

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT OF EXECUTIVE DIRECTOR - ENVIRONMENT

TO THE

MEETING OF THE RIGHTS OF WAY PANEL

Monday 12th December 2005

ITEM	DESCRIPTION
2.	BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED RIGHT OF WAY RUNNING FROM ANGLETON GREEN TO HILLSIDE, PEN-Y-FAI

2. **Bridgend County Borough Council**
Definitive Map and Statement: Public Rights of Way
In the matter of the Claimed Right of Way running from Angelton Green to Hillside, Pen-y-Fai

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 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. Bridgend County Borough Council received an application on 22nd November 1999 from Mrs A M Davies indicating that the path running from Angelton Green to Hillside, Pen-y-Fai 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 2** 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 2

CLAIMED PUBLIC FOOTPATH ANGELTON GREEN TO HILLSIDE, PEN-Y-FAI

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 between Angeltion Green and Hillside, Pen-y-Fai, as a public footpath in the Definitive Map and Statement. The claimed path as indicated on the plan accompanying the application is shown by a bold black dashed line on the plan in **Appendix 51**.

B Resources Appraisal

2. 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.

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. In this particular case there is little, if any, historic documentary evidence to indicate that public rights exist. Furthermore, a third of the original claimants have been interviewed and all of those have indicated that they would be willing to attend any public inquiry that may have to be held should an Order be made and objected to. In this instance, therefore, if public rights have been shown to exist any Order would be made under Section 53(3)(b)

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 19th August 1999 Carwyn Jones, Assembly Member for Bridgend forwarded a letter to the County Borough Council regarding various issues at Angelton House that a constituent had raised with him. According to the letter the constituent, Mrs A Davies, indicates that the residents are concerned that they no longer have access to the woods at Angelton because a fence is being put up preventing them from entering. The letter states that the land was purchased by Beazer Homes and they have sold part of it to a gentleman who wishes to rebuild Angelton House.
14. A copy of the letter from Mr C Jones, AM, is provided in **Appendix 52**.
15. Although a formal response regarding the erection of the fence was forwarded to Mr Jones by the Planning Department the issue of access was left to the Council's Rights of Way Section to deal with.
16. In a reply that was sent to Mr Jones on the 20 October 1999 the Assembly Member was advised that there were currently no registered public rights of way in the vicinity of Angelton House. Therefore, the new owner of the property, Mr Hooper, was not causing an obstruction of any highway neither was he committing an offence by erecting a fence on the boundary of his property.
17. The letter goes on to state, however, that legislation does exist which enables routes that have been used by the public in excess of 20 years to be added to the Definitive Map of Public Rights of Way. In this regard the letter also confirms that approximately 18 months to 2 years ago a member of the public contacted the County Borough Council's Rights of Way Officer to discuss the possibility of claiming a right of way through the wood.
18. Investigation of the Council's records have indicated that those forms were forwarded to Mrs Davies. However, as the letter to Mr Jones indicates they were never returned. Furthermore, a further set of forms had been sent just prior to the receipt of Mr Jones' letter and the Council were waiting for these to be returned.
19. A copy of the Council's response to Mr C Jones is provided in **Appendix 53**. A copy of a letter to the clerk to Newcastle Higher Community Council that confirms that the original forms were forwarded to Mrs Davies is provided in **Appendix 54**.
20. At the same time, August 1999, the Council's Chief Executive received a letter from the local Member, Councillor M Wilkins. In that letter Councillor Wilkins stated that she had received numerous phone calls from residents of Angelton Green who had informed her that land north of the Beazer home development, which is designated as a public open space for leisure use and falls under condition 10 of the Section 106 Agreement with Beazer Homes, has been sold to Mr T Hooper.
21. In her letter Councillor Wilkins asks:

1. for a Mareva Injunction to be taken out against Beazer Homes for non-compliance of condition 10 of the Section 106 Agreement.
2. that an enforcement notice be served on the new owner for obstructing access to a public open space and for all fencing to be removed.
3. that Mr Hooper produce his deeds; and,
4. that the Forestry Commission be notified.

Councillor Wilkins also suggests that the Council's Planning Department could have a case to answer for failing to monitor the actions of Beazer Homes.

22. A copy of Councillor Wilkins letter is provided in **Appendix 55**.
23. A reply was sent to Councillor Wilkins from the Planning Department on the 2nd September 1999. In that letter it was explained to Councillor Wilkins that the information she had received from the residents appeared to be misleading. The letter provided a history of events connected with applications for planning permission in the area. It was also explained that the area set aside for playing fields and associated facilities in the Local Plan amounts to approximately 1 hectare and it is only this limited area that is the subject of the Section 106 Agreement.
24. The remaining land so the letter indicates is privately owned and other than a small area set aside for community use, is not allocated for use as a public facility. The owners are therefore able to protect their property by erecting a means of enclosure without the need to obtain planning permission.
25. The letter continues by stating that there are no statutory rights of way indicated on the Definitive Map in the vicinity of Angelton House and access to public open space has not been prevented. Finally, Councillor Wilkins was also advised that the Legal Department did not believe that there was any basis for applying for a Mareva Injunction.
26. A copy of the Council's response to Councillor Wilkins can be seen in **Appendix 56**.
27. On the 22nd November 1999 the County Borough Council received a letter from Mrs A M Davies enclosed with which was an Application Form that was the first of two applications for footpaths in the area. Also enclosed with the letter and Application Form were 10 public rights of way 'Evidence Forms'.
28. The 10 'Evidence Forms' indicated that the path from Angelton Green to Hillside had been used by the public for such a length of time as to establish it as a public right of way. Use of the path was claimed for varying periods of time between 1969 and 1999.
29. Also attached to the letter and application form was a plan showing by means of arrows, the proposed footpath. A copy of Mrs Davies' letter is provided in **Appendix 57**.
30. 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 County Borough Council by Mrs Davies on 22nd November 1999. These indicated that Mrs Davies had served notice on Mr Hooper of Angelton Hall and Mr R G Jones, Managing Director, Beazer Homes, Cardiff.

31. A copy of the application forms (W.C.A. 5 and 7) and accompanying plan are attached at **Appendix 58**.
32. In the letter accompanying her application Mrs Davies also states that the footpath has been obstructed by a fence. She also indicates that whilst the path is under dispute she believes access should be unfettered and she requests the removal of this obstruction until a decision is made.
33. In reply the County Borough Council acknowledges Mrs Davies' application and advises her that on the basis of the criteria adopted, her application has been identified as priority 25.
34. With regard to Mrs Davies' request for the removal of the fence, the letter advises that it was held by the Court of Appeal in *R v Lancashire County Council ex p Guyer (1980)* that where a serious dispute existed concerning the legal status of a way an authority was under no duty under the section to assert the applicant's claim to the use and enjoyment of the path by taking action to secure the removal of the obstruction. From this decision it is clear that the legal status of the path should be established before seeking the removal of an obstruction under Section 130(1).
35. A copy of the Council's reply dated 1st December 1999 can be found in **Appendix 59**.
36. The Council had no reason to doubt the fact that Mr Hooper was the only landowner and as such that the application had been made correctly. However, during 2001 Mr Hooper telephoned the Council and confirmed that a small strip of land over which the claimed right of way ran was actually owned by another person. In fact that person, Mr P Green, owned the small area of land between the carriageway of Angelton Green and the start of the woodland that was owned by Mr Hooper.
37. As a result of the above information the application was incomplete as all the procedural requirements of the Wildlife and Countryside Act had not been followed i.e. not all landowners had been notified. However, the matter could be rectified quite easily if the applicant served notice on the newly identified landowner.
38. Following receipt of the newly identified landowners' details a letter was forwarded to the applicant requesting that she complete another set of application forms. This she did and those forms were submitted on the 31st December 2001.
39. A copy of the second set of application forms (W.C.A. 5 and 7) are attached at **Appendix 60**
40. The application requested that a modification be made to the Definitive Map and Statement by adding thereto the route described in paragraph 47 below as a footpath. As indicated above the application was supported by 10 'Evidence Forms' that provided evidence of use for varying periods between 30 and 13 years.
41. The County Borough Council has recently been able to investigate this particular claimed right of way. Therefore, as it had been 6 years since the application was received a letter was forwarded to all 10 people who had previously completed evidence forms together with the applicant to ascertain whether they still wished to pursue the claim.
42. Of the 10 people contacted, 3 indicated that they still wished to pursue the application and that they were willing to be interviewed. Unfortunately, of the 3 other responses received,

the people either no longer lived at the addresses, did not wish to pursue the matter or had passed away. The remaining 5 claimants wished to pursue the claim but did not want to be interviewed. Mrs Davies, the applicant, also still wished to pursue the matter and was willing to be interviewed.

43. In addition to the above eleven people the County Borough Council was also asked to contact Mr J Davies. It appears that Mr Davies had filled in an 'Evidence Form' in 1999 when Mrs Davies originally submitted the application. However, this was not included with the application nor had it been submitted afterwards. Mr Davies had, however, kept a copy and wished to pursue the application.
44. That 'Evidence Form' has been included with the other ten and all of them can be seen in **Appendix 61**.

The Claimed Route

45. The claimed route runs from Angelton Green through Coed-y-Werlish into open fields and then onto Hillside. The exact alignment of the route as submitted by the applicant is described in detail in paragraph 47 as well as being shown by a bold black dashed line on the plan in **Appendix 51**.
46. If a Modification order is made the route to be registered will have a width of 1.2 metres with a natural surface throughout its entire length.
47. The claimed footpath commences at Point A on the map Grid Reference SS 89768218 being a point 17 metres south east from the centre of the eastern frontage of the property known as No.42 Angelton Green and will proceed in a general east north easterly direction for 28 metres to Point B Grid Reference SS 89788212 where it will continue in a generally southerly direction for 61 metres to Point C at Grid Reference SS 89798210 at which point the path turns and runs in a curved west south westerly direction for 66 metres to Point D Grid Reference SS 89748210. From Point D the path runs in a westerly direction for 107 metres to Point E Grid Reference SS 89638213 before turning and running in a curved north westerly direction for 43 metres to Point F Grid Reference SS 89598219 being a point 170 metres south west from the centre of the eastern frontage of the property known as No.42 Angelton Green. The total length of the footpath will be approximately 305 metres.
48. As indicated in previous paragraphs the County Borough Council has been provided with evidence concerning the use of the path that is the subject of this report. In this instance that evidence has been provided by 12 people in 2 different ways. Use of the route as shown on the plan accompanying the 'Evidence Forms' varies between 30 and 13 years whilst the applicant indicated that she had used the route for 4 years at the time the application was made.
49. The main body of evidence was forwarded to the County Borough Council by the use of 'Evidence Forms'. However, evidence was also gained by interviews. Eleven of the twelve people provided evidence using the Wildlife and Countryside Act 'Evidence Forms'.
50. In order to corroborate the information contained in the 'Evidence Form' it is usual for the Council to interview as many of the people who completed 'Evidence Forms' as possible. In this particular case the Panel can rely on the corroboration of three people (27% of the

claimants) who were willing to be interviewed by the County Borough Council's Rights of Way Officer. The applicant, who had not filled in an 'Evidence Form' was also interviewed.

51. A full analysis of the 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.
52. As a result of the need to examine the 'Evidence Forms' thoroughly as part of the current investigation it has come to light that there appear to be some discrepancies in the various answers provided by the claimants. In particular, one claimant does not indicate how long they used the path. However, it appears that they were born in the area so they would only have used it since they can remember. I have, therefore, made certain assumptions and where claimants are likely to have used/known the path all their life, I have suggested that from 6 years old would be more appropriate.
53. In a second instance it was discovered during the interview that the claimant had only used the route up to the age of 16 and then again for the past 9 years.
54. Full details of the discrepancies and the assumptions/alterations made can be found in **Appendix 62**.
55. The bar chart shown in **Appendix 63** summarises the claimed use as indicated on the 'Evidence Forms' as well as from the applicant's interview. All the 'Evidence Forms' were completed in 1999. The bar chart shows that 9 of the 12 people who are included in the chart had used the path for a 20-year period from 1979 to 1999 – the date when the application was made.
56. One applicant only used the path while he was a child, although he has known the path since the 1950's. The two other people who are shown on the chart have either not lived in the area long enough or were too young to be able to prove 20 years use.
57. Members should note that the 20-year period shown on the bar chart might 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.
58. As indicated in paragraph 43 above the County Borough Council eventually received 11 completed 'Evidence Forms' to support the official application that was received from Mrs A M Davies in 1999. All of these will be included in the analysis below.
59. 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.
60. 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.

61. 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.
62. In this particular case the forms were compiled and completed by the claimants before this decision. Therefore, although Members will see the answers the claimants put on the forms in **Appendix 61**, they should for the purpose of determining this application note that these are now, by virtue of the above ruling, to be ignored.
63. 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 61 (Nos. 1 – 11)**.

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

Answer: Footpath only 11

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

Answer: Yes 11
No 0

Q9 *How long have you known the path:*

Answer: 0 – 20 years 0
21 – 30 years 6
31+ years 2
No specific time 3

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

Answers:

<u>Type of Use</u>		<u>Number of Years</u>		
		<u>21 - 30</u>	<u>31+</u>	<u>No time period given</u>
<u>Foot</u>	<u>8</u>	<u>6</u>	<u>1</u>	<u>1</u>
<u>None specified</u>	<u>3</u>			<u>3</u>

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

Answer: Daily 1
5 times per week 1
2/3 times per week 2
Frequently 5
Regularly 1

64. As will be noted from the above summaries all of the claimants indicated that the route was well defined. They also all believed the route to be a footpath.
65. In this particular case over 50% of the claimants indicated that they had known the path for between 21 and 30 years. One fifth had known the path over 30 years and 27% provided no specific answer.
66. As it can be seen from the above summary over two thirds of the people who provided an answer indicated that they had used the route 'On Foot'.
67. Over a third (36%) of the claimants indicated that they used the route more than twice a week with a further 54% confirming they used it 'Frequently or Regularly'. Only one person suggested they used it on a less frequent basis. The reason for this could be found in the reply to Question 12. This route is on the edge of a residential area and as a result is alleged to have been used for many day-to-day recreational purposes.
68. 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 as such i.e. access to woodlands and fields; safe environment for children to play; recreational; leisure; walking dog; personal exercise; and, fruit picking. In those circumstances the path would be likely to be used by the majority of people on a daily basis.
69. The 'Evidence Form' also provides space for the claimants to indicate if there were ever any stiles/gates/notices/obstructions on the path. All of them indicated that none of these were present on the path.
70. Question 16 asks claimants if they have ever seen other people using the route and if they were locals or strangers. All of the claimants replied to this question with varying degrees of details. 45% simply said locals on foot or similar whilst the other 55% suggested something along the lines of:
- People from village and other places have always used the path and I personally saw numerous people using it over the years mainly on foot but some horse riders (6 people)
 - Foot (2 people)
 - Used by numerous locals – foot (3 people)
71. Question 19 asks if the claimant, or anyone they know, has ever been stopped from using the path. In all cases the claimants indicated that they had not.
72. Following on from Question 19, Question 20 asks if the claimants were ever told that the path was not public. In this particular case all of the claimants indicate that they were never told that the route was not public.
73. Question 15 concerns employment and is very important because if someone has been using the claimed route 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.

74. With regard to the other questions, and in particular Question 18, an examination of the 'Evidence Forms' revealed that none of the claimants ever sought permission to use the path.
75. Question 17 seeks to establish if the claimants have always used the same route. In 45% of the cases the claimants simply answered 'yes' to this question. However, in the other six cases the claimants provided more details. These were:
- As far as I can recall I always followed the same path, but also used the woods and fields (3 people)
 - As far as I can recall I always followed the same route and also access surrounding fields and woodlands (2 people)
 - In using this footpath and access to it the answer is mainly yes (1 person)
76. 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. In the majority of cases the claimants indicate either 'No', 'Not known', or 'Not as far as they are aware'. However, in 45% of the 'Evidence Forms' the claimants have indicated that they 'Never thought it appropriate to check'.
77. 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. All of the claimants answered this question and all indicated that they had not.
78. The 'Evidence Form' provides space at the end for any further information the claimants wish to add. In this particular case none of the claimant's added further information at this point. However, on 6 of the 11 forms additional information was provided either in answer to Question 9 or Question 23. That information is as follows:
- Growing up in the village I frequently used the path indicated to access adjoining woodlands with my parents, friends and on my own. My parents never informed me that there was any problem with access. I always assumed that there was a public right of way to use the path. As children we used to make dens in the woods to play. I have never been approached by anyone asking me to leave the path or indeed the woods or fields. (30% of claimants)
 - Used path for recreational purposes and access, particularly when my four children (aged 19 – 29) were growing up. They frequently used the path to access woodland and fields. Due to frequent use by residents the area has always been regarded as a public facility and a safe environment for children to play and enjoy the countryside. One of the reasons I moved to Pen-y-Fai was ease of access to green areas. (20% of claimants)
79. Full details of all additional information provided can be found on the individual 'Evidence Forms' in **Appendix 61 (Nos. 1, 2, 3, 4, 5, 11)**
80. On the 17th and 24th August 2005 the Rights of Way Section interviewed 3 people who had completed 'Evidence Forms' and who indicated that they wished to continue with the application and would be willing to be interviewed. The applicant was interviewed on the 5th September 2005.

81. Full details of the information provided at the interviews can be found in the signed statements provided at **Appendix 64**.
82. 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'.
83. To this end I can confirm that the Rights of Way Officer has compared the 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. A summary of the main points is provided below:
- Two of the claimants have known and used the path for over 20 years
 - No-one was confronted and told the path was private or been told that they could not use it
 - They all saw other residents and children using the pathways
 - One of the claimants said that there was not a fence surrounding the property
 - Two of the claimants admit to seeing a wrought iron fence surrounding the property
 - All four interviewed confirm they have always thought the path was public and never experienced any problems using it
 - All three claimants would be willing to go to Public Inquiry
84. As Mrs Davies did not complete an 'Evidence Form' it has not been possible to make a comparison between that document and her interview. Therefore the main points arising from Mrs Davies' interview are provided below:
- She had known and used the path at the time of the application for four years
 - She admits to seeing the fence, however there was a gap in it which she used for access
 - Mrs Davies and one claimant admit to seeing 'private property' signs put up by Mr Hooper
 - All four of those interviewed confirm they have always thought the path was public and never experienced any problems using it
 - When Mrs Davies came home one day in 1999 she saw the gap that she used for access blocked off with wood nailed across the gap and an unsightly red sign saying 'keep out'.
 - This was the first indication Mrs Davies had that the land had changed ownership
 - Mrs Davies always followed the same route to Hillside and would use it about once or twice a month. The route to Tondu Road was used very infrequently.
 - Mrs Davies, Mr and Mrs Hooper and a few other residents had a meeting to resolve the issue. Mr Hooper offered a patch of woodland as a compromise for children, however the residents refused this as they wanted to go through the correct legal process and they were concerned the right could be taken away at any time.
85. In addition to being able to clarify the information provided on the 'Evidence Form' and to gain other information it is now usual practice to ask the person being interviewed to draw

on a plan of the area the line of the route that they used. Copies of these plans are provided in **Appendix 64** after each of the individual signed statements.

86. As well as the four individual plans a composite plan has also been created to enable Members to see more clearly where the claimants have indicated that they have been walking. A copy of that plan is provided in **Appendix 65**.
87. As can be seen from this plan the claimants have shown that they have not all used the same route. Indeed, only in one or two particular points do the routes actually coincide.
88. In one case (Mr Rees) the use does not continue to Hillside and in all cases the route through and exit from the woodland was different. The significance of these differences will be made clear in the following section of the report.
89. In addition to the information/evidence provided by Mrs Davies during her interview further additional information was forwarded to the County Borough Council under cover of a letter dated 12th September 2005. The majority of the letter suggests changes to her interview transcript and these have been incorporated into the signed interview notes that can be seen in **Appendix 64**. However, attached to the letter were also notes made by Mrs Davies during August 1999 when the matter first arose together with copies of four letters written to the County Borough Council on the 15th August 1999. In addition photographs taken at the time were also sent with the letter.
90. In her notes Mrs Davies highlights the incidents that occurred over a 10 day period between the 3rd and 10th August 1999. The main points raised are:
- 3rd August 1999** - Entrance to woods being boarded up prior to house being rebuilt.
Access to woodland to be restricted although it was pointed out that the residents had cared for it and the land had been walked for over 30 years.
The boards blocking the entrance were removed that night.
 - 4th August 1999** - New owners advised people walking their dog that the land was private.
 - 6th August 1999** - A new gate was erected although it was removed fairly quickly. After approaching other residents a meeting was called to discuss the matter.
 - 9th August 1999** - The County Borough Council was contacted about the fences.
Beazer Homes were contacted about the sale of the land.
A residents meeting was held.
 - 10th August 1999** - Mr Hooper made contact and stated his case. Prior to commencing work on site he was required to seal all boundaries to ensure no one could enter and be injured.
Mr Hooper was informed of the resident's feelings especially relating to the removal of access to the woods. He was also informed that the land had been walked for over thirty years and although not an official right of way it fulfilled the criteria to be so.
Mr Hooper confirmed that access would not be allowed to the woods and field either now or in the future. He was advised that the residents intended to pursue the creation of a public right of way.

91. A copy of Mrs Davies' letter dated 12th September 2005 can be seen in **Appendix 66** whilst the notes from 3rd to 10th August 1999 inclusive can be seen in **Appendix 67**.
92. As indicated above Mrs Davies also wrote four letters to various different departments of the County Borough Council on the 15th August 1999. The first, to the Planning Officer, relates to the fencing off of Angelton House and the surrounding woodland. In the second paragraph of the letter Mrs Davies refers to the fact that there has been access to the woodland surrounding Angelton House for some years.
93. Mrs Davies' three other letters, which are all in similar form, were sent to The Director of Environmental and Planning Services, the Conservation Officer, and the Tree Preservation Officer. In those letters Mrs Davies indicates that although the residents of Angelton Green, Penyfai and Penyfai village have used the wood as a local amenity for a number of years the woodland has now been closed off. Mrs Davies also says that some residents have informed her that the land has been walked for over twenty years.
94. The remainder of the letter relates to the flora and fauna of the area and requests information on 5 specific matters relating to the conservation and management of the woodland.
95. A copy of the letter to the Planning Department is provided in **Appendix 68** whilst one of the three letters in similar form is provided in **Appendix 69**.

Legal Background

96. The County Borough Council has been asked to add a public footpath to the Definitive Map and Statement under the Wildlife and Countryside Act 1981 (the 1981 Act).
97. The relevant statutory provision which applies to adding a footpath 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 the) 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'

98. The evidence is provided by 11 'Evidence Forms', nine of which indicate that the public had used a route for a period in excess of 20 years. Section 31 of the Highways Act 1980 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.'

99. 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 of right. The public must have used the way without hindrance (eg 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 but is generally taken to run backwards from the time when the use of the path was first 'called into question.'
100. As can be seen from paragraphs 85 to 87 above those claimants who were interviewed, together with the applicant were asked to mark on a plan where they had walked. The plan in **Appendix 65** shows the alignment they drew.
101. The significance of the fact that not all the routes are identical was recently highlighted during a presentation by Ms Ross Crail, Barrister in her paper entitled 'The Legal Framework' at the Rights of Way Law Review course 'Understanding User Evidence' which was attended by the Rights of Way Officer. In paragraph 10 of her paper she indicates:
- 'Not all and any public user can be relied upon for the purposes of common law dedication or section 31. For one thing, the user must have been of a single defined route. It does not have to be made up or surfaced, of course, but it does have to be defined and it has to be the same route that people have followed throughout the period relied on. "*A public right on land depends upon proof of public user over an exactly demonstrated course*": per Lord Oliver of Aylmerton in *Attorney General ex rel Yorkshire Derwent Trust Ltd v. Brotherton* [1992] 1 AC 425 at p.434. If people have crossed land in the same general direction but by varying routes, their user cannot be aggregated and attributed to a single route.'
102. The Rights Of Way Panel must consider whether there is sufficient evidence to allege that the presumption is raised. The standard of proof is the civil one, on the balance of probabilities. Members must weigh up the evidence and if, on balance, it is reasonable to allege that there is a public right of way, then the presumption is raised. The onus is then on the landowner to show evidence that there was no intention on his part to dedicate. This must be by some overt act on the part of the landowner to show the public at large that there was no such intention.
103. Such evidence may consist of notices or barriers, or by the locking of the way on one day in the year, and drawing this to the attention of the public, or by the deposit of a Statutory Declaration to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.

The Landowners

104. As indicated in the frontispiece and paragraphs 30 to 39 of the report the applicant, Mrs Davies, had a duty under Schedule 14 of the Act to serve a notice on the landowner. According to the original Form W.C.A. 7 which can be seen in **Appendix 5** Mrs Davies indicated that notice had been served on Mr Hooper, as owner of Angelton Hall.
105. This is confirmed by Mr Hooper who, in a letter dated 24th November 1999, acknowledges that Mrs Davies presented him with forms applying for footpaths through his land on the 21st November 1999. In that letter Mr Hooper also wishes for it to be recorded that both he and his wife object most firmly to the creation of such access. He also indicates that the matter has been placed in the hands of his solicitors and that they will contact the Council in due course. Finally he requests copies of any guidance notes that may be available in respect of the process for dealing with such an application.

106. A copy of Mr Hooper's letter is provided in **Appendix 70**.
107. Although no formal response was sent to Mr Hooper it is clear from the subsequent correspondence that officers from the Rights of Way Section must have either spoken to Mr Hooper or sent some guidance notes. That correspondence consists of a statutory declaration made in accordance with Section 31 (6) of the Highways Act 1980.
108. The declaration, which is accompanied by a plan showing the area of land to which the declaration relates, has been completed in the correct manner. The purpose of the declaration is to enable a landowner to deposit with the highway authority a map and statement showing the ways (if any) that he admits are dedicated as highways. If he then, within six years, deposits a statutory declaration that no additional ways have been dedicated since the deposit of the map, this is sufficient, in the absence of proof to the contrary, to establish that no additional ways have in fact been dedicated.
109. In this particular case the original statutory declaration, which was dated 29th February 2000, stated that no public rights of way or highways had been dedicated across the land. A second declaration dated 13th April 2005 confirmed that no further dedications had taken place. In both instances a letter was sent from the Council acknowledging receipt of the statutory declaration and confirming that no registered rights of way existed over the area of land in question.
110. A copy of the original statutory declaration together with the Council's response can be found in **Appendix 71** whilst the second statutory declaration and council acknowledgement can be seen in **Appendix 72**.
111. Although there was no formal exchange of correspondence between the dates of the two statutory declarations Mr Hooper did often contact the Council by telephone to determine the current position in respect of the determination of the application.
112. On the 30th March 2005 Mr Hooper wrote to the County Borough Council to express his concern about the delay in resolving the application. Furthermore, he indicated that he was extremely disappointed to discover during a recent conversation that it could be another 12 months or more before a decision was made.
113. In the letter Mr Hooper confirms that a formal witnessed statement of objection and supporting evidence was submitted shortly after the application was made. He also states that he and his wife have patiently endured the stress and uncertainty that this issue has caused without complaint. Furthermore, despite having to involve the police during the early stages of the dispute to stop the destruction of fencing, they have ignored the continuous trespass over their property that occurs to this day.
114. In addition the letter confirms that Mr Paul Green has also objected to the rights of way application. According to Mr Hooper, Mr Green informed him that he had purchased the land in 1987. He also confirmed that the hospital land he purchased was enclosed by a fence, which was removed to construct the houses.
115. Mr Hooper then goes on to say in the letter that Mr Green erected the timber fencing which encloses the west of Mr Hooper's land, leaving a small gap for access for Water Board personnel. Finally Mr Hooper was given to understand that Mr Green had allocated an

entrance point for a footpath at that time but this option was not subsequently taken up by the Council.

116. In addition to the above Mr Hooper also enclosed with his letter documentary evidence, which he believed supported his objection and provided evidence, which indicated that neither Mrs Davies nor anyone else could have enjoyed 20 years access to the land prior to the application being made. Three documents were attached to Mr Hooper's letter. These were:

- a report to the Development Control Committee of Ogwr Borough Council dated 29th June 1991
- a report to the Planning Committee of the County Borough Council
- a letter from the County Borough Council to Councillor Wilkins dated 2nd September 1999.

117. In his letter Mr Hooper indicates that his interpretation of the evidence is as follows:

Document P/95/355/OUT – 29th June 1995

Page 1, Item 2 - Pen-y-Fai hospital still existed

Page 5 - Countryside Council for Wales confirm no public access

Page 6 - Hospital expected to remain in use

Page 7 - Hospital expected to close within 5 years

Page 9 – Our land is within the (then) Hospital grounds. This was a mental Hospital. Members of the public would not have been allowed to roam the grounds.

Document P/98/159/FUL

Page 1 - Refers to meeting held on 11th June 1998

Page 2 - Paragraph 2 states that Angelton house had only been vacant for 12 years at that time

Page 2 - Paragraph 4 confirms owner had not abandoned residential use

Page 3 - Top of page reiterates this observation

Letter to Councillor Mrs M Wilkins

Page 1 - Reference to the 'site' extending to 15.1 hectares (embracing our property)

Page 1 - Reference to document P/95/355/OUT referred to earlier

Page 1 - Statement that 'no other recreation facilities will be provided'

Page 2 - Angelton house was part of Pen-y-Fai/Glanrhyd Hospital complex

Page 2 - Note that our land 'is not allocated for use as a public facility'

Page 2 - Note that trespass on our land is not a Council issue

Page 3 - Reaffirmation that there must be 20 years uninterrupted use.
Simple calculation shows this was not the case

118. A copy of Mr Hooper's letter and the two reports can be seen in **Appendices 73, 74 and 75** respectively. The letter to Councillor Wilkins can be found in **Appendix 56**.
119. A response was forwarded to Mr Hooper from the County Borough Council on the 11th April 2005. In that letter Mr Hooper was advised that despite extra funding from the Welsh Assembly Government to deal with issues arising from the coming into force of the

Countryside and Rights of Way Act 2000, the Council had been unable to progress applications for Modification Orders as quickly as it had hoped.

120. Two suggestions were put forward in this letter as to how the matter might be dealt with. Firstly, Mr Hooper could offer an alternative route to be registered as a public footpath as a compromise and on the understanding that the applicant withdraw their applications for Modification Orders. The second suggestion concerned the employment of a freelance professional rights of way officer to investigate the applications on behalf of the Council but paid for by Mr Hooper. The County Borough Council following receipt of legal advice subsequently withdrew this as an alternative.
121. A copy of the letter from the County Borough Council to Mr Hooper dated 11th April 2005 can be seen in **Appendix 76**.
122. Mrs Davies was informed of Mr Hooper's offer by the County Borough Council on the 1st June 2005. However, no formal reply was received before Mr Hooper's offer expired on the 17th July 2005.
123. On 16th August 2005 the Rights of Way Officer and his assistant interviewed Mr and Mrs Hooper. A summary of that interview is provided below:
 - Mr and Mrs Hooper bought their house and land from Beazer Homes in 1999. It was originally part of the hospital complex. The house was practically derelict and the land was completely over-grown and overrun with brambles and bushes. Photographs taken at the time, which show the derelict house and land, can be seen in **Appendix 78**.
 - The whole site was originally surrounded by wrought iron fencing but a developer, Mr Paul Green, took down part of the fencing in order to build and develop the land known as Angelton Green.
 - When they purchased the land, Mr and Mrs Hooper were advised to fence off the property. Unaware of the alleged right of way, Mr Hooper followed this advice and fenced off all of his property. This is when the dispute occurred as local residents said they had used his land as a local footpath for over 20 years.
 - A carpenter erected a fence but this was vandalised on two occasions. The police were called and local residents were warned that arrests would be made if it occurred again.
 - Mr and Mrs Hooper decided to try and sort the dispute out amicably and organised a local residents meeting with 4/5 local people, including Mrs Davies. They explained to the residents that they had no previous knowledge of the alleged footpath and that they were only acting on instructions from their solicitors. The residents concluded by saying they were going to apply for public footpaths.
 - Mr Hooper re-iterated in his interview that the grounds were fenced off when it was a hospital, therefore it could not have been used for an uninterrupted twenty-year period.
 - It was confirmed that Mr & Mrs Hooper erected signs indicating 'private property'. A photocopied receipt for the purchase of the signs indicates they bought in 2001. This was provided and can be seen in **Appendix 79**.
 - As Mr and Mrs Hooper are in the process of selling their house they wanted to try again to sort out the matter. As a consequence, an alternative footpath was offered to the applicant, however no reply was received from Mrs Davies and as a result Mr Hooper withdrew his offer.

124. As indicated in paragraph 38 above the County Borough Council contacted Mrs Davies on 13th August 2001 as it had been brought to their attention that a small area of land over which the Claimed Right of Way ran was in the ownership of a third party.
125. It appears that at some time in the past a small 'ransom strip' had been retained between the edge of the highway known as Angelton Green and the land belonging to Angelton House. Mrs Davies was advised to serve notice on the newly identified landowner, Mr P Green and this was subsequently done (see paragraph 39).
126. Mr Green had never written to the County Borough Council indicating whether he had any objection to the proposed application. Therefore it seemed appropriate for him to be interviewed. On 17th August 2005 the Rights of Way Officer, Mr Mason, and his assistant interviewed Mr Green.
127. During this interview Mr Green confirmed that he had bought the land on which the residential development was constructed approximately 18 years ago (i.e. 1987) and finished the development 5 years ago. He also confirmed that the land had previously been owned by the Health Authority and that when he bought it, it had a 6 foot steel fence all around.
128. When he purchased the land Mr Green said it was overgrown and as a result no one was walking in the field. Only when he opened access to the fields to start building did people walk down to the site.
129. A copy of Mr Green's interview can be seen in **Appendix 80**.
130. During his interview Mr Green also provided officers with photographs of the area of land in question taken shortly after he purchased the land. These photographs show that the field was uncultivated and appeared to be ungrazed.
131. Mr Green also indicated that there was a fence surrounding the property as it was established policy years ago that there were no rights of way through mental hospital grounds. On one photograph the wrought iron fence, which surrounded the site, is visible in the distance. The wooded area can also be seen.
132. Copies of the photographs can be seen in **Appendix 81**.
133. In addition to Mr Hooper and Mr Green the majority of the land at the time of the application was owned by Beazer Homes. On 7th December 1999 the County Borough Council received a letter from Wyn Thomas plc on behalf of Beazer Homes (Wales) Ltd requesting advice as to the progress of this matter. Unusually, there was no indication as to whether the company objected to the application.
134. A copy of that letter is provided in **Appendix 82**.
135. In view of the fact that the land had once been in the ownership of Beazer Homes a letter was forwarded to that company during the recent consultation exercise to determine if they had any information in respect of this matter. To date no reply has been received.
136. As the land had once been owned by the Health Authority it was thought appropriate to contact the Estate Manager at Glanrhyd Hospital to determine if the hospital had any

information in respect of the application. A meeting took place between Mr Mason, Miss Geers and Mr Alun Watkins on the 2nd September 2005.

137. During that meeting Mr Watkins confirmed that there was definitely a wrought iron fence around the hospital grounds and showed Mr Mason a picture on the wall confirming this. He confirmed that as the hospital was a lunatic asylum it was usual practice to have a fence to keep the patients in although he was unaware of any legislation, which indicated that this was a statutory duty.
138. Mr Andy Davies, who is the risk manager of the medium secure unit at Glanrhyd Hospital, was contacted by telephone on the 7th September 2005 to ascertain if mental hospitals had to be surrounded by a fence. Mr Davies said that there was no provision in the Mental Health Act that indicated that mental hospitals had to be fully enclosed by fencing.
139. Although the secure unit within the hospital site would have to be enclosed, some patients are kept on a voluntary basis and therefore are free to leave whenever they chose. Mr Davies therefore confirmed that the grounds of mental hospitals did not, by statute, have to be fully enclosed.

Documentary Evidence

137. 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.
138. The completed checklist for this application is shown in **Appendix 83**. A second table that provides some additional comments on the documents viewed is provided in **Appendix 84**. As will be seen from the checklist no documentary evidence has been found to substantiate this application.
139. In an attempt to determine if a single defined route had been established the Council decided to find out if any aerial photographs of the area existed. Following discussions with the UK's leading company in this field, who have undertaken this work since 1919 it emerged that one aerial photograph did exist and that photograph was taken in 1971.
140. This has resulted in the Council acquiring a 9" x 9" contact print of the Pen-y-Fai area at 1:5000 scale and a 12" x 12" enlargement of the area at 1:500 scale. A copy of each of the photographs can be found in **Appendix 85**.
141. As Members will be able to see from these photographs no defined route exists through the fields to the west of the wood. Obviously it would be impossible to determine if a defined route existed through the wood due to the tree canopy but one would expect to see a defined route either through the field leading to the wood or between the wood and Hillside especially if the route was being used as often as the 'Evidence Forms' suggest.

Consultations

142. The required consultations with the community council; the prescribed organisations; and the statutory undertakers have been carried out. The local Member was also consulted on the application.
143. British Telecommunications responded on the 5th September 2005 and indicated that they have no objections to an Order being made.
144. No replies have been received from any of the other statutory undertakers, the Community Council, the local member or the majority of the prescribed organizations.
145. Mr A Morgan responding on behalf of the Ramblers Association indicated in his letter dated the 19th August 2005 that the Association would support the claim. Furthermore, he confirmed that he had spoken to local residents of Pen-y-Fai who had informed him that the path had been used over a long period of time and until recently they had not been prevented from using it by a landowner.
146. A copy of Mr Morgan's letter is included in **Appendix 86**.

Conclusion

147. It is apparent from correspondence received in August 1999 from Mr C Jones, AM and Councillor M Wilkins that access to the woods, and therefore, the alleged footpath had, at sometime in the immediate past, been stopped up by means of a fence. This is further confirmed by the letter dated 22nd November 1999 from Mrs Davies, the applicant, which accompanied her application and in which she also states that the footpath is obstructed by a fence.
148. In addition to the above the landowner submitted a statutory declaration in February 2000, which indicated that no public rights of way had been dedicated over his land and that he did not agree to any other ones being dedicated. By renewing that declaration in April 2005 the landowner did everything necessary to negate any claim being made for a path over his land and which included use after February 2000.
149. In view of the above it can be quite clearly stated that the alleged footpath was brought into question in 1999 and definitely by February 2000. However, before determining whether the 20-year period should be taken back from this date the further evidence contained in the report must be looked at to determine if the path was called into question at an earlier date.
150. In his interview Mr Green suggests that a 6-foot iron fence was in situ when he bought the land in 1986/1987. Shortly after that he opened part of the fence line up to start his development and people began using the area.
151. Mr Green also suggests that no one was using the area as it was overgrown but the photographs he provided do not indicate this but only suggest that it was not cultivated or grazed and that the vegetation is consistent with boggy ground. In fact Mr Rees in his interview suggests that the ground was boggy and that it was easier to use as the area became developed by Mr Green. However, this only relates to the field where the houses known as Angelton Green are now located i.e. the one end of the alleged path.

152. On the basis of the information contained above I would suggest that unless access to the start of the claimed path in Angelton Green was gained by some other means it is unlikely that this could have been achieved at the point the applicant is suggesting until Mr Green demolished some of the fence so that he could begin developing the area i.e. approximately 1987. Furthermore, once the alleged route was being used it would certainly have been brought into question in 1999 by the erection of a fence at the edge of the wood and possibly as early as 1996 by the erection of a gate by Beazer Homes at the eastern end of the driveway. On that basis the public could not have been using the path for 20 years.
153. Use of the path as a public footpath is claimed by 11 people through the 'Evidence Forms' together with further evidence submitted by the applicant. This information is further supported by 3 of those people who were willing to be interviewed together with interview notes from the applicant.
154. Claimed use of the path from the 'Evidence Forms' varies between 13 and 30 years up to the time the application was made. All of the claimants indicating that they never saw any stiles, gates or notices on the path.
155. None of the claimants sought permission to use the pathway, neither had any of them ever been turned back or stopped from using the path. In response to Question 17 45% of the claimants indicated that they had always used the same route. However, in the other six cases the claimants provided more details and these can be found in paragraph 75.
158. In their reply to Question 12, which asks why people used the route, a number of different responses were provided. According to the 'Evidence Forms' the route was used as access to woodlands and fields; safe environment for children to play; recreational; leisure; walking dog; personal exercise; and, fruit picking. Use was also confirmed by the following documents.
- A letter from Mr C Jones whereby a constituent has complained that 'access to woods' is being prevented.
 - A letter from Councillor Wilkins that also indicates that local residents are concerned that 'access to open space' is being prevented.
 - A letter from Mrs Davies that confirms that 'access to a footpath' is being denied.
 - Various interviews that confirm use of a '*path*' with each saying that they always used the same route whereas the plans indicate otherwise.
 - Notes and letters from Mrs Davies from 1999 which say that '*access to woodland*' is being prevented and that '*the land has always been walked*'.
159. In addition to the above all of the claimants on their 'Evidence Forms' confirmed that the path they used was well defined.
160. As indicated in paragraph 101 above it is extremely important that for public user to be relied on, either for the purposes of common law dedication or Section 31, the user must have been of a single defined route. Whilst all the claimants on the 'Evidence Forms' and in the interviews indicate the path was well defined I am concerned that this is not the case. In particular, there are many references to areas of land being obstructed i.e. 'the wood', the 'public open space' or even 'the land'. It is far more likely that the public used to wander at will over this area as opposed to using one defined route to get from A to B.

161. In addition the plans on which those interviewed drew the route they walk all show, to varying degrees, different routes. Finally, the 1971 photograph, which I admit is only at the start of when people indicate that they began using the alleged route, does not show any kind of defined path. However, with the suggested frequented levels of use suggested by the claimants and the indication that they used to see many other people using the route you would expect other people to have used the route before prior to this time and have thus 'created' a defined path.
162. I therefore conclude that on the balance of probability there is insufficient evidence to show that the presumption of dedication contained in the 1980 Act Section 31(1) has been raised for the path marked with a bold black dashed line on the plan shown in **Appendix 51**.

Recommendation

The Rights of Way panel is invited to RESOLVE:

Either

- A1 That on the balance of probability there is insufficient evidence to show that the presumption of dedication contained in the 1980 Act Section 31(1) has been raised and 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 National Assembly for Wales within 28 days from the date of the decision letter.

Or

- B1 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 51** has been used for such a period to raise presumption that it has been dedicated as a public footpath and that this evidence has not been rebutted by any other evidence;
- B2(i) On resolving B1 above to approve the making of a Definitive Map Modification Order to show the route described as follows as a Public Footpath in the Definitive Map and Statement:-

The footpath commences at Point A on the map Grid Reference SS 89768218 being a point 17 metres south east from the centre of the eastern frontage of the property known as No.42 Angelton Green and will proceed in a general east north easterly direction for 28 metres to Point B Grid Reference SS 89788212 where it will continue in a generally southerly direction for 61 metres to Point C at Grid Reference SS 89798210 at which point the path turns and runs in a curved west south westerly direction for 66 metres to Point D Grid Reference SS 89748210. From Point D the path runs in a westerly direction for 107 metres to Point E Grid Reference SS 89638213 before turning and running in a curved north westerly direction for 43 metres to Point F Grid Reference SS 89598219 being a point 170 metres south west from the centre of the eastern frontage of the property known as No.42 Angelton Green. The total length of the footpath will be approximately 305 metres.

If a Modification order is made the footpath will have a width of 1.2 metres with a natural surface throughout its entire length.

- B2(ii) To approve the confirmation of the Definitive Map Modification Order made as a result of B2(i) above provided no objections or representations are made within the prescribed period or if any so made are withdrawn.
- B3 If any objections or representations are made within the prescribed period and are not subsequently withdrawn then the Order be referred to the National Assembly for Wales for determination.