

RIGHTS OF WAY REPORT



Date Written	31 st January 2014
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Service Area	Economic Development
Committee Date	24 th February 2014

To: Chairman, Ladies and Gentlemen

TOWN 26

PURPOSE OF THE REPORT:

To obtain committee approval for a Public Path Diversion Order to divert Footpath Town 26.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Town 26 is recorded on the Definitive Map and Statement as a footpath. The footpath currently runs through the school grounds and is obstructed by hedgerows and fences.
- 1.2 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.

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

1.4 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.”*

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

- 1.6 The Order must be in the prescribed form.
- 1.7 Schedule 6 of the Act has effect on the making and confirmation of the Order.
- 1.8 Other sections of the Act be applied to the making of a public path diversion order.
- 1.9 This diversion is being undertaken by the Council of its own volition.
- 1.10 The legal background is to be found at Agenda Item 5.

1.11 The Route

Existing Footpath – the existing route of Town 26 is depicted as a solid black line between points A- B on the attached plan, Town 26.

Proposed Footpath – the proposed route will follow an already existing tarmac path for its entire length and is depicted as a dashed line between Points A - B on the attached plan.

The commencement and termination points of the original path, Town 26 will remain the same.

No extra work is necessary to bring the proposed diversion into a fit condition for use by the public.

No limitations or conditions exist on the proposed diversion.

The proposed diversion is no less convenient to the public and will not affect their enjoyment of the footpath as a whole.

The proposed diversion does not adversely affect the land served by the existing or proposed footpath.

The proposal conforms to the aims and objectives within the Merthyr Tydfil County Borough Council's Rights of Way Improvement Plan.

- 1.12 This proposal to divert the right of way to outside the school grounds is for safety reasons.
- 1.13 The southern section of the path between Luther Lane and the school roundabout is in unknown ownership.
- 1.14 The northern section of the path is subject to an agreement with the Council under s111 Local Government Act 1972 for the purposes of

facilitating the Council's planning and highways functions and relating to a development off Pantyffin Road. It is likely that this section of the path will become adoptable highway within the next 2 years.

2.0 ASSESSMENT

- 2.1 This assessment is to assist Councillors in determining the application before them today; an application to divert Town 26.
- 2.2 The diversion is necessary on the grounds of safety to school children.
- 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 It is possible for the landowner to claim compensation under s28 Highways Act 1980 as applied by s121(2) Highways Act 1980. The land is in unknown ownership.

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.

5.0 RECOMMENDATION(S) that

- (a) Taking into account all of the evidence which has been provided to confirm the diversion of Town 26 from the bold line as depicted on the Plan, Town 26, between Point A and Point B to the dashed line as depicted on the Plan, Town 26, between Point A and Point B.
- (b) That a Public Path Diversion Order be made to divert the footpath.
- (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>
Town 26		Rights of Way Department Unit 5