

**ENVIRONMENT AND HIGHWAYS
CABINET BOARD**

REPORT OF HEAD OF LEGAL SERVICES – DAVID MICHAEL

13TH NOVEMBER 2014

SECTION A – MATTER FOR DECISION

WARD AFFECTED: BLAENHONDDAN

**APPLICATION TO DELETE FOOTPATH NO. 23 COMMUNITY OF
BLAENHONDDAN**

Purpose of Report

To consider an application to delete footpath no 23 in the community of Blaenhonddan .

Background

- 1.1. On the 27 October 2003 an application was considered by this Council to delete this public footpath on the basis it should not have been included into this Council's Definitive Map and Statement. A copy of that report has been included into Appendix 1.
- 1.2. The basis of that claim was that the path was not public in 1954, which is the relevant date of the Map and Statement. Appendix 2 provides the details of the grounds for making an application to delete a public path. Appendix 3 includes the relevant extract from the Wildlife and Countryside Act 1981 which places a duty on the Council to continually review its Definitive Map and Statement in the light of receiving any new evidence discovered or submitted to it.
- 1.3. This current application was made on the 9th May 2012 which includes additional evidence not submitted previously. The plan for this application is found before the appendices. Therefore this Council must determine the claim and take account of the previous evidence as well as the additional evidence in coming to a decision.

- 1.4. A summary of the issues dealt with in the previous report and the issues raised in this current application are included in Appendix 4
- 1.5. The decision to delete must be based on the balance of probabilities. Case law has established that significant weight should be given to the inclusion of the path into the Map and Statement. The previous report (Appendix 1 page 24) explains why there should be an initial presumption that the path is a public one. Appendix 2 to this report provides a fuller explanation.
- 1.6. Where the current application raises issues already dealt with in the previous report, reference will be made to the relevant paragraphs in that earlier report.

The Path

- 2.1. Public Footpath No. 23 commences on Main Road and proceeds via an 8 metre wide road or track for 80 metres between points A and B before continuing as a 1-2 metre wide path between points B and C. It passes under a railway bridge before crossing over the Tennant Canal via a stone footbridge to terminate on the towpath.
- 2.2. The road has also been subject to vehicular use between points A and B but is not recorded as a public carriageway. It is assumed therefore any vehicular use is limited to individuals who have a private right to drive along the road.

THE EVIDENCE

- 3.1. The current application case rests on a number of issues as follows:

Automatic extinguishment by the “Cut-off Date”

- 3.2. That the path passes over private land and no public rights existed before or after the “cut off” date of 1 January 1949. Further reference is made to this “cut off” date in relation to diversion, widening or extending the path.

Comment

The initial part of the sentence is an assertion based on the premise that if none can be shown to exist then the “cut off” provision would prevent the registration of the path after 1949.

This is a misunderstanding of current legislation. The applicant has forwarded an extract of section 53 and 54 but presumed it to be from the Wildlife and Countryside Act 1981. These provisions relate to the Countryside Act 2006 and any applications made after 2026.

Notices of Non Intent to Dedicate

- 3.3. “That notices were in place under the Rights of Way Act 1932 to prevent a right of way being established.”

Comment

Paragraph 2.6. to 2.9. from the previous report dealt with this allegation.

- 3.4. There is additional evidence from “The Joint Meeting of Neath Rural District Council with Representatives of Parish Councils relative to the question of Rights of Way 16 May 1934.”

Comment

A discussion ensued regarding the landowner’s right to be able to exercise such a discretion. Under the Rights of Way Act 1932 any landowner could erect a notice alongside a path or track to inform the public that he or she did not recognise such a public right of access existed.

- 3.5 The applicant has submitted a copy of a letter dated the 13th September 1934 from the Neath Abbey Estate to Lord Dynevor, and enclosed a schedule of the paths alongside which notices were to be erected, which from the description included what is now footpath no.23. Two types of notices were enclosed with the letter and read:

- (1) “Rights of Way Act 1932, there has been no dedication of this Way under the above Act.”
- (2) “This is a private road and the unauthorised use of the same for vehicular traffic of any kind, also bicycles is prohibited. Proceedings will be taken against offenders.”

Comment

It is not known which of the two notices were erected, precisely where along the path they were sited although the schedule of paths that were to have notices installed, compiled by the Neath Abbey Estate stated that the notice was to be placed “near the Laundry on road”.

The notice relating to unauthorised use of the road in vehicles and bicycles would have no effect on the owner’s intention to dedicate the way as a public path. The other notice would have an effect, but only for the duration the notice remained on site. However there is no evidence to show for how long which of the two notices were in place, nor for how long they were maintained on site.

- 3.6 The applicant draws attention to a letter from the Neath Abbey Estates to Lord Dynevor dated the 28th April 1933 stating “the notices will be affixed to boards and treated in such a way that they will last a considerable time and then can be easily treated and economically renewed”.

Comment

This does not provide any specific evidence as to the period the notices were kept in place.

Tithe Redemption Annuity

- 3.7 The applicant has submitted a 1935 edition of the Ordnance Survey plan and stamped with “Tithe Redemption Annuity Schedule” with the roadway shown as an enclosed parcel of land which been allocated a number and acreage with a charge levied at £1.8s.4d per annum. It lists under the Parish of Blaenhonddan the areas of land subject to this annuity and includes “lawn free premises, bungalow and garden, rough land and roadway”.

The Tithe Commutation Act 1836 replaced all tithes that were payable in kind with a monetary payment known as a tithe rent charge. These charges were made on an agreed proportion of the annual profits from the cultivation of farming made by the parishioners to the church. Further details are contained in Appendix 5 including an explanation of a tithe redemption annuity and the extinguishment of the obligation to pay a tithe rent charge.

Comment

This would indicate a tithe had been payable on the road containing Footpath No. 23 and so had some value and not exempt as a result of the land containing either public or private way. Two issues arise from this document however:-

- (i) Its provenance has not been identified and there is no reference to the apportionment or other documents which were produced in relation to a tithe redemption. The document having been considered by this Council's Archives have concluded that in itself it would not therefore be admissible as evidence. Further details of the additional research undertaken at the National Record Office, is included in Appendix 6.*
- (ii) The evidence discovered and referred to in paragraph 5.3 of the first report as contained in Appendix 1, stated no tithe was payable on the road which contradicts the implication of an annuity having been payable on this "roadway". Therefore, in the absence of any further supporting documents, it is difficult to place any significance to this plan given the research outlined in Appendix 6 would suggest that no annuity or tithe was ever paid.*

Information from Blaenhonddan Parish Council

- 3.8 The applicant makes further reference to the minutes cited in paragraphs 2.3 to 2.5 in the earlier 2003 report. These highlight the request from the Parish Council to the Neath Rural District Council to undertake repairs to the road. The applicant asks why would the Council request works when in the Parish Card they describe the condition of the path as being fair.

Comment

It is difficult to answer such a question unless the surveyor of the path could be asked what in his view constituted a "fair" condition. Secondly the Parish Council were concerned with the scavenging contractor refusing to travel along the road to access the tip. Therefore their request is more likely to be concerned with ensuring the road was kept in a suitable condition for vehicles.

Additional Minutes from Blaenhonddan Parish Council

- 3.9. The minute dated the 11th July 1938 from a meeting of the Blaenhonddan Parish Council has been submitted in addition to those considered in the earlier report from paragraph 2.3. - 2.5.

“Alleged Rights of Way. The engineer reported that during the month representatives of Blaenhonddan Parish Council had inspected the Draft Map and discussed paths claimed as public rights of way and that such paths had been coloured on the original Draft Map, and it has been arranged that representatives of the Parish Council should inspect the map and give their views therein. Resolved that the Engineer’s action in this matter be confirmed.”

Comment

There is no representation to the significance of this entry and no copy of the map referred to.

The Draft Map as referred to in the preparation of the first Definitive Map was that published in 1955 after the National Parks and Access to the Countryside Act 1949 in effect, imposed an obligation on Parish Councils to survey this path network. Consequently whatever Draft Map was being referred to in 1938 was not that published in 1955.

- 3.10. (a) That the Parish Council represented footpaths as purple lines, bridleways as green lines and road used a public paths as broken green lines (RUPPS);
- (b) that on the Parish map, Footpath 23 had originally been coloured by a broken green line, which represent RUPP’s but it was later replaced with a solid black line and the entire length is no longer shown as a public right of way;
- (c) The Parish Card of Blaenhoddan Community Council has no date of the survey, the description type can be seen to have been crossed out and altered with a different colour marker from CRF right of way to F/P and A/C road.

Comment

Paragraph 24 of the first report under the section "Comment" explains the responsibility fell to the Parish Council to survey the paths they considered had public status.

C.R.F. was a term used by a number of Parish Councils throughout England and Wales to represent a cart road used a public footpath. It was an equivalent term for roads used as a public footpath.

An examination of the Parish Map if enlarged, possibly does show a broken green line but drawn over by a solid black line. The card also crosses out the description C.R.F. to FP over A/C road, which may mean footpath over access or accommodation road. The card describes the path "Accommodation Road leading from between Cadoxton Church and the Victoria Laundry to the Tenant Canal. Pedestrians are allowed free use of the Canal Towpath and the above roadway in the access thereto."

- 3.11 The applicant suggests that if the road had been claimed as a C.R.F. then a modification order should have been made to re classify or downgrade the road to a public footpath.

Comment

The Parish Survey initially thought to class the route as a C.R.F but presumably decided that the road had no public status and so reviewed their opinion.

No modification order could have been made as the provisions of the Wildlife and Countryside Act 1981 had not at that time come into force.

Secondly even if the path had been designated as a C.R.F it would have been reclassified at the Special Review in 1972.

- 3.12. That the Parish where they describe the condition of the path (which is recorded as fair) is on a separate piece of paper and there is no heading quoting "Glamorgan County Council National Parks and access to the Countryside Act 1949." Nor is there any stamp quoting: "Blaenhonddan Parish Council."

Comment

The paper referred to above is merely the reverse side of the same Parish Card which does include the headings quoted above.

- 3.13. The Council minutes describe this roadway before and after the survey in 1951 - 1952.

Comment

There is no dispute that the route provides vehicular access for those who have such an easement, but that in itself does not prejudice the coexistence of public rights.

- 3.14. Reference is made to the Council Minutes, undated but presumed to be 1949 where it was noted the Council's scavenging contractor was not prepared to continue unless the roadway was repaired.

Secondly that on the 26 March 1952 the Council engineer of the Rural District County Council had received a request from the Parish Council to construct a drainage system for the road. The Parish Council received a reply that the road was private and the Council have no right to undertake any work on the roadway.

Thirdly the Rural District Council had received a request from the Parish Council to repair the road due to its use as access to the refuse tipping site, as well as being used by the public. The Rural District Council had no liability to maintain the road. (This was referred to in paragraph 2.5. in the previous report and the ensuing responses which also pointed out that on the 9th June 1955, the District Council had by then undertaken repairs.)

Comment

The Highways Act 1835 made all public roads that had been maintainable by the inhabitants at large, maintainable by the Council. However this did not affect public paths. Nonetheless the National Parks and Access to the Countryside Act 1949 made all public paths that were in existence immediately prior to that date maintainable by the Council upon the passing of that Act.

So the issue is whether the District Council took the view as footpath No. 23 was considered to be public by 1955 they had an obligation to do the necessary repairs but only to a standard suitable for pedestrian use.

The question being whether the Rural District Council did not consider they had any liability under the 1949 Act to repair the road to a standard available for vehicular use. This of course would have been correct and was without prejudice to the liability to repair the path for pedestrian use. They eventually undertook the repairs in 1955 although it is not clear to what standard and for what type of public use.

- 3.15 The applicant considers reference to the Highways Act 1835 is irrelevant because at this time the road contained dram lines and so was not a public highway. These lines are depicted on the ordnance survey of 1877.

Comment

There is no evidence the dram lines were in existence in 1835 and by the time the second edition of the ordnance survey was published in 1899 the lines had been removed.

Secondly reference to this earlier Act merely highlights that because the road had not been maintainable at the public expense at this time, then that is a reason why the Council did not automatically assume responsibility for its repair as a carriageway.

- 3.16. That a previous internal memorandum from this Council dated the 1st December 1999 referred to the Blaenhonddan Parish Council minutes from 1949 - 1952, and that the County Council considered the road to be a private way which is why it had no right to carry out the works.

Comment

This would be consistent with the explanation offered above and under the last comment.

It should also be noted that a public path can exist but be maintainable by the owner/s of the path or by no one. Consequently the assumption that if the Council is not responsible to maintain the path, it cannot be public, is incorrect.

- 3.17. That the Parish Card states there is evidence of over sixty years' use which is incorrect as the Dynevor Estate had erected notices under the Rights of Way Act 1932

Comment

This issue has been considered in paragraph 3.4.

- 3.18. That the Parish Card which provides the information on the length of use, is not stamped with the Parish Council's name nor any reference to the National Parks and Access to the Countryside Act 1949.

Comment

As already indicated within the comment after paragraph 3.7., the Parish Card had information written on both sides and so there is no doubt it has been authenticated as a true record of that Council's findings.

- 3.19 The applicant reiterates his opinion the Dynevor Estate did erect notices but the reason there is no reference to the notice in the Parish Council Minutes is that footpath No. 23 did not exist until it was placed on the Parish Card.

Comment

The path would have been considered to be public in order for the path to be included on to the Parish Card and into all the editions of the Definitive Map and Statements. The Definitive Map does not create a path at its relevant date, but reflects the existence of one.

Secondly it appears the Dynevor Estate were aware the public were using the path in 1933.

- 3.20. The applicant has two black and white photographs of a notice, one taken from near Main Road and a second taken further along the roadway facing south east which is alleged to state "Private Road"

Comment

This was considered in the previous report under paragraph 2.10 and it is currently accepted that this is indeed the case in the sense a road being a route which conveys vehicles for private use.

- 3.21. That a memorandum from this Council date the 1 December 1999 states the Blaenhonddan Parish Council minutes from 1949 - 1952 shows the path was yet to be registered and that the advice from the previous Council was undoubtedly correct as at that stage no public right of way had been conclusively established.

Comment

This relates to the Minute dated 12 June 1952, where the then Parish Council were seeking assistance from the County Council to liaise with the District Council regarding the repair of the roadway. By 1955 that work was completed..

- 3.22. When the survey was carried out in 1951/1952 the Council were leasing a means of access to the tip from 1940/1955 and as this road was under a lease to the Council, it was not a public right of way except in accordance with the terms of the lease. A lease cannot dedicate a Right of Way to themselves without the consent of the owners.

Comment

The applicant has not provided the minute to show the Council were leasing the land, nor which Council. Nonetheless even if one of the Councils were doing so, then any dedication of the path would have to be by the owner of the freehold and to the public, not by the Council. Secondly the lease was allegedly from 1940 to access the tip which of course would have been for vehicular use. Again an indication of a private easement for a specific purpose.

- 3.23. That the easement granted to St. Cattwg's Church in 1929 is evidence there was no pre-existing public path.

Comment

This particular issue has already been dealt with in the previous report under paragraph 2.2.

One piece of additional information is from a witness, who along with the refuse contractor used to cut the grass in the graveyard from 1953 to 1959. This person said the hay was loaded into the cart which was positioned on the path by tossing the hay over the side wall, before being moved by the horse. Thus it may be the church required access via the roadway for this particular purpose.

The same witness alleges there used to be a public footpath sign at the "Neath end" of the entrance to the road, pointing along the roadway. However no date has been given for the period this was in place.

Draft Maps

- 3.24. That the Draft Definitive Map was not published in the London Gazette on the 14 September 1951 as was required.

Comment

A full account of the process which reviewed the Definitive Map and Statement was given in paragraph 3.1. - 3.8. in the previous report to this Council. This Council's predecessor complied fully with the requirement to advertise each stage of the process.

- 3.25 That the Definitive Map of 1954 shows a solid purple line for the entire length and width of the haul road for footpath No. 23. If this map had been done in the 1950's the colour coding should have been a broken green line. The Parish Map and Statement claimed this was a cart road footpath (C.R.F.) at this time.

Comment

Whilst the Parish Card originally described the path as a C.R.F., this abbreviation was subsequently crossed out and replaced with the words FP over A/C road. It is not clear when this was done, but it is possible if not probable, prior to the production of the Draft Map in 1955.

- 3.26. That the Parish Card and Definitive Statement do not read the same, the Parish Card claims a width of 10' while the Definitive Statement describes the path as undefined.

Comment

It is not possible to state why there is a difference other than to speculate, that those who compiled the Definitive Map did not know how much of the width of the initial 70 metres of the accommodation road should be regarded as public footpath.

- 3.27. That the Parish Card states "leading from accommodation road" and the Definitive Statement states "passing long an accommodation road."

Comment

This is incorrect as the Parish Card states "accommodation road leading from between Cadoxton Church and the Victoria Laundry to the Tenant canal."

The amended description “FP over A/C road” is consistent with the Definitive Statement.

“Commences on Main Road, Cadoxton, between St. Cattwg’s Church and the Victoria Laundry and proceeds southwards along accommodation road to the Tenant canal.”

- 3.28. That there are no buildings beyond the Victoria Laundry for an accommodation road.

Comment

It is assumed by this statement that access would not have been needed beyond the Laundry and so the term accommodation road is misleading. The earlier Parish minutes show the Tenant Canal Company, The Transport Commission for the railway network and the then Gas Board required access whose premises are further along the road than the laundry. The minute also recorded the fact that those companies had stated they had such a right to use this road.

- 3.29. Accommodation Road anyone proceeding southwards would walk into what was then the wall of Victoria Laundry.

Comment

This would be a criticism of the description in the Definitive Statement, as the path proceeds south south east from Main Road to the canal.

- 3.30. (i) That when the alleged footpath No. 23 was first registered to the present day there has never been a footpath sign or any way marking by means of colour coding;
- (ii) That it became law in 1968 to sign post public rights of way;
- (iii) That a footpath sign was erected in 1993 on my property without permission. When challenged I was threatened with prosecution and a fine if I removed the sign. Procedures were not followed when placing the sign on my property.

Comment

- (i) *Two of those persons referred to who submitted evidence of their use of this path stated they recall seeing a footpath sign alongside St. Cattwg's Church. However it is not known whether this is of an earlier signpost or that stated to have been installed in 1993;*
- (ii) *Section 27 of the Countryside Act 1968 enables the Council, to erect signposts where the public path leaves the metalled road, although if after consultation with the Parish Council it is considered such signs are not needed then there would be no requirement to do so.*

Land Valuation under the 1910 Finance Act

- 4.1. A valuation was undertaken on the incremental increase in the value of all land for which a tax was liable. Owners could apply for a reduction in this tax if they admitted to the existence of a public right of way over a particular plot of land.
- 4.2. Sometimes reference is made to public paths and more particularly to strips of land which were known to be roadways (private or public) which would be excluded from the individual parcels of land. Consequently the relevant documents were checked, including the Valuation Plan based on the second edition of the Ordnance Survey from the National Record Office. This "roadway" containing footpath No. 23 is shown as a different colour to the assessment number through which it crosses. It is difficult to establish whether "the path" is linked to any other assessment number, as itself is not shown to have been allocated a number. The path has been coloured and is distinguishable from the assessment parcel through which it passes, although is not shown colourless as Neath Road which was evidently acknowledged to have been a public carriageway at that time. All that can be concluded is the path was identified as a discrete and separate unit to the adjacent land.

Conclusion

- 5.1. In addition to the conclusion in the previous report the current application misinterpreted the application of Sections 53 and 54 of the Countryside Act 2006.

- 5.2. It is apparent that the Dynevor Estate arranged to have notices placed either at the beginning or alongside this path in November 1933. There is no evidence to establish whether one or both notices were erected nor for the duration they remained in place. Therefore it is not possible to comment on the effect they would have in undermining the presumption that footpath no.23 was dedicated to the public by 1954.
- 5.3. The description of the path by the Parish Council and the manner in the way it was depicted in the Parish Map suggests that Council did not consider there was any need to retain its classification as a C.R.F. That in fact they recognised there was a public footpath via this private accommodation road rather than leave open the question as to whether the road (that is the public path) had any higher public status.
- 5.4. The question as to whether there was any public liability to maintain the road does not in itself establish whether the path is public if no such public liability exists. Nonetheless the issues under discussion at the time of the Parish Council meetings would suggest their concerns related to maintenance of the road for vehicular access.
- 5.5. The internal memorandum referred to between officers of this Council, does not in itself provide evidence and is a view expressed by one officer as a way of offering an explanation as to why there was a question over the liability for the maintenance of the path.
- 5.6. Accommodation Road as it has been frequently referred to, was to emphasise its use by a number of companies who required access along different lengths of the road to reach their premises. Private vehicular roads and public paths can and often to coexist.
- 5.7. Whether or not the path had ever been signposted in the 1950's and later, has little bearing on the question as to the public status of the road in 1954. Many public paths do not contain signposts where they leave metalled roads.
- 5.8. The recent evidence submitted along with the earlier evidence highlighted in the first report, does not show there is anything substantial to outweigh the presumption, the path was correctly included into the Definitive Map. Furthermore it is significant that no landowner or member of the public ever objected to the inclusion of this path into the

four precursors to the current Definitive Map and Statement at the time those editions were published in 1955, 1964, 1970 and 1972.

Appendices

Appendices 1-6

Recommendation

That the application be refused.

Reason for Proposed Decision

The available evidence does not outweigh the presumption that the path was correctly included onto the definitive map.

List of Background Papers

None

Officer Contact

Mr. Iwan Davies – Principal Solicitor – Litigation

Tel No: 01639 763151

Email: i.g.davies@npt.gov.uk

COMPLIANCE STATEMENT

APPLICATION TO DELETE FOOTPATH NO. 23 COMMUNITY OF BLAENHONDDAN

(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

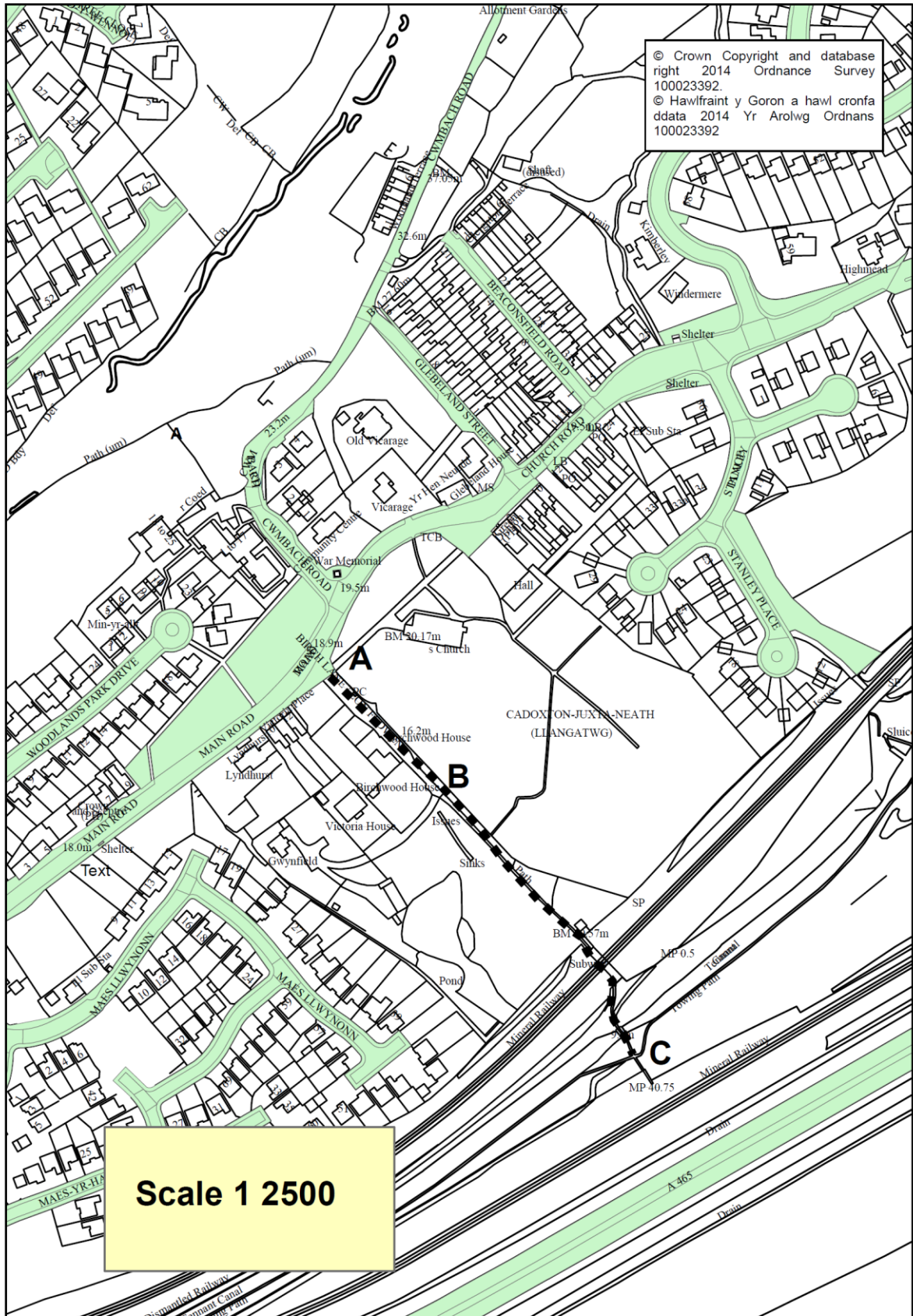
Other Impacts

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

Plan referred to in paragraph 1.3.
of the report



ITEM 2

**APPLICATION TO DELETE FOOTPATH NO. 23 COMMUNITY OF
BLAENHONDDAN**

Introduction

- 1.1 An application has been made by Mr Campfield to have the whole length of footpath No. 23 in this Community removed from the Definitive Map and Statement.
- 1.2 He considers that this path was incorrectly registered and has submitted evidence in support of his application.

1.3 The Path

Footpath No. 23 commences on Main Road (point A) alongside St Catwg's Church and proceeds in a generally south easterly direction for 240 metres and terminates on the towpath which runs along the southern side of the Neath Tennant Canal. (As shown on the attached plan.) The first 70 metres is approximately 8 metres wide but narrows to 1-2 metres between points B and C. It then passes under a railway bridge with a limited headroom of 5' 5" before crossing over a pedestrian stone arched bridge over the canal to link to the towpath at point D. The towpath is unregistered and was the subject of an earlier application but refused by this Committee on 6th January 2003. It is nevertheless open and available for use.

The Landowners

- 1.4 The Applicant lives in one of the adjacent properties to this footpath and has owned the land containing the path between points A and C, since 1993. However where the path passes under the railway bridge it is under the ownership of Railtrack/Network Rail and the remainder being owned by the Port Tennant Canal Company.

1.5 Consultation

All the usual organisations and affected landowners have been contacted:

- (a) the local representative of the Ramblers' Association have said they will 'strongly oppose' the application

- (b) Leeder Property Management who act for Port Tennant Canal Company state the track is used by members of the public and do not consider there are any valid grounds to delete this footpath
- (c) Blaenhonddan Community Council stated they do not support the deletion of this footpath because members of the public still use it and have been doing so for many years
- (d) Railtrack said that there is a history of trespass on the railway at this location and would support the closure of the footpath
- (e) The local Member submitted a file containing evidence in support of the retention of this path on the Definitive Map and Statement

The Relevant Legislation

1.6 The Wildlife and Countryside Act 1981 placed an obligation on all Surveying Authorities to keep their Definitive Map and Statement under continuous review and to consider any evidence that is submitted that purports to show that the Definitive Map and Statement requires amending.

1.7 The extract below quotes the relevant section of that Act:

"Wildlife and Countryside Act 1981

53 Duty to keep definitive map and statement under continuous review.

(2) As regards every definitive map and statement, the surveying authority shall keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence ... of any of [the events specified in sub-section (3)] 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:-

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(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. "

Comment

The possible deletion of a public right of way is based on the premise the path had been included on the map in error there having been no public right of way over the path at the date of the preparation of the original definitive map. That preparation commenced soon after the provisions of the National Parks and Access to the Countryside Act 1949 came into force which required the County Councils to undertake a survey of all routes considered to have such legal status. That survey was given to the Parish Councils who in 1951/1952 compiled their own written description of the routes which were recorded on what became known as the 'Parish Cards'. The routes were plotted on a 6" to 1 mile Ordnance Survey plans, also known as the "Parish Map". Consequently according to this Council's records, Footpath No. 23 was presumed to have had legal status when the first Definitive Map was produced and which has a relevant date of 1954. Therefore the applicant will have to show that the path was not a public right of way at this date and therefore any evidence that relates to instances after 1954 will not be relevant.

The Department of the Environment Circular 18/1990 sets out the current view which is that the onus of proof is firmly on those seeking to demonstrate the map is wrong. Paragraphs 6 and 10 of that circular give clear advice to authorities to treat the map and statement as correct, unless and until it is proved otherwise by the confirmation of a modification order.

*That Circular received judicial approval in *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001). It concluded that any consideration of such an application to delete must start with the initial presumption that the right of way exists. The standard of proof required to show the inclusion of the path is incorrect was on the balance of probabilities. Evidence of some substance has to be put in the balance*

if it is to outweigh the initial presumption that the way had been correctly included.

It should be borne in mind that the procedure laid down under the National Parks and Access to the Countryside Act 1949 resulted in a series of consultations affording any member of the public, organisations or landowners the opportunity to object to the depiction of any of the public rights of way in the former Glamorgan and subsequent West Glamorgan County Councils.

2.1 The Evidence

Each of the pieces of evidence will have to be viewed in the context of why it suggests the path should not have been considered a public right of way on 14th September 1954. Consideration of its desirability, suitability or if it has been obstructed or overgrown since 1954 is not relevant.

2.2 Private Easement

A letter has been produced dated 31st August 1929 from the Neath Abbey Estate Office who represented the Dynevor Estate. At that time Lord Dynevor owned the section of path between points A and C. The letter was addressed to the Representative Body of the Church in Wales who had purchased some land to the rear of the adjacent church to extend the graveyard. However they wanted to obtain access to that graveyard and purchased an easement for a nominal sum. In addition the Parochial Church Council was to build at its own expense a gateway in the boundary wall. The letter also refers to the path as a private road. There is also a copy of a letter in response dated 20th October 1930 accepting the terms and conditions set out for the easement.

Comment

The implication is that if this path had been recognised as a public right of way on foot in 1929/1930, then the Parochial Church Council would not have needed to gain permission to use this path as an access into the adjacent graveyard.

There is the possibility that this easement was for vehicles, which would have no bearing on whether or not the path was considered to be a public footpath at that time. However Mr Campfield wishes to point out that the previous gap in the boundary wall has been filled with a different type of stone. That gap is too small to accommodate vehicles and therefore he

would argue that the easement referred to above would have been for pedestrian access. This reference to a 'private road' is contrary to the view of the Parish Council some twenty or so years later as it was they who included the path in their survey of public rights of way in 1951/1952 and stated in the Parish Card that it had been in use for over 60 years or more. A site inspection has revealed that the gap is too narrow to have contained a vehicular gate.

2.3 Previous Council Minutes

The applicant has provided some extracts from earlier minutes from the former Neath Rural District Council which he contends show the path could not have had public status.

2.4 That in March 1952 the Parish Council requested the then Neath District Council to improve the drainage of the road, but were told the roadway was private and in such circumstances the Council have no right to carry out any works.

2.5 That in June 1952 the Parish Council had contacted the Council to carry out repairs but their reply was that the County Council had no liability to maintain under the National Parks Act 1949.

Comment

The only related minutes found for the Blaenhoddan Parish Council were for the 2nd April 1952 which referred to the 'Roadway Cadoxton Church to canal' and that the District Council had to consider a legal difficulty before it could undertake any repairs on the road. On 14th May 1952 a reply was still being awaited and by the 12th June 1952 it was recorded that the District Council indicated that they could not expend any money. The Parish Council considered the County Council be asked to take up this issue with the District Council. On the 8th January 1953 the District Council indicated it was purchasing an alternative tipping site and therefore their decision on improvements to the roadway would be postponed. Further reference to this was made on 3rd March 1955 and that repairs would be postponed until the new tip is in operation. By the 9th June 1955 it was reported that the District Council had undertaken the repairs to this roadway. The implication is that the Council had accepted it had some liability to maintain/repair the road.

- 2.6 An unsourced minute has been forwarded and dated 3rd October 1933 which highlighted that notices had been posted by the Dynevor Estate on certain paths to the effect they had not been dedicated to the public.

Another unsourced minute reflected the Clerk to the Council (presumed to be of the former Glamorgan County Council dated 5th September 1933) had been in communication with the Dynevor Estate and various Parish Councils concerning the new provisions of the Rights of Way Act 1932 and requesting information on any notices that had been erected by landowners. It also refers to a letter from the Clerk to the Dyffryn Clydach Parish Council relating to notices erected by the Dynevor Estate.

Comment

The then new provisions of the Rights of Way Act 1932 enabled landowners to place notices on any paths they considered were not public rights of way. The notices could state that those owners did not wish to dedicate any particular routes as public rights of way and were in effect statements of non-intent.

- 2.7 Mr Campfield would say that Footpath No. 23 was at that time still part of the Dynevor Estate and whilst he cannot categorically state such notices were erected on this path it is again an indication of the Estate's desire not to have any of its paths or tracks dedicated for public use.

Comment

Unfortunately not providing the source of these minutes makes it difficult to fully appraise the context in which they were presented, in that often earlier and later minutes also make reference to the issues in hand. However the assertion that the Dynevor Estate did not wish Path 23 to be dedicated is speculative.

- 2.8 The Blaenhonddan Parish Council Minutes have been checked for the similar period 1931-1934.

On 3rd January 1933, there is reference to 'Footpaths' and quoting from the Minutes:

"the following footpaths were reported to have had notices placed near them and fixed with the following works on them.

Rights of Way Act 1932 there has been no dedication under the above Act."

There followed a short list of paths that were reported to have had such notices placed alongside or on them, Footpath No. 23 was not included. The end of the report stated:

"The Clerk was instructed to report the paths with notices on to the Clerk of the NRD Council."

Comment

This suggests that the Clerk to the Parish Council was complying with the Minute, (quoted as being 5th September 1933) and from the former Glamorgan County Council.

- 2.9 A later Minute from the Blaenhonddan Parish Council 3rd January 1934 made reference to Footpaths and that the Clerk had reported to the Neath Rural District Council a list of other paths which had notices placed on them. Again Footpath No. 23 is not included in this list.

Comment

Curiously the Minute refers to an Act 1929. Nonetheless it is clear that the Dynevor Estate had not utilised the provisions of the Rights of Way Act 1932 to refute the existence of public rights of access along Footpath No. 23. Yet according to the Minute forwarded by Mr Campfield, they did do so for routes on their land in the former Parish of Dyffryn Clydach. It has been an assumption that the granting of a private easement to the Church must have implied the Dynevor Estate did not recognise public rights along Footpath No. 23. However this now appears to be false, particularly in view of the fact the easement was granted in 1929, a date close to the passing of the Rights of Way Act 1932, and when the issues of access along paths was being considered by the Estate.

2.10 Private Signs

Mr Campfield has produced a photograph of the lane at the time the Victoria Laundry was in existence, he estimates this photograph to have been taken in about 1977. At approximately point B on the plan there is a notice, although the words cannot be identified. However Mr Campfield has stated it reads Private Road.

Comment

Even assuming such a notice stated that the road was private, this does not assist in helping to evaluate what legal status the path was considered to have at this time. A private road would be interpreted as being a route over which certain people have a right to drive vehicles.

2.11 Deposit of Boulder Across the Path

Mr Campfield has stated that Colour Care Photographic Laboratories occupied the premises of Victoria Laundry by the late 1970's and placed large boulders in the lane. He submitted a questionnaire that he asked the previous manager of the Company to make certain comments. That manager stated his knowledge of the lane spanned the period 1988-1990 but whilst the premises was vacated between 1990 and 1994 they were checked at regular intervals.

2.12 He did not recall seeing a public footpath sign, nor known the path to have ever been cleared of overgrowth, nor had the Company undertaken any work, never received any complaint from the Council or members of the public regarding employees of the company parking on the path and was never approached by the Council to remove the obstruction across the lane (presumably this is reference to the boulders).

2.13 Nine prepared statements have been submitted by previous employees of Colour Care Photographic Laboratories who all said the path was 'obstructed by very large stone boulders in the early 1980's until Colour Care vacated the premises in 1990.

Comment

It is not clear whether pedestrian access was blocked, or whether the boulders were positioned to prevent vehicular access. There is a letter however from Leeder Property Management who act for the Port Tennant Canal Company who stated their clients require vehicular access once or

twice a year to clear the culvert and who have to remove the boulders accordingly. Nonetheless whatever action was taken during the 1980's is not relevant in deciding whether or not the public footpath had already come into existence in 1954.

2.14 Removal of Ash Tip

The applicant has forwarded an extract from the local Blaenhonddan newsletter which he states was dated 1983 and which made reference to the Community Council's representations for the strict control of the removal of the disused ash tip to the rear of Colour Care. They further expressed concerns over the extent of the operation and that the volume of lorry traffic at the dangerous junction of this path with Main Road. His point is that there is no reference to the public footpath which he considers should have received attention had it been recognised as a public footpath.

2.15 The Path is a Cul de Sac

Mr Campfield wishes to point out that this footpath does not connect to another public footpath but the private canal towpath.

Comment

Whilst the towpath is not registered, public access is and has been available along it, and further evidence has recently been submitted which shows that Footpath No. 23 has been used to obtain access to this towpath. As a result of this additional evidence this Council may well have to review the possible status of the towpath in this vicinity.

2.16 Path Not Maintained

The applicant also wishes to point out that he was on this land on a daily basis, from 1979 until 1993 and that the obstruction referred to earlier, the overgrowth and signpost was not dealt with by the Council. He therefore considers this is evidence of an acceptance by the Council that it has been a private road.

Comment

Any failure by the Council to carry out its statutory duties does not detract from the fact that the route was already considered to be a public one by 1954.

2.17 An Alternative Route?

Mr Campfield has made reference to a minute from Neath Rural District Council which he quotes as being dated 1954/1955. It is entitled 'Roadway between Cadoxton Church and Tennant Canal (211). Recommendation that the above roadway be cleaned and rendered fit for pedestrians when the refuse tip at Ynysllynad is in operation'.

- 2.18 There is another route shown on the attached plan (E-F) which he believes may be the path that this minute refers to. The reason being that he states 'rendering' means 'concreting' in this context, and this "alternative" has a concrete surface and is 10' wide. However Footpath No. 23 has a stone, earth surface and is recorded on the Definitive Statement as undefined but measures up to a maximum of 20'.

Comment

A site visit has revealed a 60 metre length of path off Stanley Place which is 10' wide, concrete and well defined up to the railway line where it is blocked by a metal door. There is no defined path continuing on from this railway bridge to the canal. However:

- (a) this minute is quite specific in describing the roadway between Cadoxton Church and the Tennant Canal. Footpath No. 23 passes alongside this church, the alternative does not*
- (b) the Definitive Statement is quite clear in referring to a path commencing on Main Road and passing between St Catwg's Church and the Victoria Laundry, as does the Parish Card produced at the time of their survey in the early 1950's although curiously it describes the path as being 10' wide.*

2.19 Mr Campfield wishes to point out that there is a discrepancy in the directions quoted in the Definitive Statement. This states the path proceeds southwards along an accommodation road to the Tennant Canal. Footpath No. 23 proceeds in a south easterly direction and therefore Mr Campfield would argue the alternative path could be described as proceeding in a southerly direction.

Comment

Strictly speaking this is incorrect as the closest the alignment the alternative has to a southerly direction is a south south easterly before bearing south east again to the canal.

2.20 Mr Campfield also wishes to show that the Footpath No. 23 is described as proceeding to the Tennant Canal. However it passes via a footbridge over the canal which is not referred to in the statement. The alternative proceeds as far as the northern bank of the Tennant Canal and in his opinion this path fits the description more accurately.

2.21 **Access to the Canal for Barge Trips**

Mr Campfield says there is a history of residents going to the canal to alight barges for canal trips during the summer in the earlier part of the last century. He wishes to point out that at the point the alternative path meets the canal the earlier editions of the Ordnance Survey Plan, including the 1919 edition, depict a square shaped embayment into which he would say barges could have docked, to enable passengers to board.

Comment

There is the possibility that this alternative route was used but this in itself does not mean Footpath No. 23 was incorrectly registered. In addition there is no reason to assume the public could not board barges where Footpath No. 23 meets the canal. Three people have given evidence to say that the barges were boarded where Footpath No. 23 meets the canal. It should also be noted that both the Parish Card and Definitive Statement refer to Footpath No. 23 as passing along an accommodation road. It has already been noted that the Port Tennant Canal Company use this road approximately twice a year to gain access to the canal. No evidence has been forwarded to show the "alternative path" suggested by Mr Campfield is an accommodation road.

2.22 The Dramway

The earliest edition of the Ordnance Survey date 1877, shows a railway line running along the length of this path passing under the former Neath and Brecon Railway Line, bifurcating thereafter, one branch terminating on the northern bank of the canal the other branch passing over what is now a footbridge spanning the canal, and joining the Great Western Railway which is shown running approximately parallel to and to the south of the canal.

- 2.23 Mr Campfield would say a public footpath could not have existed, because people would have been forced to walk along the railway line.

Comment

The 1899 edition of the Ordnance Survey does not show the same amount of detail and it is difficult to be sure a railway line existed by this date. Certainly by the production of the 1919 edition the railway line is no longer shown.

- 2.24 Mr Campfield's point is the Parish Card states the path had been in use for 60 years, and so by implication from at least 1890. If the dramway was there until sometime in the early part of the last century how could the public have acquired such rights if there was an operational line in existence.

2.25 Comment

Apart from the fact it is unclear if the line existed by 1899, it was not a criminal offence to walk on private mineral railway lines by general statute. This in itself would not prevent the acquisition of such a right of way.

2.25 Overgrown Nature of the Path

Photographs have been produced by Mr Campfield (undated) which he states were taken in the 1980's showing Footpath No. 23 being overgrown. Whilst he purchased the path in 1993 he was leasing land from Colour Care Photographic Laboratories, and to the rear of their premises. He cleared the area including the path as he was operating a skip hire business from the 1980's. He said that until he cleared this path it was impassable and therefore he cannot understand how the Council can say it is a public footpath when no-one could use it.

- 2.26 The applicant has also stated the relevant date of the first Definitive Map is 1954 yet it was not advertised until 4th August 1970. In his opinion it should have been put into the London Gazette and one or more local newspapers not more than six months after the relevant date of its preparation.

Comment

This is factually incorrect and perhaps not unsurprisingly a misunderstanding of the procedures involved. It is worth summarising these procedures and the results of each stage to show that the review into the production of this Council's Definitive Map was comprehensive, affording the public and landowners many opportunities to make representations or objections to the inclusion of any paths within it. It is significant that at no time was any query raised with respect to Footpath No. 23 which in itself adds weight to the conclusivity of its depiction in the Definitive Map and Statement.

Evidence in Support of Retention

- 3.1 The National Parks and Countryside Act 1949 placed an obligation on every Council to carry out a survey of all possible public rights of way which enable Parish Councils to undertake the survey and supply the information to the County Council. The Parish Card already referred to described this path and it was also shown on the 1:10560 scale map used in that survey.
- 3.2 Thereafter the former Glamorgan County Council was obliged to produce a draft map and statement which had a relevant date 1954 and published on the 4th February 1955 in the London Gazette and Western Mail.
- 3.3 Any objections or representations made were considered by the appointment of a person by the Council to determine whether a modification to the draft map and statement should be made. Such hearings were held by Mr William Thomas in 1956 and 1957. No objections were made to the inclusion of Footpath No. 23
- 3.4 Any modifications that were made had to be advertised again and were placed in the London Gazette and Western Mail on the 6th May 1960. No modifications were therefore listed in that schedule.

- 3.5 The next stage in the procedure was to allow representations or objections to the previous determination by Mr William Thomas and such hearings were held by a Mr R Cornish at Neath Rural District Council offices on the 8th December 1960.
- 3.6 Following these hearings this Council's Provisional Map and statement was advertised in the London Gazette and Western Mail on 1st May 1964. This notice permitted any landowner, lessee or occupier of land over which the map showed a public right of way an opportunity to apply to what was then referred to as the Quarter Session, which was the forbearer of the Crown Court. The public had no right to apply and so landowners were in the privileged position of having a further chance to object to the depiction of routes they did not consider were public.
- 3.7 A schedule was compiled for all hearings to the Quarter Sessions for those routes in former Glamorgan County Council which were considered between September 1966 to November 1968. Footpath No. 23 is not in that list. Clearly no landowner ever took any issue with its legal status at that time and therefore it was included into this Council's first Definitive Map produced by the 2nd April 1970, notice of which was given on the 4th August 1970 again in the London Gazette and Western Mail.
- 3.8 By the 3rd August 1968 the provisions of the Countryside Act 1968 came into force which required 'all roads used as public footpaths to be reclassified into either byways open to all traffic, bridleways or footpaths'. The former Glamorgan County Council undertook a review and on the 14th March 1974 published its results in the same newspapers referred to previously.

The former Glamorgan County Council also received consent from the Welsh Office to carry out a Special Review which invited all non-County Borough, District and Parish Councils to submit claims, together with supporting evidence for the inclusion of:

- (a) new paths to the Definitive Map of 1970
- (b) exclusion of registered paths from the Definitive Map of 1970
- (c) reclassification of Roads Used as Public Paths so depicted on the Definitive Map of 1970.

It should be noted a schedule that listed all objections and representations was reported to the former Glamorgan County and no entry was listed against Footpath No. 23.

Therefore from the first occasion this path was included into the Parish Survey Map in the early 1950's until and after the production of the Draft Special Review Map of 1974, the inclusion of Footpath No. 23 has never been challenged, but accepted by the previous Parish Council, District Council, the two previous owners of the land now owned by the applicant, by the other two landowners of the remainder of the path and by the general public. All have, by implication, accepted it was already a public footpath by 1954.

4.0 Ordnance Survey Plans

The depiction of a route on the many editions of the Ordnance Survey, is not evidence that a public right of way exists. It reflects the fact that it was a surveyable feature at the time that particular map was prepared. If the path appears on a succession of editions then it assists in being able to show over what minimum period of time it has existed.

- 4.1 In the case of Footpath No. 23, the lane that commences on Main Road and represents this registered footpath first appears on the 1877 edition of the Ordnance Survey. (However it appears on the Map of 1841, dealt with later.)
- 4.2 The initial 32 metres of this lane is approximately 6 metres wide before narrowing to about 3 metres where it passes under the railway bridge which contains the Neath and Brecon Railway. The path is shown as containing a railway line which passes over the canal (via what is now the footbridge), before reaching the sidings of the Great Western Railway Line. Whilst there appears to be sufficient width to walk alongside the initial 32 metres of railway line, where the path narrows, the railway line divides into two and gives the appearance of there being insufficient width for pedestrians to walk alongside. This in itself does not rule out the possibility of a dedication given the fact it was not a criminal offence to walk along a private railway line.
- 4.3 The second edition of the Ordnance Survey is dated 1899 and no longer shows the railway line passing along the centre of the track. Only a single line is shown, nor does it connect to the Great Western Railway. The entire length of the track is about 6 metres wide.

- 4.4 By the 1919 edition of the Ordnance Survey, there is no railway line.
- 4.5 The 1968 edition which was surveyed in 1966 and shows the first 70 metres as being about 8 metres wide before eventually narrowing to a path shown being approximately 1 metre wide.

The path is shown as passing under the railway bridge and over the canal bridge to join the Great Western Railway Line, but also to link to the canal towpath.

5.0 Tithe Map and Apportionment

Around the early 1840's the majority of parishes were surveyed by tithe commissioners who were appointed by law, to levy a form of rent for land. It had to be assessed for the value of its average produce and each field to be accurately measured and allocated a permanent record (and number).

- 5.1 It was prepared under statutory authority, with great care and accuracy to show all cultivated land, arable and pasture but also had to show waste land and roads which did not produce crops, because a tithe was not payable on these (and therefore no number would be allocated to such a parcel or strip of land). Any land which was titheable would be given a number, shown on the plan and also shown in the apportionment book, which amongst other details, would describe the type of field or property concerned along with the amount payable. If there was no number then no tithe was payable.
- 5.2 The tithe map, which was produced in 1841, shows Footpath No. 23 as a spur off Main Road, at its junction with Main Road it is wider than that road and it ends as a cul de sac on the south eastern side of the canal on the towpath but significantly has no number shown in it. Consequently the implication is the footpath was of the same status as Main Road and was simply a highway which ended as a cul de sac on the towpath.
- 5.3 It should be noted that the purpose of the tithe survey was to show land that was titheable, not to show what were considered public highways. Nonetheless these documents together with all the other evidence discovered, further supports the earlier Parish Council's view, and this Council's predecessor that it was correctly shown as at least a public footpath.

5.4 The Department of the Environment Guidance Note (1989) states 'Although concerned solely with identifying tithable lands the maps do mark roads quite clearly as untithable and thus can provide useful support evidence when taken in conjunction with appropriate schedules'.

6.1 User Evidence

Nineteen letters of objection to the proposed deletion of this path were submitted by the local Member, eight of whom were interviewed and a further person who also objects to this application. Five have said they started walking this path in the 1930's, another eight from the 1940's and another one person quoted 1958.

6.2 Generally speaking the reasons given for using Footpath No. 23 was to obtain access to the canal towpath either because they wished to walk to Aberdulais or Neath and therefore were using the towpath as an alternative to Main Road.

6.3 Those interviewed were able to provide very detailed accounts of their use, the reasons and intensity of which varied over different periods. These accounts can be read in the background papers but as a summary it should be noted that:

- (a) Three were able to say that the headroom under the railway bridge (point C) was sufficient to permit a horse and cart to pass as one of the local farmers used this path to access the local refuse tip. (At present the headroom is approximately 5' 5".)
- (b) Three people, (one of whom was not interviewed) recall barge trips being organised, one of whom specifically said they stopped on the canal towpath to the rear of the church
- (c) Another resident stated he used to work as a fireman for the Great Western Railway Company (and previously for the Neath & Brecon Railway Company) and said that he used to walk home along the towpath and then via Footpath No. 23. The reason being that one of the sidings was between Cadoxton and Neath, and said there was no need to walk back to Neath. He also wished to point out that a high proportion of men in Cadoxton worked in industry, for example for the railway companies, and as bus drivers and therefore walked back to the village via this towpath and Footpath No. 23.

Conclusion

- 7.1 The evidence submitted in support of the application that addresses whether the path was correctly registered by 1954 is the easement that was granted to the Representative Body of the Church in Wales in 1929.
- 7.2 No evidence has been forwarded to show precisely what the easement related to and makes no comment on access along the remainder of the path. (Particularly for those walking from the towpath.)
- 7.3 The Tithe Map suggests it may have been a highway by even 1841, and if that is correct, it may have been considered to have higher rights than even pedestrian access.
- 7.4 The suggestion that the alternative path was intended to have been Footpath No. 23, is difficult to support, because apart from the description of its width, and surface, all descriptions refer to the path's proximity to the church. In addition there is an abundance of other evidence that the registered path has been the one in use since at least the 1930's, but no user evidence of the alternative, nor any record of there having been any complaints about the condition of the alternative being unavailable.

Nonetheless even if there is a case for the alternative being considered as a public footpath, it does not follow that Footpath No. 23 was incorrectly registered.

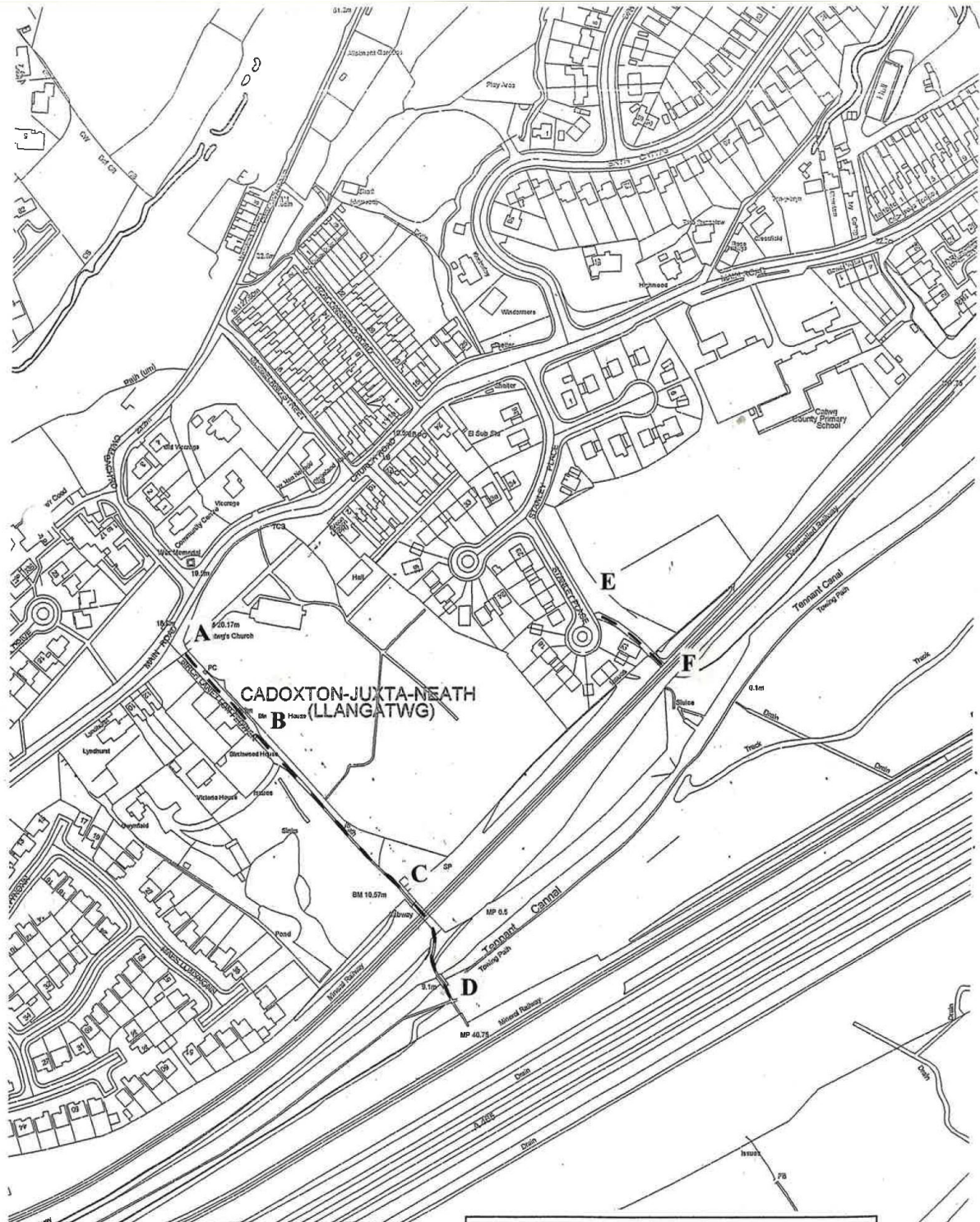
- 7.5 Lastly it must be borne in mind that the comprehensive procedures that were followed which resulted in the registration of this path is in itself good evidence that must be given weight in assessing this application.
- 7.6 On the balance of probabilities it must be concluded that the applicant has failed to show Footpath No. 23 was incorrectly registered.

Recommended:- that the application be refused.

Background papers: Investigation file.

Contact officer: Brian Thorne ext. 3151

APPENDIX 1cont'd.. – Plan



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**Application to Delete Footpath 23
 Community of Blaenhonddan
 Scale 1 : 2,500 Grid Ref. 2756 - 1984**

**Footpath 23 A---B---C---D
 Alternative Route? E---F**

APPENDIX 2

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.'

APPENDIX 3

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 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 rises 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.

APPENDIX 4

Summary of the Issues dealt with in Previous Report of 27 October 2003

1. Private easement.
2. Parish Council Minutes.
3. Existence of Private Notices.
4. Boulder across the path.
5. Clearance of ash tip.
6. That the path is a cul-de-sac.
7. Path not maintained.
8. An alternative path should have been recognised as the Definitive Path.
9. Barge trips would have been held from the point the alternative path meets the canal.
10. Existence of a dramway along the path.
11. Path overgrown when owner purchased the land.
12. Existence of Ordnance Survey plans do not identify public rights of way.
13. The Review of the public paths as required by the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968.
14. Tithe Map and Apportionment.
15. User evidence.

Summary of the Evidence submitted by the Applicant considered in the present report

1. "Cut-off date of 1954".
2. Rights of Way Act 1932 and notices of non-intent to dedicate a public path;
3. Tithe Redemption Annuity.
4. Depiction of the path on the Parish Map and its description on the Parish Card.
5. Lack of maintenance of road due to it being a private way.
6. Internal Memorandum from this Council's legal department.
7. Council obtained an easement to use the road.

8. Accommodation road did not lead to anywhere beyond the former laundry.
9. Lack of signposts or waymarks.

Additional Evidence Discovered by this Council

10. The Parish Council Minutes show there was acquiescence by previous owners of part of the path.

APPENDIX 5

A Tithe Redemption Annuity refers to the extinguishment of the liability to pay tithe rent charge. Until 1918 redemption could be affected only by the payment of a lump sum. After 1918, instigated by the Tithe Act of that year, such redemption could be realised by means of terminable annual payment initially not exceeding 50 years but extended by the Tithe Act of 1925 to a maximum of 60 years. The Tithe Act of 1936 abolished all rent charges payable on land before 2nd October 1936, replaced by Redemption Annual Annuities which were payable for 60 years, ending in 1986. This was supervised by a new Tithe Rent Redemption Commission. Alternatively, such charges could be redeemed via other arrangements, but anyone to whom a tithe was due could be compensated by the Government.

Many tithes also became payable to private estates after the dissolution of the monasteries. Where the landowner was the tithe owner as in this case a situation was created in which an individual was effectively liable to pay tithes himself. This was usually resolved by merging the tithe in the land. Although unity of possession was the most common cause of the merger, tithe costs provided for merger under certain conditions. Provision for mergers to be confirmed, via declaration of mergers, were executed under the seal of the Tithe Commissioner. However merger of tithes might take place before apportionment and could have been effected by the original agreement or award and not by a separate deed. The Tithe Act 1936 provided for all tithe rent charges to be extinguished under this Act each owner of tithe rent charge was obliged to transmit to the Tithe Redemption Commission details in writing of every tithe rent charge not already redeemed.

APPENDIX 6

As the applicant was unable to provide any information on where he obtained this plan , a researcher was commissioned to obtain the District Record Map (reference IR 90) and Orders for Apportionment (reference IR 94) from the National Record Office at Kew. The 1933 edition of the Ordnance Survey Plan was used by the Commissioner to draw more accurately the parcels of land that had been identified on the original Tithe Survey Plan of 1841. The Tithe Act 1936 enabled all those who had paid a tithe to be able to be relieved from the obligation by paying an annual charge over the succeeding fifty year period. However the District Plan excludes Footpath No. 23 nor is the path given a number. Therefore no reference is made to the path in either the Orders for Apportionment, nor indeed under the Initial Redemption Returns under the earlier form IR 110.

This again undermines the reference to an annuity in the plan supplied by the applicant. All one can conclude therefore is the official documents referred to above provide the authenticated record of those annuities where implemented and they do not include the roadway. Consequently greater reliance should be placed on these records than that produced by the applicant.