



SUBJECT: APPLICATION FOR AUTHORISATION UNDER SECTION 66 OF THE HIGHWAYS ACT 1980 FOR A STRUCTURE (FOR THE PURPOSE OF SAFEGUARDING PERSONS USING THE HIGHWAY) ON PUBLIC FOOTPATH NO. 102 GRAIG

**REPORT BY: MR. STEFAN DENBURY
COUNTRYSIDE AND RIGHTS OF WAY ASSISTANT**

**LOCATION: LOWER PONTYMISTER FARM – FOOTPATH 102 GRAIG
GRID REF: ST 2487 8952**

1. PURPOSE OF REPORT

1.1 To provide the Head of Public Protection, Community & Leisure Services with information to consider and determine proposals to authorise a new structure on a Public Right of Way recorded on the Definitive Map and Statement under section 66 of the Highways Act 1980 (HA80).

2. SUMMARY

- 2.1 Gates, stiles, and other structures on a public right of way are unlawful obstructions unless:
They are recorded on the definitive statement as a limitation, or
- It can be shown that the way was dedicated with such a structure despite not being recorded on the definitive statement (i.e. the statement requires updating), or
 - They have been authorised by the authority under s. 147 of the HA 1980, or
 - They have been authorised under any other relevant legislation (for example s. 66 HA 1980).
- 2.2 Caerphilly County Borough Council is attempting to improve access to public rights of way for all users by removing unlawful limitations, structures and furniture and improving existing, lawful limitations, structures and furniture.
- 2.3 However legislation permits the authorisation of new structures where they may be required to prevent unauthorised use of a Public Right of Way (Footpath or Bridleway) to safeguard users of that path.

3. RECOMMENDATIONS

3.1 That a kissing gate with RADAR bypass be installed.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The path is a public footpath and therefore s.66 of the Highways Act 1980 is applicable;
- 4.2 Unlawful use (e.g. by motor vehicles and particularly motorcycles) is primarily a matter for the police, and installation of any form of barrier should be as a last resort when crime prevention methods fail to tackle the issue, and the public are placed in danger by such use.
- 4.3 Given the evidence presented, if unlawful use is to be prevented, a structure is required;
- 4.4 A structure (of any form) could create difficulty for some lawful users and may constitute an unnegotiable obstruction to some lawful users. Following the public consultation and completion of the Integrated Impact Assessment (section 7 below), it was determined that the originally proposed structure, a K-barrier, was a complete obstruction to some users who would otherwise be able to use the footpath. It was preferred by the Disabled Ramblers Chair following consultation with their membership, that a Kissing Gate with RADAR bypass would be preferred if absolutely necessary.

5. THE REPORT

- 5.1 The Head of Public Protection, Community & Leisure Services has delegated powers to authorise new structures on Public Rights of Way under section 66 of the Highways Act 1980 following evidence of unauthorised use to protect users of the path.
- 5.2 The route referred to is recorded as a Public Right of Way on the Definitive Map and Statement as footpath No. 102 in the former Parish of Graig and therefore s.66 of the Highways Act 1980 is applicable.
- 5.3 Consideration will need to be given to:-
- Whether the structure being sought meets the requirements of s. 66(3) HA80 to protect users of the path from unauthorised use;
 - Whether the structure is the 'least restrictive' (hierarchy provided by the table in **Appendix 1**);
 - S. 66 of the Highways Act 1980 is only applicable to public footpaths and bridleways;
 - Whether the hazard posed by use of motorcycles on the footpath is sufficient to warrant the physical intervention of a barrier.
- 5.4 The structure proposed initially was a K-Barrier and an example is shown on **Appendix 2**. **The recommended structure is now a kissing gate with radar bypass and is shown on Appendix 6.**
- 5.5 Evidence of Misuse is shown in **Appendix 3**. Appendix 3(1) is one of several emails received from the landowner detailing the misuse being experienced. Appendix 3(2) is the photograph attached to the same email – a person pushing a 'moped' type

bike, and another riding something similar can be seen in the background. Appendix 3(3) shows the use by equestrians of the footpath – access being gained around the existing structure. Appendix 3(4) shows a motorcycle type vehicle travelling along the path (right of the photograph).

- 5.6 The requested location is at GR ST 2487 8952. This is shown on **Appendix 4** and a detailed location plan is shown on **Appendix 5**;
- 5.7 Any structure approved as a result of this report will replace an existing (unauthorised) vehicle access barrier at GR ST 2477 8954 with an adjoining pedestrian access chicane. The chicane is not to any known standard, and a less restrictive route has been created by the public around the whole structure which poses a hazard given the proximity of the used route to the top of the river embankment, and this still poses difficulty to certain users.
- 5.8 Following consultation through an online survey on the Council's website via a QR code erected on site and on the authority's website, as well as through the authority's social media channels and direct consultation with stakeholders, comments were received in relation to the effect the proposed barrier would have on public users.
- 5.9 From the online survey, of 18 responses, 71% stated the structure would affect them through one or more of the protected characteristics. Although 3 of those were in relation to bicycles. Although bicycles are not unlawful on a public footpath, use would be trespass against the landowner and therefore these cannot be considered in relation to use of a public footpath.
- 5.10 Five respondents referred to either personal use, or direct experience of wheelchair interaction with similar style barrier to the proposed.
- 5.11 Two users referred to use of recumbent bikes and trikes as mobility aids. These may well be considered lawful, and access could well be restricted or prevented entirely by use of a K-barrier.
- 5.12 Other comments on social media made reference to motorcycles still being able to access through K-Barriers rendering them ineffective for their purpose, but by being in place they still prevented some lawful use. This may be the case for any structure, however, other structures will still allow lawful use, where a K-barrier might not.
- 5.13 A separate conversation with a stakeholder group (Disabled Ramblers), allowed officers to gain a more in depth understanding of the challenges faced by those using both powered and manual wheelchairs, as well as other types of mobility aids (e.g. 'mobility scooters' as well as recumbent bicycles / trikes used as mobility aids).
- 5.14 The authority has been aware for some time that users with double, or especially large pushchairs and prams have encountered difficulties, and whereas on occasion, the structures could be negotiated, it is questioned whether some lawful users should experience greater difficulty than other users?

- 5.15 Ultimately the matter is one of law enforcement, and it could be argued that the police are responsible for enforcing the law, however given their resources and the potential for continued mis-use of the path, even after operations to deal with the mis-use, the matter may still be present.

5.16 **Conclusion**

It would appear that the originally proposed structure – a K-Barrier – would not only make access more difficult, but is likely to prevent access entirely to a number of lawful users. Given the evidence presented relating to the occurrences of motorcycle use, there is a genuine risk to the users of the public footpath – a risk which the authority has a duty to manage, and if the risk cannot be eliminated by police operations etc, the only remaining option is to install a limitation. Although in an ideal world, no barrier would be needed to protect those using the path from mis-use by motorcycles, a kissing gate with RADAR bypass would appear the logical, least restrictive option, as any other less restrictive gate or structure would allow a motorcycle to pass with little difficulty.

6. **ASSUMPTIONS**

- 6.1 The route is of the status as described on the Definitive Map and Statement, and no other / higher rights exist.

7. **SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 Reject the proposal of a new K-Barrier over a public right of way: Footpath 102 in the former Parish of Graig under section 66 of the Highways Act 1980 to prevent the unauthorised use of the public right of way by vehicles and motorcycles and to protect the users of the way from unauthorised use. The British Standard BS5709:2018 for gaps, gates and stiles clearly sets out the requirements when a structure is required and provides guidance in selecting an appropriate structure. Consultations have been held publicly and representations are included in the report. New structures are known to provide a barrier to use of public rights of way by some lawful users (some types of large pushchairs and mobility aids are known to be restricted by K-Barriers), therefore, given the results of the survey and the representations received it would appear that installing a K-barrier at this location would be an unreasonable limitation on a significant proportion of users, and particularly those who find access to safe, traffic free routes may already be limited. Therefore consideration of using a kissing gate with RADAR bypass instead of a K-barrier would be a reasonable change and it would allow access to a greater proportion of users, although not necessarily all. The use of the path by Motorcycles is a genuine Health and Safety concern, and any structure more accessible will serve no purpose of prevention of access to motorcycles, but might still cause an obstruction to some users. The authority have a duty of care for public users, and the use of a Kissing gate with a RADAR bypass would appear to strike the right balance in prevention of use versus accessibility.

Link to full Integrated Impact Assessment

<https://www.caerphilly.gov.uk/caerphillydocs/iaa/iaa-22-s66-0001>

8. FINANCIAL IMPLICATIONS

- 8.1 The cost of the structure, installation and future maintenance will be covered by the Local Authority in perpetuity. The structure is currently priced at £574.00, and installation will be approximately £300.00.
- 8.2 Removal of the existing structure can be carried out on a standard day rate for subcontractors, at £125.00 per person, per day. It would be anticipated that the removal would take two persons no more than one day. The cost of the structure, installation and removal of the nearby existing barrier will be covered by the Welsh Governments' Access Improvement Grant. Future maintenance costs will be very low, as these structures are very low maintenance with an approximate lifespan exceeding 25 years providing they are not vandalised. As vandalism cannot be ruled out this is a cost which should be factored into any budget to allow maintenance or replacement in the future.

9. PERSONNEL IMPLICATIONS

- 9.1 The implications to this Authority involve staff time to process the proposal, arrange installation and follow-up checks of structures if authorised on a regular basis in the future.

10. CONSULTATIONS

- 10.1 Consultations were made with Local Councillors, via CCBC social media channels, an online survey and directly with the Disabled Ramblers group.

11. STATUTORY POWER

- 11.1 Section 66 Highways Act 1980

Author:

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Consultees:

Philip Griffiths, Green Space Strategy and Cemeteries Manager,
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Background Papers:

None

Appendices:

- Appendix 1 Table of structures in least restrictive order;
Appendix 2 Example of a K-Barrier;
Appendix 3(1) Evidence of unlawful use – email from landowner;
Appendix 3(2) Evidence of unlawful use – photograph taken 28/05/2020;
Appendix 3(3) Evidence of unlawful use – photograph taken 12/12/2020;
Appendix 3(4) Evidence of unlawful use – photograph taken 29/03/2022;
Appendix 4 Location plan OS 25,000 map;
Appendix 5 Location plan – detailed location.
Appendix 6 Example of a kissing gate with RADAR bypass.



Accessibility of structures on Footpaths in least restrictive order

<u>Gap</u>	<u>Allows all users</u>
<u>Gate unlatched, self-closing, two way</u>	<u>Allows most users</u>
<u>Gate latched, non-self closing, two way</u>	<u>Allows most users, but can inhibit some, e.g., those with difficulty with dexterity and reach. This gate might, with certain latches, be less restrictive than one way unlatched non-self-closing gate.</u>
<u>Gate, latched, self-closing, two way</u>	<u>Allows most users, but can impede some, e.g. those with difficulty with dexterity and reach</u>
<u>Gate, latched, non-self-closing, one way</u>	<u>Allows most users, but can impede some, e.g. those with difficulty with dexterity and reach</u>
<u>Gate unlatched, self-closing, one way</u>	<u>Allows most users, but can impede some users of mobility vehicles</u>
<u>Kissing Gate, unlatched, dimensions that allow use by mobility vehicles</u>	<u>Allows most users, but requires more effort than most gates</u>
<u>Kissing Gate, latched, dimensions that allow use by mobility vehicles</u>	<u>Allows most users, but requires more effort than most gates and can impede some users, e.g. those with difficulty with dexterity and reach</u>
<u>Kissing gate with RADAR bypass</u>	<u>Allows most users, but requires more effort than most gates and can impede some users, e.g. those with difficulty with dexterity and reach and those with large pushchairs.</u>
<u>Gate, latched, self-closing one way</u>	<u>Prevents some mobility vehicles users</u>
<u>Kissing Gate, unlatched, dimensions insufficient for mobility vehicles</u>	<u>Prevents some users, e.g. mobility vehicle users and pushchairs</u>
<u>Kissing Gate, latched, dimensions insufficient for mobility vehicles</u>	<u>Prevents some users, e.g. disabled users, and is generally more difficult to use than latch less ones</u>
<u>Stile (existing and, exceptionally, new) with RADAR gate and dog gate</u>	<u>Allows most wheelchairs, but not most pushchairs. Impedes or prevents the less able</u>
<u>Stile (existing and, exceptionally, new) with dog gate</u>	<u>Prevents most pushchairs and all wheelchairs. Impedes or prevents the less mobile</u>
<u>Stile (existing) without dog gate</u>	<u>Prevents most pushchairs and all wheelchairs. Impedes or prevents the less agile and many dogs</u>



Denbury, Stefan

From: [REDACTED]
Sent: 28 May 2020 18:42
To: Denbur [REDACTED]
Subject: RE: TWO MOTORBIKES ON PATH 27/05/2020 6.34 PM THURSDAY
Attachments: 20200528_182511.jpg

Hello Steffan,

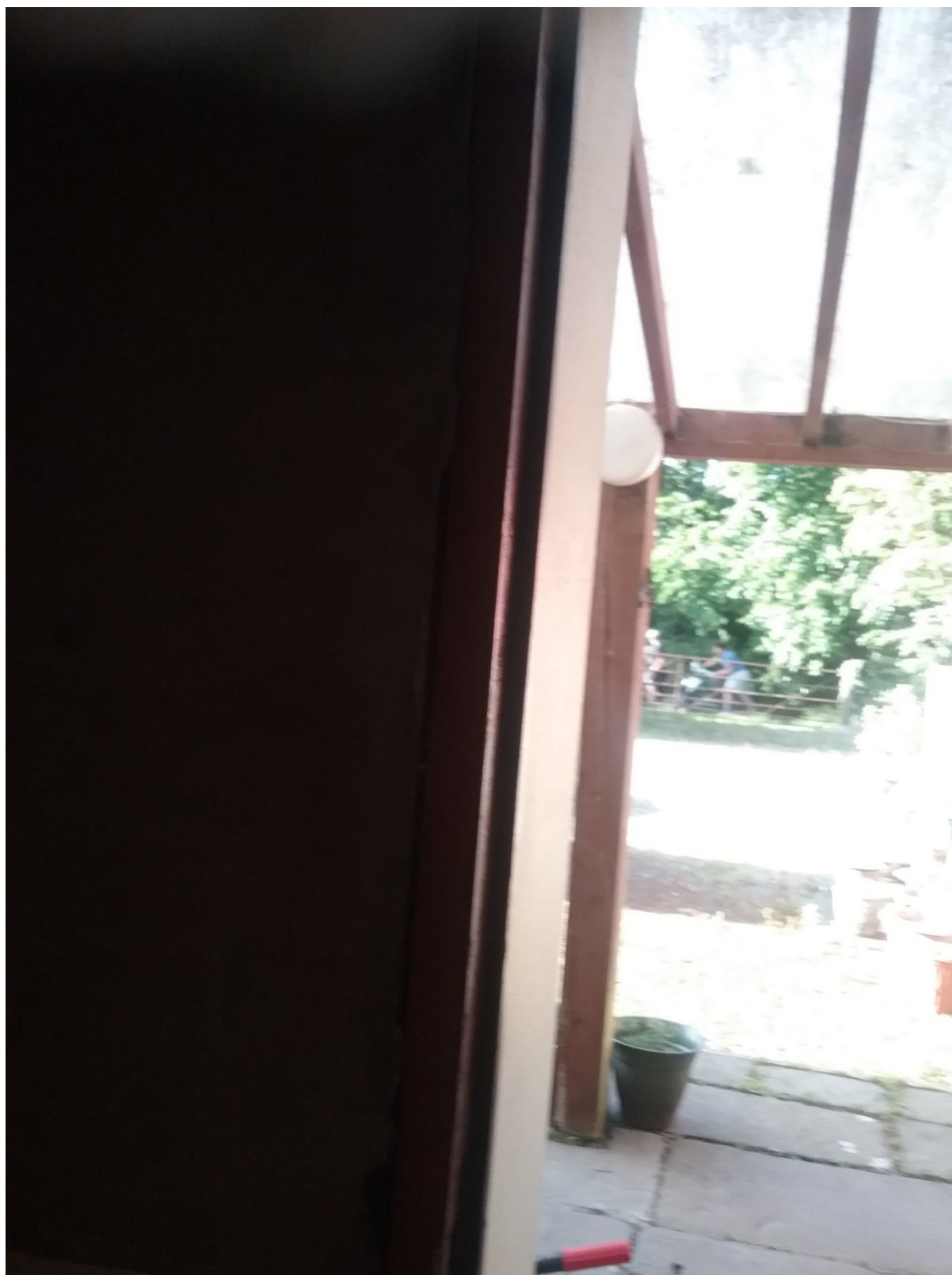
Two motorbikes fought their way through the lane barrier at 6.30 pm today and drove off at speed one with two passengers sitting on. The noise and speed was very excessive and the were other path users present.

There is an accident waiting to happen on

this path. Regards Richard Morris

[REDACTED]

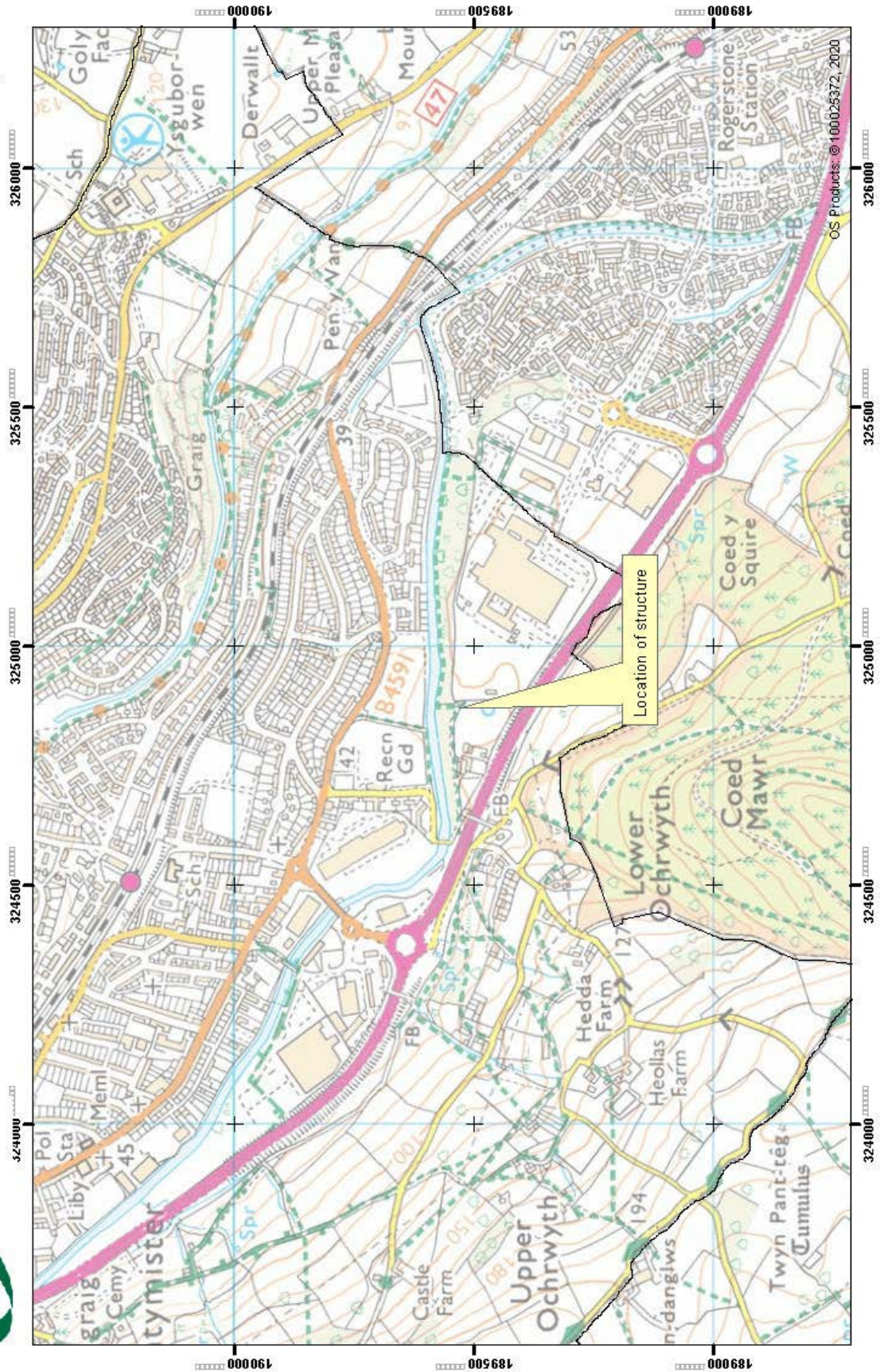
Appendix 3 (2)





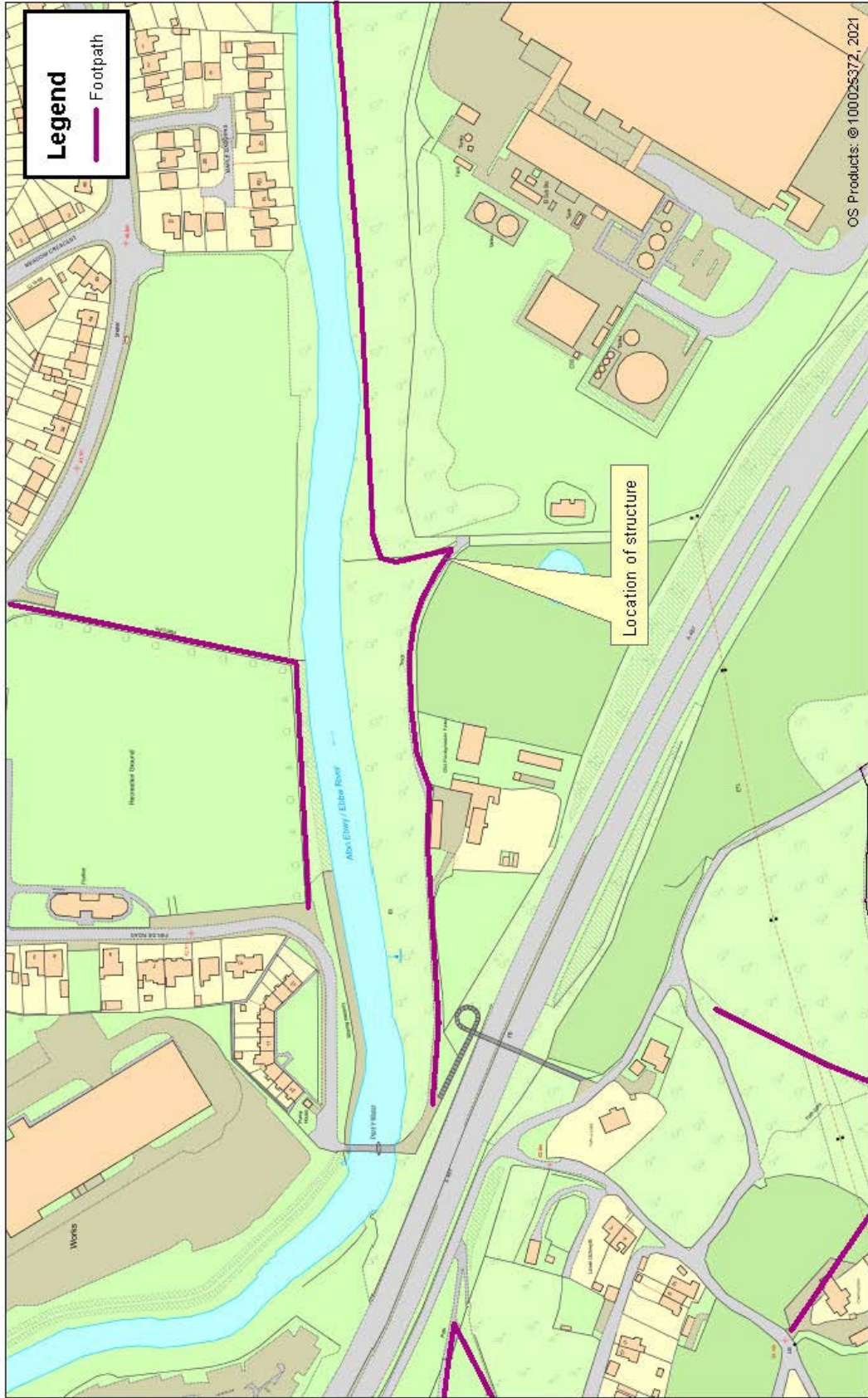


Appendix 4
1:10,000



OS Products: © 100025372, 2020

Appendix 5
1:2,500



OS Products: ©100025372, 2021

Example of a Kissing gate with RADAR bypass

