

**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 the A426 Rugby Road Cotesbach, to West Cottages at the junction with Shawell Road.</b>			
Application No.:	<b>M1249</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):	<b>West Cottages Lane</b>
Settlement:	<b>Cotesbach</b>		
Parish:	<b>Cotesbach</b>		
District/Borough:	<b>Harborough</b>		
Nearest Town/City:	<b>Lutterworth</b>		
Start Location:			
Start Grid Refs:	Landranger:	<b>SP 5363 8199</b>	Eastings,Northings: <b>45363 28199</b>
End Location:			
End Grid Refs:	Landranger:	<b>SP 5446 8156</b>	Eastings,Northings: <b>45446 28156</b>

Applicant's Name, Address & Postcode: <b>Will Steel, British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ.</b>			
Date Received:	<b>21/05/2021</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? <b>Yes/No</b></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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\* 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 A426 Rugby Road, Cotesbach near Town End Farm at approximate grid reference SP53638199

to West Cottages, at the junction of Shawell Road, Cotesbach and Lutterworth Road, Shawell at approximate grid reference SP54468156

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 040 Cottesbach of 1804 and 129 Shawell of 1839

List of Streets

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

OS One Inch sheet 169 -Coventry (Outline) published in 1899 and sheet 170 -Market Harborough (Outline) published in 1898.

OS County Series Leicestershire LII.4 published 1887 and Leicestershire LII.8 both published 1904.

OS Six inch series Warwickshire XXIII.NE published 1886

OS 25k series 42/58 published circa 1949 Bartholomew map of Great Britain, Sheet 18 - Birmingham & Leicester published 1903

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Signed..... ..... Dated 20 May 2021

**How we use your information**

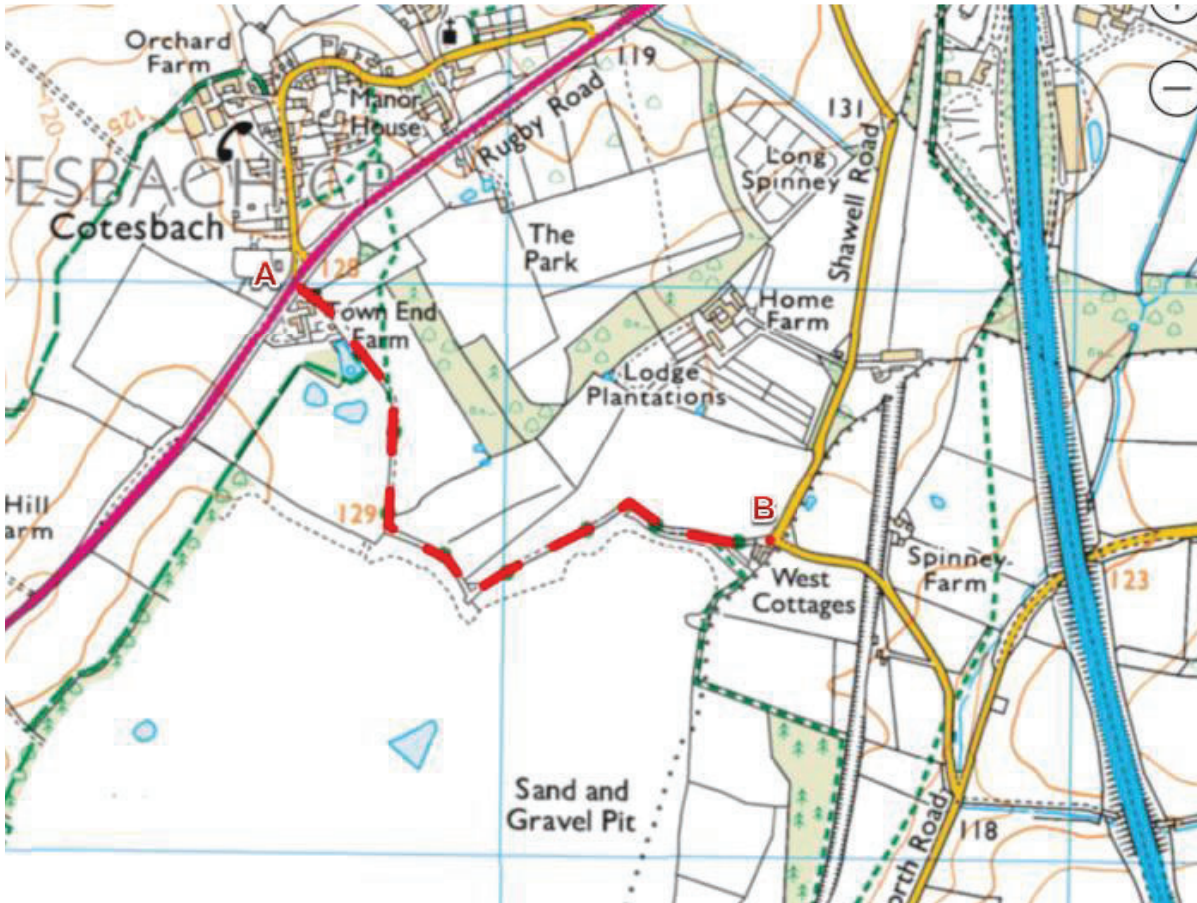
Any information you provide will be used in accordance with current data protection regulations and other relevant legislation. The information will be used to consider your application for a Definitive Map Modification Order. A copy of your application (including your name and address) will be published 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:** Cotesbach **Grid Reference:** SP538815

**Map of Path:** Route applied for is shown in RED DASHES starting from the A426 Rugby Road, Cotesbach near Town End Farm going south east to end at West Cottages, at the junction of Shawell Road, Cotesbach and Lutterworth Road, Shawell. The route is shown as an ORPA on OS Maps, is known as Shawell Lane and is not on the online Definitive Map. 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-0082

### Description of Path:

Path starts from the A426 Rugby Road, Cotesbach near Town End Farm at approximate grid reference SP53638199 going south east to end at West Cottages, at the junction of Shawell Road, Cotesbach and Lutterworth Road, Shawell at approximate grid reference SP54468156. The route is shown as an ORPA on OS Maps, is known as Shawell Lane 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, OR
- s.53(3) and (4)(a) of the Countryside and Rights of Way Act 2000 on a bridleway or byway but shown as a footpath on a definitive map, is to extinguish all those bridleway or byway rights on that route. OR
- The effect of s.53(3) and (4)(c) Countryside and Rights of Way Act 2000 on a public highway that existed prior to 1949 is to extinguish the vehicular rights on a route shown in the definitive map and statement as a bridleway. OR
- The effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)

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

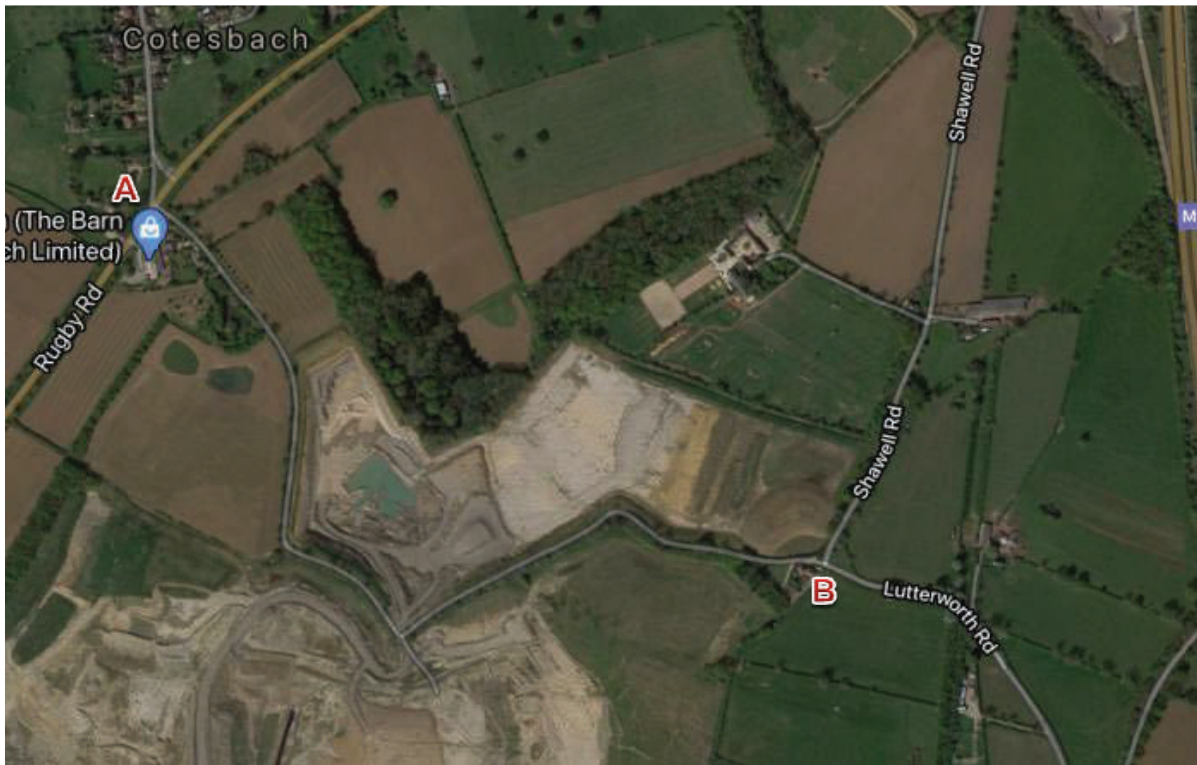
b. The application contains one or more of the following forms of supporting evidence:

- 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 from the A426 Rugby Road, Cotesbach near Town End Farm at approximate grid reference SP53638199 going south east to end at West Cottages, at the junction of Shawell Road, Cotesbach and Lutterworth Road, Shawell at approximate grid reference SP54468156. The route is shown as an ORPA on OS Maps, is known as Shawell Lane 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 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.** Tithe map 19 Leicestershire 040 Cottesbach of 1804 and 129 Shawell 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.

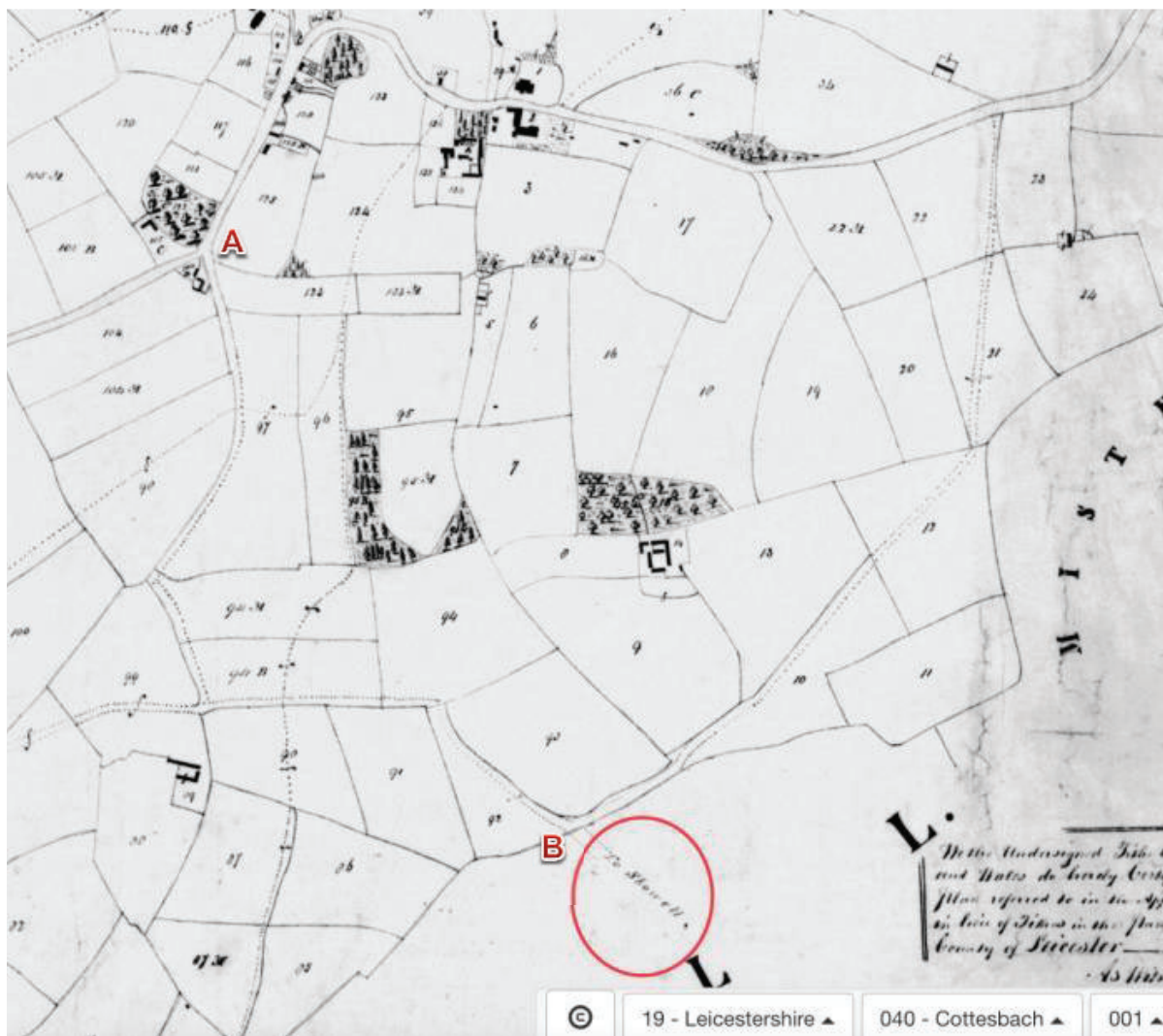
(3) The Tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on road, although 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 Cottesbach 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 joins at B, and is labeled as continuing in the direction of Shawell (circled). The second image is from the Cottesbach tithe apportionment record showing that public roads had no tithe payable. The third image from the Shawell tithe map shows the route from A to B as a road in the same style as the nearby circled tithe apportionment 193a from the direction of Cottesbach. The final extract is from the Shawell tithe apportionment records showing 193a described as a Road.

**Assessment.** These are probably second class maps and so are 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 joins on the Cottesbach tithe map in the direction of Shawell. This status is supported on the Shawell tithe map with a road in the direction of Cottesbach. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.





Extract from the Cottesbach tithe map of the application route from A to B as a road in similar style to the existing road it joins at B and continuing in the direction of Shawell



OCCUPIERS	TOTAL QUANTITIES.			TOTAL RENT CHARGE.		
	A.	R.	P.	£	s.	d.
W. William Hill	363	"	36	91	16	1
Richard Garner	158	2	13	34	8	2
William Arnson	137	2	4	28	4	3
Robert Amner	174	2	33	41	13	.
Joseph Johnson	292	2	12	75	16	1
Whiston	44	3	17	8	3	8
John Burton	5	1	27	.	17	4
Thomas Read	10	2	37	2	9	7
Himself	4	"	31	.	19	4
Cottagers	1	.	2	.	.	.
The Reverend James Powell	16	2	17	3	13	.
Marriott	6	"	16	1	7	.
Richard Garner	"	3	20	.	.	.
Church and Church-yard	1216	1	15	287	7	6
Public Roads	11	1	16	.	.	.
	1227	2	31			

(Signed /

Extract from the Cottesbach tithe apportionment records showing public roads with no tithe payable



Extract from the Shawell tithe map of the application route from A to B as a road in similar style to the existing road it joins at B and nearby road with apportionment number 193a, circled. The route is also shown as coming from Cottesbach, circled.

17	Untifield Meadow	Grass	3	1	30	16	1	A
193	Twenty	do	11	16	1	17	10	A
193a	Road in do	do	2	26	1	1		A
103	Wood Twenty	do	13	3	23	2	15	10 A
206	Plot	do	2	2	15	6	10	A
206a	Road in do	do	3	15	1			A
			134	117	29	5	3	
99	Jenkins Close	Grass	1	2	24	12	1	A

Extract from the Shawell tithe apportionment records showing number 193a described as a Road

## Evidence from Maps:

### 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-231923314/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 where the application route 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.



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 169 –Coventry (Outline) published in 1899 and sheet 170 –Market Harborough (Outline) published in 1898.

**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> and <https://maps.nls.uk/view/101168048>

**Meaning.** The application route is shown on the first extract below from A to B, continuing on the second extract from A to B as a minimum “third class metalled road” in some parts fenced and others 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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Sheet 169 - Coventry (Outline)

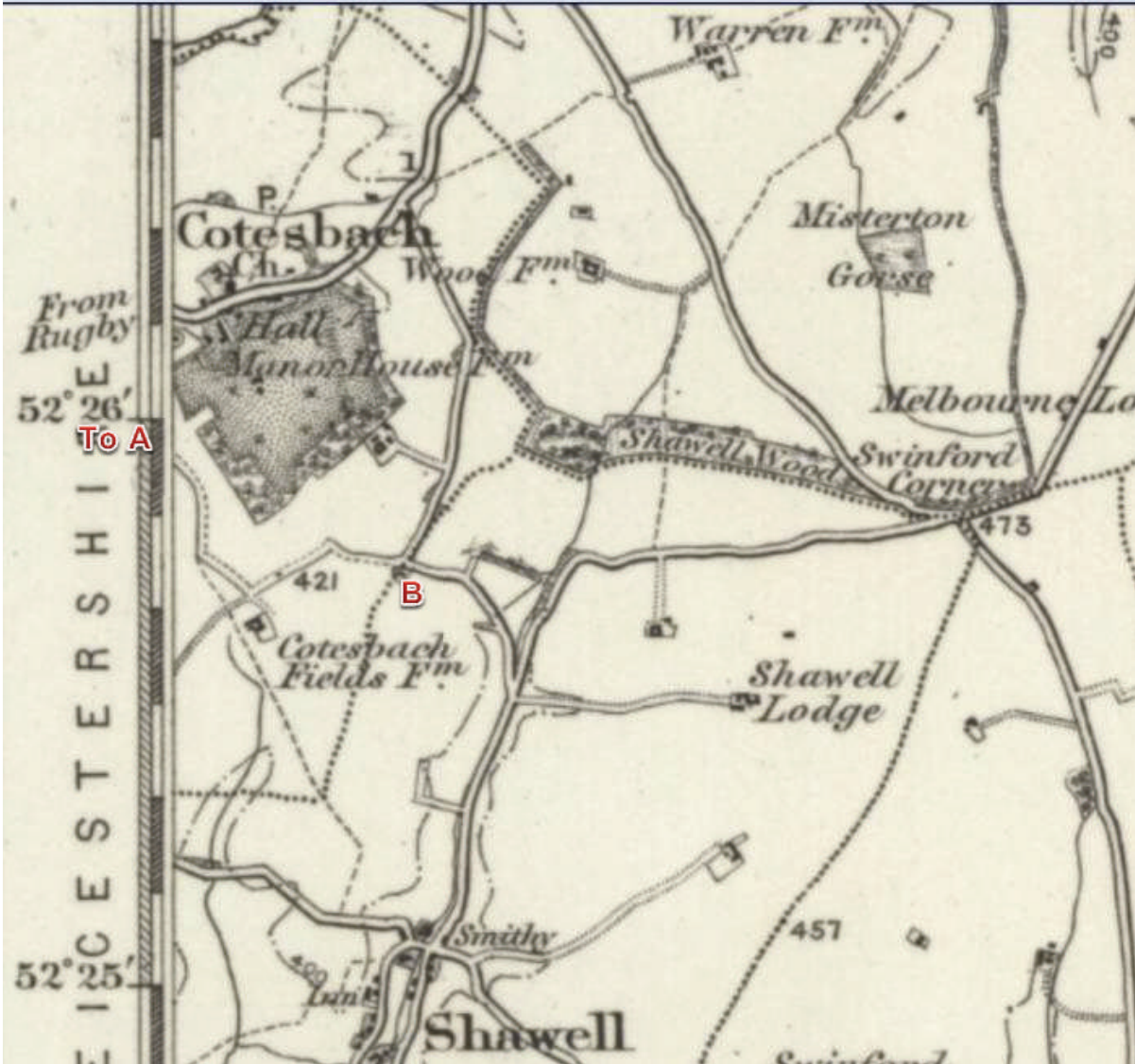
Publication date: 1899

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

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



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



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

Metalled Roads; First Class	Fenced	5 (Mile distance) (Altitude) 211	Unfenced
" " Second Class			
" " Third Class			
Unmetalled Roads			

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



## Ordnance Survey Maps - 25 inch England and Wales

**Date.** OS County Series Leicestershire LII.4 published 1887 and Leicestershire LII.8 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.

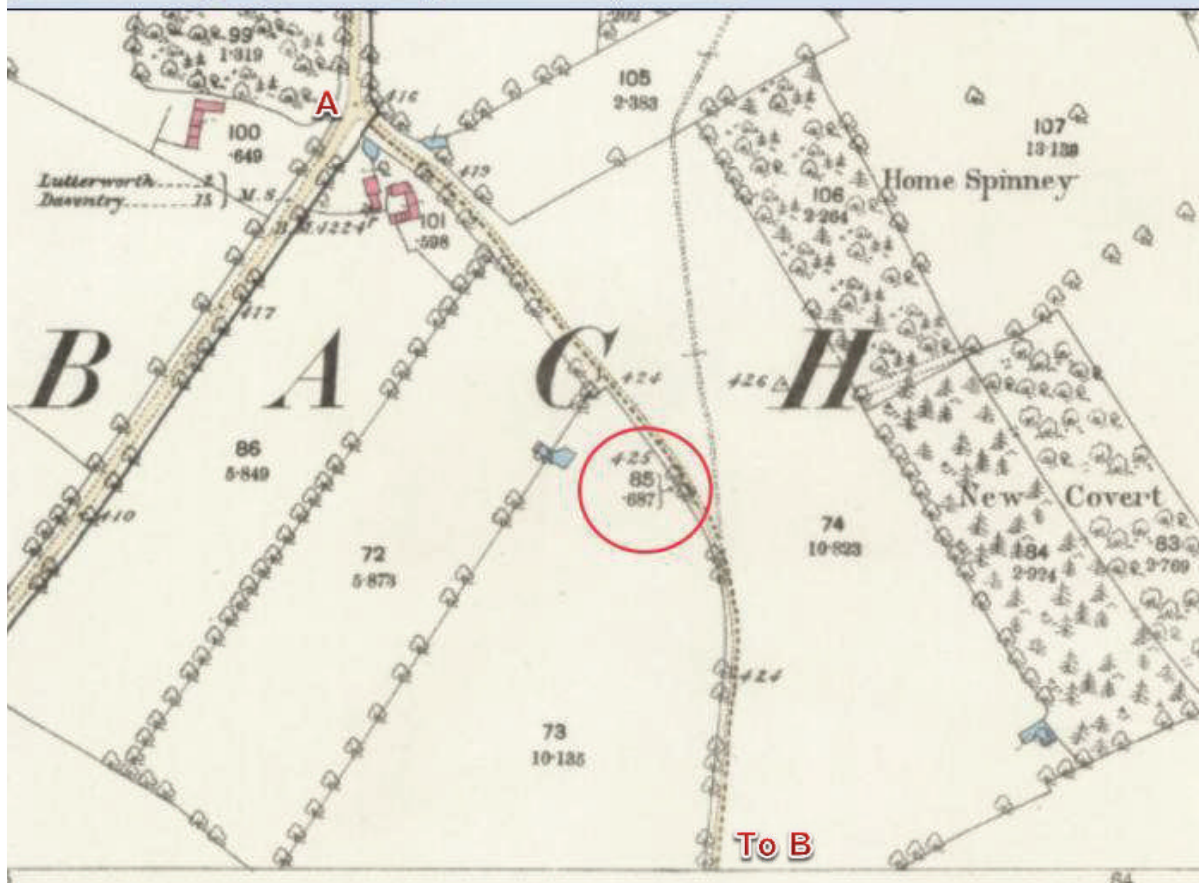
**Archive.** The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114595968> And <https://maps.nls.uk/view/114595977>

**Meaning.** The route is shown on the first image below from A towards B as a coloured road with separate title circled and benchmark numbers, typically shown beside routes considered as roads. The second image shows the road continuing from A to B as a road , also with separate title, circled, and benchmark numbers.

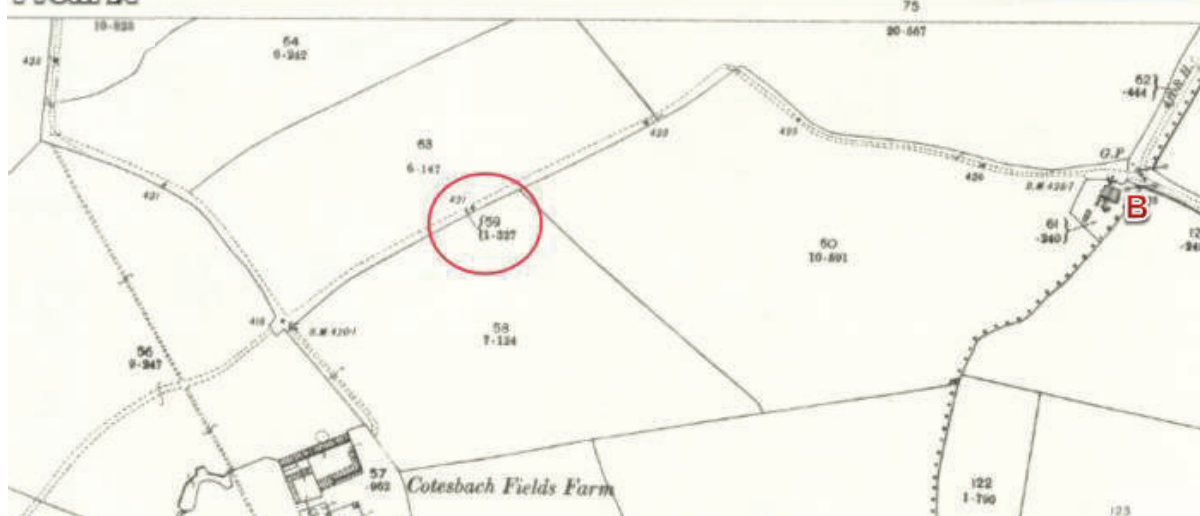
**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus combined with other evidence in this application this is evidence in support of the route being a public highway. The presence of separate titles and benchmark numbers along the application route further suggests a status of public road.

**Library** **Leicestershire LII.4 (Churchover; Cotesbach; Lutterworth; Monks K...**  
**nd** **Surveyed: 1886, Published: 1887**  
**Náiseanta** **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 as a coloured road with separate title (circled) and benchmarker numbers*



*Extract from OS 25" Map showing the application route marked from A towards B as a road with separate title (circled) and benchmark numbers*

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

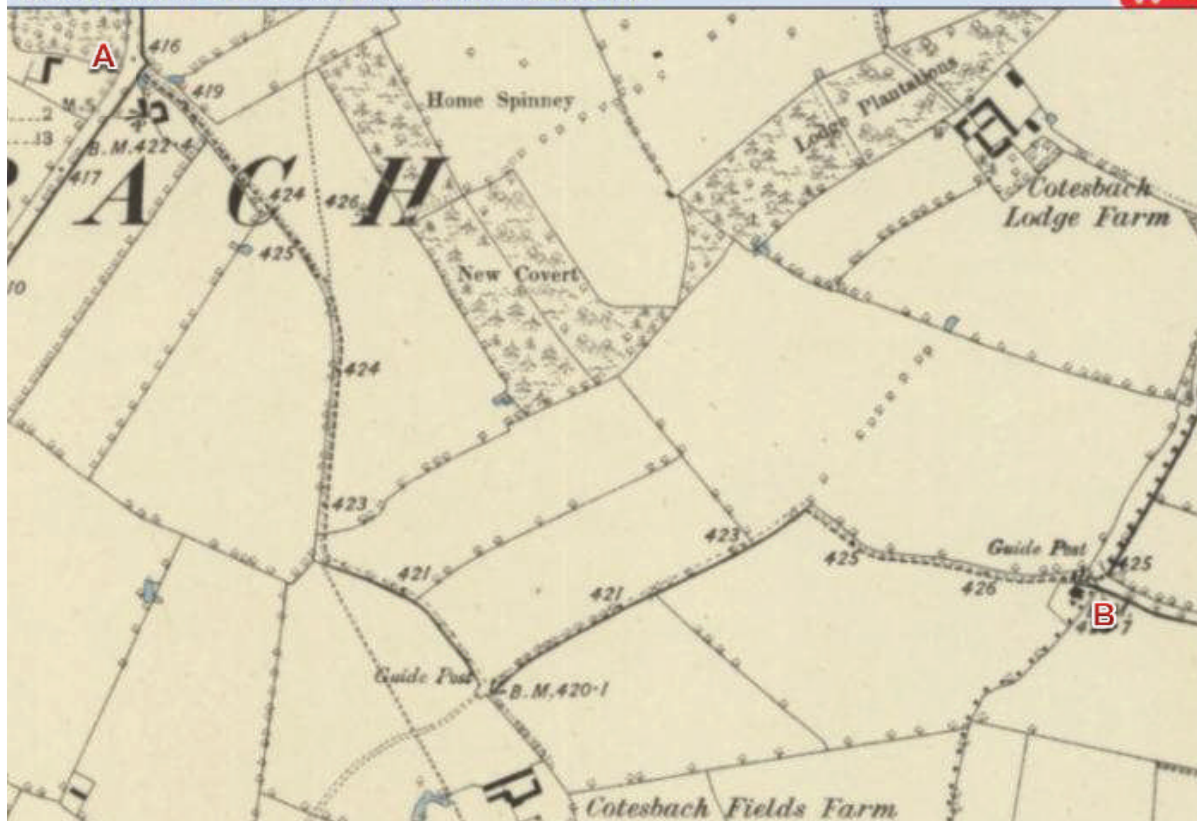
**Date.** OS Six inch series Warwickshire XXIII.NE published 1886

**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/101585074>

**Meaning.** The route is shown on the first image below from A towards B as a road with benchmark numbers, typically shown beside routes considered as roads.

**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 benchmark numbers along the application route further suggests a status of public road.



Extract from OS 6 inch Series Map showing the application route from A to B as a road with benchmark numbers

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

**Date.** OS 25k series 42/58 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.

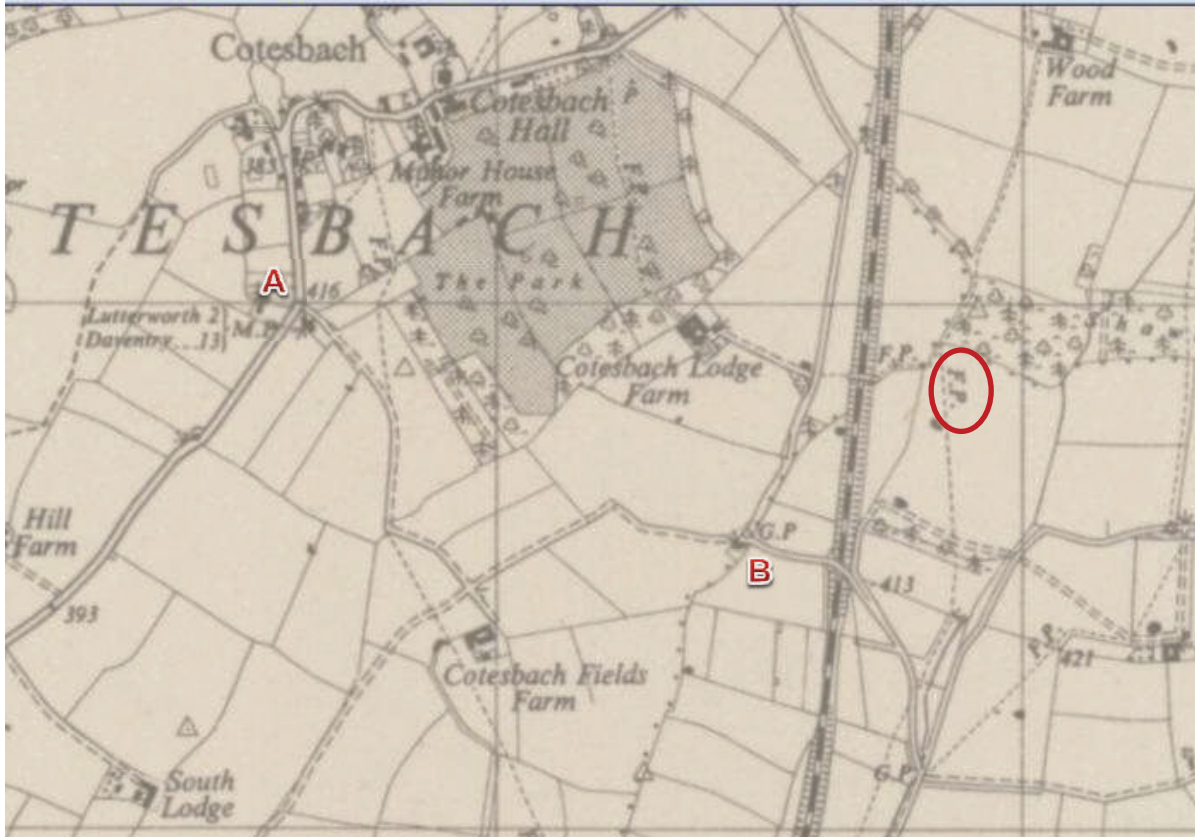
**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/207352079>

**Meaning.** The application route is shown on the extract below from A to B as a mix of road and track but certainly of higher status than the labeled footpaths (FP) on the extract.

**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 with example of nearby footpaths (FP) circled*

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

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

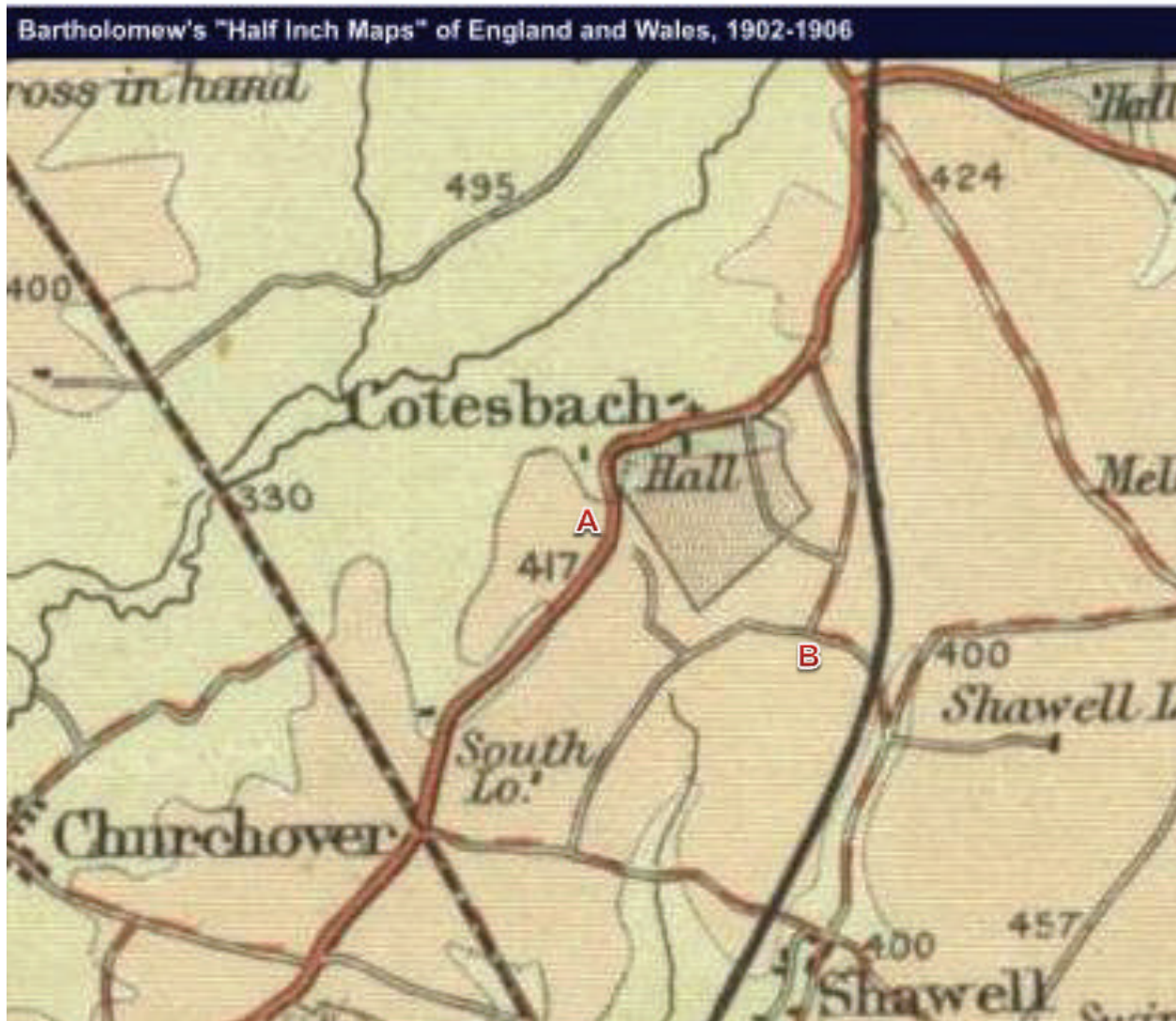
**Relevance.** The map was made for sale to the public, particularly for tourists and cyclists and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished. This enables us to draw inferences from how routes are shown.

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

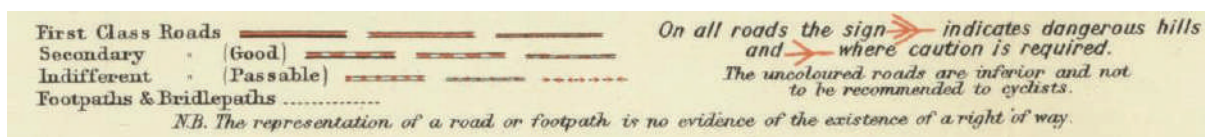
**Meaning.** The application route is shown on the extract below from A to B almost entirely as an “indifferent road” as shown on the key in the second image.

**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 majority of the application route is shown as a 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.





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



Extract from Bartholomew's Map showing the key

## List of Streets

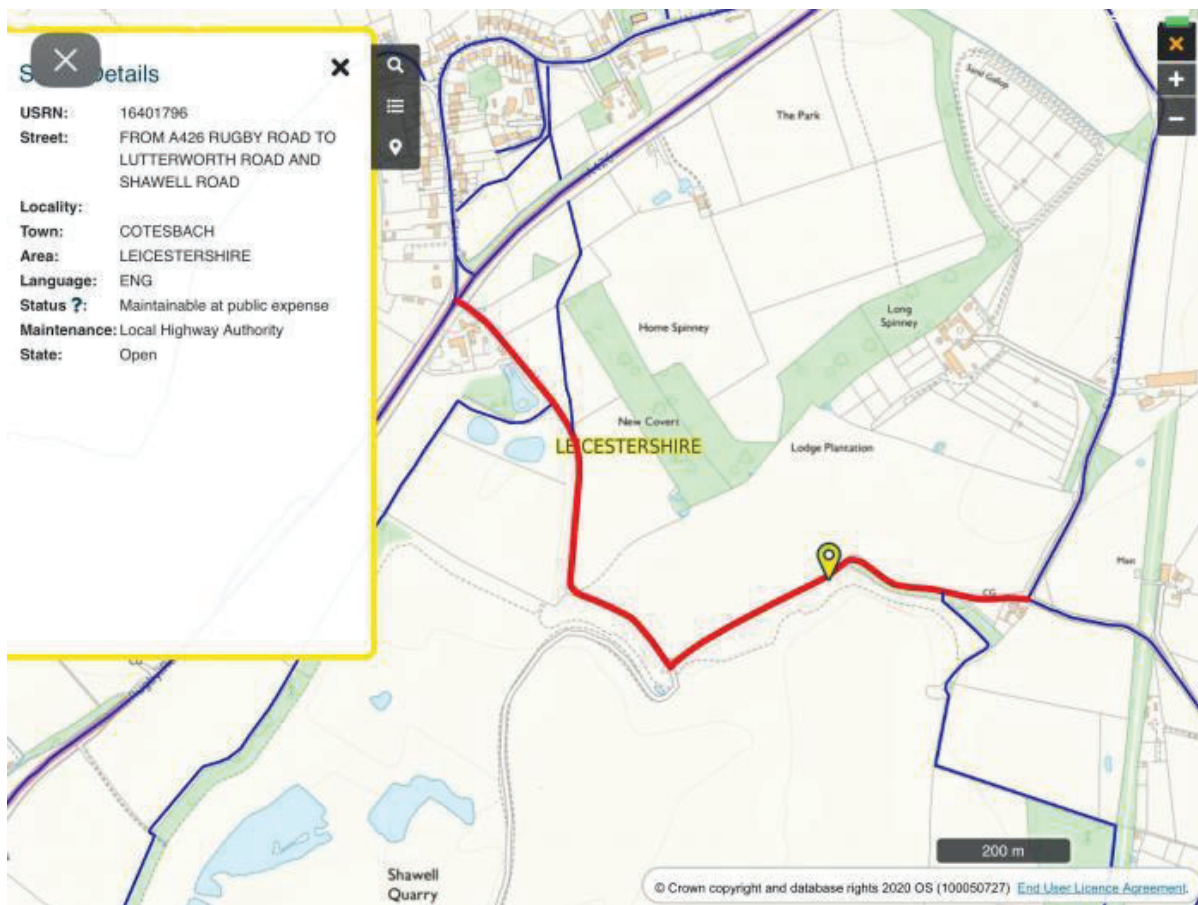
**Date.** The current record of list of streets that is maintainable at the public expense.

**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 as USRN 16401796 and described as "From A426 Rugby Road to Lutterworth Road and Shawell Road" and recorded as maintainable at public expense.

**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*

## **INSPIRE Land Ownership**

**Date.** This extract from the INSPIRE database was taken in March 2021.

**Relevance.** The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.

**Archive.** The publicly accessible dataset is found at <https://data.gov.uk/data/map-preview?e=1.74944&n=60.8433&s=49.9553&url=http%3A%2F%2Finspire.landregistry.gov.uk%2Finspire%2Fows%3FService%3DWMS%26Request%3DGetcapabilities&w=-8.17167> . The extract below is taken from a screen shot taken by the Applicant on the date stated above.

**Meaning.** The application route is shown, indicated by A to B. The first and last section of the route is shown as separate from any registered landholding, but for the most part, registered land abuts the route.

**Assessment.** The characteristic of unregistered strips of land bounded by registered land is typically found for vehicular highways of ancient origin. Other reasons could exist, but these are unlikely when the evidence as a whole appears to show that vehicular rights existed.

