



## **RIGHTS OF WAY CABINET COMMITTEE**

### **MINUTES OF THE MEETING HELD VIA MICROSOFT TEAMS ON FRIDAY 2ND OCTOBER 2020 AT 2.00 PM**

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#### **PRESENT:**

Councillor S. Morgan (Chair)  
Councillor J. Ridgewell (Vice-Chair)

#### **Councillors:**

C.J. Gordon (Cabinet Member for Corporate Services) and L. Phipps (Cabinet Member for Housing and Property).

#### **Together with:**

P. Griffiths (Green Space Strategy and Cemeteries Manager). S. Denbury (Countryside and Rights of Way Assistant) M. Woodland (Senior Solicitor) and C. Evans (Committee Services Officer).

#### **1. TO ELECT A CHAIR OF THE COMMITTEE FOR THE ENSUING YEAR**

It was moved and seconded that Councillor S. Morgan (Deputy Leader and Cabinet Member for Economy and Enterprise) be elected as Chair of the Committee for the ensuing year. By a show of hands this was unanimously agreed.

#### **2. TO ELECT A VICE-CHAIR OF THE COMMITTEE FOR THE ENSUING YEAR**

It was moved and seconded that Councillor J. Ridgewell (Cabinet Member for Environment and Infrastructure) be elected as Vice-Chair of the Committee for the ensuing year. By a show of hands this was unanimously agreed.

#### **3. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillor E. Stenner (Cabinet Member for Finance, Performance and Customer Service).

#### **4. DECLARATIONS OF INTEREST**

Councillor C. Gordon declared a personal interest in Agenda Item 6 - 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 as an objector to the application is known to him and left the meeting during consideration of the item.

## 5. RIGHTS OF WAY CABINET MINUTES – 3RD DECEMBER 2018

RESOLVED that the minutes of the meeting held on 3rd December 2018 were approved as a correct record.

## 6. 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.

Councillor C. Gordon declared a personal interest in this item as an objector to the application is known to him and left the meeting during consideration of the item.

The Committee noted that site visits had taken place, in which Members were afforded the opportunity to consider the proposals and the current layout, as well as obtain a visual perspective on the proposals within the report.

The Cabinet Rights of Way Committee were asked to consider and determine an application to make an Order to divert a Public Right of Way affected by development granted by Planning Permission.

The Green Space Strategy and Cemeteries Manager introduced the report and explained that 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.

It was noted that 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.

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.

The Officer outlined that the Committee are being asked to consider the Order as sought under Section 119 of the Highways Act 1980, in which an application 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 of the report, or the Authority make an Order under section 118 of the Highways Act 1980 to extinguish the route of Footpath 54 Caerphilly as it is no longer needed, or enforcement action be taken to remove the obstructions caused by the construction of the residential development, or an Order under section 119 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.

The Chair thanked the Officer for the report and welcomed Councillor Shayne Cook, Local Ward Member to provide his representation on the application.

Councillor Cook spoke on behalf of the local residents regarding their objections against the proposed footpath and concerns for the raised footfall, increased anti-social behaviour, and concerns from homeowners that their house prices may decrease, as a result, and were not advised at the time of purchase. In addition, it was noted that Welsh Government Guidance recommends against the application proposed, and in particular as an alternative route had been proposed through the 'Green Corridor/ Wildlife Path' requested that this be considered. The Committee noted that Councillor J. Pritchard, also a local Ward Member has expressed similar concerns on behalf of the residents and does not support the application.

The Committee thanked the Councillor for his comments and sought further clarification on the points raised around the proposed route, and whether this is something that would be considered by the Planning Inspectorate. Officers explained that, whilst he cannot comment in the impact to house prices, the guidance provided by Welsh Government is not legislation, and therefore cannot be enforced, as such, this is the same legislation that would be considered by the Planning Inspectorate.

A Member, in noting that each of the properties would need to have Searches conducted prior to completion of sale, queried whether the Public Right of Way access would have shown up on the Searches. Officers explained that due to an error on the map, this would not have been detailed at the time.

The Chair thanked the Officer and noted that written representations have been made by the Open Spaces and Ramblers' Association, which were read out at the meeting:

- “1. We objected to the first proposed diversion on the basis that it was a diversion on to pavements and offered an alternative;
2. the developers responded with a splendid idea of routeing through a 'Green Corridor' which we were more than pleased to accept and withdrew our objections;
3. The developers build over the original footpath;
4. We were advised that the 'Green Corridor' cannot be provided as the developers did not own the and on which it was proposed and the landowner would not sell;
5. Developers cannot sell the houses; which after 2 years, is still the present position;
6. Land owner (Mr Paul Wells) makes contact with us to advise that he has never refused to sell and has written evidence of the fact that he offered to gift the land provided the developers are prepared to meet his legal fees.  
Should this prove correct then surely the problem is solved. The 'Green Corridor' can be re-instated, alleviating the need for further diversion applications.”

In noting the comments made by the Rambler's Association, further discussion took place around the potential use of the Wildlife Corridor and whilst it was agreed that further discussion could continue around this matter, the Chair wished to invite Mr Paul Wells – Mackworth Grange/Bond Demolition to address the Committee and make his representations.

Mr Wells, in response to the query around the use of the Wildlife Corridor stated that discussions had taken place around this and sale terms agreed in that Mr Wells would transfer the land to Taylor-Wimpey at no sale cost, but requested that the legal fees for the transfer be covered. In that there were additional contractual issues and a requirement to complete the sale within 24 hours, in which third parties were not available to sign, this course of action was no longer viable. However, Mr Wells explained that he is still willing to honour this agreement, as it was felt that the use of the Wildlife Corridor would be the better option. The current proposal requires the use of estate pathways, which can cause obstruction to driveways and would also require levelling of ground to ensure safety of the course of the footpath, which could lead to a number of issues and therefore was happy to continue discussions around the use of the Wildlife corridor. Mr Wells proposed that the application be deferred for a short period, whilst this option is further considered by both parties.

The Chair thanked Mr Wells for his representation and invited Ms Toni Taylor- Wells, Taylor-Wimpey to address the Committee with her representations.

Ms Taylor-Wells explained that there have been discussions underway with the vendor for several years, which have been met with a number of contractual frustrations. It was originally agreed that the site be transferred at a zero value and a cap of £40,000 in legal fees, which

would utilise the Wildlife Corridor, however there were several contractual and legal issues that arose during this time and therefore no agreement was reached. As such, Taylor-Wimpey are tied only to the site that they have ownership of and have therefore provided an application on that basis. It was noted that this is a unique situation, and due to an administrative error, however Taylor Wimpey are fully committed to providing their customers with the service they expect and therefore are willing to open further negotiations into the use of the Wildlife Corridor.

Discussions took place, in which clarification was sought on the precise route in which the proposed use of the Wildlife Corridor would take, as well as access suggestions in the form of steps and ramps where necessary to ensure that the route is DDA Compliant.

The Chair proposed that the report be deferred for a period of 3 months, for both parties to reach an agreement on the way forward and a further meeting be convened following this time, in order to discuss. However, it was noted that, should parties be unable to reach an agreement to the transfer of the Wildlife Corridor as an alternative route for the Public Right of Way, the reconvened meeting will consider the application as attached to the report.

Following consideration and discussion it was moved and seconded that the application be deferred for a period of 3 months, in order to consider an alternative option. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons outlined at the meeting, the application be deferred for a period of 3 months, in order to determine an alternative course of action.

The meeting closed at 3.04 pm.