

Application to modify the Definitive Map of Public Rights of Way under Section 538, Wildlife and Countryside Act 1981.

File Reference	538/017
Definitive Map path reference	FP73
Description of intended effect on the Definitive Map	To delete the full extent of footpath No.73 Barry as recorded on the Definitive Map. From ST 0987 6793 'The south western end of the adopted highway at the Clos Cwm Barri hammerhead' to ST 0960 6752 'Porthkerry Country Park at the edge of Mill Wood'.
Ordnance Survey arid reference	From ST 0987 6793 to ST 0960 6752
Address and postcode of the land on which the relevant part of the way or proposed way lies	Clos Cwm Barri, Barry, CF62 6LR to Porthkerry Country Park at the edge of Mill Wood, Barrv.
Nearest VillageTown	Barry
Locally known name	FP73
Communitv / Town Council	Barrv Town Council
Applicant	Mrs Karen Medhurst
Date of application	Initial application 15/09/2020 amended application 15/10/2020
Date of receipt of application	Initial application 15/09/2020 amended application 15/10/2020
Date when representation made to the National Assembly in accordance with 3(2) of Schedule 14 WCA 1981 (request for the National Assembly to direct the Authority to determine an application within a specified period). As notified by the applicant.	A Request for Direction has been made by Mrs Medhurst (applicant)
National Assembly's decision and terms of direction	On behalf of the Welsh Ministers and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, I HEREBY DIRECT The Vale of Glamorgan Council to determine the above-mentioned application not later than 9 months from the date of this Direction Decision (31.12.2021).
Date set for determination of application	
Date on which the Authority determined the application	06.09.2023
Decision	Application Declined
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.	14.10.2023
Date / time and venue of any proposed hearing or inquiry.	

Continued overleaf

National Assembly's decision and terms of direction.	
Date of confirmation of order and details of any modification made.	

Related documents attached:

Initial Application
Amended Application
Map
Statement

Please contact:

Public Rights of Way Section
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

Notice of application to modify the Definitive Map and Statement for the County of Vale of Glamorgan, Relevant date 15th March, 2016.

To: The Vale of Glamorgan Council

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

I / We: Karen Medhurst (Mrs)

Of: 

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~~

from ST 0987 6793

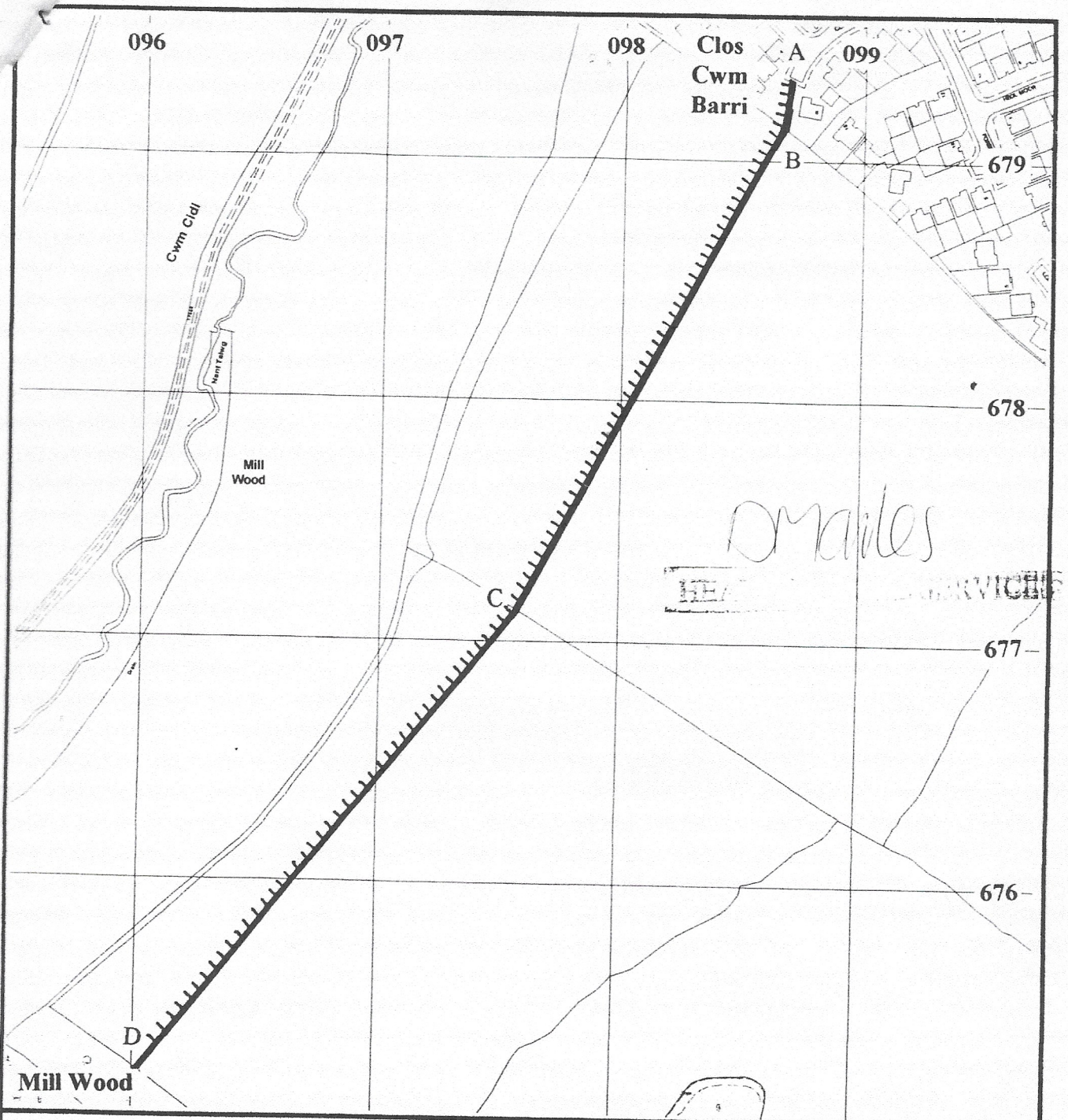
to ST 0960 6752

with a width of 1.0m 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 15/09/2020 Signed 

(on behalf of) N/A



SCALE = 1:2500

O.S. ST 0967



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Cyngor Bro Morgannwg Rhif Trwdded
LA09019L

Cwm Barry Farm Development ('the Development')

Note 1: Plot 255 = 9 Clos Cwm Barri; Plot 256 = 8 Clos Cwm Barri; Plot 257 = 6 Clos Cwm Barri; and Plot 258 = 4 Clos Cwm Barri

Note 2: Copies of Duplicate Transfers for Phases 1- 5 are held

Note 3: Register Extracts referred to for individual plots and the edged- green land are held

Note 4: Conveyance documents for the 1935 and 1977 land transfers are held

Note 5: Planning applications and associated documents can be accessed via the Planning Search link on the VOG's website.

Introduction:

1. The Vale of Glamorgan Definitive Map Modification Order 2002 (No.01) was made by Ms Marles, Head of Legal and Democratic Services, on 22/01/2002 relying on an event under s53(3)(b) WCA 1981. A section 53(3) (b) event is *'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 of the way during that period raises a presumption that the way has been dedicated as public path'*.
2. Section 31(1) HA 1980 states:
*'Where a way over any 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 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.'* (Emphasis added)
3. The relevant 20- year user period under s31 HA 1980 in the case of Footpath 73 was never established by the Council at its November 2001 meeting but an order was nevertheless made. The late Inspector Laslett (DOD June 2017) at the hearing held in December 2002 determined the relevant period mid- 1979 to mid- 1999. 30/06/1999 has been taken as the end date of the relevant period.

4. This DMMO Application seeks the deletion of Footpath 73 under the first limb of s53(3) (c) (iii) WCA 1981 on the ground that new evidence has been discovered that when considered in the context of the previously considered evidence¹ shows that 72% of users who submitted a user evidence form ('EUF') supporting the claimed route were residents on the Development who '***enjoyed the claimed way by licence***'. Therefore, their user did not meet the 'as of right' statutory test under s31 HA 1980 *nec vi, nec clam, nec precario* formulated by Lord Hoffman² as:

'Not by force, nor stealth, nor the licence of the owner' (Emphasis added)

Land acquisition and Planning Background:

5. Outline planning permission (90/00248/OUT) was granted for the development of the 28-acre site (or thereabouts) on 17/11/1994. A s106 Legal Agreement between the Land Authority for Wales ('LAW') and the Vale of Glamorgan Borough Council ('the Council') that should have been signed and sealed before planning approval was granted was signed and sealed on 21/11/1994. The s106 Legal Agreement was not registered as a local land charge under the Local Land Charges Act 1975 until 4 years 8 months later on 15/07/1999. The s106 Legal Agreement and Plan can be viewed online - planning search 1990/00248/OUT.
6. The Development site comprised of land conveyed to the Urban District Council of Barry on 26/11/ 1935 by Samuel Romilly plus Cwm Barry Farm land sold to LAW on 18/03/1977 by Graham Arthur Greene Esq and Simon Romilly Esq. The 1977 conveyance totalling 59.3 acres was registered on 17/05/1977 under Land Registry ('LR') title WA69908 that will be referred to as the 'Parent Title'.
7. Included in the Parent Title was the historical farm access track from off Pontypridd Road - where 99a Pontypridd Road was later built - claimed by family related witnesses as being the historical access to the Footpath. However, this track was outside of the site boundary

¹ <https://www.bailii.org/ew/cases/EWHC/Admin/2004/132.html> - paragraph 26

² <https://www.bailii.org/uk/cases/UKHL/1999/28.html>

for outline application 1990/00248/OUT and was not part of the s106 Legal Agreement. What was within the site boundary and included in the s106 Legal Agreement was the 39.9 acres of land transferred to the Council on 21/11/1994 for use as public open space ('POS') only – edged green land in the s106 Legal Agreement. The transfer of the 39.9 acres was officially registered in the LR by the Council over 4-years later on 11/12/1998 under title WA895681.

8. The 1977 conveyance had a plan attached showing land '*coloured green*' accessed by a track '*coloured blue*'. This land was not conveyed to LAW in 1977 but was a reference to a 3-acre land parcel (or thereabouts) situated behind Hawthorn Road – included in the s106 Legal Agreement referred as the edged brown land. This land was designated POS in the 1935 conveyance. As successor in title to the Urban District Council of Barry the Council owned the edged brown land. Under the s106 Legal Agreement this land was sold to LAW on 21/11/1994 for the sum of £800,000.
9. LAW divided the Development site into 5 land parcels - Phases 1, 2, 3, 4 and 5. When each land parcel was sold a Legal Transfer was drawn up between LAW and the Builder. The Builder then filed the Transfer in the LR and re-registered the land in its name under a Sub- Title to the Parent Title.
10. Attached as Appendix A is a table providing details of the Phases sold by LAW to the Builders. Electronic copies of Register Extract and Title Plan (where available) for each of the 5 Phases are adduced to this Application. Phases 1, 2, 3 and 4 were sold by LAW and transferred to the Builders before the Council officially registered the s106 Legal Agreement as a Local Land Charge under the 1975 Act and officially registered the 39.9 acres with the LR as POS. The Council's failure to register the s106 Legal Agreement and the POS in a timely manner was overlooked by solicitors for LAW and the Builders. The Builders then went onto sell approximately 150 homes without solicitors/conveyancers for the home-buyers remedying the situation.
11. On 12/07/1999 a press article in the South Wales Echo reported on a petition to Wimpey signed by 150 residents demanding a Pedestrian Access to 'the grassland' – this was the 39.9 acres edged green land in the s106 Legal Agreement. All signatories would have

been unaware of the s106 Legal Agreement and the planning obligation for a Pedestrian Access from the Development to Porthkerry Country Park ('PCP'). 3 days later the s106 Legal Agreement was eventually registered by the Council. The Director of Legal Services at the time, Mr Peter Evans, when challenged in October 2008 about its late registration responded it was due to an 'administrative oversight'. The Council could have notified existing residents and those who were yet to complete on their conveyances of the belated s.106 registration by reference to data it held such as local search requests, council tax records or simply do a mail shot on the occupied properties on the Development but no effort was made to do so. The late registration in the LR of the 39.9 acres edged green land designated as POS has never been explained.

12. Phase 1 was sold first to Wimpey. Wimpey registered the land transfer under Sub- Title WA761544. The Transfer dated 30/05/1995 states as follows:

*'IT IS AGREED AND DECLARED THAT Wimpey shall **not** by virtue of this Transfer **acquire or be entitled to any easement of way light or air** (other than specifically granted by this Transfer) which would or might interfere with or restrict the free use of the Retained Land for building or any other purpose and any enjoyment of any way or light or air by Wimpey from any part of the Retained Land shall be deemed **RECEIVED BY MEANS OF LICENCE ONLY**' (Emphasis added)*

The above provision is quoted in the Property Register section of the Register Extract.

The 'Retained Land' is defined 'the remainder of the land comprised in Title No. WA69908 and each and every part thereof.' (Emphasis added)

13. The same provision as in paragraph 12 above is made in the Land Transfers for Phases 2, 3 and 4 except 'Wimpey' is replaced by the word 'Purchaser' or 'Westbury'. There is no such agreement and declaration in the Land Transfer for Phase 5, sold by the Welsh Development Agency as successors in title to LAW, because Phase 5 was the last land parcel to be sold for development and the 39.9 acres had been officially registered by the Council on 11/12/1998 as POS. Since user of POS under the Open Space Act 1906 is '**by right**' the term '**by means of licence only**' over the 39.9 acres of fields had become academic.

14. The 3-acre POS land conveyed to the Council in 1935 referred to in paragraph 8 above was included in the Phase 5 land parcel comprising in total 4.12 acres. Research on how the change of use from POS to residential development use was achieved is ongoing. Cwm Barry Residents Action Group mounted an objection against the Development. If the Action Group had known of the POS designation at the time a challenge to the area behind Hawthorn Road being developed for residential dwellings may well have succeeded.
15. Each Phase once sold and re-registered by the Builders was then divided up into individual plots registered in the LR under 'Sub- sub' LR titles to be sold to future home-buyers. All 'Sub-sub' titles emanated from the Parent Title so were a **'part thereof'**. The home-buyers on Phases 1 and 3 were the successors in title to Wimpey and the home –buyers on Phase 2 and 4 successors in title to Westbury. As successors in title each and every home-buyer, was bound by the provision shown in paragraph 12 above.

User by licence argument:

16. Central to this DMMO Application is the legal submission that any resident **'enjoying a way'** over Phase 3 from their Phase 1 and 2 homes and those already occupying Phase 3 homes did so **'by licence'**. This would include **'enjoying a way' where** plots 255, 256, 257 and 258 were to be built. All 4 plots were bound by condition 4 reserved matters application 1998/00014/RES not to be occupied until the Council's access for maintenance vehicles to PCP had been laid out for reason of ensuring a satisfactory form of access to the Country Park. The Council had reserved rights of access over the private drive serving plots 257 and 256. Both plots were sold after the end date of the relevant period 30/06/1999 on 23/07/1999 and 30/07/1999 respectively. User by residents of this 20m section of the order route right up until the home-buyers completed their conveyances was therefore **'by licence'**. The 96% section of the order route that crossed over the 39.9 acres was also 'Retained Land' held under the Parent Title until formally registered as POS on 11/12/1998 so any user of this section of the order route by residents up until

11/12/1998 would again have been *'by licence'*. Once registered as POS their user was *'by right'*.

17. Condition 5 reserved matters application 1998/00014/RES conditioned specifications for the Council's field gate. The approved engineering layout plan, 1439 06 01 F, can be viewed under planning search 1999/00164/RES – confusingly an obsolete layout is currently shown on 1998/00014/RES. The approved layout provided for the field gate to be installed towards the top of the private drive with the hanging post located on plot 255 butting up against the screen brick wall on its western boundary with a small section of driveway running beyond the gate into PCP. When the existing hedgerow was grubbed up in October 1998 for the Council's access the field gate was set further back into PCP and the hanging post incorrectly positioned on plot 256. This breach in the planning condition created a gap leaving plot 255's shared boundary with the Council insecure.
18. From October 1998 residents took to using this unauthorised gap to access the fields in favour of the original gap behind plot 255 previously used. Towards the end of the 20-year relevant period the approach to the gap from January 1999 was over land set aside for the private drive that was to serve plots 257 and 256 because the screen brick wall prevented access to it via plot 255. The private drive was completed in mid- June 1999 – just 2 weeks before the end of the 20-year relevant period.
19. How plot 255 was ever 'signed off' by the NHBC with an insecure boundary to PCP is a mystery. Plot 255 was sold on 17/06/1999 – LR title WA93643. Shortly afterwards Wimpey secured the boundary with a section of fence panel rather than properly remedy the breach of the planning condition and uplift the field gate and correctly position it as per the approved engineering layout. This failure by Wimpey was to have serious consequences on the purchasers of plots 256 and 257. 2 months after they moved in a DMMO Application was made claiming a route under presumed dedication showing the unauthorised gap created in October 1998 as the access point to the field. It was the blocking of the gap with the fence panel that prompted the claim. However once the order was confirmed instead of removing the fence panel the Council uplifted its field gate to

create yet another unauthorised gap – this time on the shared boundary of plot 256 and the Council.

The 1999 DMMO Application:

20. Adduced is a copy of a letter dated 21/08/2002 sent by the 1999 DMMO Applicant, Mr Morris, stamped received by the Planning Inspectorate on 22/08/2002 and the Draft and Approved Plans that were before the Inspector.
21. The letter is incontrovertible proof that the 1999 DMMO Applicant claimed a route over the alignment of what he refers to as the '*intended path*' as per the Draft Plan 1439 02 01 – referred to in his letter as the 'Provisional site plan'. Had this layout been approved this path would have satisfied the s106 obligation for a Pedestrian Access from the Development to PCP. A Pedestrian Access in accordance with the terms of the s106 Legal Agreement from the Development to PCP was never satisfied. This was a serious breach of the Legal Agreement the responsibility for which rests with the Council's Local Planning Authority and LAW or its successors currently the Welsh Parliament.
22. The petition signed by 138 residents in June 1999 was a petition for a Pedestrian Access signed by residents who had no knowledge of the s106 Legal Agreement because it was not registered as a land charge until 15/07/1999. The petition did not support the public right of way claim as the 1999 DMMO Applicant and the Inspector seemed to believe. Had the Council placed the petition before the Inspector as Mr Morris requested the Inspector would have been duty bound to deem it irrelevant to the claim and given it no weight whatsoever.
23. Rather than address the petition Wimpey ignored it – this was despite its obligation in the Land Transfer to provide the s106 Pedestrian Access from Phase 3. Wimpey inappropriately relied on the letter dated 16/06/1999 from the Council's Senior Lawyer, Glenys Jones, relinquishing it from providing the s106 Pedestrian Access on Phase 3 when in accordance with the terms of the Legal Transfer it was only within the gift of LAW or its successors to do so. The Council's Planning Officer responsible for the Development, Ms

Crofts, filed the petition on planning application file 1997/00987/FUL to gather dust until discovered in 2009 – long after DMMO 2002 (No.01) had been confirmed.

24. The blockage referred to by Mr Morris in his letter was without doubt the fence panel Wimpey erected adjacent to the field gate to secure the boundary between plot 255 and the Council – see paragraph 19 above. Had the disputed access point been ‘blocked’ by the Council’s field gate then Mr Morris would have said so. Not one of Mr Morris’s 17 supporters identified the Council’s field gate in their EUFs as obstructing the claimed route.
25. When the proposed layout as per the Draft Plan was changed the 1999 DMMO Applicant failed to notice the screen brick wall on the western boundary of plot 255 had been moved and the land set aside for the ‘*intended path*’ included in the curtilage of plot 255. This accounts for why Mr Morris erroneously described his claimed route as passing over the private drive serving plots 257 and 256 rather passing through plot 255.
26. The late Inspector did not have before him the large-scale engineering plans so more likely than not made the same mistake as the 1999 DMMO Applicant by failing to notice the movement of the western screen brick wall on plot 255 in the Approved Plan. Regardless the late Inspector was clear in his Decision Letter that the claimed route was a continuation of the eastern footway of Clos Cwm Barri and that the ‘alternative gap’ had been obstructed. This alignment coincides exactly with where the ‘*intended path*’ was to be located under the Draft Plan that leads directly to the fence panel. The engineering plans indisputably show the land set aside for the ‘*intended path*’ was incorporated into plot 255 and not subsumed into the private drive.

Analysis of EUF’s in the context of the ‘*User by Licence Argument*’:

27. EUFs supporting the 1999 DMMO Application were considered by late Inspector Laslett at the December 2002 hearing but they were never considered in the context of the ‘***User by Licence Argument***’. Attached as **Appendix B** is a table with appropriate comments having regard to this argument.

28. To summarise the EUFs in the context of the **'User by Licence Argument'**:

- (i) 18 people from 8 households completed EUFs. Mr and Mrs Curtis of 24 Ffordd Cwm Cidi completed one jointly.
- (ii) 13 EUF providers were resident on the Development and 5 were non-resident.
- (iii) User of the claimed route by the 13 people resident on the Development as per the provision in their individual conveyances was **'by licence'** i.e. **'with permission'**.
- (iv) Of the 5 non-residents Mr and Mrs Lewis never walked the claimed route because the gate cited on their EUFs was not the field gate installed by Wimpey in October 1998.
- (v) Of the 5 non-residents only Mr and Mrs Williams (1 household), parents of the Chief Witness, Mrs Morham, may have used the claimed route once the stile behind 52 Ffordd Cwm Cidi referred to on their EUFs was blocked off by fencing. However, their user would not have been possible if excess hedgerow had not been removed by Wimpey to provide for the Council's access and neither would user have been possible if the field gate had been located in accordance with the approved engineering layout.
- (vi) In view of where non-resident Mr Cadman resided that he ever accessed PCP using the route claimed by the DMMO Applicant is highly unlikely.

Conclusions:

29. Arguments about the Council's misalignment of Footpath 73 on the ground when it uplifted its field gate after DMMO 2002 (No. 01) was confirmed are ongoing. Regardless the crucial point being that Phase 1, 2 and 3 residents of the Development accessing the edged green land via plot 255 or plots 256 and 257 from whatever direction either through the 'original' or the 'alternative gap' on the shared boundary between plot 255 and the Council did so **'by licence'**. Once in the field their user of the continuation of the route to order point D up until 11/12/1998 was also **'by licence'** so the statutory test for the entire route under s31 HA 1980 was not met.

30. User of the 'original gap' by both residents and non-residents to access PCP on the shared boundary between plot 255 and the Council would not have been possible had Wimpey

filled the 'original gap' with stock proof hedging as required by the Legal Transfer with LAW to secure the Phase 3 site boundary where no natural boundary existed prior to commencing development.

31. User of the 'alternative gap' by both residents and non-residents to access PCP on the shared boundary between plot 255 and the Council would not have been possible if Wimpey had set out the Council's access to PCP over the private drive in accordance with the approved engineering layout by butting up the hanging post against the screen brick wall on plot 255.

32. User of the claimed route by non-residents Mr and Mrs Williams and the unlikely user of non-resident Mr Cadman is insufficient to support that a footpath commencing from the historical access at the farm access track where 99a Pontypridd Road was later built ever subsisted as a public right of way.

33. A combination of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] with LAW; the 1999 DMMO Applicant being confused over the alignment of the 'intended path'; and an Inspector who literally lost his way in every sense of the term³ all resulted in Footpath 73 in its entirety being recorded in error. There is nothing in the WCA 1981 and case authorities that would allow such a set of dire circumstances to ripen into a claim for a footpath under presumed dedication and an order being made and confirmed. Mr and Mrs Underdown had 42-days to appeal the order in the High Court. It has taken 17 years of extensive research to make the discoveries to reveal the truth of what happened and expose the injustice.

34. Mr and Mrs Underdown, home- owners of 8 Clos Cwm Barri, have literally suffered for 17 years as a consequent of the failings by those in authority. Like every other home-buyer on the Development they purchased a family home with the expectation of privacy and

³ Against the express wishes of the Underdowns the Inspector carried out an unaccompanied site visit the day after the hearing. Mrs Underdown maintained an all-day watching vigil from her property that had a clear view of the field beyond the field gate at the time. She never saw him.

the right to enjoy their home – instead they were burdened *de facto* with a Pedestrian Access to a 220-acre Country Park used by all and sundry 24 hours a day 365 days a year. To correct the record a DMMO must be made by the Order Making Authority citing an event under s53(3) (c) (iii) for its deletion. In the interests of justice this DMMO Deletion Application must be given priority and considered out of turn.

Karen Medhurst (Mrs) – DMMO Applicant

15/09/2020

APPENDIX A

LAND TRANSFERS BETWEEN LAW/WDA and BUILDERS

Phase No. and name of Builder Price Paid £	Land Parcel in acres	Legal Land Transfer Date	LR Sub -Title and LR Description	Reserved Matters Application Number	Number of Houses built (approximate)
1 – Wimpey £1,131,000	8.4	31/05/1995	WA761544 Land on the south west side of Pontypridd Road, Barry	1994/00801/RES	66
2 - Westbury £1.280,000	6.2	29/03/1996	WA788672 Land on the west side of Pontypridd Road, Barry	1996/00430/RES	74
3 – Wimpey £1,742,000	4.97	19/11/1997	WA761544 Land on the south west side of Pontypridd Road, Barry	1998/00014/RES and 1999/00164/RES	57
4- Westbury £1,026,000	4.6	03/11/1998	WA891362 Land to the south west of Pontypridd Road, Barry	1998/01220/RES	39
5- Persimmon £1,651,000	4.12	27/08/1999	WA931149 Land west of Pontypridd Road, Barry	1999/01009/RES	41
TOTAL	28.29				277

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Name of EUF provider: Claimed use of Application Route	Address shown on EUF	Phase Number	'User by Licence' comments
Martin and Carol Morris Claimed use: Both claimed 18 months user	1 Clos Cwm Barri	Phase 3 – Wimpey	<ul style="list-style-type: none"> • Mr Morris was the 1999 DMMO Applicant • 1 Clos Cwm Barri purchased on 23/10/1998 – LR title WA896371. • Prior to moving in Mr and Mrs Morris visited the area to view the progress of their new home and walk across the fields to PCP. Both claimed a route commencing from Fforddd Cwm Cidi • Both claimed using stiles – one of which is located behind 52 Fforddd Cwm Cidi. As Phase 3 was developed their route to the fields would have varied from over the stile on Phase 1 to the 'original gap' in the hedge behind plot 255 and latterly the 'alternative gap' east of the Council's field gate until blocked by Wimpey with a fence panel • On purchasing number 1 Clos Cwm Barri Mr and Mrs Morris became successors in title to Wimpey. As successors in title when they walked along the eastern footway of Clos Cwm Barri from their Phase 3 home 'any enjoyment of way, light and air' they derived' over the 'Retained Land' 'or any part thereof' was 'by licence'. • User of the private drive was always 'by licence' right up until the end of relevant period 30/06/1999. Once Mr and Mrs Morris set foot in the field they were still on 'Retained Land' where user was 'by licence'

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			<p>until 11/12/1998 when the 39.9 acres was registered as POS and user became 'by right'.</p> <ul style="list-style-type: none"> The 'enjoyment' of the claimed way derived by Mr and Mrs Morris was exercise and fresh air.
<p>Dawn and James Morham:</p> <p>Claimed use:</p> <p>Dawn Morham – 23 years daily user from 1976 – 1999</p> <p>James Morham – 3 years user 1997 - 1999</p>	<p>45 Fforddd Cwm Cidi</p>	<p>Phase 3 – Westbury June 1996 – December 1998</p> <p>Phase 3 – Wimpey</p> <p>December 1998 to date</p>	<ul style="list-style-type: none"> Mrs Morham was a Chief Witness at the hearing. Mrs Morham claimed the historical access of the Footpath was where 99a Pontypridd Road was later built. Mr and Mrs Morham lived at 37 Coed y Felin -LR title WA833533 – on the Phase 2 Westbury site from 20/06/1997 until December 1998. 99a Pontypridd Road had been in beneficial occupation for about 4 months when they moved onto Phase 2. As successors in title to Westbury when they walked from their Phase 2 home 'any enjoyment of way, light and air' they derived' over the 'Retained Land' or any part thereof was 'by licence' i.e. with permission. Their access to the fields via Phase 3 over whatever plot or plots and through whatever gap was 'by licence'. Once they set foot in the field they were still on 'Retained Land' where user was also 'by licence' until 11/12/1998 when the 39.9 acres was registered as POS and user became 'by right'. Once the Morhams moved to Phase 3, 45 Fforddd Cwm Cidi, on 11/12/1998 – LR title WA897732 - the same date the 39.9 acres was

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			<p>officially registered in the LR as POS - user of the private drive was always 'by licence' right up until the end of relevant period 30/06/1999. Once they accessed the fields as a POS user was 'by right'.</p> <ul style="list-style-type: none"> • The 'enjoyment' of the claimed way derived by the Morhams when living on Phase 2 and then Phase 3 was exercise and fresh air.
<p>David Stephen and Judith Carter</p> <p>Both claimed user 1989 - 1999</p>	<p>3 Clos Cwm Barri</p>	<p>Phase 3 - Wimpey</p>	<ul style="list-style-type: none"> • On purchasing number 3 Clos Cwm Barri in November 1998 Mr Stephen and Ms Carter became successors in title to Wimpey. As successors in title to Wimpey when they walked along the eastern footway of 3 Clos Cwm Barri from their Phase 3 home 'any enjoyment of way, light and air' they derived' over the 'Retained Land' 'or any part thereof' was 'by licence'. • User of the private drive was always 'by licence' right up until the end of relevant period 30/06/1999. Once they set foot in the fields they were still on 'Retained Land' where user was 'by licence' until 11/12/1998 when the 39.9 acres was registered as POS and user became 'by right'. • Their route between 1989 and November 1998 to access the 39.9 acres of fields is not known. If, like the Morhams, they lived on another part of the Development then their user with permission would have been longer than from November 1998.

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			<ul style="list-style-type: none"> The 'enjoyment' of the claimed derived by Mr Stephen and Ms Carter was exercise and fresh air.
<p>Paul Jeffries</p> <p>Claimed use: User period unclear</p>	13 Ffordd Cwm Cidi	Phase 1 - Wimpey	<ul style="list-style-type: none"> There are many anomalies and contradictions in this EUF – due to confusion rather than dishonesty. Mr Jeffries lived at 13 Ffordd Cwm Cidi from July 1996. As successor in title to Wimpey when he walked from his Phase 1 home 'any enjoyment of way, light and air' he derived' over the 'Retained Land' or any part thereof was 'by licence'. His approach to the 39.9 acres of fields would have been along the already constructed estate footway Ffordd Cwm Cidi. On stepping foot onto Phase 3 he was accessing 'Retained Land' so user of any route to the field was 'by licence'. Once he set foot in the fields he was still on 'Retained Land' where user was 'by licence' until 11/12/1998 when the 39.9 acres was registered as POS and user became 'by right'. User of the private drive was with permission right up until the end of relevant period 30/06/1999.. Once he set foot in the fields his user had become 'by right' wef 11/12/1998. The 'enjoyment' of the claimed way derived by Mr Jeffries was exercise and fresh air.
<p>Margaret Briard; Mr and Mrs Grocutt; and Mr and Mrs Curtis</p>		Phase 1 - Wimpey	<ul style="list-style-type: none"> The self- same 'Retained Land' argument applies to these Ffordd Cwm Cidi home-owners as it does to Mr Jeffries above.

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<p>Claimed Use:</p> <p>All claimed 2 years user 1997 - 1999</p>			<ul style="list-style-type: none"> • The 'enjoyment' of the claimed way derived by these residents was exercise, fresh air and walking their dog.
<p>James Michael Wood</p> <p>Claimed Usage;</p> <p>6 – months</p>	<p>8 Fforest Drive</p>	<p>Phase 3</p>	<ul style="list-style-type: none"> • Mr Wood purchased 8 Fforest Drive in February 1999. 16 Fforest Drive had on its shared boundary with 9 Clos Cwm Barri the historical gate to the 39.9 acres of fields. • Mr Wood claimed a route from Fforest Drive to PCP. Up until June 1999 when number 16 Fforest Drive was sold it would have been possible to walk through this property and through the historical gateway before Wimpey PLC erected fencing to stop user. • Alternatively, Mr Wood may have walked from his home and followed the eastern footway on Clos Cwm Barri to access the field via the 'alternative gaps' behind 9 Clos Cwm Barri. The fence stopping up he refers to in his EUF was the fence Wimpey erected to secure the shared boundary between plot 255 and the Council • Regardless of which route taken 'any enjoyment of way' he derived over the 'Retained Land' or any part thereof was 'by licence'. • User of the private drive was with permission right up until the end of relevant period 30/06/1999. Once he set foot in the fields his user had become 'by right' wef 11/12/1998.

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			<ul style="list-style-type: none"> • The <i>'enjoyment'</i> derived by Mr Jeffries was exercise and fresh air.
Mr and Mrs Williams	21 Dovey Close	Did not reside on the Development	<ul style="list-style-type: none"> • Mr Williams was a Chief Witness at the hearing. He is the father of Mrs Morham. Mr and Mrs Williams lived in Dovey Close from around November 1991. Dovey Close is on the other side of the Pontypridd Road traffic light junction being a cul- de – sac off Severn Avenue/Conway Drive. • Mr Williams supported his daughter in her contention that the farm access where 99A Pontypridd Road was later built was the historical access of the Footpath before building of Phase 2 commenced. • From 1979 Mr and Mrs Williams lived at Coed Mawr, Highlight Park where the nearest point of access to PCP would have been Footpath 27 from off Nant Talwg Way. • Once Mr and Mrs Williams moved to Dovey Close the nearest and most convenient access to PCP would have been via Broad Close and along the track to Nant Talwg Pumping Station then over a stile into the Millwood where they could then pick up Footpath 27 • Any user of plot 255 or the private drive serving plots 257 and 256 to access the filed would have been minimal – both Mr and Mrs Williams claimed using the stile behind 52 Fforddd Cwm Cidi until blocked with fencing. • The <i>'enjoyment'</i> derived by Mr and Mrs Williams was exercise and fresh air.

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<p>Mr and Mrs Lewis</p> <p>Claimed use:</p> <p>25 years 1974 - 1997</p>	<p>19 Howard Court Pontypridd Road</p>	<p>Did not reside on the Development</p>	<ul style="list-style-type: none"> • When Mr and Mrs Lewis completed the EUFs in 1999 they were in their 70s and had ceased walking to PCP 2 years earlier • In view of where Mr and Mrs Lewis lived – which was opposite the Parkland Walk that led to a pedestrian gate into PCP with a route that linked to Footpath 31 - it is highly unlikely they ever walked a route across the Cwm Barry Farm fields to access PCP • In 1997 the estate road Clos Cwm Barri had not been laid out – building of Phase 3 commenced August 1998. Neither had the field gate across the top of the private drive that accessed the 39.9 acres of fields been erected. Therefore, Mr and Mrs Lewis would be unlikely to even know where Clos Cwm Barri was. Also, the gate they referred to in their EUFs could not possibly be the locked gate at top of private drive because it did not exist in 1997 • Clos Cwm Barri is regularly confused with Cwm Barry Way and the evidence points to genuine confusion on the part of Mr and Mrs Lewis when completing the EUFs because they would both be very familiar with the links to PCP from off Cwm Barry Way that was virtually opposite to where they lived
<p>Michael Cadman</p> <p>Claimed Usage:</p> <p>10 years 1989 - 1999</p>	<p>1 Millwood Rise</p>	<p>Did not reside on the Development</p>	<ul style="list-style-type: none"> • In view of where Mr Cadman lived, he had two nearby access points to PCP. One was the end of Cwm Barry Way were an unrecorded pathway linked to Footpath 31. The other route was the top of Hawthorn Road where an old farm gate and the remnants of track led

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			<p>into the 3-acres of field designated POS in the 1935 conveyance. User of this area was 'by right'. Mr Cadman would then have walked across what was Phase 4 and accessed the 39.9 acres of fields through the historical gateway at Lon Fferm Felin. Once entering the 39.9 acres of fields user wef 11/12/1998 was 'by right' when the Council registered the land as POS in the LR.</p> <ul style="list-style-type: none">• Clos Cwm Barri is regularly confused with Cwm Barry Way and the evidence points to genuine confusion on the part of Mr Cadman when completing the EUF suggesting he more likely than not would never have walked along Clos Cwm Barri to access PCP because it would have been inconvenient for him to do so
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Supplementary Submission 1 to DMMO Deletion Application - Cwm Barry Farm Development ('the Development')

Legal Submission – Unauthorised Development of Council's gated access at Clos Cwm Barri

1. Applications for the discharge of reserved matters are not planning applications. Any conditions relating to anything other than reserved matters should be imposed when outline permission is granted. Legally, it is clear that conditions imposed at the reserved matters stage must relate to those on the outline permission.
2. Outline permission for the Development 1990/00248/OUT was granted on 17/11/1994. Condition 9 provided for a **single** Vehicular Access point to the POS/PCP for the Council's maintenance vehicles. Condition 9 must be read in conjunction with paragraph 2.5 of the s106 Legal Agreement specifying the Vehicular Access be built to an adoptable standard to the edged green land i.e. PCP and be installed within 5 years of the date of the Legal Agreement.
3. It is common ground a section of hedge was grubbed up in October 1998 and the Council's field gate installed and immediately locked so was not available for pedestrian use. In January 1999 Wimpey's site compound was dismantled and work began on the build of plots 258, 257 and 256.
4. It is inarguable the Council's Vehicular Access over the private drive serving plots 257 and 256 did not satisfy the s106 obligation because it was not built to an adoptable standard and in any event Clos Cwm Barri did not terminate on the edged green land. There is nothing in the outline that provided for a **secondary** Vehicular Access point that did not meet the s106 specifications so it is submitted the Council's Vehicular Access was unauthorised development meaning the reserved rights of access over the private drive were not lawfully created.
5. 2 Approval Notices were issued in respect of reserved matters application 1998/00014/RES - both dated 05/06/1998. One is signed by the then Head of Planning and Transportation Mr Rob Thomas – current Managing Director of the Vale of Glamorgan Council - and the other by Mr Rob Quick the then Chief Planning Officer. Of significance

are the differences in the NOTE: - Mr Rob Thomas's is far more robust warning Wimpey that any departure to the approved plans will constitute unauthorised development; that the conditions imposed should be read carefully and that the developer is responsible for compliance; commencing the development without meeting the terms of the conditions in full will constitute unauthorised development that will require the submission of a further application to retain.

6. The existing hedgerow to be retained is shown on drawing 1439.02.01A – see planning search 1998/00014/RES. So even if wrong on the '*Unauthorised Development*' argument (which is denied) the removal of excess hedge definitely created an unauthorised access to PCP in breach of condition 8.
7. Wimpey erected a section of fence panel across this unauthorised access – as stated in the initial DMMO submission this action prompted the 1999 DMMO Application that claimed the location of the fence panel as the point of access to the field. An access created in October 1998 as a result of a breach in condition 8 could not have met the test for presumed dedication under s31 HA 1980.
8. On 23/03/2000 Wimpey submitted a planning application 2000/00376/FUL to remove the Council's gated access and re-instate the hedge and erect fencing to butt up against the screen wall on plot 255. This would have remedied the '*unauthorised development*' including resolving the issue of the field- gate being incorrectly located leaving plot 255's boundary insecure. On 15/09/2000 Mr Rob Thomas, then the Head of Planning, refused the application on the grounds access was required to maintain the land. This was an illogical decision because a Vehicle Access at Lon Fferm Felin (Phase 4) that complied with the s106 specifications had been in situ since at least July 2000. The fact there was a ransom strip in the locality of the Phase 4 field gate that caused access problems to the Council was a legal matter that was irrelevant to planning considerations. By refusing Wimpey's application when the Council had 2 Vehicular Access points from the Development to PCP Mr Thomas lost the opportunity to put matters right and allowed the breach in condition 9 of the outline to remain unresolved.

9. Setting aside the '*Unauthorised Development*' argument as a matter of fact the Council did not require the access point at Clos Cwm Barri because it was rarely used likely because, not being built to an adoptable standard, it was not fit to sustain heavy duty maintenance machinery. Also, the machines were higher than the second-floor level of plot 256 so would breach the restrictive covenant in the landowner's deeds. The access was then rendered useless in April 2003 when the field gate was uplifted to create a further unauthorised access to accommodate Footpath 73 and a waymarker post erected – despite it being a matter of factual evidence submitted by the 1999 DMMO Applicant and his main witness that the access point claimed was where the fence panel had blocked the way claimed.

10. We have long held the belief that the true reason for refusing the Wimpey application was so the gate was left in situ to then be uplifted to accommodate Footpath 73. This would then appease the residents who had been petitioning for and demanding a Pedestrian Access and prevent claims against the Council under the Land Charges Act 1975 for the late registration of the s106 Legal Agreement from being mounted. The tactic, if indeed a tactic, worked – there were no claims under the 1975 Act that we know of and residents over the years have come to treat Footpath 73 as the *de facto* Pedestrian Access to PCP. The Council has encouraged this because the 96% of the order route that passes over PCP was not closed under the Coronavirus Regulations despite notices stating '*Footpath 73 closed throughout its length*'. (Emphasis added)

11. Even if wrong in these beliefs it is fact that a Pedestrian Access to PCP was never installed on Phase 3 as per Wimpey's Legal Land Transfer with LAW. A kissing gate was installed in 2007/8 on Phase 4 at Lon Fferm Felin as a result of CCW funding – so was nothing to do with the outline planning condition or s106 legal obligation - it just suits the Council to say it was to coverup the planning irregularities.

12. In conclusion this *Legal Submission* regarding '*Unauthorised Development*' compliments the *Legal Submission* on the '*By Licence*' argument to support the deletion of Footpath 73 **throughout its length** citing an event under s53(3) (c) (iii).