

STATEMENT OF REASONS

MONMOUTHSHIRE COUNTY COUNCIL (C74.5 FLY-TIPPING) PUBLIC SPACES PROTECTION ORDER 2023

Monmouthshire County Council (The authority) is proposing to make a Public Space Protection Order on the C74.5, off the B4245, near Undy to address an ongoing issue of fly tipping and off roading at the location.

Legal framework

Two conditions must be met in order for a local authority to make a Public Space Protection Order under S59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (The Act). The authority must be able to show that:

- a) Activities are taking place that have had a detrimental effect on the quality of life of those in the area.
- b) The effect of the activities is likely to be of a continuous nature such as to make the activities unreasonable and this justifies the restrictions imposed.

S64 of the act establishes that if a PSPO is to be in place on the highway the authority must show that it has considered the effect the order will have on premises adjoining or adjacent to the highway and the likely effect on other persons in the locality.

S72 of the act sets out the requirements with regard to Convention Rights, consultation, publicity and notification.

The authority should consider the rights of freedom of expression and assembly as set out in Articles 10 and 11 of the Convention as set out under The Human Rights Act 1998. These can be considered proportionately and are not absolute rights.

The requirements as to consultation and notification have been addressed and the necessary statutory consultees have received the order as proposed, any comments received or objections made will be considered when the decision whether to make the order is taken. The notice was published on Monmouthshire County Council's Website and placed on site on 2024.

Fly-tipping

The land, a former rail siding, shown in the plan at schedule ... and registered as "Land at Rogiet" (WA871398) is owned by Monmouthshire County Council.

The land is designated as Green Wedge in the local development plan. The council land holding continues on the opposite side of the rail line to the east just beyond the M4 bridge where Rogiet Country Park begins, creating a near continuous strip of land protected from development. The ownership and designation ensure green infrastructure connectivity between the settlements of Rogiet and Magor and Undy.

A former brown field site, the vegetation is not a typical natural native habitat but does have high ecological value. Larger areas are dense scrub containing both native and non-native flowering species of high value to pollinators, ideal habitat for nesting birds and other native fauna.

Whilst the land is not designated or managed as public open space, it is accessible to the public and used by local residents for exercising dogs and for recreation. As such it meets the criteria of a public place.¹ A local farmer traverses the land from the south side of the fields with tractors during harvest. This is to increase the distance travelled between exiting the field before reaching the B4245 to allow time for mud to fall from his tyres and reduce issues of mud on the main road. Network Rail require access through the land to access the railway via a pedestrian gate to service a communications station.

Following reports from the public, MCC officers have been monitoring large scale and ongoing incidences of regular fly tipping on the land as indicated in the plan. Details of the fly tips recorded are to be found in the schedule which identified 31 separate incidents to August 2023 and a further 13 incidents to 26th January 2024. The waste contained a variety of commercial and domestic hazardous and non-hazardous waste.

Fly tipping is the illegal and uncontrolled disposal of waste and the deposit of controlled waste is an offence under the Environmental Protection Act 1990. The act of fly tipping is widely accepted as being a form of antisocial behaviour and as such it is detrimental to the quality of life of local people in several ways. It can:

- cause pollution of soil, water, and air, as well as damage to wildlife habitats and biodiversity. Some types of waste, such as chemicals, batteries, asbestos, and medical waste, can pose serious health risks to humans and animals that come into contact with them.
- increase the risk of fire, flooding, and landslides, as well as attract pests and vermin that can spread diseases and damage crops.
- affect the climate change mitigation and adaptation efforts, as it can reduce the carbon sequestration potential of land, increase the greenhouse gas emissions from decomposing waste, and hinder the development of renewable energy sources and green infrastructure.
- reduce the value and productivity of the land and property, as well as the attractiveness and competitiveness of the area for businesses, investors, tourists, and residents. Fly tipping can also undermine the trust and social cohesion among the stakeholders and the public, as well as the reputation and image of the area.
- divert the resources and attention from the development and implementation of more sustainable and circular waste management practices, such as waste prevention, reduction, reuse, recycling, and recovery.
- make the land unsightly and spoil the amenity of the area for locals and visitors.

Off roading

There is also evidence of unauthorised off-road driving and riding of motorbikes, quadbikes and other off-road vehicles that has a detrimental effect on the amenity of the public space.

There are several known negative effects of such usage, it;

- Disturbs the vegetation and wildlife habitats, reducing the biodiversity and ecological functions of the ecosystems.

¹ Prevention of Crime Act 1953 S1(4). Also see Knox v Anderton [1982] 11 WLUK 98] and Harriot v DPP [2005] EWHC 965 (Admin)

- Emits noise and air pollution, which affects the health and well-being of humans and animals.
- Contributes to global warming by releasing greenhouse gases and reducing the carbon sequestration potential of the soil and plants.
- Reduces the amenity of the land for other users.

Effect of the proposed order

The order seeks to prevent the fly tipping and other potential anti-social activities by stopping vehicular access to the lane by means of a padlocked gate at the entrance from the B4245, at the Northern most end of Moorgate Farm Road. The gate will be installed in a location that is visible from the road, allows for traffic to pull off the B4245 and maintains access to the adjacent field gates. Given the visibility it is unlikely that the offending fly tippers will continue to use this location for their purposes. Access will be available to the sides of the gate for pedestrians, cyclists and other users who wish to legitimately access the highway and the land beyond as shown on the plan.

Authorised users will be given access to the gate using a key. Currently only the adjacent landowners, network rail staff and the emergency services have been identified as requiring access however there is the possibility that other users may need to be authorised. Such individuals or organisations can be added to a list appended to the order.

Under this order it will be an offence to pass the gate in an unauthorised vehicle or to allow access to unauthorised persons either by opening the gate or by distributing a copy of the key.

As the lane is a no through route, we do not foresee that the provisions of the order will have a detrimental effect on any other legitimate users of the highway. The MCC land is used illegally by off road vehicles and while the gate will prevent access to the short section of highway beyond the gate, this is a no through route and as such there is no legitimate destination beyond the gate.

The provisions will not affect rights to freedom of expression and any impact on the freedom of assembly are both limited, as the road can still be accessed on foot and are proportionate as the behaviour the order is intended to prevent has such a detrimental effect when weighed against the relatively minor impact on convention rights.

Monmouthshire County Council

November 2024