

PLANNING COMMITTEE:

16 March 2021

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

**Section 257 Town and Country Planning Act 1990, Stopping Up of St
Mellons No. 2 Public Footpath**

Reason for the Report

Asbri Planning have received planning permission (Application No. 20/01306/MJR) for a new residential development. The Public Footpath will be incorporated into private property gardens and requires a stopping up order.

Background

The Public Footpath historically used to link through to Millfield Close through a car park. Housing stopped up the car park as part of a neighbourhood regeneration scheme and incorporated the car park within private gardens. The southern section of the footpath was outside of their ownership and therefore became an isolated footpath with no alternative route provided within the scheme.

As there is an adopted footpath to the south within a green public amenity space, it is deemed reasonable and necessary to stop up St Mellons 2 Footpath under Section 257.

Issues

The Public Footpath is currently a dead end with no physical way through or link to a Footway.

The Public Footpath Diversion Application must be confirmed in order to allow the proposed development plan to go ahead as approved. If the application is objected to then the applicant will need to amend the Western section of the planning application to allow for the existing footpath alignment to be retained.

Local Member Consultation

The following statutory consultees submitted no objections.

Adjacent property owners are notified of the application

Trowbridge Ward Members: Cllr Bowen-Thomson, Cllr Lay, Cllr Michael

Utilities:

- Virgin
- BT Openreach
- Welsh Water
- Wales & West
- Western Power

Users groups:

- Ramblers
- Auto Cycle Union
- British Horse Society
- Byways and Bridleways Trust
- Open Spaces Society
- Cycling UK
- Welsh Trail Riders Association

Legal Implications

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.

The order may provide for the:

1. 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).
2. 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).
3. Payment of costs for carrying out the works (section 257(2)(d), TCPA 1990).

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

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.

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 Welsh Assembly Government. 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 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 (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).

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

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 2021-24: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202021-24.pdf> 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

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.

24 February 2022

Background Papers:

- Signed Officer Decision Report
- Location Map