

BRIDGEND COUNTY BOROUGH COUNCIL
REPORT TO RIGHTS OF WAY SUB COMMITTEE

22 AUGUST 2022

REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

**PROPOSED DIVERSION OF FOOTPATH 16 AND 17, YNYSAWDRE
AND
PROPOSED PART EXTINGUISHMENT OF FOOTPATH 16, YNYSAWDRE
AND
PROPOSED DIVERSION OF FOOTPATH 12, 16 AND 17 NEWCASTLE HIGHER**

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 of the Town & Country Planning Act 1990, on land west of Maesteg Road, Tondu, CF32 9DF.

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 sections of Footpaths 16 and 17 Ynysawdre and Footpaths 12, 16 and 17 Newcastle Higher to be diverted as well as the part extinguishment of Footpath 16, Ynysawdre. They are:

- P/16/366/OUT - outline planning application for the development of 450 dwellings, 1000sq.m class B1 use, highway works, public open space, which received conditional consent (outline) on the 13th December 2018.
- P/19/915/RES – reserved matters applications to P/16/366/OUT for 405 residential units, link road and temporary car park, granted conditional consent (reserved matters) on the 17th September 2020.

3.2 The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The sections of footpaths which are proposed to be diverted are shown by solid black lines running between the following points on the plan in **Appendix B** to the report.

- Footpath 17 Ynysawdre – Points A-B
- Footpath 16 Ynysawdre – Points I-J
- Footpath 12 Newcastle Higher – Points M-N
- Footpath 16 Newcastle Higher – Points W-X
- Footpath 17 Newcastle Higher – Points I-A1-B1

3.3 The section of Footpath 16, Ynysawdre which is proposed to be extinguished is also shown by a solid black line running between Points C-A-H on the plan in **Appendix B** to the report.

3.4 This plan also shows the proposed alternative routes for the footpaths as dashed black lines running between the following points.

- Footpath 17 Ynysawdre – Points C-D-E-F-G
- Footpath 16 Ynysawdre – Points J-K-L
- Footpath 12 Newcastle Higher – Points O-P-Q-R-S-T-U-V-N
- Footpath 16 Newcastle Higher – Points W-Y-Z
- Footpath 17 Newcastle Higher – Points I-C1-D1-E1-F1-B1

3.5 An additional section of footpath is also being shown as part of the alternative route of Footpath 12 Newcastle Higher and this is shown by dashed black lines between Points P – G1. This is being created to link the main proposed alternative route for Footpath 12 Newcastle Higher with an estate road that is proposed to be constructed nearby.

3.6 The section of footpath to be created is shown as a dashed black line on the same plan running between Points P-G1.

4. Current situation/proposal

Current Routes and Proposed Diversions, Proposed (Part) Extinguishment and Proposed Creation

4.1 Currently Footpath 17, Ynysawdre, commences at Point A (Grid Reference SS 89028444), as shown on the plan in **Appendix B**, and proceeds in a generally north westerly direction for approximately 72 metres to link onto Derllwyn Road at Point B (Grid Reference SS 88988449). The footpath has a part natural and part tarmac surface. The approximate length of the footpath to be diverted is 72 metres with a width of 2 metres.

- 4.2 The proposed alternative route of Footpath 17, Ynysawdre, runs from Point C (Grid Reference SS 89088442) on the plan (**Appendix B**), and proceeds in a general westerly direction for approximately 56 metres to Point D (Grid Reference SS 89028442), it then continues in a north westerly direction for approximately 62 metres to Point E (Grid Reference SS 88988446). The route then proceeds in a general north north-easterly direction for approximately 47 metres to Point F (Grid Reference SS 89008450) before continuing in a north westerly direction for approximately 12 metres to its termination point on Derllwyn Road at Point G (Grid Reference SS 88998450). The approximate length of the new route is 177 metres with a width of 2 metres. The surface between Points C-D-E-F-G will be tarmacadam.
- 4.3 Currently Footpath 16, Ynysawdre, commences from the maintainable highway at Maesteg Road at Point I (Grid Reference SS 89298419), as shown on the plan in **Appendix B**, and proceeds in a general north westerly and north north-westerly direction for approximately 111 metres to Point J (Grid Reference SS 89218427). The approximate length of the footpath to be diverted is 111 metres with a width of 2 metres. The footpath has a part natural and part tarmacadam surface.
- 4.4 The proposed alternative route of Footpath 16, Ynysawdre, runs from Point J (Grid Reference SS 89218427) on the plan (**Appendix B**), and proceeds in a general south westerly direction for approximately 33 metres to Point K (Grid Reference SS 89198424) where it continues in a general westerly direction for approximately 35 metres to its junction with the proposed diverted route of Footpath 17 Newcastle Higher at Point L (Grid Reference SS 89158424). The approximate length of the new route is 68 metres with a width of 2 metres. The surface between Points J-K-L will be tarmacadam.
- 4.5 Currently Footpath 12, Newcastle Higher, commences at Point M (Grid Reference SS 88728412), as shown on the plan in **Appendix B**, and proceeds in a general west south-westerly and westerly direction for approximately 454 metres to Point N (Grid Reference SS 88728412). The approximate length of the footpath to be diverted is 454 metres with a width 0.9 metres. The footpath has a natural surface.
- 4.6 The proposed alternative route of Footpath 12, Newcastle Higher, runs from Point O (Grid Reference SS 89058428) on the plan (**Appendix B**), and proceeds in a south westerly direction for approximately 88 metres to Point P (Grid Reference SS 89008421) where it turns and runs in a general west south westerly and south westerly direction for approximately 128 metres to Point Q (Grid Reference SS 88908414) before continuing in a north westerly direction for approximately 14 metres to Point R (Grid Reference SS 88898415), it then continues in a south westerly direction for approximately 17 metres to Point S (Grid Reference SS 88888414). The route then continues in a general north westerly direction for approximately 24 metres to Point T (Grid Reference SS 88868415), where it then proceeds in a general south westerly direction for approximately 41 metres to Point U (Grid Reference SS 88828413), it then proceeds in a general westerly direction for approximately 96 metres to Point V (Grid Reference SS 88738411), it then continues in a general northerly direction for approximately 20 metres to Point N (Grid Reference SS 88728412). The approximate length of the new route is 428 metres with a width of 2 metres. The surface between Points O-P-Q-R-S-T-U-V-N will be tarmacadam.

- 4.7 Currently Footpath 16, Newcastle Higher, commences from Point W (Grid Reference SS 88988391), as shown on the plan in **Appendix B**, and proceeds in a general westerly direction for approximately 121 metres to Point X (Grid Reference SS 88868389). The approximate length of the footpath to be diverted is 121 metres with a width 1.5 metres. The path has a natural surface.
- 4.8 The proposed alternative route of Footpath 16, Newcastle Higher, runs from Point W (Grid Reference SS 88988391) on the plan (**Appendix B**), and proceeds in a general southerly direction for approximately 66 metres to Point Y (Grid Reference SS 88998384) before continuing in a general westerly direction for approximately 187 metres to its termination point at Point Z (Grid Reference SS 88818382). The approximate length of the new route is 253 metres with a width of 2 metres. The surface between Points W-Y-Z will be a natural surface.
- 4.9 Currently Footpath 17, Newcastle Higher, commences from its junction with the maintainable highway known as Maesteg Road at Point I (Grid Reference SS 89298419), as shown on the plan in **Appendix B**, and proceeds in a general westerly direction for approximately 26 metres to Point A1 (Grid Reference SS 89278419), it then continues for approximately 514 metres in a general north westerly direction to Point B1 (Grid Reference SS 88798438). The approximate length of the footpath to be diverted is 537 metres with a width of 0.9 metres.
- 4.10 The proposed alternative route of Footpath 17, Newcastle Higher, runs from the maintainable highway known as Maesteg Road at Point I (Grid Reference SS 89298419) on the plan (**Appendix B**), and proceeds in a north north-westerly direction for approximately 34 metres to Point C1 (Grid Reference SS 89278422) before continuing in a south westerly direction for approximately 47 metres to Point D1 (Grid Reference SS 89238420), the route then continues in a general north westerly direction for approximately 381 metres to Point E1 (Grid Reference SS 88888435) before continuing in a general southerly direction for approximately 3 metres to Point F1 (Grid Reference SS 88888435) before proceeding in a general north westerly direction for approximately 101 metres to Point B1 (Grid Reference SS 88798438). The approximate length of the new route is 566 metres with a width of 2 metres. The surface between Points I-C1-D1-E1-F1-B1 will be tarmacadam.
- 4.11 The section of Footpath 16, Ynysawdre, to be extinguished commences from Point C (Grid Reference SS 89088442), as shown on the plan in **Appendix B**, and proceeds in a general westerly and north westerly direction for approximately 52 metres to Point A (Grid Reference SS 89028444) before continuing in a general west north-westerly direction for approximately 75 metres to its junction with Derllwyn Road at Point H (Grid Reference SS 88958445). The approximate length of the footpath to be extinguished is 127 metres with a width of 2 metres.
- 4.12 The additional section of footpath to be created commences at its junction with the proposed new route of Footpath 12, Newcastle Higher at Point P (Grid Reference SS 89008421), on the plan (**Appendix B**), and proceeds in a general south south-westerly direction for approximately 37 metres to its junction with the estate carriageway at Point G1 (Grid Reference SS 88998417). The approximate length of the new route is 110 metres with a width of 2 metres. The surface between Points P-G1 will be tarmacadam.

- 4.13 The diversion of the footpaths was originally discussed in February 2020 when the landowner and agent for the applicant sought advice from the Rights of Way Section for the possible diversion of the footpaths following comments made by the Rights of Way Section in regards to planning application P/16/366/OUT. As a result of those discussions the agent submitted a proposal for the diversion of the footpath.
- 4.14 During those discussions, the Rights of Way Section noted that if the proposed diversions were to be successful this would leave Footpath 16, Ynysawdre as a route with an anomaly. This anomaly relates to that section of Footpath 16, Ynysawdre which is currently obstructed by a building and compound between Point I and J as shown on the plan in **Appendix B**. At the time, Footpath 16, Ynysawdre was in the process of being registered as a public footpath having been the subject of an application for a Definitive Map Modification Order. The order had been made on the 25th March 2019 but had not yet been confirmed. The order was subsequently confirmed on the 26th March 2021.
- 4.15 Although the obstruction of the footpath is outside of the boundary of the development, the Rights of Way Section discussed with the applicant the possibility of including a small diversion of that section of the claimed footpath, at that time, as part of this application. The applicant then sought permission from the adjoining landowner in February and March 2021 asking to divert the claimed footpath onto their land. Subsequently, a phone call was received from the adjoining landowner on the 13th March 2021 confirming that they had no objection to the proposal.
- 4.16 The application to divert those section of footpaths in Ynysawdre and Newcastle Higher, as well as the part extinguishment of Footpath 16, Ynsawdre was submitted on the 16th March 2021. The application was received as a result of further comments made by the Rights of Way Section in relation to planning application P/19/915/RES.
- 4.17 In accordance with the Rights of Way Sections standard consultation process for Public Path Orders the local County Borough Council members, Ynysawdre Community Council, Newcastle Higher Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities were consulted on the proposal in March/April 2022. During the consultation process numerous representations were received in relation to the proposed diversion. These are outlined below.
- 4.18 Bridgend Ramblers – No objection.
- 4.19 Wales & West Utilities – No objection.
- 4.20 South Wales Police Design out Crime Officer – No objection.
- 4.21 Ynysawdre Community Council – No reply received.
- 4.22 Newcastle Higher Community Council – No reply received.
- 4.23 Dwr Cymru Welsh Water (DCWW) – No reply received.

4.24 In order to facilitate the reserved matters to P/16/336/OUT for 405 residential units, link road and temporary car park at land west of Maesteg Road, Tondu, CF32 9DF sections of the following footpaths will need to be diverted.

- Footpath 16, Ynysawdre
- Footpath 17, Ynysawdre
- Footpath 12, Newcastle Higher
- Footpath 16, Newcastle Higher
- Footpath 17, Newcastle Higher

4.25 In addition, part of Footpath 16, Ynysawdre will need to be extinguished. A short section of path linking one of the estate roads with the proposed diversion of Footpath 12 Newcastle Higher will also be created

4.26 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.’*

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

- The Council is aware that the overall length of the network in this area as a result of the proposed diversions, part extinguishment and proposed creation of the routes as indicated in paragraphs 4.1 to 4.12 of the report is approximately 175 metres more than what is currently shown on the Definitive Map and in the recent Definitive Map Modification Order. However, a large

proportion of the routes are currently unusable by members of the public due to the current nature of the site. In the long term the proposed diversions, part extinguishment and creation enables the Rights of Way network in this area to be enjoyed by the public and protected from obstruction. It also enables the network to be accurately recorded and maintained. 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 diversions 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 diversions, part extinguishment and creation of the various 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 those footpaths 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 routes 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 developer must provide a suitable alternative to users of the existing footpaths. 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 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 and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to divert Footpaths 16 and 17 Ynysawdre and Footpaths 12, 16 and 17 Newcastle Higher and to create an additional link footpath 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 authorisation be given for the Chief Officer Legal and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to part extinguish Footpath 16 Ynysawdre 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.
- 9.3 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.
- 9.4 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
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Contact officer: Mr Mathew Palmer
Rights of Way and Access Land Officer

Telephone: (01656) 642595

Email: 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 16+17 YNY & FP 12, 16 + 17 NEW & FP
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