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## Penderfyniad ar y Gorchymyn

Ymchwiliad a gynhaliwyd ar 11/04/17  
Ymweliad â safle a wnaed ar 11/04/17

**gan Helen Slade MA FIPROW**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 27/04/17**

## Order Decision

Inquiry held on 11/04/17  
Site visit made on 11/04/17

**by Helen Slade MA FIPROW**

**an Inspector appointed by the Welsh Ministers**

**Date: 27/04/17**

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**Order Ref: ROW/3157580**

<b>The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.</b>
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- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as The Vale of Glamorgan Council (Public Footpaths Nos 21 and 22 Wenvoe) Public Path Diversion Order 2016.
- The Vale of Glamorgan Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 8 April 2016 and there was one objection outstanding at the commencement of the local inquiry.
- The Order proposes to divert the public rights of way shown on the Order Plan and described in the Order Schedule.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### Procedural Matters

1. I carried out an unaccompanied site visit the day before the inquiry opened when I was able to walk or view most of the affected footpaths. However the area is currently a construction site and part of the compound was inaccessible to me.
  2. I undertook an accompanied site visit at the end of the first day of the inquiry when it had been possible to make the necessary arrangements for safety equipment to be provided. I was accompanied on that visit by representatives of the Applicant (Redrow Homes Limited); by representatives of the Order Making Authority (Vale of Glamorgan Council); and by one person who was objecting to the Order; but not by the statutory objector.
  3. Although originally scheduled for one day, the inquiry ran over into a second day, ending at 1.45pm on the Wednesday.
  4. The proceedings were recorded and an announcement to that effect was made by Mr Teague, the Rights of Way Officer for the Vale of Glamorgan Council ('the Council') during the opening of the event.
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## ***Submissions***

### *The appointment of the Inspector and the conduct of the inquiry*

5. Although not a statutory objector, Mrs Karen Gallimore attended the inquiry as an objector to the proposals. She raised some procedural points which it was necessary for me to deal with at the start of the event, as the thrust of the submissions might have affected my ability to continue with the inquiry.
6. Mrs Gallimore questioned whether or not membership of my professional organisation (Institute of Public Rights of Way and Access Management or IPROW), and the occupation of my husband as a Rights of Way professional, compromised my ability to hold the inquiry.
7. I was able to clarify that I did not know Mr Gwyn Teague, the officer concerned, who also happens to be a member of IPROW. I also explained that my husband had long since retired but that, in any case, the Planning Inspectorate were aware of his previous professional standing and steps had always been taken to avoid any conflict of interest. No other parties expressed any concern about these matters.
8. Mrs Gallimore and Mr Wallis (the statutory objector) both raised the issue of the lack of any statutory or regulatory procedural framework for events such as this in Wales, unlike in England. They considered that the situation was less than satisfactory because it can lead to inconsistencies in the running of inquiries and hearings in Wales. Furthermore, Mrs Gallimore questioned the availability of the documents prior to the inquiry.
9. I am aware that there are differences between the two jurisdictions, but the Planning Inspectorate in Wales has adopted guidance which very much follows the spirit of the Rules which are in force in England, as acknowledged by both the Council and the Applicant<sup>1</sup>. This is designed to eliminate as far as is possible any inconsistencies which may have existed in the past. The fact that Mr Wallis failed to engage in the procedure in line with the published guidance is regrettable; but, as stated in its introduction, the guidance booklet has no legal status; compliance with the procedures is consequently voluntary.
10. In terms of the statutory availability of documents as set out in the Notice of the Order, I am satisfied that those documents were available for inspection as required. With regard to the documents for the inquiry (i.e. statements and proofs) the applicant and the Council submitted their papers in accordance with the non-statutory guidance. Despite the absence of equivalent submissions from Mr Wallis, and the fact that Mrs Gallimore did not make a statutory objection, I exercised my discretion to hear their evidence and receive their submissions at the inquiry.
11. I was appointed by the Welsh Government and I am satisfied that I am qualified to both hold the Inquiry and to determine the matter, without there being any danger of my impartiality being compromised. I am also satisfied I conducted the event as I would have conducted any other event, whether held in Wales or in England. I am satisfied that all parties were treated fairly by being given the opportunity to be heard and to question those who took a different stance.

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<sup>1</sup> Guidance on procedures for considering objections to Definitive Map and Public Path Orders in Wales [October 2014]

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### *Validity of the Order*

12. Mrs Gallimore considers that the Order is invalid for a number of reasons which I set out below. She believes that it contains errors which render the Order incapable of confirmation without modification, and that the required modifications would cause a perception of prejudice, and possibly actual prejudice:
- a) The seal and signature is not at the end of the Order, but after the Schedules – which she maintains is contrary to the requirements of the relevant regulations<sup>2</sup>;
  - b) Parts 2 and 3 of the Order refers to 'the Authority' and not the actual name of the Authority;
  - c) Part 4 of the Order only refers to the installation of a kissing gate, and its BS number. No mention is made of the steps which have already been set out. In addition there is no reference to works and specifications in relation to the surface of the diverted route (which the inquiry heard had not yet been agreed);
  - d) Part 5 of the Order does not name the person required to pay the cost of carrying out the works;
  - e) Schedule 2 does not show the steps as a limitation and there is no reference to the specification;
  - f) The width on Schedule 2 states 1.5 metres but the steps, and the width of the path, have been shown to be less than that;
  - g) Whilst the Inspector is able to make modifications to the Order, there are too many errors to correct and the Inspector does not have the power to sign and seal the Order in the proper place.
13. These matters were explored at the inquiry, and I deal with them in turn as follows:
- a) The Schedules are an integral part of the Order, which would make no sense without them. I am quite satisfied that the Order is signed and sealed in the logical and customary position. Even if Mrs Gallimore were correct, and the location of the signature was not in accordance with what the Regulations intended, I am satisfied that it is in sufficiently like form to be acceptable in this respect.
  - b) What is meant in this Order by the term 'the Authority' is set out in the preamble to the Order. The Vale of Glamorgan Council is identified as 'the Authority'. Whilst it might be considered preferable to recite the full name of the Authority at each point in the Order, I am satisfied that the Order clearly identifies the body responsible in this respect.
  - c) The question of the steps was a matter which was raised at the inquiry, and with which I deal more specifically later in my decision. Suffice to say that the steps are no longer to form part of the surface of the route, and therefore do not need to be mentioned in the description of the path. I have also addressed the matter of the general specification in more depth at paragraph 49 onwards.

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<sup>2</sup> The Town and Country Planning (Public Path Orders) Regulations 1993

- d) The Order provides for the Applicant to pay the cost of carrying out the necessary works. Although the identity of the Applicant was clear at the inquiry, it is open to me to modify the Order to insert the name of the Applicant, and if I confirm the Order I intend to do so for the purposes of clarity.
- e) As the steps are to be omitted, this point is no longer relevant.
- f) As with the specifications in general, I deal with this aspect later in my decision at paragraph 49 onwards.
- g) With respect to modifying the Order, it is a matter for me in exercising my discretion to decide whether or not the modifications required render it inadvisable or impossible to confirm it. I have borne this responsibility in mind in coming to my decision. Nevertheless, I do not consider that the Order is intrinsically invalid to the extent that I cannot proceed to consider it. I have already concluded above in relation to the question of the seal and the signature.

### *Statutory consultations*

- 14. Mr Wallis expressed concern about the lack of consultation and considered that the absence of an objection from the local group of the Ramblers, of which he is a member, was because they had not received either the consultations or the notification of the Order being made.
- 15. Mr Teague (on behalf of the Order Making Authority) advised that all the statutory procedures had been complied with in both the making of the Order and in the publicising of the inquiry.
- 16. On the second day of the inquiry (the matter having been raised during the first day) Mr Gwyn Lewis, the Footpath Secretary of the Glamorgan Area of the Ramblers stated that he had telephoned Geraint Thomas (the relevant volunteer Footpath Officer from the Penarth Group of the Ramblers) who had confirmed to him that he (Mr Thomas) had been involved in early consultations regarding the proposals. Mr Thomas confirmed to Mr Lewis that he had received a copy of the Order and the Notice at the appropriate time, and his organisation had not objected to it. He had also been aware of the inquiry.
- 17. I am satisfied that the statutory consultation procedures were carried out as indicated by Mr Teague, and indeed that the local group of the Ramblers have been involved throughout the process.

### **The Main Issues**

- 18. Section 257(1) of the Town and Country Planning Act 1990 provides for an Order to be made authorising the stopping up or diversion of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act.
- 19. In coming to a decision on this matter I must take account of relevant case law and the advice in the Guidance for Local Authorities on Public Rights of Way published by the Welsh Government [October 2016] ('the 2016 Guidance'). In this case, as development has taken place, I need to consider whether or not the development is substantially complete and, consequently, whether the provisions of Section 257 remain applicable.

20. In considering whether or not to confirm such an order, I have discretion to consider:

- The interests of the general public;
- The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway;
- Any potential financial loss to members of the public.

## **Reasons**

### ***Background***

21. Outline planning permission was granted to the Applicant on the 11 April 2014 under the reference 2013/00884/OUT. Subsequent permissions for reserved matters under the references 2014/00452/RES and 2015/00601/RES provided the necessary detail and prompted the application to divert the two footpaths which cross the housing development site on the fringe of Wenvoe village. Mr Russell, for the Applicant, explained that the original proposals for the footpaths, made in 2014, were subject to numerous objections at the informal consultation stage, and that significant effort had been made by the developers to meet and overcome these objections. Miss Parry was of the view that these had been successful as all objections had been withdrawn except that of Mr Wallis.
22. The Order proposes that two footpaths be diverted. Footpath 21 crosses the northern end of the site linking to the northern arm of the road Clos Llanfair, and would cut through the gardens of several properties if left in its current position. The proposed route would largely follow the pavement or footway to an internal estate road, linking to the adjoining housing estate at Point H on the Order Plan (the southern arm of Clos Llanfair). The diverted route would leave the internal estate road at Point E on the Order Plan, passing along a linking surfaced footpath between properties 69 and 70 to Point A, where it would re-join the existing onward route of Footpath 21.
23. Footpath 22 currently runs north to south through the eastern part of the development site but would be obstructed by one or two properties at its southern extremity, and would pass through the garden of a third. The proposed route would follow the footway to the principle road access to the site, before passing along a surfaced footpath constructed across a section of public open space between Points J and H on the Order Plan, passing a children's play area and an attenuation basin.
24. The Order proposes that the new path be 1.5 metres wide throughout and that a kissing gate be constructed at Point H to British Standard BS 5709-2006.
25. Both paths, prior to development, were unsurfaced field paths. They have been subject to temporary closures since 2014 more or less continuously (a subject of discontent for the objectors) while the development of the site as a whole has proceeded. However it is the contention of the Applicant that the development, insofar as the public footpaths are concerned, is not substantially complete, and that the Order is required to allow completion of the site to take place.

### ***Whether it is necessary to divert the footpaths to enable development to be carried out***

26. The approved planning permission would result in the partial obstruction of both paths on their definitive lines within the development site boundary. I have described these effects in paragraphs 22 and 23 above. The Order does not affect any part of either

path outside the development boundary. In order for the development to be carried out in accordance with the approved plans I am satisfied that it is necessary to divert both the paths concerned<sup>3</sup>.

***Whether or not the development is substantially complete***

27. Even where the necessity test has been made out, an Authority retains discretion as to whether or not to make an order, and it is not guaranteed that an order, once made, would be confirmed. Nevertheless, Paragraph 6.59 of the 2016 Guidance states there must be good reasons for not making (or, by implication, not confirming) such an order.
28. Paragraph 6.65 sets out one of the situations where the making or confirmation of an order under Section 257 would not be possible. Where the development, insofar as it affects a right of way, is completed before the necessary order to divert or extinguish it has been made or confirmed, the powers under Section 257 are no longer available to be used. In this respect, development should be regarded as completed if the work remaining to be carried out is minimal.
29. In this case, a significant amount of development has taken place, and a high proportion of the dwellings have been completed. Many are occupied and others are in the process of being sold (whether built or not). It was indicated by the Applicant at the inquiry that out of 140 homes to be built in total, eight had yet to be built, and eight were under construction. Mr Wallis considered that this clearly demonstrated that the development was substantially complete. The Applicant, however, considered that the houses which would obstruct the definitive line of both footpaths had not yet been constructed, and thus the development, insofar as it affected the rights of way, was not substantially complete.
30. At my site visits it was possible to see that some ground works have taken place on the existing line of Footpath 21 in preparation for the relevant dwellings, and a building compound obstructs the route for part of its length (near Point B on the Order Plan). The route is currently subject to a temporary closure order<sup>4</sup> and has been so affected for much of the time that the development has been in progress.
31. With respect to Footpath 22, a temporary car park and surrounding fence obstructs the path at its southern end (near Point C on the Order Plan) but the rest of the route is available for use on its definitive line, albeit partially over a constructed estate road. A temporary surface has been laid between Points J and D on the Order plan to facilitate the use of the existing route, but the proposed route will run on a very slightly different alignment at this location and run through an area of public open space which has not yet been set out. The proposed route to the south of Point J, along the footway to the estate road is available for use and has been, to all intents and purposes, completed.
32. Section 257(3) provides for an Order to be made under the section (i.e. Section 257) authorising the stopping up or diversion of a footpath which is temporarily stopped up or diverted under any other enactment. Thus there is no bar to confirming the Order on the basis of its present stopping up under the Road Traffic Act 1984.
33. I consider that it is unarguable that the development as a whole is well on the way to completion but I cannot agree that it is complete insofar as it affects the definitive

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<sup>3</sup> See also paragraphs 38 and 39

<sup>4</sup> Although see paragraph 71 in this respect

lines of the rights of way concerned. Whilst both footpaths have been subject to temporary closure, and have been obstructed, the approved plans of the consented development show that the dwellings which will necessitate the diversion of the paths concerned have, for the most part, yet to be built.

34. Mrs Gallimore argued in closing that, in line with the judgement in *Hall*<sup>5</sup>, the planning permission was 'spent' and it was therefore not appropriate to confirm the Order. Miss Parry, for the Applicant, argued that since it was self-evident that a number of houses still required to be built, the planning permission could not be regarded as 'spent'.
35. Mrs Gallimore did not specifically identify the location on Footpath 21 where she felt that the judgement in *Hall* was of relevance. I note that the judgement related to a situation where the wall of a garage had been built across the existing right of way, thus obstructing it, but was demolished when the obstruction was identified. Mr Russell demonstrated in his proof of evidence that there is no house which is the subject of the approved planning permission currently obstructing the definitive line of the footpath. The definitive line of the path passes through the gardens of the properties concerned. I therefore consider that the situation I am considering can be distinguished from *Hall*, and that the judgement is not relevant in this case.

### ***The interests of the general public***

#### ***Alternative routes***

36. Mr Wallis considered that the diversion of Footpath 21 as set out in the Order was not the most acceptable in terms of the public user. He favoured a route which would run to the north of the gardens of the properties affected by the definitive line, through the adjacent woodland area. In his view, this would maintain the ambience of the right of way as a rural path.
37. From the site visit it appears that this route is currently being used as an alternative route to the line of the path which is closed, to access the adjoining field to the west. Nevertheless, the Council and the Applicant agreed that the route favoured by Mr Wallis had been considered earlier in the process, and that local residents of the adjoining estate had rejected it on the basis that it would become a 'dumping ground' for garden waste and be unpleasantly confined.
38. Mrs Gallimore, on the other hand, considered that this was, in fact, likely to be the definitive line and that the Order was therefore not necessary as far as Footpath 21 was concerned.
39. I am satisfied that the definitive line of Footpath 21 lies a little to the south of the currently walked line, and would therefore run through the gardens of the adjacent properties if left un-diverted.
40. Mr Wallis also considered that another preferable alternative would have been to take the diverted route more directly west of Point E, to link into the field via the 'woodland walk' being created along part of the western boundary of the development.
41. Neither of the two options put forward by Mr Wallis forms part of the Order I am considering. Given the rejection of one of the routes at the informal consultation stages, it is likely that any Order which had been made in those terms would have

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<sup>5</sup> *Hall v SSE* [1998] JPL 1055 (QBD)

received a number of objections. As the Applicant pointed out, the pre-order consultations had whittled the objections down to just one, that of Mr Wallis, and the rural nature of the path will inevitably be compromised by the construction of the housing estate. The diversion will, however, maintain the link to its continuation in the field adjoining the development. In the absence of any agreement to either of his suggestions, it is not justifiable for me to consider modifying the Order to accommodate the alternatives put forward by Mr Wallis.

#### *Active Travel (Wales) Act 2013*

42. Mr Wallis was very exercised by the failure, in his eyes, to accommodate cycling use through the development to link with the main village of Wenvoe. He referred specifically to the Active Travel (Wales) Act 2013 ('the 2013 Act') and the Statutory Guidance which accompanies it. He considered that the Council had failed to fulfil their duties under the 2013 Act by failing to accommodate cycling on the diverted footpaths; in particular the diversion of Footpath 22.
43. Mr Wallis did not provide a copy of either the 2013 Act or the Statutory Guidance, but the Applicant helpfully provided copies in their document bundle (Inquiry Document 2). The 2013 Act does not mention any duties in connection specifically with Orders under the 1990 Act. In fact it makes no reference to the 1990 Act at all. Furthermore, it makes clear that the duties of the 2013 Act only apply to specified designated localities. The pursuance of active travel policies in other areas is voluntary.
44. Active Travel is defined in Paragraph 2.5 of the associated guidance<sup>6</sup> as meaning walking and cycling as alternative means to motorised transport for the purpose of making everyday journeys, which includes journeys to work, educational establishments and local services or facilities. It covers short-distance commuting, but does not cover purely recreational routes. The term 'walker' is taken to embrace users of wheelchairs or other mobility aids.
45. The Applicant has been required as a consequence of the planning permission to construct a cycle track alongside the main road off which the development lies (Port Road). This cycle track links into the village access road at the nearby roundabout, and also extends southerly along Port Road beyond the development site.
46. The diversion of the rights of way, which are footpaths, will facilitate the continued use of the paths on foot through the development into and out of the established village settlement.
47. Nevertheless, Mr Teague confirmed that neither of the Order routes was designated as an Active Travel Route and that the area as a whole was not a designated locality for the purposes of the 2013 Act.
48. It seems to me therefore that the Council had no duties under the 2013 Act in this specific case, but that the measures that have been taken as part of the planning process have nevertheless ensured the provision of facilities for cycling and walking.

#### *Specifications of the diverted route*

49. The Order as made specifies a number of issues in relation to the condition of the proposed path:

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<sup>6</sup> Statutory Guidance for the Delivery of the Active Travel (Wales) Act 2013 [October 2014]



- a) Article 2 of the Order states that there shall be created to the reasonable satisfaction of the Authority alternative highways for use as a replacement for the said footpaths as provided in Part 2 of the Schedule.
  - b) Article 3 of the Order states that the diversion of the footpaths shall have effect on the date on which the Authority certifies that the terms of Article 2 have been complied with.
  - c) Article 4 sets out the works that have to be carried out in relation to the highway described in Part 2 of the Schedule and reference is made to the installation of a kissing gate.
  - d) Article 5 states that the Applicant is required to pay the cost of carrying out the said works.
  - e) Part 2 of the Schedule to the Order sets out in relation to both the new rights of way that there is to be a kissing gate, constructed to British Standard BS5709-2006 at Point H on the Order plan, to serve both routes.
  - f) Part 2 of the Schedule to the Order also states that both paths will have a width of 1.5 metres.
50. Mr Wallis, and Mrs Gallimore, were concerned on a number of fronts: the ability of less able people to use the paths; the fact that a kissing gate which allows the passage of wheelchairs or children's buggies would, by default, allow the passage of bicycles; that the paths were not specified to be wide enough to accommodate cyclists and walkers; and that the final specifications in relation to the surface of the paths had not yet been agreed between the developers and the Council.
51. I acknowledged these concerns at the inquiry and sought to obtain assistance on the matter by asking the Council to invite the officer responsible for agreeing the final specifications to attend and to give evidence. Mr Teague had explained that, for the most part, the proposed routes would eventually be 'adopted' by the Council and would, in fact, be removed from the Definitive Map and Statement as they would no longer fit the definition of a path which ought to be included on it. However, there would be a gap in time between the certification of the route as a public right of way (footpath) and the adoption of the relevant sections (as footways adjoining a carriageway). He also accepted that it was possible for the delay to be one of some years. He considered that the width of 1.5 metres quoted in the Order was to take account of the minimum width of the route where it would be obstructed by lighting columns.
52. Mr Lee Howells attended the inquiry on behalf of the Council and gave very helpful evidence to clarify a number of issues. Mr Howells is the Highway Development Team Leader and will be responsible for negotiating the final specifications for the adoption of the highways within the development, which he confirmed would actually include the entire length of both diverted routes. He also accepted that there might be a delay before adoption took place. He confirmed that no design specifications had yet been agreed between the Council and the Developers from his perspective.
53. Mr Howells explained that the normal requirement for the adoption of a footway would be a minimum width of 2 metres, which might be less where localized narrowings occurred due to such street furniture as lighting columns. He considered that a surfaced path across an area of public open space would also need to be 2 metres wide. If there were unavoidable constraints, the Council might accept a width of 1.5

metres. When considering the adoption of highways, the Council takes into account passenger safety based on topography and the surroundings, but not aesthetic appearances. He indicated that the nature of the surfacing was likely to be either tarmacadam or blockwork.

54. Apart from the fact that the Order states that both paths would have a width throughout of 1.5 metres, which is clearly not compatible with the normal adoption requirements, the principal issue of concern to Mr Wallis (and to Mrs Gallimore) was the width of the section of the proposed route of Footpath 21 between Points A and E on the Order plan. At the accompanied site visit the width of this section, which was under construction, appeared quite narrow, and also included four concrete steps. On measuring the width it was found to be between 1.1 and 1.2 metres. The accompanied visit was carried out during the first day of the inquiry. Counsel for the Applicant addressed me on the question the following morning, and indicated that the steps were to be taken out, and that the whole path between Points A and E would be reconstructed to a width of 1.5 metres, as per the Schedule to the Order.
55. Mr Howells, giving his evidence on the second day, was of the view that this relatively short section of the path is straight, and will be lit by a street light, so a width of 1.5 metres was likely to be acceptable from an adoption point of view.
56. Mr Wallis considered that there was no indication that the gradient of the slope would meet standards which were acceptable from an Equalities Act 2010 perspective.
57. Mrs Gallimore was concerned that the alterations announced by Miss Parry would impact on the owners of the adjoining properties, one of which was already occupied and the other had, according to Mr Russell, just been sold.
58. The first thing to consider is that the diversions will not come into effect, even upon the confirmation of the Order, until the Authority (i.e. the Council) has certified that the alternative routes have been created to their reasonable satisfaction. It seems to me to make no sense to agree a route which is less than the width required for adoption (where adoption is intended) especially if it is possible for the process of adoption to take some years. Once the development is complete, the routes will no doubt be in daily use by the residents and others, and surfacing will be in place. The users will expect, as would any normal person, that the entire width of the footway and footpaths that they are traversing, day in and day out, forms part of the publicly maintainable highway. The existing routes, as shown on the Definitive Map and Statement, are publicly maintainable (as rural paths) and they will remain publicly maintainable as a consequence of the diversion, whether they are adopted or not. To maintain only part of the width would be nonsense.
59. With respect specifically to the length of the proposed route between Points A and E, the Applicant indicated that the path would be contained between two property boundaries, but was unable to be precise as to their nature or their height. Part of the boundary to one side was likely to take the form of a retaining wall as there was a difference in levels.
60. Paths which are contained or bounded on both sides by fences or walls are, generally speaking, less attractive to users than those which are open. My experience elsewhere suggests that paths of this nature, even in rural settings, are generally required to be a minimum width of 2.0 metres to mitigate the effect of containment and to facilitate surface management. Despite the presence of a street light I consider that the minimum width of this section of the path should also be 2.0 metres.

I cannot allow the fact that the developer has pre-empted the confirmation of the Order in relation to this stretch of the proposed route to affect my conclusion on this issue.

61. If I confirm the Order I therefore propose to modify it to show the width of the whole of the proposed route as 2.0 metres, subject only to the limitations resulting from the presence of appropriate street furniture such as lighting columns. A modification such as this would need to be advertised as it would affect land not affected by the Order as made.
62. Turning to the question of the kissing gate, Mr Teague indicated that the presence of the kissing gate was requested by the local residents to help prevent unauthorised cycle use of the footpaths. The quoted design standard for gates on public rights of way, BS5709-2006, provides for flexibility in design to allow for the needs of users to be taken into account. However, as Mr Wallis pointed out, a gate which is usable by children's buggies or wheelchair users might also be likely to permit cyclists to pass.
63. This is a problem for the Council to address in deciding on what design parameters to agree, but I am satisfied that the issue is one that is recognised and acknowledged by the parties concerned. The Council has duties under the Equalities Act 2010 and I must also have regard to this issue. However, I am satisfied that these requirements have not been overlooked by the Council; the issue is ultimately one of management for the Council as Highway Authority and not a matter which should prevent me from confirming the Order.

#### *Public safety*

64. Part of the proposed route of Footpath 22 is intended to cross an area of public open space in which a children's play area and an attenuation basin are located. The attenuation basin is a feature designed to collect flood water in exceptional circumstances. According to the Applicant and the Council there is no intention to erect a fence around the basin as it will normally hold no water.
65. Mr Wallis was concerned at the proximity of the basin to the proposed path and felt that there was an issue of public safety.
66. The proximity of the basin to the proposed path was presumably an issue which was considered at the planning stage. There is no intrinsic reason why someone using the proposed footpath route would be in any danger in relation to the attenuation basin. The basin does not lie immediately adjacent to the proposed line of the path so a person would have to be straying off the line of the path to get to the basin. Whilst I can understand Mr Wallis's concern, I do not consider that this is a matter which ought to affect my decision.

#### ***The potential effects on occupiers of property adjoining the highway***

67. The proposed routes of the two paths in question would mean that they become part of the network of estate roads and paths. Mr Russell pointed out that the design of the scheme meant that no part of either of the two paths would lie 'behind' any of the new properties, but only to the front of them. I do not think it likely that there would be any adverse effects on the occupiers of properties adjoining the majority of the highway.
68. The exception might be the short link between Points A and E where it would lie to the side of the two properties concerned. I have already concluded that this short length

ought to be 2.0 metres wide and not 1.5 metres. This would, in my view, also be of benefit to the adjoining owners by making the route easier to keep under natural surveillance.

69. I note Mrs Gallimore's point about the fact that these two properties have been sold, and one of them is occupied. However at the time that the Order was made, that situation did not pertain. Should I propose the confirmation of the Order with the modifications that I have suggested above, it might be considered sensible to ensure that the owners of any of the affected properties currently sold, or in the process of being sold, were made aware of the matter. Nevertheless, it is ultimately the responsibility of the seller to make potential purchasers aware of any legal issues affecting a property they are conveying. Modifications of the type I am proposing would have to be advertised in any case, providing the opportunity for objections.

### ***Any potential financial loss to members of the public***

70. No issues in this respect were identified which require my attention.

### **Other Matters**

71. As I have mentioned above, concern was expressed by Mr Wallis about what he considered to be the inappropriate use of temporary closure orders under Schedule 14 of the Road Traffic Regulation Act 1984 which has resulted in the closure of both Order routes for some 2½ years. Copies of the relevant orders were presented to me at the inquiry at my request. It was noted that the latest order made under these provisions contains an error regarding the date.
72. Whilst I can appreciate the frustrations of Mr Wallis and others about the continuing inconvenience resulting from these closures, they are not matters which fall under my jurisdiction. Other avenues exist to pursue complaints of this nature, and to determine the validity of the current temporary closure.

### **Conclusions**

73. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.
74. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modifications which will require advertising.

### **Formal Decision**

75. I propose to confirm the Order subject to the following modifications:
- In Article 5 of the Order insert in brackets after the words 'The Applicant' the words '(Redrow Homes Ltd)';

- In Part 2 of the Schedule, in the descriptions of both Footpath 21 Wenvoe and Footpath 22 Wenvoe, in the columns headed 'Width' delete the figure '1.5' and insert the figure '2.0';
- In the same columns, add the following words; '*subject to the limitations of street furniture*';

Since the confirmed Order would affect land not affected by the Order Paragraph 3 (6) of Schedule 14 to the Town and Country Planning Act 1990 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Helen Slade*

**Inspector**

## **APPEARANCES**

### FOR THE ORDER MAKING AUTHORITY:

Mr Nigel Farthing	Birketts, Instructed by Vale of Glamorgan Council
He called	
Mr Gwyn Teague	Rights of Way Officer
Mr Lee Howells	Highway Development Team Leader

### FOR THE APPLICANT:

Miss Clare Parry	Counsel, instructed by Redrow Homes Limited
She called	
Mr Matt Russell	Director, Vectos, Traffic and Transportation Consultants, on behalf of Redrow Homes Limited

### STATUTORY OBJECTOR:

Mr Max Wallis	Friends of the Earth, Barry & Vale
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### INTERESTED PARTY IN OBJECTION:

Mrs Karen Gallimore

## **DOCUMENTS**

- 1 Inquiry bundle prepared by the Applicant, Redrow Homes Limited
- 2 Bundle of documents presented by Miss C Parry, Counsel for the Applicant
- 3 Closing submissions of Miss C Parry, on behalf of the Applicant
- 4 Bundle of five Temporary Closure Orders relating to the Order Routes, submitted by the Vale of Glamorgan Council
- 5 Statement of Mr M Wallis, with copy letter from Redrow dated 15 June 2015
- 6 Submission and Statement of Mrs K Gallimore, with two appendices: Objection to informal consultations dated 19 July 2015, and copy of Order Decision FPS/W3005/5/1 dated 12 August 2015