

**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 PART OF FOOTPATH NUMBER 51 AT  
VOYLART CLOSE, DUNVANT**

<b>Purpose:</b>	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 51 at Voylart Close, Dunvant
<b>Policy Framework:</b>	The Countryside Access Plan 2007-2017
<b>Statutory Test:</b>	Section 257 Town and Country Planning Act 1990
<b>Reason for Decision:</b>	The application satisfies the legal tests under Section 257 of the Town and Country Planning Act 1990 and the objection received does not provide sufficient grounds to cause the application to be rejected
<b>Consultations:</b>	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners and the prescribed organisations.
<b>Recommendation:</b>	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
<b>Report Author:</b>	Kieran O'Carroll
<b>Finance Officer:</b>	James Moore
<b>Legal Officer:</b>	Sandie Richards
<b>Access to Services Officer:</b>	Phil Couch

## **1. Introduction**

- 1.1 An application was made to this Authority on 2<sup>nd</sup> October 2016 to divert a section of public footpath number 51 at Voylart Close as shown on the attached plan under Section 257 of the Town and Country Planning Act 1990 (The Act).

## **2 Consideration 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 9<sup>th</sup> September 2016 relating to the replacement of a detached bungalow and detached garage at 3 Voylart Close, Duvant (Application Number 2016/1189)
- 2.3 The grant of planning permission was subject to the following condition: 'No demolition works relating to the existing dwelling shall commence until the Right of Way crossing the site has been formally diverted and a copy of the Diversion Order has been submitted to and agreed in writing by the Local Planning Authority'
- 2.4 The grantee of the permission has therefore made an application to divert footpath number 51 to enable him to carry out the permitted development. It is considered that the applicant can easily satisfy Section 257 of the Act.
- 2.5 The existing route of the footpath is recorded on the Council's Definitive Map as passing through the properties; 1 to 6 Voylart Close. The path is completely obstructed and is thus impassable on the ground. The applicant has taken account of this fact and has proposed not only to divert that section crossing 3 Voylart Close but also to divert the remainder of the obstructed path onto a useable route.

- 2.6 The applicant has received the consent of the owners of all those properties crossed by the path who have all joined the application. The proposal will not only enable the applicant's development but will also provide significant benefits to those properties.
- 2.7 The applicant has received the consent of all owners of the land to be crossed by the alternative path where it has been possible to identify those owners. Some of this land is unregistered and whilst notices addressed to the owners and occupiers were posted on site, it has not been possible to determine their identity. The majority of the proposed alternative path will run along the currently unadopted highway of Voylart Close itself.

### **3 Consultations**

- 3.1 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 2<sup>nd</sup> December 2016 and 6<sup>th</sup> January 2017.
- 3.2 One objection has been received to the proposal.
- 3.3 If an order is made, notice of making the order will be published and a statutory period of four weeks will be allowed for any objections or representations relating to the order.
- 3.4 If objections are made during the statutory period, the Council will not be able to confirm any such order itself and would need to refer the order to the Planning Inspectorate of the Welsh Government for determination.
- 3.5 If no formal objections are received, the Council will be able to confirm the order as an unopposed order.

3.6 The present informal objection has been made by the owners of the land lying to the south west of number 6 Voylart Close and the grounds quoted are as follows:

3.6.1 The diversion of footpath 51 would restrict access to their land and their use of the road.

*It should be noted that footpath 51 in its present position is obstructed and offers no access. The diversion will result in a useable legal route passing along the highway. It is not understood how the diversion could restrict their use of this road. The proposed diversion should have no effect on this issue.*

3.6.2 The path has been obstructed for nearly 50 years and has been built over on several occasions deeming the path unusable.

*The Council has a duty under Section 130 of the Highways Act to assert and protect public paths and to ensure they are made available for public use. The diversion proposed by the applicant will open a route that has been obstructed to the public for 50 years. This is an advantage to the proposal.*

3.6.3 There was a public inquiry held in 1997 regarding footpath 51 and they requested the path be extinguished.

*The public inquiry in 1997 is a separate issue. The inquiry related to whether or not evidence was sufficient to realign the path under section 53 of the Wildlife and Countryside Act 1981. It would need to be shown by evidence that the current line was an error and that the path actually existed along the alternative route. The result of the inquiry was that no order could be made under that section. This application is under the Town and Country Planning Act 1990 and is not based on evidence. A diversion order can be made under this Act where the Council is satisfied that it is necessary to divert the path to allow the applicant to implement his planning permission.*

3.7 Therefore, the grounds for objection are not considered sufficient to warrant the conclusion that no diversion order be made.

3.8 On the 2<sup>nd</sup> December 2016, a draft version of this report was circulated to members and landowners including the applicant and the objector to provide them with the opportunity to comment on the information contained. On the objector's comments, the applicant made the following point:

3.8.1 When setting the course of the proposed path care was taken to ensure that the point of entry/exit to the objector's land remained as it was (i.e. at point B on the Plan at Appendix 1) and therefore the situation has not changed.

#### **4 Conclusions**

4.1 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 his planning consent.

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

#### **5 Financial Considerations**

5.1 There are no financial implications to this report.

#### **6 Equality and Engagement Implications**

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

**Background Papers:** ROW-00222379/KA0

#### **Appendices:**

APPENDIX 1 – Plan showing proposed diversion