

**PLANNING COMMITTEE:**

**6 OCTOBER 2022**

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

**Section 119a Railway Path Diversion of Radyr No.1 Footpath at Gelynis Farm, Morganstown**

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### **Reason for the Report**

Transport for Wales have planning consent (Planning Ref 21/00235/MJR) to remove the existing level crossing as part of the Metro Railway Modernisation project which is being undertaken throughout the Core Valley Lines (CVL). A new vehicle and pedestrian access bridge is being constructed which will provide a new route for the Public Footpath to be diverted onto. This is necessary as the existing level crossing will no longer be safe for the public to use due to the increased number of trains.

### **1 Background**

#### Location and Description of the Existing Public Footpath and Usage

1.1 The Public Footpath starts between properties Primrose Cottage and Y Wern from Main Road, Morganstown. There are a series of steps leading down to the private access road. The footpath continues along the private access road to the level crossing and Gelynis Farm and adjacent farm. The Footpath continues over a footbridge crossing the River Taff and terminates at Ironbridge Road linking to the Taff Trail route.

This Footpath is well used by visitors to the area and local community by walkers and informally on bicycle as a leisure route. The Footpath also provides private vehicle access rights to the farm and adjacent landowner.

There is an informal footpath which connect through to the playing fields and Pugh's Garden Centre at the bottom of the steps which is also a popular area for various leisure activities.

The public footpath is regarded as an important link to the Taff Trail on the other side of the river, and as a result is in constant use during the day.

### 1.2 Proposed Diversion of Footpath

- The existing Footpath section to be proposed for stopping up is approximately 235m.
- The new bridge being created is approximately 335m.
- The average width in excess of 5m, plus 2m verges, except where the road width is reduced across the bridge deck to 4.1m with a hard verge of 1.5m at a higher level to the carriageway.
- There is an elevated pedestrian section over the bridge span to provide a safe route for pedestrians.
- The new bridge will be maintained under the property ownership of Transport for Wales and the respective maintenance responsibilities will fall on the owner.

### 1.3 Health & Safety Risk

- (a) From a Network Rail census report taken in 2016, the following numbers were reported to have used the crossing.

	Weekday	Weekend
Pedestrians	164	387
Cyclists	51	66

- (b) Currently the footpath crossing relies upon warning signs, self-closing gates, fully combined rubberised/tarmac modernised rail surface and good sighting distances of approaching trains from a safe decision point at both sides of the crossing.
- (c) As part of the new Metro railway project, which includes improved operational efficiencies, lower maintenance requirements and full modernised upgrades to the Cardiff Valley Network these modern developments will include new rolling stock, more trains per hour, and faster journey times. For these improvements to take place

all safety risks associated with the railway infrastructure must be taken into consideration, as supported, and instructed by the office of Rail and Road, who is the TfW's rail regulator.

- (d) The current number of trains along this section of line is 12 trains per hour and based on the current railway timetable amounts to 192 trains per operational day. This equates to 1 train every 5 minutes.
- (e) Taking into effect the new proposed railway infrastructure and timetable, with new electrified rolling stock operating along this route this number will increase to 24 trains per hour, which amounts to 384 trains per day. This equates to 1 train every 2.5 mins.

#### 1.4 Increased Health & Safety Risk

- (a) In line with Health & Safety requirements and railway safety standards this proposed increase in the number of trains operating along this section of line enforces the requirement to undertake new risk assessments on all crossings within the CVL. Under the risk model used (Network Rail ALCRM), quantifies these additional risks in two ways, (i) individual risk and (ii) collective risk. The former is a measure of the risk that an individual crossing user is exposed to when traversing the railway, and the latter is a measure of the total harm or safety loss at the crossing.
- (b) The collective risk recognises that with the increased number of trains per day operating over the crossing equates to a greater probability there will be to an accident occurring. This statistic, as a result of the new train service, will increase the potential risk of public safety at this crossing significantly over and above the current risk score.
- (c) In addition, this crossing has been assessed, from previous incident reports, misuse and near misses, as the highest risk crossing on the CVL, based on existing operational information, i.e., not taking into consideration the additional frequency of trains, and the quieter modern electrified rolling stock improvements.
- (d) Crossing closures of this high-risk nature is consistent with the Office of Road and Rail (ORR), regulatory requirements for railway operators who need to maximise the reduction in risks of accidents at all level crossings.
- (e) Accordingly, in line with the Welsh Government's policy of modernising the railway the rail safety risk at this crossing will be greater than reasonably permitted, and closure is the only available option.

- (f) The effect of the loss of the crossing on users, whether there are alternative rights of way and the safety of these relative to the existing rail crossing. The opportunity for taking alternative action to remedy the problem such as a diversion, bridge, or tunnel, or the carrying out of safety improvements to the existing crossing
- (g) The loss of the existing footpath crossing has already been fully assessed, and as a result of the high safety risk which already exists, coupled with the fact that this risk will be increased the only option considered right for all aspects to reduce totally any risk to the railway is to build a road overbridge. This has received full planning consent following significant design options, and as a result this rail crossing diversion order application can now progress.

## **2 Issues**

2.1 Concerns have been raised from the consultation that the new footbridge is too steep of a gradient and therefore will no longer be accessible for all users. Public Rights of Way Team are satisfied this has been considered through the Planning Application process with consent given by Transportation Operational Manager.

2.2 Below is an insert from the Planning Application Section 5 Internal Consultee Responses which addresses the concerns/issues raised by consultee:.

5.1 The Operational Manager, Transportation, makes the following comments on the application:

(iii) The new section of road (inc. bridge) will have an end to end length of approximately 370m with an average width in excess of 5m, plus 2m verges, except where the road width is reduced across the bridge deck to 4.1m with a hard verge of 1.5m at a higher level to the carriageway. The submission advises that this arrangement (elevated pedestrian section over the bridge span) has been provided for the safety of pedestrian while on the structure itself. The width and general layout of the replacement road is comparable with or slightly more generous than the current arrangement, albeit the point to point distance of the new route is longer and involves negotiating the bridge ramps (discussed below).

(iv) In addition to any other means of enclosure, vehicle restraint barriers of circa 900mm in height would be installed along the elevated sections of the proposed access road where it sits on top of the earth embankment ramps, along with which solid reinforced concrete containment parapets (walls) of approx. 2.2m in height would be installed along either side of the bridge where it crosses the rail line.

(v) The existing Footpath No.1 Radyr that is to be diverted along the new road and over bridge will leave its existing route shortly after crossing the River Taff in the east and re-join

it again just before the end of the Gelynis Farm fields on the west. The existing route to be diverted measures some 235m in length and will be replaced by a route of some 335m, amounting to an addition 100m walking distance. To put this increased distance in context, as an example the walk from the Church on Chapel Road in Morganstown to the Village Hall in Tongwynlais is 1.3km or 1300m, the increased walking distance of 100m therefore amounts to an additional 7.5% of the overall distance; and as the overall distance increases the additional length becomes less of a factor. This 100m increase in the point to point distance is therefore considered to be insignificant in relation to the distance of any likely actual journey and in light of the often recreational nature of the use.

(vi) The bridge will be accessed via earth embankment ramps and the design gradient of these has been the subject of some concern/objection. In which respect, to achieve the required headroom above the rail lines within the space available the ramps are proposed to be 1:12 or 8% and will not include landings as they need to cater for vehicles as well as pedestrians. The applicant acknowledges that the gradients of the road are steeper than recommended by the guidance for inclusive mobility. However in considering the matter it must be noted that mobility and active travel guidance confirms that 1:12/8% is the maximum recommended gradient (para 4.7.11, see below), although 1:20/5% is preferable. He is advised these gradient values are common across access guidance, albeit when considering a pedestrian only ramp they would generally expect intermediate landings (level areas) to be included. Welsh Government's Active Travel Design Guidance document (December 2014) extract: 4.7.11 As a general rule, a gradient of 5% (1 in 20) should be regarded as a desirable maximum in most situations and 8% (1 in 12) should be used as the absolute maximum. However, it is recognised that there will be locations where steeper gradients cannot reasonably be avoided. In these situations local authorities will need to explain the justification for proposing steeper gradients, as per the requirements of Section 3(6) of the Active Travel Act.

(vii) When considering gradients it must also be noted that Footpath No.1 Radyr meets Ty Nant Road via a set of steep stone steps and the bridge ramp gradients are shallower than those in the western part of the private farm access road, which are approximately 1:10/10%. As such he agrees with the applicant that the slopes of the proposed new bridge crossing are unlikely to deter users, given the topography of retained sections of the route to the west. He is therefore content that the proposed bridge ramp gradients, while at the upper end of the guidance limits, are acceptable for the reasons given.

(viii) The diversion of the existing footpath will be subject to separate application to the Council under Section 257 of the Town and Country Planning Act 1990, following determination of this planning application. While, in a strict sense, the determination of the

footpath diversion applications falls outside the scope of this planning application, it is nonetheless noted that the principle (of the diversion) is intrinsic to the planning application and brings with it safety benefits to the public, who will no longer be required to negotiate a level crossing and associated gates. Therefore, without prejudice to consideration of any formal application, he would confirm that he currently has no objection in principle to the proposed diversion of the footpath.

2.3 If there are objections during the public consultation period if the Legal Order is made, the case will be referred to Planning Environment Decisions Wales (PEDW). PEDW will review the case and comments and determine whether or not the Local Authority is to confirm the order.

### **3 Local Member Consultation**

#### **3.1 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 Calum Davies & Cllr Helen Lloyd-Jones
- Radyr Morganstown Community Council

#### **3.2 Outcomes/Comments:**

- Objections from Ward Members Cllr Calum Davies and Cllr Helen Lloyd-Jones
- Objections from Radyr Morganstown Community Council

#### **3.3 Cllr Davies and Cllr Lloyd-Jones Comments**

- We understand the reasons for wishing to have the diversion. However the design of the bridge is such that we believe it will be difficult for people with disability issues and for parents with children in pushchairs to use the bridge.

- We believe that there should be a lift system to take the pedestrian across the railway line, as there is at Radyr Station.
- We welcome having an extra footpath using the bridge but we do not want to lose the existing public right of way albeit that it does go across the railway line.
- We have both been made aware that there is considerable demand from Morganstown to have a halt on the Metro system. We are also aware that a halt at the location of Gelynys Farm would be easy for the people living in Tongwynlais to access.
- To future proof the site, we want to see the current public right of way retained, especially if alternatives do not support the access for those with disabilities as required by law. We want the bridge to be another public right of way. We know that cyclists use the existing right of way, so we would like the bridge to have bridleway status.

In summary:-

- We do not believe the best option is to have a diversion to Footpath 1
- We believe the best option is to upgrade Footpath 1 to a Public Bridleway.
- We believe the route across the bridge should be a Public Bridleway too.
- We believe there should be a lift system installed to take people across the railway line. (This will enable disabled people to reach the Iron Bridge and the Taff Trail.)

### 3.4 RMCC Comments

- Although we opposed it, we understand that the bridge will be built, given that Transport for Wales has received planning permission to allow for its construction
- We agree that if the bridge is to be built, then the existing footpath has to be diverted, since the increased frequency of trains traveling along the railway line will make the existing level crossing too dangerous to use
- However, the limited space available for the bridge means that the gradient of the road crossing will be too steep to allow safe and reasonably easy access for any pedestrians or cyclists with mobility issues. It would, in fact, be steeper than prescribed in current regulations. This would include disabled people, some elderly people, family groups (with young children) cycling across the bridge - and more

- We think that it is unacceptable to replace the flat public right of way, used by a large number of walkers and cyclist, with what many will find to be a barrier to active travel
- As such, we think that Transport for Wales should be required to provide alternative access for those unable to use the bridge. This could include installing lift access - similar to the lifts provided at Radyr Station. This will ensure that this popular public right of way remains accessible to all
- We also believe that it should be ensured that the bridge is safe for pedestrians to use, when they cross it alongside cars, vans, lorries and agricultural vehicles.
- We are keen to discuss this with members of the Planning Committee.

#### **4 Legal Implications**

The following advice has been sought on the proposal

The Council has the power to make orders to divert footpaths under section 119A of the Highways Act 1980 ("1980 Act"). In considering whether a path 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 public safety, having regard to all of the circumstances.

Particular consideration needs to be given to:

- whether it is reasonably practicable to make the crossing safe for public use
- the arrangements for ensuring, if the order is confirmed, that the appropriate signs and barriers are put in place
- Whether the created path is reasonably convenient to the public
- The effect the proposal will have on the land served by the existing path
- The effect on the land over which the new path is to be created
- The effect on the rights of way network as a whole
- The safety of the diversion – in particular where it passes along or across a vehicular highway.

The order may require the rail operator to maintain all or part of the path created by the order. The Council may also require the rail operator to enter into an agreement to defray part or all of any compensation that may be payable together with any expenses reasonably incurred in connection with the erection and maintenance of barriers and signs or in making up the new path.

The rail operator must ensure that suitable fencing is erected and appropriate signs provided to the public that the path has been diverted.



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 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.

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>

## **Financial Implications**

The applicant has agreed and paid the S.119a application fee which includes Highways and Legal Services resources.

**Recommendations**

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

**Matt Wakelam**

**ASSISTANT DIRECTOR, TRANSPORT, PLANNING & ENVIRONMENT**

**Appendices:**

- Appendix 1 Map of Proposed Diversion
- Appendix 2 Completed S119a Application (Redacted)

**Background Papers:**

- 21/00235/MJR Full Planning Permission Document