



**PUBLIC RIGHTS OF WAY CABINET COMMITTEE –  
17<sup>TH</sup> JANUARY 2023**

**SUBJECT: APPLICATION FOR AN ORDER UNDER SECTION 257 OF THE TOWN AND COUNTRY PLANNING ACT 1990 TO DIVERT A PUBLIC RIGHT OF WAY (RESTRICTED BYWAY 11 RHYMNEY) AT THE FORMER ROYAL BRITISH LEGION CLUB, RHYMNEY**

**REPORT BY: MR S. DENBURY – COUNRTYSIDE AND RIGHTS OF WAY ASSISTANT**

**REF: 21/PPO/005 TCPA90 S257 – RESTRICTED BYWAY 11 RHYMNEY GRID REFERENCE: SO 110 090**

**1. PURPOSE OF REPORT**

- 1.1 To consider and determine an application to make an Order which would divert Restricted Byway 11 Rhymney at the former Royal British Legion Club, Rhymney onto an alternative alignment to allow development granted consent, to be carried out.

**2. SUMMARY**

- 2.1 Public Rights of Way are recorded on the Definitive Map and Statement and are afforded Highway status and protection. Section 257 of the Town and Country Planning Act 1990 gives Local Authorities the ability to make Orders to alter public rights of way which would otherwise be incompatible with development granted consent through the planning system.

**3. RECOMMENDATIONS**

- 3.1 Either to **make** an Order under s257 town and Country Planning Act 1990 to divert Restricted Byway 11 Rhymney as detailed in **appendix 2** – objections are anticipated which would require the matter to be determined by PEDW; or
- 3.2 **Refuse to make** an Order under s257 town and Country Planning Act 1990 to divert Restricted Byway 11 Rhymney as detailed in **appendix 2** – The public right of way will remain on the original definitive line and development will not be able to proceed to that consented. Reasons for the refusal must be given. The matter could be appealed and determined by PEDW.

#### 4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The legal test appears to have been met to allow the diversion of the public right of way. The test is:  
The Local Authority may make an Order under S257 Town and Country Planning Act 1990 to divert or stop up a right of way if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with the planning permission granted.

#### 5. THE REPORT

- 5.1 The Rights of Way Cabinet Committee has the power to make Orders under section 257 of the Town and Country Planning Act 1990 at the request of the landowner/applicant in order to enable development to be carried out in accordance with the planning permission granted.
- 5.2 The site of the former Royal British Legion Club is crossed by a Restricted Byway (number 11 in the former Parish of Rhymney on the Definitive Map and Statement).
- 5.3 Planning consent was sought and subsequently granted under application numbers 21/0530/FULL and 21/0597/FULL to erect dwellings on the site.
- 5.4 Following consultation from the Planning Officer and the Rights of Way department, comments were made in relation to the existence of the public right of way, and its incompatibility with the proposed development as proposed. The applicant and agent were made aware of the comments at that time as well.
- 5.5 An initial proposal to alter the alignment of the public right of way, routed the restricted byway along the estate road at the centre of the development. From past experience of similar consultations proceeding development, as well as guidance from the Welsh Government, use of estate roads to carry public rights of way should be avoided in favour of separate, traffic free routes.
- 5.6 Welsh Government guidance: (page 73 of 'Public rights of way - guidance for local authorities 2016')
- 7.9. When an existing right of way needs to be revised to accommodate the planned development, any alternative alignment should avoid the use of estate roads, drives, gardens or other private areas wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. The potential of alternative routes to encourage sustainable transport and active travel should also be considered.**
- 5.7 The applicant submitted an amended proposal on 30<sup>th</sup> November 2021 to alter the alignment to route the restricted byway around the perimeter of the development which officers considered to remove the issues of using an estate road to carry a public right of way.
- 5.8 It was subsequently brought to the attention of the applicant that the design for the alternative route, appeared to use part of a steep embankment, and the agent submitted an altered application and plan on 14<sup>th</sup> June 2022 to remove this uncertainty.
- 5.9 A pre-order consultation was carried out on 22<sup>nd</sup> April 2022 for a 28 day period to gauge perception of the proposals from statutory consultees and statutory undertakers (utilities companies).

- 5.10 Representations against the proposal were received from the Green Lane Association ('GLASS') representative as detailed in full in **appendix 3**. The summary of these representations surrounds the nature of the path being confined between fences / boundaries, and the tight turns associated with the alignment being difficult to negotiate for certain lawful users – particularly horse drawn carriages.
- 5.11 Following discussions between the developer and GLASS, an alternative diversion on the same route as that initially proposed along the estate road was submitted on 7<sup>th</sup> July 2022 and this was put to pre-order consultation in the same manner as the first on 19<sup>th</sup> August 2022.
- 5.12 Representations against the proposal were received from the Open Spaces Society representative as detailed in full in **appendix 4**. The summary of these representations surrounds the use of the estate road through the development – a matter which officers had attempted to avoid in the earlier stages of the proposal.
- 5.13 Further correspondence was received from GLASS on 26<sup>th</sup> August 2022 stating:- “We have no objection to the diversion provided the position, width and surface type is in accordance to the latest plan..”
- 5.14 on 30<sup>th</sup> August 2022, the agent confirmed that they wished the matter to be determined in its current form i.e. the proposal in **appendix 2**.
- 5.15 A statement was also received at the request of Mr Denbury from the applicant (**appendix 5**) which provides further detail on the parking arrangements for the development.
- 5.16 **Conclusion**
- 5.17 The legal test associated with making an Order under s257 of the Town and Country Planning Act 1990 has been met as the public right of way would otherwise prevent the development from being carried out in accordance with planning permission granted.
- 5.18 The applicant has after seeking planning consent, attempted to accommodate the right of way in various proposals, none of which appear to be entirely acceptable to all parties consulted.
- 5.19 It has been stated by the OSS representative that a redesigned development or a proposal where the development is moved in its entirety might alleviate their concerns, but such changes would presumably require the matter to be reconsidered by the Planning department and Planning Committee, incurring costs and further time delays for the applicant, hence the applicant has asked for the matter to be determined in its present form.
- 5.20 The present proposal would appear to allow access to lawful users on a straightforward route through the development, however the points raised regarding parking by the OSS representative can be evidenced in many developments county and countrywide, where footways (pavements) are obstructed by parked cars.
- 5.21 The development, is however understood to be for the applicant and immediate family only, and is not a commercial development.
- 5.22 Parking should be sufficient enough, given the low density of the development, to prevent the issues raised by the OSS representative – although the future use cannot be forecast, and therefore there are no guarantees that future parking would not become an issue.

## **6. ASSUMPTIONS**

- 6.1 It is assumed that parking is sufficiently adequate for the development so that vehicles will not need to park on the access road i.e. the alternative route therefore blocking passage to certain lawful use by the public.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 The proposed diversion of restricted byway 11 in the former parish of Rhymney, under section 257 of the Town and Country Planning Act 1990 will allow the consented development to proceed. The proposal will not be considerably less commodious, being approximately 20 metres shorter than the existing route, however the test under s257 of the Town and Country Planning Act 1990 is that it is necessary to divert or extinguish a public right of way to enable development to be carried out. Consultations have already been held with user groups and other interested parties, and any issues foreseen have been discussed and the proposal amended to the best of the applicant's ability. The final proposal has not been acceptable to all consulted for reasons given in the report. The proposal will not have an impact upon the protected characteristics with the exception of disability and pregnancy & maternity. In these cases, the relevant issues are for the additional length of the path and the gradient. This has been considered, and the increased distance, would benefit users as the gradient would be reduced slightly by the greater length. The alternative route is therefore not considered to negatively impact upon any protected characteristic.

[Link to full Integrated Impact Assessment](#)

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Incurred costs are recoverable from the applicant, and therefore there are no long term financial implications to the authority.

## **9. PERSONNEL IMPLICATIONS**

- 9.1 Personnel implications include officer time in preparing reports, drafting Orders and notices and arranging advertisements in the press as required by legislation. Notices must also be erected on site and maintained in place for the specified duration.

## **10. CONSULTATIONS**

- 10.1 The consultation to the current proposal drew opposition from the Open Spaces Society (OSS) representative (appendix 4). The opposition is based firstly on the arrangement of the proposed development. However, the arrangement was considered and approved by the Planning Committee and it is not for this process to challenge the outcome of the decision. We are to determine whether the diversion is necessary to allow the development to be implemented.
- 10.2 The second point is relating to future parking within the development. It is stated that parking is a problem within developments, a fact which can be evidenced by the number of complaints received regarding vehicles being parked on pavements obstructing them from use by pedestrians and users with pushchairs and mobility aids/scooters. The issue with regard to sufficient parking is again one for the planning department to refer to at the planning committee meeting or design stages of a development.

However this is a small development of only three properties, and parking, even with guests should be possible within the curtilage of each property. This however can never be guaranteed.

- 10.3 The original consultation drew opposition from the Green Lane Association (GLASS) representative (appendix 3) on the grounds that the alternative route would be unusable by users of horse drawn carriages given the tight corners in the proposed route. For this reason the applicant redesigned the route to allow a straighter passage through the development.
- 10.4 It is appreciated that neither option is perfect, however on the assumption that the access road is not used for parking of any vehicles, this proposal is the simplest and most accessible for all lawful user groups.

## **11. STATUTORY POWER**

- 11.1 Section 257 of the Town and Country Planning Act 1990.

Author:

Mr S. Denbury, Countryside and Rights of Way Assistant, denbus@caerphilly.gov.uk

Consultees:

Christina Harrhy, Chief Executive, harrhc@caerphilly.gov.uk,  
Mark S. Williams, Corporate Director for Economy and Environment, williams@caerphilly.gov.uk,  
Rob Tranter, Head of Legal Services and Monitoring Officer, trantrj@caerphilly.gov.uk  
Lynne Donovan, Head of People Services, donovl@caerphilly.gov.uk  
Steve Harris, Head of Financial Services and s.151 officer, harrisr@caerphilly.gov.uk  
Councillor Philippa Leonard, Cabinet Member, leonap@caerphilly.gov.uk  
Councillor Chris Morgan, Cabinet Member, morgac15@caerphilly.gov.uk  
Councillor Julian Simmonds, Cabinet Member, simmoj@caerphilly.gov.uk  
Councillor James Pritchard, Cabinet Member, pritcj@caerphilly.gov.uk  
Councillor Carl Cuss, Local Councillor, Cusscj@caerphilly.gov.uk

### Community Council

Clerk to the Rhymney Community Council

### Prescribed Organisations:

British Horse Society  
Byways and Bridleways Trust  
Open Spaces Society  
The Ramblers

### Statutory Undertakers

Openreach (formerly: British Telecom)  
Dwr Cymru / Welsh Water  
Wales and West Utilities  
Western Power Distribution

Background Papers:

None

Appendices:

Appendix 1 Location Plan 1:10,000 scale

Appendix 2 Detailed Plan 1:500 scale

Appendix 3 Response to consultation (Green Lane Association ('GLASS'))

Appendix 4 Response to consultation (Open Spaces Society ('OSS'))

Appendix 5 Statement from the applicant



Hawliau Tramwy  
Cyhoeddus /  
Public Rights of Way

21-PPQ-005

Location Plan

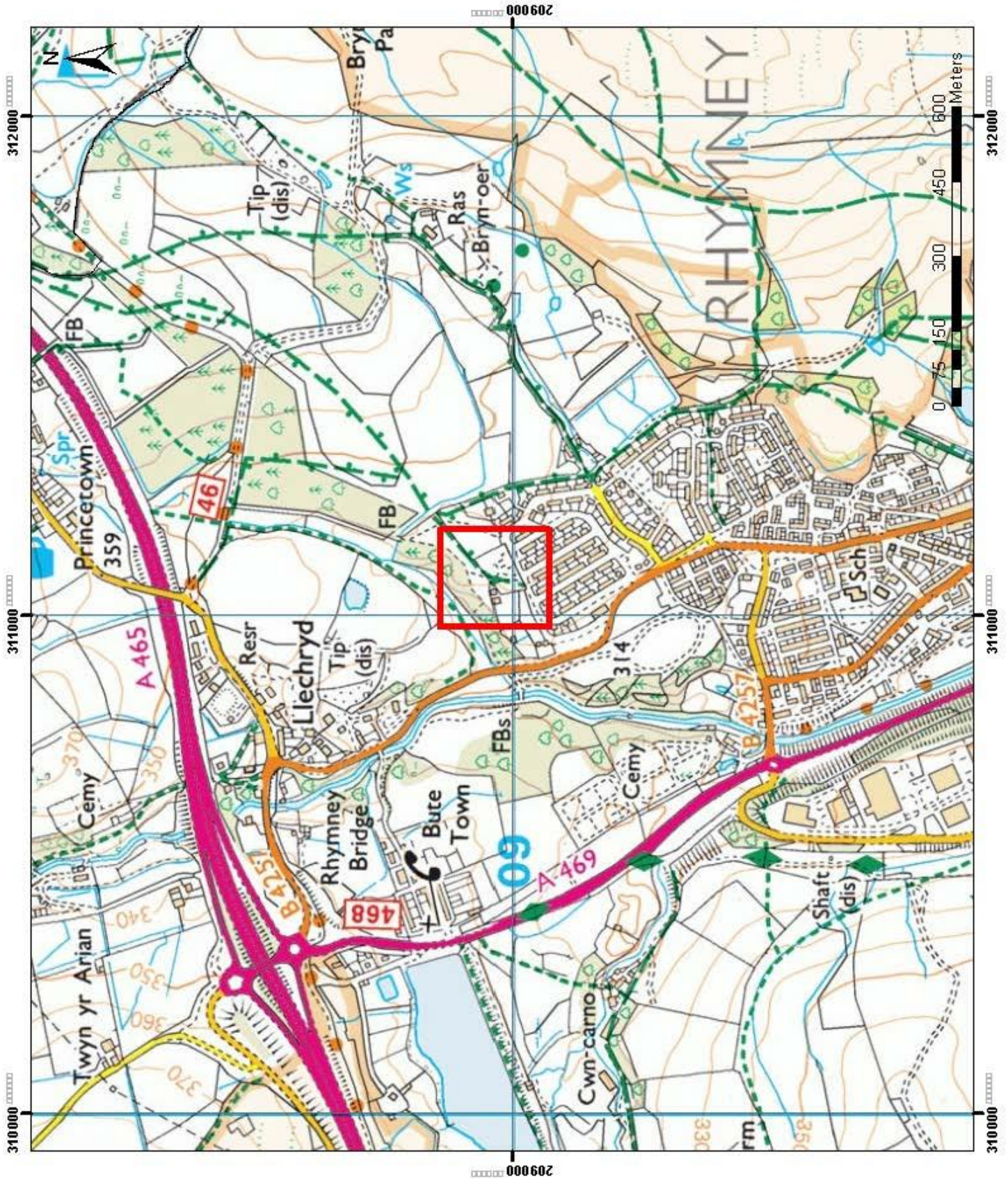
## Appendix 1

1:10,000 at A4

Mae'r wybodaeth hon ar gyfer  
erweiniad yn unig ac nid yw'n ffurfio  
rhan o'r Map Difiniol. Gallwch chi  
geol rhagor o gyngor ac arweiniad  
drwy gysylltu â ni.

This information is for guidance only  
and does not form part of the  
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Hawliau Tramwy  
Cyhoeddus /  
Public Rights of Way

Cilfordd Gyfyngedig /  
Restricted Byway  
11 Rhymni / Rhymney  
21/PPO/005 s257 TCPA90

**Legend**

-  Llwyrbr arfaethedig i gael ei crewyd / Proposed path to be created
-  Llwyrbr arfaethedig i gael ei diddymwyd / Existing path to be closed
-  Clifordd gyfyngedig heb ei heffeithio / Unaffected Restricted Byway

**Appendix 2**

1:1,000 at A4

Mae'r wybodaeth hon ar gyfer arweiniad yn unig ac nid yw'n ffurfio rhan o'r Map Diffiniol. Gallwch chi gael rhagor o gyngor ac arweiniad ddiwy gysylltu â ni.

This information is for guidance only and does not form part of the Definitive Map. Further advice and guidance can be obtained by contacting us.

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## Appendix 3

From:

To: Subject: Date:

Attachments:

[WWW: Rights Of Way](#)

Re: 21-PPO-005 Pre-Order Consultation for diversion of a public right of way 04 May 2022 11:33:27

[xkVch0686QGVX0kG.png](#) [5OzX2y5ZB0x1Jpm.png](#)

Dear Stefan,

Thank you for the early consultation on the plans to divert RBW11, a Public Right of Way (PRoW) over land at the former Royal British Legion Club (RBLC), Rhymney. After careful consideration, the Green Lane Association feels the detail of the plans fall short of meeting the required tests and advises it would object to a diversion order based on them.

### **ASSESSMENT OF RBW11**

Initial inspection shows RBW11 to be of historical interest. The PRoW is recorded as forming part of a wider historical road network connecting Brecon to Rhymney. Given the section to be affected is small and the historic route to the southwest is truncated nearby at the ordinary road network, the Association believes a pragmatic approach can permit its revision, provided the basic tests are met for all class of user. (A Restricted Byway (RB) records public rights for user on foot, horse, and vehicles other than mechanically propelled vehicles. Higher rights may exist, albeit most but not all are likely extinguished by the Natural Environment Rural Communities Act 2006).

I am struck by the difficulty faced attempting to divert a PRoW that has been long obstructed. Such cases often open a can of worms. There is a significant question in my mind as to the position, width and scope of the public access across the development site.

It's worth noting that RBW11 is not recorded on the National Street Gazetteer, which may have simplified the process. This is an apparent omission as it is a Highway Maintainable at Public Expense (HMPE) by virtue of s.49 of the Countryside and Rights of Way Act 2000. Albeit, earlier legislation may have already confirmed HMPE status on CRF11 (s.47 of the National Parks and Access to the Countryside Act 1949, et al).

The recorded route of the PRoW does not exist on the ground, it's fenced off and the land raised, presumably as part of the development for the RBLC. The Definitive Map and Statement shed little light on the width, recording the route as varying in width, albeit with a notional 10 feet approximation over the length of several public paths. Historic mapping suggests the development site may be a place where the highway boundaries were considerably wider. Aerial photography from around the time of the Parish surveys suggests a way of between 8 and 12m. Although these are far from conclusive.

Witness marks on the ground suggest the continuation of RBW11 to the north has been in use in modern times; the question then arises, how did the users cross the RBLC, given that the recorded route of the PRoW was obstructed? I suspect they simply used the RBLC car park and its connection to the estate. This leads me to wonder if dedication of public rights has occurred over a wider area. I am drawn to the track to the west of the site and question whether part of this also holds public rights.

Reviewing the supplied plans highlights inconsistencies with the depiction of the site at its west side. The track is missing, and the embankment appears not to align with images and maps of the area. Possibly, this part of the plan was thought unimportant; however, the proposed route of the diversion has now brought this area into sharp focus. I find it challenging to judge the plans given the uncertainty.

### **ASSESSMENT OF THE REVISED ROUTE**

Notwithstanding, I believe the Association can adopt a pragmatic approach, given the small scale of the development. It seems sufficient to provide a simple connection between the continued route of RBW11 to the north and the ordinary road network.

From a user perspective, any revision to the route must be considerate of those permitted to use it by right. Being an RB, the primary concern is for horse-drawn vehicles (HDV) and cycles, as providing for these usually ensures the other classes of users as catered for. Although care must be taken to ensure users are not brought into conflict with one another. Importantly, any diversion must provide an equivalent level of convenience or greater, and continue to be maintained at public expense.

At face value, the proposals do not provide the public with this; They resemble an estate footpath rather than a highway for vehicles. It is one thing to provide a clear way over open ground and another to confine users within fences on either side and sharp turns. The tightness of the turns limits negotiation by HDVs, and I am unconvinced two carriages could pass each other, or avoid crossing by taking in turns, as the ends of the fenced-off corridor are obscured. I am similarly unconvinced a wheelchair user or person on a recumbent cycle faced with an oncoming HDV would have little where to go.

The Green Lane Association objects to the planned diversion of RBW11 for these reasons. However, I see no reason why reasonable pragmatism should not find an agreeable solution.

### **GUIDELINE**

I think it beneficial to indicate what sort of compromise may prove acceptable. Regrettably, the current site plan is too uncertain to provide a considered opinion based on it. However, the equivalence test seems more likely to be met by widening the highway and removing the tight bends at points B and D, although much depends on the detail. Our general guideline width for a green lane is 5m. It may be possible to consider less, provided it is straightforward to negotiate with room to manoeuvre, and regular passing places are provided.

I'm drawn to an earlier plan for the site that showed the highway running between the houses. There is much detail missing - surface, width, whether it is fenced, bounded or gated, and how it runs over the driveway. However, at face value, it may provide both the desired simple connection and sufficient room for users to share the space and co-exist with each other and their surroundings.

The Association wholeheartedly supports the Welsh Government (WG) guidelines indicating preference should be given to

avoiding estate roads where possible (para 7.9 of the Guidance for Local Authorities on Public Rights of Way – August 2016). However, given the apparent difficulty in delivering a simple (not torturous) alternative within the relatively small development area, it may prove worthwhile to consider this case on its individual merits. Especially in relation to the inherent contradiction in the WG guidelines - that rerouting a vehicular PRow to avoid vehicle traffic is not achievable. Perhaps, given the land's previous use as a car park, it may be reasonable to consider the level of traffic the public has previously co-existed with and compare this with the expected level of traffic from the development.

Yours sincerely,



South Wales Representative  
Green Lane Association [www.glass-uk.org](http://www.glass-uk.org)  
[www.trailwise2.co.uk](http://www.trailwise2.co.uk)

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The Green Lane Association Ltd is a national user group protecting our heritage of ancient vehicular rights of way. Registered in England, No 5369836, Registered Office: Blue Pig Cottage, 1 Elmer Street, Grantham, Lincolnshire, NG31 6RE

On 22/04/2022 10:58, WWW: Rights Of Way wrote:

Dear Consultee,

Please find attached a consultation for your attention. To enable us to determine the matter in a timely manner, a response within 28 days would be appreciated if possible.

Copies of this consultation have also been sent to the Rights of Way Cabinet Committee Members, Local Ward Member, Community Council, Green Lane Association, British Driving Society, British Horse Society, Byways and Bridleways Trust, Open Spaces Society and the Ramblers.

Kind regards,

**Stefan Denbury**

Cynorthwydd Cefn Gwlad a Hawliau Tramwy | Countryside And Rights Of Way Assistant Cyngor Bwrdeistref Sirol Caerffili | Caerphilly County Borough Council

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Gallwch ohebu mewn unrhyw iaith neu fformat. Ni fydd gohebu yn Gyfraeg yn creu unrhyw oedi. Correspondence may be in any language or format. Corresponding in Welsh will not lead to any delay.

[REDACTED]



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**WEB** [www.oss.org.uk](http://www.oss.org.uk)

22/8/22

Dear Mr. Denbury

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 257**

**PROPOSED DIVERSION OF RESTRICTED BYWAY NO. 11 RHYMNEY between GR SO 11055 08972 and 11072 09043 at the former Royal British Legion Club.**

I visited the site today, but I was unable to walk along RBW 11 because it was obstructed by fencing and a padlocked gate.

I spoke with some local people who live not far from the area that was once owned by the Royal British Legion and they spoke of the area formerly being open, easily accessible and easy to use. Even if the area were not obstructed by fencing and a padlocked gate, the byway would not be easy to use as the ground appears to have been bulldozed and the terrain is uneven.

I had wanted to view the site to see if I could suggest an alternative diversion because the one proposed is not acceptable. I understand that under section 257 of Town and Country Planning Act 1990 that Council may make an Order to divert restricted byways if it is satisfied that it is necessary to do so to enable development to be carried out. However, the plans could be altered so that the byway would follow the route marked "track" on the map which is parallel to a lane leading to some sheds. If the whole development were moved 3 metres south-southwest there would be room for the byway to skirt the development.

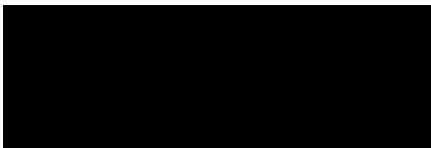
An alternative is to forsake the temporary caravans and make room for the 3 houses in a different configuration. This would leave plenty of room for the byway on the north side of the development before it turns south-southeast and rejoins the present line. It is

necessary to divert to enable the development to be carried out, but the line of the diversion should not be on roads shared with vehicular traffic.

It has to be agreed that parking is a huge problem and a significant minority of people have no regard for the access needs of others so long as they can park with as little inconvenience to themselves. Added to this too many people do not consider how much space is available to them to park their cars when they purchase a vehicle. Although the planning application shows provision for car parking on the plots, it is highly likely that at times there will be more cars than the plots have catered for. Extra cars, visitors' cars will be parked on the byway. When the propensity is for CCBC to allow garages to be converted into living spaces ( 95%+ successful applications ) it is obvious that the byway will be obstructed by parked cars and it is highly unlikely that the authority will have the means to take action against those obstructing the byway. It would be disingenuous of either CCBC staff or the landowners to pretend that parking on this approach road would not be a problem.

As a result the Open Spaces Society opposes the proposed route of the diversion. However, the Open Spaces Society is keen to find a reasonable compromise - a route where walkers, equestrians, cyclists and those driving a horse and cart do not have to dodge and dive from cars & vans to ensure their safety.

Yours sincerely,



Correspondent for the Open Spaces Society for  
Caerphilly County Borough

## Appendix 5

**From:**  
**To:** [Denbury, Stefan](#)  
**Cc:**  
**Subject:** RE: RBW11 Rhymney 21-PPO-005s257 TCPA90  
**Date:** 20 October 2022 13:07:14

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Hi Stefan

Thank you for your e mail and opportunity to write a supporting statement, please find below our thoughts:

Regarding moving the rights of way on the former British legion site, we fully understand and take on board the concerns raised regarding the diversion, we have considered the parking and understand that in some cases this becomes a problem for residential areas, the properties both have garages which are detached so there are no plans to convert them and incorporate them into living space, we have also made sure that the driveways are a good size enabling parking for more than two cars per plot, we believe that we have provided parking for at least 10 cars on driveways plus garaged parking on the land.

The road in only serves two properties so anyone accessing the public right of way will not be inconvenienced by parked cars on the road or by much traffic, the new proposed route is a more direct route for users to gain access to the public highway and we will ensure that any planting does not obstruct vision each way entering the highway.

We are very happy to work with you in order to make this adjustment to the route of the rights of way, I do not believe that it will be detrimental to users and we are happy to make provision ensuring that parking will not become an obstruction for users of the rights of way.

Kindest Regards