

BRIDGEND COUNTY BOROUGH COUNCIL
REPORT OF EXECUTIVE DIRECTOR - ENVIRONMENT
TO THE
MEETING OF THE RIGHTS OF WAY PANEL
Friday 21st October 2005

ITEM	DESCRIPTION
1.	BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE DELETION OF FOOTPATH 9 PYLE

1. **Bridgend County Borough Council
Definitive Map and Statement: Public Rights of Way In the matter
of the Deletion of Footpath 9 Pyle**

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 31st January 1955. Following the resolution of objections a provisional map and statement was published on 1st May 1964, and following the determination of further objections, the Definitive Map and Statement was published on the 4th August 1970. The map and statement had a relevant date of the 14th 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.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 20th December 1990 with a relevant date of 1st 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 1st 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 there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The County Borough Council received an application on the 13th March 1997 requesting that Footpath 9 Pyle as shown coloured purple on the Special Review Definitive Map in Appendix 1 and by a dashed black line on the plan shown in Appendix 2 be deleted from the said Special Review Definitive Map and Statement. Investigations have, therefore, been undertaken by the County Borough Council 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 National Assembly for Wales.

Members are informed that in the application before them the applicants are alleging that the footpath never really existed and that it came to be included on the Definitive Map in error. They have put forward three distinct grounds to support these allegations. These are:

1. the physical characteristics of the route are such that the footpath has always been impossible to walk
2. witnesses indicate that the footpath has never been used
3. the Parish Map and Statement on which the Definitive Map and Statement are based are inconsistent with, and contradict, each other.

If the evidence put forward by the applicant is sufficiently cogent to satisfy the Authority that on the balance of probability the Definitive Map and Statement are in error then they are obliged to make a modification order under Section 53 of the 1981 Act. In the application

that I s the subject of this report the evidence is as stated in **Schedule 1** herein.

SCHEDULE 1

Application to Delete Footpath 9 Pyle

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 delete the public right of way known as Footpath 9 Pyle from the Glamorgan County Council Special Review Definitive Map and Statement. The footpath runs across land at Ty Tanglwst Farm, Pyle and is shown on the copy of that Definitive Map provided in **Appendix 1** and by a dashed black line on the plan provided in **Appendix 2**.

B Proposed Action

2. The Rights of Way Panel is invited to RESOLVE either:
 - A1 That on the balance of probabilities there is sufficient evidence to show that there is no public right of way over the land shown on the Special Review Definitive Map and Statement as Public Footpath 9 Pyle 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 delete the route described as follows as a Public Footpath from the Glamorgan County Council Special Review Definitive Map and Statement:-

‘Commences on footpath 8, south west of Ty Tanglwst Farm, and proceeds north-east across fields to terminate on Heol-y-Sheet.

750 yards in length and 3 feet wide’
 - 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 Welsh Assembly Government for determination.

Or

B1 In rejecting A1 above and deciding that on the balance of probability that sufficient evidence has been provided to rebut the evidence in support of the application to delete Footpath 9 Pyle 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 Welsh Assembly Government within 28 days from the date of the decision letter.

C Resources Appraisal

3. As Members are aware, financial implications are not to be considered by the Panel when determining this application as the County Borough 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.

D Supporting Information

Background to the Application

4. On the 13th March 1997 the County Borough Council received a letter from David & Snape, Solicitors. Enclosed with that letter was an application Form (W.C.A.5) requesting that the public right of way known as Footpath 9 Pyle be deleted from the Definitive Map and Statement. Accompanying the application was a Statement of Case together with supporting documents. Further details of the Statement of Case and the supporting documents are provided later in the report.
5. The Application, which requested that an Order be made under Section 53 of the Wildlife and Countryside Act 1981 was submitted on behalf of Richard, Mary and Richard John Lougher on the 11th March 1997. A letter of the same date from David and Snape, Solicitors and which accompanied the application indicates that Footpath 9 Pyle crosses only land owned by the applicants. The Council were satisfied, therefore, that there was no reason for forms W.C.A. 6 and 7 (notification to landowners) to be completed.
6. A copy of the letter dated 11th March 1997 from David and Snape, Solicitors and the completed Application Form (W.C.A. 5) are attached at **Appendix 3**.
7. The application had been prompted by almost 6 years of disagreement between the landowner and both the current and previous Highway Authority's concerning the existence of Public Footpath 9 Pyle.
8. In March 1991 the Mid Glamorgan County Council received a 'Path Problem Report Form' from Mr N Davies of the Bridgend and District Ramblers Association. Within that form Mr Davies indicated, amongst other problems,

that in relation to Footpath 9 Pyle, there was 'no indication that Footpath exists'.

9. A copy of Mr Davies' report form is included in **Appendix 4**.
10. Following receipt of that form it appears that an officer from the Mid Glamorgan County Council's Rights of Way Section inspected the footpath. According to a letter from the County Council to R & M Lougher and Son dated 16th May 1991 that inspection revealed that the footpath was obstructed in two places.
11. The letter also requests that the obstructions be removed by the time a second inspection is carried out on the 5th June 1991. It would also appear that the Officer had spoken to the landowner during his initial inspection, and that the owner had suggested that the path had been obstructed for 40 years.
12. A copy of the letter and accompanying plan from the Mid Glamorgan County Council to R and M Lougher & Son dated 16th May 1991 is included in **Appendix 5**.
13. The agent for the Loughers, Mr G Morgan Joseph, replied to the letter from the Mid Glamorgan County Council on the 22nd May 1991. In that letter the agent indicates that his clients have actually done much to improve the environment in that area and they do not wish to be obstructive. However, Mr Lougher's previous statement that the footpath had been obstructed for 40 years was correct. The agent requests information as to when the rights of way were registered; if it possible to have a copy of the Definitive Map; and, whether the next inspection can be deferred.
14. A copy of Mr Morgan Joseph's letter to the Mid Glamorgan County Council dated 22nd May 1991 is enclosed in **Appendix 6**.
15. In replying to the letter from Mr Morgan Joseph the County Council provided a comprehensive summary of the process by which the footpaths became registered public rights of way. It is also obvious from the letter, a copy of which is reproduced in **Appendix 7**, that a copy of the Definitive Map was also forwarded to the agent. A further inspection of the footpath was due to take place on the 1st July 1991 but in the meantime the landowner was once again reminded of his statutory duty to remove the obstructions.
16. The reply from Mr Morgan Joseph dated 20th June 1991 reiterates the fact that the family have known of, and lived at, the farm since the 1930's whilst he has known the farm for over 60 years. Furthermore, Footpath 9 Pyle is not shown on the Ordnance Survey maps of 1919, 1943 or 1965. Mr Morgan Joseph then suggests that as no notification of the registration of the footpath appears to have been served on the landowner a mistake was made.
17. Finally, Mr Morgan Joseph reiterates that the footpath has never existed and that an error has occurred. A request is made for information as to how to have the footpath removed from the Definitive Map and Statement.

18. A copy of the letter from Mr Morgan Joseph, dated 20th June 1991, to the Mid Glamorgan County Council is included in **Appendix 8**.
19. The Mid Glamorgan County Council responded to Mr Morgan Joseph on the 12th July 1991. Once again it was clearly noted that the procedures required under the National Parks and Access to the Countryside Act 1949 for registering the footpaths were correctly followed. Furthermore, the procedures did not include notifying all landowners that the maps were being prepared but relied on notices being placed in a local paper as well as the London Gazette. The letter also confirms what constitutes an obstruction and indicates that insufficient evidence has been submitted to prove that the footpath never existed.
20. The letter from the Mid Glamorgan County Council dated 12th July 1991 to Mr Morgan Joseph is attached in **Appendix 9**.
21. Replying on the 24th July 1991 Mr Morgan Joseph simply reiterates what his clients have previously said, namely:
 1. they would wish to co-operate
 2. they were not aware the footpath existed
 3. had the footpath been used they would have been aware of it
 4. they never knew of the registration process for either the original Definitive Map or Special Review
 5. they are not responsible for any obstructions
22. Once again there is a request for information concerning the procedures for stopping up the paths.
23. A copy of Mr Morgan Joseph's letter to the Mid Glamorgan County Council dated 24th July 1991 is provided in **Appendix 10**.
24. On the 18th September 1991 the Mid Glamorgan County Council once again wrote to Mr Morgan Joseph to clarify its position. This letter reiterates the fact that all procedures were correctly followed in preparing both the original and Special Review Definitive Maps. Furthermore, it insists that until such time as the footpaths may be deleted then the obstructions must be removed.
25. Finally, it suggests that although no real evidence has been brought forward to suggest an error was made the landowners can apply for a deletion. The appropriate application forms were included with the letter. Mention is also made of the possibility of diverting the route.
26. A copy of the letter dated 18th September 1991 from the Mid Glamorgan County Council to Mr Morgan Joseph is provided in **Appendix 11**.
27. During September and October 1991 Mr Morgan Joseph forwarded three further letters to the County Council. These do not provide any further evidence concerning the alleged error of registering Footpath 9 Pyle but

merely re-iterate previous information. In those letters requests are also made for copies of the Notices advertising the various stages in the Definitive Map procedure together with copies of the relevant plans.

28. In view of the fact that the letters merely reiterate previous information it is not felt necessary to include copies of these letters in this report.
29. The information requested by Mr Morgan Joseph was forwarded by the County Council under cover of a letter dated 16th December 1991. Also attached to that letter were further copies of the application forms to enable the Loughers to apply to delete the footpath. Further details in respect of the procedures concerning the production of the Definitive Map can be found in paragraphs 61 to 108 of this report.
30. At the beginning of 1992 Mr Morgan Joseph again contacted the County Council and requested further copies of plans. He also agreed that the footpath was shown on the M4 Side Road Order, No.2 1975 but indicated that regrettably this was not noticed at the time. Further information concerning this document can be found in paragraphs 128 to 131 of this report.
31. A copy of Mr Morgan Joseph's letter dated 30th January 1992 to the Mid Glamorgan County Council is shown in **Appendix 12**.
32. There appears to have been no further correspondence, discussions or meetings between the Mid Glamorgan County Council and the Loughers or their agent between the beginning of 1992 and February 1996. In a letter, dated 21st March 1996, the Mid Glamorgan County Council indicated that a meeting took place on the 15th February 1996 between Mr Lougher, members of the Community Council and officers of the County Council. The purpose of the meeting appears to have been to discuss a proposal by the Community Council to divert the public footpaths.
33. A copy of the letter, and accompanying plan, dated 21st March 1996 from the Mid Glamorgan County Council to Mr Lougher is included in **Appendix 13**.
34. No reply was received to this letter and a reminder was sent by the County Borough Council on the 18th April 1996. This resulted in a letter being forwarded to the County Borough Council from Mr Morgan Joseph on the 2nd May 1996.
35. In that letter, a copy of which is included in **Appendix 14**, Mr Morgan Joseph indicates that both his client and he do not accept the suggested diversion because no evidence exists as to the existence of Footpath 9 Pyle. Attached to the letter are statements from both his clients and himself as their Agent. These statements also form part of the owners' application to delete and are referred to in more details in paragraphs 49 to 51.
36. The County Borough Council responded on the 1st August 1996 by reiterating all the facts concerning the production of the Definitive Map. A copy of that letter is included in the report at **Appendix 15**.

37. A further letter, dated 13th August 1996, was then received from Mr Morgan Joseph and this again reiterated both his and his clients view in respect of Footpath 9 Pyle. The letter also rejected the diversion proposals as the alternative route would have used an accommodation track that was also used by herds of between 80 and 100 cows and heifers, agricultural machinery, milk tankers, etc.
38. A copy of the letter from Mr Morgan Joseph to the County Borough Council dated 13th August 1996 is enclosed in **Appendix 16**.
39. As a result of that letter a meeting was arranged between the Loughers, Mr Morgan Joseph and the County Borough Council's Rights of Way Officer and this took place on the 16th October 1996. Following those discussions the landowners still insisted that the right of way did not exist and requested the appropriate forms to delete the path from the map. Those forms were forwarded to Mr Morgan Joseph under cover of a letter dated 23rd October 1996.
40. A copy of the letter from the County Borough Council to Mr Morgan Joseph dated 23rd October 1996 is included in **Appendix 17**.
41. At the beginning of 1997 the County Borough Council were still receiving complaints from members of the public regarding the obstruction of the footpath. Therefore, a further site inspection was undertaken and this revealed the path was obstructed in a number of places.
42. As a result the County Borough Council again requested Mr Lougher to remove the obstructions. This led to the application to delete the footpath that is the subject of this report.
43. Following advice from the Assistant Director, Legal and Property, it was then decided that the application should be determined prior to the County Borough Council undertaking any possible action against the landowner for the removal of the obstructions. Further details in respect of this matter are provided in paragraphs 136 to 138 of the report.

The Case for Deletion

44. As indicated in paragraph 4 the County Borough Council received a letter from David & Snape, Solicitors on 13th March 1997. Enclosed with that letter was an application for a Modification Order to delete Footpath 9 Pyle from the Special Review Definitive Map and Statement. The application was accompanied by a Statement of Case together with supporting documents.
45. The Statement of Case is divided into six sections and is accompanied by 19 Appendices. It is proposed that this document should remain in its original format as presented to the County Borough Council in order for Members to appreciate the case as put forward by the applicant. It has, therefore, been

copied in its original format and although it is shown in the list of Appendices as **Appendix 18** it has been provided as a separate document.

46. As can be seen from the document at **Appendix 18** the case for the applicant is very detailed. It is not proposed, therefore, to reiterate the entire contents within this section of the report, however, a summary of the information is provided below.
47. In applying for a deletion the applicants are alleging that the footpath never really existed and that it came to be included on the Definitive Map in error. They have put forward three distinct grounds to support these allegations. These are:
 4. the physical characteristics of the route are such that the footpath has always been impossible to walk
 5. witnesses indicate that the footpath has never been used
 6. the Parish Map and Statement on which the Definitive Map and Statement are based are inconsistent with, and contradict, each other.
48. According to the applicants the physical characteristics of the land over which Footpath 9 Pyle is alleged to run are such that the footpath would always have been impossible to use. The applicants indicate that there are seven ancient boundaries or long standing issues that support these allegations. Each one is numbered in green on the plan in **Appendix E of Appendix 18** and is further described below.
 1. A 2 to 3 feet high stone wall/bank shown as a boundary on maps dating from 1919 (see **Appendix A, B and C of Appendix 18**). The applicants indicate the wall had a barbed wire fence on top in 1953/1954 when the Parish Map was drawn and that there is no evidence of a stile
 - 2 & 3 At least one hedge here dating from 1919 (see **Appendix A, B and C of Appendix 18**) but there has also been a gate. The applicants suggest that it is the usual practice for footpaths not to use gates but have stiles alongside. They are suggesting that there have never been stiles here.
 4. When the Parish Map was drawn there was a hedge that was 10 to 12 feet wide and 10 to 12 feet tall with no means of access through it.
 5. Drainage works at this location mean that the ground over which the footpath runs is now passable (see photo 3 in **Appendix S of Appendix 18**). Prior to this the area would have been more waterlogged and would have extended to the hedge described in 4 above.
 6. There is an ancient hedgerow 15 feet wide and 7 to 8 feet tall with a ditch and small stream running through it requiring a bridge to cross at this location. No evidence of a stile or bridge.
 7. The Parish Card (see **Appendix F of Appendix 18**) suggests the footpath ends on Heol-y-Sheet at a stile. The witnesses' statements indicate that there was a 4 to 5 feet wide and 6 to 7 feet tall hedge here with no stile. When Heol-y-Sheet was slightly re-aligned due to the

construction of the M4 motorway and a new fence was erected no provision was made for a stile.

49. The applicants include nine statements in support of their applications (see **Appendix J – R of Appendix 18**) from former workers, local residents and themselves. According to these statements none of the witnesses has ever seen members of the public walking along the footpath since they have lived, or whilst they worked or visited, the farm. In the case of Mrs Lougher this is since 1932, Mr Lougher 1948, Mr Jenkins 1936 – 1950, Mr Courtney 1936 – 1945, Mr Morgan Joseph 1932 – present day.
50. It is also suggested that as Tytanglwst Farm is not a large holding and the footpath is alleged to have run close to the back of the farm buildings the applicants and their witnesses could not have failed to notice walkers crossing the field. Furthermore, they would have seen physical evidence such as trodden earth, grass or gates, stiles or gaps.
51. Local residents, Mr Creasey, Mr John and Mrs Waite indicate that they regularly used Heol-y-Sheet from the 1940's and have never seen a stile where the footpath is alleged to start.
52. The third and final grounds of the applicants for alleging that Footpath 9 Pyle was shown in error are the apparent discrepancies in, and between, the Parish Map and Statement and the Special Review Definitive Map and Statement (see pages 6 & 7 of **Appendix 18**).
53. The applicants contend that the description of the route as indicated on the parish card/statement (same document) do not correlate with the route drawn on the parish map. Their reason for this is the use of field numbers to describe where the footpath runs.
54. The applicants have added the field numbers from the 1919 and 1942/43 Ordnance Survey maps to the Parish Map (see **Appendix A, B and C of Appendix 18 respectively**). According to the applicants the footpath as shown on the Parish Map runs through only one of the two field numbers as indicated on the Parish Statement. They also point out that the Parish Statement suggests that the footpath runs in a northerly direction when it quite clearly does not.
55. Various other issues with respect to the Parish Card are also made. These include:
 1. The length of the footpath having been changed from half a mile to 750 yards
 2. The card being unsigned
 3. The card being undated
 4. There being no reference number inserted on the card
 5. The reason for believing the route is public being cited as 'uninterrupted usage by the public 40 years'.

56. It is the contention of the applicants that the 'flaws' in the Parish Card of Footpath 9 are in sharp contrast to the accurate description shown on the Parish Card of Footpath 8 (see **Appendix H of Appendix 18**). It is further contended that the flaws in the description of Footpath 9 on the Definitive Map are simply repeats of the errors made in drawing and writing the Parish Map and Card.
57. Within their Statement of case the applicants also put forward a solution to deal with this matter. Their proposal was to divert the footpath along a path, previously constructed as a substitute for Heol-y-Sheet when the M4 motorway was built, and then through a playing field.
58. For the sake of completeness in compiling this report it was felt appropriate for all, or as many as possible, of those people who provided statements in support of the application to be interviewed. To this end a letter was forwarded to David & Snape, Solicitors on 23rd August 2000 requesting the same.
59. Those interviews took place on the 12th October 2000. However, only eight of the nine people who originally completed Statements were interviewed. In addition a further person was interviewed and the information obtained from that interview is in addition to the Statement provided by the applicants in their original Statement of Case.
60. Full details of the information provided at those interviews can be found in **Appendix 19** (1 – 9).

The Background to the Definitive Map

61. Members will be aware that part of the introduction to this report i.e. pages 2 to 6, provides a brief outline of the historical background to the Definitive Map and Statement both generally and with particular reference to the County Borough area. The application that is currently before them is seeking to determine that the Special Review Definitive Map and Statement are incorrect and that a footpath that is shown thereon has been shown in error. It is thought necessary, therefore, to provide more comprehensive details of the process for preparing and publishing the Definitive Map and Statement to show that all the procedures required under the legislation were, in fact, followed.
62. In September 1947 the report of the Committee on Footpaths and Access to the Countryside (the 'Hobhouse Committee') was published. Following earlier reports it recommended that all public rights of way should be surveyed and recorded on maps:

'We consider it essential that a complete survey shall be put in hand forthwith so that an authoritative record of rights of way in this country may be prepared before it is too late'

63. The recommendation was put into effect through the enactment of sections 27 to 38 of the National Parks and Access to the Countryside Act 1949. Under these provisions all county councils in England and Wales were given the duty of surveying and mapping all public rights of way in their area, classifying them as footpaths, bridleways or roads used as public paths (RUPP's).
64. The National Parks and Access to the Countryside Act 1949 required every county council:
 - a. to carry out a survey of 'all lands in their area over which a right of way (...) is alleged to exist' and;
 - b. then to prepare a draft map showing on it those footpaths, bridleways, and roads used as public paths which, in the opinion of the county council as surveying authority, were, or were reasonably alleged to be, public rights of way.
65. While the surveying authority had a duty to prepare the map, it clearly could not do this without information from other sources. Section 28 required the authority to consult district and parish councils about the arrangements to be made for the provision of information. A parish council was required to call a parish meeting to consider the information to be provided.
66. The minutes of the Pyle Parish Council for this particular period of time can be viewed at the Glamorgan Record Office in Cardiff. It has not been possible to photocopy the minutes but instead a transcript is provided here and below where necessary.

Date of Meeting	Minute
23/05/1950	National Parks and Access to the Countryside Act (NPACA) 1949 Resolved that a special meeting to be held to discuss the issue
15/09/1950	NPACA 1949 Meeting studied in detail all the scheduled footpaths as shown on the Parish Map and it was agreed that, in the main, all the paths were open.
28/11/1950	NPACA 1949 Resolved that special meeting be held on 4/12 to mark maps and information cards
04/12/1950	NPACA 1949 No Quorum – no business
30/01/1951	NPACA 1949

Special meeting to be held on 06/02/1951

25/09/1951

NPACA 1949

Clerk reported he had completed survey and formal notice had been given of a Parish Meeting to confirm these

67. As can be seen from the minutes above it would appear that in calling a Parish Meeting the Pyle Parish Council complied with the requirements of the Act. Unfortunately, there appears to be no minute of the Parish Meeting, nor any indication of exactly what routes were included in the list. However, it must be assumed that the meeting took place and that the routes as detailed on the Parish Map and Card were all agreed to by those present as this is what has been in the possession of the Highway Authority ever since.
68. Properly carried out, the survey entailed an immense amount of work. Documentary evidence such as enclosure awards, old Ordnance Survey maps, tithe maps, parish maps, local histories and guidebooks, maps of admitted rights of way and local authority minutes had to be consulted. Such documentary evidence had to be supplemented by local knowledge, e.g. an old Ordnance Survey map might show the physical existence of a track on the ground, but evidence of use by the public as of right would have to be collected to show public status.
69. It was also necessary to consider all those paths that could be presumed to have been dedicated to the public because of use over a period of at least 20 years, even though there was no documentary evidence of status.
70. As noted above a number of stages were gone through before the draft map was published:
 - a. a survey of all 'alleged rights of way' was organised by the county council;
 - b. arrangements were made with parish and district councils for the supply of information;
 - c. those councils had to organise meetings in each parish to consider the information that the council should supply to the county council;
 - d. the county council then considered the information supplied by the parish and district councils together with the other information it possessed, such as evidence supplied by the Ramblers Association (RA) or other bodies, and decided which rights of way existed, or were reasonably alleged to exist.
71. The surveying authority then prepared the draft map and statement showing those ways it considered to be public rights of way. It had to publish notice of the preparation of the draft map and statement in the London Gazette and one or more local newspapers circulating in the area of the authority. These notices stated where the draft map and statement could be inspected, and the time (not less than four months) within which representation and objection as

to paths shown or omitted, or as to matters contained in, or omitted from, the statement, could be made to the surveying authority. There was no provision for notification to be given to individual owners and occupiers that rights of way were shown over their land on the draft map.

72. Notices advertising the fact that the Draft Map for the Glamorgan County Council area had been prepared were published in the London Gazette and the Western Mail on the 4th February 1955.
73. Authorities were required to prepare the map on a scale of not less than two and a half inches to the mile, and to show footpaths by a purple line, bridleways by a green line and roads used a public paths by a broken green line.
74. The map clearly needed to show the position (i.e. the paths the authority regarded as being public) at a particular date. This date, termed by the Act as the draft map's 'relevant date', was fixed by the authority as the date after which no further information would be taken into account. It thus formed the 'cut-off' date for the survey.
75. The Act provided, however, that the relevant date of the draft map was not to be more than six months before notices appeared in the press announcing that the draft map had been prepared. The surveying authority therefore had up to six months from the relevant date to complete its consideration of the information obtained, map the paths, and prepare copies of the draft map and statement for inspection.
76. As the draft map was prepared an accompanying statement was also produced. This contained the relevant date and 'such particulars appearing to the authority to be reasonably alleged as to position and width (of paths) or as to any limitations or conditions affecting the public right of way, as in the opinion of the authority it is expedient to record'.
77. Surveying authorities interpreted this in a variety of ways: some gave full information as to when paths narrowed or widened, the position of stiles, gates, footbridges, conditions of surface or existence of a common law right to plough. However, others considered that practically no fact was expedient to record. The fuller a statement is, the more helpful it is for users to find their way and the better for settling a dispute as to whether a path has been obstructed.
78. The only copy of the Glamorgan County Council Draft Map available for inspection is to be found in the Glamorgan Record Office in Cardiff. Unfortunately, it is not possible to photocopy this map so a digital photograph of the section that shows Footpath 9 Pyle is attached at **Appendix 20**. A photocopy of the accompanying Statement is also provided in the same appendices.
79. The following is recorded in the Pyle Parish Council meeting minutes for 22nd February 1955:

‘Clerk reported that the portion of the Draft Map and Statement relevant to the Pyle Parish had now been received from the County Council. It was further stated that the Draft Map and Statement was being placed for inspection at the Welfare Hall until 9th April next and from that date to the expiration of period allowed for objections it would be on exhibition at the Talbot Institute. Public Notices detailing the procedure for objections to or omissions from anything contained in the Draft Map and Statement had been posted up at various points in the parish.’

80. It will be noted from this minute that the parish council were not only relying on people seeing the notices placed in the newspaper by the County Council but were also being proactive by posting their own notices at various points within the parish.
81. The purpose of the public notice of the preparation of the draft map and statement was to give the public an opportunity to inspect them and see whether the information they contained appeared correct, e.g. whether all the paths believed to be public had been included and whether the information in the statement was accurate, and also to give landowners and occupiers an opportunity to see if paths they regarded as private were shown as public. Anyone could object to what was included in, or omitted from, the map and statement.
82. If any representation or objection was so made, the authority had to consider the objection or representation, appoint a person to hear the objector and then determine whether any modification of the map or statement should be made. The result of this determination had to be notified to the person making the representation or objection.
83. The minutes reproduced below indicate that the parish council were made aware of a number of objections to paths in the Pyle Parish. However, Footpath 9 Pyle was not among those objected to although Footpath 8 Pyle was.

Date of Meeting

Minute

27/03/1956

Parish Council had been informed that objections had been received and these would be heard on 17th and 19th April 1956 and Parish Council could attend. Agreed special meeting be held to discuss

06/04/1956

Special Meeting

List of paths objected to but Parish Council not given an indication of who objector was or which section of path they objected to (Footpath 8 is shown in the list). Parish Council under the impression it had been diverted previously. Clerk to investigate.

01/05/1956 Clerk reported on hearings. Objectors were British Rail. Level crossing on Footpath 8 was the problem but this, it was said, was diverted many years previously by the Great Western Railway.

84. The minute of the 1st May 1956 confirms that the clerk had attended the hearings and that the objection to Footpath 8 Pyle had been made by British Rail and specifically referred to the section of the footpath over the railway.
85. Following the determination of any appeals to the Secretary of State the authority then prepared a provisional map and statement. This was the draft map and statement modified by the various decisions made by the authority and the Secretary of State, and had the same relevant date as that of the draft map.
86. Notice of preparation of the provisional map and statement was given in the London Gazette and the local press as before. Section 31 of the National Park and Access to the Countryside Act 1949 gave a right to any owner, lessee or occupier of land over which the map showed a public right of way to apply to the Crown Court (formerly Quarter Sessions) for a declaration that, at the relevant date of the map, one of the following applied:
 - a. there was no public right of way over the land;
 - b. the rights of the public were those specified in the application and not those specified in the map and statement;
 - c. the position or width of the right of way were as indicated in the application and not as indicated in the map and statement;
 - d. the public right of way was subject to limitations or conditions other than those recorded in the statement or that those so recorded were incorrect.
87. The public had no right to apply to the Crown Court. The provisional stage thus placed owners, lessees and occupiers of land in the privileged position of having a further chance to object. If an application was made, the surveying authority either agreed to the application or defended the case and could call the public as witnesses.
88. The following is recorded in the Pyle Parish Council meeting minutes for 28th April 1964:

‘Clerk reported that the portion of the Provisional Map and Statement relevant to the Pyle Parish had now been received from the County Council. It was further stated that the Provisional Map and Statement was being placed for inspection at both the Welfare Hall and the Talbot Institute. Public Notices detailing the procedure for objections to or omissions from anything contained in the Draft Map and Statement had been posted up at various points in the parish.’

89. It will be noted from this minute that the Parish Council were once again not only relying on people seeing the notices placed in the newspaper by the County Council but were being proactive by posting their own notices at various points within the parish.
90. On hearing the application the Court had to decide whether to make the declaration sought. It had power to decide that the route shown on the map was the wrong one and that the path should instead go across other land. In such a case it then made not only the declaration applied for but also a further one showing the correct line of the path.
91. The Act provided that, subject to any further appeal to the High Court on a point of law, and subject to section 32, a declaration by the Court was conclusive evidence of the matters stated therein.
92. The Notices advertising the publication of the Provisional Map and Statement were published in the London Gazette and the Western Mail on the 1st May 1964. Photocopies of the Provisional Map and accompanying Statement are shown in **Appendix 21**.
93. If no applications were made to the Crown Court within 28 days of publication of the provisional map, or when such applications had been determined, the Act required the surveying authority to prepare a definitive map and statement. Notice of its preparation had to be given in the same manner as for the draft and provisional maps.
94. The particulars in the definitive map and statement were those contained in the provisional map and statement modified by any declarations made at provisional stage. The relevant date was again the same as in the statement accompanying the draft map.
95. Within six weeks of the notice of publication of the definitive map an application could be made to the High Court on the grounds that the map, or any part of it, was not within the powers of the Act, or that the Act or regulations had not been complied with.
96. The Notices advertising the publication of the Definitive Map and Statement for the Glamorgan County Council area were published in the London Gazette and the Western Mail on the 4th August 1970. Photocopies of the Definitive Map and accompanying Statement are shown in **Appendix 22**.
97. Section 32(4) of the National Parks and Access to the Countryside Act 1949 provided that the definitive map and statement were conclusive evidence in law of the particulars they contained. This was the fundamental provision that, by providing a record of the public's rights that could be used as evidence in court, made the compilation of definitive maps so valuable. Section 32(4) was repealed and replaced by the Wildlife and Countryside Act 1981. The subject of the Definitive Map's conclusive nature as indicated by the two Acts will be treated further in the next section of the report.

98. The 1949 Act required the Surveying Authorities to review their Definitive Maps every 5 years. However, as can be seen from the above it took Glamorgan County Council almost 20 years to produce their first Definitive Map. By the time the Definitive Map had been published the Countryside Act 1968 had come into force.
99. The 1968 Act amended the 1949 Act by shortening the stages for all reviews begun thereafter. It did not, however, alter the requirements for consultation with district and parish councils and only slightly altered the list of events required by the 1949 Act to be considered at a review.
100. When the authority had taken into consideration all events occurring since the relevant or review date of the previous map and statement, the preparation of the revised draft map was advertised in the London Gazette and one or more local newspapers circulating in the area.
101. For the Glamorgan County Council area that review mainly took the form of the reclassification of all those rights of way shown on the Definitive Map and Statement as RUPP's. The 1968 Act indicated that these had to be reclassified as either Footpaths, Bridleways or Byways Open to All Traffic (BOAT's) which was a new category of highway defined by this particular Act. The review also aimed to take into account any legal events (i.e. diversions/creations/extinguishments) that had taken place since the relevant date of the Definitive Map i.e. 14th September 1954.
102. The Notices advertising the publication of the Draft Special Review Map and Statement were published in the London Gazette and the Western Mail on the 14th March 1974. Photocopies of the Draft Special Review Map and accompanying Statement are shown in **Appendix 23**.
103. If any representation or objection was made to the Secretary of State and not withdrawn, an inspector appointed by him held a local inquiry at which all interested parties could be represented. The date and place of such inquiries were notified to the local authorities, to objectors, landowners and occupiers. Notices were normally placed in the local press and on public notice boards; these included both the path numbers involved and a short note as to what was in dispute.
104. For the Ogwr Borough Council area of Mid Glamorgan County Council a large number of objections were received. Therefore the Public Inquiry was held on the 9th – 11th, 16th – 18th, 23rd – 25th and 30th September 1980 at the Recreation Centre, Bridgend.
105. After considering the inspector's report the Secretary of State decided whether to direct the surveying authority to modify the draft map. The Inspectors recommendations and the Secretary of States decisions were published on the 13th October 1982. After the inquiries and the Secretary of State's decisions, the surveying authority published and advertised the revised definitive map. This was the revised draft map modified as directed by the Secretary of State.

106. The Special Review Definitive Map and Statement were published on the 20th December 1990. A copy of the Special Review Definitive Map showing Footpath 9 Pyle is provided in **Appendix 1** whilst a copy of the Special Review Definitive Statement can be found in **Appendix 24**.
107. As Footpath 9 Pyle was not subject to any reclassification procedure it was not covered by the Public Inquiries in September 1980.
108. From the above information it can be seen that Pyle Parish Council and the Glamorgan and Mid Glamorgan County Council's carried out the procedures for the preparation and publication of the various stages of the Definitive and Special Review Definitive Maps and Statements correctly. It was a fault, or a drawback, of the legislation that did not require landowners to be contacted directly. However, the fact that the matter was discussed by the Parish Council, advertised in a local paper and at various points within the parish as well as being put on deposit for 4 months should have given anyone who wished to be involved ample opportunity to discuss the matter.

Legal background

109. The application has been made under the Wildlife and Countryside Act 1981 (1981 Act) to delete the public footpath known as Footpath 9 Pyle from the Definitive Map and Statement.
110. The relevant statutory provision which applies to deleting a public right of way from the Definitive Map and Statement is Section 53(3)(c)(iii) of the 1981 Act, which requires the Surveying Authority (Bridgend County Borough Council) to modify the Definitive Map and Statement following:

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

that there is no public right of way over land shown in the map and statement as a highway of any description.'
111. Department of the Environment and Welsh Office Circular 1/83 provided advice and guidance to Local Authorities on the changes brought about by the Wildlife and Countryside Act 1981. In particular paragraphs 14 and 16 of Annex A relate to the discovery of evidence which show that paths should be added to, or deleted from, Definitive Maps or paths already shown thereon should be up, or down, graded.
112. In determining whether the Definitive Map and Statement should be modified the local authority are required to consider all relevant evidence concerning the status of the right of way involved. They must also be satisfied, before making an Order that the evidence shows on the balance of probability that the right of way exists or that the path already shown on the map is not in fact

a public right of way. The mere assertion that it does, or does not, exist would be insufficient to satisfy the test. Paragraph 16 also indicated that:

‘The conclusive evidential effect of definitive maps and statements means, however, that the evidence must show that no right of way existed as at the relevant date of the definitive map on which the way was first shown’.

113. The provision in the 1981 Act for the deletion of paths shown on the map caused concern to user organisations when the Act was going through parliament because it placed no limits on the evidence that was admissible to support such an application.
114. In 1990 the Department of the Environment and Welsh Office issued a joint Circular (18/90 & 45/90 respectively). The purpose of that Circular was to clarify the position with respect to the ability of local authority’s to make Modification Orders for the downgrading or deletion of public rights of way.
115. The Circular puts the onus of proof firmly on those seeking the modification to demonstrate that the map is wrong (paragraph 4). Indeed, paragraph 7 indicates that the evidence needed to remove a public right of way from such an authoritative record will need to be cogent (i.e. powerful, convincing).
116. The Circular also gives clear advice to authorities to treat the map and statement as correct unless and until it proved otherwise by the confirmation of a modification order (paragraphs 6 and 10). In making a Modification Order the authority must be able to say, according to paragraph 5, that there is no public right of way over the land shown in the map and statement as a highway of any description.
117. It was clear, therefore, that the ‘conclusive evidence’ provision of s.56 would not prevent mistakes in the definitive map from being corrected where there was sufficient evidence to show that such mistakes had been made. What was not clear, however, was what evidence would be sufficient, and in particular, what weight should be given, in the assessment of evidence, to the fact that the right of way whose status or existence was subsequently challenged had been included in the definitive map after an investigation made at an earlier and often a much earlier date.
118. Subsequent court decisions have resulted in the correct approach now being identified by the Court of Appeal as follows. Where the right of way in question is marked on the definitive map, the local authority, Secretary of State or the inspector must start with an initial presumption in favour of the existence of that right and, unless there is evidence to the contrary, should assume that proper procedures were followed – and that evidence did exist which made it seriously arguable that the right subsisted at the relevant date, even if no trace of that evidence survives.
119. The deletion of a right of way from the map would, therefore, have to be made on the ground that the path had been included on the map in error. That is to

say that there had been no public right of way over the path at the date of the preparation of the original definitive map.

120. The Panel must consider whether there is sufficient evidence to show that the inclusion of the path on the Definitive Map was incorrect. The standard of proof is the civil one i.e. on the balance of probabilities. Members must weigh up the evidence and if, on balance, they consider that the right of way was shown in error on the first Definitive Map and there was no public right of way then the application should succeed.

Documentary Evidence

121. 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.
122. The completed checklist for this application is shown in **Appendix 25**. A second table that provides some additional comments on the documents viewed is provided in **Appendix 26**. As will be seen from the checklists virtually none of the documents that were looked at provided any evidence to substantiate the existence of the public rights of way.
123. The one document that does pre-date the original survey for the Definitive Map and does provide some further evidence of the existence of the public right of way is a Schedule of Public Rights of Way for the Pyle Parish. The Schedule, which is dated 20th February 1939, appears to have been compiled by the Penybont Rural District Council probably with the help of the Parish Council. It would appear to be a list of paths in the Pyle Parish scheduled under the provisions of the Rights of Way Act 1932.
124. This is confirmed by minutes from two Pyle Parish Council meetings held during the 1930's. The minutes, which can be found in minute books held at the Glamorgan Record Office, Cardiff, are reproduced below:

Date of Meeting	Minute
05/11/1934	Schedule of Rights of Way discussed and agreed – minute only lists those paths not mentioned at the meeting by the clerk
02/11/1936	Letter from Penybont Rural District Council concerning Schedule of Rights of Way under 1932 Act. To be done as soon as possible.

125. Footpath 9 is clearly numbered and described in almost the same way on this schedule as it is in the parish card which was completed by the Parish Council

for the original survey under the 1949 Act. However, there are two differences:

1. In the 1939 list the path is described as commencing in the farmyard whilst on the parish card it is indicated as branching off path 8 slightly to the south west of the farm yard.
 2. In the 1939 Schedule the path is clearly described as running through field 249, however, this particular field number is missing from the parish card.
126. Members should note that in both cases fields 245 and 247 are mentioned as is a stile in the southern side/hedge of Heol y Sheet.
127. A copy of the Schedule prepared by the Penybont Rural District Council is provided in **Appendix 27**.
128. As was indicated in the interview notes with the applicants the alignment of Footpath 9 Pyle was shown on the Side Road Order when the M4 was being constructed. Such Orders are legal documents that are produced to stop-up, divert, raise, lower or otherwise alter any highway (including public rights of way) and private means of access that crosses or enters the route of the new road, or will be otherwise affected by its construction or improvement.
129. In this case not only was a small section of Footpath 9 Pyle stopped up but a large section of Footpath 8 Pyle was also extinguished. Furthermore, the maintainable highway known as Heol y Sheet was extinguished and a pedestrian walkway put in its place albeit on a different route. More importantly, the private means of access to Ty Tanglwst Farm was also diverted.
130. The private means of access to the farm is quite clearly marked on the Side Road Order. As was indicated in the interview notes both Mr Lougher senior and his wife did note that Footpath 9 Pyle was shown on the Side Roads Order. However, Mr Lougher suggests that he did not say anything at the time as he thought it was a mistake.
131. A copy of the plan and Schedule for The M4 Motorway (Stormy Down to Groes Section) and Connecting Roads Scheme (Side Roads) No.2 Order 1975 can be found in **Appendix 28**.
132. The County Borough Council was also made aware during the interviews that the farm and surrounding land once belonged to the Margam Estate. The Council has written to the Agent for the estate on a number of occasions to ascertain if they have any information concerning this particular right of way. However, despite a number of reminders no reply has ever been received.

Evidence of Use – Other Information

133. Although the burden of proof in an application to delete a public right of way from the definitive map and statement rests with the applicants it is

considered appropriate for any other information that the surveying authority may have in its possession to also be put before the Panel. The purpose of this section of the report, therefore, is to include details of that information.

134. In June 1993 the Ogwr Borough Council contacted the Mid Glamorgan County Council indicating that they had received a complaint that the route of Footpath 9 Pyle was obstructed. Having contacted the landowner Ogwr Borough Council was writing to the County Council to ascertain the current situation in respect of the footpath. In their reply the Mid Glamorgan County Council indicated that they were currently discussing the matter with the landowner.
135. A copy of the letter from Ogwr Borough Council dated 18th June 1993 together with Mid Glamorgan County Council's response dated 22nd July 1993 can be found in **Appendix 29** and **30** respectively.
136. As will be seen from elsewhere in the report there then seemed little progress on this matter until just before Local Government Re-organisation in 1996. It was at this time that the Community Council put forward a suggestion for the diversion of the footpath. During the next few months discussions then took place between the local authority and the landowner.
137. Following the breakdown in negotiations for the diversion of the route and receipt of the application for deletion of the public footpath the County Borough Council then faced a difficult decision. It either had to pursue the landowner for obstruction of the public right of way or determine the application for deletion. As a result of numerous discussions between the Rights of Way Officer and the County Borough Council's solicitors it was finally agreed that the application to delete should be determined first. This decision was agreed by the Rights of Way Sub-Committee at their meeting on the 25th July 1997.
138. A copy of the report and the appropriate minute are attached in **Appendix 31**.
139. Following that decision both the Cynffig Community Council and the South Cornelly Residents Association contacted the County Borough Council. In their letter dated 25th September 1997, a copy of which is included in **Appendix 32**, the Community Council confirmed that they were totally opposed to the suggestion that the footpath should be deleted. They did not, however, provide any reasons for their opposition.
140. In their letter the Residents Association indicated that they were appalled that the authority had 'decided to relinquish footpath 9 rather than pursue the issue of its existence at court'. They said that the path was clearly defined on the map and that there were a number of Councillors who would swear testimony to the fact that they have argued the route of the path with the farmer'. In reply the County Borough Council merely stated it was not relinquishing the footpath but had a duty to investigate any applications made. Furthermore, following legal advice it had been decided to determine that application before pursuing the landowner for the obstructions.

141. A copy of the letter from the South Cornelly Residents Association dated 29th September 1997 is included at **Appendix 33**.
142. It appears that a copy of the County Borough Council's reply to the Residents Association was forwarded to the Ramblers Association in order for them to make observations on the issues. In that letter, which for some reason is actually dated before the County Borough Council's reply, their Footpaths Officer, Mr K Fuller, indicates that he had recently attempted to use the footpath.
143. In his description Mr Fuller notes that the western end of the footpath is accessed through a gate but there then appears to be a farm building with silage store built over its correct line. Skirting round this he indicates that he got onto the correct line of the path using the farm tracks and after climbing over a wall and several locked gates eventually gained access to Heol-y-Sheet. Several barbed wire fences were also in the way.
144. Mr Fuller was of the opinion that there would be no problem re-opening this path except for that area to the south of the farm. The ground condition was generally good but stiles would be required at field boundaries and some physical obstructions needed clearing. Mr Fuller ends by indicating that the landowner should be made aware of his responsibilities and, if he will not carry out the work, be recharged for the path to be cleared.
145. A copy of Mr Fuller's letter is provided at **Appendix 34**.
146. In July 1998 the South Cornelly Residents Association once again contacted the County Borough Council. Again their Chairperson had received representations from residents concerning the refusal of the landowner to allow access along the footpath. In the letter the Secretary to the Residents Association indicates that the Community Council has, on several, occasions made reasonable suggestions to resolve the matter. However, the landowner had now adopted an attitude of denying that the footpath existed.
147. The Secretary also indicates that there are people in the village who can recall the footpath being in existence for many years. It is also the Associations view that the landowner is fully aware of its existence.
148. A copy of the letter dated 28th July 1998 from the South Cornelly Residents Association can be found in **Appendix 35**.
149. At the same time the Cynffig Community Council also contacted the County Borough Council regarding this issue. Once again they were concerned at how protracted this issue had become and felt that if the situation was not resolved satisfactorily soon other landowners could take advantage. The Council was asked to make a concerted effort to resolved the matter.
150. A copy of the Community Council's letter is provided at **Appendix 36**.

151. As a result of the further observations of the Community Council, Residents Association and Ramblers Association, this particular issue was again reported to the Rights of Way Sub-Committee. At its previous meeting on the 23rd July 1997 the Sub-Committee had agreed that the landowner's application to delete the footpath would be placed at priority 16. However, following those further observations the matter was reported to the Rights of Way Sub-Committee on the 14th September 1998. As a result of that report the application was advanced to priority 4.
152. A copy of the report to, and minute of, the Rights of Way Sub-Committee on the 14th September 1998 is included at **Appendix 37**.

Consultations

153. The required consultations with the community council, the prescribed organisations and the statutory undertakers have been carried out. The local Members were also consulted on the application.
154. In their initial response dated the 28th February 2000 the Cynffig Community Council indicated that they were awaiting correspondence from the residents of South Cornelly as they would be most affected by the Order. A reply could not, therefore, be sent until after their meeting on the 22nd March 2000.
155. A further letter was then received by the County Borough Council on the 11th September 2000. Within that second letter from the Community Council concern was expressed by the members at the continued lack of co-operation from Mr Lougher in respect of the footpath. Also, details were provided of an inspection that took place in 1985 when members of the former Pyle Parish Council, together with their clerk, walked Footpath 9.
156. The letter also indicates that, following the inspection, the footpath sub-committee and clerk met Mr Lougher. During that meeting Mr Lougher is said to have admitted to the existence of Footpath 9 but complained that it passed too near his property. At no time, the letter continues, did Mr Lougher deny the existence of the footpath.
157. A copy of Cynffig Community Council's letter dated September 2000 is provided in **Appendix 38**.
158. No response was received from either of the County Borough Councillors namely, Councillors R M Granville and J H Tildesley.
159. Mr K Fuller responded on behalf of the Ramblers Association on the 10th January 2000. In his letter, a copy of which is provided in **Appendix 39**, he indicates that the Association would object to the proposed deletion. Their reasons for this are:
1. The path forms part of the only safe walking route between South Cornelly and Tranch on the south side of the M4.

2. The farmer refuses to agree to an alternative access along his farm track
 3. Mr Fuller has walked the route as near as possible to its correct line on several occasions in the previous five years
 4. Mr Fuller has never met anyone who tried to prevent him from trying to access the path
 5. The South Cornelly Residents Association knows of local people that have walked the route in the past.
160. Mr Fuller also provides information in respect of instances where people have been prevented from using the footpath by the landowner. These are:
1. When Mr D James led a walk in the area he arranged with the farmers wife for authority to walk along the farm track. On arriving at the west end of Heol-y-Sheet the group was met by Mr Lougher and he escorted them along the farm track. He also advised Mr James that there was no public footpath in the area.
 2. During a site inspection with an Officer from the former Mid Glamorgan County Council two Ramblers Association members were confronted by Mr Lougher. At the time Mr Lougher advised the Council official that no footpath existed and requested them to leave. A complaint was then made by the landowner to the former County Council that officials had been trespassing on his land.
 3. Mr Lougher has actively prevented other people walking the route.
161. Responding on behalf of the British Horse Society Mr G Wheeler also indicates that the footpath is presently unused because it has been illegally obstructed. This is, according to Mr Wheeler, despite the fact that it is properly signposted from the metalled highway. It should be noted at this point that it is actually the short section of Footpath 8 Pyle, off which Footpath 9 runs, that is signposted.
162. In fact, a large part of Mr Wheeler's letter refers either to Footpath 8 Pyle; the new farm accommodation road provided when the M4 was constructed, or the alternative route of Heol-y-Sheet. There is very little evidence or information about the use of Footpath 9. Indeed, what is put forward i.e. that Footpath 9 was used for access by workers at the Lime Kiln situated on the south side of Heol-y-Sheet, would tend to suggest that the path has been a private means of access.
163. A copy of Mr Wheeler's letter is provided in **Appendix 39**.
164. Mr G Irlam of Groundwork Bridgend indicates in his letter, dated 9th February 2000 that he has personally walked this path in the last five years without being accosted. However, he does also acknowledge that it has been difficult because of the physical obstructions.
165. A copy of Mr Irlam's letter is provided in **Appendix 41**.

Conclusion

166. The applicant for the deletion must, by virtue of paragraph 7 of Welsh Office Circular 45/90 put forward cogent evidence to enable the surveying authority to make a Modification Order to remove a public right of way from the Definitive Map and Statement.
167. In applying for a deletion the applicants are alleging that the footpath never really existed and that it came to be included on the Definitive Map in error. They have put forward three distinct grounds to support their allegations. These are:
1. the physical characteristics of the route are such that the footpath has always been impossible to walk
 2. witnesses indicate that the footpath has never been used
 3. the Parish Map and Card on which the Definitive Map and Statement are based are inconsistent with, and contradict, each other.
168. According to the applicants the physical characteristics of the land over which Footpath 9 Pyle is alleged to run are such that the footpath would always have been impossible to use. The applicants indicate that there are seven ancient boundaries or long standing issues that support these allegations. Four of the seven relate to very tall and wide hedges with no means of access through, a stone wall with no access over, an area of ground that would always be boggy and a stream in the middle of one of the hedges without a bridge with which to cross the stream.
169. The physical characteristics of the route were also alluded to by virtually every person who signed a witness statement in support of the application to delete. However, their absence is not necessarily an indication that the route does not exist.
170. Although some of the witnesses have been on the farm, worked there or visited it since the early 1930's it may well be that any structures that had existed had fallen into disrepair even by this date and the hedges had begun to cover them thereby preventing access. It is also possible that they were there at that time but the witnesses simply cannot remember their existence.
171. With regard to the area of boggy ground then this too would not necessarily be seen as a barrier to a footpath becoming registered. There are numerous examples of rights of way within the County Borough where the route runs through boggy ground.
172. The witnesses have also suggested that they cannot recollect the ground being worn where people have allegedly walked. However, if the path had not been used much the route would not necessarily be worn away.
173. Within their statements the witnesses for the applicants suggest that there are a number of other reasons why the route has been shown in error. Primary

among those is the fact that none of them has actually ever seen anyone using the route which in some cases will once again be since the early 1930's.

174. In support of this allegation the witnesses do say in their statements that the farm is quite small in comparison to many other landholdings and the footpath does run near the farm buildings. However, no-one can guarantee total surveillance for the last 70 years.
175. A third issue raised by the witnesses is that there has never been a stile in the boundary where the path joins Heol-y-Sheet. However, the person completing the Parish Card clearly indicated that the footpath ended at a stile.
176. It is also the contention of the applicants that Footpath 9 Pyle was in fact a second registration of Footpath 8 Pyle. However that particular footpath followed the farm accommodation road from Heol-y-Sheet and none of the witnesses, nor the Statement for that footpath, indicate that there was a stile at the start of the accommodation road on Heol-y-Sheet.
177. Following on from this and relating to the physical characteristics of the route the witnesses also suggest that the route has always been impossible to walk. Clearly the route is currently obstructed in a number of places and would be impossible to use. However, it would be impossible, without photographic evidence, to comment on the public's ability to use the footpath prior to when the Council received the first complaint that the route was obstructed i.e. the footpath problem report form from Mr Davies of the Ramblers Association in March 1991.
178. In their statements some of the witnesses indicate that they never knew of the footpath's existence. However, from the information obtained during the interviews it can be seen that both Mr and Mrs Lougher did find out about the existence of the footpath during the construction of the M4 motorway both from the Side Roads Order and from a contractor who wished to erect a stile in the new boundary fence.
179. According to the information provided by the Loughers they did not do anything at the time, even though the Side Roads Order is a legal document and it showed part of the footpath being stopped up, because they thought it was a mistake.
180. Finally the witnesses all suggest that they were never informed of the preparation of the Definitive Map. Unfortunately, as has been indicated elsewhere in the report the 1949 Act did not require the Surveying Authority to notify every landowner who was affected by an alleged public right of way. However, it appears that the Pyle Parish Council did actually do more than was required by the Act by placing notices of the preparation of the map at various locations throughout their area.
181. Whilst Mr Lougher did not actually take over the tenancy of the farm from his mother-in-law until September 1953 and would not have been the tenant when the Parish Council first completed the Parish Map and Card he was the

tenant when the Draft Map and Statement were published and the notices were posted around the village.

182. Two other people associated with the Loughers state that they knew nothing of the preparation of these maps. The first, Mr Morgan Joseph, not only worked land in the area as a tenant at another farm but also represented the Loughers, and the Jenkins before them, through the company of Watts and Morgan.
183. Another friend of the Loughers, Mrs Waite, indicates that she knew people on the Parish Council at the time and they did not even tell her about the preparation of the map.
184. The third and final grounds put forward by the applicants for suggesting the footpath became shown in error on the Definitive Map and Statement is their suggestion that there are serious flaws in the Parish Map and Card.
185. The applicants refer to the field numbers as indicated on the Parish Card. The Card describes the footpath as running through two specific fields. Using field numbers from the 1919 and 1942/43 Ordnance Survey maps the footpath would appear to run through four differently numbered fields – only one of which matches with the number on the Parish Card.
186. I cannot guarantee that the numbers as indicated on the Parish Card were taken from these particular Ordnance Survey maps. However, it must be conceded that the description for Footpath 8 Pyle, which also uses field numbers, is accurate with the numbers taken from these two maps.
187. A second problem with the Parish Card, as suggested by the applicants, is the fact that the footpath is described as running 'in a northerly direction'. The applicant indicates that this is blatantly not true and I cannot disagree with this as the footpath does run in an easterly, east north easterly and then north easterly direction.
188. The applicant does, however, suggest that Footpath 8 Pyle does run in a northerly direction. Whilst this might be true for approximately one quarter of the route, one half of the route runs in an east north easterly direction whilst the other quarter runs in a north easterly direction.
189. The following four issues are raised by the applicant in relation to the Parish Card. Firstly, the length of the footpath as originally indicated on the Parish Card has been changed from half a mile to 750 yards. There is not a significant difference in these two lengths but, more importantly, all but one of the 22 paths in Pyle Parish has had their length changed.
190. As can be seen from the copy of the Card in **Appendix 42** this document has not been signed or dated nor does it have a reference number on it. Again these are not uncommon occurrences. I have checked various Parish Cards from each Parish and can confirm that 14 out of 22 (almost 66%) of the Parishes have Cards that are unsigned and undated. This does not, however,

make them invalid as they are not conclusive documents. They obviously were completed by someone and in this particular case the Parish Minutes at paragraph 66 indicate that it was more than likely the Parish Clerk.

191. The fact that the Reference Number has been left blank is also not uncommon. Of those Parishes where this had been completed it is identical to the number written in the 'No. of Path' space. In this particular case that part has been completed.
192. The applicants indicate that the Parish Card puts forward no other evidence of use i.e. from previous maps, but merely states 'uninterrupted usage by public 40 years'. Whilst I would agree that there is no evidence of the existence of the footpath on any other maps apart from the maps prepared in accordance with the 1949 Act this is not unusual. Indeed, even if there had been a path marked on an Ordnance Survey map this would not have been evidence that public rights existed along it due to the fact that these maps always have a disclaimer on indicating that whilst they do show some paths they do not necessarily represent public rights of way.
193. Members should also note that public rights of way can come into existence purely by means of the public having used the path for a certain period of time i.e. through deemed dedication. There does not have to be any other documentary evidence to support this. Further details in respect of this are provided in paragraphs 69 and 199.
194. Finally the applicants suggest that a comparison must be made between the Parish Cards for Footpaths 8 and 9. When this is done then it is quite clear that the description for Footpath 8 is more precise and accurate. This cannot be disputed.
195. It is obvious that the inaccuracies with regard to direction are also carried through to the Definitive Statement. Unfortunately, there are no records that indicate what sort of checking procedure was carried out by the County Council when all the Parish Maps and Cards were returned to them. Therefore, it appears that a large number of mistakes were simply reiterated throughout the whole process.
196. As indicated in paragraph 118 above the correct approach, as now identified by the Court of Appeal, is clearly that where the right of way in question is marked on the definitive map, the local authority, Secretary of State or the Inspector must start with an initial presumption in favour of the existence of that right and, unless there is evidence to the contrary, should assume that proper procedures were followed – and thus that evidence did exist which made it seriously arguable that the right subsisted at the relevant date, even if no trace of that evidence survives.
197. In this report the Council has proved quite clearly that all the procedures as required by the National Parks and Access to the Countryside Act 1949 have been followed. Paragraphs 61 to 108 and **Appendices 20 to 24** provide details of the procedures adopted together with all the necessary copies of all

the notices and relevant maps and statements. Furthermore, the minutes of the Pyle Parish Council meetings held during this time also indicate that the Parish Council were more proactive than was required by advertising at various locations throughout the parish the fact that the maps were being prepared and were on deposit at certain venues.

198. With regard to the notion that evidence must have existed at the time that the maps were prepared then it is obvious from the parish card (see **Appendix 42**) that this is correct. As can be seen from this document the Parish Council believed that this path was a public footpath by virtue of 'uninterrupted usage by the public 40 years.
199. Prior to the 1949 Act the period of user required for a deemed dedication of a way over settled land was 40 years. However, this was simplified by that Act to 20 years. But that was not the only way in which the law was altered. Proving the existence of a right of way was simplified by introducing a rebuttable presumption of dedication.
200. Evidence of the existence of the footpath can also be found in a document that pre-dates the completion of the Parish Card for the 1949 Act survey. The Schedule of paths in Pyle Parish dated 20th February 1939 (see **Appendix 27**) quite clearly identifies the same footpath albeit that the starting point is worded slightly differently and an extra field number is included. This document would certainly tie in with the inclusion of the route in the parish survey as well as the evidence for its existence i.e. 40 years use as shown on the Parish Card (being approximately 12 years earlier).
201. Whilst I am concerned that the field numbers are not accurately portrayed in the Parish Card I do not believe on the balance of probability that the applicant has provided sufficiently cogent evidence to suggest that Footpath 9 Pyle was registered in error on the Glamorgan County Council Special Review Definitive Map and Statement. I therefore recommend that the application for a Modification Order to delete Footpath 9 Pyle from the said Special Review Definitive Map and Statement be rejected.

Recommendation:

The Panel is recommended to resolve

- 1 That on the balance of probabilities the applicant has not provided sufficiently cogent evidence in support of their application to delete Footpath 9 Pyle from the Special Review Definitive Map and Statement and that their application has been rejected.

- 2 To advise the applicant that they may appeal, in writing, against the decision of the Council to the Welsh Assembly Government within 28 days from the date of the decision letter.

**APPENDIX 1 – 42
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**

21st OCTOBER 2005

TRANSPORTATION AND ENGINEERING