

**REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES
RIGHTS OF WAY SUB COMMITTEE
Wednesday 24 June 2009**

ITEM	SUBJECT
1.	PROPOSED DIVERSION OF FOOTPATH NO. 41, COMMUNITY OF OGMORE VALLEY. COURT COLMAN STREET/NANTYMOEL ROW, NANTYMOEL, BRIDGEND.

1. PROPOSED DIVERSION OF FOOTPATH NO 41, COMMUNITY OF OGMORE VALLEY, COURT COLMAN STREET/NANTYMOEL ROW, NANTYMOEL, BRIDGEND.

1.1 PURPOSE OF REPORT

- 1.2 This report requests authorisation for the making of an Order which will seek to divert Footpath 41, Ogmore Valley.

2 CONNECTION TO CORPORATE IMPROVEMENT PLAN / OTHER CORPORATE POLICY

- 2.1 Not applicable.

3 BACKGROUND

- 3.1 Planning consent P/07/610/FUL for a highway retaining wall amendment to planning consents 03/1353/RES and 03/1354/RES for 19 and 3 self build housing plots respectively, necessitates the diversion of Footpath 41, Community of Ogmore Valley, which would otherwise be located within the plot boundaries. Planning consent P/09/146/FUL authorises the works which are required to provide the northern part of the diversion along ramps and embankments through the steeply sloping area of public open space at the central part of the site. The public open space is shown between Points C and F on Appendix A attached to the report. The full length of the diversion lies between Points A and F on this plan.

- 3.2 The proposed diversion has evolved in response to views expressed by an Inspector appointed by the National Assembly for Wales and the County Borough Councils former Rights of Way Panel, and it is appropriate to advise the Sub Committee of the background to this matter to enable it to fully consider the diversion of the footpath.

The previous history of this matter is set out below.

- 3.3 The Rights of Way Panel of 19 November 2004 authorised the making of an order to divert Footpath 41, Community of Ogmore Valley (then known as Footpath 44, formerly Llangeinor), in view of planning consents 03/1353/RES and 03/1354/RES for 19 and 3 self build housing plots respectively. An Order was made which sought to divert the footpath primarily along the western pavement of the development and

through public open space. The plan attached to the Diversion Order is shown in Appendix B attached to the report.

- 3.4 An objection was received which was not withdrawn and the Panel authorised that the Order be submitted to the Welsh Assembly Government for determination on 25 July 2005.
- 3.5 Following written representations and a site inspection, an Inspector appointed by the Welsh Assembly Government declined to confirm the Order as she considered that the route proposed through the public open space would be too steep.
- 3.6 However, it was noted by the Inspector, that there were a number of steps and ramps in the vicinity because Nantymoel is situated in a steep sided valley, and that they ascend or descend their respective slopes at a much more gradual rate than dictated by the alignment of the route indicated on the Diversion Order plan.
- 3.7 The Inspector stated that in order to achieve an acceptable gradient in keeping with the current definitive route and other paths in the vicinity, it would be necessary to depart from the line shown on the Order plan at this point. The Inspector added that taking a less direct route from A to E across the Public Open Space (see Order plan – Appendix B) might also provide an acceptable solution.
- 3.8 Significantly, the Inspector also stated that she did not consider that the proposed route alongside the road was in principle an unreasonable solution, given the constraints of the site.
- 3.9 Following the decision from the Welsh Assembly Government stating that it declined to confirm the original order, the provision of a new route in light of the Inspectors comments was discussed with the developer.
- 3.10 Those discussions identified a new proposal for the footpath diversion. That proposal substantially reduced the gradient of the route through the public open space, in view of the Inspectors comments. The lower part of the diversion would be provided with 1.8 metre wide ramps to access the public benches which would be placed within the public open space. The remainder of the diversion through the public open space would be constructed of steps of a width of 1.4 metres to access the mountainside above the development, as the Inspector was not of the opinion that steps were unacceptable.
- 3.11 The full length of the diversion through the public open space would be constructed of concrete and would be provided with metal handrails where appropriate. The diversion would be signposted at either end and a kissing gate installed where it would access the mountainside.
- 3.12 The remainder of the diversion would utilise the pavement at the east side of the internal site road as a watercourse would be sited at the former position of the pavement which accommodated the originally proposed diversion at the west side of the estate road.

- 3.13 Subsequently, planning application 07/610/FUL for an amendment to the highway retaining wall formalised the new proposal for the footpath diversion. The diversion was identical in design to that described in paragraphs 3.10 to 3.12.
- 3.14 Consultation, on the proposed diversion was undertaken with the County Borough Council local member, Ogmore Valley Community Council, Bridgend and District Ramblers, other user groups, public utilities, South Wales Police and residents living adjacent to the site. It should be noted that these consultations were carried out when the new route was first identified and also when application P/07/610/FUL was received.
- 3.15 One objection was received from a resident of Nantymoel Row. The grounds for the objection were primarily as follows:
- (i) That the diversion involved the provision of steps as a replacement for the steep gradient of the mountainside, effectively preventing people who are not fit or able from going any further than the public benches in the open space.
 - (ii) That the pavement section of the diversion does not consider the privacy of the owners of the adjacent new houses.
 - (iii) That access to the current footpath is impossible, and the objector wished to know if the developer had renewed his application for a temporary closure order. The objector stated that he would wish to object to any further temporary closures and suggested another route along the south east boundary of the site.
 - (iv) Welsh Office Circular 5/93 states that the use of estate roads (for diversions) should be avoided wherever possible and preference given to made up estate paths through landscaped or open space areas away from vehicular traffic.
 - (v) That the path could be used to showcase and enhance access to an area of natural beauty.
 - (vi) That the period of closure as permitted in the temporary order has expired, and the path should be reopened.
 - (vii) The objector contended that the route suggested by him would be deemed acceptable by the Inspector and if the new proposal had been in line with his suggestion, the developer would now be progressing the work.
 - (viii) The new proposal is not substantially different to the route proposed in the former Diversion Order, which the Inspector stated would result in many people being denied the ability to use the public footpath.
 - (ix) After heavy rains, there are several points along the embankment where streams and waterfalls have formed, and the objector considered that the best option for the diversion would be along the top of the embankment away from the houses and water.

- 3.16 Another resident verbally contacted the Assistant Director Planning Services and asked if the proposal will prejudice the “right of way” from Court Colman Street onto Footpath 41 (there is no right of way at this location).
- 3.17 A further resident wrote of her concern in relation to the placement of steps to access the mountainside, contending that the placement of steps at Bryn Road, Ogmores Vale, has rendered the mountainside inaccessible to all but the very fit, to the detriment of dog walking and walking for pleasure.
- 3.18 A full account of the foregoing objections and exchange of correspondence is given within the Rights of Way Panel Report of 21 November 2007 and can be accessed on the Councils website.
- 3.19 Based on the information provided in the report and as a result of a site inspection the Rights of Way Panel of 21 November 2007 deferred a decision on whether authorisation should be given for the making of an Order which would seek to divert Footpath 41, Community of Ogmores Valley to enable further consultation between Officers and the developer to be undertaken. That consultation related to the provision of additional curved gradients in lieu of the steps which were formerly proposed on the higher part of the diversion within the public open space, and the provision of a third park bench within the open space, as required by the Panel.
- 3.20 Discussions were immediately commenced with the developer in this connection and this culminated in the formulation of the proposed diversion shown on Appendix A attached to this report and for which authorisation is now being sought.
- 3.21 The proposed diversion will still consist of ramps of a gradient of 1 in 8 either side of the right angle bend in the diversion where it leaves the estate road north west of Point C on Appendix A. The gradient of these ramps is identical to the gradients which were acceptable to the Rights of Way Panel. The ramps will access two public benches which will be provided within the public open space at this point. These benches will be provided in lieu of the former bench at the lower part of the site.
- 3.22 In accordance with the requirements of the previous Panel, the continuation of the diversion where it climbs the public open space will now also be ramped. When meeting on site, the previous Panel considered that the placement of the ramps on the natural slope of the land would be satisfactory, but the developer has devised a route of a gradient of 1 in 5 which marginally improves on this by slightly reducing this slope. An additional public bench will be provided adjacent to the lower section of the 1 in 5 ramp as required.
- 3.23 The full length of the diversion through the public open space will be constructed of 1.8 metre wide concrete and will be provided with metal handrails (see Appendix A) . The diversion will be bilingually signposted at either end and a metal kissing gate will be installed at Point F where it will access the mountainside. Concrete will be utilised as a blinded hardcore route would be scoured by surface water run off, and would be subject to ongoing maintenance problems.
- 3.24 The developer advises that the embankments which will accommodate the diversion will have extensive rock formations within them and will be further stabilised by the construction of retaining walls and backfilled to prevent the slippage of material.

- 3.25 The remainder of the diversion will utilise the pavement at the east side of the site road. The diversion will also be signposted with a bilingual sign at the commencement of the diversion adjacent to Nantymoel Row.
- 3.26 Consultations on the proposed diversion have been undertaken with the County Borough Council local member, Ogmore Valley Community Council, Bridgend and District Ramblers, other user groups, public utilities, South Wales Police and residents living adjacent to the site (including the objector to the former Diversion Order). No objections to the proposed diversion were received on this occasion.
- 3.27 It will be recalled that the developer has obtained planning permission P/09/146/FUL to implement the works for the construction of the ramped route through the public open space. This was granted on 28 April 2009.
- 3.28 As planning consent for the ramped route has now been obtained, it is appropriate to seek authorisation from the Rights of Way Sub Committee for the making of a Diversion Order. The route proposed through the public open space incorporates the comments of the Inspector who declined to confirm the 2005 Diversion Order, and also the requirements of the Rights of Way Panel.
- 3.29 In relation to the current proposal wholly along ramps, Members should also be advised that within the Conclusion section of the Access Statement which accompanied planning application P/09/146/FUL (for the footpath through the public open space), the applicant stated as follows; that having regard to the topography of the site, the lower sections of the footpath will be accessible to both ambulant and semi-ambulant persons, although, at a gradient of 1 in 8, assisted wheelchair use will not be possible or practicable. He also stated that, thereafter, the increased gradient of 1 in 5 would make access for wheelchair users impossible.
- 3.30 It is not considered, that it will not be possible to push a person in a wheelchair along the combined 35 metres length of the section of 1 in 8 gradients to access the public benches on the lower part of the diversion. It will be recalled that currently, the maximum permissible gradient of a private drive is 1 in 8. Additionally, in certain circumstances, this gradient is still acceptable for roads in the current Design Guide for residential and industrial estate roads, and it was the standard permissible maximum gradient for roads in new developments prior to 1993. The Head of Development control was advised of the Group Manager Highways and Fleets views in this connection.

4 GROUP MANAGER – HIGHWAYS AND FLEET COMMENTS

- 4.1 Welsh Office Circular 5/93 (DOE Circular 2/93) advises that wherever possible, the use of estate road pavements for footpath diversions should be avoided and preference given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic. It will be realised however, that the proposed diversion will utilise a pavement for its greater part, although it will also run through an area of public open space at its northern end. I provide the following comments in relation to this.
- 4.2 The public open space which will accommodate the ramped section of the proposed diversion was not originally included in the layouts for planning applications

03/1353/RES and 03/1354/RES, and the applicant agreed to incorporate this, in compliance with the foregoing advice.

- 4.3 It will be realised that Welsh Office Circular 5/93 advises that pavements should be avoided wherever possible. This implies that it is accepted that it is not always possible to site diversions away from pavements. The Inspector concurred with this view in that she stated that the guidance is not mandatory, and the failure to follow it is not necessarily fatal to the Order. As previously mentioned in this report, the Inspector did not consider that the proposed route alongside the road is, in principle, an unreasonable solution given the constraints of the site.
- 4.4 The Inspector considered that it is not possible to construct either steps or a ramp along the line shown on the Order plan through the public open space which would be acceptable for pedestrian use. The Inspector stated that in order to achieve an acceptable gradient in keeping with both the current definitive route and other paths in the vicinity, it would be necessary to depart from the line shown on the Order plan at this point. The meandering route of the current proposal through the public open space differs greatly from the route shown in the former diversion order.
- 4.5 The Inspector also stated that taking a less direct route from A to E (on the Diversion Order plan) might also provide an acceptable solution. The proposed diversion through the public open space seeks to provide a more gradual route through the open space than identified in the Order, in compliance with the Inspectors comments.
- 4.6 The proposed diversion also complies with the requirements of the Rights of Way Panel of 21 November 2007 in that the stepped component of the route considered by them will now be replaced by a ramp. Additionally, a third public bench will be provided in accordance with the Panels requirements. It will be recalled that the developer has sought to improve on the natural gradient of the land which will accommodate the new ramps, although this was acceptable to the Panel. In this connection, the developer will provide a marginally gentler gradient of 1 in 5 along the higher parts of the diversion. The lower ramps of the diversion will still be provided to a gradient of 1 in 8 as previously proposed, and the Panel had no objection to this.
- 4.7 The site of the public open space is steeply sloping, and it was appreciated that every effort should be made to ensure that the two public benches which will be provided at the lower part of the open space, will be accessible by wheelchairs. The ramps providing access to the benches will be constructed to a gradient of 1 in 8. These benches will be placed adjacent to this length of the diversion in lieu of the public bench formerly located at the site. Regrettably, the additional bench which will be located adjacent to the 1 in 5 continuation of the diversion will not be accessible to wheelchairs, given the constraints of the site. This bench will be accessible to persons on foot however, and they may wish to progress along the unaltered section of the footpath which climbs the steeply sloping mountainside.
- 4.8 It may be argued that the diversion may have a detrimental affect on the views from the existing footpath. The Inspector stated that the onward route of the footpath must provide wide ranging views of the valley and the surroundings, such that the loss of views from the lower part of the path would not be a significant drawback to users.

- 4.9 In any event, it is, contended that it is inevitable that the planning consents referred to will change the visual character of the immediate area from its former rural appearance, as it will be included in the built area of Nantymoel.
- 4.10 The Inspector accepted that the proposed development necessitates the diversion of the footpath. Consequently, the legal criteria for the making of the Order would be fulfilled.
- 4.11 The latest proposal has not been objected to, despite extensive consultations having been undertaken with the local member, Community Council, Bridgend Ramblers and other user groups, residents in the immediate area of the site (including the former objector), South Wales Police, and public utilities. It appears that the latest proposal may well have assuaged the concern of the objector and it will be appreciated that if the Sub Committee authorises the making of the Order, site and press notices will ensure that the public have an opportunity to comment on the proposal. It will be realised that if objections are received and not withdrawn, the Order must be forwarded to the Welsh Assembly Government for determination. This determination will follow the holding of a Public Inquiry or Hearing, or the implementation of the Written Representation procedure, within which, any objections will be considered by an Inspector.

5 CONCLUSION

- 5.1 It is, considered that the route of the diversion is perfectly satisfactory and incorporates the views of the Inspector who declined to confirm the Diversion Order of 2005. The proposed route also incorporates the measures required by the Rights of Way Panel of 21 November 2007. I therefore recommend that an Order(s) should be made to seek to divert Footpath 41, Community of Ogmore Valley as proposed.

6 EFFECT UPON POLICY FRAMEWORK AND PROCEDURE RULES

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

7 LEGAL IMPLICATIONS

- 7.1 None.

8 FINANCIAL IMPLICATIONS

- 8.1 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 Assistant Chief Executive Legal and Regulatory Services to make the necessary Order(s) to seek to divert Footpath 41, Community of Ogmore Valley to the route shown on Appendix A and to confirm such, Order(s), provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.

- 9.2 That the Assistant Chief Executive Legal and Regulatory Services be authorised to forward the Order(s) to the Welsh Assembly Government for determination, if any objections received are not withdrawn.
- 9.3 That the Order(s) excludes any section of the diversion which utilises highways which are maintainable by Bridgend County Borough Council, as public rights already exist over them.

10 DIRECTIONS TO SITE

- 10.1 Straight ahead at the clock tower at the north end of Ogwy Street, Nantymoel and proceed along Waun Wen Terrace and Dinam Street. Turn left at the junction with Commercial Street (opposite the Nantymoel Social Club) and proceed past the Nantymoel Hotel and over the river. Take the first turning on the right (Nantymoel Row) and park on the right hand side at the far end of the street.

LOUISE FRADD CORPORATE DIRECTOR – COMMUNITIES

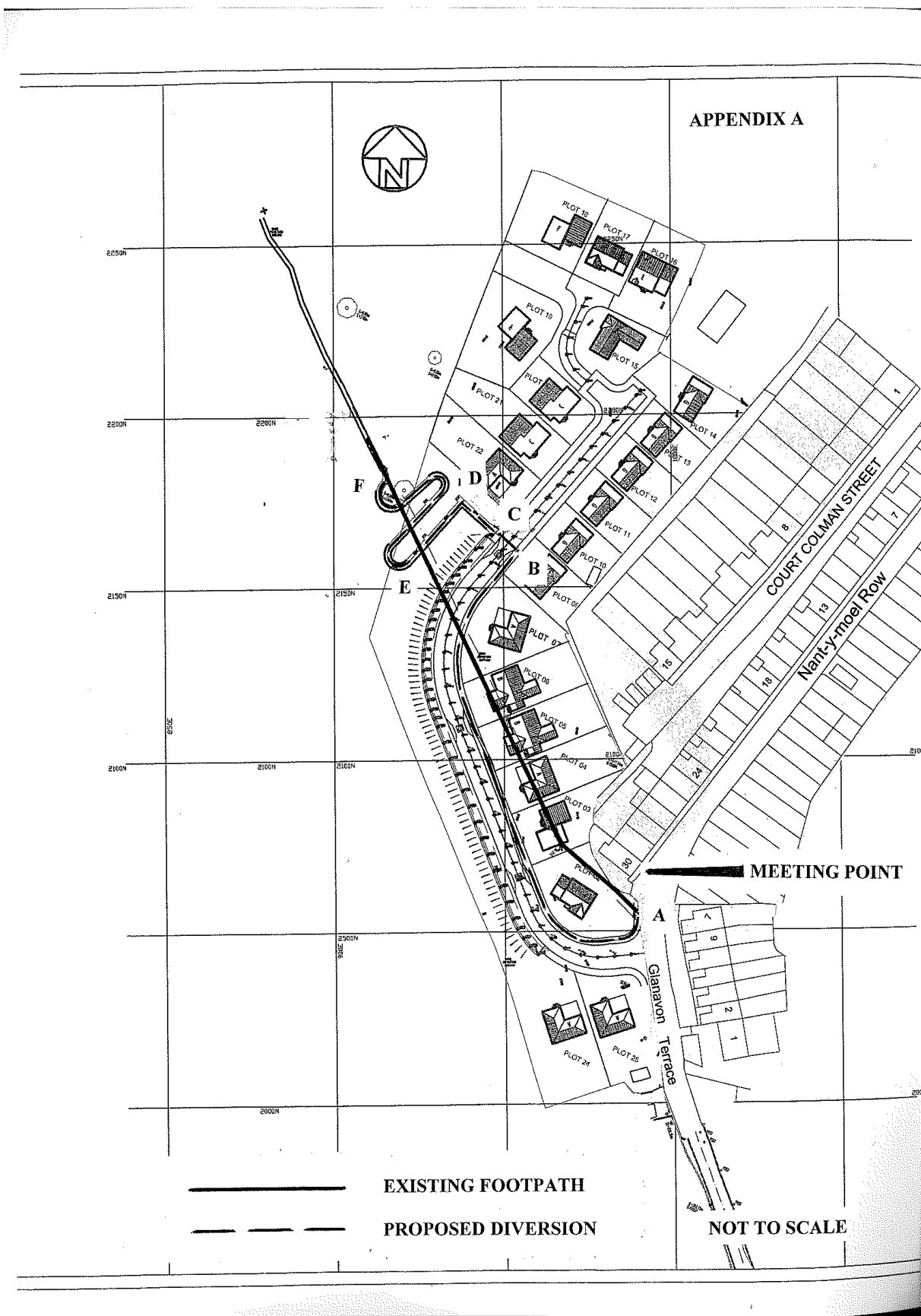
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Background Documents: File F71 from 13.10.97 to existing.

Appendix A



Appendix B

[Signature]

<p>Scale 1:1250</p> <p>Date issued: 15/12/2004</p>	<p>Phaedra Gifford Jones c/o GWA, 40/52, Director of Environmental & Planning Services, Queensland Government, Councils and Cities Office, Annet Street, Brisbane City 4000.</p> <p><small>Issued by the Queensland Government under the provisions of the Information Access Act 2009 (Qld) (IAA) and the Information Access Regulations 2009 (Qld) (IAR). This document is released under the Creative Commons Attribution-Non Commercial-ShareAlike 4.0 International License. For more information see http://creativecommons.org/licenses/by-nc-sa/4.0/</small></p>	<p>Plan Licence No: 100023405</p> <p>Planning Services Tel: 01655 643176</p> <p>Adp</p> <p>Copyright Reserved</p> 
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