

SUBJECT:	TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257 PUBLIC PATH ORDER, FOOTPATH 37 (part) CALDICOT
MEETING:	LICENCING & REGULATORY COMMITTEE – RIGHTS OF WAY ADVISORY PANEL
DATE:	17 DECEMBER 2020
DIVISION/WARDS AFFECTED:	CALDICOT

1. PURPOSE:

- 1.1 To consider the request to make and confirm, a public path diversion order under section 257 of the Town and Country Planning Act 1990, to enable development in accordance with approved planning permission.

2. RECOMMENDATIONS:

- 2.1 Having regard to the relevant legislation, tests, guidance and policy that the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of a diversion order for Footpath 37 Caldicot under Section 257 of the Town & Country Planning Act 1990 and to confirm the order if no objections are received.

3. KEY ISSUES:

- 3.1 On 5th March 2020 planning permission was granted under reference DM/2019/01761 for 130 dwellings, associated infrastructure and landscaping on land to the East of Church Road, Caldicot.
- 3.2 The developer has applied for a path order to divert Public Footpath 37, Caldicot in such a way as to accommodate the development that would otherwise obstruct the footpath.
- 3.3 The Council, under Section 257 of the 1990 Town and Country Planning Act (T&CP Act) may by order, stop up or divert a footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission.
- 3.4 Any orders changing the public path network should comply with Legislative tests and take into consideration guidance and policy.
- 3.5 The Council ran a pre-order consultation. It received five objections (appendices 12 to 16), three had no comments and five had no objections. These are detailed in the report attached.

3.6 A full report detailing the proposed order, legislation, guidance, policy and objections is appended to this report (appendix 1)

4.0 EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFE GUARDING AND CORPORATE PARENTING)

4.1 The proposal will allow approved development (DM/2019/01761) which some local residents see as having a negative impact on their character of the area, such as loss of views and immediate access to open countryside. The development will however provide employment, 130 dwellings including a proportion of affordable houses and a community park. The community park will provide a large area of public open space. Access to open countryside will still be available. The diverted footpath will have a width of 2 and 3m as outlined in the schedule and will be surfaced, giving a path that is more accessible to disabled people at all times of the year. An EQAFG evaluation has been included in appendix 3.

5.0 OPTIONS APPRAISAL

Option	Positive	Negative	Comment
To make the order	Allow development in accordance with planning application.	Loss of more direct footpath. The order could still fail at inquiry if found to be deficient.	If the order were not made there is no guarantee that the public could continue to be able to use the land as they already are as evidence on the ground is suggesting that many are not using the recorded alignment of the path.
Not to make the order	Retention of valued rural path.	Prevent the development in accordance with planning application. A new planning application would then be submitted and this would not necessarily protect the rural nature of the path	

6.0 EVALUATION CRITERIA

6.1 An evaluation assessment has been included in appendix 4 for the future evaluation of whether the decision has been successfully implemented.

7.0 REASONS:

7.1 A path order needs to be made to enable development of 130 dwellings, associated infrastructure and landscaping in accordance with approved planning permission. The proposed scheme is compliant with the relevant legislation, guidance and policy as outlined in the attached report that explains all the guidance and legislation in detail.

7.2 The objections principally refer to a change in the character of the footpath, from rural to urban and that it would cross five vehicular tracks. The change in character is an inevitable consequence of development. The proposed replacement path does cross five vehicular tracks but it would largely run through open space away from vehicular traffic. Given the constraints of the site it is held that this is not an unreasonable departure from guidance.

8.0 RESOURCE IMPLICATIONS:

8.1 Order costs including stationary, officer time and newspaper adverts will be recharged to the applicant. If the order is made and objections received, then at the Planning Inspector's request it is possible that a Public Inquiry or hearing could be called at the Authority's expense. Written representations are another option available to the Planning Inspectors. Although ultimate responsibility for the surface of the path will remain with Monmouthshire County Council, if the development is allowed to go ahead the path would be incorporated into Public Open Space for which a commuted sum has or will have been secured.

9.0 CONSULTEES

9.1 Consultees included the Local Member, The Town Council, Statutory Undertakers, user groups and local residents. Appendix 2 and the attached report lists all of the consultees and summarises their responses.

10.0 BACKGROUND PAPERS:

Appendix 1: Report

Appendix 2 Consultation Responses

Appendix 3 Equality and Future Generations Evaluation (includes Social Justice, Safe Guarding and Corporate Parenting)

Appendix 4 Evaluation Criteria

11.0 AUTHOR:

Shaun Pritchard
Assistant Public Rights of Way Officer

12.0 CONTACT DETAILS:

Tel: 01633 644676

Email: shaunpritchard@monmouthshire.gov.uk