

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

Short Description: <b>Alleged byway open to all traffic from main road between Claybrooke Parva and Ullesthorpe to Lodge Lane, Ullesthorpe.</b>			
Application No.:	<b>M1239</b>	Legal Services Ref. No.:	<b>HTWMT/</b>
Application Status:	<b>Application received. Awaiting Schedule 14 notice from applicant</b>		

Geographical Location			
Path No:	<b>TBA</b>	Route name (if known):	
Settlement:	<b>Ullesthorpe</b>		
Parish:	<b>Ullesthorpe</b>		
District/Borough:	<b>Harborough</b>		
Nearest Town/City:	<b>Lutterworth</b>		
Start Location:			
Start Grid Refs:	Landranger:	<b>SP 5018 8776</b>	Eastings,Northings: <b>45018 28776</b>
End Location:			
End Grid Refs:	Landranger:	<b>SP 5015 8754</b>	Eastings,Northings: <b>45015 28754</b>

Applicant's Name, Address & Postcode: <b>Will Steel, British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ.</b>			
Date Received:	<b>19/05/2021</b>	Date Determined:*	
Application Stage(s): <ul style="list-style-type: none"> <li>Wildlife and Countryside Act 1981 Sch 14(2) Notice Served and Certified? Yes/No</li> <li></li> </ul>			

For Further Information			
Case Officer:	<b>Piers Lindley</b>		
Telephone:	<b>0116 305 7087</b>	Fax:	
Email:	<b>footpaths@leics.gov.uk</b>		

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<b>Map accompanying the application</b>	<b>3</b>
<b>Additional Documents</b>	<b>4-18</b>
<b>Inspector's Decision</b>	

\* 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 main road between Claybrooke Parva and Ullesthorpe at approximate grid reference SP50188776

to Lodge Lane, Ullesthorpe at approximate grid reference SP50158754

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 154 Ullesthorpe of 1839

List of Streets

OS One Inch sheet 169 –Coventry (Outline) published in 1899.

OS County Series Leicestershire XLVIII.7 published 1903.

OS Six inch series Leicestershire XLVIII.NE published 1886

OS 25k series SP58/B///\* published circa 1965 and SP48/B published circa 1960

Great Britain, Sheet 18 – Birmingham & Leicester published 1903

.....  
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Signed...



Dated 19 May 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.

# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

**Parish:** Ullesthorpe **Grid Reference:** SP501876

**Map of Path:** Route applied for is shown in RED DASHES starting at the main road between Claybrooke Parva and Ullesthorpe going south and ending at Lodge Lane. The route is shown as an ORPA on OS maps and this section is on the list of streets. The application is for a BOAT.



*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-0088

### Description of Path:

Path starts at the main road between Claybrooke Parva and Ullesthorpe at approximate grid reference SP50188776 going south and ending at Lodge Lane at approximate grid reference SP50158754. The route is shown as an ORPA on OS maps and this section is on the list of streets.

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 the main road between Claybrooke Parva and Ullesthorpe at approximate grid reference SP50188776 going south and ending at Lodge Lane at approximate grid reference SP50158754. The route is shown as an ORPA on OS maps and this section is on the list of streets.

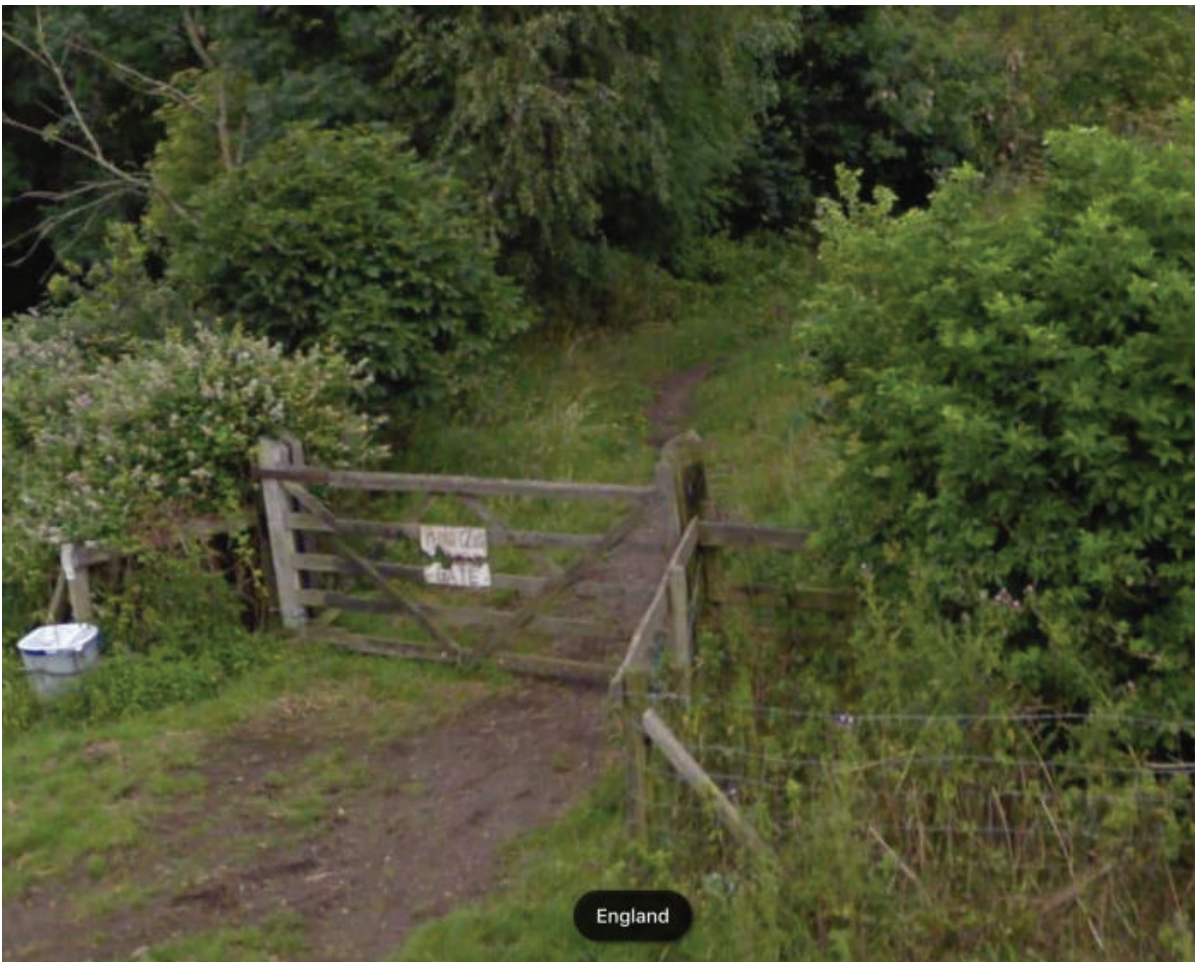




*Extract from a Google Satellite image from 2009, showing the application route from A to B*



*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 point 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 154 Ullesthorpe of 1839

### **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.

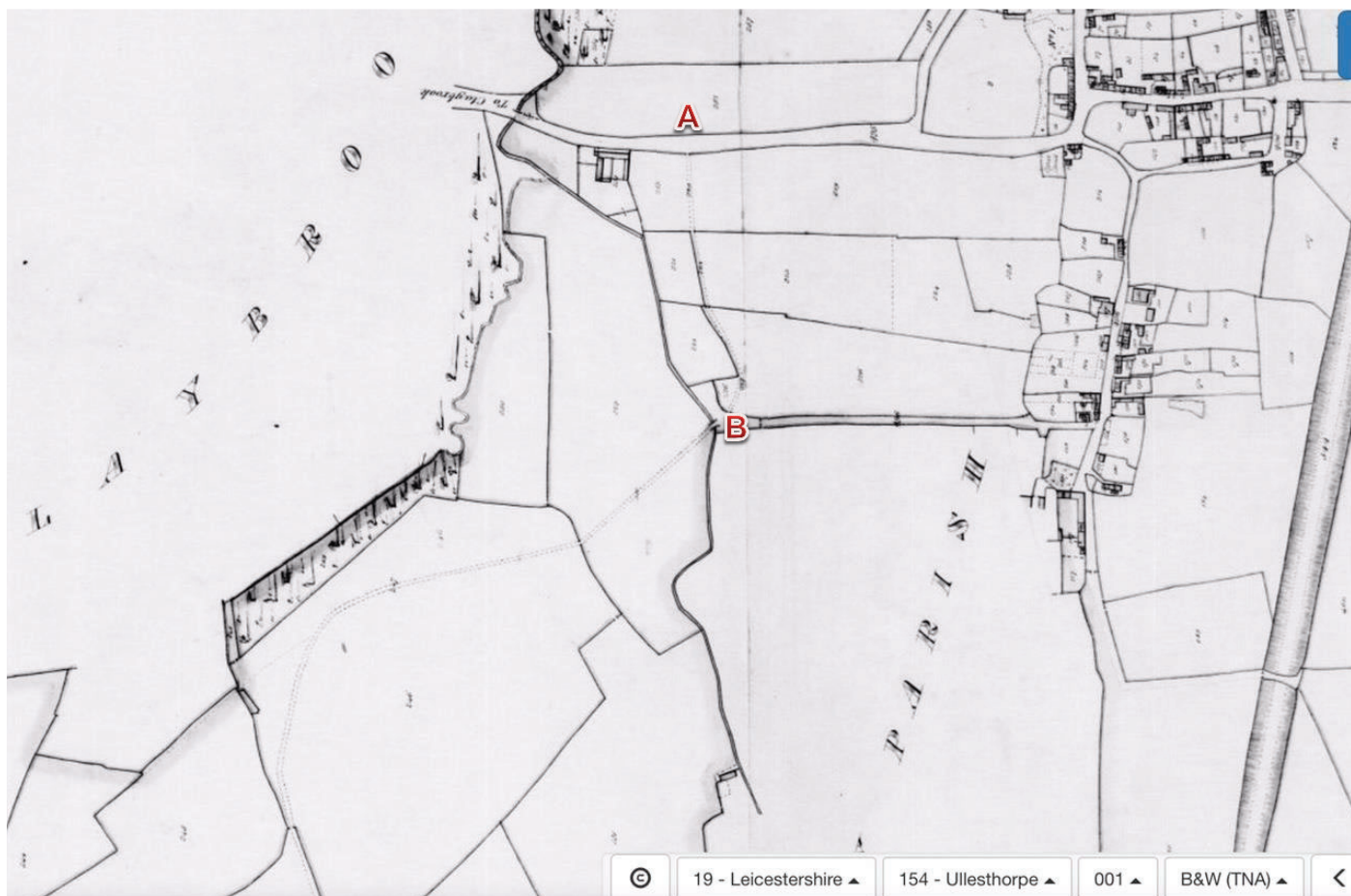
(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance 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.

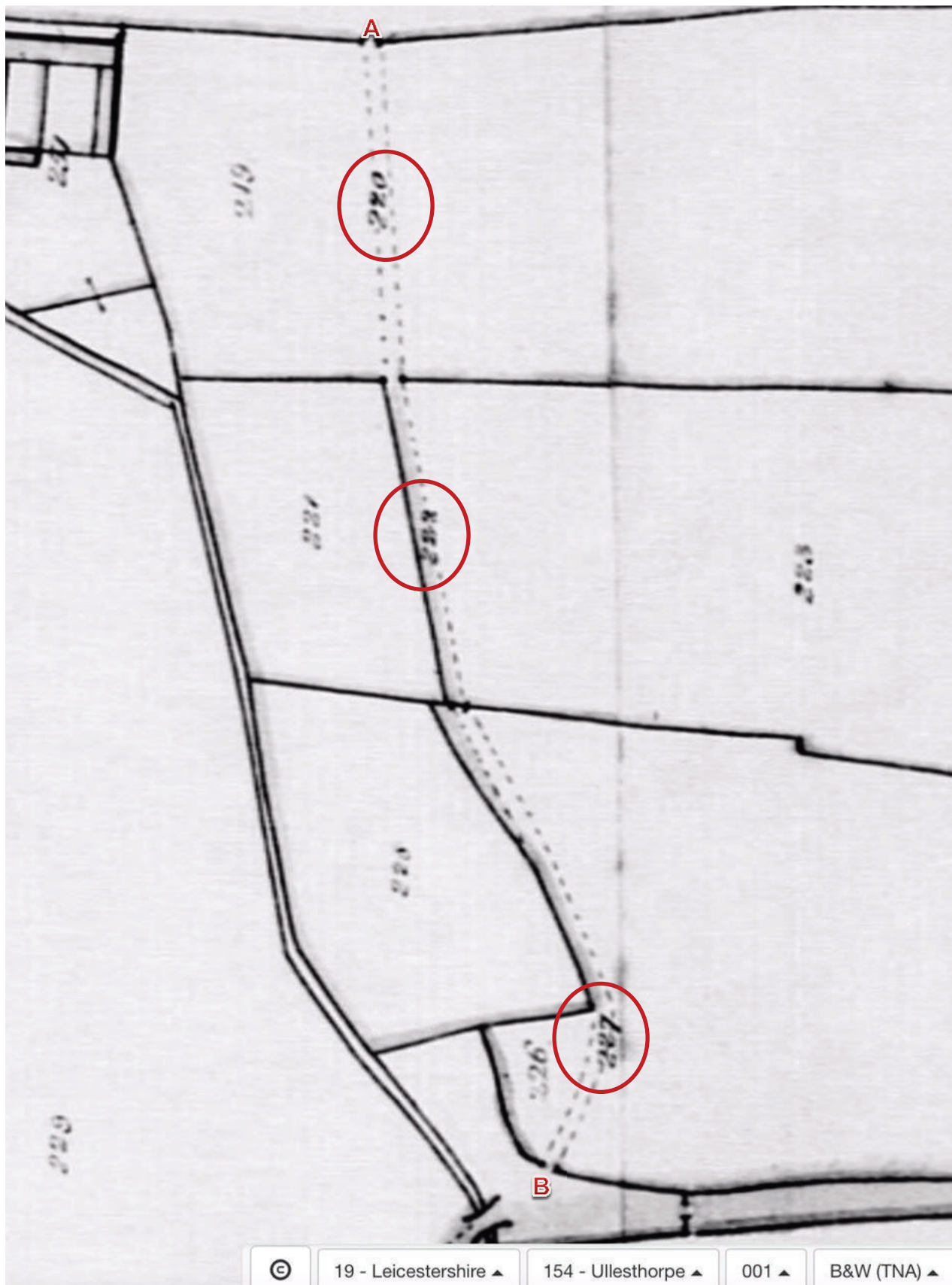
**Meaning.** The first extract below from the Ullesthorpe tithe map shows the whole application route as a road with double dashed lines from A to B. The following image is a close up of the section A to B and then the apportionment number describing A to B as a road with no tithe payable.

**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 entire application route is listed as a road 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 Ullesthorpe tithe map of the application route from A to B as a road with double dashed lines.*





*Extract from the Ullesthorpe tithe map of the application route from A to B as a road with double dashed lines and tithe apportionment numbers 227, 222 and 220 all circled.*

226	Farm Piece	Pasture	1	1	23	1	1	10	-	-	-
227	Road		-	-	1/4	-	-	-	-	-	-
228	Farm Piece and spinney		-	2	3 1/2	-	1	10	-	-	-
431	Top Holt	Arable	9	3	1 1/2	-	1	8	-	1 1/2	-
432	Side Holt	Arable	5	1	-	-	9	1	-	-	-
433	Middle Holt	Arable	13	3	-	-	-	-	-	-	-

Extract from the Ullesthorpe apportionment number 227 described as Road with no tithe payable

221	Blockley's Bog	Pasture	-	2	7	-	1	6	A	-	-
222	Road		-	-	9	-	-	-	-	-	-
223	Blockleys close	Meadow or Pasture	2	3	2	-	4	10	A	1	5A
224	Blockleys close	Meadow or Pasture	1	2	26	-	2	9	A	2	5A
225	Blockleys close	Meadow or Pasture	1	-	13	-	1	11	A	1	7A
			6	2	12	-	14	3	-	8	3

Extract from the Ullesthorpe apportionment number 222 described as Road with no tithe payable

219	Slade Gutter	Meadow	6	-	-	-	-	-	-	15	2A
220	Road		-	-	9	-	-	-	-	-	-
254	Spinney		-	-	28	-	-	2	A	-	-
255	Spinney		-	3	22	-	2	9	A	-	-
256	Half of Brook		-	-	5	-	-	-	-	-	-
257	Little Town Hill	Pasture	1	1	25	-	-	-	-	-	-

Extract from the Ullesthorpe apportionment number 220 described as Road with no tithe payable

## Evidence from Maps:

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

**Date.** OS One Inch sheet 169 –Coventry (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/101168036>

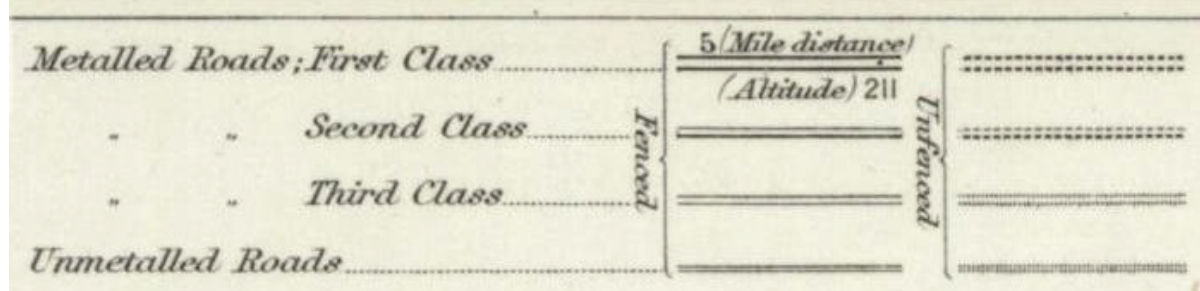
**Meaning.** The application route is shown on the extract below from A to B as a minimum “third class unfenced metalled road” and in a similar style to local existing highways such as the bridleway that continues south of Little Claybrooke.

**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 1" Map showing the application route from A to B



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

## Ordnance Survey Maps - 25 inch England and Wales

**Date.** OS County Series Leicestershire XLVIII.7 published 1903.

**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/114595734>

**Meaning.** The route is shown on the image below from A to B as an unmarked track with f handles and in the same style as the nearby existing BR circled on the map from Claybrooke Parva and similar to existing Lodge Lane.

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





Extract from OS 25" Map showing the application route marked from A to B with nearby BR circled in same style and the existing bridleway shown with an arrow

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

**Date.** OS Six inch series Leicestershire XLVIII.NE published 1886

**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/101593230>

**Meaning.** The route is shown on the image below from A to B as an unmarked track and in the same style as the nearby existing BR circled on the map from Claybrooke Parva.

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

[home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)



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 SP58/B///\* published circa 1965 and SP48/B published circa 1960

**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/93505899> and <https://maps.nls.uk/view/196187760>

**Meaning.** The route is shown on the image below from A to B as an unmarked track and in the same style as the nearby existing bridleway shown on the second, neighbouring map from Claybrooke Parva.

**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus combined with other evidence in this application this is evidence in support of the route being a public highway, likely a bridleway.

[Ordnance Survey](#) > [1:25,000 maps of Great Britain, 1945-1969](#)

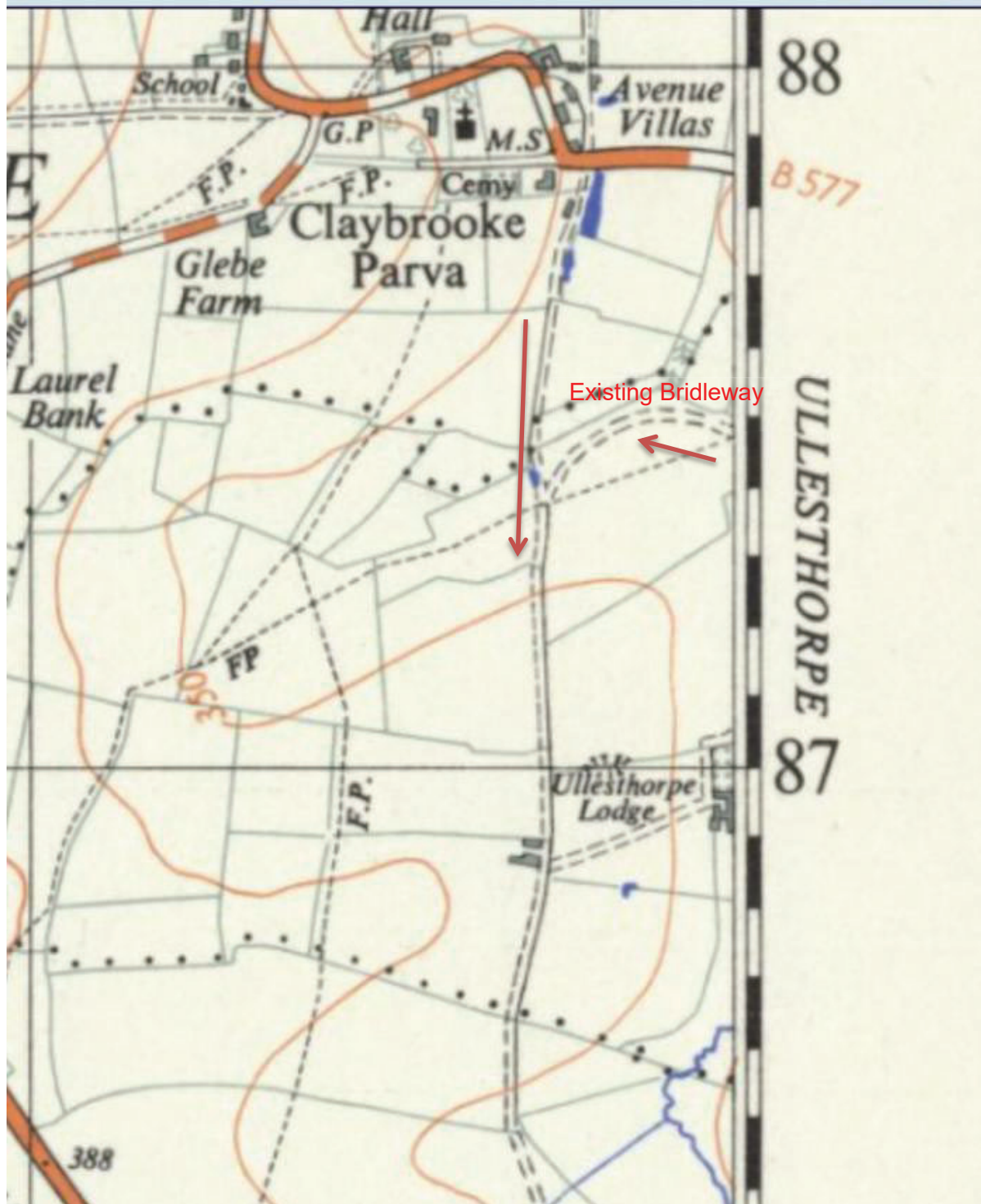


Extract from OS 25k Series Map showing the application route from A to B



SP48 - B (includes: Combe Fields; Copston Magna; Mon  
Publication date: 1960  
Size: map 40 x 40 cm (ca. 16 x 16 inches), on sheet ca. 56 )

[Ordnance Survey](#) > [1:25,000 maps of Great Britain, 1945-1969](#)



Extract from OS 25k Series Map showing the neighbouring map to the application route with existing  
bridleways marked

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

**Date.** 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 an “indifferent road” but in the same style as many surrounding existing roads in similar style to existing local highways such as Lodge Lane where the route joins to the east of B.

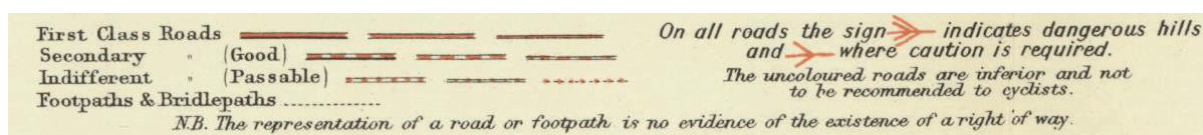
**Assessment.** Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling public. It seems likely that the disclaimer is to avoid the publishers from finding 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 equestrian and probably vehicular rights.

Library  
nd  
Noseema

Sheet 18 - Birmingham, Leicester  
Publication date: 1903



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



Extract from Bartholomew's Map showing the key



## List of Streets

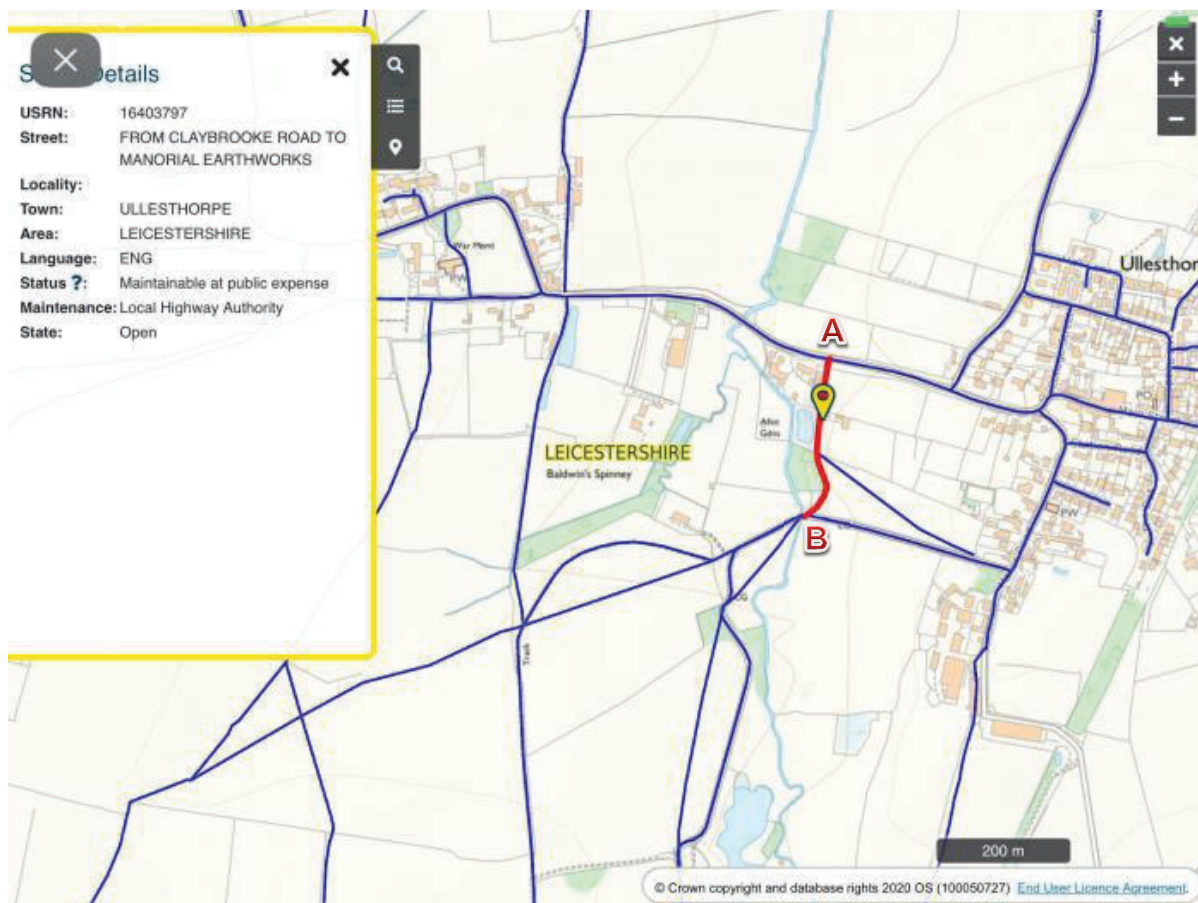
**Date.** The current record of list of streets that is maintainable at the public expense.

**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 application route is shown from A to B on the first image as USRN 16403797 and described as “From Claybrooke Road to Manorial Earthworks” with the status is “maintainable at public expense”.

**Assessment.** The path between A to B is clearly on the current List of Streets. This is excellent evidence for existing vehicular rights. However the application route between A to B has an ambiguous status that this application seeks to resolve.



*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: 19 May 2021