

**ENVIRONMENT AND HIGHWAYS
CABINET BOARD
29TH JANUARY 2015**

REPORT OF HEAD OF LEGAL SERVICES – D. MICHAEL

SECTION A – MATTER FOR DECISION

WARD AFFECTED: MARGAM

**APPLICATION TO UPGRADE BRIDLEWAY NO. 17 IN THE
COMMUNITY OF LLANGYNWYD MIDDLE AND FOOTPATH NOS.
36, 76, 58 AND 97 TO A RESTRICTED BYWAY**

Purpose of Report

To consider an application to upgrade bridleway no.17 in the Community of Llangynwyd Middle and footpath no.'s 36, 76, 58 and 97 to a restricted byway.

Background

- 1.1 The route shown on the location plan identifies the entire length of the claimed Byway which commences at point A on Bridleway No. 17 within the County Borough of Bridgend and terminates at the carriageway at Margam at point G. The three additional plans, 1, 2 and 3 show the route in more detail. Point A is in the Community of Llangynwyd Middle (Plan No. 1) and proceeds via bridleway No. 17 to the County Borough Boundary where it continues as Public Footpath No. 36 from point B (Plan No. 2). The path proceeds in a predominantly south westerly direction as Footpath Nos. 58 and 76, although part of the claimed byway excludes a section of Footpath No. 76 to follow a track running parallel to but to the south of the path shown between points D and E on Plan No. 3. The claimed route continues to the County Highway as Footpath No. 97 near Margam Abbey at point G.
- 1.2 Bridgend County Borough Council were asked if they would wish this Council to determine and include the claim to upgrade Bridleway No. 17 to a public byway but no delegated authority has been granted to this Council. The route between points B and G, shown on the location plan, is alleged to be a restricted byway. This is defined as “a way over which

the public have a right of way on foot, horseback or leading a horse and a right of way in or on vehicles other than mechanically propelled vehicles, thereby giving a right of way to cyclists and horse-drawn vehicles”.

- 1.3 The application is primarily based on documentary evidence, apart from the use made by the principal claimant, who has stated he has ridden a horse and walked along the length of the route B-C from 1990 until 1998, as shown on plan no.2. The applicant has stated he has not been able to ride a horse between points C and G, as shown on plan no 3, due to the presence of a barrier at point C, which marks the eastern boundary of Margam Park. There is also a “deer” gate and high metal stile at point F. The relevant test is under section (3)(c)(i) to the Wildlife and Countryside Act 1981 as set out in Appendix 1.
- 1.4 As such, this application cannot rely on the principle of presumed dedication as governed by under Section 31 of the Highways Act 1980 as there is no evidence of a minimum period of use for twenty years (Appendix 2).
- 1.5 Given the application is based on documentary evidence, the issue to determine is whether at the relevant date of the Definitive Map and Statement, being 1954, there was a carriageway in existence via the route specified. Appendix 3 explains why evidence of a carriageway or byway open to all traffic is required. Appendix 4 sets out more generally the basis upon which an order may be made where it is alleged the Definitive Map and Statement contain an error.
- 1.6 The test (as set out in Appendix 1) under the provisions of the Wildlife and Countryside Act 1981, is whether upon the discovery of evidence, when considered with all other relevant evidence, a right of way which is not shown on the Map and Statement subsists or is reasonably alleged to subsist.
- 1.7 The application route between points B and G passes under the ownership of two owners namely Tonmawr Farm and this Council. Both the owner of the Farm and the Margam Park Estate Manager object to the application. Their comments are contained in Appendix 5.

DOCUMENTARY EVIDENCE

Privately produced plans and Ordnance Survey Plans

- 2.1 A “ribbon route” plan was produced by John Ogilvy in 1675, but this only shows the main route through the Vale of Glamorgan.
- 2.2 A plan dated 1729 was produced by another independent surveyor by the name of Bowen. This did not include the route under consideration.
- 2.3 The applicant has provided a copy of a plan produced by an independent surveyor by the name of George Yates which was published in 1799. The scale of the plan is one inch to one mile or 1:63,360.

It depicts a road or track in approximately the position of the claimed route. The production of these commercial maps have to be interpreted with some caution. The publication by John Trevelyan entitled “Rights of Way, a Guide to Law and Practise” considers the relevance of such plans, and quotes from case law, Merstham Manor Ltd -v- Coulson and Purley Urban District Council [1936]. In the authors view, these earlier privately commissioned maps do not show whether the cartographer was intending to represent the roads as public highways. The judge in that particular case was reported to say that these maps do not give him any assistance. Consequently all one can infer is that the depiction of such a road on these maps was a belief by the cartographer that a road existed, but in law, is no evidence that the road itself was a highway at that time.

- 2.4 Further commentary on the George Yates Map and the reference made in that plan to cross roads and turnpike roads is contained in Appendix 6.

Ordnance Survey Maps

- 2.5 The route described is first shown on the Ordnance Survey Plan of 1812-1814 at a scale of 2” to 1 mile.
- 2.6 The earlier of the two copies of the Ordnance Survey Plan at the scale of 25” to 1 mile surveyed in 1876 and 1914 show the route and part of the way where it crosses the County Borough Boundary. Both editions show all the currently registered public paths in existence at that time. Part of the route contains the notation FP and the entrenchments described below, are also highlighted, although most are aligned parallel to, but south east of the currently registered path No. 58 which lies between points B and C.

- 2.7 Consequently, it is evident from the path's consistent depiction in all the Ordnance Survey Plans referred to, that it has been a long-standing feature. It should be noted that the purpose of the survey was to highlight features in existence at the time of that survey. It was not the intention of the Ordnance Survey to record and differentiate between the network of public highways.

Interpretation of Ordnance Survey Plans

- 2.8 The issue therefore is to address the significance of the depiction of tracks or roads on early plans and Ordnance Survey plans. Road has a wide definition but apart from signifying a highway, it can also mean a way to which the public has access by permission not by right, and of course it could also signify a private road.

To quote from the 4th Edition of the Rights of Way Guide to Law & Practice:

“Where an old map shows what appears to be a road, which would have been likely to have been used by vehicles, the mistake is sometimes made that this constitutes evidence of use that can provide the ground for an inference of dedication at common law. The only circumstances in which the depiction of a way on a map constitutes evidence that the way was (and so, unless extinguished, still is) public is where the map is of one kind that is capable in law of denoting a way as public, for example an inclosure awarded, a handover map, or a record by county highway surveyor of repairs”.

- 2.9 In the present case the way is already depicted as a public footpath. The Ordnance Survey Plans were not produced to establish what highways existed, let alone the status of that highway.

The Planning Inspectorate's Consistency Guidelines advise that from 1883, the depiction of the notation FP on Ordnance Survey Plans, for example, was so that the public would not mistake these for roads traversable by horses or wheeled traffic. They also go on to say that it does not indicate whether the ways were public or private. There is also case law on this point and the guidance refers to Attorney General -v- Antrobus [1905] and Moser -v- Ambleside District Council [1925].

- 2.10 The applicant wishes to point out that until the path enters Margam Park, the notation FP is absent from all the earlier Ordnance Survey Editions. Therefore the implication is that part of the route would have been suitable for higher rights.
- 2.11 The first and second edition of the Ordnance Survey of 1876 and 1914 as well as the 1962 edition, do not mark the route with the word FP. The 1962 edition shows the word track printed at various points along its length. However the 6 " to 1 mile scale revised in 1913-1914 with further revisions in 1938 and 1947 do show the letters FP alongside the route where that route passed into what is now Margam Park, that is west of point C as shown on plan no 3.
- 2.12 The first edition of the Ordnance Survey of 1876 also shows part of this route in colour, the implication and background to this use of colour is contained in Appendix 7.
- 2.13 The Rights of Way Law Review, a series of publications written by authors on the subject of public rights of ways, makes reference to how much reliance can be placed on interpreting the depiction of footpaths, tracks on plans. The view expressed is that it is much more difficult to prove a right of way exists in landscapes that are unaffected by inclosure awards (see paragraph 2.19).
- 2.14 In contrast to these views, the applicant has also submitted an extract from an article entitled "Interpreting Maps and the Meaning of Private".
- (a) The article suggests the term "private" meant something different in the 18th and 19th centuries and was often noted to be roads used by Parishioners, but simply roads which did not connect to the principal highway networks.
 - (b) That Estates would often argue their drives are private, but that from diarists and literature this was not the case.
 - (c) That maps produced before the Ordnance Survey, are dismissed as inaccurate and irrelevant, but that until the accuracy of the subsequent Ordnance Survey Maps, these privately produced maps were all that was available. Whilst being sometimes schematic, these maps would not have been acceptable if they showed both public and private roads.

(d) In addition that Cross Roads are said not to be public or vehicular because coaches were only used relatively recently. However, the article points out there is evidence from a report of 1680 where coaches were in use in Bedford, Yorkshire in 1889 and in Swanbourne in 1800.

2.15 It is also argued that the disclaimer on Ordnance Survey Plans was intended to absolve the survey from litigation.

2.16 There is no evidence that the independent surveyors were under instructions not to include private roads. The only point where a cross road could be said to exist is at point B near the Parish Boundary.

Tithe and Apportionment

2.17 An explanation of these documents is contained in Appendix 8. They were not intended to show public highways, although some routes which would have been public highways or private roads were often omitted from the total tithe payable, as they usually represented unproductive land. Inferences can sometimes be drawn from the depiction of a track but much depends on the references to the track in the Apportionment.

2.18 The purpose of the compilation of the tithe was to identify productive land. Between points B and G the land was under the ownership of the Margam Estate who produced their own valuation in 1814.

The Valuation Plan produced by the Margam Estate, clearly depicts the claimed restricted byway as a track.

2.19 The Margam Estate Plans show this route on a series of plans. One shows the track described as “Road from the Upper Park to Llangynwyd” and shows the track crossing the Parish Boundary. Another plan shows the Track with pecked lines with the words “to Llangynwyd”. A third estate plan shows the Parish Boundary very clearly and tracks “to Llangynwyd”, “Road from Heol-Moch” and also “from Margam”. It also identifies the Upper Park Gate, which is at point C. The plans clearly identified a route from the Abbey to Llangynwyd and also other roads leading to and from different directions and naming “the destination of the routes”.

2.20 It cannot be concluded the plans produced by the Estate were showing routes it considered were public highways, let alone carried vehicular rights, that is a carriageway. It is important to recognise why the Valuation was drafted as its function was not to identify public carriageways. The route is currently registered as a public path and so there is no dispute that the path, either at the time of the survey or at a later date, became recognised as highway.

Inclosure Awards

2.21 Whilst these are some of the most important historical documents for identifying public rights of way, not all Parishes were subject to these awards which were made under various Acts throughout the 18th and 19th centuries. However, none were made for the land affected by this route. A brief account of their relevance can be found in Appendix 9.

Finance Act 1910

2.22 Under this Act, landowners could apply for a reduction of the tax on their land if they admitted to the existence of a public right of way across plots of land. The Apportionment has been checked for the farms and no reference has been made to rights of way. Appendix 10 explains in more detail the purpose and relevance of the Act.

Earlier Draft and Definitive Maps

2.23 The records of previous objections and the hearings in relation to the Review of the Definitive Map and Statement, including the 1955 Draft Map, the 1964 Provisional Map, the First Definitive Map of 1970 and the Draft Special Review Definitive Map of 1972 have been checked. There is no reference to the route between points B and G, being the subject of any objections.

The Royal Commission on Ancient & Historical Monuments (RCAHM) in Wales on Medieval Non-Defensive Secular Monuments

2.24 The Applicant has submitted a number of extracts from this Volume, part of which deals with what are purported to be medieval roads, characterised as “hollow trails”. It is contended that areas which can give the appearance of a sunken lane are best preserved in hill country. It is the applicant’s case this route can be dated back to this period, the medieval period being classified as beginning with the fall of the Roman Empire in the 5th century and lasting until the 15th century. The

implication being that this route would have been one of the principal means of communication between Margam and Llangynwyd. The Commission has identified sections along this route where they identify “hollow trails”. The applicant has also submitted an extract from the 1884 Edition of the Ordnance Survey at a scale of 6” to the mile, that mark “entrenchments” running parallel to and in close proximity to the route under consideration. (These also appear on the Ordnance Survey Plans referred to in paragraph 2.4.)

- 2.25 The publication makes no reference by whom and for what purpose these trails were used. Secondly, the earlier edition of 1884 shows a number of separated and discontinuous sections of entrenchments so that, even centuries later, there was no one route shown. The route as claimed is already recorded on the Definitive Map as a public path, so there is no issue today that at some point previously it became dedicated as a public way. However, the difficulty lies in interpreting the maps as providing evidence that the route was regarded as a public byway.
- 2.26 The applicant asserts these hollow ways were used for those travelling between Margam and Llangynwyd and because they existed in medieval times it must have been what would now be classed as a carriageway, although there is no evidence for this assumption.

A carriageway being a highway with full vehicular rights.

Secondly, according to the RCAHM, the Ordnance Survey should not have referred to hollow trails as entrenchments, although nothing has been produced to support this opinion. Nevertheless these entrenchments shown on the Ordnance Survey are discontinuous, do not coincide with the precise alignment of the current path and if they were considered to form part of the path would greatly increase its width and affect the alignment of the path.

Thirdly, that Glamorgan Gwent Archaeological Trust have defined Margam Mountain as an historic landscape, although the applicant has not produced anything to support this statement. In addition the applicant has not said why this establishes the route as a public highway of any higher status than currently designated.

Previous Public Inquiries

- 2.27 The principal claimant has also cited examples of two Modification Orders which were confirmed by an Inspector at two previous public inquiries. In one case concerning an alleged Byway Open To All Traffic, Brookfield to Bridleway No. 36, Maesteg, the applicant has stated user evidence was unnecessary and in the other only one user and no documentary evidence.
- 2.28 In the inquiry the Inspector gave little weight to the Tithe Map and Ordnance Survey Plans but did give weight to the former Urban District Council's survey and that of the Parish Council. In the case of the second example, this concerned a footpath from Beach Road, Newton, Porthcawl. At the public inquiry, there were two evidence forms but five members of the public gave evidence at the inquiry. In addition, the Council itself owned part of the land and had records of the path being well used. In any event decisions from public inquiries do not make case law and therefore are not binding.

Evidence from the landowner of Tonmawr Farm

- 2.29 According to this owner the Margam Estate was sold in 1964 to Evans Bevan. The land between C and G was acquired by this Council on the 25th July 1973. The gate at point C which marks the boundary of the Park, was first locked in 1964 and according to the owner of Tonmawr Farm kept locked when this Council acquired the Estate. He indicated the subsequent barrier, which comprised an unhinged gate-like structure set in the gap, appeared after this date with a ladder stile placed alongside to permit pedestrians to continue to use the footpath.
- 2.30 This Council permitted the owner of Tonmawr Farm to pass through this gate until approximately 1983, to cut and collect fern as bedding for his animals. It was from about this date that the gate hinges were no longer operating and the gate was permanently closed. This structure has more recently been replaced by a gate and stile to allow the passage of dogs as well as pedestrians. As such, the way has been unavailable to anyone who wished to ride this route on horseback since the early 1960's.

- 2.31 The owner of Tonmawr Farm, now in his 91st year, recalls as a child, Miss Talbot, of the former Margam Estate riding her horse in the direction of Margam Hill and Llangynwyd. To his recollection, it was only those associated with the Estate that passed through, because at that time they owned all the land to Llangynwyd. He does not recall seeing anyone else riding along this way at that time nor has he seen anyone pass through on horseback since. The applicant contests this, as he states he has passed through this farm and met the owner on previous occasions. Nonetheless the applicant's use is inadequate to establish a dedication.
- 2.32 The Margam Estate owned the route at the time of the relevant date of this Council's Definitive Map and statement in 1954, therefore they and their employees would have been entitled to utilise this road for their own purposes.
- 2.33 Since this Council has owned Margam Park it has issued riding permits to certain individuals and also annual permits to a nearby Livery.

The anomaly at the County Borough Boundary, Public Footpath in Neath Port Talbot County Borough meeting Public Bridleway in Bridgend County Borough

- 2.34 It is the applicant's case that there is clearly an anomaly between the depiction of Bridleway No. 17 in the Definitive Map and Statement where it passes through Bridgend County Borough but is only recorded as a public footpath where it passes through Neath Port Talbot County Borough numbered 36 and 58.
- 2.37 Whilst Bridleway No. 17 was originally depicted as a Road Used as a Public Path, "RUPP", whereas Footpath Nos. 36, 58 and 76 were not. A RUPP was a category of path which had the appearance of a green lane or cart track, but had not been classified into either a public footpath, public bridleway or public byway, the latter being a way over which the public have a right to take mechanically propelled vehicles. It was only after the provisions of the Countryside Act 1968 came into force that Councils were obliged to decide which category of public path these RUPP.s fell, by the Special Review of their Definitive Map. In this Council was done by 1971. However, under the provisions of the National Parks and Access to the Countryside Act 1949, any Council could have reclassified a route not shown as a RUPP as if it had been shown as a RUPP at the time of the Special Review. Consequently, had there been evidence prior to the publication of this Map in 1974 of equestrian status, these three contiguous footpaths could have been upgraded to a bridleway.

However, there was clearly no evidence forwarded at that time (nor throughout the earlier reviews to show a public bridleway).

- 2.38 The provisions of the Wildlife and Countryside Act 1981 enable Local Authorities to amend any route irrespective of it having been reclassified as a footpath or bridleway from a RUPP.

CONCLUSION

- 3.1 The issue to determine is whether, on the balance of probabilities, it is reasonable to allege Footpath Nos. 36, 58 and 76 should be upgraded to a restricted byway or public bridleway.
- 3.2 It has been established by case law (Trevelyan -v- Secretary of State for the Environment, Transport and the Regions [2001]) that due to the conclusive nature of the Definitive Map and Statement, evidence of some substance has to be adduced to make any amendments to the Map and Statement, and that the onus is firmly on the applicant to show the Map and Statement are incorrect, and not on the Local Authority to prove that it is correct.
- 3.3 The evidence that has been produced to upgrade the three routes to a restricted byway is:
- (a) an inference it would have been facilitating such higher rights from the Middle Ages as it linked Margam Abbey with Llangynwyd Church;
 - (b) that the earlier privately commissioned maps, Ordnance Survey plans and the Margam Valuation of their land were recording such higher rights. Yet none of the above were produced to identify highways let alone a particular class of highway.
- 3.4 There is also no evidence to support the claim the public footpaths were being enjoyed by the public on horseback, nor that somehow there has been an acceptance by the landowner this path contained such a right.
- 3.5 The conclusivity of the Definitive Map, having been the subject of a number of reviews, only shows the minimum status of highway for Footpath Nos. 36, 58 and 76. No objections were raised at any of the reviews between 1955 and 1972 to paths Nos. 36, 58, 76 and 97 being shown as footpaths.

3.6 Consequently, it cannot be concluded it is reasonable to allege such higher rights subsist for any of the four separately numbered paths routes that have been subject to this application.

Appendices

Plans – location plan and plans numbered 2,3 and 4, also Appendices 1-10

Recommendation

That the application to upgrade Public Footpath Nos. 36, 58, 76 and 97 be refused.

Reason for Proposed Decision

There is insufficient evidence to support the claim to upgrade these footpaths to a higher status than that currently ascribed to it.

List of Background Papers

None

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COMPLIANCE STATEMENT

APPLICATION TO UPGRADE BRIDLEWAY NO. 17 IN THE COMMUNITY OF LLANGYNWYD MIDDLE AND FOOTPATH NOS. 36, 76, 58 AND 97 TO A RESTRICTED BYWAY

(a) Implementation of Decision

The decision is proposed for implementation after the three day call-in period.

(b) Sustainability Appraisal

Community Plan Impacts

Economic Prosperity	..	No Impact
Education & Lifelong Learning	..	No Impact
Better Health & Wellbeing	..	No Impact
Environment & Transport	..	No Impact
Crime & Disorder	..	No Impact

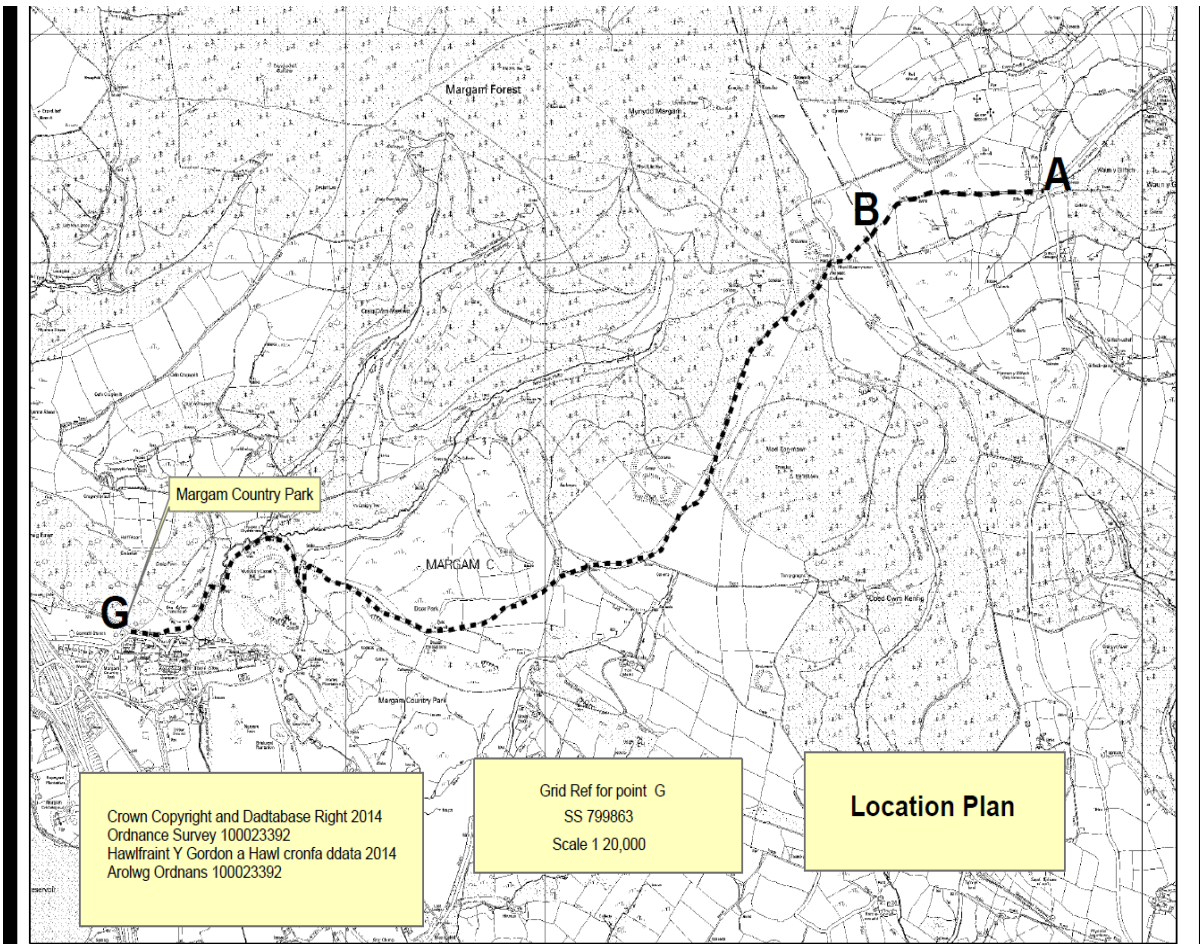
Other Impacts

Welsh Language	..	No Impact
Sustainable Development	..	No Impact
Equalities	..	No Impact
Social Inclusion	..	No Impact

(c) Consultation

This item has been subject to external consultation

Location Plan

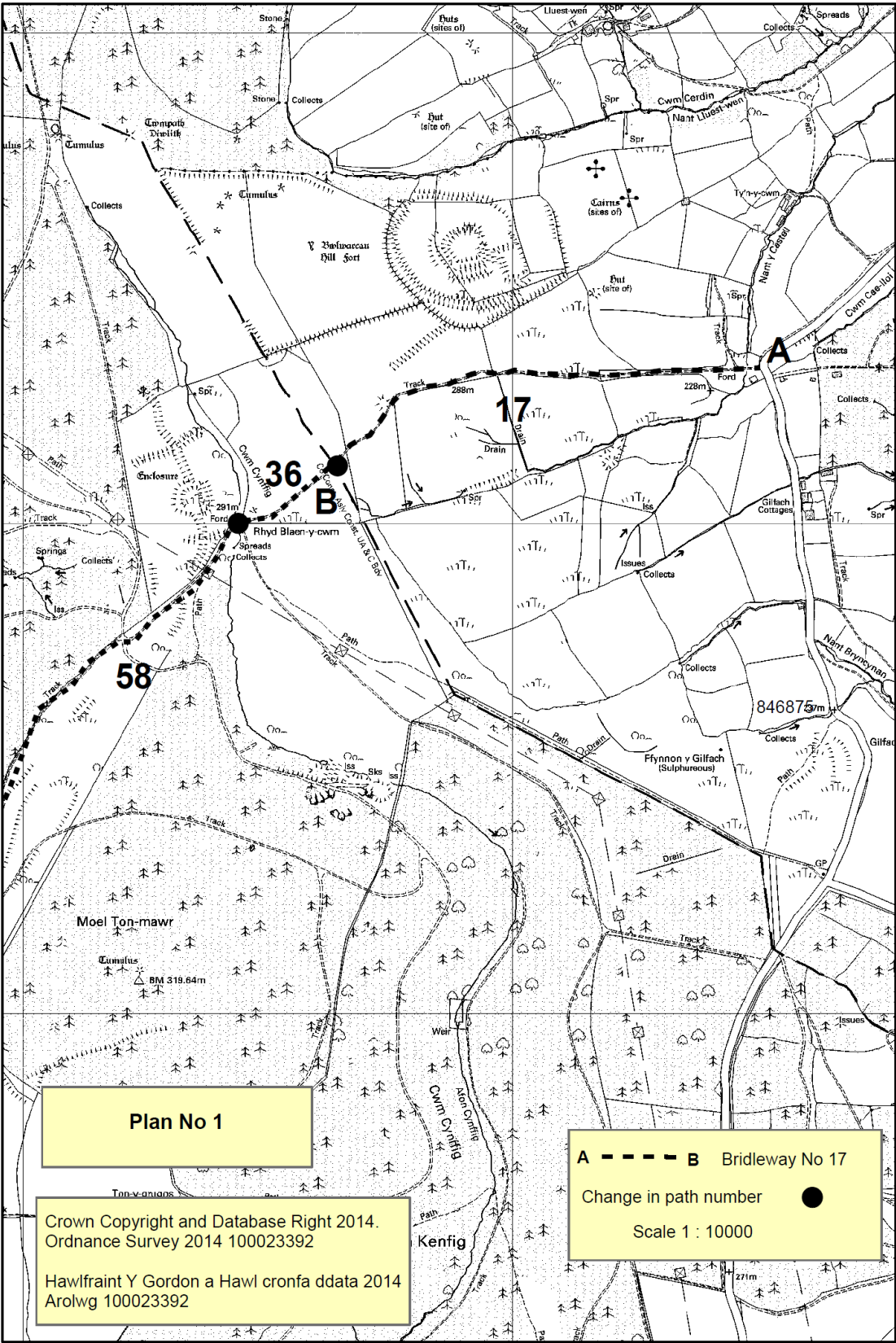


Margam Country Park

Crown Copyright and Database Right 2014
Ordnance Survey 100023392
Hawffraint Y Gordon a Hawl cronfa ddata 2014
Arolwg Ordnans 100023392

Grid Ref for point G
SS 799863
Scale 1:20,000

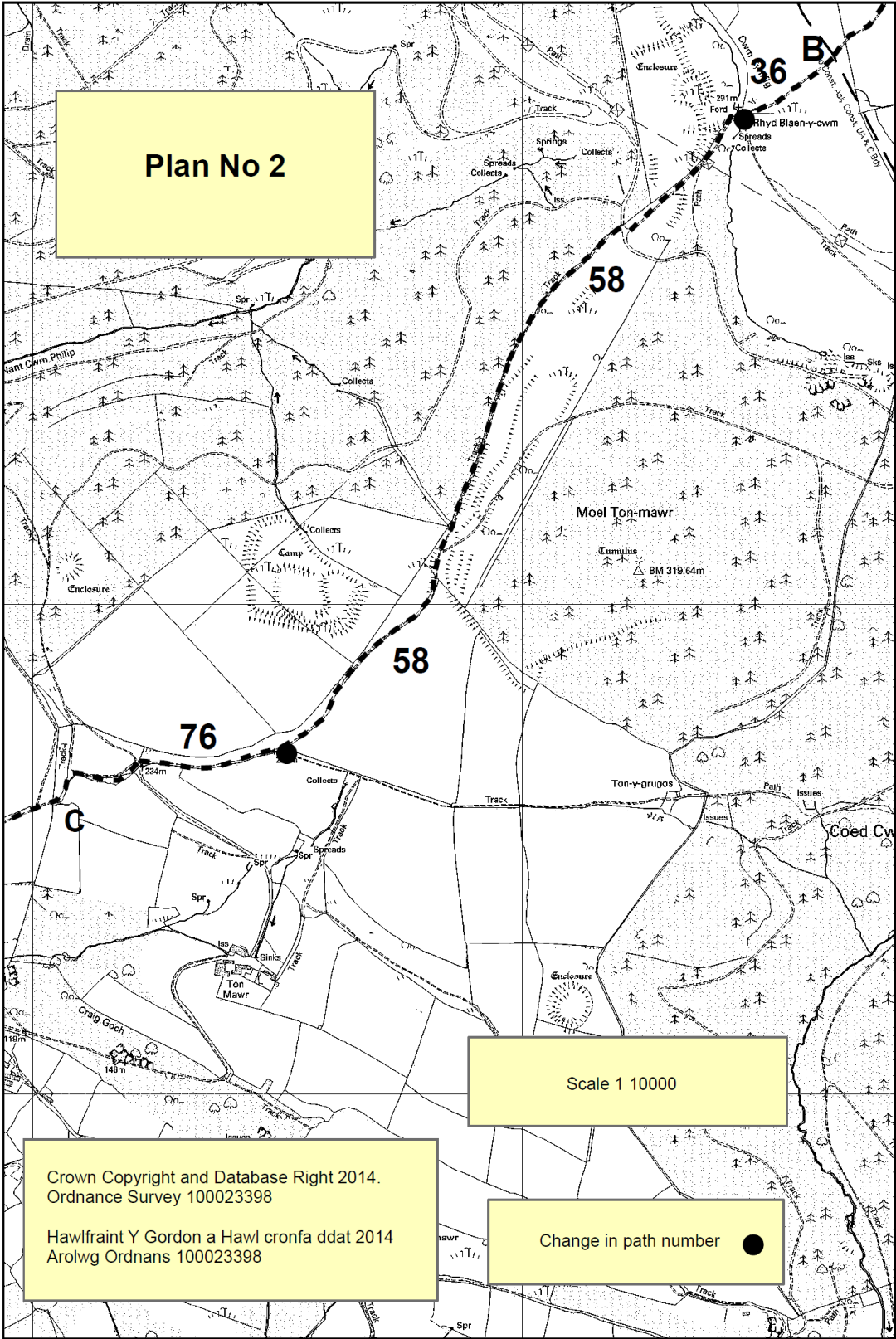
Location Plan



Plan No 1

Crown Copyright and Database Right 2014.
Ordnance Survey 2014 100023392
Hawlfraint Y Gordon a Hawl cronfa ddata 2014
Arolwg 100023392

A - - - - B Bridleway No 17
Change in path number ●
Scale 1 : 10000

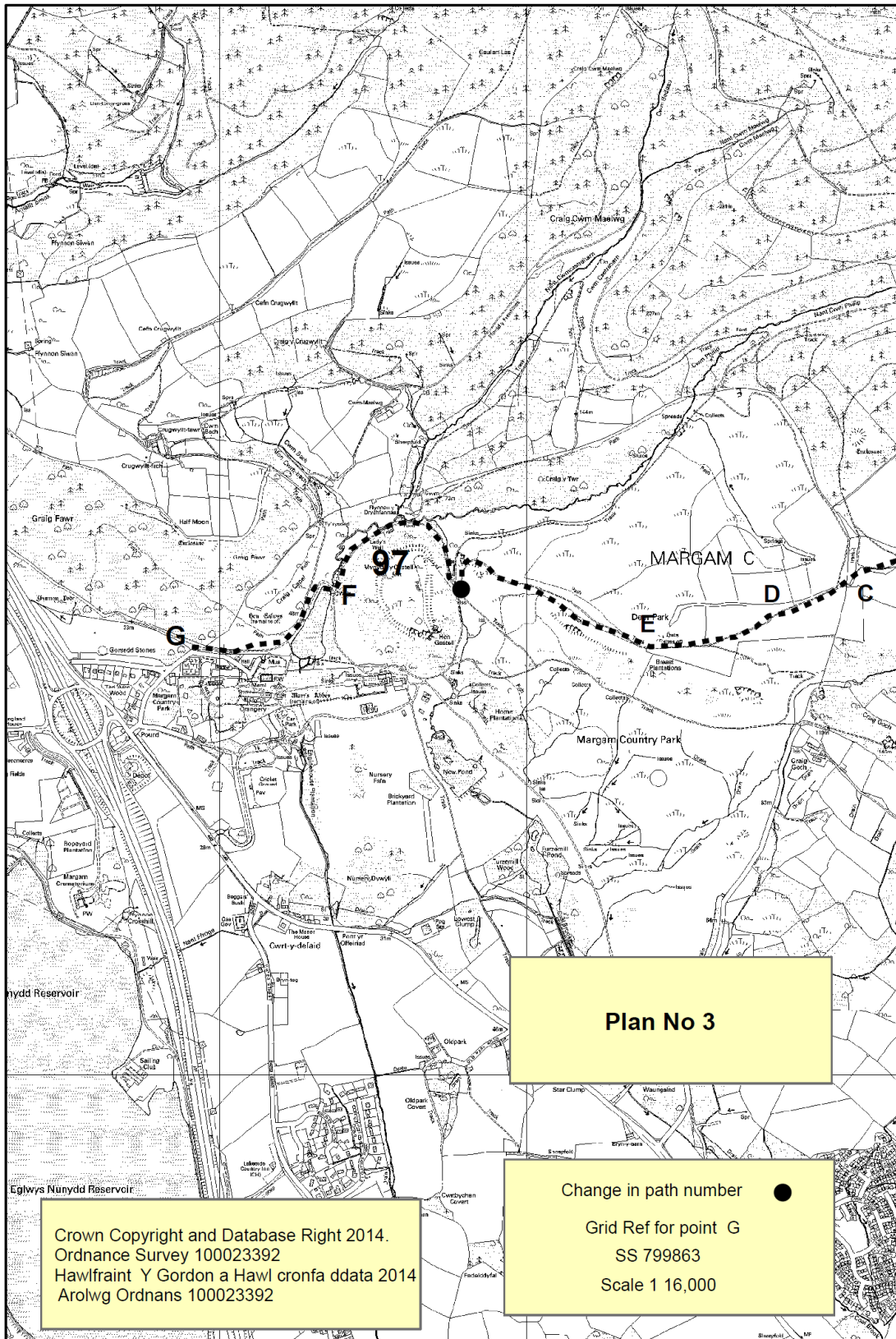


Plan No 2

Scale 1 10000

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Ordnance Survey 100023398
Hawlfraint Y Gordon a Hawl cronfa ddat 2014
Arolwg Ordnans 100023398

Change in path number ●



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Ordnance Survey 100023392
Hawlfraint Y Gordon a Hawl cronfa ddata 2014
Arolwg Ordnans 100023392

Plan No 3

Change in path number ●
Grid Ref for point G
SS 799863
Scale 1 16,000

WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every definitive map and statement, the surveying authority shall:
 - (a) as soon as reasonably practical after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in sub-section 3; and
 - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in sub section (2) are as follows:-
 - (b) the expiration, in relation to anyway in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;
 - (c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:
 - (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A a byway open to all traffic;
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description ,or any other particulars contained in the map and statement require modification.

HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

Where a public way over land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption of a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during this period to dedicate it.

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be insufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

APPENDIX 3

The provisions of the Natural Environment Rural Communities Act 2006 automatically extinguished any public byways or carriageways, that is highways used by mechanically propelled vehicles as of the cut-off date being November 2006. There are certain exemptions but none apply to this application. However a way may be recorded as a restricted byway if rights for mechanically propelled vehicles are held to have existed prior to November 2006 but then extinguished by the operation of that provision. So in this example evidence that the footpaths between points B and G were public byways would be required to establish they should be recorded as restricted byways. Furthermore, because the allegation is that the Definitive Map and Statement is incorrect then the applicant needs to show it was at the relevant date of 1954, the error was made and such a carriageway was already in existence at that time. Appendix 4 explains this latter particular point more fully.

THE BASIS UPON WHICH A MODIFICATION ORDER MAY BE MADE TO MODIFY OR DELETE A PUBLIC RIGHT OF WAY

1. This Council must be satisfied that the existing entry in the Definitive Map and Statement is incorrect. This means that the evidence should show a mistake was made at the relevant date of the First Definitive Map, which in this case is 14th September 1954.
2. The provisions of Section 32(4)(b) to the National Parks and Access to the Countryside Act 1949 required the Authority to produce a Definitive Map and Statement. Section 56(1)(b) and (d) of the Wildlife and Countryside Act 1981 provides that, “the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein to the following extent, where the map shows a footpath the map should be conclusive evidence that there was at the relevant date a highway as shown on the map...”. So if a challenge is being made to an entry to the Map and Statement the evidence must show a mistake was made at the earliest relevant date which is the first date the path was recognised as having legal status.
3. The question therefore is what is considered sufficient evidence to show that such a mistake had been made. The 1981 Act permits a correction to be made when evidence is discovered and considered with all other relevant evidence and so a decision has to be made on the balance of probabilities that an error had been made.
4. The real difficulty lies when the evidence upon which the entries were made into the Definitive Map have been lost or that record is incomplete. This is a common predicament that this and other Authorities face, as once the procedure for finally showing a public right of way has been completed the conclusivity of the Map and Statement would have led many Authorities to be less concerned on retaining the reasons for its final inclusion. Nonetheless as a result of previous case concerning R -v- S for Environment ex parte Simms and Burrows (1990), such deletions, or downgradings and other amendments are deemed possible.
5. The issue therefore is what weight is to be given to the entry into the original map especially when the evidence which led to its inclusion is absent. It was a document prepared pursuant to an Act of Parliament and which was to be an authoritative record, it required various stages leading up to its preparation to be satisfied and gave landowners several

opportunities to challenge any proposed entry. It should also be borne in mind that the map was prepared at a time when one could find local people whose memories went back very much further than today's residents.

6. This issue was addressed at the Court of Appeal concerning the case of Trevelyan -v- Secretary of State for the Environment (2000). It concluded there must be an initial presumption in favour of the existence of that public right of way and unless there is evidence to the contrary, it should be assumed the proper procedures were followed and that evidence did exist which made it seriously arguable that the right subsisted at the relevant date, even if no trace of that evidence survives.

APPENDIX 5

The owner of Tonmawr Farm having given his verbal evidence, from his occupation of the farm denies such rights have existed.

The Manager of Margam Park and the Senior Ranger stated until 1982 or 1983 the owner of Tonmawr Farm was permitted to access the Park via point C. However after that date he no longer wished to continue to do so and so the gate was secured. The Council staff do not recognise there are any higher rights than those already recognised. In addition a steel barrier at the entrance to the Park at point I which has according to the ranger been there since 1979.

Consequently none of the current landowners can be said to have acquiesced to any higher rights than those on foot via the route claimed.

THE GEORGE YATES MAP OF 1799

The legend submitted with the Map suggests the road is marked as a turnpike or toll road, although it should be added that every road on the Map appears virtually the same. It also identified this road where it crosses over another at the highest point as a “Cross Road”.

The applicant has made reference to the Planning Inspectorate’s Guidelines, (revised in 2013). The case concerning Hollins -v- Oldham (1995) where the Judge analysed the two categories and concluded a cross road must mean a public road for which a toll was payable. However, the applicant did not continue to quote from these guidelines, which point out the Judge also acknowledged that just because a mapmaker regarded a way was public or a particular status does not mean that he was necessarily correct.

The Inspectorate make it clear that the recording of a way as a cross road on a map or document may not be proof that the way was a public highway or enjoyed a particular status at that time.

The same guidelines also state that turnpike roads could only be dedicated under statute, nor can the term apply to any route where a toll was payable. Case law has also shown that a turnpike road reverted to its original status when the turnpike ceased to operate and so its pre-turnpike status would have to be clearly established before any inference could be made.

The applicant has made no comment or provided any additional evidence as to whether it was indeed a turnpike road nor its status prior to that designation.

APPENDIX 7

The first edition of the Ordnance Survey plan at a scale of 25" to 1 mile shows the route coloured from the County Boundary shown as point B on plan no 2 almost as far as a point C. It continues south east to and beyond Ton Mawr farm as a coloured track.

The portrayal of roads on Ordnance Survey Maps was deliberated by the military and the public between 1884 and 1885 due to the inadequacy of this early series. Whilst the 1" to 1 mile series attempted to classify roads between turnpike, ordinary metalled roads and minor roads (including carriage drives and cart roads) they had to be based on the larger 25" to 1 mile series. Consequently the gradual transformation of this series was effected by a series of circulars between April 1884 and November 1885 entitled " Roads Carriage Drives".

The first circular of 1884 made provision for all carriage drives (that is private roads) that were poorly metalled and kept in repair to be coloured on manuscript plans. It is possible the colouring may refer to the burnt sienna which was used to include metalled surfaces on the 25" to 1 mile series. This being the colour shown on the 1876 first edition described above.

If this convention was used, it would not therefore be possible to distinguish between private and public roads. It is worth noting that "roads" shown on the first 1" to 1 mile edition of 1886 were shaded and identified to be well maintained roads and were to be classed as first or second class roads. However publicly maintainable roads that fell short of the required standard would fall outside this first or second class category. So the wording of the circular appears to be concerned with depicting good road surfaces which were well maintained whether they were public or private.

This highlights the difficulty in attempting to interpret routes that were shown on the Ordnance surveys as being public highways.

TITHE APPORTIONMENT AND PLANS

Until the nineteenth century most land was subject to a church tithe which was one tenth of the annual produce of the land which had to be given to the church. The Tithe Commutation Act of 1836 provided that all tithes were converted into a fixed money rent. All land was assessed for the value of its average produce and each field to be accurately measured and recorded in an apportionment book along with the tithe plans. It was prepared under statutory authority by the Tithe Commissioners to show all cultivated land arable and pasture because tithe was payable on land which produced crops. It also had to show waste land and definitive roads which did not produce crops because tithe was not payable on these. If a road or public way passed through the land, a landowner may well require it to be shown so as not to pay tithe on it. As far back as 1989, the Department of Environment Guidance Notes stated “although solely concerned with identifying titheable lands, the maps do mark roads quite clearly as untitheable, thus can provide useful supporting evidence when taken in conjunction with appropriate schedules”.

INCLOSURE AWARDS

- 1.1 Common and waste land was enclosed over several centuries and unless agreement could be reached between the Lord of the Manor and others who held rights, authority was needed for what would now be termed compulsory acquisition of land and of the rights over that land. Such authority was granted by various Acts of Parliament but due to the increasing number required a General Inclosure Act of 1801 was passed setting out the general requirements and clauses.
- 1.2 Inclosure Commissioners were authorised to make an award which would give authority for the inclosure and how the highways are to be changed, by reference to a plan.
- 1.3 Where an inclosure was by agreement, little documentary evidence may remain and sometimes the early inclosure awards may have inadequate evidence. In many cases there would be an Act of Parliament associated with the award, a plan, and subsequent evidence of certification of the implementation of the award.
- 1.4 These awards are some of the most important historical documents available on the evidence of the existence of rights of way. However, they do not exist for every Parish.
- 1.5 An inclosure award will probably include a schedule of new roads and paths to be set out, often with a provision that private roads were to include the status of public bridleways or footpath. There may be important references in the lengthy description of the boundaries of the Parish on the boundaries of individual plots of land.

EXPLANATION OF FINANCE ACT 1910

This enabled a tax to be levied on the incremental value of the site itself excluding any increase in value arising from things on the land such as crops and buildings. The tax was to be paid every time the land changed hands.

Land Valuation Officers were appointed whose task it was to plot and record every piece of land. In assessing the value of the land a deduction was made for the amount by which the gross value would be diminished if sold subject to any public rights of way.

Where it came to the disposal of land, a landowner could not claim a deduction if the deduction could have been but was not claimed on the original site value. It should also be noted that valuers would have been reluctant to show any land as public ways if the land could be assessed for duty, and in fact would have been negligent to do so.