

NEATH PORT TALBOT COUNCIL

Report of the Head of Legal and Democratic Services Craig Griffiths

Matter for Decision

Wards Affected:

Port Talbot

Proposed Diversion order for part of footpath no.2 - Community of Port Talbot

Purpose of the Report

1. To determine whether to make a public footpath diversion order for footpath no.2 ("the footpath") in the community of Port Talbot

Executive Summary

2. This report considers the grounds for making a public footpath diversion order.
3. The existing footpath length follows a narrow grass track before entering a working farm via the rear of the property. The footpath runs directly through the farmyard, where farming machinery is in constant operation and regular movement of livestock.
4. The proposal is to create a public footpath diversion order which will divert part of the footpath away from the working farm, utilising a series of steps that were installed by the Council several years ago.

Background

5. The length of the footpath to be diverted is approximately 233 metres shown A-B-C-D-E on plan 1 attached at appendix 1 to the report. The footpath runs in a westerly direction running alongside the rear of the farmhouse before directly entering the farmyard. The footpath continues through the farmyard before exiting onto Byway 1, Port Talbot, as shown C-D-E on plan 1.
6. Where the path can be walked, it passes over an earth / grass path via a gradient from B-C-D on the perimeter of mountain hillside.
7. The proposed alternative A-F-G-H-I-J-K is to utilise a series of steps (which were installed by the Council several years ago) and a short section of adopted highway, before joining Byway 1.

Grounds for making a Diversion Order.

Ground 1

8. A diversion order should either be in the interest of the owner, lessee or occupier of the land crossed by the footpath or in the interest of the public.
9. It is clear that the owner of the farm whose land is crossed by the footpath would wish to have it diverted. It is in the interests of the landowner for privacy and security reasons, but also in the interests of the public for safety reasons.
10. There is no statutory bar to a person making an application where they have acquired land or developed land with the knowledge of the existence of the right of way. The application should not be considered less persuasive and has no bearing on whether the test of expediency as set out above, can be satisfied.

Ground 2

11. A diversion order should not alter the point of termination of the path unless it's on another public highway connected to the path.

12. In respect of the proposed diversion of the footpath, the point of termination is a public highway, which then connects to a byway.

Ground 3

13. Before a Council can confirm an unopposed diversion order or the Welsh Ministers confirm an opposed order, they must be satisfied that it is expedient to confirm the order regarding the first condition set out above.

It is clearly in the interests of the occupier and future occupiers of the farm to have the footpath diverted. Representations received from the Ramblers Association (See Ground Seven below) agree that it is also in the interests of the public.

Ground 4

14. That the diversion will be substantially convenient to the public.
15. Regarding the proposal shown on plan 1, the difference in distance from point A - E using the proposed footpath is approximately an additional 288 metres, however, the proposed footpath is more convenient for users of the coastal path as Byway 1 is no longer required to be used to access footpath no.2 (see representations from the Ramblers Association at Ground 7 below).

Ground 5

16. That it is expedient to confirm the order having regard to the effect the diversion would have on the public enjoyment of the path as whole.
17. The overall length of footpath no. 2 is approximately 732 metres. The proposed diversion will remove 233 metres of footpath (from point A - E) but will add 79 metres of footpath (from point A - K). This means the overall length of the path is reduced by just 154 metres. It is not considered this reduced amount would detract from the overall enjoyment of the path as a whole.
18. It should also be noted that case law has established the following two precedents

- It can be expedient to divert a path on the grounds of privacy where the alternative is not substantially less convenient, even though it may not be as enjoyable.
- Where the diversion would have no significant effect on the use of the path as a whole, the enjoyment of the path has to be considered in the context of the footpath as a whole.

Ground 6

19. The effect the diversion would have on other land served by the existing path.
20. According to the applicant the existing path has not been used for many years, the applicant stated the path changed course when the steps were installed over seven years ago and since then has been in use with no objection or concern.

Ground 7

21. The effect the diversion would have on the land containing the new path.
22. Comments received from the Ramblers Association in response to the informal consultation state: that the footpath between A-B-C-D-E, should be diverted to A-F-G-H-I-J-K because of its undulating and potential for vegetation overgrowth. In addition, to access the footpath and to continue along the coastal path currently necessitates a 200m walk along a metalled road [Byway 1] without suitable footways.
23. It is clear from these comments, that it is in the interests of the public for the footpath to be diverted.

Ground 8

24. To take account of any material provision of the rights of way improvement plan.
25. There is no suggestion that the diversion would be in any way be contrary to the material provisions of the Rights of Way Improvement Plan

Conclusion

26. On balance it is considered the diversion should be made as shown on plan 1.

Financial Impacts

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

Integrated Impact Assessment

28. 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.

Valleys Communities Impacts

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

Workforce Impacts

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

Legal Impacts

31. Whilst the recommendations are not discharging a duty under the Highways Act 1980, this Council has the discretion to do so if it deems that it is expedient to make the order and can be justified. The relevant tests have been set out above.

Risk Management Impacts

32. Given the problems the owner/ applicant? highlighted it is considered necessary to make every effort to resolve this matter. As such it would be for the convenience of both the public and the owners of the farm.

Consultation

33. Prior to this report a standard list of organisations were consulted such as the Ramblers Association, their local representative, the Byways and Bridleways Trust, the Community Council, the Local Member.

Recommendations

34. It is recommended that having due regard to the Integrated Impact Screening Assessment that a public path Diversion Order is made pursuant to Section 119 of the Highways Act 1980 in respect of the route shown A-B-C-D-E to A-F-G-H-I-J-K shown on plan no.1 and that if no objections are received then to confirm the order as made.

Reasons for Proposed Decision

35. That the grounds for making the order under the tests of expediency can be satisfied as it will improve the privacy and safeguarding of work carried out on the farm and that the diversion does not have any significant effect on the path as a whole.

Implementation of Decision

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

Appendices

37. Appendix 1 Plan no.1

List of Background Papers

38. None.

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