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Solicitor to the Council
 c/o Mrs V Julian
 Principal Legal Assistant
 Powys County Council
 County Hall
 Llandrindod Wells
 Powys LD1 5LG

August 22, 2017

Dear Sir,

PROPOSED DIVERSION OF FOOTPATHS C15 AND C18 WELSHPOOL

We hereby object to the above proposal currently being advertised on the following grounds:

- We note that the diversion of the footpath was not addressed by the planning officer in his decision: he merely states that: "Although [the objection of the rights of way team and a member of the public] are acknowledged and noted, development management would not be in a position to refuse the application only on this basis, due to the ability of the applicant to apply for a diversion of the said footpath subsequently after receiving planning permission". It is clear therefore that the impact of the development on the footpath has not been taken into account, contrary to the guidance in Defra Circular 1/09:
- Para.7.2: "The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered." The effect of the development on the footpath was not considered in granting planning permission — indeed, the question of effect was expressly set aside.
- We also note that the diversion of the footpath far exceeds what is required in order to facilitate the development. In the location plan submitted with the planning application in accordance with art.7(2)(c)(i) of the 2015 Order, the 'red-lined' development site extends slightly outside the footprint of the proposed shed. But the diversion extends so far beyond the red-lined area that its extent barely fits onto the location plan. (We note that the location plan includes some planting works outside the development site, but these were not referred to in the planning application, and form no part of the works for which permission has been given.) The diversion also resolves an obstruction of the footpath posed by an existing barn to the south of the development site, but as the development of this barn is complete, it is not eligible for diversion under s.257 of the Town and Country Planning Act 1990 (para.7.21 of Circular 1/09). This diversion order should not be used to facilitate the diversion of a path across a

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completed development site 'through the back door'. An order may be made under s.257 (and the order confirmed by the Secretary of State) if the planning authority is, "satisfied that it is necessary to do so in order to enable development to be carried out—(a) in accordance with planning permission". But this order is not necessary to enable the construction of the shed: it goes far beyond what is necessary. The Secretary of State should refuse to confirm the order, on the grounds that it is not necessary, or propose to amend it to confine the diversion to the perimeter of the development site.

- If, notwithstanding our legal submission, the Secretary of State is minded to consider the merits of the diversion as contained in the order, we make the following additional 'without prejudice' observations.
- The diverted path would follow a lengthy route around the perimeter of several small fields outside the farm yard and house. The diverted route appears to be designed to allow the path to be fenced in, else there would be little purpose in following a perimetral route — and indeed, if the path is not fenced in, users will inevitably cut off the corners from F to H and from H to K (detouring around the outside of the existing shed). But the path is set out at a minimal width of 2m. Given that the path will be fenced in to a distance of 2m from the root of the existing hedge, this will leave perhaps 1–1.5m initially, and in time, a completely inadequate width, for public use, noting that this is a rural footpath, one of thousands in Powys, which will be seldom if ever cut by the highway authority, and inaccessible to be cut by mechanical means by the landowner. A width of at least 3m should therefore be specified. Alternatively, the path should be laid out in a desire line from F to H to K, and retained at the present width.
- We note that, although the diverted path runs south from K to J alongside the canal towpath, there is no connection proposed at J to the towpath, so that walkers approaching along the canal towpath from the south unnecessarily detour over 200m to the north and back again. We propose that, if the existing alignment is retained, the order is modified to provide for a connection at J. NB There is a set of wooden rails at this point. There should also be a legal connection with the towpath through the existing gate adjacent to point D.
- We also wish to see the order modified to provide for works, comprising the installation of a gate at each crossing of a boundary feature at B, F and H, authorised under s.257(2)(b) of the 1990 Act, as we see no reason why such works should be authorised subsequently under s.147, outside the scope of public scrutiny. The gates should be compliant with the British Standard 5709:2006.

Finally, we also object to the extinguishment of the footpath between B and the main road. While the majority of walkers will wish to continue straight across the road between the existing footpaths, there is no plausible reason to stop up the 40m of this footpath along a minor farm track between the turning to the south to connect with footpath C16, and the road. For those who walk along the road from Welshpool, it will reduce 70m of road walking. But we would also emphasise that there is no power to stop up this section of footpath — it has nothing remotely to do with the development. In *Westley and others v Secretary of State for the Environment and another*, the court appeared to support the stopping up of part of the existing way which was not itself on the development site, but which was rendered redundant by the diversion as a whole. But here, the path is not rendered redundant, but will continue to serve highways at either end of its short alignment.

Yours Sincerely,



Peter Newman

Open Spaces Society Local Correspondent

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