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County Hall  
Rhadyr  
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NP15 1GA

15 July 2025

**Hysbysiad a gyfarfod**

## **Pwyllgor Tacsis a Rheoleiddio**

**Dydd Mercher, 23ain Gorffennaf, 2025 at 10.00 am,  
Council Chamber, County Hall, The Rhadyr USK**

### **AGENDA**

| Item No | Item                                                                                                                                                         | Pages   |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1.      | Ymddiheuriadau am absenoldeb                                                                                                                                 | 1 - 278 |
| 2.      | Datganiadau o Fuddiant                                                                                                                                       |         |
| 3.      | DEDDF CYNLLUNIO TREF A GWLAD 1990 – ADRAN 257 GORCHYMYN LLWYBR CYHOEDDUS, LLWYBR TROED 61 (rhan) CIL-Y-COED a elwir hefyd yn LLWYBR TROED 7 (rhan) CAERWENT. |         |

**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 |

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### **Welsh Language**

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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.

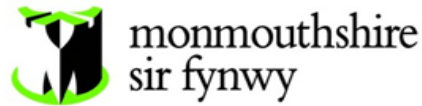
**Fairness.** We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did 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: TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257 PUBLIC PATH ORDER, FOOTPATH 61 (part) CALDICOT also known as FOOTPATH 7(part) CAERWENT.**

**MEETING: TAXI & REGULATORY COMMITTEE**

**DATE: 23 JULY 2025**

**DIVISION/WARDS  
AFFECTED: CAERWENT**

## **10. PURPOSE:**

- 1.1 To consider the request to make and confirm, a public path diversion order under section 257 of the Town and Country Planning Act 1990, to enable development in accordance with approved planning permission.

## **2.0 RECOMMENDATIONS:**

- 2.1 Having regard to the relevant legislation, tests, guidance and policy that the Taxi and Regulatory Committee authorise the making of a diversion order for Footpath 61 Caldicot under Section 257 of the Town & Country Planning Act 1990 and confirm the order if no objections are received.

## **3.0 KEY ISSUES:**

- 3.1 On 10th October 2024 Planning and Environment Decisions Wales (PEDW) granted planning permission under reference DM/2023/01042 for the construction of a stable block for 5 horses, an ancillary storage building and a manège necessitating the diversion of Footpath 61.
- 3.2 The effect of development on public rights of way is a material consideration in the determination of applications for planning permission. PEDW granted consent despite objections to the scheme based on the alleged detrimental impact that the diversion of the path would have.
- 3.3 Welsh Government guidance states that having concluded that planning permission should be granted, there must be good reasons for deciding that an order, which would permit implementation of that permission, should not be made.
- 3.4 The developer has applied for a path order to divert Public Footpath 61, Caldicot under s 257 of the 1990 Town and Country Planning Act (TCPA90) to accommodate the proposed development.

- 3.5 The Council, under Section 257 of TCPA90 may by order stop up or divert a footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission.
- 3.6 Any orders changing the public path network should comply with Legislative tests and take into consideration guidance and policy.
- 3.7 The Council ran a pre-order consultation. It received numerous objections and representations.
- 3.8 Full details of the proposed order, legislation, guidance, policy and representations are available in the report, Appendix 1.
- 3.9 The report is asking if MCC should make the order and confirm it if there are no objections. If objections are received the decision to confirm it would be referred to PEDW.

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

- 4.1 The proposed replacement path alignment contains gates rather than a stile. Many people find stiles difficult or impossible. The proposed new path would therefore be available to more people. The proposed new path alignment also runs to a layby gate rather than to a stile directly at the roadside making it safer than the existing route. The proposed development will also provide opportunities for leisure which together with the development works themselves could help boost the local economy. An Equality and Future Generations Evaluation (EQAFG) has been included in Appendix 2.

#### **5.0 OPTIONS APPRAISAL**

| <b>Option</b>         | <b>Positive</b>                                                                                | <b>Negative</b>                                                                                                                | <b>Comment</b>                                                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| To make the order     | Allow development in accordance with planning application. and provide a more accessible route | Loss of direct footpath.<br>Views possibly compromised.<br><br>The order could still fail at inquiry if found to be deficient. | If the order were not made it would prevent approved development taking place, but the path may still run through an active livery rather than the segregated alignment that has be set out to accommodate it away from potential conflict's of interest. |
| Not to make the order | Retention of valued rural path.                                                                | Prevent the development in accordance with planning application.<br>No                                                         |                                                                                                                                                                                                                                                           |

|  |  |                             |  |
|--|--|-----------------------------|--|
|  |  | accessibility improvements. |  |
|--|--|-----------------------------|--|

## **6.0 EVALUATION CRITERIA**

- 6.1 An evaluation assessment has been included in Appendix 3 for the future evaluation of whether the decision has been successfully implemented.

## **7.0 REASONS:**

- 7.1 A path order needs to be made to enable development in accordance with approved planning permission. Appendix 1, the report outlines why the scheme is compliant with the relevant legislation, guidance and policy.
- 7.2 The objections received principally refer to the detrimental impact the proposed change would have on the heritage, views and biodiversity in the area. MCC's Ecologist and Heritage Officers have, however, offered no such objections. In response to the approved planning application CADW offered no objections and MCC's Landscape Officer stated that the realignment of the footpath would be acceptable within the context of the site and setting. It is therefore held that these concerns are not of strong enough public detriment to prevent the order being made. Many of the objections also reference other alleged issues which are not relevant to the path order process and can be dealt with by different mechanisms.

## **8.0 RESOURCE IMPLICATIONS:**

- 8.1 Order costs including stationery, officer time and newspaper adverts will be charged to the applicant. If the order is made and objections received, then at PEDW's (Planning and Environment Decision Wales) 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 PEDW.

## **9.0 CONSULTEES**

- 9.1 Consultees included the Local Member, The Town Council, Statutory Undertakers, user groups and local residents. Appendix 1, The report lists all of the consultees and summaries of their responses. Full responses are also available as appendices to this report.

## **10.0 BACKGROUND PAPERS:**

- Appendix 1: Report
- Appendix 2 Equality and Future Generations Evaluation (includes Social Justice, Safe Guarding and Corporate Parenting)
- Appendix 3 Evaluation Criteria

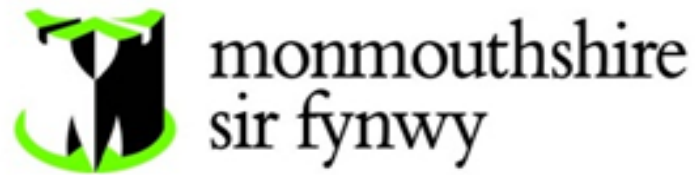
**11.0 AUTHOR:**

Shaun Pritchard  
Public Rights of Way Enforcement Officer

**CONTACT DETAILS:**

Tel: 01633 644676

Email: [shaunpritchard@monmouthshire.gov.uk](mailto:shaunpritchard@monmouthshire.gov.uk)



**Town and Country Planning Act 1990, section 257  
Public Path Order Footpath 61, Caldicot also  
known as Footpath 7 (part), Caerwent.**

**Report for Taxi and Regulatory Committee 23rd July 2025**

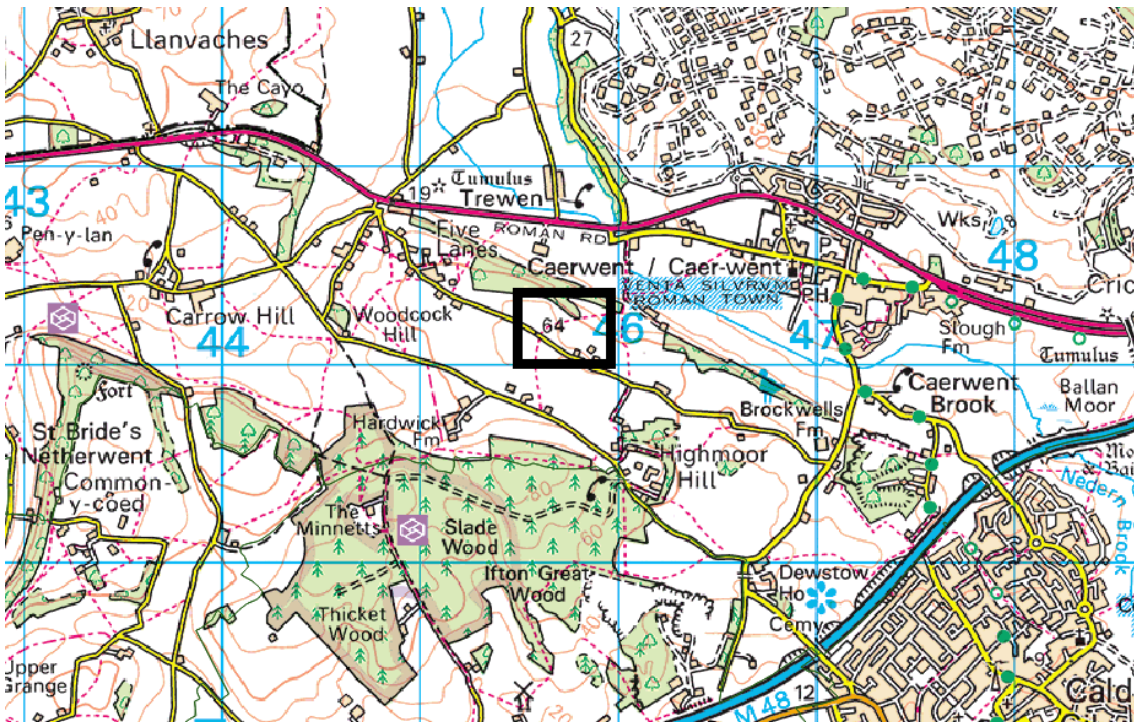
**Version 3 8 July 2025**

## 1. Purpose

- 1.1 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 to the Welsh Government. Decisions must be readily justified under the criteria of the relevant Acts.
- 1.2 This report has therefore 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, objections and other evidence in respect to a request for an order to be made under section 257 of the Town and Country Planning Act 1990 for public Footpath 61(part) Caldicot. Its purpose is to assist Members of the Taxi and Regulatory Committee to make a decision on whether or not an order should be made diverting part of Footpath 61 Caldicot and to inform all other interested parties.

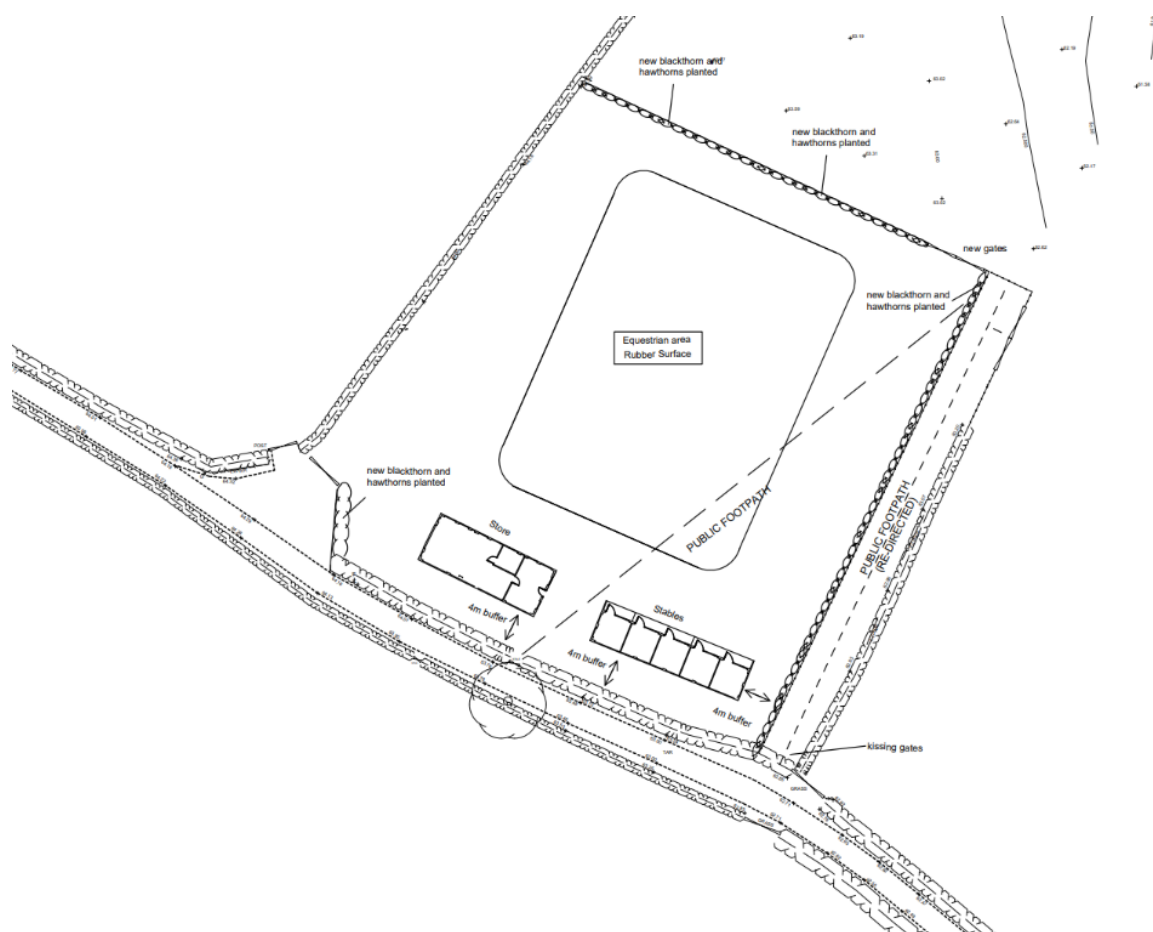
## 2. Background

### 2.1 Location Plan



2.2 On 10th October 2024, Planning and Environment Decisions Wales (PEDW) granted under reference DM/2023/01042 planning permission for the construction of a stable block for 5 horses, an ancillary storage building and a manège despite strong opposition.

2.3 Appendix R01 includes a site plan of the approved planning application  
Excerpt of Appendix R01. Site plan of the approved development.



2.4 The development if constructed would obstruct Public Footpath 61, Caldicot. The developer has therefore applied for a path order to divert the path to accommodate the development.

2.5 The Council has powers to divert footpaths if it is satisfied that it is necessary to enable development to be carried out in accordance with planning permission.

2.6 Appendix R02 sets out the proposed Order Plan and Appendix R03 the proposed Order Schedule.

### 3. Legislation/Policy Issues

3.1 The Council, under Section 257 of the 1990 Town and Country Planning Act (TCPA) has discretionary powers by order, stop up or divert footpaths if it is satisfied that it is necessary to enable development to be carried out in accordance with planning permission.

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

3.3 Successful path orders under s257 TCPA 90 are Made and Confirmed and Certified.

#### 3.4 **Section 257 of the Town and Country Planning Act 1990**

*Footpaths [bridleways and restricted byways] affected by development: orders by other authorities.*

*(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath [bridleway or restricted byway] if they are satisfied that it is necessary to do so in order to enable development to be carried out—*

*(a) in accordance with planning permission granted under Part III [or section 293A], or*

*(b) by a government department.*

*(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that—*

*(a) an application for planning permission in respect of development has been made under Part 3, and*

*(b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.]*

*(2) An order under this section may, if the competent authority are satisfied that it should do so, provide—*

*(a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;*

*(b) for authorising or requiring works to be carried out in relation to any footpath [bridleway or restricted byway] for whose stopping up or diversion, creation or improvement provision is made by the order;*

*(c)for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath [bridleway or restricted byway];*

*(d)for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.*

*(3)An order may be made under this section authorising the stopping up or diversion of a footpath [bridleway or restricted byway], which is temporarily stopped up or diverted under any other enactment.*

*(4)In this section “competent authority” means—*

*(a)in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State [or by the Welsh Ministers], who would have had power to grant it;*

*(b)in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.”*

### **3.5     Section 259 of the Town and Country Planning Act 1990**

*Confirmation of orders made by other authorities.*

*(1)An order made under section 257 or 258 shall not take effect unless confirmed by the [appropriate national authority]or unless confirmed, as an unopposed order, by the authority who made it.*

*(1A)An order under section 257(1A) may not be confirmed unless the [appropriate national authority] or (as the case may be) the authority is satisfied—*

*(a) that planning permission in respect of the development has been granted, and*

*(b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.]*

*(2)The [appropriate national authority]shall not confirm [any order under section 257(1) or 258] unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.*

*(3)The time specified—*

*(a) in an order under section 257 as the time from which a footpath [bridleway or restricted byway] is to be stopped up or diverted; or*

*(b) in an order under section 258 as the time from which a right of way is to be extinguished, shall not be earlier than confirmation of the order.*

*(4)Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed”*

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

In additional to the TCPA legislation the council should consider the following Legislation, Guidance and Policy.

- Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016 (Appendix R04)
- Monmouthshire County Council Policy as set out in its Application & Guidance Pack for Public Path Diversion and Extinguishment Orders under the Town and Country Planning Act 1990 s257 (Appendix R05)
- [Environment \(Wales\) Act 2016](#)
- Equality Act 2010 (Appendix R06)
- [Active Travel \(Wales\) Act 2013](#)
- [Well-being of Future Generations \(Wales\) Act 2015](#)
- Monmouthshire’s Countryside Access, Protocol and Operational Management Guide. (Appendix R07)

## **4. Consultees**

4.1 The council ran a pre-order consultation. At the time, the order was proposed to be made in relation to planning application DM/2021/00738 but this was superseded by planning application DM/2023/01042. The final path order details differ very slightly from those originally consulted on but not in a materially significant way. The main difference is that the final proposal contains a kissing gate and field gate rather than two kissing gates. Appendices R08 & R09 set out the consultation plan and schedule. Consultees included the Local Member, Caldicot Town Council, the statutory undertakers, user groups and local residents. Unsolicited representations were also received.

4.2 The following list, partly redacted for reasons of the General Data Protection Regulations provides a summary of the responses and representations made. Full copies of the objections, redacted where appropriate and other significant representation can be found in Appendices R10 to R29

|   | <b>Name</b>                 | <b>Organisation</b> | <b>Summary of Representations</b>                                                                                                                      |
|---|-----------------------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Ms S Palmer<br>Appendix R10 | MCC Biodiversity    | The proposed realignment will run alongside the existing hedge; no hard surfacing which could affect the hedge will be used. The proximity of the path |

|   |                              |                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---|------------------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                              |                                       | to the hedge is unlikely to negatively impact wildlife using the hedge.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 2 | Mrs C Hunter                 | The Open Spaces Society               | No response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 3 | Mr S Garland<br>Appendix R11 | Lower Wye Valley Ramblers Association | Purely on the suitability of the proposed footpath diversion, I have no objection."                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 4 | Mr R Ray<br>Appendix R12     | MCC Legal Services                    | <p>Although the application referred to in the pre consultation email below was declined I note that permission has been granted on appeal for subsequent application DM/2023/01042 and that the current proposed diversion is in order for development to be carried out under the above permission.</p> <p>Provided that the current diversion application doesn't differ from the 2021 proposal it appears to meet the statutory test that the diversion is necessary for purposes of the development. The diversion of the path seems to have minimal impact of the public and as such there seems to be no reason to refuse to make the order.</p> <p>I attach a copy of a transfer of part that contains restrictive covenants relating to private rights of way enjoyed by the owner of this property and the adjoining field to the west. These private rights are not in conflict with the proposal and as such do not seem to present an obstacle to the order.</p> |

|    |                             |                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----|-----------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5  | Matthew Lewis               | MCC Environment & Culture Manager                                                    | No comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 6  | Mr J Morgan<br>Appendix R13 | MCC Heritage                                                                         | Whilst the area is within the conservation area and Roman town of Caerwent, there is no direct development on which to comment from a heritage perspective, as the proposal seems only to offer a new location for a route already obstructed by a development which has been consented by the planning inspectorate. As such, there are no Heritage objections to the allowing the continuation of this routes use by a minor adjustment, for a path that would otherwise effectively no longer exist once the development already consented is built. |
| 7  | Ms D Harris<br>Appendix R14 | CADW<br>In response to approved planning application DM/2023/01042.                  | Having carefully considered the information provided, we have no objection to the proposed development in regards to the scheduled monuments or registered historic parks and gardens listed in our assessment of the application                                                                                                                                                                                                                                                                                                                       |
| 8  | Mr A Nevill<br>Appendix R15 | MCC Landscape Officer<br>In response to approved planning application DM/2023/01042. | Subject to rights of way approval a realignment would be acceptable within the context of the site and setting.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 9  | Ruth Rourke                 | MCC Countryside Access Manager                                                       | I have no objection to the order which appears to follow all the necessary tests and policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 10 | Bradley Griffiths           | Western Power Distribution                                                           | No response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|    |                                      |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|--------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11 | Openreach,<br>Network<br>Alterations | Openreach                              | Please find attached our letter detailing the procedure should you encounter our line plant during your works                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 12 | External<br>Relations Team           | Natural Resources<br>Wales             | No response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 13 | Plant<br>Protection                  | Cadent/National<br>Grid                | Searches based on your enquiry have identified that there is no record of apparatus in the immediate vicinity of your enquiry.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 14 | Sharon Grey                          | Dwr Cymru / Welsh<br>Water             | Email Acknowledged                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 15 | Ms Laraine<br>McKeon<br>Appendix R16 | Clerk,<br>CaerwentCommunity<br>Council | The ecology provided with the planning application documents relating to DM/2021/00738 notes the importance of the hedge along the eastern border for biodiversity including nesting birds and advises an exclusion zone along a nearby hedge to the east and works completed outside the nesting bird season or preceded by a breeding bird survey to protect any ground nesting birds using the site the development should have little impact on the biodiversity of the area. We therefore would recommend a 2 metre buffer zone along the eastern hedge be retained between the hedge and the footpath even after construction works are complete in order to protect nesting birds from disturbance each year. |
| 16 | Cllr Phil<br>Murphy                  | MCC                                    | No response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 17 | Mark Davies                          | MCC Highways                           | Just to confirm I have no adverse comments or objection to the diversion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|    |                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 18 | Anonymised representations<br>Appendix R17 |  | The public have enjoyed the scenery on this ancient footpath which has been left undisturbed since roman times. The proposed route would deny them these views. The proposed field edge path would deny view and disturb birds nesting in the hedge.                                                                                                                                                                                                                                                                   |
| 19 | Anonymised representations<br>Appendix R18 |  | My wife and I ... have walked this path with nothing to bother us but a few cows or sheep, now there are Search Lights, unfriendly dogs, offensive signs and a feeling that we are not welcome, this can't be right .I can't see the point in moving something that has been in use for probably hundreds of years. Therefore, I am totally against the moving of the footpath.                                                                                                                                        |
| 20 | Anonymised representations<br>Appendix R19 |  | I do not agree with the proposed diversion of the ancient footpath. I would like to think walkers can enjoy their pleasant hike without change for years to come. Also without fear of the loose guard dog.                                                                                                                                                                                                                                                                                                            |
| 21 | Anonymised representations<br>Appendix R20 |  | We would both like to register our objection to the proposed application to divert part of the above-mentioned public footpath. and believe that the owners should not have bought the land knowing that there was already a public footpath present and assume that they can just divert it to fit in with proposed planning. By moving part of the footpath and diverting it through a cordoned off area would take away the public's experience of the countryside and its views The installation of intrusive CCTV |

|    |                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|    |                                            |  | cameras pointing directly at the stile along with warning signs of aggressive looking dogs running loose before even entering the public footpath have already changed the public's experience of being able to enjoy it.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 22 | Anonymised representations<br>Appendix R21 |  | I object to altering the footpath. It is very ancient path which links Shirefield Lane diagonally to Caerwent church. That is how footpaths were set up so that you could walk the shortest distance to where you want to go. There is a rottweiler in the field and a camera pointing at the stile.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 23 | Anonymised representations<br>Appendix R22 |  | I would like to strongly object to the proposed diversion of the existing footpath to align with the eastern boundary of the field, this will detract significantly from the public's experience of this right of way access. At present heading from Five Lanes towards the Rodge Wood/Rodge Farm direction the walker initially experiences a wide open expanse of flat countryside and woodland and as the walk progresses toward the Rodge Farm a wide open vista is revealed below with open rolling countryside, the flat floodplain of the River Niddern, the historic Roman Wall, the picturesque village of Caerwent and the former wartime armaments factory , which itself has 2 visible scheduled monuments slowly come in to view, a unique experience. This application to re route the footpath should only be |

|    |                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----|--------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                            |  | approved if planning permission for development granted and approval for the diversion of the footpath should not be granted in isolation or as a separate matter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 24 | Anonymised representations<br>Appendix R23 |  | Redirection of the path would conflict with Mon CC's conservation plan for Caerwent and the surrounding area. The Waterpits is considered by historians to be part of the landscape from Brockwells to Westward farm which is still in its original state after many centuries. This must not be lost at the behest of one who wants to construct a livery which most residents oppose. The route would impact on hedgerow wildlife. How can it be possible that does not reside in the county be given priority over residents of many years.                                                                                                           |
| 25 | Anonymised representations<br>Appendix R24 |  | I would like to register my strong objection to the proposal to divert Foot path No 7. The diversion will be detrimental to the views experienced by users of the path, ie. the gradually unfolding vista of Caerwent, its church and Roman remains below. The diverted route will be adjacent to an existing hedgerow and will impact detrimentally on wildlife habitat and associated biodiversity of the area. A study of the map reveals the current route appears to lead directly to the West Gate of Caerwent Roman Town, with 1 prior diversion around Rodge Farm buildings. Further diversion will dilute the potential historical significance |

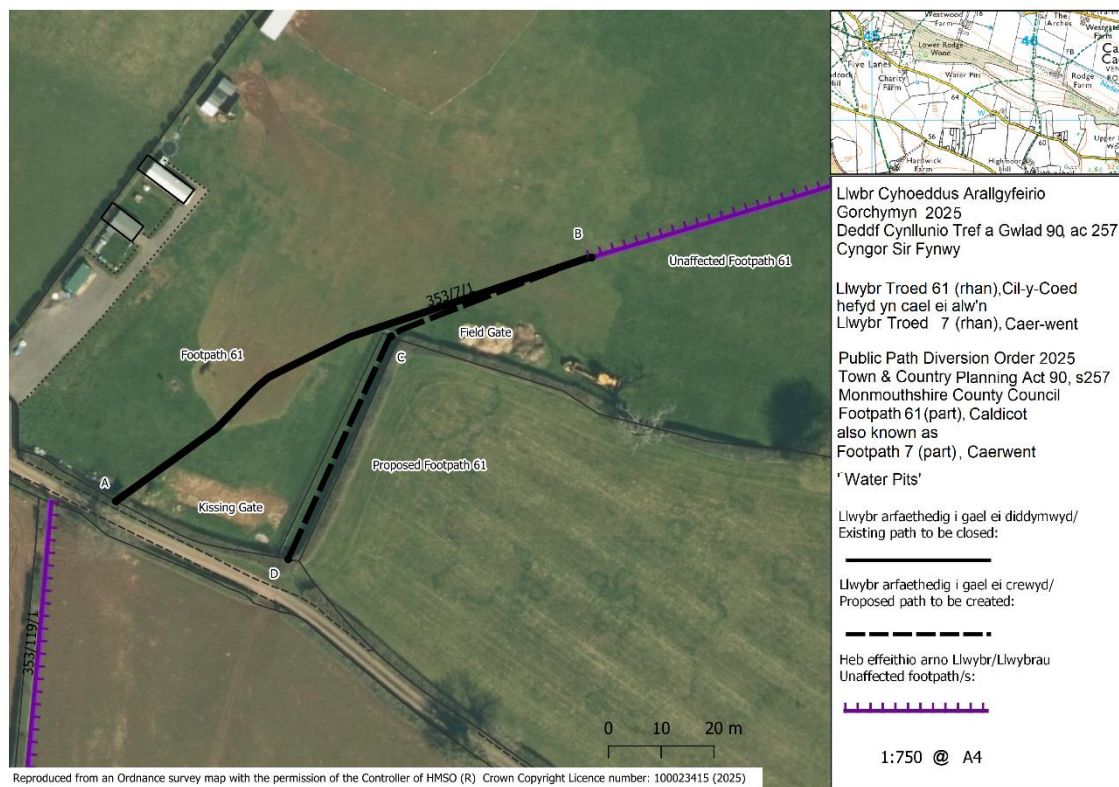
|    |                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----|--------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                            |  | of this route as documented in the Welsh Tithe Map of 1842.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 26 | Anonymised representations<br>Appendix R25 |  | CCTV , a wooden barrier at the stile, and the the notices advising dogs loose and camera surveillance of the site continuously. These have been in place to deter and intimidate anybody who may wish to use the footpath. I would be fearful of what action the persons living in the illegal static caravan on site would do if I used the stile and footpath. I hope your work is to ensure our footpaths are freely available for use by the public and not to rubberstamp actions taken by selfish individuals who disregard the law, authority and the public's rights. I think the application to reroute and build on this very ancient right of way should be refused. |
| 27 | Anonymised representations<br>Appendix R26 |  | I have lived and worked in the Caerwent area for over 50 years and I strongly object to the diversion of this footpath!<br><br>As you well know yourself the importance of the Roman city of Caerwent and surrounding area. This ancient path should stay in place                                                                                                                                                                                                                                                                                                                                                                                                              |
| 28 | Anonymised representations<br>Appendix R27 |  | I am very upset the applicant wants to divert the path. He has plenty of land without moving the path and therefore has no good reason to be requesting this at this stage as planning has only just been submitted and many objections have been made. I do not think the applicant's requirements justify the public being herded into a tall wooden and wire corridor                                                                                                                                                                                                                                                                                                        |

|    |                                            |               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----|--------------------------------------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                            |               | with 2 gates to negotiate that also deprives them of magnificent views.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 29 | Anonymised representations<br>Appendix R28 |               | I have no objection to the proposed new route. I do object to surveillance by CCTV and entrance to the path that obscures views and the dogs running loose sign which I consider intimidating.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 30 | Anonymised Petition<br>Appendix R29        | 90 Signatures | The diversion will be detrimental to the views experienced by users of the path i.e. the gradually unfolding view vista of Caerwent, its church and the roman remains below. The proposed diversion of the path adjacent to the existing hedgerow will impact detrimentally on the wildlife habitat and associated biodiversity. The current route appears to lead directly to the West Gate of Caerwent's Roman Town, with 1 prior diversion around Rodge Farm further diversion will dilute the potential historical significance of this route as documented in the Welsh Tithe Map of 1842. The use of intrusive surveillance cameras and warning signs of 'Dogs Roaming Free' is intimidating and discourages use of the Public Right of Way and should be ceased. |

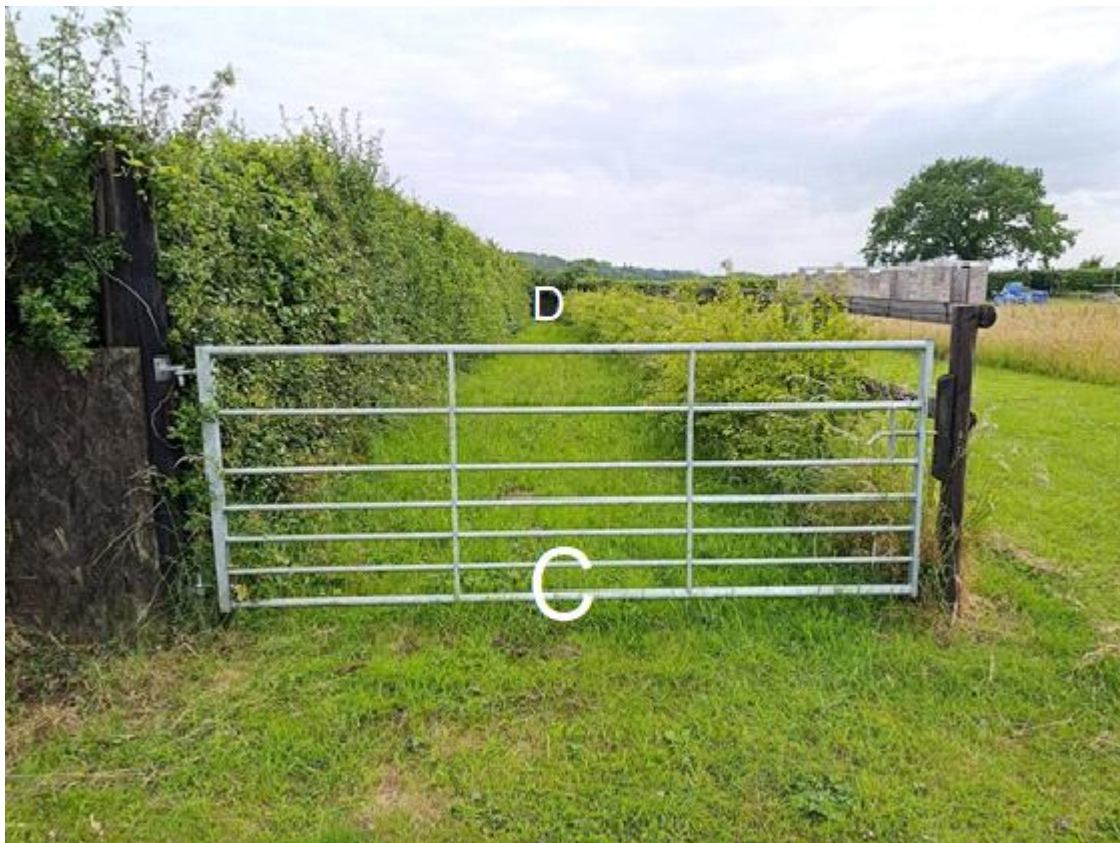
## 5. Photographs

The following images demonstrate the character of the existing site and how the proposed order relates to it.

## 5.1 Proposed Order Plan over Aerial Photography.



## 5.2 Looking southwest from point C to point D.



5.3 Looking from existing path 61 adjacent to point C to point A.



5.4 Looking northeast from approximately point A to point C



5.5 Google Earth images looking towards Caerwent indicating the approximate alignment of the path and its proposed replacement. The dark purple lines represent the existing footpaths, the black line the path to be extinguished and the red its replacement.



## 6. Application of Tests, Guidance & Policy

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

### 6.01 Town and Country Planning Act 1990

Section 257 of the Town and Country Planning Act 1990 (The Making test)

*“257 Footpaths [bridleways and restricted byways] affected by development: orders by other authorities.*

*(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath [bridleway or restricted byway] if they are satisfied that it is necessary to do so in order to enable development to be carried out—*

*(a) in accordance with planning permission granted under Part III*

6.02 Officer comment: It is necessary to divert or extinguish Footpath 61, Caldicot to enable the development DM/2023/01042 to be carried out. This test is therefore satisfied.

6.03 Section 259 of the Town and Country Planning Act 1990 (The Confirmation tests)

*“259 Confirmation of orders made by other authorities.*

*(1) An order made under section 257 or 258 shall not take effect unless confirmed by the [appropriate national authority] or unless confirmed, as an unopposed order, by the authority who made it.*

*[(1A) An order under section 257(1A) may not be confirmed unless the [appropriate national authority] or (as the case may be) the authority is satisfied—*

*(a) that planning permission in respect of the development has been granted, and*

*(b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.]*

*(2) The [appropriate national authority] shall not confirm [any order under section 257(1) or 258] unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.*

6.04 Officer comment: Planning permission has been granted. It is necessary to divert the Footpath to enable the development to be carried out in accordance with the permission. These tests are therefore satisfied.

## **6.10 Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016 (Appendix R04)**

*6.101 The necessity test entails examining the activities authorised by the planning permission (both operational development and changes of use) to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.*

6.102 Officer comment: The approved development would permanently obstruct path 61 on its present alignment. It is therefore necessary to move the path.

*6.103 Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.*

6.104 Officer comment: The authority must decide if there is a good reason not to make the order.

6.105 *In coming to a judgment as to whether to make an Order, the following should be taken into account:*

- *The interests of the general public.*
- *The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.*
- *Any potential financial loss to members of the public.*

6.106 Officer comment: The pre-order consultations generated numerous responses, the details of which have been set out in section 4, Consultees. If the order is made, notices will be posted on site and advertised in a local newspaper inviting comment from the public at large before the order is confirmed. If objections are received the decision to confirm the order will be referred to PEDW.

6.107 *When making a diversion, the new path must either commence or terminate at some point on the line of the original way. However, alternative ways need not do so and may, for instance, run parallel to the route being stopped up. To avoid the creation of a cul-de-sac and to enable the public, where appropriate, to return to that part of the original way not affected by the development, any alternative way provided should be linked via another highway to the original way.*

6.108 Officer comment: The proposed replacement path commences on a connecting highway and terminates on the line of the original way. This condition is therefore satisfied.

6.109 *When making a Diversion Order under s. 257 of the TCPA 1990, the authority should consider any works that will be required to bring an alternative way into a fit condition for public use. Where necessary, the Order, as specified by Schedule 1 of the Town and Country Planning (Public Path Orders) Regulations 1993 should state within its paragraph 3 that the diversion will not have effect until the authority certifies that the requirements defined in its paragraph 2 have been complied with. Note that certification achieved by completion of works must be advertised to the public in a local newspaper.*

6.120 Officer comment: The proposed replacement path is outside of the main development area and is largely already in place. The order if Confirmed will not be

Certified until the path is available as described by the order. Certification would be advertised.

*6.121 Where the development, insofar as it affects a right of way, is completed before the necessary Order to divert or extinguish the right of way has been made or confirmed, the powers under s. 257 and s. 259 of the TCPA 1990 to make and confirm Orders are no longer available.*

6.122 Officer comment: Activities have started on site, but this has not impacted on the availability of the existing path alignment.

*6.123 When an existing right of way needs to be revised to accommodate the planned development, any alternative alignment should avoid the use of estate roads, drives, gardens or other private areas wherever possible, and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. The potential for alternative routes to encourage sustainable transport and active travel should also be considered.*

6.124 Officer comment: - The proposed replacement path runs along a track specifically set out for it away from public vehicular traffic to a roadside verge. There is no verge where the path presently meets the road.

## **6.2 Monmouthshire County Council Procedure as set out in its Application & Guidance Pack for Public Path Diversion and Extinguishment Orders under the Town and Country Planning Act 1990 s257 (Appendix R05)**

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

### *Landownership*

*The very 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 seek the landowners written consent before you can continue. The County Council will not be able to process your application without this.*

6.202 Officer comment: The registered owner of the land has agreed to the proposed changes and to defray any compensation costs against the council.

### 6.203 *The Legal Tests*

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

#### *The Legal Tests for Town and Country Planning Act Orders*

*Before making an order, the Authority must be satisfied that:*

- Regard has been had to the need for an alternative highway to be provided
- The development affecting the route has not already been carried out
- The route shown in the order as the alternative route is not an existing Public Right of Way.

6.204 Officer comment: The present path is frequently used. There is therefore a need for the path. The development works have started but do not yet impact on the existing path. The proposed alternative route is not an existing Public Right of Way.

6.205 *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.*

6.206 Officer comment: The applicant has agreed to pay the order processing costs. However, if an order is made and opposed its confirmation will be determined by the Welsh Government via PEDW. The cost of any consequential public inquiry or hearing would be borne by Monmouthshire County Council. It is possible that PEDW might chose written representations to determine the case.

### 6.207 Design and Development Considerations

*Work should not be started on site until any necessary legal orders to alter the network have been made and confirmed by the Council.*

6.208 Officer comment: Works have started but are not yet substantially complete and do not yet impact on the availability of the existing route.

6.209 DOE Circular 5/94 (Welsh Office 16/94) requires that care must be taken to plan out crime. "Care should be taken that well-intentioned segregation schemes for pedestrians and cyclists do not lead to over-isolation, especially at night. Wherever possible, footpaths and alleyways should be wide, clear of hiding places, well lit and should follow a direct route....sensitive and skilled design should be capable of reconciling the need for acceptable landscaping and the need to

*produce safe environments. Generally speaking, however, landscaping schemes should avoid creating hidden areas, near footpaths for example where crime is easier to commit.”*

6.210 Officer comment: Although the path proposed path would run between two boundaries due to its rural nature it is unlikely to offer opportunities for crime.

*6.211 Public footpaths should have a minimum width of 2 metres and bridleways, restricted byways and byways a width of 3.5 metres. If the way is to be enclosed by fencing, hedging, or buildings then footpaths should be of a minimum width of 4 metres and bridleways and byways 6 metres. However, within new development, wider paths may be required to reflect the anticipated heavier usage of these paths, any safety issues and would ensure that users of PROW have adequate space to pass each other and that there is a feeling of spaciousness.*

6.212 Officer comment: The confined replacement path would have a recorded width of 3m. Although the replacement path is confined between boundaries because of the setting, the quantity of traffic and the length of path it is held that this is not an unreasonable departure from policy. There have been no objections received to this point.

*6.213 When a PROW is replaced or realigned it should be constructed to at least the same specification as the original, although where there is known to be a potential for greater usage, appropriate surfacing, widening and lighting may be required. In these circumstances, PROW are to be made up in accordance to the Council’s adoption standard.*

6.214 Officer comment: The existing path is unmade, has no recorded width and runs through pasture. The proposed replacement path would also be unmade and have a minimum recorded width of 2m. The development itself is unlikely to add to the amount of traffic using the path.

### **6.3 Environment (Wales) Act 2016**

#### **6.31 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.*

6.32 Officer Comment: Biodiversity provision has largely been considered and agreed as part of the planning consent. MCC ecologists have also been consulted specifically on the proposed path order and offered no objections.

## **6.4 Equality Act 2010 (Appendix R06)**

### **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.*

6.41 Officer comment: Monmouthshire County Council is committed to the Equality Act. As previously stated in this report Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide (page 20 section 7.3) In this context this legislation relates mostly to accessibility. The proposed replacement path contains gates rather than a stile. It will therefore be accessible by a larger percentage of the population.

## **6.5 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.*

*(2) The Welsh Ministers and each local authority must have regard to the needs of walkers and cyclists in the exercise of their functions under—*

*(a) Parts 1, 2, 4 and 7 of the Road Traffic Regulation Act 1984 (general and special traffic regulation, parking places and obstructions),*

*(b) Part 3 of the New Roads and Street Works Act 1991 (street works), and*

*(c) Part 2 of the Traffic Management Act 2004 (network management by local traffic authorities).”*

*“10 Duty to exercise functions to promote active travel*

*(1) The Welsh Ministers and local authorities must exercise their functions under this Act in a manner designed to—*

*(a) promote active travel journeys, and*

*(b) secure new active travel routes and related facilities and improvements in existing active travel routes and related facilities.*

*(2) Each local authority must make a report to the Welsh Ministers specifying what it has done in each financial year in the performance of the duty imposed on it by subsection (1).*  
*”*

6.51 Officer comment: The proposed section of the replacement because of its location is unlikely to be used much in an Active Travel capacity. However, the proposed replacement path will not contain any stiles, a limitation some people find difficult or impossible to negotiate. The path will therefore be available to both Active Travel and Leisure users that cannot use it now.

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

*The Well-being of Future Generations (Wales) Act is about improving the social, economic, environmental and cultural well-being of Wales.*

*It will make the public bodies listed in the Act think more about the long-term, work better with people and communities and each other, look to prevent problems and take a more joined-up approach.*

*Its goals include:*

**6.601 A prosperous Wales**

6.602 Officer comment: Proposal will permit the approved planning application to take place that in turn will provide leisure facilities that could help support the local economy.

*6.603 A resilient Wales*

6.604 Officer comment: Enhanced accessibility might help reduce the reliance on cars and public transport and their consequential emissions.

*6.605 A healthier Wales*

6.606 Officer comment: Enhanced path accessibility could encourage physical exercise with its health and wellbeing benefits.

*6.607 A more equal Wales*

6.608 Officer comment: The proposed new alignment will be available to people who cannot use stiles. Additionally, the path might help reduce the reliance on cars and public transport with their associated costs.

*6.609 A Wales of cohesive communities*

6.610 Officer comment: Enhanced accessibility might encourage more people to spend time outdoors helping to form and cement community bonds.

*6.611 A Wales of vibrant culture and thriving Welsh Language.*

6.612 Officer comment: Any signage under MCC's control would be bilingual.

*6.613 A globally responsible Wales*

6.614 Officer comment: Enhanced accessibility could help reduce reliance on cars and public transport and therefore reduce emissions.

**6.7 Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide (Appendix R07)**

*"Development (10): . Where a public right of way is affected by development the path must be kept on the legal alignment wherever possible or diverted under the*

*Town & Country Planning Act 1990 prior to any works being carried out. The use of Estate Roads should be avoided wherever possible and preference given to the use of estate paths through landscaped or open spaces away from vehicular traffic. The County Council requires either a minimum width of 2 metres for footpaths and 3 metres for bridleways or the full width previously enjoyed by the public, if greater.*

#### *10.2 Public Rights of Way are protected by law.*

*Any interference with, or obstruction of or attempt to move a Public Right of Way can only be done by legal means. It is important therefore. That Public Rights of Way are identified at any early stage in the development process because the identification of a Public Right of Way at a later stage in the development process may result in significant delays, halt development and may make properties unsaleable. Monmouthshire County Council has a duty to keep Public Rights of Way open and available for use by the public and will therefore take such action as may (including direct enforcement action and prosecution) to ensure that members of the public are not inconvenienced in their use of the Public Rights of Way network. It should be noted that granting of planning permission does not give permission to obstruct a public right of way.*

*Developers must ensure that:*

- There is no diminution in the width of the right of way*
- No builder's materials are stored on a right of way*
- No damage or substantial alteration, either temporary or permanent, is caused to the surface of the public right of way*
- Vehicle movements are arranged so as not to interfere with the public's use of the way*
- No additional barriers (e.g. gates) are placed across the right of way*
- No wildlife fencing or other ecological protection measures are placed across a right of way or allowed to interfere with a right of way.*
- The safety of members of the public using the rights of way is ensured at all times."*

*6.71 Officer Comment: Works have started on site, but the legal alignment of the existing path is fully available. The proposed new alignment falls outside of the main development area. The developer has therefore agreed to make available the proposed new alignment before there is a need to obstruct the existing route.*

6.72 Equalities Act 2010 (7.3). *The Countryside Access Service is committed to providing the best possible level of service to its customers. In delivering our work we undertake assessments of the likely impact on the diverse communities and individuals who access our services. Where potential adverse impacts are identified, we seek to mitigate them and ensure discrimination is prevented. Where opportunities to improve the service are provided, or the accessibility of the public rights of way network are identified, we will do our best to bring about those improvements within resources available.*

6.73 Active Travel Act (8.1). The 2007 ROWIP (now Monmouthshire's Countryside Access Improvement Plan 2020- 2030) Chapter 11 encourages active healthy lifestyles through: *“addressing barriers that prevent use and working in partnership with planning, developers and others to create well-designed, accessible environments that encourage active travel and walking, cycling and horse riding as recreational pursuits..*

6.74 Officer comment: The proposed replacement alignment contains 1 kissing gate and one field gate. The alignment to be replaced contains a stile.

## **7. Consideration of Consultation Responses and Representations.**

### **7.10 Ms S Palmer , MCC Ecologist (Appendix R10)**

*The proposed realignment will run alongside the existing hedge; no hard surfacing which could affect the hedge will be used. The proximity of the path to the hedge is unlikely to negatively impact wildlife using the hedge.*

7.11 Officer comment: Comments confirm that the proposal is unlikely to have a detrimental impact on the hedge or wildlife.

### **7.12 Mr S Garland, Lower Wye Valley Rambler's Association (Appendix R11)**

*Purely on the suitability of the proposed footpath diversion, I have no objection.*

7.13 Officer comments: Comments confirm that the suitability of the proposed new route.

### **7.14 Mr R Ray, MCC Legal Services (Appendix R12)**

*Although the application referred to in the pre consultation email below was declined I note that permission has been granted on appeal for subsequent application DM/2023/01042 and that the current proposed diversion is in order for development to be carried out under the above permission.*

*Provided that the current diversion application doesn't differ from the 2021 proposal it appears to meet the statutory test that the diversion is necessary for purposes of the development. The diversion of the path seems to have minimal impact of the public and as such there seems to be no reason to refuse to make the order.*

*I attach a copy of a transfer of part that contains restrictive covenants relating to private rights of way enjoyed by the owner of this property and the adjoining field to the west. These private rights are not in conflict with the proposal and as such do not seem to present an obstacle to the order.*

7.15 Officer comment: The current proposal does vary from the 2021 proposal but not a materially significant way. The main difference is that the new proposal contains a kissing gate and a field gate rather than two kissing gates. Comments otherwise confirm that there seems to be no reason to refuse to make the order.

#### **7.16 Mr J Morgan, MCC Heritage (Appendix R13)**

*Whilst the area is within the conservation area and Roman town of Caerwent, there is no direct development on which to comment from a heritage perspective, as the proposal seems only to offer a new location for a route already obstructed by a development which has been consented by the planning inspectorate. As such, there are no Heritage objections to the allowing the continuation of this routes use by a minor adjustment, for a path that would otherwise effectively no longer exist once the development already consented is built.*

7.17 Officer comment: MCC Heritage offers no objection to proposed changes and recognises that planning consent has been granted.

#### **7.18 Mr A Nevill, MCC Landscape Officer in response to planning application DM/2023/01042 (Appendix R14)**

*Subject to rights of way approval a realignment would be acceptable within the context of the site and setting.*

7.19 Officer comment: MCC's landscape Officer confirms the proposed realignment is acceptable in the context of site and setting and would therefore not be sufficiently detrimental to the public to prevent the order being made.

**7.20 Ms D Harris, Historic Environment Branch, CADW in response to planning application DM/2023/01042 (Appendix R15)**

Having carefully considered the information provided, we have no objection to the proposed development in regards to the scheduled monuments or registered historic parks and gardens listed in our assessment.

7.21 Officer comment: No comment.

**7.22 Ms Ruth Rourke, MCC Countryside Access Manager**

*I have no objection to the order which appears to follow all the necessary tests and policy.*

7.23 Officer comment: No comment.

**7.24 Ms L McKeo, Clerk Caerent Community Council (Appendix R16)**

*The ecology provided with the planning application documents relating to DM/2021/00738 notes the importance of the hedge along the eastern border for biodiversity including nesting birds and advises an exclusion zone along a nearby hedge to the east and works completed outside the nesting bird season or preceded by a breeding bird survey to protect any ground nesting birds using the site the development should have little impact on the biodiversity of the area. We therefore would recommend a 2 metre buffer zone along the eastern hedge be retained between the hedge and the footpath even after construction works are complete in order to protect nesting birds from disturbance each year.*

7.25 Officer comment: MCC's ecologist states that the proposal is unlikely to impact wildlife negatively without the recommended additional buffer.

**7.26 Anonymised representations (Appendix R17)**

*The public have enjoyed the scenery on this ancient footpath which has been left undisturbed since roman times. The proposed route would deny them these views. The proposed field edge path would deny view and disturb birds nesting in the hedge*

7.27 Officer comment: In response to the planning application CADW offered no objection and MCC's Landscape Officer stated that subject to rights of way approval a realignment would be acceptable within the context of the site and

setting. MCC Heritage and MCC Ecology in response to the proposed order also offered no objections. It is held therefore that the objections are not strong enough to prevent the order being made.

#### **7.28 Anonymised representations (Appendix R18)**

*My wife and I ..... have walked this path with nothing to bother us but a few cows or sheep, now there are Search Lights, unfriendly dogs, offensive signs and a feeling that we are not welcome, this can't be right .I can't see the point in moving something that has been in use for probably hundreds of years. Therefore, I am totally against the moving of the footpath*

7.29 Officer comment: The alleged unfriendly dogs, search lights and offensive signs are not relevant to the proposed diversion. There are other mechanisms for dealing with such matters. The point of moving the path is to accommodate the approved development which would otherwise not be able to take place.

#### **7.30 Anonymised representations (Appendix R19)**

*I do not agree with the proposed diversion of the ancient footpath. I would like to think walkers can enjoy their pleasant hike without change for years to come. Also without fear of the loose guard dog*

7.31 Officer comment: The legislation provides to allow paths to be diverted. These comments do not constitute a good reason not to make the order. The existence of a dog on site is not relevant to the proposal and there are other mechanisms for dealing with such matters.

#### **7.32 Anonymised representations (Appendix R20)**

*We would both like to register our objection to the proposed application to divert part of the above-mentioned public footpath. and believe that the owners should not have bought the land knowing that there was already a public footpath present and assume that they can just divert it to fit in with proposed planning. By moving part of the footpath and diverting it through a cordoned off area would take away the public's experience of the countryside and its views The installation of intrusive CCTV cameras pointing directly at the stile along with warning signs of aggressive looking dogs running loose before even entering the public footpath have already changed the public's experience of being able to enjoy it. I do not agree with the proposed diversion of the ancient footpath. I would like to think walkers can enjoy their pleasant hike without change for years to come. Also without fear of the loose guard dog*

7.33 Officer comment: The applicant has the right to apply for a path order to divert the path. In response to the planning application CADW offered no objection

and MCC's Landscape Officer stated that subject to rights of way approval a realignment would be acceptable within the context of the site and setting. MCC Heritage in response to the proposed order also offered no objections. It is held therefore that the objections are not strong enough to prevent the order being made. The camera and dog are not relevant to the proposed diversion and there are other mechanisms for dealing with such matters.

#### **7.34 Anonymised representations (Appendix R21)**

*I object to altering the footpath. It is very ancient path which links Shirefield Lane diagonally to Caerwent church. That is how footpaths were set up so that you could walk the shortest distance to where you want to go. There is a rottweiler in the field and a camera pointing at the stile*

7.35 Officer comment: Under the proposed legislation, the age of the path and its direct alignment are not good enough reasons to prevent the order being made. The camera and dog are not relevant to the proposed diversion and there are other mechanisms for dealing with such matters.

#### **7.36 Anonymised representations (Appendix R22)**

*I would like to strongly object to the proposed diversion of the existing footpath to align with the eastern boundary of the field, this will detract significantly from the public's experience of this right of way access. At present heading from Five Lanes towards the Rodge Wood/Rodge Farm direction the walker initially experiences a wide open expanse of flat countryside and woodland and as the walk progresses toward the Rodge Farm a wide open vista is revealed below with open rolling countryside, the flat floodplain of the River Neddern , the historic Roman Wall, the picturesque village of Caerwent and the former wartime armaments factory , which itself has 2 visible scheduled monuments slowly come in to view, a unique experience. This application to re route the footpath should only be approved if planning permission for development granted and approval for the diversion of the footpath should not be granted in isolation or as a separate matter*

7.37 Officer comment: In response to the planning application CADW offered no objection and MCC's Landscape Officer stated that subject to rights of way approval a realignment would be acceptable within the context of the site and setting. MCC Heritage in response to the proposed order also offered no objections. Planning consent for the development has been granted. Under Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016 (Appendix R04) there is a need for adequate consideration of the rights of way before the decision on the planning application is taken. It is held therefore that the objections are not strong enough to prevent the order being made.

#### **7.38 Anonymised representations (Appendix R23)**

*Redirection of the path would conflict with Mon CC's conservation plan for Caerwent and the surrounding area. The Waterpits is considered by historians to be part of the landscape from Brockwells to Westward farm which is still in its original state after many centuries. This must not be lost at the behest of one who wants to construct a livery which most residents oppose. The route would impact on hedgerow wildlife. How can it be possible that does not reside in the county be given priority over residents of many years*

7.39 Officer comment: In response to the planning application CADW offered no objection. MCC Heritage and MCC Ecology in response to the proposed order also offered no objections. It is held therefore that the objections are not strong enough to prevent the order being made.

#### **7.40 Anonymised representations (Appendix R24)**

*I would like to register my strong objection to the proposal to divert Foot path No 7. The diversion will be detrimental to the views experienced by users of the path, ie. the gradually unfolding vista of Caerwent, its church and Roman remains below. The diverted route will be adjacent to an existing hedgerow and will impact detrimentally on wildlife habitat and associated biodiversity of the area. A study of the map reveals the current route appears to lead directly to the West Gate of Caerwent Roman Town, with 1 prior diversion around Rodge Farm buildings. Further diversion will dilute the potential historical significance of this route as documented in the Welsh Tithe Map of 1842*

7.41 Officer comment: In response to the planning application CADW offered no objection and MCC's Landscape Officer stated that subject to rights of way approval a realignment would be acceptable within the context of the site and setting. MCC Heritage and MCC Ecology in response to the proposed order also offered no objections. It is held therefore that the objections are not strong enough to prevent the order being made.

#### **7.42 Anonymised representations (Appendix R25)**

*CCTV , a wooden barrier at the stile, and the notices advising dogs loose and camera surveillance of the site continuously. These have been in place to deter and intimidate anybody who may wish to use the footpath. I would be fearful of what action the persons living in the illegal static caravan on site would do if I used the stile and footpath. I hope your work is to ensure our footpaths are freely available for use by the public and not to rubberstamp actions taken by selfish individuals who disregard the law, authority and the public's rights. I think the application to reroute and build on this very ancient right of way should be refused*

7.43 Officer comment: Under the proposed legislation the alleged intimidation of path users is not relevant to the proposed diversion. There are other mechanisms for dealing with such issues. The age of the path is not a reason to prevent the order being made.

**7.44 Anonymised representations (Appendix R26)**

*I have lived and worked in the Caerwent area for over 50 years and I strongly object to the diversion of this footpath!*

*As you well know yourself the importance of the Roman city of Caerwent and surrounding area. This ancient path should stay in place.*

7.45 Officer comment: CADW offered no objection in response to the planning application and MCC's Heritage Officer offered no objection to the proposed path order. It is held therefore that the respondent's comments do not constitute a strong enough reason to prevent the order being made.

**7.46 Anonymised representations (Appendix R27)**

*I am very upset the applicant wants to divert the path. He has plenty of land without moving the path and therefore has no good reason to be requesting this at this stage as planning has only just been submitted and many objections have been made. I do not think the applicant's requirements justify the public being herded into a tall wooden and wire corridor with 2 gates to negotiate that also deprives them of magnificent views*

7.47 Officer comment: Planning has now been granted, and it is necessary to divert the path to accommodate the proposed development. The proposed new alignment contains two gate and joins the road at a layby. The existing route contains a stile, a structure that many people find difficult and joins the road where there is no layby. Given CADW's and MCC's Landscape Officer's comments in response to the planning application it is held that the change of view from the path is not detrimental enough to the public to prevent the order being made.

**7.48 Anonymised representations (Appendix R87)**

*I have no objection to the proposed new route. I do object to surveillance by CCTV and entrance to the path that obscures views and the dogs running loose sign which I consider intimidating*

7.49 Officer comment: There are mechanisms outside of the path order process to deal with alleged intimidation of path users. The respondent is not objecting to the proposed new alignment.

### **7.50 Anonymised petition (Appendix R29)**

*The diversion will be detrimental to the views experienced by users of the path i.e. the gradually unfolding view vista of Caerwent, its church and the roman remains below. The proposed diversion of the path adjacent to the existing hedgerow will impact detrimentally on the wildlife habitat and associated biodiversity. The current route appears to lead directly to the West Gate of Caerwent's Roman Town, with 1 prior diversion around Rodge Farm further diversion will dilute the potential historical significance of this route as documented in the Welsh Tithe Map of 1842. The use of intrusive surveillance cameras and warning signs of 'Dogs Roaming Free' is intimidating and discourages use of the Public Right of Way and should be ceased.*

7.51 Officer comment: In response to the planning application CADW offered no objection and MCC's Landscape Officer stated that subject to rights of way approval a realignment would be acceptable within the context of the site and setting. MCC Heritage and MCC Ecology in response to the proposed order also offered no objections. It is held therefore that the objections are not strong enough to prevent the order being made. The alleged intimidation of path users is not a consideration in the path order process. There are mechanisms outside of this process for dealing with such issues.

## **8. Recommendation**

That the Taxi & Regulatory Committee authorise the making of the diversion order for Footpath 61 Caldicot under Section 257 of the Town & Country Planning Act 1990 as set out in this report and to confirm the order if no objections are received.

### **AUTHOR:**

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## Equality and Future Generations Evaluation

|                                                                                                                                                                    |                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name of the Officer</b> completing the evaluation<br>Shaun Pritchard<br><br><b>Phone no:</b> 01633 644676<br><b>E-mail:</b> shaunpritchard@monmouthshire.gov.uk | <b>Please give a brief description of the aims of the proposal</b><br><br>Diversion of Footpath to accommodate an approved planning application for .a stable block for 5 horses, an ancillary storage building and a manège. |
| <b>Name of Service area</b><br><br>Countryside Access, Monlife                                                                                                     | <b>Date</b> 12/06/2025                                                                                                                                                                                                        |

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**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                       | Proposed new path alignment includes gates.<br>The existing alignment includes a stile which older people with mobility issues often find difficult or impossible to negotiate. | None                                                                            |                                                                                                       |
| Disability                | Proposed new path alignment includes gates.<br>The existing alignment includes a stile which people with mobility issues often find difficult or impossible to negotiate.       | None                                                                            | Design considered in pre-app with Green Infrastructure Team                                           |
| Gender reassignment       | .Not relevant                                                                                                                                                                   |                                                                                 |                                                                                                       |

| 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 relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Pregnancy or maternity        | Not relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Race                          | Not relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Religion or Belief            | Not relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Sex                           | Not relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Sexual Orientation            | Not relevant                                                                                                                                                                                                       |                                                                                 |                                                                                                       |
| Welsh Language                | Any signage to be bilingual                                                                                                                                                                                        | None                                                                            |                                                                                                       |
| Poverty                       | Enhanced accessibility might help reduce the reliance of cars and public transport and their associated cost. The leisure facilities provided by the development work itself might help support the local economy. | 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?<br>Describe the positive and negative impacts.                                    | What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>A prosperous Wales</b><br>Efficient use of resources, skilled, educated people, generates wealth, provides jobs                                                                      | Proposal will permit approved planning application to take place which in turn could provide employment.                     |                                                                                                                 |
| <b>A resilient Wales</b><br>Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)                                      | Enhanced accessibility might help reduce the reliance of cars and public transport and their associated CO2 emissions.       |                                                                                                                 |
| <b>A healthier Wales</b><br>People's physical and mental wellbeing is maximized and health impacts are understood                                                                       | Enhanced path accessibility could help facilitate physical exercise with its health and wellbeing benefits.                  |                                                                                                                 |
| <b>A Wales of cohesive communities</b><br>Communities are attractive, viable, safe and well connected                                                                                   | Enhanced accessibility encourage more people to spend time outdoors helping to cement community bonds                        |                                                                                                                 |
| <b>A globally responsible Wales</b><br>Taking account of impact on global well-being when considering local social, economic and environmental wellbeing                                | Enhanced accessibility could help reduce reliance on cars and public transport and therefore their associated CO2 emissions. |                                                                                                                 |
| <b>A Wales of vibrant culture and thriving Welsh language</b><br>Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation | The development will provide sporting facilities.. Signage under MCC's control would be bilingual.                           |                                                                                                                 |
| <b>A more equal Wales</b><br>People can fulfil their potential no matter what their background or circumstances                                                                         | The proposed new path alignment will be accessible to more people making for a fairer society.                               |                                                                                                                 |

### 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>     | <p>The proposal by its nature is long term</p>                                                                                                                                                                                                                |                                                                                                                         |
|  <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>           | <p>Proposed path alignment, materials and construction details determined by working with the developer and consultees.</p>                                                                                                                                   |                                                                                                                         |
|  <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>              | <p>MCC officers, user groups, community groups and statutory undertakers were consulted as well as neighbouring landowners.</p>                                                                                                                               |                                                                                                                         |
|  <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p> | <p>The path's proposed new alignment runs away from the proposed active stable buildings away from any possible sources of conflict. The proposed path alignment is also likely to remain undisturbed by activity adjacent to the proposed stable blocks.</p> |                                                                                                                         |

| 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>Considering impact on all wellbeing goals together and on other bodies</p> | <p>The views from the proposed path alignment might subjectively be as good as from the path;s existing alignment. However this impact is likely to be minimal and the proposed path will be more accessible than the existing path.</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 relevant                                    |                                                                                                                                                                                                                             |                                                                                                            |
| Safeguarding        | Not relevant                                    | <i>.Safeguarding is about ensuring that everything is in place to promote the well-being of children and vulnerable adults, preventing them from being harmed and protecting those who are at risk of abuse and neglect</i> |                                                                                                            |
| Corporate Parenting | Not relevant                                    |                                                                                                                                                                                                                             |                                                                                                            |

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

The proposal has principally informed by the approved planning application but also takes into account the following.

- Town & Country Planning Act 1990 s257
- 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 Town and Country Planning Act 1990 s257
- 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

**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 will allow approved development (DM/2019/01761 ) which some representations claim will have a negative impact on the heritage, biodiversity and views of the area. Not all consultees agree however and any detrimental impact is likely to be minimal. The development will however provide improved path accessibility.

**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 |
|-----------------------------------------------------------------------------------------|------------------------------|--------------------|
| T & R Committee report                                                                  | 23 July 2025                 | R Rourke           |
| Make Order (depending on result of above) and consider objections to it if any are made |                              |                    |
|                                                                                         |                              |                    |

**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.**

| <b>Version No.</b> | <b>Decision making stage</b> | <b>Date considered</b> | <b>Brief description of any amendments made following consideration</b> |
|--------------------|------------------------------|------------------------|-------------------------------------------------------------------------|
| <b>1</b>           | Council                      | <b>23 July 2025</b>    | <i>To be decided</i>                                                    |
|                    |                              |                        |                                                                         |
|                    |                              |                        |                                                                         |

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## Appendix 12

### Evaluation Criteria – Cabinet, Individual Cabinet Member Decisions & Council

|                                |                                                                                                    |
|--------------------------------|----------------------------------------------------------------------------------------------------|
| <b>Title of Report:</b>        | <b>TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257 PUBLIC PATH ORDER, No. 37 (part), CALDICOT</b> |
| <b>Date decision was made:</b> | <b>23 July 2025</b>                                                                                |
| <b>Report Author:</b>          | Shaun Pritchard. Assistant Rights of Way Officer.                                                  |

#### **What will happen as a result of this decision being approved by Cabinet or Council?**

The Head of Law/ Monitoring Officer will be instructed to make a Public Path Order in accordance with the procedures contained in the 1990 Act, and in accordance with Schedule 14 of the 1990 Act and the Town and Country Planning (Public Path Orders) Regulations 1993.

Notice of making the Order will be posted on site and published in a newspaper circulating in the locality. A period of at least 28 days will be given for the receipt of objections to the Order. If there are no objections the Order will be confirmed by the Council as an unopposed order.

In the event that objections are made and not withdrawn, authority will be given to submit the Order along with any written representations to the Planning Inspectorate for confirmation.

Should the Order be confirmed, the Order will come into operation once the alternative way or path as described in the Order has been constructed and a Certificate of Satisfactory Compliance has been issued by the Council.

12 month appraisal

*Was the desired outcome achieved? What has changed as a result of the decision? Have things improved overall as a result of the decision being taken?*

#### **What benchmarks and/or criteria will you use to determine whether the decision has been successfully implemented?**

Confirmation of the order would allow a temporary closure and permanent works associated with the approved planning application to take place on the present alignment of path 37. Certification of the order which can be done once the new path alignment is available as detailed in the order. The path would legally move at certification.

12 month appraisal

*Paint a picture of what has happened since the decision was implemented. Give an overview of how you fared against the criteria. What worked well, what didn't work well. The reasons why you might not have achieved the desired level of outcome. Detail the positive outcomes as a direct result of the decision. If something didn't work, why didn't it work and how has that effected implementation.*

#### **What is the estimate cost of implementing this decision or, if the decision is designed to save money, what is the proposed saving that the decision will achieve?**

Typically paths orders cost in the region of £3000 but these would be recharged to the applicant. If however the order is made and it goes to the planning inspector for determination the cost of any public inquiry would be borne by MCC.

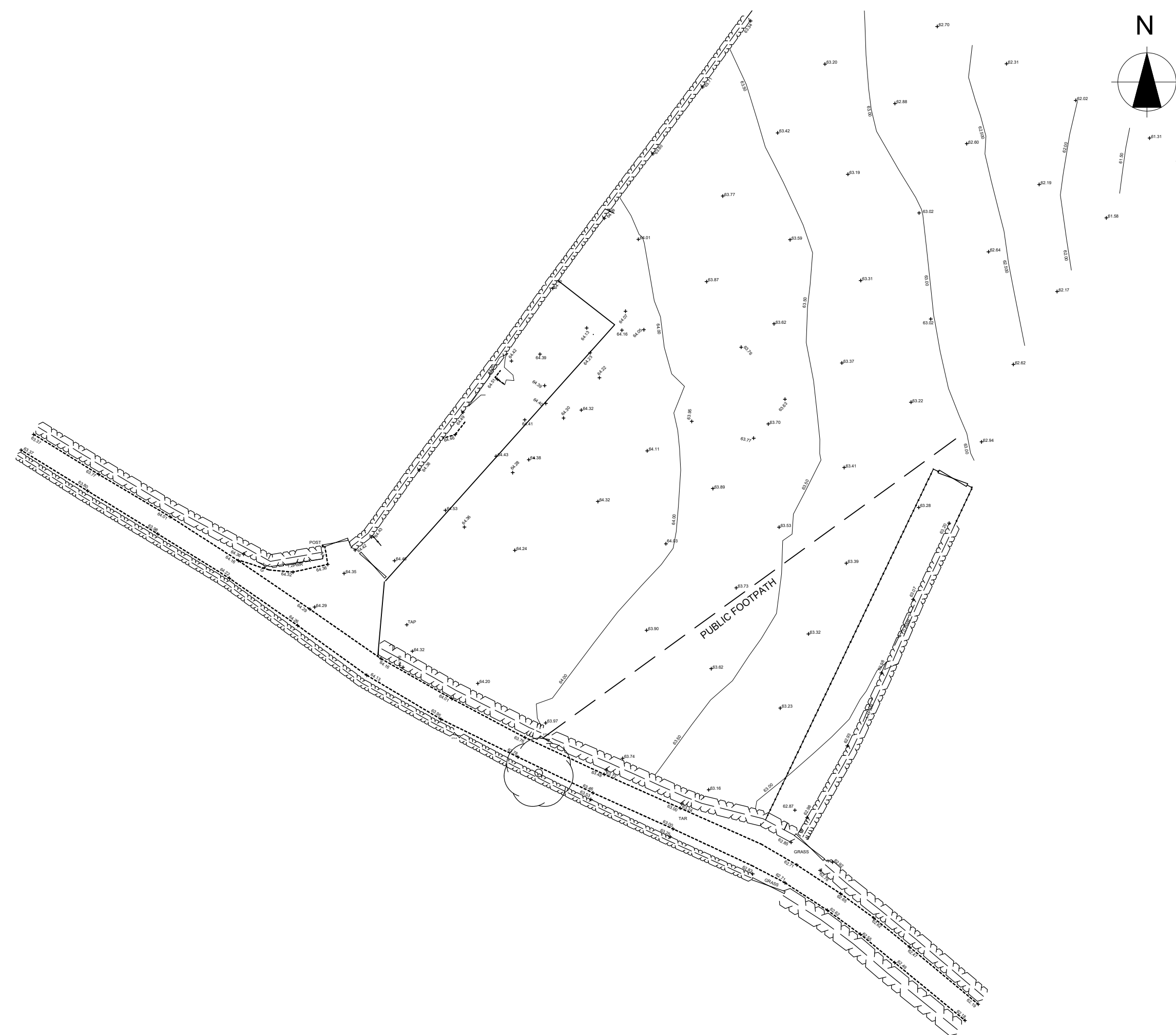
12 month appraisal

*Give an overview of whether the decision was implemented within the budget set out in the report or whether the desired amount of savings was realised. If not, give a brief overview of the reasons why and what the actual costs/savings were.*

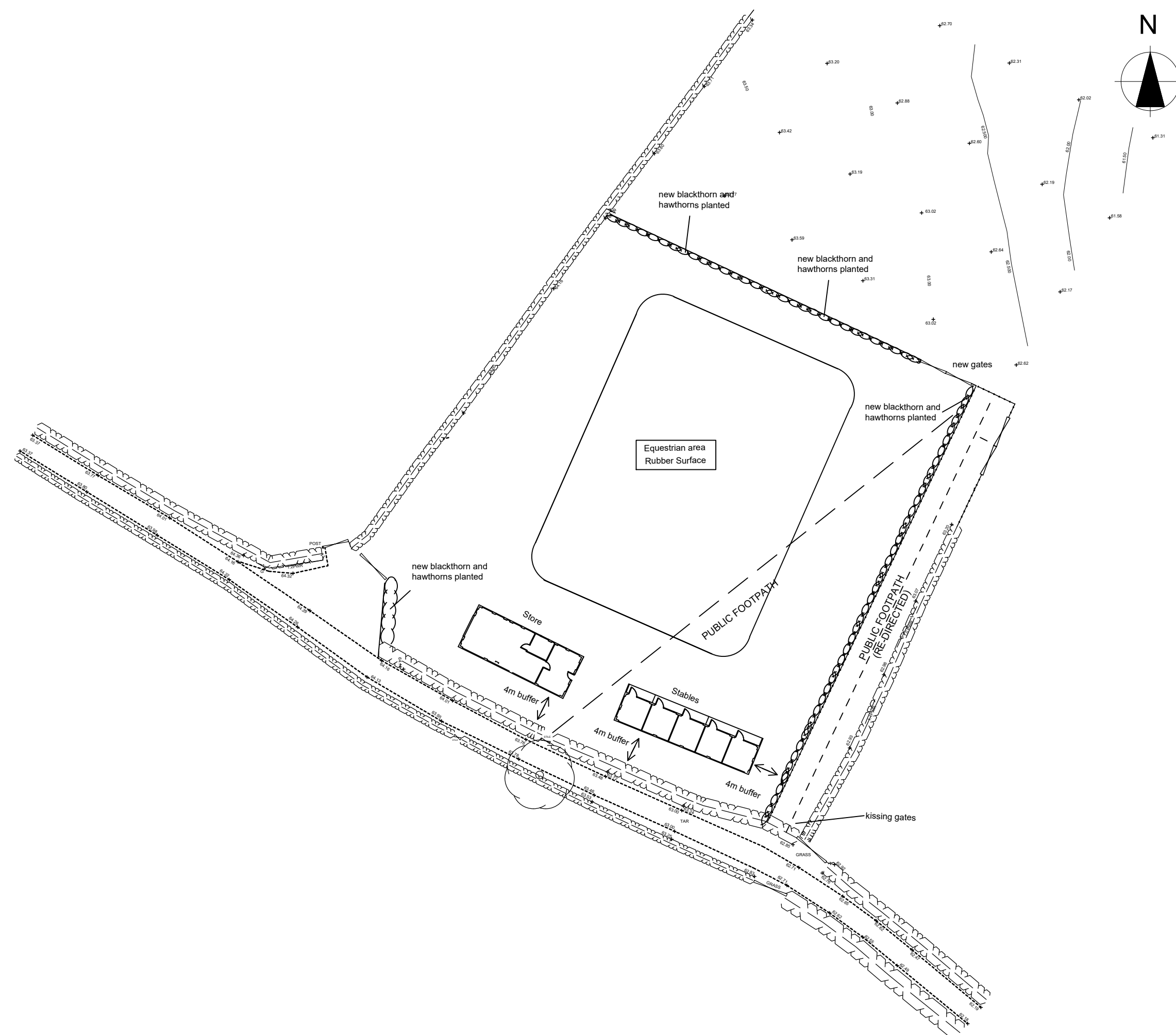
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|                                    |
|------------------------------------|
| <a href="#">Any other comments</a> |
|------------------------------------|

SCALE 1/500



SCALE 1/500



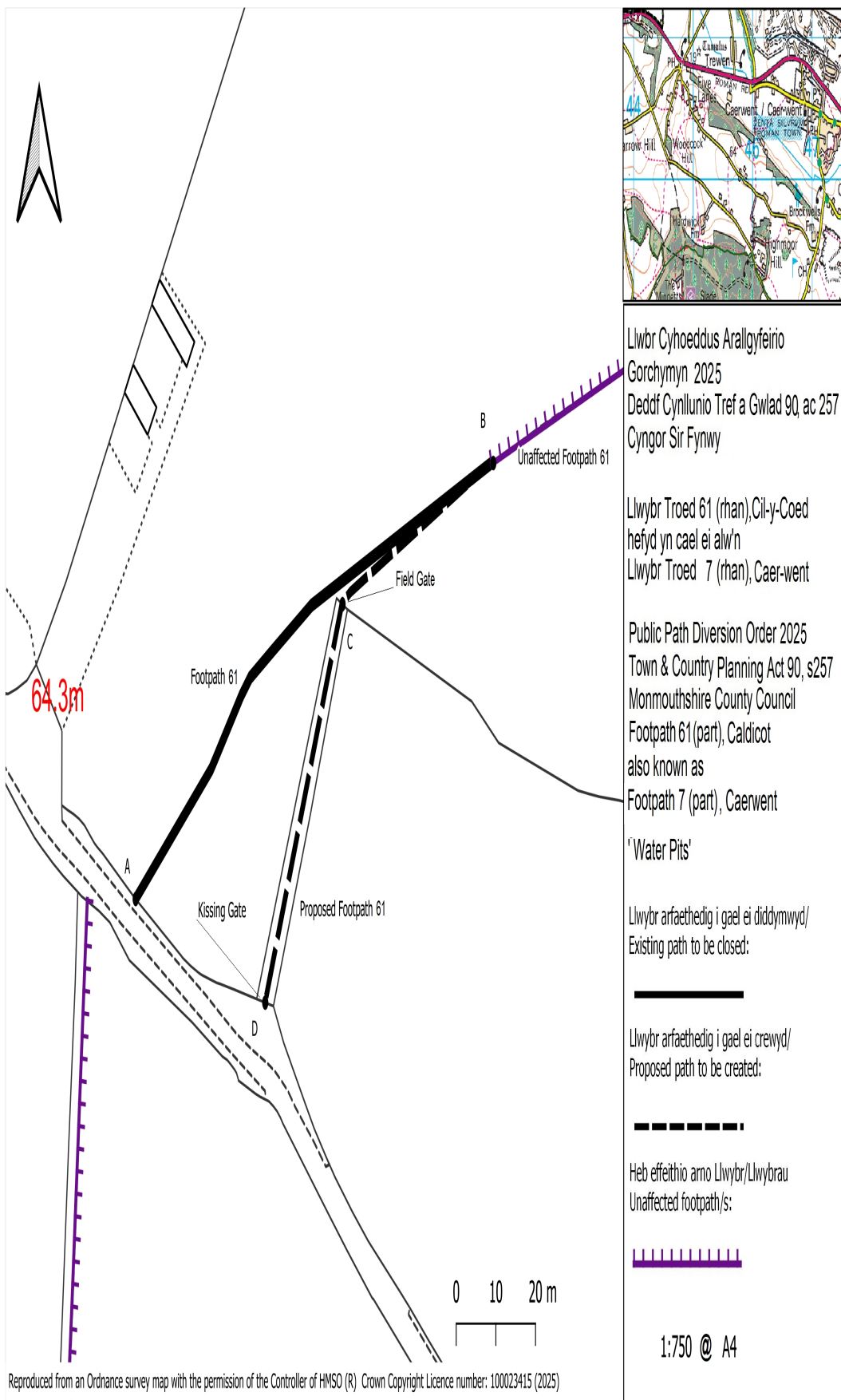
The Contractor is to check and verify all building and site dimensions, levels and sewer invert levels at connection points before work starts.

[illegible]

|       |                               |
|-------|-------------------------------|
| Title | PLANNING DRAWING (Site plans) |
|-------|-------------------------------|

|                  |                |                         |     |
|------------------|----------------|-------------------------|-----|
| DRN BY<br>JMP    | SCALE<br>1/500 | DRAWING NUMBER<br>PLN-2 | REV |
| DATE<br>26/09/22 |                |                         |     |

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Llywodraeth Cymru  
Welsh Government

# Guidance

## Guidance for Local Authorities on Public Rights of Way

October 2016

# Guidance for Local Authorities on Public Rights of Way

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**GWT  
Countryside**

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## 1. Introduction

- 1.1. This advice and guidance sets out the Welsh Government's policy on public rights of way and its view of the law. It does not take the place of primary legislation, but seeks to give an overview of it within a policy context. It replaces:
  - Welsh Office Circular 44/90 Rights of Way Act 1990.
  - Welsh Office Circular 45/90 Modifications to the Definitive Map: Wildlife and Countryside Act 1981.
  - Welsh Office Circular 5/93 Public Rights of Way.
  - Welsh Office Circular 6/93 Recovery of Costs of Public Path and Rail Crossing Orders.
  - Welsh Office Circular 47/96 Recovery of Costs for Public Path and Rail Crossing Orders Amendment Regulations.
  - Paragraphs 8 – 22 of National Assembly for Wales Circular 31/2001.
  - Statutory guidance under section 147 and 147ZA of the Highways Act 1980 relating to the requirement for local authorities to have regard to the needs of people with mobility problems when authorising stiles and gates, issued November 2006.
- 1.2. The information within this document is applicable only within Wales.
- 1.3. The document sets out advice to authorities on the following aspects of public rights of way:
  - **Managing the Network:** the systems in place to ensure the effective management of public rights of way, and a discussion of the main management issues that arise in practice.
  - **Maintaining the Network:** the powers and duties of an authority to maintain the physical elements of the network and its associated structures.
  - **Protecting the Network:** the enforcement powers and duties of authorities to ensure the network remains available for public use.
  - **Recording the Network:** the means and processes through which the network is legally recorded.
  - **Changing the Network:** how the network can be changed through legal processes.
  - **Planning Permission and the Network:** how the network interacts with the development management process.
- 1.4. Our extensive network of public rights of way provides a major recreational resource and the opportunity to experience the immense variety of our landscape and the settlements within it. All parties - including authorities, landowners, path users and voluntary bodies - are therefore urged to work together to ensure that rights of way are legally defined, properly maintained, signposted and kept open for public use. Authorities should ensure they allocate sufficient resources to discharge their statutory duties in relation to public rights of way.

- 1.5. In many instances the use of public rights of way does not fit neatly into administrative boundaries, and authorities are encouraged to work collaboratively where this will enhance general enjoyment of the network. Rights of way staff are also encouraged to work closely with their colleagues in areas such as tourism and transportation to help maximise the benefits of their network for economic development and sustainable/active travel. By working closely with Welsh Government and organisations such as Natural Resources Wales, the benefits of our extensive and wide ranging public rights of way network can be felt throughout Wales.
- 1.6. Rights of way continue to serve their primary function of providing access for people within their local community, but for their full recreational potential to be realised it is desirable that they are managed by authorities as an integral part of the whole complex of recreational facilities within a given area.
- 1.7. Rights of way also play an important role in achieving the aims of the Active Travel (Wales) Act 2013 to enable more people to walk, cycle and generally travel by non-motorised transport. Significant potential exists for authorities to draw on and develop the rights of way network when discharging their duties to continuously improve facilities and routes for pedestrians and cyclists, and to prepare maps identifying current and potential future routes for their use. Additionally, it is important that routes are maintained and improved, where practicable, to ensure that obligations placed on authorities by the Equalities Act 2010 are met.

### **Further Information**

- 1.8. Throughout this guidance, references are made to other guidance and publications and, where these are available online, hyperlinks are provided. A list of additional sources of information is set out in Annex 2.
- 1.9. Authorities should also note that this guidance only sets out responsibilities specific to legislation regarding the management of public rights of way. In many instances, it may be necessary for authorities to consider other legislation when carrying out their duties, such as in relation to nature conservation or health and safety.

### **Local Authority Resourcing**

- 1.10. This document does not place any extra obligations on authorities and therefore has no implications in terms of additional manpower or increased expenditure. Funding for rights of way functions is provided through the revenue support grant. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way, and that the rights of way network is in a fit condition for those who wish to use it.

## Statutes

- 1.11. All references to statutes in this document are to the versions currently in force, as amended. The relevant statutes are referenced in this document as follows:

|                   |                                                       |
|-------------------|-------------------------------------------------------|
| <b>NPACA 1949</b> | National Parks and Access to the Countryside Act 1949 |
| <b>CA 1968</b>    | Countryside Act 1968                                  |
| <b>HA 1980</b>    | Highways Act 1980                                     |
| <b>WCA 1981</b>   | Wildlife and Countryside Act 1981                     |
| <b>RTA 1988</b>   | Road Traffic Act 1988                                 |
| <b>ROWA 1990</b>  | Rights of Way Act 1990                                |
| <b>TCPA 1990</b>  | Town and Country Planning Act 1990                    |
| <b>CROW 2000</b>  | Countryside and Rights of Way Act 2000                |
| <b>NERC 2006</b>  | Natural Environment and Rural Communities Act 2006    |

## Responsible Bodies

- 1.12. Each of the Acts mentioned above refers to the relevant responsible body, for example the local highway authority, the local planning authority, the local authority, the surveying authority, the order making authority or traffic authority. As Wales has unitary authorities, these bodies are one and the same. As a result, this document refers only to the **authority**, meaning the unitary authority. The only exception to this is within our three National Park Authorities (NPAs). Where certain highways functions are delegated by agreement to a NPA it may take on responsibility for rights of way duties and powers within the park. NPAs are also the local planning authority.

## 2. Managing the Network

- 2.1. Managing the network involves a wide variety of tasks from programming improvements, maintaining records, providing information to the public and ensuring compliance with legal requirements.

### Rights Of Way Improvement Plans

- 2.2. Section 60 of the CROW 2000 places a duty on authorities to produce Rights of Ways Improvement Plans (ROWIPs). The Welsh Ministers expect ROWIPs to be the primary means by which authorities identify the changes to be made, in respect of management and improvement, to their local rights of way network in order to make better provision for users. Authorities should have regard to the guidance produced by the Welsh Government in respect of ROWIPs when preparing and reviewing their local document.

### Availability of Maps and Statements for Public Inspection

- 2.3. Definitive Maps and Statements are documentary records of public rights of way. They indicate where the public may lawfully walk, ride or drive. There is further information about the nature of Definitive Maps and Statements in the section '*Recording the Network*' below (para. 5.1-5.60).
- 2.4. Authorities must make copies of their Definitive Map and Statement and Modification Orders available for public inspection at one or more places to which the Map and Statement relate, usually at the offices of the authority or other places where the public can inspect them. Authorities should also, as far as practicable, deposit copies with community and town councils; these need only cover the area relevant to that community. Authorities are required to keep available for public inspection at least one copy of older editions of Maps and Statements, together with the Orders modifying them, and also to inform the public that copies of Definitive Maps and Statements and Orders are available for inspection.
- 2.5. Many authorities will keep 'working copies' of their map based on the Definitive Map, but which do not have the legally conclusive status of Definitive Maps. A working map may include additional information that the Definitive Map is not required to include, such as diverted routes for which Legal Event Modification Orders have not yet been made, or permissive routes. Authorities are also encouraged to make working maps available for public inspection, but such copies should clearly state their lack of legal status.

### Registers

- 2.6. Section 53B of the WCA 1981 requires authorities to keep a register of applications for Definitive Map Modification Orders. The statutory requirements for registers are set out in regulations - [The Public Rights of Way \(Registers\) \(Wales\) Regulations 2006](#) - but if authorities wish to record additional information, they are encouraged to do so.

- 2.7. Section 31A of the HA 1980 requires authorities to set up a register containing information with respect to declarations lodged and maps and statements deposited under s. 31(6) of the HA 1980. Such declarations and deposits enable landowners formally to acknowledge the rights of way across their land and, in doing so, make clear that they have no intention to dedicate any further routes across their land.
- 2.8. Section 121B of the HA 1980 requires registers to be kept for Public Path Orders for which a right of application exists under s. 118ZA, s. 118C, s. 119ZA and s. 119C of the HA 1980. However, these sections are not in force in Wales. Until they enter into force, the duty to keep a register under s. 121B is not triggered.

### Promoted Routes

- 2.9. Authorities may wish to develop promoted routes on a local and regional basis. This can also be done in partnership with others such as voluntary groups, and with the input of the Local Access Forum. Such routes can provide an excellent resource for members of the public by setting a start and finish point, as well as providing information about the route and amenities in the area, such as:
- Public toilets
  - Parking provision
  - Public transport
  - Which routes/sections are accessible to people with mobility problems
  - Levels of difficulty.
- 2.10. Information provided to the public should be clear with regard to the status of the routes so to avoid any ambiguity if a claim for a Definitive Map Modification Order affecting any part of it were made at some future point. This is particularly relevant where promoted routes do not have the same status for their entire length or where permissive sections are incorporated.
- 2.11. By its very nature a promoted route could lead to greater use of the public rights of way concerned. Careful consideration should be given to the suitability of the routes chosen and their ability to withstand increased traffic. Any improvement works needed should also be identified, including the need to meet any quality standards. Routes that duplicate or run parallel to existing promoted regional and long distance routes should be avoided to prevent confusion. Where routes run near to authority boundaries, the condition and coherence of routes between both authorities should also be considered.
- 2.12. Authorities should take careful account of the views of local people, including landowners, and should ensure, before undertaking publicity for, or endorsing, particular routes, that there is a clear commitment to future maintenance, having regard to the possible increase in use. There may also be a need to obtain planning permission for any additional facilities to be provided along well-used routes. Opportunity should be taken to promote understanding of

the countryside and environmental concerns where possible. Publicity can also be used to draw attention to any restrictions due to the operation of local byelaws and Traffic Regulation Orders.

- 2.13. The promotion of paths which pass over heavily used major roads or railways may result in increased numbers of people using these crossings, thereby increasing the risk of accidents. Authorities should therefore have regard to the potential threat to public safety when promoting such routes and take necessary steps to reduce the risk to the public in crossing roads. In the case of railway crossings, authorities should consult the Office of Rail and Road (ORR) and Network Rail who will advise on the safety implications of increased use. Further guidance on level crossing safety can be found in the ORR Guidance *'Document Level Crossings: a guide for managers, designers and operators'*.
- 2.14. When developing a brand for a promoted route, care should be taken to ensure that it is not misleading relative to accepted waymarking standards. The logo for the route should either incorporate arrows of the appropriate colour for the status of the path, be designed to sit alongside traditional waymarkers or incorporate a directional design that could not be misconstrued as being indicative of status. A good example of a branded path is the Wales Coast Path, where a combination of branded waymarker arrows are in use alongside standalone 'dragon shell' roundels.
- 2.15. When using route branding, care should be taken to ensure that it does not lead to excessive and unnecessary signage in the countryside or confusion. In particular, the recognised hierarchy of waymarking should be implemented, with branding for the Wales Coast Path and National Trails taking precedence over more locally promoted routes.

### Prioritisation Schemes

- 2.16. Authorities must ensure that they continuously review the Definitive Maps and Statements to keep them up to date by Order. Where a backlog of proposals for amending the Definitive Map has built up, authorities are urged to take appropriate action to make the necessary resources available to ensure that their Definitive Maps are brought up to date as soon as possible. It is also recommended that authorities should periodically publish a statement setting out their priorities for bringing and keeping the Definitive Map up to date as soon as reasonably practicable. Potential applicants should have regard to that statement when submitting their applications for Modification Orders.
- 2.17. After consulting with an authority, applicants have the right to ask the Welsh Ministers to direct that authority to reach a decision on a Definitive Map Modification Order application if no decision has been reached within twelve months of the authority receiving confirmation that notice of the application has been served on affected landowners and occupiers. In response to such a request, when considering whether to direct an authority to determine an application for an order within a specified period, the Welsh Ministers will take into account:

- any statements made by the authority setting out its priorities for bringing and keeping the Definitive Map up to date;
- the reasonableness of such priorities;
- any actions already taken by the authority or expressed intentions of further action on the application in question;
- the circumstances of the case and any views expressed by the applicant.

2.18. Authorities may also set out a prioritisation scheme for the management and improvement of their local network. This could form part of their ROWIP, and should be made available to members of the public to inform them how maintenance and enforcement requests to the authority will be dealt with. Where an authority publishes a prioritisation scheme to address maintenance or protection of the network, this may be taken into consideration by the court when deciding what would be a reasonable time for undertaking repairs in relation to applications made under s. 56 of HA 1980.

### **Local Access Forums**

- 2.19. Section 94 of the CROW 2000 places a duty on authorities to establish Local Access Forums to advise on public access to land for any lawful purpose and outdoor recreation, including public rights of way and the right of access to open country.
- 2.20. Membership of Local Access Forums should include a balance of users of rights of way and the right of access to open country, landowners and occupiers, together with any other interests especially relevant to the area. Local Access Forums should focus on those issues that are most relevant to their own area, considering issues at the strategic level, taking care to direct advice to the most appropriate recipients and adopting a proactive approach. Authorities must have regard to Forums' views in reaching decisions on access and public rights of way issues.

### **Informing Individuals and Other Groups**

- 2.21. To complement Local Access Forums' strategic role, authorities may wish to establish or maintain liaison groups that draw together the representatives of all interests in the rights of way network. In those areas where changes to the network are needed to ensure that it is better suited to the needs of users, liaison groups can play a valuable role in helping to define proposals which represent the best possible balance between all interests. The more detailed scrutiny that liaison groups can give to rights of way proposals is a valuable addition to the work of Local Access Forums. Local Access Forums may establish sub-groups to perform this type of function.

## Providing Information to the Public

- 2.22. Authorities should aim to provide the public with information on the full range of choices available for enjoying the rights of way network. All such information should be accessible, comprehensive and well promoted.
- 2.23. Authorities should tailor their publicity to local needs, opportunities and constraints, but imaginative schemes already in place in the country include: production of leaflets; offering guided walks and rides; organising or participating in festivals; use of mobile technology in the form of mobile phone apps and GPX routes; promoting the network in other areas of work such as schemes to support rural communities; and making information available on a website that shows the availability of public rights of way and their relationship to other areas of publicly accessible land. Publicity also provides an opportunity to promote understanding of the countryside and of environmental concerns.

## Wardens and Volunteers

- 2.24. Authorities have powers to appoint wardens, both within the countryside generally and, by virtue of s. 62 of the WCA 1981, to act on public rights of way. Wardens can advise members of the public on the use of rights of way. They can also help to guard against inconsiderate behaviour which can sour relationships between landowners and rights of way users.
- 2.25. When carrying out their duties to maintain public rights of way, authorities should make use of available help from landowners and voluntary groups. Voluntary groups can assist in a wide variety of activities such as route surveying, undertaking repairs and waymarking. Authorities utilising voluntary assistance should ensure that appropriate training is provided in areas such as the use of tools and health and safety, and that adequate supervision is given.

## Equality Act 2010

- 2.26. The Equality Act 2010 brings together various aspects of anti-discrimination legislation. It requires public sector bodies to be proactive in eliminating discrimination, in advancing equality of opportunity and in fostering good relationships between people with a disability and others. It widens the definition of disability: mobility difficulty, poor sight, learning difficulties, manual dexterity and certain long-term illnesses are all included within the Act.
- 2.27. Section 69 of the CROW 2000 amended s. 147 of the HA 1980, requiring authorities to have regard to the needs of people with mobility problems when authorising the erection of stiles, gates or other furniture on appropriate public rights of way. Authorities have particular powers under section 147ZA in this regard (see para 3.13-3.15).

- 2.28. Both s. 147 and s. 147ZA contain powers to impose conditions on the design and maintenance of structures. Authorities are advised that these powers can be used to require, for example, that a structure complies with BS 5709, as a minimum.

### **Needs of People with Mobility Problems**

- 2.29. Authorities should be aware of the latest best practice guides, including those produced by relevant user groups such as the Fairfield Trust and Pittecroft Trust. Such documents, together with the British Standard BS 5709 for gaps, gates and stiles, should provide authorities with enough information on how to assess the needs of people with mobility problems and to determine which routes should have priority for improved access for such people. Authorities should implement a Least Restrictive Access policy, seeking to minimise barriers when replacing and installing gates and stiles, in agreement with the landowner. Tackling physical barriers on rights of way is only one part of providing better access to the countryside for people with disabilities or mobility problems and consideration needs also to be given to publicity, parking and other relevant facilities.
- 2.30. When preparing their ROWIP, authorities should set out how the local rights of way network meets the current and future needs of local users, including blind people and people with mobility problems. Local Access Forums should endeavour to ensure that representatives from local disability groups are invited to sit as a member of the Forum. Further information can be found in ROWIP Guidance published by the Welsh Government.

### **Welsh Language (Wales) Measure 2011**

- 2.31. The Welsh Language (Wales) Measure 2011 is underpinned by three main principles:
- The Welsh language has official status in Wales.
  - In Wales, the Welsh language should be treated no less favourably than the English language.
  - The use of the Welsh language should be promoted and facilitated in Wales.
- 2.32. As a consequence of the Welsh Language Measure, authorities should ensure that they give Welsh an equal prominence with English. All official Orders and notices published (e.g. those in relation to Public Path Orders), and all promotional material should be bilingual, using text of the same size and prominence for both languages. Where appropriate, commonly-used symbols may be used on signage instead of language.

### **Nature Conservation**

- 2.33. 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. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'.

- 2.34. The Local Authority should refer to the Welsh Government guidance in relation to the Biodiversity and Resilience of Ecosystems Duty as well as any internal guidance. In the absence of such guidance contact the LA ecologist (or independent ecologist where one is not in place) for further advice.
- 2.35. All wild birds and certain other animals and plants are given legal protection under Part I of the WCA 1981. Before undertaking works authorities should consider whether the proposed action is likely to affect a protected animal or plant species. The level of protection differs according to individual species needs. Advice on individual species should be sought from the authority's in-house ecologists where available or appropriate external experts. Natural Resources Wales (NRW) can grant licences to allow certain work to be carried out which would otherwise be unlawful. Authorities can seek advice from NRW on the need for a licence.
- 2.36. Extra protection is given to animal and plant species of European importance (European Protected Species - EPS) through the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations'). Before undertaking any work it is necessary for authorities to consider the implications of the proposed action on any EPS. Authorities can obtain an EPS licence from NRW to avoid breaking the law.
- 2.37. Badgers and their setts are protected separately under the Protection of Badgers Act 1992. Licences for works that might affect badgers may be obtained from NRW or Welsh Government depending on the purpose of the activity being proposed.
- 2.38. Part II of the WCA 1981 relates to the designation of protected areas, including Sites of Special Scientific Interest (SSSIs) and National Parks. There are over 1000 SSSIs in Wales, each being protected by law from damage through development or unsuitable management or other activities.
- 2.39. Local Authorities and other public bodies are considered to be 'Section 28G authorities' for the purposes of the WCA 1981. As such, authorities have a duty to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
- 2.40. As a 'section 28G authority' local authorities are also required, under section 28H and 28I of the WCA 1981, to; notify NRW before carrying out any work likely to damage any of the features by reason of which a SSSI has been notified and; notify NRW before granting any permission for activities likely to damage the features of a SSSI. These duties apply even where the operation is not within the SSSI, but may detrimentally affect it. These operations may include those activities normally associated with the creation or routine maintenance of highways. Authorities are therefore advised to consult

informally with Natural Resources Wales before carrying out any operation in or near an SSSI, including path maintenance.

- 2.41. Authorities must also consider whether sites are designated for any other nature conservation purpose under domestic legislation or as European or International sites (e.g.: NNRs, SACs, SPAs, Ramsar sites). Authorities must consider their obligations under Part 6 of the Habitats Regulations in relation to undertaking or permitting work for a plan or project that is likely to have a significant effect on a European site in view of the site's conservation objectives.
- 2.42. The requirement to have regard to the purposes for which a National Park or Area of Outstanding National Beauty was created (s. 11A(2), NPACA 1949; s. 85, CROW 2000) will apply to an authority when carrying out duties to manage and maintain the public rights of way for which they are responsible.

### **Invasive Non-Native Species and Injurious Weeds**

- 2.43. The control of invasive non-native species is principally dealt with under the WCA 1981, Environmental Protection Act 1990, the CROW 2000 and NERC 2006 Invasive Alien Species Regulation (EC 1143/2014) and Environment (Wales) Act 2016. When undertaking maintenance of the network, work should be planned to ensure that invasive non-native species, such as (but not exclusively) Giant Hogweed, Himalayan Balsam and Japanese knotweed, are not allowed to spread and the appropriate disposal of 'controlled waste' is carried out. Attention needs to be given to carrying out the operation safely as plants (e.g. Giant Hogweed) and products used can be toxic. Further details relating to invasive non-native species can be found at [www.nonnativespecies.org](http://www.nonnativespecies.org) and <http://gov.wales/topics/environmentcountryside/farmingandcountryside/plantsspeedbiotechnology/invasive-non-native-species/invasive-plant-species/?lang=en>
- 2.44. Similar attention should be paid to injurious weeds such as (but not exclusively) Common Ragwort and Broad-leaved Dock, ensuring they are disposed of appropriately and not allowed to spread onto neighbouring land. Further information on how to prevent and control the spread of ragwort: <http://gov.wales/topics/environmentcountryside/farmingandcountryside/plantsspeedbiotechnology/injweeds/?lang=en>
- 2.45. Authority staff or contractors should also take into account the guidance provided on the use of pesticides near public rights of way and other publically accessible outdoor spaces. The guidance can be found at: <http://www.hse.gov.uk/agriculture/topics/pesticides.htm>

### **Scheduled Monuments**

- 2.46. Scheduled monuments are nationally important monuments that are afforded statutory protection under the Ancient Monuments and Archaeological Areas Act 1979 and the Historic Environment (Wales) Act 2016. The aim of the

protection is to avoid any damage or significant alteration to the monument and its setting. The extent of any such monument is depicted on a plan known as the scheduled area.

- 2.47. Cadw should be consulted prior to undertaking any work to a public right of way within a scheduled monument. Scheduled monument consent is required from the Welsh Ministers, via application to Cadw, before any works are carried out within the scheduled area that could cause damage to the scheduled monument. It is a criminal offence to do otherwise and the types of works that require such consent include ordinary maintenance activities such as digging post holes, installing new furniture, and tipping materials onto a surface. Proposals should be considered in light of published guidance on the Conservation Principles for the Sustainable Management of the Historic Environment in Wales. Further information is available from the [Cadw website](#).
- 2.48. Cadw should also be consulted prior to undertaking any works to a public right of way within a registered historic park and garden.

### **3. Maintaining the Network**

- 3.1. Most public rights of way are maintainable at public expense and, where this is the case, authorities have a duty to maintain them. Authorities may also maintain public rights of way that are not publicly maintainable.
- 3.2. Under s. 43 of the HA 1980, community or town councils can maintain footpaths, bridleways and restricted byways in their area which are maintainable at public expense without the prior consent or agreement of the authority, although it is strongly advised that agreement is sought before work is undertaken. However, maintenance by community councils does not absolve authorities from discharging their own responsibilities. Under s. 50 of the HA 1980, authorities, community or town councils can maintain footpaths and bridleways not maintainable at public expense without prejudice to the responsible owners' rights and duties.

#### **Standards of Maintenance**

- 3.3. It is not considered practicable to recommend specific standards for the maintenance or restoration of particular kinds of public rights of way. However, maintenance should be such that ways are capable of supporting the use that is made of them by ordinary traffic at all times of the year. In some cases, this might require the importation and application of suitable hard materials. Maintenance need not conform to an arbitrary standard of construction or appearance, but should instead harmonise with the general appearance and character of the surroundings or adhere to any restrictions that may apply, for example as a result of SSSI status.

#### **Structures**

##### **Bridges**

- 3.4. Sections 91 and 92 of the HA 1980 allow for the construction and reconstruction of bridges forming part of a public right of way. A bridge may be reconstructed either on the same site or on a new site within 200 yards of the old one. Should a bridge be moved to a new site within the 200 yard limit the power extends to the highway that gives access to the bridge and this can be reconstructed along with the bridge without the need for a diversion Order. However, under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010, flood defence consent is required from Natural Resources Wales prior to any work in, over, under or near a main river. Where a bridge is to be constructed over any other form of water course (including ditches, drains, cuts, dikes, sewers other than public sewers, and passages through which water flows) ordinary watercourse consent is required from the lead local flood authority, normally the unitary authority.

## **Gates and Stiles**

- 3.5. Gates, stiles, and other structures on a public right of way are unlawful obstructions unless:
- They are recorded on the definitive statement as a limitation, or
  - It can be shown that the way was dedicated with such a structure despite not being recorded on the definitive statement (i.e. the statement requires updating), or
  - They have been authorised by the authority under s. 147 of the HA 1980, or
  - They have been authorised under any other relevant legislation.
- 3.6. Unless dedicated with a limitation of a gate, restricted byways and byways open to all traffic may not have such a structure placed across them. Section 145 of the HA 1980 specifies that a minimum width of 5 feet (1.5 metres) must be provided for a gate across a bridleway and a minimum of 10 feet (3 metres) for a gate on a highway comprising a carriageway (i.e. one where the public have a right of way for the passage of vehicles). In the case of bridleway gates dedicated subject to BS 5709 standards, those gates should be useable whilst the horse rider is mounted.

## **Liabilities to Maintain**

- 3.7. Under s. 146(1) of the HA 1980, landowners are responsible for maintaining gates, stiles and similar structures across footpaths, bridleways or restricted byways, whether or not they are shown on the definitive map. Authorities must contribute not less than a quarter of the expenses reasonably incurred where landowners undertake works to such a structure. These responsibilities apply unless a specific agreement or condition to the contrary has been concluded in writing between the authority and the landowner, such as where the structure has been authorised subject to conditions under s. 147 of the HA 1980. Where it appears to an authority that the landowner is not complying with their statutory duty, the authority may give notice of their intention to take the necessary steps for repairing and making good the stile, gate or other works. The authority may recover the expenses reasonably incurred doing so from the landowner.
- 3.8. Where authorities make arrangements to carry out work to maintain structures themselves, they should be clear in their dealings with the landowner that the work is undertaken on the landowner's behalf.

## **Authorising New Structures - Section 147**

- 3.9. Section 147 gives competent authorities power to authorise the erection on a footpath or bridleway (but not on a restricted byway or byway open to all traffic or cycle track) a stile, gate or other structure which prevents the ingress or egress of animals. The authority can act only on a representation from the owner, lessee or occupier of the land. The power applies only to footpaths and bridleways which cross land which is used, or is being brought into use,

for agriculture (as defined in s. 329 of the HA 1980), forestry, or the breeding or keeping of horses. Any authorisation granted under s. 147 does not permit any interference with private rights of access or the rights of statutory undertakers.

- 3.10. An authority may, if it decides to grant an authorisation, impose conditions for maintenance and for ensuring that the right of way can be used without undue inconvenience to the public. Other powers are also available under s. 66(3) of the HA 1980 for authorities to provide and maintain on a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.
- 3.11. Before authorising a new barrier under s. 147, authorities should be satisfied on three counts:
- That the land is being used, or is being brought into use, for agriculture, forestry or for the breeding or keeping of horses.
  - That, in order for that use to be carried on efficiently, it is expedient for a structure to be erected on the path or way that crosses the land to prevent the ingress or egress of animals.
  - That the barrier being authorised is the least restrictive barrier that is consistent with the need to contain or exclude animals.
- 3.12. Where the reasons for authorising the barrier no longer permanently apply, the authorisation should be revoked and the barrier removed.

### Improving Structures - Section 147ZA

- 3.13. Section 69 of the CROW 2000 also introduced a new s147ZA to the HA 1980, giving authorities powers to enter into agreements with landowners, lessees or occupiers of land to undertake work on a structure which is on a footpath or bridleway in order to replace it with a new or improved structure which will be safer or more convenient for persons with mobility problems.
- 3.14. Authorities should note the following:
- It provides a power only to enter into an agreement. Authorities may not enter into an agreement except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated. There are powers, similar to those in s. 147, to impose conditions, including conditions for future maintenance.
  - The power to enter into an agreement is limited to structures which are “relevant structures”. These are structures which are lawful, and it is for authorities to satisfy themselves that a structure that is subject of a proposed agreement is a “relevant structure”. Any structure across a footpath or bridleway which is not a “relevant structure” can be dealt with by the authority under s. 130 and s. 143 of the HA 1980 as an obstruction. In some circumstances, authorisation by the authority of a replacement structure under s. 147 may provide a solution.
  - A s. 147ZA agreement can cover more than one structure.

- Authorities should ensure that the improved or replacement structure is the least restrictive barrier that is consistent with any need to contain or exclude animals. Authorities should note that the power to enter into agreements does not extend to removal of structures without replacement. *Note:* In this case a gap conforming to BS 5709 or similar could count as a structure if the circumstances of any particular case suggest it can do so.
- The power to enter into agreements envisages that works will follow, so the power cannot be used to enter into agreements to authorise retrospectively works that have already been carried out.

3.15. Notwithstanding the powers available under s. 147ZA, authorities should also have regard to their responsibilities under the Equalities Act 2010. A model s. 147ZA agreement is attached in Annex 3. Authorities should keep records of authorisations under s. 147 and s. 147ZA and are encouraged to make these available for public inspection alongside the definitive map and statement. More detail regarding this requirement can be found in paragraph [5.22](#).

## Surfaces

- 3.16. Section 263 of the HA 1980 vests the surfaces of highways maintainable at public expense in the highway authority. Authorities are therefore able to act as if they were owners of surfaces of public rights of way, to an extent sufficient to control, protect and maintain the way for use by the public.
- 3.17. The authority is required to ensure that ways are capable of accommodating the use that is made of them by ordinary traffic at all times of the year. This means that work must be undertaken to ensure the route is safe and fit for ordinary traffic, as appropriate to its status. This includes cutting back any surface vegetation as required.
- 3.18. Authorities have specific powers to improve the surfaces of highways. These powers extend to:
- Levelling.
  - Reconstructing bridges.
  - Replacing fords or stepping stones with bridges.
  - Planting and laying out verges.
  - Metalling.
  - Improving drainage.
  - Treating the highway to mitigate dust.
  - Providing cattle grids.
  - Protecting against hazards of nature.
  - Carrying out works or placing structures for the purposes of enhancing amenity or providing a public service.
- 3.19. In addition, authorities have a general power of improvement under s. 62 of the HA 1980 that can be relied on in circumstances where specific powers are not applicable. However, improvements should ensure that the route remains usable as dedicated.

## Signage

### Road Side Posts

- 3.20. Section 27 of the CA 1968 requires authorities to signpost footpaths, bridleways, restricted byways and byways open to all traffic where they leave metalled roads. A road is taken to be any highway and any other road to which the public has access; a metalled road therefore includes any right of way with improved hard surfaces (such as tarmac). Authorities need not erect signposts at the junction of a way with a metalled road where the town or community council has been consulted and agrees that it is not necessary.
- 3.21. It is an offence under s. 131(2) of the HA 1980 to remove or obliterate a traffic sign that complies with the Traffic Signs Manual without authorisation.

### Waymarking

- 3.22. The term “signpost” also includes other signs such as a painted waymark. Signposting and waymarking of public rights of way are of considerable benefit to path users and also assist landowners by helping to prevent trespass. Authorities must also ensure that members of the public are provided with sufficient information, by means of appropriate signs or notices, particularly at path junctions, to enable them to use the local rights of way network. This is especially important where paths have been altered by means of statutory Orders since the most recent version of publicly available maps, such as Ordnance Survey, was published.
- 3.23. The owner or occupier of the land crossed by a right of way must always be consulted before any sign is erected, although consent is not required as a landowner cannot refuse to allow waymarking. Landowner consent must, however, be obtained if the sign is to be attached to his or her property, such as a fencepost or stile. In the majority of cases, a signpost at the point where a right of way leaves a metalled road will be installed in a roadside verge or footway that is in the ownership of the authority and therefore most of the cases where the duty to obtain consent will apply are those where waymarks are installed to guide the public along the correct route.
- 3.24. The recommended system in Wales for waymarking public rights of way uses small coloured arrows to show the direction of the path and also to act as a target when viewed from a distance. A different colour is used for each category of public right of way, intended only to show the status of the route and not to indicate whether it is physically suitable:
- Footpaths are waymarked using yellow arrows (BS 08 E 51).
  - Bridleways are waymarked with blue arrows (BS 20 E 51).
  - Restricted byways are waymarked with purple (plum) arrows (BS 02 C 39).
  - Byways open to all traffic are waymarked with red arrows (BS 06 E 55, approximate).

## Gaining Access to Undertake Work<sup>1</sup>

### Powers of Entry for the Purposes of Survey

- 3.25. Section 289 of the HA 1980 provides that a person duly authorised in writing by an authority may at any reasonable time enter onto any land for the purposes of surveying that or any other land in connection with the exercise of their highway authority functions. This does not overtly include functions of the surveying authority in connection with its duties under the WCA 1981. In relation to the WCA 1981 duty to keep the Definitive Map and Statement under continuous review, it has been suggested that the need to access land (for example, for the purposes of surveying for an Order) would be covered by the general duty on the highway authority to "*assert and protect the rights of the public to the use and enjoyment of the highway*" under s. 130 of the HA 1980 and that therefore the powers to access land for the purposes of survey in the HA 1980 cover access required for surveys in relation to the WCA 1981. However, this contention has not been tested in the Courts.
- 3.26. The powers in s. 289 are supplemented by the provisions of s. 290, and the two sections need to be read together. Section 292(4) makes it an offence to wilfully obstruct a person acting in exercise of a power under s289.

### Power of Entry for the Purpose of Maintaining Certain Structures and Works

- 3.27. Where an authority has the power or right to maintain, alter or remove any structure or work on, over or under land that neither belongs to the authority, nor forms part of a highway for which they are the highway authority, powers of entry are contained in s. 291 of the HA 1980. Subsections (1), (2) and (3) of s. 290 also apply to s. 291. In relation to s. 291, "structure" includes a bridge, fence, barrier or post and "work" includes tunnel, ditch, gutter, watercourse, culvert, drain, soakaway or pipe. Section 292(4) makes it an offence to wilfully obstruct a person acting in exercise of a power under s291.

### Powers of Entry for Purposes Connected to Certain Orders Relating to Footpaths and Bridleways

- 3.28. Section 293 of the HA 1980 contains powers additional to those in s. 289 to enter onto land for the purpose of surveying or valuing it in connection with the making of Public Path Orders. In addition to granting these powers of entry to authorities, there is specific authorisation for officers of the Valuation Office to enter land for the purposes of valuation. Again it should be noted that these powers of entry do not cover Orders made under the WCA 1981.

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<sup>1</sup> The text in this section is based on text from the IPROW - Public Rights of Way Good Practice Guide (GPG). GPG is not a complete statement of the law or its interpretation and the latter is ultimately for the courts to decide.

## Powers of Entry of Premises

- 3.29. Section 294 of the HA 1980 allows the authority to apply to the Magistrates' Court for an order authorising the authority (by any authorised officer) to enter, examine and "lay open" the premises for the purposes of:
- Surveying.
  - Making plans.
  - Executing, maintaining or examining works.
  - Ascertaining the course of sewers or drains.
  - Ascertaining or fixing boundaries.
  - Ascertaining whether any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted.
- 3.30. In addition to these specific matters, Schedule 22 applies the provisions of s. 294 to a large number of other sections of the HA 1980. Potentially the most useful of these for rights of way officers are:
- Section 36(6) and (7) (duty to keep the list of streets).
  - Section 38 (adoption of highway by agreement).
  - Section 154(1) and (4) (the cutting back of trees and overhanging branches).
  - Section 163 (the prevention of water falling on or flowing onto a highway).
  - Section 165 (dangerous land adjoining street).

## Access with Vehicles

- 3.31. Section 300(1) of the HA 1980 provides that:

*"No statutory provision prohibiting or restricting the use of footpaths, footways, bridleways or restricted byways shall affect the use by a competent authority of appliances or vehicles, whether mechanically operated or propelled or not, for cleansing, maintaining or improving footpaths, footways, bridleways or restricted byways or their verges for preventing or removing obstructions to them or otherwise preventing or abating nuisances or other interferences with them, or for maintaining or altering structures or other works situated therein."*

- 3.32. The Vehicles (Conditions of Use on Footpaths) Regulations 1963 apply to the use by the authority of appliances or vehicles on rights of way. In particular it should be noted that the speed of any vehicle or appliance is limited to 5 mph. The regulations were amended in 1966 to make specific provision for the crossing of gas pipelines by vehicles. Where a right of way crosses a rail track, additional restrictions may apply and authorities should ensure they comply with all relevant legislation in this regard.
- 3.33. Although s. 300 of the HA 1980 is titled *"Right of local authorities to use vehicles and appliances on footways, bridleways and restricted byways"* it is not clear how any such right is to be enforced and the section is silent about

how authorities deal with matters such as access along rights of way where the legally recorded width is too narrow to permit the passage of vehicles or where the right of way is subject to limitations such as stiles or gates that would have to be removed to allow vehicles or appliances to pass. Section 300 does not allow for vehicles to be used on land that is not a public right of way, nor does it provide for compensation to be payable for any damage to land or structures.

- 3.34. Section 290(2), which applies to s. 289 and s. 291, gives authorised persons the power to take with them onto land *"such other persons and such other vehicles and equipment, as he may consider necessary"*. Section 289 relates to surveying. Section 291 gives the right of entry over land if necessary to exercise the power or right to maintain, alter or remove any structure, if the land neither belongs to the authority nor forms part of a highway for which they are responsible,. The legislation does not provide for a mechanism for the authority to force entry with vehicles along a footpath or bridleway.
- 3.35. Schedule 12A, paragraph 7 of the HA 1980 gives authority for any person duly authorised in writing to enter on land taking with him *"vehicles, machinery and other equipment as may be requisite"*. The Schedule 12A powers for access are in connection with works to reinstate paths where there has been unauthorised disturbance to the surface. Notice must be given in writing. The powers of access are for entry onto relevant land and include access to land reasonably believed by the authority to be in the same ownership.
- 3.36. Although again there is no obvious means of forcing a landowner to allow access, the Schedule 12A powers do seem to provide for access to land other than via the line of the right of way.

### Improving Access for Maintenance Vehicles in the Future

- 3.37. When authorising new gates or stiles under s. 147 of the HA 1980 (para 3.9-3.12 above) on a path that is suitable and of sufficient width to allow vehicular access, the authority may wish to consider including a condition to require the landowner to remove and replace that structure should the authority require later access.

### Access for Signposting and Waymarking

- 3.38. Section 71 of the Road Traffic Regulation Act 1984 empowers the authority to *"enter any land and exercise such other powers as may be necessary for the purpose of the exercise and performance of their powers and duties of placing, replacing, converting and removing traffic signs"*. For the purposes of s. 71, "traffic signs" includes signposts for footpaths and bridleways and "signposts" includes other notices or signs for the same purpose. Any authority making a Traffic Regulation Order under the Road Traffic Regulation Act 1984 is also empowered under s. 71 to enter land.

### Other Powers of Access

- 3.39. Section 40(2) of the CROW 2000 provides that a person authorised by the authority may enter land for the purpose of certain activities in connection with

sections 35-37, for ascertaining whether or not an offence is being committed under s. 14 or s. 39 or for the purposes of erecting notices under s. 19(1). Any person exercising these rights of access may use a vehicle to enter the land. Notice requirements apply to occupied land other than access land and there is no right to enter dwellings.

- 3.40. Section 324 of the TCPA 1990 contains access powers in relation to certain planning functions, but these do not extend directly to the powers to make Public Path Orders under the same Act.

## 4. Protecting the Network

- 4.1. Members of the public are entitled to expect that all rights of way will be kept open and available for use. The integrity of the network depends on the cooperation of landowners, occupiers and lessees in discharging their legal duties to ensure paths are clear of obstructions and hazards. In the most part, there is compliance with these duties and the public are able to use the network with ease. However, where this is not the case, authorities have a range of duties and powers to ensure that any problems can be resolved.

### Enforcement Methods

- 4.2. Sometimes, it is necessary for authorities to investigate alleged breaches of the law and take action where offences are found to have been committed. Often, an investigation will be triggered by a complaint. As part the investigation, an inspection of the site in question should be made unless the site has already been subject to a recent inspection, or an inspection is not likely to be of assistance owing to the nature of the offence (e.g. threatening behaviour to users of a public path).
- 4.3. In investigating the alleged offence, authorities may wish to consider:
- Whether sufficient evidence exists to show an offence is being committed or may have been committed.
  - The powers available to the authority to deal with the offence.
  - Whether the offence is a repeat of an offence that has been dealt with previously through enforcement procedures.
  - Whether the offence involves the erection of permanent structures or developments.
  - Whether the offence is a recent occurrence or has been going on for a substantial length of time before it was identified.
  - Whether enforcement action would be proportionate in the circumstances.
  - The terms of any other policy in place within that authority, including the principles contained within the Concordat for Good Enforcement, where relevant.
- 4.4. The options available to authorities following investigation of such complaints will usually be:
- No enforcement action.
  - Informal enforcement action.
  - Service of a notice and/or direct action with recovery of costs.
  - Simple Caution.
  - Prosecution.

### No Enforcement Action

- 4.5. It may be concluded that an offence has not been committed or that the issue could be resolved other than by enforcement action. In these circumstances,

no further action is required, though authorities may wish to advise complainants and alleged offenders, where necessary, of the outcome.

### Informal Advice

- 4.6. Where problems identified are of a minor nature and an authority is confident that corrective action will be taken by the alleged offender, it may seek to address the problem by giving informal advice. In such circumstances, an authority might wish to agree a reasonable timescale for corrective works after which more formal enforcement methods will be considered.

### Service of Notice and Direct Action

- 4.7. Where provision is made in the relevant statute, authorities may serve statutory notices which require a person, business or organisation to comply with specific requirements.
- 4.8. Where a formal notice is served, the method of appealing against the notice, if any, should be explained in writing at the same time. The notice should explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.
- 4.9. In general, failure to comply with a properly written and served statutory notice will make the recipient liable to prosecution. In some cases, authorities are able to carry out direct works in default of a failure to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances, it is possible to prosecute in conjunction with service of a notice.
- 4.10. Often, specific provision is made within a statute for the form that a notice must take, and how it must be served. For notices issued under the HA 1980, sections 320 and 322 apply.
- 4.11. Authorities may also use common law powers to remove an obstruction or otherwise legally abate a nuisance on the highway without prior notice.

### Simple Caution

- 4.12. Previously known as a formal caution, simple cautions may be given in circumstances where offences have been investigated and evidence of guilt sufficient to give a realistic prospect of successful prosecution has been established. Simple cautions require the offender to admit guilt by signature of a declaration. The suspected offender must understand the significance of a simple caution and give an informed consent to the caution.
- 4.13. Authorities should follow the procedures described in Ministry of Justice [guidance](#) when issuing a simple caution.
- 4.14. The aims of simple cautions are to:
- Deal quickly and simply with less serious offenders.

- Avoid unnecessary appearances in a criminal court.
- Reduce the likelihood of offenders re-offending.

4.15. A record of a caution that has been accepted should be kept on file, and may be referred to if a prosecution is brought at a later date for a further offence.

### Prosecution

- 4.16. Where an offence is serious in nature, authorities may elect to bring about a prosecution. It is anticipated that authorities will have their own protocols for prosecution and officers should therefore consult with their own legal advisers at an early stage.
- 4.17. At a minimum, the investigation of an offence relating to public rights of way is likely to generate a statement by an officer confirming the existence of the relevant public right of way by reference to the Definitive Map and Statement, and a description of the allegation which has been investigated.

### Animals

- 4.18. The Health and Safety at Work Act 1974 creates obligations not to put at risk the health and safety of third parties. In addition, under certain circumstances, the keeper of any animal may be liable, under s. 2(2) of the Animals Act 1971, for damage caused by that animal. For example, the keeper of an animal is liable for damage, including injury caused, if they were aware of the animal's likelihood to cause injury.
- 4.19. If a farmer, or any landowner and occupier, were to keep any animal that they knew to have a likelihood of causing injury in a field crossed by a public right of way and a user was injured as a result, then they would be liable for prosecution under the Health and Safety at Work Act 1974, and could also be sued for damages by the user under the Animals Act 1971.
- 4.20. In general, therefore, no offence is committed simply by keeping animals on land crossed by public rights of way, but a liability may arise should an incident occur. Where authorities are alerted to incidents involving animals they may wish to proceed by contacting the relevant landowner to remind them of that liability and, where possible, agree any measures that could be undertaken to help to mitigate the risk.

### Cattle, including Bulls

- 4.21. It is an offence under s. 59 of the WCA 1981 for an occupier to permit a bull to be at large in a field or enclosure crossed by a public right of way except where:
- The bull does not exceed the age of 10 months; or
  - The bull is not a recognised dairy breed and is accompanied by cows or heifers.

- 4.22. The recognised dairy breeds are: Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry. However, even for bulls that are excluded from the offence in s. 59, farmers' obligations under the Health and Safety at Work Act 1974 still apply.
- 4.23. A Health and Safety Executive (HSE) study reported that most of the incidents on rights of way involving cattle arise when suckler cows and calves are at large in fields. The HSE have summarised their findings and provided guidance for the public and for farmers in [Agriculture Information Sheet No 17EW\(rev1\)](#). The guidance also includes useful information as to the form and contents of signs that could be used to indicate the presence of animals.

## Dogs

- 4.24. A dog impeding the free use of a public right of way by behaving in a threatening manner and frightening users is a public nuisance under common law. It may also be an offence under s. 137 of the HA 1980 because it constitutes an obstruction to the highway. In dealing with such occurrences, authorities may also consider the powers available to them under the Anti-social Behaviour, Crime and Policing Act 2014 in relation to irresponsible dog ownership. Further details can be found in the [Dealing with Irresponsible Dog Ownership Practitioners Manual](#).
- 4.25. Dogs commonly accompany users of public rights of way, but there is no requirement to make specific provision for them, such as by erecting dog stiles or specialist outdoor furniture, but given that some dogs are also guide dogs, authorities should also consider their obligations under the Equalities Act 2010 and consider whether any unnecessary obstruction to the use of public rights of way by dogs could be removed. There is no requirement in law for a dog to be on a lead but they should be kept under effective control at all times. Clear and concise advice can be found in the [Dog Walking Code](#). A path user who allows a dog to wander off the right of way becomes a trespasser.

## Horses

- 4.26. As stated above, farmers and landowners/occupiers should have regard to s. 2 of the Animals Act 1971 when considering keeping any animal in a field crossed by the public right of way, including horses. This section of the Act also applies to the keeper of any horse who injures anyone lawfully using a bridleway such as a walker, provided the keeper knew the horse was likely to cause such injury.

## Dangerous Species

- 4.27. The Dangerous Wild Animals Act 1976 states that *"no person shall keep any dangerous wild animal except under the authority of a licence granted in accordance with the provisions of the Act by a local authority"*. A full list of the species covered can be found in the Act. However, for the purposes of agriculture, it should be noted that the list includes wild boar and ostrich. The Act requires such animals approved by licence to be kept in secure

accommodation and not to be in contact with members of the public. Consequently, no such animal should be kept on or near a public right of way.

## Obstruction

- 4.28. Under s. 130(1) of the HA 1980, authorities are under a duty to assert and protect the rights of the public to use and enjoy those public rights of way for which they are responsible. They are also under a duty under s. 130(3) of the HA 1980 to prevent, as far as possible, the stopping-up or obstruction of those public rights of way for which they are responsible. Authorities are also under a duty to prevent, as far as possible, the stopping-up or obstruction of those highways for which they are not responsible, if they consider that it is prejudicial to the interests of their area. The Act empowers authorities to start legal proceedings or take whatever steps they deem expedient to discharge these duties.
- 4.29. In addition, authorities are required under s. 130(6) of the HA 1980 to take proper proceedings whenever they receive representations from a community or town council that a way has been obstructed or stopped-up, or that unlawful encroachment onto roadside waste has taken place.
- 4.30. The public are entitled to expect that all rights of way will be kept open and available for use and it is important that authorities act quickly to investigate any complaint made to them. Authorities should ensure that any obstructions they discover or have reported to them are removed as soon as is reasonably practicable. Section 143 of the HA 1980 enables authorities to secure the removal of structures on the highway by serving notice on the person responsible and by removing the obstruction themselves at the person's expense should that person fail to comply with the notice. Section 149 of the HA 1980 also enables an authority to have any "thing" deposited on a highway, which constitutes a nuisance or danger to users, removed.
- 4.31. In dealing with obstructions, authorities should be aware that information recorded in the Definitive Statement about the position or width of a right of way, or of the limitations or conditions that are relevant to it, is conclusive evidence of those matters. Where there are legitimate limitations, information should be recorded in the Definitive Statement describing the effect that they have in restricting the use of the way by those who are lawfully entitled to use it. Where the information recorded is not about position or width, or is not relevant to limitations or conditions, authorities should examine the evidence in each instance to resolve any inconsistency and make any necessary modifications to the Definitive Map and Statement in line with the duties imposed by s. 53(2) of the WCA 1981.
- 4.32. Evidence may be available to suggest that a public right of way shown on the Definitive Map does not exist. However, the Map is conclusive as to the public rights of way shown to exist on it (without prejudice to the existence of other rights – see s. 56(1) of the WCA 1981) and the path or way must remain open and available for use until the Definitive Map has been amended, or closure procedures have been complied with.

### **Wilful Obstruction of a Highway**

- 4.33. Under s. 137ZA of the HA 1980, when convicting a person under s. 137 of that Act of wilfully obstructing a highway, the Magistrates' Court can order that person to remove the obstruction. A person who has been ordered to remove an obstruction cannot be prosecuted again under s. 137 in respect of that obstruction during the period for removing it set by the court under s. 137ZA. Nor can a person be prosecuted during any period for complying with directions set by the court under s. 311(1) of the HA 1980.
- 4.34. Where authorities choose to exercise any of their powers to remove an unlawful obstruction after a person has been convicted under s. 137ZA(3), s. 137ZA(4), in conjunction with s. 305 of the HA 1980, allows authorities to recover expenses reasonably incurred in doing so.

### **Keeping Ways Clear of Overhanging Vegetation**

- 4.35. Section 154(1) of the HA 1980 enables authorities to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the extent of endangering or obstructing the passage of vehicles, pedestrians or horse-riders, to cut the vegetation back. These provisions also apply to roads and footpaths that are not highways but to which the public has access, e.g. paths laid within public open space.
- 4.36. Authorities may serve notice on land owners or occupiers to remove hedges, trees or shrubs likely to obstruct, endanger or cause danger by falling to users. If the issue is not remedied within the 14 day notice period, the authority may cut back the vegetation or remove dangerous trees and shrubs itself and recover the expenses reasonably incurred in doing so from the person in default. Section 65 of the CROW 2000 extends s. 154 to apply to vegetation which endangers or obstructs the passage of horse-riders allowing for vegetation overhanging bridleways or carriageways to be cut back to a suitable height.

### **Corporate Responsibility**

- 4.37. The Highways (Obstruction by Body Corporate) Act 2004 addressed concerns that obligations to prevent the obstruction of highways could be prevented by setting up a company to hold the land over which a right of way runs. The 2004 Act amended the HA 1980 to apply s. 314 of that Act (which enables criminal proceedings against officers or members of a body corporate) to s. 137 and s. 137ZA to ensure that directors and other officers of a company, as well as the body corporate, can be convicted of obstruction offences, and be subject to fines (and a court order to remove the obstruction in the case of s. 137ZA), where they are culpable.

### **Serving Notice on Local Authorities**

- 4.38. Sections 130A-130D of the HA 1980 enable any person to serve notice on an authority requesting it to secure the removal of certain types of obstructions

on public rights of way. Should the authority refuse or fail to take action, the applicant can seek a Magistrates' Court order compelling the authority to act.

## Damage

### Disturbing the Surface of Ways

- 4.39. Where the surface of a footpath, bridleway or any other highway which consists of or comprises a carriageway other than a made up highway has been disturbed so as to render it inconvenient for the exercise of the public right of way, an offence is committed under s. 131A of the HA 1980 and the offender can be prosecuted. Similarly it is an offence under s131 to:
- Make a ditch or excavation in a carriageway (i.e. restricted byway or byway open to all traffic), or
  - Remove any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the authority, or
  - Deposit anything whatsoever on a highway so as to damage the highway, or
  - Light a fire, or discharge a firearm or firework, within 50 feet from the centre of a carriageway (i.e. restricted byway or byway open to all traffic), resulting in damage to the highway.
- 4.40. Further provision is made under s. 1 of the Criminal Damage Act 1971 for prosecution where the surface of a highway maintainable at public expense is damaged. Defences exist in this case if, at the time the damage was done, the offender believed that the authority had consented to the damage or would have so consented, or where the damage was immediately needed for protection of the offender's own rights and the means of protection was reasonable.

### Agricultural Operations

- 4.41. Occupiers of land are permitted under s. 134 of the HA 1980 to plough footpaths and bridleways that run across arable land. Byways open to all traffic and restricted byways may not be ploughed, nor may footpaths and bridleways that run along the edges of a field or enclosure (headland paths). The right to plough or otherwise disturb the surface of a path that crosses arable land is subject to the path being reinstated for public use. Furthermore, the right only extends to circumstances where *"it is not reasonably convenient in ploughing, or otherwise disturbing the surface of, the land to avoid disturbing the surface of the path or way"*.
- 4.42. Where the occupier of land has ploughed or otherwise disturbed the surface of a footpath or bridleway, the path must be reinstated to not less than its minimum width, so as to make it reasonably convenient for the public to use. The line of the path must also be made apparent on the ground in doing so. The timescales for reinstatement are specified within the HA 1980 and are:

- Within 14 days where the disturbance is the first agricultural operation of the season, or
- Within 24 hours for subsequent disturbances.

4.43. On the application of the occupier, either before or during the period of the first disturbance, the authority may grant an extension for an additional period of not more than 28 days. Extensions may not be granted retrospectively. Authorities can also by Order authorise the temporary diversion of the way where it is necessary to enable such works to be carried out. Authorities can recover from the applicant their reasonable expenses incurred in connection with the Order.

4.44. Occupiers who fail to reinstate the surface of ways disturbed by ploughing or other works within the statutory periods, where reinstatement is not sufficient for the right of way, can be prosecuted.

#### **Width of Paths for the Purposes of Reinstatement Following Disturbance and Encroachment**

4.45. Where the width of a right of way is known, such as by being recorded in the Definitive Statement then this may be taken as the minimum width to which a path must be reinstated following ploughing or cropping.

4.46. If the width of the right of way is unrecorded, Schedule 12A of the HA 1980 makes provision for the “minimum width” for reinstatement by the occupier, which varies depending on the circumstances (see below). If the occupier fails to reinstate to the minimum standard and the authority undertakes the work itself, a maximum width for the reinstated surface is also set by Schedule 12A.

4.47. These minimum and maximum widths are:

- For cross-field paths:
  - Footpath: minimum width 1 metre and maximum width 1.8 metres.
  - Bridleway: minimum width 2 metres and maximum width 3 metres.
- For field-edge (headland) paths:
  - Footpath: minimum width 1.5 metres; maximum width 1.8 metres.
  - Bridleway: width must be 3 metres.
- For other highways
  - Byways, Restricted Byways and others: minimum width 3 metres; maximum width 5 metres.

4.48. The minimum width is the absolute minimum acceptable for path users. For crops such as oil seed rape, which are prone to collapse across a cleared way as they reach maturity, it will be necessary to clear the plants to a greater width than the minimum to ensure convenient passage. These minimum widths only apply in relation to the reinstatement of a public right of way following ploughing or disturbance and are not general widths to be applied in other circumstances.

## **Hazards**

### **Excavations**

- 4.49. Under s. 165 of the HA 1980 an authority may serve notice requiring a landowner to execute any necessary work of protection, repair, removal or enclosure to eliminate any source of danger on land adjoining a highway which is unfenced or inadequately fenced. The owner has a right to appeal such a notice. The authority may undertake the necessary works should the owner not comply, subject to any appeal, and recover the costs from the owner.

### **Barbed Wire**

- 4.50. Under s. 164 of the HA 1980 an authority may serve notice in writing upon the occupier of land adjoining a highway where barbed wire is likely to injure persons or animals lawfully using the highway. Such a notice should require the occupier to abate the nuisance caused by the barbed wire within a stated time (between one and six months from the date of the notice).

### **Dangerous Trees**

- 4.51. Under s. 154(2) of the HA 1980, authorities may serve notice on a landowner or occupier to remove any hedge, tree or shrub which is dead, diseased, damaged or insecurely rooted that is likely to cause damage to the highway by virtue of its condition. If the landowner or occupier does not comply, the authority may carry out the work itself and recover from them the cost of doing so.

### **Dangerous Structures**

- 4.52. Under the Building Act 1984, an authority has the power to deal with buildings, structures or parts of buildings or structures that are considered to be dangerous. These powers are most commonly exercised through an authority's Building Control function. These powers allow an authority to take action to remove or make safe such a structure should they be unable to find the owner to give them the opportunity to deal with the danger themselves.

## **Deterrence**

### **Signage**

- 4.53. It is an offence under s. 57 of the NPACA 1949 to place or maintain, on or near a public right of way shown on the Definitive Map, a notice or sign containing false or misleading information likely to deter the public from using that right of way. Section 57 places a duty on the authority to enforce these provisions.
- 4.54. Section 132 of the HA 1980 makes it an offence to paint, inscribe or affix any picture, letter, sign or other mark on the surface of a highway, or upon any

tree, structure or works in the highway without lawful authority. The authority has the power to remove any such sign.

- 4.55. Section 131(2) of the HA 1980 makes it an offence to pull down or obliterate a traffic sign or direction post.

### Intimidation

- 4.56. If a landowner (or occupier) challenges a member of the public by shouting or ejecting them from land, effectively deterring or preventing them from using the public right of way, the authority could be requested to fulfil their duty under s. 130 of the HA 1980 to assert and protect the rights of the public to use and enjoy public rights of way. Should this challenging conduct continue, it could be dealt with as an obstruction under s. 137.
- 4.57. Other courses of legal action include s. 4 of the Public Order Act 1986, the Protection from Harassment Act 1997, the Justices of the Peace Act 1361, as well as common law.
- 4.58. Where it appears that a public order offence has occurred, or could occur, authorities should consult their local police authority to assist in resolving the issue.

### Events

- 4.59. The use of public rights of way for organised sponsored walks, cross-country running challenges and similar events is generally considered to be acceptable, provided they reflect the rights available on the chosen route, i.e. not promoting a cycle race upon a footpath.
- 4.60. Promotion or participation in a motorised race or trial of speed on any highway is an offence under s. 12 of the RTA 1988.
- 4.61. Promotion or participation in any other motorised competition or trial (i.e. not a race or trial of speed) on a highway (which includes restricted byways) is an offence under s. 13 of the RTA 1988 unless the trial is authorised, and conducted in accordance with any conditions imposed, by the Welsh Ministers under regulations.
- 4.62. Promotion or participation in a trial between motor vehicles on a footpath, bridleway or restricted byway is an offence under s. 33 of the RTA 1988 unless authorised by the authority (subject to any conditions as the authority think fit) and with the written consent of the landowner and occupier.
- 4.63. It is an offence under s. 31 of the RTA 1988 to promote or participate in a race or trial of speed between cycles on a bridleway with no exception. The Welsh Ministers may authorise such trials on other public ways by regulations. The trials must be conducted in accordance with any conditions imposed by the regulations.

## Traffic Regulation Orders

- 4.64. Conflicts over the type of use may occur on some public rights of way and authorities should look to solve these where possible by management measures, based on cooperation and agreement. User groups will often agree to measures involving voluntary restraint, which they themselves will help to monitor.
- 4.65. Under the Road Traffic Regulation Act 1984, Orders can be made to prohibit, restrict or regulate traffic using particular highways, including footpaths, bridleways restricted byways and byways open to all traffic. The term "traffic" includes pedestrians and persons driving, riding or leading horses or other working animals. The Act sets out the purposes for which such Orders may be made. These include preventing danger to persons or other traffic using the road, preserving the character of the road for use by persons on horseback or foot and preserving the amenities of the area through which the road runs. The Welsh Ministers commend the use of such Orders to prevent inappropriate use and to protect the countryside where this is necessary and other management measures have failed or have been assessed to be inadequate.
- 4.66. Sections 14 and 15 of the Act, as substituted by Schedule 1 of the Road Traffic (Temporary Restrictions) Act 1991, also enable Temporary Traffic Regulation Orders to be made for periods of up to six months in respect of footpaths, bridleways, restricted byways, cycle tracks and byways open to all traffic, or up to 18 months for other highways. Orders may only be made due to works on or near the path; the likelihood of danger to the public or damage to the way; or for the purposes of litter clearing and cleansing. Authorities are required to have regard to the existence of alternative routes suitable for the traffic which would be affected by the Order.
- 4.67. Where landowners or utility companies apply for Temporary Traffic Regulation Orders on routes or roads that form part of the Wales Coast Path, a National Trail or regionally promoted route, they should attempt to ensure that, where access for users cannot be maintained through the closed highway, an appropriate diversion is provided and signed. Information should be supplied in advance providing details of any such order and the provisions made for users to continue their journey.
- 4.68. Sections 16A-C of the Act enable the traffic authority to restrict or temporarily prohibit, by order, the use of roads (including public rights of way) or any part of them for the purposes of facilitating the holding of a sporting, social or entertainment event; enabling members of the public to watch the event; or reducing disruption to the traffic likely to be caused by the event. This may be done to such extent and subject to such conditions or exceptions as the authority may consider necessary or expedient. In doing so, traffic authorities need to satisfy themselves that it is not reasonably practicable to hold the event other than on a road, that regard has been had to the safety and convenience of alternative routes suitable for the traffic which will be affected by the Order and that the Order would not have the effect of preventing, at

any time, access for pedestrians to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians from, and only from, the road. Orders will usually continue in place for a maximum of 3 days unless made or agreed by the Welsh Ministers.

- 4.69. A Temporary Traffic Regulation Order may only be extended by application to the Welsh Ministers. Consultation with local users prior to application for extension should be undertaken as described in Welsh Office Circular 31/92.
- 4.70. Temporary Traffic Regulation Notices may be issued for the same reasons where it appears that a restriction should come into force without delay. Notices may initially continue in force for 5 days, or for 21 days where issued due to the likelihood of danger to the public or damage to the way.

### Public Spaces Protection Orders

- 4.71. Public Spaces Protection Orders (PSPOs) were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 which came into force on 20 October 2014. The Act and the [regulations](#) made under the Act apply in both England and Wales. PSPOs can be used to prevent public access to certain classes of highway, including public rights of way, as well as to wider areas of open space. Public rights of way restricted by a PSPO do not cease to be regarded as a highway.
- 4.72. PSPOs replace Gating Orders and Dog Control Orders. Transition arrangements for any Gating or Dog Control Order in place when the Act came into force allow 3 years for them to be replaced by a PSPO.
- 4.73. Whilst the Countryside Code states that dogs should be kept under effective control, in replacing Dog Control Orders, a PSPO can be made to require people in public areas to:
- Keep a dog on a lead.
  - Put a dog on a lead if told to by a police officer, police community support officer or someone from the council.
  - Stop a dog accessing certain places – like farmland or parts of a park.
  - Limit the number of dogs that a person can have with them (this applies to professional dog walkers too).
  - Clear up after a dog.
- 4.74. Such controls may be required on public rights of way, for example where restrictions are necessary to protect nature conservation interests.
- 4.75. Further guidance is available within the publication, '[Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals](#)' published by the Home Office.

## 5. Recording the Network

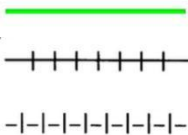
### The Definitive Map and Statement

- 5.1. A Definitive Map and Statement is conclusive evidence of the public's rights at the relevant date of that Definitive Map, or subsequent legal Order amending those rights. Once a highway has come into being, by whatever means and whether it is recorded or not, it continues indefinitely no matter whether it is used, unless there has been a legal Order closing or diverting the way.
- 5.2. Section 56 of the WCA 1981 states that the Definitive Map and Statement, taken together, provide the legal basis of rights of way and the limitations that go with them.
- 5.3. There may be additional public rights of way which are not recorded on the Definitive Map and Statement, or rights which are 'under recorded', for example showing a footpath where a bridleway exists.

### Footpaths

- 5.4. The depiction of a footpath is conclusive proof that the public had, at the relevant date, a right of way on foot. Footpaths are shown on Definitive Maps as continuous purple lines, continuous lines with short bars at intervals or broken black lines with short intervals.
 
- 5.5. The term footpath is defined for the purposes of the HA 1980 as meaning a highway over which the public have a right of way on foot only, not being a footway. A distinction is therefore drawn within the HA 1980 between footpaths and footways. Footways (i.e. pavements) also carry rights on foot only, but are part of highways that also comprise a carriageway (i.e. rights of way for the passage of vehicles) (see definitions of 'footway' and 'carriageway': s. 329 HA 1980). Invalid carriages, including wheelchairs and powered wheelchairs, may be used on both footways and footpaths by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not exceed a maximum speed of 4 mph on footpaths and should be used in accordance with prescribed conditions set out in [regulations](#).

### Bridleways

- 5.6. Bridleways are conclusive evidence at the relevant date of public rights on foot and on horseback or leading a horse and are shown on maps by a continuous green line, a continuous line with cross bars, or a broken line with cross bars in the intervals.
 
- 5.7. Section 30 of the CA 1968 expands public rights on bridleways to include a right to ride bicycles. However, in exercising that right, cyclists are required to give way to pedestrians and persons on horseback. Furthermore, the CA 1968 expressly provides that the expansion of rights to cyclists does not create any further obligation as respects maintenance or to do anything to

facilitate the use of the bridleway by cyclists. Electrically-assisted pedal cycles must meet the specification set out in the Electrically Assisted Pedal Cycles Regulations 1983, as amended by the Electrically Assisted Pedal Cycles (Amendment) Regulations 2015, in order to be considered such. As is the case on footpaths, invalid carriages, including wheelchairs and powered wheelchairs, may be used on bridleways by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not exceed a maximum speed of 4 mph on bridleways and should be used in accordance with prescribed conditions set out in [regulations](#).

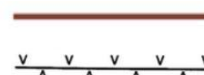
## Restricted Byways

- 5.8. The CROW 2000 created a new category of highway - restricted byways - carrying a public right of way on foot, on horseback or leading a horse, and for vehicles other than mechanically propelled vehicles. From 16 November 2006, ways which were shown in Definitive Maps and Statements as roads used as public paths (RUPPs) were reclassified as restricted byways. Restricted byways use the notation previously reserved for RUPPs, being a broken green line or a broken line with small arrowheads.
- 5.9. As above, invalid carriages, including wheelchairs and powered wheelchairs may be used on restricted byways by virtue of the Chronically Sick and Disabled Persons Act 1970 (see definition of 'footway' under s20 of the Chronically Sick and Disabled Persons Act 1970 – 'restricted byway' inserted by SI2006/1177). Powered wheelchairs must not exceed a maximum speed of 4 mph on restricted byways and should be used in accordance with prescribed conditions set out in [regulations](#).



## Byways Open to All Traffic

- 5.10. A byway open to all traffic (BOAT) is a vehicular right of way carrying rights for users of mechanically propelled vehicles, which is used by the public mainly for the purposes for which footpaths and bridleways are used. Byways open to all traffic are shown by either a continuous brown line or by a continuous line with arrowheads alternatively above and below the line. In the case of byways open to all traffic, class 3 invalid carriages may be used to their maximum speed of 8 mph. Use must still be in accordance with prescribed conditions set out in [regulations](#).



## Maintaining the Definitive Map and Statement

- 5.11. Authorities are responsible for Definitive Maps and Statements. They have a duty to keep them as up to date as possible, taking account of all of the available evidence in order to maintain a Definitive Map and Statement of the highest attainable accuracy. Authorities should give priority to producing an up to date Map and Statement on which all public rights of way are recorded and which covers all of the area for which they are responsible.

- 5.12. Section 53 of the WCA 1981 requires authorities to keep their Definitive Maps and Statements under continuous review and to modify them by way of Orders where they are shown to be wrong or incomplete. The starting point is the Definitive Map and Statement for a particular area as defined in s. 53(1) and, until replaced by a modified Map and Statement prepared in accordance with the provisions of s. 57(3), may be:
- The latest Definitive Map and Statement following the completion of a review carried out under s. 33 of the NPACA 1949 Act as originally enacted, or as amended by the CA 1968; or
  - Where no review took place, or the first review was abandoned under the provisions of s. 55 of the WCA 1981, the original Definitive Map and Statement prepared under s. 32 of the NPACA 1949; or
  - For those former county boroughs and other excluded areas for which the survey provisions were never adopted or for areas where a survey was begun, but abandoned, the Map and Statement prepared under s. 55(3) of the WCA 1981.
- 5.13. Section 57(3) of the WCA 1981 enables authorities to consolidate Modification Orders into a new Map and Statement. Section 57A enables authorities to prepare a consolidated Map for the whole of the area for which they are currently responsible. The relevant date of a new Map and Statement should be not more than six months before the date on which it is prepared, and should be later than the relevant date of the last Modification Order consolidated into it.
- 5.14. Section 53(2) of the WCA 1981 requires the Definitive Maps and Statements to be continuously reviewed by authorities. It requires authorities to modify their Definitive Maps and Statements by Order as soon as reasonably practicable after the occurrence of any of the events specified in s. 53(3).
- 5.15. Section 53(2) distinguishes between events which occurred before the commencement of the WCA 1981 on 28 February 1983 (s.53(2)(a)) and those which occurred afterwards (s.53(2)(b)). This distinction is significant as the enabling section must be cited within the preamble of modification orders.
- 5.16. Authorities are not required to have completed modification of their Maps and Statements for all events which preceded the commencement of the WCA 1981 before embarking on modifications relating to subsequent events: both are to be done at the same time. It is also possible for a single Modification Order to be based on several events that qualify under both s. 53(2)(a) and s. 53(2)(b), where that is considered appropriate.
- 5.17. Where, with regard to former roads used as public paths, a way is shown in the Map with the restricted byway notation, but is described in the Statement as a highway of another description, authorities should establish the correct status of the way and, in accordance with their duty under s. 53 of the WCA 1981, modify the Map and Statement appropriately. Any applications for Orders to modify the status of a road used as public path which were made

before 16 November 2006 are to be determined under the WCA 1981, subject to s. 67 of the NERC 2006.

## Modifying the Definitive Map and Statement

- 5.18. The events to be considered in relation to the modification of Definitive Maps and Statements are set out in s. 53(3) of the WCA 1981.
- Subsection 3(a) concerns necessary changes to the Definitive Map and Statement consequent upon the confirmation of Orders under highways and other legislation and Magistrates' Court Orders under s. 116 of the HA 1980.
  - Subsection 3(b) concerns the presumed dedication of footpaths, bridleways and restricted byways at common law or by virtue of s. 31 of the HA 1980. It can apply to ways shown on the Definitive Map and Statement but over which greater rights are now presumed to have been dedicated.
  - Subsection 3(c) relates to the discovery by authorities of evidence which shows that a right of way not shown on the Map and Statement subsists, or is reasonably alleged to subsist, and should be shown; or that a right of way already shown ought to be shown as a right of way of a different description; or that a right of way does not exist and should be removed, or that the particulars contained in the Map and Statement require modification.
- 5.19. Authorities should not make an Order to update the Definitive Map and Statement under subsection 3(a) until, where they are required to do so, certification or notification has been issued that the effect of the relevant Public Path Order or Magistrates' Court Order has taken place on the ground. These subsection 3(a) Definitive Map Modification Orders take effect on being made.
- 5.20. When deciding whether a way ought to be shown on the Definitive Map and Statement as a byway open to all traffic, authorities should examine the characteristics of the way. Relevant case law suggests that, for a carriageway to be a byway open to all traffic, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use, but the character, type and suitability for use by walkers and horse riders rather than vehicles may be considered. Further information is available in the Planning Inspectorate's Rights of Way [Advice Note 8](#). Where a way presumed to have been dedicated as a highway for all purposes under s. 31 of the HA 1980 also satisfies the definition of a byway open to all traffic, authorities may make an Order to add the way to the Definitive Map and Statement under s. 53(3)(c)(i) of the Act, subject to the provisions described in paragraph [5.56](#).
- 5.21. The restricted byways implementing legislation provides that restricted byways may also be recorded. The NERC 2006 amended the HA 1980 to permit the addition of restricted byways, by means of an Order made under the WCA 1981, to the Definitive Map and Statement on the basis of user or documentary evidence. Section 68 of the NERC 2006 also amends the HA

1980 so as to clarify that a qualifying period of use by pedal cycles may give rise to a restricted byway, but case law indicates that such use is capable of giving rise to bridleway rights only when considering past use.

- 5.22. Authorities should keep records of authorisations given under s. 147 of the HA 1980, and agreements made under s147ZA of the same Act, and are encouraged to make those authorisations available for public inspection alongside the Definitive Map and Statement. However, the Welsh Ministers do not consider that the duty to keep the Definitive Map and Statement under continuous review includes a requirement to record the existence of a s. 147 or s. 147ZA authorisation or agreement on the Map and Statement. The only way in which such an authorisation or agreement could be recorded on the Definitive Map and Statement is by an Order under s. 53(3)(c)(iii). Section 53(4) makes clear that a Definitive Map Modification Order may add details of limitations affecting the right of way to the statement.

### Applications for Definitive Map Modification Orders

- 5.23. Section 53(5) of the WCA 1981 enables any person to apply to the authority for an Order to be made modifying a Definitive Map and Statement as respects any of the events specified in s53(3)(b) or (c) of the WCA 1981. The procedure for making and determining applications is set out in Schedule 14 to the WCA 1981. Persons are not entitled to apply for a Definitive Map Modification Order under s. 53(3)(a) of the WCA 1981.
- 5.24. The form of application is prescribed in regulation 8 of [the Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1993](#) and set out in Schedule 7 to those regulations. Submitted applications must be accompanied by a map to a scale of not less than 1:25,000 showing the claimed rights of way which are the subject of the application and copies of any supporting evidence, including statements of witnesses. It is sufficient for the maps accompanying an application to have been digitally derived from an original map of larger than 1:25,000 so long as the scale of the application map as presented during application is less than 1:25,000. Whilst an authority may waive some of the requirements of Schedule 14 of the WCA 1981 in deciding whether or not to accept an application, case law has made it clear that in the case of an application to recognise a byway open to all traffic (whether by upgrading an existing way or by the first recording of any public rights on a way) the claimed mechanically propelled vehicle rights, otherwise automatically extinguished, are preserved under s. 67(3) and (6) of the NERC 2006 only if the full stated requirements of Schedule 14 to the WCA 1981 are met.
- 5.25. Notice that an application for an Order has been made must be served by the applicant on every owner and occupier of the land involved. Applicants who cannot find out the name or address of the owner or occupier of the land may apply to the authority for exemption from the requirement to serve a personal notice, and for its direction that notice be served instead by addressing it to the owner or occupier of the land (as described in the notice) and affixing it to a conspicuous object on the land. Such a direction should not normally be

withheld if the applicant can show that he or she has made every reasonable effort to identify the owner or occupier of the land. Finally, a certificate must be supplied to the authority, by the applicant, to inform it that notice of the application has been served on all of the landowners and occupiers concerned, subject to the provisions made for instances where land ownership cannot be determined. The forms of the notice and certificate are prescribed by regulation 8 of, and Schedules 8 and 9 to, the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

- 5.26. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant town or community councils, decide whether to make an Order on the basis of the evidence discovered. If no decision has been reached within 12 months (dated from when the applicant had served notice on the affected landowners and occupiers), the applicant has the right to ask the Welsh Ministers to direct an authority to reach a decision on an application. The Welsh Ministers, in response to such a request, will take into account:
- Any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date.
  - The reasonableness of such priorities.
  - Any actions already taken by the authority or expressed intentions of further action on the application in question.
  - The circumstances of the case.
  - Any views expressed by the applicant.
- 5.27. Decisions on applications must be served on the applicant and on the owner and occupier of the land involved. Reasons should be given where an application is refused.
- 5.28. In the event of an authority refusing to make an Order, the applicant has a right of appeal to the Welsh Ministers against that decision. Appeals must be lodged with the Planning Inspectorate within 28 days from the date on which the authority serves notice on the applicant of its decision. Appeals should be made in writing, giving grounds for the appeal, and be accompanied by copies of the application, the map showing the way concerned, the supporting documentation and the authority's decision. A copy of the notice of appeal must also be served on the authority but without the accompaniments. The Welsh Ministers, in considering an appeal, are required to decide, following review of the available information, whether an Order should be made and if so to direct the authority accordingly. The Welsh Ministers are not empowered to authorise the modification of the Definitive Map and Statement or to make an Order themselves.
- 5.29. Authorities must record all applications for Definitive Map Modification Orders and the outcomes of those applications in a register that is available to the public.

## Order Making

- 5.30. Before making an Order, authorities must consult other local authorities (including town and community councils) in whose area the way is located. In accordance with s. 53(2)(b) of the WCA 1981, authorities should make the Order as soon as reasonably practicable after they have concluded that one should be made, or after having been directed by the Welsh Ministers to do so following a successful appeal under Schedule 14 of the WCA 1981.
- 5.31. Orders made under the WCA 1981 reflect specified rights which are already claimed to exist (or not to exist in the case of downgrading or deletions) based on evidence gathered and therefore there is no wider statutory duty to consult beyond other local authorities. Nevertheless, seeking information more widely about a proposed WCA 1981 Order could produce additional material relating to its existence or true status and may pre-empt misunderstandings, resolve objections and reduce conflict. The prescribed organisations (see Annex 1) are a starting point for the organisations to be consulted, but authorities should not regard these as the only organisations that they should consult.
- 5.32. The forms of the various Orders provided for by the WCA 1981 are prescribed in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. Where appropriate, the prescribed form makes provision for alternative entries in the schedule to the Order for the different modifications that can be made to Definitive Maps and Statements i.e. additions, deletions, changes in status and the modification of written statements as the circumstances of each case may require.
- 5.33. Authorities should include sufficient, accurate information to allow the way to be unambiguously identified. They should include information about the width of ways to be added to the Definitive Map and Statement. Authorities should also record limitations and conditions, for example: gates and stiles along the way, and any other specification which is appropriate. This provision is only applicable where the dedication of the route was subject to such limitations. For example, it would be inappropriate to include a gate as a limitation where the gate was installed after a period of use giving rise to a statutory dedication. In these circumstances, the gate, or any other structure, would be regarded as an obstruction unless its installation fulfilled certain conditions and was formally authorised by the authority.
- 5.34. The scale of the map referred to in the Order is prescribed in the 1993 Regulations and must be not less than 1:25,000, although larger scale maps should be used wherever practicable. The scale, orientation and grid references should be clearly shown on the map. Apart from deletions, the notation used to depict the various classes of right of way is prescribed in the Regulations for Definitive Maps and Statements. For deletions, a continuous bold black line is recommended.
- 5.35. Since there is no procedure for the correction of errors once an Order has been confirmed (limited powers exist for an Inspector to modify Orders prior to confirmation), other than the result of the discovery of evidence, particular

attention should be paid to the preparation of Orders to ensure that the Order map and schedule do not conflict. Moreover, since Orders effectively modify the Definitive Map and Statement on confirmation, and are therefore subject to the provisions of s. 56(1) of the WCA 1981 regarding the conclusive evidential effect of Definitive Maps and Statements, the Order map and schedule serve effectively the same function respectively as the Definitive Map and Statement.

- 5.36. The procedure for making and determining whether or not to confirm Definitive Map Modification Orders under s. 53(2)(a) and (b) is set out in Schedule 15 to the WCA 1981. The Schedule provides for the publication of notices announcing the making of Orders, the consideration of representations and objections, and the modification of Orders.

### Publicity for Orders

- 5.37. The content of notices announcing the making of Orders and the publicity to be given to them are set out in paragraph 3 of Schedule 15 to the WCA 1981. The notice must be published in at least one local newspaper circulating in the area in which the land to which the Order relates is situated. It should be noted that a newspaper is defined as being published periodically or at intervals not exceeding twenty-six days between the publication of any two such papers. An authority's own widely distributed paper may be used, provided it meets this definition. In addition, a copy, together with a copy of the Order or relevant extract from the Order, should be served on:

- Every owner and occupier of that land.
- The relevant town and community council.
- The prescribed organisations.
- Other persons as the authority considers appropriate, such as a National Park authority and other local organisations which are recognised as being representative of user interests.

- 5.38. The description in the notice of the general effect of the Order should be sufficient to enable the public to understand its fundamental purpose and to identify the rights of way involved. The notice published in the local newspaper will not be accompanied by a plan and it is therefore helpful for key points of the route to be referenced by features on the ground as well as by grid references.
- 5.39. A copy of the notice must be displayed in a prominent position at both ends of the way. The notice must be accompanied by a plan illustrating the effect of the Order. However, whilst maps prepared as part of the Order are required to be at the appropriate scale, this may result in a map that is too large to display on site. In such instances, it may be appropriate to display a smaller plan on site depicting the effect of the Order. The notice must also be available at council offices in the locality and any other places considered by the authority to be appropriate. The places should be reasonably accessible to local people. Authorities should serve and display notices of the making of an Order at the same time as the notice is published. A copy of the notice should

also be sent to any person who has requested to be sent copies, and who has paid for this service. Authorities may also wish to make use of their websites to publicise Orders.

- 5.40. Authorities are reminded of their obligations in relation to parity for the Welsh language (para 2.31-2.35) and that notices on site and in the press should therefore be published in English and Welsh.
- 5.41. Section 70A of the WCA 1981 states that the notices served in connection with WCA 1981 processes should be by one of the methods described in s. 329 of TCPA 1990. Ordinarily, this will be by delivering it in person to the addressee or their usual address; by posting it by recorded delivery; or by email where an email address has been given.

### Representations and Objections

- 5.42. Authorities should seek to forestall representations and objections by prior discussion with landowners, users and representative organisations. They should also try to resolve representations and objections when they have been made.
- 5.43. The period for making representations and objections must be not less than 42 days from the date of publication of the notice that an Order has been made.
- 5.44. Paragraph 3(8) of Schedule 15 to the WCA 1981 permits any person, at any time before the objection period expires, to require the authority to provide, within 14 days of the receipt of the request, details of any documents it took into account in making the Order. There is also provision for people to inspect and take copies of relevant documents in the possession of the authority and to be informed by the authority of the whereabouts of such documents not in its possession.

### Confirmation of Orders

- 5.45. Authorities may confirm Orders that are unopposed, or in respect of which all the representations and objections have been withdrawn. Authorities must submit Orders in respect of which there are representations or objections, and Orders which are unopposed but require modification, to the Welsh Ministers. The Planning Inspectorate, which administers this process on behalf of the Welsh Ministers, has a [checklist](#) of documents which must accompany Orders submitted for a decision on whether or not they should be confirmed.
- 5.46. Paragraph 5 of Schedule 15 to the WCA 1981 states that where one Order contains one or more modifications to the Definitive Map or Statement in respect of which there are representations or objections, and other modifications in respect of which there are no such representations or objections, the authority can confirm the unopposed part of the Order, which has the effect of modifying the Definitive Map and Statement to the extent of the confirmed part. The authority must then submit that part of the Order in respect of which there are representations or objections to the Welsh

Ministers to consider whether or not to confirm it. Authorities must notify the Planning Inspectorate when they intend to do this. Any element of an Order that is subdivided for partial confirmation in this way must appear to be capable of confirmation in its own right.

### **Publicising Decisions on Orders**

- 5.47. The requirements for publicising confirmed Orders and the non-confirmation of Orders are specified in paragraph 11 of Schedule 15 to the WCA 1981. Confirmed Orders are given the same publicity as that given to made Orders. A copy of the decision not to confirm an Order must be served on the same persons on whom notice of the making of the Order was served.
- 5.48. Copies of all confirmed Orders made under s. 53 (including Orders made under s. 53A which have the effect of modifying the Definitive Map and Statement) and s. 54 (where outstanding Orders to reclassify roads used as public paths are being determined to a conclusion) must be sent to the Ordnance Survey at the time of confirmation.

### **Deletion or Downgrading of Ways Shown on the Definitive Map and Statement**

- 5.49. Once prepared, and until subsequently revised, the Definitive Map and Statement is conclusive evidence in rights of way disputes. Authorities are under a duty to make an Order modifying the Definitive Map and Statement where they have evidence that a public right of way should be downgraded or deleted. They may discover evidence themselves, or evidence may be presented with an application to modify the Map and Statement.
- 5.50. Notwithstanding the clear starting point in relation to the possible deletion or downgrading of a right of way, the powers in s. 53(3) of the WCA 1981 include the making of Orders to delete or downgrade rights of way shown on the Definitive Map and Statement in cases where evidence shows that rights did not exist at the time when they were first shown on the map. In making such an Order, the authority must be able to say, in accordance with s. 53(3)(c)(ii) or (iii), that:
- A highway of a particular description ought to be shown on the Map and Statement as a highway of a different description; or
  - That there is no public right of way over land shown in the Map and Statement as a highway of any description.
- 5.51. The evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement – and this would equally apply to the downgrading of a way with “greater” rights to a way with “lesser” rights – will need to fulfil certain stringent requirements. These are that:
- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time

the Definitive Map was surveyed and made or considered in a previous application.

- The evidence must be of sufficient substance to displace the presumption that the Definitive Map is correct.
- The evidence must be cogent.
- There must be positive evidence of any erroneous recording.

- 5.52. While all four conditions should be met, they should be considered in the order listed. Before deciding to make an Order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified.
- 5.53. Applications may be made to an authority under s. 53(5) of the WCA 1981 to make an Order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way, or that a right of way is of a lower status than that shown, to prove that the Map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence, clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to the Act, to investigate the matters stated in the application; however it is not for the authority to demonstrate that the Map reflects the true rights, but for the applicant to show that the Definitive Map and Statement should be revised to delete or downgrade the way.
- 5.54. In the case of deletions, it has previously been argued that a case for presumed dedication could be established on a way that had formerly been recorded on the Definitive Map but which was found, subsequently, to have been recorded in error. These were based on the belief that the use of the way, between the first recording of the way on the Definitive Map and Statement and when it was determined that an error had been made, could give rise to presumed dedication. The Welsh Government's advice is that this argument is incorrect. Instead, it is the Welsh Government's view that use of the way in such circumstances cannot be "as of right" for the purpose of presumed dedication, as rights that cannot be prevented cannot be acquired. It is not possible for a right of way to be dedicated for the purposes of s. 31 of the HA 1980 when use of the way is by virtue of it having been shown on the Definitive Map but which is subsequently removed.

### **Preparation of Definitive Maps and Statements for Excluded Areas**

- 5.55. The WCA 1981 extended the requirement to have a Definitive Map and Statement to the whole of Wales and authorities whose areas include areas previously excluded from the requirement for a survey are now under a duty to produce a Definitive Map and Statement using the provisions of the WCA 1981. Authorities are recommended to build a comprehensive record through adding routes to a "blank" Map and Statement by means of Orders made under s. 53 of the WCA 1981.

## Extinguishment of Certain Rights under Part 6 of NERC 2006

- 5.56. Section 67(1) of the NERC 2006 extinguished, with effect from 16 November 2006, all unrecorded public rights of way for mechanically propelled vehicles, with certain exceptions. The exceptions were, broadly, for highways that were part of the 'ordinary roads' network, or highways that had been expressly created or dedicated as a public right of way for mechanically propelled vehicles. The Act provided for additional exceptions where, in certain cases, there were long standing duly-made applications, under s. 53(5) of the WCA 1981, to have a byway open to all traffic added to the Definitive Map and Statement. The Act also curtailed the scope for the future creation of public rights of way for mechanically propelled vehicles by providing that they can only come into existence where they are expressly created for such vehicles.

## List of Streets

- 5.57. Section 36(6) of the HA 1980 requires authorities to make and keep up to date a list of streets within their area which are highways maintainable at public expense. Lists are therefore required to include, in so far as they are publicly maintainable, the whole or any part of any of the following:
- Any highway, road, lane, footway, alley or passage.
  - Any square or court.
  - Any land laid out as a way whether it is for the time being formed as a way or not.
- 5.58. As a result, the list of streets is required to include all of those ways shown on the definitive map that are maintainable at public expense, in addition to any other publicly maintainable highway.
- 5.59. The form in which the list of streets should be kept and the details included within it are not specified. The list of streets may, however, take the form of a map. Whilst many copies of that map may exist, only one will be an authoritative record.

## Unclassified Roads on the List of Streets

- 5.60. When an application is made under the WCA 1981 to add a public right of way to the Definitive Map and Statement, the inclusion of an unclassified road on the HA 1980 list of highways maintained at public expense may provide evidence of vehicular rights. However, this is not conclusive and must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

## 6. Changing the Network

- 6.1. There is a legal process that must be followed when a right of way is to be closed or diverted. This is normally done by an authority making a Public Path Order under the HA 1980 or the TCPA 1990.
- 6.2. The HA 1980 allows footpaths, bridleways and restricted byways to be created, diverted and extinguished. The Act also provides for special Orders to be made in certain circumstances and enables authorities to make applications to the Magistrates' Court to alter public rights of way, including byways open to all traffic.
- 6.3. The TCPA 1990 enables authorities to stop up or divert public footpaths, bridleways and restricted byways as well as to create or improve alternative highways as replacements, but only where they are affected by development. The Act also allows the Welsh Ministers to make similar changes to any highway.
- 6.4. Orders under the HA 1980 are based on the expediency of a desired change, subject to public use or interest tests. Orders are typically made either in the interests of the public, a cross section of the public or of interested parties as set out in the relevant section.
- 6.5. The TCPA 1990 can be used to change the network when planning permission is given. Orders can be made to alter or extinguish routes because they would otherwise be incompatible with the consented development. When it is expedient to change the network due to or in association with development, use of the HA 1980 is not precluded. However, Orders under the HA 1980 are subject to specific public interest tests.
- 6.6. Changes can also occur as a result of legal instruments made other than by an authority. These include Side Road Orders and Acts made by the National Assembly for Wales.

### Public Path Orders – Highways Act 1980

#### Public Path Creation Orders

- 6.7. Section 26 of the HA 1980 gives an authority the power to create:
  - Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.8. Authorities can make Orders creating routes where it appears to them that a path or way is needed and that it is expedient for a way to be created. When making this judgment, authorities must have regard to the extent to which the new way would add to:
  - The convenience or enjoyment of a substantial section of the public; or

- The convenience of persons resident in the area.

6.9. In both cases, the effect that the creation would have on the rights of persons interested in the land must also be considered, alongside the Act's provisions as to compensation (s. 28, HA 1980). Authorities must also have due regard to:

- The needs of agriculture (including the breeding or keeping of horses).
- The needs of forestry.
- The desirability of conserving flora, fauna and geological and physiographical features.

6.10. When having regard to the provisions for compensation in section 28, it is preferable to proceed with the consent of the landowner and, if necessary, to seek to agree compensation at an early stage. It will often be the case that Creation Orders are made at the same time as other Orders (as described below) but they are also useful where agreement is impossible or inappropriate, e.g. where it has not been possible to identify the landowner or where an owner agrees to a creation but lacks legal capacity to dedicate in an agreement.

6.11. When making an Order under s. 26 the HA 1980, the authority should consider any works that will be required to make the way fit for public use. If necessary, the Order should state that it does not take effect for a stated number of days following confirmation so that such works can be undertaken and completed. Where the work has been completed prior to confirmation, no such period is required.

6.12. Prior to confirming an Order, an authority must consider any material provisions in any current Rights of Way Improvement Plan for the area.

### Public Path Extinguishment Orders

6.13. Section 118 of the HA 1980 gives an authority the power to extinguish:

- Footpaths;
- Bridleways; or
- Restricted byways.

6.14. When *making* such an Order, the authority must be satisfied that it is expedient that the way should be stopped up because it is not needed for public use.

6.15. Prior to *confirming* an Order, the authority or, if the Order is opposed, the Welsh Ministers, must be satisfied that confirmation is expedient having regard to:

- The extent to which that the path or way would, apart from the Order, be likely to be used by the public.

- The effect of the extinguishment on land served by the path or way, account being taken of the provisions as to compensation.

When considering these matters, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded (s. 118(6), the HA 1980).

- 6.16. The expediency assessment that is required at the Order-making stage is therefore different from that required when the Order is confirmed. At confirmation, the decision-maker does not have to be satisfied that the way is not needed for public use. An Order could therefore be confirmed even where the way was likely to be used to a limited degree, but where the decision-maker concluded that extinguishment was still expedient in the circumstances.
- 6.17. Temporary circumstances for the purpose of s. 118(6) should be interpreted broadly. The Courts have previously found temporary circumstances to include obstructions that may have the appearance of permanent features, but which could be removed by appropriate legal means - such as an electricity sub-station, a pine tree and a 12ft high laurel hedge.
- 6.18. Ways need not be shown on the Definitive Map and Statement before they can be extinguished, but authorities must be satisfied as to the status of ways before making an Extinguishment Order.

### Public Path Diversion Orders

- 6.19. Section 119 of the HA 1980 gives an authority the power to divert:
- Footpaths;
  - Bridleways; or
  - Restricted byways.
- 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. Compensation provisions also extend to Diversion Orders (s. 28 of the HA 1980).
- 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.
- 6.22. The authority must also be satisfied that the Diversion Order does not alter the point of termination of the way:
- If that point is not on a highway (e.g. it ends at the sea shore, or at a viewing point); or

- Where it is on a highway, otherwise than to another point which is on the same highway, or another highway connected with it, and which is substantially as convenient to the public.
- 6.23. A Diversion Order may in part follow an existing path or road, but the Order should not be used to close a path where a substantial part of the alternative route is already subject to a public right of way. Otherwise, the tests appropriate to a Public Path Extinguishment Order would be improperly side-stepped.
- 6.24. A Diversion Order can only amend the Definitive Map and Statement insofar as the course or line of the right of way is concerned; it cannot alter the status of the way. For example, a Diversion Order can neither downgrade a bridleway to a footpath, nor upgrade a footpath to a bridleway. However, where, as set out above, a diverted route is coincident in part with an existing right of way, the status of either the existing or diverted right of way may change as a consequence of the other right of way having a different status. Clearly, where two rights of way of differing status were coincident, the superior rights would prevail along the coincident section.
- 6.25. Authorities may consider concurrent Creation and Extinguishment Orders where the termination of points of existing and/or proposed paths render a Diversion Order inappropriate (e.g. alteration of a cul-de-sac path).
- 6.26. In deciding whether to make a Diversion Order, it is advisable to consider both the tests for making the Order and for confirming the Order. Even if all the tests are met, the authority may still exercise its discretion not to make an Order.
- 6.27. Before confirming an Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- It is expedient in the interests of the person(s) stated in the Order that the line of the path be diverted (subject to the constraints on altering the point of termination: see para. 6.22 above).
  - That the diverted path will not be substantially less convenient to the public (which can include, for example, comparing the lengths of the current and proposed paths and the difficulty of walking them).
  - That it is expedient to confirm the order having regard to the effect which:
    - The diversion would have on the public enjoyment of the path or way as a whole.
    - The Order would have on other land served by the existing public right of way, taking into account provisions for compensation.
    - Any new path or way would have on the land over which it is to be created and any land held with it, again taking into account provisions for compensation.
  - Regard has been given to any material provisions included within any extant Rights of Way Improvement Plan for the area.

- 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.
- 6.29. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way). In such circumstances, the Diversion Order should not be confirmed, since a Diversion Order cannot be confirmed if the path or way will be substantially less convenient to the public in consequence of the diversion.
- 6.30. Unlike section 118 of the HA 1980, section 119 does not explicitly require the decision-maker to disregard temporary circumstances – for example, any buildings or structures preventing or diminishing the use of the existing way – when considering whether to make or confirm a Diversion Order. The Planning Inspectorate [Advice Note 9](#) states that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent.
- 6.31. Section 119(3) of the HA 1980 requires the authority to consider if any works will be required to bring the way into a fit condition for public use. If such works are necessary, the Order should state: (i) that the diversion of the footpath does not take effect for a specified number of days following confirmation to allow those works to be carried out; and (ii) the extinguishment of the current footpath also does not take effect until the highway authority certifies that the works have been carried out.
- 6.32. Ways need not be shown on the Definitive Map and Statement before they can be diverted but, as with a s. 118 Order, authorities must be satisfied as to the status of ways before making an Order.

### **Creation Agreements – Highways Act 1980**

- 6.33. Section 25 of the HA 1980 provides for the creation of a footpath, bridleway or restricted byway by agreement.
- 6.34. When making an agreement, the authority should consider any works that will be required to bring the way into a fit condition for public use. If necessary, the agreement should state that it does not take effect until any specified conditions have been complied with. The agreement may include provision for compensation and state limitations for the new way, so long as those limitations are not incompatible with the path being recorded as a public right of way. Any way that is created by s. 25 of the HA 1980 becomes maintainable at public expense.

- 6.35. Agreements may only be entered into with the owner of the land crossed by the proposed path and authorities should satisfy themselves of the capacity of the other party through inspection of deeds or registered title. A party cannot enter into an agreement with itself. As such, it is not possible for an authority to make a s. 25 agreement for a new public right of way on its own land. Consideration should instead be given to a dedication of rights by deed under s. 1 of the Localism Act 2011 or to a Creation Order under s. 26 of the HA 1980.
- 6.36. When an agreement is made, the authority must ensure that the path is physically laid out on the ground and give notice in at least one local newspaper circulating in the area. Whilst an authority must consult other local authorities if the land affected lies within the adjoining authority's area, there is no requirement to consult users before entering into an agreement. Authorities are recommended, however, to notify town and community councils and user organisations about the ways created.
- 6.37. Creation agreements which are conditional and rely on the confirmation of an associated Order cannot be taken into account when determining applications for those Orders. A sealed unconditional creation agreement already in force can be considered however.

## **Special Public Path Orders – Highways Act 1980**

### **Rail Crossing Order**

- 6.38. Rail operators have the right to apply, under s118A or s119A of the HA 1980, as appropriate, to an authority for Rail Crossing Orders, which extinguish or divert footpaths, bridleways, or restricted byways that cross railways by means of level crossings. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 prescribe the information the rail operator must supply when applying for a Rail Crossing Order, and the form of Orders and notices. It will usually be for the operator to justify the need for the Order and, while some information relating to the use of the path may be available from the highway authority or other sources, the operator is expected to make the best assessment on the information available. In addition, the operator should include proposals as to how the crossing will be stopped up securely should an Order be successful. Applications which are not in the appropriate form (i.e. as prescribed in these regulations or in a form substantially to the like effect), or which fail to supply the required information, cannot be accepted as validly made.
- 6.39. Since Rail Crossing Orders are intended primarily to address the question of public safety, it is essential that authorities deal with all such applications promptly. Where a valid application has been made and an authority has neither confirmed the Order, nor submitted it to the Welsh Ministers for confirmation within 6 months of receipt, s. 120(3A) of the HA 1980 provides that the Welsh Ministers may make the Order without consulting the authority, although this will normally be done in response to a written request from the operator.

- 6.40. Section 118A(1) provides for the extinguishment of a footpath, bridleway or restricted byway that crosses a railway, otherwise than by a tunnel or bridge, where it appears to the authority expedient in the interests of the safety of members of the public using it, or likely to use it. Care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway. Section 118A(2) provides that the Order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way.
- 6.41. Before confirming the Order, the Welsh Ministers, or the authority in the case of unopposed Order, must be satisfied in accordance with s. 118A(4) that it is expedient to do so having regard to all the circumstances, and in particular to whether it is reasonably practicable to make the crossing safe for public use, and to any arrangements made for ensuring that any appropriate barriers and signs are erected and maintained if the Order is confirmed. Other considerations may include:
- The extent of use currently made of the existing path.
  - The risk to the public of continuing such use.
  - The effect that the loss of the path would have on users of the public rights of way network as a whole.
  - The opportunity for taking alternative measures to deal with the problem, such as a Diversion Order or a bridge or tunnel and the relative cost of such alternative measures.
- 6.42. Where an Order is confirmed, signs should be erected at both ends of the extinguished way informing users of the extinguishment and advising them of the nearest alternative route. Authorities should also consider whether to provide a map or to erect signposts and waymarkers showing the alternative route. Section 118A(5) provides that authorities may require the operator to enter into an agreement to defray, or contribute towards, any expenses incurred in connection with the erection or maintenance of any barriers or signs.
- 6.43. Section 119A(1) provides for the diversion of a footpath, bridleway or restricted byway that crosses a railway, otherwise than by a tunnel or bridge, where it appears to the authority expedient in the interests of the safety of members of the public using it or likely to use it. As such an Order must not be confirmed unless the decision-maker is satisfied that it is expedient in all the circumstances, authorities are also advised to consider whether the new way would be reasonably convenient to the public and the effect it would have on the land served by the existing path or way, and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way would have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway.
- 6.44. Under s. 119A(6) the Diversion Order may require the railway operator to maintain all or part of the way created by the Order and under s. 119A(8), the

authority may require the operator to enter into an agreement to defray part, or all, of any compensation that may be payable, together with any expenses reasonably incurred in connection with the erection and maintenance of barriers and signs or in making up the new way. As with Rail Crossing Extinguishment Orders, the operator must ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted. Authorities should consider whether it is necessary to provide a map showing the alternative route, or to erect signposts and waymarks for this purpose.

- 6.45. Section 119A(7) makes the extinguishment element of a Rail Crossing Diversion Order subject to the satisfactory physical implementation of the replacement section of the way, mirroring the provision made in s. 119(3) for public path diversions (see section 6.32 above).

### **Crime Prevention Special Order**

- 6.46. Sections 118B and 119B of the HA 1980 currently apply in Wales only insofar as they relate to Schools Protection Special Orders. Therefore, in Wales, the provision made under these sections does not currently extend generally to the making of Crime Prevention Special Orders for closure or diversion of rights of way on the grounds of crime prevention in designated areas.
- 6.47. Public Space Protection Orders may be a more appropriate response to crime and anti-social behaviour if it is desired to preserve the public rights for possible physical reinstatement of a route at a later date (para 4.71-4.76).

### **Schools Protection Special Order**

- 6.48. Sections 118B and 119B of the HA 1980 enable authorities to close or divert a right of way that crosses school land, if expedient, for the purpose of protecting pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health or safety arising from such activity.
- 6.49. Prior to the confirmation of an Order made under s118B and s119B, the Welsh Ministers or, in the case of uncontested Orders, the authority, must consider the expediency of doing so with regard to other measures that could have been taken to secure the school and the likelihood of a substantial improvement to security, as well as the effects of the Order on the land served by the extinguished right of way or the diversion. The powers are not available to National Park Authorities.
- 6.50. Sections 118C and 119C of the Act are not in force in Wales.

### **SSSI Diversions**

- 6.51. Sections 119D and 119E of the HA 1980 are not in force in Wales.
- 6.52. The sections would otherwise enable an Authority, at the request of Natural Resources Wales, to make an Order to divert a public right of way where the

public use of the highway is causing, or continued public use would be likely to cause, significant damage to a Site of Special Scientific Interest (SSSI).

## **Public Path Orders – Town and Country Planning Act 1990**

### **Stopping-Up and Diversion Orders Made by Local Authorities**

- 6.53. Section 257 of the TCPA 1990 gives an authority the power to divert or extinguish:
- Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.54. The TCPA 1990 also enables orders to include provision for the creation of an alternative highway, or the improvement of an existing one, for use as a replacement to one being stopped up or diverted.
- 6.55. Authorities have no power to make Orders for extinguishing or diverting highways carrying rights for motorised vehicles in order to enable development to be carried out. Orders are made by the authority that granted the planning permission or, where permission was granted by the Welsh Ministers (including a permission contained in a special or general development order, or under an order designating an enterprise zone) or the development is carried out by a government department, by the authority which in normal circumstances would have granted the planning permission.
- 6.56. Before making an Order the authority must be satisfied that it is necessary to do so in order to enable development to be carried out either:
- In accordance with planning permission granted under Part III (of the Act); or
  - By a government department.
- 6.57. It should not, however, be assumed that an Order should be made simply because planning permission has been granted.
- 6.58. The necessity test entails examining the activities authorised by the planning permission (both operational development and changes of use) to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.
- 6.59. Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.

- 6.60. In coming to a judgment as to whether to make an Order, the following should be taken into account:
- The interests of the general public.
  - The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.
  - Any potential financial loss to members of the public.
- 6.61. When making a diversion, the new path must either commence or terminate at some point on the line of the original way. However, alternative ways need not do so and may, for instance, run parallel to the route being stopped up. To avoid the creation of a cul-de-sac and to enable the public, where appropriate, to return to that part of the original way not affected by the development, any alternative way provided should be linked via another highway to the original way.
- 6.62. When a diversion or alternative right of way is proposed to be provided and dedicated over land not owned by the developer, the consent of the landowner(s) to the proposed dedication must be obtained before the Order is made. No compensation provision exists in respect of TCPA orders other than where agreed independently. Where the length of way to be stopped up or diverted straddles two authority areas, the Order must be made jointly by both authorities (unless one authority discharges the functions of the other by means of an agreement under s. 101 of the Local Government Act 1972).
- 6.63. When making a Diversion Order under s. 257 of the TCPA 1990, the authority should consider any works that will be required to bring an alternative way into a fit condition for public use. Where necessary, the Order, as specified by Schedule 1 of the Town and Country Planning (Public Path Orders) Regulations 1993 should state within its paragraph 3 that the diversion will not have effect until the authority certifies that the requirements defined in its paragraph 2 have been complied with. Note that certification achieved by completion of works must be advertised to the public in a local newspaper.
- 6.64. To confirm a Stopping-Up or Diversion Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that the criteria considered at the Order-making stage have been met.
- 6.65. Where the development, insofar as it affects a right of way, is completed before the necessary Order to divert or extinguish the right of way has been made or confirmed, the powers under s. 257 and s. 259 of the TCPA 1990 to make and confirm Orders are no longer available. This is because the development, which the Order is intended to enable, has already been carried out. If such a development has already been completed, there is no basis for an Order to be made. It is, of course, open to the authority to consider what action, if any, it might take to secure the diversion or extinguishment of the right of way by the exercise of such other powers as may be available. In this respect, development should be regarded as completed if the work remaining to be carried out is minimal.

### **Extinguishment Orders on Land Held for Planning Purposes**

- 6.66. Section 258 gives an authority the power to stop up a footpath, bridleway or restricted byway on its own land if it plans to develop the land.
- 6.67. To confirm an Extinguishment Order, an authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- An alternative right of way has been or will be provided; or
  - The provision of an alternative right of way is not required.

### **Procedure Available to Welsh Ministers in Anticipation of Planning Permission**

- 6.68. Authorities cannot make Public Path Orders in anticipation of the granting of planning permission (though may undertake preliminary work such as consultation). Section 253 of the TCPA 1990 Act enables the Welsh Ministers to make and advertise a draft of the Order where:
- An application for planning permission has been made by an authority, statutory undertaker, or a National Park Authority; or
  - The application stands referred to the Welsh Ministers pursuant to a direction under s. 77; or
  - The applicant has appealed under s. 78 against a refusal of planning permission or of approval required under a development order, or against a condition of such permission or approval.
- 6.69. Similar procedures also exist under regulation 15 of the Town and Country Planning General Regulations 1992 to enable the Welsh Ministers to publish notice of an Order under s. 251, extinguishing a public right of way over land held for planning purposes, at the same time as acquiring land either by compulsory purchase order (s. 226) or by agreement (s. 227). Once the land over which the right of way subsists has been acquired, the Welsh Ministers may also make a Compulsory Purchase Order under s. 254 to acquire land to provide an alternative right of way.

### **Acquisition of Land Act 1981 Cases**

- 6.70. Section 32 of this Act enables acquiring authorities to make Orders for the extinguishment of non-vehicular rights of way over land that is, could be, or is proposed to be, acquired compulsorily. Before making an Order, the acquiring authority must be satisfied that a suitable alternative has been or will be provided (or that an alternative is not required), e.g. by way of a public path agreement or Order.
- 6.71. Section 32 provides for restrictions on the Order-making power, including as to when the extinguishment of the right of way takes effect. The power in section 32 is also not available where s. 251 or s. 258 of the TCPA 1990 apply. Schedule 6 of the HA 1980 applies to the making, confirmation, validity and date of operation of Orders under s. 32 (see s. 32(2), the Acquisition of Land Act 1981).

## Temporary Stopping-Up Orders (Minerals)

- 6.72. Section 261 of the TCPA 1990 gives an authority the power to make Orders under s. 257 to stop-up or divert a footpath, bridleway or restricted byway for a period of time so that minerals can be worked from the surface.
- 6.73. Prior to confirmation of the Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- The way needs to be stopped up to enable minerals to be worked by surface working.
  - The way can be restored afterwards to a condition not substantially less convenient to the public.
- 6.74. Prior to the TCPA 1990, the suspension of non-vehicular rights of way affected by opencast mining was the subject of the Opencast Coal Act 1958. Whilst no new orders can now be made under the 1958 Act, any that preceded 31 December 1999 will remain in operation.
- 6.75. The Welsh Ministers may revoke an Order made under s. 15 of the Opencast Coal Act 1958:
- If no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted and they are satisfied that there is no early prospect of such activities being so carried on; or
  - As soon after such permitted activities have been so carried on as they are satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
  - They are satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the requirements of s. 15A(10) of the 1958 Act.
- 6.76. The procedure for revoking an existing Order is not prescribed, but is likely to be initiated by the Welsh Ministers, via the Planning Inspectorate, seeking to clarify whether the conditions for revocation have been met or whether an authority advising them of such of their own volition.
- 6.77. When confirming the need, or lack thereof, for continuation of an Order, authorities should submit copies of the original Order to the Welsh Ministers with a supporting statement identifying the permitted activity and advising as to the state of completion or the prospect of the activities being carried out.
- 6.78. Where records of the original Order or permitted activity are no longer available, it is sufficient to establish the extent to which *any* opencast activity or opencast planning permission remains active within the affected area. Where no prospect exists of any such activity being carried out, or where it is

clear that the suspension of rights is no longer necessary for the purposes of carrying on any such completed activity, an Order may be revoked.

### **Magistrates' Court Applications**

- 6.79. Section 116 of the HA 1980 enables authorities to apply to a Magistrates' Court for an Order to extinguish or divert a highway of any description other than a trunk or special road. These provisions apply therefore to footpaths, bridleways, restricted byways and byways open to all traffic, in addition to the powers available in s. 118 and s. 119 of the HA 1980 and other legislation to extinguish and divert all of these rights of way, other than byways open to all traffic.
- 6.80. There may be circumstances where it is appropriate to use the Magistrates' Court procedure under s. 116 of the HA 1980. For example, s. 116 could be used to extinguish or divert a footpath or bridleway (or retain such rights) and simultaneously extinguish a vehicular right of way. It could also be used to extinguish vehicular rights and preserve footpath, bridleway or restricted byway rights over byways open to all traffic, although authorities should be aware that this could expose a resulting footpath or bridleway to ploughing with the result that its character and appearance as a landscape feature is destroyed.
- 6.81. It is considered, however, that authorities should make use of the other powers available to extinguish or divert rights of way unless there are good reasons for not doing so.

### **Concurrent Orders**

- 6.82. Creation and Diversion Orders can be made concurrently with Extinguishment Orders to provide alternative routes to those being stopped up. Where Orders are associated in this manner, the new routes contained within the Creation or Diversion Order(s) may be taken into account when determining whether or not to confirm the Extinguishment. This does not apply to Creation Agreements.
- 6.83. In considering the new routes, account should be taken of the convenience of the alternative path compared to that which is to be extinguished and if this is significantly less than that enjoyed by users of the existing path, authorities will need to consider whether the criteria set out in s. 118(1) of the HA 1980 have been met. Care should also be taken to ensure that full consideration is given to all of the matters set out in both s. 26 (or sections 119-119B in the case of Diversion Orders) and s. 118.
- 6.84. Where related Extinguishment and Creation or Diversion Orders have been made concurrently, and representations or objections have been made to one but not the other, authorities are advised to submit both Orders to the Welsh Ministers for confirmation. There is no provision for combining both Creation and Extinguishment in one Order.

## Joint and Combined Orders

- 6.85. No regulations are, at present, in force in Wales allowing s. 53A of the WCA 1981 to become operative.
- 6.86. As a result, provisions to enable authorities to include directions to modify the Definitive Map and Statement in certain Orders are unavailable. Authorities should therefore continue to make separate Orders as required.

## Side Road Orders & Acts of Parliament

- 6.87. Where planning permission is granted for constructing or improving a highway, and another highway crosses or enters the route, or is, or will be affected by such development, powers are available under s. 248 of the TCPA 1990 to enable the Welsh Ministers to stop-up or divert such other highways, where this is considered expedient in the interests of safety or to facilitate the movement of traffic on the highway. In addition, powers to make Side Road Orders are available under s. 14 of the HA 1980 in respect of trunk or classified roads (not being special roads). It is not appropriate to use s. 247 or s. 257 of the TCPA 1990 to stop-up or divert ways for these purposes.
- 6.88. It is similarly possible for Acts of Parliament or the National Assembly for Wales to affect named rights of way directly.

## Applications for Costs

- 6.89. The parties in rights of way proceedings that arise when a rights of way Order is submitted to the Planning Inspectorate for confirmation are normally expected to meet their own expenses. In these cases, unlike with ordinary civil litigation, an award of costs does not necessarily follow the outcome. In other words, costs are not simply awarded to the party in whose favour the judgement goes. Subject to the exceptions outlined below, costs are awarded only on grounds of unreasonable behaviour.
- 6.90. The Planning Inspectorate may order that one party pay the costs of another in a case where:
- That party has behaved “unreasonably”.
  - The unreasonable behaviour has caused the other party to incur unnecessary costs that they would not otherwise have incurred.
- 6.91. Guidance on the proper approach when considering costs applications is contained in Welsh Office Circular 23/93, ‘Awards of Costs incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings’.
- 6.92. Costs may be awarded only in cases where a public inquiry or hearing is held and do not extend to rights of way cases determined by written representations and a site visit. Rights of way procedures do not enable applications for costs to be made in advance of the public inquiry or hearing – any application on the ground of another party’s unreasonable behaviour

should be made to the Inspector at the hearing or inquiry. However, parties to a hearing or inquiry are encouraged to provide notification in advance to the opposing party of the possibility that an application for costs might be made and the reasons for it.

- 6.93. A party may have to pay costs if a hearing or an inquiry could reasonably have been avoided, or if it is unreasonably delayed or extended. For example, the authority could be at risk if an Inspector halts a hearing or an inquiry because they find that the Order is defective. Anyone who does not comply with the timetables set out by the Planning Inspectorate (unless there is a good reason why they could not do so) could also be at risk if they cause a hearing or inquiry to be adjourned, or to last longer than it would have done if they had complied with the timetables, and by doing so they cause others to incur unnecessary or wasted expense in the process.
- 6.94. Applicants and relevant persons do not have to attend a hearing or an inquiry. They may decide to rely on their written evidence, although if they do, they should advise the Planning Inspectorate in good time. But if an applicant or a relevant person asks to be heard and then fails to turn up or be represented without good reason, they risk an award of costs for unreasonable behaviour. Similarly, a person who has made an irrelevant objection and who unreasonably insists on being heard at a hearing or an inquiry risks an award of costs. There is also a risk of an award of costs in the event that a hearing or an inquiry has to be cancelled as a result of an objection being withdrawn at a late stage in the proceedings.
- 6.95. In a case where the party against whom costs are being claimed is not present at the inquiry or hearing, the Inspector will not be able to hear their representations against the claim. In such cases the Inspector will report the application and circumstances, with provisional conclusions but no recommendation, to the Planning Inspectorate's Costs Branch, who will follow up and determine the claim after inviting the absent party to comment. Any comments received will be exchanged with the claiming party before a decision is issued.
- 6.96. In cases where there is an interim decision or inquiry and an application for costs is related to the substance of the Order, as opposed to a matter of procedure, then it is likely the application will be determined only at the end of the process, when the merits of the Order have been settled beyond doubt.

### **'Analogous' Orders**

- 6.97. Public Path Creation Orders made under s. 26 of the HA 1980 are considered to be analogous to Compulsory Purchase Orders, in that the making or confirmation of the Order could take away from an objector some right or interest in land for which the statute gives a right to compensation. Extinguishment and Diversion Orders made under sections 118-119B of the HA 1980 may also be analogous, depending on the particular circumstances.
- 6.98. If a person with an interest in the land over which a path is to be created, extinguished or diverted successfully objects to such an Order, an award of

costs will be made in the person's favour unless there are exceptional reasons for not doing so. The award of costs will therefore follow where the person attends, or is represented at, a hearing or inquiry and is heard as a statutory objector, and the Order is not confirmed, or the Order is modified in favour of the person's interest, whether wholly or in part. No application for costs need be made at the hearing or inquiry by such an objector, as the Welsh Ministers will write to the party concerned at the end of the Order proceedings. The award would be made against the authority making the Order, although this would not, of itself, imply unreasonable behaviour by the authority.

### **Orders Determined at a Magistrates' Court**

- 6.99. The costs procedures described above apply where an Inspector, on behalf of the Welsh Ministers, determines whether or not to confirm an Order through a public inquiry or hearing. If all parties act "reasonably" then there is no risk of costs being awarded. In contrast, a contested Diversion or Extinguishment Order made under s. 116 of the HA 1980 will be determined at a Magistrates' Court under the civil litigation costs procedures, where the costs "follow the event". In other words, liability for costs depends on the outcome of the case itself. This means that the party, or parties, that fail(s) to get the result they were seeking would be at risk of having to meet the costs of the successful party, or parties.

### **Procedures for Public Path Orders**

- 6.100. The statutory provisions relating to the creation, diversion and stopping up of public rights of way have been framed to secure the protection of both the public rights and the interests of owners and occupiers, as well as the interests of bodies such as statutory undertakers. It is essential, therefore, that authorities wishing to bring an Order into effect by a particular date should allow enough time, when making the Order, to comply with all the statutory requirements, which may include a public inquiry into objections. In particular, it should be borne in mind that the obstruction of a path or way before the right of way over it has been extinguished is unlawful.

### **Application**

- 6.101. Authorities have discretion to make Public Path Orders, as described above, and may do so of their own choice or at the request of another party. The form of application for Rail Crossing Orders is prescribed but otherwise, where another party seeks a change to the network by Public Path Order, the form of application is not prescribed. Authorities may nevertheless find it useful to deal with requests by way of application form, collecting information for administrative purposes and to assist with assessment of legal tests. Natural Resources Wales may apply for a Public Path Creation Order to enable the public to obtain access to any access land or to facilitate such access. However, the rights to apply for Public Path Orders provided by sections 118ZA and 119ZA of the HA 1980 are not, at present, in force in Wales.

- 6.102. Should the authority decide to proceed with the application, the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996, permit authorities to charge applicants the costs of making Orders under sections 26, 118, 118A, 119 and 119A of the HA 1980.
- 6.103. Authorities should publish their scales of charges and should inform applicants in advance of the maximum charge for their application. Authorities must not charge more than the costs they have incurred.
- 6.104. Examples of the costs which authorities may incur in making an Order are:
- Notifications to landowners, statutory undertakers, prescribed organisations, other authorities and other persons.
  - Posting notices on site and elsewhere.
  - An advertisement in one local newspaper for each of the stages of the Order, namely making the Order, confirming the Order and the coming into force of the Order (where the final stage is separately required). The newspaper must be circulated widely and reliably in the area covering the Order and under the requirement to obtain best value, less conventional publications such as free sheets may satisfy the requirement.
  - Site inspections.
  - Research into the status and previous history of the way.
  - Negotiations with applicants and other interested parties before making the Order.
  - Preparing reports for Committee.
  - Preparing Orders and notices.
- 6.105. Authorities can recover from applicants the costs of informal consultations (such as negotiations between authorities, applicants, landowners, user groups and any other interested parties) where they lead to Orders being made. It is for the authorities themselves to decide what services are necessary to the making of a particular Order and applicants should be made aware that these may vary according to the circumstances of the particular case.
- 6.106. Objections to an Order, and the decision taken by the Welsh Ministers on whether or not the Order should be confirmed, are outside the applicant's control. It is considered unreasonable to expect the applicant to bear the extra expense incurred by the authority in pursuing opposed Orders through to confirmation. All costs relating to the submission of an Order to the Welsh Ministers - and the subsequent decision on whether or not it should be confirmed - have therefore been excluded from the power to charge. The authority will nevertheless wish to ensure that the applicant is afforded every opportunity to participate in any public inquiry or hearing. Although objectors have the right to be heard by the Welsh Ministers, such matters can also be considered on the basis of written representations. Such arrangements have proved to be cost-effective and all parties should consider this procedure wherever possible.

6.107. Applicants are not entitled to a refund other than under the following conditions:

- Where the authority fails to confirm an unopposed Order.
- In the case of unopposed Orders, the authority fails to submit the Order for confirmation to the Welsh Ministers without the agreement of the person who requested the Order.
- Where proceedings preliminary to the confirmation of a Public Path Creation Order are not taken concurrently with proceedings for a Public Path Extinguishment Order.
- Where the Order cannot be confirmed because it has been invalidly made.

6.108. Authorities may not seek payment in advance of incurring of costs. Payment should therefore be sought after the advertisement of the making of the Order has been placed with the local newspaper. Payment for subsequent advertisements in relation to the confirmation of the Order, or certification of the new path, should similarly only be sought after these have been placed with the newspaper. Authorities may defer confirmation or, in the case of opposed Orders, referral to the Welsh Ministers, until payment has been made.

6.109. The power to charge is discretionary and authorities may choose not to charge for this service at all. It is expected that authorities will normally seek to use this power to recover their costs incurred in making these Orders, but it is accepted that in some circumstances it may not be cost-effective to do so or that other circumstances may influence charging decisions. Applicants should therefore normally expect to bear the cost of making an Order.

6.110. Before making an Order proposing to divert a right of way under s. 119 of the HA 1980, authorities can require the owner, lessee or occupier of the land to enter into an agreement under s. 119(5) to defray or contribute towards expenses incurred by the authority in bringing a new way into a fit condition for use by the public.

### **Pre-Order Consultation**

6.111. Local authorities, and National Park authorities in whose area the way or proposed way is situated, must be consulted before an authority makes an Order. If a way to be extinguished or diverted lies partly within the area of an adjoining authority, that authority's consent must be obtained.

6.112. In addition to the statutory requirements, authorities should consider consultation with community or town councils, prescribed organisations, user groups, Local Access Forums, and liaison groups. Natural Resources Wales should be consulted about any way or proposed way which lies within a National Park or affects a Long Distance Route as defined within the NPACA 1949 (including National Trail). This approach should help authorities to forestall representations and objections before they make Orders, by means

of discussion and negotiation with landowners, users and representative organisations.

- 6.113. Authorities should consult widely on proposals which could result in Orders affecting public rights of way. This applies especially to proposed Orders to be made under the HA 1980 or the TCPA 1990, where there may be alternative options.
- 6.114. Statutory undertakers should be consulted before an Order is made and where necessary their consent obtained. Section 121(4) of the HA 1980 provides that they may refuse to consent to the confirmation of Extinguishment and Diversion Orders. Section 24(2) of the HA 1980 requires the Welsh Ministers to give their approval if a proposed right of way is to connect with a trunk road. Where notices are required to be served on owners of land and the land belongs to an ecclesiastical benefice group, paragraph 1(4) of Schedule 6 to the HA 1980 specifies that notice must also be served on the Diocesan Board of Finance for the diocese in which the land is situated. The consent of the appropriate authority as defined in s. 327 of the HA 1980 is required in respect of the Act's application to Crown land.
- 6.115. Orders made under s. 257 of the TCPA 1990 which affect apparatus belonging to statutory undertakers cannot be confirmed without their consent.

### Determination

- 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.
- 6.117. In respect of land designated as a National Park or an Area of Outstanding Natural Beauty, the relevant legislation, respectively s. 11A(2) of the NPACA 1949 and s. 85 of the CROW 2000, requires an authority, in carrying out its functions (which will include the making of Orders and agreements to create, divert or extinguish public rights of way), to have regard to the purposes for which the National Park or Area of Outstanding Natural Beauty was created.

### Order Making

- 6.118. The forms of the various Orders and notices provided for by the HA 1980 are prescribed in the Public Path Orders Regulations 1993 (as amended) and The Town and Country Planning (Public Path Orders) Regulations 1993.
- 6.119. The limitations and conditions set out in the schedule to a form of Order should only be limitations and conditions affecting the actual exercise of the public right of user, e.g. design, standard, position, number of gates, conditions for removal of structure or minimisation of its effect on users.

- 6.120. There are no standard widths for ways which are created or diverted within a Public Path Order. Local circumstances affecting the widths that are appropriate or achievable will vary, however authorities should specify widths in every Public Path Order.
- 6.121. The maps contained in an Order should be on a scale of not less than 1:2,500 or, if no such map is available, on the largest scale readily available. Extracts from a current edition of an Ordnance Survey map should be used and it should be endorsed with the copyright conditions required by the Ordnance Survey. The scale and orientation should be clearly shown, as well as the grid references to enable the public to identify the rights of way concerned. The map should also contain sufficient detail to show the effect, not just on the path or way to be stopped-up or diverted, but on those highways connected to it. In the case of Diversion Orders made under the HA 1980, the Order map must show whether part of the new route to be followed comprises an existing path or way and, if so, define that part.
- 6.122. Notices must be published in at least one local newspaper circulating in the area to which the Order relates. At the same time that the notice is published, a copy of the same notice together with a copy of the draft Order or relevant extract from the draft Order, and a copy of the accompanying map, must also be served on: every owner and occupier of that land; the relevant community or town council; the prescribed organisations (Annex 1); and, where required, other persons or bodies such as a National Park Authority and Natural Resources Wales.
- 6.123. Authorities must also notify any persons or groups who require them to do so of Orders made over a given period proposing to add to or amend the definitive map and statement or to change the network. This requirement may apply to every Order made by the authority or Orders of a particular description and may relate to the whole or any part of their area. Authorities may make a reasonable charge for doing so.
- 6.124. The description in the notice of the general effect of the Order should be sufficient to enable the public to understand its fundamental purpose and to identify the rights of way involved. The notice published in the local newspaper will not be accompanied by a plan and therefore key points of the route should be referenced to features on the ground as well as being specified by grid references.
- 6.125. A copy of the notice must be displayed in a prominent position at both ends of the section of the way to be created, diverted or stopped up by the Order. The notice must be accompanied by a plan illustrating the effect of the Order. The notice must also be displayed at council offices in the locality and any other places considered by the authority to be appropriate. The places should be reasonably accessible to local people.
- 6.126. Authorities must send copies of the statutory notices of Orders made as specified below to the organisations listed in Annex 1.

- 6.127. Notices required to be given under the TCPA 1990 should be issued by reference to s. 329. Notices given in relation to the HA 1980 should be by reference to s. 322.
- 6.128. In both cases, this will usually be by delivering it in person to the addressee or their usual address, or by posting it by recorded delivery. The TCPA 1990 also includes provision for service by email where an email address has been given. Further provisions exist where the names of the affected person cannot be ascertained, including procedures for posting a notice on site where necessary, within Schedule 6, paragraph 3(C) of the HA 1980; Schedule 14, paragraphs 6 and 7 of the TCPA 1990; s. 329 of the TCPA 1990; and s. 322 of the HA 1980.

### Representations

- 6.129. The period for making representations and objections must be not less than 28 days from the date of publication of the notice that an Order has been made. Authorities should ensure that a copy of the Order and accompanying map are available for inspection at all reasonable hours for the period. Authorities should particularly consider extending the objection period where it would otherwise expire on a day of foreseeable office closure, e.g. a Bank Holiday.
- 6.130. Once an Order has been advertised, authorities are expected to attempt to resolve objections and to secure their withdrawal. A representation or objection is duly made to an Order provided it is within time and in the manner specified in the notice. If duly made objections are not withdrawn then the Order cannot be confirmed by the Order-making authority. If the Order-making authority wishes to proceed with a Public Path Order which has been objected to or to have it confirmed with amendments, then the Order must also be submitted to the Welsh Ministers to determine whether or not it should be confirmed. The authority is not entitled to refuse to accept an objection based on its own judgement of whether or not the grounds of the objection or representation appear to be relevant, although it will need to make observations on the objection as part of its submission to the Welsh Ministers.

### Confirmation

- 6.131. Authorities may confirm Orders which are unopposed, or to which all duly made representations and objections have been withdrawn. Authorities have the discretion not to proceed with Orders in respect of which there are representations or objections, or may withdraw an Order for other reasons, such as external factors making a scheme no longer appropriate. In order to bring the procedure to an end, the authority must make a formal resolution not to proceed, and should notify the applicant and those who have made representations or objections of the passing of the resolution.
- 6.132. In the case of an Order in respect of which there are duly made representations or objections, an Inspector appointed by the Welsh Ministers will determine whether or not to confirm it. Once an Order is submitted to the Welsh Ministers, the power of decision passes to them, or their appointed

Inspector. However, if all the representations and objections are subsequently withdrawn, the authority will be asked whether it wants to confirm the Order itself. The Planning Inspectorate, which administers the confirmation process on behalf of the Welsh Ministers, has a [checklist](#) of documents which must accompany an Order submitted for a decision on whether or not it should be confirmed.

6.133. Orders which require confirmation by the Welsh Ministers under paragraph 2 of Schedule 6 to the HA 1980 (Orders under sections 26 and 118 – 119D of the Act, or s. 32 of the Acquisition of Land Act 1981) may be modified by the inspector.

6.134. Claims for compensation under s. 28 of the HA 1980 (or as applied by s. 121(2), as amended) from persons with an interest in the land affected by an Order must be made in writing to the authority and served on it within six months from the date on which the Order comes into operation.

## Ordnance Survey

6.135. Ordnance Survey maps include public rights of way and so are important tools for the public in using the network. It is in everyone's interest that these maps accurately reflect the public's rights, and on completion of any Orders, the authority are required to submit the relevant information to Ordnance Survey. Authorities should send copies of Orders which involve the authority certifying that a change has come into effect to Ordnance Survey after the Authority has so certified. Other Orders should be sent after they have been confirmed.

**Table 1: When authorities should send copies of orders to Ordnance Survey**

| <i>Provision</i>                                                                                                     | <i>Ordnance Survey</i>        |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------|
| <i>Highways Act 1980</i>                                                                                             |                               |
| s26 Compulsory powers for creation of footpaths, bridleways and restricted byways                                    | Order on confirmation         |
| s116 Power of Magistrates' Court to authorise stopping up or diversion of highway                                    | On decision of the Magistrate |
| s118 Stopping up of footpaths, bridleways and restricted                                                             | Order on confirmation         |
| s118A Stopping up of footpaths, bridleways and restricted byways crossing railways                                   | Order on confirmation         |
| s119 Diversion of footpaths, bridleways and restricted byways                                                        | Order on certification        |
| s119A Diversion of footpaths, bridleways and restricted byways crossing railways                                     | Order on certification        |
| <i>Wildlife and Countryside Act 1981</i>                                                                             |                               |
| s53(2) definitive map modification order                                                                             | Order on confirmation         |
| <i>Town and Country Planning Act 1990</i>                                                                            |                               |
| s257 Footpaths, bridleways and restricted byways affected by development : orders by other [than Secretary of State] | Order on certification        |
| s258 Extinguishment of public rights of way over land held for planning purposes                                     | Order on confirmation         |
| <i>Acquisition of Land Act 1981</i>                                                                                  |                               |
| s32 Power to extinguish certain public rights of way                                                                 | Order on confirmation         |

## 7. Planning Consent and the Network

- 7.1. Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken; and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.
- 7.2. The grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an Order under s. 247 or s. 257 of the TCPA 1990, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, until the necessary Order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site, unless there are existing additional private rights. Authorities must ensure that applicants whose proposals may affect public rights of way are made aware of the limitations to their entitlement to start work at the time planning permission is granted. The local planning authority should not impose conditions on a grant of planning permission which are the subject of other statutory controls, for example, diversion or stopping up orders. It may however be helpful to append a note or informative to the decision to draw the applicant's attention to other forms of consent that must be obtained before development can commence.
- 7.3. The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and authorities should ensure that the potential consequences are taken into account whenever such applications are considered.
- 7.4. Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed. Consequently, such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval.
- 7.5. Welsh Office Circular 32/92 sets out the information to be supplied and validated with a planning application. All public rights of way crossing or adjoining the proposed development site should be marked on the plan to be submitted with the full planning application. While the information supplied by an applicant should therefore make clear how the potential development will impinge on any rights of way, authorities will need to ensure that all rights of way affected by the development are identified and take into account any applications for the addition of a path or way to the Definitive Map, any modifications that the authority itself may be proposing to make, the possible existence of any other rights on the ways shown on the Definitive Map and any ways not yet recorded on the Definitive Map.

- 7.6. It is likely to be to the benefit of the authority and the developer to be aware of the impact of a development scheme on the local rights of way network as early as possible in the process (this might be at the pre-application stage or the outline planning stage). Any potential disadvantages to the public arising from alternative arrangements proposed for an affected right of way can be minimised through early liaison between the developer, the authority, local amenity groups, prescribed organisations (Annex 1) and affected individuals.
- 7.7. Where pre-application discussions are undertaken, the rights of way officer should be included in all meetings. Any consultation at this stage should include the prescribed organisations as a matter of course.
- 7.8. This course of action will produce an acceptable scheme in many instances and make it more likely that the eventual proposals will be acceptable to the public. Further, the approach should minimise uncertainty, costs in revising design schemes and delays. Not adopting this approach could lead to significant delays, mainly because the authority does not have the power to confirm an opposed Public Path Order. Instead, it will have to be submitted to the Welsh Ministers for a decision on whether or not it should be confirmed. Applicants should be reminded that formal permission to stop-up or divert a public right of way remains a legal requirement regardless of the granting of planning permission. Failure to ensure formal permission is in place before work starts could lead to prosecution.
- 7.9. When an existing right of way needs to be revised to accommodate the planned development, any alternative alignment should avoid the use of estate roads, drives, gardens or other private areas wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. The potential of alternative routes to encourage sustainable transport and active travel should also be considered.
- 7.10. Where the application is for full planning permission, such as mineral extraction, the decision on the application may be preceded by lengthy negotiation between the developer and the authority, with the eight-week period stipulated in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 for the determination of planning applications being set aside by mutual consent. If there is a reasonable expectation that planning permission will eventually be forthcoming, there is no reason why the proposals for any consequential stopping-up or diversion of public rights of way should not be considered concurrently with, and as part of, discussions on the proposed development, rather than await the grant of planning permission. This should include, as far as possible, the preparation in draft of the Order, and associated notices, the form of which is prescribed in the Town and Country Planning (Public Path Orders) Regulations 1993, although care should be taken to ensure rights of way staff are kept informed of any changes to the design whilst the application is being determined.

- 7.11. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 provides that development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site. This is entirely separate from any notices and advertisements required when making and confirming a subsequent Extinguishment or Diversion Order.
- 7.12. The procedure for diversion or extinguishment of rights of way made under the TCPA 1990 follows that described in para 6.100– 6.137. The relevant regulations are the Town and Country Planning (Public Path Orders) Regulations 1993.

### Permitted Development

- 7.13. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) sets out a wide range of development that can be undertaken without needing to make an application for planning permission. Where restrictions contained within the 1995 Order refer to highways, this includes, in general, all public rights of way. Where reference is made to highways “used by vehicular traffic”, this should include any byway open to all traffic or restricted byway recorded on the Definitive Map and Statement.
- 7.14. It is an offence under s. 4(1)b of the RTA 1988 to drive a mechanically propelled vehicle on a footpath, bridleway or restricted byway without lawful authority. Therefore the use of such a public right of way to create new vehicular access, or similar, that might be considered to be permitted development under the Town and Country Planning (General Permitted Development) Order 1995, could be an offence under the RTA 1988.

## Annex 1

### Prescribed Organisations

| Organisation                | Consultation extent                                                                                                                | Pre-order consultation address                                                    | Order notification extent                           | Order address                                                                                                  |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Auto Cycle Union            | All cases, except those affecting footpaths or bridleways over which no public vehicular rights are claimed, or suspected to exist | The appropriate local representative as notified to the authority                 | All orders made in England and Wales                | Auto Cycle Union, Wood Street, Rugby, Warwickshire CV21 2XY (Except where otherwise notified to the authority) |
| British Driving Society     | All cases, except those affecting footpaths and bridleways over which no vehicular rights are claimed, or suspected to exist       | British Driving Society, Endersley, Church Road, Wingfield, Eye, Suffolk IP21 5QZ | All definitive map orders made in England and Wales | British Driving Society, Endersley, Church Road, Wingfield, Eye, Suffolk IP21 5QZ                              |
| British Horse Society       | All cases                                                                                                                          | BHS local representative as notified to the authority                             | All orders made in England and Wales                | BHS, British Equestrian Centre, Stoneleigh, Kenilworth, Warwickshire CV8 2LR                                   |
| Byways and Bridleways Trust | All cases                                                                                                                          | BBT local nominee if notified to the authority                                    | All orders made in England and Wales                | Byways and Bridleways Trust<br>PO Box 117, Newcastle Upon Tyne, NE3 5YT                                        |
| Cyclists' Touring Club      | All cases, except those affecting footpaths over which no other rights are claimed, or suspected                                   | Cyclists' Touring Club, Parklands, Railton Road, Guildford, Surrey. GU2 9JX       | All orders made in England and Wales                | Cyclists' Touring Club, Parklands, Railton Road, Guildford, Surrey. GU2 9JX                                    |
| Open Spaces Society         | All cases, but only in those areas                                                                                                 | The appropriate local                                                             | All orders made in England and                      | Open Spaces Society, 25A Bell                                                                                  |

|                                |                                                                                                                                              |                                                                                                                               |                                      |                                                                                                                               |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
|                                | where the Society has notified the authorities concerned of their interest                                                                   | representative as notified to the authority                                                                                   | Wales                                | Street, Henley-on-Thames, Oxon RG9 2BA                                                                                        |
| The Ramblers' Association      | All cases                                                                                                                                    | RA local representative as notified to the authority                                                                          | All orders made in England and Wales | Ramblers' Association, 2nd Floor Camelford House, 87-90 Albert Embankment, London, SE1 7TW                                    |
| Welsh Trail Riders Association | All cases in Wales, except those affecting footpaths and bridleways over which no public vehicular rights are claimed, or suspected to exist | W.T.R.A. Ltd<br>PO Box 3015<br>Cardiff<br>CF3 5YE<br>United Kingdom<br><br>(Except where otherwise notified to the authority) | All orders made in Wales             | W.T.R.A. Ltd<br>PO Box 3015<br>Cardiff<br>CF3 5YE<br>United Kingdom<br><br>(Except where otherwise notified to the authority) |

Authorities should note that the names and addresses of the persons to whom these notices must be sent may change from time to time, or may vary from one area to another. The prescribed organisations have been asked to ensure that authorities are notified well in advance of such changes. Authorities should of course ensure that their own records are kept up to date in this respect.

In addition, authorities are also asked, whenever they make Orders which would result in a footpath or bridleway being created on land adjacent to operational railway lines, to notify Network Rail of the making and confirmation of the Order and to provide them with a copy of the Order.

## Annex 2

### Additional Sources of Information

#### **Natural Resources Wales**

- *‘Recreation and Access policy advice and guidance’ (available on its website)*
- *‘By all reasonable means: Inclusive access to the outdoors’*
- *‘A guide to definitive maps and changes to public rights of way’*
- *The Countryside Code*

#### **DEFRA**

- *‘Authorising structures (gaps, gates & stiles) on rights of way’*
- *‘Making the best of byways’*
- *‘Regulating the use of motor vehicles on public rights of way and off road’*
- *‘Guidance for local authorities on implementing the biodiversity duty’*

#### **The Home Office**

- *‘Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals’*

#### **Planning Inspectorate**

- *Rights of Way (section on its website)*

#### **Institute for Public Rights of Way and Access Management (including Rights of Way Review committee – Practice guidance notes)**

- *Institute for Public Rights of Way and Access Management website*

#### **Non-native Species Secretariat**

- *Non-native species website*

#### **Health and Safety Executive**

- *Agriculture Information Sheet No 17EW(rev1)*

#### **Pittecroft Trust**

- *Understanding the Defra guidance on Public Path Structures and Gaps, Gates, Stiles. A guide to the British Standard BS5709:2006*

#### **Welsh Government guidance**

- *Environment Act (Wales)*

## Annex 3

### Draft Model 147ZA Agreement

(This does not form part of the statutory guidance)

#### FOR INFORMATION

These notes are included to provide an explanation of section 147ZA of the Highways Act 1980. They do not form part of the agreement.

1. The purpose of section 147ZA is to enable agreements to be made between local authorities and landowners, occupiers and lessees for the replacement of structures across public footpaths and bridleways, such as stiles and gates, with new structures that will be easier for the public to use, and in particular for those who have disabilities or mobility issues.
2. The agreement provides for the respective responsibilities of the owner, etc and the authority for the design and erection of the new structure and its subsequent maintenance.
3. Section 147ZA also provides that the owner's right to erect and maintain a structure across the path or way will apply to the new structure, and cease to apply to the former structure, on such date as is specified in the agreement, or, if no date is specified, one year after the date of the agreement. However, if any conditions in the agreement are not adhered to, the right to erect and maintain the new structure will cease to apply unless and until the conditions are complied with, and the authority may require the structure to be removed.
4. **The model agreement may prove useful to authorities, owners, lessees and occupiers, but is only a suggested template and should be tailored to meet individual circumstances. Authorities, owners, lessees and occupiers should take legal advice before entering into an agreement under section 147ZA.**

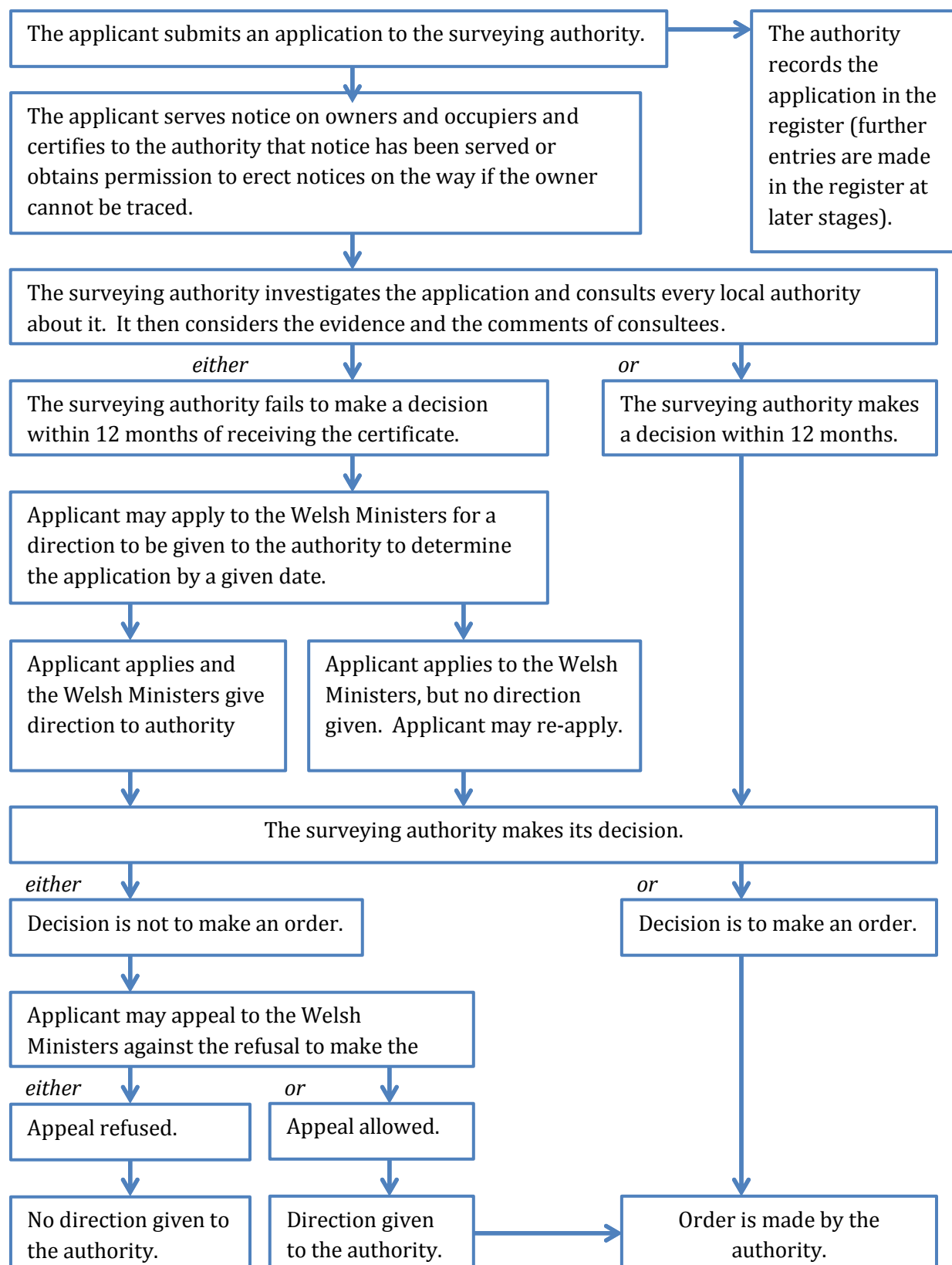
| <b>PROPOSED CONTENT OF AGREEMENT</b><br><i>Items in italics are where details have to be added, or where one or more options are to be deleted as appropriate.</i>                                                                                                                 | <b>Notes</b>                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. This is an agreement between the Authority and the <i>[owner] [lessee] [occupier]</i> under section 147ZA of the Highways Act 1980 for the purpose of <i>[summary of the purpose of the agreement, e.g. replacing a stile on Hemsby footpath 4 with a kissing gate]</i>.</p> | <p>Included to provide a summary of what the agreement is about, to state the parties to the agreement and to make it clear that it is an agreement under section 147ZA.</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>2. In this Agreement, the following definitions apply and terms not defined have the meaning assigned to them in the Highways Act 1980:</p> <p>“Authority” means the local highway authority or other competent authority, or any other authority acting under an agreement with the local highway authority or other competent authority which provides for that authority to be able to enter into an agreement under section 147ZA;</p> <p>“existing structure” means the <i>[description of the structure]</i> at <i>[description of location, including a grid reference]</i> and shown as point A on the plan attached to this Agreement;</p> <p>“lessee” means <i>[details of lessee]</i>;</p> <p>“new structure” means the <i>[description of the structure]</i> at <i>[description of location, including a grid reference]</i> and shown as point A on the plan attached to this Agreement;</p> <p>“occupier” means <i>[details of occupier]</i>;</p> <p>“owner” means <i>[details of owner]</i>;</p> <p>“qualifying works” mean all the works as described in the Schedule to the Agreement necessary to remove the existing structure and erect in its place the new structure;</p> <p>“right of way” means the <i>[footpath]</i> <i>[bridleway]</i> on which the existing structure is located, <i>and which is recorded in the definitive map and statement for [name of definitive map] as [parish name and number of right of way]</i>.</p> <p>3. The right of way is subject to a limitation whereby the owner/lessee/occupier has the right to erect and maintain the existing structure <i>[by virtue of an authorisation granted on (date) by (name of authority which granted the authorisation)]</i>.</p> | <p>Makes it clear that any terms not defined take any definition given to them in the Highways Act 1980.</p> <p>Allows for there to be an agent authority which has power under its agency agreement to enter into section 147ZA agreements.</p> <p>Include where there is a lessee.</p> <p>Include where there is an occupier separate from the owner.</p> <p>Include the definitive map reference for the right of way where it is so recorded.</p> <p>Give details of the section 147 authorisation if there is one.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>4. The owner/lessee/occupier agrees to undertake the qualifying works within three months of the date of this Agreement and to notify the authority when the works have been completed.</p> <p>5. The Authority agrees to reimburse the owner/lessee/occupier for expenses reasonably incurred in undertaking the cost of the qualifying works.</p> <p>6. <i>For the purposes of subsection (5) of section 147ZA the effective date of this Agreement is [insert date].</i></p> <p>7. <i>The [owner], [lessee] and [occupier] have consented to the making of this Agreement.</i></p> <p>8. <i>The following conditions apply to this Agreement: [specify conditions]</i></p> <p>9. <i>The new structure is deemed to be erected under this Agreement only if the conditions specified in clause 8 are being complied with.</i></p> <p>Signed: <i>[by parties to the agreement]</i></p> <p>Date:</p> | <p>Rewrite this and the next clause as appropriate if the Authority is to undertake the works and the owner/lessee/occupier is to meet any of the costs.</p> <p>Add additional text if desired to provide for inspection by the Authority prior to any payment being made.</p> <p>Use this clause only if the effective date is to be specified: the default is one year from the date of the agreement.</p> <p>Include if there is an occupier or lessee separate from the owner, and delete as appropriate.</p> <p>Include if conditions are to be specified (subsections (3) and (4)).</p> <p>Include if conditions are specified.</p> |
| <p><b>PLAN</b><br/>Showing the path or way and, as point A, the location of the existing structure.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>SCHEDULE</b><br/>Description of qualifying works.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

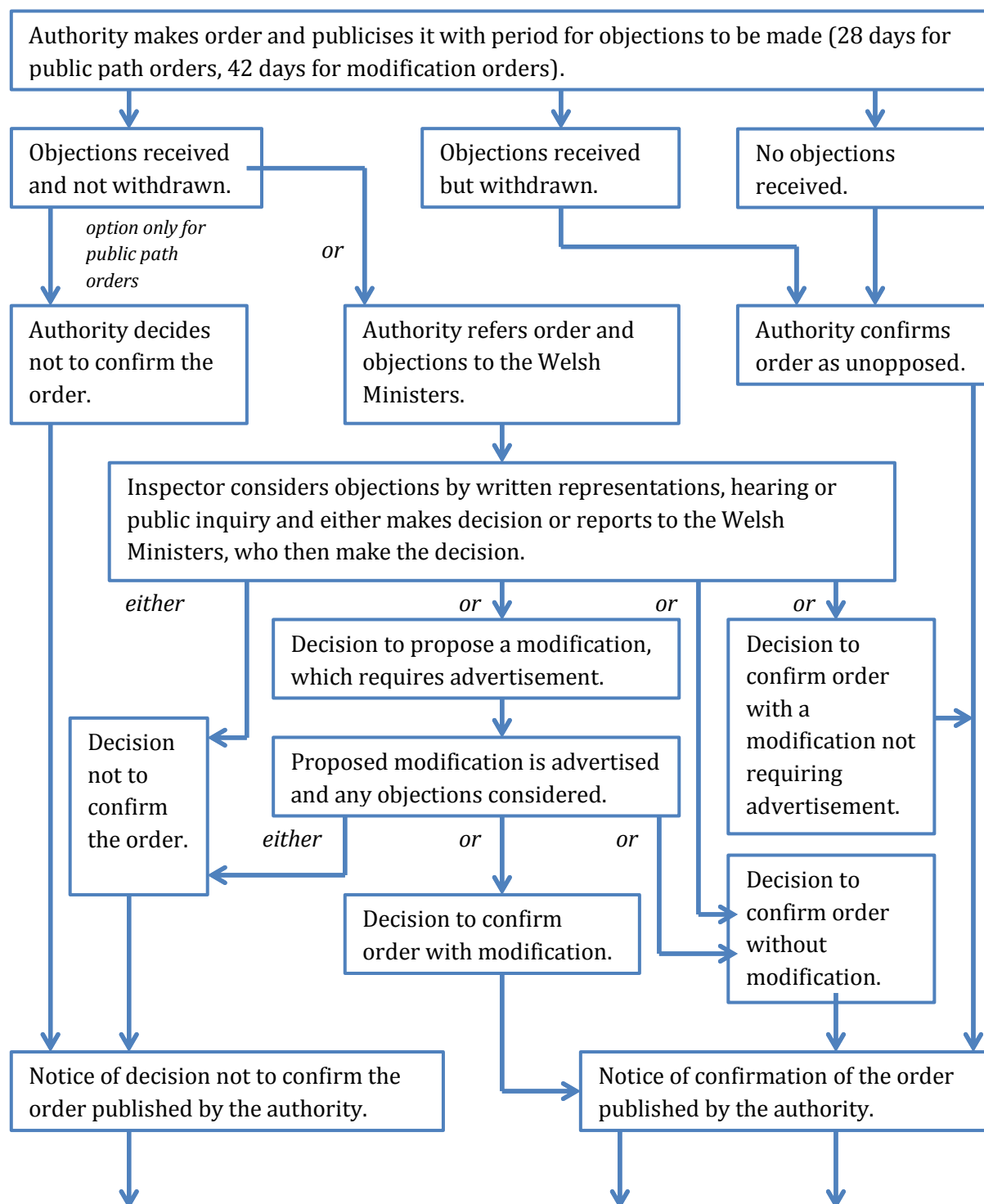
## Annex 4

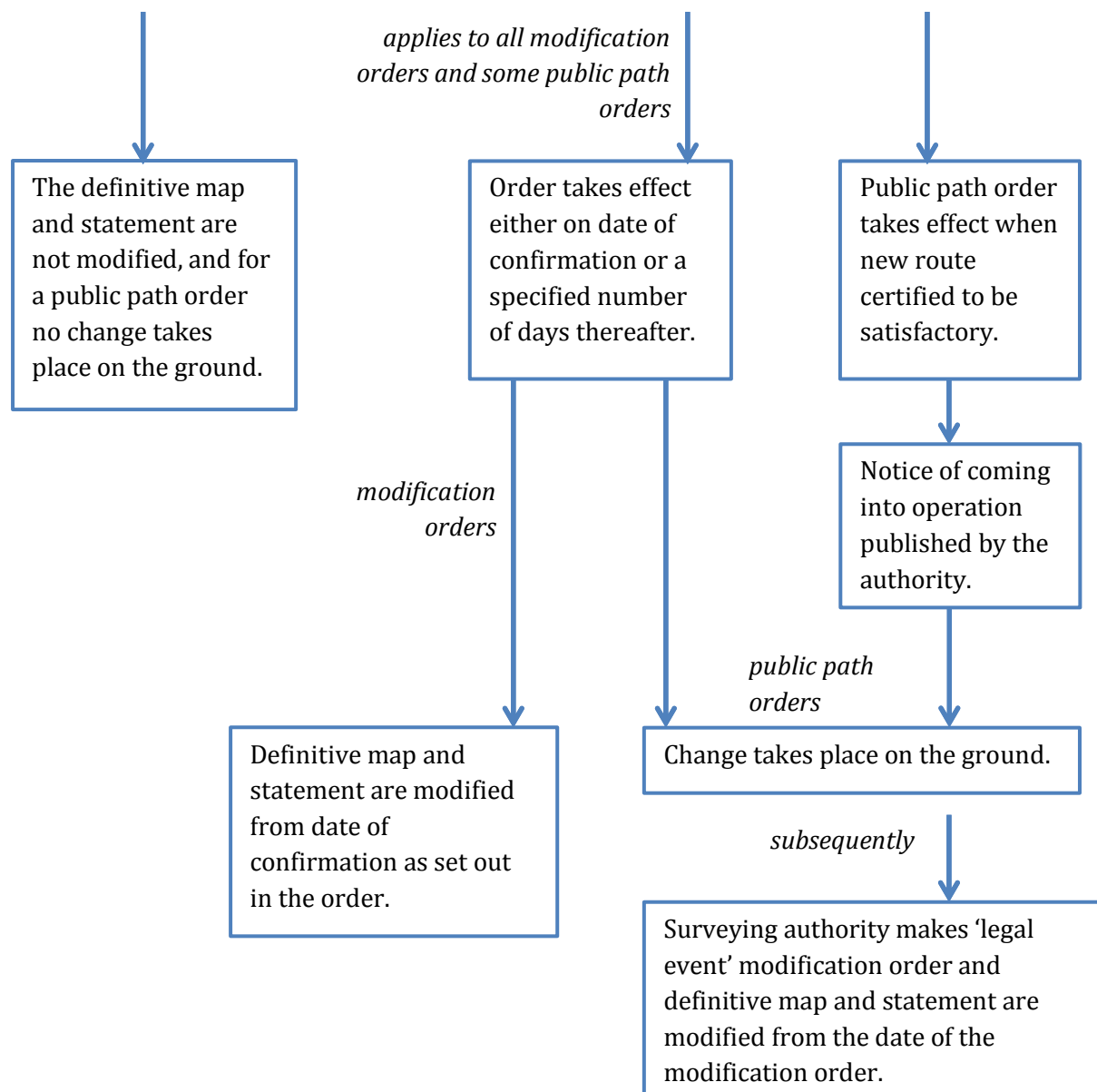
### Flowchart: Applications for Modification Orders



## Annex 5

### Flowchart: Procedure for Modification and Public Path Orders





Monmouthshire County Council



Countryside Service

**Application & Guidance**

**Pack For**

**Public Path Diversion and**

**Extinguishment Orders**

**UNDER THE TOWN AND**

**COUNTRY PLANNING ACT**

**1990, Section 257**



# Guide to the Procedure for Public Path Orders

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These guidelines are to explain the procedure for Diversions and Extinguishments applied for under the Town and Country Planning Act (TCPA) section 257. They apply where it is necessary:

- To stop up or divert a path for development as a result of planning permission granted under Part III of the TCPA
- To stop up or divert a path for development as a result of planning permission by a government department

For the above power to be exercisable, the authority must be satisfied that it is necessary to stop up or divert a way *in order for development to be carried out*. If it is only *desireable* to divert or extinguish a route, rather than *necessary* to avoid its physical obstruction then an application under the Highways Act 1980 should be sought. It should also be noted that the Town and Country Planning Act is only appropriate where development has not been completed. If development has already been completed and illegally constructed over a path a diversion under the Highways Act 1980 section 119 should be sought.

## **The granting of Planning Permission does**

1. **not, in itself, afford permission to close or divert a public right of way.**  
Obstructing or disturbing a Public Right of Way before the public path order procedure has been completed is an offence for which you may be fined, prosecuted and/or building works removed.
2. not necessarily mean any application to alter the Public Rights of Way network will necessarily succeed.

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

### **Landownership**

The very 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 seek the landowners written consent before you can continue. The County Council will not be able to process your application without this.

### **The Legal Tests**

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

### **The Legal Tests for Town and Country Planning Act Orders**

Before making an order the Authority must be satisfied that:

- It is necessary to do so to enable development to be carried out in accordance with planning permission granted by the Council under Part III of the Act
- The disadvantage or loss likely to arise as a result of the stopping up or diversion to members of the public generally, or to persons whose properties adjoin or are near the existing highway, has been weighed against the advantages of the proposed stopping up or diversion
- Regard has been had to the need for an alternative highway to be provided
- The development affecting the route has not already been carried out
- 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 having regard to the disadvantage or loss likely to arise as a result of the changes it is useful to 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 CCW in the pre-order consultation round.)

## Design and Development Considerations

Work should not be started on site until any necessary legal orders to alter the network have been made and confirmed by the Council.

Provision of a new line for a public right of way should be considered at the detailed planning stage or before. The Council will give preference to ways that are provided which pass through landscaped or open space areas away from vehicular traffic. Estate roads should not be used to provide a new line for an existing right of way unless there is no other option.

DOE Circular 5/94 (Welsh Office 16/94) requires that care must be taken to plan out crime. *"Care should be taken that well-intentioned segregation schemes for pedestrians and cyclists do not lead to over-isolation, especially at night. Wherever possible, footpaths and alleyways should be wide, clear of hiding places, well lit and should follow a direct route....sensitive and skilled design should be capable of reconciling the need for acceptable landscaping and the need to produce safe environments. Generally speaking, however, landscaping schemes should avoid*

*creating hidden areas, near footpaths for example where crime is easier to commit.”*

Public footpaths should have a minimum width of 2 metres and bridleways, restricted byways and byways a width of 3.5 metres. If the way is to be enclosed by fencing, hedging, or buildings then footpaths should be of a minimum width of 4 metres and bridleways and byways 6 metres. However, within new development, wider paths may be required to reflect the anticipated heavier usage of these paths, any safety issues and would ensure that users of PROW have adequate space to pass each other and that there is a feeling of spaciousness.

When a PROW is replaced or realigned it should be constructed to at least the same specification as the original, although where there is known to be a potential for greater usage, appropriate surfacing, widening and lighting may be required. In these circumstances, PROW are to be made up in accordance to the Council's adoption standard. In every case this will be a matter for discussion between the prospective developer, the Local Planning Authority (LPA) and the Highway Authority.

The needs of all members of the community need to be taken into account when furniture, gradients and surfacing are being considered. Monmouthshire County Council works to a Least Restrictive Access Policy (See Public Rights of Way AN A-Z Problems, Policy and Protocols). This means that furniture will only be installed on public rights of way where it is needed for the ingress or egress of livestock. Gaps and gates will always be used in preference to stiles. Where there is no longer a need for furniture on a path due to development then this furniture should be removed as part of the design and public rights of way staff should be consulted at the earliest opportunity to consider improvements to any site boundary furniture which may need to be altered to retain livestock or improve the path for the less abled.

Where paths run over new watercourses as part of a development then the developer will be expected to pay for the costs of a suitable crossing and its ongoing maintenance. A section 106 or other type of agreement may be required for this. The public Rights of Way Field Officer should be consulted upon any water crossings at the earliest possible stage who will advise re the specifications of any crossings required.

It is important that new routes which go to the edge of the site join the public rights of way or highway network to avoid access and maintenance issues arising later.

The affects on biodiversity of diverting or closing a route should be considered at the earliest opportunity. Public rights of way often provide important wildlife corridors and contribute to greenspace provision.

## **Work required on the new route or that will be required to remove structures from an old route.**

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

The County 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 than a gap should be made available. The County Council will also not agree to structures such as stiles on a new route, unless it is not possible to install anything else on the land in question. Types of furniture and suitability can be discussed with a Rights of Way Officer.

Landowners will be charged 100% of the reasonable costs of all new foot or bridleway bridges and their installation. Such structures will be supplied and erected by the County Council or its approved agent. Where a structure is built to a higher specification at the request of the authority then the County Council will bear any additional cost.

If applying for an extinguishment of a path, please also note the presence of any structures such as bridges. The County Council will arrange for them to be removed and used elsewhere on the network where appropriate.

## **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 1:2500 and it must be accurate. If no such map is available than the largest scale readily available should be used. 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 County Council requires a reasonable width to be made available that would be sufficient for two users to pass and be convenient for cutting machinery. Public footpaths should have a minimum width of 2 metres and bridleways, restricted byways and byways a width of 3.5 metres. If the way is to be enclosed by fencing, hedging, or buildings then footpaths should be of a minimum width of 4 metres and bridleways and byways 6 metres. Only in exceptional circumstances will an alternative width be agreed. This policy is also designed to ensure public safety and that the needs of the disabled are also taken into account.

## **Diversion of cross-field paths**

Where possible a diverted path should be routed so as to avoid the need to plough it or otherwise disturb the surface.

Please note that the Highways Act prohibits the ploughing or other disturbance of a footpath or bridleway that follows the side or headland 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 headland 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 council charges a fee for the administrative work involved in dealing with an 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 advertising costs. The Council retains discretion to waive, or partially waive, costs where considered appropriate in the public interest.

You will be invoiced at three stages: (Payment is due 30 days from invoice date):

Stage 1. Pre-publication (non refundable charge)

Stage 2. Publication

Stage 3. Confirmation of order

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 an application under s257 is as indicated on the Cost Schedule attached. Charges for additional costs are outlined in the Cost Schedule. VAT is not charged.

## **Time span**

The average length of time taken to process an application to confirmation is in excess of nine months. However, if the matter is submitted to the Welsh Assembly Government and their Inspector calls a public inquiry or hearing, it may take much longer. Whilst proposals and applications are encouraged to be submitted based on outline planning permission it should be expected that detailed planning permission needs be submitted before an order is able to be made formally.

**Please note that until a Public Path Order is confirmed than the existing route remains in existence and must be available for use.**

## **Procedures Involved With Public Path Orders under the Town & Country Planning Act**

The procedure for dealing with the diversion or extinguishment of public rights of way is complex and can be time consuming. The basic stages are as follows:

1. Informal discussions with the council's rights of way officers to discuss the feasibility of the proposal, application form, cost schedule.

2. Receipt of your final application and informal consultations with user groups and statutory consultees.
3. Negotiations following any objections to the proposal at informal consultation stage.
4. Where considered necessary, there will be a site visit by the Rights of Way Officer and the Rights of Way Licensing and Regulatory Advisory Panel (Councillors).
5. Drawing up of order map, schedule, legal notice, order and report for committee or delegated power.
6. Consideration of a report on the application by the Regeneration, Environment and Resources Director if there are no objections and a decision on whether to make/ refuse/defer the making of a diversion order. If objections are outstanding the report will be considered and determined by the Rights of Way Advisory Panel and relevant Cabinet Member who will make a decision on whether or not to make/refuse/deter the application.
7. Preparation and publication of the order followed by 28 days' advertisement on site and in the press.
8. Negotiations on any formal objections to the order. An authority can not confirm an order to which representations or objections have been made and not withdrawn.
9. If the objections cannot be resolved the order will be submitted to the Welsh Assembly Government and they will appoint an Inspector to determine the objections and decide whether the order should be confirmed. Depending on the circumstances, the inspector may reach his decision on the basis of an exchange of correspondence, or the case may be taken to a public hearing or inquiry. It should be noted that the Inspector has no powers to amend a planning permission so as to facilitate what objectors to an order claim to be a preferable diversion and inspectors are advised not to allow objectors to seek to reargue the merits of the development for which planning permission has been granted.
10. If it is decided by an Authority or an Inspector that the order should be confirmed, publication of a notice is made of the decision in the press and on site. At this stage the developer must provide the path to the required standard. (Please note that an Inspector may decide not to confirm the order.)

An order which extinguishes a right of way under the 1990 Act is normally drafted as to come into effect immediately on the order's confirmation, regardless of whether or not the development has taken place. Orders which divert or otherwise bring into existence new rights of way, will be drafted so as to come into operation not immediately upon confirmation (unless the new route is already available at an acceptable standard to this Authority) but upon certification by rights of way staff that the new route has been satisfactorily created. This prevents the order from taking effect if for any reason the development fails to be carried out as planned. It also avoids a contested order being confirmed by an inspector and coming into operation on a date over which this Authority has no control.

If for any reason an order comes into operation other than on the date on which it is confirmed, the authority will have to certify the order to bring it into operation and there will be additional costs for this in terms of advertisement and administration fees.

11. A site visit, or several site visits, may be carried out by council officers to ensure satisfactory provision of the new route. Certification will be issued only when the new route is provided satisfactorily.

### **If There Are Objections to the Order**

Because of the initial consultation process, objections to Orders are usually few and far between and they are even less likely should the Countryside Access Team be consulted very early on in the design process for a development, before an application for closure or diversion is submitted.

A formal objection has to be made in writing to the County Council within the 28 day period. If objections are received then an officer will enter into dialogue with the objector. If the objections are maintained, the Council will send the Order to the Welsh Assembly Government (WAG) for determination, after consulting with the applicants and objectors. WAG will decide whether or not a Public Inquiry is deemed necessary or whether the written representation or hearing procedures can be invoked.

Applicants will be expected to present their own case at the Inquiry in defending the opposed order. County Council Officers will arrange and attend the Inquiry to answer questions regarding the processing of the order. If the written representation procedure is exercised, the Council will normally act as a facilitator for this.

If a Public Inquiry is necessary and the order is made in the public interest, the Council will prepare a case for confirmation of the order at a Public Inquiry. However if the Order is made in the landowner's interest, the Council will only act as a facilitator for this.

An independent Inspector appointed by the National Assembly for Wales will give his/her decision to confirm, not confirm or modify the Order after the case has been considered.

**Beware there are No Guarantees**

The County Council can not guarantee that any application will proceed to the making or confirmation of an order, nor can the County Council give assurances that all applications will be successful in the event of objection.

Applicants must be aware that they may incur cost without the Order eventually succeeding.

The Council will endeavour to resolve objections if at all possible and applicants will be able to withdraw their applications prior to objected Orders being sent to WAG for determination. In these circumstances the County Council 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 ERRORS OR OMISSIONS.**

## Public Path Order – Cost Schedule

| <b>Stage 1 Pre-publication</b><br><b>(non refundable, even if the order does not get approval at Committee and no order is made)</b> |                                                                                                                                                                  |                                                                                                      |                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Item                                                                                                                                 | Details                                                                                                                                                          | What's Included                                                                                      | Approximate Cost                                           |
| 1. Initial Investigative work                                                                                                        | Feasibility of proposal, Guidance, check application form, cost schedule, phone calls and map work. Set up file and enter details into computer system.          | Officer time which includes: Photocopying, typing, stationary requirements, computer work/facilities | £60.00                                                     |
| 2. Research into history and status of rights of way                                                                                 | Check for claims. Check routes on the Definitive Map, previous orders, file history and applications etc.                                                        | Officer time                                                                                         | £30                                                        |
| 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, widths. Photographs. | Officer time/mileage                                                                                 | £60                                                        |
| 4. Formal Consultation Letter                                                                                                        | Consultation letters and plans with statutory undertakers and prescribed bodies                                                                                  | Officer time including: Typing, Stationery, Drawing up of plans                                      | £90                                                        |
| 5. Officer time considering and responding to informal consultation responses                                                        | Recording and analysing replies and responding as necessary. Negotiations/ mediation with any objectors                                                          | Officer time                                                                                         | £60                                                        |
| 6. Assessment of Legal Implications                                                                                                  | Seek legal advice                                                                                                                                                | Officer time                                                                                         | £30                                                        |
| 7. Preparation of Committee reports/ delegated powers report                                                                         | Detailing background to application, proposal and legal tests. Detailed plan to be included showing proposal.                                                    | Officers time and resources                                                                          | £60.00<br>(Additional time to be charged for if necessary) |

**Applicant invoiced at this stage**

## Public Path Order- Cost Schedule

| <b>STAGE 2. PUBLICATION</b>                                      |                                                                         |                                                        |                    |
|------------------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|--------------------|
| Stage                                                            | Details                                                                 | What's Included                                        | Approximate Cost   |
| 8. Drawing up of order map, schedule, legal notice and order     | Draft the legal order, schedule, plan and site notice                   | Officer time                                           | £90                |
| 9. Letters to consultees, distribution of legal order and notice | Send copy of the legal order/notice/plan to all affected people/bodies. | Officer time<br>Photocopying costs<br>Stationery costs | £200               |
| 10. Drawing up statement of reasons for order                    | Explaining why the order is being made                                  | Officer time                                           | £30                |
| 11. Site visit                                                   | Post, check and remove site notices                                     | Officer time                                           | £60                |
| 12. Admin costs for advertisement                                | Press notice written<br>Processing of advert<br>Invoice                 | Officer time                                           | £30                |
| 13. Advertisement costs                                          | Will depend on size of advert and the paper in which it is placed       | Average cost of £250 per order                         | £250 plus or minus |

**Applicant invoiced at this stage.**

## Public Path Order- Cost Schedule

| <b>Stage 3. Confirmation of Order</b>             |                                                                                                                                                                                                                                                                     |                                                         |                         |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|-------------------------|
| <b>Stage</b>                                      | <b>Details</b>                                                                                                                                                                                                                                                      | <b>What's Included</b>                                  | <b>Approximate Cost</b> |
| 14. Negotiations of objections                    | (May not be required)                                                                                                                                                                                                                                               | Officer time                                            | £120.00                 |
| 15. Forward order to WAG (if required)            | (May not be required.)<br>Covering letter to WAG,<br>Council's comments,<br>assemble necessary paper work                                                                                                                                                           | Officer time<br>Photocopying<br>Stationary requirements | £60                     |
| 16. site visit(s) to certify route is operational | Check new route is satisfactory prior to confirmation (every effort will be made to ensure this only needs to be done once, but in some circumstances more than one visit may be necessary particularly where development is stretched over a long period of time). | Officer time/ mileage                                   | £60+                    |
| 17. Confirmation of order                         | Drafting and sealing of confirmed notice and order and site plan. Send to all relevant consultees, landowners etc.                                                                                                                                                  | Officer time<br>Photocopying<br>Stationery requirements | £200                    |
| 18. Admin costs for advertisement                 | Alteration of notice<br>Processing of order<br>Arrangements for press                                                                                                                                                                                               | Officer time                                            | £30                     |
| 19. Site Visit                                    | Place notices on site                                                                                                                                                                                                                                               | Officer time                                            | £60                     |
| 20. Advertisement costs                           | Will depend on size of advert and the paper in which it is placed                                                                                                                                                                                                   | Average cost of £250 per order                          | £250 plus or minus      |

**Applicant is invoiced at this stage.**

## PUBLIC PATH ORDER – COST SCHEDULE

| Additional Charges                         |                                                                             |                                                               |                                  |
|--------------------------------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------|
| Item                                       | Details                                                                     | Whats included                                                | Cost                             |
| Letters/phone calls                        | Additional letters to applicant or objectors which are not covered by above | Officer time                                                  | £20.00 per letter                |
| Site visits                                | Additional to above, as required                                            | Officer time                                                  | £115 each (dependant on mileage) |
| Site Visit by Rights of Way Advisory Panel | Additional to the above as required                                         | Officer time, mini bus hire, administration to notify Members | £100                             |

1. The average minimum costs for an unopposed order is in the region of £1,600.00 (minus stages 14 and 15)

2. Average minimum costs for an opposed order is in the region of £1,930.00 (including £100 for site visit by Advisory Panel).

**The variables in the total cost will be:**

**i) Cost of advertisement** – dependent on publication used and size of notice. This does vary widely. Please discuss with the Assistant Public Rights of Way Officer. (Stages 13 and 20).

**ii) The stage that the public path order (PPO) reaches.** Applicant or Monmouthshire County Council can withdraw the application at any stages prior to the orders confirmation or point 15.

The first seven stages will form the non-refundable deposit for work undertaken up to and including that point, this will not be refunded if the order fails to continue to the next stage.

If the application is taken forward by the County Council the Applicant will be invoiced at the end of stage 13 and again at the end of the process at stage 20.

Additional costs may be charged for further site visits, phone calls and letters which are not included in the schedule and will be invoiced for at the relevant stages (7, 13 and 20).

Multiple order applications incur additional costs per order made, identified in 8, 9, 13 and 20 above.

**The fees noted above are only a general guide and every effort will be made to ensure that costs are kept to a minimum.**

**TOWN AND COUNTRY PLANNING ACT 1990**  
**Section 257, 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 Council to process the application as specified in the Cost Schedule and Procedural Guide for Making Public Path Orders. I understand that I will be required to pay these costs in three instalments.

I understand and agree to pay the costs of carrying out the necessary work to provide the new route to the satisfaction of the Council. 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 100% for the actual costs of the furniture and installation (unless agreed otherwise in writing with Monmouthshire County Council). I will be separately invoiced when any necessary works are completed.

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:





Town & Country Planning Act 1990, Section 257  
**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 the Public Rights of Way Officer, Monmouthshire County Council, PO Box 106, Caldicot. NP26 9AN

You must also send:

1. Two copies of 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

- a) Name
- b) Address
- c) Contact Telephone number

Name & address of agent (only complete if applicable)

- a) Name
- b) Address
- c) Telephone number
- d) Profession

Name & address of the owner(s) of the land on both sides of the Public Right of Way to be diverted.

- a) Name
- b) Address

If you the applicant do not own the land on which part, or all, of the new route is to run, has the consent of the landowner(s) been obtained in writing YES / NO (If yes please attach).

- a) Name
- b) Address

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:

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

Name of Community or Communities in which the path are located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).  
..... from OS Grid Reference (where there is only one path  
involved) ..... to OS Grid Reference.....

General description of path(s)

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

Please give the name of the local newspaper(s) circulated in the area.

**SECTION C: REASON FOR DIVERSION**

Planning Application No.

On what date is the development affecting the Public Right(s) of Way expected to begin.

## SECTION D: DECLARATION

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

1. (Delete this particular statement if it does not apply) I/We own the land edged red on the attached plan which I/We have signed and dated.
2. I/We have read and understood the guidance notes attached to this application. I/We agree to comply with the following conditions in respect of this application:
  - a. 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.
  - b. The proposed alternative route must be constructed to the satisfaction of the Monmouthshire County Council as the Highway Authority.
  - c. The siting and type of any new, bridges, stiles, gates or fencing must be agreed with the County Council prior to erection and maintained at the applicants own expense in the future (unless specifically agreed otherwise in writing with the County Council).
  - d. Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the County Council.
  - e. The alternative route(s) to be signposted and waymarked to the satisfaction of the County Council.
3. If the Council agrees to make the order for the diversion of the path(s) I/We will carry out such work on the diverted route of the path as may be specified by the County Council, at our own expense, to bring the route into a fit condition for public use at such time as the diversion order can be confirmed.
4. I/We 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.
5. I/We 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/We undertake that it/they shall in no way be obstructed before the Order comes into operation.
6. The Order when made must state the period of time required for the implementation of the diversion(s) *(by what date will you make the new routes available?)*  
The period of time required is \_\_\_\_\_ weeks
7. I/We declare that to the best of my/our 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:

Date:





Town & Country Planning Act – SECTION 257  
**APPLICATION FOR AN ORDER TO  
 PERMANENTLY EXTINGUISH ALL, OR  
 PART, OF A PUBLIC RIGHT OF WAY**

The following questions should be answered as fully as possible and the form returned to:  
 Public Rights of Way Officer, Monmouthshire County Council, PO Box 106, Caldicot  
 NP26 9AN

You must also send:

1. Two copies of a plan showing the Public Right of Way concerned and with the line of the extinguishment clearly marked. You should also indicate on one of the plans landownership details.
2. Any relevant landowners/owners/occupiers agreement to the proposal
3. A signed "Undertaking to Pay Costs Form"

**SECTION A: GENERAL**

Name & address of applicant

- a) Name
- b) Address
- c) Telephone/mobile number

Name & address of agent (only complete if applicable)

- a) Name
- b) Address
- c) Telephone/mobile number
- d) Profession

Are you the sole landowner of the entire length of path to be closed? YES / NO

If "No" has the consent of the landowner(s) been obtained in writing? YES / NO If YES please attach.

Give the name & address of the owner(s) of the land over which the Public Right(s) of Way to be extinguished passes over.

- a) Name
- b) Address

Have you obtained the written consent of any Lessee or Tenant or Occupier to the extinguishment proposal? YES / NO If yes please attach consent.

- a) Name of Tenant, Lessee or Occupier
- b) Address

Name & address of the owner(s) of the land on both sides of the Public Right of Way to be extinguished.

- a) Name
- b) Address

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

Name of the Community or Communities in which the path is located:

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

*(Where there is only one path involved)* From OS Grid Reference..... to OS Grid Reference.....

General Description of path(s)

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

Please give the name of the local newspaper(s) circulated in the area.

## **SECTION C: NEW LENGTHS OF PUBLIC RIGHTS OF WAY TO BE DEDICATED**

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

If the applicant does not own or control the land to be dedicated, has the consent of the landowner(s) been obtained? YES / NO

- a) Name
- b) Address

## **SECTION D: REASON**

Planning Application No.

On what date is the development affecting the Public Right(s) of Way expected to begin.

What is the likely use of the path and what effect will the closure of the path have on the land served by it?

## SECTION E: DECLARATION

**I/We own the land edged red on the attached plan which I/we have signed and dated. We have read and understood the guidance notes attached to this application and agree to comply with the following conditions in respect of this application:**

- 1a. Any proposed dedicated route/s must be at least equal in construction to the length of the route it is replacing.
  - b. The proposed alternative route must be constructed to the satisfaction of the Monmouthshire County Council as the Highway Authority.
  - c. The citing and type of any necessary gates, fencing or other furniture on the route to be dedicated must be agreed with the County Council prior to erection.
  - d. Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the County Council.
  - e. The alternative route to be signposted and way marked to the satisfaction of the County Council.
2. I/We 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/We declare the Public Rights of Way(s) to be extinguished is/are in no way obstructed and that it/they are fully available to the public and I/We undertake that it/they shall in no way be obstructed before the Order comes into operation.
  4. I/We are aware that if an order is made and confirmed the County Council will make arrangements, where necessary, to remove any foot or bridleway bridges on the route that has been closed.
  4. I/We declare that to the best of my/our knowledge and belief all the particulars given are true and accurate.

Signed:

Date:

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# 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. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**Changes to legislation:**

Equality Act 2010, Introductory Text is up to date with all changes known to be in force on or before 02 July 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

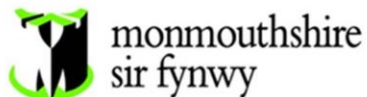
**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 140B(1) words omitted by [S.I. 2019/469 Sch. 1 para. 17\(6\)](#)
- s. 209(3)(e) inserted by [2018 anaw 2 Sch. 1 para. 19\(4\)](#)
- Sch. 3 para. 17(4)(d) and word omitted by [S.I. 2019/305 reg. 5\(7\)\(b\)\(iii\)\(dd\)](#)
- Sch. 17 para. 6AA and cross-heading inserted by [2018 anaw 2 Sch. 1 para. 19\(5\)\(f\)](#)
- Sch. 17 para. 6F inserted by [2018 anaw 2 Sch. 1 para. 19\(5\)\(h\)](#)
- Sch. 17 para. 3A(1)(a)(b) substituted for words by [2018 anaw 2 Sch. 1 para. 19\(5\)\(d\)\(i\)](#)

# Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide

This document is available in alternative formats and in Welsh on request.



Version 2, Final February 2020

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## 2.0 Introduction

### 2.1 The Resource

Monmouthshire has nine countryside sites that are directly managed by MonLife's Countryside Access Service. These do not include Caldicot Castle Country Park and Tintern Old Station which are managed as part of MonLife's portfolio separately. The sites are important in providing places for people to undertake leisure pursuits and active lifestyles. Research shows that they are also important for the mental well-being and physical health of residents and has a positive effect on longevity of life. The sites are managed in cooperation with "Friends of" Groups, where they exist.

Monmouthshire's Public Rights of Way (PROW) network extends to 2,164.83km and provides unparalleled opportunities for public access throughout a tremendously varied and rewarding landscape. A significant number of PROW provide invaluable links for the community to shops, schools and services, in effect continuing to serve the utilitarian purpose out of which all rights of way evolved. It is the very links with Monmouthshire's heritage, culture, life and landscape that make public rights of way the single most important recreational resource in the County.

The PROW network like the countryside sites are also unique in offering not only a recreational resource, but provide benefits for health and well-being, make a significant contribution to the tourism industry and the rural economy. The PROW resource currently costs each resident of Monmouthshire around £4 per year!

### 2.2 Existing Policy

The existing policy for PROW management can be found in Monmouthshire's "Public Rights of Way An A to Z of Problems, Policy and Protocols" which was published in 2005. This is supplemented by the Rights of Way Improvement Plan (ROWIP) 2007 and its review in 2010, the Countryside Access Improvement Plan (CAIP) 2020, the Rights of Way Biodiversity Action Plan 2011 and Countryside Access Design Guide 2012. Since then there have been changes in legislation and Government thinking. There is now more emphasis on improving the PROW network for meeting the needs of all of the public today and an onus on Highway Authorities to manage more strategically into the future. Guidance<sup>1</sup> produced by the Welsh Government, to update the ROWIP requires that all key policies for the management of local rights of way should be reviewed. This new policy document reflects this and updates the previous "A-Z of Policy and Protocols" to bring together all aspects of rights way and countryside access management policy in one place.

There has never been a management policy document for countryside sites, but as the revised CAIP has been extended to include other types of access such as countryside sites then where applicable they are included.

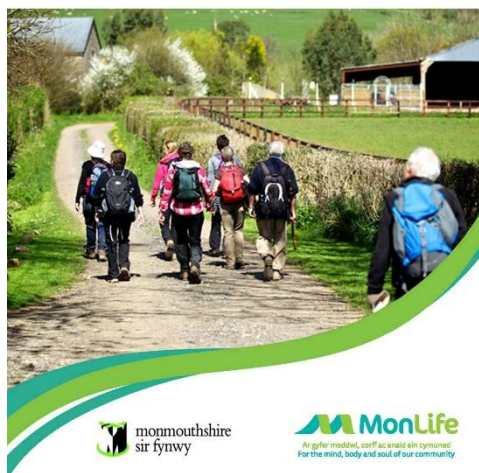
### 2.3 Aims and Objectives of this Guide

The Countryside Access Service provides a statutory service to the residents of Monmouthshire and its visitors. In order to continue to provide a good service it is important that the service seeks continual improvement and adapts to the ever-changing world of public rights of

way/access management. With an already large and ever increasing workload, new policies must be developed to manage growing public expectation.

### Monmouthshire's Countryside Access Improvement Plan 2020 – 2030

This document forms the Rights of Way Improvement Plan (RoWIP)  
for purposes of the Countryside and Rights of Way Act 2000



Importantly it should be noted that the Monmouthshire Countryside Access Improvement Plan(CAIP) remains an ambitious and forward-looking document. It doesn't limit its remit to the duties that the County Council is obliged to fulfil as highway, surveying and access authority. The statements of action are not fully resourced; it recognises the need to work with partners and stakeholders to deliver many of its elements.

This policy review is an integral element of the CAIP review. It focusses directly on

- how the service delivers statutory elements of its work
- manages the resources available to it, and
- operational priorities

Practice continually evolves in response to: new legislation, guidance from Government, case law, changing priorities, improving technology, emerging good practice in other authorities and regularly from our own officers and perhaps most importantly as a response from feedback from our users.

This review is not meant to be a definitive guide to legislation. It assumes a little understanding of the subject matter.

This review provides an opportune moment to restate policy and practice and where necessary amend it. It also provides an ideal opportunity to set out the approach taken by the County Council to the management of PROW and access.

## 3.0 Summary of Issues/Background

Monmouthshire's Countryside Access service has a good national reputation and staff have continually strived to improve the service to the people of Monmouthshire within the limitations placed upon them.

Issues highlighted by the rights of way improvement plan review assessments 2016/18 and Monmouthshire's Public Service Board Well-Being Assessment include:

1. The PROW network performs many functions, which include, but stretch beyond leisure and recreation alone. The network is part of the local transport infrastructure and is an important factor in the local economy of Monmouthshire and an invaluable free resource for the well-being and quality of life for Monmouthshire's residents and visitors alike. It also provides valuable volunteering opportunities. Countryside sites also provide similar opportunities.
2. The Countryside Access Team is under several pressures, some constant, others variable. The service requires greater resources than present to help overcome these pressures.
3. The Well-Being of Future Generations Act requires that the service must think about the long-term, work better with people, communities and other services to look to prevent problems and take a more joined-up approach.
4. The Active Travel (Wales) Act provides opportunities to improve existing paths and create new ones and needs a partnership approach to ensure a sustainable and usable network is developed around the whole county.
5. The service must plan for the future and identify the demands of the future. Health walks and using rights of way to improve health, improving access in and to open spaces, improving the network available to horse riders, runners and cyclists, better promotion to targeted audiences, development of bite sized doorstep opportunities, connecting people with wildlife and landscapes are some of the identified issues that need to be addressed in the future.
6. The service must explore and exploit further ways of promoting how it works, what it does, and the importance of that work.
7. Monmouthshire's Countryside Access Service has an active and valued volunteer base which the citizens of Monmouthshire would like to see expand.
8. The service must explore other ways of raising funds, involving the community and relating the Service to the general public.
9. The Service must prioritise where it focuses resources and standards to reflect areas of most demand. It must also be able to be adaptable to cover such things as bad weather events.
10. The Service must demonstrate provision of a full and effective Service by a commitment to pursuing its duties, including enforcement action, when legislation is ignored and requires that policies should enable rather than constrict timely action.

## 4.0 Classification of Public Rights of Way

The PROW network is part of the highway network making up 57% of the over-all highways in Monmouthshire. These “minor” highways are protected by the same highways legislation as the wider highway network and as such must be kept open and available for use by the public at all times.

However they are distinguished from other all purpose-highways in the way they can be used as this is dependent on what the status is. PROW are broken down into four levels of status:

- **Footpath**, a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;
- **Bridleway**, a highway over which the public have a right of way on foot and a right of way on horseback or leading a horse, with or without the right to drive animals of any description along the highway. Section 30(1) of the 1968 Countryside Act introduced the right of riding pedal cycles on bridleways.
- **Byway open to all traffic (BOAT)**, a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are so used;
- **Restricted byway (RB)** – a highway over which the public have restricted byway rights. This means a right of way on foot, a right of way on horseback, or leading a horse, a right for vehicles other than mechanically propelled vehicles and the right to drive animals of any description along the highway.

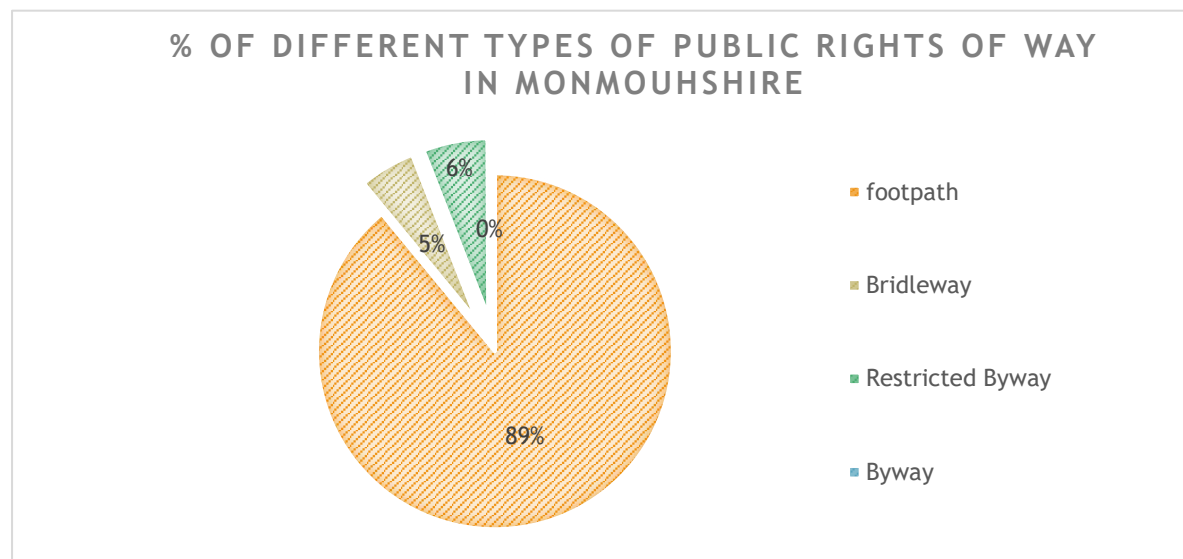
Restricted Byways are a new category of highway introduced by the Countryside and Rights of Way Act 2000 (CROW). Under the CROW Act, all PROW which were designated as a Road Used as Public Path (often denoted as CRB's or CRF's on Monmouthshire's Definitive Map) were re-designated as Restricted Byways.

Section 30 of the Countryside Act 1968 expanded public rights on bridleways to include a right to ride bicycles. However, in exercising that right, cyclists are required to give way to pedestrians and persons on horseback. Furthermore, the Countryside Act 1968 expressly provides that the expansion of rights to cyclists does not create any further obligation as respects maintenance or to do anything to facilitate the use of the bridleway by cyclists.

Invalid carriages, including wheelchairs and powered wheelchairs, may be used on both footways, footpaths, bridleways, restricted byways and byways by virtue of the Chronically Sick and Disabled Persons Act 1970

Electrically-assisted pedal cycles must meet the specification set out in the Electrically Assisted Pedal Cycles Regulations 1983, as amended by the Electrically Assisted Pedal Cycles (Amendment) Regulations 2015, in order to be considered such. As is the case on footpaths, invalid carriages, including wheelchairs and powered wheelchairs, may be used on bridleways by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not

exceed a maximum speed of 4 mph on rights of way and should be used in accordance with prescribed conditions set out in regulations.



The network available for the disabled, horse riders and cyclists is particularly poor and disjointed. Therefore, maintenance of existing bridleway and restricted byway routes is more critical to the public's ability to use the network.

The List of Streets is held by Highways and should show all county maintained roads in Monmouthshire. This shows an extensive number of county unclassified roads many of which are important links in the rights of way network.

The network in Monmouthshire is very dense and ancient. This provides a challenge as it is not then easy to manage this network in a way which is fit for the modern and future needs of the public using it. It also presents a challenge in that resources are spread thinly in an attempt to keep as much of the network as possible available to as many people as possible. This can create conflict of interest when trying to decide where to channel resources.

Together with an increasingly litigious society and a firm statutory duty placed upon Monmouthshire County Council as Highway Authority the Countryside Access Service must adopt and adhere to a robust statement of priorities for effective management of the network.

## 5.0 Structure and Delegation

### 5.1 Delegation of Functions

The various functions relating to the delivery of the County Council's statutory obligations relating to public rights of way and countryside sites are delegated by the County Council to either officers or committees of the County Council; primarily the Licencing and Regulatory Committee and elected member – principally the Portfolio Holder for Countryside.

Who the various duties and powers are delegated to and any limitations or requirements on their use are set out in Monmouthshire's Scheme of Delegation.

### 5.2 Structure of the Countryside Access Service

PROW and Countryside Sites in Monmouthshire are directly managed by the Countryside Access Team, within MonLife.

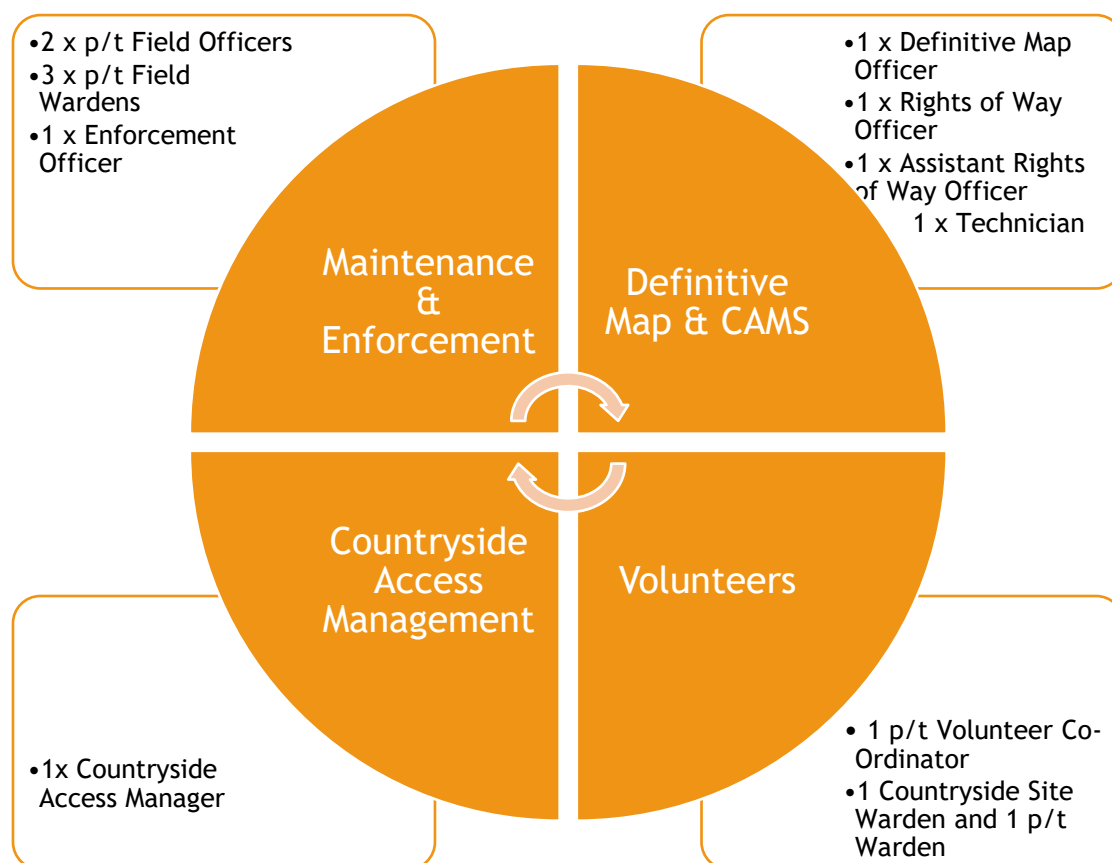
MonLife is an exciting collaboration that has unified all services and facilities under one brand, strengthening awareness and enhancing opportunities for all. MonLife is part of Monmouthshire County Council and delivers leisure, youth and outdoor education, green infrastructure and countryside access, play, learning, destination management, arts, museums and attractions.

Below are the Operational Areas of MonLife



It is a dynamic and fast moving organisation with a commercial focus but also ensuring that the valuable services within its portfolio combine to provide huge benefit to the communities, young people and customers they serve. The strategic focus of MonLife is on physical and mental health and wellbeing, providing opportunities in learning and experiencing, achieving a more physically active lifestyle for all.

It should be noted that an agreement is in place for those rights of way which fall within the National Park in Monmouthshire to be directly managed by the Brecon Beacons National Park Authority (BBNP). Should that agreement ever be rescinded then the rights of way in the BBNP would be covered by the procedures and policies that apply to the rest of Monmouthshire.



The work of the Countryside Team can be broken down into several areas but staff increasingly work across disciplines.

- Strategic Management – Policy, CAIP Review and monitoring, Delivery Plans, Countryside Site Management Plan development, research, promotion, staff management, managing budgets/resources, developing and managing projects, partnerships and grants, Green Infrastructure projects, national and local consultations, training and development, Freedom of Information Requests, Insurance claims and prioritisation of work.
- Definitive Map Review –statutory elements of ensuring the Definitive Map and Statement is up to date. This includes researching and processing claims, anomalies, legal orders (such as diversions), temporary closures, monitoring and advising on development, land searches and other types of inquiries. There is also work involved to keep up to date and improve our on-line mapping service, public registers and our Countryside Access Management System (CAMS).
- Maintenance and Enforcement – inspection, prioritisation, maintenance and enforcement of the PROW network. Also includes asset protection, community liaison, Offa's Dyke Path National Trail and Wales Coast Path Annual Project programme and leads on least restrictive access and other improvement programmes etc.
- Management of Countryside sites – promotion, inspections, maintenance, community liaison, agreements, education, events, improvement projects, asset protection & enforcement.

- Volunteers – enabling groups, town and community councils to assist with the administration, maintenance and promotion, identification and funding of improvements on the rights of way network and countryside sites.



## 6.0 Aims and Objectives of the Countryside Access Service

The aim of the Countryside Access Service is to provide Countryside Sites and a public rights of way network in Monmouthshire which are correctly recorded, easy to follow, safe to use and adaptable to the needs of today and the future. There is an ever increasing amount of statutory powers and duties placed upon us to achieve this aim. Generally, these are: -

### To protect, assert and provide an accessible network free from interference and obstructions by

- a) Continuing to develop constructive and good relationships with landowners/occupiers and User Groups
- b) Promoting conciliation as a first result in resolving problems of illegal obstructions and infringements as is reasonable
- c) Using all enforcement powers necessary when conciliation fails following legislation, MCC Enforcement Policy and The maintenance and Enforcement Prioritisation system (Chapter 15)

### Manage, maintain and enhance a network fit for the needs of Monmouthshire's residents now and in the future by: -

- a) Managing the network in accordance with the statement of priorities (Chapters 13 & 15)
- b) Replace known missing bridges and those that need repair (as per statement of priorities & 16.4)
- c) Seek resources to inspect bridges and to replace/repair them
- d) Install and repair all missing and broken fingerposts where public right of way meets metalled road
- e) Preventing the fabric of the network (stiles/gates/surfacing) from deteriorating further and applying the Least Restrictive Access policy (chapter 7)
- f) Fully utilising and updating the CAMS database
- g) Providing improvements where possible to take account of the needs of those less able and those of the local community as per the Rights of Way Improvement Plan
- h) Encouraging and developing Community/Town Council and local groups to assist with maintenance, promotion and events on rights of way.

### Keep the Definitive Map and Statement up-to-date and to ensure the status and alignment of all PROW are correct in accordance with statutory duties by: -

- a) Investigating and determining all claims in accordance with the statement of priorities (see chapter 14)
- b) Investigate and determine anomalies in accordance with statement of priorities & 14.2
- c) Process applications to change PROW in accordance with policy (14.4)
- d) Ensure all changes are covered by a formal order

## Develop and improve the network through public right of way improvement initiatives

- Plan for and prioritise programme of improvements identified through CAIP, Green Infrastructure, Active Travel and Well-Being Plan.
- Link to external initiatives where possible to add benefit to the public rights of way network.
- Link to other plans such as Active Travel and Well-Being Plan to provide improvements in a partnership approach and wider scale than just countryside access service alone.
- Seek resources to increase consultation and undertake surveys of possible improvements (like identifying those paths which can be made more accessible to all by removal of barriers etc.) with local communities and Volunteer Groups to ensure maximum benefits of any improvements and to help monitor benefits afterwards.

## Manage, Promote & Improve Countryside Sites to provide opportunities for the public to access green spaces, encouraging active travel or recreational activities thereby improving their health, well-being, and the environment.

- Promote and maintain sites
- Plan for and prioritise improvements using CAIP and Green Infrastructure plans to develop individual management plans for each countryside site. These should link to other plans such as Active Travel and include community involvement and needs both now and in the future.
- Improve biodiversity/landscape of sites, connecting people with quiet spaces and the environment.
- Improve facilities where possible to enable people to enjoy the sites and enable more people to use the sites.
- Manage events and requests for events/ supervise any agreements relating to other people's access via or through the land, tenancy agreements, fishing, geocaching, filming, park run etc.
- Enabling "Friends of.." and community groups to be actively involved with the above.

## Manage Open Access Land

- Look at how to provide access to any isolated parcels of access land
- Work with landowners to provide the best means of providing access to Open Access Land
- Provision and management of agreements with respect to means of access to Open Access Land
- Carry out enforcement where necessary
- Support Natural Resources Wales with review of Conclusive Maps
- Oversee any bylaws

### 6.1 Access to Water

Access to some water sport provision such as canoeing in Monmouthshire is limited. There are rights of navigation on the River Wye. To canoe on the Monmouthshire and Brecon Canal a licence is required. However, there is no clarity regarding canoeing on the River Usk. If such

rights were to be negotiated by all parties than Monmouthshire County Council would be prepared to be involved, specifically where negotiation of access may need to be sort on land the Council holds near or besides the Usk.

## 6.2 Community Involvement

The very nature of public rights of way encourages involvement of the community from community councils to small groups of volunteers. The Countryside Access Service has always recognised this and has a long history of encouraging community involvement.

Our aim is to continue to encourage local groups/ Community Councils to assist with the maintenance, surveying, promotion, events and other appropriate activities on countryside sites and rights of way network.

## 6.3 Partnership & Working with Others

The wide ranging remit of the Countryside Access Service necessitates strong working relationships with numerous other service areas within Monmouthshire County Council. Regulatory work requires close work with Planning & Development Management, Legal Services, Highways and Trading Standards. Increasingly as budgets have minimised and there is recognition of the similar benefits of our work, new and other relationships are being sought across MCC and MonLife such as with Exercise Referral, Outdoor Education, Youth etc.

Outside of MCC the service works with relevant government agencies such as Natural Resources Wales. The Service also has many other links with NGO's, other voluntary bodies, charities such as National Trust and Wildlife Trusts, countryside management projects and the Wye Valley AONB.

The Countryside Access Service is grant projects. actively involved with numerous partnerships where two or more partners work together on common interests and goals by sharing information and skills, pooling resources and pursuing opportunities to develop An example of this is the Living Levels Landscape Partnership. Such partnership working will continue.

## 6.4 Monmouthshire Local Access Forum

Section 94 of the CROW 2000 places a duty on authorities to establish Local Access Forums to advise on public access to land for any lawful purpose and outdoor recreation, including public rights of way and the right of access to open country.

Membership of The Monmouthshire Local Access Forum tries to include a balance of users of rights of way and the right of access to open country, landowners and occupiers, together with any other interests especially relevant to Monmouthshire. The Local Access Forum focuses on those issues that are most relevant to Monmouthshire, considers issues at the strategic level, and adopts a proactive approach. Monmouthshire County Council must have regard to this Forums' views in reaching decisions on access and public rights of way issues.

There are 3 to 4 meetings per year and these are open for the public to attend. Agendas and reports are available on our [website](#).

## 6.5 Community & Town Council Maintenance

Under s. 43 of the HA 1980, community or town councils can maintain footpaths, bridleways and restricted byways in their area which are maintainable at public expense without the prior consent or agreement of the authority, although it is strongly advised that agreement is sought before work is undertaken.

Under s. 50 of the HA 1980, authorities, community or town councils can maintain footpaths and bridleways not maintainable at public expense without prejudice to the responsible owners' rights and duties.

Town and Community Councils are also important partners for the Countryside Access Service in supporting local volunteer groups, identifying & funding improvements, promotion and reporting issues.

## 6.6 Communication

The Countryside Access Service is an extremely high profile and busy frontline service. It deals with highly complex and contentious issues and with parties often vehemently opposed to each other's viewpoint.

Much of the services day to day activity is one to one contact with farmers and landowners and so a good working relationship with the landowner/farming community is paramount in resolving issues and ensuring the network is in a fit condition. Similarly, good working relationships are required with User Groups, who can contribute both to work on the ground and in development. A pragmatic, objective and constructive attitude to the work is therefore essential and the Service should continue to: -

- Work closely with NFU/CLA Cymru and user groups to ensure constructive liaison is continued
- Liaise with local communities to ascertain local priorities
- Engage with Monmouthshire Local Access Forum to benefit from public liaison
- Work closely with other access development initiatives
- Monitor and improve means of communication and promotion
- Forge and develop links wherever necessary to enhance service delivery and development

## 6.7 Performance

Performance is notoriously hard to measure as officers know that one claim for a new path could represent months of work or one maintenance or enforcement issue could take weeks of negotiation. This work is therefore difficult to quantify in performance measure.

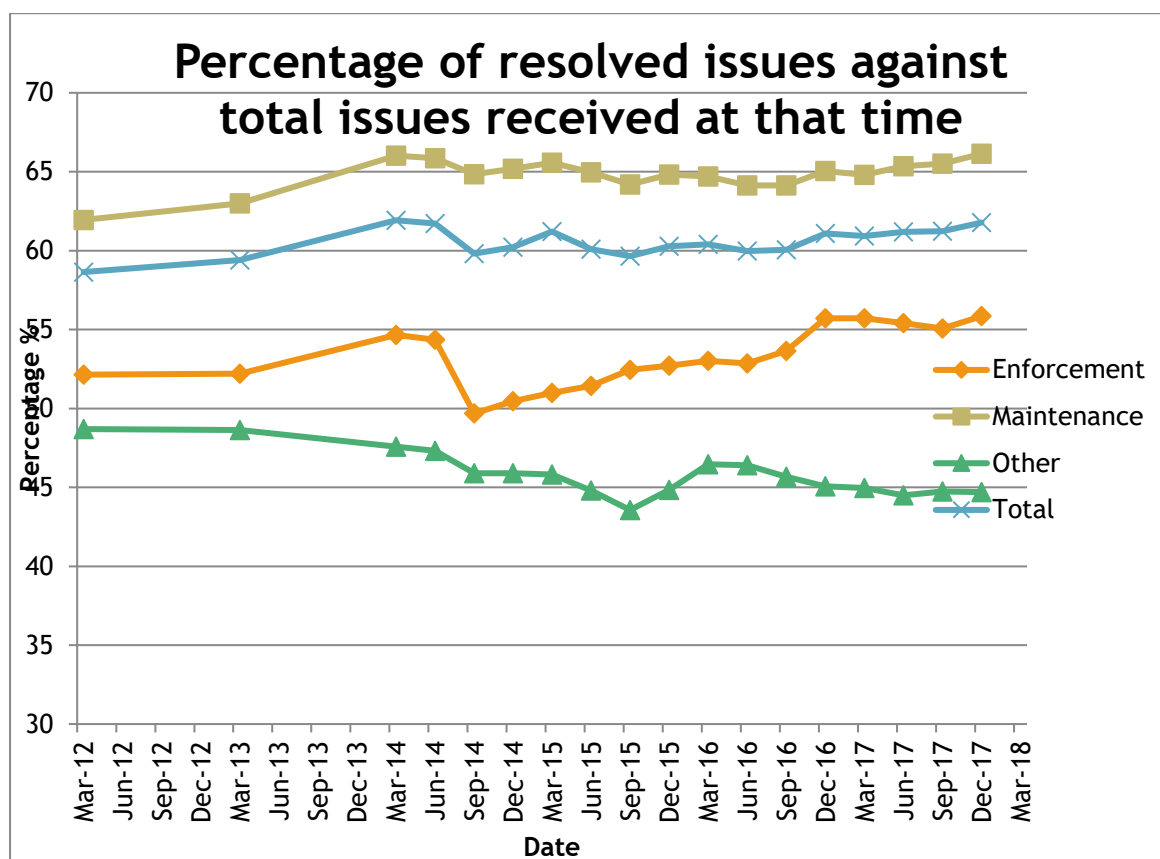
Until 2012 the Authority used to survey 5% of the network and measure "ease of use of paths" and "signage at metalled roads". This measure did not accurately reflect the position across the whole of Monmouthshire and was not meaningful to the management of the network or public.

Since 2013, the Countryside Access Service has adopted measures that show

- the total number of unresolved and resolved maintenance issues
- the total number of unresolved and resolved enforcement issues

- the numbers using the main promoted routes,

The new indicator gives an understanding as to the amount of work that is outstanding and the amount of work that is achieved. This is a performance indicator which the public can relate to and which provides useful information to the Council itself on the condition of the network. The information is collected within CAMS and is reported within the annual Monmouthshire Improvement Plan.



## 7.0 Equalities Act 2010 and Well-Being Act

### 7.1 SOCIAL AND HEALTH BENEFITS OF WALKING, RIDING AND CYCLING

The importance of recreational access for health and well-being is widely acknowledged. The annual report of the Chief Medical Officer for Wales<sup>ii</sup> draws clear associations between activity and health stating *“It has been estimated that the cost of physical inactivity to Wales is around £650 million per year. Regular physical activity such as walking and cycling has significant benefits for health including lowering the risk of cardiovascular diseases, diabetes, colon and breast cancer, and depression.”*

Evidence from the Welsh Outdoor Recreation Survey 2014 suggests that when compared with other outdoor activities, the levels of intensity associated with many of the pursuits and landscape types typically accessed by the rights of way network might be particularly beneficial to health.

#### 7.1.2 Obesity

Currently over half of adults in Monmouthshire are classed as overweight or obese and Monmouthshire has an estimated 100 classrooms of obese children with 2.1% of 4 and 5 year olds in the county classified as overweight or obese. Obesity harms children in the short term and between 55% and 80% will go on to become obese adults. Obesity in childhood has been linked to a range of social and economic consequences in adulthood. Obesity is the most potent risk factor for Type 2 Diabetes. Public Health Wales warn of a Type 2 diabetes epidemic, across Wales rates of diabetes have increased from 5% in 2003/4 to 7% in 2015/16 with 7% of Monmouthshire residents currently being treated.

#### 7.1.3 Mental Health

Nearly a quarter of diseases in the UK can be attributed to mental health problems, a larger share than any other single health problem including cardiovascular diseases (16%) and cancer (16%). The Welsh Government’s “Together for Mental Health” strategy reports one in four adults experience mental health problems or illness at some point during their lifetime and one in six of us will be experiencing symptoms at any one time. At a time of recession when levels of stress and anxiety inevitably rise, more people will be affected and suicide rates are likely to rise. Promoting well-being and preventing mental health problems is a critical element of wider public health strategy, since a person’s mental health is influenced by a broad range of social, economic, cultural, environmental and wider health factors. An effective approach to population mental well-being includes a combination of interventions across the life course.

Monmouthshire has an increasingly aged population. Daffodil Cymru projects an 87% increase in Monmouthshire’s population aged 65 and over with dementia by 2035. This is above the increase projected across Wales of 72% and the second highest in Wales. It becomes even more important to remain active in older age in order to stay healthy and remain independent. Engaging in physical activity carries very low health and safety risks for older adults. In contrast the risk of poor health as a result of inactivity are very high.

There is growing evidence of the benefits of engagement with the natural environment for those living with dementia. There is a recognised need however to raise awareness with specialist dementia organisations and the wider health community of the demonstrable benefits, value and opportunities for engagement with the natural environment as often their focus lies with

health and social care solutions. There is also an interest from the natural environment, greenspace and volunteering sectors to better service the needs of people living with dementia, but it is not always clear where they are required, or what the greatest needs are and how to deliver solutions.

The Greening dementia report states *“evidence shows that barriers particularly affecting people living with dementia include: concerns about how they will be perceived; a lack of awareness of the needs of people with dementia among greenspace organisations and their staff; the costs of resourcing visits, including transport and carer costs; and the impact of risk aversion among people with dementia, their carers and service providers.”*

Studies have found evidence that physical activity in natural environments brings additional benefits to mental well-being on cessation of exercise with greater feelings of revitalization and positive engagement, decreases in tension, confusion, anger and depression and increased energy.

#### 7.1.4 Longevity

Proximity of local green spaces in walkable distance has a positive effect on longevity regardless of social economic status or age according to a longitudinal study in Japan. This investigated the association between older people's longevity and the existence of nearby green spaces in which they could walk. The five year survival percentage of older people who lived in an area with walkable green spaces was significantly higher than that of people living in an area without such spaces<sup>1</sup>.

#### 7.1.5 Sedentary Lives

People's lives are increasingly sedentary. Fewer people are doing manual work and many jobs involve little physical effort. Across Wales only 24% of people aged 65 and over exercise 3 or more times a week, however 58% of this age group report doing no frequent physical activity. However the UK Chief Medical advisers say that for currently inactive individuals, evidence shows the following health benefits could be achieved from 10 minutes of brisk walking per day:

- Increased physical fitness
- Greater ease of performance of everyday physical activities
- Improved mood
- Improved quality of life
- Increased body leanness and healthier weight
- 15% reduction in risk of early death

An additional 10 minutes walking per day is likely to be seen as achievable by those people who are currently classified as “inactive” and could lead to lifting them out of the inactive category at which the greatest risks to health persist. Public Health England state that *“if 1 in 10 people aged between 40-60, or from lower social economic groups, started to do 10 minutes walking per day, it is estimated it would prevent 251 deaths per year and achieve an economic saving of £310 million per year”*.

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<sup>1</sup> Green dementia (a literature review of the benefits and barriers facing individuals living with dementia in accessing the natural environment and greenspace), Natural England 21 November 2013

### 7.1.6 Loneliness

According to the Office for National Statistics, the UK has the highest rates of loneliness in the EU, with all ages severely affected. Over 10% of over 65s experience chronic levels of loneliness (*Campaign to End Loneliness*), whilst 83% of 18-34 year olds often, always or sometimes feel lonely<sup>2</sup>. The effects of isolation and loneliness upon public health are substantial, as is the subsequent burden upon public services. Indeed, social isolation carries a health risk equivalent to smoking up to 15 cigarettes a day and can increase the risk of premature death by up to 30 percent<sup>3</sup>.

Enabling more proactive and preventative care for those who are most vulnerable is essential for both public health and the health service, with 1 in 10 GP appointments attributable to loneliness, costing the NHS £1.53bn per annum<sup>4</sup>.

The Countryside Access Service has many volunteers, who carry out a variety of tasks. One of the main benefits and value to our volunteers is the sense of companionship and social interaction that they bring. This benefit is known to be of particular importance to those attending GP Referral and our guided health walks.

### 7.2 Barriers

Evidence shows that the benefits of access to the natural environment are unevenly distributed and that many groups of people are noticeably absent or failing to reap these benefits. It is therefore important to bear in mind the barriers to the general population when also considering the specific needs of people such as those with dementia.

The general barriers outlined by Greening Dementia and Monmouthshire's Outdoor Study can be summarised as below:

- **Availability of Information** – Lack of information is a potential deterrent to people engaging with the natural environment. This can include lack of awareness of the opportunities available to people and where they can go. Also a lack of information about what services to expect at a given location including information on access, terrain, paths and information about facilities such as toilets and parking.
- **Negative perceptions-** fears and concerns can exist which determine people's willingness to access the natural environment and or public green spaces
- **Time** – A lack of spare time to plan and prepare for a visit can stop the visit taking place. In addition people can feel that to gain benefit, they need to give up more time for exercise or visits than in reality they do.
- **Motivation** – There are easier, less challenging things to do in which case there can be a lack of motivation to engage with the natural environment.
- **Physical accessibility** – Access to cheap, reliable transport is an issue. Also physical barriers on paths such as stiles or broken furniture. Location, distance and availability of transport was a key factor identified by the Wye Valley AONB in people living with dementia being able to access a local project.

<sup>2</sup> Acevo 2016

<sup>3</sup> LGA 2016

<sup>4</sup> Extract from Public Policy Exchange.co.uk Training Flyer 14062017

- **Lack of physical fitness** - This can deter people from wishing to engage with the natural environment, particularly if the activity involved is perceived to require a degree of fitness.
- **Lack of reasonable or accessible local greenspaces** – A key barrier and potential inequality is the availability of accessible green spaces near where people live with the appropriate facilities.
- **Expense**- This is a particular issue for people of lower socio-economic groups where cost is cited in some research as a primary reason for not accessing the natural environment.
- **Design** – Issues such as signage, information sheets, navigation aids and labels are important in addressing the complexity that begins to act as a barrier to people. Familiarity with a place can be important to some groups (like those with dementia) as can Way-finding aids in some green spaces (such as dementia friendly signage) could overcome some of their concerns about getting lost.

The Countryside Access Service is committed within the new ROWIP to work with partners to reduce all barriers.

### 7.3 Equalities Act 2010

The Countryside Access Service is committed to providing the best possible level of service to its customers.

In delivering our work we undertake assessments of the likely impact on the diverse communities and individuals who access our services. Where potential adverse impacts are identified we seek to mitigate them and ensure that discrimination is prevented. Where opportunities to improve the service provided, or the accessibility of the public rights of way network, or countryside site are identified, we will do our best to bring about those improvements within resources available; for example the practical implementation of the least restrictive access policy.

### 7.4 Well-Being Act

Monmouthshire County Council is committed to delivering the aims and objectives of the Well-Being Act. The Countryside Access Service will look to deliver improvements and work in partnership with others to deliver and implement the Well-Being Act. The Countryside Access Service is particularly well- placed regarding improvements to health and well-being and we will continue to implement our Least Restrictive Access Policy on both rights of way and countryside sites.

### 7.5 Least Restrictive Access Policy

The latest best practice guides, including those produced by relevant groups such as the Sensory Trust, Natural Resources for Wales ([“By All Reasonable Means Toolkit”](#)) and Pittcroft Trust, together with the British Standard BS 5709 for gaps, gates and stiles, provides enough information on how to assess the needs of people with mobility problems and to determine which routes should have priority for improved access for such people.

Monmouthshire was the first Council in Wales to adopt (in 2004) a policy of least restrictive access. The policy seeks to limit the introduction of further structures on the rights of way network and actively seeks the removal of existing stiles. It is one way in which the authority

actively tackles disadvantage within communities. Where stiles remain they prevent use of paths by many in the community, particularly the elderly, young and those who suffer from some form of ambulant disability.

The Countryside and Rights of Way Act 2000 (section 69) and the Highways Act (section 147 & 147A) requires all highway authorities to have regard for those people who have mobility and sight problems. Highway Authorities also have a duty to regard the needs of disabled and blind when executing any works (Highways Act 1980 section 175A), and where restrictions to people with disabilities may be created (Disability Discrimination Act 1995 now replaced with Equality Act).

Section 147ZA HA 1980, gave the authority powers to enter into agreements with landowners, lessees or occupiers of land to undertake work on a structure which is on a footpath or bridleway in order to replace it with a new or improved structure which will be safer or more convenient for persons with mobility problems.

The power to enter into an agreement is limited to structures which are “relevant structures”. These are structures which are lawful, and it is for the Country Access Service to satisfy themselves that a structure that is subject of a proposed agreement is a “relevant structure”. Any structure across a footpath or bridleway which is not a “relevant structure” can be dealt with by the authority under s. 130 and s. 143 of the HA 1980 as an obstruction.

The County Council operates a “minimum barrier” policy, with respect to Public Rights of Way. Wherever maintenance issues arise to replace, repair or install new items of furniture on Public Rights of Way the opportunity will be taken to place the least restrictive barrier possible on site. Each case will be individually assessed by the Rights of Way Field Warden and any necessary furniture installed taking into account

1. The paths status,
2. Current historical furniture on site,
3. Topography,
4. Nature of farming and land use and
5. What would be the least restrictive access in that particular location?
6. The landowners wishes.

Gaps are preferred to stiles unless farm animals need to be restricted, in which case either a gate, self- closing gate, gates with boxes or kissing gates will be used in preference to stiles.

Stiles will only be installed where it has not been possible for Monmouthshire County Council to negotiate a change in structure or it is not possible to use an alternative barrier. (See also “stiles and gates on footpaths and bridleways”).

**Where a landowner wishes to refuse to alter a stile this must be received in writing.**

Copies of section 147 or section 147ZA authorisations are kept with the Definitive Map records and are available to view on request.

The Council also operates management of its countryside sites to reduce barriers and improve access. Where opportunities to improve the service provided or the accessibility of Countryside Sites are identified we will do our best to bring about those improvements within resources available.

## 8.0 Transport and Access to Services

The need for better public transport came across clearly in the assessments for The Mental-Well Being Strategy for Monmouthshire and also in the Outdoor Disability Health Assessment for the RoWIP review in 2016 and 2018 RoWIP review (public questionnaire) and Draft CAIP consultation. 15.2% of households in Monmouthshire have no car or van. Poor public transport limits people's ability to travel for work and pleasure and can lead to isolation of communities and groups of residents.

There is therefore an identified need (CAIP Statement of Action KWOT3 13.4) to develop partnerships such as the "Friends of the 65 Bus" and work with Highways and other partners to develop and promote scheduled bus services to help people access the countryside and reduce traffic, thus benefiting people's health, local economy and the environment.

The National Survey for Wales reports that 45% of Monmouthshire children travel over 1 mile to primary school and 80% of secondary pupils travel over 1 mile both higher than the Welsh average. Children who travel over a mile to school are far more likely to be driven to school which means they are missing the opportunity to benefit from regular exercise and to learn road safety. This also results in substantial costs for home to transport for parents and the local authority.

Rights of way within towns play an important part in providing the people with the ability to get to work, schools, shops, play areas etc. They are therefore an important part in making a town vibrant and provide opportunities for walking rather than using a car benefiting people's health and the environment.

### 8.1 Active Travel Act

The Active Travel (Wales) Act 2013 is a landmark Welsh law to make it easier for people to walk or cycle in Wales. MCC has compiled maps identifying current and potential future routes. A Cycling Strategy is currently being prepared to take advantage of the opportunities active travel brings, as well as extending the network of routes out of major towns to connect to other communities and places of interest.

The 2007 ROWIP and the new CAIP actively support sustainable travel as it encourages healthy active lifestyles. It incorporates the objectives of:

- *"improving the accessibility of the network to make it easier for people to incorporate walking, riding and cycling into their everyday lives" and*
- *"to support the rights of way network for purposeful journeys."*

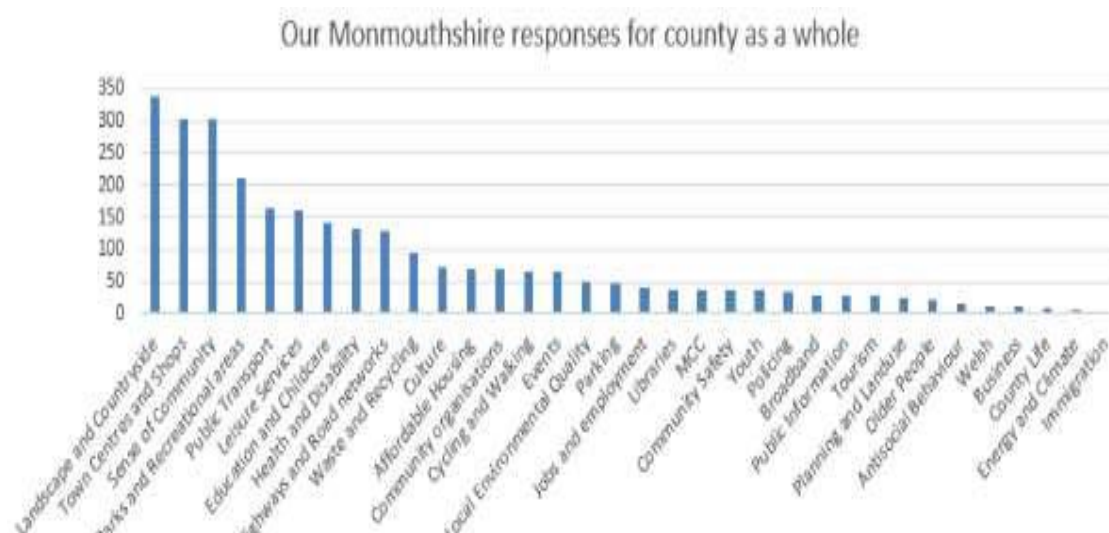
The Countryside Access Service will work with MonLife's new Active Travel Officer to ensure rights of way and routes through relevant countryside sites are upgraded if they fulfil active travel requirements.

## 9.0 ENVIRONMENT ACT

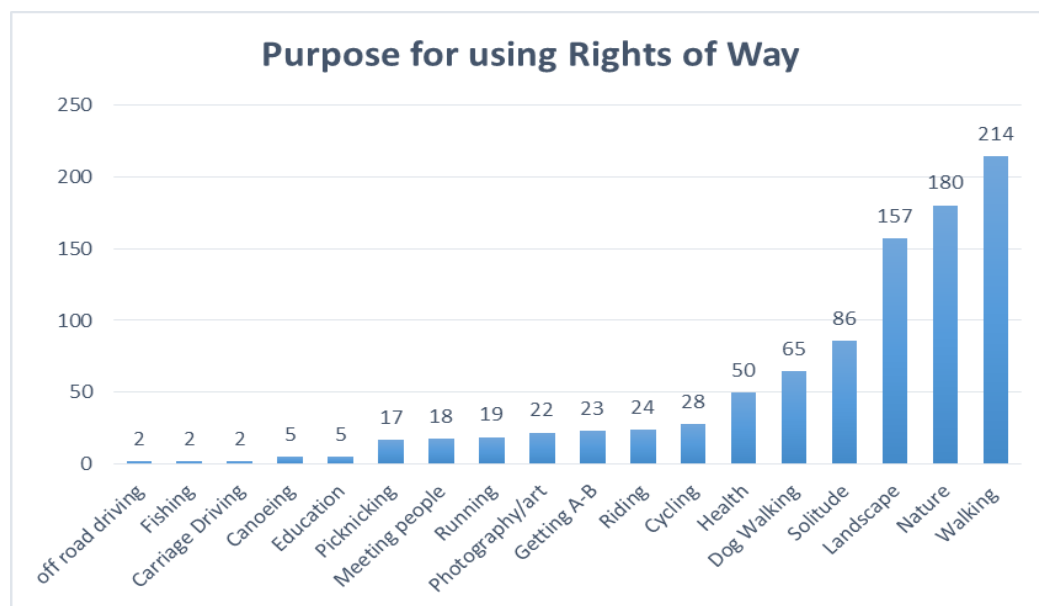
### 9.1 Landscape and Countryside

Monmouthshire's greatest asset is its landscape and natural environment. Monmouthshire has rich and diverse landscapes stretching from the flat open coast line of the Gwent Levels to the Black Mountains and World Heritage Site in the Brecon Beacons National Park and the picturesque river gorge of the Wye Valley Area of Outstanding Beauty. It has major biodiversity and nature conservation resources which are internationally and nationally recognised with the landscape baseline being amongst the highest in Wales.

Between August and December 2016 staff from a range of public services in Monmouthshire attended over 80 events speaking to more than a thousand people to get their views about what is good about Monmouthshire and what would make it better. The chart below shows the topics that people mentioned most often. Landscape and countryside come at the top of the list.



In the Rights of Way Improvement Plan Public Questionnaire Consultation in 2018 Landscape and Nature were also top reasons for visiting Monmouthshire's Countryside as shown in the table below.



The Environment (Wales) Act 2016 Section 6 of the Environment (Wales) Act also puts in place a Biodiversity and Resilience of Ecosystems Duty for public authorities who must seek to maintain and enhance biodiversity, and in so doing promote the resilience of ecosystems, so far as is consistent with the exercise of their functions in Wales. This recognises the underpinning importance of biodiversity in its widest sense to healthy, functioning ecosystems, and therefore the multiple benefits that we derive from them.

In 2011 Monmouthshire Countryside Access Team produced a **"Biodiversity Action Plan" and a Technical Summary Manual**". These will continue to provide assistance to both staff, volunteers, contractors and managers regarding protecting biodiversity when undertaking rights of way work. These documents are available on-line or by request.

Opportunities exist to deliver the aims of the Environment Act through protecting Biodiversity and Landscape whilst undertaking rights of way improvement projects and through working closely with the Green Infrastructure Team particularly where there are large developments proposed.

Of most relevance to the development of the new ROWIP will be the Area Statements being developed by Natural Resources Wales. The Act contains no statutory timeline for the production of these statements, but Natural Resources Wales has indicated that full coverage of Wales will be achieved by Spring 2020.

Monmouthshire County Council will work with Natural Resources Wales to contribute useful information to the Area Statements, develop work programmes and projects that will contribute towards the sustainable management of natural resources.

## 9.2 Invasive species

The control of invasive non-native species is principally dealt with under the WCA 1981, Environmental Protection Act 1990, the CROW 2000 and NERC 2006 Invasive Alien Species Regulation (EC 1143/2014) and Environment (Wales) Act 2016. When undertaking maintenance of the rights of way network, or on countryside sites, work will be planned to ensure that invasive non-native species, such as (but not exclusively) Giant Hogweed, Himalayan Balsam and Japanese knotweed, are not allowed to spread and the appropriate disposal of 'controlled waste' is carried out.

Similar attention will be paid to injurious weeds such as (but not exclusively) Common Ragwort and Broad-leaved Dock. The Countryside Access Service will work with appropriate authorities and other landowners to help ensure these do not spread.

Authority staff or contractors will take into account the guidance provided on the use of pesticides near public rights of way and other publically accessible outdoor spaces such as country parks. The guidance can be found at:

<http://www.hse.gov.uk/agriculture/topics/pesticides.htm>

## 10. Development

### 10.1 Development & Public Rights of Way

The PROW Service contributes to the shaping of development framework policies to bring benefits to PROW and access provision from the development process, prevent where possible the avoidable loss of access and to mitigate any adverse impacts of development where possible.

The Service responds to many planning consultations annually. The applications relate to the full spectrum of development from major transport infrastructure projects, large housing provision to the smaller scale change of use applications for agricultural buildings, house extensions etc.

Development can bring positive benefits for PROW and Access particularly through:

- The improvement of existing PROW
- The application of good design principles to new routes
- The provision of new or up-graded routes

Equally development can adversely impact upon the amenity and enjoyment of the network. Where this is the case responses will set out what those adverse impacts are likely to be and, where possible, how they can be designed out or mitigated.

The Service responds with advice about how the proposed development can contribute to improving PROW and access provision and will work with developers to secure improvements through good design and/or developer contribution.

**The effect of development on a public right of way is a material consideration in determining planning applications.** Developers should therefore incorporate details of any alterations proposed within the application for planning permission. Planning Officers should ensure all applications affecting a right of way should be brought to the attention of the Countryside Access Team immediately.

In some circumstances where the Service feel that there is the potential for significant harm to be caused to the network by proposed development and or the development conflicts with the development plan, an objection to the proposed development may be made.

There is a high probability that objection will be made to planning applications that:

- fail to indicate the existence of recorded rights of way that would be directly impacted by the development, and or,
- where public rights of way require diversion or extinguishment to facilitate the development and no provision has been made to secure the necessary legal orders.

There are a number of long standing and difficult to resolve obstructions on the PROW network as a result of development on the line of a PROW without the necessary diversion or extinguishment order having been made at the time. In the worst case this can result in a complete loss of public access and blighted property.

New obstruction by development is treated as a high priority, as once complete there is little motivation for developers or planners to resolve the issues that are created.

Where a public right of way is affected by development the path must be kept on the legal alignment wherever possible or diverted under the Town & Country Planning Act 1990 prior to any works being carried out. The use of Estate Roads should be avoided wherever possible and preference given to the use of estate paths through landscaped or open spaces away from vehicular traffic.

The County Council requires either a minimum width of 2 metres for footpaths and 3 metres for bridleways or the full width previously enjoyed by the public, if greater.

### 10.2 Public Rights of Way are protected by law.

Any interference with, or obstruction of or attempt to move a Public Right of Way can only be done by legal means. It is important therefore, that Public Rights of Way are identified at any early stage in the development process because the identification of a Public Right of Way at a later stage in the development process may result in significant delays, halt development and may make properties unsaleable.

Monmouthshire County Council has a duty to keep Public Rights of Way open and available for use by the public and will therefore take such action as may (including direct enforcement action and prosecution) to ensure that members of the public are not inconvenienced in their use of the Public Rights of Way network.

It should be noted that granting of planning permission does not give permission to obstruct a public right of way.

Developers must ensure that:

- There is no diminution in the width of the right of way
- No builder's materials are stored on a right of way
- No damage or substantial alteration, either temporary or permanent, is caused to the surface of the public right of way
- Vehicle movements are arranged so as not to interfere with the public's use of the way
- No additional barriers (e.g. gates) are placed across the right of way
- No wildlife fencing or other ecological protection measures are placed across a right of way or allowed to interfere with a right of way
- The safety of members of the public using the rights of way is ensured at all times.

## 11.0 Recording

### 11.1 Information Governance

The requirements of the Freedom of the Information Act 2000 and the Environmental Information Regulations 2004 have placed an additional burden on the Service. The Service has in recent years invested to increase the number of documents held electronically. It is hoped to be able to continue with this investment as there are significant long term costs associated with the storage and retrieval of archived paper records.

In addition to the benefit of having archive and other material such as the draft and provisional Definitive Map more readily available to officers, this has enabled the Service to respond more easily to FOI and EIA requests reducing the time otherwise spent on this largely unproductive area of work.

In compliance with the FOIA the service has a publication scheme on the County Council's website detailing what information is readily available to the public and the charges associated with its provision.

### 11.2 CAMS (Countryside Access & Management System)

In order to improve service delivery and management planning we purchased a few years ago a prowl database. The CAMS system is based on a geographical information system (GIS) technology. The data within CAMS is owned and managed by all officers. All officers will, input, record and process their work using this system. The Definitive Map has been digitised in draft so that it can be viewed electronically and is linked into CAMS so that it is updated regularly.

**monmouthshire**  
sir fynyw

**Public Rights of Way Map**

The map shows all Public Rights of Way in Monmouthshire. The map will also display path furniture once the map is zoomed in. Use the Search options on the left of the map to quickly find a location. Click the Rights of Way map objects for information.

**Search Map**  
Select the type of search you require and enter the search text below:

- ☐ Town/Village
- ☐ Street Name
- ☐ Postcode
- ☐ Route Code e.g. 123-2-1
- ☐ Grid Reference

© Crown copyright. All rights reserved (100023415) (2013)  
This map is intended as a guide only and may not be legally accurate. Due to the changing nature of the countryside, actual conditions encountered may differ from some of the information shown.

Telephone: 01633 644644 Email: [contact@monmouthshire.gov.uk](mailto:contact@monmouthshire.gov.uk) Address: County Hall, The Rhadyr, Usk

**monmouthshire**  
sir fynyw

Some of the data held within CAMS is available publicly to fulfil our aims of promoting the network and helping people make informed choices about routes.

<https://www.monmouthshire.gov.uk/countryside-services/countryside-access/>

The Countryside Access Team continues to work with the software provider to develop the system further to meet service and customer demands.

### 11.3 Registers

Section 53B of the WCA 1981 and the Public Rights of Way (Registers) (Wales) Regulations 2006 requires authorities to keep a register of applications for Definitive Map Modification Orders, which can be found on the [authority's website](#)

Information with respect to declarations lodged and maps and statements deposited under s. 31(6) of the HA 1980 is kept in another register available on the website. Such declarations and deposits enable landowners formally to acknowledge the rights of way across their land and, in doing so, make clear that they have no intention to dedicate any further routes across their land.

### 11.4 The Definitive Map and Statement Recording Policy

The Definitive Map and Statement is the conclusive legal record of public rights of way. The Wildlife and Countryside Act 1981 section 53 places a duty on the County Council as surveying authority to “keep the Definitive Map and Statement under continuous review”.

The Definitive Map and Statement is the foundation for the Countryside Access Service and it is essential that the record is accurate. The work associated with maintaining the Definitive Map and Statement is not only essential for the delivery of front line maintenance and enforcement work but in dealing with: -

- Property searches
- Applications to add unrecorded rights to the Definitive Map and Statement
- Applications to amend recorded public rights of way
- Recording statutory declarations to protect land from future claims for rights
- Applications to divert or extinguish existing PROW in the landowner or public interest
- Anomalies and width enquiries

The duty to maintain the definitive map is a front line activity in its own right and affects a great many people. Cases can have a significant bearing on the quality of life for an individual or community and can be highly emotive. They therefore require a high level of professionalism from the officers involved in determining them.

The Countryside Access Service has made significant strides towards producing a new Definitive Map and making rights of way information more accessible. The draft, provisional and Definitive Maps have been scanned to enable officers to respond to communications more quickly and work remotely. To assist with this a digitised working map and countryside access management system has been created.

A digital Working copy of the Definitive Map is available for the public to use at <https://access.monmouthshire.gov.uk/>

A set of Definitive Maps is available at Gwent Record Office. **An appointment** can also be made to view the Definitive Map and Statement and any orders made since its publication by contacting [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk)

The National Streets Gazetteer, aiming to combine all authorities' List of Streets online, is live at [www.findmystreet.co.uk/](http://www.findmystreet.co.uk/). Public Rights of Way should be shown on it by 2020.

**The principal objectives and policies of the Countryside Access Service relating to the Definitive Map and Statement are as set out below:**

1. Keep the Definitive Map and Statement up to date and ensure the status and alignment of all PROW are correct in accordance with statutory duties by:-
  - a) Investigating and determining all claims in accordance with the statement of priorities
  - b) Investigating and determining anomalies in accordance with statement of priorities
  - c) Processing applications to change PROW in accordance with policy and statement of priorities
  - d) Ensuring all changes are covered by a formal Order

## 12.0 Publicity and Promotion

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The Countryside Access Service has no budget or personnel to carry out promotion. Nevertheless, wherever possible the service seeks to actively promote access to the countryside and its benefits.

Research for the RoWIP review shows that promotion is highly important both in terms of finding out where to go, but also by good signage and information on the ground to give confidence. Those routes that are well promoted are well used by both locals and tourists.

Access to the internet can help alleviate difficulties in accessing services. 79% of households in Monmouthshire have internet access<sup>5</sup>. The ONS 2016 report into internet access tells us there has been an increase in daily internet access and that use of smart phones to access the internet has nearly doubled since 2011. The growth of smart phones is important to bear in mind when planning digital services. However, the Older People's Commissioner notes that 35% of people aged 50+ in Wales are digitally excluded so for the time being it is important to look at a wide range of publicity material not just digital technology. This was backed by the ROWIP public questionnaire consultation which showed local people still rely on local knowledge, word of mouth, publications and on Ordnance Survey Maps.

Monmouthshire has a large number of local circular routes and these are promoted on [VisitMonmouthshire.com](http://VisitMonmouthshire.com). The paths are all "pathcared" by local volunteers and community groups so that there can be confidence in the routes condition. The Countryside Access Team actively work with community and other volunteer groups to promote walking themselves. This approach is identified in the Monmouthshire Walking Product Development Strategy (2013).

Monmouthshire hosts parts of the Wales Coast Path and Offa's Dyke Path National Trail both of which are promoted in partnership by the Welsh Government and Natural Resources Wales. The Wye Valley Walk also has a management team via the Wye Valley Area of Outstanding Natural Beauty (WV AONB) which helps promote this route. A CAIP aim is that means of promoting other regional routes can be achieved with other local authorities and partners. The Countryside Access Service will not be looking to devise and promote new long distance paths itself, unless it is a multi-purpose path with high public value and benefits.

Research shows that there is a desire for an increase in short circular routes and routes that connect with places of interest/other communities. There is a need in particular for a wider range of health walks to be developed and promoted to targeted audiences such as GP Surgeries. There is also a need for general information to enable volunteers to be active, landowners and the public to understand their responsibilities and for an understanding of how orders are made etc.

The general approach taken overall to promotion is that MCC will:

- Actively promote the public rights of way network and all other types of countryside access (parks and country parks) irrespective of ownership via [VisitMonmouthshire.com](http://VisitMonmouthshire.com)

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<sup>5</sup> National Survey for Wales

- Seek to implement the Monmouthshire Walking Product Development Strategy
- Provide access to digitised version of the Definitive map on modern mapping with access to information regarding furniture and promoted routes so that people can make informed decisions of where they want to go.
- The Service will try to target publications to specific users as per the Destination Development Plan and Rights of Way Improvement Plan.
- The Countryside Access Team will work with Ordnance Survey to correct errors on its mapping and to encourage the regular publication of Ordnance Survey maps.
- The Service will actively encourage other authorities involved with promoted regional routes and others to actively maintain and continue to promote the routes.
- The Countryside Access Service will not look to devise and promote new long distance paths itself, unless it is a multi-purpose path with high public value and benefits.
- To assist where possible user groups, volunteer groups, community/town councils and "Friends of.....Groups" to promote access opportunities and in particular to assist in the promotion of local circular health walks.

**Occasionally private individuals or organisations wish Monmouthshire County Council to help design or promote a walk or ride of their own. In this situation the following criteria must be met:-**

- The route must be substantially on public rights of way and any permissive routes would require permission of the landowner.
- The route must conform to one of the types of walk specified in the Walking Product Development Strategy for which there is a known demand.
- Route furniture must be in a good condition
- Signage and waymarking should be in place at all decision points
- The route needs to be regularly inspected, pathcared and managed by the producers of the walk or by an agreed other organisation.
- Where possible the route should be least restrictive access
- Where possible the routes should be made available to higher users (cyclists/horse riders).
- The route guide must conform to good practice and be available to download from visitmonmouthshire.com or a well-designed website.
- Routes should be accessible by public transport and or will require adequate car parking close to the start/finish.
- Where possible routes should start /finish close to settlements.

Private routes which are not subsequently maintained or promoted adequately as per the conditions above, will be removed from Monmouthshire's website.

## 13.0 Statement of Priorities and Overview

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Management of the network is essential in order for users to use the network safely and with confidence. Given all the consideration of legislation, finance, best practice, practicality and policy, priorities are required to meet the expectations of users and to meet our obligations. Management includes not just the physical elements of public rights of way but also the enforcement, protection and legal definition of the network.

By focusing on the priorities within this document more officer time will be available to concentrate on proactive issues and projects across the network for the benefit of users. This must be partly steered by the Countryside Access Manager.

## 14.0 Statement of priorities for Definitive Map and Statement Orders

### 14.1 Section 53 Modification Order Prioritisation

If a way is shown on the Definitive Map, then it is conclusive evidence of public rights along the way unless there has been a legally authorised change. Monmouthshire, like other Authorities, has a backlog of applications for a path to be added or altered on the Definitive Map and Statement. These are known as Section 53 Applications (commonly also known as claims) and are dealt with under the Wildlife and Countryside Act 1981.

The Service has a [public register](#) of section 53 applications which can be found on our website.

Monmouthshire County Council agreed a programme for dealing with such work as outlined below in November 2004:

**All evidential Modification Orders will be dealt with in the date order that the completed application was received except in any of the following circumstances where a case may be investigated sooner.**

A. **Statutory Provision** *There may be paths not recorded on the Definitive Map which the Community Council nonetheless consider to be highways.*

The path must be subject to obstruction or encroachment as stipulated under Section 130 (3) & (6) of the Highways Act 1980. The resulting investigations may lead to the Definitive Map being modified by the surveying authority taking action about the encroachment/obstruction.

B. **Planning Considerations.** *Planning permission may be sought for a site where an unresolved claim that a path already exists.*

- The existence of a public right of way is a material planning consideration
- The question of the existence of the path should if at all possible be agreed with the landowner but that might not prove to be possible.
- The planning authority may take the view that the existence of the path needs to be resolved in association with the consideration of the planning application for the site.
- The surveying authority needs the discretion to take the matter out of turn if not to do so could be prejudicial to the developer, the public or the highway authority.

C. **Status Enquiries.** *Paths may be subject to diversion, extinguishment or traffic proposals or give rise to other causes of legal action for the purpose of which it may be necessary to establish the nature of the public's rights.*

- The opportunity to resolve the issue should not previously have arisen.
- For the purposes of justice, the status should need to be resolved and the surveying authority in association with the police, local authority or legal advisors involved should be satisfied that this is so.

D. **Matters of Financial Disadvantage.** *There may be instances where because the status of a way has not been conclusively determined there would be financial prejudice if matters were to be left to be determined in accordance with the programme.*

- There may be discrepancies between maps perhaps not reflected in search replies.
- A potential large maintenance obligation could fall upon the Local Authority if the matter were to be left.
- It is more cost effective to resolve the issue at an early date.

**E. Drafting errors** where they meet the above criteria

**This prioritisation is currently under review and it is likely that an additional criteria of “public benefit” may be added as outlined below.**

To be consistent with CAIP and maintenance prioritisation public benefits could consist of

- Routes that allow more types of user – consistent with aims of CAIP of increasing access to those with disabilities/health issues and who have little off road access
- Routes with positive health and safety benefits – such as providing safe off road routes as alternative to busy roads
- Links to amenities/tourism attractions.

In addition the Monmouthshire LAF have recommended that these issues should also be considered within any change:

- Where there is predominantly User Evidence
- Where there is Loss of use

## 14.2 Anomalies prioritisation

Anomalies will be dealt with in accordance to the same exceptions as laid down in the modification order prioritisation, unless there is an opportunity to resolve an anomaly through a diversion package or in order to progress an enforcement/maintenance issue/improvement scheme.

## 14.3 Planning Considerations. Planning permission may be sought for a site where a Temporary Closure/Diversion for Events or Works is required

The Countryside Access Service receives requests from Natural Resources Wales, Statutory undertakers and others for temporary closures or diversions where works or events are going to be undertaken on or over a right of way. Any orders made are advertised on our [website](#)

The Service will charge for processing these and will ask that certain conditions to be met. These will include such things as below, but might also be more specific relating to the particular path or landscape.

- The route must be checked prior to and following an event, or any operations i.e. tree felling, and the path restored at the applicants expense to a suitable condition as agreed by the Countryside Field Officer.
- The path, if possible, must have a diversion in place especially where national, regional and other promoted routes are involved.
- Any events along public rights of way have to be marshalled.
- Insurance for events is required
- The route should be well signed regarding any formal closure and be opened as soon is safe to do so.

It should be noted that complete closures of woods and other areas of land can deny communities access to the countryside, affecting their ability to lead active healthy lifestyles. **Such applications will not be allowed**, except in exceptional circumstances (where it can be shown that harvesting operations cannot be carried out in another way and will affect the whole site and be an actual safety issue for the public).

#### 14.4 Prioritisation of Rights of Way Legal Orders

The Countryside Access Service also has many requests per year for paths to be moved, altered in status or closed. There is one officer that deals with such requests and consequently there is a backlog of requests for changes.

The Council has published guides for the different types of orders to help applicants understand the processes, costs and timescales involved with legal orders. These are regularly updated and are available on request from [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk)

The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the various acts) for changing a PROW must apply.

- The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
- The Applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use.
- The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
- The definitive line should (where it is considered by the County Council to be reasonably practicable) be open, clear and safe to use.

As with Evidential Modification Orders, the County Council is often under pressure to process certain applications in advance of others. A policy is therefore required for this area of work also, to set out the priority that will normally be applied by the County Council.

##### 14.4.1 Prioritisation of Public Path Orders Policy

**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 County Council 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.
- A problem exists which cannot be solved through maintenance or enforcement.
- A safer route is provided
- A route forms all or part of a missing link in the network

- A route forms part of a promoted or long distance or circular route
- 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.

For the purpose of these policies the term 'Public Path Change Order' shall be taken to include:

- Orders made under Section 26 (creations), 118 (extinguishments) or 119 (diversions) of the Highways Act 1980
- Applications to the Magistrates Court under Section 116 of the Highways Act 1980 (extinguishments or diversions).
- Orders made under Section 257 of the Town and Country Planning Act 1990 (extinguishments and diversions).

### 14.5 Processing Dedication and Creation Agreements

The County Council has powers to accept dedications of new rights. A policy is required to set out the priority that will normally be applied by the County Council to individual cases and hence the order in which applications will be dealt with.

Dedications and Creation Agreements will normally only be processed in the following circumstances:

- Where it will satisfy one or more of the relevant key principles set out above in 14.4.1
- Where the requirements to make a dedication forms part of an obligation in a section 106 agreement.

## 15.0 Statement of Priorities Maintenance & Enforcement

### 15.1 Overview

In common with many services the demand placed on the Countryside Access Service by the public is greater than our capacity to meet it and there is static and reducing budgets. How we allocate the resource available must therefore be prioritised. The priorities must reflect the need to adequately meet our statutory obligations while providing the greatest benefit to the public, and do so in a transparent and accountable way.

### 15.2 Network Prioritisation

The network management priorities for enforcement and prioritisation have been developed with regard to best practice and to reflect the extensive public consultation undertaken in 2010/11 (2 workshops, 331 consultations including all volunteers and Monmouthshire Local Access Forum, press and web advertisement and article in Countryside Newsletter sent to 500 people). The final version was agreed by Cabinet on 5<sup>th</sup> October 2012.

#### 15.2.1 How the prioritisation system works.

Monmouthshire's prioritisation system takes into account priorities from the Countryside Access Improvement Plan to increase the number of paths available to horse riders, disabled and cyclists, as well as the Council's responsibilities for health and safety and maintenance/enforcement. Also the route usage, status, promotion, whether a route is barrier free, the inconvenience and safety of the issue are all factored in.

On receiving an issue from the public, County Councillor, volunteer or other source, staff seeks relevant information and tick the relevant boxes within CAMS. This automatically generates a final prioritisation number and report as shown below.

**Prioritisation Number Generator**  
28/11/2011

Link affected: 371/31/1 Issue affected: 09015

|                                        |                                                      |                                                                                                                          |
|----------------------------------------|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>A</b> Health and safety product :   | 36                                                   | Between 1 & 81. If this number equals 999 then either the Risk fields have not been filled in or an error has occurred . |
| <b>B</b> Status product :              | 3                                                    | Between 3 & 12                                                                                                           |
| <b>C</b> Usage product :               | 24                                                   | Between 8 & 32                                                                                                           |
| <b>D</b> Effect product :              | 10                                                   | Between 0 & 20                                                                                                           |
| <b>E</b> Promotion product :           | 15                                                   | Between 15 & 40                                                                                                          |
| <b>F</b> Required product :            | 0                                                    | Between -15 & 0                                                                                                          |
| <b>F</b> Discretionary product :       | 5                                                    | Between 0 & 20                                                                                                           |
| <b>G</b> Discretionary points Reason : | permission form landowner to improve stile to a gate |                                                                                                                          |
| <b>H</b> Barrier Free product :        | 0                                                    | Between 0 & 10                                                                                                           |
| <b>I</b> Maint Type product :          | 15                                                   | Between 0 & 20                                                                                                           |

Priority Number: **108** Please enter this number into the priority box on the issue form, this figure should be between 11 & 254

Current Page No.: 1 Total Page No.: 1 Zoom Factor: 100%

It is important to note that once a prioritisation number is issued, it can be reviewed and changed if the nature of the issue alters, or other factors change the situation. This may increase, decrease or leave the score the same. The highest number an issue can receive is 254 and the lowest is 11. It should also be noted that a lower prioritisation number does not

necessarily mean that that issue will not achieve attention or be forever at the bottom of the workload. Many lower priority issues are dealt with by contracts when grant funding is found or as part of other works on a path, or by volunteer groups.

The system is subject to monitoring and periodic review. If found necessary, than the scoring used to prioritise may change.

The prioritisation system is based upon a list of 7 criteria which are assigned a weighting and given a range of scores. Combined these scores give the final total prioritisation score. The Enforcement Officer, Field Officer and two Field Wardens will use the prioritisation system to organise their workloads, alongside their other duties. The 7 Criteria are:

**Health and Safety, Impact and Effect**– This forms the greatest weighting and is broken into two sections. Firstly, it calculates a risk product between 0 and 100, the greater the number the greater risk. The second section is the effect on the use of the path, and is secondary to the first.

| <b>Likelihood</b>      | <b>Impact</b>                                                      | <b>Effect:</b>     |
|------------------------|--------------------------------------------------------------------|--------------------|
| Very likely = 10       | Fatality = 10                                                      | Inconvenient,      |
| Likely = 8             | Major injury/ fatality =8                                          | Unusable,          |
| Possible = 6           | Major injury = broken bones/ incapacitated =6                      | Unknown/ bypassed, |
| Unlikely =4            | Minor injury = cuts, scrapes, bruises, strains (walking wounded)=4 | none               |
| Extremely unlikely = 2 | Insignificant = cuts, scrapes, bruises = 2                         |                    |
| Not recorded = 0       | Unknown = 0                                                        |                    |

When dealing with an issue the above options are selected as consistently and as objectively as possible. Officers receiving the issue will use their experience and all knowledge to hand to give a balanced view on the factors above erring on the side of caution. It is not until an officer views the issue on site that a more comprehensive assessment will be given. Once a site visit has been carried out the officer will update the risk assessment and therefore the overall prioritisation score may change.

**Route Usage** - The Route Usage box is broken down in to High, Medium, Low and Unknown/blank. To ascertain which category a link falls into the following factors are taken into account:

- People Counter figures
- worn surface of path or worn furniture showing heavy use by legitimate users
- Information from local users/communities
- Large number of issues from multiple sources/users

- A link path to local amenities (e.g. Pub, Dog walk area, Park etc.)
- Worn surface of path shown on aerial photos/street view
- Landowner information
- Change of vegetation
- Promotion

**Status - This** relates to whether the route is a footpath (3 points), Bridleway (6 points), Restricted Byway (9 points), or Byway Open to All Traffic (12 points). Routes that allow more types of use support a more diverse range of users and as such have been a greater weight in the prioritisation system. This is consistent with the aims in the CAIP of increasing access to those with disabilities/ health issues and who have little off road network to use.

**Promotion** – More weight is given to those routes which are promoted and the amount of points awarded is governed by the type of promotion as follows:

- National Trail e.g. Offa's Dyke Path National Trail or Wales Coast Path (40 points)
- Regional Trail e.g. Usk Valley Walk (35 points)
- Monmouthshire Promoted Tourism Trail e.g. Tread and Trot Trails (points 25)
- Pathcare route – (points 25)
- Local Walks – e.g. Mitchel Troy Circular
- Cycle route – Points 15

**Maintenance/Enforcement type:** These are weighted according to which group they are broken down into.

|                           |   |           |
|---------------------------|---|-----------|
| 1 Obstacle                | } | 20 points |
| 1 Crow notice             |   |           |
| 1 S56 repair notice       |   |           |
| 1 Bridge – maintenance    |   |           |
| 1 Clearance maintenance   |   |           |
| 2 Ploughing cropping      | } | 15 Points |
| 2 Steps – maintenance     |   |           |
| 2 Gate – maintenance      |   |           |
| 2 Stile –maintenance      |   |           |
| 2 Tree – clear            |   |           |
| 2 Deposit - enforcement   |   |           |
| 2 Landscape - enforcement |   |           |
| 2 Animals -enforcement    |   |           |
| 3 Surface – maintenance   | } | 10 points |
| 3 Drainage – maintenance  |   |           |
| 3 Surface – enforcement   |   |           |

|                                         |   |          |
|-----------------------------------------|---|----------|
| 4 Notices/signs - enforcement           | } | 5 points |
| 4 Hazard abutting - enforcement         |   |          |
| 4 Fingerposts                           |   |          |
| 4 Overhead/side veg – clear/enforcement |   |          |
| 4 Waymarking                            |   |          |

|                           |   |          |
|---------------------------|---|----------|
| 5 Info board              | } | 0 Points |
| 5 Other obstructed        |   |          |
| 5 Other maintenance       |   |          |
| 5 Other clearance         |   |          |
| 5 Other enforcement other |   |          |
| 5 Other signage           |   |          |

**Barrier free** - Currently linked into the promoted route section of CAMs any routes deemed to be barrier free, meaning easily accessible to those with disabilities for example wheelchair users. This is currently being expanded to take into account routes that are already barrier free, and to identify routes that have potential for changing into a barrier free route. Any routes that fulfil this criteria gain an extra 10 points.

**Discretionary Points** - To be used when not covered by existing factors to a maximum value of twenty points, normally five points for each additional reason. These must also be authorised by the Countryside Access Manager. Some of the possible uses of this are as follows:

- Where a deadline is involved for works such as grant funding or enforcement notice
- Where the work is part of a project
- Where works are grouped with others to open up the network
- Where improvement works have been authorised e.g. making the network more accessible
- Fulfilling existing policies e.g. The Equality Act
- Where works are to facilitate a Planning application
- Land charge search - requiring Quality Assurance work to be undertaken

#### 15.2.2 How the system is applied

- The highest prioritisation scores equate to highest priority.
- As many tasks are then implemented as resources allow, starting with the highest scores, but subject to any practical considerations affecting implementation and the ability to work in key community areas where there are clusters of issues and most public benefit can be gained, or where other opportunities exist to enhance the network i.e. grants for specific areas.

#### 15.3 Permissive Paths

Permissive paths will not be managed by the County Council unless they have been established under a formal signed agreement, or form part of a national or regional trail promoted directly by Monmouthshire County Council. The Council will not enter into

any formal agreement unless there is a demonstrated public need for the path which cannot be met by other means.

It is known that large parts of the Usk Valley Walk, Wye Valley Walk and small sections of Offa's Dyke Path National Trail are permissive paths. These routes and other permissive routes will be managed in conjunction with the landowner and according to the above prioritisation system. The Council will seek to make Definitive all permissive paths on existing promoted regional and long distance routes i.e. Wye Valley Walk, Usk Valley Walk, Three Castles Walk. It will also seek to make Definitive those permissive paths which provide important access links into countryside sites.

## 16.0 Enforcement Policy Overview

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The primary function of central and local government enforcement work is to protect the public and the environment. This applies specifically to Public Rights of Way as well as to a wide range of other functions. Furthermore the effectiveness of legislation in protecting the Public Rights of Way network and the rights of the public depends crucially on the compliance of those regulated. We have therefore adopted the central and local government Concordat on Good Enforcement.

Included in the term “enforcement” are advisory visits and information. We will therefore provide information and advice in plain language on the rules we apply and we will be open about how we go about our work. We will always be keen to discuss general issues or specific problems with anyone experiencing difficulties.

We believe that prevention is better than cure and that our role therefore involves actively working with both landowners and users to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will always identify themselves by name. Our staff will also provide a contact point and telephone number for further dealings with us. In cases where disputes cannot be resolved without formal enforcement any right of appeal or complaint will be explained, with details of the process and the likely timescales involved.

We are also required by legislation to act in a timely fashion where some issues are concerned such as cropping and ploughing. The Countryside Access Team does not hold a directory of all landowners. In each situation every effort is made to identify an owner of land, however in cases where one cannot be found (for example for ploughing and cropping, barbed wire obstructions, ropes across paths, locked gates etc.) a Notice will be placed in clear view on site.

In dealing with obstructions, the authority is aware that information recorded in the Definitive Statement about the position or width of a right of way, or of the limitations or conditions that are relevant to it, is conclusive evidence of those matters. Where there are legitimate limitations, information should be recorded in the Definitive Statement describing the effect that they have in restricting the use of the way by those who are lawfully entitled to use it. Where the information recorded is not about position or width, or is not relevant to limitations or conditions, the authority will examine the evidence in each instance to resolve any inconsistency and make any necessary modifications to the Definitive Map and Statement in line with the duties imposed by s. 53(2) of the WCA 1981.

Evidence may be available to suggest that a public right of way shown on the Definitive Map does not exist. However, the Map is conclusive as to the public rights of way shown to exist on it (without prejudice to the existence of other rights – see s. 56(1) of the WCA 1981) and the path or way must remain open and available for use until the Definitive Map has been amended, or closure procedures have been complied with.

In investigating an alleged offence, we will consider:

- Whether sufficient evidence exists to show an offence is being committed or may have been committed.
- The powers available to the authority to deal with the offence.
- Whether the offence is a repeat of an offence that has been dealt with previously through enforcement procedures.
- Whether the offence involves the erection of permanent structures or developments.

- Whether the offence is a recent occurrence or has been going on for a substantial length of time before it was identified.
- Whether enforcement action would be proportionate in the circumstances.
- The terms of any other policy in place within that authority, including the principles contained within the Concordat for Good Enforcement, where relevant.

Options available to the authority following investigation of such complaints will usually be:

- **No enforcement action.** (It may be concluded that an offence has not been committed or that the issue could be resolved other than by enforcement action. In these circumstances the complainant and alleged offenders will be notified and CAMS updated accordingly)
- **Informal advice** (Where problems identified are of a minor nature and an authority is confident that corrective action will be taken by the alleged offender, it may seek to address the problem by giving informal advice. In such circumstances, we will agree a reasonable timescale for corrective works after which more formal enforcement methods will be considered.)
- **Informal enforcement action.**
- **Service of a notice and/or direct action with recovery of costs.**
- **Simple Caution.**
- **Prosecution.**

#### 16.0.1 Service of Notice and Direct Action

Where provision is made in the relevant statute, the authority may serve statutory notices which require a person, business or organisation to comply with specific requirements.

Where a formal notice is served, the method of appealing against the notice, if any, should be explained in writing at the same time. The notice should explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.

In general, failure to comply with a properly written and served statutory notice will make the recipient liable to prosecution. In some cases, the authority is able to carry out direct works in default of a failure to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances, it is possible to prosecute in conjunction with service of a notice.

Often, specific provision is made within a statute for the form that a notice must take, and how it must be served. For notices issued under the HA 1980, sections 320 and 322 apply.

The Authority may also use common law powers to remove an obstruction or otherwise legally abate a nuisance on the highway without prior notice.

#### 16.0.2 Simple Caution

Previously known as a formal caution, simple cautions may be given in circumstances where offences have been investigated and evidence of guilt sufficient to give a realistic prospect of successful prosecution has been established. Simple cautions require the offender to admit guilt by signature of a declaration. The suspected offender must understand the significance of a simple caution and give an informed consent to the caution.

The Authority will follow the procedures described in Ministry of Justice guidance when issuing a simple caution.

The aims of simple cautions are:-

1. Deal quickly and simply with less serious offenders.
2. Avoid unnecessary appearances in a criminal court.
3. Reduce the likelihood of offenders re-offending.

A record of a caution that has been accepted will be kept on file, and may be referred to if a prosecution is brought at a later date for a further offence.

### 16.0.3 Prosecution

Where an offence is serious in nature, the authority may elect to bring about a prosecution.

## 16.1 Network Inspection

The Service does not operate a programmed inspection regime of the PROW network given the length of the network, the resource this would require, and the many factors over which the County Council has little influence but that can affect the network and would render inspection regimes ineffective; for example

- Ploughing and cultivation
- Excavation by animals
- Private vehicular use
- Landowner liability items such as gates and stiles
- Forestry operations

In place of a programmed inspection regime the Service assess all reports received in line with the network and operational priorities set out in Chapter 16 above.

Volunteer Community Groups however are encouraged to undertake surveys of the communities they work in to establish volunteer work and improvement programmes.

## 16.2 Barbed Wire Across a Public Right of Way

A barbed wire fence or exposed barbed wire erected across a Public Right of Way without an adequate means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the County Council has adopted in these matters is firstly to ask the owner of the fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the County Council as it would constitute a new stile, (see stiles and gates). If the owner fails to agree to either of these courses of action the County Council will remove the barbed wire where it affects the path without further notice. If the owner continues to commit further offences of this nature the County Council will consider prosecution for obstruction. (Highways Act 1980 section 137 and 149).

## 16.3 Barbed Wire Alongside a Public Right of Way

Where a barbed wire fence is situated alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of the County Council the barbed wire does represent a danger to the public then the County Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses

or fails to do so the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. (Highways Act 1980 section 164.)

## 16.4 Bridges

Sections 91 and 92 of the HA 1980 allow for the construction and reconstruction of bridges forming part of a public right of way.



A bridge may be reconstructed either on the same site or on a new site within 200 yards of the old one. Should a bridge be moved to a new site within the 200 yard limit, the power extends to the highway that gives access to the bridge and this can be reconstructed along with the bridge without the need for a diversion Order.

However, under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010, flood defence consent is required from Natural Resources Wales prior to any work in, over, under or near a main river. Where a bridge is to be constructed over any other form of water course (including ditches, drains, cuts, dikes, sewers other than public sewers, and passages through which water flows) ordinary watercourse consent is required.

Monmouthshire has 1326 bridges on its rights of way network. Many of these are of specialist design and over 10 metres. Monmouthshire County Council will maintain and install bridges that are the responsibility of the Highway Authority.

All bridge work is prioritised according to the prioritisation used for all maintenance and enforcement issues and includes risk, usage, promotion and inconvenience. But when it comes to replacement, it also includes the possibility of diverting the path, whether there is another bridge nearby, cost and complexity. The benefits of replacing each bridge to the public as a whole are therefore very much taken into account when prioritising which bridges should be replaced first.

## 16.5 Bridges Required Over New Ditches, Ponds and Channels

It is an offence for a landowner to wilfully obstruct a Public Right of Way (Highways Act 1980 s137). The County Council has a duty to protect and assert the rights of the public to the use and enjoyment of the public rights of way network (Highways Act 1980 s130).

Where a landowner creates a new ditch, pond or channel etc. that crosses an existing right of way, a suitable bridge, or structure must be provided which can accommodate all legitimate users safely and without restriction.

Structures will be supplied and erected by the County Council or approved agents. Landowners will normally be charged 100% of the reasonable costs of the bridge structure and installation. Where a structure is built to a higher specification at the

request of the Authority than the County Council will bear any additional cost. Absence of any structure can be construed as "wilful obstruction" on behalf of the landowner. Exceptions may include instances where a path is not recorded in the Definitive Map and Statement subsequent to the new feature being created.

This policy is designed to ensure that landowners, who intentionally obstruct rights of way, by creating ditches or water features, are required to provide a bridge or other suitable structure on the Definitive line of the right of way. Diverting the path retrospectively is not normally an acceptable solution and the feature will normally be considered an obstruction.

Higher specifications may include extra width beyond minimum requirements, higher parapets and additional requirements where the route is considered appropriate for access for all. The County Council will still charge up to a minimum standard but will bear the costs of a higher specification. This approach is consistent with the County Council's aim to improve access for all.

## 16.6 Bulls and Dangerous Animals

It is an offence under s. 59 of the WCA 1981 for the occupier of land crossed by a Public Right of Way to allow a bull over 10 months old and on its own and/or any bull of a recognised dairy breed (even if accompanied by cows/heifers) to be at large in it.

Bulls that are less than 10 months old or of a recognised beef breed and at large with cows/heifers are exceptions to this rule.

The recognised dairy breeds are: Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry. However, even for bulls that are excluded from the offence in s. 59, farmers' obligations under the Health and Safety at Work Act 1974 still apply.

If any animal, which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a Public Right of Way an offence may be committed and the occupier could be sued by the injured party (Wildlife and Countryside Act 1981 section 59). Farmers and landowners/occupiers should have regard also to s. 2 of the Animals Act 1971 when considering keeping any animal in a field crossed by the public right of way, including horses.

The County Council will deal with the problem by approaching the landowner and requesting that he moves the bull or dangerous animal from the field in which the right of way passes. A failure on the part of the landowner to comply with such a request may result in prosecution.

A Health and Safety Executive (HSE) study reported that most of the incidents on rights of way involving cattle arise when suckler cows and calves are at large in fields. The HSE have summarised their findings and provided guidance for the public and for farmers in Agriculture Information Sheet No 17EW (rev1). The guidance also includes useful information as to the form and contents of signs that could be used to indicate the presence of animals.

The Dangerous Wild Animals Act 1976 states that “no person shall keep any dangerous wild animal except under the authority of a licence granted in accordance with the provisions of the Act by a local authority”. A full list of the species covered can be found in the Act. For the purposes of agriculture, it should be noted that the list includes wild boar and ostrich. The Act requires such animals approved by licence to be kept in secure accommodation and not to be in contact with members of the public. Consequently, no such animal should be kept on or near a public right of way.

### 16.7 Cattle Grids

Cattle Grids are not encouraged as they can limit access to some users. Policy is currently being written. To be included at later date with costs

### 16.8 Competitions and Speed Trails

It is an offence (under section 33 of the Road Traffic Act 1988) to hold a motor vehicle race or trial or speed on a footpath or bridleway unless the event is authorised by the highway authority and the consent of the owner is obtained in writing. Even if authorised and where the owner has given consent an offence is still committed if the vehicle is driven dangerously or without due care and attention or without reasonable consideration for others.

The use of public rights of way for organised sponsored walks, cross-country running challenges and similar events is generally considered to be acceptable, provided they reflect the rights available on the chosen route, i.e. not promoting a cycle race upon a footpath.

### 16.9 Crops Growing on Public Rights of Way

Where a crop (other than grass) has been planted or sown on land crossed by a Public Right of Way the occupier has a duty to ensure that the line on the ground of the Public Right of Way is indicated to be not less than the minimum width (1m for cross field footpaths and 2m for cross field bridleways 1.5m + field edge footpaths and 3m+ for field edge bridleways). Additionally the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence. (Rights of Way Act 1990 section 137A.)

### 16.10 Ploughing and Crops on Public Rights of Way

In some circumstances occupiers of land are entitled to plough Public Rights of Way if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. All field edge public rights of way and cross-field Roads used as Public paths (RUPPs), Restricted Byways and ‘Byways Open to all Traffic’ (BOATS) should never be ploughed.

Where a cross-field footpath or bridleway is ploughed it must be reinstated within the “statutory time limit” otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use to not less than the statutory minimum width. In respect of footpaths the minimum width is 1m and 2m for bridleways. The “statutory time limit” is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling. (Rights of Way Act 1990 section 134)

The minimum width is the absolute minimum acceptable for path users. For crops such as oil seed rape, which are prone to collapse across a cleared way as they reach maturity, it will be

necessary to clear the plants to a greater width than the minimum to ensure convenient passage. These minimum widths only apply in relation to the reinstatement of a public right of way following ploughing or disturbance and are not general widths to be applied in other circumstances.

### 16.11 Enforcement of Ploughing and Cropping

Interference with Public Rights of Way by ploughing and cropping is a major problem and the County Council has adopted the following protocol to deal with it.



For a first offence the County Council will explain the law to the offender and advise that the route will be inspected again within 14 days. Upon expiry of that period if the path has not been reinstated to a satisfactory standard the Council will serve formal legal notice upon the offender requiring them to reinstate the path within a further 14 days. If the path is still not reinstated satisfactorily the Council will carry out the necessary work

with contractors and recover costs from the offender.

On occasions where there are repeated offences in subsequent years the County Council will immediately serve formal legal notice requiring the reinstatement of the path within 24 hours (unless other time frame agreed).

Where an occupier re-offends after service of formal legal notice on the same path, the County Council will serve legal notice and additionally will consider prosecuting the offender.

### 16.12 Dangerous Land Adjoining a Public Right of Way

From time to time the County Council encounters unfenced dangers on adjoining land, which present hazards to path users. The County Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him to remove or adequately fence the danger. The County Council can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice the Council may carry out the work and recover the costs from the owners. (Highways Act 1980 section 165.)

### 16.13 Diversion, Creation and Extinguishment of Public Rights of Way

To alter, close or create a new Public Right of Way a legal order is required. All orders are open to public consultation and certain legal criteria have to be met. The County Council therefore cannot guarantee that all orders will be made or completed. Application forms and

advice regarding diverting, closing or creating a public right of way are available from the Countryside Access Team at [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk)

### 16.14 Dogs On Public Rights of Way - see also Intimidating Dogs

The Council endorses responsible dog ownership. Clear and concise advice can be found in the dog walking code which is available on the Natural Resources Wales Website <https://naturalresources.wales/media/4862/the-dog-walking-code.pdf>

Dogs are allowed on Public Rights of Way but they should be kept under close control at all times. There is no requirement in law for a dog to be on a lead at the current time (but legislation may soon change this). A path user who allows a dog to wander off the right of way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path or to worry livestock the owners are advised to keep the dog on a lead.

It is an offence to allow a dog that is not under close control or on a lead to be at large in a field or enclosure with sheep. A farmer may shoot a dog, which is attacking or chasing livestock.

The fouling of a public right of way by a dog may be an offence under an order made under the Dogs (Fouling of Land) Act where the person in control of the dog fails to remove the fouling. Dog fouling is an accepted hazard to health. The County Council will attach signs to stiles, gates and fingerposts advising owners to keep their dogs on a lead, or under close control where there is a reported problem. The County Council may also choose to use its powers to make an order under section 27 of the Road Traffic Act 1988 requiring dogs to be kept on a lead on specified footpaths and bridleways. Failure to comply is an offence.

### 16.15 Intimidating Dogs

It is an offence to keep a dangerous or intimidating dog on a Public Right of Way and it can also be considered a “public nuisance”.

In the above circumstances the County Council will request the landowner to take action to remove the dog from the vicinity of the footpath so that users of the public right of way will not be deterred from using the path. The County Council may also advise complainants to notify the police directly.

### 16.16 Electric Fences Across a Public Right of Way

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the County Council has adopted in these matters is firstly to ask the owner of the electric fence to remove it immediately, or if it is necessary for agriculture to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the County Council as it would constitute a new stile, (see stiles and gates). If the owner fails to agree to either of these courses of action the County Council will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature the County Council will consider prosecution for obstruction. (Highways Act 1980 section 137, 137Z, and 149.)

### 16.17 Electric Fences Alongside a Public Right of Way

Where an electric fence runs alongside a Public Right of Way it may be a danger to and a nuisance to members of the public. If in the opinion of the County Council this is the case then the County Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the County Council removing the fence and recovering costs from the owner. (Highways Act 1980 section 165.)

### 16.18 Encroachment

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred, or is alleged to have occurred, the County Council is duty bound to investigate and the following action will be taken.

Consideration will be given to whether the encroachment has actually occurred and is materially affecting the way or may do so in the future. This may require considerable research including historical research to establish the legitimate width of the highway, (see Width of Public Rights of Way). If it is demonstrated to the County Council's satisfaction that encroachment has occurred but it is not materially affecting the path or the rights of Users the County Council may regard it as de Minimis "*the law is not concerned with trifles*". In these circumstances the County Council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the encroachment has been found to the County Council's satisfaction to be materially affecting the right of way and the rights of Users the following approach will be taken to have it removed. Firstly the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment within a reasonable timescale to be determined by the County Council. If this fails to secure the removal of the encroachment the County Council will commence enforcement action in respect of the obstruction. (See obstructions).

### 16.19 Erosion

Erosion will be addressed by preventative maintenance wherever possible.

Sites, which are identified as suffering from erosion, will be prioritised for action according to public safety and budget restraints.

### 16.20 Firearms on Public Rights of Way

It is not an offence to shoot across a Public Right of Way, although to do so could amount to a common law nuisance, wilful obstruction of the Highway under Highways Act 1980 s137, a breach of Health and Safety at Work Act 1974 or intimidation, depending on the circumstances. It is an offence to discharge a firearm within 50 feet of the centre of a byway (carriageway carrying public vehicular rights) if it injures, interrupts or endangers any user of the byway.

Section 19 of the Firearms Act 1968 also makes it an offence for a person to have a loaded air-weapon, or any other firearm whether loaded or not, together with ammunition, in a public place (which includes public rights of way), unless the person has lawful authority or a reasonable excuse, such as a landowner shooting vermin on his own land.

Where the County Council receives a complaint regarding firearms and is concerned about public safety than the matter will be referred to the police. -see also intimidating and threatening behaviour

### 16.21 Hedges and Trees Adjacent to Public Rights of Way

(See also 16.22 “Tree Branch across Public Rights of Way”)

In most circumstances the responsibilities of the County Council do not extend to the maintenance of hedges and trees at the side of public rights of way. Where a hedge overhangs or obstructs a Public Right of Way the County Council has a right to remove so much of the overgrowth to prevent obstruction to pedestrians and equestrians. Additionally, the Council has a power to require the owners of overhanging hedges to require them to lop or cut back the hedge within a period of 14 days. (Highways Act 1980 section 154.)

If a byway open to all traffic or restricted byway is being damaged by the exclusion of light and air due to adjacent hedges or trees the County Council has a power to seek an order at a Magistrates Court to require the owner to cut back sufficient of it to prevent such damage. However before employing this power the County Council will discuss the matter with adjacent landowners and request that the hedges or trees be cut back or agree to carry out the work in conjunction with the owner as part of a larger project. (Highways Act 1980 section 136.)

### 16.22 Tree Branches and Limbs across Public Rights of Way

If a branch of a tree has fallen across a Public Right of Way such that the way is obstructed the County Council has adopted the following protocol. It will contact the owner of the tree and request the branch is removed within a predetermined time. If the owner fails to comply with this request the County Council will serve notice on the owner of its intention to remove the branch and recover from the landowner or occupier the costs incurred. (Highways Act 1980 section 150 (4) (c).)

### 16.23 Intimidating or Threatening Behaviour Intended to Deter Users from A Public Right of Way

The use of intimidating behaviour with the intention of deterring the use of a right of way is possibly an offence and may amount to obstruction of the path.

In these circumstances the County Council will seek to address any underlying issues, which have led to the situation arising. The County Council may then issue a warning to the offender and involve the police as appropriate. (Public Order Act 1986 section 4)

### 16.24 Landowners Liability to Path Users

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to path users by the negligence of the owner or occupier. For example if a stile were to collapse under a walker or if a path user were to be injured by an electric fence placed across a path then the injured party may pursue a claim against the occupier of the land. (Occupiers Liability Act 1957.)

### 16.25 Liability to Path Users by The County Council

As Highway Authority the County Council is responsible for the surface of Public Rights of Way. In certain circumstances the County Council will be liable for injury caused to persons using a Public Right of Way if the injury is due to a negligent act with regard to the surface of the path.

### 16.26 Litter and Fly Tipping

The County Council is responsible for keeping rights of way in their area, which are publicly maintainable, clean and clear of litter and refuse, so far as is practicable. (Environmental Protection Act 1990ss 86(9) and 89(1)&(2). However regard has to be had to the character and use of the right of way as well as to the measures that are practicable in the circumstances.

If there is sufficient litter to amount to an obstruction, then the County Council also has a duty to take appropriate action – see obstruction.

To help deal with the problem of litter and dog poo, we ask all visitors/users to follow the advice in the [Countryside Codes](#) to keep our places special for both wildlife and people.

This means that everyone should take their litter and bagged dog poo away with them at the end of their visit if there is no bin on site, or if the bin is already full.

### 16.27 Misleading Signs and Notices Erected On Public Rights of Way

Misleading and unlawful signs can deter people from lawfully exercising their right to use paths and the county council has a duty to prevent such occurrences. Such signs erected on a public right of way can be removed by the county council.

Signs erected affecting a public right of way but on adjacent land can be dealt with on application to the Magistrates Court. The Magistrates may impose a fine or order the offender to remove the sign on pain of a continuing fine for each day it remains. (highways act 1980 section 132. National parks and access to the countryside act 1949 section 57.)

### 16.28 Obstructions and Encroachments, which can be Readily Removed

The County Council has a statutory duty to remove all obstructions and encroachments to Public Rights of Way (The Highways Act 1980). The County Council also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Monmouthshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. Depending on circumstances, offenders are normally given 7 days to comply. This informal notice will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the County Council will remove the obstruction and recover the costs from the offender.

The County Council has a protocol for considering prosecution for obstruction or other offences relating to rights of way as well as taking the direct action outlined above. (Highways Act 1980 S143.).

### 16.29 Obstructions and Encroachments Which Are More Permanent

From time to time permanent obstructions on Public Rights of Way are encountered. Often permanent structures are erected on Public Rights of Way and an unofficial diversion put in place by the landowner or occupier. The County Council has a statutory duty to assert and protect all Public Rights of Way. (Highways Act 1980 S130.)

Monmouthshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue with the landowner/occupier who will be given the opportunity to apply for a diversion of the path. If, after a certain period of time, no application is forthcoming enforcement proceedings will be commenced against the offender in the magistrates Court. The magistrates can make an Order requiring the offender to remove the obstruction within a specified time period and impose an ongoing fine if the offender fails to remove the obstruction. (Highways Act 1980 section 137 and 137Z.)

Where authorities choose to exercise any of their powers to remove an unlawful obstruction after a person has been convicted under s. 137ZA(3), s. 137ZA(4), in conjunction with s. 305 of the HA 1980, allows authorities to recover expenses reasonably incurred in doing so.

### 16.30 Pesticides and Herbicides

The Health and Safety Executive advises that rights of way should not be over sprayed and that if the product label advises that people and animals should stay out of a crop, which has been sprayed, the need for warning notices where rights of way join or cross the treated area should be considered. (Health and Safety at Work Act 1974 section 3.)

Authority staff or contractors should also take into account the guidance provided on the use of pesticides near public rights of way and other publically accessible outdoor spaces. The guidance can be found at: <http://www.hse.gov.uk/agriculture/topics/pesticides.htm>

### 16.31 Rope Across a Public Right of Way

It is an offence to stretch a rope or similar object across a public right of way. In some circumstances, a temporary rope or wire to restrain farm animals may be acceptable across a public footpath (but no other class of right of way), provided that it is visible and can be easily and safely removed and replaced by path users.

The County Council will request that any unauthorised rope or similar object be permanently removed. If this is not done, the County Council will remove the rope and prosecution may be considered. (Highways Act 1980 section 162.)

### 16.32 Scheduled Ancient Monuments

Scheduled monuments are nationally important monuments that are afforded statutory protection under the Ancient Monuments and Archaeological Areas Act 1979 and the Historic Environment (Wales) Act 2016. The aim of the protection is to avoid any damage or significant alteration to the monument and its setting. The extent of any such monument is depicted on a plan known as the scheduled area.

Cadw should be consulted prior to undertaking any work to a public right of way within a scheduled monument. Scheduled monument consent is required from the Welsh Ministers, via application to Cadw, before any works are carried out within the scheduled area that could cause damage to the scheduled monument. It is a criminal offence to do otherwise and the types of works that require such consent include ordinary maintenance activities such as digging post holes, installing new furniture, and tipping materials onto a surface. Proposals should be considered in light of published guidance on the Conservation Principles for the Sustainable Management of the Historic Environment in Wales. Further information is available from the Cadw website.

### 16.33 Signposts

Monmouthshire County Council has a duty to signpost all footpaths, bridleways and byways where they meet a metalled road (Countryside Act 1968). This is usually undertaken by installing a fingerpost. But sometimes other signs may be required for example traffic regulation order signage.

All signposts used in association with public rights of way will conform to:

- The Traffic Signs Regulations and General Directions 2016 or subsequent amendments.
- Quality Standards for Wales Coast Path and Offa's Dyke Path National Trail.
- Designs approved in special circumstances, by the Countryside Access Manager, to allow local distinctiveness and to aid improvements on promoted or "access for all routes", or to contribute to actions within the CAIP.

It is an offence under s. 131(2) of the HA 1980 to remove or obliterate a traffic sign that complies with the Traffic Signs Manual without authorisation.

Before signage is installed checks for relevant designations or constraints that might require appropriate consultation or approval are required (e.g. SSSIs, SAMs etc.). It is also important to check for underground cables with appropriate machinery. The materials proposed for the location must be suitable e.g. bespoke signs may be necessary in conservation areas, or to fit with local schemes. Any text on signage or waymark discs on Offa's Dyke Path National Trail (ODPNT) and on the Wales Coast Path must be presented bi-lingually with Welsh first, English second and with both on both sides of the sign if double sided. A metal acorn if not routed on the blade must be used on the ODPNT.

On public rights of way the status of the path should be shown on a fingerpost. This is usually shown on the blade by the use of a walking man (footpath), Horse (bridleway) and Horse and carriage (Restricted Byway). It is important to remember the Equalities Act and the use of symbols that are universally recognised and avoiding colours that may fade or be difficult for some to see should be considered. In all cases text should be kept to a necessary minimum for clarity and the blades should be as short as possible.

Fingerposts should be sited suitably to insure that the blades will not pose a hazard to anyone or anything (hitting heads, passing vehicles etc.).

Where distances are shown on blades this should be in miles as per regulations and not km.

### 16.34 Waymarking

The County Council has no duty to waymark. However it is recognised that it is important for land management and that identifying the alignment of routes provides confidence to users. Therefore, public rights of way should be waymarked where necessary along their length in accordance with the former Countryside Commission's recommended colour co-ordinated notation and following consultation with landowners/and or occupiers. Moreover, if agreement can be reached to use existing structures, this will be preferable to erecting new ones.

- ⇒ Footpaths are waymarked using yellow arrows (BS 08 E 51).
- ⇒ Bridleways are waymarked with blue arrows (BS 20 E 51).
- ⇒ Restricted byways are waymarked with purple (plum) arrows (BS 02 C 39).
- ⇒ Byways open to all traffic are waymarked with red arrows (BS 06 E 55, approximate).

Waymarks should not be placed on trees or in hedges except in very exceptional circumstances where it is not possible for a waymark post or other structure to be provided.

It is common for promoted routes to have specially designed waymarkers for the route. These need to be approved by the Countryside Access Manager before being installed on site. Additionally, it should be noted that Regional routes such as Usk Valley Walk, Wye Valley Walk, Three Castles Walk along with the ODPNT and WCP take priority where waymarking and signage is required.

### 16.35 Stiles and Gates on Footpaths and Bridleways

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The County Council's only duty extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

However, the County Council has a discretionary power to extend this grant where least restrictive access improvements are taking place and will, in normal circumstances where there is sufficient budget provide a 100% grant by arranging to carry out all the work at no cost to the landowner and will also normally supply the necessary furniture. This discretionary grant will be withdrawn if landowners fail to cooperate, are obstructing other rights of way or are requesting a diversion. (Highways Act 1980 section 146.)



If an occupier of land wishes to install additional stiles or gates on footpaths or bridleways they must apply in writing to the County Council for authority to do so. To erect stiles or gates without this authority is an unlawful obstruction and is a criminal offence (see obstructions).

The only circumstance for which the County Council can provide authorisation for the erection of a new stile/gate is that the structures are required for stock control purposes or forestry works. (Highways Act 1980 section 147.) Note gates and stiles authorised under section 147 will be under the condition that if the land reverts to a different use from forestry or livestock are no longer present then the structure can be removed.

Stiles and gates cannot be erected for security or other purposes and may be regarded as obstructions to the highway. (See obstructions)

When authorising new gates or stiles under s. 147 of the HA 1980 on a path that is suitable and of sufficient width to allow vehicular access, the authority will consider including a condition to require the landowner to remove and replace that structure should the authority require later access.

It is the landowner's duty to ensure that livestock do not get out onto highways and cause an accident. Monmouthshire County Council has in the past taken a sympathetic approach to farmers who padlock their gates to prevent livestock from getting on to main highways by installing stiles and kissing gates alongside the field gate through which the right of way passes. This approach will continue only where there is a possibility of livestock getting on to main roads

if the farmers gate is left open by the public. However, it should be noted that Monmouthshire has a duty in law to ensure paths are accessible to all and in line with that legislation the Council will no longer allow stiles next to gates.

Farmers field gates must remain unobstructed and available for public use, so that the public can open and shut the gate easily on footpaths where

- such a field gate is not the last restrictive barrier to livestock,
- the livestock are permanently removed
- it is not possible to erect a self- closing gate or kissing gate next to the existing farm gate
- complaints are received from the public

Monmouthshire County Council will provide signs reminding the public to shut the gate. It should also be remembered that to lock a gate through which a Public Right of Way runs is an offence and the County Council may have no choice but to deal with the matter as an obstruction if complaints from the public are received.

Unless dedicated with a limitation of a gate, restricted byways and byways open to all traffic may not have such a structure placed across them. Section 145 of the HA 1980 specifies that a minimum width of 5 feet (1.5 metres) must be provided for a gate across a bridleway and a minimum of 10 feet (3 metres) for a gate on a highway comprising a carriageway (i.e. one where the public have a right of way for the passage of vehicles). In the case of bridleway gates dedicated subject to BS 5709 standards, those gates should be useable whilst the horse rider is mounted.

Monmouthshire County Council operates an “Access for All” policy where the least restrictive option of furniture will be used. (See Chapter 7 Equality Act and Least Restrictive Access Policy)

### 16.36 Surface of Public Rights of Way

Section 263 of the Highways Act 1980 vests the surfaces of highways maintainable at public expense in the highway authority. Monmouthshire County Council is therefore able to act as if they were owners of surfaces of public rights of way, to an extent sufficient to control, protect and maintain the way for use by the public.

The authority is required to ensure that ways are capable of accommodating the use that is made of them by ordinary traffic at all times of the year. This means that work will be undertaken to ensure the route is safe and fit for ordinary traffic, as appropriate to its status. This includes cutting back any surface vegetation as required. This is carried out in accordance with our maintenance and enforcement prioritisation.

The Authority also has a general power of improvement under s. 62 of the HA 1980 that can be relied on in circumstances where specific powers are not applicable. However, where this is used improvements should ensure that the route remains usable as dedicated.

The County Council as the highway authority owns the surface of all Public Rights of Way that are publicly maintainable; the landowner’s interest only extends to the sub soil. It is an offence to interfere with the surface of a public right of way to the detriment of users, the County Council

has a duty to protect the interests. The County Council will take enforcement action to ensure the surface of Public Rights of Way unlawfully disturbed are reinstated. (See also Enforcement and Ploughing and Crops on public rights of way).

Occupiers of land can disturb the surface of a right of way by special licence if they first apply to the County Council to do so and by statutory licence in respects of ploughing. (See ploughing and crops)

Where there are public footpath or bridleway rights on a route, which also has private vehicular rights, the County Council may consider making a contribution towards the costs of maintenance of the surface to the extent required for the level of public rights.

Landowners and occupiers who wish to upgrade the surface of a footpath, Restricted Byway or bridleway on which there are also private vehicular rights, must apply in writing to Monmouthshire County Council's Countryside Access Team. Full details of the works to be undertaken and proof of the landowner's agreement will be required before permission to alter the surface the right of way can be considered or agreed. Where upgrading a surface of a path is agreed this will normally be on the basis that the applicant will pay the costs involved and continue to maintain and repair the surface of the path and any necessary drains to the new standard. In considering such applications, the Authority will also consider the impact on the public's enjoyment of the route, safety, environmental and landscape issues.

### 16.37 Vegetation, Clearance & Cutting

The County Council is responsible for ensuring that vegetation growing in the surface of a Public Right of Way is kept under control. Overgrowth i.e. plants growing across the path from beside it, are the responsibility of the landowner (see Hedges and Trees Adjacent to PROW)

Effort will be made to ensure vegetation clearance observes good conservation practice by following the guidance within the Rights of Way Biodiversity Technical Manual.

Rights of Way found in need to be cutting will be incorporated into the maintenance list for attention according to our prioritisation in Chapter 16.

### 16.38 Volunteers

The Council has various policy and practice documents that provide a comprehensive source of information for individual volunteers and MCC's role as managers. A new set of guidance is in production to enable community and other groups to volunteer.

### 16.39 Width of Public Rights of Way

There is no general rule applying to the width of Public Rights of Way and the width is a matter of fact to be determined on each occasion based upon the following. The width may be set out in

- the Definitive Statement,
- an historical document or
- It may be the width of the way between boundaries such as hedges or fences.
- Alternatively, the width may be that which the public have customarily enjoyed.

In the absence of the foregoing the County Council will require a reasonable width to be made available, which would be sufficient for two users to pass and be convenient for cutting machinery and assist to make paths accessible to all users as required under the Equality Act. In the case of a footpath, this will be regarded as 2 metres. In the case of a bridleway 3 metres and in the case of a byway 5 metres.

An encroachment into the width of a Public Right of Way is an obstruction and a criminal offence and the County Council will deal with encroachments according to protocols. (See also Encroachment, Obstruction and Enforcement).

Statutory default minimum widths apply to all Public Rights of Way (as per Schedule 12 A Highways Act 1980), but in relation to ploughing and reinstatement following ploughing these are as follows. (See also ploughing and crops).

| <b>Path</b> | <b>Headland path<br/>(field edge)</b> | <b>Crossfield</b> |
|-------------|---------------------------------------|-------------------|
| Footpath    | 1.5 metres                            | 1 metre           |
| Bridleway   | 3 metres                              | 2 metres          |

Restricted Byway and Byway, should never be ploughed, historic width applies

## 17.0 Contact Details

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**Email:** [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk) **Telephone** 01633 644850

Countryside Access, MonLife,  
Monmouthshire County Council  
County Hall  
The Rhadyr, Usk  
Monmouthshire NP15 1GA

**Website** [www.monlife](http://www.monlife)

**Twitter:** monlifeoutdoorcountryside

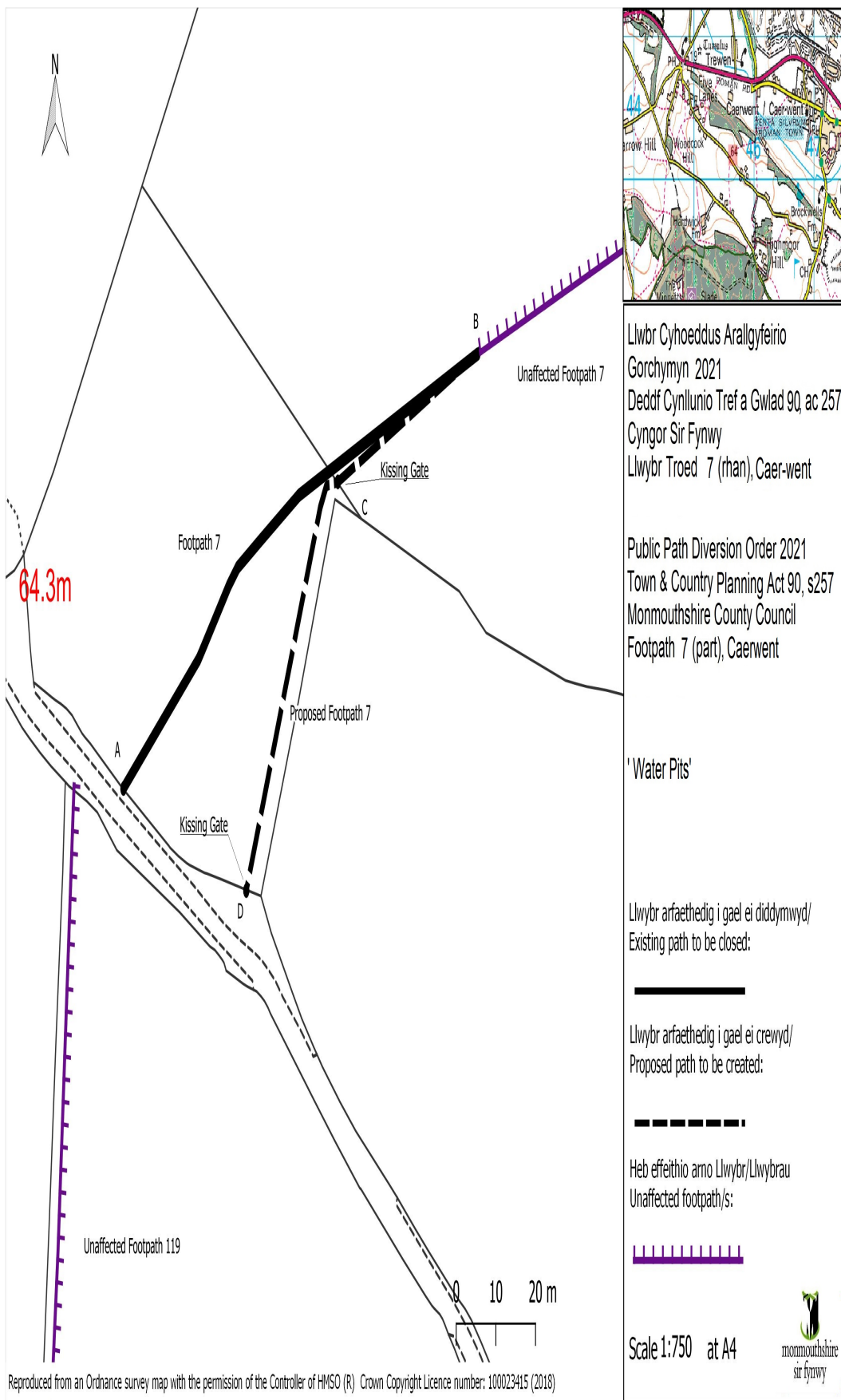
**Facebook:** moncountryside facebook.com/visitmonmouthshire

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<sup>i</sup> Review of Rights of Way Improvement Plans - Guidance to Local Highway Authorities in Wales  
<http://gov.wales/topics/environmentcountryside/consmanagement/rights-of-way-and-wider-access/rights-of-way/?lang=en>

<sup>ii</sup> <http://gov.wales/docs/dhss/report/140929cmorereportten.pdf>

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**Public Path Diversion Order 2021**  
**Town and Country Planning Act 1990, s257**  
**Monmouthshire County Council**  
**Public Footpath No. 7 (part), Caerwent**

**SCHEDULE**

**PART 1**

**Section as  
indicated on  
map**

**Description of site of existing path or way**

B-A

The Footpath continues from unaffected Footpath 7 at point B (ST4569190204) in a West South Westerly direction a distance of 102m to the County Road at point A(ST4560190158).

**PART 2**

**Description of site of alternative highway**

**Section as  
indicated on  
map**

B-C-D

The Footpath continues at a width of 2m from unaffected Footpath 7 at point B(ST4569190204) in a West South Westerly direction a distance of 38m to a Kissing Gate at point C(ST4565590191).

From point C the Footpath continues in a South South Westerly direction at a width of 3m parallel to and 3m away from the field boundary a distance of 52m to a join the County Road through a Kissing Gate at point D(ST4563290147).

**PART 3**

**Description of site of existing highway to be improved**

None



**From:** Palmer, Sali A. <SaliPalmer@monmouthshire.gov.uk>  
**Sent on:** Thursday, June 5, 2025 8:53:47 AM  
**To:** Pritchard, Shaun <ShaunPritchard@monmouthshire.gov.uk>  
**Subject:** TCPA 90 s 257 Public Path Order FP 7 Caerwent CAMS 01097 Water Pits

Hi Sean

Regarding the above Path Order, the biodiversity team have no objection to the proposed realignment. The proposed realignment will run alongside the existing hedge; no hard surfacing which could affect the hedge will be used. The proximity of the path to the hedge is unlikely to negatively impact wildlife using the hedge.

Kind regards,

*Sali*

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**Sali Palmer BSc (Hons) MSc MCIEEM**

**Biodiversity and Ecology Officer / Swyddog Bioamrywiath ac Ecoleg**  
Green Infrastructure / Seilwaith Gwyrdd  
Monlife  
Monmouthshire County Council / Cyngor Sir Fynwy



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**From:** Ray, Richard <RichardRay@monmouthshire.gov.uk>  
**Sent on:** Thursday, June 5, 2025 2:08:48 PM  
**To:** Pritchard, Shaun <ShaunPritchard@monmouthshire.gov.uk>  
**Subject:** FW: TCPA 90 s 257 Public Path Order FP 7 Caerwent CAMS 01097 Water Pits  
**Attachments:** Water Pits Schedule TCPA.pdf (10.77 KB), 5lanesFP7Caerwent750.jpg (982.59 KB), Official Copy (Transfer) 13.06.2002 - CYM79308.pdf (286.11 KB)

Hi Shaun,

Although the application referred to in the pre consultation email below was declined I note that permission has been granted on appeal for subsequent application DM/2023/01042 and that the current proposed diversion is in order for development to be carried out under the above permission.

Provided that the current diversion application doesn't differ from the 2021 proposal it appears to meet the statutory test that the diversion is necessary for purposes of the development. The diversion of the path seems to have minimal impact of the public and as such there seems to be no reason to refuse to make the order.

I attach a copy of a transfer of part that contains restrictive covenants relating to private rights of way enjoyed by the owner of this property and the adjoining field to the west. These private rights, indicated by brown and blue triangles on the plan are not in conflict with the proposal and as such do not seem to present a obstacle to the order.

Interestingly the line on the plan shows the path as footpath 67 rather than the 7 on the plan you provided. Has the numbering changed?

Regards

Richard Ray  
Paralegal – Commercial/ Paragyfreithiol – Masnachol  
Monmouthshire County Council/ Cyngor Sir Fynwy  
Tel/ Ffon : 01633 64(4052)  
Email/ Ebost: [richardray@monmouthshire.gov.uk](mailto:richardray@monmouthshire.gov.uk)  
Website/ Gwefan: [www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk)

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**From:** Morgan, Jonathan <JonathanMorgan@monmouthshire.gov.uk>  
**Sent:** 11 June 2025 17:59  
**To:** Pritchard, Shaun <ShaunPritchard@monmouthshire.gov.uk>  
**Subject:** RE: TCPA 90 s 257 Public Path Order FP 7 Caerwent CAMS 01097 Water Pits

Dear Shaun,

Thank you for the consultation on this proposal.

Whilst the area is within the conservation area and Roman town of Caerwent, there is no direct development on which to comment from a heritage perspective, as the proposal seems only to offer a new location for a route already obstructed by a development which has been consented by the planning inspectorate.

As such, there are no Heritage objections to the allowing the continuation of this routes use by a minor adjustment, for a path that would otherwise effectively no longer exist once the development already consented is built.

I would suggest however, that failing to relocate this section of path to the a nearby line proposed would ultimately render the route unusable, which would be of detriment to the Caerwent.

*Cofion/ Regards,*  
Jonathan

**Jonathan Morgan** BSc Hons, Dip Cons,  Hapus I siarad Gymreag  
Swyddog Dirprwyedig – Adeiladau Rhestredig II & II\* Listed Buildings - Delegated Officer

*Uwch Swyddog Rheoli Treftadaeth* Snr. Heritage Management Officer

**\* We are now at the peak of the construction year and response times are often into weeks. Please ensure all time sensitive application information is formally submitted directly to [Planning@monmouthshire.gov.uk](mailto:Planning@monmouthshire.gov.uk) (Cc'ing the case officer) using the current DM/ application number.**

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## LANDSCAPE/ GREEN INFRASTRUCTURE / URBAN DESIGN Planning Application Consultation Response Form

|                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>LS Officer</b>                                                                                                                                                                                                                                                                                                                                                                                         | Andrew Nevill                                                                                                                                                                                          |
| <b>DM Officer</b>                                                                                                                                                                                                                                                                                                                                                                                         | Adam Foote                                                                                                                                                                                             |
| <b>Planning App</b>                                                                                                                                                                                                                                                                                                                                                                                       | DM/2023/01042                                                                                                                                                                                          |
| <b>Site</b>                                                                                                                                                                                                                                                                                                                                                                                               | Land North West Of Holly Lodge, Road From A48 To Dewstow Road, Fives Lanes<br>Caerwent, Monmouthshire                                                                                                  |
| <b>Proposal:</b>                                                                                                                                                                                                                                                                                                                                                                                          | Change of use from agriculture to land for the keeping of horses (retrospective)<br>proposed erection of stable block for 5 horses, erection of ancillary storage building,<br>construction of manege. |
| <b>Status:</b>                                                                                                                                                                                                                                                                                                                                                                                            | Planning application                                                                                                                                                                                   |
| <b>Date / Version</b>                                                                                                                                                                                                                                                                                                                                                                                     | 22.08.2023                                                                                                                                                                                             |
| <b>The Landscape Officer/Team, in responding to the above application, provides the following substantive response:</b>                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                        |
| <b>Pre-application comments, notes and observations</b>                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                        |
| <b>No objection - Conditions and Planning obligations</b>                                                                                                                                                                                                                                                                                                                                                 | ✓                                                                                                                                                                                                      |
| <b>Provisional holding objection – Further information or clarification is required</b>                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                        |
| <b>Objection – on the grounds set out below</b>                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                        |
| <b>POLICY</b>                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                        |
| Future Wales 2040<br>PPW Edition 11<br>LDP S1 Strategic policy<br>LDP S13 Policy Landscape, Green Infrastructure and the Natural Environment.<br>LDP Policy GI1 Green Infrastructure<br>S13 Landscape, GI and the Natural Environment<br>MCC Green Infrastructure SPG 2015<br>LDP DES1 General Design Considerations<br>LDP Policy LC5 Protection and enhancement of Landscape Character<br>TAN 12 Design |                                                                                                                                                                                                        |
| <b>No objection - Conditions and Planning obligations</b>                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                        |
| The recent application DM/2023/01042 for the proposed change of use from agriculture to land for the keeping of horses (retrospective) proposed erection of stable block for 5 horses, erection of ancillary storage building,                                                                                                                                                                            |                                                                                                                                                                                                        |

construction of manege has been reviewed from a Landscape and GI perspective

### **Documents reviewed**

Application form

SITE LOCATION PLAN

2320 RIDING ARENA CONSTRUCTION GUIDE

SUPPORTING PLANNING STATEMENT

DESIGN AND ACCESS STATEMENT

PNL-01 STABLES

PLN-02 SITE PLANS EXISTING AND PROPOSED

PLN-03 PROPOSED

PRELIMINARY ECOLOGICAL APPRAISAL REPORT

### **Landscape and GI**

The site is rural and greenfield in an open countryside aspect adjacent to Five lanes road. The road links from the settlement of five lanes to Brockwell and Dewstow road. The lane is bounded by high native species hedge and trees with occasional residential, small holdings, small-scale agricultural buildings along its route and larger farm complexes set much further back from the lane. The countryside setting is rural in nature, mixed agricultural fields, small copses, a locally elevated plateau with shallow scarpe to the north / northeast to the Nedern brook environs, Rodge woods and Caerwent settlement. It is noted that much of the built form adjacent to the lane are within their own enclosures ie using boundary hedge and hedge / tree planting to property and garden curtilages especially those on the northern side of the lane. The site is bisected by PROW 353/7/1 and bounds and partially includes Lower ridge woods SINC to the NE. The land is ALC predictive grade 2 over most of the site

The site is within the Caerwent hinterland landscape character area (LCA) and is typified by gently undulating, band of mixed pasture and arable farmland with blocks of woodland that runs from the western boundary of the county to the Wye Valley in the east and is dissected in places by steep wooded valleys. This LCA contains the Severnside sub-region settlement of Caerwent, the Main Villages of Pwllmeyric, Shirenewton/Mynyddbach and St Arvans and the Minor Villages of Crick and Llanfair Discoed. The eastern quarter of the LCA lies within the Wye Valley AONB. Field patterns range from larger fields bounded by well managed hedges in the south to smaller more enclosed and wooded with thicker mature hedges, and hedge banks to the east. The principle settlement is the Roman town of Caerwent and the MOD training area to the north. Other settlement forms vary from nucleated villages such as Shirenewton to the dispersed linear settlement of St Brides, traditional farmsteads/small holdings also typical, along with a number of country estates and their associated grounds. The area generally is home to a number of rare species of butterfly, other insects and ground flora and dormice

An analysis of the relevant sensitivity appraisals from LANDMAP information indicates that the wider LCA has been evaluated as;

Historic Landscape; 83% High and 13% Moderate

Cultural Landscape; 20% Outstanding and 45% Moderate

Landscape Habitats; 86% Moderate

Geological Landscape; 47% High, 45% Moderate

Visual and Sensory; 55% High and 35% Moderate

The sites' localised landscape setting is characteristic of the rural aspects and intrinsic values of the wider LCA. The proposal is to develop the southern and higher elevated area of the overall field closest to current access from the highway on an area that is a flatter plateau. The proposal includes for a new stable block approx. 18.5 x 5 x 3.75m ht as scaled, storage building 15 x 6 3.75m as scaled, manege arena 40m x 30m as scaled and associated access, fencing and new planting.

The field location is partially visible from nearby Caerwent settlement as part of the skyline ridge associated with the nearby lane and landform associated with nearby Woodcock and Highmoor hill. However, the development proposals of the stables and storage unit have been set back from skyline within 4m of lane hedge and at 3.75m in height are not likely to be visually intrusive. The material selection is recessive and of natural materials for walls and with felt roofing. Subject to rights of way approval a realignment would be acceptable within the context of the site and setting. From a policy perspective LC5 Protection and Enhancement of landscape character highlights that development with permitted provided it would not have an unacceptable adverse

effect on the special character or quality of Monmouthshire's landscape in terms of its visual, historic, geological, ecological or cultural aspects. It is considered that the proposed scheme will be acceptable from a Landscape and GI visual impact and character perspective subject to further clarification. .

There are four areas requiring further clarification and information.

- The proposed native species hedge planting creating a division between menage and stable from the remainder of the field and redirected PROW is acceptable however further information is required to determine size and density of planting, stock protection and establishment along with a programme of aftercare management to ensure resilience. This can be provided prior to determination or as a condition of approval should the application progress.
- Further clarification is required with regard to surfacing within the site. It is assumed from the drawings provided that there is no further hard surfacing within the site or as aprons to the proposed stable or storage unit. Further clarification would be welcome.
- Further clarification is required with regard to external lighting. The PEA indicates external lighting to the menage and stable yard may be provided however there is no reference to external lighting provided on plan or in PS or DAS. Further clarification is required with regard to any external lighting proposals.
- The PEA 5.9 enhancements also indicates further biodiversity net benefits in the form of bird and bat boxes. Further clarification on plan would be welcome. This can be provided prior to determination or as a condition of approval should the application progress.

It is noted that the layout indicates new planting to entrance. It is recommended that any new hedging in this location be installed on the lane side of the existing fence to seek to reduce the visual impact of the close board fence on a rural lane setting.

Subject to further information and clarifications the current proposal is acceptable from a Landscape and GI perspective and will not have a significant adverse impact on the character and appearance of the wider valued landscape or setting and provisions of Planning Policy Wales (Edition 11) February 2021 and Policies S13, NE1 and LC5 of the Monmouthshire County Council Adopted Development Plan 2011-2021.

## **CONDITIONS AND PLANNING OBLIGATIONS**

Should the application progress to be approved it is anticipated that the following conditions should apply if not satisfactorily provided during the application process prior to determination.

### **Conditions**

#### **1. LANDSCAPE CONDITION**

Prior to the commencement of development full details of soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. Details shall include:

- o Soft landscape details shall include: means of protection, planting plan, specifications including cultivation and other operations associated with tree, shrub and grass establishment.

Reason: In the interests of visual and landscape amenity; in accordance with Policies LC4 & LC1/5, GI1 and NE1 of the Local Development Plan

#### **2. LANDSCAPE WORKS IMPLEMENTATION**

All hard and soft landscape works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs and ensure the provision afforded by appropriate Landscape Design and Green Infrastructure LC5, DES 1, S13, and GI 1 and NE1.

### 3. LANDSCAPE MAINTENANCE

A schedule of landscape maintenance for a minimum period of five years shall be submitted to and approved by the Local Planning Authority prior to the commencement of development and shall include details of the arrangements for its implementation. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure the provision of amenity afforded by the proper maintenance of existing and / or new landscape features.

### **INFORMATIVES**

Policy NE1 – Nature Conservation and Development seeks to ensure the protection and enhancement of wildlife and landscape resources by appropriate building design, site layouts, landscaping techniques and choice of plant species.

Monmouthshire County Council

Eich cyfeirnod  
Your reference

DM/2023/01042

By email

Ein cyfeirnod  
Our reference

Dyddiad  
Date

8 August 2023

Llinell uniongyrchol  
Direct line

0300 0256004

Ebost  
Email:

[cadwplanning@gov.wales](mailto:cadwplanning@gov.wales)

Dear Sir/Madam

**Planning Application – Change of use to land for keeping of horses (retrospective), stable block, storage building, manege, Land North West Of Holly Lodge, Road From A48 To Dewstow Road, Fives Lanes, Caerwent, Monmouthshire**

Thank you for your letter of 26 July 2023 inviting our comments on the information submitted for the above planning application.

### Advice

Having carefully considered the information provided, we have no objection to the proposed development in regards to the scheduled monuments or registered historic parks and gardens listed in our assessment of the application below.

The national policy and Cadw's role in planning are set out in Annex A.

### Assessment

#### Scheduled Monuments

MM325 St. Michael's Churchyard Cross, Llanfihangel Rogiet  
MM068 Standing Stone 252m South of Bencroft Lane  
MM154 St Bridges Netherwent Deserted Village  
MM069 The Larches Camp  
MM179 Round Barrow 250m North-east of Five Lanes  
MM350 Five Lanes Roman Site  
MM129 Llanvaches Castle  
MM047 Llanvair Castle  
MM289 Cewere Quarry and Limekiln, Llanvair-Discoed  
MM024 Llanmelin Wood Hillfort  
MM341 Royal Navy Propellant Factory Guided Weapons Scheme Static Firing Bay  
MM352 Royal Navy Propellant Factory Caerwent Nitro-glycerine Hill  
MM152 Whitewell Brake Roman Site  
MM001 Caerwent Roman Town  
MM151 Crick Round Barrow

MM026 The Berries Mound & Bailey Castle  
MM334 Church Farm Romano-British settlement

### Registered Parks & Gardens

PGW(Gt)53(MON) Penhein  
PGW(Gt)44(MON) Dewstow House

This planning application is for the change of use from agriculture to land for the keeping of horses (retrospective) proposed erection of stable block for 5 horses, erection of ancillary storage building, construction of manege on land northwest of Holly Lodge Road from A48 to Dewstow Road, Fives Lanes.

The above designated historic assets are located inside 3km of the proposed development but apart from scheduled monument MM001 Caerwent Roman City, intervening topography, buildings and vegetation block all views between them. Consequently, the proposed development will have no impact on the settings of these designated historic assets.

Scheduled monument MM001 Caerwent Roman City is located some 950m to the northeast of the application area. It consists of the remains of *Venta Silurum*, the most important civilian Roman settlement in Wales and the administrative capital, or *civitas*, of the Silures tribe. The surviving town walls are among the finest examples of Roman masonry in Britain and it was the standing remains that attracted early antiquaries to the town. In the 16th century William Camden noted '*the ruinous walls, the chequer'd pavements (mosaics), and the Roman coyns*', while in the 17th and 18th centuries mosaics were uncovered, and most destroyed. Since AD 1899 over half of the area within the walls has been excavated with the result that much is known about the layout of the town.

The settlement at Caerwent was established in the late 1st century AD, soon after the Roman conquest of South Wales, and was located on the line of the road connecting Gloucester with Carmarthen. The earliest buildings in the town were probably mainly timber framed and the settlement straggling, arranged along either side of the road. By the late 2nd century the town had developed to become rectangular in plan, and was laid out on a standard Roman grid pattern. The first town defences, built around this time, consisted of an earthen bank and outer ditch, and the road ran east - west through the middle of the town, along the line of the modern road. The Roman road was wider than the modern road, and had gateways at each end. There were also gates on the north and south sides of the town. The town within the walls was laid out in 20 blocks or *insulae*, with the main public buildings - the forum basilica, temple and baths - located in the middle. The temple was built in about AD 330, with its entrance off the main road through the town. The layout of the temple is of typical Roman plan with a private inner shrine and a sanctuary alcove, surrounded by a public ambulatory set in a walled sacred garden, or *temenos*, with a long entrance hall fronting the street. The deity worshiped in the temple is unknown, however a stone found in one of the excavated houses (now on



display in the Church) was dedicated to Mars Ocelus, a Rhineland conflation of two gods, one Roman and one Celtic, which indicates a degree of cultural fusion in the religious practices of the inhabitants of the town. The forum, located immediately west of the temple, was also entered from the main road. It comprised a paved rectangular area which would have been enclosed by colonnades of shops. On the north side are the remains of the basilica, built in the early 2nd century AD and later rebuilt in AD 300 before being dismantled in the middle of the 4th century. It was aisled internally with two rows of Corinthian columns and would have provided space for public meetings and ceremonies, as well as small rooms for administrators and magistrates. Shops lined other sections of the main street and the side streets, with the rest of the space within the *insulae* taken up with houses, farms and industrial buildings. On Pound Lane, which follows the line of a Roman side street, are the exposed remains of a colonnaded shopfront facing the street, with accommodation arranged around a courtyard behind. This is typical of the excavated shops in the town, which had the commercial unit fronting the road, with accommodation, workshops and a yard behind. Just inside the south gate was a large building that could have been an Inn, fronting a side street that ran north - south through the town. Although the basic town plan was rigid and orderly, in detail it was far less rigorously geometrical with some of the 20 *insulae* packed with buildings and others containing fewer buildings and open space. By the 4th century the town was prospering and several large luxurious houses of typical Roman courtyard layout had replaced earlier smaller dwellings. Many of these new houses boasted wall paintings, mosaic floors and hypocaust underfloor heating. In the northeast part of the town the partial remains of a possible amphitheatre partly overlay two of the *insulae* and one of the side streets. This was evidently a late development in the town.

Around AD 220 an inscribed plinth was erected on the site of the modern War Memorial to commemorate *Venta Silurum's* patron, Tiberius Claudius Paulinus. The inscription reads 'To [Tiberius Claudius] Paulinus, Legate of the Second Legion Augusta, proconsul of the province of Narbonensis, emperors propraetorian legate of the province of Lugdunensis, by decree of the council, the Canton of the Silurians '. This stone was found in AD 1903 and is one of the most important Roman inscribed stones found in Britain. It is on display in the Church.

In the second half of the 3rd century or the first half of the 4th century, the town defences were strengthened, with an external wall built onto the earthen bank and the gateways rebuilt in stone. Around AD 350 towers were added to the north and south walls (6 on the S side, 5 on the N side), and about this time the original defensive ditch was filled in and a new outer ditch dug, and the north and south gates were blocked. The town wall can be best appreciated on the south side of the town, where it is accessible for its entire length from the east to west gateways. These gateways would have been the principal entrances to the town and probably comprised double archways and flanking guard chambers. The south wall stands to a maximum height of 5m and retains much of the original facing stone, in places right to the top. Where the facing stone is missing the roughly coursed rubble core of the wall is visible. The original 2nd century earthen bank was retained after the stone wall was built and would have been surmounted by a wall-walk. The towers built



along the north and south walls are semi-octagonal in plan. Most are ruinous, but one on the south wall stands to nearly the full height of the wall and has internal joist holes which demonstrate that it would have been 3 storeys high, containing three windowless rooms.

In the southeast corner of the town, overlying the Roman wall is a small medieval Motte around 24m in diameter and 5m high. There is no record as to the date and function of this castle, but it is likely to be 11th or 12th century in date and was probably built to take advantage of the defensive capabilities of the substantial Roman walls.

The Roman town was probably originally laid out without defences although these were added in the 2<sup>nd</sup> century and strongly reinforced in the 4<sup>th</sup> century. Initially therefore views from the town were not important but once the defences were constructed, views from them in all directions would have been significant in particular the views east and west along the main road between Gloucester and Caerleon. The motte would have had views across the remains of the Roman town, but its significant views would have been to the east along the road to Gloucester and to the southeast along the Nedern Brook towards the castle on Ballon Moor (scheduled monument MM026) and Caldicot Castle (scheduled monument MM050).

The proposed development consists of an equestrian complex consisting of a ménage stable block and ancillary storage building. It will be partly visible on the ridge to the southwest of the Roman town, which is one of the identified significant views from the scheduled monument, but it will be some 950m away, partly screened by existing hedges and seen along with the existing building to the west of it and with the buildings of Rodge Farm below it. These existing buildings have already added modern structures into the view from Caerwent. As such, whilst there may be a slight visual change in the view from the Roman Town this will not have any effect on the way that it is experienced, understood and appreciated. Consequently, the proposed development will have no impact on the setting of scheduled monument MM001.

Yours sincerely,

Denise Harris  
Historic Environment Branch

## Annex A

### Our role

Our statutory role in the planning process is to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled monuments, registered historic parks and gardens, registered historic landscapes where an Environmental Impact Assessment is required and development likely to have an impact on the outstanding universal value of a World Heritage Site. We do not provide an assessment of the likely impact of the development on listed buildings or conservation areas, as these are matters for the local authority.

It is for the local planning authority to weigh our assessment against all the other material considerations in determining whether to approve planning permission.

### National Policy

Applications for planning permission are considered in light of the Welsh Government's land use planning policy and guidance contained in Planning Policy Wales (PPW), Technical Advice Notes and related guidance.

PPW [planning-policy-wales-edition-11.pdf](#) explains that it is important that the planning system looks to protect, conserve and enhance the significance of historic assets. This will include consideration of the setting of an historic asset which might extend beyond its curtilage. Any change that impacts on an historic asset or its setting should be managed in a sensitive and sustainable way.

The conservation of archaeological remains and their settings is a material consideration in determining a planning application, whether those remains are a scheduled monument or not. Where nationally important archaeological remains are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in exceptional circumstances that planning permission will be granted if development would result in a direct adverse impact on a scheduled monument (or an archaeological site shown to be of national importance)

[Technical Advice Note 24: The Historic Environment](#) elaborates by explaining that when considering development proposals that affect scheduled monuments or other nationally important archaeological remains, there should be a presumption in favour of their physical preservation in situ, i.e. a presumption against proposals which would involve significant alteration or cause damage, or would have a significant adverse impact causing harm within the setting of the remains.

### Historic Parks and Gardens

PPW also explains that local authorities should value, protect, conserve and enhance the special interests of parks and gardens and their settings included on the register of

historic parks and gardens in Wales and that the effect of a proposed development on a registered park or garden or its setting should be a material consideration in the determination of a planning application.

Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

*Please delete as appropriate:*

I have no comments to make in respect of the proposed diversion.

My comments are attached.

My comments are:

FOR MANY YEARS MEMBERS OF THE PUBLIC HAVE ENJOYED THE SCENERY ON THIS ANCIENT FOOTPATH WHICH HAS BEEN LEFT UNDISTURBED SINCE ROMAN TIMES. THIS PROPOSED ROUTE WOULD SIGNIFICANTLY DENY THE PUBLIC THE VIEWS TO ROMAN WALLS, WESTGATE AND THE CHURCH IN THE VALLEY BELOW. THE DIVERSION WHICH IS "ALREADY IN CONSTRUCTION STAGE" IS A CORRIDOR WITH FENCE ON ONE SIDE AND HEDGE ROW ON THE OTHER WHICH WOULD DISTURB NESTING BIRDS AND DENYING VIEWS. THE LANDOWNER HAS INSTALLED CCTV CAMERAS DIRECTLY ABOVE THE STYLE AND SEVERAL IN THE FIELD. THERE ARE TWO LARGE DOGS RUNNING FREE AND SIGNS ALERTING THE PUBLIC THIS IS TOTALLY UNACCEPTABLE IN THE OPEN COUNTRYSIDE

I STRONGLY OBJECT TO THIS APPLICATION

Name (please print):

Address:

Signed:

Date:

Organisation:

CAMS 01097 Water Pits

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
**Llwybr Troed Cyhoeddus Rhlf 7 (rhannol), Caerwent.**

**Fy sylwadau yw:**

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**Sefydliad:** \_\_\_\_\_



**monmouthshire**  
**sir fynwy**

**Monmouthshire County Council**  
PO Box 106, Caldicot,  
NP26 9AN

**Cyngor Sir Fynwy**  
Blwch SP 106, Caldicot  
NP26 9AN

**Tel/Ffôn: 01633 644644**  
**Fax/Ffacs: 01633 644666**

**E-Mail/Ebost: [contact@monmouthshire.gov.uk](mailto:contact@monmouthshire.gov.uk)**  
**Web/Gwefan: [www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk)**

**Tel/Ffôn: 01633 644676**  
**Fax/Ffacs:**  
**Mobile/Ffôn symudol**  
**E-mail/E-bost: [shaunpritchard@monmouthshire.gov.uk](mailto:shaunpritchard@monmouthshire.gov.uk)**  
**Our Ref/Ein Cyf: CAMS 01097 Water Pits**  
**Your Ref/Eich Cyf:**  
**Date/Dyddiad: 18/06/2021**

Dear Sir/Madam

**RE: Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

An application has been received from Mr Alan Connolly of Church Road, Frampton Cotterell to divert part of Public Footpath No. 7 (part), Caerwent under the provisions of Town and Country Planning Act 1990, s257.

The proposal has been requested to accommodate the development of an equestrian facility. Details of the planning application can be found against application DM/2021/00738 on Monmouthshire County Council's website.  
<https://planningonline.monmouthshire.gov.uk/online-applications/?lang=EN>

The effect of the Order would be to divert part of Footpath 7 as described by the attached plan and schedule.

I believe that the proposed diversion meets the requirements set out in the Town and Country Planning Act 1990 – Section 257, however, I would be grateful to receive any views or comments you may have within 4 weeks of the date of this letter.

If you wish to visit the site of the proposed route please contact me so that I may advise the applicant.

Please be advised that if I do not receive a response I will assume that you have no comment to make. Please ensure therefore if you would like your views to be taken into consideration that you either complete the attached slip and return it in the freepost envelope provided or email me referencing 'CAMS 01097 Water Pits'.

Yours faithfully

**Shaun Pritchard**  
Assistant Rights of Way Officer  
Countryside Access  
Monlife



From: xxxxxxxxxxxxxx  
Sent: 01 July 2021 14:27  
To: Pritchard, Shaun  
Subject: Water pit footpath.

Sir.

I must again put pen to paper, or finger to keypad.

I can't see the point in moving something that has been in use for probably hundreds of years and along

comes a total stranger from England with no feeling for the area or even the countryside.

My wife and I xxxxxxxxxxxxxx have walked this path with nothing to bother us but a few cows or sheep, now

there are Search Lights, unfriendly dogs, offensive signs and a feeling that we are not welcome, this can't

be right.

Therefore I am totally against the moving of the footpath.

With regards.

xxxxxxxxxxxxxx

Sent from my iPad

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Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

*Please delete as appropriate:*

I have no comments to make in respect of the proposed diversion.

My comments are attached. ✓

My comments are:

I do not agree with the proposed diversion of the ancient Footpath 7 Caerwent.

I would like to think walkers can enjoy their pleasant hike without change, for years to come, also with no fear of the loose guard dog.

Name (please print):

Address

Signed:

Date:

Organisation:

CAMS 01097 Water Pits

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
**Llwybr Troed Cyhoeddus Rhif 7 (rhannol), Caerwent**

[illegible]

**Sefydliad:** \_\_\_\_\_

From: xxxxxxxxxxxxxxxxxxxxxxxxx

Sent: 08 July 2021 13:52

To: Pritchard, Shaun

Subject: Combined response to the proposed application CAMS 01097 Water Pits,

Dear Sean,

Please find below a combined response to the proposed application CAMS 01097 Water Pits, to divert

part of Public Footpath No. 7 (part), Caerwent under the provisions of Town and Country Planning Act

1990, s257.

Both myself xxxxxxxxx and my xxxxxxxxx would like to register our objection to the proposed application to divert part of the above mentioned public footpath.

xxxxxxx and believe that the owners should not have bought the land knowing that there was already a public footpath present and assume that they can just divert it to fit in with proposed planning, that is currently being undertaken without the correct planning permission being in place to begin with.

Safety of the re-positioning of the stile has been stated as a benefit to moving it, but we both believe this

is just an unfounded reason for it to be moved to accommodate the proposed planning. To our knowledge, there has never been any known accidents related to the original long term position of the stile. If this stile was to be moved to "improve public safety" rather than accommodate building plans, does this mean that other stiles and public footpaths that are accessed via much busier roads (such as the one by Dewstow Farm), will also need to be moved?

By moving part of the footpath and diverting it through a cordoned off area would take away the public's experience of the countryside and its views, especially for the long term residents of the land and surrounding area that have always enjoyed those views.

The installation of intrusive CCTV cameras pointing directly at the stile along with warning signs of aggressive looking dogs running loose before even entering the public footpath have already changed the public's experience of being able to enjoy it.

Yours sincerely

xxxxxxxxxxxxxxxxxxxxxx

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Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

*Please delete as appropriate:*

I have no comments to make in respect of the proposed diversion.

My comments are attached.

My comments are:

I object to altering this footpath.  
It is a very ancient path which links Shrewfield Lane diagonally  
to Caerwent Church. That is how footpaths were set up so that  
you could walk the shortest distance to where you wanted to go.

is the Churchyard so this path has always meant a lot to me.

When people buy a field knowing there is a footpath they must  
expect to change it to suit themselves.

I also object very strongly that Mr Connolly is making it impossible  
for anyone to feel safe walking the path at the moment. There is a  
kettling in the field and a carer pointing at the stile.  
It would be a good idea for one of your staff to visit unannounced  
to see the situation for yourself.

Name (please print):

Address

Signed:

Date:

30<sup>th</sup> June 2021

Organisation:

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
**Llwybr Troed Cyhoeddus Rhlf 7 (rhannol), Caerwent**

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**Sefydliad:** \_\_\_\_\_

Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

*Please delete as appropriate:*

I have no comments to make in respect of the proposed diversion.

My comments are attached.

My comments are:

1) Redirection this public footpath would conflict with Mon C.C.'s Conservation Plan for Caerwent and surrounding area. This applies to sec 174 regarding landscape setting in particular, as has been shown by the fact that the land owner has been permitted to do this already.

2) The Waterpits is considered by historians, to be part of the landscape from Brockwells to Westward farm which is still in its original state of many centuries. This must not be lost at the behest of one who wants to construct a livery, which most residents oppose.

3) The proposed and existing unlawful route would impact hedge row wildlife, a problem for which there could be no mitigation. This would affect long-tailed tits which nest in this hedge area regularly.

4) Surely, the unlawfully created, force section of new path should preclude the owner from any rights to apply for diversion. Especially as little effort seems to have been made to ensure he complies with regulations?

5) How can it be possible that one who does not reside in the country can be given priority over residents of many years?

Name (please print):

Address

Signed:

Date:

Organisation:

CAMS 01097 Water Pits

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
**Llwybr Troed Cyhoeddus Rhif 7 (rhannol), Caerwent**

**Fy sylwadau yw:**

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**Sefydliad:** \_\_\_\_\_

From: xxxxxxxxxxxx

Sent on: Saturday, July 17, 2021 7:36:27 AM

To: Pritchard, Shaun <ShaunPritchard@monmouthshire.gov.uk>

Subject: CAMS 01097 Waterpits

Dear Mr Pritchard,

I would like to register my strong objection to the proposal to divert Foot path No 7.

The diversion will be detrimental to the views experienced by users of the path, ie. the gradually unfolding vista of Caerwent, its church and Roman remains below.

The diverted route will be adjacent to an existing hedgerow and will impact detrimentally on wildlife habitat and associated biodiversity of the area.

A study of the map reveals the current route appears to lead directly to the West Gate of Caerwent Roman Town, with 1 prior diversion around Rodge Farm buildings. Further diversion will dilute the potential historical significance of this route as documented in the Welsh Tithe Map of 1842.

Finally the use of intrusive surveillance cameras and signs warning of "DOGS RUNNING FREE", introduced by the current owner, is intimidating and discourages use of the Public Right of Way, and should be ceased.

Yours sincerely

xxxxxxxxxxxxx

xxxxxxxxxxxxx

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Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

Please delete as appropriate:

I have no comments to make in respect of the proposed diversion.

My comments are attached.

My comments are:

I ASSUME THAT PART OF THE PROCESS OF RE-ROUTING A FOOTPATH REQUIRES YOU TO VISIT AND INSPECT THE SITE. YOU WILL THEREFORE HAVE NOTED THE ACTIONS THAT HAVE BEEN TAKEN PRIOR TO ANY AUTHORISATION BEING GRANTED. I REFER TO THE CCTV CAMERA, WOODEN BARRIER AND ~~NOTICE~~ WARNING NOTICE THAT HAVE BEEN ERECTED AND PLACED AT THE STILE FOR THIS FOOTPATH (A) ON YOUR ENCLOSED PLAN. THE NOTICE ADVISES DOGS, KIDS AND CAMERA SURVEILLANCE OF THE SITE CONTINUOUSLY. THESE HAVE BEEN IN PLACE FOR SOME MONTHS, OBVIOUSLY TO DETER AND INTIMIDATE ANYBODY WHO MAY WISH TO USE THE FOOTPATH. LIVING 3 TO 400 METRES FROM THE SITE I WOULD BE FEARFUL OF WHAT ACTION THE PERSON OR PERSONS LIVING IN THE ILLEGAL STATIC CARAVAN ON THE SITE, WOULD TAKE, IF I USED THE STILE AND FOOTPATH. I HOPE YOUR WORK IS TO ENSURE OUR FOOTPATHS ARE FREELY AVAILABLE FOR USE BY THE PUBLIC AND NOT TO SUPPORT AND RUBBER STAMP ACTIONS TAKEN BY SELFISH INDIVIDUALS WHO DISREGARD AUTHORITY, THE LAW, REGULATIONS AND PUBLIC RIGHTS FOR THEIR OWN PERSONAL GAIN. IN THE ABOVE CIRCUMSTANCES I THINK THE APPLICATION TO RE-ROUTE AND BUILD ON THIS VERY ANCIENT RIGHT OF WAY SHOULD BE REFUSED. I WOULD URGE YOU TO ACT SOON AND SUPPORT THE VAST MAJORITY OF LOCAL RESIDENTS AND THOSE WHO 'GENUINELY' WISH TO USE THE FOOTPATH AND WANT THIS WONDERFUL AMENITY RETAINED.

Name (please print):

Address:

Signed:

Date:

27 JULY 21

Organisation:

CAMS 01097 Water Pits

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
**Llwybr Troed Cyhoeddus Rhif 7 (rhannol), Caerwent**

**Fy sylwadau yw:**

[illegible]

**Sefydliad:** \_\_\_\_\_

**From:** xxxxxxxxxx

**Sent on:** Thursday, July 15, 2021 11:47:09 AM

**To:** Pritchard, Shaun <ShaunPritchard@monmouthshire.gov.uk>

**Subject:** CAMS 01097 Water Pits

I have lived and worked in the Caerwent area for over 50 years and I strongly object to the diversion of this footpath!

Be it that the stile is onto the lane, in all my memory there has not been an accident coming off the footpath.. as it is suggested in some of the planning support letters ,that is dangerous.

As you well know yourself the importance of the Roman city of Caerwent and surrounding area. This ancient path should stay in place.. in fact Mr Connolly should have it suggested to him that he makes adjustments to his plans to avoid the footpath!

Kind Regards

Mrs xxxxxxxxxx

xxxxxxx

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Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

*Please delete as appropriate:*

~~I have no comments to make in respect of the proposed diversion.~~

My comments are attached.

My comments are:

I remember my grandmother telling stories of how they walked across the Waterpits to Caerwent. It was an established footpath for the residents of Five Lanes (Shirefield) to visit relations and friends and get the local gossip. Needless to say I am very upset by the fact that Mr Connolly wants to divert the footpath to facilitate his proposed development. He has plenty of land to facilitate this without moving the footpath, and therefore has no "good reason" to be requesting this at this stage as planning has only just been submitted and many, many objections have been made. Therefore I do not believe that Mr Connolly's requirements justify the public being herded into a tall wooden and wire corridor with 2 gates to negotiate and which also deprives them of the magnificent views towards Caerwent Village. I urge you to think about the detrimental effect it will have on the field but also the emotional effect it will have on the residents of the lane and the many walkers who have taken great comfort and enjoyment from using this footpath during the pandemic.

Name (please print):

Address

Signed:

Date:

19-7-2021

Organisation:

CAMS 01097 Water Pits

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Gorchymyn Gwro Llwybr Cyhoeddus Arfaethedig  
Llwybr Troed Cyhoeddus Rhlf 7 (rhannol), Caerwent**

**Fy sylwadau yw:**

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**Sefydliad:** \_\_\_\_\_

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Return Correspondence Form

**Town and Country Planning Act 1990 – Section 257**  
**Proposed Public Path Diversion Order**  
**Public Footpath No. 7 (part), Caerwent**

Please delete as appropriate:

~~I have no comments to make in respect of the proposed diversion.~~

~~My comments are attached.~~

My comments are:

- The diversion is only necessary if approval for Application DM/2021/00738 is given.
- I have no objection to the proposed new route.
- I do object to: surveillance by CCTV; the construction of a high fence at the current entrance to the path from the road which obscures views across the field; display of a sign saying "Dogs running loose" (which I consider to be intimidatory).

Name (please print):

Address

Signed:

Date:

Organisation:

CAMS 01097 Water Pits

**Deddf Cynllunio Gwlad a Thref 1990 - Adran 257**  
**Gorchymyn Gwyro Llwybr Cyhoeddus Arfaethedig**  
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**Sefydliad:** \_\_\_\_\_

Page 268

### **Petition to Monmouth County Council, Rights of Way and Countryside Access :**

**We, the undersigned, believe the Proposed Public Path Diversion Order (foot path no. 7) should be reconsidered and the application requesting diversion refused, on the grounds that :**

- A. The diversion of the public footpath will be detrimental to the views experienced by users of the path, ie. the gradually unfolding vista of Caerwent, it's church and roman remains below.
- B. The proposed diversion, adjacent to an existing hedge row, will impact detrimentally on wildlife habitat and associated biodiversity.
- C. The current route appears to lead directly to the West Gate of Caerwents Roman Town, with 1 prior diversion around Rodge Farm. Further diversion will dilute the potential historical significance of this route as documented in the Welsh Tithe Map of 1842
- D. Finally the use of very intrusive surveillance cameras and signs warning of "DOGS RUNNING FREE" is intimidating and discourages use of the Public Right of Way, and should be ceased.

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