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Dydd Llun, 23 Mehefin 2025

Notice of meeting

Pwyllgor Trwyddedu a Rheleiddio

Dydd Mawrth, 1af Gorffennaf, 2025 at 11.20 am,
Council Chamber, County Hall, The Rhadyr USK

AGENDA

Item No	Item	Pages
1.	Ymddiheuriadau am absenoldeb	1 - 68
2.	Datganiadau o Fuddiant	
3.	DEDDF PRIFFYRDD 1980 - ADRAN 119 LLWYBR CYHOEDDUS, GORCHYMYN GWYRO, LLWYBR TROED 138 (rhan) GOETRE FAWR	

Paul Matthews

Chief Executive / Prif Weithredwr

MONMOUTHSHIRE COUNTY COUNCIL CYNGOR SIR FYNWY

THE CONSTITUTION OF THE COMMITTEE IS AS FOLLOWS:

County Councillor Tony Easson	Dewstow;	Welsh Labour/Llafur Cymru
County Councillor Christopher Edwards	St. Kingsmark;	Welsh Conservative Party
County Councillor Simon Howarth	Llanelly Hill;	Independent Group
County Councillor Jane Lucas	Osbaston;	Welsh Conservative Party
County Councillor Jayne McKenna	Mitchel Troy and Trellech United;	Welsh Conservative Party
County Councillor Alistair Neill	Gobion Fawr;	Welsh Conservative Party
County Councillor Martin Newell	Town;	Welsh Conservative Party
County Councillor Sue Riley	Bulwark and Thornwell;	Welsh Labour/Llafur Cymru
County Councillor Dale Rooke	Chepstow Castle & Larkfield;	Welsh Labour/Llafur Cymru
County Councillor Jackie Strong	Caldicot Cross;	Welsh Labour/Llafur Cymru
County Councillor Tudor Thomas	Park;	Welsh Labour/Llafur Cymru
County Councillor Armand Watts	Bulwark and Thornwell;	Welsh Labour/Llafur Cymru

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Aims and Values of Monmouthshire County Council

Our purpose

To become a zero-carbon county, supporting well-being, health and dignity for everyone at every stage of life.

Objectives we are working towards

- Fair place to live where the effects of inequality and poverty have been reduced.
- Green place to live and work with reduced carbon emissions and making a positive contribution to addressing the climate and nature emergency.
- Thriving and ambitious place, where there are vibrant town centres and where businesses can grow and develop.
- Safe place to live where people have a home where they feel secure in.
- Connected place where people feel part of a community and are valued.
- Learning place where everybody has the opportunity to reach their potential.

Our Values

Openness. We are open and honest. People have the chance to get involved in decisions that affect them, tell us what matters and do things for themselves/their communities. If we cannot do something to help, we'll say so; if it will take a while to get the answer we'll explain why; if we can't answer immediately we'll try to connect you to the people who can help – building trust and engagement is a key foundation.

Fairness. We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did what we did.

Flexibility. We will continue to change and be flexible to enable delivery of the most effective and efficient services. This means a genuine commitment to working with everyone to embrace new ways of working.

Teamwork. We will work with you and our partners to support and inspire everyone to get involved so we can achieve great things together. We don't see ourselves as the 'fixers' or problem-solvers, but we will make the best of the ideas, assets and resources available to make sure we do the things that most positively impact our people and places.

Kindness: We will show kindness to all those we work with putting the importance of relationships and the connections we have with one another at the heart of all interactions.



SUBJECT:	HIGHWAYS ACT 1980 – SECTION 119 PUBLIC PATH DIVERSION ORDER, FOOTPATH 138 (part) GOETRE FAWR
MEETING:	LICENCING & REGULATORY COMMITTEE – RIGHTS OF WAY ADVISORY PANEL
DATE:	1 JULY 2025
DIVISION/WARDS AFFECTED:	GOETRE FAWR

1. PURPOSE:

- 1.1 To consider an application submitted by the landowner of Mount Pleasant to divert the above footpath.
- 1.2 To consider the objection to the proposed order in relation to the relevant legal tests that applies to Highways Act Orders under Section 119
- 1.3 To make a recommendation to:
 - a) Either make or not make the order.
 - b) In the event of making an order, and that order is unopposed, that authority be given to Legal Services to subsequently confirm the order.

2. RECOMMENDATIONS:

- 2.1 Having regard to the relevant legislation, tests, guidance and policy that the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of a diversion order for Footpath 138 Goetre Fawr under Section 119 Highways Act 1980 and to confirm the order if no objections are received.

3. KEY ISSUES:

- 3.1 On 20th July 2023 a path order application was received by Monmouthshire County Council (MCC) Countryside Service, which sought to divert a public footpath in the Goetre Fawr Community.
- 3.2 The applicant sought the path diversion in their interests to address safety, security and privacy issues affecting their property.

- 3.3 The application proposes to divert Footpath 138 (part) in the Goetre Fawr Community, from its current alignment to one in the adjacent field.
- 3.3 The Authority under Section 119 of the Highways Act 1980 may by order, divert a footpath, bridleway or restricted byway if it is satisfied that it is in the interests of either the landowner or the public.
- 3.4 Any orders changing the public path network should comply with legislative tests and take into consideration guidance and policy.
- 3.5 A full report detailing the proposed order, legislation, guidance, policy and objection is appended to this report (Appendix 1).
- 3.6 MCC ran a pre-order consultation. It received thirteen positive or neutral responses and one objection. The nature of the objection is detailed in the report (Appendix 1).

4.0 EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFE GUARDING AND CORPORATE PARENTING)

- 4.1 The proposal would allow the legal alignment of the existing footpath to be moved on to a new alignment in the adjacent field. The new alignment is sought by the landowners affected by the existing footpath, and they have cited safety, security and privacy reasons for the application. Both the households affected by the existing path are the home to young children and the application seeks to remove the path from beside one dwelling's garden and from beside the house and out of the other dwelling's garden. The diverted footpath will have a width of 2 metres as outlined in the Schedule (Main Report Appendix 3) and will be accessed via a pedestrian gate making that path no less accessible to path users with sight or mobility issues. An EQAFG evaluation has been included in Appendix 3.

5.0 OPTIONS APPRAISAL

Option	Positive	Negative	Comment
To make the order	Allow the diversion and address the safety, security and privacy concerns of the applicant and their neighboring landowner.	Slightly less convenient. The order could still fail at inquiry if found to be deficient.	The person making the objection suggested an alternative route for the new path that would divert it into the adjacent field very near to Mount Pleasant. This has been discounted because the

			landowner for the adjacent field would not consent, and MCC Biodiversity would object, to the removal of the existing boundary hedge.
Not to make the order	The current legal alignment of the footpath would still be available to the public.	Failure to address the safety, security and privacy issues.	

6.0 EVALUATION CRITERIA

- 6.1 An evaluation assessment has been included in Appendix 4 for the future evaluation of whether the decision has been successfully implemented.

7.0 REASONS:

- 7.1 That the concurrent diversion and extinguishment order meets the required tests, set out by the Highway Act 1980, Section 119.
- 7.2 With regards to the objection, it must be considered whether the change of alignment to public Footpath 138 is likely to affect the enjoyment of the route. It is the Officer's opinion that it does not affect the enjoyment.
- 7.3 The Rights of Way Advisory Committee, in coming to their decision needs to be satisfied that the order meets the relevant tests as outlined in the Highways Act 1980 Section 119 and set out in the attached report (Appendix 1) for making the order.
- 7.4 If the Rights of Way Advisory panel decide to adopt the recommendation made, then an order will be advertised and posted on site. After the statutory period of 28 days, in which any member of the public would be allowed to object, should the objection be maintained, or another received, then the case would be directed to Planning and Environment Wales (PEDW), to appoint an Inspector to make a decision. If no objections are received, then the order can be confirmed.

8.0 RESOURCE IMPLICATIONS:

- 8.1 If the order is made then order costs including Rights of Way Officer's, and Legal Officer's time, and newspaper adverts, will be recharged to the applicant. If the order is made and objections are received, then at the Planning Inspector's request it is possible that a Public Inquiry or Hearing could be called at the Authority's expense. Written representations are another option available to the Planning Inspectors. It is noteworthy that the person objecting has given a written assurance that if the decision is to make the order, he will not object at the public consultation stage, thereby reducing the likelihood of the case needing to be referred to PEDW.

9.0 CONSULTEES

- 9.1 Consultees included the Local Member, The Community Council, Statutory Undertakers and User Groups. Appendix 2 lists all of the consultees and summarises their responses.

10.0 BACKGROUND PAPERS:

Appendix 1: Report.

Appendix 2: Consultation Responses.

Appendix 3: Equality and Future Generations Evaluation (includes Social Justice, Safe Guarding and Corporate Parenting).

Appendix 4: Evaluation Criteria.

11.0 AUTHOR:

Gavin Pugh

Assistant Public Rights of Way Officer

12.0 CONTACT DETAILS:

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Highways Act 1980, Section 119 Public Path Order Footpath 138 (part) Goetre Fawr.

**Report for Licensing and Regulatory Rights of Way Advisory
Committee 1 July 2025.**



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

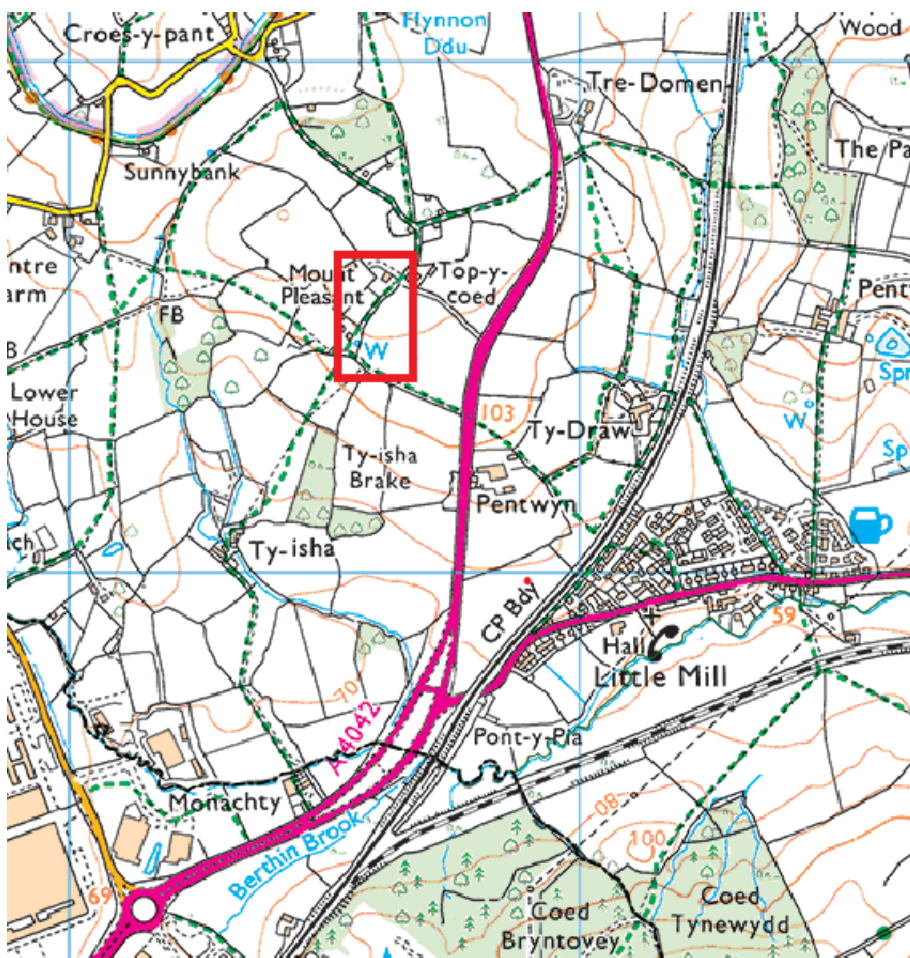
1. Purpose

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 138 (part) Goetre Fawr. Its purpose is to assist Members of the Licensing 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 138 Goetre Fawr 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 20th July 2023, a public path order application was received by Monmouthshire County Council (MCC) Countryside Access Service. It was made by the owner of Mount Pleasant, Mamhilad, Pontypool NP4 0JD, to

divert the public footpath that runs down an access track and through the garden of the property, on to an alignment in the adjacent field.

- 2.2 The reason for the application was in the interests of the landowner to improve safety, security and privacy for the applicant.
- 2.3 The Authority has powers to divert footpaths if it is in the interests of the owner 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 1.4 and Appendix 1.5 are the updated versions of these documents for 2025.

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 Countryside Service ran a pre-order consultation from 18th October 2023. Consultees included the Local Member, Goetre Community Council, the statutory undertakers and user groups.

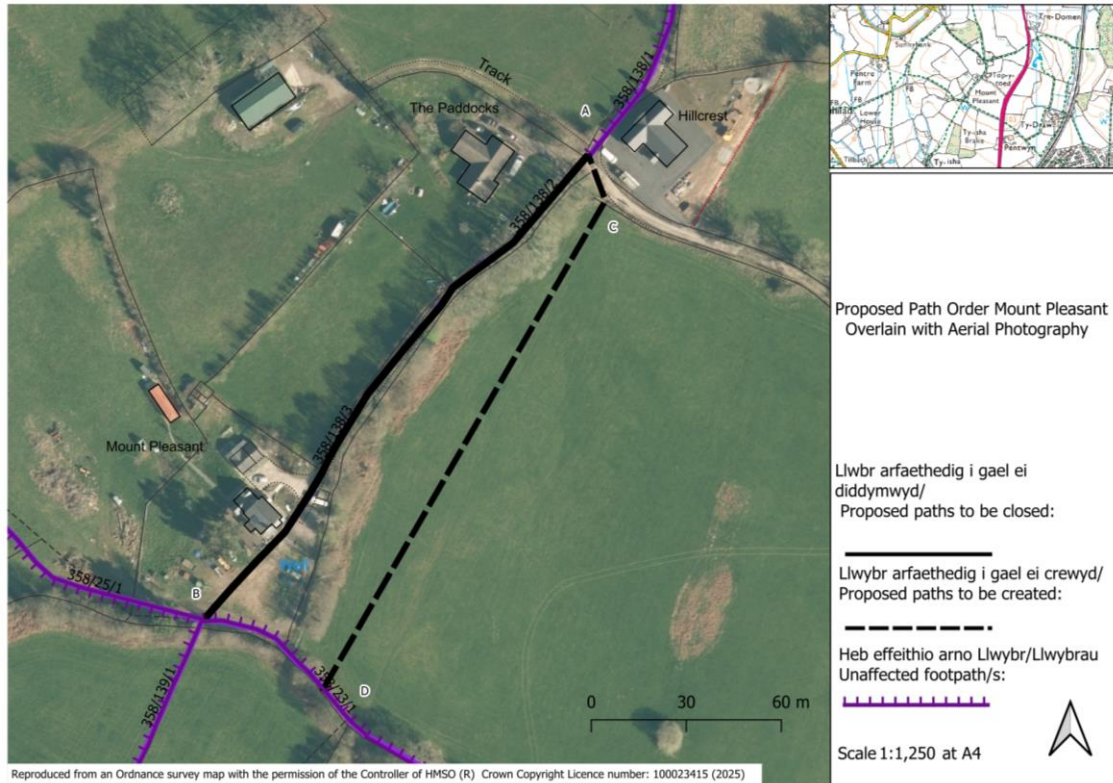
4.2 The following is a complete list with a summary of the responses. Details of the objection can be found in paragraph 7 below.

	Name	Organisation	Summary of Representations
1	Daniel Hulmes	MCC Biodiversity Officer	No objection.
2	Head Office	The Open Spaces Society	No response.
3	Mr Steve Garland	Lower Wye Valley Ramblers Association	Objection. (please see paragraph 7 below for details).
4	Derek Humble	Pontypool Ramblers	No objection.
5	Matthew Lewis	MCC Environment & Culture Manager	No objection. Comment, 'looks a sensible diversion'.
6	Richard Ray	MCC Legal Department	No objection. Comment, 'it appears to satisfy the statutory tests'.
7	Bradley Griffiths	Western Power Distribution	No objection. Comment, 'we have no infrastructure which would be affected by the new footpath'.
8	Openreach, Network Alterations	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, " <i>no Dwr Cymru apparatus will be affected by the proposed works</i> ".
12	Jonathan Lazenby	Clerk, Goetre Fawr Community Council	No objection. Comment, 'no concerns with the proposals'.
13	County Councillor Jan Butler	MCC	No objection. Comment, 'I have no issues with this proposed diversion. It makes sense'.
14	County Councillor Catrin Maby	MCC	No objection.

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.



From Point A Looking South down existing and proposed routes (stile to be changed to kissing gate if order successful).



View from Point C (top of proposed path) down route of proposed path.



View from Point C (top of proposed path) to the east.



View from the top of existing path to the west.



View from further down the existing path to the west.



View from further down the proposed path to the east.



View from further down the proposed path to the south.



View from further down the proposed path to the West.



View of route of the existing path past Mount Pleasant.



View north from Point D along the route of the proposed path.



View North from Mount Pleasant along the existing 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***

6.3 The path affected is a public footpath shown on the Definitive Map and Statement. The order would be in the interests of the landowner who owns the land over which the existing footpath runs to assist with privacy and security.

6.4 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.*

6.5 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 a rutted vehicle access track and the alternative path would run over a grass field.

6.6 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.*

6.7 Although the decision for the Panel 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 6.4 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 or is no more or less enjoyable than the existing route. The evidence to support this is that there are views available from the existing path and from the proposed alternative path. The existing route runs beside the private garden of The Paddocks and next to the dwelling house at Mount Pleasant and on through the middle of the garden. The proposed alternative path runs through an open field. The views to the west towards the tower above Pontypool that may be reduced from the proposed path, can be seen through the trees in the winter and are regained on the lower section of the proposed path, as well as more views available to the south from the proposed path.

6.8 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

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.*

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

6.10 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.*

6.11 The objection made in respect of this proposed diversion relates to the views lost, so this is a relevant consideration in this case. This should be balanced against the applicant's desire for improved privacy and security, as well as comparing the 'enjoyment' of the proposed route against that of the existing route.

6.12 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.*

6.13 The person objecting in this case has suggested an alternative route for the proposed path, but this has been discounted for a number of reasons including the fact that it would involve breaching the existing mature tree and hedge boundary between the vehicle access track and the adjacent field. This would conflict with the duty under this Act.

6.14 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)

6.15 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."

6.16 The applicant does not own the field over which the proposed path would run. They have obtained the written permission of the relevant landowner to divert the path on to their field.

6.17 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.

6.18 MCC Biodiversity Team has been consulted and had no objection to the proposed diversion. They have been spoken with regarding the alternative proposal that would need the boundary to be breached, and they would

prefer that was not done, or that suitable mitigation was carried out if it were essential.

6.19 **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.

- 6.20 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 not be impaired by the proposal.

6.21 **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.

- 6.22 The existing path and the proposed path are similar in length and accessibility. There is no effective way to improve the path because it runs over pasture, and it would be impractical to seek to upgrade the path for cycle use.

6.23 **Well-being of Future Generations (Wales) Act 2015**

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

6.25 **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>

- 6.26 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 diverted route is gated.

6.27 Monmouthshire's Countryside Access Improvement Plan.

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

6.28 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.

6.29 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 a pedestrian gate or kissing gate would be included as a limitation within the order, the stile that is in place on the proposed route would be removed to allow for the installation of a gate.

7. Objection.

7.1 The following objection was received from the Lower Wye Ramblers Path Officer, who was a consultee at pre-order stage:

7.2 These are the relevant extracts from emails exchanged between the person making the objection and the MCC Assistant Public Rights of Way Officer.

19/10/23

7.3 I do have some concerns regarding this proposed footpath diversion, and I do not believe it would improve the route for the path user.
According to Land Registry, Mount Pleasant was last sold in 2018, and the purchasers would have been fully aware of the FP [Footpath] travelling along the length of the lane /driveway and past the front of the property.
From the satellite imagery, the landowner of the proposed diversion also incorporates field edge footpath 358/23/1. I can see no evidence of a maintained field edge footpath and this therefore concerns me.
Personally, and as a Ramblers group we are finding more and more fields which have been traditionally grazed, now being obstructed by crops.

LOOKING SOUTH TO NORTH ALONG PROPOSED DIVERSION



LOOKING WEST TO EAST ALONG FIELD EDGE



- 7.4 This was the initial response to the pre-order consultation, prior to a site visit. The consultee has made an incorrect assumption in this communication. The field edge path referred to, and appearing as a satellite image above, is not on land owned by the applicant.

23/10/23

- 7.5 A few points I would disagree with, if privacy and safety are a concern, you don't buy a property with a footpath running past it.
If paths are not purposely hidden, obstructed or waymarks removed in people's gardens and driveways, walkers have no problem using them. Moving a path off a route with vehicle access, on to one without, is generally preferred and seen as an improvement for safety reasons – This is a no through road with minimal traffic and this is opposite to MCC's argument given for Upper Minnetts at Rogiet which is trying to move a traffic free path on to lane with vehicle access.
I need to view this FP and its relationship with FP 358/25/1, which again appears to be in the garden of Mount Pleasant.
I also want to look at the possibility $\frac{3}{4}$ of the lane / driveway still being used and perhaps just prior to the house, the FP then being diverted into the field.
- 7.6 The comment about buying a property with a footpath nearby suggests that the buyer had no concern for their privacy and safety, or no right to have those concerns. Most path orders are applied for to address these types of issues, usually for sites where public rights of way run near dwelling houses. One of the purposes of the path order diversion process is to address such issues. There is then a comment that suggests that if a path is clear and well marked that people have no problem using a path near to private houses and gardens. In the consultations previously conducted for diversion of paths through gardens and near houses, most path users would prefer not to walk those routes and will find an alternative if one is available. As for safety, moving a footpath off a driveway and into a field would appear to always be safer than leaving the path along a vehicle track, irrespective of what has happened at other sites.

19/12/23 (Following Site Visit)

- 7.7 *"I do have concerns with this proposal, and I do not believe that there is any clear benefit to the public in accepting this proposed diversion.
The current route gives fine views towards Mynydd Garn-Wen, Little Mountain and Pontypool Tower as opposed to the diversion with intermittent views of high sided vehicles travelling along the A4042.
I also have concerns regarding the FP being diverted on to FP 358/23/1 point D to B. Point D to B will present extra demands of maintenance when compared to the existing FP A to B.
There appears to have been little effort in maintaining the existing rights of way within the applicant's land boundary.
Two examples are purposely obstructing point B with a fence (now removed) and the second is a broken stile albeit outside of scope at grid ref SO 31508 03437.*

There also appears to have been recent activity in clearing the FP B towards D for example a clearly cut back hedgerow, which indicates a previously overgrown FP.

I object on behalf of the Ramblers to the current proposed diversion of Public Footpath 138”.

- 7.8 The applicant has stated the requirement for improved security and privacy. A compromise regarding privacy and security would be to maintain the public right of way from point A towards point B and enter the field at approx. grid ref SO 31574 03486 just prior to the property. The enjoyment of the views as mentioned above would be maintained and the applicant's privacy & security also addressed. A compromise for the FP user is using section D to B which Officers have concerns about.

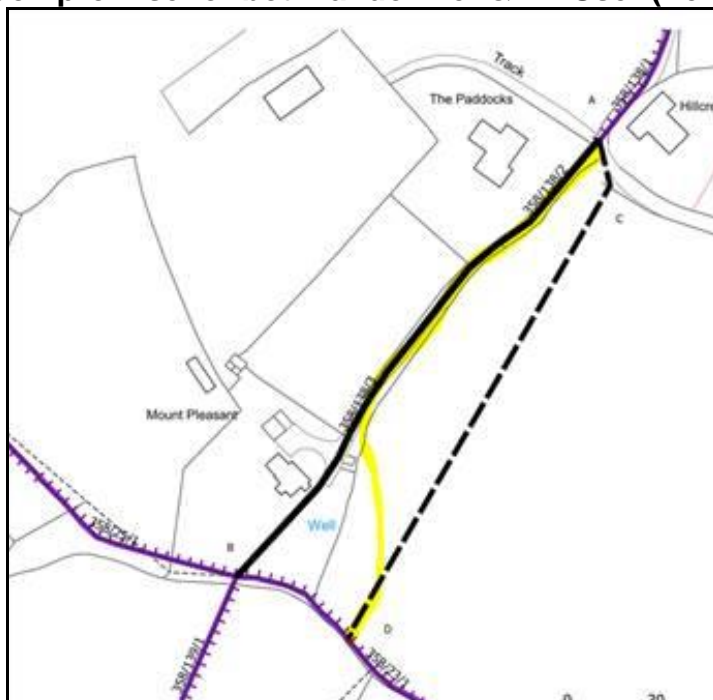
Views from the driveway/lane



Looking from B towards D



Compromise for both landowner & FP User (Yellow route)



- 7.9 The comment about the proposal, 'not having any clear benefit to the public' is not one of the legal tests. A path order has to be in the interests of either the landowner or the public.
- 7.10 Although the views that are mentioned would be reduced, there are views to the east that are obtained from the proposed path towards the Usk Valley then the views lost initially are regained lower down the proposed path, as well as enhanced views to the south. The views referred to above can also be obtained, unobstructed by houses, by any path user who continues along the path to the south, or the path that leads off to the west.
- 7.11 The alternative route suggested by the person objecting leaves the path user on the vehicle access track for longer, which is undesirable. It would require a mature boundary to be breached and does not address the privacy and security concerns of the resident of the neighbouring property, The Paddocks. (See paragraph 8 below).

27/02/24

- 7.12 *"The length of the footpath which I consider should be protected to allow the footpath user panoramic views towards Myndd-Garn-wen, Little Mountain and Pontypool Tower, whilst still allowing Mount Pleasant both privacy and security measures 0.07 mile and the new proposal measures circa 0.03 mile. The compromise which I have accepted on behalf of The Ramblers is diverting the path onto FP 358/23/1 away from Mount Pleasant house (point E to B).*

My objection therefore still stands"



The picture below are the views I am trying to protect:



The views towards high sided HGV's on the A4042 which I am trying to avoid:



06/03/24

- 7.13 *"I fully appreciate your position and that you feel it necessary to take this one to the Rights of Way Panel. You have mentioned that "Public Enjoyment" is subjective but likewise 'safety, security and privacy' is also subjective. The litmus test I always use when looking at how much a FP is used is to use Strava heat map. The heat signature using the FP through Mount Pleasant is very faint. This is no Cambrian Way!"*
- 7.14 The comment that path enjoyment is no more subjective than the safety, security and privacy elements involved in this case is debatable. There are likely to be greater safety risks with walking a vehicle track compared to a field. There are privacy issues with a path that runs near one property and in the immediate vicinity and past windows of another. There is also likely to be an increased security risk with a right of way that runs near to outbuildings and a dwelling house, than if it runs away from those buildings.
- 7.15 The 'litmus test' referred to above is not strictly relevant to the path order process. The level of use of the path is believed to be low, but the same legal tests apply to rights of way irrespective of their level of use.

8. Edited email from resident of neighbouring Property - The Paddocks

- 8.1 *As I understand the footpath is proposed to continue down past my property (The Paddocks) and at the bottom of my garden take a left turn through the hedge and continue down the field the other side of the hedgerow. I believe you have been out to the properties and visited the location. As you will have seen, the footpath runs long the visually open boundary of my property and garden, and I hope you can understand how intrusive the footpath is.*
- 8.2 *I have 2 x young children, who in summertime are outside in the garden quite often naked running around. Unfortunately, this footpath enables the public to be able to fully view nearly all of our garden. It will also enable the public to look into our living room, kitchen window & living space and a bedroom window – plus full view and easy access into our garden and property.*
- 8.3 *This is our family space that is being compromised. My children are playing within 1 to 2 meters of this footpath, it is affecting the quality & Security of our outdoor living area, especially as camera phones are now the norm.*
- 8.4 *I understand that the Ramblers Association have objected to the path being moved because they will not be able to see the view of the mountain from the other side of the hedge.*
- 8.5 *I am struggling to understand the legitimacy of this. The physical structure of my house and the large objects that I have situated in my garden obscure the view of the mountain, the only clear view is approx. 5-6meters of length at the lower end of the path (where the stile would be) which in turn raises my concern of strangers/general public loitering longer along this sensitive area to cross the stile, is it really worth walking and intruding on someone's privacy for 5m of clear view? When prior to reaching my property there are*

clear open views the mountain area across a field, which covers quite a distance of the footpath. This section does not intrude on private areas. (before you reach Hilcrest), as it runs along the boundary of an open field.

- 8.6 *When the footpath runs along my garden the footpath is then shrouded by trees to the left and my property and garden to the right. There is no view of the mountain until you reach the bottom 5 – 6meters. This does not seem logical when the other side of the hedge the view is beautiful and open countryside. The new proposed diversion does not diminish the route, it actually enhances it. There are beautiful views over Monkswood the Usk Valley and Monmouthshire, all the way to Llanishen area south of Monmouth 15 miles work of view.*
- 8.7 *I understand the need for footpaths and for public right of ways, I enjoy walking through the countryside myself, being emersed in nature and countryside. If I am on a footpath that runs through someone's property I find it quite uneasy and I don't like it. Surely the Ramblers Association understands and can consider this along with the fact of safety for young children. Especially when an adequate, if not better alternative has been provided in terms of physical features of the path, landscape character, directness, and there would be no need for an additional stile half way down.*
- 8.8 *If this footpath stays in its current position it has very limited views, it intrudes on the privacy of my house and my garden I have 2x young children & often friends who play outside in close proximity to this path. We are not trying to stop people enjoying the countryside, we are trying to protect our children and our privacy.*
- 8.9 The comments contained within this email are valid concerns about both the proposed diversion and the alternative suggested by the person objecting. The existing path has been in place for decades, but this does not preclude it from being moved by way of legal order. A change in the make up of the occupants of a property can prompt a path order application. The increased awareness of safeguarding and mitigating or eliminating risks to children can be a consideration in this case.

9. Conclusion

- 9.1 This case has arisen following a path order application received from the owner of Mount Pleasant, Mamhilad to divert the existing public footpath from their driveway and garden and into the adjacent field.
- 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 (Appendix 1.1) and schedule (Appendix 1.2) were created to reflect what was deemed the most suitable diversion for the footpath.
- 9.3 The landowner for the field where the proposed path was to run has 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 unaffected public footpaths (highways).
- 9.5 It also meets the test of being '*not substantially less convenient*' because, as the schedule (Appendix 1.2) shows, the distance from A to B is 190 metres, and the distance from A to C to D is 192 metres.
- 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.
- 9.7 After the proposal was sent out for pre-order consultation, one objection was received. This came from the Lower Wye Ramblers and is the reason the case is before the Committee for a decision to be made in respect of the order.
- 9.8 The objection claimed that the current path provided views to the west that were better than those to the east, and that this reduced the enjoyment of the path.
- 9.9 The views from the existing and proposed paths would differ, but it is subjective as to whether they are lesser or greater and therefore make the route more or less enjoyable. It is relevant to note that the view available to the west, as referred to in the objection, is available during the winter and also from the lower section of the proposed path. Also, the proposed path offers views to the east towards the Usk Valley and south towards Penyrheol.
- 9.10 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.*'
- 9.11 Privacy. In this case the privacy of both The Paddocks and Mount Pleasant is affected by the route of the existing path. The existing path offers views into the garden of The Paddocks and into the property of Mount Pleasant. The proposed path would run on the far side of a high tree and hedge lined boundary, approximately 15 metres further away from The Paddocks and approximately 30 metres further away from Mount Pleasant.
- 9.12 Security. The properties affected by the current path are remote and secluded and are vulnerable to rural crime as a result. Although the use of a public right of way is not necessary to access the property for criminality, the route of the current path through the curtilage and near to the property prevents the landowner from deterring the public from entering the area. The removal of the path from this location would allow the landowner to secure the route that they are unable to protect at present.

- 9.13 Safety. The current path runs along a rutted vehicle track used by agricultural, commercial and domestic vehicles to access Mount Pleasant and the land beyond. The track is unsurfaced and is uneven due to year-round use. The proposed path runs over level grassland. It is generally safer to walk a path that has no vehicle access along it, than one that has vehicle access along it.
- 9.14 There are privacy concerns that the applicant included in their application, and these are supported by the resident of The Paddocks in the email detailed in paragraph 8.

10. Recommendation

- 10.1 That the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of the diversion order for Footpath 138 Goetre Fawr 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 138 Goetre Fawr.
Appendix 1.2: Schedule HA Diversion FP 138 Goetre Fawr.
Appendix 1.3: Diversion Extinguishment HA 1980 App Pack.
Appendix 1.4: Amended Order Plan HA Diversion FP 138 Goetre Fawr.
Appendix 1.5: Amended Schedule HA Diversion FP 138 Goetre Fawr.

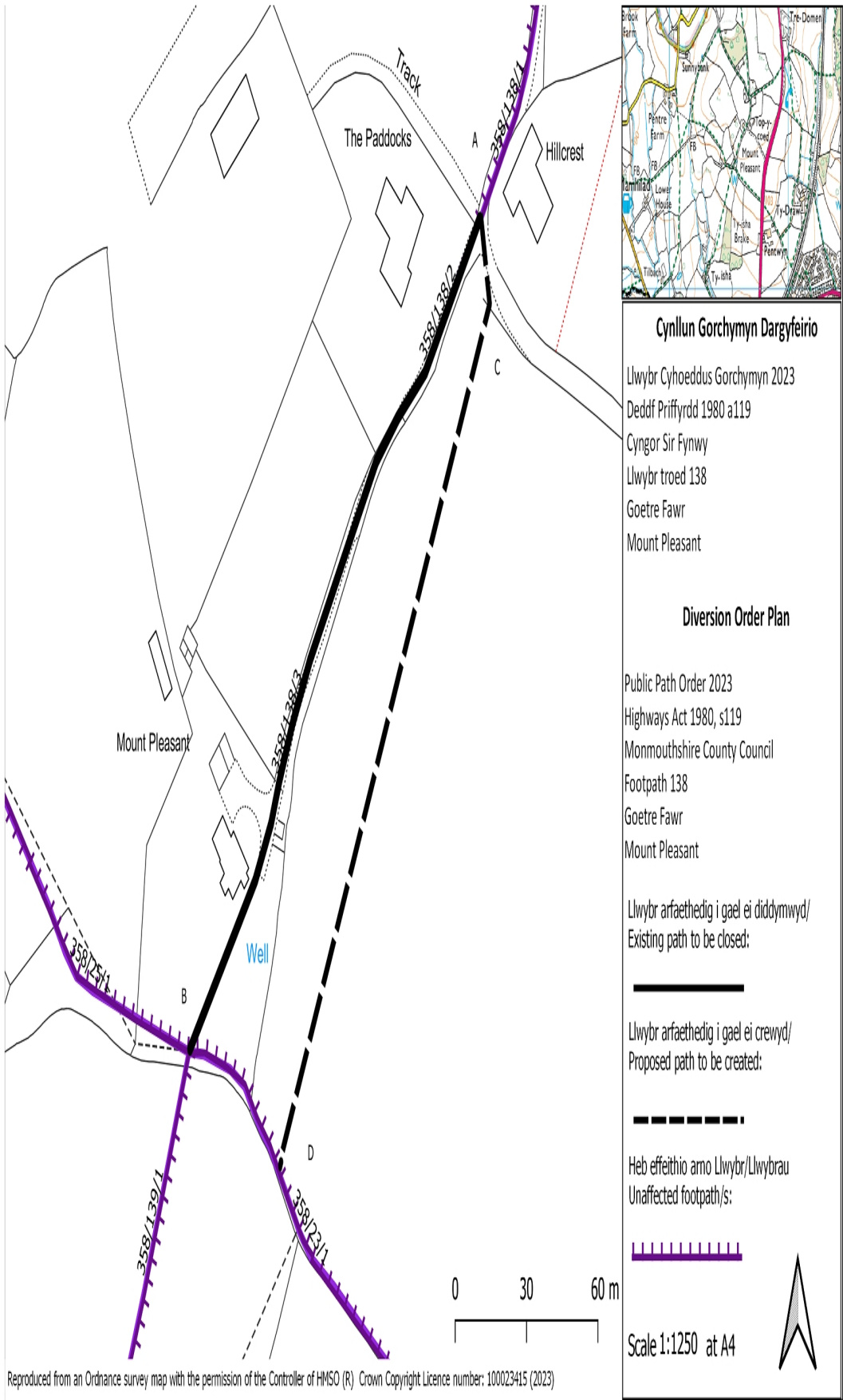
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Public Path Diversion Order 2023
Highways Act 1980, Section 119
Monmouthshire County Council
Public Footpath No. 138 (part), Goetre Fawr

SCHEDULE

PART 1

<u>Section as indicated on map</u>	<u>Description of site of existing path or way</u>
A-B	Footpath continues from unaffected footpath 138 at point A (SO31660357) and continues in a South Westerly direction for 190m to point B (SO31530342).

PART 2

<u>Section as indicated on map</u>	<u>Description of site of new Public Right of Way</u>
A-C-D	Footpath continues from unaffected footpath 138 at point A (SO31660357) at a width of 2m in a generally Southerly direction for 16 metres to a pedestrian gate at point C (SO31650356). The footpath then continues at a width of 2 metres in a South Westerly direction 176 metres across the field to unaffected Footpath 23 at point D (SO31560340).

PART 3

Limitations and Conditions

Point C (SO31650356)	Pedestrian Gate model 012/MG as described in Monmouthshire County Council's Countryside Access Design Guide or the latest BS5709 equivalent.
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Monmouthshire County Council



Countryside Access Application & Guidance Pack for Public Path Orders Under the Highways Act 1980



Guide to the Procedure for Public Path Orders

These guidelines are to explain the procedure for path Diversions and Extinguishments (Closures). Public Path Orders (PPOs) can be applied for by any owner, lessees or person using land crossed by the Rights of Way (RoW).

Monmouthshire County Council (MCC) – ‘the Authority’, has a duty to assert and protect the RoW network. The Authority can exercise discretion over which path order applications are pursued and which are not.

When a PPO application is made to the Authority it will be assessed against the below listed prioritisation criteria. Public path change orders are prioritised in date of application, or referral from an officer, but may be dealt with earlier if one or more of the following applies:

- Where an application has been made to the Authority in its capacity as Planning Authority.
- Where the processing of an Order could save significant costs incurred in other Rights of Way functions.
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.
- Where a problem exists which cannot be solved through maintenance or enforcement.
- Where a safer route is provided
- Where a route forms all or part of a missing link in the network.
- Where a route forms part of a promoted or long distance or circular route.
- Where a route is not shown in the Definitive Map and Statement but has an anticipated high level of use, if it were to be added either by Agreement or Order
- A route is shown in the Definitive Map with lower rights and the anticipated level of use would be greater if higher rights were to be added either by Agreement or Order.

When applying for a public path order it is important to consider the following:

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 Legal Tests

Legislation requires that certain tests must be considered for PPOs. Different tests apply to diversion and extinguishment orders as outlined below.

a) The Legal Tests for Diversion orders (Section 119)

Diversion Orders are used primarily to divert a route or part of a route, onto another line. These Orders can be made in the interests of the applicant (as stated above) and in the interests of the public.

Before making an order, the Authority must be satisfied that it is necessary to divert the path in the interests of either the public or the applicant.

The Authority must also be satisfied that:

- (i) The diverted route will be substantially as convenient to the public, when compared to the current Public Right of Way. Ignoring any temporary circumstances preventing or diminishing the use of the path by the public.
- (ii) The diversion will not alter the point of termination of the path, if that point is not on a highway, if it is on a highway then the point of termination must be to another point on the same highway, or a connected highway (i.e., it does not create a 'dead-end').

The Authority should also make sure that the route shown in the order as the alternative route is not an existing Public Right of Way.

The Authority has the power to require the applicant to cover the costs of the order and the cost of making up the new path, as well as any compensation that may be payable.

When making a Diversion Order one must also consider:

- (i) How it will affect the public use of the path and other nearby paths as a whole.
- (ii) How it will affect land served by the existing path.
- (iii) How it will affect land it is diverted through.
- (iv) Whether the diverted path is less convenient to the public.
- (v) If the order is in the best interests of the person or persons named in it.
- (vi) The affect the proposals will have on conservation needs and biodiversity (If this is unknown prior to consultation, then this will usually be dealt with through inclusion of the Authority's Biodiversity Officer and/or NRW in the pre-order consultation.)

b) The Legal Tests for Extinguishment Orders (Section 118)

Extinguishment Orders are used to extinguish all, or part, of a Public Right of Way.

It must appear to the authority, before making an Order, that it is necessary to stop up the path or way on the grounds that it is not needed for public use. They must ignore any temporary circumstances preventing or diminishing the use of the path by the public.

Before confirming an order, the Authority, or the Welsh Government (WG) must be satisfied that it is necessary to confirm the order having regard to the likely use that would be made of the path and to the effect which closure of the route would have on land served by it. The Authority or the WG must ignore any temporary circumstances preventing the use of the path by the public.

Creation of a Public Right of Way

There are several ways in which creating a new public path can come about. Under the Highways Act these are under section 25a or 26. Usually creations come about as a result of a requirement for a diversion or extinguishment. A Public Rights of Way Officer will be able to give advice about the correct act to use, procedure, tests and supply any necessary forms.

Development

Where you are applying for a public path order to allow development to take place over the line of the footpath this must be dealt with under the Town and Country Planning Act 1990. However, if the development has already been substantially, or wholly completed and has been illegally constructed over a path you will need to apply for a diversion under the Highways Act 1980 section 119.

Work Required on the new route or old route.

If you think that you want to erect a stile or gate, known as barriers, or other furniture, please indicate this on the plan attached to your application form, because to erect them without them being recorded in the Order could be classed as an obstruction.

The Authority has a [Least Restrictive Access Policy](#) and will not authorise unnecessary barriers on a new route at any time. For example, if the land will not contain animals such as sheep, horses, pigs, or cows then a gap should be made available. Types of barriers that are suitable appear in the [Authority's Furniture Design Guide](#).

Plan of the Diversion

When applying for a diversion the applicant will need to supply a plan illustrating the proposal when the application form is submitted. This plan should be at a scale of either 1:1250 or 1:2500 and it must be accurate. It is the applicant's responsibility to produce a plan which accurately illustrates the proposal, as any alteration to the plan may result in extra costs for the applicant and delays in the process.

Widths for new paths

The Authority requires a reasonable width to be made available that would be sufficient for two users to pass and be convenient for cutting machinery. In the case of a new footpath, this will be a minimum of 2 metres. In the case of a bridleway a minimum of 3 metres is required.

Only in exceptional circumstances will an alternative width be agreed. This policy is also designed to comply with the Authority's [Least Restrictive Access Policy](#).

Diversion of cross-field paths

The Highways Act prohibits the ploughing or other disturbance of a footpath or bridleway that follows the side or boundary of a field or enclosure. Restricted Byways and Byways should never be ploughed.

You may be required to enter into an agreement to maintain the surface of any path diverted onto a field boundary as well as complying with your legal obligations to cut back hedges and remove the trimmings to ensure that the path remains at its full width.

Fees

The Authority charges a fee for the administrative work involved with a PPO application in accordance with the *Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended)*. This means you will have to pay the actual costs involved including press advertising costs.

The Authority retains the discretion to waive, or partially waive, costs where it considers it appropriate and in the public interest.

You will be invoiced at the conclusion of the PPO process at whatever stage this concludes on a case-by-case basis.

The fee charged in each case is dependent on the complexity of the case and is directly related to the time spent on processing the application. The approximate scale of charges for PPO are as indicated on the Procedure and Cost Schedule attached.

Time span

The average length of time taken to process an application to confirmation is around twelve months. However, if the matter is submitted to the WG, and they call a public inquiry or hearing, it may take much longer.

Please note that until a Public Path Order is confirmed the existing route must remain available for use.

If There Are Objections to An Order

PPOs are subject to public consultation.

A formal objection must be made in writing to the Authority within the set period for objections, usually 28 days from the making of the order. If objections are received, then an officer will enter into dialogue with the objector. If the objections are maintained, the Authority must send the order to the WG for determination.

Procedures Involved with a Public Path Order under the Highways Act

The procedure for dealing with the diversion or extinguishment of footpaths and bridleways is complex and can be time consuming. The basic stages are detailed in the attached Process and Cost Schedule.

Data Privacy Summary

Processing of applicant's personal data by Monmouthshire County Council is necessary to process public rights of way legal orders. Without this information, we will not be able to fulfil this task.

Your details will be legitimately shared within a partnership area in a safe and secure manner. This includes the Planning and Environment Decisions Wales, Contractors, Legal Services, Highways, MonLife Countryside Access, Green Infrastructure & Planning. Your personal details will not be shared further, unless in relation to safeguarding or other legal obligations.

Your records will be safely stored and retained in line with our retention policy unless we need to retain them under another lawful basis. You have a number of rights in relation to the information including the right of access to information we hold about you and the right to complain if you are unhappy with the way your information is being processed.

Should you need to make a complaint about the way your data has been processed, please contact dataprotection@monmouthshire.go.uk or if you are not fully satisfied you may contact the Information Commissioner's Office online at www.ico.org.uk/concerns or via their helpline: 0303 123 1113.

Beware There Are No Guarantees

The Authority cannot guarantee that any application will proceed to the making of an order, nor can the Authority give any assurance that all applications will be successful. Applicants must be aware that they may incur costs without the order being successful. The Authority will endeavour to resolve objections if possible and applicants will be able to withdraw their applications prior to objected orders being sent to WG for determination. In these circumstances the Authority will only recover costs up to the point that this event occurs.

EVERY EFFORT HAS BEEN MADE TO ENSURE THE ACCURACY OF THE INFORMATION GIVEN, HOWEVER, THIS GUIDE IS NOT INTENDED TO BE A DEFINITIVE STATEMENT OF LAW, NOR CAN ANY RESPONSIBILITY BE ACCEPTED FOR AMENDMENTS, ERRORS, OR OMISSIONS.

PPO – Process and Cost Schedule

Stage	Details	Approximate Cost
1. Initial investigative work	Feasibility of proposal, guidance provided, check application form, prepare cost schedule, phone calls and map work. Set up file and enter details into CAMS computer system.	£100
2. Research into history and status of rights of way	Check for any claims. Check routes on the Definitive Map, check for any previous orders, check path file history and any other applications.	£100
3. Site visit	Look at feasibility of route on the ground. Discuss and check final proposal with applicant. Draw up detailed site plan, schedule of works, including path widths. Take photographs.	£50-£100 + Mileage Dependent upon distance and time spent at site
4. Pre-Order consultation process	Consultation emails and plans sent to statutory undertakers and prescribed bodies	£50
5. Officer time considering and responding to pre-order consultation responses	Recording and analysing replies and responding as necessary. Negotiations/ mediation with any objectors	£50-£100 Dependent upon any objections being received
6. Assessment of legal implications	Seek legal advice with MCC lawyer	£25
7. Preparation of delegated powers report	Detailing background to application, proposal, and legal tests. Detailed plan to be included showing proposal	£150
**Objections received?	<i>If there are objections to the order at this stage, then the below Objections Schedule applies.</i>	<i>Additional Costs, see below</i>

Stage	Details	Approximate Cost
8. Creation of Legal Order (making)	Drafting and sealing of legal order and notice. Send copy of the legal order/notice/plan to all affected people/bodies and statutory consultees.	Included in Legal Costs* unless otherwise stated.
9. Order Notices to the press	Notices appear in the local newspaper for public consultation	£500-£600 Dependent upon size of notice
10. Site visit	Copy of notices and plans posted at site for public consultation	£50 + Mileage Dependent upon distance and time spent at site
***Objections received?	<i>If there are objections to the order at this stage, then the below Objections Schedule applies.</i>	<i>Additional Costs, see below</i>
11. Site visit	Attend site to assess suitability and availability of new route.	£50 + Mileage Dependent upon distance and time spent at site
12. Creation of Legal Order (confirmation)	Drafting and sealing of legal order and notice. Send copy of the legal order/notice/plan to all affected people/bodies and statutory consultees.	Included in Legal Costs* unless otherwise stated
13. Order Notices to the press	Notices appear in the local newspaper	£400-£600 Dependent upon size of notice
14. Site visit	Copy of notices posted on site.	£50 + Mileage Dependent upon distance and time spent at site

***Legal Costs**

Legal Costs are set at £225 per PPO.

NB If a PPO is the subject of unresolved objections, or if unforeseen legal costs arise, then the set fee is no longer applicable.

The average cost of an unopposed PPO is in the region of £2,000.

The average cost of an opposed order is in the region of £3,000.

The Applicant or the Authority can withdraw the application at any stage prior to the order's confirmation prior to stage 11. Charges to the relevant stage will be incurred.

The fees stated above are only a guide and every effort will be made to ensure costs are kept to a minimum.

Mileage is charged at 50p per mile.

Objections Schedule

Item	Details	Approximate Cost
** If Objections received at stage 7		
Prepare report for Rights of Way Advisory Panel	Detailing background to application, proposal, and legal tests. Detailed plan to be included showing proposal.	£150
Site visit by Rights of Way Advisory Panel	If required by the panel to determine the making of the order.	£300

Item	Details	Approximate Cost
***If objections at stage 10 Report prepared for WG	Full file of evidence compiled for submission to WG by Rights of Way Officer and Legal Department	£500 NB - This can increase significantly dependent upon the nature and extent of the objections.

Potential Additional Costs Schedule

Item	Details	Approximate Cost
Other communications	Additional emails and phone calls in relation to the order which are not covered by the above	£25-£100
Site visits	Any additional visits to those detailed above, as required	£50 + Mileage Dependent upon distance and time spent at site

HIGHWAYS ACT PUBLIC PATH ORDER(S)

Undertaking to Pay Costs Form

I undertake to pay the costs incurred in processing the Public Path Order for:

Public Right(s) of Way No(s).

Community of

I understand that the cost will be the actual costs incurred by the Authority to process the application as specified in the Process and Cost Schedule. I understand that I will be required to pay these costs in full at the conclusion of the process.

I understand and agree to pay the costs for carrying out the necessary work to provide the new route to the satisfaction of the Authority. Where it has been agreed that the Authority, or its agents, should carry out any works and supply any furniture (including bridges) on behalf of this application, I understand that I will be invoiced for the total costs of the furniture and installation (unless agreed otherwise in writing with Monmouthshire County Council).

I also understand that I must pay any compensation that may arise as a consequence of the diversion/creation/extinguishment of a path onto or affecting land not in the control of the applicant.

Name
(Please print): _____

Signed: _____

Address
(For invoicing): _____

Date: _____



HIGHWAYS ACT 1980, SECTION 119

APPLICATION FOR AN ORDER TO PERMANENTLY DIVERT PART OR ALL OF A PUBLIC RIGHT OF WAY

The following questions should be answered as fully as possible, and the form returned to Countryside Access, Monmouthshire County Council, County Hall, Usk, NP15 1GA.

You must also send:

1. A plan not less than 1:2500, showing the Public Right of Way concerned and with the line of the diversion clearly marked, along with landownership details.
2. Any relevant landowners/owner/occupiers' agreements to the proposal.
3. A signed "Undertaking to Pay Costs Form".

SECTION A: GENERAL

Name & address of applicant

Name: _____

Address: _____

Email: _____ Telephone: _____

Name & address of agent (only complete if applicable)

Name: _____

Address: _____

Email: _____ Telephone: _____

If you do not own all the land on which any part of the path to be diverted runs, has the consent of the landowner(s) been obtained in writing? YES / NO

(If YES please attach).

Name: _____

Address: _____

Email: _____ Telephone: _____

Have you obtained the written consent of any Lessee or Tenant or Occupier YES/NO
(If YES please attach consent)

Name of Lessee, Occupier or Tenant:

Address: _____

Email: _____ Telephone: _____

SECTION B: PUBLIC RIGHT (S) OF WAY TO BE DIVERTED

Name of Community or Communities in which the affected path(s) are located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).

Path Number(s)

General description of path(s)

Status: The path(s) affected are *footpath/bridleway (*delete the term that does not apply)

SECTION C: REASON FOR DIVERSION

Section 119 of the Highways Act 1980, as amended by Schedule 16 para.5 of the Wildlife and Countryside Act 1981, permits diversions of public footpaths and bridleways on the grounds that it is expedient in the interests of:

- (i) the owner, lessee, or occupier and/or
- (ii) the public.

Please indicate whether this application serves the interests of the owner, etc., and/or the public and give specific reasons why.

(i) _____

(ii) _____

What effect will the diversion have on the convenience and enjoyment of the path by the public?

SECTION D: DECLARATION

(Please read carefully, amend as necessary and then sign).

1. I have read and understood the guidance notes attached to this application. I agree to comply with the following conditions in respect of this application:
 - (i) The proposed alternative route must be at least equal in construction to the length of the route it is replacing and have an equal or improved surface.
 - (ii) The proposed alternative route must be constructed to the satisfaction of Monmouthshire County Council as the Highway Authority.
 - (iii) The siting and type of any new bridges, stiles, gates, or fencing must be agreed with the Authority prior to erection and maintained at the applicant's own expense in the future (unless specifically agreed otherwise in writing with the Authority).
 - (iv) Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the Authority.
 - (v) The diverted route(s) to be signposted and waymarked to the satisfaction of the Authority.
2. If the Authority agrees to make the order for the diversion of the path(s) I will carry out such work on the diverted route of the path as may be specified by the Authority, at my own expense, to bring the route into a fit condition for public use at such time as the diversion order can be confirmed and certified.
3. I understand that no authority for the diversion of a Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
4. I declare the Rights of Way(s) to be diverted is/are in no way obstructed and that it/they are fully available to the public and I undertake that it/they shall in no way be obstructed before the Order comes into operation.
5. I declare that to the best of my knowledge and belief all, the particulars given are true and accurate and I hereby apply for the diversion of the route(s) I have detailed above.

Signed: **Dated:**.....



HIGHWAYS ACT 1980, SECTION 118

APPLICATION FOR AN ORDER TO PERMANENTLY EXTINGUISH PART OR ALL OF A PUBLIC RIGHT OF WAY

The following questions should be answered as fully as possible, and the form returned to Countryside Access, Monmouthshire County Council, County Hall, Usk, NP15 1GA.

You must also send:

1. A plan not less than 1:2500, showing the Public Right of Way concerned and with the line of the extinguishment clearly marked, along with landownership details.
2. Any relevant landowners/owner/occupiers' agreements to the proposal.
3. A signed "Undertaking to Pay Costs Form".

SECTION A: GENERAL

Name & address of applicant

Name: _____

Address: _____

Email: _____ Telephone: _____

Name & address of agent (only complete if applicable)

Name: _____

Address: _____

Email: _____ Telephone: _____

If you do not own all the land on which any part of the path to be extinguished runs, has the consent of the landowner(s) been obtained in writing? YES / NO
(If YES please attach).

Name: _____

Address: _____

Email: _____ Telephone: _____

Have you obtained the written consent of any Lessee or Tenant or Occupier YES/NO
(If YES please attach consent)

Name of Lessee, Occupier or Tenant: _____

Address: _____

Email: _____ Telephone: _____

SECTION B: PUBLIC RIGHT (S) OF WAY TO BE EXTINGUISHED

Name of Community or Communities in which the affected path(s) are located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).

Path Number(s)

General description of path(s)

Status: The path(s) affected are *footpath/bridleway (*delete the term that does not apply)

SECTION C: NEW PUBLIC RIGHTS OF WAY TO BE CREATED

Is there to be a new route created to replace the extinguished route/s YES / NO

If the applicant does not own or control the land over which the new right of way is to be created, has the consent of the landowner(s) been obtained? YES / NO

Name: _____

Address: _____

Email: _____ Telephone: _____

SECTION D: REASON

Section 118 of the Highways Act 1980 permits footpaths and bridleways to be extinguished where it can be shown that the path is not needed for public use.

Please indicate the reason for requesting this Extinguishment:

What effect will the closure of the path have on the land served by it?

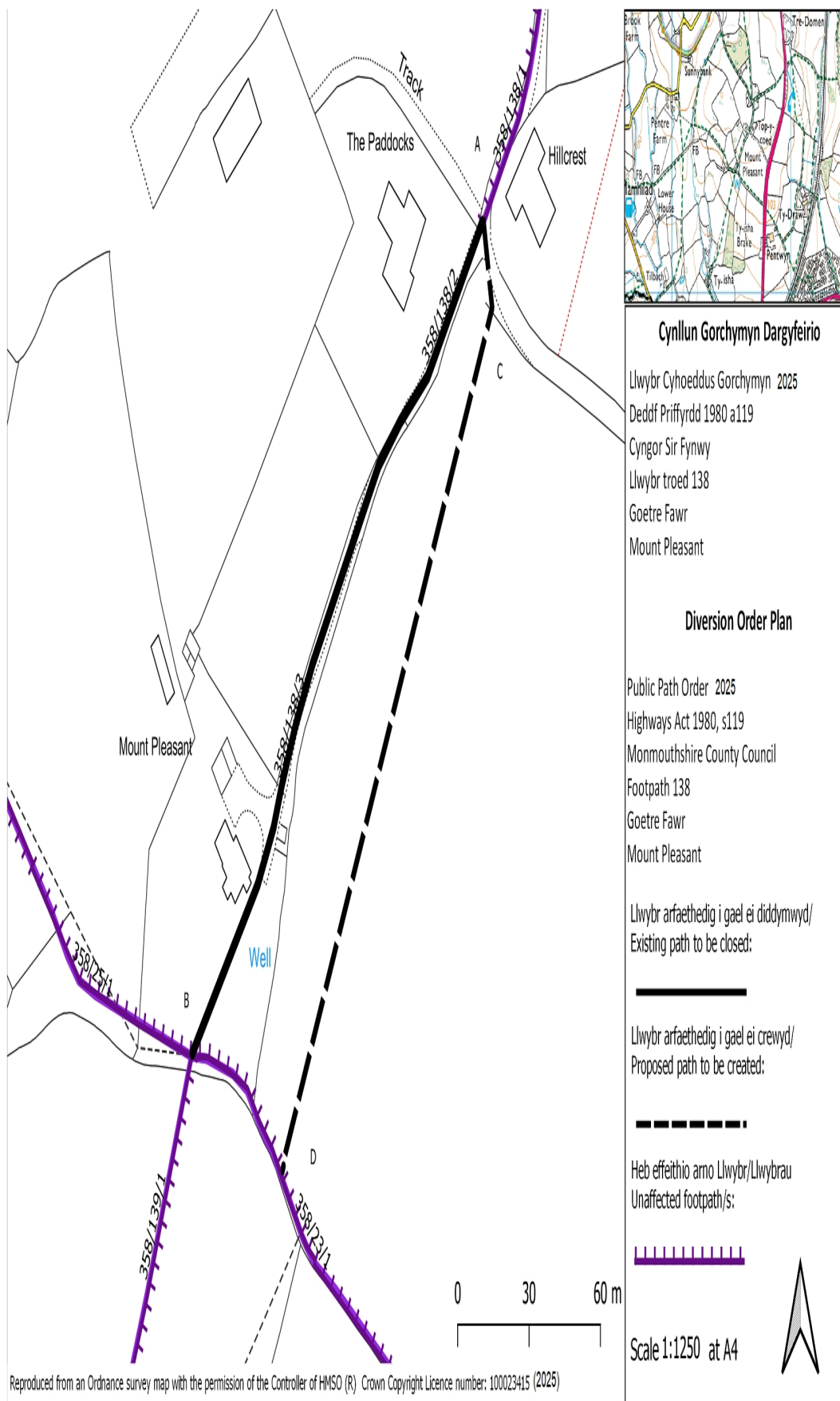
SECTION E: DECLARATION

(Please read carefully, amend as necessary and then sign).

1. I have read and understood the guidance notes attached to this application and agree to comply with the following conditions in respect of this application:
 - (i) Any routes proposed to be created must be at least equal in construction to the length of the route it is replacing.
 - (ii) The alternative route must be constructed to the satisfaction of the Authority.
 - (iii) The siting and type of any necessary gates, fencing or other furniture on the route to be dedicated must be agreed with the Authority prior to erection.
 - (iv) Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the Authority.
 - (v) The alternative route to be signposted and way marked to the satisfaction of the Authority.
2. I understand that no authority for the extinguishment of a Public Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
3. I declare the Public Rights of Way(s) to be extinguished are in no way obstructed and that it/they are fully available to the public and I undertake that it/they shall in no way be obstructed before the Order comes into operation.
4. I am aware that if an order is made and confirmed the Authority will make arrangements, where necessary, to remove any foot or bridleway bridges on the route that has been closed.
5. I declare that to the best of my/our knowledge and belief all the particulars given are true and accurate.

Signed: **Dated:**.....

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Public Path Diversion Order 2025
Highways Act 1980, Section 119
Monmouthshire County Council
Public Footpath No. 138 (part), Goetre Fawr

SCHEDULE

PART 1

<u>Section as indicated on map</u>	<u>Description of site of existing path or way</u>
A-B	Footpath continues from unaffected footpath 138 at point A (SO31650357) and continues in a South Westerly direction for 190m to point B (SO31530342).

PART 2

<u>Section as indicated on map</u>	<u>Description of site of new Public Right of Way</u>
A-C-D	Footpath continues from unaffected footpath 138 at point A (SO31660357) at a width of 2m in a generally Southerly direction for 16 metres to a pedestrian gate at point C (SO31650356). The footpath then continues at a width of 2 metres in a South Westerly direction 176 metres across the field to unaffected Footpath 23 at point D (SO31560340).

PART 3

Limitations and Conditions

Point C (SO31650356)	Pedestrian Gate model 012/MG as described in Monmouthshire County Council's Countryside Access Design Guide or the latest BS5709 equivalent.
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APPENDIX 2 – CONSULTEES

	Name	Organisation	Summary of Representations
1	Daniel Hulmes	MCC Biodiversity Officer	No objection.
2	Head Office	The Open Spaces Society	No response.
3	Mr S Garland	Lower Wye Valley Ramblers Association	Objection. (Please see paragraph 7 of Main Report Appendix 1 for details).
4	Derek Humble	Pontypool Ramblers	No objection.
5	Matthew Lewis	MCC Environment & Culture Manager	No objection. Comment, 'looks a sensible diversion'.
6	Richard Ray	MCC Legal Department	No objection. Comment, 'it appears to satisfy the statutory tests'.
7	Bradley Griffiths	Western Power Distribution	No objection. Comment, 'we have no infrastructure which would be affected by the new footpath'.
8	Openreach, Network Alterations	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, 'no Dwr Cymru apparatus will be affected by the proposed works'.
12	Jonathan Lazenby	Clerk, Goetre Fawr Community Council	No objection. Comment, 'no concerns with the proposals'.

13	County Councillor Jan Butler	MCC	No objection. Comment, 'I have no issues with this proposed diversion. It makes sense'.
14	County Councillor Catrin Maby	MCC	No objection.



Equality and Future Generations Evaluation

Name of the Officer completing the evaluation Gavin Pugh Phone no: 07976 088876 E-mail: gavinpugh@monmouthshire.gov.uk	Please give a brief description of the aims of the proposal Whether to authorise the diversion of footpath 138 Goetre Fawr under Section 119 Highways Acty 1980.
Name of Service area Public Rights of Way, Monlife	Date 01/07/2025

Page 67

Are your proposals going to affect any people or groups of people with protected characteristics? Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	The proposed path would be safer for younger and older members of the public because it takes the path off a vehicle track and onto a grass field.	None	
Disability	The existing path follows a rutted vehicle track.The proposed path would be over a more level and softer grass.	minimal	
Gender reassignment	.Not applicable.		



Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Marriage or civil partnership	Not applicable.		
Pregnancy or maternity	Not applicable.		
Race	Not applicable.		
Religion or Belief	Not applicable.		
Sex	Not applicable.		
Sexual Orientation	Not applicable.		
Welsh Language	Any signage will be bilingual.	None	
Poverty	Enhanced accessibility might help reduce the reliance of cars and public transport and their associated cost. Housing development permitted by the proposed order includes a proportion of affordable housing.	None	




2. Does your proposal deliver any of the well-being goals below? Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal. There's no need to put something in every box if it is not relevant!

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth, provides jobs	Not applicable.	
A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)	Not applicable..	
A healthier Wales People's physical and mental wellbeing is maximized and health impacts are understood	Any action to improve the rights of way network can encourage physical exercise with its health and wellbeing benefits.	
A Wales of cohesive communities Communities are attractive, viable, safe and well connected	The application seeks to improve the public rights of way network which can encourage more people to spend time outdoors and help to link communities.	
A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing	Enhancing the rights of way network can help promote active travel and reduce reliance on cars and public transport and therefore reduce emissions.	
A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People	Any action to improve the rights of way network can encourage physical exercise with its health and wellbeing benefits and enables people to	

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
are encouraged to do sport, art and recreation	enjoy local heritage. Signage under MCC's control would be bilingual	
A more equal Wales People can fulfil their potential no matter what their background or circumstances	The use of the rights of way network is non-discriminatory, although some disabilities may prevent the safe use of some paths.	This proposal improves the nature of the surface of the path, takes the path on to a safer route, and adds no additional difficulty for the path user.

3. How has your proposal embedded and prioritised the sustainable governance principles in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Long Term</p> <p>Balancing short term need with long term and planning for the future</p>	The proposal by its nature is long term.	
 <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>	Not applicable.	

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>	<p>The usual interested user groups, MCC Departments (Ecology/Biodiversity), community groups and statutory undertakers were consulted as part of the path order process.</p>	
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>The current path runs over an access track that MCC has responsibility to maintain the surface of for path users. The new path would run over a field used for sheep grazing and would need no specific maintenance.</p>	
 <p>Integration</p> <p>Considering impact on all wellbeing goals together and on other bodies</p>	<p>The use of the rights of way network can have a positive impact upon the users health and wellbeing.</p>	

4. Council has agreed the need to consider the impact its decisions has on the following important responsibilities: Social Justice, Corporate Parenting and Safeguarding. Are your proposals going to affect any of these responsibilities?

	Describe any positive impacts your proposal has	Describe any negative impacts your proposal has	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?

Social Justice	Not applicable.		
Safeguarding	The proposed diversion takes the current path alignment off a vehicle track, and away from two dwelling houses where young children reside.		
Corporate Parenting	Not applicable.		

5. What evidence and data has informed the development of your proposal?

The proposal was instigated by the path order application and takes into account the following:

- Highways Act 1980 S119.
- Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016.
- Monmouthshire County Council Application & Guidance Pack for Public Path Diversion and Extinguishment Orders under the Highways Act 1980 Section 119.
- Environment (Wales) Act 2016.
- Equality Act 2010.
- Active Travel (Wales) Act 2013.
- Consultation Responses.
- The Well-being of Future Generations Act 2015.
- Monmouthshire's Countryside Access Improvement Plan.
- Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide
- Other interested parties' communications.

6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?

The proposal could allow, what has generally been accepted as a positive and necessary change to the rights of way network. There has been one objection which has prevented this path order being made under delegated powers. The proposal is, I believe, an improvement to the path and this in turn should encourage greater use of the route if authorised.

7. ACTIONS: As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

What are you going to do	When are you going to do it?	Who is responsible
L & R Committee report	1st July 2025	Ruth Rourke. Countryside Access Manager
Make Order (depending on result of above) and consider objections to it if any are made	To be confirmed.	

8. VERSION CONTROL: The Equality and Future Generations Evaluation should be used at the earliest stage, such as informally within your service, and then further developed throughout the decision making process. It is important to keep a record of this process to demonstrate how you have considered and built in equality and future generations considerations wherever possible.

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	Council	1st July 2025	

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