

PLANNING COMMITTEE:

16 March 2022

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

Section 118 Highways Act 1980, Stopping Up of Footpaths at Lincoln Court and Pennsylvania

Reason for the Report

To extinguish sections of redundant highway, as part of a Neighbourhood Regeneration Scheme, to enhance the aesthetic quality of the area by processing a Section 118 Highways Act 1980 Stopping Up Order.

Background

There are six locations of adopted highway which have been identified that are no longer needed and being proposed to be stopped up.

- Location 1 (Grid Reference 319872:180280): Grass area with a recorded adopted path crossing it which does not physically exist.
- Location 2 (Grid Reference 319961:180162): Area of adopted highway is enclosed within private gardens.
- Location 3 (Grid Reference 320063: 180171): Stopping up of adopted highway to create a new storage bin area and a new footpath is being provided.
- Location 4 (Grid Reference 320032:180114): Adopted path does not exist and partially enclosed by fencing.
- Location 5 (Grid Reference 320029:180095): Grass area with a recorded adopted path crossing it which does not physically exist.
- Location 6 (Grid Reference 319901:180083): Removing of steps and landscaping to create a grass bank as an improved public amenity.

Issues

The only known issue is location 2 which has adopted highway enclosed in two private garden properties. The stopping up is necessary to amend the adopted highway mapping to resolve this historic anomaly.

Overall the Neighbourhood Regeneration Scheme is considered necessary to enhance the overall area for the local community's benefit.

Consultation

No comments or objections have been received.

Consultees included:

Adjacent property residents for each of the locations has received initial consultation letters and maps to explain the stopping up application and locations.

Associations/Organisations: Ramblers; Auto Cycle Union; British Horse Society; Byways and Bridleways Trust; Open Spaces Society; Cycling UK; Welsh Trail Riders Association

Utilities: Welsh Water; Virgin Media; Wales and West Utilities; Western Power; BT Openreach

Ward Members: Councillor Joe Carter, Councillor Frank Jacobsen, Councillor Dan Naughton and Councillor Emma Sandrey

Legal Implications

In considering whether a path or way should be stopped up, the Council must be satisfied that the criteria of the 1980 Act has been met. Where it appears to a Council as respects a footpath or bridleway in its area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the Council may by an order (a 'public path extinguishment order'), which has been submitted to and confirmed by the First Minister, or confirmed by the Council as an unopposed order, extinguish the public right of way over the path or way. The First Minister must not confirm such an order, and a Council must not confirm such an order as an unopposed order, unless he or it is satisfied that it is expedient to do so, having regard: (1) to the extent, if any, to which it appears to him or it that the path or way would, apart from the order, be likely to be used by the public; and (2) to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation.

A local authority may recover costs from an owner or occupier of land where it has complied with a request to make a public path extinguishment order.

The procedure for making and confirming a public path order is set out in Schedule 6 of the Highways Act 1980 and involves the Council giving various notices in the prescribed form stating the general effect of the order. If no representations or objections are made, or if any are made and 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 who shall, before confirming the order, 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 First Minister 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.

The First Minister of the National Assembly shall not confirm a public path stopping up order, and the Council shall not confirm an order as an unopposed order, unless he or, as the case may be, they are satisfied that the stopping up to be effected by it is expedient for the reasons mentioned above.

The Council is entitled to recover its costs from the applicant as provided by the Local Authorities (Recovery for Costs for Public Path Orders) Regulations 1993.
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

Protected characteristics are: (a) Age (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality (e) Disability (f) Pregnancy and maternity (g) Marriage and civil partnership (h) Sexual orientation (i) Religion or belief – including lack of belief.

Other Considerations

- Consideration should be given as to whether an equalities impact assessment (EQIA) is required, (including an updated assessment if there has been a time lapse since the assessment was carried out), to ensure that the Council has understood the potential impacts of the proposed decision in terms of its public sector equality duty. The decision maker should consider any EQIA. The proposal must also be subject to any relevant health and safety assessment.
- Section 17 of the Crime and Disorder Act 1998 also imposes a general 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.

- 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 decision maker should also have regard, when making its decision, to the Council's wider obligations under The Well-Being of Future Generations (Wales) Act 2015 ('the Act').

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.

In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2021-2024: <https://www.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Pages/Corporate-Plan.aspx> When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, 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. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

Financial Implications

None - The applicant has agreed to cover costs.

Recommendations

For the Planning Committee to **approve** the application allowing Highways Officers to process the Section 118 Stopping Up Order via Legal Services.

ANDREW GREGORY
DIRECTOR, TRANSPORT, PLANNING & ENVIRONMENT

24 February 2022

Background Papers:

- Site Location Map
- Signed Officer Decision Report