

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

File Reference	53B/0005
Definitive Map path reference	Barry No.73
Description of intended effect on the Definitive Map	To change the particulars relating to Public Right of Way No.73 Barry, which would result in the path leaving Porthkerry Country Park from a different point on the parks boundary. The application changes the route of the path resulting in the path terminating on Pontypridd Road rather than Clos Cwm Barri
O.S. grid ref.	From 309868 167913 to 310101 168203
Address / postcode	From 8 Clos Cwm Barri, CF62 6LR to 99a Pontypridd Road, CF62 7LQ
Nearest Village/Town	Barry
Locally known name	-
Community / Town Council	Barry
Applicant	Mrs. K. Gallimore
Date of application	29.01.2009
Date of receipt of application	29.01.2009
Date when representation made to the National Assembly in accordance with 3(2) of Schedule 14 WCA 1981. As notified by the applicant.	
National Assembly's decision and terms of direction	
Date set for determination of application	01.07.2010
Date on which the Authority determined the application	01.07.2010
Decision	Application refused
Date when notice of appeal served on the National Assembly and the Authority in accordance with paragraph 4(1) of Schedule 14 to the WCA 1981.	20.08.2010
Date / time and venue of any proposed hearing or inquiry.	
National Assembly's decision and terms of direction.	Appeal dismissed
Date of confirmation of order and details of any modification made.	-

Continued overleaf

Related documents attached:

Application
Map
Statement by Applicant

Please contact:

Public Rights of Way
Vale of Glamorgan Council
The Dock Offices
Subway Road, Barry
Vale of Glamorgan
CF63 4RT
Email.sathomas@valeofglamorgan.gov.uk

Wildlife and Countryside Act 1981

Section 53(3)(c)(iii)

Notice of application to modify the Definitive Map and Statement for the former County of Glamorgan,

Relevant date 14th September, 1954.

PUBLIC RIGHT OF WAY NO. 73 BARRY

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To: The Vale of Glamorgan Council

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

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I / We KAREN GALLIMORE

Of: [Redacted]

hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by [delete as appropriate]

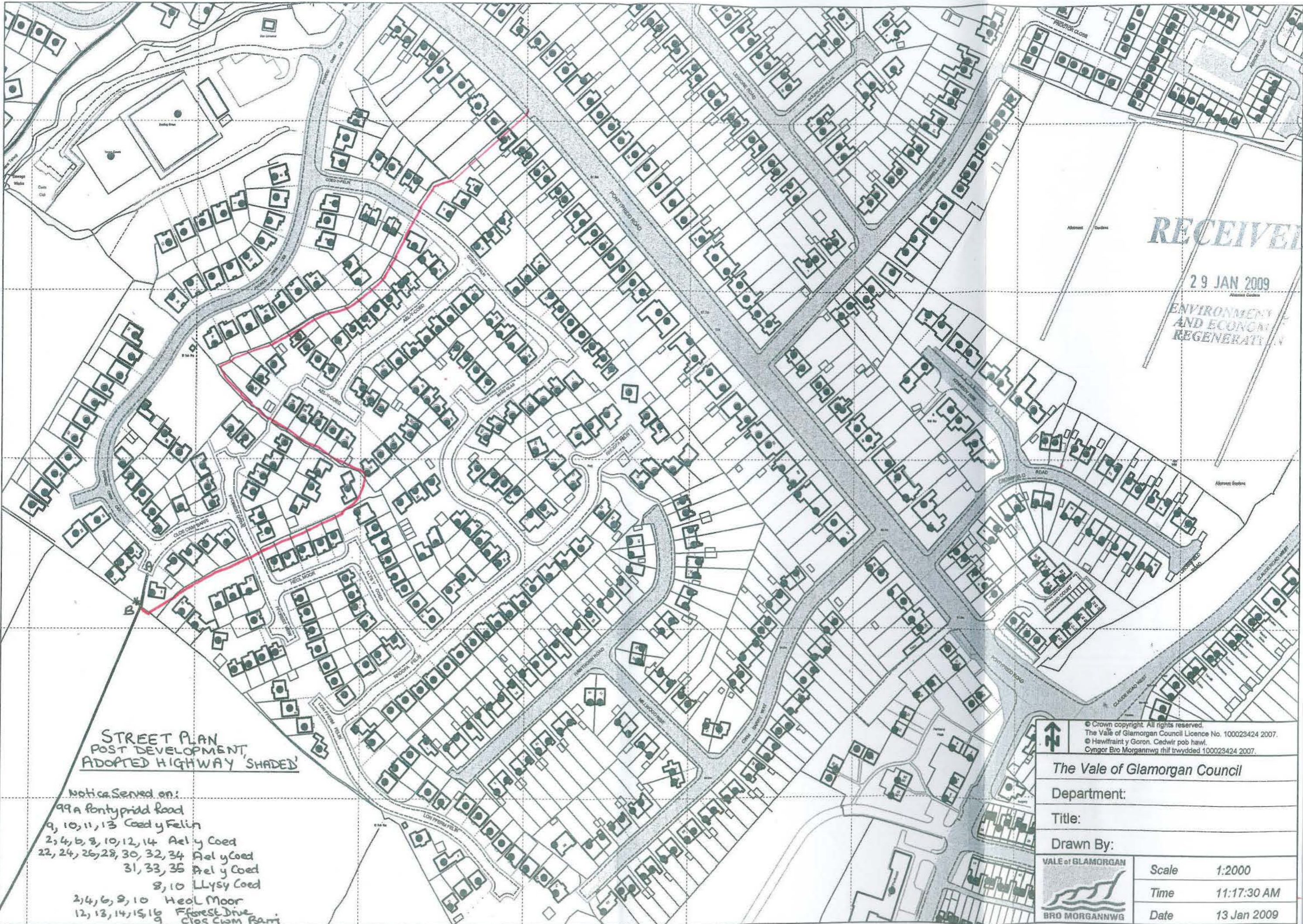
- ~~adding a footpath / bridleway / restricted byway~~
- ~~changing the status of the footpath / bridleway / restricted byway~~
- ~~deletion of the footpath / bridleway / restricted byway~~
- changing the particulars relating to the footpath / ~~bridleway / restricted byway~~

TO COMMENCE
 from THE ADOPTED HIGHWAY AT THE FRONTAGE OF 99A PONTYPRIDD ROAD
 to WHERE THE PATH ENTERS PORTHKERRY COUNTRY PARK AT THE EDGE OF MILLWOOD (ORDER POINT ON THE DEFINITIVE MAP MODIFICATION ORDER BARRY (No 1) 2002)
 with a width of 1 METRE and shown on the map annexed hereto.

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

Dated 29th January 2009 Signed [Redacted] K G GALLIMORE

(on behalf of) WJA



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**STREET PLAN
 POST DEVELOPMENT,
 ADOPTED HIGHWAY SHADED**

Notice Served on:
 99A Pontypridd Road
 9, 10, 11, 13 Coed y Felin
 2, 4, 6, 8, 10, 12, 14 Ael y Coed
 22, 24, 26, 28, 30, 32, 34 Ael y Coed
 31, 33, 35 Ael y Coed
 8, 10 Llys y Coed
 2, 4, 6, 8, 10 Heol Moor
 12, 13, 14, 15, 16 Forest Drive
 9 Clos Cwm Parri

Legend:

— Existing Order Route A-B → C → D
 — Section 53(3)(c)(iii) Route

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<p>The Vale of Glamorgan Council</p>	
<p>Department:</p>	
<p>Title:</p>	
<p>Drawn By:</p>	
<p>VALE of GLAMORGAN </p>	<p>Scale 1:2000</p>
	<p>Time 11:17:30 AM</p>
	<p>Date 13 Jan 2009</p>

Wildlife and Countryside Act 1981

Statement to Support Application to modify the Definitive Map and Statement (Section 53(3) (c) (iii))

Following on from a Public Hearing held on 3rd December 2002 the Planning Inspector made his decision on 25th March 2003 to confirm the Definitive Map (Modification) Order 2002 (No1) – Public Right of Way No 73 Barry (Document 1).

The Council as the Order Making Authority (OMA) is under a duty to make an Order to modify the Definitive Map and Statement where there is evidence that a mistake has been made. I attach to my Application conclusive evidence that a mistake was made during the determining of the above Order. Due to the seriousness of the matters I would ask that the Council invoke its Emergency Powers and arrange for the Definitive Map Modification Sub Committee of the Cabinet to meet as soon as possible to deal with the issues arising.

Background:

A resident on the Phase 3 Development was concerned at the lack of a Pedestrian Access to Porthkerry Country Park from the Wimpey Phase 3 development. There was local press coverage on 12th July 1999 regarding the matter (Document 2). In the article a Ward Councillor who had himself purchased a property on the Phase 3 Development on 25th June 1999 is quoted as promoting the idea of a Public Path to access the Park. The resident had organised a petition in June 1999 and formed a Footpath Action Group. Action was taken against Wimpey for its failure to provide a Pedestrian Access in its site layout. Wimpey was absolved from any wrongdoing. Another resident subsequently progressed the matter as suggested by the Councillor in the newspaper article and on the 29th September 1999 made an Application for a 'claimed' Public Path under Section 53 (3) (b) of the WCA 1981.

At the Hearing the Inspector, having seen aerial photographic evidence provided by the Council, accepted that the field gate at Pontypridd Road was an historical access point to the fields. I attach a section of a plan obtained from Local Authority files clearly depicting a dropped kerb at Pontypridd Road leading to a track and a field gate (Document 3). In para 17 of the Report the Inspector states that the line walkers previously took had been dictated by gaps in the dense hedges (Document 4). There were contractual and planning obligations on all developers to retain existing hedgerows – which could only be removed by consent from the Land Authority for Wales and the Council. I attach a photograph provided by the National Assembly for Wales dated 1981 where I have analysed the route along the hedge line and through the various gaps **before** developers set about the removal of hedgerows without permission (Document 5).

I have resolved the uncertainty in para 22 in the Inspectors Report with regard to the build of 99a Pontypridd Road. This plot was **not** included in the original outline Application for Cwm Barry (90/00248/OUT) but was the subject of a separate Application for a single dwelling. The Application (91/00899/OUT) was approved on 1st October 1991 and subsequently renewed on 21st October 1994 (94/00864/OUT). Despite **not** being part of the Original Outline Application for Cwm Barry the plot was included in the Phase 2 Westbury Homes Development. 99a Pontypridd Road was completed and sold in February 1997. It is therefore possible to date that the historical entrance to the fields from Pontypridd Road became dysfunctional *circa* February 1997. What was not revealed at the Hearing was that one of the Witnesses, called by the Applicant to support the Order, lived on the Phase 2 Development prior to moving to Phase 3 in December 1998. One would have expected this Witness who had stated in her Evidence Form

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submitted to the Hearing that she had walked the route on a daily basis since the 1970s, to have provided some clarity concerning the date the historical access point at Pontypridd Road was called into question.

The Substantive Error

Schedule Part I and II of the Order clearly states:

*'Commences at the southwestern end of the **adopted** highway at the Clos Cwm Barri hammerhead.....'*

Clos Cwm Barri was **not** an adopted highway when the Order was confirmed in March 2003 and it remains unadopted to this day. But the Inspector based his decision on the information given to him. Had the Inspector been made aware that Clos Cwm Barri was unadopted he would have had no choice but to analyse the route as projecting from the adopted highway fronting 99a Pontypridd Road. To do so would have involved the land interests of numerous other parties through whose properties the route passed and include a way not shown on the Order. The error would have deemed the Order substantially defective and the Inspector may well have rejected it outright. Alternatively, the Inspector may have invoked his powers of modification under para 8 (2) of the WCA 1981 and the Order would have been re-written in the modified form showing a route commencing from the adopted highway fronting 99a Pontypridd Road. The Order would then have been publicised and the appropriate notice served on those parties whose land interests were affected. The Public would then have been in a position to give fully informed representations or objections on the corrected Order. There is no doubt that due to the number of parties involved a Public Inquiry would have been held – a far more formal and expensive procedure than a Public Hearing.

As stated above the Application was submitted on 29th September 1999. It was considered by the Planning Committee on 6th September 2001. The Officer's Report recommended that the Application be dismissed (Document 6). However, the Councillors chose not to accept this recommendation and referred the matter to the Definitive Map Sub Committee. The Sub Committee tested the evidence placed before it on the 19th and 26th November 2001 by the Applicant and the Objectors and resolved to approve the Application. The Order was drawn up by the Council's Legal Department and the matter reported back to the Planning Committee on 17th April 2002. The Council was unable to approve the Order due to outstanding objections. The Objectors included persons who had purchased properties unaware that any pedestrian public rights affected their properties or that a claim for a 'Public Path' through their homes would be made **after** they had moved in. I understand there has been a considerable diminution in the value of their properties as a consequence of the access rights. However, an objection based on loss of property value was not a factor the Inspector was able to take into account.

In view of the outstanding objections to the Order the Council was prevented from confirming it and it was referred to the Planning Inspectorate in May 2002 with a statement that the Council would be supporting the Order at the Hearing. Somewhat perversely the scenario set was that Officers who had wished to refuse the Application were sent to the Hearing to support the Order. Three Council Officers attended. Despite the fact the 'Council' was supporting the Order and one of the Officers was a qualified solicitor, the Officers chose not to take the lead at the Hearing. This responsibility was placed on the Applicant. In effect the Officers, who one would expect to be qualified and experienced in such matters, took very little part in the proceedings and did not disclose to the Inspector that the Report of 6th September 2001 had recommended the refusal of

the Application and that this refusal reflected the collective views and advice of the Chief Officer Management Team.

Conclusion

In general terms Officers of the Council would be expected to undertake research and investigate the merits of any Application. This would include accessing the 'List of streets maintainable at public expense' which records the extent of the adopted highways within the Vale that the Highway Authority is legally obligated to maintain. Such a checking process requires modest computer skills and takes literally seconds. It took 3 and half years from the date of the Application for the Order to be confirmed by the Inspector and yet not one Councillor or Officer within the Vale appears to have recognised a fundamental error with such far reaching affects and implications. However, these are matters to be pursued either by way of an internal inquiry or by those parties whose land interests are now affected. One avenue would be to report the matter to the Local Government Ombudsman. Another would be to seek proper legal advice.

For my part I have recognised the error and therefore submit the Application with a view to ensuring that the Responsible Body, the Council, in its role as the Order Making Authority, fulfils its duties and progresses the Application in a fair and responsible manner to ensure that the Definitive Map and Statement accurately records the Public Rights of Way that affect the whole of the Cwm Barry Development.

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Karen Gallimore

29th January 2009

Enc: Application - Form AP01 plus Field Plan and Street Plan
Notice of Application - Form AP02
Certificate of Confirmation that Notice has been served - Form AP04

Evidence Documents

- Document 1 - Copy Order 2002 (No 1)
- Document 2 - South Wales Echo Article 12th July 1999
- Document 3 - Phase 2 Agreement Drawing BARI 001 100 23rd September 1996
- Document 4 - Inspector's Report
- Document 5 - 1981 Photograph analysing route from 99a Pontypridd Road to Park
- Document 6 - Report by the Director of Environmental and Economic Regeneration 6th September 2001

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