

# **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**

**14<sup>th</sup> June 2016**

## Index

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1. Introduction.....	1 - 2
2. Legal Tests.....	3
3. Statutory Background.....	4 - 9
4. Witness Statement.....	10
5. Evidence Forms.....	11 - 12
6. Pre-Order Consultations.....	13 - 18
7. Land Registry Documents ( <i>official copies requested in 2015</i> ).....	19 - 20
8. Historical Map Evidence.....	21 - 40
9. The Definitive Map and Statement.....	41 - 51
10. The Highway Records.....	52 - 53
11. Aerial Photographs.....	54 - 56
12. Site Photographs.....	57 - 58
13. Natural Environment and Rural Communities Act 2006.....	59
14. Section B to C - Review.....	60 - 64
15. Conclusion.....	65
16. Recommendation.....	66

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Glossary

Appendixes for both Reports 1 to 66

# 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.



- 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

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- 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 1<sup>st</sup> 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

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#### 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 11<sup>th</sup> 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 19<sup>th</sup> 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 13<sup>th</sup> 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

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- 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

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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

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- 6.1. There have been two periods for pre-order consultation; one was conducted in 2004 and the second ran from 28<sup>th</sup> January 2015 to 7<sup>th</sup> 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
<b>Section B to C of the Route in Question</b>					
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.

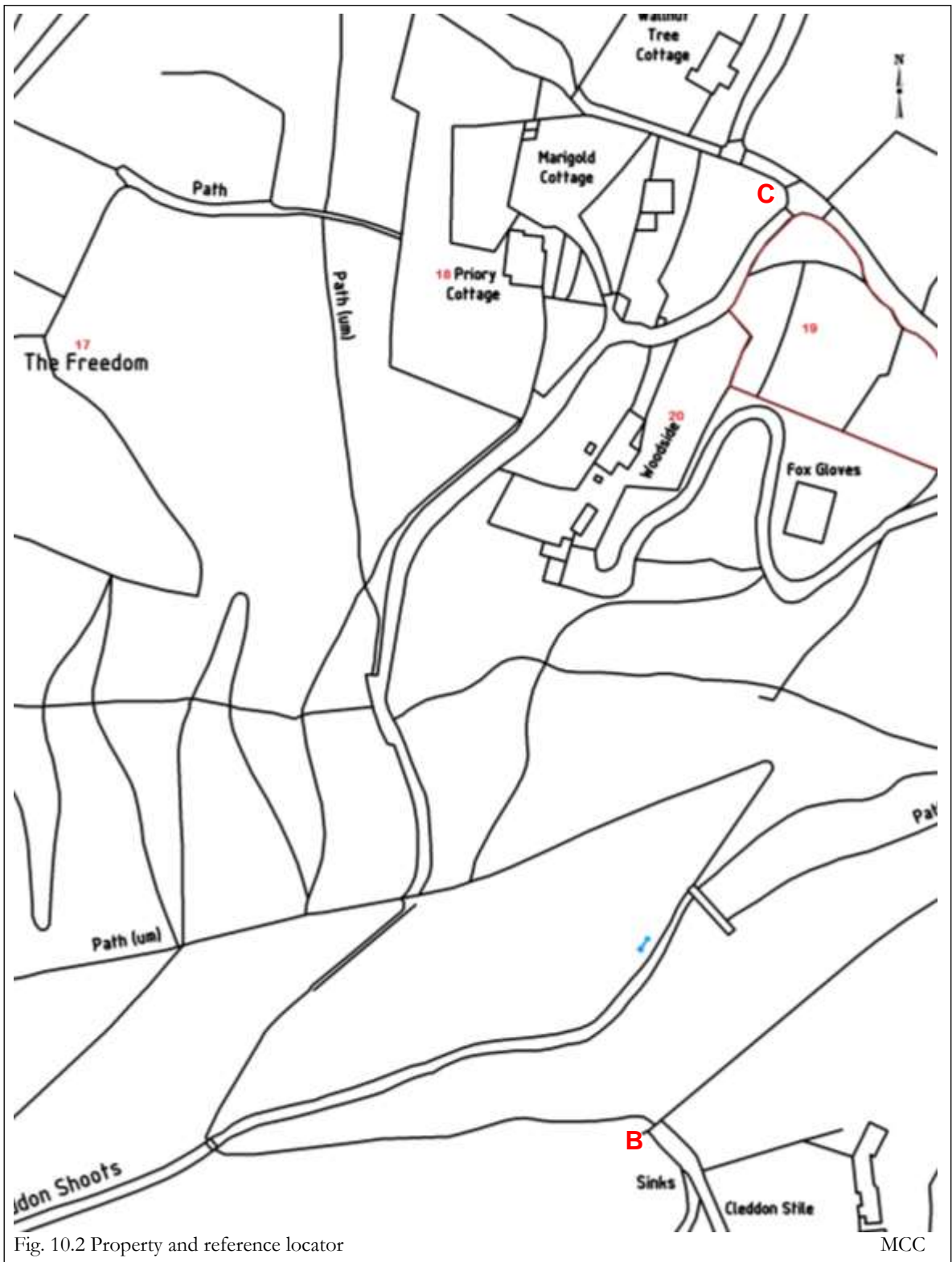


Fig. 10.2 Property and reference locator

## 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 9<sup>th</sup> 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.

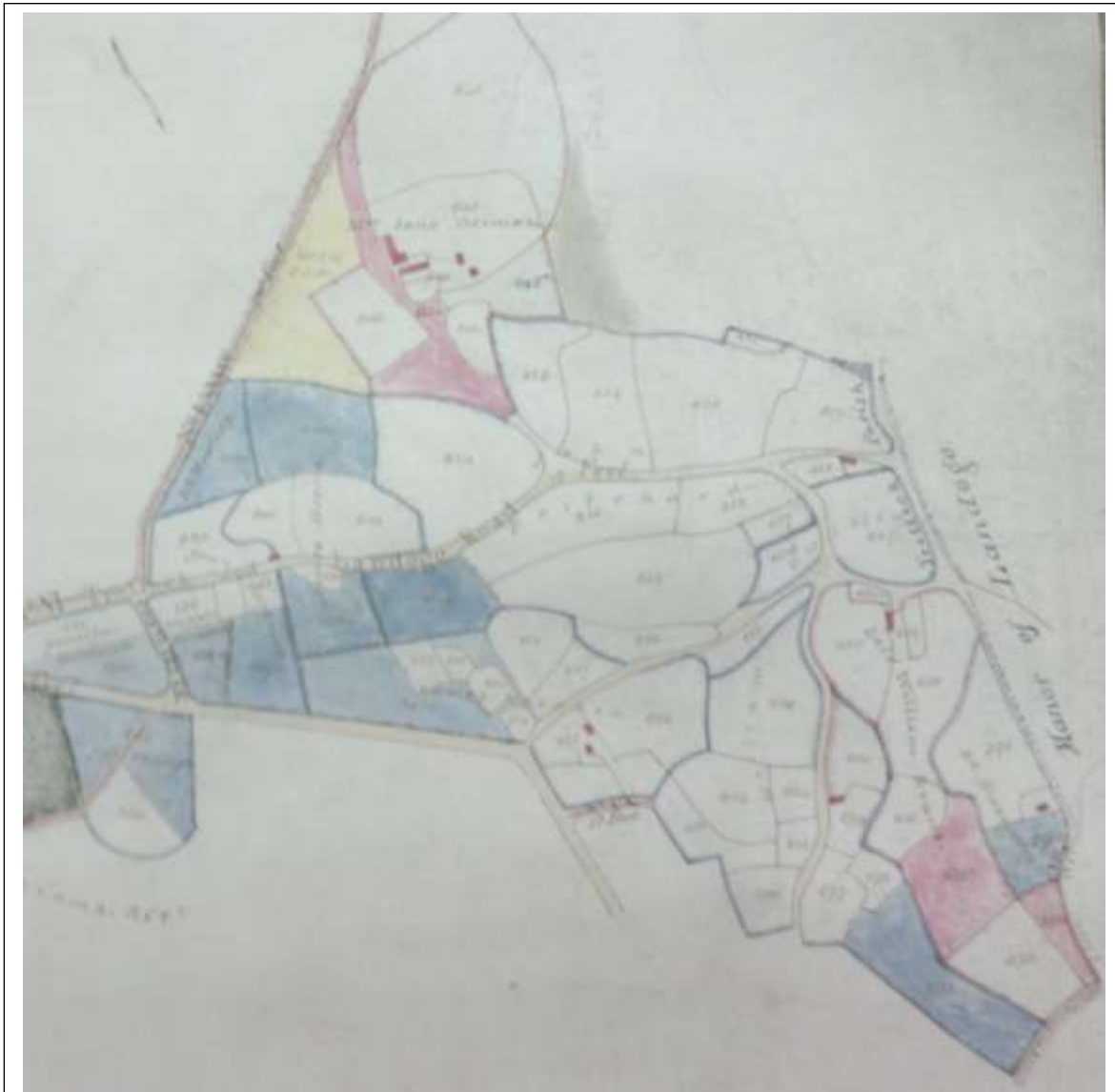
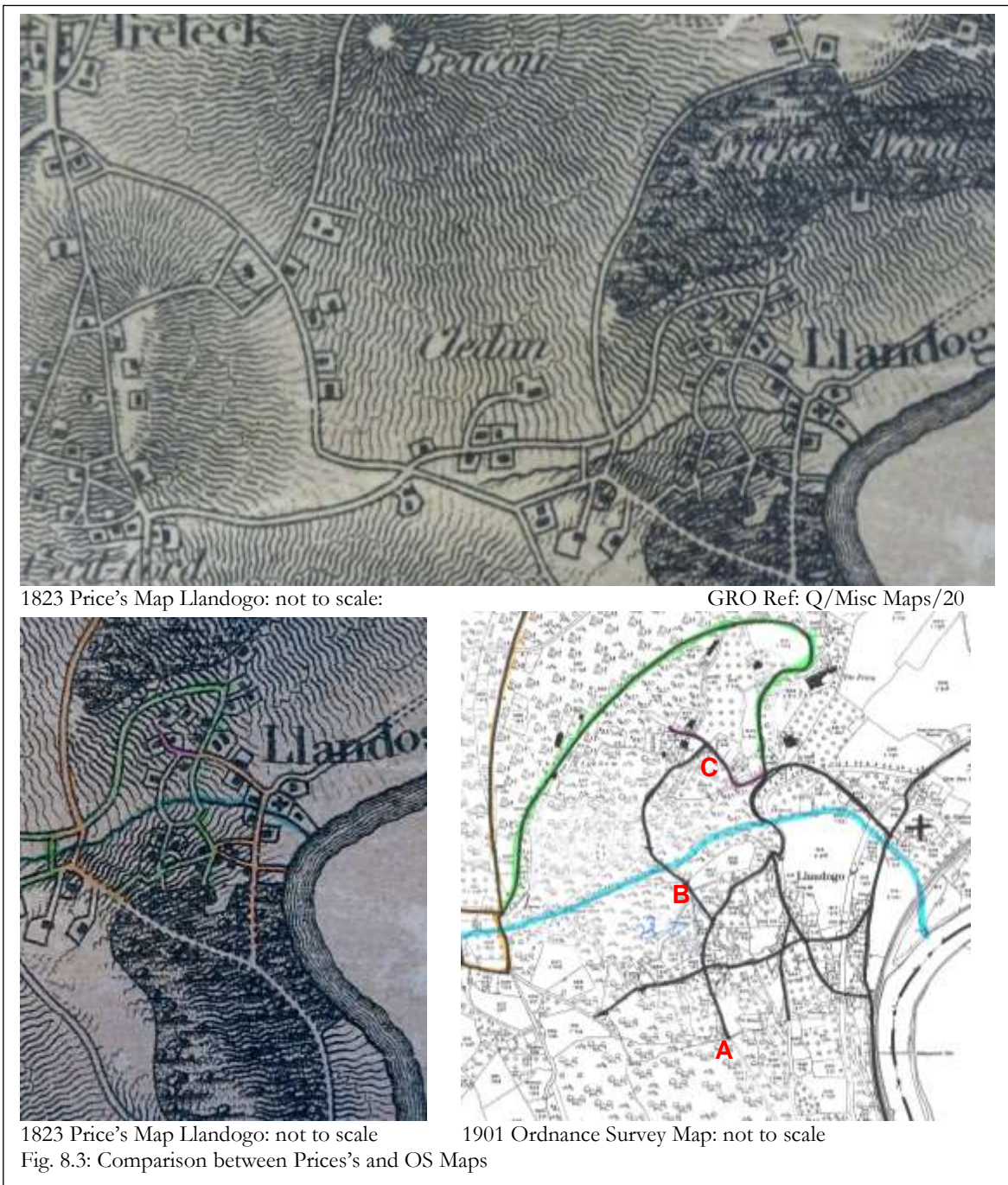


Fig. 8.2:  
1821 Enclosure Award not to scale: Gwent Record Office Ref: Q/Inc. Aw. 2 page J



- 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”.



- 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.

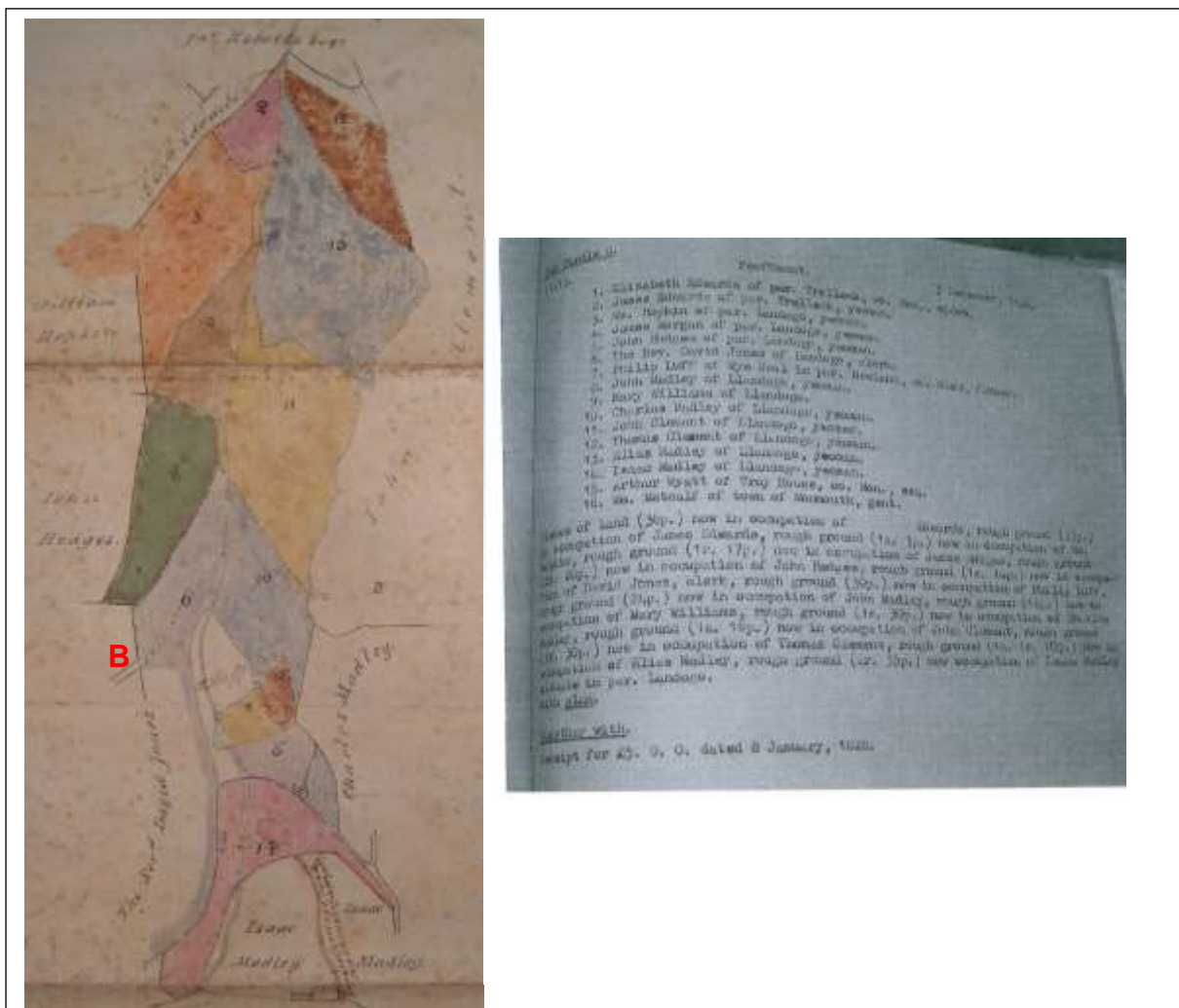


Fig. 8.4: Appendix 11 & 12 Applicants' Evidence 3  
 1828 Title Deeds Map and Catalogue entry for Cleddon Shoots Llandogo: not to scale;  
 GRO Ref: D39811-13

- 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.



- 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 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.



- 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 1<sup>st</sup> 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.

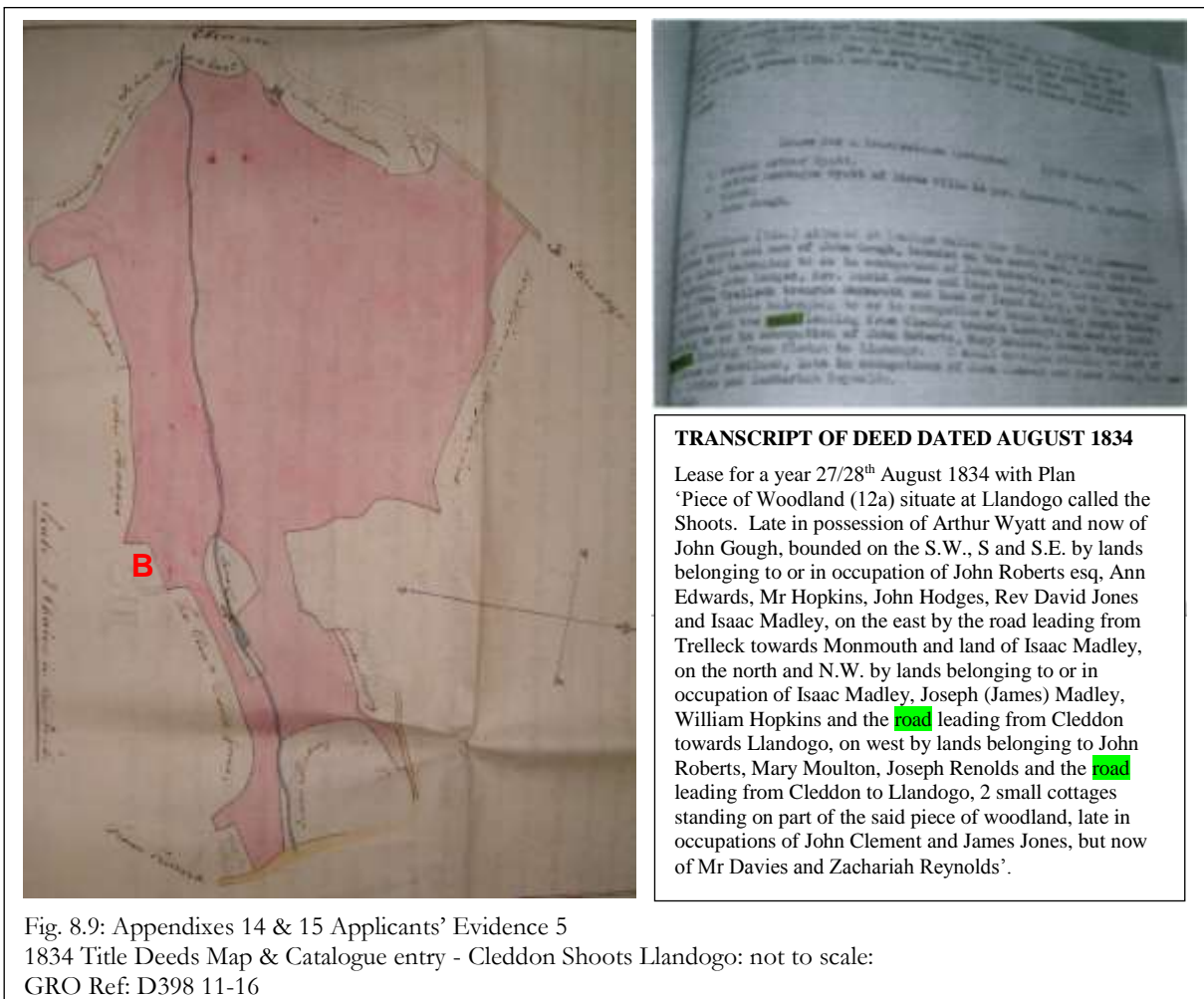


Fig. 8.9: Appendixes 14 & 15 Applicants' Evidence 5  
 1834 Title Deeds Map & Catalogue entry - Cleddon Shoots Llandogo: not to scale:  
 GRO Ref: D398 11-16

- 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 necessarily 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 19<sup>th</sup> 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.

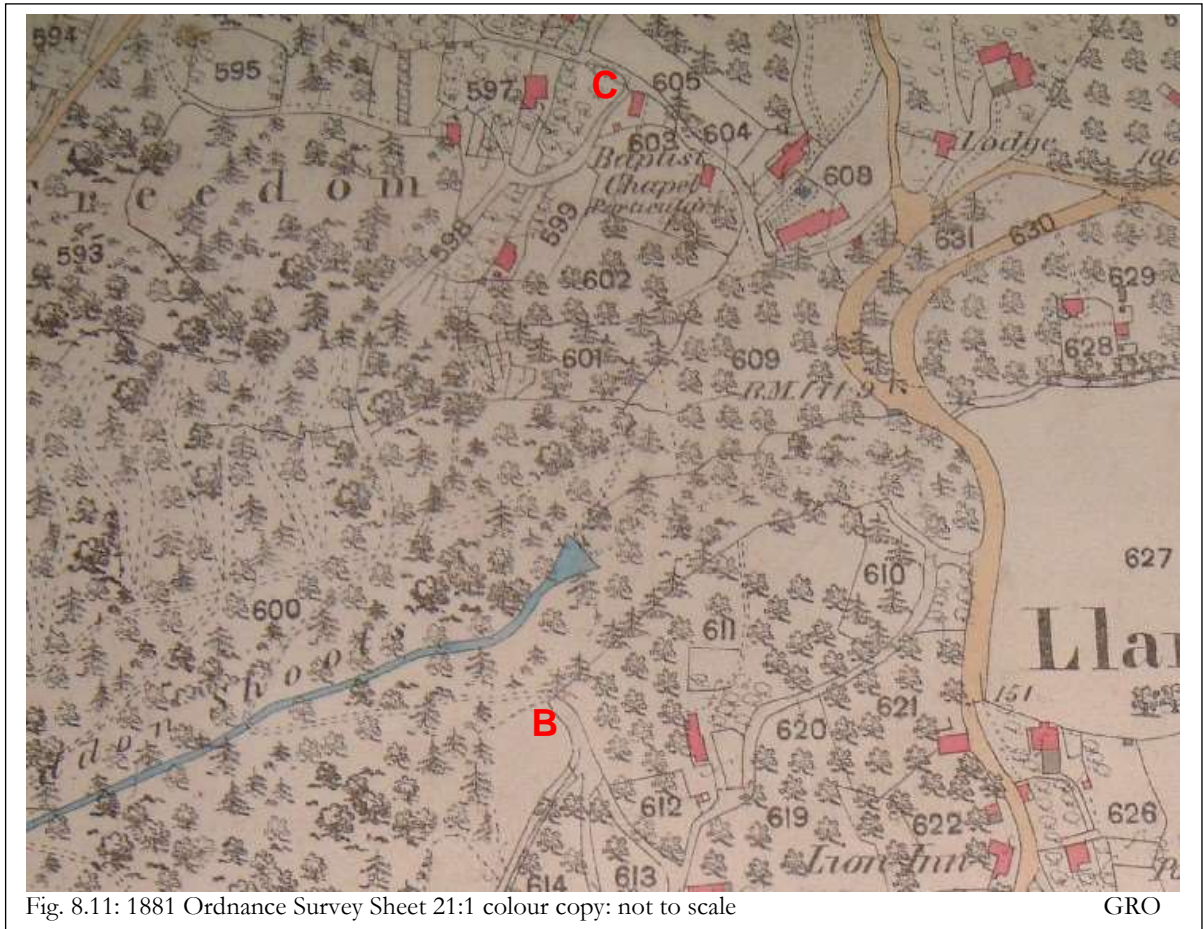


Fig. 8.11: 1881 Ordnance Survey Sheet 21:1 colour copy: not to scale

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.

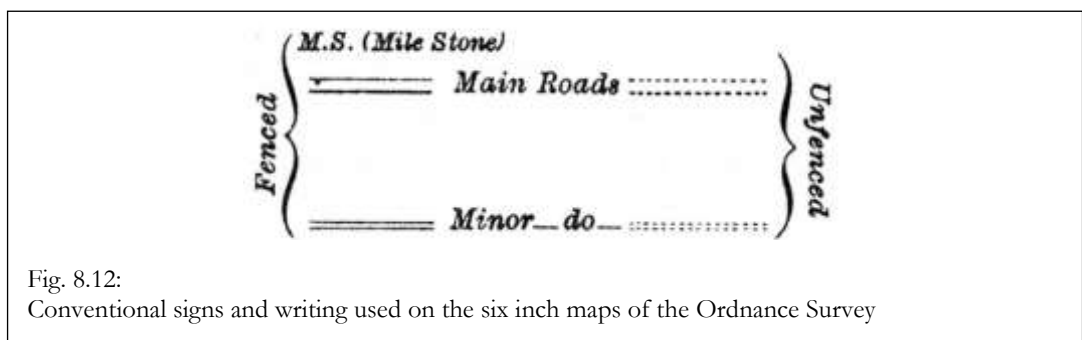


Fig. 8.12:

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.

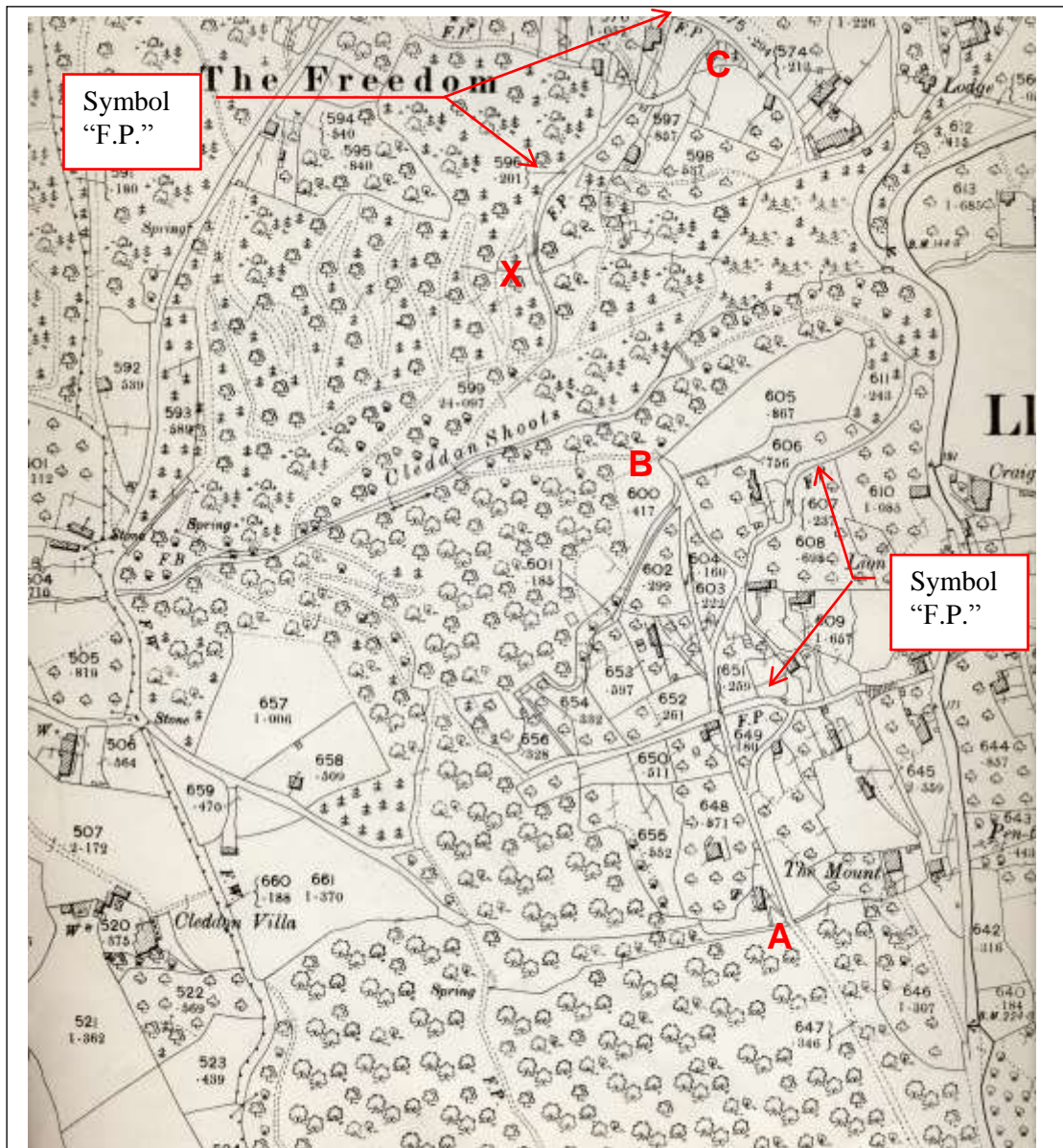
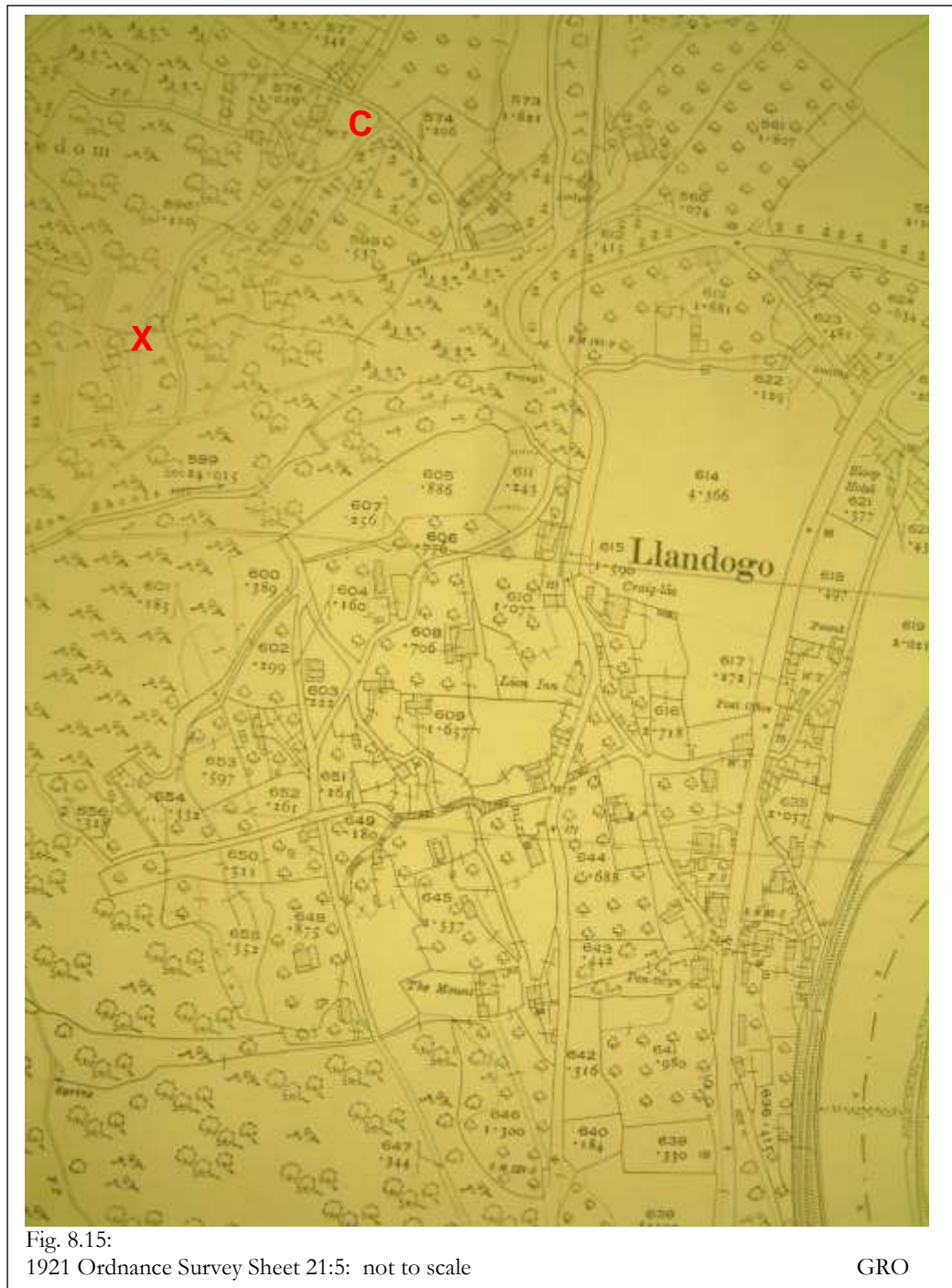


Fig. 8.14:  
1902 Ordnance Survey Sheet 21:5 not to scale:

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.



- 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.



- 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

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- 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).

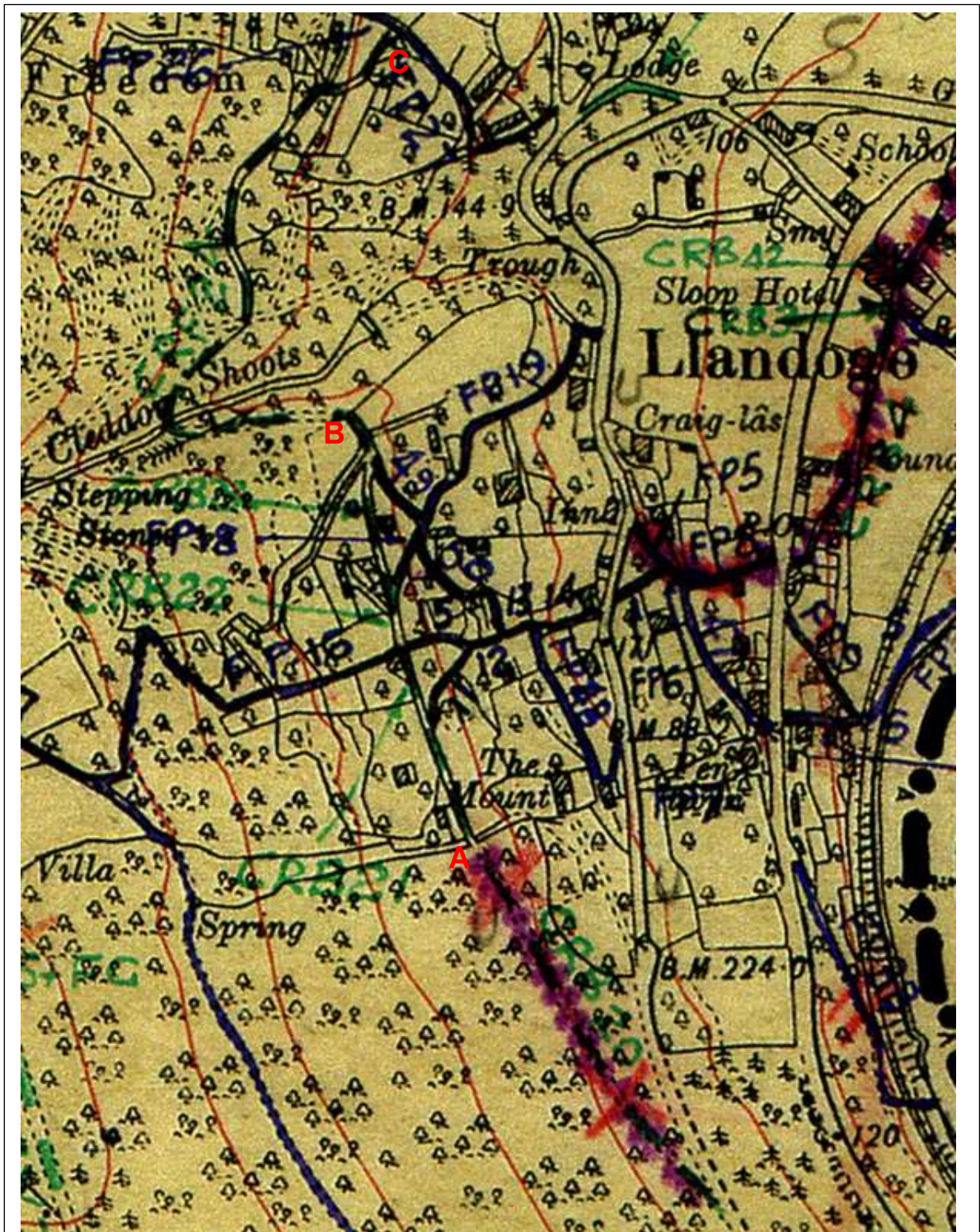


Fig. 9.1:  
1952 Draft Definitive Map Sheet 21: not to scale:

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 31<sup>st</sup> 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 1<sup>st</sup> 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.

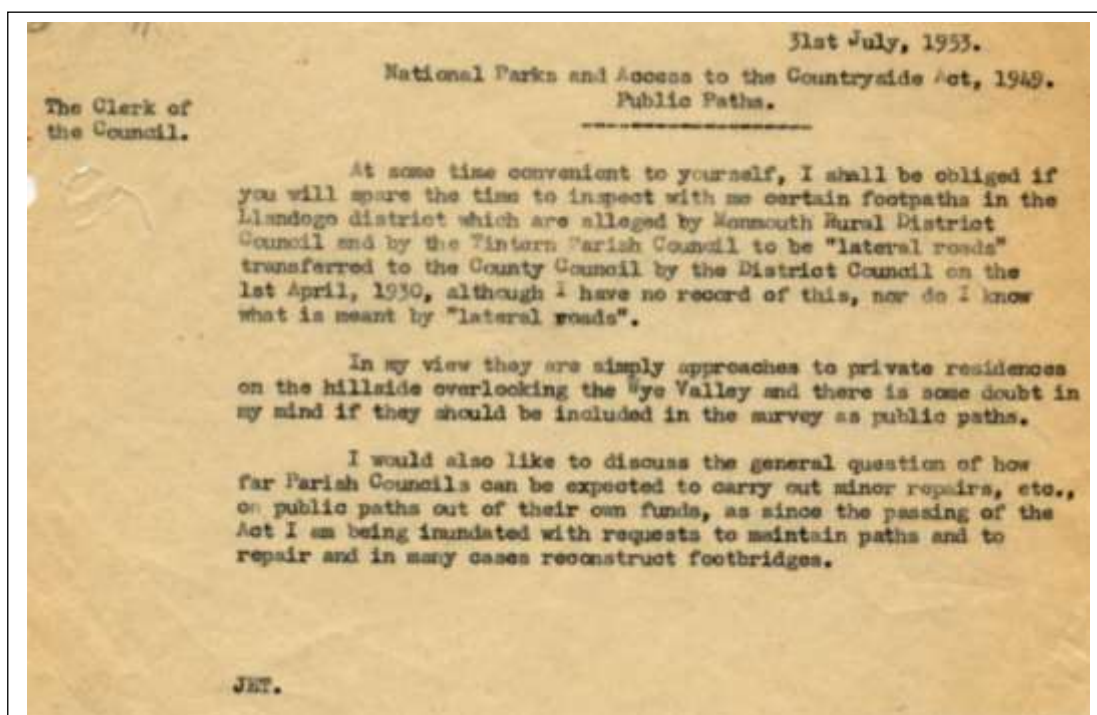
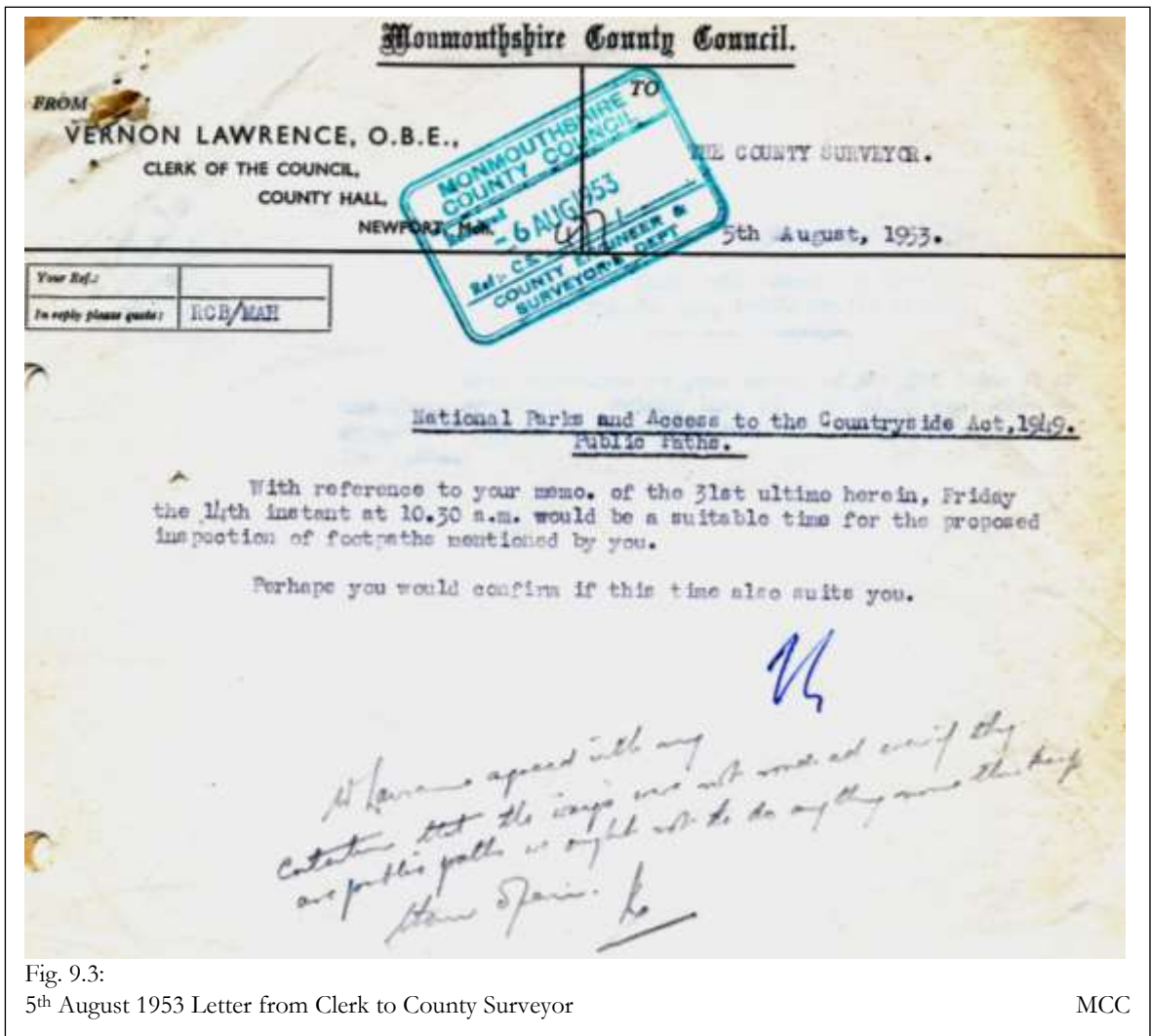


Fig. 9.2:  
31<sup>st</sup> July 1953 Letter from County Surveyor to Clerk

MCC

- 9.6. After a site inspection of the routes in the Llandogo district on the 14<sup>th</sup> August 1953 there is a note added in pencil to the letter dated 5<sup>th</sup> 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"*.



- 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 17<sup>th</sup> 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”.

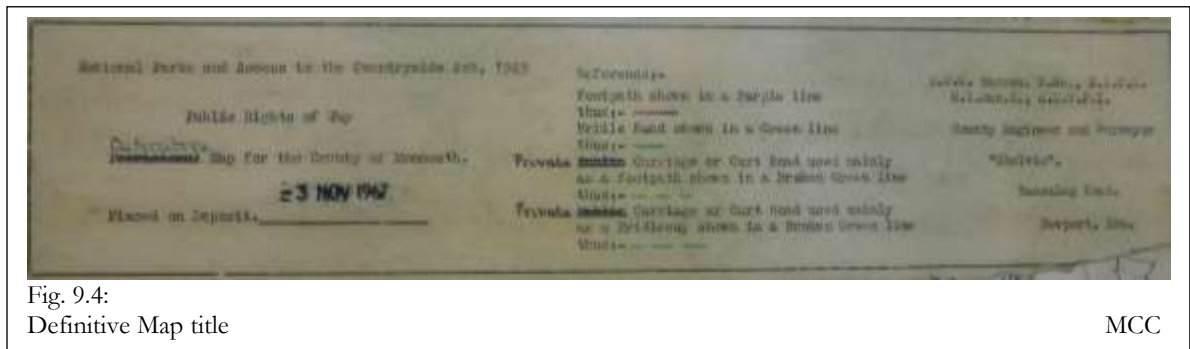


Fig. 9.4:  
Definitive Map title

- 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”.

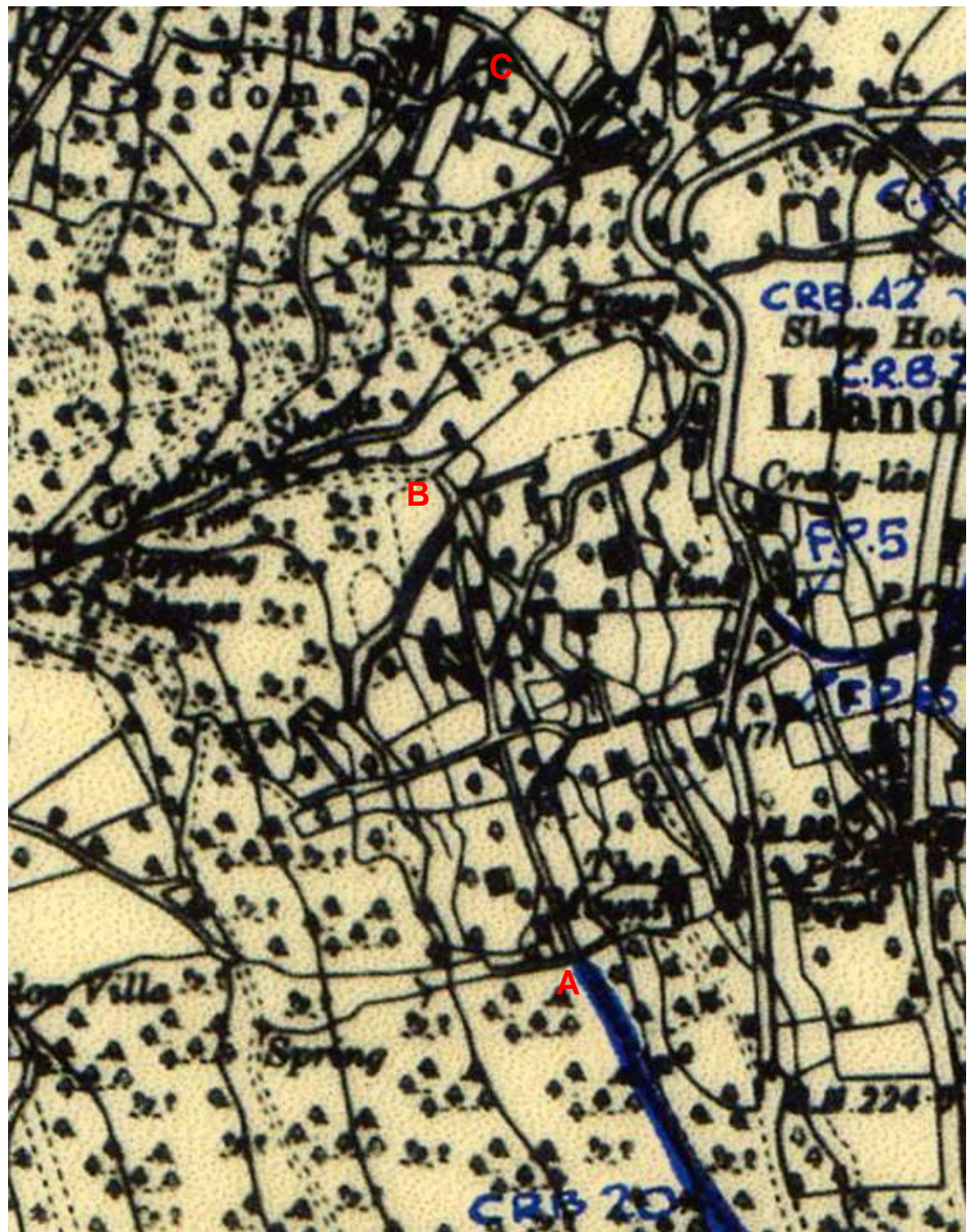


Fig. 9.5:  
Addition and Deletion Map (Modification Map) sheet 21: not to scale;

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- 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.

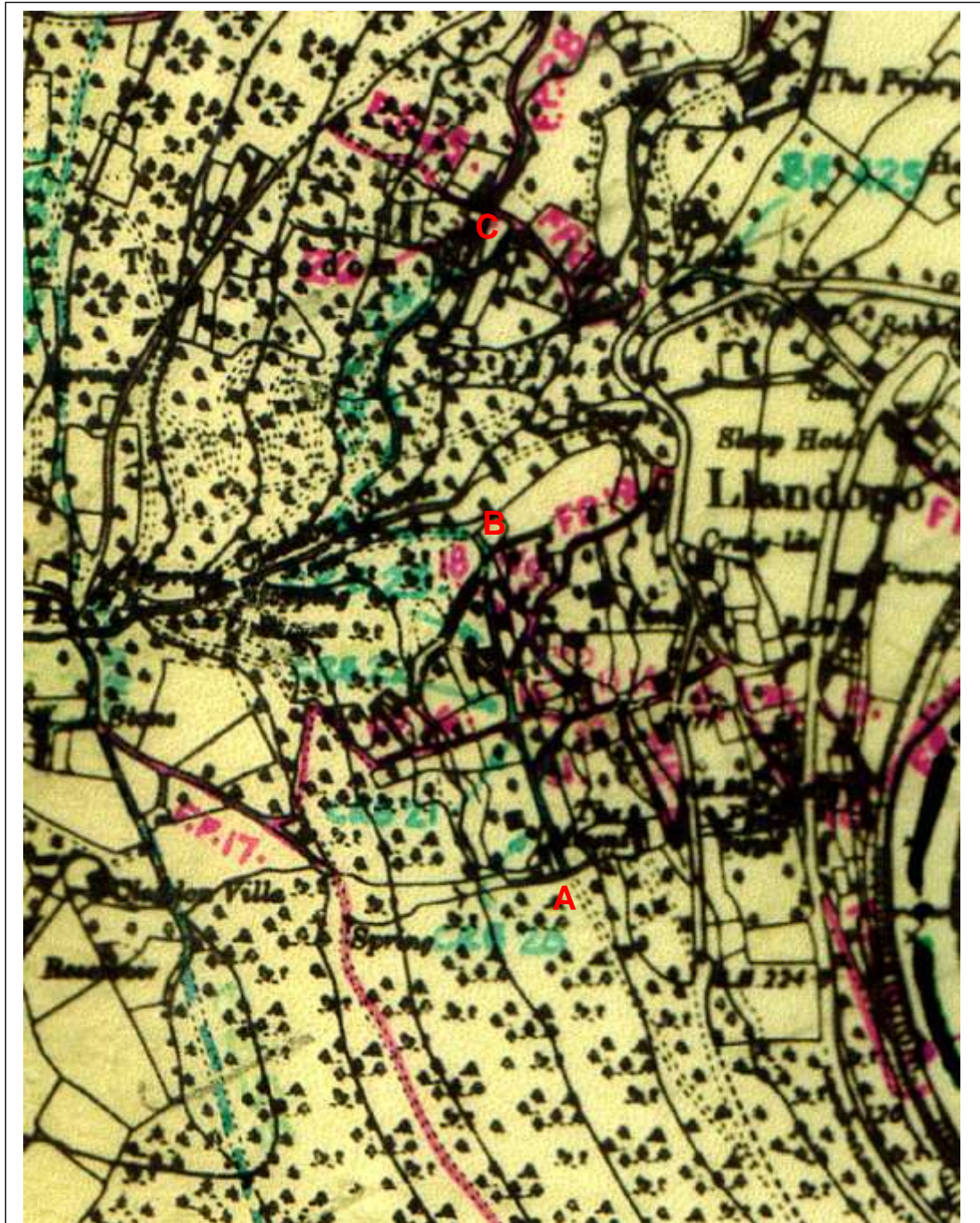


Fig. 9.6:  
1967 Definitive Map sheet 21: not to scale:

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- 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 3<sup>rd</sup> 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: 1<sup>st</sup> 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: 1<sup>st</sup> 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: 1<sup>st</sup> 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: 1<sup>st</sup> 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 1<sup>st</sup> 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.

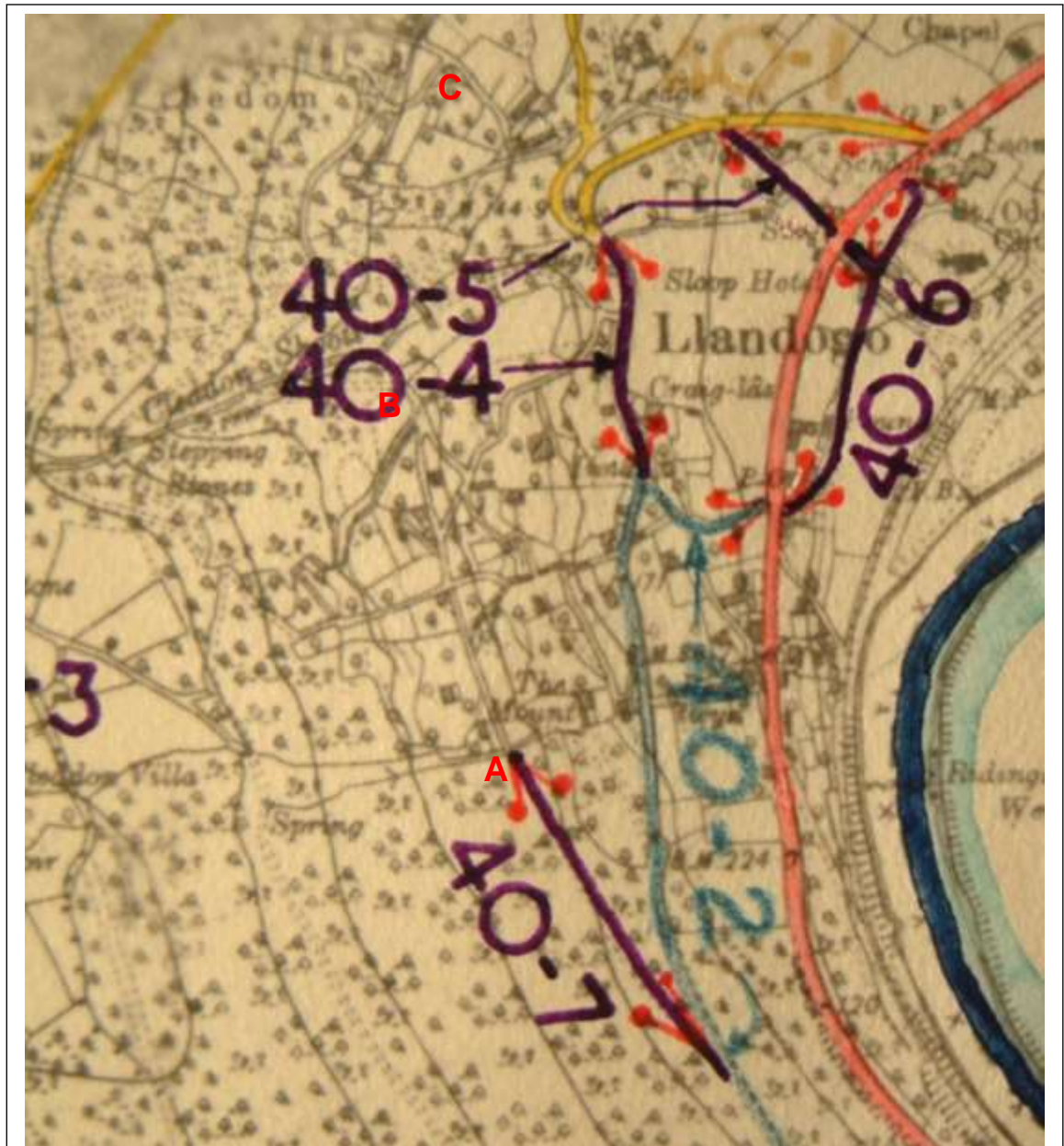


Fig. 10.1:  
1949 Highway Records: not to scale:

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- 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.

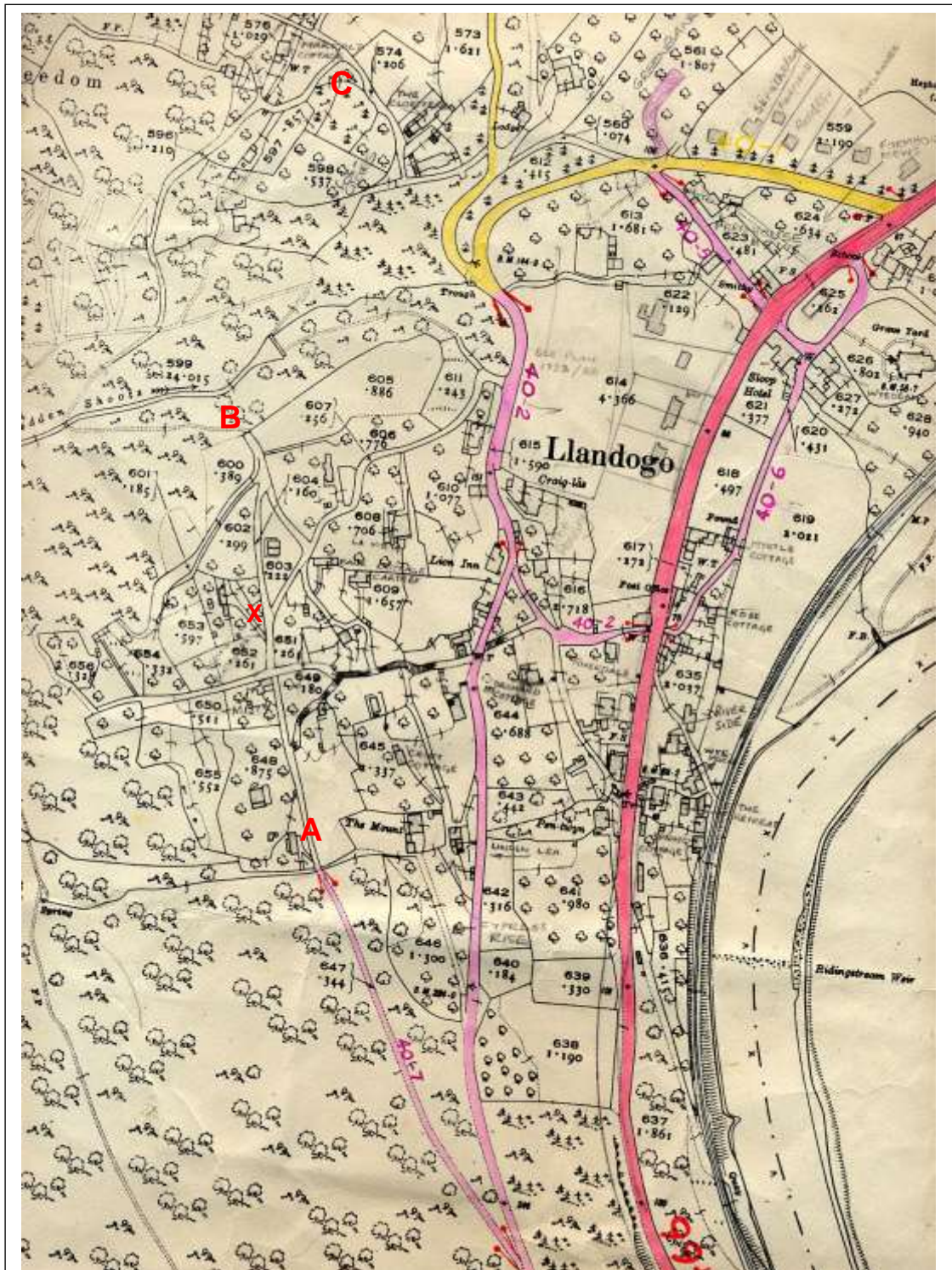


Fig. 10.2: Appendix 22: Applicant's Evidence 11  
Undated historical highway records not to scale:

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## 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.

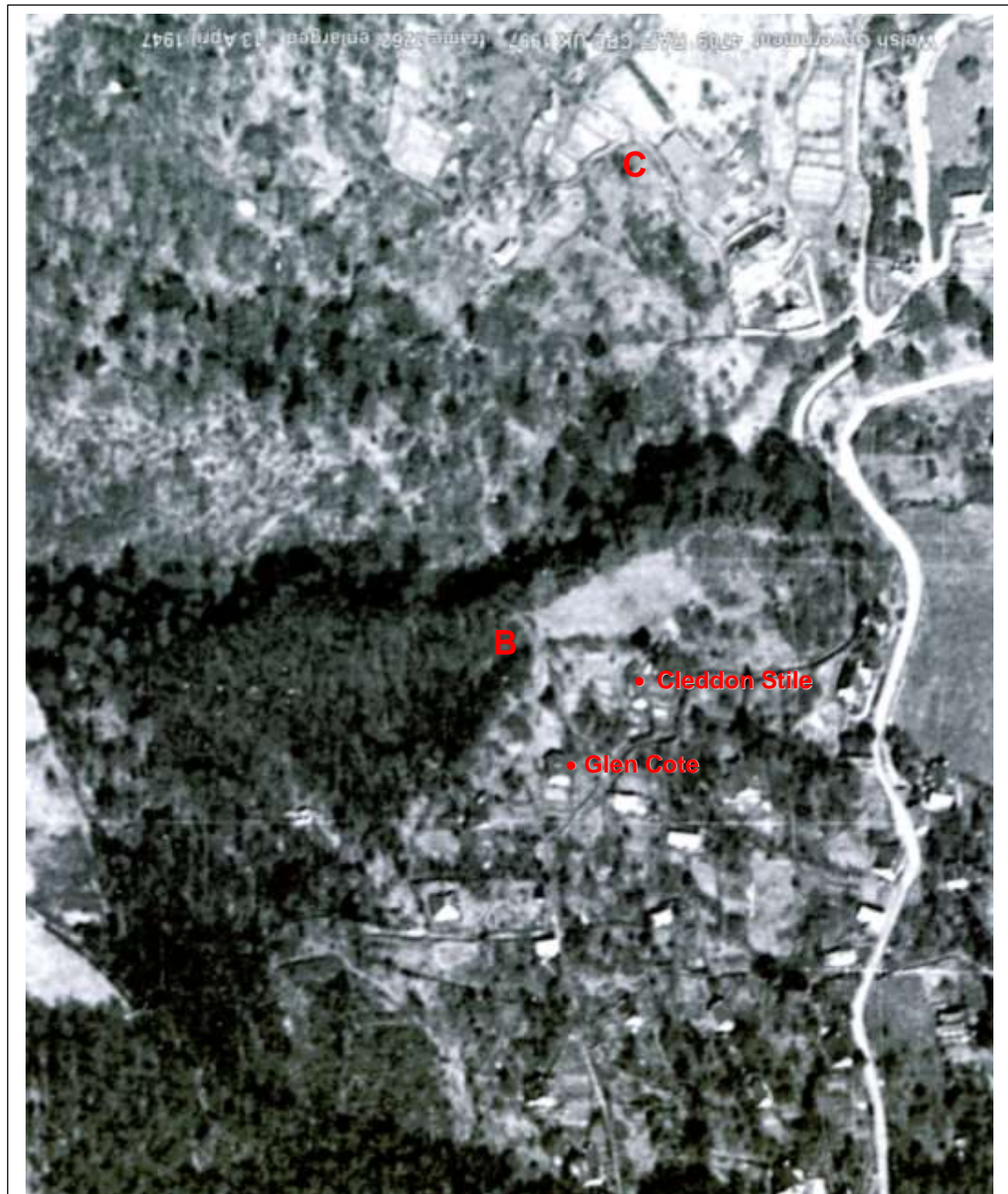


Fig. 11.1:  
Aerial photograph: Dated 13 April 1947:  
(MCC has a purchased copy. It is available at MCC office for viewing.)

National Assembly of Wales

- 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.

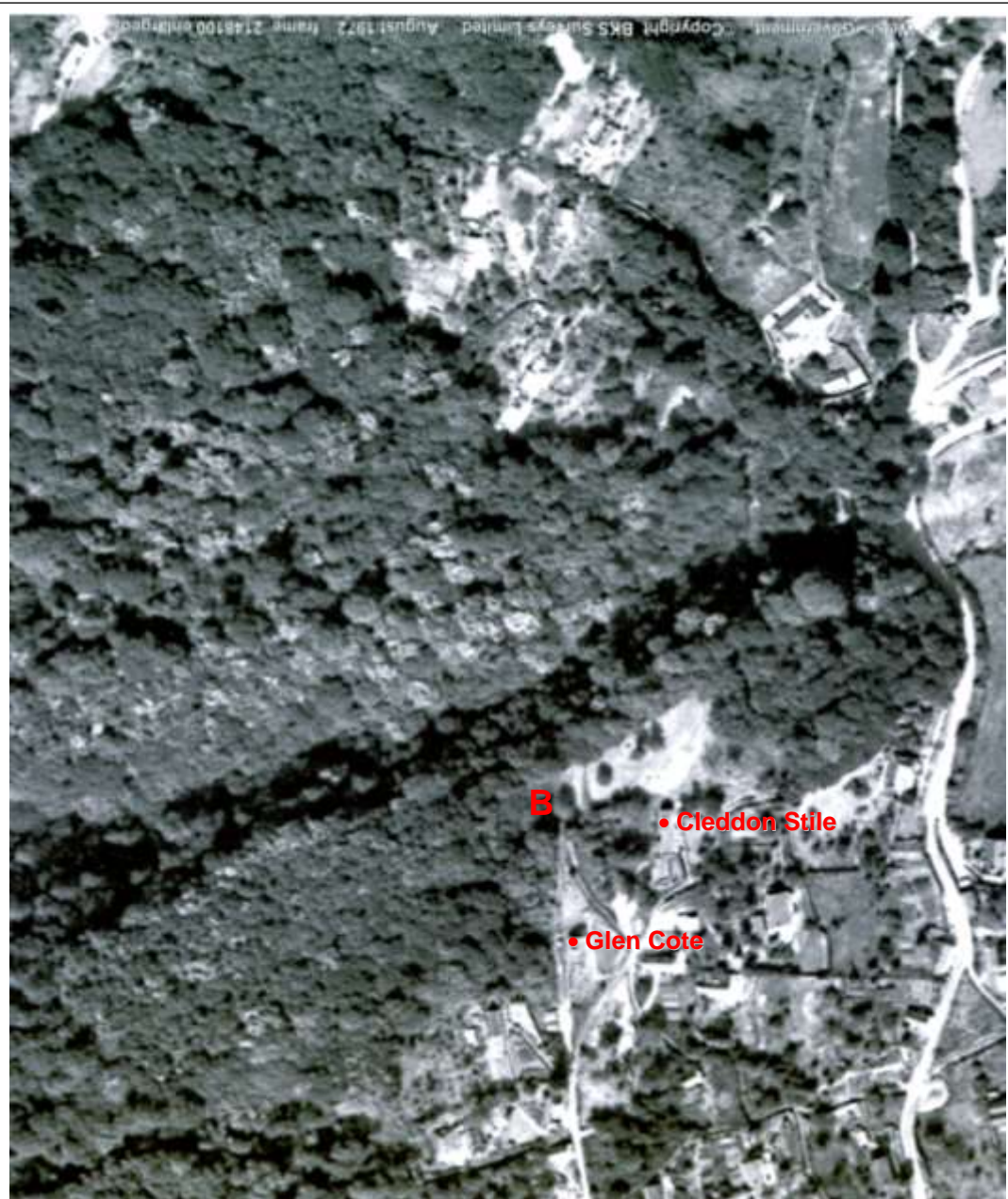


Fig. 11.2:  
Aerial photograph: Dated August 1972: National Assembly of Wales  
(MCC has a purchased copy. It is available at MCC office for viewing.)

- 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*).**

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- 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 16<sup>th</sup> 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 29<sup>th</sup> 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**

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- 13.1. Regulations associated with restricted byways (RB) and roads used as public paths (RUPPs) came into force on the 11<sup>th</sup> 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 16<sup>th</sup> 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 11<sup>th</sup> 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 16<sup>th</sup> 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

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- 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 CRF24 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

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- 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

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- 16.1. Members are invited to resolve that authorisation be given to the Community Services Cabinet Portfolio Member to proceed with making 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.



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Mandy Mussell

Definitive Map Officer

June 2016



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Ruth Rourke

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June 2016

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