

Report of the Head of Planning and City Regeneration

Planning Committee – 7 September 2021

Proposed Diversion of Footpath 13 and 15 Community of Ilston

Purpose:	To consider whether to withdraw the diversion order made on the 18 th January 2012 and make a new diversion order.
Policy Framework:	The Authority's Countryside Access Plan (Rights of Way Improvement Plan).
Consultation:	Ilston Community Council, Local Member, Natural Resources Wales, Gower Riders, Ramblers Association, British Horse Society, Open Spaces Society, local horse riders, local path users (via site notices).
Reason for decision:	To improve the privacy of the applicants and to create more attractive and safer footpaths for the public.
Recommendation(s):	It is recommended that: <ol style="list-style-type: none"> 1) A second Diversion Order for Footpaths 13 and 15 be made and the first diversion order made for Footpaths 13 & 15 be withdrawn, and, if no objections are received, to confirm the same as unopposed; 2) If objections are received to submit the case to the Planning Inspectorate.
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1.0 Background

- 1.1 A Diversion Order was made to divert footpaths 13 and 15 at Longoaks, Penmaen on the 18th January 2012 following a decision made under Delegated Authority. Plan 1 shows the diversion of the two paths that was proposed at that time. An objection was made to the order and so the matter had to be reported to Committee (on the 10th October 2012) seeking

approval to forward the diversion order to the Planning Inspectorate for determination.

- 1.2 Subsequently Natural Resources Wales (NRW), consented to footpath 15 being diverted through the adjacent Park Woods (T-Q-P-K), as shown on Plan 2 attached to this report. More than 90% of footpath 15 already passes through Park Woods, and the public have used an alternative route to footpath 15 through the Woods for over 30 years.
- 1.3 Although this presented a significantly better diversion than that which was the subject of the previous diversion order, the agreement was only on the condition that this Authority provide NRW with any temporary closure orders that may be required for forestry operations for any public paths on land owned by Natural Resources Wales in the City and County of Swansea, waiving any charges and with no time limit. The cost of a temporary closure is presently over £2000, mostly made up of advertising costs.
- 1.4 The second diversion proposal was presented to Committee on 17 July 2013. The Committee decided that the condition required by NRW was unreasonable, given the possible unlimited costs of temporary footpath closures on Swansea Council for the benefit of NRW.
- 1.5 In 2017 Council officers found that NRW had carried out extensive tree felling operations in Park Woods that affected public footpath 15 and another public footpath. Heavy timber extraction vehicles were driven along both footpaths, which are well-used by the public. However, NRW did not consider that it was necessary to close the footpaths, or to contact the Council to inform them that the works were taking place.
- 1.6 It has therefore been concluded that NRW do not require the footpaths to be closed temporarily whilst forestry works are taking place and that they do not need the condition they required for a diversion along the route (T-Q-P-K).
- 1.7 It is therefore proposed to divert the footpaths as shown on Plan 2 without the consent of NRW.

2.0 Consultations

All of the usual consultees were approached about the diversion shown on Plan 2, i.e., the owners/occupiers of the four affected properties, the local representative of the Ramblers Association, the Community Council, the local Member and the Gower Commons Association.

3.0 Proposed alternative for Footpath 15

- 3.1 The proposed new route for footpath 15 follows a route already used by walkers along the edge of the woodland between points T and K on land owned by NRW. On reaching Point K the original route of footpath 15 is joined. The existing route between points A and K is owned by Long Oaks Cottage.

4.0 Proposed Diversion of Footpath 13

4.1 The owner and occupier of Long Oaks House applied to move the path from passing through their garden to a new route passing through fields owned by them between points L and I. The proposed route will also avoid the working farmyard of Long Oaks Farm. Kissing gates will be required at points L and O.

5.0 Grounds for Making a Diversion Order for Footpaths 13 and 15 under Section 119 of the Highways Act 1980

5.1 **S119 (1)** *Where it appears to the Council it is in the interests of the owner and/or occupier of land crossed by the path, or of the public, it is expedient to divert the path (whether onto land of the same or another owner).*

5.2 It is in the interest of the applicants who are resident of Long Oaks House to have the footpath moved from passing in close proximity to their home and across their garden. It is also evident it would be in the interest of the owner of Long Oaks Farm to remove the public from passing through a working farmyard. These are common reasons for diverting public footpaths.

5.3 The diversion could also be considered to be in the interest of the public as they will no longer be required to walk through two private gardens or through a working farmyard, but instead will be provided with a pleasant route through woodland and fields with three small gates to negotiate.

5.4 **S119 (6)** *a council shall not confirm a public path diversion order as an unopposed order, unless they are satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—*

(a) the diversion would have on public enjoyment of the path or way as a whole,

(b) the coming into operation of the order would have as respects other land served by the existing public right of way,
and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

5.5 The existing footpath 13 (and a short length of 16) is 500 metres long between points T and I, whereas the total length of the alternative footpath is 600 metres. Walkers using footpath 15 would find a shorter route, as the existing route I-A-L is 530 metres, whereas the new route I-M-L is 300 metres; plus the existing route between points T-A-K is 280 metres, whilst the new route T-P-K is 230 metres. Purely in terms of distance walked the convenience of the new routes compared to the old routes therefore depends on the journey taken by the walker and could be said to be about the same overall.

5.6 However, there are other factors that must be considered in this case as part of the convenience equation, as well as the public's enjoyment of the footpaths. Private gardens and working farmyards are often a deterrence

to walkers using a footpath. Working farmyards are also a health and safety risk for members of the public wandering through. Walkers will not encounter either on the proposed new footpaths.

- 5.7 The number of gates is the same on the existing and proposed footpath routes, and the land is relatively flat and therefore there are no significant differences in gradient.
- 5.8 With regard to (b) above, it is not considered that the diversion proposal would have any detrimental effect on other land served by the path.
- 5.9 Considering (c) above, the three private landowners who have applied for or given consent to the diversion evidently do not consider there would be any issue in diverting the footpaths. However, regarding footpath 15, this would move from the land owned by Long Oaks Cottage into the adjacent woodland owned by Natural Resources Wales. It is considered that this would have no effect on the woodland because:
1. The proposed new footpath through the woodland is already a well-used route by walkers.
 2. The woodland is already access land and therefore subject to a right of access on foot for the benefit of the public.
 3. NRW have recently demonstrated that the presence of public footpaths elsewhere in the woodland does not have a detrimental effect on their need to carry out forestry operations, and, in any event, the new route of the footpath would run along the edge of the woodland and is only 230 metres long (there are already 4600 metres of footpaths within the woodland area).
- 5.10 **S119 (5)** *The Council can require the applicant to enter into an agreement to defray or make such contributions towards any compensation that may be payable to a person with an interest in the land who is adversely affected by the Diversion Order and any costs incurred in bringing the new path into a suitable condition.*
- 5.11 The owner of Longoaks Cottage has agreed to pay for costs associated with any claims made for compensation made by NRW up to a maximum of £2000. The Council's Land Valuer has estimated that the compensation payable could be anywhere from £1 to £2000. The land owned by NRW over which the new footpath would run (between points T and K) is already subject to a right of access on foot for the benefit of the public. As described above we have established that NRW do not need to close footpaths through the woodland in order to carry out their forestry operations, and the new route of the footpath would run around the edge of the woodland. The proposed new footpath through the woodland is already a well-used route by walkers and occupies only a small part of the land, being 460m² in area.
- 5.12 It has been agreed the Council will pay for the costs associated with the installation of the kissing gates needed at points L and O.
- 5.13 **S119 (6A)** *The considerations to which a council are to have regard in determining whether or not to confirm an order as an unopposed order, include any material provision of a rights of way improvement plan.*

5.14 The circumstances relating to this proposal comply with Section 5.2 of the Council's Countryside Access Plan (rights of way improvement plan).

6.0 Conclusion

6.1 That a diversion order be made for footpaths 13 and 15 as shown on Plan 2 attached to this report and, if no objections are received, to confirm the same as an unopposed Order, or, if objections are received, to submit the case to the Planning Inspectorate

7.0 Integrated Assessment Implications

7.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

7.2 The Well-being of Future Generations (Wales) Act 2005 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

7.3 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

7.4 An Integrated Impact Assessment Screening Form (appendix 1) has been completed with the agreed outcome that a full IIA report was not required. The new footpaths will essentially be the same as the old footpaths with the exception that the footpaths will no longer pass through two private gardens or a working farmyard and therefore are likely to be safer and used more frequently by the public. The diversion will have a slightly beneficial impact on public use of the two footpaths (use of the footpaths is likely to be less than 100 people per year) and a significant benefit to three private house holders.

7.0 Financial Implications

7.1 The Council will need to install two kissing gates. Other costs will be borne by the landowners.

8.0 Legal implications

8.1 There are no legal implications associated with this report.

Background Papers:

Committee report dated 17 July 2013.

Appendices:

Location plans