

PLANNING COMMITTEE:

OCTOBER 6, 2022

**REPORT OF: DIRECTOR - PLANNING, TRANSPORT &
ENVIRONMENT**

**Section 119 Highways Act 1980 Diversion of Whitchurch No.39
Footpath, Wenallt Farm, Rhiwbina**

1 Reason for the Report

The new landowner of Wenallt Farm, Mrs Jennie Jenkins, is renewing old fencing and creating new horse paddocks on her farm. There have been previous incidents of walkers coming into difficulty with horses in the paddocks while using the Public Footpaths. Mrs Jenkins is proposing to divert the footpath to create smaller paddocks and provide a segregated route for walkers. She has also agreed to replace stiles with pedestrian gates to improve access along the Footpaths.

Overall, the diversion will provide a safer and more accessible route for walkers and improve the management of the horses and working farm elements.

2 Background

Wenallt Farm is a working livery yard with a mix of small horse paddocks and larger grazing fields. The farm has recently been bought by Mrs Jenkins who is now making improvements to create smaller horse paddocks and renewing fencing. The farm is situated near the Wenallt being a popular site for walkers and horse riding and provides a strategic link across to the Thornhill area and community along the northern side of the M4.

There have been previous incidents of walkers encountering some of the horses and finding it difficult to use the footpath safely at certain pinch points.

The Rights of Way Officer, Jennifer Griffiths, and maintenance officers have met with Mrs Jenkins on site to agree the proposed diversion route. Works proposed on the site

will comprise of new post and rail fencing to be installed, upgrading the footpath surface where there are boggy ground conditions and replacing stiles with pedestrian gates to improve accessibility for walkers.

3 Issues

The diversion is considered necessary by the rights of way team to provide a safe route for walkers crossing the farm and reducing interaction between walkers and horses. The application is subject to public consultation and may be objected to therefore the landowner is aware this may cause delays in being able to undertake certain aspects of the work on the site. The original footpath alignment must stay open and in situ until the legal order is confirmed.

4 Local Member Consultation

Consultees included:

- Utility Companies (Virgin, BT Openreach, Welsh Water, Western Power & Wales and West)
- Statutory Users Groups (Ramblers, Auto Cycle Union, British Horse Society, Byways and Bridleways Trust, Open Spaces Society, Cycling UK, Welsh Trail Riders Association)
- Ward Members – Cllr Jane Cowan; Cllr Adrian Robson; Cllr Oliver Owen
- Adjacent Landowners: Welsh Government, Roads Administration, Cathays Park

Outcomes/Comments:

Ramblers confirm they will not raise any objections to the proposal.

Welsh Water have objected as they have apparatus crossing the farm. They have undertaken a site visit with the landowner and surveyed the location of their apparatus on 17th August 2022. Welsh Water have confirmed a wayleave agreement is required with Mrs Jenkins. This is currently being processed by Welsh Water and they do not wish to withdraw their objection until the wayleave agreement is complete. There are no current timescales of when this agreement should be expected to be completed by.

Public Rights of Way Team are willing to proceed with the application process as Welsh Water will have an opportunity to formally object if the wayleave agreement has not been completed during the Legal Order public consultation period.

5 Legal Implications

The Council has a discretionary power to divert footpaths, bridleways or restricted byways pursuant to Section 119 of the Highways Act 1980 ("1980 Act").

In considering whether a path or way should be diverted the Council must be satisfied that the criteria of the 1980 Act has been met. They must consider whether it is expedient to do so in the interests of the owner, lessee or occupier of land crossed by the path or the public, only where the:

- Diverted route would not be substantially less convenient to the public.
- Diversion would not alter any point of termination of the path, other than to another point on the same highway or a connected highway.

The authority must also consider any material provisions of the rights of way improvement plan (section 119(6A), HA 1980).

In assessing whether the diverted path will not be substantially less convenient to the public, the authority will consider a number of factors, including:

- Physical features
- Directness. The new route should not unreasonably lengthen the path.
- Landscape character.
- Features of interest. The new route should not move the path away from significant features of interest.
- Financial. The new route should not result in any increased maintenance costs.
- Safety. The new route should not subject users to any potential dangers or hazards.
- Needs of all users. The new route should include features to improve access for the mobility impaired user; (for example, gates rather than stiles and ramps, rather than steps).

Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the Council may require the person who made the application or representations to enter into an agreement with them. The agreement will be to defray, or to make such contribution as may be specified in the agreement towards any compensation which may become payable under section 28 of the 1980 Act or any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public.

The procedure for making and confirming a public path order is set out in Schedule 6 of the Highways Act 1980. This involves the Council giving various notices in the prescribed form stating the general effect of the order. 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 & Environment Decisions Wales (PEDW) who are an executive agency that reports to the Welsh

Government. Before confirming the order PEDW 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, PEDW on behalf of the Welsh Government may confirm the order, with or without modifications. An order made under section 119A of the Highways Act 1980 is not effective until it is confirmed. PEDW shall not confirm a public path diversion order, and the Council shall not confirm an order as an unopposed order, unless they are satisfied that the diversion is expedient for the reasons mentioned above. Further, 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.

The Council is entitled to recover its costs as provided by the Local Authorities (Recovery for Costs for Public Path Orders) Regulations 1993.

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.

Other Considerations

Consideration should be given as to whether an equalities impact assessment (EQIA) is required, (including an updated assessment if there has been a time lapse since the assessment was carried out), to ensure that the Council has understood the potential impacts of the proposed decision in terms of its public sector equality duty. The decision maker should consider any EQIA. The proposal must also be subject to any relevant health and safety assessment.

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.

Well Being of Future Generations (Wales) Act 2015

The decision maker should also have regard, when making its decision, to the Council's wider obligations under The Well-Being of Future Generations (Wales) Act 2015 ('the Act').

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.

In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2021-24: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202021-24.pdf> When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, 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. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them.

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

6 Financial Implications

The landowner has agreed to pay the legal order costs of the application process, and legal fees.

7 Recommendations

The recommendation is for Planning Committee to approve the application to proceed to Legal Services to make the Legal Order.

Gary Brown

OPERATIONAL MANAGER, TRANSPORT, PLANNING & ENVIRONMENT

Appendices:

Appendix 1_Location Map of Proposed Diversion

Appendix 2_Welsh Water Utilities Map

Background Papers:

Completed S119 Application

Report Ref 104654 Officer Decision Report and Approval