

**SUBJECT: DEFINITIVE MAP MODIFICATION ORDERS, PRICES BRIDGE,
WHITELYE, TRELLECH**

DIRECTORATE: TOURISM, LEISURE AND CULTURE

MEETING: RIGHTS OF WAY ADVISORY PANEL SUB-COMMITTEE -

DATE: 29th JANUARY 2019

DIVISION/WARDS AFFECTED: TRELLECH/TINTERN

1. PURPOSE:

- 1.1. Under Section 53(2) of the WCA 1981, the Council is required to consider and determine cases with a view to making an order under section 53 of the WCA 1981 to change the Definitive Map and Statement (DM&S).
- 1.2. The purpose of the report is to consider all the evidence and decide whether or not to add the alleged restrict byways to DM&S for Monmouthshire. The routes to be added are shown on the draft consultation map (Appendix 1), in the community of Trellech, Whitelye (location plan Appendix 2).
- 1.3. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. We are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. We must weigh up the evidence using the test of the 'balance of probabilities', and, if on this balance, it is reasonable to conclude that the evidence shows that change should be made, we must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, members must themselves consider the evidence and reach their own conclusions. If a modification order is made anyone has a right to object. The matter would then be determined by the Planning Inspectorate for Wales.

2. RECOMMENDATIONS:

- 2.1. Members are invited to consider evidence provided and to advise the Cabinet Member for Operations Management whether they agree that rights of way that are not shown on the Definitive Map and Statement subsists, or is reasonably alleged to subsist, over the Routes and that the status of those ways are not restricted byways but instead bridleways.
- 2.2. If this is agreed then to advise the Cabinet Member for Operation Management to make two Definitive Map Modification Orders as detailed. Order One: Under section 53(2)(b), subsection (3)(c)(i) of the Wildlife and Countryside Act 1981 for the Routes, A-B-C-C1, to classify them as bridleways, numbers 503, 504 and 505 Trellech (382). Order Two: Under section 53(2)(b), subsection (3)(c)(i) of the Wildlife and Countryside Act 1981 for the Routes, B-E-F, C-E and C1-D, to classify them as bridleways, numbers 501A, 501 and 501B, Trellech (382) and 506 Tintern (381).

3. KEY ISSUES:

- 3.1. Mrs Greatorex-Davies submitted a claim to register the Route, A-B-C-D, as public restricted byways.
- 3.2. Furthermore, under section 53 of the WCA 1981 where the Authority has a duty to keep the DM&S under continuous review, the Route, B-E-F and C-E will also be added to the DM&S.
- 3.3. Mr J. Griffin progressed the claim with the Secretary of State. The Planning Inspector directed the Authority to determine the Order by the 13th November 2018 (Appendix 2).

- 3.4. A pre-order consultation was carried out on the 18th April 2018 to the 25th May 2018 and evidence investigated.
- 3.5. There is one objector, Mr & Mrs Talbot of Moor Farm, to the registration of the Routes on the DM&S on the grounds that the land is in private ownership and that the Routes are for private use.
- 3.6. Privacy, suitability or current maintenance of the route, are not matters which can be considered under WCA legislation.
- 3.7. If the objections made are sustained it is likely that the claim will go to the Planning Inspector for determination.

4. REASONS:

- 4.1. There are 36 user evidence forms, a number of historical documents and legislation that when taken together shows the routes are reasonably alleged to exist. There is very little evidence to support public horse drawn cart use. Based on the totality of the evidence, Officers believe the routes to be bridleways and not restricted byways as submitted by the applicants.

5. RESOURCE IMPLICATIONS:

- 5.1. The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.
- 5.2. The decision is one that must be taken on strict legal tests:
 - If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
 - In the event that an order is made and there are objections the Planning Inspectorate for Wales would consider the matter by way of written representations, hearing or public inquiry. The decision taken by the investigating officer and the Rights of Way Advisory Panel is a decision based on legal tests and the above costs cannot be a consideration in the determination of the application.

6. WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING):

- 6.1. The Order if made will neither positively nor negatively impact on the well-being goals or the sustainable development principals.

7. CONSULTEES:

- 7.1. Corporate Management Team, Rights of Way Advisory Panel Members (Licensing and Regulatory Committee), Select Committee Chairmen, Cabinet Members, Local Member, Head of Finance and Head of Legal Services.

8. BACKGROUND PAPERS:

- 8.1. Draft and Consultation map (Appendix 1)
- 8.2. Location map (Appendix 2)
- 8.3. Report, Glossary and Appendixes bundle (Appendix 3)
- 8.4. Future Generation Evaluation (Appendix 4)

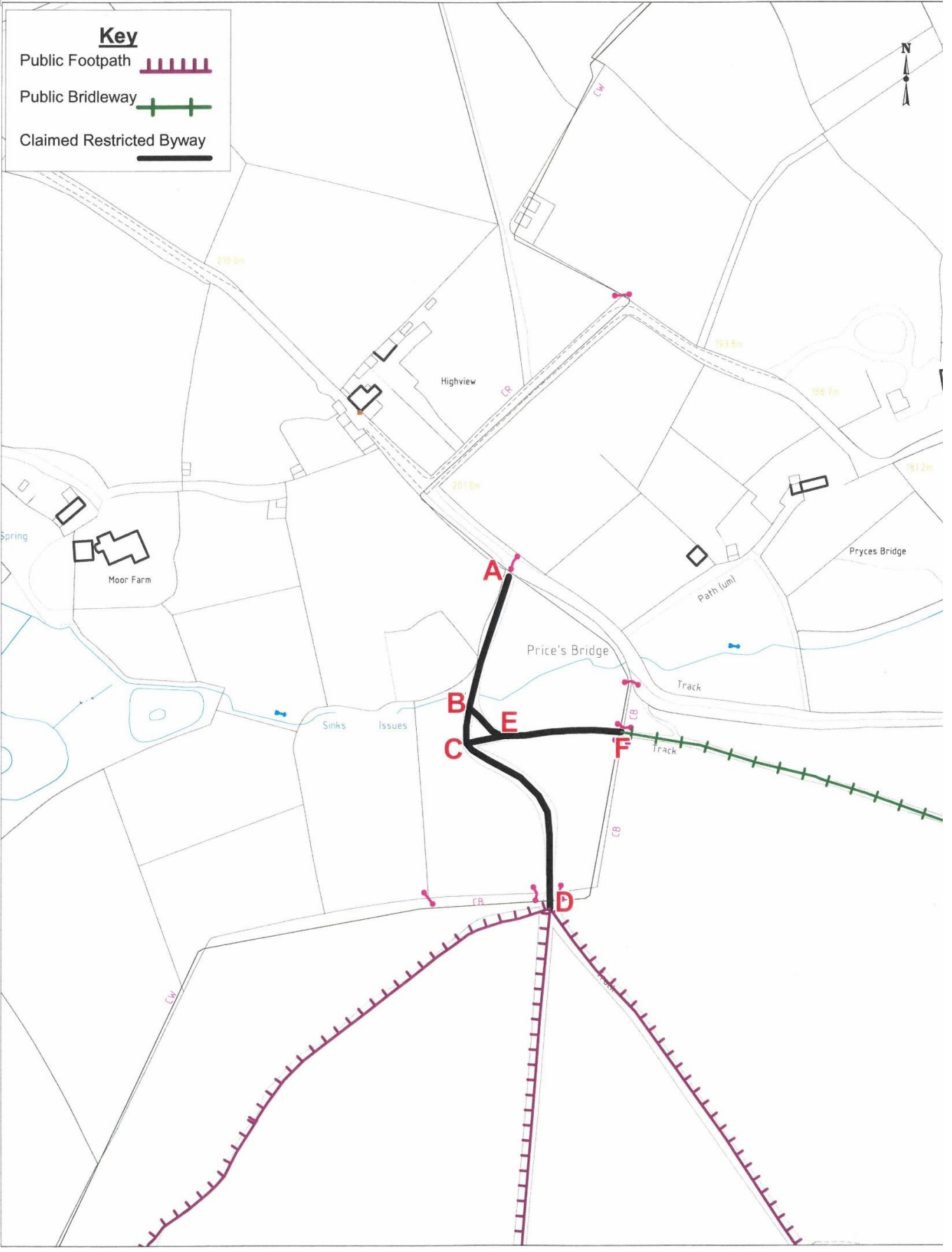
9. AUTHOR: Ruth Rourke Principal Countryside Access Officer

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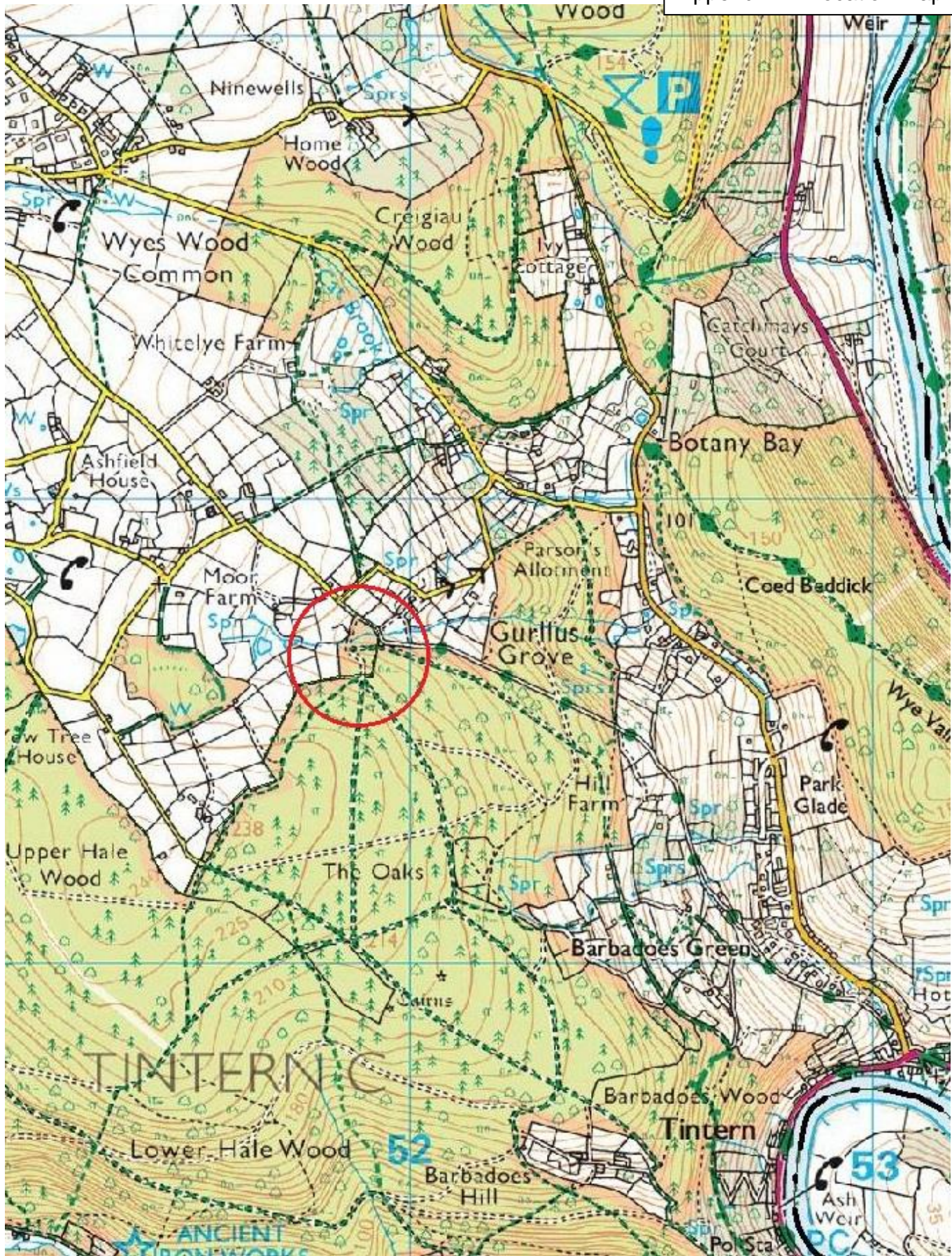
Consultation Plan

GR: SO518017

Scale 1:2000 at A4



Appendix 2: Location map



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