

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

Application No.:	M1246	Leg	al Services l	Ref. No.:	HTWMT/	
Application Status:	Applica applica		received. A	waiting	Schedule 14 not	ice from
Geographical Locati	on					
Path No:	TBA	Rou	te name (if l	known):	Marefield Lane	!
Settlement:	Marefield					
Parish:	Tilton on the Hill & Halstead, Marefield					
District/Borough:	Harborough					
Nearest Town/City:	Billesdo	on				
Start Location:						
Start Grid Refs:	Landran	ger:	SK 7451 06	641 Eas	stings,Northings:	47451 30641
End Location:						
End Grid Refs:	Landran	ger:	SK 5013 07	<b>'89</b> Eas	stings,Northings:	45013 30789
Applicant's Name, A Will Steel, British F CV8 2XZ.				k, Stare	ton, Kenilworth, \	Narwickshire,
Date Received:	24/2	5/202		7-4- D-4	ermined:*	

• Wildlife and Countryside Act 1981 Sch 14(2) Notice Served and Certified? Yes/No

•

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

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<sup>\*</sup> 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  AND
*adding a <del>footpath</del> /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. Red Lodge Road at the start of Marefield Lane near Marefield Spinney at approximate grid reference SK74510641
to. Marefield Road opposite Dawson's Lane at approximate grid reference SK75130789
as shown on the attached plan.
I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:
<u>List of Documents</u>
tithe map 19 Leicestershire 068 Halstead and 097 Marefield both of 1847 and 150 Tilton on the Hill published in 1841 William King map around Belvoir 1806
First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869  OS sheet 156 – Leicester (Outline) published in 1899
OS County Series Leicestershire XXXIII.5 and Leicestershire XXXIII.1 both published 1904 OS Six inch series Leicestershire XXXIII.NW published 1904
OS 25k series 43/70 published circa 1949 Bartholomew map of Great Britain, Sheet 18 – Birmingham & Leicester published 1903
List of Streets
Signed Dated Dated

## How we use your information

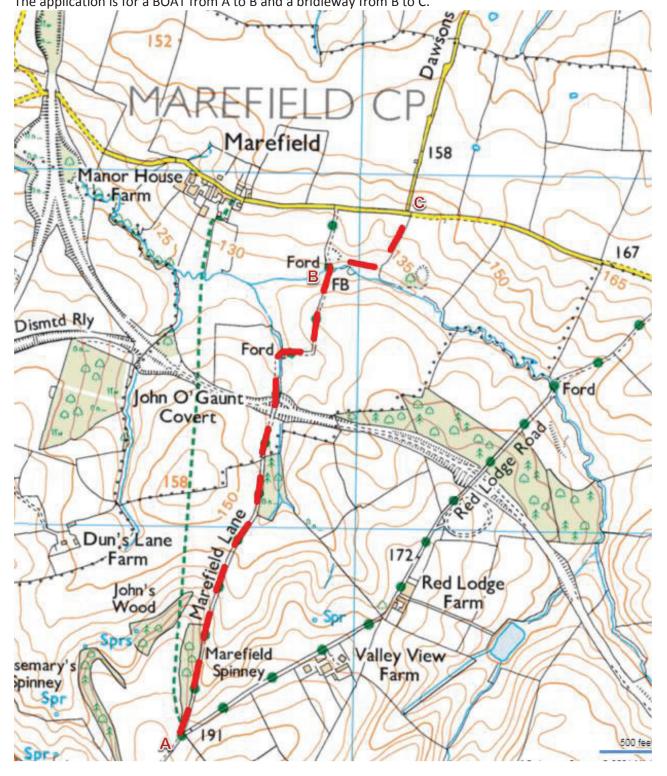
Any information you provide will be used in accordance with current data protection regulations and other relevant legislation. The information will be used to consider your application for a Definitive Map Modification Order. A copy of your application (including your name and address) will be published 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: Tilton on the Hill and Marefield Grid Reference: SK747074

Map of Path: Route applied for is shown in RED DASHES starting on the Red Lodge Road at the start of Marefield Lane near Marefield Spinney goes north to the second Ford then going due east, due north to end on Marefield Road opposite Dawson's Lane. The route is shown largely as an ORPA on OS Maps and is not on the online Definitive Map. The application is for a BOAT from A to B and a bridleway from B to C.



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-0315** 

## **Description of Path:**

Path starts on the Red Lodge Road at the start of Marefield Lane near Marefield Spinney at approximate grid reference SK74510641 goes north to the second Ford then going due east, due north to end on Marefield Road opposite Dawson's Lane at approximate grid reference SK75130789. The route is shown largely as an ORPA on OS Maps and is not on the online Definitive Map.

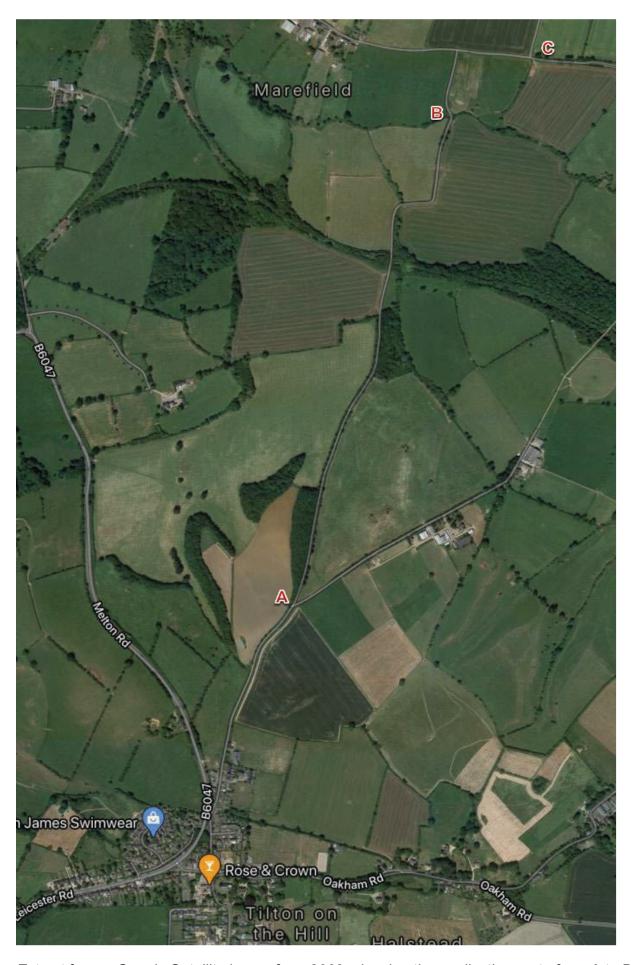
This application is made because, on the cut off day, 1st January 2026, the effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown 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 on the Red Lodge Road at the start of Marefield Lane near Marefield Spinney at approximate grid reference SK74510641 goes north to the second Ford then going due east, due north to end on Marefield Road opposite Dawson's Lane at approximate grid reference SK75130789. The route is shown largely as an ORPA on OS Maps and is not on the online Definitive Map.



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 C looking towards B

#### **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 068 Halstead and 097 Marefield both published in 1847 and 150 Tilton on the Hill published in 1841

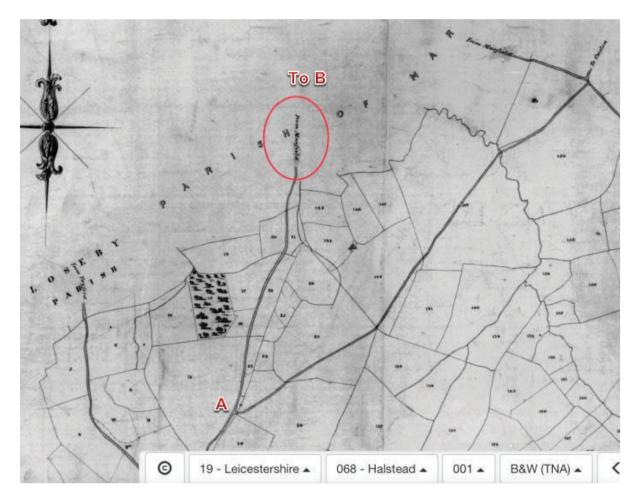
#### Relevance.

- (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.

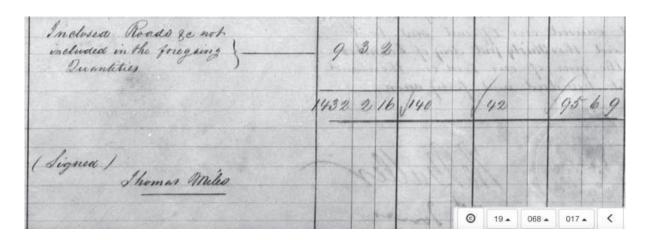
**Archive**. The tithe map has been accessed via the Genealogist website and the extract is shown below.

Meaning. The first extract below from the Halstead tithe map shows the application route as a road from A towards B in the same style as other existing roads in the area such as the one it leaves from point A. Additionally the road is shown from the direction of Marefield. The second image is an extract from the Halstead tithe apportionment record showing Inclosure roads with no tithe payable. The third extract from the Marefield tithe map shows the application route as a road from A to point B and on towards C from the direction of Harborough, which is south of Tilton (circled) with tithe apportionment number 3, also circled, shown in close up on the following extract. Additionally at C, the route is shown as going in the direction of Melton Mowbray (circled) which would be north along the existing Dawson's Lane. The fifth extract from the Marefield apportionment records show apportionment 3 described as Road with no tithe payable. The final extract is from the Tilton on the Hill tithe map showing a road leaving the village northwards from the church in the direction of Melton Mowbray (circled) which would support the findings in the Marefield tithe map that the direction the application route is going generally north towards Melton Mowbray.

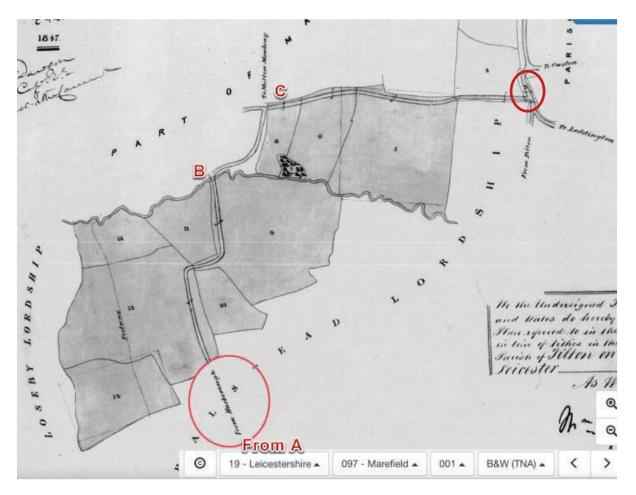
**Assessment.** This is probably a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is shown as a road in similar style to other existing roads within the parishes including the road it leaves from on the Halstead tithe map and joins on the Marefield tithe map and described as a road on the various tithe apportionments shown from Harborough and Tilton on the Hill going towards Marefield and Melton Mowbray. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



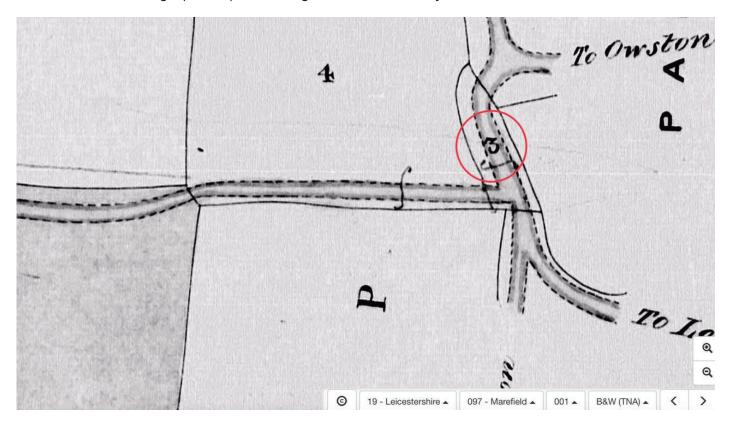
Extract from the Halstead tithe map of the application route from A to B as a road in similar style to the existing roads it starts from at point A.



Extract from the Halstead tithe apportionment records showing Inclosure Roads with no tithe payable



Extract from the Marefield tithe map of the application route from A to B continuing to C as a road in similar style to the existing roads it ends at, labeled as apportionment number 3 (circled) and from the direction of Harborough (circled) continuing to Melton Mowbray at C



Extract from the Marefield tithe map of the application route showing a close up of apportionment number 3 (circled)

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referring to the Plan.	NAME AND DESCRIPTION  LANDS AND PREMISES.	CULTIVATION.	STATUTE MEASURE,			PAYABLE TO From of the Hill			PAYABLE TO Impropriato		1000
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56	Brackendale - Second high gate close _	Casture do	26	2 "	36	©	19 📥	. 09	7 🕳 📗 01	04 🔺	<

Extract from the Marefield tithe apportionment records showing number 3 described as a Road with no tithe payable



Extract from the Tilton on the Hill tithe map showing a road leaving north of the church towards Melton Mowbray that supports the findings in the Marefield tithe map

# **Evidence from Maps:**

## William King's Map of land surrounding Belvoir Castle, 1806

**Date**. A map of the tract of country surrounding Belvoir Castle, including extensive districts of the counties of Leicester, Lincoln and Nottingham and the whole of the county of Rutland published 1806

**Relevance**. William King's map of 1806 was believed to have been commissioned for the Duke of Rutland and is considered a highly accurate map created from a new survey, intended for travellers, showing turnpike roads, public carriage roads and bridle roads. It is believed to be the result of only the second original survey to be carried out since Saxton's time. According to the title it was: "accurately laid down from a survey taken in 1804, 1805 and 1806 by W. King". On the map, there is a dedication to the Duke of Rutland, signed: "W. King" with "Knipton Nov. 8 th. 1806" and the map bears the imprint: "Engraved and sold for the Proprietor by W. Faden, Geographer to His Majesty and to H.R.H. The Prince of Wales. Charing Cross"

Archive. The extracts from this sheet below were obtained from records held at the County Record Office.

**Meaning**. The application route is shown on the first extract below from A to B to C. The second extract shows the key or "explanation" of the map symbols. The whole of the application route is shown as a "public carriage road" as described on the map and in the same style as existing local highways such as the one it leaves and joins.

**Assessment**. The key to the map indicated that the route was considered to be for public vehicular traffic as a "public carriage road". This means that as the route is presented as a public carriage road at the time the map was drawn, provided no stopping up order exists, the route will still carry public carriageway rights.



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

	EXPLAN	ATION.	The state of
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Villages.	Parishes as	and the same	Вагомьу
- 11	Hamlets as	appendig.	Sutton 1
Churche	s and Chapels		
Wind Mi	ills & Water Mills	*	<b>加</b> 斯科
Turnpik	e Roads		
Tumpike	28	TP	est of
Public (	arriage Roads		
Bridle 1	Roads	10	
County 1	Bounds		

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

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

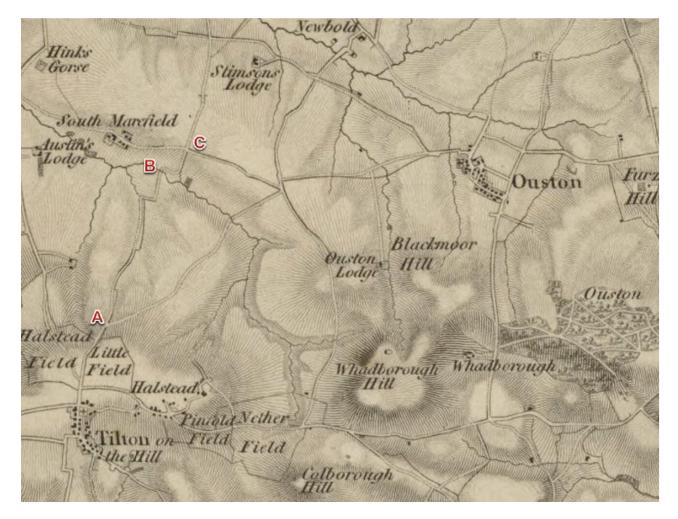
Date. First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869

**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 to C as a road in similar style to existing highways such as the existing road from where the application starts at point A and ends at point C.

**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 to C

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

Date. OS 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

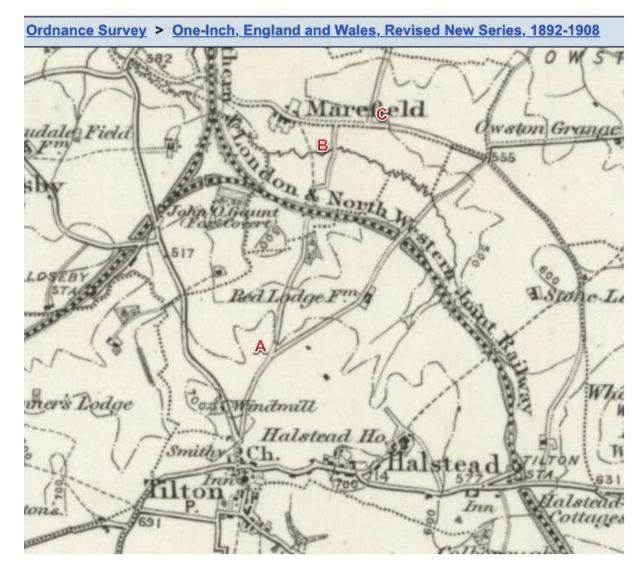
**Meaning**. The application route is shown on the extract below from A to B as a minimum "second class metalled road" in some parts fenced and others unfenced, mostly in similar style to the existing road it leaves at point A. The section between B and C is not shown as a road on this map.

**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 between A and B.

Library nd Naiseanta 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 inc



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

Metalled	Road	s; First Class	5/Mile dista	noe/
	THE COURSE		(Altitude)	211 ~
	*	Second Class	Fem	— ž
		Third Class	ord	

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

## Ordnance Survey Maps - 25 inch England and Wales

Date. OS County Series Leicestershire XXXIII.5 and Leicestershire XXXIII.1 both published 1904.

**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/114594252 and https://maps.nls.uk/view/114594216

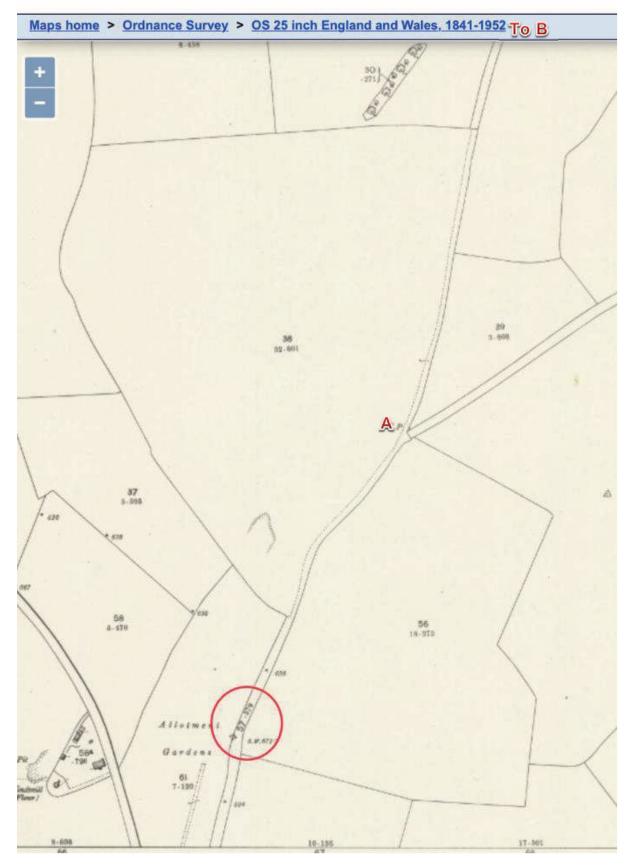
Meaning. The route is shown on the first image below from A towards B initially in the same style as the existing road it leaves at A and then in the same style as the road south of A which is shown as a road with separate title and area (circled). The second image shows the route from A towards B continuing as a road with separate title number and area (circled) before becoming an unmarked track south of where it crossed the old railway. The final image shows the route continuing as an unmarked track from A to B to C. At B the map shows the route had both a Ford and a foot bridge on it which would suggest the route had higher status than just a footpath. It is also worth noting that this unmarked track style is the same as the existing road called Dawson's Lane that continues north from C. As the route is shown at various stages in the same style as the existing road it leaves and the existing road it joins, it is likely the whole of the application route was considered a public highway.

**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. The presence of separate titles on various sections of the application route further suggest a status of public road.

Leicestershire XXXIII.5 (Cold Newton; Lowesby; Marefield; Owston ...

Revised: 1902, Published: 1904

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)



Extract from OS 25" Map showing the application route marked from A towards B with sections shown with separate title circled

Leicestershire XXXIII.5 (Cold Newton; Lowesby; Marefield; Owston ...

Revised: 1902, Published: 1904

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)



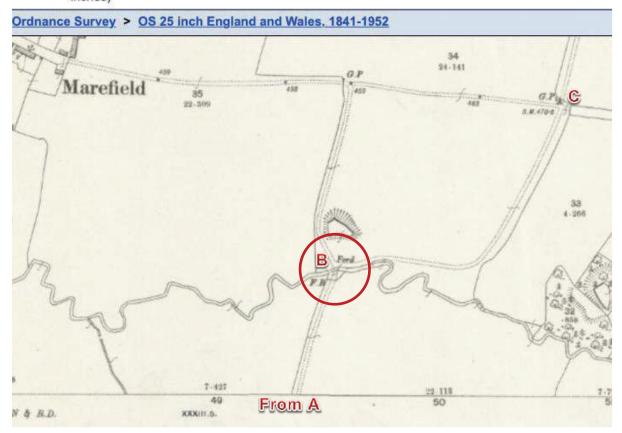
Extract from OS 25" Map showing the application route marked from A towards B with sections shown with separate title circled

ibrary d laiseanta Leicestershire XXXIII.1 (Lowesby; Marefield; Owston and Newbold; ...

Revised: 1902, Published: 1904

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)



Extract from OS 25" Map showing the application route marked from A to B and on to C with Ford and footbridge (FB) circled

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

Date. OS Six inch series Leicestershire XXXIII.NW published 1904

**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/101592738

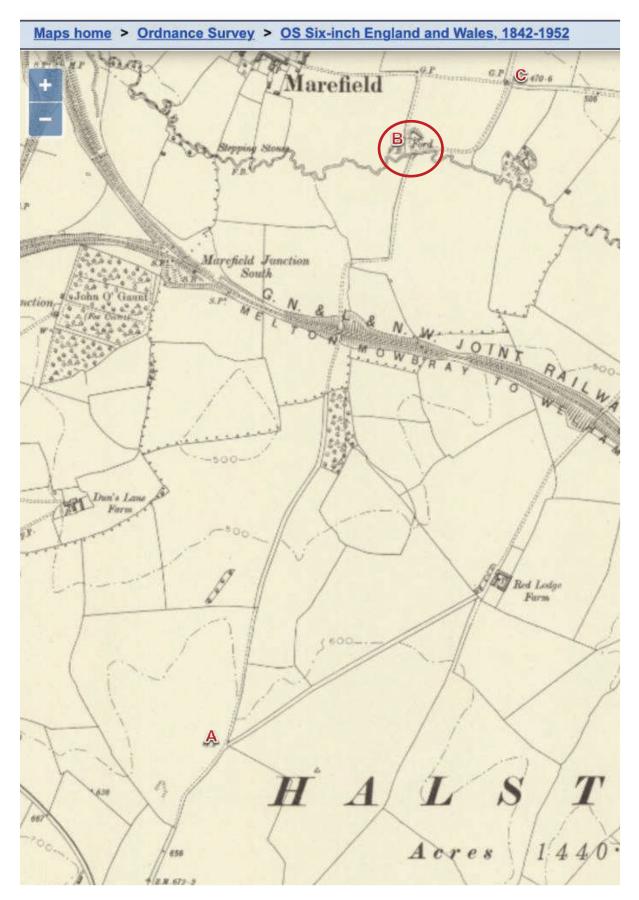
**Meaning**. The route is shown on the image below from A to B to C as a road in the same style as the existing road it leaves at A and joins at C.

**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.

Leicestershire XXXIII.NW (includes: Marefield; Owston and Newbold...

Revised: 1902, Published: 1904

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 to C as a road in the same style as the existing road it leaves at A and joins at C

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

Date. OS 25k series 43/70 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.

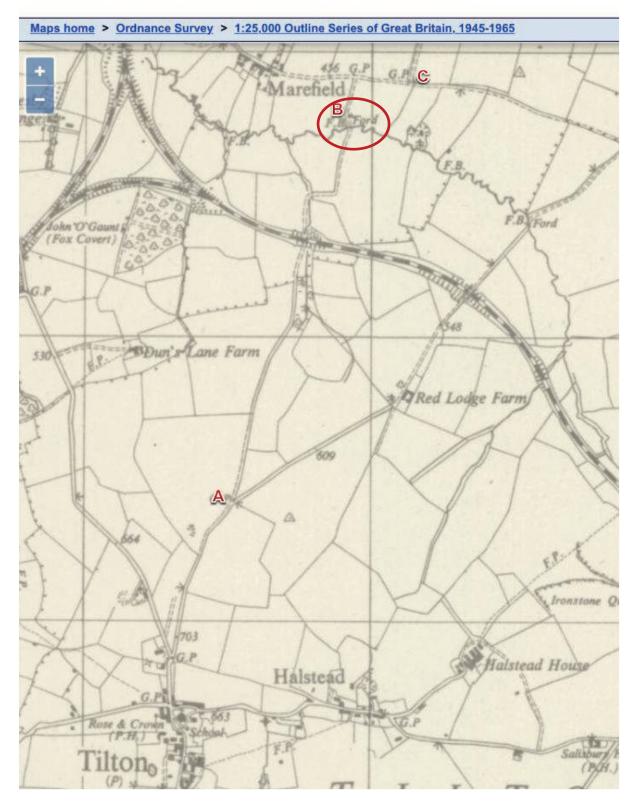
**Archive**. The extracts from this sheet below were obtained from the National Library of Scotland at https://maps.nls.uk/view/207350630

**Meaning**. The application route is shown on the extract below from A to B as a mix of road in the same style as existing roads and track in the area. Note the route also shows a ford and footbridge (FB) at point B (circled) which would typically be shown on maps where a route had higher status than footpath. The section between B and C is not shown on this map.

**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 between A and B.

Ordnance Survey, 1:25,000, Provisional (Outline Edition): 43/70 -... Surveyed / Revised: No dates on map; Published: ca. 1949

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



Extract from OS 25k Series Map showing the application route from A to B to C with ford and footbridge (FB) at point B circled

## 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

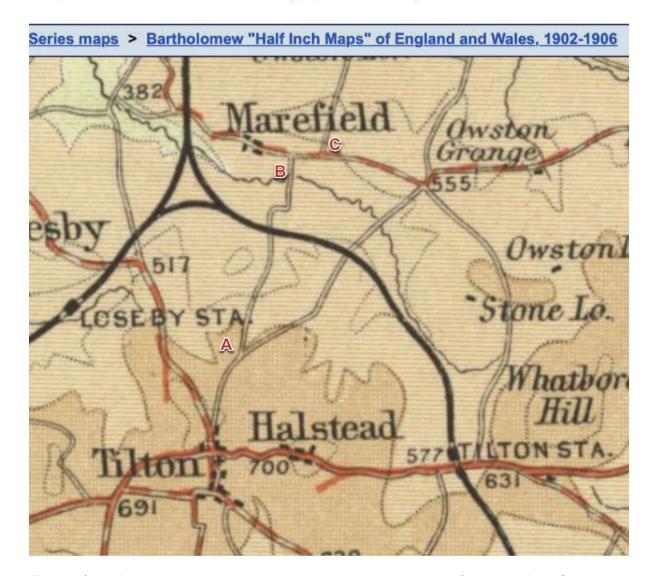
**Meaning**. The application route is shown on the extract below from A to B as an "indifferent road" as shown on the key in the second image, and in the same style as the existing road it leaves at A. The section between B and C is not shown on this map.

**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 between A and B.

ibrary, d Sheet 18 - Birmingham, Leicester

Publication date: 1903

diseanta Size: sheet ca. 56 x 77 cm (ca. 22 x 30 inches)



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

First Class Roads

Secondary

(Good)

Indifferent

(Passable)

Footpaths & Bridlepaths

NB. The representation of a road or footpath is no evidence of the existence of a right of way.

Extract from Bartholomew's Map showing the key

## **List of Streets**

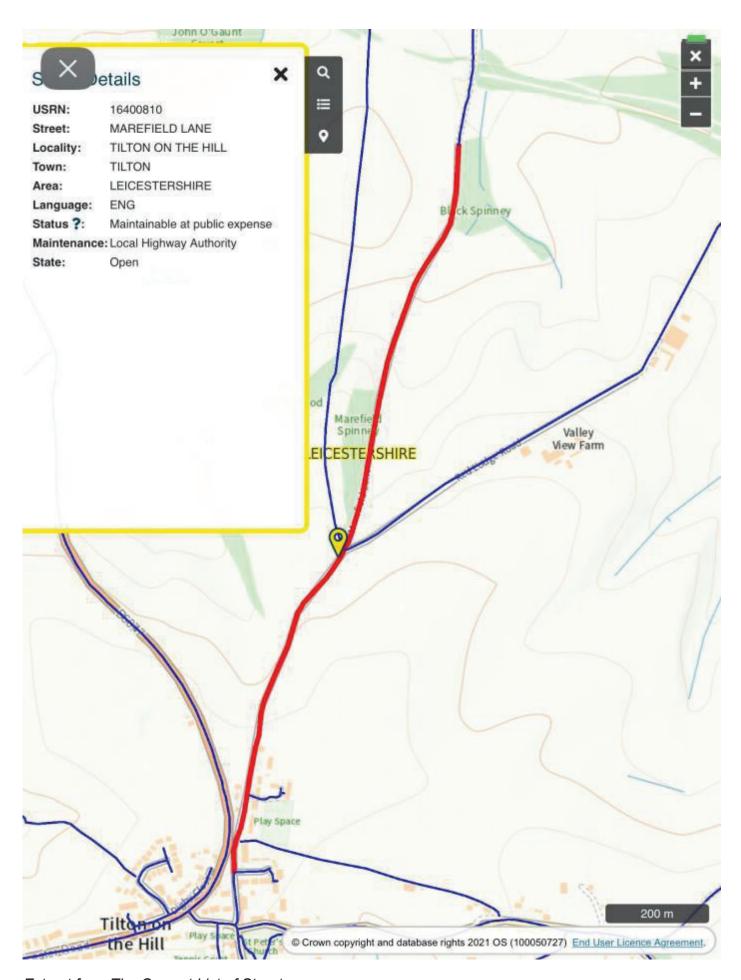
**Date**. The current record of list of streets that is maintainable at the public expense.

**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.

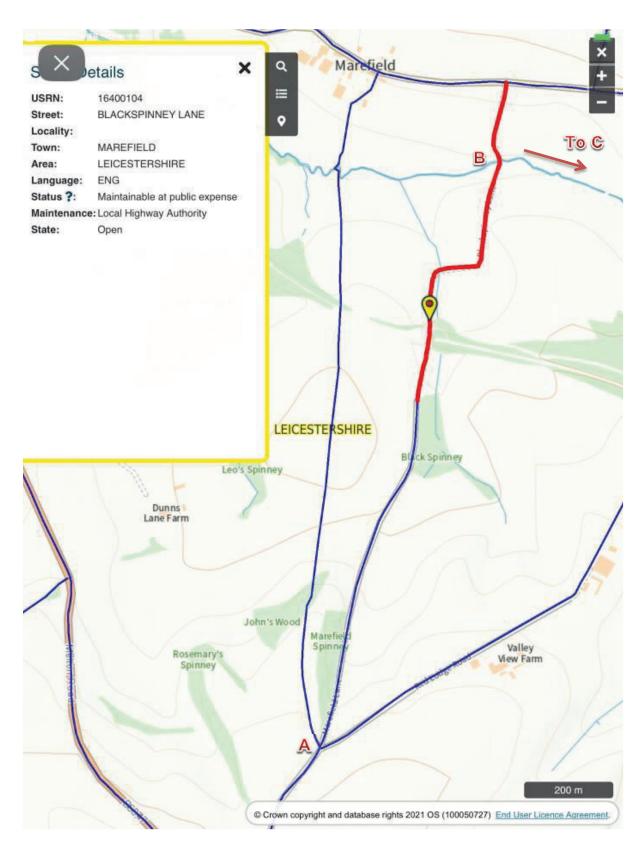
Archive. The extracts from this sheet below were obtained from https://findmystreet.co.uk

**Meaning**. The application route between A to B is shown as USRN 16400810 and USRN 16400104 known as Marefield Lane and Blackspinney Lane recorded as maintainable at public expense. The section between B and C is not shown on the list of streets.

**Assessment**. The path is clearly on the current List of Streets. This is excellent evidence for existing vehicular rights for the section from A to B.



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 from A to B and a bridleway from B to C.

Date: 10 May 2021