

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

Short Description: Alleged byway open to all traffic from the A4394 Theddingworth Road at Scoborough along Scoborough Road to the county boundary.			
Application No.:	M1250	Legal Services Ref. No.:	HTWMT/
Application Status:	Application received. Awaiting Schedule 14 notice from applicant		

Geographical Location			
Path No:	TBA	Route name (if known):	Scoborough Road
Settlement:	Scoborough		
Parish:	Lubenham		
District/Borough:	Harborough		
Nearest Town/City:	Market Harborough		
Start Location:			
Start Grid Refs:	Landranger:	SP 6815 8644	Eastings, Northings: 46815 38644
End Location:			
End Grid Refs:	Landranger:	SP 6838 8619	Eastings, Northings: 46838 38619

Applicant's Name, Address & Postcode: Will Steel, British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ.			
Date Received:	21/05/2021	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	4-19
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 junction of Lubenham Road, Theddingworth and Theddingworth Road, Lubenham on the A4304 near Scoborough Cottage at approximate grid reference SP68158644
to along the Scoborough Road, Lubenham to end at the county boundary at the River Welland, Marston Trussell at approximate grid reference SP68388619

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

Marston Trussell parish boundary remarks record book OS26/7405 from Scoboro Lodge to Marston Trussell
List of Streets
INSPIRE Land Ownership
William King's map of the tract of country surrounding Belvoir Castle published 1806
First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869
OS One Inch sheet 170 - Market Harborough (Hills) published in 1898; OS County Series Leicestershire L.10 published 1886.
OS Six inch series Leicestershire L.SW surveyed 1885, OS 25k series 42/68 - A published circa 1949
Bartholomew map of Great Britain; Sheet 18 - Birmingham & Leicester published 1903

Signed.....  Dated..... 21 May 2021

How we use your information

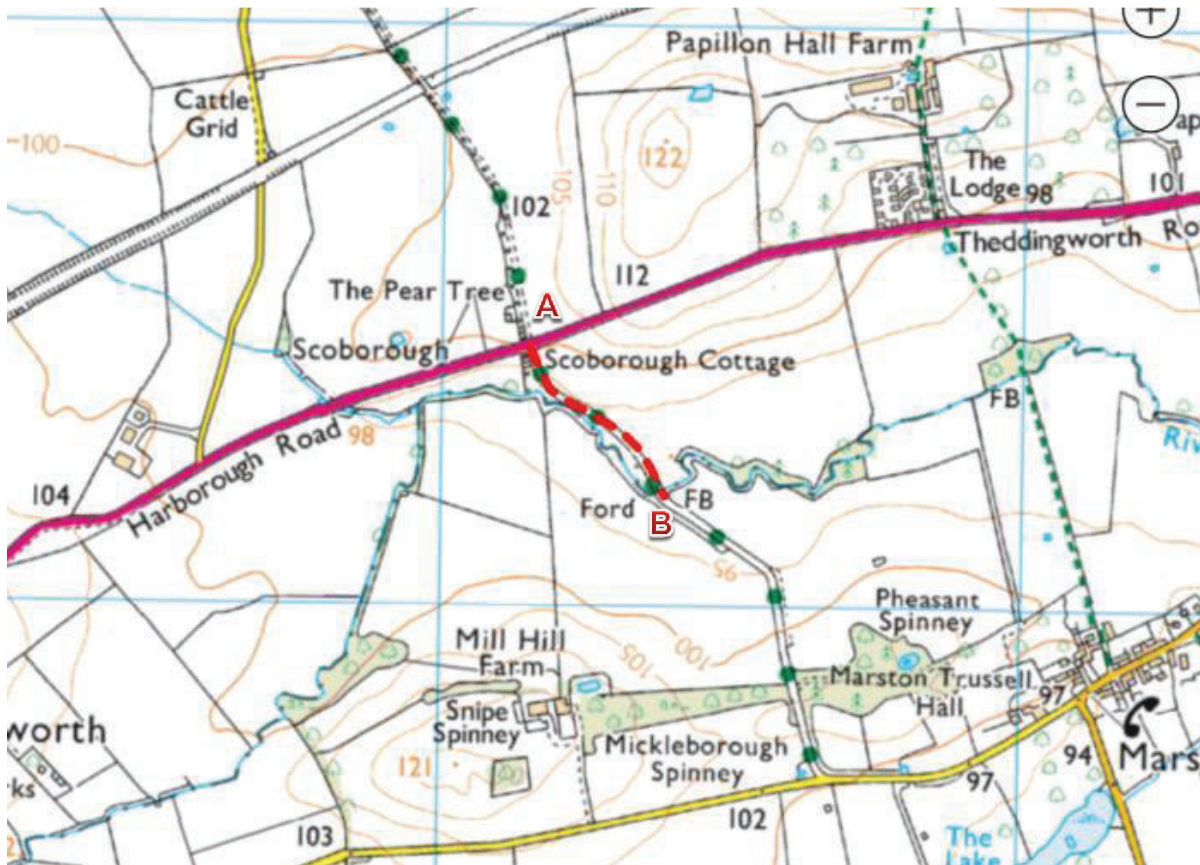
Any information you provide will be used in accordance with current data protection regulations and other relevant legislation. The information will be used to consider your application for a Definitive Map Modification Order. A copy of your application (including your name and address) will be published 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: Lubenham **Grid Reference:** SP682863

Map of Path: Route applied for is shown in RED DASHES starting at the junction of Lubenham Road, Theddingworth and Theddingworth Road, Lubenham on the A4304 near Scoborough Cottage goes south east along the Scoborough Road, Lubenham to end at the county boundary at the River Welland, Marston Trussell. The route is shown as an ORPA on OS Maps and is not on the online Definitive Map. The route is on the list of streets but as it is not fully tarmacked, crossing the boundary via an off road ford, 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-0083

Description of Path:

Path starts at the junction of Lubenham Road, Theddingworth and Theddingworth Road, Lubenham on the A4304 near Scoborough Cottage at approximate grid reference SP68158644 goes south east along the Scoborough Road, Lubenham to end at the county boundary at the River Welland, Marston Trussell at approximate grid reference SP68388619. 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, 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 at the junction of Lubenham Road, Theddingworth and Theddingworth Road, Lubenham on the A4304 near Scoborough Cottage at approximate grid reference SP68158644 goes south east along the Scoborough Road, Lubenham to end at the county boundary at the River Welland, Marston Trussell at approximate grid reference SP68388619. 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 A looking towards B



Photograph from Google Maps internet search 2020, of Scoborough Ford at approximately point B on the map above

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.

Parish Boundary Records

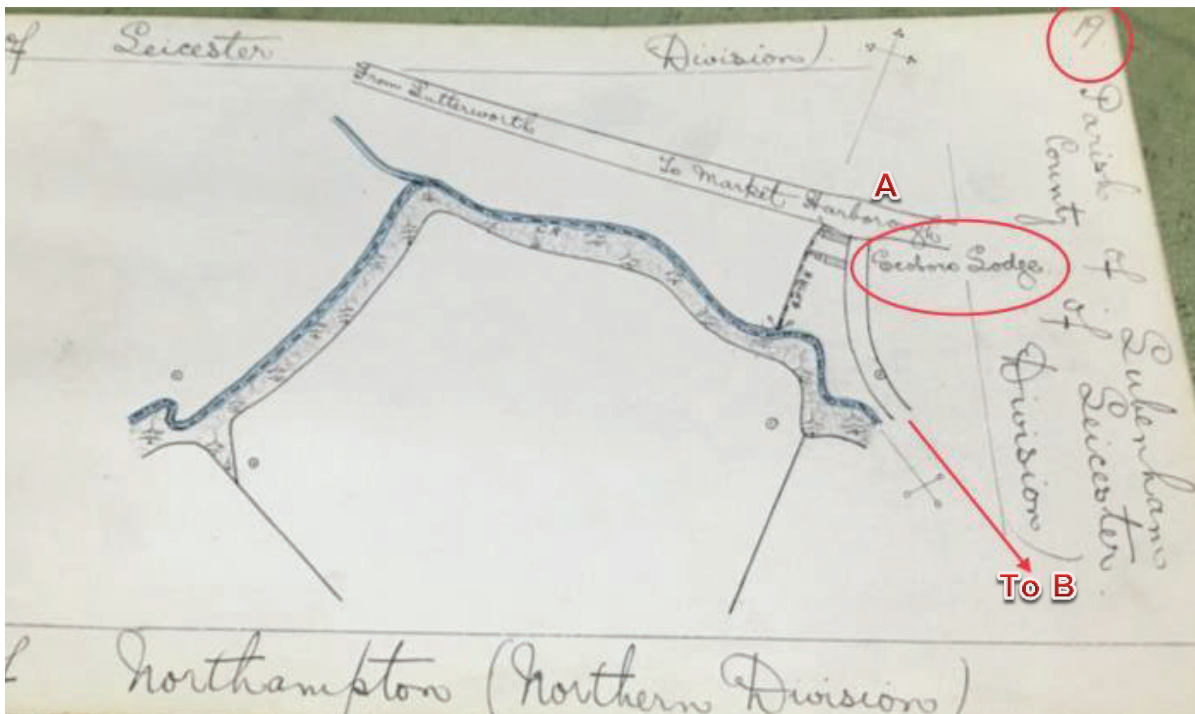
Date. Marston Trussell parish boundary remarks record book OS26/7405 produced circa 1898

Relevance. The Ordnance Survey was given the duty of ascertaining and recording all public boundaries by the Ordnance Survey Act 1841. Of particular value for determining highway status are the Boundary Sketch Maps (OS 27) and the Boundary Remarks Books (OS 26). These were produced under Parliamentary authority (the 1841 Act), with the power to summon the Clerk of the Peace and any books, maps, papers or other documents he held (s. 5 of the 1841 Act) and under provisions that an offence be committed for obstructing or hindering the surveyor appointed under the 1841 Act (s. 8 of the 1841 Act). The Boundary Sketch Map was advertised for public inspection and the records held in official custody as were the Boundary Remarks Books. The Boundary Sketch Maps show the whole of the parish (sometimes a group of parishes), and indicate which of the Boundary Remark Books is needed to look at a specific section of the parish boundary. The boundary survey was approved by representatives known as meresman, from each parish.

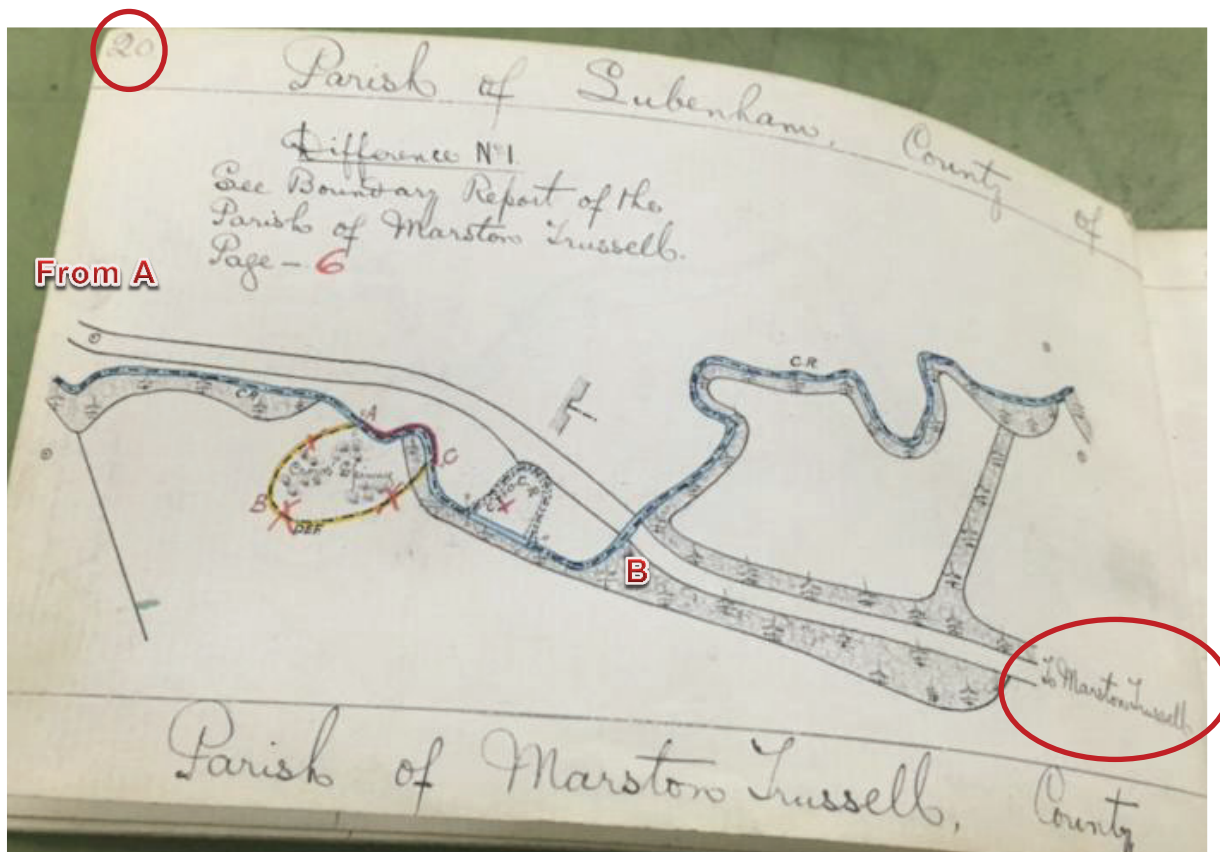
Archive. The extract below is from the Marston Trussell parish boundary remarks record book which is held at The National Archives at Kew document reference OS26/7405.

Meaning. The extracts from the Marston Trussell parish boundary remarks record book with Lubenham parish shows a road coming south from Scoboro Lodge, circled on the first image in the direction of the red arrow. On the second image of the next page in the book, the application route is shown from A to B crossing the river and heading towards Marston Trussell

Assessment. This is very good evidence that the route shown was considered by the two parishes concerned to be a road maintainable by the parishes.



Extract from page 19 of the Marston Trussell boundary remarks book showing a road leaving the Lutterworth to Market Harborough road at Scoboro Lodge going in the direction of the red arrow



Extract from page 20 of the Marston Trussell boundary remarks book with Lubenham parish showing the route from A to B as a road crossing the river and continuing towards Marston Trussell (circled)

Evidence from Maps:

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

Date. William King's 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"

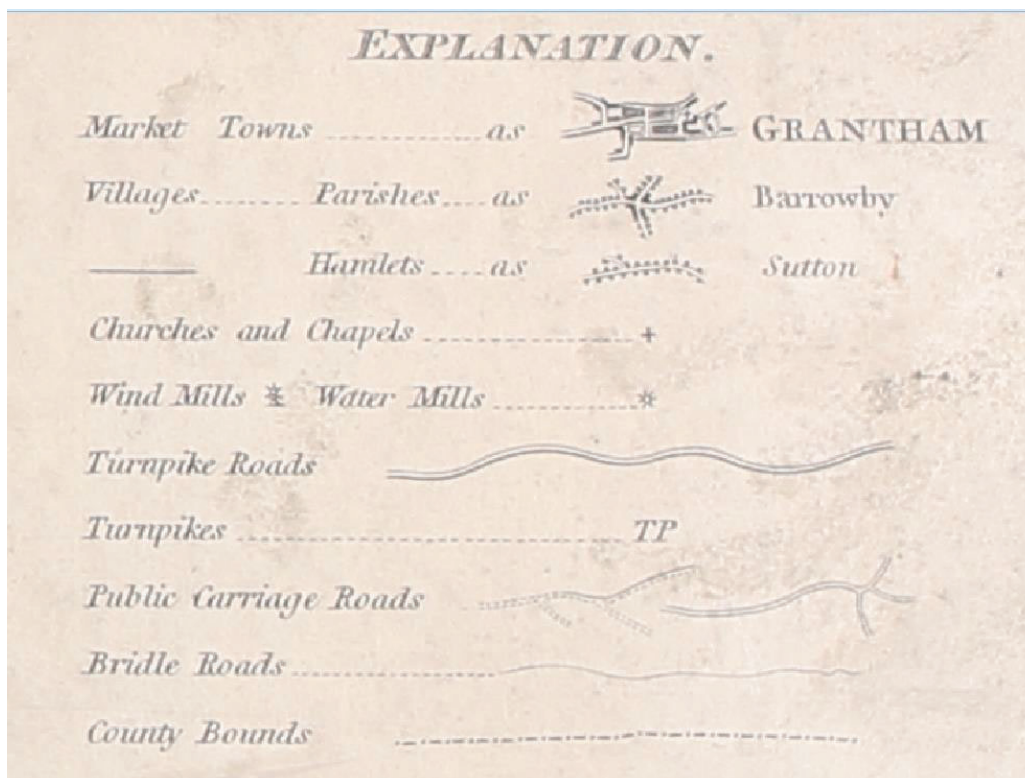
Archive. The extracts from this sheet below were obtained from records held at the County Record Office.

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-231924419/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 through Marston Trussell.

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 170 –Market Harborough (Hills) 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/101168045>

Meaning. The application route is shown on the extract below from A to B as a minimum “second class metalled road”, in a similar style to the existing road it leaves at point A and the existing roads through Marston Trussell.

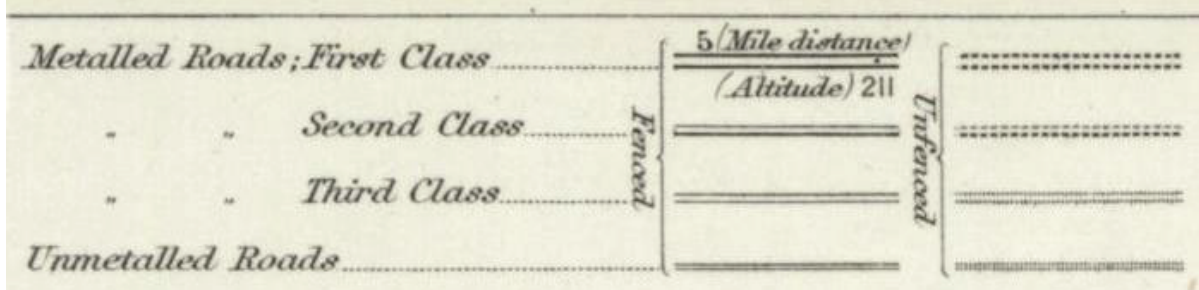
Assessment. Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.

home > OS One-Inch to the mile, England and Wales, Revised New Series



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

home > OS One-Inch to the mile, England and Wales, Revised New Series



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

Ordnance Survey Maps - 25 inch England and Wales

Date. OS County Series Leicestershire L.10 published 1886.

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

Archive. The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114595929>

Meaning. The route is shown on the first image below from A towards B as a coloured road in similar style to the existing road through Marston Trussell. The road is shown with separate title and area, circled and in close up on the second image.

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

Library
nd
Náiseanta

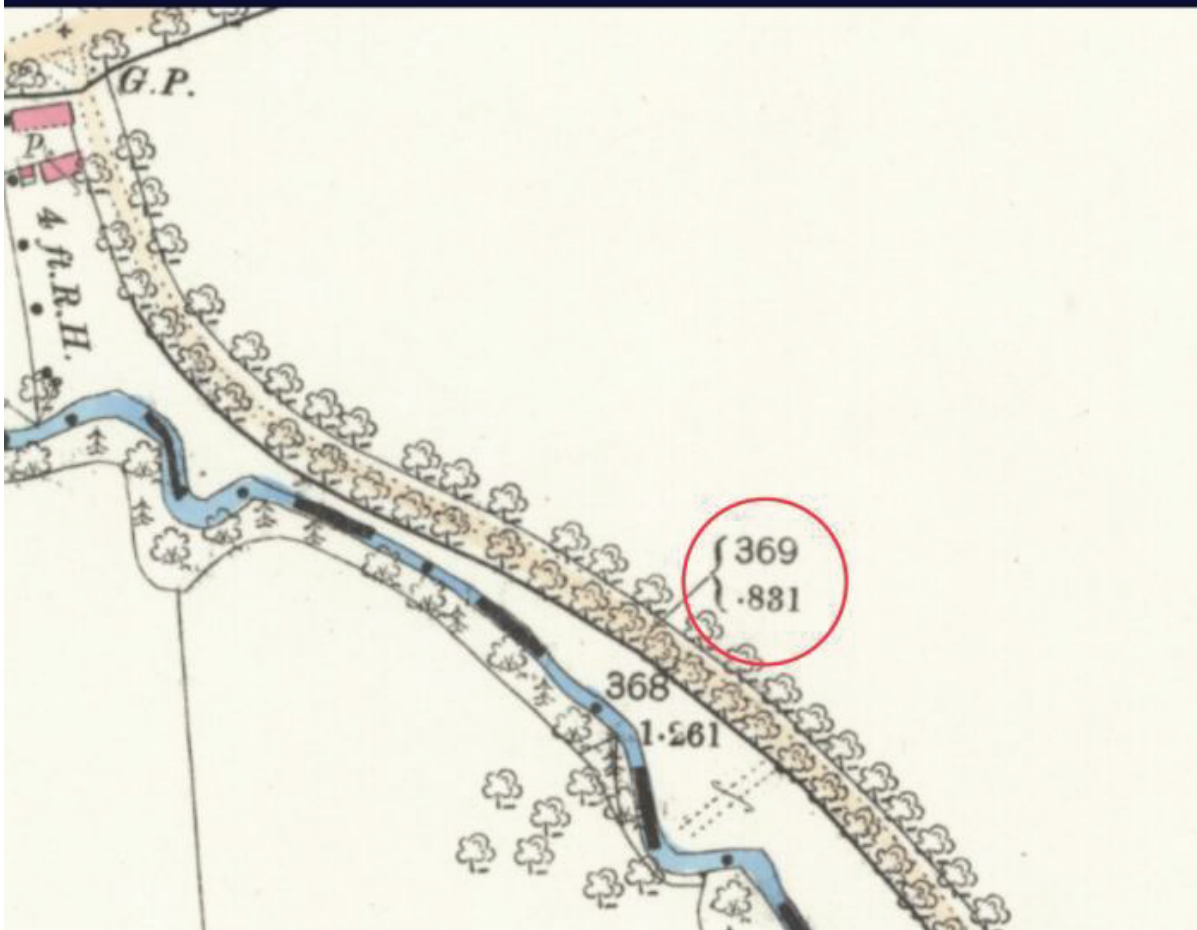
Leicestershire L.10 (Lubenham; Marston Trussel; Theddingworth)
Surveyed: 1884 to 1885
Published: 1886

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 through Marston Trussell south of the Hall

> OS 25 inch England and Wales, 1841-1952



Extract from OS 25" Map showing the application route in close up with separate title circled

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

Date. OS Six inch series Leicestershire L.SW surveyed 1885

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

Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101593311>

Meaning. The route is shown on the image below from A to B as a road in the same style as the existing road through Marston Trussell south of the Hall.

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.

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 south of Marston Trussell Hall

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

Date. OS 25k series 42/68 - A 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/207352148>

Meaning. The application route is shown on the extract below from A to B as a road in the same style as the existing road south of Marston Trussell Hall.

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. 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.

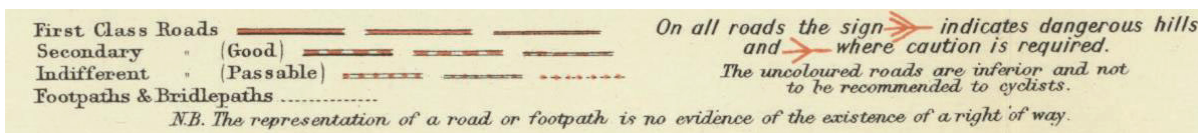
Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131065>

Meaning. The application route is shown on the extract below from A to B as an “secondary road” as shown on the key in the second image, and in the same style as the existing road through Marston Trussell.

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 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

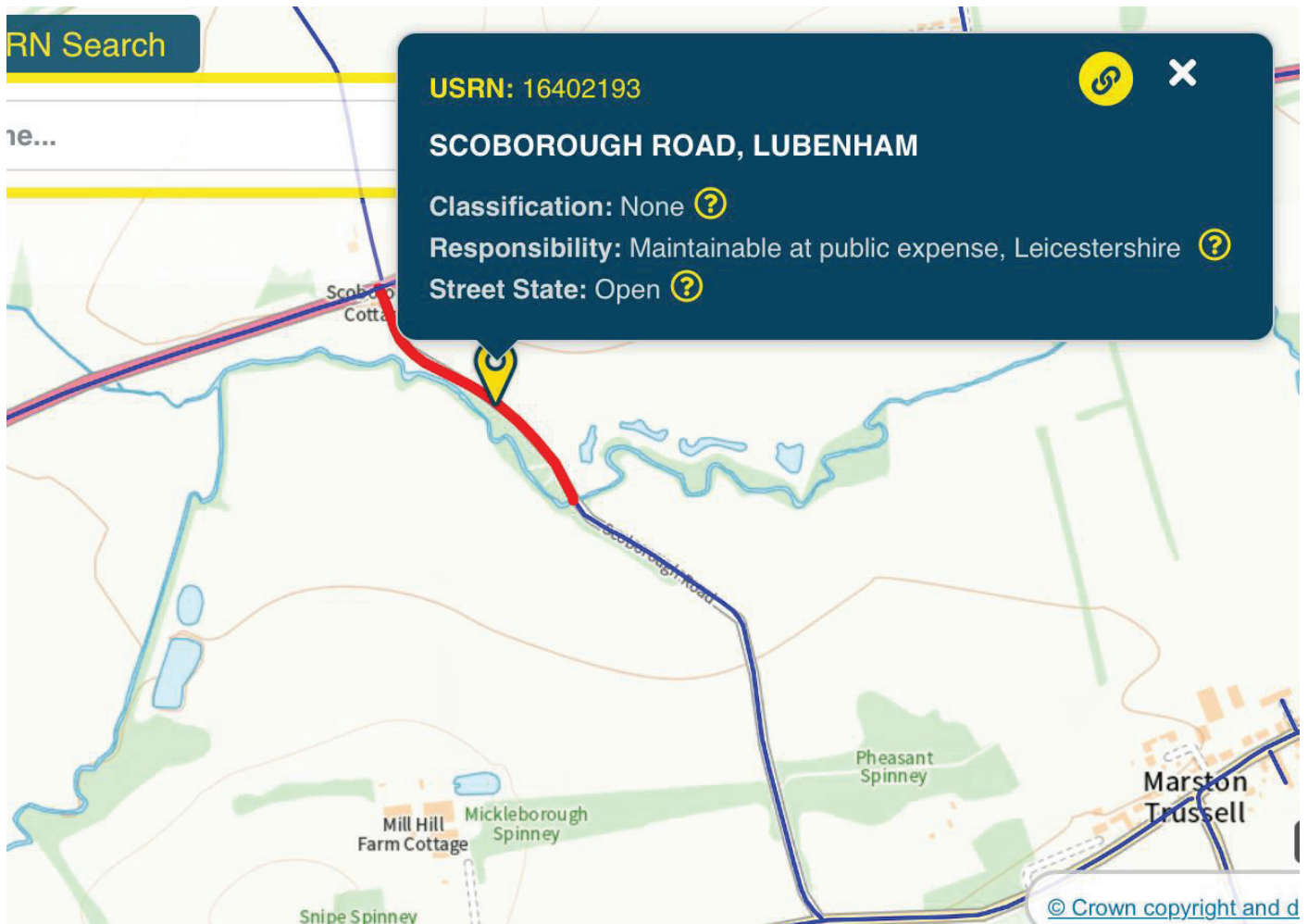
Date. The current record of list of streets that is maintainable at the public expense.

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 16402193 and described as "Scoborough Road, Lubenham" and recorded as maintainable at public expense. However as the route is not fully tarmacked and crosses a ford from an unsurfaced road a DMMO application is necessary to establish status.

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 August 2020.

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 on the image below 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.



Extract from the INSPIRE mapping with approximate line of application route indicated from A to B

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: 21 May 2021