

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

6th December 2018

REPORT BY: SENIOR MANAGER, COUNTRYSIDE, CONTRACTED AND CULTURAL SERVICES

**SUBJECT: Wildlife and Countryside Act, section 53 and Schedule 14
Application for a Definitive Map Modification Order**

REPORT FOR: DECISION

DEFINITIVE MAP MODIFICATION ORDER (DMMO) APPLICATION

**APPLICATION REF LLANBRYNMAIR_DMMO_001:
AFFECTING BRIDLEWAY 6 (COMMUNITY OF LLANBRYNMAIR) ON LAND AT
BARLINGS BARN, CWM-Y-FFYNNON FARM AND CWM-PEN-LLYDAN, PANDY**

EFFECT OF APPLICATION, AS MADE:

Downgrade of status of bridleway 6, Llanbrynmair from bridleway to footpath

CONTENTS:

The application

Relevant legal background

Documentary evidence

Physical evidence – site survey

User evidence

Landowner evidence

Assessment of the evidence

Consultations

Conclusions

Officer recommendation

THE APPLICATION

1. Application Llanbrynmair_DMMO_001 was made by Mr T Margolis, on 30th October 2013 (appendices 1a and 1b.) Mr and Mrs Margolis are the owners of land at Barling's Barn, Pandy Rhiwsaeson; their land is crossed by part of the route recorded on the Definitive Map and Statement as bridleway 6, community of Llanbrynmair.
2. The effect of this application, as made, would be to downgrade the status of the route, from bridleway to footpath status. The application route is shown on the plan at appendix 1c as route A-M. It should be noted that the property of Barling's Barn was formerly named Caeaugleision; that is the name that appears on many of the documentary evidence sources described below.
3. The application route also crosses land at Cwm-y-Ffynnon Farm and Cwm Pen Llydan. These properties are owned by Mr A Ashton and Mr RI Owen and by Mr and Mrs D Catterall respectively.
4. The evidence accompanying the original application was as follows:
 - A typed schedule describing the application route;
 - A typed supporting statement, titled 'Reasons for application for Modification Order Wildlife and Countryside Act 1981' (appendix 2a);
 - A hand drawn plan, titled 'Sketch of Caeaugleision farmyard as at 1960 drawn by Mr A Ashton, resident at that time' (appendix 2b);
 - An extract from 1932 Rights of Way Act survey map, in colour; this shows the section of the application route from Caeaugleision Farm to Ffridd Caeaugleision (just north of Cwm-y-Ffynnon farm) (appendix 2c);
 - An extract from 1932 Rights of Way Act survey map, in black and white; this shows the application route around Caeaugleision and Cwm-y-Ffynnon (appendix 2d);
 - Extract from 1932 RWA survey written description titled 'List of public footpaths' and showing the path numbered as '6' (appendix 2e);
 - Completed user witness forms were supplied from the following people:
 - a. Mr Henry Hughes, Bodhyfryd, Pandy, Llanbrynmair;
 - b. Mr RG Ashton, Pandy Rhos, Llanbrynmair;
 - c. Mrs Helen Hughes, Bodhyfryd, Pandy, Llanbrynmair;
 - d. Mr R.I Owen, Cwm-y-Ffynnon, Llanbrynmair;
 - e. Mrs Ashton, Cwm-y-Ffynnon, Llanbrynmair;
 - f. Mr Ashton, Cwm-y-Ffynnon, Llanbrynmair.
5. The documents supplied by the applicant (Mr Margolis) at later dates were:
 - Two aerial photographs, provided by the Woodland Trust and dated 1948 and 1969 respectively (appendices 2f and 2g);
 - Three photographs of Caeaugleision farmyard, which were taken in 1982 (appendices 2h, 2i and 2j.)

6. Notice of application was served upon:
 - Mr RI Owen and Mr and Mrs RA Ashton, jointly as owners of Cwm-y-Ffynnon farm;
 - Mr and Mrs D Catterall, owners of Cwm Pen Llydan.

7. Description of the application route:

The route affected by this application is currently recorded on the Definitive Map and Statement as bridleway 6 Llanbrynmair. It is noted on the Definitive statement as starting at “Cwm Pen Llydan” and finishing at “End of unclassified Council road at Caeaugleision.”

Bridleway 6 is recorded as linking with bridleway 3 and footpath 4 at Cwm Pen Llydan, at OS Grid reference SH 9289,0635. It follows a generally west-south-westerly direction for approximately 1340 metres, leaving the yard at Cwm Pen Llydan, following the access track to the property and then leaving the track to ascend the hillside of Llechwedd Du. It then follows a well-defined track feature along the ridge between Fridd Caeugleision and the fields to the south of Esgair Gelynen. At OS Grid Reference SH 9173,0573 the route turns to descend the slope running roughly parallel with the stream in a generally south-westerly direction for approximately 286 metres, crossing an access track. At OS Grid Reference SH 9157,0550 it turns to follow a generally west-north-westerly direction for approximately 44 metres down a slope and across the stream. It then turns to run parallel with the stream in a generally west-south-westerly direction for approximately 460 metres, passing through Cwm-y-Ffynnon Farm. It crosses a field between the farmyard at Cwm-y-Ffynnon and Caeaugleision (now Barling’s Barn) following a generally west-south-westerly direction for approximately 124 metres. It then enters the grounds of Caeaugleision and continues in a generally south-south-westerly direction for approximately 129 metres passing the buildings at Caeaugleision. It ends where it meets footpath 7 at the northern end of the access track to Caeaugleision at OS Grid Reference SH 9097,0514.

The Definitive Statement records the path as having an average width of 5 feet.

8. Although the bridleway is noted on the Statement as ending at the “unclassified Council road at Caeaugleision”, the List of Streets for Powys does not currently show any highway maintainable at public expense linking with this bridleway. It is recorded as a cul-de-sac for cyclists and equestrians, as it terminates on a footpath at its south-western end. The nearest county road to the south-western end of the bridleway is the U2313; this is shown on the List of Streets as ending at the fork between the ends of the access tracks to Caeaugleision and Cwm-y-Ffynnon.

RELEVANT LEGAL BACKGROUND

9. Evidence produced in connection with a Definitive Map Modification Order (DMMO), both presented in an application and discovered by the surveying authority, must be assessed according to the provisions of the relevant statutes, these being Section 53 of the Wildlife and Countryside Act 1981 (WCA) and Section 31 of the Highways Act 1980 (HA.) They must also be assessed in the light of legal principles established by case law (Court judgements).

10. Statute Law:

Section 53 WCA imposes upon the County Council, as the surveying authority, the legal duty to keep the definitive map and statement under continuous review (s(2)(a) and s(2)(b)). If an event specified in s(3) has, on the balance of probabilities occurred, the authority is obliged to modify the definitive map and statement by means of a DMMO.

11. The event relevant to this application is:

s53(3)(c)(ii) – “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.”

12. Case Law

Case law is the accumulated decisions of judges over time, the interpretation and applicability of which can sometimes be difficult to assess, and thus evolves with each subsequent decision.

13. Decisions of “courts of record” are binding on all inferior courts and tribunals. In terms of domestic law, the principal courts of record are the High Court, the Court of Appeal and the House of Lords. A higher court of record binds the decisions of a lower court of record. Decisions have immediate effect. They apply during any period in which an appeal could be lodged or, having been lodged, is pending.

14. Tribunals such as public inquiries are not normally bound by decisions of the County or Magistrates’ Courts (‘stopping up’ decisions are obvious exceptions). Whilst not binding though, decisions by courts other than those of record may be ‘persuasive’. The weight to be attached to them will depend on the circumstances.

15. The need for discovery of evidence was considered in the case of *Burrows v SoSEFRA* (2004.) The judge noted that an inquiry cannot simply re-examine evidence considered when the Definitive Map and Statement was first drawn up; there must be some new evidence, which, when considered together with all the other evidence available, justifies the modification.

16. The nature of “discovered” evidence in s53(3)(c)(i) WCA is “the finding out of some information which was not known to the surveying authority when the earlier map (i.e. the first definitive map) was prepared” (*Mayhew v. SoSE* 1993). The evidence discovered can be either documentary, or evidence of use by the public, or both. This discovered evidence must be considered together with any other relevant evidence which is not newly “discovered”.

17. The case of *Trevelyan v SoSE* (2001) considered the evidence needed to modify the Definitive Map and Statement, to delete or downgrade a public right of way. Lord Phillips MR stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not

have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

18. Government circulars and advice

From time to time, government publishes advice circulars that summarise the effects of important judicial decisions in courts of record, or give guidance about the practical interpretation of statutes. The circulars are intended to be authoritative guidance to surveying and highway authorities, but may be rendered less relevant by new case law or statute, which in turn will lead to a new circular being published to acknowledge a change in emphasis in the law.

19. The Welsh Government’s ‘Guidance for Local Authorities on Public Rights of Way’ (August 2016) includes guidance on the recording of public rights of way. It outlines the procedures for assessing applications for Definitive Map Modification Orders.

20. In relation to downgrading or deletion of public paths, paragraph 5.51 states that:

“The evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement – and this would equally apply to the downgrading of a way with “greater” rights to a way with “lesser” rights – will need to fulfil certain stringent requirements. These are that:

- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the Definitive Map was surveyed and made or considered in a previous application.
- The evidence must be of sufficient substance to displace the presumption that the Definitive Map is correct.
- The evidence must be cogent.
- There must be positive evidence of any erroneous recording.”

21. In addition, paragraph 5.53 states that:

“Applications may be made to an authority under s. 53(5) of the WCA 1981 to make an Order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way, or that a right of way is of a lower status than that shown, to prove that the Map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence, clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to the Act, to investigate the matters stated in the application; however, it is not for

the authority to demonstrate that the Map reflects the true rights, but for the applicant to show that the Definitive Map and Statement should be revised to delete or downgrade the way.”

22. Making a modification order

If, having applied the above legal principles, it is considered on the balance of probabilities that the event in s53(3)(c)(ii) of the Wildlife and Countryside Act 1981 has occurred, the definitive map and statement must be modified by making a definitive map modification order.

DOCUMENTARY EVIDENCE

23. The following documentary evidence was submitted with the Mr Margolis’ application, reference Llanbrynmair_DMMO_001. (NB: The user witness forms that Mr Margolis supplied are described under the section titled ‘User evidence’)

24. ‘Reasons for application for Modification Order Wildlife and Countryside Act 1981.’ (appendix 2a): This is a typed document and describes the applicant’s reasons for making this application.

Amongst other points, the applicant has commented that:

- The supporting statements accompanying his application indicate that “..even prior to January 1960, the route was not used by the public within living memory.”
 - He believes the route to have been used, but only by persons closely associated with the occupiers or working on the land in question. He comments that the bridleway is of no obvious use to the public as a through-route, leading only to private property.
 - In 1960, there were two stone walls directly in the line of the bridleway, one at the Cwm Pen (Llydan) end of the bridleway, the other adjacent to Caeaugleision barn farmyard. The wall at the Caeaugleision end of the path is described as having been a raised level, 4 feet high stone wall, which was in existence until August 1983, when it was demolished. He comments that the presence of the two walls means that it was impossible for the entire route to be a bridleway or cart track, or passable on horseback.
 - The recording of the route through Caeaugleision farmyard changed three times during the process of recording it on the Definitive Map, being different on each of the draft, provisional and first Definitive Maps. He states that none of the three routes could possibly have been correct, due to the stone wall and physical constraints of the topography.
- 25.** The date of January 1960 is significant in that it was the date of survey given on the parish survey card, completed under the provisions of the National Parks and Access to the Countryside Act 1949. Evidence of use or non-use before this date may be relevant to the consideration as to whether it was a highway or not, at that date. If the route was a highway at that date, then lack of use after that would not affect the status of the route. The legal maxim ‘Once a highway, always a highway’ would apply; non-use does not, in itself, remove highway rights.

26. This path is recorded as a through-route for walkers, linking to public paths at both ends. As noted above, the south-western end of the route is currently recorded as a cul-de-sac for horse riders and equestrians, ending on a footpath. There are a number of possible reasons for this.

- The bridleway may end at a location that is, or was once a 'place of public resort' for horse riders. The Courts recognised that culs-de-sac in rural areas can be highways in certain circumstances; one case in which this was considered is *Eyre v New Forest Highway Board 1892*.
- Alternatively, it might reflect an issue with the recording of the status of the route now shown as bridleway 6, or it could reflect an issue with the recording of the route shown as footpath 7.
- It is possible that there may be an unrecorded highway on a different alignment, linking to the south-western end of bridleway 6, carrying at least bridleway rights.
- It is possible that both the footpath and bridleway are recorded in error.

The effect of application Llanbrynmair_DMMO_001 would be to downgrade the status of bridleway 6 to that of footpath, as the applicant alleges that it has been recorded as a bridleway in error. As such, this report is focussed on the evidence in relation to that allegation, rather than assessing the status of any route linking to bridleway 6. Other, additional evidence would be needed to do that.

27. There is a stone wall still in existence at Cwm Pen Llydan, located on bridleway 3, which joins bridleway 6. This is discussed further below. That might reflect an error in the recording of bridleway 3; however, that error could relate to the alignment of the bridleway, rather than its status or existence.

28. The applicant refers to wall being shown in the sketch plan of Caeugleision farmyard in 1960, which is further described below. He comments that this illustrates that it is impossible for bridleway 6 to have followed the route shown on the Definitive Map through the farmyard and the only way through the would have been via a 'distinctive and obvious S bend which a competent surveyor could not have failed to notice.'

29. 'Sketch of Caeugleision farmyard as at 1960 drawn by Mr A Ashton, resident at that time' (appendix 2b): This is a hand drawn sketch; it is signed and dated by Mr Ashton as having been prepared on 26th October 2013.

30. The hand drawn sketch of the farmyard at Caeugleision gives personal recollections of a witness who has known the land for his whole life and so helps in understanding the other statements provided. However, it was not drawn until 2013, so the accuracy may have been affected by the time that has elapsed since 1960. Neither is any scale indicated on the map, which can present difficulties in interpretation.

31. The sketch plan indicates the location of the stone wall at the south-western end of the path, as mentioned by the applicant in his supporting statement. This appears to run parallel with the feature labelled as a 'track' that leaves the northern end of the farmyard. There is a second feature labelled as 'track field' to

the east of this. If this second 'track field' is the alignment of the bridleway as now recorded, then either the wall would lie across its line, or the bridleway was closer to the barn, along the feature labelled as 'narrow track.' The average width of the bridleway is given in the statement as being 5 feet, so that is possible as no width is given for the narrow track marked. To be described as a 'track', it seems likely that the corridor will have been at least wide enough to accommodate one person walking.

- 32.** The sketch includes a comment about the 'road' leading to Caeaugleision, being the access track from county road U2313. Mr Ashton notes this as having been no more than a stone track, maintained by his grandfather and uncle. That does not preclude there having been public rights over it. It may simply have been a route that was not maintained actively because it was not brought to the attention of the Parish Council or County Council as needing maintenance.
- 33.** Extract from 1932 Rights of Way Act survey map, in colour (appendix 2c):
This is enlarged from the original. It shows the section of bridleway 6 from Caeaugleision to Ffridd Caeaugleision (just north of Cwm-y-Ffynnon.)
- 34.** Extract from 1932 Rights of Way Act survey map, in black and white (appendix 2d):
This is enlarged from the original. It shows the section of bridleway 6 around Caeaugleision and Cwm-y-Ffynnon, including the 'S' to the east of Cwm-y-Ffynnon.
- 35.** Extract from 1932 RWA survey written description titled 'List of public footpaths' (appendix 2e): This includes 2 sheets, in black and white. These give descriptions of each of paths 1-4 and 9-13 in Llanbrynmair parish.
- 36.** The original Rights of Way Act 1932 survey map and the whole of the written schedule were examined as part of the research for this application and are described below. On inspection, it is apparent that all of the public paths included in the 1932 Rights of Way Act survey in Llanbrynmair parish are included in the written 'List of public footpaths'; there is no separate list of paths of any other status. The maps that accompany this survey show all of the paths as a red line; there is no difference in line style or colour to denote status.
- 37.** It should also be noted that more than one of the paths shown on the list accompanying the Rights of Way Act 1932 survey for Llanbrynmair is now recorded on the Definitive Map as a public path, of higher status than footpath. One example is the nearby route now recorded on the Definitive Map and Statement as being bridleway 52 through Pentre Celyn; this is shown on the 1932 Rights of Way Act survey and like bridleway 6, it is included in the written 'List of public footpaths' and denoted on the survey map as a red line.
- 38.** Two aerial photographs, provided by the Woodland Trust, dated 1948 and 1969 (appendices 2f and 2g):
These are black and white photographs, supplied by the applicant at 200dpi. Both are annotated with the copyright text 'Bing © 2016 Intermap, © Microsoft

Corporation, TODO aerial attribution Earthstar Geographics SIO', suggesting that they have come from a website source.

39. The 1948 photograph shows Caeagleision and Cwm-y-Ffynnon farms in one corner, with the access tracks leading to them. On the current alignment of the bridleway, leaving Caeagleision farm yard and travelling towards Cwm-y-Ffynnon farm, there is a clear linear feature apparent on the aerial photograph. This suggests a worn, used route, which enters a large field that is pale in colour on the photograph.
40. This worn route is not apparent immediately to the northeast of this field. However, a feature that appears to be a corridor between two hedgerows or lines of trees is apparent at the easternmost edge of the photograph, again corresponding with the current line of the bridleway beside the stream.
41. It is apparent from the 1948 photograph that Cwm-y-Ffynnon farmyard was significantly smaller in 1948 than it is now and did not extend over the current line of the bridleway.
42. The 1969 aerial photograph shows the same area, but is more granular and so less detail can be discerned. However, the same distinctive paler field to the north of Caeagleision is apparent; so is the paler corridor of land, corresponding with the current line of the bridleway between Caeagleision and the field.
43. These photographs do confirm that in 1948 and 1969, there were no buildings over the alignment of the bridleway around Cwm-y-Ffynnon farm. They also confirm that there was a well-worn linear route in use, leaving Caeagleision farmyard and travelling northeast towards Cwm-y-Ffynnon.
44. Three photographs of the barn in Caeagleision farmyard, which were taken in 1982 (appendices 2h, 2i and 2j):

These were accompanied by an email, dated 29th November 2017 about a number of matters. The applicant explained the following about the photographs:

“Further to my email of 26 October 2017 I thought it might be helpful to send you copies of three photographs I have unearthed of the original Barn at Caeagleision, taken in 1982.

South and East photograph - The East side of the Barn show the doors as depicted in Mr. Ashton's sketch of 26 October 2013 and was where the muck was stored.

North and West photograph - The North face of the Barn shows the aperture through which the hay was stored from Caeagleision field. You can also see on the corner the narrow wooden gate shown on Mr. Ashton's sketch. It would have been impossible for a horse to pass through here as indicated on "bridleway 6". One can just make out on the West face of the Barn the remains of the stone wall (other side of tall, thin trees) which the horses would have needed to clamber over to use the bridleway.....again impossible. This is also depicted on Mr. Ashton's sketch.”

“South and West photograph - my wife and I are the two people shown in this photo. I am standing on the narrow track above the stone wall shown in Mr. Ashton's sketch.”

45. It is useful to compare the photographs with the sketch provided by Mr Ashton, to understand which part of the farmyard is depicted. The barn is shown on the southern side of the yard, closest to the stream.
46. The photograph of the south and west walls appears to have been taken from the farmyard, from a point at the corner of the building that would be roughly on the alignment of the bridleway as currently recorded. It shows the remains of a narrow corridor, with a wooden gate or door at one end. This appears to be on the southern end of the building, so not on the line shown as the ‘narrow track’ on Mr Ashton’s drawing. By comparison with the person in the foreground of the picture, it would appear to be around the same width as one person. The second person – Mr Margolis – is stood in an area that appears to be sunken below the surrounding ground and against the western wall of the barn. This is on the line shown as a ‘narrow track’ on Mr Ashton’s sketch.
47. The photograph of the north and west walls also appears to have been taken from the farmyard, from a point at the corner of the building that would be roughly on the alignment of the bridleway as currently recorded. Again, there is a narrow corridor of approximately one person wide, on the northern wall of the building.
48. The photograph of the south and east walls appears to have been taken from a point between the barn and the stream, so on the opposite side of the building to the farmyard and alignment of bridleway 6. It shows that by 1982, the barn was derelict. The photograph confirms that there was a door for access to this side of the building. The end of a narrow corridor at the southern end of the building is also visible near the front of the picture, as an oblong opening immediately adjoining the main barn.
49. Whilst these photographs do confirm the structures that were in place in 1982 immediately adjoining the old barn, they unfortunately do not show what else was present within the main farmyard, between the barn and the house. Neither do they confirm what gates, walls or other features were in place at the northern end of the farmyard, where the bridleway leaves it. As such, they neither support nor contradict the evidence given in Mr Ashton’s sketch and do not, in themselves, prove that there was no feasible route for a bridleway through the yard.

50. Documents subsequently researched:

The documents that have been researched, in addition to those submitted with the application includes the full range of historical documents normally researched by County Council officers in the course of processing any evidential order. It is uncommon to find a single document that provides significant evidence that shapes how an application is determined. Rather, these documents vary in their usefulness and evidential value, both generically and individually; but can often help to build up a body of evidence either supporting or opposing a modification order claim, on a balance of probabilities.

51. Ordnance Survey Editions:

The value of any OS editions to public rights of way analysis is not in providing evidence of status, which they cannot normally do; but in showing that a particular way was shown as a cartographic feature at a given time when the survey for that edition was carried out. Extra information may be added such as fords, bridges, milestones, boundary stones and bench-marks, which may help to build up a picture of the physical nature of a route through time. The fact that a way is not shown on any particular edition is not evidence that it did not exist as a public right of way. Similarly, the depiction of a claimed route on an OS map, is not evidence that it is a public right of way.

52. Before 1883, footpaths and bridleways were not normally distinguished as such on 1:10,560 and larger scale mapping. Foot and bridle ways, tracks and minor roads look very much the same. From 1883 to the late 1940s, Ordnance Survey recorded two types of path, being footpath and bridle path and were annotated F.P. and B.R respectively. From the late 1940s, Ordnance Survey abandoned the use of the B.R on maps.

53. The guidance to surveyors was that 'A path, made or unmade, is defined as an established way other than a road or track...Made paths are those whose surfaces are paved or metalled...Unmade paths [will only be shown] whose existence is indicated by the evidence of disturbance to the ground and are continuous between successive access points..'

54. It should be noted that the terms 'Bridle Road' and 'Footpath' are physical descriptions. Bridle roads were regarded as passable on horseback. The object of describing footpaths was that '...the public would not mistake them for roads traversable by horses or wheeled traffic.' From 1893 onwards, the footpaths to be shown included all of those over which there was a 'well-known and undisputed public rights of way,' but also included 'private footpaths through fields (but not in gardens)...if they are of a permanent character.'

55. 1st Edition Ordnance Survey, 1836; 1 inch to the mile (appendices 3a and 3b.)

Both a photograph of the full map sheet and a zoomed in extract can be found at appendices 3a and 3b. Cwm-y-Ffynnon is labelled in approximately the same location as the current farm. The text 'Caeaugleision' seems to be further to the west, closer to Pandy Rhiw Saeson village. This may simply be a result of the scale, as the buildings cannot be discerned. The Tithe Map of 1836 shows the buildings in their current location and in addition, the applicant advised that he believes the property to have been built in around 1762.

56. The map does clearly depict the relief, with the ridges of Llechwedd Du and Ffridd Esgair Gelynen being very apparent. A number of connecting ways are shown as prominent white corridors. It is useful to compare the connecting ways around Cwm-y-Ffynnon and Caeaugleision with the current network of county roads and public rights of way in the area.

- The 1836 map shows a linear route running from the current location of Caeaugleision over the Ffridd Esgair Gelynen ridge to Esgair Gelynen and then on to Cwm Pen Llydan. This not currently recorded as a public right of way, or shown on the List of Streets.

- It also shows another connecting route circling round from Llechwedd Du to Ffridd Esgair Gelynen to the northeast of Cwm Pen Llydan. Likewise, this not currently recorded as a public right of way or shown on the List of Streets.
 - However, the routes now recorded as restricted byways 10 and 12 are also shown as linear connecting ways, as are the current county roads.
- 57.** The alignment now recorded as bridleway 6 is not shown as a feature at all on the 1836 Ordnance Survey 1-inch map.
- 58.** 1st Edition Ordnance Survey, 1887; 25 inches to the mile (1:2500) (appendix 3c):
The extract comes from Landmark GIS data and shows the whole application route and Esgair Gelynen.
- 59.** A double pecked line feature annotated 'FP' is clearly visible on this map, following a route from Caeaugleision to Cwm Pen Llydan that corresponds with the alignment of the route now recorded as bridleway 6. It joins to another similar route at the boundary of Cwm Pen Llydan; this second route runs from Esgair Gelynen and is also annotated 'FP'. No public right of way is currently recorded over this connecting route.
- 60.** The route of the current bridleway 3 is apparent as another double pecked line feature leaving the grounds of Cwm Pen Llydan; this has no annotation.
- 61.** A number of other double pecked line features are apparent, crossing Ffridd Caeugleision and Llechwedd Du. None are annotated.
- 62.** Boundaries, trees and the barn at Caeugleision are apparent on this Ordnance Survey edition. There appears to be a physical corridor continuing through the farmyard from the point where footpath 7 enters it and bridleway 6 leaves it. The double pecked line track leaving the north end of the yard corresponds with the pale track noted on the aerial photography. The map indicates that this track did cross a boundary at the northern end of the farmyard, but does not confirm what structure was present e.g. a gate or stile.
- 63.** It is apparent that a physical route, along the alignment now recorded as bridleway 6 has existed since at least 1887. The annotation of 'FP' reflects the physical condition of the path at the time of survey. However, surveyors were not asked to differentiate between public and private use. The fact that the route was considered to be a 'footpath' in terms of its physical characteristics does not preclude that there may have been public rights to use it on horseback.
- 64.** 1st Edition Ordnance Survey, 1890; 6 inches to the mile (1:2500) (Appendix 3d):
The extract at comes from Landmark GIS data.
- 65.** The double pecked line 'FP' feature corresponding with the current line of bridleway 6 is shown, as are the connecting double pecked line features.

66. 2nd Edition Ordnance Survey, 1901; 25 inches to the mile (1:2500) (appendix 3e):
This is an extract from Landmark GIS data, but the tile of data only extends just to the east of Cwm-y-Ffynnon. Having checked with Powys County Archives, the paper sheet for the missing area does not seem to have survived, unfortunately.

67. Again, the double-pecked 'FP' feature corresponding with the line of bridleway 6 is apparent, leaving the northern end of the farmyard at Caeugleision. It crosses a boundary at the exit of the farmyard and is annotated 'FP.'

68. The northern end of the application route, at Cwm Pen Llydan is visible. The double pecked feature annotated 'FP' is apparent and on the same alignment as the earlier (1887) map.

69. 2nd Edition Ordnance Survey, 1902; 6 inches to the mile (1:10,560) (appendix 3f):
This is an extract from Landmark GIS data, but does extend to the east of Cwm-y-Ffynnon and so shows the whole application route.

70. This again shows the double pecked line feature annotated 'FP' and there does not appear to be any change in the route when compared with the earlier maps of 25 inches to the mile or 6 inches to the mile.

71. 4th Edition Ordnance Survey, 1953; 6 inches to the mile (1:10,560) (appendix 3g):
This is an extract from Landmark GIS data.

72. No significant changes to the alignment of the double pecked line feature are apparent when compared with the earlier Ordnance Survey maps. The route is again annotated 'FP.' The farmyard of Cwm-y-Ffynnon had not been extended over it at that time.

73. Summary of OS editions

The Ordnance Survey editions from 1887 to 1953 in showing a clear, double pecked line feature on the current alignment of bridleway 6. This supports there having been a physical route between Caeugleision and Cwm Pen Llydan, which was apparent on the ground throughout that time; the alignment was consistent throughout this 66-year period. Given that the route is not paved or metalled, its depiction on Ordnance Survey maps indicates that it must have been apparent on the ground throughout that time as disturbance to the surface.

74. As noted above, the path is annotated as 'FP', but that reflects the physical characteristics apparent to the surveyor. It does not reflect the extent of the public rights over the route; annotation as 'FP' would not, in itself, be sufficient to presume that there was no public right to use it on horseback. From 1888 onwards, Ordnance Survey maps carried the disclaimer 'The depiction on this map of a road, track or footpath is no evidence of the existence of a right of way' and surveyors were instructed not to inquire into the existence of rights of way.

75. Then, as now, routes fell out of use, as other more convenient routes became available to the public, or as there were changes in the local area that altered the destinations to which people would have walked, or ridden a horse.

Other cartographers:

76. Bartholomew's half inch Map Sheet 16 (Aberystwyth), published 1921 (appendix 3h) (National Library for Wales)

These can also be found online, on the website of the National Library of Scotland. Bartholomew's Maps focussed on the travelling public, including cyclists and tourists, whereas Ordnance Survey maps were produced as documents of record. Early editions of Bartholomew's Maps did not include dates on the maps. However, they can give an indication of routes that may have been considered significant to travellers in the early 20th century.

77. The village of Pandy Rhiwsaeson is annotated on sheet 16; the current county road from the village to Caeugleision is indicated as a distinct enclosed route. Caeugleision and Cwm-y-Ffynnon farms are not noted on the map, but the enclosed route is shown as continuing to Esgair Gelynen, where it ends. This does not give evidence of public rights over the route, but does suggest a physical route of some significance past Caeugleision to Esgair Gelynen.

78. Tithe Maps and Apportionments:

Tithe maps were produced, largely in the period 1837-50, following the Tithe Commutation Act 1836. Their purpose, combined with the accompanying tithe apportionments, was to convert the longstanding duty of parishioners to pay the church a tax in the form of the produce of the land (a tithe), to a monetary payment.

79. Surveys were originally required to be carried out for each parish, and a new map produced at a scale of not less than 3 chains per inch (1:2376), which combined with the apportionment (a book of reference) would show land-use, acreage, ownership and tenancy of all productive land in the parish, and apportion payments accordingly. Maps produced in this way, usually in the first few years after 1836, and sealed by the Tithe Commissioners, are known as "1st class awards".

80. A lesser survey, using existing maps or estate surveys of a variety of scales and proficiencies, was also permitted. These latter maps are known as "2nd class awards", and usually have less evidential strength when produced at any sort of tribunal or court of law. The vast majority of tithe maps produced in Powys are 2nd class awards, although the quality of their surveying and drafting can be very good, and give good indications of the status of a way.

81. The relevance of tithe maps to public rights of way work is twofold: firstly, where public roads or (much less often) public paths are positively shown and described as such, and secondly (and much more commonly) where public ways of some sort may be inferred by being shown as linear areas of land not included in the survey of surrounding productive land. However, this is a form of "negative" evidence that needs to be supported by other stronger sources.

82. The evidential value of tithe maps with respect to public rights of way has been the subject of a body of case law since the 19th century. The Planning Inspectorate Consistency Guidelines (4th Revision January 2015) notes that:

“..the absence of a route from a Tithe Map does not necessarily mean that no highway existed. It may simply mean that its existence had no effect on the tithable value of the land..” It is also noted that “It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.”

- 83.** In relation to paths crossing land covered in herbage, the case of *Stoney v Eastbourne Rural District Council [1927]* is noted in the Consistency Guidelines. The judge commented that “..to say that an ordinary pasture or arable field, over which a right of public footpath exists, has its titheability confined to other parts of the field, not including the small strip of land covered by the footpath, seems to me quite contrary to common sense and to the documents which we have before us..”
- 84.** Apportionment of rent-charge in lieu of tithes in the parish of Llanbrynmair in the County of Montgomery (1841, William Parry of Morfodion) (Appendix 4a)
Caeagleision, Cwm-y-Ffynnon and Cwm Pen Llydan farms are named on the Tithe Map. Caeagleision and Cwm-y-Ffynnon are noted as being in the ownership of Sir Watkin Williams Wynne, and occupied by tenants. Cwm Pen Llydan is noted as having been owned by Morris Jones and not tenanted.
- 85.** The access track to Caeagleision is apparent as an enclosed corridor, numbered 137; it is open to, and continuous with the current route of the county road. The land use is described as ‘Homestead.’ The current access track to Cwm-y-Ffynnon is not shown in this way.
- 86.** The current route of bridleway 6 crosses the enclosures numbered 138 and 140 before emerging onto the area labelled ‘Sheepwalk’ on Ffridd Caeagleision. There is no mention of the bridleway in the written award for enclosures 138 and 140. The sheepwalk is un-numbered and outside the area of the award.
- 87.** At Cwm Pen Llydan, the route of the bridleway crosses enclosure 235. Again, this is noted as being pasture and there is no mention of a bridleway in text.
- 88. Conclusion:**
In summary, the Tithe Map does not provide any information that either supports, or denies the existence of a public highway of bridleway status over the route now recorded as bridleway 6. This is perhaps not surprising, as the route of the bridleway crosses areas of land noted in the Tithe Apportionment as being pasture. A public way covered in herbage would have been productive land and so not exempt from Tithe.
- 89. Inclosure Awards:**
No Inclosure Awards have been identified that include the area of land crossed by the application route.
- 90. Finance Act Land Valuation Maps and Parish Field Books (1910):**
This survey was intended to give a value to land throughout the country, in order that a tax could be levied (incremental value duty) on every land holding, based on the increase in its value following public investment in infrastructure, at a

change in ownership. Land occupied by public ways was exempt from duty, and land crossed by public paths was given a reduced value, although there was no obligation to declare the existence of public rights of way across the land.

- 91.** The survey maps, called Record Plans, were produced on Ordnance Survey base maps, of scale 1:2500. They show each land holding with a coloured boundary and a “hereditament” number; the hereditament numbers are listed in the accompanying Valuer’s Field Book. The Valuer’s Field Books give details of the owner and occupier of each hereditament at the time of survey, together with information about land use, any easements or restrictions over it and anything for which a deduction was being claimed for the purpose of the tax. This included the existence of any declared public right of way.
- 92.** Land remaining uncoloured, between numbered holdings, is assumed to be exempt from duty. One reason for that is because of public ownership or usage, as the highway authority was a rating authority; rating authorities were exempt from the duty. The survey is not faultless, but often provides good positive evidence for the existence of a public way. However, in a similar way to tithe maps, it cannot provide negative evidence for the non-existence of a public way, as landowners were not required to declare them.
- 93.** Record Plan: Welsh region, Wrexham (Welshpool) District, Sheet Mont XX 11 (National Archives Kew, piece reference IR 131/11/185) (Appendices 5a – 5d): This plan includes hereditaments 72 (Cwm Pen Llydan) and a small part of hereditament 103 (Esgaircelyn) as well as the area crossed by bridleway 3, being hereditaments 104 (Rhydymeirch) and 105 (Clegyrnant.)
- 94.** The Ordnance Survey base map does show the double pecked line feature annotated ‘FP’, over which bridleway 6 is now recorded. This joins a second double pecked line track or way just to the west of Cwm Pen Llydan; both join the entrance to the yard at Cwm Pen Llydan. The way is included in the surrounding coloured hereditament, so was not considered to be exempt from duty.
- 95.** The double pecked-line features over which footpath 4 and bridleway 3 are now recorded are also apparent on the base map, leaving the farmyard at Cwm Pen Llydan and travelling in generally north-westerly and northerly directions respectively. The route over which footpath 4 runs is annotated ‘FP’; the route over which bridleway 3 runs is not annotated at all.
- 96.** Record Plan: Welsh region, Wrexham (Welshpool) District, Sheet Mont XX 14 (National Archives, piece reference IR 131/11/188) (appendices 5e-5h): This plan includes part of hereditament 103 (Esgaircelyn), together with hereditament 108 (Caeaugleision) and hereditament 109 (Cwmffynnon.)
- 97.** At Caeaugleision Farm, the Ordnance Survey base map indicates a total of 5 double pecked line features, four of which are annotated ‘FP.’ These include the routes over which footpaths 7 and 10 and bridleway 6 are now recorded.

- 98.** An enclosed way from Ty Newydd towards Pwll Melyn and Caeaugleision is shown as being included within the hereditament. This is the route now shown on the List of Streets as being county road U2313.
- 99.** At Cwmffynnon Farm, a double pecked line feature runs to the west of the farmyard and again, coincides with the route now recorded as bridleway 6. A spur track or way leaves this just to the south of the farmyard. It links with the track or way that is now the access track to Cwm-y-Ffynnon Farm.
- 100.** Interestingly, the northernmost section of the route now recorded on the List of Streets as being county road U2313 is shown as an unenclosed way for most of its length on the Ordnance Survey base map.
- 101.** On checking the National Archives' Valuation Office map finder, the record plan would include part of hereditament 109 (Cwmffynnon) does not appear to have survived and so could not be examined.
- 102.** Valuer's Field Book: Llanbrynmair Parish (National Archives Kew, piece reference IR 58/90072): Hereditaments 103, 104, 105, 108 and 109 were examined.
- 103.** Hereditament 103 (appendices 5i and 5j) is Esgaircelyn. The land is noted as being a farm, owned by Sir W.W. Wynne Bart Ruabon (so part of the Wynnstay Estate.) No deductions were noted for 'Public rights of way or user' and no other mention is made of any public way. This is of note, given that footpath 5 was later recorded as running along the double pecked line feature shown on the Ordnance Survey base map, then crossing into the Rhyd y Meirch farm hereditament.
- 104.** Hereditament 104 (appendices 5k and 5l) is Rhyd y Meirch, again noted as being a farm and owned by Sir W.W. Wynne. Again, there are no deductions claimed for 'Public rights of way or user' and no other mention is made of any public way; the route now recorded as public footpath 2 does cross the hereditament.
- 105.** Hereditament 105 (appendices 5m and 5n) is Clegyrnant, noted as being a farm and owned by Sir W.W. Wynne. There are no deductions claimed for 'Public rights of way or user' and no other mention is made of any public way, although the route now recorded as bridleway 3 does cross the hereditament and its route is shown on the Ordnance Survey base map used for the Finance Act survey.
- 106.** Hereditament 108 (appendices 5o and 5p) is Caeaugleision. It is noted as being a farm and owned by Sir W.W. Wynne. Under the section titled 'Charges, easements and restrictions affecting market value of fee simple', it is noted that there are '5 footpaths through land.' However, no deduction is noted for 'Public rights of way or user.'
- 107.** Hereditament 109 (appendices 5q and 5r) is Cwmffynnon, noted as being a farm and owned by Sir W.W. Wynne. There are no deductions claimed for 'Public rights of way or user' and no other mention is made of any public way; the route now recorded as public footpath 2 does cross the hereditament.

- 108. Montgomeryshire Inland Revenue Land Valuation Books (Powys County Archives, piece reference M/LVR/1/19):**
These contain a summary of the more detailed entries found in the Valuer's Field Books that are held by the National Archives. As the Valuer's Field Book for hereditament 72 could not be inspected at the time when the other hereditaments were viewed, being in a separate book, the summary entry in the Land Valuation Book at Powys County Archives was inspected instead.
- 109.** Hereditament 72 (appendices 5s and 5t) is Cwm Pen Llydan. It is noted as being owned and occupied by E.M. Jones, so not part of the Wynnstey Estate. No deductions are claimed for 'Public Rights of Way or User
- 110. Conclusion:**
It is of note that although all of hereditaments 103 to 109 were owned by the Wynnstey Estate (Sir W.W. Wynne) and all were in use as farms at the time of the Finance Act survey, the presence of 'footpaths' is only noted in one of them. Despite the fact that double-pecked line features were noted on the Ordnance Survey base maps, many of which were annotated 'FP' and over which public rights of way were later recorded on the Definitive Map, the owner did not choose to seek any deduction for 'Public rights of way or user' in respect of Esgaircelyn, Rhyd y Meirch, Clegyrnant or Cwmffynnon farms.
- 111.** Neither did the owner of Cwm Pen Llydan choose to declare any public rights of way and seek a deduction. However, they were not required to do so.
- 112.** The notable exception is in respect of Caeagleision (hereditament 108); although no deduction for 'Public rights of way or user' has been claimed, the presence of 5 footpaths is noted as affecting the market value of the land. It is not explicitly stated that these paths were in use by the public. However, if the paths were considered to affect the value of the land, it seems reasonable to assume that there were rights over them that extended to use by people other than the Wynnstey Estate, their representatives and the tenants occupying the farms.
- 113.** This suggests that these 'footpaths' were seen as being significant, given that none were noted on the adjoining farms also owned by the Wynnstey Estate. Of the 5 double pecked line features on the Ordnance Survey base map crossing hereditament 108, four now have public rights of way recorded over them.
- 114. Public Utility Plans:**
No public utility plans were identified that included the land crossed by the application route.
- 115. Estate Plans:**
As noted above, much of the land in the area around the application route, including Cwmffynnon and Caeagleision farms were formerly owned by the Wynnstey Estate. It is understood that this was the case until the early to mid-20th century, when tenants of the farms were offered the opportunity to buy them from the Estate. The papers of the Wynnstey Estate were inspected for this area.

- 116.** Survey and valuation of the several estates of Sir Watkin Williams Wynn Bart: lying in the parishes of Llanwryn, Machynlleth, Darowen, Penegoes, Gemmaes and Llanbryn-mair within the hundred of Cyfeiliog and county of Montgomery; also in the parish of Mallwyd in the county of Merioneth / by Sir Watkin's most obedt. servt. J. Probert. (National Library of Wales, MMS ID: 99262076402419)
Plans and descriptions of the farms making up this part of the Wynnstay Estate, including Cwmffynnon and Caeaugleision farms are all held in a single bound volume. The surveys were carried by John Probert. The plans are at a scale of 6 chains to an inch (1:4,752) and dated 1763.
- 117.** Estate surveys were not carried out for the purpose of identifying public highways. However, in some instances, highways were marked on Estate plans e.g. where they formed the boundary of the Estate.
- 118.** Map making was expensive and plans that were originally produced for a different purpose were sometimes used to produce estate surveys. However, the plans for the Wynnstay Estate appear to have been produced specifically for the purpose. The level of detail and condition of the plans is good; individual gates and stiles can be discerned on the maps. Each field or other enclosure is numbered.
- 119.** On the map and surveyor's description of Caeaugleision farm (appendices 6a and 6b), the application route crosses the enclosures numbered 7, 8 and 11. These are noted in the surveyor's description as follows:
- Enclosure 7 – Rhos Fach, Rough pasture;
 - Enclosure 8 - Wern Ucha, rough pasture;
 - Enclosure 11 – 'A moiety of Ffridd Newydd of 33 acres with Mr Yeates's tenant of Pen y Cribbion.'
- 120.** It is noted that the farm benefits from 'Also a proportion of the common adjoining of 517 acres belonging to 12 farms.' The word 'Common' is marked on the plan of the farm, being immediately adjoining enclosure 11. This is the area now known as Llechwedd Du.
- 121.** Gates are marked on the plan at the southern end of enclosure 7, close to the farm buildings at Caeugleision and at the boundary between enclosures 7 and 8. It is less clear whether there was any gate or stile at the northern end of enclosure 8, where the application route exits the field, or at the point where it enters enclosure 11.
- 122.** There is also a map and description of Cwm Ffynnon farm (appendices 6c and 6d.) At the time of this Wynnstay Estate survey, none of the land crossed by the application route formed part of the holding now known as Cwm-y-Ffynnon farm. The application route does not cross any of the enclosures shown on this plan of Cwm Ffynnon. However, the farm did benefit from 'A proportional part of the common adjoining of 517 acres belonging to 12 farms.' The word 'common' is not marked on this map, although 'Sheepwalk' is marked at the location of enclosure 11 of Caeaugleision farm.

- 123.** The map of Rhiwsaeson farm (appendix 6e), being the demesne farm for the Estate – indicates that the strip of land adjoining Caeaugleision, over which part of the application runs was owned by owned by John Yeates Esq.
- 124.** The route now recorded as footpath 8 past Pen Cae Du is shown as a hedged, enclosed lane of significant width. Other linear paths or tracks are indicated on the map, but none coincide with routes now recorded as public rights of way.
- 125. Summary of Estate records:**
The plan of Caeaugleision farm indicates that there were gates in the fields immediately to the north of the farm buildings. This would have allowed for access on horseback, from the buildings at Caeaugleision as far as the point where the application route emerges onto John Yeates' land. It is not clear what happened at the boundary between Caeaugleision and John Yeates' land.
- 126.** The survey also suggests that there were 12 farms who would have needed access to move livestock onto the 'common' referred to in the survey. It is not clear what route was being used and at least some of the farms will have been directly abutting the common and so able to turn livestock out directly onto it. As the application route runs to and across Llechwedd Du, it is possible that some of the farms may have used it to move livestock onto and off the common.
- 127. Highway authority records:**
These can encompass a wide variety of documents, but in the context of public rights of way investigation are normally confined to the parish survey records following the 1932 & 1949 Acts, the various maps and documents associated with the production of Definitive Map & Statement (DMS) stages, and any records kept by the Highways Department, including the List of Streets and maintenance maps. Parish Council, RDC and UDC minutes may also be helpful in some cases; but are often difficult to locate, if they still exist at all.
- 128. Rights of Way Act 1932 Parish Survey:**
This was a non-statutory survey of public rights of way. Parish Councils were permitted to prepare maps and written statements of the routes that they believed to be public rights of way, but were not required to do so. Neither was there any statutory process that allowed for public scrutiny of the maps, or objection to them. As such, the Rights of Way Act 1932 surveys have less evidential weight than documents produced via a statutory process, that allowed for public scrutiny and objection and which were kept in the public domain.
- 129.** Maps and written descriptions of the public rights of way in Llanbrynmair parish were produced under the Rights of Way Act 1932. The documents have since been split up; Powys County Council holds the survey maps, whilst Llanbrynmair Community Council holds the written descriptions for the paths.
- 130.** There are two survey maps for the area crossed by the application route. The route is split across County Series sheets Montgomeryshire XX SE and Montgomeryshire XX SW (appendices 7a and 7b.)

- 131.** Routes that are now recorded on the List of Streets as county roads generally seem to have been colour washed in yellow on the maps. The section of road and access track to Caeaugleision and Cwm-y-Ffynnon has a grey shading. All of the other routes annotated onto both of these two maps are shown in red. No other colouration is used and there is no key to indicate whether the colour is significant in denoting status or not.
- 132.** The application route is shown as a red line, annotated '10.' The route is consistent with the alignment of the current footpath 7 and bridleway 6; the two paths are not split on this survey map.
- 133.** Route 10 is shown as ending at the entrance to Cwm Pen Llydan farmyard; no connection to any route is shown. The routes now recorded as bridleway 3 and footpath 4 at Cwm Pen Llydan are not shown at all.
- 134.** At Caeaugleision, there is an 'S' – which could indicate a stile – on the section of path now recorded as footpath 7. To the north of the farm buildings, the annotation 'FG' – which could be a field gate – next to the line marked '10.' Just to the northwest of Cwm-y-Ffynnon, another 'S' is marked and then further to the northwest, two more FG's are noted, at the entrance and exit to the enclosure marked 'Ffridd Caeaugleision.'
- 135.** The written description that accompanies the survey is titled 'Parish of Llanbrynmair (Rights of Way Act 1932) List of Public Footpaths' (appendices 7c – 7h.) It is perhaps first worth noting that this is followed by a list and description of all of the path numbers in the parish as shown on the maps; there is no separate list of paths of any status other than 'footpath.'
- 136.** The application route – path 10 – is recorded as follows:
"Starts from no. 9 at Pencilin across meadow to a stile, across meadow to a Field Gate to Caeaugleision farm yard. Proceeds by Field Gate across pastures near Cwmffynnon to a stile, across two pastures and two Field Gates to hill and Cwmpenllydan."
- 137. Conclusions:**
This recording of the application route in the 1932 Rights of Way Act parish survey is a good indication that at the time of survey, the Parish Council regarded the route as being a public path. There do not appear to be any significant differences to the alignment of the route, when compared with the current Definitive Map. However, all of the routes in Llanbrynmair parish were noted as being 'footpaths', although many are now recorded as public bridleways or even restricted byways. Given that, the Rights of Way Act 1932 survey information for this parish needs to be regarded with caution, in relation to the status of the application route. Without other supporting evidence, this survey alone would not be sufficient to conclude that the status was footpath only.
- 138. Definitive Map records:**
Under the National Parks and Access to the Countryside Act 1949, parish councils were required to produce a survey of all of the known public rights of way in their area. That was made up of a map and written statements (survey cards)

for each path. The former parish councils were required to record the paths as being of status footpath, bridleway, CRF (Cart Road Used as a Footpath) or CRB (Cart Road Used as a Bridleway), with the latter two categories collectively being RUPPs (Roads Used as Public Paths.) Detailed guidance was issued to the parish councils about how they should undertake their surveys.

- 139.** Following this, a Draft Map and Statement was produced and published, with a period for public objection. The council was required to show on this map those rights of way which in its' opinion subsisted, or were reasonably alleged to have subsisted, at the 'Relevant Date' of the map. The relevant date was carried forward to the Provisional and First Definitive maps.
- 140.** Any objections to the content of the Draft Map were considered by an appointed panel, whose decisions were then incorporated into a Provisional Map and Statement. This was published with a further period for landowner objection in the Crown Court. Once any objections had been decided by the Court, a Definitive Map and Statement was produced and published. There were then only limited grounds for objection within a limited time period via judicial review in the High Court.
- 141.** At the time when the Draft Maps were produced, Llanbrynmair parish was within the Rural District of Machynlleth. The Relevant Date for the Draft, Provisional and Definitive Maps for this Rural District area is 1st April 1960.
- 142.** National Parks & Access to the Countryside Act, 1949 – parish survey:
It should be noted that in Montgomeryshire, the County Council chose not to produce a dedicated Statement to accompany each of the Draft, Provisional and First Definitive Maps. Instead, they adopted the earlier parish survey cards as being the Statements for the paths and the cards were allocated a relevant date. For Llanbrynmair parish, that was 1st April 1960.
- 143.** The parish survey card for bridleway 6 (appendix 8a) is held by Powys County Council and is now the Statement for the path. It is not known what happened to the parish survey maps for Llanbrynmair; as for many areas of Montgomeryshire, the parish survey maps do not seem to have survived.
- 144.** The written survey card notes the path as being a 'B.R.', i.e. a Bridle Road. It is described as starting at Cwm Pen Llydan, "...following a green cart track across hill via F.G., movable rails and F.G. to join Cwm-y-Ffynnon farm lane at a F.G. and follow same through Caeau-gleision farm yard to join unclassified road."
- 145.** This is interesting, as it does suggest that the parish council viewed the path as linking with a route of unclassified road status. No link to any route on the List of Streets is now recorded and the parish survey card is not conclusive evidence in itself of the existence of a highway of unclassified road status. However, it sheds some light on the apparent 'cul-de-sac' recording of the western end of the path, from the point of view of equestrians and cyclists.
- 146.** It is also interesting that the surveyor chose to record the presence of 'movable rails', given that the presence of a stile is noted on the earlier Rights of Way Act

1932 survey map. It could be that the 'Stile' and the 'movable rails' are the same structure, described in different ways. Movable rails could have allowed access on horseback, whereas a traditional stile might not have done. Furthermore, the parish survey card qualifies that the obstructions on the path are 'none' and that it has an average width of 5 feet, so wide enough to accommodate a horse.

147. The parish survey card also specifically states that the reason for believing the path to be public is that it is "Shewn on 1932 maps." That presumably refers to the maps produced under the Rights of Way Act 1932. The date of the survey for the path is given as '1/60' i.e. January 1960.
148. The parish survey card for bridleway 3 simply records it as ending at Cwm Pen Llydan; no link to bridleway 6 is mentioned.
149. Draft Map (published on 11th April 1960):
The path falls across two County Series Ordnance Survey map sheets, being Montgomery XX SW and Montgomery XX SE (appendices 8b and 8c). 1:2500 scale mapping was used to produce the Draft Map, so a good level of detail can be seen.
150. The alignment of the path is shown on the Draft Map on exactly the same alignment as on the Rights of Way Act 1932 survey map. However, paths of different status are identified on the Draft Map using colour. Path 6 is indicated with a green line; the key inside the cover of the folder containing all of the Draft Maps for Montgomeryshire denotes as being a bridleway. Path 7 is shown in purple, denoting a footpath.
151. The Parish Survey Map also shows a connection between bridleway 6 and bridleway 3 at Cwm pen Llydan, running to the south of the property.
152. Provisional Map (published on 23rd September 1968) (appendix 8d):
The coloured lines denoting the public rights of way have been drawn much less carefully on the Provisional Map than on the earlier Draft Map or Rights of Way Act 1932 survey maps; the edges of the lines are ragged in places. The base map is also much less detailed than that used for the Draft Map, being at a scale of 6 inches to the mile (1:10,560.) However, it is clear that the intention in relation to bridleway 6 is that the path follows the same double peaked line track feature, over which it shown on the earlier Rights of Way Act 1932 and Draft maps.
153. This is the first map that shows an alignment through Caeaugleision farm yard that is not directly aligned with the track as it leaves the northern end of the farmyard. However, there are several other points where both the green line showing path 6 and the lines showing nearby paths 4 and 5 deviate from the underlying track or 'FP' features. It seems likely that this is due to poor drawing, rather than any intention that the paths should follow a different alignment.
154. First Definitive Map & Statement (published on 10th February 1969) (appendix 8e):
This is produced on a base map of scale 1:10,560 and is in black and white; no colour is used. The line styles used to denote path status are those currently set

out under the Wildlife and Countryside Act (Definitive Maps and Statements) Regulations 1993. Path 6 is shown using the bridleway line style.

- 155.** Again, bridleway 6 is shown as following the underlying double peaked line track feature. No significant deviations from the alignments shown on the Rights of Way Act 1932 and Draft Maps are apparent.
- 156.** It is notable that the line of the bridleway is not drawn following the track feature where it leaves the northern end of the farm yard at Caeaugleision; it is a short distance to the east and somewhat closer to the farm buildings. This could have resulted from the line being based on the poor drawing on the Provisional Map. Added to that, due to the scale of the base map – with the 1mm line representing a corridor of approximately 10 metres wide – there is a need to look at physical evidence and other contemporaneous historic documents, when interpreting the alignment of a public right of way within the 10 metre corridor. These may be the apparent changes of route noted by the applicant in his statement of reasons for making this application.
- 157.** No subsequent reviews or consolidations have been published for the Montgomeryshire Definitive Map.
- 158. County Surveyors records:**
As noted above, the List of Streets does not currently show any highway maintainable at public expense that links to the south-western end of the application route. The current List of Streets data is held as a GIS table (appendix 9a.) Unclassified county road U2313 runs from Pandy Rhiw Saeson village to the fork where the access tracks for Cwm-y-Ffynnon and Caeaugleision divide. It is maintained as part of the ordinary roads network.
- 159.** The following older, highways records have been examined:
- Montgomeryshire 'Green Book' – dated 1941 (appendix 9b);
 - Montgomeryshire 'Map chest' map – undated (appendix 9c);
 - Montgomeryshire 'Green Book' – undated (appendix 9d);
 - Montgomeryshire 'Brown Book' – dated 1956 (appendix 9e);
 - The agricultural grants files for the Llanbrynmair area.
- 160.** The plan in the 'Green Book' of 1941 has been annotated with the text 'Group 2.' Over the route now recorded as county road U2313, there is a purple line on the map; the line is somewhat indistinct, but appears to end at Caeaugleision. However, there is a pencil cross at the junction of the tracks to Caeaugleision and Cwm-y-Ffynnon; there are no other similar crosses on this map. It may be that the extension of the line to Caeaugleision was considered to be an error.
- 161.** An uncoloured enclosed route continues beyond this, to Esgair Gelynen and Cwm Pen Llydan. The nearby route now recorded as restricted byway 12 is shown in a similar way, as an uncoloured enclosed route.
- 162.** County road C2017 to the south of Pandy Rhiw Saeson village is shown in yellow; the section north of the village is shown in purple, as is county road C2161 running up the Clegyrnant valley. The western end of county road U2313 is

shown in purple; the eastern end and the application route are unfortunately not shown at all, being off the edge of the map.

- 163.** Similarly, the undated 'Map chest' map shows the U2017 coloured in yellow as far north as Pandy Rhiwsaeson village. The section of the C2017 to the north of the village and the C2161 up the Clegyrnant valley are shown in purple.
- 164.** On the undated 'Green Book', the route of county road U2313 is shown uncoloured, from Pandy Rhiw Saeson to the fork at Caeugleision and Cwm-y-Ffynnon. Again, an uncoloured enclosed route continues beyond this, to Esgair Gelynen and Cwm Pen Llydan.
- 165.** The C2017 leading from Llanbrynmair to Pandy Rhiwsaeson village is indicated in yellow. The section of the C2017 to the north of the village and the C2161 up the Clegyrnant valley are also shown in yellow.
- 166.** On the plan in the 'Brown Book' of 1956, the number '11' is annotated onto the base map in the area around Cwm-y-Ffynnon and Esgair Gelynen.
- 167.** The C2017 leading from Llanbrynmair to Pandy Rhiwsaeson village is indicated in yellow. The section of the C2017 to the north of the village and the C2161 up the Clegyrnant valley are also shown in yellow. The U2313 leading from the village to Cwm-y-Ffynnon is uncoloured. An uncoloured enclosed route continues through Caeugleision to Esgair Gelynen and then on to Cwm Pen Llydan.
- 168.** Although the plans are not accompanied by any key, there does seem to be a correlation between the coloration used on the plans in the Green and Brown books and maintenance priority of each of the routes on the List of Streets.
- 169.** The current C class roads are distinctly coloured in yellow on all three maps. It is notable that the colouration of the northern section of the C2017 and the C2161 changed with time, from purple to yellow. This suggests that these sections of highway may have been allocated increased maintenance priority between 1942 and 1956.
- 170.** By contrast, the way U2313 was coloured as time progressed may indicate a decline in the priority given to its maintenance. On the earliest of these plans, it was shown a distinct purple line extending as far as Caeugleision; surrounding routes of lower status, including restricted byways were shown uncoloured. By 1956, it was shown uncoloured in the same way as restricted byway 12.
- 171.** The agricultural grants files show that an application was made to seek adoption of the section of agricultural track between the end of the U2313 and Cwm-y-Ffynnon. This application was made in the 1960s and was rejected. No such application seems to have been made in respect of the section of track from the U2313 to Caeugleision.
- 172.** Highway surveyor's records for the area have been checked in the Quarter Sessions records. The only document that was found that relates to this area was a plan showing the proposed route of the C2017. However, Caeugleision and

Cwm-y-Ffynnon are outside the limits of deviation of the plan and so no useful information can be gained from it.

173. Highway Authority Records-Summary:

The records described above certainly give positive evidence that the application route has been regarded as a public right of way since the Rights of Way Act 1932 survey was carried out, if not earlier. Given that all of the routes on the Rights of Way Act 1932 survey for Llanbrynmair parish were shown in the same way, this survey alone would not be strong enough evidence to conclude that its status was only that of footpath.

174. The County Surveyor's records of 1941 to 1956, together with the information in the parish survey card produced under the National Parks and Countryside Act 1949 do seem to suggest that the application route may, in fact have met with another highway running from the current end of the U2313 to Caeagleision, or even through and beyond it. Whilst making a formal assessment of that is not the subject of this application, it is of relevance to explaining why the application route is now recorded as an apparent cul-de-sac for equestrians and cyclists.

175. Other relevant documents researched:

These include Parish Council records, the registers of section 31(6) deposits, local history books and guidebooks.

176. Llanbrynmair Parish Council minutes (appendix 10:)

These are held by Llanbrynmair Community Council and can be inspected on request. The original minutes are written in Welsh; the translations into English below have been prepared by Powys County Council's Translation Unit.

177. Seven extracts were identified as being of relevance to the area around the application route. These have been translated as follows:

5th March 1908:

"Footpath from the Pandy at Caeagleision – On the proposal of Mr Richard Williams and seconded by Mr John Sho.... Jones it was unanimously passed for to be spent repairing the Footpath at Caeagleision This was considered to be cheap, Mr Richard Williams and Mr Rowland Edwards to take care of the work."

8th December 1908:

"Caeagleision Stile – It was stated that nothing had been done about this stile and it was agreed on the proposal put forward by Mr RH Davies and seconded by Mr D Davies that Mr R Williams should speak to Mr Rich Owen and to bring a report to the next meeting."

17 November 1928:

"Caeagleision Footpath – The Chairman drew attention to the footpath at Caeagleision to Gromffynnon across which there was a fence without a stile. It was passed on Mr R Williams' proposal and seconded by Mr J M Morris for the clerk to write to Mr Rich Owen, Caeagleision to ask him to place a stile across the footpath."

23rd March 1929:

“Caeaugleision Stile – A report was received from Mr R Williams about this stile and Mr R Williams’ proposal was passed and seconded by Mr Fred Jones to write to Mr R Owen again to place a stile on the footpath.”

17 April 1930:

“Footpaths – it was passed to repair the following Footpaths:

1. Pandy to Caeaugleision – One day’s labour”

November 1932:

“Cwmffynnon footpath – It was agreed to give three days of labour – the Chairman to take care of it.”

20 December 1934 extract

“Caeaugleision to Cwmpen pathway – Mr Davies’ proposal was passed for two days of work to be given to clear the footpath. Mr R H Davies to take care of it.”

- 178.** Some of these entries in the minute book may refer to footpath 7, as this crossed land at Caeaugleision, but it is difficult to be certain about that without any maps. However, others – notably the entries of 17th November 1928 and 20th December 1934 are more specific in referring to a path north of Caeaugleision, running to Cwm-y-Ffynnon and Cwm Pen Llydan respectively.
- 179.** Again, they provide supportive evidence that a route from Caeaugleision to Cwm Pen Llydan was in use by the public on foot, at least. However, the fact that use by equestrians is not mentioned does not preclude the routes having been used by the public on horseback, prior to the dates of these minutes. The route may simply have fallen out of use by equestrians by this time.
- 180.** “A history of the parish of Llanbrynmair” – Richard Williams, 1889.
This is held by the National Library of Wales (piece reference XDA1359 LL2 W72.) Local history books are not legal records in themselves and can only represent the author’s interpretation of other sources. However, they can provide useful context to the general history of the area. Having been produced in 1889, this book gives some explanation of what was happening in the Llanbrynmair area in the period after the Tithe Survey and Wynnstay Estate survey and prior to the Finance Act 1910 records. Points of note in this history book are as follows.
- 181.** The author comments on the poor state of the roads in the area at that time and the distance of the area from ports and markets. He notes that lime and other manures had to be brought into the area on horseback from Derwenlas and Porthywaun on mountain paths. He notes that the road through Pandy Rhiw Saeson village (now the C2017) was built in around 1836, to assist the farmers of Nantcarfan and Clegyrnant to transport lime and other commodities to their farms and to market their own produce.

- 182.** Likewise, the author refers to the recollections of the (then late) Reverend Samuel Roberts, who described the roads in the area as being narrow and stony, slippery and steep, running through river rapids and being so deep and narrow that carts were not able to pass each other.
- 183.** In terms of the industry, the author notes that there were several fulling mills in the Llanbrynmair parish producing flannel; one of these was at Pandy Rhiw Saeson.
- 184.** This information is helpful in understanding the condition and likely usage of the highways in the area around the application route, in the period before 1889. Use of steep, narrow paths in poor condition with loaded horses does not seem to have been uncommon, for transporting all manner of goods including lime and farm produce. Whilst its fulling mill was in operation, Pandy Rhiw Saeson would have been a destination in itself for local farmers producing wool.
- 185.** Llanbrynmair in the 20th century – Llanbrynmair Local History Society 2005:
A copy of this is held by the National Library of Wales (piece reference XDA1359.LL78.LL79) A copy is also held by Powys County Archives (piece reference R942.951.)
- 186.** This book includes notes about the recollections of Ceri Evans, née Roberts, who grew up at Cwm Pen Llydan. She recalls that there were two cart tracks leading to Cwmpen. One of these crossed the river at Rhyd y Meirch and followed the brook to Cwmpen. The other track came from the direction of Pandy, past Caeagleision, over Esgair Gelynen and Cwmpen moorland. It continued over the open mountain, past Llyn Gwyddior to Cannon in Cwm Nant-yr-Eira. There is no plan in the book showing the alignment of the tracks.
- 187.** The roads are noted as having been very wet and muddy for most of the year. Ceri Evans also recalls going to Cannon by pony, over Nant yr Eira via the mountain road. Nant yr Eira is identified on the map in the front of the book, being the valley running between Capel Biwla and Cwmdrwen.
- 188.** This indicates that there was a track in use by carts in the 20th century that linked Caeagleision and Cwm Pen Llydan over the moorland. It does not confirm the exact alignment of the track referred to and nor does it confirm whether the track was used by the wider public.
- 189.** “Llanbrynmair – Images of yesterday” – Llanbrynmair Local History Society
This is a collection of photographs, showing places and people in Llanbrynmair parish. The National Library of Wales holds a copy (piece reference Dyb 2013 C268.)
- 190.** Whilst photographs cannot prove highway status in themselves, they do provide good evidence of any physical feature shown in them. They can provide useful information about the landscape and way of life in the area. Those of relevance to the application route are as follows.
- 191.** The photograph titled ‘Transporting food for shooters and beaters on Cwmpen Mountain on the Sir Watkin Estate’ is undated and it is difficult to tell exactly

where it was taken, but it is on a hillside in the vicinity of Cwm Pen Llydan. There are horses in the picture, loaded with sacks. This indicates that horses were taken across this mountainside with loads.

PHYSICAL EVIDENCE – SITE SURVEY:

- 192.** A site visit was made on 30th August 2017. There have been changes to the buildings, ground and boundaries around Barling's Barn and Cwm-y-Ffynnon, which have changed the physical character of the application route since it was recorded on the Definitive Map. However, most of the application route crosses open pastureland that has not changed significantly in that time period. A plan showing the locations of the photographs is at appendix 11a; the photographs are at appendix 11b.
- 193.** Notably, there are a number of points along the application route where a defined, old track feature is still apparent on the ground. These are:
- Between points 9 and 11, where two rows of old trees form an enclosed path or way. This enclosed path is in the location shown on earlier Ordnance Survey maps as being between two field boundaries, with the route annotated 'FP' running along it. The ground between the trees is level across its whole width, with the exception of the stream at one edge. The stream is not wide at this point, so can easily be stepped across by a person or horse.
 - Between points 15 and 20, where there is a wide, level track running up the slope to the boundary between Ffridd Caeagleision and Llechwedd Du. At the point where it crosses the boundary between the two, the track has a width of approximately 5 metres between the banks on either side. It is markedly sunken relative to the old wall on the north side and the slope of Ffridd Caeagleision to the south.
- 194.** There have been changes to the area between the buildings at Barlings Barn; as noted by the applicant, the property and outbuildings have been renovated since 1985. Evidence sources other than site survey need to be consulted, to ascertain the physical condition of the route at the time when it was recorded on the Definitive Map. The photographs provided by the applicant, aerial photography and Ordnance Survey records are described above.
- 195.** Between Barling's Barn and Cwm-y-Ffynnon, the route crosses level ground on a gentle gradient, with no physical restrictions on the width.
- 196.** The farmyard at Cwm-y-Ffynnon has been extended over the line of the application route since 1949, so it is difficult to comment on any restrictions that might have been present before this. Again, aerial photography records are described above.
- 197.** To the northeast of Cwm-y-Ffynnon farmyard, the route ascends open pasture, then runs along a level platform immediately adjacent to the stream before entering the defined enclosed lane between points 9 and 11. The ground is boggy at point 9, but not impassable on foot.

- 198.** There is sufficient width to allow a horse to pass between the two rows of trees between points 9 and 11, where the ground is firm and even. The stream crossing is at a narrow point, so not impassable on foot or horseback.
- 199.** The ground between the stream crossing and point 14 is quite rough in character, but again, the gradients are not particularly steep.
- 200.** Above point 14, the ground is firm and the application route passes along a firm, well-defined level track for some distance, as described above. The width is approximately 5 metres between points 15 and 19.
- 201.** From point 19 to point 26, the application route crosses Llechwedd Du, where the terrain is much steeper and more difficult to navigate. However, the remains of a more level pathway can be seen; this is around 4-5 feet wide at its narrowest point. It is quite difficult to pick out amongst the surrounding vegetation, but once identified, is certainly passable on foot. The ground is firm and not waterlogged.

202. Physical evidence - summary:

From the site survey carried out on 30th August 2017, there have been changes to the physical character of the application route at Barlings Barn and Cwm-y-Ffynnon since 1949, which make it difficult to comment on whether it could physically have been used on horseback at these locations. However, the character and width of the rest of the route, as far as the entrance to Cwm Pen Llydan, is certainly not inconsistent with use on horseback. The remains of a defined trackway are still in evidence, albeit that the section across Llechwedd Du would require care, especially in poor weather.

USER EVIDENCE

203. The applicant submitted user witness evidence forms from a number of people who knew the route, and in some cases used parts of it. These are from:

- Mr Henry Hughes of Bodhyfryd, Pandy;
- Mrs Helen Hughes, Bodhyfryd, Pandy;
- Mr RG Ashton, Pandy Rhos, Llanbryn-mair;
- Mr R.I Owen, Cwm-y-Ffynnon, Llanbryn-mair;
- Mrs Ashton, Cwm-y-Ffynnon;
- Mr Ashton, Cwm-y-Ffynnon.

204. Mr Owen is the current owner of land crossed by the application route, and farms it in partnership with Mr and Mrs Ashton. As such, their evidence is described in more detail below, under the section titled 'Landowner evidence.'

205. Mr and Mrs Hughes of Bodhyfryd were interviewed about their knowledge of the route; their user witness form and notes of their interview are at appendices 12a, 12b and 12c. In her user witness form, Mrs Hughes states that she is not aware of the public having used the route and does not regard it as being public. She believes that route was for farming purposes and for delivery of mail on foot.

206. Mr Hughes explained that he has lived in the Pandy Rhiwsaeson area since his childhood. His grandmother and then his father delivered post in the area and he accompanied them on occasions. As a child aged 9-10, Mr Hughes was involved in beating for the Wynnstay Estate shoot above Cwm-y-Ffynnon.

207. Of particular note in Mr Hughes' comments is that:

- He does recall using part of footpath 7 when delivering post with his father. He also recalls there being a stile in the boundary between Cwm-y-Ffynnon and Caeaugleision.
- He recalls that Esgair Gelynen farm had been abandoned by the time he was 5 or 6, when he delivered the post with his father in 1949-1950s.
- Mr Hughes comments that he is not aware of the application route (now recorded as bridleway 6) being used by the general public.
- He does recall using another route with his father, which was regarded locally as being a public bridleway and was used by horses. This started at a ford on opposite the former Wynnstay Estate keeper's pond; the ford had a big distinctive boulder on one side. It then continued to Llyn Gwyddior via Cwm Pen Llydan, running onto the top of the mountain via the forestry. Mr Hughes recalls that Mr Roberts used to bring shire horses down this track when there was a shoot, to take food back up. This route is shown on the plan appended to his statement.

208. In view of Mr Hughes' comments about the route from the ford to Llyn Gwyddior, other evidence sources have been checked, to ascertain whether there is any information about the status of the route that he recalls using.

- Ordnance Survey maps do show a track, which starts at the ford, runs to Esgair Gelynen and then continues to Cwm Pen Llydan. This route does not entirely coincide with the track noted by Mr Hughes; he indicates that he used a lower track with a zig-zag bend that also ran to Esgair Gelynen and which is indicated on Ordnance Survey maps. Further tracks are shown as running from Cwm Pen Llydan onto the mountain, although not as far as Llyn Gwyddior itself.
- The Tithe Map of 1836 describe the enclosures across which this route runs as being 'pasture'; no route is shown as being excluded from tithe payment. However, if the route was covered in herbage and grazed, then it would have been considered productive land and not exempt from Tithe.
- The Wynnstay Estate records note the land as being partly within the demesne farm, being Rhiwsaeson. The map does show a track starting at roadside within the field noted as 'Cae Ffram', although this does not coincide with the location of the current ford and boulder. This joins a second track, to pass over the enclosure numbered 8 and labelled 'Ffrydd Goeddog', to the boundary with John Yeates' land. The 'quality' of enclosure 8 is described in the text as being 'Wood, arable, pasture.'
- The track is shown on the Ordnance Survey base map used for the Finance Act 1910 survey. It passes through hereditaments 103 and 191. Hereditament 191 is noted as being owned and occupied by Sir Watkins

Williams Wynn and described as 'woodland.' No deduction is claimed for 'public rights of way or user.' Hereditament 103 is noted as being owned by Sir Watkins Williams Wynn and occupied by Luther Jones. It is described as being 'Land and buildings' and again, no deduction is claimed for 'public rights of way or user.'

- No Inclosure Award has been identified which covers this area.

It is possible that there may be public rights over the route indicated by Mr Hughes. However, the evidence described above is insufficient to draw any conclusion about its status. Without further, more positive evidence, it is not possible to assess this at the current time.

209. Mr RG Ashton (appendix 12d) explains that he is the son of the owner of Cwm-y-Ffynnon. He states that he does regard the application route as being public and has observed public use of it. He also states that he has no knowledge of public asking permission to use it, or being turned back. He notes the status of the application route as being 'footpath.'

210. Summary of the user evidence:

Mr Hughes' comments, with regard to the route that he used with his father, may point towards an error or omission on the Definitive Map and Statement. However, at the current time, it is not possible to draw any conclusion about this, without further, more positive documentary or user witness evidence. Both Mr and Mrs Hughes' comments and those of Mr RG Ashton do indicate that they are not aware of any use of the application route as a bridleway in their lifetimes. However, that cannot preclude it having been used as a bridleway prior to that, but having subsequently fallen out of use on horseback.

LANDOWNER EVIDENCE

211. This consists of statements provided by Mr Margolis, Mr A Ashton and Mr R Owen, and Mr Catterall.

212. Mr Margolis has provided the evidence described above and in addition, he provided a witness statement dated 19th December 2017 (appendix 13a.) It was accompanied by an extract from a 1901 map. This witness statement replaced the notes provided following an interview on 30th August 2017.

213. Mr Margolis' witness statement partly focusses on his correspondence with the Council since he bought Caeaugleision in 1982 and opened his holiday business as Barling's Barn. These comments do not provide evidence in themselves of the status of the application route prior to the point when it was recorded on the Definitive Map. Points of note in respect of its status are that:

- Mr Margolis comments that he has found no evidence that there was ever a stile in Caeaugleision field. He notes that this hay field is shown on historic maps (parcel 965 extract 1901 map attached to his witness statement), whereas the stile on the bridleway was in parcel 960, closer to Cwm-y-Ffynnon farm.
- Prior to the mid-1960s, Caeaugleision field was in the tenancy of Caeaugleision farm and the hay in Caeaugleision field was stored in the Barn at

Caeaugleision. After the mid-1960s, Caeaugleision field was in the tenancy of Cwm-y-Ffynnon and the hay in Caeaugleision field continued to be stored in the Barn at Caeaugleision up until Mr and Mrs Margolis purchased the property in 1982.

- He feels that all of the evidence from the extensive public records he has researched, and witness statements, point to the fact that bridleway 6 has always been a footpath. He comments that it is only the 1960s survey that says differently with no credible evidence to back this up.

214. Mr Ashton and Mr Owen were interviewed together on 5th October 2018. Mr Owen is Mr Ashton's uncle and they farm Cwm-y-Ffynnon in partnership. Their user witness forms and interview notes are at appendices 13b, 13c, 13d and 13e. Some key points to note from their interview are that:

- Mr Ashton and Mr Owen explained that Cwm-y-Ffynnon, Caeaugleision, Cwm Pen Llydan and Esgair Gelynen farms were all part of the Wynnstay Estate. As previous tenants left or abandoned the farms, their family were asked to take on the tenancies by the Estate. They did so and farmed the land.
- In the early 1980s, the family bought Cwm-y-Ffynnon and Caeaugleision from the Wynnstay Estate.
- Mr Owen was born at Caeaugleision. Mr Owen comments that the track along which the bridleway is recorded was used by the farm prior to the 1950s, to gather sheep using ponies. This would have been a few times per year. They travelled along the track and then left it to go onto the open hill.
- Neither Mr Ashton nor Mr Owen recall other horse riders using bridleway 6 and Mr Owen does not recall it being used on foot by anyone other than Cwm-y-Ffynnon farm.
- Mr Owen thinks it likely that the track was used to carry peat down from the hillside on sledges to Esgair Gelynen. The track on the hillside, along which the route of the bridleway is shown and the wall beside it are very old, having been there since the time when the land was owned by the Wynnstay Estate.
- He recalls that there was a stile on the path, in the same fence line as the new gate, near to the farm house at Cwm-y-Ffynnon. It had rails, steps and a plank.
- Mr Owen does not recall anyone from Cwm Pen Llydan using the route to travel to Cwm-y-Ffynnon. Mr Ashton comments that in the 1960s, the family took on the tenancy for Cwm Pen Llydan. At that stage, the only access to the farm was on foot; he does not know how horses would have been taken up there. The current track to the property, from the river, was put in by Mr Ashton's family in the mid-1980s.

215. Mr Catterall was interviewed on 5th October 2017 (appendix 13f.) He has carried out extensive research into the history of Cwm Pen Llydan. Amongst other comments, he notes that:

- The property was built in the 1827. Before that, there was a longhouse dating back to the 1600s on the site, where there is now the remains of a stone barn.

- Before the current access track was built, the only access to the farm from the county road was on foot along the route now recorded as footpath 4. The farm had a motor car in the 1930s, but this was left in a tin shed on the road, at the bottom of the footpath.
 - Mr Catterall understands that two Welsh Cobs were kept at the farm. They came in along the access track from Esgair Gelynen, but not on the route now recorded as bridleway 6.
- 216.** Mr Catterall has also provided a photograph of the water wheel at the back of Cwm Pen Llydan house, dating from the 1920s (appendix 13g.) He comments that “Clearly, there never was a bridleway (or even a footpath) as there was a permanent drive shaft from the wheel to the house.”
- 217.** Mr Catterall’s comments and the photograph from the 1920s do suggest that there may be an issue with the alignment of the bridleway as recorded. The wheel clearly predates the bridleway being recorded on the Definitive Map. However, Ceri Evans’ recollections (described above) do suggest that there was route used by horses, that passed through Cwm Pen Llydan and continued over the open mountain to Llyn Gwyddior. This does support the existence of a route through Cwm Pen Llydan that could be used by horses.
- 218.** Mr Catterall provided extracts from the Tithe Map and apportionment (appendices 13h, 13i and 13j) for the area around Cwm Pen Llydan; the contents are described above.
- 219.** He has also provided a leaflet by the Welsh Mills Society from October 2011 (appendix 13k.) This includes a copy of the photograph that Mr Catterall provided of the water wheel. The text explains that the person in the picture is Dafydd Roberts, tenant farmer and father of Ceri Evans, née Roberts. It notes that Ceri Evans does not recollect seeing the wheel when she was growing up and explains that the wheel was used to turn the butter churn in the pantry.
- 220.** Landowner evidence-Conclusions:
The landowner evidence is made up of a combination of personal recollections of the application route and research into its history. It does point towards horses having been taken to Cwm Pen Llydan from the direction of Caeaugleision and Cwm-y-Ffynnon. Mr Ashton’s evidence does indicate that horses were taken up the application route from Cwm-y-Ffynnon for farming purposes, at the very least.

ASSESSMENT OF THE EVIDENCE

- 221.** The documentary evidence does support the existence of a public path between Caeaugleision and Cwm Pen Llydan and the applicant has not challenged this. The effect of the application would be to downgrade it, not to delete it.
- 222.** Ordnance Survey maps consistently show a route annotated ‘FP’, which coincides with the line now recorded as bridleway 6 that joins the two farms via Cwm-y-Ffynnon. The Finance Act 1910 survey does note 5 ‘footpaths’ as being

an easement or restriction on Caeaugleision. Five paths annotated 'FP' are shown on the Ordnance Survey base map on which the survey has been produced, one of which is the application route. The parish council minutes and Rights of Way Act 1932 survey information also give a strong indication that the application route was in use on foot in the early 20th century.

- 223.** However, as described above, it seems that horses were able to travel along it and the physical character of the route would allow for that. The Wynnstay Estate survey for Caeaugleision indicates that at that time, there was a gate at the northern end of Caeaugleision farm yard. There also appears to have been a gate at the location where a stile is indicated on the Rights of Way Act 1932 survey. This may reflect a change in the use of the route over time; the route may simply have fallen out of use by those on horseback by 1932.
- 224.** The landowner and user evidence does include personal recollections of the application route and surrounding area, which are valuable in understanding its more recent history. Those recollections do suggest that use by the public in the 20th century has been on foot, although Mr Owen acknowledges that there was use of the route on horseback for farming purposes.
- 225.** Mr Hughes' comments are interesting, as they point towards a different route that was used by horses and carts, from the ford on the road to Rhyd y Meirch. That would line up with the information given by Mr Catterall about the track from Esgair Gelynen, along which the cart horses were brought into Cwm Pen Llydan. However, without more positive documentary evidence, it is difficult to make any further assessment of this at the current time. Neither does it preclude the application route also having been used on horseback.
- 226.** It is also significant that the application route was included in the draft map as a bridleway and that was not challenged at the time. The parish survey card specifically refers to the 1932 Rights of Way Act survey, so that information was clearly considered by the surveyor. It is also significant that all of the routes on the 1932 survey are described under a 'List of footpaths.' It is highly unlikely that all of the public ways in the parish will only have been of footpath status and indeed, several other paths shown on the 'List of footpaths' are now recorded as public ways of higher status.

CONSULTATIONS:

- 227.** The owners of the affected land, path user groups, Natural Resources Wales, Llanbrynmair Community Council, the Local Member and statutory undertakers were consulted about this application. The responses are described below.
- 228.** Mr Margolis has submitted detailed further comments (appendix 14a), referenced to each numbered paragraph in this report. In response to his comments:
- In relation to paragraph 24, the applicant questions whether due process was followed, as he is not aware of any evidence that the (former) parish council of Llanbrynmair discussed bridleway 6 between the years 1958 and 1970 and notes that Mr Owen has no recollection of any such discussion. In response to this, there is positive evidence that the statutory process was

followed in relation to public rights of way in Llanbrynmair parish, including bridleway 6, because parish survey cards were produced on the form set by the National Parks and Access to the Countryside Act 1949; those forms survive to this date. Whilst some parishes noted discussions about individual paths in their minutes relating to the parish surveys, others did not. It is also of note that no objection appears to have been made to the inclusion of this bridleway on the Draft, Provisional or Definitive Maps.

- In relation to paragraph 26, the reasons for which bridleway 6 might have been recorded as a cul-de-sac have been described because it cannot be assumed that the bridleway has been recorded at the wrong status, solely because it has been recorded as ending on a footpath. There are other possible reasons for this anomaly, although it is outside the scope of this report and the application made to formally assess them.
- In relation to paragraph 30, the applicant provides a statement in support of the accuracy of Mr Ashton's sketch. The accuracy is not being brought into question, but it is normal practice to note the potential limitations of every evidence source considered in researching these cases.
- In relation to paragraphs 39 and 40 and 125, the applicant comments on the reason for and use of the worn, used route in the aerial photographs. He notes that the tenants of Caeagleision farm at that time were working the field to and from Caeagleision Barn. It is accepted that the tenants are more than likely to have been using this route, but that does not prove that other members of the public were not using the route as well. Aerial photographs provide good evidence of physical features at the time when the picture was taken. However, like Ordnance Survey maps, they can neither prove nor disprove the existence of public rights over a given route.
- In relation to paragraph 43, the applicant points out an error in the description of the direction of the worn route; this is noted and the error has been corrected in paragraph 43 above, so that it now reads 'northeast.'
- In relation to paragraph 55, the applicant's assertion as to the location of Caeagleision is accepted, but as noted above, it is normal to note any potential limitations in relation to each evidence source.
- In relation to paragraph 145, the applicant questions the connection to a 'district road' that is noted in the parish survey card. The parish survey cards are statutory documents and for Montgomeryshire, they were adopted as the Statements to accompany the Draft, Provisional and first Definitive Maps. As such, their content was made public and could have been challenged following the publication of the Draft or Provisional Maps. The note about the link to a 'district road' is not conclusive evidence of the existence of those rights in itself; a separate assessment would have to be made about that. However, the content of the Survey Card was put forward on behalf of the former Parish Council and does not seem to have been challenged by them; the inclusion of a note about the 'District road' is a matter of fact.
- In relation to paragraphs 176 to 179, the applicant confirms that he is not contesting the existence of a public footpath but comments that he has yet to see any evidence that the route was used by equestrians other than those

working for the farms. As noted above, the physical characteristics of the route certainly do not preclude use on horseback; the presence of a stile does not disprove that there were pre-existing rights to use the route on horseback. The Council is not required to provide evidence that there are rights for equestrians beyond that already contained in the Definitive Map and Statement; rather, it is for the applicant to provide cogent evidence that those rights do not exist. 'Cogent' is defined in the Oxford English Dictionary as being 'clear, logical and convincing.'

- 229.** The applicant's final comment is that he believes that the Council has "...researched all available evidence very thoroughly but – in my opinion – all the evidence they put forward as to the actual status of bridleway 6 (as opposed to the legal status), is full of supposition and "might have been" which is not backed up with hard fact." In response to this, historic evidence can rarely provide such 'hard facts'; whilst the text and features in a documentary evidence source are a matter of fact, assessing what they mean for highway research requires a great deal of interpretation. A knowledge is needed of the historic context of each document, so that reasonable inferences can be drawn about the meaning it intended to convey.
- 230.** Mr Catterall has also responded as an affected landowner (appendix 14b.) He feels that on balance, the evidence would suggest that the downgrading to a footpath would definitely be the right decision, not just on the "common sense must rule" basis but also on the historical perspective. He has not provided any further evidence or commented on the individual evidence sources described above.
- 231.** Mr M Mosse has provided responses in two capacities; first, he has responded as the local representative for the Rambler's Association (appendix 14c) and second, in his role as the British Horse Society representative (appendix 14d.)
- 232.** As the Rambler's Association representative, he comments on some blockages on the bridleway and notes that these could be resolved by a diversion. These are practical management options that cannot be taken into account in assessing this application for a Definitive Map Modification Order.
- 233.** As the British Horse Society representative, he comments that he objects to the application and has previously suggested an alternative route for the bridleway. Again, this is a practical management option that cannot be taken into account in assessing this application for a Definitive Map Modification Order.
- 234.** The Open Spaces Society representative describes some points from an Inspector's decision about another application for a Definitive Map Modification Order affecting a bridleway at Llanbadarn Fynydd (appendix 14e.) He has clarified that there is a typing error in his response; the reference to paragraph 5 should read '52' instead. He quotes the Inspector's comments about the need for evidence, to demonstrate that proper procedures were not followed in connection with the 1949 Act when this bridleway was added to the Definitive Map and the need for cogent evidence. The Open Spaces Society representative comments that "Witness evidence about what use was made of the way is irrelevant; it is conceded that it is a footpath and the absence of

regular use on horseback in the middle of the late C20 is also irrelevant. The question is what is the historic status. No reliable witness testimony can go back that far (only hearsay.)” He then goes on to suggest that no case has been made out for downgrading and that the application should be turned down.

235. The Byways and Bridleways Trust, Natural Resources Wales and Powys County Council’s Planning Services acknowledged receipt of the emailed consultation but provided no further response.

236. The following statutory undertakers responded, but none objected:

- BT Openreach;
- Manweb;
- Wales and West;
- Severn Trent.

CONCLUSIONS

237. The body of evidence researched includes positive evidence of a highway of footpath status, at the very least, over the application route. This is not contested by the applicant.

238. Overall, the physical characteristics of the application route do not preclude use of it on horseback. The route is sufficiently wide to allow for that and there are sections with the characteristics of an old enclosed lane. The issue at Cwm Pen Llydan may reflect an alignment error on this part of the bridleway, rather than an error in relation to the status, but that is not the subject of this application.

239. The alignment of the route is consistent on Ordnance Survey maps from 1887 to 1953; the line recorded on the Definitive Map is clearly intended to follow the route shown on the Ordnance Survey base map. The annotation of ‘FP’ on Ordnance Survey maps reflects the surveyor’s view about the physical character of the route only; they were instructed not to involve themselves in the extent of public rights.

240. Local history records attest to the generally poor condition of highways in the area during the period prior to 1889 and even into the early 20th century. The presence of a stile at one location in the 20th century could reflect a change in the use of the route over time, but would not be enough, without other evidence, to draw the conclusion that the route cannot be of bridleway status.

241. The parish survey card records the path at bridleway status. If the Parish Council had disagreed with the surveyor’s view that this route was a bridleway, they could have challenged that at a number of stages before the first Definitive Map was published. No evidence has been found to indicate that the status was challenged, following the publication of the Draft or Provisional Definitive Maps. Whilst the application route is listed on the Rights of Way Act survey records under the ‘Schedule of footpaths’, it must be noted that all of the paths in Llanbryn-mair parish were listed on the same ‘Schedule of footpaths.’ There does not seem to have been a corresponding list of bridleways.

- 242.** As noted in the Welsh Government’s Guidance for Local Authorities on Public Rights of Way, “it is not for the authority to demonstrate that the Map reflects the true rights, but for the applicant to show that the Definitive Map and Statement should be revised to delete or downgrade the way.”
- 243.** The evidence to do that must be cogent, of sufficient substance to displace the presumption that the Definitive Map is correct and there must be positive evidence of any erroneous recording. Whilst the applicant’s comments on the evidence are noted, it is not considered that they have provided sufficient evidence to positively demonstrate that the application route has been incorrectly recorded.
- 244.** As noted above, the legal event relevant to this application is section s53(3)(c)(ii) of the Wildlife and Countryside Act 1981. Namely, this is “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.”
- 245.** For the reasons described above, on the basis of the available evidence, it is not considered that, on the balance of probabilities that the legal criteria are met under section s53(3)(c)(ii.)

RECOMMENDATION:

That a Definitive Map Modification Order should not be made in respect of application Llanbrynmair_DMMO_001 because it is considered that, on the balance of probabilities, the legal criteria under section s53(3)(c)(ii) of the Wildlife and Countryside Act 1981 are not met.