

NEATH PORT TALBOT COUNCIL

Cabinet

11th December 2024

Report of the Head of Legal and Democratic Services Craig Griffiths

Matter for Decision

Wards Affected:

Bryn and Cwmavon

Proposed Diversion order for part of footpath no.127 - Community of Cwmavon

Purpose of the Report

1. To determine whether to make a public footpath diversion order in accordance with the Town and Country Planning Act 1990 for part of footpath no.127 in the community of Cwmavon.

Executive Summary

2. This report considers the grounds for making a public footpath diversion order to enable development to be carried out where full planning permission has been approved.

3. The section of footpath no.127 that is proposed to be diverted, currently commences at Heol-Jiwbili and proceeds in a general north north-easterly direction to its junction with Heol-Crwys.
4. The proposal is to create a public footpath diversion order which will divert part of footpath no.127 to an existing unadopted and unregistered path.

Background

5. The length of the path concerned is approximately 85 metres and is shown A - B on plan 1 attached at appendix 1 to the report.
6. The path commences at its junction with the maintainable highway known as Heol-Jiwbili at point A and proceeds in a general north north-easterly direction to its junction with the maintainable highway known as Heol-Crwys at point B.
7. The path passes through an existing housing development and as such has been obstructed for many years. Currently, pedestrian access between Heol-Jiwbili and Heol-Crwys is via an unadopted and unregistered path shown C - D on Plan 1; It is proposed that this path becomes the diverted route for footpath no.127.

Grounds for making a Diversion Order under the Town and Country Planning Act 1990

Ground 1

8. Before making an order, the authority must be satisfied that it is necessary to do so in order to enable development to be carried out. It should not, however, be assumed that an order should be made simply because planning permission has been granted.
9. The necessity test entails examining 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.

10. 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.

Ground 2

11. In coming to a judgement as to whether to make an order, the following should be taken into account:
 - a. The interests of the general public
 - b. The potential effects of the order on some members of the public, such as occupiers of property adjoining the highway
 - c. Any potential financial loss to members of the public

Ground 3

12. When making a diversion, the new path must either commence or terminate at some point on the line of the original path. However, alternative ways need not do so and may, for instance, run parallel to the route being stopped up. To avoid the creation of a cul-de-sac and to enable the public, where appropriate, to return to that part of the original way not affected by the development, any alternative path provided should be linked via another highway to the original path.

Ground 4

When making a Diversion Order under s. 257 of the TCPA 1990, the authority should consider any works that will be required to bring an alternative path into a fit condition for public use. Where necessary, the Order should state that the diversion will not have effect until the authority certifies that the requirements have been complied with.

Ground 5

13. Where the development, insofar as it affects a right of way, is completed before the necessary order to divert or extinguish the right of way has been made or confirmed, the powers under s. 257 and s. 259 of the TCPA 1990 to make and confirm orders are no longer available. This is because the development, which the order is intended to enable, has already been carried out. If such a development has already been completed, there is no basis for an order to be made.

Officer Report

14. Ground 1 - Full planning permission was approved on the 13th June 2023. The plans clearly show that it is a necessary for the path to be diverted to enable the development to take place. In any event, the path is currently obstructed by the existing housing development and has been for many years.
15. Ground 2 - The proposed diverted route is already the de-facto route for pedestrian access between Heol-Jiwbili and Heol Crwys, it is not considered that the public's interests are adversely affected by the proposal.
16. Ground 3 - The proposed diverted route offers a more direct route between Heol-Jiwbili and Heol Crwys, commencing and ending on the same line as the original path.
17. Ground 4 - The proposed diverted route has a tarmacadam surface which is in a good state of repair. No works are required to bring the new route into a fit state for public use.
18. Ground 5 - The construction phase of development is still within its infancy, so it remains appropriate to use the powers contained with the Town and Country Planning Act 1990.

Consultation

19. Prior to this report a standard list of organisations were consulted such as the Ramblers Association, the Byways and Bridleways Trust, utility companies and the Local Members.

20. No adverse comments were received.

Financial Impacts

21. There are no financial implications associated with this report.

Integrated Impact Assessment

22. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulation 2015, the Well Being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment has indicated that a more in-depth assessment is not required. The integrated impact assessment is attached at appendix 2.

Valleys Communities Impacts

23. There are no valley community impacts associated with this report.

Workforce Impacts

24. There are no workforce impacts associated with this report.

Legal Impacts

25. Whilst the recommendations are not discharging a duty under the Town and Country Planning Act 1990, this Council has the discretion to do so if it deems that is it necessary to make the order to enable a development to proceed. The various grounds for making the order have been set out in the report.

Risk Management Impacts

26. There are no risk management impacts associated with this report.

Consultation

27. Prior to this report a standard list of organisations were consulted such as the Ramblers Association, the Byways and Bridleways Trust, utility companies and the Local Members.

Recommendations

28. It is recommended that having due regard to the Integrated Impact Screening Assessment that a public path Diversion Order is made pursuant to Section 257 of the Town and Country Planning Act 1990 in respect of the route shown A-B to C-D on plan no.1 and that if no objections are received then to confirm the order as made.

Reasons for Proposed Decision

29. That the grounds for making the order can be satisfied as the diversion is necessary to enable the development to proceed.

Implementation of Decision

30. The decision is proposed after the three day call in period.

Appendices

31. Appendix 1- Plan No. 1
32. Appendix 2 - Integrated Impact Screening Assessment

List of Background Papers

33. None.

Officer Contact

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