

RECORD OF OFFICER DECISION

WILDLIFE AND COUNTRYSIDE ACT 1981 S.53

APPLICATIONS TO ADD TWO FOOTPATHS IN THE PARISH OF LATTON

APPLICATION D/2023/002

Name	Signature	Date	Approved Yes/No
Sally Madgwick As Definitive Map and Highway Records Manager, pursuant to section 107 of Scheme of Sub-Delegation dated 08/04/25, I am authorised under Wiltshire Council's Constitution to make the above decision on behalf of Parvis Khansari, Corporate Director Place		08 April 2025	Yes
Chris Clark- Head of Local Highways	For information only		
Report From:	Ali Roberts Definitive Map Officer		
Date of Report:	4 April 2025		
Return to:	Ali Roberts		

This decision is in accordance with the relevant requirements in Part 1 and the Local Authorities (Executive Arrangements) (Meetings and access to information)(England) Regulations 2012

SUMMARY:

1. Wiltshire Council are in receipt of an application numbered D/2023/002 made under Section 53 of the Wildlife and Countryside Act 1981 (WCA81), to modify the definitive map and statement for the area by adding 2 Footpaths in the parish of Latton. The application is based on historical documentary evidence that the applicant believes demonstrate the public rights applied for exist and should be recorded as such in the definitive map and statement for the area.

2. Wiltshire Council are acting under its duty under s.53(3)(c)(i) of the WCA81, in determining the application, where the discovery of evidence which, when considered with all other relevant evidence available to them, show that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path , a restricted byway or, subject to section 54A, a byway open to all traffic.
3. Following an initial public consultation on the matters and the investigation of historical evidence submitted as part of the application and discovered at the Wiltshire and Swindon History Centre and held by Wiltshire Council, officers found that an order should be made to record Path 7 as per historical evidence. Of particular note evidentially is the 1805 Down Ampney, Latton and Eisey Inclosure Award, which awarded the route as a *“Public Footway from Latton to Driffild and Private Carriage Road and Driftway”* and the Ordnance Survey Maps dated 1816 and 1828 showing the route was set out. The full body of historical evidence is explained in the report.
4. The evidence for application D/2023/002 does not demonstrate, that it can be reasonably alleged that Path 8 should be recorded. The 1805 Down Ampney, Latton and Eisey Inclosure Award Path 8 (described in the side note as *“Public Footway from Cirencester to Down Ampney”*), and Path 9 (described in the side note as *“the same public footway continued”*) should be read together in their entirety. It is clear that the public footway leads from the Cricklade and Cirencester Turnpike Road to its usual entrance into Mowsdowns and Mowsdown Lane, which is an ancient inclosure and not set out in the Award (Path 8). This same public footway then continues passing over the Southwestside of Mowsdowns, through and over Charlham Field in its usual course to its entrance into an ancient Inclosure called Ampney Close (Path 9). The sidenote for Path 8 states the public footway is from Cirencester to Down Ampney, *“Public Footway from Cirencester to Down Ampney”*, Down Ampney is south east which is the direction of Path 9. However, Mowsdown Lane, is east north east leading away from Down Ampney. Path 8 and Path 9 are already recorded on the Definitive Map of Public Rights of Way as Bridleway Latton 6. As such it fails to meet the tests of S.53 (3)(c)(i). The applicant will be informed of their right to appeal within 28 days of any decision letter to the Secretary of State under schedule 14 of the WCA81.

RECOMMENDATION

5. That Wiltshire Council makes a definitive map modification order to record public Path 7 to be known as Footpath Latton no.24. The Footpath is to be recorded in the parish of Latton from
Record of Officer Decision- application D/2023/002

Croft Lane, at OS Grid Reference SU 0916-9593 heading in a north north westerly direction to Down Ampney Road with a recorded width of 9.14 metres and continuing in a northerly direction to the Gloucestershire boundary at Folly Wood, OS Grid Reference SU 0848-9814, with a recorded width of 6 metres, a total distance of approximately 4,400 metres. If no objections are received once it has been duly advertised the Order should be confirmed and the definitive map and statement altered accordingly.

DECISION REPORT
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO ADD TWO FOOTPATHS IN THE PARISH OF LATTON

1. Application

Application number: D/2023/002

Application date: 16 March 2023

Applicant: Charles Townley

█ Milton Grove

Stroud

Gloucestershire

GL1 █

Application to: Add 2 footpaths in the parish of Latton.

Footpath 1 leads from Croft Lane, Latton, SN6 6DP, at OS Grid Reference SU 0916-9593 heading in a north north westerly direction to Down Ampney Road and continuing in a northerly direction to the Gloucestershire boundary at Folly Wood, OS Grid Reference SU 0848-9814, a distance of approximately 4,400 metres. This path will be referred to as Path 7

Footpath 2 leads from Bridleway Latton 6, GL7 5QY, at OS Grid Reference SU 0793-9742 heading in a north easterly direction to its intersection with Path 7 at the southeast corner of Vines Brake Wood at OS Grid Reference SU 0855-9790, a distance of approximately 800 metres. This Path will be referred to as Path 8

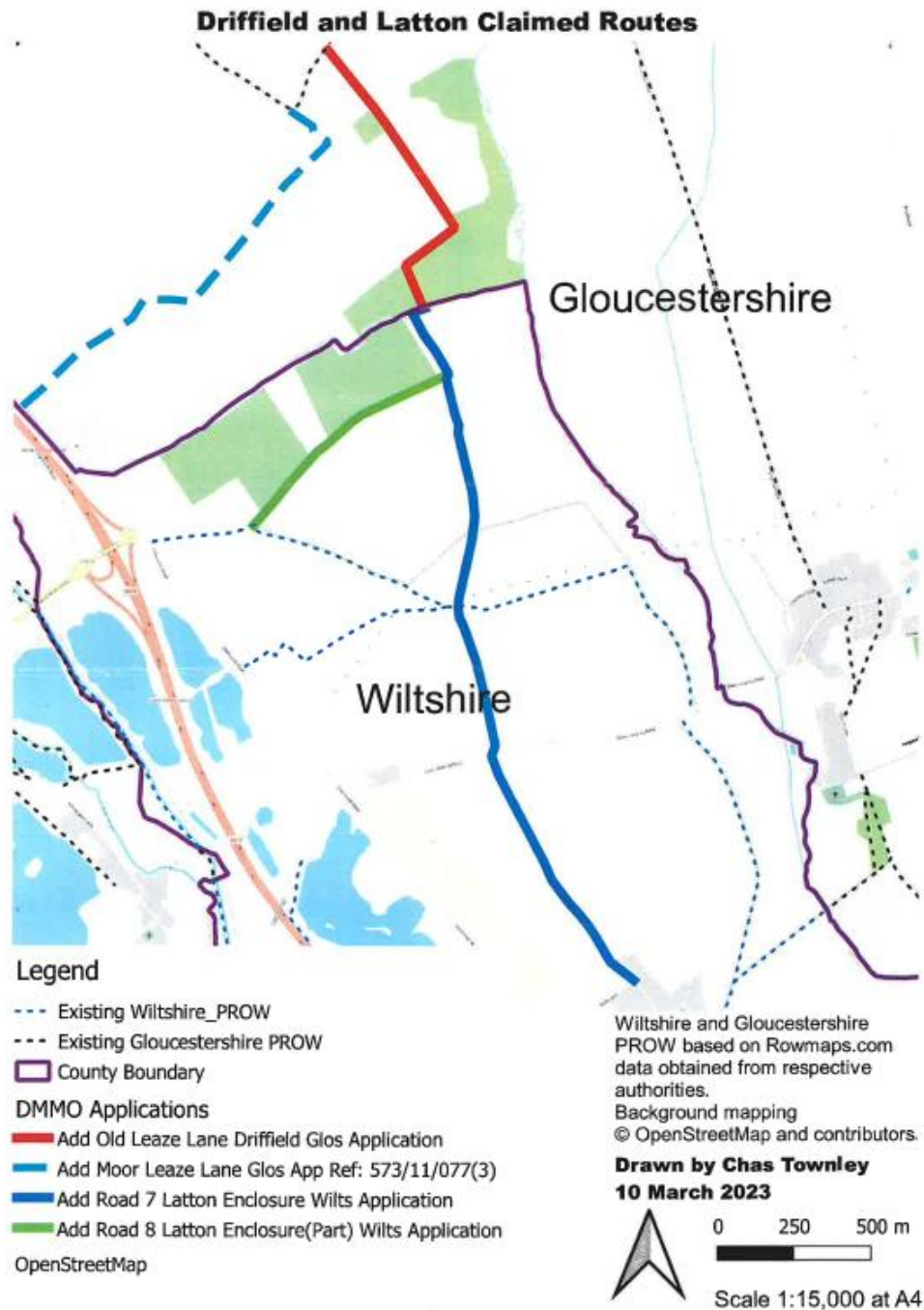
Application Width: The application seeks to record the width for both footpaths at 6.1 metres (20 feet) as per the Latton and Eisley inclosure award of 1805

Comprises: Form 1 – Notice of an application for Modification Order

Form 3 - Certificate of Service of notice of application for
Modification Order served on;
David Wood, Director
Farmcare Trading Limited
Gibbs Building
215 Euston Road
London
NW1 2BF

Applicant also contacted Bidwell and Savills and stating in an email dated 20 May 2024 *“I recently became aware that the Down Ampney estate is being marketed for sale and I am therefore writing to you in respect of the public rights of way affecting this landholding. I am presently pursuing a Definitive Map Modification Order Application to Wiltshire County Council to record two rights of way across the estate, which are included in the Latton Enclosure award, one of which links to a claims I have submitted to Gloucestershire County Council for a rights of way in Driffield Parish The reference for the Wiltshire application is D/2023/002 and the Gloucestershire applications are 573/11/077(3) and 573/11/077(4). I have attached a copy of the application to Wiltshire which includes a map showing the claimed routes in both Driffield and Latton parishes. Notice of this application was served on Farmcare at the time of the application last year. I just wanted to seek assurance that information about the applications will be notified to the intended purchasers when rights of way information is shared with them.”* This email was acknowledged by Bidwells 24 May 2024.

Application map

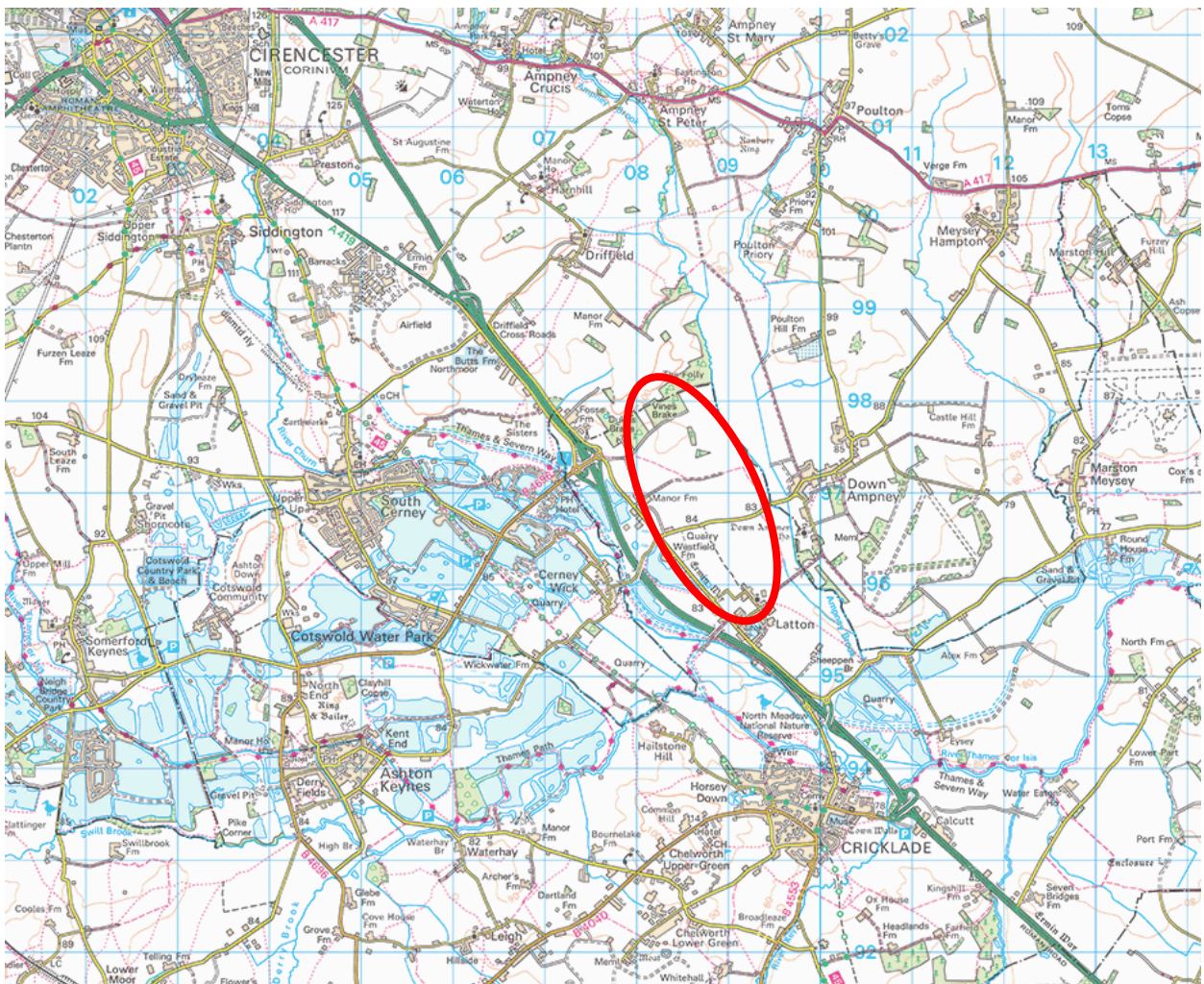


2. Purpose of Report

2.1. To determine an application, made under Section 53(2) of the Wildlife and Countryside Act 1981, to add 2 Footpaths in the parish of Latton.

3. Location and DMMO plan

- 3.1 There are 2 claimed routes; Path 7 is located to the north of Latton village and heads north north west, crossing Down Ampney Road and continuing north to the Gloucestershire County Boundary. Path 8 runs from Ermin Street (Now Cirencester Road), the first section heading east is now recorded as Bridleway Latton 6 (LATT6), the DMMO application then states Path 8 heads north east to the south eastern corner of Vines Brake Wood.

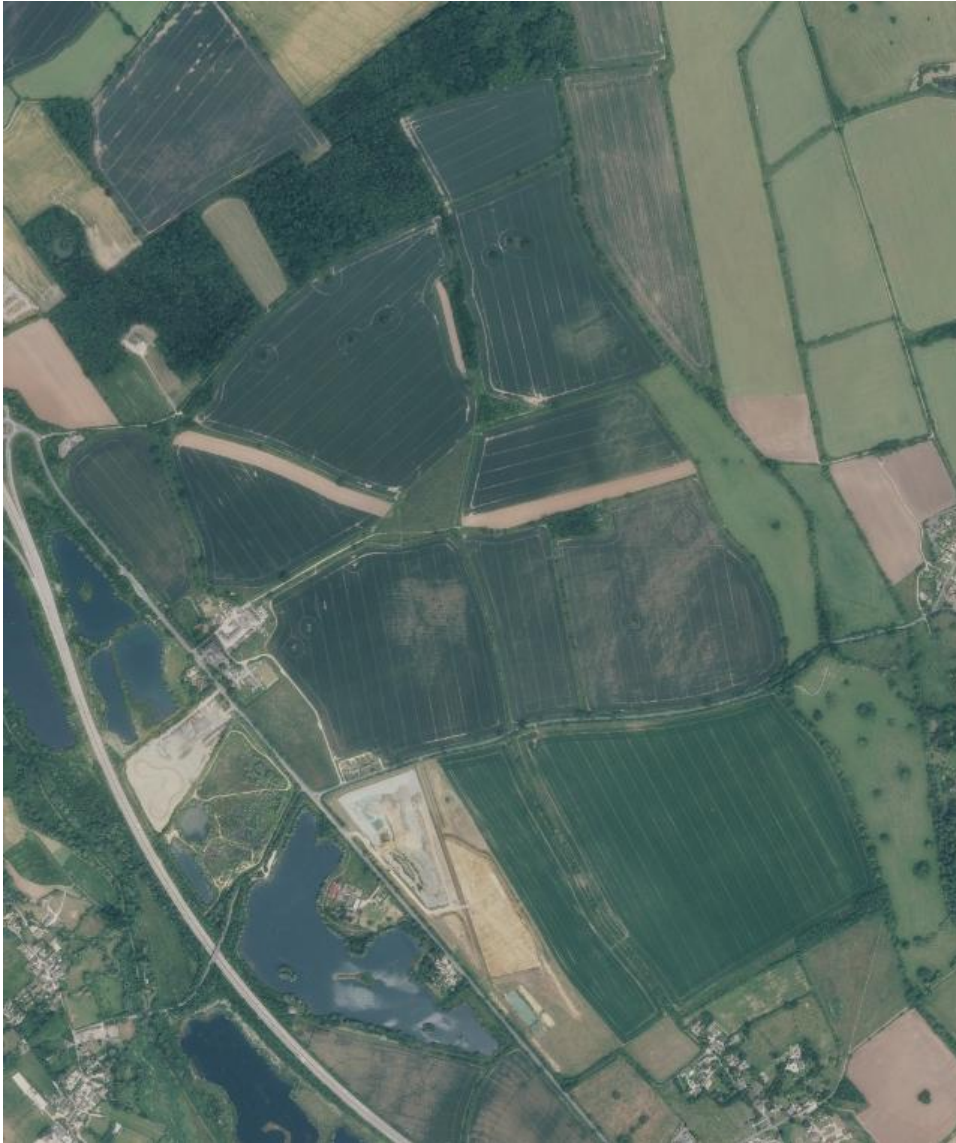


3.2 **Plan of DMMO D/2023/002 Path 7 and Path 8** showing the application paths and their points referred to throughout the decision report. Path 7 Points A-B-C-D and Path 8 Points F-E-C. Path 9 is also shown Points E-H-I



4 Photographs

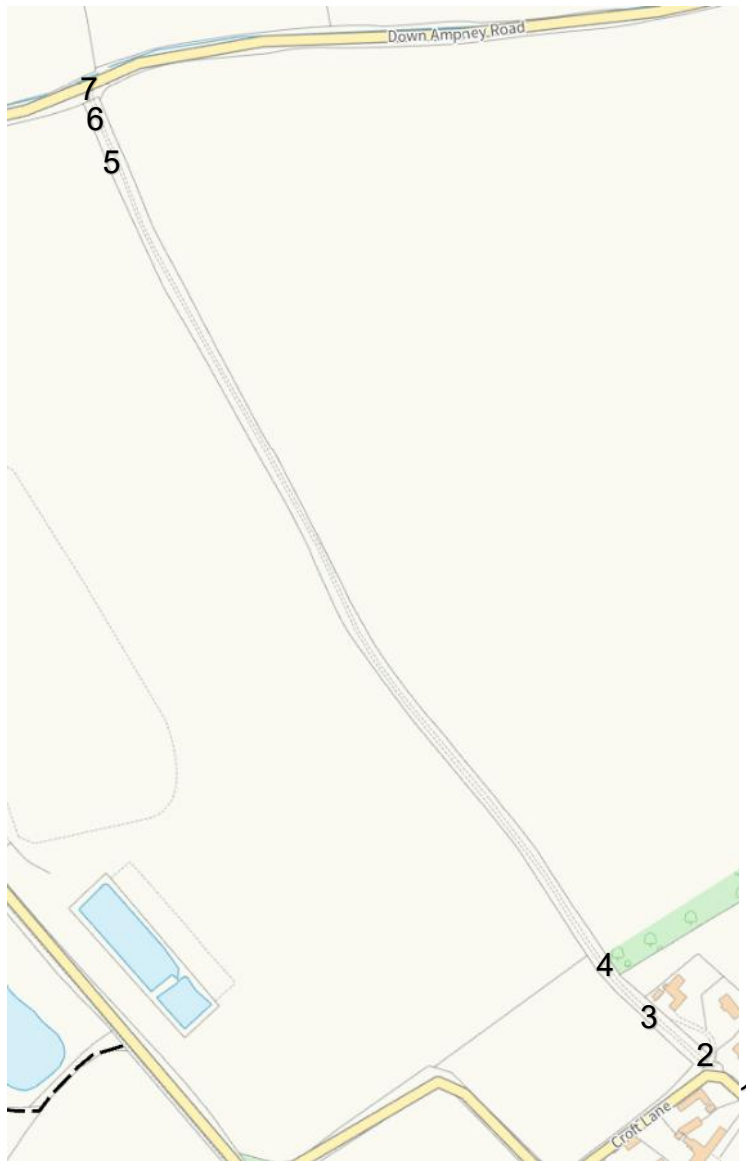
4.1 Aerial photo of the area the claimed Footpaths are located.



4.2 Site photographs taken on the 2 paths on 17 January 2025.

4.3 **Path 7 Points A-B** - from Croft Lane, Latton village to Down Ampney Road. Photograph 1 and 2 show that there is an access to a lane leading from Croft Lane. Photograph 3 shows a used route for this section which appears to head east towards LATT5. Photograph 4 shows the route is impassable at this point with heavy overgrowth. The heavy overgrowth continues along the route to its access at Down Ampney 5 at photograph 5. A ditch can be seen at photograph 6

on the eastern boundary of the route. From Down Ampney Road there is a field gate across the route which can be seen at photograph 7.





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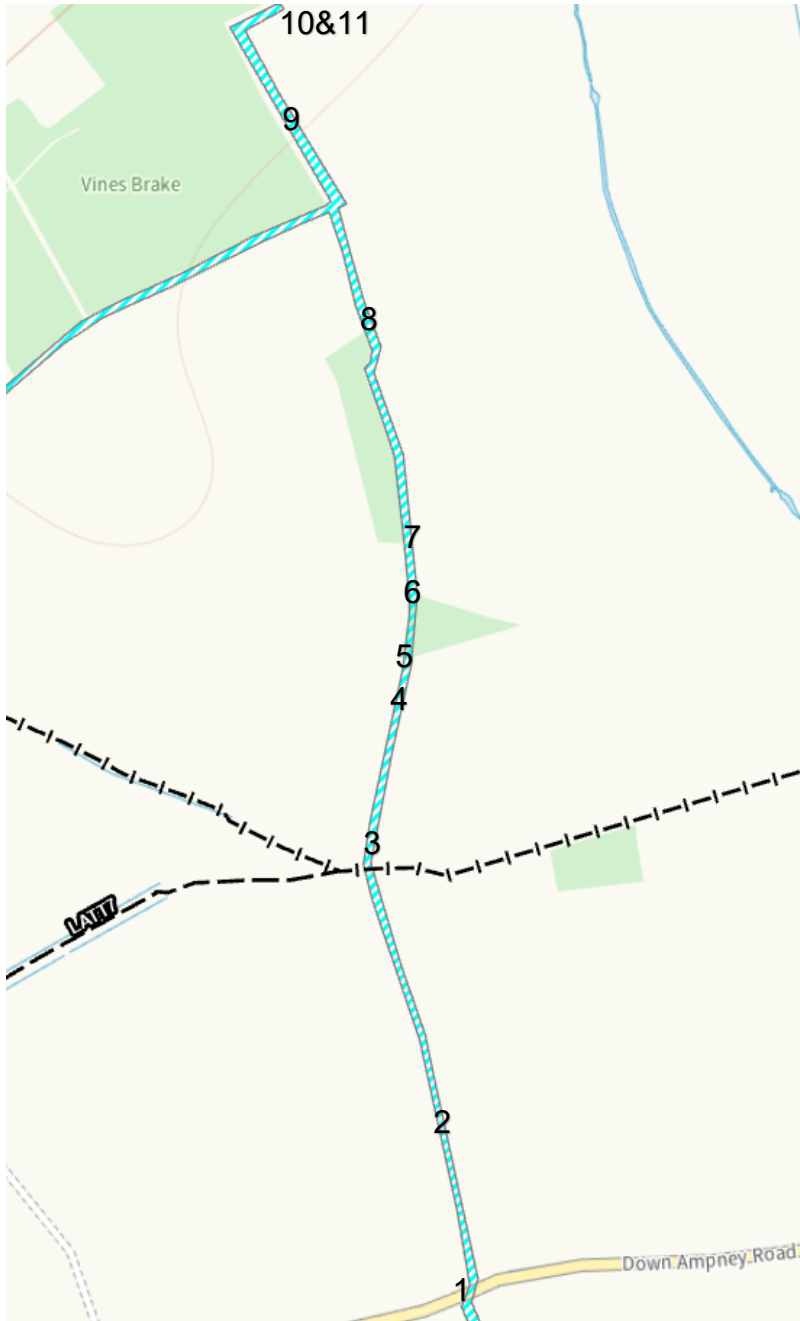
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7

- 4.4 **Path 7 Points B-C-D** - from Down Ampney Road to the Gloucestershire boarder. From Down Ampney Road there is a double locked field gate at the access point of the path. There appears to be a walked route along the path shown at Photograph 2. There is a field edge along the path at Photograph 3. Photograph 4 shows the crossing point from the east of the hedge line to the west of the hedge line and continues unobstructed west of the small copse at Photograph 5 and 6. Photograph 7 shows the heavy overgrowth at the point where the path crosses from the west of the southern small copse to the east of the northern

small copse. However, Photograph 8 shows the route is unobstructed once past this point. The route continues unobstructed at Photograph 9 to the east of Vines Brake. Photograph 10 and 11 shows a gate at the Gloucester boundary.







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8



4.5 **Path 8 Points F-E-C** – From Points F-E, now recorded as LATT6, then from its intersection with LATT6 to the south eastern corner of Vines Brake. Photograph 1 shows a field gate at the access point from LATT6 with a sign that reads “*PRIVATE Keep Out*”. Photograph 2, 3 and 4 shows a wide, unobstructed route. Photograph 5 shows a small bridge crossing the ditch heading south. Photograph 6 is of the access point at the south eastern corner of Vines Brake.





5 Registered Landowner

5.1 Title Number GR215527
Farmcare Trading Limited
50 New Bond Street
London
W1S 1BJ

6 Initial Consultation

- 6.1 Wiltshire Council undertook an initial consultation regarding the application on 21 October 2024, consultees included, Latton Parish Council, Council Member for Urchfont and Latton Division, the landowners and landowner representatives, statutory consultees, user groups and local residents. The following replies were received. A copy of that letter can be seen below.

“Wildlife and Countryside Act 1981 – Section 53

Application to add Two Footpaths in the parish of Latton.

Wiltshire Council are in receipt of an application, dated 16 March 2023, to record 2 public footpaths in the parish of Latton.

Footpath 1 leads from Croft Lane, Latton, SN6 6DP, at OS Grid Reference SU 0916-9593 heading in a north north westerly direction to Down Ampney Road and continuing in a northerly direction to the Gloucestershire boundary at Folly Wood, OS Grid Reference SU 0848-9814, a distance of approximately 4,400 metres.

Footpath 2 leads from Bridleway Latton 6, GL7 5QY, at OS Grid Reference SU 0793-9742 heading in a north easterly direction to its intersection with Footpath 1 at the southeast corner of Vines Brake Wood at OS Grid Reference SU 0855-9790, a distance of approximately 800 metres.

The application seeks to record the width for both footpaths at 6.1 metres (20 feet) as per the Latton and Eisley inclosure award of 1805.

A copy of the application plan is attached accompanied by a summary of historical evidence submitted by the applicant in support of the claim.

The Council is now placed under a duty to investigate the available evidence and invites responses and evidence to the application. The council may only consider

evidence as to what public rights subsist over the routes, matters such as the need, desire, environmental and safety matters are not able to be considered as part of this process.

I would be grateful to receive any additional information, comments or representations on this matter, in writing, to ali.roberts@wiltshire.gov.uk or send to Rights of Way and Countryside, County Hall, Bythesea Road, Trowbridge, Wiltshire, BAS14 8JN, not later than 4 December 2024.

The application and the summary of evidence document submitted by the applicant are available to view online on Wiltshire Council's register of DMMO applications which can be found at www.wiltshire.gov.uk/recreation-rights-of-way. The application reference is D/2023/002.

Any responses submitted to this consultation will be available for public inspection in full.

Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>"

6.2 Ramblers

"In our opinion the award of both paths as "public foot ways" in the Latton Inclosure Award is conclusive evidence that public rights of way exist over them, at least on foot.

In regard to the possibility of higher rights, the applicant correctly points out that Dunlop is believed by some commentators to have been wrongly decided, but we also agree that the evidence of higher rights over the whole route is limited, bearing in mind that (a) the width of 20 feet set out by the commissioners does not comply with the minimum width of 30 feet stipulated in the 1801 Inclosure Act for a public carriage road and (b) the route does not link two villages. Even if Old Leaze Lane were to be recorded as a restricted byway, all the northern arms of the routes applied for would terminate on bridleways (we assume that, if there

were any evidence of higher rights over either LATT6 or the bridleway in Driffield parish the applicant would have found this during his research).

However, mapping evidence does suggest that higher rights may exist over the section of Footpath 1 between Croft Lane and Down Ampney Road. OS maps have consistently shown this section as an enclosed road or track since the end of the 19th century and it is also shown as a road on Bartholomew 1897-1907.”

6.3 Malcom Fordham

“I have a number of old maps, digitally held, that clearly show a thoroughfare existing along the same or similar route as the blue line (Road 7/Footpath 1) on the map you have sent out.

They are from :-

Enclosure awards 1800/1805 and maps from 1773, 1816, 1828, 1877, 1885, 1890, 1900, 1903, 1905, 1921, 1947, 1959, 1960, 1961, 1971 and 1975. Some of these map dates may be slightly out, due to revisions.

If you think any of these maps may be helpful please let me know and I can send it/them to you via e-mail.”

6.4 Officers response

“I would be very grateful to receive any evidence you have regarding this case.”

6.5 Lloyd Wigglesworth

“Thank you for sending me details of D/2023/002

I don't think I am an unintelligent man and have read many legal and complicated documents during my career but I have to say I found the communication extremely difficult to understand what is being proposed and where.

My wife also tried to read what you sent and also looked at me blankly and asked me to explain it.

Personally I think you need to try to articulate it again with a map we can recognise if you want much serious response.”

6.6 Officer response

“Under Section 53 of the Wildlife and Countryside Act 1981, it is possible to make an application to claim a public right of way based on historic and documentary evidence. In this case we have an application to add 2 footpaths to the definitive map heading north from Latton village, across Down Ampney Road, concluding at Gloucestershire county boundary at The Folly Woods and a spur heading west along the southern boundary of Vines Brake and Dukes Brake woods. I'm sorry that you found the application map difficult to follow. Attached is a snip of an up-to-date ordnance survey map with the 2 application paths highlighted in yellow.

When determining applications based on historical evidence, the burden of proof lies in the balance of probabilities, i.e. that it is more likely than not that public rights exist. When evaluating historical evidence it is necessary to recognise that differing weight given to different evidence, for example Inclosure Awards are grade A evidence. The Planning Inspectorate Consistency Guidelines, which may be viewed using the following link, contain further information regarding the types of historical evidence which may be considered in these cases:

<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fpublications%2Fdefinitive-map-orders-consistency-guidelines&data=05%7C02%7CAli.Roberts%40wiltshire.gov.uk%7Cc1338a58cf994674824908dce6a33c19%7C5546e75e3be14813b0ff26651ea2fe19%7C0%7C0%7C638638836407101874%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=FmBIJ5udzoa0hWx%2BsMPzz66ooTY5%2FFsW%2BesyGc8Qmv8%3D&reserved=0>

I have also attached a useful guidance booklet from Natural England "A guide to definitive maps and changes to public rights of way" (NE112)

I hope this has made the application clearer to you but please feel free to call me if you would like further details."

- 6.7 Mogers Drewett, Solicitors, acting on behalf of Farmcare Trading Ltd, owner of Down Ampney Estate. Their submission can be seen in full at Appendix 1

"Executive Summary

(1) The only basis for this application for two footpaths is the Latton Inclosure Award, which described the dual status of the two intended routes as being public FPs and private carriage roads.

(2) There is no other evidence, applicable to Latton parish, of any FP status on these routes. Thus this case depends on whether or not the two claimed routes came into being as public footpaths pursuant to the Inclosure Award.

(3) The legal position, relying on the General Inclosure Act 1801 and the case of Cubitt v Maxse (1873) is that just awarding the route is not enough: it had not only to be described in the Award but also laid out on the ground and formed and completed, and taken to by the public.

(4) No evidence appears of that happening on our two routes.

(5) Path 7 (certainly from points B – C – D) was not laid out, formed or completed, or taken to by the public as a public FP. It was never any more than an intended FP.

(6) Path 8 was formed and completed as a private carriage road (as far as point C) but not as a FP. The FP ran from the A419 (point E) south-east to the bend (point F), and then further south- eastwards via path 9. It was never intended to run along route 8 (green).

(7) Post-Inclosure evidence is all against these two routes enjoying public status

- OS map evidence shows no physical existence of path 7 (points B – C –*

D), and no physical existence east of point C;

- *OS Book of Reference applies the “road” category but on A – B only. In any event, the term road encompasses private as well as public roads. North of B, all the fields that the intended route would have passed through were in arable use, and fenced off;*
- *Boundary records – these show that no route in Latton existed on C – D.*
- *Finance Act 1910 – both routes are shown privately owned, and included in the respective hereditaments;*
- *Deductions – none which expressly related to either path 7 or path 8.*
- *Handover map: no reference to these intended footpaths;*
- *Parish claim 1950: no claim for path 7, and no objections to non-inclusion. Path 8: originally claimed as FP F - C, and then continuing eastwards from point C, but it was then deleted; there was no objection to that deletion.*
- *No evidence of public maintenance or public use.*

(8) On this basis, no reasonable allegation of FP status can be made out. The application should, we submit, be refused.”

6.8 Mogers Drewett, Solicitors, acting on behalf of Farmcare Trading Ltd, owner of Down Ampney Estate.

“I’ve now read through the Act.

As to width, all public roads and highways (except bridleways and footpaths) were to be and remain 40ft wide at least. The Award dealt with the BR/FP widths.

The surveyor appointed to ensure that the new roads and highways (no exception expressed here for BR & FP) were formed and put into good and sufficient repair, had to certify that that had been done. No local parish was to be charged with repair cost of the said roads and highways “until the same shall be made fit for the passage of travellers and carriages”.

The point here, as far as our present case is concerned, is that all the new public routes including BR & FP had to be formed on the ground, made fit for the passage of all public use with or without vehicles respectively, and certified as such.

It is our case that none of B – C – D was formed and put into repair, but, without prejudice to that, at the very least we know that C – D was not, because there was no route between B and C.

*The effect of the unlawfulness of use provision is that no **other** route, i.e. no route that had not been formed and put into repair, could lawfully be used by the public.*

*Thus, the claimed route 7, despite being shown **on the plan** as going all the way to the county boundary, patently didn't.*

Please include these points as part of our Submission and give them full weight in the process of reaching your decision."

6.9 Officer response

- As discussed at paragraph 10.2 – 10.32 Inclosure Awards provide reliable evidence as they arise from Acts of Parliament and their main purpose was to divide the land which necessitated the formation of highways. The Acts gave the Inclosure Commissioners the power to change the highway network of the parish and authorised the Commissioners to set out highways, public and private, with the parish. Weight can be given to routes included within Inclosure Awards as landowners had a strong influence over the Inclosure process and would have wanted to minimise public highways over their land. The public nature of the Inclosure process was clearly set out within the Act, notice of public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways. To amend rights recorded in the Inclosure Award and Map would require an extensive legal process as discussed at paragraph 10.33-10.36.
- Discussed at paragraph 10.29, 14.10 and 14.11, it can be seen from the Ordnance Survey Map drawing 164 Ashton Keynes dated 1816 and OS Map sheet 34 dated 1828 Path 7 and Path 8 recorded in the Inclosure Award were set

out on the ground as they are recorded on the topographical maps and the area has remained remarkably comparable over the course of time with distinct topography of the field boundaries following the course of both application paths as discussed at 10.31, 14.10 -14.20. Path 7 must have been set out as private carriage road, and therefore set out as a public footpath, as there are a number of allotments that must use this route as access.

- The more commonly known General Act 1801 is The Inclosure Consolidation Act 1801 41 Geo.3 (UK) c.109 dated 02 July 1801 and applied its powers and provisions to all local Acts passed after this date. The Down Ampney, Latton and Eifey Inclosure Award is 41 Geo. 3(UK) c.101 dated 23 June 1801 therefore predates The General Act 1801 consequently The General Act 1801 is not in force.
- As discussed from paragraphs 10.23 – 10.27 Reading the descriptions, in The Down Ampney, Latton and Eifey Inclosure Award, of Path 8 and Path 9 in their entirety it is clear that the public footway leads from the Cricklade and Cirencester Turnpike Road to its usual entrance into Mowsdowns and Mowsdown Lane (which is an ancient inclosure). This same public footway then continues passing to its entrance into an ancient Inclosure called Ampney Close. The sidenote for Path 8 states the public footway is from Cirencester to Down Ampney, *“Public Footway from Cirencester to Down Ampney”*, Down Ampney is south east of this point which is the direction of Path 9 reiterated by the side note for Path 9 *“the same public footway continued”*. However, Mowsdown Lane is east north east which is leading away from Down Ampney.
- Boundary records provided in Mogers Drewett’s evidence show that Path 7, approximately up to the south eastern corner of Vines Brake, and Path 8 were evident on the ground in 1874, therefore clearly the Inclosure routes were set out as provided by the Inclosure Award. It is noted that the section from Vines Brake to the Gloucestershire County Boundary is recorded on the Ordnance Survey Map drawing 164 Ashton Keynes dated 1816 and OS Map sheet 34 dated 1828. As discussed at paragraphs 10.21 and 10.22 the side note for Path 7 in The

Down Ampney, Latton and Eifey Inclosure Award states *“Public Foot way from Latton to Driffield and private Carriage Road and Drift Way”*, Driffield is the neighbouring parish in Gloucestershire, the Kempsford and Driffield Inclosure Map also records this spur. Therefore Path 7 does continue to the Gloucestershire County Boundary as described in The Down Ampney, Latton and Eifey Inclosure Award and shown set out in OS maps of that time.

7 Main Considerations for the Council

- 7.1 The definitive map and statement of public rights of way are conclusive evidence as to the particulars contained therein, however this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, excluding the Borough of Swindon. The Surveying Authority is the body responsible for the preparation and continuous review of the definitive map and statement of public rights of way. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies:

“As regards every definitive map and statement the Surveying Authority shall-

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of these events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

- 7.2. The event referred to in subsection 2 (as above) relevant to this case is:

“(3) (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”

7.3. Section 53 (5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”

7.4. Schedule 14 of the Wildlife and Countryside Act, states:

“Form of applications

1. *An application shall be made in the prescribed form and shall be accompanied by:*

(a) a map drawn to the prescribed scale and showing the way or ways to which, the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

The prescribed scale is included within the *“Statutory Instruments 1993 No.12 Rights of Way – The Wildlife and Countryside (Definitive Maps and Statements)*

Regulations 1993”, which states that “A definitive map shall be on a scale of not less than 1/25,000.”

2. (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or ‘occupier’ of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

- 7.5. Section 32 of the Highways Act 1980, states that the authority may consider a range of historical documents and their provenance:

“Evidence of dedication of a way as highway

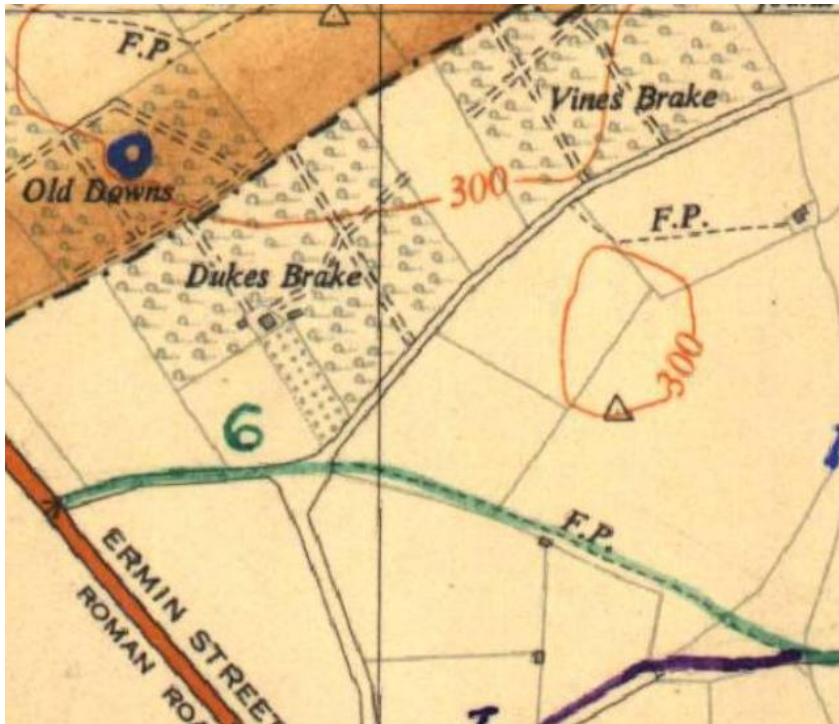
A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

Current records

- 8.1 As a result of the National Parks and access to the Countryside Act 1949 every surveying authority (in this case Wiltshire Council) holds and maintains a definitive map and statement which is a legal record of the public rights of way in its area. If a way is shown on the map, then it is legally conclusive evidence that those rights existed at the relevant date of the map. However, the absence of a route is not conclusive that there may be unrecorded rights.
- 8.2 The Cricklade and Wootton Bassett Rural District Council Area Definitive Map and Statement dated 1952 does not record the routes. However, path 8 and the southern section of Path 7, Points A-B, are shown on the topographical base map which is the OS 1:25000 Provisional Edition. The survey and print date is not given but the Grid North date of January 1949 is given on the sheets so it is taken to be the print date. Path 9 is recorded as Bridleway Latton 6 with a slight deviation of the south eastern section from the Inclosure Award route.



- 8.3 The first section of Path 8 heading east is now recorded as LATT6. The claimed continuation of Path 8 is not recorded on the definitive map; however, it is recorded on the base map as a delineated track with a specific width, fenced or hedged on both sides.

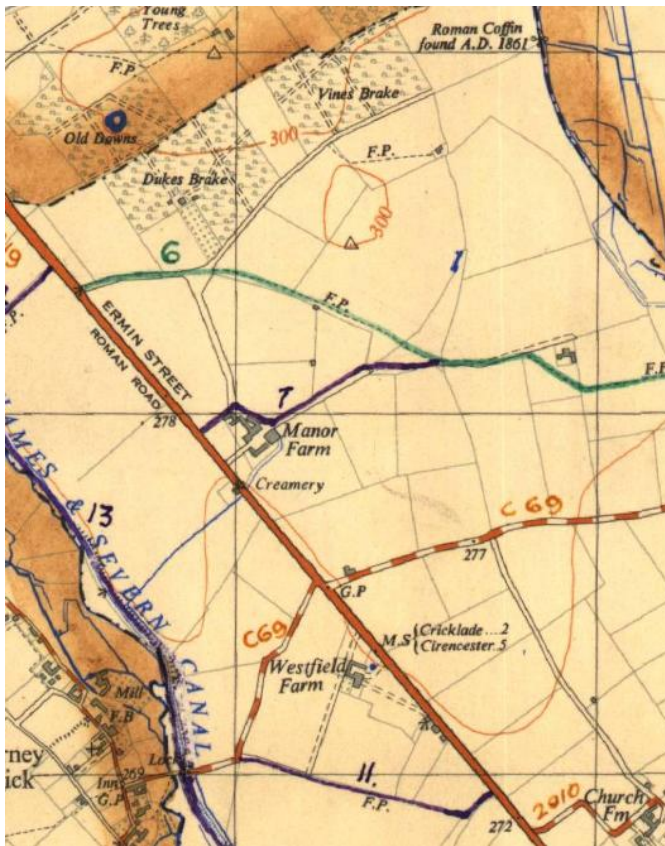


- 8.4 Although Path 7 Points A-B is not recorded on the definitive map it is recorded on the base map as a delineated track with a specific width, fenced or hedged on both sides from Latton village to Down Ampney Road.

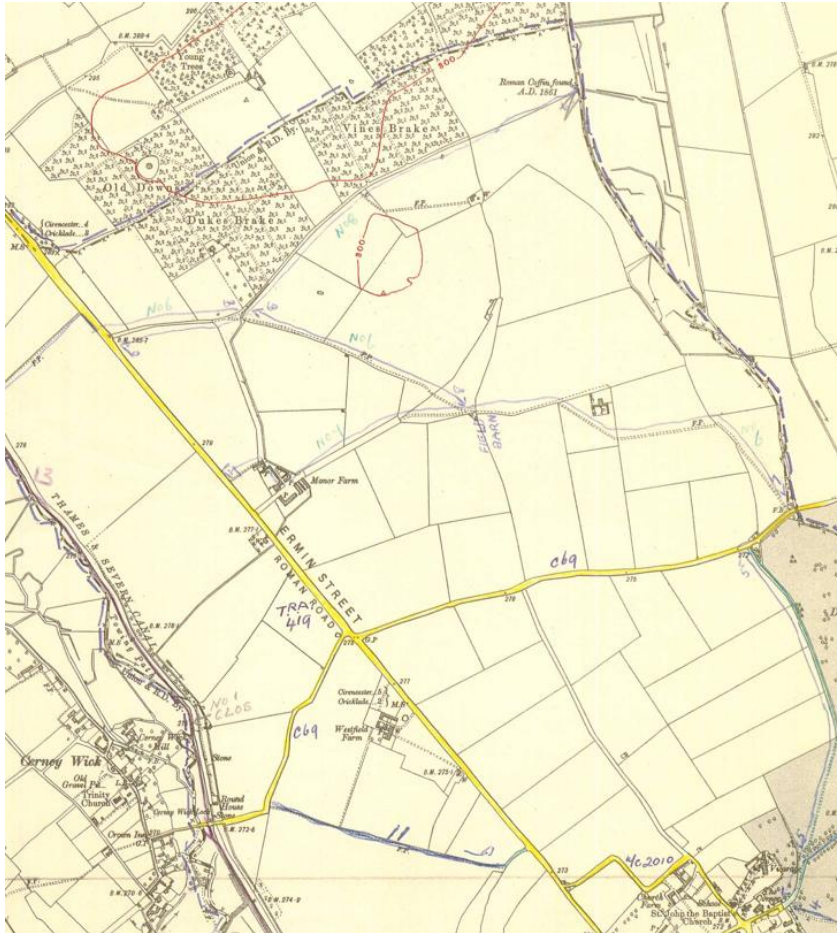


- 8.5 From Down Ampney Road heading north to the county boundary Path 7 Points B-C-D no longer shown on the topographical base map, however the field

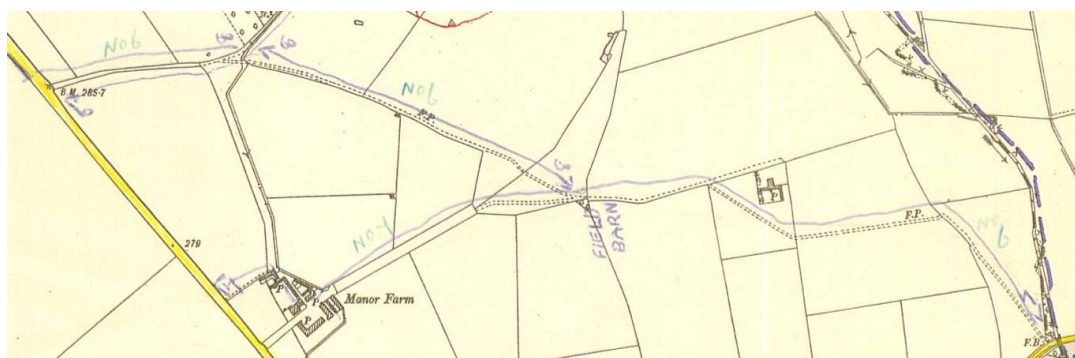
boundaries remain remarkably comparable to the course of Path 7.



- 8.6 The preliminary step to creating the definitive map of public rights of way as a result of the National Parks and Countryside Access (NPACA) Act 1949 was for each parish to submit a map to the county council marking the public rights of way which they believed existed in their parish.
- 8.7 Latton Parish Claim Map surveyed in 1950, although Path 8 and the southern section of Path 7, Points A-B, are clear on the base map, the 1926 Edition of the Ordnance Survey Map, Path 7 was not claimed by the Parish Council.



8.8 Path 8 heading east is now recorded as LATT6, which continues along Path 9 as described in the Down Ampney, Latton and Eisey Inclosure Award, as discussed at paragraphs 10.25 and 10.26. The south eastern section of Path 9 deviates slightly from the route on the Inclosure Award but follows a similar course culminating at the same termination point I.



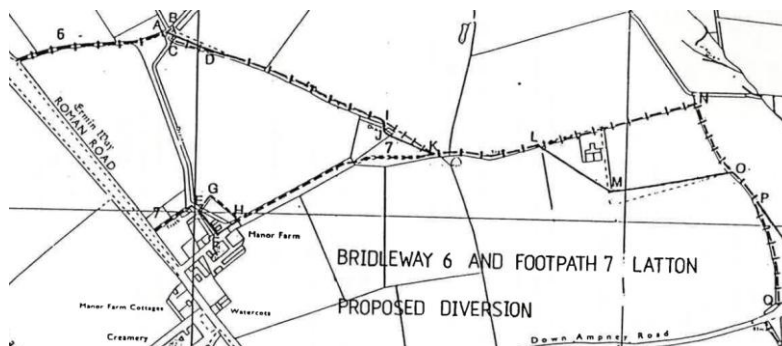
*“Bridleway commencing at a point at the Parish Boundary adjoining Down
Ampney Road going in a North Westerly direction to a point on the Cricklade &*

Cirencester Road (Ermin Street) midway between the Manor & Fosse Farms.”

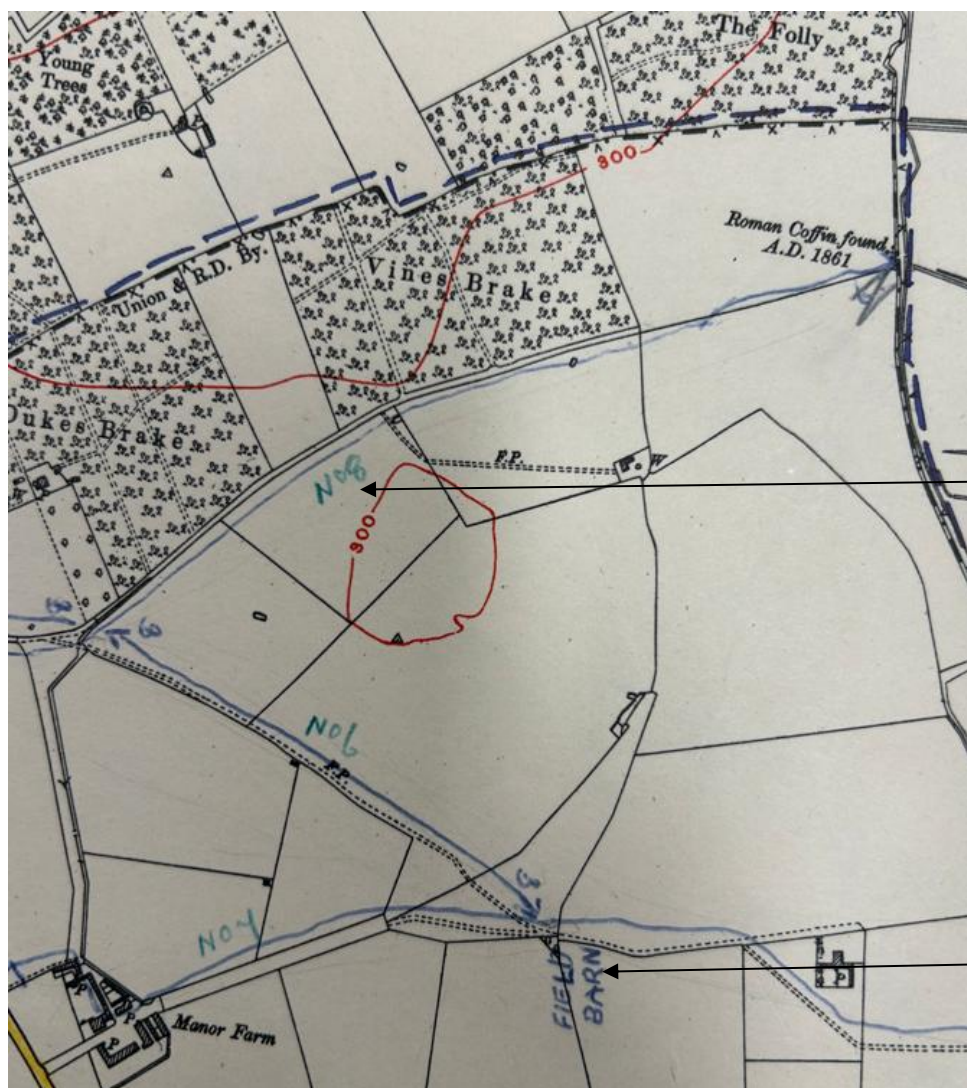
The County Surveyor adds “B.P. from the Down Ampney Road (C69) on the County Boundary at Down Ampney leading northward past Field Bar and thence to the Cirencester Road/TR.A419), 700 yards north west of Manor Farm.”

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.		PATH No. <u>6</u> (to correspond with No. on map)	
PUBLIC RIGHT OF WAY.		PARISH OF <u>LATTON</u>	
NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.)		LENGTH <u>1 1/2 miles</u>	WIDTH <u>4 feet</u>
<u>Bridle Way commencing at a point at the Parish Boundary adjoining Down Ampney Road going in a North Easterly direction to a point on the Cirencester & Berks Road (Ermin Street) midway between the Manor & Fosse Farms</u>		WHETHER FENCED OR OPEN <u>Open</u>	APPROXIMATE PERIOD OF UNINTERRUPTED USER :- YEARS FROM <u>Living Memory</u>
<u>B.P. from the Down Ampney road (C69) on the County boundary at Down Ampney leading northward past Field Bar and thence to the Cirencester road (TR.A419), 700 yards north west of Manor Farm</u>		WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL :- <u>None</u>	
NATURE OF SURFACE			

The south eastern section of LATT6 (Path9) was diverted on 13 March 1996 to follow the field boundaries, as can be seen from the diversion map.



- 8.9 The claimed continuation of Path 8 was claimed by Latton Parish Council on their claim map as Footpath Latton 8 (LATT8). The surveyed line can be seen following the claimed route with No.8 written in blue pen at the centre point of the line just below.



- 8.10 However when reading the claim card, the route described in the survey, now recorded on the definitive map as LATT6. *Footpath commencing from No.7 at a point at Field Barn to Bridle Road No.6 (this is LATT6 so at this point 'to Bridle Road No.6' makes no sense) and thence across Cricklade to Cirencester Main Road (Erim Street) in a south easterly direction to the parish boundary adjoining South Cerney.*

Footpath commencing from No.7 at a point at Field Barn to Bridle Road No.6 and thence across Cricklade to Cirencester main road (Erim Street) in a south Easterly direction to the parish Boundary adjoining South Cerney.

- 8.11 This route description was corrected by the Council surveyor and states “F.P from path no 6 400 yards east of Ermin Street (TR A419) leading north east along the south eastern edge of Dukes Brake and Vine Brake to the County Boundary, 200 yards south of The Folley.” This is a correct description of the route on the parish map claimed as path no.8.

F.P from path no 6 400 yards east of Ermin Street (TR. A419) leading north east along the south eastern edge of Dukes Brake and Vine Brake to the County boundary, 200 yards south of The Folley. NATURE OF SURFACE
--

- 8.12 Written on the parish claim is “Take out see Glou letter 14/08/52 NOT DESCRIBED BY PARISH COUNCIL” Although this letter could not be found in the archives it is clear this instruction was accepted and consequently LATT8 was never added to the definitive map and no objection was made to this decision.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PUBLIC RIGHT OF WAY.		PATH No. <u>8</u> (to correspond with No. on map)
NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDLEWAY, ETC.) <i>Footpath commencing from No. 6 at a point at Field Barn to Brindle Road No 6 and thence across a field to Ermin Street main road (Ermin Street) in a south easterly direction to the parish boundary adjoining South Cerny.</i>		LENGTH <u>1200 yds</u> <u>80 Chains</u> WIDTH <u>3 Feet.</u>
NATURE OF SURFACE <i>Mainly Grass</i>		WHETHER FENCED OR OPEN <u>Open</u>
STILES, GATES, FOOTBRIDGES, STEPPING STONES <i>One Field Gate Two Stiles</i>		APPROXIMATE PERIOD OF UNINTERRUPTED USER :— YEARS FROM <u>LIVING Memory</u>
WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)		WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL :— <u>None</u>
OBSERVATIONS :— <i>Obstructions in some parts Path still in use</i>		DATE OF REPAIR
WHETHER SHOWN ON UNDERMENTIONED MAPS :— ORDNANCE 6" SHEET. REF. <u>44.8.</u> <u>5xw.</u>		WHETHER SUBJECT TO PLOUGHING <u>Two Fields</u>
LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932).		DATE OF SURVEY
OTHER MAPS :—		INCLOSURE AWARD

8. F.P. From path No. 6, 400 yards east of Ermin Street, Trunk Road A.419, leading north-east along the south- eastern edge of Dukes Brake and Vines Brake to the County boundary, 200 yards south of The Folley.	1200 yards 3 feet Subject to part ploughing. Partly obstructed.	<i>Take out - Not described in statements by P.C.</i>
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9. Historic Records

9.1 Maps and documents dating back to the 1700s have been viewed depicting the area concerned. Although it can be helpful to present these in chronological order to show the consistent recording of a way over time it does not allow for the need to apply evidential weight to documents. For example, although a way may appear on many commercial maps it does not necessarily carry as much evidential weight as if the way is shown in two publicly consulted documents or created, say, as the result of an Act of Parliament.

9.2 Therefore, in evaluating historical evidence it is necessary to recognise that differing weight must be given to different evidence. The following categorisation has been used;

Category A carries the highest weight and category F the lowest. This system of categorisation has been devised by officers with regard to The Planning Inspectorate's Consistency Guidelines (now archived as of 20 November 2024) and Chapter 6 of the book 'Rights of Way A Guide to Law and Practice – Fourth Edition' by John Riddall and John Trevelyan.

Category	May provide evidence for	Examples
A	Legal creation of a highway Reputation of a way as a highway Physical existence of a way Conclusive evidence of public rights	Inclosure Acts, awards and plans Orders creating, diverting or extinguishing highways Railway and canal acts and plans Definitive map and statement
B	Reputation of a way as a highway Physical existence of a way	Documents, maps, plans drawn up as a result of legislation, consulted upon, but whose primary purpose was not to record public rights. I.e. Tithe Commission, Inland Revenue Finance Act
C	Reputation of a way as a highway Physical existence of a way	Includes local government records (highway board, county council, parish council)
D	Reputation of a way as a highway Physical existence of way	Other maps and documents showing highways additional to or as a part of their purpose. Includes parish maps, estate plans, conveyances
E	Reputation of a way as a highway Physical existence of a way	Commercial maps, some Ordnance Survey records
F	Reputation of a way as a highway Physical evidence of a way	Local repute, consultation responses

10. Category A

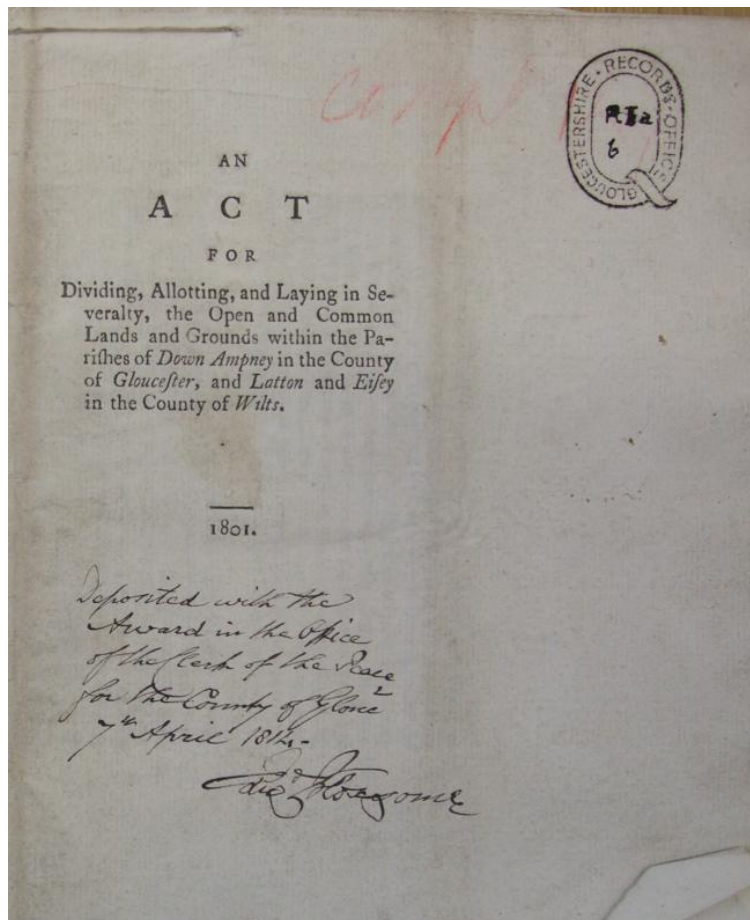
10.1 Evidence within this category is potentially of the highest weight and includes conclusive evidence (i.e. the definitive map and statement), Inclosure acts, awards and plans, legal orders or events and deposited railway plans (i.e. arising from an act of parliament which specifically required the identification and verification of public rights of way).

10.2 Inclosure

Between 1545 and 1880 the old system of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful

landowners may have had considerable influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined at the beginning of the nineteenth century with the passing of two main general Acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

- 10.3 Inclosure Awards provide reliable evidence as they arise from Acts of Parliament and their main purpose was to divide the land which necessitated the formation of highways. The Acts gave the Inclosure Commissioners the power to change the highway network of the parish and authorised the Commissioners to set out highways, public and private, with the parish. Weight can be given to routes included within Inclosure Awards as landowners had a strong influence over the Inclosure process and would have wanted to minimise public highways over their land. The public nature of the Inclosure process was clearly set out within the Act, notice of public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private highways.
- 10.4 **The Act – Inclosure Act: Down Ampney, Latton and Eifey 1801.** A local Act dated 23 June 1801 passed through Parliament for *“Dividing, Allotting, and Laying in Severalty, the Open and Common Grounds, within the Parishes of Down Ampney in the County of Gloucestershire, and Latton and Eifey in the County of Wilts. 1801”*. *“Deposited with the Award in the Office of the Clerk of the Peace in the County of Glou 7th April 1814”*

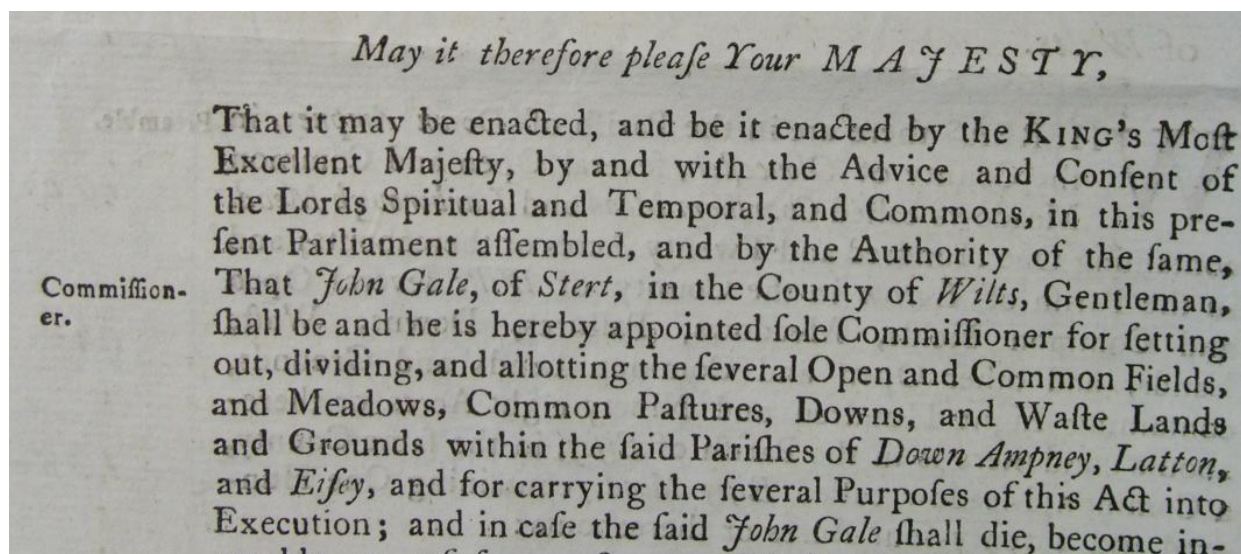


10.5 The more commonly known General Act 1801 is The Inclosure Consolidation Act 1801 41 Geo.3 (UK) c.109 dated 02 July 1801 and applied its powers and provisions to all local Acts passed after this date. The Down Ampney, Latton and Eifey is 41 Geo. 3(UK) c.101 dated 23 June 1801 therefore predates The General Act 1801, consequently The General Act 1801 is not in force.

10.6 The sole Commissioner is appointed to oversee the process. The commissioner is named as John Gale of Stert, and his purpose is described on page 2 of the Act.

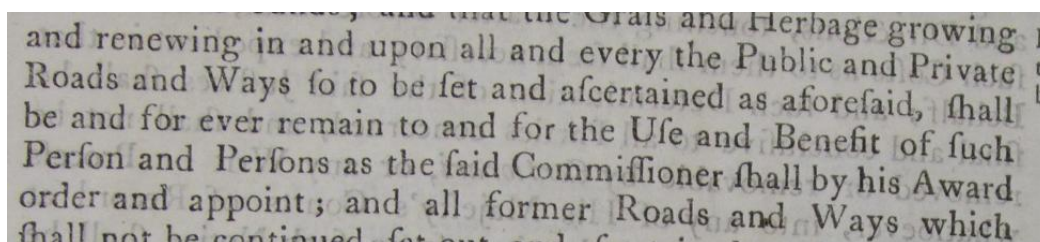
“ That it may be enacted, and be it enacted by the King’s Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same. That John Gale, of Stert, in the County Of Wilts, Gentleman, shall be and is hereby appointed sole Commissioner for the setting out, dividing, and allotting the several Open and Common Fields, and Meadows, Common Pastures,

Downs, and Waste Lands and Grounds within the said Parishes of Down Ampney, Latton and Eifey, and for carrying the several Purposes of this Act into Execution;"

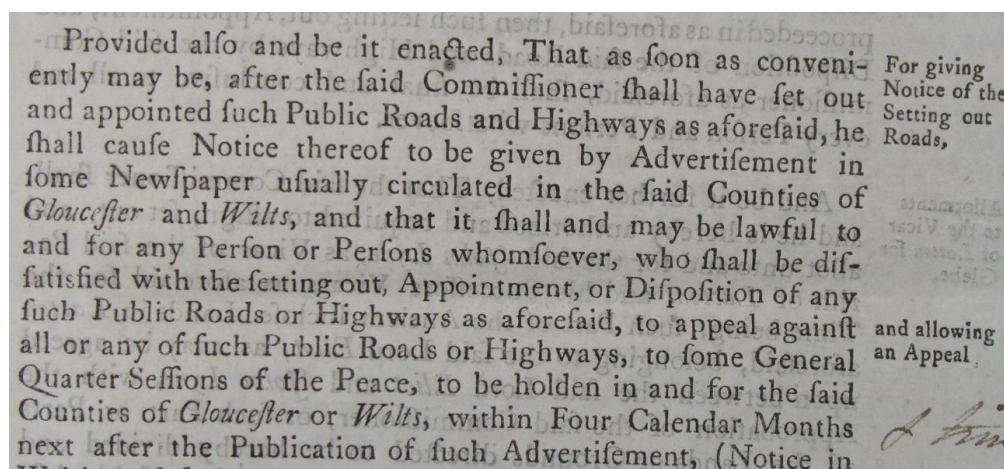


- 10.7 The Commissioner is given the authority to set out Public and Private Roads, Highways, Bridleways and Footways, etc on page 7 of the Act. *"And be it further enacted, That the said Commissioner shall and he is hereby authorised and required, to set out, ascertain, order and appoint, divert or turn both Public and Private Roads, Highways, Bridleways and Footways, Ditches, Drains, Hatches, Watercourses, Bridges, Gates, Stiles, Fences, Mounds, Banks, Bounds, and Landmarks in, over, upon, and through or by the Sides of the Lands and Grounds hereby intended to be divided and allotted, with the Dimensions and Breadths thereof, so as all Public Roads and Highways (except Bridle Ways and Foot Paths) shall be and remain Forty Feet broad at the least; and so far as that all the said Roads and Highways shall be well sufficiently fenced out on both Sides, in such a Manner and within such Time as the said Commissioners shall direct and appoint; and that it shall not be lawful for any person to erect and Gate across any of the said Public Roads or Highways, or to plant any Trees in or near the Hedges on the Sides thereof; at a less Distance from each other than Fifty Yards; and after such Public Roads and Highways shall have been set out as aforesaid, the said Commissioner shall and he is hereby required, by Writing under his Hand, to appoint some proper Person to Surveyor thereof, and such*

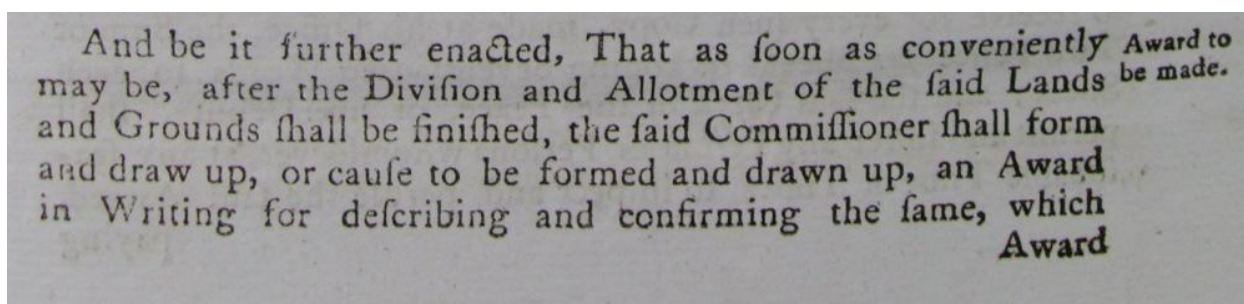
- 10.9 The Act sets out on page 9 that the Public and Private Roads and Ways shall be and forever remain for the use and benefit of those as set out in the Award *“and every the Public and Private Roads and Ways so to be set and ascertained as aforesaid, shall be and for ever remain to and for the Use and Benefit of such Person and Persons as the said Commissioner shall by his Award order and appoint;”*.



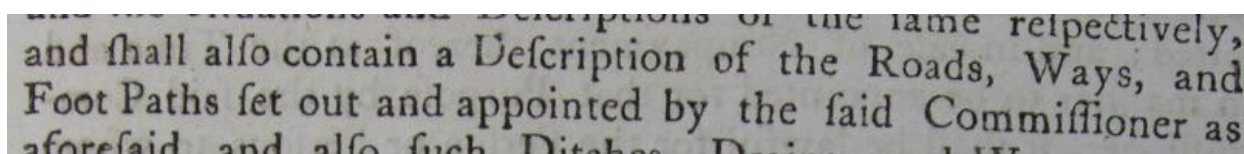
- 10.10 The Act sets out on page 9 the public notice and appeal process for the setting out of the Public Roads and Highways. *“Provided also and be it enacted. That as soon as conveniently may be, after said Commissioner shall have set out and appointed such Public Roads and Highways as aforesaid, he shall cause Notice thereof to be given by Advertisement in some Newspaper usually circulated in the said Counties of Gloucestershire and Wilts, and that it shall and may be lawful to and for any Person or Persons whomsoever, who shall be dissatisfied with the setting out, Appointment, or Disposition of any such Public Roads or Highways as aforesaid, to appeal against all or any of such Public Roads or Highways, to some General Quarter Sessions of the Peace, to be holden in and for the said Counties of Gloucestershire and Wilts, within Four Calendar Months next after Publication for such Advertisement ...”*



- 10.11 The Act sets out that an award is to be drawn up describing and setting out the lands to be Inclosed and includes the provision to set out footpaths in that award. On page 23 and 24 of the Act it states *“That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, the said Commissioner shall form and draw up, or cause to be formed and drawn up, an Award in Writing, for describing, and confirming the same, and which said Award or Instrument, ... shall also contain a Description of the Roads, Ways and Foot Paths, set out and appointed by the said Commissioner”*.

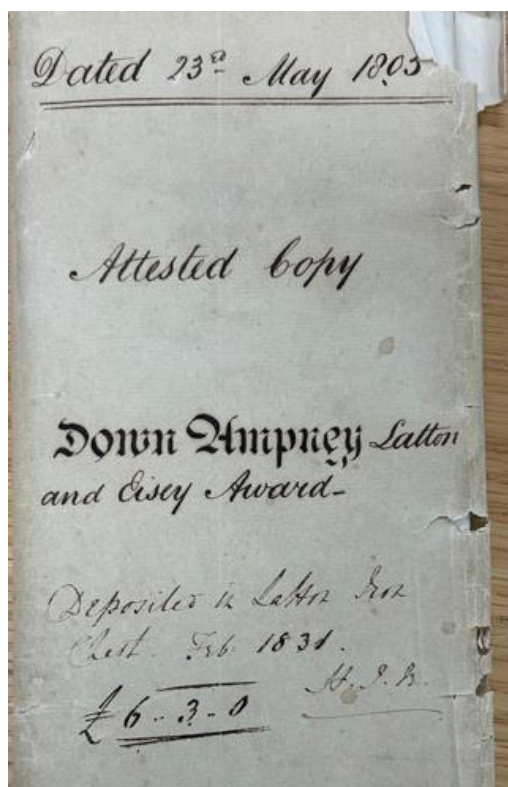


And be it further enacted, That as soon as conveniently Award to be made. may be, after the Division and Allotment of the said Lands and Grounds shall be finished, the said Commissioner shall form and draw up, or cause to be formed and drawn up, an Award in Writing for describing and confirming the same, which Award



and shall also contain a Description of the Roads, Ways, and Foot Paths set out and appointed by the said Commissioner as aforesaid, and also such Ditches, Drains, and

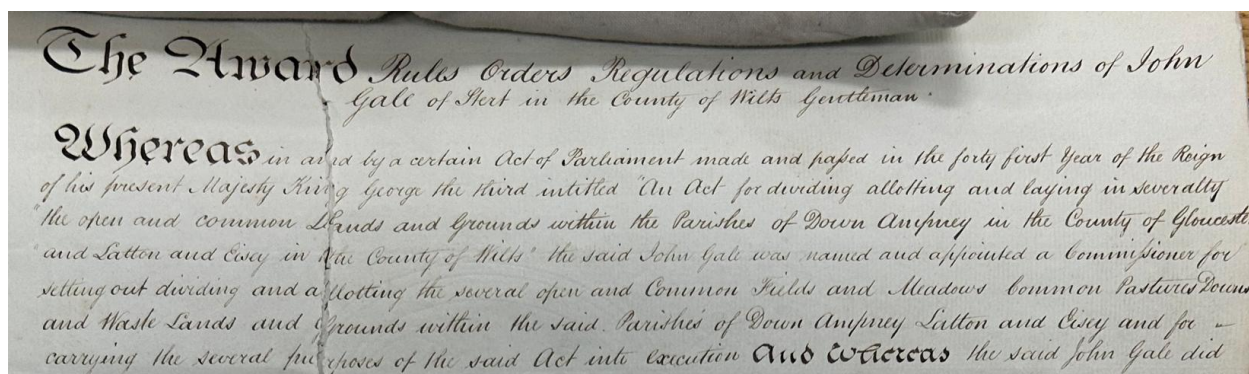
- 10.12 The Act dated 23 June 1801 clearly sets out the authority for the appointed Commissioner to enclose allotments and land within the parish of Latton (and Down Ampney and Eifey) including footpaths/ ways and set out that an award should be drawn up showing those lands and highways to be set out.
- 10.13 **Down Ampney, Latton and Eisey Inclosure Award - viewed at WSHC A1-EA-198**
“Dated 23 May 1805. Attested Copy. Down Ampney Latton and Eisey Award. Deposited in Latton Box Chest. Feb 1831. £6..3..0. HJB”



10.14 The sole Commissioner, John Gale, took the oath on 12 November 1801 in the presence of John Clark Esquire one of his Majesty's Justices of the Peace. *"John Gale do swear that I will faithfully impartially and honestly according to the best of my skill and Judgement exercise the Powers and perform the Trusts reposed in me as a Commissioner by Virtue of an Act of Parliament for dividing allotting and laying in Severalty the Open and Common Lands and Grounds within the parishes of Down Ampney in the County of Gloucester and Latton and Eisey in the County of Wilts so help me God. Signed John Gale."* *"Sworn at Marlborough in the County of Wilts the twelve day of November in the year of Our Lord 1801 before me one of his Majesty's Justices of the Peace in the County of Wilts. Signed John Clark."*

10.15 The award names the commissioner as John Gale, who have powers as per the 23 June 1801 Act 'An Act for dividing, allotting and laying in severalty "the open and common Lands and Grounds within the Parishes of Down Ampney in the County of Gloucester and Latton and Eisey in the County of Wilts', amongst other matters, to set out a number of public highways. *"The Award Rules Orders*

Regulations and Determinations of John Gale of Stert in the County of Wilts Gentleman Whereas in and by a certain Act of Parliament made and passed in the forty first year of the Reign of his present Majesty King George the Third entitled "An Act for dividing, allotting and laying in severalty "the open and common Lands and Grounds within the Parishes of Down Ampney in the County of Gloucester and Latton and Eisey in the County of Wilts" the said John Gale was named and appointed a commissioner for setting out and dividing and allotting the several open and common Fields and Meadow Common Pasture Downs and Waste Lands and Grounds within the said Parishes of Down Ampney Latton and Eisey and for carrying the several purposes of the said Act into execution"



10.16 John Gale, appointed Henry Hoyte to assist him with viewing and valuing the lands and Daniel Mumford to survey, measure and plan of the lands. "John Gale did on the twelfth day of November one thousand eight hundred and one and before he acted as such commissioners or executed any of the powers vested in him by the said Act before John Clark Esquire one of his Majesty's Justices of the Peace in and for the said County of Wilts take and subscribe the Oath by the said Act directed to be by him taken and subscribed which oath is hereunto annexed and hath proceeded to carry the same into execution AND WHEREAS the said John Gale the Commissioner appointed Henry Hoyte Gentleman to assist him in viewing and valuing the Lands and Grounds intended by the said Act to be divided and allotted AND WHEREAS Daniel Mumford the surveyor named in the said Act to make a survey Admeasurement and Plan of the said Lands and Grounds"

the Sign of the White Horse in Bricklade in the County of Wilts And Whereas the said John Gale did on the twelfth day of November one thousand eight hundred and one and before he acted as such Commissioner or executed any of the Powers vested in him by the said Act before John Clark Esquire one of his Majesty's Justices of the Peace in and for the said County of Wilts take and subscribe the Oath by the said Act directed to be by him taken and subscribed which Oath is hereunto annexed and hath proceeded to carry the same into Execution And Whereas the said John Gale the Commissioner appointed Henry Heyte Gentlman to assist him in viewing and valuing the Lands and Grounds intended by the said Act to be divided and allotted And Whereas Daniel Mumford the Surveyor named in the said Act to make a Survey and a true and exact Admeasurement and Plan of the said Lands and Grounds was incapable of doing the same and making

- 10.17 On page 3 the Award states 2 “NOW THESE PRESENTS WITNESS that the said John Gale the Commissioner named and appointed as aforesaid by virtue of the said Act of Parliament and in pursuance thereof and of all and every the powers and authorities contained therein hath proceeded to execute the powers and perform the Trusts reposed in him by the said Act of Parliament And accordingly the said Commissioners Hath set out ascertain order and appoint both the Public and Private Roads Highways Bridleways and Footways in over upon or through the said Lands and Grounds by the said Act of Parliament directed to be divided and allotted as the same are now marked and staked out and delineated in the maps hereunto annexed and next hereinafter described”

Public and private Roads- Latton and Eisey shall also be straightened and declared the Boundary between the same Parishes as after mentioned Now these presents witness that the said John Gale the Commissioner named and appointed as aforesaid by virtue of the said Act of Parliament and in pursuance thereof and of all and every the Powers and Authorities contained therein hath proceeded to execute the powers and perform the Trusts reposed in him by the said Act of Parliament And accordingly the said Commissioners Hath set out ascertain order and appointed and by these Presents Doth set out ascertain order and appoint both the Public and private Roads Highways Bridle Ways and Footways in over upon or through the said Lands and Grounds by the said Act of Parliament directed to be divided and allotted as the same are now marked and staked out and delineated in the Maps hereunto annexed and next hereinafter described (that is to say) In the Parish of Down Ampney one public bridle Road

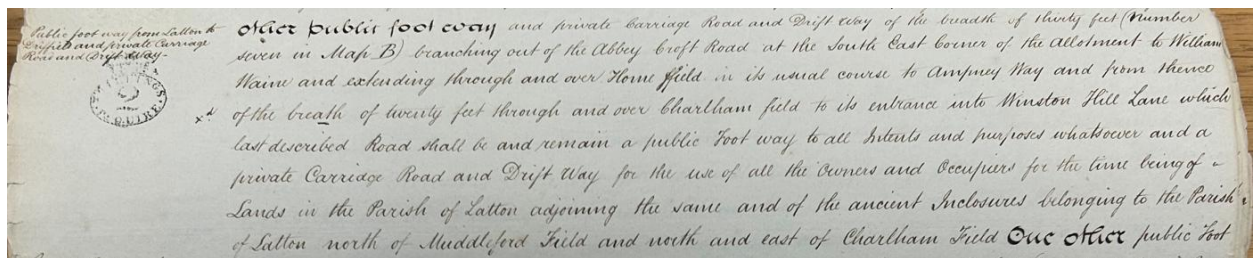
Down Ampney public bridle Road to through

- 10.18 **The plan.** The plan or map shows the lands and highways that are described in the award. The Inclosure map is shown below, the map is entitled “Plan B, to which the Award refers of the Parish of LATTON in the county of Wilts. Including the several Allotments to Lord Elliot that are subjected to the payment of Corn Rent to the Vicar marked with the numbers, 21, 22, & 29. John Gale.”

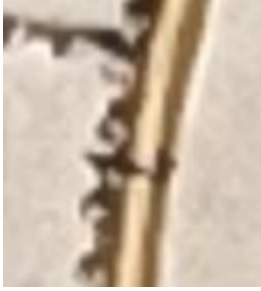


10.19 The award describes the allotted lands and various highways set out. Included in the text is a description of number 7 in Map B, a public footway to all and private carriage road and drift way for the use of all the owners and occupiers. A width of 30ft is stated from its southern section, Points A-B, at Abby Croft Way, thence 20ft from Ampney Way heading north, Points B-C-D. Path 7 – Public Footway
*“Public Footway from Latton to Driffield and Private Carriage Road and Driftway
 ...One other public footway and private carriage road and drift way of the breadth of thirty feet (number 7 in Map B) branching out of the Abby Croft Road at the south east corner of the allotment of William Waine and extending through and*

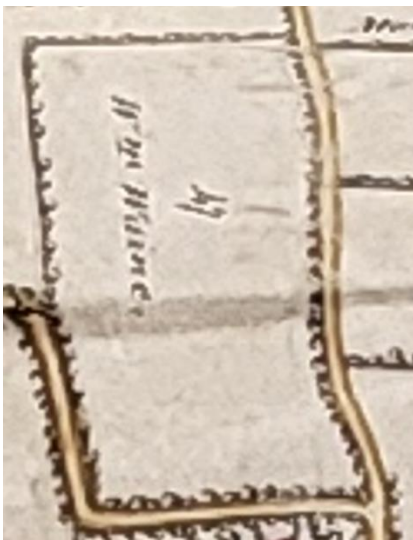
over Home Field in its usual course to Ampney Way and from thence of the breadth of twenty feet through and over Charlham Field to its entrance into Winston Hill Lane which last described road shall be and remain a public footway to all intents and purposes whatsoever and a private carriage road and drift way for the use of all the owners and occupiers for the time being of lands in the Parish of Latton adjoining the same and of the ancient Inclosures belonging to the parish of Latton north of Muddelford Field and north and east of Charlham Field.”



“One other public footway and private carriage road and drift way of the breadth of thirty feet (number 7 in Map B) ...”



“...branching out of the Abby Croft Road at the south east corner of the allotment of William Waine ...”



“... through and over Home Field in its usual course to Ampney Way...” Points A-B



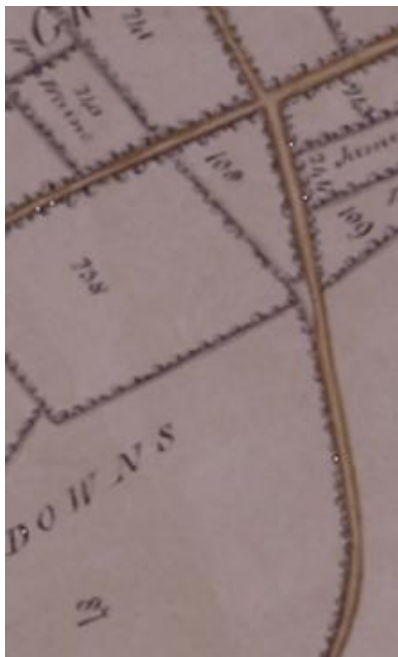
“... through and over Charlham Field to its entrance into Winston Hill Lane ...”

Points B-C-D

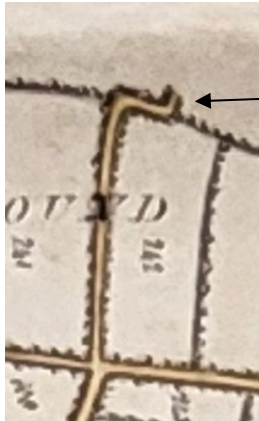


10.20 Allotments 87 and 108 are described by ancient Inclosures Winstone Hill Lane, approximately Point G, “by ancient Inclosures Winstone Hill Lane (Number eighty seven and one hundred and eight in map B).

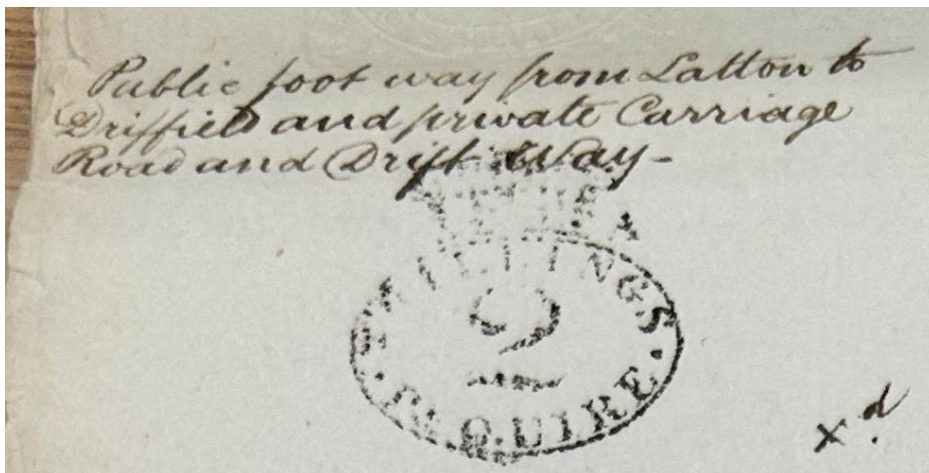
said vicar for Tithes (Number twenty two in Map B) by ancient Inclosures Winstone Hill Lane (Numbers eighty seven and one hundred and eight in Map B) by ancient Inclosures (Numbers



10.21 On the Inclosure Map Path 7 is shown open and continuing out of Wiltshire into Gloucestershire.



10.22 The Inclosure Award reiterates this stating in the sidenote that Path 7 runs from Latton to Driffield, Driffield being the neighbouring Inclosure in Gloucestershire.
"Public Foot way from Latton to Driffield and private Carriage Road and Drift Way



Driffield Inclosure Map B showing the spur from Gloucestershire into Wiltshire, which is the northern end of Path 7 with the signature of John Gale, the same Commissioner for the Down Ampney, Latton and Eisey Inclosure.



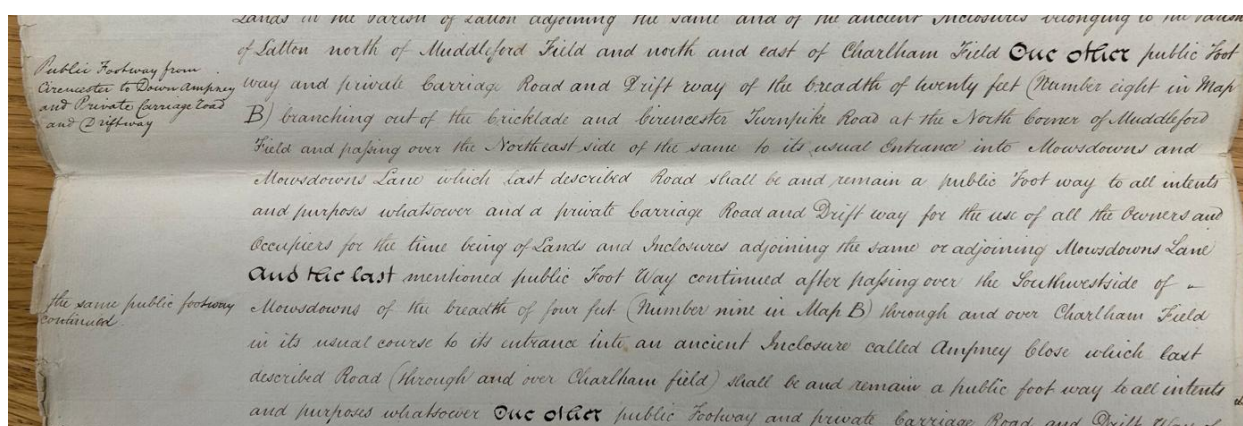
Kempsford and Driffield
Enclosure Award Map B

Down Ampney, Latton and
Eisey Inclosure Award Map B

10.23 Also included in the text is a description of number 8 in Map B, a public footway from Cirencester to Down Ampney and Private Carriage Road and Driftway. And number 9 in Map B the same public footway continued. *"Public Footway from Cirencester to Down Ampney and Private Carriage Road and Driftway ... One other public footway and private carriage road and drift way of the breadth of twenty feet (number 8 in the Map B) branching out of the Cricklade and Cirencester Turnpike Road at the north corner of Muddleford Field and passing*

over the northeast side of the same to its usual entrance into Mowsdowns and Mowsdowns Lane which last described road shall be and remain a public footway to all intents and purposes whatsoever and a private carriage road and drift way for the use of all the owners and occupiers for the time being of lands and inclosures adjoining the same adjoining Mowsdowns Lane.

The same public footway continued ... And the last mentioned public Foot Way continued after passing over the Southwestside of Mowsdowns of the breadth of four feet (Number nine in Map B) through and over Charlham Field in its usual course to its entrance into an ancient Inclosure called Ampney Close which last described Road (through and over Charlham Field) shall be and remain a public foot way to all intense and purposes whatsoever”



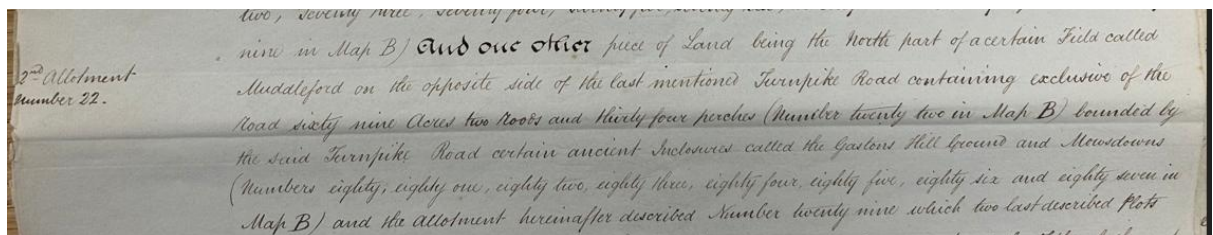
“One other public footway and private carriage road and drift way of the breadth of twenty feet (number 8 in the Map B) ...” Number 8 can be seen on the section of the route north of Muddleford field, prior to its usual entrance into Mowsdowns and Mowsdowns Lane.



“ ... branching out of the Cricklade and Cirencester Turnpike Road at the north corner of Muddelford Field and passing over the northeast side of the same to its usual entrance into Mowsdowns and Mowsdowns Lane ...” Points F-E



10.24 Mowsdown is described as an ancient Inclosure “2nd Allotment number 22 ... and one other piece of Land being the north part of a certain Field called Muddlesfield on the opposite side of the last mentioned Turnpike Road containing exclusive of the road sixty nine Acres two roods and thirty four perches (Number twenty two in Map B) bounded by the said Turnpike Road certain ancient Inclosures called the Gastons Hill Ground and Mowsdown (Number eighty, eighty one, eighty two, eighty three, eighty four, eighty five, eighty six and eighty seven in Map B

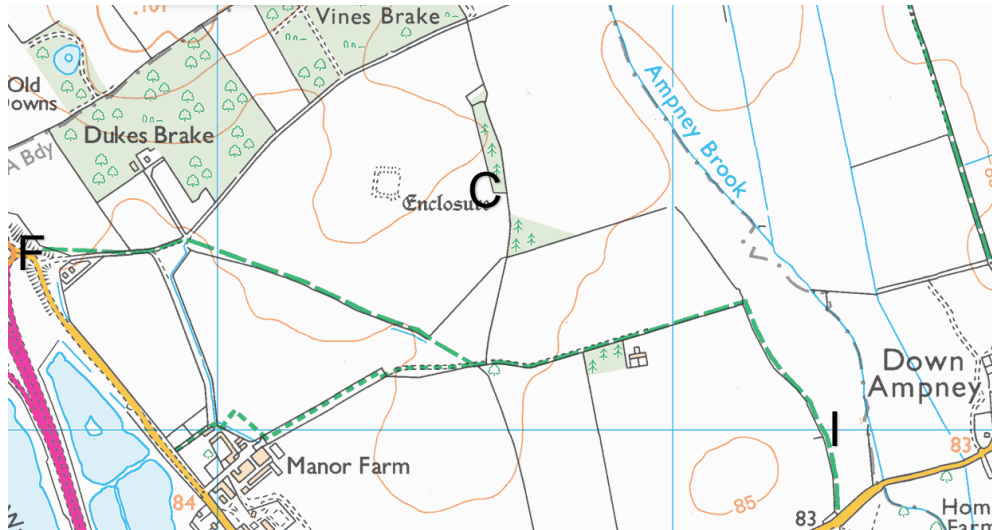


10.25 Path 9 on Map B, is described as the same public footway in the sidenote and is shown from Points E-H-I, *“the same public footway continued ... And the last mentioned public Foot Way continued after passing over the Southwestside of Mowsdowns of the breadth of four feet (Number nine in Map B) through and over Charlham Field in its usual course to its entrance into an ancient Inclosure called Ampney Close which last described Road (through and over Charlham Field) shall be and remain a public foot way to all intense and purposes whatsoever”*. The first section of the path, from its intersection with Path 8, heading south east, follows what is now recorded as LATT6, *passing over the Southwestside of Mowsdowns*, Points E-H. From its intersection with LATT7, *Charlham Field*, the path continues in a south easterly direction, Points H-I.



10.26 Reading Path 8 and Path 9 in their entirety it is clear that the public footway leads from the Cricklade and Cirencester Turnpike Road at Point F to its usual entrance into Mowsdowns and Mowsdown Lane (which is an ancient inclosure) at Point E. This same public footway then continues passing over the Southwestside of Mowsdowns, Point H, through and over Charlham Field in its usual course to its entrance into an ancient Inclosure called Ampney Close, Point

I. The sidenote for Path 8 states the public footway is from Cirencester to Down Ampney, “*Public Footway from Cirencester to Down Ampney*”, Down Ampney is south east of Point F which is the direction of Path 9. However, Mowsdown Lane, heading to Point C, is east north east of Point F which is leading away from Down Ampney.



10.27 Inclosure Act: Down Ampney, Latton and Eifey 1801 states “*and in such Manner as the said Commissioner shall award, order, or direct; and that is shall not be lawful for any Person, after such New Roads or Ways are set out, and the Objections (if any) are heard and determined on, to use any other Road or Way, either Public or Private, in over, upon, or through the said Lands and Grounds ... and all former Roads and Ways which shall not be continued, set out, and ascertained as aforesaid, shall be deemed Part of the Lands and Grounds to be divided and allotted pursuant to this Act.*” Therefore, if there had been public access to Mowsdown, Mowsdown Lane, as an ancient inclosure, this has not been set out in the Award and therefore the officer considers it is incontrovertible that any public rights along Mowsdown Lane no longer exist.

and in

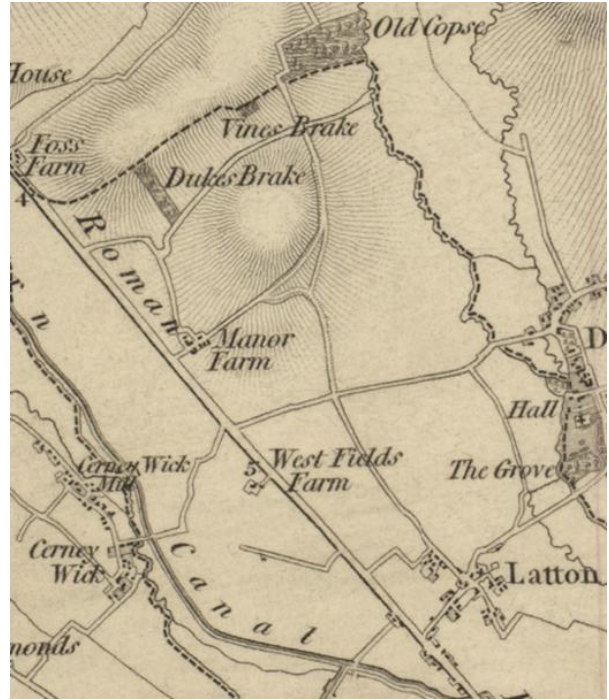
such Manner as the said Commissioner shall award, order, or direct; and that it shall not be lawful for any Person, after such New Roads or Ways are set out, and the Objections (if any) are heard and determined on, to use any other Road or Way, either Public or Private, in, over, upon, or through the said Lands and Grounds; and that the Grass and Herbage growing and renewing in and upon all and every the Public and Private Roads and Ways so to be set and ascertained as aforesaid, shall be and for ever remain to and for the Use and Benefit of such Person and Persons as the said Commissioner shall by his Award order and appoint; and all former Roads and Ways which shall not be continued, set out, and ascertained as aforesaid, shall be deemed Part of the Lands and Grounds to be divided and allotted pursuant to this Act.

Herbage of
the Roads to
be allotted.

10.28 The Award is sealed and deposited to the Clerk of the Peace for the County of Wiltshire on 7 April 1814;

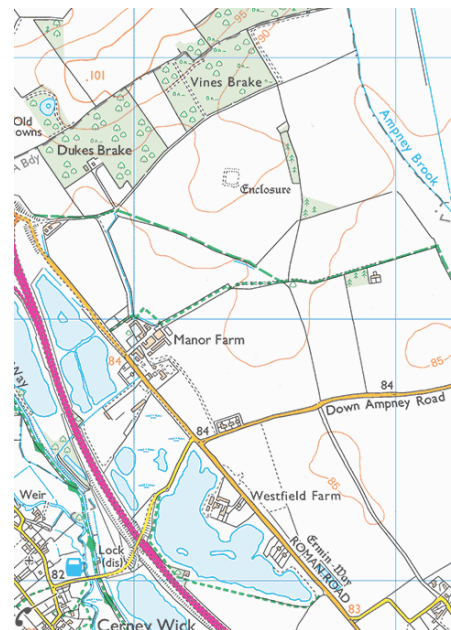
"John (LS) Gale

Sealed and Delivered by the within named John Gale and signed by the within named John Lord Elliot, John Archer, John Gleed, John Betterton, Thomas King, Jane Townsend, John Ballinger, Philip Bowley otherwise Goodman, William Matthews. Thomas Packer, William Trinder, Thomas Ware and Martha Large (the word "may" in the first skin the words "John""their""Lessee" in the second skin, the words "feet""feet" in the third skin the word "and road""and" in the fourth skin the words "for late Mary Howse's" "and five perches" in the fifth skin the words "and twenty two""late" in the sixth skin one whole line containing an allotment and the words "and Lord Elliot""and thirty three""late" in the seventh skin the words "for late Edward Fitchews""and Lord Elliott""and thirty three""Lord Elliot and""three and thrity""late" in the eighth skin the words "and thirty""and""field" "Elliot" in the ninth skin being first interlined several words being first wrote on Erasures and several words being first run through with the pen in the fifth, seventh, eighth and ninth skins in the presence of Thos Wells (Inclosed) 1814 April 7th The within Award with the Oaths and Plans annexed were deposited and left in the office of the Clerk of the Peace for the County of Gloucester. So J Witney.



10.30 Path 7 and Path 8 (now LATT6) must have been set out as private carriage roads, and therefore set out as public footpaths, as there are a number of allotments that must use these routes as access.

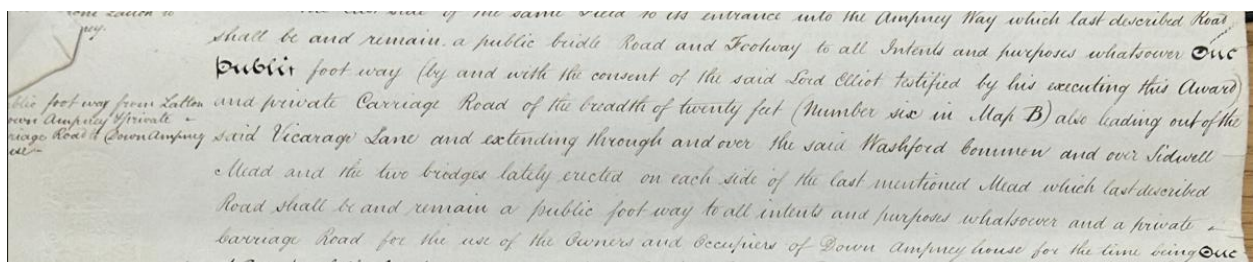
10.31 Inclosure map inclined to show the map approximately orientated north next to the current Ordnance Survey map. The area has remained remarkably comparable over the course of time with distinct topography. The field boundaries still follow Path 7 and Path 8.

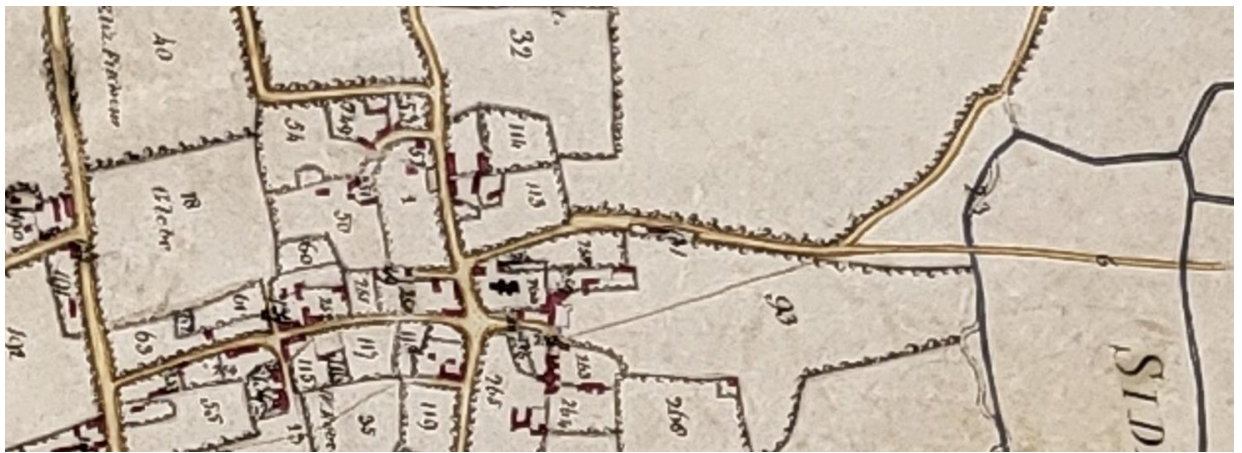


10.32 It is clear public roads, private carriageways and public footways were set out as part of the 1805 Down Ampney, Latton and Eisey Inclosure award which was enrolled with Clerk of the Peace for Wiltshire in 1809. The width and routes of these paths are clearly described and depicted in the award and map. Path 7 is set out as a public footway and private carriage road and driftway with a width of 30ft from Abby Croft Way to Ampney Road, Points A-B, continuing with a width of twenty feet to the Gloucestershire County Boundary, Points B-C-D. Path 8 is set out as a public footway and private carriage road and drift way with a width of twenty feet from Points F-E, now recorded as LATT6. The public footway then continues along Path 9 with a width of 4 metres from Points E-H-I.

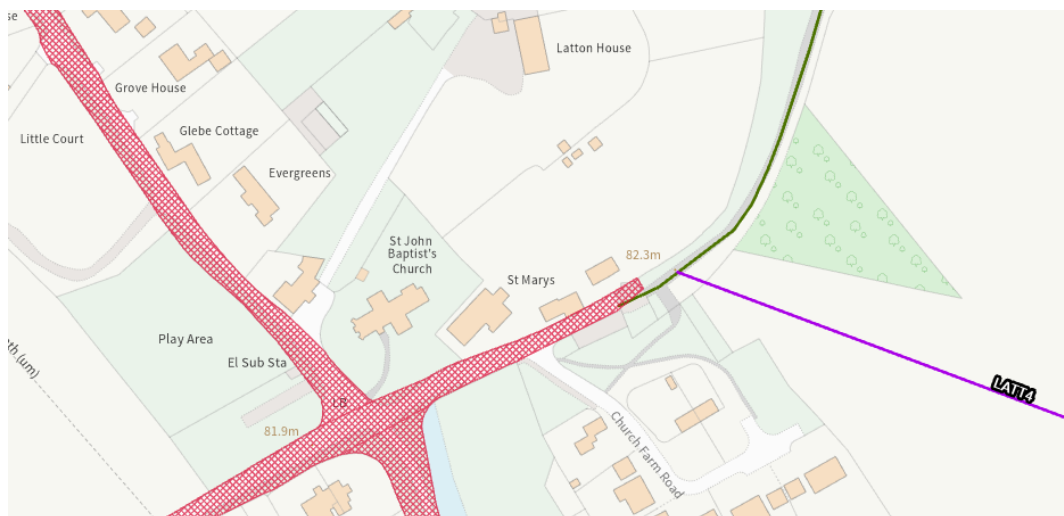
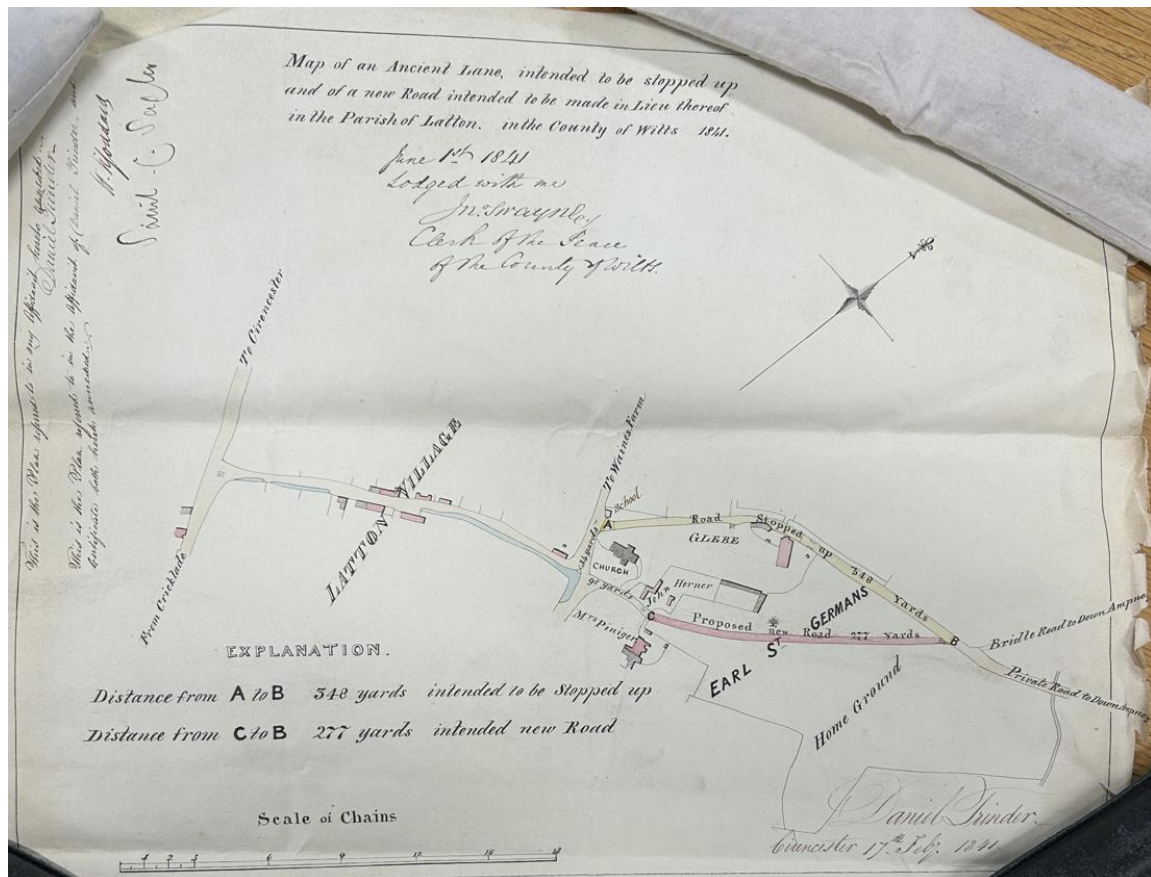
10.33 Great Roll, Warminster, 29 June 1841, Inclosure Clerk of the Peace of the County of Wilts - A1/110/1841T

Unless an act of law has extinguished or amended rights recorded in the Inclosure Award and Map then these rights still exist. A legal process to amend a route recorded on the Down Ampney, Latton and Eisey Inclosure Award and Map was undertaken for Path 6 as described which demonstrates the acceptance of the award by the court. *“One Public Footway (by and with the consent of the said Lord Elliot testified by his executing this Award) and private Carriage Road of the breadth of twenty feet (number six in Map B) also leading out of the said Vicarage Lane and extending through and over the said Washford Common and over Sidwell Mead and the two bridges lately erected on each side of the last mentioned Mead which last described Road shall be and remain a public footway to all intents and purposes Whatsoever and a private Carriage Road for the use of the Owners and Occupiers of Down Ampney House for the time being”*



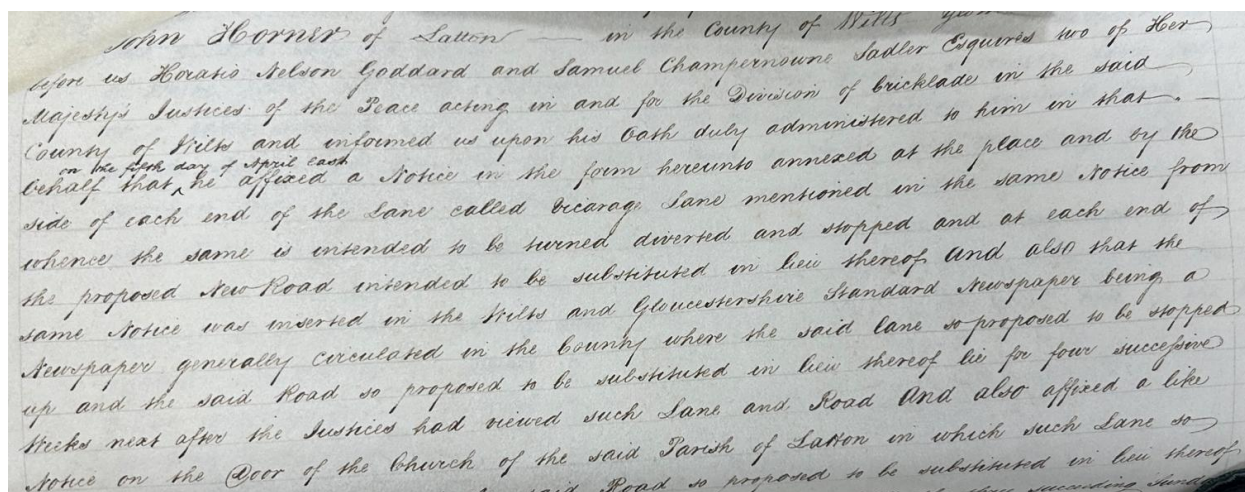


10.34 The act of law was discussed in detail in the Great Roll, Warminster, 29 June 1841, Inclosure Clerk of the Peace of Wilts. *“two of her Majesty’s Justices of the Peace in and for the said County of Wilts and informed us upon his Oath duly administered to him in that behalf that the Plan delivered to us of a certain land called Vicarage Lane in the Parish of Latton in the said County of Wils proposed so be turned diverted and stopped and also of a certain other Road proposed so be made formed and completed and intended so be substituted in lieu thereof and annexed so our Certificate this day signed by us is a correct and accurate Plan of the said lane intended to be stopped, and of the Road intended to be substituted in lieu thereof”*



10.35 “two of His Majesty’s Justices of the Peace acting in and for the Diversion of Cricklade in the said County of Wilts and informed us upon his Oath duly administered to him in that behalf that on the fifth day of April he affixed a Notice in the form hereunto annexed at the place and by the side of each and of the Lane called Vicarage Lane mentioned in the same Notice from whence the same is intended to be turned diverted and stopped and at each end of the proposed New Road intended to be substituted in lieu thereof and also that the same

Notice was inserted in the Wilts and Gloucestershire Standard Newspaper being a Newspaper generally circulated in the County where the said land so proposed to be stopped up and the said Road so proposed to be substituted in lieu therefore lie for four successive weeks next after the Justices had viewed such Land and Road And also affixed a like Notice on the Door of the Church of the said Parish of Latton “



10.36 No record of the extensive legal process to amend rights as demonstrated by the diversion of Path 6 has been found for Path 7 and Path 8 therefore the rights recorded in the Inclosure Award and Map still exist.

11. Category B

Category B evidence may be documents or plans drawn up as a result of legislation and consulted upon but where the primary purpose was not to record public rights. Examples of this includes records from the Tithe Commissioners and the Inland Revenue.

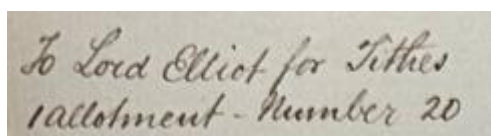
11.1 The Tithe Commutation Act of 1836

In 1836 the Tithe Commutation Act converted tithe payments into annual rent-charges. The apportionment of tithes was recorded in a schedule and on a map. Tithe documents were concerned with titheable land, it was not their purpose to record highways. Land not subject to tithe and therefore excluded on the map

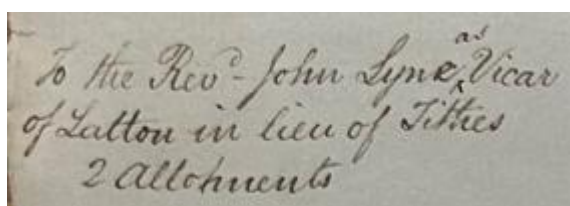
could be public highway, however it could also be private tracks, the land could be held by the church, or barren waste land, there are a number of issues that would affect productivity and therefore the land's titheable value.

- 11.2 Tithe surveys required careful mapping and examination of the landscape and land use and the maps and apportionments documents that resulted can offer valuable evidence of how the parish was at that time.
- 11.3 Latton Parish does not have a tithe map. Evidence of the Down Ampney, Latton, Eisey Inclosure Award shows that the tithes were commuted at that time in lieu of allotments. This is further evidence for the lawfulness of the Inclosure Award as if it hadn't been lawful, tithes would have had to be commuted in 1836.

"To Lord Elliot for Tithes allotment Number 20 [Charlham Field]



"To the Rev John Lyne and Vicar of Latton in lieu of Tithes 2 allotments ... 1st allotment 21 [PEASE BRIDGE FIELD] ... 2nd allotment number 22 [Muddleford Field]"



11.4 Inland Revenue Finance Act 1909/1910

In 1910 The Inland Revenue provided for the levying of tax (Increment Value Duty) on the increase in site value of land between its valuation on 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. The survey was usually carried out by Inland Revenue Inspectors working in an area of the county of which they were knowledgeable. Every individual piece of land in

private ownership was recorded and mapped and, because tax was to be levied based on area, highways and common land were carefully identified and included in the documentation.

- 11.5 The following is taken from the Journal of the Society of Archivists (JSA, Vol 8(2) no 2, Oct 1986 p 95-103 “An Edwardian Land Survey: The Finance (1909-10) Act and describes the process by which this was achieved. It is clear that the survey was carefully undertaken by people with local knowledge:

“The Valuation Department assumed responsibility of valuation for rating purposes, and the hereditaments of 1910 provided the basis for their work for very many years, so that the documents of that time often continued to be used as working documents long after the repeal of land clauses”.

“A land valuation officer was appointed to each income tax parish. These were almost always the existing assessors of income tax (who were also frequently assistant overseers), and some several thousand were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying each hereditament.”

- 11.6 Land that was valued for taxation purposes was shown coloured and given a hereditament number. This number allows reference to a valuation book where deductions are listed. Deductions were permitted where the value of a property were diminished, for example if a public right of way, an easement, or a right of common existed. It was common practice for valuers to exclude public roads by leaving them uncoloured and in some instances by re-enforcing their separation from the surrounding hereditaments by drawing on ‘broken braces’. Braces were a symbol used by the OS to link or join features and by breaking them the surveyor could show that something was un-connected with an adjoining feature.
- 11.7 The Finance Act is not specific about the exclusion of roads though they may be excluded under s.25 or Section 35(1) of the Act which says that *“No duty under this part of the Act shall be charged in respect of any land or interest held by or*

on behalf of a rating authority”.

11.8 WHSC Ref: L8/10/05 Latton map and L8/1/63 Finance Act Valuation Book

The working copy of the Finance Act plans held at WSHC have been viewed. The base maps for these records were the Second Edition of the Ordnance Survey's County Series maps at a scale of 1:2500. These maps had been revised in 1899 by the OS and undoubtedly provide the most accurate record of the landscape that we have for that time. The application routes are shown on Wiltshire sheet 5/5.

- 11.9 Seen below are images of the finance act map for the area. The southern section of Path 7 up to Down Ampney Road, Points A-B, is shown coloured within allotment 7. The base map shows this section of Path 7 is a delineated track with a specific width, fenced or hedged on both sides. The field book has also been viewed at WSHC which describes allotment 7 as being owned by the Earl of St Germans and the occupier as Dennis Sydney, the allotment is described as house and buildings and agricultural land with no deduction for public rights of way.



✓ 7 & 8	Dennis Sydney	Earl of St. Germans	Ho: & Bldgs	Church Farm	52
			Ag: Land	384.234	286
					$\frac{205}{172} \frac{7}{6}$

11.10 The northern section of Path 7 north of Down Ampney Road to the parish boundary, Points B-C-D, is shown coloured within allotment 57. The base map shows no topographical record of the route. The field book has also been viewed at WSHC which describes allotment 57 as being owned by the Earl of St Germans and the occupier as Charles Kinnett, the allotment is described as house and buildings and agricultural land with no deduction for public rights of way

70:6

Parish of Latter

No. of Assessment.	No. of Poor Rate.	Christian Names and Surnames of Occupiers.	Christian Names and Surnames of Owners, with their Residences.	Description of Property—If an Inn, &c., the name or sign by which known.	No. of House.	Street, Place, Name and Precise Situation of Property.	Poor Rate.					Reference to Map.
							Estimated Extent.	Gross Annual Value.	Rateable Value.			
1	2	3	4	5	6	7	8	9	10	11	12	
						Acres.	R.	£	s.	£	s.	
57	162	Tinnett Che ^s	Earl of St Germans	No + Bldgs Ag. Land		Latter Tish.		506.330	267	183	16	

11.11 Path 8 is shown as a delineated track also shown coloured within allotment 57.

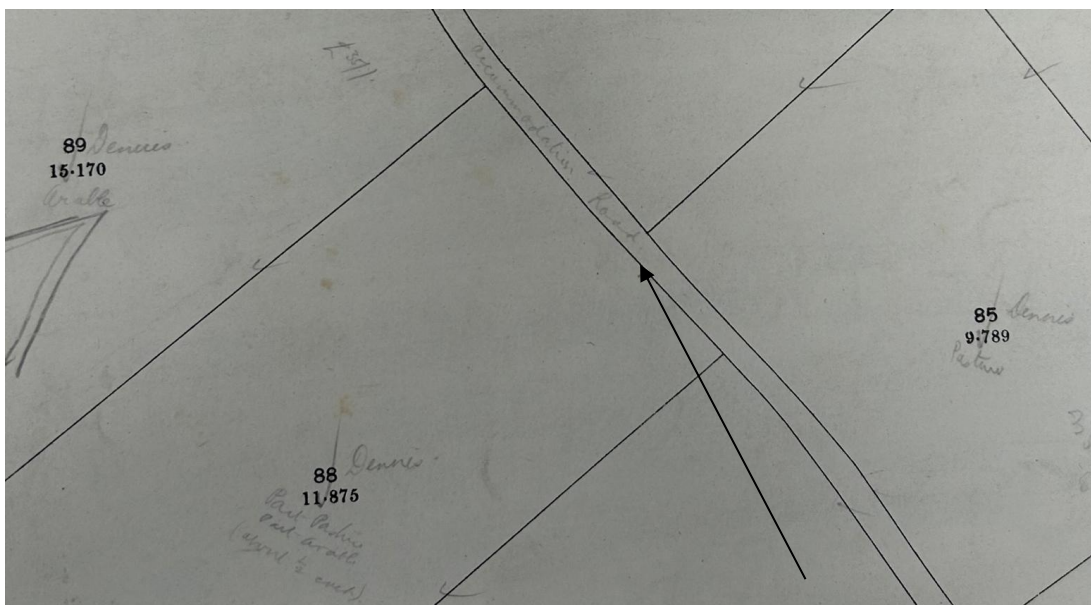


11.12 The claimed continuation of Path 8, ancient Inclosure Mowsdowns Lane, is shown coloured within allotment 83 and 57, close inspection of the map shows pencil lines either side of the track with the central section bracketed to 57. The base map shows Path 8 is a delineated track with a specific width, fenced or hedged on both sides. The field book has also been viewed at WSHC which describes allotment 83 as being owned and occupied by the Earl of St Germans, the allotment is described as woods with no deduction for public rights of way



✓ 82	✓ 89	Earl of S. Germano	"	"	Woods	Esey	7.703	3	2	3	
✓ 83	✓ 90	"	"	"	"	Lotton	49.582	20		19	10
								3	17	4.10 2.884	3 0 1 120
										49.582	

11.12 Pencil notes made on the Finance Map show the surveyor recording the southern section of Path 7, Points A-B, from Latton village to Ampney Down, as an Accommodation Road which gives access to land or property.



11.13 The Planning Inspectorate Consistency Guidelines at 11.2.9 *“Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.”*

12. Category C

12.1 Evidence in this category includes local government records (i.e. parish council, rural district council, highway board and county council), that is records whose purpose is connected with the administration of public assets, has legal responsibility for the protection of public rights and assets and is subject to public scrutiny. These include records of bodies whose function is the highway authority. These can be important records as they relate to maintenance liability and can be a clear indication of public acceptance of same.

12.2 Rural District Council Takeover Map c.1929

As a result of the Local Government Act 1929 the responsibility for the maintenance of rural roads was passed from Rural District Councils to the County Council. In Wiltshire the maps transferring this information are known as Takeover Maps. This information was then used to produce the County Council's Highway record. This record has been maintained and amended since that time and forms part of the Council's records of highways maintainable at public expense. It was not the purpose of the document to show public footpaths.

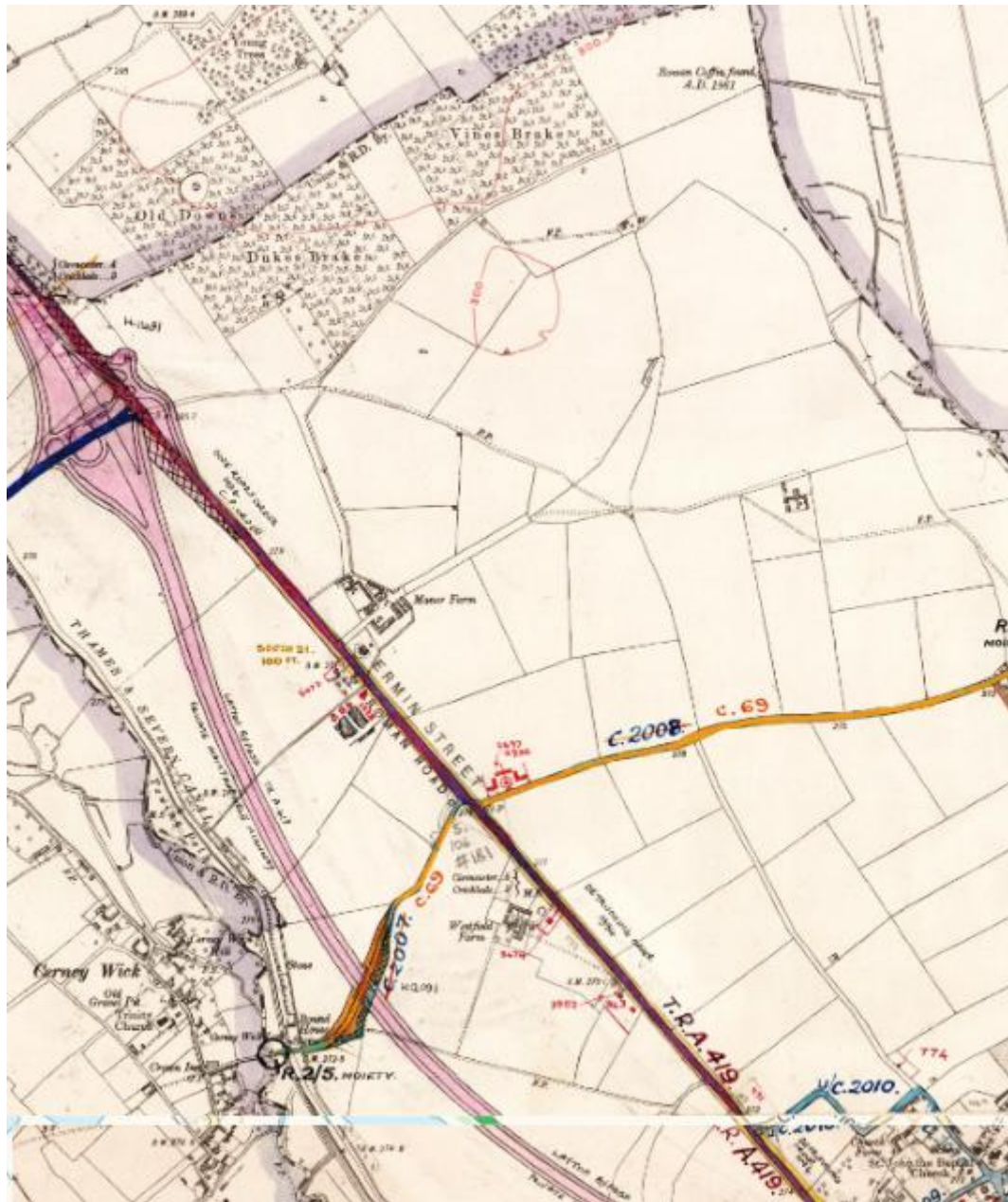
Path 7 and Path 8 are not marked on the map.



PATH 8

Sometime after the taking over of the responsibility for rural roads Wiltshire County Council amalgamated the information and produced a highway record. This record has been maintained and amended since that time and forms part of

the Council's records of highways maintainable at public expense. Path 7 and Path 8 are not marked on the map.



12.5 Roads and Bridges Minutes Latton 1936-1975 (WSHC F2-255-145-1)

Correspondence between the resident of Lane End (now Latton Grange), Wiltshire County Council and Cricklade and Wootton Bassett Rural District Council in 1948 shows a confusion as to whether the southern section of Path 7 leading directly from Croft Lane, was public highway or a public right of way.

plant trees in the lane shown on the sketch attached to his letter. This lane is not a repairable county highway, and I have no knowledge as to whether it is a public right of way. If the District Council see no objection to Commander Hutchinson's proposal the County Council will offer no objection, but in view of the District Council's duty under Section 28(1) of the Local Government Act, 1894, regarding the protection of public rights of way and the stopping or obstruction of any rights of way it is perhaps a matter which you should deal with.

Clerk to Cricklade and Wootton Bassett Rural District Council, 16 February 1948

"the County Council are unable to consent to the planting of trees on a public highway, and I regret that I am unable to help you in the matter. Have you tried to get permission to plant in the adjoining field ..."

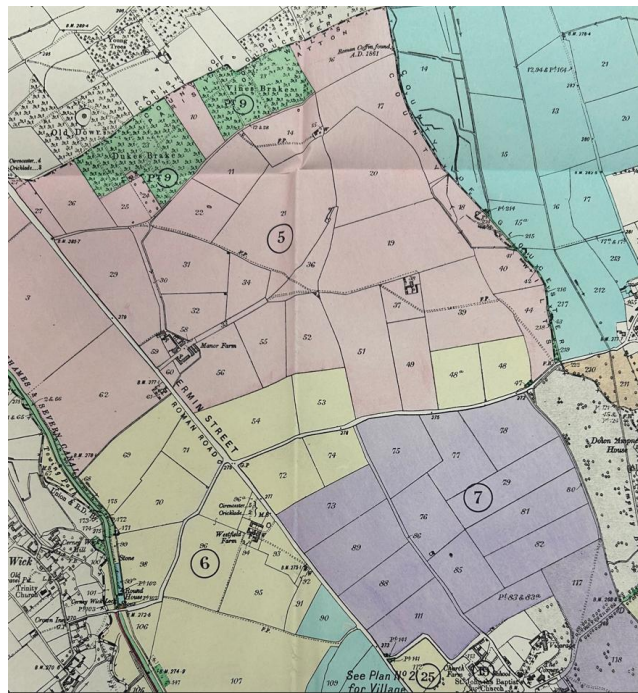
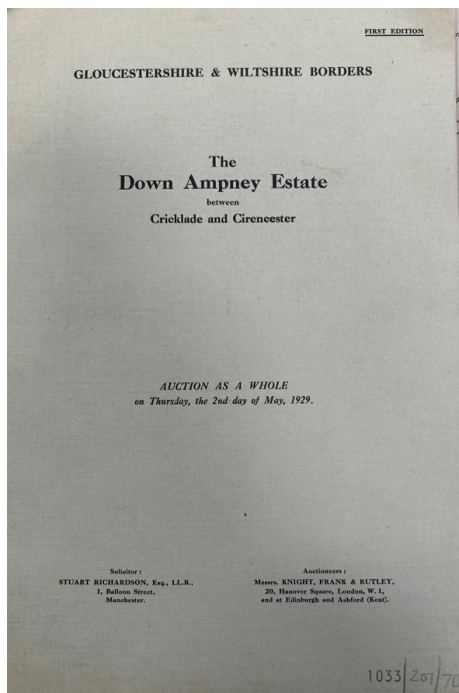
Referring to your letter of the 27th January, 1948, the County Council are unable to consent to the planting of trees on a public highway, and I regret that I am unable to help you in the matter. Have you tried to get permission to plant in the adjoining field as suggested by the Clerk to the Cricklade and Wootton Bassett Rural District Council?

13 CATEGORY D EVIDENCE

13.1 Evidence in this category includes other maps, plans or documents which show highways additional to or as a part of their purpose but which were not produced as a result of legislation or subject to consultation. Examples are parish maps, estate plans, conveyances or sales particulars.

13.2 WSCH 1033/207/70 Down Ampney Estate papers and maps –

The southern section of Path 7, up to Down Ampney Road, Points A-B, is shown coloured within the mauve plot, public rights of way recorded on the definitive map within this plot are also shown coloured, LATT4, 15 and 5. The northern section of Path 7, Points B-C-D, and Path 8 are shown coloured within the pink plot, public rights of way recorded on the definitive map within this plot are also shown coloured, LATT6 and 17.



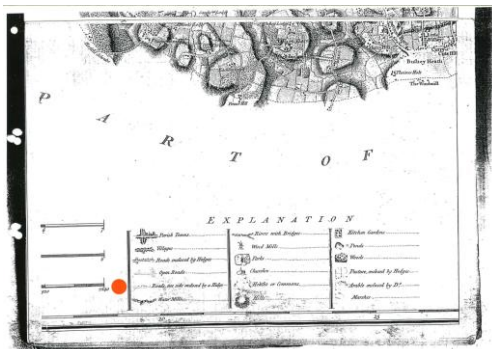
The stipulations in the auction papers state *“The Plans ... are believed to be correct and shall be so accepted both by the Vendors and the Purchasers, and no error or mis-statement therein or in the following particulars shall annul the sale. ... The properties are sold subject to all rights of way, water, drainage, light or other easements of every description that may affect the same”*

1. The Plans are prepared and the Quantities are taken from the 1921 and 1922 Editions of the Ordnance Survey of Great Britain. They are believed to be correct and shall be so accepted both by the Vendors and Purchaser, and no error or mis-statement therein or in the following particulars shall annul the sale or entitle either party to compensation, nor in any circumstances give grounds for an action at Law for breach of warranty, misrepresentation, damages or otherwise.

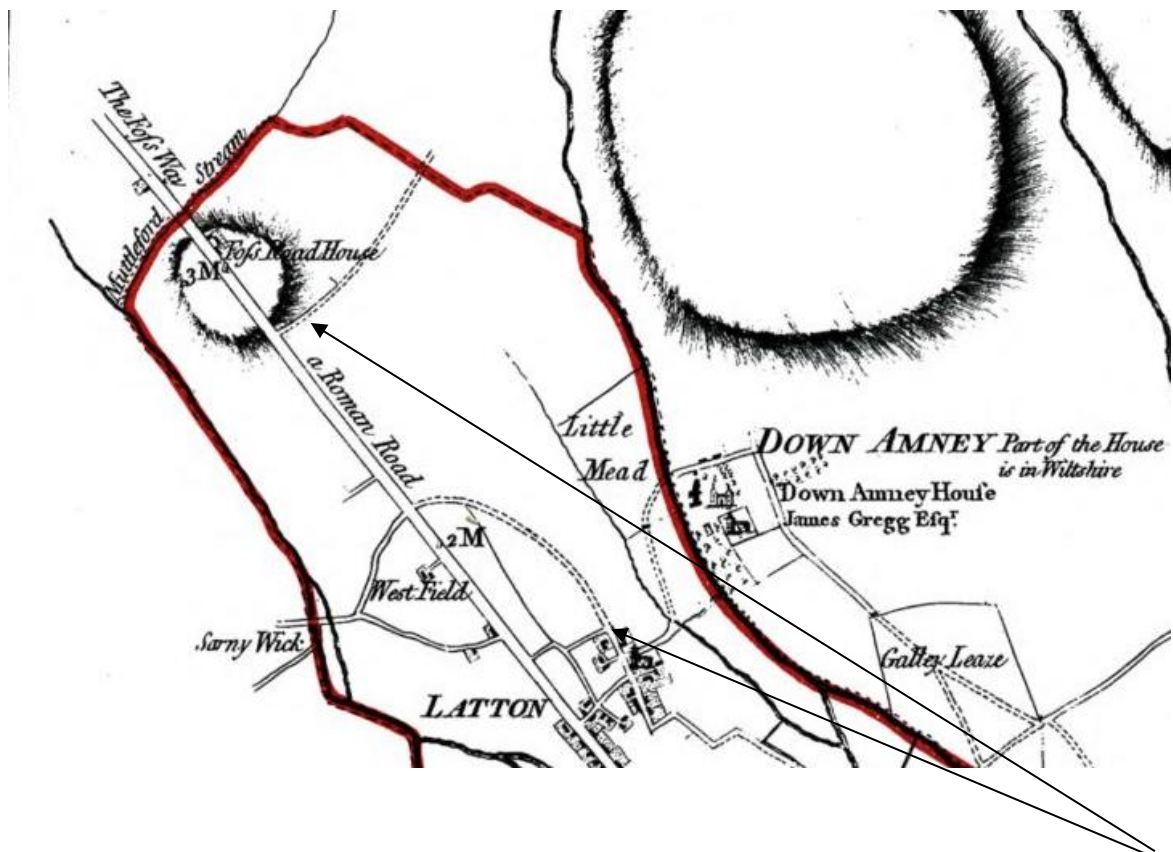
2. The Properties are sold subject to all rights of way, water, drainage, light or other easements of every description that may affect the same, whether mentioned or referred to in the Particulars or any abstracted document and to all existing tenancies and rights of outgoing tenants, and to all outgoing of every description that may be subsisting or chargeable thereon. The Agreements and Leases, where in writing can be inspected at the Offices of the Solicitor :— Stuart Richardson, Esq., 1, Balloon Street, Manchester.

CATEGORY E EVIDENCE

- Evidence in this category includes commercial maps and Ordnance Survey maps, plans and documents. It is usual for there to be a significant quantity of evidence in this category, and it is important to bear in mind the originality and purpose of the documents. The value of this group of evidence lies in the continuity of records over a long period of time and any differing origin. It must be borne in mind that this group of documents would have had the largest public circulation outside of the parish.
- Not all commercial maps are derived from the same surveys and although Hence it is useful to compare the county maps produced by Andrew's and Dury's, C & I Greenwood, the Ordnance Survey, J Cary and Bartholomew.
- It must also be considered that even when surveys produced by the OS were used by other map makers there was considerable scope for revision and updating specific to the individual purpose. For example, Popular Series maps produced by the Ordnance Survey were revised with reference to highway surveyors.
- Andrew's and Dury's Map of Wiltshire 1773 (scale 2 inches = 1 mile)**
- Andrew's and Dury's Map is a commercial map of the county based on original survey. The map is dedicated "*To Noblemen Gentlemen Clergy shareholders of the County of Wilts This MAP is inscribed by their most Obedient and devoted servants JOHN ANDREWS ANDREW DURY*". The map has no key but the Hertfordshire map does and there is no reason to consider that the Surveyor would have employed different mapping symbols for this particular map.

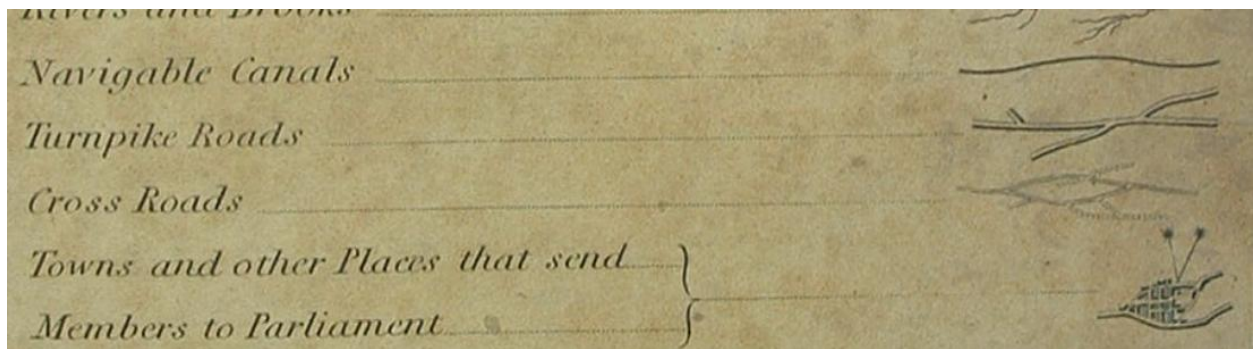


- 14.5 The map shows a route heading north, then north west from Latton village to West Field Farm. Before the path curves north west the route is roughly following Path 7 from its access from the village to Down Ampney Road, Points A-B. The map also records a route roughly following Path 8 and the claimed continuation of Path 8, ancient Inclosure Mowsdowns Lane.



14.6 **Greenwoods Map of Wiltshire 1820 (scale 1 inch = 1 mile)**

Greenwood resurveyed and produced a set of updated county maps between 1817 and 1839. Greenwood's first edition "Map of the County of Wilts from Actual Survey", dated 1820, is a commercial map, produced for the travelling nobility who contributed to its production. The maps were produced at a scale of 1 inch to the mile in full colour and have a key.



- 14.7 Unlike Andrew's and Dury's Map which shows a path from Latton village heading towards West Field Farm Greenwood 1820 shows a route from Latton Village continuing heading north following the route up to Down Ampney Road, the southern section of Path 7, Points A-B.



- 14.8 **Bartholomew's half inch survey atlas 1902** Record the southern section of Path 7, Points A-B, from Latton village to Down Ampney Road as a delineated track.



Southern
Section of
PATH 7

14.9 Ordnance Survey

The Ordnance Survey was founded in 1791 and developed a range of maps, varying in scale and level of detail, to meet changing needs for accurate and updated maps of the country. The maps are based on original survey, with revisions, and are topographical in nature, i.e. showing only physical features which are recorded by a particular surveyor at the time of survey, with place names and administrative boundaries added, they do not differentiate between public and private routes.

14.10 Ordnance Survey hand drawn, 29 August 1816 – 164 Ashton Keynes

In preparation for the production of a map covering the whole of England at the scale of 1 inch to 1 mile the OS surveyed the country at a scale of 2 inches to 1 mile. Path 7 is shown with solid lines indicating a delineated track with a specific width, fenced or hedged on both sides to Down Ampney Road, Points A-B. Continuing north the route is shown with a solid line on the western side, therefore fenced or hedged and a dashed line on the eastern side indicating a change in vegetation and unfenced, Points B-G.



The track is shown with a double solid line south of its intersection with Path 8, Point G, which is approximately where Winston/e Hill Lane begins according to the Inclosure Award *“by ancient Inclosures Winstone Hill Lane (Number eighty seven and one hundred and eight in map B).*



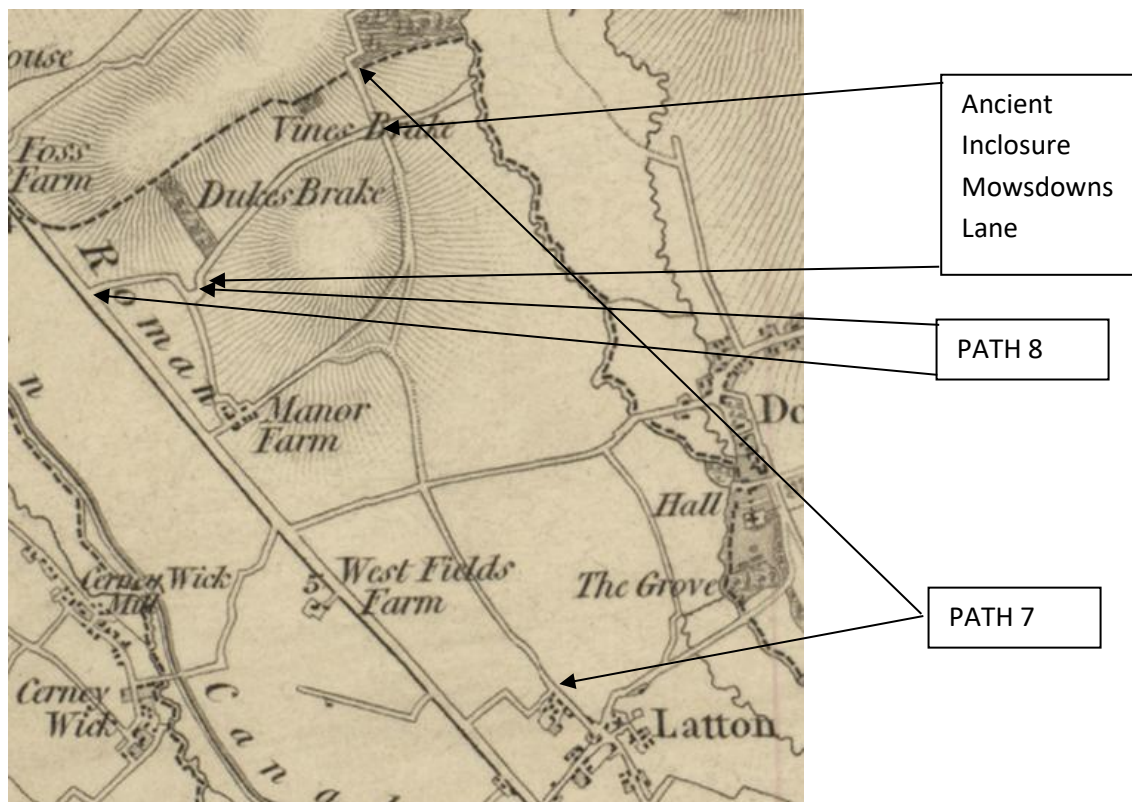
Then continues into Gloucestershire shown with double solid lines again indicating a delineated track with a specific width, fenced or hedged on both sides, Points G-C-D.

Path 8 is shown with double solid lines along its entire route, therefore a delineated track with a specific width, either fenced or hedged. The claimed continuation of Path 8 is as Mowsdowns Lane a private carriage road and drift way in the Inclosure Award as discussed at paragraph 10.23 and 10.24.

14.11 Ordnance Survey Map Sheet 34 dated 23 August 1828 by Lieut Colonel Colby of the Royal Engineers

Published at the Tower of London 12th August 1828 by Lieut. Colonel Colby of the Royal Engineers.

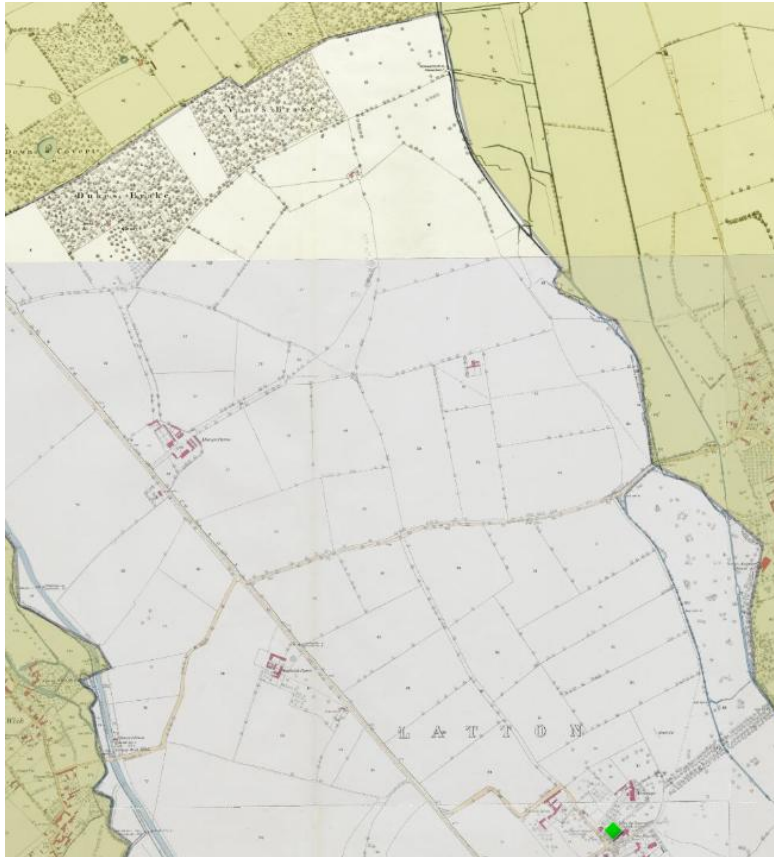
Path 7 and Path 8 both shown with double solid lines along the entire length of the routes, indicating a delineated route, fenced or hedged on both sides.



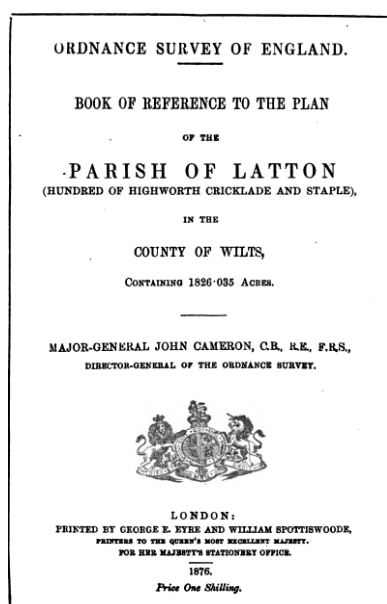
- 14.12 The 1:2500 scale was introduced in 1853-4 and by 1896 it covered the whole of what were considered the cultivated parts of Britain. J B Harley, historian of the Ordnance Survey, records that *“the maps delineate the landscape with great detail and accuracy. In fact, practically all the significant man-made features to be found on the ground are depicted. Many phenomena make their debut on the printed map and as a topographical record the series transcends all previous maps. Every road..., field..., stream and building are shown; non-agricultural land is distinguished...quarries, sand, gravel and clay pits are depicted separately; all administrative boundaries are shown;...hundreds of minor place names...appear on the map for the first time. Where appropriate, all topographical features are shown to scale. The series is thus a standard topographical authority”*.
- 14.13 Richard Oliver in his book *“Ordnance Survey Maps a complete guide for historians”* recognises that *surveying errors (and paper distortion during printing) cannot be ruled out, particularly where detail is sparse, but in practice such errors are likely to be very hard to demonstrate, because of a general paucity of suitable sources rivalling or bettering the OS in planimetric accuracy and completeness of depiction.”*
- 14.14 OS maps are topographical in nature, recording only what was visible to the surveyor at the time of survey and cannot be relied upon alone in determining whether or not the path is public or private. The maps drawn at a scale of 25 inches to 1 mile, carry the following disclaimer *“N.B._The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.”*

14.15 Surveyed in 1875 published 1879, 25 inch to the mile

The area of Path 7, Path 8 and Path 9 shown in full.



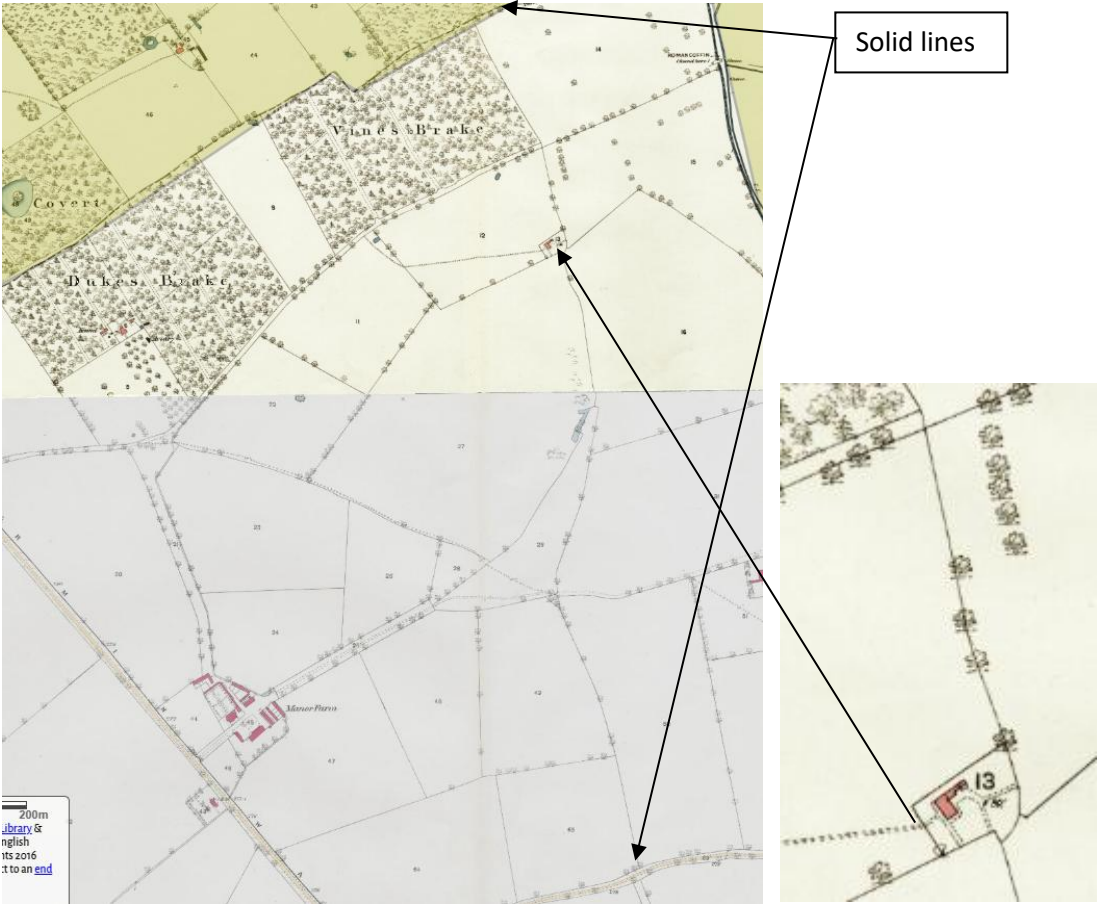
Path 7 section Points A-B, leading from Latton Village heading in a north north westerly direction to Down Ampney Road. The route is shown as a delineated track with a specific width, fenced or hedged on both sides. There is not a solid line from the village suggesting an open track entrance which can still be seen in paragraph 4.3 photographs 1 and 2. There is a solid line across the route accessing Down Ampney Road suggesting a gate/boundary/fence at this location, paragraph 4.3 photograph 7. The track is numbered 87. The Ordnance Survey Of England, Book of Reference to the Plan of the PARISH OF LATTON records No.87 as a Road with an area in acres 3.176.



No. on Plan.	Area in Acres.	Remarks.
79	1.600	Houses, gardens, &c.
80	12.917	Arable.
81	5.459	Pasture, &c.
82	.341	House and garden.
83	3.523	Pasture.
84	5.796	Arable.
85	15.170	Arable.
86	11.875	Arable.
87	3.176	Road.

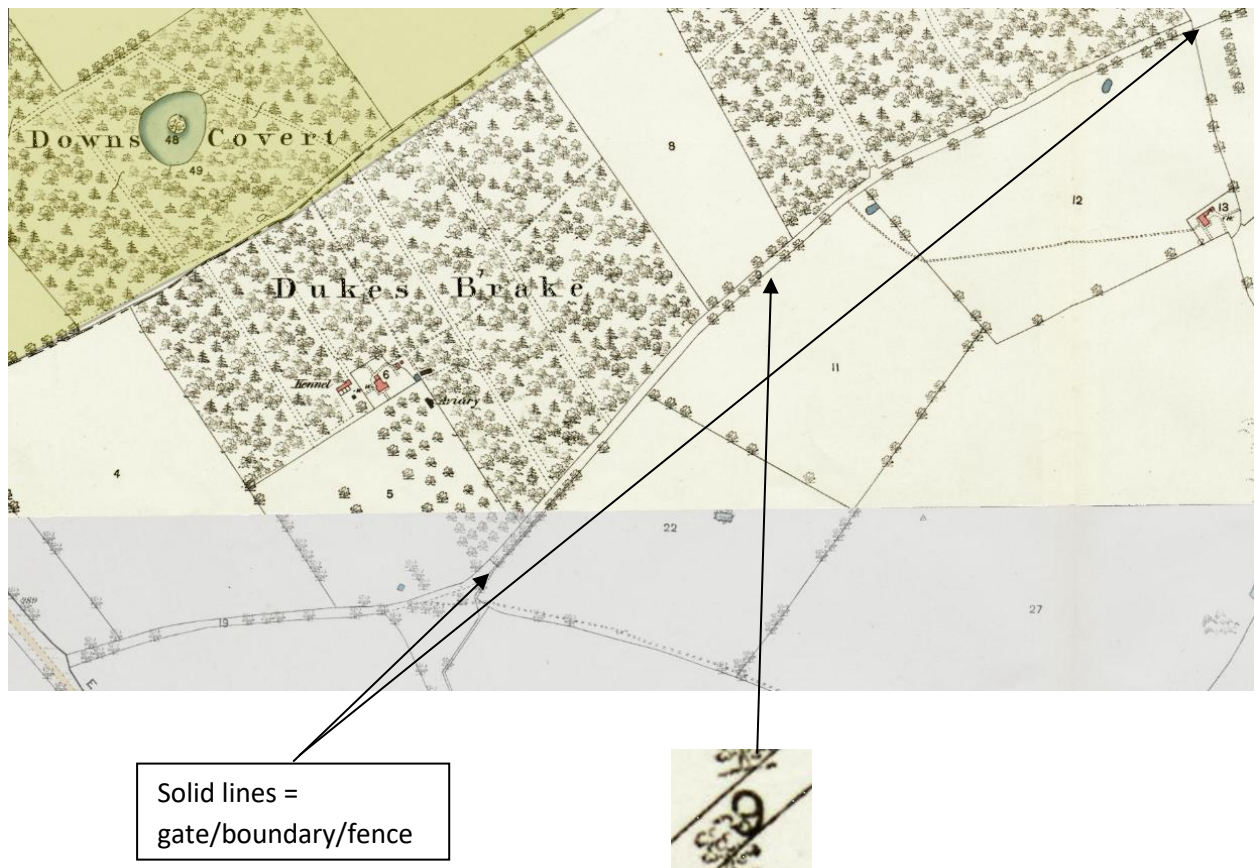
Path 7 from Down Ampney Road heading north to the Gloucestershire boarder is not delineated on the map, Points B-C-D. There is a solid line across the route from Down Ampney Road and at its intersection with the Gloucestershire boarder suggesting a gate/boundary/fence at these locations. Photographs of the site show there is still a double field gate at Down Ampney Road, paragraph 4.4

photograph 1 and a gate at the boarder, paragraph 4.4 photographs 10 and 11. A property is recorded as 13 and is recorded in the Ordnance Survey Book of Reference to the Plan as No.13, House and Garden. 0.331 acres. This is approximately the position of Winston/e Hill Lane according to the Inclosure Award and indicated by the hand drawn OS map of 1816, Point G. As previously discussed at 10.20.



No. on Plan.	Area in Acres.	Remarks.
1	12.379	Pasture.
2	11.381	Arable.
3	4.031	Pasture.
4	12.477	Arable.
5	6.789	Pasture.
6	.358	House and garden.
7	26.014	Wood.
8	7.533	Pasture.
9	1.647	Road.
10	22.983	Wood.
11	10.257	Pasture, &c.
12	11.544	Pasture, &c.
13	.331	House and garden.

Path 8 is shown with double solid lines along its entire route, therefore a delineated track with a specific width, either fenced or hedged. The claimed continuation of Path 8 is recorded as Mowsdowns Lane a private carriage road and drift way in the Inclosure Award as discussed at paragraph 10.23 and 10.24. There is a solid line across the route from its intersection with Mowsdowns Lane at the western end of the track and at its intersection with Path 7, at the eastern end of the track, suggesting a gate/boundary/fence at these locations. There is still a gate at its western access point, Mowsdowns Lane, paragraph 4.5 photograph 1 but the eastern access point is now open, paragraph 4.5 photograph 6. The track is numbered 9 in the Ordnance Survey Book of Reference and records No.9 as a Road with an area in acres 1.647.



Path 9 is shown with double dashed lines, indicating a change in vegetation and unfenced, follows the same route from Points E-H heading in a south easterly direction. The path then deviates slightly from the Inclosure Award but follows a similar course culminating at the same termination point at I. This route continues

to be recorded following this course and is claimed by Latton Parish Council in 1950 as Bridleway Latton 6. The route is then diverted to its current route On 13 March 1996 as discussed at paragraph 8.8.



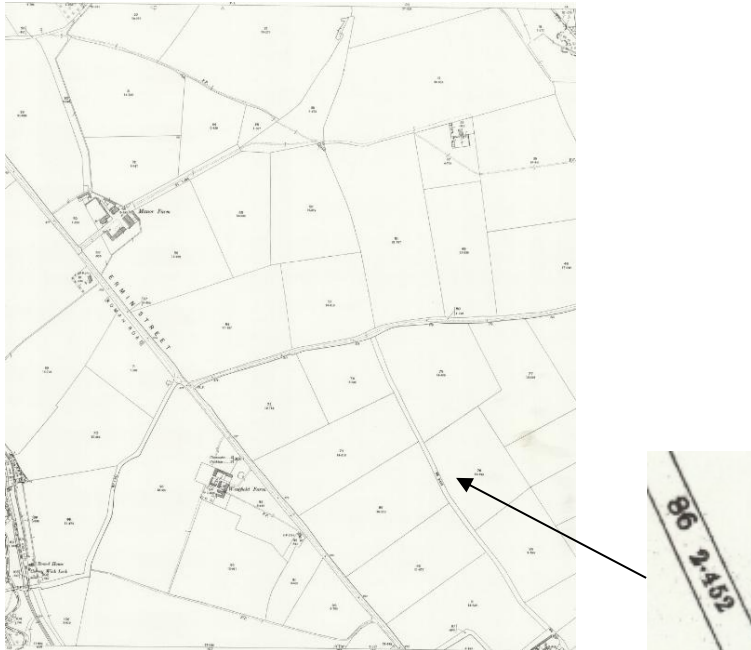
14.16 Surveyed 1873-80 revised 1898 published 1903 6 inch to the mile Map

Both Path 7 and Path 8 are shown in the same manner as the 1875 map. Path 9 is now labelled FP.

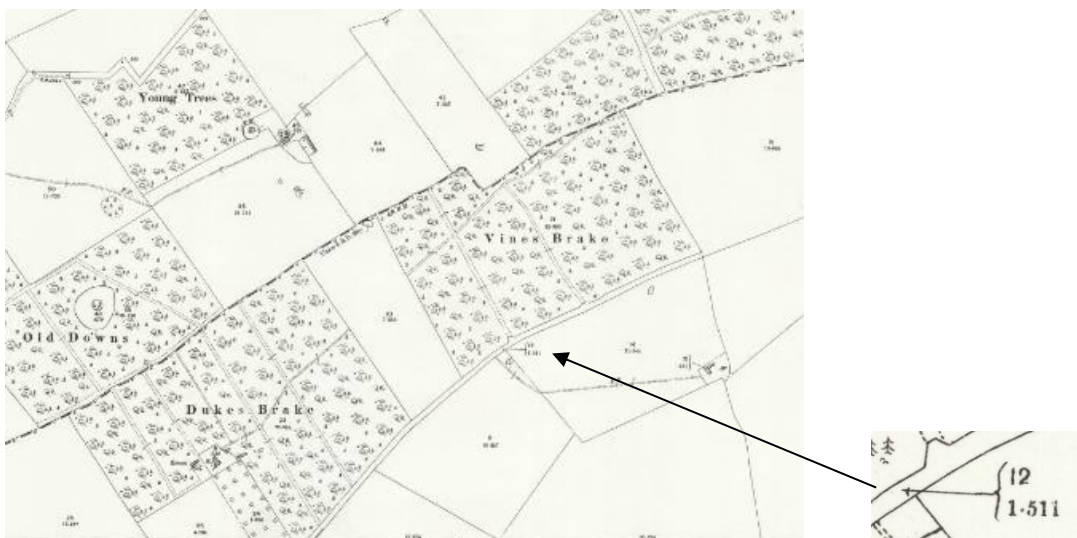


14.17 Revised 1898 Published 1900 25 to mile

Both Path 7, Path 8 and Path 9 continue to be shown in the same manner as the 1875 map. The southern section of Path 7, Points A-B, shown as a track, is numbered 86 with an area in acres 2.452.

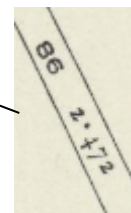
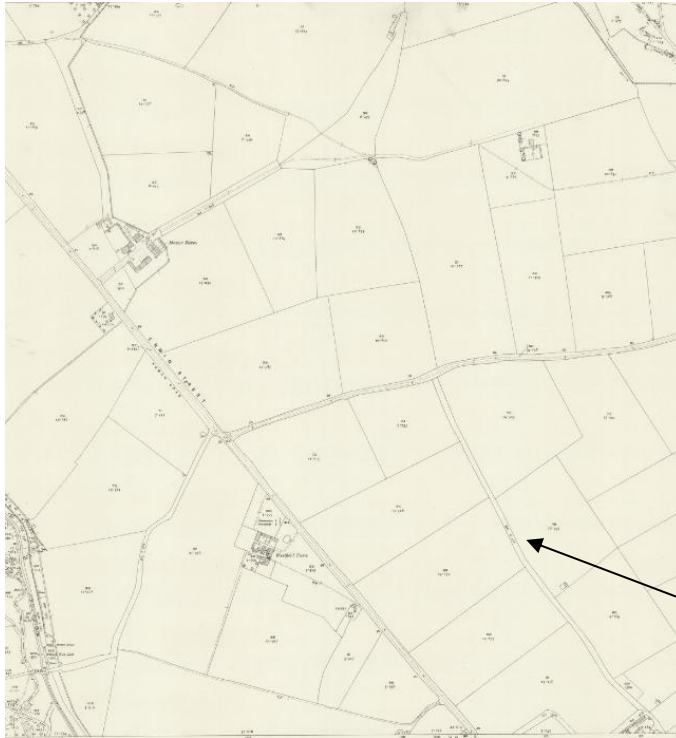


The claimed continuation of Path 8, Mowsdowns Lane, is numbered 12 with an area in acres 1.511

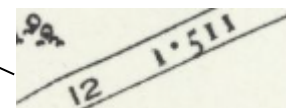
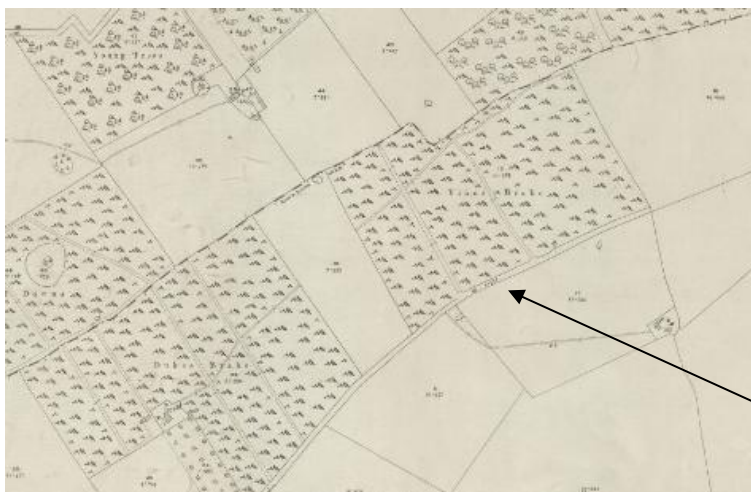


14.18 Revised 1920 Published 1921 25 to the mile

Both Path 7, 8 and Path 9 continue to be shown in the same manner as the 1875 map. The southern section of Path 7, Points A-B, shown as a track, is numbered 86 with an area in acres 2.472.

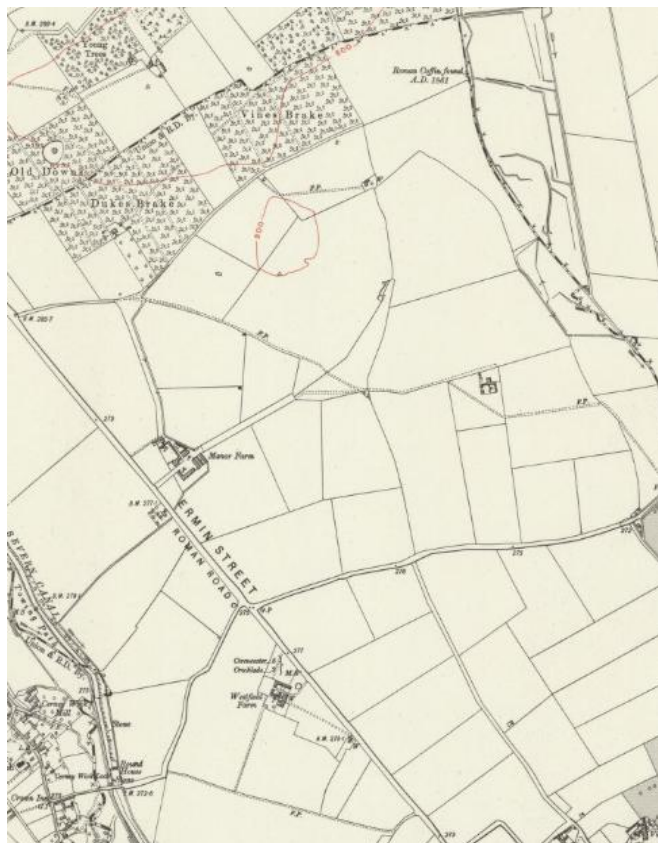


The claimed continuation of Path 8, Mowsdowns Lane, is numbered 12 with an area in acres 1.511



14.19 Revised 1920 published 1924, 6 inch to the mile

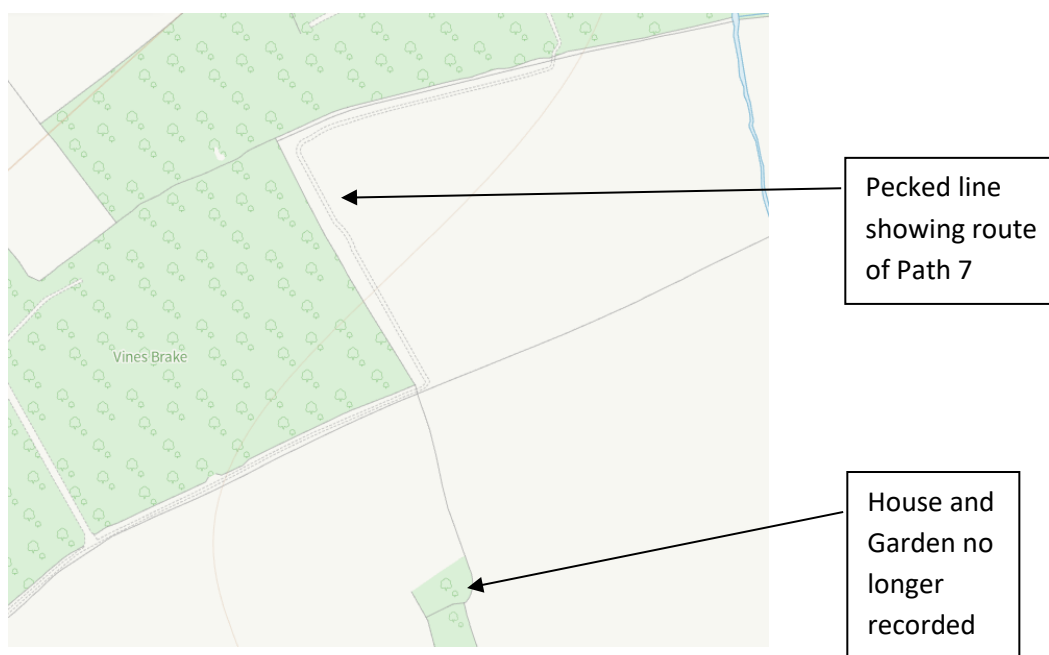
Both Path 7, Path 8 and Path 9 continue to be shown in the same manner as the 1875 map.



14.20 Current Ordnance Survey Map

Both Path 7 and Path 8 continue to be shown in the same manner as the 1875 map. The north western section of Path 9 is now shown as LATT6, the south eastern section follows the route recorded in the 1875 map, this route deviates slightly from the Inclosure Award but follows a similar course culminating at I. LATT6 is diverted in 1996 as discussed at paragraph 8.8. The southern section of path 7, Points A-B, leading from Latton Village heading in a north north westerly direction to Down Ampney Road is shown as a delineated track with a specific width, fenced or hedged on both sides. There is not a solid line from the village suggesting an open track confirmed by photographs 1 and 2 at paragraph 4.3. There is a solid line across the route accessing Down Ampney Road suggesting a gate/boundary/fence at this

location, confirmed by photograph 7 at paragraph 4.3. From Down Ampney Road heading north to the Gloucestershire County Boundary is not delineated on the map, Points B-C-D, but the field boundaries follow the same course as Path 7 recorded in the Inclosure Award. There is a solid line across the route from Down Ampney Road and at its intersection with the Gloucestershire County Boundary suggesting a gate/boundary/fence at these locations. Photographs of the site show there is still a double field gate at Down Ampney Road, paragraph 4.4 photograph 1 and a gate at the boundary, paragraph 4.4 photographs 10 and 11. There is no longer a home and garden recorded on the current map as had previously been recorded as No.13 as can be seen at paragraph 4.4 photograph 8. There is now a pecked line path recorded to the east of Vines Brake, the continuation of Path 7 as recorded on the Inclosure Award map, although it is shown further east than is recorded on the Inclosure Award map. Paragraph 4.4 photograph 9.



Path 8 is shown with double solid lines along its entire route, therefore a delineated track with a specific width, either fenced or hedged as is the claimed continuation of Path 8, recorded as Mowsdowns Lane a private carriage road and drift way in the Inclosure Award, as discussed at paragraph 10.23 and 10.24. There is a solid line across the route from its intersection with Mowsdowns Lane at the western end of the track and at its intersection with Path 7, at the eastern

end of the track, suggesting a gate/boundary/fence at these locations. There is still a gate at its western access point, Mowsdowns Lane, paragraph 4.5 photograph 1 but the eastern access point is now open, paragraph 4.5 photograph 6.

Below is the Inclosure Award Map inclined to show the map approximately orientated north next to the current Ordnance Survey map. The area has remained remarkably comparable over the course of time with distinct topography. Path 7 section, Points A-B, has continued to be recorded as a delineated track, as has Path 8 in its entirety. The northern section of Path 7, Points B-C-D, has not been recorded as a delineated track however the field patterns remain consistent with the wide field margins following Path 7 as can be seen at paragraph 4.4 photographs 2, 3, 4, 5, 6, 8 and 9.



15 Conclusion

- 15.1 It is clear from the evidence before Officers Path 7 and Path 8 (now the northern section of LATT6) were recorded as 'public footway and private carriage road and drift way', Path 9 was recorded as 'a public footway' and the claimed

continuation of Path 8 is recorded as Mowsdowns Lane 'a private carriage road and drift way' on the Down Ampney, Latton and Eisey Award 23 May 1805 as a result of a local Inclosure Act for the parishes of Down Ampney, Latton and Eifey dated 23 June 1801 and deposited on 7 April 1814 in the Office of the Clerk of the Peace in the County of Gloucestershire. The width and route of the paths are described in the award which tallies with the clearly depicted paths on the Inclosure Map. The Ordnance Survey Maps dated from 1816 show Path 7 and 8 evidently set out and remain remarkably consistent over the course of time with distinct topography, and Path 9 is shown on Ordnance Survey Maps from 1875. Unless an act of law has extinguished these paths since the Inclosure documents then public rights still exist. No legal event has been discovered which has extinguished those rights.

15.2 Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows that, on the balance of probabilities, a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates. This section allows for the consideration of common law and the inclusion of historical evidence and is the more commonly used section.

15.3 In considering the evidence under section 53(3)(c)(i) there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw*(1994) 68P & CR 402 (*Bagshaw*):

Test A: Does a right of way subsist on the balance of probabilities? This requires the authority to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed paths is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the authority should find that a public right of way has been reasonably alleged.

To confirm the Order, a stronger test needs to be applied; that is, essentially that contained within Test A. In *Todd and Bradley v SoSEFRA [2004] EWHC 1450 (Admin)*. Evans-Lombe J found that the appropriate test for confirmation is the normal civil burden of proof that such a way subsists on the balance of probabilities.

Test B is the weaker test and only requires that on the balance of probabilities it is reasonably alleged that public rights subsist. This allegation may only be defeated at the order making stage by incontrovertible evidence.

- 15.4 Officers conclude that after consideration of all available historical evidence presented and discovered, demonstrates that it is not only reasonably alleged, Test B, but on the balance of probabilities, Test A, Path 7 should be recorded on the definitive map and statement as a footpath. They therefore consider that Wiltshire Council have a duty to make a Definitive Map Modification Order to add Path 7 to the definitive map and statement of public rights of way. However, Officers consider that there is not a reasonable allegation to record Path 8 as applied for. The western section of Path 8 as recorded on the Inclosure Award is now recorded on the Definitive Map and Statement as Bridleway Latton 6 and the eastern section, Mowsdown Lane, is an ancient inclosure, this was not set out in the Award and therefore any public rights along the lane no longer exist.

16 Overview and Scrutiny Engagement

- 16.1 Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory process which is set out under Section 53 of the Wildlife and Countryside Act 1981.

17 Safeguarding Considerations

- 17.1 Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside

Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

18 Public Health Implications

- 18.1 Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based only on the balance of probabilities determined by the relevant evidence.

19 Environmental Impact of the Proposal

- 19.1 Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based only on the balance of probabilities determined by the relevant evidence.

20 Equalities Impact of the Proposal

- 20.1 Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone

21. Risk Assessment

- 21.1 Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

- 21.2 Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is an error within the definitive map and statement which ought to be investigated, and it would be unreasonable for the Council not to seek to address this fact.

22 Financial Implications

- 22.1 The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
- 22.2 If orders are made and advertised and no objections are forthcoming the Council will not incur any further costs beyond advertising the confirmation of the order , if appropriate. If the orders attract objections that are not withdrawn, they must be forwarded to the Secretary of State for determination. The orders may be determined by written representations (no additional cost to the Council), a local hearing (additional costs to the Council in the region of £300) or a public inquiry (additional costs to the Council in the region of £5000).

23 Legal Considerations

- 23.1 Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the SoSEFRA, who will consider the evidence and may direct the Council to make an order.
- 23.2 If an order is made and objections are received, any determination of the Order by the Secretary of State may be challenged in the High Court.

24 Options Considered

To:

- (i) Refuse to make a definitive map modification order under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence any additional rights exist that are not currently recorded on the definitive map and statement or is reasonably alleged to subsist, or
- (ii) Where there is sufficient evidence that a right for the public on foot, subsists or is reasonably alleged to subsist, the authority is required to make a definitive map modification order to add Path 7 as a Footpath, amending the definitive map and statement of public rights of way accordingly, under Section 53 of the Wildlife and Countryside Act 1981.

25 Reasons for Proposal

25.1 Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an order should be made if the Authority discovers evidence, which, when considered with all other relevant evidence available to them, shows

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”

25.2 The evidence demonstrates that the application route Path 7 of application D/2023/002 that Test B, on the balance of probabilities it is reasonably alleged that public rights subsist, the appropriate test at the order making stage. This allegation may only be defeated at the order making stage by incontrovertible evidence. However, in this case officers believe Test A has also been met, the evidence shows on the balance of probabilities the right of way subsists over land in the area to which the map relates which is not currently shown in the map and statement.

26 Recommendation

26.1 That Wiltshire Council makes a definitive map modification order to record public Path 7 to be known as Footpath Latton no.24. The Footpath is to be recorded in the parish of Latton from Croft Lane, at OS Grid Reference SU 0916-9593 heading in a north north westerly direction to Down Ampney Road with a recorded width of 9.14 metres and continuing in a northerly direction to the Gloucestershire boundary at Folly Wood, OS Grid Reference SU 0848-9814, with a recorded width of 6 metres, a total distance of approximately 4,400 metres. If no objections are received once it has been duly advertised the Order should be confirmed and the definitive map and statement altered accordingly.

Ali Roberts

Definitive Map Officer

4 April 2025