

**PLANNING COMMITTEE:**

**2 FEBRUARY 2023**

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

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**Section 257 Diversion Order, Town And Country Planning Act 1990-Prow  
Lisvane 28, Lisvane ,Cardiff**

**Reason for the Report**

1. It is necessary for the PROW Lisvane 289, in conjunction with Planning Application 14/02891/MJR to be diverted to retain public rights with the Churchlands Development.
2. The confirmed legal order will allow the footpath to be realigned with the development and the Definitive Map and Statement to be modified to reflect the change.

**Background**

3. Planning Application 14/02891/MJR requires the existing Public Footpath, Lisvane 28 to be diverted to preserve existing public rights within the Development.
4. The footpath is being diverted through the new housing development on a footway for approximately 190metres. The final 60metres is through a green corridor and ends on St Mellons Road.
5. As compensation for the loss of green space, a new Public Footpath is being dedicated to link from Lisvane No.28 to the adjacent Public Open Space behind St Denys Church, Lisvane. A new vehicle access gate with adjacent pedestrian gate will also be installed on St Mellons Rd for Parks to access the site maintenance purposes.

6. The Public Footpath will be an improvement from crossing a field to becoming more accessible along a footway and linking to green spaces through the new housing community

### **Issues**

7. There are two footpaths which cross the development site, Lisvane 15 and Lisvane 28. Both applications are being presented to Planning Committee. They both start off Graig Road, Lisvane and both terminate on St Mellons Road, Lisvane.
8. It was not achievable to have both Lisvane No.28 and Lisvane No.15 within a green corridor due to constraints with protected habitats and species along the western boundary of the site. Lisvane No.28 footpath will be realigned within the housing development along a new footway but generally following a similar route alignment to the existing path.
9. Through negotiation with the Lisvane Consultees and Redrow Officers, a minor amendment to the southern section of the proposed route was undertaken to realign the footpath through a short section of green corridor and linking to the adjacent Public Open Space by St Denys Church.

### **Consultation**

10. Statutory & Non-Statutory Consultees were notified in writing of the S257 Application. A third consultation was undertaken to consult with new elected members on 30 November 2022 and no objections received.
  - Ward Councillors: Councillors J Lances, S-E Melbourne and E Reid-Jones
  - Lisvane Community Council; Lisvane Environment Group; Graig Protection Society; Parks Department; and adjacent landowners
  - Utilities: Virgin; BT Openreach; Welsh Water; and Western Power
  - User Groups: Ramblers; Auto Cycle Union; British Horse Society; Byways and Bridleways Trust; Open Spaces Society; Cycling UK; and Welsh Trail Riders Association

### **Outcomes from Consultation**

11. Through negotiation with the Lisvane Consultees and Redrow Officers, a minor amendment to the southern section of the proposed route was undertaken to realign the footpath through a short section of green corridor and linking to the adjacent Public Open Space by St Denys Church.

## Legal Implications

12. 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.

13. 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).

14. 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.

15. 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.

16. 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](#)).

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

### Equality Act

18. 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; and (i) Religion or belief – including lack of belief.

### Other Considerations

19. 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.

20. 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.

21. 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

22. 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').
23. 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.
24. 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.
25. 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
26. 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**

27. The Developer has agreed to pay the costs of the Diversion Order.

## **Recommendation**

28. To approve the Section 257 Diversion Application to allow the Public Rights of Way Team to instruct Legal Services to process the Legal Order to divert the Public Footpath, Lisvane 28 as part of the approved Churchlands Development 14/02891/MJR.

**ANDREW GREGORY**  
**DIRECTOR PLANNING, TRANSPORT AND ENVIRONMENT**  
**26 January 2023**

## **Appendices:**

Appendix A - Map