

**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

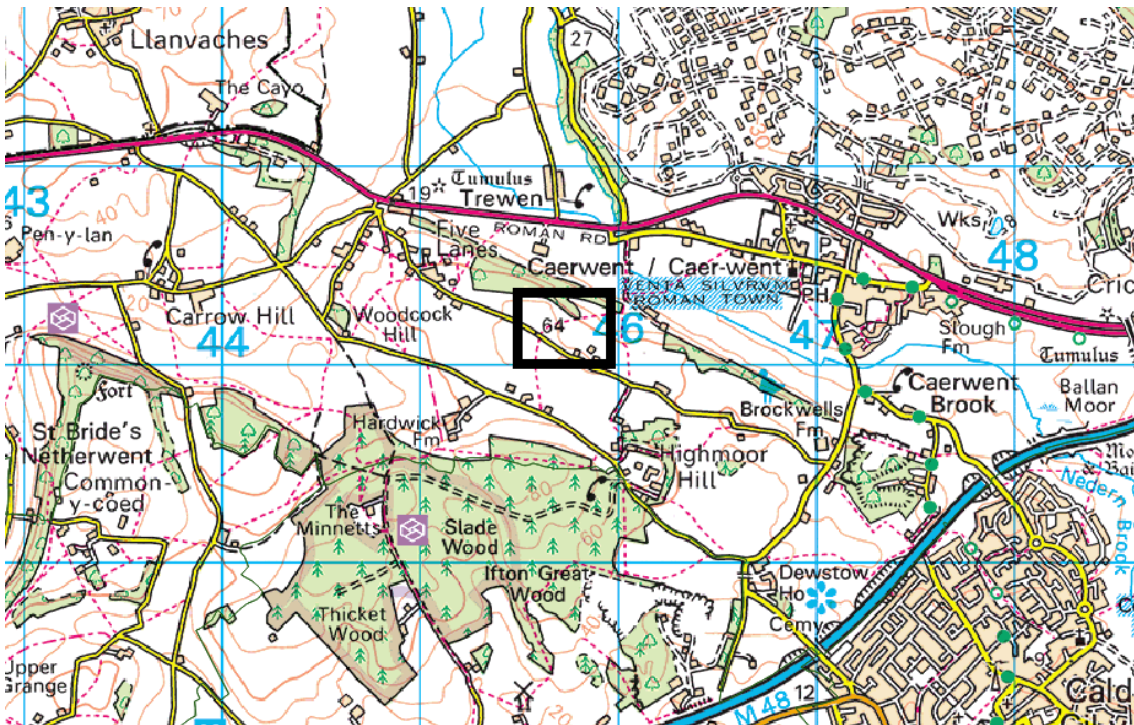
Version 3 8 July 2025

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.

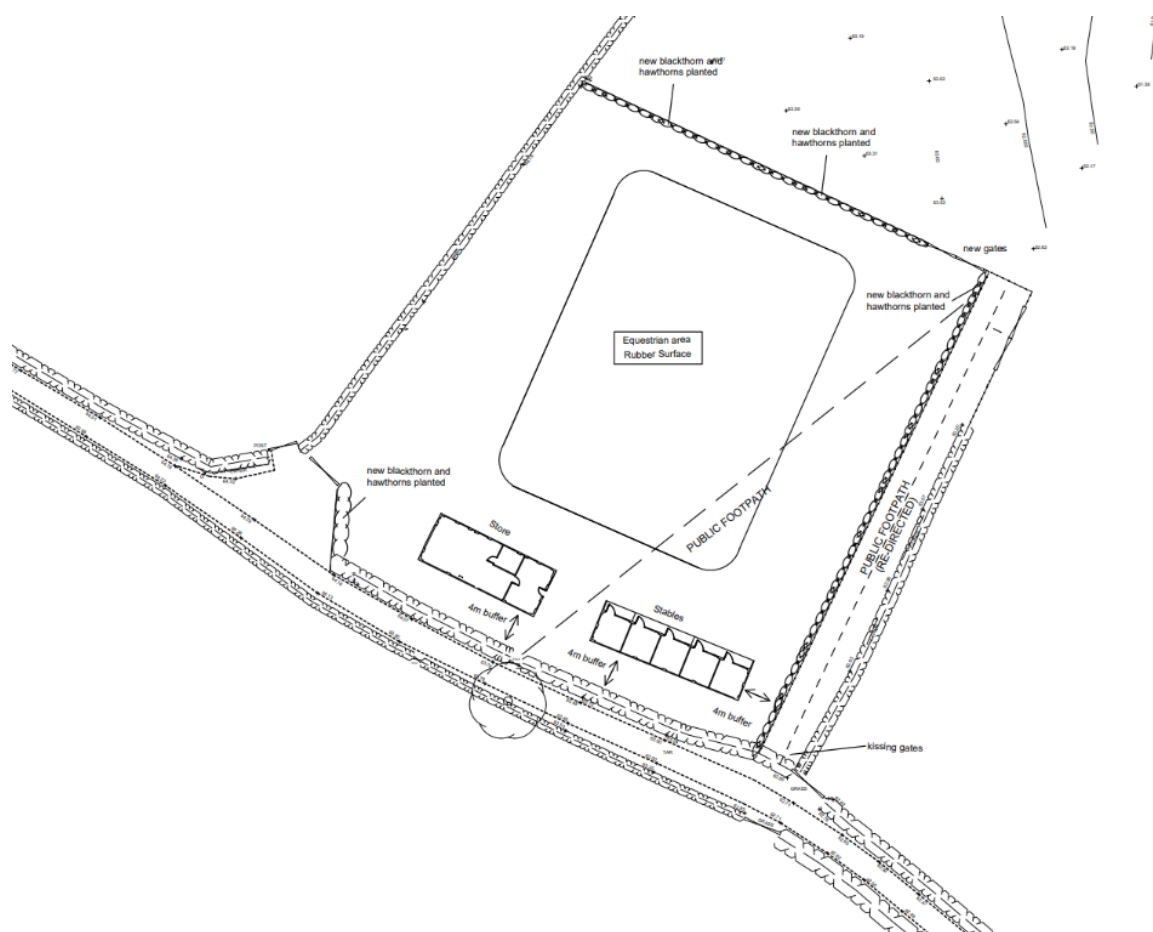
2. Background

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

	Name	Organisation	Summary of Representations
1	Ms S Palmer 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 Appendix R11	Lower Wye Valley Ramblers Association	Purely on the suitability of the proposed footpath diversion, I have no objection.”
4	Mr R Ray Appendix R12	MCC Legal Services	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.

5	Matthew Lewis	MCC Environment & Culture Manager	No comment
6	Mr J Morgan 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 Appendix R14	CADW 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 Appendix R15	MCC Landscape Officer 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, Network Alterations	Openreach	Please find attached our letter detailing the procedure should you encounter our line plant during your works
12	External Relations Team	Natural Resources Wales	No response
13	Plant Protection	Cadent/National 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 Water	Email Acknowledged
15	Ms Laraine McKeon Appendix R16	Clerk, CaerwentCommunity 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 Murphy	MCC	No response
17	Mark Davies	MCC Highways	Just to confirm I have no adverse comments or objection to the diversion.

18	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.
19	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.
20	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.
21	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.
22	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.
23	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 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 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 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

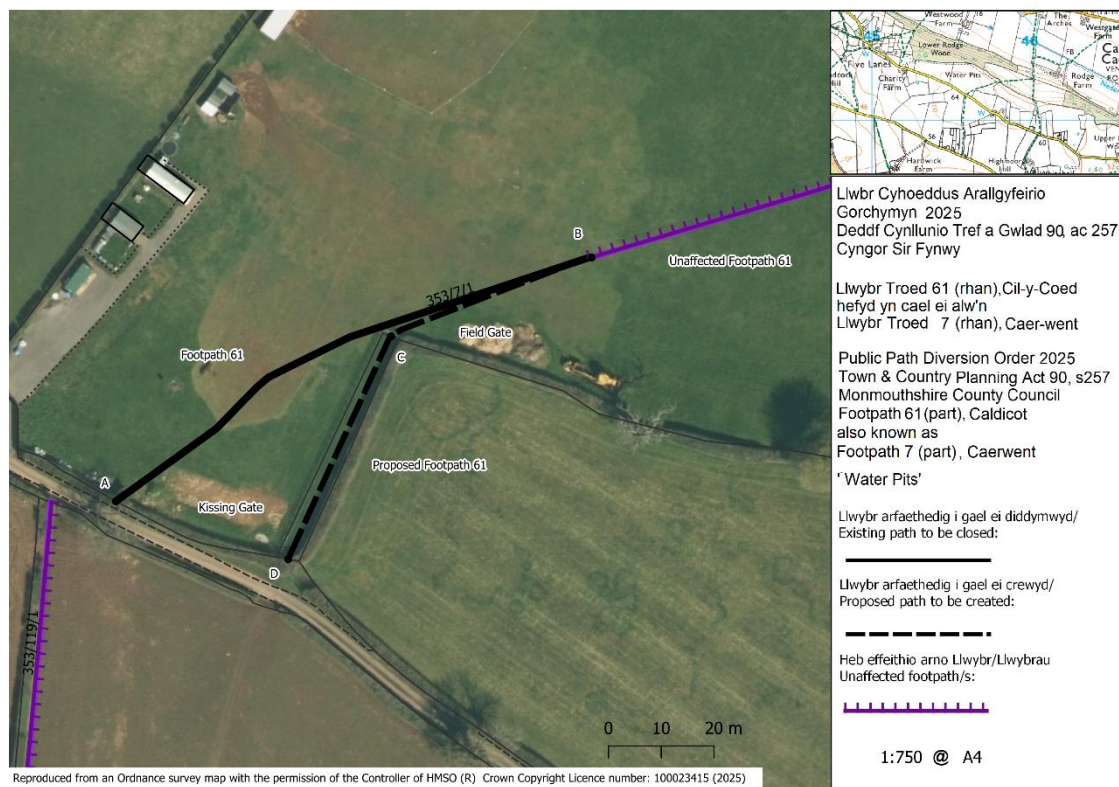
			of this route as documented in the Welsh Tithe Map of 1842.
26	Anonymised representations Appendix R25		CCTV , a wooden barrier at the stile, and the the notices advising dogs loose and camera surveillance of the site continuously. These have been in place to deter and intimidate anybody who may wish 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 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
28	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.
29	Anonymised representations 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 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.

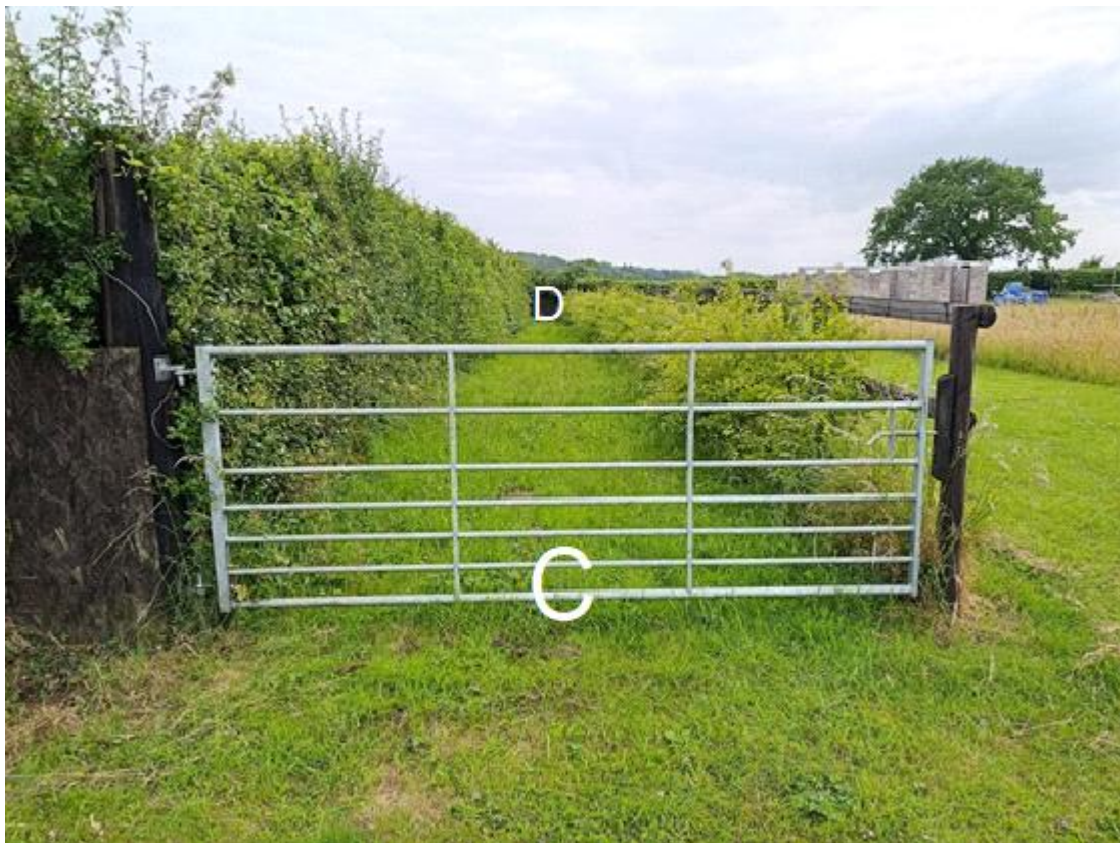
5. Photographs

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:

Shaun Pritchard
Public Rights of Way Enforcement Officer
Telephone: 01633 644676
Email: shaunpritchard@monmouthshire.gov.uk

Countryside Access Manager
Ruth Rourke
Telephone 01633 644860
Email: ruthrourke@monmouthshire.gov.uk