

1. Introduction: Definitive Map Modification Order

BACKGROUND

- 1.1. An application has been received from Mrs Greatorex-Davies, the clerk of Tintern Community Council under Section 53(2) of the Wildlife & Countryside Act 1981 (WCA). The application, dated the 11th December 2013, is to modify Definitive Map and Statement (DM&S) of Monmouthshire by adding a restricted byway in the Community of Trellech on the boundary with the Community of Tintern (Appendix 1.1 location map).
- 1.2. An assessment of the evidence was made and it was pointed out to the Applicant that another route was also referred to. Subsequently, Mrs Greatorex-Davies confirmed the inclusion of the other route alignment, “from the East to connect with ‘Route A’”, in her letter dated 6th August 2014 (Appendixes 1.2 & 1.3). This means that two routes referenced as ‘Route A’ and ‘Route B’ are both being claimed as restricted byways (Appendix 1.4).
- 1.3. The effect sought by the Application, if successful, is therefore to add the Route, A-B-C-D (‘Route A’) given that the legal requirements under the WCA 1981 schedule 14 have been complied with. 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 (‘Route B’) will also be added to the DM&S if the Definitive Map Modification Order is confirmed (Appendix 1.5).
- 1.4. 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.

AIM OF REPORT

- 1.5. The aim of this report is to set out the relevant evidence and legal tests including the weight that can be given to that evidence in accordance with section 53 of the Wildlife and Countryside Act 1981 to reach a determination on whether or not to make two Definitive Map Modification Orders (DMMO).

2. Legal Framework

- 2.1. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. There is no requirement to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. The evidence must be weighed up using the tests of “**subsists or is reasonably alleged to subsist**” and on the ‘**balance of probabilities**’, and, if on this **balance**, it is reasonable to conclude that the evidence shows that the Routes are to be added, then this must be done. Although, this report has considered the evidence, and made a recommendation based on assessment, members must themselves consider the evidence and reach their own conclusions. If modification orders are made anyone has a right to object. The matter would then be determined by the Planning Inspectorate for Wales.

Definitive Map Route Definitions

- 2.2. Footpaths, bridleways, restricted byways and byways open to all traffic are generally referred to as public rights of way and are public highways. The Routes being considered are for restricted byway status which is defined under section 66(1) of the Wildlife and Countryside Act 1981 as being a highway over which the public has a right of way on foot, or horseback or leading a horse, and a right of way for vehicles other than mechanically propelled vehicles.

Continuous Review of the Definitive Map and Statement (DM&S)

- 2.3. Under section 53 of the Wildlife and Countryside Act 1981 the duty of the Authority is to make Definitive Map Modification Orders (DMMO) to modify the DM&S as soon as reasonably practicable on the occurrence of certain specified events under section 53(3). Monmouthshire County Council are responsible for the preparation and the continuous review of the DM&S under section 53(2) of the WCA 1981.

Wildlife and Countryside Act 1981 section 53(2)

- (2) as regards every definitive map and statement, the surveying authority shall:*
- a) as soon as reasonably practicable 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 subsection (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 modification to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*

- 2.4. The application, Route A-B-C-D, is considered under section 53(2)(b) of the WCA 1981 and the event as specified in section 53(3)(c)(i). The other Route B-E-F and C-E, is

considered under section 53(2)(b) of the WCA 1981 and the event as specified in section 53(3)(c)(i) as shown below in italics.

Wildlife and Countryside Act 1981 section 53(3)

(3) The event referred to in subsection (2) is as follows –

(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 in 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;

- 2.5. With regard to the standard of proof needed under 53(3)(c)(i), an order must be made if there is reasonable allegation in favour of the existence of public rights. After publication such an order can however only be confirmed if, on the balance of probability, the alleged rights can still be shown to exist despite objections. Thus, if the tests appear to have been satisfied, yet there remains a conflict of credible evidence which cannot be reconciled, the Authority is obliged to make an order.
- 2.6. The basis of the discovery of evidence may be documentary or user evidence and can be considered alternatively to continuous use or alongside it.
- 2.7. The Authority is required to assess whether the event giving rise to the need to modify the Definitive Map & Statement has occurred by identifying an instance whereby the existence of the rights were challenged (in other words “called in to question”) and then apply the statutory foundation included in the Highways Act 1980 section 31(HA s.31) or by identifying an inference of dedication at common law.

Statutory Tests

Highways Act 1980 section 31(1)

(1) Where a way over any 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 been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a Highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

- 2.8. The above section contains numerous considerations that should be applied in determining applications. The Sub-committee should be guided by those that may be relevant to this application. Below are extracts from section 31(1) Highways Act 1980, along with a brief outline as to their effect.

- i) **...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...**

It is a principle of common law that use cannot give rise to acquisition of rights if that use has been on the basis of a criminal offence (e.g. where use has been unlawful).

- ii) **...actually enjoyed...**

Sufficient use of the way must be shown for the required period.

- iii) **...by the public...**

The use must be shown to have been by the public at large. Private use by employees, tenants or a particular category of people cannot qualify.

- iv) **...as of right...**

The House of Lords in *Sunningwell*¹ decided that “as of right” means “if by right”. For use to give rise to a presumption of dedication it must be as “if by right”. That is without force, secrecy or permission (*nec vi, nec clam, nec precario*).

- v) **...without interruption...**

Interruption means actual or physical stopping by the landowner or someone acting on their behalf. This interruption must have been made with the intent to prevent the public using a way. Interruption occurring for an unrelated purpose, such as building works or car parking, will not qualify.

- vi) **...for a full period of 20 years...**

The time period to be considered under the Highways Act 1980 is 20 year use prior to the date the way was called into question.

- vii) **... no intention during that period to dedicate it.**

The intention not to dedicate must be supported by demonstration of overt acts that have been taken and sufficiently communicated to the public so that the public at large are aware. Circumstances such as a letter between a landowner and the Council or a clause in a tenancy agreement would not be sufficient to show a lack of intention to dedicate.

- 2.9. If the criteria under section 31(above) are not met, the Authority should consider whether it can be reasonably alleged that a route has been dedicated under Common Law.

¹ *R v Oxfordshire County Council ex parte Sunningwell Parish Council* (HL) [1999] UKHL 28 [2000] 1 AC 335 [1999] 3 All ER BBE

The Establishment of Highways

- 2.10. Subject to a small number of exceptions, before any highway over a strip of land can come into being there must be an act of dedication by the landowner followed by public acceptance. In disputes public acceptance is demonstrated in user evidence forms and other historical documentation that are submitted in support of claims.

Common Law Tests

- 2.11. Common Law dedication differs from the statutory provision in so much as it does not require a minimum of 20 years to be shown. Instead the shorter the period under consideration the more compelling the evidence of obvious public use and acceptance of the owner needs be displayed. Capacity to dedicate must also be shown. That is a landowner must be identified.
- 2.12. Documentary evidence may be useful in determining whether the Routes were ever previously considered to be public. Section 32 of the Highways Act 1980 provides for “any map, plan or history of the locality or other relevant document” to be tendered in evidence of the existence or status of public rights of way.

Highways Act 1980 section 32

(32) A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

Extinguishment of Public Rights for Mechanically Propelled Vehicles (MPV)

- 2.13. The Natural Environment and Rural Communities Act section 67(1) came into force in Wales on 16th November 2006 and had the effect of extinguishing public motor vehicular rights over every way that was not already shown on the DM&S, or was shown only as a footpath, bridleway or restricted byway.
- 2.14. This was, however, subject to certain exceptions contained in subsection 67(2).

Natural Environment and Rural Communities Act 2006 Subsection (67)(2)

67(2) Subsection (1) does not apply to an existing public right of way if -

- a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,*
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),*
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,*
- (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

2.15. In the current case it will therefore be necessary to consider whether public vehicular rights were, or would have been, extinguished as a result of NERC Act 2006. This is detailed in Chapter 13.

Open Access

2.16. The current case is also subject to Open Access regulations (Countryside and Rights of Way Act 2000 (CRoW)) which identified open access land in Wales. Under these regulations it would not be necessary to register public rights of way over land that is designated as Open Access Land. The Forestry Commission (Natural Resources Wales) in 2005 with the knowledge that they owned the OS parcel 1524 (1901 OS map) included this area as Open Access.

DMMO Process

2.17. The DMMO process seeks to ensure public rights are correctly recorded as they exist and is an exercise in modifying the DM&S to reflect such a position. It is not within the remit of the order to give consideration to other factors such as need, nuisance or suitability (though aspects of these facts may assist where they constitute evidence of past use). The effect of amenity, antisocial behavior or other such circumstances relating to the way is unable to be taken into account. The process is not to decide whether a way is desirable at a given location but whether a way has been established through dedication and acceptance by the public.

2.18. In determining the current Application, consideration must therefore be given to whether the documentary evidence and user evidence provided is sufficient to show

that the Routes are, or reasonably alleged to be, public rights of way based on the discovery of evidence under subsection 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

- 2.19. In *Todd v Secretary of State for the Environment, Food and Rural Affairs* (2004) it was held that in the case of an Application under subsection 53(3)(c)(i) (addition of a way to the map), in deciding whether to make an Order, the test to be applied is not whether the evidence establishes that a right of way exists, but whether a right of way can reasonably be alleged to exist. Even though the Sub-committee may consider that the evidence is insufficient to establish that the rights of way exist they must make the Order if it is reasonable to do so.

3. Land Owner Notification

- 3.1. The Applicant has stated that a notice (Appendix 3.2) has been served on Mr and Mrs Talbot of Moor Farm thereby confirming that the requirement of the Wildlife and Countryside Act 1981 (WCA) Schedule 14, Paragraph 2 has been complied with for the Route, A-B-C-D. The affected landowners have been notified with the application certificate (iii) and the accompanying map (Appendixes 3.3 & 3.4).
- 3.2. The Applicant believes that Mr and Mrs Talbot are the only landowners because of their actions in changing the physical nature of the area and reported verbal responses.
- 3.3. Mr and Mrs Talbot, on 13th April 2018, received the draft and consultation map (Appendix 1.5) notifying them of all the Routes being investigated.
- 3.4. Legislation stipulates that the Authority has a duty to keep the DM&S under continuous review and as the Routes, B-E-F and C-E link with the Route, A-B-C-D they were all included in the pre-order consultation.
- 3.5. It is also demonstrated in Chapter 7 that both the relevant department and the Director of Legal Services for Natural Resources Wales (NRW) have also been consulted.
- 3.6. Mr and Mrs Talbot confirmed, in an email dated 25th May 2018, that they do hold the title deeds to the land.

4. Land Registry

- 4.1. Title Deed number WA426587 is for the land edged by a red line on the plan (Appendix 4.1) and entries on the registered title (Appendixes 4.2 & 4.3) dated the 25th June 2015 indicate Mr Robin James Talbot and Mrs Gillian Talbot as being the proprietors since 2nd February 1989.
- 4.2. The land over which the Routes A-C-B [A-B-C-D] and C-D [B-E-F and C-E] cross has been the subject of a land dispute between Mr and Mrs Talbot of Moor Farm and Natural Resources Wales (NRW). NRW having sought legal advice eventually negotiated an agreement with Mr and Mrs Talbot to settle out of court.
- 4.3. The discrepancy over the extent of land ownership is not going to be investigated and resolved under the legislation pertaining to public rights of way. Although, OS parcel number 1524 is marked on the 1901 and 1921 Ordnance Survey maps it is not referenced in the 1988 Transfer Documents and the 1934 Conveyance. See table below.

TIME LINE for landownership of 1921 OS parcel 1524 (OS p1524)

4.4. Land registry number WA462587

Date	Context	Inclusion or exclusion of OSp 1524
2018/ 2017	The Talbots state ownership inclusion of (OSp1524)	inclusion
2015	Land Registry mark edge red inclusion of (OSp1524) Land Registry tint pink marks exclusion of (OSp1524) The 2015 Land registry refers to the 1934 Conveyance. The 2015 Land registry states: The land coloured blue is tinted pink on filed plan. (Appendix 4.1 to 4.3).	inclusion and exclusion
2013	The Talbots overtly obstruct routes/land	inclusion
2013	Submission of DMMO routes cross over OSp1524	
1997	Forestry Commission submits Statutory Declaration and includes (OSp1524) signed by Magistrates Court.	inclusion
1988	Transfer Documents excludes (OSp1524) in list. Plan is rendered poorly showing incorrect colouring of area coloured blue.	exclusion
1934	Conveyance 31 st August 1934 excludes (OSp1524) in list. Furthermore, the plan also excludes (OSp1524).	exclusion
1924	Forestry Commission Statutory Declaration states ownership commenced between 1924 and 1974 and includes (OSp1524).	inclusion

- 4.5. Nevertheless, it remains possible to determine that public rights exist over land that is held privately.
- 4.6. This means that the owner of the land would have to reinstate the public rights of way to their original alignment, width and nature if it is proven that public rights of way exist. The original alignment and width would be that which is illustrated on the 1920s Ordnance Survey maps (Fig. 8.16 (not to scale)) as these are the base maps for the Definitive Map.

5. Statutory Declaration Section 31(6) HA1980

- 5.1. Research has shown that the Forestry Commission (now NRW) submitted a Deposit Statement and plans on the 7th/8th August 1997 and then a Statutory Declaration on the 16th September 1997 under section 31(6) of the Highways Act 1980 (Appendixes 5.1 to 5.4).
- 5.2. The 16th September 1997 Forestry Commissions (NRW) Statutory Declaration states that they were the landowner from any date between 1924 and 1974 up to the submission date. The documentation also states that the Forestry Commission (NRW) has continuing responsibility of the land by promising to lodge at six year intervals further declarations. When using the dates 1924 and 1974 it shows that the Forestry Commission (NRW) has been the landowner for a lengthy period.
- 5.3. Investigation of this 1997 Statutory Declaration confirms that it is valid.
 - i) The Act specifies a scale of not less than 1:10,560 which is the minimum recommended. Although, there is no scale recorded on the 1997 deposit maps, when measured they are about 1:10,000 which is greater in scale than 1:10560.
 - ii) The deposit is signed and dated 7th August 1997 acknowledged as received by the Public Rights of Way Officer (Appendix 5.1).
 - iii) The relevant deposited map (Appendix 5.2) shows the alignments of all public rights of way highlighted purple, green or brown. However, the deposit gives no key in which to identify the alignments marked by bold black solid or broken lines.
 - iv) The 1997 deposit of statement and maps, dated as received by Mr R. McAlister on the 7th August 1997, follows the required legislative form.
 - v) Legislation directs that two submissions must be made separately a few days apart. Therefore, the Forestry Commission (NRW) has submitted the Statutory Declaration, signed and dated the 16th September 1997 (Appendix 5.3), along with the relevant statements of ownership and reference made to their acknowledgement of the existing public rights of way highlighted on the deposited maps made on the 8th August 1997 [sic 7th].
- 5.4. The section 31(6) Statutory Declaration submitted in 1997 influences the claim as it interrupts the continuous 20 year period between 2013 and 1993.
- 5.5. Furthermore, when the 1997 Statutory Declaration was made, the Forestry Commission (NRW) stated that they would lodge similar declarations at six year intervals. Research has revealed that these promised submissions are not evident on file.

- 5.6. However, legislation introduced Open Access Land in 2005. The Forestry Commission (NRW) knowing that they were the landowner designated OS parcel 1524 (1901 OS map) along with the whole woodland and other areas as Open Access Land. The effect of this designation was to dedicate the land thus making the whole area available to the public as long as it was only on foot. The Forestry Commission (NRW), having made this formal dedication, had no need to renew the Statutory Declaration and no additional submissions were made.
- 5.7. This means that the 20 year period, 2013 to 1993, is interrupted for six years from 1997 to 2003 and due to the designation of Open Access Land in 2005 a further interruption occurred covering the period, 2005 to 2013.
- 5.8. In their reply to the 2018 pre-order consultation, Mr and Mrs Talbot have stated that they need to obtain information from the Solicitors' Regulation Authority regarding their Statutory Declaration that was made with the solicitor at the time [2013] who has now ceased trading.
- 5.9. The Council does not hold a full authorised copy of Mr and Mrs Talbot's Statutory Declaration but is aware that they were advised, in 2013, that this legislative procedure was available to them if they wished to pursue it.
- 5.10. The period for 20 year continuous uninterrupted use of the Routes, A-B-C-D; B-E-F and C-E, is from 1997 to 1977. Thirty-six out of the 47 user evidence forms, submitted with the 2013 Application cover this period.

6. User Evidence Forms & Other Submissions

User Evidence Forms

- 6.1. The user evidence forms including an accompanying map are typically submitted along with an application to register a public right of way on the Definitive Map and Statement (DM&S).
- 6.2. In this report there are effectively two routes. Although the application notified the landowner of only one route, A-B-C-D, the witness evidence indicates the existence of another connecting route, B-E-F and C-E.
- 6.3. The Authority did not mark in red the alignments of the Routes, A-B-C-D, B-E-F and C-E, even though the majority of maps attached to the user evidence forms are marked as compiled by 'mussell.m'. The Application letter (Appendix 6.1 to 6.3) demonstrates that two maps were sent out specifying that one was for information showing existing rights of way and the other was blank for respondents to mark the alignments of the Routes they used. In this Application some respondents have marked on the information map a bold red line depicting the Routes. A number of the user evidence forms have utilised this information map which in this Report is considered acceptable.
- 6.4. Forty-seven DMMO evidence forms have been submitted to the Authority in support of the Routes, A-B-C-D, B-E-F and C-E (Fig. 1.3). The use is described from 1942 onwards where out of the 47 respondents, 46 used the Routes during the 20 year period from 1993 to 2013.
- 6.5. The references made by respondents concerning landownership are not relevant to whether public rights may or may not already exist.
- 6.6. However, research has shown that the Forestry Commission (NRW) submitted a Deposit of Statement and plans on the 7th/8th August 1997 followed by a Statutory Declaration on the 16th September 1997 under section 31(6) of the Highways Act 1980 (Appendixes 5.1 to 5.4). Consequently, the 20 year period (1993 to 2013) has been interrupted by that 1997 Statutory Declaration. Therefore, the period investigated will now be from 1977 to 1997.
- 6.7. This means that out of the 47 evidence forms there are 36 respondents who report having used either one or all of the Routes between 1977 and 1997.
- 6.8. Thirty-six user evidence forms along with comments, Appendixes 6.4 to 6.39.6 have been investigated.

- 6.9. The user evidence forms show that none of the respondents is an owner or tenant or an employee of the landowner.
- 6.10. Furthermore, the various and specific questions regarding notices and signs reveals that none of the 36 respondents report seeing any signage or notices stating that the Routes were not open or in any way declaring the private nature of the OS parcel 1524 (1901 OS map). In other words the Routes being investigated were all open and freely available for use.
- 6.11. The user evidence along with timeline chart (Appendix 6. 40) reveals that out of the 36 respondents there are:
- i) 36 that report using the Routes on foot. Of these 36 people, 19 describe in their evidence forms that they used all the Routes on foot and 4 describe using the Route, A-B-C-D only. This leaves 13 users who have attached a map marking the Routes even though they do not specifically describe them on their evidence forms.
 - ii) 36 responders have submitted maps along with their evidence forms. Of these 36, 32 have marked all the Routes while 4 have marked only Route, A-B-C-D. Of the 36 responders who have all signed and dated their forms there are 14 that have additionally signed and/or dated their map.
 - iii) 9 users also report use of the Routes with vehicles. Of these 9 people, 5 report using all the Routes with a vehicle; 1 reports using the Route, A-B-C-D only; while 3 do not specify which routes used.
 - iv) 3 users report having seen horse drawn vehicles; 2 of the 3 do not specify the frequency of this type of use while 1 reports seeing her friends Dad on a horse & trap once.
 - v) 5 users report use of the Routes on horseback. Of these 5 people, 3 report using all the Routes on horseback; 2 report using the Route, A-B-C-D only.
 - vi) Further to the horse riding usage there are reports of cyclist using the Routes. The Countryside Act 1968 allows for cyclist to use a bridleway and not a footpath. Therefore bicycle use of the Routes is included with horse riding use. There are 9 responders who state that they have cycled the Routes.
 - vii) 9 users, of whom 5 report using all the Routes on a bicycle; 4 report using the Route, A-B-C-D only.
 - viii) This means that there is a total of 8 responders either horse riding or cycling on all the Routes.
 - ix) Additionally, there are 9 responders of the 36 that report seeing horse riders using the Routes. Therefore, in total there are 16 responders that report the Routes being used to the level required for bridleway rights.

- 6.12. This shows overall that all 36 people who provided user evidence have walked the Routes. Of the 36 responders; 3 have ridden horses; 5 have cycled and 5 have driven motorised vehicles over all the Routes.
- 6.13. The reported use of motor vehicles can no longer be taken as evidence to establish public vehicular rights, owing to the Natural Environment and Rural Communities Act 2006 (NERC 2006) in respect of claims submitted for the registration of byways open to all traffic after the 19th May 2005.

OTHER SUBMISSIONS:

Proforma

- 6.14. Mr Herbert George Sadler submitted on the 5th January 2015 a “Proforma” (Appendix 6.41 to 6.41.5) designed by interested parties to assist him in providing evidence.
- 6.15. The “Proforma”, when compared with the formal user evidence forms omits important details such as date of birth, the place of local residence and the period in which the Routes were used. Besides, the “Proforma” contains leading statements, such as “to get back the land or open the paths”. His statement of his use of the footpath 381/122/1 is not the Route marked on his map, A-C-B [A-B-C-D]. For these reasons his evidence cannot be taken into account. Furthermore, after writing to him, requesting that he completes a user evidence form, I was contacted and told that he had passed away in April 2016.

Letters

6.16. Mrs Greatorex-Davies

- i) Mrs Greatorex-Davies replied on 6th August 2014 to the assessment report (point 1.2) by submitting additional statements from Mr J Griffin, Mr and Mrs J Simpson and Mr R Woods (Appendixes 6.42 to 6.45 respectively).

Comment

- ii) Mr J Griffin’s addition is not used as it is outside of the 1977 to 1997 period. Mr and Mrs Simpson’s and Mr R Woods’ additions have been incorporated within their evidence.

She also stated in her letter that:

- iii) *“We would like Route B(C to D)[B-E-F and C-E] to be added to the claim as this is clearly the natural line of the currently accepted right of way from the East to connect with Route A and had been mentioned because it was in daily use. Indeed, there was a sign at the point it meets Route A (point C)[C] pointing to “Barbadoes Green”, again indicating a path accepted by the authorities. Also, this section is marked in red on the Ordnance Survey map indicating that they thought this was a path with public access.”*

Comment

- iv) Both the north/south alignment (Route A [A-B-C-D]) and the east/west alignment (Route B [B-E-F and C-E]) have been included on a map as part of the pre-order consultation process.
- v) The acceptance of the Route, B-E-F and C-E, by both the Local Authority and the Forestry Commission, in installing a fingerpost at point [C] indicates their belief that a public right of way existed, although this has no weight as the Route is not registered on the Definitive Map and Statement (DM&S). This is detailed in Chapter 9.
- vi) The Ordnance Survey map indicating the Route, B-E-F and C-E, does not prove public access. The Ordnance Survey maps have a disclaimer that states:

“Public rights of way shown on this map have been taken from local authority definitive maps and later amendments. The map includes changes notified to Ordnance Survey by 1st Feb 2005. Rights of way are liable to change and may not be clearly defined on the ground. Please check with the relevant local authority for the latest information. The representation on this map of any other road, track or path is no evidence of the existence of a right of way”.
- vii) It is possible that Ordnance Survey received false information from the Local Authority.

6.17. Mr J Griffin

- i) Mr John Griffin, a local resident, has furthered this Claim for and on behalf of Mrs Greatorex-Davies, the clerk to Trellech United Community Council, by making representation, under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, on the 22nd August 2017. His purpose was to seek direction to be given to Monmouthshire County Council (MCC) to determine an application for an Order, under section 53(2) of the WCA 1981. The Planning Inspector directed that MCC should determine the Claim by the 13th November 2018.

THE ANALYSIS OF THE EVIDENCE FORMS

6.18. The validity of user evidence forms:

i) Signing and dating of forms

All 36 respondents signed and dated their forms. Some of them had not dated and signed their maps although any doubt can be dismissed as the maps and forms were securely attached to each other.

ii) A clear description of the Routes

All 36 respondents give a clear description of the Routes either as a reply to question 2 or in reply to question 26 of the evidence form. In respect of their maps some of them have added markings in clarification.

iii) Clarity on how the Routes were being used

All 36 respondents clearly state how and when they used the Routes.

iv) Errors and omissions

- a) Although some users have not signed and dated their attached maps, all 36 respondents have signed and dated their forms and most have stated that they are prepared to attend a public inquiry.
- b) Not every respondent has used the same route description. Some county unclassified road numbers are incorrect. However, the Routes have been shown on their maps attached to their signed and dated evidence forms.
- c) Some questions have not been answered which indicates that they are not applicable to that particular respondent. An example is the question regarding gates and whether or not they are locked. If the response is that the Routes are not gated, it follows that there are no gates available to lock.
- d) Every respondent has given name, address, date of birth and occupation.
- e) Therefore, the overall response from all 36 users is that no omissions have occurred.

v) Lack of clarity

- a) All 36 respondents have been clear on both their forms and attached maps. The user evidence shows public usage of all the Routes.
- b) Therefore, no lack of clarity has been observed.

vi) Serious inconsistencies

- a) Mr Flashman's response appears to have serious inconsistencies. However, this is clarified when reference is made to an assisting location map where it is obvious that he is referring to the county unclassified road C51-9[CAMS381/51-4] for much of his response.

vii) Possible collusion between witnesses

- a) The evidence forms taken together show displeasure at the overt destruction and obstruction of the Routes carried out by the owners of Moor Farm.
- b) However, the main content of each evidence form remains personal and relevant to the respondent's use of the Routes.
- c) There are some answers where collaboration is noted, such as, in the description/location of routes which has only served to highlight obvious family relations. These are: Mr and Mrs Koek; Mr & Mrs Simpson and their two children Miss C Simpson and Mr SMT Simpson; Mr A Townsend and his daughter Miss J Townsend; Mr J Phillips and Mrs G Phillips; Mr and Mrs Verdigi.

- d) When all the information within the evidence forms is taken together and compared it is judged that collaboration is minimal and is not detrimental to the Claim.

viii) Other anomalies

- a) The county unclassified road CAMS 381/51-4 marked on some of the user evidence forms and maps has also been referenced as county unclassified road C51-9 and, in error, C51-1. Chapter 10 details two highway maps that show the road passing over Prices Bridge to have been given different reference numbers. For the purpose of this Report the road is referenced as C51-9[CAMS 381/51-4].
- b) Differences are noted between the submitted user evidence maps. Some of them show the Routes marked by bold red lines on a blank map while others have marked them in red on the information map, either of which is considered acceptable in this Report. (See 6.2.)

CONSIDERING THE WEIGHT OF THE USER EVIDENCE

6.19. The user evidence needs to be tested in order to decide what evidential weight to place on them. As with historical documentation, user evidence that is tested generally carries significantly more weight than untested evidence.

- i) The user evidence submitted in support of the Claim consists of 36 completed forms made by different people, each for varying periods that are more or less than 20 years which, when taken together, covers the qualifying minimum of 20 years. Furthermore, the immediate family relations have been noted where possible. Although this has occurred, there remains a cross section of different families and family members who have both lived in and been visitors to the area.
- ii) The reporting of trades-people, the postman and the Forestry Commission workers using the Routes in motorised vehicles cannot be taken to establish public vehicular rights. However, in this instance the postman, Mr D Mayo, also reports walking the Routes for pleasure and this aspect of his use of the Routes can be taken into account.
- iii) Out of the 36 respondents, 15 state that they wandered freely and the reporting of this type of use cannot establish public rights. However, out of the 15 who wandered freely, six both kept to the path and wandered freely. This leaves 9 who wandered freely in the area. Therefore it is deduced that 27 users kept to the Routes.

- iv) Until as recently as 2017 none of the respondents was aware of the extent of Open Access Land and their use of it for recreational activities. Therefore, their use of the Routes from the 28th May 2005 when the Countryside and Rights of Way Act (CROW) came into force, clearly identifying Open Access Land in Wales, cannot give rise to a presumption of dedication for specific route alignments.
- v) The overall inspection of all 47 user evidence forms and the examined 36 forms has revealed that each form was completed with sufficient detail and individuality to show the use of the Routes. Furthermore, all 36 forms when compared show that they have been answered accurately. Of the 36 responders 9 were interviewed confirming their previous submissions, answering further questions and where asked marked on another blank map all the Routes their used.
- vi) In the main the 36 users have clearly stipulated the start and end dates for their specific period of use. However, if a start or end date is not clear this has been clarified by other questions answered on the form and where possible also derived from the respondent's date of birth and the date of signature.
- vii) The 36 respondents have, in the majority, clearly addressed their period of use and how they have used the Routes. Some have given precise details of use and frequency. For example, weekly and/or seasonally.
- viii) The majority of respondents report no difficulty in negotiating the Routes other than when the obstructions were placed across them by Mr & Mrs Talbot of Moor Farm whose actions brought the Routes into question.
- ix) One or two respondents have recorded encountering boulders across the Routes. This is significant because not all the users report the boulders and one user describes them as small rocks and some trees which were easily moved. This action does imply that someone (perhaps the Forestry Commission) was attempting on a regular basis to prevent the vehicular use of the Routes. It is evident that this placement of boulders across the Routes was not permanent.
- x) In this case an overall picture has emerged from the comparison of the user evidence against the historical Ordnance Survey maps, aerial photographs and site photographs with the result that no obvious differences exist between the respondent's recollection and these sources of information. This adds weight to the user evidence examined.

CONCLUSION OF ANALYSIS AND WEIGHT OF USER EVIDENCE

- 6.20. The use of the Routes is described from 1942 onwards where out of the 47 respondents, 46 used them during the 20 year period from 1993 to 2013.
- 6.21. Due to the Forestry Commission submitting a Statutory Declaration on the 16th September 1997 under section 31(6) of the Highways Act 1980 the 20 year period (1993 to 2013) is interrupted. Therefore, the period investigated is from 1977 to 1997.
- 6.22. This means that out of the 47 evidence forms there are 36 respondents who report having used either one or all of the Routes between 1977 and 1997.

PUBLIC VEHICULAR RIGHTS LOST

- 6.23. All 36 users believed that they had a right to use the Routes for: walking, cycling, horse riding or in or on motorised vehicles. The 9 who report use of the Routes in motor vehicles can no longer be taken as evidence to establish public vehicular rights, owing to the NERC Act 2006.

PUBLIC RESTRICTED BYWAY RIGHTS ARE NOT SUPPORTED

- 6.24. Out of the 36 there are only three people who report seeing other users on horse drawn carts. There are no users stating that they have used the Routes with horse drawn carts. The pre-order consultation letter provided the definition of restricted byways however no one has replied in connection with this type of use.

PUBLIC BRIDLEWAY RIGHTS

- 6.25. Five users report use of the Routes on horseback. Of these 5 people, 3 report using all the Routes on horseback; 2 report using the Route, A-B-C-D only.
- 6.26. Nine cyclists of whom 5 report using all the Routes by bicycle; 4 report wandering freely.
- 6.27. This means that there is a total of 8 responders either horse riding or cycling on all the Routes.
- 6.28. Additionally, there are a further 9 responders of the 36 that report seeing horse riders using the Routes. Therefore, in total 16 responders report the Routes being used to the level required for bridleway rights.

PUBLIC FOOTPATH RIGHTS

- 6.29. Thirty-six users reporting use of the Routes on foot. Of these 36 people, 19 report using all the Routes on foot and 4 report using the Route, A-B-C-D only. This leaves 13 users of whom have attached a map marking the Routes even though they do not specifically describe them on their evidence forms.
- 6.30. Thirty-six responders have submitted maps along with their evidence forms. Of these 36, 32 have marked all the Routes while 4 have marked only Route, A-B-C-D. Of the

36 responders who have all signed and dated their forms there are 14 that have additionally signed and/or dated their map.

6.31. An examination of the evidence of the 36 responders reveals that:

- i) Mr Neale whose period of use is limited to less than 1 month must be excluded, which leaves 35.
- ii) Mr Flashman's evidence must be excluded as in most of his answers he refers to county unclassified road C51-9[CAMS 381/51-4] which passes his home. This leaves 34.
- iii) 15 respondents have wandered freely in the woodland area. 6 of the 15 have stated they have both kept to the paths and wandered freely. 9 of the 15 report having wandered freely.
- iv) Due to the area being mostly woodland there is the legitimate capability of both keeping to the paths and wandering freely. Therefore, this means that out of the 34 respondents there is a further reduction of 9 people who have wandered freely.
- v) This leaves 25 witnesses whose evidence supports the Claim. This number is sufficient to represent the people as a whole/the community in general.

Overall results

6.32. Taken together this user evidence demonstrates 20 years of continuous uninterrupted use over the Routes, A-B-C-D and B-E-F and C-E (Fig. 1.3).

- i) This means that of the 25 witnesses, 8 also report vehicular use of the Routes which no longer counts towards public vehicular rights.
- ii) Of the 25, 3 report seeing horse drawn carts whose evidence is not as supportive as actual users of this type.
- iii) Of the 25, 4 state they have used all the Routes on horseback; 3 of 4 have used both Routes; 1 of 4 have used Route A-B-C-D only. Of the 25, 5 state they have used the Routes on bicycle; 4 of 5 have use both Routes; 1 of 5 has used Route A-B-C-D only. Of the 25, 7 reporting having seen other horse riders; 6 of the 7 were walkers who had witnesses seeing horse riders on all the Routes. This means there is a total of 16 witnesses supporting bridleway rights.
- iv) There are 25 witnesses who report having walked the Routes. Of the 25, 6 report having both kept to the path and wandered freely which is legitimate use in a woodland area. Of the 25, 19 have used both Routes; 4 of 25 have used route A-B-C-D only.

6.33. The overall result of the analysis shows that there is sufficient evidence to support, horse riding, cycling and walking for the Routes, A-B-C-D and B-E-F and C-E (Appendix 1.5).

7. Pre-Order Consultations

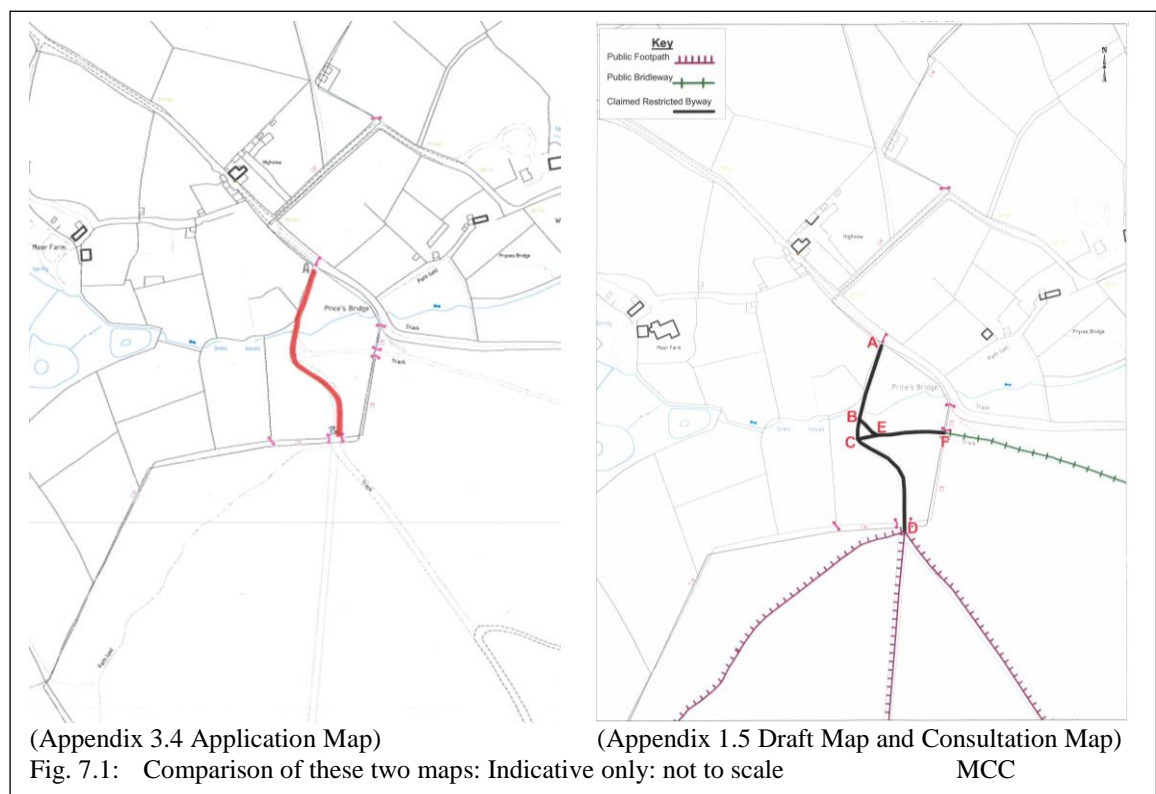
7.1. The period of the pre-order consultation for the Definitive Map Modification Order to register the Routes, A-B-C-D, B-E-F and C-E, as a restricted byway, on the Definitive Map and Statement (DM&S) ran from the 13th April 2018 to the 25th May 2018. (Appendix 7.1 to 7.2)

Pre-Order Consultation results dated 2018			
1	Matthew Lewis	Head of Countryside	No reply
2	Ruth Rourke	Countryside Access Officer	Continuous input.
3	Kate Stinchcombe	Biodiversity Officer	No reply
4	Claire Williams	Legal Services	Continuous input
5	Paul Keeble	Highways	No reply
6	Debby Blakebrough	Councillor Trellech	No reply
7	Ann Webb	Councillor for St Arvans	No reply
8	Ann Davison	Clerk Trellech Community Council	No reply
9	Elizabeth Greatorex-Davies	Clerk Tintern Community Council/1 st lead Applicant	No reply
10	John Giffin	2 nd lead Application Administer	No objection
11	A Underwood	The British Horse Society	No reply
12	C Hunter	Open Spaces Society	No reply
13	Sir/Madam	The Byways and Bridleway Trust	No reply
14	S Wheeler	Natural Resources Wales	No objection
15	J Askew	Tread Lightly	No reply
16	A Thomas	Ramblers	No objection
17	D Wyatt	Green Lane Association	No reply
18	G Owen	CTC National Cycle Charity	No reply
19	Sir/Madam	LARA	No reply
20	Sir/Madam	ACU Auto-Cycle Union Ltd	No reply
21	Sir/Madam	British Telecom	No objection
22	Sir/Madam	National Grid plant location	No objection
23	Rachel Humphreys	Welsh Water	No objection
24	Paul Fitzpatrick	Western Power Distribution	No objection/No affect to apparatus
25	Mr & Mrs Talbot	Moor Farm	Objection
26	Sir/Madam	Director of Legal services Natural Resources Wales	No reply

7.2. Mr and Mrs Talbot, the owners of Moor Farm, have objected to the DMMO that registers the Routes, A-B-C-D, B-E-F and C-E, as restricted byways to the DM&S (Appendixes 7.3 to 7.5).

Their grounds of objection are that:

- i) *“We have a copy of DMMO submitted by this person on behalf of Tintern Community Council and copied to us on the 17th December 2013 and dated 11th December 2013 but it does not agree with the Consultation Plan attached to your letter. The form copied to us shows only one path - currently marked on your plan as running from A to D.”* (See the comparison below Fig. 7.1)
- ii) *“Historically Public Rights of Way have run around the edge of our land but not across it. (see Maps attached).”* (Appendixes 7.3 & 7.5).
- iii) *“There are ‘tracks’ across our land that are part of our farm but these are not Public Rights of Way as confirmed by Monmouthshire County Council.”*



Comments

- iv) The 11th December 2013 Application map (Appendix 3.4) shows the consultation plan route A-B [A-B-C-D] only.
- v) Under the Council’s duty to review the Definitive Map and Statement if other ways join the route being investigated are also not shown on the map then these are also investigated. The 2018 pre-order consultation map included all the Routes being investigated (Fig.1.3) (repeated in Fig.7.1 above). The Authority will be dealing with this objection by processing two Orders.

- vi) The alignment of the Routes, A-B-C-D, B-E-F and C-E, are not recorded on the Definitive Map and Statement. This does not mean that public rights do not already exist. Definitive Map Modification Orders may be made if it is determined that, on the balance of probabilities, public rights already exist. The historical documentation leading to the publication of the Definitive Map and Statement is detailed in Chapter 9.
- vii) The alignment of 'tracks' is detailed in Chapter 8 – Historical map evidence. The 'tracks' do not serve Moor Farm but are instead connecting through routes that provide access to all the forestry lands in the region that are managed by Natural Resources Wales. There are other ways north of point A that directly serve Moor Farm.

7.3. No other pre-order consultation objections have been lodged by any other person or organisation.

8. Historical Map Evidence

8.1. The Highways Act 1980 section 32 states that a court or other tribunal before determining whether a route has or has not been dedicated as a highway shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight that is considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

The Enclosure Awards

8.2. The Enclosure Awards, are legal documents enacted by Parliament that record the ownership and distribution of land enclosed. Besides land ownership, enclosure awards and maps also record the landed endowments of churches, common or waste land, schools and charities, the existence of roads, rights of way, drainage, and the ownership of boundaries, different types of land tenure and liability to tithe.

8.3. Enclosure Awards as evidence, when considering Definitive Map Modification Orders, hold substantial legal weight as it was these Awards that created the network of roads and ways, and in some cases extinguished old ones. Furthermore, the Enclosure Awards went through an extraordinary consultation process prior to being settled in the courts. These Awards are the legal event which irrefutably declares the right of way to exist at that date. This means that only a legal stopping-up order would rebut the claim of the existence of a road or way shown within an Enclosure Award.

8.4. The 1810 Enclosure Awards for the communities of Llandogo, Trellech and Tintern from the Gwent Record Office and Map M record the area being investigated.

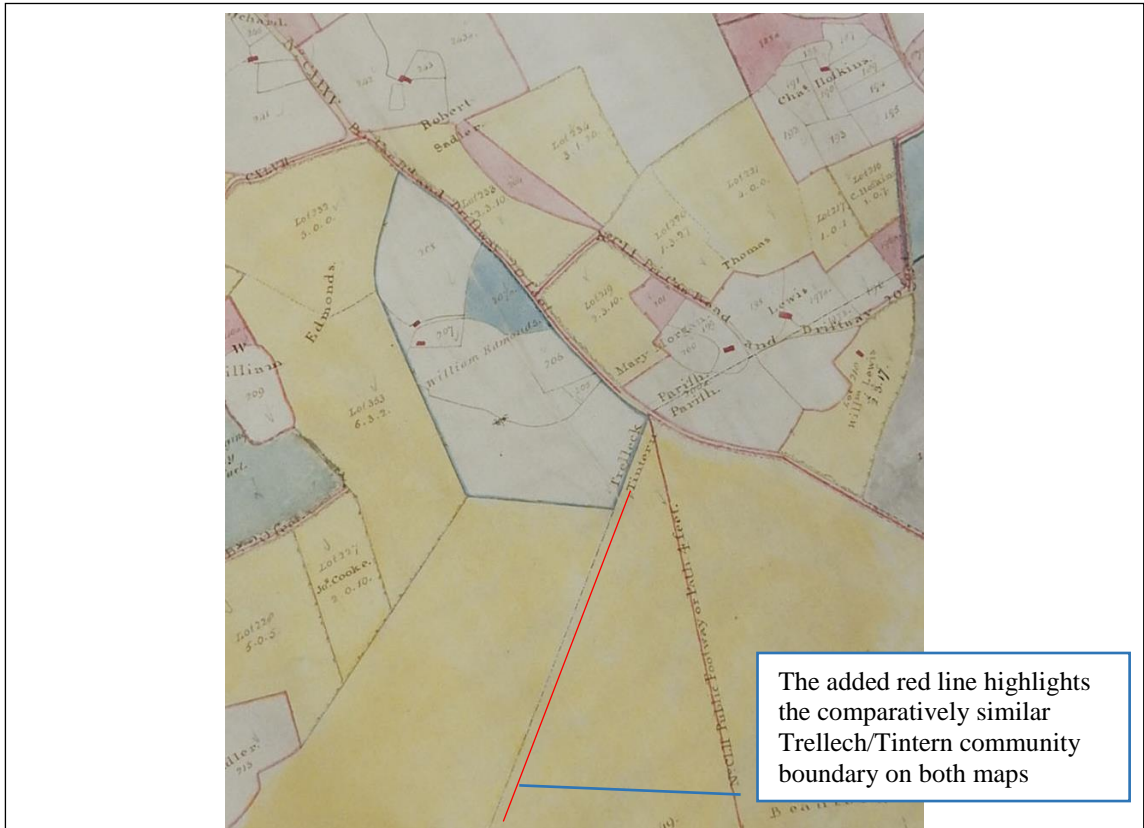
8.5. The extract of 1810 Enclosure Award (Fig. 8.1) shows a route marked by a bold red line along with the label “No. CLII [152] Public Footway or path 4 feet” that crosses the land that is referenced as lot 349 and is owned by His Grace the Duke of Beaufort.



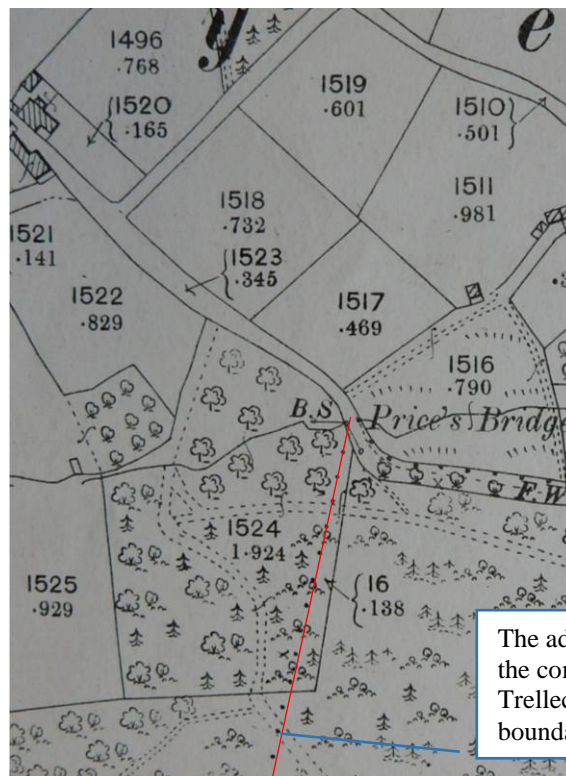
Fig. 8.1: Extract from 1810 Llandogo, Trellech and Tintern Enclosure Award: not to scale: GRO

8.6. This extract of the 1810 Enclosure Award also shows the boundary line for the Trelleck and Tintern Communities to be in a position that has not changed over the years. This boundary between the communities is the nearest point of reference that gives the approximate location for the Routes, A-B-C-D, B-E-F and C-E, being investigated (the Routes).

8.7. A comparison between the extract of the Enclosure Award is made with an extract of the 1901 OS map (Fig. 8.2) and this confirms that the Routes are not shown on the Enclosure Award as either “public” or “private” ways.



Extract of 1810 Enclosure Award map: Turned to match the Ordnance Survey orientation:



Extract of 1901 Ordnance Survey map

Fig. 8.2: Extract from 1810 Enclosure Award compared with 1901 OS map: not to scale:

GRO & MCC

8.8. Additionally, the location of the public footway marked on the Enclosure Award where it joins another route at the Tintern/Trellech Parish boundaries may be similar to the location of the “gateway” documented in the Definitive map statement detailed in Chapter 9 point 9.29.

The 1823 Price’s Map

8.9. The 1823 Price’s Map (Fig. 8.3) is an eighteenth and nineteenth century commercial map generally produced for wealthy people who would use them for business purposes, for travel in the area and to transport goods to and from the River Wye. Therefore, the ways shown on them may generally be considered to have been available for use and regarded as public highways. However, in this instance the scale of this document, 6 inch to a statute mile, is too small to illustrate the Routes.



Fig. 8.3: 1823 Price’s Map: not to scale:

MCC Office

The 1830 Greenwoods Map

8.10. The Greenwoods map (scale 1 inch to statute mile), published in 1830 (Fig. 8.4), for a similar commercial purpose as the Price's map again does not illustrate the Routes. It is known that the Greenwoods Map is a poorer copy than that of the other mapping. The 1830 commercial maps do not usually extend to the detail required for the depiction of footpaths.

8.11. The Routes are not shown and this suggests that they are probably footpaths. However, all the historical documents need to be taken together, and on the balance of probabilities, a determination of public status is reached.



The 1830 David and Charles Map

8.12. The David and Charles Map (scale 1 inch to statute mile), Sheet 68 dated 1 May 1830 (Fig.8.5), like the previous maps does not show the Routes. Again the scale of this map is too small to show footpaths. This means that the alignments that are shown are probably roads having higher public rights than that of footpaths.

8.13. There is a road passing through the property know later as Moor Farm which proceeds south-westwards passing other homes to connect with another road in the southwest. The depicted road is not on the alignment of the Routes being investigated. Comparison of this map with other Ordnances Survey maps shows that the Routes being investigated lie further south than the Moor Farm road illustrated on the David and Charles Map.

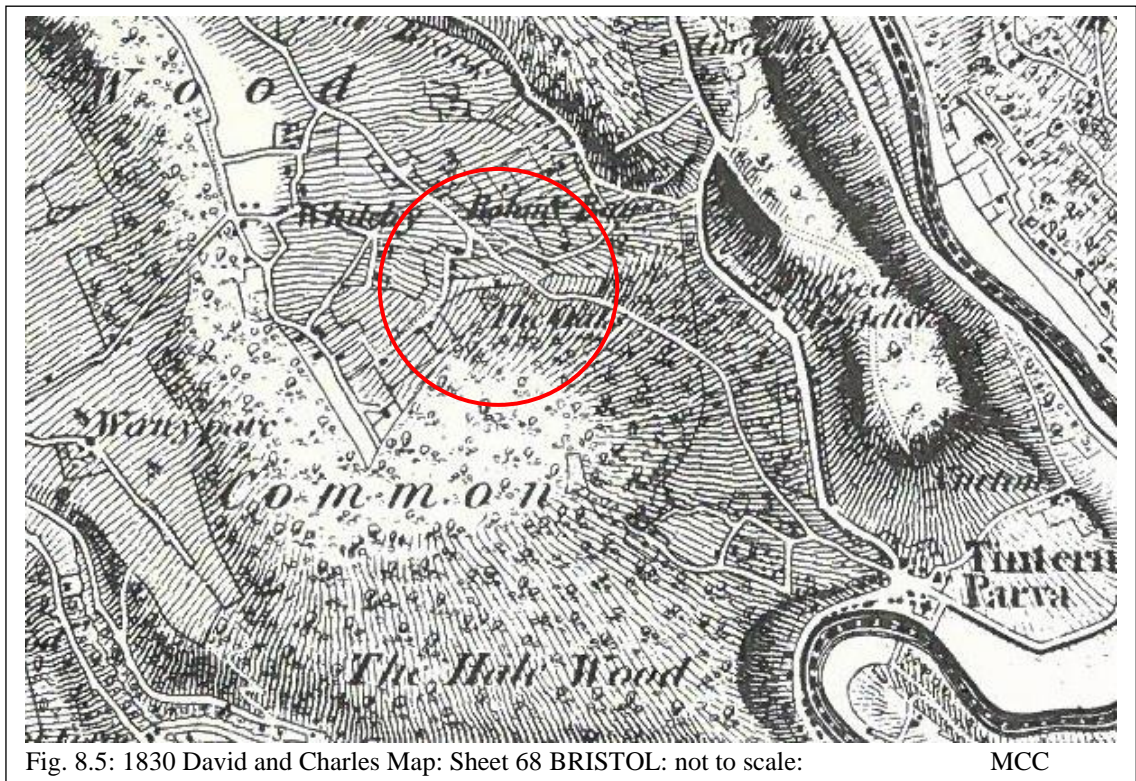


Fig. 8.5: 1830 David and Charles Map: Sheet 68 BRISTOL: not to scale:

MCC

The 1830 Cassini Map

8.14. The 1830 Cassini Map 172 (scale 1:63,360) (Fig.8.6), being a facsimile of the Ordnance Survey Sheets 34, 35, 43 and 44 published between 1828 and 1831, shows similar alignments for roads and markings as illustrated on the David & Charles Map.

8.15. The Cassini Map like the David & Charles Map shows a road passing through the property known later as Moor Farm (Fig. 8.6) but again does not illustrate the Routes being investigated.



Fig. 8.6: 1830 Cassini Map:

Sheet 162 GLOUCESTER & FOREST OF DEAN: not to scale

MCC

The 1830 Ordnance Survey Map

8.16. The 1830 Ordnance Survey Map (scale 1 inch to statute mile) (Fig. 8.7), is the base map to the Cassini and David & Charles Maps and is known to be more accurate in the depiction of physical features surveyed.

8.17. The Ordnance surveyors were given the duty to mark all the physical features that they encountered whether public or private but were not to concern themselves with, or enquire into, rights of way.

8.18. The David/Charles, Cassini and 1830 OS maps show a road running south-west from Botany Bay past Moor Farm and other various properties marked by tiny black rectangles. When comparison is made with later OS maps the Moor Farm road lies north of the Routes being investigated.



8.19. All the 1830 maps discussed so far are of a scale that only enables the depiction of roads that are shown to cross east and west connecting The Oaks with the Common. When these 1830 maps are compared with other mapping data sets it suggests that minor routes such as footpaths were not physical features that could be recorded at the scale of 1 inch to a statute mile whereas the roads that are depicted are either, byways open to all traffic, restricted byways or bridleways.

The 1835 Highways Act.

8.20. A public highway is established when any way has been dedicated and accepted by the public at large. A way which was a public highway before the passing of the 31st August 1835 Highways Act is repairable by the parish without the formalities prescribed in Section 23 of this 1835 Act.

8.21. The 1835 Act deals mainly with the responsibility of maintenance for “*roads, occupation ways and horsepaths not footpaths*”. This means that the issue of public maintenance does not clarify the public status of any route and it is false to assume that because a way is shown on a pre-1830s map that it is an ancient public highway automatically implying higher public rights.

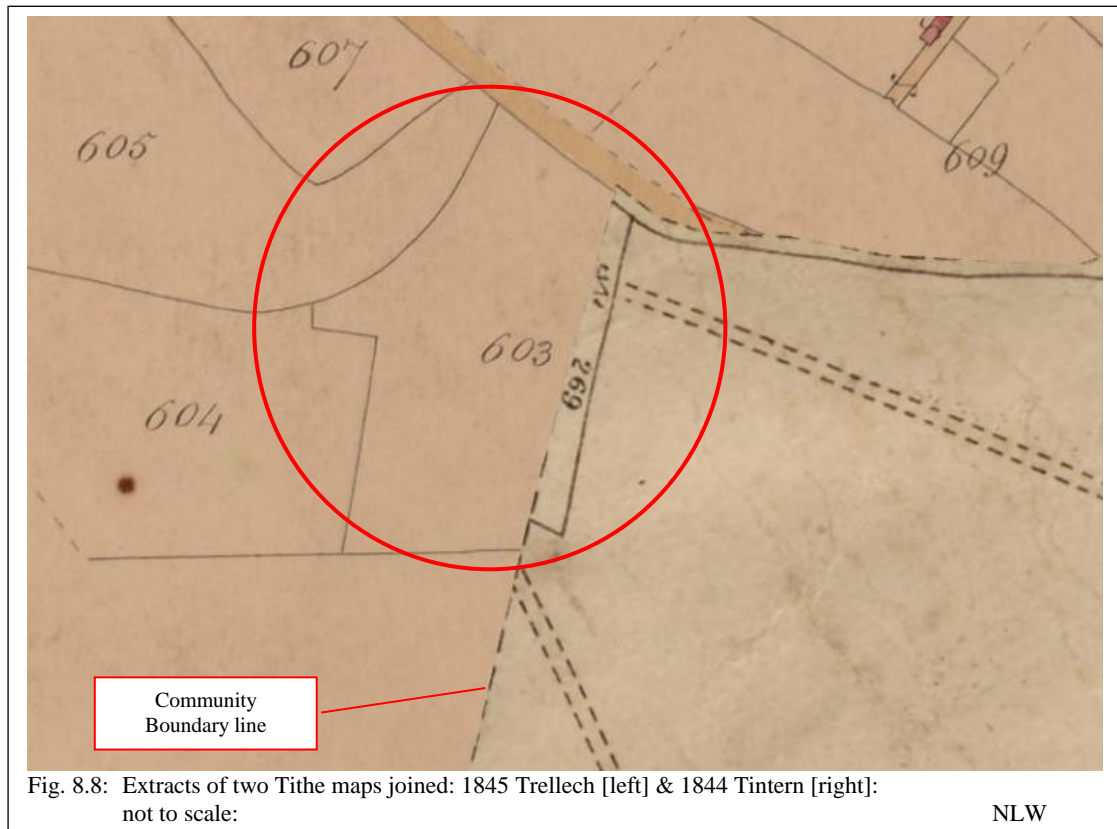
8.22. All the historical maps prior to 1835 do not show the Routes being investigated. This does not mean that no public rights of way exist as other historical mapping, published at a different scale, may show the Routes and these documents taken together, on balance, may support higher public rights.

The Tithe Maps

8.23. The Tithe Maps hold significant evidence for public rights of way as routes are shown shaded and without apportionment numbers, therefore separating those ways from the purpose of the tithe maps which was to take a tithe/tax from the profits of arable land. The lack of tithe apportionment numbers means that the strip of land, the basis of the route alignment, was not in any individual ownership and was not arable and therefore did not produce a product that was taxable.

8.24. The Tithe maps relevant for the investigation into the Routes, A-B-C-D, B-E-F and C-E, are Trellech dated 11th March 1845 and Tintern dated 17th January 1844. For the purposes of finding the location of the Routes an extract of both the Trellech and Tintern Tithe maps has been joined at the boundary between the communities (Fig. 8.8).

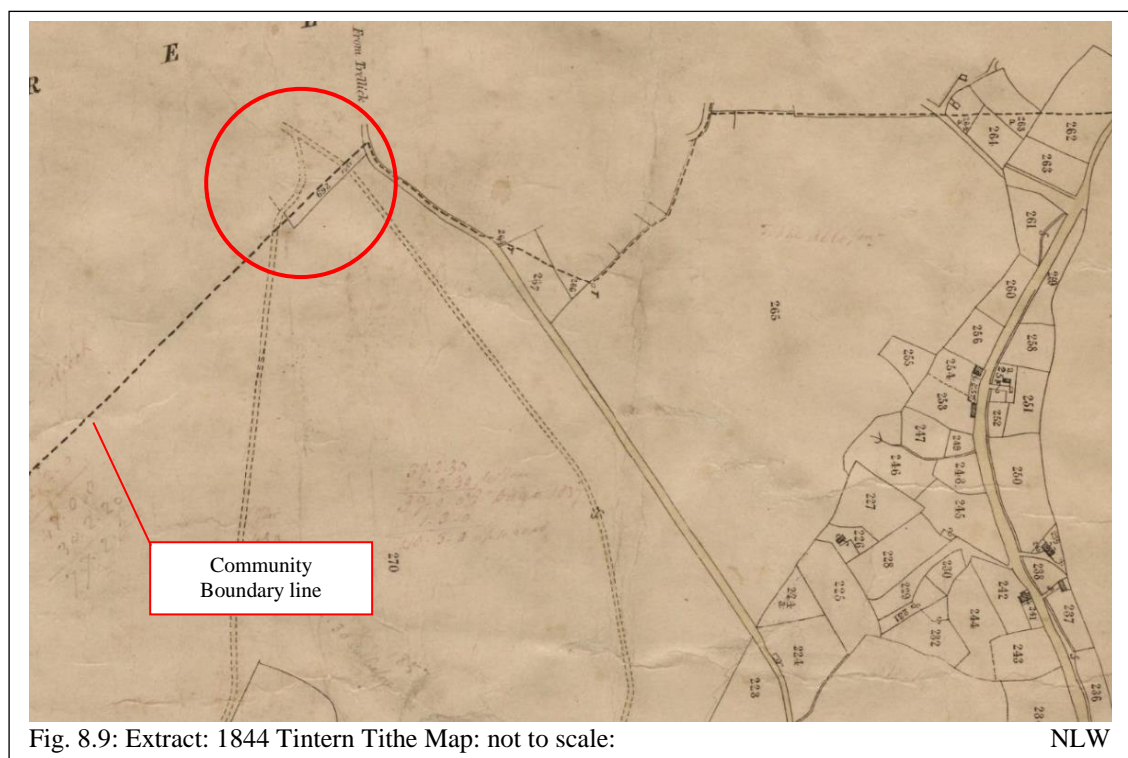
8.25. The 1845 Trellech Tithe map (Fig. 8.10), **does not** show the Routes while the 1844 Tintern Tithe map (Fig. 8.9) **does** show the Routes. It is noted that the 1845 Trellech Tithe map does not depict the continuation of the Routes crossing over the community boundary.



8.26. This does not mean that public rights do not exist as other historical maps and user evidence may suggest that public rights do already exist but were not depicted on the Trellech Tithe map.

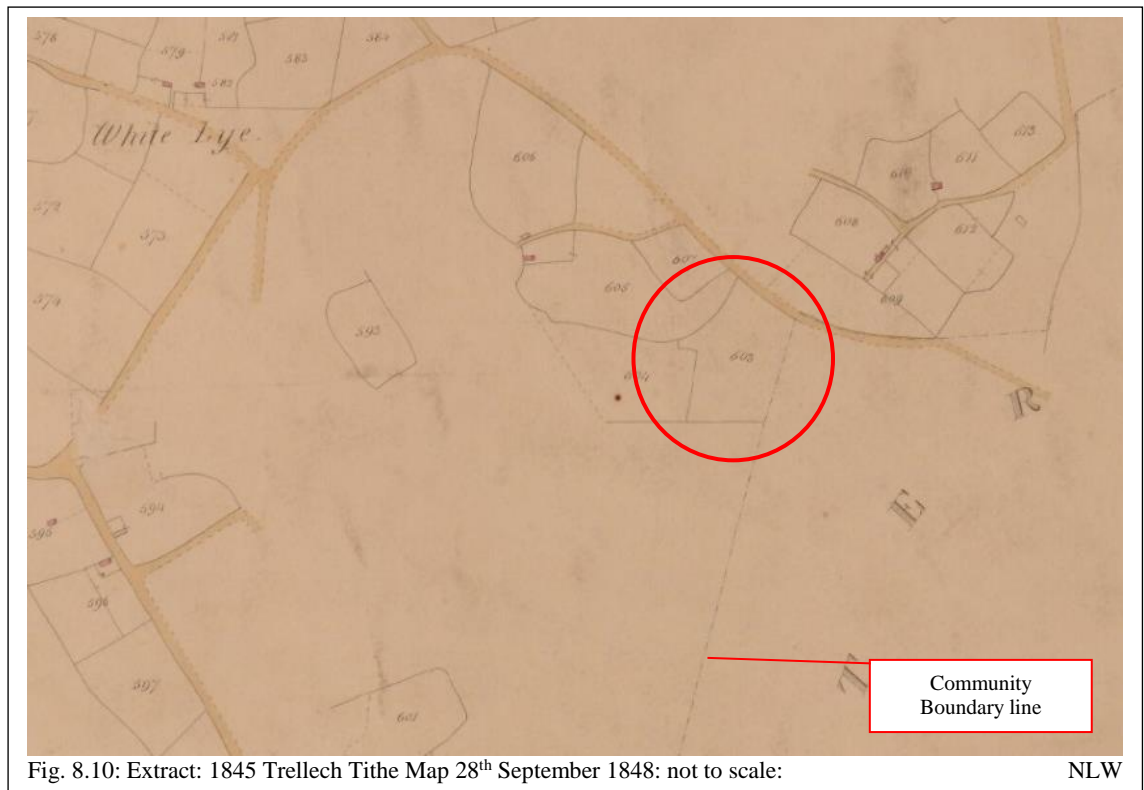
8.27. The 1844 Tintern Tithe map (Fig. 8.9), shows the continuation of the Routes. There are a number of interesting comparisons that may have influence:

- i) The 1845 Trellech Tithe map drawn up after the 1844 Tintern Tithe map was not transposed correctly.
- ii) The Routes on the 1844 Tintern Tithe map show that this Tithe map has been carefully surveyed suggesting that routes did continue over the community boundary.
- iii) The Routes illustrated on the Tintern Tithe map are a copy of the route alignments shown on all the Ordnance Survey maps (detailed later in this report).
- iv) The 1844 Tintern Tithe map also marks plot number 269 and this is not repeated over the boundary. The 1845 Trellech Tithe map instead shows plot number 603. On the Tintern Tithe map the Route runs through plot number 269 and the separate parcels are linked by a symbol that is called a brace.
- v) There are no such braces across the Trellech/Tintern boundary and this suggests that the boundary was the division for differing land ownerships.
- vi) The plot boundary lines do not join, again illustrating the different rendering of the maps.



- vii) Furthermore, when roads are shaded on the tithe map data sets and the same alignments shaded on the highways maps, it is understood that the shaded routes are public rights of way usually at a status higher than that of footpaths. It is difficult to conclude if the Routes are shaded on the Tintern Tithe map.

8.28. The Routes cross land that is in the Parish/community of Trellech which are not illustrated on the 1845 Trellech Tithe map (Fig. 8.10). Therefore this document does not support public rights.

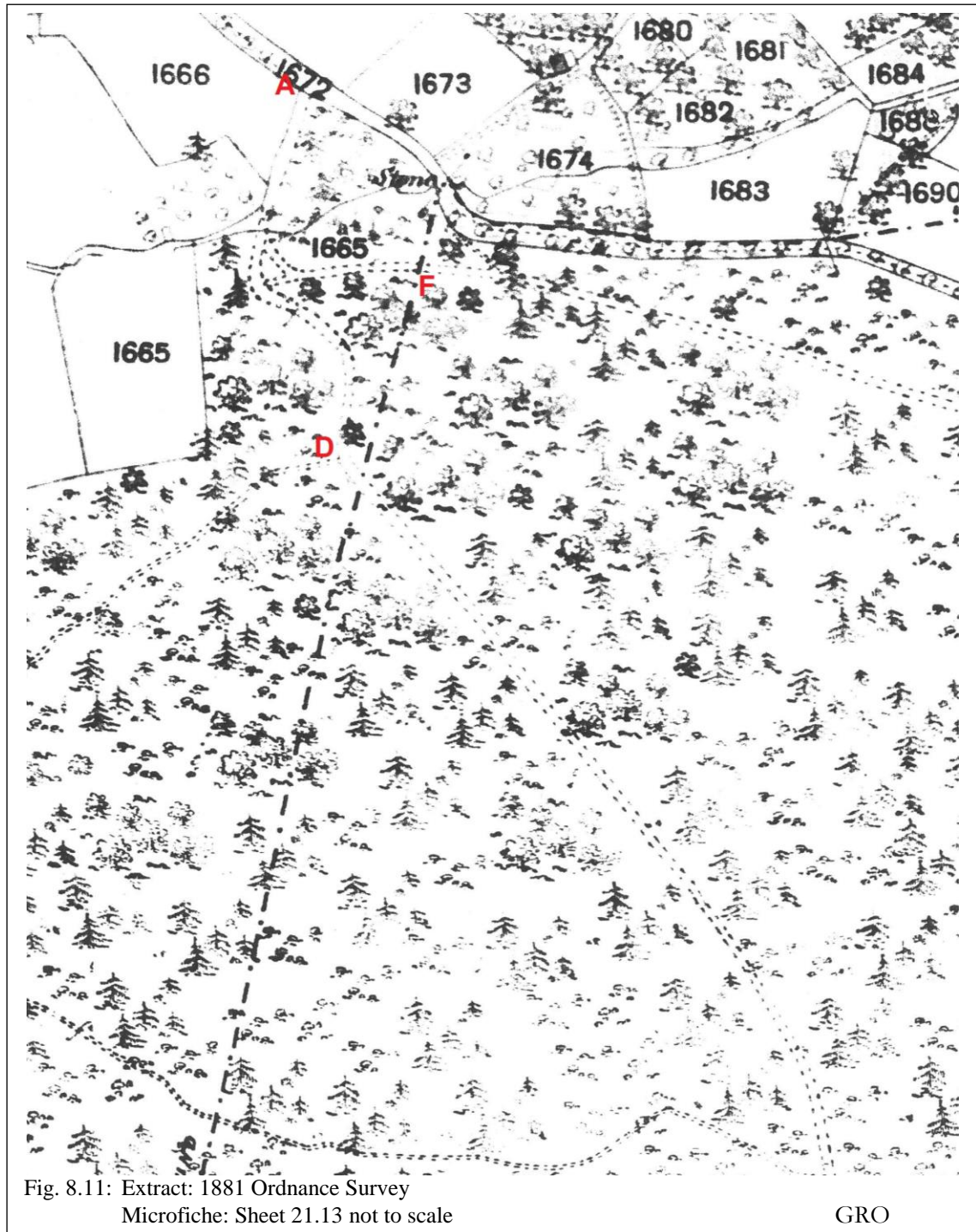


The Ordnance Survey Maps and Conventional Signs

8.29. The Ordnance Surveyors were given the duty to depict all physical features that were encountered and not to consider whether public or private rights existed. The marking of a way on Ordnance Survey maps does not specify whether it is private or public.

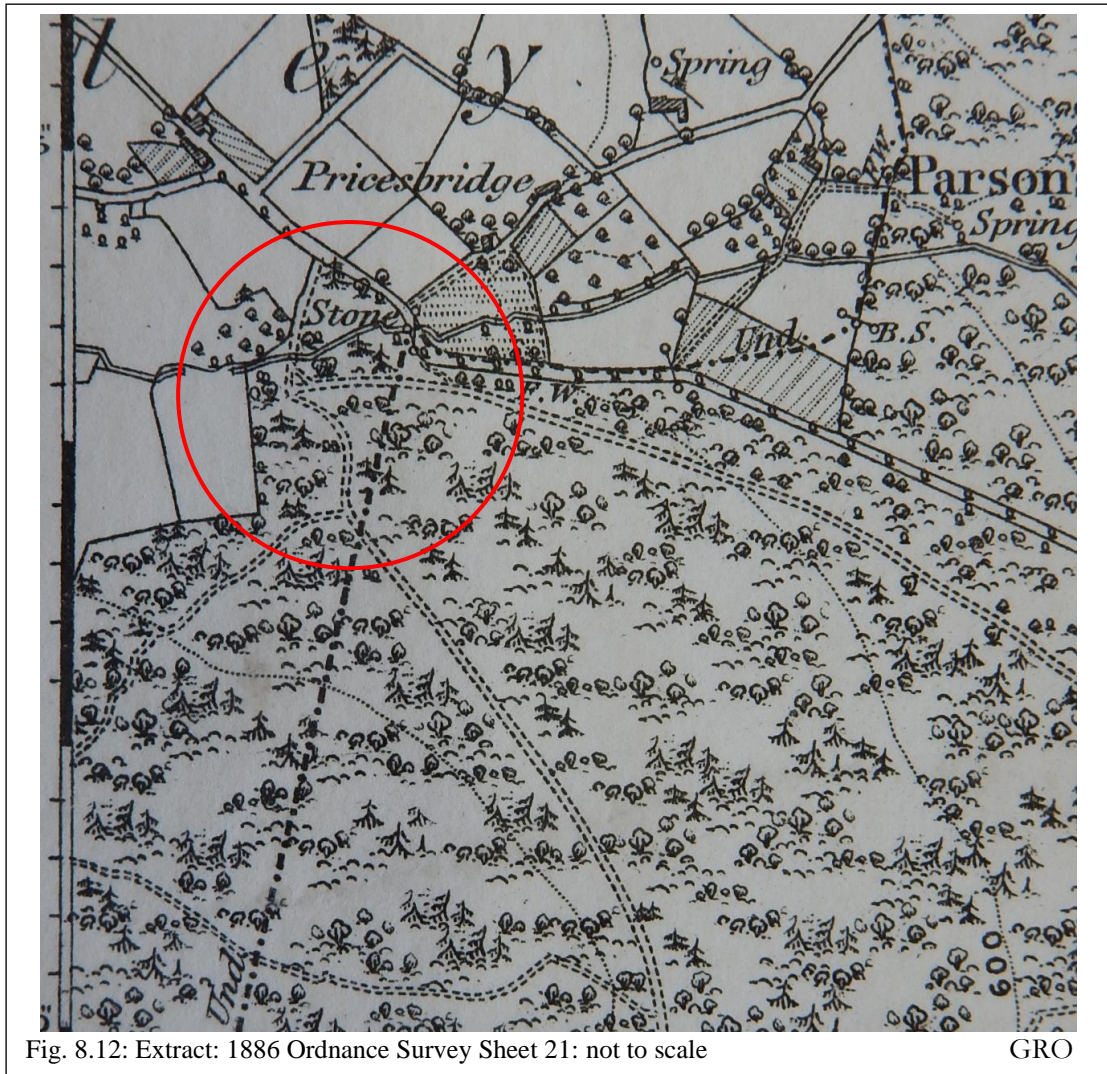
The 1881 Ordnance Survey map

8.30. The 1881 Ordnance Survey (OS) map, Sheet 21:13, scale 1:2500, surveyed 1880 & 1881 (Fig. 8.11), shows the Routes marked by two broken parallel lines on the same alignment as the 1844 Tintern Tithe map.



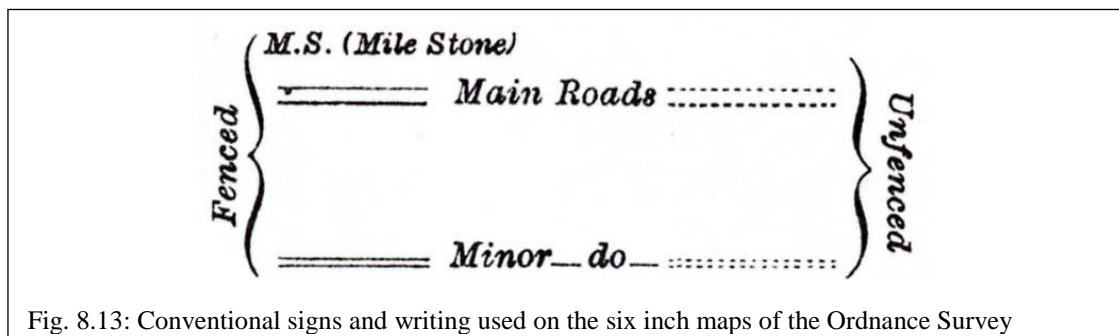
The 1886 Ordnance Survey map, scale 1:10560

8.31. The 1886 Ordnance Survey (OS) map, Sheet 21, six inch to one Statute Mile, surveyed 1880 & 1881 (Fig. 8.12), shows the Routes marked by two broken parallel lines on the same alignment as the 1844 Tintern Tithe map.



The conventional signs and symbols

8.32. The conventional signs and symbols (Fig. 8.13) used for the six inch maps have been kept as standard over the years. The Routes are indicated by two broken parallel lines that represent an “unfenced main road”.



The 1886 Ordnance Survey map scale 1:2500

8.33. The 1886 Ordnance Survey map, Sheet 21, scale 1:2500, surveyed 1880 & 1881, (Fig. 8.14) shows the southern part of the Route, A-B-C-D, on a similar alignment and in greater detail. The section of the Route shown is again illustrated by two broken parallel lines indicating an “unfenced main road”.

8.34. The parcel of land (referred to here as 1665a) is not surrounded by a solid black boundary line marking the extent of the parcel. The section of the Route marked is on the same alignment as the 1886 OS map (Fig.8.12).

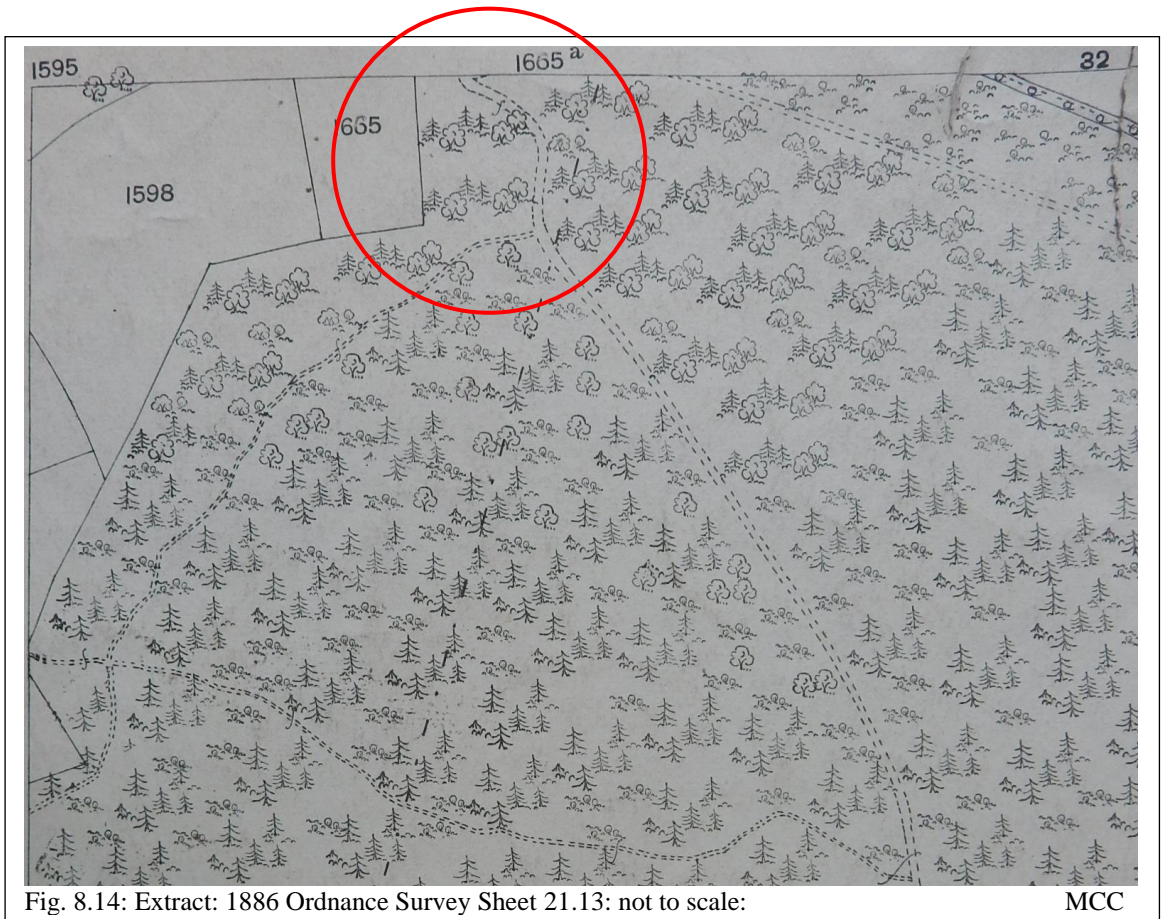
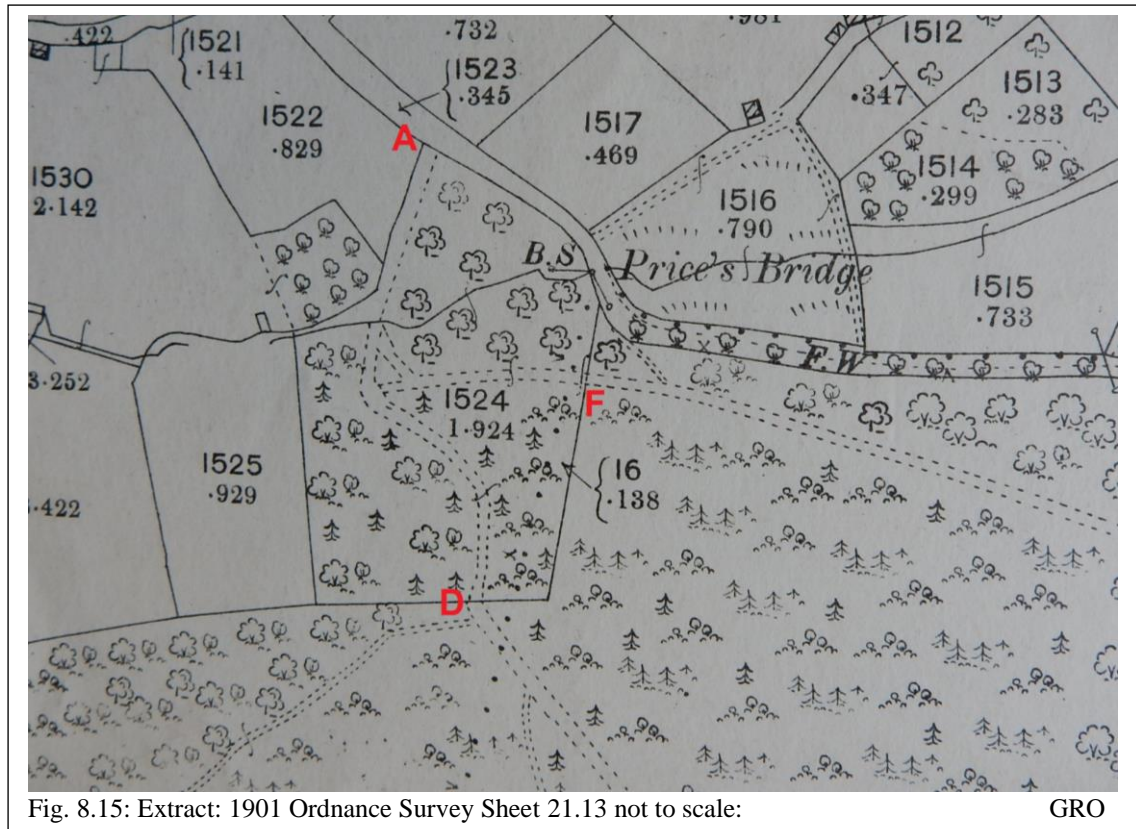


Fig. 8.14: Extract: 1886 Ordnance Survey Sheet 21.13: not to scale:

MCC

The 1901 Ordnance Survey map

8.35. The extract of the 1901 Ordnance Survey map Sheet 21:13 (Fig. 8.15) shows the whole area. The Routes are marked by two parallel broken black lines, indicating an “unfenced main road”.



8.36. The parcel of land previously referred to as 1665a is now number 1524. The 1901 Ordnance Survey Map is the first map that records parcel number 1524. The parcel numbers 16 and 1524 are surrounded by a solid black line marking the boundary extent. All the Routes marked are on the same alignment as the previous 1886 OS maps.

8.37. The conventional signs and writings help with interpretation of the maps (Fig 8.13). The parallel solid lines, when associated with roads, are fenced main or minor roads and parallel broken lines mean unfenced main or minor roads. Therefore, it can be extrapolated that a solid line means a barrier of some type and a broken line means a change in surface.

8.38. Furthermore, this OS map has similar parcel divisions that have already been detailed on the Tithe maps. The OS map parcel 1524 is parcel 603 on the Trellech Tithe map and OS map parcel 16 is parcel 269 on the Tintern Tithe map. The rendering of the parcel divisions from 1844 to 1921 has remained constant regardless of the solid line that marks the property boundary that is reflected on the Enclosure Award map (Fig. 8.1).

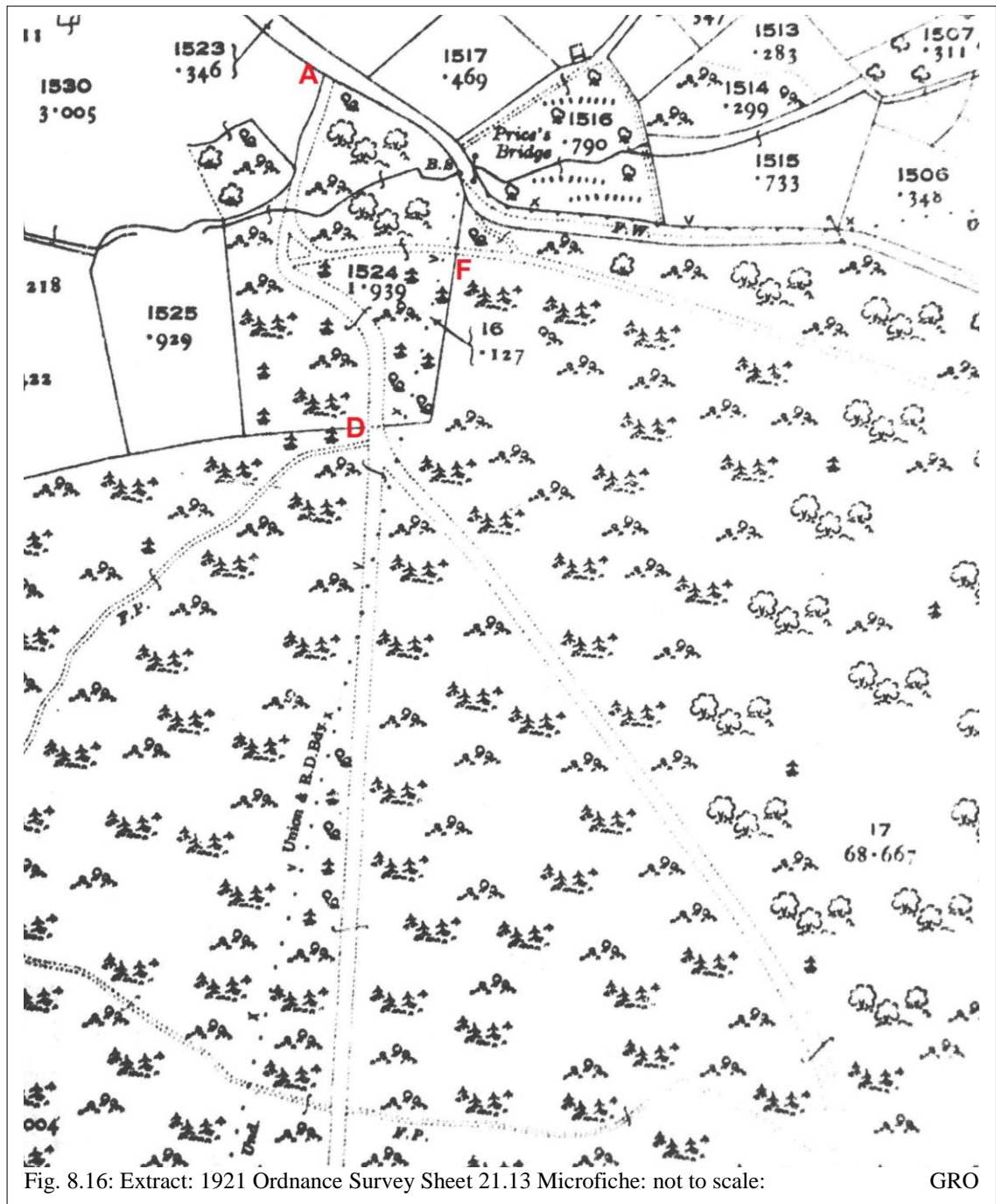
8.39. This means that on the 1901 Ordnance Survey Map Sheets 21:13 (Fig. 8.15) there are solid black lines at points A, D and F that cross the Routes which may represent a type of barrier. However, the evidence submitted by the 36 users (Chapter 6) referenced in the report do not refer to any barriers that cross the Routes. This means that the feature represented by this line was no longer visible between the years 1946 to 2013.

The 1921 Ordnance Survey map

8.40. The 1921 Ordnance Survey map sheet 21:13 (Fig. 8.16) again has similar linear markings to all the previous OS maps discussed.

8.41. However, on this OS map there are more braces which link all smaller areas of land divided by either the Routes or the stream to parcel number 1524.

8.42. The 1921 Ordnance Survey map is not the first to record parcel number 1524. This parcel number is significant as it is **not** referred in the 1934 conveyances and the documents for the 1988 sales particulars.



- 8.43. All the Ordnance Survey maps show the Routes as marked by two parallel broken lines suggesting a higher status other than that of footpath. However, these marks and conventional signs depicting the alignment of the Routes does not clarify the status for either bridleway, restricted byway, byway open to all traffic or county unclassified road.
- 8.44. Moreover, the Ordnance Surveyor's duty was to depict all physical features that were encountered during the task and not to determine whether or not a way shown was public or private. It is therefore possible that some of the ways depicted on the Ordnance Survey maps may prove to be private for a particular type of user and public for another type user.

The 1910 Finance Act Maps

8.45. The 1910 Finance Act Maps provided for the levy and collection of a duty on the increment value of all land in the United Kingdom. Under this system, private owners were required to surrender to the State part of the increase in the site value of their land, which resulted from the expenditure of public money on communal developments such as roads, common land or public services.

8.46. The reason for the production of the Finance Act maps and registers was to record land values and not for the purpose of recording the extent of the publicly maintainable highways.

8.47. The Finance Act maps record the extent of landownership which provided for the levy of various tax duties on lands. These Finance Act records also help with the status of any routes that are in question.

8.48. There are two “working copies” of the Finance Act Map Sheet 21:13 (Fig. 8.17 & 8.18) that show the Routes as crossing a plot that is coloured and marked ‘sold’.



Fig. 8.17: Extract: 1910 Finance Act Map - working copy:
Sheet 21.13: not to scale

GRO

8.49. The additional working copy of the Finance Act map shows that the 'sold' plot has now been coloured green and numbered as plot 84 (Fig.8.18)



Fig. 8.18: Extracts from 1910 Finance Act Map – working copy:
Sheet 21.13: not to scale

GRO

8.50. The two working map sheets 20.16 and 21.13 (Fig. 8.19) have been joined and show the east and west extent of plot 84.



Fig. 8.19: Extracts from 1910 Finance Act Map – working copy:
Sheets 20.16 and 21.13: not to scale

GRO

9. The Definitive Map and Statement

- 9.1. The Routes, A-B-C-D, B-E-F and C-E, being investigated pass over land that lies solely in the Trellech Community. However, in this instance as the Routes cross over the boundary with Tintern the Definitive Map & Statement (DM&S) for both communities has been examined.
- 9.2. The DM&S for the area of Monmouthshire has a “Relevant” date of 1 July 1952. It was published on the 16 November 1967 and is now kept under continuous review by Monmouthshire County Council.
- 9.3. The County Council was required under section 27 of the National Parks and Access to the Countryside Act 1949, to carry out a survey and define all those footpaths, bridleways and roads used as public paths which it considered were public. The process of producing the DM&S went through three stages, Draft, Provisional and Definitive.
- 9.4. The former County of Monmouthshire (Gwent) carried out this task by sending a map to every Community Council. The Community Councils were asked to walk every path and provide details of them. A public meeting had to be held which resulted in local people recommending alterations at this stage.

The Tintern community survey map

- 9.5. The Tintern community survey maps have been retained whereas some of the Trellech community survey maps have not been retained. However, the Tintern survey map illustrates the alignments of ways that have through the process of the compilation of the Definitive Map been described and listed in the Statements for Trellech. These Statements are detailed in point 9.24 to 9.29.
- 9.6. The Tintern community survey map (Fig 9.1) shows the alignment of the cart road footpath (CRF) 112 continuing directly under the community boundary and seemingly not utilising the physical features of the Routes as shown on the OS base map. The arrow indicating CRF 112 conceals those physical features depicted on the OS map. Additionally, the community bold black boundary line mostly obscures the marking of the alignment of CRF 112. It is the arrow and the number marked that indicates that the alignment of the cart road footpath lies beneath the boundary line.
- 9.7. Although, the alignment of CRF 112 lies beneath the boundary mark and does not utilise the physical features depicted on the OS map for the Routes, it does not mean that there are no public rights over them. User evidence, historical maps and further investigation into the process leading up to the publication of the Definitive Map and Statement will

show that public rights did cross over the parcel of land (1524) and link with the public maintained highway C51-9[CAMSC51-4].

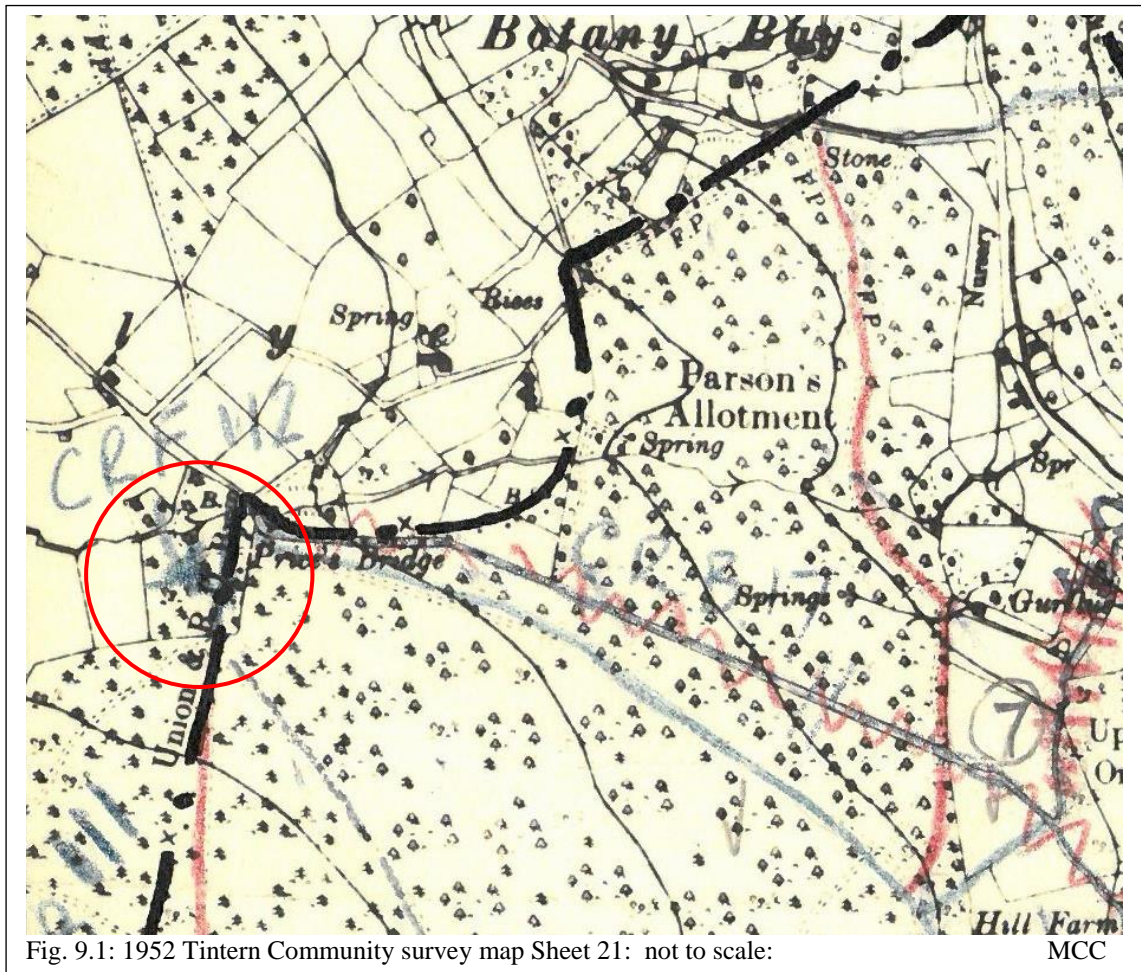


Fig. 9.1: 1952 Tintern Community survey map Sheet 21: not to scale:

The Draft Definitive Map

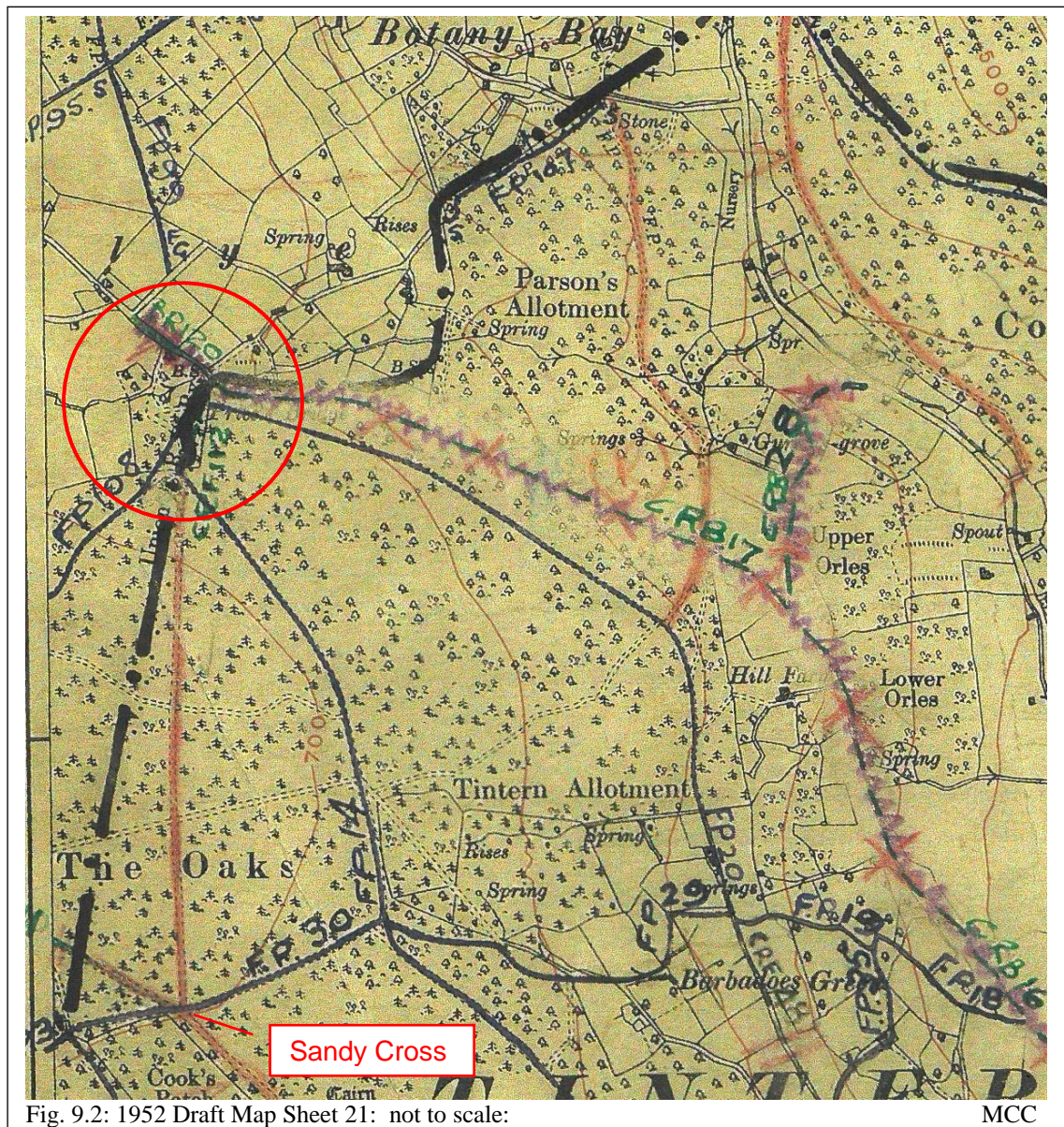
9.8. The Draft Definitive Map was deposited in all District Offices and also at County Hall. Notice of its publication and where it could be inspected was given in local papers and the London Gazette. A period (not less than four months) was allowed for representations and objections to be made to the Council in relation to the paths shown or omitted on the draft plans and statements. The Draft Map was published on the 16th December 1952 and 12 years later the Provisional map was published on the 17th September 1965. During this period any user who was not satisfied with decisions could appeal to the Secretary of State who appointed a representative to hear appeals and come to a decision.

9.9. As a result of the first consultation the Draft Definitive Map has a number of working marks recording changes made. There are red crosses that remove the alignments of ways marked in blue or green and there are red lines that add the alignments of omitted public rights of way.

9.10. The Draft Definitive Map, 16th December 1952, (Fig. 9.2) does not show the alignment of the Routes, A-B-C-D, B-E-F and C-E, marked by red or blue lines. This means that firstly the Trellech and Tintern surveyors did not consider the Routes to be used by the

public and that secondly there is no evidence of anyone else coming forward, during the 12 year consultation period, to add the Routes.

9.11. The markings on the Draft Definitive Map (Fig.9.2) indicate that while some ways crossed over the community boundary others seem to be obscured by the bold black boundary line. There are two ways that cross the parcel of land (1524). One is footpath (FP) 108 Trellech. The other is the green dashed mark for cart road footpath (CRF) 112 that is partly concealed by the bold black boundary line. However, the reference number in green, “CRF112”, signifies its alignment and existence.



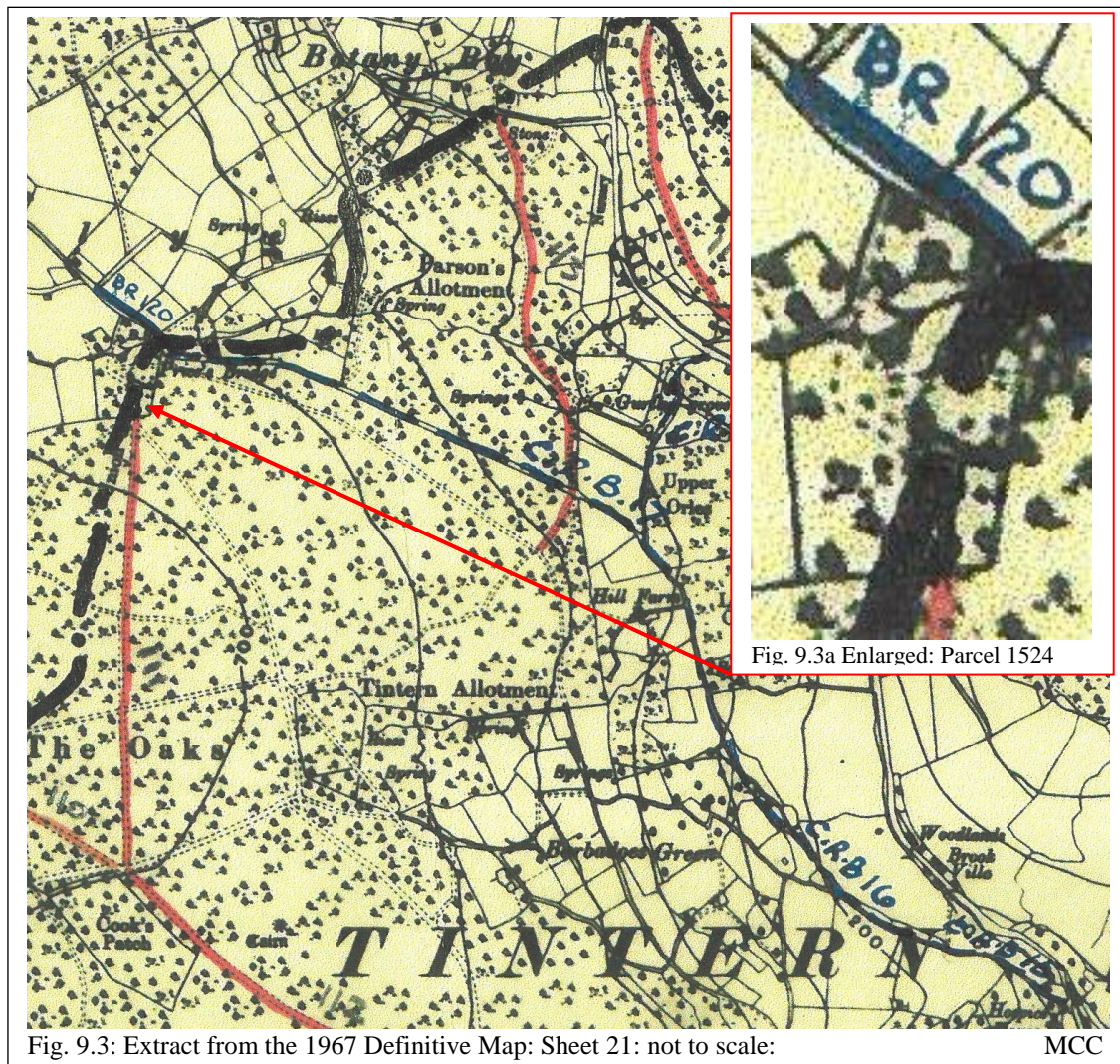
9.12. The alignment of CRF112 does not use the physical features illustrated on the OS base map for “unfenced main roads”. On both the Survey and Draft Definitive maps: the boldness of the community boundary mark; the density of the forest; the scale of the mapping 1:10560, have come together forcing a drafting error.

- 9.13. The Draft Definitive Map shows blue lines for public footpaths; green lines for bridleways and broken green lines for Cart Road Footpaths (CRF) and Cart Road Bridleways (CRB). The red lines mark the alignments of ways that were added as a result of the Draft Map publication and consultation.
- 9.14. The Draft Definitive Map shows that the surveyors believed that public rights crossed over the parcel of land (1524) to join with Bridleway (BR) 120 and Cart Road Bridleway (CRB) 17 even if they did not use the physical features denoted on the OS base map. Furthermore after research, the road marked as BR120 and CRB17 was found to already be recorded on the highways “List of Streets” therefore this alignment is shown as being crossed out.
- 9.15. All the markings on the Draft Definitive Map show that consultations and investigations were carried out which resulted in the additions and deletions of the alignments of various ways that excluded the Routes being investigated. The reasons for omitting the Routes, A-B-C-D, B-E-F and C-E, has not been found. This does not mean that public rights do not exist over them.
- 9.16. It is evident from the Draft Definitive Map that public rights did cross over the parcel of land (1524) and that the combination of both the Draft and the Additions and Deletions maps show that a technical error has occurred.

The Additions and Deletions Map

9.17. The Additions and Deletions Map (Fig.9.3) records the alignments of ways to be added in red and those to be deleted in blue. On closer inspection the Routes being investigated and any other alignments of ways are not marked in red or blue over the parcel of land (1524). Furthermore, although there is a bold black boundary line this would not hide any other coloured lines if marked. This indicates that both FP108 and CRF112 Trelleck [Trellech] should, in keeping with the process for the compiling of the Definitive Map, be retained and copied to the Provisional Definitive Map.

9.18. The additions and deletions files for both Trellech and Tintern communities has been examined and there is no mention from either the Parish/Community Councils, the Forestry Commission or for that matter anyone else requesting the removal of FP 108 or CRF 112 Trelleck[Trellech].

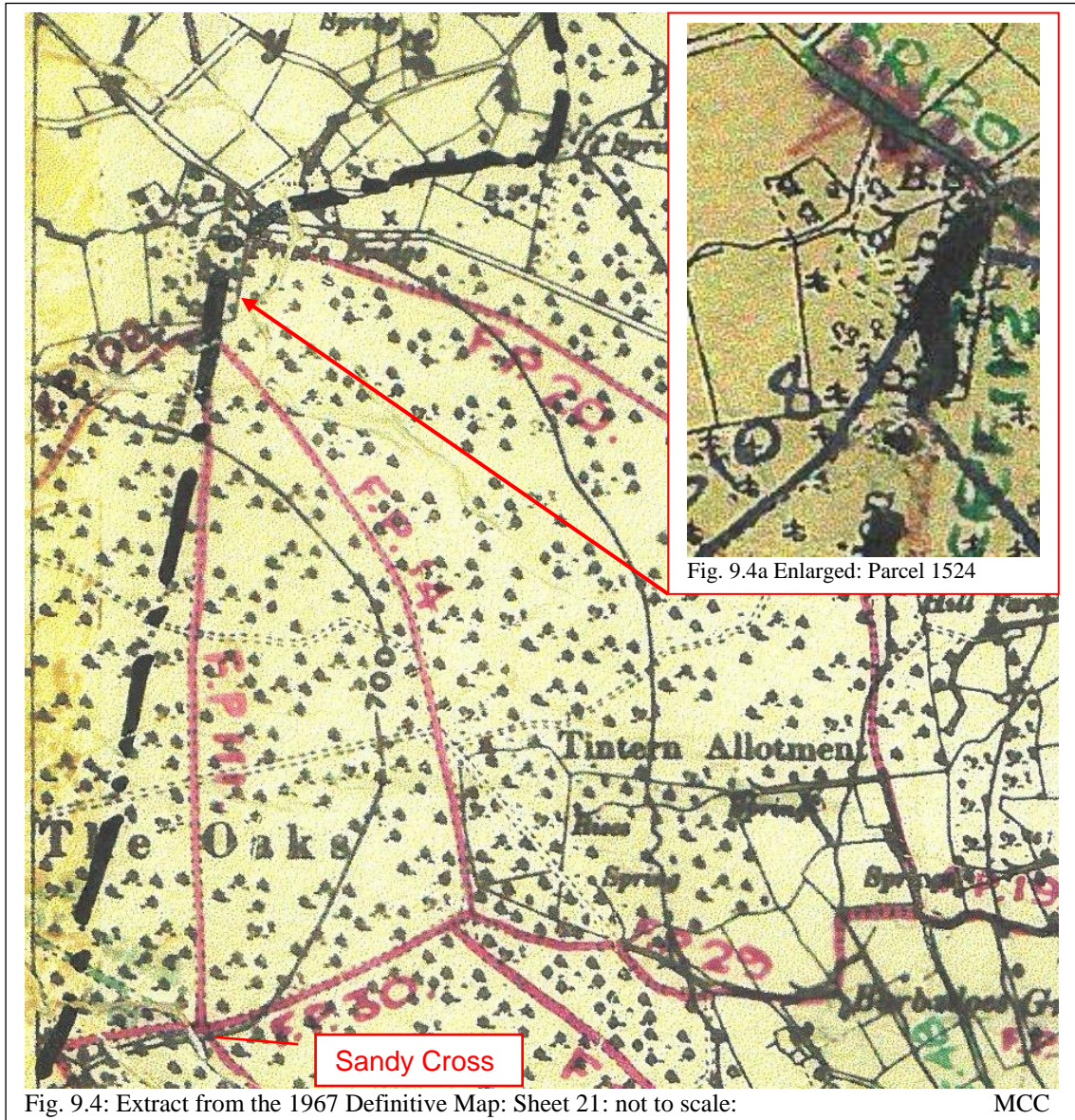


9.19. Once all appeals and objections to the Draft Definitive Map and Statement had been processed the Provisional Definitive Map and Statement was published on the 17th September 1965. The Provisional Map was deposited for a period of 28 days and in this

case no appeals were made and the title “Provisional” on some of the map sheets was changed to “Definitive”. The Definitive Map was published on the 3rd November 1967.

The Definitive Map

9.20. The Definitive Map shows no markings for the Routes, A-B-C-D, B-E-F and C-E (Fig. 9.4). Registered public rights of way in the area are marked by bold pink [legally purple] lines for footpaths; solid green lines for bridleways and broken green lines for roads used as public paths (now restricted byways).



9.21. The Definitive Map (Fig. 9.4) does not show FP108 and CRF112 to have been copied from the Draft Definitive Map. This demonstrates that the process for complying the Definitive Map was not followed and therefore a drafting error has occurred.

9.22. Furthermore, no process was demonstrated on the Additions and Deletions Map for the removal of FP108 and CRF 112. The Draft Definitive Map (Extract Fig. 9.4a) shows FP108 to pass over the parcel of land (1524) to join CRF112 at the community boundary line. Cart Road Footpath (CRF) 112 has not been depicted at all on the Definitive Map.

Additionally, the bold black boundary line is not as prominent on the Definitive Map therefore it is obvious that no coloured lines have been hidden.

9.23. The Definitive Map is conclusive evidence in respect of public rights of way registered. However, not all public rights are recorded and, as reported here, FP108 has been copied on the Definitive Map incorrectly while CRF112 has been omitted without adhering to the processes as indicated by the Additions and Deletions Map. The limited scale of the OS base mapping, the location of the bold black boundary line and the location of the Routes within woodland has made it difficult to illustrate the alignments of public rights of way in the area.

The Definitive Map Statements

9.24. The Definitive Map Statement gives a brief description of each way (Appendixes 9.1 to 9.4). The public rights of way footpaths 14, 20 & 111 Tintern reach the community boundary and end with no connection, while footpath 108 Trelleck is depicted to join FP 14 Tintern.

9.25. The Statement for Footpaths (FP) 10, 11, 12, 13 & 14 Tintern: (Appendix 9.1)

“From Tintern Road, Halewood Lane to Whitelye” (In use over 50 years; Muriel Eva Hayward, Gothic Cottage Tintern member Tintern Parish council 18/8/1950 R.R. Thomas Tintern Parish Council 18/8/1950.)

- i) The statement in italics does not give any detail other than describing a route between Tintern via Halewood Lane and on to Whitelye. This infers a connection to Whitelye itself and does not describe the way as ending at the Parish (Community) boundary or at the solid line that marks a boundary feature on the OS mapping.
- ii) There are other Definitive Map Statements that refer to community boundary lines or physical features such as walls or fences.

9.26. The Statement for Footpaths (FP) 18, 19 & 20 Tintern: (Appendix 9.1)

“From Trelleck Road via Sawyers Place to Barbadoes” (In use over 50 years; Muriel Eva Hayward, Gothic Cottage Tintern, member Tintern Parish council 18/8/1950 R.R. Thomas Tintern Parish Council 18/8/1950.)

- i) The statement in italics only describes the way commencing at Trelleck Road (R2 Trelleck-Botany Bay Road) then continues via Sawyers Place to Barbadoes (Green). This statement is too abbreviated as it only makes reference to the alignments for footpaths 18 and 19 and does not detail which path it joins at the termination of FP 19. Although the description does not include FP20 Tintern, the way has not been deleted from the Definitive Map.

9.27. The Statement for Footpath (FP) 111 Tintern: (Appendix 9.2)

“From its junction with FP30 north through The Oaks to join FP.14 and CRF 112.”

- i) There is no separate Statement for Cart Road Footpath (CRF) 112 Tintern. However, there is a Statement for Footpath (FP) 112 Tintern (Appendix 9.2) that bears no relation to CRF 112.
- ii) There is a statement for CRF 112 Trelleck [Trellech]. (See point 9.29)
- iii) This demonstrates that a technical error was made during the process of assembling the DM&S and highlights the fact that either the Draft or Definitive maps and/or statements have been copied incorrectly or not at all.

9.28. The Statement for Footpath (FP) 108 Trelleck[Trellech]: (Appendix 9.3)

“Prices Bridge: When you come to end of Council Road by Forest View Whitelye at Forestry Store Sheds you turn left and walk N.E. you go right through the wood till you come to cartway you go over this and go on down about 80 yards till you come to one more cartway you pass over this and walk 20 yards then you come on to the Whitelye to Tintern land[e] and boundary mark at Prices Bridge” (Used by the Public for 60 years; A Sadler, Forest View, Whitelye.)

- i) This statement in italics describes FP108 shown on the Draft Definitive Map (Fig. 9.2) and does not reflect anything depicted on the Definitive Map (Fig. 9.3). This description shows that even though there is a solid line representing a wall or fence at the boundary of parcel 1524 the footpath continued through this feature, over the land, crossed two cartways and ended at the ‘Whitelye to Tintern land[e]’ at the boundary stone (BS) which is marked on the OS map.
- ii) Additionally, this statement shows that FP108 did not end at the parcel boundary.
- iii) The Routes, A-B-C-D, B-E-F and C-E, are clearly described as “cartways”. In the terminology of the time there were “roads used as public paths” designated as cart road bridleways (CRB) or cart road footpaths (CRF). It is evident from this description that the Routes were in existence in the early 1950s and this suggests that the Routes provided access to forestry land.
- iv) Furthermore, there is no evidence during each stage of the process prior to the publication of the DM&S to suggest that the Routes were considered as public rights of way. In other words no markings are made over the Routes on the Draft Map other than the FP108 and CRF112 Trellech and there are no markings on the Additions and Deletions map either adding and/or removing alignments of all the routes that cross the land. When all of this information is taken together it shows that a drafting error has occurred. Moreover, the lack of markings made on the Draft, Additions & Deletions maps does not mean that there are no public rights.

9.29. The Statement for Cart Road Footpath (CRF) 112 Trelleck [Trellech]; (Appendix 9.4)

“You go through gateway at Prices Bridge and go over the stream and take the upper Road of the two and go on up for 100 yards then you go up the ride and keep on till you get to Sandy Cross and when you are walking this ride you are on the boundary of Trelleck and Tintern and going to Sandy Cross you are going south.”

- i) It appears from this description that CRF 112 Trellech marked on the Draft Definitive Map does not follow the alignment described. The described route may mean the Route, A-B-C-D.
- ii) The phrases “...gateway at Price’s Bridge” and “...over the stream” imply that the gate is north-north-west of Price’s Bridge. The presence of a “gateway” did not prevent use of the route described. Moreover, the recently submitted user evidence forms do not report there being any “gateway”.
- iii) The phrase “...take the upper Road of the two” implies there are two roads and this is confirmed by the statement for FP108 Trellech and that “the upper Road” means the Route, A-B-C-D.
- iv) The local name “Sandy Cross” is described in the statement as being in the south. There are five existing public rights of way that join at this location and “Sandy Cross” is indicated on Figs. 9.2 and 9.4.
- v) The phrase “...walking this ride” is difficult to interpret. The word ‘ride’ could be a misspelling for the word ‘road’ or could refer to ‘bridleway’ and the routes used for horse ‘riding’. A more likely interpretation is the middle English word ‘riding’ meaning a ‘clearance’, which at this location could mean a ‘fire break’ on the Tintern/Trellech boundary.
- vi) This Statement is evidence to support the continuation of CRF112 on an alignment that follows the Trellech/Tintern boundary line. This means that a way should be added which would link with RB 110 Tintern. The examination of the DM&S reveals an omission showing another technical drafting error.

9.30. Throughout this process there have been no letters from the Forestry Commission disagreeing with the alignments depicted on the Draft Definitive Map for the ways FP108 and CRF 112 Trellech.

9.31. Although, the DM&S is conclusive evidence as to ways recorded thereon it has been demonstrated here that a number of errors have occurred during the assembly process.

9.32. Both the Draft and Definitive Map Statements describe the existence of FP108 and CRF112 Trellech. This indicates an anomaly on the Definitive Map that shows the additional ways, U-V-W-X-Y and Y-Z-D (Fig. 9.5), have not been copied correctly.

Therefore, other Definitive Map Modification Orders should be made to correct this error and possibly upgrade and/or add other routes that continue south of point D.

- 9.33. The omission of the Routes, A-B-C-D, B-E-F and C-E, from all the documents used in the compilation of the DM&S does not prevent their registration. The user evidence along with Ordnance Survey mapping suggests that, on balance, public rights existed, and Definitive Map Modification Orders for the Routes, A-B-C-D, B-E-F and C-E, should be made.

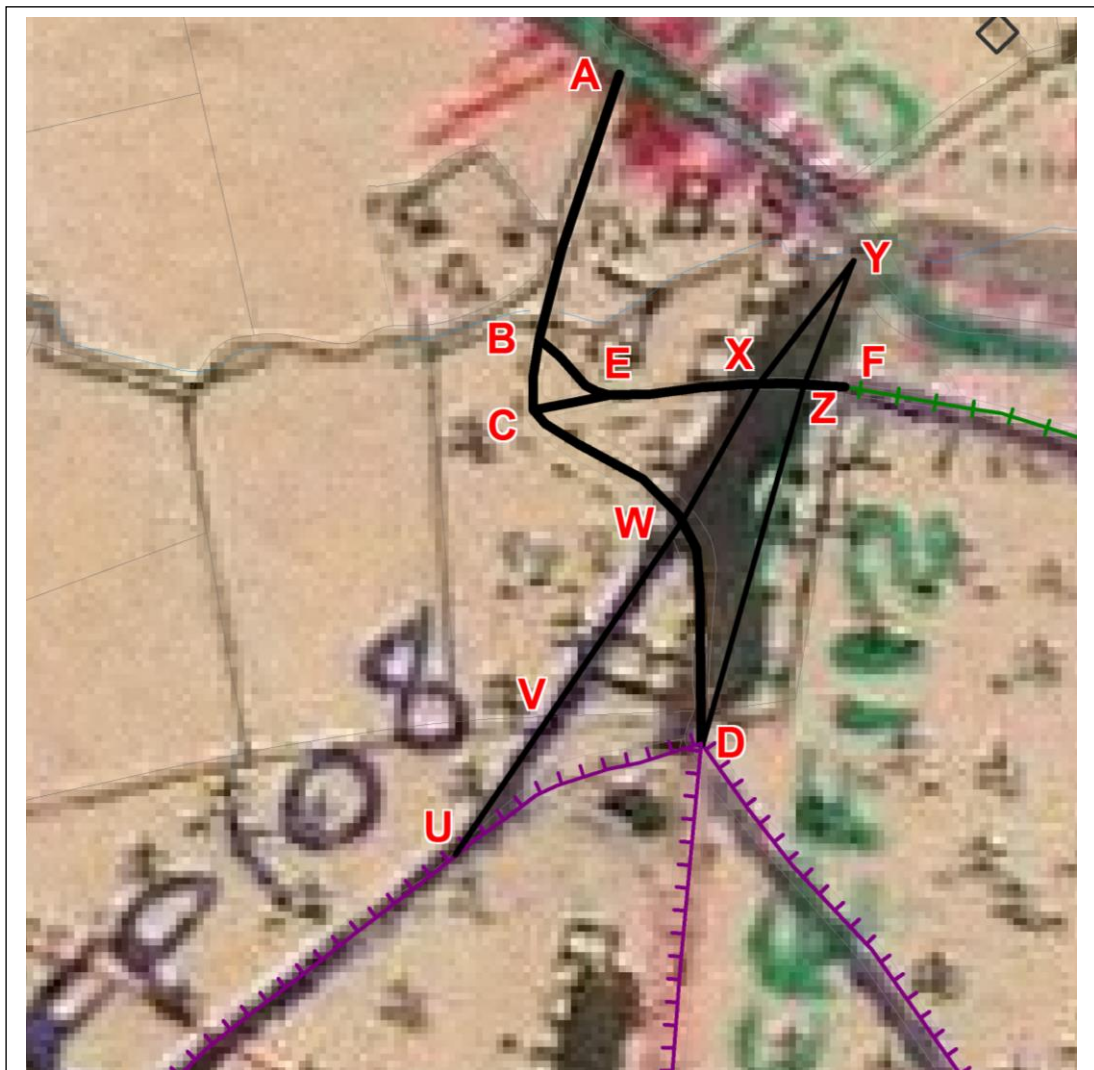


Fig. 9.5: Extract: Combination of Draft Definitive Map and digitised route alignments:
not to scale:

MCC

10. The Highway Records

10.1. Both the 1st April 1949 and current “List of Streets” do not record the Routes, A-B-C-D, B-E-F and C-E, as county unclassified highways. The extent of the highway that is shown on an extract of the 1949 Highway Map (Fig. 10.1) depicts the road alignment C51-4.

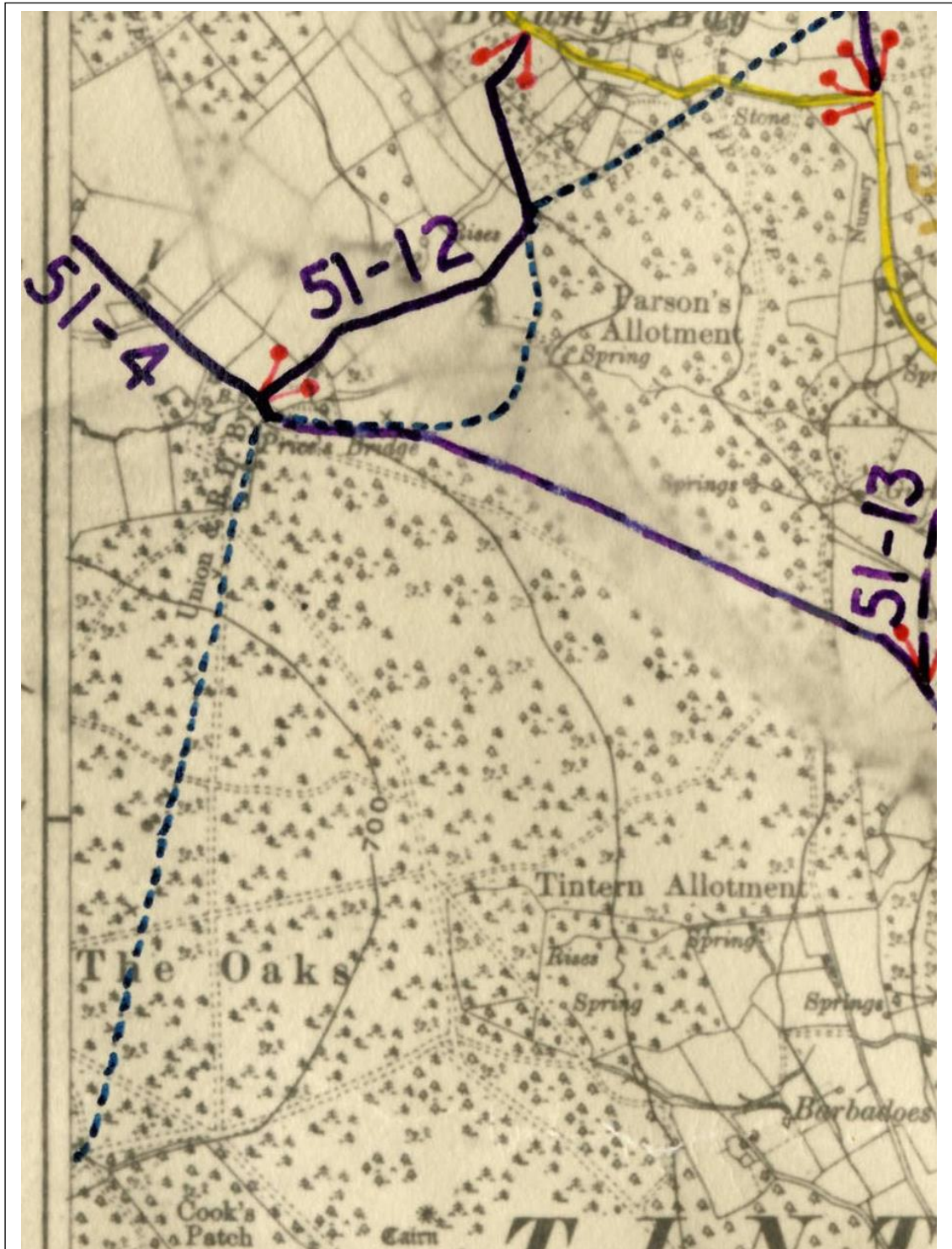


Fig. 10.1: Extract from the 1949 Highways book: Sheet SO 21 NW&SW: not to scale:

MCC

10.2. The highways record does not add any further information in support of the Routes being investigated.

10.3. The undated Highway Map (Fig. 10.2) records the same road. However, it is now referred to as C51-9 (Tintern Road). These two highway records show the road passing over Price's Bridge to have been given different reference numbers.

10.4. Both the highway maps do not include the Routes that lead into the wood and forest.

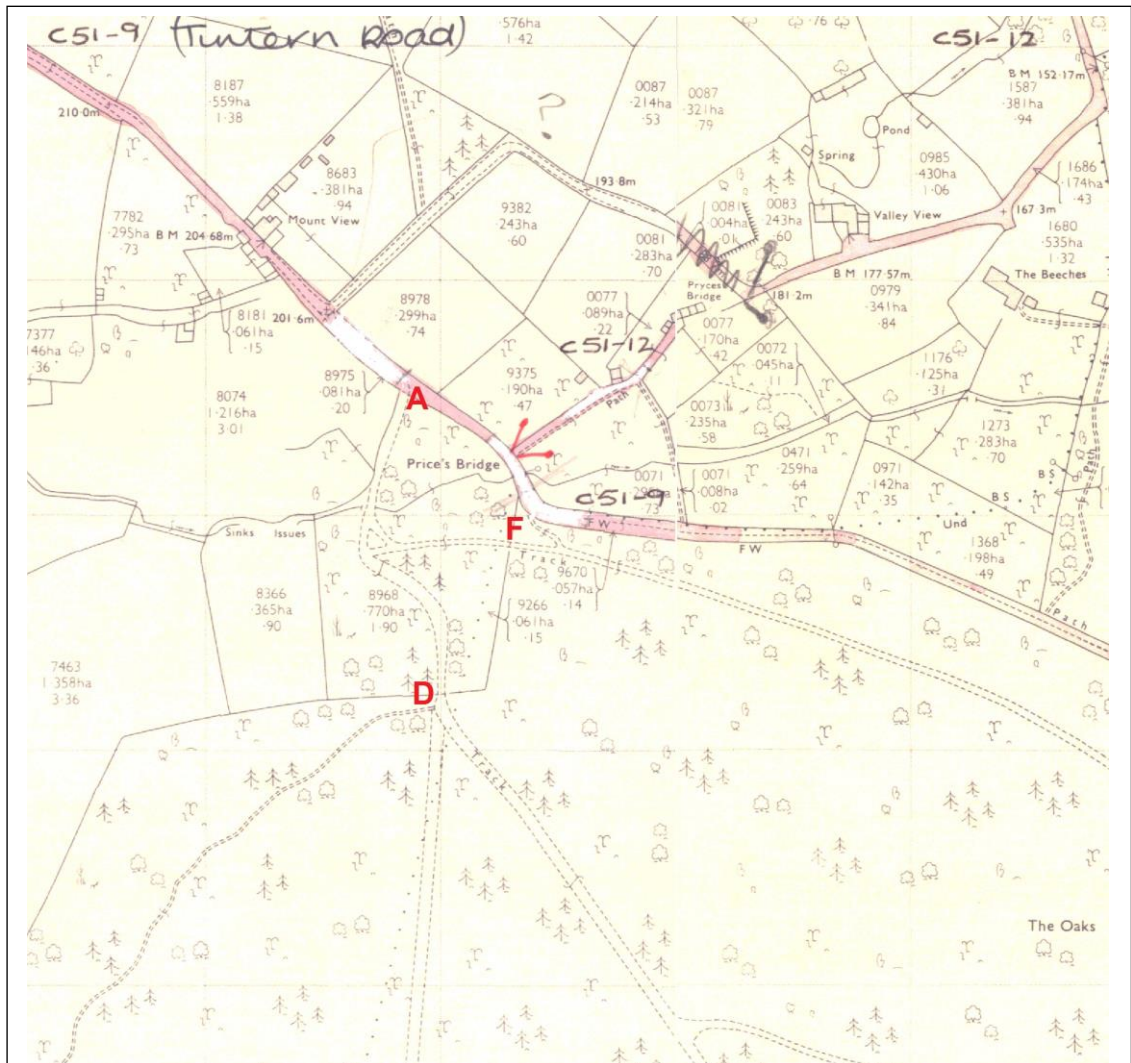


Fig. 10.2: Extract from the undated Highway maps Tank (2):
Sheets 5001-5101(441) & 5201-5301(442); not to scale:

MCC

11. Aerial photographs

11.1. The Aerial Photograph dated 2010 (Fig. 11.1) taken from the Countryside Access management system (CAMS) along with the overlay of the topographical lines shows the alignment of the Routes, A-B-C-D, B-E-F and C-E. The canopy of trees, although dense has a break in it between the marks B-E and C-E. This highlights the significance of the Routes as access to the woodland.



Fig. 11.1: Extract from the 2010 Aerial photographs (CAMS): not to scale:

MCC

11.2. The 2010 aerial photograph showing more of the surrounding area (Fig. 11.2) shows that the Route A-B-C-D is distinctive regardless of the tree canopy.

11.3. It is also noticeable that the way proceeding south of point D is more distinctive than the unclassified county road C51-9[CAMS381/51-4] that continues generally south eastwards from point A. This suggests that the Route, A-B-C-D, was a significant access to the forest and a link to the existing three public rights of way that converge at point D.



Fig. 11.2: Extract from the 2010 Aerial photographs (CAMS): not to scale:

MCC

12. Site photographs

- 12.1. Mr J T Simpson[14] took photographs of the area in November 2013; on the 7th and 31st January 2014 (Appendixes 12.1 to 12.3)
- 12.2. Photograph 1: November 2013: (Appendix 12.1) shows the unclassified county road C51-9[CAMS381/51-4]. The photograph shows a way-marker post for the promoted route known as “Tread & Trot Tintern’s Hidden History”.
- 12.3. Photograph 2: November 2013: (Appendix. 12.1) shows the unclassified county road C51-9[CAMS381/51-4]. The photograph shows a way-marker post for the promoted route known as “Tread & Trot Tintern’s Hidden History”.
- 12.4. Photograph 3: November 2013: (Appendix 12.1) shows the Route between points A & B. The boundary of Moor Farm shown as a wall with a wooden fence is at a different level than that shown for the Route.
- 12.5. Photograph 4: November 2013: (Appendix 12.1) shows the Route between point A & B. The Route is a sunken and wide track. No evidence of prevention to walkers or horse riders.
- 12.6. Photograph 5: November 2013 (Appendix 12.1) shows the Route between points B & E. There is evidence of a culvert shown over the stream.
- 12.7. Photograph 6: November 2013 (Appendix 12.1) shows the Route between points B & C. The Route is wide and level. Although the photograph shows a few tree branches no physical obstructions prevent the use of the Route for horse riders or walkers.
- 12.8. Photograph 7: November 2013 (Appendix 12.1) shows the Route between points C and D. The Route is wide and level but is obstructed by three tree trunks reported to be felled as part of the obstruction to the alleged right of way.
- 12.9. Photograph 8: November 2013 (Appendix 12.1) shows the Route between points C and D. The Route is wide and level but is obstructed by two large tree trunks reported to be felled as part of the obstruction to the alleged right of way. The surface of the Route is sunken and wide with the evidence of a stone surface.
- 12.10. Photograph 9: November 2013 (Appendix 12.2) shows the Route between points C and D. The Route is wide, sunken and has a rock and stone surface. There is some wear and tear down the centre of the Route from water/rainfall. The sign reads “Warning Forest Operations”.

- 12.11. Photograph 10: November 2013 (Appendix 12.2) shows the Route between points C and D. The Route is wide, sunken and has various large boulders across it. There are two observations made from this photograph. Firstly, the boulders have been negotiated by passing them on the left hand side as shown in the photograph. Secondly, the boulders could be climbed over and maybe an experienced horse rider could jump this obstruction. Furthermore, the red and white tape, although perhaps a warning to indicate the hazard, has not deterred users. Water seems to be eroding the central line of the Route further exposing a rock and stone surface.
- 12.12. Photograph 11: November 2013 (Appendix 12.2) shows the Route at point D. The fingerpost indicates the footpath (FP) 108 Trellech going out towards the left of the picture. There are boulders; red and white tape between two small tree branches and a mound of earth across the route at point D. These obstructions have been negotiated by passing them on the right. Both this photograph and photograph 1 show that no gates or signage were erected to notify the public of the privacy of the land at points A and D.
- 12.13. Photograph 12: November 2013 (Appendix 12.2) shows the Route at point F. The Route has red and white tape across it. Additionally, the surface of the Route has been recently disturbed and the level changed that has formed an obstruction to wheeled vehicles. The sign states: "Warning Forest Operations". The photograph shows no permanent signage notifying the public of the privacy the Route and land to prevent use beyond point F.
- 12.14. Photograph 13: 31st January 2014 (Appendix 12.3) shows the Route between points A and B. The photograph shows that a felled tree has partly blocked the Route. However, this is not enough to prevent horse riders, cyclist and walkers.
- 12.15. Photograph 14: 7th January 2014 (Appendix 12.3) shows the Route near point B. The photograph reveals a half-buried pipe across the Route surface. The photograph indicates that the pipe has not been able to cope with the water flow for a long time. This stream and half-buried pipe do not prevent any type of usage of the Route.
- 12.16. Photograph 15: 7th January 2014 (Appendix 12.3) shows the Route near points B. The photograph shows the stream affecting the surface of the Route. In the distance there are 2 to 3 tree trunks blocking the Route.
- 12.17. Photograph 16: 7th January 2014 (Appendix 12.3) shows the Route at point D. The Route, D to C, has been obstructed by numerous felled trees. The Fingerpost indicates the start of FP 108 Trellech directing walkers to proceed out towards the left of the photograph. The surface of all the public rights of way that join at point D has been

disturbed by heavy motor vehicle use. There are no gates, notices or signs at the access indicating private ownership of the land.

- 12.18. Photograph 17: 7th January 2014 (Appendix 12.3) shows the forestry track and the nature of the ways through the forest prior to the obstruction of the Routes and the felling of the trees in the area.
- 12.19. Photograph 18: 31st January 2014 (Appendix 12.3) shows the Route at point F. The Route is obstructed by a large mound of earth and tree debris. The way-marker post in the foreground indicates a “Tread & Trot” way directing users to turn right.
- 12.20. Photograph 19: 31st January 2014 (Appendix 12.3) does not show the Route being investigated but instead indicates the continuation of the “Tread & Trot” way that has a steep slope before it joins with the existing unclassified county road C51-9[CAMS 381/C51-4].
- 12.21. The “Tread & Trot” way-markers on the posts are for the promoted route known as “Tread & Trot Tintern’s Hidden History”. The alignment of this promoted route that turns right in the photographs 18 & 19 near point F has some significance due to the report of an encounter between the MCC Officers and the landowner of Moor Farm (Mr Talbot). When the promoted “Tread & Trot” way was being designed in 2011, Mr Talbot informed MCC officers that the alignment for the way could not utilise the Route, A-B-E-F through his land.
- 12.22. All the photographs were taken in 2013/2014 when Mr Talbot was creating barriers across the Routes, A-B-C-D, B-E-F and C-E. Parts of some of the photographs show that the Routes were wide sunken access tracks in and through the forest.
- 12.23. There is no evidence of permanent gates, notices or signs that inform the public of the private nature of the land and access roads.

13. The Natural Environment and Rural Act 2006

- 13.1. The regulations associated with restricted byways (RB) and roads used as public paths (RUPPs) came into force on the 11th May 2006 in Wales through the Countryside and Rights of Way Act 2000 (Commencement No. 8 & Transitional Provisions [Wales] Order 2006). The Natural Environment and Rural Communities Act 2006 (NERC) sections 66-72 Part 6 followed and came into force in Wales on the 16th November 2006.
- 13.2. A guide for local authorities, enforcement agencies, rights of way users and practitioners compiled by DEFRA for Part 6 of NERC and Restricted Byways is used in this Chapter to test whether or not the Act applies in this case.
- 13.3. The 2006 NERC Act flow charts, illustrating the process for determining public rights of way for mechanically propelled vehicles (MPVs) over any given way, are included on Appendixes 13.1 to 13.3. The NERC Act sub-sections that do apply to the Routes, A-B-C-D, B-E-F and C-E (the Routes), have been repeated and commented on below.

Testing of the Claim against the NERC Act 2006

- 13.4. Section 67(1) extinguished, on commencement, public motor vehicular rights over every highway that was not already shown on the definitive map and statement, or was shown only as a footpath, bridleway, or restricted byway. In effect the public rights of way for mechanically propelled vehicles have been extinguished over every highway not already shown on the definitive map and statement.
- 13.5. If this Section 67(1) were left with no further explanation it would mean that not only are public vehicular rights extinguished along the Routes but also virtually the whole of the existing highway network including other highways such as county unclassified roads. However, Subsection 67(2) introduces a series of exceptions to protect certain highways from such extinguishment under Subsection 67(1). **Any route that qualifies under one or more of these exceptions would not have its public rights of way for mechanically propelled vehicles extinguished.**
- 13.6. Subsection 67(2)(a) excepts ways that have been lawfully used more by motor vehicles than by any other user types in the five years preceding commencement. The intention here is to except highways that are part of the 'ordinary roads network'. It is not incumbent on the local highway authority to undertake a detailed investigation or survey of "main lawful use" on every way.

Comment

- i) *The Authority did not have any record of motor vehicle use for the Routes before this claim was made. The user evidence forms submitted in support of the Claim report that there were nine motor vehicle users among the 36 forms examined. The Routes have been used by motor vehicles as access for deliveries made by the postman and others; a local resident moving hay bales and wooden fencing for agricultural purposes; and for forestry management purposes. This reported private motor vehicle usage is minimal in comparison to any other user type.*

- 13.7. Subsection 67(1) says that an existing public right of way for mechanically propelled vehicles is extinguished if the Route is over a way which, immediately before commencement, was not shown in a definitive map and statement or was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. However, this is only subject to the exceptions under subsections 67(2) to (8).

Comment

- i) *The Routes are not registered on the Definitive Map and Statement. Therefore, without the exceptions of subsections 67(2) & (3), the public mechanically propelled vehicular rights are extinguished.*
- ii) *Nevertheless, the exceptions under subsection 67(2) to (8) need to be applied prior to determination and if any **one or more** of the exceptions does apply then public mechanically propelled vehicular rights are not extinguished and would remain.*

The flow charts (Appendixes 13.1 to 13.3) illustrating the process of determining whether or not a public right of way for Mechanically Propelled Vehicles (MPVs) over any given way are extinguished by section 67 of the Natural Environment and Rural Communities (NERC) Act 2006 are helpful aids:

- 13.8. **Subsection 67(2)(a) states that public MPV rights are extinguished unless the main lawful use by the public during the period of 5 years ending with commencement was use for MPVs**

Comment

- i) *Other than the private vehicular use reported by responders on their evidence forms there is no record of “main lawful” vehicular use of the Routes made by the public during the period ending on the 11th May 2006.*
- ii) *This means that under subsection 67(2)(a) public MPV rights are extinguished.*

- 13.9. **Subsection 67(2)(b) states that public MPV rights are extinguished unless, immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980(c.66) (list of highways maintainable at public expense)**

Comment

- i) *The Routes are not on the list of highways maintainable at public expense known as the “List of Streets”.*
- ii) *This means that under subsection 67(2)(b) public MPV rights are extinguished for all the Routes investigated.*

13.10. Sub-Section 67(2)(c) states that public MPV rights are extinguished unless the way is created (by an enactment or instrument or otherwise) on terms that expressly provide for MPVs.

Comment

- i) *The Routes are depicted on the 1886, 1881, 1920 and 1921 Ordnance Survey Maps and marked as “unfenced main roads”. There is no symbol “FP” marked alongside the Routes depicted on the OS maps. The Surveyors were instructed to only record the physical features they encountered and not to determine whether private or public rights existed over them.*
- ii) *The OS marks for “unfenced main roads” indicates that the Routes were possibly created to provide for forestry management purposes. This type of management would require large vehicles for wood extraction and for these reasons access roads were created for private use.*
- iii) *Although, the OS maps depict the Routes as “unfenced main roads” the marking of these physical features on the documents has no legal powers. This means that under subsection 67(2) (c) public MPV rights are extinguished.*

13.11. Sub-Section 67(2)(d) states that public MPV rights are extinguished unless the way was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by MPVs.

Comment

- i) *The Routes are shown on the OS documentation as “unfenced main roads” and although probably used by heavy motor vehicles for forestry management the creation of them was not made “by the virtue of any enactment” and therefore they were not constructed under any enacted powers.*
- ii) *Therefore, public MPVs rights are extinguished.*

13.12. Sub-Section 67(2)(e) states that public MPV rights are extinguished unless the way was created by virtue of use by such vehicles during a period ending before 1st December 1930.

Comment

- i) *It is difficult to establish if the Routes were “created by virtue of use by public vehicles during a period ending before 1st December 1930” as motor vehicle use only became common in 1918 after the First World War.*

- ii) *The gathering of vehicular user evidence for the 12 years between 1918 and 1930 in support of public MPV rights that were created by virtue of use is not possible. Moreover, 20 years of uninterrupted vehicular use is required under section 53(3) of the WCA 1981.*
- iii) *Therefore, public MPVs rights are extinguished.*

13.13. Sub-Section 67(3)(a) states that public MPV rights are extinguished unless a DMMO application for a byway open to all traffic is made under Section 53(5) of the WCA 1981 before 19 May 2005 (Wales).

Comment

- i) *The Definitive Map Modification Order (DMMO) application for this Report, to register the Routes as restricted byways was submitted in 2013 which is after the 19th May 2005 “cut off” date.*
- ii) *Therefore, public MPVs rights are extinguished.*

13.14. Sub-Section 67(6) states that public MPV rights are extinguished unless a valid application under section 53(5) of the WCA 1981 Act is made in accordance with paragraph 1 of Schedule 14 to that Act.

Comment

- i) *The 2013 DMMO application is valid but does not meet the tests under subsection 67(3)(a).*
- ii) *Therefore, public MPV rights are extinguished.*

Conclusion

13.15. Although the OS maps illustrate the Routes as “unfenced main roads” (point 13.10) which suggests vehicular status, the OS surveyors were instructed not to enter into the determination of whether private or public rights existed. This means that, under subsections 67(2) to 67(8) of the NERC Act 2006, it has been demonstrated that not any of the exceptions are met. Therefore **public mechanically propelled vehicle rights are extinguished.**

14. Summary

- 14.1. In considering the Application the Council cannot take into account need, nuisance or suitability. The only matter to be considered is what public rights, if any, **already** exist. Although suitability cannot be taken into account it may be a factor in deciding whether or not certain types of use by the public would, in fact, have been likely or possible in the past.
- 14.2. The valid Application submitted by Mrs Greatorex-Davies on the 11th December 2013 is supported by 47 user evidence forms, one proforma and various site photographs claiming the use of the Routes, A-B-C-D, as restricted byways under section 53(3)(c)(i).
- 14.3. Mr and Mrs Talbot of Moor Farm, have been informed of the Claim.
- 14.4. Legislation stipulates that the Authority has a duty to keep definitive map and statement under continuous review. In carrying out this duty all the submitted documents were investigated and it was noted that additional Routes, B-E-F and C-E, had been included. All the Routes, A-B-C-D, B-E-F and C-E, have been detailed in the pre-order consultation letter (Chapter 7).
- 14.5. Mr and Mrs Talbot obstructed the Routes in 2013 and this brought the public rights into question. Prior to this they also attended MCC offices to dispute the removal of a fallen tree lying across one of the Routes in February 2011 which they claimed was theirs and that MCC had no right to remove. This suggests that 20 year period is interrupted in 2011. The next 20 year period is from 2011 to 1991.
- 14.6. However, the Statutory Declaration detailed in Chapter 5 (Appendix 5.1 to 5.4) submitted by the Forestry Commission and witnessed by the Magistrates Court in 1997 interrupts both the 20 year periods, 2013 to 1993 and 2011 to 1991. This means that the period for 20 year continuous uninterrupted use of the Routes is from 1997 to 1977.
- 14.7. The dispute and errors made in relation to the landownership of OS parcel 1524 (1901 OS map) detailed in Chapter 4, have obscured the accuracy of who was responsible for the area.
- 14.8. However, the Forestry Commission's 1997 Statutory Declaration, signed before the Magistrates Court, shows that they were the sole landowners during the 20 year period, 1977 to 1997, that has been examined. Therefore, the Forestry Commission held the capability to dedicate the Routes and were aware of the public use thereby submitting the Statutory Declaration in 1997. The Forestry Commission may have submitted the

declaration but did not erect any permanent gate or signage at, point A, the entrance to the woodland.

- 14.9. Furthermore, legislation introduced Open Access Land in 2005. The Forestry Commission, knowing that they were the landowner of OS parcel 1524 (1901 OS map), designated it along with the rest of the woodlands in the area as Open Access Land. The effect of this designation was to dedicate the land thus making the whole area available to the public as long as it was only on foot. The Forestry Commission, having made this formal dedication, had no need to renew the Statutory Declaration and no additional submissions were made.
- 14.10. The issues surrounding the landownership do not prevent the registration of public rights of way on the DM&S and the 20 year period 1997 to 1977 is investigated. There are 36 respondents who provided user evidence during this period.
- 14.11. The 36 user evidence forms have been examined and all users believed that they had a right to use the Routes either, walking, cycling, horse riding, or in or on motorised vehicles.
- 14.12. Although there are two users who record trees/stones across the Routes these could easily be moved if in a vehicle or negotiated if by another type of usage. This has been demonstrated in the site photographs. The remaining 34 witnesses report no permanent gates, obstructions or signs to prevent use.
- 14.13. At various locations in the area the Routes are reported to have had fingerposts directing users to "Barbadoes Green". It is unknown when these fingerposts were installed by Gwent County Council but no objection or removal of them was made by the Forestry Commission.
- 14.14. All 36 respondents walked the Routes; only 3 of the 36 used the Routes on horseback; only 5 on a bicycle and only 5 have used a motorised vehicle. There are three people who report seeing a horse drawn cart.
- 14.15. The examination of the user evidence shows that the total of 36 user evidence forms has been reduced to 25. These 25 respondents were both local and visitors to the area. When all their submissions are taken together it demonstrates that the Routes have been used for a continuous uninterrupted period of 20 years.

14.16. The explanation in reaching the number of 25 respondents:

- i) Mr Neale whose period of use is limited to less than 1 month adds no weight to the overall usage of the Routes. Therefore his evidence has been discounted which leaves 35 users.
- ii) Mr Flashman's evidence must be excluded as in most of his answers he refers to county unclassified road C51-9 which passes his home. This leaves 34.
- iii) 15 respondents have "wandered freely" in the woodland area. 6 of the 15 have stated they have both "kept to the paths" and "wandered freely" and 9 of the 15 report having "wandered freely".
- iv) Due to the area being mostly woodland there is the legitimate capability of both "keeping to the paths" and "wandering freely". Therefore, this means that out of the 34 respondents there is a further reduction of 9 people who have "wandered freely".
- v) This leaves 25 witnesses whose evidence supports the Claim. This number is sufficient to represent the people as a whole/the community in general.

14.17. Taken together this user evidence demonstrates 20 years of continuous uninterrupted use over the Routes, A-B-C-D, B-E-F and C-E (Fig. 1.3).

- i) This means that of the 25 witnesses, 8 also report vehicular use of the Routes which no longer counts towards public vehicular rights.
- ii) Of the 25, 3 report seeing horse drawn carts whose evidence is not as supportive as actual users of this type.
- iii) Of the 25, 4 state they have used the Routes on horseback; 3 of 4 have used all Routes; 1 of 4 have used Route A-D only. Of the 25, 5 state they have used the Routes on bicycle; 4 of 5 have use both Routes; 1 of 5 has used Route A-D only. Of the 25, 7 reporting having seen other horse riders; 6 of the 7 were walkers who had witnesses seeing horse riders. This means there is a total of 16 witnesses supporting bridleway rights.
- iv) There are 25 witnesses who all report having walked the Routes. Of the 25, 6 report having both "kept to the path" and "wandered freely" which is legitimate use in a woodland area. Of the 25, 19 have used both Routes; 4 of 25 have used Route A-B-C-D only.

14.18. The overall results of the analysis of the user evidence shows sufficient evidence to support, horse riding, cycling and walking for the Routes. Taken together this user evidence demonstrates 20 years of continuous uninterrupted use over the Routes, A-B-C-D, B-E-F and C-E (Fig: 1.3).

- 14.19. The pre-order consultation that ran from the 13th April 2018 to the 25th May 2018 resulted in only one objection which was made by Mr and Mrs Talbot of Moor Farm.
- 14.20. Their grounds for objection are that: the submission plan [map] passed to them as part of their notification is different to the pre-order consultation plan [map] (Fig. 7.1); the historically public rights of way have run around the edge of their land but not across it; the tracks that cross their land are part of the farm and are not public rights of way as confirmed by the Authority.
- 14.21. These grounds of objection are not relevant. The assessment of the submission showed that all the Routes, A-B-C-D, B-E-F and C-E, were supported by user evidence and the applicant confirmed that all of them should be added to the DM&S. The pre-order consultation for Definitive Map Modification Orders, Chapter 7, shows that the required people, associations and organisations, including landowners and any adjacent landowners, were consulted.
- 14.22. The DM&S does not record all public rights of way. However, it is possible under the Wildlife and Countryside Act 1981 to register routes if they subsist or are reasonably alleged to subsist and may therefore be determined that, on the balance of probabilities, public rights already exist.
- 14.23. Any disagreement on landownership is not a subject for this Report. The Claim to officially recognise traditional usage by the public, of which both parties have been fully aware, overrides whatever may eventually be decided in respect of landownership.
- 14.24. The 1810 Enclosure Award, the 1823 Price's Map, the 1830s Greenwoods Map, David and Charles Map, Cassini Map and 1830 Ordnance Survey Map do not show the Routes being investigated.
- 14.25. The 1830 maps are at a scale that only enables the depiction of roads and this suggests that minor routes such as footpaths were not physical features that could be recorded while roads that are depicted could be either, byways open to all traffic, restricted byways or bridleways.
- 14.26. The Highways Act 1835 deals mainly with the responsibility of maintenance for "*roads occupation ways and horsepaths not footpaths*". However, as the 1830 mapping that pre-dates 1835 does not show the Routes there is no responsibility for their maintenance. This does not mean that no public rights exist as other documentary and in this instance user evidence may support public rights.

- 14.27. The 1844 Tintern Tithe map shows the Routes to be similar in alignment to the 1886-1921 Ordnance survey maps. While the 1845 Trellech Tithe map does not show the Routes. The Routes cross land that is in the parish/community of Trellech and are not illustrated on the 1845 Trellech Tithe map therefore this document does not support public rights.
- 14.28. The 1881, 1886, 1901 and 1921 Ordnance Survey Maps show the Routes as “unfenced main roads”. Ordnance Surveyors were given the duty of recording the physical features that they encountered and were not to “*inquire into whether or not a way was either private or public*”. However, it is possible to have both private and public rights over the same alignment.
- 14.29. The 1910 Finance Act maps, registers and field books do not depict or record the Routes. Therefore, this data set does not support public rights. When these records are compared and combined with the 1840s Tithe maps and the 1810 Enclosure Award it suggests that, on the balance of probabilities, no public rights exist over plot 1524 (1901 OS map).
- 14.30. The Definitive Map (Fig. 9.4) does not show the Routes marked as registered.
- 14.31. However, the process for the compiling of the Definitive Map and Statement, detailed in Chapter 9, shows that a technical error has occurred. The omission of public rights of way is evidenced in the Definitive Map Statements which has also been forced by the boldness of the Tintern/Trellech community boundary line marked on all the maps.
- 14.32. Contrary to Mr & Mrs Talbot’s declaration that ‘*no routes cross their land*’, both the Draft and Definitive Map Statements describe two public rights of way, Footpath FP108 and Cart Road Footpath CRF112 (restricted byway) that cross over OS parcel 1525 (1901 OS map). This demonstrates an anomaly on the DM&S in that the ways, U-V-W-X-Y and Y-Z-D (Fig. 9.5), have not been copied correctly. This anomaly will be investigated at a later stage.
- 14.33. Furthermore, these statements describe the Routes, A-B-C-D, B-E-F and C-E, as both “cartways” and as “roads”. The mention of the Routes in the Statements supports higher rights and not footpath rights. However, on one hand the mention of the Routes in the Statements does not confirm either their public or private status. Then on the other hand the fact that the Routes are described and passed over by two descriptions suggests that at the time they were regarded as private access tracks and not included along with other public rights of way to be recorded.
- 14.34. The Highway Records do not add any further information in support of the Routes, A-B-C-D, B-E-F and C-E.

- 14.35. Although the aerial photographs show a dense tree canopy, the Routes are partially visible. This suggests that the Route, A-B-C-D, was an access to the forest and also joined with other registered public rights of way across the community boundary.
- 14.36. The site photographs taken in 2013/2014 by Mr J T Simpson[14] show that some of the Routes were wide sunken access tracks in and through the forest. Also there is no evidence in the photographs of any permanent gates or signage informing the public of the private status of OS parcel 1524 (1901 OS map) crossed by the Routes.
- 14.37. The Natural Environment and Rural Act 2006 demonstrates that, under subsections 67(2) to 67(8), not any of the exceptions are met. Therefore public mechanically propelled vehicle rights are extinguished.

15. Conclusion

- 15.1. In conclusion the historical OS maps indicate higher rights by referencing them as “unfenced main roads” and five respondents report their vehicular use of all the Routes. The NERC Act 2006 extinguishes public vehicular rights therefore the Routes cannot be registered as byways open to all traffic (BOAT). The designations that are available are public restricted byways (RB), bridleways (BR) and footpaths (FP).
- 15.2. The rarity of reported horse and cart use does not support classifying the Routes as public restricted byways.
- 15.3. The evidence submitted in support of this Claim shows that the Routes have regularly been used by the public mainly for walking, cycling and horse-riding thereby suggesting public bridleway (BR) rights.
- 15.4. All the evidence demonstrates that the Routes were “actually enjoyed”; “by the public”; “as of right”; “without interruption” and “for a full period of 20 years” (the statutory requirement). Furthermore, within the 20 years from 1977 to 1997, there is no real evidence that the Forestry Commission had made any overt effort to clearly communicate to the public that they had “no intention during that period to dedicate” the Routes claimed.
- 15.5. These conclusions mean that two Definitive Map Modification Orders should be made to register public bridleway rights over the Routes, A-B-C-D, B-E-F and C-E (Appendix1.5).

16. Recommendation

16.1. Members are invited to consider evidence provided and to advise the Cabinet Member for Operations Management whether they agree that a right of way that is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over the Routes and the status of those ways are not restricted byways but instead bridleways.

If this is agreed then to advise the Cabinet Member for Operation Management to make two Definitive Map Modification Orders as detailed.

16.2. 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).

16.3. 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).

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