

**Report of the Head of Legal, Democratic Services and Business
Intelligence**

Planning Committee – 6 June 2017

**PUBLIC RIGHTS OF WAY – APPLICATION FOR A PUBLIC PATH
DIVERSION ORDER RELATING TO FOOTPATH NUMBER 4 AT
BRYNMAEN FARM IN THE COMMUNITY OF MAWR**

Purpose:	To consider whether to accept or reject an application made to this Authority to make a public path diversion order relating to footpath 4 at Brynmaen Farm
Policy Framework:	The Countryside Access Plan 2007-2017
Statutory Test:	Section 119 Highways Act 1980
Reason for Decision:	The application satisfies the legal tests under Section 119 of the Highways Act 1980 and the objection received is not considered sufficiently cogent to cause the application to be rejected
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 granted and that a public path diversion order is made, and: (2) if objections are received to the order, to refer the order to the Planning Inspectorate for determination
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Legal Officer:	Sandie Richards
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1. Introduction

1.1 An application was made to this Authority on 23rd May 2016 to divert a section of public footpath number 4 at Brynmaen Farm as shown on the attached plan under Section 119 of the Highways Act 1980 (The Act).

2 The Statutory Tests

2.1 Under Section 119(1) of the Act, where it appears to a council that, in the interests of the owner, lessee or occupier of land crossed by a public path, or of the public in general the line of the path should be diverted, it may make a public path diversion order.

2.2 The applicants are the owner of all the land affected by the proposed diversion and the purpose of the application is to divert footpath number 4 away from the farm buildings to improve their privacy. Therefore, it is easy to satisfy the condition that the diversion is in the interest of the owners of the land crossed by the path.

2.3 The effect of a public path diversion order would be to extinguish the current definitive line of footpath 4 and create a new definitive route for the path.

2.4 Under Section 119(2), a public path diversion order shall not alter a point of termination of a path or way (a) if that point is not on a highway, or (b) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

2.5 This application clearly satisfies the requirements of Section 119(2). The proposed diversion commences at a point on footpath 4 and the result of the diversion is the movement of the termination point where the path meets the road to another point on the same road roughly 95 metres to the north-west.

- 2.6 If when such an order is made no objections are received within the statutory time period allowed then the Council is able to confirm the order as an unopposed order.
- 2.7 If when such an order is made objections are received within the relevant time period and those objections are validly made specifying the grounds of objection then the Council cannot confirm the order. The Council would need to refer the order to the Planning Inspectorate, an executive agency sponsored by the Welsh Government, for determination.
- 2.8 Under Section 119(6) of the Act the Planning Inspectorate shall not confirm a public path diversion order and the Council shall not confirm an unopposed order unless they are satisfied that the diverted path will not be substantially less convenient to the public having regard to the effect:
- 2.8.1 the diversion would have on public enjoyment of the path or way as a whole;
- 2.8.2 the coming into operation of the order would have as respects other land served by the existing public right of way; and
- 2.8.3 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.
- 2.9 It is considered that the proposed route will be at least as convenient to the public as the existing one. There is a slight increase in the length of the path. However, this could be viewed as beneficial to the public's enjoyment of the path as a whole rather than as an inconvenience.
- 2.10 The diversion would afford the owners of the farm greater privacy. Land crossed by the new path will fall within the same title as the original and so no new title and no other landowners will be burdened

by its existence. These points will be considered further when discussing the objections received below.

- 2.11 Under Section 119(3), if the Council considers work is required to bring the alternative into a fit condition for use by the public it shall specify the date by when this shall occur and not certify the Order has come into force until the work has been completed.
- 2.12 It is noted that clearance work will be required along with drainage works to improve the ground quality. Further, three integral field gates will need to be installed along the proposed new route. Therefore, these works will need to be completed before any order will take effect.
- 2.13 The applicants have signed a declaration confirming their agreement to pay the costs that may be incurred by the Council for expenses incurred to bring the new route of the path into a fit condition for use by the public.

3 Compensation

- 3.1 Under Section 119(5) before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path, the Council can require that person to enter an agreement with the Council to defray, or to make a contribution towards any compensation payable under Section 28 of the Act.
- 3.2 Under Section 28 of the Act (as applied to public path diversion orders by Section 121(2) of the Act), if it is shown that the value of a person's interest in land has depreciated, or that person has suffered damage by being disturbed in his enjoyment of land as a result of the order, then that person will be entitled to compensation equal to the amount of depreciation or damage.
- 3.3 The applicants have made a declaration in writing that they agree to pay any costs that may be incurred under Section 119(5) for

compensation that may become payable. Therefore, there will be no such financial risk for the Authority.

4 Informal Consultations

- 4.1 Those consultees listed on the first page of this report have been informally consulted regarding the application in accordance with advice given in 'Welsh Government Guidance to Local Authorities' dated October 2016. Such consultations were conducted between 2nd February 2017 and 2nd March 2017
- 4.2 Comments have been received from the representative of the local Ramblers and Gower Society.
- 4.3 One objection has been received from the owners of a nearby property who consider they will be adversely affected by the diversion.
- 4.4 The Ramblers and Gower Society representative states that whilst he has no fundamental objections to the diversion, he points out the need for clearance along part of the new route. He advises that a length of the alternative route is too wet and boggy and he considers that this route would be unacceptable.
- 4.5 These issues will be addressed before any diversion order is allowed to take effect. It is agreed that clearance work will be required along with drainage works to improve the ground quality. The costs incurred in bringing the new path into a fit condition for use will be borne by the applicants.
- 4.6 The owners of a nearby property object on the grounds that they consider:
 - 4.6.1 The entrance to the proposed diversion from the road is opposite their front gate and therefore imposes on their privacy;

- 4.6.2 the proposed entrance is at the top of a hill where the path meets a narrow section of road and walkers would be in danger of colliding with motor vehicles;
- 4.7 Former Councillor Ioan Richard, former ward member for Mawr, has commented that whilst the diversion would relieve one party of privacy invasion, it would create a problem for another. He reiterates the objectors' point that the new path will exit onto a dangerous brow of a hill but the Councillor has clarified that he has not checked the position on site.
- 4.8 The objectors felt that a safer option would be to keep the entrance to the path at its current location where it joins the road and create a path leading from this point north-west along the inside of the hedge to reach the proposed position of the path then following the same diverted route south-west. There would then be no entrance opposite their property and in their view this would be safer. This proposal was discussed with the applicants who wished to continue with their original application route over their land.
- 4.9 The objectors' front gate fronts onto a public road over which pedestrians have a right to walk at any time. Therefore, it is not considered that having a public path entrance on the opposite side of this road to their gate will cause an issue in terms of privacy. In any event, the path entrance will only have migrated 95 metres as a result of such a diversion. The entrance to the objector's home is a wall and gates of at least 6ft high (see Appendix 2).
- 4.10 The objectors already have a public path namely public footpath number 7, running directly alongside and behind their property. Under this proposal, footpath 3 will be situated on the opposite side of a public road.

4.11 The gate at the roadside will be set back from the road slightly and is therefore considered to offer a safe entrance and exit to the footpath.

4.12 It should be noted that these consultations are informally conducted at this stage and no order has yet been made. Therefore, this objection does not constitute a formal objection within the relevant statutory period. If an order is made and if the objectors wish, they can formally object at the relevant time. This would then require the referral of the order to the Planning Inspectorate.

5 Conclusion

5.1 The application has been considered and consultations have been conducted.

5.2 The application meets the requirements of Section 119 of the Highways Act 1980.

5.3 The objection received is not considered sufficiently cogent to warrant the rejection of the application

6 Financial Considerations

6.1 There are no financial implications to this report.

7 Equality and Engagement Implications

7.1 EIA Screening has been conducted and a full EIA report is not required

Background Papers: ROW-00222196/KAO

Appendices

APPENDIX 1 – Plan showing proposed diversion

APPENDIX 2 – Photograph showing front entrance to objector's property