

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **ENVIRONMENT, REGENERATION & STREETSCENE SERVICES CABINET BOARD**

**2nd December 2022**

### **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.14 - Community of Cwmavon**

#### **Purpose of the Report**

1. To determine whether to make a public footpath diversion order for footpath no.14 in the community of Cwmavon.

#### **Executive Summary**

2. This report considers the grounds for making a public footpath diversion order.

3. The existing footpath passes to the rear of 4 properties, intersecting several of the properties, one of which is still under construction.
4. The proposal is to create a public footpath diversion order which will divert part of footpath no.14 away from the properties, utilising an adopted road as an alternative

## **Background**

5. The length of path concerned is 120 metres shown A-B-C-D on plan 1 attached at appendix 2 to the report. The path passes to the rear of four properties, one of which is still under construction. The path crosses over one garden and through the shed of another and is obstructed by the house at its western end, near point A (the current ordnance survey plans do not show the house at this western end). The existence of this public path was not addressed when planning consent was given for the development of these four houses.
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 a woodland.
7. There are two potential alternatives. The first is shown on plan 1, is 200 metres in length and is positioned to pass along the southern side of the unadopted road. The second potential alternative would require a much smaller diversion as the differences in distance would be negligible, this is shown in plan 2 at appendix 3.

## **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 path or in the interest of the public.
9. In this example it is clear that the owners of the two properties whose land is crossed by the path would wish to have the path removed.
10. The applicant does not reside at any of the affected properties but owns the land containing most of the path and sold the four houses to those residents. As such the application is being made on behalf of those residents.

11. 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.
12. Informal consultations were undertaken on moving the path to pass along the road shown on plan 1. Comments were received from two residents who agreed with the proposal, but an objection was made by the representative of the Ramblers Association on the grounds that proposed alternative would be longer and that the existing path for most of its length is suitable for use. The objector also said there is advice from the Welsh Ministers that public paths should not be diverted on to existing estate roads.
13. Due to this objection a second proposal was considered as shown on plan 2, however objections were received by the owners of two properties.
14. The first objector stated that in wet weather the path becomes slippery and that trees are prone to falling across the path, additionally, due to the elevation of the path, anyone using the path can see into the gardens and into the rear windows of his house affecting his privacy. This person stated he has lived at his house for 5 years and has never seen anyone use the path
15. The second objector who has been a resident for 10 years and whose house would be positioned even closer to the path, stated that apart from one or two people when he first moved in, he has never seen anyone else use this section of path. Both residents said the public use the length of road A-E-D as shown on plan 1.

## **Ground 2**

16. A diversion order should not alter the point of termination of the path unless it's on another public highway connected to the path. In this example both points of termination for both these proposals start and finish at the same point.

### **Ground 3**

17. 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.
18. It is clearly in the interests of the occupiers and future occupiers of the houses situated below the path to have it diverted on to the road. The representative of the Ramblers Association would say that it is not in the interests of the public to do so.

### **Fourth ground**

19. That the diversion will not be substantially less convenient to the public.
20. Regarding the first proposal shown on plan 1, the difference in distance is 120 metres as opposed to 200 metres via the road. Both residents who have commented state that the existing path can become slippery and even dangerous when wet and so would argue this alternative is better. The representative from the Ramblers Association however disagrees.
21. Regarding the proposal shown in plan 2 the existing length is 58 metres and the proposed alternative is 62 metres, clearly an insignificant difference for walkers.

### **Fifth Ground**

22. 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.
23. The overall length of footpath no. 14 is approximately 1150 metres. Currently 225 metres of this passes over two sections of the existing estate road as shown on plan 3 attached at appendix 4; this equates to 19% of the overall length of the path. Adding another 200 metres via the proposed alternative shown in plan 1 would increase this to 36%.
24. Consequently, it is not considered this additional amount would detract from the overall enjoyment of the path as a whole. 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.

### **Sixth Ground**

25. The effect the diversion would have on other land served by the existing path.
26. The land which joins the length that is under consideration will not be adversely affected by either proposal.

### **Seventh Ground**

27. The effect the diversion would have on the land containing the new path.
28. According to the residents the existing path has not been used for many years, the residents say the path can become dangerous and therefore to create an alternative near the existing one would be unwise.
29. According to the opposite view given by the Representative of the Ramblers association, creating a path over an existing road would be a breach of the Welsh Ministers guidelines. However the guidelines do allow a path to be diverted over part of an existing path or road, but state that a diversion order should not be used where a substantial part of the alternative route is already an existing public right of way. In this example the proposed alternative shown in plan 1 would pass over an unadopted road, but even if it were adopted, the 200 metres would only constitute some 17% of the total length of the existing path.

### **Eighth Ground**

30. To take account of any material provision of the rights of way improvement plan.
31. 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**

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

## **Financial Impacts**

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

## **Integrated Impact Assessment**

34. 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**

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

## **Workforce Impacts**

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

## **Legal Impacts**

37. 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**

38. Given the problems the owners have 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**

39. 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**

40. 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 to A-E-D shown on plan no.1 and that if no objections are received then to confirm the order as made.

## **Reasons for Proposed Decision**

41. That the grounds for making the order under the tests of expediency can be satisfied as it will improve the privacy of the residents who live in close proximity to the path and that the diversion does not have any significant effect on the enjoyment of the path as a whole.

## **Implementation of Decision**

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

## **Appendices**

43. Appendix 1- Integrated Impact Screening Assessment
44. Appendix 2 Plan no.1
45. Appendix 3 Plan no.2
46. Appendix 4 Plan no.3

## **List of Background Papers**

47. None.

## **Officer Contact**

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