

Town and Country Planning Act 1990, section 257 Public Path Order Footpath 37 Caldicot (part).

**Report for Licensing and Regulatory Committee Rights of
Way Advisory Committee 17 December 2020**

Version 3, Final, 9 December 2020 RR

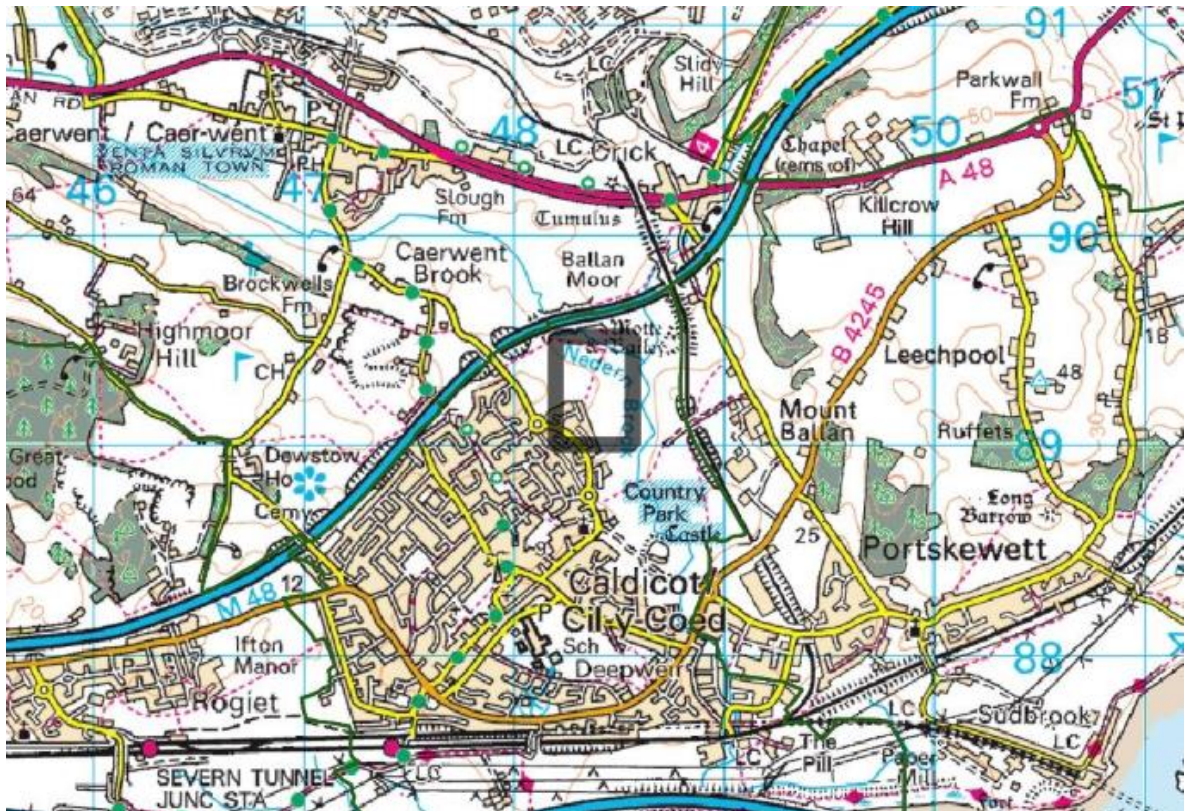


1. Purpose

- 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 Assembly 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 37(part) Caldicot. Its purpose is to assist Members of the Licensing and Regulatory Rights of Way Advisory Committee to make a decision on whether or not an order should be made diverting part of Footpath 37 Caldicot and to inform all other interested parties.

2. Background

Location Plan



- 2.1 On 5th March 2020 planning permission was granted under reference DM/2019/01761 for 130 dwellings, associated infrastructure and landscaping on land to the East of Church Road, Caldicot.
- 2.2 Appendix 1 includes a site plan of the approved planning application

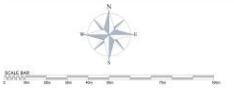
Excerpt of Appendix 1. Site plan of the approved development.



Unit Type	Number of Units	Number of Bedrooms	Number of Bathrooms	Number of Car Spaces	Total Number of Units
Affordable Units	135	135	135	135	135
Market Sale Units	135	135	135	135	135
Total	270	270	270	270	270

- Site Key**
- Site Boundary
 - 1.8m high close board fence
 - 1.8m high brick screen wall
 - 1.8m high personnel gate
 - 1.2m stock proof fence
 - Parking space
 - ♦ Affordable unit - Social Rented
 - Easement/Exclusion Zone
 - Raised Surface
 - Proposed hedgerows & trees
 - Existing Trees & Vegetation

CLIENT: DAVID WILSON HOMES
PROJECT: Church Road, Caidicot
Overall Site Planning Layout
SCALE: 1:1000
DATE: October '19
DESIGNED BY: RW
CHECKED BY: K
DATE: PL-01
hammond
 Architectural Ltd
 10 Gald Topps, Newport, NP23 4PH
 01633 846970
 info@hammond-td.co.uk
 www.hammond-td.co.uk



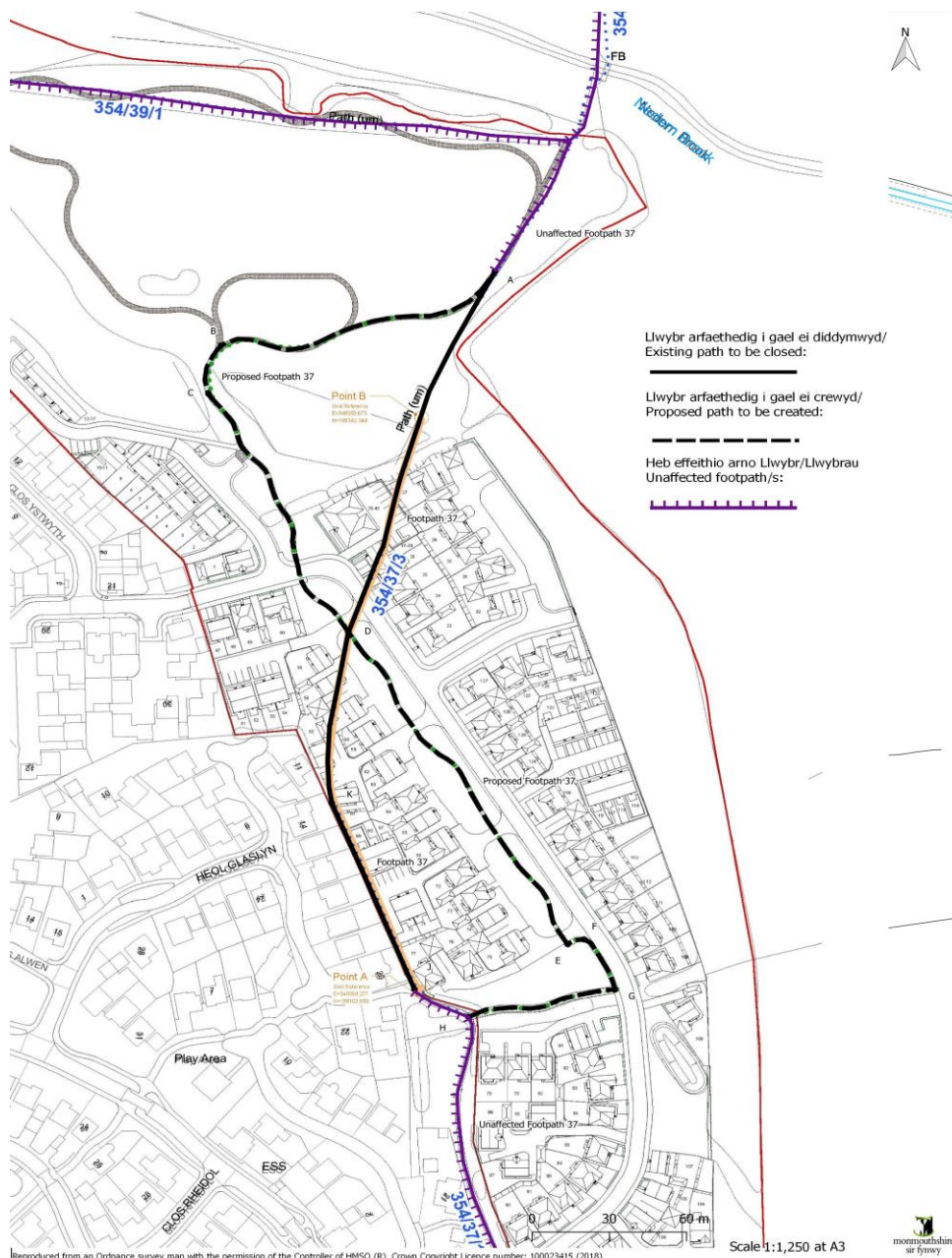
2.3 The development if constructed would however obstruct Public Footpath 37, Caldicot. The developer has therefore applied for a path order to divert Public Footpath 37, Caldicot in such a way as to accommodate the development.

2.4 The Council has powers to divert footpaths 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.

2.5 Appendix 2 sets out the proposed Order Plan and Appendix 3 the proposed Order Schedule.

2.6 Appendix 4 indicates the existing alignment of Footpath 37, its proposed diverted alignment and how they relate to the proposed development.

Extract of Appendix 4



3. Legislation/Policy Issues

- 3.1 The Council, under Section 257 of the 1990 Town and Country Planning Act (T&CP Act) has discretionary powers by order, stop up or divert footpaths 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.
- 3.2 The council should therefore consider if the proposal meets the requirements of the legislation. It should also consider all of the other relevant legislation, supplementary guidance and policy.
- 3.3 Successful path orders made under s257 TCPA 90 are Made, Confirmed and Certified.

3.4 Section 257 of the Town and Country Planning Act 1990

“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 [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

“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.

(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 addition to the T&CPA 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 5)
- 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 6)
- Environment (Wales) Act 2016
- Equality Act 2010
- Active Travel (Wales) Act 2013
- The Well-being of Future Generations Act 2015
- [Monmouthshire's Countryside Access, Protocol and Operational Management Guide](#) and [Monmouthshire's Countryside Access Improvement Plan](#)

4. Consultees

4.1 The council ran a pre-order consultation. Consultees included the Local Member, Caldicot Town Council, the statutory undertakers, user groups and local residents.

4.2 The following is a complete list with a summary of the responses. Full copies of objections can be found in Appendices 12-16.

	Name	Organisation	Summary of Representations
1	Ms K Stinchcombe	Biodiversity Officer	No comment
2	Mrs C Hunter	The Open Spaces Society	No response
3	Mr A Thomas	Lower Wye Valley Ramblers association	Content with the proposals.
4	Laura Bazely	MCC Legal Services	I note that the proposed path may not be as convenient for the public as the proposed path – it is not as direct a path
5	Matthew Lewis	Environment & Culture Manager	No response
6	Ruth Rourke	Countryside Access Manager	No objection

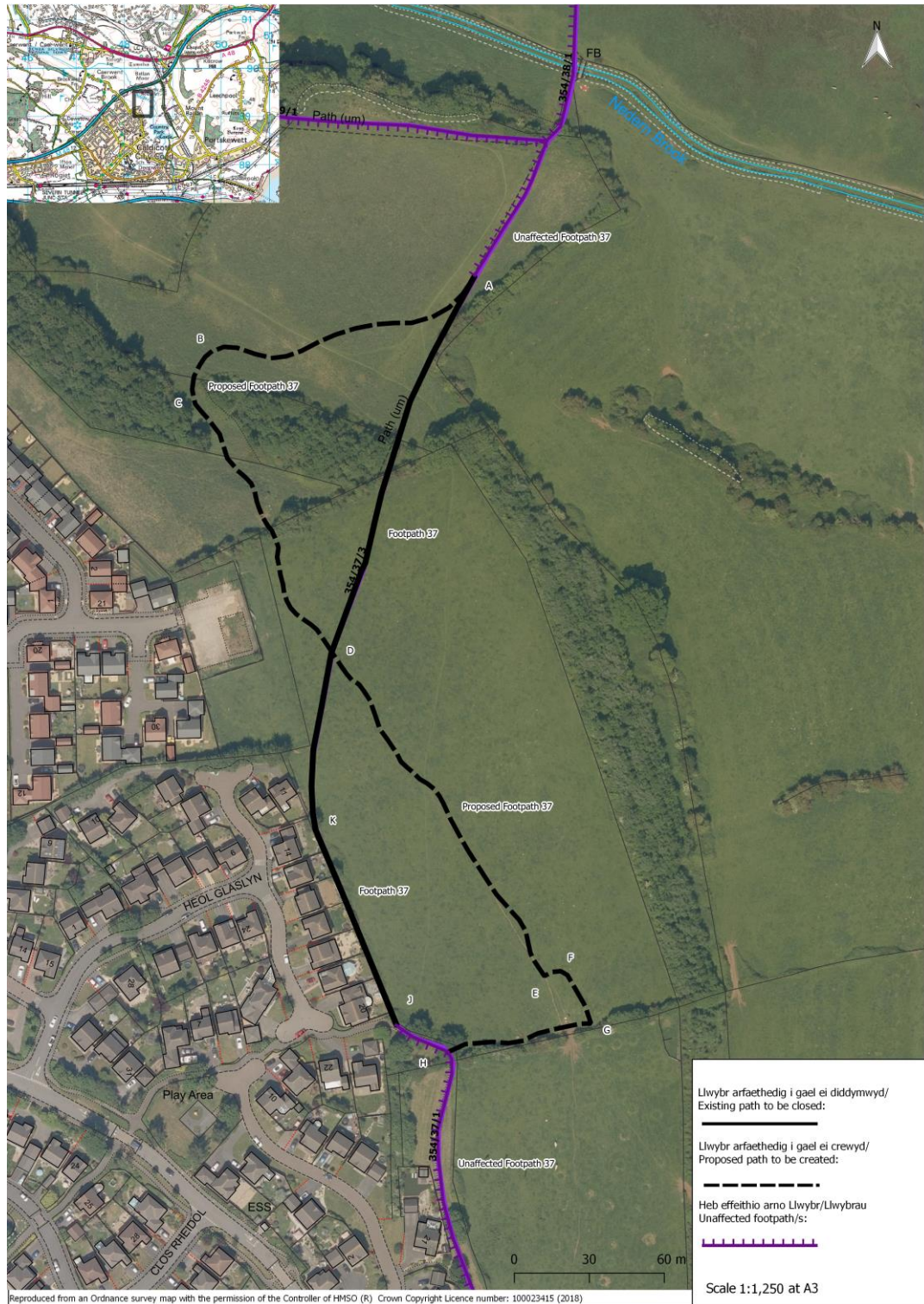
7	Bradley Griffiths	Western Power Distribution	We do not have any equipment or cable on the marked development.
8	Openreach, Network Alterations	Openreach	Acknowledgement of receipt of details
9	External Relations Team	Natural Resources Wales	No comment
10	Plant Protection	Cadent/National Grid	No objection
11	Sharon Grey	Dwr Cymru / Welsh Water	We withdraw our objection.
12	Mrs Gail McIntyre	Clerk, Caldicot Town Council	No comment
13	Cllr Jo Watkins	MCC	I think the pathway looks fine but residents are complaining about the fact it crosses roads. & I am completely fine about the footpath moving as it needs to for the development to go ahead, although I know a number of residents are not.
14	Mr Kevin Hall	Local resident	Path order plan misleading as sections of path labelled unaffected will be lose their unspoilt views over Nedern Valley, the SSSI, Caldicot Castle and Severn Bridge. Proposal in breach of Welsh Government guidance to 'avoid estate roads' by diverting a well-used country pathway onto an urban walkway straddling a high pressure gas main and crosses cul-de-sac roads at least 5 times. Misleading street scene provided by developer showing one row of development and not the whole scheme.
15	Mrs Julie Griffiths	Local resident	Impact on wellbeing and mental health due to change of the path from one that crosses open countryside to an urban walkway through a housing estate crossing five estate roads.
16	Mr Kevin Larkin	Local resident	No response
17	Ms Sian Crawford	Local resident	No response
18	Mrs Victoria Silcox	Local resident	Loss of a safe, tranquil walkway in open space to one through a housing estate that crosses many roads and is not in keeping with public expectation of a public path. Path should be revised to avoid the need to cross estate roads and obstruction by traffic. Building of expensive houses seems more important than people's rights to safely enjoy

			open space.
19	Mrs Katie O'Brien	Local resident	Change in character from a rural path that provides access to the SSSI, is surrounded by nature and can be enjoyed safely by children to an unsafe polluted path that crosses five roads and puts children at risk.
20	Mr Philip Nicholson	Local resident	No response
21	Mr George Rice	Local resident	Loss of path used by people enjoying the countryside and provides access to the SSSI and Nedern brook to an estate path crossing numerous roads. The existing path should be retained and the layout of the site set out to accommodate it.
22	Mrs Tessa Savigear	Local resident	No response
23	11 Heol Glaslyn	Local resident	No response
24	12 Heol Glaslyn	Local resident	No response
25	14 Heol Glaslyn	Local resident	No response
26	15 Heol Glaslyn	Local resident	No response
27	16 Heol Glaslyn	Local resident	No response
28	22 Heol Glaslyn	Local resident	No response

5. Photographs

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

Proposed Order Plan over Aerial Photography.



Looking north from a point on Unaffected Footpath 37 towards point H



Looking north east from a point between points A and D towards point A



Looking north from approximately point H to point D



Looking west from approximately point G to point H



5.2 Google Earth images indicating the approximate alignment of the path and its proposed replacement. The solid black line represents the existing path and the broken black line its replacement.



6. Application of Tests, Guidance & Policy

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

6.2 Town and Country Planning Act 1990

Section 257 of the Town and Country Planning Act 1990

“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

6.3 Officer comment: It is necessary to divert or extinguish Footpath 37, Caldicot to enable the development DM/2019/01761 to be carried out. This test is therefore satisfied.

Section 259 of the Town and Country Planning Act 1990

“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.

6.4 Officer comment: Planning permission has been granted and it is necessary to divert the Footpath to enable the development to be carried out in accordance with the permission. These tests have therefore been satisfied.

6.5 Welsh Government Guidance for Local Authorities on Public Rights of Way October 2016 (appendix 5)

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.

6.6 Officer comment: The approved development would permanently obstruct path 37 on its present alignment.. It is therefore necessary to move the path.

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.*

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

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.*

6.8 Officer comment: The pre-order consultations generated numerous responses the details of which have been set out in section 4, Consultees.

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.

6.9 Officer comment: The proposed replacement path commences and terminates on the line of the original way.

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.

6.10 Officer comment: The majority of the proposed replacement path will be made and have a minimum width of 2m. Only a short section connected to the existing path running through grassland will remain unmade.

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.*

6.11 officer comment: Construction has started on site but the development but is not yet substantially complete.

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.

6.12 Officer comment:- The proposed route crosses 5 vehicular roads but would run largely through landscaped or open space areas away from vehicular traffic.

6.13 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 6)

“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.

6.14 Officer comment: All of the affected land is controlled by the applicant.

6.15 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.

- 6.16 Officer comment: The present path is very well used albeit not always on its precise legally recorded alignment. There is therefore a need for the path. The development works have started but are not yet substantially complete. The proposed 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.

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

6.18 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.

- 6.18 Officer comment: The development works have started but are not yet substantially complete The developer has agreed that no permanent works are to take place on the legally path alignment until any path order is confirmed.

- 6.19 *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 routesensitive 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."*

- 6.20 Officer comment: The proposed replacement path would be generally overlooked and open in character.

- 6.21 *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.*

- 6.22 Officer comment: The majority of the replacement path would have a recorded width of 2m with one section recorded at 3m. The path is not to be enclosed and would be open in character.

6.23 *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.*

6.24 Officer comment: The existing path is unmade and runs through pasture. The majority of the proposed replacement path would have a resin bound sealed surface and have a recorded width of 2m.

6.25 Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide sets out policy on removing barriers and improving access for all. *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.*

6.26 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..*

6.27 Officer comment: The proposed new alignment contains no barriers such as gates or stiles. Existing site boundary gates are already of a high standard.

6.28 [Environment \(Wales\) Act 2016](#)

6 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.

6.29 Officer Comment: Biodiversity provision have largely been considered and agreed as part of the planning consent. The new path would run over land under the control of MCC. It will be therefore managed to its standards.

6.30 **Equality Act 2010 (appendix 8)**

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.

6.31 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 would to be made to a high standard therefore accessible by a larger percentage of the population.

6.32 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).
”

6.33 Officer comment: The proposed section of the replacement path likely to be used in an active travel capacity (travel required to go about usual daily business but not leisure) would be made up to high standard and have a

sealed resin surface. The section between points G and H on the proposed order plan would be 3m wide and built to cycle/footway multiuser standards. The 2m wide sections mostly have public vehicular carriageways running parallel to them so their width is less of a concern.

6.34 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:

6.35 A prosperous Wales

6.36 Officer comment: Proposal will permit approved planning application to take place that in turn will provide employment, housing and a community park.

6.37 A resilient Wales

6.38 Officer comment: Enhanced accessibility might help reduce the reliance on cars and public transport and their consequential emissions. The new community park will be under MCC's control and therefore managed with its biodiversity values.

6.39 A healthier Wales

6.40 Officer comment: Enhanced path accessibility and new community park could encourage physical exercise with its health and wellbeing benefits.

6.41 A more equal Wales

6.42 Officer comment: The community park will provide open space for all. Additionally, the path might help reduce the reliance on cars and public transport with their associated costs. The development contains a proportion of affordable housing.

6.43 A Wales of cohesive communities

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

6.45 A Wales of vibrant culture and thriving Welsh Language.

6.46 Officer comment: The community park will provide open space to allow exercise and sport. Signage under MCC's control would be bilingual.

6.47 A globally responsible Wales

6.48 Comment: Enhanced accessibility could help reduce reliance on cars and public transport and therefore reduce emissions.

6.49 [Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide](#) (chapter 10 page 28)

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.*

6.50 Officer Comment: Works have started on site and there is a temporary path closure in place. The temporary closure was issued on the basis that no permanent works were to take place on the existing recorded alignment of the path until any path order was confirmed. The applicant also agreed to provide an alternative through route the site while the closure was in force.

7.0 Consideration of Consultation Responses.

7.1 The following section comments on the issues raised.

7.2 Laura Bazely, MCC Legal Services

I note that the proposed path may not be as convenient for the public as the proposed path – it is not as direct a path

7.3 Officer comment: The proposed replacement path is approximately 150m longer than the original path which has a length of approximately 350m. It would in most part however, have a sealed surface rather than running over an unmade grass path.

7.4 Cllr Jo Watkins, MCC

I think the pathway looks fine but residents are complaining about the fact it crosses roads, I am completely fine about the footpath moving as it needs to for the development to go ahead, although I know a number of residents are not.

7.5 Officer comments: None

7.6 Mr Kevin Hall, Local resident (full response appendix 12)

Path order plan misleading as sections of path labelled unaffected will be lose their unspoilt views over Nedern Valley, the SSSI, Caldicot Castle and Severn Bridge. Proposal in breach of Welsh Government guidance to 'avoid estate roads' by diverting a well-used country pathway onto an urban walkway straddling a high pressure gas main and crosses cul-de-sac roads at least 5 times. Misleading street scene provided by developer showing one row of development and not the whole scheme.

7.7 Officer comment: The sections of path labelled unaffected fall outside of the scope of the proposed order. Any loss of views from sections of path outside of the order would be a matter for Planning. The proposed new alignment does cross 5 vehicular roads but it would run largely through open space away from vehicular traffic over the balance of its length as required by the guidance. The proposed path does roughly follow the alignment of a buried high-pressure gas main. The misleading street scene I suspect would also be a matter for Planning.

7.8 Mrs Julie Griffiths, Local resident (full response appendix 13)

Impact on wellbeing and mental health due to change of the path from one that crosses open countryside to an urban walkway through a housing estate crossing five estate roads.

7.9 Officer comment: The different character of the replacement path is an inevitable consequence of development but its proposed new alignment would runs largely through open space away from vehicular traffic. The proposed changes allow the construction of the approved development, which includes a community park. This park might help offset the loss of the existing rural path.

7.10 Mrs Victoria Silcox, Local resident (full response appendix 14)

Loss of a safe, tranquil walkway in open space to one through a housing estate that crosses many roads and is not in keeping with public expectation of a public path. Path should be revised to avoid the need to cross estate roads and obstruction by traffic. Building of expensive houses seems more important than people's rights to safely enjoy open space.

7.11 Officer comment: The different character of the replacement path is an inevitable consequence of development but its proposed new alignment would run largely through open space away from vehicular traffic. The proposed changes allow the construction of the approved development, which includes a community park. This park might help offset the loss of the existing rural path. The decision to build the houses would be a matter for Planning.

7.12 Mrs Katie O'Brien, Local resident (full response appendix 15)

Change in character from a rural path that provides access to the SSSI, is surrounded by nature and can be enjoyed safely by children to an unsafe polluted path that crosses five roads and puts children at risk.

7.13 Officer comment: The different character of the replacement path is an inevitable consequence of development but its proposed new alignment would run largely through open space away from vehicular traffic. The proposed changes allow the construction of the approved development, which includes a community park. This park might help offset the loss of the existing rural path. The proposed path alignment would continue to provide access to the SSSI.

7.14 Mr George Rice, Local resident (full response appendix 16)

Loss of path used by people enjoying the countryside and provides access to the SSSI and Nedern brook to an estate path crossing numerous roads. The existing path should be retained and the layout of the site set out to accommodate it.

7.15 Officer comment: The different character of the replacement path is an inevitable consequence of development but its proposed new alignment would run largely through open space away from vehicular traffic. The proposed changes allow the construction of the approved development, which includes a community park. This park might help offset the loss of the existing rural path. The fact that a high pressure gas main runs through the site means it makes sense for the new path alignment to follow it as otherwise the site would have been very constrained. The proposed path alignment would continue to provide access to the SSSI.

8.0 Recommendation

8.1 That the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of the diversion order for Footpath 37 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:

Shaun Pritchard

Assistant Public Rights of Way Officer

Telephone: 01633 644676

Email: shaunpritchard@monmouthshire.gov.uk

Countryside Access Manager

Ruth Rourke

Telephone 01633 644860

Email: ruthrourke@monmouthshire.gov.uk