

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 7th 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 10th 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 25th 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 30th 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 18th 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.

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