

PLANNING COMMITTEE:

19 May 2021

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

**SECTION 257 TOWN AND COUNTRY PLANNING ACT 1990, PUBLIC
FOOTPATH RADYR NO.37**

Reason for the Report

1. As part of Planning Application 14/02733/MJR for the Plasdwr Residential Development, the Public Footpath Radyr No.37 is proposed to be realigned within a green corridor. The northern section the footpath, a new pedestrian crossing on Llantrisant Road will provide improved access to link with Public Footpath Radyr No.38 heading towards the Radyr Golf Club.
2. A confirmed legal order will allow the footpath to be realigned within the new development and the Definitive Map and Statement to be modified to reflect this change.

Background

3. The Public Footpath currently crosses grazing fields for livestock from Llantrisant Road heading south towards St Fagans.
4. There is currently no controlled crossing points on Llantrisant Road to link to Radyr No. 38 to the North. The upgrading and widening of Llantrisant Road for multiple benefits will include a controlled pedestrian crossing. Due to the location of the controlled crossing, bus stops and the proposed school location, the footpath needs to be diverted.
5. The Public Footpath will be retained within a green corridor and will provide good links to the neighbouring communities and school.

Issues

6. The diversions of the footpaths must be confirmed prior to building works to be completed. If there are objections to the order, an amended planning application would be required to retain the existing path alignment.

Local Member Consultation

7. No objections received. Radyr Morganstown Community Council, St Fagans Community Council and Ward Members Cllr McKerlich and Cllr Graham Thomas have been consulted. Adjacent landowners, utilities and user groups have also been consulted.

Legal Implications

8. The power to make a stopping up or diversion order under s.257 of the Town & Country Planning Act 1990 (TCPA 1990) is a discretionary power. [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 either:

- In accordance with a valid planning permission or
- By a government department.

A conflict between the planning permission and a footpath or bridleway is essential for the grant of a stopping up or diversion order under section 257. The footpath or bridleway does not need to be obstructed by the intended physical development, a change of use of the land can be sufficient, provided the change of use requires the footpath or bridleway to be closed or diverted.

9. The order may provide for the:
 - Creation of an alternative highway or improvement of an existing highway for use as a replacement for the one authorised to be stopped up (section 257(2)(a), TCPA 1990).
 - Protection of any rights statutory undertakers have in respect of their apparatus that immediately before the date of the order is under, in, on, over, along or across the footpath or bridleway (section 257(2)(c), TCPA 1990).
 - Payment of costs for carrying out the works (section 257(2)(d), TCPA 1990).
10. 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.

11. 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. Conditions can be imposed on a stopping up or diversion order tying it to the relevant planning permission in terms of timescale and the need to serve notice on the local highway authority before implementing the order.
12. The procedure for making an order under [section 257](#) of the TCPA 1990 is governed by [Schedule 14](#) to the TCPA 1990 (Procedure for footpaths and bridleways orders) and involves the Council giving various notices in the prescribed form stating the general effect of the order. If no representations or objections are duly made, or if any so made are withdrawn, the Council may confirm the order (but without any modification). Where any representation or objection which has been duly made is not withdrawn the matter is referred to the First Minister of the National Assembly for Wales. Before confirming the order The First Minister will either cause a local inquiry to be held; or give any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose. After considering the report of the person appointed to hold the inquiry or hearing, the First Minister may confirm the order, with or without modifications (Section 257(4), TCPA 1990.) An order made under section 257 of the TCPA 1990 is not effective until it is confirmed ([section 259, TCPA 1990](#)).
13. No compensation is payable in respect of those adversely affected by the order.
14. Other Considerations
 - 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 wellbeing 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.

Financial Implications

15. Redrow Development has paid the application fee which includes Legal and Highways resources.

Recommendations

16. The recommendation is for Planning Committee to approve the application in order for Legal Services to process the Legal Order.

ANDREW GREGORY
DIRECTOR, TRANSPORT, PLANNING & ENVIRONMENT

15 April 2021

Appendices:

Appendix A: Map of proposal Radyr 37

Background Papers:

Diversion Application

Officer Decision Approval