



SUBJECT: APPLICATION FOR AN ORDER UNDER SECTION 257 OF THE TOWN AND COUNTRY PLANNING ACT 1990 TO DIVERT A PUBLIC RIGHT OF WAY TO ENABLE DEVELOPMENT GRANTED BY PLANNING PERMISSION TO BE CARRIED OUT.

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

**REF: 18/PPO/003 TCPA90 S257 FP26 BEDWAS
GRID REFERENCE ST 157 892**

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to make an Order which would divert a Public Right of Way to enable development granted by planning permission to be carried out.

2. SUMMARY

- 2.1 Public Rights of Way are recorded on the Definitive Map and Statement and are afforded Highway status and protection. Section 257 of the Town and Country Planning Act 1990 gives Local Authorities the ability to make alterations to the network (following application from a developer who has been granted planning permission) provided it is necessary to do so in order to enable the development to be carried out.

3. RECOMMENDATIONS

- 3.1 To **make** an Order under s257 Town and Country Planning Act 1990 to divert Footpath 26 Bedwas as detailed in **Appendix 6**.
- 3.2 To **not make** an Order under s257 Town and Country Planning Act 1990 to divert Footpath 26 Bedwas as detailed in **Appendix 6** – The developer will be required to keep the public right of way on the original line, and amendments will be required to the plan for the development to take into account the route of the public right of way – there may be loss of a number of dwellings as access will no longer be possible.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The Order is required to enable the development granted consent (18/0440/RM) to be carried out.

5. THE REPORT

- 5.1 The Rights of Way Committee has the power to make Orders under section 257 of the Town and Country Planning Act 1990 following the granting of Planning Consent, to divert public rights of way which are incompatible with the proposed development.
- 5.2 The route is a recorded public right of way on the Definitive Map and Statement and is recorded as: Footpath 26 Bedwas.
- 5.3 The development granted consent under Planning Permission 18/0440/RM is incompatible with the present alignment of a part of the public right of way approximately 147 metres in length, and it is therefore necessary for that part of the public right of way to be diverted to permit the development to be carried out. The remaining 203 metres over land under the control of the applicant is unaffected.
- 5.4 An application has been received from Mr Ron Milsom on behalf of Llanmoor Homes under section 257 of the Town and Country Planning Act 1990. **Appendix 1.**
- 5.5 Objections were raised at an early stage and a meeting was held at the Council Offices at Ty Bargoed in January 2020 with representatives of the developer, the Ramblers' Association and the Open Spaces Society. Issues were brought to the applicant's attention regarding:
 - 5.5.1 use of the estate road as an alternative route for part of the diversion;
 - 5.5.2 the necessity of the diversion around the LEAP (Locally Equipped Area for Play);
 - 5.5.3 the need for the diversion around the parking for a number of plots;
 - 5.5.4 and the issue over cars parking on pavements obstructing use in the future.
- 5.6 The applicant has taken the comments on board and has made the following alterations (**Appendix 2** indicates the revised alterations sought):
 - 5.6.1 The applicant maintains the need for use of the estate road footway (A-E-B **Appendix 6**) as essential without the loss of further properties. The applicant has stated that the density of the development is already lower than is required, and further reduction in plots would adversely affect the financial viability of the site as a whole;
 - 5.6.2 The route proposed to run to the South of the LEAP was removed from the proposal, with the exception of a turnover the final few metres prior to meeting the estate road footway – this is to accommodate a property boundary;
 - 5.6.3 The applicant maintains that the diversion of the route B-F-C (**Appendix 6**) is required to avoid conflict between the proposed private road use and the public right of way. The gradient of the ground is also stated to be inconsistent with maintaining the public right of way on its original alignment given the change in levels and the need for a retaining wall.
 - 5.6.4 The alternative route is proposed to be on a footway adjacent to a vehicular carriageway for approximately 104 metres, 48 metres of which will be protected by a metal knee rail to prevent vehicles mounting, and therefore parking on the public right of way.

5.6.5 The developer also agreed to the installation of a table top structure at the crossing point of the estate road to further slow vehicles at this location.

5.7 Conclusion

5.7.1 The necessity test associated with making an Order under s257 of the Town and Country Planning Act 1990 has been met as the Public Rights of Way are incompatible with the development granted planning permission.

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 all 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.

8.2.2 Integration: The Well-being goals are being met as described in 7.1.1 – 7.1.3.

8.2.3 Involvement: The design of the development has been scrutinised from an early stage, and the prescribed organisations, statutory undertakers, the developers and other Council departments have been involved to maximise the benefits, and minimise any negative factors.

8.2.4 Collaboration: Working with different bodies including the developer, user groups

and other Council departments, has led to an improved infrastructure which is easier for all to use, and will benefit the wider community.

- 8.2.5 Prevention: Early involvement in the design and consultation with user groups has resulted in preventing damage or loss of quality of the infrastructure, and has also prevented unnecessary limitations to the public.

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 eliminate any impact to persons with disabilities therefore a full EIA has not been carried out.

10. FINANCIAL IMPLICATIONS

- 10.1 There are costs associated with advertising an Order, if made, which are recovered from the applicant. The applicant has agreed to cover all costs in the covering letter of the application (**Appendix 1**).

11. PERSONNEL IMPLICATIONS

- 11.1 Officer time in preparation of materials and posting notices on site are relevant personnel implications to the making of an Order.

12. CONSULTATIONS

- 12.1 A consultation has been carried out with statutory consultees as listed below:

Prescribed Organisations:

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

Statutory Undertakers:

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

Caerphilly County Borough Council:

Mr R. Tranter - Head of Legal Services
Mr M. Woodland - Senior Solicitor
Mr P. Griffiths - Green Spaces Strategy and Cemeteries Manager
Rights of Way Cabinet Committee:
Cllr Gordon, Cllr Morgan, Cllr Mrs Phipps, Cllr Ridgewell, and Cllr Mrs Stenner
Local Councillors:
Cllr Mrs Aldworth, Cllr Ms Gale and Cllr Havard

12.2 Responses were received from the Open Spaces Society, the Ramblers' Association and BT Openreach.

12.2.1 The Open Spaces Society stated they will object to an Order proposing the alterations sought (**Appendix 7**);

12.2.2 The Ramblers' Association stated:

*"1) The RA seek all PROW potentially affected by development should retain a rural aspect;
2) Welsh Government guidance is not to align PROW onto either estate roads, their footways or private drives or gardens;
3) The PROW could remain unchanged if the site layout were to be redesigned to accommodate the route."*

12.2.3 BT Openreach stated that apparatus is in the vicinity (**Appendix 8**), however they do not object subject to retaining access rights to their apparatus – the proposed alterations to the Public Rights of Way network will not affect this access. It is noted that the details within BT Openreach's response were not accurate – referring to a location other than this. The matter was queried, and they have been provided opportunity to correct what is presumed to be an error. No further response has been received from BT Openreach.

13. STATUTORY POWER

13.1 Section 257 Town and Country Planning Act 1990

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Background Papers:

- (i) section 257 Town and Country Planning Act 1990
- (ii) Guidance for Local Authorities on Public Rights of Way – October 2016 (Welsh Government)

Appendices:

- Appendix 1 Application Form including Plan
- Appendix 2 Amended Plan
- Appendix 3 Equalities Impact Assessment screening
- Appendix 4 Location plan 1:10,000 scale
- Appendix 5 Site layout plan 1:2,000 scale
- Appendix 6 PROW Detail plan 1:1,000 scale
- Appendix 7 Objection from the Open Spaces Society
- Appendix 8 BT Openreach response