

ENVIRONMENT AND HIGHWAYS CABINET BOARD

17TH September 2015

REPORT OF HEAD OF LEGAL SERVICES – D.MICHAEL

MATTER FOR DECISION

WARD AFFECTED: CLYNE AND MELINCOURT

APPLICATION TO DELETE BRIDLEWAY NO 9 CLYNE AND MELINCOURT

Purpose of Report

To consider the application to delete Bridleway No.9 from the Definitive Map and Statement.

Background

An application has been submitted by the owner of Cefn Gelli Farm to remove bridleway No. 9, Clyne from the Definitive Map and Statement as shown on the attached Plan No.1 (A-B-C-D-E-F). The Applicant believes the bridleway was incorrectly registered as a public one when the initial surveys were undertaken to consider what Public Rights of Way existed as a result of the passing of the National Parks and Access to the Countryside Act 1949. (For a further explanation of the history of the compilation of the Definitive Map and Statement, see Appendix 1.) The opportunity to make such an application is governed by the Wildlife and Countryside Act 1981 (see Appendix 2).

Consultations

An objection to the application has been received from the Ramblers Association, via their local representative. They contend that the bridleway was correctly placed on the Definitive Map at the time it was first recorded. They also state that should the landowner have conclusive evidence to the contrary then that evidence should be produced in due course. Subsequently, all the evidence produced by the applicant is assessed in section 3.

Comment

A gate and fence obstruct the bridleway at points A and F respectively. On 7th November 2008 the Ramblers Association served notice on this Council requiring it to take enforcement proceedings to re-open the bridleway. It is understood the serving of this notice prompted the application. Although it has subsequently been discovered that the path has been obstructed with barbed wire at point G from the 1990's. This was recorded by the officer at the time, as contained in Appendix 4. Several attempts were made to secure the removal of the obstructions, although those identified at points C and D have subsequently been found not to lie across the bridleway as the path passes around the fencing.

No other comments on the consultations were received.

The Evidence Submitted in Support of the Application

The basis upon which a Modification Order may be made to delete a Public Right of Way is contained in Appendix 3. In summary, the applicant must show there was no public path in existence by 1954. Furthermore, because the Definitive Map is conclusive of the particulars it contains, there is a presumption in law it is correct and so the onus is on the applicant to show that it is wrong and not for the Council to justify its inclusion in the Map and Statement.

The test, therefore, is whether there is evidence of some substance to show, on the balance of probability that a mistake was made when the route was first recorded as a public bridleway and so the Definitive Map and Statement is incorrect.

The owner and occupier of Cefn Gelli Farm (the applicant) has lived at Cefn Gelli Farm since 1941 and states that it is the family home.

Comment

It is unclear why an application to delete the bridleway from the Definitive Map and Statement has not been submitted sooner. The witness statement contained in Appendix 4 highlights that the applicant was aware of the public status of Bridleway 9 in the 1990's and had been provided with the relevant forms to make an application to delete the route.

The applicant has provided evidence and supporting documents of the activities that occurred at Cefn Gelli Farm and the former Tin Works in the 1930's and 1940's. These include several photographs overlooking the former Tin Works whilst they were operational, a written statement, and the 1921 and 1951 editions of the Ordnance Survey map. The 1921 edition as surveyed in 1919 is shown on plan no.2.

The applicant recalls, as a child of 8 or 9 (in approximately 1949-50), returning home from school with her brother and being chased by the watchman as they passed via a small wooden gate next to Clyne Farm Road at point F. The applicant remembers the gate having a notice on it stating "Private. Keep Out".

Comment

It is not clear whether this gate was on the bridleway, or the farm road, as this has not been clarified by the applicant .

The applicant asserts that during the war, the Ministry of Defence used the Tin Works to make bomb casings. One of the applicant's uncles was a secretary at the works and another was a night watchman. Her father was also employed by the factory to pull the trucks along the lower tramway with farm horses.

Comment

It is unclear whether the use of the lower tramway at this time would have interrupted public access along Bridleway 9 which was in the vicinity of point B. Further clarification of this point has not been provided.

The applicant states that a locomotive was used on the top line to pull the trucks up and down the line to join the main railway line. There was a further gate at this point, which contained had a heavy chain and lock.

Comment

Again, it is not apparent whether the gate was directly on the bridleway and attempts to clarify this with the applicant has been unsuccessful.

The applicant contends that throughout this period, the area near point B was covered in duff, described as piles of coal varying in height, between 16ft-30ft. and extending over a " large area." although unspecified. This deposit was not cleared until the late 1950's or early 1960's when the applicant's father sold the duff to a power station.

Furthermore, the applicant states that people would not have walked from Clyne Terrace to the cwm, as the area has always been enclosed by a fence and only altered to its present state as it is today when an incinerator was placed on the site between one and two years ago.

Comment

Clarification of the approximate location of the incinerator, whether it obstructed, the Bridleway, the location of the fence, and how that affected public use has not been provided.

The applicant submitted two plans at a scale of 1:10,560.

The 1921 is based on an earlier revision of 1919 and the 1951 edition having been partly re-levelled between 1946 and 1950.

All three Ordnance Survey editions show broken parallel lines following the approximate route of the current alignment for bridleway 9, from Clyne, at point B to point F, with points A -B passing along the accommodation road to Cefn Gelli Farm. Appendix 5 relates to the relevance of Ordnance Survey as evidence of public and or private rights of way.

The 1964 edition does not show the disused Tin Works, although it identifies several broken parallel lines running near the Definitive Route. However, none match the existing bridleway alignment.

The Ordnance Survey is inconclusive as to whether the former Tin Works disrupted use of the Bridleway throughout its operation. Parallel broken lines indicate a track approximately corresponding to bridleway 9, and converging at the point the track passes under the railway line at point B.

Likewise, the photographs submitted with the application show the Tin Works in operation from several different positions but do not establish the works would have interrupted public use of the bridleway. The Ordnance Survey show the route running between 95 and 275 metres distant from the Tin Works, with a tram line crossing the bridleway near point B and another running approximately north west to south east from the Tin Works which appears to cross bridleway 9 at point C. The bridleway passes underneath a railway bridge near point B.

Additional Research

Tithe Map and Apportionment

The Tithe Commutation Act 1836 required the value of land be assessed but any waste land, which could include public rights of way, did not require a tithe which would have been payable to the Authorities. Therefore, a landowner may have required a public right of way to be shown to avoid having to pay a tithe on that part of that land (see Appendix 6). In relation to Cefngelly (sic) David Walter Williams is listed as owner, with no discount for rights of way and no discernible path being shown on the accompanying map.

Vale of Neath Railway Act 1846

The railway bridge near point B was constructed under the Vale of Neath Railway Act 1846, sometime between 1846 and 1851. Accompanying the Act is a plan showing the land affected, as well as a valuation book which provides a brief description of the land identified by the field number with the owners, the lessees and occupiers of that land.

In this instance, the land affected by the bridge is split into two parcels (the relevant section on the report plan covers the section of bridleway shown A-B). The reputed owner is Henry John Grant, the lessees are David Williams and Evan Williams and the occupier is listed as Evan Williams. The Farm and housing are described as farm house, barn, stables, two cottages, outhouses, garden and yard. The access track to Cefn Gelli (A-B) is listed as rough pasture. There is no specific reference to the railway passing over a highway.

The Finance Act 1910

Tax was payable on productive land but a deduction could be made if the holding contained any public rights of way (see Appendix 7). The assessment for Cefngelly (sic) was carried out on 31st July 1910. Again, David Walter Williams was listed as the owner, encompassing "Land, House and Buildings", with no discount listed for public rights of way, easements or rights of common.

Rural District Council Minutes 1928-1952

Whilst the relevant Clyne Parish Records are not held with the West Glamorgan Archives Service, the Neath Rural District Council minutes are available, with the exception of the period May 1940-October 1947. The only reference to Cefn Gelli related to the Rights of Way Act 1932. This Act sought

to define how a right of way might be dedicated, whilst also providing land owners with an opportunity to prevent any public rights arising by depositing notices of their objection to the Local Council.

Accordingly, on 8th November 1933, the Neath Rural District Council reported that Clyne Parish Council had declared “there are no cases to report of Notice having been posted by landowners along public paths in their parish”.

Comment

The Vale of Neath Railway Act 1846, the Tithe, the Finance Act and the Rural District Council Minutes make no reference to a public highway. However, it cannot be concluded that no public bridleway existed as a result of the absence of any mention of a public path. The Tithe and Finance Act were not enacted to specifically identify public highways and so the lack of reference to such a way is not evidence none existed at that time. In addition, there is no evidence available to establish when the bridleway became dedicated. It should be presumed the bridleway existed before the relevant date of the Definitive map and Statement, being 1954, for it to have been included into the Map and Statement. Consequently it is possible the bridleway existed prior to the development of the tin works in 1879, or became dedicated after that date assuming, the building and the activities associated with the works did not affect use of the way. It is also possible the bridleway became dedicated after the tin works ceased production and were demolished in 1933. It is not known what affect the subsequent use of the site had on public access as a munitions factory during the second world war.

Parish Card and Map

The National Parks and Access to the Countryside Act 1949 placed an obligation on Glamorgan County Council to carry out a survey of all the known public rights of way in their area. Where possible this was delegated to the Parish Councils, which lead to the production of the Parish Card and Map. This map identifies the paths with an accompanying description (the Card). Whilst the Card for Bridleway 9 is neither signed nor dated, it is presumed the survey was undertaken by members of Clyne Parish Council in approximately 1951, as were many others throughout Glamorgan at that time

The Card describes the bridleway as running “From access road to Cefn-y-gelli, under Rlwy Bridge, alongside of Old Tin Plate Wks to join County highway at Clyne Farm”. It is listed as being a bridleway, approximately 750 yards long, constructed of earth and stone, in a fair condition and having been “Used for over 40 years”. The alignment shown on the map almost exactly resembles the alignment which remains on the Definitive Map.

Hearings following the publication of the Draft Map and Statement of 1954

It appears that, following the publication of the Draft Map of Rights of Way for the Neath Rural District (relevant date 14th September 1954), an objection was lodged by the British Transport Commission regarding public paths that crossed railway lines, which included bridleway 9, Clyne. The objection itself has not been located, however, the Inspector’s handwritten notes from the subsequent Inquiry into the matter, have been located and read;

“Report by Mr William Thomas on the Inquiry held 29 Jan 1957 at Neath into the objection by the British Transport Commission to the inclusion of the following paths in the draft map.”

Mr Thomas then deals with each path individually. In relation to bridleway 9, Clyne, Mr Thomas noted;

“Relevant act in Vale of Neath Railway Act no reference appears on Deposited Plan. Railway coy (sic) were required to make and maintain a bridge but thought not to be the bridge in question. Now used only for access to houses on down side of line and access to farm. Mr Williams of the farm has erected a gate across the road but it is not locked. Mr Williams appeared personally to support the Commission’s objection.

“Parish Council say that a resident 89 years of age has always known path as public. It provides important communication and probable further development will enhance its importance.

“I suggest it be regarded as a public path.”

Comment

Consequently consideration was given to the status and existence of this bridleway at a time when there would have been people whose memories could have extended to a much earlier period than the present day. Clearly the Inspector was not presented with any evidence to result in the bridleway being deleted from the map and statement.

Subsequently, Bridleway 9, Clyne has appeared on each publication of the Definitive Map unaltered, resulting in its depiction in the Definitive Map and Statement today.

Conclusion

The applicant believes there to be enough evidence to suggest the bridleway was included in the Definitive Map and Statement by error. Indeed, anecdotal evidence suggests potential interruption to public use prior to the relevant date of the Definitive map of 1954 by the former Tin Works and then munitions factory during the Second World War. The Tithe and Finance Act surveys also appear to support the suggestion that no public right of way existed at that time. However, as highlighted earlier, these documents cannot show rights did not arise in the period leading up to the period prior to the publication of the Draft Definitive Map in 1954. Furthermore, the Tithe and Finance Act were not enacted to identify public highways and so the lack of reference to such a way is not necessarily evidence none existed at that time.

In contrast, the Definitive Map and Statement is conclusive evidence of the particulars contained therein. When the Parish Council surveyed the path in 1952 they were clearly of the view it had public status and had been in use for over 40 years. They made reference to the tin works but no mention of that interfering with the use of the route.

Case law has established the onus is on those who wish to apply to delete a public path to show that its depiction is incorrect and some evidence of substance should be adduced to alter that presumption. In addition, the applicant must show that the Bridleway did not exist at the relevant date of the Definitive Map, in this case 1954 and that should be based on the balance of probabilities.

Case law has highlighted that evidence that was available to support the inclusion of a path into the Definitive Map and Statement may not be available today and therefore cannot be tested. (Appendix 3) Its depiction in the Definitive Map and Statement should give some weight as to its legal status, unless it can be shown, on the balance of probabilities, an error was made. The bridleway was subject to an objection from The British Transport Commission in 1954 and supported by the applicant's father who therefore was available to provide either written or oral evidence at the subsequent Inquiry. Had there been good evidence that there was no bridleway at that time the Inspector who held the Inquiry, could have deleted the path from the draft map. In addition there has been no objection or challenge to the existence of this Bridleway until the present applicant appears to have obstructed the path in 1998.

List of Background papers

Footpaths file

Appendices

1-7 and Plans numbered 1 and 2

Recommendation

It is recommended that the application be refused and therefore no Modification Order is to be made.

Reason for proposed Decision

The applicant has been unable to show on the balance of probabilities that this bridleway did not have public path status in 1954.

Officer Contact

Mr Iwan Davies – Principal Solicitor – Litigation
Tel No. 01639 763151 Email: i.g.davies@npt.gov.uk

Mr Mike Workman – Paralegal
Tel No. 01639 763771 Email: m.workman@npt.gov.uk

COMPLIANCE STATEMENT

APPLICATION TO DELETE BRIDLEWAY NO 9 CLYNE AND MELINCOURT PURPOSE OF REPORT

(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.

**HISTORY OF THE COMPILATION OF THE DEFINITIVE MAP
AND STATEMENT**

1. The National Parks and Countryside Act of 1949 placed an obligation on all Councils to produce a Definitive Map and Statement. Parish Councils were given the task of surveying all routes they considered may have legal status. This resulted in the production of what has come to be known as the Parish Map (at the scale of 6" to 1 mile) and the all too often rather brief description of the path contained on small cards also known as the Parish Card. Some of the descriptions on these cards were more comprehensive than others but in combination with the paths depiction in the "Parish Map", they provide a useful record of what routes were considered to have public path status by 1954.
2. The information was passed to the former Glamorgan County Council, which collated the information and produced the first Draft Definitive Map which, in their opinion, reflected routes considered to be public rights of way on 14th September 1954, which became the "relevant date" of the first Definitive Map published in 1970.
3. The legislation required that the information gathered should be the subject of a series of reviews which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the various editions of these earlier Draft Maps and Definitive Map, along with the corresponding statements as and when they were published. The result was the production of the Initial Draft Map and Statement published in 1955, a Provisional Map and Statement published in 1964, the first Definitive Map and Statement published in 1970, the Draft Special Review of 1971, published in 1974 and the current Definitive Map and Statement published in 1988.

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.

**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 downgrading 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.
7. Welsh Office Circular 45/90 on 'Modifications to the Definitive Map', advises that: 'in making an application for an order to delete...a right of way, it will be for those who contend that there is no right of way..., to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. ...it is not for the authority to demonstrate that the map is correct, but for the applicant to show that an error was made.'
8. Welsh Office Circular 5/93 on 'Public Rights of Way' states that: 'Surveying authorities, whenever they discover or are presented with evidence which suggests that a definitive map and statement should be modified, are required to take into consideration all other relevant evidence available to them concerning the status of the right of way involved. Moreover, before making an order they must be satisfied that the evidence shows on the balance of probability that a right of way...shown on the map is not in fact a public right of way. The mere assertion, without supporting evidence, that a right of way does not exist would be insufficient to satisfy that test.'

STATEMENT OF RIGHTS OF WAY OFFICER DATED 19th AUGUST 1998 &
ACCOMPANYING PLAN

STATEMENT OF WITNESS

Statement of Rowan Michael Williams

Age Over 18

This statement (consisting of 3 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 19th day of August, 1998

Signature: *Rowan Williams*

I am Rowan Michael Williams and I have been employed as a Rights of Way Officer since 1986; initially by West Glamorgan County Council and since April 1996 by Neath Port Talbot County Borough Council.

The Council has a duty under Section 130 of the Highways Act 1980 to assert and protect the public right to use those paths shown in the Definitive Map of Public Rights of Way. I attach a copy of the current edition of the Definitive Map insofar as it relates to bridleways 6 and 9 and footpath 10 in the Community of Clyne, I have coloured those sections of those footpath which cross Miss Williams' land.

Ru W

EXHIBIT NO 1.

The National Parks and Access to the Countryside Act 1949 placed a duty on County Councils to produce the first Definitive Maps and the former Glamorgan County Council was assisted in this task by the various Parish Councils in its administrative area.

Those Parishes carried out their surveys in about 1952. These formed part of the first Definitive Map which was published in 1954 and which shows bridleways 6 and 9 and footpath 10 crossing what is now Miss Williams' land. Public notices of

Signature: *Rowan Williams*

the creation of the Map were placed in all newspapers circulating in Glamorgan at that time and a Public Inquiry would have been held if anyone disputed the existence of such a right of way.

On the 21st of June 1996 a complaint was received from a resident of the village of Clyne that access to the public rights of way at Cefn-y-Gelli Farm was being denied. In particular bridleway number 9 was blocked by three barbed wire fences. Footpath number 10 by a sealed gate, and bridleway number 6 by two barbed wire fences and three sealed gates. I produce a map exhibit number 2, showing the position of these obstructions. All these obstructions are on the line of the bridleways and footpath where they cross over Miss Christine Williams' land.

On the 26th of June 1996 I called at the farm and met Miss Christine Williams. She gave me a number of reasons for denying access; essentially denying that there were public rights of way over her land. I advised her that if it was her belief that the paths were not public then she should enter an application for their removal from the Definitive Map under the provisions of the Wildlife and Countryside Act 1981.

On the 5th of July 1996 I wrote to Miss Williams supplying her with the necessary forms to make such an application. I produce a copy of the letter as exhibit number 3.

I subsequently carried out a further inspection of the path and noted that none of the obstructions had been removed.

Signature.....

On the 20th of November 1996 I again wrote to Miss Williams and produce a copy of this letter exhibit number 4.

In the absence of a reply I wrote again on the 25th of March 1997 and produce a copy of that letter exhibit number 5.

On the 16th of July 1997 and on the 4th of March 1998 the Council's Legal Section also wrote to Miss Williams requiring the removal of the obstructions a copy of these letters is produced as exhibit number 6.

I have checked the routes from time to time including on the 20th of May 1998 and I have noted that all the obstructions are still in place.

As I stated above the Authority is under a legal duty to ensure that the rights of way as shown on the Definitive Map are not obstructed. It is also an irrefutable presumption that all rights of way are shown on the Definitive Map are in fact public rights of way. If Miss Williams disagrees with the registration of these rights back in the 1950's then she should apply to have the Definitive Map modified to exclude them. She has been given every opportunity to make such an application, upon receipt of which any evidence she could provide would be carefully considered. However, she has to date failed to do this and the rights remain blocked.

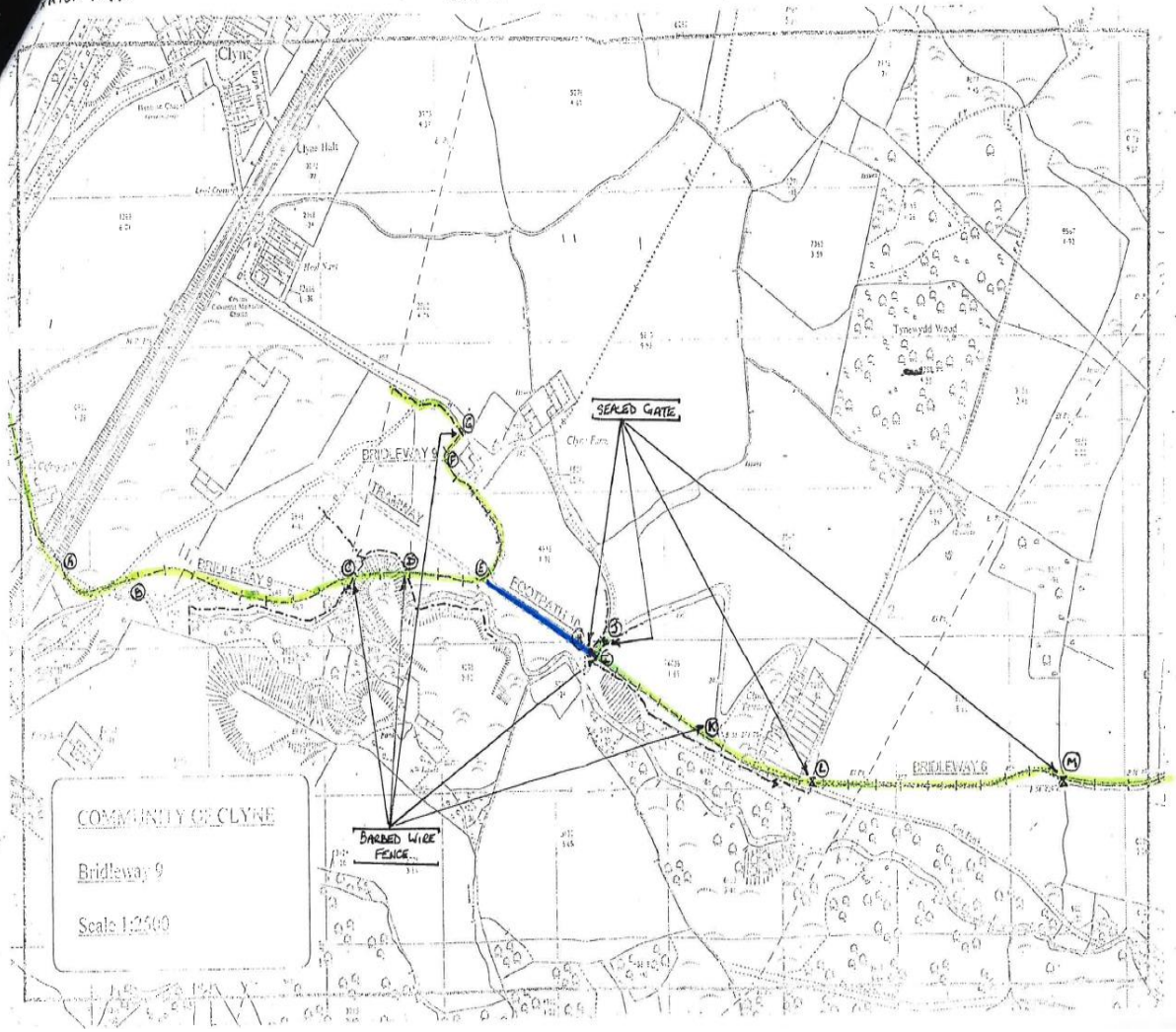
Consequently, on the 22nd of April the Council's Technical Services Committee resolved that as no Modification Order had been sought and yet the rights of way remain blocked Miss Williams should be prosecuted for obstructing bridleways 6 and 9 and footpath 10.

Signature.....

lit98/misc98/rmwillia

EXHIBIT No. 8.

MAP 5



ORDNANCE SURVEY MAPS

- 1 The creation of the Ordnance Survey is reflected in its name, which was the original military purpose of the organisation, in the first instance in mapping Scotland at the time of the creation of the United Kingdom following many centuries of conflict and later during the Napoleonic Wars, when there was a threat of invasion from France. As such, the Ordnance Survey was not tasked with identifying any public highways. In certain areas, the first edition of the Ordnance Survey was accompanied by a book for each Parish, which gave the land use of each separately numbered parcel on the map, one of which was Public Road.
- 2 The status of routes shown on early OS maps is still a matter of debate at Public Inquiries. Guidance by the Planning Inspectorate (Definitive Map Orders: Consistency Guidelines, 4th Ed. Feb 2011, Section 12) explains the relevance of tracks shown on early editions of the OS Map. “From 1888, Ordnance Survey maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way”
- 3 The guidance continues “later OS surveys and maps...clearly provide an accurate representation of routes on the ground at the time of the survey. However, it should be emphasised that the depiction of a way on an OS map is not, of itself, evidence of a highway. The courts have treated Ordnance Survey maps as not being evidence of the status of the way”. In the case of *Attorney-General v Antrobus* [1905] Farewell J states:
“such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey”.
- 4 In *Moser v Ambleside Urban District Council* [1925] Pollock MR stated:
“If the proper rule applicable to ordnance survey maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate...”

- 5 In Norfolk CC v Mason [2004] NR205111, Cooke J states:
“Throughout its long history the OS has had a reputation of accuracy and excellence....It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights...”

- 6 The guidance finishes with the caveat “Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence.”

TITHE APPORTIONMENT AND PLANS

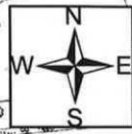
Until the nineteenth century most land was subject to a church tithe which was one tenth of the annual produce of the land which had to be given to the church. The Tithe Commutation Act of 1836 provided that all tithes were converted into a fixed money rent. All land was assessed for the value of its 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”.

EXPLANATION OF FINANCE ACT 1910

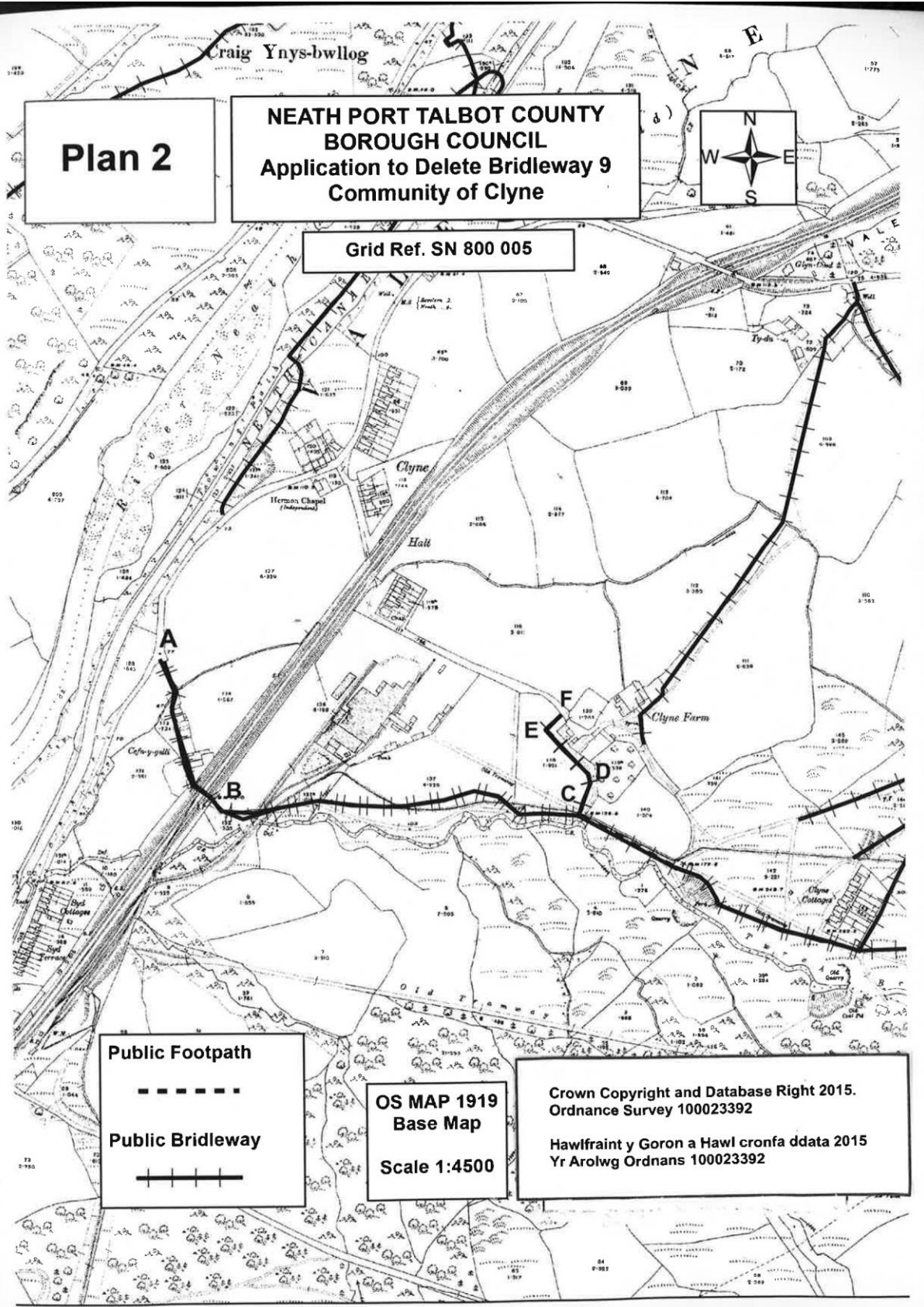
- 1 This enabled a tax to be levied on the incremental value of the site itself excluding any increase in value arising from things on the land such as crops and buildings. The tax was to be paid every time the land changed hands.
- 2 Land Evaluation Officers were appointed whose task it was to plot 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.
- 3 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.

Plan 2

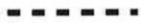
**NEATH PORT TALBOT COUNTY
BOROUGH COUNCIL
Application to Delete Bridleway 9
Community of Clyne**



Grid Ref. SN 800 005



Public Footpath



Public Bridleway



**OS MAP 1919
Base Map
Scale 1:4500**

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Yr Arolwg Ordnans 100023392**