

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by the Executive Director of Infrastructure and Regeneration**

**Planning Committee: 28 May 2014**

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**ROW14/01                      Diversion of public path at/near Wester Cochno Farm,  
Cochno Road, Hardgate by Mr Richard Spratt**

#### **1. REASON FOR REPORT**

- 1.1** This report relates to an application to divert part of a public path, which is a type of application that is not covered by the Council's approved Scheme of Delegation. The application therefore requires to be considered by the Planning Committee.

#### **2. RECOMMENDATION**

- 2.1** That the Committee (a) authorise the Planning and Building Standards Manager to issue a draft public path diversion order and undertake the associated statutory notification, and (b), in the event of there being no objections to the draft order authorise the Planning and Building Standards Manager to confirm the public path diversion order upon expiry of the statutory notification period. In the event of unresolved objections being received, the application would be reported back to the Committee for further consideration at that time.

#### **3. DEVELOPMENT DETAILS**

- 3.1** The application relates to a section of rural track which forms a continuation of the western arm of Cochno Road. The track provides access to Wester Cochno and Cochnohill Farms, and continues into the Kilpatrick Hills to Greenside Reservoir. The track is understood to be privately owned by a local farmer and the Forestry Commission, but its use as a public path is well established. The track is recorded as a claimed right of way by the Scottish Rights of Way and Access Society (SCOTWAYS), although this status has never been vindicated by any legal proceedings.
- 3.2** Whilst the track has been used by local people and visitors as a walking and cycling route into the Kilpatrick Hills for many years, it is also used to access locations around Greenside Reservoir for the consumption of alcohol. This has resulted in anti-social behaviour being experienced by the residents of the properties alongside the track, including vandalism and late night noise. The Police have been called to the location on numerous occasions, and have met with residents to try to address the anti-social behaviour problems in the hills around Greenside Reservoir. However, the location is difficult to police due to its remoteness and the many small areas of woodland and hidden areas.

**3.3** As a result, the affected residents have sought to move the a section of the route to Greenside Reservoir away from their homes, in order to reduce the opportunity for and likelihood of anti-social behaviour by persons travelling to or from the hills. Forestry Commission Scotland, which owns a substantial area of land north of Cochno Road, has recently planted woodland and installed a new path network in the vicinity of the site in order to encourage responsible public access. One of these new forestry paths forms a “bypass” which avoids the houses at West Cochno and Cochnohill, and whilst slightly longer than the original route (75m), it is of a higher standard of construction and offers improved views across the Clyde and Glasgow. On 5 June 2013 the Planning Committee agreed to amend the Council’s Core Path 98 to follow this new route.

**3.4** The effect of amending the core path route is that signs and maps now show the Forestry Commission track as the core path, and no longer show the original route past Wester Cochno and Cochnohill. This encourages many of the walkers/cyclists to use the new path, but the persons who are responsible for the anti-social behaviour problems are less likely to abide by signs or maps and the problems have therefore continued. The residents would therefore like to install gates blocking off the original route, in order to make access by such people more difficult. However, the original route past their homes remains a right of way, whilst the new forestry track has not yet had time to become established as a right of way itself. This application therefore seeks a public path diversion order under Section 35 of the Countryside (Scotland) Act 1967, to change the route of the right of way to use the new forestry track. This would allow the residents to install gates closing off the original route.

## **4. CONSULTATIONS**

**4.1** The statutory procedure for applications under this legislation is that if the Council is minded to support the diversion of the public path a draft public path diversion order is prepared, and statutory notification is carried out after the draft order is available for inspection. Therefore, there has not yet been any consultation or notification carried out in respect of the current application. However, at the time of the diversion of the Core path, a full consultation was carried out by the Council’s Access Officer, involving the following stakeholders:

- Bearsden and Milngavie Ramblers;
- British Horse Society Scotland;
- Clydebelt;
- Faifley Community Council;
- Forestry Commission Scotland;
- Glasgow Mountain Bike Club;
- Helensburgh and West Dunbartonshire Ramblers;
- Police Scotland;
- Ramblers Scotland;
- Scottish Cycling;

- Scottish Rights of Way and Access Society (SCOTWAYS);
- West Dunbartonshire Access Forum

All of these organisations were in favour of the diversion of the Core path at that time, although SCOTWAYS did comment that the existing track is a claimed right of way which should be preserved.

- 4.2** If the Committee is minded to authorise a draft public path diversion order, it will be necessary to carry out further notification, including notification of the Forestry Commission, other owners/neighbours, a site notice and a press notice. It would also be intended to re-notify the stakeholder groups listed above. If no objections were received within the statutory 28-day period, the draft order could then be confirmed. On the other hand, if objections were received, the draft order would require to be referred to the Scottish Ministers for confirmation. In such circumstances the nature of the objections would be reported to a future Committee meeting in order to allow these issues to be properly considered. The Committee would then be able to decide whether or not to seek confirmation of the order from the Scottish Ministers.

## **5. REPRESENTATIONS**

- 5.1** None at this time, as no notification has taken place apart from publication of the application on the weekly list of applications received. See explanation of notification procedures under Section 4 above.

## **6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN**

### West Dunbartonshire Local Plan 2010

- 6.1** The majority of both path routes are within the Green Belt, although the north-western end lies within the Regional Scenic Area. Policy GB1 contains a presumption against development within the Green Belt, other than specified types of countryside uses and other limited circumstances. One of the uses so specified is outdoor recreation of a type which is appropriate for the countryside. Policy RS1 seeks to preserve the landscape of the Kilpatrick Hills and presumes against any development which might impact adversely upon the appearance or nature conservation value of the area. The proposal would involve no new physical development, other than the probable placement of farm gates over the existing route. There would be no impact upon the appearance or character of the Green Belt or the Regional Scenic Area, and the proposal is consistent with Policies GB1 and RS1.
- 6.2** The original route of the path is designated in the Local Plan as a Core Path, whilst the western part of both routes is within a Local Nature Conservation Site. Policy R5 indicates that the Council will protect core paths and rights of way with a special emphasis on access to the countryside. Although the proposal would result in the removal of a section of the core path/right of way which is delineated on the local plan map, it would be replaced by an appropriate alternative route, and the Council has already agreed to divert the core path to this new route. The route shown in the local plan has therefore been superseded. Policy E3A seeks to maintain and enhance the

environmental resources of the area by protecting local nature conservation sites (LNCS) from harmful development. The proposal would not involve any new development within the LNCS. It is therefore considered that the proposal would be consistent with Policies R5 and E3A.

## **7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

### West Dunbartonshire Local Development Plan (Proposed Plan)

- 7.1** The routes of the paths are partly within the Green Belt and partly within the Outer Countryside. The north-western end of the paths is within a Local Landscape Area and a Local Nature Conservation Site. The corresponding policies DS2, DS3, GN3 and GN4 are broadly equivalent to the current local plan policies, and the proposal is considered to be consistent with all of these new policies.

- 7.2** The proposed new route of the public path is already designated as the Core Path route in the LDP, in accordance with the decision made by the Committee in June 2013. The proposal to divert the right of way is therefore consistent with this designation and the corresponding Policy GN8.

### Principle of Diversion of Public Path

- 7.3** Section 35 of the Countryside (Scotland) Act 1967 indicates that:

*“Where an owner, tenant or occupier of land crossed by a public path satisfies the...planning authority that for securing the efficient use of the land...or providing a shorter or more convenient path across his land, it is expedient that the line of the path...should be diverted...the authority may by order...:*

- (a) create...any such new public path as appears to the authority requisite for effecting the diversion, and*
- (b) extinguish...the right of way over so much of the path as appears to the authority requisite as aforesaid”*

- 7.4** In this case, the motivation behind the proposed diversion of the path is to allow closure of a stretch of existing path where residents have experienced significant problems arising from anti-social behaviour. Whilst these problems arise from a small minority of path users, they are understood to be persistent and significant, and it is noted that the previous diversion of the core path was supported by the Police. It is therefore considered reasonable to allow diversion of the path provided that the new route is of an equivalent or superior quality.

- 7.5** The path forms part of an important route which provides public access into the countryside to the north of Clydebank, and which is well used for recreational walking and cycling. Whilst the new path is slightly longer than the original route, the difference (75m) is not significant for a route of this type, and the new path is considered to be superior to the original route in terms of the standard of its construction, its links to the wider path network, and its views across the surrounding area. The new path is therefore of a suitable

standard to replace the existing path, a fact which has previously been recognised by the changing of the core path route.

- 7.6** At present the Forestry Commission track has no status as a right of way, because it is of recent construction and has not been used by the public for long enough to become a right of way. A route does not normally become a right of way until the public has been able to pass unhindered for at least 20 years. However, by diverting the public path onto this new route it would become a vindicated right of way, ensuring that this route remains available to the public in perpetuity.

## **8. CONCLUSION**

- 8.1** The diversion of the public path to coincide with the core path would help to alleviate problems experienced by local residents, whilst providing an improved route for walkers, cyclists and horse riders. It would also secure right of way status for the new route, which has already been designated as a core path but is not yet a right of way. It is therefore recommended that the Committee authorise the Planning and Building Standards Manager to prepare a draft public path diversion order, and to confirm that order in the event of there being no objections to it.

## **9. CONDITIONS**

- 9.1** Not applicable.

**Richard Cairns**

**Executive Director of Infrastructure and Regeneration**

**Date: 13<sup>th</sup> May 2014**

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**Appendix:** 1. Report to 5 June 2013 Planning Committee  
concerning diversion of core path.

**Background Papers:** 1. Application documents and plans  
2. West Dunbartonshire Local Plan 2010  
3. West Dunbartonshire LDP - Proposed Plan

**Wards affected:** Ward 4 (Kilpatrick)