



Appendix 1

Highways Act, 1980

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

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

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

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

Appendix 2

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 any way 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 3

- (a) R v Secretary of State for Wales ex parte Emery 1996
- (b) Taff Vale Railway v Pontypridd LDC 1905 93 LT 126 British
Transport Commission v Westmorland CC 1958 A.C.126

Appendix 4

Witness No. 1

One resident of Bryndulais Ave, as shown on Plan No. 2, stated she has owned dogs since 1988 and uses the bridge as part of her circular walk. The route taken involves walking along most of the length of this road to join Church Road before walking via the footpath No. 29 before crossing over the footbridge. She then continues south west to Pen y Banc and thereafter joins Bridleway No. 9 and on to footpath No. 28 before passing alongside the football ground on Dulais Road. In addition she has used the footbridge to walk to the Post Office marked on plan No. 1 and 2.

Witness No. 2

He has used the footbridge since the early 1950's and when he was young, living with his family in the Brick Row. Subsequently, continued to visit his grandmother in Brick Row when he and his parents moved to Mary Street. He also used the bridge to catch the bus at age 15 when working at the Cefn Coed Colliery. He later undertook voluntary work for the community and so he could be anywhere in the village, if and when he received a call on his receiver. Therefore, he may have had cause to use the bridge as a short cut to reach his place of work. In fact, he wished to emphasise that if the bridge was not present then any additional time needed to reach his place of work would have compromised his ability to carry out his work.

Witness No. 3

She has been a 'Brownies' and 'Guides' leader for the past 40 years, and is currently using the community centre which means she uses the bridge when walking to and from her home on Martyn Avenue. She also stated that some young people use the footbridge who live

on the south eastern side of the railway to walk to the playing fields via footpath No 29.

Witness No. 4

This person has lived at Heol Hen for the past 40 years and has used the footbridge over this period when walking between the Post Office and 'Cost Cutters' (formerly the Cooperative). When younger, she also used the footbridge to walk to the area at Bryn-Cae and Ystitau-gwynor via footpath No. 29. She also noted some younger people use the footpath to access the playing fields.

Witness No. 5

Has lived at her present address in Bryndulais Row since 1986 and has used the footbridge since living there and even before this when living in Brick Row.

Her reasons for using the footbridge include walking to the community centre, hairdressers, the post office and also to visit friends who live a short distance past the community centre. Since the footbridge has been closed, she now has to walk from the rear of her house via the footbridge which she says is steeper. In addition, she has used the footbridge when collecting her grandchildren from school at the end of Bryn Bedd.

Witness No. 6

In the course of his duties as the current Local Member for Seven Sisters since 2008, has had cause to use the footbridge a few times per week to visit his constituents. In addition, has made frequent and regular use of the bridge for 30 years until 1989 when living in a different part of the village.

Appendix 5

Special User Groups

A) The Planning Inspectorate has produced advice on this matter in that they say there is no strict legal interpretation of the term 'public'. The dictionary definition being 'the people as a whole' or 'community in general'. Arguably and sensibly that use should be by a number of people who together may be taken to represent the people as a whole / the community.

However, Coleridge LJ in *R –v- Residents of Southampton* 1887 said that 'use by the public' must not be taken in its widest sense – for it is common knowledge that in many cases only the local residents ever use a particular road or bridge. Consequently, use wholly or largely by local people may be use by the public as depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local people as a whole / the local community.

B) In contrast to this view was the decision made by Lord Parke in *Poole –v- Huskinson* 1834 who concluded: "there may be dedication to a limited part of the public". This case was quoted by an Inspector in 1997 appointed to consider an application to add a public bridleway to the Definitive Map for North Yorkshire County Council. Here the route had also been in use for 40 to 50 years. That Inspector concluded; "in the case before Lord Parke, residents of the same parish were held to constitute a limited part of the public and I therefore believe the inhabitants of the Parish of Cliffs should also be held to constitute a limited part". The Inspector refused to confirm the Order.

Appendix 6
Impact Assessment – First Stage