

Planning Sub-Committee (Public Rights Of Way)

13th January 2022



VALE of GLAMORGAN



BRO MORGANNWG

Caradoc Avenue to Dyfan Road, Barry.

Man Agored Gyhoeddus Dyfan Road
/ Dyfan Road Public Open Space

Embankment

Cold Brook

Embankment

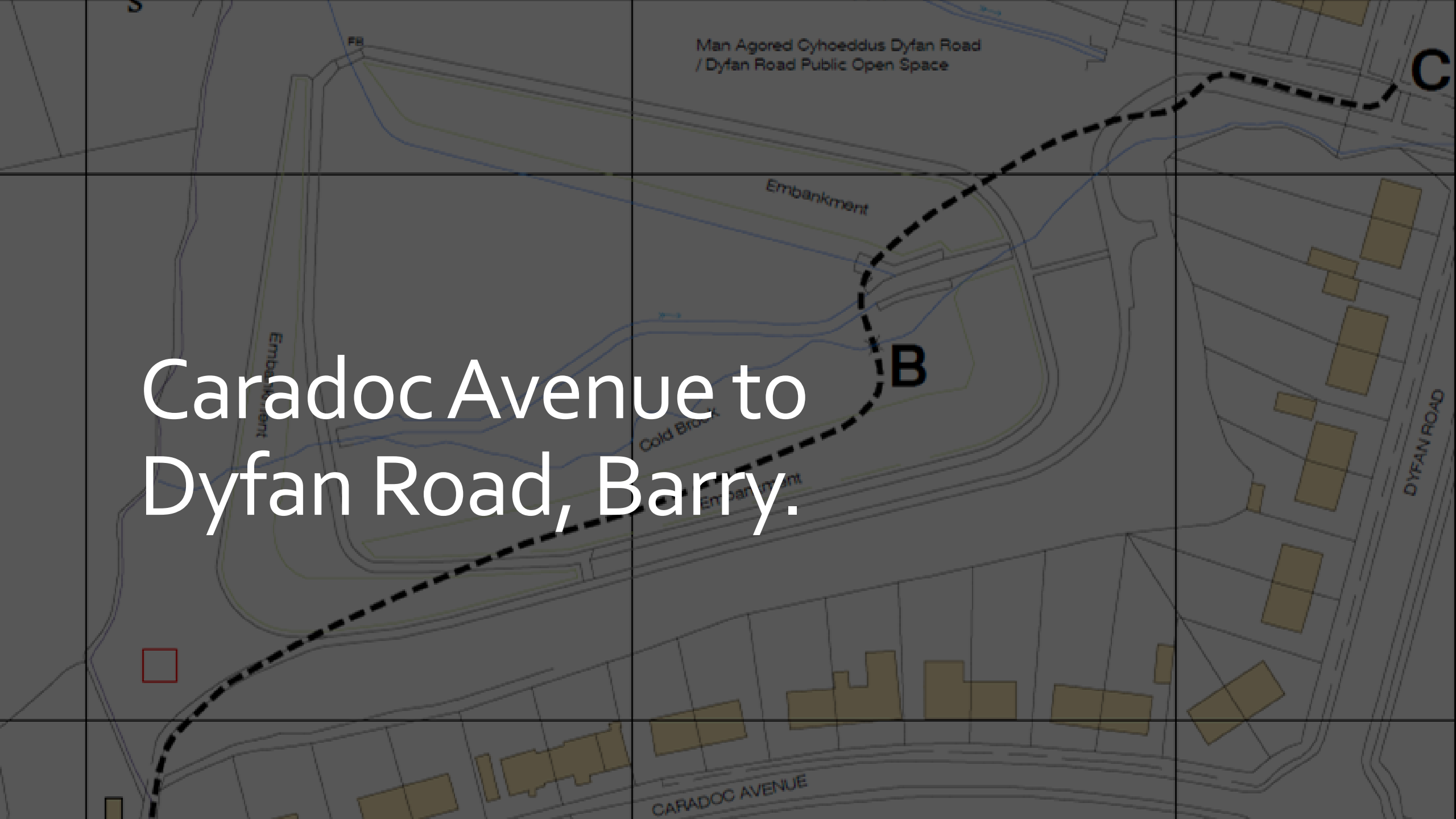
DYFAN ROAD

CARADOC AVENUE

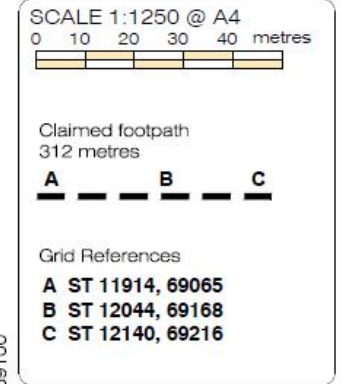
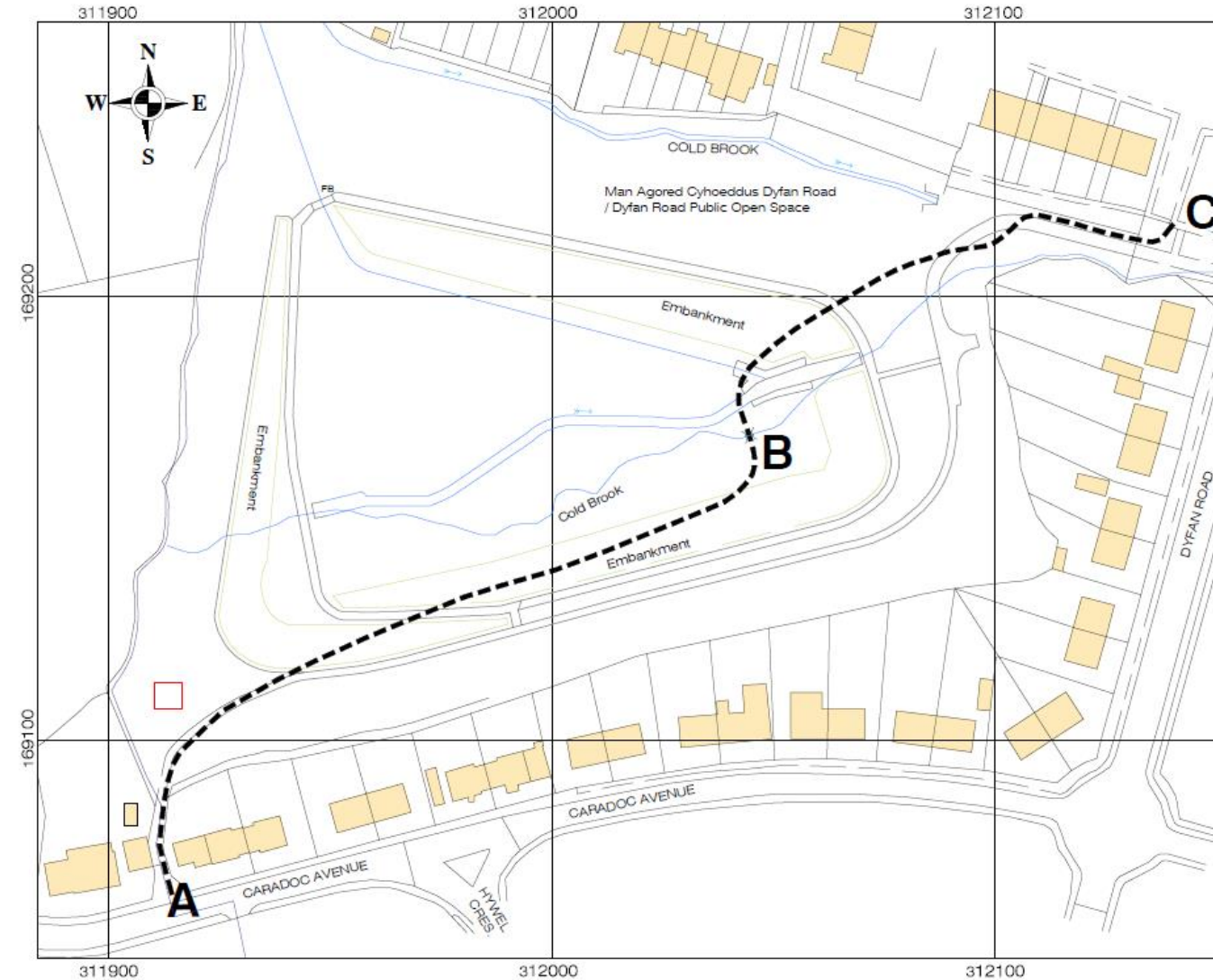


B

C



Application Effect



Claimed public footpath
from
Caradoc Avenue
to Dyfan Road,
Barry 2021

Not incompatible with common law presumption of dedication

- Use must not be criminal

Actually enjoyed

- Sufficient use for required period

Used by public at large

- Not private use by landowners, guests or employees

Used as of right

- Without force
- Without secrecy
- Without permission

Without interruption

- Actual physical stopping up
- Not incidental

Used for 20 years

- Preceding the date rights were called into question

No demonstration of intention not to dedicate

- Overt acts by landowner taken and communicated sufficiently to the public

Legal Framework – Highways Act 1980 s31

Legal Framework – Common Law

No minimum time

- The shorter the time the stronger the evidence of use and acquiescence

Capacity

- Landowner capable of dedicating must be identified

hereby certify that the requirements of paragraph 2 of Schedule 14 to
Wildlife and Countryside Act 1981 have been complied with in connection
with my / our application to you dated... 28th April 2014
for the modification of the definitive map and statement for the former
of Glamorgan

Landowner Notification

ROAD

AVENUE

28th April 2014 Signed *K. Gallivan*

(on behalf of)

Background

-Acquired by
Council 1980

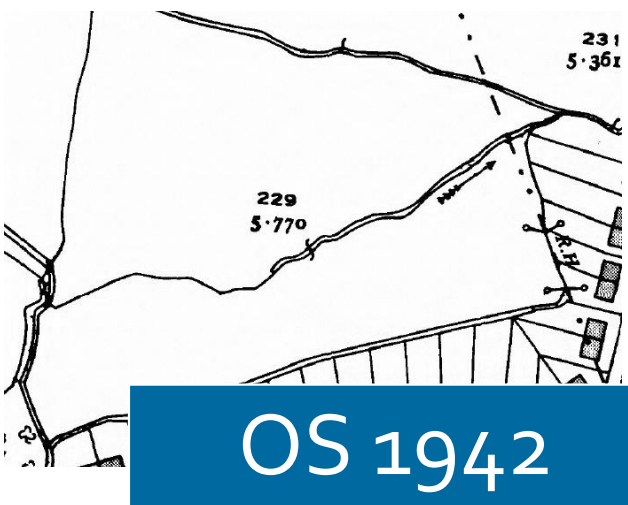
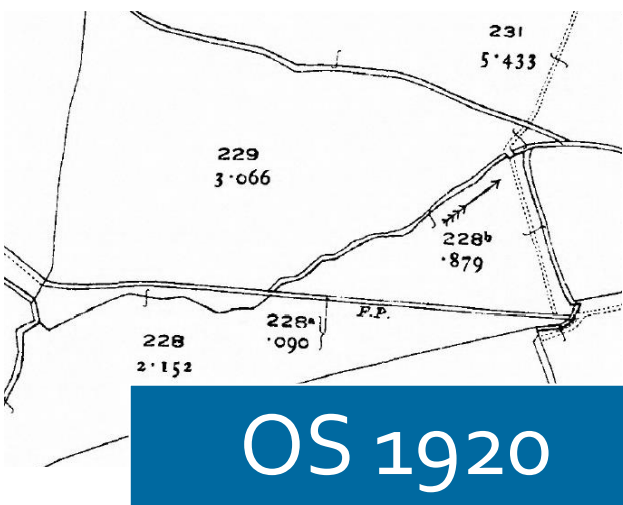
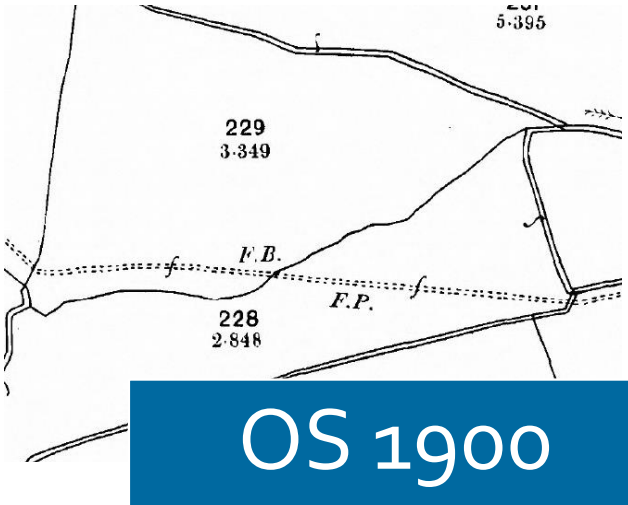
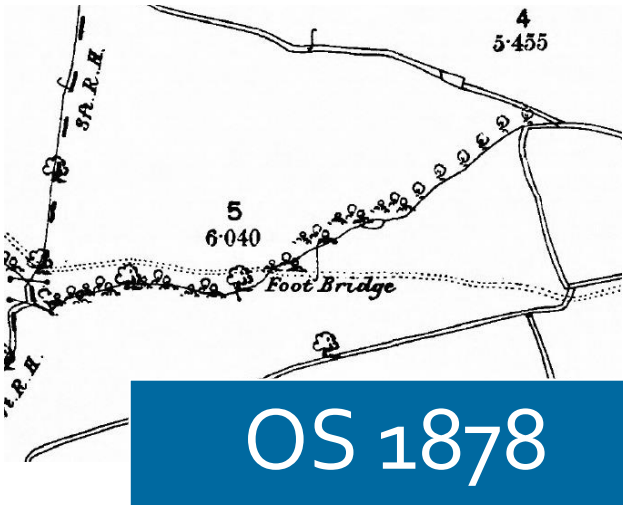




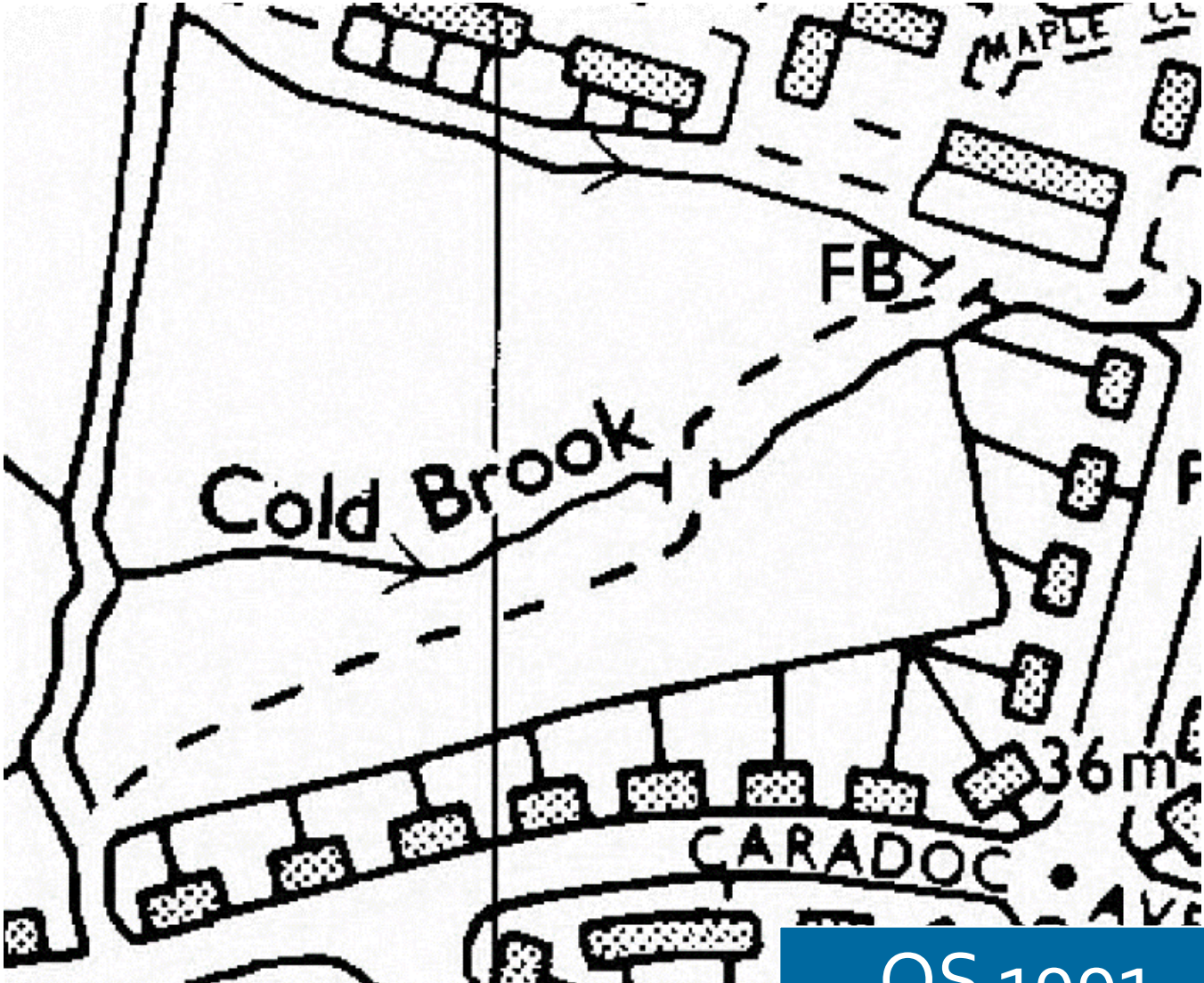
Background

Acquired by Council 2009

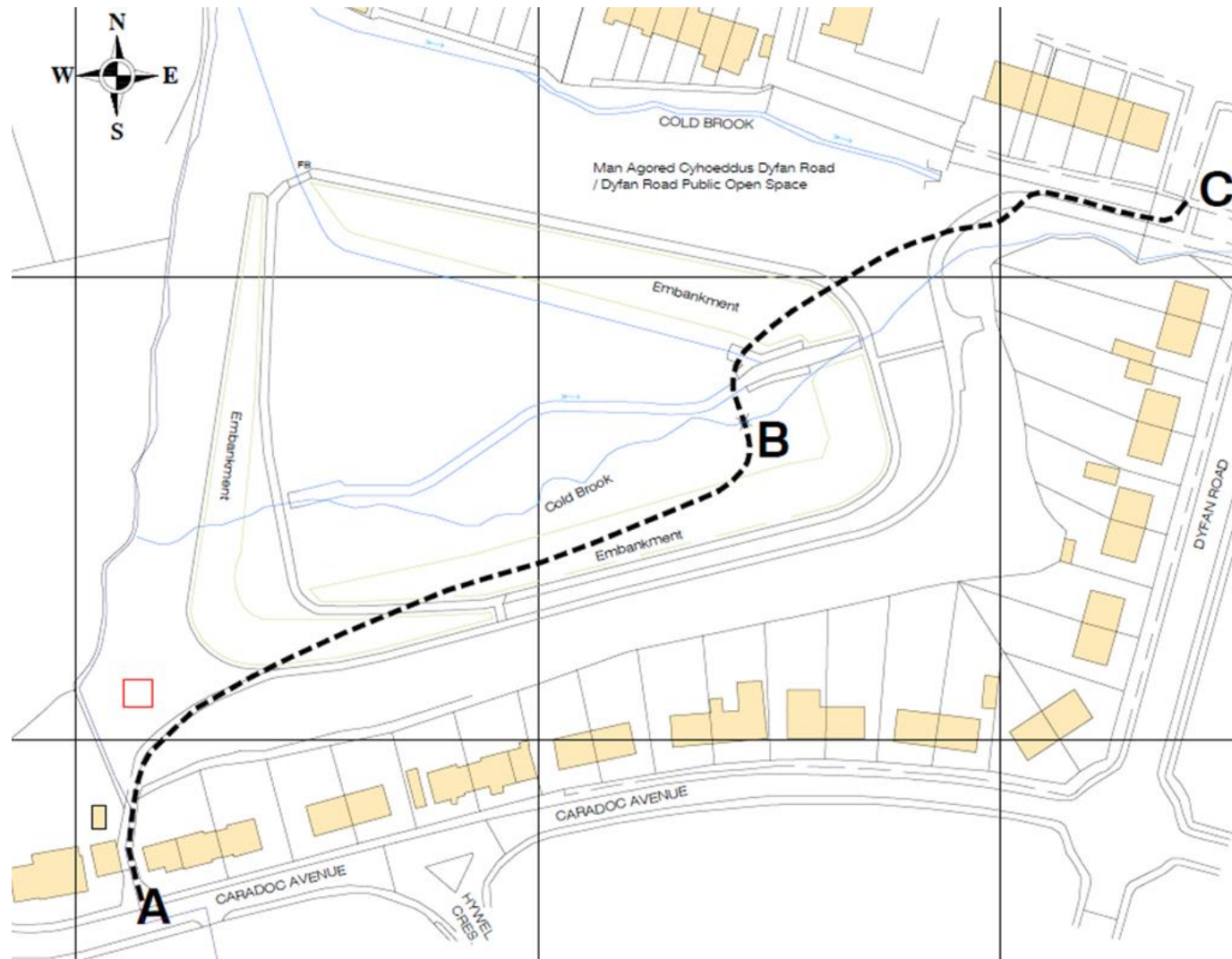
Background – Early mapping



Background –
Prior to lagoon



OS 1991



Background – Post construction of lagoon

User Evidence



12 user
evidence forms
submitted



9 users for 20
years, more for
shorter spans

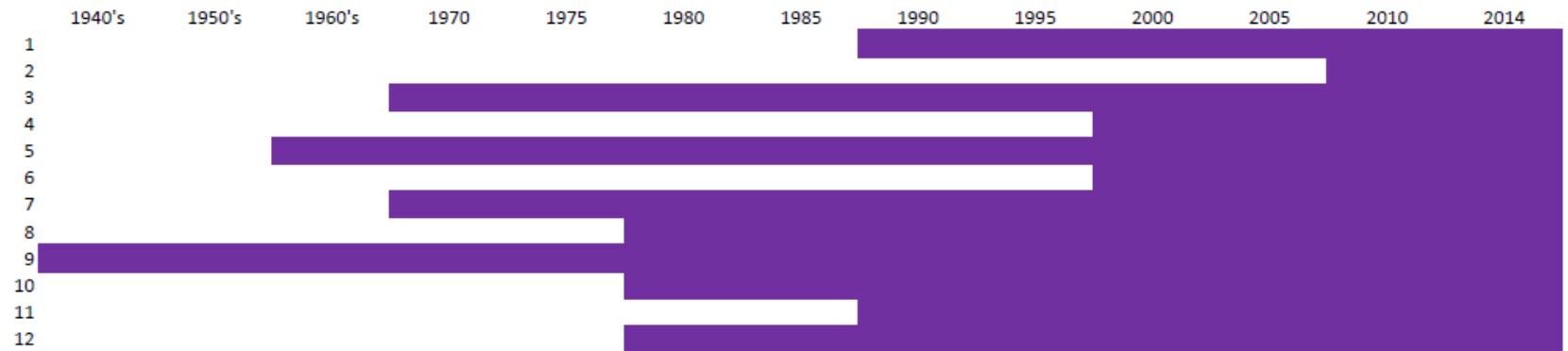


Use on foot for
recreation, dog
walking, short
cut



No interference
or obstruction
reported

Caradoc Avenue to Dyfan Road User Evidence Chart



Documentary Evidence

<i>Ordnance Survey Maps 1878 (1:2500), 1885 (1:10560)</i>	<ul style="list-style-type: none">• No features matching application route
<i>Ordnance Survey Maps 1900 (1:2500), 1901 (1:10560)</i>	<ul style="list-style-type: none">• No features matching application route
<i>Ordnance Survey Maps 1920 (1:2500), 1921 (1:10560)</i>	<ul style="list-style-type: none">• No features matching application route
<i>Ordnance Survey Maps 1955 (1:1250), 1955-56 (1:2500), 1965 (1:10000)</i>	<ul style="list-style-type: none">• No features matching application route
<i>Ordnance Survey Maps 1970 & 71 (1:1250), 1975 (1:10000) 1984 (1:10000)</i>	<ul style="list-style-type: none">• No features matching application route
<i>Ordnance Survey Maps 1991 (1:10000)</i>	<ul style="list-style-type: none">• Route shown consistent with application
<i>Ordnance Survey Maps / Aerial photos 2000 onwards</i>	<ul style="list-style-type: none">• Route shown consistent with application• Lagoon displayed on modern mapping and photography following its construction

Case Assessment

Clearly defined path prior to construction of lagoon

- No early evidence of route though clear in 1991 mapping

Evidence supportive of use by sufficient numbers for over 20 years

- Evidence forms demonstrate high frequency public use with no interruptions

Application entirely within Public Open Space

- Use has relied on existing rights
- Use *As of right* requires demonstration of form of tolerated trespass
- Distinct from *By right* where pre-existing rights are being exercised
- No new rights therefore acquired

Conclusion & Recommendation

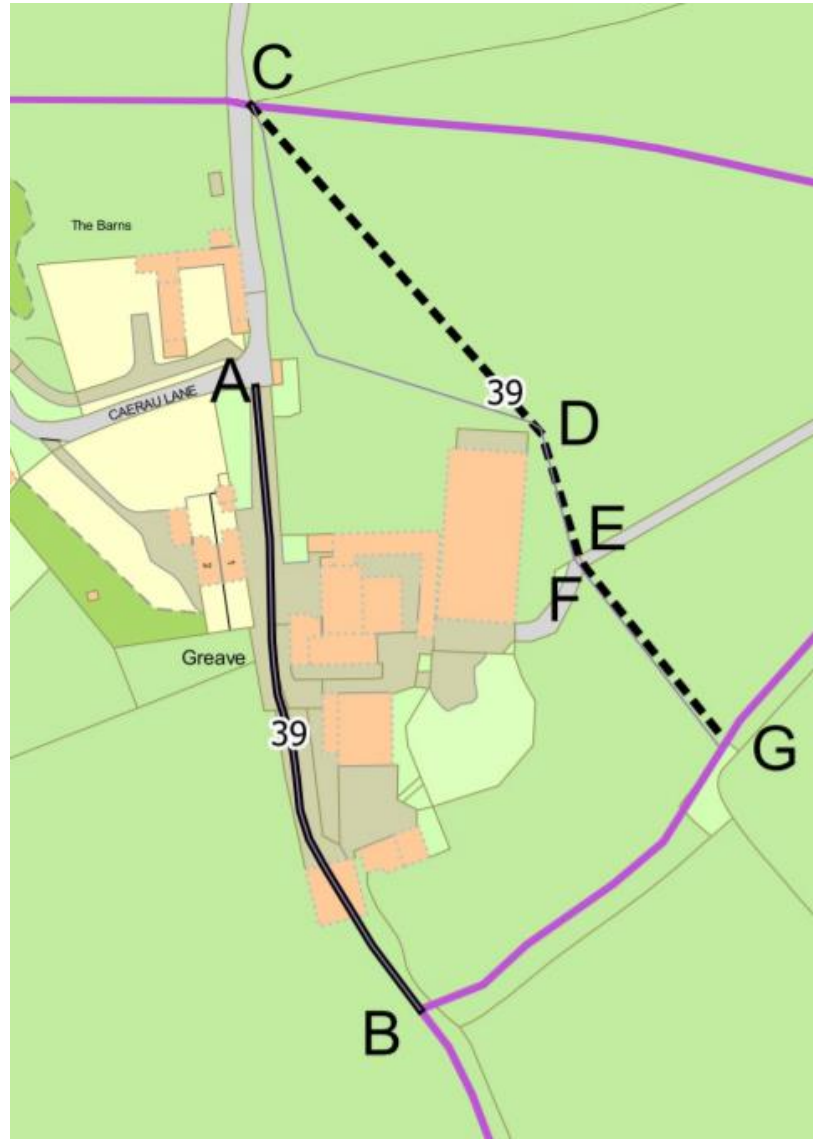
No public right of way should be recorded on the definitive map due to use by right

Recommended that the Vale of Glamorgan Council decline to make a Definitive Map Modification Order in respect of the application.

Wenvoe 39



Application Effect



Existing alignment

- Crosses working farmyard
- Obstructed by barn

New alignment

- Field adjacent to farm complex
- Bypasses buildings

Order Making HA 1980 s119

- **Expedient (convenient and practical) in the interests of the landowner or the public.**
 - All or part of a way
 - Interests of at least one of the affected parties
- **Must not alter the point of termination of the way:**
 - If not on a highway; or
 - If it connects to a highway, to the same or another highway connected and ***substantially as convenient to the public.***
 - Concurrent Creation and Extinguishment Orders may be necessary
- **New route should not substantially follow existing highway**
 - Else extinguishment is appropriate
- **Cannot downgrade or upgrade a route**
- **Also consider tests for confirming the order.**

Order Confirmation HA 1980 s119

Termination point and expediency in the interest of the public/landowner

Diverted path will not be substantially less convenient to the public.

Expediency having regard to the effect it would have on:

- Public enjoyment of the path or way as a whole.
- Other land served by the existing public right of way, taking into account provisions for compensation.
- The new path or way on the land over which it is to be created and any land held with it, taking into account provisions for compensation.

Any material provisions included within the Rights of Way Improvement Plan for the area.

Consideration of any works required to bring an alternative way into a fit condition for public use should be given. If such works are necessary, the Order should state:

- that the diversion of the footpath does not take effect for a specified number of days following confirmation to allow those works to be carried out; and
- the extinguishment of the current footpath also does not take effect until the highway authority certifies that the works have been carried out.

Ways need not be shown on the Definitive Map and Statement before they can be diverted

Order Confirmation HA 1980 s119

Diverted path will not be substantially less convenient to the public.

- Convenience may be interpreted as meaning ease of use.

Public enjoyment of the path or way as a whole.

- Enjoyment can take into account other factors such as the views to be enjoyed from the path or way.

Convenient but less enjoyable

- Consider balance between applicant's interests and amenity loss to the public

Enjoyment enhanced but route substantially less convenient

- Unable to be confirmed.

Temporary circumstances are not required to be disregarded

- When considering convenience a fair determination may only be possible on the assumption that the existing route is available.

Objection

*Loss of historic route;
Direct link to football/sports
facility & Wenvoe via footbridge*

- Only the farm house itself and the adjacent two properties connect to sports facilities
- Footpath has a natural surface, unlikely to be preferred over Caerau Lane & pavement beside the A4050
- The proposed diversion does not impact the direct link from the A4050 footbridge to the Sports Ground.

*Existing route appropriated
by farm
Obstructions should be
removed first*

- Crosses a surfaced area providing access into several farm buildings for the movement of stock and vehicles, it is a farm yard.
- Planning application 1979/00601/FUL provided authority for the erection of the barn that obstructs the alignment of the footpath (appendix 4).
- Diversion of the route is an appropriate remedy

*Diversion doubles distance A-B
New path from C-G is not
comparable to A-B so the
lengths given make no sense.*

- The proposed route is longer than the original route however the route is safer, crossing fields rather than passing through a working farm the proposed footpath is unsurfaced and more in character with the rights of way network in the area.

*Diversion to west should be considered
Right-of way needs clearly separating from
the farm to its east to prevent blocking and
damage from operational vehicles.
The width should be defined as 1.5m as
'price' for allowing the illegal barn to
remain.*

- Diverting the footpath to the field to the west of the barn would take the footpath across land which tends to be very wet, the repositioning of the northern section of the footpath would not remove the risk from livestock or vehicles working in the vicinity

Surrounding Area



Recommendation

- That an Order to divert part of Footpath No.39 Wenvoe be made and, subject to no objections being received, also confirmed

A

St Donats 6

B

D

E

Path (um)



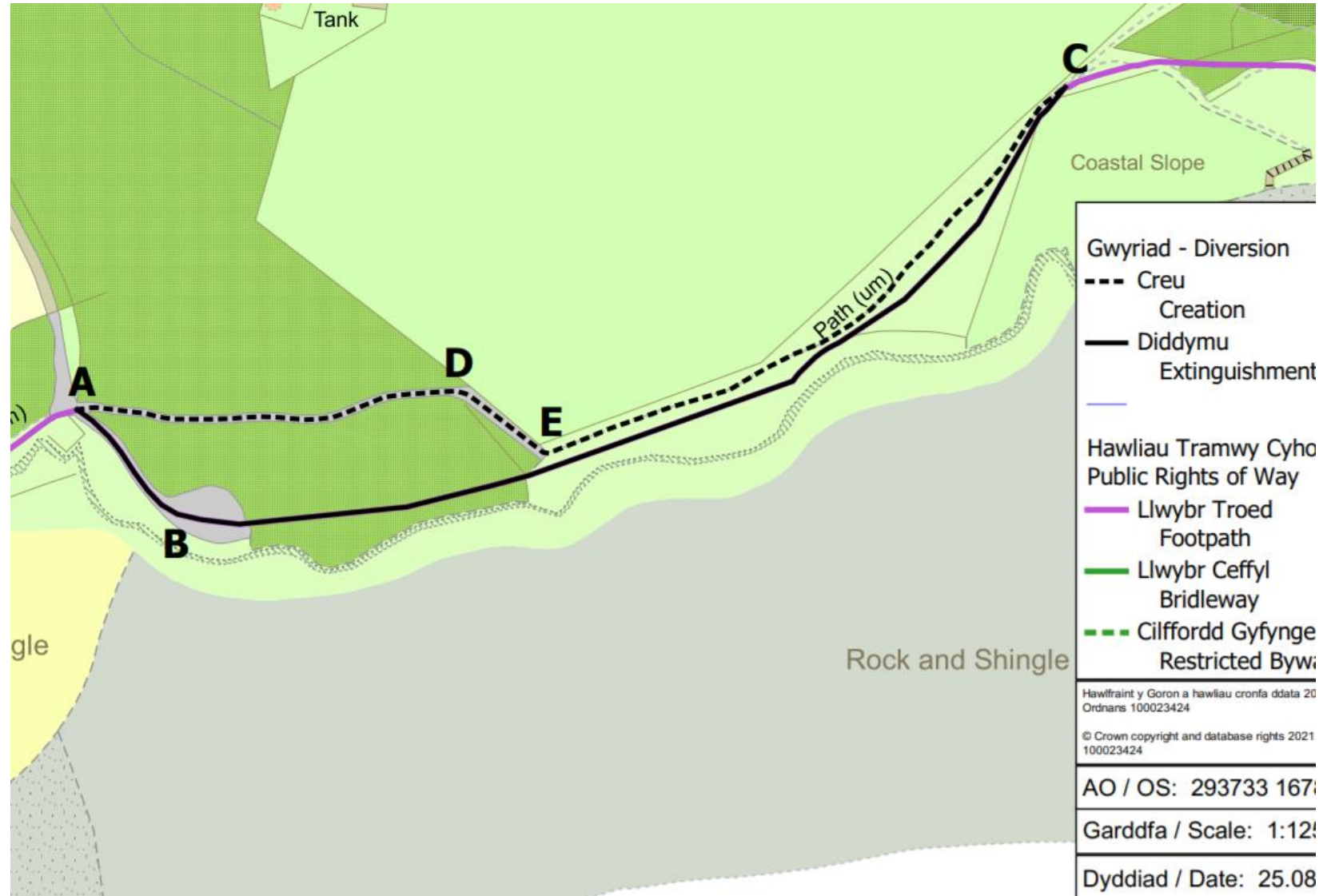
Application Effect

Existing alignment

- Wales Coast Path
- Cliff edge

New alignment

- Roll back
- De-facto current route



Order Making HA 1980 s119

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Objection

We agree with it in principle; it appears to implement the de-facto situation already in place.

This is part of the Wales Coastal Path; we would ask if the changes give a path of appropriate high standard?

The section D-E is narrow, hemmed in by the fence; 1.5m width is hardly adequate for passing a group of walkers as commonly encountered on this route.

The section near point C is at the top of the sliding coastal slope; if no stabilisation works are proposed, we ask that the field fence is set back so the path can be rolled back at this point if needed in future years.

We don't agree that the width available now is insufficient, your proposal to increase the width would involve cutting into the hedgerow which we would like to avoid if at all possible. As you have noted the proposal implements the de-facto situation already in place, we have received no complaints relating to the width of the path or difficulty in passing on the path.

The coastline is regularly monitored and if in the future the path appears to be at risk we will contact the landowner regarding the moving of the path to the landward side of the fence line.

Would you please contact me to indicate if it is your intention to object to the proposal as it stands.

Evidence of usage on the ground, new route will follow this alignment

Old route to be closed

7

6



Recommendation

- That an Order to divert part of Footpath St Donats 6 be made and, subject to no objections being received, also confirmed