

## RIGHTS OF WAY COMMITTEE – 29TH MARCH 2006

**SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF MONMOUTHSHIRE IN RESPECT OF DELETING THREE PATHS FROM MOUNTAIN ROAD, BEDWAS TO COLLIERY ROAD, BEDWAS**

**REPORT BY: DIRECTOR OF THE ENVIRONMENT**

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### 1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to delete three paths from the definitive map and statement.

### 2. SUMMARY

- 2.1 Evidence is presented related to an application to delete three paths from the definitive map and statement.

### 3. LINKS TO STRATEGY

- 3.1 There is duty to maintain the Definitive Map and Statement.
- 3.2 The Authority has a number of “cross cutting” objectives which include sustainability, health promotion, social inclusion, equal opportunities (as an employer and in service delivery) and e-government. Officers should seek to ensure that all proposals are in keeping with these wider objectives and reports should, wherever possible, make clear how this will be achieved.

### 4. THE REPORT

#### 4.1 Background

- i) As Members are aware this Committee has full delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981.
- ii) By the term "public rights of way" we mean paths, tracks and unmetalled roads over which the public have the right to walk and in some cases ride horses and possibly drive motor vehicles.

These may be classified as follows:-

A footpath: over which the right of way is on foot only.

A bridleway: over which there is a right of way on foot and on horseback or leading a horse, and also for the use of a pedal cycle.

A byway open to all traffic: this means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.

- iii) The Wildlife and Countryside Act 1981 places a duty on the County Borough Council to keep the existing definitive map under continuous review, make Modification Orders as necessary to take account of the occurrence of events requiring the map to be modified and to prepare definitive maps for any of the area not previously surveyed.
- iv) The definitive map and statement will be modified by means of Orders made by the surveying authority i.e. the County Borough Council. The Wildlife and Countryside Act enables any person to apply to the surveying authority for an order to amend the definitive map.
- v) The procedure for making such an application is detailed in Schedule 14 of the Wildlife and Countryside Act. The application before you has been compiled in accordance with these requirements. The said procedures are referred to latter in the report.
- vi) When determining the application before you, Members will be acting in a quasi-judicial capacity. Before making an order, Members must be satisfied that the evidence shows, **on the balance of probabilities**, that a right of way of a particular description does, or does not exist. Each application must be dealt with on its own merits, noting the interests of both the applicants, the landowners and objectors.
- vii) The application before you is concerned with rights that are alleged not to exist and not as to whether it would be prudent or beneficial to delete them. Members are also required to view the route of the rights of way in question.
- viii) If following the site visit the Committee decides to make an Order, then once this decision has been reached the County Borough Council has to give notice of its general effect. Following Members` decision there is a right of appeal to the National Assembly for Wales. A period of at least 42 days from the date of first publication of the notice must be allowed for objections.
- ix) If following the site visit the Committee decides not to make an Order, then once this decision has been reached the County Borough Council has to give notice of its general effect. Following Members` decision there is a right of appeal to the National Assembly for Wales within 28 days of the applicant being given notice of the Committee decision.
- x) Department of Environment circular number 18/90 (being Welsh Office circular number 45/90) provides guidance in relation to the consideration of applications to modify the definitive map and statement made under the provisions of Part III of the Wildlife & Countryside Act 1981 and states:-

"In making an application for an Order to delete or down grade a right of way it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. The Authority is required by paragraph 3 of Schedule 14 of the Act to investigate the matters stated in the application. However, it is not for the Authority to demonstrate that the map is correct but for the applicant to show that an error was made. The advice contained in paragraphs 14 and 16 of Annex to circular 1/83, regarding the considerations applicable to the deletion or down grading of rights of way is again relevant and is reproduced at Annex 1. In making an Order the Authority must be able to say in accordance with Section 53(3)(c)(iii), that there is no public right of way over land shown in the map and statement as a highway of any description.

- xi) Authorities will be aware of the need to maintain an authoritative map and statement of the highest attainable accuracy. The evidence needed to remove a public right of way from such an authoritative record, will need to be cogent. The procedures for identifying and recording public rights of way have in successive legislation being comprehensive and thorough. Whilst they do not preclude errors particularly where recent research has uncovered previously unknown evidence or where the review procedures have never been implemented they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to forty years without being questioned earlier. Where an Authority is disposed to make an Order deleting/down grading a right of way it should consider the need for additional consultation - for example with local user groups - or publicity to ensure that all the evidence from the public concerning the existence or status of the route is available.

## **Annex 1**

Paragraphs 14 and 16 of Annex A to circular 1/83 read as follows:-

14 - Sub-section 3(c) relates to the discovery by surveying Authorities of evidence which shows that a right of way not shown on the map and statement subsists or is reasonably alleged to subsist and should therefore be shown: of that a right of way already shown is of a different status and should be up or down graded or that it does not in fact exist and should be taken off; or that the particulars contained in the statement require modification. These provisions apply to footpaths, bridleways and byways open to all traffic.

16 - Surveying authorities whenever they discover or are presented with evidence which suggests that a definitive map and statement should be modified are required to take into consideration all other relevant evidence available to them concerning the status of the right of way involved before making an Order they must be satisfied that the evidence shows on the balance of probability that a right of way of a particular description exists or that a way shown on the map is not in fact a public right of way. The mere assertion without any supporting evidence that a right of way does or does not exist would be insufficient to satisfy that test. The limitations on the admissibility of evidence that formerly applied in the case of deletions have been removed thus enabling any evidence that is relevant to be taken into consideration. The conclusive evidential effect of definitive maps and statements, means, however, that the evidence must show that no right of way existed as at the relevant date of the definitive map on which the way was first shown. Equally, claims of presumed dedication which are based solely on the fact that a way shown on the definitive map would not be acceptable since the only event that can give rise to a presumption of dedication is user as a right. It would be necessary therefore in the face of evidence which shows that "no right of way exists to demonstrate that the path or way has been used without interruption and as a right for twenty years for it to remain on the definitive map".

### **Wildlife and Countryside Act 1981 Section 53(3)(c)(iii)**

#### **Footpath No.78, 78A and 79 in the Community of Bedwas and Machen Leading from Mountain Road, Bedwas to Colliery Road, Bedwas**

- 4.02 Introduction
- 4.03 For identification purposes the location of the paths is shown on Document No.2 which is an area north of Bedwas and has been reproduced from the ordnance survey mapping by use of the Authority's Geographical Information System.
- 4.04 An Application has been received under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 from Mrs.G.D.Hutchinson, "Triacre", Mountain Road, Bedwas to modify the Definitive Map and Statement for the County of Monmouthshire by deleting 3 paths. Two of

the paths lead from Mountain Road, Bedwas eastwards and the third being a continuation of the first two leading southwards to Colliery Road, Bedwas. These paths are identified on the definitive map and statement for the former County of Monmouthshire (relevant date 1st July 1952) as footpath No.78, 78A and 79 and indicated on the plan marked Document No.4 along the bold black lines A-B (FP78A), B-C (FP79), and B-D (FP78).

4.05 A copy of the Definitive map (scale 1:10,560) relevant date 1<sup>st</sup> July 1952 is included as Document No.3 with the three paths highlighted within the bold black circle. Document No.3A is a copy of the definitive map transferred to Mid Glamorgan County Council at Local Government re-organisation in April 1974.

4.06 The paths are described in the definitive statement relevant date 1<sup>st</sup> July 1952 as follows;

FP78 Bedwas and Machen

Name of path : Quarry Path

Description: From junction with 78a and 79 west to gap at rear of Cottages between cottages to Mountain Road.

Grounds for belief : In use of over 20 years.

FP78a Bedwas and Machen

Name of path : Quarry Path

Description : Leaves colliery road by stone stile, skirts east side of Quarry in north easterly direction then bears south east to junction with 78 and 79.

Grounds for belief : In use of over 20 years.

FP79 Bedwas and Machen

Name of path : Quarry Path

Description : From junction with 78 and 78a south east to field gate and through Mountain Road.

Grounds for belief : In use of over 20 years.

4.07 The paths cross land owned by 4 separate landowners

4.08 Research has been undertaken to determine the validity of the claim by collating, as far as possible, all **Documentary Evidence** available, together with the crucial **User Evidence** provided by the applicant of the claim.

4.09 The claimant has confirmed that she has served notice on the known landowners.

4.10 I would clarify that one landowner inherited the land after the application was made, but is aware of the application and has been involved with the investigations.

4.11 Evidence

#### **Evidence of Supporters of Claim to Delete the three paths**

4.12 Mrs.D.Lewis

4.13 The application has been supported by Mrs. D. Lewis. Mrs. Lewis has been interviewed on three occasions. In her statement dated 4<sup>th</sup> February 2002 (Document No.6) she states that she was born in "Sunnyside" Mountain Road, Bedwas a short distance from her present house. She states that all the properties along the eastern side of Mountain Road had gates from their gardens to the fields at the rear. These gates allowed residents access to collect water from a nearby well as there was no mains water supply.

4.14 She further states that she has never known anyone wishing to walk the path, shown on the definitive map to pass in front of her property to Mountain Road. She has never challenged any person to prevent them using the path, as no-one has ever used the path. She states that

the path was a private path from the properties to the well to collect water. She only became aware of the existence of the path recently when two local people wanted to walk the route.

- 4.15 Her comments have been reinforced by her more recent letter dated 24th October 2002 Document No.7
- 4.16 More recently during a meeting on the 6<sup>th</sup> July 2004 Mrs.Lewis confirmed that she had been at the present property since 1948. The Electricity Board had locked the gate into the adjoining field to prevent access to a newly installed transformer. A photograph Document No.8 has been produced showing the lock. No date has been given for the photograph. She confirmed that as far as she was aware no-one ever tried to walk from Mountain Road to Colliery Road via the footpath. She recalled that the Water Board constructed a tank further up Mountain Road which supplied the properties with mains water. Since that time 1948, no-one needed to visit the well for water.
- 4.17 Mr. B.E. Tranter,
- 4.18 Mr Tranter has lived in his present property for twenty five (25) years and does not recall seeing any person walking the field. He recalled talking to his next door neighbour Mrs. Rees (deceased) who said that before a mains supply was provided, water was collected from the well. The path from the rear of the properties was for water collection and has not been used since a mains supply was provided. Document No.9

#### **Evidence of opponents of this claim**

- 4.19 Mr. and Mrs. Prosser
- 4.20 Mr. and Mrs. Prosser believes that the paths subject of the application, are public. In support of this, they have offered the definitive map and statement as evidence together with a number of maps identifying the lines of the paths at various dates.
- 4.21 Mr. and Mrs. Prosser were interviewed on the 5<sup>th</sup> February 2003 and 17<sup>th</sup> July 2004. On the 5<sup>th</sup> February 2003, Mr. Prosser raised the subject of the above paths. He stated that Mr. L. Richards had shown it on the definitive map as a path and produced a map which he pointed out confirmed this. Mrs. Prosser stated that her mother had always crossed by the door of Ty Melin, to go to the well to collect water. She stated that in the drought (date not identified) people from all over Bedwas came to collect water from the well. Mr and Mrs. Prosser were asked where the people were from and would any walk up to the well and then up and around the top of the hill (assumed to mean via Mountain Road) to which Mr. Prosser stated that there would be no point as they were only going to collect water from the well and that this would be a long way round to carry the water. He stated that people would go up to the well from Rectory Road area and then go back down the same way they came up. Also that people from the west would go across to the well past Dorothy's door (Ty Melin) to collect their water and go back the same way as they went.
- 4.22 The evidence provided by Mr and Mrs Prosser in support of their contention that public rights exist includes maps dated 1880 (Document No.12), which indicates routes of paths across the land from Mountain Road to a spring, but no path, on the definitive line, from the spring to Colliery Road. A map of 1900 map (Document No.13) effectively shows the same paths leading from Mountain Road to the spring and again no path along the definitive line. The route being identified by the letters "FP". A third map dated 1920 (Document No.14), indicates broadly the same paths and identification of "FP" with the exception where the path goes around the quarry and then southwards to the well. In addition there is a route along the definitive line from the well to Colliery Road.
- 4.23 They were not aware of the survey undertaken by the Bedwas and Machen UDC, or of the subsequent notices in the local newspaper and London Gazette. They did identify the original hand written draft maps and statements which they believe were prepared by Mr. Lewis

Richards (now deceased). These documents were the initial stage of the preparation of the Definitive Map and Statement prepared by Monmouthshire County Council.

- 4.24 During the last interview of Mr and Mrs Prosser, on the 20th July 2004, Mr. Prosser explained that he had lived in the area for 67 years and had used the path since the age of 9. He explained that he and his father had used the path when going shooting. The route used was over the stone stile on Colliery Road, through the quarry then up onto the footpath which extends past the spring, right hand side of quarry, then onto private land and northwards to Llwyn-y-Llynfa. He clarified he did not use path to the left of the quarry. Mr. Prosser was unable to say who else used the path. Mrs Prosser explained that her mother lived at Pen Heol-y-banc and went across by the footpath, through the grounds of the Managers house to the spring down to Mrs Lewis`. Mrs. Prosser further explained when questioned, that her mother went through the fields to the spring, but never down to the Rectory, Colliery Road. Mrs Prosser said that she did not herself collect water, but used the paths when younger, until the farmer Mr. Greenhaf closed the path so she couldn`t use it.
- 4.25 Mr. Prosser recollected that he used the path in 1954 and the path became blocked when a pigeon cote was erected on the route around 1955/56. He believed the path was blocked because of the quarry. Mr. Prosser says he spoke to the landowner regarding the path and he said "OK it is on the definitive map", but he didn`t want anyone else to use it.
- 4.26 When asked about who walked the path Mr and Mrs Prosser seemed only to identify her mother as using the path. They further clarified that people would walk to the well from Mountain Road and Colliery Road and return the way they came. They were not aware of anyone using the path from Mountain Road to Colliery Road. This comment was also made at a previous interview on the 5<sup>th</sup> February 2003.
- 4.27 Mr. Prosser identified Mr. Lewis Richards, who was employed by Bedwas and Machen Urban District Council, who it was alleged, surveyed the path in July 1951 as part of the work in preparing the definitive map and statement under the National Parks and Access to the Countryside Act 1949. The definitive statement Document No.15, does identify Mr. L. Richards as surveyor, however investigation of the original hand written statements Document No.17 identifies Mr. L. Poore as the surveyor of footpath 20 referred to as the Quarry Path. This footpath eventually became footpaths 78, 78A and 79 on the definitive map. (Copy of typed Draft statement included as Document No.16). Mr. Prosser raised the question as to why the route was included if it was not used as a footpath. Mr. Prosser believes that the identification of the paths on the maps he has provided establishes the existence of public rights of way.
- 4.28 During the interviews, officers explained the process being undertaken in challenging the definitive map and statement. Mr. Prosser requested papers associated with this report, but his request was declined. Mr. Prosser then explained that he would request the papers through the Welsh Assembly, but again it was explained that all information would be included in this report and he would have the opportunity to comment as part of the consultation process.
- 4.29 The whole committee process was explained to Mr and Mrs Prosser and that only Members who viewed the site would be able to consider the report and decide on the outcome of the application. Further, it was explained the various options available to both applicant and objector to the outcome of the committee resolution.
- 4.30 Mr. Prosser further explained that the area was full of history and that the paths formed a part of this. He described the finding of a stone with a face on it in the well, the stone now being on show in the museum in Cardiff. Mr. Prosser thought it would be nice if youngsters could visit and take parties to collect water so they could experience what earlier generations did.
- 4.31 The definitive description of the path indicates that;

“From junction with 78 and 78a south east to field gate and through Mountain Road. “

- 4.32 When questioned about this description, particularly the reference to the “field gate” Mr. Prosser believed that this is the small gate in the boundary of Ty Melin.
- 4.33 In an attempt to open the path for public use, Mr. Prosser has served notice on the Authority under Section 130A of the Highways Act 1980. This is a new power that allows aggrieved parties to make application to the Magistrates Court for the removal of obstructions. Magistrates Court may order the Authority to remove obstructions within a stated time period. As the location of the obstructions detailed in the Notice under Section 130A was unclear, the Authority requested that Mr. Prosser clarify the points of obstruction. Attached as Document No.28 is a copy of the plan provided. The Act contains provisions to enable a local authority to prevent the making of an order if it can satisfy the Court that the fact that the way in question is a public right of way is seriously disputed. In this case the application being considered for deletion meets this criteria.
- 4.34 More recently Mr. Prosser identified two local residents who he thought may have information on the existence of the paths. Both these residents have been contacted by letter on the 28<sup>th</sup> October 2004 Document No. 29 , but one has indicated following initial correspondence that he did not wish any further involvement in this matter. The second party has been contacted and provided information detailed as follows.
- 4.35 In his reply of the 26<sup>th</sup> November 2004 Document No.30, Mr. Williams wished to object to the removal of the three footpaths. Mr. Williams moved to the area in 1966 and recalls an entrance to land south of Ty-Melin, Mountain Road at a wooden five bar gate. This entrance was removed when the adjoining bungalow was extended and it is suggested is partly built over the path. He asks that the paths are retained for future generations.
- 4.36 Reference to the wooden gate and line of path was the result of a further letter to Mr. Williams dated 3<sup>rd</sup> December 2004 Document No.31. In his subsequent reply of the 16<sup>th</sup> December 2004 Document No.32, Mr. Williams returned the plan having indicated the location of the wooden gate. In addition Mr. Williams confirms that he used the paths himself and has seen others walking along them.
- 4.37 Mr. Williams mentions that his wife used the paths to access the Old Quarry area to feed ponies stabled there by the then landowner. Mr. Williams continues by explaining that his late mother-in-law was friendly with a lady living in a property north of Ty-Melin and that she accompanied her on the footpaths to access her home. One section led to a gate in the garden wall of her cottage.
- 4.38 Additional Evidence**
- 4.39 Mr. L. Richards
- 4.40 During the interviewing of parties associated with this matter, it has come to light that the definitive route of footpath No.79 may in fact be incorrect. It appears that by the evidence of Mr. L. Richards, Document No.18, the field gate referred to in the definitive description was positioned a short distance down Mountain Road. Mr. Richards clarified this point in his statement received by the Authority on the 28<sup>th</sup> February 2003. Document No.18, and he identified the route he believed to be the correct route on the accompanying plan. Some idea of the location of this gate could be gained from the land ownership plan accompanying the agreement of sale by Monmouthshire County Council to Mr. Greenhaf in 1955. This plan identifies a field access off Mountain Road. This would coincide with the statement of Mr. L. Richards.
- 4.41 Photographic Evidence
- 4.42 In considering applications under the Wildlife and Countryside Act 1981, the Authority uses

various methods to identify information for both supporting or refuting the claims for either Adding or Deleting paths. One method is to consider information contained on aerial photographs. In this regard the opportunity was taken to view the extensive archive of aerial photographs held by the National Assembly for Wales, Air Photographs Unit , Cathays, Cardiff

- 4.43 Document No.19 is an aerial photograph flown on 13th May 1946, this shows the extent of the quarry, and there appears three faint lines running east from properties on Mountain Road. The top line appearing to start at Ty Melin, the second runs from the same property, but from a point south of the one mentioned previously, and the third running north east from Mountain Road, from what could be the location of the gate mentioned by Mr. L. Richards in his statement as the definitive path terminating at a field gate. There is no further evidence of the path until further east heading east north east to the northern part of what appears to be a ploughed field. The line then runs north east but disappears as it starts to go around the northern edge of the quarry.
- 4.44 Document No.20 is an aerial photograph flown on 30<sup>th</sup> May 1950. There does not appear to be any identifiable lines similar to those on the 1946 photograph. The quarry area appears to have enlarged. Use of the “well” previously referred to was substantially reduced once mains water was introduced in 1948.
- 4.45 Document No.21 is an aerial photograph flown on 5<sup>th</sup> June 1951. This picture was taken one month before it was surveyed by Mr. L. Poore as part of the preparation of the definitive map and statement. It shows the quarry, but no apparent signs of any walked route.
- 4.46 Document No.22 is an aerial photograph flown on 1<sup>st</sup> June 1962. There is new development on Mountain Road and the quarry appears to have been infilled and levelled. There is no apparent evidence of any routes as on the 1946 photograph.
- 4.47 Document No.23 is an aerial photograph flown on 11<sup>th</sup> June 1967. There is no apparent difference to that of the 1962 photograph with the exception that “Triacre” appears to have been built.
- 4.48 Document No.24 is an aerial photograph flown dated 4<sup>th</sup> June 1971. There is a faint line shown, but this does not appear to be on the same route as the 1946 photograph and turns through a curved route south eastwards.
- 4.49 Document No.25 is an aerial photograph flown on 14<sup>th</sup> May 1979. It shows no additional information to that previously identified.
- 4.50 Document No.26 is an aerial photograph flown on 25<sup>th</sup> April 1989. No additional information to that previously identified.
- 4.51 Document No.27 is an aerial photograph flown on 8<sup>th</sup> August 1991 Document No. 27. No appearance of any routes or quarry.
- 4.52 The Situation at Present
- 4.53 In considering the present day situation, footpath No.78A, commences on Colliery Road at a stone stile. Once over the stile you immediately climb a second stile that was erected by the Authority as part of the works associated with the adjacent culvert. You then follow a stoned track in a north north westerly direction, before turning in a more northerly direction towards the site of the well. This section of path is not evident on the ground and you are required to pick your way through overgrowth and overhanging trees.. The path then passes over a barbed wire fence on the side of an embankment to the site of the old well. You then follow a worn track meandering up the embankment before heading in a westerly direction. At this point the path bisects into footpath No.79 which travels in a west south westerly direction crossing barbed wire fences to a small gate passing in front of Ty Melin to terminate on



Mountain Road. The other path, footpath No.78 heads in a westerly direction to a gap in a wall at Sunnyside, the gap has been bricked up, but the path continues through to Mountain Road.

4.54 *The Landowner's View*

4.55 Applicant; Mrs. G.D. Hutchinson,

4.56 The application is supported by photographs taken over a period of time since 1948. Many of the photographs show the stone stile on Colliery Road to be blocked and these are attached as Document No.10. The application is supported by a written statement describing the brief history of the land, Document No.11. In the statement Mrs. Hutchinson explains that until the early 1900's part of the alleged path coincided with access to a working quarry. Properties on Mountain Road had access to the field at the rear in order to collect water from the well. In 1948 a water tank was constructed to provide the properties on Mountain Road with water. After this date there was no need to access the well. In 1939, Mrs. Hutchinson's father rented the quarry area from Mr. Lewis, who rented the land from Monmouthshire County Council. The applicant's father finally purchased the land from Monmouthshire County Council in 1955 and there was no notice that a right of way had been established at that time. The quarry was filled in 1957-58 by the NCB. Further land was purchased from Glamorgan County Council in 1956 to build the present property, which was completed in 1966. The area to the rear was then divided up into and used for poultry and an orchard. Early maps show that the access to the well terminated at the gates at the rear of the cottages and not Mountain Road. The applicant confirms that neither she nor her father have ever been approached by the public for access across their land. She points out that there is a suitable alternative via the existing maintainable highways and she is convinced that the paths were only as access to the well to collect water by residents. From the time the applicant's father rented the ground, the stile was blocked off and the double gates padlocked at the Colliery Road end of the path.

4.57 Summary

4.58 An application under Section 53 (3)(c)(iii) of the Wildlife and Countryside Act 1981 has been received to Delete three paths from the definitive map and statement prepared under the National Parks and Access to the Countryside Act 1949 by Monmouthshire County Council.

4.59 The applicant has indicated that as far as she can recall no-one has ever walked the routes, and that her father had kept the routes closed since he controlled the land.

4.60 The current owner of Ty Melin, has lived in her present property since 1948 and can recall the area before this, having been born nearby. She indicates that the routes were only ever used by residents to collect water from the nearby well, before a mains water supply was provided.

4.61 The owner of Sunnyside, who has lived at the property for 25 years does not recall anyone ever trying to use the paths.

4.62 Mr. and Mrs. Prosser, Hillside Terrace are contesting the application in that they believe the path is public. They agree that no one used the paths as a through route, only to collect water and return the way they came. The 1880 and 1900 maps identify routes only from Mountain Road leading to a spring. The 1920 map indicates a varied route around the quarry, a well at a different position to the previous spring and a route leading to Colliery Road. Although the paths are shown on Ordnance Survey maps this is not conclusive evidence to the existence of a public right of way. It only shows that some form of route was in existence at the time of the map.

4.63 The aerial photograph of 1946 partially shows three paths from Mountain Road running east and north of the quarry, but these routes do not appear on any subsequent photograph.

4.64 Statements from the affected landowners indicate that no-one has used the paths since the water tank was constructed and a mains water supply provided along Mountain Road in 1948.

- 4.65 The statement by Mr. L. Richards, suggests that footpath No.79 has been incorrectly recorded and that the path should bear more south westwards to the site of a former field gate. In order to clarify the understanding of the reference to "fieldgate" the opportunity has been taken to inspect other paths surveyed by Mr. L. Poore. One path recorded as footpath No.97 on the Draft map is from Duffryn Farm to Twyn-shon-Evan Road. It is described as;

Leaves FP96 at F.G in Duffryn Farm yard between farm buildings. Turns N.E. at F.G. continues N. Easterly to second F.G. through second F.G. to third F.G. on Twyn-shon-Evan Road.

- 4.66 The field gate at this location is 12 feet wide.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 Cost of an order should Members resolve to support the application, is in the region of £1,800.00 Whatever Members` decision, should representations be received this may result in a public inquiry. This cost may exceed £10,000

## **6. PERSONNEL IMPLICATIONS**

- 6.1 None

## **7. CONSULTATIONS**

- 7.1 Mrs Hutchinson, Applicant and landowner  
Mr. Greenhaf, landowner  
Mrs. Lewis, landowner  
Mr, Trantor, landowner  
Mr and Mrs. Prosser,  
Cabinet Member for Highways Councillor K. Griffiths  
Councillor Mrs. E.M. Aldworth  
Councillor J.R. Davies  
Councillor R.T. Davies  
Councillor A. Donaldson  
K. Donovan, Ramblers Association local representative  
Clerk to Bedwas, Trethomas and Machen Community Council  
Mr.M-R. Williams, Chief Engineer  
J. Cooper, Transportation Manager  
D. Perkins, Head of Legal Services

## **8. RECOMMENDATIONS**

- 8.1 On the basis of the evidence and information compiled in the submitted documents, Members are requested to determine the application before them by either :-
- (i) Supporting the claim as made that the paths have been registered in error
  - (ii) Rejecting the claim
- 8.2 If the claim is rejected a further report will need to be prepared so Members may consider the correct route of footpath No.79

## **9. REASONS FOR THE RECOMMENDATIONS**

9.1 To comply with its duty to keep the definitive map and statement under continuous review

## **10. STATUTORY POWER**

10.1 Wildlife and Countryside Act 1981. This is a Council function delegated to this Committee

Author: A.J. Sander, Senior Assistant Engineer Rights of Way  
Consultees: Cabinet Member for Highways Councillor K. Griffiths  
Councillor Mrs. E.M. Aldworth  
Councillor J.R. Davies  
Councillor R.T. Davies  
Councillor A. Donaldson  
Mrs Hutchinson, Applicant and landowner  
Mr. Greenhaf, landowner  
Mrs. Lewis, landowner  
Mr. Trantor, landowner  
Mr and Mrs. Prosser,  
K. Donovan, Ramblers Association local representative  
Clerk to Bedwas, Trethomas and Machen Community Council  
Mr. M-R. Williams, Chief Engineer  
Transportation Manager  
D. Perkins, Head of Legal Services

Appendix 1