

Meeting of:	Public Rights of Way Sub Committee
Date of Meeting:	Thursday, 13 January 2022
Relevant Scrutiny Committee:	Environment and Regeneration
Report Title:	Highways Act 1980 s119 Proposed Public Path Diversion Order Footpath No.39 Wenvoe
Purpose of Report:	To consider an application to divert the above footpath. The application is made by the Public Rights of Way Section.
Report Owner:	Gwyn Teague, Public Rights of Way Officer
Responsible Officer:	Phil Chappell, Operational Manager, Regeneration
Elected Member and Officer Consultation:	Councillor Bird, Ward Member Councillor Burnett, Cabinet Member Legal Services Regeneration Countryside Planning and Building Control
Policy Framework:	This report is a matter for decision by the Public Rights of Way Sub-Committee.
Executive Summary:	<ul style="list-style-type: none"> The purpose of this report is to consider an application to divert public footpath No.39 Wenvoe. The application is made by Public Rights of Way Section, detail of the proposed change to the public footpath is provided in Appendix 1. The existing definitive alignment of the footpath crosses a working farmyard and through a barn that has been on the alignment of the footpath for over 35 years. The diversion would move the footpath onto a field adjacent to the farm complex. An objection to the proposal was received following from a broad pre-order consultation, consulting the Ward Member, the Community Council, the landowner, user groups and utility companies. The objection is provided in Appendix 2.

Recommendation

1. That the Council, being the relevant highway authority proceed with the making of an Order to divert part of Footpath No.39 Wenvoe, as described in the attached order plan and schedule (Appendix 1) and subject to no objections being received, to confirm the Order.

Reason for Recommendation

1. The diversion of the footpath is expedient in the interests of the public. The existing definitive alignment of the footpath crosses a working farmyard and through a barn that has been on the alignment of the footpath for over 35 years. The diversion would move the footpath onto a field adjacent to the farm complex.

1. Background

- 1.1 Public Footpath No.39 is located to the east of Wenvoe and is part of a network of paths used for leisure purposes.
- 1.2 The effect of the diversion would be to divert the footpath from running over a working farmyard and through a barn to running through a field adjacent to the farm complex, from the alignment A-B (bold line) to C-D-E-F-G (dashed line) as shown on the Order plan.
- 1.3 The Order plan and schedule are included describing the changes in greater detail (Appendix 1).

2. Key Issues for Consideration

- 2.1 In deciding whether to make a diversion order it is reasonable to consider both the tests for making the Order and for confirming the Order (R. (Hargrave) v. Stroud District Council [2002]). Even if all the tests are met, the Council may exercise its discretion not to make the Order.
- 2.2 Before making a diversion order it must appear to the Council that it is expedient to divert the path in the interests either of the public or of the owner, lessee or occupier of the land crossed by the path.
- 2.3 The Authority must also be satisfied that the diversion order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public:
- 2.4 Before confirming an order, the Council, or the Secretary of State, if the order is opposed, must be satisfied that:
 - a) The diversion is expedient in the interests of the person(s) stated in the order,
 - b) The path will not be substantially less convenient to the public as a consequence of the diversion,
 - c) It is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing

path and on land affected by any proposed new path, taking into account the provision for compensation.

- 2.5** Convenience should be interpreted as meaning ease of use, whereas enjoyment can take into account other factors such as the views to be enjoyed from the path or way.
- 2.6** In applying the tests to the current case it is noted that:
- i) The proposed diversion retains connection to the same highways.
 - ii) The Public Rights of Way Section believe the proposed alternative route to be no less convenient to the public, this issue is discussed further in Paragraphs 2.9 to 2.18.
 - iii) Both the original and proposed route crosses land in the ownership of the same landowner, the landowner agrees with the proposal.
- 2.7** A consultation was undertaken on the 19th October 2021 allowing 21 days to respond, no objections were received and authorization to make the diversion Order was provided through delegated powers.
- 2.8** Before the Order was made an objection was received from Friends of the Earth Barry and Vale (appendix 2), the Order making process was halted to allow this sub-committee the opportunity to view the application and decide if the Order should be made.
- 2.9** Addressing the individual points raised in the objection:
- 2.10** Objection - We object to this clumsy and significant diversion to a natural historic route, which makes a direct walking link to the modern football/sports facility - and the safe route to Wenvoe over the A4050 footbridge.
- 2.11** Response - From the plan attached (appendix 3) it is evident that only the farm house itself and the adjacent two properties would consider the footpath to be a direct walking link to the modern sports facilities. Although the footpath provides a traffic free route the footpath has a natural surface, it is more likely that the preferred route from the Sports Ground into the village would be along Caerau Lane then the pavement beside the A4050, the route is surfaced throughout and is only 100 metres longer (approximate). The proposed diversion does not impact the direct link from the A4050 footbridge to the Sports Ground.
- 2.12** Objection - The RoW does not as stated cross a farmyard, but between the homes and the farm. The historic track has been appropriated by the farm and used for parking vehicles. The farmer has also unlawfully erected a barn on the path.
First, the barn obstructing the right-of-way should be removed. We question if it had planning permission; if so, why was this given with requiring a path diversion?
- 2.13** Response - The footpath crosses a surfaced area providing access into several farm buildings for the movement of stock and vehicles, it is a farm yard. Planning application 1979/00601/FUL provided authority for the erection of the barn that obstructs the alignment of the footpath (appendix 4). Whilst the implementation of that planning permission has had the effect of unlawfully obstructing the path diversion of the route is an appropriate remedy.
- 2.14** Objection - Second, the awkward and lengthy diversion from the direct historic route from A-B more than doubles the distance between these points; the

proposed new path from C-G is not comparable to A-B so the lengths given make no sense.

- 2.15 Response - The proposed route is longer than the original route however the route is safer, crossing fields rather than passing through a working farm the proposed footpath is unsurfaced and more in character with the rights of way network in the area.
- 2.16 Objection - Third, if the illegal obstruction-barn were to be retained, a simple diversion round it to the west is easy. Also, the right-of way needs clearly separating from the farm to its east to prevent blocking and damage from operational vehicles. The width should be defined as 1.5m as 'price' for allowing the illegal barn to remain.
- 2.17 Response - Diverting the footpath to the field to the west of the barn would take the footpath across land which tends to be very wet, the repositioning of the northern section of the footpath would not remove the risk from livestock or vehicles working in the vicinity.
- 2.18 Attached is the landowner's response to the objection (appendix 5).

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1 The Well-being of Future Generations (Wales) Act 2015 is about sustainable development. The Act sets out a 'sustainable development principle' which specifies that the public bodies listed in the Act must act in a manner which seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs. In meeting their sustainability duty, each body must set objectives that highlight the work the body will undertake to contribute to meeting the seven Well-being Goals for Wales.
- 3.2 The activities set out in this report will contribute to the national well-being goals and help ensure we have a resilient Wales, the five ways of working will be embedded throughout the response to determine the application to divert public footpath No.39 Wenvoe. We have worked collaboratively with other partners and consultation has taken place with the community in order to shape our response.

4. Resources and Legal Considerations

Financial

- 4.1 The proposed changes are part of a package being promoted by the Vale of Glamorgan Council and as such landowner contribution has been waived, the costs will be met by external funding

Employment

4.2 None

Legal (Including Equalities)

4.3 The power to make an order is discretionary only. No right of appeal exists against the Authority's decision not to make an order.

4.4 Kissing gates - BS5709 standard will be installed along the route.

5. Background Papers

Appendix 1 - Order plan and schedule

Appendix 2 - Objection from Friends of the Earth Barry and District

Appendix 3 - Plan providing an overview of the location

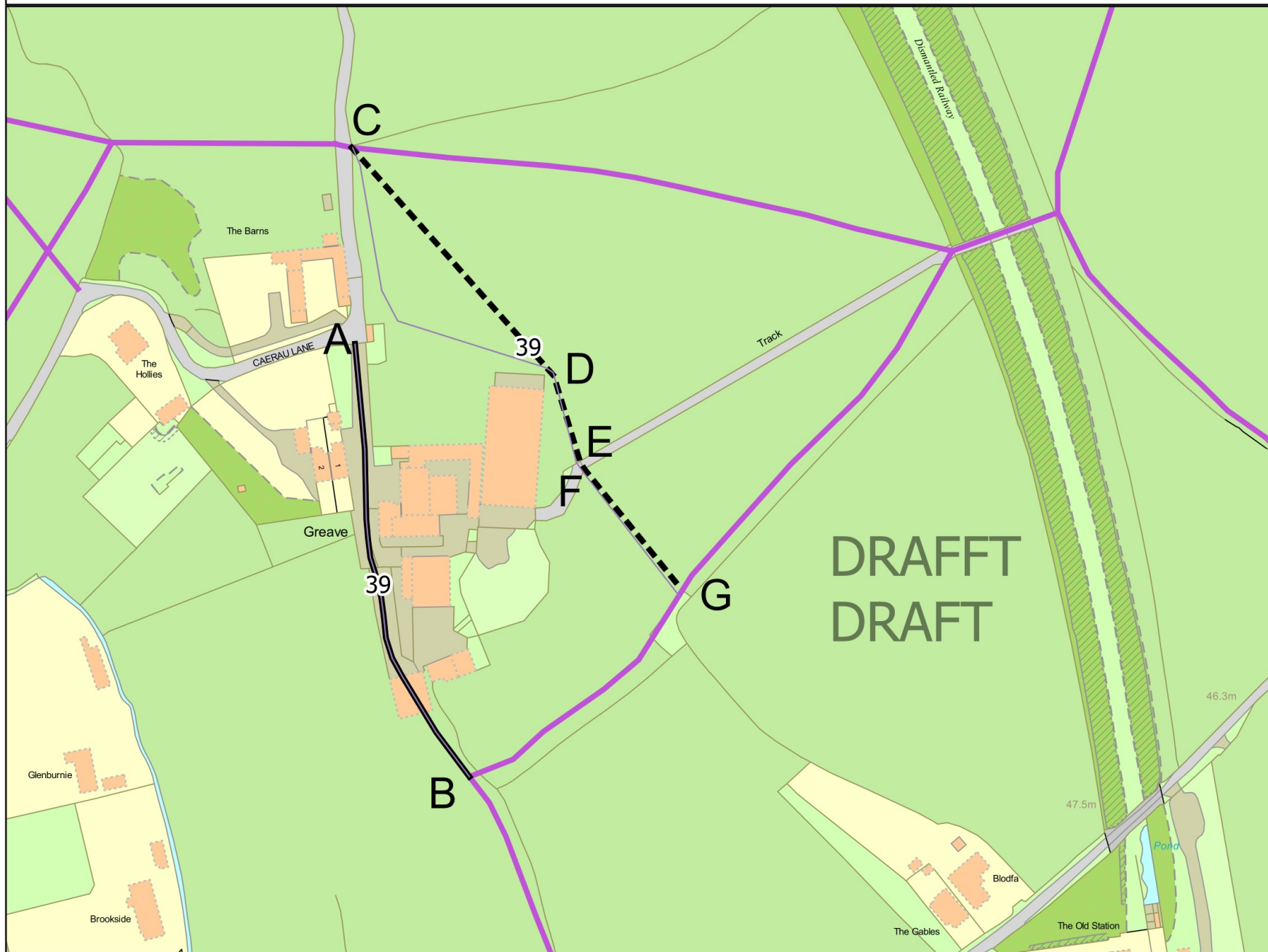
Appendix 4 - 1979/00601/FUL Planning application decision for barn

Appendix 5 - Landowner response to objection

Gwyo Llwybr Troed neu ran ohono Rhif 39 Gwenvô, Deddf Pryffyrdd 1980, Adran 119
 Diversion of part of Public Footpath No.39 Wenvoe, Highways Act 1980 Section 119



Deddf Pryffyrdd 1980,
 Adran 119
 Gwyo Llwybr Troed neu
 ran ohono
 Rhif 39 Gwenvô
 Highways Act 1980,
 Section 119
 Diversion of part of Public
 Right of Way
 No.39 Wenvoe



- Public Rights of Way
- Bridleway
 - Footpath
 - - - Restricted Byway
- Gwyrriad - Diversion
- Creu Creation
 - Diddymu Extinguishment

Garddfa / Scale:
 1:2500

Dyddiad / Date:
 18. 10.2021

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Highways Act s119

Public Rights of Way No. 39 Wenvoe

SCHEDULE

Part 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

Section of path or way as indicated on map	Position	Length	Width
A – B Footpath No.39 Wenvoe	Commences on Caerau Lane at point A (NGR 312418 173539) and proceeds southwards passing across the farmyard and through a barn to it's junction with Public Footpath No.47 Wenvoe at B (NGR 312471 173342).	209 metres	0.6 metres

Part 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

Section of path or way as indicated on map	Position	Length	Width
C – D – E – F – G Footpath No.39 Wenvoe	Commences on Caerau Lane at a kissing gate at point C (NGR 312417 173628) and proceeds south-eastwards to point D (NGR 312509 173524), the path continues south-south-eastwards to a kissing gate at point E (NGR 312521 173486). The path crosses a farm track to a kissing gate at point F (NGR 312523 173482) then continues south-eastwards to terminate at it's junction with Public Footpath No.47 Wenvoe at point G (NGR 312567 173427).	254 metres	1.5 metres

Part 3

LIMITATIONS AND CONDITIONS

C – D – E – F – G Footpath No.39 Wenvoe	Point C (NGR 312417 173628)– a kissing gate BS5709 (2021) Point E (NGR 312521 173486)– a kissing gate BS5709 (2021) Point F (NGR 312523 173482)– a kissing gate BS5709 (2021)
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Thomas, Sandra A

From: BarryVale FOE <barryvale.foe@gmail.com>
Sent: 17 November 2021 10:29
To: Thomas, Sandra A
Cc: [REDACTED]
Subject: RoW no.39 Greave Farm, Wenvoe

We object to this clumsy and significant diversion to a natural historic route, which makes a direct walking link to the modern football/sports facility - and the safe route to Wenvoe over the A4050 footbridge.

The RoW does not as stated cross a farmyard, but between the homes and the farm. The historic track has been appropriated by the farm and used for parking vehicles. The farmer has also unlawfully erected a barn on the path.

First, the barn obstructing the right-of-way should be removed. We question if it had planning permission; if so, why was this given with requiring a path diversion?




Second, the awkward and lengthy diversion from the direct historic route from A-B more than doubles the distance between these points; the proposed new path from C-G is not comparable to A-B so the lengths given make no sense.

Third, if the illegal obstruction-barn were to be retained, a simple diversion round it to the west is easy. Also, the right-of way needs clearly separating from the farm to its east to prevent blocking and damage from operational vehicles. The width should be defined as 1.5m as 'price' for allowing the illegal barn to remain.



Regards,
Max Wallis

Friends of the Earth Barry&Vale
[REDACTED]
[REDACTED]

Public Rights of Way

-  Footpath
-  Bridleway
-  Restricted Byway

Proposed Diversion

-  to be extinguished
-  to be created

2nd December, 2021



nearest property

sports ground

Code No. 79/0601

VALE OF GLAMORGAN BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACTS 1971-74
THE TOWN AND COUNTRY PLANNING (GENERAL)
REGULATIONS, 1974 6

10

THE TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDERS 1973-74 1977

PERMISSION FOR DEVELOPMENT

To MX E. Stephenson & Sons Per. Mr. A.H. Kendrick, 84 Fairwater Grove West, Llandaff, Cardiff.

WHEREAS you did on the 6th day of April, 1979

make application in writing to the Vale of Glamorgan Borough Council (hereinafter referred to as "the Council") for permission to develop land at The Greave Farm, Wenvoe, S. Glam short particulars of the development being as follows:—

NAME OF APPLICANT	DESCRIPTION OF PROPOSED DEVELOPMENT
<u>E. Stephenson & Sons.</u>	<u>Erection of New Barn.</u>

Vale of Glamorgan Borough Council as the Local Planning Authority, hereby PERMIT the proposed development to be carried out, in accordance with the plans (if any) submitted with the said Application subject to the development being begun on a date which is not later than five years from the date of this permission and subject also to compliance with the condition(s) (if any) specified below.

CONDITION(S)

NIL.

The reasons for the Council's decision to grant permission for the proposed development, subject to compliance with the condition(s) hereinbefore specified are:—

NIL.

Dated this 9th day of October, 1979.

J. Lewis
Chief Executive

(PLEASE SEE NOTES ON BACK)

This consent does not convey any approval or consent required by The Building Regulations, 1974 or any Acts other than the Town and Country Planning Acts 1971-74

NOTE 1

- (1) If the applicant is aggrieved by the decision of the local planning authority to refuse permission for the proposed development, or to grant permission subject to conditions, he may appeal to the Secretary of State for Wales in accordance with section 36 of the Town and Country Planning Act, 1971, within SIX MONTHS of the receipt of this notice. (Appeals must be made on a form which is obtainable from the Welsh Office, Summit House, Windsor Place, Cardiff.) The Secretary of State has the power to allow a longer period for the giving of notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. (The statutory requirements include section 6 of the Control of Office and Industrial Development Act 1965 and section 23 of the Industrial Development Act 1966).
- (2) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for Wales, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council, in which the land is situated, a purchase notice requiring the council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (3) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

NOTE 2

When the Development involves the laying out of new Streets the Developer is advised to submit constructional details of such streets to the appropriate Surveyor (see below) and obtain approval before the work is commenced. This will facilitate the taking over by the Highway Authority of the Streets, when completed, as highways repairable by the inhabitants at large.

Director of Environment and Planning,
County of South Glamorgan,
Ceres House,
Newport Road,
Cardiff.

Dear Sandra,

Thank you for keeping us informed.

We were sorry reading that you had a late objection. It was hard to understand, as the points raised don't seem to be relevant.

1. Says it doesn't cross a farm yard which is untrue. It goes right through the middle of a working farm yard where heavy machinery can be in use, also cattle in the yard.
2. The building was erected by my late father when he ran the farm and not myself and I am not sure if planning sought or was needed in the early seventies when this went up.
3. We understand people use the footpaths for leisure and witnessed this during lockdown. However, we did not see many people use the route through the farm as there are plenty of very scenic paths around the fields. Which gives people the sense of open spaces they are looking for, and very few stick to the original paths, especially with dogs and children and the farm yard is too dangerous for this.
4. It is crazy to say that this path is a straight walk to the sports fields, as the main road has an excellent straight walk to the sports field and footbridge with out the need for people in a hurry to walk through cow muck and when wet, pools and puddles. You would need to leave the good clean path on the main road to walk up a dangerous single track road to go though a busy yard and turn back down the road towards the playing fields.
5. As for historic. Farming has become very dangerous as seen by accidents even among the farming family community. This path has walls that obstruct visibility of walkers and children and the new proposed route is much safer, with walkers being in full view. The objector states it is twice as long I don't think this is true. We cannot see why it should remain, it's barely used the new route is safer and much more scenic and would definitely be used and enjoyed more.

Thanks

