



## **PUBLIC RIGHTS OF WAY CABINET COMMITTEE – 2ND OCTOBER 2020**

**SUBJECT: APPLICATION FOR AN ORDER UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 TO DIVERT PUBLIC FOOTPATH 54 CAERPHILLY - AFFECTED BY DEVELOPMENT GRANTED BY PLANNING PERMISSION.**

**REPORT BY: COUNTRYSIDE AND RIGHTS OF WAY ASSISTANT – MR S. DENBURY**

**REF: 19/PPO/003 HA80 S119 - FOOTPATH 54 CAERPHILLY  
GRID REFERENCE ST 315 188**

### **1. PURPOSE OF REPORT**

- 1.1 To consider and determine an application to make an Order to divert a Public Right of Way affected by development granted by planning permission.

### **2. SUMMARY**

- 2.1 Public Rights of Way are recorded on the Definitive Map and Statement and are afforded Highway status and protection. Section 119 of the Highways Act 1980 (HA80) gives Local Authorities the power to make Orders to divert footpaths, bridleways or restricted Byways.
- 2.2 Before making a Diversion Order it must appear to the authority that it is expedient to divert the path in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.
- 2.3 The authority must also be satisfied that the Diversion Order does not alter the point of termination of the way where it is on a highway, otherwise than to another point which is on the same highway, or another highway connected with it, and which is substantially as convenient to the public.

### **3. RECOMMENDATIONS**

- 3.1 The Committee is required to determine whether:
  - 3.1.1 the Order the applicant has sought under s119 of the Highways Act 1980 be made to **divert the route** of Footpath 54 Caerphilly following the construction of the residential development to the alternative route **A-C-D-E-B on Appendix 8**; or
  - 3.1.2 the Authority make an Order under s118 of the Highways Act 1980 to **extinguish the route** of Footpath 54 Caerphilly as it is no longer needed: or
  - 3.1.3 enforcement action should be taken to remove the obstructions caused by the construction of the residential development: or
  - 3.1.4 an Order under s119 of the Highways Act 1980 be made to divert the route of

Footpath 54 Caerphilly onto a different route to be determined following further consultation.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 The development known as 'Kingsmead' constructed by Taylor Wimpey currently obstructs the definitive line of Footpath 54 Caerphilly and action is required to either:
- 4.1.1 alter the alignment of Footpath 54 Caerphilly to take into account the residential development given that planning permission has been granted and the majority of the development is now occupied;
- 4.1.2 remove the footpath from the Definitive Map and Statement; or
- 4.1.3 remove the obstructions constructed on the legal line of Footpath 54 Caerphilly by way of demolition of a number of vacant residential properties: or
- 4.1.4 alter the alignment of Footpath 54 Caerphilly to take into account the residential development, but on a different route to that proposed by the applicant.

#### **5. THE REPORT**

- 5.1 The Rights of Way Cabinet Committee (referred to hereafter as '*the Committee*') has the power to determine what action the Authority will take to resolve the matter of the obstruction to Footpath 54 Caerphilly.
- 5.2 The route which is the subject of this report is a recorded public right of way on the Definitive Map and Statement for the former Glamorgan County Council and now forms part of the Definitive Map for the County of Caerphilly, and is recorded as Footpath 54 Caerphilly.
- 5.3 An Order to divert the line of Footpath 54 Caerphilly was made on 20<sup>th</sup> August 1998 under section 119 of the Highways Act 1980 (HA80). However, this Order was not confirmed, and the line of Footpath 54 Caerphilly remained unchanged (**Appendix 4**). An administrative error by the Authority subsequently altered the route on the GIS (Geographic Information System) mapping, leading to incorrect information being supplied to the developer thereafter.
- 5.4 Parts of this incorrect route were subsequently utilised in the Order in paragraph 5.7 and crossed land within the control of Mackworth Grange / Bond Demolition.
- 5.5 On 4<sup>th</sup> November 2013 Planning Permission 12/0860/RM was granted for the Kingsmead development.
- 5.6 The public right of way was identified as being incompatible with the proposed development, as a number of houses, garages and gardens were planned over the definitive line of the public right of way.
- 5.7 Due to this incompatibility between the designed development and the public right of way, it was deemed necessary to divert the public right of way under section 257 of the TCPA90 (Town and Country Planning Act 1990). Taylor Wimpey as the developer made a new application in 2014 to realign the public right of way through the development utilising estate footways predominantly but also utilised part of the incorrect route which was believed to hold a legal status and crossed land under the control of Mackworth Grange / Bond Demolition.
- 5.8 A pre-Order consultation was carried out which received objections from the Open Spaces Society and the Ramblers' Association on 15<sup>th</sup> March 2014, and Mr B. Williams on 25<sup>th</sup> April 2014 on grounds of the use of estate road footways as

alternative paths.

- 5.9 Welsh Government guidance is to *“avoid the use of estate roads, drives, gardens or other private areas wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic.”* Section 7.9 within ‘Guidance for Local Authorities on Public Rights of Way’ – October 2016 – Welsh Government.
- 5.10 Subsequently an amended Order was made on 4<sup>th</sup> March 2015 under section 257 of the TCPA90 (**Appendix 5**) to extinguish the public right of way and create two alternative routes – one on the estate road footways as proposed previously and one along a route along the drainage channel embankment (known as the Wildlife Corridor due to the potential for wildlife habitat) – however Taylor Wimpey were not in control of all of the land necessary to complete the Order and although negotiations are believed to have taken place between Taylor Wimpey and Mackworth Grange / Bond Demolition to permit the creation of an alternative public footpath, these did not end in agreement.
- 5.11 During this time building works continued and the development was ultimately considered to have been substantially complete, and the powers under s257 TCPA90 were no longer available. S257 of the TCPA90 provides for development to take place, but this legislation cannot be used if the development has been completed.
- 5.12 On 27<sup>th</sup> September 2019 Taylor Wimpey submitted an application under section 119 of the HA80 to divert the footpath and this report relates to this application. (**Appendices 1 and 2**).
- 5.13 A pre-Order consultation was carried out receiving objections from Mr Michael Wells of Mackworth Grange / Bond Demolition regarding the topography of the land under their control which was to be reinstated to its former level leaving a steep gradient from the Taylor Wimpey development (**Appendix 6a – email, Appendix 6b – associated plan**).
- 5.14 Further objection was received from Mr Wells regarding an area of land under his ownership, which Taylor Wimpey have allegedly utilised without permission for the construction of the accessible ramp at the South of the development (**Appendix 7a – email, Appendix 7b associated plan**).
- 5.15 Comments were also received from local Councillor James Pritchard and Councillor Shayne Cook which were based on comments and queries from local residents of the development. These comments relate largely to anti-social behaviour, and to the creation of a ‘through route’ which is alleged would cause depreciation of property values and increased insurance costs. Neither of these factors can be considered under s119 of the HA80 and therefore the comments have not been included for member’s consideration.
- 5.16 Comments were also submitted by the Rambler’s Association local representative and the Open Spaces local representative – both critical of the process, and the standard of the proposed alternative route – being for a considerable percentage of the route, on a shared access or estate road. However, both parties have stated they would not oppose the proposed alternative should an Order be made.
- 5.17 Taylor Wimpey have provided details of works they propose which will link to the existing network overcoming the topographical issue described in 5.13 at point ‘A’ on

the plan in appendix 7.

5.18 Members are now asked to determine:

5.18.1 whether they consider the tests of s119 of the Highways Act 1980 would be met by the alternative path proposed in the application:

- a) it must appear to the authority that it is expedient to divert the path in the interests of the public or of the owner/lessee or occupier;
- b) the route must not be substantially less convenient to the public – the proposed route is 96m longer than the existing route, and this includes the accessible ramp;

**If objections are received to the making of such an Order, the matter will be referred to the Planning Inspectorate for determination.**

5.18.2 whether the Authority should make an Order under s118 of the HA80 to extinguish the footpath as 'no longer needed'.

**If objections are received to the making of such an Order, the matter will be referred to the Planning Inspectorate for determination;**

5.18.3 whether enforcement action requiring demolition of three houses, three garages, regrading the route through the constructed accessible ramp and the realignment of property boundaries which may require further planning applications would be appropriate:

5.18.4 whether they consider any alternative to be more appropriate.

## 5.19 Conclusion

5.20 The Order to divert the Public Right of Way under s119 of the HA80 is the least disruptive option necessary to maintain public access across the development.

5.21 The Authority can refuse to make an Order under s119 of the HA80 to divert the Public Right of Way, and instead to make an Order under s118 of the HA80 to extinguish the Public Right of Way as it appears to be no longer necessary. This may be difficult to prove, and objections may be received and upheld by the Planning Inspectorate which will subsequently require action to divert the footpath or reinstate it as described in 5.20 and 5.22 respectively.

5.22 Reinstatement of the Definitive Line of the Public Right of Way would require the removal of three houses, three garages, realignment of property boundaries and regrading the Definitive line through the accessible ramp.

## 6. ASSUMPTIONS

6.1 There are no assumptions made.

## 7. LINKS TO RELEVANT COUNCIL POLICIES

7.1 **Corporate Plan 2018-2023.** Public Rights of Way link to the Well-being objectives:

- 7.1.1 4 – Promote a modern, integrated and sustainable transport system that increases opportunity, promotes prosperity and minimises the adverse impacts on the environment;
- 7.1.2 5 - Creating a county borough that supports a healthy lifestyle in accordance with the Sustainable Development Principle within the Wellbeing of Future Generations (Wales) Act 2015;
- 7.1.3 6 - Support citizens to remain independent and improve their well-being.

## **8. WELL-BEING OF FUTURE GENERATIONS**

- 8.1 The report links directly to the Well-being goals within the Well-being of Future Generations Act (Wales) 2015:
  - **A more equal Wales**
  - **A healthier Wales**
  - **A Wales of cohesive communities**
  - **A resilient Wales**
  - **A globally responsible Wales**
- 8.2 It is consistent with three of the five ways of working within the Act:
  - 8.2.1 Long Term: Maintaining access to, and use of Public Rights of Way will help CCBC to reduce our contribution to global warming by promoting sustainable development opportunities. A high quality and more commodious alternative should encourage use between residential areas and amenities.
  - 8.2.2 Integration: The Well-being goals are being met as described in 7.1.1 – 7.1.3.
  - 8.2.3 Collaboration: Working with the developer and other Council departments, has led to an infrastructure which is usable by all, and will benefit the wider community.

## **9. EQUALITIES IMPLICATIONS**

- 9.1 An Equality Impact Assessment (EIA) screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance (**Appendix 3**). The proposed alterations will have no impact to the protected characteristics of Age, Gender Reassignment, Marriage & Civil Partnership, Pregnancy and Maternity, Race, Religion & Belief, Sex or Sexual Orientation. The protected characteristic of Disability has been considered. As a standard we aim to improve path surfaces, widths, gradients and cambers, as well as reducing the number of structures where possible, or improving their accessibility if they cannot be removed. The proposal has been altered to minimise any impact to persons with disabilities therefore a full EIA has not been carried out.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Financial implications to this Authority are expected regardless of the decision.
- 10.2 Should the Committee resolve to make an Order under section 119 of the HA80, objections are expected from Mackworth Grange / Bond Demolition with relation to **5.13** and **5.14**. If objections are received, the Authority must refer the matter to the

Planning Inspectorate for a decision. The costs associated with this process are covered by the Authority and can run to multiple thousands of pounds.

- 10.3 Should the Committee resolve to refuse to make an Order under section 119 of the HA80, but resolve to make an Order under s118 of the HA80 objections would be expected from user groups and the general public. If objections are received, the Authority must refer the matter to the Planning Inspectorate for a decision. The costs associated with this process are covered by the Authority and can run to multiple thousands of pounds.
- 10.4 Should the Committee resolve not to make an Order under s118 or s119 of the HA80, the applicant may appeal to the Planning Inspectorate, who will either direct the Authority to make an Order or not make a direction. In the latter scenario, the Public Footpath will still remain obstructed and a further resolution will need to be reached.
- 10.5 Costs associated with the making, publishing and advertising of an Order, Confirmation and Certification of compliance are covered by the applicant.
- 10.6 Should the Order be made, and subsequently receive objections, the matter will be referred to the Planning Inspectorate – the costs associated with this process are covered by the Order making Authority and can run to multiple thousands of pounds.

## **11. PERSONNEL IMPLICATIONS**

- 11.1 Implication include:
  - i. Rights of Way Officer time in preparation of materials and posting notices on site;
  - ii. Legal Services time in making an Order and arranging for advertising in the local press as required by legislation;
  - iii. Rights of Way Officer time in Certifying compliance with the Order.
  - iv. Should an Order be made, and subsequently receive objections, the matter will be referred to the Planning Inspectorate – considerable officer time will be necessary for this process.
  - v. Should the Order not be made, the applicant may appeal to the Planning Inspectorate and this will require further officer time.
  - vi.

## **12. CONSULTATIONS**

- 12.1 Robert Hartshorn – Head of Public Protection  
Robert Tranter – Head of Legal Services  
Richard Crane – Senior Solicitor  
Phillip Griffiths – Green Spaces Strategy and Cemeteries Manager  
Rights of Way Cabinet Committee:  
Cllr Cuss, Cllr George, Cllr Gordon, Cllr Morgan and Cllr Mrs Stenner  
Cllr J. Pritchard and Cllr S. Cook – Local Councillors

### **12.2 Prescribed Organisations:**

British Horse Society  
Byways and Bridleways Trust  
Open Spaces Society  
The Ramblers' Association

### 12.3 Statutory Undertakers:

British Telecom / Openreach  
Dwr Cymru / Welsh Water  
Wales and West Utilities  
Western Power

### 12.4 Caerphilly Town Council:

Mr Phil Davy

## 13. **STATUTORY POWER**

### 13.1 section 119 of the Highways Act 1980

Author: Countryside and Rights of Way Assistant – Mr S. Denbury

#### Background Papers:

- i. Section 119 Highways Act 1980;
- ii. Guidance for Local Authorities on Public Rights of Way – October 2016 (Welsh Government);
- iii. BS8300-1:2018 Design of an accessible and inclusive built environment.

#### Appendices:

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|-------------|--|
| Appendix 1  | s119 HA80 application 27 <sup>th</sup> September 2019      |
| Appendix 2  | s119 HA80 application plan 27 <sup>th</sup> September 2019 |
| Appendix 3  | EIA Screening  |
| Appendix 4  | s119 HA80 Order 20 <sup>th</sup> August 1998               |
| Appendix 5  | s257 TCPA 90 Order 4 <sup>th</sup> March 2015              |
| Appendix 6a | Objection from Mr Wells (email)(regarding point A)         |
| Appendix 6b | Objection from Mr Wells (plan)(regarding point A)          |
| Appendix 7a | Objection from Mr Wells (email)(regarding point B)         |
| Appendix 7b | Objection from Mr Wells (plan)(regarding point B)          |
| Appendix 8  | Proposed Alteration of FP54 Caerphilly                     |