

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

Short Description:			
Adding a Byway Open to All Traffic, along the field road from Allextan Road, Hallaton to East Norton Road, Horninghold			
Application No.:	M1238	Legal Services Ref. No.:	HTWMT/
Application Status:	Awaiting Certificate of notices having been served		
Geographical Location			
Path No:	Ref. No. not allocated	Route name (if known):	East Norton Road (part of a longer distance field road to East Norton)
Settlement:	Horninghold		
Parish:	Horninghold and Hallaton Parishes		
District/Borough:	Harborough		
Nearest Town/City:	Hallaton		
Start Location:			
Start Grid Refs:	Landranger:	SP8035 9830	Eastings,Northings: 48034 29831
End Location:			
End Grid Refs:	Landranger:	SP8060 9729	Eastings,Northings: 48055 29737
Applicant's Name, Address & Postcode:			
Mr. Will Steel, on behalf of the British Horse Society, of Abbey Park, Stareton, Kenilworth, CV8 2XZ.			
Date Received:	24/04/2021	Date Determined: *	
Application Stage(s):			
<ul style="list-style-type: none"> Wildlife and Countryside Act 1981 Sch 14(2) Notice Served and Certified? No 			
For Further Information			
Case Officer:	Piers Lindley		
Telephone:	0116 305 7087	Fax:	
Email:	footpaths@leics.gov.uk		
Contents List:			Page:
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Map accompanying the application			3
Additional Documents			4-22
Inspector's Decision			

* 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.

Form PT634

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/We Will Steel, on behalf of the British Horse Society
of Abbey Park, Stareton, Kenilworth CV8 2XZ

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 Allexton Road, Hallaton at approximate grid reference SP80359830
to East Norton Road in Horninghold at approximate grid reference SP80609729

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

Tithe map 19 Leicestershire Horninghold of 1850
William King's Map of land surrounding Belvoir Castle, 1806
First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869
OS One Inch sheet 156 –Leicester (Outline) published in 1899
OS County Series 25 inch Leicestershire XXXIX.11 and Leicestershire XXXIX.15 both published 1886
OS Six inch series Leicestershire XXXIX.SE published 1885
OS 25k series 42/89-B published circa 1949
Bartholomew Great Britain, Sheet 18 – Birmingham & Leicester published 1903
List of Streets 

Signed.....  Dated 25 April 2021

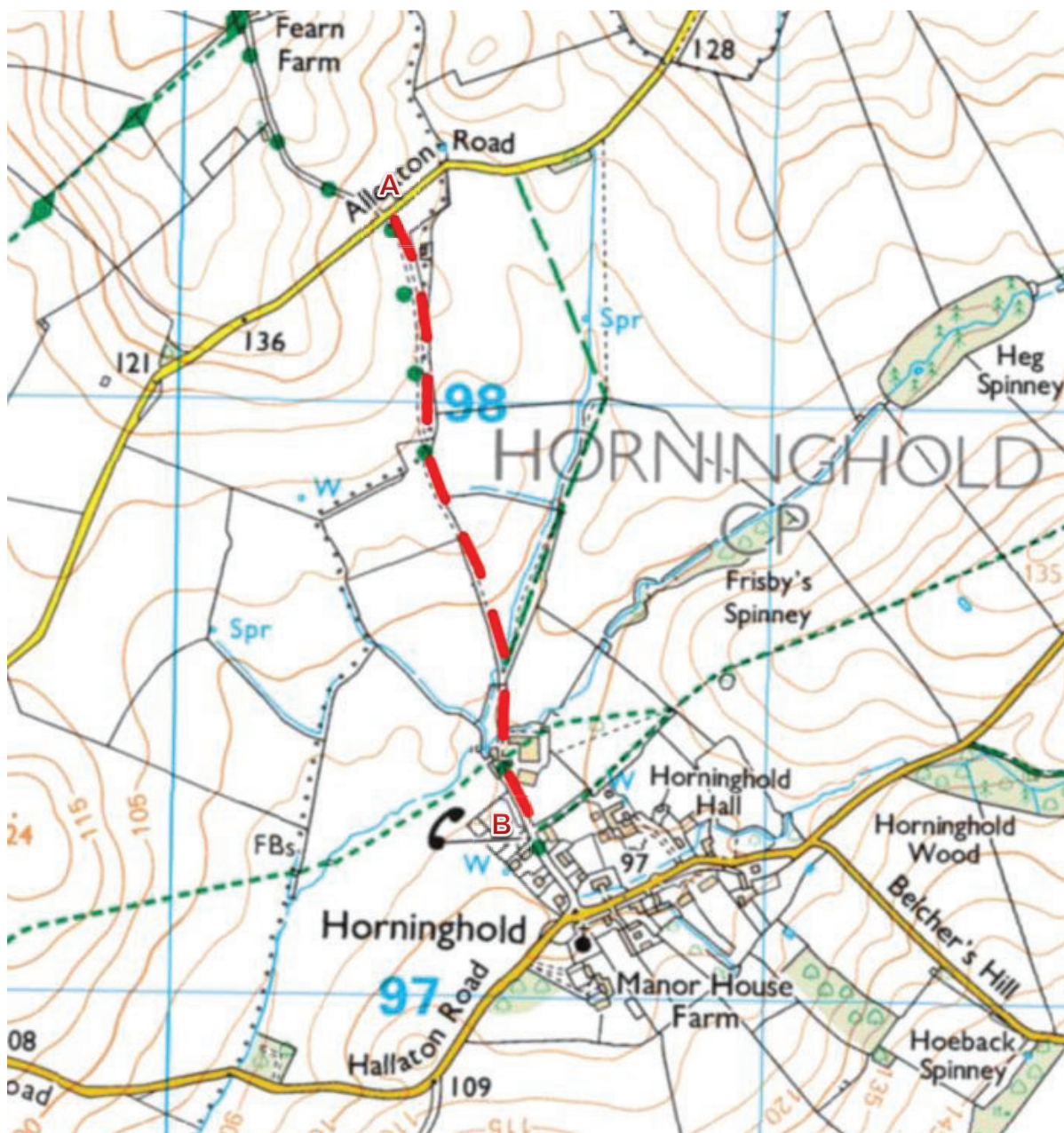
How we use your information

Any information you provide will be used in accordance with current data protection regulations 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.

Definitive Map Modification Order Application

Parish: Hallaton and Horninghold **Grid Reference:** SP804978

Map of Path: Route applied for is shown in RED DASHES between Allextan Road, Hallaton south to end at the East Norton Road in Horninghold. The route is shown on OS Maps partially as an ORPA and partially on a track and is not on the online Definitive Map. The route is on the list of streets but without a classification and as it crosses grass fields therefore a DMMO application is deemed necessary to establish status.



Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Applicants Path Reference: LEI-0152

Wildlife and Countryside Act 1981 Summary of Evidence

Definitive Map Modification Order Application

Parish: Hallaton and Horninghold **Grid Reference:** SP804978

Map of Path: Route applied for is shown in RED DASHES between Allexton Road, Hallaton south to end at the East Norton Road in Horninghold. The route is shown on OS Maps partially as an ORPA and partially on a track and is not on the online Definitive Map. The route is on the list of streets but without a classification and as it crosses grass fields therefore a DMMO application is deemed necessary to establish status.



Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Applicants Path Reference: LEI-0152

Description of Path:

Path starts at Allextion Road, Hallaton at approximate grid reference SP80359830 and goes south to end at the East Norton Road in Horninghold at approximate grid reference SP80609729. The route is shown on OS Maps partially as an ORPA and partially on a track and is not on the online Definitive Map. The route is on the list of streets but without a classification and as it crosses grass fields therefore a DMMO application is deemed necessary to establish status.

This application is made because, on the cut off day, 1st January 2026, 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. (This applies if the route is determined to be a footpath or bridleway.)

I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, 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:

- Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
- Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
- Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
- Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
- 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

The application route is shown on the photos below and starts at Allextion Road, Hallaton at approximate grid reference SP80359830 and goes south to end at the East Norton Road in Horninghold at approximate grid reference SP80609729. The route is shown on OS Maps partially as an ORPA and partially on a track and is not on the online Definitive Map. The route is on the list of streets but without a classification and as it crosses grass fields therefore a DMMO application is deemed necessary to establish status.



Extract from a Google Satellite image from 2009, showing the application route from A to B



Extract from a Google Streetview image from 2009, showing the application route from approximately point A looking towards B



Extract from a Google Streetview image from 2009, showing the application route from approximately point B looking towards A

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

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.

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."

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, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

Tithe Records

Source. The Tithe map 19 Leicestershire 075 Horninghold of 1850

Relevance.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The Tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on road, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from the tithe documents regarding the existence of public rights, and, in particular, public vehicular rights. In some cases highways are coloured sienna or light brown which typically indicates public status.

Archive. The tithe map has been accessed via the Genealogist website and the extract is shown below.

Meaning. The first extract from the Horninghold tithe map shows the application route from A towards B as a road in the same style as the existing road it leaves at A that continues towards Hallaton, circled. The route is also shown with f handles that indicates the route was considered a public right of way. The second image is from the Horninghold tithe apportionment records showing that public highways had no tithe payable.

Assessment. This is probably a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is shown as a road depicted in the same way on Horninghold tithe maps as other existing public roads such as the one it leaves from at A that continues to Hallaton. The Horninghold tithe apportionment also describes public

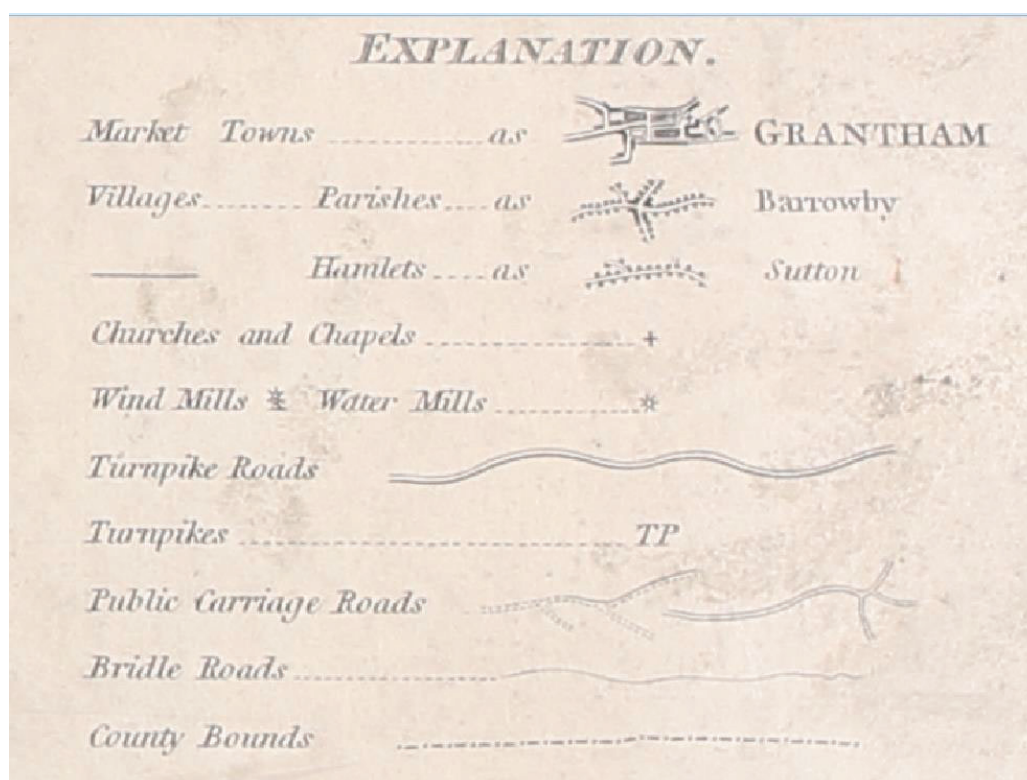
highways with no tithe payable. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



Extract from the Horninghold tithe map of the application route as a road from A to B



Extract from Kings' Map showing the application route from A to B



Extract from Kings' Map showing the explanation of symbols or key

OS First Edition Ordnance Survey Maps - One-inch England and Wales, 1784-1869

Date. First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869

Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the

ground. They were published by Lt. Col Mudge and later by Lieu M Colonel Colby of the Royal Engineers. They were sold by Jas. Gardner, agent for the sale of Ordnance Survey maps.

Archive. The extracts from this sheet below were obtained from the National Library of Australia at OS First Series 1813 <https://nla.gov.au/nla.obj-231924520/view>

Meaning. The route is shown on the extract below from A to B as a road in similar style to existing highways such as the existing roads it both leaves from at A and joins at B.

Assessment. Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.



Extract from OS First Edition Map showing the application route marked from A to B

OS One Inch Ordnance Survey Maps - One-inch England and Wales

Date. OS One Inch sheet 156 –Leicester (Outline) published in 1899.

Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the ground.

Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101167952>

Meaning. The application route is shown on the extract below from A to B as a road at a minimum “unmetalled road” both fenced and unfenced.

Assessment. Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.

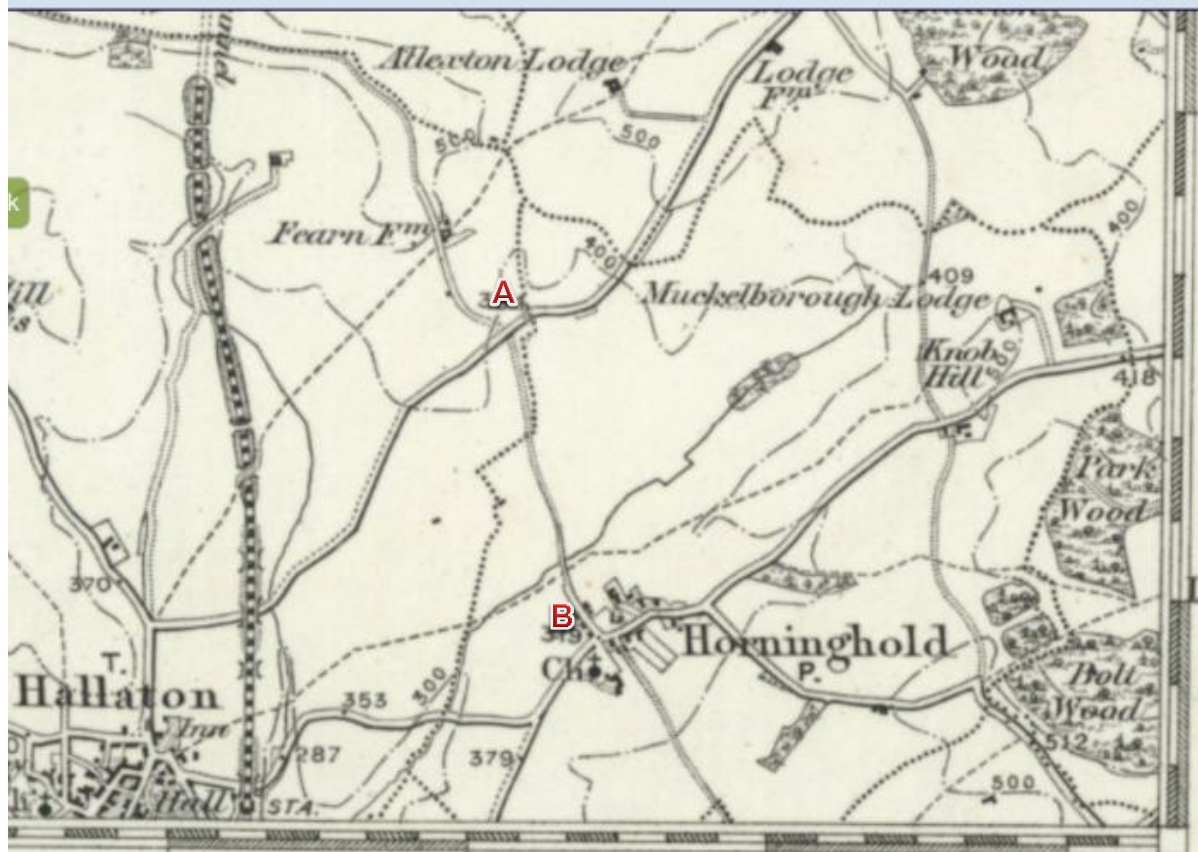
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of Scotland
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Sheet 156 - Leicester (Outline)

Publication date: 1899

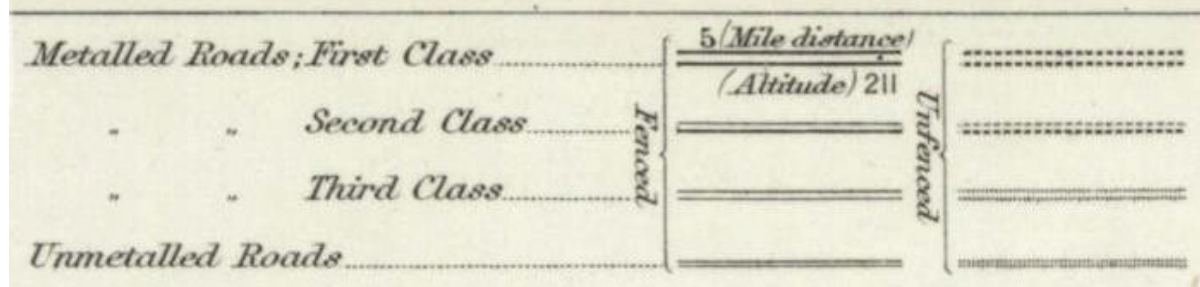
Size: map 31 x 46 cm (ca. 12 x 18 inches) on sheet ca. 43 x 56 cm (ca. 17 x 22 inches)

[home](#) > [Ordnance Survey](#) > [One-Inch, England and Wales, Revised New Series, 1892-1908](#)



Extract from OS 1" Map showing the application route from A to B

[home](#) > [OS One-Inch to the mile, England and Wales, Revised New Series](#)



Extract from OS 1" Map showing the key to the roads

Ordnance Survey Maps - 25 inch England and Wales

Date. OS County Series 25 inch Leicestershire XXXIX.11 and Leicestershire XXXIX.15 both published 1886.

Relevance. The OS First and Second Edition County Series mapping was at 25 inch to the mile scale which would predominantly have been used for professional purposes rather than navigation. They were detailed enough to show gates and barriers on road and tracks.

Archive. The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114595086> and <https://maps.nls.uk/view/114595110>

Meaning. The first extract shows the application route from A towards B as a coloured road in the same style as the existing road it leaves and with waymarker numbers. On the second image the route continues from A to B in the same coloured road style with waymarker numbers. In parts the application route is shown as coloured road with waymarker numbers, indicating that the whole of the route from A to B was considered a road.

Assessment. Other through routes especially those with waymarker numbers shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.

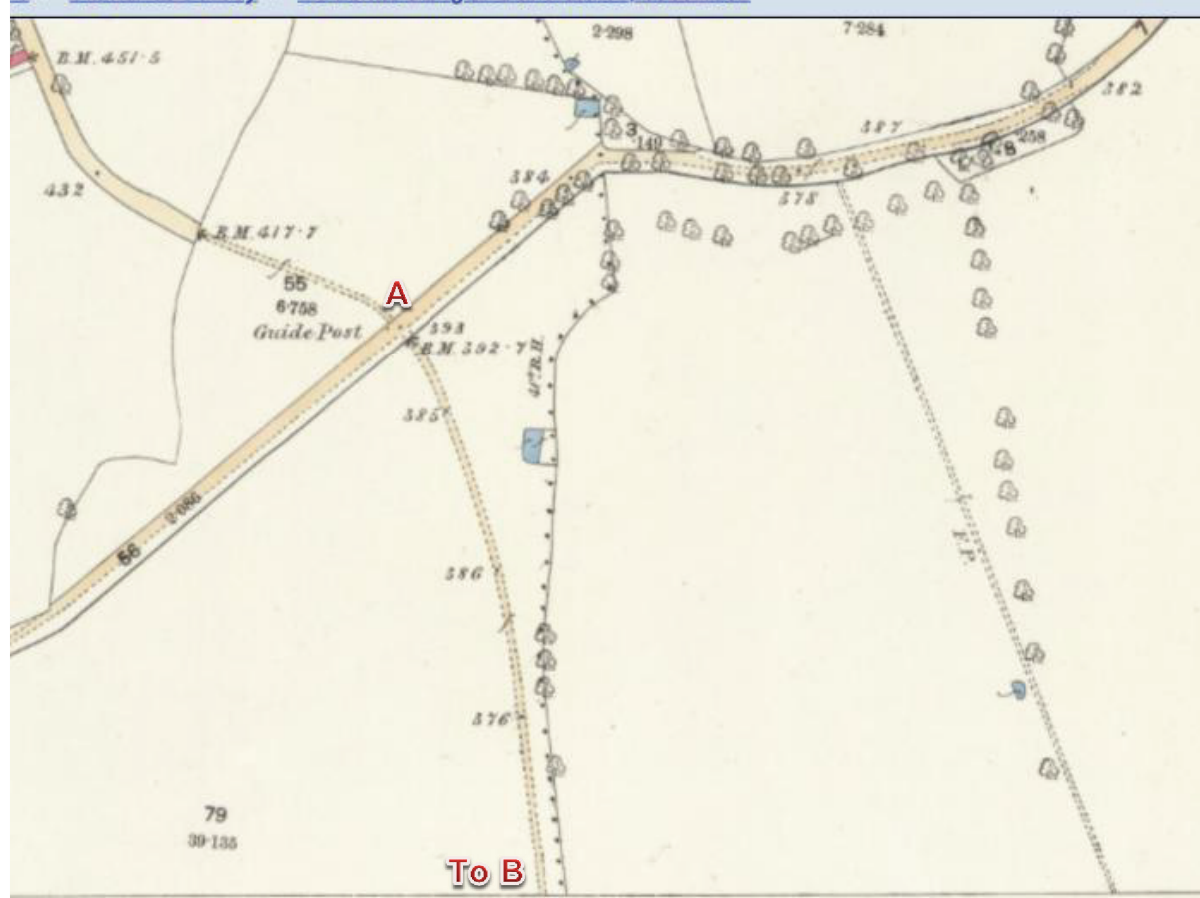
National Library of Scotland
Darlann Nàiseanta
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Leicestershire XXXIX.11 (Allestree; East Norton; Hallaton; Horning...

Surveyed: 1885, Published: 1886

Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

Ordnance Survey > OS 25 inch England and Wales, 1841-1952



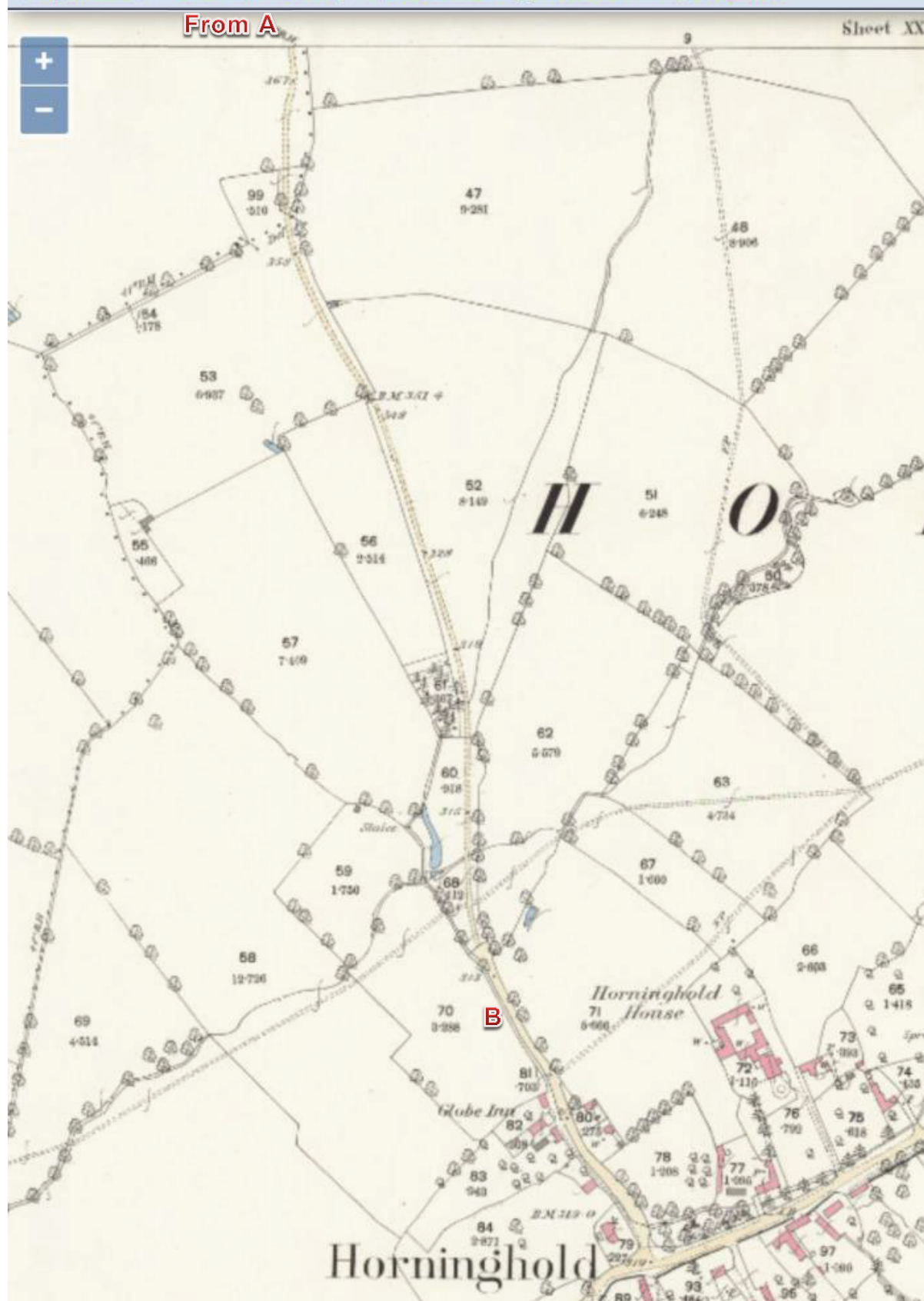
Extract from OS 25" Map showing the application route marked from A towards B

Leicestershire XXXIX.15 (Blaston; Hallaton; Horninghold)

Surveyed: 1885, Published: 1886

Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

[Maps home](#) > [Ordnance Survey](#) > [OS 25 inch England and Wales, 1841-1952](#)



Extract from OS 25" Map showing the application route marked from A to B

OS Six Inch Ordnance Survey Maps - Six-inch England and Wales

Date. OS Six inch series Leicestershire XXXIX.SE published 1885

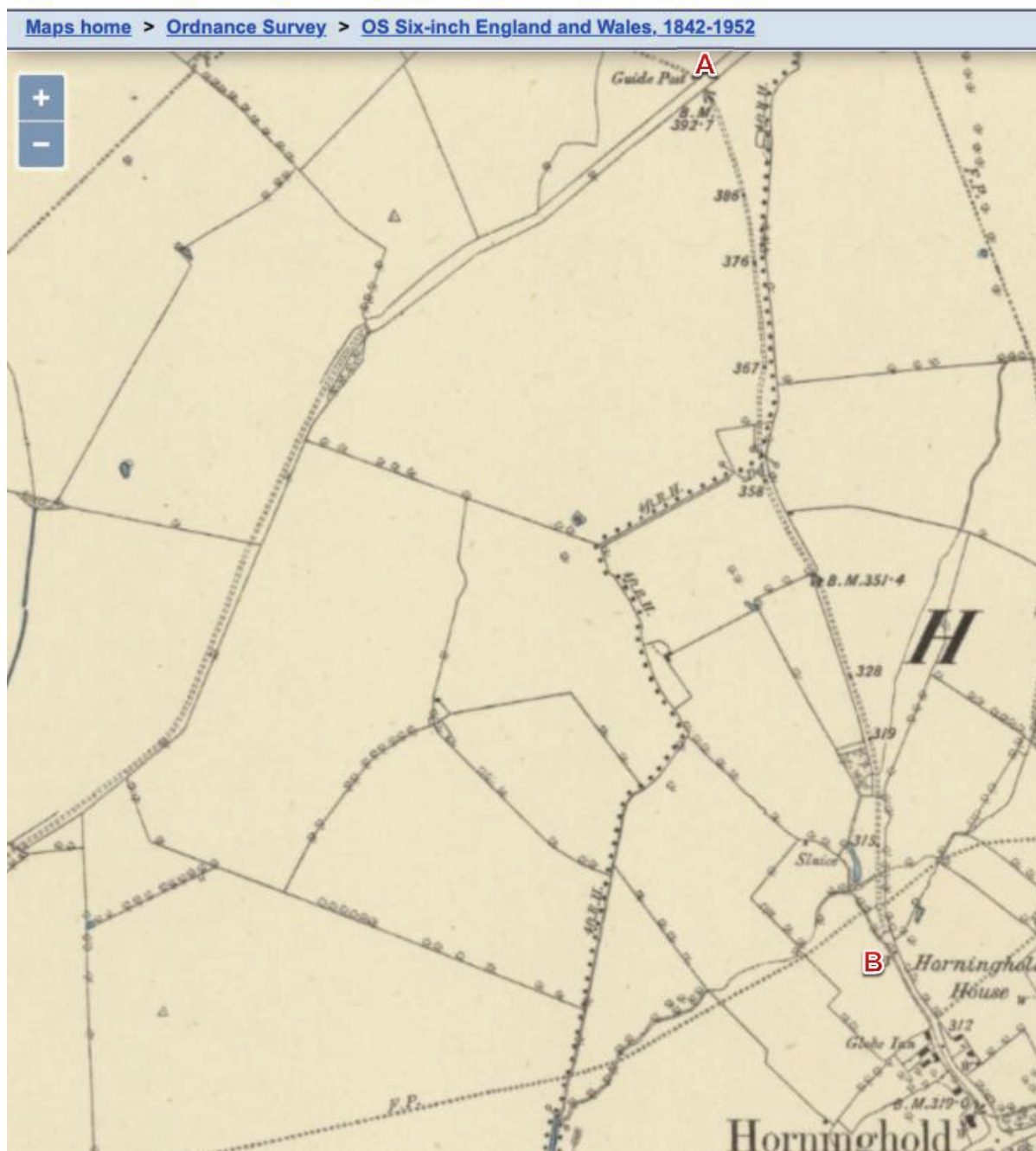
Relevance. The OS Six Inch Series were the most comprehensive, topographic mapping covering all of England and Wales from the 1840s to the 1950s. Two editions for all areas were published, and then regular updates in the 20th century for urban or rapidly changing areas.

Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101592999>

Meaning. The whole of the application route is shown on the image below from A towards B as a likely road with waymarker numbers. The application route is shown in the second half in the same style as the existing road to the south west of point A that continues to Hallaton. Given the application route has waymarker numbers that continue in sequence, it seems likely the whole of the route was considered a road.

Assessment. Other through routes especially those with waymarker numbers shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.

Leicestershire XXXIX.SE (includes: Allexton; East Norton; Hallato...
Surveyed: 1884, Published: 1885
Size: map 31 x 46 cm (ca. 12 x 18 inches), on sheet ca. 43 x 58 cm (ca. 17 x 23 inches)



Extract from OS 6 inch Series Map showing the application route from A to B

Ordnance Survey, 1:25,000 maps of Great Britain

Date. OS 25k series 42/89-B published circa 1949

Relevance. The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps.

Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/207352307>

Meaning. The route is shown on the image below from A to B as an unmarked track in a similar style as the existing road that runs from the south west of Horninghold to Blaston Hall. Along with other evidence in this document, it seems probable that the whole of the route was considered a road.

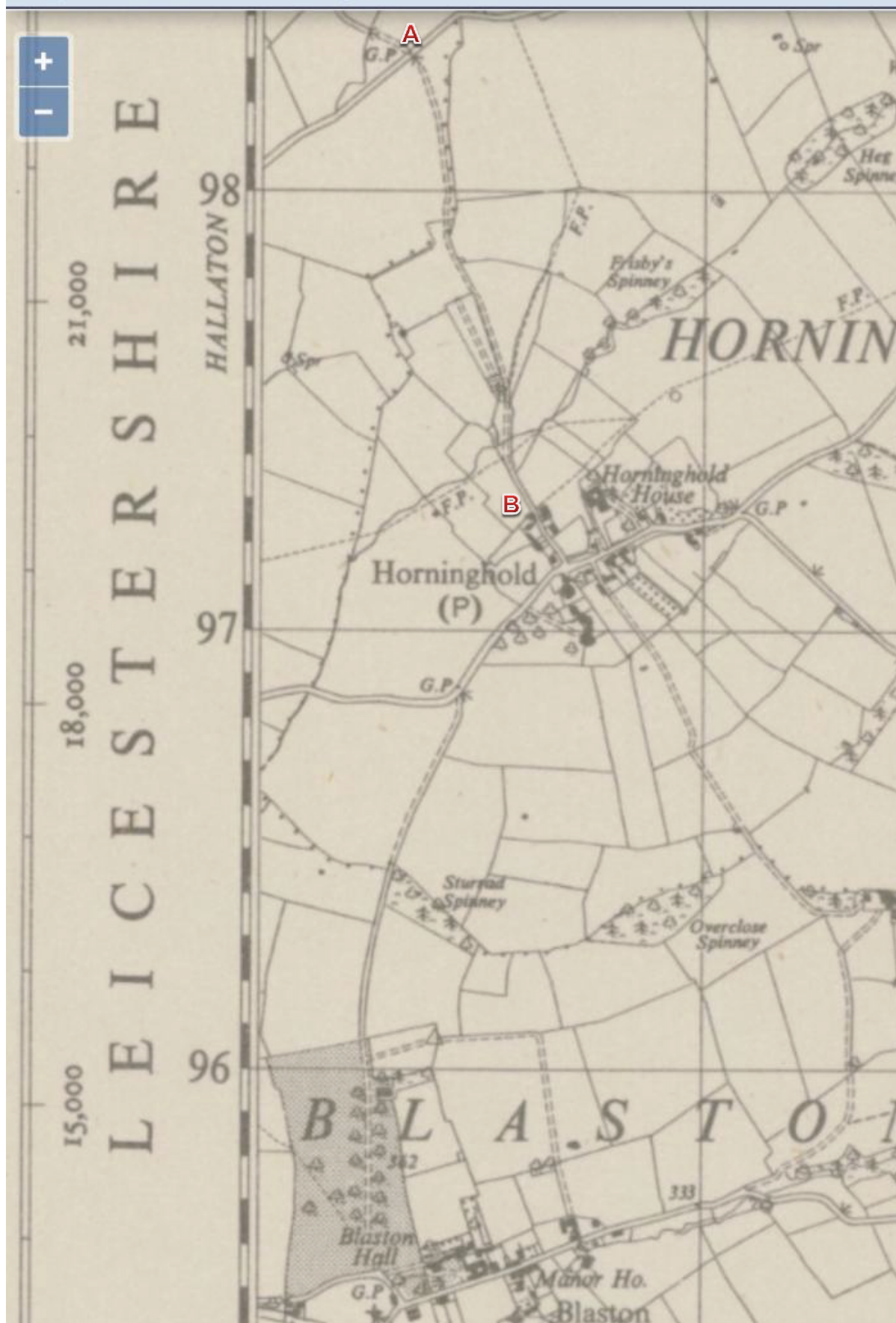
Assessment. Some other through routes shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.

Ordnance Survey, 1:25,000, Provisional (Outline Edition): 42/89 -...

Surveyed / Revised: No dates on map; Published: ca. 1948

Size: map 40 x 40 cm (16 x 16 inches), on sheet ca. 62 x 49 cm (ca. 24 x 20 inches)

[Maps home](#) > [Ordnance Survey](#) > [1:25,000 Outline Series of Great Britain, 1945-1965](#)



Extract from OS 25k Series Map showing the application route from A to B

Bartholomew's Half Inch to the Mile Maps of England and Wales

Date. Bartholomew Great Britain, Sheet 18 – Birmingham & Leicester published 1903

Relevance. The map was made for sale to the public, particularly for tourists and cyclists and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished. This enables us to draw inferences from how routes are shown.

Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131065>

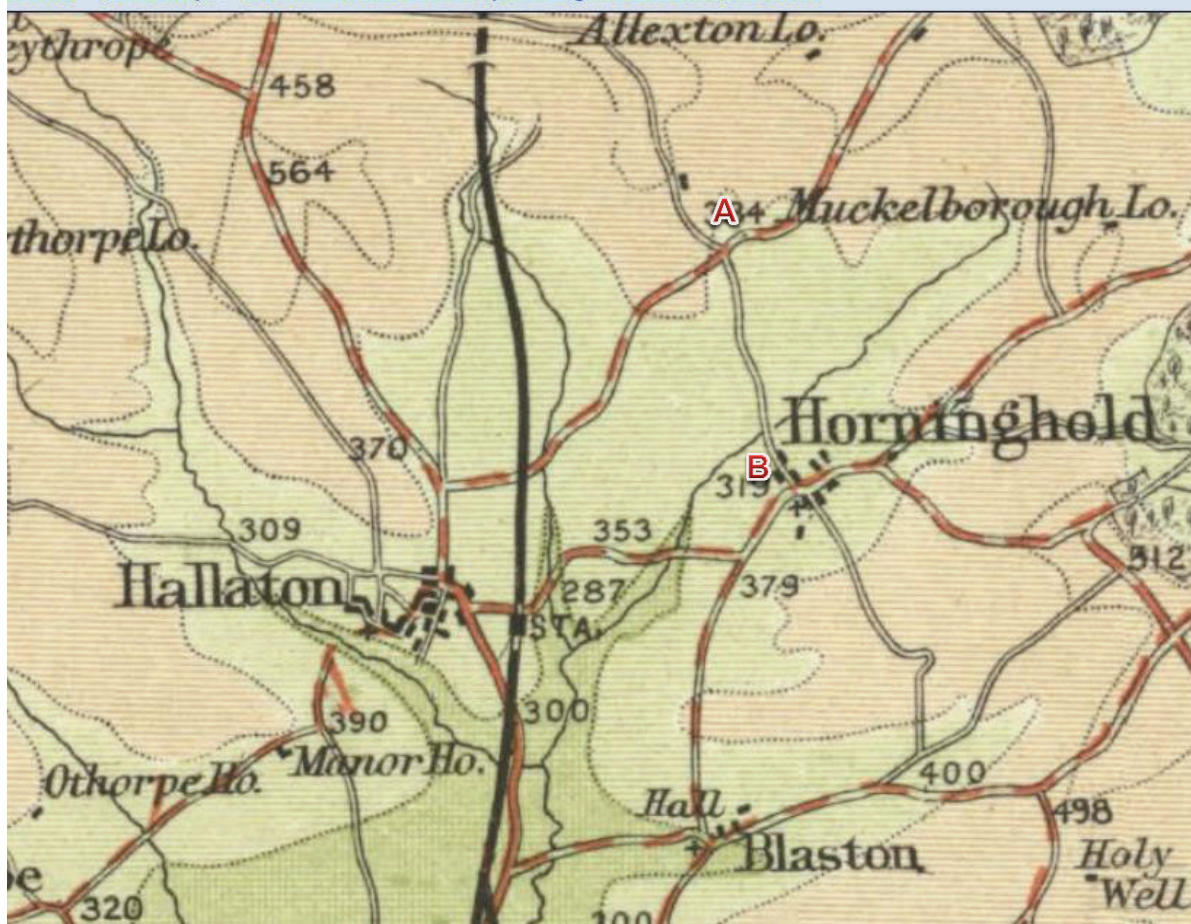
Meaning. The application route is shown on the extract below from A to B as a “secondary road”. It is shown in the same style as many surrounding existing roads.

Assessment. Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling public. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action. The application route is shown as a good secondary road. The depiction of the route in this manner is evidence in favour of the proposition that the application route was considered to have vehicular rights.

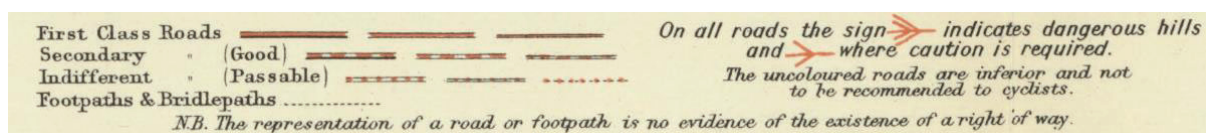
National Library of Scotland
Leabhrairinn Nàiseanta na h-Alba

Sheet 18 - Birmingham, Leicester
Publication date: 1903
Size: sheet ca. 56 x 77 cm (ca. 22 x 30 inches)

[s home](#) > [Series maps](#) > [Bartholomew "Half Inch Maps" of England and Wales, 1902-1906](#)



Extract from Bartholomew's Map showing the application route from A to B



Extract from Bartholomew's Map showing the key

List of Streets

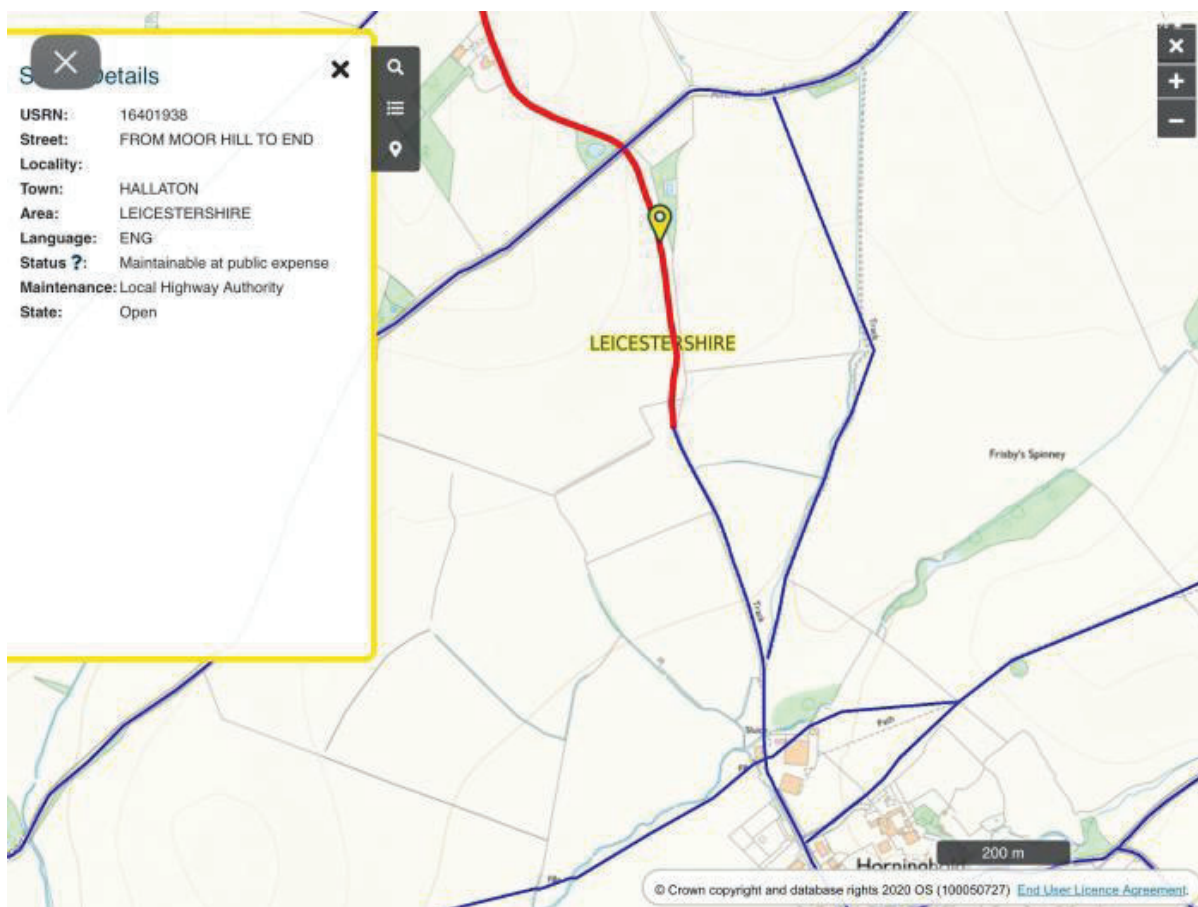
Date. The current record of list of streets that is maintainable at the public expense.

Relevance. This is a record that must be maintained by the highway authority. It records those highways that the authority considers are maintainable at the public expense. The showing of a route on the list is strong evidence that that route is a highway.

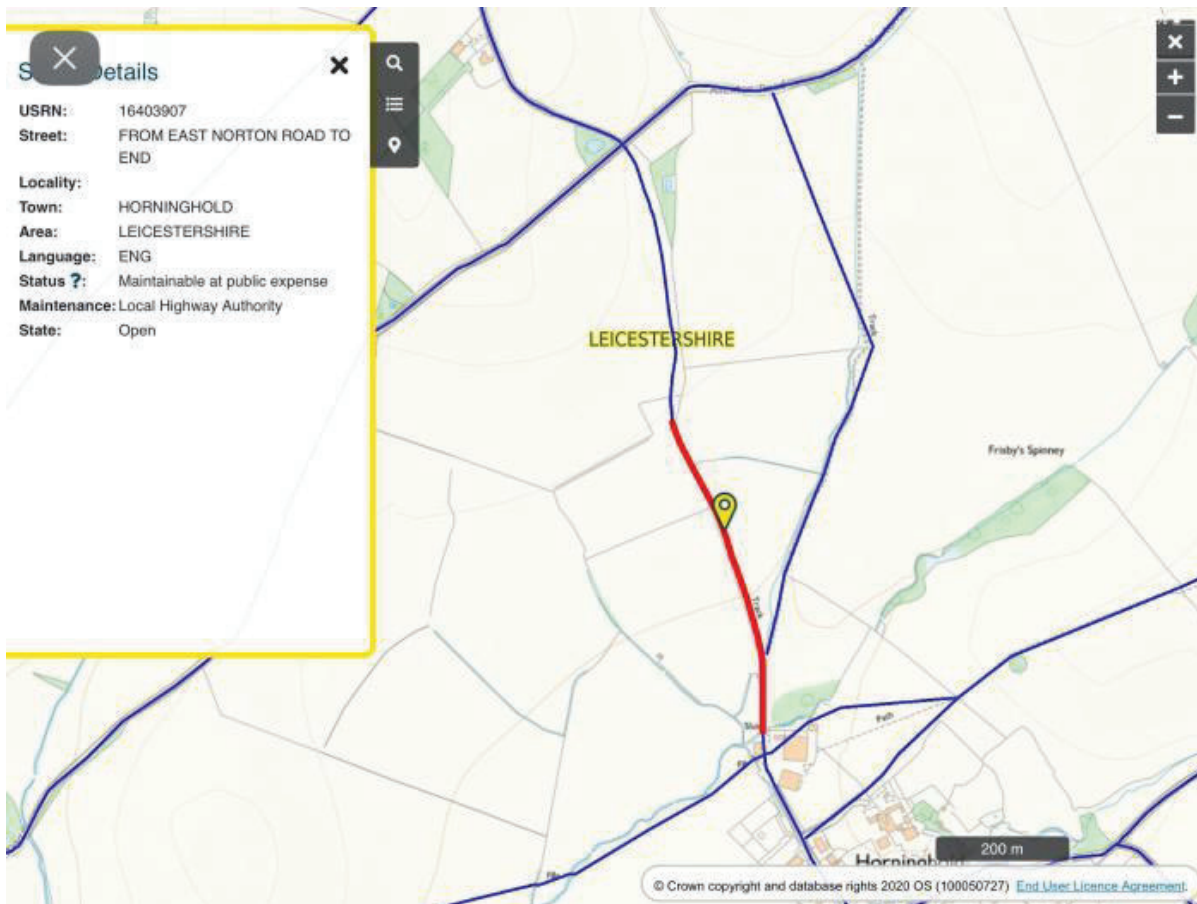
Archive. The extracts from this sheet below were obtained from <https://findmystreet.co.uk>

Meaning. The southern section of the application route is shown as part of USRN 16401938 and USRN 16403907 and is maintainable at public expense. The unclassified status of the application route and the fact that the route crosses open grass fields suggests that it is not classified as a road under the commonly known definition therefore an application for a DMMO to establish the status of the route is deemed required.

Assessment. The path is clearly on the current List of Streets. This is excellent evidence for existing vehicular rights.



Extract from The Current List of Streets



Extract from The Current List of Streets

CONCLUSIONS

This document presents evidence from many years that consistently indicate that the application route was part of the wider highway network. Whilst no single piece of evidence is conclusive in its own right, taken as a whole it paints a sound picture of the existence of public vehicular rights.

Employing the well-established legal maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

The applicant requests the surveying authority to add the route to the definitive map as a BOAT.

Date: 25 April 2021