



PUBLIC RIGHTS OF WAY CABINET COMMITTEE – 15TH JANUARY 2021

SUBJECT: DEFERED PUBLIC RIGHTS OF WAY CABINET COMMITTEE MEETING
2ND OCTOBER 2020:- 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 the deferred report placed before the Public Rights of Way Cabinet Committee on 2nd October 2020 to make an Order to divert a Public Right of Way affected by development granted by planning permission.

2. SUMMARY

- 2.1 The Public Rights of Way Cabinet Committee meeting of 2nd October 2020 was deferred for a period of three months to allow matters relating to the transfer of the area of land referred to as 'the wildlife corridor' to be discussed between the relevant parties.
- 2.2 Following this period of time, the parties involved have not reached agreement, and the land transfer has not taken place.

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: 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 that sought by the applicant, the route of which is to be determined during the meeting.

4. REASONS FOR THE RECOMMENDATIONS

4.1 This information is provided in the original report placed before the Public Rights of Way Cabinet Committee on 2nd October 2020 (**Appendix 1**);

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 owner of the land referred to as 'the Wildlife Corridor' and the applicant / developer have not reached agreement on terms of the land transfer.

5.3 The Committee are now required to determine which of the four options given in the recommendations (3.1.1 – 3.1.4 of this report) the Authority is to take.

5.4 3.1.4 of this report provides scope to alter the alignment of the proposed route to make a more accessible and commodious route.

5.5 Options C and D (**Appendices 4 and 5**) are given as an improvement to access for those with additional mobility needs as this route eliminates the issues encountered by width and camber of the pavement on the Eastern side of the road recorded as Rhiw'r Coedtir.

5.6 To define the public right of way to other users, the route along Rhiw'r Coedtir could be marked by a painted line and pedestrian symbols on the road surface for the appropriate width which would not have an adverse impact upon vehicular use.

5.7 A dropped kerb should also be included adjacent to property number 58 to allow for accessibility.

5.8 Conclusion

5.9 An 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, and option B (**Appendix 2**) provides opportunity for a more accessible and commodious route over that sought in the application (Option A – **Appendix 3**).

5.10 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.

5.11 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.

- 5.12 Should the Committee determine that Option A (**Appendix 2**) is favoured, it is requested that Option C (**Appendix 4**) form the route in the Order to be made for reasons of accessibility and equality;
- 5.13 Should the Committee determine that Option B (**Appendix 3**) is favoured, it is requested that Option D (**Appendix 5**) form the route in the Order to be made for reasons of accessibility and equality;

6. ASSUMPTIONS

- 6.1 There are no assumptions made.

7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 **This information is detailed in the report of 2nd October 2020 (Appendix 1)**

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 **This information is detailed in the report of 2nd October 2020 (Appendix 1)**

9. EQUALITIES IMPLICATIONS

- 9.1 **This information is detailed in the report of 2nd October 2020 (Appendix 1)**

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 Options A and C (**Appendices 2 and 4**). 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 In relation to Option B and D (**Appendices 3 and 5**), although the route would terminate on land controlled by Mackworth Grange / Bond Demolition, this land already carries a Public Right of Way which abuts the boundary, and any detriment to the value or use of the land would be minimal.
- 10.4 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.
- 10.5 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.

- 10.6 Costs associated with the making, publishing and advertising of an Order, Confirmation and Certification of compliance are covered by the applicant.
- 10.7 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 **This information is detailed in the report of 2nd October 2020 (Appendix 1)**

12. CONSULTATIONS

No further consultations have been carried out since the previous report of 2nd October 2020.

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:

- Appendix 1 Report of 2nd October 2020 including Appendices
- Appendix 2 Option to divert under s119 Highways Act 1980 (Option A)
- Appendix 3 Option to divert under s119 Highways Act 1980 (Option B)
- Appendix 4 Option to divert under s119 Highways Act 1980 (Option C)
- Appendix 5 Option to divert under s119 Highways Act 1980 (Option D)