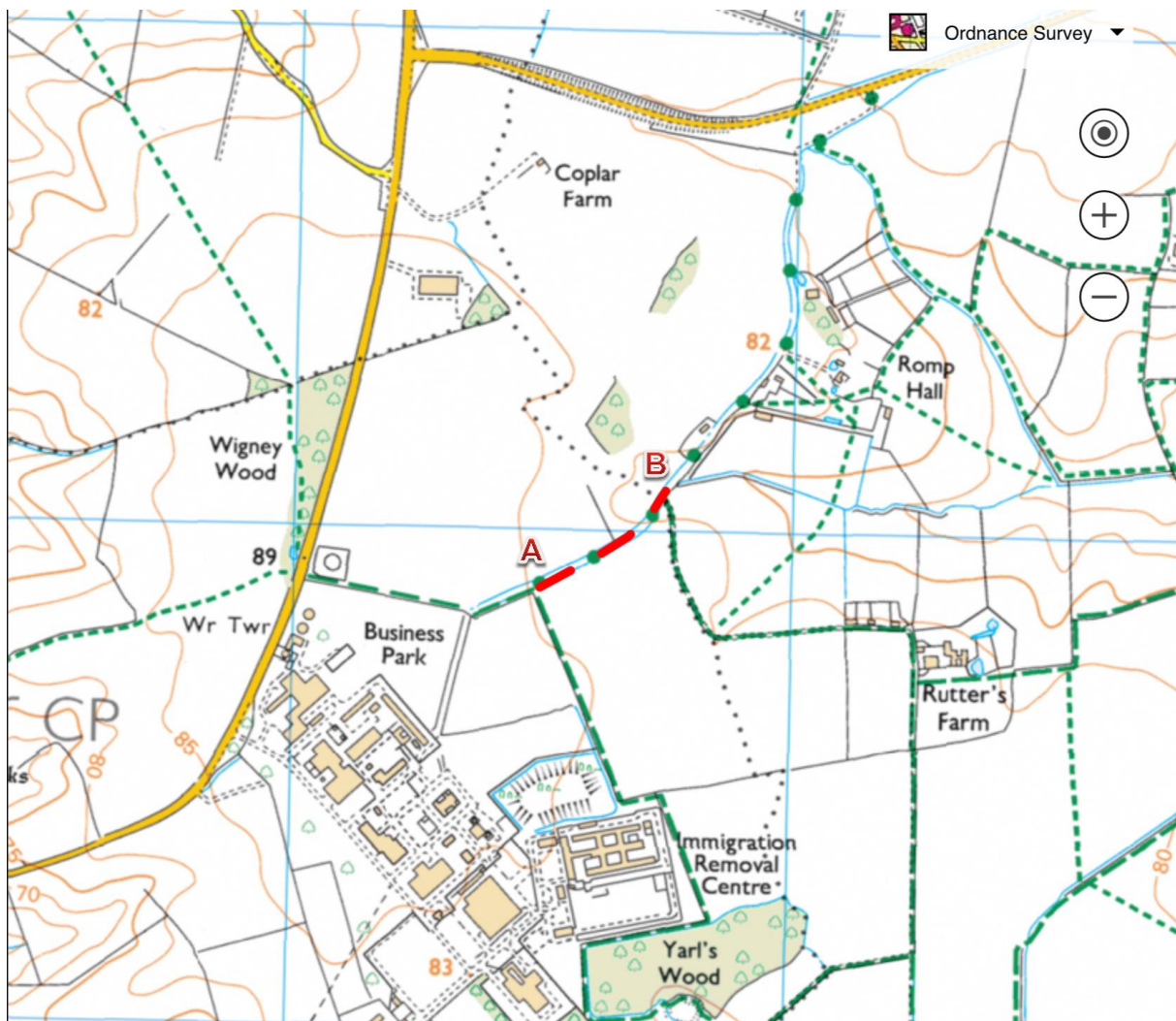


# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

**Parish:** Thurleigh and Milton Ernest **Grid Reference:** TL039574

**Map of Path:** Route applied for is shown from A to B on the red dashed route between Bridleway 7 Milton Ernest going north east along the Old Milton Road and ends at bridleway 29 Thurleigh to Rutters Farm. The route is shown as an ORPA on an unclassified road to access the bridleways on OS Maps and is shown as a private road on the online Bedford Borough Definitive Map.



*Extract from Ordnance Survey 1:25000*

**Applicants Path Reference: BED-0174**

### Description of Path:

Path starts at Bridleway 7 Milton Ernest at approximate grid reference TL03495688 going north east along the Old Milton Road and ends at bridleway 29 Thurleigh at approximate grid reference TL03745708 that goes to Rutters Farm. The route is shown as an ORPA on an unclassified road to

access the bridleways on OS Maps and is shown as a private road on the online Bedford Borough Definitive Map.

██████████ I am the applicant for the order, for and on behalf of the British Horse Society (BHS). I am a volunteer of the BHS with a key objective to support and progress Project 2026 in the region.

This application is made because, on the cut off day, 1st January 2026, the effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route. (This applies if the route is determined to be a footpath or bridleway.)

I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, because:

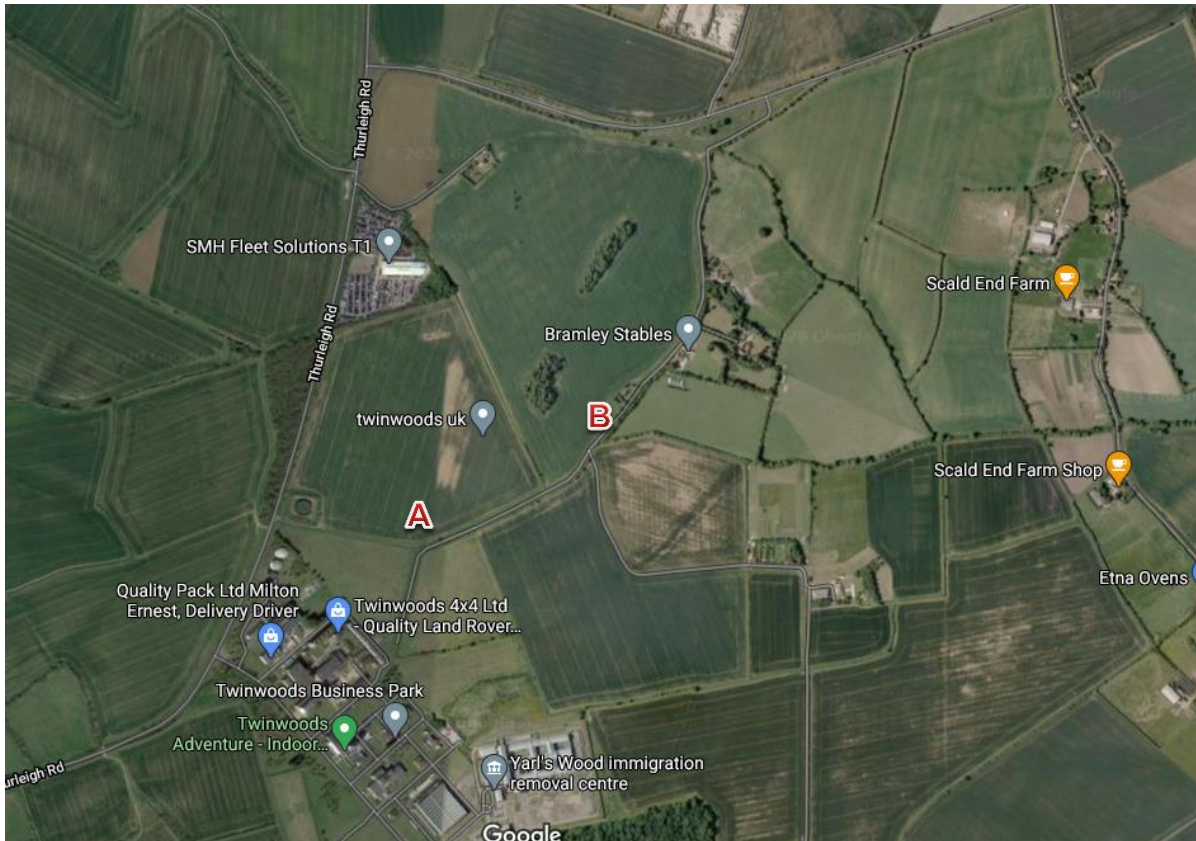
a. This application statement includes explanations as to how the evidence applies to the application route, and

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

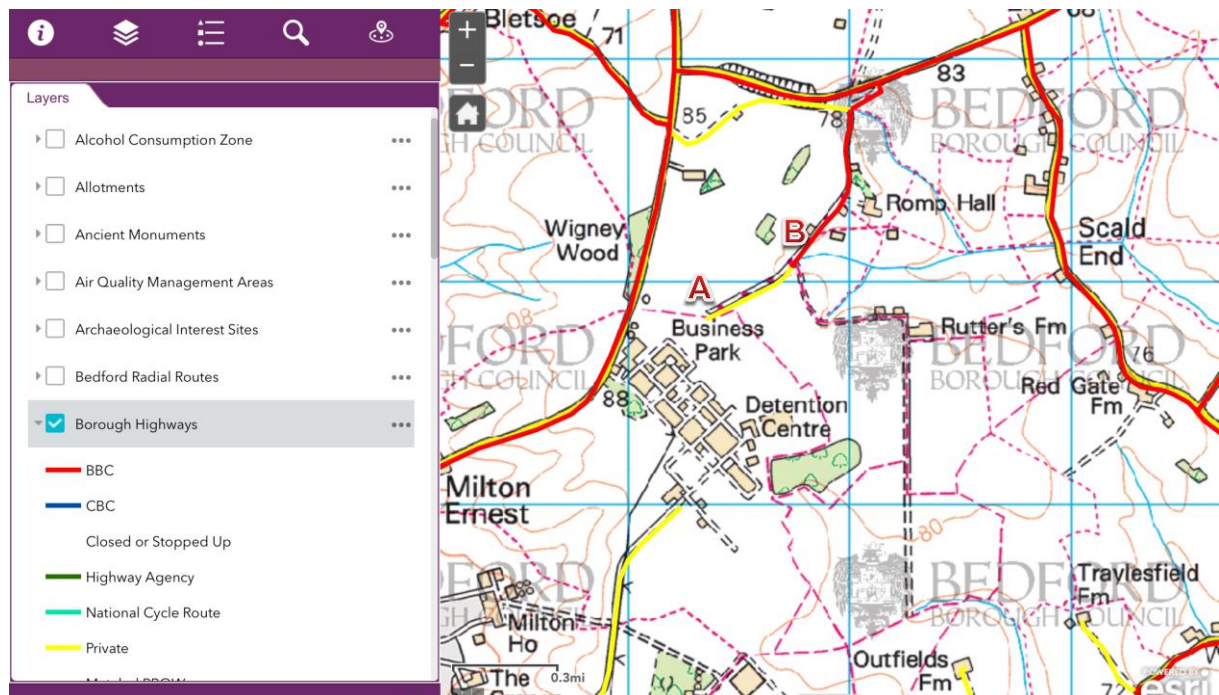
- Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
- Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
- Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
- Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
- Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

## **THE APPLICATION ROUTE**

The application route is shown on the images below and starts at Bridleway 7 Milton Ernest at approximate grid reference TL03495688 going north east along the Old Milton Road and ends at bridleway 29 Thurleigh at approximate grid reference TL03745708 that goes to Rutters Farm. The route is shown as an ORPA on an unclassified road to access the bridleways on OS Maps and is shown as a private road on the online Bedford Borough Definitive Map.



*Extract from a Google Satellite image from 2009, showing the application route from A to B*



*Extract from a Bedford Borough Council online Definitive map showing the application route as A to B being the private stretch of road marked in yellow*



## **DOCUMENTARY EVIDENCE OF HIGHWAY STATUS**

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

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

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

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

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

### **Evidence from Maps:**

#### **Military Maps: Drawings Prepared by the Board of Ordnance 1780s-1840**

**Date.** Drawing of Bedford for military purposes for the Board of Ordnance by William Hyett, 1815 in pen and ink on paper.

**Relevance.** War and the threat of war have always proved great incentives for map-making. The eighteenth and early-nineteenth centuries brought both. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. The new maps were to be published – and at the detailed scale of one inch to the mile.

Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. The Board had been established in Tudor times to manage the supply of stores and armaments for the army and maintain national defences. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle.

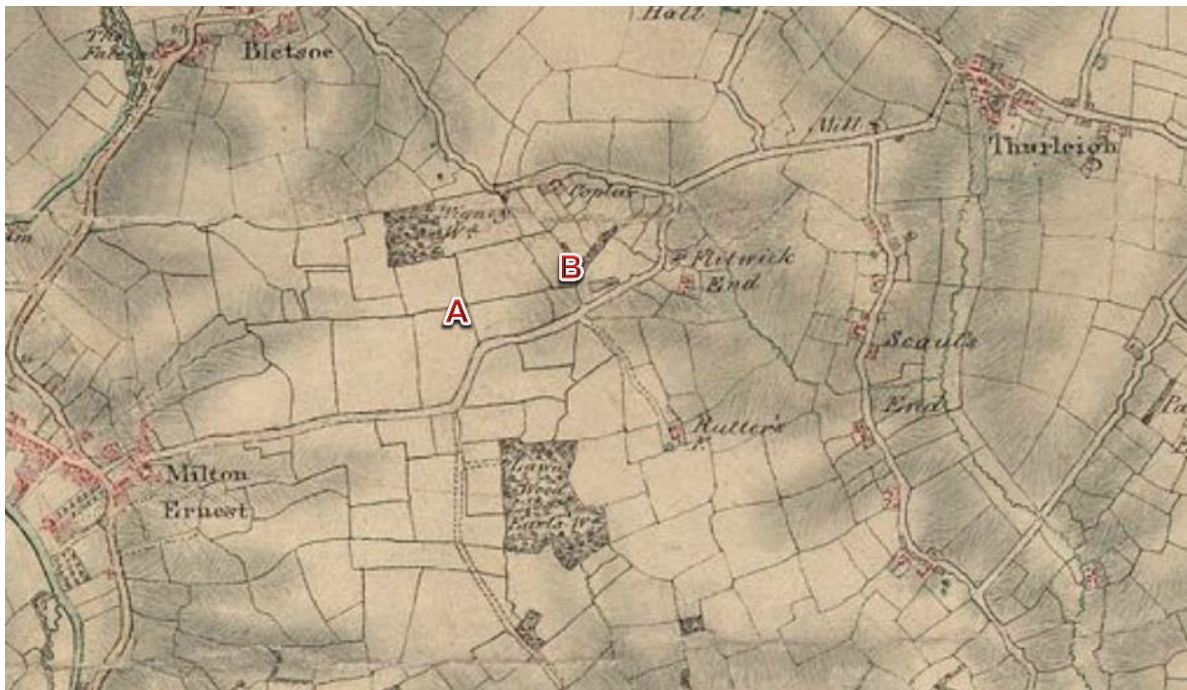
Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere. Back in the Drawing Room at the Tower of London, fair copies of the drawings were prepared at the reduced scale of one inch to the mile.

The British Library is very fortunate in possessing 351 of the original preliminary drawings made by the surveyors between the 1780s and 1840. They cover most of England south of a line between Liverpool and Hull. Being significantly larger in scale, the preliminary drawings show much more detail than the printed maps.

**Archive.** The extracts from this sheet below were obtained from the British Library website at <http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/b/002osd000000023u00192000.html>

**Meaning.** The application route is shown on the extract below from A to B as part of the main road between Milton Ernest and Thurleigh and in a similar style to local existing highways.

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



*Extract from Drawing for Board of Ordnance showing the application route from A to B*

### **OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913**

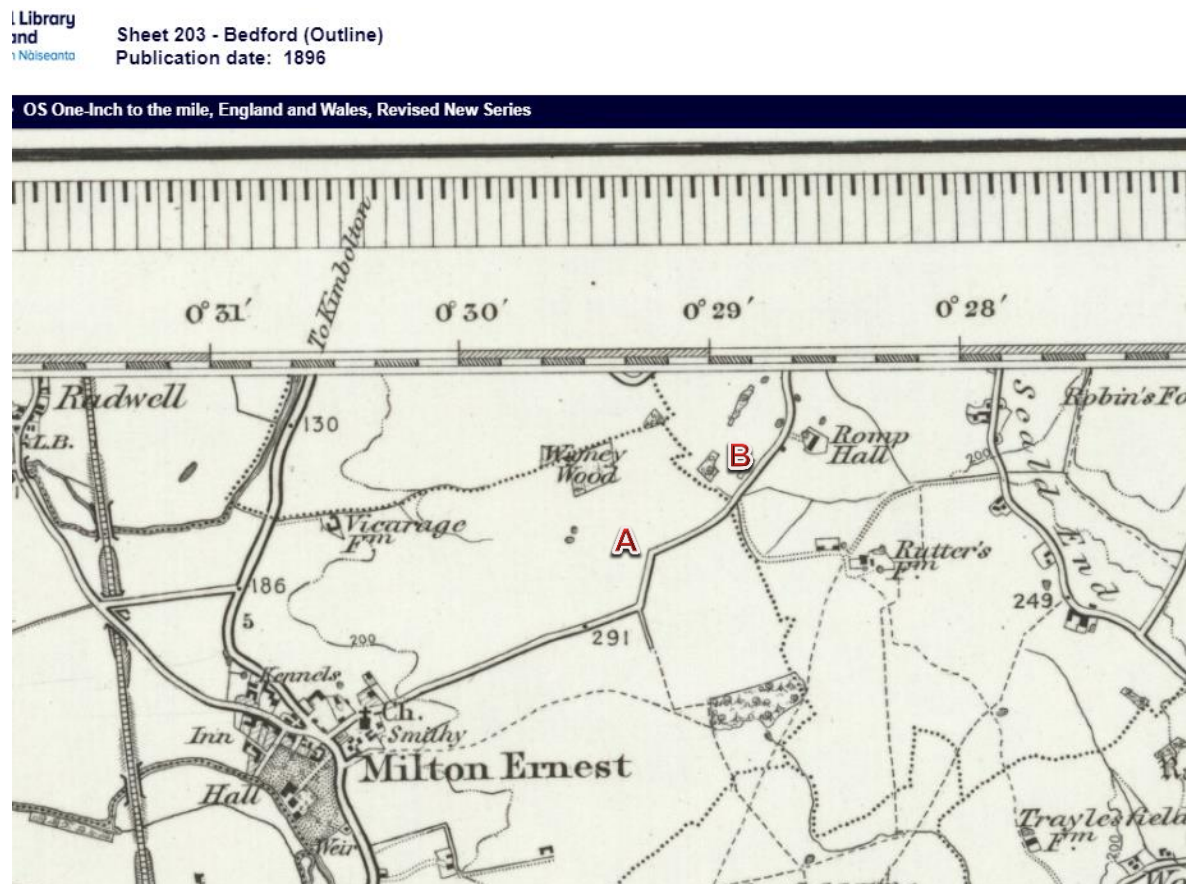
**Date.** OS sheet 203 –Bedford (Outline) published in 1896.

**Relevance.** These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the ground.

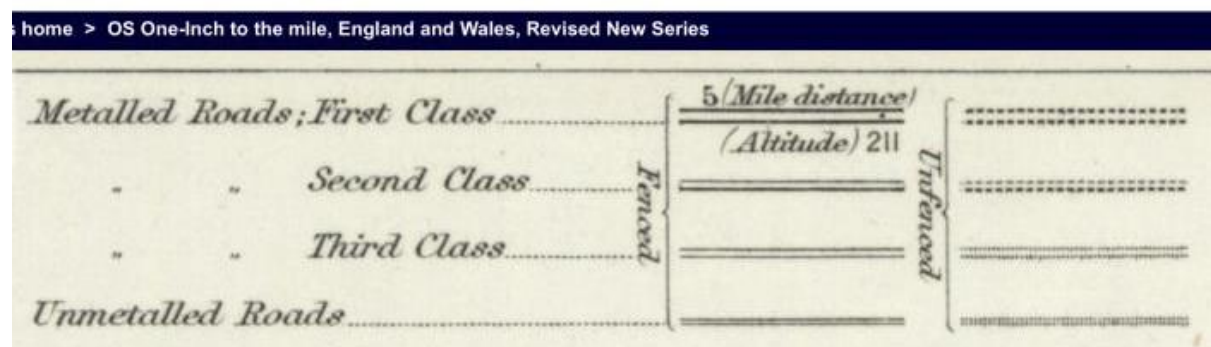
**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168267>

**Meaning.** The application route is shown on the extract below from A to B as a “second class metalled road” in a similar style to local existing highways.

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



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



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

## **Ordnance Survey Maps - 25 inch England and Wales, 1841-1952**

**Date.** OS County Series Bedfordshire VII.15 and Bedfordshire VII.11 both published 1884

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

**Archive.** The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114481566> and <https://maps.nls.uk/view/114481542>

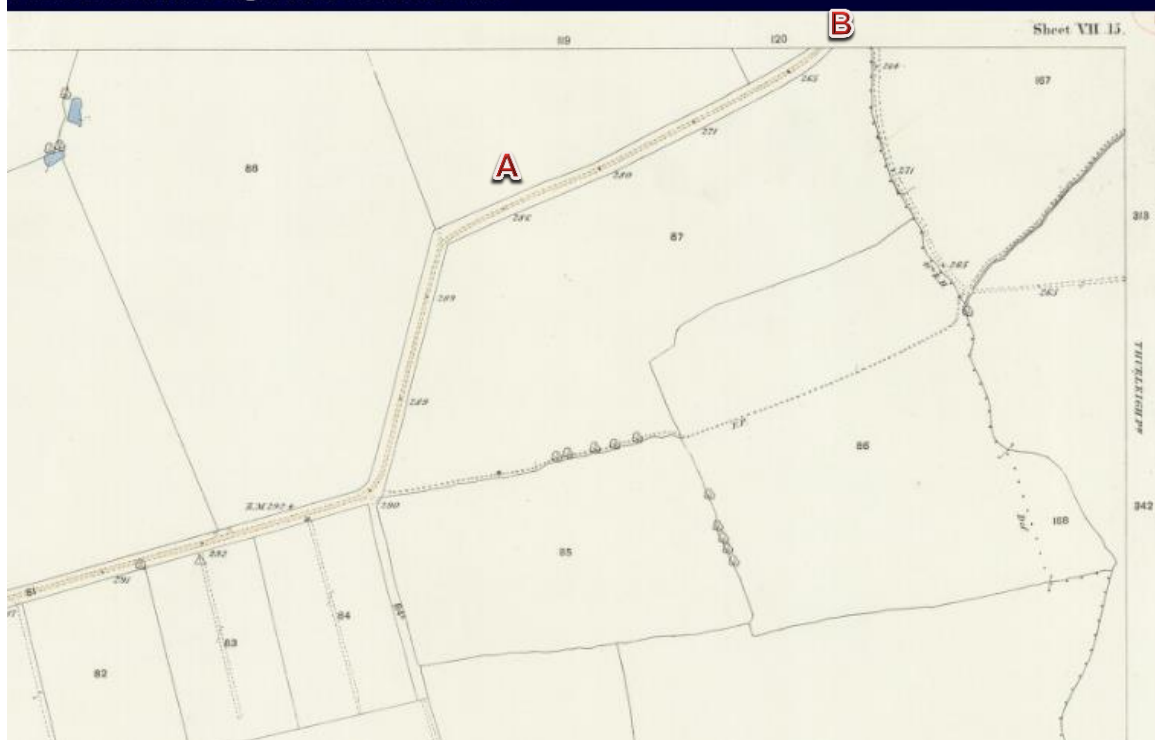
**Meaning.** The route is shown on the first image below from A to B, continuing on the second image from B to C. The whole of the application route is shown as a road as it used to be the main Milton Road from Milton Ernest to Thurleigh. The separate title number of the road is circled on the image as plot 162. Separate title numbers further indicate the route was considered a highway at the time the map was published.

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

National Library  
of Scotland  
Leabharlann Nàiseanta  
na h-Alba

Bedfordshire VII.15 (Clapham; Milton Ernest; Pavenham; Thurleigh)  
Surveyed: 1882  
Published: 1884

[Home](#) > OS 25 inch England and Wales, 1841-1952



*Extract from OS 25" Map showing the application route marked from A to B*



Maps home > OS 25 inch England and Wales, 1841-1952



*Extract from OS 25" Map showing the application route marked from B to C with separate plot circled*

### **OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913**

**Date.** OS Six inch series Bedfordshire VII.SE published 1884

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

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101567654>

**Meaning.** The route is shown on the image below from A to B as a road in similar style to local existing highways.

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





*Extract from OS 6 inch Series Map showing the application route from A to B*

### **Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961**

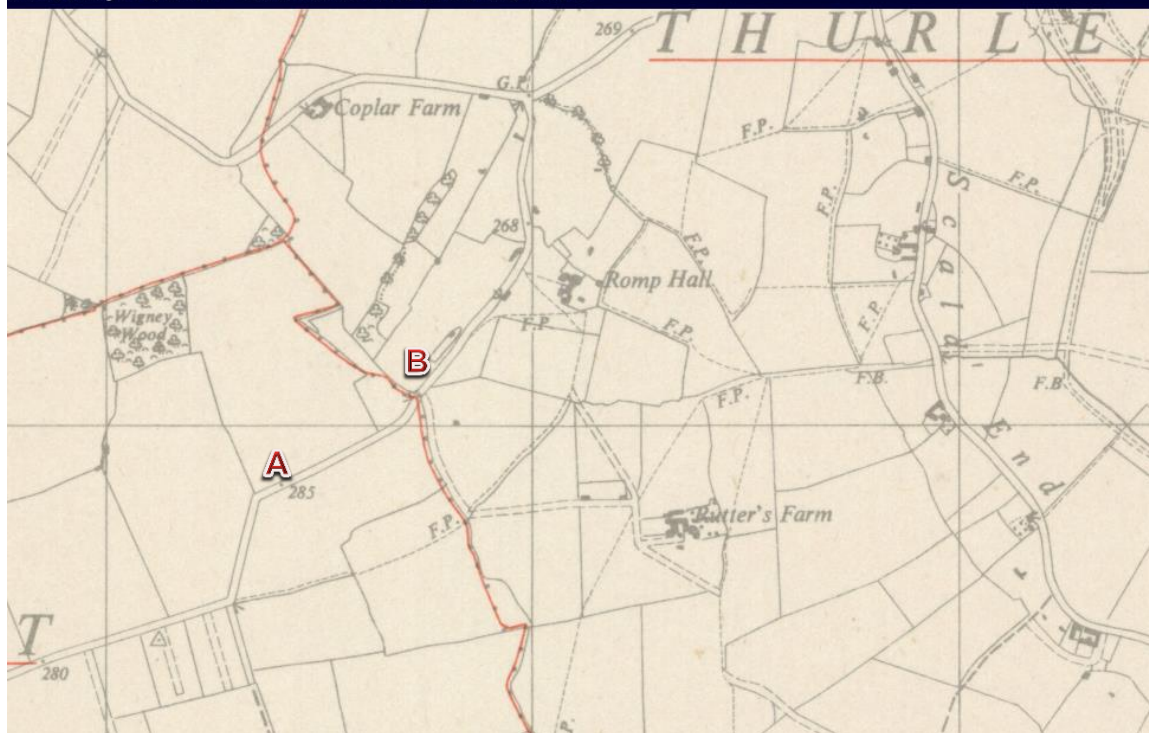
**Date.** OS 25k series 52/05-A published circa 1948

**Relevance.** The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps.

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/196759340>

**Meaning.** The route is shown on the image below from A to B as a road in similar style to local existing highways.

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



*Extract from OS 25k Series Map showing the application route from A to B*

### **Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924**

**Date.** Great Britain, Sheet 19 – Cambridge, Huntingdon published 1902

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

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131068>

**Meaning.** The route is shown on the image below from A to B as a road in similar style to local existing highways.

**Assessment.** Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling public. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action. The application route is shown as a good secondary road. The depiction of the route in this manner is evidence in favour of the proposition that the application route was considered to have equestrian and probably vehicular rights.

> Bartholomew's "Half Inch Maps" of England and Wales, 1902-1906



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

### Inland Revenue Valuation Records - Finance (1908-10) Act 1910

**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 land owner 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.”*

**Archive.** The extract below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives documents reference is IR 126/2/260.

**Meaning.** The extract below shows the application route from A to B as a white road between hereditaments in the coloured boundary.

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

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

These records strongly suggest the route applied for was a public vehicular highway.



*Extracts from the Inland Revenue Valuation Map IR 126/2/260 showing the application route from A to B*

## **INSPIRE Land Ownership**

**Date.** This extract from the INSPIRE database was taken on 5 September 2020.

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

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

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

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



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

## **CONCLUSIONS**

This document presents evidence from many years that consistently indicate that the application route was part of the wider highway network. Whilst no single piece of evidence is conclusive in its own right, taken as a whole it paints a sound picture of the existence of public vehicular rights.

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

The applicant requests the surveying authority to add the route to the definitive map as a BOAT.

Date: 10 October 2020

Name: [REDACTED]

Position: Volunteer

Organisation: British Horse Society