



Report of the Chief Legal Officer

Planning Committee – 6 September 2022

Public Rights of Way – Application to Divert Footpath MU5 off Higher Lane

Community of Mumbles

Purpose:	To consider whether to accept or reject an application made to this Authority under the Town and Country Planning Act 1990 to make a public path diversion order relating to footpath number MU5.
Policy Framework:	The Countryside Access Plan 2007-2017
Consultations:	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners and the prescribed organisations.
Recommendation:	It is recommended that: (1) the application be approved and that a public path diversion order be made, and: (2) if objections are received to the order, to refer the order to the Welsh Ministers for determination.
Report Author:	Ashley Richards
Finance Officer:	Adele Harris
Legal Officer:	Jonathan Wills
Access to Services Officer:	Rhian Millar

1. Introduction

- 1.1 An application was made to the Council on the 14th February 2022 to divert part of public footpath number MU5 as shown on the plan at Appendix 1 under Section 257 of the Town and Country Planning Act 1990 (“The Act”).

2. Considerations of Application

- 2.1 Under Section 257(1) of the Act, the Council may make a diversion order relating to any footpath if satisfied that it is necessary to enable development to be carried out in accordance with planning permission granted.
- 2.2 The applicant was granted planning permission on the 18th November 2021 relating to a residential development (31 dwellings) with associated road infrastructure, drainage provision and landscaping (Application Number 2018/2634/FUL).
- 2.3 The grant of planning permission for the development of land over which there is a public right of way does not in itself constitute authority for interference with the right of way or for its closure or diversion. The diversion application is a separate matter to the issuing of planning permission and it cannot be assumed that because planning permission is granted, a stopping up or diversion order will automatically be made.
- 2.4 The applicant has therefore made an application to divert footpath number MU5 to enable them to carry out the development permitted by the planning permission. It is considered that the applicant can easily satisfy Section 257 of the Act.
- 2.5 The relevant part of the footpath is currently recorded on the Council's Definitive Map as shown by a black bold line on the plan in Appendix 1. It is shown as passing from a point on Higher Lane (point A), through the field to the south which is intended to be developed under the planning permission to reach the track to the rear of Beaufort Avenue (point E) from where footpath MU5 continues but is not affected by the application.
- 2.6 In order to accommodate the development the applicant is seeking to divert the footpath along a route shown by a dashed black line on the plan at Appendix 1 that largely follows the proposed footways of the estate roads of the development and along a pathway fronting several proposed dwelling to reach the same point E as described in paragraph 2.5 above. The proposed path following the development of the site is shown on the plan in Appendix 2 as an orange dotted line.
- 2.7 The applicant has produced evidence of title to the land and it is confirmed the applicant is the owner of all land in which the current and proposed routes are situated.
- 2.8 It is important to note that the public footpath diversion application must be approved and the subsequent diversion order be confirmed in order to allow the proposed development to be implemented. If the application were to fail then the planning permission could not be implemented without unlawfully interfering with the public's right of way.

3. Consultations

- 3.1 An informal consultation took place in accordance with advice given in 'Welsh Government Guidance to Local Authorities' dated October 2016. The period for the receipt of objections or representations in relation to the application commenced on the 27th April 2022 and lasted for 4 weeks, ending on the 27th May 2022. An informal notice of the application together with a plan of the proposed diversion was advertised on site and on a notice board at the Civic Centre.
- 3.2 All of the usual consultees were approached about the proposed diversion. These included the Ramblers, the Ramblers local representative, the British Horse Society, the Green Open Spaces and Heritage Alliance, Natural Resources Wales, the Byways and Bridleway Trust, the Open Spaces Society, the Local Member for the Mumbles electoral ward, Mumbles Community Council, Gower Riding Club, Cycling UK and the Swansea Civic Society.

4. Consideration of Representations

- 4.1 The informal consultation generated 12 responses, of which 10 were in opposition to the proposed diversion. The remaining two made commentary and queries about the application but were not in favour or in opposition to the application and therefore are not considered further in this report.
- 4.2 One objector states that the footpath was in situ before the proposed development while another states that the footpath has existed for over 20 years.
- 4.2.1 It is agreed that the footpath was in existence prior to the planning application for development and there is no dispute that the path has existed in excess of 20 years. However, this is not an application which seeks to determine whether or not a footpath exists or not. It is agreed that a footpath exists over the land which features on the Council's Definitive Map and Statement as footpath MU5. This application relates to whether the existing footpath should be diverted in accordance with the application to allow the developer to implement his planning permission.
- 4.3 Five objectors state that the footpath should be the shortest and most direct route available and that the diversion would result in a path that is substantially less convenient.
- 4.3.1 The existing footpath on the site is approximately 132 meters in length and the proposed route of the footpath is approximately 144 meters, a difference of 12 meters. It is agreed that the proposed route of the path will be slightly longer given it will need to follow the footways of the estate roads, but it is not considered that the diversion would unreasonably lengthen the path and it retains the connection between Higher Lane and the remainder of footpath MU5. It is also arguable that the diverted path

would be more convenient in terms of its condition, being accessible to those who find it difficult or impossible to walk on an unsurfaced path.

4.3.2 Further, if the development were implemented and the estate roads offered to the Council for adoption as public highways under Section 38 of the Highways Act 1980 then the public will have a right to walk anywhere along the footways and carriageways. However, if the development is implemented and it is not the intention of the developer to offer the estate roads for adoption then the route of the proposed footpath will be the only lawful way over which the public will have the lawful right to pass and repass. Whether to offer the estate roads for development is a decision for the developer. Therefore, if they decide to keep these roads privately maintainable then there is an advantage of the proposed new route of the footpath through the site.

4.4 Seven objectors raise concern over a danger arising from cars crossing the junction and five have concern over cars crossing the footpath to enter adjoining properties.

4.4.1 This is not considered a valid ground of opposition. There are many examples of public footpaths which are crossed by vehicles who have private access rights to reach their properties. Further, it could be said that walking over most footpaths has the same level of danger as walking along footways that lie alongside carriageways (i.e. pavements) which are crossed by cars to access driveways to properties.

4.4.2 It must be noted that public rights of way and private rights of way are separate rights which can co-exist over the same piece of land. Any change to a public right of way will not affect any private rights of way and vice versa. The owner of the land through which the footpath runs (irrespective of whether the footpath is maintainable by the Council as Highway Authority at public expense), in this case the applicant, can grant any private rights of way he chooses to any person in order for that person to access their property irrespective of whether they need to cross a public footpath. It is true that excessive granting of private rights may cause an interference to the public's right of way. However, it is not considered that the granting of rights to briefly cross the public's right of way to reach their properties would be unreasonable interference in any way.

4.4.3 Further it is not considered that the diverted route would introduce any other unreasonable safety concerns. The diversion will result in better lighting of the path via the proposed housing estate (the actual means and level of lighting being a planning consideration and not relevant to this application), will not result in any areas of poor visibility and will unlikely encourage any anti-social behaviour. The path will be open and lighter which may in fact deter any anti-social or potentially criminal behaviour.

- 4.5 One objector raises concern over the procedure for the application and questions whether due process has been followed.
- 4.5.1 Thus far in the processing of the application only informal consultations have been conducted by the Council to advise various parties that an application has been made. This is not part of the statutory process for making a diversion order which will be initiated should members decide to approve the application. Following the making of any such order, a formal consultation process will be carried out including a public notice in the newspaper and site notice. All objectors will then have an opportunity to formally object to the making of any such diversion order. If any objections are received at the formal stage, the order would need to be referred to the Welsh Ministers to decide whether or not the order should be confirmed.
- 4.6 Five objectors raise concern over the physical changes to the path following any implementation of development as the nature of the path would be different to its existing state.
- 4.6.1 The footpath in its current form is a dirt path running across the field to the south of Higher Lane. The proposed footpath would provide a tarmac surface for walkers to pass. This is arguably an improvement and will increase the categories of user that will be able to make use of the footpath including for the enjoyment of disabled users or for example those with young children.
- 4.7 Four objectors expressed concerns about the impact on the landscape and character in the area.
- 4.7.1 This application is not an opportunity to reconsider any issues that were material considerations when the Council acting as the Local Planning Authority determined that planning permission for the development was to be granted. The impact on the character of the area would have been considered at that stage and is not relevant to the application to divert part of footpath MU5.
- 4.7.2 The developer has agreed to dedicate a public footpath in the field from the south of the site, to link up with footpath MU3. This then gives members of the public a similar walking experience.
- 4.8 Four objectors raised concern over the effect of the application on “features of interest”.
- 4.8.1 The relevant officers are not aware of any features of cultural importance in this area. However, as indicated in paragraph 4.8 above, planning permission has already been granted for the development and the development’s effect or non-effect on the character of the area would have been considered at that time. Planning Committee previously determined to grant the planning permission and therefore clearly considered that on balance with other planning considerations the effect

on the character of the area was not prohibitive to the granting of consent. In any event, this is not a relevant consideration for the current application.

4.9 Four objectors express concern with regard to the financial burden of maintaining the footpath following the diversion.

4.9.1 The Council as Highway Authority is currently responsible for the maintenance of footpath MU5 at public expense which involves clearance of vegetation from the current dirt track across the field. If the proposed estate roads on the development are offered to the Council for adoption then the entire roadways of the development will be maintainable to public expense in any event. If the roadways are not adopted by the Council as per the will of the applicant developer then it is likely that the proposed path given its nature will cost less to maintain than the route currently in existence and in any event the Council's responsibility for maintenance would be limited to the width of the footpath (one metre) and not the wider area.

4.10 A number of objectors raise further concerns relating to the safe movement of traffic, the AONB lighting policy, crime, as well as identifying a number of policies and legislation to which the Council should have due consideration.

4.10.1 The matters raised are predominantly planning issues which would have been discussed before planning permission was granted for the development and are not matters which are relevant to the current application. Due process is being followed with regard to the current application and all relevant legislation will be observed throughout the process in particular the provisions of section 257 of the Town and Country Planning Act 1990 for the legal test for making a diversion order as set out in paragraph 2.1 of this report.

4.10.2 As stated at paragraph 4.4.3 the diversion of the footpath itself is not likely to result in any significant safety concerns and is not likely to cause any unreasonable danger to walkers.

5. Conclusion

5.1 The application satisfies the requirements of Section 257 of the Town and Country Planning Act 1990 as the proposed diversion is considered necessary to allow the applicant to implement the planning permission granted by the Council in its function as local planning authority.

5.2 The objections received are not considered sufficiently persuasive to warrant the rejection of the application.

6. Financial Implications

6.1 There are no financial implications to this report.

7. Legal Implications

7.1 The legal implications are set out in the body of the report.

8. Integrated Impact Assessment

8.1 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.

8.2 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'.

8.3 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.

8.4 The Integrated Impact Assessment (IIA) process has been applied to the subject of this report. No implications have been identified. An IIA Screening Form has been completed with the agreed outcome that a full IIA report was not required for the reasons given in paragraph 8.5 below.

8.5 Should the application for the diversion of part of footpath MU5) be approved it is not considered there would be any adverse impacts upon any protected groups or communities. Should the development and the diversion be implemented the new route of the footpath would benefit older people, disabled people and parents by providing a more suitably surfaced path for enjoyment. The screening will be revisited if planning

agree to proceed and updated to consider issues raised from the formal consultation.

8.6 The IIA Screening Form is appended to this report for reference.

Background Papers: None

Appendices:

Appendix 1	Plan showing the current and proposed footpath prior to any development of the site
Appendix 2	Plan showing proposed path following implementation of the proposed development.
Appendix 3	IIA Screening Form