

Definitive Map of Rights of Way for Leicestershire Register of Definitive Map Modification Order Applications

| | | | |
|---|--|--------------------------|--|
| Short Description: Add a footpath from existing Public Footpath L98 to Walton Hill, Isley cum Langley | | | |
| Application No.: | M1177 | Legal Services Ref. No.: | |
| Application Status: | Application Received | | |
| Geographical Location | | | |
| Path No: | L98 | Route name (if known): | |
| Settlement: | Isley Walton | | |
| Parish: | Isley cum Langley | | |
| District/Borough: | North West Leicestershire | | |
| Nearest Town/City: | Castle Donington | | |
| Start Location: | Existing end of Public Footpath L98 | | |
| Start Grid Refs: | Landranger: | SP 425 250 | Eastings,Northings: 442571,325039 |
| End Location: | Walton Hill | | |
| End Grid Refs: | Landranger: | SP 425 251 | Eastings,Northings: 442538,325147 |
| Applicant's Name, Address & Postcode: Mr Roy Denney – Leicestershire Local Access Forum | | | |
| Date Received: | 01/04/2019 | Date Determined.* | |
| Application Stage(s): • Application made 01/04/2019 | | | |
| For Further Information | | | |
| Case Officer: | Samantha Ireson | | |
| Telephone: | 0116 305 0001 | Fax: | |
| Email: | footpaths@leics.gov.uk | | |
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| Map accompanying the application and documents | | | 3 |
| Supporting documents | | | 4-41 (1-38) |
| | | | |

* Note the **Determination Date** is the occasion on which Leicestershire County Council formally decided whether or not to make an order in response to this application.

APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER

**WILDLIFE AND COUNTRYSIDE ACT 1981
DEFINITIVE MAP AND STATEMENT FOR THE COUNTY OF LEICESTERSHIRE**

Please complete this form and return it together with Form PT636, and any evidence you wish to submit, to: Safe and Sustainable Travel Team, Environment and Transport Department, Leicestershire County Council, County Hall, Glenfield, Leicester, LE3 8RJ.

I, Roy John Denney on behalf of the Leicestershire Local Access Forum

Of : C/o Room 700, County Hall, Leicester, LE3 8RJ

hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981, modifying the Definitive Map and Statement for the area by

~~*adding a footpath/bridleway/byway open to all traffic~~

~~*deleting a footpath/bridleway/byway open to all traffic~~

*upgrading the footpath/bridleway

~~*downgrading the bridleway/byway open to all traffic~~

~~*varying the particulars in the Definitive Statement relating to the footpath/bridleway/byway open to all traffic~~

(*delete as appropriate)

which runs from the northern end of L98 to the A453
in the Parish of Isley Walton

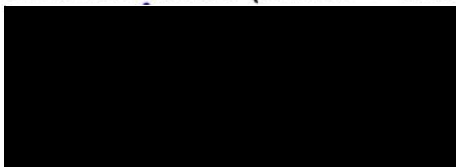
as shown on the attached plan.

I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

List of Documents

Definitive Map Modification Order Case Document
Certificate of service of notice (form PT 636)

Signed...



...Dated... 1.4./2019

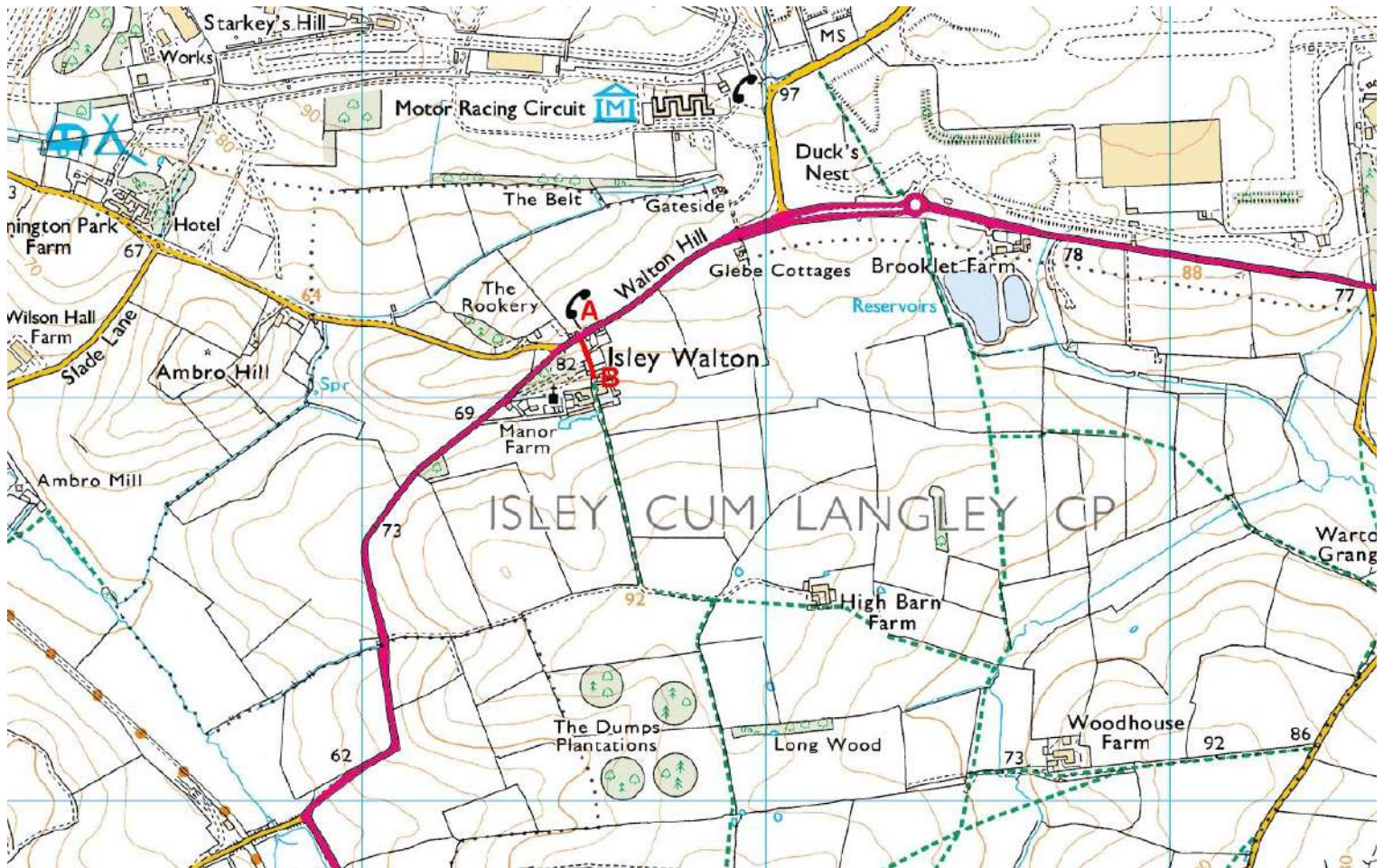
How we use your information

Any information you provide will be used in accordance with the Data Protection Act 1998 and other relevant legislation. The information will be used to consider your application for a Definitive Map Modification Order. A copy of your application (including your name and address) will be published online in order to meet statutory requirements. Other personal details (such as telephone numbers, email addresses and signatures) will be removed before publication.

The Application Route

4. The application route is shown on the plan below:

Point A (Trunk road – A453) to Point B (northern extent of L98).



Ordnance Survey 1:25000 scale map extract showing application route

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**Extend route of the northern end of L98 to the A453
in the Parish of Isley Walton to be shown as a Public Footpath**

Applicants reference: LLAF-RJD2

1 April 2019

OS County series map: Explorer 245 – National Forest
Modern Definitive Map sheet: SK42NW



1. My name is Roy John Denney. I am the applicant for the order on behalf of the Leicestershire Local Access Forum (LLAF). This application is based on evidence gathered by several researchers; most having extensive experience in volunteer roles related to public rights of way.

2. This application is made because, on the cut off day, the effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route.

3. We believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 because:

a. This application statement includes explanations as to how the evidence applies to the application route, and

b. The application contains one or more of the following forms of supporting evidence:

(1) Legal document(s) relating specifically to the right of way that is the subject of the application.

(2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application.

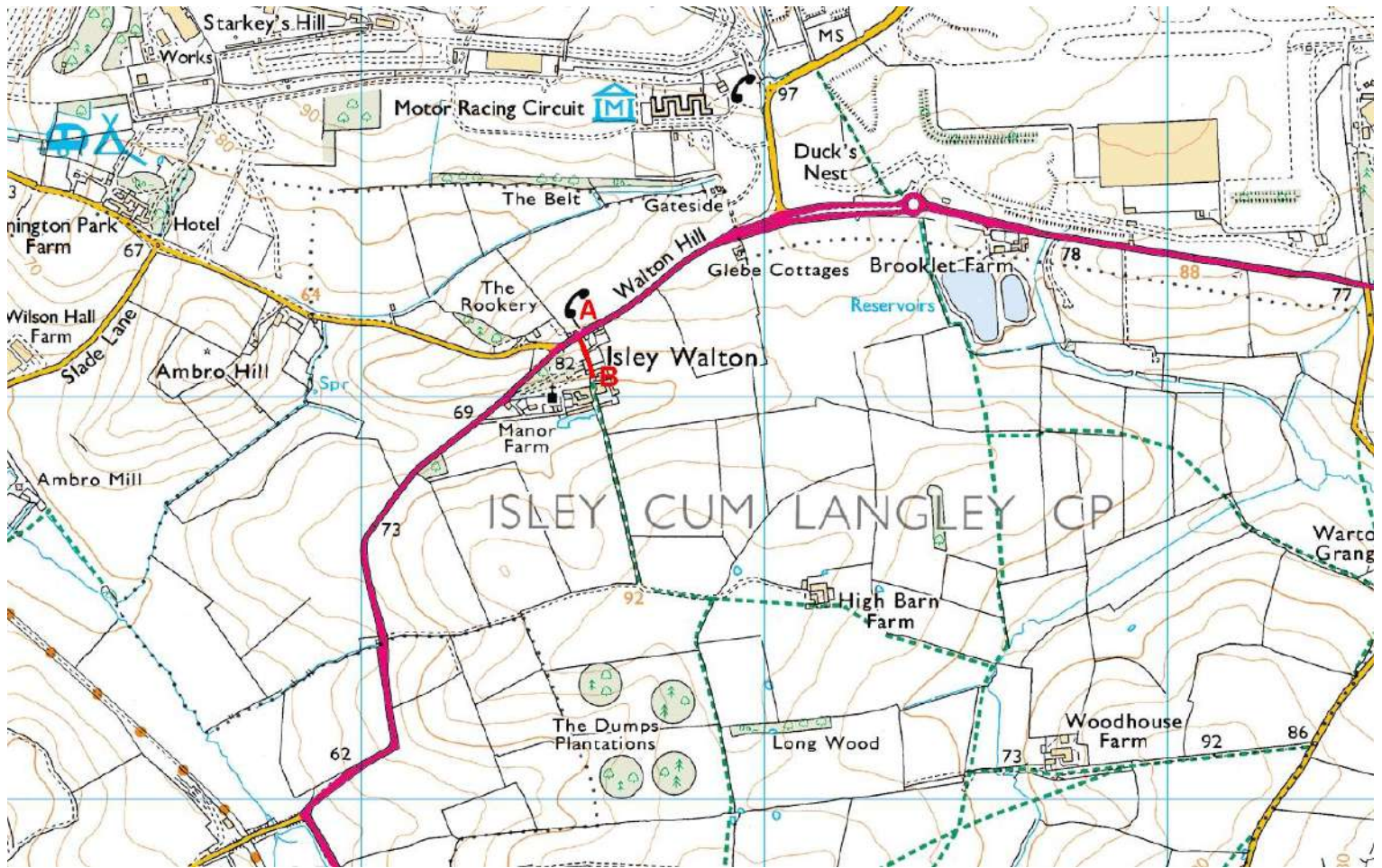
(3) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.

(4) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

The Application Route

4. The application route is shown on the plan below:

Point A (Trunk road – A453) to Point B (northern extent of L98).



Ordnance Survey 1:25000 scale map extract showing application route

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

5. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

6. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

7. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status.

Background

Isley Walton was granted in the 12th century to the Knights Templar by a member of the Ferrers family (Brown A E, LAHS, 2003). Originally it was part of Breedon until it became a parish of its own (Nichols J, 1804, p. 859). Isley Walton was twice the size that it is today in medieval times having lost a considerable part of its territory since to Castle Donington.

From 1629 to 1890 the village was owned by the London Company of Bowyers until it was sold with the aid of a large mortgage (from the Bowyers) to Baron Donington of Donington Hall (source: Bowyers Website). In 1895 the estate was sold to Baron Donington's land agent, Mr John Gillies Shields.

Langley was an “extra parochial” area also originally attached to Breedon. It was the site of Langley Priory, a nunnery, founded by William Pantolf, Lord of Breedon, in the mid -12th century. After the Reformation the Priory was sold and converted into a Hall. The estate developed into a small community servicing the Hall and the adjacent farms and woodland. The population from local directories ranges from 25 to 303 (Douglass, 1988).

The present parish of Isley Walton cum Langley was formed out of Isley Walton, Langley and part of Castle Donington in 1936 under the County of Leicester Review Order.

Strategically, the village lies on the old main road from Nottingham to Tamworth (now the A453). For over a hundred years this section was part of the Tamworth to Harrington Bridge (at Sawley) Turnpike Trust (closed 1863 – Hansard, July 1863). A Turnpike toll cottage still exists today on the northern side of the A453. Plans that were made for the diversion of this road in 1838 still exist (see figs 3 and 4) and throw light on the highways in this area as the straightening of the Turnpike made a considerable change to the communication network *within* the village.

Evidence

Enclosure

We cannot not find any documentary evidence of an enclosure for Isley Walton though Gillies Shields mentions one in 1803 on the Breedon Benefice website. He states that the enclosure allotted 5 acres for a “church yard”. This might be referring to the Breedon Enclosure Act.

Nichols in 1804 states that Isley Walton was “not enclosed under [the] Kegworth Act. Lies in an open field state”. The records of the Bowyers Company state that an enclosure attempt was abandoned in 1819.

Quarter Sessions – LLRO QS48/1

We have searched the Quarter Sessions bundles for the parish of Isley Walton and can find no reference to this route being diverted or stopped up.

1829 – Plan of Manor and East Farms – DG29/Ma/158/1 (LLRO)

This plan shows the lands belonging to the Worshipful Company of Bowyers and was probably produced for a potential lessee of the estate.

It clearly shows a road (on the route of L98) running south of Isley Walton which becomes a track in the direction of Langley Priory. See figs 1 and 2.

1838 - Map for Diversion of the Turnpike (Ashby Museum Collection)

This plan shows a proposed new stretch of road and is dated 13 October 1838. The internal layout of the village was to change considerably as the new road sliced off land at the northern edge and led to the building of the current access road. This evidence is important as it clearly shows a lane coming in at the south end of Isley Walton (on the route of L98). See figs 3 and 4.

1840 - Tithe Map - DE76/T1/158/1 (LLRO)

This map shows a road from Langley at the bottom to Isley Walton.

There is text on the map to substantiate this.

See figs 5 and 6.

1910 Finance Act - DE2072/97 Map: IR IX.12 (LLRO)

There are no claims for deductions for Rights of Way or use in Column 25 for Isley Walton. There are several claims by C B Shakespeare for land at Langley Priory and Diseworth (for £150). The map used is the 1903 Second Edition (IX.12)

However, a minor road is shown clearly running south from Isley Walton through plot 169 which is marked on the map as belonging to “Shields”. This is on the route of L98.

Other map evidence

OS One inch First Edition 1836

Shows a road from Isley Walton to Langley Priory. Fig 7.

The **OS 25 inch Second Edition 1882** clearly shows a lane through Isley Walton linking with the track to High Barns. The lane on the map is quite wide, as wide as Walton Hill main road.

The following maps have been consulted and all show a road south of Isley Walton to the track to High Barn farm. See figs 8 and 9.

1890 OS 10560

1901 OS 2500

1904 OS 10560

Sales documents from 1903 to 1984

All show a through route to the A453 from south of Isley Walton. Figs 10 to 11.

Burton to Nottingham Railway Plans 1864

Companies willing to build railways were required to show owners of land either side of the proposed line detailed maps and a book of reference. These maps were well researched as mistakes would be costly. Plans were put on public deposit so that landowners and their agents could study them.

See figs 13 and 14.

Ordnance Survey Drawing 1815 British Library

These maps were made by professional draughtsmen such as in this case Henry Stevens and were used as the basis of the first OS one-inch maps. They were drawn to a higher scale than the one-inch maps and were some of the best maps of the time.

See fig 15.

King's Map of Leicestershire

Maps like this were produced for aristocratic and well-off travellers and sold to the public. These would have shown routes that were well used and open to travellers. Inaccurate maps would have not received sales. This one was produced for the Duke of Rutland.

See fig 16.

Evidence from the 1949 National Parks and Access to Countryside Act documentation (at Modern Records, Leicestershire County Hall)

J G Shields, Chair of the Parish Meeting and the person who filled in the parish surveys, shows a lack of understanding in regard to rights of way. In regard to L98 he writes:

[The route] ...was used years ago as a Bridle road for hunting people though never has been any signboard up showing it as such. No public money ever used for upkeep etc etc.

Comment: Very few footpaths/bridleways at this time in this area had boards or signs from the road and the fact that according to Mr Shield no public money was spent on this road (even if that could be proved) does not preclude it from being a public highway. *The reference to a bridle road may well be evidence that this route was used by horse riders regularly and may have higher rights.*

It should be noted that several paths were added to Isley Walton parish by the County Surveyor, Mr W. Pearson. These had not been recognised by Mr Shields. In my opinion the local officials and people understood that the road from the A453 was part of the public highway and didn't need to be claimed as a public right of way.

A key piece of evidence is that the RDC surveyor states that the linked path from Breedon continues to Isley Walton.

See figs 17 to 20.

Evidence from the 1954 Tribunal held to deal with disputes over routes missing or added in error to the Draft Definitive Map.

Footpath L98a was added as a continuation to L98 “up from Isley Walton”.

See figs 21 to 26.

Other documentary evidence

Mr Gillies Shields on the Breedon Benefice website states that: “in the past Isley Walton church was used by the cottagers of Langley and the servants of Langley Priory (the squires of Langley on the whole used Diseworth church)”.

The route they used to reach the church must have been the lane that entered Isley Walton at its south end from Langley.

References:

Bowyers Website: <http://www.bowyers.com/>

Brown A E, *The Lost Village of Andreshurch*, Trans LAHS, 2003

Bucks S and Wadey P, *Restoring the Record*, 2017

Douglass SP, *Langley Priory*, Trans LAHS, 1988

Gillies Shields on the Breedon Benefice site: <http://www.benefice.org.uk/>

Hansard

Nichols J, *The History and Antiquities of the County of Leicester*, 1795-1815

Repositories

Ashby Museum Collection

Leicestershire Record Office (LLRO)

Leicestershire Modern Records (LCCMR - at County Hall, Glenfield).

Map Evidence for Isley Walton L98 route from 1829



Fig 1 1829 - Map for the London Company of Bowyers showing the old layout of the village and lane from Langley at bottom of the map.

It was probably produced for a potential lessee of the estate. The road layout and depiction of buildings is consistent with the map produced for the Turnpike trust nine years later.

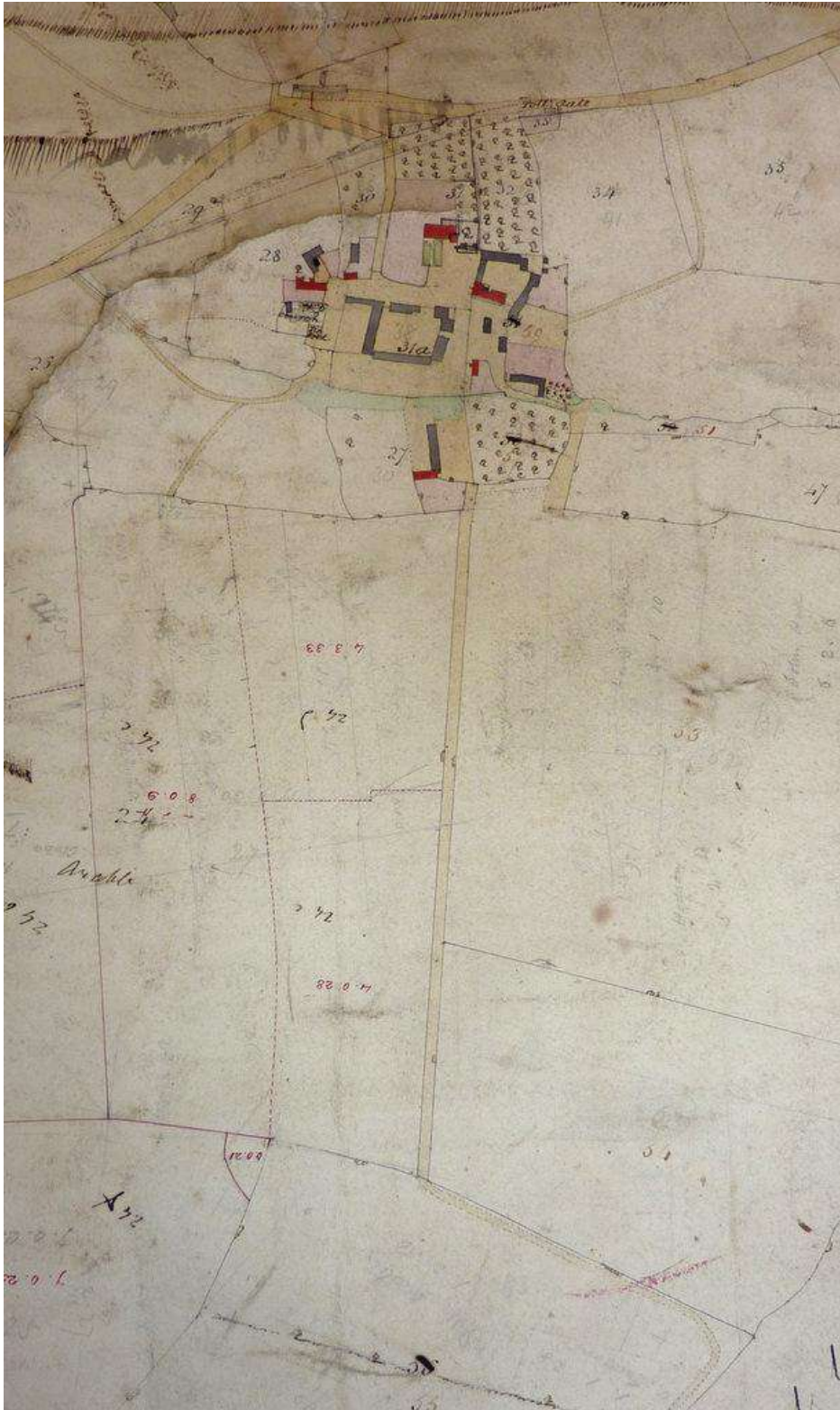


Fig 2 1829 Map showing route to Langley

Fig 2 (above)

This map shows the continuation to Langley. It makes little sense for this section of road not to connect to the Turnpike Road at the northern boundary of the hamlet.

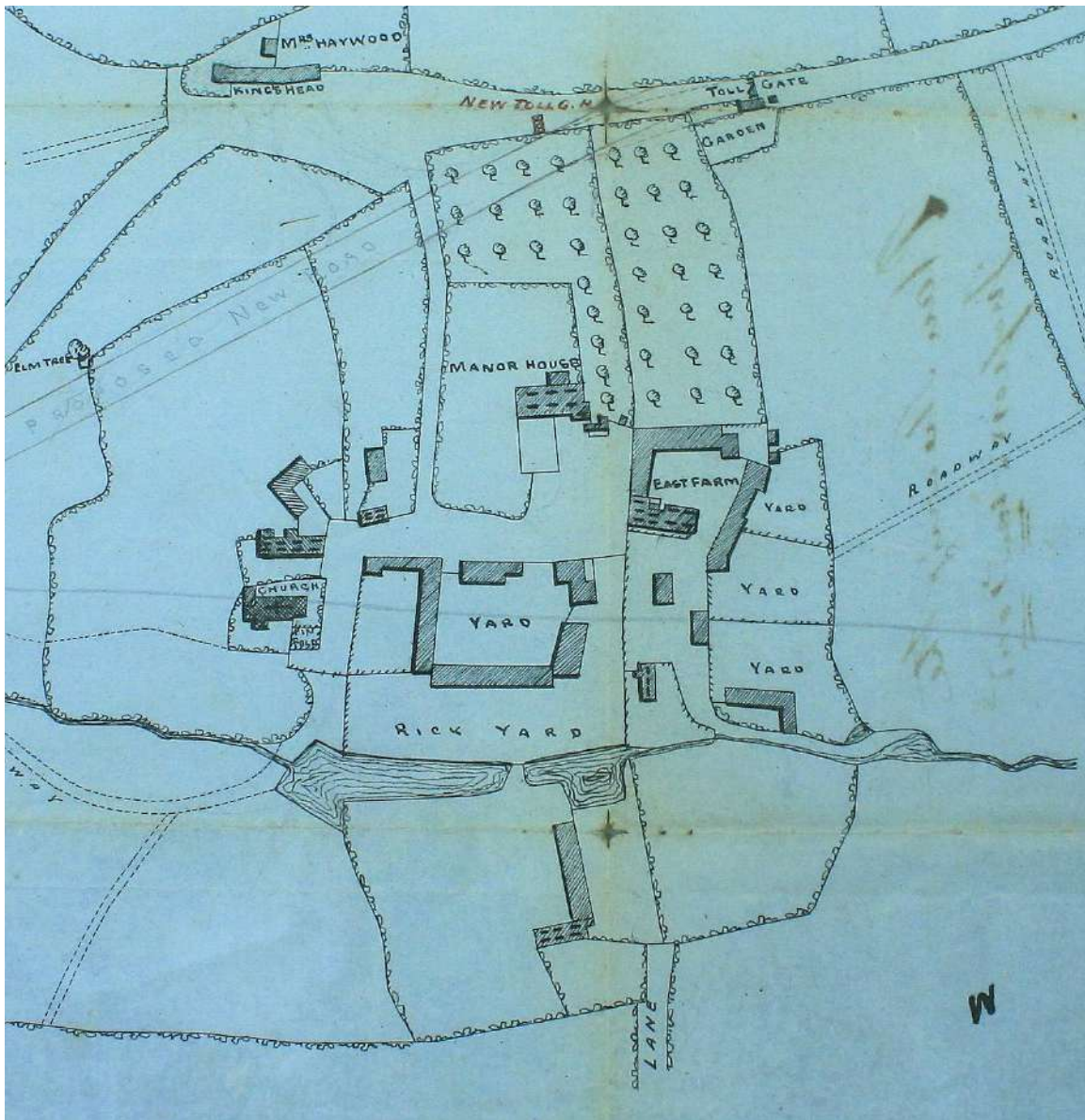


Fig 3 1838 Map showing proposed Turnpike Trust diversion and old layout of village (Ashby Museum Collection). Turnpike Trusts were set up by Act of Parliament and maps they produced would have been open to public inspection i.e. by principal landowners. This map is useful in this case for providing supporting evidence for a linked route to Langley (see Fig 4).

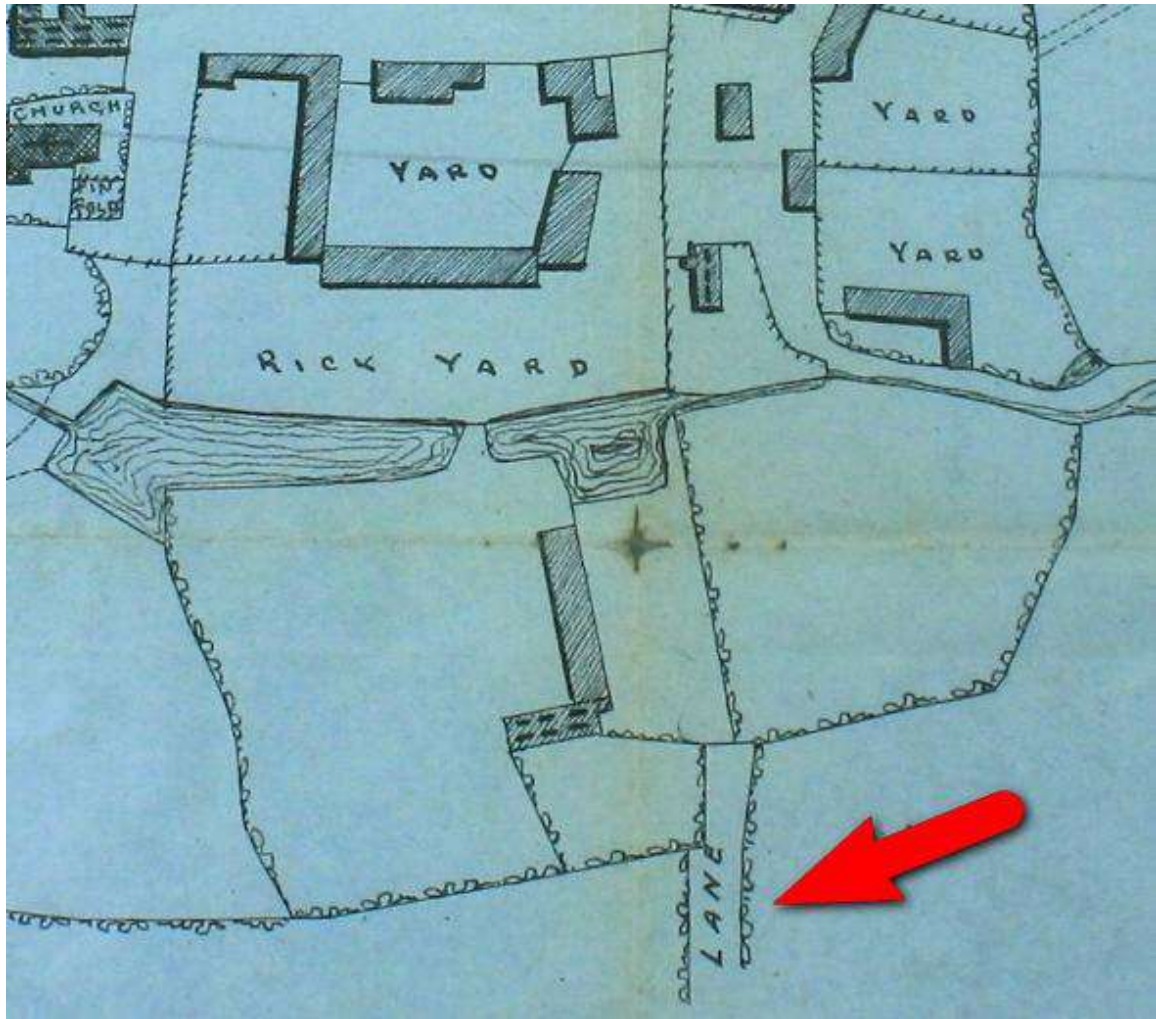


Fig 4 1838 - Close up showing "Lane" at foot of map on the route of L98 (Ashby Museum Collection).



Fig 5 The Tithe Map showing lane “to Isley Walton”. Further down it says “From Langley”. The Turnpike diversion has taken place and a new road put through the top of the village. The light brown or sienna colouring was usually used as public highways and this is the case here. There is no apportionment number anywhere on the route and therefore no tithe was assessable.

The words “to Isley Walton” and “from Langley” are unlikely to have been written on roads for use by landowners only. This depiction is consistent with the application route being a public highway at the time of this map (1840). (See page 80 of Bucks and Wadey)

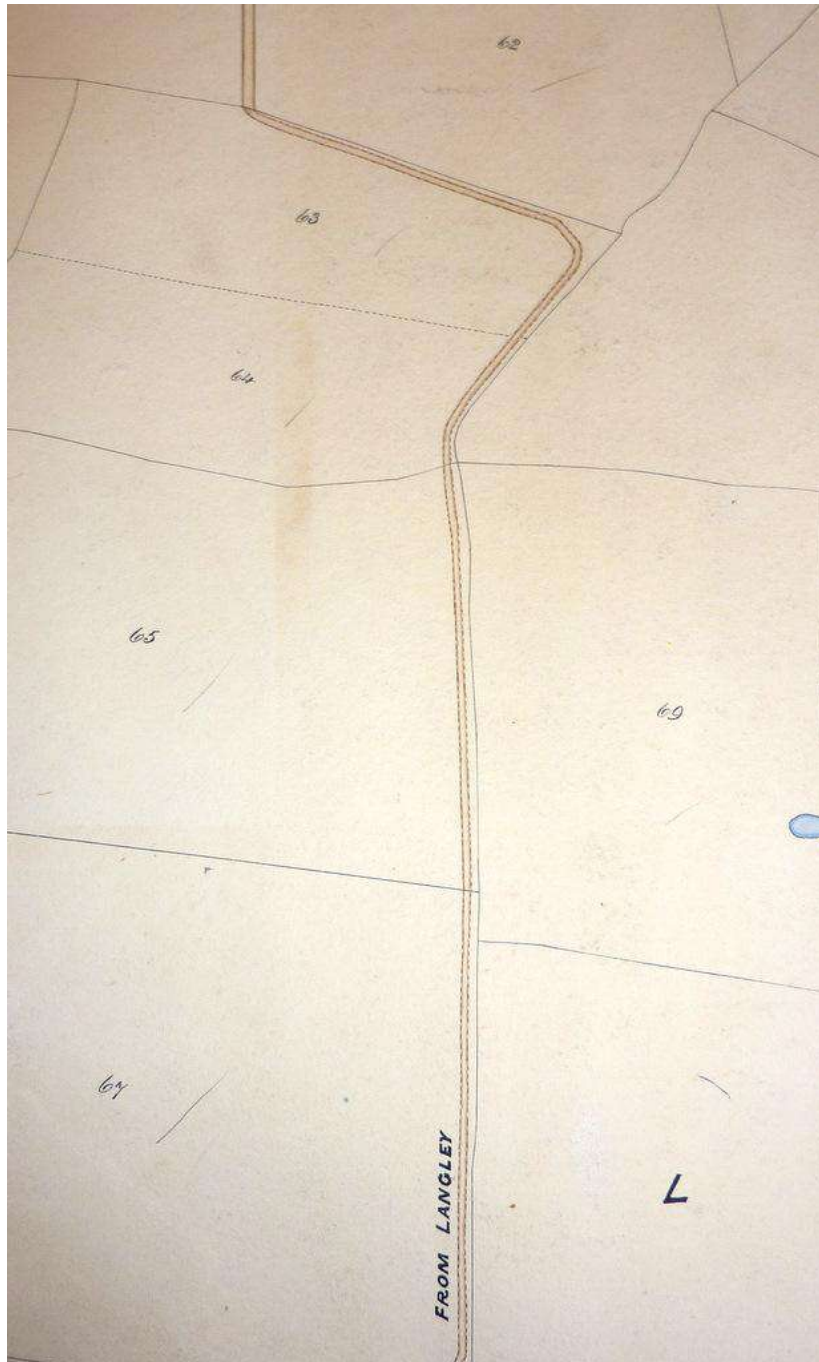


Fig 6 Track “from Langley” 1840 Tithe Map.

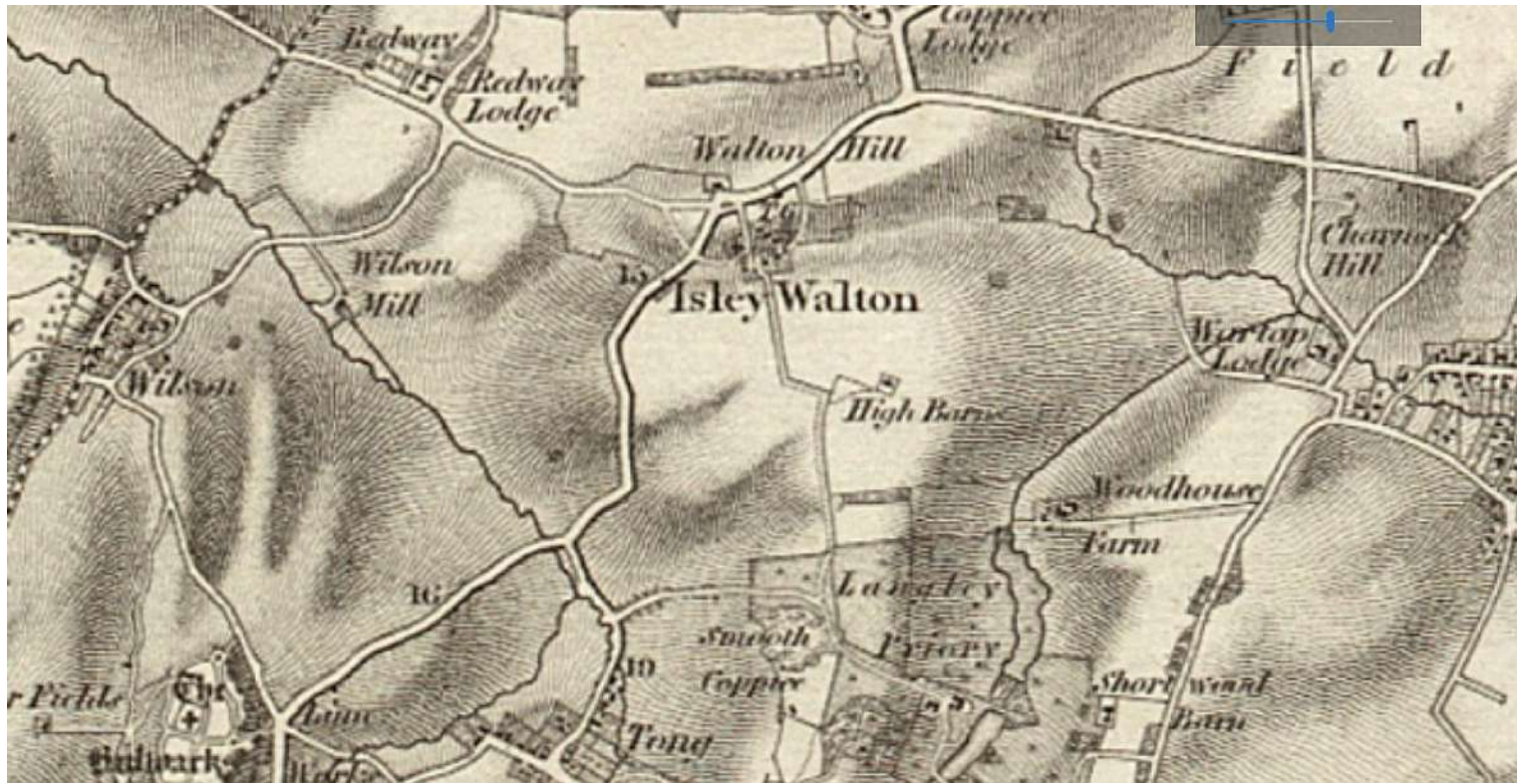
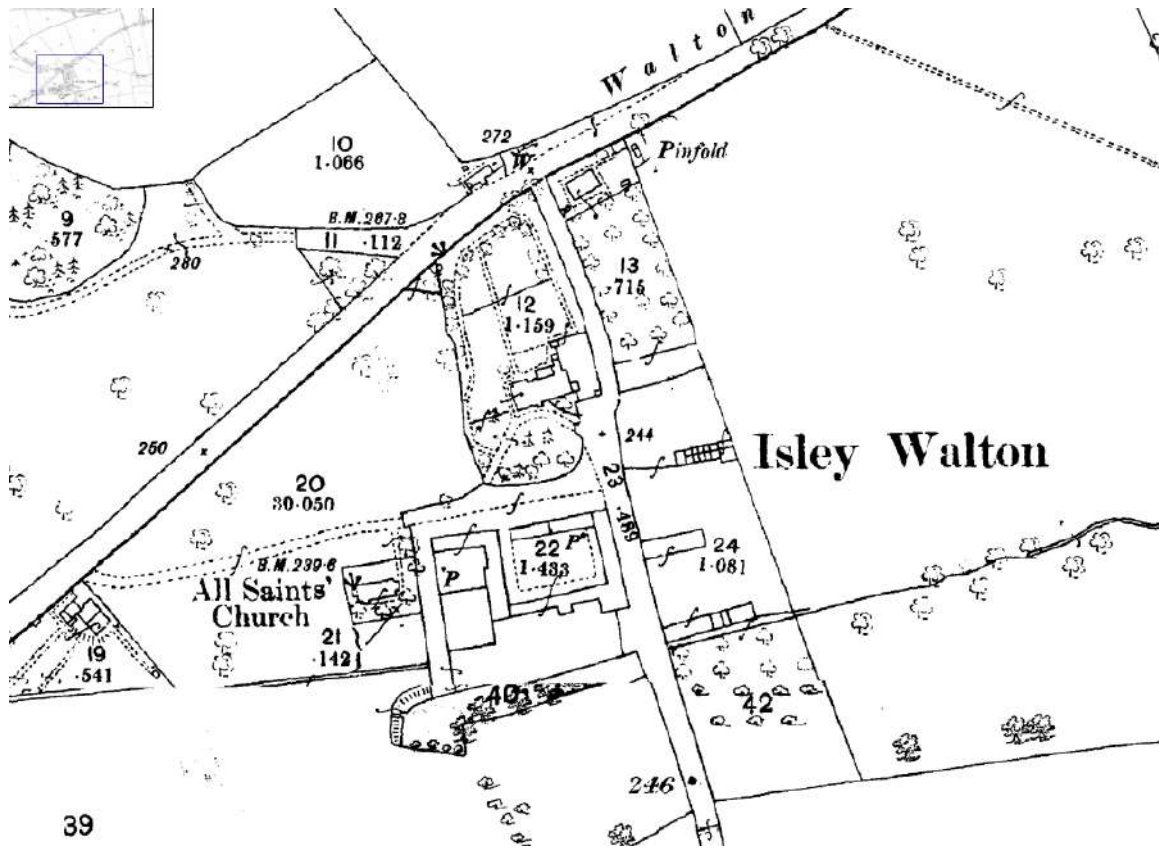


Fig 7 OS 1836 one inch First Series 1836 clearly showing a road from Isley Walton to Langley Priory.

These early maps were sold to the travelling public and purport to show physical features that appeared on the ground.

The application route is shown as a minor or un-metalled road from Walton Hill, Isley Walton to Langley Priory. It shows it as a through route.

Fig 8 1882 25-inch Ordnance Survey - North section showing lane through village.



O.S. First and Second edition County Series mapping was predominately used for professional purposes rather than for navigation.

The route is shown in the same way as earlier maps and this is evidence of their correctness especially in regards to their through nature and connection with the highway which was previously a turnpike route.

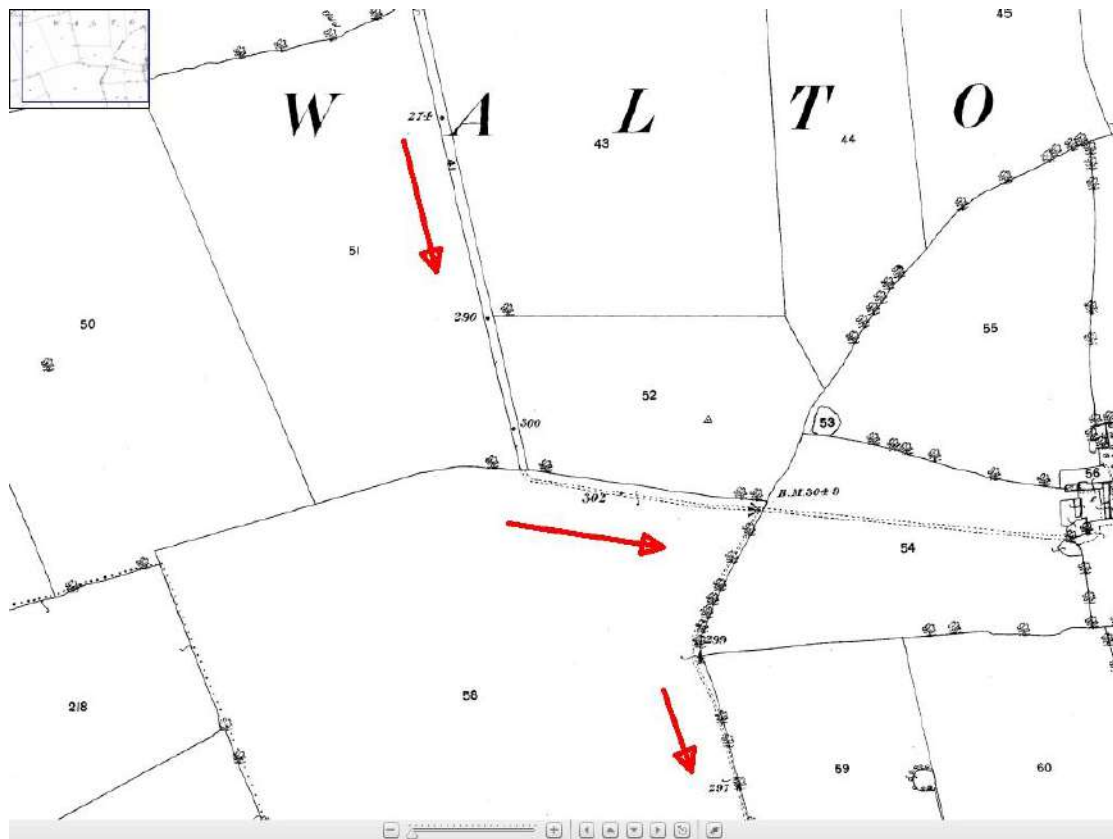


Fig 9 1882 25 inch OS South section – route to Langley by track and footpaths marked by arrows (ours).

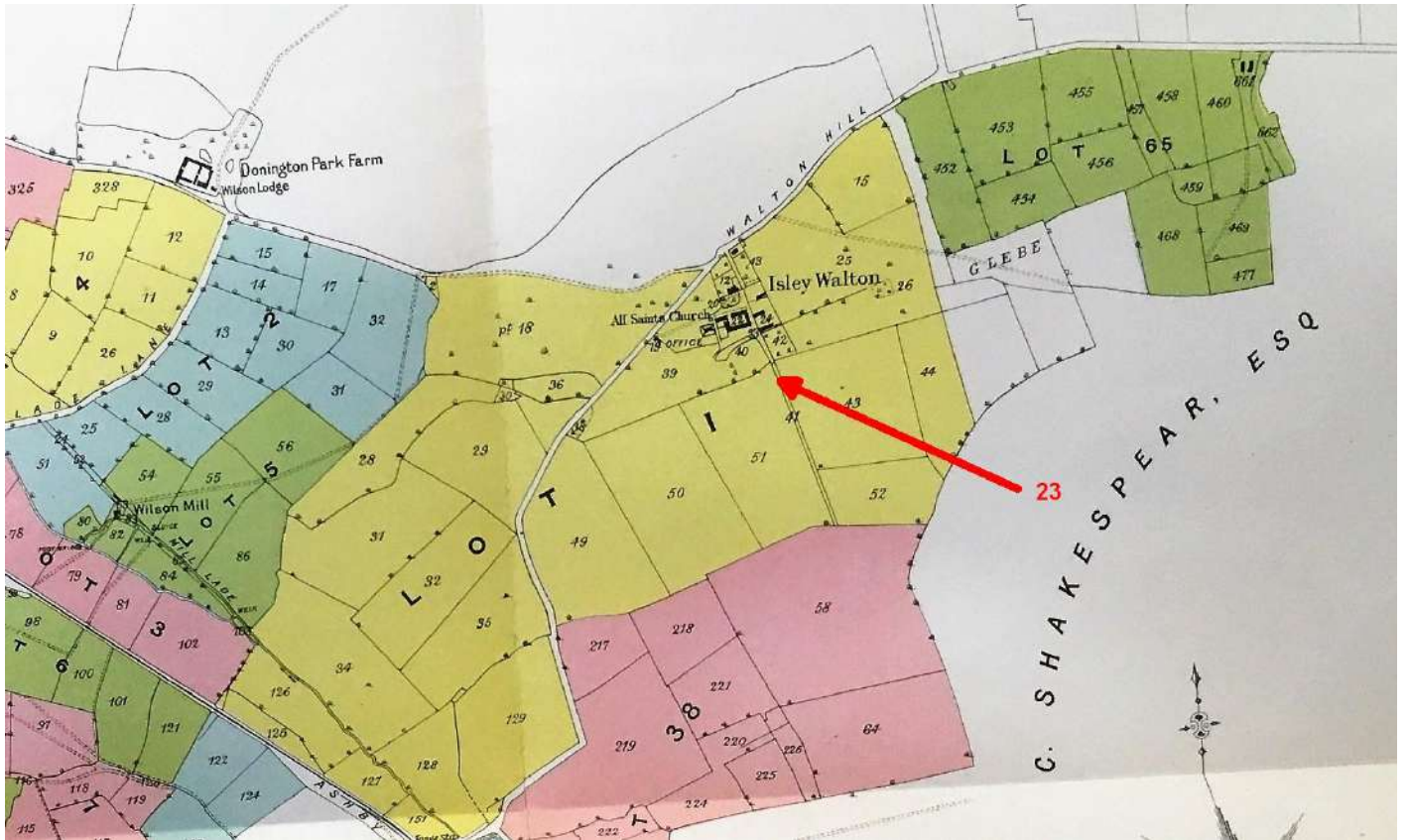


Fig 10 1903 - Extract from **Sale Plan** for Donington Estate showing route of L98. Our arrow.

This document shows which parcels of land were included in each lot of the sale. They were drawn up by the landowner or his agent. Public roads will often have been excluded from such sales and not included in any of the lots.

Since no easement is mentioned it is reasonable to surmise that the route had public rights. It is shown with the number 23 which the schedule tells us is a ROAD (see Fig10b below).

4
TOGETHER WITH
300a. Or. 13p.
OF

Rich Arable and Pasture Land

Good and Extensive Farm Buildings,

Which comprise Shedding for 97 Cows, 2 Seven-stall Stables with Granary over, Mixing Place, Waggon Hovel, Loose Box, 2 open Yards with Sheds, Mixing Place, and Cooling House, with Granary over, Engine House, Shed with 7 Loose Boxes, Pigstyes, and Poultry Houses.

Standing on this Lot are

THE ESTATE OFFICES

AND

FIVE GOOD COTTAGES

SCHEDULE.

| No. on Plan. | Name of Tenant. | Cultivation. | A. | R. | P. |
|--------------|-----------------|-------------------------|---------------|----------|-----------|
| 49 | J. G. Shields | Arable | 18 | 3 | 22 |
| 50 | " | ditto | 20 | 0 | 10 |
| 51 | " | Pasture | 17 | 1 | 24 |
| 52 | " | Arable | 7 | 2 | 27 |
| 43 | " | ditto | 17 | 0 | 18 |
| 44 | " | ditto | 8 | 1 | 9 |
| 39 | " | Pasture | 9 | 1 | 28 |
| 19 | " | Garden | 0 | 2 | 7 |
| 20 | " | Pleasure Grounds | 3 | 0 | 8 |
| 12 | " | House and Gardens | 1 | 0 | 25 |
| 22 | " | Buildings | 1 | 1 | 29 |
| 40 | " | Pond | 0 | 1 | 13 |
| 42 | " | Orchard | 0 | 3 | 30 |
| 13 | " | Cottage and Orchard | 0 | 2 | 34 |
| 24 | " | Buildings and Stackyard | 1 | 0 | 13 |
| 25 | " | Pasture | 23 | 0 | 14 |
| 26 | " | ditto | 0 | 1 | 3 |
| 15 | " | Arable | 7 | 3 | 17 |
| 34 | " | Pasture | 17 | 3 | 32 |
| 28 | " | ditto | 10 | 2 | 34 |
| 31 | " | Arable | 16 | 1 | 7 |
| 32 | " | ditto | 13 | 1 | 32 |
| 35 | " | ditto | 14 | 0 | 6 |
| 29 | " | ditto | 13 | 0 | 12 |
| 30 | " | Wood | 0 | 1 | 34 |
| 36 | " | Pasture | 4 | 1 | 37 |
| pt. 18 | " | ditto | 25 | 0 | 26 |
| 2 | " | Cottage and Garden | 0 | 1 | 11 |
| 23 | " | Road | 0 | 1 | 38 |
| 38 | " | Pasture | 0 | 1 | 20 |
| 129 | Roulstone | Arable | 17 | 0 | 39 |
| 125 | " | Pasture | 2 | 3 | 26 |
| 126 | " | ditto | 7 | 3 | 7 |
| 127 | Nicklinson | ditto | 3 | 2 | 7 |
| 128 | " | ditto | 9 | 1 | 24 |
| 151 | " | ditto | 2 | 1 | 33 |
| 41 | Shields | Pond | 0 | 3 | 5 |
| Total | | | A. 300 | 0 | 13 |

In Lease to Mr. J. G. Shields for a term of 14 years from Lady Day, 1894, at a rent of £1 3s. 4d. per acre, the Tenant paying the Tithe (about 3s. 10d. per acre).

Fig 10b The sales schedule shows 23 (L98) as a ROAD.



Fig 11 Isley Walton map and schedule produced for J G Shields early 20th century to show the Shields' tenants and their rents.

Schedule.

| NAME OF TENANT | ACREAGE | | YEARLY RENT | | | DESCRIPTION. |
|--------------------------------------|---------|-----|-------------|----|----|----------------------------|
| | A | DEC | £ | S | D. | |
| BREEDON AND CLOUD HILL LIFE WORKS | | | 31 | 0 | 0 | OFFICES AND COTTAGE |
| BREEDON NATIONAL SCHOOL TRUSTEES | | 062 | | 5 | 0 | SCHOOL |
| BUCK JOHN | 72 | 356 | 147 | 14 | 2 | ELIJAH'S BARN ETC. |
| COOPER T.L. & A. | 20 | 511 | 51 | 10 | 6 | LAND |
| CLOWES R.A. | 166 | 683 | 266 | 13 | 8 | HIGH BARNS ETC. |
| DITTO | | | | 9 | 0 | DUTCH BARN |
| CROSS J. | | | 13 | 0 | 0 | COTTAGE |
| FARM ACCOUNT | 50 | 600 | 101 | 4 | 0 | LAND |
| FLETCHER C.E. | | | 30 | 0 | 0 | HOUSE ETC. |
| HARRIS H. | | 160 | 10 | 8 | 0 | COTTAGE |
| IN HAND | 1 | 977 | | | | WOODLANDS |
| DITTO | 4 | 165 | 36 | 2 | 2 | MELBOURNE ALLOTMENTS |
| KINSEY FRANK | | | 5 | 0 | 0 | BOY'S SCHOOL |
| LONG EATON URBAN DISTRICT COUNCIL | | | | 7 | 0 | POLES ETC. |
| LEICS. AND WARWICKS. ELEC. POWER CO. | | | 16 | 13 | 6 | POLES ETC. |
| MIDDLETON MISS | | | 8 | 0 | 0 | RUCHENHARVE OLD TOLL HOUSE |
| POSTMASTER GENERAL | | | 1 | 12 | 0 | STAYS STRUTS ETC. |
| POYNTON R.A. | | | 37 | 9 | 0 | STONE COTTAGE |
| SHIELDS J.G. | 5 | 465 | 10 | 0 | 0 | GARDENS |
| DITTO | | | 70 | 0 | 0 | MANOR HOUSE |
| DITTO | 10 | 101 | | | | PLANTATIONS AND ROADS |
| SHARPE OSWALD | 308 | 194 | 577 | 17 | 0 | ISLEY WALTON FARM ETC. |
| TINEY JAMES | | | 33 | 16 | 0 | STONE COTTAGE |
| TOWLE F.W. | | | 30 | 0 | 0 | KEEPERS LODGE |
| WAKEFIELD J. | 14 | 287 | 42 | 6 | 8 | LAND |
| WHITE A.A. | 10 | 508 | 21 | 0 | 4 | LAND |
| WRIGHT C. | | | 4 | 15 | 4 | COTTAGE |
| TOTAL ACREAGE | 665 | 169 | | | | |
| TOTAL YEARLY RENTS | | | 1545 | 3 | 4 | |
| LESS OUTGOINGS | | | 122 | 18 | 1 | |
| | | | 1422 | 5 | 3 | |

Above (Fig 11)

By the early 20th century the Donington Estate, which included Isley Walton, had mostly passed to the Shields family. This map is based on the 1903 map as the plot numbers are the same. The road through Isley Walton is clearly shown.

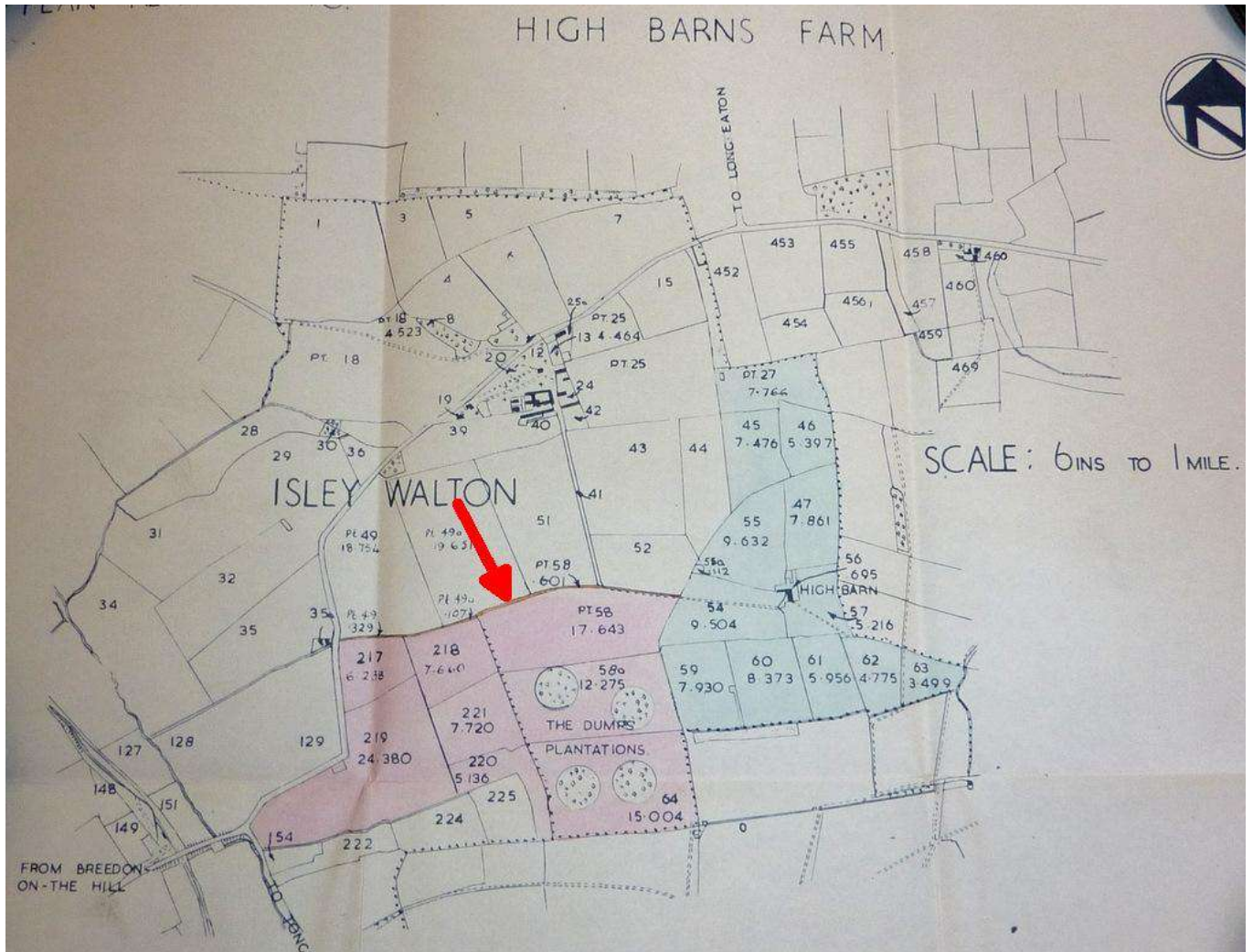



Fig 12 Sale Plan of High Barn Farm 1984 (above). The sale by the Shields Estate clearly shows lane from Isley Walton south. The sales document also states that the Shields maintain a right of way along the track marked in brown (arrowed). No comment about rights is made about the other access route to High Barn through the village.

DE4674/1432 (LLRO) based on the OS six-inch map.

Burton and Notts Railway 1864 (aborted) - Reference Book and Plans

These show a road south to Langley (no. 20 on plan). The accompanying book of reference states that it is an "occupation road" owned by the Bowyers Company, however as well as private rights they may carry public ones. Fig 13 below.

Burton and Nottingham Railway.
The Parish of Isley-Walton—*continued.*

| No. on Plan. | Description of Property. | Owners or Reputed Owners. | Lessees or Reputed Lessees. | Occupiers. |
|--------------|--|--|-----------------------------|---|
| 12 | Field | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 13 | Field | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 14 | Brook | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | |
| 15 | Gardens | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson George Fitchett, and Thomas Harris |
| 16 | Field | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 17 | Field | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 18 | Pond | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 19 | Farmyard, fold-yard, and stackyard | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 20 | Occupation road | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings |  |
| 21 | Waggon hovel, blacksmith's shop, wheelwright's shop, and sheds | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 22 | Stackyard | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |
| 23 | Orchard | The Master, Wardens, and Society of the Mystery of Bowyers of the City of London | The Marquis of Hastings | John Nicklinson |

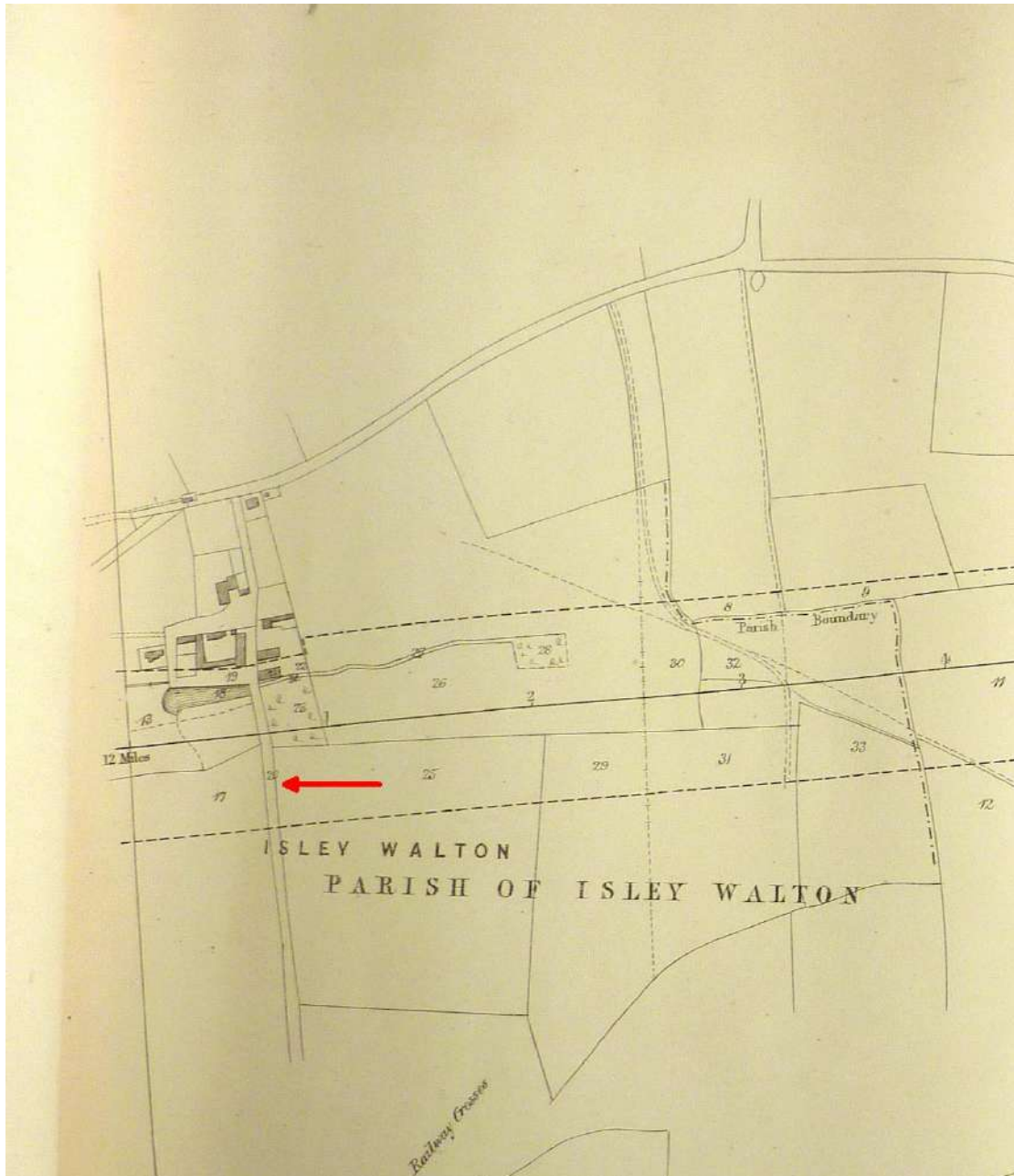


Fig 14 shows the plan that accompanied the Reference book.

The road from Isley Walton to Langley is marked with a “20”.

Railway routes were well researched and documented as mistakes would have been costly to rail companies. Plans were put on deposit and landowners would ensure that matters were properly recorded especially if access was needed across the route of the line or land was to be sold at the appropriate values to railway companies.

Ordnance Survey Drawing: Leicester and Loughborough Sheet 263

This map drawn in 1815 by Henry Stevens for the original One-inch OS map (but to a larger scale) shows a route from Isley Walton to Langley Priory substantially on the route of L98. This is similar to the route shown on King's map of Leicestershire (1806) see fig 16.



Fig 15 OS Drawing 263 (from the British Library)

Henry Stevens was a professional draughtsman responsible for several of these drawings for the O.S. They were regarded as amongst the best maps of the time.

King's map of Leicestershire (1806)



Fig 16 - our annotation of route.

William King's Map is accepted as being an accurately drawn map for its time.

King's maps were sold to the travelling public and were unlikely to show routes they could not use.

Judicial Comment

Hollins and Oldham (1995), Judge Howarth examined various maps like this one from 1777 to 1830 which show cross roads and turnpikes. These maps were very expensive to purchase and prepare. There was "no point in showing a road to a purchaser if they he did not have the right to use it."

National Park and Access to the Countryside Act 1949 Documentation

Isley cum Langley cont'd

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949
SURVEY OF RIGHTS OF WAY 3

Note: In completing this form due regard should be had to the information contained in the pamphlet "Survey of Rights of Way" issued by the Ministry of Town & Country Planning.

| (1) Ref. No. on Map. | (2) Kind of Path | (3) Name of path (If any) | (4) Starting and finishing point and concise information about features on the path (vide pages 11, 12 & 13 of pamphlet) | (5) Grounds for believing path to be public | (6) Condition of path | (7) How surveyed i.e. walked, ridden, etc. |
|--|------------------------|---|--|---|-----------------------------|---|
| <i>Verbye LVIII SE Lies. IX SE <u>2</u> <u>4</u> <u>5</u> L98</i> | | | <i>From Isley Walton via The bumps Plantation, Smooth Coppice to The Brand at the top of Longe Hill. No defined track beyond Smooth Coppice, just the open fields.</i> | <i>Not a public footpath but was used for cows as a bridle road for hunting people tho there never has been any sign board, up showing it as such. No public money was used for upkeep etc.</i> | | |
| Surveyed by <i>Parish Meeting</i> | | Address <i>Mr J. Shields Isley Walton</i> | | Date <i>13th Dec 1950</i> | | |

Fig 17 Parish Survey for FP that became L98. Mr J. Shields states that it runs **from "Isley Walton....."**

This is one of the surveys conducted under s27 of the National Parks and Access to the Countryside Act (1949) for the purpose of creating the definitive map.

Four public footpaths, not recognised as such by Mr Shields, were added to the definitive map by the Castle Donington RDC and the County Council. Mr Shields was the principal landowner in Isley Walton and also chairman of the Parish Meeting. He was the sole surveyor for the parish and completed the 1949 Act documentation himself.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF RIGHTS OF WAY

Note: In completing this form due regard should be had to the information contained in the pamphlet "Survey of Rights of Way" issued by the Ministry of Town and Country Planning

| (1) Ref. No. on map | (2) Kind of Path | (3) Name of path (if any) | (4) Starting and finishing point and concise information about features on the path (vide pages 11, 12 and 13 of pamphlet) | (5) Grounds for believing path to be public | (6) Condition of path | (7) How surveyed i.e. walked, ridden etc. |
|---------------------------|------------------------|---------------------------------|---|--|---|--|
| 24 171 | F.P. | NIL | Footpath from Worthington Lane to Worthington Parish boundary First stile rails, 1 st + 2 nd fields ploughed about 1949, 2 nd + 3 rd stiles rails but overgrown by hedge. 3 rd + 4 th + 5 th fields grass 4 th + 5 th 5 th + 6 th stiles rails, also 7 th @ Parish boundary | Used by Public for a good number of years, but very rarely in recent years | Poor | Walked |
| 28 L98 | F.P. | - | Long - Griggston Pond to join with F.P. in Longy Farm. | - | agreed continuity to Isley Walton W. Pearson, R.D.C. | |

TEP/MS Surveyed by... J. Baker, R. Walker, R. Roberts... Address... Brecon on the Hill... Date... June 11th...
Pearson Derby 1951

Fig 18 extract from the Brecon on the Hill survey sheet. L98 is mentioned as continuing to Isley Walton by the Rural District Council surveyor W. Pearson:

“agreed continuity to Isley Walton...” (purple pen)



Fig 19 1949 Act survey map showing L98 which was at the time Isley Walton FP2.

At the southern end can be seen the path continuing to Breedon mentioned on the Breedon survey (marked Breedon Parish).

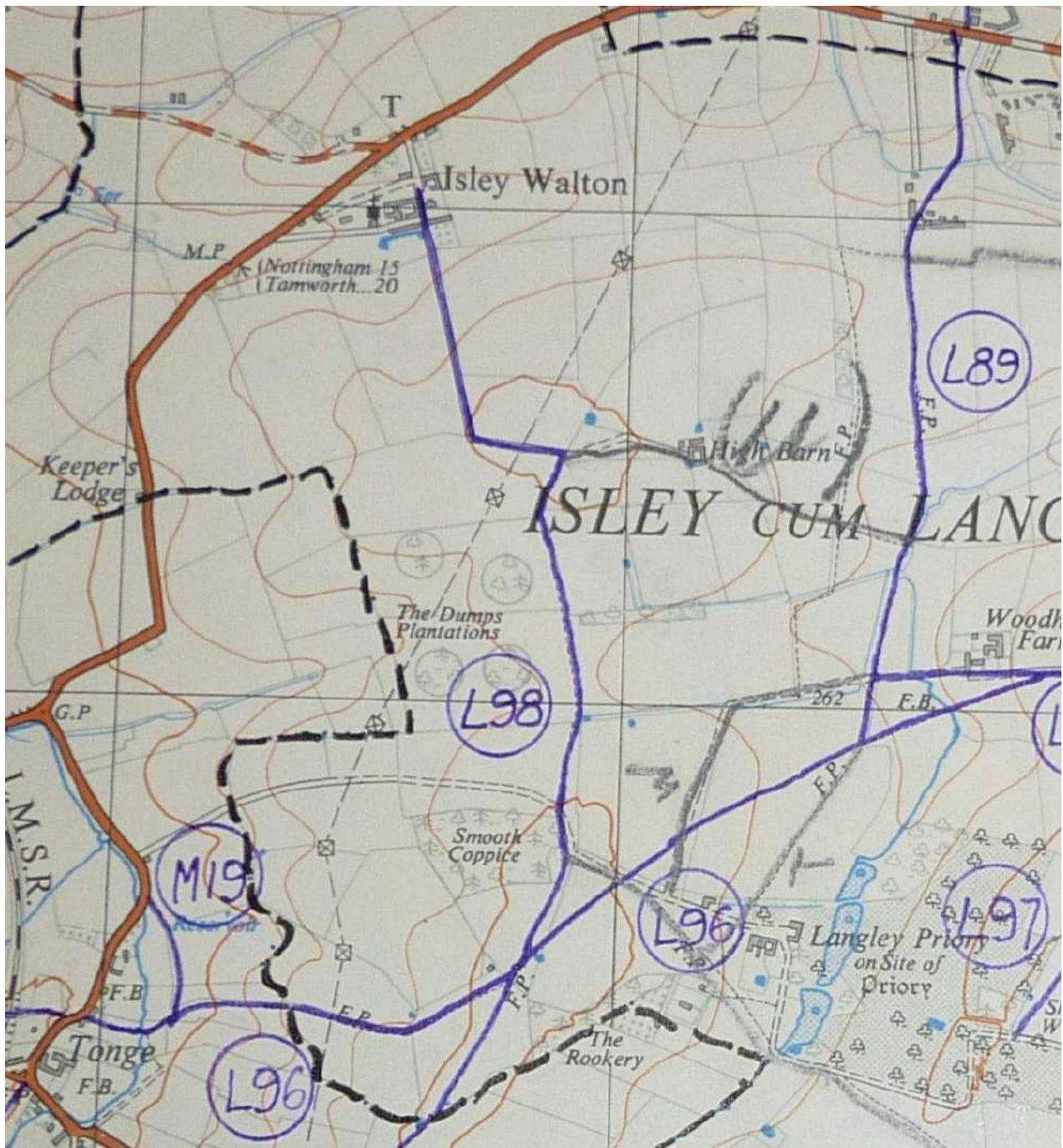


Fig 20 Draft Definitive map shows L98 meeting the access and presumed public road in Isley Walton. It would make no sense terminating a public footpath at a point which was not a public highway.

Note other paths in pencil at Langley Priory and High Barn were later added to the Definitive Map as public rights of way as the surveyors did not agree with the chairman of the Isley Walton Parish Meeting (see below).

Survey of Rights of Way.

Ashby, Ashby Wolds and Coalville Urban Districts,
Ashby and Castle Donington (part) Rural Districts.

Inquiry - 27th April, 1954.

Present:-

| | | |
|---------------------|---|--|
| Mr. J.J. Sparrow | } | Representing the County Council. |
| Mr. F. Yates | | |
| Mr. J. Bullen | } | Each representing their own Electoral Division. |
| Mr. W.H. Snape | | |
| Mrs. D.M. Sheffield | | |
| Mr. S. Marper | | |
| Mr. H. Willeman | | |
| Mr. J. Burrows | } | Representing the four Associations. |
| Mr. S.J. Pick | | |
| Mr. G.H. Green | | |
| Mr. E.S. Colledge | | |
| Mr. E. Hallam | } | Representing the Castle Donington R.D.C. |
| Mr. E.V. Pearson | | |
| Mr. B.G. Pember | } | Representing the Stretton-en-le-Field Parish Meeting. |
| Mr. R. Mountfort | | |
| Mr. A.F. Jackson | } | Representing the Appleby Magna Parish Council. |
| Mr. I.J. Heath | | |
| Mr. C.A. Nickels | | |
| Mr. G. Joyce | | Representing Mr. H. Robey, Major Jesson, the Willesley Park Golf Club, Mr. Charles Bates, Mr. Cecil Bennion and Miss M.C. Fosbrooke. |
| Mr. W.L. Starbuck | } | Representing Mr. Charles Bates. |
| Mr. J. Parker | | |
| Mr. Charles Bates. | } | Representing the Coalville U.D.C. |
| Mr. H.B. Chynoweth | | |
| Mr. R.H. Smith | | |
| Mr. F. Hines. | | |
| Mr. C.J. Ridgway | | |
| Mr. S.E. Wilkinson | } | Representing the Ashby-de-la-Zouch U.D.C. |
| Mr. C.S. Curtis | | |
| Mr. J.E. Wilkinson | } | Representing the Ashby-de-la-Zouch R.D.C. |
| Mr. Cecil Bennion. | | |
| Mr. L.A. Stonley | } | Representing the Ravenstone Parish Council. |
| Mr. R.H. Wright | | |
| Mrs. M.G. Colledge. | | |
| Miss M. Willett | } | Representing the Sweptstone Parish Council. |
| Mr. H. Ketchley | | |
| Mr. K. Evans | } | Representing the Sweptstone Parish Council. |
| Mr. C.W. Hinson. | | |
| Mr. H. Robey | | |
| Mr. T.G. Heafield. | | |
| Mr. C. Knight. | | |
| Mr. L. Black | | |
| Mr. T.D. Newman. | | |

The objections were heard in the order shown on the
attached list.

(t) Alleging that a footpath running north-north-eastwards from the west side of Langley Priory in the parish of Isley-cum-Langley to the Tonge/Diseworth Footpath has been omitted. (222)

(u) Alleging that a footpath running eastwards by High Barn, Isley-cum-Langley, has been omitted. (224)

(v) Alleging that a footpath running northwards across one field from Burney Lane, Breedon-on-the-Hill to the County boundary has been omitted. (225)

(w) Alleging that a footpath running northwards from a point midway between Smooth Coppice and Langley Priory, Isley-cum-Langley, has been omitted. (226)

(x) Alleging that a footpath running northwards from a point 100 yards south-west of Whartop Grange, Isley-cum-Langley, has been omitted. (227)

(y) Alleging that a footpath running south-eastwards from the Castle Donington/Diseworth Road by Whartop Grange and then south-westwards to the parish boundary has been omitted. (228)

Fig 22 The list above shows the paths which it was alleged had been omitted from the original survey, four of which were in Isley Walton (highlighted by us). Path "u" is of particular interest (see green box). See also Fig 20 which shows the locations of "u", "t" and "w". (Source: LCCMR)

The Tribunal agreed to recommend that it be shown on the Map.

(t) and (w) Mr. Green: "Pre-war we used these paths quite a lot and so did a lot of local people. During the war period many of these paths were interfered with by ploughing. I am of the opinion that it would be very difficult to find many of these, but in pre-war days we knew them, used them and regarded them as public paths. These paths were more or less agreed with the Parish Council and I have no doubt in my own mind that they were rights of way. Tonge people I have talked to know there were paths in existence prior to the ploughing."

The Tribunal agreed to recommend that the ways be shown on the Map.

Fig 23 The tribunal added paths "t" and "w" to the Definitive Map despite them not being recorded in the schedules by the Isley Walton Parish Meeting. (LCCMR)

- 10 -

(u) Mr. Green: "The Draft Map recognises the road up from Isley to near High Barn Farm. We have used this as a path and have never been challenged on it. The farmer's wife at the farm has said to various people I know that she is delighted to see people on the path."

The Tribunal agreed to recommend that this way be shown on the Map.

Objection (v) was withdrawn.

Objections (x) and (y).

Mr. Green: "I resolved to speak to the first six people I met in Diseworth and ask them if they knew the footpaths. Each of them took me to the same places. The people could walk across to the exact spot. There is a footbridge over the brook, it is one of the oldest and most magnificent structures I have seen, it may be 100 years old. It is well marked and I actually met a man on the path. The other one is almost in the nature of a road and I am assured by the villagers that it is in daily use by at least one person. The stile is kept in excellent condition"

The Tribunal agreed to recommend that these paths be shown on the Map.

Fig 24 refers to path "u" which became the definitive L98a.

Mr Green states that "The Draft Map recognizes the road up from Isley to High Barn Farm....." which of course is the route of L98 which we are claiming. *It was therefore recognized at the Tribunal that the road up to and into Isley Walton was a Public Right of Way.* (LCCMR)

The Tribunal which consisted of users, landowners, and Parish, District and County Councillors acceded to this decision.

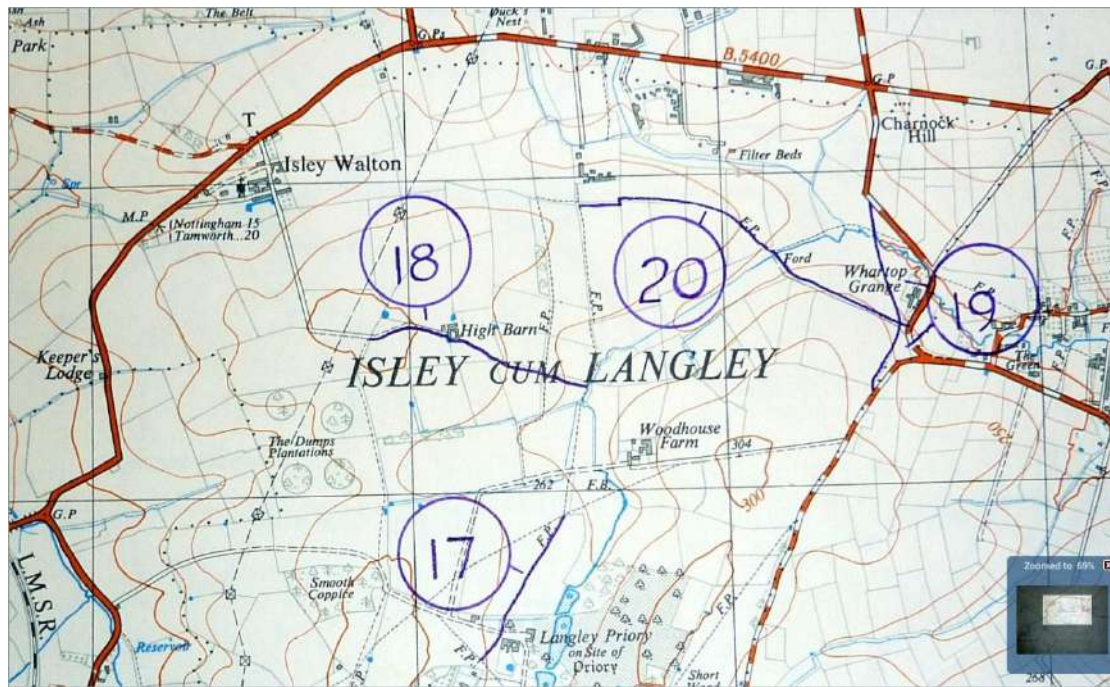


Fig 25 Map showing the four Isley Walton paths discussed at the Tribunal. 18 which became L98a (note the “a” denoting a continuation) linked directly to the road which became L98 and without doubt was expected to link to the main road at Isley Walton. (LCCMR)

| <u>In the Parish of Isley-cum-Langley.</u> | |
|--|---|
| 17. | Add path from west of Langley Priory to Tonge/Diseworth path. |
| 18. | Add path eastwards by High Barn. |
| 19. | Add path northwards from near Whartop Grange. |
| 20. | Add path from Castle Donington/Diseworth Road by Whartop Grange to parish boundary. |

Fig 26 Extract from the Tribunal Decision List.

All of these paths, originally omitted by the Isley Walton Parish Meeting (as well as L98), were added to the Definitive Map in 1954. (LCCMR).

LEICESTERSHIRE COUNTY COUNCIL

DEFINITIVE STATEMENT

| Ref No | Relevant Date | Map | Status | Location | Width | Limitations and Conditions |
|--------|---------------|------------------|----------|--|-------------|----------------------------|
| L94 | 29/09/1992 | SK42NW | Footpath | Between the Biggin and Clapgun Street, Castle Donington Parish(es) Castle Donington | Not defined | None |
| L95 | 14/09/1992 | SK42NW | Footpath | From Garden Crescent to Clapgun Street, Castle Donington Parish(es) Castle Donington | Not defined | None |
| L96 | 29/09/1992 | SK42SW | Footpath | From the Diseworth - Belton Road to Tonge and the A453 road Parish(es) Isley cum Langley, Breedon on the Hill | Not defined | None |
| L96a | 29/09/1992 | SK42SW | Footpath | From west of Langley Priory to footpath L96 Parish(es) Isley cum Langley | Not defined | None |
| L97 | 29/09/1992 | SK42SW | Footpath | From the Diseworth - Beltn Road south west to Short Wood near Langley Priory Parish(es) Isley cum Langley | Not defined | None |
| → L98 | 14/09/1992 | SK42SW SK42NW | Footpath | <u>From Isley Walton</u> to the A447 road east of Tonge Parish(es) Isley cum Langley, Breedon on the Hill | Not defined | None |
| L98a | 29/09/1992 | SK42SW | Footpath | From footpath L98 east past High Barns to footpath L89, north of Langley Priory Parish(es) Isley cum Langley | Not defined | None |

Fig 27 From the current County Council DM statement (our annotation).

According to County Council's Definitive Statement L98 starts in the village/hamlet of Isley Walton.

Conclusion

The claimed route is part of the old track from Isley Walton village to Langley Priory and is clearly shown in the following pieces of evidence:

1806 - King's map

1815 - Ordnance Survey drawing (no. 263)

1829 - Estate map for the Bowyers Company

1836 - First edition OS One-inch map

1838 - Turnpike Trust map (diversion through Isley Walton)

1840 - Tithe Map

1864 - Proposed Burton to Nottingham Railway plans (line aborted)

1882 - OS 25-inch map for professional use

1903 to 1984 – the Donington and Shields estate sales maps

1950s – Castle Donington Rural District Council (CDRC) surveyor notes on Breedon parish survey sheet that L98 *continues* to Isley Walton

1954 - National Parks and Access to Countryside Act Tribunal - "the draft map recognises the road up from Isley Walton to High Barn".

The 1950 Parish Survey was completed by the principal landowner who claimed that this footpath was a bridle road for hunting and not used by the public; this claim was overturned by the RDC and the County Council and it became L98. Four further footpaths were added to Definitive Map in the very small parish of Isley Walton as a result of the Tribunals held on 27 April 1954.

We must conclude from this that the RDC and County Council did not agree with the Mr Shield's understanding of what a public right of way was. Furthermore, the statement from Mr Pearson (CDRDC surveyor) that L98 continued from Breedon parish to Isley Walton could only mean that it connected to the main highway by the hamlet.

Potential for bridleway status

As this route was most likely used for hundreds of years by travellers from Isley Walton to Langley Priory it would be most unlikely that the route was not used by horses. Indeed, the old maps for travellers such as King's were produced specifically for people on horseback or horse drawn vehicles.

Mr Shields (1950) refers to the route we are applying for as a "hunting road" so horses would have definitely been involved in this activity, therefore it is very likely that this route had higher rights and the claimed footpath should be upgraded to a bridleway.

Addendum

Further evidence has been found for the route:



Fig 28 OS Book of Boundary maps for this area.

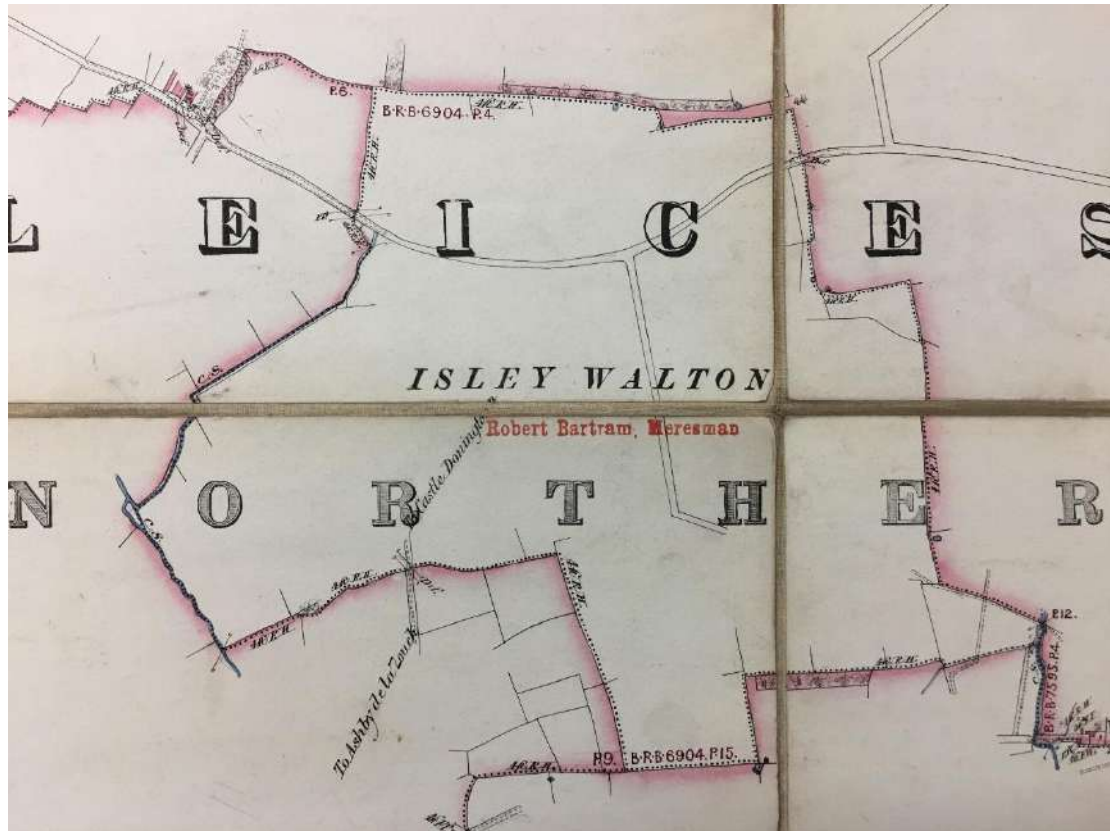


Fig 29 OS Boundary map for Isley Walton 1881

These maps were produced under Parliamentary authority (by the 1841 Act) and were advertised for public inspection. They are held in official custody by the National Archives at Kew.

This map clearly shows the through route of L98 from the junction with the old turnpike road, heading south out of the settlement. This document is further proof that the route south of the hamlet was contiguous.

Comment on Path Creation Order by Leicestershire County Council, 2004 (FPS/M2460/6/6)

This application was made under section 26 of the Highways Act 1980 by LCC and went to public inquiry where it was not confirmed by the Inspector (March 2012). We would like to make comments on the objections made by residents of Isley Walton and then those of the inspector.

Comments made by Objectors

1. *The path would go through a farm yard.*

Many footpaths throughout the country are routed through working farm yards safely and according to the Definitive Map part of this footpath already enters the farmyard from the south.

2. *The path would not connect to other routes*

Opposite the entrance to Isley Walton is a layby and public bus stop (service bus 155 from Coalville to East Midlands Airport – 6 buses per day). These allow linear walks to be made towards Breedon and Diseworth (and return by bus) and circular walks southwards using L98 as an outward and return route.

Furthermore, a splendid walk can be made by parking in Breedon or Worthington and by taking the bus to Isley Walton for the start of the walk back.

3. *There is an alternative route.*

The suggested alternative route between High Barn Farm and the A453 is not a public highway and would require permission of the landowner to use it.

This application is based on different legislation and different tests (see page 2) which we feel have been soundly met.

Inspector's Comments

The Inspector in 2012 determined that the previous application did not pass the first test of the s26 of the Highways Act 1980 however we believe that he was unaware of the availability of public transport and nearby parking. With these, the continuation of L98 northwards would “add to the convenience or enjoyment of a substantial section of the public” (the first test of s26).

When this short section of footpath is made definitive, access would be much easier to an attractive area of countryside south of Isley Walton and the network would be properly connected once again.

Summary

We have identified maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public rights of way network. The applicant therefore requests the surveying authority to add the route to the definitive map and statement.

Roy J Denney
Vice Chairman, Leicestershire Local Access Forum
C/o Room 700, County Hall, Leicester, LE3 8RJ
(www.leics.gov.uk/laf)