

No.

## PLANNING SUB-COMMITTEE (PUBLIC RIGHTS OF WAY)

Minutes of a remote meeting held on 6<sup>th</sup> September 2023.

The Sub-Committee agenda is available [here](#).

The Meeting recording is available [here](#).

Present: Councillors G. Bruce, P. Drake, N.P. Hodges, N.C. Thomas, and E. Williams.

Also present: Councillors J.E. Charles and W.A. Hennessy.

<b>Name of Public Speaker:</b>	<b>Agenda Item:</b>	<b>Reason for Speaking:</b>
H. Ali	(6) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 s53(3)(c)(i) - for the addition of a public footpath to the Definitive Map from Westbury Close to Robins Lane, Barry.	Objector to the application or their representative.
C. Cox	(7) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 s53(3)(c)(iii) - to delete the full extent of footpath no.73, Barry as recorded on the definitive map.	The applicant or their representative.
K. Medhurst	(7) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 s53(3)(c)(iii) - to delete the full extent of footpath no.73, Barry as recorded on the definitive map.	The applicant or their representative.

(a) Announcement –

Prior to the commencement of the business of the Sub-Committee, the Democratic and Scrutiny Services Officer read the following statement: “May I remind everyone present that the meeting will be live streamed as well as recorded via the internet and this recording archived for future viewing.”

No.

(b) Appointment of Chair –

RESOLVED – T H A T Councillor N.C. Thomas be appointed as Chair for the Sub-Committee for the remainder of the current Municipal year.

(c) Appointment of Vice-Chair –

RESOLVED – T H A T Councillor P. Drake be appointed as Vice-Chair for the Sub-Committee for the remainder of the current Municipal year.

(d) Minutes –

RESOLVED – T H A T the minutes of the meeting held on 13<sup>th</sup> January 2022 be accepted.

(e) Declarations of Interest –

No declarations of interest were received.

(f) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 S53(3)(c)(i) - For the Addition of a Public Footpath to the Definitive Map from Westbury Close to Robins Lane, Barry (DP) –

The Countryside Access Manager for the Council introduced the covering report which dealt with a claim that a route running from ST 312551 on Westbury Close to ST 169271 on Robins Lane, should be added to the Definitive Map and Statement.

The claimed route, as submitted by the applicant, was mapped between Point A on Robins Lane to Point B in Robins Court, where currently there was a wooden fence intersecting the route. From a follow up phone call with the applicant, and the wording on the user evidence forms, it was clear that the route claimed continued northwards via a partially enclosed alleyway to Point C. It was described on all the user evidence forms as “from Robins Court to Westbury Close.” The entire length of the route from A-B-C was 127 meters.

The appended investigation report set out the relevant evidence and legal tests, including the weight that could be given to that evidence, to inform a determination by the Sub-Committee on whether or not to make a Definitive Map Modification Order (DMMO). In determining the Application, consideration would need to be given as to whether the documentary evidence and user evidence provided was sufficient to show that the way was, or was reasonably alleged to be, a public Right of Way based on the discovery of evidence under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981.

No.

On behalf of the Local Authority, Ms. Claire Goodman-Jones from Birchill Access Consultancy Ltd presented the investigation report that required the Sub-Committee to assess the evidence and determine whether to make an appropriate DMMO capable of giving effect to relevant evidence, or to decline the application.

Through a series of PowerPoint slides, Ms. Goodman-Jones evidenced the conclusions of their investigation report as follows:

There appeared to be sufficient user evidence, in terms of numbers and frequency of use, to meet some of the tests of Section 31 of the Highways Act 1980. However, the fact that the northern terminus of the claimed route was on Westbury Close, an unadopted road, and that most of the witnesses lived on that road, threw considerable doubt on a claim that they constituted “the public at large”. None of the user evidence presented mentioned extending access along Westbury Close to other termini that did have known public rights.

Whilst case law allowed the possibility of establishing the existence of a public right that ended at a cul-de-sac, there should be a legitimate reason for the public to wish to access it. The Planning Inspectorate’s consistency guidelines (para 2.36) stated: “Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.”

Ordnance Survey mapping showed various changes in the land use and housing development over the years from the 1800s onwards. It was clear that a roadway of uncertain status existed for many years along approximately the same alignment as part of the claimed route (A-B). The roadway extended further westwards to the Gibbonsdown estate, but eventually this western section disappeared with further housing development. Since the 1960s the area had become more built over, with the construction of the adjacent Cae Glas and Westbury Close estates. At some time around then, the more modern route B-C came into existence.

Although some of the documentary evidence (e.g., Tithe Map) might hint at the possibility of the above roadway, leading to the long-gone Gibbonsdown Farm, enjoying public rights in the past, the balance of evidence did not support that in the last 150 years.

Therefore, the application should be declined because of its north-westerly terminus on an unadopted road without proven public rights, thereby throwing doubt on the users’ claim to be exercising a right as “the public at large”.

Following Ms. Goodman-Jones’ presentation, the Chair invited Mr. Hossain Ali, the only registered speaker objecting to the application, to address.

As a representative of Robins Court Residents Association, Mr. Ali advised that the Association welcomed both the covering and investigation report put before the Sub-Committee. However, wished it to be recorded that there were elements of the report that the Association did not fully agree with, but these were not to be disclosed at the current time. The reasons for not setting a DMMO, as set out in

No.

paragraph 9.1 of the investigation report, were compelling but would add that Westbury Close was a Local Authority development so the landlord for the tenants was the Council. It was a fact that tenants could not claim a public right of way over land owned by their landlord. It followed that providers of user evidence forms that are, or were, Council tenants could not claim a public right of way over the application route because, other than two metres of land or so behind no. 10 Cae Glas, the land was owned by the Council and allocated to the Council's housing department. The Association trusted that the Sub-Committee would support the investigation report recommendation to refuse the application.

With no points of clarification raised by the Sub-Committee in relation to Mr. Ali's representations, the Chair referred to the procedure for the meeting and confirmed that there were no non-committee Vale of Glamorgan Elected Members wishing to address the Sub-Committee on the matter or any registered public speakers in support of the application.

In addition, neither of the responsible officers in attendance, namely Mr Hunt and Ms Goodman-Jones, had any further comments to raise in light of Mr. Ali's representations. Therefore, the Chair opened Sub-Committee debate on the matter.

Councillor Williams subsequently noted that it was the responsibility of the Sub-Committee to make a decision based on the current application and its associated tests put before the Sub-Committee but, out of curiosity, enquired of the responsible officers whether the non-highway location on the route, Westbury Close, would be adopted by the Local Authority in the future. In reply, Ms. Goodman-Jones advised that the imminent decision of the Sub-Committee on the application as it stood did not prevent any further applications being submitted in the future on either the same or slightly amended route and that it was the prerogative of the Local Authority, as the Highways Authority, to adopt or un-adopt highways within its area as deemed necessary. In addition, Mr. Hunt stated that it was feasible that the non-highway location could be adopted by the Highways Authority in the future, however there were no current discussions to date on the matter and it was up to the Highways Department of the Vale of Glamorgan Council to consider as a separate matter.

Also out of curiosity, whilst recognising that their question was not germane to the case, the Chair then enquired after the justification for the fence that had been erected on the route which was a traditionally used pedestrian way. Ms. Goodman-Jones confirmed that she had seen the erected fence having visited the site and she was aware that building works were taking place in the near vicinity in relation to the Robins Court development and that comments had also been made in relation to anti-social behaviour on the site for which the fence provided extra privacy for local residents, however she was unable to confirm the exact justification for the fence being erected. Mr. Hunt subsequently confirmed that he had nothing further to add in response to the Chair's question and Ms Goodman-Jones' response

Councillor Williams moved the officer's recommendation as per the investigation report and this was seconded by Councillor Drake and the vote was subsequently

No.

carried by no dissent. It was confirmed by the Democratic and Scrutiny Services Officer that Councillor Hodges was not present for the entirety of the item and therefore was not considered as part of the vote taken.

With no further comments or questions, the Sub-Committee subsequently

RESOLVED – T H A T the Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 s53(3)(c)(i), for the addition of a public footpath from Westbury Close to Robins Lane Barry, be declined.

Reason for decision

As per the legal tests and evidence set out within the appended investigation report.

(g) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 S53(3)(c)(iii) - To Delete the Full Extent of Footpath No.73, Barry as Recorded on the Definitive Map (DP) –

The Countryside Access Manager for the Council introduced the covering report which dealt with a claim that a route running from ST09876793 the south-western end of adopted highway at the Clos Cwm Barri hammerhead to ST09606752 Porthkerry Country Park (PCP) at the edge of Mill Wood, Footpath 73 (FP73) should be deleted from the Definitive Map and Statement (DMS).

On behalf of the Local Authority, Ms. Deborah Sharples from Birketts LLP presented the appended investigation report which set out the relevant evidence and legal tests, including the weight that could be given to that evidence, to inform a determination by the Sub-Committee only on whether or not to make a Definitive Map Modification Order (DMMO).

Ms. Sharples began the presentation by providing context on the application, namely that FP73 ran from Clos Cwm Barri over a private shared driveway serving 6 and 8 Clos Cwm Barri and forming part of the titles to those properties, into and through PCP and ended at a point D on the included plan within the papers (at Document 3) within PCP. The most contentious part of the route was A-B. The owners of the driveway over which it ran complained about the intrusion of users on their privacy and sense of security and had consistently maintained that FP73 ought not to be shown on the DMS as a public right of way.

The land affected by FP73 A-B was formerly farmland and was acquired by Land Authority Wales (LAW) for the purposes of development. Planning permission was obtained for its development under outline planning permission 90/00248/OUT in 1994. There was a related s106 agreement dated 21<sup>st</sup> November 1994 made between the Vale of Glamorgan Borough Council (VOG) and LAW.

Furthermore, as per section 4 of the investigation report, FP73 was recorded on the DMS following a decision by a Planning Inspector on 25<sup>th</sup> March 2003 to

No.

confirm an Order made by the Council on 22<sup>nd</sup> January 2002. The Order was confirmed following a public hearing and an unaccompanied site visit. Applications were made for the deletion of the route in 2009. The two applications were dismissed by an Inspector following a schedule 14 Appeal by their decision letter dated 4<sup>th</sup> November 2011.

In referring the Sub-Committee to paragraph 2.4 of the investigation report, and the legal test set out in the Wildlife and Countryside Act 1981 s53 (3)(c), Ms. Sharples advised that it was necessary for the Sub-Committee in considering the application to determine, firstly whether there had been a discovery of evidence since FP73 was added to the DMS that had not been previously considered by a decision maker and secondly, if there had been, whether that evidence, when considered with all other relevant evidence showed that the route should be deleted from the DMS or modified.

As a supplementary point, Ms. Sharples raised that under schedule 15 paragraph 12 of the Act, it was now not open to anyone to question the validity of the Order which was originally made in 2003 to add the route to the Definitive Map.

Ms. Sharples endorsed the various points on evidence in the Inspector's letter of 2011, which was available to the Sub-Committee in advance of the meeting and highlighted that case law was not evidence as set out in the Inspector's letter. Neither were opinion, allegations, or motives of any party but, the Sub-Committee could listen to opinion and statements to support its decision making based on factual evidence.

A DMMO decision could not take into account factors such as desirability, need, nuisance or suitability. The effect on amenity, antisocial behaviour or other such circumstances which arose from the recording of the route were also not to be taken into account. It was not relevant to consider, in connection with the decision, whether there were or were not procedural irregularities connected with the making or confirmation of the original order.

Two major themes raised by the Applicant, which were irrelevant to the Sub-Committee's decision, were:

(a) That the footpath had been incorrectly laid out by the Council i.e., that the route laid out did not reflect that which was described in the Order. This was not material to the question of whether or how the route should be depicted on the DMS and that had been expressly recognised by the Applicant. For that reason, the issue was not addressed in the investigation report, but all the points made had been considered to determine whether any of them were material to the claim.

(b) There were numerous allegations of dishonesty, incompetence, fraud, misfeasance in public office and other civil and criminal wrongs made against the Council, its officers, and others. The documents containing these had all been considered to assess whether any points could be of relevance to the decision, but none of the allegations, even if proven, could be relevant to the claim under consideration in the case. The Applicant was aware that the opportunity to

No.

challenge alleged procedural irregularities and errors in the decision letter that had long passed. This was set out clearly in the 2011 decision letter.

Ms. Sharples then advised that the s106 Agreement, heavily disputed by the Applicant, required that the transfer of the Extension to PCP to the Council would include a right of way for the Council and its servant agents and licensees over the access to be provided, but that right was not, in fact, granted. The only right of access provided in that transfer was a right of access which was personal to the Council and intended for maintenance purposes. Neither the s106 agreement nor the transfer of the Extension to PCP was listed as being a document which was in front of the Inspector in 2002, but it was clear from their decision letter that they were at least broadly aware of these requirements. The failure to include that right (however it came about) meant that the public did not have a right to use the route of FP73 between A and B in reliance on such a right. As such the route was being used as of right not by right.

Ms. Sharples went on to advise that the Applicant had submitted to the Council a very significant volume of information, much of which was in the form of submissions containing their interpretation of events. The submissions were lengthy and highly repetitive, but they had all been carefully considered to assess whether they referred to or revealed any new evidence or information which was of relevance as per section 6 of the current investigation report. All of the items of evidence submitted had also been considered to assess whether they contained any new evidence. The investigation report sought to highlight the issues which were relevant and not those which were not. This was in the interests of ensuring that the salient points were brought to the fore and were not obscured by issues which would not assist in progressing the claim.

Ms. Sharples drew the Sub-Committee's attention to section 6 of the investigation report, case assessment, and highlighted two salient points, that in their professional opinion should be highlighted to the Sub-Committee as possible newly considered evidence submitted as follows:

### **Evidence of Aerial Photographs and Report from Christine Cox**

The relevance of these photographs was that wear lines were sometimes apparent on aerial photographs, and these could be used as evidence that there had been use of a particular route (though by who, or what and with what purpose could not be seen). In this case the photographs were being used to try to show that there was no use of the routes at the times when the photographs were taken between 1979 and 1999. Therefore, the route could not have been used and the previous inspector was mistaken.

The report from Ms. Cox carried insufficient weight to outweigh the opinion of the previous Inspector who heard the evidence in 2002 and who heard the evidence of the witnesses at the hearing and who did inspect some aerial photographs, as did the Inspector in 2011, from the relevant period. Therefore, the evidence presented by Ms. Cox was not considered to be new evidence.

### **Reservation of rights over 6 and 8 Clos Cwm Barri**

No.

A further matter concerning the rights of the owners of houses on the Development, not raised by the Applicant, had been considered as part of the investigation of the claim, having come to light when the titles to the properties were considered by Ms Sharples.

The titles to numbers 6 and 8 Clos Cwm Barri had rights reserved out of them at the time of the transfer from Taylor Wimpey to the current owners. One of the rights reserved affected the shared driveway, which was defined as an Accessway. The right was as follows:

*“In respect of all parts of the Estate to which access is to be gained over the Accessways..... to pass with or without vehicles (below first floor level only) along that part of the Accessways shown coloured blue on the Plan”.*

The scope of the private right reserved for owners of land in Phase 1 and Phase 3 (only) was only to access other parts of the Estate (Phases 1 and 3) so it did not extend to a right to use the Accessway (shared driveway) to gain access to PCP, which was not part of the Estate as defined. This meant that a person who was a resident of Phase 1 or Phase 3 who walked across the land to gain access to PCP would not be exercising their private right of way but using the route as of right. It was an oddity of the case that when returning to their home on Phase 1 or Phase 3 they would be exercising the private right of way because they would then be accessing part of the Estate.

The evidence, thus, meant that the return journey of some of the users (from PCP to the development) would have been by right. This, however, made only a small difference to the claim because it would have been (and clearly was) readily evident to the owners of the land crossed by FP73 that all users walking from the Development towards PCP were using the route as of right and not by right and that a proportion of those coming the other way (those who did not live on Phase 1 or Phase 3) were also using it as of right and not by right. This level of use – by the same number of people – would have been sufficient to bring to the attention of a reasonable landowner that a public right of way was being asserted.

Consideration had been given to whether this was cogent new evidence, which when considered with the other evidence available to the Council required the DMS to be modified by the deletion of FP 73 or any part of it. To cause a change to be made to the DMS new evidence must be substantial, not only any small piece of evidence would be sufficient. The conclusion was that it did not. In reaching this conclusion, account had been taken of the fact that the Inspector in 2002 considered not only user evidence forms, but also heard oral evidence and saw other documents as set out in paragraph 6.23 of the investigation report.

In summary, Ms. Sharples advised that neither the application nor the Council's investigation of the position had led to the discovery of new evidence which, when considered with all other relevant evidence available showed that there was no public right of way over the route of FP73 or that any other particulars contained in the map and statement required modification.



No.

Following Ms. Sharples presentation, the Chair confirmed that the Sub-Committee had received copies of all papers relevant to the application which included late representations received from Mrs. Medhurst. In reply, Ms. Sharples advised that they too had considered the late representations, however, did not consider there to be any new evidence contained therein.

With no registered speakers objecting to the application being present as well as no non-Committee Elected Members indicating their wish to address, the Chair subsequently invited the two registered public speakers in support of the application to address the Sub-Committee.

With the Chair's approval, following a request from Mrs. Medhurst, Ms. Cox was invited as the first speaker. Ms. Cox's verbal representations could be summarised as follows:

- The photographs were physical evidence that showed no use during the statutory period. In answer to paragraph 6.47 of the investigation report: The aerial photographs were not being used to try to show no use (or indeed to try to show anything). They were being used to provide objective expert evidence for or against alleged use under the objectivity requirements of Civil Procedure Rules part 35. These rules demanded complete objectivity backed by direct evidence delivered by a recognised and qualified expert in the relevant discipline.
- No formal expert evidence report had been previously provided to either Planning Inspector who had drawn their own non-expert conclusions, or to a sub-committee of planning. A Planning Inspector was an expert in planning matters and not aerial photographic interpretation. Both inspectors note no evidence from aerial photographs for linear access along the alleged route prior to the layout of the roads for the residential development, late 1990s, prior to 2000. Before this time, Point A was simply a point in the agricultural landscape with no visible evidence on aerial photographs for external pedestrian access to or from it.
- It was agreed that the change in visibility from 2000 was in accordance with the change of land use of the north part of the site from wholly agricultural to residential recent to that date, and the 'footpath', as opposed to agricultural use, actually dates from the time of said change from pastoral agricultural to residential land use.
- There were important and relevant points made in the Council and both previous Inspectors' reports which merited and required detailed joint consideration by the aerial photographic experts for both sides in the case. These points included but were not exclusive to: Agricultural use over the land and the specific traces of that use on aerial photographs; and the proven use of aerial photographs to provide evidence for residual and past land use, not simply use on 'one moment in time'.
- Aerial photographs provided a very robust and important element to assist the case.
- Ms. Cox respectfully disagreed with some of the findings of the 2023 Investigation report to the Director of Place.
- It was requested that a 'meeting of experts' be arranged.

No.

A single point of clarification was then raised with Ms. Cox by the Chair of the Sub-Committee in relation to Ms Cox's reference to 'evidenced use' and the extent by which aerial photographs would evidence sporadic, occasional use on grassed land. In response Ms. Cox advised that, with respect, they did not agree that it would be difficult to evidence sporadic, occasional use on a site such as the one under scrutiny and that past land use may well be evident over areas of access.

The Chair subsequently introduced Mrs. Medhurst to address the Sub-Committee. Mrs. Medhurst's verbal representations could be summarised as follows:

- The alleged defamatory content in Mrs. Medhurst's submissions had not been proven by the Council - but para 4.19 (b) remained in the report for the public at large to access. These facts, and the unwarranted redaction in the report and 'late reps', meant Mrs. Medhurst would not be addressing the report per se.
- The reasoning in the Westbury Close Report recommendation to decline to make an order was analogous to footpath 73 "..... the fact that Westbury Close is an unadopted road, and may not have `public access rights, does have a significance ....."
- When the order for footpath 73 was made, Clos Cwm Barri was an unadopted road with no proven public access rights to order point A. Access along Clos Cwm Barri to order point A, was limited to phase 1 and 3 residents, whose conveyances granted them 'rights' to pass along unadopted estate roads. They had no 'rights' to pass over the private drive serving 6 and 8 Clos Cwm Barri. Use of the private drive by uninvited residents was therefore 'by force' because it breached the terms of their conveyances.
- Of the 17 witnesses supporting the original footpath application, 12 lived on phases 1 or 3 and 2 were related to a phase 1 witness. The remaining 3 lived 'off-site' but their evidence was never tested. Had the same 'legislative context' been applied the original Clos Cwm Barri application, as in the current Westbury Close claim, an order would not have been made.
- As to order confirmation, Clos Cwm Barri was erroneously described an - adopted highway; section B – D passed over PCP where public recreational rights had subsisted since November 1994; and no public access was available at order point 'D' until November 1994. Order point 'A' was a cul-de-sac for the 'entire statutory period relied on and order point 'B' for most of it – so it was impossible for a way to subsist connecting these 2 termini.
- 8 Clos Cwm Barri was mis-sold by Wimpy as a 'private dwelling' – in full knowledge residents were petitioning to use the property as an entrance to PCP. The footpath never subsisted. It was added to the DMS to serve as an entrance to PCP and to cover up breaches of planning control; the s106; and Wimpey's contractual obligations. The 'law' and 'truth' must prevail, and an order made to delete footpath 73 from the DMS.
- If Ms. Goodman-Jones had drafted the investigation report, their recommendation would have been to delete Footpath 73.

With no points of clarification raised by the Sub-Committee in response to Mrs. Medhurst's representations, the Chair referred back to the responsible

No.

officers, namely Mr Hunt and Ms Sharples, for their comments on the representations made by both speakers as per the procedure for the meeting.

Ms. Sharples stated that Ms. Cox had given their expert opinion on the matter, and it was therefore the responsibility of the Sub-Committee to interpret the meaning of Ms. Cox's photographic evidence and determine whether there was any new evidence to consider as a result.

In relation to Mrs. Medhurst's verbal representations, Ms. Sharples stated that they did not agree that an alternative outcome would have been reached had an alternative professional written the investigation report. Irrelevant of what Ms. Goodman-Jones said in relation to the earlier agenda item and the requirement for a footpath to run between publicly adopted highways, the facts in the Footpath 73 case were known by both Inspectors in 2003 and 2011 and therefore they were not new and nothing about the non-adoption of Clos Cwm Barri was relevant in the current case.

Ms. Sharples also did not accept that adoption was the same as the existence of public rights of way as adoption related to maintenance of a public road at public expense and it was evident that there were public access roads on the Clos Cwm Barri estate before adoption in order for residents to access visible services provided by the council such as refuse collection.

It was not the case that people living on the estate had no rights over the driveway of Clos Cwm Barri. The extent to which they had those rights had already been explained to the Sub-Committee within the investigation report and Ms. Sharples' presentation. It was a matter of law.

Whether or not no. 8 Clos Cwm Barri had been previously mis-sold was not a matter for the Sub-Committee or relevant to its decision. It was an historical matter that would be dealt with by a completely different decision-making mechanism.

The Sub-Committee was reminded that only relevant new evidence could be considered and not evidence previously considered. It was not an opportunity to go over evidence the Inspector previously considered.

On the Chair's invitation, Mr. Hunt confirmed that they had no further comments to add.

The Chair subsequently opened up the matter for Sub-Committee debate and Councillor Bruce began by questioning how the close neighbours to the driveway in question felt in relation to the matter as they too would witness members of the public using the footpath. In response, the Chair advised that documentary evidence for the case set out that the ownership of no. 6 Clos Cwm Barri had changed and where previously the owner was in favour of the application to delete the footpath, the current owner of the property opposed the application to delete due to the therapeutic advantages of being able to access PCP near to their property.

No.

With the Sub-Committee's permission, Councillor Charles was invited to address the Sub-Committee and advised that she was the ward member for the properties in question and that no. 6 Clos Cwm Barri was purchased knowing that the footpath was in the vicinity and easily accessed. Councillor Charles also added that the route was used regularly by many different persons and that many were in support of the footpath and for keeping it on the DMS.

With the Chair's permission, Ms. Sharples then offered a reminder to the Sub-Committee that the desirability or otherwise of the route was not a matter material to the considerations of the Sub-Committee.

Councillor Williams then expressed their sympathy in relation to the application as they recognised that it was a difficult situation for some of the local residents and they themselves would not be happy were members of the public crossing their private property. However, it was recognised by the Sub-Committee that desirability could not be taken into account in relation to the Sub-Committee's decision and the Sub-Committee was required to consider any new evidence which had clearly not come to light. In addition, Councillor Williams highlighted that the local property owners were previously aware of the rights on the property, and it was accepted that the previous decision approving the original order stood.

As a result, Councillor Williams moved the officer's recommendation as per the investigation report and this was subsequently seconded by both Councillors Drake and Bruce. The vote was subsequently carried by no dissent.

Councillor Williams wished to thank all experts who had attended the Sub-Committee meeting to provide their expert opinion and acknowledged that the information provided to the Sub-Committee was vast but was welcomed in order for the Sub-Committee to consider and come to an informed decision.

In conclusion, the Chair confirmed that there were no further matters under Part I or Part II on the agenda.

**RESOLVED – T H A T** the Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 s53(3)(c)(iii), to delete the full extent of footpath no.73 Barry as recorded on the definitive map, be declined.

#### Reason for decision

As per the legal tests and evidence set out within the appended investigation report.