

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO RIGHTS OF WAY SUB COMMITTEE

17 MARCH 2022

REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

PROPOSED DIVERSION OF FOOTPATH 12, PORTHCAWL

1. Purpose of report

- 1.1 The purpose of this report is to request authorisation for the making of an Order pursuant to Section 257 (diversion) of the Town & Country Planning Act 1990, on land at Moor Lane Porthcawl CF36 3EJ.

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 12, Porthcawl to be diverted. They are:

- P/16/497/FUL - change of use of land for the provision of high quality self-catering mobile wooden chalets, tourist accommodation & supporting facilities, which received conditional consent on the 13th April 2017; and
- P/17/554/RLX – variation of condition 2 of P/16/497/FUL relating to occupancy of chalets, which received conditional consent on the 16th March 2018.

- 3.2 To enable Footpath 12 Porthcawl to be diverted as proposed by the applicant it will also be necessary to divert an additional section of Footpath 12 Porthcawl not in the ownership of the applicant. A kissing gate was previously erected in the very north eastern corner of the site on what was assumed to be the definitive alignment of the footpath. However, the actual alignment of the footpath should cross through the field boundary 13 metres south of where the kissing gate was installed. By taking the diversion through the existing structure this will maintain the integrity of the rights of way network by avoiding the creation of an anomaly where the definitive route and the proposed diverted route would not match and will avoid the removal of a mature

section of hedge which would be necessary to relocate the structure. The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The section of Footpath 12 Porthcawl 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 12 Porthcawl between Points A-C-D-E-B.

4. Current situation/proposal

Current Route and Proposed Diversion

- 4.1 Currently that section of Footpath 12, Porthcawl to be diverted commences at Point A (Grid Ref. SS 81657916), as shown on the plan in **Appendix B**, and proceeds in a north easterly direction for approximately 265 metres to its termination point at Point B (Grid Ref. SS 81827936). The current definitive width of the route is 1.2 metres. The footpath has a natural surface.
- 4.2 The current route is obstructed by a mature hedgerow at a point approximately 13 metres to the west of Point B (Grid Ref. SS 81827936).
- 4.3 The proposed alternative route of Footpath 12, Porthcawl commences at Point A (Grid Ref. SS 81657916) on the plan (**Appendix B**), and proceeds in an east north-easterly direction for approximately 216 metres to Point C (Grid ref. SS 81857922), it then continues in a north north-westerly direction for approximately 155 metres to Point D (Grid Ref. SS 81817937) before proceeding in a general easterly direction for approximately 6 metres passing through a second kissing gate en route to Point E (Grid Ref. SS 81827937), before it turns and runs in a south easterly direction for approximately 14 metres to Point B (Grid Ref. SS 81827936).
- 4.4 The approximate total length of the new route is 391 metres with a width of 5 metres (Points A-C-D) and 1.2 metres between Points D-E-B. The surface between Points A-C-D-E will be a natural surface and between Points E-B will be a hardcore surface. The 5 metre width (Points A-C-D) was suggested by the applicant as minimum width for a landscape/ecology belt surrounding the development site as per planning application P/16/497/FUL.
- 4.5 There will be a kissing gate at Point X (Grid Ref. SS 81817937).
- 4.6 The diversion of this section of Footpath 12, Porthcawl was originally discussed in February 2020 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 principle by the Rights of Way Section.
- 4.7 The application to divert this section of Footpath 12, Porthcawl was submitted on the 20th February 2020. The application was received as a result of comments made by the Rights of Way Section in respect of planning application P/16/497/FUL.
- 4.8 Whilst preparing the documents to carry out a consultation in accordance with the Councils standard pre-order consultation process in 2020, the Rights of Way Section noted that if the proposed diversion were to be successful this would leave Footpath 12, Porthcawl as a route with an anomaly. This anomaly relates to that section of the definitive alignment of Footpath 12, Porthcawl which is currently obstructed by the

mature hedgerow as mentioned earlier in this report. The Council wrote to the applicant's agent asking if they would be willing to agree to include an additional section of Footpath 12, Porthcawl, not in the applicants' ownership, 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 subject to written confirmation from the adjoining landowner.

- 4.9 The Rights of Way Section contacted the adjoining landowner in August 2020 to gather their views on the diversion of the additional section of Footpath 12, Porthcawl, and can confirm that the Director of Grove Golf Club Limited (the adjoining landowner) responded to confirm that they would be happy to co-operate subject to the views of other consultees.
- 4.10 In accordance with the Council's standard consultation process for Public Path Orders the local County Borough Council member, 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 2020. During the consultation process numerous representations were received in relation to the proposed diversion. These are outlined below.
- 4.11 Bridgend Ramblers – No objection subject to the agreement of the adjoining landowner to the proposal.
- 4.12 Wales & West Utilities – No objection.
- 4.13 Porthcawl Town Council – No objection subject to the area being properly maintained by the land owners and that the footpath remains accessible.
- 4.14 South Wales Police Design out Crime Officer – No objection.
- 4.15 In order to facilitate the development and variation of condition 2 of P/16/497/FUL relating to occupancy of chalets at land at Moor Lane Porthcawl CF36 3EJ a section of Footpath 12, Porthcawl will need to be diverted.
- 4.16 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.'*

4.17 In respect of the three considerations outlined above Members are advised as follows:

- The Council is aware that the new route will be 126 metres longer than the existing route. 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 Moor Lane and the A4229. 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 (EIA) 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 of the footpath 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 12, Porthcawl would become obstructed and the Council would then have to take action to remove these 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**
There has been a significant increase in the use of the countryside for the purpose of well-being, but this has increased the maintenance burden on the areas that the public enjoy for recreation and health benefits.
- **Collaboration**
The developer must provide a suitable alternative to users of the existing footpath. The Order will be open to objection and cannot be implemented until all objections are withdrawn or, where objections do remain the Order is confirmed by the Planning Inspectorate.
- **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 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 and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to divert Footpath 12, Porthcawl as shown on the plan in **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 Chief Officer Legal and Regulatory Services, HR and Corporate Policy 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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CORPORATE DIRECTOR COMMUNITIES
3 March 2022

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Background documents: File A763/1/FP 12 Porthcawl (17th February 2020 – 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.

Due to current circumstance regarding the pandemic, a site visit will not be possible. However, the Rights of Way Section are currently looking at ways to resolve this issue.