

PLANNING COMMITTEE:

3 NOVEMBER 2022

**REPORT OF THE DIRECTOR OF PLANNING,
TRANSPORT AND ENVIRONMENT**

SECTION 257 WHITCHURCH FOOTPATHS 106, 107 & 108 DIVERSIONS

1 Reason for the Report

The development of the new Velindre Hospital in Whitchurch has received outline planning consent (application Reference 17/01735/MJR) on March 27th 2018. There are three historic footpaths crossing the site that were recently recorded on the Definitive Map that will be built upon and now require path diversions. The applicant has applied under Section 257 of the Town & Country Planning Act to permanently divert the paths within the perimeter of the site as leisure routes in green areas.

The application requires Planning approval to proceed to Legal Services to make the Legal Order.

2 Background

2.1 Cardiff Council Planning Committee refused an application to record three historic footpaths crossing the proposed Velindre development site based on contrary evidence. The applicant appealed to Planning and Environment Decisions Wales (PEDW) who overturned this decision and directed Cardiff Council to make the Order. The Modification Order was unopposed, and the Order confirmed. The three footpaths are now recorded on the Definitive Map as Whitchurch 106, 107 & 108.

2.2 The proposed development and footprint of the main hospital building will obstruct the three footpaths. The landowner has applied to formally divert the three footpaths around the site within green areas to retain the leisure routes for the public to continue to use and enjoy. The routes will continue to link to

existing adopted highway and existing rights of way paths. The paths are being diverted to allow the outline Planning application [17/01735/MJR](#)

3 Issues

- 3.1 The Section 257 Whitchurch Footpath diversion application is necessary if the proposed development is to proceed. The application requires approval by Planning Committee for a Legal Order to be made. The Order is subject to public consultation and if there are objections then the case will be determined by PEDW.
- 3.2 If the Order is confirmed, it is recommended the developer prioritised the creation of the new routes to allow the public to use these routes while the main construction site is being developed. Where it is not safe to do so, a temporary closure would be required, and alternative temporary routes provided.

4 Consultation

4.1 Statutory & Non-Statutory Consultees were notified in writing of the S257 Application on 15th August 2022.

- Cardiff Council Parks & Transportation Teams
- 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: Cllr Kate Carr; Cllr Jamie Green; Cllr Jackie Jones; Cllr Marc Palmer; Tongwynlais Community Council
- Non-Statutory Consultees (Local User Groups): Whitchurch and Tongwynlais PACT; Save the Northern Meadows; Friends of Forest Farm; Mr. Rock (Original S53 Applicant of Recorded Footpaths)

Outcomes from Consultation

- 4.2 Western Power Distribution and BT Openreach confirmed their utilities will not be affected. The only comments received were from Non-Statutory Consultees (See Appendix B for Consultation Results).
- 4.3 Consultees raised concerns the proposed diversion of Whitchurch No.107 would be close to the protected buffer zone along the edge of the site.
Response – The diversion is proposed along the boundary of the buffer zone but not within it.

4.4 Concerns this application is premature as further planning permission needs to be applied for and granted to understand where these diversions are necessary.

Response – The diversions are necessary as outline planning consent is granted and the footpaths are within the footprint of the built area. The Reserved Matters and Conditions will be required to provide more details of the layout and design of the site. The diversion of the paths will inform these further permissions/conditions of what is required to ensure the paths are protected within the site.

4.5 The Reserved Matters Application is now live and in the public domain (Planning Reference [22/02231/RES](#)), without prejudice to any decision that may be made on the reserve matters submission. Sufficient details are available to allow consultees and the public to make informed comments during the Legal Order public consultation stage (i.e., Notice of Proposal).

5 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:

- 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).

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. Notices must be served on every owner and occupier of land affected. 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 Planning & Environment Decisions Wales (PEDW) who are an executive agency that reports to the Welsh Government. Before confirming the order PEDW may cause a local public inquiry to be held; or they may give any person by whom any representation or objection has been made an opportunity of being heard by a person appointed by them. After considering the report of the person appointed to hold the inquiry or hearing, PEDW on behalf of the Welsh Government may confirm the order, with or without modifications. 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>

6 Financial Implications

The landowner, Velindre University NHS Trust, has agreed to pay the application fee which includes Highways and Legal Services resources.

Recommendations

Approve the application to instruct Legal Services to Make the Order.

ANDREW GREGORY

DIRECTOR OF PLANNING TRANSPORT AND ENVIRONMEN

27 October 2022

Appendices:

Appendix A Map of Proposed Diversions

Appendix B Consultation Results

Appendix D Submitted Velindre Statement of Reason

Background Papers:

Appendix C Submitted Application form

Equalities Impact Assessment