

PLANNING COMMITTEE:

15 December 2021

**REPORT OF THE DIRECTOR OF PLANNING,
TRANSPORT & ENVIRONMENT**

Section 257 Stopping Up and Diversion Application at Creigiau Quarry

Reason for the Report

1. Creigiau Quarry will begin quarrying works again following their planning consent in December 2018 (Application Ref: 15/01953/MJR). There are historic anomalies requiring sections of footpaths to be stopped up which physically no longer exist due to quarrying works. The bridleway partly forms the access road into the quarry which will not be suitable for users on safety grounds.
2. The following proposals are:
 - a) Bridleway 88 – Stop up 445m of the bridleway; This path will be unsafe for path users while quarry traffic uses the route on a regular basis
 - b) Footpath 58 – Stop up entire path of 200m; This is an historic ‘floating’ path which no longer exists on the ground due to quarrying many years ago. The path does not link to any other highway or rights of way.
 - c) Footpath 78 – Stop up 38m of the footpath within the quarry site which is a dead end. Divert the footpath 144m south along the quarry site boundary to link to Public Footpath Pentyrch 29.
 - d) Footpath 57 - Stop up 54m of the footpath within the quarry site which is a dead end. Divert the footpath 316m north along the quarry site boundary to link to Public Footpath Pentyrch 29.
 - e) The proposed diversions of Footpaths 57 & 78 will provide circular route options around the eastern side of the quarry which currently do not exist.

Background

3. Creigiau Quarry has not been an active quarry for many years. There are a few rights of way within the quarry boundary which have been longstanding issues as they are not accessible to the public to use due to the historic quarrying activities.
4. Tarmac Company were given planning consent (Ref: 15/01953/MJR) in December 2018 to reopen the quarry once again. They are now required to apply under Section 257 TCPA to stop up or create new rights of way within their planning permission boundary site. This Public Path Order application process is required and must be confirmed to modify the Cardiff Definitive Map and Statement.
5. Currently there is a Temporary Traffic Regulation Order to prevent public access on the affected footpaths as they are not considered safe to use.

Issues

6. Bridleway 88 – The route has been obstructed for many years by fencing around the quarry and a substation. Officers have considered options to create an alternative bridleway route through the woodland adjacent to the quarry, but this is not possible due to steep gradients through the woodland. The land where the alternative bridleway route would be aligned is outside of the Creigiau Quarry boundary.

Tarmac have a Temporary Traffic Regulation Order in place to prevent public access. For Public Rights of Way the maximum length of a TTRO is six months. Every additional 6 months requires an application to be consented by Welsh Government. The quarry will be open for several years therefore Welsh Government is unlikely to grant extensions for the future of the quarry workings. TTROs is not a reasonable option to retain the bridleway therefore it requires stopping up.

7. Footpath 58 – This footpath is floating in the air as it no longer exists on the ground due to historic quarry works. The path does not connect or potentially provide a connection with other rights of way or highway within the area. The path should be stopped up to bring the Definitive Map up to date to reflect what is accessible on the ground.
8. Footpaths 57 and 78 have short sections which lead into the quarry site as dead ends. They are historic anomalies and require stopping up as part of the

quarry reopening. To create an improved joined up rights of way network, these two footpath spurs will be diverted to link to Footpath 29. This will provide circular route options on the eastern side of the quarry.

Consultation Requirements

9. Consultees included:

- Pentyrch Community Council
- Cllr Gavin Hill-John
- Adjacent landowners
- Utility Companies
- Statutory User Group Consultees: Auto Cycle Union, British Driving Society, Ramblers, Cycling UK, British Horse Society, Byways & Bridleways Trust, Open Spaces Society, Welsh Trail Riders Association

10. There are no outstanding objections to this application.

11. The adjacent residents of Creigiau Farm raised questions regarding footpaths which cross their property and why they were not also considered as part of the application to stop up. The footpaths and bridleway they queried are outside of the Creigiau Quarry Planning Application Boundary and outside of the quarry landownership therefore cannot be included in this application.

Public Rights of Way Officers will meet with the residents of Creigiau Farm separately to this application to discuss any issues of the paths crossing their property.

12. Cooke & Arkwright Solicitor, Mr Russell Davies, has withdrawn his initial objection to the application. Mr Davies represents the Wingfield Estate, the adjacent farmland to Creigiau Quarry. His concern was the proposed diversions of Footpaths 57 and 78 appearing to be aligned on the Wingfield Estate land rather than within Creigiau Quarry landownership. Creigiau Quarry landowner's have reassured and confirmed this is not the case and the proposed diversion of Footpaths 57 and 78 are entirely within the planning application boundary. Mr Davies has provided written acknowledgement that he withdraws his initial objection.

13. Pentyrch Community Council (PCC) have no comments at this time. Their July 2021 Planning Committee stated:

Pentyrch Community Council met in July 2021 and confirmed the footpath changes are inevitable because of the works planned at Creigiau Quarry. PCC would like to see that when a footpath or bridleway closes there is a replacement. It was RESOLVED to make no comment at this time.

Legal Implications

14. Section 257 Town and Country Planning Act (TCPA) 1990

The power to make a stopping up or diversion order under s.257 of the TCPA is a discretionary power. Section 257 permits the making of an order for the stopping up or diversion of a footpath or bridleway which is necessary to enable development to be carried out either:

- In accordance with a valid planning permission or
- By a government department.

A conflict between the planning permission and a footpath or bridleway is essential for the grant of a stopping up or diversion order under section 257. The footpath or bridleway does not need to be obstructed by the intended physical development, a change of use of the land can be sufficient, provided the change of use requires the footpath or bridleway to be closed or diverted.

The order may provide for the:

- Creation of an alternative highway or improvement of an existing highway for use as a replacement for the one authorised to be stopped up (section 257(2)(a), TCPA 1990).
- Protection of any rights statutory undertakers have in respect of their apparatus that immediately before the date of the order is under, in, on, over, along or across the footpath or bridleway (section 257(2)(c), TCPA 1990).
- Payment of costs for carrying out the works (section 257(2)(d), TCPA 1990).

An application for a stopping up or diversion order under section 257 of the TCPA 1990 cannot be made or confirmed once the relevant development is “substantially complete”. A stopping up order does not affect any private rights of way that exist over the land

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. It cannot be assumed that because planning permission is granted, a stopping up or diversion order will automatically be made. Conditions can be imposed on a stopping up or diversion order tying it to the relevant planning permission in terms of timescale and the need to serve notice on the local highway authority before implementing the order.

The procedure for making an order under section 257 of the TCPA 1990 is governed by Schedule 14 to the TCPA 1990 (Procedure for footpaths and bridleways orders) and involves the Council giving various notices in the

prescribed form stating the general effect of the order. Notices must be served on every owner and occupier of land affected. If no representations or objections are duly made, or if any so made are withdrawn, the Council may confirm the order (but without any modification). Where any representation or objection which has been duly made is not withdrawn the matter is referred to the Planning Inspectorate who are an executive agency that reports to the Welsh Government. Before confirming the order the Planning Inspectorate may cause a local public inquiry to be held; or they may give any person by whom any representation or objection has been made an opportunity of being heard by a person appointed by them. After considering the report of the person appointed to hold the inquiry or hearing, the Planning Inspectorate on behalf of the Welsh Government may confirm the order, with or without modifications. An order made under section 257 of the TCPA 1990 is not effective until it is confirmed (section 259, TCPA 1990).

No compensation is payable in respect of those adversely affected by the order.

15. Equality Act

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard for the need to:

- (1) eliminate unlawful discrimination
- (2) advance equality of opportunity
- (3) foster good relations on the basis of protected characteristics

Protected characteristics are: (a) Age (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality (e) Disability (f) Pregnancy and maternity (g) Marriage and civil partnership (h) Sexual orientation (i) Religion or belief – including lack of belief.

16. Other Considerations

Section 17 of the Crime and Disorder Act 1998 also imposes a general duty on the Council, when exercising its functions, to take account of community safety dimension, with a view to reduce local crime and disorder in its area.

Before exercising its functions under the 1984 Act, the Council must have regard to its duties under The Active Travel (Wales) Act 2013, the Welsh Language (Wales) Measure 2011.

17. Well Being of Future Generations (Wales) Act 2015

The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future.

Financial Implications

The Legal Order will be processed utilising staff resources provided by Highways Officers and Legal Services Officers.

Recommendations

To approve the S257 Application for Creigiau Quarry and Legal Services to be instructed to process the Legal Order.

Andrew Gregory
Director of Planning, Transport & Environment
9 October 2021

Appendices:

Appendix 1 Map of Creigiau Quarry

Appendix 2 Map of Creigiau

Background Papers:

Officer Decision Report

Officer Decision Report Authorised by Andrew Gregory

Section 257 Applications

Temporary Traffic Regulation Order