

**PLANNING COMMITTEE:**

**17 FEBRUARY 2021**

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**REPORT OF: DIRECTOR - PLANNING, TRANSPORT &  
ENVIRONMENT**

**SECTION 257 TOWN AND COUNTRY PLANNING ACT 1990 (Diversion of  
Footpath at Cae'r Castell, Cardiff)**

**1. Reason for this Report**

- 1.1 Planning permission has been granted for Application No. 18/02519/MJR for a housing development on the old Eastern High school site. This requires a realignment of the footpath from Cae'r Castell Place to Newport Road.
- 1.2 The realignment of the footpath requires consent by Planning Committee for Legal Services to process the Section 257 Diversion Legal Order.

**2. Background**

- 2.1 Currently the footpath is a linear route with street lighting linking Cae'r Castell to Newport Road. The footpath is not overlooked by properties after Cae'r Castell but is well used by the community and provides a good link to the adjacent school, St Illtyd's Catholic High School.
- 2.2 The new housing development will realign the footpath from Cae'r Castell around a pond and green space. A pedestrian crossing will be provided from the green space to connect to the new footway. The footway will have street lighting and be overlooked by the properties.
- 2.3 The developer plans to upgrade the footpath to a shared use path once this Legal Order Diversion is confirmed. This will require an application to upgrade the footpath adjacent to the carriageway under the Highways Act and a Cycle Track Act conversion where the path is away from the carriageway through the green space. This will be applied for once the diversion order is confirmed and the upgrading of the footpath to a cycle

track permits shared use. Signage will be installed along the route to indicate the path is for both users.

### **3. Issues**

The S257 Diversion Legal Order must be confirmed prior to the development being substantially complete. Legal Orders are subject to public consultation and members of the public have a right to object to the proposed diversion. If this happens, the case is submitted to the Planning Inspectorate to determine. If the diversion is refused, the developer will need to amend their planning application to retain the existing footpath alignment.

### **4. Local Member consultation**

Ward members, utilities and user groups are consulted when the application is received. No objections have been received. Consultees Include:

- a) Ward Members: Rumney
- b) Utilities:
  - Virgin
  - BT Openreach
  - Welsh Water
  - Wales & West Utilities
  - Western Power
- c) Users groups:
  - Ramblers
  - Auto Cycle Union
  - British Horse Society
  - Byways and Bridleways Trust
  - Open Spaces Society
  - Cycling UK
  - Welsh Trail Riders Association

### **5. Reason for Recommendations**

Public Rights of Way Team and consultees are satisfied with the new proposed path alignment as the path will have improved access and create a safer route for the public to use.

## **6. Legal Implications**

### **Section 257 Town and Country Planning Act 1990**

6.1 Section 257 of the TCPA 1990 permits the making of an order for the stopping up or diversion of a footpath or bridleway which is necessary to enable development to be carried out. The grant of planning permission for the development of land over which there is a public right of way does not in itself constitute authority for interference with the right of way or for its closure or diversion. It cannot be assumed that because planning permission is granted, a stopping up or diversion order will automatically be made.

6.2 An application for a stopping up or diversion order under section 257 of the TCPA 1990 cannot be made or confirmed once the relevant development is “substantially complete”. A stopping up order does not affect any private rights of way that exist over the land.

6.3 The procedure for making an order under S257 is governed by Schedule 14 to the TCPA 1990 – Procedure for footpaths and bridleways orders. The Legal Order process is subject to public consultation and may be objected to. If no representations or objections are made, the Council may confirm the order. In cases where objections are made and not withdrawn, the legal order will be submitted to the Planning Inspectorate to determine.

### **Other Considerations**

6.4 The following legal considerations have been considered under approval 18/02519/MJR. The footpath will now become a safer route for the community to use with the proposal to upgrade the path to a shared cycle way. The footpath will cross a green open space providing an improved amenity space whereas currently it is a path through an alleyway.

- **Equality Act** - In considering this matter the decision maker must have regard to the Council’s duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard for the need to:
  - eliminate unlawful discrimination
  - advance equality of opportunity
  - foster good relations on the basis of protected characteristics
- **Section 17 of the Crime and Disorder Act 1998** - This imposes a duty on the Council, when exercising its functions, to take account of community safety dimension, with a view to reduce local crime and disorder in its area.

- The Active Travel (Wales) Act 2013 - Before exercising its functions under the 1984 Act, the Council must have regard to its duties under The Active Travel (Wales) Act 2013, the Welsh Language (Wales) Measure 2011.
- Well Being of Future Generations (Wales) Act 2015 - The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future.

## **7. Financial Implications**

There are no financial implications as the application and legal order costs are paid for by the applicant.

## **8. RECOMMENDATIONS**

It is recommended that the Planning Committee approves this application to modify the Definitive Map and Statement and that the Director of Legal, Governance and Monitoring Officer be instructed to process the appropriate legal orders.

**ANDREW GREGORY**  
**DIRECTOR, TRANSPORT, PLANNING & ENVIRONMENT**  
**17 February 2021**

*The following appendices are attached:*

Appendix 1: Map of Proposed Diversion

*The following background papers have been taken into account*

- S257 Application and Map
- Chief Officer Sign off
- Officer Decision Report
- Equalities Impact Assessment