

BRIDGEND COUNTY BOROUGH COUNCIL
REPORT TO RIGHTS OF WAY SUB COMMITTEE

8 JANUARY 2019

REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

PROPOSED DIVERSION OF FOOTPATH NO 17, PORTHCAWL

1 Purpose of this report

- 1.1 This report requests 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.

2 Connection to Corporate Improvement Objectives / Other Corporate Priorities.

- 2.1 The improvement in access to the rights of way network that the diversion of this section of Footpath 17, Porthcawl will achieve will help to deliver two of the Council's corporate priorities as identified in the Corporate Plan 2018 – 2022, including:

Supporting a Successful Economy
Helping people to be more self-reliant

- 2.2 Improving physical access to public rights of way is also a major element in the Council's Rights of Way Improvement Plan (ROWIP). The ROWIP has been designed to complement the Council's policies as well as other national and regional policies.

3 BACKGROUND

- 3.1 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 will require a section of Footpath 17, Porthcawl to be diverted. The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The section of the footpath which is proposed to be diverted is shown between Points A-B-C on the plan in **Appendix B** to the report.
- 3.2 The proposed development is also affected by two applications for Definitive Map Modification Orders to upgrade Footpath 17 Porthcawl to a Bridleway submitted by the British Horse Society. Further details on these are provided in paragraph 4.6 below.

4 CURRENT SITUATION/PROPOSAL

Current Route and Proposed Diversion

- 4.1 Currently the route as described in the Definitive Statement commences at Point A (Grid Ref. SS 84097743), as shown on the plan in **Appendix B**, and proceeds in a general easterly direction for approximately 50 metres to Point B (Grid Ref. SS 84147743) the route then continues in a general north easterly direction for approximately 5 metres to Point C (Grid Ref. SS 84147744). The approximate length of the footpath to be diverted is 55 metres but the width is currently undefined in the Definitive Statement. The footpath has a natural surface.

- 4.2 The proposed alternative route of Footpath 17, Porthcawl, runs from Point D (Grid Ref. SS 84097744) on the plan (**Appendix B**), and proceeds in a general easterly direction for approximately 8 metres to Point E (Grid Ref. SS 84107744) before continuing in an east south-easterly direction for approximately 11 metres to Point F (Grid Ref. SS 84117744), the route then continues in a general easterly direction for approximately 32 metres to Point C (Grid Ref. SS 84147744). The approximate length of the new route is 51 metres. The new footpath will have a width of 1.5 metres and a tarmac surface with path edging as per the rest of Footpath 17 Porthcawl through the housing estate.
- 4.3 As will be noted from the diversion order plan, the new footpath will start (Point D) on the eastern edge of the footway on The Burrows approximately 11 metres north of the point where the existing footpath leaves the same residential street (Point A on the plan). This slight alteration to the point where the route commences on The Burrows is perfectly acceptable within the scope of the legislation. Furthermore, the reason why the footpath diversion is not shown as running along the footway of The Burrows i.e. between Points A and D is because the footway is already shown as part of the maintainable highway and the legislation does not allow for public rights of way to be created over existing highways. Taking into account the additional section of footway that users of the footpath will now have to use, the total length of the alternative route is 62 metres.
- 4.4 The diversion of this section of Footpath 17 Porthcawl was originally discussed in November 2016 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. The proposed alternative route was agreed in principal by the Rights of Way Section.
- 4.5 The application to divert this section of Footpath 17, Porthcawl was submitted on the 14th August 2017. The application was received following the Rights of Way Sections comments in relation to planning application P/17/595/FUL.
- 4.6 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 Porthcawl to a bridleway with a width of 1.5 metres. Although the decision to make the two order's had been made prior to the submission of the diversion application the orders themselves had not been made. In fact Order No. 2 2018 was made on the 19th March 2018 and Order No. 7 2018 was made on the 18th September 2018.
- 4.7 In accordance with the Councils standard consultation process for Public Path Orders the local County Borough Council members, Porthcawl Town 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 2017. During the consultation process numerous representations were received in relation to the proposed diversion. These are outlined below.
- 4.8 Bridgend Ramblers – No objection
- 4.9 South Wales Police Designing out Crime Officer – Commented that fencing should run adjacent to the diversion and should be at least 1.8 metres high and that vehicular access should also be prevented onto the footpath. Other points raised were that the new route would be favourable if it was:

- As straight as possible
- Wide
- Well lit
- Devoid of potential hiding places
- Overlooked by surrounding buildings and activities

4.10 The British Horse Society (BHS) – Objected to the proposal on the following grounds.

1. That the two Definitive Map Modification Order applications to upgrade that section of Footpath 17 to a bridleway should be made prior to the determination of the proposed diversion of the footpath.
2. The Councils statement in its consultation letter that ‘if the application to divert the footpath is successful this will not have any bearing on the determination of the Modification Order’ was grossly misleading.
3. The Council only referred to one Definitive Map Modification Order application in its consultation letter whereas, there have been two affecting this particular footpath. Whilst the Council did reject the original application, subsequently accepted by the planning inspectorate on appeal, it did, in fact, accept the second application and agreed that a Modification Order should be made in respect of the second application.
4. The Modification Orders should be determined prior to the diversion order.
5. The BHS does not believe they are being treated fairly and, in fact, feel they are being discriminated against.
6. Diverting the footpath to the north side of the development in question would make it ‘clearly not so convenient and commodious’.

4.11 It is worth noting that during the Councils consultation process the British Horse Society representative forwarded a copy of the consultation to a number of other horse riders in the area. This resulted in representations being received from 22 members of the public. One person submitted their email twice whilst a second submitted two identical emails within the space of a few minutes as well as a third completely different email at a different time. Below is a summary of the objections that were submitted by those 22 people:

- 4.11.1 Eleven riders stated the planning application would encroach on the lane which has an order to make it a bridleway which requires at least a width of 1.5 metres.
- 4.11.2 Nine indicated that the Council should make the Modification Order to upgrade the footpath to a bridleway prior to the diversion so that the route would be classed as a bridleway during discussions.
- 4.11.3 Five riders stated that the width (1.5 metres) was too narrow and would make it unsafe for horses and members of the public to pass.

4.11.4 Three felt that the diversion of this ancient route will be to the detriment of its upgrade to a bridleway.

4.11.5 Three also stated that equestrians were being discriminated against.

4.11.6 One rider felt that it was important to encourage the enjoyment of bridleways.

4.11.7 One also added that as a keen rider they believe that it is important to encourage the enjoyment of bridleways and safeguard their access for future generations.

4.12 It appears to the Rights of Way section that there are six main points that are the basis of the majority of the objections to the proposal. These have been listed below with the Councils response to each one.

- The majority of the riders were concerned that the planning application encroached on to a lane which, at the time had an order waiting to be made for the route to be shown as a bridleway. That order was made on the 19th March 2018 and is known as Order No. 2 2018. Nine of those believe that the Definitive Map Modification Order (DMMO) to upgrade Footpath 17 Porthcawl (Order No. 2 2018) should be dealt with prior to the diversion of the footpath. It is correct that the decision to make a DMMO upgrading Footpath 17 to a bridleway was made more than 3 years prior to the date on which the application to divert the footpath was received. Unfortunately, the publishing and subsequent determination of the DMMO's was not progressed prior to the diversion application having been received due to resource issues within the Council. Members should be aware, however, that since the pre-order consultation was undertaken the Council has published 4 DMMO's 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 have attracted approximately 200 objections, 84 emails/letters of support, 2 petitions objecting to the orders with 70 signatures and 1 petition supporting the orders with 47 signatures. Prior to the publication of the 3 DMMO's discussions took place with the Legal Department who advised that it would not be appropriate to delay the making of the Order under consideration today pending the determination of the DMMOs that affect Footpath 17 Porthcawl, given that they are separate legal processes and additionally objections were expected which would mean that it would be some considerable time before the DMMOs were determined.
- It has been suggested by the British Horse Society that diverting the route and making the alternative a public bridleway would remove any objections from equestrians. There are a number of ways the Council could facilitate this. Firstly, the footpath affected by the development could be extinguished and then the proposed alternative could be created as a bridleway. Secondly, the footpath is diverted as per the current proposal and then the Council makes a separate creation order for a bridleway over the new footpath. However, should the Council take forward either of these options, it presumes that the DMMOs (Order Nos. 2 & 7 2018) will be confirmed. If the DMMO was not confirmed this would mean that there would be a short section of bridleway leading to a footpath on either side.

- Of the 22 representations received, 5 riders state that the width of 1.5 metres for the proposed diversion would not be wide enough yet 11 others state that the bridleway requires a width of at least 1.5 metres. The Council agrees that if it were diverting this route as a public bridleway then its minimum width requirement would usually be no less than 2.5 metres. However, the proposal seeks to divert a public footpath which currently has 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 particular case the footpath is not immediately bounded on both sides and therefore, 1.4 metres would be sufficient. However, the developer has agreed to surface the route to 1.5 metres as that is the width of the tarmac path from The Burrows to Birch Walk. It is also worth noting that a report prepared by a consultant in relation to the British Horse Society's DMMO applications to the Council submitted in 2007, which ultimately resulted in Order Nos. 2 and 7, 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. It is possible 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 is 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. There are currently three options to resolve this issue which are outlined below;
 - The developer could extend the proposed width of the footpath by a maximum of approximately 1-2 metres but this would require substantial earthworks to ensure retention of the garden of the adjacent property (No. 11 The Burrows).
 - The applicant submits a Public Path Order application to extinguish part of the width, as shown on the confirmed DMMO, to get it back to the proposed 1.5 metres.
 - The developer has to reconsider their application which could potentially mean re-designing the entire site, dwelling and landscaping.
- In relation to the equestrians who submit that the diversion of the footpath would be to the detriment of the application to upgrade the footpath to a bridleway the Council reiterates what it has advised equestrians previously in that regard. It is the Council's contention, despite the County Access and Bridleways Officer indicating that it is grossly misleading that if the application to divert the footpath is successful, that this will not have any bearing on the determination of the Modification Order. In terms of the DMMO, the Inspector acting on behalf of the Welsh Ministers will be looking to determine 'on the balance of probabilities' whether equestrian rights have been shown to exist on the route included within the British Horse Society's original application. The Inspector will be considering evidence which, in some cases, may predate the existence of the residential estate and therefore the width of the route or even its alignment may eventually alter from that shown in the Order. If that or anything else happens in the meantime such as the currently proposed diversion, then the Council will have to deal with it at the appropriate time. If the property being constructed in accordance with P/17/595/FUL is completed prior to the determination of the DMMO's, then in addition to the three options that the developer has as outlined above, the Council would also have to consider taking enforcement action if any part of the bridleway was obstructed.

- Eleven riders raised issues related to the planning application itself. Members however should be aware that the granting of planning permission does not guarantee that the diversion or extinguishment of a public right of way affected will be achieved. Members must decide whether the proposed route meets the requirements of the legislation and further information in this regard is provided in section 4.15.2 below.
- As well as their representations, a number of equestrians refer to a kissing gate prohibiting access along the route. The kissing gate in question was erected on Footpath 19 Porthcawl, 244 metres to the west of the current proposal in approximately 2002 when that footpath was created. This was because of illegal use of the route by horse riders and motor vehicles. Members should note that access to the section of footpath currently being considered for diversion was restricted in 2002 by the installation of an 'A' frame. It has always been the Councils intention that should higher rights be determined to exist the kissing gate and 'A' frame would be removed.

4.13 In relation to the British Horse Society's Objections, the majority have been covered in the above or will be responded to in section 4.15.3 below. In relation to their claim that they are not being treated fairly, Members are advised that an Equality Impact Assessment has been carried out and this shows that there are no implications or impacts on specific equality groups. Lastly, in relation to their objection on the grounds that the diverted route is 'clearly not so convenient and commodious' the Council would disagree. Whilst the description of the diverted route is 4 metres shorter than the existing route, when adding the additional 11 metres along the footway which the public will have to use, the new route is 7 metres longer than the existing route. This is very minor when the total length of Footpath 17 Porthcawl is 457 metres. Furthermore, routes that are diverted under the Town and Country Planning Act 1990 are not required to be 'as convenient or commodious', as that is the criteria for diverting routes under the Highways Act. In terms of this particular diversion the Council only has to be satisfied that it is necessary in order to enable the development to be carried out.

4.14 Porthcawl Town Council – Although no formal response was received from the Town Council in relation to the pre-order consultation sent out by the Rights of Way section, the Town Council did object to the planning application on the grounds that the deviation of the footpath was not acceptable and the alteration would set a unacceptable precedent. The Town Council's grounds for objecting to the Planning Application were noted during the planning application process but it was felt more appropriate that they should be addressed as part of the formal application procedure to divert the public right of way. In relation to their objection which indicates that the alteration sets an 'unacceptable precedent', Members will be aware that the legislation enables developers to submit applications to divert public rights of way affected by development. This application does not, therefore, set any kind of precedent. In terms of the diversion being 'unacceptable' then the Town Council does not indicate why it is 'unacceptable' and therefore it is difficult to comment on this other than to indicate, as detailed in 4.15 below, why the Diversion Order should not be made.

4.15 GROUP MANAGER – HIGHWAY SERVICES.

4.15.1 In order to facilitate the construction of a new detached two storey dwelling house with three bedrooms as per planning consent P/17/595/FUL next to 15 The

Burrows, Porthcawl, CF36 5AJ a section of Footpath 17, Porthcawl will need to be diverted under section 257 the Town and Country Planning Act 1990.

4.15.2 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.’*

4.15.3 In regard to the three considerations outlined above Members are advised as follows:

- The interests of the public can be said to be satisfied because although the proposed diversion is slightly longer than the existing route this is very minor when the total length of Footpath 17, Porthcawl is considered. In addition the current footpath has a natural surface whereas the proposed surface will be tarmac and the current width is undefined whereas the new width will have a defined width of 1.5 metres. The developer will be responsible for the works to provide the diversion and the provision of the new route.
- The footpath is being moved from one side of an area of open ground to the other. As a result it will be between approximately 5 and 10 metres closer to the boundary of No. 11 The Burrows. It should be noted, however, that just because the proposed footpath is closer to the boundary of No. 11 The Burrows the diversion of the footpath would be negligible due to the topography of the land as users of the footpath would be closer to a bank and fencing, so would not be easily able to see over into the adjoining property, or indeed be seen by the residents of No.11 The Burrows. The Rights of Way section agrees that properties will still be affected by the

route albeit to a greater or lesser extent. Therefore there does not appear to be any additional effects of the Order on any adjoining properties.

- It may be considered that the Order could have a detrimental effect on equestrian users – with the path being diverted before the DMMO is determined. However, the route is currently only a public footpath and therefore the matter must be processed as such. It is not known at this point of time whether the DMMO's Nos. 2 & 7 will be confirmed. If the DMMO's are confirmed then the Council will have to deal with any new issues that arise at that time. The various options available to the Council and the developer are outlined in paragraph 4.12.
- The Council is unaware of any potential financial loss to members of the public.

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 IMPACT ASSESSMENT

6.1 An Equality Impact Assessment has been undertaken and the diversion of this footpath will not prejudice recreation along the public rights of way network for any sections of the community. There are no other implications or impact on specific equality groups.

7. WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015 IMPLICATIONS

7.1 The duty has been considered in the assessment of this application. It is considered that there would be no significant or unacceptable impacts upon the achievement of wellbeing goals/objectives as a result of the proposed diversion. The assessment is attached at **Appendix C**.

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 order process and the implementation of any works required by the Council.

9 RECOMMENDATION

9.1 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.

9.2 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.

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.

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CORPORATE DIRECTOR - COMMUNITIES**

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BACKGROUND DOCUMENTS

File A763/1/FP 17 Porthcawl (14th August 2017 – present)
Equality Impact Assessment
File A763/1/213C (26th November 2007 – present)
File A763/1/213A (26th November 2007 – present)

DIRECTIONS TO SITE.

The Rights of Way Sub Committee of 29 January 2010 agreed that future Rights of Way Sub Committee reports shall provide directions to, and the postcode of sites. This will ensure that the sites are easily located for the purpose of the site meeting prior to the Rights of Way Sub Committee at the Civic Offices. In compliance with this, the directions to the site and its postcode are as follows.

Members are requested to meet at (Point A shown on the attached map (**Appendix B**)). The meeting point (as if coming from the Civic Offices) is accessed by proceeding north along Angel Street, then going straight ahead at the lights onto Park Street (A473). Proceed for approximately 2.1 miles to a roundabout, take the 2nd exit carrying along the A473, before taking the 2nd exit at the next roundabout to join the A48 (Port Talbot/Porthcawl). Continue along the A48 to another roundabout, take the 1st exit (Porthcawl/A4106) onto Bridgend Road. Continue along Bridgend Road until you reach the next roundabout (2.1 miles), take the 1st exit (Newton), before taking your 1st left onto Manor Grove, then your 2nd right onto Danygraig Avenue, then the 3rd right onto Birch Walk, you will then need to take your 1st left onto Rowan Drive, then 2nd right onto Lime Tree Way before finally taking the 1st left onto The Burrows. The location of the site meeting is on your left some 85 metres from the junction with Lime Tree Way. There is limited on road parking near to the start point on The Burrows, The Firs or Cypress Gardens.

The wearing of Wellington boots or other waterproof footwear is strongly recommended.

The postcode for The Burrows is CF36 5AJ. This postcode is south of the meeting point when using Google maps.

It is advised that you park nearby and walk to the starting point as there is limited on street parking.