

RIGHTS OF WAY REPORT



Date Written	30 th January 2014
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Service Area	Economic Development
Committee Date	24 th February 2014

To: Chairman, Ladies and Gentlemen

Merthyr Vale 16

PURPOSE OF THE REPORT:

To obtain committee approval for a Public Path Diversion Order to divert a section of the Taff Trail (Merthyr Vale 16)

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Merthyr Vale 16 is recorded on the Definitive Map and Statement as a Bridleway and also forms part of the Taff Trail. The route is within the ownership of Dwr Cymru Welsh Water (DCWW). In the vicinity of Orchard Close, Aberfan, the Taff Trail passes close to properties. The boundary of Welsh Water's land ownership is demarcated by several lengths of retaining wall. These retaining walls are of various constructions; however they are generally rubble walls in a poor condition.
- 1.2 The considerable height of these retaining walls together with their position, close to housing, creates a number of hazards. The hazards include the collapse of masonry, falls from height, and vandalism with stones being thrown into the properties below.
- 1.3 At Orchard Close, the water mains have been diverted some 30 metres west of the trail which presents the opportunity to remove or reduce the height of the existing retaining wall and to replace this structure with a sloping embankment.
- 1.4 The scheme has been selected to minimise the risks to the community and to permanently remove problems associated with a large earth retaining structure. To maintain privacy to the householders the

existing boundary wall is being replaced with a hedged bank at the top of the proposed slope and this hedged bank provided with a screen to allow the hedge to mature.

- 1.5 Section 119 of the Highways Act 1980 gives the authority the power to approve an application for changes to the route of a path by concurrent creation and extinguishment, stating in s1:

“Where it appears to a Council as respects a footpath or bridleway in their area ... that, in the interest 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 onto land of the same or another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, -

- (a) create ... any such new footpath or bridleway as appears to the Council requisite for effecting the diversion, and*
- (b) extinguish ... in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An order under this section is referred to in this Act as a public path diversion order.”

- 1.6 Subsections 2 – 9 of S.119 also require:-

That if the termination point is not on a highway, the new termination point must *“be substantially as convenient to the public.”*

That the order not come into force until any necessary work is done to *“bring the new site of the footpath or bridleway into a fit condition for use by the public.”*

That the public path diversion order may be unconditional or subject to limitations or conditions.

That the landowner, lessee, or occupier of the land enter into an agreement with the Council to defray or make contribution to the costs of any compensation and any expenses which may be incurred *“in bringing the new site of the path or way into fit condition for use for the public.”*

That the order not be confirmed unless the Council / Welsh Assembly Government are satisfied that:

“it is expedient as mentioned in subsection (1) above, and 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.”*

Any material provisions in the Rights of Way Improvement Plan must be considered.

The Order must be in the prescribed form.

Schedule 6 of the Act has effect on the making and confirmation of the Order.

Other sections of the Act be applied to the making of a public path diversion order.

- 1.7 An application to divert this section of the Taff Trail has been received from DCWW.
- 1.8 Before deciding to make an order local authorities may under section 119(5) Highways Act 1980 require an applicant to defray or contribute towards compensation payable, or any expenses which they may incur in bringing the new path or way into a fit condition for use by the public.
- 1.9 DCWW has agreed to defray any compensation which could become payable as a consequence of the order and any expenses incurred by the local authority in bringing the new path to a fit condition for use by the public.
- 1.10 The legal background is to be found at Agenda Item 5.
- 1.11 The Route

Existing Footpath – The section of the bridleway to be diverted commences at point A on the plan, grid reference SO07040083 and proceeds in a general south- south-westerly direction for approximately 100 metres to point B, grid reference SO07010074. It is depicted as a solid black line.

- 1.12 Proposed Footpath – The proposed route will have the same starting and terminating points, but deviates slightly to the west of the existing trail. It is depicted as a dashed line between points A and B on the plan.

- 1.13 Site clearance is required to implement the route. The route will be surfaced in tarmac and will be an improvement to the current route. The onsite works must be completed before the confirmation of the order. No limitations or conditions exist on the proposed diversion.
- 1.14 The proposed diversion is no less convenient to the public and will not affect their enjoyment of the bridleway as a whole. The new surface will be an improvement for the users.
- 1.15 The proposed diversion does not adversely affect the land served by the existing or proposed bridleway.
- 1.16 The proposal conforms to the aims and objectives within the Merthyr Tydfil County Borough Council's Rights of Way Improvement Plan.

2.0 ASSESSMENT

- 2.1 This assessment is to assist Councillors in determining the application before them today; an application to divert Merthyr Vale 16.
- 2.2 The diversion is necessary for the stability of the trail; the users and the local residents.
- 2.3 It is concluded on the balance of probabilities all the requirements of s119 Highways Act 1980 have been met for this route.

3.0 FINANCIAL IMPLICATION(S)

- 3.1 A notice advertising this order will need to be placed in the local newspaper and on site. These costs will be met out of the existing rights of way budget.
- 3.2 Responsibility for maintenance of rights of way routes lies with the Council as Highway Authority; the financial implication for the diverted route is the same as for the original route.
- 3.3 The landowner does not seek compensation under s28 Highways Act 1980 as applied by s121(2) Highways Act 1980. It is not known whether any other claim for compensation will be made but if they are the landowner has agreed to defray these claims.

4.0 EQUALITY IMPACT ASSESSMENT

- 4.1 An Equality Impact Assessment has been prepared for the purpose of this report and no negative effects have been identified at this stage.

5.0 RECOMMENDATIONS(S)

- 5.1 (a) Taking into account all of the evidence which has been provided to confirm the diversion of Merthyr vale 15 from the bold line as depicted on the plan, Merthyr Vale 16, between Point A and Point B to the dashed line as depicted on the Plan, Merthyr Vale 16, between Point A and Point B.
- b) That a Public Path Diversion Order be made to divert the bridleway.
- c) To approve the confirmation of the Public Path Diversion Order made as a result of (b) above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.

Gary Thomas
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Merthyr Vale 16		Unit 5