

PLANNING COMMITTEE:

19 May 2021

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

**SECTION 257 TOWN AND COUNTRY PLANNING ACT 1990, PUBLIC
FOOTPATH RADYR NO.38**

Reason for the Report

1. The developer, Redrow, has received outline planning consent for Application Number 14/02733/MJR for the PlasDwr Residential Development. The Public Footpath Radyr No.38 is proposed to be realigned through green spaces in the new development. Radyr Golf Club and Redrow Developers are jointly applying for the realignment of the footpath crossing both of their land parcels to provide a safer path for walkers.
2. A confirmed legal order will allow the footpath to be diverted around the boundary of Radyr Golf Club and within the new development. The Definitive Map and Statement to be modified to reflect this change.

Background

3. The Public Footpath currently crosses the Radyr Golf Course putting green and exits by means of a stile. The footpath continues across a grazing field to terminate on Llantrisant Road. There is currently no controlled crossing points on Llantrisant Road to link to Radyr No. 37 to the south.

4. The proposed diversion from Fford Las will follow the permissive path around Radyr Golf Club Hole No.5 to the stile. The stile will be replaced with a kissing gate to improve access for walkers. The footpath will continue along a grass verge and alongside the allotments towards Llantrisant Road. The footpath will then continue to the North between the hedgerow adjacent to Llantrisant Road and the allotment boundary fence with an approximate width of 3m unsurfaced path. There will then be a gap in the hedge to connect to the pedestrian crossing at Llantrisant Road to continue along Radyr No.37 footpath to the south.

Issues

5. This Public Footpath Radyr No.38 diversion application is being processed at the same time as the Public Footpath Radyr No.37. Both footpaths require diversions as they are both affected by the same development.
6. This Diversion Application will inform the Reserved Matters (RM) application. If the proposed diversion of the footpath is not achievable due to unknown factors during the RM consultation, this Section 257 diversion application will require amendment.

Local Member Consultation

7. Consultation included:

- Radyr Morganstown Community Council
- St Fagans Community Council
- Ward Members: Cllr McKerlich and Cllr Graham Thomas
- Adjacent landowners
- Utilities and
- User Groups

8. Cllr McKerlich requested the inclusion of Radyr Golf Club as part of the diversion application. This has now been agreed between Redrow and the Golf Club Management.
9. As part of the initial consultation, Radyr & Morganstown Community Council (RMCC) objected to the proposed diversion (see Appendix 1). Their objection was withdrawn.

Radyr Golf Club path alignment issue

10. RMCC and Cllr McKerlich requested the footpath section crossing Radyr Golf Club should be included as part of the diversion application. The footpath crosses Hole no.5 putting green and can cause conflict between path users and club members. Radyr Golf Club provide an alternative permissive path around the outer perimeter of the green for walkers to use. As this is permissive, walkers have a legal right to use the path crossing the green if they wish. Signage has been improved on site to inform both walkers and members of the paths available and to give way to walkers.
11. Initially PRoW Officers advised RMCC and Cllr McKerlich this section of the footpath could not be considered as it is outside of Redrow's land ownership. Radyr Golf Club and Redrow have now agreed to jointly apply for the diversion of the footpath to improve safety and access across both parcels of landownership.

Allotments and Llantrisant Rd Section

12. RMCC objected to the footpath not being retained within a green corridor and provided alternatives to be considered by PRoW Officers, Planning and Redrow. It was noted that Llantrisant Road would be a busy route even with the improvements being made and not appropriate diversion of the footpath. They proposed the diversion should be along the outer boundary of the Radyr Golf Club to Llantrisant Road with a width of 2m path. This would be a pleasant walk alongside a hedge on one side and the allotments on the other side.

13. The request was submitted to Highways – Transportation Team, Planning and the Developer for consideration. Comments from Officers confirmed this was not viable as this area of land has a specific allocation for allotments. If the footpath were to cross the allotments, additional fencing and access gates would be required. This would risk the security of the site and loss of allotment grounds. If Redrow were to proceed with diverting along this boundary then the Reserved Matters application would be at risk of not being approved by planning.
14. RMCC continued to object to the proposed diversion unless the footpath section along Llantrisant Road was situated behind the hedgerow along the maintenance track adjacent to the western side of the allotments. This option was not supported by Highways and Parks Officers as the path would be unsurfaced, unlit and would only be 1.5m width. It would be difficult for walkers to use as the hedge growth would reduce the footpath width further and would create a narrow alleyway.
15. A site visit on October 15, 2020 was undertaken with Redrow representative, Tristan Brooks, Jennifer Griffiths (PRoW Officer) and RMCC Officers to discuss the reasons for objections by RMCC and consider any alternatives to the proposed route alignment. Mr Brooks confirmed the maintenance track behind the hedge along Llantrisant Rd would be 3m wide and therefore would be sufficient for walkers. There would also be partial overspill of street lighting onto the footpath. Walkers could choose if they wanted to use the new footway on Llantrisant Road or the maintenance path. Both RMCC and PRoW Officers are now satisfied with the route alignment.

Legal Implications

16. 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.

17. 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).

18. 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.

19. 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.

20. 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).
21. No compensation is payable in respect of those adversely affected by the order.

Other Considerations

22. 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

23. 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.

24. 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.

25. 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.

Financial Implications

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

Recommendations

27. 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
29 April 2021

Appendices:

Appendix 1: Radyr 38 Map
Appendix 2: Photos

Background Papers:

Diversion Application
RMCC Objections and Withdrawal
Officer Decision Approval
Summary of Approved Allotment Plan (P18-0655-15F)