

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

Short Description: Alleged Bridleway from Red Lodge Farm, along Red Lodge Road to junction of Hyde Lodge Road and Marefield Road.			
Application No.:	M1248	Legal Services Ref. No.:	HTWMT/
Application Status:	Application received. Awaiting Schedule 14 notice from applicant		
Geographical Location			
Path No:	TBA	Route name (if known):	Red Lodge Road
Settlement:	Marefield		
Parish:	Tilton on the Hill & Halstead		
District/Borough:	Harborough		
Nearest Town/City:	Billesdon		
Start Location:			
Start Grid Refs:	Landranger:	SK 7514 0686	Eastings,Northings: 47514 30686
End Location:			
End Grid Refs:	Landranger:	SK 7589 0767	Eastings,Northings: 47589 30767
Applicant's Name, Address & Postcode: Will Steel, British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ.			
Date Received:	24/05/2021	Date Determined:*	
Application Stage(s): <ul style="list-style-type: none"> • 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.gov.uk		
Contents List:	Page:		
Application Form	2		
Map accompanying the application	3		
Additional Documents	4-21		
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 Red Lodge Road at Tilton on the Hill close to Red Lodge Farm at approximate grid reference SK75140686

to junction of Hyde Lodge Road and Marefield Road at approximate grid reference SK75890767

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 068 Halstead and 097 Marefield both of 1847

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

Great Britain, Sheet 18 – Birmingham & Leicester published 1903

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Signed.....  Dated 8 May 2021

How we use your information

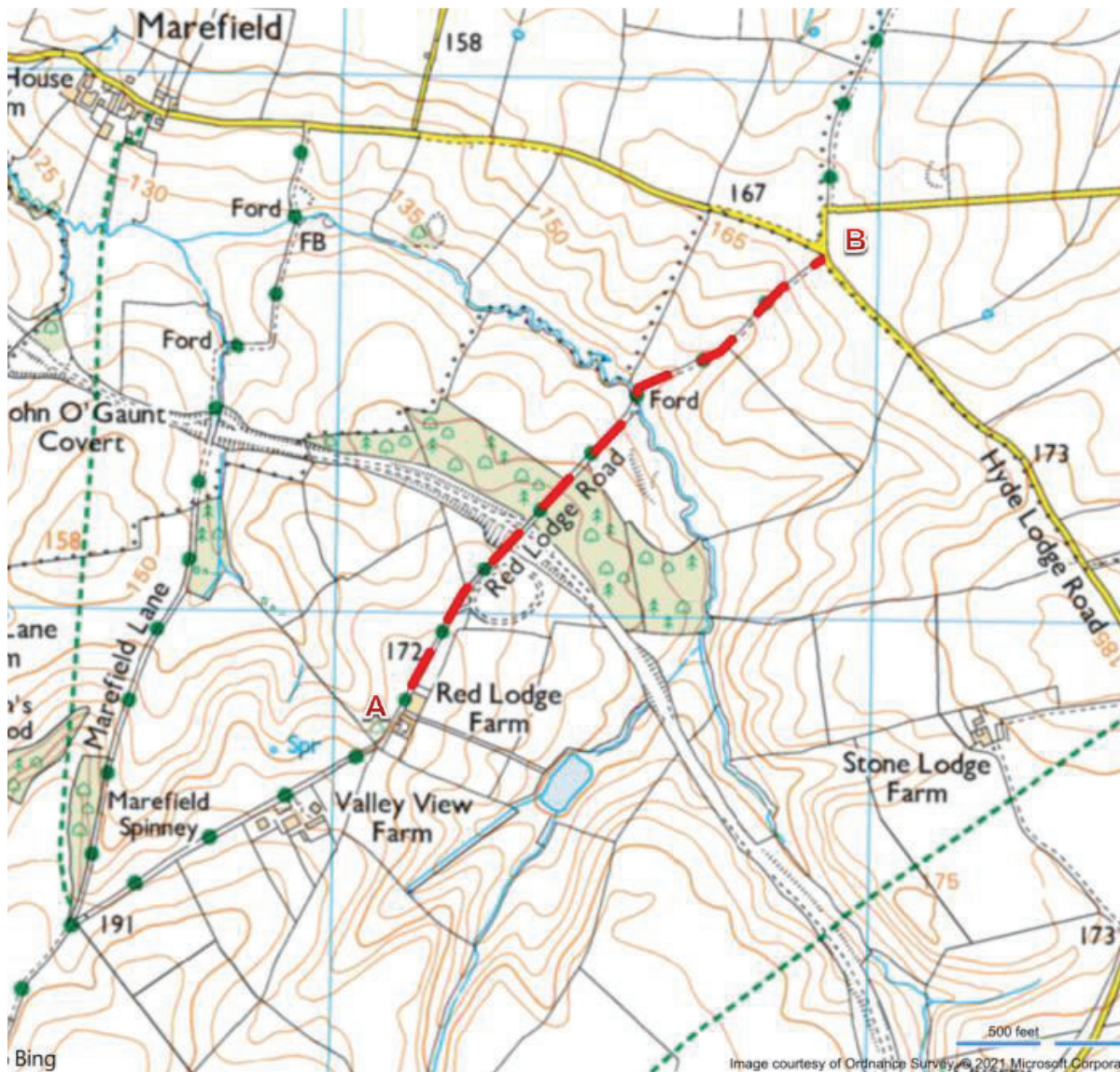
Any information you provide will be used in accordance with current data protection regulations and other relevant legislation. The information will be used to consider your application for a Definitive Map Modification Order. A copy of your application (including your name and address) will be published 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: Tilton on the Hill **Grid Reference:** SK755073

Map of Path: Route applied for is shown in RED DASHES starting on the Red Lodge Road at Tilton on the Hill close to Red Lodge Farm goes north east to end at the junction of Hyde Lodge Road and Marefield Road. The route is shown as an ORPA on OS Maps and is not on the online Definitive Map.



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-0012

Description of Path:

Path starts at Red Lodge Road at Tilton on the Hill close to Red Lodge Farm at approximate grid reference SK75140686 goes north east to end at the junction of Hyde Lodge Road and Marefield Road at approximate grid reference SK75890767. The route is shown 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 at Red Lodge Road at Tilton on the Hill close to Red Lodge Farm at approximate grid reference SK75140686 goes north east to end at the junction of Hyde Lodge Road and Marefield Road at approximate grid reference SK75890767. The route is shown 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 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 068 Halstead and 097 Marefield both of 1847

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 whole application route as a road from A to B in the same style as other existing roads in the area such as the one it leaves from at A and joins at B. 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 at point B from the direction of Tilton towards A (circled) with tithe apportionment number 3, also circled. The final extract from the Marefield apportionment records show apportionment 3 described as 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 application route is shown as a road in similar style to other existing roads within the parish including the road it leaves and joins on the Halstead tithe map and described as a road in the direction of Tilton on the Marefield tithe records. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



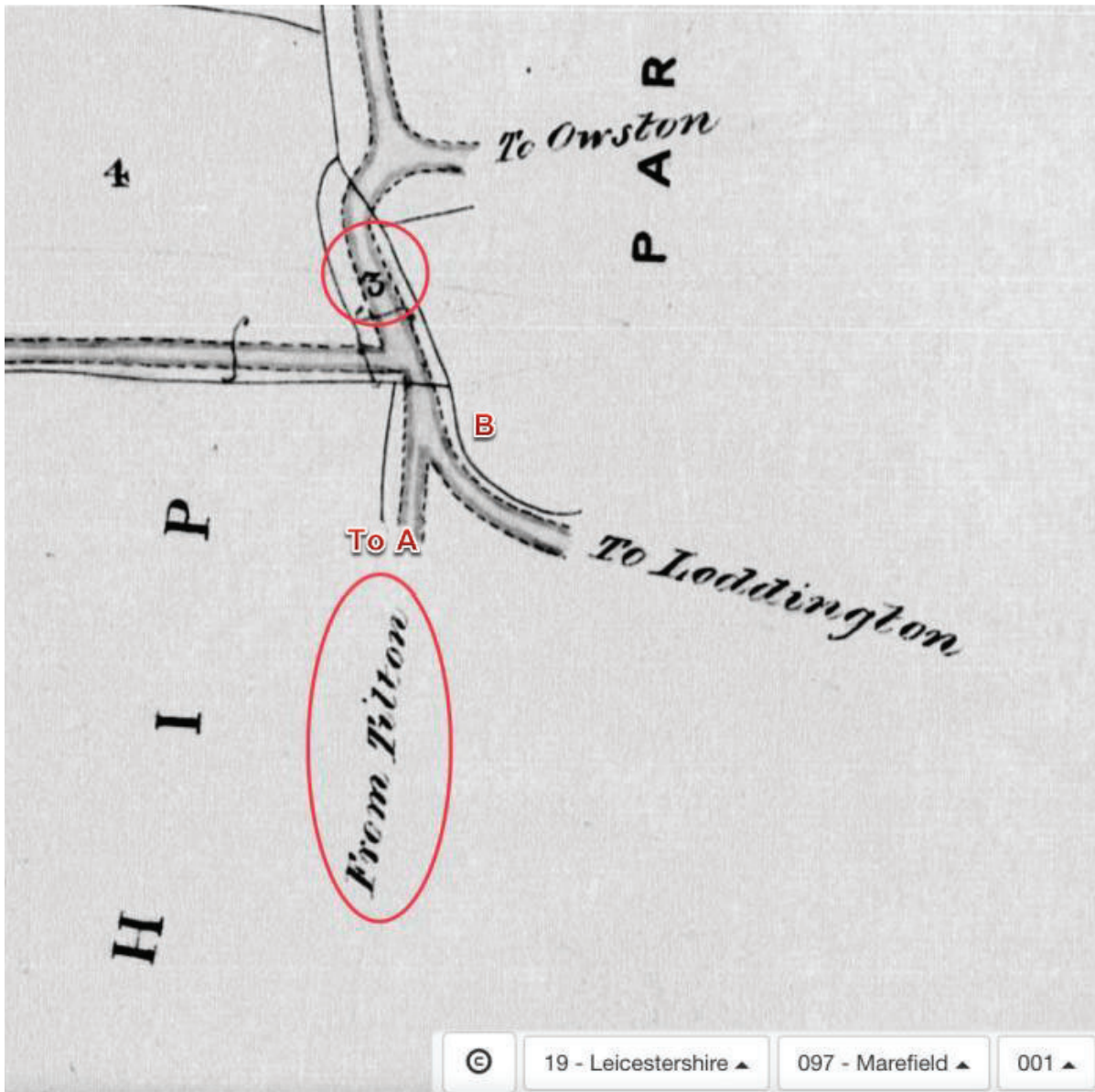
Extract from the Halstead tithe map of the application route from A to B as a road in similar style to the existing roads it starts and ends from.

Inclosed Roads are not included in the foregoing Quantities

9	3	2		
1432	2	16	140	42
			9569	

(Signed) Thomas Miles

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 as a road in similar style to the existing roads it ends at, labeled as apportionment number 3 (circled) and from the direction of Tilton (circled)

C.—London: Printed and Published (By Authority),
Amount of Rent-Charge apportioned upon the several Lands,
and to whom payable.

Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.			PAYABLE TO <i>Tenants of Tilton on the Hill</i>			PAYABLE TO <i>Impropriators</i>		
			A.	R.	P.	£	s.	d.	£	s.	d.
1	Far Bushey high leys	Pasture	16	2	31						
2	Little leys	do	7		34						
3	Road Dit	do		2	2						
4	Road Leys	do	8		22						
			32	2	9				12		
5	Bractundale	Pasture	26	2	15						
6	Second high gate close	do	9		36						

© 19 ▲ 097 ▲ 004 ▲ <

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

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"

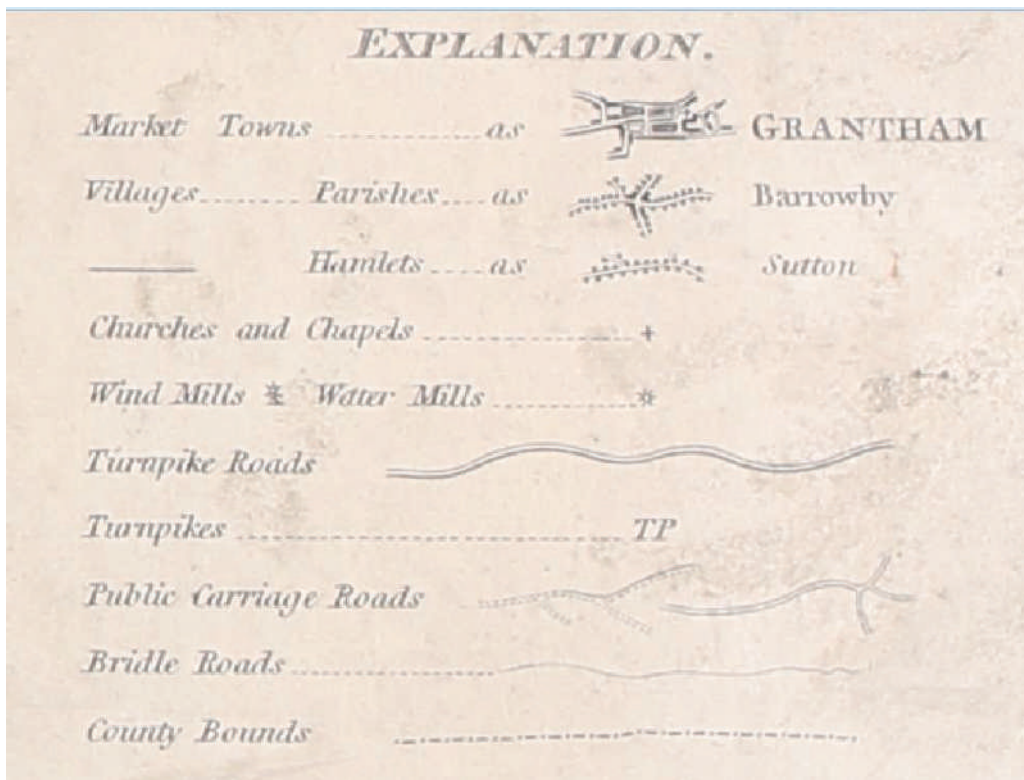
Archive. The extracts from this sheet below were obtained from records held at the County Record Office.

Meaning. The application route is shown on the first extract below from A to B. 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



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 road from where the application starts at point A.

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 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>

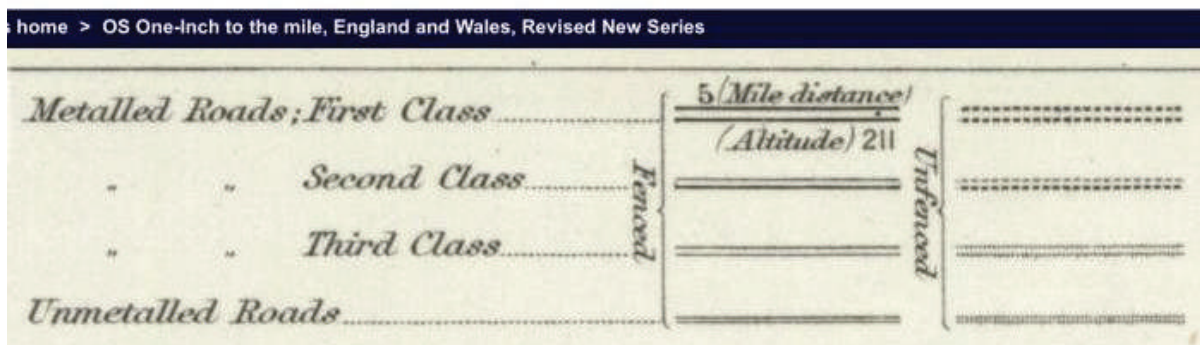
Meaning. The application route is shown on the extract below from A to B as a minimum “third class metalled road” in some parts fenced and others unfenced, mostly in similar style to the existing road it either leaves at point A and joins at point B.

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.

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



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

Ordnance Survey Maps - 25 inch England and Wales

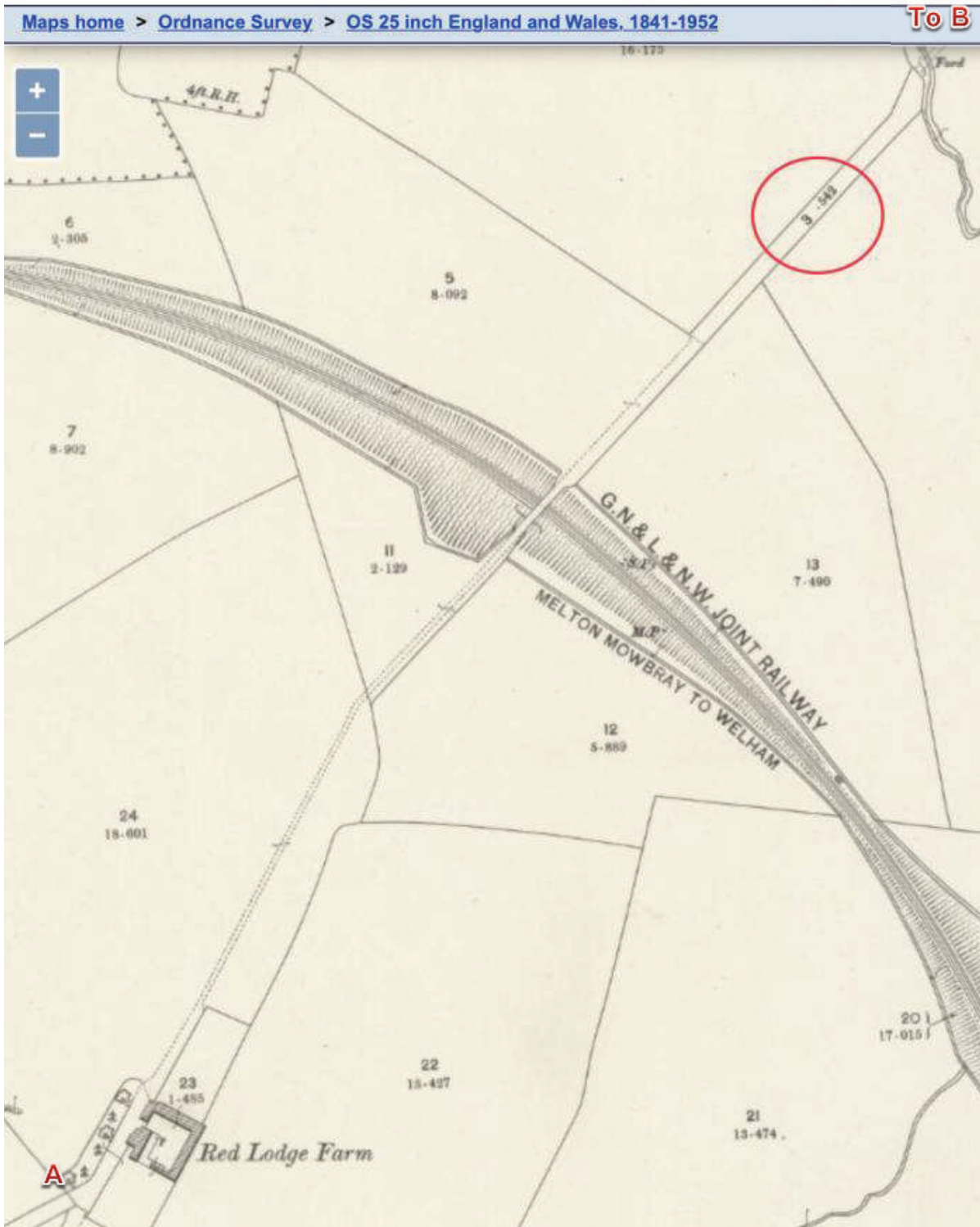
Date. OS County Series Leicestershire XXXIII.5 and Leicestershire XXXIII.1 both published 1904.

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.

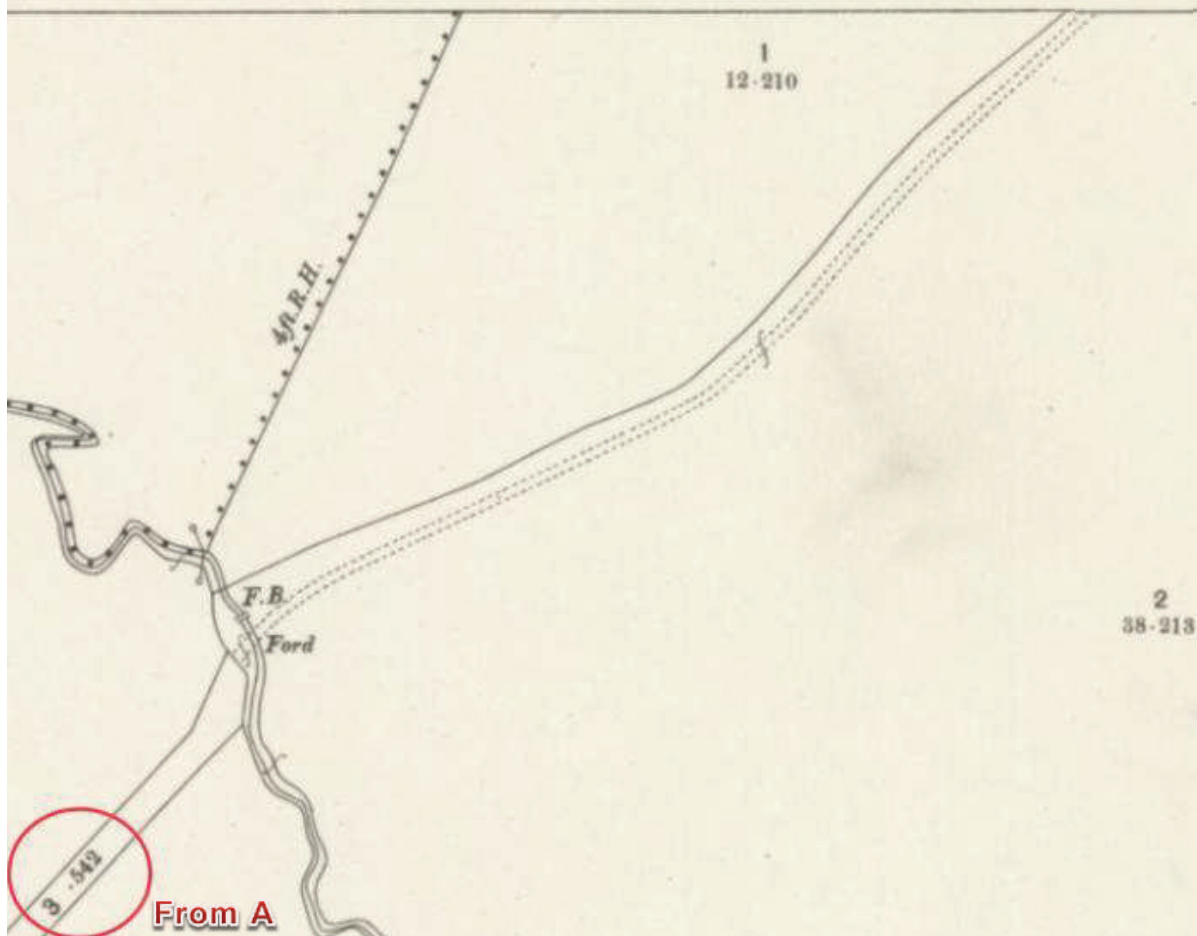
Archive. The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114594252> and <https://maps.nls.uk/view/114594216>

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 then as an unmarked track with double dashed lines before reverting back to the same style as the existing road it left at A. One section of the route also shows it marked with title number and area (circled). The second image shows the route from A towards B continuing as a road showing the title number and area in close up before the route crosses a watercourse and is marked as a ford before continuing as an unmarked, double dashed track. The final image shows the route from A to B as an unmarked track with double dashed lines joining an existing road in this same style and continuing onwards in the same style towards Owston – marked on the map with red arrow. 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 the beginning and end sections of the application route further suggest a status of public road.

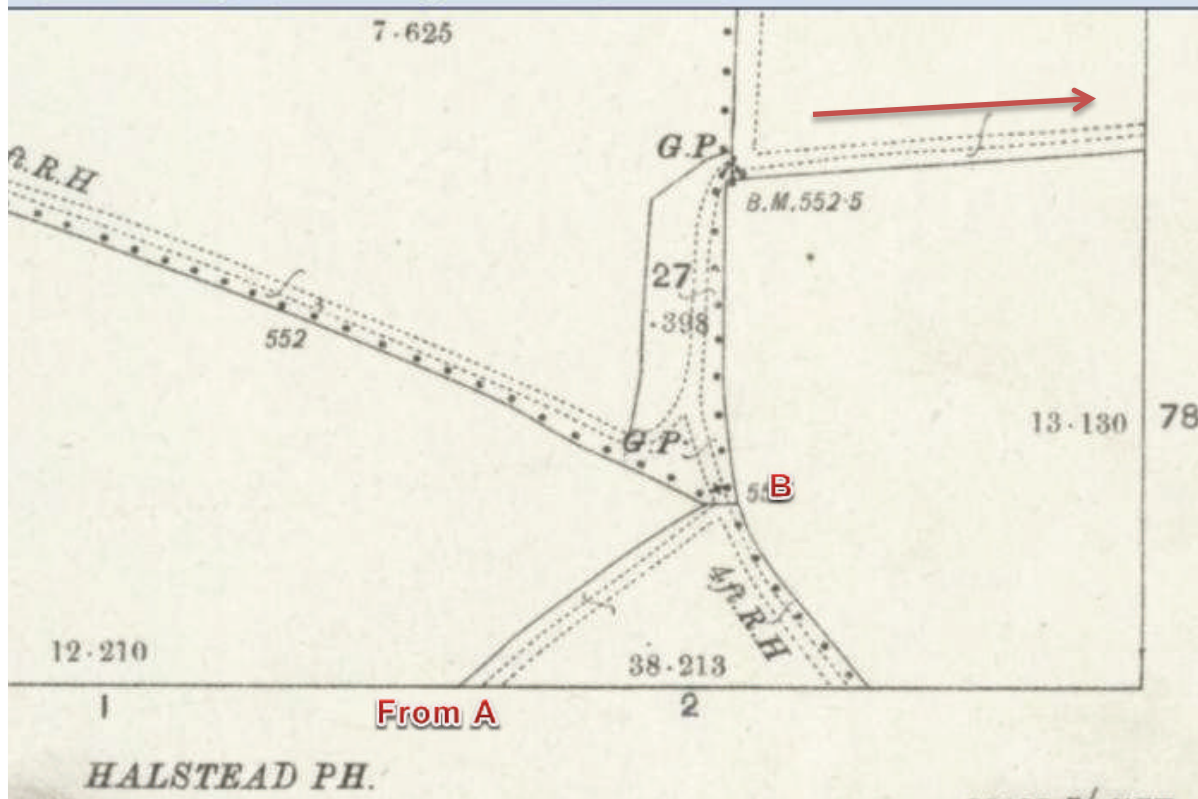


Extract from OS 25" Map showing the application route marked from A towards B with sections shown with separate title circled



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

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



Extract from OS 25" Map showing the application route marked from A to B and in the same style as the existing road that continues to Owston marked with red arrow

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

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

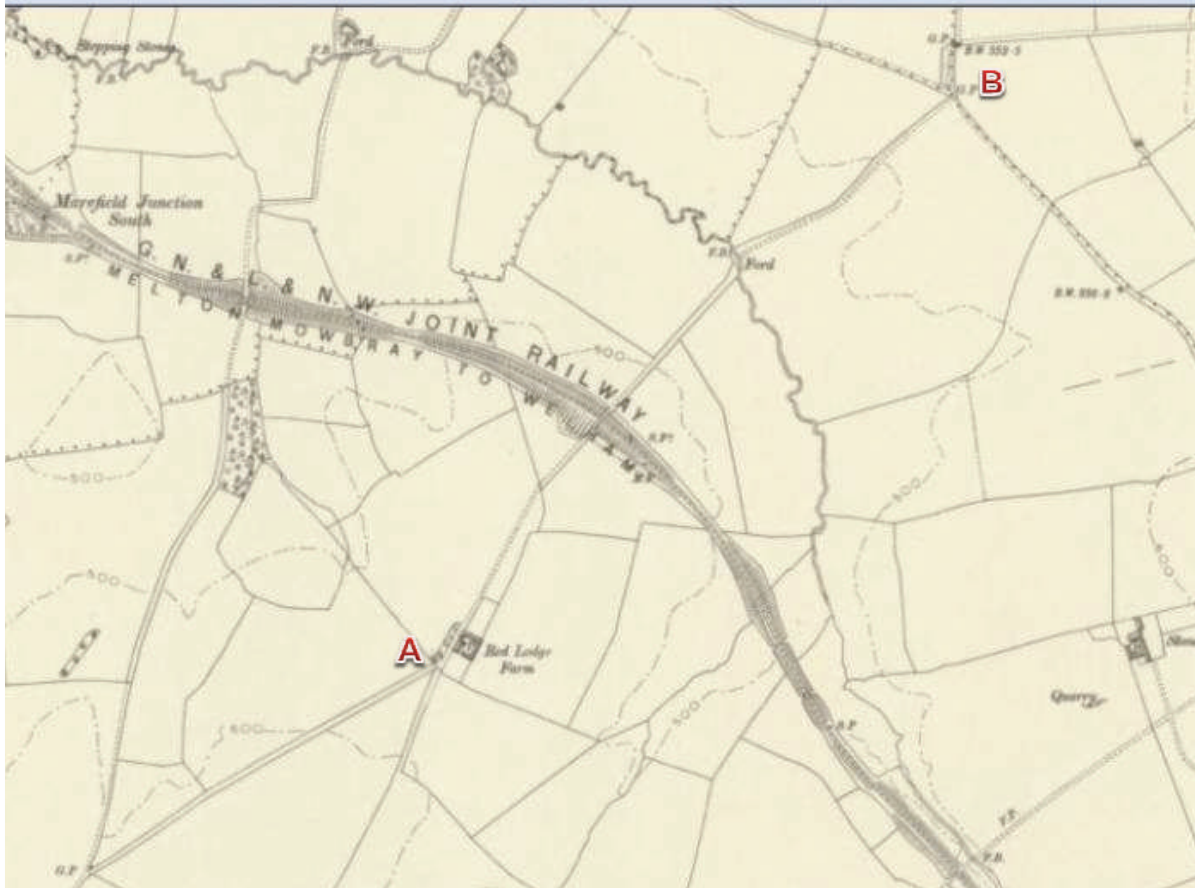
Relevance. The OS Six Inch Series were the most comprehensive, topographic mapping covering all of England and Wales from the 1840s to the 1950s. Two editions for all areas were published, and then regular updates in the 20th century for urban or rapidly changing areas.

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 as a road in the same style as the existing road it leaves at A and joins at B that continues on to Owston.

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

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

Date. OS 25k series 43/70 published circa 1949

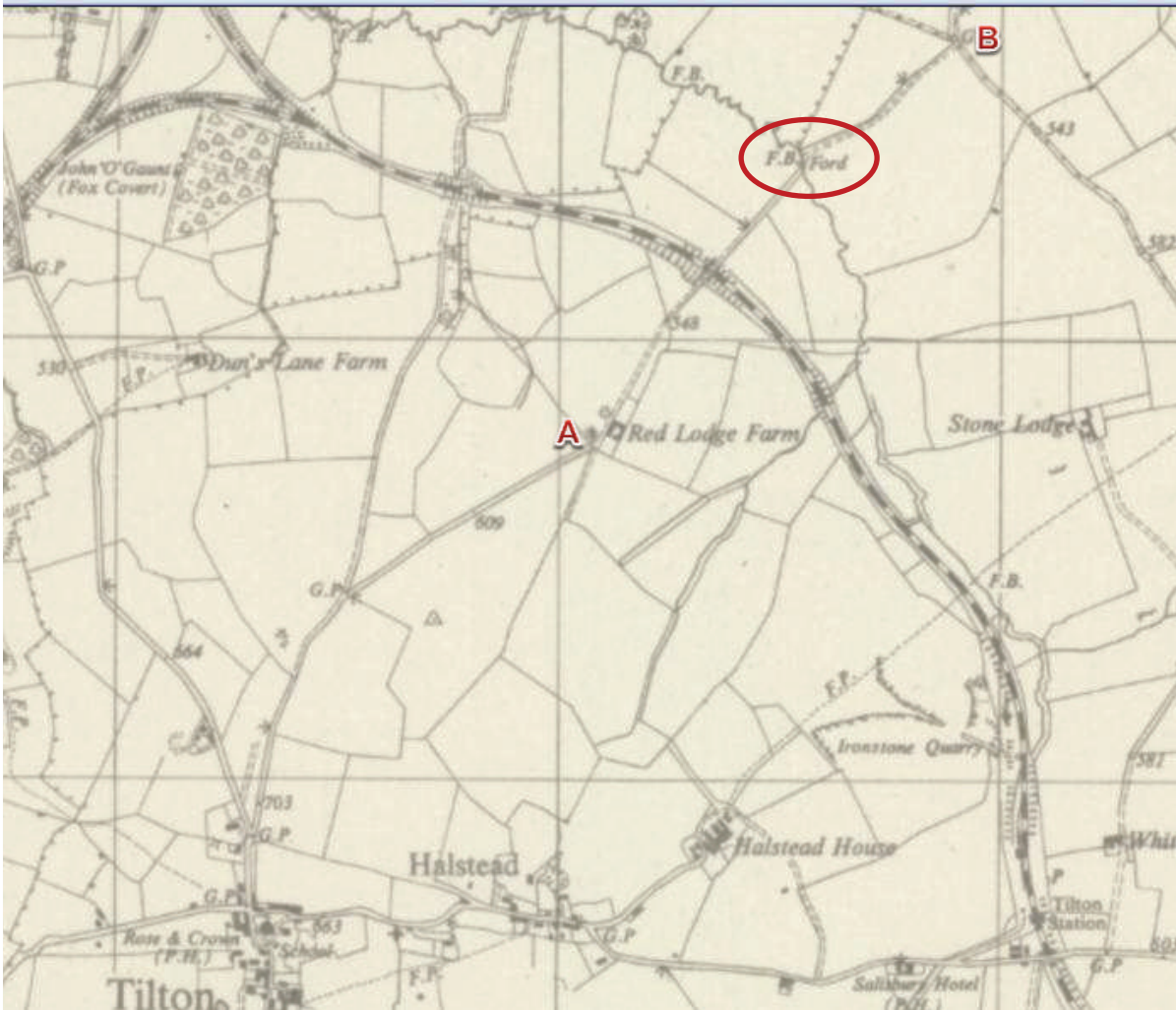
Relevance. The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps.

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. Note the route also shows a ford (circled) which would typically be shown on maps where there was a public highway of some kind.

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.

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. 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.

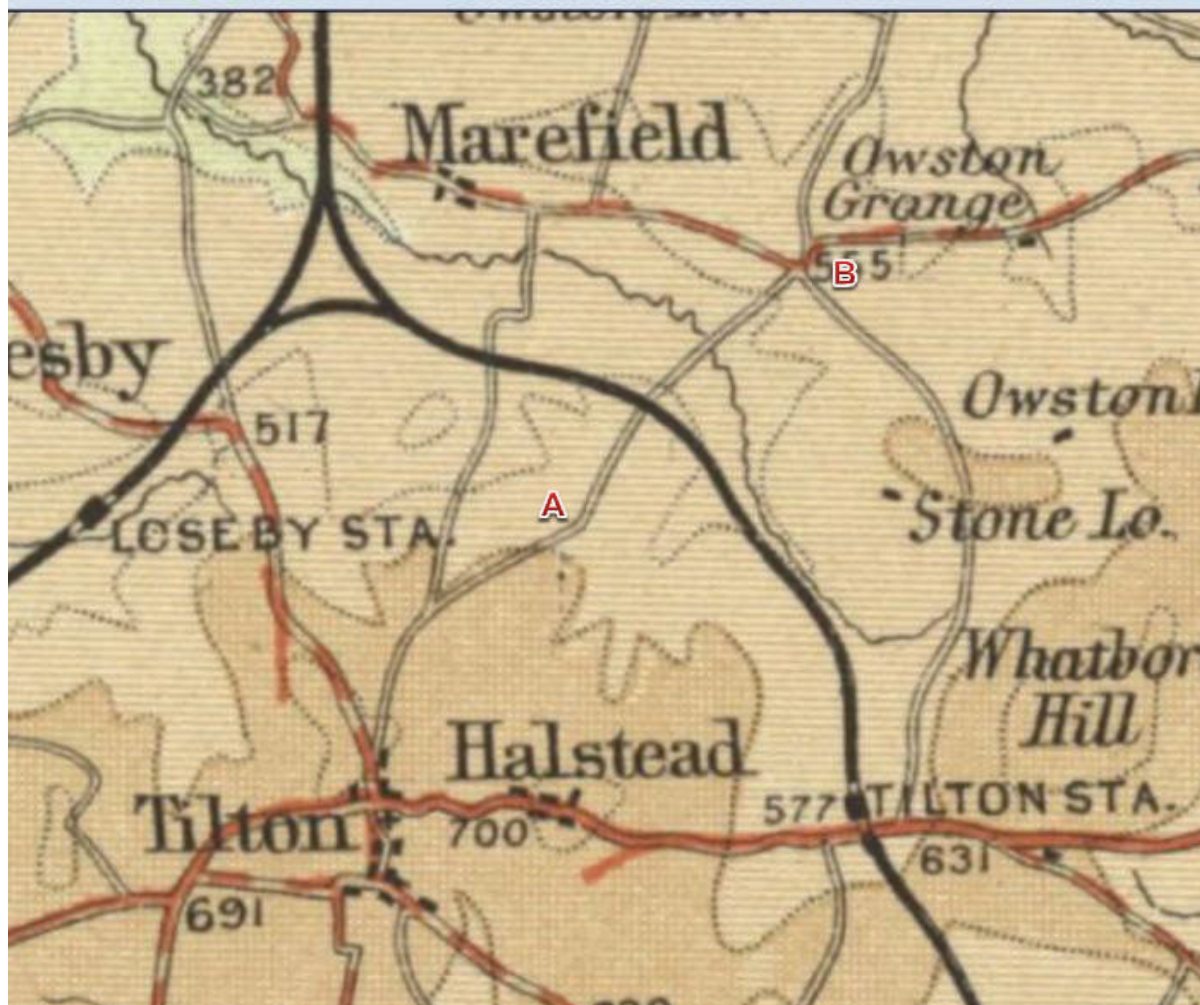
Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131065>

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 and joins at B.

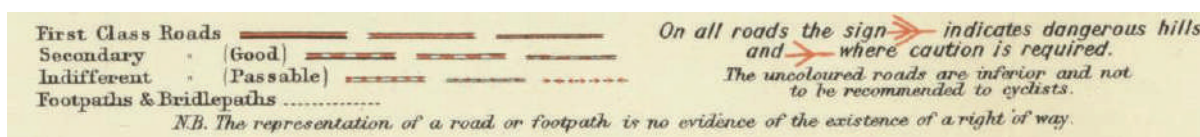
Assessment. Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling public. It seems likely that the disclaimer is to avoid the publishers from finding themselves 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 Sheet 18 - Birmingham, Leicester
 Publication date: 1903
 Size: sheet ca. 56 x 77 cm (ca. 22 x 30 inches)

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

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 Bridleway however the authority may believe higher rights such as Restricted Byway may exist after considering the evidence in this application.

Date: 8 May 2021