

**CYNGOR SIR POWYS COUNTY COUNCIL**

**PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE**

**2<sup>nd</sup> August 2018**

**REPORT BY: HEAD OF LEISURE AND RECREATION**

**SUBJECT: Opposed Diversion Order 2017: Abandonment and making of a new public path Order**

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**REPORT FOR: DECISION**

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**Footpaths C15 and C18, Wernllwyd (Community of Welshpool.)  
Proposed abandonment of diversion Order 2017 and making of a new  
diversion Order under section 119 of the Highways Act 1980**

**Background:**

1. An application was made by Mr DM Jones on 3<sup>rd</sup> February 2010, to divert parts of footpaths C15 and C18 at Wernllwyd. Initially, this application was made to move the paths out of the working farmyard and so it was placed on file to await processing.
2. However, in 2014, a planning application (P/2014/0352) was made to construct an agricultural building; the proposed location was on the line of footpath C18. Given that, the applicant was advised that the path would need to be formally diverted before they could implement the development. The applicant was asked to undertake the pre-Order consultations.
3. Mr F Jones took over as the applicant for the diversion at that time, although the land affected remains in the ownership of his father, Mr DM Jones.

**Consultation:**

4. Pre-Order consultation was carried out in 2016, by the agent to the applicant (Mr R Corbett of Roger Parry and Partners.) The following parties were consulted:
  - a. Welshpool Town Council;
  - b. The local member at the time, being Cllr P Pritchard and also Cllr S Hayes, as the site is very close to the boundary with the neighbouring ward.
  - c. Path user groups, including the Rambler's Association, Open Spaces Society and Byways and Bridleways Trust;
  - d. Natural Resources Wales;
  - e. North and Mid Wales Trunk Road Agency;
  - f. The Council's Planning Service, Highways, Transport and Recycling service and Cycling officer;
  - g. Utility companies.

5. No objections were received, so a diversion Order was made in July 2017. A copy of the Order can be found at appendix A.

**Objections:**

6. One objection to the Order was received, from Mr Peter Newman of the Open Spaces Society. His letter can be found at appendix B.
7. Some of Mr Newman's objections related to the planning process. The points relevant to the legal criteria for this diversion are that:
  - He felt that the proposed diversion exceeded what was required to allow for the development to be carried out, as the diversion extends beyond the 'red line' area identified on the planning application.
  - The diverted path would follow a lengthy route around the perimeter of several small fields and this would appear to be designed to allow the path to be fenced in. His concern was that the path width was set out at 2 metres in the Order and that if the path directly abutted the hedgerow, this could then leave a width of only 1-1.5 metres available to the public.
  - There is no connection proposed between point J and the canal towpath, which would mean that walkers approaching the canal towpath from the south would need to unnecessarily detour over 200m.
  - That he felt that the work to install the new gates should be specified in the Order, rather than the gates being authorised separately under section 147 of the Highways Act 1980.
  - That the diversion of the section of path to between point B and the main road would result in more road walking for those seeking to access the paths from Welshpool.
8. The points made in response to Mr Newman are in the email of 19<sup>th</sup> October 2017 (appendix C.) In summary, these were:
  - That part of footpath C15 was included in the diversion because it is an important connecting route with footpath C18. There is a need to ensure that the road crossing between footpaths C15 and C18 is as direct and safe as possible, given that this is a busy trunk road. Leaving this section of footpath C15 in place would result in a staggered crossing, which the North and Mid Wales Trunk Road Agency would not support.
  - Keeping the path close to this development site may be the shortest route, but it would mean taking a route that is close to regular movement of heavy vehicles and machinery and through enclosed areas with intensive farming activity. The proposed route keeps the public away from the busiest and most industrialised areas of the farm by using the adjoining pasture land.
  - The proposed route of footpath C18 has been drawn onto the Order plan with the centre line being a minimum of 4 metres from the centre of the field boundary. That effectively means that there is a strip of at least a metre wide between the edge of the path and field boundary, even without specifying a width greater than 2 metres for the path itself.
  - The Canal and River Trust were initially approached about diverting the path via point J and over the towpath, but did not give consent for that.

- The form of words for a diversion Order under section 257 of the Town and Country Planning Act 1990 does not allow for limitations and conditions (i.e. structures such as gates) to be specified at all. If gates are needed for livestock control, they must be authorised separately.

**Options and further consultations:**

9. By the time the response was sent to Mr Newman, officers had visited the site. It was apparent that the new building subject of the planning consent had already been constructed. As such, it is no longer possible to confirm the diversion Order that was made in 2017, under section 257 of the Town and Country Planning Act 1990. Under this legislation, a public path Order cannot be confirmed if the development for which it is needed is already substantially complete.
10. Given this, the applicant was advised that a new Order would need to be made, under section 119 of the Highways Act 1980 and that they would be expected to meet the costs of doing so.
11. Subsequent to that, Mr Newman contacted the Canal and River Trust himself, to find out whether they would consent to a short linking spur footpath, between point J and the canal towpath. There is a gate in place at this location already. The Canal and River Trust advised that they felt that this was a good idea in principle, but would not consent to a public path being created over the towpath. The emails are at appendix D.
12. The liability created by such a link would be shared between the landowner and the Council, with the landowner being responsible for the gate in the boundary near point J, adjoining the towpath. The new path would be entirely over land in the ownership of Mr Jones; his agent has advised that he would be willing to create this linking path.
13. There is no option to continue with the 2017 Order, given that the building is already in place. Given that, the options are:
  - a. To abandon the 2017 Order and make a new one, under section 119 of the Highways Act 1980 for the same routes as the 2017 Order, as per the plan at appendix E;
  - b. To add a creation agreement to the diversion, for a footpath link between the towpath and point J as per the plan at appendix F;
  - c. Or to abandon the 2017 Order and either seek and consult on completely different routes, or take alternative action to reopen the footpaths.
14. The routes subject of the 2017 Order have broad agreement, other than the points raised by Mr Newman. Mr Newman's concerns could be addressed by adding a linking path from point J. As the applicant would be meeting the cost of making a new Order, it is proposed that the 2017 Order be abandoned and that a new Order be made for the same diversion routes, but with an added linking path between point J and the canal towpath.

**RECOMMENDATIONS:**

1. That the diversion Order made in 2017 for footpaths C15 and C18 under section 257 of the Town and Country Planning Act 1990, as at Appendix A, be formally abandoned, as it cannot be confirmed; and
2. That a new diversion Order be made in replacement, under section 119 of the Highways Act 1980 for the routes shown on the plan at appendix E; and
3. That the Council enters into a creation agreement with the landowner, to create a linking section of path between point J and the canal towpath, as per the plan at appendix F. This would come into effect only if the new diversion Order can be confirmed.

**Appendices:**

Appendix:	Description:
A	Diversion Order 2017, footpaths C15 and C18 Welshpool
B	Objection letter from Mr Newman, 22 <sup>nd</sup> August 2017
C	Email from Countryside Services to Mr Newman, 19 <sup>th</sup> October 2017
D	Emails from Mr Newman to Canal and Rivers Trust, December 2017
E	Plan of diversion routes for proposed new Order
F	Plan of suggested additional linking footpath