

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

<b>File Reference</b>	53B-009
<b>Definitive Map path reference</b>	Barry No.26
<b>Description of intended effect on the Definitive Map</b>	The addition of a footpath from Pontypridd Road to Millwood, Porthkerry.
<b>O.S. grid ref.</b>	310003 168284 to 309767 168149
<b>Address / postcode</b>	From Pontypridd Road CF62 7LX to Millwood CF62 6LZ
<b>Nearest Village/Town</b>	Barry
<b>Locally known name</b>	-
<b>Community / Town Council</b>	Barry
<b>Applicant</b>	Mrs. J. Underdown and Mrs. K. Gallimore
<b>Date of application</b>	01.04.2010
<b>Date of receipt of application</b>	01.04.2010
<b>Date when representation made to the National Assembly in accordance with 3(2) of Schedule 14 WCA 1981. As notified by the applicant.</b>	April 2011
<b>National Assembly's decision and terms of direction</b>	The decision was not to issue a direction
<b>Date set for determination of application</b>	29.07.2011
<b>Date on which the Authority determined the application</b>	29.07.2011
<b>Decision</b>	That a Definitive Map Modification Order be made in respect of the addition of a footpath between Points B - E of the draft order plan. That a Definitive Map Modification Order not be made in respect of section A-B and E-F of the application route as identified within the draft order plan. Plan attached. Order made and advertised. Objections received
<b>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.</b>	-
<b>Date / time and venue of any proposed hearing or inquiry.</b>	25 – 26 June 2014
<b>National Assembly's decision and terms of direction.</b>	Summary of Decision: The Order is not confirmed
<b>Date of confirmation of order and details of any modification made.</b>	-

Continued overleaf

Related documents attached:

Application  
Map  
Statement by Applicant  
Draft Order Plan

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**  
**Section 53 (3)(c)(i)**

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

To: The Vale of Glamorgan Council

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

X/ We: Jean Underdown and 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]

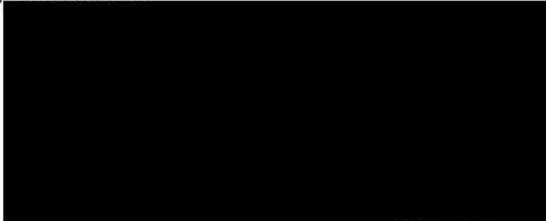
adding a footpath / ~~bridleway~~ / ~~restricted byway~~  
~~changing the status of the footpath / bridleway / restricted byway~~  
~~deletion of the footpath / bridleway / restricted byway~~  
~~changing the particulars relating to the footpath / bridleway / restricted byway~~

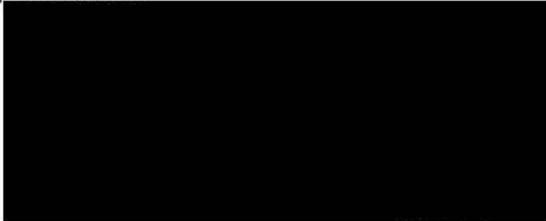
from Pontypridd Road (Traffic light Junction)

to Millwood, Pontypridd Porthkerry Park, PROW 26

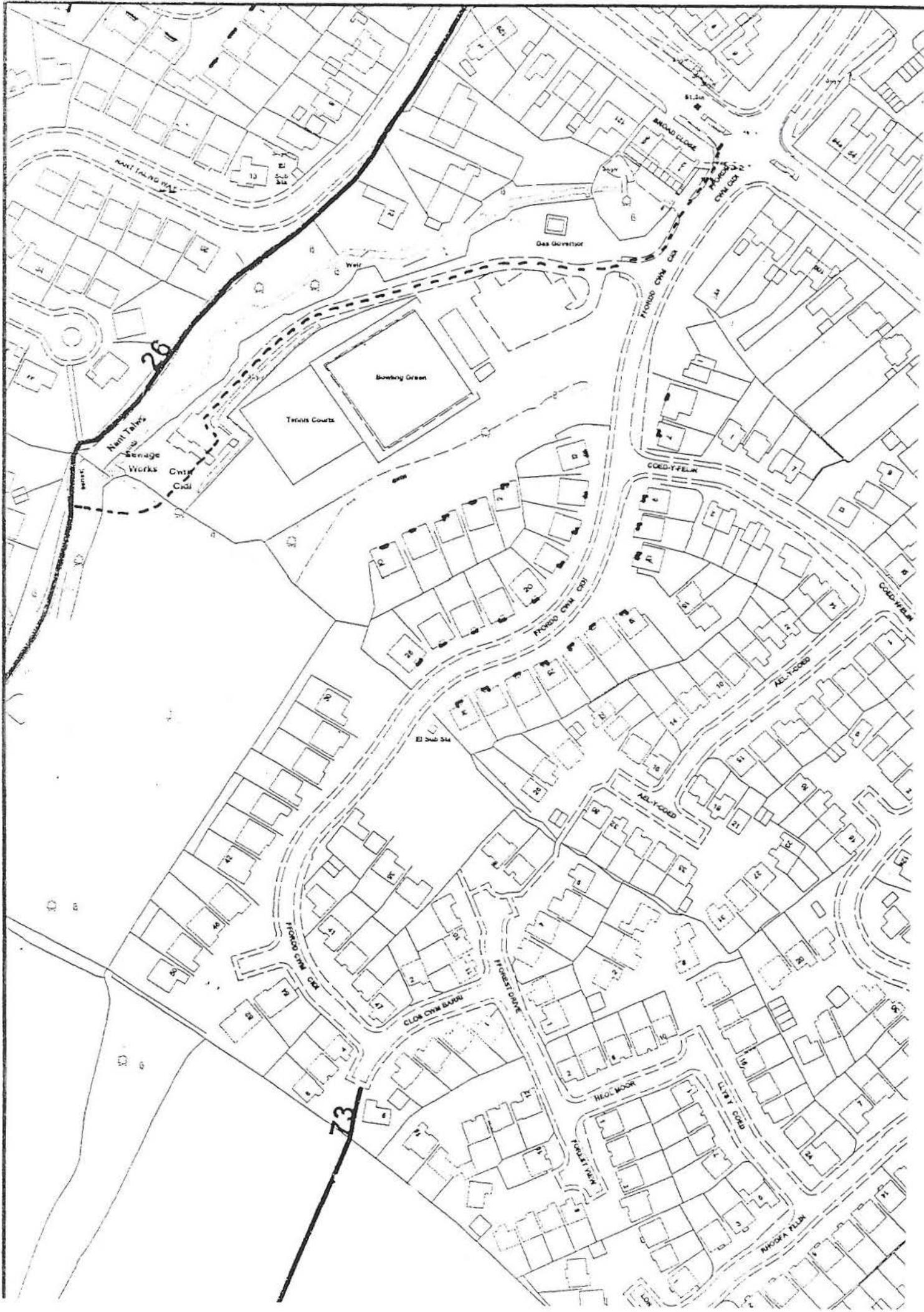
with a width of 1-2 metres and shown on the map annexed hereto.

X/ We attach copies of the documentary evidence ( including statements of witnesses) set out overleaf, in support of this application.

Dated 1st April 2010 Signed 

(on behalf of) 

# 1. Application Map



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

### **Statement and Evidence in support of my Application**

We hereby apply for an Order under Section 53(2) of the WCA 1981 to modify the Definitive Map and Statement by adding a footpath to commence from Pontypridd Road/Broad Close to The Millwood in Porthkerry Park. The route claimed crosses over the Nant Talwg stream and links up with the registered public highway known as Footpath 26 which is part of the Millennium Trail.

An evidential event under Section 53(3)(c)(i) of the Act is the discovery of evidence which when considered with all other relevant evidence available to the Local Authority shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist. In these circumstances two legal tests need to be applied, the statutory test and the common law test. We have full confidence that our evidence will satisfy the statutory legal test. We also provide significant evidence to support a claim under common law. Various Legal Deeds and Documents prove an implication of dedication of a public right of way by the Council over the original Track from Pontypridd Road to the Millwood and that the public has accepted this dedication.

We attach documentary evidence in support of our claim with our comments in *italics* as follows:

#### **1. Application Map**

*The route we are claiming is shown by a broken black line. It is to be noted that the way passes alongside the Millwood Bowling Club and tennis courts and through where Nant Talwg Pumping Station/Sewage works are sited. We have confirmed that although the land on which the Bowling Club and Tennis Courts are located is managed by the Council's Grounds Maintenance Division the area is not part of Porthkerry Country Park. However, we understand that this land is in the ownership of the Council and therefore the Council is a landowner directly affected by this Application.*

*There is some uncertainty as to the landownership details for the actual site on which the Pumping Station/Sewage Works are located albeit Welsh Water has confirmed that the tarmac track leading to the Works is owned by the Council over which Welsh Water has declared it has a right of way. This being so Welsh Water has also been served notice of our Application because regardless of landownership our Application clearly affects Welsh Water's assets.*

2. Extract from Site Survey Plan undertaken on behalf of the Land Authority for Wales (LAW) in October 1977 – Plan Number 6821/1.

*This plan shows the un-adopted Tarmac Track that commenced from Pontypridd Road/Broad Close to the Sewage Plant. From the tarmac area at the front of the Sewage Plant the plan shows a gravel path that leads to a stile that facilitated pedestrian access to the Millwood in Porthkerry Park. The current Warden has attested to the fact that this stile was in existence when he first took up his position as Park Warden in 1979 thus confirming Pedestrian User of the footpath and stile as being well over 20 years. Dedication of public rights may be presumed under the statutory test set out in Section 31 of the HA 1980 for a User period of at least 20 years. Clearly the test is more than satisfied.*

*We do not know when the Sewage Works was first built – but it was clearly before 1977. This exact date of build will be known by Welsh Water or the Council or both. Nevertheless whatever the date was the Works were installed it is clearly obvious that the Track to the works would have been installed at the same time. There is evidence to prove that this Track emanating from Pontypridd Road was originally very narrow – barely wide enough for one vehicle - but was widened circa the late 1980s to accommodate the Council’s Bowling Club and associated facilities.*

3. Extract from Legal Agreement between the VOG Council and LAW dated 10<sup>th</sup> February 1994

*This Agreement was an ‘agreement’ for LAW to compulsory purchase land in the ownership of the Council. This land included the an area of approximately 688 square metres being a section of the un-adopted road leading from Pontypridd Road to the rear of Broad Close, the VOG Council Car Park, Bowling Green, Tennis Courts, Pavilion and **Nant Talwg Pumping Station**.*

4. Extract from Development Brief prepared by LAW for the Phase 1 Cwm Barry Estate – dated 3<sup>rd</sup> June 1994

*Para 4.5.1 clearly states that there was a recognised Pedestrian Link to the Country Park/Mill Wood via the service access ( i.e. tarmac track) to Nant Talwg Pumping Station that was to be preserved.*

5. Extract from Vesting Declaration dated 10<sup>th</sup> October 1994

*This Declaration proves that LAW vested in itself title to the 688 square metres of land referred to in Document 3 above*

6. Extract from Legal Land Transfer between LAW and Wimpey for the Phase 1 site dated 31<sup>st</sup> May 1995

*Para 3.2 enforces what was said in the Development Brief (see Document 4 above) and clearly states that pedestrian access to the Country Park/Mill Wood is to be kept and preserved for all time.*

*When Wimpey acquired the Phase 1 parcel of land from LAW in May 1995 it undertook the responsibility for the Accommodation Works and New Junction layout on Pontypridd Road. It was therefore Wimpey that acquired ownership of land previously owned by the Council and subject to the vesting declaration by LAW over which the main access road into the new estate - Ffordd Cwm Cidi – was constructed. Our claimed route includes the top section of what became Ffordd Cwm Cidi. We would aver that para 3.2 of this Legal Land Transfer Agreement combined with the earlier dated legal agreements between the VOG Council and LAW are all documentary evidential proof of express intention to dedicate public pedestrian rights over the Track leading to the Country Park/Mill Wood. The Legal Land Transfer also acknowledges access rights for vehicles for those accessing the Bowling club and associated facilities as well as the Pumping Station/Sewage Works. It is irrefutable that the dedication was accepted by the public at large for both pedestrian and vehicular use of the track. Furthermore by using the terminology to keep and preserve in the Land Transfer Agreement shows that dedication was for all time in other words the dedication was not constrained by time limitations. Obviously Wimpey did not acquire ownership of the entire track all the way up to the Pumping Station/Sewage Works but dedication of public rights over its entire length had already been implied by the Council in the Legal Agreements between the Council and LAW. Fford Cwm Cidi was adopted by the Council in February 2004 as was the 'splay' entrance leading to the original track. From then the adopted highway Ffordd Cwm Cidi became maintainable at public expense and of course the Council still retains ownership of the un-adopted track. In effect the Council has regained 'control' of the entire route we are claiming.*

7. Decision Notice 04/00067/FUL dated 12<sup>th</sup> March 2004

*This Application was approved by Rob Thomas – Head of Planning and Transport under Officer delegated powers in March 2004 – just a few weeks after the adoption of Ffordd Cwm Cidi. The Decision Notice clearly 'Notes' that the application site may*

*be subject to future claims of Public Rights of Way under S53 WCA 1981 whereby public access may be required through the application site. This would suggest that Mr Thomas was fully aware that Footpath claim could be made. However, in the Files viewed there was nothing to suggest that the Application had been advertised as affecting a PROW. Clearly the fencing and gating works undertaken by Welsh Water in 2004 constitute an obstruction to part of our claimed route. The original stile access to the Millwood/Porthkerry Park was also obstructed by the fence but interestingly a new stile at the end of a narrow metalled path is now located east of the original one. Planning consent was granted in March 2004 but due to the reluctance by Welsh Water to provide us with information the actual date the fencing etc works were carried out is not known. The Application File for the works undertaken by Welsh Water has been examined. Plan Number Q51 006 CO1 depicts the existing stile and a new path to join stile and existing footpath. The new path actually diverted the original footpath to a new line. But the plan would suggest that the historical line through the Sewage Works had been diverted even before the 2004 Application was made.*

*The problem the VOG Council now has to deal with that was clearly anticipated by Mr Thomas in March 2004 is that the relevant Orders were not made to add a recognised way to the Definitive Map and Statement under Section 53 of the WCA 1981 and then to legally divert it under the HA 1980. Efforts have been made to establish who undertook the diversion works and erected the new stile but despite communicating with Welsh Water since the end of last year the organisation is yet to confirm the facts of the matter or accept an offer to undertake a site visit with an appropriate Welsh Water representative. The VOG Council has also not been as forthcoming as it could be with providing us with information. The new metalled pathway leading to the new stile is definitely located on land owned by the Council and yet this new footpath is outside of the 'red line' of the Application Site. This raises many questions. When making its Planning Application Welsh Water completed Certificate B thereby acknowledging that land in the ownership of another party was affected by the development proposal. It seems obvious to us that as the 'affected landowner' the Council should have advised Welsh Water that appropriate Orders in respect of Rights of Way needed to be made prior to commencing the works. Such Orders could have been initiated by Welsh Water or even the Council. The reasons that this did not happen will be no doubt be revealed during the determination of this Application.*

8. Plan of Porthkerry Country Park from Council's website— date not known

*The location of the new stile is depicted by a purple dot. You will note that once you cross over the stile there is a footpath that crosses the small bridge over the stream which after a short distance links to the registered PROW Number 26 which is the termination point (terminus ad quem) of our claimed route. Importantly PROW 26 is part of the Millennium Trail. Other points of interest on this Plan are that registered PROW 73 is not shown but a path leading from the Park to Forest Drive is. A yet to be determined Footpath Application submitted by Karen Gallimore in January 2009 was accompanied by an Application Map analysing a route from 99a Pontypridd Road to Porthkerry Country Park via Forest Drive.*

Mrs Jean Underdown, joint Applicant to this Application, wishes to make a personal statement to support the Application but due to the fact that we still await responses to various information requests – and taking into account the Holiday period - this statement and any other evidence that is discovered will be submitted after the Easter Holiday recess.

**Jean Underdown – Section 53 WCA 1981 Applicant**

**1<sup>st</sup> April 2010**

**Karen Gallimore – Section 53 WCA 1981 Applicant**

**1<sup>st</sup> April 2010**



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

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[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

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To Mrs Underdown & Mrs Gallimore  
(by e-mail)

*Eich Cyf / Your Ref:*

*Ein Cyf / Our Ref:* 515460

*Dyddiad / Date:* 6 May 2011

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Dear Mrs Underdown & Mrs Gallimore

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

I refer to your request for a direction in accordance with paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, requiring the Vale of Glamorgan County Council to determine the above application submitted to them on 1 April 2010. The substance of the application was that an order be made to modify the definitive map and statement by registering the above route.

The Vale of Glamorgan County Council has been consulted as required by the Act.

In considering whether, in response to a request under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981, the Council should be directed to determine an application within a specified period, we take into account any statement of priorities made 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.

The Council has informed us that during a period of staff shortages in 2010 a backlog of rights of way work accumulated and, as a result, work on this particular application has been delayed. They have confirmed however, that work is now underway on the backlog and that pre-order consultations will shortly be carried out with regard to this particular application. Comments from objectors are due to be requested at the end of this month and, providing no further evidence is presented that will require additional research, the Council has confirmed the date of 1 August 2011 for determination of the application.

As the Council appear to be actively working on this application and have provided a reasonable timetable for its determination, it is considered that additional time be allowed for the application to be considered.

We have taken into consideration both the response of the Vale of Glamorgan County Council and the information you have submitted. Your application has been considered in light of the above and it has been decided not to issue a direction to the Vale of Glamorgan County Council requiring them to determine your application within a specified time. Should the application not be determined by the date proposed however, we will request a further explanation from the Council.

*Rydym yn Croesawu Gohebiaeth yn Gymraeg a Saesneg*

*We Welcome Communications in Welsh and English*

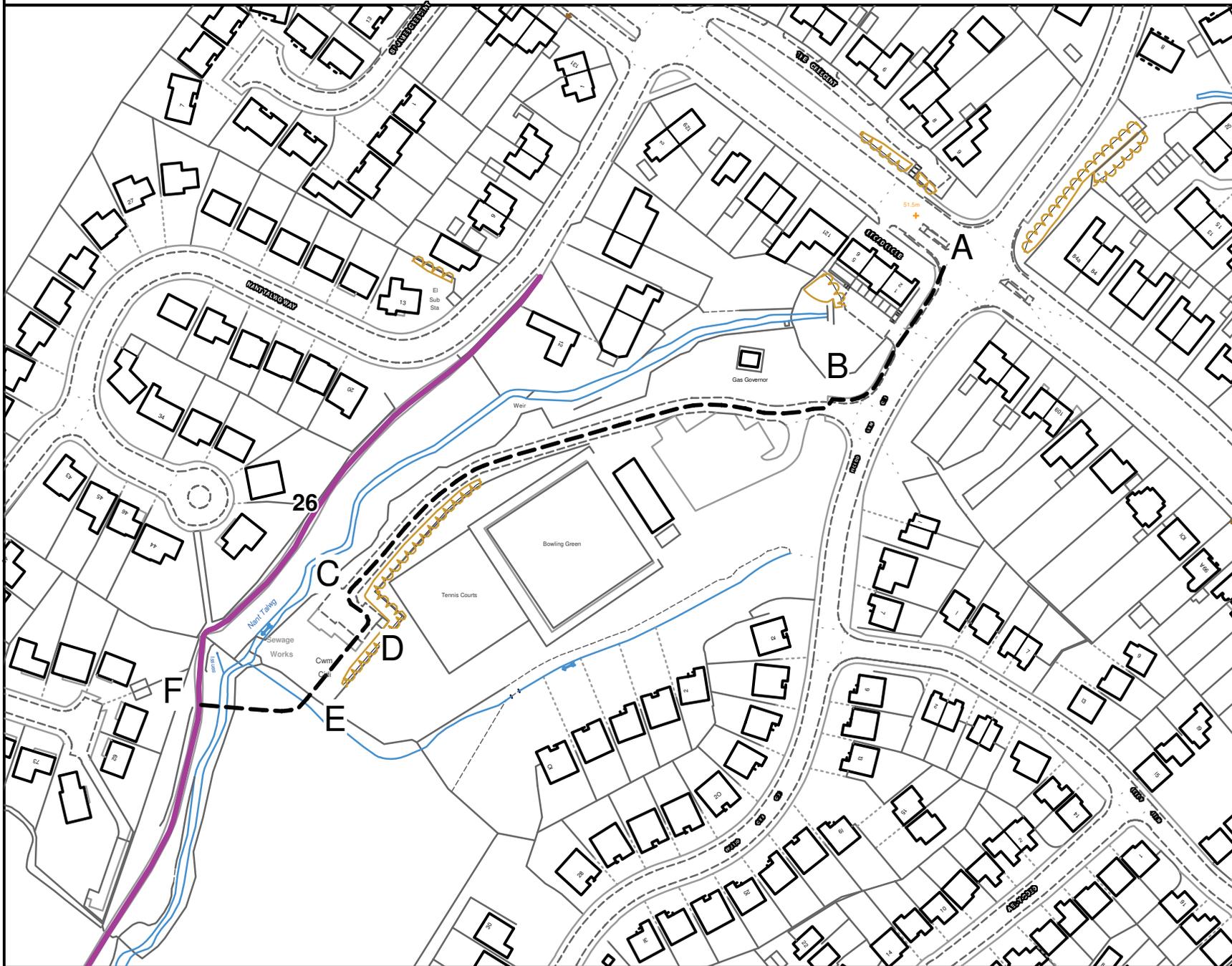
A copy of this letter is being sent to the Vale of Glamorgan County Council.

Yours sincerely

*Helen Sloman*

Authorised by the Welsh Ministers

# Application for Addition of Public Footpath, Barry



**Wildlife and Countryside Act 1984 s53**

**Addition of Public Right of Way in the Parish of Barry**

**Legend**

- To be Added
- Public Footpath (Unaffected)



**Scale: 1:2500**  
**OS: ST 0475**

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**Date: 08/09/2010**  
**Printed By: G Teague**