

**BRIDGEND COUNTY BOROUGH COUNCIL**  
**REPORT OF THE EXECUTIVE DIRECTOR OF ENVIRONMENT**  
**RIGHTS OF WAY PANEL**  
**27<sup>TH</sup> JULY 2007**  
**TRANSPORTATION AND ENGINEERING DEPARTMENT**

<b>ITEM</b>	<b>SUBJECT</b>
1.	PROPOSED DIVERSION OF FOOTPATH NO.3 COMMUNITY OF ST. BRIDES MINOR

# **1. PROPOSED DIVERSION OF FOOTPATH NO. 3 COMMUNITY OF ST. BRIDES MINOR**

## **1.1 PURPOSE OF REPORT**

- 1.2 This report requests authorisation for the forwarding of Bridgend County Borough Council's Diversion of Footpath 3, Community of St. Brides Minor, Public Footpath Diversion Order No. 2, 2007 to the Welsh Assembly Government for determination as three objections to the Order have been received and have not been withdrawn.
- 1.3 The Order has been made under Section 257 of the Town & Country Planning Act 1990 and it is necessary to obtain authorisation from the Panel for the foregoing course of action.

## **2. CONNECTION TO CORPORATE IMPROVEMENT PLAN / OTHER CORPORATE POLICY**

- 2.1 Not applicable

## **3. BACKGROUND**

- 3.1 Full planning consent 05/1032 was granted for 36 dwellings on 16<sup>th</sup> March 2006. This was supplemented by full consent 06/942 for plot substitution and three additional dwellings on 4<sup>th</sup> October 2006. These consents necessitate the diversion of the above footpath. The existing footpath and the proposed diversion are shown on the Diversion Order plan attached at Appendix A. The existing paths shown on Appendix A are all Footpath No. 3, Community of St. Brides Minor. The southernmost section of path between points B and C is a branch path of the main footpath.
- 3.2 The Rights of Way Panel of 17<sup>th</sup> July 2006 authorised the making of an Order which sought to divert the footpaths. The developer initially proposed a diversion along the pavement fronting Plots 37, 9, 10 and 11 shown on Appendix A (immediately north of the site entrance) but agreed to provide a diversion along the southern edge of the open area to the north of these plots in lieu of the route to the front of the plots if the Panel wished him to do this. The provision of this route was also dependent on confirmation being received from the Environment Agency to the effect that it had no objection to a route at existing ground levels, as it would lie within the flood plain. The Environment Agency subsequently confirmed that it has no objection to this route and it was thus proposed in the Diversion Order.
- 3.3 The developer had been advised that the Rights of Way Panel of 10<sup>th</sup> February 2004 declined to authorise a diversion proposed by a previous applicant along the pavements and through open space, as it wished a riverside diversion to be provided. The developer preferred to seek the diversion along the pavements and stated that this will ensure maximum security for all its users. The developer is aware of the provisions of Welsh Office Circular 16/94, Planning Out Crime, which states that the security of premises can be reduced where a footpath or alleyway provides unrestricted access to the rear.

- 3.4 The Panel will no doubt recall that planning consent had been granted for the development requiring the diversion as now proposed, after a lengthy process. The rights of way situation was only one of many factors to be taken into consideration when determining a planning application, and on balance, it was considered that the scheme is satisfactory.
- 3.5 As it was strongly emphasised by members at the Panel meeting of 17<sup>th</sup> July 2006 that the layout with planning consent did not provide a riverside diversion, the developer agreed to construct a circular permissive route, northwards from the regions of Plots 9, 10 and 11 to the river and back, provided that the Environment Agency confirmed that it has no objection to this. This confirmation was received and the developer will provide the permissive route referred to.
- 3.6 In addition, the developer agreed to provide a sum of money for a pedestrian link at the eastern edge of the Maendy Farm site to the east of the housing development in question. This sum has been received.

#### **4. Current Situation / Proposal**

- 4.1 As previously stated in 1.2, three objections have been received to the County Borough Council's Diversion Order No. 2, 2007. The objections have been made by the British Horse Society, the Open Spaces Society and the Campaign for the Protection of Rural Wales (Appendices B, C and D respectively). Following correspondence, the first two objectors confirm that they wish to sustain their opposition to the Diversion Order. The Campaign for the Protection of Rural Wales has not advised me to date of its intention in this connection.
- 4.2 Welsh Office Circular 5/93 (DOE2/93) Annex A, Paragraph 8 advises that once an Order has been advertised, local authorities are expected to make every effort to resolve objections and to secure their withdrawal. The Circular also advises that if duly made objections are not withdrawn, the Order must be referred to the Secretary of State (now Welsh Assembly Government) for determination. It is also stated that the authority has no locus to determine whether or not the grounds of objection or representation are relevant.

#### **5. Assistant Director Transportation & Engineering Comments**

- 5.1 The grounds of objection stated in the letters of 13<sup>th</sup> June 2007 from the British Horse Society (Appendix B) and the Open Spaces Society (Appendix C) are similar in that both state that the development is complete and that the Definitive Route has been obstructed. Both objections also contend that the original path F – D is the same as the diversion F – E. The Horse Society states that there is a drafting error regarding the position of Point D with respect to the general reference point at Willowturf Court stated within the Diversion Order. The Open Spaces Society states that the Order should have been made under the Highways Act 1980 (as the development is complete) and that the diversion is substantially less convenient to the public.
- 5.2 The objectors were informed on the 21<sup>st</sup> and 20<sup>th</sup> of June 2007 respectively that the developer advises that when the Order was made only 16 dwellings of the 39 to be provided on site had been completed and that at that time, those completed included only two plots, i.e. the show houses, which are affected by the original alignment of

the public right of way. The objectors were also informed that some dwellings on the site are yet to be completed and the construction of at least one dwelling is yet to be commenced.

- 5.3 The objectors were further advised that the Council is aware that the Department of the Environment Circular 2/1993 (Welsh Officer Circular 5/93) indicates at paragraph 24 to Annex C that:

“Where the development insofar as it affects a path or way is completed before the necessary order to divert or extinguish the path has been made or confirmed, the powers under sections 257 and 259 of the Act to make and confirm orders are no longer available since the development, which the order is intended to enable has already been carried out. If such a development has already been completed there is no basis for an order to be made.”

- 5.4 The point was also made that the Council is also aware of the judgement in *Ashby & Dalby v Secretary of State for the Environment* (1980) that orders could be made so long as some of the authorised development remained to be carried out, but if it had been completed, the powers in the Town and Country Planning Act 1971 corresponding to those in the Town and Country Planning Act 1990 ss 247 and 257 could not be used.

- 5.5 The objectors were informed that the above information proves that the Council has acted correctly in using the provisions of s 257 of the Town and Country Planning Act 1990 to make this Diversion Order.

- 5.6 In relation to the obstruction of the footpath, the objectors were advised that the Council is aware that the developer has, unfortunately, obstructed the definitive route of the footpath. They were informed that it was considered, therefore, that the making of the Diversion Order was the most expedient way of attempting to resolve the situation. However, if the Diversion Order is not confirmed, Bridgend County Borough Council will then consider what action to take to safeguard the public's rights along the footpath.

- 5.7 In relation to the contention that the existing route F-D is the same as route F-E, the objectors were informed that this is not the case as the rear boundary enclosure of Plots 9, 10 and 11, is built on the existing route of Footpath 3. To further illustrate this point, it will be realised that the northern part of the driveway north of Plot 37 which will accommodate the 1.4 metres wide diversion clearly overlaps the boundary enclosure referred to and this will be extended westwards towards Heol Cwrddy shown on the Diversion Order plan.

- 5.8 It was pointed out to the British Horse Society that the route of the diversion north of Plots 37, 9, 10 and 11 is not available for use as yet but if the Order is confirmed, the parking spaces will be removed from the driveway. The current sales office will become a garaging facility and an apartment will be built above. The order requires the provision of a painted line along the southern edge of the diversion at this point to emphasise the presence of a public footpath. A 1.4 metres wide tarmac surface will be continued westwards along the diversion and a bilingual footpath signpost and an overlapping barrier will be erected at Point E on Heol Cwrddy. A handrail or railings will

be erected along the northern side of the diversion from Point E eastwards to the east end of the trees adjacent to the diversion.

- 5.9 The Horse Society was also advised that there is a drafting error in the Order in relation to the distance of Point D from the general reference point at Willowturf Court. An examination has shown that the distances from Points C and D to the reference point at Willowturf Court should be interchanged with each other to provide an accurate measurement of the distances concerned. It is my opinion that this will not prejudice the outcome of the Order as during the legal process, consent can be requested to amend the descriptions concerned. It should also be borne in mind that the position of the commencement of the existing footpaths on Heol Cwrddy is already a matter of public record and is firmly established on the Definitive Map.
- 5.10 The Open Spaces Society was advised that as far as their comment that the proposed diversion is substantially less convenient to the public is concerned, it will be noted that the length of the main route (A-B-D) of the existing footpath is 161 metres or thereabouts. The corresponding length of the diversion (A-G-F-E) is 173 metres or thereabouts. The length of the branch path section of the existing footpath (B-C) is 95 metres or so. The corresponding length of the diversion (C-G) is 115 metres or so. In view of the foregoing measurements and as the existing main or branch footpaths do not provide a frequently used access to a school or shops or other such facility, the Open Spaces Society was informed that I do not accept that the diversion is substantially less convenient to the public.

It was also stated that I accept that the visual character of the area has changed but this is an inevitable consequence of the planning consent.

Both objectors were advised that the developer has agreed to provide a circular permissive footpath from the proposed diversion north of Plot 11 to the river bank and back.

- 5.11 The objectors confirmed by letter dated 25<sup>th</sup> June and 29<sup>th</sup> June 2007 respectively that they do not wish to withdraw their objections (see Appendices E and F).
- 5.12 The Assistant Director, Transportation & Engineering again wrote to the objectors stating that as they have not withdrawn their objections, the County Borough Council is not empowered to determine the Order and the Rights of Way Panel will be requested to authorise the forwarding of the Order to the Welsh Assembly Government which will decide whether it should be confirmed following an Inquiry or Hearing.
- 5.13 The British Horse Society was advised in response to its letter of objection dated 25<sup>th</sup> June 2007 (Appendix E) as follows:

I acknowledge receipt of your letter dated 25<sup>th</sup> June 2007 which retains your objection to the above Order.

In relation to the first paragraph, I take your point that your letter of 17<sup>th</sup> May 2007 did not specifically make reference to the Highways Act 1980. You stated that the order is unnecessary to enable the development to be carried out because the development is

essentially complete. I would add however that if this were the case, it would have been appropriate to make the Order under the Highways Act 1980.

In relation to the third paragraph, planning consent 05/1032 was granted for 36 dwellings on 16<sup>th</sup> March 2006 and this was supplemented by consent 06/942 for plot substitution and three additional dwellings on 4<sup>th</sup> October 2006. The second paragraph of my letter of 21<sup>st</sup> June 2007 confirmed that when the Order was made only 16 dwellings of the 39 to be provided on site had been completed. It was further stated that at that time, those completed included only two plots (the show houses) which are affected by the original alignment of the footpath.

The comments in the fourth paragraph give the impression that the footpath was not officially temporarily stopped up at the time of the site visit of 17<sup>th</sup> July 2006. The temporary order commenced on 24<sup>th</sup> April 2006 and lasted for a period of six months although another temporary order has since been made. The builder had erected his own notices stating that the path was temporarily stopped up and my assistant's notes state that you referred to the fact that the builder had not displayed the County Borough Council's notices in this connection. The County Borough Council's Rights of Way Officer, Mr. A Mason, asked the site manager to arrange for the statutory notices to be erected.

As far as the fifth paragraph of your letter is concerned, stating that Plots 9, 10 and 11 do not obstruct the original line of the public right of way, I refer you to the comments in the fifth paragraph of the second page of my letter of 21<sup>st</sup> June 2007, which clearly states that existing route F-D is separate from diversion F-E. The diversion beyond the locked gate cannot be walked as it will not be provided until the Diversion Order is confirmed.

In relation to the sixth paragraph, you summarise the comments expressed in the fifth paragraph of my letter of 21<sup>st</sup> June 2007, relating to Welsh Office Circular 5/93 where development affecting a path or way is completed before the necessary order to divert or extinguish a path has been made or confirmed. This states that the powers under sections 257 & 259 of the Town and Country Planning Act 1990 are no longer available if the development which the order is intended to enable has been completed. Conversely, you were also advised of the judgement in *Ashby and Dalby v. Secretary of State for the Environment* in that orders could be made so long as some of the authorised development remained to be carried out.

In relation to the latter point of paragraph six, all 39 dwellings on the site have planning consent and the additional three plots do not serve as a contrivance to justify that the development is not complete.

With regard to the seventh paragraph of your letter, I can confirm that a house has yet to be built on Plot 11 which is part of the original planning consent. The apartment above the sales office which was part of the subsequent planning consent has also to be built. Additionally, the houses on Plots 1, 2, 3, 4 and 5 are still under construction.

In relation to the eighth paragraph of your letter, the County Borough Council is aware that Welsh Office Circular 5/93 states that the use of estate road pavements should be avoided wherever possible and preference given to made up paths through

landscaped or open space areas away from vehicular traffic. I concur that the Rights of Way Panel of 10<sup>th</sup> February 2004 stated that it wished to see a diversion adjacent to the riverbank, not along the route proposed by the developer which largely followed pavements.

Turning to the ninth paragraph of your letter I can confirm that the Executive Director, Environment, liaised extensively with the developer and the Environment Agency in relation to the diversion but the original developer sold the land to the current developer. At that time the views of the Panel were made known to him. Contrary to your comments, the development did not proceed immediately following the Panel meeting of 10<sup>th</sup> February 2004.

As far as the tenth paragraph is concerned, following the grant of the new planning consent, on 16<sup>th</sup> March 2006, authorisation for the diversion of the paths was again requested from the Rights of Way Panel of 17<sup>th</sup> July 2006. The Authority did not wait two and a half years to report back to the Panel as you claim. This delay was attributable to extensive negotiations with the former developer before he decided that he was going to sell the land to the current developer and the time it took to determine the new planning application.

I cannot disagree with the comments in the eleventh paragraph in that despite advice to the contrary, the developer preferred to identify a diversion along pavements. The developer stated that this was for security reasons.

The case of *Ashby and Dalby v the Secretary of State* referred to in paragraph 12, has already been referred to earlier in this letter. You state that it was not intended that this decision becomes a contrivance by which developers leave out one plot in a development and then argue that the development is not complete. You will be aware that this decision was taken by the Court of Appeal, which no doubt, will have been aware that this decision would be referred to on subsequent occasions when similar issues arose. I do not agree that in the case of *Hall v Secretary of State for the Environment*, that a parallel can be drawn as this refers to the demolition of a wall which was a part of a planning consent in order to argue that the rebuilding of the wall constituted part of the authorised development remaining to be carried out.

In relation to paragraph 13, the adoption process is a lengthy procedure and it is not possible to immediately adopt the pavements and carriageways of the development.

As far as paragraph 14 is concerned, I refer you to the fifth paragraph of this letter and the previous comments of my letter dated 21<sup>st</sup> June 2007. Footpath F-D is the original route of the footpath which will be closed. It is not appropriate to open diversion F-E to public use until the Order has been confirmed and the new route has been provided. I will discuss the possible placement of cross hatching on the footpath over the tarmac driveway with the developer.

It appears from the last paragraph of your letter that you are not sure where the permissive path which the developer has agreed to provide will be located. This path would run due northwards from Plot 11 to access the riverbank and will return via a circular route to the point referred to. In view of this clarification, I ask if this has any bearing on the possible withdrawal of the objection to the footpath diversion as a

section of the riverbank will be accessed broadly in accordance with the requirement of the Rights of Way Panel of 10<sup>th</sup> February 2004. I will discuss the possibility of a Footpath Creation Order with the developer in lieu of the permissive route.

As you have not withdrawn your objection, the County Borough Council is not empowered to determine the Order and the Rights of Way Panel will be requested to authorise the forwarding of the Order to the Welsh Assembly Government which will decide whether it should be confirmed following an Inquiry or Hearing. If I do not hear from you within the next seven days, I will assume that the route northwards from Plot 11 to the riverbank does not lead you to withdraw your objection to the Order.

5.14 Further to the last paragraph above, I will report verbally to the Panel on whether the Horse Society has withdrawn its objection.

5.15 The Open Spaces Society was advised in response to its letter of objection dated 29<sup>th</sup> June 2007 (Appendix F) as follows:

I acknowledge receipt of your letter dated 29<sup>th</sup> June 2007 which retains your objection to the above Order.

I note that the Open Spaces Society still objects because it is contended that the development is complete and that the order should have been made under the Highways Act 1980 .It is also stated that the diversion is substantially less convenient to the public.

I draw your attention to my letter of 20 June 2007, which stated in the second paragraph that when the Order was made only 16 dwellings of the 39 to be provided had been completed and only two of these plots were affected by the original alignment of the public right of way. It was thus not appropriate to use the Highways Act 1980 to make the Diversion Order.

In relation to the question of the diversion being substantially less convenient to the public, I refer you to the tenth paragraph of my letter which provided you with the respective distances of the existing footpath and the proposed diversion, and stated that as the existing main or branch footpaths do not provide a frequently used access to a school or shops or other such facility, I do not accept that the diversion is substantially less convenient to the public.

As you have not withdrawn your objection, the County Borough Council is not empowered to determine the Order and the Rights of Way Panel will be requested to authorise the forwarding of the Order to the Welsh Assembly Government which will decide whether it should be confirmed following an Inquiry or Hearing.

5.16 As previously mentioned, the Campaign for the Protection of Rural Wales objected to the Order on 18<sup>th</sup> June 2007 (see Appendix D).

5.17 The CPRW objects to the continued diversion of footpaths onto public highways where the countryside nature of the path is lost. They state that the main purpose of the footpath was to provide access to the river bank of the River Ogmore with a branch alongside Nant Bryncethin to Bryncoch. The CPRW notes that the path is being



diverted away from the riverbank whereas the path to Bryncoch skirts the built up area. They contend that this would also be the case if the footpaths to be diverted would be aligned adjacent to the riverbank. The CPRW state that the present footpath is away from the riverbank because of flooding – that is not now a requirement as development is now taking place in the flood plain and flood prevention works must be in place. The CPRW concludes by stating that the continued realignment of paths, longer distance for walking and the urbanisation of countryside paths is unacceptable.

5.18 The Campaign for the Protection of Rural Wales was advised on 25<sup>th</sup> June 2007 as follows:

I refer to your letter of objection dated 18<sup>th</sup> June 2007 which has been forwarded to me by the Director of Legal and Democratic Services and have the following comments for your consideration.

The closing date for the submission of objections or representations was the 19<sup>th</sup> June 2007. However, your letter of objection was not received by the Director of Legal and Democratic Services until 20 June 2007. It is noted that the copy of the Order which was hand delivered to your address by Mr. Chris Lewis of my Rights of Way section on the 11<sup>th</sup> June 2007 did not advise you of the closing date but I note from the top right hand corner of your letter of objection that you were aware of this date.

In view of the fact that two other objections have been received to the Order, I am providing you with the following comments on your points of objection. However, the Director of Legal and Democratic Services will ultimately decide whether the objections raised in your letter can be taken into consideration as they were received after the closing date.

In relation to your comment that the Campaign for the Protection of Rural Wales objects to the continued diversion of footpaths on to public highways where the countryside nature of the footpath is lost I acknowledge that the recreational and visual character of the area and footpath will change but contend that this is an inevitable consequence of the planning consent.

As far as the third paragraph of your letter is concerned, the original definitive alignments of the main and branch footpaths are considerably removed from the riverbank and, contrary to the comments in the fourth paragraph of your letter, the Order seeks to divert the footpath to a route closer to the river. This is not to say, however, that I do not understand your dissatisfaction with the pavement component of the diversion, and would inform you that the proposed diversion route behind Plots 37, 9, 10 and 11 and the proposed permissive footpath northwards from the area of these Plots has been introduced in an attempt to mitigate the pavement diversion. Mr Lewis also delivered a coloured plan showing the proposed permissive route on the 11<sup>th</sup> June 2007

In relation to the penultimate paragraph of your letter, I cannot contradict your contention that the existing footpath is located away from the river because of flooding as I have no information to the contrary. It will be realised, however, that the permissive route will be located within an area which is susceptible to flooding but it is

considered that the opportunity to provide this amenity feature should not be missed, especially when the flooding of the area is so infrequent.

With regard to the final paragraph of your letter I can confirm that the Council will always seek to ensure that the rights of way network is protected. However, it is sometimes inevitable that planning consents will require the realignment of footpaths and Section 257 of the Town and Country Planning Act 1990 has been devised in order to undertake this.

You also refer to longer distances for walking being provided as a consequence of such diversions. In this particular case I can advise you that the length of the main route (A-B-D) of the existing footpath is 161 metres or thereabouts whilst the corresponding length of the diversion (A-G-F-E) is 173 metres or thereabouts. The length of the branch path section of the existing footpath (B-C) is 95 metres or so whilst the corresponding length of the diversion (C-G) is 115 metres or so. In view of the foregoing measurements, and as the existing main or branch footpaths do not provide a frequently used access to a school or shops or other such facility, I do not accept that this diversion is substantially less convenient to the public.

I trust that the foregoing comments assist you and ask whether you are prepared to withdraw your objection in light of these comments. I shall be grateful to receive your views within 10 days of the date of this letter.

- 5.19 Further to the second and third paragraphs of the above letter, the letter of objection from the Campaign for the Protection of Rural Wales has been formally accepted, as it was delivered to the post box at Civic Offices on the late afternoon of the closing date for objections.
- 5.20 As previously mentioned, the Campaign for the Protection of Rural Wales has not advised me to date whether it will withdraw its objection.

## **CONCLUSION**

- 5.21 The foregoing information demonstrates that the County Borough Council has, in accordance with the advice of the former Welsh Office, made every effort to resolve the objections and to secure their withdrawal.
- 5.22 The Open Spaces Society has confirmed that it retains its objection and it is appropriate that the Order be forwarded to the Welsh Assembly Government for determination on the basis of this objection alone.
- 5.23 The British Horse Society has also objected to the Diversion Order and I await their comments in relation to whether the clarification provided on the provision of a permissive circular route to the riverbank north of Plots 9, 10 and 11 will lead them to reappraise their position. It is a distinct possibility that the Horse Society will retain its objection and the Panel will be verbally appraised of the situation when it becomes clear.

## **6. EFFECT UPON POLICY FRAMEWORK & PROCEDURE RULES**

6.1 It is considered that there is no effect upon policy framework and procedure rules

## **7. LEGAL IMPLICATIONS**

7.1 A copy of the Report has been forwarded to the Director of Legal and Democratic Services and any observations will be reported verbally to the Panel.

## **8. FINANCIAL IMPLICATIONS**

8.1 It is usually the case that an Inquiry or Hearing is held following the receipt of objections which are not withdrawn. Former Welsh Office advice states that objections to Orders, and their determination by the Secretary of State (now Welsh Assembly Government) fall within the public domain and, as such, are outside the applicant's control. It is considered unreasonable to expect the applicant to bear the extra expense incurred by the local authority in pursuing opposed orders through to confirmation and these costs have therefore been excluded from the power to charge. The authority will nevertheless wish to ensure that the applicant is afforded every opportunity to participate in any public inquiry. Although objectors have the right to be heard by the Secretary of State, such matters can also be considered on the basis of written representations. This may be appropriate where there are only two or three objectors. Such arrangements have proved to be more cost effective and all parties are therefore urged to adopt this procedure wherever possible.

8.2 Any financial implications arising from the above procedures are expected to be minimal and will be met from within existing resources.

## **9. RECOMMENDATION**

9.1 That authorisation be given for the Director of Legal and Democratic Services to forward Bridgend County Borough Council Public Path Diversion Order Town & Country Planning Act 1990 Section 257 Diversion of Footpath 3, Community of St. Brides Minor Public Footpath Diversion Order No. 2, 2007 to the Welsh Assembly Government for determination

**RHODRI-GWYNN JONES**  
**EXECUTIVE DIRECTOR – ENVIRONMENT**

**17<sup>th</sup> July 2007**

**Contact Officer: Mr Chris Lewis**  
**Rights of Way Assistant**

**Telephone: 01656 642506**

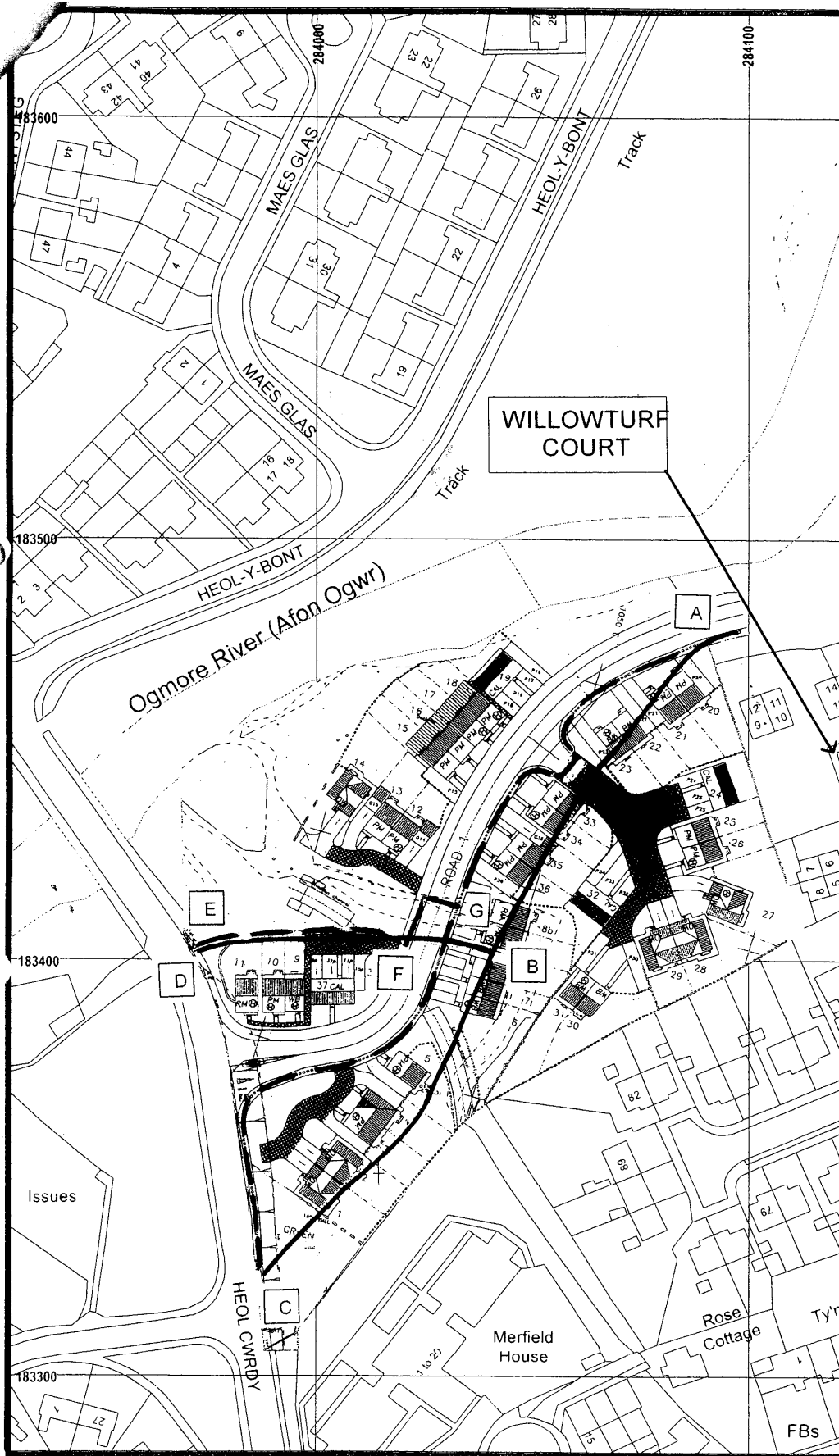
**Email: lewiscd@bridgend.gov.uk**

**Postal Address: Transportation & Engineering Department  
Morien House  
Bennett Street  
Bridgend Industrial Estate  
Bridgend CF31 3SH**

**Background Documents:** ADT&E File F162, 163 from 23.10.01 to existing. Planning Application Files 05/1032 & 06/942

# **APPENDIX A**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)



**DIVERSION OF FOOTPATH NO. 3 COMMUNITY BRIDGE ST BRIDEN MINOR**

**BRIDGEND COUNTY BOROUGH COUNCIL**

**PUBLIC PATH DIVERSION ORDER No. 2007**

**KEY**  
 EXISTING FOOTPATH  
 PROPOSED DIVERSION

**Scale 1:1,250**  
**Date issued: 23/04/07**

**Rhodri-Gwynn Jones**  
 BSc., C.Eng., M.I.C.E.  
**Executive Director - Environment, Bridgend County Borough Council, Civic Offices, Angel Street, Bridgend CF31 4WB.**

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**Transportation & Engineering**  
**Tel: (01656) 642516**

**Appendix A**

# **APPENDIX B**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)

Registered Offices  
British Horse Society  
Stoneleigh Deer Park  
Kenilworth  
Warwickshire  
CV6 2XZ  
  
Limited Liability  
Registered No. 444742 England



Tel: 01926 707700  
Fax: 01926 707800  
e-mail: enquiry@bhs.org.uk  
Web Site: www.bhs.org.uk

Baytree  
29 Newton Nottage Road  
Porthcawl

**British Horse Society**

Registered Charity No. 218504  
Patron: Her Majesty The Queen

BRIDGEND COUNTY  
BOROUGH COUNCIL  
13 JUN 2007  
LEGAL AND DEMOCRATIC  
SERVICES

**Mr P. A. Jolley**  
**Director of Legal and Democratic Services**  
**Bridgend County Borough Council**  
**Civic Offices**  
**Angel Street**  
**Bridgend**  
**CF31 4WB**

Dear Sir,

**RE: Bridgend County Borough Council**  
**Diversion of Footpath 3 Community of St. Brides Minor**  
**Public Footpath Diversion Order No.2, 2007.**

Thank you for your letter dated 17<sup>th</sup> May 2007, enclosing copy of the above Order made on the 16<sup>th</sup> May 2007.

We must however advise you that we object to the Order on the following grounds:-

The Order is unnecessary "to enable the development to be carried out" as stated in the order because the development is essentially complete and many of the houses and parking bays affecting the original footpath are occupied.

The line of the diverted footpath between F and E is the same as the original path F and D onto which has been constructed a private driveway and parking bays that are in use, preventing any present or future safe and convenient pedestrian access.

There is presumably a drafting error regarding the position of point D with respect to the general reference point at Willowturf Court that effect to identify point D as other than the same point E which it clearly is on the ground.

We would be pleased to hear from you in connection with this matter.

Yours faithfully

**G. J. Wheeler**  
**County Access and Bridleways Officer**  
**British Horse Society**

Sorry checked  
through your  
mail lobby &  
found these.  
(146)

Working for you and your horse

**Appendix B**



# **APPENDIX C**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)



Chairman RODNEY LEGG Charity no 214753 General Secretary

KATE ASHBROOK  
 BRIDGEND  
 BOROUGH  
 14 JUN 2007  
 LEGAL AND  
 SERV

Mr P A Jolley  
 Director of Legal and Democratic Services  
 Bridgend County Borough Council  
 Civic Offices  
 Angel Street  
 Bridgend CF31 4WB

13 June 2007

Dear Mr Jolley

**Bridgend County Borough Council**  
**Diversion of footpath 3, Community of St Brides Minor**  
**Public footpath diversion order no. 2 2007**

The Open Spaces Society objects to the above order on the grounds that it does not comply with the relevant legislation.

We understand that the development is complete and that the definitive route has been obstructed. Therefore the order should be made under the Highways Act 1980 and not under the Town and Country Planning Act 1990, and we trust that you will therefore abandon the order.

Without prejudice to that view we consider that the existing route F-D is the same as the route F-E, both of which are obstructed.

Furthermore the proposed diversion is substantially less convenient to the public. We trust you will not proceed with this.

Yours sincerely

Kate Ashbrook  
 General Secretary

25A Bell Street, Henley-on-Thames, Oxon RG9 2BA  
 tel: 01491 573535 fax: 01491 573051 e-mail: [hq@oss.org.uk](mailto:hq@oss.org.uk) website: [www.oss.org.uk](http://www.oss.org.uk)

The Open Spaces Society (formerly The Commons, Open Spaces and Footpaths Preservation Society) campaigns to create and conserve common land, village greens, open spaces and rights of public access, in town and country, in England and Wales. Founded in 1865, we are Britain's oldest national conservation body.

# Appendix C

# **APPENDIX D**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)

Received by  
19/6/07

CAMPAIGN FOR THE PROTECTION OF RURAL WALES

MID AND SOUTH GLAMORGAN BRANCH

FROM R. LITTON  
61 CHAFFAL AVENUE  
PENYFAI  
BRIDGEND  
CF31 4NW  
18/6/07

TO DIRECTOR OF LEGAL AND  
DEMOCRATIC SERVICES

BRIDGEND COUNTY BOROUGH COUNCIL  
20 JUN 2007  
LEGAL AND DEMOCRATIC  
SERVICES

BRIDGEND C.B.C  
CIVIC OFFICES  
ANGEL ST  
BRIDGEND  
CF31 4NW

Dear Sir

I wish, on behalf of CPRW to object to  
Public Footpath Diversion Order 2 2007.

CPRW objects to the continued diversion of  
footpaths onto public highways where the countryside  
nature of the footpath is lost.

The main purpose of the footpath was to provide  
access to the river bank of the River Ogmore with a  
branch alongside Nant Brynceithin to Bryncoch

We note however that the path is being diverted  
away from the river bank where as the path to  
Bryncoch skirts the built up area. This  
would also be the case if the footpaths ~~is~~  
were to be diverted ~~would~~ be aligned adjacent to the  
river bank. ~~The intended route~~ The present footpath

is away from the river bank because of flooding  
- that is not now a requirement as development  
is now taking place on the flood plain and  
flood prevention works must be in place.

The continued realignment of paths, longer distances  
for walking and urbanisation of countryside paths  
is unacceptable. Yours faithfully

R. Litton  
Committee member for Bridgend

Appendix D

# **APPENDIX E**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)

Registered Offices

British Horse Society  
Stoneleigh Deer Park  
Kenilworth  
Warwickshire  
CV8 2XZ

Limited Liability  
Registered No. 444742 England



Tel: 01926 707700  
Fax: 01926 707800  
e-mail: enquiry@bhs.org.uk  
Web Site: www.bhs.org.uk

Baytree  
29 Newton Nottage Road  
Porthcawl  
Mid Glamorgan  
CF36 5PF  
25<sup>th</sup> June 2007

## British Horse Society

Registered Charity No. 210504

Patron: Her Majesty The Queen

**Mr C. D. Lewis**  
**Transportation and Engineering**  
**Environmental and Planning Services Directorate**  
**Bridgend County Borough Council**  
**Morien House**  
**Bennett Street**  
**Bridgend Industrial Estate**  
**BRIDGEND**  
**CF31 3SH**

Dear Sir,

**RE: Bridgend County Borough Council**  
**Diversion of Footpath 3, Community of St. Brides Minor**  
**Public Footpath Diversion Order No.2, 2007.**

Thank you for your letter dated 21st June 2007, concerning our objection to the above Order and for elucidating on what you see as the legal issues.

However our objection did not, as you suggest, make any mention of the 1980 Highways Act. Instead our first point was a simple and straight forward response to your Order which stated that the Order "was necessary to enable development work to be carried out" when clearly this had already occurred so far as we and anyone else are concerned.

Furthermore, the Order stated that the planning permission granted was for 36 dwellings and not 39 as you now suggest. When we visited the development shortly after receiving notice of the Order it appeared to us that 36 dwellings were complete, certainly sold and as far as could reasonably be discerned from the number of notices posted, "Curtsey – Property Occupied", largely occupied. It would seem the developer has a different benchmark for completion than anyone else and we suggest that they are using residential occupation as their measure of completion.

To say, as you do, that at the time of the Order, the only plots affected by the original alignment of the public right of way was the two show houses, 9 and 10, is to put the proverbial cart before the horse. The reality is that when the Rights of Way Panel met for the second time on 17<sup>th</sup> July 2006 to consider this proposal the development was at an advanced stage and the whole of the diagonal A to C was obstructed without so much as a Temporary Closure Notice in place. It will be recalled that the Legal Officer was requested to advise the panel members of their discretion in this matter, even at that time.

So far as we are concerned plots 9, 10 and 11 are the few plots that do not obstruct the original line of the public right of way and this part would be usable

## Appendix E

Working for you and your horse

today if it were not for the locked gate in the car park and the temporary barrier alongside Heol Cwrddy.

With regard to the DOE Circular 2/1993 (Welsh Office Circular 5/93) to which you refer we have two points:-

Firstly, it expressly states the powers under the Act to make and confirm orders are no longer available since the development "**which the order is intended to enable**" has been carried out. The Order was intended to enable 36 dwellings and the fact that another two plots have been eked out of the site or deliberately set aside is not only a contrivance to say the development is not complete but also, we suggest, exceeds the development for which permission has been granted.

Furthermore you go on to say that one dwelling is yet to be commenced which presumably is plot 37, the sales office, which is to be converted to a garaging facility and an apartment above which again we see as works in excess of the development for which planning permission was granted, requiring the Order to be made.

Secondly, the same Welsh Office Circular 5/93 to which you refer expressly states that "the use of estate roads for footpath diversions **should** be avoided wherever possible and preference given to the use of made up paths through landscaped or open space areas away from vehicular traffic." For this reason, when the Rights of Way Panel met for the first time to discuss this proposal on 10<sup>th</sup> February 2004 they determined that the footpath was to be diverted along the riverbank and not on the footways as proposed by the developer and recommended in the Officers Report.

No order was forthcoming however, and the development was allowed to proceed obstructing, not only the definitive line of the footpath, but also that alternative route along the riverbank determined as appropriate by the above mentioned panel meeting.

If the Authority had acted in accordance with the wishes of the first Panel then the alternative route may have been secured if the developer had shown more regard for the new path than they did for the original footpath. Instead the Authority waited two and a half years and recalled the Rights of Way Panel on the 17<sup>th</sup> July 2006 with the, apparent to them, *fait accompli*.

It is acknowledged from your report to the second Panel meeting that you advised the developer on a number of occasions that the Panel wanted a riverside diversion but as you confirmed during our telephone conversation last Wednesday, the developer always wanted the footpath to be diverted onto the pavements. Indeed only today we have received from you, a consultation concerning a Reserved Matters Application from the same developer for Phase 1 on the adjoining site, and we see that it is proposed that the continuation of footpath 3 is to be diverted onto the pavement here also, without any need whatever from the development point of view.

You mention in your letter one piece of case law, namely *Ashby & Dalby v Secretary of State for the Environment* (1980), of which the undersigned was not entirely unaware, but it is our view that whilst respecting the decision in the particular circumstances, it was not intended that this decision becomes a contrivance by which developers leave out one plot in a development and then argue that the development is

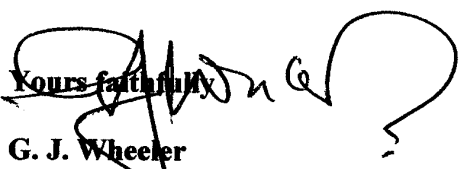
## Appendix E

not complete. In the situation that exists here our view is that the later case of *Hall v Secretary of State for the Environment* (1998) is appropriate in that the planning permission for that part of the development requiring the order to be made, namely 36 dwellings, has been spent.

It is our belief that the Authority has failed here "to safeguard the public's rights along the footpath" and that the appropriate course of action now is for the Authority to adopt the highway forthwith, thus ensuring the right of the public to pass and re pass which they are presently denied by the presence of the occupied dwelling houses.

That part of the footpath F-D, whilst not unaffected by the development, should be cleared of obstructions allowing the public free and unfettered access and instead of the painted line you mention, that will have no deterrent whatever to the continued use as parking lots, the area defining the footpath should be cross hatched and highlighted as footpath so that it is safe and can be properly policed without reference to the rights of way department, when cars are illegally parked.

As to your penultimate paragraph we are unclear what to infer from this. If by circular you mean the public will have the permissive right to walk from the North side of plot 11 to point A and back, this is what was determined by the first Panel meeting and we wonder why now, this is being offered up as a permissive route only!

~~Yours faithfully~~   
**G. J. Wheeler**  
**County Access and Bridleways Officer**  
**British Horse Society**

**Appendix E**



# **APPENDIX F**

(to be read in conjunction with the Rights of Way Panel  
Report dated 27<sup>th</sup> July 2007)

10 = 70941



Chairman  
RODNEY LEGG

Charity no 214753

General Secretary  
KATE ASHBROOK

25A Bell Street  
Henley -on-Thames  
Oxfordshire  
RG9 2BA

Tel: 01491 573535  
Fax: 01491 573051  
email: [hq@oss.org.uk](mailto:hq@oss.org.uk)  
website: [www.oss.org.uk](http://www.oss.org.uk)

Executive Director – Environment  
Transport and Engineering  
Environmental and Planning Services Directorate  
Bridgend County Borough Council  
Morien House  
Bennett Street  
Bridgend Industrial Estate  
Bridgend  
CF31 3SH

FAO Mr C Lewis

Your ref TE/H/CDL/F162  
29 June 2007

Dear Sir

**Bridgend County Borough Council**  
**Diversion of footpath 3, community of St Brides Minor**  
**Public footpath diversion order no 2, 2007**

Thank you for your letter of 21 June.

We understand that the development which allegedly necessitates the diversion of the path is complete. Building should have ceased until the outcome of the diversion was determined. As the path is obstructed, the order should be made under the Highways Act 1980. The diversion is substantially less convenient to the public.

We support the points made to you by Mr Wheeler and trust you will abandon the order.

**Appendix F**

Yours faithfully

Kate Ashbrook

Kate Ashbrook  
General Secretary

Appendix F