

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

File Reference	53B/0008
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.
O.S. grid ref.	From 309868 167913 to 309605 167519
Address / postcode	Clos Cwm Barri CF62 6LR
Nearest Village/Town	Barry
Locally known name	-
Community / Town Council	Barry
Applicant	Mrs. K. Gallimore
Date of application	30.11.2009
Date of receipt of application	30.11.2009
Date when representation made to the National Assembly in accordance with 3(2) of Schedule 14 WCA 1981. As notified by the applicant.	
National Assembly's decision and terms of direction	
Date set for determination of application	01.07.2010
Date on which the Authority determined the application	01.07.2010
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.	-

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

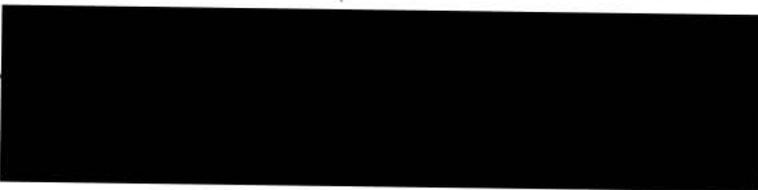
Wildlife and Countryside Act 1981

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

To: The Vale of Glamorgan Council

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

I / We: KAREN GALLIMORE

Of: 

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]

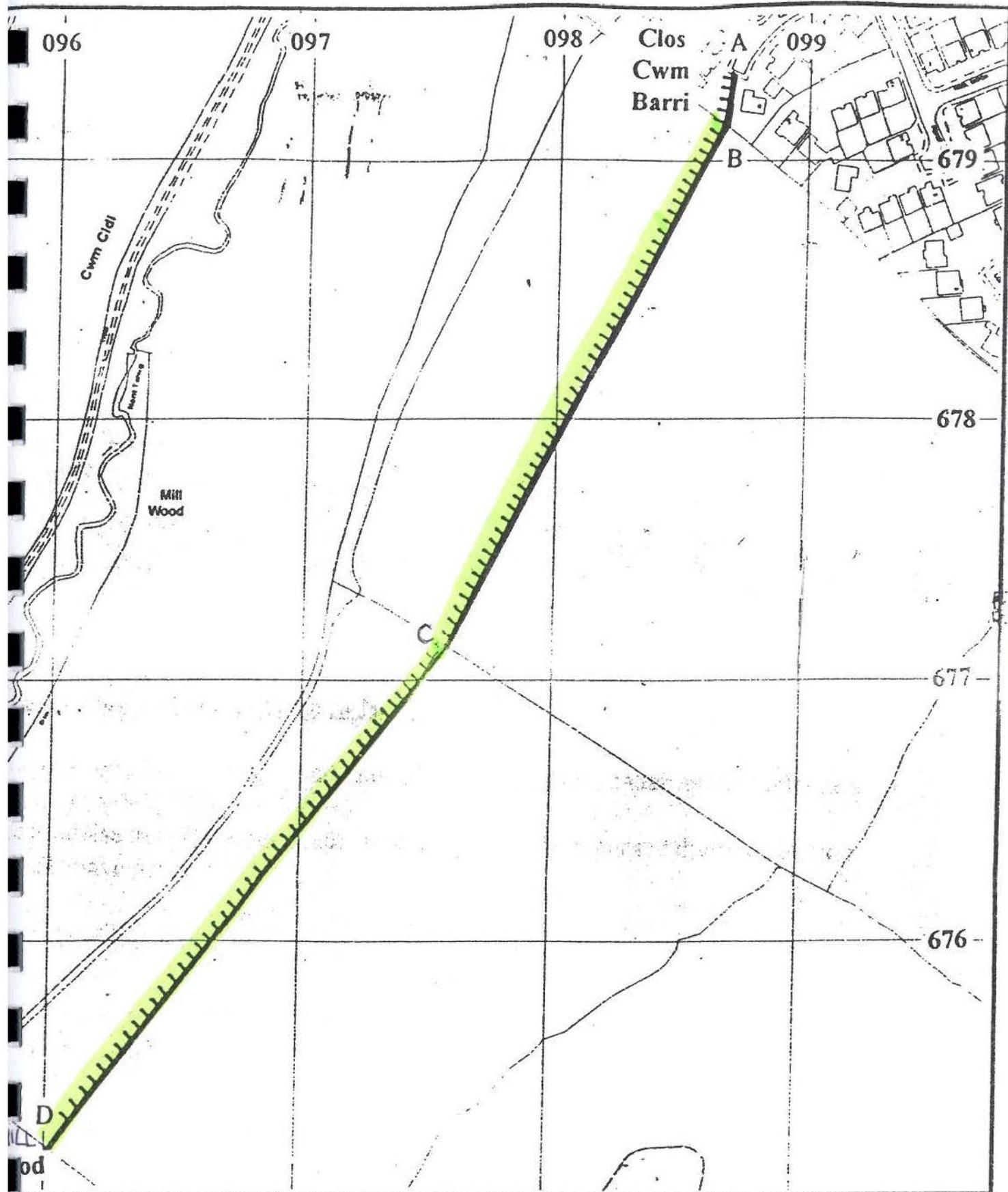
- ~~adding a footpath / bridleway / restricted byway~~
- ~~changing the status of the footpath / bridleway / restricted byway~~
- ~~deletion of the footpath / bridleway / restricted byway~~
- ~~changing the particulars relating to the footpath / bridleway / restricted byway~~

from PROW 73 - ORDER POINT B - Entrance to Porthkerry Country Park
to PROW 73 - ORDER POINT D - Entrance to Mill Wood located in Porthkerry Park
not defined in 2002
with a width of Order 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.

Dated 30th November 2009 Signed 

(on behalf of)



Section of PROW 73 to be DELETED

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

Statement and Evidence in support of my Application

An evidential event under Section 53(3)(c)(iii) of the Act is the discovery of evidence showing that a right of way should be deleted, or other particulars in the Definitive Map and Statement require modification. This Application is specifically for the Deletion of a Way.

Whereas it was my wish that the **Deletion of Order Points B, C and D** be determined as part of my January 2009 Application the Council has not provided any guarantee that it will do so hence the submission of this associated Application. I have made further evidence submissions since January 2009 in support of my January 2009 Application that have not yet been released to the public that impact on this **Deletion Application**. I therefore urge those parties affected by the **Deletion** to ensure that they view my January 2009 Application once it is made available to the public

An error was made when the 1999 Application was determined by the Council and later confirmed by the Planning Inspector in that none of the professional and experienced persons involved in the process appreciated that Order Points B, C and D did not fulfil *nec vi, nec clam* and *nec precario* of Section 31 HA 1980. For those with knowledge and understanding of the WCA 1981 and Section 31 of the HA 1980 it would have been clearly apparent that the Claim for this section of the Application foundered on both *nec vi* and *nec precario*. I adduce primary documentary evidence as follows:

1. The Legal Transfer Deed and Plan dated 21st November 1994 between the Land Authority for Wales and the VOG Borough Council for the transfer of the Four Fields to the Council to be used as Public Open Space on 21st November 1994. Sealed under seal number 18226(ii) by the Council and seal number 1756 by LAW – copy Deed and Plan attached
2. HM Land Registry Title Deed WA895681 – copy attached - note the covenant under C: 2. of the Charges Register
3. Deed of Rectification dated 22nd September 1998 between VOG Council and LAW. VOG Council seal number 01107(i) and LAW seal number 2318 – copy attached

The above documents are irrefutable proof that the fields became part of Porthkerry Country Park with effect from 21st November 1994 and as designated public open space (POS) the public had permission (*precario*) to roam and wander at will over the fields that were included in the 1999 Application route claimed subject to compliance with the Park Byelaws that had come into operation on 1st September 1977.

It was never reported what the PROW Sub Committee deemed the 20 year relevant period to be under Section 31 of the HA 1980 when it sat in November 2001 to consider the 1999 Application but it was nevertheless a resolution of the Members of the Committee that the Council advertise its intent to make an Order under Section 53(3)(b) of the WCA 1981. At the Hearing held in 2002 the Inspector decided the material User period of 20 years under Section 31 HA 1980 be from mid-1979 to mid -1999. This being so then Users of the section of route claimed from B to D could only have walked this route 'as of right' from mid-1979

to 21st November 1994 - in other words a duration of just over 15 years and therefore 5 years short of that required under Section 31 of the HA 1980.

The evidence is such that it cannot be argued that section B – C – D of PROW 73 was included on the Definitive Map in error. To resolve the error it is necessary for the Council to make an Order under Section 53(3)(c)(iii) to delete Order Points B – C – D from the Definitive Map and Statement. I would hope that in the interests of correcting the mistake made that both the Council and the Inspector were party to that the Council will be minded to support this Application. I would point out that for any Objections to the Order to be valid then it would have to be proven that Users of Order Points B – C – D walked over the fields 'as of right' from 21st November 1974 to 21st November 1994 to fulfil the Section 31 HA 1980 criteria. However, the Council will be well aware that as a consequence of the Joint Appeals Inquiry held in 1978 it was authoritatively adjudged that there was no significant urban fringe infiltration in the area. The Appeals Decision was issued on 31st July 1978 so even if public rights started to become established with effect from 1st August 1978 compliance with Section 31 would still not be satisfied and it would therefore not be possible to uphold Objections on these grounds.

It is important to add that the situation has been confused because Order Point B as waymarked and 'shown on the ground' is not located in accordance with the 1999 Application and Order that was confirmed without modification by the Inspector on 25th March 2003. The Claim made by the 1999 Order Applicant and his supporters was that when the historical gap behind number 9 Clos Cwm Barri (photographed in November 2001 by the PROW Officer) became impassable the fields were accessed via a gap to the east of and adjacent to the Council's Access gate. This gap, created by Wimpey circa October 1998 when it removed a section of ancient hedgerow to facilitate the installation of the Council's access gate, was later closed by Wimpey when the firm erected a fence panel. Wimpey never obtained the authority from the Land Authority for Wales nor the Council to remove this particular section of hedgerow so I therefore aver that the access to the Park at Order Point B was forcibly created around October 1998 so the 1999 Claim should have foundered on 'nec vi'. The difficulty is that the fence panel is not within the curtilage of the owners of number 8 Clos Cwm Barri but is situated on the shared boundary between the owners of number 9 Clos Cwm Barri and the Council. I therefore wish to make clear that the landowners of number 9 are directly affected by this Application along with the Council as landowner of the Park. However, since Order Point B was incorrectly located by the Council on its shared boundary with the owners of number 8 instead of number 9 I have, as a courtesy only, notified the owners of number 8 of this Application and a certificate to this effect has been completed.

So that there is no misunderstanding I attach as follows:

4. A copy of a photograph by a main supporter of the 1999 Order and Chief Witness at the 2002 Hearing with her hand written caption clearly declaring the fence panel as *'Gap where Pedestrians walked boarded off'*
5. An extract of the March 2003 Decision Letter – note the contents of paragraph 19
6. A photograph of the historical gap in the hedgerow taken by the PROW Officer at the Site meeting of 22 November 2001. Please note that this historical gap is shown on a Survey Map of the Area undertaken on behalf of the Land Authority for Wales in 1977. However, the area where the Council's gate and the fence panel currently are is shown on the Map as dense ancient hedgerow. The 1977 Survey Map was deposited with the Council as an evidence document on 30th July 2009

7. Extract from Decision Letter Joint Appeals Inquiry reference P72/300 and 340 dated 31st July 1978

Karen Gallimore – Section 53 WCA 1981 Applicant (2009 – Deletion) 30th November 2009