

**Report of the Head of Legal and Democratic Services**

**Area 2 Development Control Committee**

**Date 23<sup>rd</sup> June 2009**

**PUBLIC FOOTPATH NO. 64**

**COMMUNITY OF LLANRHIDIAN HIGHER**

**Summary**

<b>Purpose:</b>	To consider whether the depiction in the Definitive Map or the Statement for this path is correct.
<b>Policy Framework:</b>	Countryside Access Policy No. 4.
<b>Reason for Decision:</b>	That the evidence shows the path is correctly shown in the Definitive Map.
<b>Consultations:</b>	All the usual organisations have been consulted including all the owners and occupiers of the land; the Byways and Bridleways Trust; the Ramblers Association; the British Horse Society; the Commons Open Spaces and Footpath Preservation Society; the Countryside Council for Wales; G. Bligh (equestrian riders' interests); L. Locke (local representative of the Ramblers Association and Gower Society); Councillor R Lewis
<b>Recommendation(s):</b>	It is recommended that:  (i) This Committee recommend to Cabinet that a Modification Order be made to correct the Definitive Statement and if no objections are made to confirm the same as an unopposed Order.

**1. Introduction**

This report deals with the discrepancy between the depiction of this path in the Definitive Map and the Statement which describes a different route. Because there is a conflict it is necessary to make a Modification Order to correct either its depiction or description. This is required due to this Council's obligation under the provisions of Section

53(c) to the Wildlife and Countryside Act 1981 to continually review and update the Definitive Map and Statement when it discovers such evidence. (See Appendix 1 for a fuller explanation).

## **DESCRIPTION OF THE ROUTE SHOWN ON THE DEFINITIVE MAP**

### **1.2 Legal Principles**

Under the provisions of the Wildlife and Countryside Act 1981 Section 53(2), this Council is obliged to amend the Council's record of public rights of way, known as the Definitive Map and Statement. Claims for additions to the Map and Statement are called "Schedule 14 applications" as they are made under this provision to the 1981 Act. They often are based on the public being able to demonstrate their long-term use of the path whether by showing:

- (a) the minimum period of twenty years, as is required by Section 31 of the Highways Act;
- (b) a greater or lesser period than twenty years but under common law;
- (c) the Council is also obliged to make amendments to the Map and Statement where it discovers evidence that shows a public path exists.

1.3 The manner by which the Definitive Map and Statement can be changed is by making a Modification Order, which modifies that Map and Statement. That Order will be subject to objections and representations but can only be confirmed by this Council if it is unopposed. If it is opposed the Order has to be referred to the National Assembly for Wales for determination.

1.4 Under the provisions of Section 31 to the Highways Act 1980 (Appendix 3) a public right of way will be deemed to have been dedicated to the public if a minimum period of twenty years uninterrupted use can be shown to have been enjoyed by the public provisions of Section 53(b) to the Wildlife and Countryside Act 1981 therefore apply (Appendix 1).

1.5 This twenty year period is calculated by counting retrospectively from the first occasion the public's alleged right to use the way was brought into question. This usually happens when the path is blocked by something like a locked gate or fence. When the twenty year period has been identified it is usually termed the "relevant period". If there is no physical barring of the way then the relevant period is counted retrospectively from the date a Schedule 14 application is made.

1.6 Another means by which a path may be presumed to have been dedicated is under common law (Appendix 4). In these circumstances

the landowner would have to show that he or she had not just acquiesced to public use but in some way facilitated or encouraged that use. The owner of all the land containing the claimed public path would therefore have to be identified but the period of use need not necessarily be twenty years and could be for a lesser period.

- 1.7 In addition, the Council may discover other evidence which suggests a public path exists. Under the provision in Section 53(3)(c)(i) to the Wildlife and Countryside Act 1981, a Council is obliged to make a Modification even if it is only reasonable to allege such a way exists (Appendix 1). Such evidence could include user evidence and/or documentary evidence.

#### **The Present Position with Footpath No. 64**

- 1.8 The issue is whether part of the length and position of footpath no. 64 as currently registered is correct. The Definitive Map shows the path via Pen-yr-Heol as shown on the attached plan no 1 from point C to point H. The statement which accompanies the Definitive Map suggests the path passes alongside Caerau via point A-D-E-F-H. When a conflict appears between the Map and Statement it is necessary to determine which is correct as the two of course should relate to the same route.
- 1.9 At the entrance to Pen-yr-Heol (at point C), public access is barred by an electric gate which was erected by the owners of this farm in 2004. The path is further obstructed by overgrown vegetation and rubble between point B and G. South of point H there is no defined path where the path crosses the northern part of the common as much of this area is overgrown.

#### **Description of the Route as Referred to the Definitive Statement**

- 1.11 According to the Definitive Statement the path is described as commencing east of Pen-yr-Heol Farm, but it is not more specific. Assistance can be obtained by reading the original description by the Parish Council which gave rise to the current statement. An explanation of the relevance of the Parish Card and earlier Definitive Reviews can be obtained in Appendix 5.
- 1.12 However not only does the "Parish Description" place the path via what is now Caerau (between points D-E), so does the "Parish Map". It is not clear from that map precisely which side of the property Caerau the path passed, but it rejoins the remaining length of footpath no. 64 where it proceeds south across the common.
- 1.13 Today there is no path via A-D-E-F-H in the position described in 1951. That route is blocked at the road at point A by a hedge which forms the field boundary at point A. At point D there is a fence and a small wooded area between D and the property of "Caerau". There is no

path or any form of access alongside this property, and a steep drop at point E. Access to the common is not possible at the present time although there is an overgrown gap at point F.

- 1.14 In reality, footpath No. 64 commences on the road from Three Crosses and Blue Anchor at the entrance to Pen-yr-Heol Farm as shown on Plan No. 2 at point C and proceeds via the farm in a southerly direction to cross Mynydd-Bach-y-Cocs Common. Footpath No. 65 branches off the path before the path divides again, prior to joining the road from Three Crosses to Cilonnen at point L.

### **The Evidence**

- 2.1 The sources of information comprise various editions of Ordnance Survey plans, tithe plans and its Appointment, the Finance Act 1910, plans, apportionments and field book and accounts from members of the public who have either lived at or in close proximity to the path. The minutes for the previous Parish Council, Swansea Borough Council, Glamorgan County Council and Gower, Rural District Council meetings have been checked for the period when footpath no. 64 would have been considered by the Parish Council in the early 1950s.
- 2.2 There is no record of this path having been discussed at any of the four Councils during this period of time.

### **Ordnance Survey Plans**

- 3.1 The depiction of paths on the various editions of these maps do not establish that a public right of way exists along any of the routes shown. It merely records what was a surveyable feature at the time of the survey. Consequently reference to these maps only assists in determining whether a particular path existed, for what period of time and in what position.
- 3.2 The earliest Ordnance Survey Map available is that surveyed between 1812 and 1814 at a scale of 2" to 1 mile. It was never published for sale but formed the basis of subsequent editions at the scale of 25" to 1 mile.

On this 1812/1814 edition Pen-yr-Heol Farm is shown together with a holding known as Hencae, which is no longer in existence but located at what would now be point B (Plan 1). A track is shown leading from point C to point B leading on south to Mynydd-Bach-y-Cocs Common to join the road from Three Crosses to Cilonnen. There is no such feature shown via A-D nor in fact are there any buildings depicted alongside this route. At this scale, the depiction of this track suggests it was a prominent feature and the fact it connects one recorded highway to another suggests it formed a link between the two.

- 3.3 The next earliest survey is a plan produced under the Tithe Commutation Act 1836 and dated 1847 for the Parish of Llanrhidian Higher. The relevance of the evidence of Tithe and the Apportionment is contained in Appendix 6. The track C-H (Plan 1) is shown on this plan as a route widening as it proceeds south toward the common. It is excluded as titheable as it was not productive land and referred to as "commonable land". This either suggests it was used as some form of road by the public or that it was an access way for those who had rights to graze livestock on the common.
- 3.4 The First Edition of the Ordnance Survey was published in 1879 and shows both the route C-H and A-D-H (Plan 1). The path passing via Pen-yr-Heol being the wider of the two. There are two paths shown passing either side of the property, known as Caerau. The Second and Third Edition of the Ordnance Survey plans shows both the routes C-H and A-D-H, although the path between A-D-H is shown as passing via the western side of Caerau and marked as "Footpath"
- 3.5 No fourth edition was ever published at the 1:2500 scale as confirmed by all the map holding institutions in the UK.
- 3.6 The 1938 Ordnance Survey edition at a scale of 6" to one mile shows the same features as the third edition and the current property of Caerau being marked as Pant-yr-Heol.
- 3.7 The Ordnance Survey 1970 edition at the scale of 1:2500 does not show the path A-D-H (Plan 1) and the property that was shown as Pant-yr-Heol has been renamed "Caerau". A track is shown between A and Caerau but no further. The route alongside Pen-yr-Heol is still shown as before.
- 3.8 An additional feature common to the editions of 1914 and 1970, at the scale of 1:2500, is a line across the track at point G and in the 1970 edition a line across the track at point C (Plan 1). The significance being that this would either represent a gate or fence or some other form of barrier.
- 3.9 There is also a 1913 edition of the Ordnance Survey with additions of 1948 at the scale of 6" to one mile. This means in 1948 additional or updated features were marked on the plan such as name changes, new buildings added or those no longer in existence removed, but no new survey undertaken. The significance being that the features shown in 1948 occurred three years before the Parish Council surveyed the route. No path is shown via Caerau, although that property is also and confusingly named Pen-yr-Heol.

### **Summary of Map Evidence**

- 3.10 It appears therefore that the map evidence shows the route the Parish Council identified as a public path alongside what is now "Caerau" was not in existence when they surveyed the paths in 1951.

However, the base map the Parish Council used for their survey was the 1913 edition with additions in 1938 which may explain why they drew the line of the path via Caerau because it was marked as a footpath on that edition.

### **Finance Act 1910**

- 4.0 The passing of this Act meant that landowners had to pay a tax on the value of their land, which was payable every time the land changed hands (for a fuller explanation see Appendix 7). The relevance being that if any public right of way crossed land, the owner could obtain a deduction on that tax. To make a false declaration would constitute a criminal offence.
- 4.1 The apportionment which is a ledger listing by number all the farm holdings, records each field and whether such dedications were made. The fields under the ownership of this farm are shown on a Second Edition Ordnance Map.
- 4.2 Entry No. 98 for Pen-yr-Heol was listed as a "house garden, agricultural land, buildings equalling 15 acres in total". A £2.00 deduction was made for the existence of a public right of way. There is no other path shown other than that currently registered, which is shown as a separate and clearly identifiable strip of land adjacent to the parcel for Pen-yr-Heol. Whilst this may suggest this track was not part of the farm, it provides valuable information because any public way would usually not be recorded as part of the parcel of land. The farm Pen-y-Graig immediately to the west also has a deduction made in its value for the existence of a public right of way. On its western boundary there is also a registered public footpath no. 66. Consequently there is justification for interpreting this deduction for the route currently registered as Public Footpath 64.
- 4.3 Entry 94 relates to the holding for Pen-yr-Heol and what is now Caerau. A further entry makes reference to a deduction as having been made under the tithe apportionment. One possibility is the deduction concerned the road from Three Crosses to Blue Anchor which divided the fields belonging to Pant-yr-Heol at that time.

### **Interview With Residents And Previous Occupiers**

- 5.1 The current owners and occupiers of Pen-yr-Heol Farm, Mr & Mrs Jones have lived at this address since approximately 1974. They say their deeds describe the path passing alongside their property as a

“horseway”. There is no statutory definition for “horseway” and so it could imply equestrian rights for the public or a way for those who have a licence or permission to ride and lead horses and possibly other animals to the common.

- 5.2 The current owners said they have seen very few people use the path, but by implication concede it has been used by the public. However they placed an electric gate at the entrance at point C in 2004 as they have been burgled three times. Prior to this time there was a wooden gate but it was never locked.
- 5.3 In their view it is a route that has been used by previous generations to drive cattle from and to the common.
- 5.4 They pointed out there is a spring in the vicinity of point B (Plan 1) which is why the track has always been boggy. This is a reason why they consider the alternative route via Caerau would have been used by the public as a footpath.
- 5.5 The mother of Mr Jones of Pen-yr-Heol was interviewed. She lived at Pen-yr-Heol from birth in 1931 until she moved in 1952. She said she has been visiting the farm on a regular basis throughout her life and in her opinion no member of the public has used the path since her childhood.
- 5.6 Mrs Jones recalls a double gate at point A (Plan 1), and said she was about five years old when it was removed and the resulting gap replaced by an earth bank on which the hedge later developed. Mrs Jones said the path to Pant-yr-Heol existed as a vehicular route until it was changed to the alternative track J-K at the time the name of the property was changed to Caerau.
- 5.7 When she was young, Mrs Jones remembers a small gate at point F (Plan 1) which provided access to the common via the path which she recalls passed to the eastern side of what is now Caerau, formerly Pant-yr-Heol.
- 5.8 Mrs Jones' elder sister was also interviewed. She lived at Pen-yr-Heol from birth in 1920 until 1976. She does not remember the public using this path from C-B-H (Plan 1). She does remember a gate and stile at the beginning of the path at point A and confirmed there was a path which passed alongside the eastern side of what was then Pant-yr-Heol before accessing the common via a gate point F.
- 5.9 She and her sister recall there was rear access to this property which is why on some maps, there appears to be a path on its eastern side. Also the steep drop that exists today at the southern side of the property has been caused by the construction of a wall and bank, yet previously it was possible to walk via the side of this property as it was a gradual slope.

- 5.10 She recalls her mother taking a horse and trap via the lane C-H and confirmed there was a gate across the track at point G put there by her grandfather, although whilst never locked, was usually tied . The path had to be kept stock-proof as he kept cattle in the fields to the south. This may account for why the line shown across the path at point G first appeared on the 1:2500 scale of 1914 edition plan and is absent on earlier editions.
- 5.11 Both sisters recall a funeral procession being refused access by their parents via the path C-H and that it was diverted via A-F. However they were unable to say when this occurred.

#### **Summary Of Evidence from Mr And Mrs Jones and Mr Jones' Mother and Aunt**

- 6.1 It appears a gate existed at point A, but was removed in about 1936. This would account for why the path was still shown on the 1938 addition to the 1913 edition but absent on the 1948 addition.
- 6.2 Both sisters are able to give an account as to why there appears to be a path passing either side of the property at Pant-yr-Heol on the earlier Ordnance Survey plans and why there is a steep drop today on the southern side of that property, giving the impression no path could have existed at this point.
- 6.3 Both verify there was access to the common via a gate at point F. Mrs Jones the younger sister can also offer an explanation as to why the path via A-H disappears from the 1948 addition and why the new access track to Caerau J-K-E appears on the 1970 edition. It was created by the new owner of that property who was responsible for changing its name from Pant-yr-Heol to Caerau.
- 6.4 The current owners of Pen-yr-Heol, who have been living at that property since 1974 say the path had been used on an infrequent basis until they placed an electric gate across the northern entrance to the track in 2004. Whilst this conflicts with Mr Jones' mother and aunts' accounts, it highlights use was infrequent, given both his mother and aunt visited Pen-yr-Heol, and never saw anyone pass by.

#### **Evidence from Owners and Occupiers of Caerau**

- 6.5 The present owners and occupiers of Caerau, Mr & Mrs Lott, were interviewed. They have been resident at that property since 1967. Mrs Lott understands there were three cottages at the site of Caerau and the track A-D-E (Plan 1) merely provided access to those cottages. Mr Lott confirmed there used to be an access directly to the common via point F via what was a wooden gate, but he replaced it with a metal gate. It is now an overgrown gap with much of the northern field in the common overgrown and almost impenetrable as evidenced by a site



visit on the 16th October, 2007. Mr Lott said it was about two years ago when cattle were last grazed on the common which is why growth has not been kept in check.

- 6.6 Mrs Lott said when she moved into her property there was no gate at point A nor any path from A-D, nor has she seen anyone attempting to obtain access via her property.
- 6.7 Both Mrs Jones' mother and Mrs Lott were involved in a private dispute over whether the track via C-B formed part of the access to Caerau. The Hearing was held in either 1973 or 1974 and various witness statements were taken which may have provided information on what public access had been enjoyed. However the Court no longer has the record of this case and Mrs Lott has been unable to produce any records.
- 6.8 Mrs Lott said she received a visit from the Parish Council, who informed her the track C-B was a bridleway although she could not say when this occurred.

#### **Summary of Evidence from Owners of Caerau**

- 7.1 Mrs Lott has confirmed there has been no gate at point A (Plan A) on the path since 1967, which one would expect given the route was no longer shown on any of the O.S. maps after the 1938 addition. Mrs Lott said that there was however a gate at point F which was in existence in 1967 so there had been access to the common from Caerau and probably Pant-yr-Heol before it was renamed Caerau. However, whether the general public made use of it is unknown.

#### **Owner/Occupier of Foxwood**

- 8.1 Mr Zorko lives in Foxwood which is the property immediately adjacent to the field which contained the route A-D (Plan 1). He has been resident at the house since 1997 and said there has been no gap or gate in the field boundary at point A since he has lived at that property.

#### **Overall Summary**

- 9.1 If the Definitive Map and Statement is to be altered, then there needs to be sufficient evidence to show an error was made when the path in question was included into the Map and Statement. The relevant date for the 1st Definitive Map is 1954 which was based on all the information and surveys undertaken by the then Parish Councils in around 1951. The question therefore is was there already a public path via the route C-B-G-H in 1954 or via A-D-E-F-H.
- 9.2 As highlighted in Appendix 2, the Court of Appeal has established that there must be an initial presumption that if there is an entry of a path into the Definitive Map that right exists.

- 9.3 Unless there is evidence the public's use has been challenged, there would be a presumption that the way has been in existence and had by 1954 been dedicated either under what is Section 31 of the Highways Act 1980 or under common law. Under common law the period of use which could give rise to a presumed dedication could be for a period greater or less than twenty years.( Appendix 4)

#### **Evidence in Favour of its Retention as shown in the Definitive Map**

- 10.1 (a) The map evidence shows it has been in existence since 1814;
- (b) Some form of barrier, probably a gate was placed across at southern end by 1914 but never locked;
- (c) The route is highlighted on the Tithe map as untithable in 1847;
- (d) A deduction was claimed and granted to the landowner of Pen-yr-Heol when the 1910 Valuation was undertaken. It specifically stated such a deduction should be made for the existence of a public right of way at Pen-yr-Heol Farm. It would have been a criminal offence to make a false declaration to the Commissioners;
- (e) Mrs and Mrs Jones stated they have seen some people use the path prior to 2004 but an infrequent and low level of use;
- (f) No challenge was made to its entry and its depiction in the list and subsequent drafts of the Definitive Map and Statement in 1955, 1960, 1971 and 1988 by the former residents of Pen-yr-Heol, no member of the public, nor the Parish Council.

#### **Evidence in Favour of Changing the Definitive Map**

- (a) The previous occupiers of Pen-yr-Heol say they never saw anyone use the path;
- (b) A funeral procession was refused access on one occasion.
- (c) It was shown on the Parish Map as a public footpath, although it is not clear from this map which side of Pant-yr-Heol it passed;
- (d) The Parish Card drafted in 1951 implies the path passed Pant-yr-Heol route;
- (e) The path via Pant-yr-Heol is shown from 1879 until 1938 on the Ordnance Survey Plan. The previous occupiers of Pen-yr-Heol recall a gate/stile at point A until 1936 and a gate at point F (Plan 1) although could not say when this was removed.

## Conclusion

- 11.1 The path via Pant-yr-Heol (now Caerau) had ceased to exist by 1948 which raises the question why did the Parish Council record this path as a public way when they surveyed the area in 1951.
- 11.2 If the path via Pant-yr-Heol (now Caerau) ceased to exist by 1954, but the Parish Council considered such a right existed, then the blocking of this public right of way was challenged either by 1936 on the evidence of Mrs Jones or between 1938 and 1948 according to the map evidence. This implies there had been no use for at least nine years prior to 1954, but possibly as much as eighteen years.
- 11.3 There is far less evidence to show a public path existed via Pant-yr-Heol (now Caerau) in 1954 than via Pen-yr-Heol. Whatever the reason for the Parish Council showing the route via Pant-yr-Heol in 1951, this route did not undergo the four successive reviews that the currently registered path did as it was never shown on the Definitive Map. Neither the previous owner and occupiers of Pen-yr-Heol Farm objected nor the Parish Council who could have identified the error if they considered one existed. More crucially the previous occupiers and owners of Pen-yr-Heol gave an undertaking to the Commissioner that such a public right did exist via their farm at the time of the 1910 Valuation. Furthermore, previous owners of the same farm excluded the lane when the Tithe awards were made in 1847.
- 11.4 Therefore a modification order should be made to correct the description of this path in the Statement to reflect its correct position as shown in the Definitive Map.
- 11.5 There are no financial implications to this report.

**Recommended:** That this Committee recommend to Cabinet that a Modification Order be made to correct the Definitive Statement and if no objections are received to confirm the same as an unopposed Order.

## APPENDIX 1

### WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every definitive map and statement, the surveying authority shall keep the map and statement under continuous review and as soon as possible after the occurrence of any of [events specified in sub section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of the event.
- (3) The events referred to in sub section (2) are as follows:
  - (b) the expiration, in relation to anyway in the area to which the map relates of any period such that the enjoyment by the public
  - (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 shown on the map and statement subsists or is reasonably alleged to submit over land in the area to which the map relates, being a right of way to which the part applies.

## APPENDIX NO. 2

### THE BASIS UPON WHICH A MODIFICATION ORDER MAY BE MADE

1. This Council must be satisfied that the existing entry in the Definitive Map and Statement is incorrect. This means that the evidence should show a mistake was made at the relevant date of the First Definitive Map, which in this case is 14<sup>th</sup> September 1954.

The provisions of Section 32(4)(b) to the National Parks and Access to the Countryside Act 1949 required the Authority to produce a Definitive Map and Statement and also contained in the Section 56(1)(b) and (d) of the Wildlife and Countryside Act 1981. Namely, "the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein to the following extent, where the map shows a footpath the map should be conclusive evidence that there was at the relevant date a highway as shown on the map...". So if a challenge is being made to an entry to the Map and Statement the evidence must show a mistake was made at the earliest relevant date which is the first date the path was recognised as having legal status.

3. The question therefore is what is considered sufficient evidence to show that such a mistake had been made. The 1981 Act permits a correction to be made when evidence is discovered and considered with all other relevant evidence and so a decision has to be made on the balance of probabilities that an error had been made.
4. The real difficulty lies when the evidence upon which the entries were made into the Definitive Map have been lost or that record is incomplete. This is a common predicament that this and other Authorities face, as once the procedure for finally showing a public right of way has been completed the conclusively of the Map and Statement would have led many Authorities to be less concerned on retaining the reasons for its final inclusion. Nonetheless as a result of previous case

concerning R -v- S for Environment ex parte Simms and Burrows (1990), such deletions, or downgradings and other amendments are deemed possible.

5. The issue therefore is what weight is to be given to the entry into the original map especially when the evidence which led to its inclusion is absent. It was a document prepared pursuant to an Act of Parliament and which was to be an authoritative record, it required various stages leading up to its preparation to be satisfied and gave landowners several opportunities to challenge any proposed entry. It should also be borne in mind that the map was prepared at a time when one could find local people whose memories went back very much further than today's residents.
  
6. This issue was addressed at the Court of Appeal concerning the case of Trevelyan -v- Secretary of State for the Environment (2000). It concluded there must be an initial presumption in favour of the existence of that public right of way and unless there is evidence to the contrary, it should be assumed the 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.

## APPENDIX 3

### HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

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

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be sufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

## APPENDIX 4

### DEDICATION UNDER COMMON LAW

No minimum period of use is required, but the claimants must show that it can be inferred by the landowners conduct, that he or she had actually dedicated the route. Use of right, if not of itself necessarily sufficient. Under statute, twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowners tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) or whatever period is being considered, acquiesced to that use and took measures to facilitate public use.

Obviously this means the landowners have to be identified and evidence that they wished to have the route dedicated to the public.



## APPENDIX No. 5

### HISTORY OF THE COMPILATION OF THE DEFINITIVE MAP AND STATEMENT

1. The National Parks and Countryside Act of 1949 placed an obligation on all Councils to produce a Definitive Map and Statement. Parish Councils were given the task of surveying all routes they considered may have legal status and in the case of Llanrhidian Higher that was undertaken in 1951 by the production of what has come to be known as the Parish Map (at the scale of 6 " to one mile) and the all too often rather brief description of the path contained on small cards also known as the Parish Card. Some of the descriptions on these cards were more comprehensive than others but in combination with the paths depiction in the "Parish Map " provide a useful record of what routes were considered to have public path status by 1954.
2. The information was passed on to the former Glamorgan County Council who collated the information and produced what was the first Draft Definitive Map which in their opinion reflected routes considered to be public rights of way on 14<sup>th</sup> September 1954 which became the relevant date of the first Definitive Map published in 1970.
3. The legislation required that the information gathered should be the subject of a review which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the Draft and Definitive Maps and Statements as published. The result was the production of the initial Draft Map and Statement published in 1955, a Provisional Map and Statement published in 1964, the first Definitive Map and Statement published in 1970, the Draft Special Review of 1971 and the current Definitive Map and Statement published in 1986.

## APPENDIX 6

### TITHE APPORTIONMENT AND PLANS

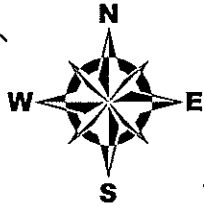
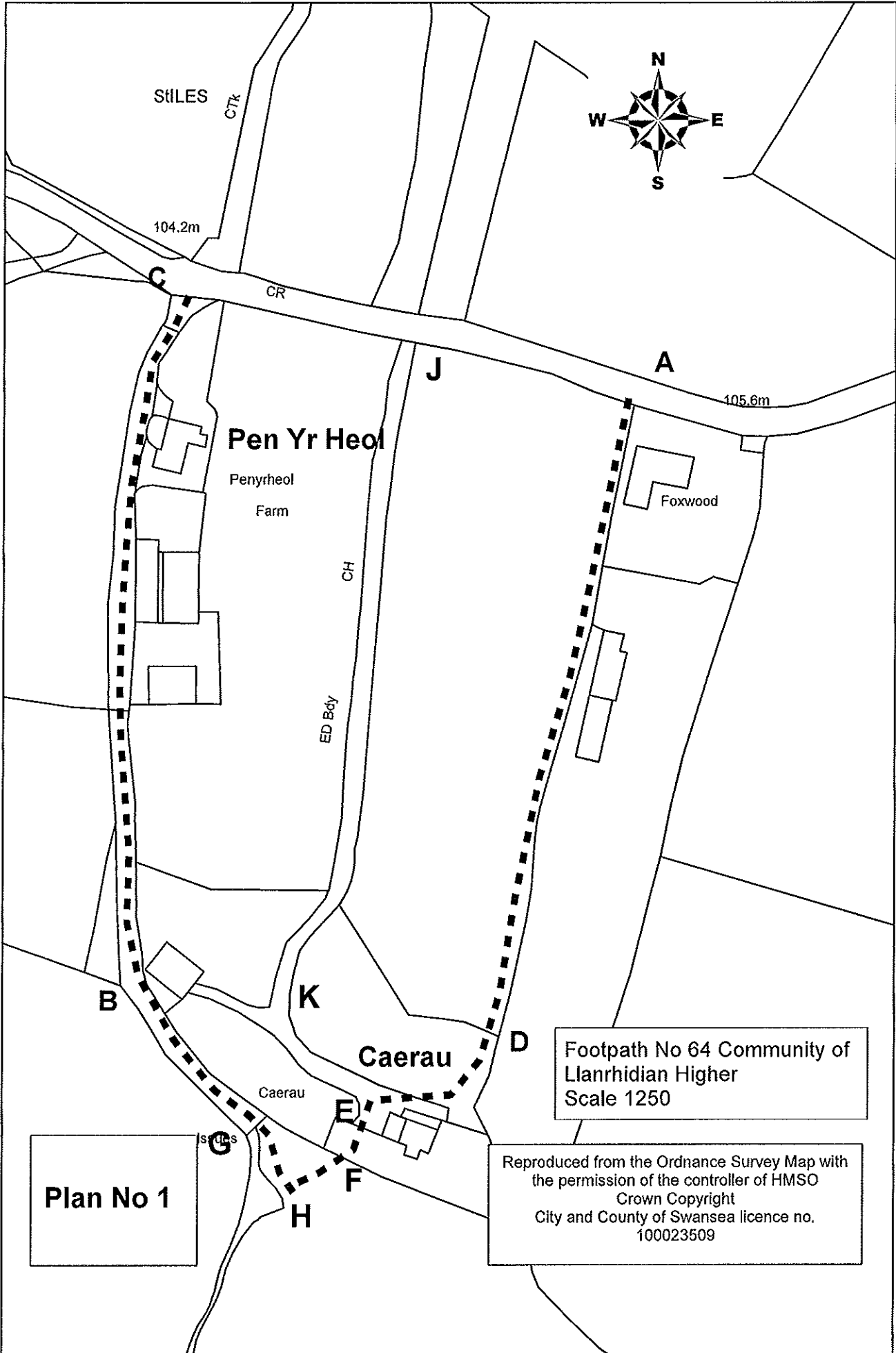
Until the nineteenth century most land was subject to a church tithe which was one tenth of the annual produce of the land which had to be given to the church. The Tithe Commutation Act of 1836 provided that all tithes were converted into a fixed money rent. All land was assessed for the value of its average produce and each field to be accurately measured and recorded in an apportionment book along with the tithe plans. It was prepared under statutory authority by the Tithe Commissioners to show all cultivated land arable and pasture because tithe was payable on land which produced crops. It also had to show waste land and definitive roads which did not produce crops because tithe was not payable on these. If a road or public way passed through the land, a landowner may well require it to be shown so as not to pay tithe on it. As far back as 1989, the Department of Environment Guidance Notes stated "although solely concerned with identifying titheable lands, the maps do mark roads quite clearly as untitheable, thus can provide useful supporting evidence when taken in conjunction with appropriate schedules".

**APPENDIX 7**  
**EXPLANATION OF FINANCE ACT 1910**

This provided for the levying of tax upon the incremental value of the site itself excluding any increase in value arising from things on the land such as crops and buildings. The tax was to be paid every time the land changed hands.

Land Evaluation Officers were appointed whose task it was to plot and record every piece of land. Their concern with rights of way was in assessing the value of the land but a deduction was made for the amount by which the gross value would be diminished if sold subject to any public rights of way.

Where it came to the disposal of land, a landowner could not claim a deduction if the deduction could have been but was not claimed on the original site value. It should also be noted that valuers would have been reluctant to show any land as public ways if the land could be assessed for duty, indeed, they would have been negligent to do so.



STILES

104.2m

CTK

CR

105.6m

**Pen Yr Heol**

Penyrheol  
Farm

Foxwood

CH

ED Bdy

B

K

**Caerau**

D

Caerau

STILES

**Plan No 1**

H

E

F

Footpath No 64 Community of  
Llanrhidian Higher  
Scale 1250

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1949 13.124329

1949 13.124329

1939 13.124329

1939 13.124329

SHLES

C

FP 65

FP 64

L

Plan No 2