

# Monmouthshire Countryside Access Policy, Protocol and Operational Management

Appendix 5 A Rights of Way Improvement Plan Review

Version 1, June 2019

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

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## 2.0 Introduction

### 2.1 The Resource

Monmouthshire has 9 countryside sites which are directly managed by the Countryside Access Service and in conjunction with "Friends of" Groups. These do not include Caldicot Castle Country Park and Tintern Old Station which are managed as part of MonLife's portfolio separately. The sites are important in providing places for people to undertake leisure pursuits and active lifestyles. Research shows that they are also important for the mental well-being and physical health of residents and has a positive effect on longevity of life. The sites are managed in conjunction with "Friends of" Groups.

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

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

### 2.2 Existing Policy

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

There has never been a management policy document for countryside sites, but as the revised ROWIP will be extended to included other types of access such as countryside sites than where applicable this is also included here.

## 2.3 Aims and Objectives of this Plan

The Countryside Access Service provides a statutory service to the residents of Monmouthshire and its visitors. In order to continue to provide a good service it is important that the service seeks continual improvement and adapts to the ever-changing world of public rights of way/access management. With an already large and ever increasing workload, new policies must be developed to manage growing public expectation.

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

This policy review is an integral element of the rights of way improvement plan review. It focusses directly on

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

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

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

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

## 3.0 Summary of Issues/Background

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

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

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

## 4.0 Classification of Public Rights of Way

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

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

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

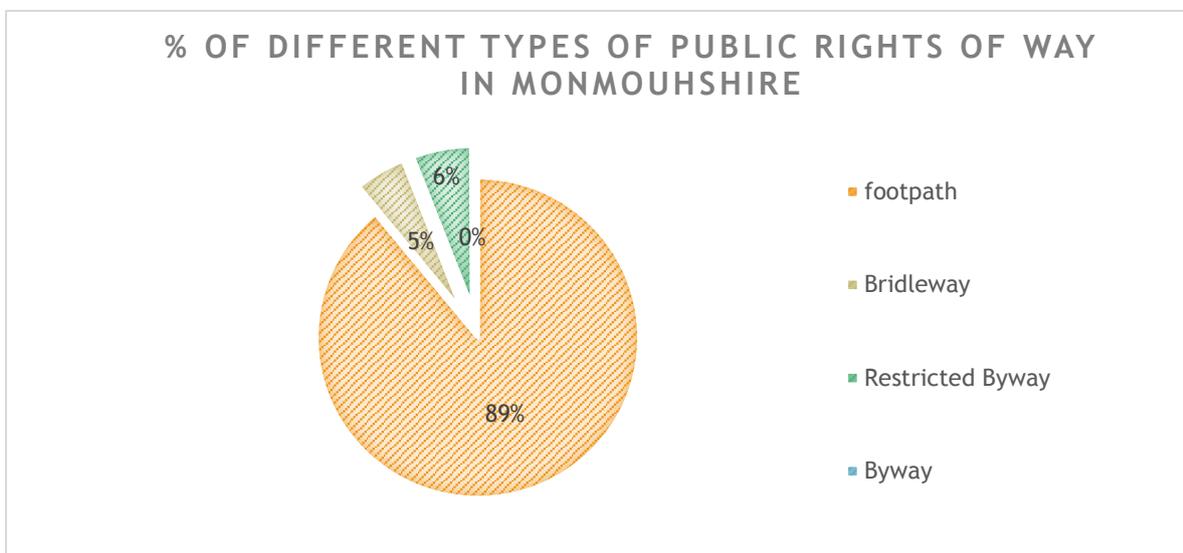
Restricted Byways are a new category of highway introduced by the Countryside and Rights of Way Act 2000 (CROW). Under the CROW Act, all PROW which were designated as a Road Used as Public Path (often denoted as CRB's or CRF's on Monmouthshire's Definitive Map) were re-designated as Restricted Byways.

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

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

Electrically-assisted pedal cycles must meet the specification set out in the Electrically Assisted Pedal Cycles Regulations 1983, as amended by the Electrically Assisted Pedal Cycles (Amendment) Regulations 2015, in order to be considered

such. As is the case on footpaths, invalid carriages, including wheelchairs and powered wheelchairs, may be used on bridleways by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not exceed a maximum speed of 4 mph on rights of way and should be used in accordance with prescribed conditions set out in regulations.



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

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

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

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

## 5.0 Structure and Delegation

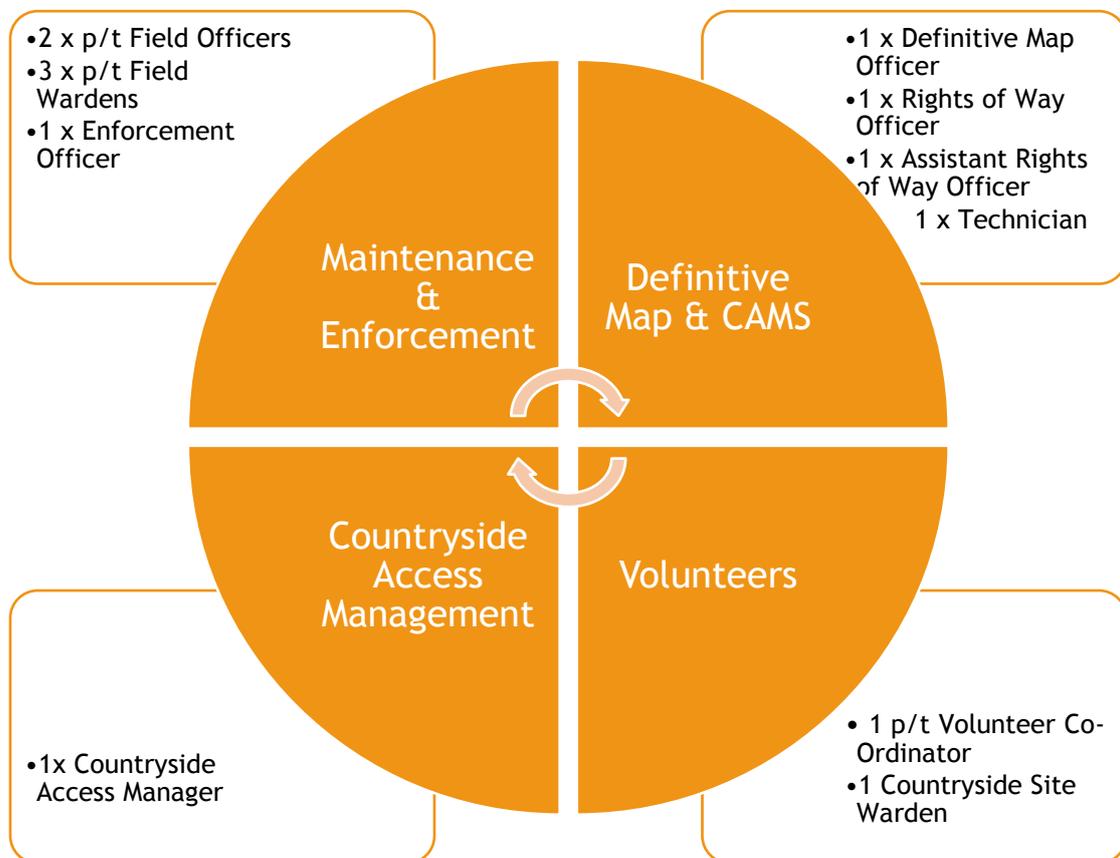
### 5.1 Delegation of Functions

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

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

### 5.2 Structure of the Countryside Access Service

PROW and Countryside Sites in Monmouthshire are directly managed by the Countryside Access Team, within Monmouthshire County Council's Green Infrastructure and Countryside Service. It should be noted that an agreement is in place for those rights of way which fall within the National Park in Monmouthshire to be directly managed by the Brecon Beacons National Park Authority (BBNP). Should that agreement ever be rescinded then the rights of way in the BBNP would be covered by the procedures and policies that apply to the rest of Monmouthshire.



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

- Strategic Management – Policy, ROWIP Review and monitoring, research, promotion, budget, staff management, project and grant development/management, Green Infrastructure projects, national and local consultations, training and development, Freedom of Information Requests, Insurance claims and prioritisation of work.
- Definitive Map Review –statutory elements of ensuring the Definitive Map and Statement is up to date. This includes researching and processing claims, anomalies, legal orders (such as diversions), temporary closures, monitoring and advising on development, land charge and other types of searches. There is also work involved to keep up to date our on-line mapping service, public registers and our Countryside Access Management System (CAMS).
- Maintenance and Enforcement – inspection, prioritisation, maintenance and enforcement of the PROW network. Also includes asset protection, community liaison, National Trail and Wales Coast Path Annual Project programme and leads on least restrictive access and other improvement programmes etc.
- Management of Countryside sites – promotion, inspections, maintenance, community liaison, education, events, improvement projects, asset protection & enforcement.
- Volunteers – enabling groups, town and community councils to assist with the administration, maintenance and promotion of the rights of way network and countryside sites.

## 6.0 Aims and Objectives of the Countryside Access Service

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

Generally these are:-

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

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

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

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

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

- a) Investigating and determining all claims in accordance with the statement of priorities (see chapter 14)
- b) Investigate and determine anomalies in accordance with statement of priorities & 14.2

- c) Process applications to change PROW in accordance with policy (14.4)
- d) Ensure all changes are covered by a formal order

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

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

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

- Promote and maintain sites
- Improve biodiversity and enhance sites, connecting people with quiet spaces and the environment.
- Manage events and requests for events/ supervise any agreements relating to other people's access via or through the land etc.
- Enabling "Friends of.." and community groups to be actively involved with the above.

### Manage Open Access Land

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

### 6.1 Access To Water

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

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

## 6.2 Community Involvement

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

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

## 6.3 Partnership & Working With Others

The wide ranging remit of the Countryside Access Service necessitates strong working relationships with numerous other service areas within Monmouthshire County Council. Regulatory work requires close work with Planning & Development Control, Legal Services, Highways and Trading Standards. Increasingly as budgets minimise and there is recognition of the similar benefits of our work, new and other relationships are being sought within Leisure such as the GP referral Officer, Outdoor Education, Youth etc.

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

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

## 6.4 Monmouthshire Local Access Forum

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

Membership of The Monmouthshire Local Access Forum tries to include a balance of users of rights of way and the right of access to open country, landowners and occupiers, together with any other interests especially relevant to Monmouthshire. The Local Access Forum focuses on those issues that are most relevant to Monmouthshire, considers issues at the strategic level, and adopts a proactive

approach. Monmouthshire County Council must have regard to this Forums' views in reaching decisions on access and public rights of way issues.

There are 3 to 4 meetings per year and these are open for the public to attend. Agendas and reports are available on the website.

## 6.5 Community & Town Council Maintenance

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

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

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

## 6.6 Communication

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

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

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

## 6.7 Performance

Performance is notoriously hard to measure as officers know that one claim for a new path could represent months of work or one maintenance or enforcement issue

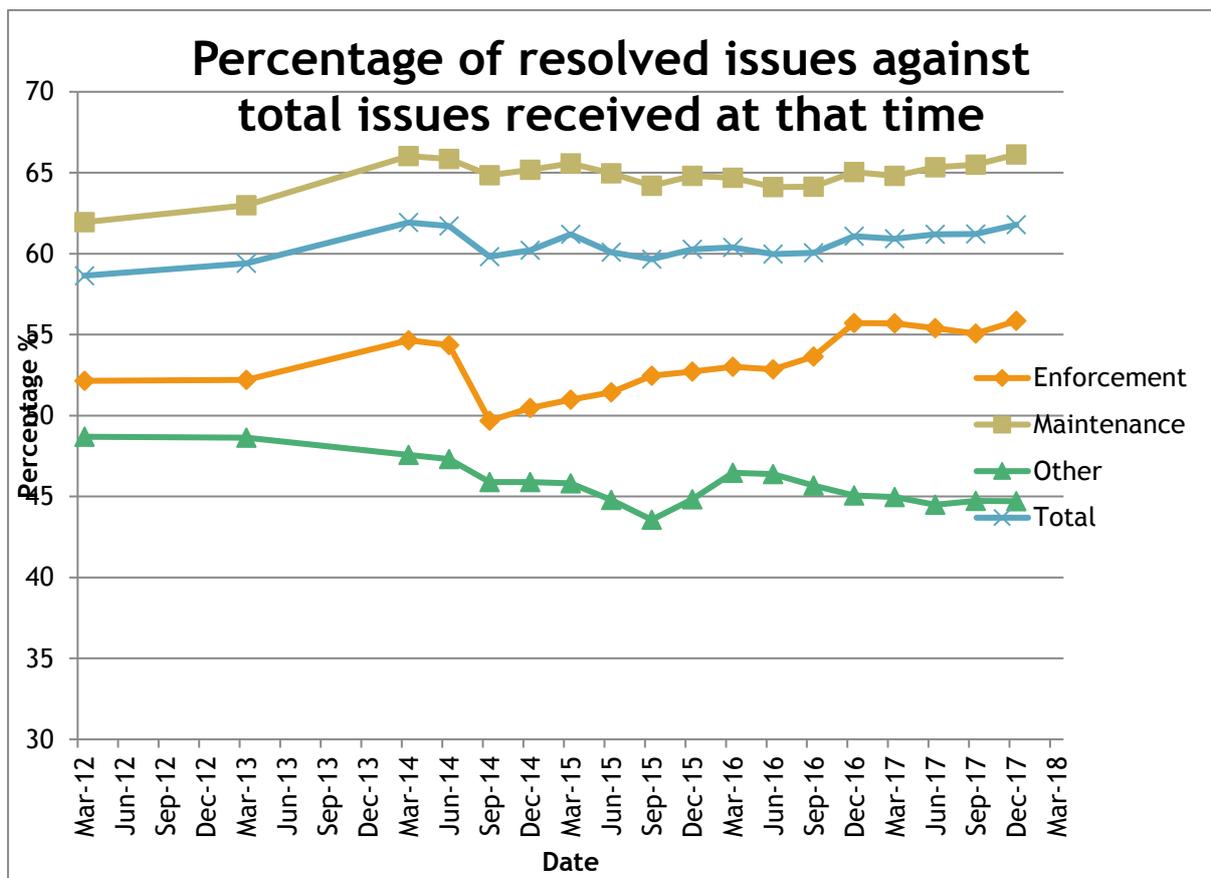
could take weeks of negotiation. This work is therefore difficult to quantify in performance measure.

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

Since 2013 the Countryside Service has adopted measures which show

- the total number of unresolved and resolved maintenance issues
- the total number of unresolved and resolved enforcement issues
- the numbers using promoted routes

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



## 7.0 Equalities Act 2010 and Well-Being Act

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

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

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

#### 7.1.2 Obesity

Currently over half of adults in Monmouthshire are classed as overweight or obese and Monmouthshire has an estimated 100 classrooms of obese children with 2.1% of 4 and 5 year olds in the county classified as overweight or obese. Obesity harms children in the short term and between 55% and 80% will go on to become obese adults. Obesity in childhood has been linked to a range of social and economic consequences in adulthood. Obesity is the most potent risk factor for Type 3 Diabetes. Public Health Wales warn of a Type 2 diabetes epidemic, across Wales rates of diabetes have increased from 5% in 2003/4 to 7% in 2015/16 with 7% of Monmouthshire residents currently being treated.

#### 7.1.3 Mental Health

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

Monmouthshire has an increasingly aged population. Daffodil Cymru projects an 87% increase in Monmouthshire's population aged 65 and over with dementia by 2035. This is above the increase projected across Wales of 72% and the second

highest in Wales. It becomes even more important to remain active in older age in order to stay healthy and remain independent. Engaging in physical activity carries very low health and safety risks for older adults. In contrast the risk of poor health as a result of inactivity are very high.

There is growing evidence of the benefits of engagement with the natural environment for those living with dementia. There is a recognised need however to raise awareness with specialist dementia organisations and the wider health community of the demonstrable benefits, value and opportunities for engagement with the natural environment as often their focus lies with health and social care solutions. There is also an interest from the natural environment, greenspace and volunteering sectors to better service the needs of people living with dementia, but it is not always clear where they are required, or what the greatest needs are and how to deliver solutions.

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

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

#### 7.1.4 Longevity

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

#### 7.1.5 Sedentary Lives

People's lives are increasingly sedentary. Fewer people are doing manual work and many jobs involve little physical effort. Across Wales only 24% of people aged 65 and over exercise 3 or more times a week, however 58% of this age group report doing no frequent physical activity. However the UK Chief Medical advisers say that

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

for currently inactive individuals, evidence shows the following health benefits could be achieved from 10 minutes of brisk walking per day:

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

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

### 7.1.6 Loneliness

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

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

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

## 7.2 Barriers

Evidence shows that the benefits of access to the natural environment are unevenly distributed and that many groups of people are noticeably absent or failing to reap these benefits. It is therefore important to bear in mind the barriers to the general

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<sup>2</sup> Acevo 2016

<sup>3</sup> LGA 2016

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

population when also considering the specific needs of people such as those with dementia.

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

- **Availability of Information** – Lack of information is a potential deterrent to people engaging with the natural environment. This can include lack of awareness of the opportunities available to people and where they can go. Also a lack of information about what services to expect at a given location including information on access, terrain, paths and information about facilities such as toilets and parking.
- **Negative perceptions-** fears and concerns can exist which determine people's willingness to access the natural environment and or public green spaces
- **Time** – A lack of spare time to plan and prepare for a visit can stop the visit taking place. In addition people can feel that to gain benefit, they need to give up more time for exercise or visits than in reality they do.
- **Motivation** – There are easier, less challenging things to do in which case there can be a lack of motivation to engage with the natural environment.
- **Physical accessibility** – Access to cheap, reliable transport is an issue. Also physical barriers on paths such as stiles or broken furniture. Location, distance and availability of transport was a key factor identified by the Wye Valley AONB in people living with dementia being able to access a local project.
- **Lack of physical fitness** - This can deter people from wishing to engage with the natural environment, particularly if the activity involved is perceived to require a degree of fitness.
- **Lack of reasonable or accessible local greenspaces** – A key barrier and potential inequality is the availability of accessible green spaces near where people live with the appropriate facilities.
- **Expense-** This is a particular issue for people of lower socio-economic groups where cost is cited in some research as a primary reason for not accessing the natural environment.
- **Design** – Issues such as signage, information sheets, navigation aids and labels are important in addressing the complexity that begins to act as a barrier to people. Familiarity with a place can be important to some groups (like those with dementia) as can Way-finding aids in some green spaces (such as dementia friendly signage) could overcome some of their concerns about getting lost.

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

### 7.3 Equalities Act 2010

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

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

### 7.4 Well-Being Act

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

### 7.5 Least Restrictive Access Policy

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

Monmouthshire was the first Council in Wales to adopt (in 2004) a policy of least restrictive access. The policy seeks to limit the introduction of further structures on the rights of way network and actively seeks the removal of existing stiles. It is one way in which the authority actively tackles disadvantage within communities. Where stiles remain they prevent use of paths by many in the community, particularly the elderly, young and those who suffer from some form of ambulant disability.

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

Section 147ZA HA 1980, gave the authority powers to enter into agreements with landowners, lessees or occupiers of land to undertake work on a structure which is

on a footpath or bridleway in order to replace it with a new or improved structure which will be safer or more convenient for persons with mobility problems.

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

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

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

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

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

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

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

## 8.0 Transport and Access to Services

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

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

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

### 8.1 Active Travel Act

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

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

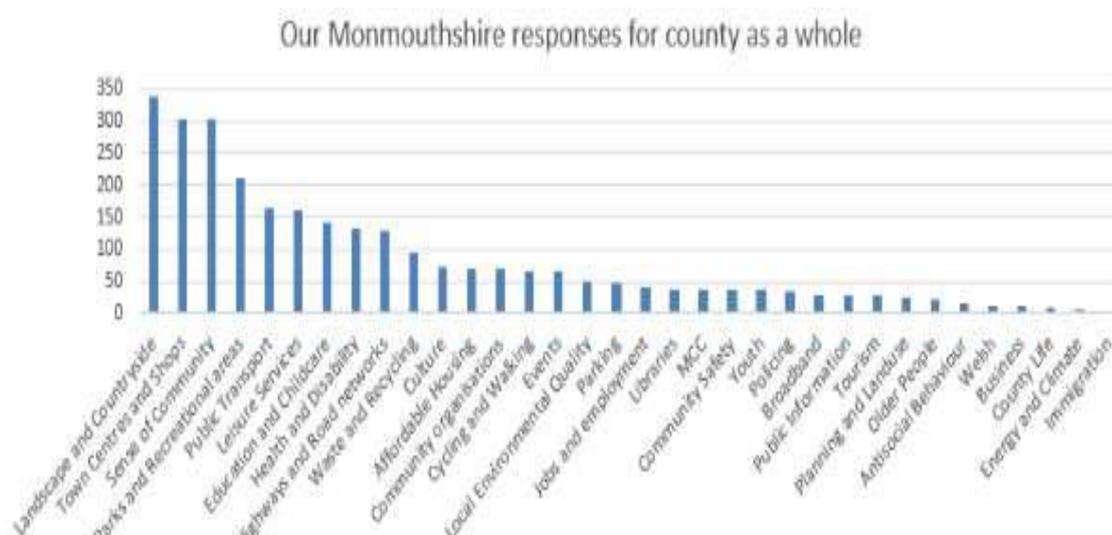
- *"improving the accessibility of the network to make it easier for people to incorporate walking, riding and cycling into their everyday lives"* and
- *"to support the rights of way network for purposeful journeys."*

## 9.0 ENVIRONMENT ACT

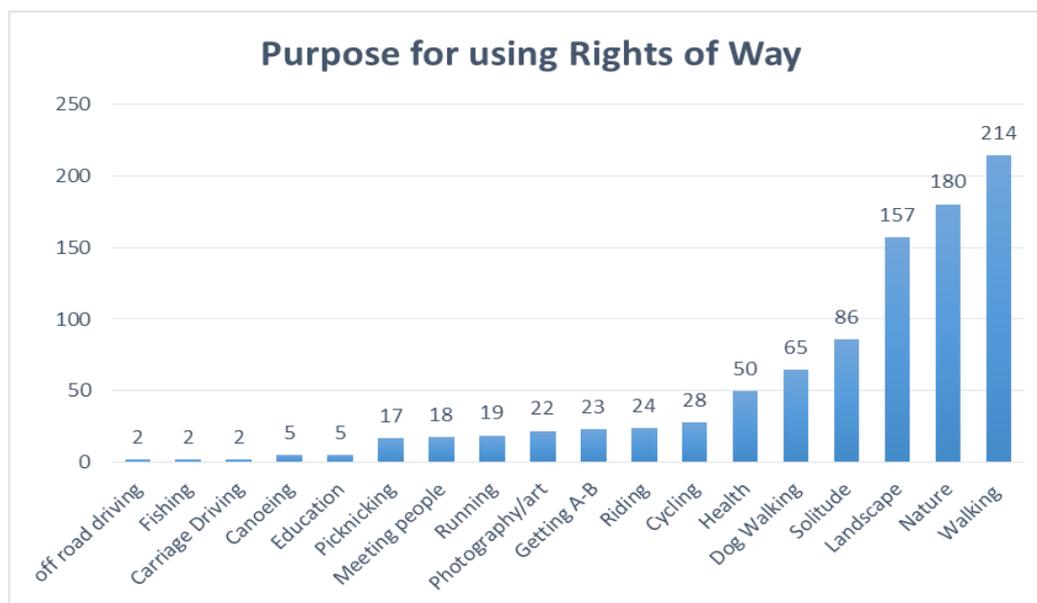
### 9.1 Landscape and Countryside

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

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



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



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

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

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

Of most relevance to the development of the new ROWIP will be the Area Statements being developed by Natural Resources Wales. The Act contains no statutory timeline for the production of these statements, but Natural Resources Wales has indicated that full coverage of Wales will be achieved by the end of 2019.

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

## 9.2 Invasive species

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

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

Authority staff or contractors will take into account the guidance provided on the use of pesticides near public rights of way and other publically accessible outdoor spaces such as country parks. The guidance can be found at:  
<http://www.hse.gov.uk/agriculture/topics/pesticides.htm>

## 10. Development

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### 10.1 Development & Public Rights of Way

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Developers must ensure that:

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

# 11.0 Recording

## 11.1 Information Governance

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

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

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

## 11.2 CAMS (Countryside Access & Management System)

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

and is linked into CAMS so that it is updated regularly.

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

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View Path Problems and Structures >  
Report a Problem >  
My Reported Problems >  
Track a Problem >  
Manage My Account >  
Logout >

**Public Rights of Way Map**

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

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

- Town/Village
- Street Name
- Postcode
- Route Code e.g. 133 2 1
- Grid Reference

Search

Go to My Saved Location  
Set My Saved Location

© Crown copyright. All rights reserved (100023415) (2012)  
This map is intended as a guide only and may not be legally accurate. Due to the changing nature of the countryside, actual conditions encountered may differ from some of the information shown.

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

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sir fynywy

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

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

### 11.3 Registers

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

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

### 11.4 The Definitive Map and Statement Recording Policy

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

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

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

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

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

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

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

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

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

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

## 12.0 Publicity and Promotion

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

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

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

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

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

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

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<sup>5</sup> National Survey for Wales

understand their responsibilities and for an understanding of how orders are made etc.

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

- Actively promote the public rights of way network and all other types of countryside access (parks and country parks) irrespective of ownership via VisitMonmouthshire.com
- Seek to implement the Monmouthshire Walking Product Development Strategy
- Provide access to digitised version of the Definitive map on modern mapping with access to information regarding furniture and promoted routes so that people can make informed decisions of where they want to go.
- The Service will try to target publications to specific users as per the Destination Development Plan and Rights of Way Improvement Plan.
- The Countryside Access Team will work with Ordnance Survey to correct errors on its mapping and to encourage the regular publication of Ordnance Survey maps.
- The Service will actively encourage other authorities involved with promoted regional routes and others to actively maintain and continue to promote the routes.
- The Countryside Access Service will not look to devise and promote new long distance paths itself, unless it is a multi-purpose path with high public value and benefits.
- To assist where possible user groups, volunteer groups, community/town councils and "Friends of..Groups" to promote access opportunities and in particular to assist in the promotion of local circular health walks.

Occasionally private individuals or organisations wish Monmouthshire County Council to help design or promote a walk or ride of their own. In this situation the following criteria must be met:-

- The route must be substantially on public rights of way and any permissive routes would require permission of the landowner.
- The route must conform to one of the types of walk specified in the Walking Product Development Strategy for which there is a known demand.
- Route furniture must be in a good condition
- Signage and waymarking should be in place at all decision points
- The route needs to be regularly inspected, pathcared and managed by the producers of the walk or by an agreed other organisation.
- Where possible the route should be least restrictive access
- Where possible the routes should be made available to higher users (cyclists/horse riders).

- The route guide must conform to good practice and be available to download from [visitmonmouthshire.com](http://visitmonmouthshire.com) or a well-designed website.
- Routes should be accessible by public transport and or will require adequate car parking close to the start/finish.
- Where possible routes should start /finish close to settlements.

Private routes which are not subsequently maintained or promoted adequately as per the conditions above, will be removed from Monmouthshire's website.

## 13.0 Statement of Priorities and Overview

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Management of the network is essential in order for users to use the network safely and with confidence. Given all the consideration of legislation, finance, best practice, practicality and policy, priorities are required to meet the expectations of users and to meet our obligations. Management includes not just the physical elements of public rights of way but also the enforcement, protection and legal definition of the network.

By focusing on the priorities within this document more officer time will be available to concentrate on proactive issues and projects across the network for the benefit of users. This must be partly steered by the Countryside Manager.

## 14.0 Statement of priorities for Definitive Map and Statement Orders

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### 14.1 Section 53 Modification Order Prioritisation

If a way is shown on the Definitive Map then it is conclusive evidence of public rights along the way unless there has been a legally authorised change. Monmouthshire, like other Authorities, has a backlog of applications for a path to be added or altered on the Definitive Map and Statement. These are known as Section 53 Applications (commonly also known as claims) and are dealt with under the Wildlife and Countryside Act 1981.

The Service has a public register of section 53 applications which can be found on our website.

Monmouthshire County Council agreed a programme for dealing with such work as outlined below in November 2004:

**All evidential Modification Orders will be dealt with in the date order that the completed application was received except in any of the following circumstances where a case may be investigated sooner.**

A. **Statutory Provision** *There may be paths not recorded on the Definitive Map which the Community Council nonetheless consider to be highways.*

The path must be subject to obstruction or encroachment as stipulated under Section 130 (3) & (6) of the Highways Act 1980. The resulting investigations may lead to the Definitive Map being modified by the surveying authority taking action about the encroachment/obstruction.

B. **Planning Considerations.** *Planning permission may be sought for a site where an unresolved claim that a path already exists.*

- The existence of a public right of way is a material planning consideration
- The question of the existence of the path should if at all possible be agreed with the landowner but that might not prove to be possible.
- The planning authority may take the view that the existence of the path needs to be resolved in association with the consideration of the planning application for the site.
- The surveying authority needs the discretion to take the matter out of turn if not to do so could be prejudicial to the developer, the public or the highway authority.

C. **Status Enquiries.** *Paths may be subject to diversion, extinguishment or traffic proposals or give rise to other causes of legal action for the purpose of which it may be necessary to establish the nature of the public's rights.*

- The opportunity to resolve the issue should not previously have arisen.

- For the purposes of justice, the status should need to be resolved and the surveying authority in association with the police, local authority or legal advisors involved should be satisfied that this is so.

D. **Matters of Financial Disadvantage.** There may be instances where because the status of a way has not been conclusively determined there would be financial prejudice if matters were to be left to be determined in accordance with the programme.

- There may be discrepancies between maps perhaps not reflected in search replies.
- A potential large maintenance obligation could fall upon the Local Authority if the matter were to be left.
- It is more cost effective to resolve the issue at an early date.

E. **Drafting errors** where they meet the above criteria

**This prioritisation is currently under review and it is likely that an additional criteria of “public benefit” may be added as outlined below.**

To be consistent with ROWIP and maintenance prioritisation public benefits could consist of

- Routes that allow more types of user – consistent with aims of rowip of increasing access to those with disabilities/health issues and who have little off road access
- Routes with positive health and safety benefits – such as providing safe off road routes as alternative to busy roads
- Links to amenities/tourism attractions.

In addition the Monmouthshire LAF have recommended that these issues should also be considered within any change:

- Where there is predominantly User Evidence
- Where there is Loss of use

## 14.2 Anomalies prioritisation

Anomalies will be dealt with in accordance to the same exceptions as laid down in the modification order prioritisation, unless there is an opportunity to resolve an anomaly through a diversion package or in order to progress an enforcement/maintenance issue/improvement scheme.

## 14.3 Planning Considerations. Planning permission may be sought for a site where a Temporary Closure/Diversion for Events or Works is required

The Countryside Service receives requests from Natural Resources Wales, Statutory undertakers and others for temporary closures or diversions where works or events are going to be undertaken on or over a right of way.

The Service will charge for processing these and will ask that certain conditions to be met. These will include such things as below, but might also be more specific relating to the particular path or landscape.

- The route must be checked prior to and following an event, or any operations i.e. tree felling, and the path restored at the applicants expense to a suitable condition as agreed by the Countryside Field Officer.
- The path, if possible, must have a diversion in place especially where national, regional and other promoted routes are involved.
- Any events along public rights of way have to be marshalled.
- Insurance for events is required
- The route should be well signed regarding any formal closure and be opened as soon is safe to do so.

It should be noted that complete closures of woods and other areas of land can deny communities access to the countryside, affecting their ability to lead active healthy lifestyles. **Such applications will not be allowed**, except in exceptional circumstances (where it can be shown that harvesting operations cannot be carried out in another way and will affect the whole site and be an actual safety issue for the public).

#### 14.4 Prioritisation of Rights of Way Legal Orders

The Countryside Service also has many requests per year for paths to be moved, altered in status or closed. There is one officer that deals with such requests and consequently there is a backlog of requests for changes.

The Council has published guides for the different types of orders to help applicants understand the processes, costs and timescales involved with legal orders. These are regularly updated and are available on request from [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk)

The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the various acts) for changing a PROW must apply.

- The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
- The Applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use.
- The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
- The definitive line should (where it is considered by the County Council to be reasonably practicable) be open, clear and safe to use.

As with Evidential Modification Orders, the County Council is often under pressure to process certain applications in advance of others. A policy is therefore required for this area of work also, to set out the priority that will normally be applied by the County Council.

#### 14.4.1 Prioritisation of Public Path Orders Policy

**Public path change orders are prioritised in date of application, or referral from an officer, but may be dealt with earlier if one or more of the following applies.**

- Where an application has been made to the County Council in its capacity as Planning Authority
- Where the processing of an Order could save significant costs incurred in other Rights of Way functions.
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.
- A problem exists which cannot be solved through maintenance or enforcement.
- A safer route is provided
- A route forms all or part of a missing link in the network
- A route forms part of a promoted or long distance or circular route
- A route is not shown in the Definitive Map and Statement but has an anticipated high level of use if it were to be added either by Agreement or Order
- A route is shown in the Definitive Map with lower rights and the anticipated level of use would be greater if higher rights were to be added either by Agreement or Order.

For the purpose of these policies the term 'Public Path Change Order' shall be taken to include:

- Orders made under Section 26 (creations), 118 (extinguishments) or 119 (diversions) of the Highways Act 1980
- Applications to the Magistrates Court under Section 116 of the Highways Act 1980 (extinguishments or diversions).
- Orders made under Section 257 of the Town and Country Planning Act 1990 (extinguishments and diversions).

#### 14.5 Processing Dedication and Creation Agreements

The County Council has powers to accept dedications of new rights. A policy is required to set out the priority that will normally be applied by the County Council to individual cases and hence the order in which applications will be dealt with.

Dedications and Creation Agreements will normally only be processed in the following circumstances:

- Where it will satisfy one or more of the relevant key principles set out above in 14.4.1
- Where the requirements to make a dedication forms part of an obligation in a section 106 agreement.

## 15.0 Statement of Priorities Maintenance & Enforcement

### 15.1 Overview

In common with many services the demand placed on the Countryside Access Service by the public is greater than our capacity to meet it and there is static and reducing budgets. How we allocate the resource available must therefore be prioritised. The priorities must reflect the need to adequately meet our statutory obligations while providing the greatest benefit to the public, and do so in a transparent and accountable way.

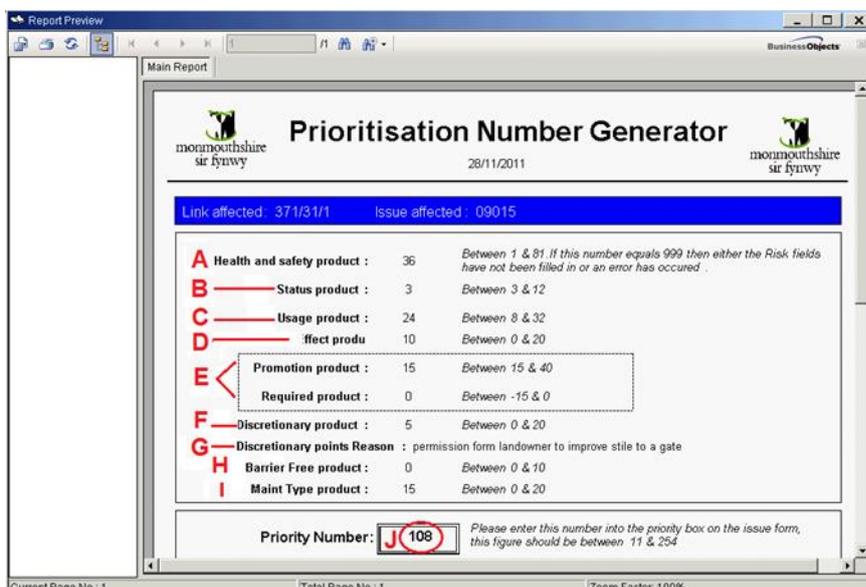
### 15.2 Network Prioritisation

The network management priorities for enforcement and prioritisation have been developed with regard to best practice and to reflect the extensive public consultation undertaken in 2010/11 (2 workshops, 331 consultations including all volunteers and Monmouthshire Local Access Forum, press and web advertisement and article in Countryside Newsletter sent to 500 people). The final version was agreed by Cabinet on 5<sup>th</sup> October 2012.

#### 15.2.1 How the prioritisation system works.

Monmouthshire's prioritisation system takes into account priorities from the rights of way improvement plan to increase the number of paths available to horse riders, disabled and cyclists, as well as the Councils responsibilities for health and safety and maintenance/enforcement. Also the route usage, status, promotion, whether a route is barrier free, the inconvenience and safety of the issue are all factored in.

On receiving an issue from the public, County Councillor, volunteer or other source, staff seeks relevant information and tick the relevant boxes within CAMS. This automatically generates a final prioritisation number and report as shown below.



It is important to note that once a prioritisation number is issued, it can be reviewed and changed if the nature of the issue alters, or other factors change the situation. This may increase, decrease or leave the score the same. The highest number an issue can receive is 254 and the lowest is 11. It should also be noted that a lower prioritisation number does not necessarily mean that that issue will not achieve attention or be forever at the bottom of the workload. Many lower priority issues are dealt with by contracts when grant funding is found or as part of other works on a path.

The system is subject to monitoring and periodic review. If found necessary, than the scoring used to prioritise may change.

The prioritisation system is based upon a list of 7 criteria which are assigned a weighting and given a range of scores. Combined these scores give the final total prioritisation score. The Enforcement Officer, Field Officer and two Field Wardens will use the prioritisation system to organise their workloads, alongside their other duties. The 7 Criteria are:

**Health and Safety, Impact and Effect**– This forms the greatest weighting and is broken into two sections. Firstly it calculates a risk product between 0 and 100, the greater the number the greater risk. The second section is the effect on the use of the path, and is secondary to the first.

Likelihood	Impact	Effect:
Very likely = 10	Fatality = 10	Inconvenient,
Likely = 8	Major injury/ fatality =8	Unusable,
Possible = 6	Major injury = broken bones/ incapacitated =6	Unknown/ bypassed,
Unlikely =4	Minor injury = cuts, scrapes, bruises, strains (walking wounded)=4	none
Extremely unlikely = 2	Insignificant = cuts, scrapes, bruises = 2	
Not recorded = 0	Unknown = 0	

When dealing with an issue the above options are selected as consistently and as objectively as possible. Officers receiving the issue will use their experience and all knowledge to hand to give a balanced view on the factors above erring on the side of caution. However it is not until an officer views the issue on site that a more comprehensive assessment will be given. Once a site visit has been carried out the

officer will update the risk assessment and therefore the overall prioritisation score may change.

**Route Usage** - The Route Usage box is broken down in to High, Medium, Low and Unknown/blank. To ascertain which category a link falls into the following factors are taken into account:

- People Counter figures
- worn surface of path or worn furniture showing heavy use by legitimate users
- Information from local users/communities
- Large number of issues from multiple sources/users
- A link path to local amenities (e.g. Pub, Dog walk area, Park etc.)
- Worn surface of path shown on aerial photos/street view
- Landowner information
- Change of vegetation
- promotion

**Status - This** relates to whether the route is a footpath (3 points), Bridleway (6 points), Restricted Byway (9 points), or Byway Open to All Traffic (12 points). Routes that allow more types of use support a more diverse range of users and as such have been a greater weight in the prioritisation system. This is consistent with the aims in the RoWIP of increasing access to those with disabilities/ health issues and who have little off road network to use.

**Promotion** – More weight is given to those routes which are promoted and the amount of points awarded is governed by the type of promotion as follows:

- National Trail e.g. Offa's Dyke Path National Trail (40 points)
- Regional Trail e.g. Usk Valley Walk (35 points)
- Monmouthshire Promoted Tourism Trail e.g. Tread and Trot Trails (points 25)
- Pathcare route – (points 25)
- Local Walks – e.g. Mitchel Troy Circular
- Cycle route – Points 15

**Maintenance/Enforcement type:** These are weighted according to which group they are broken down into.

- 1 Obstacle
  - 1 Crow notice
  - 1 S56 repair notice
  - 1 Bridge – maintenance
  - 1 Clearance maintenance
- 

2 Ploughing cropping  
2 Steps – maintenance  
2 Gate – maintenance  
2 Stile –maintenance  
2 Tree – clear  
2 Deposit - enforcement  
2 Landscape - enforcement  
2 Animals -enforcement



15 Points

3 Surface – maintenance  
3 Drainage – maintenance  
3 Surface – enforcement



10 points

4 Notices/signs - enforcement  
4 Hazard abutting - enforcement  
4 Fingerposts  
4 Overhead/side veg – clear/enforcement  
4 Waymarking



5 points

5 Info board  
5 Other obstructed  
5 Other maintenance  
5 Other clearance  
5 Other enforcement other  
5 Other signage



0 Points

**Barrier free** - Currently linked into the promoted route section of CAMs any routes deemed to be barrier free, meaning easily accessible to those with disabilities for example wheelchair users. This is currently being expanded to take into account routes that are already barrier free, and to identify routes that have potential for changing into a barrier free route. Any routes that fulfil this criteria gain an extra 10 points.

**Discretionary Points** - To be used when not covered by existing factors to a maximum value of twenty points, normally five points for each additional reason. These must also be authorised by the Principal Countryside Access Officer. Some of the possible uses of this are as follows:

- Where a deadline is involved for works such as grant funding or enforcement notice
- Where the work is part of a project
- Where works are grouped with others to open up the network
- Where improvement works have been authorised e.g. making the network more accessible
- Fulfilling existing policies e.g. The Equality Act

- Where works are to facilitate a Planning application
- Land charge search - requiring Quality Assurance work to be undertaken

### 15.2.2 How the system is applied

- The highest prioritisation scores equate to highest priority.
- As many tasks are then implemented as resources allow, starting with the highest scores, but subject to any practical considerations affecting implementation and the ability to work in key community areas where there are clusters of issues and most public benefit can be gained, or where other opportunities exist to enhance the network i.e. grants for specific areas.

### 15.3 Permissive Paths

Permissive paths will not be managed by the County Council unless they have been established under a formal signed agreement, or form part of a national or regional trail promoted directly by Monmouthshire County Council. The Council will not enter into any formal agreement unless there is a demonstrated public need for the path which cannot be met by other means.

It is known that large parts of the Usk Valley Walk, Wye Valley Walk and small sections of Offa's Dyke Path National Trail are permissive paths. These routes and other permissive routes will be managed in conjunction with the landowner and according to the above prioritisation system. The Council will seek to make Definitive all permissive paths on existing promoted regional and long distance routes i.e. Wye Valley Walk, Usk Valley Walk, Three Castles Walk.

## 16.0 Enforcement Policy Overview

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The primary function of central and local government enforcement work is to protect the public and the environment. This applies specifically to Public Rights of Way as well as to a wide range of other functions. Furthermore the effectiveness of legislation in protecting the Public Rights of Way network and the rights of the public depends crucially on the compliance of those regulated. We have therefore adopted the central and local government Concordat on Good Enforcement.

Included in the term "enforcement" are advisory visits and information. We will therefore provide information and advice in plain language on the rules we apply and we will be open about how we go about our work. We will always be keen to discuss general issues or specific problems with anyone experiencing difficulties.

We believe that prevention is better than cure and that our role therefore involves actively working with both landowners and users to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will always identify themselves by name. Our staff will also provide a contact point and telephone number for further dealings with us. In cases where disputes cannot be resolved without formal enforcement any right of appeal or complaint will be explained, with details of the process and the likely timescales involved.

However we are also required by legislation to act in a timely fashion where some issues are concerned such as cropping and ploughing. The Countryside Access Team does not hold a directory of all landowners. In each situation every effort is made to identify an owner of land, however in cases where one cannot be found (for example for ploughing and cropping, barbed wire obstructions, ropes across paths, locked gates etc.) a Notice will be placed in clear view on site.

In dealing with obstructions, the authority is aware that information recorded in the Definitive Statement about the position or width of a right of way, or of the limitations or conditions that are relevant to it, is conclusive evidence of those matters. Where there are legitimate limitations, information should be recorded in the Definitive Statement describing the effect that they have in restricting the use of the way by those who are lawfully entitled to use it. Where the information recorded is not about position or width, or is not relevant to limitations or conditions, the authority will examine the evidence in each instance to resolve any inconsistency and make any necessary modifications to the Definitive Map and Statement in line with the duties imposed by s. 53(2) of the WCA 1981.

Evidence may be available to suggest that a public right of way shown on the Definitive Map does not exist. However, the Map is conclusive as to the public rights of way shown to exist on it (without prejudice to the existence of other rights – see s. 56(1) of the WCA 1981) and the path or way must remain open and available for

use until the Definitive Map has been amended, or closure procedures have been complied with.

In investigating an alleged offence, we will consider:

- Whether sufficient evidence exists to show an offence is being committed or may have been committed.
- The powers available to the authority to deal with the offence.
- Whether the offence is a repeat of an offence that has been dealt with previously through enforcement procedures.
- Whether the offence involves the erection of permanent structures or developments.
- Whether the offence is a recent occurrence or has been going on for a substantial length of time before it was identified.
- Whether enforcement action would be proportionate in the circumstances.
- The terms of any other policy in place within that authority, including the principles contained within the Concordat for Good Enforcement, where relevant.

Options available to the authority following investigation of such complaints will usually be:

- **No enforcement action.** (It may be concluded that an offence has not been committed or that the issue could be resolved other than by enforcement action. In these circumstances the complainant and alleged offenders will be notified and CAMS updated accordingly)
- **Informal advice** (Where problems identified are of a minor nature and an authority is confident that corrective action will be taken by the alleged offender, it may seek to address the problem by giving informal advice. In such circumstances, we will agree a reasonable timescale for corrective works after which more formal enforcement methods will be considered.)
- **Informal enforcement action.**
- **Service of a notice and/or direct action with recovery of costs.**
- **Simple Caution.**
- **Prosecution.**

### 16.0.1 Service of Notice and Direct Action

Where provision is made in the relevant statute, the authority may serve statutory notices which require a person, business or organisation to comply with specific requirements.

Where a formal notice is served, the method of appealing against the notice, if any, should be explained in writing at the same time. The notice should explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.

In general, failure to comply with a properly written and served statutory notice will make the recipient liable to prosecution. In some cases, the authority is able to carry out direct works in default of a failure to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances, it is possible to prosecute in conjunction with service of a notice.

Often, specific provision is made within a statute for the form that a notice must take, and how it must be served. For notices issued under the HA 1980, sections 320 and 322 apply.

The Authority may also use common law powers to remove an obstruction or otherwise legally abate a nuisance on the highway without prior notice.

### 16.0.2 Simple Caution

Previously known as a formal caution, simple cautions may be given in circumstances where offences have been investigated and evidence of guilt sufficient to give a realistic prospect of successful prosecution has been established. Simple cautions require the offender to admit guilt by signature of a declaration. The suspected offender must understand the significance of a simple caution and give an informed consent to the caution.

The Authority will follow the procedures described in Ministry of Justice guidance when issuing a simple caution.

The aims of simple cautions are:-

1. Deal quickly and simply with less serious offenders.
2. Avoid unnecessary appearances in a criminal court.
3. Reduce the likelihood of offenders re-offending.

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

### 16.0.3 Prosecution

Where an offence is serious in nature, the authority may elect to bring about a prosecution.

## 16.1 Network Inspection

The Service does not operate a programmed inspection regime of the PROW network given the length of the network, the resource this would require, and the many factors over which the County Council has little influence but that can affect the network and would render inspection regimes ineffective; for example

- Ploughing and cultivation
- Excavation by animals
- Private vehicular use
- Landowner liability items such as gates and stiles
- Forestry operations

In place of a programmed inspection regime the Service assess all reports received in line with the network and operational priorities set out in Chapter 16 above.

Volunteer Community Groups however are encouraged to undertake surveys of the communities they work in to establish volunteer work and improvement programmes.

## 16.2 Barbed Wire Across A Public Right Of Way

A barbed wire fence or exposed barbed wire erected across a Public Right of Way without an adequate means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the County Council has adopted in these matters is firstly to ask the owner of the fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the County Council as it would constitute a new stile, (see stiles and gates). If the owner fails to agree to either of these courses of action the County Council will remove the barbed wire where it affects the path without further notice. If the owner continues to commit further offences of this nature the County Council will consider prosecution for obstruction. (Highways Act 1980 section 137 and 149).

## 16.3 Barbed Wire Alongside A Public Right Of Way

Where a barbed wire fence is situated alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of the County Council the barbed wire does represent a danger to the public then the County Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. (Highways Act 1980 section 164.)

## 16.4 Bridges

Sections 91 and 92 of the HA 1980 allow for the construction and reconstruction of bridges forming part of a public right of way.



A bridge may be reconstructed either on the same site or on a new site within 200 yards of the old one. Should a bridge be moved to a new site within the 200 yard limit, the power extends to the highway that gives access to the bridge and this can be reconstructed along with the bridge without the need for a diversion Order.

However, under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010, flood defence consent is required from Natural Resources Wales prior to any work in, over, under or near a main river. Where a bridge is to be constructed over any other form of water

course (including ditches, drains, cuts, dikes, sewers other than public sewers, and passages through which water flows) ordinary watercourse consent is required.

Monmouthshire has 1326 bridges on its rights of way network. Many of these are of specialist design and over 10 metres. Monmouthshire County Council will maintain and install bridges that are the responsibility of the Highway Authority.

All bridge work is prioritised according to the prioritisation used for all maintenance and enforcement issues and includes risk, usage, promotion and inconvenience. However when it comes to replacement, it also includes the possibility of diverting the path, whether there is another bridge nearby, cost and complexity. The benefits of replacing each bridge to the public as a whole are therefore very much taken into account when prioritising which bridges should be replaced first.

### 16.5 Bridges Required Over New Ditches, Ponds And Channels

It is an offence for a landowner to wilfully obstruct a Public Right of Way (Highways Act 1980 s137). The County Council has a duty to protect and assert the rights of the public to the use and enjoyment of the public rights of way network (Highways Act 1980 s130).

Where a landowner creates a new ditch, pond or channel etc. that crosses an existing right of way, a suitable bridge, or structure must be provided which can accommodate all legitimate users safely and without restriction.

Structures will be supplied and erected by the County Council or approved agents. Landowners will normally be charged 100% of the reasonable costs of the bridge structure and installation. Where a structure is built to a higher specification at the request of the Authority than the County Council will bear any additional cost. Absence of any structure can be construed as "wilful obstruction" on behalf of the landowner. Exceptions may include instances where a path is not recorded in the Definitive Map and Statement subsequent to the new feature being created.

This policy is designed to ensure that landowners, who intentionally obstruct rights of way, by creating ditches or water features, are required to provide a bridge or other suitable structure on the Definitive line of the right of way. Diverting the path retrospectively is not normally an acceptable solution and the feature will normally be considered an obstruction.

Higher specifications may include extra width beyond minimum requirements, higher parapets and additional requirements where the route is considered appropriate for access for all. The County Council will still charge up to a minimum standard but will bear the costs of a higher specification. This approach is consistent with the County Councils aim to improve access for all.

## 16.6 Bulls and Dangerous Animals

It is an offence under s. 59 of the WCA 1981 for the occupier of land crossed by a Public Right of Way to allow a bull over 10 months old and on its own and/or any bull of a recognised dairy breed (even if accompanied by cows/heifers) to be at large in it.

Bulls that are less than 10 months old or of a recognised beef breed and at large with cows/heifers are exceptions to this rule.

The recognised dairy breeds are: Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry. However, even for bulls that are excluded from the offence in s. 59, farmers' obligations under the Health and Safety at Work Act 1974 still apply.

If any animal, which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a Public Right of Way an offence may be committed and the occupier could be sued by the injured party (Wildlife and Countryside Act 1981 section 59). Farmers and landowners/occupiers should have regard also to s. 2 of the Animals Act 1971 when considering keeping any animal in a field crossed by the public right of way, including horses.

The County Council will deal with the problem by approaching the landowner and requesting that he moves the bull or dangerous animal from the field in which the right of way passes. A failure on the part of the landowner to comply with such a request may result in prosecution.

A Health and Safety Executive (HSE) study reported that most of the incidents on rights of way involving cattle arise when suckler cows and calves are at large in fields. The HSE have summarised their findings and provided guidance for the public and for farmers in Agriculture Information Sheet No 17EW (rev1). The guidance also includes useful information as to the form and contents of signs that could be used to indicate the presence of animals.

The Dangerous Wild Animals Act 1976 states that "no person shall keep any dangerous wild animal except under the authority of a licence granted in accordance with the provisions of the Act by a local authority". A full list of the species covered can be found in the Act. However, for the purposes of agriculture, it should be noted that the list includes wild boar and ostrich. The Act requires such animals approved by licence to be kept in secure accommodation and not to be in contact with members of the public. Consequently, no such animal should be kept on or near a public right of way.

## 16.7 Cattle Grids

Policy is currently being written. To be included at later date

## 16.8 Competitions and Speed Trails

It is an offence (under section 33 of the Road Traffic Act 1988) to hold a motor vehicle race or trial or speed on a footpath or bridleway unless the event is authorised by the highway authority and the consent of the owner is obtained in writing. Even if authorised and where the owner has given consent an offence is still committed if the vehicle is driven dangerously or without due care and attention or without reasonable consideration for others.

The use of public rights of way for organised sponsored walks, cross-country running challenges and similar events is generally considered to be acceptable, provided they reflect the rights available on the chosen route, i.e. not promoting a cycle race upon a footpath.

## 16.9 Crops Growing on Public Rights Of Way

Where a crop (other than grass) has been planted or sown on land crossed by a Public Right of Way the occupier has a duty to ensure that the line on the ground of the Public Right of Way is indicated to be not less than the minimum width (1m for cross field footpaths and 2m for cross field bridleways 1.5m + field edge footpaths and 3m+ for field edge bridleways). Additionally the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence. (Rights of Way Act 1990 section 137A.)

## 16.10 Ploughing and Crops on Public Rights Of Way

In some circumstances occupiers of land are entitled to plough Public Rights of Way if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. All field edge public rights of way and cross-field Roads used as Public paths (RUPPs), Restricted Byways and 'Byways Open to all Traffic' (BOATS) should never be ploughed.

Where a cross-field footpath or bridleway is ploughed it must be reinstated within the "statutory time limit" otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use to not less than the statutory minimum width. In respect of footpaths the minimum width is 1m and 2m for bridleways. The "statutory time limit" is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling. (Rights of Way Act 1990 section 134)

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

### 16.11 Enforcement of Ploughing and Cropping

Interference with Public Rights of Way by ploughing and cropping is a major problem and the County Council has adopted the following protocol to deal with it.



For a first offence the County Council will explain the law to the offender and advise that the route will be inspected again within 14 days. Upon expiry of that period if the path has not been reinstated to a satisfactory standard the Council will serve formal legal notice upon the offender requiring them to reinstate the path within a further 14 days. If the path is still not reinstated

satisfactorily the Council will carry out the necessary work with contractors and recover costs from the offender.

On occasions where there are repeated offences in subsequent years the County Council will immediately serve formal legal notice requiring the reinstatement of the path within 24 hours (unless other time frame agreed).

Where an occupier re-offends after service of formal legal notice on the same path, the County Council will serve legal notice and additionally will consider prosecuting the offender.

### 16.12 Dangerous Land Adjoining a Public Right Of Way

From time to time the County Council encounters unfenced dangers on adjoining land, which present hazards to path users. The County Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him to remove or adequately fence the danger. The County Council can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice the Council may carry out the work and recover the costs from the owners. (Highways Act 1980 section 165.)

### 16.13 Diversion, Creation and Extinguishment of Public Rights Of Way

To alter, close or create a new Public Right of Way a legal order is required. All orders are open to public consultation and certain legal criteria have to be met. The County Council therefore cannot guarantee that all orders will be made or completed. Application forms and advice regarding diverting, closing or creating a public right of way are available from the Countryside Access Team at [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk)

### 16.14 Dogs On Public Rights Of Way - see also Intimidating Dogs

The Council endorses responsible dog ownership. Clear and concise advice can be found in the dog walking code which is available on the Natural Resources Wales Website <https://naturalresources.wales/media/4862/the-dog-walking-code.pdf>

Dogs are allowed on Public Rights of Way but they should be kept under close control at all times. There is no requirement in law for a dog to be on a lead at the current time (but legislation may soon change this). A path user who allows a dog to wander off the right of way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path or to worry livestock the owners are advised to keep the dog on a lead. It is an offence to allow a dog that is not under close control or on a lead to be at large in a field or enclosure with sheep. A farmer may shoot a dog, which is attacking or chasing livestock.

The fouling of a public right of way by a dog may be an offence under an order made under the Dogs (Fouling of Land) Act where the person in control of the dog fails to remove the fouling. Dog fouling is an accepted hazard to health. The County Council will attach signs to stiles, gates and fingerposts advising owners to keep their dogs on a lead, or under close control where there is a reported problem. The County Council may also choose to use its powers to make an order under section 27 of the Road Traffic Act 1988 requiring dogs to be kept on a lead on specified footpaths and bridleways. Failure to comply is an offence.

### 16.15 Intimidating Dogs

It is an offence to keep a dangerous or intimidating dog on a Public Right of Way and it can also be considered a "public nuisance".

In the above circumstances the County Council will request the landowner to take action to remove the dog from the vicinity of the footpath so that users of the public right of way will not be deterred from using the path. The County Council may also advise complainants to notify the police directly.

### 16.16 Electric Fences Across a Public Right Of Way

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the

County Council has adopted in these matters is firstly to ask the owner of the electric fence to remove it immediately, or if it is necessary for agriculture to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the County Council as it would constitute a new stile, (see stiles and gates). If the owner fails to agree to either of these courses of action the County Council will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature the County Council will consider prosecution for obstruction. (Highways Act 1980 section 137, 137Z, and 149.)

### 16.17 Electric Fences Alongside A Public Right Of Way

Where an electric fence runs alongside a Public Right of Way it may be a danger to and a nuisance to members of the public. If in the opinion of the County Council this is the case then the County Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the County Council removing the fence and recovering costs from the owner. (Highways Act 1980 section 165.)

### 16.18 Encroachment

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred, or is alleged to have occurred, the County Council is duty bound to investigate and the following action will be taken.

Consideration will be given to whether the encroachment has actually occurred and is materially affecting the way or may do so in the future. This may require considerable research including historical research to establish the legitimate width of the highway, (see Width of Public Rights of Way). If it is demonstrated to the County Council's satisfaction that encroachment has occurred but it is not materially affecting the path or the rights of users the County Council may regard it as *de Minimis* "*the law is not concerned with trifles*". In these circumstances the County Council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the encroachment has been found to the County Council's satisfaction to be materially affecting the right of way and the rights of users the following approach will be taken to have it removed. Firstly the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment within a reasonable timescale to be determined by the County Council. If this fails to secure the removal of the encroachment the County Council will commence enforcement action in respect of the obstruction. (See obstructions).

### 16.19 Erosion

Erosion will be addressed by preventative maintenance wherever possible.

Sites, which are identified as suffering from erosion, will be prioritised for action according to public safety and budget restraints.

### 16.20 Firearms on Public Rights Of Way

It is not an offence to shoot across a Public Right of Way, although to do so could amount to a common law nuisance, wilful obstruction of the Highway under Highways Act 1980 s137, a breach of Health and Safety at Work Act 1974 or intimidation, depending on the circumstances. It is an offence to discharge a firearm within 50 feet of the centre of a byway (carriageway carrying public vehicular rights) if it injures, interrupts or endangers any user of the byway.

Section 19 of the Firearms Act 1968 also makes it an offence for a person to have a loaded air-weapon, or any other firearm whether loaded or not, together with ammunition, in a public place (which includes public rights of way), unless the person has lawful authority or a reasonable excuse, such as a landowner shooting vermin on his own land.

Where the County Council receives a complaint regarding firearms and is concerned about public safety than the matter will be referred to the police. -see also intimidating and threatening behaviour

### 16.21 Hedges and Trees Adjacent To Public Rights Of Way

(See also 16.22 "Tree Branch across Public Rights of Way")

In most circumstances the responsibilities of the County Council do not extend to the maintenance of hedges and trees at the side of public rights of way. Where a hedge overhangs or obstructs a Public Right of Way the County Council has a right to remove so much of the overgrowth to prevent obstruction to pedestrians and equestrians. Additionally the Council has a power to require the owners of overhanging hedges to require them to lop or cut back the hedge within a period of 14 days. (Highways Act 1980 section 154.)

If a byway open to all traffic or restricted byway is being damaged by the exclusion of light and air due to adjacent hedges or trees the County Council has a power to seek an order at a Magistrates Court to require the owner to cut back sufficient of it to prevent such damage. However before employing this power the County Council will discuss the matter with adjacent landowners and request that the hedges or trees be cut back or agree to carry out the work in conjunction with the owner as part of a larger project. (Highways Act 1980 section 136.)

### 16.22 Tree Branches and Limbs across Public Rights Of Way

If a branch of a tree has fallen across a Public Right of Way such that the way is obstructed the County Council has adopted the following protocol. It will contact

the owner of the tree and request the branch is removed within a predetermined time. If the owner fails to comply with this request the County Council will serve notice on the owner of its intention to remove the branch and recover from the landowner or occupier the costs incurred. (Highways Act 1980 section 150 (4) (c).)

### 16.23 Intimidating or Threatening Behaviour Intended To Deter Users From A Public Right Of Way

The use of intimidating behaviour with the intention of deterring the use of a right of way is possibly an offence and may amount to obstruction of the path.

In these circumstances the County Council will seek to address any underlying issues, which have led to the situation arising. The County Council may then issue a warning to the offender and involve the police as appropriate. (Public Order Act 1986 section 4)

### 16.24 Landowners Liability To Path Users

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to path users by the negligence of the owner or occupier. For example if a stile were to collapse under a walker or if a path user were to be injured by an electric fence placed across a path then the injured party may pursue a claim against the occupier of the land. (Occupiers Liability Act 1957.)

### 16.25 Liability To Path Users By The County Council

As Highway Authority the County Council is responsible for the surface of Public Rights of Way. In certain circumstances the County Council will be liable for injury caused to persons using a Public Right of Way if the injury is due to a negligent act with regard to the surface of the path.

### 16.26 Litter and Fly Tipping

The County Council is responsible for keeping rights of way in their area, which are publicly maintainable, clean and clear of litter and refuse, so far as is practicable. (Environmental Protection Act 1990ss 86(9) and 89(1)&(2). However regard has to be had to the character and use of the right of way as well as to the measures that are practicable in the circumstances.

If there is sufficient litter to amount to an obstruction then the County Council also has a duty to take appropriate action – see obstruction.

To help deal with the problem of litter and dog poo, we ask all visitors/users to follow the advice in the [Countryside Codes](#) to keep our places special for both wildlife and people.

This means that everyone should take their litter and bagged dog poo away with them at the end of their visit if there is no bin on site, or if the bin is already full.

## 16.27 Misleading Signs And Notices Erected On Public Rights Of Way

Misleading And Unlawful Signs Can Deter People From Lawfully Exercising Their Right To Use Paths And The County Council Has A Duty To Prevent Such Occurrences. Such Signs Erected On A Public Right Of Way Can Be Removed By The County Council.

Signs Erected Affecting A Public Right Of Way But On Adjacent Land Can Be Dealt With On Application To The Magistrates Court. The Magistrates May Impose A Fine Or Order The Offender To Remove The Sign On Pain Of A Continuing Fine For Each Day It Remains. (Highways Act 1980 Section 132. National Parks And Access To The Countryside Act 1949 Section 57.)

## 16.28 Obstructions And Encroachments, Which Can Be Readily Removed

The County Council has a statutory duty to remove all obstructions and encroachments to Public Rights of Way (The Highways Act 1980). The County Council also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Monmouthshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. Depending on circumstances, offenders are normally given 7 days to comply. This informal notice will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the County Council will remove the obstruction and recover the costs from the offender.

The County Council has a protocol for considering prosecution for obstruction or other offences relating to rights of way as well as taking the direct action outlined above. (Highways Act 1980 S143.)

## 16.29 Obstructions and Encroachments Which Are More Permanent

From time to time permanent obstructions on Public Rights of Way are encountered. Often permanent structures are erected on Public Rights of Way and an unofficial diversion put in place by the landowner or occupier. The County Council has a statutory duty to assert and protect all Public Rights of Way. (Highways Act 1980 S130.)

Monmouthshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue with the landowner/occupier who will be given the opportunity to apply for a diversion of the path. If, after a certain period of time, no application is forthcoming enforcement proceedings will be commenced against

the offender in the magistrates Court. The magistrates can make an Order requiring the offender to remove the obstruction within a specified time period and impose an ongoing fine if the offender fails to remove the obstruction. (Highways Act 1980 section 137 and 137Z.)

Where authorities choose to exercise any of their powers to remove an unlawful obstruction after a person has been convicted under s. 137ZA(3), s. 137ZA(4), in conjunction with s. 305 of the HA 1980, allows authorities to recover expenses reasonably incurred in doing so.

### 16.30 Pesticides and Herbicides

The Health and Safety Executive advises that rights of way should not be over sprayed and that if the product label advises that people and animals should stay out of a crop, which has been sprayed, the need for warning notices where rights of way join or cross the treated area should be considered. (Health and Safety at Work Act 1974 section 3.)

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

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

### 16.31 Rope Across a Public Right Of Way

It is an offence to stretch a rope or similar object across a public right of way. In some circumstances, a temporary rope or wire to restrain farm animals may be acceptable across a public footpath (but no other class of right of way), provided that it is visible and can be easily and safely removed and replaced by path users.

The County Council will request that any unauthorised rope or similar object be permanently removed. If this is not done, the County Council will remove the rope and prosecution may be considered. (Highways Act 1980 section 162.)

### 16.32 Scheduled Ancient Monuments

Scheduled monuments are nationally important monuments that are afforded statutory protection under the Ancient Monuments and Archaeological Areas Act 1979 and the Historic Environment (Wales) Act 2016. The aim of the protection is to avoid any damage or significant alteration to the monument and its setting. The extent of any such monument is depicted on a plan known as the scheduled area.

Cadw should be consulted prior to undertaking any work to a public right of way within a scheduled monument. Scheduled monument consent is required from the Welsh Ministers, via application to Cadw, before any works are carried out within the scheduled area that could cause damage to the scheduled monument. It is a criminal offence to do otherwise and the types of works that require such consent include ordinary maintenance activities such as digging post holes, installing new

furniture, and tipping materials onto a surface. Proposals should be considered in light of published guidance on the Conservation Principles for the Sustainable Management of the Historic Environment in Wales. Further information is available from the Cadw website.

### 16.33 Signposts

Monmouthshire County Council has a duty to signpost all footpaths, bridleways and byways where they meet a metalled road (Countryside Act 1968). This is usually undertaken by installing a fingerpost.

All signposts used in association with public rights of way will conform to:

- The Traffic signs and General Directions 1994 or subsequent amendments.
- Designs approved by Cabinet Member.
- Designs approved in special circumstances, by the Countryside Access Manager, to allow local distinctiveness and to aid improvements on promoted or "access for all routes", or to contribute to actions within the ROWIP.

It is an offence under s. 131 (2) of the HA 1980 to remove or obliterate a traffic sign that complies with the Traffic Signs Manual without authorisation.

### 16.34 Waymarking

The County Council has no duty to waymark. However it is recognised that it is important for land management and that identifying the alignment of routes provides confidence to users. Therefore public rights of way should be waymarked where necessary along their length in accordance with the former Countryside Commission's recommended colour co-ordinated notation and following consultation with landowners/and or occupiers. Moreover, if agreement can be reached to use existing structures, this will be preferable to erecting new ones.

- ⇔ Footpaths are waymarked using yellow arrows (BS 08 E 51).
- ⇔ Bridleways are waymarked with blue arrows (BS 20 E 51).
- ⇔ Restricted byways are waymarked with purple (plum) arrows (BS 02 C 39).
- ⇔ Byways open to all traffic are waymarked with red arrows (BS 06 E 55, approximate).

Waymarks should not be placed on trees or in hedges except in very exceptional circumstances where it is not possible for a waymark post or other structure to be provided.

### 16.35 Stiles and Gates on Footpaths and Bridleways

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The County Council's only duty extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

However the County Council has a discretionary power to extend this grant where least restrictive access improvements are taking place and will, in normal circumstances where there is sufficient budget provide a 100% grant by arranging to carry out all the work at no cost to the landowner and will also normally supply the necessary furniture. This discretionary grant will be withdrawn if landowners fail to cooperate, are obstructing other rights of way or are requesting a diversion. (Highways Act 1980 section 146.)



If an occupier of land wishes to install additional stiles or gates on footpaths or bridleways they must apply in writing to the County Council for authority to do so. To erect stiles or gates without this authority is an unlawful obstruction and is a criminal offence (see obstructions).

The only circumstance for which the County Council can provide authorisation for the erection of a new stile/gate is that the structures are required for stock control purposes or forestry works. (Highways Act 1980 section 147.) Note gates and stiles authorised under section 147 will be under the condition that if the land reverts to a different use from forestry or livestock are

no longer present than the structure can be removed.

Stiles and gates cannot be erected for security or other purposes and may be regarded as obstructions to the highway. (See obstructions)

When authorising new gates or stiles under s. 147 of the HA 1980 on a path that is suitable and of sufficient width to allow vehicular access, the authority will consider including a condition to require the landowner to remove and replace that structure should the authority require later access.

It is the landowner's duty to ensure that livestock do not get out onto highways and cause an accident. Monmouthshire County Council has in the past taken a sympathetic approach to farmers who padlock their gates to prevent livestock from getting on to main highways by installing stiles and kissing gates alongside the field gate through which the right of way passes. This approach will continue only where there is a possibility of livestock getting on to main roads if the farmers gate is left open by the public. However it should be noted that Monmouthshire has a duty in law to ensure paths are accessible to all and in line with that legislation the Council will no longer allow stiles next to gates.

Farmers field gates must remain unobstructed and available for public use, so that the public can open and shut the gate easily on footpaths where

- such a field gate is not the last restrictive barrier to livestock,
- the livestock are permanently removed
- it is not possible to erect a self-closing gate or kissing gate next to the existing farm gate
- complaints are received from the public

Monmouthshire County Council will provide signs reminding the public to shut the gate. It should also be remembered that to lock a gate through which a Public Right of Way runs is an offence and the County Council may have no choice but to deal with the matter as an obstruction if complaints from the public are received.

Unless dedicated with a limitation of a gate, restricted byways and byways open to all traffic may not have such a structure placed across them. Section 145 of the HA 1980 specifies that a minimum width of 5 feet (1.5 metres) must be provided for a gate across a bridleway and a minimum of 10 feet (3 metres) for a gate on a highway comprising a carriageway (i.e. one where the public have a right of way for the passage of vehicles). In the case of bridleway gates dedicated subject to BS 5709 standards, those gates should be useable whilst the horse rider is mounted.

Monmouthshire County Council operates an "Access For All" policy where the least restrictive option of furniture will be used. (See Chapter 7 Equality Act and Least Restrictive Access Policy)

### 16.36 Surface of Public Rights of Way

Section 263 of the Highways Act 1980 vests the surfaces of highways maintainable at public expense in the highway authority. Monmouthshire County Council is therefore able to act as if they were owners of surfaces of public rights of way, to an extent sufficient to control, protect and maintain the way for use by the public.

The authority is required to ensure that ways are capable of accommodating the use that is made of them by ordinary traffic at all times of the year. This means that work will be undertaken to ensure the route is safe and fit for ordinary traffic, as appropriate to its status. This includes cutting back any surface vegetation as required. This is carried out in accordance with our maintenance and enforcement prioritisation.

The Authority also has a general power of improvement under s. 62 of the HA 1980 that can be relied on in circumstances where specific powers are not applicable. However, where this is used improvements should ensure that the route remains usable as dedicated.

The County Council as the highway authority owns the surface of all Public Rights of Way that are publicly maintainable; the landowner's interest only extends to the subsoil. It is an offence to interfere with the surface of a public right of way to the detriment of users, the County Council has a duty to protect the interests. The County Council will take enforcement action to ensure the surface of Public Rights

of Way unlawfully disturbed are reinstated. (See also Enforcement and Ploughing and Crops on public rights of way).

Occupiers of land can disturb the surface of a right of way by special licence if they first apply to the County Council to do so and by statutory licence in respects of ploughing. (See ploughing and crops)

Where there are public footpath or bridleway rights on a route, which also has private vehicular rights, the County Council may consider making a contribution towards the costs of maintenance of the surface to the extent required for the level of public rights.

Landowners and occupiers who wish to upgrade the surface of a footpath, Restricted Byway or bridleway on which there are also private vehicular rights, must apply in writing to Monmouthshire County Council's Countryside Access Team. Full details of the works to be undertaken and proof of the landowner's agreement will be required before permission to alter the surface the right of way can be considered or agreed. Where upgrading a surface of a path is agreed this will normally be on the basis that the applicant will pay the costs involved and continue to maintain and repair the surface of the path and any necessary drains to the new standard. In considering such applications the Authority will also consider the impact on the public's enjoyment of the route, safety, environmental and landscape issues.

### 16.37 Vegetation, Clearance & Cutting

The County Council is responsible for ensuring that vegetation growing in the surface of a Public Right Of Way is kept under control. Overgrowth i.e. plants growing across the path from beside it, are the responsibility of the landowner (see Hedges and Trees Adjacent to PROW)

Effort will be made to ensure vegetation clearance observes good conservation practice by following the guidance within the Rights of Way Biodiversity Technical Manual.

Rights of Way found in need to be cutting will be incorporated into the maintenance list for attention according to our prioritisation in Chapter 16.

### 16.38 Volunteers

The Council has various policy and practice documents that provide a comprehensive source of information for individual volunteers and MCC's role as managers. A new set of guidance is in production to enable community and other groups to volunteer.

## 16.39 Width of Public Rights Of Way

There is no general rule applying to the width of Public Rights of Way and the width is a matter of fact to be determined on each occasion based upon the following. The width may be set out in

- the Definitive Statement,
- an historical document or
- It may be the width of the way between boundaries such as hedges or fences.
- Alternatively the width may be that which the public have customarily enjoyed.

In the absence of the foregoing the County Council will require a reasonable width to be made available, which would be sufficient for two users to pass and be convenient for cutting machinery and assist to make paths accessible to all users as required under the Equality Act. In the case of a footpath, this will be regarded as 2 metres. In the case of a bridleway 3 metres and in the case of a byway 5 metres.

An encroachment into the width of a Public Right of Way is an obstruction and a criminal offence and the County Council will deal with encroachments according to protocols. (See also Encroachment, Obstruction and Enforcement).

Statutory default minimum widths apply to all Public Rights of Way (as per Schedule 12 A Highways Act 1980), but in relation to ploughing and reinstatement following ploughing these are as follows. (See also ploughing and crops).

<b>Path</b>	<b>Headland path (field edge)</b>	<b>Crossfield</b>
Footpath	1.5 metres	1 metre
Bridleway	3 metres	2 metres

Restricted Byway and Byway, should never be ploughed, historic width applies

## 17.0 Contact Details

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Email: [countryside@monmouthshire.gov.uk](mailto:countryside@monmouthshire.gov.uk) Telephone 01633 644850

Green Infrastructure and Countryside Team  
Leisure & Culture Service  
County Hall  
The Rhadyr, Usk  
Monmouthshire NP15 1GA

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<sup>i</sup> Review of Rights of Way Improvement Plans - Guidance to Local Highway Authorities in Wales  
<http://gov.wales/topics/environmentcountryside/consmanagement/rights-of-way-and-wider-access/rights-of-way/?lang=en>

<sup>ii</sup> <http://gov.wales/docs/dhss/report/140929cmorereportten.pdf>