

RIGHTS OF WAY SUB-COMMITTEE - TUESDAY, 8 JANUARY 2019

MINUTES OF A MEETING OF THE RIGHTS OF WAY SUB-COMMITTEE HELD IN COMMITTEE ROOMS 2/3, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 8 JANUARY 2019 AT 11:00

Present

Councillor G Thomas – Chairperson

RM Granville

RME Stirman

G Thomas

CA Webster

Apologies for Absence

DK Edwards and JC Radcliffe

Officers:

Jane Dessent

Solicitor

Julie Ellams

Democratic Services Officer - Committees

Andrew Mason

Rights of Way Manager

Michael Pitman

Democratic Services Officer – Committees

6. DECLARATIONS OF INTEREST

None

7. APPROVAL OF MINUTES

RESOLVED:

That the minutes of the meeting of the Rights of Way Sub-Committee of 7 September 2017 be approved as a true and accurate record.

8. PROPOSED DIVERSION OF FOOTPATH NO 17, PORTHCAWL

The Chairperson invited the Sub-Committee to read the paper circulated by Mr Wheeler, British Horse Society at the start of the meeting. He then asked the Rights of Way Manger to present the report.

The Rights of Way Manager presented the report seeking authorisation for the making of an Order pursuant to Section 257 of the Town & Country Planning Act 1990 on land next to No. 15 The Burrows, Porthcawl, CF36 5AJ.

The Rights of Way Manager reported that the implementation of planning consent P/17/595/FUL, full planning application for the development of a new detached two storey dwelling house with three bedrooms next to 15 The Burrows, Porthcawl, CF36 5AJ would require a section of Footpath 17, Porthcawl to be diverted. He explained that the plan in Appendix A to the report showed the consent curtilage of the planning consent. The section of the footpath which was proposed to be diverted was shown between Points A-B-C on the plan in Appendix B to the report. He added that the proposed development was also affected by two applications for Definitive Map Modification Orders (DMMO) to upgrade Footpath 17 Porthcawl to a Bridleway submitted by the British Horse Society.

The Rights of Way Manager outlined the route as described in the Definitive Statement shown on the plan in Appendix B. He explained that the approximate length of the footpath to be diverted was 55 metres but the width was currently undefined in the Definitive Statement and had a natural surface. The proposed alternative route of

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Footpath 17, Porthcawl ran from point D to point C also shown in appendix B. The approximate length of the new route was 51 metres with a width of 1.5 metres and a tarmac surface with path edging.

The Rights of Way Manager explained that the new footpath would start approximately 11 metres north of the point where the existing footpath left the same street. This alteration was perfectly acceptable within the scope of the legislation. The reason why the diversion was not shown as running along the footway of The Burrows was because the footway was already shown as part of the maintainable highway. Taking into account this additional section, the total length of the alternative route was 62 metres.

The Rights of Way Manager reported that the application to divert the footpath was submitted on 14th August 2017 following the Rights of Way comments in relation to the planning application. He explained that in relation to the two DMMO applications affecting this site, the outcome of the Council's investigations was that two DMMO's should be made to upgrade Footpath 17 to a bridleway with a width of 1.5 metres. The decision was made prior to the submission of the diversion application however the orders had not been made until March and September 2018.

The Rights of Way Manager then outlined the representations received during the consultation process for the proposed diversion of Footpath 17, as detailed in the report. No objections were received from the Ramblers Association and South Wales Police submitted some comments in respect of the proposal as detailed in the report. The British Horse Society objected to the proposal as outlined in the report. The British Horse Society representative also forwarded a copy of the consultation to other horse riders in the area resulting in representations from 22 members of the public.

There appeared to be six main points that were the basis of the majority of the objections to the proposal. The Rights of Way Manager summarised each objection and the Council's response to each one.

- The majority of riders believed that the DMMO to upgrade Footpath 17 Porthcawl should be dealt with prior to the diversion of the footpath. The decision regarding the DMMO was taken 3 years prior to the date on which the application to divert was received however the determination had not been progressed prior to the date on which the application to divert was received. Since the pre-order consultation was undertaken, 4 DMMO's had been published within the Newton/Merthyr Mawr area (Order No's 1, 2, 3 and 7 2018), including the two affecting Footpath 17 Porthcawl (order Nos 2 & 7 2018) and these had attracted approximately 200 objections, 84 emails/letters of support and 2 petitions objecting with 70 signatures and 1 petition in support with 47 signatures. Legal advice was sought and advice received that it would not be appropriate to delay the making of the Diversion Order given that they were separate legal processes and objections were expected which would mean that it could take some considerable time before the DMMO's were determined.
- The British Horse Society suggested that diverting the route and making the alternative a public bridleway would remove any objections from equestrians. If the Council facilitated this it would be on the basis that the two DMMO's would be confirmed. If they were not this could result in a short section of bridleway leading to a footpath on either side.
- Concerns had been raised relating to the width of 1.5 metres for the proposed diversion, not being wide enough and others stating that the bridleway required a width of at least 1.5 metres. The Council would normally request a minimum width requirement of no less than 2.5 metres if it were diverting a bridleway. However, the proposal sought to divert a

public footpath which currently had no defined width. In such cases the Council would normally request that the width of the diverted footpath should be 1.4 metres if bounded on one side and 1.8 metres if bounded on both sides. In this case the footpath was not immediately bounded on both sides and therefore, 1.4 metres would be sufficient. The developer had agreed to surface the route to 1.5 metres as that was the width of the tarmac path from The Burrows to Birch Walk. He added that a report prepared by a consultant in relation to the British Horse Society's DMMO applications to the Council submitted in 2007, found that without significant evidence to suggest that the bridleway should be any wider, the upgrading of Footpath 17 Porthcawl should be limited to a width of 1.5 metres. He also said that should an Inspector acting on behalf of the Welsh Government determine that the DMMO's (Order Nos. 2 & 7) should be confirmed, they could also record a width of route that was wider than the proposed width of 1.5 metres. If this was the case, then the Council would have to determine how it might be able to accommodate such a change and three options were currently available as outlined in the report.

- Some equestrians were concerned that the diversion of the footpath would be to the detriment of the application to upgrade the footpath to a bridleway. It was the Council's contention that this would not have any bearing on the determination of the Modification Order.
- Some riders raised issues relating to the planning application itself. The Rights of Way Manager explained that the granting of planning permission did not guarantee that the diversion or extinguishment of a public right of way affected would be achieved.
- A number of equestrians had referred to a kissing gate prohibiting access along the route. The Rights of Way Manager explained that the kissing gate in question was erected on a different footpath 244 metres to the west of the current proposal because of illegal use of the route by horse riders and motor vehicles. An "A" frame had been installed on the section of footpath currently being considered and it was the Council's intention that should higher rights be determined, the "A" frame would be removed.

With regard to the British Horse Society claim that they were not being fairly treated, the Rights of Way Manager explained that an Equality Impact Assessment had been carried out which showed there were no implications or impacts on specific equality groups. In relation to their objection on the grounds that the diverted route would not be so convenient and commodious, the new route would be 7 metres longer than the existing route, a minor change when the total length was 457 metres. Routes that were diverted under the Town and Country Planning Act 1990 were not required to be as convenient or commodious but the Council had to be satisfied that it was necessary in order to enable the development to be carried out.

The Rights of Way Manager outlined the nature of the Porthcawl Town Council objection to the planning application on the grounds that the deviation of the footpath was not acceptable and would set a precedent. The objections were noted during the planning application process but formally addressed as part of the formal application procedure to divert the public right of way. He added that the legislation enabled developers to submit applications to divert public rights of

way affected by a development without setting any kind of precedent. In terms of the diversion being unacceptable, there was no indication why it was unacceptable and therefore it was difficult to comment on this.

The Rights of Way Manager outlined the Welsh Government Guidance for Local Authorities on Public Rights of Way and he detailed the three considerations and how the Council had taken them into account.

A Member asked for clarification that they were only considering the proposed diversion of the footpath and not the upgrade of the footpath to a bridleway. This was confirmed then the same member asked if the committee could request that the "A" frame was transferred with the pathway. The Rights of Way Manager stated that this could be done if the committee agreed.

The Chairperson asked Mr Wheeler from the British Horse Society to detail the concerns he had regarding the proposal. Mr Wheeler referred to the paper he had circulated and the points forming the basis of the objections to the proposed diversion, in particular the second point regarding the suggestion by the British Horse Society that diverting the route and making the alternative a public bridleway would remove any objections from equestrians. The Council response was that if the DMMOs were not confirmed then there would be a short section of bridleway leading to a footpath on either side. Mr Wheeler responded that this was not so and there was no presumption of success involved either because it did not matter. He stated that it would be most beneficial in resolving the longstanding issue between equestrians and the Council which was that the Council had effectively fenced them out of the Public Open Space of Newton Burrows where they should by law be allowed to take fresh air and exercise. He added that it had been noted in the report that the present proposal would cause a break in the continuity of the right of way such that any new bridleway so created would start on the public highway and not on the footpath and end in the Public Open Space immediately before point C. He said that if this was done it would remove the equestrian objections in principle.

The second point raised by Mr Wheeler was why was the gap accommodating the footpath not developed in the first instance. He believed the answer was that the lines defining the curtilage of house no 11 and 15 roughly bounded the residue of the ancient highway and that was set out in the Enclosure Award of 1864. He added that looking in the reverse direction to the left of the Burrows and back towards Birch Walk the rear gardens of these properties were nearly double in length around 2005 when a similar development allowed an additional house to be squeezed into Birch Walk. He explained that the original phases of developments here respected the boundary lines of the old highway, but sadly that was no longer the case and the real sting in the tail for the equestrian community was that people and organisations were objecting to their continued use as Bridleways because they were no longer wide enough. This is why they argued strongly throughout that diverting the right of way as a footpath was not just prejudicial but fatal to any possible future use as a bridleway. The route between Birch Walk and the Burrows was already too narrow. He concluded that with regard to the assertion that equestrians were being treated unfairly and the conclusion in the report that this was not so, he responded that of the 50 or so of the representations supporting the bridleway orders, all but him and one other

were from women which meant that 96% of equestrians were negatively impacted upon. Indeed the petitioning of the Council in 2011 regarding the lack of access for equestrians to the Public Open Space was made entirely by women and no progress whatever had been made here.

The Rights of Way Manager responded that with regard to the first point raised about diversion proposals, 200 objections had been received to the Modification Orders so this would not be a solution that suited everyone. He added that the route to Birch Walk was owned by the Developers who then sold the land to the residents and the width of the gap narrowed. A well-being assessment had been carried out which indicated that the route was also used by pedestrians and the improvement to the surface would benefit them and this outweighed the number of equestrians using this route.

Mr Wheeler replied that the report was dated September and as such he should have been given the opportunity to contribute to the report at an earlier date. The objections received could result in the Modification Orders failing. A petition had been made in 2011 because the equestrians, mostly female, were unable to get access to the dunes and they had nowhere to ride which left them in a dangerous position. The businesses which relied on access to the beach were unable to advertise because they had been fenced out of the beach and what had been used as a bridleway was now too narrow.

The Rights of Way Manager explained that the area of ground Mr Wheeler was referring to (the area to the rear of point C on appendix B) was not public open space and as such use of this area would be a trespass against the landowner.

The Rights of Way Manager confirmed that in future the Council would look at the existing public open space within the Newton area to see if it could be opened up for horse riders but in terms of what was being considered at this time, it would not be possible.

Mr Wheeler stated that he understood the limitations but riders were free to ride there now. The Agent confirmed that the area in question was not public open space.

A member asked for clarification of the term "undefined width". The Rights of Way Manager explained that it could be anything between 1 and 34 feet and was often based on historical evidence. Members discussed a number of points including the National Parks and Access to the Countryside Act 1949 and the definitive map and that if no width was recorded it was because the route was wide and not narrow.

RESOLVED:

- 1 That authorisation be given for the Head of Legal and Regulatory Services to make the necessary Order to seek to realign Footpath 17, Porthcawl, to the route shown on **Appendix B** to the report, and to confirm the Order provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.

- 2 That the Head of Legal and Regulatory Services be authorised to forward the Order to the Welsh Government for determination, if any objections received are not withdrawn.
- 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.
- 4 That the "A" frame that currently exists on Footpath 17 should be installed on the new route.

9. **URGENT ITEMS**

None.

The meeting closed at 12:00