

PLANNING COMMITTEE:

8 June 2023

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

**DIVERSION ORDER OF PUBLIC FOOTPATH ST FAGANS 21, Section 119
Highways Act, 1980**

Reason for the Report

1. It is necessary for the PROW, St Fagans 21 Footpath to be diverted to retain the public's rights within the Clos Y Cwarra Development.
2. The confirmed legal order will allow the footpath to be realigned within the new development and the Definitive Map and Statement to be modified to reflect this change.

Background

3. The Developer built houses upon a non-recorded Public Right of Way, which has subsequently received Legal validation.
4. The new footpath west of house no.51, noted as point C on the attached map, will connect back onto the adopted road/ pavement point B, which runs through the Clos-y-Cwarra estate and connects back to point A.
5. The confirmed legal order will allow the footpath to be realigned within the new development and the Definitive Map and Statement to be modified to reflect this change.

Issues

6. The Public Right of Way needs to be diverted to preserve the Public's safe use and access, following the completion of the housing development. If the diversion is not progressed, several properties on the Clos y Cwarra development will be obstructing the Public Footpath. Rather than stopping up the footpath altogether, there is a reasonable diversion which provides a good link into the adjacent woodland to connect to the series of footpaths and wider green spaces.

Consultation

7. Statutory & Non-Statutory Consultees were notified in writing of the S119 Application.
 - Utility Companies (Virgin, BT Openreach, Welsh Water, National Grid & 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 Catriona Brown-Reckless, Cllr Andrea Gibson, Cllr Rhys Livesy
 - Adjacent landowners
8. Outcomes from Consultation

There were no objections from Statutory Consultees.

Legal Implications

9. 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. Where it appears to the Council that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner,

lessee or occupier), the Council may by order made by them and submitted to and confirmed by the First Minister of the Welsh Government, or confirmed by the Council as an unopposed order to create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the Council requisite for effecting the diversion, and extinguish, as from such date as may be specified in the order or determined in accordance with the section 119 (3) of the 1980 Act, the public right of way over so much of the path or way as appears to the Council requisite.

An order under s.119 of the 1980 Act is referred to as a “public path diversion order”. Further s.119 (2) of the 1980 Act prevents the diversion of the end of a path if it is not on a highway. If the path does end on a highway, it may be diverted only to a point which is on the same, or a connected highway and which is substantially as convenient to 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 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 119 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.

Financial Implications

10. The Developer has agreed to pay the costs of the Diversion Order.

Recommendation

11. To approve the application for Legal Services to make the Legal Order.

ANDREW GREGORY
DIRECTOR PLANNING, TRANSPORT AND ENVIRONMENT
2 June 2023

Appendices:

Appendix A: Location Map of Proposed Diversion

Background papers:

S119 Application Form
Officer Decision Report and Approval