

FORM 1



APPLICATION FORM FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT WILDLIFE AND COUNTRYSIDE ACT 1981

To: Rights of Way Section, Wiltshire Council, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN
I, Natalie White, for and on behalf of the British Horse Society, of Abbey Park, Stareton,
Kenilworth, Warwickshire. CV8 2XZ. Hereby apply for an order under Section 53(2) of the
 Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by:

- a) Upgrading to Restricted Byway the bridleway CALW89 which runs from Point A on the application map (OSGR SU 02531 68925), at the junction between the public highway at Theobalds Green, in the Parish of Calne Without and proceeds along the bridleway CALW89 in a southerly direction along the lane to Point C (OSGR SU 02396 68471) at the junction between the bridleway and the public highway in the Village of Calstone Wellington.

With a width of: approximately 7m

and shown on the map accompanying this application.

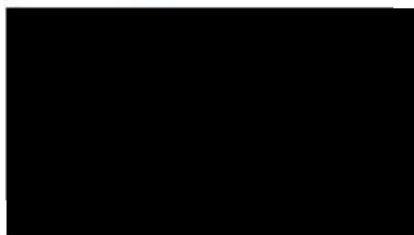
I attach copies of the following documentary evidence in support of this application, namely extracts of:

- i. Andrew and Drury's Map of Wiltshire (1773)
- ii. Ordnance Survey 1st Edition Map (1805)
- iii. Inclosure Plan for Calne, Calsone Wellington and Compton Bassett (1818)
- iv. Map of the parish of Calstone Wellington (1830)
- v. Tithe map of Calstone Wellington (parish), Wiltshire (1844)
- vi. Ordnance Survey 25" County Series Map Sheet Wiltshire XXVII.10 (1886)
- vii. Ordnance Survey 6" County Series Map Sheet Wiltshire XXVII (1889)
- viii. Ordnance Survey 1" Map Sheet 266 & 157 (1889 & 1947)
- ix. Map prepared in connection with the Finance (1909-10) Act 1910
- x. Bartholomew's Half-Inch Maps of England and Wales (1902 & 1942)
- xi. Map produced from HM Land Registry INSPIRE database (2022)

The copies of the above items of documentary evidence are contained in a Summary of Evidence document also attached.

I understand that the information I have provided may be imparted to third parties.

Signed: Natalie White

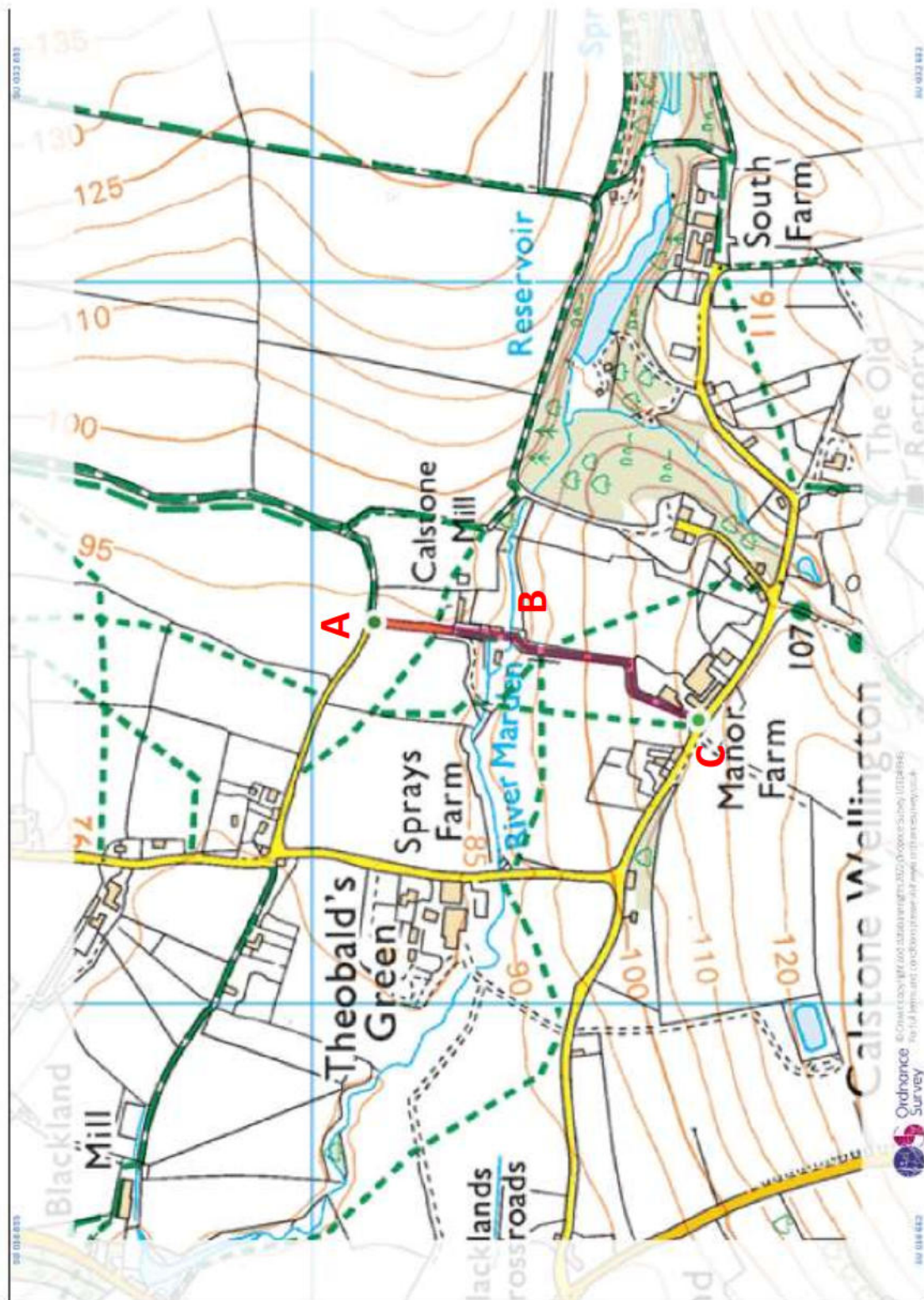


Date: 28th January 2022

Wildlife and Countryside Act 1981

Map to Accompany Definitive Map Modification Order Application

For a route in the Parish of Calne Without to be shown as a Restricted Byway marked A to B to C on the map below by the pink line, 28th January 2022



Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Summary of Evidence

Definitive Map Modification Order Application

For a route in the Parish Calne Without to be shown as a Restricted Byway marked A to B to C on the map below by the pink line.



Applicant's Reference:

WIL-0635

28th January 2022

Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map

Wiltshire XXVII.10

Grid references of ends of route
(approximate)

SU 02531 68925 to SU 02396 68471

1. My name is Natalie White. I am the applicant for the order, for and on behalf of the British Horse Society (BHS).
2. This application is made because, on the cut off day, 1st January 2026, the effect of
 - a. The effect of s.53(3) and (4)(c) Countryside and Rights of Way Act 2000 on a public highway that existed prior to 1949 is to extinguish the vehicular rights on a route shown in the definitive map and statement as a bridleway.
3. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, because:
 - a. This application statement includes explanations as to how the evidence applies to the application route, and
 - b. The application contains one or more of the following forms of supporting evidence:
 - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 - (2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
 - (3) Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
 - (4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
 - (5) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

THE APPLICATION ROUTE

4. The application route is shown approximately on the plan below:
 - a. Point A, the northern end of the route (at OSGR SU 02531 68925), at the junction between the public highway at Theobalds Green and the bridleway CALW89, in the Parish of Calne Without and proceeds along the bridleway in a southerly direction along the lane to Point B.
 - b. Point B (at OSGR SU 02506 68720), at the old Mill and continues in a southerly direction to Point C.
 - c. Point C (at OSGR SU 02396 68471), at the end of the bridleway CALW89 and the junction with the public highway to Calstone Wellington.
5. The application route is currently recorded on the Council's definitive map as the bridleway CALW89.
 (<https://wiltscouncil.maps.arcgis.com/apps/webappviewer/index.html?id=43d5a86a545046b2b59fd7dd49d89d22>)



Extract of Ordnance Survey 1:25000 scale map showing application route A to B to C as pink line (not to scale)

6. Photographs 1 to 2 are from OS Aerial Viewer and Google Street View



Photograph 1 is an OS Map Aerial View with the route from A to B to C indicated with a pink line



Photograph 2 - A Google Streetview photo from 2011 of Point A looking south along the route. The route is of significant width, is bound by hedges and has a made surface.

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

7. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

8. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

9. While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

10. Andrews and Dury's Map of Wiltshire.

- a. Date. This map is a copy of Andrews and Drury's map produced in 1773.
- b. Relevance. The map, based on an original survey, was made for sale to the public, and so is unlikely to show routes that the public could not use. The map has no key, but it appears that as in the case of Andrews and Drury's map of Hertfordshire for which there is a key, a broken line indicated an unhedged roadside.
- c. Archives. An original map is held by the Wiltshire and Swindon History Centre, (HARC). The extracts shown are taken from an online copy of a Reduced Facsimile at <http://www.wiltshirerecordsociety.org.uk/publications/1773-map-of-wiltshire/>
- d. Meaning. The application route, A to B to C, indicated with an arrow on the extract, is shown as an "Fenced Road" in the same way as the current public vehicular roads on the same map.
- e. Assessment. The depiction of the route between these points in this manner is consistent with the proposition that the application route carried equestrian and probably vehicular rights in 1773. It is quite likely that these routes connected with public rights of way.



Extract from Andrews' and Dury's Map of Wiltshire Map (1773) showing the application route.

11. Ordnance Survey 1st Edition Map

- a. Date. The OS sheets for **Wiltshire No XIV** were surveyed & published between 1805 to 1880
- b. Relevance. The 1st edition 6" maps were based on and derived from an original survey. This map was based on the preliminary field sketch map and was made for sale to the

public, and so is unlikely to show routes that the public could not use. Useful information can sometimes be derived from the particular conventions

c. Archive. The extracts from this sheet below were obtained from the National Library of Australia at <https://nla.gov.au/nla.obj-231918578/view>

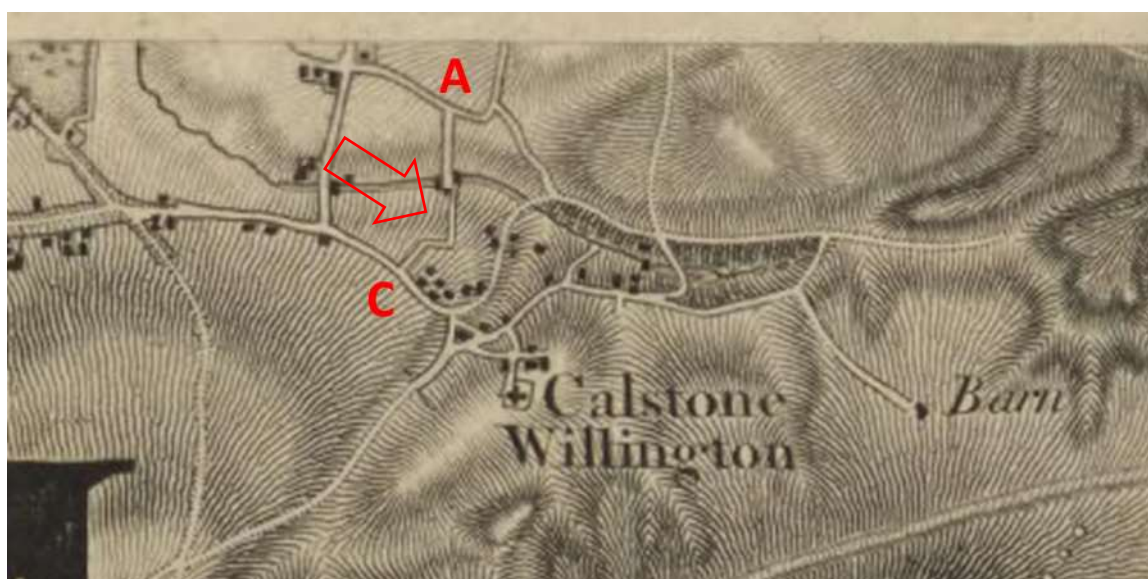
i. [Old series Ordnance Survey maps of England and Wales] / engraved at the Drawing Room in the Tower ... by Benjn. Baker & Assistants; printed by Ramshaw

ii. London: Published by Lt. Col. Mudge, Tower [and later] by Lieu M. Colonel Colby of the Royal Engineers; Sold by Jas. Gardner, Agent for the sale of the Ordnance maps, 163 Regent St., April 18th 1805-[1880?]

iii. 91 maps: mounted on linen; sheets 69 x 98 cm., or smaller + index.

d. Meaning. The map shows the application route from points A to B to C as a fenced and unfenced road in the same way as others depicted on the same map that are now public highways.

e. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network between points A to B to C which provides a strong inference that it was also considered to be part of that road network.



Extract from the 1st Edition OS Sheet XIV (1805)

12. Inclosure Plan for Calne, Calsone Wellington and Compton Bassett.

a. Date. This plan of the parish of Calne, Calsone Wellington and Compton Bassett was made in 1818.

b. Relevance. An Act of Parliament passed in the reign of King George III entitled 'An Act for dividing and allotting lands in the Parish of Cherhill and certain common meadows and common field lands in that parish and in the parishes of Calne, Calsone Wellington and

Compton Bassett, in the County of Wilts' provided authority for the inclosure of the land in these parishes subject to the terms of the Act.

(1) This Act gave the Inclosure Commissioner the powers to set out in the Act of 41 Geo III c.109 (i.e., the Inclosure (Consolidation) Act 1801). Section 8 of the 1801 Act provides that Public Carriage Roads shall be set out at 30 feet width and section 9 provides for money to be raised to pay for the setting out and maintenance of these public carriage roads. In section 10 the Commissioner is given the power to set out (with no particular width) private roads, bridleways, footways, watering places, bridges, and other things that are public in nature, and then provides for the maintenance of them to be the responsibility for ever of the owners and proprietors for the time being.

(2) The Inclosure Act of Parliament passed in 1820 provided authority for the inclosure of the land in these parishes subject to the terms of the Act. This Act gave the Inclosure Commissioner the powers to set out in the Act.

i. *"And be it further enacted that in case it shall appear to the said commissioners that there are or is any highways or highways, bridle roads, bridle road, footways or footway, in, through, over or on the sides of any inclosed lands or other lands within the said parishes which may in their judgment be diverted or turned **without inconvenience to the public** into any other highways or highway, bridle roads or bridle road, footways or footway or be diverted or turned so as to make the same more convenient to the public or be stopped up and destroyed as superfluous and unnecessary, it shall be lawful for them with the concurrence and order of two justices of the peace acting in and for the said county of wilts (not being interested in the same inclosure) and in manner and subject to appeal and giving such notice as is directed in an act passed in the fifty-fifth year of the reign of his late majesty king George the third intituled an act to amend an act of the thirteenth year of his present majesty for the amendment and preservation of the public highways in so far as the same relates to notice of appeal against turning or diverting a public highway and to extend the provisions of the same act to the stopping up of unnecessary roads, in and by their award to order and direct such public highways or highway, bridle roads or bridle road, footways or footway, to be altered, turned, stopped up, or discontinued in such manner as the said justices shall think proper."*
(Page 12)

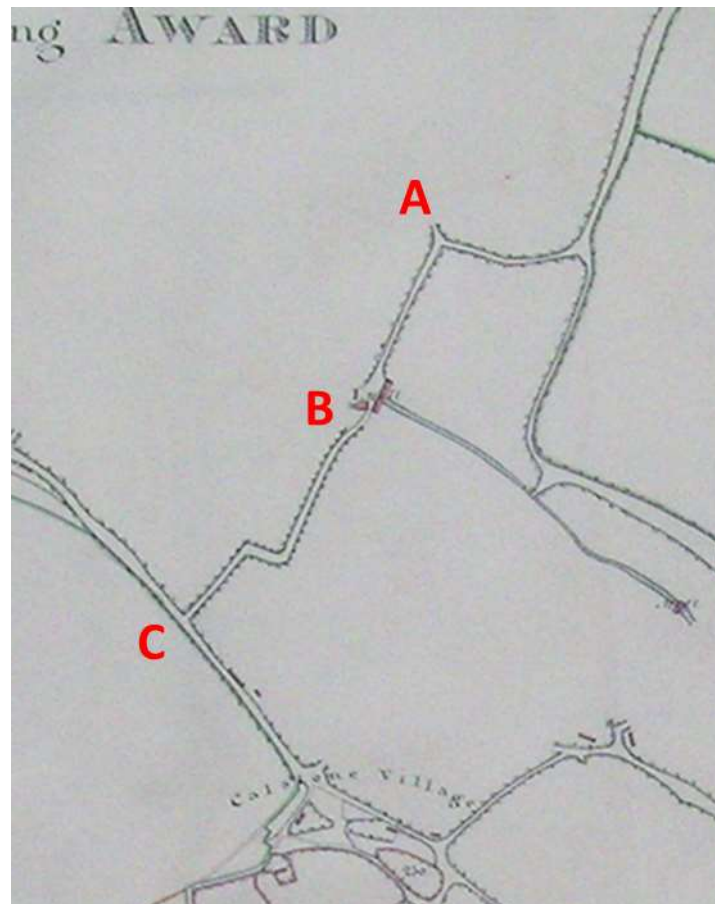
c. Archives. The following documents are held by the Wiltshire and Swindon Archives under the following references.

(1) A copy of the inclosure plan and award for Calne, Calsone Wellington and Compton Bassett is held under the reference **A1/EA 110** (1818).

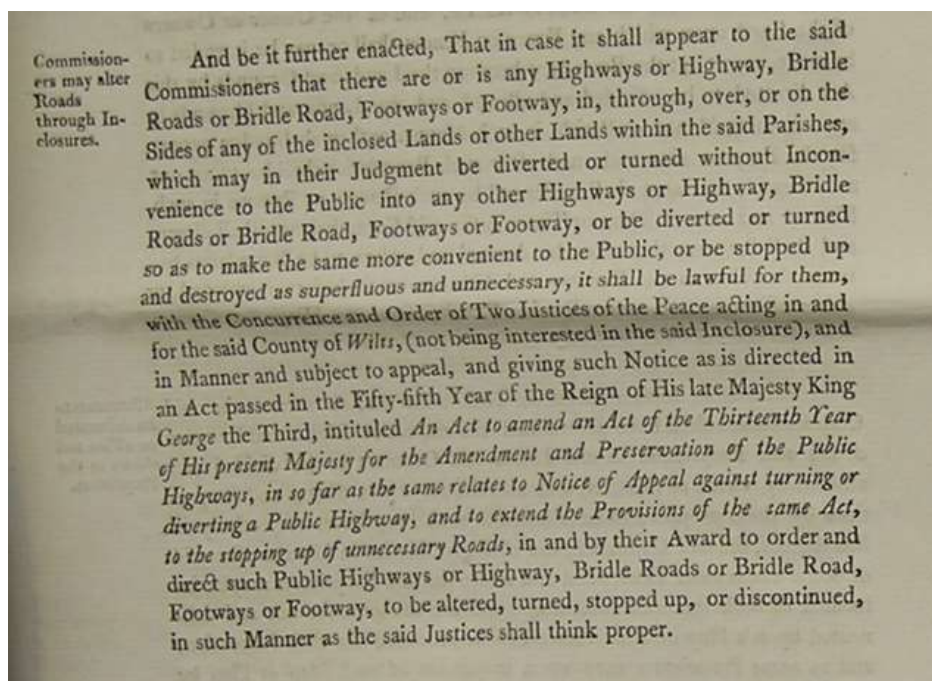
(2) A copy of the Act is held under the reference **A1/215/87** (1820).

d. Meaning. The application route from points A to B to C, indicated with an arrow on the extract, is shown as a road, in the same way as the current public vehicular roads to which it connects at either end. The applicant was not able to view the full associated award however none of the modern public highways on the inclosure plans are numbered or named and the award appears to only list private carriage roads, the applicant couldn't find mention of any public carriage roads in the sections available to the applicant. The commissioners were not to inconvenience the public when it came to setting out roads, and it would have been an inconvenience if the public would not have been able to access the mill at Point B by carriage, you could not have delivered corn for milling otherwise.

e. Assessment. The depiction of the application route between points A to B to C on the inclosure plan in this manner consistent with the proposition that the application route was a public carriage road in 1818.



Extract from the Inclosure Plan for Calne, Calsone Wellington and Compton Bassett – Map C (1818)



Extract from the Inclosure Act for Calne, Calsone Wellington and Compton Bassett (1820)

13. Map of the parish of Calstone Wellington

- a. Date. The estate map was made in 1830.
- b. Relevance. Estate maps were prepared to show the lands owned by the landowner who commissioned the map. It is of use because it shows the land and the routes to get to the various parcels. These maps would be unlikely to show the status of a route that the landowner did not agree with, so there is evidence of highway status where routes within the estate are shown in the same way as public roads outside of the estate.
- c. Archive and Reference. Map of the parish of Calstone Wellington, by Thomas Cruse. Scale: 6 chains: 1 chain. This document can be found in the Wiltshire Archives under the reference **807/27H**.
- d. Meaning. The map shows the application route as a sienna-coloured road from points A to B to C. It appears to be drawn the same as are other roads and tracks, which today are public highways.
- e. Assessment. The Application route from points A to B to C is depicted as a road. The depiction of route, in the same manner as the surrounding ordinary road network provides a strong inference that it was also considered to be part of that road network.



Extract from Extract from the Map of the parish of Calstone Wellington (1830)

14. Tithe map of Calstone Wellington (parish), Wiltshire

a. Date. The tithe map was published in 1844.

b. Relevance.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the tithable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

(3) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases, highways are coloured yellow or sienna to indicate public status.

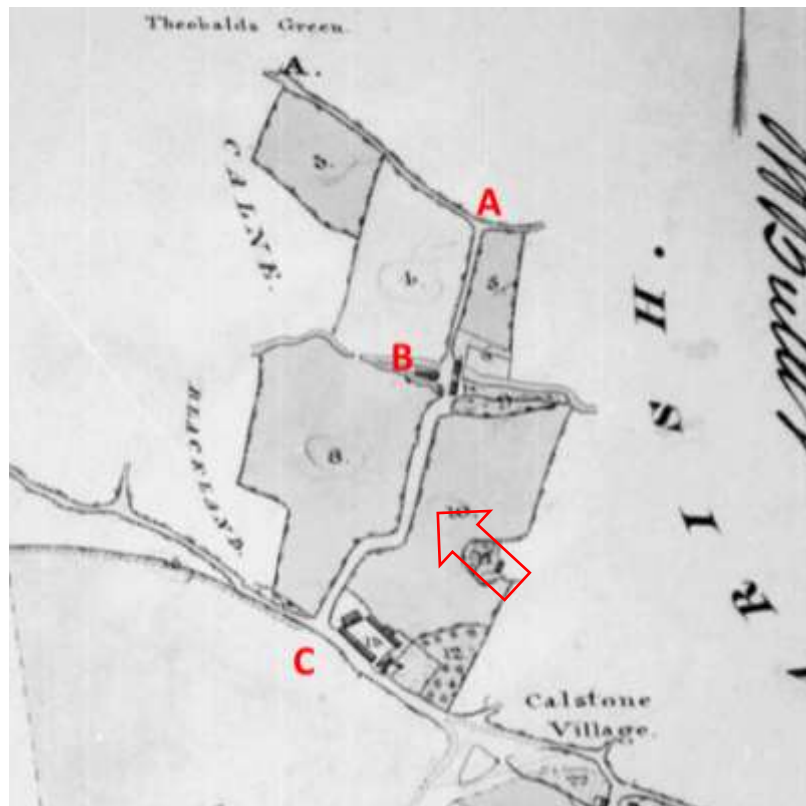
c. Archive and Reference. The tithe map for "*Tithe map of Calstone Wellington (parish), Wiltshire*" is available to examine online at the Genealogist website. The original can be viewed at the National Archives. It is believed to be a first-class map and so is legal evidence signed and sealed by the commissioners.

IR 30/38/55 – Tithe map of Calstone Wellington (parish), Wiltshire. Shows buildings, gardens, farmyards, hedge and fence ownership, arable, grassland; orchards, plantations and woods (all coloured); waterbodies. Scale: 1 inch to 6 chains; index map at 1 inch to 16 chains [1:12,672], dated 1845. Map was surveyed in 1830 by Thomas Cruse; 'Corrected and Copied' by Little and Weaver, Chippenham. (1844)

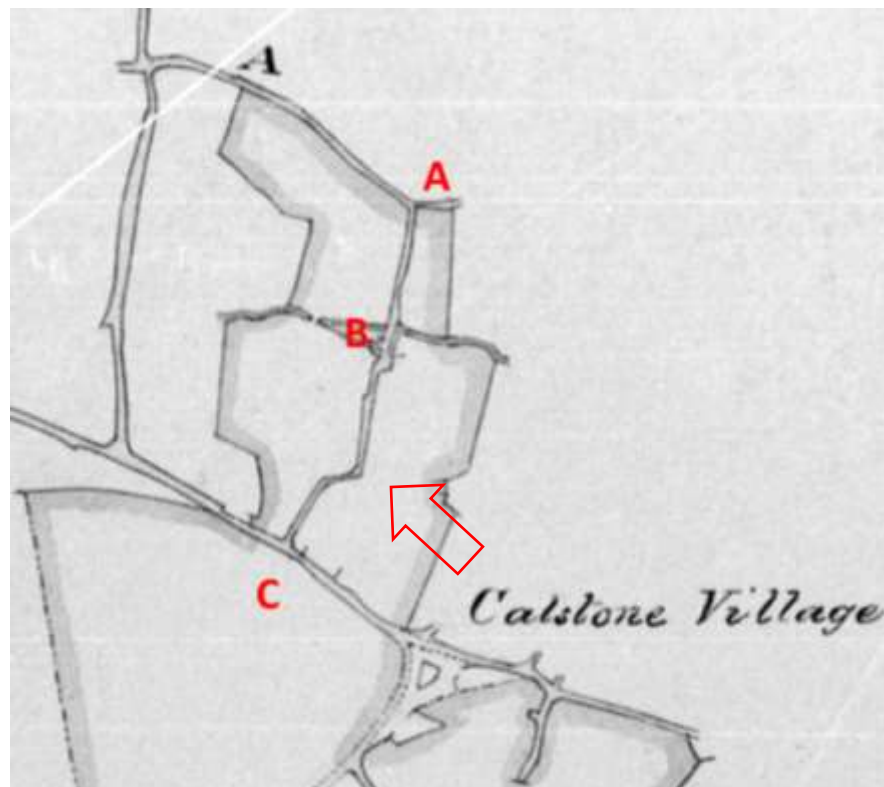
IR 29/38/55 – Tithe apportionment of Calstone Wellington (parish), Wiltshire. Valuation: William Ferris, Draycott, Wiltshire (1844)

d. Meaning. The 1844 tithe map shows the application route from Points B to C as an open road, as a black and white copy it is not possible to determine if it was coloured sienna, it is however it is depicted in the same way as the other public roads and tracks on the same map.

e. Assessment. The 1844 map clearly depicts the application route as a road between points B to C, in the same way as other public roads in the area. Which is consistent with the application route being a public vehicular highway at the time of the assessment in 1841.



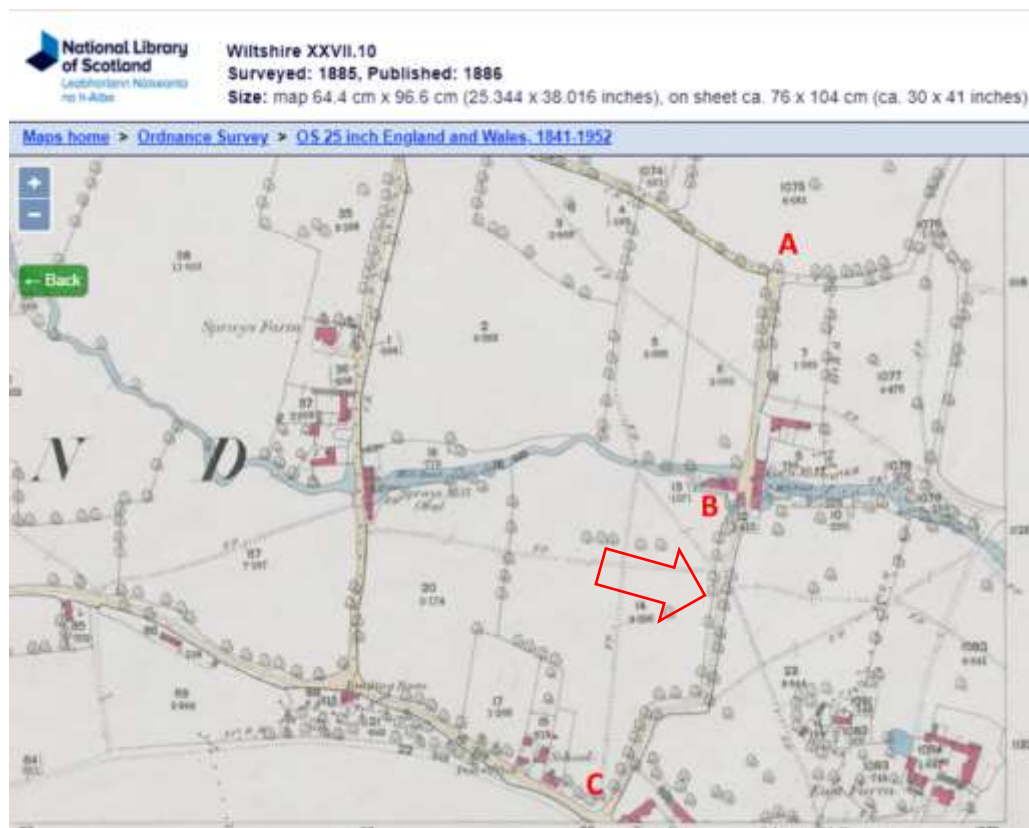
Extract from the Tithe Map for the Parish of Calstone Wellington Part 1 (1844)



Extract from the Tithe Map for the Parish of Calstone Wellington Part 2 (1844)

15. Ordnance Survey County Series 25 inch Maps.

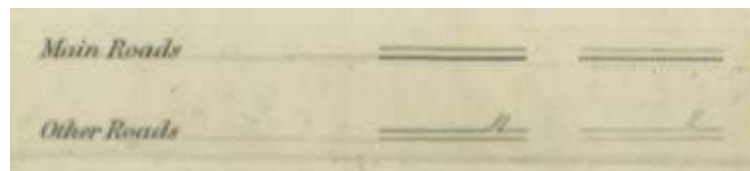
- a. Date. The OS sheets **Wiltshire XXVII.10** was surveyed in 1885 and published in 1886.
- b. Relevance. The OS County Series 25 Inch mapping was predominantly used for professional purposes rather than for navigation. They are detailed enough to show gates / barriers on roads, tracks and paths. Parcels of land are numbered, and areas shown either under the parcel number or in separate "Area Books" (on some First Edition sheets). Second edition and later maps generally carry the disclaimer "The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way". However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn. Additionally, on the first edition only, colour was used on some sheets to give significance to certain features (roads, buildings, water features, etc.)
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/120377403>
- d. Meaning. The application route is shown from point A to B to C is shown as a sienna-coloured road numbered 12 in the same way as the public highways to which it connects at either end. There are many footpaths leading off of the application route, which suggests at higher rights for the application route itself.
- e. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network between points A to B to C which provides a strong inference that it was also considered to be part of that road network between these points.



Extract from OS Sheet Wiltshire XXVII.10 (1886)

16. Ordnance Survey 6 inch Maps.

- a. Date. The first OS sheet **Wiltshire XXVII** were surveyed in 1885 and published in 1889.
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently, they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.
- c. Archive. The extracts from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/102347989>
- d. Meaning. The Characteristics Sheet for the 6" Maps differentiate between main and other roads through the use of a bold boundary on one side of a road. The claimed route is shown as "Other Roads" between points A to B to C.
- e. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.



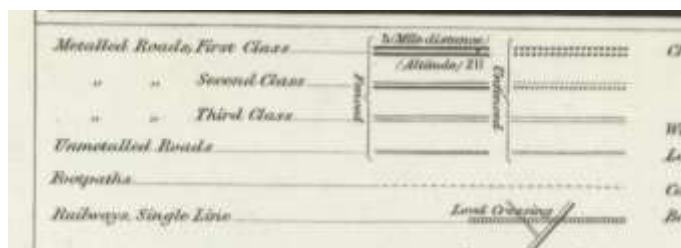
Extract from Key to OS 6" Map



Extract from OS Sheet Wiltshire XXVII (1889)

17. Ordnance Survey 1 inch Maps.

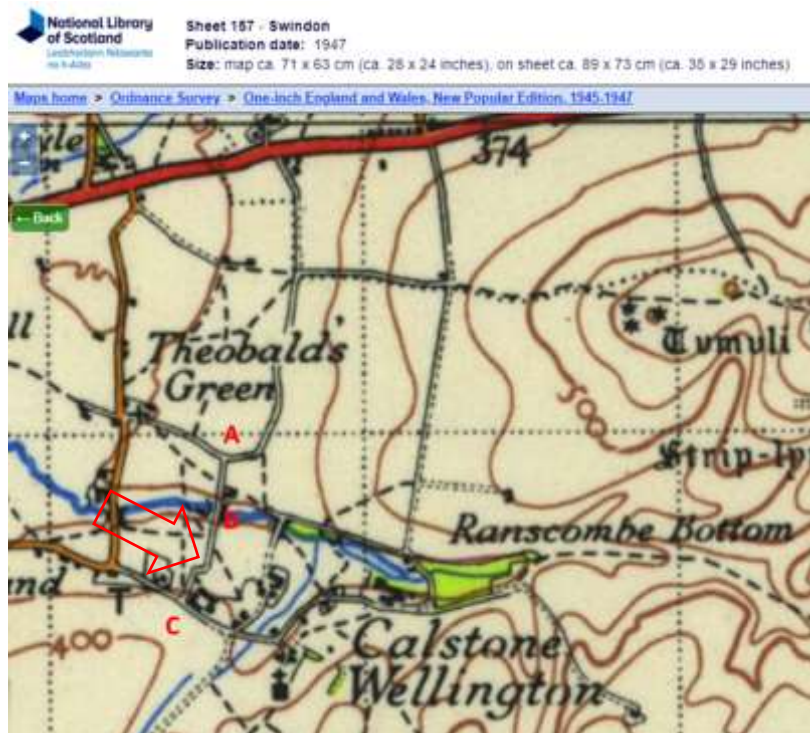
- a. Date. OS **Sheet 266** – Marlborough (Outline) was published in 1898 & OS **Sheet 157** – Swindon was published in 1947
- b. Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. These maps have no entry on the key for bridleways, only footpaths.
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168669> & <https://maps.nls.uk/view/74466956>
- d. Meaning. The route is shown as an unfenced “second class roads” between points A to B to C on the first map dated 1898 and as “bad or unmetalled roads” in the second map dated 1947.
- e. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route between points A to B to C being a public vehicular carriageway.



Extract from Key to OS 1" Map



Extract from OS 1" Map Sheet 266, showing A to B to C as “second class road”



Extract from OS 1" Map Sheet 167 showing A to B to C as "Bad or Unmetalled Road" (1945)

(Ministry of Transport, Class 1)		A. 38
Roads		B. 32/0
14 feet of Metalling and over (not classified by M. of T.)	TOLLS	Gate
Under 14 feet of Metalling, Good	"	"
" " " Bad	"	"
Minor Roads in towns, Drives and Unmetalled Roads	"	"
(Unfinished Roads are shown by pecked lines)		
Footpaths & Bridle Paths	"	"
Steep Gradients, over 1 in 7	over 1 in 5	"

Extract from Key to OS 1" Map (1945)

18. Inland Revenue Valuation / Finance Act 1910 Maps

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

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

It is noted that a highway authority was a rating authority. There was no obligation for a landowner to claim any of the other discounts available (applying for discounts was an

entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

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

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

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

As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

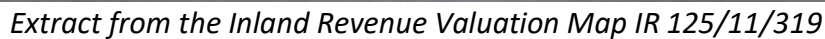
c. Archive. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document references are **IR 125/11/319**

d. Meaning. The extract below clearly shows the application route between points A to B to C as a white road, separated from the adjoining hereditaments by continuous colour-washed boundaries.

e. Assessment.

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

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



19. Bartholomew's Half-Inch Maps of England and Wales

- a. Date. This series was produced during the first half of the twentieth century. The particular maps identified below were published in 1902 and 1942.
- b. Relevance. The map was not based on an original survey. Nonetheless it was intended for sale to the public, particularly for tourists and cyclists, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- c. Archive. An original of **Sheet 29 – Berkshire & Sheet 8 (England & Wales No. 29)**. - **Salisbury Plain** is held by the National Library of Scotland (NLS) and can be viewed via <https://maps.nls.uk/view/97131098> (1902) & <https://maps.nls.uk/view/128076435> (1942)
- d. Meaning. The application route is shown as an *uncoloured indifferent (passable) road* in the 1902 version and as *other roads and tracks* in the 1942 version between points A to B to C. It is strongly marked on both maps using a solid line rather than the dashes of “*Footpaths and Bridlepaths*” indicating it was of higher status, and it is shown as a clear continuation of the public highways at either end.

e. Assessment.

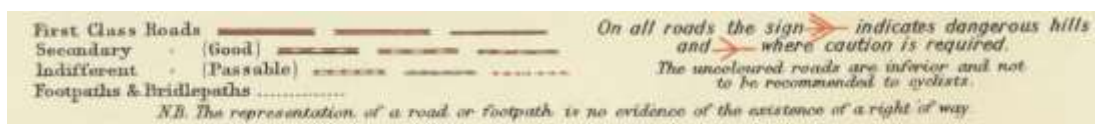
(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'.

(2) Although the maps are not based on an original survey, the fact that the larger part of the application route was originally shown as though it could lawfully be used by cyclists indicates that some positive assessment of the route led to its depiction, albeit it was classed as "inferior and not to be recommended to cyclists". At the time of publication (1902) cyclists had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

(3) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". **I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance**, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways."

(4) The conclusion is that at least some weight must be given to this source of evidence indicating that the application route was considered a vehicular highway at the time.



Extract from Bartholomew's Map Sheet 29 (1902) showing the Key



Extract from Bartholomew's Map Sheet 29 (1902) showing the application route as an uncoloured indifferent (passable) road



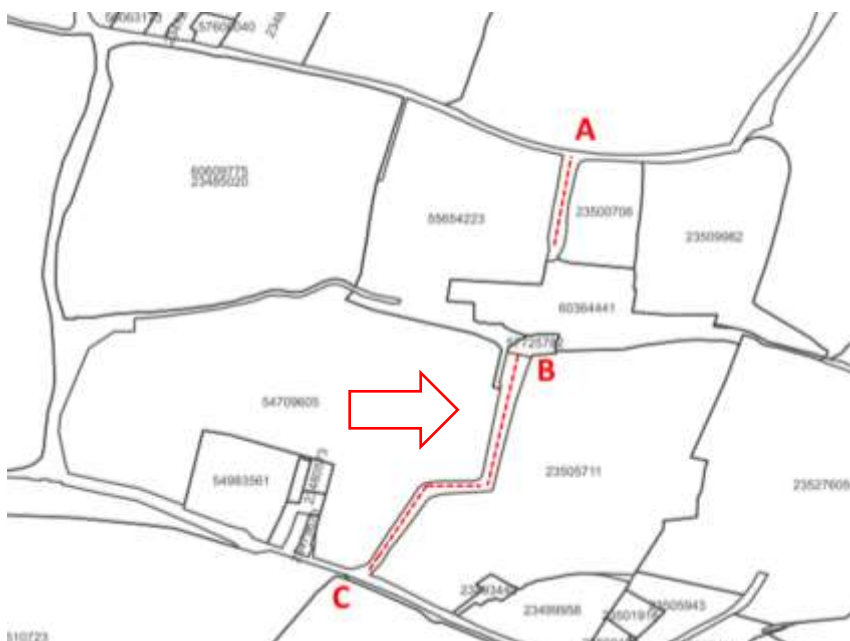
Extract from Bartholomew's Map Sheet 8 (1942) showing the application route as other roads and tracks



Extract from Bartholomew's Map Sheet 8 (1942) showing the Key

20. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 26th January 2022.
- b. Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.
- c. Archive. The publicly accessible dataset is found at <https://data.gov.uk/dataset/land-registry-inspire-view-service-and-metadata>. The extract below is taken from a screen shot taken by the Applicant on the date stated above.
- d. Meaning. The application route is shown, indicated by a red dashed line, separate from any registered landholding from part of the way between points A to part of the way to point B and from B to C. The applicant does not know when the landholdings in between the two roads was registered as in 1910 the land was not taxed and presumably belonged to the rating authority.
- e. Assessment. Vehicular highways of ancient origin are often on unregistered land. Where the adjoining land on each side has been registered, but the ancient vehicular highway has not been claimed as part of either land ownership, this is supportive evidence of the ancient vehicular highway status. In the absence of any other explanation why neither adjoining landowner would lay claim to the land, the applicant draws the conclusion that this supports the view that the application route is a vehicular highway of ancient origin.



CONCLUSIONS

21. This document presents evidence that consistently indicates that the application route was part of the wider roads network. Whilst no single piece of evidence is conclusive in its own right, taken as whole it paints a compelling picture of the existence of public vehicular rights along the application route.

22. Employing the well-established legal maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

23. The applicant requests the surveying authority to add the route to the definitive map as a Restricted Byway between points A to B to C.

Natalie White

For the British Horse Society