

RIGHTS OF WAY REPORT



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Service Area	Economic Development
Committee Date	17 th December 2012

To: Chairman, Ladies and Gentlemen

S.119 Highways Act 1980, Application for the Diversion of a section of Pant 13 (bridleway)

PURPOSE OF THE REPORT:

To obtain Committee approval of an application from Mr P Brogden to divert a section of Pant 13 (bridleway).

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Mr P Brogden, the applicant and lessee of the land over which the diversion is requested has applied to the Council to divert a section of Pant 13 (bridleway) under Section 119 Highways Act 1980 in order to accommodate a cattle grid for stock control purposes.
- 1.2 Section 119 Highways Act 1980 gives the Authority 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 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 onto the land of the same or of 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 the Act as a public path diversion order.”

Subsections 2 – 9 of s119 Highways Act 1980 also require:-

- the Authority must be satisfied that the alternative path will not be substantially less convenient to the public and that it is expedient for the order to be confirmed having regard to its effects on the public enjoyment of the paths as a whole, on land served by the existing path and on land affected by the proposed path.
- the Authority must ensure that if the termination point is not on a highway that the new termination point “be substantially as convenient to the public.”
- the Authority must ensure that all works required to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned are to be carried out before the date of order.
- that the public path diversion order may be unconditional or subject to such limitations or conditions as may be specified by the order.
- before determination, on the representations of an owner, lessee or occupier of land crossed by the path or way, the Council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards:
 1. Any compensation which may become payable
 2. Any expenses which may be incurred in bringing the new site of the path or way into fit condition for use for the public.

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

- that the order be in the prescribed form
- that schedule 6 of the Act have effect in the making of the order

- that other sections of the Act be applied to the making of a public path diversion order.

Where relevant these issues are addressed in Section 2.

1.3 The legal background to this Report is at Agenda Item 3.

2.0 THE ROUTE

- 2.1 The existing bridleway commences at Point A on the plan, Pant 13, its junction with the maintainable highway at Pengarnddu, grid reference SO07350878. It proceeds in a north-westerly direction to point B on the plan, grid reference SO07410908. It then continues in a general northerly direction to reach a field gate at grid reference SO07460977. It then continues in a general northerly direction, then in a general north-westerly direction and then in a general northerly direction to terminate at Point C on the plan, the County Borough Boundary, where the route joins a legal bridleway, Brecknock 18 at grid reference SO06541110.
- 2.2 The proposed bridleway follows exactly the same route except for a diversion around a cattle grid at Point B, grid reference SO07410908. The diversion will run to the east of the cattle grid and will pass through a bridlegate.
- 2.3 The diversion is no less convenient to the public.
- 2.4 No extra work is required to bring the proposed section into a fit condition for use as the cattle grid and adjacent bridlegate have already been installed.
- 2.5 The lessee has given his written agreement to pay any compensation that may become payable as a result of a diversion.
- 2.6 The proposal conforms to the aims and objectives within the Merthyr Tydfil County Borough Council's Rights of Way Improvement Plan.

3.0 OBJECTION RECEIVED

- 3.1 A letter of objection was received from Country Land and Business Association on behalf of Ms M Clayton stating that she was against the application as she wishes to retain the free and uninterrupted access and use of the common, and that this proposal will significantly interfere with her day to day management of her stock on the common, of which she has enjoyed for many years and is freely entitled to do so. Although the proposed diversion will require Ms Clayton to use the bridlegate the authority does not consider that the diversion is substantially less convenient.

4.0 LETTER OF SUPPORT

- 4.1 A letter of support has been received from the Gelligaer & Merthyr Commoners Association stating that they have no objection to the proposed re-routing of the right of way.

5.0 SUMMARY

- 5.1 Taking all the above into account the authority is satisfied that the path should be diverted and it is also satisfied that the diverted path is not substantially less convenient to the public and it is expedient for the order to be made having regard to its effect on the public enjoyment as a whole, on the land served by the existing path and on the land affected by the proposed path.

6.0 ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no negative environmental implications.

7.0 EQUALITY IMPACT ASSESSMENT

- 7.1 It has been identified that an Equality Impact Assessment (EqIA) is not required for the purpose of this report.

8.0 RECOMMENDATION(S) that

- 8.1
- a) Taking into consideration all the evidence which has been provided, that a Public Path Diversion Order be made to divert the bridleway.
 - b) To approve the confirmation of the Public Path Diversion Order made as a result of (a) above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
 - c) If any objections or representations are made within the prescribed period are 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>
Pant 13	2012 – ongoing	Rights of Way Department Unit 5

Consultation has been undertaken with Executive Board in respect of each proposal(s) and recommendation(s) set out in this report.

Appendix