

# Report

## Cabinet

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### Part 1

Date: 17 July 2024

**Subject** Newport City Council (Footpath 406/58/1, Rogerstone Newport)  
**Prohibition of Pedestrians Order 2024**

**Purpose** To consider outcome of the public consultation of the Prohibition of Pedestrians Order 2024 in relation to Public Right of Way 406/58/1 and to make a decision to either approve or reject the implementation of the order.

**Author** Public Rights of Way Officer - Environment and Public Protection

**Ward** Rogerstone

**Summary** The footpath 406/58/1 is recorded on the definitive map as a public right of way. This footpath was brought into being by means of an order, linked to the development of the Alcan site in 1959. The line of the footpath was close to new residential areas and was well used by the public as a means to access the Welfare ground and wider countryside. In December 2021 a temporary closure of Footpath no 58 Rogerstone was put into place as a cautionary measure due to significant erosion of the riverbank which supported the path. Following this order implementation the council sought to identify the responsible landowner and to explore the potential of grant funding for reinstating the support of the footpath. All of these enquiries were unsuccessful and on 11<sup>th</sup> January 2023 a short length of the footpath alongside the River Ebbw, between the footbridge and Rogerstone Welfare Ground collapsed into the river.

As the loss of the footpath occurred as a result of a natural event, there is no duty on the Council as highway authority to rebuild the riverbank in order to reinstate it. A section of the public footpath has become unavailable and the areas in the vicinity of the collapsed path are dangerous. It is therefore necessary to take action in order to mitigate the risks to users of the path.

On 22<sup>nd</sup> December 2023 consultation began on the implementation of a Permanent Traffic Regulation Order (Prohibition of Pedestrians) Order to close the path. This order is made under the Road Traffic Regulation Act 1984 and is on grounds of safety. The consultation period ran for an extended period from 22.12.23 to 19.01.24.

The statutory advertisement of the order returned 154 objections. As part of the Statutory Procedure Cabinet is required to consider the objections received and decide to confirm, or not confirm, the order and in doing so have regard to the representations received. None of the objections received contradicted the Council's position that the route was unsafe to use but wider considerations have been taken when making a recommendation.

**Proposal** To decline to confirm the order but retain the sections of the path that are unaffected but at suitable points, advise the public to use the alternative route as the public right of

way has been lost and is unavailable. Signpost the portion of path that is affected to warn of the danger. Amend the definitive map.

**Action by** Head of Service of Infrastructure  
Head of Service of Environment and Public Protection

**Timetable** Immediate

Please list here those officers and members you have consulted on this report.

Head of Infrastructure  
Infrastructure Service Manager  
Road Safety Officer  
Head of Environment and Public Protection  
Environment & Leisure Service Manager  
Countryside Manager  
Public Rights of Way Officer  
Senior Solicitor – Planning & Land  
Senior Legal Assistant – Conveyancing

**Signed**

## Background

The footpath 406/58/1 is recorded on the definitive map as a public right of way. This footpath was established as a public footpath route following the development and enclosure of the Alcan aluminium manufacturing site. The creation was formed through the stopping up order of footpath 406/58/1 in 1959. Following the development of the former Alcan site to residential use, the line of the footpath is located along the boundary of the residential Jubilee Park development and was well used by the public as a means to access the Welfare ground and wider countryside. The path crosses several land ownerships: the section adjacent to Jubilee Park is unregistered; the land immediately to the west of the unregistered area of land is owned by Rogerstone Community Council; and land to the north by Welsh Water.

In December 2021, following a major storm event the increased velocity of River Ebbw caused the collapse of a significant portion of riverbank and vegetation supporting the path, as a result of which that section of the path effectively disappeared. . A temporary closure of Footpath 406/58/1 Rogerstone was put into place as a cautionary measure due to significant loss of the bank. A diversion route was advised running along the adopted highway. The major disadvantage of this route as an alternative to the definitive line is the lengthy distance and circuitous route between the footbridge and Rogerstone Welfare Ground, as well as the predominantly urban nature of the route and the need to use the footway alongside Tregwilym Road.

Following the temporary closure NCC made attempts to locate the owner of the land and establish their liability for reinstatement. While these matters were being investigated and for the duration of 2022, whilst the temporary closure was in effect, the Countryside team ensured barriers and signage remained in place to advise the public of the hazard. These were frequently ignored, breached and removed. During an inspection of the barriers in January 2023 a short length alongside the River Ebbw, between the footbridge, footpath 406/58/1 and Rogerstone Welfare Ground, collapsed into the river, meaning that the path was essentially lost in that section. There is no longer any path physically present and no option to deviate the route inland due to the barrier of the flood wall.

During all this time, the Council made efforts to locate an owner and determine next steps for a potential reinstatement, which to date have proven unsuccessful. Land Registry searches showed the land is not registered to any known owner, information was also sought from the owner/developers of the former Alcan site, Walters UK and the current land managers, the Jubilee Park Management Company, all of whom confirmed that they did not have responsibility for the land. The Council also approached Natural Resources Wales who confirmed that they have no responsibility for the reinstatement of the land as the issue was not affecting the main river flows. NCC also approached Welsh Government for funding to procure a feasibility study and reinstatement works, but again were unsuccessful as the loss of the land was not, in the view of the WG, directly affecting property.

Newport City Council does not have a duty to repair either the eroded riverbank or the path, as it is not the owner of the land and the loss of the riverbank was due to a natural phenomenon. It was identified that no internal budget was available at the time and attempts to secure external funding to carry out a feasibility study or any repair works were unsuccessful. However NCC is actively continuing with its efforts to secure external funding for a feasibility study and explore reinstatement or alternative options.

The barriers and warning signs have remained in place as members of the public continue to attempt to use the narrow section of the route that has been left after the collapse. It is therefore essential that steps are taken to minimise risk of accidents and remove access rights on the land while it remains in this condition.

Research carried out has found that Local Authorities in other areas (such as Devon) have employed a Traffic Regulation Order (TRO) in similar circumstances where there has been ground slippage, loss of cliff etc. to preserve public safety. Under the Road Traffic Regulation Act 1984 section 1, a highway authority has the power to make a traffic regulation order for "avoiding danger to persons or other traffic using the road". A footpath falls within the definition of "road" for the purposes of the Act. This order has been proposed to promote safety and safety must be the primary consideration when the decision to apply or confirm an order is made.

On 22<sup>nd</sup> December 2023 consultation began on the implementation of a Permanent Traffic Regulation Order (Prohibition of Pedestrians) Order to close the path. This order is made under the Road Traffic Regulation Act 1984 and most significantly is made on grounds of safety. The consultation period ran for an extended period from 22.12.23 to 19.01.24, longer than the usual 21 days due to the Christmas holiday period. As a result of the consultation for the traffic order, 154 objections have been received. A petition containing 1500 signatures requesting that the riverbank and footpath is reinstated has also been received.

The following sections will look at the nature and validity of the objections to the order.

## WHAT DO THE OBJECTIONS SAY

The proposals have been statutorily advertised and consulted upon and a total of one hundred and fifty four objections were received. A summary of matters raised in objections is detailed below. The objections are broadly categorised under the seven points stated below.

Whilst NCC recognise the loss of amenity issues posed by the diversion, for the objections to be considered valid, they need to address and challenge the rationale for making the order, which is proposed on grounds of safety. This means that if no evidence is provided against this, they cannot be considered on other grounds.

### **The broad issues raised by the objectors are:**

- 1. The diversion that is in place is unsuitable due to width of paths that have cars partly parked on them, traffic volume and a blind point at Tregwilym Road. It is felt that the route is unsuitable for people of all abilities. Jubilee Primary School have also advised that they are unable to safely use the route to take their pupils to Rogerstone Welfare Ground, preventing them from enjoying the open space.*

Officer Comment - The path that has been lost was not compliant with the Equality Act nor was it a Safe Route to School path. The diversion is on adopted highway which means it is already fully compliant for use by the public, and there is no impact on destination as it is still achievable using another route. The path is not there due to a natural occurrence. .

The alternative route is on adopted highway as opposed to the previous footpath that was often impassable during inclement weather and had not surfacing to guide people. The alternative route is well lit and on adopted highway, therefore making it a safer route during the darker evenings. Therefore this cannot be deemed as a valid objection.

- 2. Residents of Jubilee feel that they were led to believe that when they purchased their properties there would be a direct route to Rogerstone Welfare Ground. They also feel that the loss of the path would reduce their properties value.*

Officer Comment - No information has been provided or found to ascertain where or who provided this information to potential purchasers. There is no impact on destination as this is still achievable using another route. The objections do not present evidence to challenge the rationale for making the order on grounds of safety, nor the order making process. Therefore, this cannot be deemed as a valid objection.

- 3. Objections state that planning conditions were breached by allowing the wall to be built inside of the tree root protection zone.*

Officer Comment – The objections do not present evidence to challenge the rationale for making the order on grounds of safety, nor the order making process. Therefore this cannot be deemed as a valid objection.

- 4. Loss of revenue to the Café at the Welfare Ground and also loss of revenue for the Cricket Club that runs from the ground which also includes loss of participants.*

Officer Comment -The objections do not present evidence to challenge the rationale for making the order on grounds of safety, nor the order making process. The alternative route will provide an environment where people will be able to access local facilities. This will ensure the journey to destinations within the area is for everyone helping to support people's physical and mental well-being. Therefore this cannot be deemed as a valid objection.

**5. Possible damage to the flood defence wall as a result of the riverbank not being repaired.**

Officer Comment - The Council is not the owner of the land, there is no duty on NCC to provide support flood defence. The flood defence wall is owned by the maintenance company for Jubilee Park Management Company. The objections do not present evidence to challenge the rationale for making the order on grounds of safety, nor the order making process. Therefore this cannot be deemed as a valid objection.

**6. The path promoted health and wellbeing, it was a green space and the diversion being on adopted highway does not provide this health benefit.**

Officer Comment - There is no impact on destination of wider footpath network as this is still achievable using another route. The Fairness and Equalities Impact Assessment identifies that the path provides a direct link to facilities within the Rogerstone/Jubilee area. Therefore, this cannot be deemed a valid objection.

**7. Conduct of NCC has been questioned alleging refusal to work with Rogerstone Community Council or Novellis to reinstate the path.**

Officer Comment - The land has been lost due to a natural occurrence; therefore the Council have no responsibility to undertake any works. However, the Council have been considering alternatives for this and requested external funding for reinstatement, and efforts continue at present. NCC is willing to work with third parties going forward, but as a first step more information regarding potential options is required to understand the nature and extent of the works needed via feasibility study, with costs linked to any work remaining the main barrier to any future scheme.

The objections do not challenge the rationale for making the order on grounds of safety, nor the order making process. Therefore this cannot be deemed as a valid objection.

**In summary**

None of the objections raised has addressed the issue of danger to users. The Fairness and Equalities Impact Assessment identifies that we need to balance gains in availability of routes, with the need to safeguard the public in the long term. The existing route is lost and what remains is a significant health and safety risk to the public. Therefore, there is a need to balance the need to ensure public safety at the same time as considering how best to ensure that those sections of the path which remain continue to be available for use. Confirming the TRO would render a large section of the path unusable, including sections which are still in situ.

A permanent TRO once in place would also require physical measures to be installed to stop people from using the route. Although we understand that this has been used elsewhere, we have seen that this is almost impossible to manage and users are continually breaching the barrier. In addition we would have to dedicate time and resource on a regular basis to make sure preventative measures were in place.

Additionally, a TRO would permanently remove highway rights, meaning that any potential future works for reinstatement would require a reversal of the order. This would certainly be a barrier to any potential development, which it is seen as negative, considering feedback from residents on the matter.

According to highway and case law, in this circumstance, where a route is "lost", the local authority does not have to provide a diversion. An alternative route is in place which runs along the adopted highway and whilst it may not be ideal, this route is already in place and can be easily accessed. The fact that the path is not there means that there is no need to formally extinguish the highway rights.

### Financial Summary (Capital and Revenue)

- The costs and financial implications:  
There are no financial implications linked to this proposal

	Year 1 (Current) £	Year 2 £		Year 3 £	Ongoing £	Notes including budgets heads affected
Costs (Income)						
Net Costs (Savings)						
Net Impact on Budget						

### Risks

Risk Title / Description	Risk Impact score of Risk if it occurs* (H/M/L)	Risk Probability of risk occurring (H/M/L)	Risk Mitigation Action(s) What is the Council doing or what has it done to avoid the risk or reduce its effect?	Risk Owner Officer(s) responsible for dealing with the risk?
People trying to follow the route through the collapsed section of the path	H	M	Signage in place Physical barriers to prevent access Alternative route available and people signposted to the alternative route	Environment and Leisure Service Manager

\* Taking account of proposed mitigation measures

### Links to Council Policies and Priorities

The proposal is in line with the Council's priorities or plans for the following reasons:

- It supports the Council's vision of creating a safe environment for the residents and visitors of the area.
- It aligns with the Council's Corporate Plan to protect and enhance the natural environment.

### Options Available and considered.

1. Confirm the permanent traffic regulation order in the interest of public safety, removing highway rights from the path. Amend the definitive map. Fence off the route and maintain the barriers. This will be a continual and ongoing cost to the authority and will most likely not prevent risks as the public will, in all likelihood, keep using the remaining land until this too is eroded by the river. It would also present a barrier to any future potential reinstatement of the path.

2. Decline to confirm the order. Retain the section of path that is unaffected but at suitable points, advise the public to use the alternative route as the public right of way has been lost and is unavailable. Signpost the portion of path that is affected to warn of the danger. Amend the definitive map.

## **Preferred Option and Why**

### **Option 2 - Decline to confirm the order but retain the unaffected section of the path and signpost alternative routes at suitable points.**

This option involves retaining the path that is unaffected and with this the highway rights to the whole length. The Public Right of Way remains but is unavailable in part. This means that there is potential for the reinstatement of the affected riverbank areas and the lost highway, should at some point in the future the Council or another party in the position to do so. As mentioned, NCC will continue to investigate funding options for reinstatement going forward..

At suitable points, we would advise the public to use the alternative route, as the public right of way has been lost and a public right of way is unavailable. People using the remaining riverbank land are therefore not using a public highway, will be advised that the land is unregistered, the owner is not known, the highway is lost and that it is unsafe to walk that route.

### **Comments of Chief Financial Officer**

There are no financial impacts from the decision in this paper.

### **Comments of Monitoring Officer**

The relevant legal implications are set out in the report. As is identified, the Council has no legal duty to reinstate the sections of the path which have collapsed, although it is noted that efforts to source funding for such work continue to be explored. The preferred option indicated above represents a lawful solution which maximises the utility of the remaining sections of the footpath and would enable the footpath to be reinstated at a later date should a suitable funding source be identified.

### **Comments of Head of People, Policy and Transformation**

This report seeks Cabinet to make a decision on the identified Footpath and permanent traffic regulation order following a public consultation. The proposal is in line with the Council's Corporate Plan 2022-27 vision of 'an ambitious, fairer, greener Newport for everyone', and supports its four Well-being Objectives including Environment and Infrastructure that seeks to protect and enhance our environment.

The principles of the Well-being of Future Generations (Wales) Act 2015 and its five ways of working are supported, preventing issues over the long-term. Views of local stakeholders and elected members were also taken into account through a statutory public consultation.

A Fairness and Equalities Impact Assessment was completed to review the impact on this decision on the public's safety over the long-term. There are no staffing or HR related issues arising directly from this report.

### **Comments of Cabinet Member**

Briefings have been held with the Cabinet Members for Infrastructure and Climate Change and Biodiversity

## **Local issues**

## Scrutiny Committees

N/A

### Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

A fairness and equality impact assessment was undertaken following the consultation on the implementation of the TRO. The FEIA in full is available in the Council's [website](#) for consultation.

The assessment gives consideration to risks to users' safety and explores the impact of usage of the identified alternative route, given that the current route is no longer usable as a section of the path is lost. Benefits to users with protected characteristics, especially children, older people and people with disabilities, have been identified, as the alternative route is safe, well-lit, and suitable for footpath use. The route is on an adopted highway and still provides access to local facilities, and prevents previous identified issues with accessibility during inclement weather. No negative impacts have been identified.

The assessment also considered the sustainable development principle and five ways of working:

#### Long Term

Consideration was taken to balance the short-term needs with the long-term need to ensure the safety of the public on an adopted highway maintained by Newport City Council. This alternate route is physically already in place and is in a suitable condition as a footpath.

#### Prevention

The proposal will mean that the public are asked to utilise the alternate route that is already physically in place and is in a suitable condition as a footpath. This is an adopted highway and maintained by the council so we are able to act promptly, when possible, to address any problems and prevent them from getting worse.

In addition, we will advise the public that the route under the order is no longer available, with advisory safety signage highlighting the dangers, fulfilling our duty to guide and inform the public of an unsafe route.

#### Integration

This proposal supports:

The National Well-being Goals:

- A Prosperous Wales.
- A Resilient Wales.
- A Globally Responsible Wales.
- A Healthier Wales.
- A Wales of More Cohesive Communities.
- A Wales of Vibrant Culture and Thriving Welsh Language.

(The alternate route provides a direct link to facilities for the public with the Rogerstone/Jubilee area, helping to support people's physical and mental well-being. All communication has also been provided in the Welsh language).

Newport City Council's Corporate Plan 2022-27 and Well-being Objectives:

- Environment and Infrastructure – A city that seeks to protect and enhance our environment whilst reducing our carbon footprint and preparing for a sustainable and digital future.

#### Collaboration



Worked in close collaboration with stakeholders and elected members in the development of this proposal to manage the network appropriately ensuring a safe environment for the public.

### **Involvement**

The views of local stakeholders and elected members were gathered alongside feedback from the public through a statutorily advertised consultation. These views will continue to be listened to ensuring the safety of the public over the long-term.

### **Crime and Disorder Act 1998**

N/A

### **Consultation**

Full consultation with the public on the implementation of a Permanent Traffic Regulation Order (Prohibition of Pedestrians) Order to close the path on grounds of safety was carried out between 22.12.23 to 19.01.24. Analysis of the objections received and officer comments have been included as part of this report, it is proposed that information on the outcome of the consultation is also published online via the Council's website.

### **Background Papers**

Set out a list of any relevant background papers and whether they are available to the public.

**Dated: 10 July 2024**