

Planning Sub-Committee (Public Rights Of Way)

Boverton Mill Farm to Summerhouse Point



VALE of GLAMORGAN



BRO MORGANNWG

Aim of the Report



A - Adopted highway near Boverton Mill Farm

B - Public Footpath 3, Llantwit Major

Legal Framework – Highways Act 1980 s31

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 – 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

Mechanically Propelled Vehicles

Definitive Map only allowed to record certain highways

- Footpaths
- Bridleways
- Restricted Byways
- Byways Open to All Traffic (BOAT)

Higher status or others are not recorded

- Roads mainly used by vehicles
- Cycleways

Natural Environment and Rural Communities Act 2006
extinguished unrecorded vehicular rights. Exceptions broadly

- Part of the 'ordinary roads' network
- Highways expressly created or dedicated for mechanically propelled vehicles.

Landowner Notification

To: The Vale of Glamorgan Council

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

From: *LLANTWIT MAJOR TOWN COUNCIL*

Of: *TOWN HALL, LLANTWIT MAJOR, CF61 1SB*


.....
hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in connection with my / our application to you dated *17th DECEMBER 2018* for the modification of the definitive map and statement for the former County of Glamorgan

from *ADOPTED HIGHWAY BOVERTON MILL FARM*

to *PUBLIC FOOTPATH AT SUMMERHOUSE POINT*

Dated *7/1/2019*

Signed


(on behalf of) *LLANTWIT MAJOR TOWN COUNCIL*

Background



Fourth Century BC

- Iron Age Promitory Fort

11th Century

- Berton (Boverton) Estate Established 1090

15th Century

- Estate fields let out in small enclosures
- Coney Warren established
- First modern settlement

18th Century

- Summerhouse constructed before 1730
- Coney Warren repurposed as servant's quarters
- Appeal to Court Leet in respect of road 1730 by Mr Seys

Early 19th Century

- Summerhouse sold passing various owners
- Sir John Guest (Lord Wimborne) retained until 20th Century. Habitable until 1930

Background



19th Century

- Pier (OS 1815 map) - Lime transport & smugglers
- Highways Surveyor organises repair of road
- Track shown on Tithe & OS mapping

1930s

- Hafod Girls Camp established 1932
- Boverton Place Farm acquired 1936 under Special Areas Act

1960

- Farm sold and land auctioned

1973

- Glamorgan Heritage Coast Project established
- Negotiated establishment of car park and maintained summerhouse grounds

1986

- Seawatch Centre opens attracting large visitor numbers

User Evidence

Prolonged use by foot, cycle and vehicle

Principally associated with recreation and access to facilities at the end of the track.

Nature of use has challenged since the occupation and conversion of barns at Boverton Mill in 2007

No indication of challenge prior to this period is clearly made out.

32 Evidence Forms Submitted

- Use from 1936 onwards
- 5 completed in part only
- 2 lack dates
- 5 non specific (since childhood)

Modes of use

- Foot 25 users
- Vehicle 17 users
- Cycle 8 users

Purpose

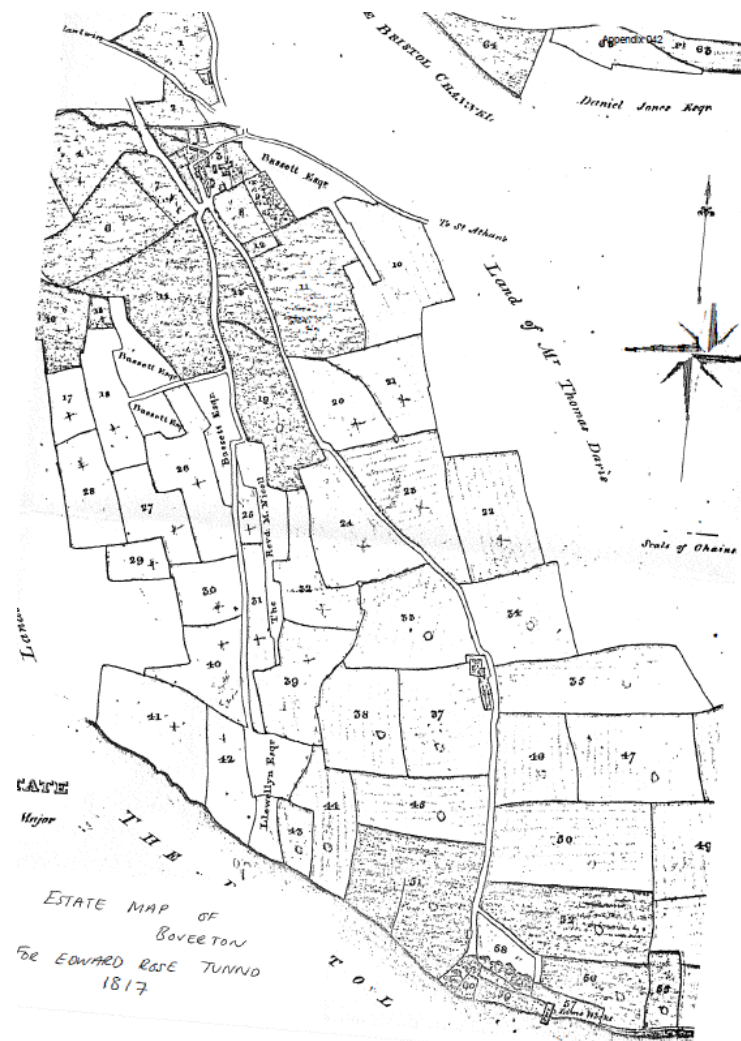
- Recreational
- Connecting facilities

Vehicular traffic

- Buses and taxis commissioned to the camp

Two additional statements received supportive of motor vehicle use

Estate Map for Edward Rose Tunnd (1817)



Numbered fields with routes that appear to be tracks left un-numbered.

Un-numbered tracks follow some highways now recorded as public (not the case for all routes shown).

No distinction appears between A-B and its northerly extension, now adopted

Boverton Mill Farm are shown segregated from the track.

Boverton Estate Statement of Property 1838-1817-1804 & Boverton Castle Estate and Schedule



58	<i>Ditches, New Piece</i>	4 - 1 - 13	
59	} <i>Summer-House and Field</i>		5 - 1 - 71
60			
61	<i>Roads and Waste, &c.</i> <i>COAL HUGH FIELDS</i>		9 - 0 - 12
62	<i>Water Meadow</i>	7 - 3 - 0	
63	<i>Coal-Hugh</i>	18 - 7 - 18	
64	<i>Ditches, Meadow</i>	7 - 0 - 22	

Route A-B is shown as unnumbered track.

Schedule of property describes land according to field number.

Schedule lists number 61 as Roads and Waste.

No parcel identified as 61 appears on map - numerous roads (including roads now recorded as public) are shaded ocre.

Posited that entry 61 relates to those shaded tracks and that the estate considered these roads at this time.

Llantwit Major Highways Accounts & Court Leet Books

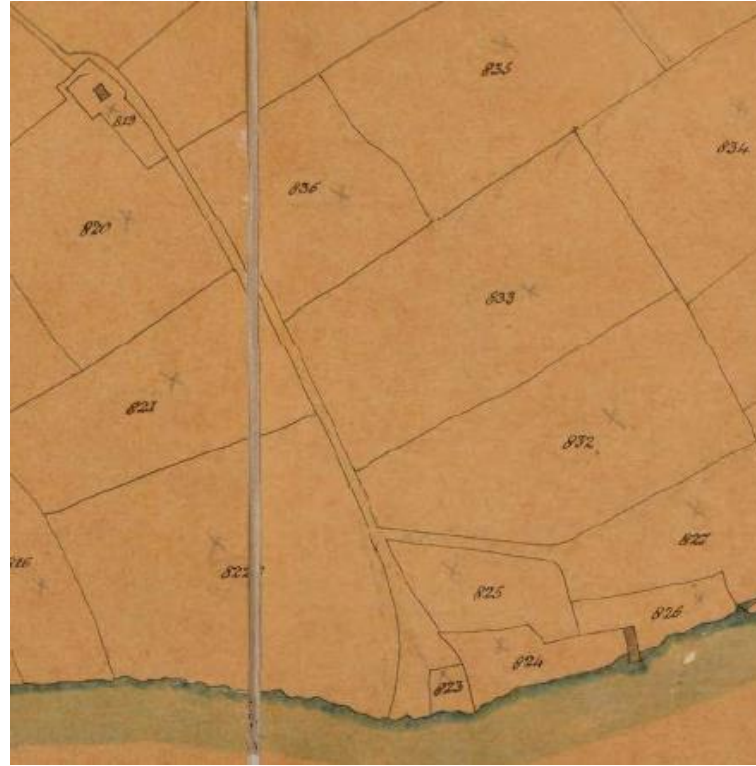
Instances of public payments for maintenance Boverton Farm Road and Mill Road.

- Payments for hauling stones from Summerhouse prior to 1845;
- Breaking and filling stones Boverton Farm Road in 1845;
- Payments in respect of Boverton Farm Road in 1856;
- Payment for maintenance on 11 perches of road near Summerhouse;
- References to having taken one load of stones from the beach at Boverton and repair of the road to the beach.

References to the Summerhouse and extraction of materials from the beach lend weight to the notion that repairs were being carried out on the section A-B for public benefit throughout the 19th Century

for Highways Accounts
1/1 - Meyrick 4 Days
Wm David 2^d 2 feet Raising & Breaking Stones }
& 4 Days filling on Boverton farm road }
George Badwell 2 days Breaking & 4 days }
filling Stones on B. farm road }
Wm Thomas 2 Days Breaking & 2 days }
filling Stones on Boverton farm road }

Tithe Map and Apportionment (1842)

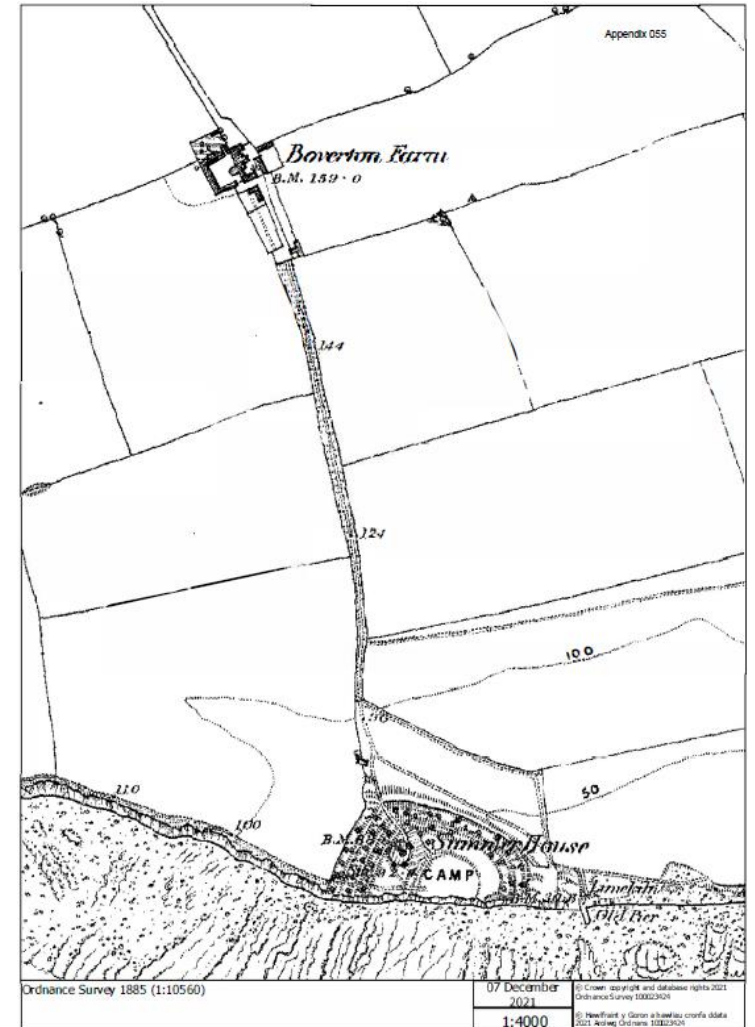


826	Sound Close	arable	4	1	8	-	9
827	Sound Close	arable	9	0	30	1	16
825	Shepherds	arable	4	1	24	-	17
824	Field	pasture	1	3	6	-	6

- The track is not clearly assigned a field number though runs into field 827
- Associated apportionment describes field 827 as 9 acres 30 perches in quantity, which is the approximate measurement of the field excluding the roads that run into it.
- Supports track not being considered part of field 827.
- No other reference to the track can be found within the apportionment.

OS 1868-1890
(2500)

OS 1885
(10560)



OS 1897
(63360)

OS 1900
(10560)



Bartholomew
1904 (126720)

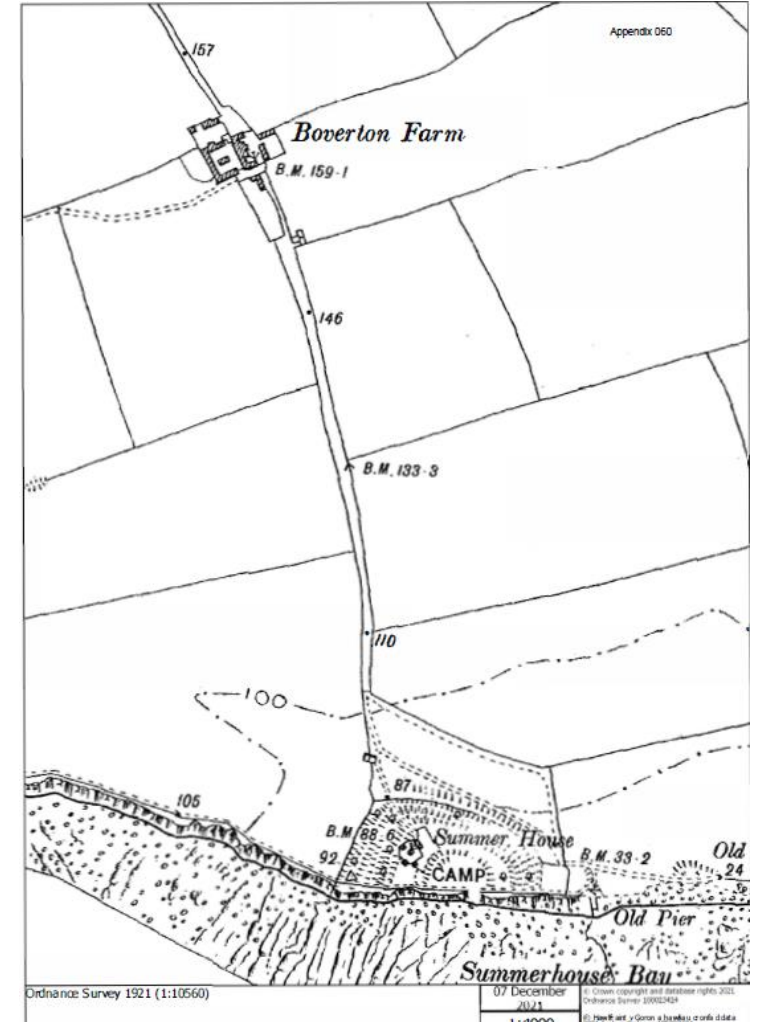


Associated mainly with recreation, these maps were popular and influential. The series sold well, particularly with cyclists and tourists.

Route depicted a continuous feature leading from Boverton to the Summerhouse.

Ordnance
Survey Maps
1919 (1:2500)

1921 (1:10560)



Bartholomew
1941 (126720)

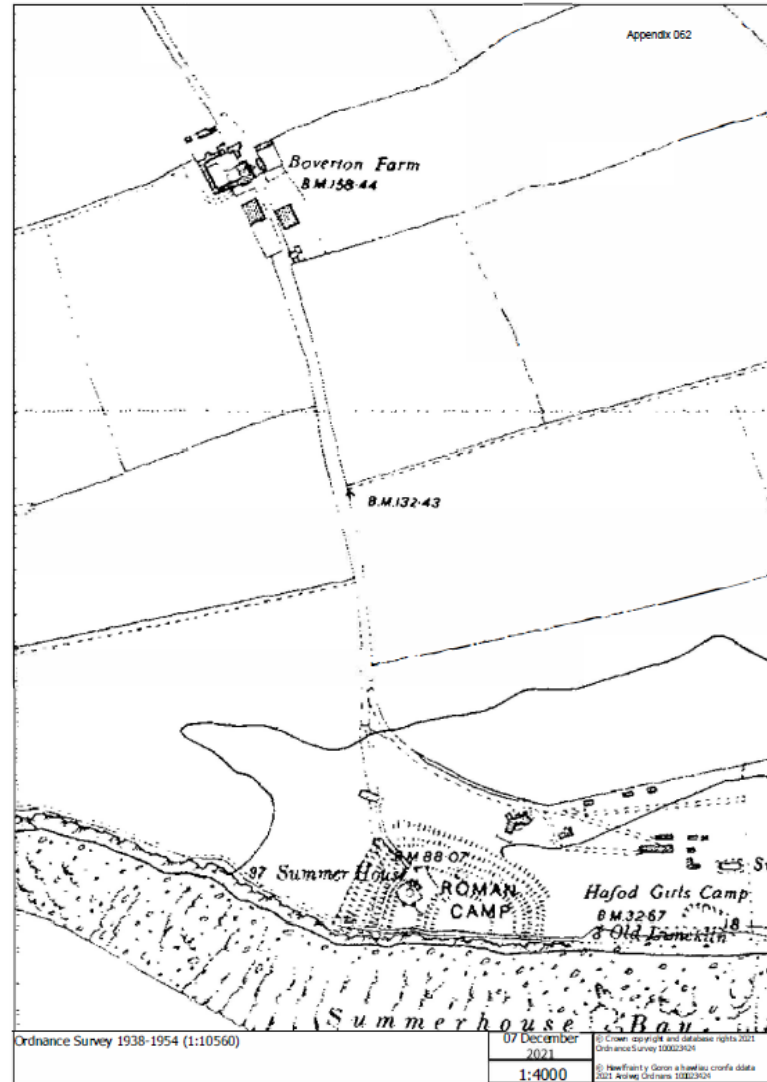


1941 edition of Bartholomew's map continues to show the track in a similar manner to the 1904 edition (above).

OS Maps 1938-1954 (1:10560)

1948 Outline (1:25000)

1948 Colour (1:25000)

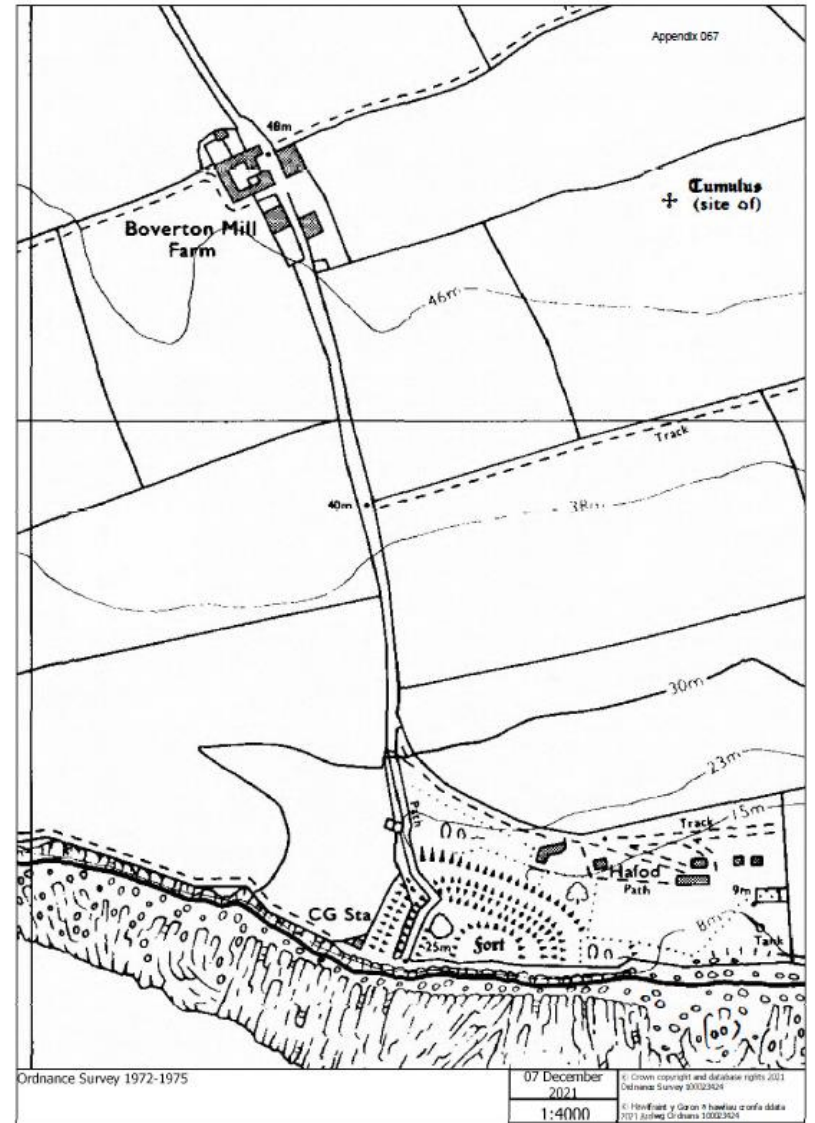
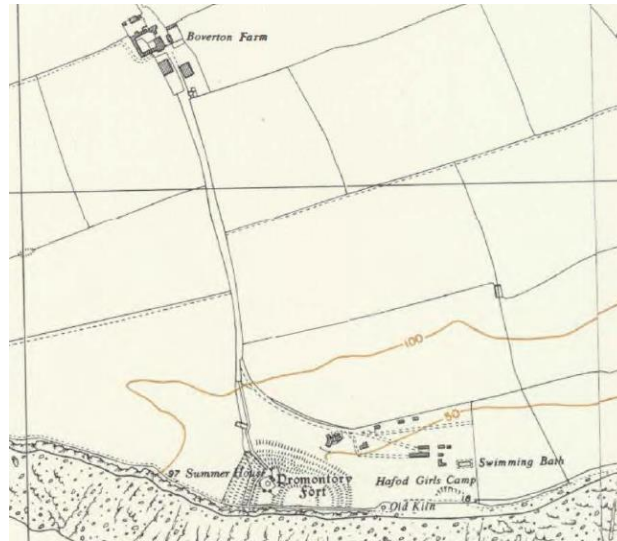


OS 1948
1:25000 Colour
edition
describes A-B
as an 'Other
Road with a
Good, metalled
surface'.

Ordnance
Survey Maps
1961 (1:63360)

1964 (1:10560)

1972-1975



Ordnance Survey Maps 1997



- 6.19. Ordnance survey mapping from the late 1990s continues to show the track as a feature extending south past Boverton Mill Farm to a car park. The track is shown uncoloured with shading consistent with county roads ending at Boverton Mill Farm.

Hafod Girls Camp

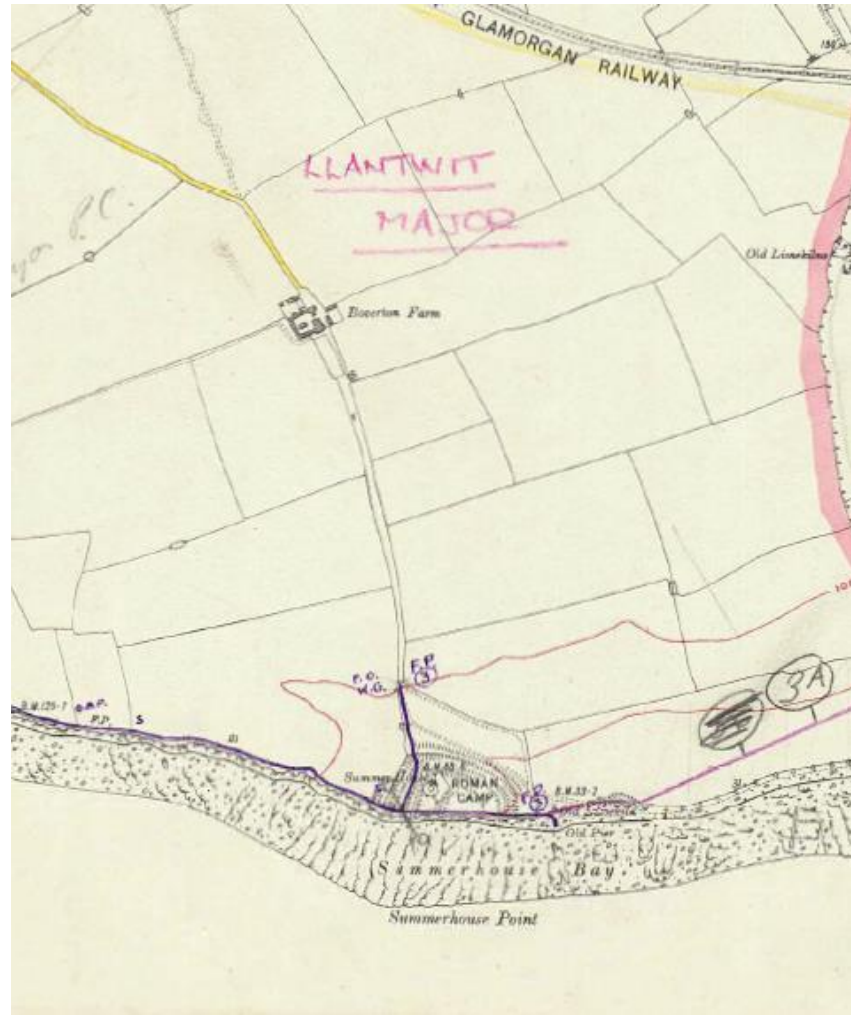


Hafod Girls Camp opened in 1932

Photographs depict a variety of outdoor activities being undertaken.

Route A-B served as access to the camp at this time.

Parish Survey Map



- Parish survey for Llantwit Major was carried out in 1951 as part of efforts to establish first Definitive Map
- Parish survey map did not identify route A-B as being subject to a public right of way.
- Shading has been applied to other public roads of a higher status.
- Whilst it might be speculated that the shading represented the extent of roads considered at the time to be publicly maintainable the precise intention is unclear.

Particulars,
Plans and
Conditions of
Sale ...
Boverton.
Glamorgan

10. Lot 1 is sold subject to a right of way in favour of the owners and occupiers of O.S. No. 969 with or without horses carts and motor vehicles along the roadway leading through the said Lot commencing at the point where the public highway terminates at the Boverton Farm Buildings to the entrance from the said roadway into O.S. No. 967 and along a strip of land 10 feet wide commencing from the said roadway and leading to O.S. No. 969 along the southern boundary of O.S. Nos. 967 and 968 between the points

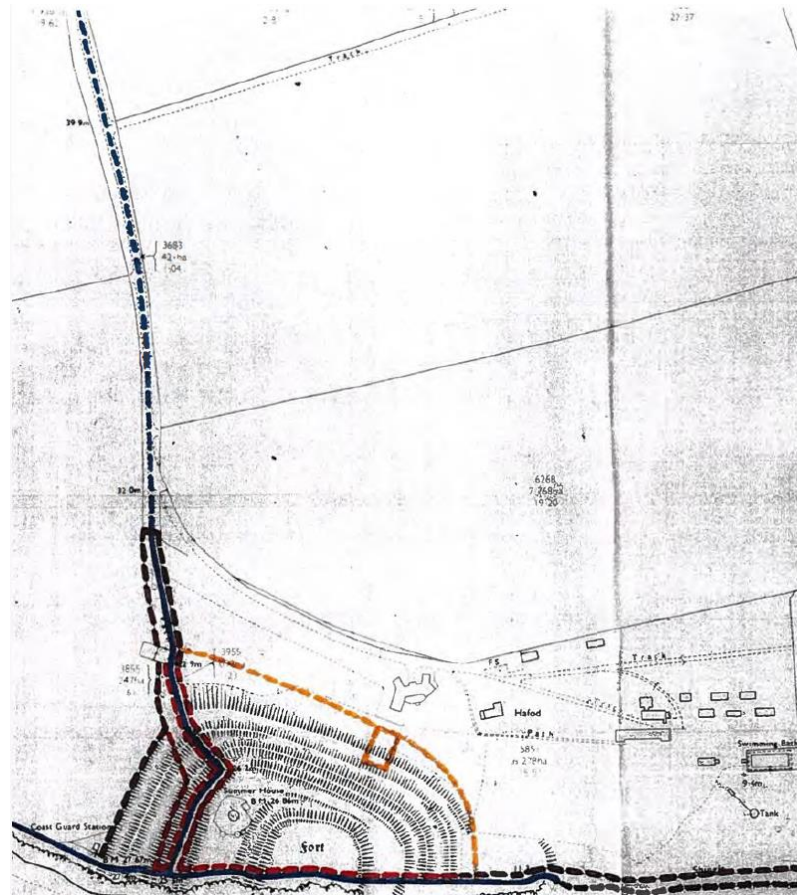
15

Refer to a County Council road maintained regularly by the Council running from Boverton to Boverton Mill Farm (thus stopping short of A-B).

Lot 1 sold subject to a private right in favour of the owners of OS 969, through Boverton Farm 'commencing at the point that the public highway terminates'.

Clear reference to the termination of the public highway at Boverton Farm implies access beyond that termination point (i.e. A-B) was not recognised in the same terms.

License 1976 & 1982



16th December 1976 – license agreed

Extended the private right of the trustees of Christian Camp (formerly The Hafod) to the public for all forms of user over A-B

License ran for a period of five years

1st April 1982 - renewed for a further five years from.

Some evidence that public access existed during the 1976-1987 period on the basis of a license, rather than as of right, therefore exists.

Car Park Planning Application 1979

There is considerable local demand for access to "Boverton Beach" and in the past there have been many occurrences of trespass, vandalism and seasonal barbecues in the vicinity of the beach. On site, there is one of the best examples of a pre-Roman Promontory Fort and a Summer House concerned with local folklore. Ecologically the area is also valued for its wildlife. The present access agreement permits the public to enjoy their local facilities, and for visitors to see a unique historic feature or to enjoy a peaceful area of open space along the Heritage Coast Footpath. 8

The maintenance and interpretation of this area by the Heritage Coast Project will also provide an interesting site for young people visiting the Hafod Camp; also the Heritage Coast will soon have a variety of other features, nature trails, circular walks, coastal footpath, picnic sites and interpretation for these young people to enjoy.

Although the rough road deters many tourists and acts as a safeguard to prevent Boverton "Beach" becoming too popular local families or fishermen provide a continuous use throughout the year. Cars have parked previously within the confines of the Hafod Camp or on the wide verge of the approach road. On occasions access to the cliff for emergency services and farm gateways have been blocked by cars.

The following proposals are made within the aims for conserving the Heritage Coast which identify this area as a "Remote" zone, where priority is to be given to agriculture and nature conservation. It is intended, therefore, that access and interpretation of the site should be at an informal level.

- (1) A small car park just within the confines of the present gate would serve to:-
- (a) prevent cars parking in farm gateways or blocking access for emergency vehicles.
 - (b) provide an alternative park for cars of local residents who have previously parked within the Hafod gate or who have driven through the camp and parked near the beach.
 - (c) satisfy a low key demand for the public who wish to view a unique historical feature.
 - (d) provide a good example of positive management which is complimentary with the exclusion of the public from the Hafod camp.

Proposed site, covering for maximum of about 20 cars, rural surfacing, landscaping with trees, new rustic fencing, new Hafod gate, notice "Hafod Camp Advice", kissing gate, rural litter bin.

Associated improvements Reinstatate wall (A) on plan with local stone, incorporate slate sign "Summerhouse Point Promontory Fort", underneath Q sign. Temporary vehicle restrainers to prevent parking in emergency access, farm gates and verges (rustic timber, 7' high, painted white). "

Refers to a rough track acting as a deterrent to tourists

Acknowledges considerable local demand for access to Boverton Beach.

Continuous use by locals and fisherman is referred to including problems caused by parked motor vehicles on verges and within the confines of Hafod.

Significant use at this time, including by motor vehicle, though supported by a time limited agreement.

Glamorgan Heritage Coast Plan Statement - First Review

(v) an access agreement has been negotiated for Summerhouse Point, a pre-Roman promontory fort which is also a haven for flora and fauna. A small car park has been provided, with an information board. The former Summerhouse has been made safe and renovated and part of the camp has been cleared of vegetation to reveal its ground form;

Work to establish access agreements included in plan along with goals to improve access further.

Provides evidence that the agreements were being actively communicated to the public at this time.

Seawatch Centre – Newspapers, Photographs, Interpretation

Visit the Glamorgan Heritage Coast Seawatch Centre



The Seawatch Centre at Summerhouse Point. A-B is primary means of access from Boverton to the facility.

Significant visitor numbers are reported (3617 school children at the centre in 1990/91 who attended by bus).

Centre continued to be promoted as an education centre during the decades following expiration of the license agreements

Llantwit Major Aspects of It's History - Vol 2

There is no documentary evidence in the Local History Archive to confirm the existence of cockpits but the *Collins Field Guide to Archaeology in Britain* [Eric S. Wood 1972] states that there were two on the Boverton Estate, one of which was walled, further suggesting the enhanced luxury and lavish lifestyle of the family. Using his power and influence, Mr. Seys appealed to the manorial court of Llantwit or Court Leet to declare the road leading to the Summerhouse to be out of repair and so shift the burden of maintenance onto the parish. This entry on the Court Rolls for 1730, indicates that the Summerhouse was built before this time. It is possible that the impetus towards greater elegance co-incided with the marriage of Ann Seys to the Chancellor, Lord King, in the reign of Queen Anne. The farm track which had been adequate for sulls [ploughs] and wains was evidently no longer seemly for the carriages of the 'Quality' heading for a picnic at the Summerhouse with its panoramic views across the Channel.

The roadway to the beach was now in regular use by Orange Punter, the Highways Surveyor of Llantwit Major. An Act of 1835 required every parish to appoint a paid surveyor to undertake road repairs, replacing the chaotic system of forced labour by amateurs. Stones were carted from the beach, broken up and tamped into place at a cost of £8 per mile. Orange Punter recorded the yardage of road repaired and was paid £10 per year, a slightly higher wage than for an agricultural labourer. He is buried next to the Church porch in Llantwit Major although the Highways Survey book still survives in the Glamorgan Record Office.

Report of an appeal to the Manorial Court in 1730 to declare the road leading to the Summerhouse as out of repair.

Primary evidence of this has not been uncovered

Other claims that the road was maintained at public expense during the 19th Century have, however, been substantiated.

Glamorgan Heritage Coast The story of Summerhouse Point

Summerhouse Point is located on the Glamorgan Heritage Coast, an area of natural beauty which has been designated by the Countryside Commission to receive special protection. Under an agreement with the landowners, this site has been opened by the Heritage Coast Project for the enjoyment of the public.

The owners of the site are the South Wales Christian Outreach Trust who use the adjoining Summerhouse Bay Conference Centre. The car park and access to the fort are permitted as a privilege granted by the Trust.



Leaflets make apparent to the public that the area is owned by a Trust and that access is provided on a permissive basis by them.

Further instance of the effect of the above licenses being communicated to the public

Coastguards
report 2014-2018

Llantwit Major
Guide, St Brides
Community
Council, Wales
Coast Path
Websites

Reports provided by the coast guard
of use of the track in more recent
years cover the period 2014-2018

Websites promoting recreational use
of the destination refer to facilities at
the southerly end of A-B, encouraging
visitors.

Challenge to User 2007

Do you know if there's been a path diversion at Mill Farm, Boverton. I had a phone call from a gentleman who has lived in Boverton all his life. When walking through the farm following his map, was challenged by the owner.

Submitted by representative of the local ramblers association

Member challenged by a person that they took to be the owner in 2007.

This may represent an interruption to use.

Case Assessment Pre 1930s

Iron Age Fort

Coney Warren

Dedication of track in 1730

Acts of maintenance throughout 19th Century

Mapping depicting route consistently

References to use by Highway Surveyor during 19th Century

Inference that route was accepted as public in 1730 and publicly maintained through the following century.

Case Assessment 1930s-2007

Strong user evidence from 1936

Hafod camp visits

Acquisition by crown in 1936 to support the operation of the Land Settlement Association

Sale by Crown in 1960

Glamorgan Heritage Coast project 1974

License made apparent to the public.

20 year period between sale of the land from the crown and access on the basis of license not completed.

License expired in 1987 - next 20 year period that could be considered ends in 2007.

2007 users were being challenged on the route.

Barriers to the acquisition of public rights from 1936 onwards. Immaterial as rights likely acquired earlier

Case Assessment Route Status

Application is for a footpath. Appropriate to consider correct status

Motivation for appealing to the Manorial Court in 1730 may have been to improve the route to a condition suitable for horse and carriage.

Wide enclosed track in mapping.

Haulage of stone from the beach along the track

Improvement of surface

Mapping evidence of connection to a pier

User evidence not limited to foot.

- Pedal cycle
- Mechanically propelled vehicle

Mechanically propelled vehicle in particular has given rise to a question as to whether the track should correctly be considered a county road and not recorded on the definitive map.

Case Assessment Route Status

Natural Environment and Rural Communities Act 2006 (s67) extinguished all unrecorded public rights for mechanically propelled vehicles in the country.

In order for vehicular rights not to have been extinguished a route had to meet one of the following criteria:

- (a) *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles*
- (b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense)*
- (c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles*
- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) *it was created by virtue of use by such vehicles during a period ending before 1st December 1930*

Case Assessment Route Status

B-E are not triggered. Not on list of streets (b); no enactments (c); no powers exercised (d) or evidence of public vehicles prior to Hafod in 1932 (e)

The remaining criteria in (a) requires that the *main* lawful use by the public between 16 November 2001 and 16 November 2006 be by mechanically propelled vehicles.

Mere use of the track by mechanically propelled vehicles is insufficient to qualify - main use need be demonstrated in order for those rights not to have been extinguished in 2006.

This is noted particularly in the context of the definition of a Byway Open to All Traffic (BOAT) which is a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public *mainly* for the purpose for which footpaths and bridleways are so used.

NERC 2006 would have the effect of extinguishing vehicular rights associated with such an unrecorded BOAT if it were not able to be otherwise included in exceptions (b)-(e).

As such it is appropriate to determine the main public use of the route during the relevant five years. This requires an examination of the comparative weight of user type.

Case Assessment Route Status

Thirty-two user evidence forms covering 33 users were initially submitted in support of the application.

171 further statements attesting to use of the track received following consultation.

- 162 provide a standardised indication that they used the track to *walk and drive to the car park at Summerhouse Point*.
- No further information on frequency of use or indication of frequency by user type.
- Where users have deviated from the template in the remaining 9 cases, 4 do not extend to use in the 5 years prior to NERC, 2 indicate more frequent use on foot than by car and 3 do not provide sufficient detail on frequency by user type to determine main use.

User Evidence Forms were offered to those submitting statements where return addresses were available in order to gather sufficient information to make a more reliable assessment of main use.

25 user evidence forms were returned in addition to the 33 users who initially responded.

- One user submitted an evidence form both initially and prior to consultation. The total number of distinct users described in evidence forms is therefore 57

Case Assessment Route Status

Forty five of these users report use of the track either throughout the five years preceding commencement of NERC 2006, or during part of that period. Of the 45 users that report use during this time:

- 39 users reported use on foot,
- 10 users reported use by pedal cycle; and
- 36 users reported use by car.

Six forms were completed in part only, discounting these:

- 35 people reported use on foot,
- 10 users reported use by pedal cycle; and
- 31 by car.

The below table summarises the results for the user evidence during the 5 year period prior to the commencement of NERC 2006,

	Daily	Weekly	Monthly	Every Few Months	Once a year	Unspecified	Total
Foot	4	10	7	11	3	4	39
Pedal Cycle	0	4	1	2	1	2	10
Car	2	6	5	19	2	2	36

Case Assessment Route Status

Numerous users attest to multiple forms of use. For those that cover the five years prior to commencement of NERC 2006, 44 provide an indication of their frequency of use by user type. Of these:

- 21 users indicated non-vehicular use more frequently than by vehicle (or not at all by vehicle);
- 18 users indicated use by both vehicle and non-vehicle at a similar frequency;
- 5 users indicated use of a vehicle more frequently than by non vehicle (or not at all by non vehicle).

Notably of the user evidence forms received post consultation and which were invited from the 171 statements received, 20 described use during the 5 year period leading up to the commencement of NERC. Of these

- 7 users indicated non-vehicular use more frequently than by vehicle (or not at all by vehicle);
- 10 users indicated use by both vehicle and non-vehicle at a similar frequency;
- 3 users indicated use of a vehicle more frequently than by non vehicle (or not at all by non vehicle).

Substantial vehicle use during the 2001-2006 period.

Evidence supports use mainly as a footpath or bridleway.

Case Assessment Route Status

Totality and frequency of use by user type does not support main use of the track by public motor vehicles

If unrecorded rights for motor vehicles had been established they failed to meet any exception in NERC 2006 s67 and as a result were extinguished in 2006.

Conclusion & Recommendation

Route likely became maintainable at public expense in 1730 and was subsequently maintained at public expense through the 19th Century.

Technical complications to dedication of rights post 1936 though are immaterial as strong evidence in favour of public rights already having been established prior to this period can be demonstrated.

Public motor vehicle rights may or may not have been established, though as no exception within NERC 2006 s67 is applicable on the current evidence the effect of NERC was to extinguish them if they had been.

Recommend making an order to record the route as a Restricted Byway