

**BRIDGEND COUNTY BOROUGH COUNCIL**  
**REPORT OF EXECUTIVE DIRECTOR - ENVIRONMENT**  
**TO THE**  
**MEETING OF THE RIGHTS OF WAY PANEL**  
**Wednesday 7<sup>th</sup> September 2005**

<b>ITEM</b>	<b>DESCRIPTION</b>
1.	<b>BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED RIGHT OF WAY RUNNING FROM BROOKFIELD HOUSE, CWMDU ROAD TO BRIDLEWAY 36 MAESTEG NEAR FFOS FARM, CWMDU, MAESTEG</b>

1. **Bridgend County Borough Council**  
**Definitive Map and Statement: Public Rights of Way**  
**In the matter of the Claimed Right of Way running from Brookfield House, Cwmdu Road to Bridleway 36 Maesteg near Ffos Farm, Cwmdu, Maesteg**

1. A 'Public Right of Way' is a way over which the public has the right to pass and repass. This phrase, therefore, includes carriageways. As a matter of convention, however, (and certainly throughout local government) the term "Public Right of Way" means a path, track and unmetalled road over which the public have the right to walk with, in some cases, the right to ride horses and bicycles and possibly drive motor vehicles.

Public Rights of Way that exist in the Bridgend County Borough Council area 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, with or without a right to drive animals of any description along the highway. In addition to rights on foot and horseback by virtue of Section 30 of the Countryside Act 1968 'any member of the public shall have, as a right of way, the right to ride a bicycle, not being a motor vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.'

A **Byway Open to All Traffic (BOAT)** over which there is a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purposes for which footpaths and bridleways are so used.

The National Parks and Access to the Countryside Act 1949 introduced procedures for recording these public rights on definitive maps. The Definitive Map was so called because it can be produced in Court as conclusive evidence of the rights shown thereon. The Act also introduced procedures for, creating, diverting and extinguishing footpaths and bridleways by Orders. The merits of those Orders would be argued at Public Inquiries, other than in the Courts, if objections were received. In particular sub-sections 27 to 38 of the Act imposed a duty upon all County Councils in England and Wales to map all public rights of way in their area classifying them as either footpaths, bridleways, or Roads Used as Public Paths (RUPP's). The survey was to be undertaken in three stages: draft, provisional, and definitive.

Due to a lack of resources there was a virtual breakdown of the system by the late 1970's with thousands of objections awaiting determination by the Secretary of State. Some Definitive Maps had never been reviewed and were still reflecting the position as at the date of the original survey in the early 1950's despite the introduction of the Countryside Act 1968.

The Wildlife and Countryside Act 1981 aimed to resolve these problems, by replacing the procedure for countywide surveys and reviews with a system of continuous amendments to the definitive maps existing at the commencement date of the Act (the 28th February 1983). It also provided for the gradual completion of Definitive Maps in all areas (except Inner London) not previously surveyed.

However where a survey or review was in progress at the commencement date the new continuous amendment procedure did not begin to operate until that survey or review had been completed or abandoned. In such areas procedures under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 remained.

Glamorgan County Council published a draft map and statement on the 31<sup>st</sup> January 1955. Following the resolution of objections a provisional map and statement was published on 1<sup>st</sup> May 1964, and following the determination of further objections, the Definitive Map and Statement was published on the 4<sup>th</sup> August 1970. The map and statement had a relevant date of the 14<sup>th</sup> September 1954.

Immediately following the publication of the Definitive Map and Statement the highway authority commenced work on an updating exercise which took account of the legal event alterations that had taken place since the relevant date, and the reclassification of all Roads Used as Public Paths (R.U.P.'s). This map was known as the Draft Special Review Map. A new Statement, taking into account the proposed changes to the Definitive Map, was also published.

Public Inquiries were subsequently held to consider representations made in respect of the Draft Special Review and the results were published by the Secretary of State for Wales in 1986. The updated map and statement was published on the 20<sup>th</sup> December 1990 with a relevant date of 1<sup>st</sup> January 1971. This map continues to be used as the Definitive Map of Public Rights of Way for the Bridgend County Borough Council area.

In April 1996 the County Borough Council inherited the task of updating the map and statement. Due to the length of time that had elapsed between the commencement of the Draft Special Review and the publication of the subsequent Definitive Map, many paths were now shown wrongly because they had been subject to legal events i.e. diversions, extinguishments or creations.

The details of all creations, diversions and extinguishments that have been confirmed and satisfactorily complied with since 1971 will form the basis of an omnibus order. This will then be used to update the Definitive Map and Statement in terms of legal events that have occurred from its current relevant date of the 1<sup>st</sup> January 1971.

As well as updating the Definitive Map to take account of all legal event orders that may have occurred since 1971 the County Borough Council must also determine applications made under the Wildlife and Countryside Act 1981 for paths to be added to, or deleted from, the map. The purpose of this report is to determine one such application.

There are no areas within the Bridgend County Borough Council administrative boundary where the provisions of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 will be relevant. That is to say, the provisions of the Wildlife and Countryside Act 1981 prevail in all cases.

Bridgend County Borough Council is both the highway and surveying authority for this area. Consequently, all duties for public rights of way in the Borough have been assigned to the County Borough Council under the terms of Section 60 of the Wildlife and Countryside Act 1981.

The Council's duties include:

1. Keeping the existing Definitive Map under continuous review by
  - making modification orders as necessary to take account of the occurrence of events requiring the map to be modified
  - making reclassification orders to reclassify any ways shown as RUPPS and,
  - preparing Definitive Maps for any areas not previously surveyed (Sections 53, 54 and 55 of The Wildlife and Countryside Act 1981).
2. Keeping copies of the Definitive Map and Statement together with copies of any subsequent modification and reclassification orders available for public inspection and to draw the attention of the public to this availability and the right to apply for modification orders to be made. (Section 57 of The Wildlife and Countryside Act 1981).

Section 53(2) of the Wildlife and Countryside Act 1981 also imposes a statutory duty upon the Authority to:

- Make, by Order, such modifications to the map and statement as soon as reasonably practicable after the commencement date as appear to them to be requisite in consequence of the occurrence before that date of any of the events specified in sub-section (3); and
- As from that date, keep the map and statement under continuous review and as soon as is reasonably practicable after the occurrence, on or after that date, of any of those events, by order makes such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event. The events specified in sub-section (3) include: the discovery by the

Authority of evidence which (when considered with all other relevant evidence available to them) shows:

‘That a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this part applies. The former Mid Glamorgan County Council received an application on 28<sup>th</sup> June 1991 from Mr G K Evans indicating that the path running from Brookfield House, Cwmdru Road to Bridleway 36 Maesteg near Ffos Farm, Cwmdru, Maesteg as shown by a dashed black line on the plan shown in **Appendix 1** should be a public right of way. Investigations have, therefore, been undertaken by the Bridgend County Borough Council as successor authority in accordance with the provisions of Section 53 of the Wildlife and Countryside Act 1981.

Subject to the applicant complying with the procedural requirement contained in Schedule 14 of the Wildlife and Countryside Act 1981 (annexation 2) paragraph 3 of Schedule 14 requires the determination by the Authority of such application as specified therein. In the event that the Authority decide, on the evidence presented to it, that a modification order cannot be made the applicant has a right of appeal to the Planning Inspectorate.

Members are informed that in the application before them the applicants seek to rely upon the provisions of Section 31 of the Highways Act 1980, which provides that

“where a way over any land other than the way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

If the provisions of Section 53(C)(1) of the Wildlife and Countryside Act 1981 and Section 31(1) of the Highways Act 1980 are taken together and evidence is presented that a path has been used for a period in excess of 20 years then there arises a presumption that the owner intended to dedicate that path as a right of way and if the Authority are satisfied with that evidence then they are obliged to make a modification order under Section 53 of the 1981 Act. In the application that is the subject of this report the evidence is as stated in **Schedule 1** herein.

It must be noted that in order for Section 31 to be invoked successfully it is necessary to show 20 years user expiring when the way was first called into question.

## SCHEDULE 1

### **Claimed Bridleway**

**Track from Brookfield House, Cwmdu Road to Bridleway 36 Maesteg near Ffos Farm, Cwmdu, Maesteg**

#### **A. Purpose of Report**

1. To determine if sufficient evidence has been adduced to and by the County Borough Council to support a Definitive Map Modification Order being made to show a path running from Brookfield House, Cwmdu Road, Maesteg to Bridleway 36 Maesteg near Ffos Farm in the Maesteg Town Council area as a public right of way in the Definitive Map and Statement. If it is felt that sufficient evidence has been provided then the nature of that evidence will determine what status that right of way should be. The claimed path is shown by a bold black dashed line on the plan in **Appendix 1**.

#### **B Resources appraisal**

2. As Members are aware, financial implications are not to be considered by the Sub-Committee when determining this application as the Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it. Officer time is involved in investigating the report and dealing with a public inquiry if an Order is made and there are objections to it.

#### **C Supporting Information**

3. As indicated in the frontispiece to this report Section 53(2) of the Wildlife and Countryside Act 1981 'the Act' imposes a statutory duty upon the Surveying Authority to make:

'by order such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and ....'

4. The events specified in subsection (3) include:

'..(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public during that period raises a presumption that the way has been dedicated as a public path;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies; ....’

5. Subsection 5 of section 53 indicates that any person may apply to the surveying authority for an order under subsection (2) at which time Schedule 14 of the Act shall have effect as to the making and determination of applications under this subsection. Subject to the applicant complying with the procedural requirement contained in Schedule 14, paragraph 3 requires the Surveying Authority to investigate the application and to decide whether or not to make the order to which the application relates.

6. In most instances where the public make an application for a Modification Order they will rely upon the provisions of Section 31 of the Highways Act 1980, which provides that:

‘where a way over any land other than the way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.’

7. Thus if the provisions of section 53(3)(b) of the Act and section 31(1) of the Highways Act 1980 are taken together and evidence is presented that a path has been used for a period in excess of 20 years then there arises a presumption that the owner intended to dedicate that path as a right of way and if the Authority are satisfied with that evidence then they are obliged to make a modification order under Section 53 of the 1981 Act.

8. Applications for Modification Orders seeking to rely on the provisions of section 31 of the Highways Act 1980 will usually be supported by a number of User Evidence Forms. An analysis of such forms is vital so that omissions, lack of clarity, serious inconsistencies, possible collusion between witnesses and other anomalies may be identified. Recent decisions at public inquiries show that if few, or none, of the users are either willing or able to attend then the Inspector is likely to ask serious questions of the authority to determine what evidential weight can be attached to the forms. As with other evidence, user

evidence tested in cross examination generally carries significantly more weight than untested evidence.

9. During their investigations of an application, therefore, the surveying authority must corroborate the information contained within the User Evidence Forms by means of interviews. This will also provide an opportunity to determine how many claimants are likely to be willing (or able) to give evidence at a public inquiry. In some cases, however, where there is a lengthy delay between the application being made and investigations commencing, such interviews may be unable to take place or be restricted to a very small number. Claimants may have simply moved away; no longer be interested in pursuing the matter; or may have actually passed away.
10. The surveying authority's further investigations of historic documentary evidence will thus become more vital. Indeed, if the surveying authority discovers other information that provides far more compelling evidence that public rights exist than the mere assertions on user evidence forms that the presumption of dedication has taken place through long user then a Modification Order should be made on that basis i.e. section 53(3)(c)(i) as opposed to one based on long user i.e. section 53(3)(b).
11. This would certainly appear to be the case with regard to this particular application. As will be seen from paragraph 40 below only a small percentage (12.5%) of the original claimants actually responded to the recent consultation exercise undertaken by the Council. Therefore, at best only four of the original 32 claimants are likely to attend any public inquiry that may have to be held should an Order be made and objected to. Whereas the Council has found a substantial amount of historic documentary evidence that appears to support the existence of public rights.
12. It would seem logical, however, to provide background information to, and details of, the original application before indicating what, if any, evidence exists to support a Modification Order being made.

### ***Background to the application***

13. On the 14<sup>th</sup> February 1990 the Mid Glamorgan County Council received a letter from Ogwr Borough Council relating to a number of complaints it had received concerning the owner of Ffos Farm. According to the letter members of the public were being prevented from walking through the farmyard.
14. On initial examination of the Definitive Map the Borough Council felt that the owner was within his rights to do this. However, further investigations by the Council showed that there appeared to be



anomalies between the Definitive Map and the actual status of the route. Those anomalies included:

1. The fact that the track was surfaced in the 1950's by the Maesteg Urban District Council and was thus considered to be a public vehicular highway. For this reason alone it was not shown on the Definitive Map.
  2. A former employee of Mid Glamorgan County Council had stated at the public inquiry in respect of another section of this route that this particular track was considered to be a public highway but he was not sure whether it was vehicular.
  3. The track was not shown as maintainable highway by the Mid Glamorgan County Council
  4. The Inspector at the inquiry would not consider the status of the route as it was outside the jurisdiction of the inquiry.
15. Despite a request from the Ogwr Borough Council for observations as to whether any public rights existed along the track there appears to have been no immediate reply from the Mid Glamorgan County Council. Indeed, the County Council did not provide a substantive reply until 29<sup>th</sup> July 1991 following the application for the route to be registered as a public right of way. Even then the letter merely stated that an application had been received and the matter was being investigated.
16. A copy of the letter from Ogwr Borough Council is included at **Appendix 2**.
17. In July 1990 a local resident, Mr J E O'Brien, wrote to Mid Glamorgan County Council concerned that most of the area had been fenced off by farmers. Indeed, he indicates that one person, namely Walter Rees of Ffos Farm, was causing a lot of trouble. According to Mr O'Brien people were discouraged from gaining access to the Darren Valley not only by Mr Rees himself but also due to the presence of approximately a dozen dogs. Furthermore, Mr Rees was always talking of fencing the area off. In order to help him Mr O'Brien requested a copy of the map showing the rights of way.
18. The Mid Glamorgan County Council responded on the 13<sup>th</sup> July 1990 by enclosing a copy of the Definitive Map. Mr O'Brien was also asked to contact the Rights of Way Section again if he was prevented from using any of the rights of way.
19. A copy of Mr O'Brien's letter dated 4<sup>th</sup> July 1990 together with the response of the Mid Glamorgan County Council is provided in **Appendix 3** and **4** respectively.

20. At the same time the County Clerk and Co-ordinator of the Mid Glamorgan County Council requested observations from the County Engineer and Surveyor in respect of the link track to Ffos Farm as the result of an enquiry from County Councillor J J Jones. The County Clerk and Co-ordinator also enclosed a copy of the letter from the Ogwr Borough Council referred to in paragraph 13 above.
21. In his response the County Engineer and Surveyor indicated that the status of the track was still undetermined. He continued by indicating that although previous documents suggested that the track was once maintained by Maesteg Urban District Council the owner Mr W Rees did not accept it as a public highway.
22. According to the County Engineer and Surveyor further evidence was required to prove the status of the track and this was being looked into in the County Archives. The County Engineer and Surveyor also confirmed that Mr Rees had told an Officer of the County Council in February 1990 that he did not accept any public rights of access along the track. The County Engineer and Surveyor was to return to the County Clerk and Co-ordinator as soon as investigations in the County archives had been completed.
23. A copy of the memorandum from the County Clerk and Co-ordinator dated 13<sup>th</sup> July 1990 together with the County Engineer and Surveyor's response dated 20<sup>th</sup> August 1990 are included in **Appendix 5** and **Appendix 6** respectively.
24. There appear to have been no further complaints concerning this particular track over the next 12 months. However, Mr O'Brien and his nephew, Mr G K Evans, must have been in contact with the Mid Glamorgan County Council in order to be provided with the Application and Evidence Forms.
25. In a letter dated 13<sup>th</sup> June 1991 Mr O'Brien forwarded to the Mid Glamorgan County Council what he termed 'the necessary amount of forms needed to establish a right of way through Ffos Farm down the Darren Valley'. In his letter Mr O'Brien indicates that though they may be legally entitled to use the path the public will be prevented from doing so by either 2 bulls, a dozen dogs or Mr Rees himself. He therefore requested confirmation that Mr Rees would be requested to remove the obstructions.
26. In their response dated 27<sup>th</sup> June 1991 the County Council indicated that the status of the track had not yet been determined nor had a Modification Order been made to register the path as public. The County Council, the letter continued, would only be in a position to ask Mr Rees to refrain from obstructing the public if the track became a registered right of way or was shown to be maintainable highway. Until that time the County Council could not acquiesce to Mr O'Brien's request.

27. A copy of the letter dated 13<sup>th</sup> June 1991 from Mr O'Brien together with the reply from Mid Glamorgan County Council dated 27<sup>th</sup> June 1991 can be found in **Appendix 7** and **8** respectively.
28. In order for this matter to be considered as an Application for a Modification Order under the terms of the Wildlife and Countryside Act 1981 the appropriate application forms also had to be submitted. To that end I can confirm that Forms W.C.A. 5 and 7 were submitted to the Mid Glamorgan County Council by Mr G K Evans towards the end of June 1991.
29. A copy of the application forms (W.C.A. 5 and 7) and accompanying plan are attached at **Appendix 9**.
30. The application requested that a modification be made to the Definitive Map and Statement by adding thereto the route described in paragraphs 43 to 46 below as a bridleway. Eventually the application would be supported by 30 'Evidence Forms'. However, judging by the dates on which the 'Evidence Forms' were signed the application was at this time only supported by 25 'Evidence Forms' that provided evidence of use for varying periods between 15 and 62 years.
31. The application was made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. Therefore, the applicant had a duty, by virtue of Schedule 14 of that 'Act' to serve notice on the landowner. The completion of the Mid Glamorgan County Council's Forms W.C.A 5 and 7 indicate that Mr Evans had complied with the requirements of the 'Act'.
32. A further letter from Mr Evans, the applicant, dated 22<sup>nd</sup> November 1991 indicates that he was enclosing one further 'Evidence Form' in support of his application. However, of the remaining five 'Evidence Forms' three were signed during October 1991. Therefore, it is likely that by the time Mid Glamorgan County Council had received this extra 'Evidence Form' it had also received a further 2 in support of the application.
33. A copy of the letter dated 22<sup>nd</sup> November 1991 from Mr G K Evans can be found in **Appendix 10**.
34. The two remaining 'Evidence Forms' were forwarded to the Council by Mr and Mrs Jones of 90 Castle Street, Maesteg. Details of how they became interested in the application can be found in paragraphs 125 to 133.
35. Following receipt of the application the County Engineer and Surveyor forwarded a copy of the evidence to the County Clerk and Co-ordinator for comment and advice. It appears that investigations were also being undertaken at both the Glamorgan Record Office, Cardiff and the

Public Record Office at Kew, London. Further evaluation and explanation of the historic documentary evidence can be found in paragraphs 48 to 119 later in the report.

36. It also appears that an Officer of the County Council had begun to interview some of those people who had completed 'Evidence Forms'. Unfortunately, the notes of those interviews cannot be found and will not, therefore, form part of this report.
37. Despite this activity little progress appears to have been made on drafting a report to be put before the Rights of Way Sub-Committee of the Mid Glamorgan County Council prior to Local Government Re-organisation.
38. The County Borough Council has recently been able to continue with the investigations in respect of the registration of this particular claimed right of way. A second consultation exercise has now been undertaken and the application reviewed. It should be noted at this stage that any information or evidence that was or has been discovered during both the previous and current investigations has been included within this report.
39. As it had been nine years since Mid Glamorgan County Council received the official application a letter was forwarded to the 32 people who had previously completed Evidence Forms to ascertain if they still wished to pursue the claim.
40. Of the 32 people the County Borough Council contacted 4 indicated that they still wished to pursue the application and would be willing to be interviewed. No replies were received from the remaining 28 people.

### ***Description of the claimed route***

41. The claimed route runs from Brookfield House, Cwmdu Road, Maesteg in a general east south easterly direction to Bridleway 36 Maesteg south west of Ffos Farm. The exact alignment of the route is described in detail in paragraphs 43 to 46 as well as being shown as a black dashed line on the plan in **Appendix 1**.
42. If a Modification Order is made the route to be registered will have a width that will vary between 2.5 and 3.0 metres along the defined track for the first 273 metres from Cwmdu Road until the point where the route becomes bounded on both sides by either hedges or fences or a combination of both. At this point, and for the next 280 metres, the width of the route will be the whole width of the track between those boundaries which will vary between 5 and 10 metres. The route will then continue for the last 68 metres past the outbuildings of Ffos Farm

as a 2.5 to 3 metre wide track. The route varies throughout its entire length between a tarmacadam, hardcore and natural surface.

43. The claimed [*footpath, bridleway, Byway Open to All Traffic*] will commence on Cwmdu Road, Maesteg at Point A on the map (Grid Reference SS 86949125) being a point 485 metres north north east of the centre of the frontage of the property known as No.20 Brookfield Road, Maesteg and will proceed in an east south easterly direction for approximately 21 metres or so to Point B (Grid Reference SS 86969124) where it will turn and run in a south easterly direction for approximately 140 metres to Point C (Grid Reference SS 87049113) thence in a generally easterly direction for approximately 112 metres to Point D (Grid Reference SS 87159112).
44. The claimed [*footpath, bridleway, Byway Open to All Traffic*] will continue from Point D over the Nant y Twlc in a general east south easterly direction for 114 metres or so to Point E (Grid Reference SS 87269108) where it will turn and run in an easterly direction for 131 metres or thereabouts crossing a disused mineral railway on route to Point F (Grid Reference SS 87299107).
45. From Point F the claimed [*footpath, bridleway, Byway Open to All Traffic*] turns and runs in an east south easterly direction for approximately 135 metres or so to Point G (Grid Reference SS 87429105) where it turns and runs in a south south westerly direction for approximately 62 metres to Point H (Grid Reference SS 87409100).
46. At Point H the claimed [*footpath, bridleway, Byway Open to All Traffic*] runs in a south easterly direction for approximately 6 metres to terminate where it meets Bridleway 36 Maesteg at Point J (Grid Reference SS87419099) being a point 694 metres east north east of the centre of the frontage of the property known as No.20 Brookfield Road, Maesteg.

The claimed right of way will also be subject to the following limitation and condition of its use, namely the right of the landowner to erect and maintain field gates at the following locations: Grid Reference SS 86969124; SS 87299107; SS 87329107; SS 87419105; SS 87419102, and the said gates to remain open and available for use by the public at all times.

47. The description of the path given in paragraphs 43 to 46 will form the basis for the description in the Order should the Rights of Way Panel resolve to make a Modification Order. Two of the words in the square brackets will be deleted depending on the status the Rights of Way Panel feel has been shown to exist.

### ***Documentary evidence***

48. A list of the primary and secondary sources that may provide documentary evidence of a claimed right of way has been created. This is being used during all the investigations into applications for Modification Orders under the Wildlife and Countryside Act 1981 to ascertain if the source is available and whether it provides any such evidence of the existence of the route.
49. The completed checklist for this application is shown in **Appendix 11**. A second table that provides additional comments on the Ordnance Survey Maps viewed is provided in **Appendix 12**. As will be seen from the checklist a number of documents have been found that provide evidence to substantiate this application. Furthermore, some of those documents may even prove that vehicular rights exist over the track and it should, therefore, be shown as a Byway Open to All Traffic. These include the Tithe Map, Ordnance Survey Plans and local authority records. The information shown on, and the evidence provided by, these documents is detailed below.
50. From medieval times to the nineteenth century most land was subject to a church tithe. That is, one tenth of the annual produce of the land had to be given to the church. By the nineteenth century changes in the rural economy had made this system hopelessly unwieldy and much disputed. Around the early 1840's the majority of parishes were surveyed by the tithe commissioners. These were appointed by statute to commute tithes in kind to a money rent. They produced detailed, large-scale parish maps and accompanying schedules known as apportionments.
51. The tithe apportionment is a statutory document, conclusive evidence of matters relating to the tithes. However, the maps do not have statutory authority and are adjuncts to the award. The awards are concerned solely with identifying tithable lands, and not with roads or their status, so cannot be used as definitive evidence about public roads, but the maps do mark roads quite accurately and, taken in conjunction with the schedules, can provide useful supporting evidence.
52. Indeed the maps have been accepted as evidence. Lord Denning has said of the tithe map (*Kent County Council v Loughlin* (1975) 119 Sol Jo 528):

*“it is of great value. It was prepared under statutory authority by the Tithe Commissioners, with great care and accuracy, to show all cultivated land, arable and pasture, because tithe was payable on land which produced crops. It also had to show wasteland and definite roads, which did not produce crops, because tithe was not payable on these. If a road passed over a man's land he would naturally require it to be shown, so as not to pay tithe on it. So on the question whether there was a road at the specific place the tithe map was of much importance.”*

53. This particular claimed right of way is covered by the Langonoyd Tithe Map and Apportionment that is dated 1842.
54. The Longonoyd Tithe Map clearly identifies a property (Enclosure No.820) as Foes Ty and this is situated where Ffos Farm is located today. The claimed right of way is clearly shown and well defined as a track running from enclosure No.809 (which today is known as Cwmdu Road) until it crosses the river (towards Bettws) to the south east of Ffos farm.
55. Other buildings to the south west of the actual farm house (Foes Ty) that also form part of the farm today are shown in Enclosure No.556. This enclosure is described as Ynys and its state of cultivation is pasture. The track over which the claimed right of way runs is one of the most defined on the map and it does not appear to have an enclosure number.
56. Whether this means that the surveyors believed this route to be a public road at the time is a matter of conjecture. Unfortunately, the original Tithe Map is only available for inspection in the Public Records Office, Kew, therefore, it has not been inspected and I am unable to confirm if the route was shown coloured in a similar manner to other routes which are maintainable highways today.
57. A photograph of the appropriate part of the Langonoyd Tithe Map and an extract from the Tithe Apportionment for this area are attached in **Appendix 13** and **14** respectively.
58. In looking for evidence to show that a road marked on the tithe map was at that time regarded as a public highway, one may sometimes be able to rely on clear and explicit statements to that effect. More often than not, however, it would be a matter of seeking to establish a convincing case by examining the implications of what one finds.
59. The best evidence comes from verbal descriptions. This may be in the form of annotations on the map e.g. the use of words like 'Public Road' alongside the route in question; or there may be a list of public roads at the end of the apportionment which refers by name or by number to the routes shown on the map. It is also possible that the owner or occupier of the land may be described as the Surveyor of Highways.
60. According to John D Andrews B.A., in an article for the Rights of Way Law Review (February 1994), the task is more onerous when the case has to be made by interpreting the detail available. It is in these circumstances that the question of tithe rent becomes significant. It is his contention that if the road is not subject to tithe rent and is shown in every respect in an identical fashion to other roads on the same map which were indisputably part of the public highway network, then this may be a positive indication that it shared the same status. It was held

in a 1928 case ( A.G v Stokesley RDC 26LGR 440) which related to just such a situation, that if the map shows 'a physical road not tithable, that is surely some evidence at least that it is a public right of way coupled with user'.

61. In this case the route as shown on the photograph of part of the Longonoyd Tithe Map in **Appendix 13**, is quite clearly defined in a similar manner to a number of the other routes in the area that are known to be maintainable highways today. These include Cwmdy Road, Heol Faen and Bridgend Road.
62. In his article entitled 'Tithe Records' for the Rights of Way Law Review, Christopher Padley concludes that Tithe Maps are of good repute for their general accuracy. Although they are not directly concerned with public rights of way important inferences can be drawn. When taken with all other evidence, tithe maps are a very important factor in determining the balance of probability needed to prove the existence of a right of way. One must ask whether it is likely that a public right of way was shown in a particular manner, or that a private way was so shown.
63. Numerous Ordnance Survey maps and plans of varying scales have been produced over the years and it is usual to inspect the 1:2500 scale plans first. Not only do they provide a detailed and accurate portrayal of what was on the ground at the time of the survey but it is contended that they may also be able to indicate the status of a route by means of colouring.
64. The 1<sup>st</sup> Edition 1:2500 Scale Ordnance Survey plan for this claimed right of way is dated 1876. On inspection of the plan it was found that the route in question was coloured orange/yellow.
65. From the personal experience of the Rights of Way Officer and by comparing other routes shown coloured orange/yellow on this edition of the Ordnance Survey plan (i.e. Bridgend Road, Heol Faen and part of Cwmdy Road) with the present maintainable highway records, it is felt that this colouring shows public roads at the time of the survey. Thus at the time the survey was undertaken for this map, in this case 1876, this track was thought to be a highway maintainable at the public expense.
66. Three photographs of the 1<sup>st</sup> Edition 1:2500 Scale Ordnance Survey plan dated 1876 that show the claimed right of way, part of Cwmdy Road, Heol Faen and part of Bridgend Road are included in **Appendix 15**. Unfortunately these plans are very fragile and colour photocopies are not available. However, the original plan may be inspected at the Glamorgan Record Office at Cathays Park, Cardiff.
67. During the investigations in respect of this particular route several other Ordnance Survey maps were also scrutinised. These included the 2<sup>nd</sup>,



3<sup>rd</sup> and 4<sup>th</sup> Edition 1:2500 scale plans, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Edition 1:10,560 (6 inch to 1 mile) maps, and, the 1<sup>st</sup> and 2<sup>nd</sup> Edition 1 inch to 1 mile maps. In all cases this route is clearly defined and marked in the same way as many of the other 'roads' on the maps/plans. Further details of these plans are given in the 'Additional comments on documents viewed' list in **Appendix 12**.

68. Yolande Hodson, BSc, Ph.D., F.S.A., F.B.Cart.S. , is a map Historian who has studied the evolution of different aspects of Ordnance Survey Maps. In recent years she has written two articles on the identification of roads on Ordnance Survey maps for the Rights of Way Law Review. It is, therefore, worth noting some of her findings and opinions at this point.
69. According to Ms Hodson very little is known of the instructions for surveying and adopting routes on Ordnance Survey maps of any scale before 1884. Until 1886, when a key began to be printed on the New Series one-inch map, there was no overt differentiation on the map between footpath, bridleway and vehicular road.
70. Occasionally Turnpike roads were shown with one of the enclosing lines shaded or thickened. However, in general, and because the one-inch maps were used mainly for military purposes, the most important distinction was whether the road was open or enclosed. Furthermore, it was also useful to know if the road was private or public. An instruction was given in 1820 that in order to distinguish those roads that are entirely on trespass [i.e. private], the line of the main road from which they branch is not to be broken for them. Unfortunately, Ms Hodson has, in her research found that the accuracy with which this instruction was implemented is rather suspect.
71. Also somewhat suspect is another of the Ordnance Survey instructions concerning the depiction of the category of a road by means of shading a line. In November 1885 an Ordnance Survey Circular provided for different classes of roads to be shown on 1:2500 and 1:10,560 scale plans/maps by shading. The overall effect of the circular was to suggest that it should be possible to make the following identifications on the published 1:2500 plans:
  - First Class Roads: all shown by the thickest shaded line. By implication, all such roads should be public.
  - Second Class Roads, category 1: public; shown by a thinner shaded line than First Class Roads
  - Second Class Roads, category 2: private; shown by a thinner line than Second Class Roads, Category 1.
  - Public or Private Road in poor repair: shown by thin lines without any shading.

N.B. There was no instruction as to what width each of the shaded lines should be.

72. Once again, Ms Hodson has identified that even where published plans show different widths of shading so that a roads status may be interpreted more accurately, the lack of uniformity and, above all, specified gauge of line, is such that it is not possible to predict with any scientific certainty that the road was public.
73. On the basis of the above I can confirm that all the Ordnance Survey plans have been checked for evidence of line shading, or lines across the area where the claimed route joins the main route. In this instance it should be noted that the first edition Ordnance Survey 1:2500 scale plans were published prior to the line shading instruction being given. However the second edition plans of the same scale were revised in 1897 and published in 1899.
74. On further inspection of those plans there does not appear to be any evidence of line shading on any of the other Ordnance Survey plans/maps.
75. Whilst investigating the existence, or otherwise, of both the claimed right of way and any public rights along it as shown on Ordnance Survey maps opportunity was taken to evaluate other maps located in the Glamorgan Archive. A further six maps were studied – one from the 17<sup>th</sup> Century; two from the late 18<sup>th</sup> Century; two from the early 19<sup>th</sup> Century and one from approximately 1930 – the majority of which were surveyed by well known surveyors/cartographers of the time. The plan from the 1930's was produced by Glamorgan County Council and appeared to show main roads in the Glamorgan County Council area.
76. In evaluating the evidence of older maps one must be aware that in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries there were no standard specifications and uniform techniques of survey and training. Therefore, the evaluation of any map must be on a case by case basis. For each case, it is necessary to establish the purpose of the map, the methods used in its construction and the motives of the man who made it. To this end it has been said that:
- “For every detail in an early map its author must be assumed to have had some reason, which it is the business of the student to uncover.”*
77. Although there were no standard specifications and uniform techniques the introduction of more precise measuring instruments in the late 18<sup>th</sup> century did enable the survey itself to become more accurate. However, we cannot say with complete certainty how many surveys were accurate and what instruments or methods were used.
78. One of the most famous map makers of the early 19<sup>th</sup> century was Christopher Greenwood. Indeed, by 1830 Greenwood had covered most of England and Wales with what were known as ‘County Maps’.

These type of maps, at one inch scale or larger carry an air of superficial reliability as the Society of Arts were paying a premium for accurate surveys of counties at that time.

79. The maps were based on Ordnance Survey triangulations and, therefore, the extent to which distances and bearings between identifiable objects coincide with their true values accord closely with modern day values. However, this accuracy is not matched in respect of topographical detail. Although Greenwood used the Ordnance Survey triangulation data together with every conceivable instrument it is apparent that these were not used systematically as he was accused of imprecision in making his map of Westmoreland.
80. In conjunction with this it has been demonstrated that the high costs of Greenwood's surveys and the speed with which they were done, reinforces the conclusion that his topographical mapping was imperfectly executed.
81. Many map makers at that time made use of secondary sources, such as estate, inclosure and large scale communications maps; but where these were untrustworthy it follows that the overall standard would have suffered.
82. As can be seen from the 'Documentary Evidence – Primary and Secondary sources' checklist and further information table in **Appendix 11** none of the five older maps provide information concerning the existence of the claimed right of way or public rights along it.
83. The plan from the early 20<sup>th</sup> Century, which appears to show main roads, is identified as being produced by the 'County Surveyors Department, Council Hall, Cardiff'. Although in the archive index the plans were listed as dating from the 1930's there is no actual date on the plans themselves except for an official archive stamp indicating 'Edgar L Chappell – Bequest 1950'.
84. The plan is very diagrammatical in that it shows very little except the County Council area; four highway divisions; the three county boroughs; main roads; subsidised roads; existing and contemplated new roads and certain main settlements. It does not appear to show any roads or lanes that are less than possibly 'B' class highways. The claimed right of way is not, therefore, shown on this particular plan.
85. During the site visit to the claimed route in 2000 to interview the current landowner it was noted that the line of the claimed right of way passed over what appeared to have been a railway line.
86. Further investigations revealed that this was shown on the Ordnance Survey plans of the 1870's and 1880's as a tramway. By the time the 2<sup>nd</sup> Edition 1:2500 scale plan of 1899 was published, however, it had

become disused. On subsequent plans in the early part of the 20<sup>th</sup> Century the route was once again in use and had become known as North's Navigation Railway.

87. Following discussions with the landowner and members of the public claiming the route it transpired that the railway was used to transport coal from North's Navigation Collieries. The colliery was taken over by the National Coal Board at nationalisation and the land over which the railway ran was bought by the previous owner, Mr Rees in 1989.
88. Due to the fact that the railway line was once owned by the National Coal Board a letter was forwarded to the agent of the successor organisation, the Coal Authority, enquiring as to any information they may have in respect of the claimed right of way. In a letter dated 24<sup>th</sup> October 2000, which has the wrong title on it, Mr P Hill for the Coal Authority indicates that although the land was held on a lease until 1988 he had no knowledge of the use of the claimed right of way by the public. Furthermore, there was no evidence of any actions taken to deter members of the public from using the railway or claimed right of way.
89. A copy of the letter from the Coal Authority's agent dated 24<sup>th</sup> October 2000 is provided in **Appendix 16**.
90. In order to have all the facts in respect of land over which the claimed right of way ran it was then decided to request a copy of the lease for the railway.
91. In April 2003 a copy of the lease was forwarded to the County Borough Council. The lease, which is dated the 5<sup>th</sup> October 1909 makes reference at one point to the maintenance of existing crossings. However, it does not refer to any public use of those crossings but states that 'suitable gates will be maintained to the reasonable satisfaction of the Lessor or the person or persons entitled as aforesaid his or their assigns'.
92. The transcription of the lease together with a copy of the accompanying plan can be found in **Appendix 17**.
93. Further research into the records of the North's Navigation Collieries has been undertaken at the Glamorgan Records Office in Cardiff. This has revealed no further information concerning this railway or evidence in relation to the use of the claimed right of way.
94. The plan provided in **Appendix 18** is an extract from the original survey of public rights of way undertaken by the Maesteg Urban District Council as part of the preparation of the Definitive Map. As can be seen from this plan the route of the claimed right of way is clearly labelled as Cart Road Bridleway 36. The route has also been coloured

yellow at sometime like many of the other routes on the map that are shown on the maintainable highway records today.

95. The description of the route as provided by the person surveying the paths at that time J R Jenkins, indicates that part of route 36 runs:

‘East [from Brookfield Cottage] to railway level crossing with field gate at either side and on to Ffos Farm.’

It also indicates that the route is metalled (i.e. a tarmac surface) from Brookfield Cottage to the first footbridge (now part of Bridleway 36)

96. A copy of the description (known as the Parish Card) is provided in **Appendix 19**.
97. According to the County Borough Council’s records the reason why this section of route 36 was not shown on any subsequent right of way maps was due to the fact that between 1951 and the publication of the draft map the local Highway Authority, namely Maesteg Urban District Council, had surfaced the track. It was, therefore, considered to be public vehicular highway and thus was not required to be shown on the Definitive Map.
98. Confirmation of the fact that this part of the route was indeed considered to be highway can be found in a letter dated 3<sup>rd</sup> February 1959 from the clerk to Glamorgan County Council. Responding to a request from Mr T M Evans regarding access to a small mine the clerk indicates that the track from Brookfield to Ffos Farm is a highway that is the responsibility of the Maesteg Urban District Council. This was the culmination of correspondence at that time.
99. Copies of these letters are provided in **Appendix 20**.
100. In consequence of the above information when the Definitive Map and Statement were published on the 4<sup>th</sup> August 1970 the route which is the subject of the current claim was not shown on the map. The rest of the path from Ffos Farm in a south easterly direction was still shown as a Cart Road Bridleway or Road Used as a Public Path (RUPP).
101. By the time the Definitive Map had been published the County Council had come under a duty by means of the Countryside Act 1968 to reclassify all its RUPP’s as either Byways, Bridleways or Footpaths.
102. In reclassifying Cart Road Bridleway 36 Maesteg the County Council received a number of objections. Those objections were subsequently determined at a Public Inquiry and then 6 years later at an appeal. Information concerning the use and status of the application currently before Members was discussed at that Inquiry and appeal. It seems appropriate, therefore, that that information is included within this report.

103. In considering what status should be given to a RUPP the 1968 Act listed three considerations that had to be taken into account. These were:

- whether any vehicular right of way had been shown to exist,
- whether it was suitable for vehicles having regard to its position and width, its condition and state of repair, and the nature of the soil,
- if it had been used by vehicular traffic, whether the extinguishment of vehicular rights would cause undue hardship

104. Having considered the three issues and taken into account the views of the Highway Authority at the time of the reclassification (1971) i.e. Maesteg Urban District Council, the County Council felt that the route from Ffos Farm in south easterly direction and known as CRB 36 Maesteg should be shown as a Byway Open to All Traffic. The draft revised map was published in March 1974 with a four month objection period. The County Council received a number of objections to its proposed reclassification and these were heard, along with many others for different routes, at a Public Inquiry held throughout September 1980 at the Recreation Centre, Bridgend.

105. Throughout the inquiry in respect of CRB 36 Maesteg reference was made to the route which is the subject of the current claim. In his report for the Secretary of State for Wales the Inspector lays out 18 findings of fact, some of which relate to the current claim. Those that do include:

- the first section of the RUPP section of path 36 leads off a made up roadway that is not on the County highway records or the Definitive Map.
- The report on lanes dated 1959 of the Ogmore and Garw Urban District Council refers to path 44 as forming part of the old road from Maesteg to Lletty Brongu
- In the past the RUPP sections of these paths together with that length of road from Ffos farm to the County road undoubtedly formed a through route which was used by the public
- The Maesteg Urban District Council has attempted to carry out repairs on that length of road from Ffos Farm to the County road but had been prevented from doing so by the owner of Ffos Farm.

106. In conclusion the Inspector said:

‘With regard to path 36 bearing in mind the above facts I consider the evidence shows vehicular rights do exist along this path. It seems clear that the Maesteg Urban District Council thought this was a public road otherwise they would not have recommended its reclassification as a byway prior to 1974. Further whilst the length of track from the county road as far as Ffos farm is not shown on the definitive map or on the county

highway records that I think is explained by the fact the Urban District Council surfaced it in the 1950's and thereby considered it to be maintainable highway. It was subsequently that Mr Rees took issue with them. There is of course in support of my conclusion that path 36 is an old road the evidence in relation to path 44 in Bettws. The report on lanes of the Ogmore and Garw Urban District Council refers to path 44 as forming part of the old road from Maesteg to Lletty Brongu and it follows that the remainder of the old road must have been path 36 in Maesteg.

There is of course also the evidence of use that comes from Mr Howells and Mr Winston Morgan. A route such as this would not be subjected to daily traffic as it is effectively a rural path in a farming community but I think their evidence clearly indicates that it was a path used as a public road.'

107. Before making a decision on the status of the route, however, the Inspector also had to take into account suitability and whether undue hardship would be suffered if the path was not confirmed as a Byway Open to All Traffic. As a result of these other two tests the Inspector determined that CRB 36 south east from Ffos Farm should be reclassified as a bridleway. As it was not part of the Inquiry he could not make any recommendation in respect of the path which is the subject of the current claim.
108. Extracts from the Inspectors report of the inquiries held during September 1980 that are relevant to this application are provided in **Appendix 21**.
109. Although the Secretary of State for Wales confirmed the recommendations of the Inspector the owner of Ffos Farm appealed against the decision. This resulted in a further Public Inquiry taking place in September 1986.
110. At this inquiry Mr Rees reiterated the fact that the track leading to his farm had always been a private farm road. Furthermore, he had consistently resisted use of it by the public and signs indicating that it was private had been there for 30 years. Toll payments had also been received from lorries going to the collieries.
111. The County Council relied on the evidence it had placed before the inquiry in 1980. In his conclusions the Inspector indicated that the status of the route from Brookfield to Ffos Farm could not be decided at the Inquiry and must be considered by the County Council after the conclusion of the review process.
112. In considering CRB 36 the Inspector at the inquiry conferred with the conclusions of the previous Inspector. That is to say there was no doubt in his mind that CRB 36 was part of an old vehicular highway.

However, because of the nature of the tests that had to be applied the route must be reclassified as a bridleway.

113. A copy of the Inspectors report from the Inquiry held in 1986 can be found in **Appendix 22**.
114. During both the documentary evidence provided above and the user evidence indicated earlier Members will recall reference being made to the fact that the route to Ffos Farm had tarmac laid on it by the Measteg Urban District Council in the 1950's. In order to ascertain the accuracy of this information further research was undertaken at the Glamorgan Record Office to see if such work was authorised by a resolution of the Council or one of its Committees.
- 115., The minutes of all Council and Committee meetings from 1952 to 1957 have been checked. On only one occasion does the route of the claimed right of way appear to have been discussed. At the Public Works Committee on 11<sup>th</sup> September 1952 Minute 415 reports on Farm Roads. The minute reads:

‘A full report was given by the Surveyor, upon works of repairs required at Banwen, also Castell Bridge to Pentre Farm and also the Darren Road. He stated that to carry out the whole of the required work would cost between £3000 and £4000. The sum included in the estimate for Farm Roads was £1500.

After a discussion it was

Resolved: That the Surveyor be authorised to expend the amount provided for in the Estimate upon the road from Castell to Pentre and also the Darren Road.

Resolved Further: That the question of repairs to Farm Roads be referred to the Glamorgan Urban District Council's Association with a view to the County Council being approached for an increased grant in respect of farm roads.’

116. Although Ffos Farm is not specifically mentioned, Members will be aware from the User Evidence that the claimed right of way is always referred to as the road to the Darren Valley or ‘Darren Road’. The fact that this work was undertaken in 1952 would definitely tie in with the fact that this section of route was removed from the maps between the parish survey (1951) and the publication of the Draft Map (1955).
117. Whilst undertaking the above research an opportunity arose to look at a number of other minute books dating from various different years. As a result of this research reference has been found to correspondence between the Maesteg Urban District Council and the owner of Cwmdu Isaf Farm.



118. This particular farm is situated approximately 600 metres to the south east of Ffos Farm and its access appears to be either along the existing Bridleway 36 and the claimed right of way past Ffos Farm or through the Darren Valley to Pont-Rhyd-y-Cyff. The two minute's from 1932 and 1934 respectively are as follows:

Minute 16 General Purposes Committee 10<sup>th</sup> May 1932

'A letter dated 7<sup>th</sup> May was read from Mr John R Thomas, Cwmdu Isaf Farm regarding the condition of the road leading to the Farm and asking if the Council could see its way to put some "stuff" on it.

The Surveyor reported that a workman was at the present time engaged on the road referred to.

Resolved: That the Surveyor be instructed to submit a report with reference to the two footbridges in that neighbourhood.'

Minute 16 Council Meeting 6<sup>th</sup> February 1934

'The Surveyor submitted a letter dated 31<sup>st</sup> January from Mr John R Thomas of Cwmdu Isaf Farm, with reference to the condition of the roads leading from the Farm to Heol Faen and Pont-Rhyd-y-Cyff respectively.

Resolved: That the Surveyor be instructed to reply stating that the Council hoped to be in a position to have the road leading from Tylers Arms through Darren y Garth repaired as soon as possible.'

119. Once again, although there is no specific mention of Ffos Farm, Heol Faen is at the southern end of Cwmdu Road and would be accessed from Cwmdu Isaf farm only via the claimed right of way. It is also quite clear from the minute of 1934 that by writing to the Urban District Council the owner of Cwmdu Isaf believed his access roads were maintained by the Council at the time.

### ***User Evidence***

120. As indicated in previous paragraphs the Mid Glamorgan County Council and the Bridgend County Borough Council have both been provided with information/evidence concerning the use of the track that is the subject of this report. In this instance that information/evidence has been provided by 32 people in 3 different ways and relates to the use of the route over varying periods of between 15 and 64 years.

121. The information/evidence was forwarded to the Mid Glamorgan County Council in the form of 'Evidence Forms' and letters whilst the County Borough Council gained other information/evidence by interviews. All of the thirty-two people provided information/evidence using the Wildlife and Countryside Act 'Evidence Forms'. Three people also provided additional information/evidence to that which was on their 'Evidence Forms' by means of a letter.
122. Although the information in the County Borough Council's files suggest that officers from Mid Glamorgan County Council interviewed at least half of those people who completed 'Evidence Forms' no records can be found of those interviews. The Panel can, therefore, only rely on the corroboration of the four people who were willing to be interviewed by the County Borough Council's Rights of Way Officer following the most recent consultation exercise.
123. A full analysis of the information/evidence contained on the 'Evidence Forms' is provided later in this section of the report. Details of, and evidence resulting from, the interviews are also provided later in the report.
124. As indicated in paragraph 121 above information/evidence in respect of the claim was provided in two letters by three people. It would seem appropriate, therefore, to indicate at this point the contents of those letters.
125. Mr and Mrs Jones were prompted to write their letter following an article in the Gazette in January 1991 requesting information about Footpath 36 at Ffos Farm and Darren Flats. Members should note that the date of the Gazette referred to in this letter is incorrect for a number of reasons. Firstly, although the letter is undated it appears to be written shortly after the gazette was published but refers to incidents in the summer of 1991. Quite clearly this could not be the case if it was written earlier in the year.
126. Secondly, the Gazette is published on a Thursday and January 23<sup>rd</sup> 1991 was in fact a Wednesday whereas 23<sup>rd</sup> January 1992 was a Thursday. Finally the letter was forwarded to the Mid Glamorgan County Council by Maesteg Town Council in April 1992. It is not likely that the Town Council would have waited over a year to forward such a letter.
127. In their letter Mr and Mrs Jones provide details of an encounter they had with a person (they presume it was the owner) at Ffos Farm during a walk the previous summer. According to Mr and Mrs Jones they were hoping to go to the Darren Valley via Brookfield House. However, when they got to Ffos Farm the gate was closed and there were a great number of dogs barking preventing the gate from being opened.

128. On calling out a person appeared and told Mr and Mrs Jones they had no right of way over the farmyard. Mr and Mrs Jones protested indicating that they had used the same route for over 40 years without any trouble. Again the lady stated there was no right of way but reluctantly finally let Mr and Mrs Jones through.
129. In their letter Mr Jones indicates that he has used the route since before 1939 when all the neighbours from Bridgend Road used to go to the Darren Flats for picnics.
130. Following receipt of their letter Mid Glamorgan County Council replied to Mr and Mrs Jones on 28<sup>th</sup> April 1992 to inform them that the route from Brookfield House to Ffos Farm was not a registered public right of way. They were also informed that the Council were collecting evidence to support the existence of a right of way and requested that they completed the enclosed 'Evidence Forms'.
131. This they did and in his 'Evidence Form' Mr Jones confirms what he has put in his letter by indicating he has used the route since 1931. He also suggests that he has used the route since he was 9 years old. In her evidence form Mrs Jones confirms that she has known the path for 45 years.
132. On inspection of the Evidence Forms it is clear that neither Mr nor Mrs Jones have ever been employed, or been a tenant of, the landowner. Furthermore, they indicate they have never sought permission to use the route. They do, however, confirm that they have been prevented from using the route and been told that there was no public right of way over the route in question.
133. A copy of Mr and Mrs Jones' letter can be found in **Appendix 23** whilst the reply from Mid Glamorgan County Council can be seen in **Appendix 24**. Copies of their Evidence Forms are provided in **Appendix 25 (Nos. 26 and 27)**.
134. Responding to the County Borough Council's consultation letter on 6<sup>th</sup> February 2000 (to his nephew and the applicant Mr G K Evans), Mr O'Brien indicates that it was he who instigated the application but asked his nephew to do most of the work as he was involved in other matters at the time. In his letter he indicates that the Darren Valley was a favourite place for picnicking and the only access was along the disputed path. However, when he first started using the route with his children many years ago (his eldest daughter is now 53) there was no dispute.
135. According to Mr O'Brien the dispute arose when he reminded Mr Rees of Ffos Farm that he should not allow his bulls and dogs to roam on the path. Mr Rees apparently told Mr O'Brien that it was private property and there was no right of way. This must have occurred in the late 1980's or early 1990's as Mr O'Brien involved the Mid Glamorgan

County Council soon after. Shortly after that the application for a Modification Order was made.

136. Mr O'Brien's 'Evidence Form' provides no further evidence of use but does indicate that he had not been employed by, or was a tenant of, the landowner. He also indicates that it was not necessary to seek permission to use the route but had been discouraged by the dogs. Furthermore he had been told that the route was not public.
137. During his interview, which took place on the 19<sup>th</sup> April 2000, Mr O'Brien generally confirmed what was in his letter and on his 'Evidence Form'. That is to say, how long he had used the route and for what reasons. He also confirmed that there had never been any signs erected in the area until Mr Rees' nephew had taken over the farm.
138. According to Mr O'Brien there were gates on the route but these were never locked. Furthermore, the only physical obstructions were the bulls and the sheepdogs. He did confirm that Mr Rees regularly told him, and others, that the route was not a public right of way. However, he felt that he would never have actually stopped him using the route. Finally Mr O'Brien confirms he has only ever walked the route. He has never ridden horses along it nor has he seen horses on it.
139. A copy of Mr O'Brien's letter is included at **Appendix 26**, his 'Evidence Form' can be found in **Appendix 25 (No.10)** and the notes from his interview can be seen in **Appendix 27**.
140. Members should note at this point that in neither the evidence from Mr and Mrs Jones nor that received from Mr O'Brien is there any indication as to when they were actually first stopped from using the track.
141. The bar chart shown in **Appendix 28** summarises the claimed use as indicated on the Evidence Forms. Use of the path appears to have continued up to the present day. The bar chart shows that 31 people had used the path for a 20-year period from 1971 to 1991 – the date when the application was made. However, this may not be the first time the way was brought into question. The exact dates for the 20-year period of use required to establish a right of way will be indicated later in the conclusion.
142. As indicated in paragraph 30 above the Mid Glamorgan County Council eventually received 30 completed 'Evidence Forms' to support the official application which was received from Mr G K Evans in 1991. Two of the 'Evidence Forms' were completed by couples therefore 32 people will be included in the analysis below.
143. Although Officers have only been able to corroborate the evidence provided on three of the 'Evidence Forms' by way of interviews the evidence on the other 'Evidence Forms' will still have some weight in

the determination of this application. However, as indicated in paragraph 8 that weight is somewhat diminished by the fact that the people will not be in a position to be cross-examined should the need arise. Nonetheless a summary of the evidence provided in the 'Evidence Forms' is given below.

144. Questions 6 to 11 inclusive on the Evidence Form seek to establish what status each claimant believes the path to be; whether they regard it as public and well defined; how long they have known and used it; and how frequently. All of these questions were, until a recent court case, felt to be some of the most important questions to be asked in determining whether public rights exist.
145. In the decision in the House of Lords in *R v Oxfordshire County Council ex parte Sunningwell Parish Council* in 1999 the House of Lords held that in the context of a claim based on long usage whether users believed or did not believe that the way was public is irrelevant. Any question relating to the belief of a user in the status of the way should be removed from the form.
146. In this particular case the forms were compiled and completed by the claimants well before this decision. Therefore, although Members will see the answers the claimants put on the forms in **Appendix 25**, they should for the purpose of determining this application note that these are now, by virtue of the above ruling, to be ignored.
147. A summary of the answers to questions 6 and 8 to 11 is provided below. Each individual's answers can be found on the completed Evidence Forms, copies of which are provided in **Appendix 25 (Nos. 1 – 30)**.

Q6 *Type of path: Footpath / Bridleway / Byway Open to All Traffic.*

Answer:	Footpath only	<b>9</b>
	Bridleway only	<b>16</b>
	BOAT only	<b>1</b>
	Fp & Bw	<b>3</b>
	Bw & BOAT	<b>2</b>
	No answer	<b>1</b>

Q8 *Is the path well defined: Yes/No*

Answer:	Yes	<b>32</b>
	No	<b>0</b>

Q9 *How long have you known the path:*

Answer:	0 – 20 years	<b>2</b>
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21 – 30 years	<b>6</b>
31 – 40 years	<b>4</b>
41 – 50 years	<b>10</b>
51 – 60 years	<b>5</b>
61 – 70 years	<b>4</b>
All my life	<b>1</b>

Q10 Over what period have you used the path on foot, horseback or by motor vehicle, (state which):

Answers:

Type of Use		Number of Years							
		0 - 20	21 - 30	31 - 40	41 - 50	51 - 60	61 - 70	All my life	No time period given
Foot	29	2	2	1	2	1	1	0	20
Horseback	2		1			1			
No use given	1		1						

Q 11 How often over the period have you used the path:

Answer: Weekly	<b>6</b>
Weekends	<b>1</b>
Monthly	<b>1</b>
Bi monthly	<b>1</b>
Other phrases for often-used (i.e. very often, often, regularly)	<b>14</b>
Other phrases for less often (i.e. occasionally, through summer, periodically, over 50 times in 60 years)	<b>7</b>
No answer	<b>2</b>

148. As will be noted from the above summaries all the claimants who answered the question indicated that the route was well defined. Exactly half of the claimants believed the route to be a Bridleway while more than a quarter thought it was only a footpath.

149. In this particular case almost a third of those who indicated a time span admitted that they had known of the path for between 41 and 50 years. Almost all of the remainder were equally divided between the 21-30, 31-40, 51-60 and 61-70 year time spans. Where claimants have provided details as to the length of time they have used the route there is an even spread right throughout the time periods.

150. As it can be seen from the above summary 90% of people had used the route 'On Foot' even though half had indicated that they thought it to be a bridleway.
151. A small percentage (almost 19%) used the path weekly. However, if one adds to this those who used other phrases such as 'frequently', 'very often', 'regularly', etc, then the figure rises to over 60%.
152. The reason for the small number of people using the path on a weekly basis can be found in the reply to other questions. This is a very rural path that provides access to the countryside as opposed to being a short cut between residential properties, places of work or leisure facilities. Indeed, although there was a range of answers to Question 12, which asks why people used the route, it is quite clear that the route was used for leisure purposes i.e. to get out into the countryside, to get to the Darren Valley for picnics, etc. In those circumstances the path would only be likely to be used by the majority of people during fine weather or holiday periods and therefore less frequently.
153. The 'Evidence Form' also provides space for the claimants to indicate if there were ever any stiles/gates/notices/obstructions on the path. Almost 90% of the people completing the forms indicated that some of these were present on the path. The answers provided included:
1. Public Bridleway notices removed by Mr Rees, 3 field gates and a pack of dogs – **28%**
  2. Approximately 10 sheep dogs – **17%**
  3. 5 field gates – **9%**
  4. Other combinations – **33%**  
i.e. 3 gates and 1 stile, 3 field gates, bridges, stiles, gates, 5 hand gates
154. As can be seen from this list there are a number of issues that require clarification. The County Borough Council has no record of a public bridleway sign being erected at any point along the route. Unfortunately, the claimants do not indicate how long it was in situ before Mr Rees removed it, or indeed, where it was actually located. This provides little or indeed no evidence to support the claim.
155. There are a number of structures indicated in the list above. However, it is my contention that the stiles and bridges referred to are actually located on the bridleway and footpath that are already in existence to the south of Ffos Farm. There are two reasons for this summation. Firstly, although the Nant y Twlc runs under the claimed path at one point there is no bridge visible.
156. Secondly, the route does, in the main, cross open country and there would be no need for stiles. Where it is enclosed the hedges/walls are close to the edge of the track and the gates go from boundary to boundary. There would be no room to enable a stile to be installed.

Finally the majority of claimants were talking about the whole route down into the Darren Valley and not just to Ffos Farm.

157. With regard to the field gates then these are not indicated as being locked by any of the claimants. Therefore, they would appear to be a legitimate limitation and condition of the use of the route and not necessarily an obstruction to try to stop people using the route.
158. Finally, mention is made of a pack of dogs and while these may, from time to time present a hazard to, or stop, anyone that wishes to use the route there may be times when they are not present. I do not, therefore, see these as a negation of any possible right to use the route.
159. As Members will have noted there appears to be an anomaly between how people have used the route i.e. on foot, horseback, etc. and what they perceive the route should be registered as. The replies to Question 16 on the 'Evidence Form' are likely to provide the answer to this.
160. Question 16 asks claimants if they have ever seen other people using the route and if they were locals or strangers. In replying to this question 50% of the claimants indicated that they had seen other people using the route only on foot; 6% only on horseback; and 34% on foot and horseback. The remainder provided no indication.
161. Question 19 asks if the claimant, or anyone they know, has ever been stopped from using the path. In this instance approximately half of the claimants indicated that they had not. Another 15% also answered 'no' to this question but with the caveat that they had been discouraged by the dogs.
162. Following on from Question 19, Question 20 asks if the claimants were ever told that the path was not public. In this particular case 50% of the claimants indicate that the landowner has told them that the route is not public whilst a slightly smaller number (47%) confirm that they have never been informed as such. One other person does indicate that she was never stopped whilst walking the route but was when she tried to ride it on horseback with her daughter in 1991. The significance of this question and the replies to it will be explained fully in the conclusion at the end of this report.
163. Question 15 concerns employment and is very important because if someone has been using the lane while working for the owner then they would have his implied permission to use the route. They would not be using it 'as of right' as a member of the public. In this case no one had ever been employed by the owner.



164. With regard to the other Question 18 an examination of the 'Evidence Forms' revealed that none of the claimants ever sought permission to use the path.
165. Question 17 seeks to establish if the claimants have always used the same route. In all cases the claimants indicated 'yes'. As indicated previously this will be due to the fact that the path is also the farm access track.
166. Although the County Borough Council also undertakes research to establish if there is any documentary evidence to support the claim the 'Evidence Form' also asks if the claimants know of any. Two people do not answer this Question (No.22) whilst 28% indicate that they do not know of any. Half of the claimants indicate that the route is marked on the 'original map' whilst 13% suggest that the tithe map provides further evidence.
167. It is assumed that the 'original map' referred to by half the claimants is the original survey undertaken in 1951 as part of the preparations for producing the Definitive Map. Further information concerning this and the significance of the Tithe Map can be found earlier in the report.
168. Finally, Question 21 seeks to establish if the claimants have used the route to exercise some private right i.e. visiting someone who lived along the route or as a means of accessing their own land or property. The majority (94%) indicated that they had not.
169. One claimant did, however, answer 'yes' to the question but provided no further details in this particular question. The other person who did not answer 'no' to this question suggests that he used the route to visit a friend at Cwmdu Uchel and also for recreational purposes.
170. Members should note that using the path as a means of accessing property is not commensurate with claiming public rights over a route. The evidence provided by these two people should, therefore, be seen as circumstantial.
171. On 8 of the forms additional information has been provided. This information is as follows:
- Claiming the path on behalf of other claimants although I have not personally used it as a bridleway
  - Although not having used path as a bridleway myself I know by word of mouth that it has been used as a bridleway
  - Although I have never seen anyone using the path as a bridleway I have heard of people using it as such
  - I have heard of people using the footpath on horseback
  - Horse and cart driven down to 4600 (plot) by father and 2 brothers for Bethlehem Chapel Whitsun picnic 1922-1924

- I have used this path since I was nine years of age. My father was employed at the Darren Quarry and went to work through the disputed area
  - My daughter and family also use the same route as me
  - I have been walking down this footpath since I was eleven years old and have never been stopped or been told it was a private road
172. Full details of all additional information provided can be found on the individual 'Evidence Forms' in **Appendix 25 (Nos. 1, 11, 20, 21, 22, 26, 27, 28)**.
173. On 19<sup>th</sup> April 2000 the Rights of Way Section interviewed 4 people who had indicated during the most recent consultation exercise that they wished to continue with the application and would be willing to be interviewed. Details of the interview with Mr O'Brien were provided in paragraphs 137 and 138 and information obtained from the other interviews is provided below. It should be noted at this point that the interview with Mr and Mrs Rees took place at the same time and therefore their information is contained on one sheet.
174. Full details of the information provided at the more recent interviews can be found in **Appendix 27 (Nos. 1 - 3)**.
175. The usual purpose of the interviews is to clarify and confirm all the information supplied by the claimant on the 'Evidence Form'. The interview also helps the claimant to recall any other information/evidence that they have remembered since completing the 'Evidence Form'.
176. To this end I can confirm that the Rights of Way Officer has compared both sets of interview notes with the 'Evidence Forms'. Therefore, as the evidence provided on the forms has been well documented above it is proposed that only a summary of any differences and/or further information/evidence needs to be highlighted at this point. That information is provided below:
- Mr T Rees (one of the claimants) had ridden a horse along the route and even used the route in a car when he once followed the hunt.
  - They do not ever remember the landowner carrying out any maintenance on the track
  - Walter Rees's father never stopped anyone using the route
  - According to Mr Arthur, Mr Rees had previously indicated that it was nice to see people walking the route. He also indicated that he did not mind people using the route as long as they closed the gates.

### ***Legal background***

177. The County Borough Council has been asked to add a Bridleway to the Definitive Map and Statement under the Wildlife and Countryside Act 1981 (the 1981 Act). However, the Council's own research may prove that the route should be a BOAT.
178. The relevant statutory provision which applies to adding any public right of way to the Definitive Map and Statement based on the discovery of evidence is Section 53(3)(c)(i) of the 1981 Act, which requires the Surveying Authority (Bridgend County Borough Council) to modify the Definitive Map and Statement following:
- 'the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –
- that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.'
179. In this particular case the evidence is not only provided in the form of 30 completed 'Evidence Forms' (two of which were filled in by married couples), 28 of which indicate that 30 members of the public believe they have used the route for a period in excess of 20 years, but also by historic documentary evidence. The relevance of the historic documentary evidence is dealt with later in this report. However, details of how user evidence can be used to prove public usage are given below.
180. Section 31 of the Highways Act 1980 (the 1980 Act) provides for the presumption of dedication of a public right of way following 20 years continuous use. Subsection (1) states:
- 'where a way over any land has actually been enjoyed by the public as of right and without interruption for a period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.'
181. It is necessary to show that there has been uninterrupted use by the public over a period of 20 years in the belief that the use was 'as of right'. The public must have used the way without hindrance (e.g. objections, verbal/written warnings, etc) or permission from the landowner or his agents. The 20-year period may be shown at any time in the past and is generally taken to run backwards from the time when the use of the path was first 'called into question'.
182. As indicated in paragraph 177 the County Borough Council's research may indicate that the route should be a Byway Open to All Traffic. Establishing vehicular rights based on long user is, however, more

complicated. Members should, therefore, be aware of recent judgements in respect of this matter together with guidance issued by Central Government.

183. Section 34(1) of the Road Traffic Regulation Act 1988 reflects the statutory provisions which were first contained in Section 14 of the Road Traffic Regulations Act 1930, which came into force on the 1<sup>st</sup> December 1930. This provision makes it an offence to drive a motor vehicle without lawful authority:

‘on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or on any road being a footpath or bridleway’

184. From this it is clear that the only land on which a motor vehicle can normally be driven legally is land forming part of a road which is not a footpath or bridleway. This has been the case since December 1930.
185. In *Robinson-v-Adair* (McCowan LJ and Dyson J, QBD 16 February 1995, TLR 2 March 1995) the Divisional Court considered an argument that a road was deemed to be a highway by virtue of 31(1) of the Highways Act 1980 because of 20 years use by vehicles, even though such use had been an offence under the Road Traffic Regulation Acts since 1930.
186. The judgement in *Robinson-v-Adair* confirmed the principle (*George Legge and Son-v-Wenlock Corporation* 1938) where Lord Maughan indicated that no rights can be established by unlawful acts.
187. According to the Government in a letter to all Local Authorities in July 1997, if vehicular rights on land other than a road are claimed by way of 20 years use, all or part of which occurred after December 1930, then such evidence alone does not conclusively prove that those rights exist. Furthermore, the Planning Inspectorate, who in April 1997 issued a guidance note referring to this particular issue, adds

*“that any claim for deemed dedication of vehicular rights, either under Section 31 of the Highways Act 1980 or at common law, should be dealt with as follows:*

- a. *Where the whole of the claimed period is pre the 1930 Act.  
As it was not a criminal offence at this period to drive a vehicle on any land, footpath or bridleway at that time then the vehicle rights can be accrued under s.31 of the Highways Act 1980 or at common law.*
- b. *Where the claimed period is part pre and part post the 1930 Act.*

*In these circumstances only the period before the introduction of the offence may be relied upon to establish the right claimed. Any use after the coming into effect of the 1930 Act would be an offence so should not therefore be taken into account.*

- c. *Where the period is post the 1930 Act. Any vehicular use without lawful authority during this period, would be a criminal offence and can not be used as evidence of public use 'as of right' where there is a claim of deemed dedication." (Braham C June 1998 Rights of Way Law Review Section 6.3 p.57)*

188. A copy of the letter from Central Government is included in **Appendix 29**.
189. On 16<sup>th</sup> February 1998 in the Queens Bench Division, Sullivan J. delivered a judgement on a case in which Mr Timothy Stevens challenged the reclassification of a Road Used as a Public Path (RUPP) as a bridleway rather than a Byway Open to All Traffic (BOAT). The challenge required Sullivan J. to consider the scope and effect of the principle that a right cannot be acquired through conduct prohibited by statute.
190. The effect of Stevens in cases where it is sought to establish vehicular rights based on long-term user appears to be as follows. First, it is clear that where vehicular use is partly pre 1930 and partly post 1930 the evidence (including documentary evidence) must be looked at as a whole, and the post 1930 user might buttress the evidence of earlier user. Accordingly, the advice set out in paragraph (b) of the Planning Inspectorate's guidance given above was capable of being misleading.
191. Secondly, where there is no evidence of vehicular user in the years immediately pre 1930 but satisfactory documentary evidence of historic user by carriages or carts, the vehicular right of way might be considered to be established by 1930. Therefore, any motor vehicle use after this date could be taken into account as buttressing or confirming the existence of the vehicular right of way.
192. As well as trying to establish that vehicular rights have been shown to exist members must also consider the definition of a Byway Open to All Traffic (BOAT) and decide whether, if any public rights exist, they fit into this category of highway.
193. Section 66(1) of the Wildlife and Countryside Act 1981 defines a Byway Open to All Traffic as

*"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”.*

194. In determining whether vehicular rights have been shown to exist, Members will be considering and confirming, or otherwise, the first part of this definition. However, the correct interpretation of the second part of the definition of a Byway Open to All Traffic (the user test) namely:
- a. “.....used by the public...” and
  - b. “mainly for the purpose.....are so used”

has been the subject of heated debate since the decision of Dyson J. in *R-v-Wiltshire County Council ex parte Nettlecombe Ltd* (DC) [1998].

195. It was decided in that case that part (a) of the user test could not be satisfied unless there was actual current user by the public of the way claimed as a Byway Open to All Traffic. It has subsequently been argued that part (b) of the user test should be taken equally as literally, so that (1) there must be vehicular, equestrian and pedestrian user and (2) user by equestrians and pedestrians combined must outweigh vehicular user.
196. These issues have, since that judgement, been brought before the courts in two other cases – *Masters-v-Secretary of State for the Environment, Transport and the Regions* (CA) [2001] QB 151 and *Buckland-v-Secretary of State for the Environment Transport and the Regions* (DC) [2000] – where they have given rise to conflict of judicial opinion.
197. It is hoped, however, that the judgement given by Roch, Tuckey and Mance LJJ on 31<sup>st</sup> July 2000 in the Court of Appeal in the case of *Masters-v-Secretary of State for the Environment Transport and the Regions* will clarify the situation. Comments on that particular case were provided by David Braham QC in his Rights of Way Law Review article entitled ‘User element in definition of BOAT’s’ published in September 2000 (Section 8.2 pp 107 – 109).
198. Firstly, he says, it remains necessary to ascertain the recent pattern of public use of a route before making a Modification Order under Section 53 of the 1981 Act where the route is a public carriage road. A Section 53 Order **would still be inappropriate** if the recent use of the carriage road has been principally with motor vehicles.
199. Secondly, it is now clear that a Section 53 Order adding a new way to the map as a Byway Open to All Traffic **would be appropriate if the recent public use was exclusively by walkers or horse riders or both or if their use exceeded all the other public use**. Contrary to the view that was taken in the Nettlecombe case, such an Order **would be appropriate if there had been no recent public use at all provided that the character of the way makes it likely that the**

**public use of the way by walkers and horse riders will be greater than the public use with vehicles.**

***The landowners***

200. Following receipt of the application for the track running from Brookfields, Cwmdru Road to Bridleway 36 Maesteg at Ffos Farm to be considered as a public right of way the former Mid Glamorgan County Council began to investigate the matter. Within a month the National Farmers Union had lodged an objection to the application with the Mid Glamorgan County Council on behalf of Mr Walter Rees, the then owner of the land.
201. In their letter dated 10<sup>th</sup> July 1991 Mr J Kelly from the National Farmers Union indicated that Mr Rees was objecting on the grounds that there was no public access along the approach road to his premises, Ffos Farm, and through the farmyard. Mr Kelly included in support of his objection a letter from Ogwr Borough Council dated 16<sup>th</sup> February 1991.
202. In that letter Mr Rees is advised that the Definitive Map does not show a right of way along the approach into the farm or through the farmyard. Furthermore, according to Ogwr Borough Council the County Council had confirmed that the access lane was not maintainable highway.
203. A copy of the letters from Mr J Kelly of the National Farmers Union and Ogwr Borough Council are included at **Appendix 30**.
204. The Mid Glamorgan County Council responded to Mr Kelly's letter on the 29<sup>th</sup> July 1991. In that letter, a copy of which is provided in **Appendix 31**, the County Council insist that the matter has to be investigated as a result of persistent claims by local residents that the access track is a public right of way. The letter also indicates that:
  - at the time of registering all other public rights of way this track was omitted because it was considered to be public highway
  - the track had been surfaced in the 1950's by the Maesteg Urban District Council and it was, therefore, considered to be a public highway
  - 26 local residents had provided written statements to the effect that they considered the road to be public by virtue of prescriptive rights.
  - the application must be determined by the Mid Glamorgan County Council's Rights of Way Sub-Committee therefore it cannot be dismissed quickly

- Mr Rees, the owner, should start collecting documentary evidence, sworn statements, etc. to negate the claim.
205. No further discussions took place between the Mid Glamorgan County Council and the landowner prior to Local Government Re-organisation in 1996.
206. On 6<sup>th</sup> February 2000, as part of the new investigations into this matter, a letter was forwarded to Mr W Rees, Ffos Farm, Cwmdu Road, Maesteg, as he was believed to still be the landowner. This not only resulted in the County Borough Council receiving two replies from Miss A Giddings of the Farmers Union of Wales on behalf of Mr Kennedy and Miss Davies, the executors of Mr Rees' estate, but also a separate letter from Mr Kennedy himself. It also resulted in the Rights of Way Officer and his assistant being able to interview Mr Kennedy.
207. The consultation letter is attached in **Appendix 32**.
208. In her first letter of the 22<sup>nd</sup> February 2000, Miss Giddings explains that she is acting on behalf of Miss Davies and Mr Kennedy as Mr Rees had passed away. Furthermore, she indicates that there has never been public access over the route and the letter should be taken as an objection to the proposal. Miss Giddings also states that there has always been notices on the track stating 'Private Property – no public access' and that the deeds expressly state access to Cwmdu Isha only.
209. The second letter of the same date merely requests a meeting to discuss the matter further.
210. A copy of Miss Giddings' first letter dated 22<sup>nd</sup> February 2000 is attached in **Appendix 33**.
211. Mr Kennedy also provided his own response to the County Borough Council's consultation letter. In his letter, which is dated 21<sup>st</sup> March 2000, he confirms that he has now taken over Ffos Farm following the death of his uncle in 1997. His reasons for objecting to the proposal include:
- signs at the start of the track by Brookfield House indicating 'Private Farm Road' and 'Private Property'. These have been in situ for more than 30 years
  - the gate at Brookfield House has always been closed and locked with a padlock
  - horse riders would be allowed access through the farmyard and to the land on both sides of the track
  - there are 5 gates on the route and there is the risk that users would not close them
  - the registration of the route would encourage certain elements of people to use it which he does not want to encourage



- every person who tried to walk or ride down this track has been challenged and told that the route is not a public right of way and that they are on private property
- at the hearing in 1986 a decision was made that the track was a private track for private use only

212. A copy of Mr Kennedy's letter is included at **Appendix 34**.
213. On 27<sup>th</sup> September 2000 the Rights of Way Officer and his assistant met Mr Kennedy and Miss Giddings on site to inspect the claimed path and to discuss the claimed right of way. A neighbouring farmer, Mr Howell's, was also present throughout the whole of the site visit.
214. Comprehensive notes of the interview/meeting and site inspection are attached in **Appendix 35**. However, the main points are detailed below:

**1. Structures**

There are five gates at various locations along the route. The one at the start was closed with a padlock at the time of the inspection. However, this was not fixed to the original gatepost but a slightly more modern one. There was a gap, therefore, between the two gateposts that most pedestrians would be able to squeeze through. The two either side of the disused mineral railway were required to be shut but not locked at all times. Although the gates at the farm were shut they were not locked.

**2. Signs**

A sign indicating 'Private Property No Public Access' was attached to an original wooden gatepost at the start of the claimed path. Mr Kennedy did not know how long it had been there but Mr Howell's thought it had been in existence for 60 to 70 years.

Newer signs indicating 'Private Road to Ffos Farm No Public Access' had been erected recently on the first gate and at other locations by Mr Kennedy. At some time in the past someone has erected a 'Beware Trains' pictorial warning sign on one of the gateposts by the disused railway.

**3. Surface**

The track has remains of a tarmacadam surface that would suggest that it was laid sometime ago. Mr Kennedy agreed that the Maesteg Urban District Council had put the tarmac down in the 1950's. However, when this was due for repair in approximately 1974 Mr Rees would not allow the work to be done. Mr Howells did suggest that Mr Rees might have purchased the tarmacadam himself.

4. Mr Rees had lived at the farm since 1940 and had owned it for nearly as long. According to Mr Howells and Mr Kennedy he had, throughout that time challenged any public right of access along it.

215. In addition to the above Mr Kennedy also indicated that he had a number of reasons that would negate any claim. However, he was only prepared to divulge 3 at the moment and these all related to safety and security issues.

### **Consultations**

216. The required consultations with the Town Council; the prescribed organisations; and, the statutory undertakers have been carried out. The two local Members were also consulted on the application.

217. The clerk of the Maesteg Town council replied on the 17<sup>th</sup> February 2000 stating that the application had been considered by the Rights of Way Committee of the Town Council. In considering the matter Members had been advised that in excess of 20 Evidence Forms had been submitted to the Local Authority together with other documentation relating to the path.

218. Having considered the matter full support was given to the modification of the Definitive Map and Statement to add a bridleway from Brookfield House to Ffos Farm.

219. A copy of the Town Council's response to the consultation exercise is provided in **Appendix 36**.

220. Councillor J J Jones responded on the 8<sup>th</sup> February 2000 indicating that this route was the main entrance to the Darren Valley for the residents of Maesteg. Furthermore, he said that he had walked this route with his father from the early 1950's until the 1970's and that his father had ridden on the track in the 1930's.

221. Councillor Jones continued by confirming that the late owner of Ffos Farm, Walter Rees, decided to stop public access over the years. He did this by depositing large amounts of hay on the road; allowing herds of cattle in the area, having sheep dogs running free and with threats to walkers.

222. A copy of Councillor Jones' letter is provided in **Appendix 37**.

223. No reply was received from Councillor W B Evans.

224. A number of replies were received from the user groups. Those responding not only included the British Horse Society, Ramblers Association and Groundwork Bridgend but also the All Wheel Drive Club.

225. The British Horse Society representative, Mr G Wheeler made a number of comments in respect of this application. These included the fact that:
- when the route was surveyed by Mr Wheeler in February 1995 there was a bridleway sign at Brookfield Cottage pointing along the accommodation road to Ffos Farm.
  - There was evidence of equestrian use
  - The Definitive Statement describes a route commencing on Cemetery Road and ending on the Parish Road at the entrance lane to Ty'maen Farm as a Footpath/Bridleway
  - Subsequent investigations have revealed the Statement does not include the section that is the subject of this report. Therefore, Mr Wheeler concludes that it must be either an omission or mean that the route is already maintainable highway.
226. A copy of Mr Wheeler's consultation response can be found at **Appendix 38**.
227. Mr K Fuller responding on behalf of the Ramblers Association indicated that the Association supported the claim. He also stated that the route had always been considered to be part of Fp/Bw 36 Maesteg linking up with Bridleways 44 and 45 Bettws to form a major route between Measteg and the Upper Garw Valley. He is at a loss to understand why there would be a gap as any horse rider arriving at Ffos Farm from the east would have to retrace their steps. His only explanation is that it was believed to be maintainable highway when the Definitive Map was first drawn.
228. It appears that the same situation would also occur with any walker approaching Ffos Farm from the south on Footpath 36A Maesteg. The Definitive Statement for this Footpath may provide a clue, however, in that it indicates that the footpath starts on the parish road south of Ffos Farm.
229. Finally Mr Fuller confirms that members of the Association, local community and horse riders have used the track for at least 30 years. Furthermore, no one has been prevented from using this route by a landowner.
230. A copy of Mr Fuller's letter is provided in **Appendix 39**.
231. Mr G Irlam for Groundwork Bridgend had little comment to make except that he was aware of signs along the road indicating 'Private Property No Public Access'. A copy of Mr Irlam's consultation response is shown in **Appendix 40**.
232. As it was possible that vehicular rights may exist over the claimed route consultations were carried out with those user groups who need

to be consulted in respect of Byways Open to All Traffic. The only response received was from the All Wheel Drive Club.

233. In their letter dated 10<sup>th</sup> March 2000 they indicate that they have no adverse comments or objections to the applications. A copy of their letter is provided in **Appendix 41**.

## **Conclusion**

234. There appears to be no specific date as to when the use of the path as a public right of way was first brought into question. The Mid Glamorgan County Council had received a letter on the 14<sup>th</sup> February 1990 from Ogwr Borough Council relating to a number of complaints it had received concerning the owner of Ffos Farm. According to the letter members of the public were being prevented from walking through the farmyard.
235. Later on that year (July to be precise) a local resident, Mr O'Brien, also contacted the County Council to complain about the trouble Mr Rees of Ffos Farm was causing. According to Mr O'Brien people were discouraged from using the route not only by Mr Rees but also by the presence of about a dozen dogs.
236. This information appears to have been corroborated by an officer from Mid Glamorgan County Council. As the County Engineer and Surveyor indicated to the County Clerk and Co-ordinator in response to a query from the local Member, Councillor J J Jones, Mr Rees did not accept any public rights of access along the track. Furthermore, Mr Rees did not accept it as public highway even though documents suggested it had once been maintained by Maesteg Urban District Council.
237. A year later (June 1991) when Mr O'Brien forwarded 25 'Evidence Form's to the County Council he was still complaining that access was being denied. In his accompanying letter Mr O'Brien indicates that as well as Mr Rees and the dozen dogs members of the public are being prevented from using the route by 2 bulls.
238. Further information concerning the date on which the use of the path as a public right of way was first brought into question can be found in both the 'user' evidence, landowner's comments and consultees responses.
239. In their letter Mr and Mrs Jones provide details of an encounter they had one summer with a person they believed to be the owner of Ffos Farm. On reaching the farmyard they were prevented from continuing not only by a large number of dogs but also by a lady who said there was no right of way through the farmyard. Despite her protests the lady finally let Mr and Mrs Jones through.

240. Unfortunately, Mr and Mrs Jones do not indicate exactly when the incident happened. However, it must have been prior to January 1991 as this was the month in which an article appeared in the Gazette prompting them to write in.
241. Responding to the County Borough Council's consultation letter in February 2000 Mr O'Brien indicates that there was no dispute when he first started using the path almost 50 years ago. He does, however, suggest that the problems arose when he reminded Mr Rees that he should not allow his bulls and dogs to roam on the path. This appears to have occurred in the late 1980's or early 1990's.
242. During his interview that took place a few months after the consultation letter Mr O'Brien confirmed the information given in the previous paragraph. He also indicated that Mr Rees, the owner, regularly told him, and others, that the route was not a public right of way.
243. This latter point is also picked up by one of the questions on the 'Evidence Form'. As can be seen from paragraph 162, 50% of the claimants indicated in their response to Question 20 that the landowner had told them the route was not public. Unfortunately, they do not indicate when these instances occurred and it is, therefore, difficult to determine from this when the way was first brought into question. The significance of this question and its replies are provided below.
244. In *Fairey v Southampton CC* (1956) Lord Denning said:

'In order for the right of the public to have been brought into question, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be appraised of the challenge and have a reasonable opportunity of meeting it.'

According to Riddall and Trevelyan in their book 'Rights of Way – A guide to law and practice' matters that would bring the public's right to use the way into question include anyone of the following:

- Locking a gate
- Putting up a notice denying the existence of a right of way
- Physically preventing a walker from proceeding along a path
- Bringing an action for trespass (for damages), or to obtain an injunction (to prohibit future use)
- Seeking a declaration from the court that the way is not public
- Erecting a notice stating that use of the way is by permission of the landowner
- Lodging an application for a definitive map modification order adding a way to the definitive map prepared under the Wildlife and Countryside Act 1981.

245. As can be seen from the above list telling someone that the route is not a public right of way may not bring the public's right to use the way into question.
246. In her first letter following the County Borough Council's consultation in February 2000 Miss Giddings, the Farmers Union of Wales representative, indicates that there have always been notices on the track stating 'Private Property – no public access'. Furthermore, during the site inspection that took place in September that year it was noticed that that sign was still in place. A neighbour, Mr Howells, suggested that it had been in existence for 60 to 70 years. Mr Kennedy on the other hand, in his letter of the 21<sup>st</sup> March 2000 states that the signs have been there for more than 30 years.
247. If the sign had been erected for 60 – 70 years then it is difficult to understand why the Maesteg Urban District Council had laid tarmac on the surface of the claimed right of way in the 1950's. Although Mr Howells did not agree that the Urban District Council had carried out the work Mr Kennedy, Mr Rees' nephew, did confirm that it was they that had laid the tarmac on the route. He did, however, also indicate that when the track was due for repair in 1974 Mr Rees would not allow the work to be done.
248. Finally, in response to the Council's consultation in 2000 Councillor Jones confirmed that Mr Rees had decided to stop public access over the years. He had done this, Councillor Jones suggested by depositing large amounts of hay on the road; allowing herds of cattle in the area; having sheep dogs running free and with threats to walkers. Once again there is no date given as to when this may have started.
249. On the basis of the information contained above the use of the path as a public right of way has definitely been brought into question in a number of ways. These included:
1. Placing notices along the route
  2. Animals being allowed to run free thereby intimidating and preventing the public using the route
  3. The public being told that the route was not public
  4. Hay, etc being deposited on the route thereby preventing access
250. However, only in a very few cases is there any actual indication of when the above occurred. Certainly members of the public complained in the 1980's and early 1990's and the Urban District Council were denied access in approximately 1974. However, whether by preventing access to the Urban District Council in 1974 constitutes bringing the use of the path as a public right of way into question is debatable. However, I believe that this is probably when the use of the path as a public right of way was first brought into question.

251. During the Public Inquiry in September 1980 the Inspector also considered the interpretation of Section 31 of the Highways Act 1980 and in particular the date from which the 20 year period is to be calculated. In his report the Inspector concludes that if in any case there is clear evidence of actual interruption of a way then that is the date from which the period is to be calculated.
252. Generally, however, with the ways that were dealt with at those inquiries one has to look at the events arising from the review itself to determine from when the period should run. He did consider the review date itself but did not think that was sufficient to establish a conclusion that the right of the public to use a particular path was brought into question simply because no action was taken to affect the public's use of a particular way and he felt an interruption for the purposes of section 31(2) of the 1980 Act must be something positive drawn to the attention of the public at large. Having considered that the Inspector took the view that the 20 year period should run from the date of the publication of the review which in this case was March 1974.
253. Members should therefore look for evidence of substantial and continuous use of the path as a public right of way up to 1974 and should decide if the evidence supplied appears to support the claim for the full period of 20 years.
254. The County Borough Council has unearthed a large number of historic documents which would appear to indicate the existence of some type of track from as early as 1842. The tithe map, Ordnance Survey plans and other historic documents all provide valuable information in respect of the existence and possible status of the claimed right of way.
255. The Longonoyd Tithe Map (1842) clearly shows the claimed right of way as a well defined route running from Enclosure 809 (which is today known as Cwmdu Road) to the river to the south east of Ty Foes (Ffos Farm today). It does not appear to be shown as being subject to any tithe rent.
256. The fact that the route is shown on a tithe map as not tithable is not conclusive evidence that the road was a public road at the time. However, as will be noted from the main body of this report, according to J D Andrews if the road is not subject to tithe rent and is shown in every aspect in an identical fashion to others on the same map which are indisputably part of the public highway network then this may be a positive indication that it shared the same status. In this case the claimed right of way is quite clearly defined on the Longonoyd tithe map in a similar manner to a number of routes in the area that are maintainable/public highways today.
257. Due to their thorough survey methods Ordnance Survey maps are useful and very accurate at depicting the topography and physical

features of an area. However, as Members will recall from the main body of the report, an eminent researcher of Ordnance Survey maps and plans has indicated that it is not possible to predict with any degree of scientific certainty that a road was public.

258. The first edition 1:2500 scale Ordnance Survey plan of this area is dated 1876 and shows the claimed right of way coloured orange/yellow. With the caveat of the previous paragraph I would confirm that personal experience of the Rights of Way Officer has shown that by comparing other similarly coloured routes in an area with the maintainable highways of today one can determine what may have been public roads at the time. A comparison of the other routes in this area of Maesteg would certainly indicate that this route is shown in a similar manner to other public roads in the area at the time.
259. Eight other Ordnance survey maps dating from 1833 to 1943 were also examined and the route was clearly marked on them all. A further six maps prepared by different cartographers and dating from the 17<sup>th</sup> to the 20<sup>th</sup> Century's were also examined. However, none of these provided any information/evidence concerning the existence of the claimed right of way. Full details concerning the eight Ordnance Survey maps and six other maps can be found in the main body of the report.
260. During the site visit to the claimed right of way in 2000 to interview the current landowner it was noted that the line of the claimed right of way passed over what appeared to have been a railway line. As Members will recall from the main body of the report this turned out to be firstly a tramway and then later it became known as North's Navigation Railway. Despite numerous investigations and being provided with a copy of the lease for the railway no information or evidence concerning the claimed right of way was found.
261. Further historic documentary evidence concerning the status of the claimed right of way is provided in paragraphs 94 to 119 of the main body of the report. That evidence relates to:
  - The fact that the route was shown on the original survey of public rights of way as part of the preparation for the Definitive Map but was removed prior to the publication of the draft map. The reason for this was due to the fact that the Maesteg Urban District Council had surfaced the track, believing it to be a vehicular highway between the original survey and publication of the draft map.
  - Correspondence from 1959 suggests that the claimed right of way is a highway the responsibility of which lies with the Maesteg Urban District Council.
  - During two public inquiries in the 1980's into the reclassification of Cart Road Bridleway 36 Maesteg to the south east of Ffos Farm the Inspectors confirmed the believe



that there was evidence to indicate that the claimed route was a vehicular highway.

- Reports to, and resolutions of, various Committees of the Maesteg Urban District Council from 1932, 1934 and 1957 indicate that this route is likely to have been maintained by that Council.

262. Information concerning the use of the path or its existence as a public right of way has also been provided by 32 people over the past 12 years to both the Mid Glamorgan County Council and the Bridgend County Borough Council. Of these, 90% of people provided information/evidence with regard to their use of the route as a public footpath; two people used it as a bridleway and no one indicated they had used it with vehicles. Use in each category was not only supplemented by replies from the consultees but also further information from the claimants.
263. Although a large number of people provided evidence in respect of the use of the route as a footpath only four of those who specified a period of use indicated they had used the route for the period of 20 years and over up to 1974. These were those claimants who indicated between 40 and 70 years use at the time they had signed the 'Evidence Form' in 1991. A further 20 people had used the route on foot but they did not specify a time period.
264. An indication of how many of these may have used the route for 20 years prior to 1974 may, however, be gained from the answer to Question 9 (How long have you known the path). In this particular case 14 people had known the path over 40 years, suggesting that as many as nine more people could have actually used the route on foot for the required length of time.
265. None of these claimants were employees or tenants of the landowner and they stated that they had not asked for permission to use the path.
266. The use of the path on foot was also augmented by information provided by one of the Local Members, Councillor J J Jones, and the Ramblers Association during the recent consultation process. Councillor Jones indicated in his response that he had walked this route with his father from the early 1950's until the 1970's. Meanwhile the Ramblers Association confirmed that the local community had used the track for at least 30 years.
267. Turning now to the provision of evidence in respect of the use of the path as a bridleway it is confirmed that while two people indicated they had used the route on horseback only one had used it for at least 20 years prior to 1974. In this one case the claimant had used the route for between 30 and 40 years prior to 1974. Once again neither of the

claimants that had ridden a horse along the route were employees or tenants of the landowner.

268. Although the representative of the British Horse Society did not provide specific evidence concerning the use of the route by his members he did indicate that there was evidence of equestrian use. Furthermore, when he surveyed the route in 1995 there was a bridleway sign a Brookfield Cottage.
269. Councillor Jones also corroborated use of the track by horses by indicating in his consultation response that his father had ridden on the track in the 1930's.
270. Of the 32 people who had used the route none provided any evidence of their use of the route with vehicles. However, the 'Evidence Form' allows claimants to provide any further information in respect of the claim right of way. In one of the eight cases where extra information has been provided the following has been written:

'Horse and Cart driven to 4600 (plot) by father and 2 brothers for Bethlehem Chapel Whitsun picnic 1922 – 1924.'

271. As indicated in the main body of the report this evidence could not be clarified by means of an interview. It is impossible to tell, therefore, whether the horse and cart were there as a result of permission having been granted by the landowner or due to the fact that it was thought to be a public highway at the time. In either case it does prove that the track was usable by a horse and cart at the time.
272. In their response to the recent consultation exercise the Welsh Trail Riders Association indicated they had no adverse comments or objections to make.
273. Since the matter was first brought to the attention of the Mid Glamorgan County Council the owner of Ffos Farm has always disputed the existence of a public right of way. In his initial response Mr Rees objected on the grounds that there was no public access along the approach road to his premises and through the farmyard. He cites, in his defence, the letter from Ogwr Borough Council which indicates the route is not shown on the Definitive Map and the County Council has confirmed that it is not shown as maintainable highway.
274. During the recent consultation exercise the new owners, Mr Kennedy and Miss Davies, also indicate that there has never been public access over the route. Furthermore, there have always been notices on the track stating 'Private Property – no public access'.
275. In a separate letter Mr Kennedy also provides a further six reasons why he feels there is no public right of way along the route. These include:

- the gate at Brookfield House has always been closed and locked with a padlock
- 
- horse riders would be allowed access through the farmyard and to the land on both sides of the track
- there are 5 gates on the route and there is the risk that users would not close them
- the registration of the route would encourage certain elements of people to use it which he does not want to encourage
- every person who tried to walk or ride down this track has been challenged and told that the route is not a public right of way and that they are on private property
- at the hearing in 1986 a decision was made that the track was a private track for private use only

276. As Members will be aware the purpose of this report is to determine whether public rights have been shown to exist. Privacy and Security reasons cannot be taken into account. Therefore, 3 of the issues indicated above cannot be considered as valid reasons for negating any claim.

277. In cases where Members are requested to determine whether public footpath or bridleway rights have been shown to exist the legal considerations are straight forward. In those cases Members would be asked to consider two important points:

- a) whether the path has been used by the public for 20 years as of right, and,
- b) was there any intention by the landowner not to dedicate the route as a right of way.

278. In answering a) above I feel that the evidence provided in this report does indicate that the path has been used by the public for more than 20 years prior to 1974 when I believe that the right was likely to have been first called into question.

279. With regard to b) above it would appear that the landowner became aware of the fact that the route was already a public highway in 1974 or thereabouts when the Maesteg Urban District Council wanted to repair the track. Until that time I believe that there was no intention by the landowner not to dedicate the route as a right of way. However, once he became aware of the fact that he could possibly stop people then the erection of the notices, physically stopping people, etc does imply an intention not to dedicate. I feel this would have occurred after 1974 and after the route had already become a public right of way.

280. Where the rights that are being called into question could include vehicular traffic then, as explained in paragraphs 182 to 199 inclusively, the legal considerations are somewhat complicated. In

essence, Members must decide, based on the evidence placed before them, what their answers to the following two questions are. The answers to these two questions will then determine whether public rights other than pedestrian or equestrian have been shown to exist and whether the route should be shown as something other than a footpath or bridleway. The two questions are:

- 1) Have vehicular rights been shown to exist? and,
- 2) If public rights do exist do they fit into the Byway Open to All Traffic category?

281. In answering each of those questions Members should also take note of the following information.

**1. Have vehicular rights been shown to exist?**

- The Road Traffic Act 1930 made it a criminal offence to drive a vehicle on anything other than a road.
- The courts have decided that rights cannot be claimed through unlawful acts.
- A vehicular right of way cannot be established based solely on post 1930 user evidence.
- Post 1930 user evidence could be considered if it was a continuation of pre 1930 use.
- Where there is no vehicular use immediately prior to 1930 but there is documentary evidence of use by carriages or carts the vehicular right of way may be said to be established by 1930. Therefore use after 1930 may be said to be confirming the existence of the vehicular right of way.

**2. If public rights do exist do they fit into the Byway Open to All Traffic category?**

- A Byway Open to All Traffic is defined as 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.
- In answering question one above Members will be considering and confirming whether vehicular rights exist. Therefore, part 1 of the definition will have been confirmed or rejected.
- The courts have decided that the second part of the definition also requires careful consideration and correct interpretation.
- Members cannot, therefore, classify the route as a Byway Open to All Traffic if the recent use with motor vehicles is greater than the use by pedestrians and equestrians combined.

- Members can agree that the route should be a Byway Open to All Traffic if:
  1. recent use was exclusively by walkers or horse riders or both or if their use exceeds all the other public use, or
  2. there is **no** recent public use at all provided that the character of the way makes it likely that the public use of the way by walkers and horse riders will be greater than the public use with vehicles.

282. On the basis of the above evidence I would suggest that the historic documents and very limited user evidence indicate that the route was a road prior to 1930. This was further supported post 1930 by the resolutions of Committees of, and work undertaken by, the Maesteg Urban District Council. Any user evidence of vehicular use post 1930 can therefore be taken into account.

283. As indicated above it would appear that the use of the route has been predominantly by pedestrians and equestrians. If the track is once again brought back into public use I also believe that the use by pedestrians and equestrians would be far greater than the public use by vehicles.

284. In determining the application for a Modification Order as submitted by Mr G K Evans the Rights of Way Panel now has a number of options available to it. Having considered the available evidence it must decide whether:

1. To make a Modification Order to add the route to the Definitive Map and Statement as a Footpath
2. To make a Modification Order to add the route to the Definitive Map and Statement as a Bridleway
3. To make a Modification Order to add the route to the Definitive Map and Statement as a Byway Open to All Traffic
4. Insufficient evidence has been provided to allege that public rights exist and in that case to reject the application and advise the applicant that they may appeal, in writing, against the decision of the Council to the National Assembly for Wales within 28 days from the date of the decision letter.

285. In light of the information contained in this report I therefore conclude that on the balance of probability there is sufficient evidence to reasonably allege that a right of way as a Byway Open to All Traffic subsists along the path marked with a bold black dashed line on the plan shown in **Appendix 1** and that this evidence has not been rebutted by sufficient evidence being submitted by the landowners.

286. The Panel is invited to RESOLVE:

- A1 That on the balance of probabilities there is sufficient evidence to support that the route marked with a bold black dashed line on the plan in **Appendix 1** has been used for such a period to raise presumption that it has been dedicated as either a public footpath, public bridleway or Byway Open to All Traffic (BOAT) and that this evidence has not been rebutted by any other evidence;
- A2(i) On resolving A1 above to approve the making of a Definitive Map Modification Order to show the route described as follows as either a public footpath, public bridleway or BOAT in the Definitive Map and Statement.

The claimed [*footpath, bridleway, Byway Open to All Traffic*] will commence on Cwmdy Road, Maesteg at Point A on the map (Grid Reference SS 86949125) being a point 485 metres north north east of the centre of the frontage of the property known as No.20 Brookfield Road, Maesteg and will proceed in an east south easterly direction for approximately 21 metres or so to Point B (Grid Reference SS 86969124) where it will turn and run in a south easterly direction for approximately 140 metres to Point C (Grid Reference SS 87049113) thence in a generally easterly direction for approximately 112 metres to Point D (Grid Reference SS 87159112).

The claimed [*footpath, bridleway, Byway Open to All Traffic*] will continue from Point D over the Nant y Twic in a general east south easterly direction for 114 metres or so to Point E (Grid Reference SS 87269108) where it will turn and run in an easterly direction for 131 metres or thereabouts crossing a disused mineral railway on route to Point F (Grid Reference SS 87299107).

From Point F the claimed [*footpath, bridleway, Byway Open to All Traffic*] turns and runs in an east south easterly direction for approximately 135 metres or so to Point G (Grid Reference SS 87429105) where it turns and runs in a south south westerly direction for approximately 62 metres to Point H (Grid Reference SS 87409100).

At Point H the claimed [*footpath, bridleway, Byway Open to All Traffic*] runs in a south easterly direction for approximately 6 metres to terminate where it meets Bridleway 36 Maesteg at Point J (Grid Reference SS87419099) being a point 694 metres east north east of the centre of the frontage of the property known as No.20 Brookfield Road, Maesteg.

The route to be registered will have a width that will vary between 2.5 and 3.0 metres along the defined track for the first 273 metres from Cwmdy Road until the point where the route

becomes bounded on both sides by either hedges or fences or a combination of both. At this point, and for the next 280 metres, the width of the route will be the whole width of the track between those boundaries which will vary between 5 and 10 metres. The route will then continue for the last 68 metres past the outbuildings of Ffos Farm as a 2.5 to 3 metre wide track. The route varies throughout its entire length between a tarmacadam, hardcore and natural surface.

The route will also be subject to the following limitation and condition of its use, namely the right of the landowner to erect and maintain field gates at the following locations: Grid Reference SS 86969124; SS 87299107; SS 87329107; SS 87419105; SS 87419102, and the said gates to remain open and available for use by the public at all times.

[N.B. Two of the words in the square brackets will be deleted depending on the status the Rights of Way Panel feel has been shown to exist.]

- A2(ii) To approve the confirmation of the Definitive Map Modification Order made as a result of A2(i) above provided no objections or representations are made within the prescribed period or if any so made are withdrawn.
  
- A3 If any objections or representations are made within the prescribed period and are not subsequently withdrawn then the Order be referred to the Planning Inspectorate for determination.

**Or**

- B1 In rejecting A1 above and deciding that on the balance of probability that insufficient evidence has been provided in support of the application to register the Claimed Right of Way to advise the applicant that their application has been rejected and that they may appeal, in writing, against the decision of the Council to the Planning Inspectorate within 28 days from the date of the decision letter.

**APPENDIX 1 – 41  
HAVE BEEN PRODUCED AS A SEPARATE DOCUMENT**

**MEMBERS OF THE RIGHTS OF WAY PANEL HAVE THEIR  
OWN COPY**

**FOR OTHER MEMBERS 2 COPIES HAVE BEEN DEPOSITED  
IN THE MEMBERS ROOM**

**ANYONE ELSE WISHING TO RECEIVE A COPY SHOULD  
CONTACT THE RIGHTS OF WAY SECTION ON 642537**

**TO BE READ IN CONJUNCTION WITH ITEM 1 OF THE  
REPORT OF THE EXECUTIVE DIRECTOR – ENVIRONMENT**

**TO**

**RIGHTS OF WAY PANEL  
ON**

**7<sup>th</sup> SEPTEMBER 2005**

**TRANSPORTATION AND ENGINEERING**