

PLANNING COMMITTEE:

July 21, 2020

REPORT OF THE DIRECTOR OF PLANNING, TRANSPORT, ENVIRONMENT.

**Section 257 Diversion, Town and Country Planning Act 1990 for Public Right of
Way Llanedeyrn No.13 Footpath**

Reason for the Report

1. The confirmed Legal Order will allow the footpath to be realigned within the new proposed development.

Background

2. Bridgegate Investments Limited, the applicant, has been granted Planning Permission to develop two additional detached houses as a Phase 2 for Application No. 20/01925/MNR. This will result in six houses located along Bridge Road and the Public Footpath Llanedeyrn No.13 requiring to be realigned to accommodate these new properties.
3. Public Rights of Way Team were consulted as part of the planning application process. Negotiation to retain the Public Footpath within a green corridor was undertaken. Currently the footpath is difficult to use, as there is a bund by the motorway. The new path alignment will provide an improved link to the existing adopted highway track on the opposite side of Bridge Road.

Issues

4. The Public Footpath is currently a dead end to the Pentwyn Link Road with no physical way through or link to a Footway. The applicant of Bridgegate Investment Ltd. requested if the footpath could be stopped up rather than diverted as the current path could not be used.
5. An initial consultation was undertaken internally with Transportation Officers to consider if this footpath would be considered as a strategic link for an active travel

route in the future. The Transportation Officers confirmed it may be considered and was beneficial to retain the path even if it currently was not fully accessible on foot. Based on this information, the applicant was advised a diversion of the footpath would be needed rather than a stopping up.

6. The Public Footpath Diversion Application must be confirmed in order to allow the proposed diversion and development plan to go ahead as approved.

Local Member Consultation

7. Consultation included:

- St Mellons Community Council
- Ward Members: Cllr Diane Rees and Cllr Joel Williams
- Adjacent landowners
- Cardiff Council Transportation Team
- Utilities and
- User Groups

The above submitted no objections.

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).
13. 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).
14. No compensation is payable in respect of those adversely affected by the order.

Other Considerations

15. 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:
 - (1) eliminate unlawful discrimination
 - (2) advance equality of opportunity
 - (3) foster good relations on the basis of protected characteristics
16. 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.

17. 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.
18. 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

19. The Applicant has agreed to cover the costs of the Order.

Recommendations

Planning Committee to approve the Section 257 Diversion Application to allow the Public Rights of Way Team to instruct Legal Services to process the Legal Order.

Andrew Gregory

Director: Planning, Transport, Environment.

Appendices:

Appendix 1: Location Plan

Appendix 2: Developer's Plan

Officer Decision Approval

Background Papers:

S257 Application