

WILDLIFE AND COUNTRYSIDE ACT 1981**Definitive Map Modification Order Application**

For a route along part of Drove Lane in Market Lavington to be shown as a bridleway.

Applicant's Reference: AW384**13th July 2020**

Version	Date
1	13.7.2020

Quick reference path facts to assist the surveying authority in its investigation	
OS County Series map	Wiltshire XL.14
Modern Explorer map	143 Warminster & Trowbridge and 130 Salisbury & Stonehenge
Grid References	SU01085533 to SU0142954966
Land Registry	Unregistered

1. [REDACTED] I am the applicant for the order. My rights of way experience stems from having been a volunteer access and bridleways officer for the British Horse Society in Wiltshire since 2015, and from having ridden the bridleways and byways in the Marlborough area since about 2000.
2. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 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:
 1. Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Enclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 2. 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).
 3. Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
 4. 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

3. The application route is shown on the application map running from point A (grid reference SU01085533) in south-easterly direction to point B (grid reference SU0142954966).
4. The application route is not recorded on the Definitive Map for Wiltshire.
5. The application route was not found on the List of Streets as of July 2019. From the eastern end of the application route the continuation of Drove Lane is on the List of Streets.

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

6. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows that, 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.

Documents referred to in evidence are in general held at either the Wiltshire and Swindon History Centre, Chippenham (WSHC), The National Archives, Kew (TNA), the National Library of Scotland (NLS) or the Wiltshire County Council Rights of Way dept..

The Wiltshire Tithe maps from the WSHC have been uploaded to Know Your Place Wiltshire (<http://maps.bristol.gov.uk/kyp/?edition=wilts>) (KYPW)

7. **Andrews and Dury's 2" Map of Wiltshire Sheet 8 (1773)**

a. **Relevance.**

This was made for sale to the travelling public and so would aim to show routes that the public could use. It was produced as a result of an independent survey. It does not have a key.

b. **Archives.** WCC ROW Dept (Facsimile)

c. **Meaning.**

The entire application route is shown clearly as a minor road, fenced but unfenced in places

d. **Assessment.**

The application route is shown as a minor road, part of the local road network.

8. **West Lavington Tithe Award**

a. **Date.** Agreement: 6th Sept. 1838, Confirmed 30 Sept 1841, Map Sept. 28 1840

b. **Relevance.**

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.

First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (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.

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 roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the 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 tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status.

c. **Archives.** WSHC, Ref. D/1/25/T/A/West Lavington
TNA, Map IR 30/38/168, Apportionment Roll IR 29/38/168

d. **Meaning.**

The tithe map is coloured, although the one at The National Archives is physically available only on special request and must otherwise be accessed through *The Genealogist* website. The digitised version on that website is in black and white.

The application route is shown bounded by two solid lines and unnumbered, unlike the land on both sides of it.

It is shown similarly to roads to which it connects, including roads leading out of the parish (to East Lavington and to Easterton) at its northern end.

Plots adjacent to the application route (e.g. plot 754) are listed in the Apportionment Roll under Fiddington Tithing. The last entry on the Summary Page for Fiddington Tithing is "Roads 3 2 24" (3 acres 2 roods 24 perches)

WSHC copies of the Wiltshire Tithe maps has been scanned and loaded to the "Know Your Place" website (<http://maps.bristol.gov.uk/kyp/?edition=wilts> in colour. The website does not hold the maps as such, but has juxtaposed them together in a mosaic that attempts to provide a view across adjoining parishes.

This shows the application route coloured yellowy brown.

e. Assessment.

This is 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 unnumbered and shown in the same manner on the tithe map as other public roads in the area. Its area is included under "Public Roads" in the Apportionment Roll.

This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.

9. **Ordnance Survey 25" Wiltshire Sheet XL.14 First Edition**

a. Date.

The First Edition of OS Sheet Wiltshire XL.14 was surveyed in 1885 and published in 1886.

b. Relevance.

The OS County Series 25 inch mapping was predominantly used for professional purposes rather than for navigation. They are detailed enough to show gates/barriers on roads, tracks and paths. Parcels of land are numbered and areas are shown either under the parcel number or in separate "Area Books" (on some First Edition sheets). Second edition and later maps generally carry the disclaimer "The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way". However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn. Additionally, on the first edition only, colour was used on some sheets to give significance to certain features (roads, buildings, water features, etc.)

c. Archive. The extracts from this sheet were obtained from the National Library of Scotland at <https://maps.nls.uk/view/120377973>

d. Meaning.

Sheet XL.14 is coloured.

The application route is the western part of a fenced, yellowy brown strip of land, numbered (200) and measured (2.364) separately from the land adjoining it. It is not labelled F.P.

At its western end it connects without gates to a sienna coloured road.

e. Assessment.

This is evidence of the existence of the application route in 1886.

That the land of which the application route is part is separately numbered and measured suggests it was not considered part of the land on either side and suggests it was a public road:

“It was the practice of the OS to allocate parcel numbers to distinct pieces of land and number them. These are numbered and recorded on the maps as acreages. Where applicable parcels were braced with adjoining parcels – for example, a track across a field may be braced in with the surrounding land and measured with that. However, some features *'are always separately numbered and measured irrespective of their size. They include railways in rural areas (in built up areas they may form part of the 'Town area'), all public roads, whether fenced or unfenced and foreshore and tidal water.'*”. From Ordnance Survey Maps, a descriptive manual by J B Harley (published by the Ordnance Survey in 1975).

It is not conclusive of vehicular rights that the route is neither labelled “F.P” nor “B.R” but suggestive of them.

As the application route is shown connecting to another clearly depicted route the applicant concludes that the application route was part of the local public road network.

10. Ordnance Survey 6”, 1st Edition, Wiltshire Sheet XL (1888)

a. Date. OS Wiltshire Sheet XL was surveyed in 1885 and published in 1888.

b. Relevance.

The 6” maps were based on and derived from the 25” series. Consequently they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.

c. Archive. The extracts from this sheet were obtained from the National Library of Scotland at <https://maps.nls.uk/view/102348822> .

The conventions used to show detail are from OS6in Conventional Signs (WSHC), held with the 6inch maps.

d. Meaning.

The 6” Maps differentiate between main and minor roads through the use of a bold boundary on one side of a Main road. The application route is shown as a fenced “Minor Road”.

e. Assessment.

This map supports the inference drawn from the 25” maps, that the route is part of the local vehicular road network.

11. Ordnance Survey One-inch Revised New Series Sheet 282 Devizes (Outline)

a. Date. OS sheet 282 Devizes (Outline) was published in 1898.

b. Relevance.

A principal purpose of the one-inch (1:63360) map, which was published between 1801 and 1976 was to provide military and civilian users with a reliable travelling map. It was marketed as the primary tourist map for motorists and cyclists. The utility of this map scale was reiterated, not only in Parliamentary publications¹, but also in the advertising material issued by the Ordnance Survey². There is no doubt, therefore, that in terms of Highways Act 1980 s.32, a main purpose of the one-inch map can be stated to have been to serve as travelling map for the public

c. Archive.

1 Report from the Select Committee on Ordnance Survey of Scotland. Ordered by The House of Commons to be printed 6 May 1856. In discussing the merits of various scales, it was asserted that the one-inch scale was “only of use for travelling purposes” (para. 53).

2 Examples of advertising matter are illustrated are described in Nicholson, T. (1991). “Ordnance Survey ephemera to 1939”, The Map collector, 54, 2-7.

The extracts from this sheet were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168780>.

d. Meaning.

The map has a key.

The application route is the western end of a strip of land shown as an Unmetalled Road.

e. Assessment.

This shows the physical existence in 1898 of an “Unmetalled Road” running along the line of the application route.

As the map represents footpaths differently it suggests that the application route was at least a bridleway

It is indistinguishable in depiction from nearby and adjoining routes, suggesting similar status to those routes.

As a main purpose of the one-inch map can be stated to have been to serve as a travelling map for the public, the likelihood must be that a route shown as a Minor Road on such a map must have had public vehicular rights unless the route clearly lead only to, say, a farmstead or private house. In this case that is not so.

12. Inland Revenue Valuation Record Plan Wiltshire 25 inch Sheet XL.14

a. Date. The valuation records were produced in the few years after 1910.

b. Relevance. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’, and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

We note that a highway authority was a rating authority. There was no obligation for a landowner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

The Inland Revenue Valuation books - known as Domesday Books but properly entitled Duties on Land Values - were prepared by the Inspector of Taxes and contain details of the valuation of land for the purposes of duty under the Finance Act (1909-10), 1910. They provide basic information relative to the valuation of each property, including the valuation assessment number, map reference, owner, occupier, situation, description and extent, as well as details of deductions (i.e. discounts) for things such as rights of way on the property. Surviving Domesday Books were presented to local record offices under s.3(6) of the Public Records Act, 1958.

Finance Act records were not available at the time of the creation of the Definitive Map and so would not have been considered amongst historical evidence regarding the rights along a route.

- c. Archive. TNA holds one record passed from the IR Valuation Offices that covers the application route, reference IR 125/11/463.

- d. Meaning.

The entire length of Drove Lane, including the application route, is shown as a white road.

- e. Assessment.

The application route is a “white road” i.e. unvalued.

As the land constituting this part of the application route is unvalued, this suggests it belongs to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.

The legislation is sufficiently clear that anyone arguing that white road status means something other than that the route is a public vehicular highway must show under which other exception from valuation this part of the application route falls.

13. Ministry of Food National Farm Survey 1941-43 (TNA Ref. MAF 73/45/40)

- a. Date. 1941-42

- b. Relevance

In April 1941 MAF authorised a survey of every farm and holding of five acres or more, giving rise to the following documents:

- A Farm Record with information on conditions of tenure and occupation; the natural state of the farm, including fertility; the adequacy of equipment, water and electricity supplies; the degree of infestation with weeds or pests; and the management condition.
- A census return for 4 June 1941 including statistics of crop acreages, livestock numbers and information on rent and length of occupancy
- A map of the farm showing the farm boundaries, on an OS base map.

The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a colour wash, and its code number is added in black ink. The relevance of these records is that where unproductive land (such as a vehicular highway or river) runs between holdings, it is excluded from the holdings.

These records were not available at the time of the creation of the Definitive Map and so could not have been considered when deciding what rights applied along a route.

The primary purpose of these records was unrelated to the depiction of rights of way.

- c. Archive

Wiltshire sheet XL.14 is held at The National Archives under reference MAF/73/45/40. This survey used the OS 25inch Edition of 1936 as its base map.

- d. Meaning

Wiltshire sheet XL.14 shows the application route excluded from adjacent land. It is clearly excluded, from example, from holding 78/9 which lies on both sides of it.

Drove Lane is labelled Cemetery Lane on the Edition of 1936.

e. Assessment

Its exclusion from the property on either side shows that that part of the application route was not part of either adjacent holding.

The valuer considered the route to be excluded from the agricultural holdings, and this only occurred where unproductive land fell between holdings. Carriageways are unproductive land. Inspection of the route shows it was not unproductive land of another sort (like a river, or woods)

Although the primary purpose of these records was unrelated to the subject of rights of way the depiction of a large section of the application route as separate from the adjacent land holdings merits explanation. Taken in conjunction with other evidence such as the Tithe Maps and Finance Act records the simplest and most convincing explanation is that the application route was, at the time of the survey around 1941-42, considered to be a public carriageway.

14. **Ordnance Survey 1:25,000 Map, Sheet SU05-B**

a. Date. 1958

b. Relevance.

Ordnance Survey maps have nearly always carried the disclaimer “The representation on this map of a Road, Track or Footpath is no evidence of a right of way”. Accordingly, they provide evidence only of physical existence unless special circumstances allow other inferences to be drawn.

The map does not contain a key – Conventional Signs were printed separately to save paper (see OS 1:25,000 Conventional Signs (WSHC))

c. Archive. The extracts from this sheet were obtained from the National Library of Scotland at <https://maps.nls.uk/view/95749815>.

d. Meaning.

The application route is shown as fenced “Other Roads ... (not classified by the Ministry of Transport)”. Footpaths and Bridle Roads are depicted differently. The remainder of Drove Lane is shown as “Roads, Ministry of Transport Class B”

e. Assessment.

This map provides evidence of the continuing physical existence of the route in 1958 as a part of the local road network and is suggestive of its status as more than a footpath or bridleway.

15. **Land Registry INSPIRE database (2020)**

a. Date. This screenshot from the Land Registry INSPIRE database was taken in July 2020.

b. Relevance.

The Land Registry INSPIRE Index Polygon 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.

The INSPIRE Id shown on an area of land can be used to look up the Title and/or Plan for that area.

c. Archive.

The publicly available INSPIRE dataset is found at <https://data.gov.uk>.

d. Meaning.

The application route is unnumbered (i.e. without an INSPIRE id) and hence unregistered land, with numbered plots of land on both sides apart from one plot which is also unnumbered.

e. Assessment.

Vehicular highways of ancient origin are often on unregistered land. Where the adjoining land has been registered, but the ancient vehicular highway has not been claimed as part of either land ownership, this is supportive evidence of the ancient vehicular highway status. In the absence of any other explanation why neither adjoining landowner would lay claim to the land the applicant draws the conclusion that this supports the view that the unnumbered part of the application route is a vehicular highway of ancient origin.

CONCLUSIONS

This document presents evidence from the last two centuries consistently indicates that the application route was part of the wider roads network. While no single piece of evidence is conclusive in its own right, as a whole it paints a compelling 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 rights existed before the operation of the Natural Environment and Rural Communities Act 2006.

The applicant requests the surveying authority update the application route on the definitive map to be a bridleway. It is arguable that the evidence suggests that carriageway rights exists over the route, however due to the current construction of the law and the proposed extinguishment of unrecorded rights in 2026 the application will be made for bridleway status with an acknowledgement that the surveying authority should make an order for Restricted Byway status if they consider that merited.