



## **Highways Act 1980, Section 119 Public Path Order Footpath 1 Usk**

**Report for Taxi and Regulatory Rights of Way Advisory  
Committee 23 February 2026.**



**Ar gyfer meddwl, corff ac enaid ein cymuned  
For the mind, body and soul of our community**

# 1. Purpose

1.1. This report has been compiled to act within the approach to be fair, impartial and operating the principles of natural justice. It sets out the full background, legislation, policy, objection and other evidence in respect of a request for an order to be made under Section 119 of the Highways Act 1980 for Public Footpath 1 Usk. Its purpose is to assist Members of the Taxi and Regulatory Rights of Way Advisory Committee to make a decision as to whether or not an order should be made to divert part of Footpath 1 Usk and to inform all other interested parties.

1.2. In deciding whether to make an order the Authority is exercising a power, not a duty. If decisions are objected to, they may be tested at an inquiry, hearing or by written representations by an Inspector appointed by Welsh Government. Decisions must be readily justified under the criteria of the relevant Acts.

## 2. Background

### Location Plan



2.1. On 24<sup>th</sup> March 2023, a public path order application was received by Monmouthshire County Council (MCC) Countryside Access Service. It was made by the Committee of the Usk Athletic Club (Usk AC), to divert the public footpath that runs across the main cricket pitch and past the entrance to a machine shed, on to an alignment behind the tennis courts. It also seeks to

move the path from across the cricket pitch in the Roger Edwards field and then realigns it in the next agricultural field.

2.2. The reason for the application was in the interests of the landowner and the public, to improve safety. There have been a number of near misses where members of the public walking the current legal alignment who have nearly been struck with cricket balls travelling at speed during matches. The path also runs in front of a machine shed that houses a large tractor with a gang mower trailer that crosses the current path whenever the machinery is used. Also, the use of the path by dog walkers has led to high levels of dog fouling on the sports field. The players now must clear the field before every match and collect all the dog faeces in order for games to go ahead safely. This grass path also becomes muddy and slippery after rain.

2.3. The Authority has powers to divert footpaths if it is in the interests of the landowner or the public.

2.4. Appendix 1.1 is the proposed Order Plan and Appendix 1.2 is the Schedule that sets out the route of the path that the application seeks to divert. These were created in 2023 and Appendix 1.3 is the updated version of the Schedule for 2026.

### **3. Legislation/Policy Issues**

3.1. The Council, under Section 119 of the Highways Act 1980 (S119 HA 1980), has discretionary powers by order, to divert footpaths if it is satisfied that it is necessary and meets certain legal tests.

3.2. The council should therefore consider if the proposal meets the requirements of the legislation. It should also consider all of the other relevant legislation, supplementary guidance and policy.

3.3. Section 119 Highways Act 1980

*Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or] of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—*

(a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*

(b) *extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

*An order under this section is referred to in this Act as a “public path diversion order”*

- (2) A public path diversion order shall not alter a point of termination of the path or way—*
  - (a) if that point is not on a highway, or*
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

*Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall —*

- (a) specify a date under subsection (1)(a) above, and*
  - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*

*Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—*

- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or*
  - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or*
  - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the*

*public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—*

- (a) the diversion would have on public enjoyment of the path or way as a whole,*
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and*
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.*

*(6A) The considerations to which—*

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and*
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order, include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.*

### **3.4. Other relevant Legislation, Guidance and Policy.**

In addition to the HA 1980 legislation the council should consider the following Legislation, Guidance and Policy. (These are detailed in paragraph 6 of this report).

- Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016.
- Monmouthshire County Council Policy as set out in its Application & Guidance Pack for Public Path Diversion and Extinguishment Orders under the Highways Act 1980.
- Environment (Wales) Act 2016.
- Equality Act 2010.
- Active Travel (Wales) Act 2013.
- The Well-being of Future Generations Act 2015.
- Monmouthshire's Countryside Access, Protocol and Operational Management Guide and Monmouthshire's Countryside Access Improvement Plan.

## 4. Consultees

4.1. MCC Rights of Way ran pre-order consultation twice for this path order in September 2023 and again in March 2025. Consultees included the Local Member, Usk Town Council, the statutory undertakers and path user groups. The first pre-order consultation met with an objection and so a revised proposal was sent out that sought to address the original objection. This met with further objection from the same person.

4.2. The following is a complete list of those consulted on the revised proposal in March 2025, with a summary of the responses. Details of the objection can be found in paragraph 7 below.

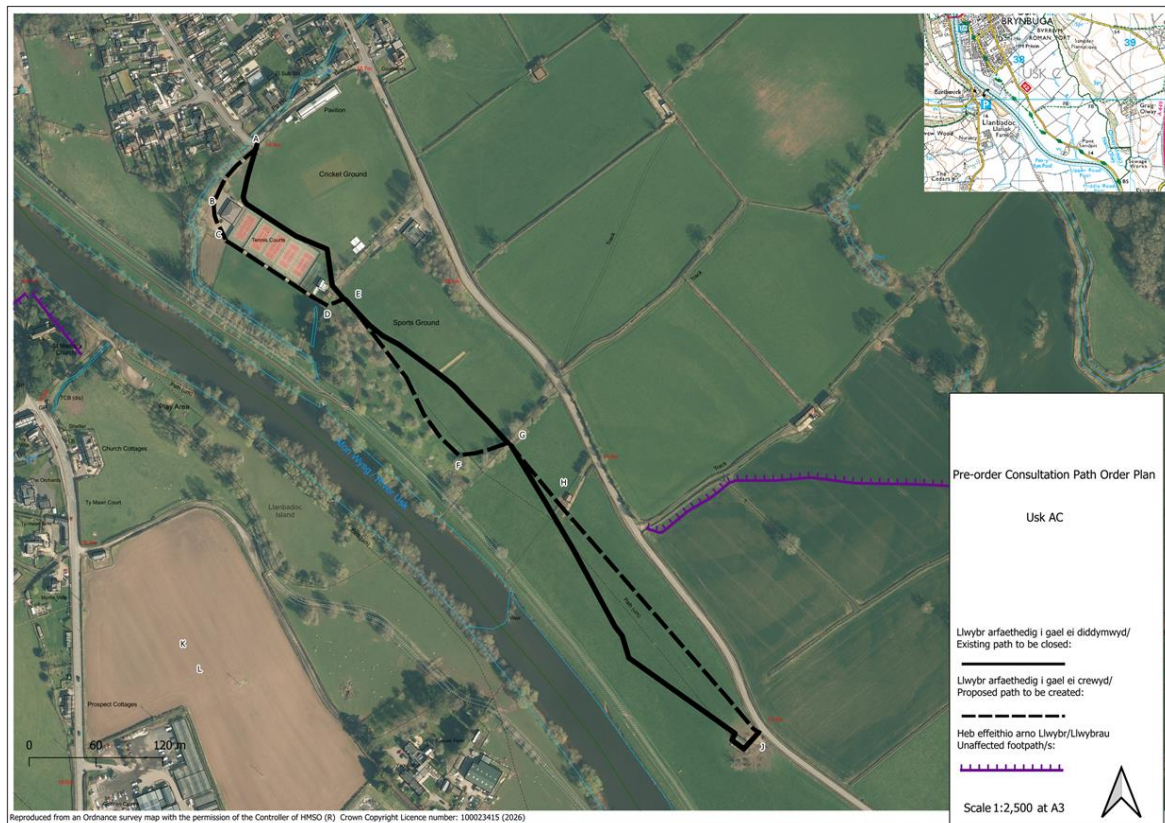
|    | <b>Name</b>                       | <b>Organisation</b>                               | <b>Summary of Representations</b>                                                                                               |
|----|-----------------------------------|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| 1  | Sali Palmer                       | MCC Biodiversity Officer                          | No objection.                                                                                                                   |
| 2  | Head Office                       | The Open Spaces Society                           | No response.                                                                                                                    |
| 3  | Mr Steve Garland                  | Lower Wye Valley Ramblers Association             | No objection.                                                                                                                   |
| 4  | Ruth Rourke                       | MCC Countryside Access Manager                    | No objection.                                                                                                                   |
| 5  | Collette Bosley                   | MCC Countryside, Destination, Environment Manager | No objection.                                                                                                                   |
| 6  | Richard Ray                       | MCC Legal Department                              | No objection. Comment, 'the proposal seems to satisfy statutory tests'.                                                         |
| 7  | Bradley Griffiths                 | Western Power Distribution                        | No objection.                                                                                                                   |
| 8  | Openreach, Network Alterations    | BT Openreach                                      | No objection. Comment, 'Openreach does not appear to have apparatus that may be affected in the area of your proposals'.        |
| 9  | External Relations Team           | Natural Resources Wales                           | No objection.                                                                                                                   |
| 10 | Plant Protection                  | Cadent Gas/National Grid                          | No objection.                                                                                                                   |
| 11 | Sharon Grey                       | Dwr Cymru / Welsh Water                           | No objection. Comment, 'Please be advised that there are no Dwr Cymru apparatus affected by the proposed works'.                |
| 12 | The Clerk                         | Usk Town Council                                  | No objection. Comment, 'The council voted in favour of the proposal'.                                                           |
| 13 | County Councillor Meirion Howells | MCC                                               | No objection. Comment, 'Yes, I believe this is what was previously discussed and allows better provision for wheelchair users'. |

|    |                              |                  |                                                                                                   |
|----|------------------------------|------------------|---------------------------------------------------------------------------------------------------|
| 14 | County Councillor Sara Birch | MCC              | No objection. Comment, 'That seems sensible'.                                                     |
| 15 | County Councillor Tony Kear  | MCC              | No objection. Comment, 'Based on your explanation, I have no issues with what is being proposed'. |
| 16 | Councillor Alison Ivin       | Usk Town Council | Objection. (Details in paragraph 7 below).                                                        |

## 5. Photographs

5.1. The following images demonstrate the character of the existing route and the proposed route.

### Proposed Order Plan overlain with Aerial Photography.



View from Point A Looking along the existing path.



View of Existing path past tennis courts.



View from Point A looking down proposed path.



View from Point B looking down proposed path.



View from Point C along proposed path.



View from further down the proposed path towards Point D.



View from further down the proposed path towards Point D.



View from Point D back along proposed path.



## 6. Application of Tests, Guidance & Policy

6.1. The following section assesses how the proposed order complies with relevant legislation, guidance and policy:

### 6.2. Highways Act 1980

*Where it appears to a council as respects a footpath, bridleway or restricted byway in their area that, **in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted***

The path affected is a public footpath shown on the Definitive Map and Statement and has been subject of a diversion order previously. The order would be in the interests of the landowner and the public to address safety issues.

### 6.3. Highways Act 1980

- (2) *A public path diversion order shall not alter a point of termination of the path or way —*
- (a) *if that point is not on a highway, or*
  - (b) *(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

The proposed diversion meets part (a) of this legal test because it terminates on the same highway. It also meets part (b) of this legal test because the route of the proposed alternative path is substantially as convenient as the existing route. The evidence to support this is that the alternative path is almost the same length as the existing path (please see the path schedule in Appendix 1.2). The existing path would be taken off an active sports field on to a purpose-built path and a grass path and be more accessible.

### 6.4. Highways Act 1980

- (6) *The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless they are **satisfied that the diversion to be effected by it, is expedient** as mentioned in subsection (1) above, and further that **the path or way will not be substantially less convenient to the public in consequence of the diversion** and that it is expedient to confirm the order **having regard to the effect which —***
- (a) *the diversion would have on public enjoyment of the path or way as a whole,*
  - (b) *the coming into operation of the order would have as respects other land served by the existing public right of way, and*
  - (c) *any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it, so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.*

Although the decision for the Committee is whether to ‘make’ the order in this case, it is appropriate to consider the legal tests that apply at the ‘confirmation’ stage during this process. The relevant parts to be considered are whether the new path will ‘not be substantially less convenient’, and in this case it is not for the reasons detailed in paragraph 6.5 above. The second consideration is section (6) (a) and relates to the ‘enjoyment of the path or way as a whole’. This is subjective, but it appears that the alternative route could be deemed more enjoyable than the existing route. The evidence to support this is that the safety issues that affect the existing path do not affect the proposed alternative path. The proposed alternative path runs along a far safer alignment than the existing path and is more accessible.

**6.5. Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016** [www.gov.wales/sites/default/files/publications/2019-04/public-rights-of-way-guidance-for-local-authorities.pdf](http://www.gov.wales/sites/default/files/publications/2019-04/public-rights-of-way-guidance-for-local-authorities.pdf)

6.20. *Before making a Diversion Order it must appear to the authority that it is expedient to divert the path in the interests of the public or of the owner, lessee or occupier of the land crossed by the path or way. A Diversion Order may be made as long as it is expedient to divert all or part of a way in the interests of at least one of these parties and authorities must be able to explain why this is so.*

6.21. *Again, ‘expedient’ in s. 119 of the HA 1980 has a wide meaning and the authority may take a broad range of factors (such as the historical integrity of the route) into account when deciding whether to make an order or, confirm an unopposed order.*

It is expedient in the interests of the landowner and the public to divert the path for the reasons detailed in paragraph 6.3 above.

**6.6. Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016**

6.28. *Whereas ‘convenience’ may be interpreted as meaning ease of use, ‘enjoyment’ can take into account other factors such as the views to be enjoyed from the path or way. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable. If so, when coming to a conclusion on expediency, the decision-maker would have to balance the applicant’s interests in having the Order confirmed against any amenity loss to the public.*

The objection made in respect of this proposed diversion relates to the preference of using the current path against the use of the proposed path. This is a relevant consideration in this case. Although the person objecting may prefer the current path, this needs to be balanced against the applicant’s desire for improved safety and the reduced risk to path users.

**6.7. Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016**

6.116. *When deciding whether to make Creation, Diversion or Extinguishment Orders under the HA 1980, authorities are required under s. 29 and s. 121(3) of the Act to have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities (including Local Authorities) to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions.*

The proposal does not conflict with the duty under this Act.

**6.8. Monmouthshire County Council Procedure as set out in its Application & Guidance Pack for Public Path Diversion and Extinguishment Orders under the Highways Act (Appendix 1.3)**

**6.9. Landownership**

*"The first thing to consider before applying for a public path order is that you, as the applicant, own all the land over which the diverted route is to cross. If you do not, you must obtain the landowner's written consent before you can continue. (Forms for this area available upon request). The Authority will not be able to process your application without this."*

The applicant does not own all the land over which the whole of the proposed path would run. They have obtained the written permission of the relevant landowners to divert the path in their fields.

**6.10. Environment (Wales) Act 2016**

***Biodiversity and resilience of ecosystems duty***

*(1) A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.*

MCC Biodiversity Team has been consulted and had no objection to the proposed diversion.

**6.11. Equality Act 2010**

***2010 CHAPTER 15***

*An Act to make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate*

*discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes.*

Monmouthshire County Council is committed to the Equality Act as stated in Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide (page 20 section 7.3). In this context this legislation relates mostly to accessibility. Accessibility along the proposed path would be improved by the proposal, and the use of gaps in place of gates, and the installation of wheelchair accessible kissing gates would increase the accessibility of the proposed path.

#### **6.12. Active Travel (Wales) Act 2013**

*9 Provision for walkers and cyclists in exercise of certain functions.*

*(1) The Welsh Ministers and each local authority must, in the exercise of their functions under Parts 3, 4, 5, 9 and 12 of the Highways Act 1980 (creation, maintenance and improvement of highways, interference with highways and acquisition etc. of land), in so far as it is practicable to do so, take reasonable steps to enhance the provision made for walkers and cyclists.*

The existing path and the proposed path are similar in length, but the proposed path would improve accessibility. The proposed path is surfaced in part, making it more accessible and suitable to some path users. A grass alternative is offered to benefit wheelchair users, as raised by way of the initial objection.

#### **6.13. Well-being of Future Generations (Wales) Act 2015**

6.14. Please see Appendix 3 to the Report to Committee which is an Equality and Future Generations Evaluation Form.

#### **6.15. Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide (Chapter 14 Page 37)**

<https://www.monlife.co.uk/wp-content/uploads/2020/08/Final-English-CA-Policy-and-Protocol-Operational-Management.pdf>

The Prioritisation of Rights of Way Legal Orders is covered by this document, equality and the Council's policy on least restrictive access requiring opportunities to be taken to make paths more accessible to all. The proposed path is more accessible than the current path.

#### **6.16. Monmouthshire's Countryside Access Improvement Plan.**

<https://www.monlife.co.uk/wp-content/uploads/2024/07/ROWIP-English-v5-final-07012020.pdf>

6.17. This plan sets out the approach to providing and managing access to Monmouthshire's countryside for the benefit of all Monmouthshire's residents and visitors.

As per other legislation and documents already described it includes improving access for all and active travel as a key element of the Plan. In this path order two pedestrian gaps are replacing pedestrian gates and two stiles are being replaced by wheelchair accessible kissing gates.

## **7. Objection.**

- 7.1. The following details outline the nature of the objection that was received from a member of Usk Town Council, Councillor Alison Ivin. (N.B. Usk Town Council, who were a pre-order consultee, voted and had no objection to the order).
- 7.2. In September 2023 part of the proposed path order sought to move the current legal alignment from one side of the tennis courts to the other for safety reasons. Welsh Water had concluded some work and had provided Usk AC with a made path to the rear of the tennis courts to reduce the use of the sports field. This has been used extensively by the public, on a permissive basis, particularly during the winter months.
- 7.3. Ms. Ivin initially raised an objection to moving the path from a grass field to a stone dust path. The reason for her objection was that the gravel present on a stone dust path can negatively affect wheelchair use, because the smaller stones can prevent the wheels from moving.
- 7.4. The objection was received by MCC Public Rights of Way and because it was a valid objection Usk AC was made aware of the objection and asked to propose an alternative plan that would address the objection.
- 7.5. In March 2025 a revised proposal was sent out for pre-order consultation that included the widening of the path to the rear of the tennis courts by 1 metre to include a grass path that would be wheelchair accessible. It also included a design for the inclusion of access ramps at each end of the relevant section of the proposed path at an incline of 1 in 20, making it wheelchair accessible.
- 7.6. One of the main reasons for the delay in progressing this path order has been the lack of communication from Ms Ivin throughout the process. I first emailed her when I was made aware of her initial objection in October 2023. I received no response, so I emailed again in February 2024, March 2024 and twice in April 2024. None of these requests to try to address Ms Ivin's objection were replied to. I contacted the Clerk to Usk Town Council to ask for assistance in obtaining a response from Ms Ivin, because I was unable to progress the path order without first addressing the objection. In August 2024 I telephoned Ms Ivin and spoke to her about her objection and Usk AC's proposal to address her objection. She stated she was unwilling to withdraw her objection, and that she would email me with the details of her objection. I received no communication, so emailed Ms Ivin twice in September 2024, in October 2024 and again in November 2024, and received no response. This meant there was an unresolved objection that I could not address because of the failure to engage with me.

- 7.7. On 16<sup>th</sup> April 2025, following the second pre-order consultation, Ms Ivin contacted me asking if the path order could include two wheelchair accessible kissing gates in the field beyond the cricket ground. I responded on 17<sup>th</sup> April and confirmed that this could be done. I received no response to that email and so I followed it up with a further email on 30<sup>th</sup> April and got no reply.
- 7.8. In June 2025 Usk Town Council voted and had no objection to the proposed path order at the Usk AC. On 23<sup>rd</sup> June I emailed Ms Ivin to provide me with details of any objection she may have to the proposed path changes. I received no response, so I emailed her again on 30<sup>th</sup> June, 7<sup>th</sup> July, 28<sup>th</sup> July and 5<sup>th</sup> August.
- 7.9. I also telephoned Ms Ivin on 5<sup>th</sup> August, and she stated that she still objected to the proposed path changes. She stated she would email me details of her objection. I received no communication, so I emailed Ms Ivin on 1<sup>st</sup> September and again on 15<sup>th</sup> September when I stipulated that if she failed to respond by 29<sup>th</sup> of September it would result in the path order progressing as her objection would not have been 'duly made'. On 28<sup>th</sup> September I received an email from Ms Ivin which appears below.

*Thank you for addressing some of my objections by confirming that you will upgrade the kissing gates to wheelchair accessible ones at points G and J (to be stipulated in the amended schedule) and to amend the specified width of the new length of footpath along and behind the tennis courts from 2m to 3m wide to accord with the description set out in your covering letter of 10 March (to be stipulated in the schedule). That approach is appreciated.*

*Regrettably, I do still have concerns with the revised footpath as outlined in our discussions.*

*The current footpath on the cricket field is highly used and is a level and open environment benefitting from natural surveillance and overlooking. It feels open and safe. The ground is flat and allows for those who have less mobility to survey the ground and pick their steps. The footpath is highly used as it offers a unique experience in Usk where we have no parks to offer an alternative. Given the number of users there are a high number of users at the older age group who value the level and safe environment which is not replicated elsewhere in Usk. Moving the footpath to the back of the tennis court takes away these attributes.*

*Both current and proposed diverted footpaths lead onto the rougher ground of the Roger Edwards field. A number of users stay on the cricket field to avoid the rougher ground for confidence of walking and because of high use and overlooking, the route does not feel isolated. It feels safer. Even with the ramping at either end of the diversion where it runs behind the tennis courts, the diverted route does not have the same attributes and the rougher ground at the top of the ramping making the transition of ground/gradient harder for some existing users.*

*For both of these reasons my view is that the footpath should remain on its current route at the edges of the cricket field where is it an accessible and much used and valued recreational route.*

*As a secondary point, it is also in my mind that the planned pump track on the Roger Edwards field will take its key access for cyclists along the same route as the diverted route of the footpath behind the tennis courts. Whilst I appreciate that the pump track does not have planning permission yet, the Town Council have been informed that the planning application for the pump track is imminent. In my opinion it is prudent to consider both applications together as the planning application is so proximate and I am advised that it is key to the pump track to take its main access over the route of the diverted footpath. Rather than sequential applications which could result in priority to the first in time, and knowing of the pump track planning application, I believe that it would be sensible for the footpath diversion to not be considered in isolation but alongside the pump track application.*

*Your letter of the 10<sup>th</sup> the planning application actually refers to the planning application to build a cycle pump track at the Usk AC site and meaning that the specification of the path proposed at the rear of the tennis court be altered from the original proposal to either a) a 3m wide footpath made up of 1.5m stone dust path and 1.5m of grass path (with a 1:20 gradient at both ends) or b) a 3m wide footpath made up of 1.5m stone dust path and 1.5m of tarmac path (with a 1:20 gradient at both ends). Given that your covering letter refers to the pump track planning application and that the specification has been drawn up with that use in mind, then there would seem to me to be enough clear indication of intended shared use of the diverted footpath in the future. This intention of shared use should not be removed from consideration of the footpath diversion because the footpath diversion is considered ahead of the pump track application when that pump track application is clearly in prospect and in mind.*

*Taking that point forward, I am concerned at any future shared use (pedestrian and cyclist) of a highly used footpath contained within fixed vertical boundaries formed by the tennis court fence and football field fences. Government advice is moving away from shared surfaces, and I am concerned that at the negative impact on the pump track proposals if the footpath is diverted resulting in an insoluble problem later on if it is essential to the pump track to use the same surface. Obviously if the footpath becomes used by cyclists, then use by pedestrians, particularly those less able, will be negatively affected.*

*If the footpath is diverted, I foresee future conflict between competing users within a limited width space. This reinforces my view expressed above, that the footpath should not be diverted.*

7.10. Below are the Officer's observations in relation to the objections.

*The current footpath on the cricket field is highly used and is a level and open environment benefitting from natural surveillance and overlooking. It feels open and safe. The ground is flat and allows for those who have less mobility to survey the ground and pick their steps. The footpath is highly used as it offers a unique experience in Usk where we have no parks to offer an alternative. Given the number of users there are a high number of users at the older age group who value the level and safe environment which is not replicated elsewhere in Usk. Moving the footpath to the back of the tennis court takes away these attributes.*

The proposed path has been designed to be more accessible than the current path with the inclusion of the wheelchair accessible inclines, surface and gaps instead of gates. There are other parks in Usk, including the Usk Island and the park and field behind the Usk Memorial Hall. It is unknown why the objection states there are no other parks in Usk.

*Both current and proposed diverted footpaths lead onto the rougher ground of the Roger Edwards field. A number of users stay on the cricket field to avoid the rougher ground for confidence of walking and because of high use and overlooking, the route does not feel isolated. It feels safer. Even with the ramping at either end of the diversion where it runs behind the tennis courts, the diverted route does not have the same attributes and the rougher ground at the top of the ramping making the transition of ground/gradient harder for some existing users.*

The Roger Edwards field is a grass field, the same as the cricket ground. In my view there is no apparent difference and so I am unsure as to what the 'rougher ground' refers to in this case.

*For both of these reasons my view is that the footpath should remain on its current route at the edges of the cricket field where is it an accessible and much used and valued recreational route.*

The current path is accessible and much used, but presents a risk to those using it for the reasons previously detailed. Cricket balls nearly hitting path users. Path running past machine sheds. The 'much used' element also contributes to the dog fouling which Usk AC wishes to manage by way of the proposed path order.

The remainder of the email refers to Ms Ivin's concerns about the use of the proposed path by cyclists if a cycle pump track is built near the route of the path. The concerns raised are not applicable to this path order proposal because this order is only seeking to transfer rights to 'pass and repass on foot' onto the proposed path. A public footpath does not carry any cycling rights, and this would remain the case with

the proposed path. Any intention to upgrade the footpath to a Cycleway or Bridleway would need to be by way of a separate legal order that would be subject to the same pre-order and public consultations that any path order must go through.

If there is ever an intention to create a multi-user path along the proposed alignment, then that is when these concerns would be relevant.

If the pump track were to be built then there is alternative access available from the nearby road via the small car park on the Roger Edwards field. This means there may never be a desire to seek cycle use on the proposed alignment.

## **8. Edited email from Usk AC in response to the objections**

### **8.1. The following is a response to the objection from a representative of the Usk AC Committee:**

I've addressed each of the points in your email below but thought it would be helpful to set out the 4 key health and safety concerns that are behind our proposal to re-direct the path. These are as follows:

- (1) safety of path users - many people that use the existing path have very little understanding or knowledge of cricket. They often do not pay attention to what is going on around them or watch for the ball as they walk along the side of the ground. Our first XI are now playing cricket at the highest level of club cricket in the country and the ball gets hit very hard. We are concerned that walkers could be injured as they walk along beside the tennis courts, particularly if they are not paying attention to the game. We have already put high netting in place to protect the tennis players, because cricket balls have been hit into the courts.*
- (2) Slip hazards at each end of the path - over the course of the winter, the gateways at each end of the path become extremely muddy and slippery. As these areas are part of the playing surface, they must remain grassed and so pedestrian generated mud is unavoidable. The proposed diversion has or will have a hard core surface at each end of the path and along the full length of the tennis courts. As a walking surface this will be far safer under foot.*
- (3) Walkers crossing the entry/exit point for ground keeping machinery - the existing path crosses the entrance to the two groundskeepers garages at the far corner of the ground. During the summer there is a constant flow of ride-on mowers and automated heavy rollers. While every care is taken at present, it is obviously not ideal to have pedestrians in close proximity to such machinery. There is also the issue of people wandering around the field when mowing is in progress, which is also not ideal.*

- (4) *Dog foul - We have seen an increasing number of dog walkers using the area and despite signage around the ground, many people let their dogs off the lead, don't pay attention to what the dog is doing and don't clean up when required. You will be well aware of the potential health issues linked to human contact with dog foul on a sports field. This has become a significant problem.*

*These are the primary reasons we support the diversion of the path behind the tennis courts. It will address all of the above concerns and from a health and safety perspective we don't see any other workable alternatives to mitigate these risks.*

*In terms of the points raised in the objection you received, I have set out our thoughts on each below.*

Current path is overlooked providing 'natural surveillance'.

*There are only two or three houses that overlook the ground and these are 150 to 200 yards away from that side of the ground. A pretty minimal level of surveillance.*

The ground is flat and allows for people with less mobility to use it.

*The path behind the tennis court is flat and hard core so does not get muddy in the winter. The two ends of the path will have ground works done to achieve a slope of less than 5%. Some people already opt to use the path behind the tennis courts over the winter because it is easier to walk on and less of a slip hazard.*

There are no other parks in Usk that offer an alternative.

*There are several other parks in Usk, a well used river path, the Island and the adjoining Roger Edwards field, which the proposed diversion will still lead walkers to.*

Moving the path removes these attributes.

*We believe the points above suggest otherwise. The loss of a minimal level of surveillance is more than offset by the health and safety issues that are addressed by the proposed diversion.*

There is rough ground at the far end of the proposed path.

*The rough ground at the far end of the proposed path will be levelled (to a 5% incline) and the existing dirt replaced by hard core that will be safer underfoot in wet conditions. This work will be done in the next week or two.*

The current route is not isolated and so feels safer than the proposed route.

*The existing route is potentially hazardous - particularly when cricket matches or practice is in progress. The proposed route addresses all of the potential hazards. After sunset each route is equally lit by the tennis court flood lights, when the courts are in use. If the tennis lights aren't on, each route is equally dark. If a walker feels unsafe on either route, why would*

*they be walking to the field at the far end of the path where there are no lights, no houses and even more isolation?*

The comments contained within this email are valid. The existing path, or a similar alignment, has been in place for many years, but this does not preclude it from being moved by way of legal order. An increased use of the field for sport, and the increased use of the path by the public has increased the safety risk that has prompted this application to divert the path. These are therefore relevant considerations for the Committee.

8.2. Below are some photographs that illustrate some of the concerns raised by the applicant.

View of current path alignment past machine shed 1.



View of current path alignment past second machine shed 2.



Current path alignment near machine sheds.



Current path alignment across field.



Damage to tennis fencing caused by cricket balls on current alignment.



## 9. Conclusion

- 9.1. This case has arisen following a path order application received from Usk AC to divert the existing public footpath, including a section of the path to be moved from one side of the tennis courts to the other.
- 9.2. The application was assessed, and a decision was made by MCC Rights of Way that it was expedient to process the application. Site visits were conducted, and a plan and schedule were created to reflect what was deemed the most suitable and safe diversion for the footpath.
- 9.3. The landowners for the fields adjacent to the Usk AC field, where the proposed path is to run, have provided written permission to allow this.
- 9.4. The proposed path diversion order meets the legal tests of '*not altering a point of termination of the path if that point is not on a highway*', because the path runs between two roads via some unaffected sections of the public footpath.
- 9.5. It also meets the test of being '*not substantially less convenient*' because, as the schedule shows, the distance from A to E is only slightly shorter than the distance from A to B to C to D to E. It is also more accessible and safer.
- 9.6. As for the confirmation test of '*having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole*', the proposed path could be considered as equally, or even more enjoyable than the existing path. Although the proposed route behind the tennis courts may be less open, it is still commodious and offers far greater safety to the public.
- 9.7. After the proposal was sent out for pre-order consultation the initial objection was about the surface of the path. This was addressed by Usk AC and then a further objection was received from the same person and is the reason the case is before the Committee for a decision to be made in respect of the order.
- 9.8. There is Department of Environment, Food and Rural Affairs (DEFRA) guidance that is mandatory in England, and recommended to be followed in Wales that states, '*where there are concerns over privacy, security, and safety*', '*an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public.*'
- 9.9. Safety. In this case there is a high risk to the safety of path users and participants in sport at the ground, that the proposal seeks to eliminate. The existing path poses a risk to the public during cricket matches, and when the machinery is in use. The slippery ground after rain is also a hazard. The users of the cricket ground are at risk from the excessive dog fouling.

## **10. Recommendation**

10.1. That the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of the diversion order for Footpath 1 Usk under Section 119 Highways Act 1980 as set out in this report, and to confirm the order if no objections are received.

## **11. List of Appendices:**

Appendix 1.1: Order Plan HA Diversion FP 1 Usk.

Appendix 1.2: Schedule HA Diversion FP 1 Usk.

Appendix 1.3: Amended Schedule HA Diversion FP 1 Usk.

Appendix 1.4: Diversion Extinguishment HA 1980 Application Pack.

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