Application to modify the Definitive Map of Public Rights of Way under Section 53B, Wildlife and Countryside Act 1981.

File Reference	53B/0006
Definitive Map path reference	Barry No.73
Description of intended effect on the Definitive Map	To delete part of Public Right of Way No.73 Barry from the Map. The addition of a footpath to the Map from Pontypridd Road to Mill Wood, Barry.
O.S. grid ref.	Deletion between 309872 167932 and 309869 167914 Addition between 310002 168284 and 309808 167954
Address / postcode	Clos Cwm Barri, CF62 6LR. Ffordd Cwm Ciddy, CF62 6LJ. Broad Close Pontypridd Road, CF62 7LX.
Nearest Village/Town	Barry
Locally known name	-
Community / Town Council	Barry
Applicant	Mrs. J. Underdown
Date of application	04.02.2009
Date of receipt of application	05.02.2009
Date when representation made to the National Assembly in accordance with 3(2) of Schedule 14 WCA 1981. As notified by the applicant.	04.02.2010
National Assembly's decision and terms of direction	The decision was not to issue a direction
Date set for determination of application	28.06.2010
Date on which the Authority determined the application	28.06.2010
Decision	Application refused
Date when notice of appeal served on the National Assembly and the Authority in accordance with paragraph 4(1) of Schedule 14 to the WCA 1981.	20.08.2010.
Date / time and venue of any proposed hearing or inquiry.	
National Assembly's decision and terms of direction.	Appeal dismissed
Date of confirmation of order and details of any modification made.	-

Continued overleaf

Related documents attached:

Application
Map
Statement by Applicant

Please contact:

Public Rights of Way Section
Vale of Glamorgan Council
The Dock Offices
Subway Road
Barry
Vale of Glamorgan
CF63 4RT
Email.sathomas@valeofglamorgan.gov.uk

Wildlife and Countryside Act 1981

Notice of application to modify the Definitive Map and Statement for the former County of Glamorgan, Relevant date 14th September, 1954

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To: The Vale of Glamorgan Council

Of: The Civic Offices, Holton Road, Barry, CF63 4RU

I / ~~We~~: JEAN UNDERDOWN

Of: [redacted]

hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by [delete as appropriate]

adding a footpath / ~~bridleway / restricted byway~~ Section 53(3)(c)(i)

~~changing the status of the footpath / bridleway / restricted byway~~

deletion of the footpath / ~~bridleway / restricted byway~~ Section 53(3)(c)(iii)

~~changing the particulars relating to the footpath / bridleway / restricted byway~~

from PONTYPRIDD ROAD (TRAFFIC LIGHTS)

to MILL WOOD

with a width of 1-2 METRES and shown on the map annexed hereto.

I / ~~We~~ attach copies of the documentary evidence (including statements of witnesses) set out overleaf, in support of this application plus my own statement

Dated 4:2:09 Signed [redacted]

~~(on behalf of)~~ N/A

AP 01

Street Plan

ProPrinter (© By Design) 13 Jan 2009 - 11:17:30 AM Licensed to GeoBridge - Vale of Glamorgan Council - SN7682

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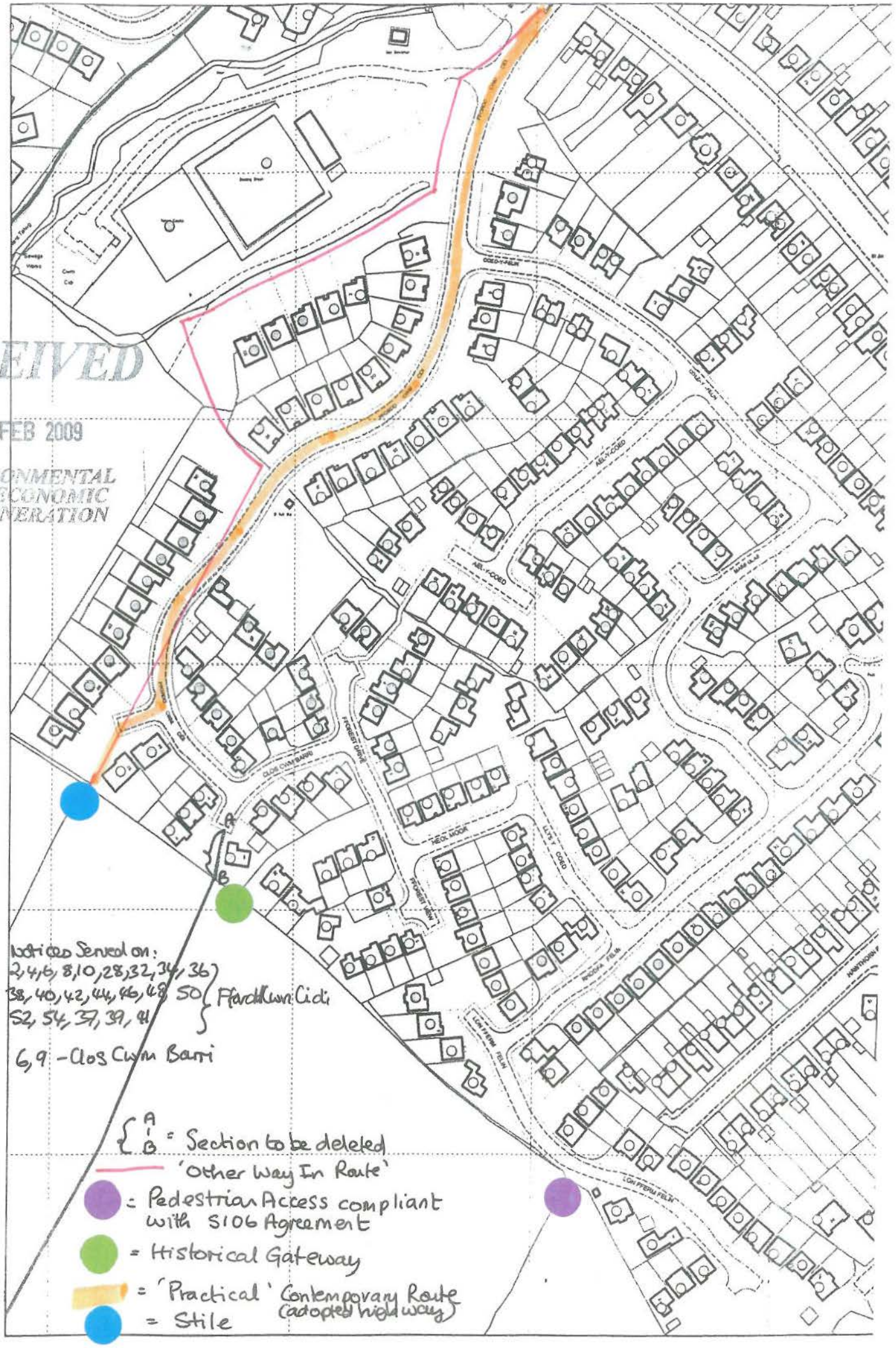

Wildlife and Countryside Act 1981
Statement to Support Application to modify the Definitive Map and Statement
(Section 53(3)(c)(i) and Section 53 (3)(c)(iii))

A Public Hearing held was held on 3rd December 2002. On 25th March 2003 the Planning Inspector made his decision to confirm an Order made by the Council to add Public Footpath 73 Barry to the Definitive Map (Document 1). Prior to this the Definitive Map Planning Sub Committee had held its own Hearing on 19th November 2001 which was adjourned to the 26th November to enable a site visit to be undertaken. Officers were also to investigate/clarify points on the WCA1981 and identify any case law regarding a **minor** variation to the access point of the footpath route. I was an Objector to the Order and gave evidence at the meeting of 19th November 2001. I escorted Councillors on the Site Meeting held on 21st November. The Sub Committee met again on 26th November 2001 but I was not allowed to be present so was not privy to the Sub Committee's responses to the Site Meeting or the case law discussions. The Sub Committee determined that an Order be made. At the Public Hearing held on 3rd December 2002 three Officers attended to represent the Council's **support** of the Order.

Under Planning Law the Council is under statutory obligations to advertise and publicise Planning Applications and strict time constraints apply to those parties wishing to make representations or objections. However, in so far a Public Rights of Way are concerned the law allows persons to make Applications under the WCA 1981 **after** development commences and even **after** people have moved into their properties. I am bound by the law as it currently stands and attach my dual Application and evidence that Modification Orders are required to **add** a way to the Definitive Map under Section 53 (3) (c)(i) WCA 1981 and **delete** a way under Section 53 (3) (c) (iii) WCA 1981.

Background:

The Outline Planning Application for the Cwm Barry Development was submitted on 1st March 1990. After its approval in November 1994 at least a dozen further Planning Applications were submitted in connection with the proposal. Up until September 1999 no person, pressure group (such as C.A.R.A.G and Barry Preservation Society), public or statutory authority raised any concerns about the effect of the proposed development on any Public Rights of Way (PROW).

Prior to development the land was in the ownership of the Council and the Land Authority for Wales (LAW). It is vital that designers, developers and Planning Officers check and confirm at the earliest opportunity the effect of development on PROW. The way now known as Public Footpath 73 was **not** shown on the Definitive Map nor was it revealed in Land Searches. It can therefore be deduced that both the Local Authority and the LAW had no knowledge of any PROW crossing the development site from Pontypridd Road through various fields and into the Mill Wood. Even if there had been 'informal' ways used by just a few members of the Public legislation exists to protect landowners against routes being claimed under the 20-year presumed dedication rule. In 1990 both the Local Authority and the LAW could have used this legislation and made section 31 (6) declarations under the Highways Act 1980 therefore protecting themselves and future home buyers. I have checked the Section 31 Register and found no such declarations. The WDA – successor to LAW - did **not** attend the Hearing but made a statement in December 2003, **after** the Order was confirmed, that there was no intention by the Agency to dedicate a public footpath from the **locked** gate at 99a Pontypridd Road and that those tenant farmers working the land would not have been authorised to allow the land to be used as a public

footpath. Unfortunately it was too late for me to use this information to support my objections at the 2002 Public Hearing.

On the basis of three User Evidence Forms submitted by the Chief Witness and two family members the Sub Committee and Inspector found that a PROW was reasonably likely to have subsisted along a route commencing from the frontage of 99a Pontypridd Road for a 20 year period from mid 1979 to mid 1999 (Document 2). There is case law whereby evidence from related persons regarding a claimed right is not sufficiently diverse to constitute **Public** use. Insofar as Public Footpath 73 was concerned the Sub Committee and the Inspector deemed otherwise.

A Resident – later to become the Chief Witness at the Public Hearing - who had moved to the Wimpey Phase 3 Development in December 1998, was concerned at the lack of a Pedestrian Access to Porthkerry Country Park. This Resident formed a Footpath Action Group. A petition was organised in June 1999 and sent to Wimpey on 24th June 1999 (Document 3). No specific claim was made for a PROW in the letter, the petition being more about the design layout of Phase 3 and the absence of an alleged 'promised purpose built' Pedestrian Access. An Officer of the Council and a Ward Member were copied into the correspondence. There was local press coverage on 12th July 1999 regarding the matter (Document 4). According to the article the Ward Councillor, who had himself purchased a property on the Phase 3 Development on 25th June 1999, had '*taken up the case*' and promoted the idea of a Public Path to access the Park. The Ward Councillor was a longstanding and experienced Member of the Planning Committee. He had sat on the Committee when the Original Outline Application was submitted in 1990 and the Decision Notice issued in November 1994. He has been a regular Planning Committee Member ever since.

Action was initiated by the Resident against Wimpey for its failure to provide a Pedestrian Access in its site layout but Wimpey was absolved from any wrong doing. Another Phase 3 Resident a supporter of the Footpath Action Group who had purchased a property on 23rd October 1998 progressed the matter of a Public Path as suggested by the Councillor. On the 29th September 1999 this Resident (the 1999 Applicant) made an Application for a 'claimed route' under Section 53 (3) (b) of the WCA 1981 citing the 20–year presumed dedication rule. The Applicant had lived on Phase 3 for 11 months before making the Application. The Applicant claimed 18 months use of the Order Route on his Evidence Form.

At the Hearing the Inspector gave considerable weight to a **Draft Plan** submitted by the Applicant dated 27th November 1997 that showed a Pedestrian Access alongside plot 255. Reference was also given to a Section 106 Legal Agreement relating to the development. The Inspector formed the view that planning obligations as per the Agreement were passed to Wimpey to provide a Vehicular Access and Pedestrian Access to the Park form Phase 3.

There is no indication in the Inspector's Report that the Officers in attendance informed the Hearing that the **Draft Plan** was superseded on 22nd May 1998 where the 1.8 metre width allowed for the Pedestrian Access was included within the curtilage of Plot 255 (No 9 Clos Cwm Barri). The Highways Authority had specifically requested this planning amendment recognising potential Public misuse of the private driveway and associated nuisance. A wall was built separating Plot 255 from the private driveway serving Plot 256 and 257. The Council claimed reserved rights for Council maintenance vehicles only to access the Park over the driveway (Document 5). The Decision Notice issued on 5th June 1998 reflected the amended site layout so

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the May 1998 Plan became the **Approved Site Layout Plan** and this rendered the **Draft Plan** obsolete.

A matter of just 3 days after the press coverage on 12th July 1999 the Section 106 Agreement was eventually registered as a land charge – some 4.5 years after it was executed. At the time the Applicant, his Chief Witness and the Councillor purchased their homes the Agreement would **not** have been revealed in the local land searches undertaken by the Local Authority. Cwm Barry was a major development and it took nearly 5 years to approve the Outline Application. When first approached by the Footpath Action Group one would have expected the Ward Councillor, an experienced Planning Committee Member and a Phase 3 homebuyer himself, to have explained the planning aspects and the obligations as per the Section 106 Agreement. There is no evidence that he did so.

The Section 106 Agreement, which is legally binding, is accompanied by a plan showing that **one** purpose built Pedestrian Access be located between points A and B on the boundary between the residential development and the Park. The Plan shows that the Pedestrian Access could have been located either on the Phase 1, 3 or 4 boundaries – and was **not** an obligation specific to Phase 3. The exact positioning of the designated Pedestrian Access was for the Local Planning Authority to decide and incorporate it as a planning condition into the 'chosen' Phase and the easy solution was to have added a kissing gate at LLon Ferm Felin. (This was actually undertaken in 2007.) No such Pedestrian Access condition is shown on Decision Notice for Phase 3 (Application 98/00014/RES) and neither is there a reference on the Notice to the existence of a Section 106 Agreement (Document 6). At the Hearing the Inspector made reference to the Section 106 obligations so the Officers were duty bound to inform the Hearing that the Agreement had **not** been registered as a land charge in a timely manner and to fully explain its terms and conditions. There is no indication that the Officers in attendance at the Hearing put the record straight on issues surrounding planning matters and the legal Agreement.

Condition 9 for Application 98/00014/RES provides for the engineering details for such matters as drainage, road layouts etc to be agreed **prior** to development commencing. Condition 9 was not discharged until 13th November 1998 when properties had already been built and were in beneficial occupation. A Section 38 agreement for the adoption of roads was entered into for Phase 3 in June 1999 and a provisional agreement for the adoption of sewers in June 2004. It would appear that up until June 1999 there was no authoritative or statutory control as to how roads and drains were being built. In the absence of regulatory control it is perhaps not surprising that roads and drains on Phase 2, 3, 4 and 5 remain un-adopted to this day. The Applicant had actually bought his property in October 1998 so one must question how a conveyance could be progressed when a planning condition as important as the engineering layout had **not** being discharged. It would also account for the fact that the Applicant supported his claim on the basis of obsolete plans. The landscaping condition had also **not** been discharged and by the time it had been in March 1999 several other people, including the Chief Witness had moved into their homes.

The Council was fully aware of the breaches of conditions and Enforcement action was initiated in September 1998. I have been unable to access all the Enforcement information. This is currently the subject of an unresolved formal complaint. However, I have been able to establish that Wimpey was asked to submit 2 further Planning Applications for Phase 3 in order to resolve matters. One application was for landscaping (Application 98/01190/RES) and the other for 18 dwellings on Phase 3 for which development had not yet commenced (Application 99/00164/RES).

In the absence of permission from the Land Authority for Wales and the Local Planning Authority and in breach of Condition 8 Wimpey had already removed a 19 foot section of ancient hedgerow that should have been retained, before the Council claimed any knowledge of the breaches of planning conditions. An access to the Park had been made at the end of the private driveway serving Plots 256 and 257 to create a new gateway that was to serve as an access point for Council maintenance vehicles. Prior to us moving in existing residents on Cwm Barry, including the Applicant and Chief Witness, took to using a 'gap' alongside the newly installed gate to access the Park rather than the historical gateway some 10 metres to the left at the rear of Plot 255. The Inspector did accept that the historical gateway was at the rear of Plot 255 but nevertheless regarded the misalignment of Order Point B as **insignificant**.

The Chief Witness had lived on the Phase 2 Westbury Homes development since June 1997 prior to moving to Phase 3 in December 1998 and claimed to have walked the claimed route from Pontypridd Road for over 20 years. I am aware that both the Applicant and the Chief Witness are very sensitive about the removal of ancient hedgerow and trees – both having reported me to the Council for what they perceived as unlawful tree felling and hedgerow maintenance. I had obtained proper planning permission: had consulted with the Tree Preservation Officer: and worked in conjunction with the Park Warden. Their claims were without merit – but this did not prevent the Council's Legal Department sending me an official letter of action. The Legal Department later apologised. Nevertheless the point I wish to make is that I have seen no evidence that either the Applicant or the Chief Witness reported Wimpey a truly unlawful act.

A Access that fully complied with the terms of the Section 106 Agreement was provided at Lon Fferm Felin in June 2000. The Council invited the Applicant and his witnesses to withdraw from the 'claimed path' Application. Two witnesses did so but the Applicant and Chief Witness pursued the claim.

Once the Inspector made his decision I was given 42 days to take a matter that had taken 3 and half years to determine to an Appeal. I obtained private legal advice costing £4500 to be told that to go to an Appeal and perhaps a Judicial Review would cost in excess of £100,000. I was advised to apply for a Diversion Order to divert the route. I did so in May 2004 where I proposed it be diverted to Lon Fferm Felin where it would **not** interfere with anyone's private land interests. I had to give an undertaking to the Council to pay Order costs of £1000. The Chief Witness at the December 2002 Hearing organised a petition to object to my Application and obtained in excess of 200 signatures – mainly from Cwm Barry Residents. The Council being mindful of the petition dismissed my Application.

Section 53(3) (c) (i) – Application to <u>add</u> a way to the Definitive Map:

I attach Documents 7 and 8 which are plans showing the exact location of a stile between Plot 111 and 112 on the Wimpey Phase 1 development. I also attach Document 9 which is a photograph taken of the stile at the site meeting of 21st November 2001 and a recent photograph taken on 5th January 2009 showing that the stile is still in place (Document 10). It is indisputable that this stile was used to access the fields and I specifically drew the stile to the attention of the Sub Committee at the Site Meeting on 21st November 2001.

The Inspector decided that the historical access from Pontypridd Road was via the track and **locked** field gate where 99a Pontypridd Road is now located. According to the Inspector when the development of 99a commenced walkers found *'another way in'* (Document 11). I am aware that the build of 99a commenced *circa* 1996 As there are well established residential properties either side of 99a dating back to the 1930s the only *'other way in'* must have been via the track

leading to the sewage works. I attach Document 12 where I have analysed the *'other way in route'* route from Pontypridd Road on an aerial photograph taken **prior** to development commencing. I have followed the hedge line and gaps and taken the route through the public open space on the Phase 1 development. The route then joins Ffordd Cwm Cidi and enters the Park at the stile – Ordinance Survey co-ordinates ST 64.29. However, since FFordd Cwm Cidi became an **adopted** Highway in February 2004 it may be more practical that the added route commences from the Pontypridd Road junction, follows the line of the **adopted** highway Ffordd Cwm Cidi and then enters the Park via the stile. Many people on Phase 1, 2 and 3 objected to my Diversion Order to Lon Fferm Felin claiming that the extra distance and time involved would be unreasonable. The route proposed on my Application will satisfy the needs of such people.

It is accepted that the current stile may prevent use by the elderly and less able. However, the Council obtained grant funding from the Countryside Council for Wales in 2006/07 for improved access to the Park. Part of the funding paid for a kissing gate that was not utilised so this gate could replace the stile. Based on the Inspectors own findings but taking into account the now **adopted** status of Ffordd Cwm Cidi I make my Application to **add** a way to the Definitive Map as per the attached Field and Street Plan.

Section 53 (3) (c) (iii) – Application to <u>delete</u> a Way from the Definitive Map:

Order Point A and B on Public Footpath 73 was **wrongly** recorded as follows:

1. Clos Cwm Barri is not served by an **adopted** highway
2. According to the **Approved Plans** the Council has private access rights over the private driveway serving numbers 6 and 8 Clos Cwm Cidi. These rights were **not** recorded on the Order. Furthermore the owners/occupiers of numbers 6 and 8 also have their own private access rights over the driveway which is in their shared ownership and these were also not recorded. In general terms all access rights involving a PROW - public and private - need to be recorded on the Definitive Map for clarity purposes and for the public to be aware of potential hazards.
3. The Inspector only considered Order Point B as a *'misalignment'*. Order point A is also a *'misalignment'* in so far as the Public Right of Way is concerned because this point was **not** historically alongside a hedgerow or a 'gap' in a hedgerow so a 'claimed path' could **not** possibly commence from what was historically a random spot in a field.
4. The implied **minor** diversion should not have been regarded by the Inspector as 'De Minimus' because the route selected by the Applicant involved allowing the Public at large to make use of the full length of a private driveway at any time – day or night - that did not follow as closely as possible the line of worn tracks shown on aerial photographs.
5. The Inspector gave inappropriate consideration to a **Draft Plan** that showed a proposed Pedestrian Access. He therefore confused an intended design layout which is a **Planning Matter** with a **Section 53 Claim** that is a **PROW** issue. Order Point A is located at where the **proposed** Pedestrian Access would have commenced. The correct alignment for the intended Pedestrian Access would be through Plot 255 (No 9 Clos Cwm Barri) leading to the natural gateway in the hedgerow to access the Park. To install the Pedestrian Access now would require the demolishing of the wall separating Number 9 Clos Cwm Barri with Numbers 6 and 8 and the requisition of land within the curtilage of Number 9. The current owner/occupier of Number 9 would have to be in agreement and appropriate compensation paid. A legal process for a Path Creation Order would have to be entered into under Section 26 of the Highways Act 1980.
6. The Inspector did not have an authenticated copy of the Section 106 Agreement neither was he in possession of the Land Transfer Agreement between the Land Authority for

Wales and Wimpey dated 17th November 1997. He therefore based his decision on **assumption** rather than fact.

7. The Inspector **incorrectly assumed** that we had full knowledge of the press article dated 12th July 1999.
8. The Inspector **incorrectly assumed** that we had exchanged contracts **after** the article of the 12th July 1999 had been published.
9. The Inspector **incorrectly assumed** that we had **not** undertaken proper inquiries into Pedestrian Access Rights affecting Plot 256. We had instructed a professional solicitor to deal with our conveyance and met with an Officer of the Council on 9th June 1999 to discuss Pedestrian Access rights affecting Plot 256.
10. The Inspector **incorrectly assumed** that John Smith MP was deceased!
11. An Officer commented at the end of the Hearing that the Order route would present '*no problems for the planting of trees on much of the fields' This* was an **incorrect** statement because when the PROW was placed on the driveway the access gate had to up-lifted and moved a distance of at least one metre thereby reducing the gateway width. This rendered the Vehicle Access unusable for the simple reason there was not enough width to support service vehicles.
12. Notwithstanding point 11 above there is no statement on the Definitive Map as to **exactly** how wide the PROW is and no definition of the precise route from A to B across what is private property. This raises ongoing problems with civil trespass issues.
13. It is unlawful under the Section 34 of the Road Traffic Act 1988 to drive a mechanised vehicle over a footpath without lawful authority. Therefore. by placing a PROW over the Vehicle Access the Council would be committing an unlawful act to access the Park at Clos Cwm Barri - **unless it could provide proof of its lawful right to do so.**
14. Under section 27 of the Countryside Act 1968 PROWs must be signposted where a footpath leaves a metalled road. The Highways Authority has been unable to provide signage for the PROW in compliance with the law. I believe this is because:
    i) Clos Cwm Barri is **not adopted** so the Highways Authority has not jurisdiction to erect signs
    ii) Even if Clos Cwm Barri was adopted to erect a signpost or way marker at Order Point A to properly delineate the one metre width of the PROW referred to in the Inspector's Report would cause an obstruction to the entrance of the private driveway rendering it impossible for homeowners to drive over it to access their homes and garages
15. The way marker positioned at Order Point B is actually attached to the Council's access Gate which forms part of the shared boundary with my property. Permission was never sought or granted to locate it on the shared boundary. I also have concerns that the placement of the way marker is not compliant with the Traffic Signs Regulations and General Directions 1994
16. The Inspector in effect 'created' a new path without my permission or consent through my property under the WCA Act 1981. There is **no provision** under the WCA 1981 to compensate private landowners whose properties are affected by PROW. Most importantly this Act does **not allow** for path creations –such matters are covered by Section 26 of the Highways Act 1980 where compensation is payable. (See point 5 above.)

None of the above very relevant and pertinent points were addressed in the Inspector's Report. Whereas it would not be expected for the members of the Public supporting and objecting to the Order to have intimate knowledge of such matters the same cannot be said for the three qualified and experienced Officers in attendance. The Inspector therefore misguidedly made his decision to

confirm the Order in the absence of information that the Council had a duty to provide to ensure a fair Hearing took place and that no party was prejudiced in any way.

Generally speaking a Council is under an obligation to carry out investigations into all the circumstances surrounding an Application. In this instance the Vale of Glamorgan Council was:

- the landowner of the Porthkerry Country Park;
- a previous landowner of property within the developed area of Cwm Barry ;
- the decision maker as per the Planning Committee procedures in place at the time;
- the Local Planning Authority;
- the Highways Authority;
- the Responsible Authority for maintaining the Local Land Charge Register;
- the Surveying Authority;
- and the Order Making Authority.

The considerable conflicts of interest issues aside the Council was fully equipped to undertake in depth and substantive investigations into the Application.

The WDA and Wimpey did **not** attend the Hearing to clarify and support the objections. The Officers in attendance did **not** take the lead at the Hearing – as would be the usual practise - and had very little input or comment. Perhaps there was some concern that the breaches of planning conditions, development control and Section 106 irregularities in which the Council, the WDA and developers all had an involvement in would surface so the stance to either not attend or, if in attendance, maintain a virtual silence was deemed the best policy? Perhaps the Officers felt cpmpromised by the significant conflict of interest issues? Perhaps the private land interests and quality of life of the owners of number 6 and 8 Clos Cwm Barri were deemed expendable? Whatever the truth of the matter I now make an Application to have Order Points A and B deleted from the Definitive Map on the grounds that the PROW through my property was wrongly recorded. It would be in everyone's best interests that my Application is dealt with in a prompt manner.

[redacted] Mrs J Underdown

Date 4-2-09

Application Documents: AP 01 and AP 04
Document 1 – Copy of Order confirmed on 23rd March 2003
Document 2 – Summary of User Evidence Forms of those supporting the Order
Document 3 – Letter to Wimpey 24th June 1999
Document 4 – South Wales Echo Article 12th July 1999
Document 5 – Section of Approved Plan dated 22nd May 1998 and approved on 5th June 1999
Document 6 - Copy Decision Notice 98/00014/RES
Document 7 - Phase 1 Layout Plan denoting stile between plots 111 and 112
Document 8 – Phase 1 Development Layout plan denoting stile between plots 111 and 112
Document 9 – Photographs of stile taken at site meeting 21st November 2001
Document 10 – Photograph of stile taken 5th January 2009
Document 11 – Planning Inspector's Report
Document 12 – Aerial Photograph analysing route
Document 13 – Field Plan
Document 14 – Street Plan

Yr Arolygiaeth Gynllunio

Adeilad y Goron, Parc Cathays, Caerdydd, CF10 3NQ

Uniongyrchol 029-2082-3274/ Ffacs 029-2082-5150

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Sandra Thomas
Vale of Glamorgan Council
Dock Office
Barry Docks
Barry
CF63 4RT

Your Ref / *Eich cyf:*

Our Ref / *Ein cyf:* 515344

Date / *Dyddiad:* 31 March 2010

Dear Madam

WILDLIFE & COUNTRYSIDE ACT 1981
REQUEST FOR A DIRECTION UNDER SCHEDULE 14, PARAGRAPH 3 (2)
REQUEST TO CHANGE PARTICULARS OF FOOTPATH FROM PONTYPRIDD ROAD TO MILLWOOD

I enclose a copy of the decision on the above Request for Direction, for your information.

Yours sincerely

J Nicholas

JULIAN NICHOLAS

D.E.E.R
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ACTION BY: BGIST
NO: EDS.
ACK:

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Mrs Jean Underdown

[redacted]

Your Ref / *Eich cyf:*

Our Ref / *Ein cyf:* 515344

Date / *Dyddiad:* 31 March 2010

Dear Mrs Underdown

WILDLIFE & COUNTRYSIDE ACT 1981
REQUEST FOR A DIRECTION UNDER SCHEDULE 14, PARAGRAPH 3(2)
ADDITION OF FOOTPATH FROM PONTYPRIDD ROAD TO MILLWOOD AND DELETION OF PART OF FOOTPATH NO. 73 AT CLOS CWM BARRI

I refer to your letter of 4 February 2010 in which you have requested that, in accordance with paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, a direction be made requiring the Vale of Glamorgan Council to determine your application submitted to them on 4 February 2009. The substance of the application was that an order be made to modify the definitive map and statement by adding a footpath commencing at Pontypridd Road to Millwood and to delete a section of Footpath 73 at Clos Cwm Barri.

In considering whether, in response to your request, the Council should be directed to determine your application within a specified period, I take into account any statement by the Council setting out its priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any action already taken by the Council as expressed intentions of further action on the application in question; the importance of the case in relation to others; and any views expressed by the applicants.

In reply to our consultation on your request for a direction the Council has confirmed that your application is to be considered at a meeting of the Council's Planning Sub Committee on 28 June 2010.

I accept that the resources available for dealing with applications of this kind are finite. I am also satisfied that the Council has set out a rational and reasonable approach to processing your application.

I appreciate your concerns that your application has not been determined within the one year time limit. However, for the reasons explained above, I am satisfied that the Council should be allowed to progress the application as is currently planned within its list of outstanding applications.

For these reasons I have decided not to issue a direction to the Council.

Please note however, that should the application not be dealt with within the timescale given, I shall be seeking a written explanation from the Vale of Glamorgan Council. It is open to you to make a further application for a direction at a later date if the authority continues to fail to make a decision on your application.

A copy of this letter is being sent to the Vale of Glamorgan Council.

Yours sincerely

John Davies

JOHN DAVIES
DIRECTOR FOR WALES
Authorised to sign on behalf of the Welsh Ministers

Yr Arolygiaeth Gynllunio **The Planning Inspectorate**

Our Complaints Procedures

Complaints

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Opposed rights of way orders can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This often leads to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding orders works. When this happens, we will try to explain things as clearly as possible. Sometimes the objectors, the order making authority or another interested party may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.
Sometimes a complaint is not one we can deal with (for example, complaints about how long the order making authority took to submit the order to the National Assembly), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Complaints Officer to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

The Complaints Officer for Wales works independently of all our casework teams. This ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give you a reply within three weeks wherever possible.

When investigating a complaint, we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply, we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.
<u>However, the law does not allow us to amend or change the decision.</u>

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report to it on our performance. APOS regularly examines the way we deal with complaints and we must satisfy them that our complaints procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint, you can contact the Public Services Ombudsman for Wales, who can investigate complaints of maladministration against Welsh public bodies.

If your complaint is against a government department or national public body the Parliamentary Commissioner for Administration may be able to help you (often referred to as the 'Ombudsman'). If you decide to go to this Ombudsman, you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – The law does not allow us to do this because an order decision is a legal document that can only be reviewed following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the system.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted, but it is not necessary to list every bit of evidence.

"How long will I have to wait for a reply to my complaint?" – You can expect a full reply within 3 weeks.

Further information

Every year, we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with, and how we plan to meet the targets which Ministers set for us. At the end of each financial year, we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the procedures for determining public path orders and definitive map orders by phoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

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Website: www.ombudsman-wales.org.uk
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Challenging the Decision in the High Court

Challenging the decision

Once an Order Decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider an order if a challenge is successful and the decision is returned to us for re-determination.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector misinterpreted the law or that some relevant criteria had not been met. If a mistake has been made and the Court considers that it might have affected the decision, it will either quash the decision and return the case to us for re-determination or it will quash the order completely.

Different order types

How High Court challenges proceed depends on the Act under which the order has been made and whether or not the order has been confirmed:

Challenges to <u>confirmed</u> orders made under the Wildlife and Countryside Act 1981

Anyone can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54 ; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will quash the order. The Inspectorate will not be asked to re-determine the case.

. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.**

Challenges to <u>confirmed</u> orders made under the Town and Country Planning Act 1990 and the Highways Act 1980

Anyone can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful the court will quash the order.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to orders which are <u>not confirmed</u>

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information below). If the

challenge is successful, the court will either quash the order, or quash the decision and ask the Inspectorate to re-determine the case.

Applications for judicial review must be received by the Administrative Court within 3 months of the date of the Order Decision, unless the Court extends this period.

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – Anyone aggrieved by the Order Decision may do so. This can include statutory objectors, interested parties as well as applicants and Order Making Authorities.

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court, but it is advisable to do so, as you may have to deal with complex points of law.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different, or expanded reasons.

Contacting us

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Public Services Ombudsman for Wales
1 Ffordd Yr Hen Gae
Pencoed
CF35 5LJ

Tel 0845 601 0987 (local call rate)
Fax 01656 641199

Website: www.ombudsman-wales.org.uk

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

"What happens if the order is quashed?" - Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

Inspection of order documents

We normally keep case files for one year after the Order Decision is issued, after which they are destroyed. You can inspect order documents here at the National Assembly for Wales building in Cathays Park Cardiff by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is

ready for you to view. Alternatively, if visiting would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the Order Making Authority.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at Cardiff Civil Justice Centre, 2 Park Street, Cardiff CF10 1ET, telephone 029 20376400; Website: www.courtservice.gov.uk

Council on tribunals

If you have any comments on our procedures, you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: http://www.council-on-tribunals.gov.uk/ However, it cannot become involved with the merits of individual cases or change an Order Decision.

GADARN O BLAID NA·POBL ANABL

BUDDSODDWR MEWN POBL
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