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Neuadd y Sir
Y Rhadyr
Brynbuga
NP15 1GA

Dydd Iau, 30 Mehefin 2016

Hysbysiad o gyfarfod

Pwyllgor Trwyddedu a Rheleiddio

Dydd Gwener, 8fed Gorffennaf, 2016 at 10.00 am
Neuadd Y Sir, Y Rhadyr, Brynbuga, NP15 1GA

AGENDA

Eitem ddim	Eitem	Tudalennau
1.	**Ymddiheuriadau am absenoldeb**	
2.	**Datganiadau o Fuddiant**	
3.	**GORCHYMYN ADDASU MAP DIFFINIOL, Cleddon SAETHU, Llandogo, TRELLECH (41 Mod)**	1 - 276
4.	**Cadarnhau dyddiad ac amser y cyfarfod nesaf**	

Paul Matthews

Prif Weithredwr

CYNGOR SIR FYNWY

MAE CYFANSODDIAD Y PWYLLGOR FEL SY'N DILYN:

Cynghorwyr Sir:	R. Chapman R. Edwards D. Evans L. Guppy J. Higginson J. Marshall J. Prosser B. Strong F. Taylor P. Watts A. Webb M. Hickman

Gwybodaeth Gyhoeddus

Mynediad i gopïau papur o agendâu ac adroddiadau
Gellir darparu copi o'r agenda hwn ac adroddiadau perthnasol i aelodau'r cyhoedd sy'n mynychu cyfarfod drwy ofyn am gopi gan Gwasanaethau Democrataidd ar 01633 644219. Dylid nodi fod yn rhaid i ni dderbyn 24 awr o hysbysiad cyn y cyfarfod er mwyn darparu copi caled o'r agenda hwn i chi.

Edrych ar y cyfarfod ar-lein
Gellir gweld y cyfarfod ar-lein yn fyw neu'n dilyn y cyfarfod drwy fynd i www.monmouthshire.gov.uk neu drwy ymweld â'n tudalen Youtube drwy chwilio am MonmouthshireCC. Drwy fynd i mewn i'r ystafell gyfarfod, fel aelod o'r cyhoedd neu i gymryd rhan yn y cyfarfod, rydych yn caniatáu i gael eich ffilmio ac i ddefnydd posibl y delweddau a'r recordiadau sain hynny gan y Cyngor.

Y Gymraeg
Mae'r Cyngor yn croesawu cyfraniadau gan aelodau'r cyhoedd drwy gyfrwng y Gymraeg neu'r Saesneg. Gofynnwn gyda dyledus barch i chi roi 5 diwrnod o hysbysiad cyn y cyfarfod os dymunwch siarad yn Gymraeg fel y gallwn ddarparu ar gyfer eich anghenion.

Nodau a Gwerthoedd Cyngor Sir Fynwy

Cymunedau Cynaliadwy a Chryf

Canlyniadau y gweithiwn i'w cyflawni

Neb yn cael ei adael ar ôl

- Gall pobl hŷn fyw bywyd da
- Pobl â mynediad i dai addas a fforddiadwy
- Pobl â mynediad a symudedd da

Pobl yn hyderus, galluog ac yn cymryd rhan

- Camddefnyddio alcohol a chyffuriau ddim yn effeithio ar fywydau pobl
- Teuluoedd yn cael eu cefnogi
- Pobl yn teimlo'n ddiogel

Ein sir yn ffynnu

- Busnes a menter
- Pobl â mynediad i ddysgu ymarferol a hyblyg
- Pobl yn diogelu ac yn cyfoethogi'r amgylchedd

Ein blaenoriaethau

- Ysgolion
- Diogelu pobl agored i niwed
- Cefnogi busnes a chreu swyddi
- Cynnal gwasanaethau sy'n hygyrch yn lleol

Ein gwerthoedd

- **Bod yn agored:** anelwn fod yn agored ac onest i ddatblygu perthnasoedd ymddiriedus
- **Tegwch:** anelwn ddarparu dewis teg, cyfleoedd a phrofiadau a dod yn sefydliad a adeiladwyd ar barch un at y llall.
- **Hyblygrwydd:** anelwn fod yn hyblyg yn ein syniadau a'n gweithredoedd i ddod yn sefydliad effeithlon ac effeithiol.
- **Gwaith tîm:** anelwn gydweithio i rannu ein llwyddiannau a'n methiannau drwy adeiladu ar ein cryfderau a chefnogi ein gilydd i gyflawni ein nodau.

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SUBJECT:	**DEFINITIVE MAP MODIFICATION ORDERS, CLEDDON SHOOTS, LLANDOGO, TRELLECH**
DIRECTORATE:	**ENTERPRISE**
MEETING:	**LICENSING AND REGULATORY COMMITTEE - RIGHTS OF WAY ADVISORY PANEL**
DATE:	**8th July 2016**
DIVISION/WARDS AFFECTED: TRELLECH	

1. PURPOSE:

1.1. To consider, under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, if the route A-C shown on the consultation plan (Appendix 1), in the community of Trellech, Llandogo (location plan Appendix 2), recorded on the Definitive Map & Statement as one type of way should in fact be recorded as a different type of way.

1.2. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. We are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. We must weigh up the evidence using the test of the 'balance of probabilities', and, if on this balance, it is reasonable to conclude that the evidence shows that change should be made, we must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, members must themselves consider the evidence and reach their own conclusions. If a modification order is made anyone has a right to object. The matter would then be determined by the Planning Inspectorate for Wales.

2. RECOMMENDATIONS:

2.1. That the Rights of Way Advisory Panel (RWAP) advise the Cabinet Member for Community Developement to make a Modification Order (under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981) to classify the cart road bridleways 20, 21, 22 and 23 and restricted byway 24 as footpaths and to confirm or seek confirmation of the Order. The details of the case are included in the Reports (Appendix 3) as part of the background papers.

3. KEY ISSUES:

3.1. Ms S. Harris and Mr A. Dance submitted an application to change the status of public cart road bridleways 20 to 23 Trellech, on 13th April 2004. It should be noted that restricted byway 24 has also being investigated for reasons detailed in the Reports (Appendix 3).

3.2. The application includes 13 historical documents, 5 witness statements and 6 evidence forms and was submitted under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (WCA). The applicant seeks to upgrade existing routes to byways open to all traffic (BOAT).

3.3. Since the application was received two public consultations have been carried out and evidence investigated. Detailed reports have now been prepared (Appendix 3) and a decision has to be made on what the status of the various routes should be in light of this evidence.

3.4. Out of the 37 consultations there is, under relevant historical reasons, 1 objector to the route in question being registered as a byway open to all traffic (BOAT).

3.5. If the route in question is to be registered as a public footpath there are 2 objections, one from the Open Spaces Society and the other from the British Horse Society. The basis of objection from the two Societies is historical documentation and reporting of the general area which cannot be attributed to a single route. While 5 objections are based on a desire for future maintenance to a vehicular standard of the route in question and are irrelevant in regards to proving the status of the route.

3.6. The Definitive Map records the southern part of the route (A to B) as a cart road bridleway and the rest of the route (B to C) a restricted byway. The Definitive Map and Statement went through extensive legal procedures and scrutiny during development and therefore substantial evidence is required to change the status of these routes.

3.7. The committee should also note that private vehicular rights will not be altered by any changes to the status of the rights of way. Current maintenance of the route, suitability or privacy are not matters which can be considered under WCA legislation. These are things which can be considered once the status of the route is resolved.

4. REASONS:

4.1. There are a number of historical documents along with user evidence that when taken together argues that, on the balance of probabilities, there are no public vehicular, horse drawn cart or equestrian rights over the route in question. Such use appears to be private.

4.2. There is also very little evidence to support equestrian use and based on the totality of the evidence, Officers believe the routes to be only footpaths and not byways open to all traffic (BOAT) as submitted by the applicants.

5. RESOURCE IMPLICATIONS:

5.1. The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.

5.2. The decision is one that must be taken on strict legal tests:

- If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
- In the event that an order is made and there are objections the Planning Inspectorate for Wales would consider the matter by way of written representations, hearing or public inquiry. The decision taken by the investigating officer and the Rights of Way Advisory Panel is a decision based on legal tests and the above costs cannot be a consideration in the determination of the application.

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

6.1. The Order if made will neither positively nor negatively impact on the well-being goals or the sustainable development principals. (Appendix 4).

7. CONSULTEES:

Corporate Management Team
All-Select Committee Chairmen
Head of Legal Services
Head of Finance
Head of Highways
Licensing and Regulatory Committee Members

8. BACKGROUND PAPERS:

8.1. Consultation plan (Appendix 1)
8.2. Location plan (Appendix 2)

8.3. Report 1: Section A to B (20 to 23)
8.4. Report 2: Section B to C (24)
8.5. Glossary
8.6. Appendixes bundle

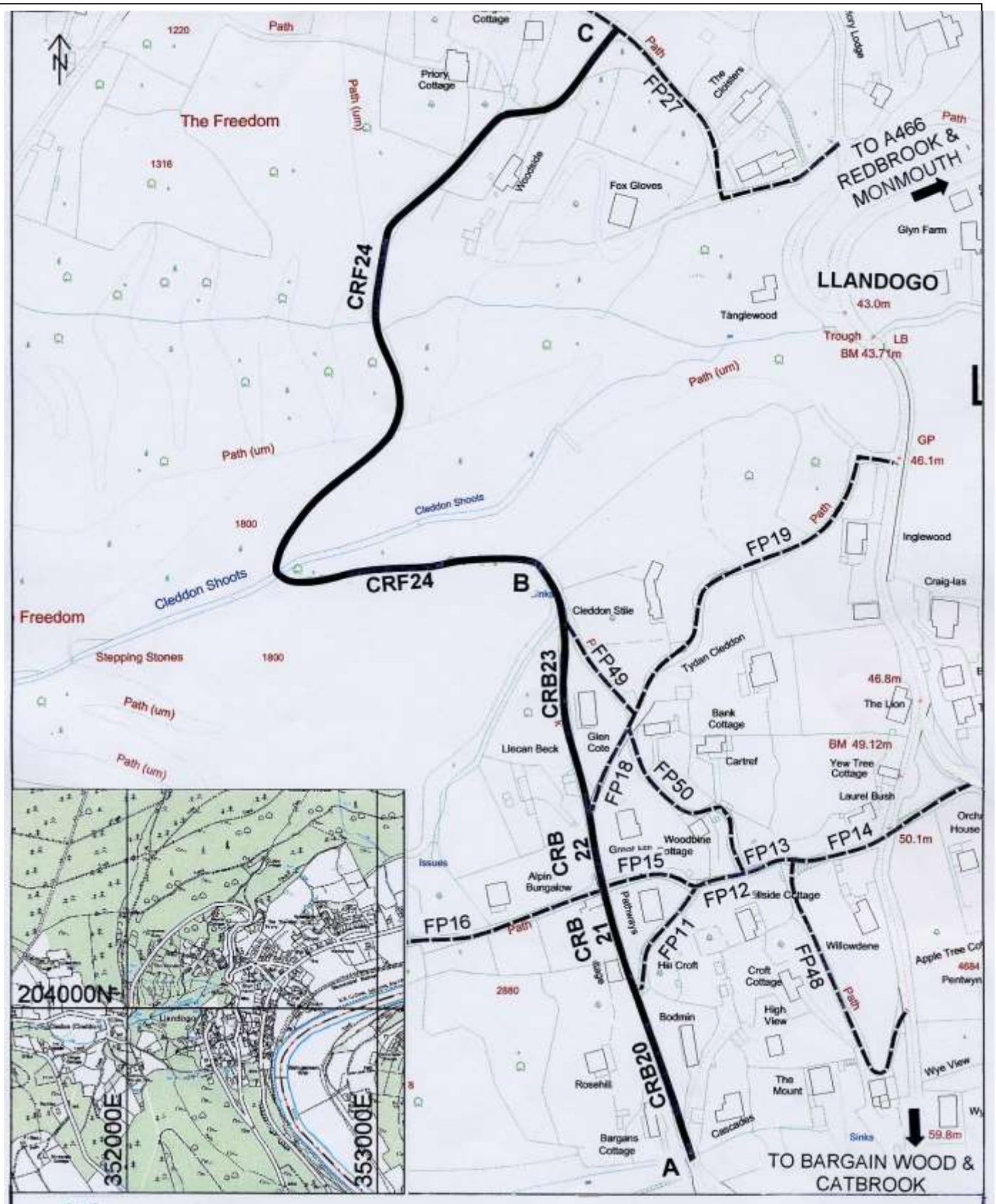
} (Appendix 3)

8.7. Future Generation Evaluation (Appendix 4)

9. AUTHOR: Ruth Rourke Principal Countryside Access Officer

10. CONTACT DETAILS:

Tel: 01633 644860
E-mail: ruthrourke@monmouthshire.gov.uk



Appendix 1: Consultation Plan

Appendix 2: Location Plan

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Future Generations Evaluation
(includes Equalities and Sustainability Impact Assessments)

Name of the Officer Mandy Mussell – Definitive Map Officer Countryside Access **Phone no:** 01633-644183 **E-mail:** mandymussell@monmouthshire.gov.uk	**Please give a brief description of the aims of the proposal** To determine whether or not to register the route in question as a public footpath on the Definitive Map and Statement.
Name of Service Countryside Access	**Date Future Generations Evaluation 4th May 2016**

NB. Key strategies and documents that may help you identify your contribution to the wellbeing goals and sustainable development principles include: Single Integrated Plan, Continuance Agreement, Improvement Plan, Local Development Plan, People Strategy, Asset Management Plan, Green Infrastructure SPG, Welsh Language Standards, etc

1. **Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal.

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth, provides jobs	The Order if made will not change route's availability which will continue to be a resource for locals and tourists to walk for the use and enjoyment of the area.	N/A
A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)	The Order if made will not change the environment in which this route extends.	N/A

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
A healthier Wales People's physical and mental wellbeing is maximized and health impacts are understood	The Order if made will not reduce people's ability to walk in the area.	N/A
A Wales of cohesive communities Communities are attractive, viable, safe and well connected	The Order if made does not impact on the community.	N/A
A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing	N/A	N/A
A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation	The Order if made will not change route's availability which will continue to be a resource for locals and tourists to walk for the use and enjoyment of the area.	N/A
A more equal Wales People can fulfil their potential no matter what their background or circumstances	N/A	N/A

2. How has your proposal embedded and prioritised the sustainable governance principles in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 Balancing short term need with long term and planning for the future	The long term result if this Order is made will be that the route is recorded correctly on the Definitive Map and Statement. The status of the route will be clarified for future reference.	N/A
 Working together with other partners to deliver objectives	N/A	N/A
 Involving those with an interest and seeking their views	All the adjacent property owners have been consulted and all their concerns have been included within the body of the reports.	N/A

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 Putting resources into preventing problems occurring or getting worse	The Order if made will clarify the status of the route and prevent confusion of responsibilities in the future.	N/A
 Considering impact on all wellbeing goals together and on other bodies	N/A	N/A

3. **Are your proposals going to affect any people or groups of people with protected characteristics?** Please explain the impact, the evidence you have used and any action you are taking below. For more detailed information on the protected characteristics, the Equality Act 2010 and the Welsh Language Standards that apply to Monmouthshire Council please follow this

link:http://hub/corporatedocs/Equalities/Forms/AllItems.aspx or contact Alan Burkitt on 01633 644010 or alanburkitt@monmouthshire.gov.uk

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	N/A	N/A	N/A
Disability	N/A	N/A	N/A
Gender reassignment	N/A	N/A	N/A
Marriage or civil partnership	N/A	N/A	N/A
Pregnancy or maternity	N/A	N/A	N/A
Race	N/A	N/A	N/A
Religion or Belief	N/A	N/A	N/A
Sex	N/A	N/A	N/A
Sexual Orientation	N/A	N/A	N/A
Welsh Language	N/A	N/A	N/A

4. **Council has agreed the need to consider the impact its decisions has on important responsibilities of Corporate Parenting and safeguarding. Are your proposals going to affect either of these responsibilities?** For more information please see the guidance http://hub/corporatedocs/Democratic%20Services/Safeguarding%20Guidance.docx and for more on Monmouthshire's Corporate Parenting Strategy see http://hub/corporatedocs/SitePages/Corporate%20Parenting%20Strategy.aspx

	Describe any positive impacts your proposal has on safeguarding and corporate parenting	**Describe any negative impacts your proposal has on safeguarding and corporate parenting**	**What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?**
Safeguarding	N/A	N/A	
Corporate Parenting	N/A		

5. **What evidence and data has informed the development of your proposal?**

The Definitive Map Modification Order, Cleddon Shoots, Llandogo, Trellech (41Mod) Report and two background reports along with all relevant appendixes consists of all the evidence and data that has informed the development of this proposal.

The evidence consists of the applicant's submissions of 13 historical documents, 5 witness statements and 6 evidence forms. The Authority has investigated these and along with this evidence has included within the reports all the available historical maps; 2 pre-order consultations with all the adjacent landowners, various public rights of way user Associations and Societies and Utility providers. Along with all this evidence other case law and legislation such as the 1981 Wildlife and Countryside Act and the 2006 Natural Environment and Rural Communities Act has been applied and discussed in these reports.

6. **SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?**

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

7. **ACTIONS: As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.**

What are you going to do	When are you going to do it?	Who is responsible	Progress
N/A			
N/A			
N/A			

8. **MONITORING: The impacts of this proposal will need to be monitored and reviewed. Please specify the date at which you will evaluate the impact, and where you will report the results of the review.**

The impacts of this proposal will be evaluated on:	Three years after the Order has been confirmed.

9. **VERSION CONTROL: The Future Generations Evaluation should be used at the earliest stages of decision making, and then honed and refined throughout the decision making process. It is important to keep a record of this process so that we can demonstrate how we have considered and built in sustainable development wherever possible.**

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	The Rights of Way Advisory Panel (RWAP) in assessing the evidence and assisting the Community Services Cabinet Portfolio Member to determine whether or not to make a Definitive Map Modification Order.	**8th July 2016**	N/A

Appendix 3

Report 1: Section A to B (20 to 23)
Report 2: Section B to C (24)
Glossary
Appendixes bundle

Licence and Regulatory Committee Report
Definitive Map Modification Order
Cleddon Shoots, Llandogo, Trellech
REPORT 1: SECTION A to B (20 to 23)

File Ref: 41Mod _Llandogo CRB23

8th July 2016

Index

1. Introduction: Definitive Map Modification Order

Background to the case

1.1. This Report is one of two reports by Monmouthshire County Council that deal with an application by two members of the public to upgrade the status of a certain route in the community of Trellech near the village of Llandogo (Appendix 1). The question to be addressed is whether or not the route has public vehicular rights.

1.2. Any discussion by applicants on aspects of need, nuisance or suitability for a route in use, which are relevant to them as private individuals, must be excluded from Council investigations on its status.

1.3. The matter to be considered in these two Reports, therefore, is what type of public rights actually exist in respect of the route in question.

1.4. The routes in question are recorded on the 1952 Definitive Map and Statement (Fig. 12.6) as Cart Road Bridleways CRB20, CRB21, CRB22 and CRB23. If, in the process of addressing the dispute a requirement for changes to the status of these routes arises, legislative action will need to be considered to amend their existing classification as recorded on the Definitive Map. These are discussed in Chapter 12 of this Report.

1.5. The status of these routes has a history going back to 2001 when legal proceedings were issued against the Authority with regard to the maintenance of these routes given that no vehicular rights existed over them. This disagreement related to the extent of any existing public rights and the amount of maintenance that the Authority should undertake. In order to resolve the matter rather than refer it to the Magistrates Court, the Authority surfaced CRBs 20, 21, 22 and FP18, as a “one off”, on the basis that there was no acknowledgement on the part of the Council that public vehicular rights exist over the routes. The reason for this was because the level of public status for the routes had not been resolved at the time as legislative investigation was required. In addition, whatever decision was made regarding the status of the routes, the Council were not responsible for maintaining the same to a standard suitable for public vehicular use.

1.6. In 2004 the Authority received a Planning Application (M/2367) for building a house on a piece of land alongside one of these routes. When the Authority dealt with the claim it sought to draw to the attention of the two Applicants the fact that public vehicular rights might not exist over the tracks leading to the plot which left it being accessible only via a CRB. Planning permission was granted subject to the

Applicants making a submission to Countryside under Section 53 of the Wildlife and Countryside Act (WCA) 1981 to ascertain the status of these routes.

1.7. A Definitive Map Modification (DMMO) application dated 13th April 2004 seeking to upgrade the status of public cart road bridleways (CRB) 20, 21, 22 and 23 to a byway open to all traffic (BOAT) was submitted by Ms S Harris and Mr A Dance. (See section A to B shown on the Consultation Plan (Fig 1.1)). In reviewing the Application, the Authority considered it necessary to consult all available historical documents in investigating the whole route, i.e. not only A to B, but also B to C.

1.8. This Report only deals with section A to B. Section B to C is covered in the second Report.

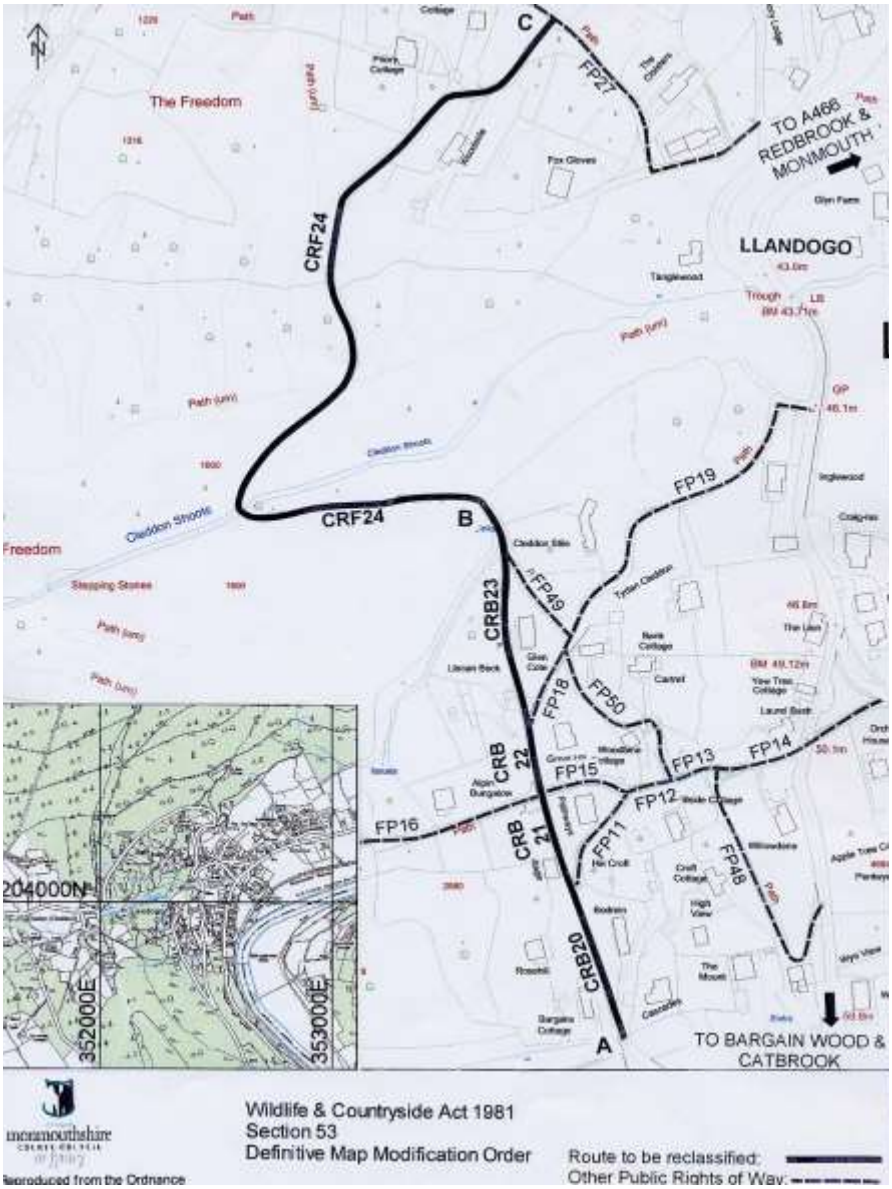


Fig. 1.1: Consultation plan MCC

2. Legal Tests

2.1. The legal tests for the route in question are under the 1981 Wildlife and Countryside Act (WCA) section 53(3)(c)(ii) that concerns itself with a highway that has been recorded at a particular status on the Definitive Map and Statement (DM&S) and should instead be recorded with a different status. Section 53(3)(c) of the 1981 WCA is distinct from other sections of the WCA as, in these types of claims, historical evidence is uncovered in support for amendment or otherwise of a path prior to the 1st January 2026.

Wildlife and Countryside Act 1981 s53:

2.2. The Section 53(2) of 1981 Act places two duties on the Authority:

(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 modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

2.3. Together these duties are known as the continuous review of the DM&S.

2.4. Events fall into two categories “legal events” and “evidential events”. The basis of this Application falls within the evidential event of section 53 (3)(c)(ii).

Wildlife and Countryside Act 1981 s53:

(3) The events referred to in subsection (2) above are as follows:

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;

2.5. Further to the above the standard of proof for both the making and confirmation of a Definitive Map Modification Order is “on the balance of probabilities”.

3. Statutory Background

How public rights of way came about

3.1. The law has always acknowledged that the public right to use a highway lies in dedication by the owner and that public use alone does not create a highway. The law is clear that if there has been a public uninterrupted user of a road for such a length of time as to satisfy a jury that the owner of the soil, whoever he might be, intended to dedicate it to the public, this is sufficient to prove the existence of a highway, even though it cannot be ascertained who the owner of it has been during the time the road has been used by the public.

3.2. The types of highway recorded on the Definitive Map and Statement (relevant date 1 July 1952) are footpaths, bridleways, restricted byways and byways open to all traffic.

3.3. A footpath only allows walkers; a bridleway allows walkers, horse riders (including people leading a horse) and possibly the right to drive cattle; a restricted byway allows all the above descriptions including non-mechanically propelled vehicles like a horse drawn cart; and a byway open to all traffic allows all types of traffic as listed above including motorised vehicles.

Common Law

3.4. Common law originally specified three types of highway, those being footpaths, bridleways and carriageways. Common law is the basis on which statutory rights have been built on. Therefore the type and level of user for these ways is in some respects similar. Over the years legislation has extended the rights where for example carriageways have been subdivided into other types of routes, some being byways open to all traffic while others are now referred to as restricted byways.

3.5. DMMO applications, where a way has become public from long usage, are now generally made under a statutory provision where the common law principles of: “without force”, “without secrecy” and “without permission” are clearly preserved by law.

3.6. Common Law uses a term “as of right”, to explain the principle of long usage that gives rise to a presumption of dedication where the use had to be without force, without secrecy and without permission. Case law has enhanced the term “as of right” to include “in the honest belief in a legal right to use”.

3.7. Provisions of section 31 of the 1980 Highways Act (HA) do not supersede the principles of implied dedication that existed at common law before 1932. That

means where a claim is made in respect of a way that is not obstructed or where use is for a period shorter than 20 years a claim may be made at common law.

3.8. However, where a claim is based only on common law, the requirement with regard to capacity to dedicate still applies. Therefore, without a specific owner, as in this case, there is no ability to offer public vehicular rights.

3.9. Furthermore, the tests under the 1980 Highways Act section 31 are not relevant to this case as it is already understood some public rights, although ambiguous, are recorded on the Definitive Map and Statement.

Restrictions imposed by statute:-

3.10. The Applicants submitted a DMMO claim under section 53 of the 1981 Wildlife and Countryside Act as the Authority had not processed the duty to reclassify under section 54 of the 1981 WCA. This section of the 1981 Act has now been revoked by the 2000 Countryside and Rights of Way Act and is no longer available for use.

3.11. The 1980 Highways Act, section 31 does not apply as the route is already registered as a public right of way on the Definitive Map and Statement as "Cart Road Bridleways" (CRB) which is essentially a road used as a public path (RUPP). In this case the route is regarded as a public bridleway which allows walkers and horse riders. This is discussed in detail in Chapter 12 of this report.

3.12. The 2000 Countryside and Rights of Way Act (CROW) Section 47 came into force on the 11th May 2006 and re-designated roads used as public paths (RUPPs) to restricted byways (RB).

3.12.1. The Welsh Statutory Instruments (2006 No.1279(V.124)(C.42) provided that nothing in section 47 or 48 of the 2000 CROW Act affects the operation of the relevant sections and schedules of the 1981 WCA if either an order or an application for a relevant order was made before the 19th May 2005.

3.12.2. The section A to B of the route in question is investigated in keeping with the submission plan (Appendix 4).

3.13. Section 67(3) of the 2006 Natural Environment and Rural Communities Act exempts this claim being affected by the Act as the application was submitted in 2004 prior to the cut-off date stipulated. Chapter 16 and Appendixes 59 to 64 provide detailed explanation.

3.14. The tests under the 1981 Wildlife and Countryside Act are applied to determine whether or not public vehicular rights already exist over section A to B of the route in question.

THE LEGAL TESTS

Discovery of Evidence

3.15. Planning Inspectorate guidance summarises the position on discovery of evidence that has evolved through Case Law:-

> *'In Mayhew it was argued that in order to be discovered, evidence had to previously have been unavailable to the authority. This argument was rejected. The judge, Potts J, adopted parts of the judgment in R v Secretary of State for the Environment ex parte Simms and Burrows where it was said that: "the word 'discovery' suggests the finding of some information which was previously unknown, and which may result in a previously mistaken decision being corrected".*

3.16. In addition, Potts J adopted the following passage from Simms and Burrows:-

> *"In particular I am satisfied that section 53(3)(c), with its use of the word "discovery", embraces the situation where a mistaken decision has been made and its correction becomes possible because of the discovery of information which may or may not have existed at the time of the definitive map".*

3.17. In the Court's view the meaning of "to discover" is to find out or become aware. The phrase implies a mental process of the discoverer applying their mind to something previously unknown to them.

3.18. In terms of discovery of evidence in the current case, it is noted that discovery need not exclude documents held in the archives at the time of drafting the definitive map from 1952 to 1967. The 1910 Finance Act Records only became available for public inspection from 1979 onwards.

3.19. This should, however, be considered in conjunction with the clarification offered in later case law where the court noted that:

> *"It is plain that the section [53(3)(c)] intends that a definitive map can be corrected, but the correction… is dependent on the 'discovery of evidence'."*

3.20. In order to qualify as a discovery for the purposes of this case then, evidence that existed at the time is able to qualify, though it must be new in the context of evidence previously considered and the submission of evidence cannot be illegal use of an existing way. Also, evidence already considered in a hearing or otherwise at an earlier stage is precluded from forming the basis of a discovery.

Standard & Existence of Evidence

3.21. Planning Inspectorate guidance outlines that:-

> *"When considering whether a right of way already shown on definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural*

defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status was ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all."

3.22. Where there is no indication that the proper procedures were significantly departed from, the standard of evidence that needs to be produced is that of actual positive evidence, of some substance, showing a contrary position to the one included on the Definitive Map and Statement.

DMMO Process

3.23. It should be noted that the DMMO process seeks to ensure rights are correctly recorded as they exist and is an exercise in modifying the definitive map to reflect such a position. It is not within the remit of the DMMO process to give consideration to matters such as privacy; the current or future necessity; or usefulness of a route (though such factors may assist where they constitute evidence of past use).

LEGAL TESTS – Discovery of Evidence

3.24. In this case the Council received the Application in 2004 along with a report consisting of 13 pieces of evidence and 6 user evidence forms to upgrade section A to B an existing cart road bridleway to a byway open to all traffic.

3.25. The Applicants' submissions and their content and weight meet the tests of 'discovery of evidence' which is considered in greater detail in this Report.

3.26. It is not possible to show that the historical records were referred to in the process of the compilation of the Definitive Map and Statement. While recognising that this lack of surviving evidence does not prove that no consideration was given, it is proposed that the submission of the historical documents at least, should be considered sufficient for a discovery under s53(3)(c)(ii).

3.27. Furthermore, when the definitive map was compiled, roads used as public paths (RUPPs) were shown as either cart road bridleways (CRBs) or cart road footpaths (CRFs). These terms have no legal significance and the category of RUPP proved to be unsatisfactory.

3.28. A number of legislative attempts were enacted to reclassify the RUPPs and finally as stipulated by the tests set out under section 67 of the Natural Environment and Rural Communities Act 2006, it remains for the Applicant's claim to be decided under the Wildlife and Countryside Act 1981 section 53(3)(c)(ii).

LEGAL TESTS – Standard of Evidence

3.29. While the historical evidence referred to must be demonstrated to be sufficient to rebut the presumption of the existence of that already recorded on the Definitive Map and Statement the ambiguity of symbols for cart road bridleways; cart road footpaths; roads use as public paths and also due to section 56(1) of the WCA 1981 Act where the depiction of a way as a RUPP on the definitive map was conclusive evidence of the existence of bridleway rights it proved difficult to properly reclassify such a route to a footpath under section 54 of the WCA1981.

3.30. Therefore, if evidence existed that a way shown as a RUPP should have been shown as a footpath, or indeed should not have been shown at all, it should be tested by way of a modification order under section 53(3)(c) of the 1981 Act, which requires all the relevant evidence to be taken into account thereby meeting the requirement for the 'discovery of evidence' as set out under that Act.

3.31. The full extent of the public status of the route began to be questioned in about 2001. Then on the 13th April 2004 the Applicants, wishing to verify vehicular access to their property (section A to B), submitted the claim to change the existing cart road bridleway (CRB) to a byway open to all traffic (BOAT) and are using Wildlife & Countryside Act (WCA) 1981 section 53(3)(c)(ii). The calling into question of the route, for the purposes of this claim is 13th April 2004.

3.32. Under section 67(3)(a) of the 2006 Natural Environment and Rural Communities Act (NERC) it is stated that if a DMMO application for a byway open to all traffic was made before the 19th May 2005 then section 67(1) does not apply. This means that the route in question, A to B, is not changed and remains ambiguously designated as a CRB. It is this situation that is now being investigated to determine whether or not the public have the right to use the way in motorised vehicles, on horseback or with a horse drawn cart.

4. Applicants' Evidence Report

4.1. A Definitive Map Modification order (DMMO) application incorporating: a report with 13 historical documents, 5 witness statements and 6 evidence forms, has been submitted under section 53 of the Wildlife and Countryside Act (WCA) 1981.

4.2. The Applicants submitted, along with the relevant forms and submission plan (Fig. 4.1), a report entitled "The Old Parish Road and CRB 23" with 13 pieces of evidence (Appendixes 2 to 39). The title shows that they believe that the cart road bridleways (CRB) 21, 22 and 23 had the status of an "Old Parish Road", (i.e. highway for public vehicular use) which included these already registered public rights of way.

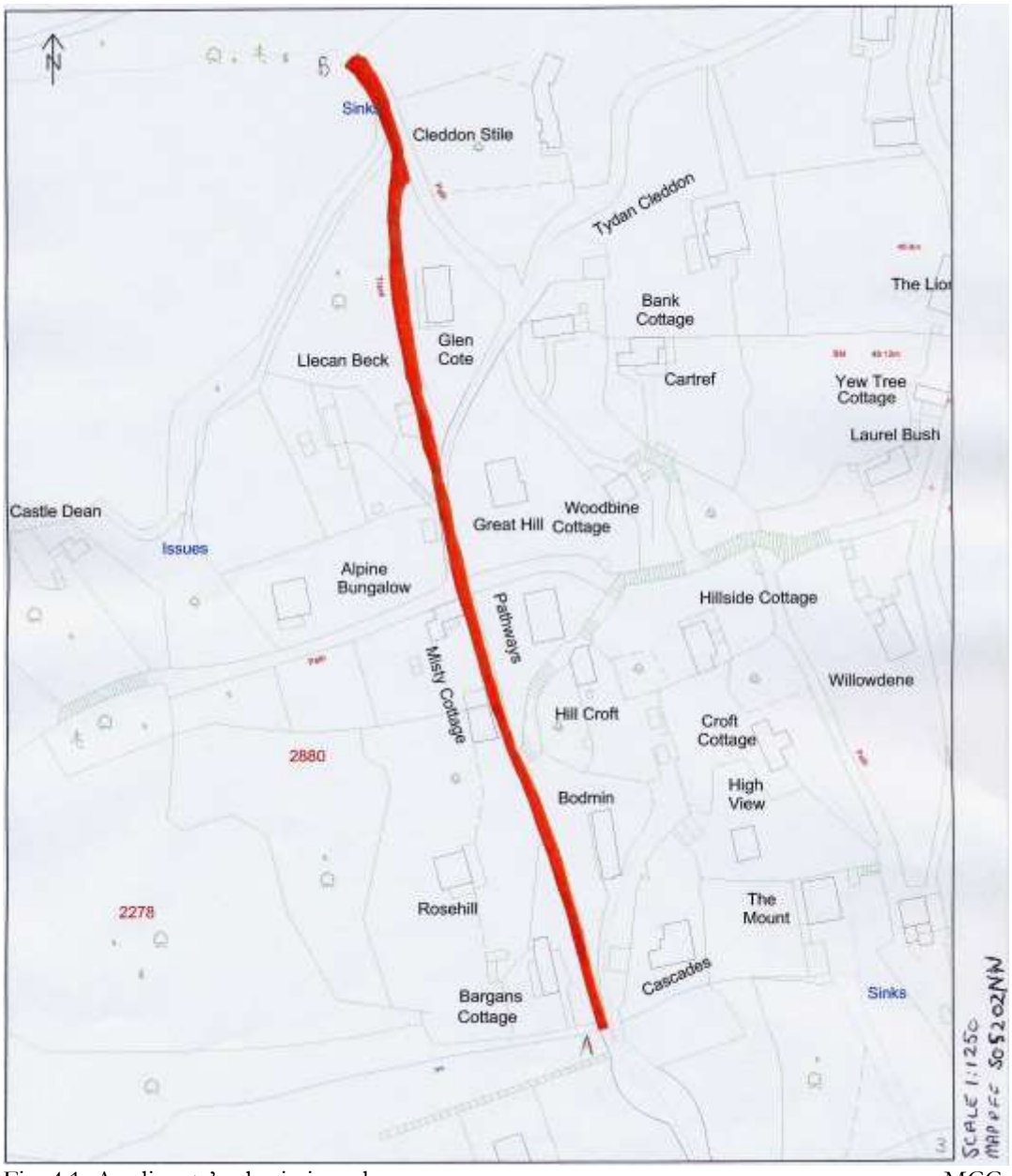


Fig. 4.1: Applicants' submission plan MCC

4.3. Although the applicants have omitted CRB 20 from their list, the full length of the route, as marked on their submission plan (Fig. 4.1), is being investigated. Additionally, restricted byway (RB) 24, as a continuous through route, is also researched as this may have a bearing or give support to higher public rights on both routes.

4.4. The wording "Old Parish Road" is discussed in more detail in Chapter 6. The phrase has been used on technical drawings submitted as part of a planning application which is descriptive use only and therefore does not prove public vehicular rights.

APPLICANTS' REPORT

4.5. ***The status of the Old Parish Road,*** *which is comprised of CRBs 21 22, and 23. When searching through documentary evidence to find information on the origin of any highway, sometimes there is one piece of evidence that is so clear and cogent that, on its own, it can indicate the status of the route in question. Sometimes there is no single decisive document, and it is necessary to assemble a sequence of documentary references which, when taken together, show on the balance of probabilities that the right being asserted exists. That is the task in this case (ref; commission for new Towns v. JJ Gallagher [2003] 2 P&CR 3; [2002] EWHC 2668). There is no single 'decisive' piece of evidence, either to show public vehicular rights, or that the road was only ever a private road, perhaps with a public bridleway along it. But there is a considerable pattern of evidence which, if taken together and construed in context, points, on the balance of probabilities, to CRBs 21/22/23 being part of a longer public vehicular road, albeit a minor one predominantly used by local people.*

Comment

4.5.1. The report of vehicular use, here, being predominantly by local people supports the fact that this is not a public vehicular through route and is not used by the public at large.

4.6. ***The "private road" question.***

If the network of roads/tracks including The Old Parish Road was only a network of private roads for landowners' access, why are there so many branches? There is no pattern of consistency between the roads and the plots alongside. The irregularity of the roads suggests antiquity and, if set out by an inclosure process, it seems very wasteful of land and of repair resources. Inclosure tended to rationalise roads and plot shapes and sizes. This area appears to be an ancient,

irregular landscape. There is no express evidence that the road, of which CRBs 21/22/23 form part, was set out as, or later regarded as, a private road of the benefit of one or a number of landowners. The name itself suggests it was not private. Furthermore, the landowner(s) adjacent to CRBs 21, 22 and 23 do not have any easement of vehicular access in their deeds and title to property (as per the conveyance of 1952). If The Old Parish Road was only a private road, with there being so many individual adjoining properties, it is almost inconceivable that the properties would be conveyed without an easement of access where such existed before sale. There is available a specimen conveyance of a property adjoining/served by this road – there is no expression or reservation of any 'private road'.

Comment

4.6.1. Irregularity of roads. The steepness of the topography in the area has possibly influenced the pattern of routes that ascend Llandogo Hill.

4.6.2. Inclosure Award for this area does not appear to exist and therefore is not available to support the alleged public vehicular rights. Additionally, the Manor of Llandogo was researched and there were no plans attached to those documents to support any type of public right.

4.6.3. The name of the road. The lane is referred to by a number of names among which are "Bargan's Lane" and "John Young's Lane" probably as it is near and leads to John Young's cottage. The Applicants are calling the route in question the "Old Parish Road". Giving a route a name does not make it public. The origin of this name is from technical drawings submitted as part of a 1989 planning application (Appendix 42) in which the term "Old Parish Road" is only descriptive and does not prove public vehicular rights.

4.7. ***How old is this road?***

The oldest document showing any part of the road is a plan made in connection with deeds for Cleddon Shoots in 1828 (Appendix 11). This shows a road coming in from the south – it is hard to see that this could be any other than The Old Parish Road / CRB 23. Further, the whole of the road is shown in the tithe plan of 1846. In Roberts v Wester [1967] QB 298, it was held that where a road was shown as existing in 1859, it was almost impossible for a highway authority successfully to argue that it did not exist in 1836 when the Highway Act 1835 came into force. On the balance of probabilities The Old Parish Road existed in 1835 substantially as it is now.

Comment

4.7.1. The 1828 and 1834 Deed papers for Cleddon Shoots (Appendixes 11 &14) have double line markings that are indicative of the route in question. The 1834 Deed plan does show double pencil markings that assist in locating the area of land shaded pink. However, this does not prove any public status for the route in question. Other routes shown on this plan are shaded along with the reference "To Llandogo" or "From Trelleck" which when compared with the highway records shows that this type of shading and reference supports public rights. While in contrast the simple pencil markings for the route in question are only indicative of location and not of public status.

4.7.2. The 1835 Highway Act. It is acknowledged that a route shown to pre-exist 1836 would then be maintained by the local Authority at public expense. However, the public status of the route and the level of maintenance would not have been stipulated. In this case only two commercial maps pre-date the 1835 Act and, although poorer in quality than the 1830s Ordnance Survey map, are historical documents which may show an alignment that coincides with parts of the route in question. These 1823 & 1830 commercial maps record topographical features only and do not specify the public or private usage of the route in question.

4.7.3. The 1846 Tithe Map (Appendix 17) shows the route in question to be shaded terracotta and, when taken together with other historical mapping, suggests that the route is public. Whether or not the route in question has public or private status is not the matter raised by this claim. The matter that is being investigated is what type of public usage is being attributed to the route in question and this document alone does not support the claimed public vehicular rights.

4.7.4. The two commercial maps of 1823 & 1830 and the 1846 Tithe map are evidence to the existence of the route in question therefore impossible for the Authority to argue that it did not exist pre-1836. However, while the Tithe map shows CRB23 as shaded, the earlier maps do not. The inconsistencies of these earlier maps does not support the claim for either public or private vehicular rights.

4.7.5. The comparison of all the evidence does suggest that the route in question was not dedicated as highway pre-1835 which would mean that the route would not be automatically maintainable, even if caused to exist by a 'body politic or corporate'[1].

[1] Rights of Way Law Review |March 1992| Section 2.1 by Professor K. Davies, Barrister

4.8. ***There is no inclosure award for this land***

A thorough search has been made for any records of parliamentary inclosure, or inclosure by agreement, of the land where this route, and the properties it serves, lie. This land was in the Manor of Llandogo, which was held by the Church of Wales, and there is no record that any inclosure process was carried out. The inclosure act and award for the Parish of Llandogo expressly do not extend to the Manor of Llandogo. This absence of deposited documents – or any reference to inclosure – is supported by a report by the Inland Revenue's District Value, in 1952, which report refers to the parish of Llandogo inclosure, and also to the absence of any other plans or maps of the manor.

Comment

4.8.1. The Enclosure Award Act dated 9 March 1821 for Trellech (Fig. 11.2) does not show the area or the route in question therefore is not available to support public vehicular status. Instead other historical documents need to be relied on. Additionally, the manorial documents for Llandogo were researched and these documents added no further support to any type of public right.

4.9. ***The tithe award and plan (Appendixes 16 & 17)***

The tithe award does not appear to list "public roads", and so is not helpful in determining the status of the road. The tithe plan shows the road coloured in a typical sienna colour, like all the roads in the area. Roads were not productive and therefore not liable to a tithe rent charge, whether public or private. However, where there is other evidence of status (which in this case there is) then the tithe award might be taken as a small piece of evidence consistent with that other evidence (Maltbridge Island Management Co. v. SoS for Environment [1998] EWHC admin 820 31 July 1998).

Comment

4.9.1. The 1846 Tithe Map for Trellech (Fig. 11.10) does show the route in question. However, this does not suggest what type of public rights already exist for the route in question. You will note that, when compared with other records, all public rights of ways are shaded therefore no differences in public status can be determined by this piece of evidence.

4.10. ***First Edition Ordnance Survey map and Book of Reference (Appendixes 18, 19 & 20)***

The Old Parish Road is shown on the 1st Edition Os 25" = 1 mile map as a road, with, at least as regards the northern portion(s), individual plot numbers. The

companion Book of Reference is not helpful – it lists the plot number, and the acreage, but this Book of Reference does not have any descriptions of land use. All we can say here is that the OS Map shows the road in a similar way to other public roads, and as part of a through-route.

Comment

4.10.1. The 1881 Ordnance Survey Map (Fig.11.11) does show the route in question clearly bounded by solid lines. The solid unbroken lines represent a boundary of some type such as a fence, hedge or wall while double pecked lines record a change in surface. It is noted from this 1881 OS Map that the route in question has structural boundaries at the northern and southern ends which suggest that there is no through route in a northerly or southerly direction. In contrast the majority of the networks of routes from the east to west ascending the mountainside are not crossed by solid lines showing that no barriers were obstructing the routes as they ascended the mountainside. There is no differentiation between the types of routes and all footpaths, bridleways and roads are depicted with similar lines. This 1881 OS map does not specify whether or not the route in question is a public right of way for motorised vehicles.

4.11. ***The Finance Act 1910 (Appendix 21)***

This is the single strongest piece of evidence of public road status. The Old Parish Road is shown "coloured out" from the adjoining plots of land. This is consistent with the requirements of the Act that all land must be valued "except land held by a rating authority". The parish council as highway authority, and its successor, rural district council as highway authority, were both rating authorities for the purposes of the Act. The Inland Revenue valuers did not treat footpaths and bridleways in this way. Footpaths and bridleways were not "coloured out" on the plans, but instead received deduction from the valuation in the "field books". This is indicative that The Old Parish Road was regarded in 1910 as a public road other than a footpath or bridleway. This is very powerful evidence. It would require extremely cogent evidence of a mistake being made by the IR valuer to diminish its weight (Robinson Webster v. Agombar 9 April 2001, (CH) HC 000095).

Comment

4.11.1. The 1910 Finance Act Working Map (Fig. 11.17) shows the route in question as uncoloured or "white out". Usually it is found that when comparing the Finance Act Map with the highways mapping data set that those roads shown "white out" on the one map are shown shaded on the other respectively. However, there are exceptions to this regular interpretation of the records. The irregularity is presented here in this area

as many of the other routes are “white out” and are not recorded as roads for public vehicular use but are instead recorded as public footpaths. There are other examples that have been taken before the Planning Inspector and in those cases it has been determined that no public vehicular rights existed on the roads shown “white out”.

4.12. ***<u>County road status</u> (Appendixes 22 & 23)***

By the time of the definitive map survey in the early 1950s, the bottom end of the route that is, to its north, recorded as CRBs 20-23, was already recorded as county maintainable highway C40-7, as far north as to a point just west of the south side of The Mount. There is no ‘place of public resort’ for this county road to go to other than its continuation as the CRBs. It is highly unlikely to be a publicly maintainable highway as far as The Mount (a private dwelling), yet not similarly a publicly maintainable highway continuing to the dwellings to the north. Further, there is evidence that the highway authority has improved the next section, CRB 20, as a vehicular road, in more-recent years. This course of actions is indicative that the highway authority regarded the route as a public road primarily serving as property access, and surfaced sections accordingly. There is no record of a formal ‘adoption’ of these improved sections. Further, ‘adoption’ of a hitherto private road, which is then improved at the public’s expense, when it serves only as access to private property, is both highly unlikely, and probably misapplication of public moneys.

<u>Comment</u>

4.12.1. <u>The County Road C40-7</u> (Fig. 13.2) is recorded on the historical highway maps although there is no recorded explanation of how the classifying of C40-7 came about.

4.12.2. The 1949 highway record (Fig. 13.1) is the only dated selection of highway maps bound in book form and the relevant map sheet shows that C40-7 was recorded as highway.

4.12.3. The 1952 Draft Definitive Map (Fig.12.1) shows a section of CRB20 to have been crossed out. The reason for this is that when the 1949 highway records were researched it was discovered that this section was already recorded as public vehicular highway C40-7. Therefore, as this section of CRB20 was already recorded on the historical highway records as C40-7, it did not need to be re-recorded and was for this reason removed from the Definitive Map records that were finally published in 1967.

4.13. ***<u>The definitive map survey 1951</u> (Appendixes 24 & 25 (Statements))***

The record of the survey made for the original Definitive Map is itself evidential. The description of the route as a "rough surfaced road"; that it was passable by lorries; and the fact that the local surveyors did not regard it as merely a footpath or bridleway. It would seem to be local knowledge at play here, rather than any express reference to old records. Because this part of the full length of the road was not already recorded by the Highway Authority as a public repairable highway, it was entirely proper and consistent with Government advice for the road to be recorded as a road used as a public path (RUPP), sub-classified as a CRB due to its width.

<u>Comment</u>

4.13.1. <u>The Definitive Map and Statement relevant dated 1 July 1952</u> is a register of historical public rights of way and not a register for maintenance liability. Although, legislation does state that the Authority has a duty to maintain the surface of a public right of way, the level of maintenance is only up to that which is normally required for the certain category of public right of way. For greater explanation of the Definitive Map and Statement, see Chapter 12.

4.13.2. In the 1950s at the time of the compilation of the Definitive Map and Statement the status of the public right was difficult to determine and the decision was taken in Monmouthshire to classify certain types of public rights of way as cart road footpaths or cart road bridleways. These classifications (that are not defined in the 1949 National Parks & Access to the Countryside Act) were applied to "roads used as public paths" (RUPPs) where it was difficult to determine the type of public right that enjoyed regular use of the route. However, these classifications neither specify public vehicular use nor verify whether or not the route is publicly maintained.

4.14. ***<u>A conveyance of 1952</u> (Appendixes 26 to 30)***

A conveyance dated 21 March 1952 passed to the Applicants (the owners of property served by the alleged BOAT) on purchase of their property. This conveyance names 'Great Hill' and 'Glyn all' (now "Glyncote") and plots 653 and 654 on the Ordnance Survey Map of 1921. The property conveyed is described as being 'bounded… by the public road leading up to a place there called Great Hill…' There is no grant or reservation in this conveyance of any private means of access to the property, on or any alternative means of access whatsoever. This is strong evidence of reputation that the road now subject of this order was regarded in

1952 by vendor and purchaser (one might reasonably assume good local knowledge – see the names, location, and occupations of the parties named in the conveyance) – as a public road providing all, and vehicular, access to the property.

Comment

4.14.1. The Conveyance of freehold property known as Rock Cottage, Llandogo in the County of Monmouth dated 21st March 1952 is difficult to interpret without the 'annexed' plan as, firstly, 'Great Hill' is the name of the area and not a single property and, secondly, the location of the property known today as "Glyncote" has never been referenced as plot number 679 on any Ordnance Survey maps.

4.14.2. Thirdly, the Tithe Map does not use this plot number 679 as mentioned in the description while the 1881 OS Map does use the plot number 679 twice which is shown to be intersected by a road.

4.14.3. The phrase "public road" is difficult to attribute to a single route as the "Great Hill" area is criss-crossed by public rights of way and, with no plan included with the 1952 Conveyance, it is difficult to verify the actual alignment referred to.

4.14.4. The word "road" may assist the claim although this is ambiguous when compared with ordnance survey maps that frequently use the symbol 'F.P.' for footpaths.

4.14.5. In conclusion, the 1952 Conveyance with no plan attached is unreliable and has a number of discrepancies which makes the weight of this historical document weak in support of the claim. For a detailed explanation see Chapter 5.

4.15. ***Evidence of reputation***

Evidence of reputation is manifested in the way people who might be expected to know about the road have regarded it, and treated it, over a period of time. There are two types of evidence of reputation here: that of the Highway Authority (which has surfaced parts of the route for vehicles), and that of local residents who would be expected to know (Trafford v St Faith's RDC (1910) JP 297). The very fact that the southern portion of the route was removed from the definitive map as a RUPP at the first reclassification, and placed instead on the 'List of Streets', is evidence of the whole route being a public vehicular road. If the whole route was not a pre-1836 public vehicular road, then for any portion of it to become publicly repairable would require a formal act of adoption by the highway authority. None is recorded or asserted. The fact that the highway authority felt able to treat the southern portion (CRB 20) as a publicly maintainable vehicular road, and later to make up CRBs 20, 21 and 22, for the benefit of the public in light vehicles, is indicative that

the authority regarded the whole road as a public road for vehicles. No authority would make up a 'private road' for the benefit of occupiers in to a public road, thus making a cul-de-sac, without an act of adoption. There is none recorded or asserted. In 1994 the Director of Highways for the highway authority stated formally that he believed this route to be a public vehicular highway; surely he should know?

The local people who have made statements about the use of this road are clear that it has had a lot of varied use by vehicular traffic. Much of this use is also consistent with a private road, but these witnesses are clear that they regarded it as a public road – no vehicular user has ever been turned back, no landowner asserts "ownership" of this road.

Comment

4.15.1. The evidence of reputation does not substantiate fact unless supported by documentary evidence. The Authority did not surface parts of the route for vehicles.

4.15.2. There is a misunderstanding between the different map records. The section of the route referenced as C40-7 on the "List of Streets" was also recorded for a time on the Draft Definitive Map complied and published for public inspection on the 16 December 1952. During further investigation into all the available documents it was revealed that the route marked on the Draft Definitive Map was already registered as a public highway and therefore was not required to be recorded a second time and was therefore removed from the Definitive Map prior to its final publication on the 3rd November 1967.

4.15.3. The southern portion was not removed from the Definitive Map data set due to a reclassification. Monmouthshire County Council did not complete and has never completed a reclassification of RUPPs. Therefore this is not evidence for the whole route in question to be a public right of way for vehicles.

4.15.4. The Authority did not regard the entire route as a public road for the use of vehicles. If the Authority had considered this then the "List of Streets" would have identified the termination point of the adopted highway further to the north covering the remainder of the route referred to as CRB 20 and to continue to include CRB 23. This is not the case and the adopted highway C40-7 terminates at the south west of the property now called Bargans Cottage.

4.15.5. There is no record of adoption for C40-7 because there was no legislative process for this at the time the road was constructed.

4.15.6. The Highway section of the Council did not consider the route in question as a public highway and would not have regarded it as such as it was not made up to the standard similar to that of a "Listed" county road such as C40-7.

4.15.7. At section 14 of the Applicants' submission there is no 1994 letter from the Director of Highways giving any formal statement with regard to the status of the route in question. There is, however, a three page extract of the A36666 Planning Application dated 5th October 1993 (Appendix 31 to 33) and also a letter dated 29th October 1993 (Appendix 34). The October 1993 letter from Highways to the Director of Technical Services only refers to observations following the granting of planning permission under A30965.

4.15.8. Furthermore, the Director of Highways for the Highway Authority did not formally make a statement with regard to the status of the route in question. Instead, in addressing observations associated with planning consents for both A29567and A30965 the County Engineer for Highways stated in letters dated 7th September 1988 and 3rd July 1989 (Appendixes 40 & 41) that the proposed development abuts a private road that is part of a network of similar substandard roads in the Llandogo area and in his opinion the roads are unsuitable to accommodate further residential development.

4.16. ***What's in a name?***

The name 'The Old Parish Road' is itself evidential. The parish was the highway authority from at least 1555 through to 1894 when the rural district councils inherited the role (passing to the counties in 1929). The parishes were responsible for the repair of all types of highway, including footpaths and bridleways, but in practice only the more important roads received 'proactive' maintenance. An 'old parish road' could be only a bridleway, but its physical character is an evidential issue – is it likely that a road amply wide enough for vehicles, well made, and enclosed, would be merely a bridleway? Why would a public body put such resources into such a limited facility? In the case of Commission for New Towns v. JJ Gallagher, in considering the meaning of 'parochial road', the judge agreed with leading expert Dr Yolande Hodson that a parochial road was more likely to be a public vehicular road than only a public path. A 'parochial road' is a 'parish road'. Taken with the evidence of the description 'public road" in the conveyance of 1952, with no express private vehicular access, it is unlikely that in this instance, a/the 'parish road' was only a bridleway.

Comment

4.16.1. The Old Parish Road is a form of descriptive reference that was used only in the planning application document, see Appendix 31, and has no legal bearing as to the public status of the route in question.

4.16.2. Although physical attributes of the route in question are apparent these cannot be taken into account when regarding the type of public rights that possibly already exist over the way being investigated.

4.16.3. The Authority has never put resources into the route in question. Evidence for this is that it was necessary for a member of the public to submit the 2001 mal-administration complaint. The recent surface work has occurred as a one-off unprejudiced repair of the route in question to avoid the consequences of the 2001 mal-administration.

4.16.4. A "parochial road" would only more likely be a public vehicular road if when taken with all other historical evidence it showed that, on balance, the route in question had existing public vehicular rights.

4.16.5. The 1952 Conveyance is compiled for the purposes of property transference and not a document that proves public vehicular rights. Phrases like "public road" used within such documents along with an accompanying map (in this case it is missing) have to be considered with other historical evidence before public rights may be determined.

4.17. ***Summary***

We cannot state clearly how or when the Old Parish Road came into being, nor is there any express indication of its status. There is a sequence of evidence that indicates that the route existed as a "physical road" from before 1835, and that this route was part of the local road network, albeit used almost totally by local traffic (R v. Inhabitants of Southampton [1887] QB 590). The survey of 1910, made under strict statutory discipline, recorded the route in a way consistent with its being a public vehicular road, and the original definitive map survey in 1951 is also consistent with a status higher than footpath or bridleway. Since then both the Highway Authority (particularly in upgrading the status and condition of parts) and local people have treated the route as a public vehicular road.

The test to be applied to this evidence is the simple balance of probabilities; when all the evidence for and against public vehicular status is weighed, is it probable that the Old Parish Road was, and therefore is, a public right of way for vehicles? There is a considerable accumulation of evidence in favour; there is little evidence against. The balance of probabilities test is satisfied, and an order should be

made to modify the RUPPs that comprise the Old Parish Road to the status of Byway Open to All Traffic (BOAT).

Comment

4.17.1. In conclusion the route in question and the Llandogo/Trelleck Road are not shown on the 1830 Ordnance Survey, David & Charles and Cassini Maps (Chapter 11: Figs. 11.8, 11.7 & 11.6 respectively). Therefore, there was no requirement at that time for unclassified county road C40-7 and the main access up to the "Great Hill" area was from the northeast and east. The Prices and Greenwoods maps that are of poorer topographical quality possibly record sections of the route in question. This possibility does not give weight to there being public vehicular rights over the route in question. The lack of pre-1835 records also suggests that the route in question is not maintainable at public expense.

4.17.2. When the 1902 & 1921 Ordnance Survey Maps are compared with the earlier 1800s mapping (Chapter 11: Figs. 11.14 & 11.15) it is noted that steps, along with the symbol 'F.P.', for footpaths, are the descriptive tools for the main route that leads up the side of the hill. This shows that public vehicular rights were not established in antiquity and proves that the term the Old Parish Road" was purely descriptive and incorrectly used in the planning application and correspondence of 1993.

4.17.3. The route in question is shown on the 1846 Tithe map (Chapter 11 Fig.11.10) and is shaded the same way as other paths that are registered as either footpaths or the main public vehicular highway. Therefore, the colouring of routes on the tithe map is not exclusive or inclusive to any particular type of public or private right. It is, instead, a format for depicting ways and separating them from the surrounding land.

4.17.4. The local traffic does not help determine public vehicular rights. This is more in keeping with the suggestion of private vehicular rights as the public at large have not and do not use the route in question in mechanically propelled vehicles.

4.17.5. The 1910 Finance Act Map (Chapter 11: Figs. 11.16) does show the route "white out" in a way that is normally shown for roads and not "public rights of way or user" which are recorded differently on these historical records. However, the distinction of bridleways and byways is embraced by the word "road" and therefore the Finance Act records do not always assist in the determination of public vehicular rights over the route in question.

4.17.6. The Definitive Map and Statement, relevant date 1st July 1952, records the route in question ambiguously as a "road used as a public path" and has the subtitle "cart road bridleway". This means that although the route in

question has the physical nature of a “road” it is used mainly as a public “footpath” and there is no evidence to suggest that it is used by the public at large on horseback or in motorised vehicles. Therefore, the route in question is not awarded the higher status of a byway open to all traffic (BOAT).

4.17.7. The Highway Authority has not upgraded the status of the route although surfacing work of the route in question has been carried out to prevent the expense of a mal-administration appeal.

4.17.8. Local people have used the route as access to their properties suggesting that the route in question was a “shared private driveway” and therefore is not a public vehicular road maintainable at public expense.

4.17.9. On balance, when all the evidence is taken together, it is shown that the route in question (A to B) should be registered as a public footpath. However, this does not prevent those already with private vehicular rights exercising such use.

5. 1952 Conveyance of Land

5.1. Section 13 of the Applicants' report is the 1952 Conveyance of freehold land known as Rock Cottage in the area of "Great Hill", Llandogo, in the County of Monmouth dated 21st March 1952 [original plan not available]. Appendixes 26-30.

5.2. The 1952 Conveyance refers to numerous maps and plot numbers that require investigation to determine the exact location and alignment of the "public road" mentioned within the Deed. The mention of the "public road" does not specify the type of public rights, the maintenance responsibility or the extent or level of that responsibility. The 1952 Conveyance alone does not define the type of public rights over the route in question.

5.3. A modern interpretation of the words of the 1952 Conveyance reads as follows:-

5.3.1. All the land in Llandogo together with the dwelling house known as Rock Cottage and all other buildings all of which form part of the enclosure numbered 653 and 654 on the 1921 Ordnance Survey Map (OS) 21.5 and are shown on the plan annexed and edge red ***[no plan available]*** *along with a written description which was in a conveyance dated 3rd December 1887.*

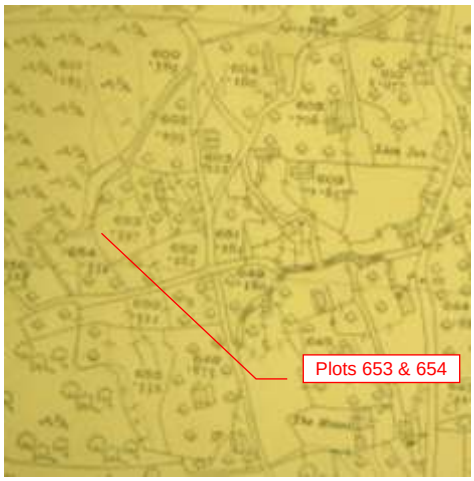


Fig. 5.1: 1921 Ordnance Survey Sheet 21:5 GRO

5.4. The modern words for the description in the 1887 Conveyance reads as follows with emphasis added:-

5.4.1. All that land orchard garden and premises… in Llandogo…and bounded by properties….and by the <u>public road</u> leading up to a place there called the <u>Great Hill</u> on all or most parts and sides…and a small portion of which property that is intersected by a <u>road</u> leading from the Trelleck Road through the same property to a place called the Glyn All… plot numbered 679 [in the Tithe Map of Llandogo [sic]]. (See Fig 5.2 the 1881 OS map.)

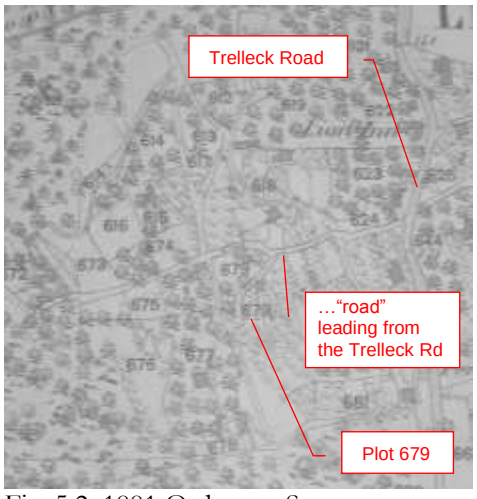


Fig. 5.2: 1881 Ordnance Survey Sheet 21:5 GRO

5.5. The 1952 Conveyance refers firstly to plots numbered 653 and 654 marked on both the 1902 (Fig. 11.14) and 1921 OS Maps (Fig.5.1) while the same plots are given different numbers on both the 1846 Tithe (Fig.11.10) and 1881 OS Maps (Fig 11.11). Secondly, the Conveyance refers to a descriptive extract from an 1887 conveyance to locate the land for Rock Cottage defining it to be "bounded by properties…and the public road….on all or most parts and sides" and incorrectly mentions a tithe map plot numbered 679 in the Parish of Llandogo. There is no plot with this number on the Tithe Map for the area being investigated.

5.6. Instead, the 1881 OS Map uses plot number 679 as described in the 1887 Conveyance. Furthermore, on the 1881 OS map plot number 679 is marked up twice and intersected by a road. (Fig 5.2).

5.7. The location of the property known today as Glyncote has never been referenced as plot number 679 on the Tithe and all Ordnance Survey Maps. The 1881 OS map shows that plot, "Glyn All", number 679 located a fair distance from the landownership extent for Rock Cottage. On the other hand the ambiguous wording of the 1887 Conveyance that mentions 'Glyn All' could be instead referring to "The Glyn" which may mean Glyn Cote a property that lies adjacent to the land for Rock Cottage and is intersected by a road. Without the original plan to verify the extent of the land and the location of the "public road" mentioned, although plot numbers are used, numerous interpretation possibilities arise. Moreover, the term "public road" is difficult to attribute to a single route as the whole hillside is criss-crossed by public rights of way.

5.8. A distinction is noted within the 1887 Conveyance description between a "road" that is described as "public" and a "road" that is implied by the descriptive omission as "not public". The word "public" is not in dispute, for the route in question along with numerous public footpaths is registered on the Definitive Map and Statement. This suggests that the omission of the word "public" to describe the road is in error while the term "road" is only descriptive and does not specify the type of public right. The word "road" may assist the claim, although this is ambiguous when compared with ordnance survey maps which frequently use the symbol "F.P." for footpaths. The mix of the terminology and their legal meanings are ambiguous; "road" could be a term for either bridleway or footpath.

5.9. It is established from the Definitive Map Statements that the whole area is called "Great Hill" and that this is not the name of a particular property. The 1902 and 1920s OS Maps all label the ways leading up to the area known as the "Great Hill"

with the symbol “F.P.” for footpaths along with the numerous line markings that indicate steps. This suggests that the route in question was probably not an unconnected solitary length of bridleway but, instead, along with all the other paths ascending/descending the “Great Hill”, was regarded as a footpath.

5.10. In conclusion, the 1952 Conveyance is a legal document for land sale purposes only. It has been shown here that this Conveyance contains errors of reference and is missing its associated plan which means that only an unsubstantiated interpretation can be applied. For these reasons the proof and weight of this historical document is unreliable when used to support the claim for public vehicular rights.

6. Historical Planning Applications

6.1. Section 14 of the Applicants' report is the Planning Report A36666 dated 5th October 1993 along with the letter dated 29th October 1993 from Gwent County Council Highways (Appendixes 31 to 34). The letter referred to (from the Director of Highways dated 1994) is not included in this section and not investigated here.

6.2. The planning history for the plot, outlined in red on the map below, situated west of Glen Cote is examined here. A detailed plan of the proposed development under planning permission A36666 is shown on Appendix 42.

Fig. 6.1:
Ordnance Survey plan showing location of property to be developed outlined red: MCC

6.3. The Planning Report considered by the Planning Committee for Application A36666 (Appendix 32) entitled "AMENDED SITING OF APPROVED DWELLING" refers to the route in question and states the following:-

"As the track is formally designated as a public right of way, over which the public have right of access with vehicles, the principle of use of the track is not at issue. As a public highway the track and supporting wall should be maintained to a standard satisfactory for accommodating vehicular traffic, irrespective of whether the existing site is developed. The traffic likely to be generated by a single dwelling would be relatively light. Domestic traffic is likely to be the lightest to use the track."

6.4. This statement is correct in as far as describing the route in question as a public right of way is concerned. However, it is incorrect in stating that there are public vehicular rights.

6.5. Planning law and guidance does not place a duty on the Council to determine public or private vehicular rights prior to granting of planning permission. Planning permissions address the building structure, design, effect on location/habitat and the safety of vehicular access. The reference to public vehicular rights in the context of these planning documents and report is incorrect, the reason being that the Planning Section of the Council does not have the authority to make any assertions regarding public or private vehicular rights.

6.6. The comment in the Decision Report for Application A36666 does not support the claim that public vehicular rights already exist over the route in question.

A planning history

6.7. Planning application A29567 for a dwelling and garage was initially approved on the 4 January 1989 and among the consultation correspondence is a letter dated 7th September 1988 (Appendix 40) from the Gwent County Council, County Engineer and Surveyor to Monmouth Borough Council stating the following:-

"This proposed development site abuts a private road that is part of a network of similar substandard roads in the Llandogo area. These roads being narrow and steeply graded with poor horizontal alignment are unsuitable for further residential development. Consequently I would not recommend this proposal from a County Highway standpoint."

6.8. The above comment did not appear in the A36666 planning application. The use of the phrase "private road" has two implications; 1) that the route is believed to be a "private shared driveway" and 2) that the terminology is incorrect as any similar routes may also be used (shared) by the public in a different capacity. It is shown here that the Gwent County Council Highways Department officer did not say that the route in question was a way "*over which the public have right of access with vehicles*".

6.9. Within planning file A29567 is another letter from the owner of Cleddon Stile, Mr T. Wilkinson John, dated 10th August 1988 (Appendix 43) that states:-

> *"…the access road (Old Parish Road) is not adopted; its maintenance is the responsibility of the adjacent landlords."*

6.10. This comment shows that a local inhabitant was aware that the route in question was not publicly maintained but instead was the responsibility of the adjacent landowners.

6.11. Mr T.W. John has also written a witness statement dated 17th October 2001 (Appendix 36) which mainly reports that *"vehicular access was quite unrestricted".* Although this is reported regarding vehicular use, the majority of that use seems to be by those people in vehicles that have been invited to dwellings in the "Great Hill" area. This type of use does not represent the public at large. This 2001 Witness statement is discussed in Chapter 7 of this Report.

6.12. A consultation letter, dated 3rd July 1989 (Appendix 41), from the County Engineer and Surveyor of Gwent County Council, to Monmouth Borough Council in response to Planning Application A30965, dated the 6 September 1989, states that having been previously consulted under outline application code A29567 his views remain unchanged. He confirms his original observations regarding the route in question which were that, along with other ways in the area, any additional development would not be recommended. This letter repeats the fact that he did not stipulate that the route in question had public vehicular rights.

6.13. The Planning Report for Application A36666 entitled "AMENDED SITING OF APPROVED DWELLING" dated 5th October 1993 was then compiled. This report refers to the route in question incorrectly. From the information investigated within all the available office files it is not possible to ascertain how this erroneous paragraph came to be inserted within the Planning Report when it is shown that

both the Highway and Countryside sections submitted the facts regarding the level of public rights over the route in question.

6.14. The consultation letter, dated 29th October 1993 with reference A36666, from the County Engineer of Highways (Appendix 34) states that there were *"no observations on the amended siting of the dwelling following grant of permission under A30965".* The contents of this letter do not refer to any public vehicular rights over the route in question. It is noted on file that planning application A36666 was granted full permission on the 1st December 1993 and that this was renewed in 1998 under planning Application M/2637 along with a note to the applicant regarding the route in question and the level of public rights over it.

6.15. The comments in the 1993 Planning Report have resulted in a mal-administration complaint which was submitted by a Mr Greggains on the 22nd January 2001. The outcome of this case of mal-administration was that the Countryside Service of Monmouthshire County Council undertook surfacing works by laying tarmac along CRBs 20 to 22 to avoid the expense of attending the Courts.

6.16. To further negate the comment made in the A36666 Planning Application it is necessary to be aware of the legal importance of the Definitive Map and Statement in which strict legislative tests need to be carried out prior to any changes being made to alignments on the Map.

6.17. The Definitive Map and Statement is the conclusive legal document of all registered public rights of way and no comments within any other documentation issued by any other department of the Council can be taken as fact regarding public rights of way.

6.18. The legal position, as currently recorded on the Definitive Map and Statement (relevant date 1st July 1952) is that the public use of the route in question is enjoyed by the public on horseback and foot for the first section A to B, and the second section B to C on foot only.

6.19. The National Parks and Access to the Countryside Act 1949 (NPACA) provided that on the Definitive Map there should be included, in addition to every public footpath and bridleway, other types of highways used by the public mainly for the purposes for which footpaths or bridleways are so used, a category termed by the Act as a "road used as a public path" (RUPP).

6.20. Additionally, guidance was issued at the time of the initial Community Council Survey in 1951 and reference was made to recording routes on the Definitive Map as cart road bridleways used mainly as bridleways, or cart road footpaths used mainly as footpaths. However, these non-statutory symbols remain, in accordance with the 1949 NPACA, essentially referred to as roads used as public paths (RUPPs).

6.21. This category of RUPP has proved to be unsatisfactory because the 1949 Act failed to make it clear whether RUPPs were subject to public vehicular rights.

6.22. If public vehicular rights did exist, the Council would have had to make an order under sections 53 or 54 of the Wildlife and Countryside Act 1981. The effect of the order would be to upgrade the route in question to byways open to all traffic (BOATS) i.e. subject to a public vehicular right.

6.23. To date such an order has not been made therefore the content of the 1993 planning report A36666 is incorrect. Moreover, the Planning Section of the Council did not have the authority to make the allegations stated in that planning document. In other words the route in question does not have public vehicular rights because a planning report states as much.

7. Witness Statements

7.1. The Applicants' report consists of five witness statements signed and dated in 2001 as they originally formed part of the documentation that was gathered in support of actions against the Council.

7.2. These witness statements have been confirmed and re-signed in 2002 by each person and are submitted as evidence in support of the claim. (Appendixes 35 to 39).

7.3. **Mr Martin Roger Brown of Maylawns, Landogo,** states that he is a member of the Trellech United Community Council and has lived and worked in Llandogo for the past 59 years and is a member of a family that has been connected with the village for many centuries. This is supported in his statement where he records that his grandfather lived in the region of the route in question at Croft Cottage and his uncle lived in Misty Cottage (formerly Ivydene). Although access and limited parking for visitors was available along the route in question there has to his knowledge never been any restriction applied to vehicles. He further reports that coal was delivered to the turning circle at the rear of Glencote (Glyncote) for collection by the residents of Priory Cottage. (Appendix 35)

Fig. 7.1:
Plan showing property locations: MCC

7.4. **Mr Thomas Wilkinson John, 6 Larkhill Close, Chepstow,** states that he lived at Cleddon Stile for 30 years between 1969 and 1999 and was not aware of any restriction on the use of the route in question by vehicles. Since his occupation of Cleddon Stile he noted constant use by a range of people namely the post, milk, fuel (coal, wood, gas) deliveries. In addition, employees of Dwr Cymru, BT, Swalec and emergency services were all able to attend to the needs of the residents that lived on this hillside. Vehicular traffic was a regular element of the

local residents' daily life. Further he reports that visitors to the Wye Valley and to Cleddon Shoots used the route in question but found themselves in difficulty in their vehicles due to route's condition and terrain. (Appendix 36)

7.5. **Mrs Amelia John, 6 Larkhill Close, Chepstow**, states that she lived at Cleddon Stile from 1969 to 1999 and during that time never encountered any restriction on the public use of vehicles on the route in question. The daily delivery of milk and post - also coal, oil, wood and gas - were regularly delivered to residents. Tradesmen, delivery men, builders and others such as the Electricity, Water and British Telecom employees all used the route in question. In addition, ambulance and fire services and friends and relatives of the residents used the route in question. Furthermore, other members of the public drove freely along the route in question to view plots of land which were for sale. (Appendix 37)

7.6. **Mr Martin James Woodford, Glyncote, Bargain Lane, Llandogo**, states that he has lived at Glyncote since 1993 and that during this time has not been aware of any restriction on the use of the route in question by the members of the public in motorised vehicles. He lists the vehicle users to be postmen, delivery men, milkmen, tradesmen, builders, removal firm workers, utility companies, ambulances, fire engines, police, visitors of residents and anyone else who has had a mind to use the route in question has freely done so. (Appendix 38)

Fig. 7.2:
Plan showing property locations: MCC

7.7. **Mr James Greggains, Ty-Dan-Cledan, Llandogo,** writes that Graham Brown, the brother of Roger Brown who owns the shop in Llandogo, recalled there never having been any restrictions on the public use of the route in question. Graham Brown also said, to James during a telephone conversation on the 10th December 2001 that coal had been delivered by trucks to a coal dump at the end of the route in question. Further, Bill Morgan, a local farmer, would deliver coal to Alan Brown and Will Reynolds who lived in separate houses north of the Cleddon ravine (Shoots) from the coal dump at the end of the route in question using a

horse drawn sledge along the track that leads northwards around the ravine (Shoots). (Appendix 39)

7.8. The witness statements all confirm the existence of a route that is not restricted as evidenced by the local residents using the route in question in vehicles to gain access to their homes. These inhabitants of the "Great Hill" have invited friends, family and other people that provide services. Such people in their vehicles are not regarded as the public at large as it can be taken that they are there at the residents' invitation and are therefore using the route in question in a private capacity.

8. Evidence Forms

8.1. In support of the application there are six evidence forms among which three are by people who believe the route in question to be a public Byway Open to All Traffic (BOAT). Two are by people who report that it has public Bridleway (BR) status while one person states that they used the way as a public Footpath (FP).

8.2. **Of these six submissions**, three people believe the status of the route in question to be that of a public BOAT and these are:-

8.2.1. **Mrs A Harwood of Highview, Llandogo (Appendix 44.1 to 44.3)** believes the public status of the route to be that of a Byway Open to all Traffic (BOAT) and states on her evidence form dated 22nd April 2004 that use of the route in question has been from "Bargans Cottage" to "sinks" for 8 years (1996 to 2004). The purpose of use was for recreation by means of foot or bicycle. Mrs Harwood reports never:

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

No additional information was supplied.

Comment

8.2.1.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Mrs Harwood has had use of the route in question unhindered on foot and bicycle for 19 years. There is no report of public vehicular use of the route in question.

8.2.1.2. This form does not support public vehicular rights over the route in question.

8.2.2. **Dr R J Harwood of Croft Cottage, Llandogo (Appendix 45.1 to 45.3)** believes that the public status of the route is that of a BOAT and states on his evidence form dated 22nd April 2004 that the use of the route in question has been from 'Bargans Cottage' to the 'sinks' for 8 years (1996 to 2004). The purpose of use was for recreation by means of foot or bicycle. Dr Harwood reports never:-

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

No additional information was supplied.

Comment

8.2.2.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Dr Harwood has had use of the route in question unhindered on foot and bicycle for 19 years. There is no report of public vehicular use of the route in question.

8.2.2.2. This form does not support public vehicular rights over the route in question.

8.2.3. **Mr Andrew Tansill of Llecan Beck, Llandogo (Appendix 46.1 to 46.3)** believes that the public status of the route is that of a BOAT and states on his evidence form dated 17th April 2004 that the use of the route in question has been from "Bargans Cottage" Grid ref: 523027 to 'Cleddon stile gate' Grid ref: 522040 for 12 years (1993 to 2004). The purpose of use was for gaining access to Llecan Beck by means of foot and vehicle. Mr Tansill reports never:-

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

Additionally it is reported that he was never made aware of any particular person owning the land and that "the general public use the route in question unimpeded for walking, bicycle and vehicular use".

Comment

8.2.3.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Mr Tansill has had use of the route in question unhindered on foot and in a vehicle for 23 years. Here is a report of private and public vehicular use of the route in question.

8.2.3.2. This is the only form that mentions public vehicular rights over the route in question for a period longer than the required 20 years. However, this in itself is not enough evidence to prove wider public vehicular rights.

8.3. **Among these six submissions**, there is one person who believes the status of the route in question to be that of a footpath:-

8.3.1. **Mrs M Monks of Bodmin, Llandogo (Appendix 47.1 to 47.3)** believes that the public status of the route is that of a footpath and states on her evidence form dated 15th April 2004 that use of the route in question has been from 'the stream' to 'the woods' for 17 years (1987 to 2004). The purpose of use was for exercising dogs. Mrs Monks reports never:-

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

No additional information was supplied.

Comment

8.3.1.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Mrs Monks has had use of the route in question on foot for 28 years.

8.3.1.2. This form does not support public vehicular rights over the route in question.

8.4. **Of these six forms**, two people believe the status of the route in question to be that of a bridleway and these are:-

8.4.1. **Mrs B Edwards of Bargans Cottage, Llandogo (Appendix 48.1 to 48.3)** believes the public status of the route is that of a bridleway and states on her evidence form dated 18th April 2004 that use of the route in question

has been from 'Bargans Cottage' Grid ref: 523027 to 'Cleddon stile Cottage' Grid ref: 522040 for 8 years (1996 to 2004). The purpose of use was for gaining access to home by means of a vehicle. B Edwards reports never:-

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

No additional information was supplied.

Comment

8.4.1.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that B Edwards has had use of the route in question unhindered in a vehicle for 19 years.

8.4.1.2. This form does not support public vehicular rights over the route in question.

8.4.2. **Ms D Mariana Robinson of Cascades, Llandogo (Appendix 49.1 to 49.2)** believes the public status of the route is that of a bridleway and states on her evidence form dated 20th April 2004 that use of the route in question has been from "stream near Bargans Cottage" to "woods and zig zag path" for 20 years (1984 to 2004). The purpose of use was for visiting friends or exercise on foot only. Ms Robinson reports never:-

- encountering any gates or stiles,
- being stopped or turned back,
- being told by anyone that it was not a public route,
- seeing any notices that carried such words as "Private" or "No Road",
- having to ask permission to use the route,
- being told that the way was public

Also she reports no knowledge of a landowner and further states that the route in question should remain as a public footpath as it was never suitable for vehicular use.

Comment

8.4.2.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Ms Robinson has had use of the route in question unhindered on foot for 31 years.

8.4.2.2. This form does not support public vehicular rights over the route in question.

8.4.2.3. Additionally, Ms Mariana Robinson, having had the opportunity to read the file of evidence supplied by Sylvia Harris (Chapter 4), has submitted in writing her understanding of that evidence (Appendixes 50.1 to 50.7).

8.4.3. Below are extracts from Ms Robinson's submission (Appendix 50.1)

The Status of the "Old Parish Road"

- *….didn't see any reference to the name "Old Parish Road" anywhere.*
- *…historical importance of WATER. ….at least 5 springs in this region.*
- *In later years, water was also the reason that CRB40 [sic] (CRB20 (part)) became public highways as C40-7, by the construction of a storage tank of water, again taken from the same spring, and which supplied the village up until the early 1990s. ….was adopted by the Council on behalf of the Water Board vehicles who regularly service the tank. Similarly, council refuse wagons stop at the turning area. They had no need to travel further than Bargans Cottage.*
- *I dispute the report findings that CRB40 [sic] (CRB20 (part)) was part of a continuous road that included CRBs 21, 22 and 23. Whilst I believe there has always been a right of way for public access to the springs, either on foot or with a cart, I don't believe it was an historical road that "went anywhere".*
- *There is no foundation under the widened turning area and the council has now put tarmac on an unstable foundation upon which people (including the general public) park their cars.*

Comment

8.4.3.1. The Old Parish Road is a form of descriptive reference that was used only in planning application documentation, see Appendixes 31, 40, 41 & 42, and has no legal bearing as to the public status of the route in question.

8.4.3.2. The history of water suggests reasons for the recording of the existing public footpaths that directly ascend the "Great Hill" and one of those reasons is to gain access to collect potable fresh water.

8.4.3.3. CRB20 (part) not "CRB40" did not become public highway C40-7. The county unclassified road was already registered on the 1949 historical highway map records. There are two records for the public highway network. The "List of Streets" which records the highways that are maintained at public expense and the 1952 Definitive Map and Statement that registers historic public rights

of way that are only maintained to the level required for their registered use. The stages of the development of the Definitive Map are detailed in Chapter 12 of this report. County Unclassified Road C40-7 south of the route in question would have influenced more regular, although limited, vehicular use. This limited vehicular use reported in evidence forms and witness statements is not the public at large. Furthermore, it is documented here that the general public park their vehicles in the widened turning area at the end of C40-7 on the east side of the road.

8.4.4. Private road question (Appendix 50.2)

- *The antiquity of pattern suggests paths and not roads. Many cottages would have been tithe cottages to the bigger houses of the area. It is inconceivable that properties would be conveyed without proper easements of vehicular access. The fact that they haven't any, is not strong evidence that this was a private or public road – it is evidence that people along the lane CRB 21-23 should NOT be using motorised vehicles along a path. By now, there are many residents, including Councillor Thomas, who say they have obtained a "right from 20 years' unhindered use, but this is not true of SH and AD's plot – where no house has existed before. Illegal use cannot be used to establish a legal right.*
- *From Bargans Cottage to Misty Cottage – it is a bridleway. *At this point the path is intersected east-west (E-W) by what is probably the correct road, uphill to one of the springs. The path then continues to Glyncote and on into the woods. (*See point 8.4.12.)*

Comment

8.4.4.1. The 1846 Tithe Map shows that there have been dwellings on "The Great Hill" and from 1949 there has been a county unclassified road up to this region which means that to prevent the use of the route in question by vehicles for the local inhabitants would be met with vehement indignation. It is evident from recent site visits that all the dwellings that were demarcated on the 1846 Tithe Map are still present today and have over time developed car parking areas and/or garages. This evidence reveals that many of the inhabitants of "The Great Hill" area may have private vehicular easements which would have to be confirmed by private means and are not the topic of this report.

8.4.4.2. Chapter 11 discusses in detail all the historical mapping and the route in question is shown by that mapping as not being the main route up the hill prior to the earliest highway record dated 1949.

8.4.4.3. Chapter 4, points 4.14.1 to 4.14.5, and Chapter 5 discusses in detail the investigation into the 1952 Conveyance that references an 1887 Conveyance that refers to the alignments of routes that ascend the "Great Hill" area from the east or north easterly direction. However, without the original plan the implications of this document in support of the claim for public vehicular rights does not, on balance, have the evidential weight to substantiate those rights.

8.4.5. How old is the road? (Appendix 50.3)

Comment

8.4.5.1. The Deed plans for Cleddon Shoots (Appendixes 11 & 14) show simple pencil markings for the route in question as indicative of locating the land and are not, on balance, a record of any public status. Expanded comments are made previously in Chapter 4, points 4.7.1 to 4.7.5, and are discussed further in Chapter 11, points 11.7 & 11.20.

8.4.6. There is no enclosure award for this land (Appendix 50.3)

Comment

8.4.6.1. The Enclosure Award is not available for inspection but an extract plan of the Enclosure Award that is held at the Gwent Record Office is included (Chapter 11 Figure 11:2) to show that there might be a plan for the Manor of Llandogo although this has not been retained or found.

8.4.7. The tithe award plan (Appendix 50.3)

Comment

8.4.7.1. As previously commented on in point 4.9.1 and further detailed in Chapter 11 point 11.21.

8.4.8. The First Edition 1881 OS Map and Book of Reference. (Appendix 50.3)

Comment

8.4.8.1. As previously commented on in point 4.10.1 and further detailed in Chapter 11 point 11.27.

8.4.9. Finance Act 1910 (Appendix 50.3)

Comment

8.4.9.1. As previously commented on in point 4.11.1 and further detailed in Chapter 11 point 11.44.

8.4.10. County Status road (Appendixes 50.3)

- *….I have proved to the OS, who came to survey my property when dealing with my boundaries, that The Mount was an area of land on this hillside – roughly in the area we are discussing. The Mount – the dwelling is just the name of a house. (See Electricity board map of area Appendix 50.7). This mix up appeared in the 1951 revision of the 1921 OS map. Similarly, the property now known as Great Hill, is not the Great Hill mentioned in the 1952 conveyance given as evidence. It is likely, historically, that Great Hill and The Mount were local names given to the rough area high above the village, where spring water emerged….*

Comment

8.4.10.1. Agreed. The study of the historical documents namely the 1952 Conveyance and the Definitive Map Statements shows that the "Great Hill" is a reference to the whole area and not to a particular property. See point 4.12.1 to 4.12.3 and also Chapters 5 & 12 for further details.

8.4.11. Map Survey 1951 (Appendix 50.4)

- *In my searches at the Public Record Office when establishing my own enquires, I was told by an officer of the OS, that the last definitive map of this area took place in 1921. Since then – maps have been "revised" only. Therefore the 1921 map should be the one used for evidence in this case. Revised editions appeared in 1951, 1971 and probably 1991 – although I'm surmising this last revision. The OS inspector who walked and measured my land in October 2002 stated that a full survey of Llandogo was being carried out because of new building, such as Pathways, the Millennium Hall etc.*
- *The reference to "passable by lorries" is quite easily cleared up. The local coal merchant owned a house along the lane. At the time, he was probably the only person who owned a motorised vehicle and used the small turning area near Glyncote to store his coal and to turn his own vehicle. He probably established private vehicular rights of*

way from the 1950's. Because he used the lane for his own private access and storage does not mean it is a public road open to all traffic…..

Comment

8.4.11.1. There is a misunderstanding in this paragraph. The Applicants refers to the Definitive Map Survey for public rights of way dated 1951 and not to Ordnance Survey mapping and field work as described by Ms Robinson.

8.4.11.2. See points 4.13.1 to 4.13.2 and Chapter 12 for a full explanation of the Definitive Map Survey and the making of the Definitive Map and Statement relevant date 1 July 1952. Point 12.27 particularly addresses the Definitive Map Statement reference to the use of lorries over the route in question.

8.4.12. Conveyance of 1952 (Appendix 50.5)

- *…In my view, the description is not talking of the north-south (N-S) route to these properties, but more likely an east-west (E-W) route since the description clearly states "up to a place there called Great Hill". The word "up is significant, since CRB21/22/23 is virtually flat along the hillside, whereas the steps and path coming up from the Trellech Road, immediately to the north of Misty Cottage (formerly Ivydene) and onwards and upwards to the Great Hill is in fact the road in question. This would bound plots 653 and 654. Similarly, the reference to Glyn All, (Glyncote) in my opinion, is the path that also comes up from the Trellech Road and curves southwards onto the lane at Misty cottage. This cross roads shows the main right of way in an E-W direction and not a N-S direction and is likely to be a public road rather than a path.*
- *... The Council needs to be aware that historically many areas of land in the Lower Wye valley had the word "The" in front of them, e.g. The Freedom, The Mount, The Fence, The Hudnalls – these were areas of land and not individual dwellings although many dwellings have taken these names.*

Comment

8.4.12.1. Study of the historical maps alongside the 1952 Conveyance detailed in Chapters 5 & 12 of this report shows that the "Great Hill" is in reference to the whole area and not to a particular property.

8.4.12.2. The 1952 Conveyance for Rock Cottage has a number of discrepancies and no annexed plan. Therefore it is difficult to verify the actual alignment of any routes mentioned. This has been investigated in depth in Chapter 5 and reference has also been made in points 4.14.1 to 4.14.5.

8.4.13. Evidence of Reputation (Appendix 50.5)

- *This paragraph states that the Highways Authority has surfaced parts of the route for vehicles – this has only been done in the last 12 months and was not the case when this file was first compiled by Jim Greggains. Not evidence at all.*
- *In 1994 the Director… Surely he should know? - Again, he may not have known and my experience of most council workers is that they don't bother to find out either. The fact that areas of the lane were surfaced either officially or unofficially by the council might depend more on "who lives along the lane" rather than any right by owners.*
- *……one of the houses has recently been built - on the site of Mrs Andrew's cottage that "burnt out" in the late 1980's because the fire engine COULD NOT GET to her property (CRB-22). The nearest fire hydrant is next to "Bargan's Cottage"….*

Comment

8.4.13.1. A mal-administration complaint was submitted by a Mr Greggins dated 22 January 2001 claiming that the Authority was not carrying out its duty to repair the surface of the route in question. The Council's Countryside Service undertook surface works to CRBs 20 to 22 purely to avoid the expense of putting the issues before the Courts. This was not done because of any lack of belief on the part of Council officers regarding the status of the route in question.

8.4.13.2. The Director of Highways for the Highway Authority did not make a formal statement with regard to the status of the route in question. See point 4.15.8 and Chapter 6 for more details associated with the planning consents and their relation to the case.

CONCLUDING COMMENTS ON EVIDENCE FORMS

8.5. It is acknowledged that public status already exists. However, the evidence forms submitted along with this application do not sufficiently support public vehicular, or public bridleway rights over the route in question. To determine the type of public

use other historical evidence has been investigated as the user evidence taken alone does not, on balance, stipulate either public vehicular, public non-motorised vehicular or public bridleway rights over the route in question.

8.6. The decision to be made is whether the available evidence suggests that the registered route in question should in fact be recorded a public bridleway, restricted byway or byway open to all traffic.

8.7. In considering this matter need, nuisance or suitability cannot be taken into account. Instead, what should be considered is whether the public enjoy equestrian and vehicular rights over the route in question. 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.

9. Pre-Order Consultations

9.1. There have been two pre-order consultations for the whole route, A to C, being investigated. The first was conducted in 2004 and the second ran from 28th January 2015 to 7th May 2015.

9.2. In response to the 2004 consultation there were 15 replies out of 38. The lack of replies from the user groups suggests that the route in question was not regarded by the public at large to be a public thoroughfare for horse or vehicle users.

9.3. There are two interesting observations gleaned from the 2004 consultation that support different sections of the claim:-

1. For RUPPs (CRBs 20 to 23)

   That the owner of Cleddon Shoots was aware of motorbike users gaining access to the Shoots and was desiring to prevent that type of public access.

2. For RB24 (Section B to C)

   The report of "human and donkey" using RB24 is a single piece of evidence that suggests that this route may have existing bridleway rights.

9.4. The first of these two observations implies some public use although this use could have been anti-social behaviour as no users have come forward to verify this single report of motorbike use. Without the user groups coming forward and confirming their use of the route in question it is not possible to confirm whether or not the use of the route was legitimate. Therefore, this single mention of motorbike use along with all the other historical evidence does not support recording the route in question as a byway open to all traffic.

9.5. The second observation is a report of people using the route RB24 in a private capacity to collect coal.

9.6. These observations are not significant in proving either public vehicular, non-motorised vehicular, or equestrian use of the route in question.

9.7. The 2015 consultation resulted in 13 replies in which the main concerns given were related to future maintenance liabilities.

Pre-Order Consultation results dated 2015			
1	Matthew Lewis	Head of Countryside	No comments at this time.
2	Ruth Rourke	Countryside Access Officer	Continuous input.
3	Kate Stinchcombe	Biodiversity Officer	No comments at this time.
4	Claire Williams	Legal Services	No comments at this time.
5	Wendy Mustow	Highways	No comments at this time.
6	Councillor D Blakebrough	Councillor for Trellech	No reply.
7	Ms A. Davidson	Community Council	No reply.
8	Mr A Blake	A.O.N.B	No reply.
9	S. Harris & A Dance	The Applicants	Reply - Ms S. Harris of Middle Farm – consultation returned "No longer at this address". Reply – Mr A Dance of Lysander House – telephoned his objection to footpath.
10	Llecan Beck	Ms Z. Lindgren	Reply – objection to footpath as maintenance to vehicle usage standards for the section leading to Lysander House should occur.
11	Alpine Lodge	Mr A. Gorell	Reply – objection to footpath registration and that the route should be maintained to vehicle usage standards.
12	RoseHill	Mr Ashley Thomas	Reply – objection to B.O.A.T registration.
13	Bodmin	Mrs S J Simpson	Replied by telephone and letter. – The Authority should fully maintain the route to vehicle standards as the wear and tear to the way causes safety issues to her property.
14	Cascades	Ms M. Robinson	Replied by telephone, emails and letters – The Authority should fully maintain the route to vehicle standards as the wear and tear to the way causes safety issues to her property.
15	Woodside	Mrs P. Wilson	Reply – objection to any upgrade of CRF 24. More concerned with CRF 24 than with CRBs 20 to 23.
16	Lower Freedom Cottage	Mrs B Rosewell	Replied by email – objection to any upgrade of CRF 24. More concerned with CRF 24 than with CRBs 20 to 23.
17	Priory Cottage		No Reply.
18	Marigold Cottage		No Reply.
19	Foxgloves		No Reply.
20	Cleddon Stile		No Reply.

21	Glen Cote		No Reply.
22	Great Hill		No Reply.
23	Misty cottage		No Reply.
24	Pathways		No Reply.
25	Bargans Cottage		No Reply.
26	Mrs A. Underwood	The British Horse Society	Reply - The BHS would object to proposals to record routes as footpaths.
27	Mr D. O. Morgan	Open Spaces Services	Reply - The OSS would object to proposal to record routes as footpaths.
28	Mr. R. Bacon	Natural Resources Wales	Reply - CRB20 to 23 No comment CRF24 covered by SSSI and SAC. If current usage is increase and if maintenance is proposed, then NRW needs to be re-consulted.
29	Mr J. Askew	Tread Lightly Area	No reply.
30	Mr. A. Thomas	Ramblers	No reply.
31	Mr D Wyatt	GLASS (Green Lane Association)	No reply.
32		Byways and Bridleways Trust	No reply.
33	Mr M. Slater	CTC	No reply.
34	Mr R. Gould	British Telecom	Reply - No objection: your proposed scheme should not affect BT apparatus.
35		National Grid	No reply.
36	Ms R. Humphreys	Welsh Water	No reply.
37		Western Power	No reply.

9.8. The Applicant, Mr A. Dance, of Lysander House, has telephoned to say that he has no further evidence at this time. But he has given verbal notice that he will submit his objection at "order making" stage if the order is made to record the route as a public footpath.

9.9. Ms Z. Lindgren of Llecan Beck has telephoned and emailed questioning who would maintain the route if it were not adopted. This DMMO, however, does not seek to adopt the right of way. It only determines whether there may or may not be public vehicular rights over the route in question.

9.10. Mr A. Gorell of Alpine Lodge has written in stating his objection if the order is made to record the route as a public footpath. He states that he has "enjoyed uninterrupted vehicular access over the road for more than twenty years as have the public who have made a nuisance of themselves through noise, being in the way and/or parking their vehicles across my drive". He is aggrieved by planning permissions for three new developments that have not taken into account the nature of the route in question.

9.11. Mr Ashley Thomas of Rosehill will object if the DMMO is made to register the route in question as a byway open to all traffic. Mr Thomas has given a detailed history of the area as his father moved there in 1949 as the Parish Rector. He recalls that there was not much traffic in the past, in fact hardly any, as most people living there did not have cars. Then in the late 60s when car usage increased the residents joined together, commissioned a local contractor, and tarmacked from point A to the junction of CRB 22 with FP18.

9.12. Mr Thomas remembers the coal lorry deliveries, mentioned in the Definitive Statement. The route in question was grass with hard core tracks which were the width of an original Mini. The lorry was about the length of a Ford Mondeo estate car or less. In other words, it was smaller in comparison to today's delivery vans which collide with walls on the upper side and teeter over the drop, thereby weakening the edges on the lower side.

9.13. Mr Thomas states that RB24 should never be registered as a byway open to all traffic by reason of it being passable only on foot, horseback or mule/donkey as the crossing at the 'Falls' in the ravine precluded motorised vehicles. He reports that properties such as Woodside and Priory Cottage had no delivery access as convenient as point B. The alternative was to go a great distance down the steep hillside to the village. Meanwhile point B was almost on the same level making it much easier to transport coal from point B by arrangement with the coal merchant and the landowner at that time. "We all had to make special arrangements like that for difficult deliveries".

9.14. This is the second reference to the use of a mule/donkey for section B to C. However, as it is pre-arranged between the coal merchant and landowner the type of use is by private means and for a private need.

9.15. Mrs S. J. Simpson of Bodmin will object if the DMMO is made to register the route in question as a byway open to all traffic. Due to her property being below the supporting banks of the route in question there is a very serious safety risk from the disturbance of heavy boulders that would cause damage if dislodged. For this safety reason it is her wish that the route be adopted between sections A to B and publicly maintained.

9.16. Ms D. M. Robinson of Cascades will object if the DMMO is made to register the route in question as a byway open to all traffic. Her reasons are entirely due to maintenance and safety concerns and not with regard to evidence of any public status.

9.17. Definitive Map Modification Orders do not consider need, nuisance or suitability of the route in question and therefore Ms Robinson's request cannot be considered under this legislative procedure.

9.18. Mrs P. Wilson of Woodside will object if the DMMO is made to register the whole route as a byway open to all traffic. She reports having lived in the village from November 1986 and is concerned that the Applicants are seeking to change the status of a private road (section A to B). However, she has always known section B to C as a footpath.

9.19. Mrs B. Rosewell who owns Cleddon Shoots will object if the DMMO is made to register the route in question as a byway open to all traffic.

9.20. Mrs A. Underwood representative, of the British Horse Society, objects to the "downgrading" of these restricted byways to footpaths referring to "known history of the area that is readily available and was carried out by Gwent and Glamorgan Archaeological Trust". Her evidence covers the general history of the area and the "use of a network of roads and pack animal trails". This evidence is not specifically related to the route in question and provides no assistance to qualifying the public status of the actual route being investigated. This is the third mention of equestrian use in the area. However, this report is generalised and not specific to a single route. In contrast, the above mentioned two reports of mule/donkey for the assisted transport of coal do refer to the particular use of RB24.

9.21. The generalised history when taken together with all the other historical documentation is interesting. However, as public equestrian use cannot be specifically attributed to the route in question, it does not assist the recording of either public restricted byway or bridleway rights.

9.22. Mr D. O. Morgan representative of the Open Spaces Society has responded to the effect that an order should be made for a byway open to all traffic as the Order Making Authority is obliged to process a DMMO and that it would be fair to all the types of users involved.

9.23. Mr R. Bacon of Natural Resources Wales (NRW) replies stating that if current usage is increased over RB24 and if maintenance is proposed then NRW needs to be re-consulted as this section of the route passes through Cleddon Shoots Woodland, a Site of Special Scientific Interest (SSSI) which is a component of the larger Wye Valley Woodlands Special Area of Conservation (SAC). Also in

accordance with all the given legislation Monmouthshire County Council will be required to undertake a Habitat Regulations Assessment.

9.24. Overall the consultation responses do not, of themselves or in conjunction with other historical evidence, provide substantial evidence to record the route in question as having public vehicular, public non-motorised or public bridleway rights. For these reasons the route in question should therefore be recorded as a public footpath (FP) only and not registered as a public byway open to all traffic (BOAT).

10. Land Registry Documents *(official copies requested in 2015)*

10.1. Title Deeds from Land Registry have been requested for the properties that utilise or abut the route in question.

10.2. A study of these documents has shown that out of the majority of the landownership documents no public vehicular rights have been described for the route in question.

No.	Date of Official copy	Title number	Title name	Dates of rights granted by a Historical Deed or Conveyance	Notes
Section A to B of route in question					
1a	24/03/2015	WA963131	Cascades	23 April 1969	"forms a bank between bridle path and the roadway shown coloured blue"
2a	26/03/2015	CYM621529	Bodmin	23 April 1969 & 10 August 1972	"..right granted to the Purchasers as a right of way at all times and for all purposes over the road way shown coloured blue."
3a	14/05/2015	WA460951	High View	29 September 1967 22 June 1971	The conveyance mentions "coloured blue" on the attached plan but does not extend the whole of the "private roadway". Although, the attached map is marked with the annotation "approx. line of private access road".
4a	14/05/2015	WA377892	Croft Cottage	21 July 1967 Deed & 29 September 1967 & Deed 15 December 1975	Deed mentions that the private driveway "coloured blue" allows the landowners to pass and repass in vehicles. The Conveyance 29/9/67 allows the same rights.
5a	14/05/2015	CYM138412	Hillside Cottage	21 July 1967 & 31 December 1970	"…shows the part thereof edged blue being a private roadway between the point marked A on the said plan to the public highway there at the point thereon marked B…."
6a	14/05/2015	CYM517453	Hill Croft	31 December 1970 & 15 December 1975	"…shows the part thereof edged blue being a private roadway between the point marked A on the said plan to the public highway there at the point thereon marked B…"
7b[1]	26/03/2015	CYM11137	Lysander House	27 September 1976 & 1 June 1988	Not available to investigate
8b[2]	26/03/2015	WA443562	Glyncote (Glencote)	27 September 1976 & 1 June 1988	Not available to investigate

No.	Date of Official copy	Title number	Title name	Dates of rights granted by a Historical Deed or Conveyance	Notes
9b[3]	26/03/2015	WA673845	Llecan Beck (formerly Quiet Ways and prior to that Rock Cottage)	21 March 1952; 27 September 1976 & 1 June 1988	For discussion regarding 1952 Conveyance with no plan attached…. see chapter 5. Other documents - not available to investigate…although an extract is copied to modern record "…pass and repass…with or without vehicles …along the private roadway as means of access to…said garage site…"
10b[4]	26/03/2015	WA93370	Bank Cottage (subdivisio n Great Hill)	17 December 1953; 30 November 1973 & 6 May 1998	The quoted extracts from the two Conveyances do not refer to any rights over the route in question. The Deed is between landowners and South Wales Electrical.
11c[1]	26/03/2015	WA924445	Cleddon Stile		There is no reference to any Conveyance or Deed therefore no mention of the route in question.
12c[2]	26/03/2015	CYM44560	Pathways		There is no reference to any Conveyance or Deed therefore no mention of the route in question.
13c[3]	26/03/2015	WA446844	Alpine Lodge		There is no reference to any Conveyance or Deed therefore no mention of the route in question.
14c[4]	26/03/2015	CYM102206	Misty Cottage		There is no reference to any Conveyance or Deed therefore no mention of the route in question.
15c[5]	26/03/2015	CYM505479	Rose Hill		There is no reference to any Conveyance or Deed therefore no mention of the route in question.
16c[6]	26/03/2015	WA373492	Bargains Cottage		There is no reference to any Conveyance or Deed therefore no mention of the route in question.

10.3. Twenty Land Registry documents have been investigated in relation to the route in question. Sixteen properties are associated with section A to B, while four properties relate to section B to C and are detailed in Report 2.

10.4. Six Land Registry documents [reference to table above 1a-6a] all make reference to the historical conveyances which state that these dwellings have private vehicular rights over a driveway that is shown shaded blue on included plans. The documents also stipulate that the landowners have a responsibility to maintain the "private roadway". The "private roadway" mentioned in these documents is not the route in question.

10.5. Four Land Registry documents [ref. 7b[1] – 10b[4]] refer to historical conveyances, although these conveyances are not available to investigate. Three of the four

modern title deeds refer to the Conveyance dated 27th September 1976 that has not been retained.

10.6. Six Land Registry documents [ref. 11c[1] – 16c[6]] do not include historical conveyances and make no reference to the route in question as being a "private or public" roadway.

10.7. Twelve Land Registry documents [ref. 1a; 2a; 7b[1] – 10b[4]; 11c[1]– 16c[6]] abut the section A to B of the route in question. Two of the 12 have a historical conveyance that does not refer to the route in question but does address a different route highlighted blue and recorded in this conveyance as a shared "private roadway".

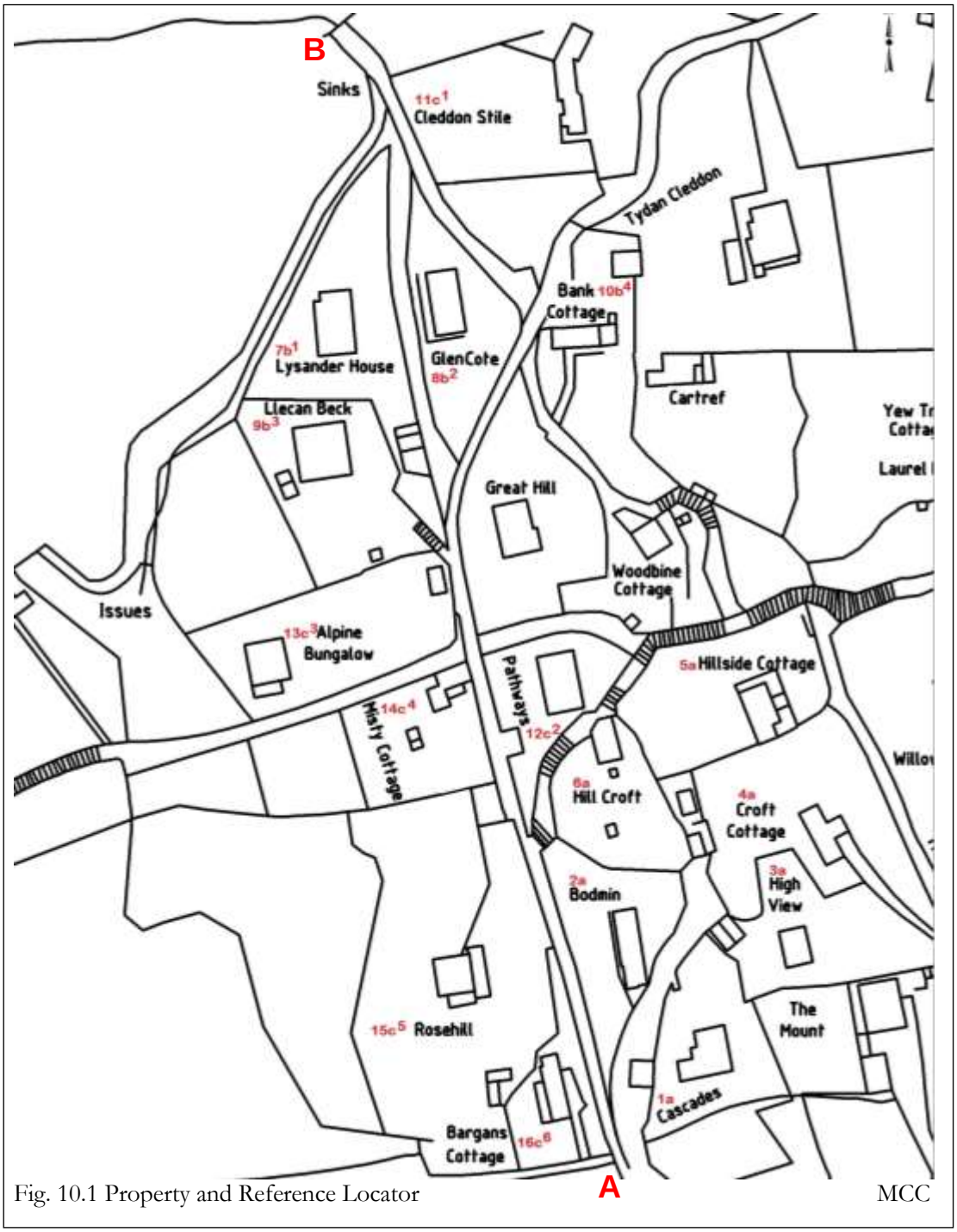


Fig. 10.1 Property and Reference Locator MCC

10.8. The other ten Land Registry documents [ref. 7b[1] – 10b[4]; 11c[1]– 16c[6]] for the properties abut and utilise section A to B of the route in question, and make no reference to public vehicular or equestrian rights.

10.9. However, the Land Registry document for Llecan Beck [9b[3]] quotes from a historical conveyance stating that the route in question has "private" access rights. Due to Llecan Beck being situated nearer point B than A, it means that most of the route in question has "private" rights as stated and not public vehicular rights. This evidence points to the route in question being a shared private drive that also has public footpath rights over it.

11. Historical Map Evidence

11.1. Legislation requires that an investigation be made of all available historical evidence that, on the balance of probabilities, may show that the route in question has public vehicular rights and should be recorded as a byway open to all traffic (BOAT) on the Definitive Map and Statement.

11.2. **John Cary's 'Improved Map' of England and Wales, series 1820 – 1832**. From an original held in The Brotherton Library, Leeds University, the route in question is not shown.

Fig. 11.1: Appendix 10: Applicants' Evidence 2:
John Cary's 'Improved Map' of England and Wales, series 1820- 1832.
From an original held in The Brotherton Library, Leeds University

11.3. **The Enclosure Award, dated 9th March 1821** (Fig. 11.2) does not cover the area in which the route in question is located. However, as the "Manor of Llandogo" is mentioned, further investigation into the Manorial documents, held at the National Library Wales, has been carried out. Unlike the example below of the nearby Enclosure Award, the Manorial documents do not distinguish any routes and paths from the surrounding land. This Report will later detail the significance of routes that are either coloured or not, depending on the map studied, which may or may not imply public status. Therefore, the Enclosure Award and the Manorial documents add no further support to the claim for any type of public right.

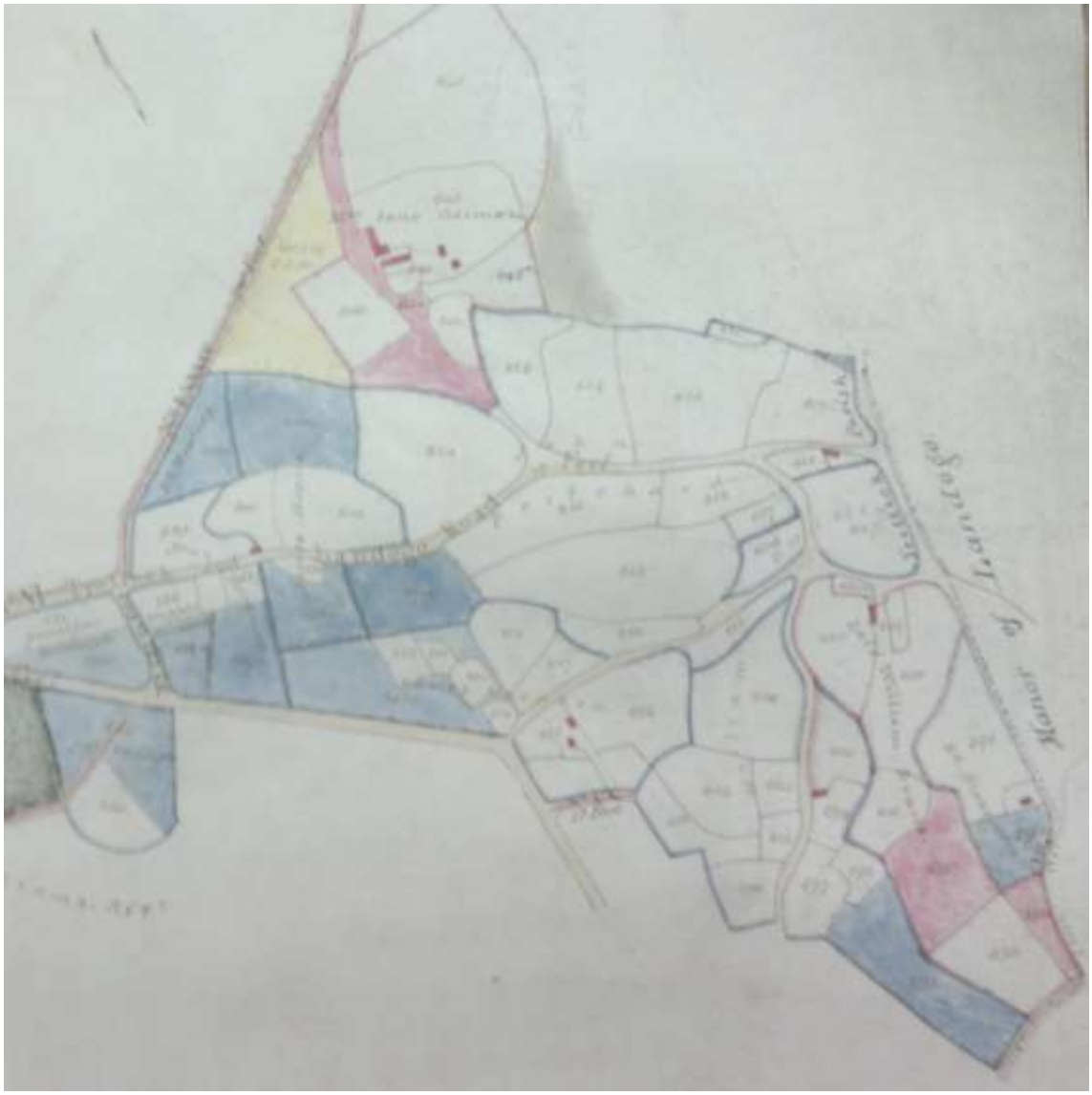
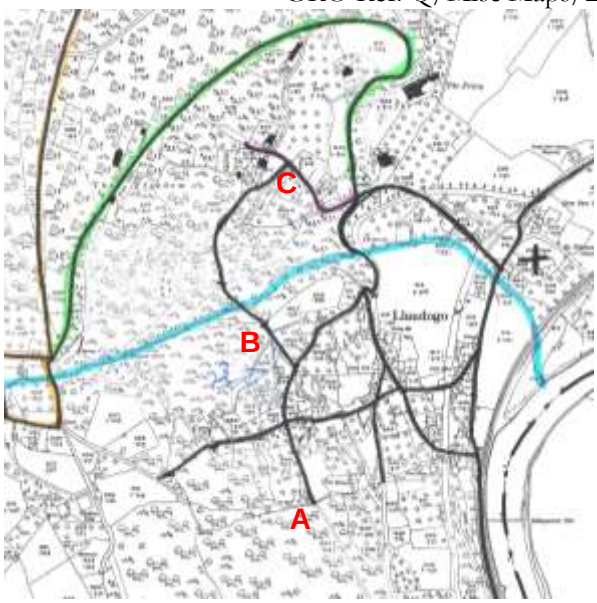


Fig. 11.2:
1821 Enclosure Award not to scale: Gwent Record Office Ref: Q/Inc. Aw. 2 page J

11.4. **The Price Map, dated 1823, commissioned by the Duke of Beaufort,** and inscribed by Henry and Charles G. Price**.** The title of this map has been destroyed however it states, in part that it was "Drawn from … Actual…and founded on a Trigonometrical basis by the surveyors of Hereford, Henry and Charles G. Price".

1823 Price Map Llandogo: not to scale: GRO Ref: Q/Misc Maps/20



1823 Price Map Llandogo: not to scale 1901 Ordnance Survey Map: not to scale

Fig. 11.3: Comparison between Price and OS Maps

11.5. This 1823 map shows a number of routes that cross Cleddon Shoots (stream) marked by parallel bold black lines. After further study and comparison with other mapping of the same era, along with the 1901 Ordnance Survey Map, it is not possible to extrapolate comparable and accurate road alignments. Although some alignments of routes are misleading it is possible that RB 24 and CRBs 20 to 22 are represented while CRB 23 is not.

11.6. Furthermore, when comparing all the historical maps from 1823 to 1920, although a road is more commonly shown at this scale on this map, the earlier 1800s maps only recorded an alignment of a route with no distinction between public or private status and no variation of markings to describe a specific type of route such as footpath, bridleway or road.

11.7. **The 1828 Plan to the Deed Papers for Cleddon Shoots** is the earliest and the first historical document to partially represent CRB23 and RB24 while the catalogue entry only lists landownership and costs. This Title Deed, created for landownership reasons, has other linear markings to assist with the locating of the property and these markings do not prove the public or private status of the routes depicted. It is possible that the broken line shown of the plan is a footpath that runs from the boundary of "Cleddon Shoots" to the stream. Additionally this marking does not continue through the property. This suggests that the route was not regarded as a major thoroughfare for use by the public at large in motorised vehicles, on non-motorised vehicles, or on horseback.

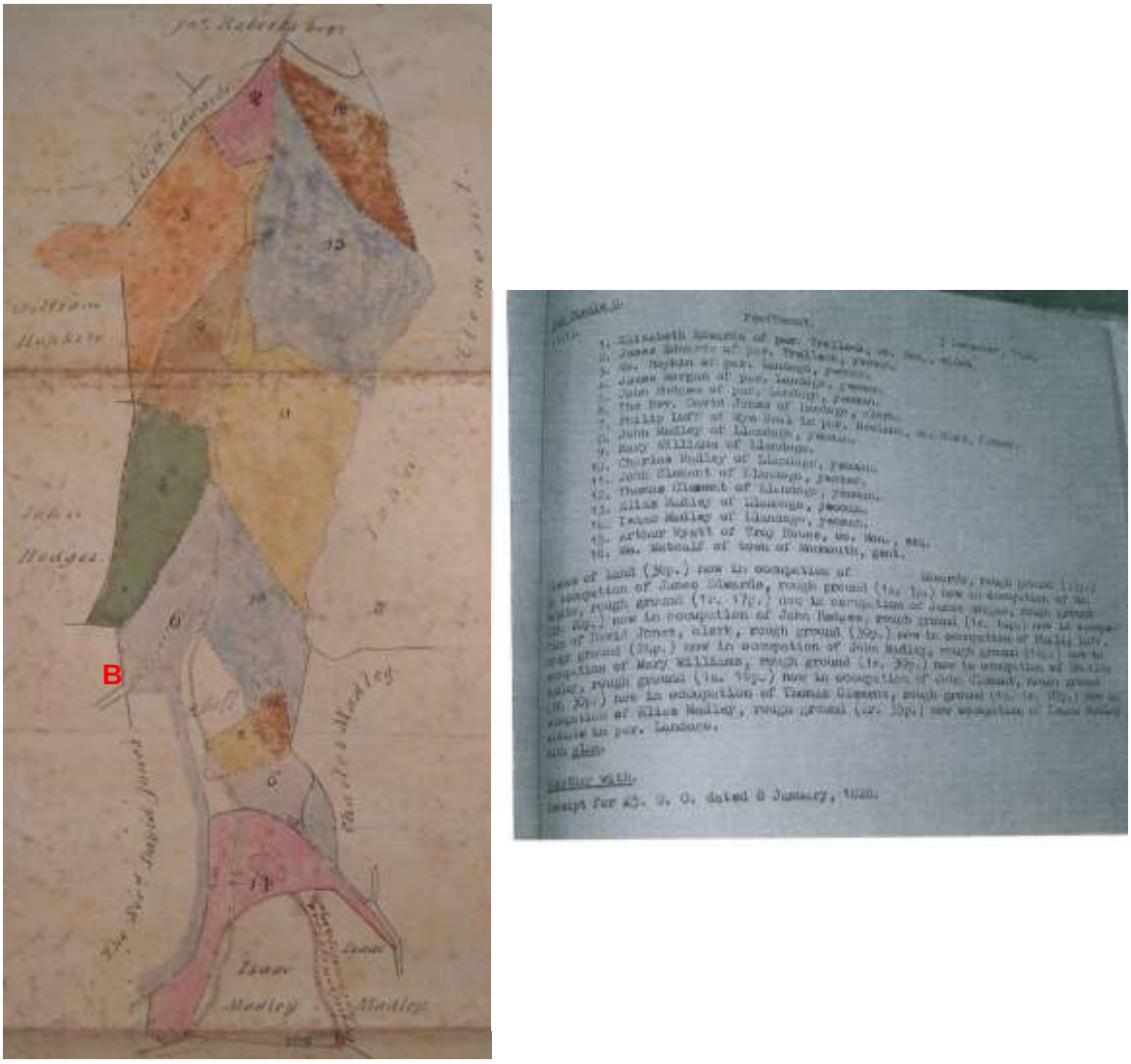
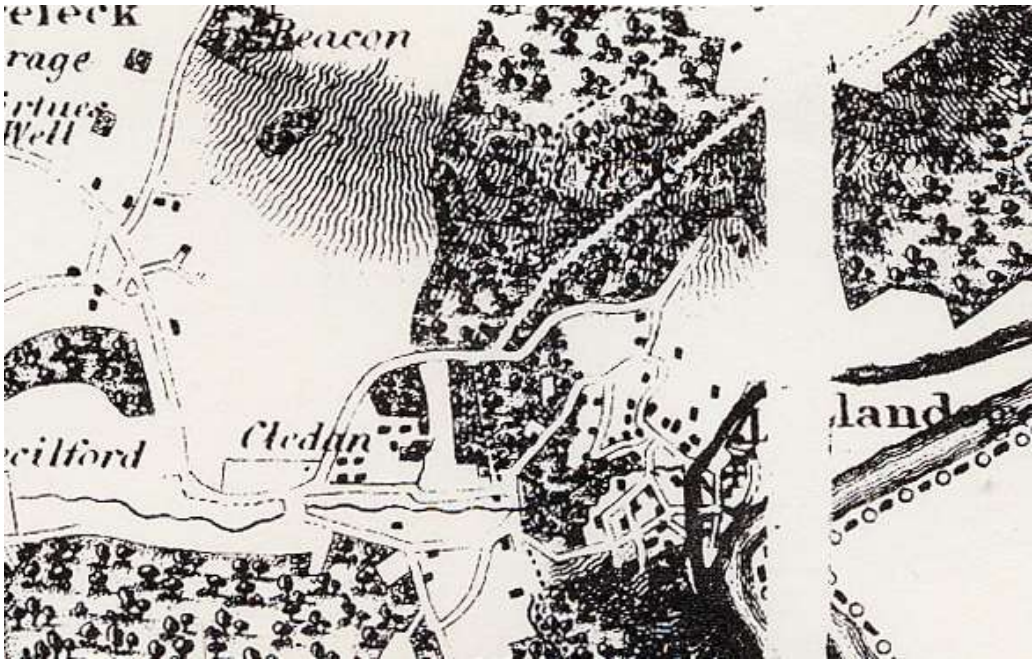
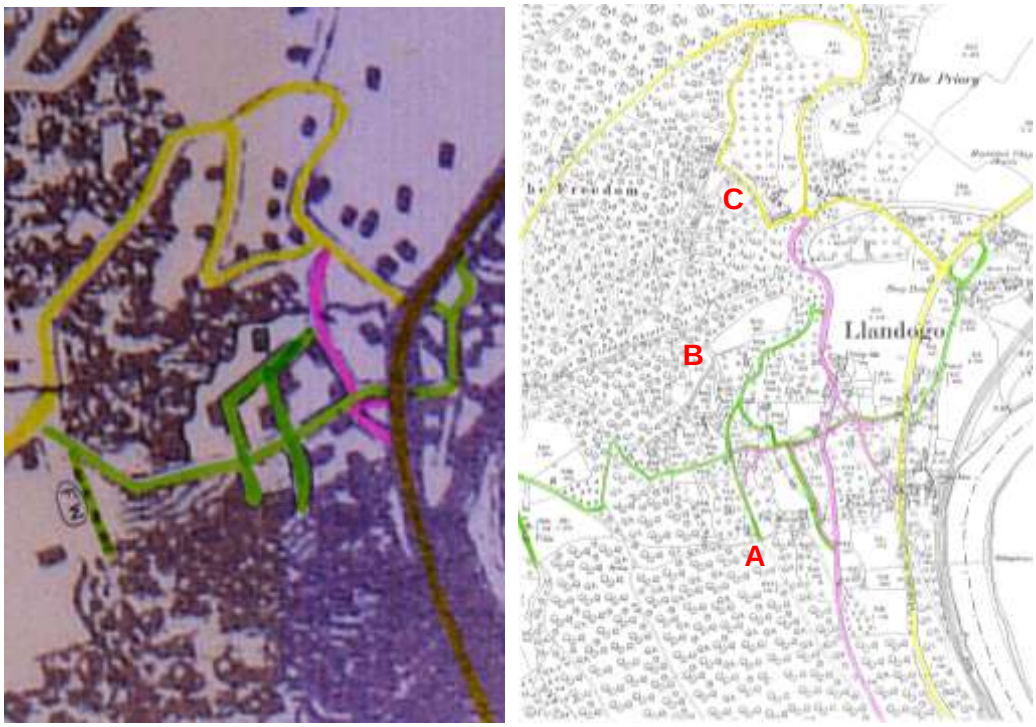


Fig. 11.4: Appendix 11 & 12 Applicants' Evidence 3
1828 Title Deeds Map and Catalogue entry for Cleddon Shoots Llandogo: not to scale:
GRO Ref: D39811-13

11.8. **The Greenwood Map, published in 1830**, when compared to other mapping reveals a mere representation of routes and not the detail that is shown from the more formal survey conducted by Ordnance Survey in the same period.



1830 Greenwood Map: not to scale: MCC Office



1830 Greenwood Map: not to scale 1902 Ordnance Survey Map: not to scale

Fig. 11.5: Comparison between Greenwood and OS Maps

11.9. However, it is noted when the comparison is made between the Greenwood and OS mapping that the poorer quality cartography of the Greenwood Map, contrary to the David and Charles Map, does in fact represent part of the route in question. A part of the route in question has been highlighted green on both maps. Like the

Price map the section of the route in question numbered CRB23 has not been included.

11.10. The 1830 maps do not usually extend to the depiction of footpaths. Although, in the comparison between the Greenwood and OS mapping, Fig11.5, it is noted that the F.W. symbol on the 1902 O.S. Map is on the same alignment as that shown on the Greenwood map. For the purposes of identification "F.W." has been marked and circled in pencil on the Greenwood Map. This is the only map of this era that shows a difference in the recording of footways and roads which suggests that the route in question is higher in category to that of a footpath.

11.11. However, the route in question, section A to B, depicted on the 1823 Price and the Greenwood Maps are not shown on the other 1830s maps that are from an actual survey conducted by the military or based on that same survey. Therefore, the few historical maps examined so far recording the alignment of the route in question are not of themselves a record for public or private rights. Other historical evidence needs to be investigated.

11.12. **The Cassini Map (162)**, was created using the Old Series Ordnance Survey sheet 35 which was published on the 1st May 1830 and, like the David & Charles Map, discussed later, does not show the route in question.

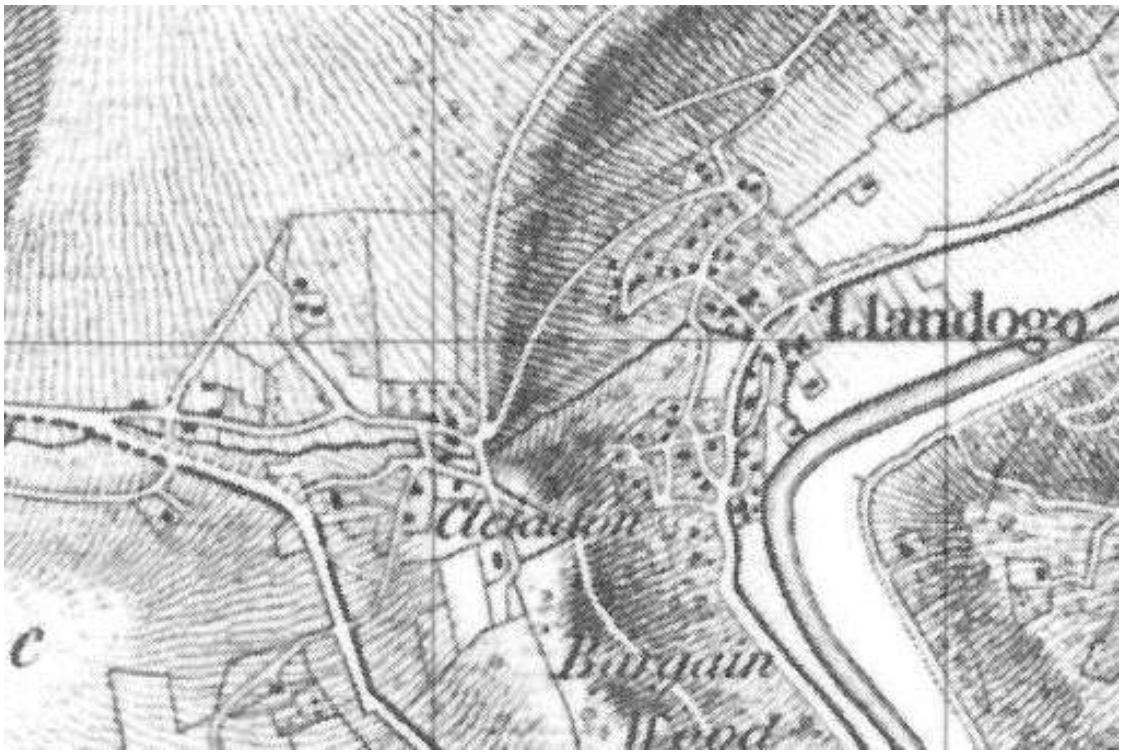
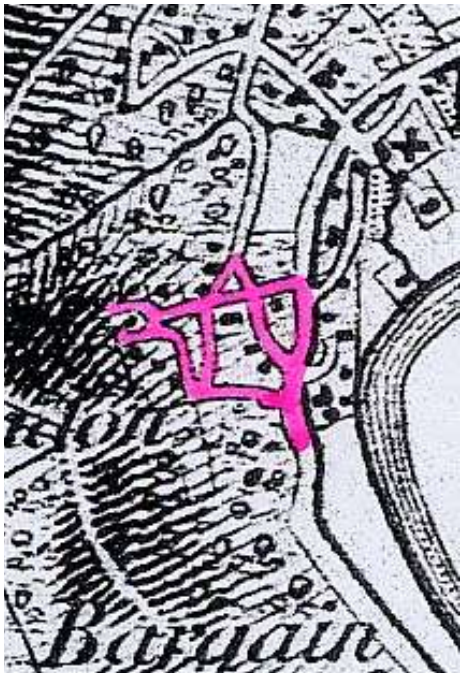


Fig. 11.6:
1830 Cassini Map Llandogo: not to scale: MCC

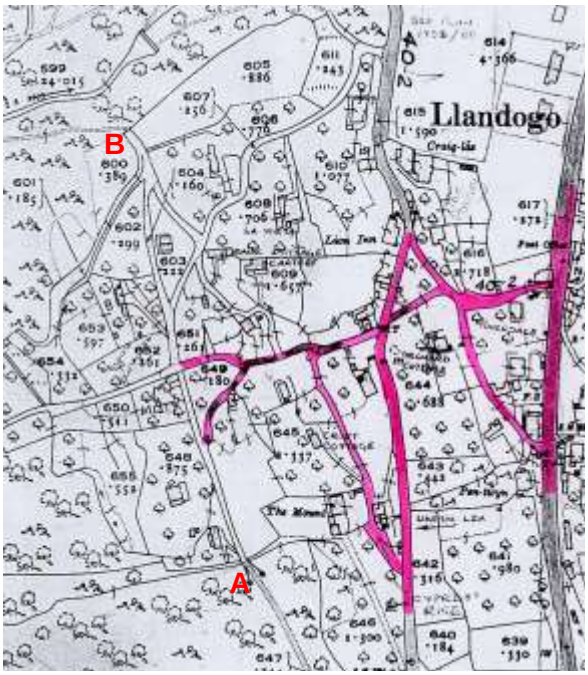
11.13. **The David and Charles Map, Sheet 68, published 1 May 1830**, is a reproduction of numerous documents covering various dates and based on surveys originally executed by the Ordnance Survey between 1811 and 1816 but extensively revised in the late 1820s. The Cassini and the David & Charles Maps of the same period do not show the route in question. The Ordnance Survey commenced in 1811 suggests that the route was not constructed pre-1835.

11.14.

1830 David and Charles Map: Sheet 68: not to scale: MCC Office



1830 David & Charles



1920 Ordnance Survey

Fig. 11.7: Comparison between 1830 David & Charles and OS Maps

11.15. Shown above is a comparison of the 1830 David and Charles with the Ordnance Survey mapping of the 1920s. The more detailed mapping of the 1920s indicates

in some respects the similarities of the routes that are for the purposes of this comparison shaded in pink. This comparison clearly shows that the route in question was not recorded in the 1830s.

11.16. **The 1830 Ordnance Survey map** is based on the first survey taken between 1791 and 1874 and published with many revisions and new editions between 1805 and 1874. These surveys are the bases for the Cassini and the David & Charles facsimile maps already discussed. The route in question is not shown on all three of these maps.

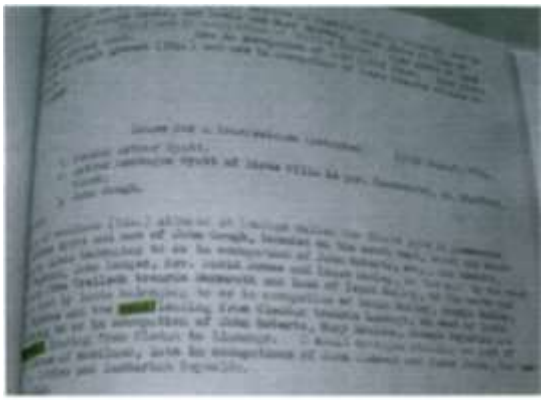
Fig. 11.8: Appendix 13 Applicants' Evidence 4
1830 1st Edition Ordnance Survey Map: not to scale GRO

11.17. The 1830 OS Map is known to be better drawn and more accurate in the depiction of physical features surveyed. It is from these original Ordnance Surveys that the Cassini, David & Charles and the Greenwood Map have been copied. This then implies that the Greenwood Map has been poorly copied as both the 1830 Cassini and David & Charles Maps do not show the route in question.

11.18. It is difficult to be certain which mapping set is wrong as there are three map sets that show similar alignments of the majority of routes recorded, while there are two map sets that show very different alignments and record additional routes. One reason may be that the scale, being 1 inch to a statute mile, does not give the required detail to depict each route accurately.

11.19. It is established that the 1830 OS map is the better record in the quality of its surveying. However, it is possible that due to the small scale of this mapping, it was difficult to depict every route. Therefore, as these earlier dated maps are inconsistent and only indicative to the alignment of the route in question, it is necessary to look at other historical records to determine on the balance of probabilities what, if any, the public status might be.

11.20. **The 1834 Map with the Deed Papers for Cleddon Shoots** indicates the route in question with two pencil markings. The transcript of the deed within the catalogue entry describes landownership extents and not public rights. The Applicants have highlighted green the word "road leading from Cleddon towards Llandogo" as evidence for higher rights. This word "road" in the Deed Papers, however, does not relate to the route being investigated. Furthermore, the second phrase, "road leading from Cleddon to Llandogo" happens to be on the western boundary of Cleddon Shoots (shaded pink). This document was created for the purpose of landownership; other markings on the plan are indicative only and not for the purposes of showing public or private ways. It is noted from this plan that the route being investigated is not shown to continue through Cleddon Shoots suggesting that it was not regarded as a major through route for use by the public at large either in motorised vehicles, on non-motorised vehicles or on horseback.



TRANSCRIPT OF DEED DATED AUGUST 1834

Lease for a year 27/28th August 1834 with Plan 'Piece of Woodland (12a) situate at Llandogo called the Shoots. Late in possession of Arthur Wyatt and now of John Gough, bounded on the S.W., S and S.E. by lands belonging to or in occupation of John Roberts esq, Ann Edwards, Mr Hopkins, John Hodges, Rev David Jones and Isaac Madley, on the east by the road leading from Trelleck towards Monmouth and land of Isaac Madley, on the north and N.W. by lands belonging to or in occupation of Isaac Madley, Joseph (James) Madley, William Hopkins and the road leading from Cleddon towards Llandogo, on west by lands belonging to John Roberts, Mary Moulton, Joseph Renolds and the road leading from Cleddon to Llandogo, 2 small cottages standing on part of the said piece of woodland, late in occupations of John Clement and James Jones, but now of Mr Davies and Zachariah Reynolds'.

Fig. 11.9: Appendix 14 & 15 Applicants' Evidence 5
1834 Title Deeds Map & Catalogue entry - Cleddon Shoots Llandogo: not to scale:
GRO Ref: D398 11-16

11.21. **The Tithe Map for Llandogo, dated 1846**, shows the route in question to be coloured terracotta. The linear markings on this Map designate plot boundaries which are in keeping with similar boundary markings shown on the 1881 Ordnance Survey (OS) Map discussed later in this report.

11.22. When comparing highway records with tithe maps the shading of the roads on the tithe maps are normally consistent with the shading of publicly maintained roads shown on the highway maps. Therefore, when a route in question is identified on the Tithe Map as shaded terracotta then it is reasonable to suggest that the route should be recorded as public route maintained at public expense.

Fig. 11.10 Appendix 17 Applicants' Evidence 7
1846 Tithe Map for Llandogo: not to scale: GRO Ref: D3731.1

11.23. However, the shading of this route here does not nessarily mean that it should be a byway open to all traffic; it could be feasible to record the route as a public footpath. This is particularly shown on the Definitive Map and Statement for this location where most of the routes are registered as footpaths.

11.24. Notably, when comparing the Tithe Map with the OS Maps the route in question on the Tithe Map is shaded terracotta only up to the plots numbered 45 & 46 in the

south and 91 & 109 in the north indicating that the route in question was only an access way for various plots and not a main public thoroughfare. Additionally, the route in question was accessed via two other routes from the east that are now recorded as public footpaths which further establishes the fact that the route in question was not regarded as a thoroughfare for the public at large in motorised vehicles, on non-motorised vehicles or on horseback.

11.25. The route in question is clearly indicated by double lines on all historical maps prior to and after the production of the Tithe Map. When a map like this shows a coloured and un-numbered strip of land, it can be taken, when considered together with other historical maps that the route in question was and therefore still remains in the public domain. However, the Tithe map records do not determine the type of public rights and therefore it is possible to register routes either as public footpaths and bridleways on the Definitive Map and Statement or as roads on the "List of Streets".

11.26. The route in question ends at point B where there is no indication of any route continuing through the Cleddon Shoots woods. This shows that the route in question was not consider a thoroughfare for any type of public use. The lack of markings on the Tithe Map north of point B suggests that there were no public rights along the northern section in the first half of the 19th Century.

11.27. **The 1881 Ordnance Survey Map (OS),** contrary to the Tithe Map, shows the route in question as not shaded. When comparing the 1881 OS Map with the highway records it is noted that only the main through roads on the 1881 OS Map are shaded. The OS Map is similar to the Tithe Map as it shows the physical features such as barriers across the route in question at the same southern and northern points where the shading on the Tithe Map ends.

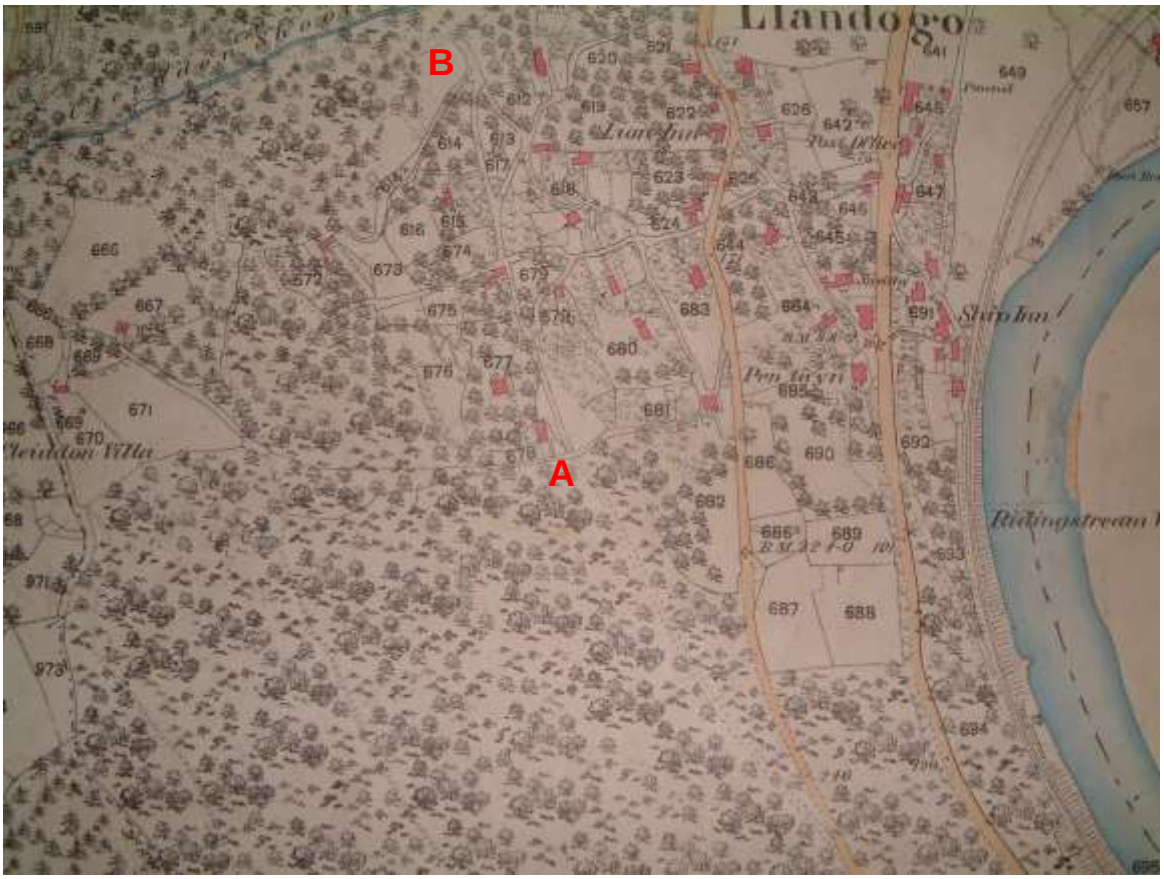


Fig. 11.11: 1881 Ordnance Survey Sheet 21:1 colour copy: not to scale GRO

11.28. The 1881 OS map shows that at the corner of the plot numbered 674 the route in question is offset slightly and, further, a broken line at this point indicates a change of surface. Both these features support the fact that the route in question was not considered a public thoroughfare.

11.29. The detailed depiction of physical features surveyed shows that the route in question is bound on all sides by solid unbroken lines denoting a fenced minor road. The markings of the OS maps are taken from the Conventional signs and writing used on the OS six inch maps.

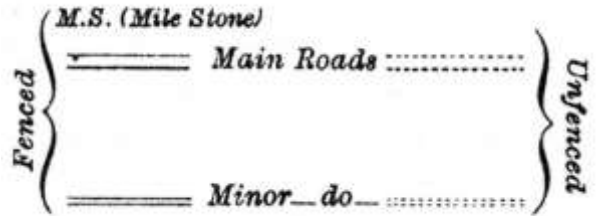


Fig. 11.12:
Conventional signs and writing used on the Ordnance Survey six inch maps.

11.30. There are solid lines at the southern (A) and northern (B) points across the route in question and, based on conventional sign usage, this implies the presence of barriers crossing the route in question while there are no such physical features across the routes that lead up the hill side in an east/west direction.

11.31. It is reasonable to suggest that these solid lines represent gates or barriers of some description. The fact that such physical features are recorded on both the OS map and the Tithe map supports the conclusion that the route in question was not regarded as a through road for the public at large in motorised vehicles, on non-motorised vehicles or on horseback.

11.32. The route in question has not been awarded a status equal to other know public roads in the area as it is not shaded. The Ordnance Survey Map unlike the Tithe Map has plot 617 on its northern section only. Plot 617 is listed in the 1st Edition 25-inch Ordnance Survey Book of Reference for the Community of Trelleck (Appendix 20), held at the British Library. In the Book of Reference there is only a numerical entry for plot number 617 and no further description of the use of the land that would indicate the possible private or public nature of the route in question.

11.33. Another symbol on all Ordnance Survey maps is the mark that resembles a stretched "S" that is called a brace. This brace links land that has been dissected by streams, routes or other topographical features. The detail afforded to this OS Map due to its larger scale shows no braces that link the route in question to any adjacent field or dwelling. These factors suggest that the route in question was considered a shared private access way and not within any individual ownership.

11.34. **The Ordnance Survey Maps dated 1886** (six inches to 1 statute mile 1:10560) is also the scale of the Definitive Map and although it is a small scale it still gives more detail than that shown on the 1830s mapping. At this scale it is worthy to note that there are three unbroken lines across the route in question. Unbroken lines across a track like this usually denote a barrier such as a wall or boundary fence possibly with a gate.

11.35. The 1886 Map and the earlier 1881 Map show that the route in question was not considered a through route at this location. This is demonstrated when observing that other junctions within the network of routes in the "Great Hill" area do not have solid lines representing barriers. The linear marking evidence on this Map shows that the route in question ended at both points A & B and was not an open through route proceeding either south of point A or north of point B.

Fig. 11.13:
1886 Ordnance Survey Sheet 21: not to scale GRO

11.36. **The 1902 Ordnance Survey Maps,** at the larger scale of 1:2500, usually have the label "track" or "F.P" alongside the linear marking indicating the alignment of un-metalled roads and footpaths. It is noted that even on this larger scale map (Fig. 11.14) the density of topographical marks and symbols limit the "F.P." labels to appear only four times. Although, the conventional signs and writings (Fig. 11.12) indicate the routes leading up the hill from the east to be fenced minor roads, most of the routes are labelled as footpaths. This suggests that, regardless of the conventional signs, these routes were merely believed to be footpaths leading to other footpaths.

Fig. 11.14:
1902 Ordnance Survey Sheet 21:5 not to scale: MCC

11.37. When comparing the 1902 OS Map with previous maps discussed it shows that at point B the solid line across the route in question remains, while the solid line at point A is no longer evident. It is possible that the existing stream was covered by a culvert and at the same time it is possible that other barriers were removed. The

1902 OS Map is the base map for the 1910 Finance Act map which is discussed in detail later.

11.38. **The 1921 Ordnance Survey Map** again has similar linear markings to the previous OS maps discussed. Although some elements are different there remains a solid line across the route in question at point B and none at point A while across other nearby footpaths solid lines exist. A single solid line denotes either a fence or a barrier while "frequent solid lines" possibly indicate steps.

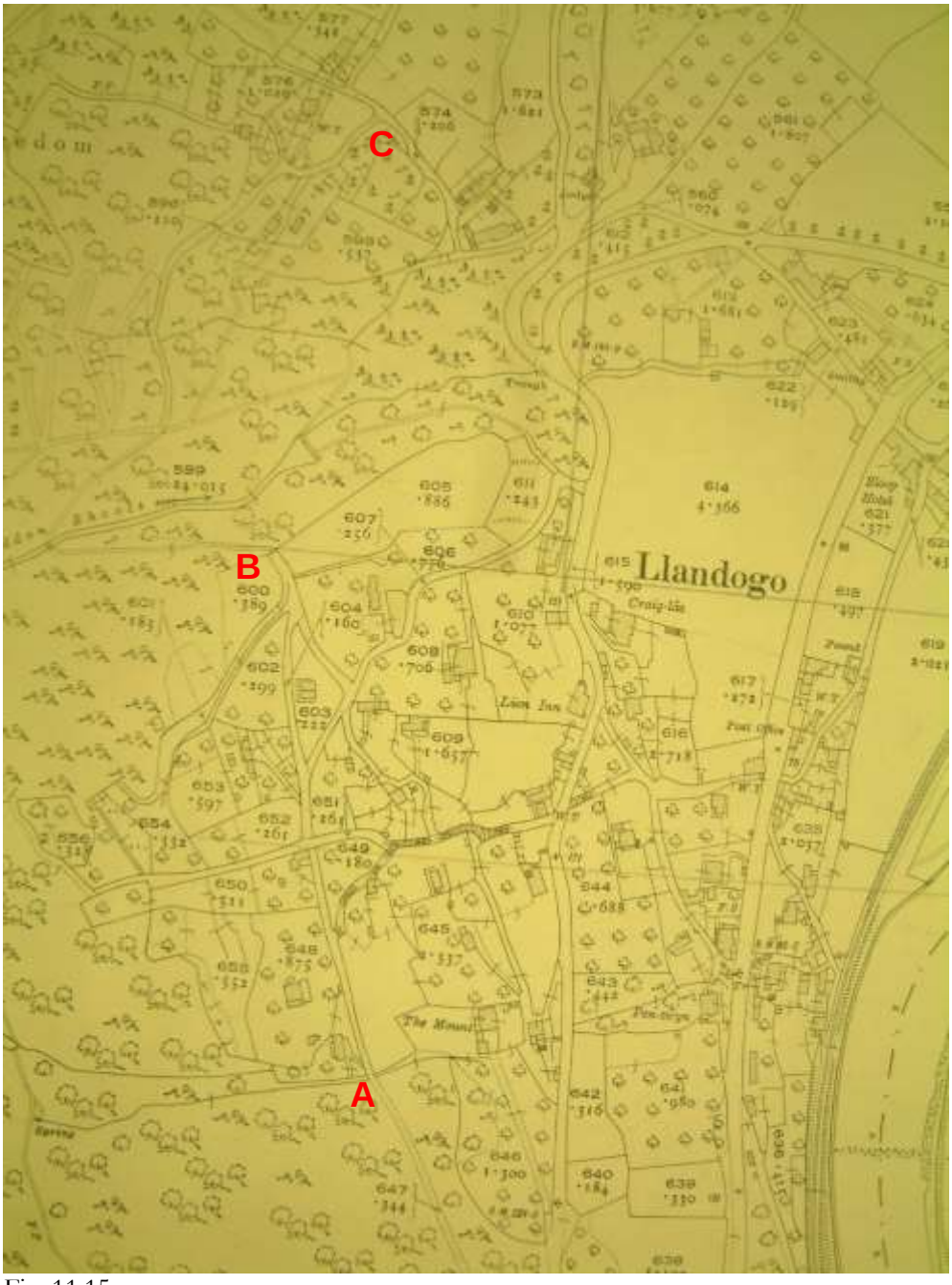


Fig. 11.15:
1921 Ordnance Survey Sheet 21:5: not to scale: GRO

11.39. It is not known what type of barrier was located at point B. However, it is possible that physical features that are intended to serve as a barrier may or may not inhibit the use of the way either by horse-drawn cart, horse, or on foot.

11.40. **The Ordnance Survey Maps** all show the route in question as marked by a solid line for most of its length. This is normally the marking adopted to depict main roads (see Fig. 11.12) but as shown here it is also the marking for footpaths.

11.41. Ordnance surveyors were given the duty to depict all physical features that were encountered. It is possible, therefore, that some of the routes depicted on the OS maps may prove to be private ways.

11.42. The conventional signs and symbols have been kept as standard over the years and it is understood that a dashed or double pecked line represents a route or way that is unfenced.

11.43. In contrast to this, a solid unbroken line represents a boundary such as a fence or wall. Therefore, if a solid line crosses a route or way then this is interpreted as a gate or another type of barrier. Although barriers such as gates do not prohibit usage of a route by any type or means, they do constitute some form of limitation and prevention. As the mapping inspected so far indicates barriers at more than one location, this suggests that the route in question was not used by the public at large instead was possibly a private access way.

11.44. **The 1910 Finance Act Register Books and Maps** provided for the levy and collection of a duty on the incremental value of all land in the United Kingdom. In this way, 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.

11.45. 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.

11.46. The Finance Act Map for this area shows the route in question to be uncoloured and, when compared with the highway record, it typically shows that roads shaded on highway maps are similarly uncoloured on finance act maps suggesting that a road was considered public.

Fig. 11.16:
1910 Finance Act Map Sheet 21.5 Kew Record Office (KRO)

11.47. Although, the Finance Act Map is first and foremost a record of 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.

11.48. The reason for this is because the Finance Act Registers and Field books Record a monetary deduction in the calculation of tax for each property for “public rights of way or user” while, for the majority of cases, routes normally used by vehicular traffic were left uncoloured or “white out” as they were considered not to have any agricultural value.

11.49. In this location there is evidence for exceptions to this usual interpretation of the Finance Act Map. In the “Great Hill” area the routes left uncoloured are registered as public footpaths on the Definitive Map and Statement and even with this evidence these routes remain recorded as public footpaths. In other words the type of marking on the 1910 Finance Act Map does not always, as a single piece of evidence, award the route in question public vehicular rights.

11.50. The Register Book that accompanies the Finance Act Map, for this area, records no monetary value that would reduce the taxable value of the land. The strip of land that is in question is not allocated a plot number for the very reason that it was never included within any particular private land ownership.

11.51. The Finance Act Map Register Book was investigated for any further details pertaining to Plots 13, 37, 43, 44, 50, 70, 74, 83, 146, 239 & 247. The Register does not record any deduction of tax for “public rights of way or user” for any of the plots already listed.

11.52. The Field Books listing these plot numbers, held in the National Archives at Kew, give no further detail. Furthermore, the Book for plots 101 to 200 is recorded as missing in transfer therefore only the Finance Act Map is available for investigation.

11.53. The working copy of the Finance Act Map has no other significant information that has been omitted from the official copy previously studied. The route in question is uncoloured while the two areas of land, north and south of points B and A respectively are shown shaded.

11.54. This strongly suggests that the route in question was not regarded as a public vehicular through road due to the fact that the only access to the route is from the east by the means of other routes that have been known and recorded as public footpaths. Therefore, it would be reasonable to suggest that for the route in question there are no higher public rights and the only public right utilised is that of a footpath.

Fig. 11.17: Appendix 21: Applicants' Evidence 10
1910 Finance Act Map "working copy" Sheet 21:5 GRO

11.55. The Finance Act mapping records at this location establish the fact that not all routes that are "white out" should automatically be regarded as having public vehicular, public restricted byway or public bridleway rights. Other historical documents and evidence needs to be considered. Only then, on the balance of probabilities, is it possible to determine the status or type of public right that utilises the route in question.

12. The Definitive Map and Statement

12.1. The public rights of way are registered on the Definitive Map and Statement for the area of Monmouthshire. These maps, which have a "Relevant" date of 1st July 1952, were published on the 16th November 1967 and are now kept under continuous review by Monmouthshire County Council Countryside Office.

12.2. 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 defined all the footpaths, bridleways and roads used as public paths which it considered were public. The process of producing the Definitive Map & Statement went through three stages:

12.2.1. The former County of Monmouthshire (Gwent) carried out this task by sending a map to every Community Council.

12.2.2. The Community Councils were asked to walk every path and provide details of them.

12.2.3. A public meeting had to be held. Local people recommended alteration at this stage.

12.3. **The Draft Map** was deposited in all District Offices as well as at County Hall. Notice of its publication and where it could be inspected was given in local papers and the London Gazette. A minimum of four months was allowed for objections against the alterations made by the Council as a result of original objections, which the Authority had to consider in the light of all evidence submitted and inform all parties of its decision. 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.

12.4. It is noted that on the Draft Definitive Map dated 16 December 1952 that the route in question is marked up by the symbol for roads used as a public path (RUPP), as '*Broken Green Line'*, along with the terms cart road bridleway (CRB) and cart road footpath (CRF).

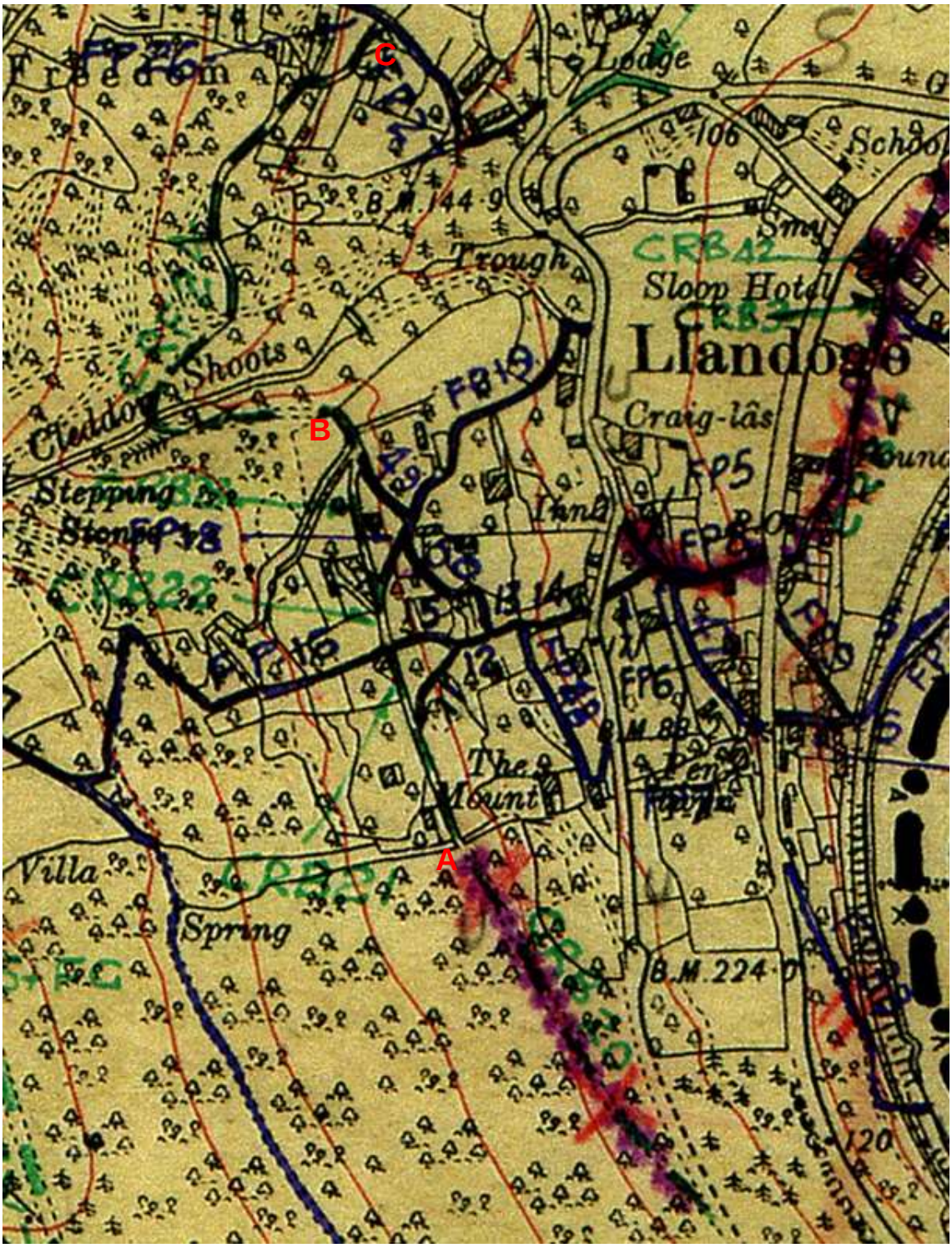
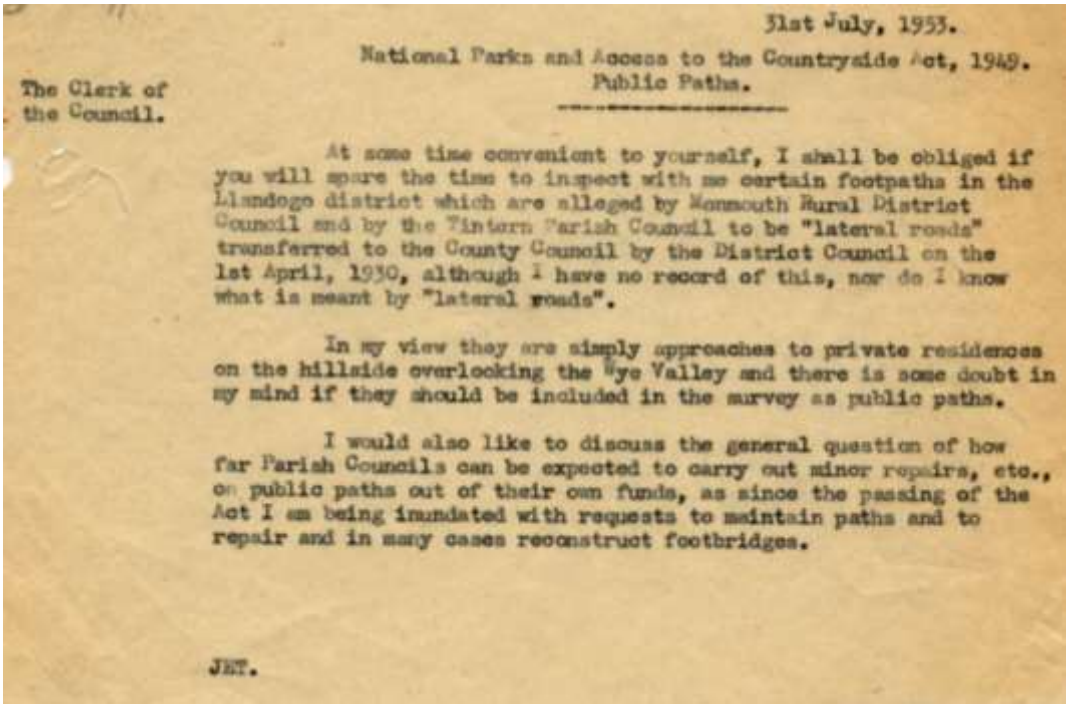


Fig. 12.1:
1952 Draft Definitive Map Sheet 21: not to scale: MCC

12.5. Office files hold copies of letters and notes that record the inspection of certain footpaths in the Llandogo district. A letter dated 31st July 1953 (Figure 12.2) states that Monmouth Rural District Council and the Tintern Parish Council refer to some footpaths in the Llandogo district as being "lateral roads" transferred to the County Council by the District Council on the 1st April 1930 although no records were retained. The County Surveyor further explains that he did not know what was meant by "lateral roads" and was of the opinion that these "lateral roads" were simply approaches to private residences on the hillside overlooking the Wye Valley and there was some doubt in his mind if the routes should be included in the survey as public paths.



31st July, 1953.

National Parks and Access to the Countryside Act, 1949.
Public Paths.

The Clerk of the Council.

At some time convenient to yourself, I shall be obliged if you will spare the time to inspect with me certain footpaths in the Llandogo district which are alleged by Monmouth Rural District Council and by the Tintern Parish Council to be "lateral roads" transferred to the County Council by the District Council on the 1st April, 1930, although I have no record of this, nor do I know what is meant by "lateral roads".

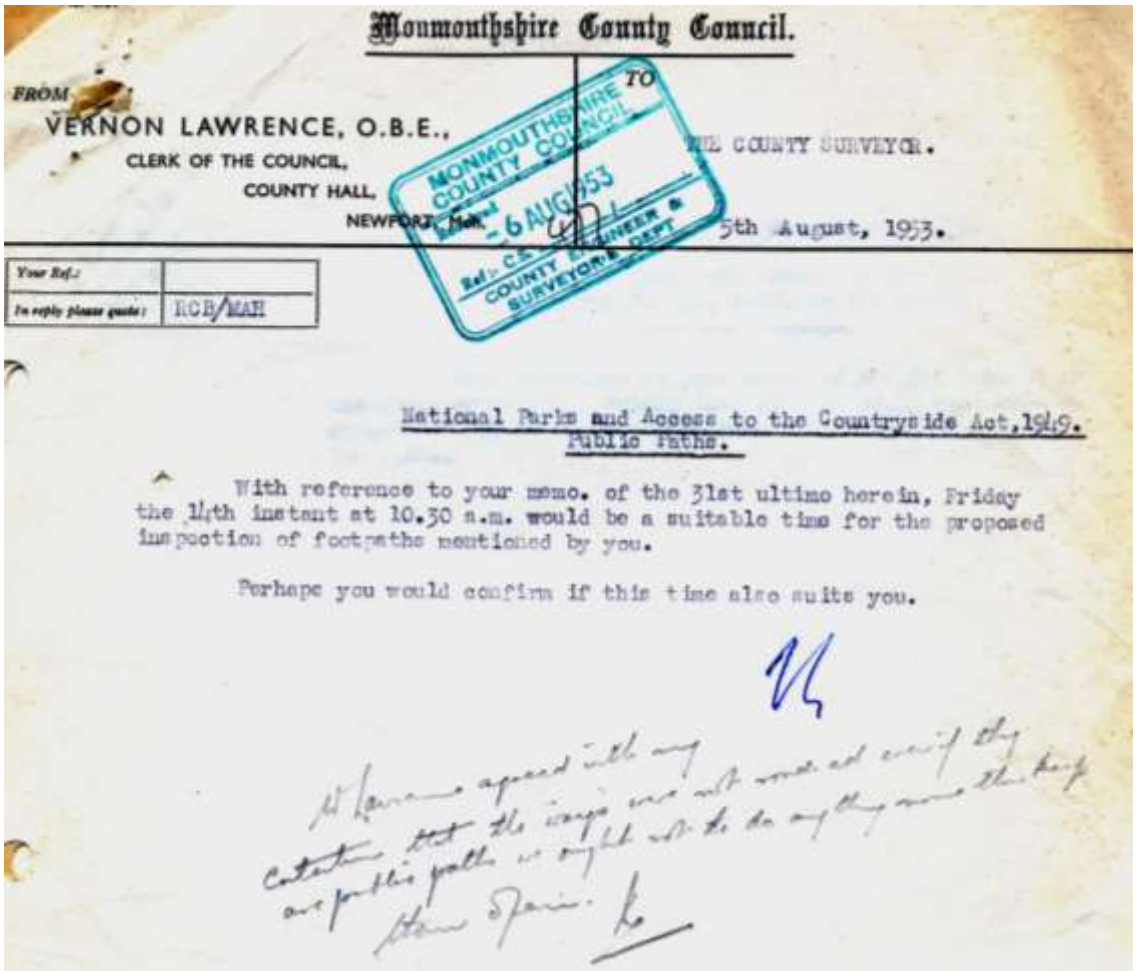
In my view they are simply approaches to private residences on the hillside overlooking the Wye Valley and there is some doubt in my mind if they should be included in the survey as public paths.

I would also like to discuss the general question of how far Parish Councils can be expected to carry out minor repairs, etc., on public paths out of their own funds, as since the passing of the Act I am being inundated with requests to maintain paths and to repair and in many cases reconstruct footbridges.

JET.

Fig. 12.2:
31st July 1953: Letter from County Surveyor to Clerk MCC

12.6. After a site inspection of the routes in the Llandogo district on the 14th August 1953 there is a note added in pencil to the letter dated 5th August 1953 (Fig. 12.3) which states that the clerk of Monmouthshire County, Mr V Lawrence, agreed with the County Surveyor's contentions that the ways were not roads and,…*"even if they are public paths, we ought not to do anything more than keep them open".*



Monmouthshire County Council.

FROM VERNON LAWRENCE, O.B.E.,
CLERK OF THE COUNCIL,
COUNTY HALL,
NEWPORT, Mon.

TO
THE COUNTY SURVEYOR.

MONMOUTHSHIRE COUNTY COUNCIL – 6 AUG 1953 – COUNTY ENGINEER & SURVEYOR'S DEPT

5th August, 1953.

Your Ref.:
In reply please quote: RCB/MAH

National Parks and Access to the Countryside Act, 1949.
Public Paths.

With reference to your memo. of the 31st ultimo herein, Friday the 14th instant at 10.30 a.m. would be a suitable time for the proposed inspection of footpaths mentioned by you.

Perhaps you would confirm if this time also suits you.

Fig. 12.3:
5th August 1953: Letter from Clerk to County Surveyor MCC

12.7. All these records taken together show that the surveyors at the time were not able to determine any maintenance liabilities or the status of the public right and thereby gave the route in question the ambiguous title of Cartroad Bridleway. The statutory term for such routes is a 'road used as a public path' (RUPP).

12.8. The 1949 National Parks and Access to the Countryside Act provided that the Definitive Map and Statement (DM&S) should include, in addition to every public footpath and bridleway, highways used by the public mainly for the purposes for which footpaths or bridleways are so used, a category termed by the Act as "road used as a public path" (RUPP). The definition in the 1949 Act did not use the words "public" or "private" before the term "road used as a public path". The term did place the word "public" prior to the word path. The interpretation then is that this type of route shown on the DM&S was visibly a road that is recorded on it as a public path which is either a "public" bridleway or "public" footpath. The public status of the road with this term "RUPP" for this route category is not determined by the 1949 Act.

12.9. The category of RUPP is thus shown to be unsatisfactory and to add to the difficulties of interpretation a pamphlet, titled Surveys and Maps of Public Rights of Way, was issued with circular number 81, dated 17th February 1950, and sent to the Community Councils in 1951 at the time of the initial surveys. This official guidance was prepared by the Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association; recommended by the County Councils Association; and approved by the Ministry of Town and Country Planning.

12.10. In this official guidance circular, reference was made to recording of routes on the DM&S with the symbols for "Public Carriage or Cart Road mainly used as bridleway to be CRB" and "Public Carriage or Cart Road mainly used as footpath to be CRF". As a result numerous highway authorities used these non-statutory symbols to record routes.

12.11. This is what has happened in this Authority and is revealed within the DM&S title (Fig. 12.4). At the Provisional stage RUPPs were referenced by using the non-statutory terms of "Public Carriage or Cart Road used mainly as a footpath shown in a Broken Green line" and "Public Carriage or Cart Road used mainly as a Bridleway shown in a Broken Green line" which were then amended at the final Definitive Map stage and the words "Public" were crossed out and replaced by the word "Private".

Fig. 12.4:
Definitive Map title MCC

12.12. An explanation of the use of these terms is given by Lord Denning in the case "R v Environment Secretary, ex p. Hood 1975 1QB 891" in which the following is stated:-

"When the local authorities came in 1949 to prepare their maps under the statute, they divided the last category 'road used as public path' into two sub-divisions which have no statutory authority. They divided them into 'CRF' and 'CRB', which denoted 'cartroad footpath' and 'cartroad bridleway', meaning respectively that there was a public footpath along a cartroad, or a public bridleway along a cartroad. In that division the local authorities did not mean to say whether the cartroad was public or private for carts, because they did not know which it was. They only meant to say by CRF that there was public

footpath along a road: and by CRB a public bridleway along a road. That division was misleading because each of those subdivisions CRF and CRB were shown in the map as a 'road used as a public path'."

12.13. On the Definitive Map for Monmouthshire (formally Gwent) the public rights of way are shown correctly in accordance with Statutory Instrument 1970 No. 675. Bridleways are shown by a continuous green line and RUPPs by a broken green line. It is the marking of a "*Broken Green line"* on the Definitive Map and within the Map title which establishes their legal status as "roads used as a public path".

12.14. The category of RUPP along with the non-statutory sub-divisions of CRB & CRF have proved to be unsatisfactory as none of the symbols make it clear whether the routes were subject to public vehicular rights. This report seeks to determine the status of the public rights that utilise the route in question.

12.15. To determine this public status research of the Draft Definitive map documents shows that the section of RUPP (CRB 20) south of point A (Fig 12.1) has been initially marked up and then later removed as indicated by red crosses and hatchings.

12.16. This marking shows that Highway records were interrogated revealing that certain routes were already part of the highway network and recorded on the "List of Streets". The section of RUPP (CRB 20) that was crossed out is south of point A and, as this was the only part already listed as public highway, it was therefore not necessary to record public status again on the Definitive Map and Statement.

12.17. The "List of Streets" is the main document this Authority holds that records the publicly maintained highway over which the public have vehicular rights.

12.18. **The Modification Map (Additions and Deletions)** (Fig. 12.5) records no markings over the route in question. There is, however, a bold blue line over part of CRB 20. The reason for this is that public rights already existed and were recorded on the Highways "List of Streets", and as part of the process for compilation of the Definitive Map records, this part of CRB 20 was marked blue for removal.

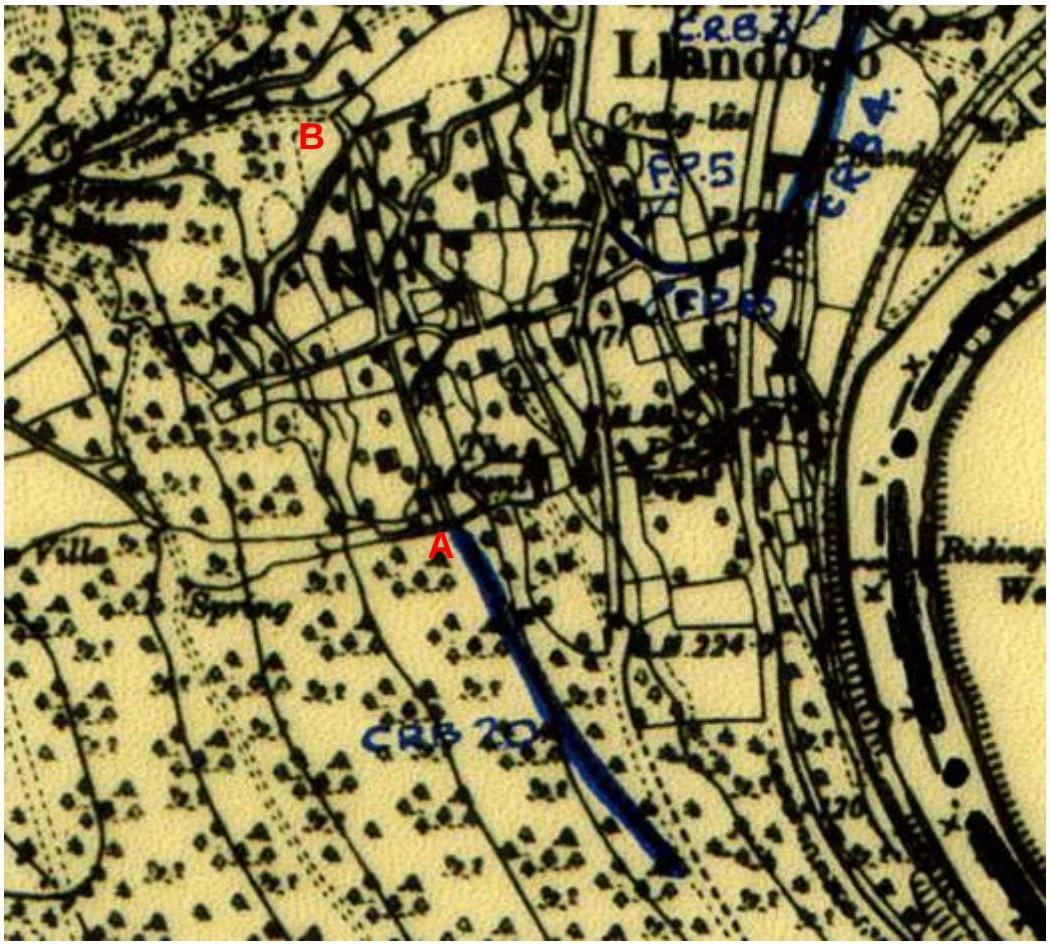


Fig. 12.5:
Addition and Deletion Map (Modification Map) sheet 21: not to scale: MCC

12.19. Since the route in question, A to B is not marked up on this map, it remains recorded as a "road used as a public path" (RUPP).

12.20. Historical vehicular rights possibly began when C40-7 was constructed. The earliest depiction of the southern route is shown on the 1949 Highway mapping records. The construction of the county road C40-7 south of the route in question may have influenced regular, although limited, vehicular use. However, the Authority does not consider this limited vehicular usage to support the existence of public vehicular rights over the CRBs 20, 21, 22 and 23.

12.21. **The Definitive Map,** in keeping with statutory provisions, shows bold broken green markings for the route in question. The arrows, also marked in green, join the route symbol of cart road bridleway or cart road footpath (along with a number) to the relevant section of the route in question. Other public footpaths in the area are marked by bold pink (purple) lines.

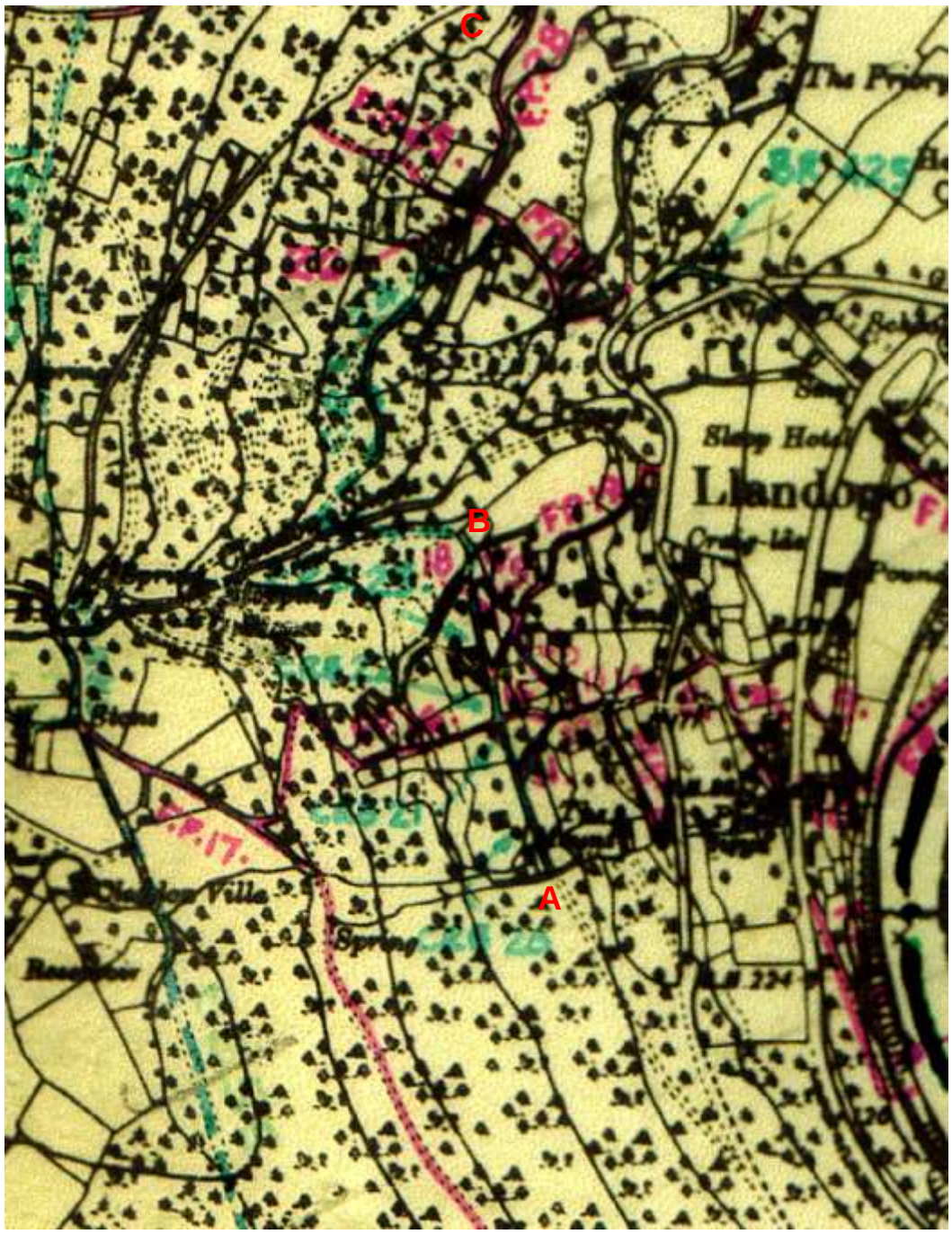


Fig. 12.6:
1967 Definitive Map sheet 21: not to scale: MCC

12.22. When all appeals and objections to the Draft Definitive Map and Statement had been processed and any additions or deletions had been marked on an intermediate map the Authority then compiled a Provisional Definitive Map and Statement.

12.23. The County Council published and advertised, as before, the Provisional Definitive Map and Statement on the 17th September 1965. This is the Draft Definitive Map duly modified. The public had no further right of objection but any owner/occupier of land crossed by a right of way could apply to quarter sessions, within 28 days of publication, for a declaration modifying the maps or statements in respect of the Rights of Way. When all applications had been determined the County Council finally published on 3rd November 1967 the Definitive Map and Statement for the County of Monmouthshire (formerly Gwent).

12.24. The Case of Trevelyan v Secretary of State 2001 raised a presumption that what is marked on the Definitive Map and Statement is properly and correctly recorded. Evidence of some substance has to be put forward to displace the presumption.

12.25. The Definitive Map & Statement is afforded considerable weight due, firstly to the statutory provision already mentioned and secondly, to the process of continuous review set out in Section 53 of the Wildlife and Countryside Act 1981, allowing for the modification of the maps and statements on the discovery of evidence suggesting that it contains errors or omissions. This allows for thorough investigation of any perceived discrepancies and their correction. This report represents such a case.

DEFINITIVE MAP AND STATEMENT

12.26. The Definitive Map and Statement in its entirety is regarded as the legal register for public rights of way and the information held within is, for completeness, better understood when both the map and statements are investigated together. The descriptions made during the survey remain the statements for the Definitive Map. These statements (Appendix 65 & 66) were compiled by Mr F. Williams of Wyedene, Llandogo in the Community of Trellech. Modern records are not able to verify the location of Wyedene, however, the mention of Ivydene, which was the previous name of Misty Cottage, is located adjacent to the route in question. Regardless of the precise location of Mr F. Williams's home he did live in Llandogo. Therefore, he had some local knowledge of the route in question although in point 12.16 it is shown that he did not know the full extent of the public highway and, as a result, described the whole route.

12.27. **Public Rights of Way (PROW) 20 to 24 states:-**

- *"Starts on County Road W. of The Mount. Rough surface road passing through wood as far as Young's Cottage. Continuing as unsurfaced road for a quarter*

of a mile approx. with a turning point for lorries at the end. Road now continues as a CRF crossing Cleddon Shoots into Cloisters Lane near Marigold Cottage".

12.28. It is noted that the first part of the above statement refers to the county road C40-7 as a rough surfaced road. Then from Young's Cottage now known as Bargan's Cottage the route in question is described as not being surfaced. By stating this for this section of the route in question, it proves that the way was never regarded as forming part of the publicly maintained highway and also suggests that it was not regularly used by the public at large in motorised vehicles.

12.29. Furthermore*, "…..a turning point for lorries at the end"* has been reported to be private vehicular use as the local coal merchant owned a house along the lane and used the small turning area near Glyncote to store his coal and to turn his vehicle. The route in question, however, appears to be too narrow to negotiate such a manoeuvre in a lorry.

12.30. The Definitive Map Statement uses the word "road" on a number of occasions. It is incorrect to assume that the descriptive word "road" automatically stipulates that such a route should have public vehicular rights and be maintained at public expense.

12.31. The other existing public footpaths have Definitive Map Statements that add further information to the route in question. The descriptions for the routes are as follows:

12.32. **PROW Trellech 11 to 14**

- *FP: Great Hill: walked: F Williams: 1st June 1951: Starts at the Laurel Bush Cottage on the Llandogo Trellech Road. After First 25 yards mount by stone steps exit on to Glen Road, 20 yards south of Wyevern Cottage.*

12.33. **PROW Trellech 15, 16 and 17**

- *FP: Great Hill: walked: F Williams: 1st June 1951: Continuation of FP No.12. Starts at Wyevern Cottage on the Glen Road, continuation of rough stone steps for 100 yds then rough pathway through woods to Cledden [sic].*

12.34. **PROW Trellech 18 to 19**

- *FP: Hollow Lane: walked: F Williams: 1st June 1951: Starts at Inglewood House on the Llandogo Trellech Road mounts hill with stone wall left hand side; Earthen bank on other. Approx. width 6ft. Exit on to Glen Road.*

12.35. **PROW Trellech 49 to 50**

- *FP: -: walked: F Williams: 1st June 1951: Starts 10 yds above the junction of FP No. 48 branching right from the Great Hill FP No. 5[sic] rough track bordered by low stone walls serving 3 cottages before crossing FP no 18 and 19 then runs up to join CRB No. 23 and 24 at its terminus.*

12.36. The Definitive Map Statement records the path to be described as Trellech 49 to 50. Then in the description there is a typing error; an "0" after the number "5" is missing. This is backed up by following the route described on the Definitive Map and also noting that FP5 is not marked while FP50 is.

12.37. **PROW Trellech 24**

- *CRF: -: walked: F Williams: 1st June 1951: Starts on County road W of The Mount. Rough surfaced road passing through wood as far as Young's Cottage. Continuing as unsurfaced road for a quarter of a mile approx. with turning point for lorries at the end. Road now continues as a CRF crossing Cleddon Shoots into Cloisters Lane near Marigold Cottage.*

12.38. Three of these statements refer to the route in question as "Glen Road". The possible reason for this may be that Glen Cote is the name of the property at the northern end (point B) of the route in question. The route in question has evidently been described in many different terms, but none of these descriptions of the route in question endorse any type of public or private use.

12.39. It is noted from all of these statements that the whole area is referred to as "Great Hill"; this name is not attributed to a single dwelling.

12.40. In keeping with all the Ordnance Survey Maps that record the physical features such as boundaries, surface changes and widths for the route in question along with these Statements it suggests that the surveyor was using the word "road" descriptively to record the physical nature of the route on the Definitive Map & Statement and not stipulating a public vehicular, a horse drawn cart or bridleway right. This reason is verified by the fact that the DM&S records the route in question as being a road used as a public path.

13. The Highway Records

13.1. Both the 1st April 1949 Highway Map and current "List of Streets" do not record the route in question as a county unclassified highway. The OS base maps on which the Highway information is recorded shows the route in question on a similar alignment to all previous historical maps discussed.

13.2. The scale of the 1949 Highway record shows a possible barrier at point X on the plan below. This suggests that the route in question was not regarded as the main route up to the area called "Great Hill".

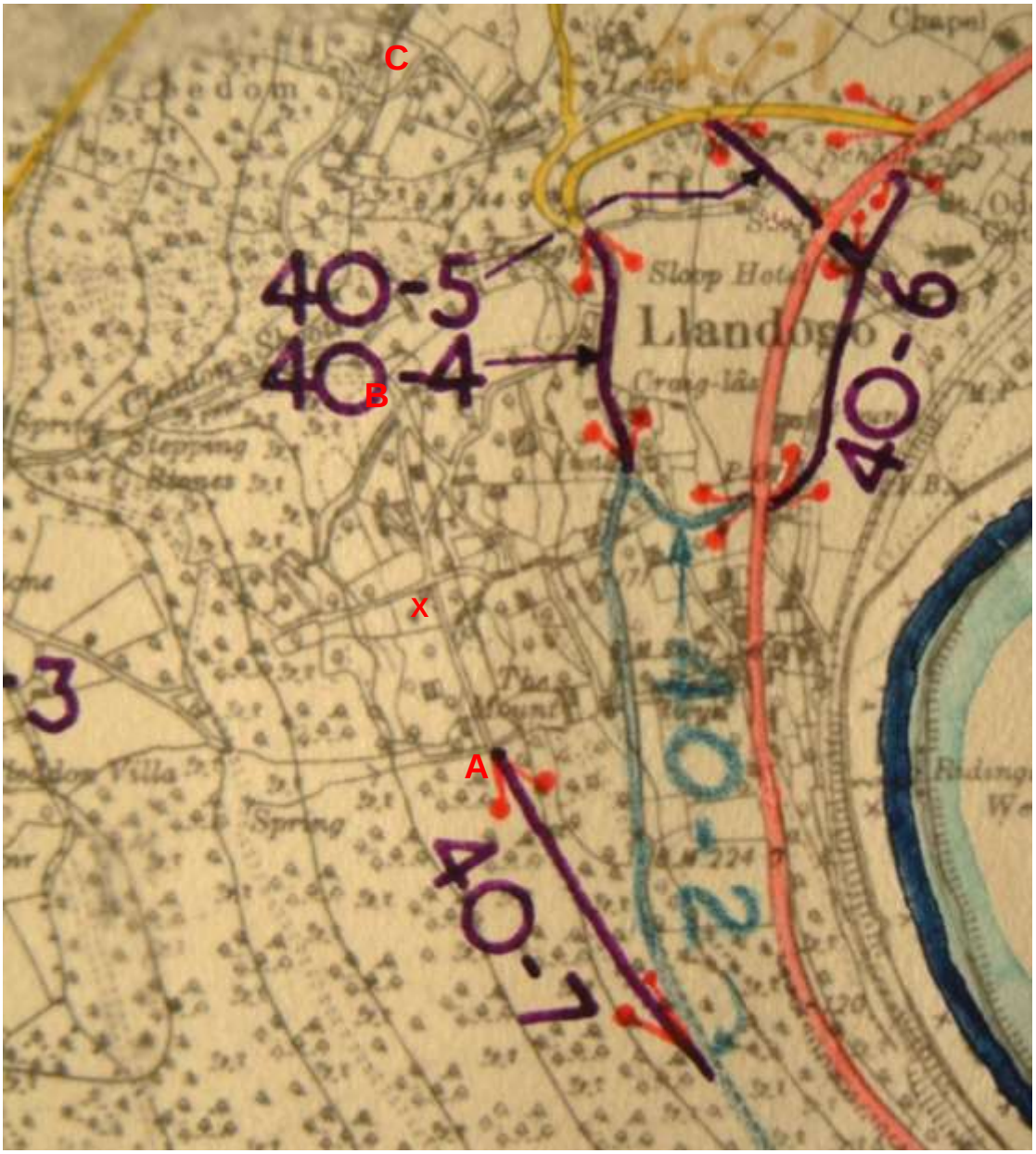


Fig. 13.1:
1949 Highway Records: not to scale: MCC

13.3. The undated Highway records show the same roads shaded as the 1949 Highway plan records. With the larger scale of this Ordnance Survey base map it is noted that the possible barrier at point X on the plan below is probably only a change in surface.

13.4. The evidence that county road 40-7 is the only section recorded on the Highway documents shows that the route in question was not regarded as a thoroughfare for the use of motorised vehicles by the public at large.

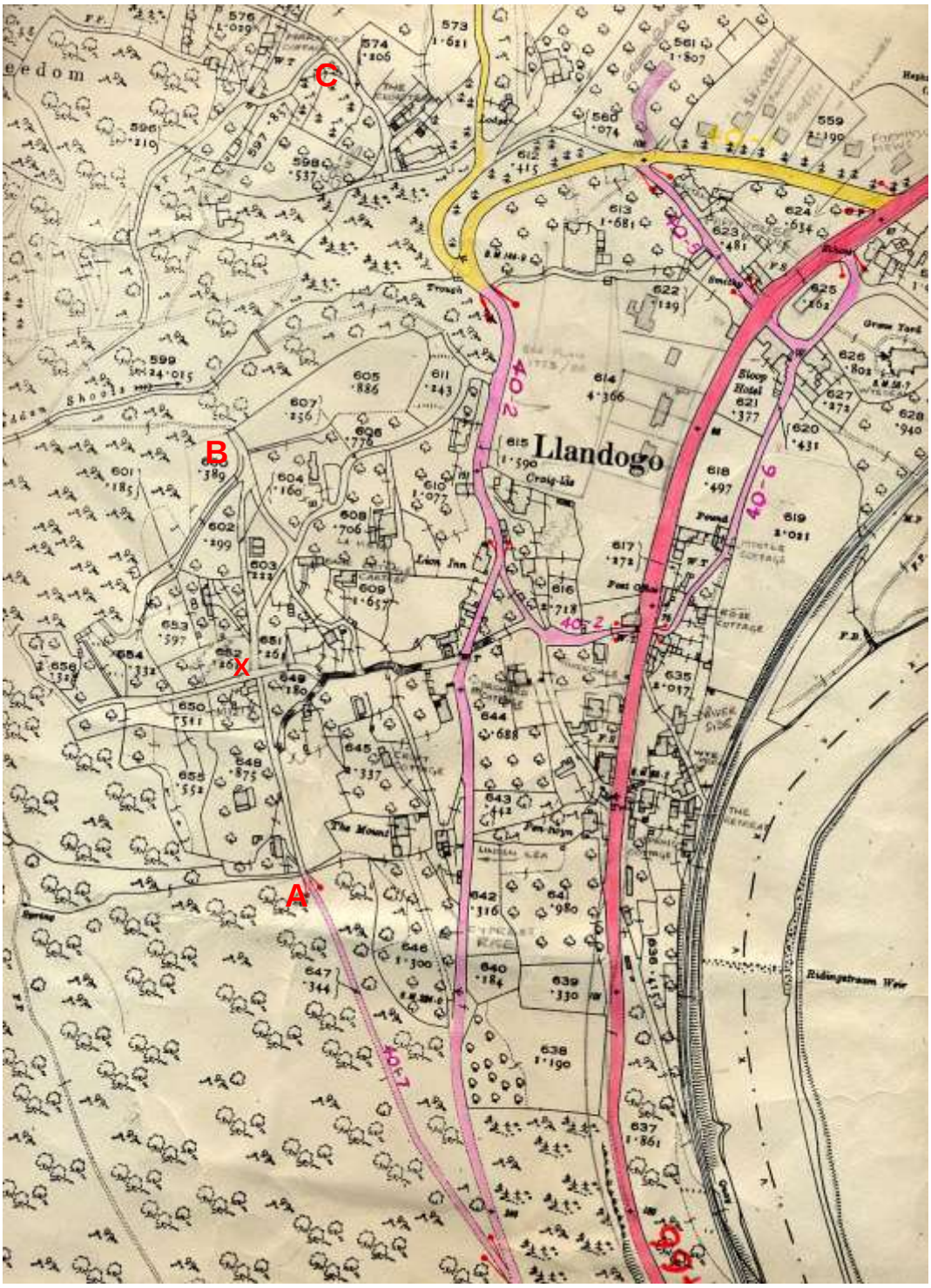


Fig. 13.2: Appendix 22: Applicants' Evidence 11
Undated historical highway records: not to scale: MCC

14. Aerial Photographs

14.1. **The Aerial Photograph dated 13 April 1947** shows that north of Glen Cote there is evidence of a small turning triangle depicted by wide light grey shading. However there are no additional similar markings continuing northwest or northeast from this location.

Fig. 14.1:
Aerial photograph: Dated 13 April 1947: National Assembly of Wales
(MCC has a purchased copy. It is available at MCC office for viewing.)

14.2. This shows that the route in question was not regarded as the regular way for the public at large in motorised or non-motorised vehicles to access other properties north of Cleddon Shoots.

14.3. Although the tree canopy in April 1947 is not dense at the time this photograph was taken, it is still difficult to see an impression of RB 24 through to Cleddon Shoots. This suggests that if the alignment of RB 24 were more discernible between the trees than that currently shown, it would support the fact that the entire route was more frequently used by the public at large. This is not evident in this photograph. Therefore, the route being investigated is not used as a through route by the public in motorised vehicles, horse-drawn carts or on horses.

14.4. Furthermore, there are no high boundaries causing shadows to fall across the route in question making it possible to view the difference in surface between the cart road bridleways (CRBs) 23 and 22. When viewing the photographs through a stereograph, CRB23 has a rougher surface compared to the more frequently used CRB22 and FP18. This shows that the section of the route in question near Glen Cote was not regarded as a main road.

14.5. Public FP18 east of Glen Cote and descending the "Great Hill" area is shown in greater relief suggesting that it was more regularly used to ascend and descend the area. Because of this daily use it became more susceptible to erosion than the other ways that run parallel to the contours of the hillside.

14.6. **The Aerial Photograph dated 27 March 1970** shows the route in question vividly in a medium grey shading and, when viewed through a stereograph, a grass knoll is seen in the middle of the CRB 23. This proves the irregular use of the route in question which allowed the grass to grow along this non-sealed surface.

14.7. When viewing the entrance of the turning triangle north of Glen Cote through a stereograph, it is noted that a barrier of some description was located to prevent some type of use. At the same time the aerial photograph shows another larger turning area directly north of Cleddon Stile being more evident 19 years after the 1951 survey for the Definitive Map. However, the aerial photograph does reveal a distinctive change in surface type which suggests that the larger turning area was possibly for private land management requirements.

14.8. It is not clear from this aerial photograph what this area might have been used for. However, it has been clarified by users and local inhabitants as being an area for the private delivery of coal by a small ford delivery truck and not for the use of the general public.

14.9. The aerial photographic evidence proves that the public at large did not frequently use the route in question as a major vehicular or equestrian thoroughfare. This is particularly evident on the sections marked CRB23 and RB24.

Fig. 14.2:
Aerial photograph: Dated 27th March 1970: National Assembly of Wales
(MCC has a purchased copy. It is available at MCC office for viewing.)

15. Site photographs *(Appendixes 51 to 58).*

15.1. **The first three photographs taken on the 16th March 1998** (Appendix 51) are of a land slip below Bargan's Cottage and the route in question shows a patched sealed surface.

15.2. **The photographs taken on the 29th February 2000** (Appendixes 52 & 53) show most of the route in question to have a sealed surface that in some areas is broken. The wear and tear of these sections of broken ground have evidence of tyre marks near them. This shows that the use of the route has been with vehicles and it is evident that it is this type of use that has damaged the surface of the route in question.

15.3. **The photographs taken in 2004** (Appendix 54) (Photographs 1, 2 & 3) show a recently sealed surface along with the evidence of tyre tracks damaging the edges of the route in question. Photograph 4 shows the unchanged surface of CRB 23. The evidence in this photograph shows a central grass knoll with parallel wearing made by wheeled vehicular traffic. However, it is evident from other historical documentation that the usage is limited to reported coal delivery and to the requirements of a single dwelling prior to the proposed development of the property in 2004.

15.4. **The evidence in photograph 1** (Appendix 56) of the stepping stones show that this route was not considered as a vehicular through route. In support of this reasoning is that the office file for restricted byway (RB) 24 (formerly cart road footpath) contains no complaints regarding the surface of the route and the need for the stones to be removed to allow motorised, horse drawn cart, equestrian or cyclist traffic. Furthermore, none of these photographs show a wide route with a central knoll of grass. Instead, a single narrow route in keeping with that expected for footpaths is illustrated.

15.5. **The photographs taken in 2014** (Appendixes 57 & 58) show the route relatively unchanged when compared with the photographs taken in 2004. Photograph 4 (Appendix 57) shows the evidence of motor car usage that has worn wheeled tracks and a central grass knoll over the section CRB 23. The comparison of the 2004 photographs with the 2014 photographs indicates that the evidence of motor car usage has not changed. This limited use supports the fact that this route has not been enjoyed by the public at large. It is more

difficult from these photographs to prove along the section CRB 20 to 22 only public bridleway or footpath use, because the sealed surface hides much of that type of use.

15.6. The photographs of RB 24 (Appendix 58) show the route to be narrow in comparison to the previous section CRB 20 to 23 (Appendix 57) and this evidence supports the fact that the route in question is not a public thoroughfare for public motorised vehicles, non-motorised vehicles or horses.

15.7. The photographs of RB 24 show that this section of the route is used mainly by pedestrians. It is difficult from these photographs to prove horse riding or cycling use.

15.8. The limitations imposed by the location of the route being investigated suggests that there was once private equestrian usage in the past carried out by local inhabitants and their associated needs. Then, much later, modern private vehicular usage was and is still conducted by the local homeowners wishing to gain access.

15.9. The site photographs when taken together with all the other evidence discussed so far suggests that the public usage of the route in question is mainly pedestrian.

16. The Natural Environment and Rural Communities Act 2006

16.1. Regulations associated with restricted byways (RBs) 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).

16.2. The Natural Environment and Rural Communities Act 2006 (NERC) sections 66-72 Part 6 came into force in Wales on the 16th November 2006.

16.3. 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 here to test whether or not the Act applies in this case.

16.4. All the 2006 NERC Act sub-sections have been investigated as the points raise questions that assist in determining whether or not public vehicular rights exist over the route in question. These sub-sections have been copied along with all the relative comments and are included at Appendixes 59 to 61. The flow chart illustrating the process for determining public rights of way for mechanically propelled vehicles (MPVs) over any given way are included in Appendixes 62 to 64.

16.5. The sub-sections 67(3a) and (6) do apply to this claim and are repeated below:-

- ***Sub-Section 67(3)(a)*** *states that: Subsection (1) does not apply to an existing public right of way if before the relevant date (19th May 2005(s.67(4)), an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modification to the definitive map and statement so as to show the way as a byway open to all traffic, (BOAT).*

  Comment

  16.5.1. This Definitive Map Modification Order application to register a byway open to all traffic (BOAT) was submitted on the 13th April 2004. This predates the coming into force of the legislation that means MPVs rights are not extinguished over the route in question if it is the subject of an application.

  16.5.2. It does, however, mean that the DMMO has to determine to establish whether or not public motorised rights do or do not exists over the route in question.

- ***Sub-Section 67(6)*** *states that: for the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 of that Act.*

  Comment

  16.5.3. Yes, the Definitive Map Modification Order Application is valid and was made on the 13th April 2004. This means that public MPVs are not automatically extinguished by the 2006 NERC Act for CRBs 20, 21, 22 and 23.

Concluding Comments

16.6. It has been demonstrated here that under section 67(2) of the 2006 NERC Act MPV rights are extinguished for the entire route marked. However, under section 67(3)(a) and 67 (6) of the 2006 NERC Act the public MPV rights are not extinguished for CRBs 20, 21, 22 and 23 due to the outstanding 2004 DMMO claim for a BOAT.

16.7. Although the tests under subsection 67(2) of the 2006 NERC Act do not apply due to the 2004 DMMO claim being outstanding at the date of commencement, an examination of the exceptions has been applied to the whole route in question for completeness (Appendixes 59 to 61). It is shown that with the aid of these "test questions", under subsection 67(2), the route being investigated does not have public vehicular rights.

16.8. The 2004 DMMO for the route in question, A to B, prevents the 2006 NERC Act from automatically extinguishing public MPV rights. However, the DMMO evidence remains to be investigated to determine the level of public status and research has shown that in this case the entire route is only a public footpath.

17. Section A to B - Review

17.1. The Applicants, under the Wildlife & Countryside Act 1981 s53 (3)(c)(ii), submitted their claim seeking to upgrade the status of CRBs 20 to 23, points A to B, (Appendix 4) to a byway open to all traffic (BOAT).

17.2. Under common law the terms “without force” is met because there has not been any barrier placed across the route in question as the route is already a registered public right of way on the Definitive Map and Statement. “Without secrecy” is met as the inhabitants of the area have openly utilised the route in question to access their private properties, and this type of use is not made by the public at large in either a vehicle, horse drawn cart or on horseback. “Without permission” is met as the inhabitants honestly believe that they have the right to drive their vehicles over the route in question to access their homes. The evidence discussed in this report shows that this belief does not extend to public vehicular, non-motorised or equestrian rights.

17.3. In considering this Application the Council seeks to determine whether or not public vehicular rights exist and cannot take into account need, nuisance or suitability.

17.4. The regular use of the route in question has been reported by local inhabitants to have been in a private capacity. The reported usage of the route in question has historically been with the use of a pack horse to transport household items to various properties and similarly the current use has been by vehicles to gain access to their private dwellings.

17.5. While there are some reports of private vehicular use over section A to B, there is no single “decisive” piece of evidence to show any public vehicular or equestrian rights.

17.6. On balance, when all the evidence is taken together it is shown that the recording of section A to B, should be that of a public footpath.

17.7. The 1952 Conveyance of land for Rock Cottage mentions “public road” but does not specify the type of public rights, the maintenance responsibility and the extent or level of that responsibility. Additionally, due to the fact that the plan is missing, the proof and weight of this historic document is weak and only an unsubstantiated interpretation can be applied to it.

17.8. The Planning Report numbered A36666 correctly describes the route in question as a public right of way. However, it is incorrect in stating that there are public vehicular rights. The context for the 1993 planning report A36666 is for permitted development and this planning report does not have the legislative weight to make the allegations regarding any public rights.

17.9. In a previous planning application, number A29567, is a consultation letter dated 7th September 1988 from the Highways Department. This letter states that the route in question, along with other substandard roads in the Llandogo area, is narrow and steeply graded with poor horizontal alignment being unsuitable for further residential development.

17.10. It is evident that comments made under planning permission have not been taken into consideration and that construction of the dwelling at the end of CRB 23 has now been completed.

17.11. The witness statements all confirm that the route in question has been available for access to their private dwellings in motorised vehicles. Additionally, the local inhabitants of the "Great Hill", Llandogo, have invited friends, family and utility providing services to their private dwellings. These invited people have attained access over the route in question in motor vehicles. This type of use is not regarded as being use made by the public at large. Therefore this private vehicular use carries no obligation in any sense that the route in question is a public byway open to all traffic.

17.12. The six evidence forms submitted do not sufficiently support public vehicular rights as the usage is similar to the private vehicular requirement that has been highlighted within the witness statements.

17.13. Two pre-order consultations were carried out one in 2004 and another in 2015 the results of which show that the route in question is not regarded as a public vehicular thoroughfare. Additionally, it is noted that the majority of the inhabitants of the "Great Hill" area are confident that they had and could prove their established private vehicular rights and believe that there is no requirement to record public vehicular rights.

17.14. Moreover, Mr T. Wilkinson John of Cleddon Stile in 1988 (Appendix 43) and Mr Ashely Thomas of Rosehill in 2015 both report, on two separate occasions, that the route in question is not adopted and that its maintenance is the responsibility of

the adjacent landlords and is not and has never been a “byway open to all traffic” maintainable at public expense.

17.15. Regardless of other Land Registry documents for the surrounding area, the 2015 Land Registry documents for Llecan Beck; the statement by a witness who lived in Cleddon Stile; and a pre-consultation result from the landowner of Rosehill, all refer to the route in question as a “private roadway”. These three, when taken together, on balance, with all the other historical evidence and documentation investigated, demonstrates that there is no evidence that positively supports public vehicular or equestrian rights over the route in question.

17.16. There are two commercial maps, the Greenwood and Price Maps, which were reproduced prior to the 1835 Highways Act. This Act stipulates that any route depicted on a map prior to 1st August 1835 meant that that route was maintainable at public expense. These two maps are the only records that show alignments which possibly represent all or parts of the route in question.

17.17. The 1830 Ordnance Survey Maps compiled under strict administration, and the facsimiles of that survey, the David & Charles and Cassini Maps, do not show the route in question.

17.18. There is no Enclosure Award map that specifically lays out the alignments of every type of road and way. Additionally, the history of the Manor of Llandogo was researched and there were no details included in the documents that record a landowner or support any type of public right.

17.19. The information gathered from these earlier historical maps suggest that the route in question is probably not maintainable at public expense and neither does the earlier documentation support the claim for the route in question to be registered as a public byway open to all traffic, restricted byway or bridleway.

17.20. The 1828 and 1834 plans within the deed papers of Cleddon Shoots have on them pencil marks probably indicating section A to B of the route in question to be a method of referencing the land to physical features noted on the ground. These deeds do not support the claim for public vehicular rights. Neither of these deed plans show the route to continue through Cleddon Shoots which suggests that the route in question was not regarded as a public thoroughfare for vehicles or horses.

17.21. The shading of the 1846 Tithe Map ends at points A & B; the “white out” on the Finance Act map ends at points A & B; and the probable evidence of two barriers at point A shown on the 1881 O S map suggests the access to the “Great Hill” area

to be from its north eastern junction with the Llandogo/Trellech road and not from the south as is the current practice. This means that public Footpaths 18 & 19 were probably used as the main routes up the hill as evidenced on the 1846 Tithe Map. Therefore, all three map sets, the Tithe, the Finance Map and all the Ordnance Survey Maps, do not support public vehicular or equestrian rights. Also, due to the topography of the area, along with the historical map evidence investigated, suggests that the route in question should be designated as a public footpath.

17.22. The 1846 Tithe Map and the 1910 Finance Act Map do not record a specific landowner for the route in question. Furthermore, the earlier Enclosure Awards and Manorial documents do not give details regarding landownership, whereas common law requires demonstration of a capacity to dedicate land usage.

17.23. Although, the historical maps such as the Tithe and Finance Act maps normally evidence higher status than that of footpaths, there are always exceptions to the rule. An exception is shown here when comparing both the historical maps with the Definitive Map. This comparison reveals that all the existing public footpaths marked in the relevant area on the Definitive Map are shown shaded on the Tithe map and are non-shaded on the Finance Act Map. These documents alone do not necessarily mean that routes depicted like this are to be recorded as public roads that are utilised by the public at large in vehicles or on horseback. However, it does demonstrate that it is possible that footpaths can also be found to be shown on these historical maps as shaded or non-shaded.

17.24. The Tithe and Finance Act maps, although useful in support of a claim, cannot be taken alone, as these maps were specifically compiled to identify “titheable” land or the value of land with regards Inland Revenue. These maps were not specifically constructed to assist in identifying public ways. This suggests that, on balance, when all other documental and physical evidence is considered, there are no public vehicular, horse drawn cart or equestrian rights over the route in question.

17.25. The Definitive Map and Statement is afforded considerable weight due to the statutory provision and the continuous review as set out under section 53 of the Wildlife & Countryside Act 1981.

17.26. Therefore, evidence of some substance is required to refute that which is already recorded on the Definitive Map and Statement. Furthermore, as has been revealed in this Report, the terminology used for the route in question is

ambiguous and has led to further study which has been carried out below in a question and answer format.

17.27. Is the whole route a *'road used as a public path'*?
Yes. The legal symbol of a *'broken green line'* for RUPPs is shown for the entire route and mentioned in the Definitive Map title.

17.28. Is section A to B a *'[Public] Carriage or Cart Road mainly used as a bridleway…'*?
No. The title to the Definitive Map was changed at Provisional stage and the word "*public"'* was substituted by the word "*private"*.

17.29. Is section A to B a *"[Private] Carriage or Cart Road mainly used as a bridleway…"*?
No. This non-statutory symbol for a cart road bridleway (CRB) is explained by Lord Denning in the case "R v Environment Secretary, ex p. Hood 1975 1QB 891" (see Chapter 12) to be misleading. The reason is because local authorities did not know whether a cart road was "*public"* or *"private"* and that this symbol along with the symbol for a cart road footpath (CRF) were both marked against the same notation for a "*road used as a public path"'* on the Map. Further, although the non-statutory symbol for a cart road bridleway (CRB) may have been provided within official guidelines, it remains non-statutory, while the symbol of *"broken green line"* remains the statutory symbol for "*roads used as a public path"*.

17.30. Is section A to B '*mainly used as a bridleway"*? No.
In other words, does the public at large use this section as a bridleway? No. Although this section has had this designation (CRB) since 1952 (the relevant date for the Definitive Map & Statement (DM&S)), the evidence of public equestrian use reported in some historical accounts for the general area, is not specifically attributed to the route in question.

17.30.1. More specifically, as the route is marked on the DM&S, legislation states that evidence of some substance has to be shown to refute that which is already recorded.

17.30.2. Only section B to C has a report by local inhabitants that coal has been transported with the help of a horse. By these means, these inhabitants found it easier to move coal from point B to their own homes near point C. This is private equestrian use.

17.30.3. There is no record of public equestrian use for the section A to B either on horseback, leading a horse, or with horse and cart.

17.30.4. There is no evidence on the office file of any regular reports stating issues with the surface of the route. On the one hand, regular equestrian use would cut deep single ruts into any soft surface and, on the other hand,

equestrians do not like tarmac as it can be slippery. There are no complaints on file relating to either surface type.

17.30.5. It has been reported that this route serves as an access to at least 12 separate dwellings which means that if this route had been deeply rutted by equestrian use then there would have been many complaints over the years requesting the repair of the route. Since 1952 only one surface repair request has been raised. This was by Mr Greggains and it pertains to the wear and tear of the sealed surface of the route in question which would not have been caused or made by equestrian use.

17.30.6. The 1998, 2000, 2004 and 2014 photographs and site visits revealed no horse hoof marks on any open ground. Further, no horse muck on the existing sealed surface was found, which shows that there was no regular equestrian use of the whole route in question.

17.30.7. The route in question connects with no other bridleways. From point B northwards it has been essentially regarded as only a footpath and from point C onwards all other public routes are registered as footpaths. Furthermore, other routes from the east and continuing westwards are all recorded as existing public footpaths.

17.30.8. This means that if A to B is to be recorded on the DM&S as a bridleway then it is isolated and not a through route linking to any other public bridleways. Isolation from other bridleways would be pointless as any public enjoyment of a route would be to continue and not have to go out and the return on a single alignment. Furthermore, it would be dangerous to invite equestrian use of the section B to C. This is discussed in Report 2 in greater detail.

17.30.9. If any one of the points raised here is taken alone it would not be enough evidence to refute what is already recorded on the Definitive Map. However, when taking all the points raised here along with all the other evidence discussed it is shown that, on balance, the evidence does substantially refute the recording of a public bridleway.

17.31. The Definitive Map Statement for the route in question along with the statements for other public rights of way in the area refer to the route being an “unsurfaced road” or “Glen road”. The recording of “unsurfaced road” indicates that the route in question was never regarded as forming part of the publicly maintained highway and also that the route was not regularly used by public vehicles. The naming of the route in question as “Glen road” is purely for location and descriptive purpose and does not authorise public or private vehicular status.

17.32. The 1949 historical highway map is the first recording of the highway C40-7 which only extends to point A, just south of Bargans Cottage. The highway records show that the route in question was not regarded as publicly maintained highway and therefore not added to the "List of Streets". When C40-7 was constructed it became the only way for vehicles to access the private dwellings in the "Great Hill" area.

17.33. The 1949 & 1970 aerial photographs show the section A to B of the route in question which was viewed through a stereograph and the difference in surfaces between RUPPs (CRB22) and (CRB23) was noted. This difference in the surfaces, depicted on these aerial photographs, along the route in question substantially pre-dates the recent works and shows that the section near Glen Cote was not considered a main through road for public vehicles.

17.34. The site photographs dated 1998, 2004 and 2014 confirm what is presented in the aerial photographs by showing CRB 20 to 22 to have a sealed surface while CRB 23 is not surfaced although the evidence of a central grass knoll, along with parallel wearing lines made by wheeled traffic, does show that some motorised vehicles have used this section. It has provided and continues to provide access to a private garage and is not used by the public at large. Furthermore, there is no horse use damage along this section. If there had been surface disturbance made by horses then more complaints would have been made to the Authority by adjoining landowners and/or the public at large regarding surface repairs.

17.35. The outstanding 2004 Definitive Map Modification Order Application for the route in question between points A to B is not subject to the tests as laid out under section 67 of the 2006 Natural Environment and Rural Act.

17.36. The results of this investigation show that the vehicular usage both in the past and in more recent times has, on balance, been made by the inhabitants of the "Great Hill" area to access their private homes.

17.37. Furthermore, an investigation of all the historical, documental and user evidence, along with the lack of any regular requests for maintenance, shows that nothing has been found to substantiate the claim that the route in question should be recorded as a public byway open to all traffic, a restricted byway (i.e. for horse drawn cart) or a bridleway. It then remains that, in keeping with the other existing registered public rights of way in the area, CRB 20 to 23 should be recorded as a public footpath.

18. Conclusion

18.1. It is concluded that there are no public vehicular rights for the entire route. Only a part of the section A to B is marked on the poorer quality maps (1823 Price map and the 1830 Greenwood map) and not the section marked CRB 23.

18.2. Although, these more generalised maps do predate the 1835 Highways Act they do not, on balance, give weight to the entire route having public vehicular rights. With their specific production criteria the evidence from these two early 1800s historical maps along with all the other historical documentation does not add weight to the evidence that suggests the entire route be registered as a byway open to all traffic.

18.3. There is one complaint from a local inhabitant with regard to the public parking their vehicles along the route in question. Moreover, the pre-order consultation only mentions a single report of anti-social motorbike use for the entire route. This evidence for public vehicular use is insufficient to register the route in question as a byway open to all traffic.

18.4. As far as it is possible with the historical documents available, it has been demonstrated here that the proper procedures in production of the Definitive Map and Statement were followed. Therefore, the standard of evidence investigated and interrogated within this report demonstrates actual positive evidence, of some substance, which shows a contrary position to that made by the Applicants and the one included on the Definitive Map and Statement.

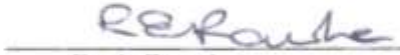
18.5. All the historical, documental and user evidence for section A to B and also that evidence which applies to section B to C detailed in Report 2 for the route being investigated, shows that there is no suggestion of use by the public at large either in motorised vehicles, in a horse drawn cart or on horseback.

18.6. Therefore, this being the case and along with the knowledge that public footpath rights crisscross the area known as the “Great Hill”, then with all this evidence taken together, it is shown that, on the balance of probabilities, the route in question, cart road bridleways (CRB) 20 to 23, does not have higher public rights and should be registered as a public footpath.

19. Recommendation

19.1. Members are invited to resolve that advice (~~authorisation~~) be given to the Community Services Cabinet Portfolio Member to (~~proceed with~~) authorise the making the Modification Order under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to classify the CRBs 20, 21, 22 & 23 as footpaths as detailed in this report and to confirm or seek confirmation of the Order.

Mandy Mussell
Definitive Map Officer
June 2016



Ruth Rourke
Principal Countryside Access Officer
June 2016

Authors: Mandy Mussell, Definitive Map Officer and R. Rourke, Principal Countryside Access Officer

Contact Details: Telephone: Ext 4813
Email: mandymussell@Monmouthshire.gov.uk

Monmouthshire County Council

Countryside Access

Licence and Regulatory Committee Report
Definitive Map Modification Order
Cleddon Shoots, Llandogo, Trellech
REPORT 2: SECTION B TO C (24)

File Ref: 41Mod _Llandogo CRB23

8th July 2016

Index

1. Introduction: Definitive Map Modification Order

1.1. This Report discusses the status of restricted byway (RB) 24 (B to C). Appendix 1 shows the location of the route in question that is in Llandogo in the community of Trellech.

1.2. Research for the entire route, A to C (Fig.1.1) was undertaken as some or all of the historical evidence may or may not support the claim submitted for section A to B (Report 1). Rather than repeat the research it was expedient to investigate via documentary evidence and carry out site visits for the whole route once. The historic records investigated were obtained from the Gwent and National Record Offices and the Welsh National Library.

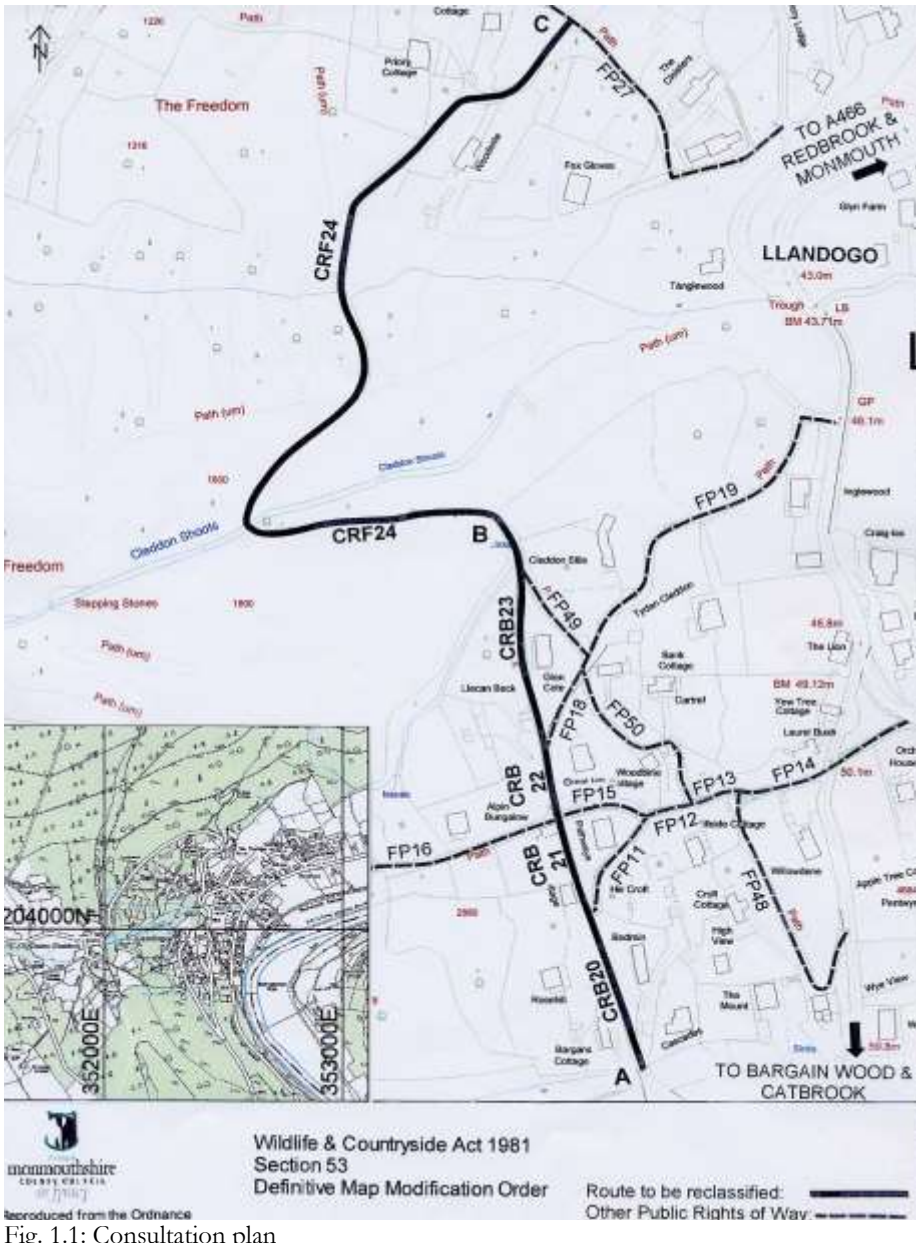


Fig. 1.1: Consultation plan

1.3. The Council needs to decide whether the available evidence suggests that the registered restricted byway RB 24 should be recorded as:

- a public footpath (available to the public on foot only),
- a public bridleway (available to the public on foot and with horses);
- a public restricted byway (RB) (available to the public on foot, with horses and with vehicles other than mechanically propelled vehicles); or
- a public byway open to all traffic (BOAT) (available to the public on foot, with horses, horse drawn carts, and with motorised vehicles).

1.4. In considering this matter, issues of need, nuisance or suitability cannot be taken into account. Instead, what should be considered is whether the public enjoy equestrian and vehicular rights over the route in question. However, suitability cannot be taken into account as 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.

1.5. While it is already understood that some public rights are shown to exist as are recorded on the Definitive Map and Statement (relevant date 1 July 1952), this Report seeks to determine whether or not public vehicular, horse drawn cart or equestrian rights exist over the route in question.

1.6. This Report only deals with section B to C.

2. Legal Tests

2.1. The legal tests for B to C, the route in question are under the Wildlife and Countryside Act 1981 (WCA) section 53(3)(c)(ii) that concerns itself with a highway that has been recorded at a particular status on the Definitive Map and Statement and should instead be recorded with a different status. Section 53(3)(c) of the 1981 WCA is distinct from other sections of the WCA as, in these types of claims, historical evidence is uncovered in support for amendment or otherwise of a path prior to the 1st January 2026.

Wildlife and Countryside Act 1981 s53:

2.2. The Section 53(2) of the 1981 places two duties on the Authority:

(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 modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

2.3. Together these duties are known as the continuous review of the DM&S.

2.4. Events fall into two categories “legal events” and “evidential events”. The basis of an application falls within the evidential event of section 53 (3)(c)(ii).

Wildlife and Countryside Act 1981 s53:

(3) The events referred to in subsection (2) above are as follows:

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;

2.5. Further to the above the standard of proof for both the making and confirmation of a Definitive Map Modification Order is “on the balance of probabilities”.

3. Statutory Background

How public rights of way came about

3.1. The law has always acknowledged that the public right to use a highway lies in dedication by the owner and that public use alone does not create a highway. The law is clear that if there has been a public uninterrupted user of a road for such a length of time as to satisfy a jury that the owner of the soil, whoever he might be, intended to dedicate it to the public, this is sufficient to prove the existence of a highway, even though it cannot be ascertained who the owner of it has been during the time the road has been used by the public.

3.2. The types of highway recorded on the Definitive Map and Statement (relevant date 1 July 1952) are footpaths, bridleways, restricted byways and byways open to all traffic.

3.3. A footpath only allows walkers; a bridleway allows walkers, horse riders (including people leading a horse) and possibly the right to drive cattle; a restricted byway allows all the above descriptions including non-mechanically propelled vehicles like a horse drawn cart; and a byway open to all traffic allows all types of traffic as listed above including motorised vehicles.

Common Law

3.4. Common law originally specified three types of highway, those being footpaths, bridleways and carriageways. Common law is the basis on which statutory rights have been built on. Therefore the type and level of user for these ways is in some respects similar. Over the years legislation has extended the rights where for example carriageways have been subdivided into other types of routes, some being byways open to all traffic while others are now referred to as restricted byways.

3.5. DMMO applications, where a way has become public from long usage, are now generally made under a statutory provision where the common law principles of: “without force”, “without secrecy” and “without permission” are clearly preserved by law.

3.6. Common Law uses a term “as of right”, to explain the principle of long usage that gives rise to a presumption of dedication where the use had to be without force, without secrecy and without permission. Case law has enhanced the term “as of right” to include “in the honest belief in a legal right to use”.

3.7. Provisions of section 31 of the 1980 Highways Act (HA) do not supersede the principles of implied dedication that existed at common law before 1932. That

means where a claim is made in respect of a way that is not obstructed or where use is for a period shorter than 20 years a claim may be made at common law.

3.8. However, where a claim is based only on common law, the requirement with regard to capacity to dedicate still applies. On the section B to C there is a specific landowner who has, to date, not dedicated public vehicular, non-motorised or equestrian rights.

3.9. Furthermore, the tests under the 1980 Highways Act section 31 are not relevant to this case as it is already understood some public rights, although ambiguous, are recorded on the Definitive Map and Statement.

Restrictions imposed by statute:

3.10. Before the year 2000 the Authority had not processed the duty to reclassify section B to C under section 54 of the 1981 Wildlife and Countryside Act (WCA). This section of the 1981 Act has now been revoked by the 2000 Countryside and Rights of Way Act and is no longer available for use.

3.11. The 1980 Highways Act, section 31 does not apply as the route is already registered as a public right of way on the Definitive Map and Statement as "cart road footpath" (CRF) which is essentially a road used as a public path (RUPP). In this case the route is regarded as a public footpath. This is discussed in detail in Chapter 9 of this Report.

3.12. The 2000 Countryside and Rights of Way Act (CROW) Section 47 came into force on the 11th May 2006 and re-designated roads used as public paths (RUPPs) to restricted byways (RB).

3.12.1. The Welsh Statutory Instruments (2006 No.1279(V.124)(C.42) provided that nothing in section 47 or 48 of the 2000 CROW Act affects the operation of the relevant sections and schedules of the 1981 WCA if either an order or an application for a relevant order was made before the 19th May 2005.

3.13. Section 67(3) of the 2006 Natural Environment and Rural Communities Act does not exempt B to C of the route in question being changed by the Act. When both the Countryside and Rights of Way Act 2000 (CROW) and the 2006 Natural Environment and Rural Communities Act (NERC) came into force, the route previously marked on the Definitive Map and Statement as a cart road footpath was changed to a restricted byway. The extinguished public vehicular rights on this section are discussed in detail in Chapter 13 of this Report and Appendixes 59 to 64.

3.14. The tests under the 1981 Wildlife and Countryside Act are applied to determine whether or not public vehicular rights already exist over section A to B of the route in question.

THE LEGAL TESTS

Discovery of Evidence

3.15. Planning Inspectorate guidance summarises the position on discovery of evidence that has evolved through Case Law:-

> *"In Mayhew it was argued that in order to be discovered, evidence had to previously have been unavailable to the Authority. This argument was rejected. The judge, Potts J, adopted parts of the judgment in R v Secretary of State for the Environment ex parte Simms and Burrows where it was said that: 'the word 'discovery' suggests the finding of some information which was previously unknown, and which may result in a previously mistaken decision being corrected'".*

3.16. In addition, Potts J adopted the following passage from Simms and Burrows:-

> *"In particular I am satisfied that section 53(3)(c), with its use of the word 'discovery', embraces the situation where a mistaken decision has been made and its correction becomes possible because of the discovery of information which may or may not have existed at the time of the definitive map".*

3.17. In the Court's view the meaning of "to discover" is to find out or become aware of. The phrase implies a mental process of the discoverer applying their mind to something previously unknown to them.

3.18. In terms of discovery of evidence in the current case, it is noted that discovery need not exclude documents held in the archives at the time of drafting the definitive map from 1952 to 1967. The 1910 Finance Act Records only became available for public inspection from 1979 onwards.

3.19. This should, however, be considered in conjunction with the clarification offered in later case law where the court noted that:

> *"It is plain that the section 53(3)(c) intends that a definitive map can be corrected, but the correction… is dependent on the 'discovery of evidence'."*

3.20. In order to qualify as a discovery for the purposes of this case then, evidence that existed at the time is able to qualify, though it must be new in the context of evidence previously considered and the submission of evidence cannot be illegal

use of an existing way. Also, evidence already considered in a hearing or otherwise at an earlier stage is precluded from forming the basis of a discovery.

Standard & Existence of Evidence

3.21. Planning Inspectorate guidance outlines that:-

> *"When considering whether a right of way already shown on definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status was ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all."*

3.22. Where there is no indication that the proper procedures were significantly departed from, the standard of evidence that needs to be produced is that of actual positive evidence of some substance, showing a contrary position to the one included on the Definitive Map and Statement.

DMMO Process

3.23. It should be noted that the DMMO process seeks to ensure rights are correctly recorded as they exist and is an exercise in modifying the definitive map to reflect such a position. It is not within the remit of the DMMO process to give consideration to matters such as privacy; the current or future necessity; or usefulness of a route (though such factors may assist where they constitute evidence of past use).

LEGAL TESTS – Discovery of Evidence

3.24. In this case the Council received the Application in 2004 to upgrade section A to B an existing cart road bridleway to a byway open to all traffic which is considered in greater detail in Report 1.

3.25. The investigation into all the available evidence meets the tests of 'discovery of evidence'. This is discussed in detail in this Report.

3.26. It is not possible to show that the historical records were referred to in the process of the compilation of the Definitive Map and Statement. While recognising that this

lack of surviving evidence does not prove that no consideration was given, it is proposed that the submission of the historical documents at least, should be considered sufficient for a discovery under section 53(3)(c)(ii).

3.27. Furthermore, when the definitive map was compiled, roads use as public paths (RUPPs) were shown as either cart road bridleways (CRBs) or cart road footpaths (CRFs). These terms have no legal significance. Hence the category "RUPP" proved to be unsatisfactory.

3.28. A number of legislative attempts were enacted to reclassify the RUPPs and finally, as stipulated by the test set out under section 67 of the Natural Environment and Rural Communities Act 2006, the route in question B to C was registered as a restricted byway.

LEGAL TESTS – Standard of Evidence

3.29. While the historical evidence referred to must be demonstrated to be sufficient to rebut the presumption of the existence of that already recorded on the Definitive Map and Statement, the ambiguity of symbols for cart road bridleways; cart road footpaths; roads used as public paths and also due to section 56(1) of the WCA 1981 Act where the depiction of a way as a RUPP on the definitive map was conclusive evidence of the existence of bridleway rights, it proved difficult to properly reclassify such a route to a footpath under section 54 of WCA 1981.

3.30. Therefore, if evidence existed that a way shown as a RUPP should have been shown as a footpath, or indeed should not have been shown at all, it should be tested by way of a modification order under section 53(3)(c) of WCA 1981, which requires all the relevant evidence to be taken into account thereby meeting the requirement for the 'discovery of evidence' as set out under that Act.

3.31. The full extent of the public status of the route was investigated in 2004. For the purposes of this case the calling into question is therefore the submission of the 2004 DMMO Application dated 13th April 2004.

3.32. Under the CROW 2000 and Natural Environment and Rural Communities (NERC 2006) Acts, section B to C was designated as a public restricted byway (RB) and public vehicular rights have been removed. Although, section B to C is not part of the DMMO application, it is integral to the alleged claim and historical research has been conducted for the whole route A to C.

3.33. Due to the changes made by NERC 2006 it is necessary to place two reports before the Committee for decision on both orders to be made at the same time.

- Report 1: Section A to B, the Application made by members of the public for a byway open to all traffic, and
- Report 2: Section B to C, which is compiled in accordance with the Authority's duty to keep the definitive map and statement under continuous review and by order make modification to the map and statement as it appears to them to be requisite in consequence of the occurrence of any specified event under section 53(3) of the WCA 1981.

4. Witness Statement

4.1. The Applicants' report contains five witness statements signed and dated in 2001 as they originally formed part of the documentation that was gathered in support of actions against the Council.

4.2. These witness statements were confirmed and re-signed in 2002 by each person and are submitted as evidence in support of the claim for the change of status for section A to B. (Appendixes 35 to 39).

4.3. From these five witness statements one, by Mr J. Greggains, refers to section B to C of the route in question.

4.4. **Mr James Greggains, Ty-Dan-Cledan, Llandogo,** writes that Graham Brown, the brother of Roger Brown who owns the shop in Llandogo, recalled there never being any restrictions on the public use of the route in question. Graham Brown also said to James during a telephone conversation on the 10 December 2001 that coal had been delivered by trucks to a coal dump at the end of the route in question. Also that Bill Morgan, a local farmer, would deliver coal to Alan Brown and Will Reynolds who lived in separate houses north of the Cleddon ravine (Shoots) from the coal dump at the end of the route in question, using a horse drawn sledge along the track that leads northwards around the ravine (Shoots). (Appendix 39)

4.5. This witness statement, although hearsay, does report the use of the route B to C with the use of a horse-drawn sledge. This description of use is not regarded as applying to the public at large. It is instead the local residents making their own plans to facilitate the transport of coal to their homes along the route in question in a private capacity.

5. Evidence Forms

5.1. Six Definitive Map Modification Order evidence forms have been submitted to the Authority as part of the DMMO application for section A to B. Of these six forms, two have some bearing on section B to C of the route in question. Both people, however, report utilising the route on foot only.

5.2. One witness believes the status of the whole route A to C to be that of a footpath.

5.2.1. **Mrs M Monks of Bodmin, Llandogo** (Appendix 47.1 to 47.3) believes that the public status of the route is that of a footpath and states on her evidence form dated 15 April 2004 that her use of the route in question has been from 'the stream' to 'the woods' for 17 years (1987 to 2004). The purpose of use was for exercising dogs. Mrs Monks reports having never:

- encountered any gates or stiles,
- been stopped or turned back,
- been told by anyone that it was not a public route,
- seen any notices that said such words as 'Private' or 'No Road',
- been asked permission to use the route,
- been told that the way was public.

No additional information was supplied.

Comment

5.2.1.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Mrs Monks has had use of the route in question on foot for 28 years.

5.2.1.2. This form does not support public vehicular rights over the route in question.

5.2.1.3. It is also know now that Mrs Monks no longer lives at this address.

5.3. The second believes the status to be a bridleway.

5.3.1. **Ms D. Mariana Robinson of Cascades, Llandogo** (Appendix 49.1 to 49.2) believes the public status of the route is that of a bridleway and states on her evidence form dated 20 April 2004 that use of the route in question has been from the 'stream near Bargans Cottage' to the 'woods and zig zag path' for 20 years (1984 to 2004). The purpose of use was for visiting friends or exercise on foot only. Ms Robinson reports having never:

- encountered any gates or stiles,

- been stopped or turned back,
- been told by anyone that it was not a public route,
- seen any notices that said such words as 'Private' or 'No Road',
- been asked permission to use the route,
- been told that the way was public.

Also she reports no knowledge of a landowner and further states that the route in question should remain as a public footpath as it was never suitable for vehicular use. Additionally, Ms Mariana Robinson, having had the opportunity to read the file of evidence compiled by Mrs S. Harris for the DMMO application for section A to B has submitted in writing her understandings of that evidence and these are addressed in detail in Report 1 and are included in Appendixes 50.1 to 50.7.

Comment

5.3.1.1. It has now been eleven years since the submission of this 2004 evidence form. Therefore it is believed that Ms Robinson has had use of the route in question unhindered on foot for 31 years.

5.3.1.2. This form does not support public vehicular rights over the route in question.

5.3.1.3. It is also noted from the evidence that Ms Robinson has used the whole route as a footpath only and does not report that she herself used the entire route on horseback.

Concluding comments

5.4. It is acknowledged that public status already exists and that these two evidence forms do support public footpath rights over the route in question. However, within one of these user evidence forms, bridleway status is reported, although only footpath use is evident for the whole route being investigated. To determine any other alleged type of public use additional historical and documental evidence must be studied.

6. Pre-Order Consultations

6.1. There have been two periods for pre-order consultation; one was conducted in 2004 and the second ran from 28th January 2015 to 7th May 2015.

6.2. In response to the 2004 consultation there were 15 replies out of 38. The lack of replies from the user groups suggest that the route in question was not regarded by the public at large to be a public thoroughfare for horse or vehicle users.

6.3. There are two interesting observations gleaned from the 2004 consultation that support different sections of the claim:-

6.3.1. For RUPPs (CRBs 20 – 23)

That the owner of Cleddon Shoots was aware of motorbike users gaining access to the Shoots and was desiring to prevent that type of public access.

6.3.2. For RB24 (Section B to C)

The report of "human and donkey" using RB24 is a single piece of evidence that suggests that this route may have existing bridleway rights.

6.4. The first of these two observations implies some public use although this use could have been anti-social behaviour as no users have come forward to verify this single report of motorbike use. Without the user groups coming forward and confirming their use of the route in question it is not possible to confirm whether or not the use of the route was legitimate. Therefore, this single mention of motorbike use along with all the other historical evidence does not support the registration of the route in question as a byway open to all traffic.

6.5. The second observation is a report of people using the route RB24 in a private capacity to collect coal.

6.6. These observations are not significant in proving either public vehicular, non-motorised vehicular or equestrian use of the route in question.

6.7. The 2015 consultation resulted in 13 replies in which the main concerns given were related to future maintenance liabilities.

Pre-Order Consultation results dated 2015			
1	Matthew Lewis	Head of Countryside	No comments at this time
2	Ruth Rourke	Countryside Access Officer	Continuous input
3	Kate Stinchcombe	Biodiversity Officer	No comments at this time
4	Claire Williams	Legal Services	No comments at this time
5	Wendy Mustow	Highways	No comments at this time
6	Councillor D Blakebrough	Councillor for Trellech	No reply
7	Ms A. Davidson	Community Council	No reply
8	Mr A Blake	A.O.N.B	No reply
9	S. Harris & A Dance	The Applicants	Reply - Ms S. Harris of Middle Farm – consultation returned "No longer at this address". Reply – Mr A Dance of Lysander House – telephoned his objection to Footpath
10	Llecan Beck	Ms Z Lindgren	Reply – objection to footpath, as maintenance to vehicle usage standards for the section leading to Lysander House should occur
11	Alpine Lodge	Mr A Gorell	Reply – objection to Footpath registration and that the route should be maintained to vehicle usage standards
12	RoseHill	Mr Ashley Thomas	Reply – objection to BOAT registration
13	Bodmin	Mrs S J Simpson	Replied by telephone and letter. – The Authority should fully maintain the route to vehicle standards as the wear and tear to the way causes safety issues to her property
14	Cascades	Ms M Robinson	Replied by telephone, emails and letters – the Authority should fully maintain the route to vehicle standards as the wear and tear to the way causes safety issues to her property
15	Woodside	Mrs P Wilson	Reply – objection to any upgrade of CRF 24. More concerned with CRF 24 than with CRBs 20 to 23
16	Lower Freedom Cottage	Mrs B Rosewell	Replied by email – objection to any upgrade of CRF 24. More concerned with CRF 24 than with CRBs 20 to 23
17	Priory Cottage		No Reply
18	Marigold Cottage		No Reply
19	Foxgloves		No Reply
20	Cleddon Stile		No Reply

21	Glen Cote		No Reply
22	Great Hill		No Reply
23	Misty cottage		No Reply
24	Pathways		No Reply
25	Bargans Cottage		No Reply
26	Mrs A. Underwood	The British Horse Society	Reply - the BHS would object to proposals to record routes as footpaths.
27	Mr D. O. Morgan	Open Spaces Services	Reply – the OSS would object to proposal to record routes as footpaths
28	Mr. R. Bacon	Natural Resources Wales	Reply – CRB 20 – 23 No comment. CRF24 covered by SSSI and SAC. If current usage is increase and if maintenance is proposed then NRW needs to be re-consulted
29	Mr J. Askew	Tread Lightly Area	No reply
30	Mr. A. Thomas	Ramblers	No reply
31	Mr D Wyatt	GLASS (Green Lane Association)	No reply
32		Byways and Bridleways Trust	No reply
33	Mr M. Slater	CTC	No reply
34	Mr R. Gould	British Telecom	Reply - no objection: your proposed scheme should not affect BT apparatus
35		National Grid	No reply
36	Ms R. Humphreys	Welsh Water	No reply
37		Western Power	No reply

6.8. The Applicant Mr A. Dance, of Lysander House, has telephoned to say that he has no further evidence at this time. But he has given verbal notice that he will submit his objection at “order making” stage if the order is made to record the route as a public footpath.

6.9. Ms Z. Lindgren of Llecan Beck has telephoned and emailed questioning who would maintain the route if it were not adopted. This DMMO, however, does not seek to adopt the right of way. It only determines whether there may or may not be public vehicular rights over the route in question.

6.10. Mr A. Gorell of Alpine Lodge has written in stating that he would object if the order is made to record the route as a public footpath. He states that he has “enjoyed uninterrupted vehicular access over the road for more than twenty years, as have the public who have made a nuisance of themselves through noise, being in the way and/or parking their vehicles across my drive”. He is aggrieved by planning permissions for three new developments that have not taken into account the nature of the route in question.

6.11. Mr Ashley Thomas of Rosehill will object if the DMMO is made to register the route in question as a byway open to all traffic. Mr Thomas has given a detailed history of the area as his father moved there in 1949 as the Parish Rector. He recalls that there was not much traffic in the past, in fact hardly any as most people living there did not have cars. Then in the late 60s when car usage increased the residents joined together, commissioned a local contractor, and tarmacked from point A to the junction of CRB 22 with FP 18.

6.12. Mr Thomas remembers the coal lorry deliveries mentioned in the Definitive Statement. The route in question was grass with hard core tracks which were the width of an original Mini. Furthermore, the lorry was about the length of a Ford Mondeo estate car or less. In other words, it was smaller in comparison to today's delivery vans which collide with walls on the upper side and teeter over the drop, thereby weakening the edges on the lower side.

6.13. Mr Thomas states that RB24 should never be registered as a byway open to all traffic. It was passable only on foot, horseback or mule/donkey as the crossing at the 'Falls' in the ravine precluded motorised vehicles. He reports that properties such as Woodside and Priory Cottage had no delivery access as convenient as point B. The alternative was to go a great distance down the steep hillside to the village, whereas point B was almost on the same level making it much easier to transport coal from point B by arrangement with the coal merchant and the landowner at that time. "We all had to make special arrangements like that for difficult deliveries".

6.14. This is the second reference to the use of a mule/donkey for section B to C. However, as it is pre-arranged between the coal merchant and landowner the type of use is by private means and for a private need.

6.15. Mrs S. J. Simpson of Bodmin will object if the DMMO is made to register the route in question as a byway open to all traffic. Due to her property being below the supporting banks of the route in question there is a very serious safety risk from the disturbance of heavy boulders that would cause damage if dislodged. For this safety reason it is her wish that the route be adopted between sections A to B and publicly maintained.

6.16. Ms D. M. Robinson of Cascades will object if the DMMO is made to register the route in question as a byway open to all traffic. Her reasons are entirely due to maintenance and safety concerns and not with regard to evidence of any public status.

6.17. Definitive Map Modification Orders do not consider need, nuisance or suitability of the route in question and therefore this request cannot be considered under this legislative procedure.

6.18. Mrs P. Wilson of Woodside will object if the DMMO is made to register the whole route as a byway open to all traffic. She reports having lived in the village from November 1986 and is concerned that the Applicants are seeking to change the status of a private road (section A to B). However, she has always known section B to C as a footpath.

6.19. Mrs B. Rosewell who owns Cleddon Shoots will object if the DMMO is made to register the route in question as a byway open to all traffic.

6.20. Mrs A. Underwood, representative of the British Horse Society, objects to the "downgrading" of these restricted byways to footpaths referring to "known history of the area that is readily available and was carried out by Gwent and Glamorgan Archaeological Trust". Her evidence covers the general history of the area and the "use of a network of roads and pack animal trails". This evidence is not specifically related to the route in question and provides no assistance to qualifying the public status of the actual route in question. This is the third mention of equestrian use in the area. However, this report is generalised and not specific to a single route. In contrast, the above mentioned two reports of mule/donkey for the assisted transport of coal do refer to the particular use of RB 24.

6.21. The generalised history when taken together with all the other historical documentation is interesting. However, as public equestrian use cannot be specifically attributed to the route in question, it does not assist the recording of either public restricted byway or bridleway rights.

6.22. Mr D. O. Morgan representative of the Open Spaces Society has responded to the effect that an order should be made for a byway open to all traffic as the Order Making Authority is obliged to process a DMMO and that it would be fair to all the types of users involved.

6.23. Mr R. Bacon of Natural Resources Wales (NRW) replies stating that if current usage is increased over CRF 24 and if maintenance is proposed then NRW needs to be re-consulted as this section of the route passes through Cleddon Shoots Woodland, a Site of Special Scientific Interest (SSSI), which is a component of the larger Wye Valley Woodlands Special Area of Conservation (SAC). Also in

accordance with all the given legislation Monmouthshire County Council will be required to undertake a Habitat Regulations Assessment.

6.24. Overall the consultation responses do not, of themselves or in conjunction with other historical evidence, provide substantial evidence to record the route in question as having public vehicular, public non-motorised vehicular or public bridleway rights. For these reasons section B to C should therefore be registered as a public footpath only.

7. Land Registry Documents *(official copies requested in 2015)*

7.1. Title Deeds from Land Registry have been requested for the properties that utilise or abut the route in question.

7.2. A study of these documents has shown that out of the majority of the landownership documents no public vehicular rights have been described for the route in question.

No.	Date of Official copy	Title number	Title name	Dates of rights granted by a Historical Deed or Conveyance	Notes
					For Section A to B of the route in question, please refer to Report 1: Chapter 10
Section B to C of the Route in Question					
17	26/03/2015	CYM11657	Land southwest of Woodside Cottage registered with Lower Freedom Cottage	4 July 1959 & Deed 17 November 1987	1959 Conveyance. Not available to investigate. Rights for water are mentioned and public or private rights of way are not. Rights related to a private drive for access to Priory Cottage are mentioned while public rights are not mentioned.
18	26/03/2015	CYM134721	Priory Cottage	11 May 1921 Deed 17 November 1987	1921 Conveyance. Not available to investigate. Extracted quote relates to water rights and not public or private rights of way.
19	26/03/2015	CYM276959	Land southwest of The Cloisters	1 September 1979	Deed of partition dated 1 September 1979. Not available to investigate. No public or private rights of way are mentioned.
20	26/03/2015	WA518254	Woodside	26 May 1920 & Deed 15 March 1974	1920 Conveyance. Not available to investigate - extracted quote relates to water rights and not public or private rights of way. 1974 Deed. Allows for private motor vehicle rights only over and along the private roadway coloured green. The land coloured green referred to is hatched brown between the points marked on the Deed plan.

7.3. Twenty land registry documents have been investigated in relation to the route in question. Four properties relating to section B to C are detailed here, while sixteen properties associated with section A to B are discussed in detail in Report 1 Chapter 10.

7.4. No further support for public vehicular or equestrian rights are ascertained from the four land registry documents that refer to section B to C of the route in question. The historical conveyances referred to in these documents are not available to investigate. The modern records do not make any reference to 'public' or 'private' rights.

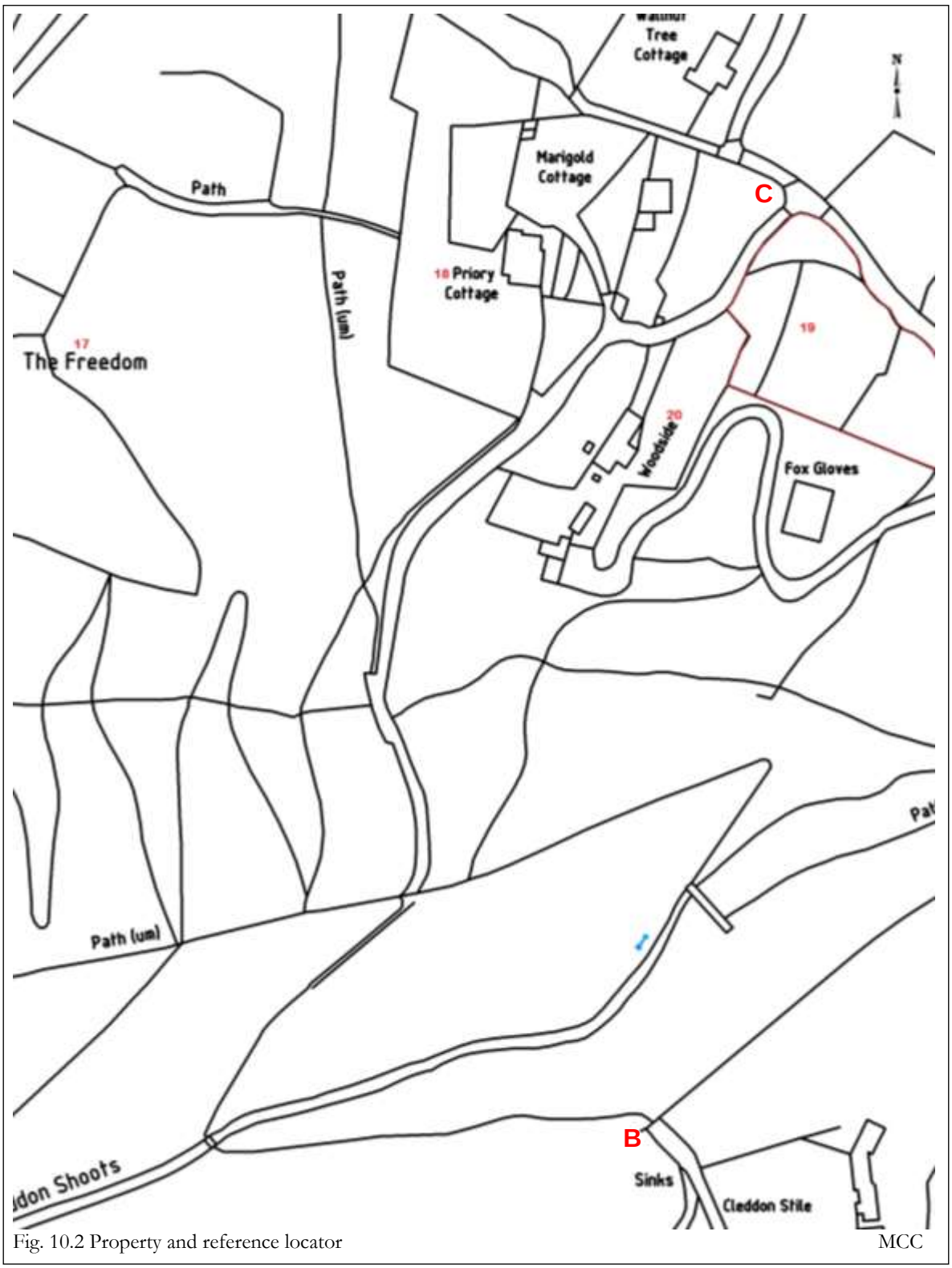


Fig. 10.2 Property and reference locator MCC

8. Historical Map Evidence

8.1. Legislation requires that all historical evidence is investigated which on the balance of probabilities may support the allegation that the route in question should be recorded as a byway open to all traffic.

8.2. **John Cary's 'Improved map' of England and Wales, series 1820 – 1832**. From an original held in The Brotherton Library, Leeds University does not show the route in question.

Fig. 8.1: Appendix 10: Applicant's Evidence 2:
John Cary's 'Improved Map' of England and Wales, series 1820 - 1832.
From an original held in The Brotherton Library, Leeds University

8.3. **The Enclosure Award, dated 9th March 1821 (Fig 8.2)** does not cover the area in which the route in question is located. However, as the "Manor of Llandogo" is mentioned, further investigation into the Manorial documents, held at the National Library Wales, has been carried out. Unlike the example below of the nearby Enclosure Award, the Manorial documents do not distinguish any routes and paths from the surrounding land. This Report will later detail the significance of routes that are either coloured or not, depending on the map studied, which may or may not imply public status. Therefore, the Enclosure Award and the Manorial documents add no further support to the claim for any type of public right.

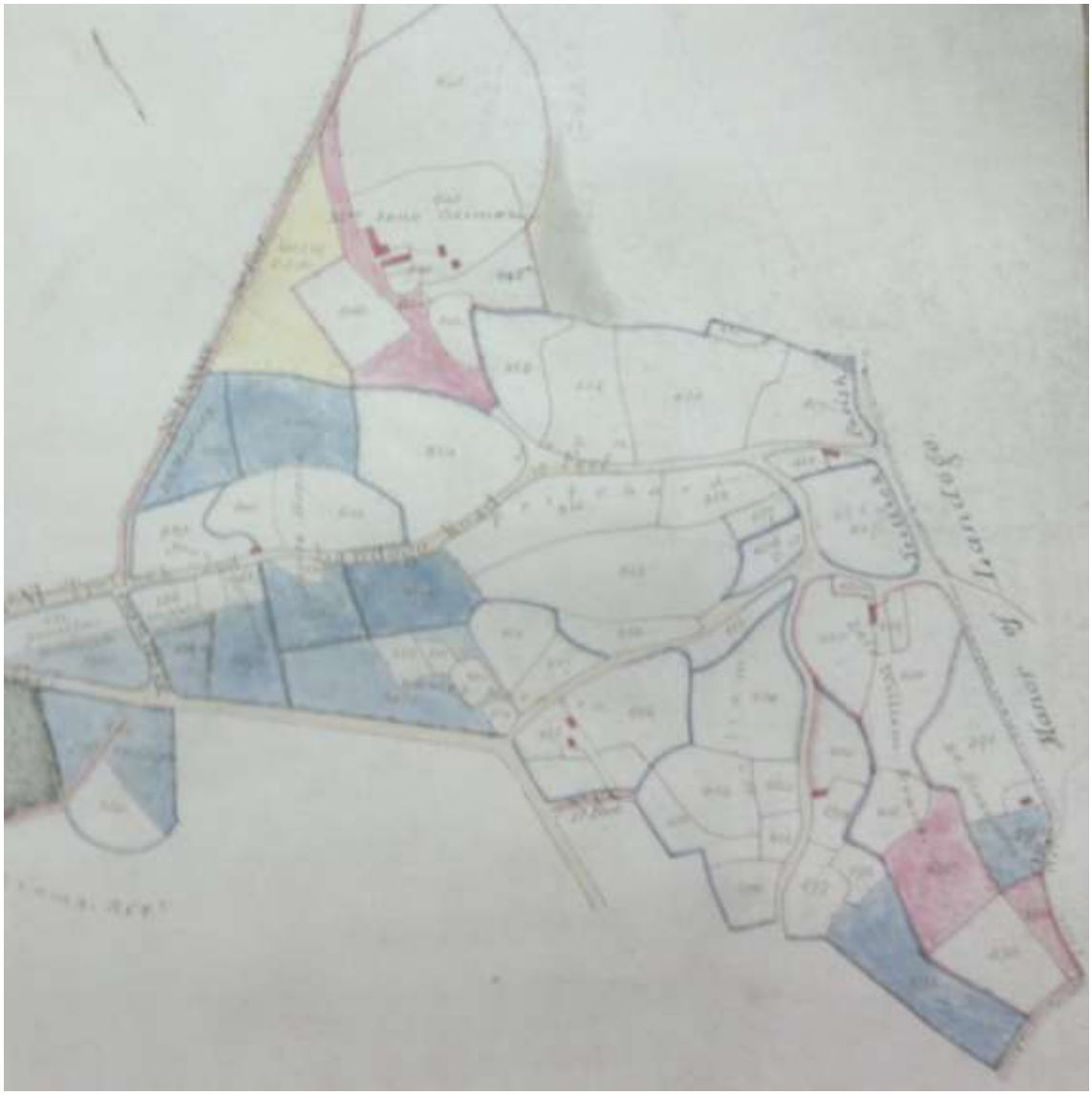
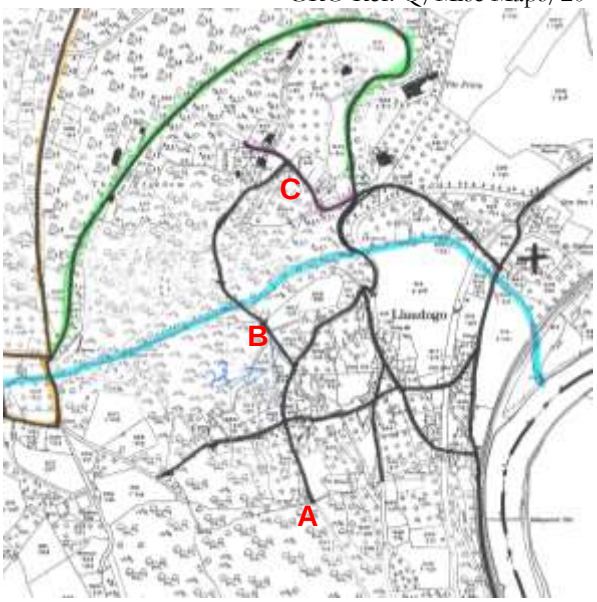


Fig. 8.2:
1821 Enclosure Award not to scale: Gwent Record Office Ref: Q/Inc. Aw. 2 page J

8.4. **Price Map, dated 1823, commissioned by the Duke of Beaufort,** and inscribed by Henry and Charles G. Price. The title of this map has been destroyed however it states, in part, that it was "Drawn from … Actual…and founded on a Trigonometrical basis by the surveyors of Hereford, Henry and Charles G. Price".

1823 Price's Map Llandogo: not to scale: GRO Ref: Q/Misc Maps/20

1823 Price's Map Llandogo: not to scale



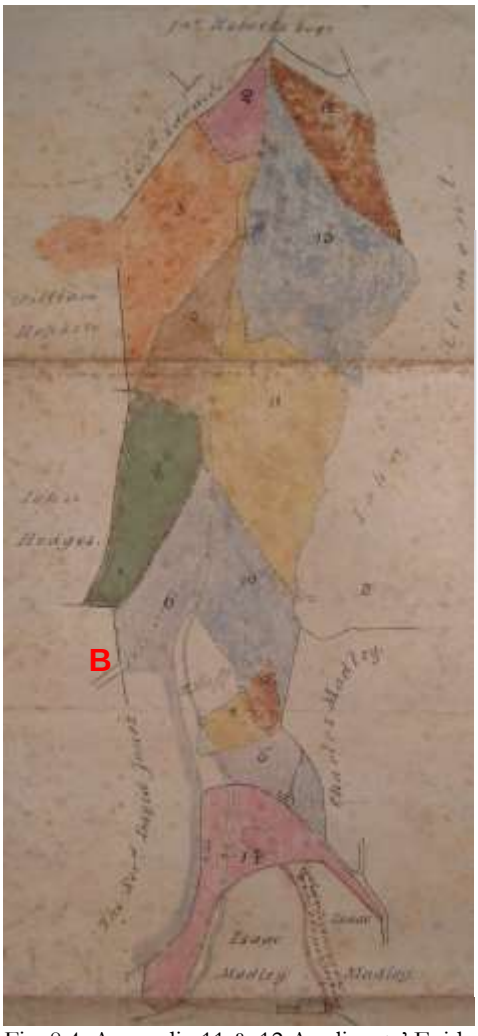
1901 Ordnance Survey Map: not to scale

Fig. 8.3: Comparison between Prices's and OS Maps

8.5. This 1823 map shows a number of routes that cross Cleddon Shoots (stream) marked by parallel bold black lines. After further study and comparison with other mapping of the same era along with the 1901 Ordnance Survey map it is not possible to extrapolate comparable and accurate road alignments. Although, some alignments of routes are misleading it is possible that RB 24 and CRBs 20 to 22 are represented while CRB 23 is not.

8.6. Furthermore, when comparing all the historical maps from 1823 to 1920, although a road is more commonly shown at this scale on this map, the earlier 1800s maps only recorded an alignment of a route with no distinction between public or private status and no variation of markings to describe a specific type of route such as footpath, bridleway or road.

8.7. **The 1828 Plan to the Deed Papers for Cleddon Shoots** is the earliest and the first historical document to partially represent CRB23 and RB24 while the catalogue entry only lists landownership and costs. This title deed created for landownership reasons has other linear markings to assist with the locating of the property but these markings do not prove the public or private status of the routes depicted. It is possible that the broken line shown on the plan is a footpath that runs from the boundary of "Cleddon Shoots" to the stream. Additionally, this marking does not continue through the property. This suggests that the route was not regarded as a major thoroughfare for use by the public at large in motorised vehicles, on non-motorised vehicles, or on horseback.



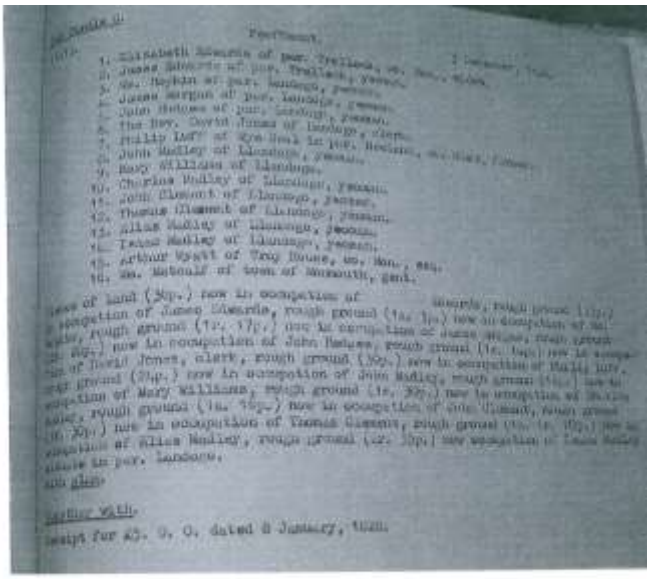
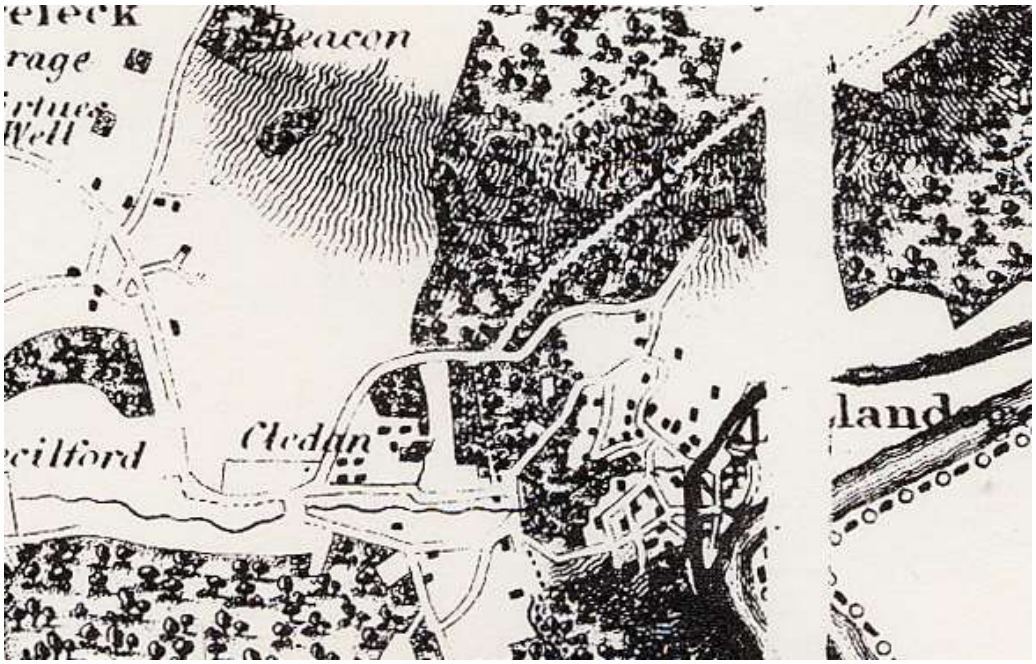
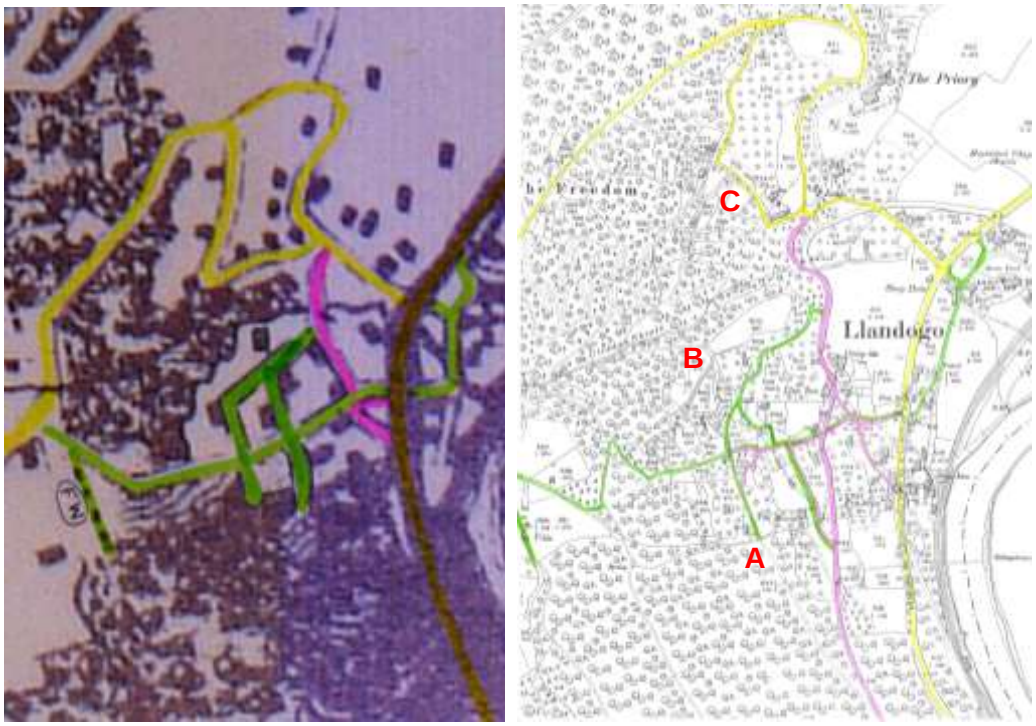


Fig. 8.4: Appendix 11 & 12 Applicants' Evidence 3
1828 Title Deeds Map and Catalogue entry for Cleddon Shoots Llandogo: not to scale:
GRO Ref: D39811-13

8.8. **The Greenwood Map**, published in 1830, when compared to other mapping reveals a mere representation of routes and not the detail that is shown from the more formal survey conducted by Ordnance Survey.



1830 Greenwood Map: not to scale: MCC Office



1830 Greenwood Map: not to scale 1902 Ordnance Survey Map: not to scale

Fig. 8.5: Comparison between Greenwood and OS Maps

8.9. However, it is noted when the comparison is made between the Greenwood and OS mapping that the poorer quality cartography of the Greenwood map, contrary to the David and Charles map, does in fact represent part of the route in question. A part of the route in question has been highlighted green on both maps. Like the Price map, the section of the route in question numbered CRB 23 (and RB 24) has not been included.

8.10. The 1830 maps do not usually extend to the depiction of footpaths. Although, in the comparison between the Greenwood and OS mapping, Fig. 8.5, it is noted that the F.W. symbol on the 1902 OS Map is on the same alignment as that shown on the Greenwood map. For the purposes of identification “FW” has been marked and circled in pencil on the Greenwood map. This is the only map of this era that shows a difference in the recording of footways and roads which suggests that the route in question is higher in category to that of a footpath.

8.11. However, the route in question, section B to C, depicted on the 1823 Price map is not shown on the Greenwood and other 1830s OS maps that are from an actual survey conducted by the military, or based on that same survey. Therefore, the few historical maps examined so far recording the alignment of the route in question are not of themselves a record for any public or private rights. Other historical evidence needs to be investigated.

8.12. **The Cassini Map (162)**, has been created using the Old Series Ordnance Survey sheet 35 which was published on the 1st May 1830 and, like the David & Charles map discussed later, does not show the route in question.

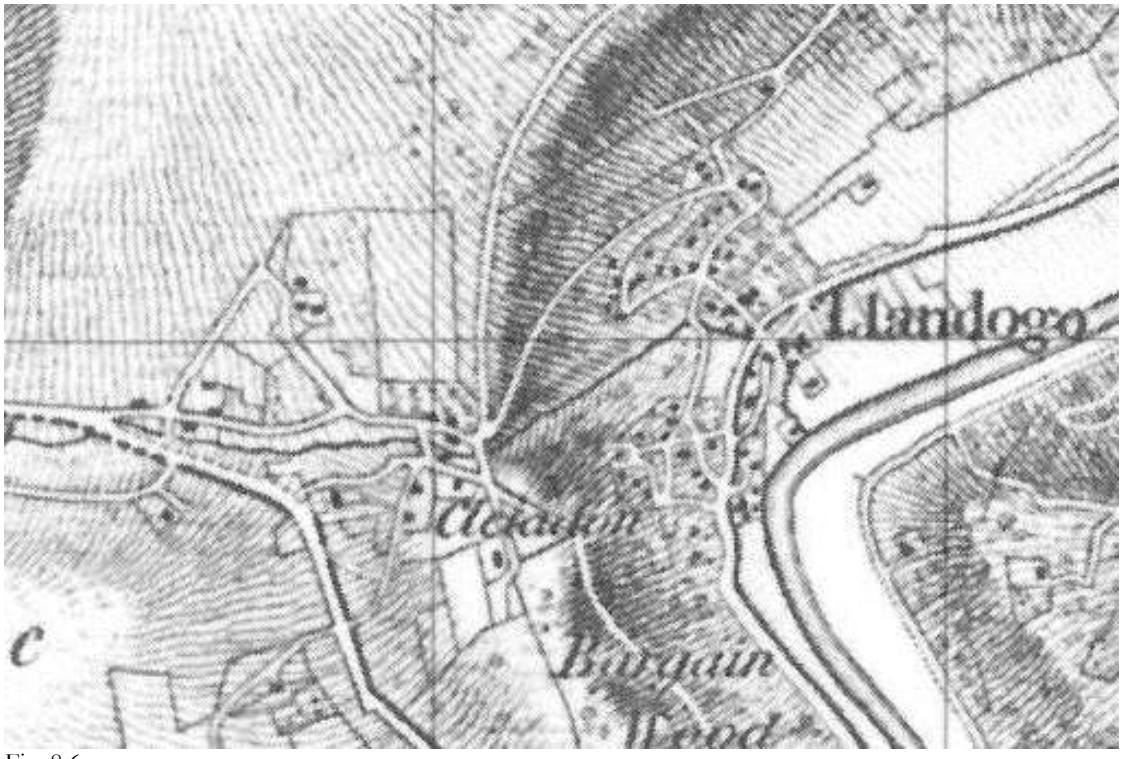
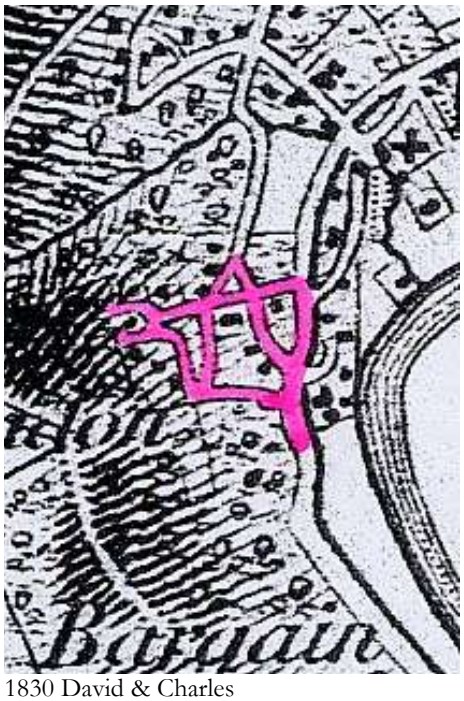


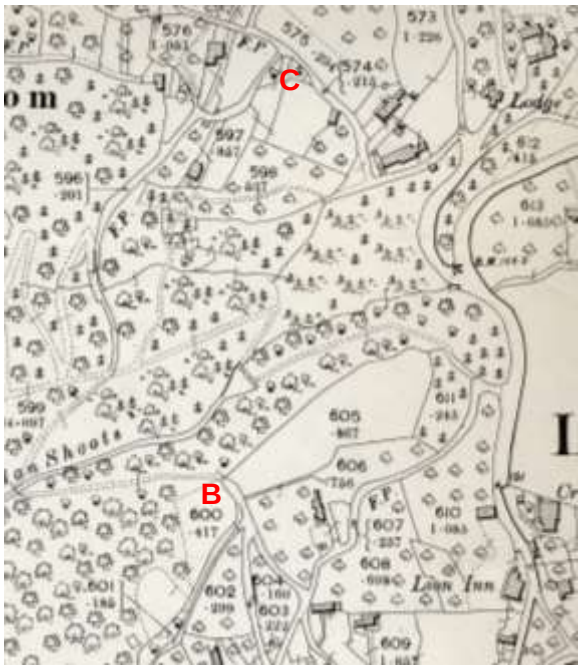
Fig. 8.6:
1830 Cassini Map Llandogo: not to scale: MCC Office

8.13. **The David and Charles Map, Sheet 68 published 1 May 1830**, is a reproduction of numerous documents covering various dates and based on surveys originally executed by the Ordnance Survey between 1811 and 1816 but extensively revised in the late 1820s. The Cassini and David & Charles maps of the same period do not show the route in question. The Ordnance Survey commenced 1811 suggests that the route was not constructed pre-1835.

1830 David and Charles Map: Sheet 68: not to scale: MCC Office



1830 David & Charles



1902 Ordnance Survey

Fig. 8.7: Comparison between 1830 David & Charles and OS Maps

8.14. Shown above is a comparison of the 1830 David and Charles with the Ordnance Survey mapping of the 1920s. The more detailed mapping of the 1920s shows

limited similarities of the routes that are, for the ease of comparison, shaded in pink on the David & Charles map. This comparison clearly shows that the route in question (B to C) was not recorded in the 1830s.

8.15. **The 1830 Ordnance Survey map** is the first survey taken between 1791 and 1874 and published with many revisions and new editions between 1805 and 1874. These surveys are the bases for the Cassini and the David & Charles facsimile maps already discussed. The route in question is not shown on all three of these maps.

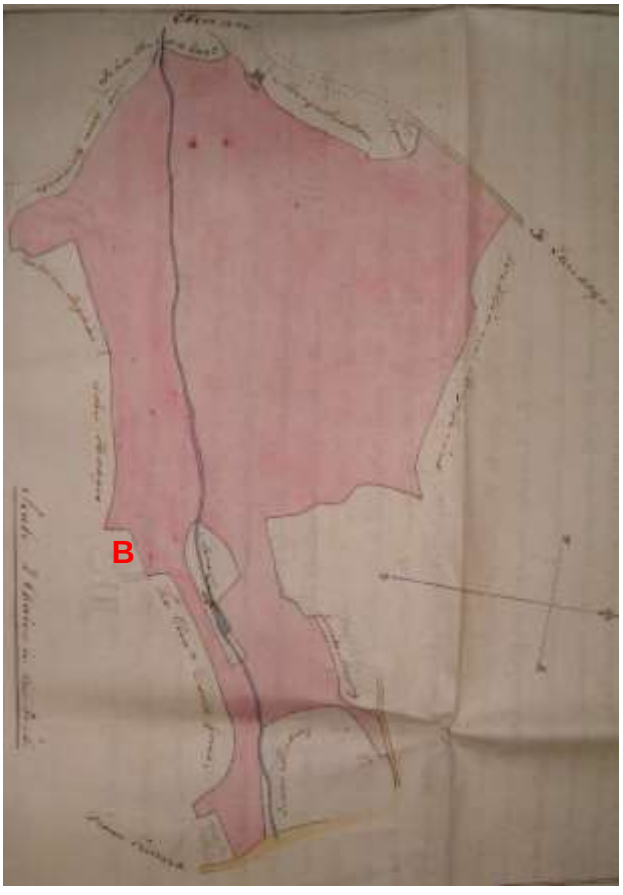
Fig. 8.8: Appendix 13 Applicants Evidence 4
1830 1st Edition Ordnance Survey Map: not to scale GRO

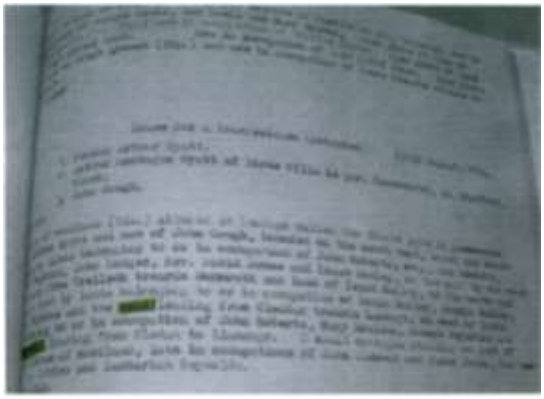
8.16. The 1830 OS map is known to be better drawn and more accurate in the depiction of physical features surveyed. It is from these original Ordnance surveys that the Cassini, David & Charles and the Greenwood Map have been copied. This then implies that the Greenwood map has been poorly copied as both the 1830 Cassini and David & Charles maps do not show the route in question.

8.17. It is difficult to be certain which mapping set is wrong as there are three map sets that show similar alignments of the majority of routes recorded, while there are two map sets that show very different alignments and record additional routes. The possible difficulty here is that the scale of 1 inch to a statute mile does not give the required detail to depict each route accurately.

8.18. It is established that the 1830 OS map is the better record in the quality of its surveying. However, it is possible that due to the small scale of this mapping, it was difficult to depict every route. Therefore, as these earlier dated maps are inconsistent and only indicative to the alignment of the route in question it is necessary to look at other historical records to determine on the balance of probabilities what if any the public status might be.

8.19. **The 1834 Plan to the Deed Papers for Cleddon Shoots** indicates the route in question with two pencil markings at point B, while the remainder of the route to point C is not depicted. The transcript of the deed within the catalogue entry describes landownership extents. The Applicants have highlighted green the word "road leading from Cleddon towards Llandogo" as evidence for higher rights. This word "road" in the Deed Papers, however, does not relate to the route being investigated. This document was created for the purpose of landownership. Other markings on the plan are indicative only and not for the purposes of showing public or private ways. It is noted from this plan that the route in question is not shown to continue through Cleddon Shoots suggesting that it was not regarded as a major through route for use by the public at large in motorised vehicles, on non-motorised vehicles, or on horseback.





TRANSCRIPT OF DEED DATED AUGUST 1834

Lease for a year 27/28th August 1834 with Plan 'Piece of Woodland (12a) situate at Llandogo called the Shoots. Late in possession of Arthur Wyatt and now of John Gough, bounded on the S.W., S and S.E. by lands belonging to or in occupation of John Roberts esq, Ann Edwards, Mr Hopkins, John Hodges, Rev David Jones and Isaac Madley, on the east by the road leading from Trelleck towards Monmouth and land of Isaac Madley, on the north and N.W. by lands belonging to or in occupation of Isaac Madley, Joseph (James) Madley, William Hopkins and the road leading from Cleddon towards Llandogo, on west by lands belonging to John Roberts, Mary Moulton, Joseph Renolds and the road leading from Cleddon to Llandogo, 2 small cottages standing on part of the said piece of woodland, late in occupations of John Clement and James Jones, but now of Mr Davies and Zachariah Reynolds'.

Fig. 8.9: Appendixes 14 & 15 Applicants' Evidence 5
1834 Title Deeds Map & Catalogue entry - Cleddon Shoots Llandogo: not to scale:
GRO Ref: D398 11-16

8.20. **The Tithe Map for Llandogo, dated 1846**, shows the route in question to be coloured terracotta from point C and continuing in a south-westerly direction for some of its length. The linear markings on the Tithe Map that designate plot boundaries are in keeping with similar boundary markings shown on the 1881 Ordnance Survey (OS) Map discussed later in this Report.

8.21. When comparing highway records with tithe maps, the shading of the roads on the tithe maps are normally consistent with the shading of publicly maintained roads shown on the highway maps. Therefore, when a route in question is identified on the Tithe map as shaded terracotta, then it is reasonable to suggest that the route should be recorded as public route maintained at public expense.

Fig. 8.10 Appendix 17 Applicants' Evidence 7
1846 Tithe Map for Llandogo: not to scale: GRO Ref: D3731.1

8.22. However, the shading of this route here does not nessarily mean that it should be a byway open to all traffic; it is feasible to record the route as a public footpath. This is particularly shown by the mapping for this location where most of the routes are registered as footpaths on the Definitive Map and Statement.

8.23. Notably, when comparing the Tithe Map with the OS maps, the route in question on the Tithe map is shaded terracotta only up to the plots 91 and 109 near point B and the plots 102 and 104 not far south of point C. This indicates that the route in question was only an access way for various plots and not a main public thoroughfare. Additionally, the route in question was accessed via another route from its northern end, point C that is now recorded as a public footpath. This further establishes the fact that the route in question was not regarded as a thoroughfare for the public at large in motorised vehicles, on non-motorised vehicles or on horseback.

8.24. The route in question is clearly indicated by double lines on all historical maps prior to and after the production of the Tithe map. When a map like this shows a coloured and un-numbered strip of land, it can be taken, when considered together with other historical maps that the route in question was and therefore still remains in the public domain. However, the tithe map records do not determine the type of public rights and therefore it is possible to register routes either as public footpaths and bridleways on the Definitive Map and Statement or as roads on the List of Streets.

8.25. There is no indication of any route continuing through the Cleddon Shoots woods. This shows that the route in question was not consider a thoroughfare for any type of public use. The lack of markings on the Tithe Map north of point B suggests that there were no public rights along the northern section in the first half of the 19th Century.

8.26. **The 1881 Ordnance Survey Map (OS),** contrary to the Tithe Map, shows the route in question as not shaded. When comparing the 1881 OS Map with the highway records it is noted that only the main through roads are shaded. The OS Map is similar to the Tithe map as it shows the physical features such as barriers across the route in question at point B where the shading on the Tithe Map ends.

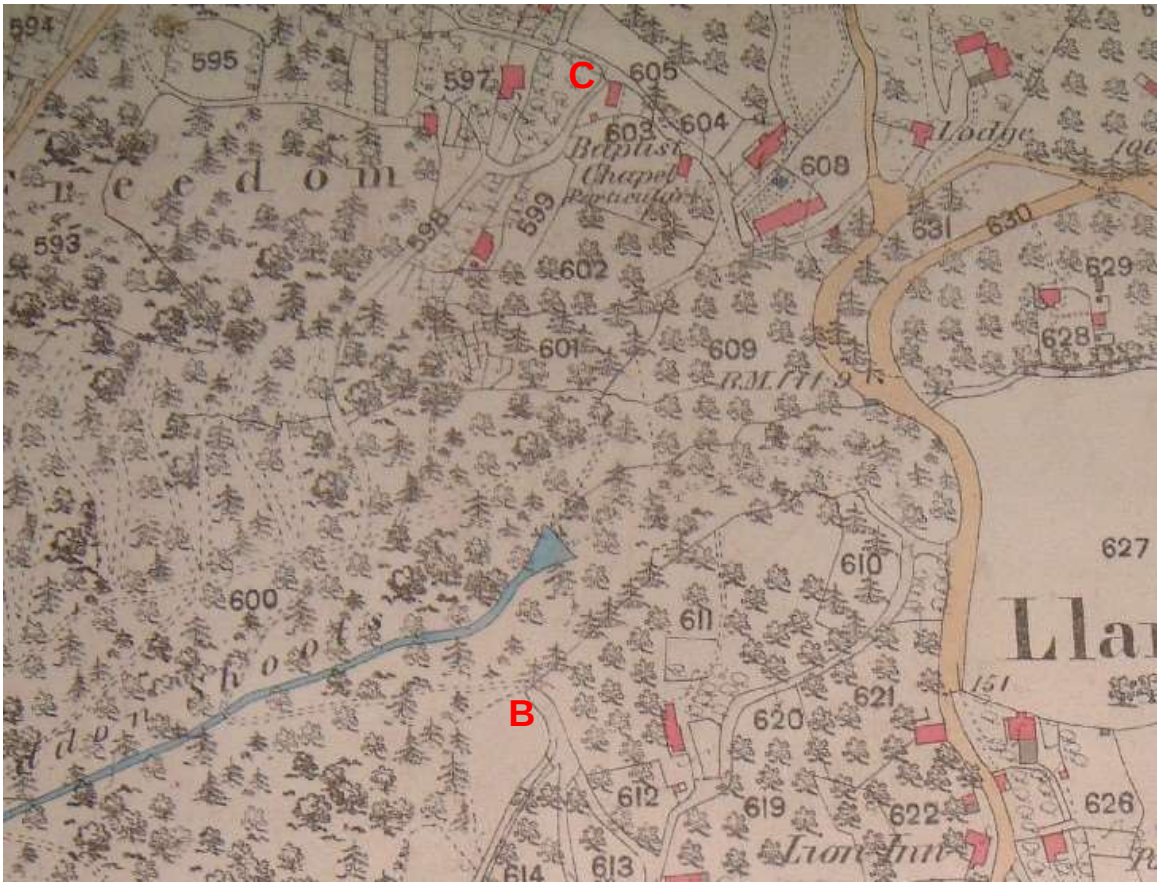


Fig. 8.11: 1881 Ordnance Survey Sheet 21:1 colour copy: not to scale GRO

8.27. The 1881 OS map shows a detailed depiction of physical features surveyed. The route in question is marked on all sides by broken lines denoting an unfenced minor road for much of its length. Where the route nears Plot 598 it is marked by solid unbroken lines denoting a minor fenced road. The markings of the OS maps are taken from the Conventional signs and writing used on the OS six inch maps.

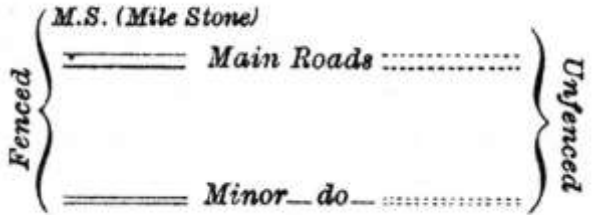


Fig. 8.12:
Conventional signs and writing used on the six inch maps of the Ordnance Survey

8.28. There are solid lines at point B across the route in question which, according to conventional sign usage, implies that a barrier crosses the route.

8.29. It is reasonable to suggest that this solid line represents a gate or barrier of some description. The fact that such physical features are recorded on both the OS Map and the Tithe map supports the conclusion that the route in question was not regarded as a through road for the public at large in motorised vehicles, on non-motorised vehicles or on horseback.

8.30. The route in question has not been awarded a status equal to other known public roads in the area as it is not shaded. The Ordnance Survey Map unlike the Tithe Map has Plot 598 on its northern section only. This plot is listed in the 1st Edition 25-inch Ordnance Survey Book of Reference for the Community of Trelleck (Appendix 20), held at the British Library. In the Book of Reference there is only a numerical entry for Plot 598 and no further description of the use of the land that would indicate the possible private or public nature of the route in question.

8.31. Another symbol on all Ordnance Survey maps is the mark that resembles a stretched “S” that is called a brace. This brace links land that has been dissected by streams, routes or other topographical features. The detail afforded this OS Map due to its larger scale shows no braces that link the route in question to any adjacent field or dwelling. These factors suggest that the route in question was considered for most of its length as a shared private access way and not within any individual ownership.

8.32. **The Ordnance Survey Maps dated 1886** (six inches to 1 Statute mile 1:10560) is also the scale of the Definitive Map and although it is a small scale it still gives more detail than that shown on the 1830s mapping. At this scale there are two unbroken lines across the route in question, one at point B and another more clearly shown on this map at point X. Unbroken lines across a track like this usually denote a barrier such as a wall or boundary fence possibly with a gate. A site visit revealed that at point X there is a wall which is not a barrier but instead two paths that are separated by a change in level.

8.33. The 1886 map and the earlier 1881 map show that the route in question was not considered a through route. This is demonstrated when observing that other junctions within the network of routes in the "Great Hill" area do not have solid lines representing barriers. The linear marking evidence on this map shows that the route in question had a barrier at point B and was open at point C. However, when this evidence is taken along with the evidence for section A to B it is noted that route as a whole was not regarded as a thoroughfare.

Fig. 8.13:
1886 Ordnance Survey Sheet 21: not to scale GRO

8.34. **The 1902 Ordnance Survey Map.** This mapping, at the larger scale of 1:2500, usually has the label “track” or “F.P.” alongside the linear marking indicating the alignment for un-metalled roads and footpaths. Due to the density of boundary markings four “F.P.” labels have been inserted. Although the conventional signs and writings (Fig.8.12) indicate the routes leading up the hill from the east to be fenced minor roads, most of the routes are labelled as footpaths suggesting that, regardless of the conventional signs, these routes were merely believed to be footpaths leading to other footpaths.

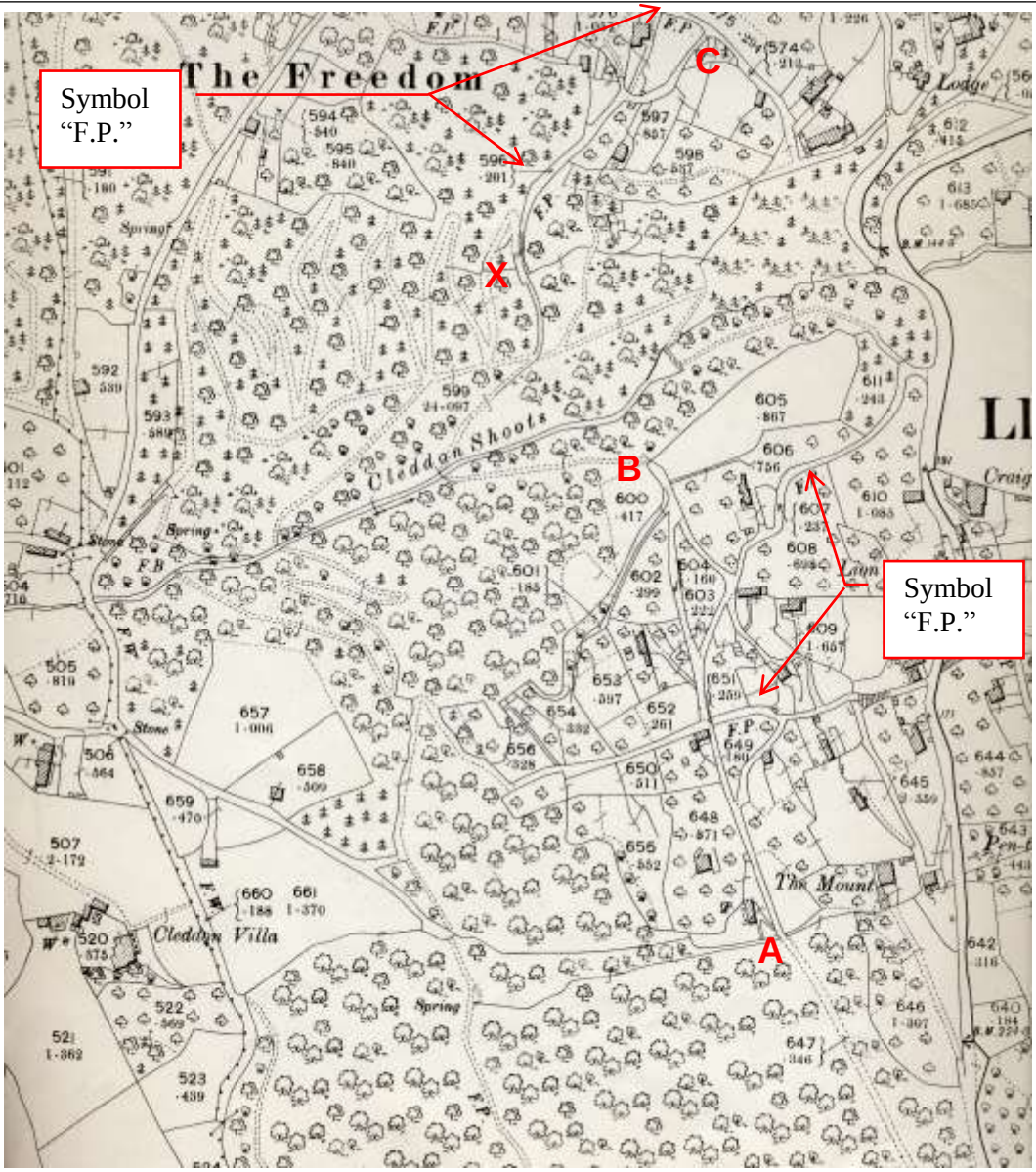


Fig. 8.14:
1902 Ordnance Survey Sheet 21:5 not to scale: MCC

8.35. When comparing the 1902 OS map with previous maps discussed, it shows that at point B the solid line across the route in question remains while the solid lines at point X clearly depict a change in level and not a barrier. The 1902 OS map is the base map for the 1910 Finance Act map which is discussed in detail later.

8.36. **The 1921 Ordnance Survey Map.** This Map, again, has similar linear markings to the previous OS maps discussed. Although some elements are different there remains a solid line across the route in question at point B while at point X the change of level and route alignment is clearly defined and not obstructed.

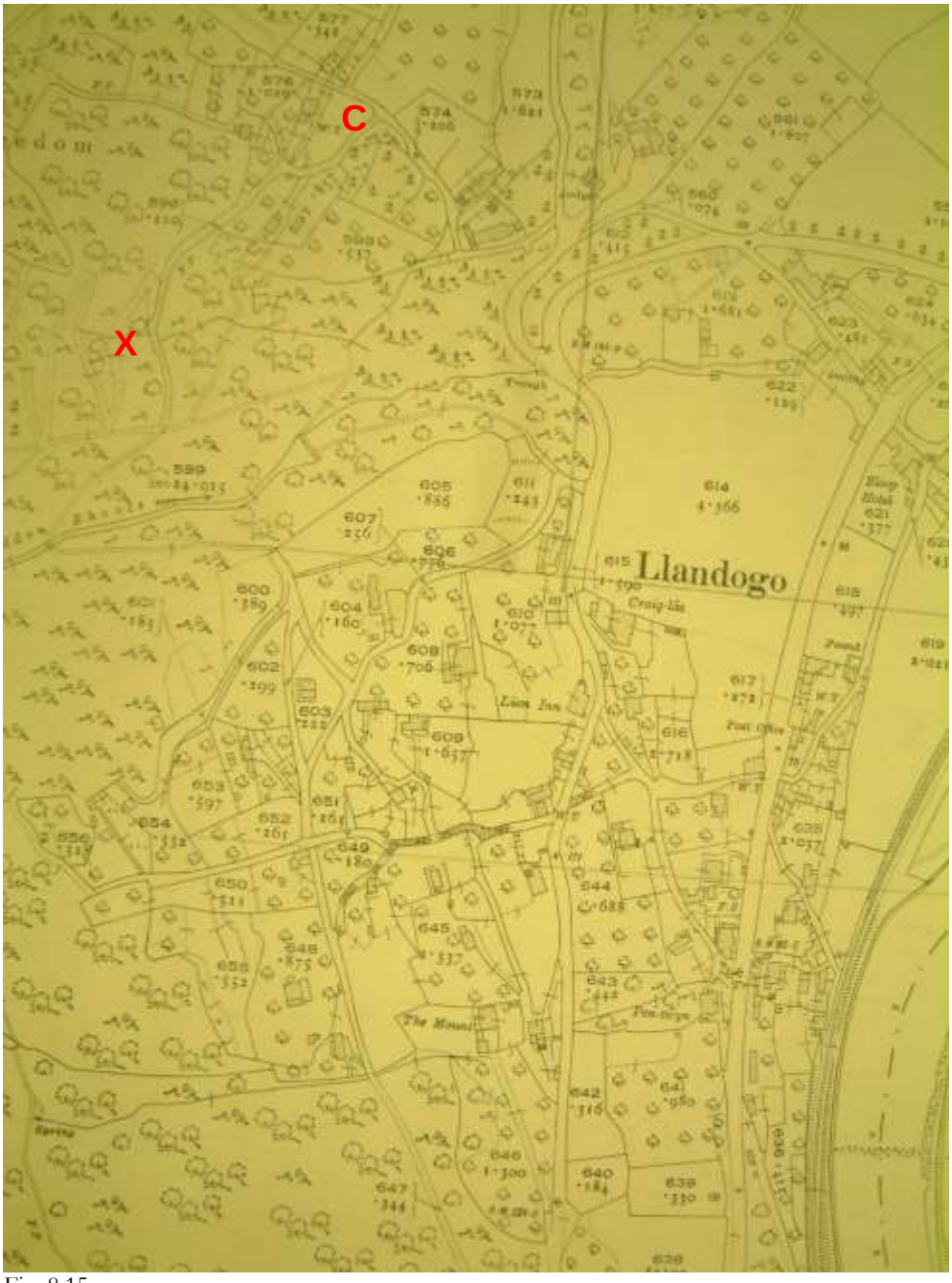


Fig. 8.15:
1921 Ordnance Survey Sheet 21:5: not to scale GRO

8.37. It is not known what type of barrier was located at point B. However, it is possible that these physical features that are intended to serve as a barrier may or may not inhibit the use of the way either by horse-drawn cart, horse, or on foot.

8.38. **The Ordnance Survey Maps** all show the route in question as marked by a solid line for most of its length. This is normally the marking adopted to depict main roads (see Fig. 8.12) but as shown here it is also the marking for footpaths.

8.39. Ordnance surveyors were given the duty to depict all physical features that were encountered. It is possible, therefore, that some of the routes depicted on the OS maps may prove to be private ways.

8.40. The conventional signs and symbols have been kept as standard over the years and it is understood that a dashed or double pecked line represents a route or way that is unfenced.

8.41. In contrast to this, a solid unbroken line represents a boundary such as a fence or wall. Therefore, if such a solid line crosses a route or way then this is interpreted as a gate or another type of barrier. Although barriers such as gates do not prohibit usage of a route by any type or means, they do constitute some form of limitation and prevention. As the mapping inspected so far indicates barriers at more than one location, this suggests that the route in question was not used by the public at large.

8.42. **The 1910 Finance Act Register Books and Maps** provided for the levy and collection of a duty on the incremental value of all land in the United Kingdom. In this way, 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.

8.43. 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.

8.44. The 1910 Finance Act Map for this area, lodged in the Kew Record Office, shows the route in question to be coloured a light green and the boundary marked in a darker green. The section, B to C, of the route in question is shown to cross Plot 13.

Fig. 8.16: 1910 Finance Act Map Sheet 21.5 Kew Record Office (KRO)

8.45. The Finance Act map is first and foremost a record of 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.

8.46. The reason for this is that the Finance Act Registers and Field Books record a monetary deduction in the calculation of tax for each property for "public rights of way or user". While, for the majority of cases, routes normally used by vehicular traffic were left uncoloured or "white out" as they were considered not to have any agricultural value.

8.47. In this location there is evidence for exceptions to this usual interpretation of the Finance Act Map. In the area north of point C the routes left uncoloured are registered as public footpaths on the Definitive Map and Statement and even with this evidence these routes remain recorded as public footpaths. In other words, the type of marking on the 1910 Finance Act Map does not always, as a single piece of evidence, award the route in question as having public vehicular rights.

8.48. The Register Book that accompanies the Finance Act Map for this area records no monetary value that would reduce the taxable value of the land. The strip of land that is in question is not allocated a plot number for the very reason that it was never included within any particular private land ownership.

8.49. The Finance Act Map Register book was investigated for any further details pertaining to Plots 13, 29 & 39. The Register does not record any deduction of tax for "public rights of way or user" for the plots listed.

8.50. The working copy of the Finance Act Map is shaded a different colour and the boundary for Plot 13 is not as clearly defined as the official copy previously studied. The route in question is coloured while at the point B southwards and point C northwards the routes are shown uncoloured. This strongly suggests that the route in question was not regarded as a public through road.

8.51. At point B the access is gained from both the south and east. It is possible that the southern access point has higher rights. However, this has been discussed in detail in Report 1 where it is shown to only have public footpath rights. The eastern access to point B and the northern access at point C from the north or east are all gained by the means of other routes that have been marked with the symbol "FP" on the OS maps and registered as public footpaths on the Definitive Map and Statement. Therefore this suggests that the route in question has no public rights for horse-drawn carts or horse riders and should be registered as a public footpath only.

Fig. 8.17: Appendix 21: Applicant's Evidence 10
1910 Finance Act Map "working copy" Sheet 21:5 GRO

8.52. The Finance Act mapping records along with all other historical evidence discussed so far show that not all routes that are "white out", as seen in Fig 8.17 south of point B and north of point C, should automatically be regarded as having public vehicular, public restricted byway or public bridleway rights. This means that for the route in question it may, on the balance of probabilities, be determined that only public footpath rights should be recorded.

9. The Definitive Map and Statement

9.1. The public rights of way are registered on the Definitive Map and Statement for the area of Monmouthshire. These maps have a "Relevant" date of 1 July 1952, and were published on the 16 November 1967 and are now kept under continuous review by Monmouthshire County Council Countryside Office.

9.2. 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 the footpaths, bridleways and roads used as public paths which it considered were public. The process of producing the Definitive Map & Statement went through three stages:

9.2.1. The former County of Monmouthshire (Gwent) carried out this task by sending a map to every Community Council.

9.2.2. The Community Councils were asked to walk every path and provide details of them.

9.2.3. A public meeting had to be held and local people recommended alteration at this stage.

9.3. **The Draft Map** was deposited in all District Offices as well as at County Hall. Notice of its publication and where it could be inspected was given in local papers and the London Gazette. A minimum of four months was allowed for objections against the alterations made by the Council as a result of original objections, which the Authority had to consider in the light of all evidence submitted and inform all parties of its decision. 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.

9.4. It is noted that on the Draft Definitive Map dated 16 December 1952 that the route in question is marked up by the symbol for roads used as a public path (RUPP), as a '*Broken Green Line'*, along with the terms cart road bridleway (CRB) and cart road footpath (CRF).

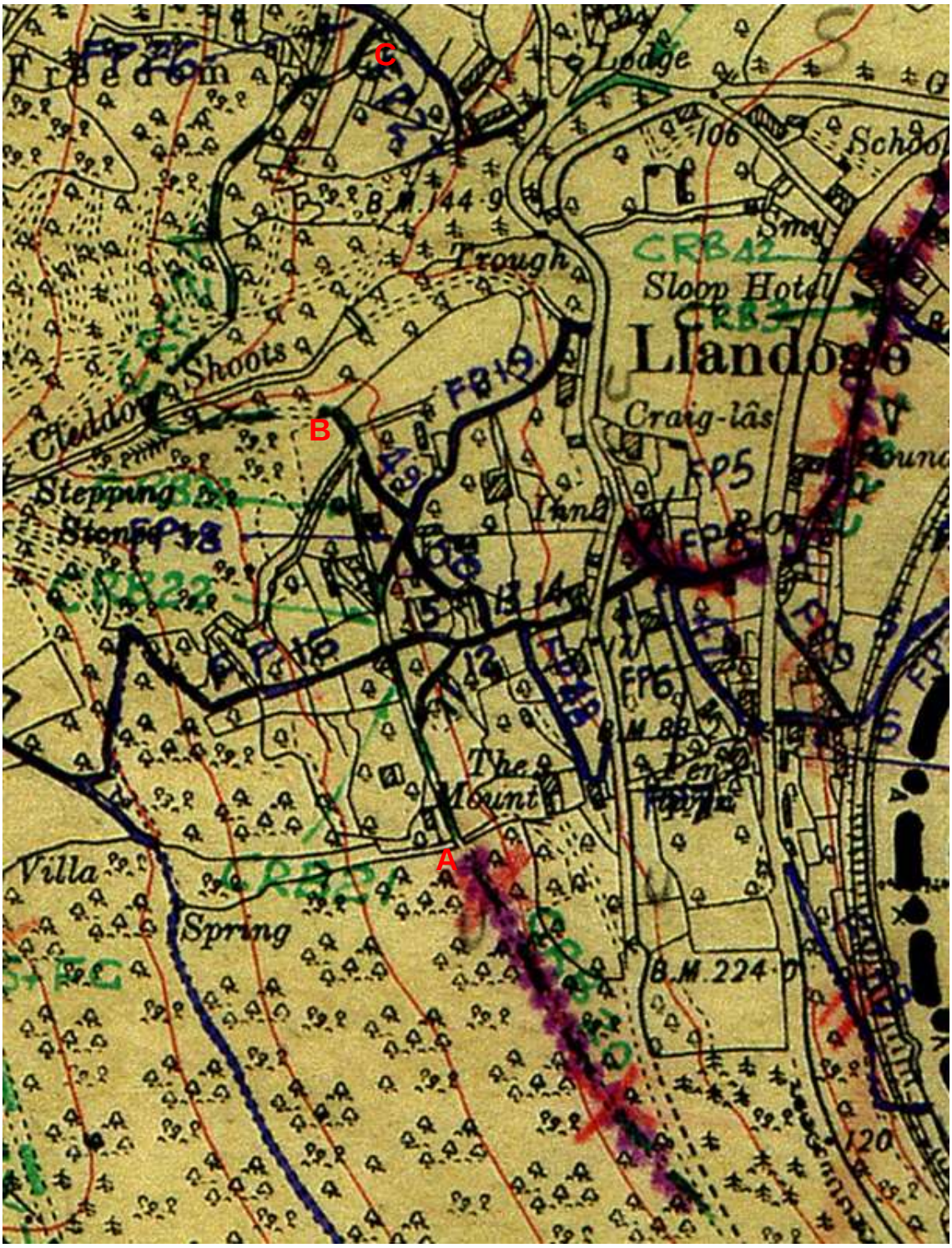
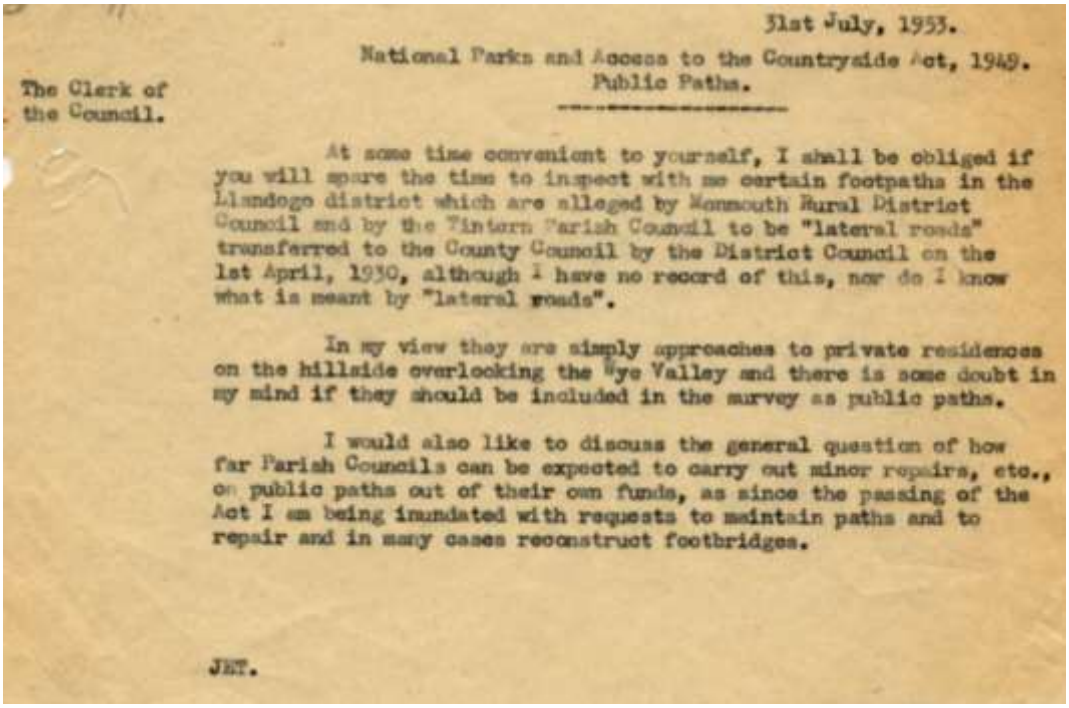


Fig. 9.1:
1952 Draft Definitive Map Sheet 21: not to scale: MCC

9.5. Office files hold copies of letters and notes that record the inspection of certain footpaths in the Llandogo district. A letter dated 31st July 1953 (Fig. 12.2) states that Monmouth Rural District Council and the Tintern Parish Council refer to some footpaths in the Llandogo district as being “lateral roads” transferred to the County Council by the District Council on the 1st April 1930 although no records were retained. The County Surveyor further explains (Fig. 9.2) that he did not know what was meant by “lateral roads” and was of the opinion that these “lateral roads” were simply approaches to private residences on the hillside overlooking the Wye Valley and there was some doubt in his mind if the routes should be included in the survey as public paths.



31st July, 1953.

National Parks and Access to the Countryside Act, 1949.
Public Paths.

The Clerk of the Council.

At some time convenient to yourself, I shall be obliged if you will spare the time to inspect with me certain footpaths in the Llandogo district which are alleged by Monmouth Rural District Council and by the Tintern Parish Council to be "lateral roads" transferred to the County Council by the District Council on the 1st April, 1930, although I have no record of this, nor do I know what is meant by "lateral roads".

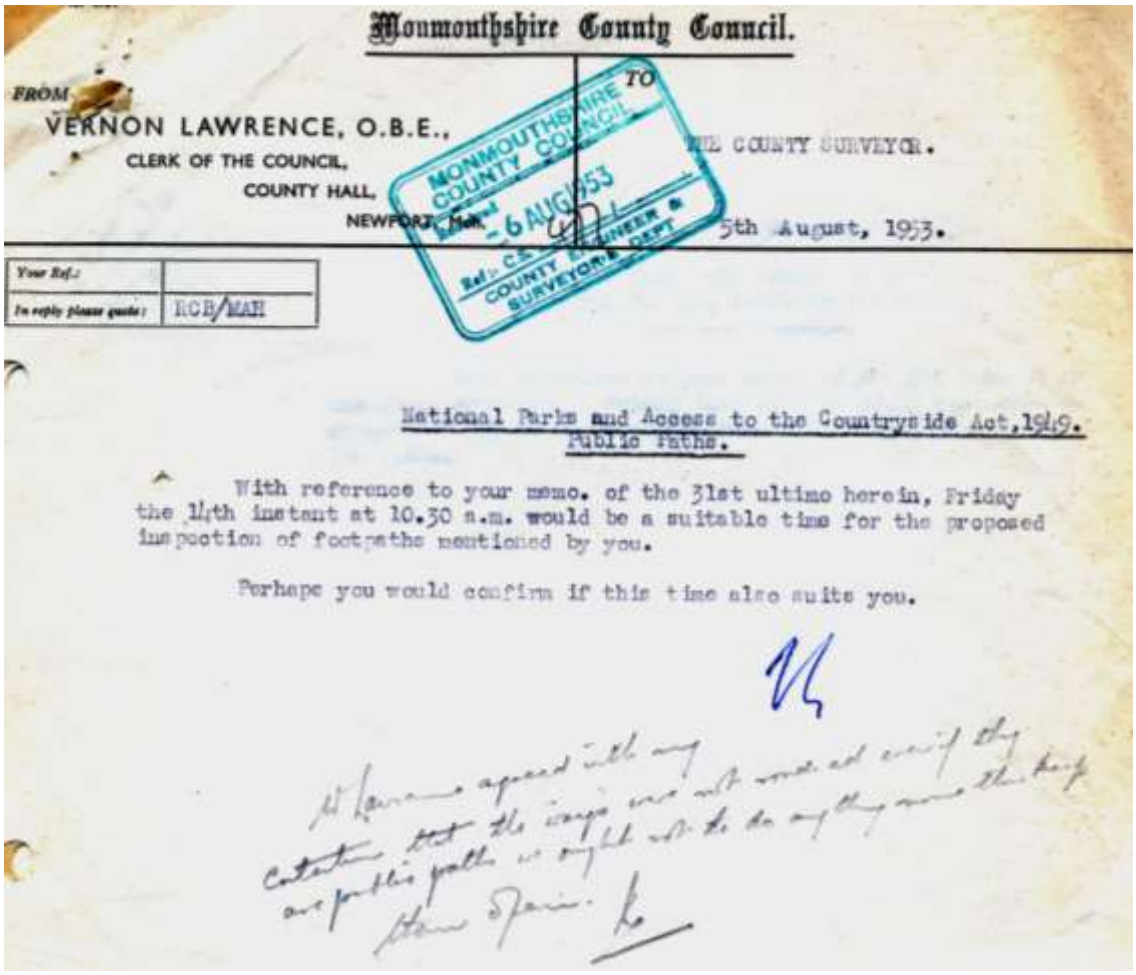
In my view they are simply approaches to private residences on the hillside overlooking the Wye Valley and there is some doubt in my mind if they should be included in the survey as public paths.

I would also like to discuss the general question of how far Parish Councils can be expected to carry out minor repairs, etc., on public paths out of their own funds, as since the passing of the Act I am being inundated with requests to maintain paths and to repair and in many cases reconstruct footbridges.

JET.

Fig. 9.2:
31st July 1953 Letter from County Surveyor to Clerk MCC

9.6. After a site inspection of the routes in the Llandogo district on the 14th August 1953 there is a note added in pencil to the letter dated 5th August 1953 (Fig. 9.3) which states that the Clerk of Monmouthshire County, Mr V Lawrence, agreed with the County Surveyor’s contentions that the ways were not roads and, ... *“even if they are public paths we ought not to do anything more than keep them open”.*



Monmouthshire County Council.

FROM VERNON LAWRENCE, O.B.E.,
CLERK OF THE COUNCIL,
COUNTY HALL,
NEWPORT, Mon.

TO THE COUNTY SURVEYOR.

MONMOUTHSHIRE COUNTY COUNCIL - 6 AUG 1953 COUNTY ENGINEER & SURVEYOR'S DEPT

5th August, 1953.

Your Ref.:
In reply please quote: RCB/MAH

National Parks and Access to the Countryside Act, 1949.
Public Paths.

With reference to your memo. of the 31st ultimo herein, Friday the 14th instant at 10.30 a.m. would be a suitable time for the proposed inspection of footpaths mentioned by you.

Perhaps you would confirm if this time also suits you.

Fig. 9.3:
5th August 1953 Letter from Clerk to County Surveyor MCC

9.7. All these records taken together show that the surveyors at the time were not able to determine any maintenance liabilities or the status of the public right and thereby gave the route in question the ambiguous title of cart road footpath. The statutory term for such routes is a "road used as a public path" (RUPP) although the observed status for the public right over the route at that time was footpath.

9.8. The 1949 National Parks and Access to the Countryside Act provided that the Definitive Map and Statement (DM&S) should include, in addition to every public footpath and bridleway, highways used by the public mainly for the purposes for which footpaths or bridleways are so used, a category termed by the Act as "road used as a public path" (RUPP). The definition in the 1949 Act did not use the words "public" or "private" before the term "road used as a public path". The term did place the word "public" prior to the word "path". The interpretation then is that this type of route shown on the DM&S was visibly a road that is recorded on it as a public path which is either a "public" footpath or "public" bridleway. The public status of the road with this term "RUPP" for this route category is not determined by the 1949 Act.

9.9. The category of RUPP is thus shown to be unsatisfactory and, to add to the difficulties of interpretation, a pamphlet, titled Surveys and Maps of Public Rights of Way was issued with circular number 81, dated 17th February 1950, and sent to the Community Councils in 1951 at the time of the initial surveys. This official guidance was prepared by the Open Spaces and Footpaths Preservation Society, in collaboration with the Ramblers Association, recommended by the County Councils Association, and approved by the Ministry of Town and Country Planning.

9.10. In this official guidance circular, reference was made to the recording of routes on the DM&S with the symbols for "Public Carriage or Cart Road mainly used as bridleway to be CRB" and "Public Carriage or Cart Road mainly used as footpath to be CRF". As a result numerous highway authorities used these non-statutory symbols to record routes.

9.11. This is what has happened in this Authority and is revealed within the DM&S title (Fig. 9.4.). At the Provisional stage RUPPs were referenced by using the non-statutory terms of "Public Carriage or Cart Road used mainly as a footpath shown in a Broken Green line" and "Public Carriage or Cart Road used mainly as a Bridleway shown in a Broken Green line" which were then amended at the final Definitive Map stage and the words "Public" were crossed out and replaced by the word "Private".

Fig. 9.4:
Definitive Map title MCC

9.12. An explanation of the use of these terms is explained by Lord Denning in the case "R v Environment Secretary, ex p. Hood 1975 1QB 891" in which the following is stated:-

"When the local authorities came in 1949 to prepare their maps under the statute, they divided the last category 'road used as public path' into two sub-divisions which have no statutory authority. They divided them into 'CRF' and 'CRB', which denoted 'cartroad footpath' and 'cartroad bridleway', meaning respectively that there was a public footpath along a cartroad, or a public bridleway along a cartroad. In that division the local authorities did not mean to say whether the cartroad was public or private for carts, because they did not know which it was. They only meant to say by CRF that there was public footpath along a road: and

by CRB a public bridleway along a road. That division was misleading because each of those subdivisions CRF and CRB was shown in the map as a 'road used as a public path'."

9.13. On the Definitive Map for Monmouthshire (formally Gwent) the public rights of way are shown correctly in accordance with Statutory Instrument 1970 No. 675. Bridleways are shown with a continuous green line and RUPPs with a broken green line. It is the marking of a '*Broken Green line'* on the Definitive Map and within the Map title which establishes their legal status as "roads used as a public path".

9.14. The category of RUPP along with the non-statutory sub-divisions of CRB & CRF have proved to be unsatisfactory as none of the symbols make it clear whether the routes were subject to public vehicular rights. This Report seeks to record the actual status of the public rights that utilise the route in question.

9.15. **The Modification Map (Additions and Deletions)** (Fig. 9.5) records no markings over the route in question. A bold blue line shows the alignment of a route that was to be removed from this set of records as it was established by investigation that those public rights already existed and were recorded on the “List of Streets”.

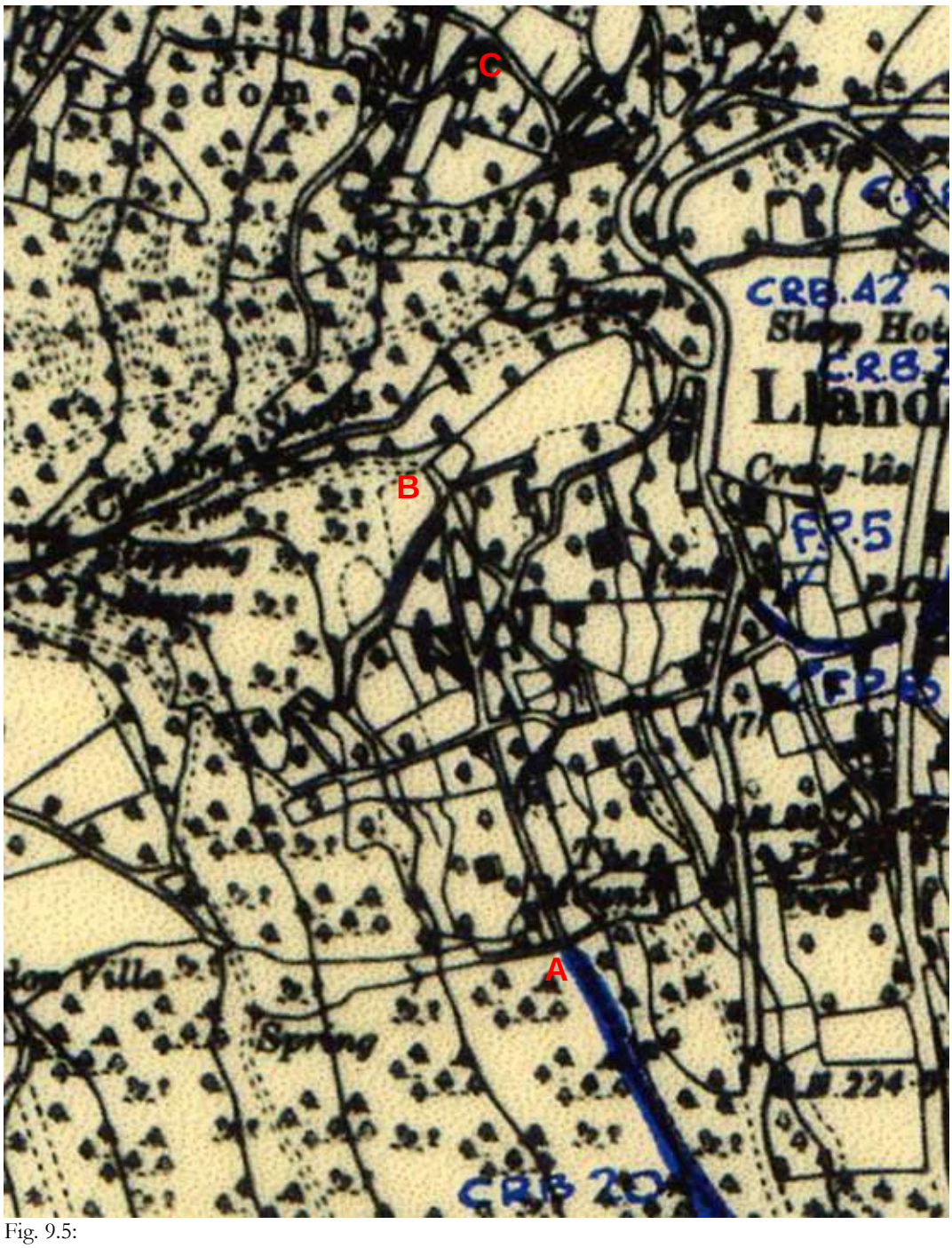


Fig. 9.5:
Addition and Deletion Map (Modification Map) sheet 21: not to scale: MCC

9.16. The designation for the route in question was not disputed at the time of the compilation of the DM&S. Therefore the route remained recorded as a cart road footpath, in the correct terminology a road used as a public path.

9.17. **The Definitive Map,** in keeping with statutory provisions, shows bold broken green markings for the route in question. The arrows also marked in green join the route symbol of cart road bridleway or cart road footpath (along with a number) to the relevant section of the route in question. Other public footpaths in the area are marked by bold pink (purple) lines.

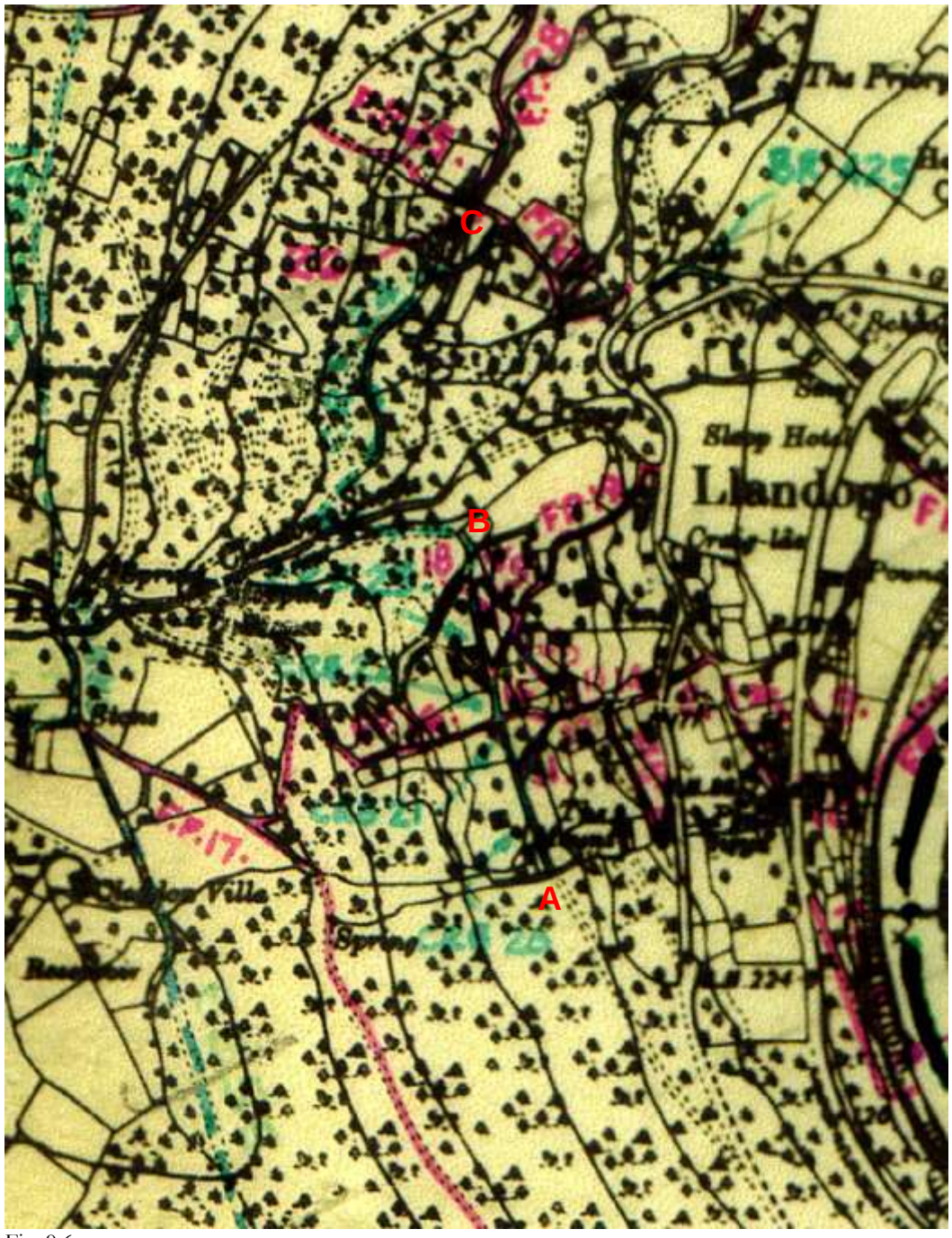


Fig. 9.6:
1967 Definitive Map sheet 21: not to scale: MCC

9.18. When all appeals and objections to the Draft Definitive Map and Statement had been processed and any additions or deletions marked on an intermediate map the Authority then compiled a Provisional Definitive Map and Statement 17 September 1965.

9.19. The County Council published and advertised, as before, the Provisional Definitive Map and Statement (17/9/1965). This is the Draft Definitive Map duly modified. The public had no further right of objection but any owner/occupier of land crossed by a right of way could apply to Quarter Sessions, within 28 days of publication, for a declaration modifying the map or statement in respect of the Rights of Way. When all applications had been determined the County Council finally published on 3rd November 1967 the Definitive Map and Statement for the County of Monmouthshire (formerly Gwent).

9.20. The Case of Trevelyan v Secretary of State 2001 raised a presumption that what is marked on the Definitive Map and Statement is properly and correctly recorded.

9.21. It is my opinion that the combined force of the 2000 CROW and 2006 NERC Acts have incorrectly designated section B to C as a restricted byway (RB) thereby allowing public horse-drawn carts and equestrians to access the route in question. I do not believe that evidence of some substance has to be put forward to displace the presumption made by these recent changes. However, historical and documental evidence has been interrogated and discussed, in both Reports 1 and 2, and is the required substantial evidence to refute the recent legislative changes made to the route in question.

9.22. The Definitive Map & Statement is afforded considerable weight due, firstly to the statutory provision already mentioned and secondly, to the process of continuous review set out in Section 53 of the Wildlife and Countryside Act 1981, allowing for the modification of the maps and statements on the discovery of evidence suggesting that it contains errors or omissions. This allows for thorough investigation of any perceived discrepancies and their correction. This Report represents such a case.

9.23. **The Definitive Map and Statement** in its entirety is regarded as the legal register for public rights of way and the information held within is, for completeness, better understood when both the maps and statements are investigated together. The descriptions made during the survey remain the statements for the Definitive Map. These statements (Appendix 65 to 66) were compiled by Mr F. Williams of Wyedene, Llandogo, nr. Chepstow, Mon. Regardless of the precise location of Mr F. Williams's home he did live in Llandogo. Therefore, he had some local knowledge of the route in question.

9.24. **Trellech number 24**

- *CRF: --: walked: F Williams: 1st June 1951: Starts on County road W of The Mount. Rough surfaced road passing through wood as far as Young's Cottage. Continuing as unsurfaced road for a quarter of a mile approx. with turning point for lorries at the end. Road now continues as a CRF crossing Cleddon Shoots into Cloisters Lane near Marigold Cottage.*

9.25. It is noted that the first section, A to B, is described as a rough surfaced road. Then from Young's Cottage now known as Bargans Cottage the route in question, A to B, is described as being unsurfaced. The next section, B to C of the route in question is described as continuing as a cart road footpath (CRF). It is incorrect to assume that this non-statutory symbol "CRF" allows for the public use of the route to be made by a horse-drawn cart or horse riders as explained by Lord Denning (point 9.13).

9.26. The DM&S uses the word "road" on a number of occasions. It is incorrect to assume that the descriptive word "road" automatically stipulates that such a route should have public vehicular rights and be maintained at public expense.

9.27. The other existing public footpaths, listed below, have Definitive Map Statements that add further information to the route in question. The descriptions for the routes are as follows:

9.28. **PROW Trellech 18 to 19**

- *FP: Hollow Lane: walked: F Williams: 1st June 1951: Starts at Inglewood House on the Llandogo Trellech Road mounts hill with stone wall left hand side; Earthen bank on other. Approx. width 6ft. Exit on to Glen Road.*

9.29. **PROW Trellech 25 to 27**

- *FP: Cloisters Lane: Walked: F Williams, 1 June 1951: Starts at the beginning of Freedom Road. Rough stony path bordered by stone walls, Path about 5 ft wide. Stone walls end at Walnut Tree Cottage, where path becomes ill defined until it exits on to the Freedom Road by a stone stile.*

9.30. **PROW Trellech 28**

- *FP: --: Walked: F Williams: 1st June 1951: Starting from Cloisters Lane by Walnut Tree Cottage. About 5 ft wide bordered by stone walls, green path making an exit on the Freedom Road.*

9.31. **PROW Trellech 49 to 50**

- *FP: -: Walked: F Williams: 1st June 1951: Starts 10 yds above the junction of FP No. 48 branching right from the Great Hill FP No. 5[sic] rough track bordered by low stone walls serving 3 cottages before crossing FP no 18 and 19 then runs up to join CRB No. 23 and 24 at its terminus.*

9.32. The Definitive Map Statement records the path to be described as Trellech 49 to 50. Then in the description there is a typing error and "0" after the number "5" is missing. This is backed up by following the route describe on the Definitive Map and also noting that FP5 is not marked while FP50 is.

9.33. The route in question has evidently been linked at point C to other public footpaths before reaching any public highways that are open to all traffic. This shows that the route was never regarded as a thoroughfare for public vehicles, horse-drawn carts and horse riders.

9.34. In keeping with all the Ordnance Survey Maps that record the physical features such as boundaries, surface changes and widths for the route in question along with these Statements suggest that there were no public vehicular, horse-drawn carts or equestrian rights. This reason is verified by the fact that the surveyor registered the route in question as essentially being a public footpath.

10. The Highway Records

10.1. Both the 1st April 1949 Highway Map and current "List of Streets" do not record the route in question as a county unclassified highway. The OS base maps on which the Highway information is recorded shows the route in question on a similar alignment to all previous historical maps discussed.

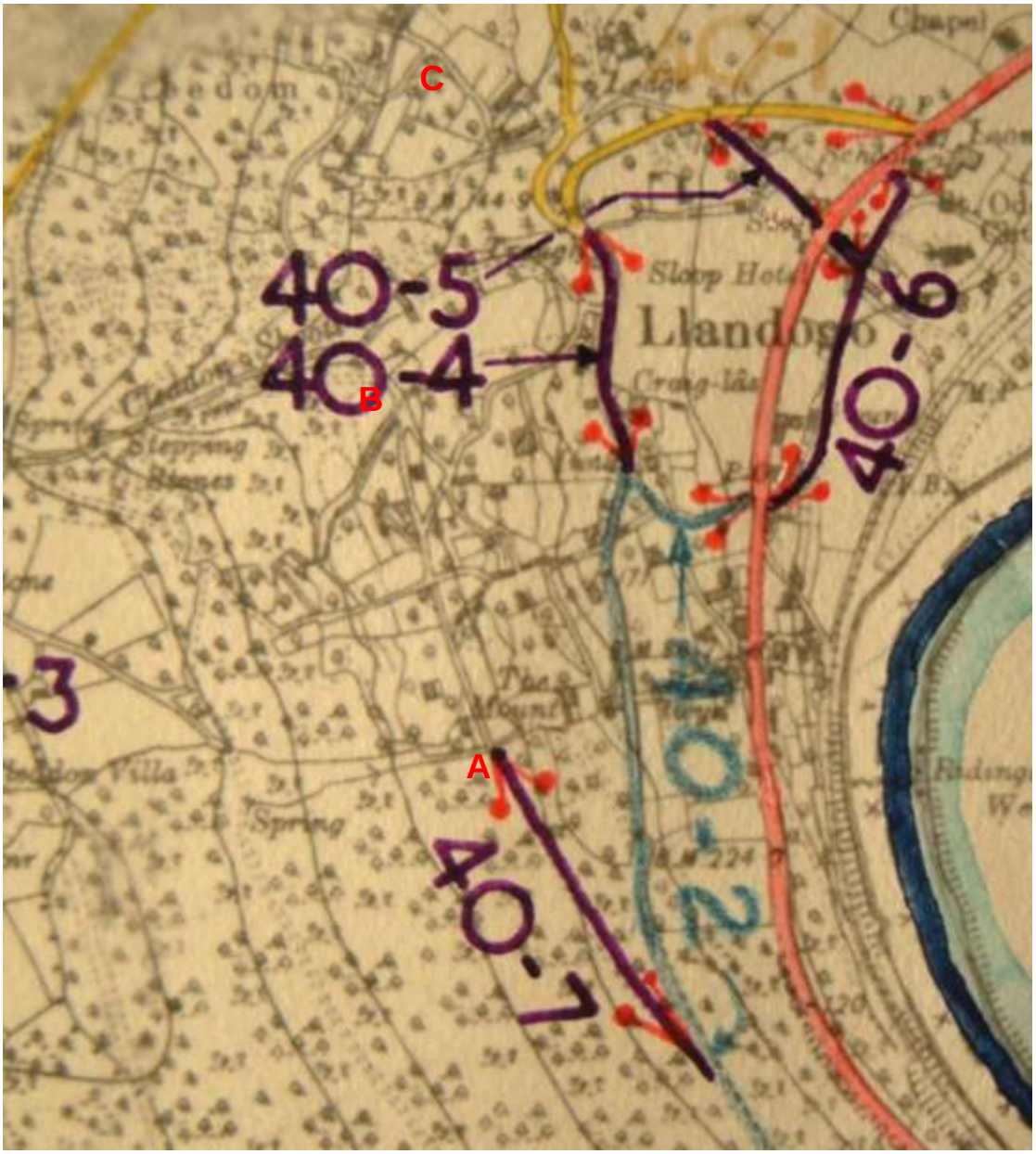


Fig. 10.1:
1949 Highway Records: not to scale: MCC

10.2. The undated Highway records show the same roads shaded as the 1949 Highway plan records.

10.3. The evidence that the county road 40-7 is the only section recorded on the Highway documents shows that the route in question was not regarded as a thoroughfare for the use of motorised vehicles by the public at large.

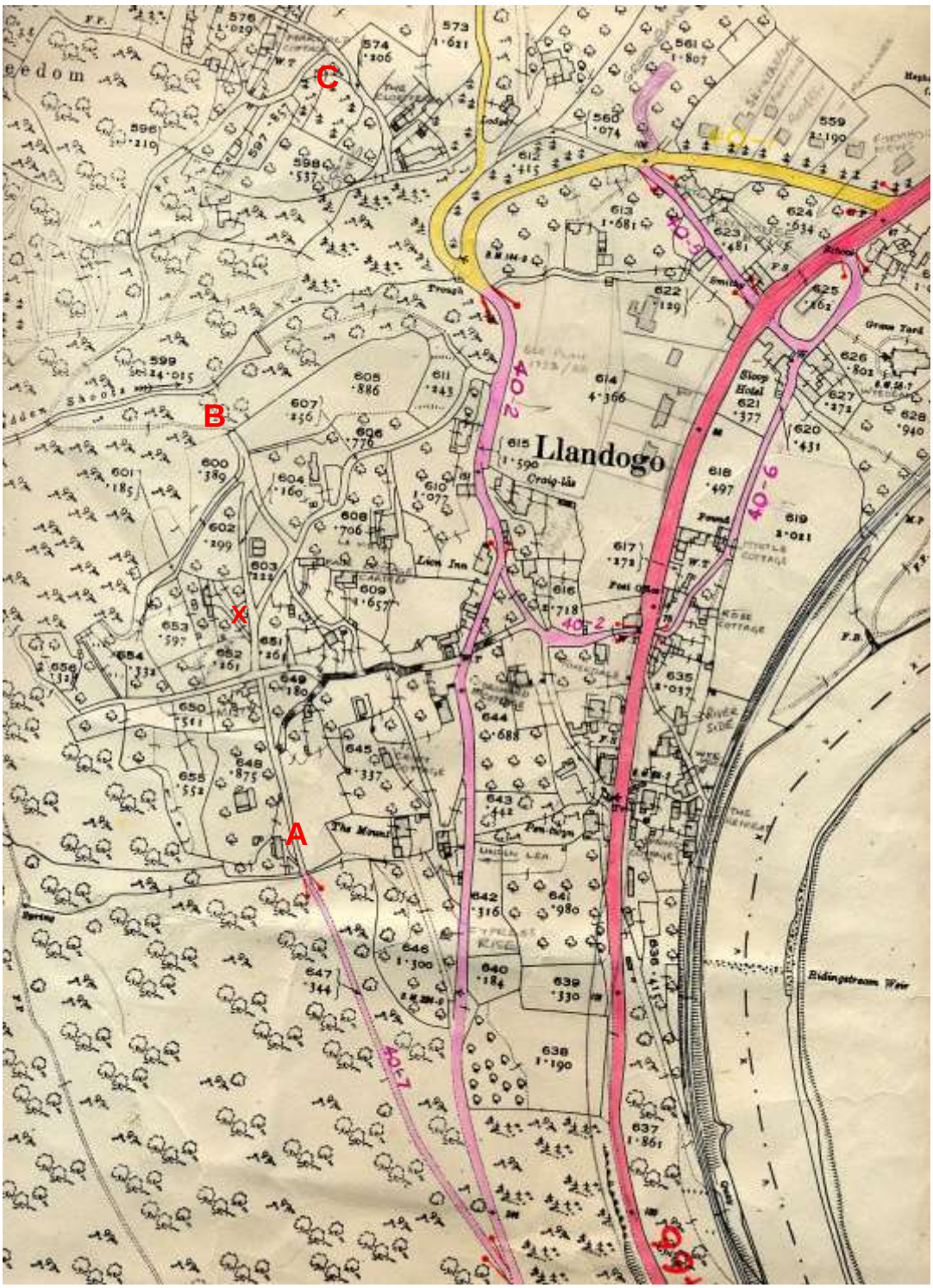


Fig. 10.2: Appendix 22: Applicant's Evidence 11
Undated historical highway records not to scale: MCC

11. Aerial photographs

11.1. **The Aerial Photograph dated 13 April 1947** shows that north of Glen Cote there is evidence of a small turning triangle depicted by wide light grey shading. However there are no additional similar markings continuing northwest or northeast from this location. Although, there is a mark that may suggest that the route in question continues northwards as a footpath.

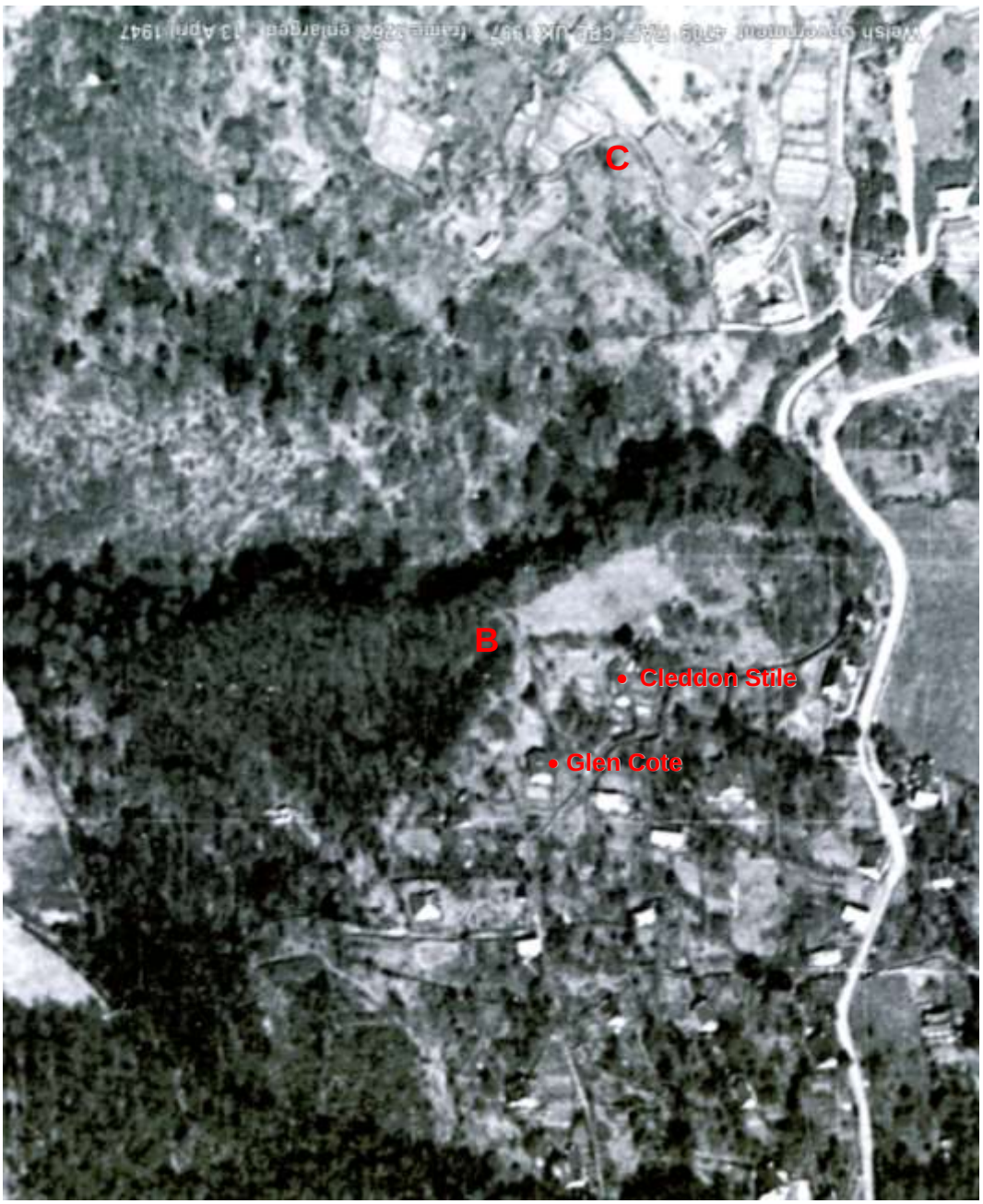


Fig. 11.1:
Aerial photograph: Dated 13 April 1947: National Assembly of Wales
(MCC has a purchased copy. It is available at MCC office for viewing.)

11.2. This shows that the route in question was not regarded as the regular way for the public at large to access other properties north of Cleddon Shoots in motor vehicles, horse-drawn carts or on horses.

11.3. Although the tree canopy in April 1947 is not dense at this time it is still difficult to see an impression of RB24 through to Cleddon Shoots. This suggests that if the alignment of RB24 were more discernible between the trees, than that currently shown, then it would support the fact that the entire route was more frequently used by the public at large. This is not evident in this photograph, which indicates that the route in question is not used as a through route by the public at large in motorised vehicles, horse-drawn carts or on horses.

11.4. **The Aerial Photograph dated 27 March 1970** does not clearly show the alignment of the route in question through the canopy of trees. It is not clear where point C should be located on this photograph.

Fig. 11.2:
Aerial photograph: Dated August 1972: National Assembly of Wales
(MCC has a purchased copy. It is available at MCC office for viewing.)

11.5. When viewing the entrance of the turning triangle north of Glen Cote through a stereograph, it is noted that a barrier of some description was located to prevent some type of use. At the same time the aerial photograph shows another larger turning area directly north of Cleddon Stile being more evident 19 years after the 1951 survey for the Definitive Map.

11.6. It is not clear from this aerial photograph what this area might have been used for. However, it has been clarified by users and local inhabitants as being an area for the private delivery of coal by a small ford delivery truck and not for the use of the general public.

11.7. The aerial photographic evidence proves that the public at large did not frequently use the route in question as a major vehicular thoroughfare.

12. Site photographs *(Appendixes 51 to 58)*.

12.1. The discussion for all the site photographs is repeated here for completeness in terms of the investigation for the whole route (A to C).

12.2. **The first three photographs taken on the 16th March 1998** (Appendix 51) are of a land slip below Bargans Cottage and the route in question shows a patched sealed surface.

12.3. **The photographs taken on the 29th February 2000** (Appendixes 52 & 53) show most of the route in question to have a sealed surface that in some areas is broken. The wear and tear of these sections of broken ground have the evidence of tyre marks near them. This shows that the use of the route has been with vehicles and it is evident that it is this type of use that has damaged the surface of the route in question.

12.4. **The photographs taken in 2004** (Appendix 54) (Photographs 1, 2 & 3) show a recently sealed surface along with the evidence of tyre tracks damaging the edges of the route in question. Photograph 4 shows the unchanged surface of CRB23. The evidence in this photograph shows a central grass knoll with parallel wearing made by wheeled vehicular traffic. However, it is evident from other historical documentation that the usage is limited to reported coal delivery and to the requirements of a single dwelling prior to the proposed development of the property in 2004.

12.5. **The evidence in photograph 1** (Appendix 56) of the stepping stones show that this route was not considered as a vehicular through route. In support of this reasoning is that the office file for restricted byway (RB) 24 (formerly cart road footpath) does not contain any complaints regarding the surface of the route and the need for the stones to be removed to allow motorised, horse-drawn cart, equestrian or cyclist traffic. Furthermore, all these photographs (Appendixes 55 & 56) do not show a wide route with a central knoll of grass. Instead, a single narrow route in keeping with that expected for footpaths is illustrated.

12.6. **The photographs taken in 2014** (Appendixes 57 & 58) show the route relatively unchanged when compared with the photographs taken in 2004. Photograph 4 (Appendix 57) shows the evidence of motor car usage that has

worn wheeled tracks and a central grass knoll over the section CRB23. The comparison of the 2004 photographs with the 2014 photographs shows the evidence of motor car usage has not changed. The limited use supports the fact that this route has not been enjoyed by the public at large. It is more difficult from these photographs to prove only public bridleway or footpath use along the section CRB20-22 because the sealed surface hides much of that type of use.

12.7. The photographs of RB24 (Appendix 58) show the route to be narrow in comparison to the previous section CRB20-23 (Appendix 57) and this evidence supports the fact that the route in question is not a public thoroughfare for public motorised vehicles, non-motorised vehicles or horses.

12.8. The photographs of RB24 show that this section of the route is used mainly by pedestrians. It is difficult from these photographs to prove horse riding or cycling use.

12.9. The limitations imposed by the location of the route in question suggests that there was once private equestrian usage in the past carried out by local inhabitants and their associated needs. Then, much later, modern private vehicular usage was and is still conducted by the local homeowners wishing to gain access.

12.10. The site photographs when taken together with all the other evidence discussed so far suggests that the public usage of the route in question is mainly pedestrian.

13. The Natural Environment and Rural Communities Act 2006

13.1. 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).

13.2. The Natural Environment and Rural Communities Act 2006 (NERC) section 66-72 Part 6 came into force in Wales on the 16th November 2006.

13.3. The coming into force of the relevant sections of both the 2000 CROW and 2006 NERC Acts are an event that has changed the designation of cart road footpath 24(CRF) on the Definitive Map and Statement to a restricted byway (RB).

13.4. That is, for section B to C, there is no need to determine public rights of way for motorised vehicles as these have been extinguished by section 67(1)(b) of the 2006 NERC Act which states that an existing public right of way for mechanically propelled vehicles (MPV) is extinguished if it is over a way which, immediately before commencement was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

13.5. To clarify this, on the 11th May 2006 the cart road footpath 24 (CRF) was designated as a restricted byway (RB) prior to the 2006 NERC Act coming into force on the 16th November 2006 thereby ensuring that public MPV rights were extinguished.

13.6. Although this change has officially removed public MPV rights it has also increased the public rights from essentially being merely a public footpath (FP) to a route that now allows the public to use the route on horseback or in non-mechanically propelled vehicles such as horse-drawn carts and bicycles.

13.7. This legislative event, the submission for a Definitive Map Modification Order (DMMO), detailed in Report 1, along with the Authority's duty to continuously review the Definitive Map and Statement has resulted in the discovery of evidence that the route in question has been incorrectly recorded in the Map and Statement as a restricted byway and ought to be there shown as a footpath. (Refer to Appendixes 59 to 64.)

14. Section B to C - Review

14.1. Prior to the commencement of the 2000 Countryside & Rights of Way (CROW) and 2006 Natural Environment & Rural Communities (NERC) Acts, the Wildlife & Countryside Act (WCA) 1981 stipulated that, with regard to every definitive map and statement, the Authority shall, as soon as reasonably practicable, carry out a review of the particulars contained in the map and statement as related to roads used as public paths (RUPPs) and by order make such modification to the map and statement as it appears to the authority to show every RUPP by one of the three following descriptions: a byway open to all traffic (BOAT); a bridleway (BR); or a footpath (FP).

14.2. Now that the relevant sections of the 2000 CROW and 2006 NERC Acts have come into force, public vehicular rights have been removed from section B to C and public restricted byway rights remain.

14.3. In considering the alleged public vehicular usage of section A to B of the route in question it is expedient to investigate all the historical documentation for the entire route A to C. The historical documentation for the section B to C, restricted byway 24, may have supported the claimed public vehicle rights for the section A to B. However, the investigation of the historical documentation for both sections shows that the route in question was not regarded as a thoroughfare or a route for public vehicles, horse-drawn carts and horse riders.

14.4. The Applicants' report detailed and discussed in Report 1 does not address section B to C. Also, correspondence as part of the pre-consultation shows that the claimants, along with other local inhabitants, are not interested in supporting public vehicular, horse-drawn carts or horse rider rights extending beyond point B north of Llecan Beck, Llandogo.

14.5. The 1952 Conveyance of land in the area of Rock Cottage, in the place known as the "Great Hill" has no bearing on section B to C of the route in question.

14.6. The planning permission A36666 has no bearing on section B to C of the route in question.

14.7. One of the five witness statements reports the use of the route B to C with a horse-drawn sledge. This type of use is not attributed to the public at large. This has been further reported on by a local resident who states that people living in the

area made their own private plans to easily transport coal to their homes along the route in question.

14.8. Two of the six evidence forms refer mainly to the whole route in question as being enjoyed mainly as a footpath. However, within one of these user evidence forms, bridleway status is recorded on the form although such use is not seen or practiced.

14.9. Two pre-order consultations were carried out one in 2004 and another in 2015 the results of which show that section B to C is not regarded as a public vehicular, horse-drawn cart or equestrian thoroughfare. The consultations received 3 objections to the upgrade of RB 24 should the route in question be changed to a byway open to all traffic; one from National Resources Wales and two from landowners near or adjacent to the route. The lack of opinion resulting from the consultations along with the historical map markings and other documents lend support to the entire route being a public footpath only.

14.10. Correspondence from the landowner of Cleddon Shoots reports the use of the section A to B to be by motorbikes gaining access to the Shoots and being "keen to ensure that the RB24 remains pedestrian only access" has implications. The allegations are, firstly, the reporting of the usage of section A to B by the public on mechanically propelled vehicles and secondly, the desire to keep the Shoots as a public footpath by erecting a barrier to prevent motorbike use.

14.11. The owner of the land at Cleddon Shoots reports some motorbike activity but it is unknown how long this had occurred or whether it has occurred only on the route in question. It is therefore difficult to ascertain if this supports public use with vehicles, or was in fact only a single report of anti-social behaviour within her woods.

14.12. This means that there is only one report for the section A to B that possibly supports public vehicular rights. However, this reporting alone, along with other user evidence, the historical evidence, and the results of the wide pre-order consultations, suggests that public vehicular and all types of equestrian rights are not proven to exist over the entire route investigated.

14.13. The pre-order consultation along with other historical evidence supports section B to C being registered on the Definitive Map and Statement as a public footpath.

14.14. The four 2015 land registry documents that refer to land adjacent to, or abutting section B to C of the route in question, do not record any public or private vehicular, horse-drawn cart or equestrian rights. Furthermore, the historical conveyances referred to within these modern title deeds are not available to investigate.

14.15. The 1823 Price Map may show this section of the route while the Greenwood, Cassini, David & Charles, and 1830 Ordnance Survey maps do not show this section of the route in question. Furthermore, the 1830 Ordnance Survey map was a survey compiled under strict administration and this does not depict this section of the route in question.

14.16. The 1828 and 1834 plans within the Deed Papers of Cleddon Shoots have no markings that indicate a route that continue through Cleddon Shoots. The information gathered from these earlier historical maps does not support any public right of way across Cleddon Shoots.

14.17. The 1846 Tithe and 1910 Finance Act maps do not depict, in their differing styles, this section of the route in question. At point B on the Tithe map there is suggested evidence of a barrier and, on the Finance Act map there is definitely the marking of a solid line that represents a barrier. This shows that on both the 1846 and 1910 historical mapping and accompanying documentation there was no recording of any type of public route through Cleddon Shoots. In this instance the Tithe and Finance Act records do not support public rights and other historical evidence needs to be considered.

14.18. The 1881, 1886, 1902 and the 1922 Ordnance Survey maps all show the section B to C of the route in question marked by parallel broken lines. The conventional signs on the 6 inch maps references these ways to be “minor unfenced roads”. Furthermore, the 1902 Ordnance Survey map has the symbol “F.P.” at two points near the northern section of the route in question.

14.19. This type of marking and symbol shows the physical nature of the route, B to C, for the majority of its length to have the status level of a footpath and not a bridleway or restricted byway. The Ordnance Survey map surveyors were not charged with the authority to record public rights. Instead, their responsibility was to depict all the physical features encountered.

14.20. The Definitive Map and Statement is afforded considerable weight due to the statutory provision and the continuous review as set out under section 53 of the Wildlife & Countryside Act 1981.

14.21. Therefore evidence of some substance is required to refute that which is already recorded on the Definitive Map and Statement. However, the terminology used for the route in question is ambiguous and requires further study which has been carried out by asking various questions that have then been answered and explained.

14.22. Is section B to C a *'road used as a public path'*?

Not at this time although the symbol of a *'broken green line'* for RUPPs is shown for the entire route and mentioned in the Definitive Map title. However, the combined legislation that came into force in 2006 has changed section B to C from a cart road footpath (CRF) to a restricted byway (RB) with the same '*broken green line'* remaining as the type of mark used to show the alignment of the route on the Map.

14.23. Is section B to C a *'[Public] Carriage or Cart Road mainly used as a footpath…'*?

No. The title to the Definitive Map was changed at Provisional stage and the word *'public'* was substituted by the word *'private'*.

14.24. Is section B to C a *'Private Carriage or Cart Road mainly used as a footpath…'*?

No. Although, the non-statutory symbol cart road footpath (CRF) may have been provided within official guidelines it remains non-statutory while the symbol of *'broken green line'* remains the statutory symbol for *'roads used as a public path'*. Moreover, this non-statutory symbol cart road footpath (CRF) is explained by Lord Denning in the case "R v Environment Secretary, ex p. Hood 1975 1QB 891" (see Chapter 9) as being misleading because local authorities did not know whether or not a cart road was *'public'* or *'private'* and that this symbol along with the symbol for cart road bridleway (CRB) were both marked using the same notation for '*road used as a public path'* on the Map.

14.25. Is the route B to C '*mainly used as a footpath'*?

Yes. It has had this designation since 1952, the relevant date for the Definitive Map and Statement. Then the combined 2000 CROW and 2006 NERC Acts changed the existing public footpath rights to include public horse-drawn cart and equestrian rights for this section which have not been and are still not being utilised by the public at large.

14.26. The Definitive Map shows many alignments of already registered public footpaths that criss-cross the hillside and pass through Cleddon Shoots. These public footpaths have a degree of influence which invites public pedestrian use of all the routes in the area while other user types have been limited. The evidence submitted and other historical documents examined supports private transportation of goods on horseback to private local dwellings in the area and do not assist in proving all types of public equestrian use over the route in question. Therefore, on the balance, all the evidence and historical documents examined suggest that the route in question has and still is utilised mainly by the public at large on foot only.

14.27. The historical highway maps have no supporting evidence for section B to C.

14.28. The aerial photographs for section B to C are not clear as this part passes through the woods and the canopy of the tree obscures any possible observations. This density of the wood to a certain degree supports the fact that the route in question A to B was probably not regarded as a thoroughfare for public motorised vehicles.

14.29. The site photographs dated 1998, 2004 and 2014 show RB (CRF) 24 as non-surfaced single track with stepping stones that cross the stream, Cleddon Shoots. In addition, nearer point C, the route passes through a narrow section between stone walls. Furthermore, there is no horse use damage along this section. If there had been surface disturbance made by horses, then there would be more complaints made to the Authority by adjoining landowners and/or the public at large regarding surface repairs. The evidence from these photographs supports public footpath rights.

14.30. The subsection 67(1) of the 2006 Natural Environment and Rural (NERC) Act has extinguished public mechanically propelled vehicle rights over the route in question between points B to C. This legislative event along with the Authority's duty to continuously review the Definitive Map and Statement has resulted in the discovery of evidence that the route in question has been incorrectly recorded in the Map and Statement as a restricted byway and ought to be there shown as a footpath.

14.31. The examination of all the historical documentation and the results reported both here and in Report 1 shows that, on balance, the entire route in question should be registered on the Definitive Map and Statement as a public footpath.

15. Conclusion

15.1. It is concluded that there are no public restricted byway rights for section B to C of the route in question. That is to say, there are no public rights for horse-drawn carts or equestrians.

15.2. The 1823 Price Map is the only pre-1830 map that depicts section B to C while all the other pre-1830 Maps do not record this section and this suggests that higher public rights do not exist.

15.3. There is a single report of anti-social motorbike use for the entire route. This evidence alone is insufficient to register the route in question as a restricted byway 'open to all types of public equestrian use'.

15.4. From the pre-order consultation it was reported that a "human and donkey" used section B to C in a private capacity for transporting coal. As there is only a single report of a beast of burden using section B to C this does not give support to the recording of the entire route as a restricted byway or bridleway.

15.5. As far as it is possible with the historical documents available it has been demonstrated in this Report that the proper procedures in production of the Definitive Map and Statement were followed. Therefore, the standard of evidence investigated and interrogated within this Report demonstrates actual positive evidence of some substance, which shows a contrary position to the one included on the Definitive Map and Statement.

15.6. All the historical, documental and user evidence for section B to C and also that evidence which applies to section A to B detailed in Report 1 for the route in question, shows that there is no evidence of use by the public either in motorised vehicles, in horse-drawn carts or on horseback.

15.7. Therefore, this being the case and along with the knowledge that public footpath rights crisscross the area, and with all this evidence taken together, it is shown that, on the balance of probabilities, the route in question (RB24) does not have higher public rights and should be registered as a public footpath.

16. Recommendation

16.1. Members are invited to resolve that advice (~~authorisation~~) be given to the Community Services Cabinet Portfolio Member to authorise the (~~proceed with~~) making of the Modification Order under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to classify restricted byway 24 as a footpath as detailed in this report and to confirm or seek confirmation of the Order.

Mandy Mussell
Definitive Map Officer
June 2016

R. E. Rourke.
Ruth Rourke
Principal Countryside Access Officer
June 2016

Authors: Mandy Mussell, Definitive Map Officer and R. Rourke, Principal Countryside Access Officer

Contact Details: Telephone: Ext 4813
Email: mandymussell@Monmouthshire.gov.uk

Glossary

AONB.....Area of Outstanding Natural Beauty

BOAT.....Byway Open to All Traffic

BR..... Bridleway

BT..... British Telecom

CRB..... Cart Road Bridleway

CRF.....Cart Road Footpath

CROW 2000.....Countryside and Rights of Way Act 2000

DEFRA.....Department for Environment, Food & Rural Affairs

DMMO..... Definitive Map Modification Order

DM&S..... Definitive Map and Statement

FP.....Footpath

GRO.....Gwent Record Office

LoS.....List of Streets

MCC..... Monmouthshire County Council

MPV.....Mechancially Propelled Vehicles

NA or KRO.....National Archives or Kew Record Office

NRW.....Natural Resources Wales

NERC 2006.....Natural Environment and Rural Commuinities Act 2006

NPACA 1949.....National Parks and Access to the Countryside Act 1949

OSS.....Open Spaces Society

PROW.....Public Rights of Way

RB..... Restricted Byway

RUPP..... Road Used as Public Path

SAC.....Special Area of Conservation

SSSI..... Site of Special Scientific Interest

WCA 1981.....Wildlife and Countyside Act 1981

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Appendixes for both Reports

Location Map

Appendix 1

WILDLIFE & COUNTRYSIDE ACT 1981
APPLICATION FOR MODIFICATION ORDER

CERIFICATE (i)

Monmouthshire County Council Definitive Map and Statement

To: Monmouthshire County Council

of: County Hall, Cwmbran.

I/We SYLVIA HARRIS AND ADAM DANCE
PLOT ADJACENT TO GLYNGLOTE C/O MIDDLE FARM
OLD PARISH ROAD PAMINGTON
of LLANDOGO TEWKESBURY
GLOS
NP25 4TF GL20 8LX

hereby apply for an order under Section 53(2) of the Wildlife & Countryside Act 1981 modifying the definitive map and statement for the area by:-

[Upgrading] [~~downgrading~~] to a [*~~footpath~~ / *bridleway / *~~cart road bridleway~~ / *~~cart road footpath~~ / *byway open to all traffic] the [*~~footpath~~ / *bridleway / *cart road bridleway / *~~cart road footpath~~ / *~~byway open to all traffic~~] *(*delete as appropriate)*

from GRID REFERENCE S23027GB BARGAIN COTTAGE

to GRID REFERENCE S22040GB GLEDDON STILE GATE

and as shown on the map annexed hereto.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application (please list documents below):

Please see attached report & schedule

Dated: 13 / 04 /2004 Signed: [signature]

Please return to: Mr J. Martin
Director of Planning & Economic Development
Monmouthshire County Council
County Hall
Cwmbran
NP44 2WP

monmouthshire
COUNTY COUNCIL
sir fynwy

WILDLIFE & COUNTRYSIDE ACT 1981
CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER

CERIFICATE (ii)

Monmouthshire County Council Definitive Map and Statement

To: Monmouthshire County Council

of: County Hall, Cwmbran.

I/We SYLVIA HARRIS AND ADAM DANCE c/o MIDDLE FARM PAMINGTON TEWKESBURY GLOS GL20 8LX

of PLOT ADJACENT TO GLYNCOTE OLD PARISH ROAD LLANDOGO NP25 4TF

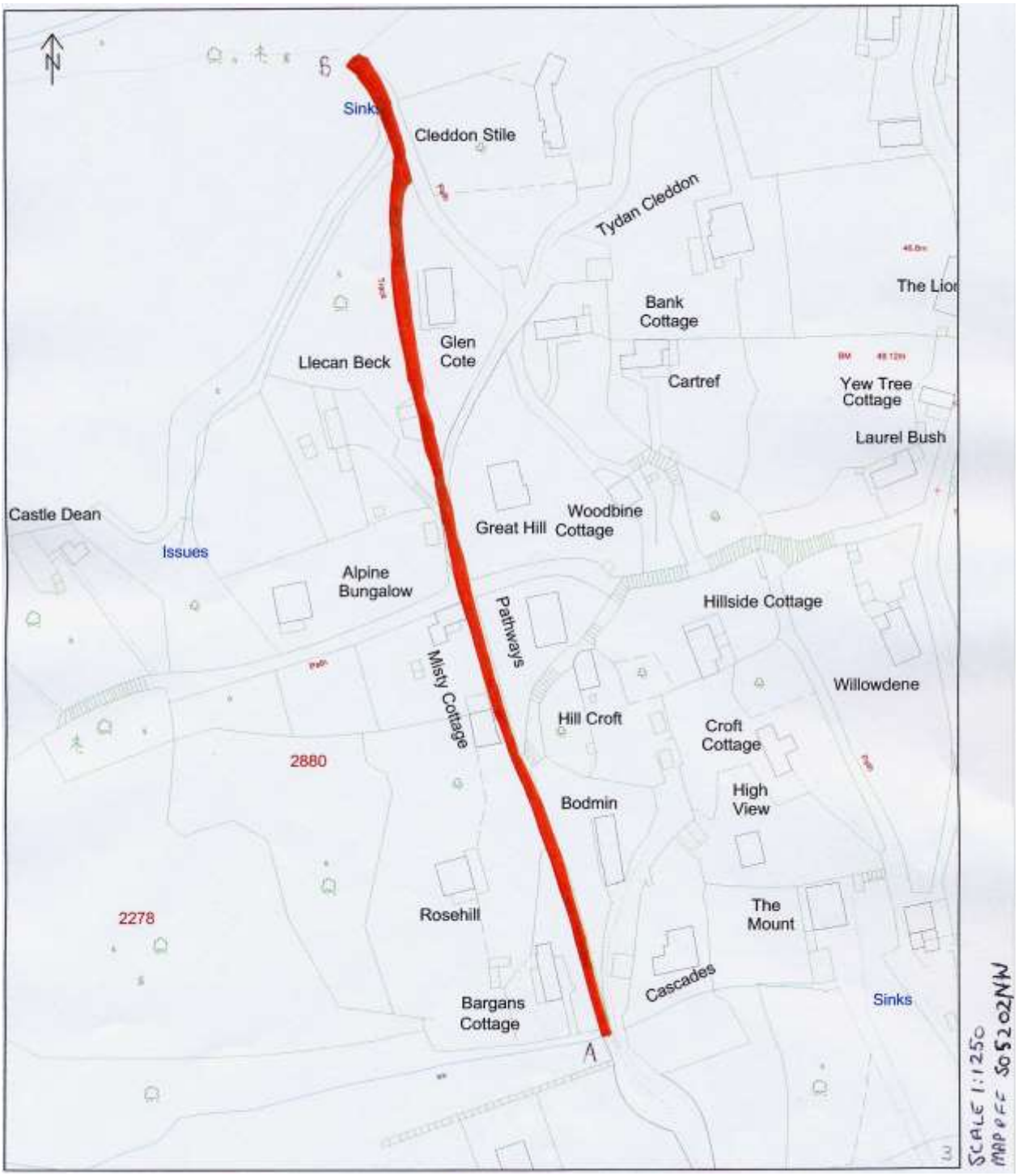
hereby certify that the requirements of paragraph 2 of schedule 14 to the Wildlife & Country side Act 1981 have been complied with.

Dated: 13 / 04 /2004 Signed: S Harris

Notices served on the following persons/bodies:-

1. Please see enclosed map
2. Households highlighted have been notified as owner/occupier
3. and hand delivered
4. .....
5. .....
6. .....

Please return to: Mr J. Martin
Director of Planning & Economic Development
Monmouthshire County Council
County Hall
Cwmbran
NP44 2WP



DMMO Application form – Plan: Applicants' submission

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Appendix 4

The Old Parish Road and CRB 23

List and summary of evidence submitted with this application

	Date	Document	Shown	Not Shown	Comments
1.					
2.	1820	Cary's New Map of E&W		X	The best of the 'county maps'. Not showing does not indicate CRB 23 did not exist, but does indicate it was not particularly significant.
3.	1828	Plan for deed papers – Cleddon Shoots	X		CRB 23 shown as a southwards extension of a track in Cleddon Shoots.
4.	1830	1st edition OS 1" = 1 mile		X	The cluster of lanes between CRB 23 and Llandogo is shown. Quite a change from 1930 to now.
5.	1834	Plan for deed papers – Cleddon Shoots	X		CRB 23 shown as a southwards extension of a track in Cleddon Shoots.
6.	1843	Tithe Award		X	The plot of land is shown, but no reference to CRB 23
7.	1846	Tithe Plan	X		CRB 23 is clearly shown coloured in the same way as public roads and the network of 'tracks'
8.	1881	1st edition OS 25 inch = 1 mile	X		Survey dates 1875-85. CRB 23 shown with own plot number. Network shown much as today.
9.	1882	1st edition Book of Reference	X		CRB 23 given an acreage, but no description (no descriptions at all in BoR for this area).
10.	1910	Finance Act working plan	X		CRB 23 is 'coloured out' of the valuation plots.
11.	1929-1951	Map of county roads	x		The southern end of the route is listed as C40-7.
12.	1951	Survey of RoW	X		Describes CRB 23 as a 'rough surfaced road' used by lorries.
13.	1952	Conveyance of property at 'Great Hill' (with plan showing Great Hill)	X		Land conveyed shortly after the first definitive map survey. CRB 23 described as a 'public road' – no reference to any private access.
14.	1994	Letter from Director of Highways	X		Highway authority states belief that CRB 23 is a public vehicular highway.
15.	Various	Letters & statements recording use and knowledge about the road.	X		

The status of the 'Old Parish Road', which is comprised of CRBs 21, 22, and 23.

When searching through documentary evidence to find information on the origin of any highway, sometimes there is one piece of evidence that is so clear and cogent that, on its own, it can indicate the status of the route in question. Sometimes there is no single 'decisive' document, and it is necessary to assemble a sequence of documentary references which, when taken together, show on the balance of probabilities that the right being asserted exists. That is the task in this case (ref: *Commission for New Towns v. JJ Gallagher* [2003] 2 P&CR 3; [2002] EWHC 2668). There is no single 'decisive' piece of evidence, either to show public vehicular rights, or that the road was only ever a private road, perhaps with a public bridleway along it. But there is a considerable pattern of evidence which, if taken together and construed in context, points, on the balance of probabilities, to CRBs 21/22/23 being part of a longer public vehicular road, albeit a minor one predominantly used by local people.

The 'private road' question

If the network of roads/tracks including The Old Parish Road was only a network of private roads for landowners' access, why are there so many branches? There is no pattern of consistency between the roads and the plots alongside. The irregularity of the roads suggests antiquity and, if set out by an inclosure process, it seems very wasteful of land and of repair resources. Inclosure tended to rationalise roads and plot shapes and sizes. This area appears to be an ancient, irregular landscape. There is no express evidence that the road of which CRBs 21/22/23 form part was set out as, or later regarded as, a private road for the benefit of one or a number of landowners. The name itself suggests it was not private. Furthermore, the landowner(s) adjacent to CRB 21/22/23 do not have any easement of vehicular access in their deeds and title to property (as per the conveyance of 1952). If The Old Parish Road was only a private road, with there being so many individual adjoining properties, it is almost inconceivable that the properties would be conveyed without an easement of access where such existed before sale. There is available a specimen conveyance of a property adjoining/served by this road – there is no expression or reservation of any 'private road'.

How old is this road?

The oldest document showing any part of the road is a plan made in connection with deeds for Cleddon Shoots in 1828. This shows a road coming in from the south – it is hard to see that this could be any other than The Old Parish Road / CRB 23. Further, the whole of the road is shown in the tithe plan of 1846. In *Roberts v. Webster* [1967] QB 298, it was held that where a road was shown as existing in 1859, it was almost impossible for a highway authority successfully to argue that it did not exist in 1836, when the Highway Act 1835 came into force. On the balance of probabilities The Old Parish Road existed in 1835 substantially as it is now.

There is no inclosure award for this land

A thorough search has been made for any records of parliamentary inclosure, or inclosure by agreement, of the land where this route, and the properties it serves, lie. This land was in the Manor of Llandogo, which was held by the Church of Wales, and there is no record that any inclosure process was carried out. The inclosure act and award for the Parish of Llandogo expressly do not extend to the Manor of Llandogo. This absence of deposited documents – or any reference to inclosure – is supported by a report by the Inland Revenue's District Valuer, in 1952, which report refers to the Parish of Llandogo inclosure, and also to the absence of any other plans or maps of the manor.

The tithe award and plan

The tithe award does not appear to list 'public roads', and so is not helpful in determining the status of the road. The tithe plan shows the road coloured in a typical 'sienna' colour, like all the roads in the area. Roads were not productive and therefore not liable to a tithe rent charge, whether public or private. However, where there is other evidence of status (which in this case there is) then the tithe award might be taken as a small piece of evidence consistent with that other evidence (*Maltbridge Island Management Co. v. SoS for* Environment [1998] EWHC Admin 820 31 July 1998).

First Edition Ordnance Survey map and Book or Reference

The Old Parish Road is shown on the 1st Edition OS 25" = 1 mile map as a road, with, at least as regards the northern portion(s) individual plot numbers. The companion Book of Reference is not helpful – it lists the plot number, and the acreage, but this Bok of Reference does not have any descriptions of land use. All we can say here is that the OS map shows the road in a similar way to other public roads, and as part of a through-route.

The Finance Act 1910

This is the single strongest piece of evidence of public road status. The Old Parish Road is shown 'coloured out' from the adjoining plots of land. This is consistent with the requirements of the Act that all land must be valued 'except land held by a rating authority'. The parish council as highway authority, and its successor rural district council as highway authority, were both rating authorities for the purposes of the Act. The Inland Revenue valuers did not treat footpaths and bridleways in this way. Footpaths and bridleways were not 'coloured out' on the plans, but instead received a deduction from the valuation in the 'field books'. This is indicative that The Old Parish Road was regarded in 1910 as a public road other than a footpath or bridleway. This is very powerful evidence. It would require extremely cogent evidence of a mistake being made by the IR valuer to diminish its weight (*Robinson Webster v. Agombar* 9 April 2001, (Ch) HC 000095).

County road status

By the time of the definitive map survey in the early 1950s, the bottom end of the route that is, to its north, recorded as CRBs 20-23, was already recorded as county maintainable highway C40-7, as far north as to a point just west of the south side of The Mount. There is no 'place of public resort' for this county road to go to, other than its continuation as the CRBs. It is highly unlikely to be a publicly maintainable highway as far as The Mount (a private dwelling), yet not similarly a publicly maintainable highway continuing to the dwellings to the north. Further, there is evidence that the highway authority has improved the next section, CRB 20, as a vehicular road, in more-recent years. This course of actions is indicative that the highway authority regarded the route as a public road primarily serving as property access, and surfaced sections accordingly. There is no record of a formal 'adoption' of these improved sections. Further, 'adoption' of a hitherto private road, which is then improved at the public's expense, when it serves only as access to private property, is both highly unlikely, and probably misapplication of public moneys.

The definitive map survey 1951

The record of the survey made for the original definitive map is itself evidential. The description of the route as a 'rough surfaced road', that it was passable by lorries, and the fact that the local surveyors did not regard it is merely a footpath or bridleway. It would seem to be local knowledge at play here, rather than any express reference to old records. Because this part of the full length of the road was not already recorded by the highway authority as a publicly repairable highway, it was entirely proper and consistent with Government advice for the road to be recorded as a 'road used as public path' (RUPP), sub-classified as a CRB due to its width.

A conveyance of 1952

A conveyance dated 21 March 1952 passed to the Applicants (the owners of property served by the alleged BOAT) on purchase of their property. This conveyance names 'Great Hill', and 'Glyn all' (now 'Glyncote') and plots 653 and 654 on the Ordnance Survey map of 1921. The property conveyed is described as being 'bounded ... by the public road leading up to a place there called Great Hill ...' There is no grant or reservation in this conveyance of any private means of access to the property, nor any alternative means of access whatsoever. This is strong evidence of reputation that the road now subject of this order was regarded in 1952, by vendor and purchaser (one might reasonably assume good local knowledge – see the names, locations, and occupations of the parties named in the conveyance) as a public road providing all, and vehicular, access to the property.

Evidence of reputation

Evidence of reputation is manifested in the way people who might be expected to know about the road have regarded it, and treated it, over a period of time. There are two types of evidence of reputation here: that of the highway authority (which has surfaced parts of the route for vehicles), and that of local residents who would be expected to know (*Trafford v. St Faith's RDC* (1910) JP 297). The very fact that the southern portion of the route was removed from the definitive map as a RUPP at the first reclassification, and placed instead on the 'list of streets', is evidence of the whole route being a public vehicular road. If the whole route was not a pre-1836 public vehicular road, then for any portion of it to become publicly repairable would require a formal act of adoption by the highway authority. None is recorded or asserted. The fact that the highway authority felt able to treat the southern portion (CRB 20) as a publicly maintainable vehicular road, and later to make up CRBs 20, 21 and 22, for the benefit of the public in light vehicles, is indicative that the authority regarded the whole road as a public road for vehicles. No authority would make up a 'private road' for the benefit of occupiers into a public road, thus making a cul-de-sac, without an act of adoption. There is none recorded or asserted. In 1994 the Director of Highways for the highway authority stated formally that he believed this route to be a public vehicular highway; surely he should know?

The local people who have made statements about the use of this road are clear that it has had a lot of varied use by vehicular traffic. Much of this use is also consistent with a private road, but these witnesses are clear that they regarded it as a public road – no vehicular user has ever been turned back; no landowner asserts 'ownership' of this road.

What's in a name?

The name 'The Old Parish Road' is itself evidential. The parish was the highway authority from at least 1555 through to 1894, when the rural district councils inherited the role (passing to the counties in 1929). The parishes were responsible for the repair of all types of highway, including footpaths and bridleways, but in practice only the more important roads got 'proactive' maintenance. An 'old parish road' *could* be only a bridleway, but its physical character is an evidential issue – is it likely that a road amply wide enough for vehicles, well made, and enclosed, would be merely a bridleway? Why would a public body put such resources into such a limited facility? In the case of *Commission for New Towns v. JJ Gallagher*, in considering the meaning of 'parochial road', the judge agreed with leading expert Dr Yolande Hodson

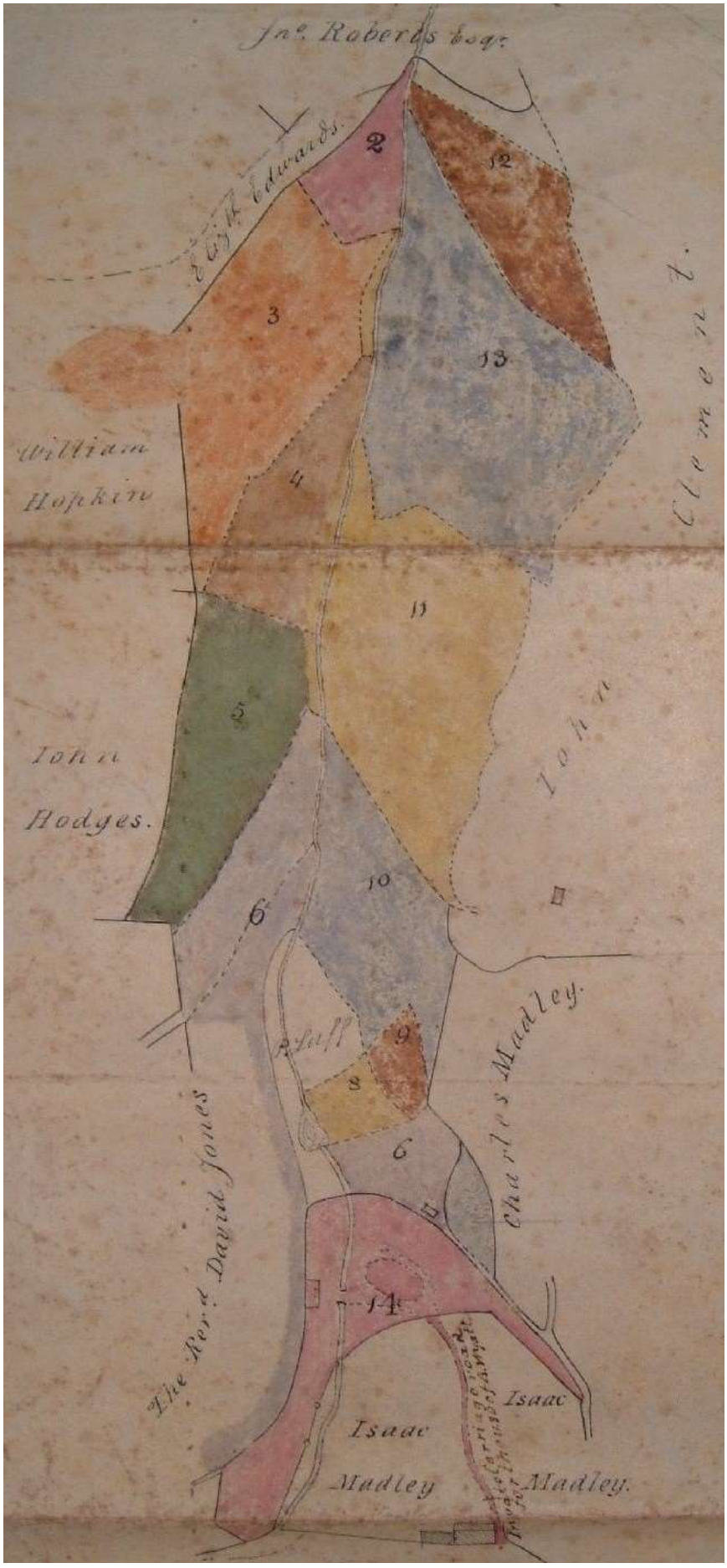
that a parochial road was more likely to be a public vehicular road than only a public path. A 'parochial road' *is* a 'parish road'. Taken with the evidence of the description 'public road' in the conveyance of 1952, with no express private vehicular access, it is unlikely that, in this instance, a/the 'parish road' was only a bridleway.

Summary

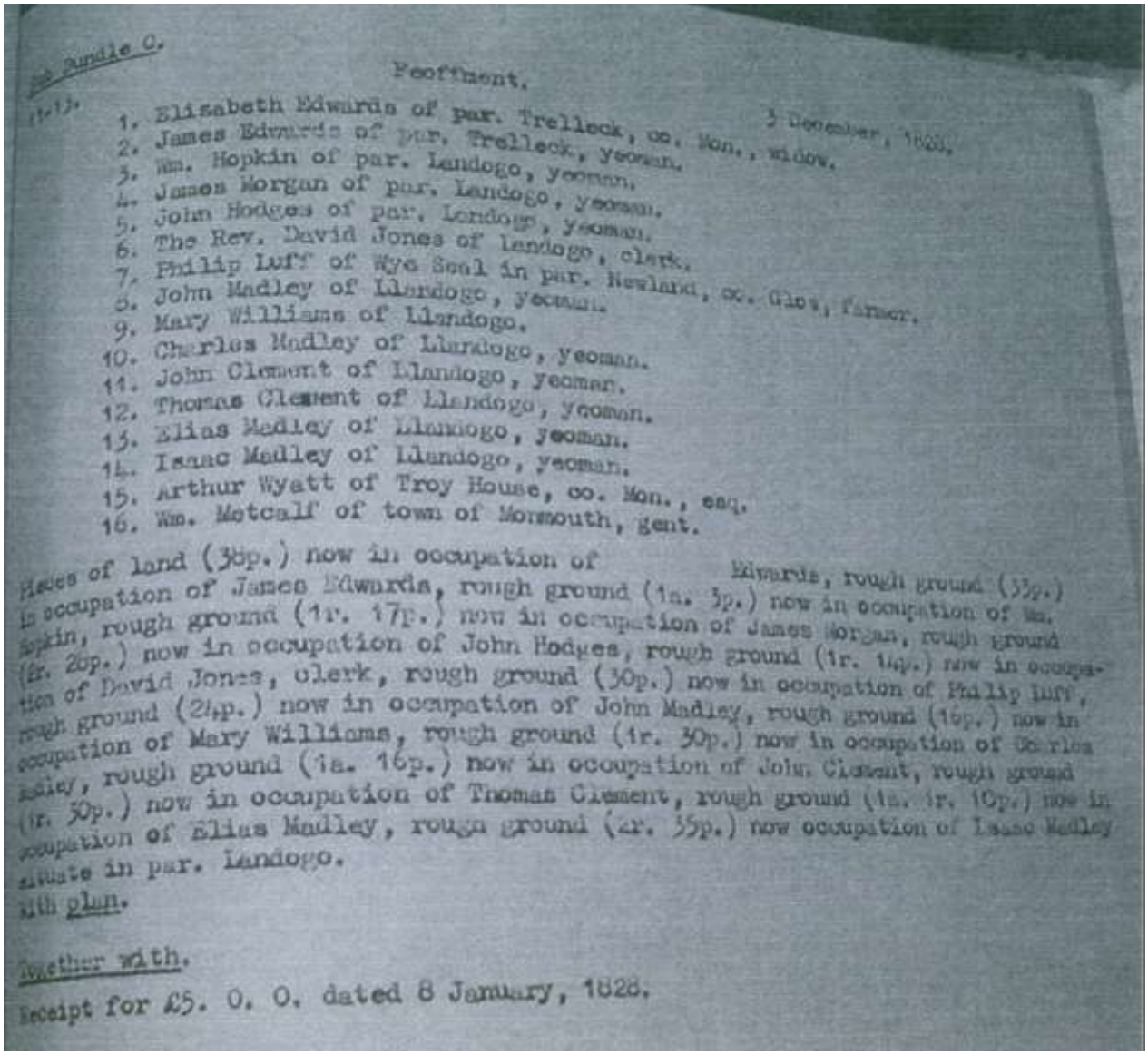
We cannot state clearly how or when The Old Parish Road came into being, nor is there any express indication of its status. There is a sequence of evidence that indicates that the route existed as a 'physical road' from before 1835, and that this route was part of the local road network, albeit used almost totally by local traffic (*R v. Inhabitants of Southampton* [1887] QB 590). The survey of 1910, made under strict statutory discipline, recorded the route in a way consistent with its being a public vehicular road, and the original definitive map survey in 1951 is also consistent with a status higher than footpath or bridleway. Since then both the highway authority (particularly in upgrading the status and condition of parts) and local people have treated the route as a public vehicular road.

The test to be applied to this evidence is the simple balance of probabilities: when all the evidence for and against public vehicular status is weighed, is it probable that The Old Parish Road was, and therefore is, a public right of way for vehicles? There is a considerable accumulation of evidence in favour; there is little evidence against. The balance of probabilities test is satisfied, and an order should be made to modify the RUPPs that comprise The Old Parish Road to the status of Byway Open to All Traffic.

John Cary's 'Improved Map' of England and Wales, series 1820- 1832.
From an original held in The Brotherton Library, Leeds University
Applicants' submission
Appendix 10



Plan to Deed papers dated 1828 – Cleddon Shoots
GWENT RECORD OFFICE EBBW VALE REF: No. D398 11-13
Applicants' submission
Appendix 11



Bundle C.

11-13.

Feoffment.

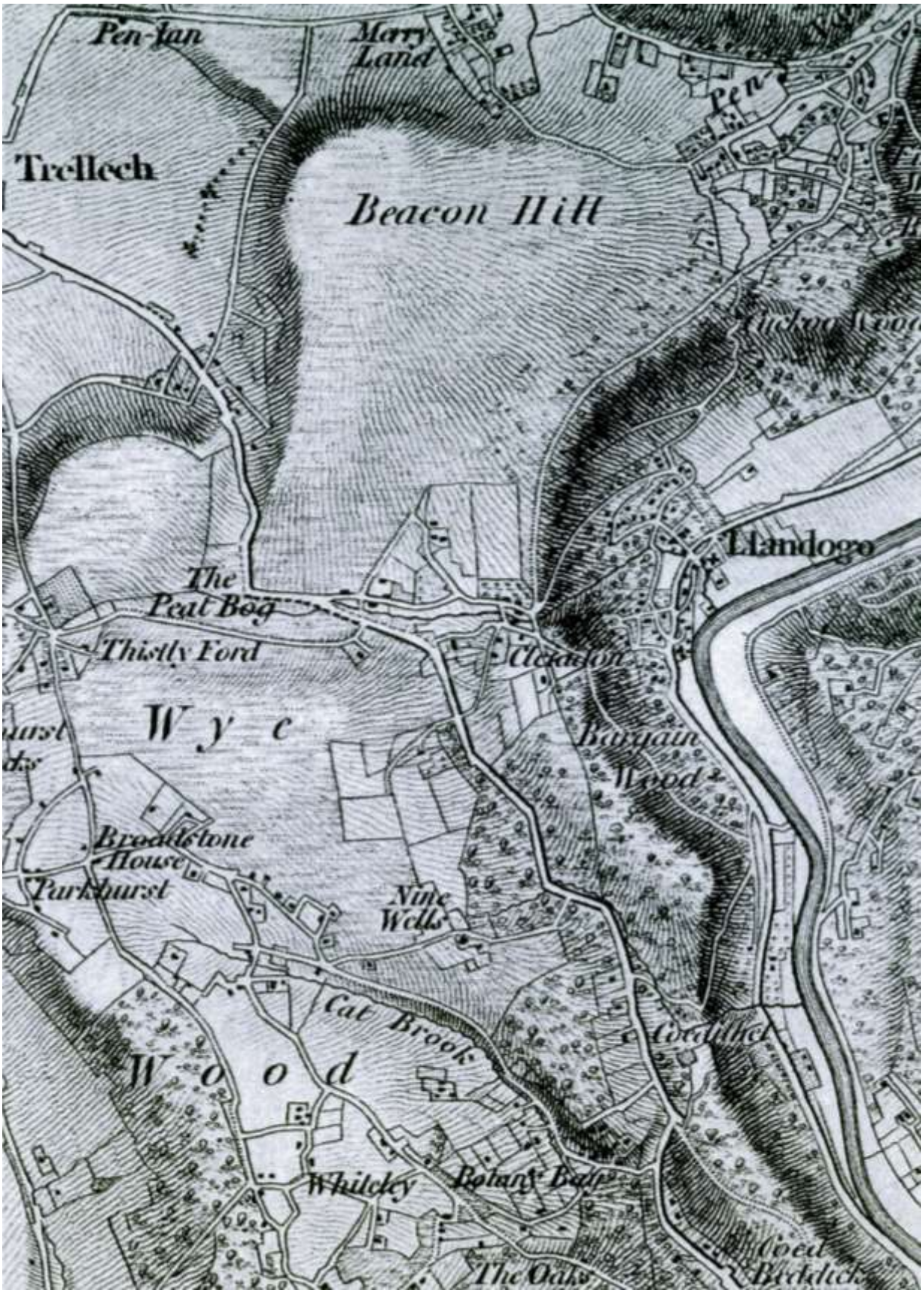
3 December, 1800.

1. Elisabeth Edwards of par. Trelleck, co. Mon., widow.
2. James Edwards of par. Trelleck, yeoman.
3. Wm. Hopkin of par. Landogo, yeoman.
4. James Morgan of par. Landogo, yeoman.
5. John Hodges of par. Londogo, yeoman.
6. The Rev. David Jones of Landogo, clerk.
7. Philip Luff of Wye Seal in par. Newland, co. Glos, farmer.
8. John Madley of Llandogo, yeoman.
9. Mary Williams of Llandogo.
10. Charles Madley of Llandogo, yeoman.
11. John Clement of Llandogo, yeoman.
12. Thomas Clement of Llandogo, yeoman.
13. Elias Madley of Llandogo, yeoman.
14. Isaac Madley of Llandogo, yeoman.
15. Arthur Wyatt of Troy House, co. Mon., esq.
16. Wm. Metcalf of town of Monmouth, gent.

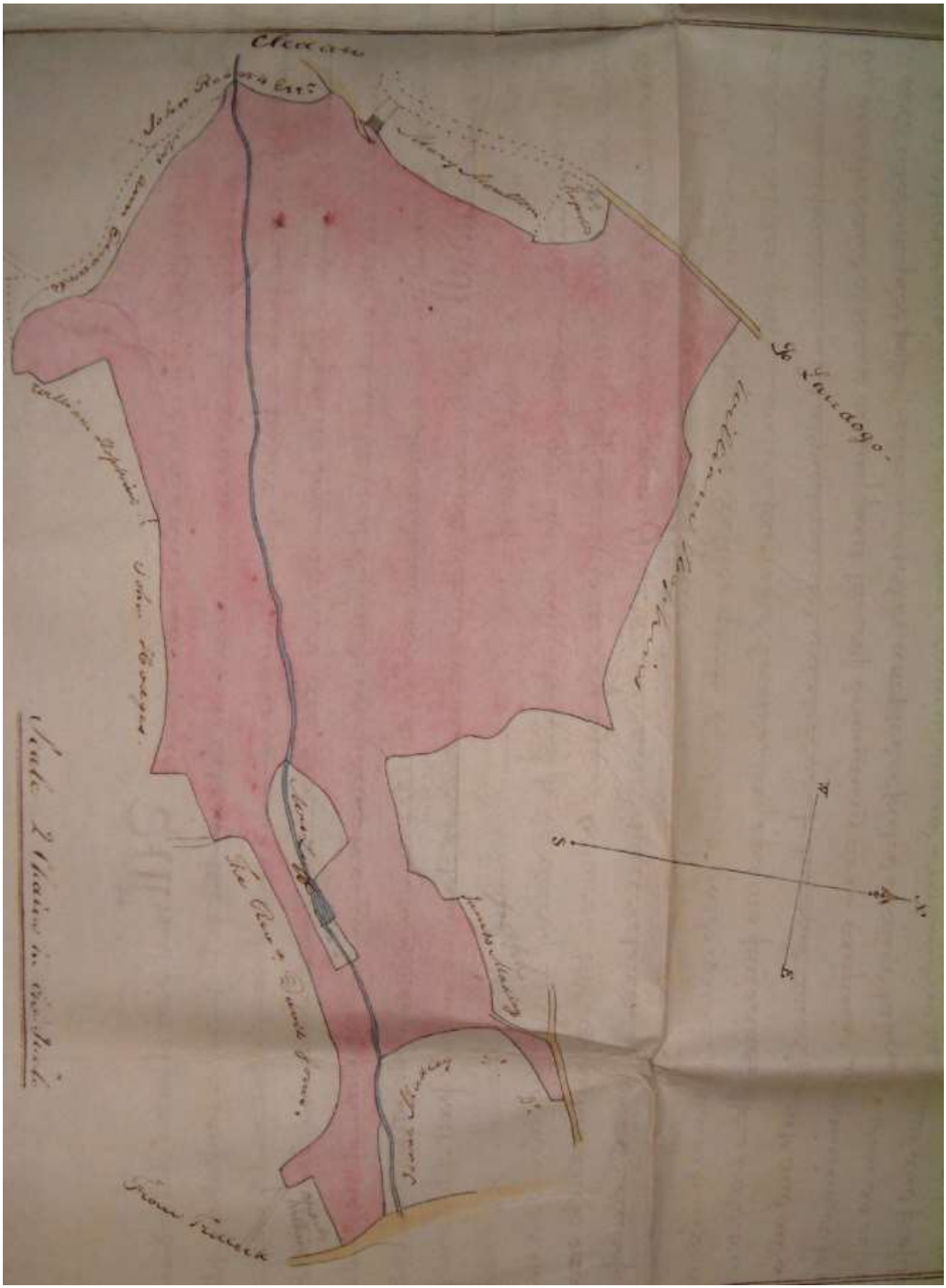
Messes of land (36p.) now in occupation of Edwards, rough ground (35p.) in occupation of James Edwards, rough ground (1a. 3p.) now in occupation of Wm. Hopkin, rough ground (1r. 17p.) now in occupation of James Morgan, rough ground (2r. 26p.) now in occupation of John Hodges, rough ground (1r. 14p.) now in occupation of David Jones, clerk, rough ground (30p.) now in occupation of Philip Luff, rough ground (24p.) now in occupation of John Madley, rough ground (16p.) now in occupation of Mary Williams, rough ground (1r. 30p.) now in occupation of Charles Madley, rough ground (1a. 16p.) now in occupation of John Clement, rough ground (1r. 30p.) now in occupation of Thomas Clement, rough ground (1a. 1r. 10p.) now in occupation of Elias Madley, rough ground (2r. 35p.) now occupation of Isaac Madley situate in par. Landogo.
With plan.

Together with.

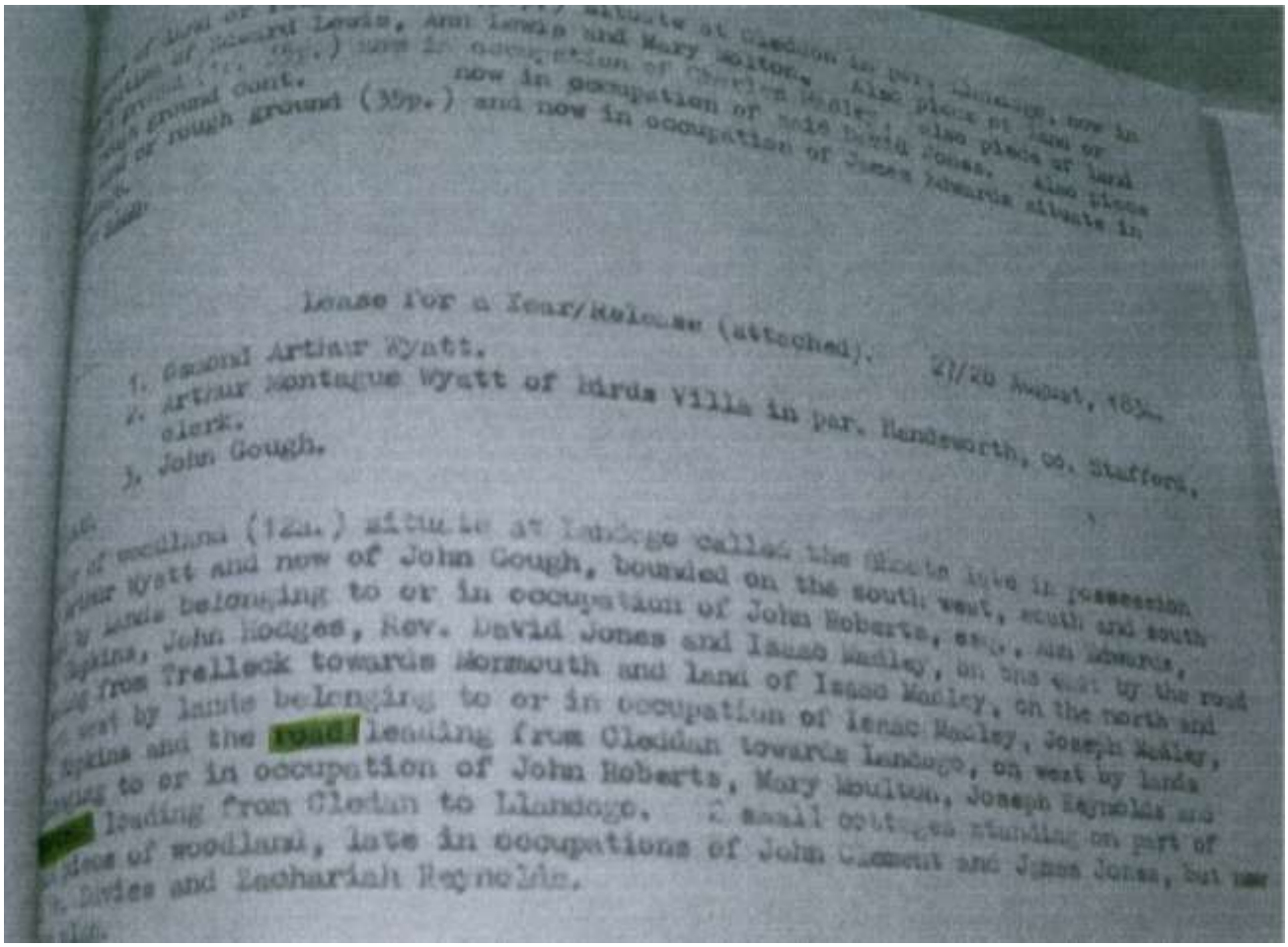
Receipt for £5. 0. 0. dated 8 January, 1828.



Ordnance Survey 1st Edition Map 1inch to the mile date 1830
GWENT RECORD OFFICE EBBW VALE
Applicants' submission



Plan to Deed Papers dated 1834 – Cleddon Shoots
GWENT RECORD OFFICE EBBW VALE REF: No. D398 11-16
Applicants' submission
Appendix 14



Lease for a Year/Release (attached). 27/28 August, 183..

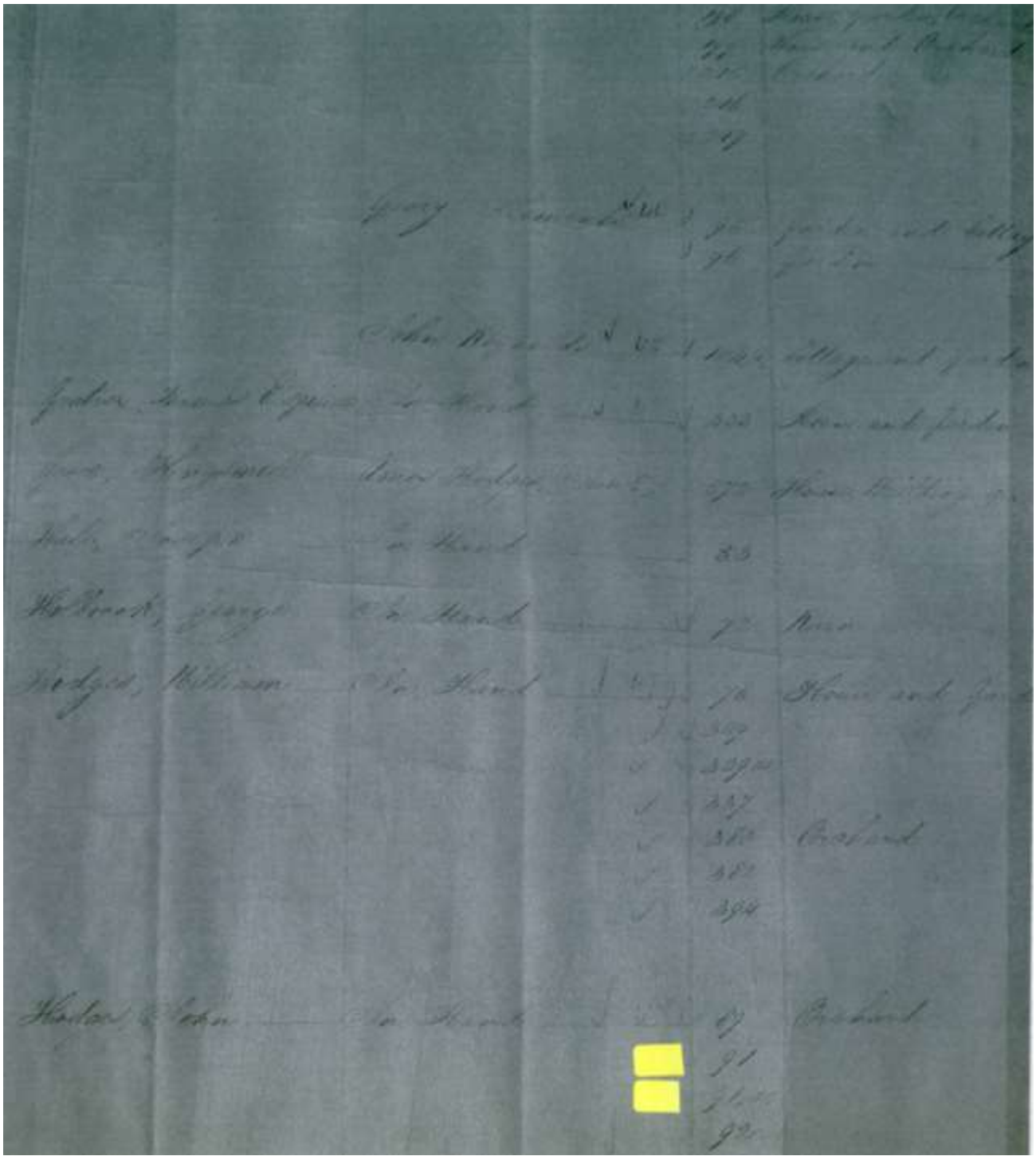
1. Colonel Arthur Wyatt.
2. Arthur Montague Wyatt of Birds Villa in par. Handsworth, co. Staffors, clerk.
3. John Gough.

Catalogue Entry for Deeds dated 1834 – Cleddon Shoots
GWENT RECORD OFFICE EBBW REF: No. D398 11-16
Applicant's submission

Lease for a year 27/28th August 1834 with Plan

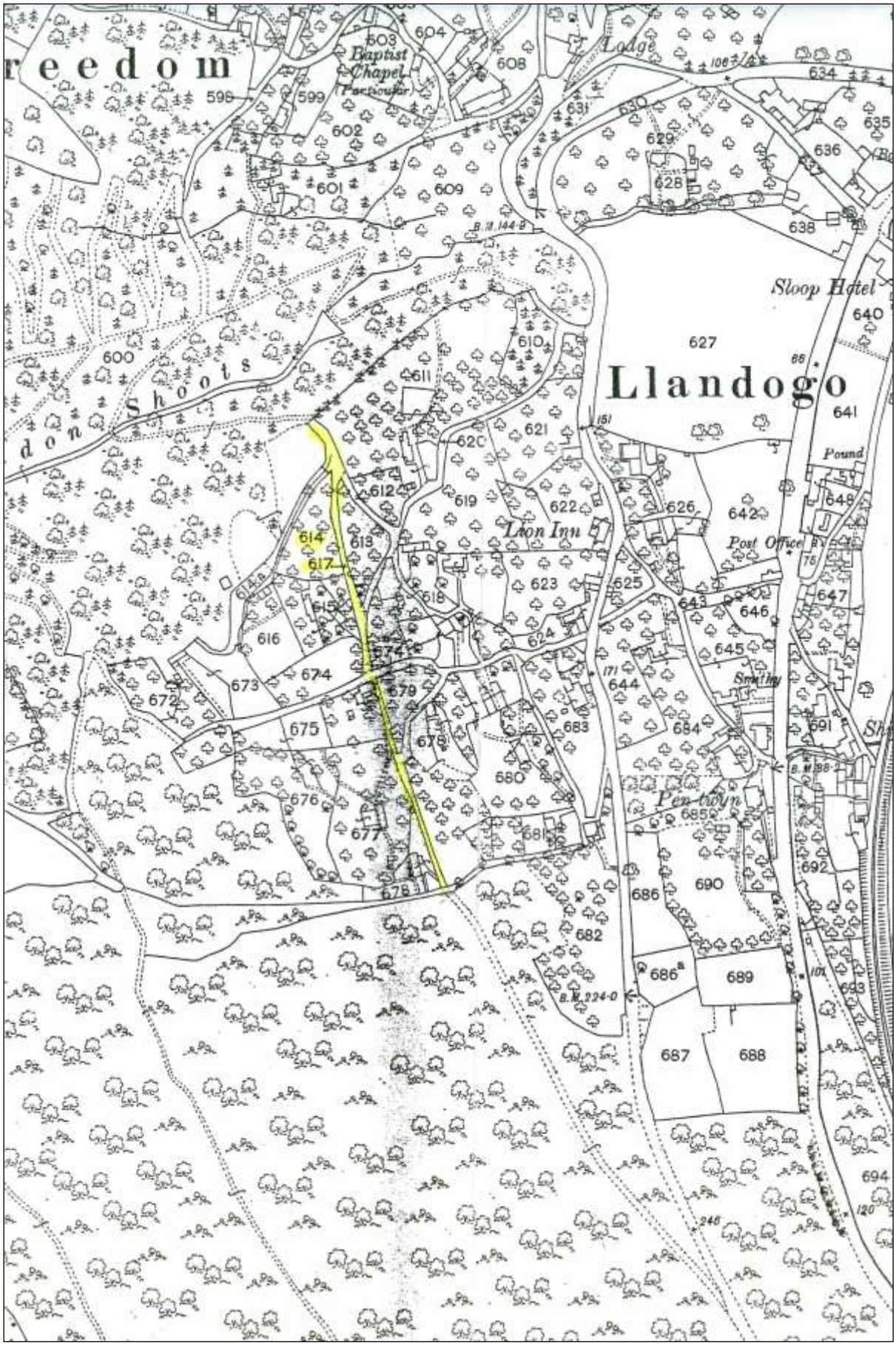
'Piece of Woodland (12a) situate at Llandogo called the Shoots. Late in possession of Arthur Wyatt and now of John Gough, bounded on the S.W., S and S.E. by lands belonging to or in occupation of John Roberts esq, Ann Edwards, Mr Hopkins, John Hodges, Rev David Jones and Isaac Madley, on the east by the road leading from Trelleck towards Monmouth and land of Isaac Madley, on the north and N.W. by lands belonging to or in occupation of Isaac Madley, Joseph (James) Madley, William Hopkins and the road (Not the road in question) leading from Cleddon towards Llandogo, on west by lands belonging to John Roberts, Mary Moulton, Joseph Renolds and the road (Not the road in question) leading from Cleddon to Llandogo, 2 small cottages standing on part of the said piece of woodland, late in occupations of John Clement and James Jones, but now of Mr Davies and Zachariah Reynolds'.

Transcript of Deed dated August 1834 – Cleddon Shoots
GWENT RECORD OFFICE EBBW VALE REF: No. D398 11-16
Applicants' submission
Appendix 15



Tithe Award dated 1843
GWENT RECORD OFFICE EBBW VALE REF: No. D1127
Applicants' submission
Appendix 16

Tithe Map dated 1846
GWENT RECORD OFFICE EBBW VALE REF: No. D3731.1
Applicants' submission
Appendix 17



Ordnance Survey 1st Edition Map 25 inch to the mile date 1881
GWENT RECORD OFFICE EBBW VALE
Applicants' submission
Appendix 18

ORDNANCE MAPS, &c.

WALES.

g Cross—LONDON.

D

Buildings—EDINBURGH.

).

ix Park—DUBLIN.

ORDNANCE SURVEY OF ENGLAND.

BOOK OF REFERENCE TO THE PLAN

OF THE

PARISH OF LLANDOGO

(HUNDRED OF RAGLAN),

IN THE

COUNTY OF MONMOUTH,

CONTAINING 1821·950 ACRES.

COLONEL A. C. COOKE, C.B., R.E.,

DIRECTOR-GENERAL OF THE ORDNANCE SURVEYS.

LONDON:

PRINTED BY GEORGE E. EYRE AND WILLIAM SPOTTISWOODE,

PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

FOR HER MAJESTY'S STATIONERY OFFICE.

1882.

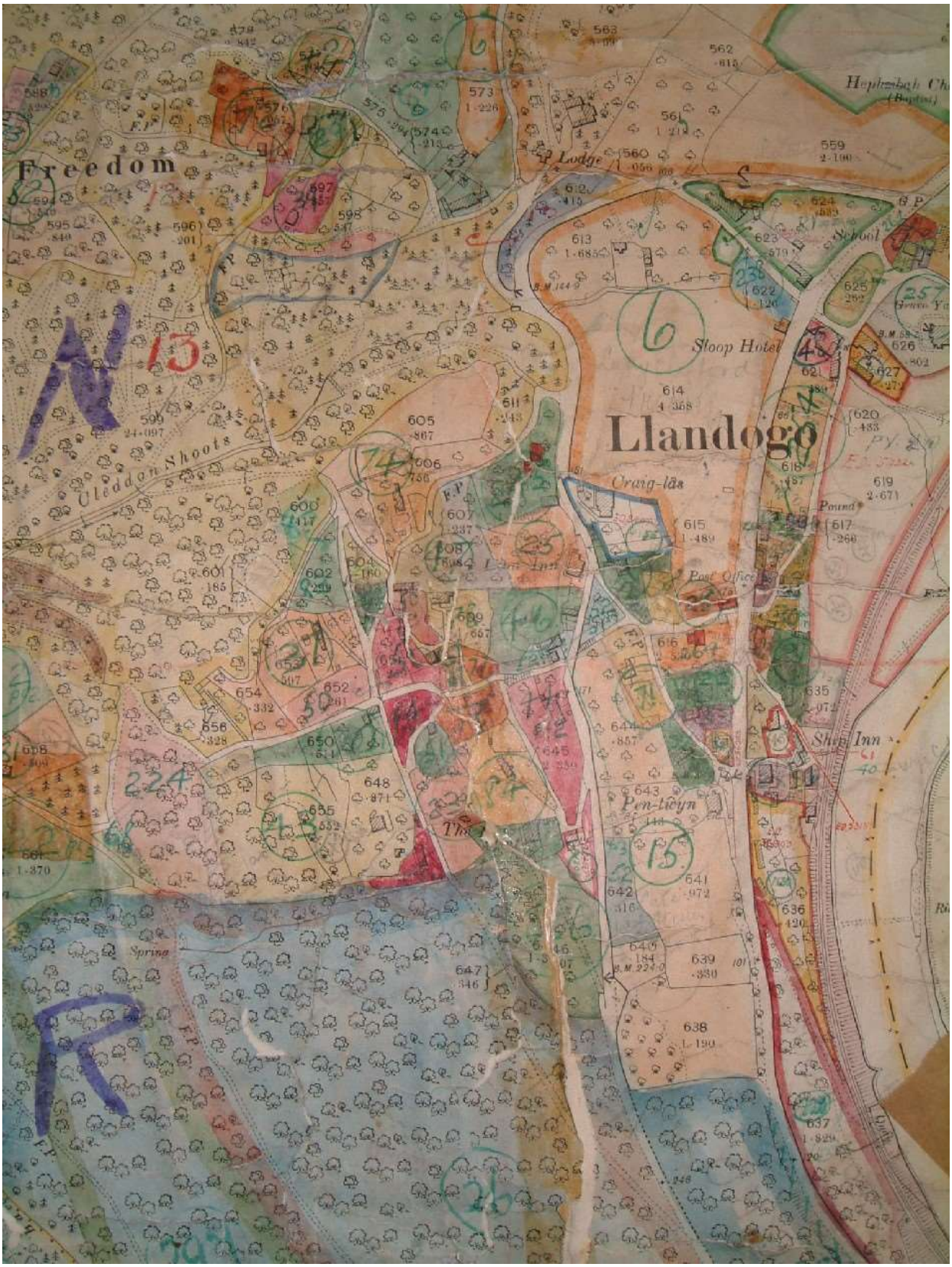
Price One Shilling.

1st Edition Book of Reference dated 1882
Applicants' submission
Appendix 19

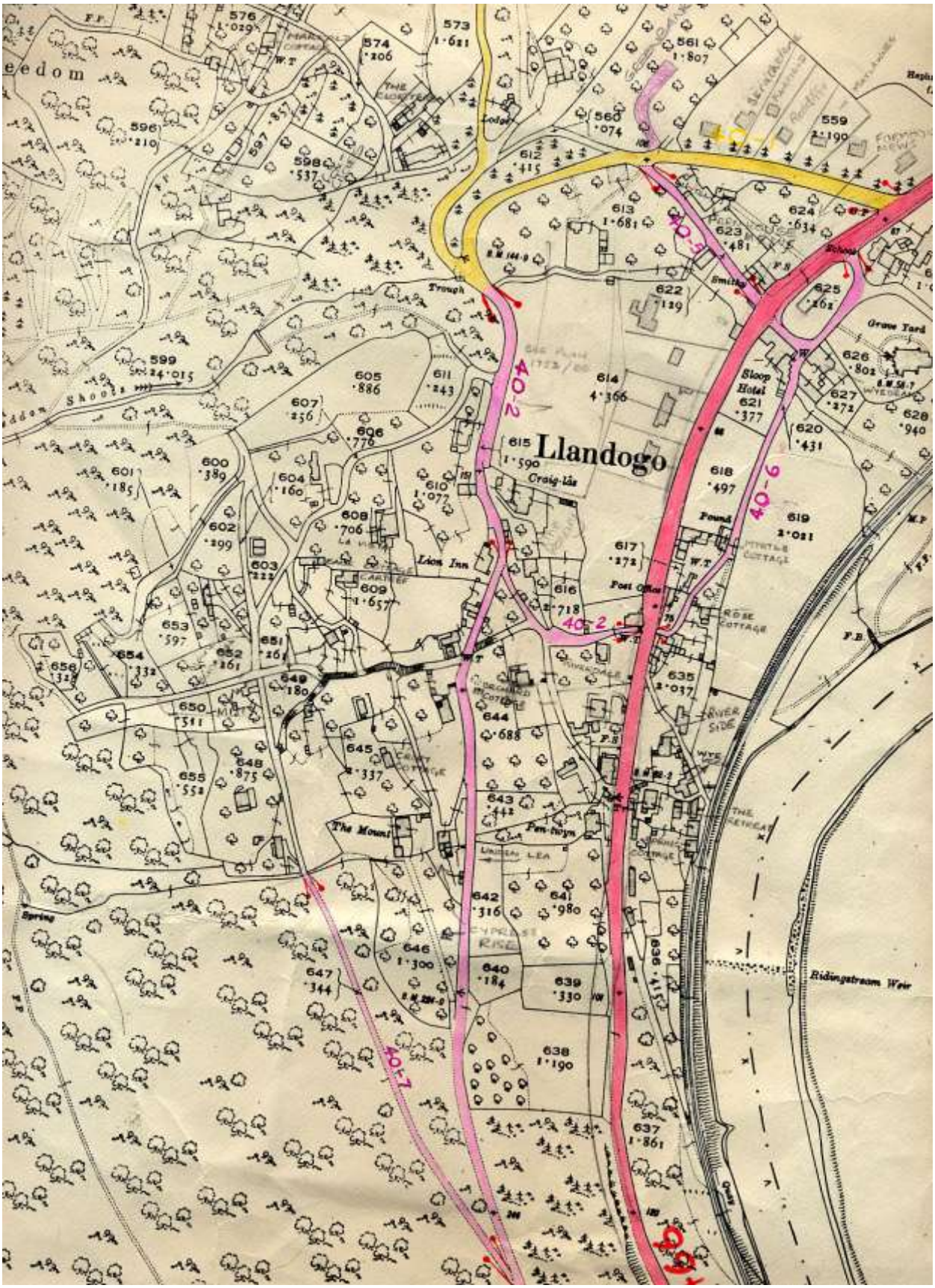
No. of Sheet and Plan and No. on Plan.	Area in Acres.
Sheet XXI. 5 :— (*cont^d.*) 553	3·627
554	·196
555	·927
556	·387
557	1·474
558	·779
559	·160
560	·332
561	3·692
562	1·330
563	2·156
564	2·836
565	16·718
566	4·286
567	2·666
568	6·540
569	6·895
570	·838
571	1·523
572	·790
573	·786
574	1·697
575	4·039
576	·998
577	·224
578	9·332
579	7·474
580	6·785
581	·364
582	7·256
583	8·489
584	·437
585	8·318
586	·218
587	5·074
588	·443
589	·180
590	·539
591	·506
592	·244
593	1·080
594	·529
595	·240
596	·342
597	1·009
598	·153
599	·361
600	23·168
601	·483
602	·537
603	·496

No. of Sheet and Plan and No. on Plan.	Area in Acres.
Sheet XXI. 5 :— (*cont^d.*) 604	·213
605	·294
606	1·244
607	·790
608	·375
609	·922
610	·243
611	1·492
612	·131
613	·222
614	·299
614a	·185
615	·313
616	·284
617	·160
618	1·063
619	·698
620	·272
621	·546
622	·539
623	·441
624	·153
625	·119
626	·928
627	3·390
628	·132
629	1·549
630	·175
631	·415
632	1·995
633	2·190
634	·406
635	·575
636	·543
637	·120
638	·374
639	·262
640	·389
641	·487
642	·676
643	·219
644	·493
645	·560
646	·152
647	·610
648	·266
649	2·945
650	·487
651	·272
652	·802
653	·445

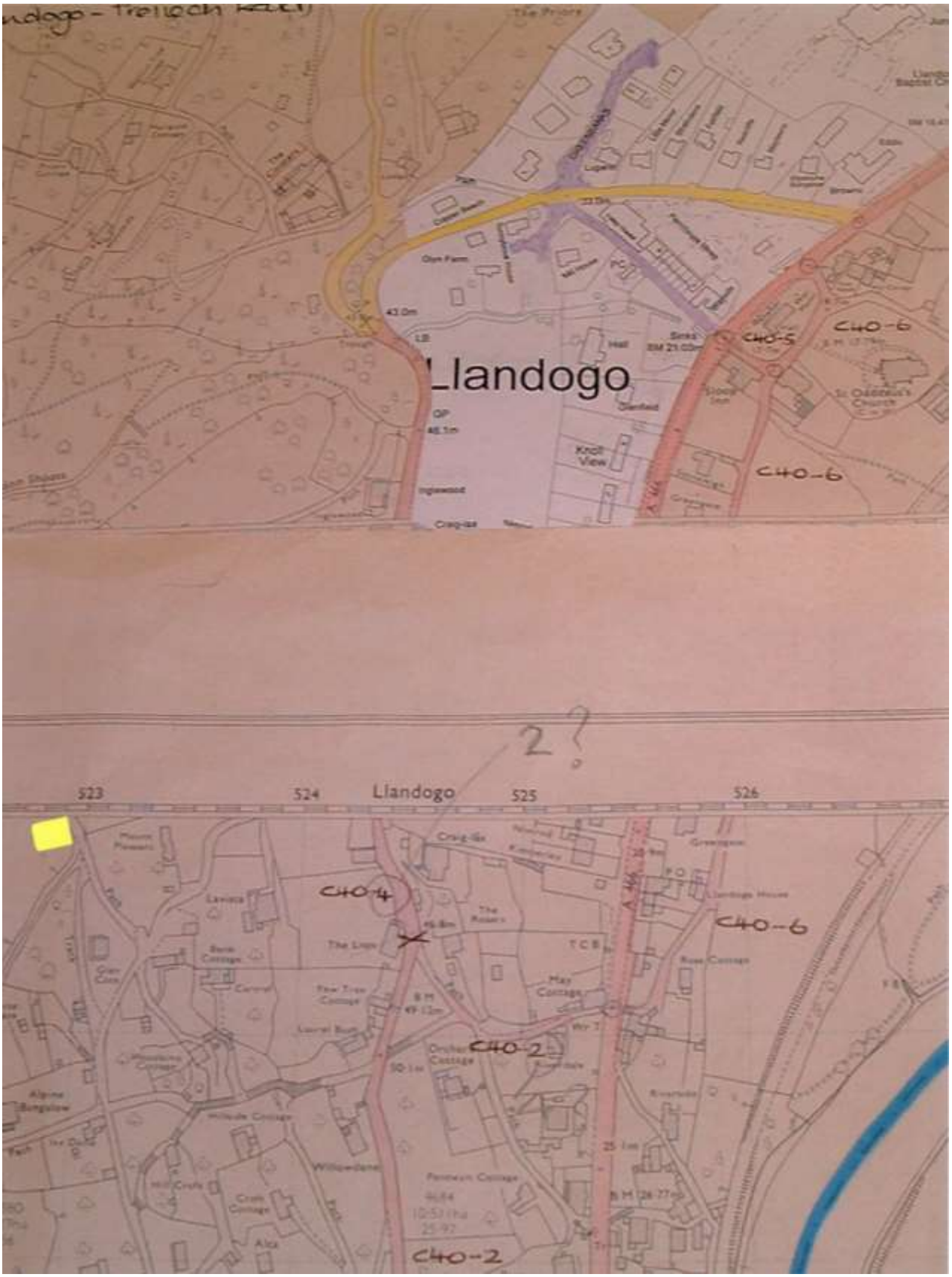
No. of Sheet and Plan and No. on Plan.	Area in Acres.
Sheet XXI. 5 :— (*cont^d.*) 654	1·882
655	·327
656	·284
657	1·612
658	·184
659	2·247
660	1·342
661	9·235
662	2·092
663	1·626
664	3·178
665	2·559
666	1·006
666a	·351
667	·509
668	·264
669	·206
669a	·188
670	·539
671	·831
672	·328
673	·332
674	·261
674a	·497
675	·511
676	·552
677	·696
678	·175
679	·909
679a	·180
680	·606
681	·288
682	1·005
683	·542
684	·723
685	·681
686	·316
686a	·184
687	·552
688	·638
689	·330
690	·819
691	·825
692	·484
693	·257
694	1·843
695	19·246
Sheet XXI. 9 :— 696	96·693
697	2·779



Working copy of the Finance Act Map 1910
GWENT RECORD OFFICE EBBW VALE
Applicants' submission



Map of County Roads undated
Applicants' submission
Appendix 22



Map of County Roads undated
Applicants' submission
Appendix 23

APPENDIX A

SURVEY OF RIGHTS OF WAY.

LOCAL AUTHORITY (Borough, District or Parish Council)..... MONMOUTH RURAL DISTRICT .....

PARISH OF..... TRELLECK UNITED .....

N.B.—The Pamphlet references in this Form are to the January, 1950 Edition of the Memorandum prepared by the Commons, Open Spaces and Footpath Preservation Society entitled "SURVEY OF RIGHTS OF WAY."

Kind of Path (Use Symbols, See Para. 4).	Name of Path, if any, or its destination	Concise description of Path commencing with its starting point. Give features occurring on Path in correct order, and its widths where well defined. If metalled, by whom repaired. (See Para. 5 on Pages 11, 12 and 13).	Brief grounds for belief that way is public.	Signature, description and address of person carrying out survey and dates.
~~F.P.~~		~~Starts at Llandogo School, metalled for FIFTY YDS. repaired by Council width 12 ft. [illegible] other places. Exit on to Monmouth-Chepstow road near [illegible]~~	~~Walked~~	~~F. Williams, 1st June, 1951~~
F.P.		From County approx. F.P.14 MR to join County Road to CRAIG LAS.		
F.P.		Starts May Cottage on Monmouth-Chepstow Road opposite G.R.S. (No.1) Steps to churchyard 4ft. wide to begin and widens to 8ft. in places. Joined by F.P. from Pentwyn and then forks. Lefthand fork making exit on the Llandogo-Trellech road at Laural Bush Cottage ending with 14 steps. Right hand fork exiting exits on the Llandogo Trellech road at the 14th.	Walked	F. Williams 1st June, 1951
F.P.		Starts at Post Office on the Monmouth-Chepstow Road. Width mainly 4 ft. Ends at Railway Cottage (Bounded by walls both sides).	Walked	F. Williams 1st June, 1951
F.P.		Starts at Pentwyn on the Monmouth-Chepstow Road, commencing with 17 steps joining footpath No.9 by the Old Ship Inn by the river.	"	F. Williams 1st June, 1951.
F.P.	Great Hill	Starts at The Laural Bush Cottage on the Llandogo Trellech Road. After first 25 yards mount by stone steps exit on to Glen Road, 20 yds south of Ryevern Cottage.	"	F. Williams 1st June, 1951.
F.P.	Great Hill	Continuation of F.P. No.12. Starts at Ryevern Cottage on the Glen Road, continuation of rough stone steps for 100 yards; then rough pathway through woods to Cleddon.	"	F. Williams 1st June, 1951
F.P.	Hollow Lane	Starts at Inglewood House on the Llandogo Trellech Road Mounts Hill with stone wall left hand side; earthen bank on other. Approx. width 6 ft. Exit on to Glen Road.	"	F. Williams 1st June, 1951
C.R.F.		County Road W.O.F. Starts on Llandogo-Trelleck Road 800 yards above The Mount. Rough surface road passing through wood as far as Young's Cottage. Continuing as unsurfaced road for a quarter of a mile approx. with a turning point for lorries at the end. Road now continues as a C.R.F. Footpath crossing Cleddon Shoots into Cloisters Lane near Marigold Cottage.	"	F.J. Williams 1st June, 1951
F.P.	Cloisters Lane	Starts at the beginning of Freedom Road. Rough stoney path bordered by stone walls. Path about 5 ft. wide. Stone walls end at Hillnuttree Cottage, where path becomes ill defined until it exits on to the Freedom Road by a stone stile.	"	F.J. Williams 1st June, 1951.

14

Extract copy of Definitive Map statement relevant date 1st July 1952
Applicants' submission
Appendix 24

535019 19/1 AS 535018

535020 20/1 CRF
535020 20/2
535020 20/3 WALKED

DISTRICT : MONMOUTH DISTRICT
COMMUNITY : TRELLECH UNITED

535020 20/4 F WILLIAMS, 1ST JUNE 1951
535020 20/5 STARTS ON COUNTY ROAD W. OF THE MOUNT. ROUGH SURFACE ROAD PASSING THROUGH WOOD AS FAR AS YOUNG'S COTTAGE. CONTINUING AS UNSURFACED ROAD FOR A QUARTER OF A MILE APPPROX. WITH TURNING POINT FOR LORRIES AT THE END. ROAD NOW CONTINUES AS A C.R.F. CROSSING CLEDDON SHOOTS INTO CLOISTERS LANE NEAR MARIGOLD COTTAGE.

535021 21/1 AS 535020

535022 22/1 AS 535020

535023 23/1 AS 535020

535024 24/1 CRF
535024 24/2 AS 535020

535025 25/1 FP
535025 25/2 CLOISTERS LANE.
535025 25/3 WALKED
535025 25/4 F WILLIAMS, 1ST JUNE 1951
535025 25/5 STARTS AT THE BEGINNING OF FREEDOM ROAD. ROUGH STONY PATH BORDERED BY STONE WALLS. PATH ABOUT 5 FT WIDE. STONE WALLS END AT WALLNUT TREE COTTAGE, WHERE PATH BECOMES ILL DEFINED UNTIL IT EXITS ON TO THE FREEDOM ROAD BY A STONE STILE.

535026 26/1 AS 535025

535027 27/1 AS 535025

535028 28/1 FP
535028 28/2
535028 28/3 WALKED

Dated 21st March 1952.

The Personal Representatives of the
late Mrs. Ruth Reynolds and another

- to -

MRS. E. M. HEWELL.

Conveyance

of freehold property known as Rock
Cottage Llanvair in the County of
Monmouth.

Williams, Sons, Bryce and Tweedy,
Monmouth.

This Conveyance

is made the Twenty-first day of March One thousand nine hundred and fifty two

B E T W E E N KENNETH EDWARD REYNOLDS of Ynyside Garage Llandogo in the County of Monmouth Garage Proprietor and BRYAN JAMES YORATH WILLIAMS of Whitecross Street in the Borough and County of Monmouth Solicitor (hereinafter called "the Vendors") of the first part BERTIE JAMES BYRD of New Mills Whitecross in the said County of Monmouth Estate Agent and Surveyor (hereinafter called "the Purchaser") of the second part and MISS MURIEL BETHELL of Number 22 Primrose Drive Huyton near Liverpool in the County of Lancaster Widow (hereinafter called "the Sub-Purchaser") of the third part.

W H E R E A S

(1) By his Will dated the Fifth day of August One thousand nine hundred and eight William Reynolds late of Rock Cottage Llandogo aforesaid devised all his real estate to the use of his wife Ruth Reynolds during her life and appointed her sole executrix thereof.

(2) The said William Reynolds died on the Eighth day of January One thousand nine hundred and nineteen and his said Will was duly proved by the said Ruth Reynolds on the Seventeenth day of March One thousand nine hundred and nineteen in the Llandaff District Probate Registry.

(3) The said William Reynolds was at the date of his death seised of (inter alia) the property hereinafter described in fee simple in possession free from incumbrances.

(4) The said Ruth Reynolds remained in possession of the said property from the date of death of the said William Reynolds until her own death hereinafter recited.

(5) By virtue of the Law of Property Act 1925 and the Settled Land Act 1925 the said property on the First day of January One thousand nine hundred and twenty six vested in the said Ruth Reynolds for an estate in fee simple.

(6) The said Ruth Reynolds died at Rock Cottage Llandogo aforesaid on the Thirteenth day of April One thousand nine hundred and thirty nine and her Will dated the Twenty eighth day of May One thousand nine hundred and thirty five was proved by the Vendors as administrators with the Will annexed on the Thirteenth day of March One thousand nine hundred and fifty two in the Llandaff District Probate Registry.

(7) The Vendors have not given or made any assent or conveyance in respect of a legal estate in or affecting the said property or any part thereof.

(8) The Vendors have agreed with the Purchaser for the sale to him of the said property in fee simple in possession free from incumbrances at the price of Six hundred and fifty pounds.

(9) The Purchaser has agreed to resell the said property to the Sub-

Purchaser at the price of One thousand and seventy five pounds.

NOW THIS DEED WITNESSETH as follows:-

1. In pursuance of the said agreement and in consideration of the sum of One thousand and seventy five pounds paid by the Sub-Purchaser as to Six hundred and fifty pounds part thereof to the Vendors by the direction of the Purchaser and as to Four hundred and twenty five pounds the balance thereof to the Purchaser (the receipt of which sum of Six hundred and fifty pounds the Vendors hereby acknowledge and the receipt of which sum of Four hundred and twenty five pounds and the payment in manner aforesaid of the said sum of Six hundred and fifty pounds the Purchaser hereby acknowledges) the Vendors as personal representatives of the said Ruth Reynolds deceased and in exercise of their statutory powers and by the direction of the Purchaser hereby convey and the Purchaser as trustee hereby conveys and confirms unto the Sub-Purchaser ALL THAT piece or parcel of land situate in the Parish of Llandogo in the County of Monmouth containing by estimation Three roods eight perches or thereabouts TOGETHER WITH the messuage or dwelling-house known as Rock Cottage and all other buildings erected thereon or on some part or parts thereof All which said premises form part of Enclosures numbered 653 and 654 on the Ordnance Survey Map (Monmouthshire Sheet XXI.5) 1921 Edition and are shown but not so as to limit or enlarge the hereinbefore written description thereof on the plan annexed hereto and thereon edged red which said premises were in a Conveyance dated the Third day of December One thousand eight hundred and eighty seven made between Richard Phillips of the one part and the said William Reynolds of the other part known and passed by the description of ALL THAT messuage orchard garden and premises situate in the Parish of Llandogo in the County of Monmouth aforesaid formerly in the occupation of Elizabeth Phillips afterwards of the said Richard Phillips and now in the occupation of the said William Reynolds as tenant thereof to the said Richard Phillips and bounded by premises belonging to John Williams John Hodges Antonio Gallenga and by the public road leading up to a place there called the Great Hill on all or most parts and sides thereof and a small portion of which premises is intersected by a road leading from the Trelleck Road through the same to a place called the Glyn All which said premises are numbered 679 in the Tithe Map of the said Parish of Llandogo and in the Schedule thereto stated to contain by admeasurement Two roods and Seventeen perches all which lastly described premises are intended to be hereby conveyed To Hold the same unto the Sub-Purchaser in fee simple.

2. The Vendors hereby acknowledge the right of the Sub-Purchaser to production of the Letters of Administration with the Will annexed to the estate of the said Ruth Reynolds and to delivery of copies thereof.

NB Plan missing all line 8 examination

3. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds One thousand five hundred pounds.

IN WITNESS whereof the said parties to these presents have hereunto set their Hands and seals the day and year first before written.

SIGNED SEALED AND DELIVERED by the said KENNETH IDRIS REYNOLDS in the presence of:-

K J Reynolds

J. Evans

Licensed Victualler

SIGNED SEALED AND DELIVERED by the said BRYAN JAMES YORATH WILLIAMS in the presence of:-

Bryan J. Y. Williams

Articled Clerk.

SIGNED SEALED AND DELIVERED by the said BERTIE JAMES BYRNE in the presence of:-

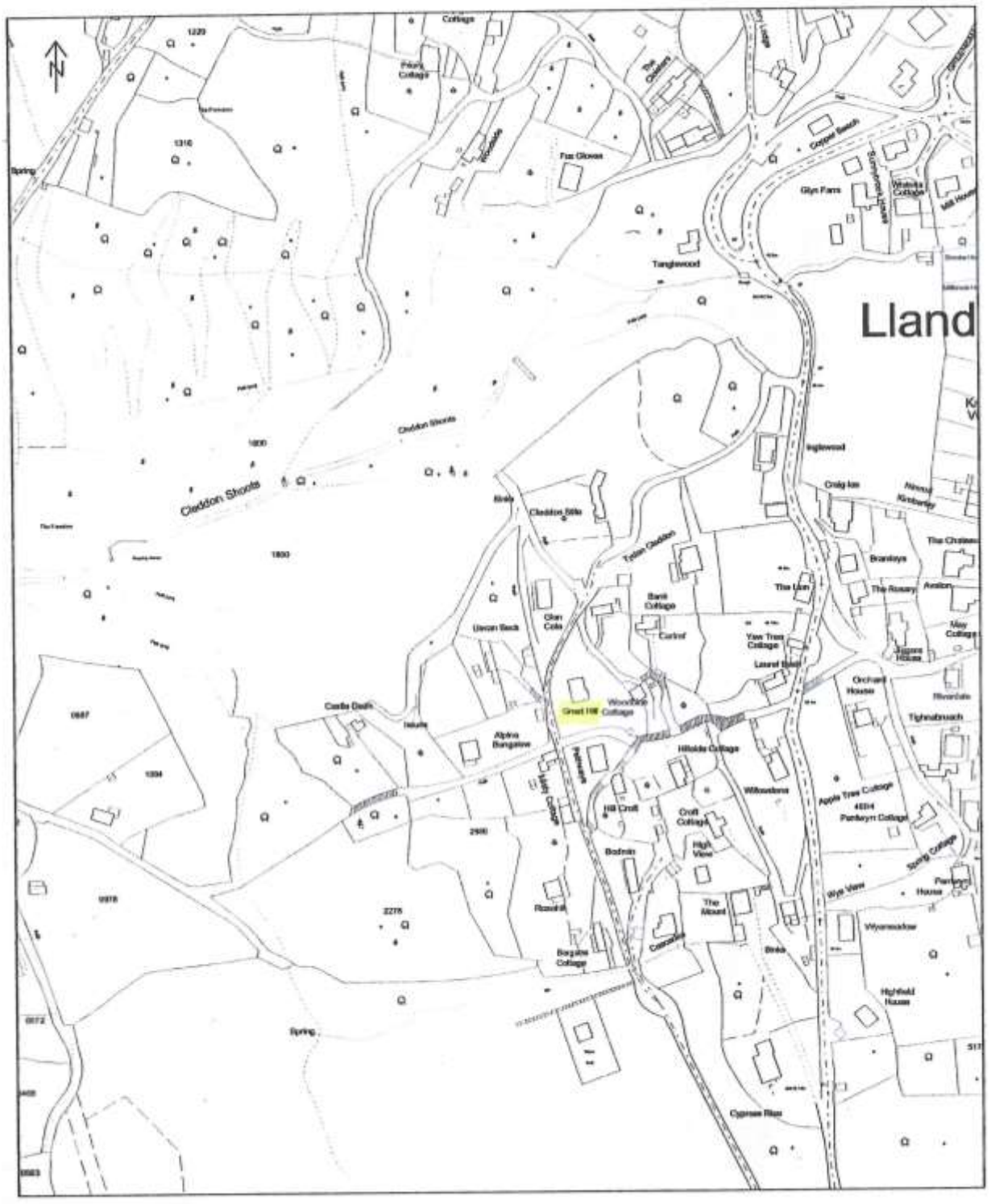
B J Byrne

G W Fowler

Post Office

Sub Postmaster

PLAN SHOWING 'GREAT HILL'



This is only a copy of the 2004 digitised plan showing property names and not the plan that is referred to in the 1952 conveyance documents
Applicants' submission
Appendix 30

Application No.A36666 Date Valid: 05 OCT 1993

Mr R K Ellis
Brambles
Mitchel Troy
Monmouth
Gwent

Agent: B.S. Technical Services,
Unit 2,
Hadnock Road,
MONMOUTH,
Gwent.

AMENDED SITING OF APPROVED DWELLING.
SITE ADJACENT GLYNCOTE, THE OLD PARISH ROAD, LLANDOGO.

Application Type: DETAILED
Community Council: TRELLECH UNITED

REPRESENTATIONS

Trellech Community Council recommends approval but point out site is outside Llandogo Development Area.

Two letters of objection have been received from local residents, one being from the occupants of Glyncote the dwelling immediately in front of and below the appliation site. The main points raised being.

- Inadequate nature of access track and retaining wall make it unsuitable to accommodate additional vehicular traffic.
- Initial site clearance work pursuant to the extant permission on site has resulted in debris falling onto the garden of the adjacent dwelling Glyncote. This hazard will be repeated despite the relocation of the dwelling.
- The postion of the proposed garage will result in additional pressure on the wall retaining the access track. The garage should be located at the southern end of the plot and set back to allow sufficient space to turn.
- Site outside village development boundary.

Copy correspondance has been received from the County Planning Officer which highlights concerns over the suitability of the access and its retaining wall to acommodate heavy vehicles during the construction period.

It also indicates that there is uncertainty over who is responsible for the maintenance of the retaining wall, the County Council or the owner of Glyncote. There is recourse to the County Council or the owners of Glyncote if the highway or retaining wall is damaged by extraordinary traffic.

Lower Wye Valley Preservation Society make the following comments:

- Access is poor, being along a narrow lane which is unsuited to additional domestic and delivery service traffic including emergency vehicles. The retaining wall to the access is showing signs of movement.
- Development of the site will be difficult and cause damage to neighbours from debris falling downhill.
- The dwelling would adversely affect the privacy of the immediate neighbours.
- The site should be retained as it is as the development would be detrimental to the area.

Application No. A36666 continued...

RELEVANT PLANNING HISTORY

29567 Dwelling and garage OUTLINE APPROVED 04.01.198.
30965 Dwelling and garage RESERVED MATTERS APPROVED 0[illegible].1989.

OFFICERS EXPLANATION/COMMENTS

The application site is located on a steeply sloping hillside at the highest part of the village of Llandogo. As detailed above planning permission has previously been granted for the development of the site by a single dwelling and garage.

Intial site works pursuant to the above approvals revealed a rock outcrop in the position of the proposed dwelling. The application seeks to relocate the development within the plot to avoid this rock outcrop. Details of the dwelling are unchanged since the previous approval. In its revised position the dwelling will sit directly behind and above 'Glyncote'. Due to the existence of only one first floor window in the rear elevation of Glyncote and the respective levels between the dwellings, this relationship will not give rise to unacceptable overlooking between the properties. Indeed the revised positioning is seen as an improvement in this respect as in its previous location where it was offset in relation to Glyncote, it would have overlooked a large section of the garden thereto.

To accomodate the dwelling in this revised position the associated double garage has been moved 14m (46ft) northwards in the plot. This will require use of an additional 18m (59ft) length of the adjacent track for day to day access to the dwelling for residents vehicles. The access is only single track width along much of its length. Furthermore, the section which fronts the application site is supported by a retaining wall, the stability of which has been questioned. As the track is formally designated as a public right of way, over which the public have right of access with vehicles, the principle of use of the track is not at issue. As a public highway the track and supporting wall should be maintained to a standard satisfactory for accommodating vehicular traffic, irrespective of whether the existing site is developed. The traffic likely to be generated by a single dwelling would be relatively light. Domestic traffic is likely to be the lightest to use the track.

Heavy traffic is likely to be required to use the track during the construction of the dwelling. If damage occurs due to extraordinary traffic, steps are available to the persons responsible for the maintainence of the wall to reclaim costs.

The applicant has been approached regarding the question of providing the parking in the south-east corner of the plot. He feels that this option is not practical due to the nature of the retaining wall that would be required to be provided.

Application No. A36666 continued...

RECOMMENDATION: GRANTED

Conditions:

1. The development hereby permitted must be begun not later than the expiration of five years beginning with the date on which the permission is granted.
2. The dwelling hereby aproved shall be developed as an alteration to and not in addition to that approval under application A29567 and A30965.
3. The garage indicated on the submitted plans shall be completed and available for use prior to the occupation of the dwelling and shall be retain thereafter in perpetuity for the parking of private motor vehicles.
4. Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning General Development Order 1988 (or any Order revoking and re-enacting that Order) no enlargements, improvements or other alterations to the dwellinghouse shall be erected or constructed without the prior approval of the Local Planning Authority.

Reasons:

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. To ensure only one dwelling in developed on the site.
3. To ensure proper parking provision.
4. To ensure the proposed development does not prejudice the amenities of the area.

NOTE TO APPLICANT

The demolition of any walls, or part thereof, will requre Conservation Area Consent from this Council if; in respect of a wall adjacent to a highway it exceeds one metre in height; or two metres in any other case. This includes retaining walls. You are advised to contact the Councils Conservation Officer for assistance.

GWENT
County Council
HIGHWAYS

Deputy County Engineer
(Head of Client Services)
H J Belsdon
BSc CEng MICE

Gwent County Council
County Hall
Cwmbran
Gwent NP44 2XN

County Engineer
M S Cwen
BSc Tech MSc CEng FICE FIHT

Date: 29 October 1993
Your Ref: A36666
Our Ref: 509/PRI/36666/IJS/57/FP

If telephoning, the person dealing with this matter is:
Mr I J Sandeman
Tel. 0633 832729
Fax No. 0633 832986

Dear Sir

PROPOSED AMENDED SITING OF APPROVED DWELLING
SITE ADJACENT GLYNCOTE, THE OLD PARISH ROAD, LLANDOGO

*** With reference to your letter dated 13 October, 1993 and accompanying plans which are returned herewith, I have to observe as follows:-

I have no observations on the amended siting of the dwelling following grant of permission under A30965.

Yours faithfully

for County Engineer

Director of Technical Services
Monmouth Borough Council
Mamhilad House
Mamhilad Park Estate
Pontypool
Gwent NP4 OYL

Highway Manager ...
... BSc CEng MICE

Highway Manager (West)
A Oliver ... MICE

All correspondence should be addressed to the County Engineer

Letter from County Engineer to Director of Technical Services in Monmouth Borough regarding planning permission A30965
Applicants' submission

WITNESS STATEMENT

Name and Address of Witness: MARTIN ROGER BROWN.
MAYLANNS,
LLANDOGO,
MONMOUTH.
MON.
NP25 4TL

STATEMENT

Witness statement on the status and use of Old Parish Road, Llandogo.
(The area from Bargains Cottage to the rear of Glencote.)

I am a resident of Llandogo and represent the Llandogo Ward on Trelleck United Community Council. I have lived and worked in Llandogo for the past 59 years, and I am a member of a family that has been connected with the village for many centuries.

At no time to my knowledge has there been any restriction on access for vehicles, and the road has been open at all times, restricted only by size of vehicles and the condition of the road surface.

In my early years coal was delivered by pony and left on the turning circle at the rear of Glencote, for collection by the residents of Priory Cottage. Families had access to their cottages with limited parking for visitors, this included my Grand Father (Croft Cottage) and my uncle (now Hisky Cottage formerly Tydolna Cottage.)

Signature: M. R. Brown.
Date: 19 : 10 : 2001

Witnessed:
I believe that the facts that I have stated in this witness statement are true.
M. R. Brown.
23rd Aug 2002

Signature: J. Greggains
Name: JAMES GREGGAINS
Occupation: RETIRED COMPANY DIRECTOR
Address: TY-DAN-CLEDAN
LLANDOGO
MONMOUTH

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WITNESS STATEMENT

Name and Address of Witness:

Thomas Wilkinson John
6 Larkhill Close,
CHEPSTOW, Monmouthshire. NP16 5JD.

STATEMENT

During the thirty years (1969-1999) I lived at Cleddon Stile, Llandogo I was not aware of any restriction on the use of Old Parish Road by motor vehicles. Since my occupation of that property there was constant use by a range of people, who, for a variety of reasons, used the road. The "post" was delivered daily and in my early years of occupation there was a daily delivery of milk. Subsequently, fuel deliveries (coal, wood, gas) were made by the providers from time to time, employees of Dwr Cymru, B.T. and S.W.E.B. (Swalec) used the facility of the road to further their supply of services. Over and above these, ambulances, fire tenders & other contingency services (e.g. medical) when, as the need arose, were able to service the dwellings on this hill side.

The constant use of the road by the residents & their families and their links with the world beyond Old Parish Road, meant that vehicular traffic was a regular element in their daily life. From time to time visitors to the Wye Valley & in particular, to Cleddon Shoots, found themselves in vehicles along this road and in difficulty, because of the terrain & the condition of the road. Builders, too, and their ancillaries, often needed a variety of vehicles to fulfil their commitments along Old Parish Road & no restriction was placed upon them as to their use of the road. As far as "the public" was concerned, the use of Old Parish Road as a means of vehicular access, was quite unrestricted.

Signature: T.W. John
Date: 17.X.01

I believe that the facts that I have stated in this witness statement are true.

T.W. John
27.VIII.02

Witnessed:
Signature: V. Greg
Name: JAMES GREGGAINS
Occupation: RETIRED COMPANY DIRECTOR
Address: TY-DAN-CLEDAN, LLANDOGO, MONMOUTH

33

WITNESS STATEMENT

Name and Address of Witness: Amelia John.
6 Larkhill Close,
Chepstow.
Monmouthshire. NP16 5JD.

STATEMENT

My husband & I lived at Cleddon Shile, (which is at the end of the Old Parish Rd) Llandogo from Dec. 1969 - June 1999. During that time there was never any restriction on the public use of motorised vehicles on this road.
For 20 years approximately there was a daily delivery of milk (6 days a week) also a daily delivery of post on weekdays when this service was motorised. Coal, Oil, wood and gas containers were also delivered regularly to residents. Electricity workers & tree fellers who were sub-contracted to the Electricity Board to lop trees & so maintain the power to surrounding villages also used the road. Employees of the Water Board and British Telcom workers used the road as did tradesmen, delivery men and builders. Ambulances & the fire service have also been in attendance. Friends & relations of residents were also regular users. Other members of the public used the road to view properties and plots of land which were for sale. Sometimes people visiting Llandogo often found themselves driving along the Old Parish Rd in Error, having taken the wrong turning. I can only reiterate that there was never any restriction on the public use of vehicles on this road. Whoever wanted to use it, did so.

Signature: A. Y. John.
Date: 17th October 2001.

I believe that the facts that I have stated in this witness statement are true.

A. Y. John.
27.8.02.

Witnessed:
Signature: V. Cyrus
Name: JAMES GREGGAINI
Occupation: RETIRED COMPANY DIRECTOR
Address: TY-DAN-CLEDAN,
LLANDOGO,
MONMOUTH

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WITNESS STATEMENT

Name and Address of Witness: MARTIN JAMES WOODFORD
GLYNCOTE, BARGAIN LANE
LLANDOGO MONMOUTH NP25 4TF

STATEMENT

I have lived at Glyncote adjacent to the old Parish Road, Llandogo since May 1993 (8 years and 5 months).

During this time there has never been any restriction on the use of the old Parish Road by members of the public using motorized vehicles. Examples of vehicular users which I have witnessed include :-

Postmen	Employees of utility companies
Deliverymen	(water, electricity, telephone)
Milk men	Ambulances
Tradesmen	Fire engines
Removal firms	Police vehicles
Builders	Visitors of residents

and in addition anyone else who has had a mind to use the road for their own purposes has freely done so.

Signature: M/s Woodford.
Date: 18/10/2001.

Witnessed:
Signature: R L Herbert
Name: RAYMOND L HERBERT
Occupation: CHEMIST
Address: THE COACH HOUSE
LLANDOGO
MONMOUTH NP25 4TP

I believe that the facts that I have stated in this witness statement are true.

M/s Woodford

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WITNESS STATEMENT

Name and Address of Witness: JAMES GREGGAINS
TY-DAN-CLEDAN,
LLANDOGO
MONMOUTH NP25 4TQ

STATEMENT Roger Brown owns the shop in Llandogo where he has lived all his life. When I enquired about the use of Old Parish Road, Roger agreed to provide a statement and suggested I also speak to his older brother Graham, who might remember more.

Graham Brown had recently moved away from Llandogo and I spoke to him on the telephone. I did not press him for a statement as his wife had told me that he had been in ill-health. The telephone conversation was on 10 December 2001 and he told me the following:

There had never been, to his knowledge, any restrictions on the public use of Old Parish Road.

He said that coal had been delivered by trucks to a coal dump at the end of Old Parish Road. Alan Brown and Wilf Reynolds who lived in separate houses north of the Cleddon ravine (i.e. some way north of the end of Old Parish Road) worked for Bill Morgan, a local farmer. Bill Morgan would deliver coal to them from this dump, using a horse-drawn sledge along the track that leads northwards around the ravine.

Signature: J. Greggains
Date: 12 Dec 2001

Witnessed: **Signature:** [signature]
Name: ALVN ASHTON
Occupation: COMPANY SECRETARY
Address: CARTREF
LLANDOGO
MONMOUTHSHIRE
NP25 4TF

I believe that the facts that I have stated in this statement are true.
[illegible]
J.J. Greggains

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Witness Statement – James Greggains August 2002
Applicants' submission
Appendix 39

Gwent County Council

M.S. Owen,
B.Sc.Tech., M.Sc., C.Eng., F.I.C.E., F.I.H.T.,
County Engineer and Surveyor,
County Hall,
Cwmbran, Gwent
NP44 2XN.
Tel: Cwmbran 838838
FAX No. 838225

Date: 7th September 1988
Your Ref: PB/A29567
Our Ref: 509/PRI/29567/MJH/61/FP

Dear Sir

PROPOSED RESIDENTIAL DWELLING
GARDEN/ORCHARD TOP SIDE OF CRB 23,
THE OLD PARISH ROAD, DIRECTLY BEHIND GLYNCOTE, LLANDOGO

With reference to your letter of the 2nd August, 1988 and accompanying *** plans which are returned herewith, I have to observe as follows:-

This proposed development site abuts a private road that is part of a network of similar substandard roads in the Llandogo area. These roads being narrow and steeply graded with poor horizontal alignment are unsuitable for further residential development. Consequently I would not recommend this proposal from a County Highways standpoint.

Yours faithfully

for County Engineer and Surveyor

The Chief Technical Officer,
Monmouth Borough Council,
Mamhilad House,
Mamhilad Park Estate,
PONTYPOOL, GWENT

If telephoning, the person dealing with this matter is:
Mr M J Hewson
Tel. Ext: 550
All Correspondence should be addressed to the County Engineer and Surveyor.

7th September 1988 Letter from the County Engineer for Highways

Gwent County Council

M.S. Owen,
B.Sc.Tech., M.Sc., C.Eng., F.I.C.E., F.I.H.T.,
County Engineer and Surveyor,
County Hall,
Cwmbran, Gwent
NP44 2XN.
Tel: Cwmbran 838838
FAX No. 838225

Date: 3rd July, 1989
Your Ref: PB/A30965
Our Ref: 509/PRI/30965/1JS/57/PP

Dear Sir

PROPOSED NEW COTTAGE WITH ADJACENT DOUBLE GARAGE ORCHARD TOP SIDE OF CRB 23, THE OLD PARISH ROAD, DIRECTLY BEHIND GLYNCOYE, LLANDOGO

*** With reference to your letter of 19th May, 1989 and accompanying plans which are returned herewith, I have to observe as follows:-

I have previously been consulted on this proposal under outline application code A29567.

My views remain unchanged in this respect. The proposed development site abuts a private road that is part of a network of similar substandard roads in the Llandogo area.

These roads are narrow with steep gradients and poor horizontal alignment. It is my opinion that these roads are unsuitable to accommodate further residential development.

Consequently, despite the grant of outline permission I would still not recommend this proposal from a County Highways standpoint.

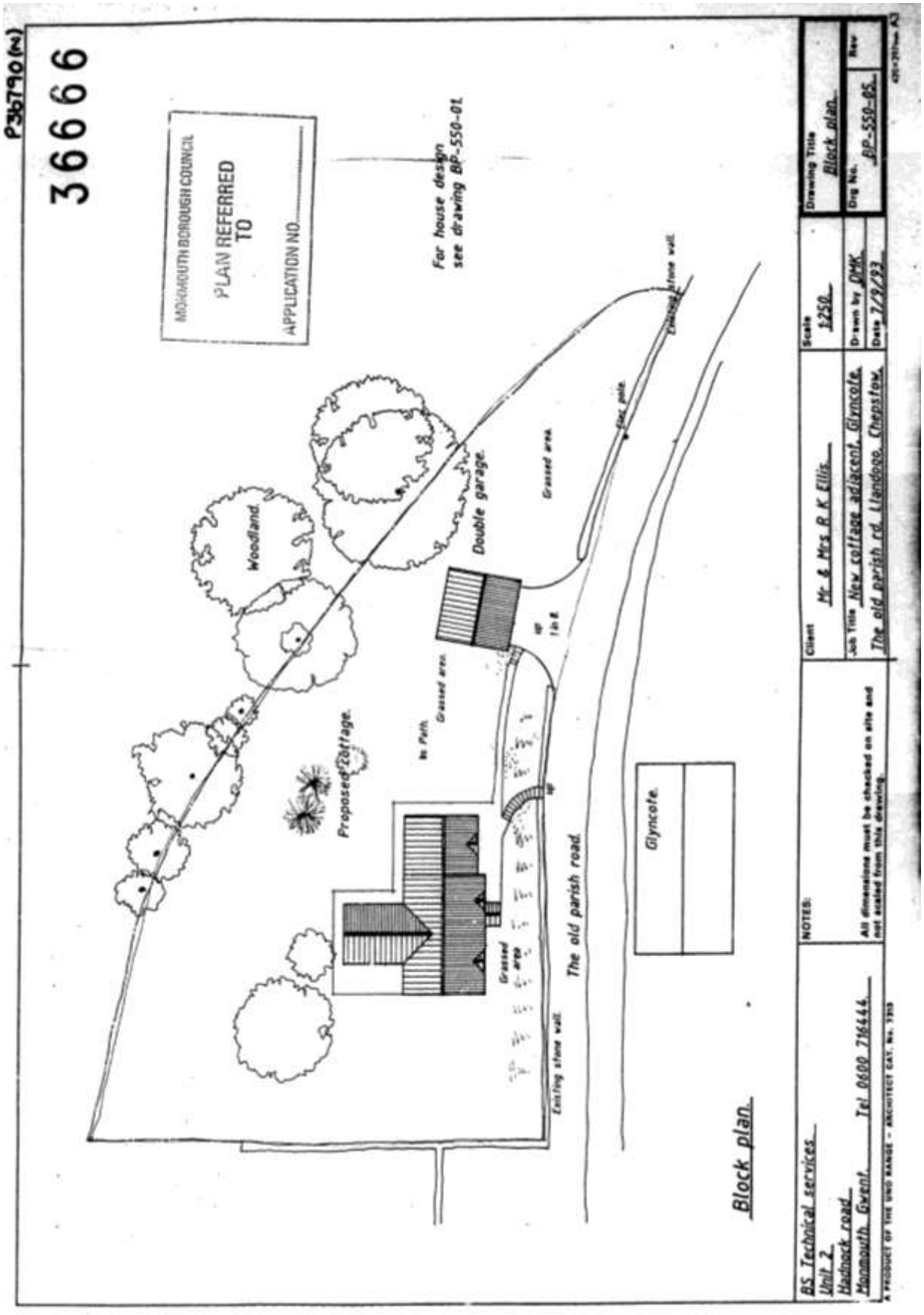
Yours faithfully

for County Engineer

Chief Technical Officer
Monmouth Borough Council
Manhilad House
Manhilad Park Estate
Pontypool
Gwent NP4 0YL

Person Dealing with this matter is:
Mr I J Sandeman
Tel. Ext: 2729

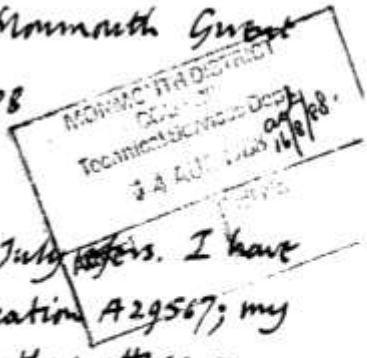
3rd July 1989 Letter from the County Engineer for Highways



Detailed plan from Planning Permission A36666

Cleddon Stile Llandogo Monmouth Gwent

10·VIII·88



Dear Sir,

Your PB/A29567, of 28 July refers. I have no objection to Application A29567; my two concerns regarding the matter are related to my right of way along the green lane directly behind Glyncoed, lieing between Glyncoed + garden/orchard on Top side of CRB 23, The Old Parish Road + the acceptable making-good by the employees of any developer of any damage through access &/or egress of plant + materials to the access road + verges from Bargain Cottage to the point of development.

I would wish my right of way to be maintained at all times + that access to my grounds should not be impeded.

You will be aware that the access road (Old Parish Road) is not adopted; its maintenance is the responsibility of the adjacent landlords. You have, no doubt, been in touch with all of them regarding the proposed development?

Yours faithfully,

T. Wilkinson John.

The Planning Officer
Monmouth District Council
Pontypool.

10th August 1988 Letter from Mr T. Wilkinson-John: Planning Permission A29567

monmouthshire
COUNTY COUNCIL
sir fynwy

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: Mrs A.J. HARWOOD

Address: HIGH VIEW, TRELLECH ROAD, LLANDOGO
MONMOUTHSHIRE. NP25 4TP.

Tel No: (01594) 530798.

2. Date of Birth: 04/11/61 Occupation/s: HOMEMAKER & STUDENT

Place of Work (during period of claim) HOME BASED.

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From 'BARGANS COTTAGE' ~~to 'SINKS'~~

To 'SINKS'

Believe status of route (* *please delete where appropriate*) ~~*Footpath/ *Bridleway~~/ *Byway

As shown on the attached plan between the Points marked 'BARGANS COTTAGE' & 'SINKS'

4 Have you used the above way? YES / ~~NO~~

If so: (a) State how many years and during which years? 8 / From 1996 To Present

(b) Where you were going to and from? LLANDOGO, CLEDDON, Neighbours

(c) For what purpose? Recreation & Social visits

(d) How many times a year? Many 20+

(e) By what means (e.g. on foot, on horseback?) Foot, Bicycle.

5. Has the way always run over the same route? YES / ~~NO~~
If not, give details and dates of any changes.

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.

NO

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. NO
7b 7c.	If 'YES' give particulars and date. N/A. Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they?
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. NO
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. NO
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. NO
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? NO
12.	Have you ever asked permission to use the way? If 'YES', from whom? NO
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? NO
14.	Please give any other information that you think is relevant on a separate sheet of paper.

SECTION C: DECLARATION

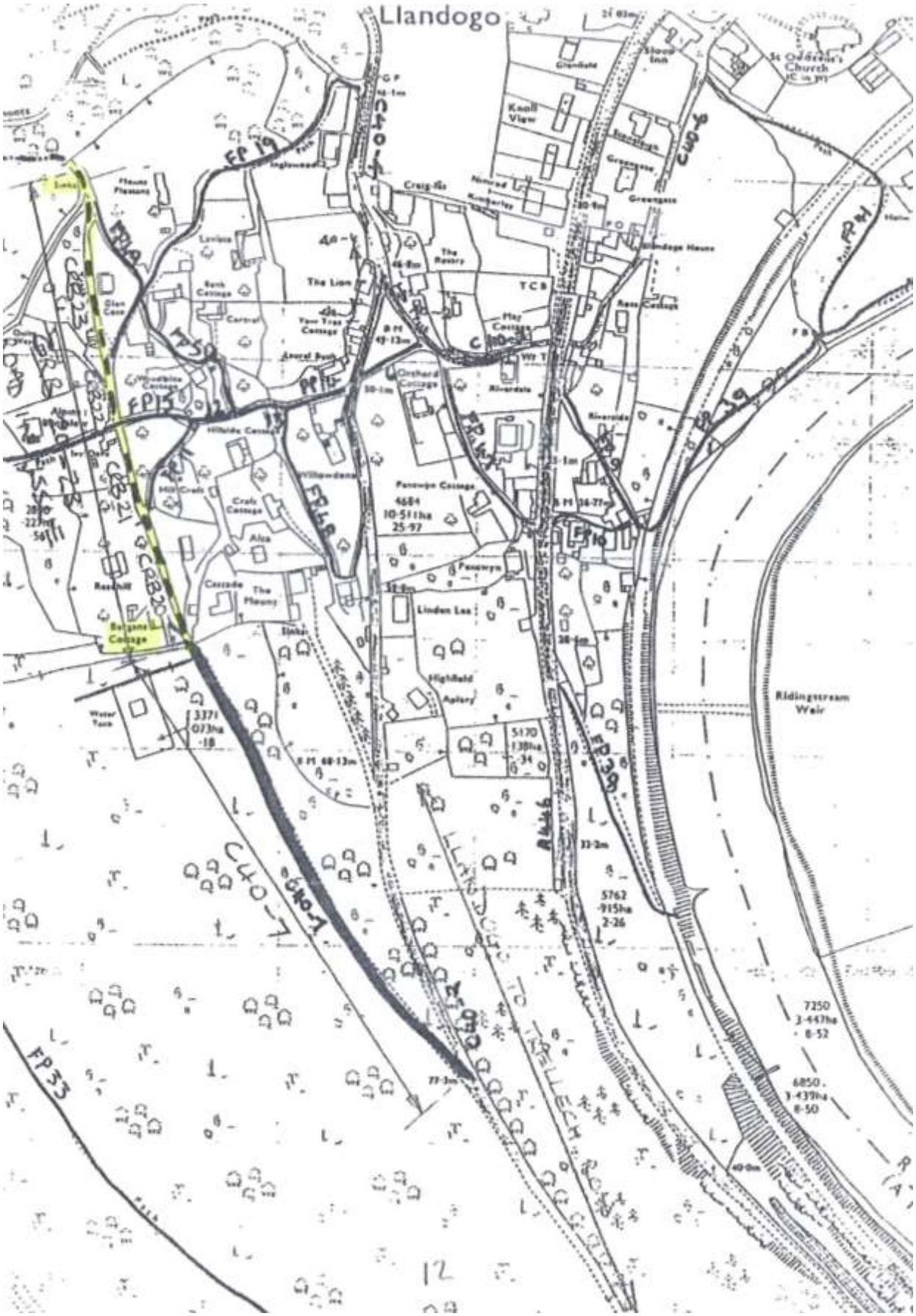
I hereby certify that to the best of my knowledge and belief the facts that I have stated are true. I [redacted]/am not willing to attend a hearing, public inquiry or court to give evidence on this matter, if this should prove to be necessary.

Signed: A Harwood Date: 22/04/04

NB. As this form is supporting evidence to an application to create or upgrade a public right of way, it will become a public document when submitted to the Council. It will be available for inspection by anyone, on application to the Council.

Delete as appropriate

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)



Evidence Forms:
Mrs Harwood
Appendix 4.3

monmouthshire
COUNTY COUNCIL
Sir Fynwy

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: Dr R. J. HARWOOD

Address: CROFT COTTAGE, TRELLECH ROAD, LLANDOGO, MONMOUTHSHIRE. NP25 4TF

Tel No: (01594) 530453

2. Date of Birth: 30/04/62 Occupation/s: CONSULTANT SOFTWARE ENGINEER

Place of Work (during period of claim) HOME BASED / UK-WIDE.

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From 'BARGANS COTTAGE'

To 'SINKS'

Believe status of route (* *please delete where appropriate*) ~~*Footpath~~/ *Bridleway/ *Byway

As shown on the attached plan between the Points marked 'BARGANS COTTAGE' & 'SINKS'.

4 Have you used the above way? YES / ~~NO~~

If so: (a) State how many years and during which years? 8 / From 1996 To Present

(b) Where you were going to and from? LLANDOGO / CLEDDON FALLS

(c) For what purpose? RECREATION

(d) How many times a year? Many (20+)

(e) By what means (e.g. on foot, on horseback?) Foot, Bicycle,

5. Has the way always run over the same route? YES / ~~NO~~
If not, give details and dates of any changes.

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.

NO.

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. NO
7b	If 'YES' give particulars and date.
7c.	Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they? N/A
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. NO
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. NO
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. NO
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? NO
12.	Have you ever asked permission to use the way? If 'YES', from whom? NO
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? NO
14.	Please give any other information that you think is relevant on a separate sheet of paper.

SECTION C: DECLARATION

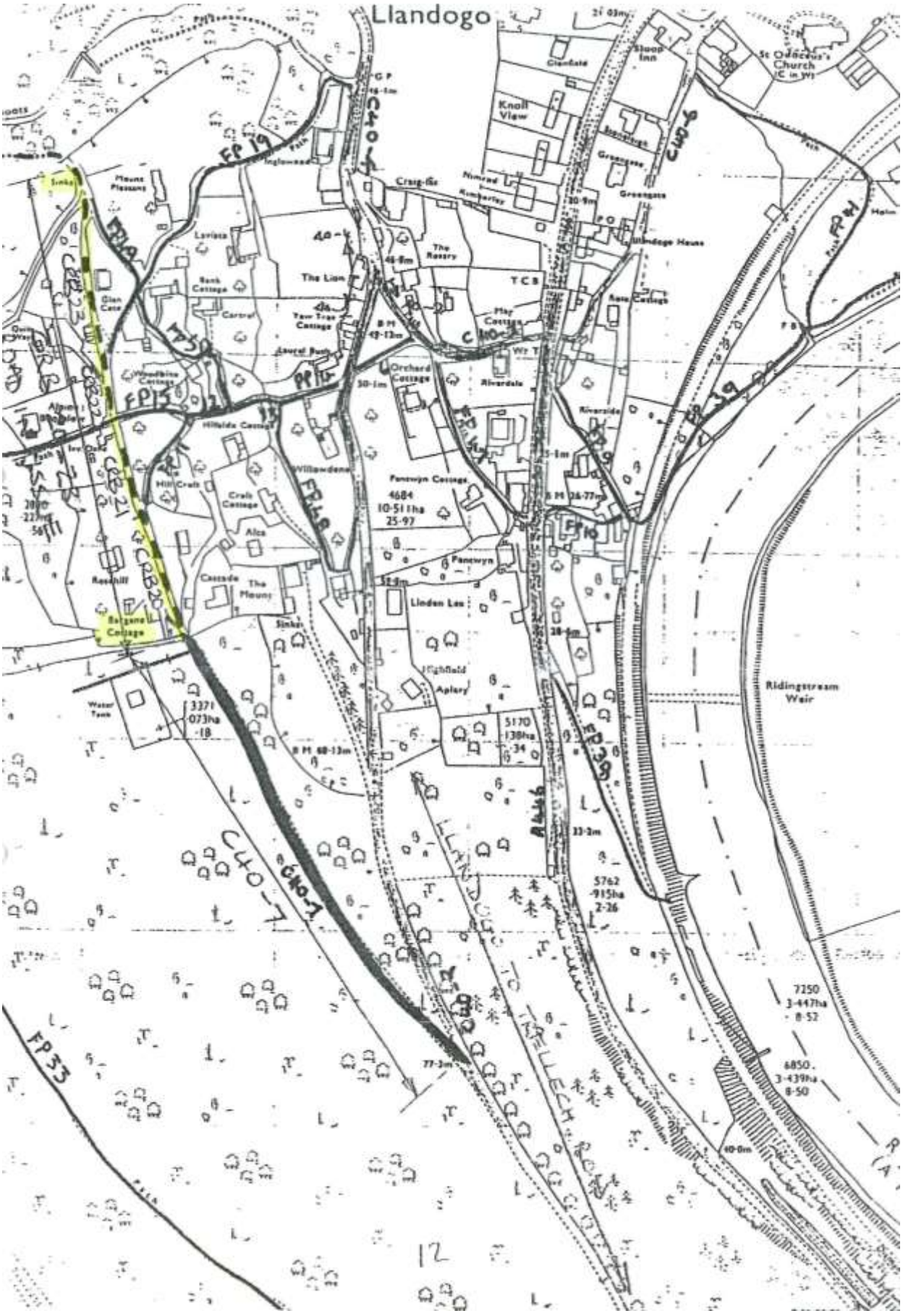
I hereby certify that to the best of my knowledge and belief the facts that I have stated are true. I am/am not willing to attend a hearing, public inquiry or court to give evidence on this matter, if this should prove to be necessary.

Signed: [redacted] Date: 22/04/04.

NB. As this form is supporting evidence to an application to create or upgrade a public right of way, it will become a public document when submitted to the Council. It will be available for inspection by anyone, on application to the Council.

**Delete as appropriate*

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)



Evidence Forms:
Dr Harwood
Appendix 45.3

monmouthshire
COUNTY COUNCIL
sir fynwy

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: ANDREW TANSILL

Address: LLEGAN BECK, LLANDOGO, MONMOUTH NP25 4TF

Tel No: (01594) 530100

2. Date of Birth: 18:7:58 Occupation/s: ARCHITECT

Place of Work (during period of claim) BRISTOL

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From BARGANS COTTAGE GRID REF: 523027GB

To CLEDDON STILE GATE GRID REF: 522040GB

Believe status of route (* *please delete where appropriate*) ~~*Footpath/~~ ~~*Bridleway/~~ *Byway

As shown on the attached plan between the Points marked AS ROUTE OF WAY, ABOVE — BARGANS COTTAGE TO LLEGAN BECK

4 Have you used the above way? YES / ~~NO~~ YES

If so: (a) State how many years and during which years? 12 / From 1993 To 2004

(b) Where you were going to and from? FROM HOUSE TO TRELECH RD.*

(c) For what purpose? ACCESSING & EXITING PROPERTY

(d) How many times a year? DAILY

(e) By what means (e.g. on foot, on horseback?) ON FOOT & VEHICULAR

5. Has the way always run over the same route? YES / NO
If not, give details and dates of any changes.

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.

NONE

* SEE ATTACHED PLAN.

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. No
7b	If 'YES' give particulars and date.
7c.	Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they?
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. No
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. No
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. No
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? No
12.	Have you ever asked permission to use the way? If 'YES', from whom? No
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? I HAVE NEVER BEEN MADE AWARE OF ANY PARTICULAR PERSON OWNING THE LAND
14.	Please give any other information that you think is relevant on a separate sheet of paper. THE GENERAL PUBLIC USE THE ROUTE IN QUESTION UNIMPEDED FOR WALKING, BICYCLE & VEHICULAR USE

SECTION C: DECLARATION

I ~~hereby~~ certify that to the best of my knowledge and belief the facts that I have stated are true. I *~~am~~/am not willing to attend a hearing, public inquiry or court to give evidence on this matter, ~~if this should prove to be necessary~~.

Signed: [signature] Date: 17:01:04.

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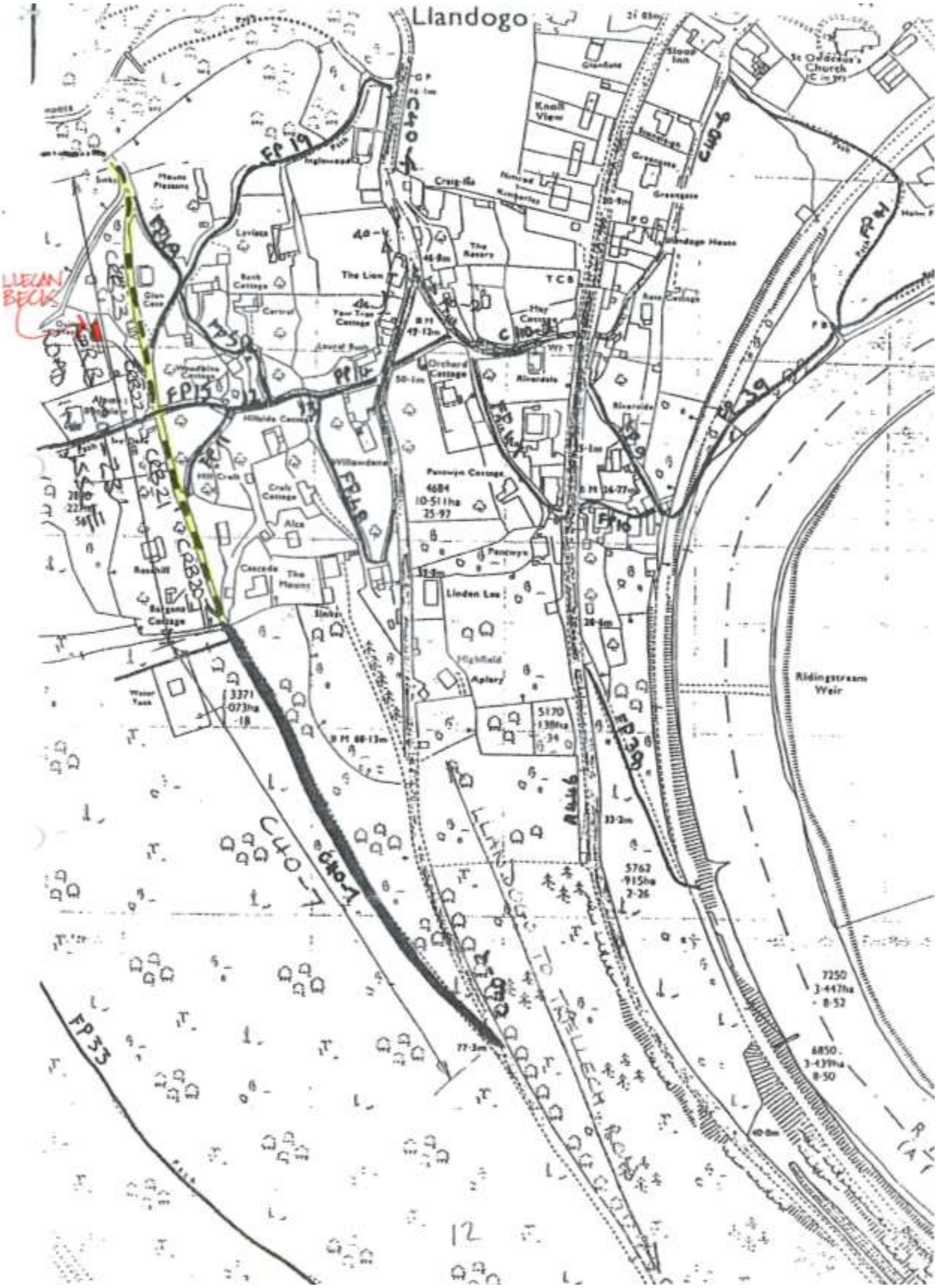
**Delete as appropriate*

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)



Evidence Forms:
Mr Tansill
Appendix 6.3

monmouthshire
COUNTY COUNCIL
sir fynwy

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: MARGARET E. MONKS

Address: "BODMIN" LLANDOGO

MONMOUTH NP25 4TE

Tel No: (01594) 530518

2. Date of Birth: 15.2.22 Occupation/s: _____

Place of Work (during period of claim) _____

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From the stream

To the woods

Believe status of route (* *please delete where appropriate*) *Footpath/ *~~Bridleway~~/ *~~Byway~~

As shown on the attached plan between the Points marked _____

4 Have you used the above way? ~~YES~~ / ~~NO~~ YES

If so: (a) State how many years and during which years? _____ / From 1987 To 2004

(b) Where you were going to and from? _____

(c) For what purpose? EXERCISING DOGS.

(d) How many times a year? _____

(e) By what means (e.g. on foot, ~~on horseback~~?) _____

5. Has the way always run over the same route? YES / ~~NO~~
If not, give details and dates of any changes.

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.

NONE

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. NO
7b	If 'YES' give particulars and date.
7c.	Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they?
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. NO
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. NO
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. NO
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? NO
12.	Have you ever asked permission to use the way? If 'YES', from whom? NO
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? NO
14.	Please give any other information that you think is relevant on a separate sheet of paper.

SECTION C: DECLARATION

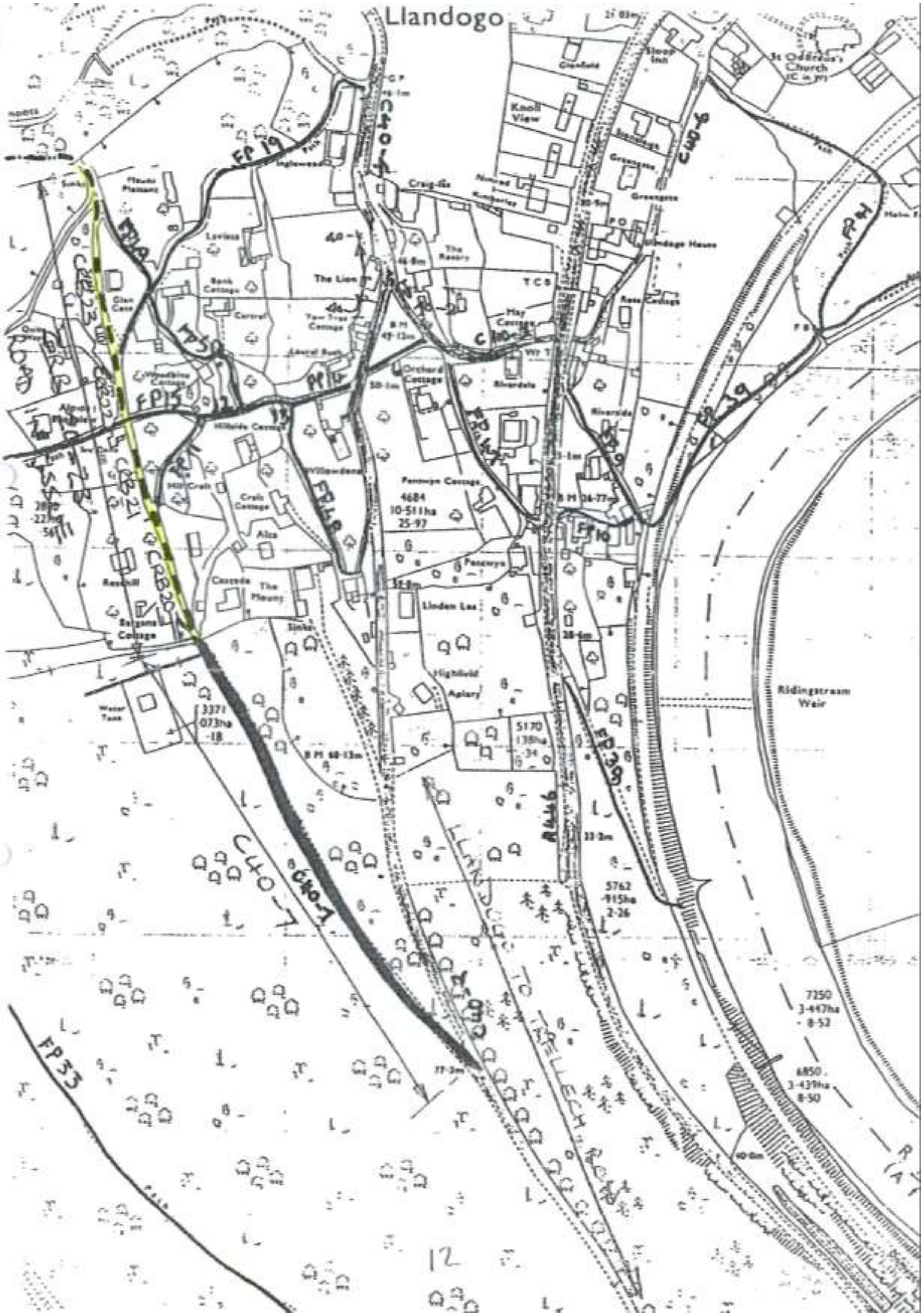
I hereby certify that to the best of my knowledge and belief the facts that I have stated are true. I *~~am~~/am not willing to attend a hearing, public inquiry or court to give evidence on this matter, if this should prove to be necessary.

Signed: [signature] Date: 15.4.04

NB. As this form is supporting evidence to an application to create or upgrade a public right of way, it will become a public document when submitted to the Council. It will be available for inspection by anyone, on application to the Council.

Delete as appropriate

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)



Evidence Forms:
Mrs Monks
Appendix 47.3

monmouthshire
COUNTY COUNCIL
sir fynwy

259 R

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: B. EDWARDS

Address: BARGANS COTTAGE, OLD PARISH ROAD
LLANDOGO, MONMOUTHSHIRE NP25 9TQ

Tel No: (01594) 530055

2. Date of Birth: 28/9/44 Occupation/s: RETIRED

Place of Work (during period of claim) _____

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From GRID REF 523027GB BARGANS COTTAGE

To GRID REF 522040GB CLEDDON STILE COTTAGE

Believe status of route (* *please delete where appropriate*) ***Footpath/** *Bridleway/ ~~*Byway~~

As shown on the attached plan between the Points marked BLACK/YELLOW HATCHING

4 Have you used the above way? YES / NO YES

If so: (a) State how many years and during which years? 8 / From 1996 To 2004

(b) Where you were going to and from? ~~[illegible]~~ VARIOUS UK LOCATIONS, HOME

(c) For what purpose? SOCIAL/DOMESTIC JOURNEYS

(d) How many times a year? 100

(e) By what means (e.g. on foot, on horseback?) CAR

5. Has the way always run over the same route? YES / NO
If not, give details and dates of any changes.
YES

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.
NO

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. NO
7b	If 'YES' give particulars and date.
7c.	Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they?
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. NO
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. NO
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. NO
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? NO
12.	Have you ever asked permission to use the way? If 'YES', from whom? NO
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? NO
14.	Please give any other information that you think is relevant on a separate sheet of paper.

SECTION C: DECLARATION

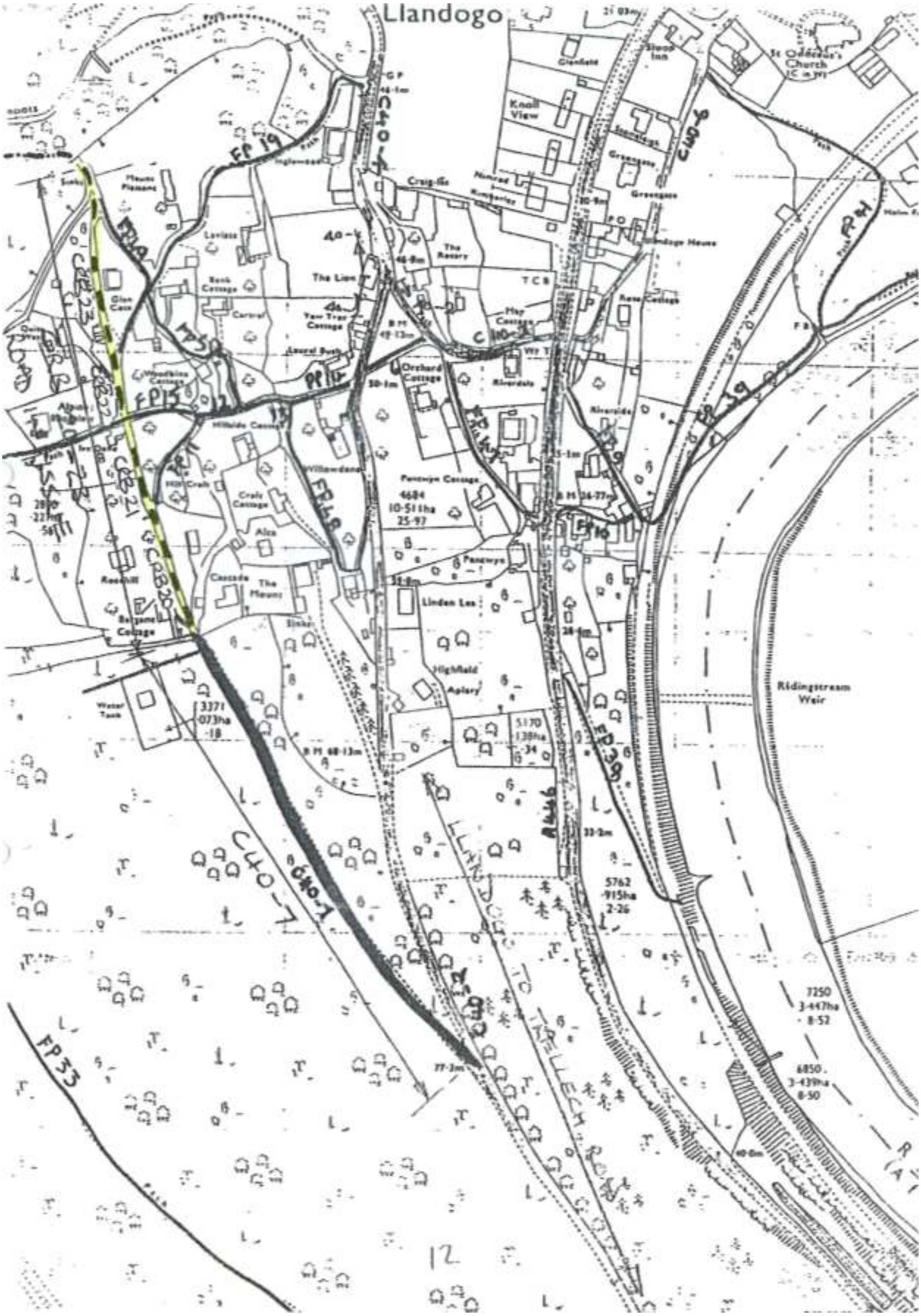
I hereby certify that to the best of my knowledge and belief the facts that I have stated are true. I *am/~~am not~~ willing to attend a hearing, public inquiry or court to give evidence on this matter, if this should prove to be necessary.

Signed: B Edwards Date: 18/4/09

NB. As this form is supporting evidence to an application to create or upgrade a public right of way, it will become a public document when submitted to the Council. It will be available for inspection by anyone, on application to the Council.

**Delete as appropriate*

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)



Evidence Forms:
Mrs Edwards
Appendix 48.3

monmouthshire
COUNTY COUNCIL
sir fynwy

PUBLIC RIGHTS OF WAY EVIDENCE FORM

The following questions should be answered as fully as possible and the form returned to the Corporate Director – Environment, FAO Public Rights of Way Officer, Monmouthshire County Council, County Hall, Cwmbran, NP44 2XH, together with a plan showing the alleged public path clearly marked.

SECTION A: GENERAL

1. Name: D MARIANA ROBINSON

Address: CASCADES, LLANDOGO,
MONMOUTH NP25 4TE

Tel No: (01594) 530484

2. Date of Birth: 18/2/54 Occupation/s: ARTIST

Place of Work (during period of claim) AS ABOVE

SECTION B: DETAILS OF THE ROUTE

3. ROUTE OF WAY From STREAM NR. BARGAN'S COTTAGE

To WOODS & ZIG-ZAG PATH

Believe status of route (* *please delete where appropriate*) *Footpath/ *Bridleway/ *Byway

As shown on the attached plan between the Points marked

4 Have you used the above way? YES / NO

If so: (a) State how many years and during which years? 20 / From 1984 To 2004

(b) Where you were going to and from? CASCADES TO MYRTLE COTTAGE

(c) For what purpose? VISITING FRIENDS, OR EXERCISE

(d) How many times a year? REGULARLY, ESPECIALLY IN SUMMER

(e) By what means (e.g. on foot, on horseback?)

5. Has the way always run over the same route? YES / NO
If not, give details and dates of any changes.

6. Have there, to your knowledge, ever been any gates or stiles on the way? If so, state (with details of location on attached plan) where the stiles or gates stood.

NO

monmouthshire
COUNTY COUNCIL
sir fynwy

7a.	If you were working for any owner or occupier of land crossed by the way at the time when you used it, or were then a tenant of any such owner, give particulars and dates. If not, write 'NO'. NO
7b	If 'YES' give particulars and date.
7c.	Did you ever receive any instructions from him / her as to the use of the way by the public? If so, what were they? NO
8.	Have you ever been stopped or turned back when using this way, or do you know or have you heard of anyone else having been stopped or turned back? If so, state when the interruption took place and give particulars. NO
9.	Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars. NO
10.	Have you ever known any locked gates or obstructions to the way? If so, state when and give particulars. NO
11.	Have you ever seen notices such as 'Private', 'No Road', 'No Thoroughfare' or 'Trespassers will be Prosecuted' on or near the way? If so, what did the notices say? NO
12.	Have you ever asked permission to use the way? If 'YES', from whom? NO
13.	Have you ever been told by the landowner that the way was public? Do you have any other information to show the way is public? NO KNOWLEDGE OF A LANDOWNER
14.	Please give any other information that you think is relevant on a separate sheet of paper. TO BE FORWARDED LATER - THIS SHOULD REMAIN A FOOTPATH.

SECTION C: DECLARATION

Not suitable for vehicular use.

I hereby certify that to the best of my knowledge and belief the facts that I have stated are true. I *am/am not willing to attend a hearing, public inquiry or court to give evidence on this matter, if this should prove to be necessary.

Signed: D M Robinson Date: 20 April 2004

NB. As this form is supporting evidence to an application to create or upgrade a public right of way, it will become a public document when submitted to the Council. It will be available for inspection by anyone, on application to the Council.

**Delete as appropriate*

NEW PUBLIC RIGHTS OF WAY EVIDENCE FORM (MM)

MY FINDINGS HAVING READ THE FILE OF EVIDENCE AND REPORT SUPPLIED BY SYLVIA HARRIS – RE: The historical status of CRB 20 - 21/22/23 as Old Parish Road and its status as a road rather than a bridleway.

D. Mariana Robinson
April 2004

Having read the report and looked at the "evidence", I am not convinced of the arguments. I have to ask myself three basic questions:

1 Why would a young newcomer to a village in Wales be so pro-active in trying to get a lane status changed, when she doesn't even live here yet? When I posed this question to Sylvia Harris (SH), she did not give me a definitive answer, merely that it was something Jim Greggains had done before her and she thought it public-spirited and in the interests of everyone to find out about the status of the lane and get MCC to confirm this status. When I again said, "Why", she changed the subject.

2. Why doesn't the report at the beginning tell us who wrote it and during what dates?

3. My findings below, will suggest that it is at least mis-leading if not entirely wrong in parts. To me, what is conveniently left out of the report is just as valid.

The Status of "Old Parish Road"

I don't have access to all the old maps referred to in the report but from the ones supplied in the file, (unless I'm mistaken), I didn't see any reference to the name "Old Parish Road" anywhere. The evidence presented fails to mention the historical importance of WATER. I asked SH and AD if they had had a geological survey carried out on their plot – to which they said yes. That report should, at the very least, have alerted them to the fact that in general this is a collapsed limestone valley. The exception is bedrock in a thin strip running roughly N-S in the direction of the "lane" for a width spanning approximately half a mile. In my opinion, it is the fact that fresh water springs are dotted around the hillside that has caused the tracks and lanes up from the village to be established over the years. This would be the nearest clean, fresh water supply. There are at least 5 springs shown on the OS maps of the area, all emerging from the hillside at the point where the sub-strata changes. They run downhill, but most sink again (into the limestone area) well before they reach the river. The exception to this is Cleddon Shoots, which continues on the surface until it reaches the river Wye.

Bargan's cottage, behind my house, is probably the oldest cottage in the village. It was once called Young's Cottage and was a slaughterhouse/butchers. Wild boar, deer etc. would be slaughtered and smoked. This activity took advantage of the stream water to wash away blood etc. taking advantage of both a clean, cold water supply and the fact that there was a natural "plug hole" for it to disappear down, just a few yards downhill (now just below the house called Wye View). Hazel was plentiful too for making charcoal and fuel for smoking meat. Slaughter hooks were still visible on

the beams of Bargan's Cottage – certainly up to 8 years ago, and are probably still there. The tall "slaughter" stone, where animals were tethered, is still next to the stream.

In later years, Water was also the reason that CRB 40 became a public highway as 40-7, by the construction of a storage tank of water, again taken from the same spring, and which supplied the village up until the early 1990s. In my dealings with Forest Enterprise on establishing my own property boundary in 2001, I had access to their map. This shows that a narrow strip (about 1 metre) down each side of the lane, as well as the central lane itself, was adopted by the Council on behalf of the Water Board vehicles who regularly serviced the tank. Similarly, council refuse wagons stop at the turning area. They had no need to travel any further than Bargan's cottage. It is true what SH says in her letter to me that "local residents" used spoil etc. to widen the turning area. They needed to: older houses were not built with garages or parking spots – because it was not a road.

I dispute the report findings that CRB 40 was part of a continuous road that included CRBs 21,22, and 23. Whilst I believe there has always been a right of way for public access to the spring, either on foot or with a cart, I don't believe it was an historical road that "went anywhere".

The former use of the eastern side (Cascades side) of the turning circle was that of a local refuse dump or tip. It doesn't take long to dig down and find evidence of Victorian pottery, glassware etc. There is no foundation under the widened turning area and the council has now put tarmac on an unstable foundation upon which people (including the general public) park their cars. The actual land to the east of the turning circle is owned either by me at Cascades or Forest Enterprise. It is only on the very latest OS maps (2002 onwards) that this "bowing out" or turning area is shown. OS Maps record physical features of an area, they are NOT necessarily the legal boundaries, although some lines are. Deeds are needed to provide evidence of status, boundaries and easements for rights of way.

Private road question

The antiquity of pattern suggests paths and not roads. Many cottages would have been tithe cottages to the bigger houses of the area. It is inconceivable that properties would be conveyed without proper easements of vehicular access. The fact that they haven't any, is not strong evidence that this was a private or public road – it is evidence that people along the lane CRB 21-23 should NOT be using motorised vehicles along a path. By now, there are many residents, including Councillor Thomas, who say they have obtained a "right" from 20 years' unhindered use, but this is not true of SH and AD's plot – where no house has existed before. Illegal use cannot be used to establish a legal right.

From Bargan's Cottage to Misty Cottage – it is a bridleway. *At this point the path is intersected E-W by what is probably the correct road, uphill to one of the springs. The path then continues to Glyncote and on into the woods.

* see later note.

How old is the road?
I am not convinced by their plans for Cleddon Shoots – it looks to me as if someone has inserted a pencil line at a convenient point, to prove their documentation. There are no other obvious roads or paths shown on the Cleddon shoots map so why include just a tiny bit of the lane in question? On the balance of probabilities, I do not think this part is a road.

The lane probably dates back to Roman times – Llandogo was part of the England - Wales defences throughout history. Springs were precious commodities and would have been protected and used by locals for fresh water. Indeed, part of many ancient paths, such as Offa's Dyke and the Wye Valley Way follow routes where spring water is available for travellers.

There is no enclosure award for this land
The absence of plans or maps for the Manor of Llandogo does not, in my opinion, mean that the lane is a road. It doesn't prove anything one way or another.

It might be best to check out what documentation is held by the Parish Archivist, Gale Reynolds.

The tithe award plan
Do not agree with the author's assumptions on this one. Again, it is not proof at all one way or another.

First Edition OS Map and Book of Reference.
I have not had access to this book or map unless this is the 1881 first edition map he is referring to – the report is not clear.

If it is the 1881 1st Edition – then the plot numbers shown on later maps are different from this one. E.g. the 1952 conveyance shown as evidence in support refers to plots 653 and 654 of the **1921 Edition OS map**. These numbers on the 1881 map refer to land in a completely different area – down by the river (behind Pat Yallup's studio and Roger Brown's horse field). The report is very confusing so I am not persuaded by his argument without checking the precise reference to which he is referring.

Finance Act 1910
What does he mean "coloured out"? Is this the opposite to "coloured in"? As far as I can see from the documentation – and I may be wrong – the only coloured bits on the map were the local authority roads and this only shows the road up to Bargan's Cottage – as we have already agreed is correct.

County Status road
The author is wrong here and mis-interpreting the maps.
I have proved to the OS, who came to survey my property when dealing with my boundaries, that The Mount was an area of land on this hillside – roughly in the area we are discussing. The Mount – the dwelling – is just the name of a house. (See Electricity board map of area). This mix up appeared in the 1951 revision of the 1921 OS map. Similarly, the property now known as Great Hill, is not the Great Hill mentioned in the 1952 conveyance given as evidence. It is likely, historically, that

Great Hill and The Mount were local names given to the rough area high above the village, where spring water emerged. Confusing, yes, but fact, No.

I have already established why the road is a public road up to Bargan's cottage – the water board tank and supply.

There is no record of formal adoption nor, I suspect, of any record of the council "filling in" bits of the CRB 21-23. Why? Because, along the years, "bits" of tarmac have more likely been obtained by back-handers to council workers to "do a bit of their road". Indeed much of the turning area and parking area now used, was by the direct instigation and direction of a former local Ted Devey – who arranged with the council when re-surfacing the A466, to have them tip the old scalpings onto this area. (He needed somewhere to park his boat). A team of local residents from CRB 20-23 worked to rake it in and harden a previously muddy, leafy unstable surface. I saw this happen although I can't now recall the year.

The large stones that are placed around the edge of the turning area were put there by the people who dug out the hillside to make Councillor Thomas's two garages – this was done prior to my living at Cascades but I was told this by both Councillor Thomas himself and by Betty Edmunds who used to live at High View.

The latest tarmac covering, was authorised by a member of the council, I am told, one George Ashworth, in an agreement with Jim Greggains, if he agreed to drop his legal case against the Council. THIS IS AN OUTRAGEOUS misappropriation of rate-payers' funds – since, if the Council had done their homework, they would have had a strong case. All they have done now, is take the easy route out by upgrading a bridlepath to an unnecessary quality surface which itself is making more problems for residents with speed, surface water drainage, unsuitable surface with no foundations, etc.

Map survey 1951

In my searches at the Public Records Office when establishing my own enquires, I was told by an officer of the OS, that the last definitive map of this area took place in 1921. Since then – maps have been "revised" only. Therefore the 1921 map should be the one used for evidence in this case. Revised editions appeared in 1951, 1971 and probably 1991 – although I'm surmising this last revision. The OS inspector who walked and measured my land in October 2002 stated that a full survey of Llandogo was being carried out because of new building, such as Pathways, the Millennium Hall etc.

The reference to "passable by lorries" is quite easily cleared up. The local coal merchant owned a house along the lane. At the time, he was probably the only person who owned a motorised vehicle and used the small turning area near Glyncote to store his coal and to turn his own vehicle. He probably established private vehicular rights of way from the 1950's. Because he used the lane for his own private access and storage does not mean it is a public road open to all traffic. One of the statements at the end of the file confirms this point.

Conveyance of 1952 *

Interestingly, no copy of the 1921 map is included in the file, but talked about at this point. Instead, there is a copy of the 1952 conveyance – so we are told, since again, there is no way of checking. I have a copy of the 1921 map – although not of the whole area in question. However, plots 653 and 654 are shown. These two plots are different to the two shown with these numbers on the 1881 edition map. In my view, the description is not talking of a N-S route to these properties, but more likely an E-W route since the description clearly states "**up** to a place there called Great Hill". The word "up" is significant, since CRB 21/22/23 is virtually flat along the hillside, whereas the steps and path coming up from the Trellech Road, immediately to the north of Misty Cottage (formerly Ivydene) and onwards and upwards to the Great Hill is in fact, the road in question. This would bound plots 653 and 654. Similarly, the reference to Glyn All, (Glyncote) in my opinion, is the path that also comes up from the Trellech Road and curves southwards onto the lane at Misty cottage. This cross roads shows the main right of way in an E-W direction and not a N-S direction and **is** likely to be a public road rather than a path.

I would need to check an OS map of the whole area, because I'm interested to know where 679 is in relation to these plots (also mentioned in the Conveyance) and also whether there is any reference to The Great Hill and if so, where it is located. The Council needs to be aware that historically many areas of land in the lower Wye valley had the word "The" in front of them, e.g. The Freedom, The Mount, The Fence, The Hudnalls – these were areas of land and not individual dwellings although many dwellings have taken these names.

Evidence of Reputation

This paragraph states that the highways authority has surfaced parts of the route for vehicles – this has only been done in the last 12 months and was not the case when this file was first compiled by Jim Greggains. Not evidence at all.

In 1994 the Director ... . Surely he should know? – Again, he may not have known and my experience of most council workers is that they don't bother to find out either. The fact that areas of the lane were surfaced either officially or unofficially by the council might depend more on "who lives along the lane" rather than any right by owners.

I do not agree with one aspect of the statements in particular. Several mention the lane being used by fire engines. This is not the case in the twenty years that I have lived here. Indeed, it is why one of the new houses has recently been built – on the site of Mrs Andrew's cottage that "burnt out" in the late 1980's because the fire engine COULD NOT GET to her property (CRB-22). The nearest fire hydrant is next to Bargan's Cottage – therefore I doubt that the fire engines would have gone up the lane even if they were narrow enough to do so, which I don't think they are. So how can we rely on these witness statements, all of which are made by people who want to establish their vehicular right of way along a path?

I dispute that the road is "well made" – it is not. It is for this reason that I object to building vehicles and general public vehicles using this track. I live downhill from it, and I am already experiencing rock fall from under the lane. There are no

foundations. It was built as a path in a time when there were no motorised vehicles of any kind. The volume of traffic using the lane and the speed with which it now travels is both alarming and dangerous. We invite tourists (many with children) to explore our ancient footpaths, steps and lanes – and are putting them in danger of being knocked down! The council's decision to tarmac surface the lane has now made it dangerous for pedestrians because there are no verges or passing places.

Summary

I do not feel there is compelling evidence that CRB21/22 and 23 are a public road open to all traffic, even on the balance of probabilities. I do not agree with the author that these tracks are simply a continuation of 40-7 – it would be nice if they were and the council maintained both the surface and the subsoil for all concerned, but I don't think the "evidence" proves anything other than the fact that there is as much confusion now as there has always been.

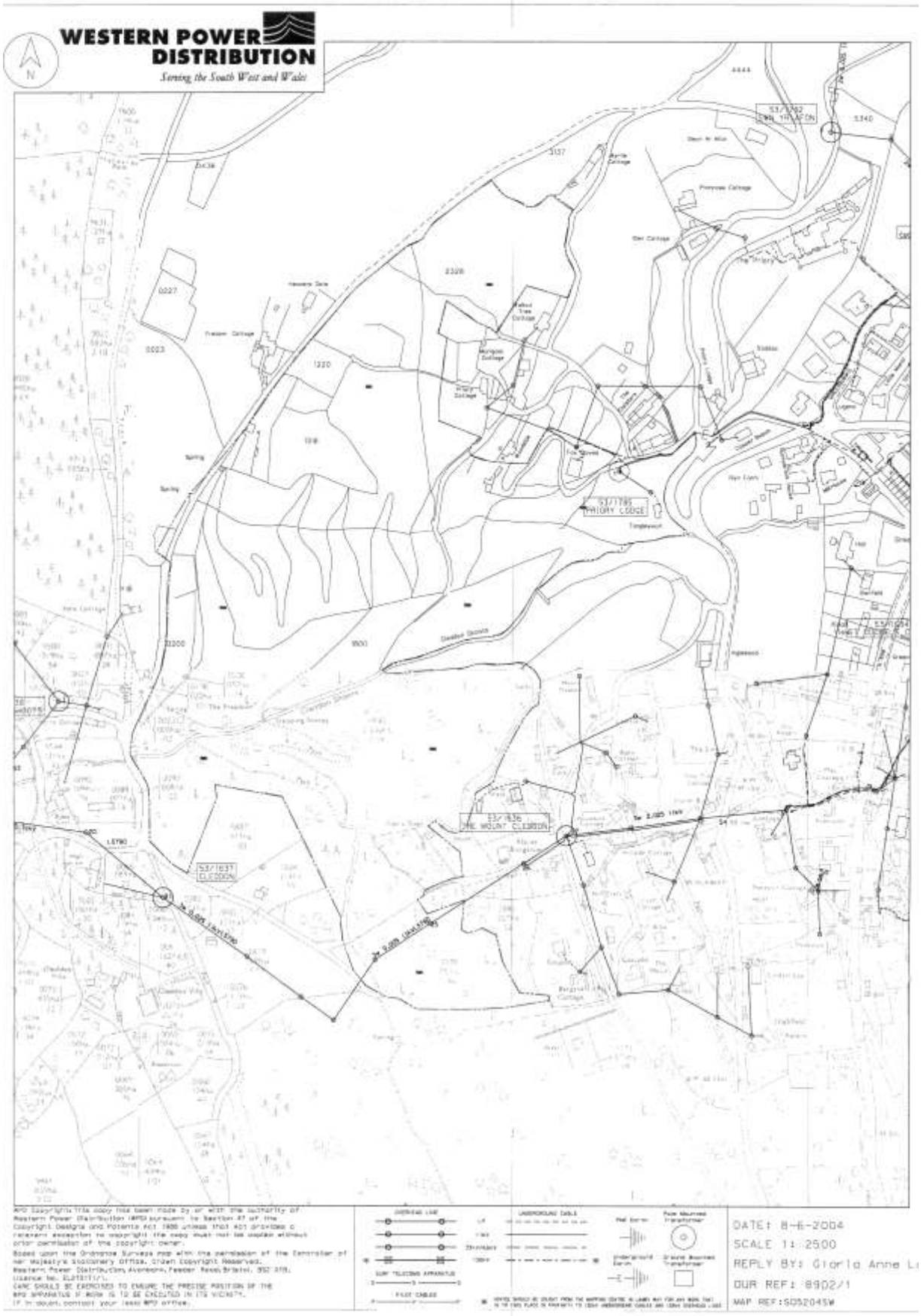
My wishes

Since no-one seems to actually own the land on which the lane is built, and the fact that the council have invited cars and other traffic to use the lane by their wayward planning consents without proper vehicular access, and the fact that they have resurfaced the lane at rate-payers' expense, I think MCC should adopt the lane for limited private vehicular use only and they must deal with the urgent problem of underpinning it and providing drainage – at their expense. In order to police light use only, I suggest that they insert bollards or posts at the Bargan's cottage end to provide just width enough for a large family car and NOT allow any further planning consents off this lane again.

In view of the arguments about the turning area and building materials being dumped there, I further suggest that the MCC formerly purchase the land from Forest Enterprise and put in safe foundations with sufficient parking along one side of the lane for all of the properties it serves. They should mark out both spaces and turning areas to be kept free, accordingly. This would solve the problem for all concerned. It would cost a lot of MCC money – but over the years they have been unwittingly spending large amounts on projects they seem to know nothing about!

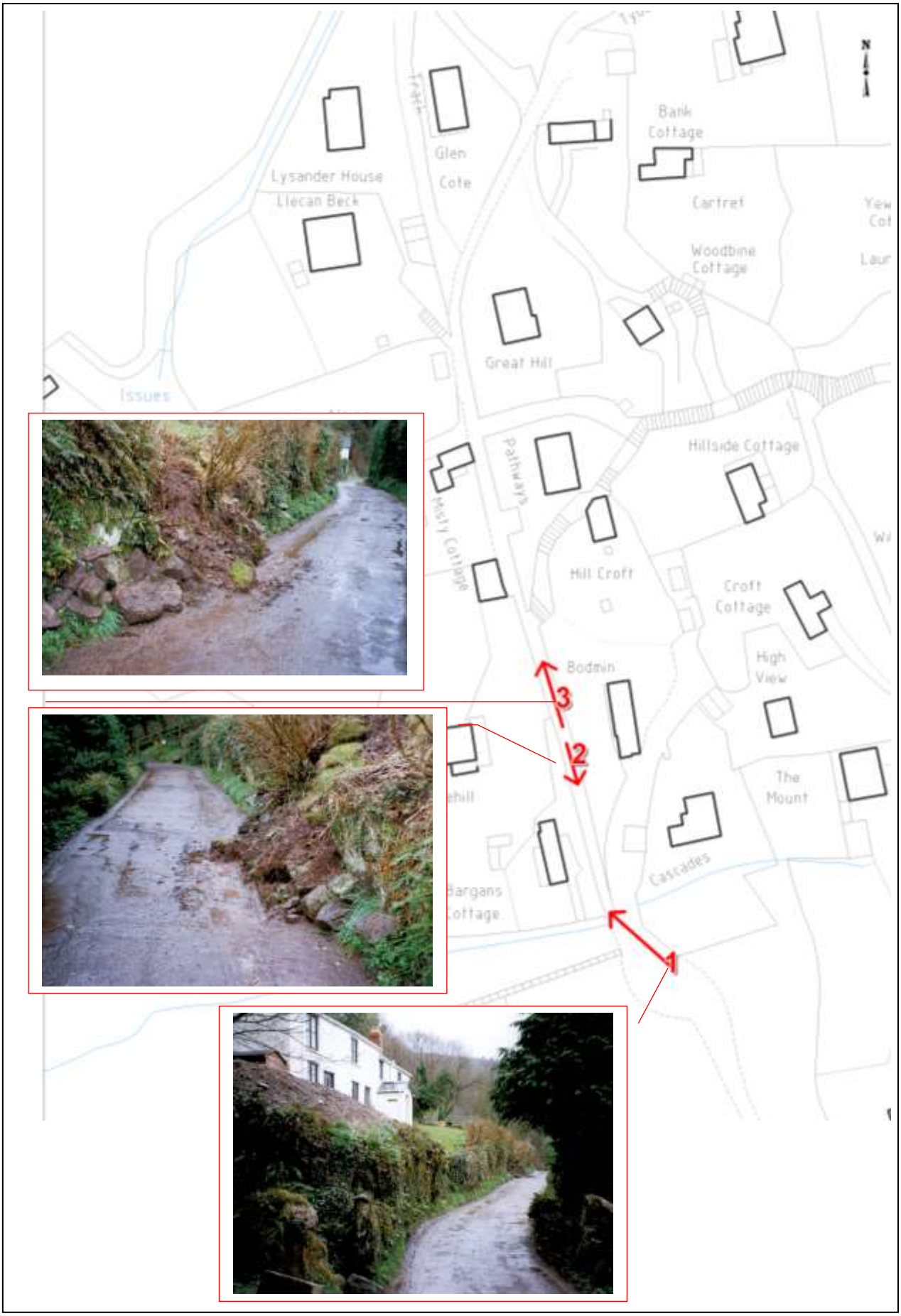
D. Mariana Robinson
Cascades
Llandogo
Monmouth NP25 4TE

26th April 2004



Ms D M. Robinson's, submission: Electricity board map of area – 2004

Appendix 50.7

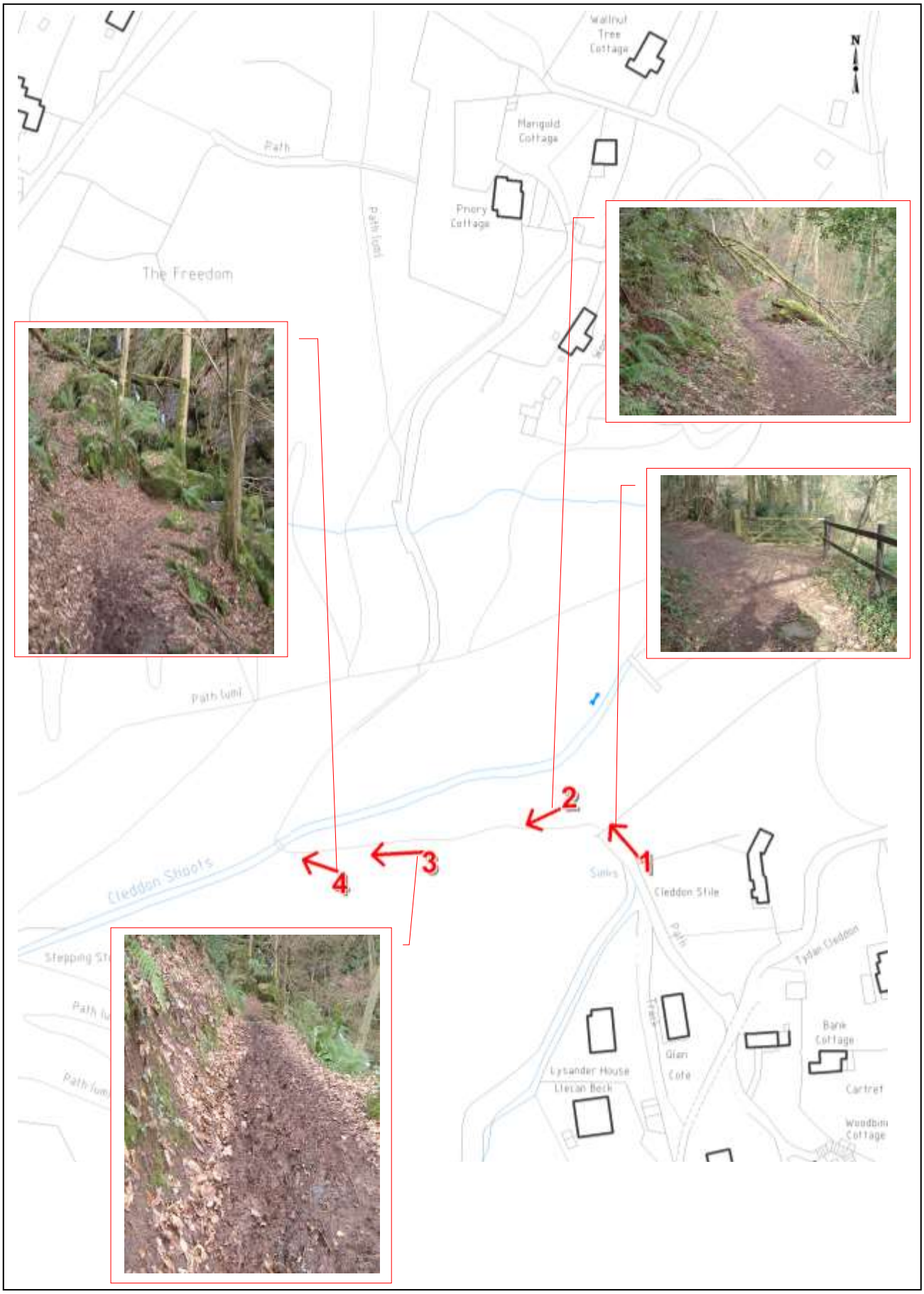


Site Photographs dated 16th March 1998

Site Photographs dated 29th February 2000

Site Photographs dated 29th February 2000

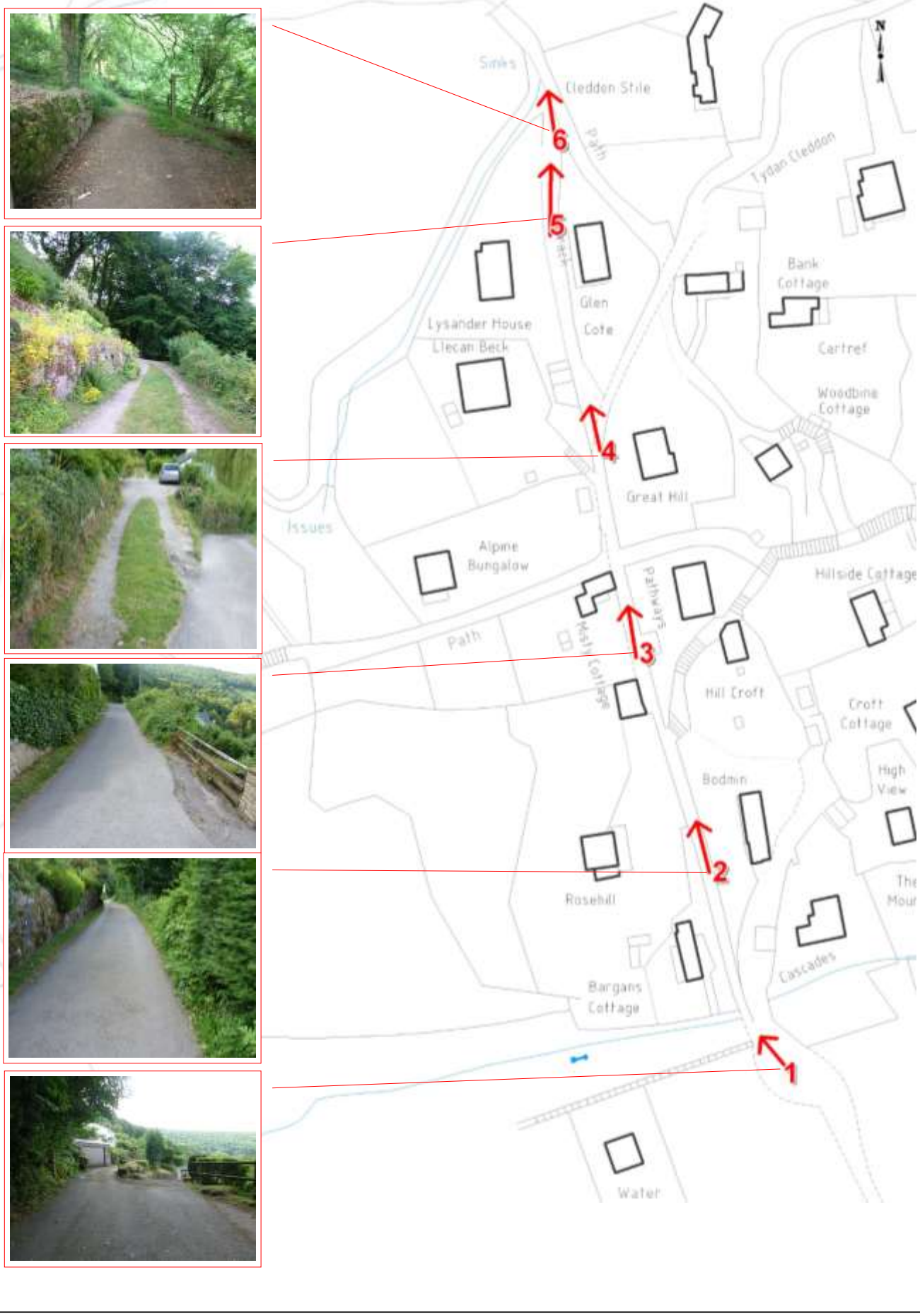
Site Photographs taken in 2004



Site Photographs taken in 2004

Site Photographs taken in 2004

Appendix 56



Site Photographs taken July 2014

Site Photographs taken July 2014

Appendix 58

The Natural Environment and Rural Communities Act 2006

Testing of the claim against the Natural Environment and Rural Communities Act (NERC) 2006

1. 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 this means that public rights of way for mechanically propelled vehicles have been extinguished over every highway not already shown on the definitive map and statement as a byway open to all traffic.

2. If this section 67(1) were left with no further explanation then that means that not only do public vehicular rights along the route in question extinguish but also virtually the whole of the existing highway network including county unclassified road 40-7. 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 any one or more of these exceptions would not have its public rights of way for mechanically propelled vehicles extinguished.

3. Subsection 67(2)(a) – excepts ways that have been lawfully used more by motor vehicles than by any other users types in the five years preceding commencement. The intention here is to except highways that are part of the 'ordinary roads network' such as C40-7.

4. The Authority does not have extensive records of motor vehicle use of the county unclassified road 40-7 but there is evidence from local residents who reporting using the route in question in motorised vehicles to gain access to their properties. It is not incumbent on the local highway authority to undertake a detailed investigation or survey of "main lawful use" on every way.

5. Subsection 67(1) says that public mechanically propelled vehicle rights are extinguished if the route in question is not shown on the Definitive Map and Statement in accordance with subsections 67(1)(a) & (b) then the public MPV rights are extinguished only if the rights are not subject to the exceptions listed in subsection 67(2) & (3).

Comment

6. *The route in question is registered on the Definitive Map and Statement. The only types of highway registered on the Definitive Map and Statement are public byways open to all traffic, restricted byways, bridleways and footpaths. This Act now prevents those previously unregistered routes to be recorded on the Definitive Map and Statement as byways open to all traffic.*

By using the flow chart that illustrates the process of determining whether a public right of way for Mechanically Propelled Vehicles (MPVs) over any given way is extinguished by section 67 of the NERC 2006 (Appendixes 59 to 61)

7. Subsection 67(2)(a) states that public MPV rights are extinguished unless the way is mainly used by MPVs.

Comment

8. *The five witness statements submitted with the claim report that the route in question was regularly used by motorised vehicles. However the use is reported to be mainly the residents and those invited as visitors or service providers such as the postman and not by the public at large therefore public MPV rights are extinguished.*

9. Subsection 67(2)(b) states that public MPV rights are extinguished unless the way is shown on the List of Streets.

Comment

10. *The route in question is not shown on the List of Streets therefore public MPV rights are extinguished. However the route in question is recorded on the Definitive Map and Statement as Cart Road Bridleways 20, 21, 22, 23 and Cart Road Footpath 24*

11. Sub-Section 67(2)(c) states that public MPV rights are extinguished unless the way is created expressly for MPVs.

Comment

12. *In the absence of the 1810 Enclosure Award map for this area the earliest and most reliable map available is the 1830 Ordnance Survey map. On this document the route in question is not shown. More importantly what is shown on the 1830s OS Map is one main route and one other route that ascend up the "Great Hill" from the east and not from the north east or the south east during the approximate time period 1830 to1881.*
13. *The Ordnance Survey mapping available during this period shows that the route in question was not created specifically for motorised vehicles.*
14. *It is acknowledge that in 1821 mechanical propelled vehicles (MPVs) were not the major form of transportation. Although wheeled horse drawn carriages were probably more frequently used along these routes to transport home building materials, equipment and contents up the "Great Hill" to the private dwellings.*
15. *The 1881, 1886, 1902 and 1922 OS maps all show the route in question with the markings that indicate the alignment of the route as a fenced minor road. The Ordnance Surveyors were only required to accurately depict the physical features they encountered in the area and not to determine whether or not a route where public or private.*

The Natural Environment and Rural Communities Act 2006 contn'd

16. *The 1846 Tithe and the 1910 Finance Act Maps both record the route in question as a road that is in most cases recorded on the "List of Street". However, both the Tithe and Finance Act Maps were conducted for the purpose of raising taxes against land and land produce and not compiled specifically for the record of public or private rights. These historical documents normally helpful when assessing whether or not, on balance, public rights may or may not already exist are not always reliable when attempting to determine what the level or type of rights the public are utilising.*
17. *The evidence suggests that the route in question was not created expressly for mechanically propelled vehicles therefore public vehicle rights over the route in question are extinguished by the 2006 NERC Act.*

18. **Sub-Section 67(2)(d) states that public MPV rights are extinguished unless the way is built for use by MPVs.**

Comment

19. *Due to the 1846 Tithe map showing the route in question and as this map predates the availability of any MPVs the way being investigated was not built for or by motorised vehicles. This would mean that MPVs are extinguished.*

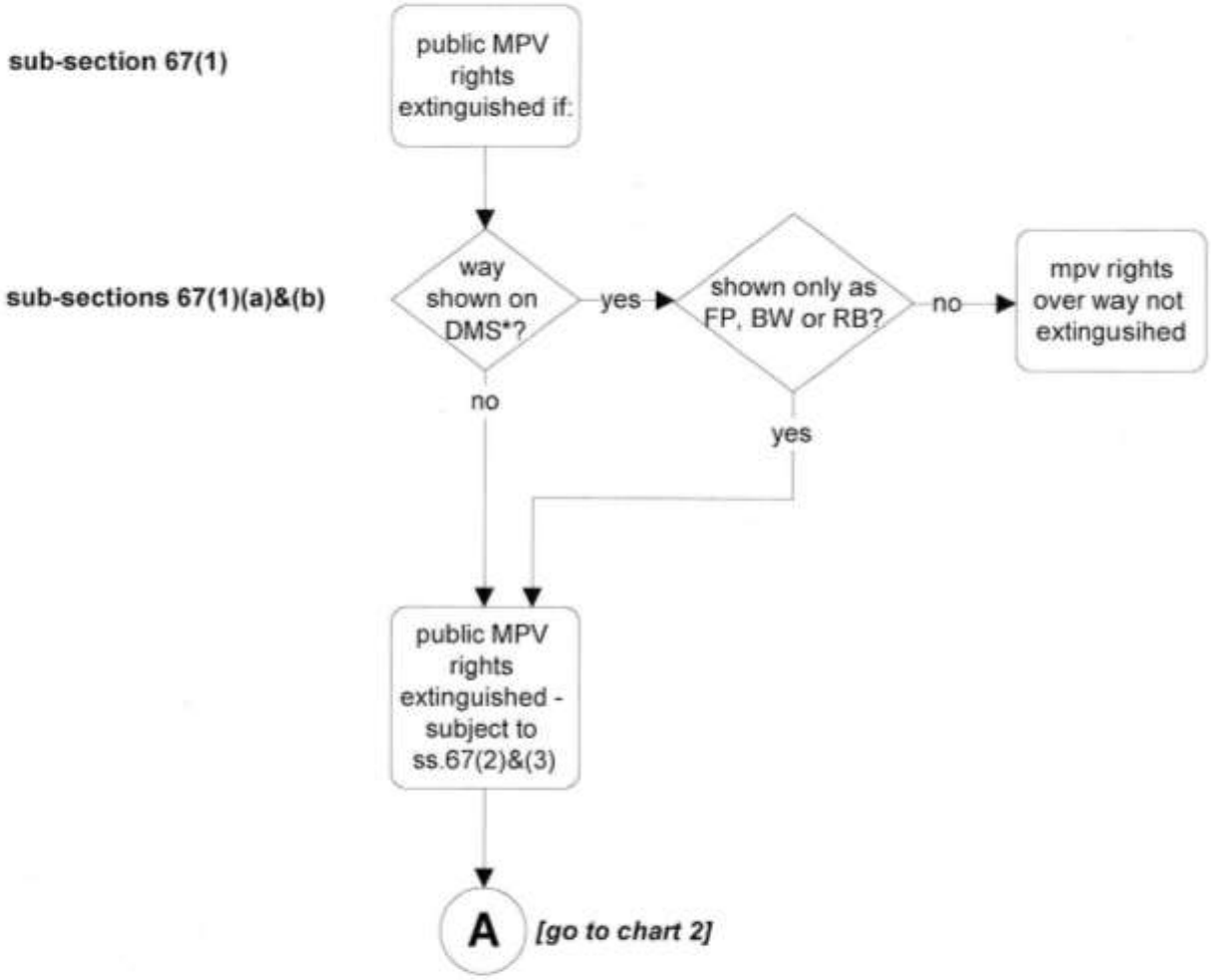
20. **Sub-Section 67(2)(e) states that public MPV rights are extinguished unless the way was created by MPVs use pre-1930.**

Comment

21. *Due to evidence of the 1846 Tithe and 1881 OS map that shows the route in question was constructed pre-1930 and not created by MPVs usage prior to that date therefore MPV rights are extinguished.*

Chart 1 of 3 - subsection 67(1)

(This chart illustrates the process for determining whether rights of way are extinguished and does not provide an interpretation of the law; it must be read in conjunction with Defra's guidance on Part 6 of the Act)

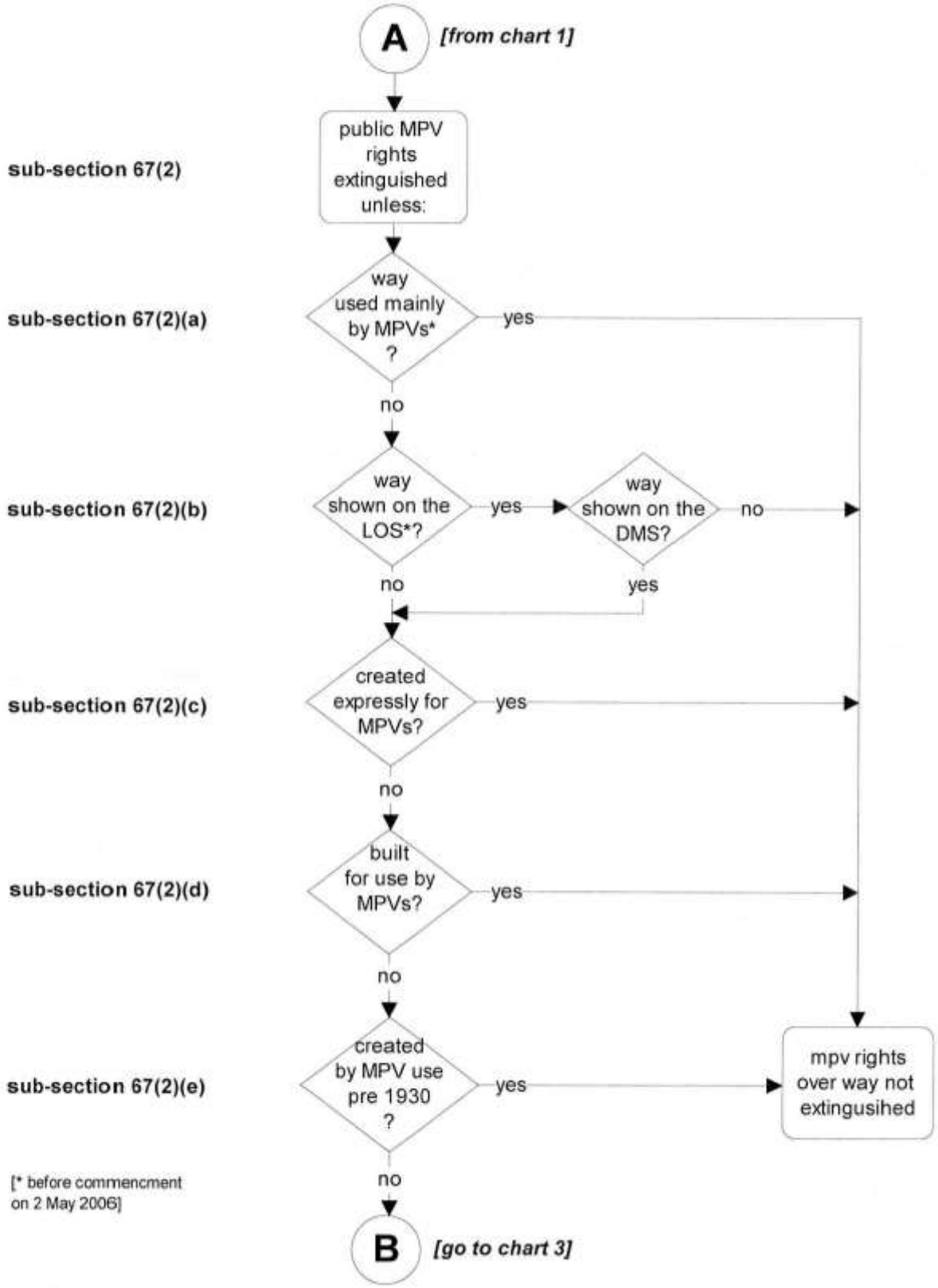


[* before commencment on 2 May 2006]

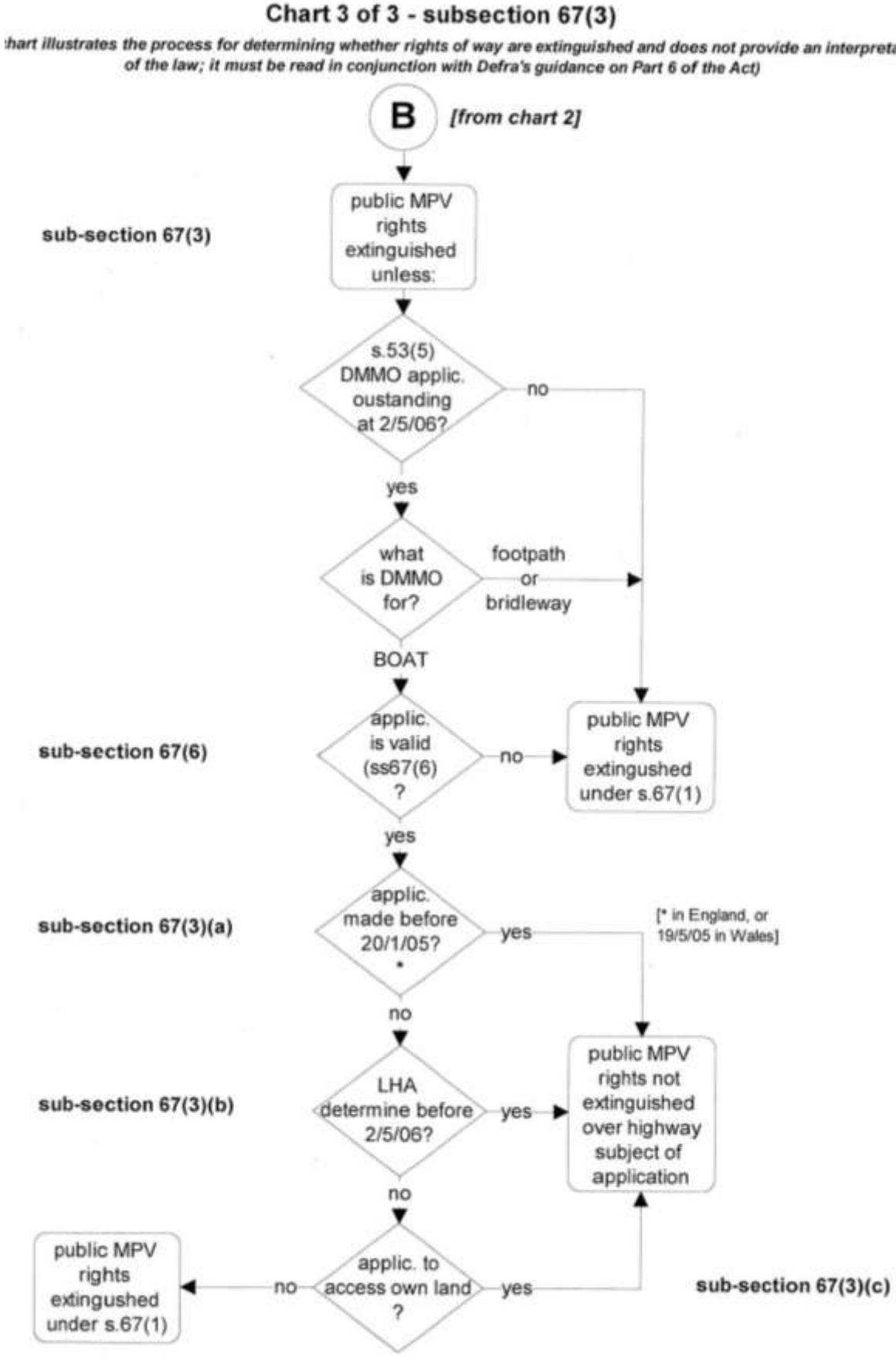
Guide to abbreviations

MPV - mechanically propelled vehicle
DMS - definitive map and statment
FP - footpath
BW - bridleway
RB - restricted byway
BOAT - byway open to all traffic
s. - section
ss. - sections
LOS - list of streets
DMMO - definitive map modification order
LHA - local highway authority

Flow chart illustrating the process of determining whether a public right of way for mechanically propelled vehicles over any given way is extinguished by section 67 of the NERC Act 2006



Flow chart illustrating the process of determining whether a public right of way for mechanically propelled vehicles over any given way is extinguished by section 67 of the NERC Act 2006



Flow chart illustrating the process of determining whether a public right of way for mechanically propelled vehicles over any given way is extinguished by section 67 of the NERC Act 2006

Appendix 64

Sheet No. 1

COUNTY OF MONMOUTH.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

SURVEY OF RIGHTS OF WAY.

LOCAL AUTHORITY (Borough, District or Parish Council)........MONMOUTH RURAL DISTRICT........

PARISH OF........TRELLECK UNITED........

N.B.—The Pamphlet references in this Form are to the January, 1950 Edition of the Memorandum prepared by the Commons, Open Spaces and Footpath Preservation Society entitled "SURVEY OF RIGHTS OF WAY."

Number of Paths coinciding with No. on Map (See Paras. 2 and 3).	Kind of Path (Use Symbols, See Para. 4).	Name of Path, if any, or its destination	Concise description of Path commencing with its starting point. Give features occurring on Path in correct order, and its widths where well defined. If metalled, by whom repaired. (See Para. 5 on Pages 11, 12 and 13).	Brief grounds for belief that way is public.	Signature, description and address of persons carrying out survey and dates.
6	F.P.		From County opposite F.P.14 N.E. to join County Road S. of Craiglas	Walked	F. Williams 1st June 1951
9	F.P.		Starts at Post Office on the Monmouth-Chepstow Road. Width mainly 4ft Ends at Railway Cottage (Bounded by walls both sides)	"	"
10	F.P.		Starts at Pentwyn on the Monmouth-Chepstow Road, commencing with 17 steps joining footpath No.9 by the Old Ship Inn by the river.	"	"
11,12,13,14	F.P.	Great Hill	Starts at The Laurel Bush Cottage on the Llandogo Trelleck Road. After first 25 yards ascent by stone steps exit on to Glen Road, 20 yds south of Wyvern Cottage	"	"
15,16,17	F.P.	Great Hill	Continuation of F.P.No.12. Starts at Wyvern Cottage on the Glen Road, continuation of rough stone steps for 100 yds then rough pathway through woods to Cleddon	"	"
18, 19	F.P.	Hollow Lane	Starts at Inglewood House on the Llandogo Trelleck Road Mounts Hill with stone wall left hand side; earthen bank on other. Approx. width 6ft. Exit on to Glen Road.	"	"
20,21,22,23 24	C.R.B. C.R.F.		Starts on County Road W. of The Mount. Rough surface road passing through wood as far as Young's Cottage. Continuing as unsurfaced road for a quarter of a mile approx. with a turning point for lorries at the end. Road now continues as a C.R.F. crossing Cleddon Shoots into Cloisters Lane near Marigold Cottage.	"	"
25,26,27	F.P.	Cloisters Lane	Starts at the beginning of Freedom Road. Rough stony path bordered by stone walls. Path about 5 ft wide. Stone walls end at Walnut Tree Cottage, where path becomes illdefined until it exits on to the Freedom Road by a stone stile.	"	"
28	F.P.		Starting from Cloisters Lane by Walnut Tree Cottage. About 5ft wide bordered by stone walls; green path making an exit on the Freedom Road	"	
29,30,31,32,32A	F.P.		Starts from Monmouth-Chepstow Road ½ mile south of Llandogo Village. Passes through wood and bounded by hedge of Coed Ithel farm on one side After 200 yds branch for Cleddon path; continues another 200 yds and then there is a branch left via stile and gate on to main road. Path continues following boundary of Coed Ithel Farm. The boundary being a stone wall and joins Llandogo Trelleck road; mile from Llandogo Village.	"	"
33	F.P.	Cleddon F.P.	Branches 200 yards along footpath No.11. Continues up through wood; crosses Llandogo-Trelleck road, half mile from Llandogo. Path continues other side of road through wood and comes out on the Great Hill path 200 yds east of Cleddon Villa.	"	"
34, 35	F.P.		Starts from Monmouth-Chepstow road 200 yards south of Coed Ithel Farm. Starts with a wooden stile and continues through wood and keeps to south side of small stream going in a westerly direction and crosses Petit Wood path. Makes exit on the Tintern Trelleck road by a wooden stile in stone wall, 200 yds south of Ivy Cottage.	"	"
36,37	F.P.	Petit Wood Path	Starts from Llandogo-Trelleck road; 1 mile from Llandogo, by stile set in stone wall. Broad track about 8ft wide through wood. After 200 yards it crosses path No.34 and 35 from Coed Ithel farm and a small stream. Skirts cultivated meadow bounded by stone wall marked 712 on ordnance sheet. Makes exit on Tintern-Trelleck road 350 yards south of Ivy Cottage.	"	"
38	F.P.		Starts from Monmouth-Chepstow road 200 yards from Llandogo Post Office. Right of way to the river passing down through wood, track very indistinct. Passes under railway track by iron bridge to river.	"	"
39, 40	F.P.	Tow path	Starts from F.P.No.3. by the Old Ship Inn; crosses on to railway track by wooden stile continues by side of track nearest river and leaves by another stile into river meadow, now following edge of river crosses stream by stone footbridge 100 yards from stile. Continues near edge of river through five fields each field entered by stile. Path ends in last field by Bigsweir.	"	"
41	F.P.		Starts from C.R.B.No.3 & 4 near Wyedene by stone stile through church yard. Leaving church yard by stone stile through south wall crossing meadow to wooden stiles crossing railway track. Passes in front of the Malas through meadow to stone footbridge on Tow Path No.39 and 40	"	" 4th June 1951
44,45,46	F.P.		Starts from Freedom Road 25 yards north of Priory. Hard earth surface 4ft wide, passing through wood 20 yards north of Cuckoo Cottage where there is a junction with a Trelleck path. Path now continues as a green track through wood, climbing side of valley terminating on 'logging' road which follows rim of valley. 200 yds from Moor Cottage.	"	" 1st June 1951

COUNTY OF MONMOUTH. Sheet No. 2

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
SURVEY OF RIGHTS OF WAY.

LOCAL AUTHORITY (Borough, District or Parish Council) [illegible]

PARISH OF [illegible]

N.B.—The Pamphlet references in this Form are to the January, 1950 Edition of the Memorandum prepared by the Commons, Open Spaces and Footpath Preservation Society entitled "SURVEY OF RIGHTS OF WAY."

Number of Paths coinciding with No. on Map (See Paras. 2 and 3).	Kind of Path (Use Symbols, See Para. 4).	Name of Path, if any, or its destination	Concise description of Path commencing with its starting point. Give features occurring on Path in correct order, and its widths where well defined. If metalled, by whom repaired. (See Para. 5 on Pages 11, 12 and 13).	Brief grounds for belief that way is public.	Signature, description and address of persons carrying out survey and dates.
47	F.P.		Starts on opposite side of road (Chepstow-Monmouth) to path No.10. Runs by side of private steps to Pentwyn,and passes four cottages to F.P.No. 7 & 8 50 yds from Spring Cottage. Path bounded by stone walls either side.	walked	F.A.Williams 1st June 1951
48	F.P.		Starts from Llandogo-Trellech Road - 50 yds from start of pathway No.5. Runs to approach Rye View then doubles back to join pathway No.13 and 14 - 25 yds from the start of pathway No.13. After doubling back path serves two cottages. Bordered by low stone wall.	"	"
49, 50	F.P.		Starts 10 yds above the junction of F.P.No.48 branching right from the Great Hill (F.P.No.5) rough track bordered by low stone walls serving 3 cottage before crossing F.P.No.18 & 19 and then runs up to join C.R.F. No.23 & 24 at its terminus.	"	"
51	F.P.		Starts from F.P.No.45 & 46 about 15 yds above Cuckoo Cottage. Passes behind cottage and continues up through wood. Bordered in places by stone wall and earthen banks.It makes no contact wit any other path or houses but passes a spring on left.Joins to ging path which runs round edge of valley linking Cladden and Penyfan.	"	"
52, 42A	F.P.		Starts from Old Church Road 50 yds after leaving Monmouth Chepstow Road, branches left through Fir wood and follows edge Park's field (O.S.No.58) until reaching stream. Then follows stream up through mixed wood to gateway which gives access to the Grove Plantation. It passes through this crossing stream by stepping stones, leaving the grove by another swing gate.Now continues as hard earth path bounded by stone walls and reaches Freedom road after 50 yds.	"	" 4th June 1951
53	F.P.		Starts from Freedom Road, appears to be continuation of F.P.No.22.Green path passes through mixed wood no boundary to path but passes remains of a few stone walls that used to be a cottage. Emerges on to pathway No.44 and 45.Whole path being about 70 yds long.	"	"
54, 55	C.R.F.	Footfanation Cladden Hanlet	Starting point junction of main road from Llandogo with the main Tintern Trellech Road. Entered by a stile adjoining a field gate skirted on right by the Bargains Wood - 6 - 9ft wide,used as a bridle Path but chiefly as footpath.After passing Bargains it emerges from between new forestry plantations by a stile adjoining a field gate where it ceases to be enforced and is bounded by dry walls past the front of Cladden House until itmeets the junctionof three pathways at Cladden Hanlet,marked in the road by a boundary stone embossed "T-L" rough metalled throughout.	An ancient way. Believed to be part ofthe original Tintern-Trellech Road.	F.C.Coy,Cladden Hall,Trellech 4th November 1950
56	F.P.	Joining main Tintern-Trellech road with C.R.F.skirting Bargains Wood.	Footpath (unfenced)emerging from main Tintern-Trellech road opposite pavement then also through fixed posts and crossbars which serves as a stile in lieu of a field gate which became unserviceable. The footpath proceeds up the hill between young forestry plantations to the edge of the Bargains Wood whereit joins the C.R.F.which connects Cladden and the junction of the main roads Llandogo with Tintern-Trellech.	"	"

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