

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

13 June 2019

**REPORT BY: HEAD OF HOUSING AND COMMUNITY
DEVELOPMENT**

**SUBJECT: Town and Country Planning Act 1990, section 257
Public path Order proposal**

REPORT FOR: DECISION

**Proposal to divert part of public footpath 65 on land adjacent to The
Firs, Churchstoke (Community of Churchstoke.)**

Background:

This report is being presented to the committee in accordance with the Council's constitution as the diversion proposal affects Council land. The need for a diversion of footpath 65 has arisen because the development subject of outline planning permission P/2017/0654 would lie on the line of part of the footpath.

The outline planning permission, which was granted on 5th October 2017, is for the erection of three detached properties, including detached carports, formation of vehicular access and associated works at land at The Firs, Churchstoke. The applicant's plan, as submitted during the planning permission process showing the development and the footpath diversion is at Appendix A. The proposed line of the footpath diversion was subsequently amended and this is shown on the plan at Appendix B.

The applicant for the proposed diversion of the footpath is Miss G Delves. Miss Delves bought the house known as The Firs and associated land from the Council. The surrounding farmland remains part of the Churchstoke Firs Council Farm Estate.

Current Definitive route:

Footpath 65 runs over land to the east of the village of Churchstoke. It commences south of the A489 at OS Grid Reference SO 2763,9392 (point A on the plan shown at Appendix B) The end point of the footpath joins with footpaths 28 and 29 at Gambler's Bridge, thereby offering opportunities for short local walks and access to longer walks via the connecting rights of way network.

Footpath 65 follows a generally south-south-westerly direction for approximately 25 metres, and then turns to follow a more southerly direction across open field for approximately 84 metres. The section to be diverted ends

at OS Grid Reference SO 2763,9381 (point C.) The total length to be diverted is approximately 109 metres; the width is undefined in the parish survey card.

Proposed alternative route:

The proposed new route of footpath 65 commences at point A, at OS Grid Reference SO 2763,9392. It follows a generally south westerly direction for approximately 30 metres, alongside a fence line marking the boundary between the land owned by Miss Delves and the Council to OS Grid Reference SO 2762,9389 (point D). It turns to follow a generally south-south-easterly direction for approximately 84 metres to re-join the existing route of the footpath at OS Grid Reference SO 2763,9381 (point C.) The total length of the proposed new path is approximately 114 metres. The width is 2 metres.

Works required:

No work is required to make the proposed new path ready for use.

Consultation:

The applicant carried out pre-Order consultation, in May 2018, and consultees were given 28 days to respond. Responses to the proposals have been received from:

- Churchstoke Community Council, who have no objection provided the landowner of the adjacent property over which the new route is planned is content with the proposal. They ask that self-closing gates are also installed at the exit to the highway to reduce the risk of animals straying if gates are left open by users of the footpath;
- Powys Highways, who have no objection;
- Ramblers Association, who acknowledged receipt of the proposal but provided no further comment;
- The tenant of the land, whose response is described below;
- Natural Resources Wales, Western Power, BT Openreach and Severn Trent, none of whom objected to the proposals.
- Mr Hugo Van-Rees on behalf on the Powys Farms Estate who supports the diversion as proposed.

The tenant of the Powys CC Farms Estate, initially objected to the proposed diversion of footpath 65, as he felt that it would result in users of the footpath walking through the area in which he feeds sheep. However, that has been resolved, and he has withdrawn his objection.

The local member (Councillor Michael J Jones) declared an interest when the matter was presented to Churchstoke Community Council. As such, a response to the diversion proposal from Councillor Jones was not pursued.

Options:

This application has been made under section 257 of the Town and Country Planning Act 1990. The legal criteria for the making of a diversion Order under this legislation is that it is necessary to do so, in order to enable development to be carried out in accordance with planning permission that has been granted.

Planning permission P/2017/0654 has been granted for the erection of three private dwellings and detached single car-ports that will lie on the line of footpath 65. As such, and as the development is not 'substantially complete', it is considered that the legal criteria for the making of a diversion Order are met.

If a diversion Order is made, opposed and submitted to the Planning Inspectorate, the Inspector could consider wider issues, including the suitability of the proposed new route, in deciding whether the Order should be confirmed or not. However, they will not re-open the matter of the planning merits of the development itself.

The Committee could:

1. Decide not to make a diversion Order in respect of this application; in that event, the applicant would not be able to implement the development subject of the planning permission that has been granted, as to do so would obstruct the line of footpath 65.
2. Approve the making of a diversion Order. Given that there are no outstanding objections, there is a low risk that the Order may then be formally opposed.

If a diversion Order is made and opposed, it could be formally abandoned. Alternatively, the Order could be submitted to the Planning Inspectorate for determination.

This diversion is considered to be primarily in the interest of the applicant, as the diversion is needed to allow her to implement the planning permission that has been granted.

Given that and as the proposal meets the legal criteria for the making of a diversion Order, it is proposed that a diversion Order be made. If it is opposed, then unless significant new information comes to light, it is proposed that the Order should be submitted to the Planning Inspectorate for determination, but that the Council should remain neutral with respect to its confirmation.

RECOMMENDATIONS:

1. That an Order be made to divert footpath 65, on the land at The Firs, Churchstoke as shown on the plan at appendix B;

Appendices:

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| Appendix A | P/2017/0654 Applicant's Site Plan showing location of proposed dwellings |
| Appendix B | Plan of proposed diversion |