



RIGHTS OF WAY COMMITTEE

Date Written	15 September 2017
Report Author	Geraint Morgan / Cheryl Jones
Service Area	Legal & Economic Regeneration
Committee Date	25 th September 2017

To: Chair, Ladies and Gentlemen

Bedlinog 8

1.0 SUMMARY OF THE REPORT

1.1 To determine an application to modify the route of Bedlinog 8.

2.0 RECOMMENDATION(S) that

2.1 (a) the route of Bedlinog 8 as shown on the Council's Definitive Map and Statement be not modified.

In respect of the route between the houses:

2.2 (b) On the balance of probabilities there is sufficient evidence to support that the route marked with a dashed line between Points B – C on the plan, Bedlinog 8, has been used for such period so as to raise presumption that it has been dedicated as a footpath, and that the evidence has not been rebutted by other evidence.

2.3 (c) On confirming (a) above to approve the making of the Definitive Map Modification Order to show Bedlinog 73 as a footpath.

2.4 (d) To approve the confirmation of the Definitive Map Modification Order made as a result of (b) above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.

- 2.5 (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 Bedlinog 8 is recorded on the Council's current Definitive Map and Statement dated 15th December 1995 and is described as:-

BEDLINOG 8 FOOTPATH

Commences at the north-west end of Mount Pleasant Street, Bedlinog, and proceeds north, past a disused quarry and thence across field to Coly Isaf Farm and footpath No. 7.

Length (metres) 640 width (metres) 0.6

Note: Formerly footpath No. 235 Gelligaer

- 3.2 In the previous Definitive Map and Statement prepared and maintained by the now defunct Gelligaer RDC the route is described as follows:-

Parish of Gelligaer.

O.S. Glam. X11.15.

<i>No. of Path: 235</i>	<i>Type: F.P.</i>	<i>Length: 700 yards</i>	<i>Width: 2'0"</i>
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Point of Commencement: Northwest end of Mount Pleasant Street, Bedlinog

Point of Termination: Coly Isaf Farm Bedlinog.

Path goes from upper end of Mount Pleasant Street past disused quarries and then north through parcels 850 and 799 then over a stile to the north again through parcel 797 over a stile and up into Coll Isaf Farm.

- 3.3 On 22nd August 2015 an application was received by the Council to modify the Definitive Map and Statement.
- 3.4 This application was for the addition of a footpath to the Statement from the lane between No. 7 and No. 8, 8 Upper High Street and rear gardens to the front pavement of between No. 9 and No. 10 Upper High Street, where it has been for past 80 years or more.
- 3.5 The applicant together with people in support of the application contend that the southernmost position of the route of Bedlinog 8 follows the dashed line and not the bold line as shown on the plan attached at Appendix 1 and labelled Bedlinog 8.

- 3.6 The section that is requested to be realigned on the Definitive Map and Statement is shown between points B and C as a dashed line. The recorded route is shown between point A-B-C as a bold line.
- 3.7 Anthony Price (born 1954), the main claimant states that he has used the path from the highway Upper High Street, side curtilage of No. 9 Upper High Street, over a stile to gain access to Coly Isaf Farm to get to work. He further states that he used the route for a walk and to help on the farm as a teenager. He then states he only uses the route occasionally in the summer (for the last 15 years) and that use was on foot. Mr Price in a plan depicts the route he used as being the dashed route between B – D, that there are stops on this dashed route and after joining the bold route there was a stile. He further states that there is a rights of way arrow at the top of the steps and at the junction with the highway. Mr Price further states that he considers that the route should follow the dashed alignment as it is the proper route for the Right of Way of Pathway 8 or under the Rhymney Valley District Council pathway 235 for past 80 years. He also states he was never given permission to use the route, clarifying this with the local people of the village only know that this is the proper route for Pathway 8 between No. 9 and No. 10 Upper High Street, Bedlinog and that the land was used by the local squire. He states that the dashed route is clearly marked with rights of way signs by Merthyr Tydfil County Borough Council under the 1981 Act. He goes on to say that the route was altered by the Rights of Way Department when they changed it in 2009 because of a complaint received by a landowner. He acknowledges there are stiles and gates along the route and that the gates were never locked. With regard signs he states there were signs – a man for right of way at the bottom of alley for No. 9 on pavement on opposite side of road then on top of steps at rear of No. 9 on a post was a small arrow sign showing people to walk down steps on to main road. He further states the route is clearly marked on the deeds of No. 9 Upper High Street, Bedlinog. He has also seen other people (ramblers and locals) using the dashed route. He states he has been unable to use the route since 2009 as the Rights of Way department have let the trees grow wild, before that the Council kept the route clear.
- 3.8 Byron Ashten, one of the claimants in 2015 stated.

I would like to confirm that Pathway 8 was and is a regularly used pathway from Upper High Street to the fields behind. It has also been recognised as a Right of Way by local and visiting rambling groups.

On 16th September 2016 the Legal Officer wrote to Mr Ashten requesting clarification of the alignment of the route and 6 other questions as follows:-

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Ashten responded as follows:-

Please find enclosed map of above.

With regard to the several questions:

- I am unable to provide dates when I used the footpaths, but they were sometime in the 1960's and 1970's and were well used.
- I am unable to tell you when the gate was installed.
- I am also unable to advise you of the date the stile was installed.
- I can confirm that there routes were regularly used by me.

With regard the map provided Mr Ashten has highlighted both the bold route and the dashed route.

3.9 Then G Blake, another claimant stated

I always remember the pathway where it is in my life.

On 16th September 2016 the Legal Officer wrote to Mr Blake requesting clarification of the alignment of the route and 6 other questions as follows:-

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Blake responded as follows:-

In response to your letter received 09.09.2016 regarding footpath at Upper High Street. The gate was there before 1950 the stile was put about 1960 as I can remember. I played down in the Quarry and when I was older used it to take my dog for a walk.

3.10 Mr Bryn Davies, one of the claimants in 2015 stated.

As a resident of the village for over 90 years, and one who took an interest in the village and its inhabitants, I well remember the footpath going from opposite Mount Pleasant Street between No. 9 and 10 Upper High Street passing the disused Quarry to gain access to the path going towards Colly Isaf Farm. I remember that after a shower of rain the stones and chippings being washed out onto the main highway making it necessary for the Council roadmen to clean it up. I also remember that in 1973 tarmac was used to cover the surface.

At no time do I remember being told that it was an adopted Highway until recently.

On 06.09.16 the Legal Officer wrote to Mr Davies requesting alignment of the route and seven other questions as follows:-

1. Please provide the dates when you used the path.
2. Please confirm that the tarmacking of the route you mention in your letter is the same route as I have requested you to draw on the plan accompanying this letter.
3. There is mention of a gate at the top of the stone steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
4. Please advise as to the date on which you consider the gate was installed.
5. There is also mention of a stile just past the gate mentioned in 3 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
6. Please advise as to the date on which you consider the stile was installed.
7. Please confirm that you used the route that you have drawn.

Mr Davies did not respond.

3.11 Mr David Evans, one of the claimants in 2015 stated:-

My name is David Evans and I am putting in writing to confirm that I personally used Ref Right of Way Pathway No. 8 between No. 9, No. 10 Upper High Street.

When I was in my teens I used to travel this footpath daily between the two collages No. 9, No. 10 all the way up to Colli-Uchaf-Farm where I worked for Farmer John Walter Morris for a number of years. I have only ever recognised this footpath the original right of way.

On 6th September 2016 the Legal Office wrote to Mr Davies requesting alignment of the route and six other questions as follows:

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stone steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as to the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Evans responded as follows:-

The gate at the top of the stile was there in the 1950 fifties along with two stone stiles along the footpath which passed along land owned by 'Bedlinog Farm' onto Colli Uchaf the next farm along the way. I used this footpath for about 10 years. The last time I used the footpath was 1990 nineties.

P.S. The map is not big enough to pin point where the second stone stile is.

Mr Evans did not mark the map.

3.12 Mrs B E Jones one of the claimants stated.

I know that my father in law used to play on this ground you're referring to, we often listened to him when he was a boy, he had an old bicycle frame but no wheels they used to stick the forks of the frame into the ground and it was their horse going to work. My husband (which has now passed over) he used to play up there on an old double decker bus. I also played in the bus when I would visit my auntie and uncle which lived at Angel's Bungalow Bedlinog opposite the Con Club. My father in law was born 1906 so you see there have always been a right of way between No. 9 and 10.

So my partner in law would have been now 116 in September 28th 2016.

The Legal Officer wrote to Mrs B E Jones on 06.09.16 to ask for the alignment of the route and six other questions.

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B"
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mrs Jones did not respond.

3.13 Mr Gareth Jones one of the claimants stated.

In recent years I have written on this subject to express my view at what I consider to be the wrongful redesignation of what I know to be the original line of said ROW:

I lived in Mount Pleasant, Bedlinog from the age of 4 years to 12 years: During that time the Row/Path went between the old semi-detached houses on High Street of the house next up the hill. The path/row ran between 2 narrow walls, then to some steps and out through a gate. From here one could walk behind Bedlinog Terrace and/or Upper High Street to either Colly Isaf Farm or Colly Uchaf Farm. A walk I often undertook with my parents after Sunday dinner.

The current line of the ROW, is, in my opinion incorrect as it differs from the original and historic one.

On the 06.09.16 the Legal Officer wrote to Mr Jones to clarify the alignment of the route and six other questions as follows:-

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.

4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B"
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Jones responded to the questions as follows:-

1. Between 1950 – 62
2. 'A' as marked.
3. No idea!
4. Unable to recollect said "stile"
5. No idea! (again!!)
6. Route walked confirmed in RED

3.14 Another of the claimants Mr Richard Kinsey stated.

I Richard Kinsey used to walk up and down steps on way to school and coming home. Moses Jones who worked for the Council used to maintain steps and the stiles on path 8.

At the top of the steps was an iron gate and two yards further into field was a wooden stile.

There was no path down into quarry.

The Legal Officer wrote out to Mr Kinsey on 06.09.16 to clarify the alignment of the route and six other questions.

1. Please provide the dates when you used the path - All my life.
2. There is mention of a gate at the top of the stone steps. Please mark the position of the gate on the plan I have forwarded to you with an "A" – As long as I can remember.
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B" - As long as I can remember.
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Kinsey responded with the comments next to the questions as above. Mr Kinsey also marked the map with the route.

3.15 Mr Allen Morgan another claimant in 2015 stated:

I am Allen Morgan and I used to live at No. 6 Bedlinog Terrace. I have used the above mentioned footpath all my life that is 71 years.

The Legal Officer wrote out to Mr Morgan to ask him to clarify the alignment of the route and six other questions as follows:

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

Mr Morgan did not respond.

3.16 Mrs B Morgan another claimant in 2015 stated.

Mrs B I Morgan was born in the bungalow at the bottom of Quarry Lane, Bedlinog in 1949, and lived at 10, Upper High Street, Bedlinog where my mother still lives. As children we used the gully between No. 9 – No. 10, through the wicket gate to play in what we called the back field's, behind my mother's house that wicket gate has always been there.

The Legal Officer wrote to Mrs Morgan on 06.09.16 to clarify the alignment of the route and seven other questions:-

1. Please provide the dates when you used the path.
2. You mention that your mother still resides at No. 10. I would be grateful if you could provide me with her name so that I could write to you to obtain her comments in relation to the application to amend the Definitive Map and Statement.
3. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
4. Please advise as to the date on which you consider the gate was installed.
5. There is also mention of a stile just past the gate mentioned in 3 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
6. Please advise as the date on which you consider the stile was installed.
7. Please confirm that you used the route that you have drawn.

Mrs Morgan responded and provided the map with a red line for the route. She also noted that the "wicket gate have been there since I can ever remember".

3.17 Another two claimants in 2015, Mr and Mrs Munkley stated that:-

I was born and raised in Bedlinog. The Right of Way between No. 9/No. 10 Upper High Street, Bedlinog, has always been a Right of Way, as a child I used the steps to go to play in the back fields as did all my friends.

If as you say that it is not the Right of Way why were the steps maintained and the brambles cut down by Gelligaer Council and also Merthyr Tydfil Council when we came into the Merthyr Borough Council in 1974.

My husband has lived in Bedlinog for 43 years and he has used that path to go up to the fields to help with the haymaking.

The Legal Officer wrote out to Mr and Mrs Munkley on 06.09.16 to clarify the route alignment and ask six other questions:-

1. Please provide the dates when you used the path.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed.
6. Please confirm that you used the route that you have drawn.

The claimants responded with answers next to the questions, as below:-

1. Please provide the dates when you used the path – From when I was a child.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A"
3. Please advise as to the date on which you consider the gate was installed - Before I was born
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed – In the 50's.
6. Please confirm that you used the route that you have drawn – I always used the route to go and play in the back fields as we refer to them.

I look forward to hearing from you in order to progress the matter.

They also included a map with the route coloured red.

3.18 Mr and Mrs Roberts also claimed the route in 2015 and stated:-

Regarding the above, this Right of Way have been used since the houses mentioned have been built. As children it was always used as easy access to the mountain and also the club field which was used for fete's and games organised by the local Sunday School anyone who walks through this Right of Way can see the whole purpose of this way.

The Legal Officer wrote out to them on 06.09.16 to clarify the alignment of the route and ask six other questions.

1. Please provide the dates when you used the path - *Please note my date of birth you'll work out it's been many years".
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A" - I remember no gate only a stile.

3. Please advise as to the date on which you consider the gate was installed.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed - I always remember it being there. I did use this Right of Way when I was younger also when I had my own family to get to the club field.
6. Please confirm that you used the route that you have drawn.

Mr and Mrs Roberts responded with answers next to the questions above. Also they provided the map with a route marked.

3.19 Mrs Helen Thomas also a claimant in 2015 stated:-

I have used this pathway throughout my life (65 years) and was aware of many others also using it.

The Legal Officer wrote out to Mrs Thomas on 06.09.16 to clarify the route alignment and ask five other questions:-

1. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
2. Please advise as to the date on which you consider the gate was installed.
3. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
4. Please advise as the date on which you consider the stile was installed.
5. Please confirm that you used the route that you have drawn.

No response was received.

3.20 Another claimant Mr Phillip Sussex wrote in 2015.

I am the owner of 9 Upper High Street, Bedlinog and I inherited from my parents when they died and as far as I know the Right of Way has always been between number 9 and number 10.

The Legal Officer wrote out to Mr Sussex to clarify the alignment of the route and ask eight other questions.

1. Please provide the date when you inherited 9 Upper High Street from your parents.
2. Please confirm whether you have ever resided at 9 Upper High Street and if so when.
3. Please advise the name of the current occupant of 9 Upper High Street as I will need to write to them to obtain their comments on the application to amend the Definitive Map and Statement.
4. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
5. Please advise as to the date on which you consider the gate was installed.
6. There is also mention of a stile just past the gate mentioned in 4 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".

7. Please advise as the date on which you consider the stile was installed.
8. Please confirm that you used the route that you have drawn.

Mr Sussex responded.

With reference to the above and in relation to your letter of the 6th September 2016 I wish to confirm the following.

I inherited 9 Upper High Street, Bedlinog after my parent's death in 1979/80. Prior to this my parents had always rented out the property so I myself never lived there. The person currently renting the property is Susan Jones who has grown up there because she lived there with her parents who were the people who rented it from my parents.

Sorry that I am unable to help you further.

3.21 Mrs Whittaker is another claimant in 2015 and stated:-

I was born and have lived in Bedlinog all my life as children me and all my friends used the Right of Way path between No. 9 and 10 Upper High Street to go up to the fields for picnics and to play in the fields, the brambles were always cut back allowing anyone using the path a safe access up to the fields.

The Legal Officer wrote out to Mrs Whittaker on 06.09.16 to clarify the alignment of the route and ask six other questions.

1. Please provide the dates when you used the path – When I was a child.
2. There is mention of a gate at the top of the stones steps. Please mark the position of the gate on the plan I have forwarded to you with an "A".
3. Please advise as to the date on which you consider the gate was installed – Before I was born.
4. There is also mention of a stile just past the gate mentioned in 2 above. Please mark the position of the stile on the plan I have forwarded to you with a "B".
5. Please advise as the date on which you consider the stile was installed – 1950's
6. Please confirm that you used the route that you have drawn – Yes as a child to play up the fields.

Mrs Whittaker responded to the questions as above and also provided a map with the route coloured red.

3.22 Mrs Pember stated in July 2015 that she objected to the request of Mr Price to have the route of Bedlinog 8 altered. Mrs Pember stated:-

My parents rented and owned land at the old quarry Bedlinog since the 1950's, I own part of the land presently.

My father used to have grazing horses on the land directly behind 8 and 9 Upper High Street where the footpath route is located; he fenced the area during the 1970's but always kept a clear gap for walkers to get to the footpath gate.

I visited the land regularly to ride my pony as a child and have accessed my land for over forty years.

The lower part of the quarry land was always open land with no fencing, as a child I used to play all around the quarry land and used to walk up to the footpath gate, the path started from what is now named old quarry lane then at the side of 8 Upper High Street up the grass banking to the gate there was a gradual slope but easy to walk.

The route was still accessible until Mr Price bought the lower part of the quarry in 1998 and Mr Hiscock bought number 8 Upper High Street around 2000, they have developed and built over the area with walls, fencing and trees. The gradual sloping footpath off the lane to the gate was dug away with a JCB and deposited on top of three garages that were located further up the quarry land; you can still see the remains of the block of three garages protruding through the debris.

I can remember that the pathway and steps at the side of 9 Upper High Street was used by the occupiers of 9 Upper High Street to get to their front door and also the people living in number 8 Upper High Street used to access their property up the same path then through number nines front yard to get to their front door, that was the only way to access number 8 until they built a new gate opening in the stone wall the other side of the house off the lane.

I have supplied photographic and ordnance survey plans as evidence, the well-trodden footpath is clearly seen on the aerial photographs following the old original boundary features of 8 Upper High Street then up to the gate.

The ordnance survey plan dated 2005 shows the old original garden boundary of 8 Upper High Street. That boundary feature is consistent with the route of the footpath shown on the definitive map and statement, the Glamorgan archives copy I sent you previously is a much clearer map than the one held at the Council offices.

The ordnance survey plan dated 2012 shows the boundary features extended over the footpath route at the rear of 8 Upper High Street.

I request that you should dismiss any potential DMMO applications as the route has been recorded correctly on the definitive map and statement.

Please could you also ensure the path is kept clear of any further obstructions and you replace the footpath sign as you promise previously. As our land directly adjoins the area of the footpath route we are getting the inconvenience of walkers coming on to our property as the route is not signposted.

On 6th September 2016 the Legal Officer wrote to Mrs Pember asking a couple of questions:-

I attach an up to date plan of the area and I would be grateful if you could mark the plan in red to show what you understand to be the correct alignment of the route.

As you are aware there are currently a gate and stile situated at the field end of the path between Nos. 9 and 10 Upper High Street. Please provide the date that you consider these two features were installed.

Mrs Pember responded as follows:

We received a letter from you dated 6th September 2016 regarding footpath 8 Bedlinog, unless we have misunderstood the wording of the letter it suggests that we have requested an amendment to the definitive map and statement.

To make it absolutely clear we have not requested an amendment, or intend to put an application to amend the definitive map.

We have just requested that the current legally recorded footpath as shown on the definitive map and statement which is also shown on the land ranger walking maps as the same route, is to be kept open, clear of obstructions and the footpath sign replaced in its correct position.

In reply to your question what date do we consider the footpath gate and stile were installed, the gate is a very old fashioned rusty gate and generations of family members have known about the gates existence in excess of 100 years.

Although there shouldn't be any need for us to show you the route as it's clearly recorded on the 1970 Definitive map and statement. We have provided a plan as requested.

- 3.23 Geoffrey Pritchard, a chartered valuation surveyor provided the following information in relation to the footpath between No. 7 and No. 8 Upper High Street, Bedlinog:-

The Hiscock family lived at 8 Upper High Street for many years from the late 1930's.

Vincent Hiscock who was born in the house has lived here again since 2001.

Hiscock family (James and Mary) lived here with their children two of whom still live in Bedlinog. Tony lives in Lewis Street and Vincent who now owns number 8 Upper High Street.

Tony Hiscock was born here in 1939 and lived here until he married in 1961. The lane was owned at the time by Margaret Edwards as was the land at the rear of number 8 and 9.

Vincent Hiscock was born here in 1941 and lived here until he joined the army in 1960. He purchased the property and returned to live here in 2001.

At some time between 1960 and 1980 the lane and parcels of land at the rear of numbers 8 and 9 were sold by the then owner.

At no time was the lane or land at the rear of No. 8 a right of way. However there is a public right of way between Number 9 and 10 Upper High Street as confirmed by Merthyr Council Rights of Way Officer in 2010.

1972 James Hiscock died and his widow lived at No. 8 on her own. In 1973 the local authority were asked to provide some lighting on the lane as it was an unmade up lane and dangerous in the dark for an elderly lady. According to then local Councillor Benny Cook the request was refused because the lane was privately owned. This was in 1973.

1973 Lane was surfaced (tarmac) by Mr William Issac on the instruction of the local authority. No further resurfacing has been carried out up to the present day. (2011)

1978 May Hiscock died.

1997 Property purchased by Eileen Evans.

2001 Property purchased by Vincent and Marion Hiscock from sons of Eileen Evans.

Enquiries made at this time at the Welsh Land Registry Office in Swansea revealed the lane was owned freehold along with some of the land at the rear of 8 Upper High Street. Freehold Land number WA881144. Enquiries made with Merthyr Council revealed that the lane was not owned by them but was an adopted highway and maintained at public expense. However no date could be given when this adoption took place or any dates when any maintenance had been carried out.

2001 Permission of all four owners of the lane was required by the gas company to install piping to provide gas supply to 8 Upper High Street.

2002 Small parcel of land purchased by Vincent Hiscock from owners of WA881144. No issue raised about rights of way at the rear of 8 Upper High Street. There is not nor has it ever been suggested that there was or is a right of way at the rear of 8 Upper High Street, Bedlinog.

These facts and recollections are by the undersigned.

Tony Hiscock and Vincent Hiscock

Other Information in Relation to Route

3.24 On 22nd April 2013 the Council served a Notice on Mr Wilson and Mr Price to remove some barbed wire that was destructing the route. This obstruction occurred at the point to the rear of the property that adjoined Old Quarry Lane. Mr Wilson and Mr Price were given until 20th May 2013 to remove this obstruction.

3.25 On 22nd April 2013 the Senior Solicitor wrote to Mr Price as follows:

I write in relation to the above and in particular to the barbed wire which is fixed to the wire fence that runs along the south west side of the lane.

As you are aware, the lane up as far as the new fence posts is an adopted highway, with a public right of way (which is also a highway) extending for a meter or so

beyond the gate posts before it veers in a north east direction behind the rear gardens of 8 & 9 Upper High Street.

Section 164 of the Highway Act 1980 states: 'Where on land adjoining a highway there is a fence made with barbed wire in or on it and the wire is a nuisance to the highway, a notice may be issued by the Local Authority for the 'nuisance' to be removed'.

I confirm that following reports of a nuisance from members of the public, the Council have considered the same and that the view that a nuisance does in fact exist and on that basis you are required to remove the barbed wire from fence to the side of the highway. Please ensure the barbed wire is removed by the 22nd June 2011. I will ask an officer from the Highways Department to check for compliance on that day.

3.26 On 1st May 2013 a response was received.

In reply to your letter dated 22.04.13 and our phone conversation dated 24.04.13, I am informing you yet again that there has never been a right of way up my lane; it has always been between No. 9 and No. 10 Upper High Street, if you check your maps and with the Land Registry they can confirm this.

I am annoyed with the incompetents of the people working within your Departments and will inform you once again to get in touch with Mr Pritchard who is the land agent for Bedlinog estate who we bought the land off 14 years ago and who has the deeds of the land that contains correct right of way and how many years it has been there, your Legal Department has his details.

In future if you wish to obtain access to my land they can phone me to arrange a site meeting and failing to do so is trespassing, noted in the letter dated 22.04.013 you, mentioned removing barbed wire, please note that it is criminal damage if you pursue this action and any actions in this manor will be reported to the Police as you have no authority to do so, and also in future please input sufficient evidence when sending such demanding letters and failing to do so will leave me no choice but to not respond and dis-guard the letter.

3.27 On 28th April 2013 Mr Price wrote:-

In reply to your letter of 22.04.13 I would like to bring to your attention that there is no Right of Way on my property, this was sorted out with your Legal Department in 20011 "so I thought"

I am fed up with the incompetence in the Rights of Way Department, how many times must I tell your Rights of Way Department, how many times must I tell your Rights of Way Department and Legal Department that pathway 8 has been in the same place for the past 80 to 100 yrs and every person and ramblers who uses Pathway 8 will confirm.

The only persons in the village who never use it and are using your department to make waves are the Pembers who are emailing your Department and other Council

Department because they want the Council to help them control the lane between No. 7/No.8 Upper High Street. They are building a house on their property and they don't own the lane and they reckon that the lane is an adopted highway.

The only obstruction on pathway 8 are overgrown trees between No. 9 and No. 10 Upper High Street on the steps leading to the style on top of the steps.

Approximately 5 to 10 yrs that the Right of Way signs were put up by Tony (sorry I don't know surname) your Rights of Way Officer, and approximately 2 yrs ago they were removed by Mrs Judith Jones your Rights of Way Officer and that's why the trees were left to over grow, now the Pembers have emailed your department again and this matter seems to have resurfaced again. Well I am still waiting for your Legal Department and Highways Department who have been investigating since 2011 to confirm the Council have legally adopted the lane, so check with Mr Simon Jones or Mr M Williams to see how far they have got on with their investigation.

Now as far as I am concerned there is no Right of Way or Adopted Highway on my Property when we purchased it, so of you have a problem with barbed wire blocking pathway 8 then get in touch with the Bedlinog Estate, the agent acting on behalf of the estate is Mr Jeff Pritchard (your Legal Department has his address).

If this help you to understand that I cannot help you in this obstruction of pathway 8, then you can send any more correspondence to my Solicitor Mr Russell Price, of Morgan Cole LLP, Bradley Court, 11 Park Place, Cardiff, CF10 3DR.

3.28 On 14th May 2013 the Senior Solicitor responded as follows:

I have been forwarded a copy of a letter sent by you to Mr Alyn Owen of Merthyr Tydfil County Borough Council which concerns issues relating to the lane off Upper High Street and footpath 8.

I attach a copy of a letter written to you dated the 3rd March 2011 which clearly sets out the Council's position with regard to both the lane and the footpath. The Council is satisfied that the lane is in part Public Highway and the extent to which it extends up the lane has of course been marked.

Further in relation to the location of footpath 8, I refer you to section 32(4) of the National Parks and Access to the Countryside Act 1949 which provides that the definitive map and statement should be conclusive in law of the particulars they contain. I attach a further copy of the map and statement for your information. I note that you maintain that the location of the footpath has been erroneously marked on the plan but even if that were case and this is something that is not admitted by the Council, I refer you to the case of *Morgan v Hertfordshire CC (1965)*. In this case the Court of Appeal considered such an issue and held that, even if a path had been included in error, the map provided conclusive evidence of the public's rights over it.

I am informed that the Rights of Way Department has served upon you a notice pursuant to section 143 of the Highways Act 1980 requiring you to remove the barbed wire obstructing footpath 8 by the 20th May 2013. I attach a copy of the plan marking the location of the obstruction. As stated in the notice should you fail to

remove the obstruction by the above date the Council will remove the obstruction and recover its expenses from you.

3.29 On 15th May 2013 Mr Price replied.

In reply to your letter 14/05/13 I am still waiting for you to prove to me that the Council have evidence of the proper procedure that you have the permission from the Bedlinog Estate (Agent Mr Jeff Pritchard).

When you show me evidence, then I will take the legal advice and we can resolve this issue once and for all.

I feel that you and the Council are bias against myself, I have had no correspondence from yourself since March 2011 when you stated that you were investigating the matter, now the Pembers have emailed you again you seem to respond very quickly to them but I have no response from you at all?

Like I stated, when I purchased my property there was no adopted highway or Right of Way on my property, so I think if you sort out this matter with the Bedlinog Estate, then you will have an answer to this problem, and also if you check my deeds with the Land Registry they will confirm no adopted highway or Right of Way.

Now in reply to your letter of 04.04.13 Ref: Street signage you confirmed that you will remove the sign from my lane of which you have trespassed on my land. If the sign is not removed in the next 10 days I will have the sign removed and will bill you the cost of removal.

So please can you conclude your investigation a.s.a.p. I have supplied you with Mr Pritchard's address he will act on behalf of the Bedlinog Estate. But just in case you have lost his address I will give it to you.

3.30 On 24th May 2013 the Legal Office wrote to Mr Price as follows:

I refer to the S143 Highways Act 1980 notice dated 22nd April 2013, the letter from my colleague, Mr Simon Jones and your letter dated 15th May 2013.

Officers of the Rights of Way section attended site on 21st May and I am informed that the barber wire crossing the public right of way is still in situ.

Public Right of Way Bedlinog 8 was added to the Definitive Map and Statement following a survey undertaken as part of requirements of the National Parks and Access to the Countryside Act 1949. The survey was undertaken in 1953. Following this survey a Definitive Map and Statement was prepared. Any objection to the alignment of the route was to be raised at this stage.

Section 34(2) National Parks and Access to the Countryside Act 1949 provided that the Definitive Map and Statement should be conclusive as to the particulars they contain. This section was repealed by s56 Wildlife and Countryside Act 1981. S56 Wildlife and Countryside Act 1981 provides that the depiction of a path on the definitive map and statement is conclusive evidence that, at the relevant date, a

public right of way existed over the path to the extent where the map shows a footpath, there was a right of way on foot but without prejudice to the existence of other rights.

S53(3)(c)(iii) Wildlife and Countryside Act 1980 deals with the situation where it is alleged that particulars contained within the Definitive Map and Statement are incorrect. In the current situation it is stated by you that the path (or indeed a portion of it) has been included on the map in error, there having been no public right over the path at the date of preparation of the original definitive map.

Department of the Environment Circular 18/90 states quite clearly that in making an application for an Order to delete or downgrade a right of way it is for those who contend that there is no right to prove that the map is in error by the discovery of evidence which when considered with all other evidence clearly shows that a mistake was made when the right of way was first recorded.

To date no application has been received from you to delete the right of way (or a portion of it) from the definitive map and statement. I do, however, acknowledge that correspondence has been received from G. Pritchard, Chartered Valuation Surveyor, in relation to the right of way.

I attach to this form an application form for you to complete should you consider that the route needs amending. The application fee is £3,060. The Local Authority will not entertain your statement that the route is incorrect until an application form and the application fee is received.

It is also possible that you could make an application to the Local Authority to divert the footpath under S118 Highways Act 1980 in order for the footpath to be diverted to what you purport to be the correct alignment. An application for a diversion under the Highways Act 1980 is also enclosed. The Local Authority will not entertain any application to divert unless the application is accompanied by the requisite fee of £3,060. The Local Authority can give no assurance that an application to divert will be successful. Should you make an application to divert the path to run along the alleyway next No. 9 High Street then the Local Authority will also expect you to complete a form stating that you will be liable to pay any compensation that will become payable should the application to divert be successful.

It is possible for the Local Authority to install a gate in the position where the barbed wire is currently situated. This would be undertaken in pursuance of the Local Authority's powers under S66 Highway Act 1980. The installation of the gate would be met by the Local Authority (as stated to you in our letter of 13th April 2011 – copy attached).

Should no application to amend or divert the right of way be received from you by 31st May 2013 then the Local Authority will initiate action to install a gate.

I am further informed that you have erected a new sign stating that the lane is a private lane. The sign needs to be removed forthwith. This is incorrect. I attach a copy of the adoption records which clearly shows the lane coloured brown confirming the same is adopted.

3.31 On 25th May 2013 Mr Price responded.

In reply to your letter 24/5/13 I am still waiting for an answer to the investigation Mr Jones (Legal Department) and Mr M Williams (Highways Department), since they started in 2011, to show evidence that the Council have adopted the lane, from The Bedlinog Estate properly? When I have their reply then I can take legal advice? "but I am still waiting?"

If you check the email, you have received from the Pembers/Thomas' since 2009, they have been instructing the Council about diverting pathway 8 and adopted lane, so it's not me you should have sent the form to it's the Pembers you should send the forms to. I am happy with pathway 8 its been between No. 9 and No. 10 Upper High Street, for the past 100 yrs and as far as I am concerned can stay for another 100 yrs.

Also in my letter on 15.05.13 to Mr Jones the Council are going to remove the sign off my lane (Old Quarry Lane). I own the land I did not ask for the lane to be named or give you permission to put the sign on my lane. So please can you remove the sign in the next 10 days and also remove the winter grit bin at the same time. If it no removed off my lane after 10 days then I will have it removed and bill you the costs.

I had a meeting with Mr Jones in his office about the adopted lane; he showed me a map with the brown mark on my lane, like he stated anyone could have put a brown mark on the lane, when all the other brown lines are highway roads in the Bedlinog Village. "Why would the Council adopt a lane leading to a private property and a disused quarry?"

Please can you resolve this issue in the next 21 days. I have had enough of the harassment and threats from the Council over the past 5 years, since the Pembers started building this house, you have cause my family and me great stress and worry. Please sort this issue out in the next 21 days to give me an answer one way or other, if not I am going to seek legal advice to stop this harassment by the Council.

3.32 On 29th May 2013 the Legal Officer responded to Mr Price in relation to the installation of a gate as follows.

I refer to your letter dated 25th May 2013.

I can add nothing further to that which was stated in my letter of 24th May 2013.

The investigations conducted by Mr Simon Jones and Mr Meirion Williams have been concluded.

I must inform you that the Local Authority will be attending the right of way to install a gate at the point where the right of way joins the adopted highway.

No further communication in relation to the installation of a gate will be sent to you.

3.33 Subsequent to this correspondence used between the Council's Legal Department and Mr Price's Solicitor.

3.34 On 27th May 2013 Mr Wilson, co-owner of the land over which the obstruction occurred wrote to the Council as follows:-

A) Having spent most of my life living in Bedlinog Terrace, it's next to the land in question. Most of that time indeed there was no fencing around the land in question, of which I am now a joint owner. The fence in question and all other fencing was put up by Mr Price my co-owner. He originally put it up without my permission, but I did not object.

I have always been under the opinion there was a Right of Way there, and access was always to be given. Indeed Margaret Edwards always told me you must not deny access to the adjoining land and garages. When she sold us the land indeed she was my neighbour at the time. As your letter on April 22nd I agreed to meet them sometime in May. That is Ms Cheryl Jones and her colleague. I did tell her that I would take down the barbed wire and a section of the fence involved. I did phone her on several occasions and left her a message. When I did make contact with her after some time. I wanted to tell her that I would have to make other arrangement for taking the barbed wire and fence down by making some of gate or stile but she have very little time for me telling me it was too late. The reason being why I did not take it down was that Mr Price my co-owner has moved his horses. And of course if taken down the horses could get out. Indeed that's why I decided to erect some sort of gate given a chance I would still do so. I would be more than happy to take down tatty sign at bottom of lane (Again that's put up without my permission).

3.35 On 10th March 2014 the Council received a notice under Section 130A(i) Highways Act 1980 to secure the removal of the barbed wire fencing on land at the rear of a Upper High Street Bedlinog. The Notice also complained of an obstruction in front of the footpath gate and also that the gate was damaged. In the accompanying letter Mr and Mrs Pember stated:-

The location of the obstruction is supplied, there has also been damage to the footpath gate and hinge which needs to be repaired as the gate is very heavy and could injure footpath users if it falls off it is only just hanging on by the remaining hinge.

As the Council are aware there has been many obstructions to the footpath route and road, it has been causing us inconvenience as walkers walk over our property because they cannot use the correct route because the footpath signage has not been replaced and the continual re-erecting of the barbed wire fencing.

3.36 Ordnance Survey Maps have been looked at in respect of the route claimed for realignment. A route is clearly shown on Ordnance Survey Maps from 1875 showing a route as running between the properties of No. 7 and No. 8 Upper High Street.

3.37 Aerial photographs from 2001 also clearly show a defined route and the Rights of Way Officer acknowledges that this is a defined route.

4.0 ASSESSMENT

- 4.1 This assessment is to assist Councillors in determining the application before them today; an application to modify the Definitive Map and Statement by recording the route known as Bedlinog 8 along a different alignment in the south.
- 4.2 The starting point in a claim like this one is that the Council's Definitive Map and Statement is correct. Department of the Environment Circular 13/90 is clear – it is for the applicant to demonstrate that the route is recorded incorrectly. When determining the point the council needs to be satisfied of the following: whether in accordance with Section 53(3)(c)(i) Wildlife and Countryside Act 1981, a Right of Way not show subsisted, and also in accordance with Section 53(3)(c)(iii) Wildlife and Countryside Act 1981. Whether there was no public Right of Way over land shown on the map.
- 4.3 The Council needs to look at two issues (a) is the evidence to show that no route existed across the southernmost portion as depicted on the Council's Definitive Map and Statement and (b) is there evidence to show that the route should be recorded along the section between the houses in the south.
- 4.4 The Council is not satisfied that there is evidence that no route should be recorded along the route as shown in the Council's Definitive Map and Statement in the south. In looking at and determining the evidence, Mr Wilson, one of the co-owners of the land acknowledges that the route as recorded is correct. The Pembers have also produced statements that the route as currently shown is correct. Other users of a route in the south state that they have used the same route for the entire time that they have used the route (i.e. a route between the houses). This evidence of use from other users does not provide sufficient evidence to show that the currently recorded route is incorrect. What is shown is that they use a route between the houses. The Council is not satisfied that the route is incorrectly recorded.

The Council has however taken the opportunity to look at the section between the houses and to consider whether that is a right of way that needs to be recorded.

- 4.5 In determining whether there is a route between the houses the Council looked at the following.

Status

PRoW can be claimed as a Footpath, Bridleway, Restricted Byway or BOAT.

Officers must investigate the claim at the highest status substantiated by the evidence; the investigation could conclude that the route does not exist.

Evidence of vehicular use of this claimed route has been submitted. It is officer's opinion that this was all private use, e.g. for delivery to farms, working on farms and farm-to-farm traffic.

Officers are of the opinion that equestrian use of this route was limited and was with the permission of the owner.

User and historic evidence demonstrate public use of this route as a footpath.

Officers therefore present this route as a footpath.

4.6 Period of Use to be Considered

In the absence of any challenge to the right of way in question, the normal period looked at for the purpose of the establishment of the right of way for long user is 20 years prior to the date of the application itself; i.e. 23rd August 1995 to 22nd August 2015.

Councillors will note from the Report before them that the path has been enjoyed by the public as of right and without interruption for a full period of twenty years and the way deemed to have been dedicated as a highway, as there is insufficient evidence that there was no intention during that period to dedicate it.

During the relevant period for consideration the route has been available for public use.

4.7 The Line of the Route

The line of the route is not discernible on the ground.

4.8 Historical and Other Evidence

The route has been depicted on a number of cartographic sources. Depiction of this route on the various maps as described in the body of this Report indicates that a track / path existed at that particular time; it is not indicative of public rights on the route. It is, however, evidence of the existence of the track / path and the way in which this claimed route links with other routes.

The route is depicted on a number of aerial photographs.

4.9 User Evidence

Councillors are requested to take into account user evidence as described above.

4.10 Landowners and Other Interested Parties

Councillors are requested to take into consideration the landowners' comments and submissions above.

5.0 SUMMARY

In respect of the route between the houses Councillors will note from the Report before them that the path has been enjoyed by the public as of right and without interruption for a full period of twenty years and the way deemed to have been dedicated as a highway. There is insufficient evidence that there was no intention during that period not to dedicate it.

Officers have presented historic as well as user evidence for the existence of this route as a footpath.

Officers consider that the evidence above establishes the existence of the rights now claimed, i.e. over the relevant period and at all material times before it.

Taking all of the above into account and in conjunction with the historical evidence, the interviews with claimants, it is evident that a right of way does exist over this route.

It is concluded that on the balance of probabilities all the requirements of S. 31(1) and (2) Highways Act 1980 have been met for the route included on the application. It is considered that a presumption of dedication has arisen and that this presumption has not been rebutted by sufficient evidence of lack of intention to dedicate by the landowner of any part of the route. An Order to modify the Definitive Map and Statement could therefore be made under S 53 (3)(b) Wildlife and Countryside Act 1981.

Officers therefore recommend that the footpath Bedlinog 73, marked with a dashed line between Points B – C be recorded on the Definitive Map and Statement

6.0 FINANCIAL IMPLICATIONS

Officer time is involved in investigating the route and writing the report. If Councillors determine that the public right of way exists, there will be a financial implication in advertising the Order and also for dealing with the Public Inquiry if an Order is made and there is an objection to it.

If the Order is confirmed, there will be a financial implication in that the route will need to be signed. As Councillors are aware, financial implications are not to be considered by the Committee when determining this application as the County Borough Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it.

7.0 EQUALITY IMPACT ASSESSMENT

An Equality Impact Assessment has been considered relating to this document and no negative effects have been identified at this stage.

8.0 HUMAN RIGHTS ACT

- 8.1 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights which would be considered are rights pursuant to Article 8, Article 1, Protocol 1, and Article 6. The recording of public rights of way on the Definitive Map and Statement does not involve the creation of any new rights but merely records the existence of rights to which the land is already subject. Recording of existing legal rights is not in itself an interference with either respect for private life

or private property and in any event the surveying authority has a statutory duty to record all public rights of way which are shown on investigation to subsist.

- 8.2 Article 8 protects the right to respect for family and private life including an individuals' home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 8.3 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate.
- 8.4 Committee should also be aware of Article 6, the focus of which (for the purpose of this committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

ELLIS COOPER
DEPUTY CHIEF EXECUTIVE

GERAINT THOMAS
CABINET MEMBER FOR
REGENERATION AND PUBLIC
PROTECTION

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Bedlinog 8	September 2017	Unit 5
Does the report contain any issue that may impact the Council's Constitution?		NO