

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

1 July 2021

REPORT BY: HEAD OF HIGHWAYS, TRANSPORT AND RECYCLING

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

REPORT FOR: DECISION

Proposal to divert part of footpath 16, at land adjacent to Aberannell Bungalow, Beulah LD5 4UA (Community of Treflys.)

Background:

An application was made by Mr M & Mrs J Evans in July 2015, to divert part of footpath 16. Initially, this application was made to move the path out of the garden of Aberannell Bungalow and so it was placed on file to await processing.

However, in 2016, a planning application (P/2016/0994) was submitted for the erection of two dwelling houses, formation of two vehicular accesses and all associated works on land adjacent to Aberannell Bungalow. The proposed location was on the line of footpath 16. Given that, the applicants were advised that the path would need to be formally diverted before they could implement the development. The applicants were asked to undertake the pre-Order consultation. The applicants' plan, as submitted during the planning permission process showing the development and the existing footpath across the site is at appendix A.

The diversion proposals also affect land owned by two private landowners.

Current Definitive route:

The length of footpath 16 to be diverted commences at a point in open field at OS Grid Reference SN 9172, 5139 (point A as shown on plan at appendix B) and runs in a generally east-south easterly direction for approximately 82 metres to OSGR SN 9179, 5136 (point D). It then turns north-eastwards at the property boundary for approximately 30 metres to join the County Road No. C4 at OSGR SN 9181, 5138 (point E).

Proposed alternative route:

The proposed alternative route commences at a point in open field at OSGR SN 9172, 5139 (point A) and runs in a north easterly direction for approximately 55 metres to join the County Road No. C4 at OSGR SN 9176, 5143 (point B). The total length of the proposed new path is approximately 55 metres. The proposed width is 2 metres.

Works required:

The applicant proposes to install a kissing gate at OSGR SN 9176, 5143 (point B).

Consultation:

The applicants carried out pre-Order Consultation in January 2021 and consultees were given 28 days to respond. Responses to the proposal have been received from:

- Cllr T J Van-Rees (Local Member) who strongly supports the proposal.
- Treflys Community Council, who have no objection and support the proposal.
- The Ramblers Association, whose response is described below.
- The Open Spaces Society, whose response is described below.
- PCC Planning, Wales and West Utilities, BT Openreach, Natural Resources Wales, CPAT and Western Power Distribution, none of whom objected to the proposals.
- Balfours Ltd, agent for the Llwyn Madoc Estate, the landowner for the field adjoining the development site, who have given their consent to the proposal.

The Ramblers Association commented that the proposed path is about 20 metres longer than the existing but involves an extra 50 metres walking on the road rather than through a field. As it is a fairly minor road, this was considered acceptable, and the Association would therefore not object to an order being made.

Comments on the proposal were received from Mr Peter Newman of the Open Spaces Society in a letter dated 3rd April 2021. In his response, Mr Newman stated that the new route would not be acceptable as it meets the road further from the village. He suggested that the diversion could start at point A following the field boundary via point C and meeting the road at the northeast corner of Plot 1 (should read as Plot 2.) The applicants responded to Mr Newman's comments in a letter dated 23rd April, as at Appendix D. They set out the reasons for which they feel that the path should be diverted through the field adjoining the building plots, rather than along a fenced corridor between houses. Mr Newman replied and reiterated that he was unable to support the proposal. A copy of this letter 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 P/2016/0994 has been granted for the erection of two dwellings and associated works that will lie on the line of footpath 16. 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 16.
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 applicants, 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 16, at land adjacent to Aberannell Bungalow, Beulah in the community of Treflys as shown on the plan at appendix B;
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 P/2016/0994 Development Site Location Plan
- Appendix B Plan of proposed diversion
- Appendix C Letter dated 3rd April from Mr Newman, Open Spaces Society
- Appendix D Letter of response to Mr Newman from the applicants
- Appendix E Second letter from Mr Newman, Open Spaces Society