



monmouthshire  
sir fynwy

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

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



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

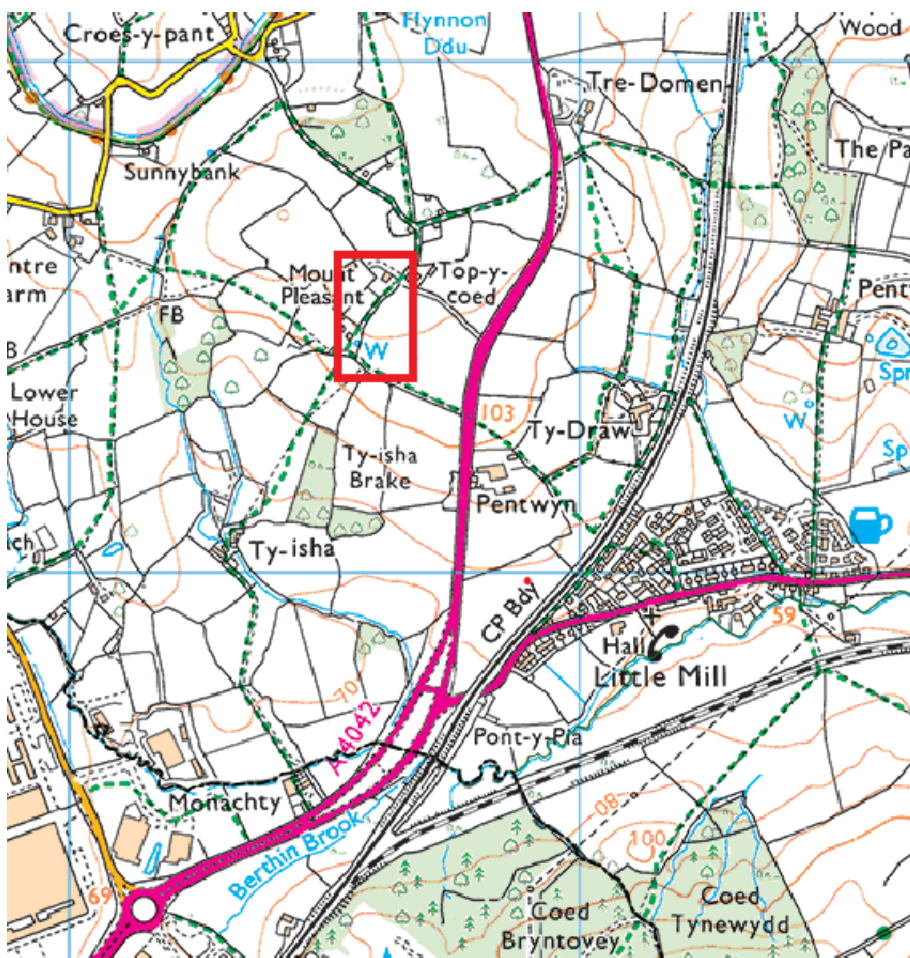
# 1. Purpose

1.1 This report has been compiled to act within the approach to be fair, impartial and operating the principles of natural justice. It sets out the full background, legislation, policy, objection and other evidence in respect of a request for an order to be made under Section 119 of the Highways Act 1980 for Public Footpath 138 (part) Goetre Fawr. Its purpose is to assist Members of the Licensing and Regulatory Rights of Way Advisory Committee to make a decision as to whether or not an order should be made to divert part of Footpath 138 Goetre Fawr and to inform all other interested parties.

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

## 2. Background

### Location Plan



2.1 On 20<sup>th</sup> July 2023, a public path order application was received by Monmouthshire County Council (MCC) Countryside Access Service. It was made by the owner of Mount Pleasant, Mamhilad, Pontypool NP4 0JD, to

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

- 2.2 The reason for the application was in the interests of the landowner to improve safety, security and privacy for the applicant.
- 2.3 The Authority has powers to divert footpaths if it is in the interests of the owner or the public.
- 2.4 Appendix 1.1 is the proposed Order Plan and Appendix 1.2 is the schedule that sets out the route of the path that the application seeks to divert. These were created in 2023 and Appendix 1.4 and Appendix 1.5 are the updated versions of these documents for 2025.

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

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

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

#### **3.3 Section 119 Highways Act 1980**

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

- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

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

- (2) A public path diversion order shall not alter a point of termination of the path or way—*

- (a) *if that point is not on a highway, or*
- (b) *(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

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

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

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

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

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

*(6A) The considerations to which—*

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

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

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

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

## 4. Consultees

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

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

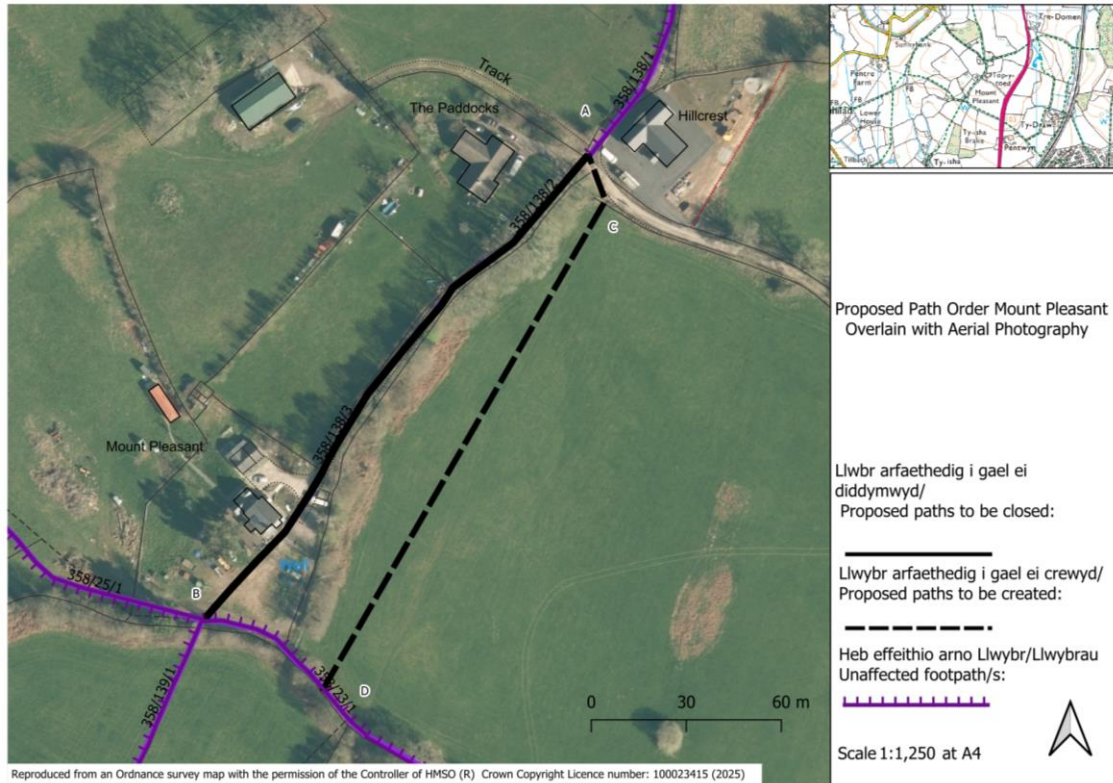
	Name	Organisation	Summary of Representations
1	Daniel Hulmes	MCC Biodiversity Officer	No objection.
2	Head Office	The Open Spaces Society	No response.
3	Mr Steve Garland	Lower Wye Valley Ramblers Association	Objection. (please see paragraph 7 below for details).
4	Derek Humble	Pontypool Ramblers	No objection.
5	Matthew Lewis	MCC Environment & Culture Manager	No objection. Comment, 'looks a sensible diversion'.
6	Richard Ray	MCC Legal Department	No objection. Comment, 'it appears to satisfy the statutory tests'.
7	Bradley Griffiths	Western Power Distribution	No objection. Comment, 'we have no infrastructure which would be affected by the new footpath'.
8	Openreach, Network Alterations	Openreach	No objection. Comment, 'Openreach does not appear to have apparatus that may be affected in the area of your proposals'.
9	External Relations Team	Natural Resources Wales	No objection.
10	Plant Protection	Cadent Gas/National Grid	No objection.
11	Sharon Grey	Dwr Cymru / Welsh Water	No objection. Comment, " <i>no Dwr Cymru apparatus will be affected by the proposed works</i> ".
12	Jonathan Lazenby	Clerk, Goetre Fawr Community Council	No objection. Comment, 'no concerns with the proposals'.
13	County Councillor Jan Butler	MCC	No objection. Comment, 'I have no issues with this proposed diversion. It makes sense'.
14	County Councillor Catrin Maby	MCC	No objection.



## 5. Photographs

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

### Proposed Order Plan overlain with Aerial Photography.



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





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



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





View from the top of existing path to the west.



View from further down the existing path to the west.



View from further down the proposed path to the east.



View from further down the proposed path to the south.





View from further down the proposed path to the West.



View of route of the existing path past Mount Pleasant.





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



View North from Mount Pleasant along the existing path.





## 6. Application of Tests, Guidance & Policy

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

### 6.2 Highways Act 1980

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

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

### 6.4 Highways Act 1980

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

6.5 The proposed diversion meets part (a) of this legal test because it terminates on the same highway. It also meets part (b) of this legal test because the route of the proposed alternative path is substantially as convenient as the existing route. The evidence to support this is that the alternative path is almost the same length as the existing path (please see the path schedule in Appendix 1.2). The existing path would be taken off a rutted vehicle access track and the alternative path would run over a grass field.

### 6.6 Highways Act 1980

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

6.7 Although the decision for the Panel is whether to 'make' the order in this case, it is appropriate to consider the legal tests that apply at the 'confirmation' stage during this process. The relevant parts to be considered are whether the new path will 'not be substantially less convenient', and in this case it is not for the reasons detailed in paragraph 6.4 above. The second consideration is section (6) (a) and relates to the 'enjoyment of the path or way as a whole'. This is subjective, but it appears that the alternative route could be deemed more enjoyable or is no more or less enjoyable than the existing route. The evidence to support this is that there are views available from the existing path and from the proposed alternative path. The existing route runs beside the private garden of The Paddocks and next to the dwelling house at Mount Pleasant and on through the middle of the garden. The proposed alternative path runs through an open field. The views to the west towards the tower above Pontypool that may be reduced from the proposed path, can be seen through the trees in the winter and are regained on the lower section of the proposed path, as well as more views available to the south from the proposed path.

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

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

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

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

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

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

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

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

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

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

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

**6.15 Landownership**

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

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

**6.17 Environment (Wales) Act 2016**

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

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

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

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

#### 6.19 **Equality Act 2010**

##### *2010 CHAPTER 15*

*An Act to make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes.*

- 6.20 Monmouthshire County Council is committed to the Equality Act as stated in Monmouthshire's Countryside Access Policy, Protocol and Operational Management Guide (page 20 section 7.3). In this context this legislation relates mostly to accessibility. Accessibility along the proposed path would not be impaired by the proposal.

#### 6.21 **Active Travel (Wales) Act 2013**

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

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

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

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

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

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

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

- 6.26 The Prioritisation of Rights of Way Legal Orders is covered by this document, equality and the Council's policy on least restrictive access requiring



opportunities to be taken to make paths more accessible to all. The diverted route is gated.

**6.27 Monmouthshire's Countryside Access Improvement Plan.**

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

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

6.29 As per other legislation and documents already described it includes improving access for all and active travel as a key element of the Plan. In this path order a pedestrian gate or kissing gate would be included as a limitation within the order, the stile that is in place on the proposed route would be removed to allow for the installation of a gate.

## **7. Objection.**

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

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

**19/10/23**

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

LOOKING SOUTH TO NORTH ALONG PROPOSED DIVERSION



LOOKING WEST TO EAST ALONG FIELD EDGE



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

### **23/10/23**

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

### **19/12/23 (Following Site Visit)**

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

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

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

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

#### **Views from the driveway/lane**

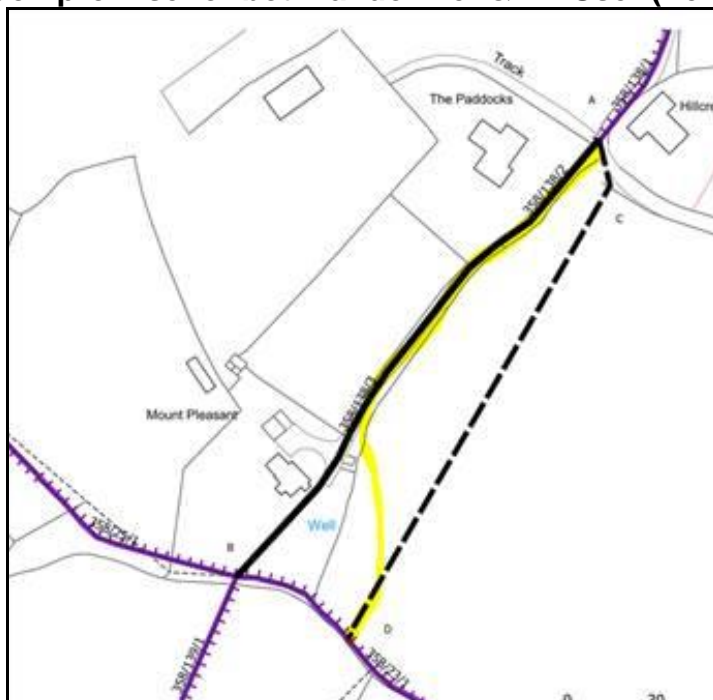




Looking from B towards D



Compromise for both landowner & FP User (Yellow route)



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

**27/02/24**

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

*My objection therefore still stands"*



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



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





**06/03/24**

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

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

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



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

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

## **9. Conclusion**

- 9.1 This case has arisen following a path order application received from the owner of Mount Pleasant, Mamhilad to divert the existing public footpath from their driveway and garden and into the adjacent field.
- 9.2 The application was assessed, and a decision was made by MCC Rights of Way that it was expedient to process the application. Site visits were conducted, and a plan (Appendix 1.1) and schedule (Appendix 1.2) were created to reflect what was deemed the most suitable diversion for the footpath.
- 9.3 The landowner for the field where the proposed path was to run has provided written permission to allow this.

- 9.4 The proposed path diversion order meets the legal tests of '*not altering a point of termination of the path if that point is not on a highway*', because the path runs between two unaffected public footpaths (highways).
- 9.5 It also meets the test of being '*not substantially less convenient*' because, as the schedule (Appendix 1.2) shows, the distance from A to B is 190 metres, and the distance from A to C to D is 192 metres.
- 9.6 As for the confirmation test of '*having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole*', the proposed path could be considered as equally, or even more enjoyable than the existing path.
- 9.7 After the proposal was sent out for pre-order consultation, one objection was received. This came from the Lower Wye Ramblers and is the reason the case is before the Committee for a decision to be made in respect of the order.
- 9.8 The objection claimed that the current path provided views to the west that were better than those to the east, and that this reduced the enjoyment of the path.
- 9.9 The views from the existing and proposed paths would differ, but it is subjective as to whether they are lesser or greater and therefore make the route more or less enjoyable. It is relevant to note that the view available to the west, as referred to in the objection, is available during the winter and also from the lower section of the proposed path. Also, the proposed path offers views to the east towards the Usk Valley and south towards Penyrheol.
- 9.10 There is Department of Environment, Food and Rural Affairs (DEFRA) guidance that is mandatory in England, and recommended to be followed in Wales that states, '*where there are concerns over privacy, security, and safety*', '*an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public.*'
- 9.11 Privacy. In this case the privacy of both The Paddocks and Mount Pleasant is affected by the route of the existing path. The existing path offers views into the garden of The Paddocks and into the property of Mount Pleasant. The proposed path would run on the far side of a high tree and hedge lined boundary, approximately 15 metres further away from The Paddocks and approximately 30 metres further away from Mount Pleasant.
- 9.12 Security. The properties affected by the current path are remote and secluded and are vulnerable to rural crime as a result. Although the use of a public right of way is not necessary to access the property for criminality, the route of the current path through the curtilage and near to the property prevents the landowner from deterring the public from entering the area. The removal of the path from this location would allow the landowner to secure the route that they are unable to protect at present.

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

## **10. Recommendation**

- 10.1 That the Licensing and Regulatory Rights of Way Advisory Committee authorise the making of the diversion order for Footpath 138 Goetre Fawr under Section 119 Highways Act 1980 as set out in this report, and to confirm the order if no objections are received.

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

Appendix 1.1: Order Plan HA Diversion FP 138 Goetre Fawr.  
Appendix 1.2: Schedule HA Diversion FP 138 Goetre Fawr.  
Appendix 1.3: Diversion Extinguishment HA 1980 App Pack.  
Appendix 1.4: Amended Order Plan HA Diversion FP 138 Goetre Fawr.  
Appendix 1.5: Amended Schedule HA Diversion FP 138 Goetre Fawr.

### **AUTHOR:**

Gavin Pugh  
Assistant Public Rights of Way Officer  
Telephone: 07971 088876  
Email: [gavinpugh@monmouthshire.gov.uk](mailto:gavinpugh@monmouthshire.gov.uk)

### **Countryside Access Manager:**

Ruth Rourke  
Telephone 01633 644860  
Email: [ruthrourke@monmouthshire.gov.uk](mailto:ruthrourke@monmouthshire.gov.uk)