

Appendix 3

Report 1: Section A to B (20 to 23)

Report 2: Section B to C (24)

Glossary

Appendixes bundle

Monmouthshire County Council

Countryside Access



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

File Ref: 41Mod _Llandogo CRB23

8th July 2016

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1. Introduction: Definitive Map Modification Order

Background to the case

- 1.1. This Report is one of two reports by Monmouthshire County Council that deal with an application by two members of the public to upgrade the status of a certain route in the community of Trellech near the village of Llandogo (Appendix 1). The question to be addressed is whether or not the route has public vehicular rights.
- 1.2. Any discussion by applicants on aspects of need, nuisance or suitability for a route in use, which are relevant to them as private individuals, must be excluded from Council investigations on its status.
- 1.3. The matter to be considered in these two Reports, therefore, is what type of public rights actually exist in respect of the route in question.
- 1.4. The routes in question are recorded on the 1952 Definitive Map and Statement (Fig. 12.6) as Cart Road Bridleways CRB20, CRB21, CRB22 and CRB23. If, in the process of addressing the dispute a requirement for changes to the status of these routes arises, legislative action will need to be considered to amend their existing classification as recorded on the Definitive Map. These are discussed in Chapter 12 of this Report.
- 1.5. The status of these routes has a history going back to 2001 when legal proceedings were issued against the Authority with regard to the maintenance of these routes given that no vehicular rights existed over them. This disagreement related to the extent of any existing public rights and the amount of maintenance that the Authority should undertake. In order to resolve the matter rather than refer it to the Magistrates Court, the Authority surfaced CRBs 20, 21, 22 and FP18, as a "one off", on the basis that there was no acknowledgement on the part of the Council that public vehicular rights exist over the routes. The reason for this was because the level of public status for the routes had not been resolved at the time as legislative investigation was required. In addition, whatever decision was made regarding the status of the routes, the Council were not responsible for maintaining the same to a standard suitable for public vehicular use.
- 1.6. In 2004 the Authority received a Planning Application (M/2367) for building a house on a piece of land alongside one of these routes. When the Authority dealt with the claim it sought to draw to the attention of the two Applicants the fact that public vehicular rights might not exist over the tracks leading to the plot which left it being accessible only via a CRB. Planning permission was granted subject to the

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

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



2. Legal Tests

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

Wildlife and Countryside Act 1981 s53:

- 2.2. The Section 53(2) of 1981 Act places two duties on the Authority:
- (2) *As regards every definitive map and statement, the surveying authority shall-*
- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) *as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*
- 2.3. Together these duties are known as the continuous review of the DM&S.
- 2.4. Events fall into two categories “legal events” and “evidential events”. The basis of this Application falls within the evidential event of section 53 (3)(c)(ii).

Wildlife and Countryside Act 1981 s53:

- (3) *The events referred to in subsection (2) above are as follows:*
- (c) *the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*
- (ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;*
- 2.5. Further to the above the standard of proof for both the making and confirmation of a Definitive Map Modification Order is “on the balance of probabilities”.

3. Statutory Background

How public rights of way came about

- 3.1. The law has always acknowledged that the public right to use a highway lies in dedication by the owner and that public use alone does not create a highway. The law is clear that if there has been a public uninterrupted user of a road for such a length of time as to satisfy a jury that the owner of the soil, whoever he might be, intended to dedicate it to the public, this is sufficient to prove the existence of a highway, even though it cannot be ascertained who the owner of it has been during the time the road has been used by the public.
- 3.2. The types of highway recorded on the Definitive Map and Statement (relevant date 1 July 1952) are footpaths, bridleways, restricted byways and byways open to all traffic.
- 3.3. A footpath only allows walkers; a bridleway allows walkers, horse riders (including people leading a horse) and possibly the right to drive cattle; a restricted byway allows all the above descriptions including non-mechanically propelled vehicles like a horse drawn cart; and a byway open to all traffic allows all types of traffic as listed above including motorised vehicles.

Common Law

- 3.4. Common law originally specified three types of highway, those being footpaths, bridleways and carriageways. Common law is the basis on which statutory rights have been built on. Therefore the type and level of user for these ways is in some respects similar. Over the years legislation has extended the rights where for example carriageways have been subdivided into other types of routes, some being byways open to all traffic while others are now referred to as restricted byways.
- 3.5. DMMO applications, where a way has become public from long usage, are now generally made under a statutory provision where the common law principles of: “without force”, “without secrecy” and “without permission” are clearly preserved by law.
- 3.6. Common Law uses a term “as of right”, to explain the principle of long usage that gives rise to a presumption of dedication where the use had to be without force, without secrecy and without permission. Case law has enhanced the term “as of right” to include “in the honest belief in a legal right to use”.
- 3.7. Provisions of section 31 of the 1980 Highways Act (HA) do not supersede the principles of implied dedication that existed at common law before 1932. That

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

- 3.8. However, where a claim is based only on common law, the requirement with regard to capacity to dedicate still applies. Therefore, without a specific owner, as in this case, there is no ability to offer public vehicular rights.
- 3.9. Furthermore, the tests under the 1980 Highways Act section 31 are not relevant to this case as it is already understood some public rights, although ambiguous, are recorded on the Definitive Map and Statement.

Restrictions imposed by statute:-

- 3.10. The Applicants submitted a DMMO claim under section 53 of the 1981 Wildlife and Countryside Act as the Authority had not processed the duty to reclassify under section 54 of the 1981 WCA. This section of the 1981 Act has now been revoked by the 2000 Countryside and Rights of Way Act and is no longer available for use.
- 3.11. The 1980 Highways Act, section 31 does not apply as the route is already registered as a public right of way on the Definitive Map and Statement as “Cart Road Bridleways” (CRB) which is essentially a road used as a public path (RUPP). In this case the route is regarded as a public bridleway which allows walkers and horse riders. This is discussed in detail in Chapter 12 of this report.
- 3.12. The 2000 Countryside and Rights of Way Act (CROW) Section 47 came into force on the 11th May 2006 and re-designated roads used as public paths (RUPPs) to restricted byways (RB).
 - 3.12.1. *The Welsh Statutory Instruments (2006 No.1279(V.124)(C.42) provided that nothing in section 47 or 48 of the 2000 CROW Act affects the operation of the relevant sections and schedules of the 1981 WCA if either an order or an application for a relevant order was made before the 19th May 2005.*
 - 3.12.2. *The section A to B of the route in question is investigated in keeping with the submission plan (Appendix 4).*
- 3.13. Section 67(3) of the 2006 Natural Environment and Rural Communities Act exempts this claim being affected by the Act as the application was submitted in 2004 prior to the cut-off date stipulated. Chapter 16 and Appendixes 59 to 64 provide detailed explanation.
- 3.14. The tests under the 1981 Wildlife and Countryside Act are applied to determine whether or not public vehicular rights already exist over section A to B of the route in question.

THE LEGAL TESTS

Discovery of Evidence

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

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

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

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

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

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

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

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

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

Standard & Existence of Evidence

3.21. Planning Inspectorate guidance outlines that:-

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

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

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

DMMO Process

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

LEGAL TESTS – Discovery of Evidence

- 3.24. In this case the Council received the Application in 2004 along with a report consisting of 13 pieces of evidence and 6 user evidence forms to upgrade section A to B an existing cart road bridleway to a byway open to all traffic.
- 3.25. The Applicants’ submissions and their content and weight meet the tests of ‘discovery of evidence’ which is considered in greater detail in this Report.
- 3.26. It is not possible to show that the historical records were referred to in the process of the compilation of the Definitive Map and Statement. While recognising that this lack of surviving evidence does not prove that no consideration was given, it is proposed that the submission of the historical documents at least, should be considered sufficient for a discovery under s53(3)(c)(ii).
- 3.27. Furthermore, when the definitive map was compiled, roads used as public paths (RUPPs) were shown as either cart road bridleways (CRBs) or cart road footpaths (CRFs). These terms have no legal significance and the category of RUPP proved to be unsatisfactory.

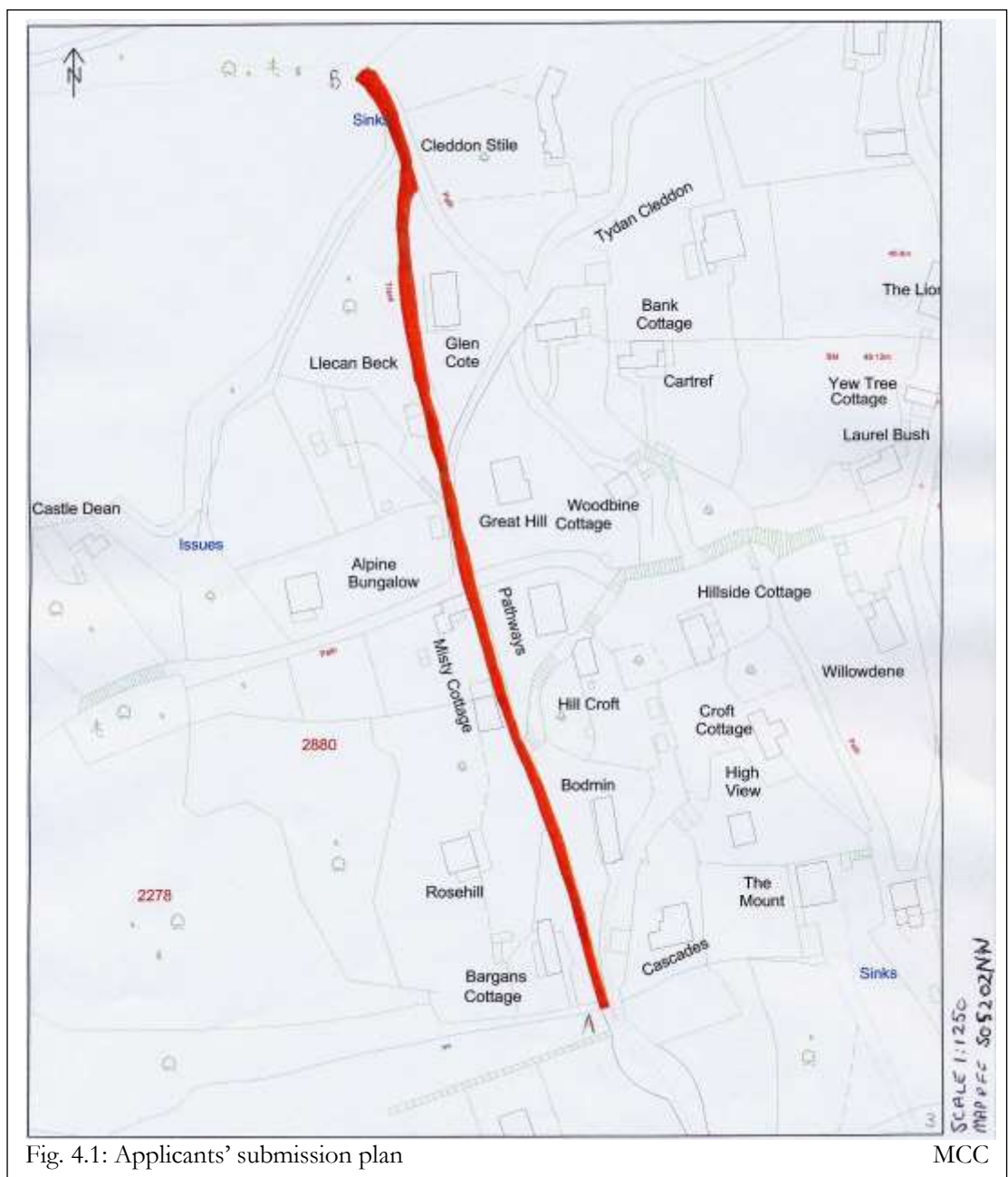
- 3.28. A number of legislative attempts were enacted to reclassify the RUPPs and finally as stipulated by the tests set out under section 67 of the Natural Environment and Rural Communities Act 2006, it remains for the Applicant's claim to be decided under the Wildlife and Countryside Act 1981 section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

LEGAL TESTS – Standard of Evidence

- 3.29. While the historical evidence referred to must be demonstrated to be sufficient to rebut the presumption of the existence of that already recorded on the Definitive Map and Statement the ambiguity of symbols for cart road bridleways; cart road footpaths; roads use as public paths and also due to section 56(1) of the WCA 1981 Act where the depiction of a way as a RUPP on the definitive map was conclusive evidence of the existence of bridleway rights it proved difficult to properly reclassify such a route to a footpath under section 54 of the WCA1981.
- 3.30. Therefore, if evidence existed that a way shown as a RUPP should have been shown as a footpath, or indeed should not have been shown at all, it should be tested by way of a modification order under section 53(3)(c) of the 1981 Act, which requires all the relevant evidence to be taken into account thereby meeting the requirement for the 'discovery of evidence' as set out under that Act.
- 3.31. The full extent of the public status of the route began to be questioned in about 2001. Then on the 13th April 2004 the Applicants, wishing to verify vehicular access to their property (section A to B), submitted the claim to change the existing cart road bridleway (CRB) to a byway open to all traffic (BOAT) and are using Wildlife & Countryside Act (WCA) 1981 section 53(3)(c)(ii). The calling into question of the route, for the purposes of this claim is 13th April 2004.
- 3.32. Under section 67(3)(a) of the 2006 Natural Environment and Rural Communities Act (NERC) it is stated that if a DMMO application for a byway open to all traffic was made before the 19th May 2005 then section 67(1) does not apply. This means that the route in question, A to B, is not changed and remains ambiguously designated as a CRB. It is this situation that is now being investigated to determine whether or not the public have the right to use the way in motorised vehicles, on horseback or with a horse drawn cart.

4. Applicants' Evidence Report

- 4.1. A Definitive Map Modification order (DMMO) application incorporating: a report with 13 historical documents, 5 witness statements and 6 evidence forms, has been submitted under section 53 of the Wildlife and Countryside Act (WCA) 1981.
- 4.2. The Applicants submitted, along with the relevant forms and submission plan (Fig. 4.1), a report entitled "The Old Parish Road and CRB 23" with 13 pieces of evidence (Appendixes 2 to 39). The title shows that they believe that the cart road bridleways (CRB) 21, 22 and 23 had the status of an "Old Parish Road", (i.e. highway for public vehicular use) which included these already registered public rights of way.



- 4.3. Although the applicants have omitted CRB 20 from their list, the full length of the route, as marked on their submission plan (Fig. 4.1), is being investigated. Additionally, restricted byway (RB) 24, as a continuous through route, is also researched as this may have a bearing or give support to higher public rights on both routes.
- 4.4. The wording “Old Parish Road” is discussed in more detail in Chapter 6. The phrase has been used on technical drawings submitted as part of a planning application which is descriptive use only and therefore does not prove public vehicular rights.

APPLICANTS’ REPORT

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

Comment

- 4.5.1. The report of vehicular use, here, being predominantly by local people supports the fact that this is not a public vehicular through route and is not used by the public at large.
- 4.6. **The “private road” question.**
If the network of roads/tracks including The Old Parish Road was only a network of private roads for landowners’ access, why are there so many branches? There is no pattern of consistency between the roads and the plots alongside. The irregularity of the roads suggests antiquity and, if set out by an inclosure process, it seems very wasteful of land and of repair resources. Inclosure tended to rationalise roads and plot shapes and sizes. This area appears to be an ancient,

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

Comment

- 4.6.1. **Irregularity of roads.** The steepness of the topography in the area has possibly influenced the pattern of routes that ascend Llandogo Hill.
- 4.6.2. **Inclosure Award** for this area does not appear to exist and therefore is not available to support the alleged public vehicular rights. Additionally, the Manor of Llandogo was researched and there were no plans attached to those documents to support any type of public right.
- 4.6.3. **The name of the road.** The lane is referred to by a number of names among which are “Bargan’s Lane” and “John Young’s Lane” probably as it is near and leads to John Young’s cottage. The Applicants are calling the route in question the “Old Parish Road”. Giving a route a name does not make it public. The origin of this name is from technical drawings submitted as part of a 1989 planning application (Appendix 42) in which the term “Old Parish Road” is only descriptive and does not prove public vehicular rights.

4.7. How old is this road?

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

Comment

- 4.7.1. The 1828 and 1834 Deed papers for Cleddon Shoots (Appendixes 11 &14) have double line markings that are indicative of the route in question. The 1834 Deed plan does show double pencil markings that assist in locating the area of land shaded pink. However, this does not prove any public status for the route in question. Other routes shown on this plan are shaded along with the reference “To Llandogo” or “From Trelleck” which when compared with the highway records shows that this type of shading and reference supports public rights. While in contrast the simple pencil markings for the route in question are only indicative of location and not of public status.
- 4.7.2. The 1835 Highway Act. It is acknowledged that a route shown to pre-exist 1836 would then be maintained by the local Authority at public expense. However, the public status of the route and the level of maintenance would not have been stipulated. In this case only two commercial maps pre-date the 1835 Act and, although poorer in quality than the 1830s Ordnance Survey map, are historical documents which may show an alignment that coincides with parts of the route in question. These 1823 & 1830 commercial maps record topographical features only and do not specify the public or private usage of the route in question.
- 4.7.3. The 1846 Tithe Map (Appendix 17) shows the route in question to be shaded terracotta and, when taken together with other historical mapping, suggests that the route is public. Whether or not the route in question has public or private status is not the matter raised by this claim. The matter that is being investigated is what type of public usage is being attributed to the route in question and this document alone does not support the claimed public vehicular rights.
- 4.7.4. The two commercial maps of 1823 & 1830 and the 1846 Tithe map are evidence to the existence of the route in question therefore impossible for the Authority to argue that it did not exist pre-1836. However, while the Tithe map shows CRB23 as shaded, the earlier maps do not. The inconsistencies of these earlier maps does not support the claim for either public or private vehicular rights.
- 4.7.5. The comparison of all the evidence does suggest that the route in question was not dedicated as highway pre-1835 which would mean that the route would not be automatically maintainable, even if caused to exist by a ‘body politic or corporate’¹.

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

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

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

Comment

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

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

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

Comment

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

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

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

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

Comment

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

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

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

Comment

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

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

4.12. **County road status (Appendixes 22 & 23)**

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

Comment

- 4.12.1. The County Road C40-7 (Fig. 13.2) is recorded on the historical highway maps although there is no recorded explanation of how the classifying of C40-7 came about.
- 4.12.2. The 1949 highway record (Fig. 13.1) is the only dated selection of highway maps bound in book form and the relevant map sheet shows that C40-7 was recorded as highway.
- 4.12.3. The 1952 Draft Definitive Map (Fig.12.1) shows a section of CRB20 to have been crossed out. The reason for this is that when the 1949 highway records were researched it was discovered that this section was already recorded as public vehicular highway C40-7. Therefore, as this section of CRB20 was already recorded on the historical highway records as C40-7, it did not need to be re-recorded and was for this reason removed from the Definitive Map records that were finally published in 1967.

4.13. **The definitive map survey 1951 (Appendixes 24 & 25 (Statements))**

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

Comment

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

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

4.14. **A conveyance of 1952 (Appendixes 26 to 30)**

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

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

Comment

- 4.14.1. The Conveyance of freehold property known as Rock Cottage, Llandogo in the County of Monmouth dated 21st March 1952 is difficult to interpret without the ‘annexed’ plan as, firstly, ‘Great Hill’ is the name of the area and not a single property and, secondly, the location of the property known today as “Glyncote” has never been referenced as plot number 679 on any Ordnance Survey maps.
- 4.14.2. Thirdly, the Tithe Map does not use this plot number 679 as mentioned in the description while the 1881 OS Map does use the plot number 679 twice which is shown to be intersected by a road.
- 4.14.3. The phrase “public road” is difficult to attribute to a single route as the “Great Hill” area is criss-crossed by public rights of way and, with no plan included with the 1952 Conveyance, it is difficult to verify the actual alignment referred to.
- 4.14.4. The word “road” may assist the claim although this is ambiguous when compared with Ordnance Survey maps that frequently use the symbol ‘F.P.’ for footpaths.
- 4.14.5. In conclusion, the 1952 Conveyance with no plan attached is unreliable and has a number of discrepancies which makes the weight of this historical document weak in support of the claim. For a detailed explanation see Chapter 5.

4.15. **Evidence of reputation**

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

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

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

Comment

- 4.15.1. The evidence of reputation does not substantiate fact unless supported by documentary evidence. The Authority did not surface parts of the route for vehicles.
- 4.15.2. There is a misunderstanding between the different map records. The section of the route referenced as C40-7 on the "List of Streets" was also recorded for a time on the Draft Definitive Map compiled and published for public inspection on the 16 December 1952. During further investigation into all the available documents it was revealed that the route marked on the Draft Definitive Map was already registered as a public highway and therefore was not required to be recorded a second time and was therefore removed from the Definitive Map prior to its final publication on the 3rd November 1967.
- 4.15.3. The southern portion was not removed from the Definitive Map data set due to a reclassification. Monmouthshire County Council did not complete and has never completed a reclassification of RUPPs. Therefore this is not evidence for the whole route in question to be a public right of way for vehicles.
- 4.15.4. The Authority did not regard the entire route as a public road for the use of vehicles. If the Authority had considered this then the "List of Streets" would have identified the termination point of the adopted highway further to the north covering the remainder of the route referred to as CRB 20 and to continue to include CRB 23. This is not the case and the adopted highway C40-7 terminates at the south west of the property now called Bargans Cottage.
- 4.15.5. There is no record of adoption for C40-7 because there was no legislative process for this at the time the road was constructed.

- 4.15.6. The Highway section of the Council did not consider the route in question as a public highway and would not have regarded it as such as it was not made up to the standard similar to that of a “Listed” county road such as C40-7.
- 4.15.7. At section 14 of the Applicants’ submission there is no 1994 letter from the Director of Highways giving any formal statement with regard to the status of the route in question. There is, however, a three page extract of the A36666 Planning Application dated 5th October 1993 (Appendix 31 to 33) and also a letter dated 29th October 1993 (Appendix 34). The October 1993 letter from Highways to the Director of Technical Services only refers to observations following the granting of planning permission under A30965.
- 4.15.8. Furthermore, the Director of Highways for the Highway Authority did not formally make a statement with regard to the status of the route in question. Instead, in addressing observations associated with planning consents for both A29567 and A30965 the County Engineer for Highways stated in letters dated 7th September 1988 and 3rd July 1989 (Appendixes 40 & 41) that the proposed development abuts a private road that is part of a network of similar substandard roads in the Llandogo area and in his opinion the roads are unsuitable to accommodate further residential development.

4.16. **What’s in a name?**

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

Comment

- 4.16.1. The Old Parish Road is a form of descriptive reference that was used only in the planning application document, see Appendix 31, and has no legal bearing as to the public status of the route in question.
- 4.16.2. Although physical attributes of the route in question are apparent these cannot be taken into account when regarding the type of public rights that possibly already exist over the way being investigated.
- 4.16.3. The Authority has never put resources into the route in question. Evidence for this is that it was necessary for a member of the public to submit the 2001 mal-administration complaint. The recent surface work has occurred as a one-off unprejudiced repair of the route in question to avoid the consequences of the 2001 mal-administration.
- 4.16.4. A “parochial road” would only more likely be a public vehicular road if when taken with all other historical evidence it showed that, on balance, the route in question had existing public vehicular rights.
- 4.16.5. The 1952 Conveyance is compiled for the purposes of property transference and not a document that proves public vehicular rights. Phrases like “public road” used within such documents along with an accompanying map (in this case it is missing) have to be considered with other historical evidence before public rights may be determined.

4.17. Summary

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

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

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

Comment

- 4.17.1. In conclusion the route in question and the Llandogo/Trelleck Road are not shown on the 1830 Ordnance Survey, David & Charles and Cassini Maps (Chapter 11: Figs. 11.8, 11.7 & 11.6 respectively). Therefore, there was no requirement at that time for unclassified county road C40-7 and the main access up to the “Great Hill” area was from the northeast and east. The Prices and Greenwoods maps that are of poorer topographical quality possibly record sections of the route in question. This possibility does not give weight to there being public vehicular rights over the route in question. The lack of pre-1835 records also suggests that the route in question is not maintainable at public expense.
- 4.17.2. When the 1902 & 1921 Ordnance Survey Maps are compared with the earlier 1800s mapping (Chapter 11: Figs. 11.14 & 11.15) it is noted that steps, along with the symbol ‘F.P.’, for footpaths, are the descriptive tools for the main route that leads up the side of the hill. This shows that public vehicular rights were not established in antiquity and proves that the term the Old Parish Road” was purely descriptive and incorrectly used in the planning application and correspondence of 1993.
- 4.17.3. The route in question is shown on the 1846 Tithe map (Chapter 11 Fig.11.10) and is shaded the same way as other paths that are registered as either footpaths or the main public vehicular highway. Therefore, the colouring of routes on the tithe map is not exclusive or inclusive to any particular type of public or private right. It is, instead, a format for depicting ways and separating them from the surrounding land.
- 4.17.4. The local traffic does not help determine public vehicular rights. This is more in keeping with the suggestion of private vehicular rights as the public at large have not and do not use the route in question in mechanically propelled vehicles.
- 4.17.5. The 1910 Finance Act Map (Chapter 11: Figs. 11.16) does show the route “white out” in a way that is normally shown for roads and not “public rights of way or user” which are recorded differently on these historical records. However, the distinction of bridleways and byways is embraced by the word “road” and therefore the Finance Act records do not always assist in the determination of public vehicular rights over the route in question.
- 4.17.6. The Definitive Map and Statement, relevant date 1st July 1952, records the route in question ambiguously as a “road used as a public path” and has the subtitle “cart road bridleway”. This means that although the route in

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

- 4.17.7. The Highway Authority has not upgraded the status of the route although surfacing work of the route in question has been carried out to prevent the expense of a mal-administration appeal.
- 4.17.8. Local people have used the route as access to their properties suggesting that the route in question was a “shared private driveway” and therefore is not a public vehicular road maintainable at public expense.
- 4.17.9. On balance, when all the evidence is taken together, it is shown that the route in question (A to B) should be registered as a public footpath. However, this does not prevent those already with private vehicular rights exercising such use.

5. 1952 Conveyance of Land

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

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

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

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

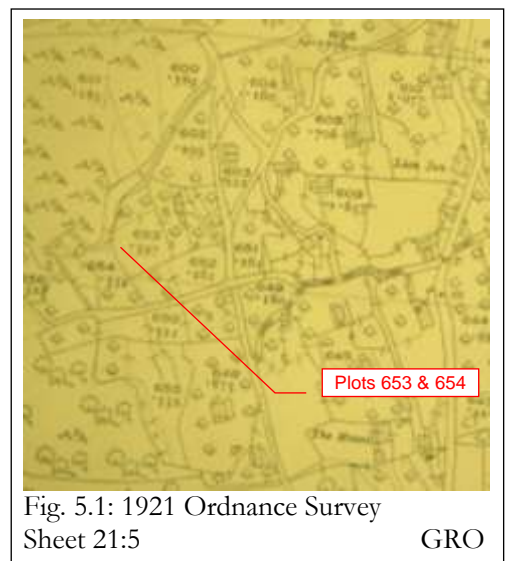


Fig. 5.1: 1921 Ordnance Survey Sheet 21:5

GRO

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

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

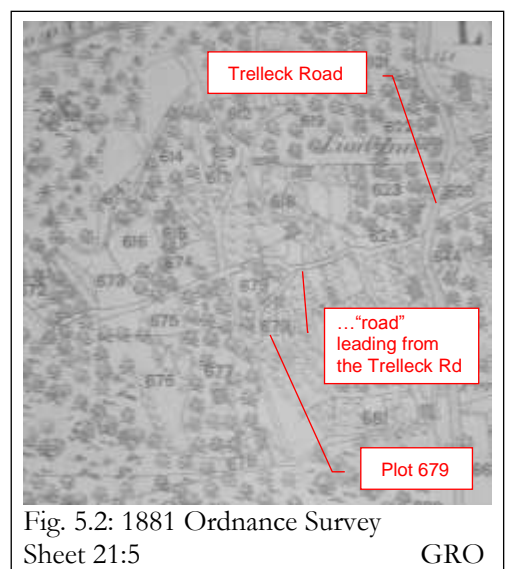


Fig. 5.2: 1881 Ordnance Survey Sheet 21:5

GRO

- 5.5. The 1952 Conveyance refers firstly to plots numbered 653 and 654 marked on both the 1902 (Fig. 11.14) and 1921 OS Maps (Fig.5.1) while the same plots are given different numbers on both the 1846 Tithe (Fig.11.10) and 1881 OS Maps (Fig 11.11). Secondly, the Conveyance refers to a descriptive extract from an 1887 conveyance to locate the land for Rock Cottage defining it to be “bounded by properties...and the public road....on all or most parts and sides” and incorrectly mentions a tithe map plot numbered 679 in the Parish of Llandogo. There is no plot with this number on the Tithe Map for the area being investigated.
- 5.6. Instead, the 1881 OS Map uses plot number 679 as described in the 1887 Conveyance. Furthermore, on the 1881 OS map plot number 679 is marked up twice and intersected by a road. (Fig 5.2).
- 5.7. The location of the property known today as Glyncope has never been referenced as plot number 679 on the Tithe and all Ordnance Survey Maps. The 1881 OS map shows that plot, “Glyn All”, number 679 located a fair distance from the landownership extent for Rock Cottage. On the other hand the ambiguous wording of the 1887 Conveyance that mentions ‘Glyn All’ could be instead referring to “The Glyn” which may mean Glyn Cote a property that lies adjacent to the land for Rock Cottage and is intersected by a road. Without the original plan to verify the extent of the land and the location of the “public road” mentioned, although plot numbers are used, numerous interpretation possibilities arise. Moreover, the term “public road” is difficult to attribute to a single route as the whole hillside is criss-crossed by public rights of way.
- 5.8. A distinction is noted within the 1887 Conveyance description between a “road” that is described as “public” and a “road” that is implied by the descriptive omission as “not public”. The word “public” is not in dispute, for the route in question along with numerous public footpaths is registered on the Definitive Map and Statement. This suggests that the omission of the word “public” to describe the road is in error while the term “road” is only descriptive and does not specify the type of public right. The word “road” may assist the claim, although this is ambiguous when compared with Ordnance Survey maps which frequently use the symbol “F.P.” for footpaths. The mix of the terminology and their legal meanings are ambiguous; “road” could be a term for either bridleway or footpath.
- 5.9. It is established from the Definitive Map Statements that the whole area is called “Great Hill” and that this is not the name of a particular property. The 1902 and 1920s OS Maps all label the ways leading up to the area known as the “Great Hill”

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

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

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

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

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

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

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

A planning history

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

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

- 6.8. The above comment did not appear in the A36666 planning application. The use of the phrase “private road” has two implications; 1) that the route is believed to be a “private shared driveway” and 2) that the terminology is incorrect as any similar routes may also be used (shared) by the public in a different capacity. It is shown here that the Gwent County Council Highways Department officer did not say that the route in question was a way “*over which the public have right of access with vehicles*”.
- 6.9. Within planning file A29567 is another letter from the owner of Cleddon Stile, Mr T. Wilkinson John, dated 10th August 1988 (Appendix 43) that states:-
“...the access road (Old Parish Road) is not adopted; its maintenance is the responsibility of the adjacent landlords.”
- 6.10. This comment shows that a local inhabitant was aware that the route in question was not publicly maintained but instead was the responsibility of the adjacent landowners.
- 6.11. Mr T.W. John has also written a witness statement dated 17th October 2001 (Appendix 36) which mainly reports that “*vehicular access was quite unrestricted*”. Although this is reported regarding vehicular use, the majority of that use seems to be by those people in vehicles that have been invited to dwellings in the “Great Hill” area. This type of use does not represent the public at large. This 2001 Witness statement is discussed in Chapter 7 of this Report.
- 6.12. A consultation letter, dated 3rd July 1989 (Appendix 41), from the County Engineer and Surveyor of Gwent County Council, to Monmouth Borough Council in response to Planning Application A30965, dated the 6 September 1989, states that having been previously consulted under outline application code A29567 his views remain unchanged. He confirms his original observations regarding the route in question which were that, along with other ways in the area, any additional development would not be recommended. This letter repeats the fact that he did not stipulate that the route in question had public vehicular rights.
- 6.13. The Planning Report for Application A36666 entitled “AMENDED SITING OF APPROVED DWELLING” dated 5th October 1993 was then compiled. This report refers to the route in question incorrectly. From the information investigated within all the available office files it is not possible to ascertain how this erroneous paragraph came to be inserted within the Planning Report when it is shown that

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

- 6.14. The consultation letter, dated 29th October 1993 with reference A36666, from the County Engineer of Highways (Appendix 34) states that there were “*no observations on the amended siting of the dwelling following grant of permission under A30965*”. The contents of this letter do not refer to any public vehicular rights over the route in question. It is noted on file that planning application A36666 was granted full permission on the 1st December 1993 and that this was renewed in 1998 under planning Application M/2637 along with a note to the applicant regarding the route in question and the level of public rights over it.
- 6.15. The comments in the 1993 Planning Report have resulted in a mal-administration complaint which was submitted by a Mr Greggains on the 22nd January 2001. The outcome of this case of mal-administration was that the Countryside Service of Monmouthshire County Council undertook surfacing works by laying tarmac along CRBs 20 to 22 to avoid the expense of attending the Courts.
- 6.16. To further negate the comment made in the A36666 Planning Application it is necessary to be aware of the legal importance of the Definitive Map and Statement in which strict legislative tests need to be carried out prior to any changes being made to alignments on the Map.
- 6.17. The Definitive Map and Statement is the conclusive legal document of all registered public rights of way and no comments within any other documentation issued by any other department of the Council can be taken as fact regarding public rights of way.
- 6.18. The legal position, as currently recorded on the Definitive Map and Statement (relevant date 1st July 1952) is that the public use of the route in question is enjoyed by the public on horseback and foot for the first section A to B, and the second section B to C on foot only.
- 6.19. The National Parks and Access to the Countryside Act 1949 (NPACA) provided that on the Definitive Map there should be included, in addition to every public footpath and bridleway, other types of highways used by the public mainly for the purposes for which footpaths or bridleways are so used, a category termed by the Act as a “road used as a public path” (RUPP).

- 6.20. Additionally, guidance was issued at the time of the initial Community Council Survey in 1951 and reference was made to recording routes on the Definitive Map as cart road bridleways used mainly as bridleways, or cart road footpaths used mainly as footpaths. However, these non-statutory symbols remain, in accordance with the 1949 NPACA, essentially referred to as roads used as public paths (RUPPs).
- 6.21. This category of RUPP has proved to be unsatisfactory because the 1949 Act failed to make it clear whether RUPPs were subject to public vehicular rights.
- 6.22. If public vehicular rights did exist, the Council would have had to make an order under sections 53 or 54 of the Wildlife and Countryside Act 1981. The effect of the order would be to upgrade the route in question to byways open to all traffic (BOATS) i.e. subject to a public vehicular right.
- 6.23. To date such an order has not been made therefore the content of the 1993 planning report A36666 is incorrect. Moreover, the Planning Section of the Council did not have the authority to make the allegations stated in that planning document. In other words the route in question does not have public vehicular rights because a planning report states as much.

7. Witness Statements

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

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

7.3. **Mr Martin Roger Brown of Maylawns,**

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



Fig. 7.1:
Plan showing property locations: MCC

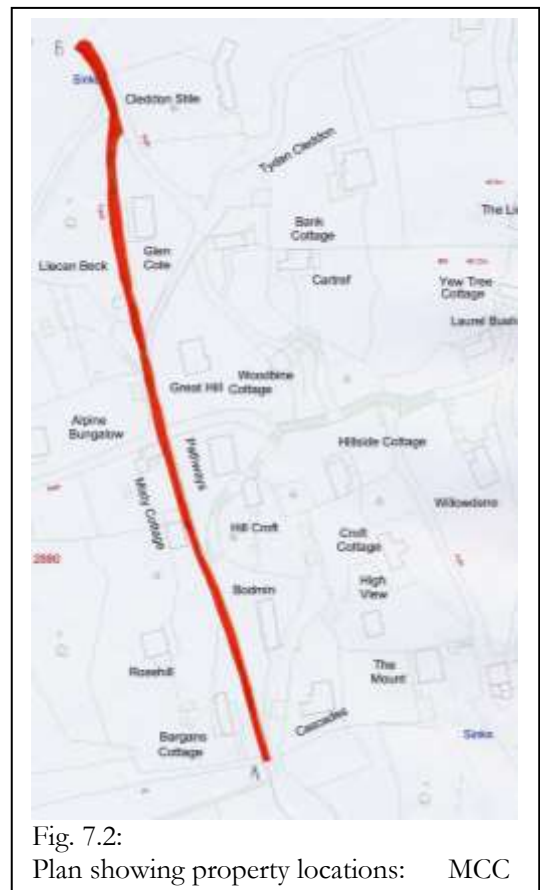
for collection by the residents of Priory Cottage. (Appendix 35)

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

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

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

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



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

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

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

8. Evidence Forms

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

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

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

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

No additional information was supplied.

Comment

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

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

8.2.2. Dr R J Harwood of Croft Cottage, Llandogo (Appendix 45.1 to 45.3)

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

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

No additional information was supplied.

Comment

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

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

8.2.3. Mr Andrew Tansill of Llecan Beck, Llandogo (Appendix 46.1 to 46.3)

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

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

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

Comment

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

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

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

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

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

No additional information was supplied.

Comment

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

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

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

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

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

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

No additional information was supplied.

Comment

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

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

8.4.2. Ms D Mariana Robinson of Cascades, Llandogo (Appendix 49.1 to 49.2)

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

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

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

Comment

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

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

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

**8.4.3. Below are extracts from Ms Robinson’s submission (Appendix 50.1)
The Status of the “Old Parish Road”**

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

Comment

- 8.4.3.1. The Old Parish Road is a form of descriptive reference that was used only in planning application documentation, see Appendixes 31, 40, 41 & 42, and has no legal bearing as to the public status of the route in question.
- 8.4.3.2. The history of water suggests reasons for the recording of the existing public footpaths that directly ascend the “Great Hill” and one of those reasons is to gain access to collect potable fresh water.
- 8.4.3.3. CRB20 (part) not “CRB40” did not become public highway C40-7. The county unclassified road was already registered on the 1949 historical highway map records. There are two records for the public highway network. The “List of Streets” which records the highways that are maintained at public expense and the 1952 Definitive Map and Statement that registers historic public rights

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

8.4.4. Private road question (Appendix 50.2)

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

Comment

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

- 8.4.4.2. Chapter 11 discusses in detail all the historical mapping and the route in question is shown by that mapping as not being the main route up the hill prior to the earliest highway record dated 1949.
- 8.4.4.3. Chapter 4, points 4.14.1 to 4.14.5, and Chapter 5 discusses in detail the investigation into the 1952 Conveyance that references an 1887 Conveyance that refers to the alignments of routes that ascend the “Great Hill” area from the east or north easterly direction. However, without the original plan the implications of this document in support of the claim for public vehicular rights does not, on balance, have the evidential weight to substantiate those rights.

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

Comment

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

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

Comment

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

8.4.7. The tithe award plan (Appendix 50.3)

Comment

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

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

Comment

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

8.4.9. Finance Act 1910 (Appendix 50.3)

Comment

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

8.4.10. County Status road (Appendixes 50.3)

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

Comment

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

8.4.11. Map Survey 1951 (Appendix 50.4)

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

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

Comment

- 8.4.11.1. There is a misunderstanding in this paragraph. The Applicants refers to the Definitive Map Survey for public rights of way dated 1951 and not to Ordnance Survey mapping and field work as described by Ms Robinson.
- 8.4.11.2. See points 4.13.1 to 4.13.2 and Chapter 12 for a full explanation of the Definitive Map Survey and the making of the Definitive Map and Statement relevant date 1 July 1952. Point 12.27 particularly addresses the Definitive Map Statement reference to the use of lorries over the route in question.

8.4.12. Conveyance of 1952 (Appendix 50.5)

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

Comment

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

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

8.4.13. Evidence of Reputation (Appendix 50.5)

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

Comment

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

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

CONCLUDING COMMENTS ON EVIDENCE FORMS

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

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

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

- 8.7. In considering this matter need, nuisance or suitability cannot be taken into account. Instead, what should be considered is whether the public enjoy equestrian and vehicular rights over the route in question. Although, suitability cannot be taken into account it may be a factor in deciding whether or not certain types of use by the public would, in fact, have been likely or possible in the past.

9. Pre-Order Consultations

- 9.1. There have been two pre-order consultations for the whole route, A to C, being investigated. The first was conducted in 2004 and the second ran from 28th January 2015 to 7th May 2015.
- 9.2. In response to the 2004 consultation there were 15 replies out of 38. The lack of replies from the user groups suggests that the route in question was not regarded by the public at large to be a public thoroughfare for horse or vehicle users.
- 9.3. There are two interesting observations gleaned from the 2004 consultation that support different sections of the claim:-
1. For RUPPs (CRBs 20 to 23)

That the owner of Cleddon Shoots was aware of motorbike users gaining access to the Shoots and was desiring to prevent that type of public access.
 2. For RB24 (Section B to C)

The report of “human and donkey” using RB24 is a single piece of evidence that suggests that this route may have existing bridleway rights.
- 9.4. The first of these two observations implies some public use although this use could have been anti-social behaviour as no users have come forward to verify this single report of motorbike use. Without the user groups coming forward and confirming their use of the route in question it is not possible to confirm whether or not the use of the route was legitimate. Therefore, this single mention of motorbike use along with all the other historical evidence does not support recording the route in question as a byway open to all traffic.
- 9.5. The second observation is a report of people using the route RB24 in a private capacity to collect coal.
- 9.6. These observations are not significant in proving either public vehicular, non-motorised vehicular, or equestrian use of the route in question.

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

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

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

- 9.8. The Applicant, Mr A. Dance, of Lysander House, has telephoned to say that he has no further evidence at this time. But he has given verbal notice that he will submit his objection at “order making” stage if the order is made to record the route as a public footpath.
- 9.9. Ms Z. Lindgren of Llecan Beck has telephoned and emailed questioning who would maintain the route if it were not adopted. This DMMO, however, does not seek to adopt the right of way. It only determines whether there may or may not be public vehicular rights over the route in question.
- 9.10. Mr A. Gorell of Alpine Lodge has written in stating his objection if the order is made to record the route as a public footpath. He states that he has “enjoyed uninterrupted vehicular access over the road for more than twenty years as have the public who have made a nuisance of themselves through noise, being in the way and/or parking their vehicles across my drive”. He is aggrieved by planning permissions for three new developments that have not taken into account the nature of the route in question.

- 9.11. Mr Ashley Thomas of Rosehill will object if the DMMO is made to register the route in question as a byway open to all traffic. Mr Thomas has given a detailed history of the area as his father moved there in 1949 as the Parish Rector. He recalls that there was not much traffic in the past, in fact hardly any, as most people living there did not have cars. Then in the late 60s when car usage increased the residents joined together, commissioned a local contractor, and tarmacked from point A to the junction of CRB 22 with FP18.
- 9.12. Mr Thomas remembers the coal lorry deliveries, mentioned in the Definitive Statement. The route in question was grass with hard core tracks which were the width of an original Mini. The lorry was about the length of a Ford Mondeo estate car or less. In other words, it was smaller in comparison to today's delivery vans which collide with walls on the upper side and teeter over the drop, thereby weakening the edges on the lower side.
- 9.13. Mr Thomas states that RB24 should never be registered as a byway open to all traffic by reason of it being passable only on foot, horseback or mule/donkey as the crossing at the 'Falls' in the ravine precluded motorised vehicles. He reports that properties such as Woodside and Priory Cottage had no delivery access as convenient as point B. The alternative was to go a great distance down the steep hillside to the village. Meanwhile point B was almost on the same level making it much easier to transport coal from point B by arrangement with the coal merchant and the landowner at that time. "We all had to make special arrangements like that for difficult deliveries".
- 9.14. This is the second reference to the use of a mule/donkey for section B to C. However, as it is pre-arranged between the coal merchant and landowner the type of use is by private means and for a private need.
- 9.15. Mrs S. J. Simpson of Bodmin will object if the DMMO is made to register the route in question as a byway open to all traffic. Due to her property being below the supporting banks of the route in question there is a very serious safety risk from the disturbance of heavy boulders that would cause damage if dislodged. For this safety reason it is her wish that the route be adopted between sections A to B and publicly maintained.
- 9.16. Ms D. M. Robinson of Cascades will object if the DMMO is made to register the route in question as a byway open to all traffic. Her reasons are entirely due to maintenance and safety concerns and not with regard to evidence of any public status.

- 9.17. Definitive Map Modification Orders do not consider need, nuisance or suitability of the route in question and therefore Ms Robinson's request cannot be considered under this legislative procedure.
- 9.18. Mrs P. Wilson of Woodside will object if the DMMO is made to register the whole route as a byway open to all traffic. She reports having lived in the village from November 1986 and is concerned that the Applicants are seeking to change the status of a private road (section A to B). However, she has always known section B to C as a footpath.
- 9.19. Mrs B. Rosewell who owns Cleddon Shoots will object if the DMMO is made to register the route in question as a byway open to all traffic.
- 9.20. Mrs A. Underwood representative, of the British Horse Society, objects to the "downgrading" of these restricted byways to footpaths referring to "known history of the area that is readily available and was carried out by Gwent and Glamorgan Archaeological Trust". Her evidence covers the general history of the area and the "use of a network of roads and pack animal trails". This evidence is not specifically related to the route in question and provides no assistance to qualifying the public status of the actual route being investigated. This is the third mention of equestrian use in the area. However, this report is generalised and not specific to a single route. In contrast, the above mentioned two reports of mule/donkey for the assisted transport of coal do refer to the particular use of RB24.
- 9.21. The generalised history when taken together with all the other historical documentation is interesting. However, as public equestrian use cannot be specifically attributed to the route in question, it does not assist the recording of either public restricted byway or bridleway rights.
- 9.22. Mr D. O. Morgan representative of the Open Spaces Society has responded to the effect that an order should be made for a byway open to all traffic as the Order Making Authority is obliged to process a DMMO and that it would be fair to all the types of users involved.
- 9.23. Mr R. Bacon of Natural Resources Wales (NRW) replies stating that if current usage is increased over RB24 and if maintenance is proposed then NRW needs to be re-consulted as this section of the route passes through Cleddon Shoots Woodland, a Site of Special Scientific Interest (SSSI) which is a component of the larger Wye Valley Woodlands Special Area of Conservation (SAC). Also in

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

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

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

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

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

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

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

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

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

10.5. Four Land Registry documents [ref. 7b¹ – 10b⁴] refer to historical conveyances, although these conveyances are not available to investigate. Three of the four

- 10.8. The other ten Land Registry documents [ref. 7b¹ – 10b⁴; 11c¹– 16c⁶] for the properties abut and utilise section A to B of the route in question, and make no reference to public vehicular or equestrian rights.
- 10.9. However, the Land Registry document for Llecan Beck [9b³] quotes from a historical conveyance stating that the route in question has “private” access rights. Due to Llecan Beck being situated nearer point B than A, it means that most of the route in question has “private” rights as stated and not public vehicular rights. This evidence points to the route in question being a shared private drive that also has public footpath rights over it.

11. Historical Map Evidence

- 11.1. Legislation requires that an investigation be made of all available historical evidence that, on the balance of probabilities, may show that the route in question has public vehicular rights and should be recorded as a byway open to all traffic (BOAT) on the Definitive Map and Statement.
- 11.2. **John Cary's 'Improved Map' of England and Wales, series 1820 – 1832.** From an original held in The Brotherton Library, Leeds University, the route in question is not shown.



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

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

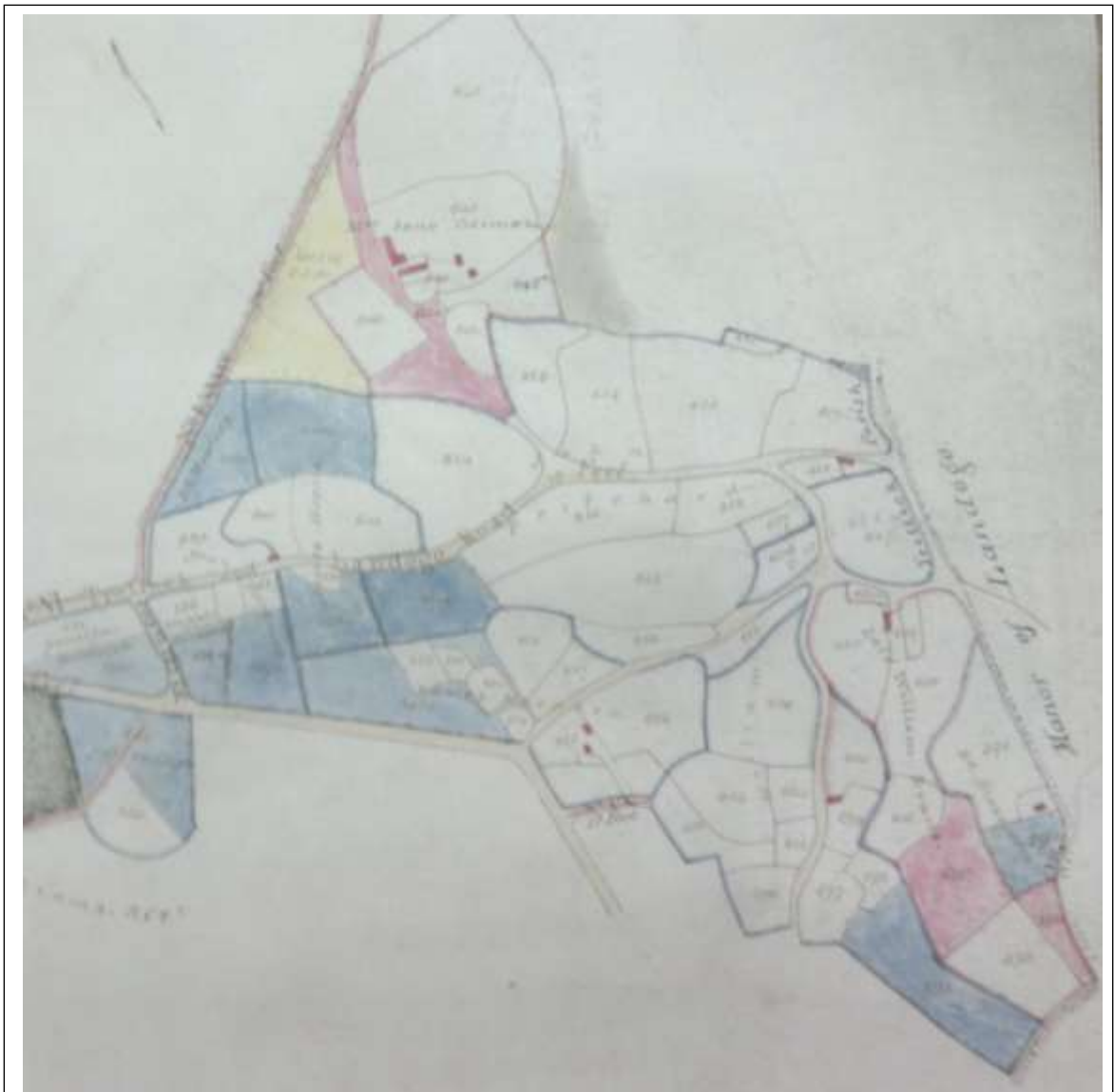


Fig. 11.2:
1821 Enclosure Award not to scale: Gwent Record Office Ref: Q/Inc. Aw. 2 page J

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

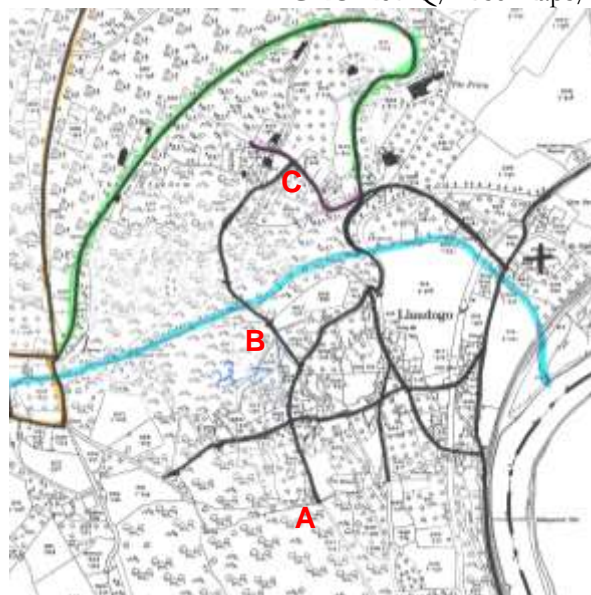


1823 Price Map Llandogo: not to scale:

GRO Ref: Q/Misc Maps/20



1823 Price Map Llandogo: not to scale



1901 Ordnance Survey Map: not to scale

Fig. 11.3: Comparison between Price and OS Maps

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

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

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

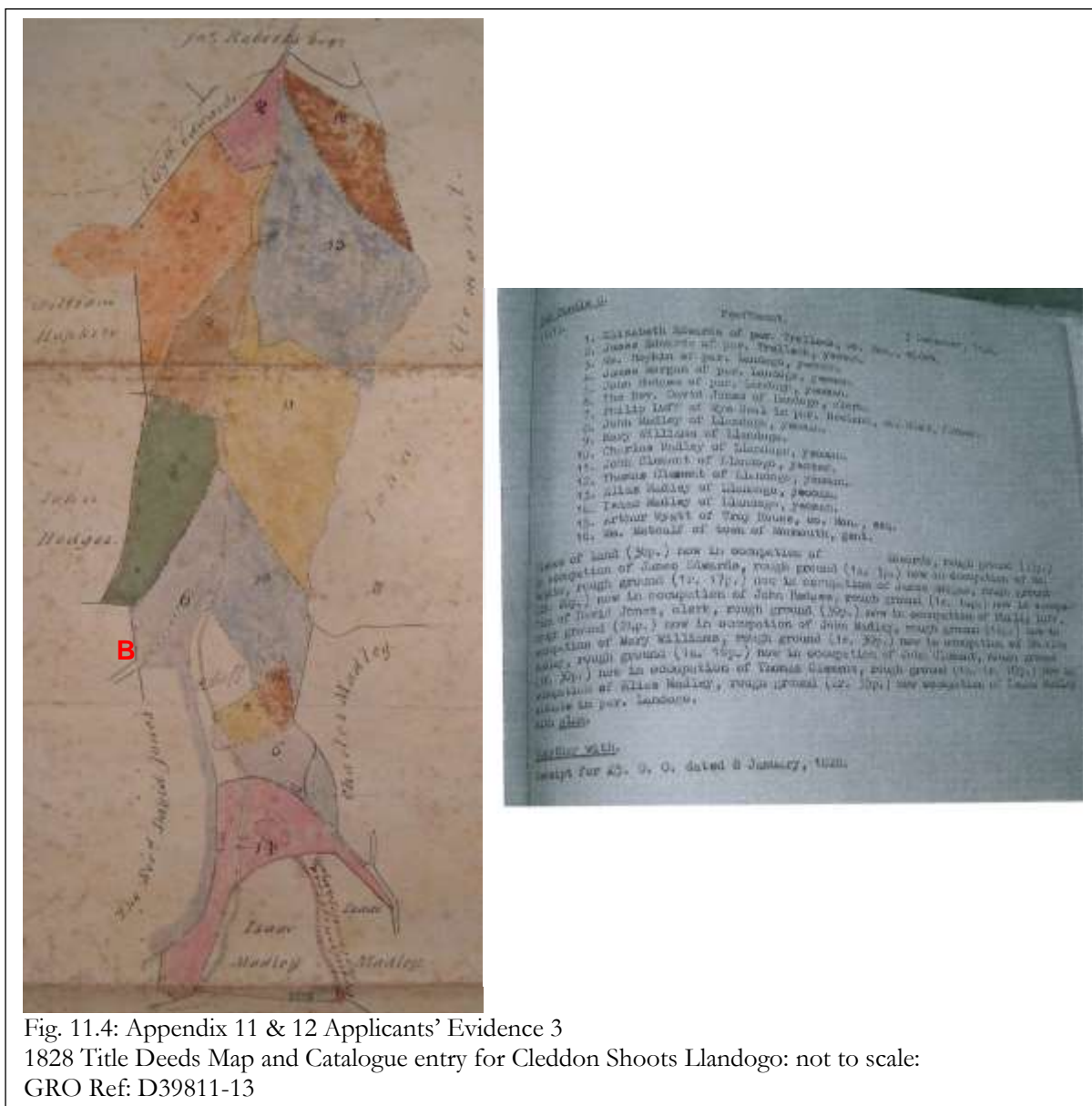


Fig. 11.4: Appendix 11 & 12 Applicants' Evidence 3
 1828 Title Deeds Map and Catalogue entry for Cleddon Shoots Llandogo: not to scale:
 GRO Ref: D39811-13

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

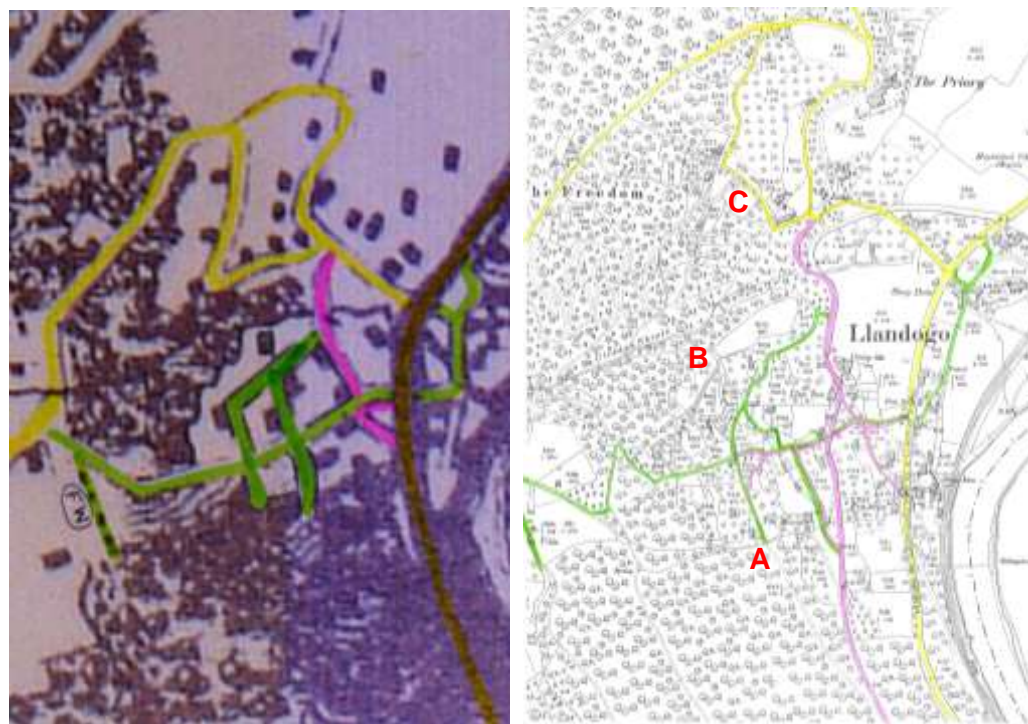


Fig. 11.5: Comparison between Greenwood and OS Maps

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

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

- 11.10. The 1830 maps do not usually extend to the depiction of footpaths. Although, in the comparison between the Greenwood and OS mapping, Fig11.5, it is noted that the F.W. symbol on the 1902 O.S. Map is on the same alignment as that shown on the Greenwood map. For the purposes of identification “F.W.” has been marked and circled in pencil on the Greenwood Map. This is the only map of this era that shows a difference in the recording of footways and roads which suggests that the route in question is higher in category to that of a footpath.
- 11.11. However, the route in question, section A to B, depicted on the 1823 Price and the Greenwood Maps are not shown on the other 1830s maps that are from an actual survey conducted by the military or based on that same survey. Therefore, the few historical maps examined so far recording the alignment of the route in question are not of themselves a record for public or private rights. Other historical evidence needs to be investigated.
- 11.12. **The Cassini Map (162)**, was created using the Old Series Ordnance Survey sheet 35 which was published on the 1st May 1830 and, like the David & Charles Map, discussed later, does not show the route in question.



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

MCC

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

11.14.

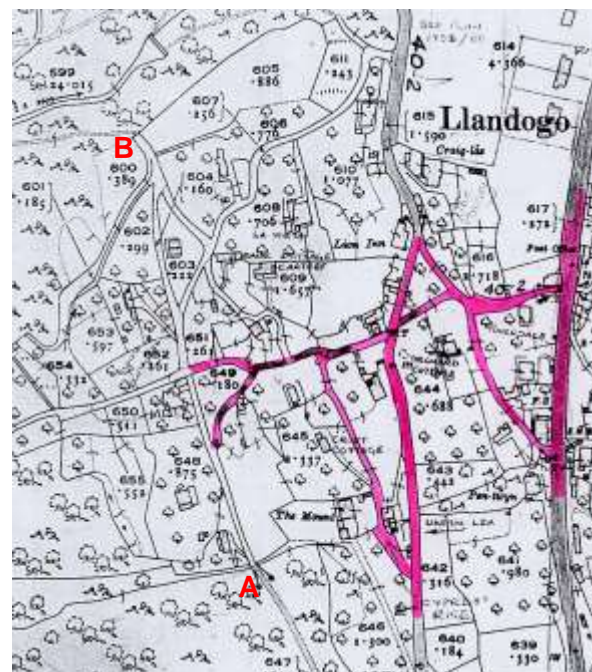


1830 David and Charles Map: Sheet 68: not to scale:

MCC Office



1830 David & Charles



1920 Ordnance Survey

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

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

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

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



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

GRO

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

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

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

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

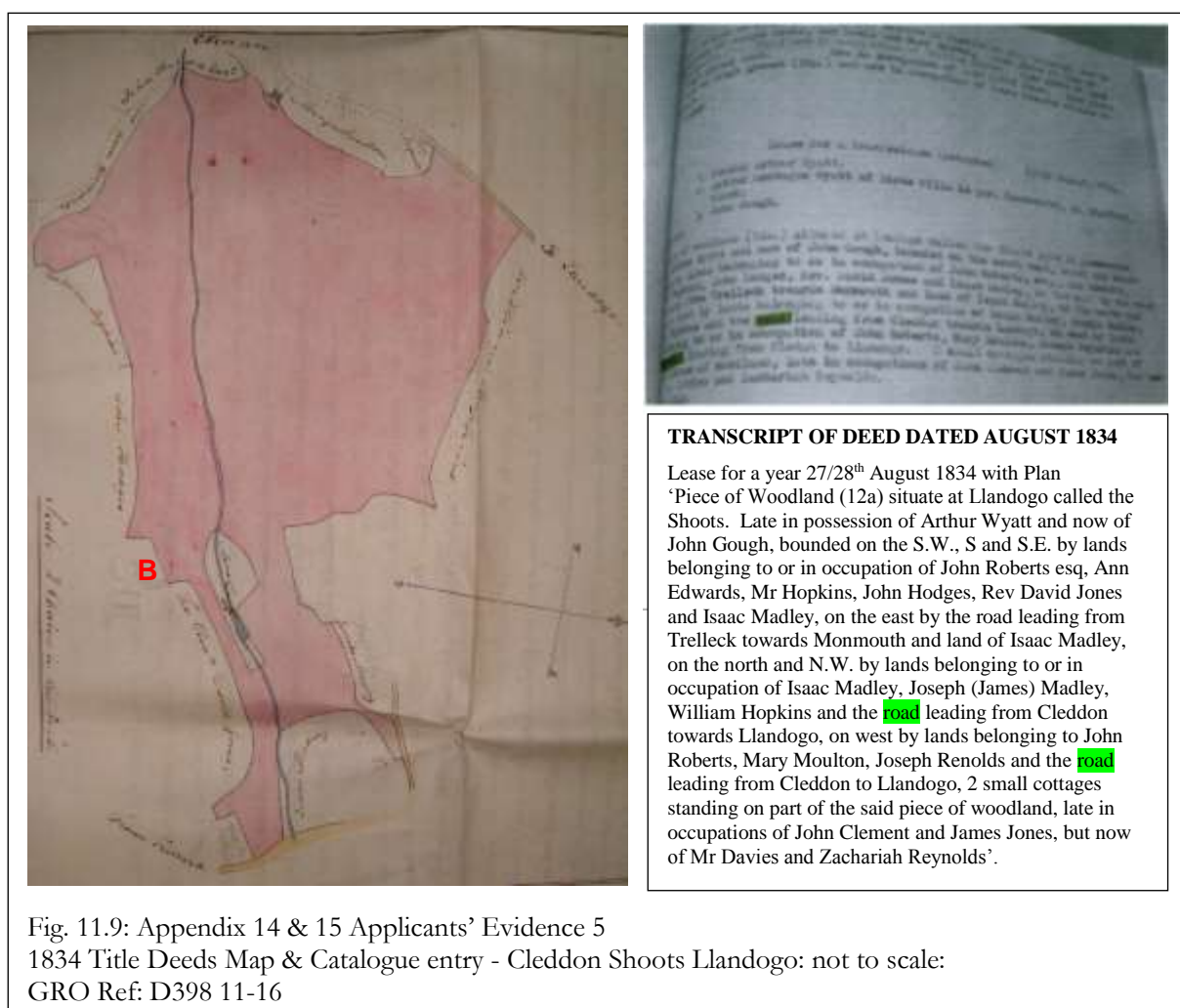


Fig. 11.9: Appendix 14 & 15 Applicants' Evidence 5
 1834 Title Deeds Map & Catalogue entry - Cleddon Shoots Llandogo: not to scale:
 GRO Ref: D398 11-16

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

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



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

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

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

- 11.25. The route in question is clearly indicated by double lines on all historical maps prior to and after the production of the Tithe Map. When a map like this shows a coloured and un-numbered strip of land, it can be taken, when considered together with other historical maps that the route in question was and therefore still remains in the public domain. However, the Tithe map records do not determine the type of public rights and therefore it is possible to register routes either as public footpaths and bridleways on the Definitive Map and Statement or as roads on the “List of Streets”.
- 11.26. The route in question ends at point B where there is no indication of any route continuing through the Cleddon Shoots woods. This shows that the route in question was not consider a thoroughfare for any type of public use. The lack of markings on the Tithe Map north of point B suggests that there were no public rights along the northern section in the first half of the 19th Century.

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

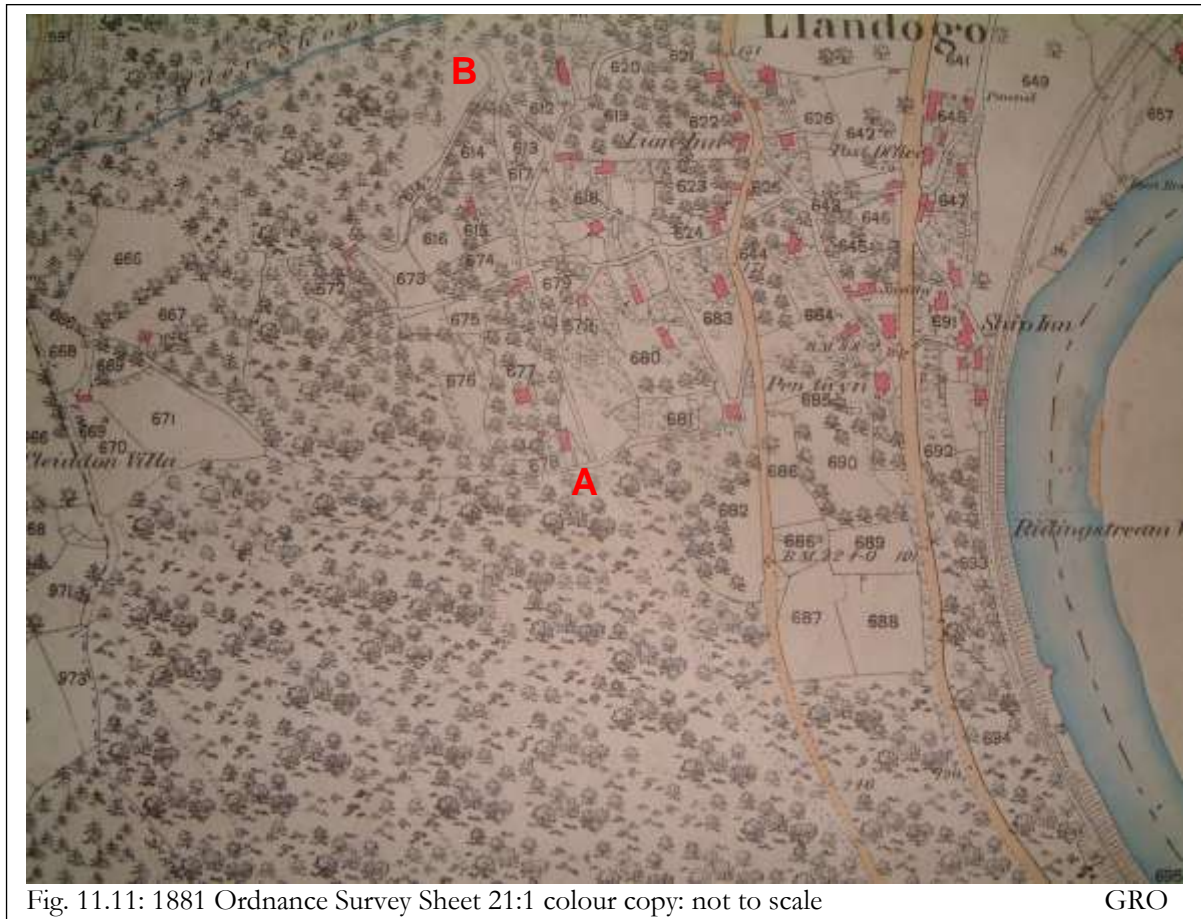
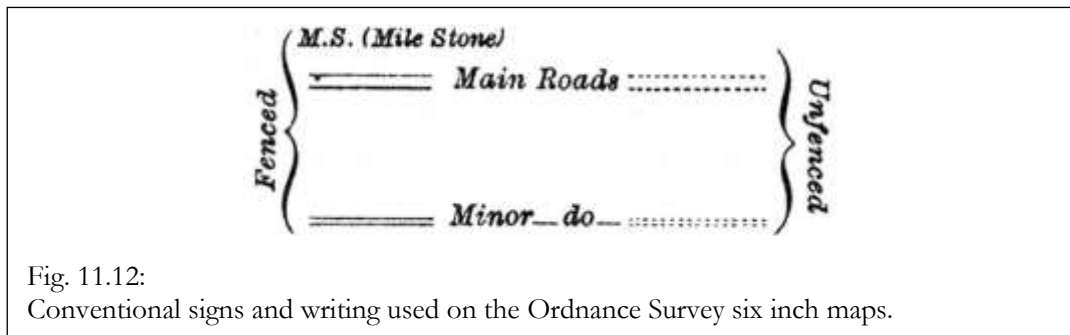


Fig. 11.11: 1881 Ordnance Survey Sheet 21:1 colour copy: not to scale

GRO

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

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



- 11.30. There are solid lines at the southern (A) and northern (B) points across the route in question and, based on conventional sign usage, this implies the presence of barriers crossing the route in question while there are no such physical features across the routes that lead up the hill side in an east/west direction.
- 11.31. It is reasonable to suggest that these solid lines represent gates or barriers of some description. The fact that such physical features are recorded on both the OS map and the Tithe map supports the conclusion that the route in question was not regarded as a through road for the public at large in motorised vehicles, on non-motorised vehicles or on horseback.
- 11.32. The route in question has not been awarded a status equal to other know public roads in the area as it is not shaded. The Ordnance Survey Map unlike the Tithe Map has plot 617 on its northern section only. Plot 617 is listed in the 1st Edition 25-inch Ordnance Survey Book of Reference for the Community of Trelleck (Appendix 20), held at the British Library. In the Book of Reference there is only a numerical entry for plot number 617 and no further description of the use of the land that would indicate the possible private or public nature of the route in question.
- 11.33. Another symbol on all Ordnance Survey maps is the mark that resembles a stretched "S" that is called a brace. This brace links land that has been dissected by streams, routes or other topographical features. The detail afforded to this OS Map due to its larger scale shows no braces that link the route in question to any adjacent field or dwelling. These factors suggest that the route in question was considered a shared private access way and not within any individual ownership.

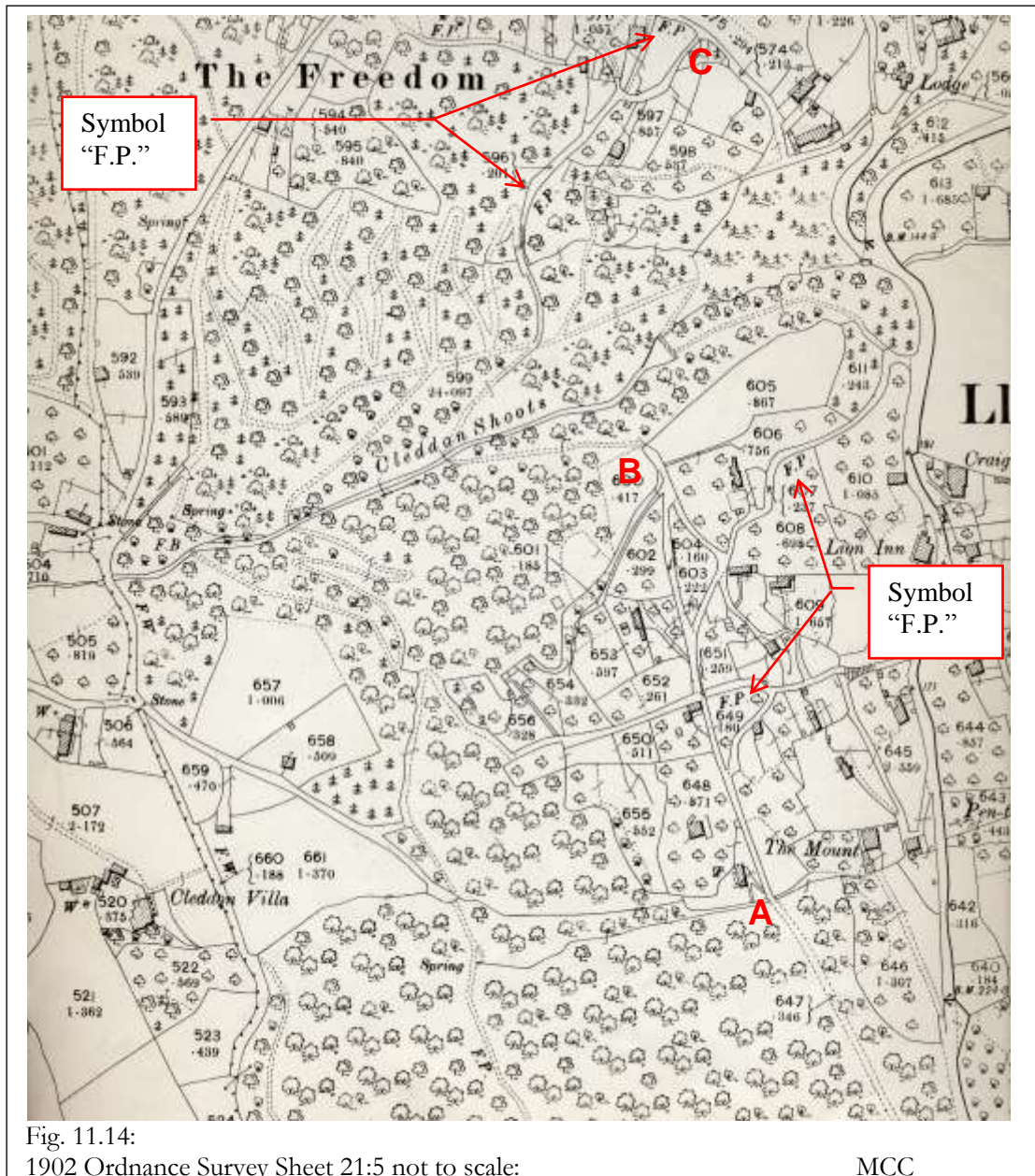
- 11.34. **The Ordnance Survey Maps dated 1886** (six inches to 1 statute mile 1:10560) is also the scale of the Definitive Map and although it is a small scale it still gives more detail than that shown on the 1830s mapping. At this scale it is worthy to note that there are three unbroken lines across the route in question. Unbroken lines across a track like this usually denote a barrier such as a wall or boundary fence possibly with a gate.
- 11.35. The 1886 Map and the earlier 1881 Map show that the route in question was not considered a through route at this location. This is demonstrated when observing that other junctions within the network of routes in the “Great Hill” area do not have solid lines representing barriers. The linear marking evidence on this Map shows that the route in question ended at both points A & B and was not an open through route proceeding either south of point A or north of point B.



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

GRO

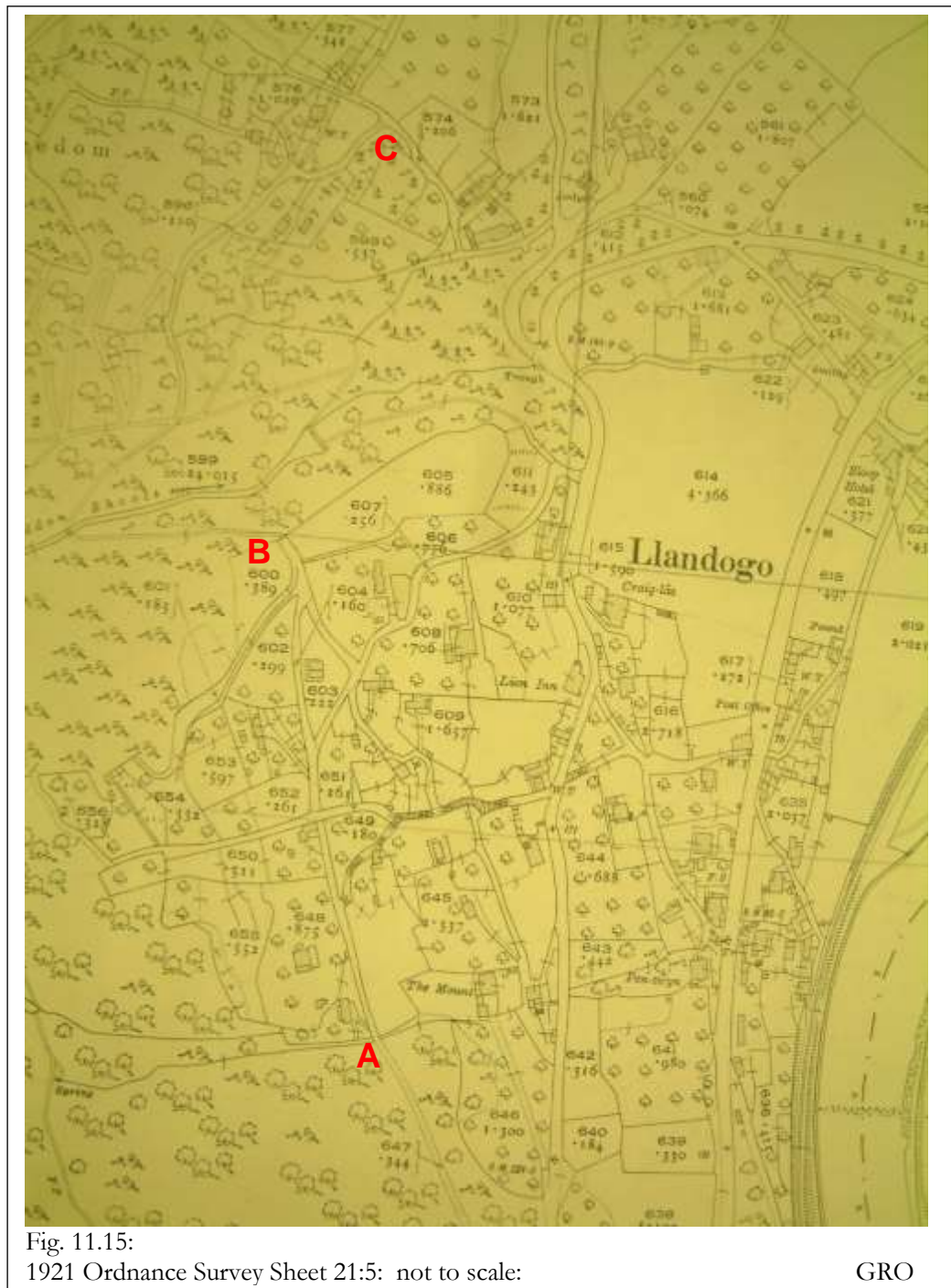
11.36. **The 1902 Ordnance Survey Maps**, at the larger scale of 1:2500, usually have the label “track” or “F.P” alongside the linear marking indicating the alignment of unmetalled roads and footpaths. It is noted that even on this larger scale map (Fig. 11.14) the density of topographical marks and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



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

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

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



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

- 11.40. **The Ordnance Survey Maps** all show the route in question as marked by a solid line for most of its length. This is normally the marking adopted to depict main roads (see Fig. 11.12) but as shown here it is also the marking for footpaths.
- 11.41. Ordnance surveyors were given the duty to depict all physical features that were encountered. It is possible, therefore, that some of the routes depicted on the OS maps may prove to be private ways.
- 11.42. The conventional signs and symbols have been kept as standard over the years and it is understood that a dashed or double pecked line represents a route or way that is unfenced.
- 11.43. In contrast to this, a solid unbroken line represents a boundary such as a fence or wall. Therefore, if a solid line crosses a route or way then this is interpreted as a gate or another type of barrier. Although barriers such as gates do not prohibit usage of a route by any type or means, they do constitute some form of limitation and prevention. As the mapping inspected so far indicates barriers at more than one location, this suggests that the route in question was not used by the public at large instead was possibly a private access way.

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

11.45. The reason for the production of the Finance Act Maps and Registers was to record land values and not for the purpose of recording the extent of the publicly maintainable highways.

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



Fig. 11.16:
1910 Finance Act Map Sheet 21.5

Kew Record Office (KRO)

11.47. Although, the Finance Act Map is first and foremost a record of the extent of landownership which provided for the levy of various tax duties on lands, these Finance Act records also help with the status of any routes that are in question.

- 11.48. The reason for this is because the Finance Act Registers and Field books Record a monetary deduction in the calculation of tax for each property for “public rights of way or user” while, for the majority of cases, routes normally used by vehicular traffic were left uncoloured or “white out” as they were considered not to have any agricultural value.
- 11.49. In this location there is evidence for exceptions to this usual interpretation of the Finance Act Map. In the “Great Hill” area the routes left uncoloured are registered as public footpaths on the Definitive Map and Statement and even with this evidence these routes remain recorded as public footpaths. In other words the type of marking on the 1910 Finance Act Map does not always, as a single piece of evidence, award the route in question public vehicular rights.
- 11.50. The Register Book that accompanies the Finance Act Map, for this area, records no monetary value that would reduce the taxable value of the land. The strip of land that is in question is not allocated a plot number for the very reason that it was never included within any particular private land ownership.
- 11.51. The Finance Act Map Register Book was investigated for any further details pertaining to Plots 13, 37, 43, 44, 50, 70, 74, 83, 146, 239 & 247. The Register does not record any deduction of tax for “public rights of way or user” for any of the plots already listed.
- 11.52. The Field Books listing these plot numbers, held in the National Archives at Kew, give no further detail. Furthermore, the Book for plots 101 to 200 is recorded as missing in transfer therefore only the Finance Act Map is available for investigation.
- 11.53. The working copy of the Finance Act Map has no other significant information that has been omitted from the official copy previously studied. The route in question is uncoloured while the two areas of land, north and south of points B and A respectively are shown shaded.
- 11.54. This strongly suggests that the route in question was not regarded as a public vehicular through road due to the fact that the only access to the route is from the east by the means of other routes that have been known and recorded as public footpaths. Therefore, it would be reasonable to suggest that for the route in question there are no higher public rights and the only public right utilised is that of a footpath.



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

GRO

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

12. The Definitive Map and Statement

- 12.1. The public rights of way are registered on the Definitive Map and Statement for the area of Monmouthshire. These maps, which have a “Relevant” date of 1st July 1952, were published on the 16th November 1967 and are now kept under continuous review by Monmouthshire County Council Countryside Office.
- 12.2. The County Council was required under section 27 of the National Parks and Access to the Countryside Act 1949, to carry out a survey and defined all the footpaths, bridleways and roads used as public paths which it considered were public. The process of producing the Definitive Map & Statement went through three stages:
- 12.2.1. The former County of Monmouthshire (Gwent) carried out this task by sending a map to every Community Council.
- 12.2.2. The Community Councils were asked to walk every path and provide details of them.
- 12.2.3. A public meeting had to be held. Local people recommended alteration at this stage.
- 12.3. **The Draft Map** was deposited in all District Offices as well as at County Hall. Notice of its publication and where it could be inspected was given in local papers and the London Gazette. A minimum of four months was allowed for objections against the alterations made by the Council as a result of original objections, which the Authority had to consider in the light of all evidence submitted and inform all parties of its decision. Any user who was not satisfied with decisions could appeal to the Secretary of State who appointed a representative to hear appeals and come to a decision.

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

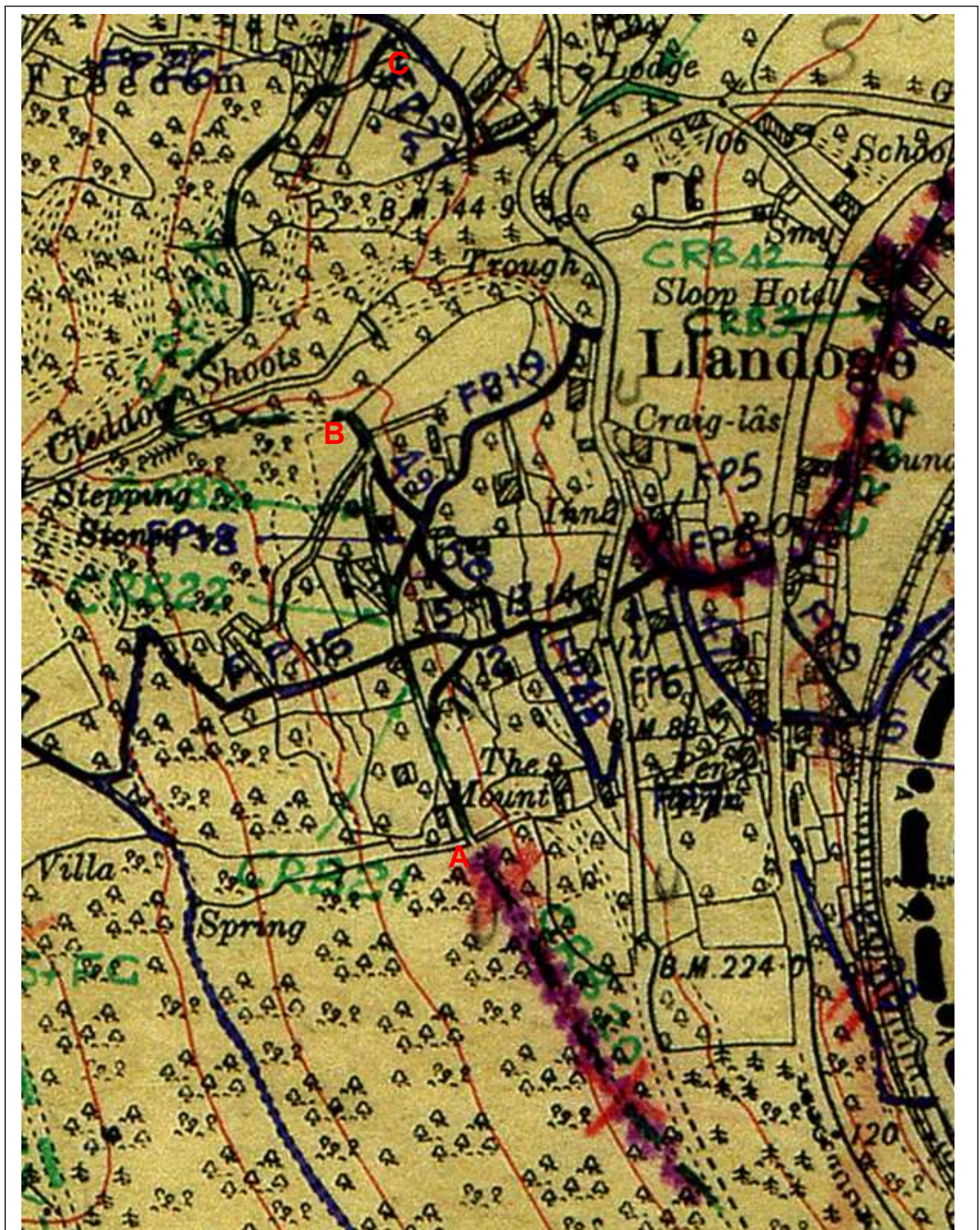
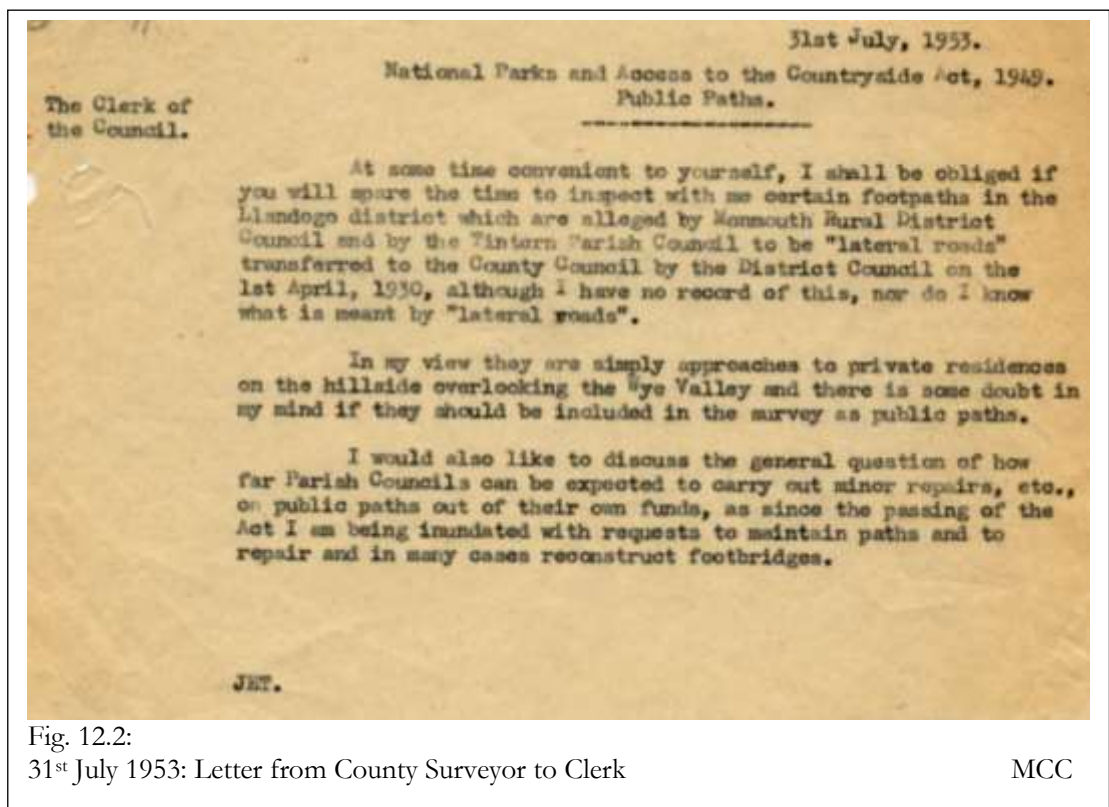


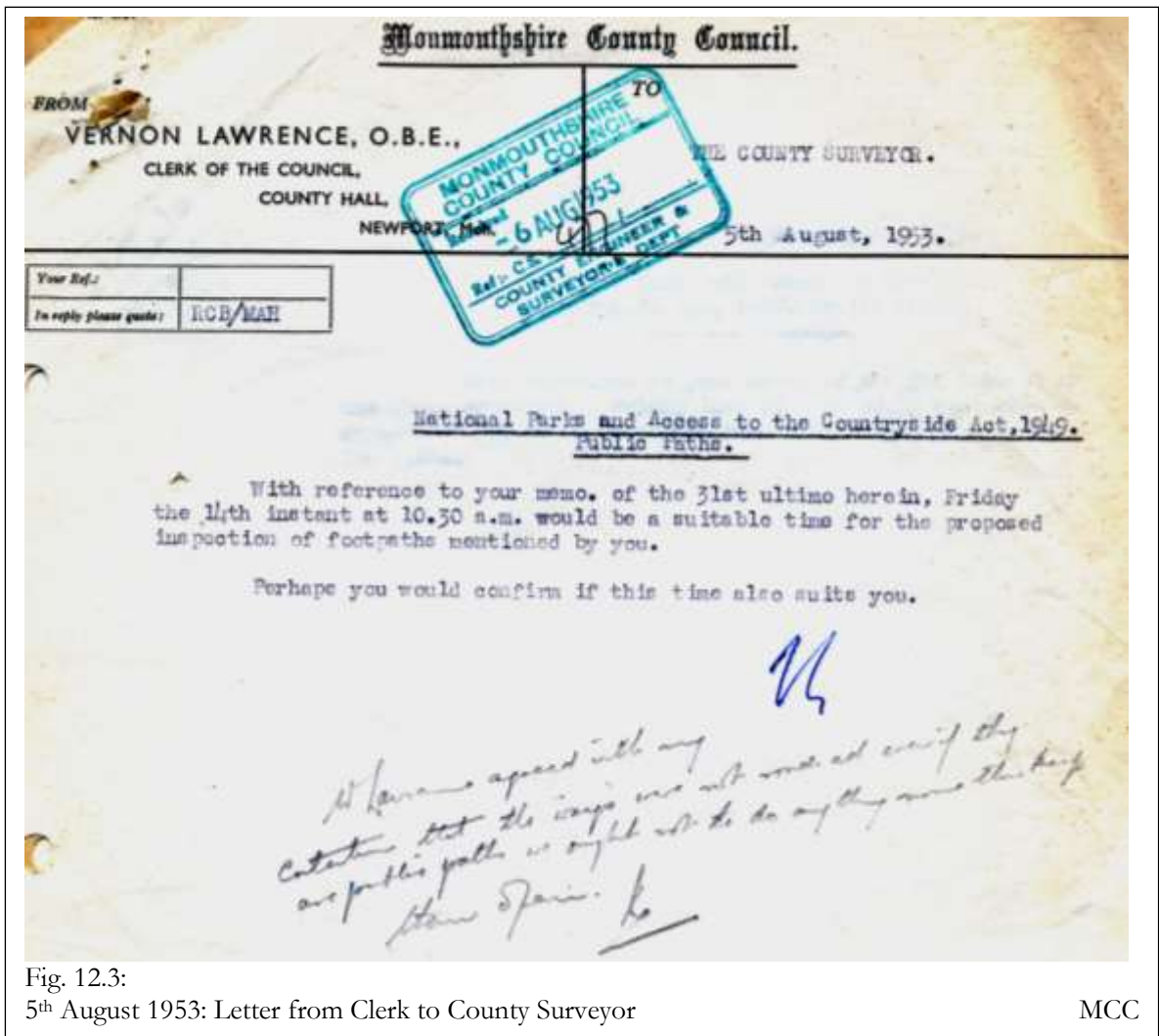
Fig. 12.1:
1952 Draft Definitive Map Sheet 21: not to scale:

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



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



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- 12.7. All these records taken together show that the surveyors at the time were not able to determine any maintenance liabilities or the status of the public right and thereby gave the route in question the ambiguous title of Cartroad Bridleway. The statutory term for such routes is a ‘road used as a public path’ (RUPP).
- 12.8. The 1949 National Parks and Access to the Countryside Act provided that the Definitive Map and Statement (DM&S) should include, in addition to every public footpath and bridleway, highways used by the public mainly for the purposes for which footpaths or bridleways are so used, a category termed by the Act as “road used as a public path” (RUPP). The definition in the 1949 Act did not use the words “public” or “private” before the term “road used as a public path”. The term did place the word “public” prior to the word path. The interpretation then is that this type of route shown on the DM&S was visibly a road that is recorded on it as a public path which is either a “public” bridleway or “public” footpath. The public status of the road with this term “RUPP” for this route category is not determined by the 1949 Act.

- 12.9. The category of RUPP is thus shown to be unsatisfactory and to add to the difficulties of interpretation a pamphlet, titled Surveys and Maps of Public Rights of Way, was issued with circular number 81, dated 17th February 1950, and sent to the Community Councils in 1951 at the time of the initial surveys. This official guidance was prepared by the Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association; recommended by the County Councils Association; and approved by the Ministry of Town and Country Planning.
- 12.10. In this official guidance circular, reference was made to recording of routes on the DM&S with the symbols for “Public Carriage or Cart Road mainly used as bridleway to be CRB” and “Public Carriage or Cart Road mainly used as footpath to be CRF”. As a result numerous highway authorities used these non-statutory symbols to record routes.
- 12.11. This is what has happened in this Authority and is revealed within the DM&S title (Fig. 12.4). At the Provisional stage RUPPs were referenced by using the non-statutory terms of “Public Carriage or Cart Road used mainly as a footpath shown in a Broken Green line” and “Public Carriage or Cart Road used mainly as a Bridleway shown in a Broken Green line” which were then amended at the final Definitive Map stage and the words “Public” were crossed out and replaced by the word “Private”.

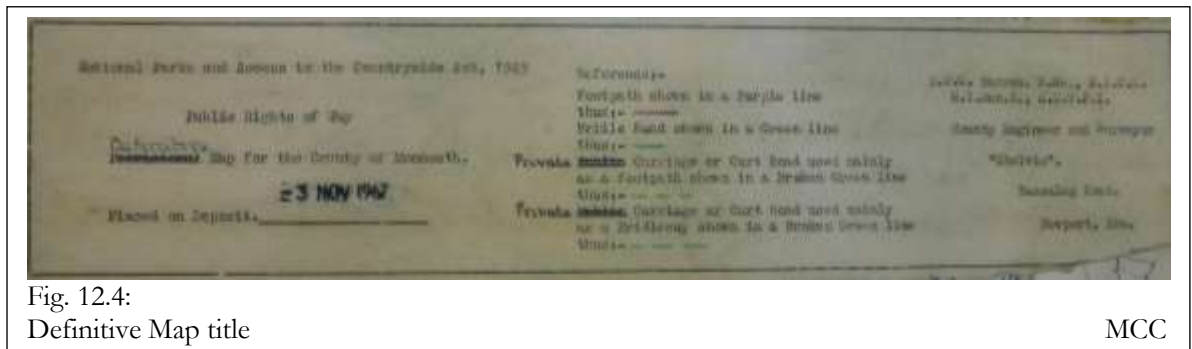


Fig. 12.4:
Definitive Map title

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

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

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

- 12.13. On the Definitive Map for Monmouthshire (formally Gwent) the public rights of way are shown correctly in accordance with Statutory Instrument 1970 No. 675. Bridleways are shown by a continuous green line and RUPPs by a broken green line. It is the marking of a "*Broken Green line*" on the Definitive Map and within the Map title which establishes their legal status as "roads used as a public path".
- 12.14. The category of RUPP along with the non-statutory sub-divisions of CRB & CRF have proved to be unsatisfactory as none of the symbols make it clear whether the routes were subject to public vehicular rights. This report seeks to determine the status of the public rights that utilise the route in question.
- 12.15. To determine this public status research of the Draft Definitive map documents shows that the section of RUPP (CRB 20) south of point A (Fig 12.1) has been initially marked up and then later removed as indicated by red crosses and hatchings.
- 12.16. This marking shows that Highway records were interrogated revealing that certain routes were already part of the highway network and recorded on the "List of Streets". The section of RUPP (CRB 20) that was crossed out is south of point A and, as this was the only part already listed as public highway, it was therefore not necessary to record public status again on the Definitive Map and Statement.
- 12.17. The "List of Streets" is the main document this Authority holds that records the publicly maintained highway over which the public have vehicular rights.

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

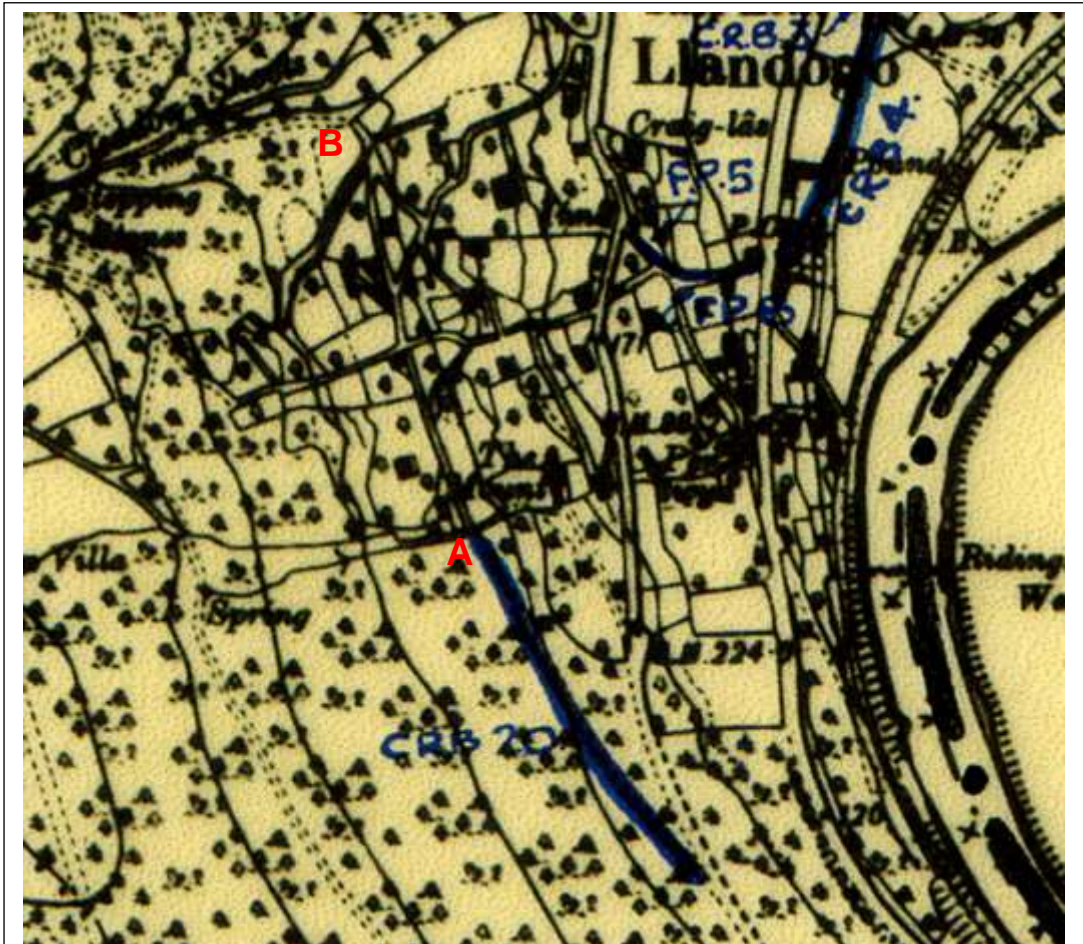


Fig. 12.5:
Addition and Deletion Map (Modification Map) sheet 21: not to scale:

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

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

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

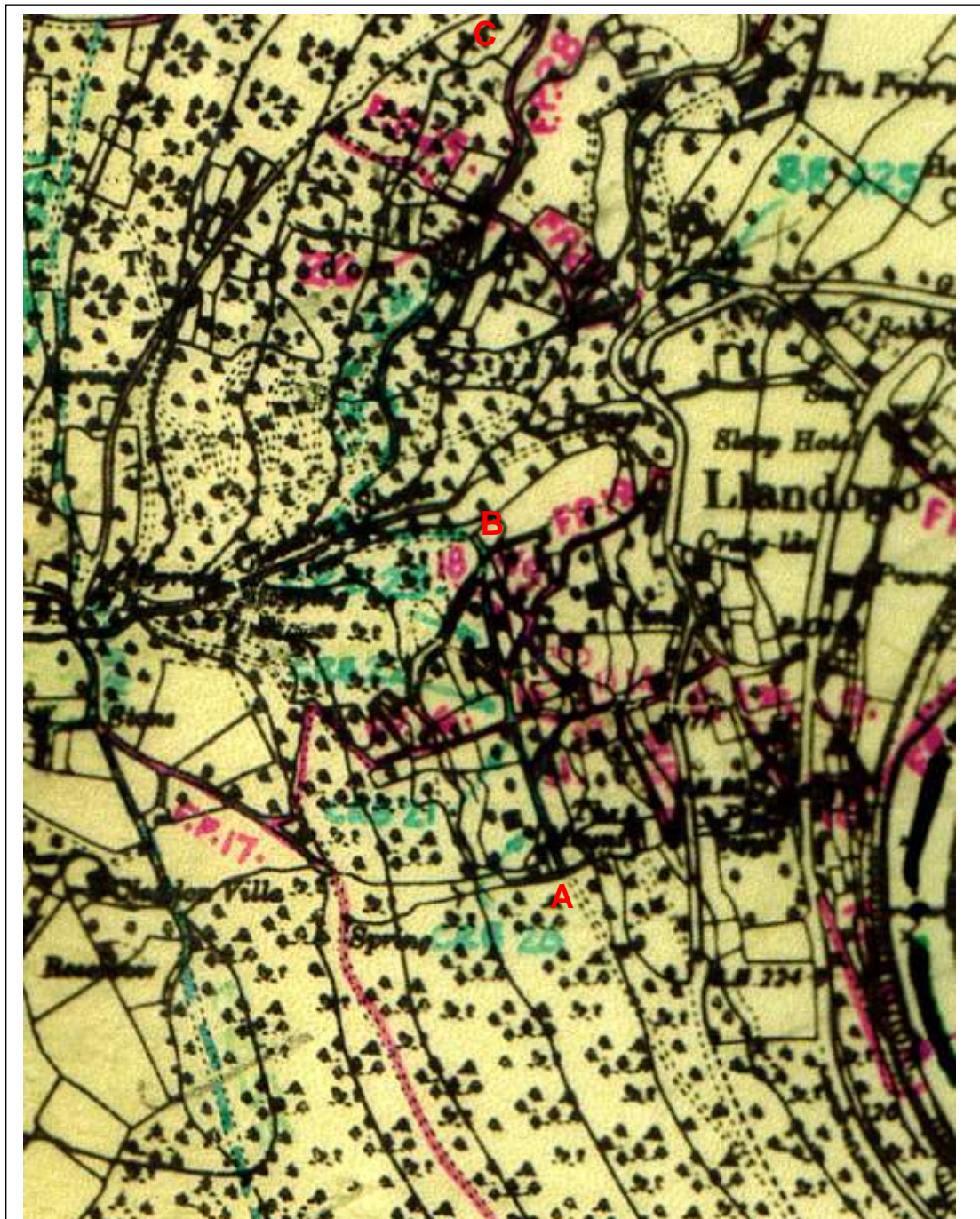


Fig. 12.6:
1967 Definitive Map sheet 21: not to scale:

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

- 12.23. The County Council published and advertised, as before, the Provisional Definitive Map and Statement on the 17th September 1965. This is the Draft Definitive Map duly modified. The public had no further right of objection but any owner/occupier of land crossed by a right of way could apply to quarter sessions, within 28 days of publication, for a declaration modifying the maps or statements in respect of the Rights of Way. When all applications had been determined the County Council finally published on 3rd November 1967 the Definitive Map and Statement for the County of Monmouthshire (formerly Gwent).
- 12.24. The Case of Trevelyan v Secretary of State 2001 raised a presumption that what is marked on the Definitive Map and Statement is properly and correctly recorded. Evidence of some substance has to be put forward to displace the presumption.
- 12.25. The Definitive Map & Statement is afforded considerable weight due, firstly to the statutory provision already mentioned and secondly, to the process of continuous review set out in Section 53 of the Wildlife and Countryside Act 1981, allowing for the modification of the maps and statements on the discovery of evidence suggesting that it contains errors or omissions. This allows for thorough investigation of any perceived discrepancies and their correction. This report represents such a case.

DEFINITIVE MAP AND STATEMENT

- 12.26. The Definitive Map and Statement in its entirety is regarded as the legal register for public rights of way and the information held within is, for completeness, better understood when both the map and statements are investigated together. The descriptions made during the survey remain the statements for the Definitive Map. These statements (Appendix 65 & 66) were compiled by Mr F. Williams of Wyedene, Llandogo in the Community of Trellech. Modern records are not able to verify the location of Wyedene, however, the mention of Ivydene, which was the previous name of Misty Cottage, is located adjacent to the route in question. Regardless of the precise location of Mr F. Williams's home he did live in Llandogo. Therefore, he had some local knowledge of the route in question although in point 12.16 it is shown that he did not know the full extent of the public highway and, as a result, described the whole route.
- 12.27. **Public Rights of Way (PROW) 20 to 24 states:-**
- *“Starts on County Road W. of The Mount. Rough surface road passing through wood as far as Young’s Cottage. Continuing as unsurfaced road for a quarter*

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

- 12.28. It is noted that the first part of the above statement refers to the county road C40-7 as a rough surfaced road. Then from Young’s Cottage now known as Bargan’s Cottage the route in question is described as not being surfaced. By stating this for this section of the route in question, it proves that the way was never regarded as forming part of the publicly maintained highway and also suggests that it was not regularly used by the public at large in motorised vehicles.
- 12.29. Furthermore, “.....a turning point for lorries at the end” has been reported to be private vehicular use as the local coal merchant owned a house along the lane and used the small turning area near Glyncote to store his coal and to turn his vehicle. The route in question, however, appears to be too narrow to negotiate such a manoeuvre in a lorry.
- 12.30. The Definitive Map Statement uses the word “road” on a number of occasions. It is incorrect to assume that the descriptive word “road” automatically stipulates that such a route should have public vehicular rights and be maintained at public expense.
- 12.31. The other existing public footpaths have Definitive Map Statements that add further information to the route in question. The descriptions for the routes are as follows:
- 12.32. **PROW Trellech 11 to 14**
- *FP: Great Hill: walked: F Williams: 1st June 1951: Starts at the Laurel Bush Cottage on the Llandogo Trellech Road. After First 25 yards mount by stone steps exit on to Glen Road, 20 yards south of Wyevern Cottage.*
- 12.33. **PROW Trellech 15, 16 and 17**
- *FP: Great Hill: walked: F Williams: 1st June 1951: Continuation of FP No.12. Starts at Wyevern Cottage on the Glen Road, continuation of rough stone steps for 100 yds then rough pathway through woods to Cledden [sic].*
- 12.34. **PROW Trellech 18 to 19**
- *FP: Hollow Lane: walked: F Williams: 1st June 1951: Starts at Inglewood House on the Llandogo Trellech Road mounts hill with stone wall left hand side; Earthen bank on other. Approx. width 6ft. Exit on to Glen Road.*

12.35. **PROW Trellech 49 to 50**

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

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

12.37. **PROW Trellech 24**

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

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

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

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

13. The Highway Records

- 13.1. Both the 1st April 1949 Highway Map and current “List of Streets” do not record the route in question as a county unclassified highway. The OS base maps on which the Highway information is recorded shows the route in question on a similar alignment to all previous historical maps discussed.
- 13.2. The scale of the 1949 Highway record shows a possible barrier at point X on the plan below. This suggests that the route in question was not regarded as the main route up to the area called “Great Hill”.

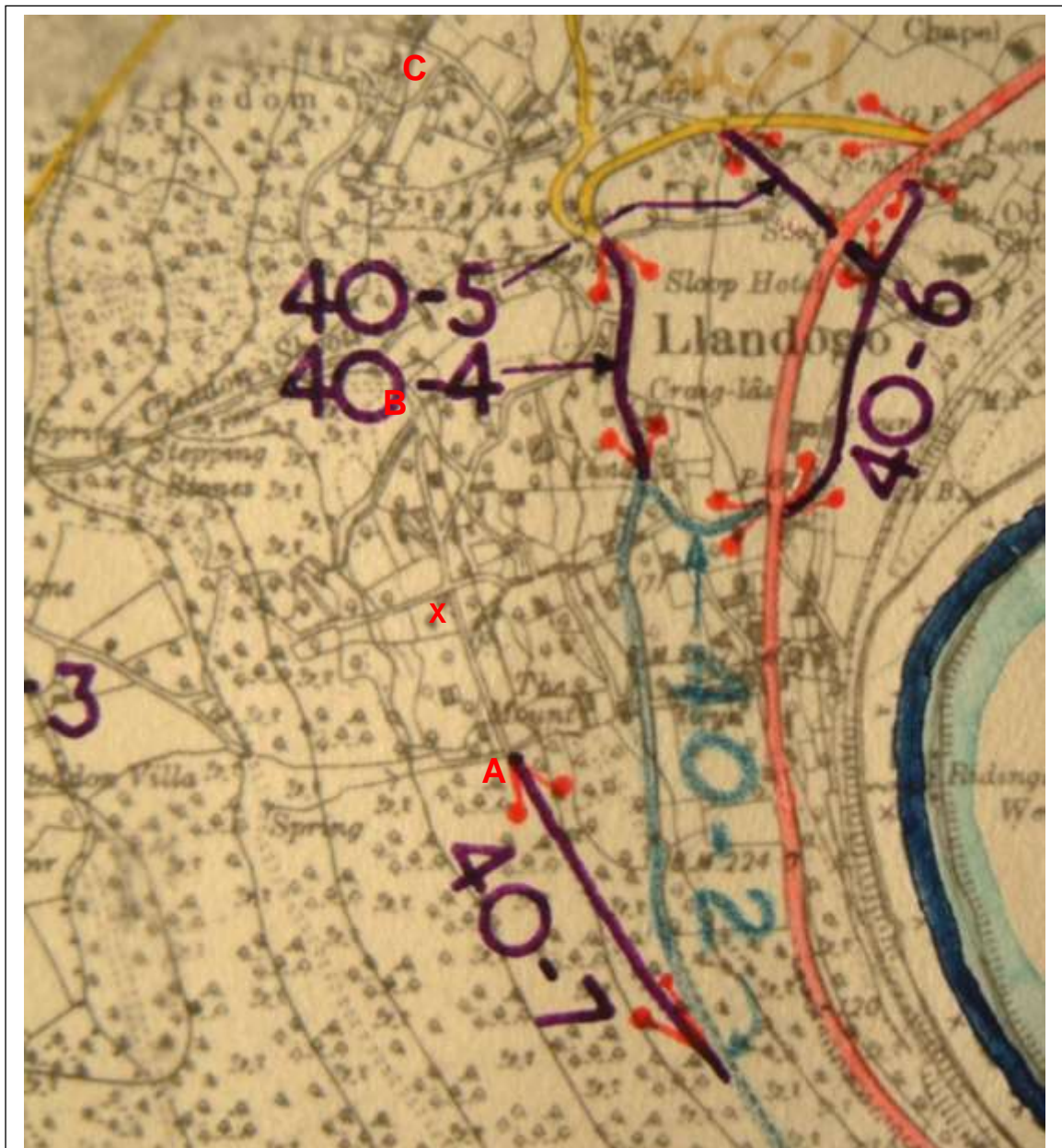


Fig. 13.1:
1949 Highway Records: not to scale:

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- 13.3. The undated Highway records show the same roads shaded as the 1949 Highway plan records. With the larger scale of this Ordnance Survey base map it is noted that the possible barrier at point X on the plan below is probably only a change in surface.
- 13.4. The evidence that county road 40-7 is the only section recorded on the Highway documents shows that the route in question was not regarded as a thoroughfare for the use of motorised vehicles by the public at large.

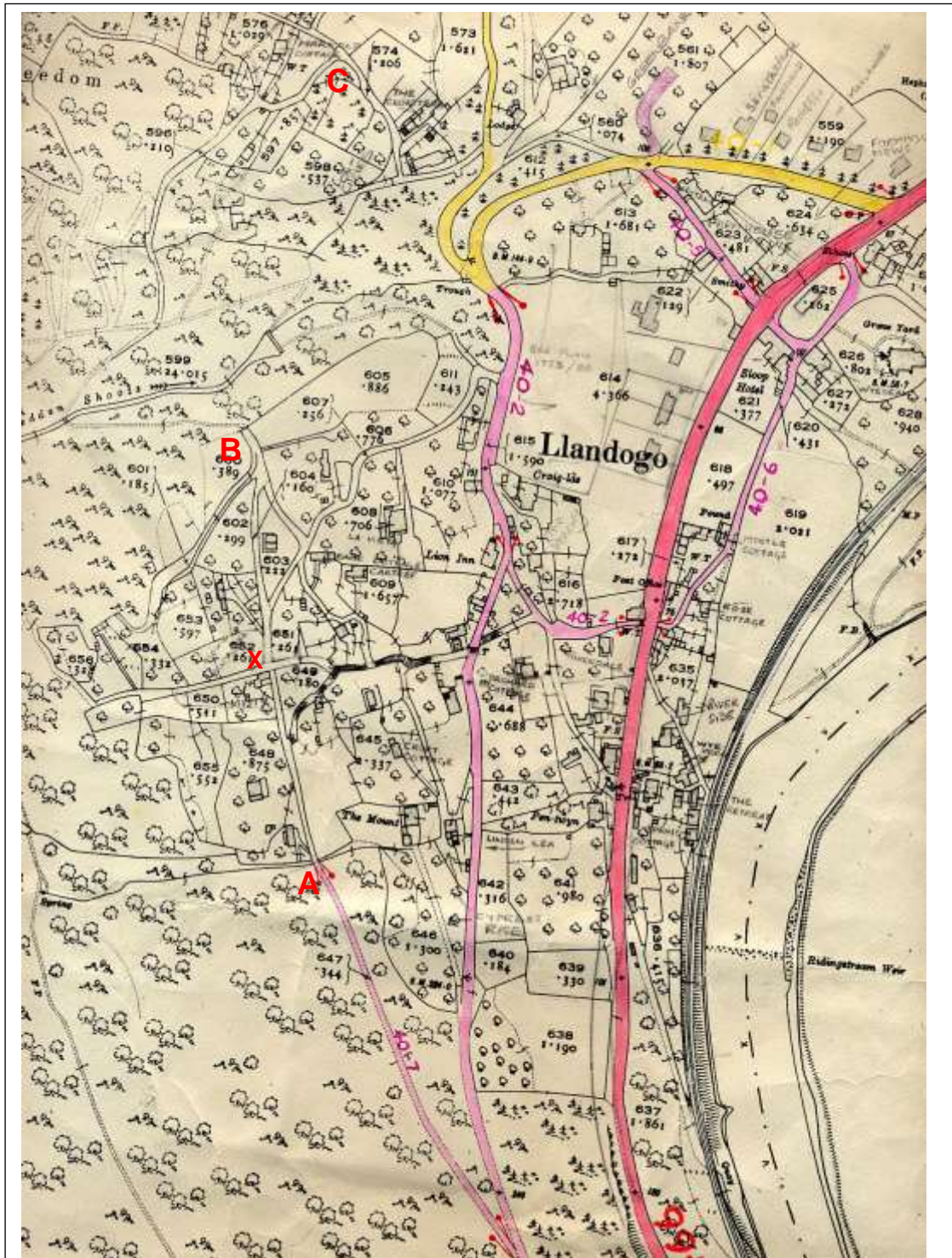


Fig. 13.2: Appendix 22: Applicants' Evidence 11
Undated historical highway records: not to scale:

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14. Aerial Photographs

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



Fig. 14.1:

Aerial photograph: Dated 13 April 1947:

(MCC has a purchased copy. It is available at MCC office for viewing.)

National Assembly of Wales

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

- 14.3. Although the tree canopy in April 1947 is not dense at the time this photograph was taken, it is still difficult to see an impression of RB 24 through to Cleddon Shoots. This suggests that if the alignment of RB 24 were more discernible between the trees than that currently shown, it would support the fact that the entire route was more frequently used by the public at large. This is not evident in this photograph. Therefore, the route being investigated is not used as a through route by the public in motorised vehicles, horse-drawn carts or on horses.
- 14.4. Furthermore, there are no high boundaries causing shadows to fall across the route in question making it possible to view the difference in surface between the cart road bridleways (CRBs) 23 and 22. When viewing the photographs through a stereograph, CRB23 has a rougher surface compared to the more frequently used CRB22 and FP18. This shows that the section of the route in question near Glen Cote was not regarded as a main road.
- 14.5. Public FP18 east of Glen Cote and descending the “Great Hill” area is shown in greater relief suggesting that it was more regularly used to ascend and descend the area. Because of this daily use it became more susceptible to erosion than the other ways that run parallel to the contours of the hillside.
- 14.6. **The Aerial Photograph dated 27 March 1970** shows the route in question vividly in a medium grey shading and, when viewed through a stereograph, a grass knoll is seen in the middle of the CRB 23. This proves the irregular use of the route in question which allowed the grass to grow along this non-sealed surface.
- 14.7. When viewing the entrance of the turning triangle north of Glen Cote through a stereograph, it is noted that a barrier of some description was located to prevent some type of use. At the same time the aerial photograph shows another larger turning area directly north of Cleddon Stile being more evident 19 years after the 1951 survey for the Definitive Map. However, the aerial photograph does reveal a distinctive change in surface type which suggests that the larger turning area was possibly for private land management requirements.
- 14.8. It is not clear from this aerial photograph what this area might have been used for. However, it has been clarified by users and local inhabitants as being an area for the private delivery of coal by a small ford delivery truck and not for the use of the general public.

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

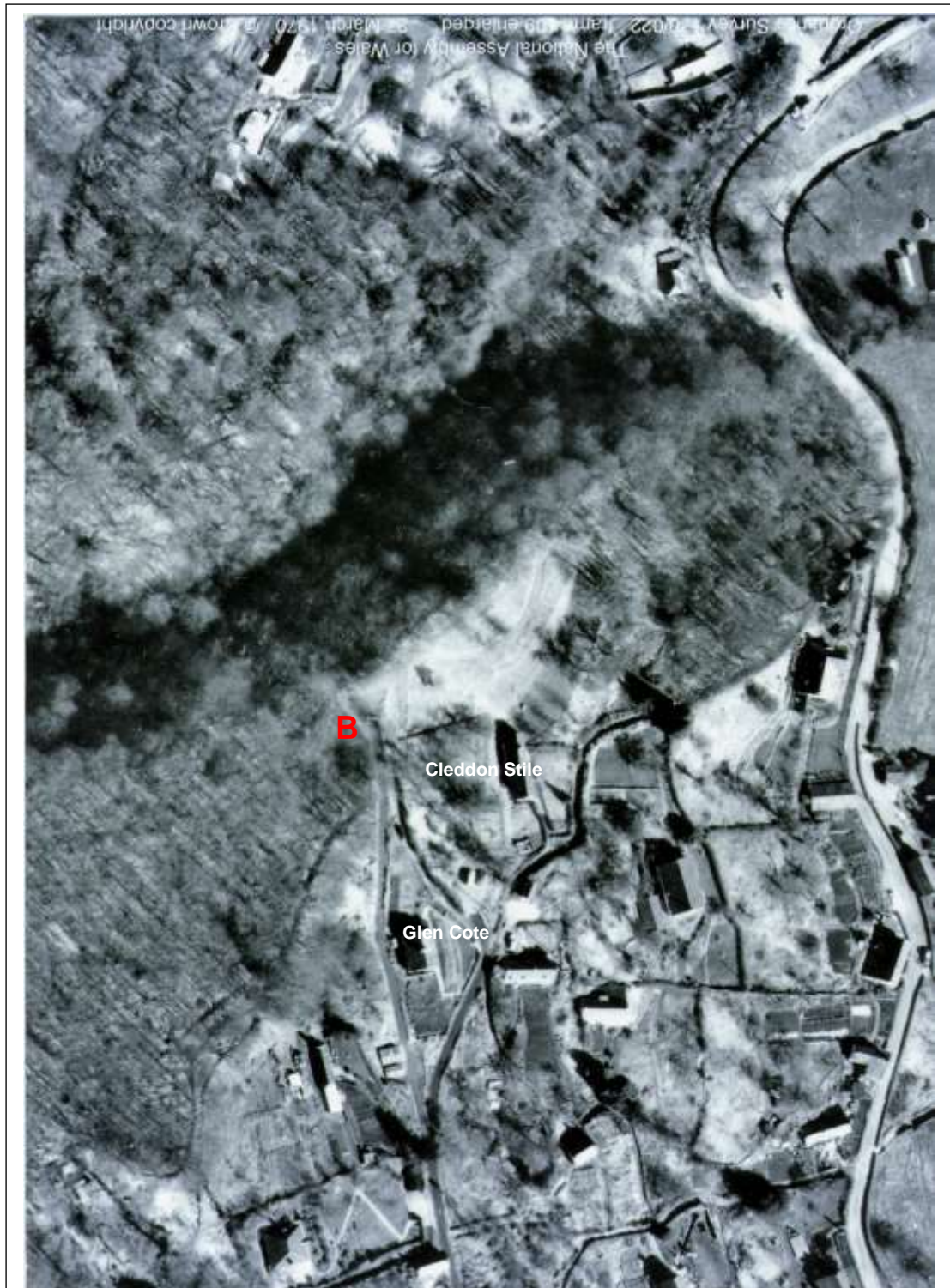


Fig. 14.2:
Aerial photograph: Dated 27th March 1970:
(MCC has a purchased copy. It is available at MCC office for viewing.)

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15. Site photographs (Appendixes 51 to 58).

- 15.1. **The first three photographs taken on the 16th March 1998** (Appendix 51) are of a land slip below Bargan's Cottage and the route in question shows a patched sealed surface.
- 15.2. **The photographs taken on the 29th February 2000** (Appendixes 52 & 53) show most of the route in question to have a sealed surface that in some areas is broken. The wear and tear of these sections of broken ground have evidence of tyre marks near them. This shows that the use of the route has been with vehicles and it is evident that it is this type of use that has damaged the surface of the route in question.
- 15.3. **The photographs taken in 2004** (Appendix 54) (Photographs 1, 2 & 3) show a recently sealed surface along with the evidence of tyre tracks damaging the edges of the route in question. Photograph 4 shows the unchanged surface of CRB 23. The evidence in this photograph shows a central grass knoll with parallel wearing made by wheeled vehicular traffic. However, it is evident from other historical documentation that the usage is limited to reported coal delivery and to the requirements of a single dwelling prior to the proposed development of the property in 2004.
- 15.4. **The evidence in photograph 1** (Appendix 56) of the stepping stones show that this route was not considered as a vehicular through route. In support of this reasoning is that the office file for restricted byway (RB) 24 (formerly cart road footpath) contains no complaints regarding the surface of the route and the need for the stones to be removed to allow motorised, horse drawn cart, equestrian or cyclist traffic. Furthermore, none of these photographs show a wide route with a central knoll of grass. Instead, a single narrow route in keeping with that expected for footpaths is illustrated.
- 15.5. **The photographs taken in 2014** (Appendixes 57 & 58) show the route relatively unchanged when compared with the photographs taken in 2004. Photograph 4 (Appendix 57) shows the evidence of motor car usage that has worn wheeled tracks and a central grass knoll over the section CRB 23. The comparison of the 2004 photographs with the 2014 photographs indicates that the evidence of motor car usage has not changed. This limited use supports the fact that this route has not been enjoyed by the public at large. It is more

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

- 15.6. The photographs of RB 24 (Appendix 58) show the route to be narrow in comparison to the previous section CRB 20 to 23 (Appendix 57) and this evidence supports the fact that the route in question is not a public thoroughfare for public motorised vehicles, non-motorised vehicles or horses.
- 15.7. The photographs of RB 24 show that this section of the route is used mainly by pedestrians. It is difficult from these photographs to prove horse riding or cycling use.
- 15.8. The limitations imposed by the location of the route being investigated suggests that there was once private equestrian usage in the past carried out by local inhabitants and their associated needs. Then, much later, modern private vehicular usage was and is still conducted by the local homeowners wishing to gain access.
- 15.9. The site photographs when taken together with all the other evidence discussed so far suggests that the public usage of the route in question is mainly pedestrian.

16. The Natural Environment and Rural Communities Act 2006

- 16.1. Regulations associated with restricted byways (RBs) and roads used as public paths (RUPPs) came into force on the 11th May 2006 in Wales (through the Countryside and Rights of Way Act 2000 (Commencement No. 8 & Transitional Provisions)(Wales) Order 2006).
- 16.2. The Natural Environment and Rural Communities Act 2006 (NERC) sections 66-72 Part 6 came into force in Wales on the 16th November 2006.
- 16.3. A guide for local authorities, enforcement agencies, rights of way users and practitioners compiled by DEFRA for Part 6 of NERC and Restricted Byways is used here to test whether or not the Act applies in this case.
- 16.4. All the 2006 NERC Act sub-sections have been investigated as the points raise questions that assist in determining whether or not public vehicular rights exist over the route in question. These sub-sections have been copied along with all the relative comments and are included at Appendixes 59 to 61. The flow chart illustrating the process for determining public rights of way for mechanically propelled vehicles (MPVs) over any given way are included in Appendixes 62 to 64.
- 16.5. The sub-sections 67(3a) and (6) do apply to this claim and are repeated below:-
- **Sub-Section 67(3)(a)** states that: *Subsection (1) does not apply to an existing public right of way if before the relevant date (19th May 2005(s.67(4))), an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modification to the definitive map and statement so as to show the way as a byway open to all traffic, (BOAT).*

Comment

- 16.5.1. This Definitive Map Modification Order application to register a byway open to all traffic (BOAT) was submitted on the 13th April 2004. This predates the coming into force of the legislation that means MPVs rights are not extinguished over the route in question if it is the subject of an application.
- 16.5.2. It does, however, mean that the DMMO has to determine to establish whether or not public motorised rights do or do not exist over the route in question.

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

Comment

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

Concluding Comments

- 16.6. It has been demonstrated here that under section 67(2) of the 2006 NERC Act MPV rights are extinguished for the entire route marked. However, under section 67(3)(a) and 67 (6) of the 2006 NERC Act the public MPV rights are not extinguished for CRBs 20, 21, 22 and 23 due to the outstanding 2004 DMMO claim for a BOAT.
- 16.7. Although the tests under subsection 67(2) of the 2006 NERC Act do not apply due to the 2004 DMMO claim being outstanding at the date of commencement, an examination of the exceptions has been applied to the whole route in question for completeness (Appendixes 59 to 61). It is shown that with the aid of these “test questions”, under subsection 67(2), the route being investigated does not have public vehicular rights.
- 16.8. The 2004 DMMO for the route in question, A to B, prevents the 2006 NERC Act from automatically extinguishing public MPV rights. However, the DMMO evidence remains to be investigated to determine the level of public status and research has shown that in this case the entire route is only a public footpath.

17. Section A to B - Review

- 17.1. The Applicants, under the Wildlife & Countryside Act 1981 s53 (3)(c)(ii), submitted their claim seeking to upgrade the status of CRBs 20 to 23, points A to B, (Appendix 4) to a byway open to all traffic (BOAT).
- 17.2. Under common law the terms “without force” is met because there has not been any barrier placed across the route in question as the route is already a registered public right of way on the Definitive Map and Statement. “Without secrecy” is met as the inhabitants of the area have openly utilised the route in question to access their private properties, and this type of use is not made by the public at large in either a vehicle, horse drawn cart or on horseback. “Without permission” is met as the inhabitants honestly believe that they have the right to drive their vehicles over the route in question to access their homes. The evidence discussed in this report shows that this belief does not extend to public vehicular, non-motorised or equestrian rights.
- 17.3. In considering this Application the Council seeks to determine whether or not public vehicular rights exist and cannot take into account need, nuisance or suitability.
- 17.4. The regular use of the route in question has been reported by local inhabitants to have been in a private capacity. The reported usage of the route in question has historically been with the use of a pack horse to transport household items to various properties and similarly the current use has been by vehicles to gain access to their private dwellings.
- 17.5. While there are some reports of private vehicular use over section A to B, there is no single “decisive” piece of evidence to show any public vehicular or equestrian rights.
- 17.6. On balance, when all the evidence is taken together it is shown that the recording of section A to B, should be that of a public footpath.
- 17.7. The 1952 Conveyance of land for Rock Cottage mentions “public road” but does not specify the type of public rights, the maintenance responsibility and the extent or level of that responsibility. Additionally, due to the fact that the plan is missing, the proof and weight of this historic document is weak and only an unsubstantiated interpretation can be applied to it.

- 17.8. The Planning Report numbered A36666 correctly describes the route in question as a public right of way. However, it is incorrect in stating that there are public vehicular rights. The context for the 1993 planning report A36666 is for permitted development and this planning report does not have the legislative weight to make the allegations regarding any public rights.
- 17.9. In a previous planning application, number A29567, is a consultation letter dated 7th September 1988 from the Highways Department. This letter states that the route in question, along with other substandard roads in the Llandogo area, is narrow and steeply graded with poor horizontal alignment being unsuitable for further residential development.
- 17.10. It is evident that comments made under planning permission have not been taken into consideration and that construction of the dwelling at the end of CRB 23 has now been completed.
- 17.11. The witness statements all confirm that the route in question has been available for access to their private dwellings in motorised vehicles. Additionally, the local inhabitants of the “Great Hill”, Llandogo, have invited friends, family and utility providing services to their private dwellings. These invited people have attained access over the route in question in motor vehicles. This type of use is not regarded as being use made by the public at large. Therefore this private vehicular use carries no obligation in any sense that the route in question is a public byway open to all traffic.
- 17.12. The six evidence forms submitted do not sufficiently support public vehicular rights as the usage is similar to the private vehicular requirement that has been highlighted within the witness statements.
- 17.13. Two pre-order consultations were carried out one in 2004 and another in 2015 the results of which show that the route in question is not regarded as a public vehicular thoroughfare. Additionally, it is noted that the majority of the inhabitants of the “Great Hill” area are confident that they had and could prove their established private vehicular rights and believe that there is no requirement to record public vehicular rights.
- 17.14. Moreover, Mr T. Wilkinson John of Cleddon Stile in 1988 (Appendix 43) and Mr Ashely Thomas of Rosehill in 2015 both report, on two separate occasions, that the route in question is not adopted and that its maintenance is the responsibility of

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

- 17.15. Regardless of other Land Registry documents for the surrounding area, the 2015 Land Registry documents for Llecan Beck; the statement by a witness who lived in Cleddon Stile; and a pre-consultation result from the landowner of Rosehill, all refer to the route in question as a “private roadway”. These three, when taken together, on balance, with all the other historical evidence and documentation investigated, demonstrates that there is no evidence that positively supports public vehicular or equestrian rights over the route in question.
- 17.16. There are two commercial maps, the Greenwood and Price Maps, which were reproduced prior to the 1835 Highways Act. This Act stipulates that any route depicted on a map prior to 1st August 1835 meant that that route was maintainable at public expense. These two maps are the only records that show alignments which possibly represent all or parts of the route in question.
- 17.17. The 1830 Ordnance Survey Maps compiled under strict administration, and the facsimiles of that survey, the David & Charles and Cassini Maps, do not show the route in question.
- 17.18. There is no Enclosure Award map that specifically lays out the alignments of every type of road and way. Additionally, the history of the Manor of Llandogo was researched and there were no details included in the documents that record a landowner or support any type of public right.
- 17.19. The information gathered from these earlier historical maps suggest that the route in question is probably not maintainable at public expense and neither does the earlier documentation support the claim for the route in question to be registered as a public byway open to all traffic, restricted byway or bridleway.
- 17.20. The 1828 and 1834 plans within the deed papers of Cleddon Shoots have on them pencil marks probably indicating section A to B of the route in question to be a method of referencing the land to physical features noted on the ground. These deeds do not support the claim for public vehicular rights. Neither of these deed plans show the route to continue through Cleddon Shoots which suggests that the route in question was not regarded as a public thoroughfare for vehicles or horses.
- 17.21. The shading of the 1846 Tithe Map ends at points A & B; the “white out” on the Finance Act map ends at points A & B; and the probable evidence of two barriers at point A shown on the 1881 O S map suggests the access to the “Great Hill” area

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

- 17.22. The 1846 Tithe Map and the 1910 Finance Act Map do not record a specific landowner for the route in question. Furthermore, the earlier Enclosure Awards and Manorial documents do not give details regarding landownership, whereas common law requires demonstration of a capacity to dedicate land usage.
- 17.23. Although, the historical maps such as the Tithe and Finance Act maps normally evidence higher status than that of footpaths, there are always exceptions to the rule. An exception is shown here when comparing both the historical maps with the Definitive Map. This comparison reveals that all the existing public footpaths marked in the relevant area on the Definitive Map are shown shaded on the Tithe map and are non-shaded on the Finance Act Map. These documents alone do not necessarily mean that routes depicted like this are to be recorded as public roads that are utilised by the public at large in vehicles or on horseback. However, it does demonstrate that it is possible that footpaths can also be found to be shown on these historical maps as shaded or non-shaded.
- 17.24. The Tithe and Finance Act maps, although useful in support of a claim, cannot be taken alone, as these maps were specifically compiled to identify “titheable” land or the value of land with regards Inland Revenue. These maps were not specifically constructed to assist in identifying public ways. This suggests that, on balance, when all other documental and physical evidence is considered, there are no public vehicular, horse drawn cart or equestrian rights over the route in question.
- 17.25. The Definitive Map and Statement is afforded considerable weight due to the statutory provision and the continuous review as set out under section 53 of the Wildlife & Countryside Act 1981.
- 17.26. Therefore, evidence of some substance is required to refute that which is already recorded on the Definitive Map and Statement. Furthermore, as has been revealed in this Report, the terminology used for the route in question is

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

17.27. Is the whole route a '*road used as a public path*'?

Yes. The legal symbol of a '*broken green line*' for RUPPs is shown for the entire route and mentioned in the Definitive Map title.

17.28. Is section A to B a '*[Public] Carriage or Cart Road mainly used as a bridleway...*'?

No. The title to the Definitive Map was changed at Provisional stage and the word "*public*" was substituted by the word "*private*".

17.29. Is section A to B a '*[Private] Carriage or Cart Road mainly used as a bridleway...*'?

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

17.30. Is section A to B '*mainly used as a bridleway*'? No.

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

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

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

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

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

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

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

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

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

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

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

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

- 17.32. The 1949 historical highway map is the first recording of the highway C40-7 which only extends to point A, just south of Bargans Cottage. The highway records show that the route in question was not regarded as publicly maintained highway and therefore not added to the "List of Streets". When C40-7 was constructed it became the only way for vehicles to access the private dwellings in the "Great Hill" area.
- 17.33. The 1949 & 1970 aerial photographs show the section A to B of the route in question which was viewed through a stereograph and the difference in surfaces between RUPPs (CRB22) and (CRB23) was noted. This difference in the surfaces, depicted on these aerial photographs, along the route in question substantially pre-dates the recent works and shows that the section near Glen Cote was not considered a main through road for public vehicles.
- 17.34. The site photographs dated 1998, 2004 and 2014 confirm what is presented in the aerial photographs by showing CRB 20 to 22 to have a sealed surface while CRB 23 is not surfaced although the evidence of a central grass knoll, along with parallel wearing lines made by wheeled traffic, does show that some motorised vehicles have used this section. It has provided and continues to provide access to a private garage and is not used by the public at large. Furthermore, there is no horse use damage along this section. If there had been surface disturbance made by horses then more complaints would have been made to the Authority by adjoining landowners and/or the public at large regarding surface repairs.
- 17.35. The outstanding 2004 Definitive Map Modification Order Application for the route in question between points A to B is not subject to the tests as laid out under section 67 of the 2006 Natural Environment and Rural Act.
- 17.36. The results of this investigation show that the vehicular usage both in the past and in more recent times has, on balance, been made by the inhabitants of the "Great Hill" area to access their private homes.
- 17.37. Furthermore, an investigation of all the historical, documental and user evidence, along with the lack of any regular requests for maintenance, shows that nothing has been found to substantiate the claim that the route in question should be recorded as a public byway open to all traffic, a restricted byway (i.e. for horse drawn cart) or a bridleway. It then remains that, in keeping with the other existing registered public rights of way in the area, CRB 20 to 23 should be recorded as a public footpath.

18. Conclusion

- 18.1. It is concluded that there are no public vehicular rights for the entire route. Only a part of the section A to B is marked on the poorer quality maps (1823 Price map and the 1830 Greenwood map) and not the section marked CRB 23.
- 18.2. Although, these more generalised maps do predate the 1835 Highways Act they do not, on balance, give weight to the entire route having public vehicular rights. With their specific production criteria the evidence from these two early 1800s historical maps along with all the other historical documentation does not add weight to the evidence that suggests the entire route be registered as a byway open to all traffic.
- 18.3. There is one complaint from a local inhabitant with regard to the public parking their vehicles along the route in question. Moreover, the pre-order consultation only mentions a single report of anti-social motorbike use for the entire route. This evidence for public vehicular use is insufficient to register the route in question as a byway open to all traffic.
- 18.4. As far as it is possible with the historical documents available, it has been demonstrated here that the proper procedures in production of the Definitive Map and Statement were followed. Therefore, the standard of evidence investigated and interrogated within this report demonstrates actual positive evidence, of some substance, which shows a contrary position to that made by the Applicants and the one included on the Definitive Map and Statement.
- 18.5. All the historical, documental and user evidence for section A to B and also that evidence which applies to section B to C detailed in Report 2 for the route being investigated, shows that there is no suggestion of use by the public at large either in motorised vehicles, in a horse drawn cart or on horseback.
- 18.6. Therefore, this being the case and along with the knowledge that public footpath rights crisscross the area known as the “Great Hill”, then with all this evidence taken together, it is shown that, on the balance of probabilities, the route in question, cart road bridleways (CRB) 20 to 23, does not have higher public rights and should be registered as a public footpath.

19. Recommendation

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



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June 2016



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