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### Bridgend County Borough Council



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#### **Cyfarwyddiaeth y Prif Weithredwr / Chief Executive's Directorate**

Deialu uniongyrchol / Direct line /: 01656 643148 /  
643147

Gofynnwch am / Ask for: Democratic Services

Ein cyf / Our ref:

Eich cyf / Your ref:

**Dyddiad/Date:** Wednesday, 29 September 2021

Dear Councillor,

#### **RIGHTS OF WAY SUB-COMMITTEE**

A meeting of the Rights of Way Sub-Committee will be held remotely - via Microsoft Teams on  
**Tuesday, 5 October 2021 at 14:00.**

#### **AGENDA**

1. Apologies for Absence  
To receive apologies for absence from Members.
2. Declarations of Interest  
To receive declarations of personal and prejudicial interest (if any) from Members/Officers in accordance with the provisions of the Members Code of Conduct adopted by Council from 1 September 2008.
3. Approval of Minutes 3 - 8  
To receive for approval the Minutes of the 08/01/2019.
4. Proposed Diversion of Footpath 19, Coychurch Lower and Proposed Part  
Extinguishment of Footpath 18 Coychurch Lower 9 - 24
5. Urgent Items  
To consider any other item(s) of business in respect of which notice has been given in accordance with Rule 4 of the Council Procedure Rules and which the person presiding at the meeting is of the opinion should by reason of special circumstances be transacted at the meeting as a matter of urgency.

Note: Please note: Due to the current requirement for social distancing this meeting will not be held at its usual location. This will be a virtual meeting and Members and Officers will be attending remotely. The meeting will be recorded for subsequent transmission via the Council's internet site which will be available as soon as practicable after the meeting. If you have any queries regarding this, please contact [cabinet\\_committee@bridgend.gov.uk](mailto:cabinet_committee@bridgend.gov.uk) or tel. 01656 643147 / 643148.

Yours faithfully

**K Watson**

Chief Officer, Legal, HR & Regulatory Services

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Councillors:  
DK Edwards  
RM Granville

Councillors  
JC Radcliffe  
G Thomas

Councillors  
MC Voisey  
CA Webster

## 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

Business Administrative Apprentice

#### 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

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 14<sup>th</sup> 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



**BRIDGEND COUNTY BOROUGH COUNCIL**  
**REPORT TO RIGHTS OF WAY SUB COMMITTEE**

**5 OCTOBER 2021**

**REPORT OF THE CORPORATE CHIEF EXECUTIVE - COMMUNITIES**

**PROPOSED DIVERSION OF FOOTPATH 19, COYCHUCH LOWER AND  
PROPOSED PART EXTINGUISHMENT OF FOOTPATH 18, COYCHURCH LOWER**

**1. Purpose of report**

- 1.1 The purpose of this report is to request authorisation for the making of two Orders pursuant to Section 257 (diversion) and Section 258 (Extinguishment) of the Town & Country Planning Act 1990, on land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU.

**2. Connection to corporate well-being objectives / other corporate priorities**

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-

1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
2. **Helping people and communities to be more healthy and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.

**3. Background**

- 3.1 The implementation of the following planning consents will require a section of Footpath 19, Coychurch Lower to be diverted. They are:

- P/16/549/OUT - outline planning application for the development of up to 71,441sq.m. of B1, B2 and B8 employment floor space, including access, car parking, diversion of public rights of way, site remediation, drainage, landscaping and associated engineering operations, which received conditional consent (outline) on the 7<sup>th</sup> July 2017.
- P/17/1044/NMA - non-material amendment to Conditions 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23 & 24 of P/16/549/OUT to change the wording of the conditions, granted Non-Material Amendment conditional consent on the 10<sup>th</sup> January 2018.

- P/18/492/RES - reserved matters to P/16/549/OUT for approval of landscaping within the development site, granted conditional consent (reserved matters) on the 25<sup>th</sup> February 2019 at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU.
- P/20/269/RLX – Variation of condition 1 of P/16/549/OUT to amend to illustrative masterplan and parameters, granted conditional consent (RLX) on the 30<sup>th</sup> June 2020 at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF35 5AU.

3.2 To enable Footpath 19 Coychurch Lower to be diverted as proposed by the applicant it will also be necessary to extinguish a section of Footpath 18 Coychurch Lower. This will maintain the integrity of the rights of way network by avoiding the creation of a cul-de-sac route. Additionally, the opportunity has also been taken during discussions with the applicant to create two link paths from Footpath 19 Coychurch Lower to link into an estate footway and an estate link path. The two new paths will be created either by Agreement or Order using the Council's separate powers under the Highways Act 1980. The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The section of Footpath 19 Coychurch Lower which is proposed to be diverted is shown between Points A-B on the plan in **Appendix B** to the report. This plan also shows the proposed alternative route for Footpath 19 Coychurch Lower between Points A-C-D-E-F-G-H-I & J-K-L; the section of Footpath 18 Coychurch Lower which is proposed to be extinguished between Points J-W; and, for completeness, the two new links to be created between Points A-M-N-O-P-Q and R-S-T-U-V.

#### 4. Current situation/proposal

##### Current Route and Proposed Diversion

- 4.1 Currently Footpath 19, Coychurch Lower commences at Point A (Grid Ref. SS 92857765), as shown on the plan in **Appendix B**, and proceeds in a general east north-easterly direction for approximately 615 metres to its termination point at the Brocastle Brook (County Borough Boundary) at Point B (Grid Ref. SS 93407790). The definitive width of the route is undefined. The footpath has a natural surface.
- 4.2 The proposed alternative route of Footpath 19, Coychurch Lower, runs from Point A (Grid Ref. SS 92867765) on the plan (**Appendix B**), and proceeds in a north westerly direction for 124 metres to Point C (Grid Ref. SS 92767773) before continuing in a north north-easterly direction for 12 metres to Point D (Grid Ref. SS 92777775), it then continues in an east north-easterly direction for approximately 144 metres to Point E (Grid Ref. SS 92917777), where it turns and runs in a northerly direction for 88 metres to Point F (Grid Ref. SS 92927786), before proceeding in a north easterly direction for 32 metres to Point G (Grid Ref. SS 92947788), it then continues in an east north-easterly direction for 162 metres to Point H (Grid Ref. SS 93107791), before finally running in a north easterly direction for 144 metres to its junction with Footpath 18 Coychurch Lower at Point I (Grid Ref. SS 93237797).
- 4.3 The additional alternative route of Footpath 19 Coychurch Lower commences from its junction with Footpath 18 Coychurch Lower at Point J (Grid Ref. SS 93327789), and continues in a general easterly direction for 58 metres to Point K (Grid Ref. SS

93387789), before turning and running in a north easterly direction for 18 metres to its termination point at the Brocastle Brook at Point L (Grid Ref. SS 93397790).

- 4.4 The approximate total length of the new routes will be 782 metres with a width of 2 metres. The footpath will have a natural surface throughout its entire length.
- 4.5 The section of Footpath 18, Coychurch Lower which is to be extinguished currently commences at Point J (Grid Ref. SS93327789), as shown on the plan in **Appendix B**, and proceeds in a south easterly direction for approximately 7 metres to Point W (Grid Ref. SS 93337789).
- 4.6 Members should note that a small section of Footpath 19 Coychurch Lower (approximately 8 metres) will not be affected by the proposed diversion. The section of route not affected by the diversion is shown between Points A and X on the plan in **Appendix B**. Retaining this link will provide access to the A48 and the existing rights of way network in the Vale of Glamorgan via the public footpath directly opposite.
- 4.7 The diversion of this section of Footpath 19, Coychurch Lower was originally discussed in April 2018 when the agent for the applicant sought advice from the Rights of Way Section for the possible diversion of the footpath. As a result of those discussions the agent submitted a proposal for the diversion of the footpath. However the Rights of Way Section were not happy with the original proposal as this showed most of the proposed diverted route of Footpath 19 Coychurch Lower using estate footways. Discussions then continued between both parties until the currently proposed alternative route was agreed in principal by the Rights of Way Section. During those early discussions, the applicant informed the Rights of Way Section that they wished to create two additional link paths within the development site. As a result, the Rights of Way Manager agreed in principal to create the two additional link paths as public footpaths.
- 4.8 The application to divert this section of Footpath 19, Coychurch Lower as well as creating two additional link paths was submitted on the 18<sup>th</sup> June 2018. The application was received as a result of comments made by the Rights of Way Section in regards to planning application P/16/549/OUT.
- 4.9 Whilst preparing the documents to carry out a consultation in line with the Councils standard pre-order consultation process in 2018, the Rights of Way Section noted that if the proposed diversion were to be successful this would leave Footpath 18 Coychurch Lower as a cul-de-sac route. The Council wrote to the applicant's agent asking if they would be willing to agree to include the extinguishment of a short section of Footpath 18 Coychurch Lower in their application so that this potential anomaly could be resolved. The agent confirmed that the amendments to the application were acceptable to them and the applicants.
- 4.10 In accordance with the Councils standard consultation process for Public Path Orders the local County Borough Council member, Coychurch Lower Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities, were all consulted on the proposal in September 2018. During the consultation process

numerous representations were received in relation to the proposed diversion. These are outlined below.

- 4.11 Bridgend Ramblers – No objection
- 4.12 Wales & West Utilities – No objection
- 4.13 Coychurch Lower Community Council – No objection
- 4.14 South Wales Police Design out Crime Officer – No objection
- 4.15 Dwr Cymru Welsh Water (DCWW) – objected as they have apparatus in the area that is affected by the proposal. This objection was forwarded onto the agent acting on behalf of the applicant as all works that DCWW were concerned about would be carried out by a contractor appointed by the agent/applicant. Further discussions took place between the agent and DCWW and a final email was sent stating that as a result of those discussions DCWW would be withdrawing their objection.
- 4.16 Due to proposed changes to the planning consent (P/16/549/OUT) which had previously been granted, a request was made to the Rights of Way Section asking to postpone the application to divert the footpaths until such time as a decision was made with regards to planning application P/20/269/RLX.
- 4.17 The diversion application process was paused until the outcome of the proposed changes to the planning application was granted consent. Once consent had been granted amended proposals for the diversion of Footpath 19 Coychurch Lower were submitted.
- 4.18 In accordance with the Councils standard consultation process for Public Path Orders the local County Borough Council member, Coychurch Lower Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities, were all consulted on the new proposals in July 2020. During the second consultation process further representations were received in relation to the proposed diversion. These are outlined below.
- 4.19 Wales & West Utilities – No objection
- 4.20 Bridgend Ramblers – No objection
- 4.21 Cllr Elaine Venables – Although no formal objection was received Cllr Venables was concerned that the proposed diversion of Footpath 19 Coychurch Lower would be very close to the current alignment of Footpath 18 Coychurch Lower.
- 4.22 Natural Resources Wales – No objection
- 4.23 South Wales Police Design out Crime Officer – No objection
- 4.24 Openreach – No objection
- 4.25 Dwr Cymru Welsh Water - objected for the same reasons as outlined in paragraph 4.15. The objection was forwarded to the applicant's agent and following further

discussions between the agent and DCWW the Council received an email advising that DCWW would be withdrawing their objection.

- 4.26 During the preparation of this report the Rights of Way section was made aware that as part of the planning process a number of areas within the development site were earmarked for new enhanced landscape planting. Further discussions then took place with the agent acting on behalf of the applicant/landowner which resulted in the Rights of Way section being advised that one area would affect the proposed diversion of Footpaths 19 Coychurch Lower whilst another would affect that section of Footpath 18 Coychurch Lower which runs through the site and which is not going to be diverted.
- 4.27 A further site visit was carried out between the Rights of Way Section, the agent acting on behalf of the landowner and the contractor carrying out the works on site in February 2021 to discuss the issue of the requirements for the enhanced landscaping areas. In order to protect the saplings in the new enhanced landscape planting areas, the applicant/landowner decided to fence off the areas with rabbit proof fencing whilst they matured over a period of 5 years. The alternative would have been to use individual tree guards but it was deemed more appropriate to use the fencing due to the size of the areas, the number of new saplings requiring protection and the ease of ongoing maintenance. During that meeting, the Rights of Way Section were advised that the rabbit proof fencing would need to fully enclose the areas concerned, and that stiles were the preferred option to gain access to the areas as any other furniture used, such as pedestrian gates or kissing gates would cause a break in the fencing which could potentially allow rabbits to squeeze through, no matter how small the gap.
- 4.28 The Council agreed that they would allow the fencing to be erected and remain in place for a maximum of 5 years at both sites provided the applicant/landowner agreed to:
- Physically create two alternative permissive paths around the enhanced landscape planting areas each with a minimum width of 2 metres for those not wishing or able to climb over the stiles which will be erected on the proposed diverted route of Footpath 19 Coychurch Lower and the existing route of Footpath 18 Coychurch Lower. The routes would be maintained by the landowner for the duration of the fencing being in place up to a maximum of 5 years.
  - The applicant/landowner would install and maintain stiles in the fences at the points where the proposed route of Footpath 19 Coychurch Lower and the existing route of Footpath 18 Coychurch Lower passed through the enhanced landscape planting areas to enable those wishing to use the Definitive alignments of the public footpath. The locations of the proposed stiles are indicated by four 'X's on the plan in **Appendix C**. The two stiles on the proposed diverted route of Footpath 19 Coychurch Lower would be shown as a limitation in the Order.
  - The applicant/landowner would remove the stiles at the end of the 5 year period when the fences would also be removed.

- 4.29 The Council has received written confirmation from the applicant/landowner agreeing to the conditions.
- 4.30 With regards to the surface of the permissive routes, the Council can confirm that they are of the same physical characteristics as the remainder of Footpaths 18 and 19 Coychurch Lower, and as such, would not have a long term detrimental effect on users of the footpaths.
- 4.31 In order to facilitate the development of up to 71,441sq.m. of B1, B2 and B8 employment floor space, including access, car parking, diversion of public rights of way, site remediation, drainage, landscaping and associated engineering operations as per planning consent P/16/549/OUT at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU a section of Footpath 19, Coychurch Lower will need to be diverted. In addition part of Footpath 18 Coychurch Lower will need to be extinguished and two link paths will be created.
- 4.32 The Welsh Governments Guidance for Local Authorities on Public Rights of Way – August 2016 states:

*‘Before making an Order the Council must be satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission that has been granted.’*

As Members are aware, it should not be assumed that an Order should be made simply because planning permission has been granted.

*‘In determining whether an Order is ‘necessary’ the Council must examine the activities authorised by the planning permission to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.’*

*‘Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.’*

*‘In coming to a judgment as to whether to make an Order, the following should be taken into account:*

- *The interests of the general public.*
- *The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.*
- *Any potential financial loss to members of the public.’*

- 4.33 In regard to the three considerations outlined above Members are advised as follows:
- The Council is aware that the new route will be 227 metres longer than the existing route and that for the first 5 years four stiles will be installed on the route. However, the stiles will be removed after 5 years and during the time

they are in situ a separate alternative path without any structures will be made available. Consideration was given to diverting the path closer to the development but this was not possible on the northern side of any potential building. And, if the diversion was taken to the south of any potential building the alternative route would have had to utilise the estate footways. As has already been indicated in paragraph 4.7 this was deemed to be unacceptable as the proposal would not have met current guidelines for the diversion of footpaths. In the long term the proposed diversion enables the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained and will allow for the footpath to remain as a continuous off-road walking route for members of the public between the A48 and the County Borough Boundary. For these reasons it is considered that the test that the proposal is in the interests of the public can be said to be satisfied.

- There does not appear to be any additional effects of the Order on any adjoining properties.
- The Council is unaware of any potential financial loss to members of the public. The developer will be responsible for any works that are required to provide the diversion and the provision of the new routes.

## **5. Effect upon policy framework and procedure rules**

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

## **6. Equality Act 2010 implications**

6.1 An initial Equality Impact Assessment screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment Template has been completed and a summary of the implications from the assessment relating to the five ways of working is outlined below in respect of the proposal:

- **Long-term**

The diversion, part extinguishment and creation of two link paths routes will enable the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained.

- **Prevention**

If the proposals are not implemented Footpath 19 Coychurch Lower would become obstructed and the Council would then have to take action to remove those obstructions. This would have significant resource implications. As the applicant will be carrying out all works involved, this will mean that the

route will not become obstructed and the Council will not have to take any action.

- **Integration**

With agreed construction methods, as well as time frames, the diversion of footpaths to enable development to be implemented allows for an attractive and diverse economy that will encourage more people to use the route during their daily routine.

- **Collaboration**

The Council works closely with the applicant/developer to implement the proposed works so that the likelihood of objections is minimal.

- **Involvement**

Consultations were carried out with statutory consultees, local members and community councils to gather their views before the decision to make the order is made.

## **8. Financial implications**

8.1 Any financial implications arising from the above procedures are expected to be minimal as the developer will be meeting the cost of the diversion and extinguishment order process and the implementation of any works required by the Council.

## **9. Recommendations**

9.1 That authorisation be given for the Chief Officer - Legal, HR and Regulatory Services to make the necessary Orders to seek to divert Footpath 19 Coychurch Lower and to part extinguish Footpath 18 Coychurch Lower as shown on the plan in **Appendix B** to the report, and to confirm the Orders provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.

9.2 That the Chief Officer - Legal, HR and Regulatory Services be authorised to forward the Order(s) to the Welsh 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.

**Janine Nightingale**  
**CORPORATE DIRECTOR COMMUNITIES**  
September 2021

**Contact officer:** Mr Mathew Palmer  
Rights of Way and Access Land Officer

**Telephone:** (01656) 642595

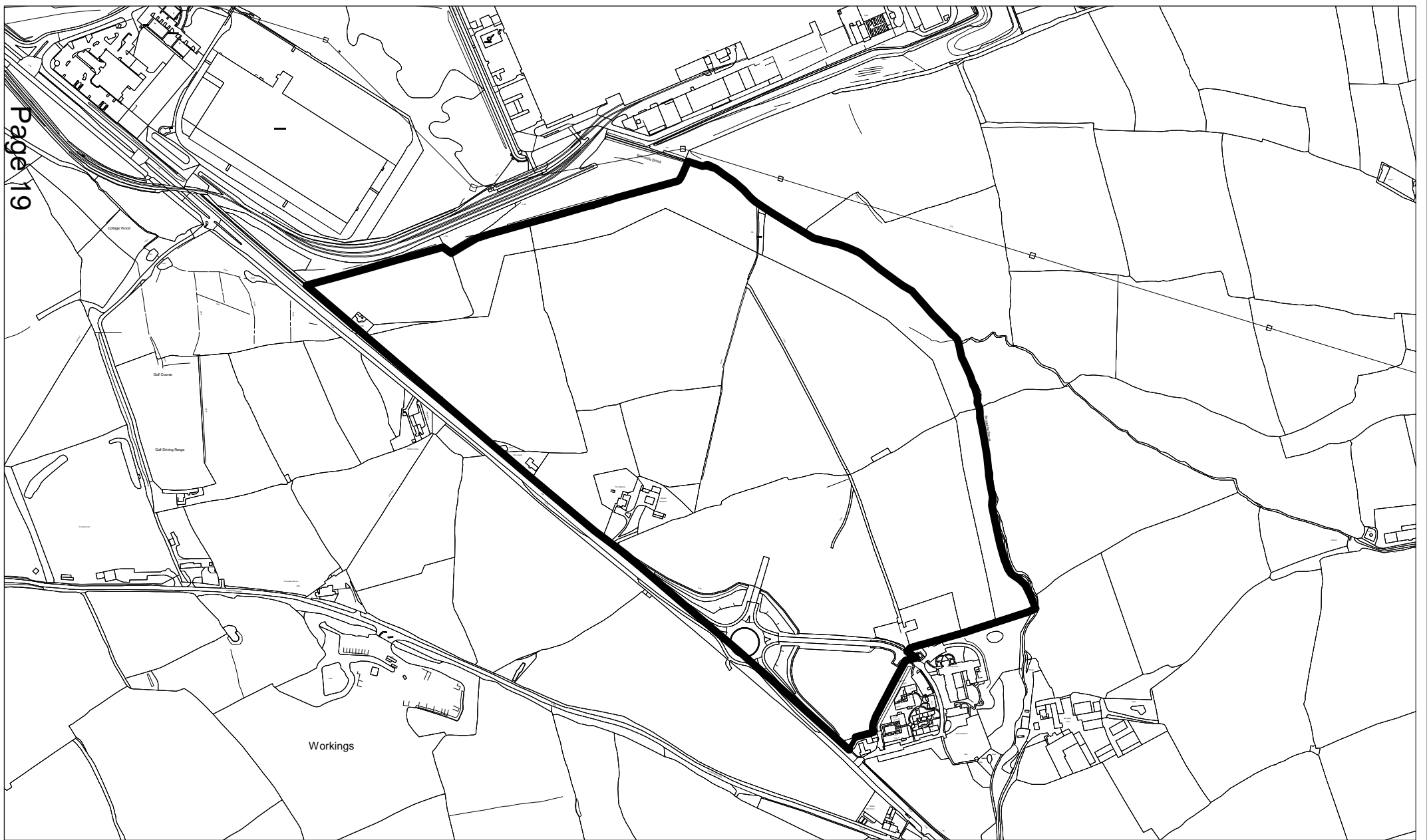
**Email:** [mathew.palmer@bridgend.gov.uk](mailto:mathew.palmer@bridgend.gov.uk)



**Postal address:** Rights of Way  
Communities Directorate  
Bridgend County Borough Council  
Waterton Depot  
Waterton Lane  
Waterton  
Bridgend  
CF31 3YW

**Background documents:** File A763/1/FP 18 + 19 Coychurch Lower (8<sup>th</sup> August 2016 – present)

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**BRIDGEND COUNTY BOROUGH COUNCIL**

**COMMUNITIES DIRECTORATE**

*Corporate Director  
Communities*

Civic Offices  
Angel Street  
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**APPENDIX A**



**Planning Application P/16/549/OUT**

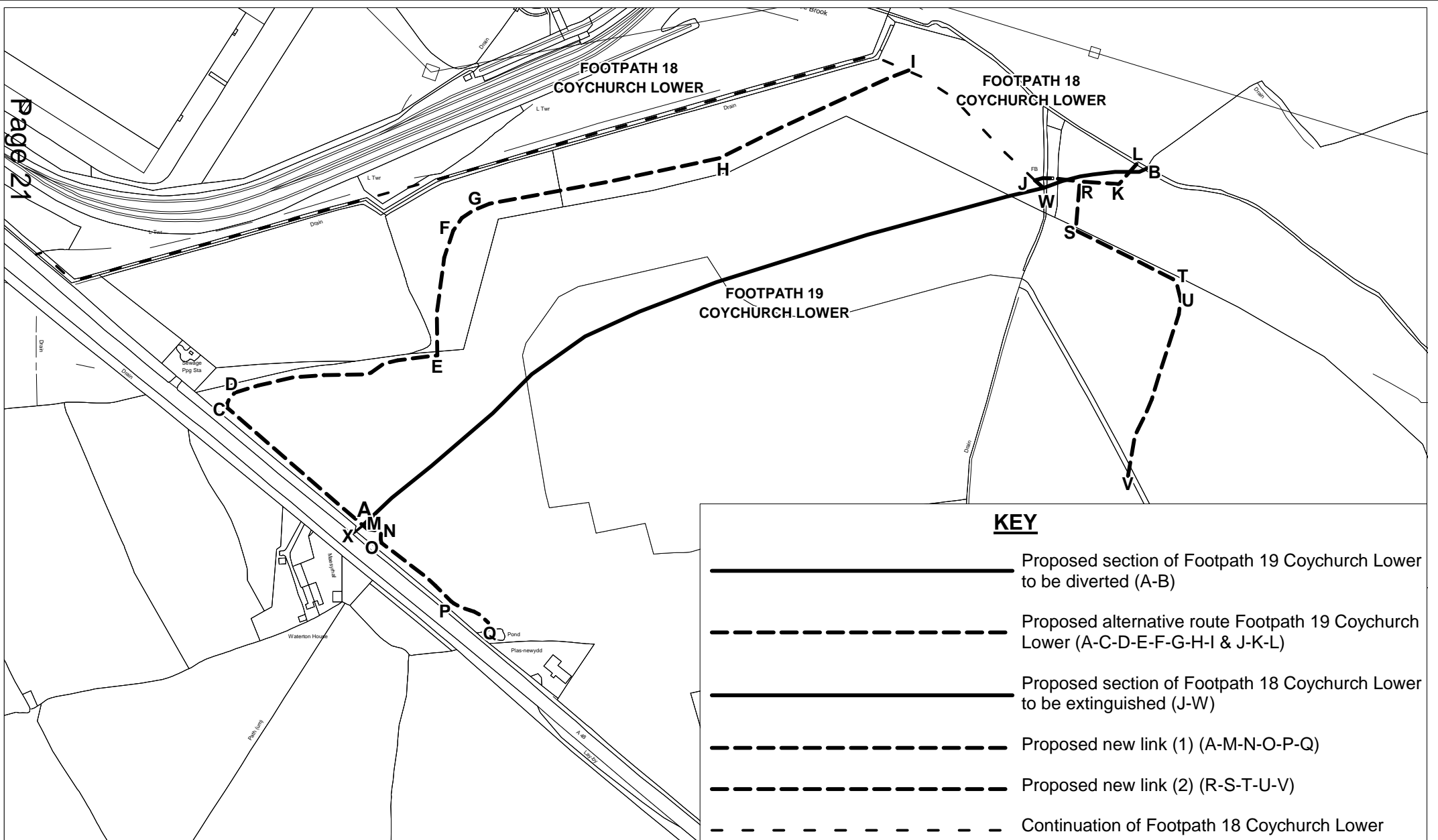


**Scale 1:7500**

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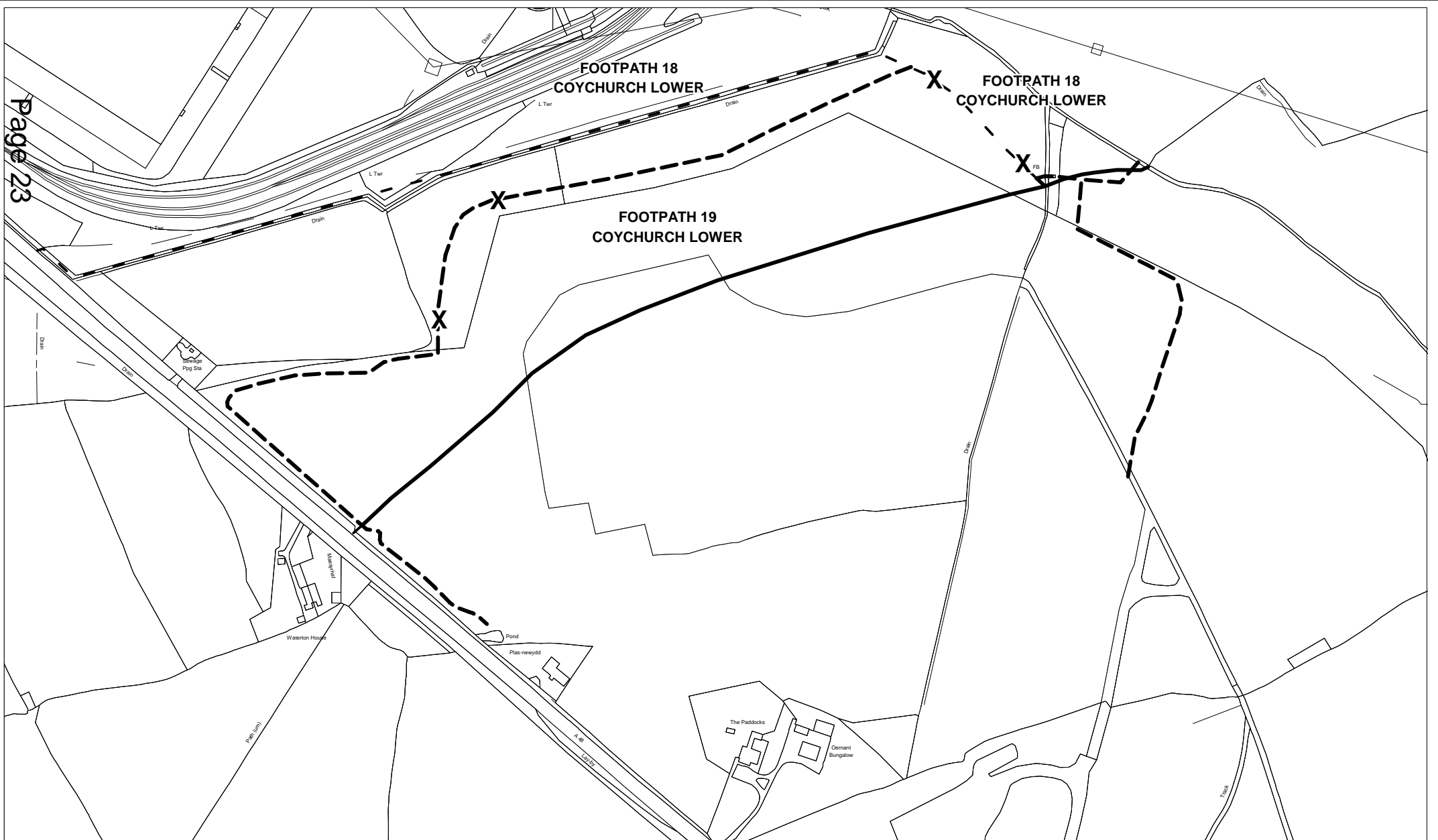
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KEY	
	Proposed section of Footpath 19 Coychurch Lower to be diverted (A-B)
	Proposed alternative route Footpath 19 Coychurch Lower (A-C-D-E-F-G-H-I & J-K-L)
	Proposed section of Footpath 18 Coychurch Lower to be extinguished (J-W)
	Proposed new link (1) (A-M-N-O-P-Q)
	Proposed new link (2) (R-S-T-U-V)
	Continuation of Footpath 18 Coychurch Lower

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**BRIDGEND COUNTY BOROUGH COUNCIL**

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**APPENDIX C**



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