

Wildlife and Countryside Act 1981 Summary of Evidence

Definitive Map Modification Order Application

Parish: Knotting **Grid Reference:** TL001625

Map of Path: Route applied for is shown in RED DASHES starting at the junction of bridleway 18 and 5 continuing southwards along footpath 5 and footpath 6 then continuing further southwards until it joins Knotting Green road opposite an unnamed spinney and small stream. The route is shown partially shown as a footpath on OS Maps and the online Definitive Map. The application is for a bridleway.



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

Applicants Path Reference: BED-0199

Description of Path:

Path starts at the junction of bridleway 18 and 5 at approximate grid reference TL00146310 continuing southwards along footpath 5 and footpath 6 then continuing further southwards until it joins Knotting Green road opposite an unnamed spinney and small stream at approximate grid reference TL00366187. The route is shown partially shown as a footpath on OS Maps and the online Definitive Map.

The applicant for the order is the British Horse Society (BHS) whose key objective is 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, OR
- s.53(3) and (4)(a) of the Countryside and Rights of Way Act 2000 on a bridleway or byway but shown as a footpath on a definitive map, is to extinguish all those bridleway or byway rights on that route. OR
- The effect of s.53(3) and (4)(c) Countryside and Rights of Way Act 2000 on a public highway that existed prior to 1949 is to extinguish the vehicular rights on a route shown in the definitive map and statement as a bridleway. OR
- The effect of s.54A Wildlife and Countryside Act 1981 (as inserted by Sch 5 para 4 of the Countryside and Rights of Way Act 2000) on a route that carries public mechanically-propelled-vehicular rights and is not already on the definitive map as a highway of any description, is to prevent it from being recorded. (This applies if the route is shown to be a highway other than a footpath, bridleway or restricted byway.)

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

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

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

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

THE APPLICATION ROUTE

The application route is shown on the photos below and starts at the junction of bridleway 18 and 5 at approximate grid reference TL00146310 continuing southwards along footpath 5 and footpath 6 then continuing further southwards until it joins Knotting Green road opposite an unnamed spinney and small stream at approximate grid reference TL00366187. The route is shown partially shown as a footpath on OS Maps and the online Definitive Map.



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

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.

Tithe Records

Source. Tithe map 01 Bedfordshire 032 Knotting of 1839

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 titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

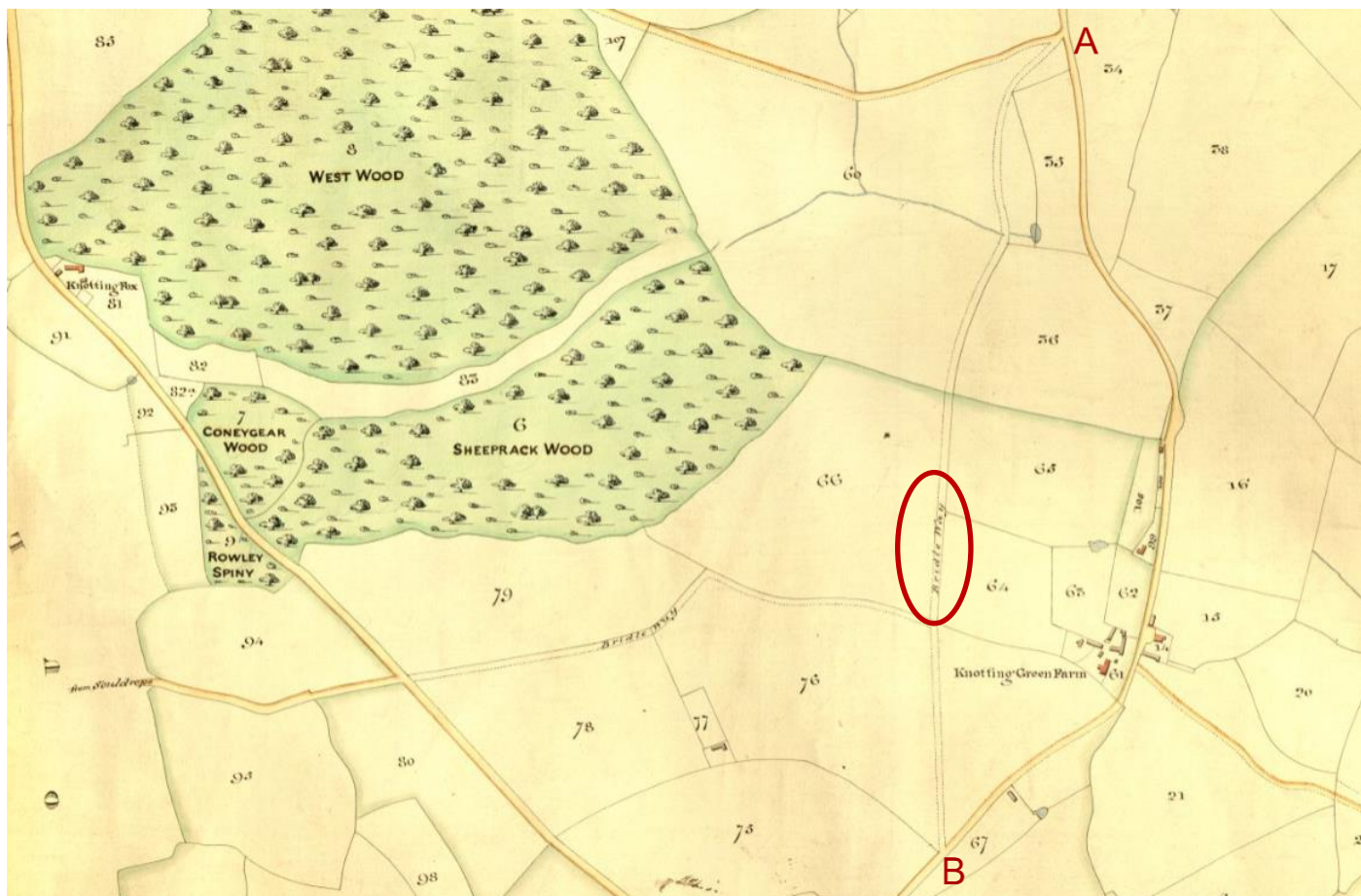
(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance 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-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on road, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of 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 the tithe documents regarding the existence of public rights, and, in particular, public vehicular rights. In some cases highways are coloured sienna or light brown which typically indicates public status.

Archive. The tithe map has been accessed via the Genealogist website and the extract is shown below.

Meaning. The first extract below from the Knotting tithe map shows the whole application route as a Bridle way (circled) from A to B, also shown in close up on the second image. The final extract is from the Knotting tithe apportionment records showing that Roads had no tithe payable.

Assessment. This is probably a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is shown clearly as a bridle way and not a footpath as is its current status. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



Extract from the Knotting tithe map of the application route from A to B as a Bridle way, circled

OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION of LANDS AND PREMISES.	STATE of CULTIVATION.	QUANTITIES in STATUTE MEASURE.	Amount of Rent-Charge apportioned upon the several Lands, and Payable to the Rector.	R E
George Waine	10 11 12	Part of Hays Close Road Close Wolsey Close	Meads " "	1. 9 8. 33 12. 2. 30 21. 34	£. s. d. 14. 14. ~	Jno. 19
Self.	105	The Rectory Church-Yard		1. 23 1. 33 3. 16	~ 2. ~	Sec. 21
Roads				39. 3. 23	~ ~ ~	

Extract from the Knotting tithe apportionment records showing Roads with no tithe payable

Sales Particulars

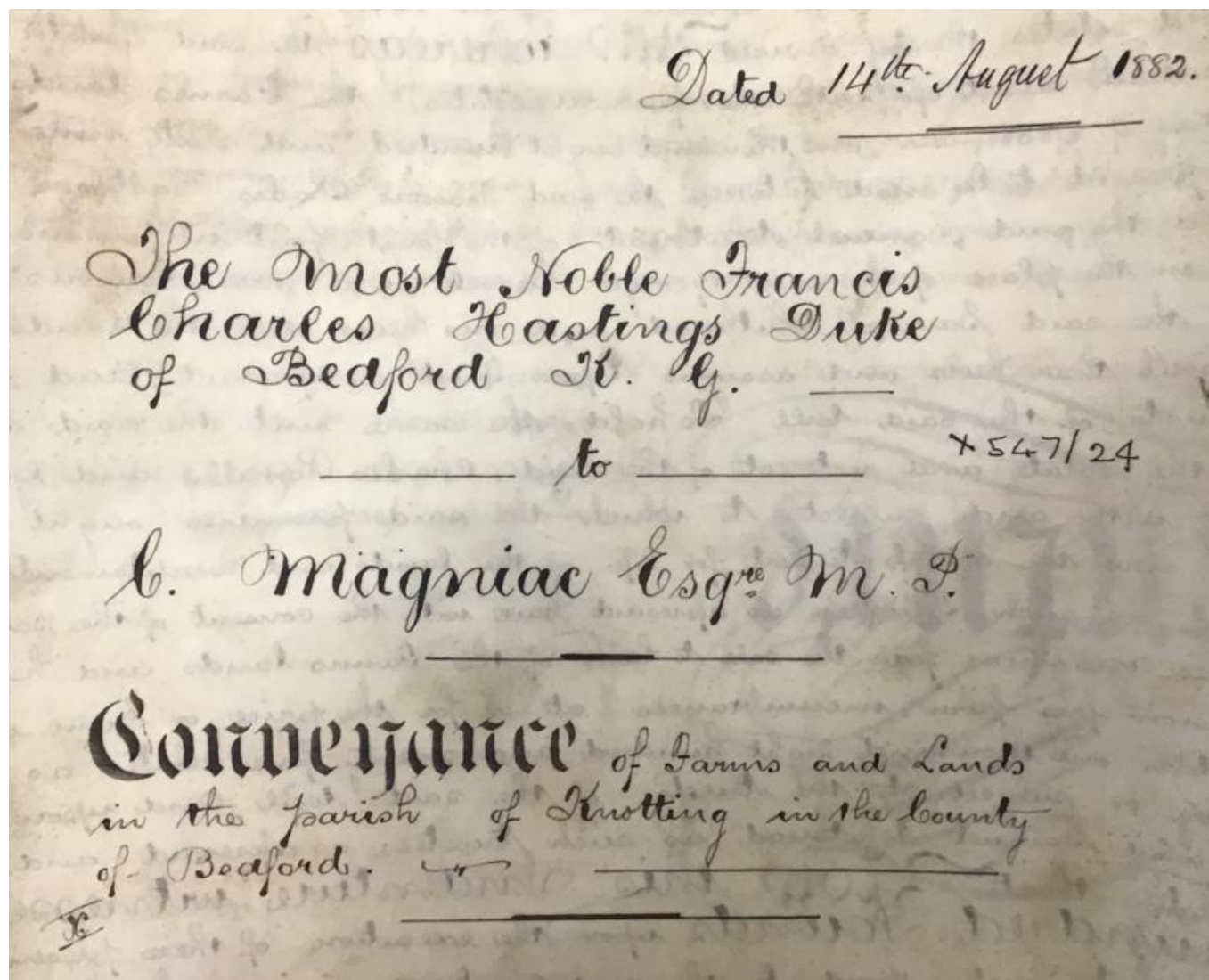
Date. Sales conveyance between Francis Charles Hastings, 9th Duke Of Bedford, Charles Romilly and Charles Magniac dated 14 August 1889

Relevance. This conveyance is held at the Bedford Record Office and is an important legal document showing the disposal of the 9th Duke of Bedford's land around the parishes of Knotting, Souldrop and the Colworth Estate.

Archive. The extracts from this sheet below were obtained from the Bedford Record Office reference X547/24

Meaning. The first extract shows the date and who the Knotting area of the conveyance was between – the Duke of Bedford & Charles Magniac. The second document is an extract showing the legal signatories of the document and their witnesses. The third extract from the conveyance documentation shows the application route from A to B as a road in the same colour as the existing road that goes between Knotting and Knotting Green, albeit more narrow that is likely to support the assertion that the route was indeed of a lower bridle way status as indicated by the tithe map evidence. The final extract from the conveyance documentation shows that plot number 69 is in fact called “Bridle Way Green” – it is a field that shows the application route through it and this further supports the applicants claim that the route should indeed be a bridle way not a footpath.

Assessment. This is an important legal document, witnessed and cast into law that shows the application route in a similar manner as the ordinary highway network and thus this is evidence in support of the route being a public highway.



Extract from Sales conveyance showing the parties to this legal document for the sale of land in the parish of Knotting in 1882

Signed Sealed and delivered by the within named
Francis Charles Hastings Duke of Bedford in the
presence of

Thomas T. Wing

Bedford Office -

Signed Sealed and Delivered by the within named Charles
Romilly in the presence of

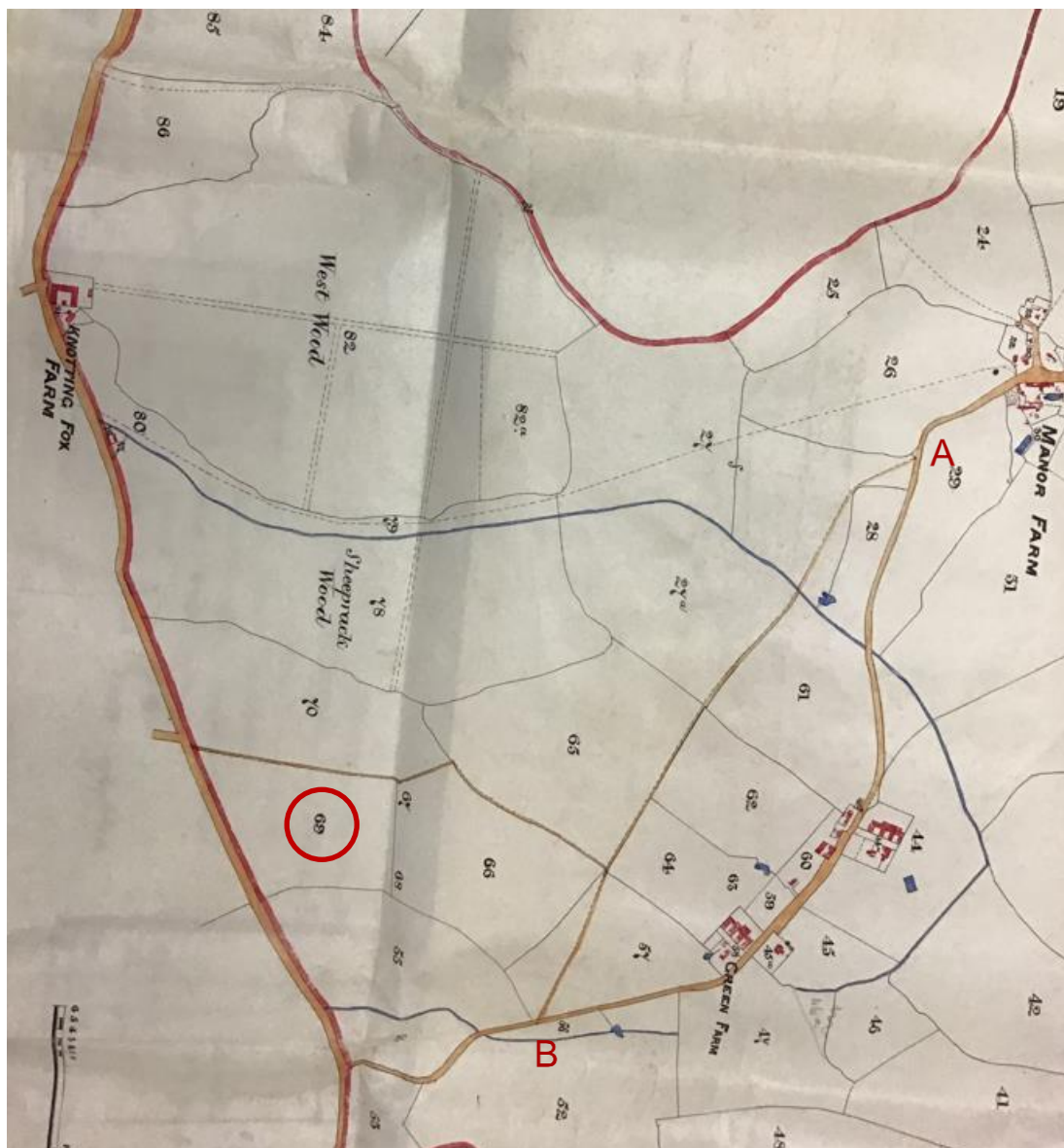
Thomas T. Wing

Signed Sealed and Delivered by the within named Samuel
Whitbread in the presence of -

Thos Gray

Bedford Office

Extract from Sales conveyance showing the signatories to this legal document for the sale of land by the Duke of Bedford



Extract from Sales conveyance showing the map relating to the conveyance with the application route from A to B in the same colour as the existing road between Knotting and Knotting Green with field number 69 circled

No.	Description.	Acreable.			Pasture.		
		100	3	5	139	3	7.
	Brought forward	199	3	5			
69.	Bridle way green	21	0	10			
70	Sheep rack fence	25	1	25			
		246	1	0	139	3	7
					246	1	0.

Extract from Sales conveyance showing the parcel of land 69 described as Bridle Way Green

Evidence from Maps:

Duke of Bedford Estate Maps

Date. Estate map of Knotting & Souldrop by John Lambe Davis 1775 belonging to the Duke of Bedford.

Relevance. The cost of producing maps in the 1700s was so high that often it was only very wealthy, landed gentry who could afford to have maps commissioned. The Duke of Bedford was one such person and he also owned huge parts of the whole of Bedfordshire. He commissioned a series of maps to accurately record his vast estates in Bedfordshire.

Archive. The reference for this map is R1/47 and is held at the Bedford Record Office

Meaning. Unfortunately, due to an agreement between the Duke of Bedford and the Bedford Record Office, nobody is allowed to photograph any of his Estate maps and therefore the relevant extract of the map cannot be reproduced in this document. However, the applicant has viewed the map extensively and the application route is shown on the estate map from A to B as a bridle way in the same position as the publicly available tithe map reproduced above.

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

Duke of Bedford Estate Maps

Date. Estate map of Knotting, Souldrop & Wymington by Thomas Evans 1822 belonging to the Duke of Bedford.

Relevance. The cost of producing maps in the 1800s was so high that often it was only very wealthy, landed gentry who could afford to have maps commissioned. The Duke of Bedford was one such person and he also owned huge parts of the whole of Bedfordshire. He commissioned a series of maps to accurately record his vast estates in Bedfordshire.

Archive. The reference for this map is R1/49 and is held at the Bedford Record Office

Meaning. Unfortunately, due to an agreement between the Duke of Bedford and the Bedford Record Office, nobody is allowed to photograph any of his Estate maps and therefore the relevant extract of the map cannot be reproduced in this document. However, the applicant has viewed the map extensively and the application route is shown on the estate map from A to B as a bridle way in an exact replica and position as to the publicly available tithe map reproduced above.

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

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 Bridleway.

Date: 28 August 2022

Organisation: British Horse Society