

**CYNGOR SIR POWYS COUNTY COUNCIL**

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

**24<sup>th</sup> October 2019**

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

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

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**REPORT FOR: DECISION**

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**Proposal to divert Footpath CF22, at land East of Ithon Road,  
Llandrindod Wells (Community of Llandrindod Wells.)**

**Background:**

The need for a diversion of footpath CF22 has arisen because the development subject of planning permission 19/0021/FUL would lie on the line of the path.

The planning permission, which was granted on 5<sup>th</sup> April 2019, is for the erection of a residential development comprising of 55 units at Land East of Ithon Road, Ithon Road, Llandrindod Wells, LD1 6AS. The applicant's plan, as submitted during the planning permission process showing the development and the footpath diversion is at Appendix B.

The applicant for the proposed diversion of the footpaths is J G Hale Construction Ltd. The diversion proposals affect land owned by two private landowners and Powys County Council Schools Service.

There is a proposed creation agreement associated with this diversion application. This has been put forward to facilitate pedestrian movement to and from the development if the diversion is successful and is shown on the plan at appendix A as line D-F. The path creation would come into effect if the diversion Order were confirmed. However, it is legally a separate procedure to the making of a diversion Order and is not subject of statutory opportunities for objection.

**Current Definitive route:**

Footpath CF22 commences at a junction with Ithon Road public highway, adjacent to the south-western corner of Llandrindod Wells cemetery at OSGR SO 0548, 6215 (point A) and runs in a generally south-easterly direction for approximately 105 metres, terminating on land to the north of the pumping station, situated to the west of Holcombe Drive at OSGR SO 0557, 6208 (point B).

Footpath CF22 is a cul-de-sac footpath as it does not connect to any other public right of way or highways at the eastern end. The statement records the path as travelling from the road near to the cemetery to the Old Isolation

Hospital. The total length to be diverted is approximately 69 metres; the width is undefined in the Statement.

**Proposed alternative route:**

The proposed alternative route commences from Ithon Road at a point approximately 295 metres south of point A and opposite the entrance into the farmstead at Ty Canol at OSGR SO 0545, 6185 (point C). It follows in an east south-easterly direction for approximately 125 metres to connect with footpath CF20 at OSGR SO 0557,6182 (point E). The total length of the proposed new path is approximately 125 metres. The proposed width is 3 metres to allow for pedestrian and cyclist use along the path.

**Works required:**

The proposed path construction plan can be found at Appendix C.

**Consultation:**

Asbri Planning carried out pre-Order Consultation on behalf of the applicant in April 2019 and consultees were given 28 days to respond. Responses to the proposals have been received from:

- Llandrindod Wells Town Council, who support the proposals;
- The Open Spaces Society, whose response is described below;
- Dwr Cymru Welsh Water, whose response is described below
- Wales and West Utilities, BT Openreach, Natural Resources Wales, National Grid, CADW, none of whom objected to the proposals.
- The affected landowners, who have given their written consent to the proposals.

The local members (Cllr Gary Price and Cllr Jon Williams) were consulted and no objections were received.

Dwr Cymru Welsh Water objected to the proposals, as they have apparatus in the vicinity of the proposed footpath. However, the construction of the public right of way would be done sympathetically thus avoiding any detrimental impact on their apparatus or Dwr Cymru's capacity to maintain.

Comments on the proposal were received from Mr Peter Newman of the Open Spaces Society on the 25<sup>th</sup> April 2019. In his response, Mr Newman stated that he was looking for a dedicated footpath connection from the hammerhead at the northern end of the development, west to Ithon Road and east to Holcombe Drive. The agent for the applicant responded to Mr Newman's comments. The email exchange can be found at Appendix D. In the course of communication Mr Newman stated that he was objecting to the proposal. This was confirmed in an email to Countryside Services. A copy of this can be found at Appendix E.

**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 19/0021/FUL has been granted for the erection of a residential development comprising of 55 units that will lie on the line of footpath CF22. 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 CF22.
2. Approve the making of a diversion Order. Given the outstanding objection, there is a significant 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.

If a diversion Order is made, opposed, and submitted to the Planning Inspectorate, the Council can decide to support, remain neutral with respect to, or oppose the confirmation of the Order.

If the Council decides to support the Order, then it must make a case as to why the Order should be confirmed. If the Council chooses to remain neutral or oppose the confirmation of the Order, that responsibility lies with the applicant.

This diversion is considered to be primarily in the interest of the applicant, as the diversion is needed to allow them 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 CF22, on land to the East of Ithon Road, Llandrindod Wells as shown on the plan at appendix A;
2. That if the Order is made and opposed, unless significant new information comes to light, it is submitted to the Planning Inspectorate for determination;

3. That the Council takes a neutral stance with respect to confirmation of the Order, if it is submitted to the Planning Inspectorate for determination.

**APPENDICES:**

- Appendix A Plan of proposed diversion and path creation
- Appendix B 19/0021/FUL Applicant's Site Plan showing location of proposed development
- Appendix C Applicant's Path Construction Plan
- Appendix D Email Correspondence between Mr Newman, Open Spaces Society and Aspri Planning
- Appendix E Email Correspondence between Mr Newman, Open Spaces Society and Countryside Services