

Wildlife and Countryside Act 1981 Summary of Evidence

Definitive Map Modification Order Application

Parish: Pavenham **Grid Reference:** SP995559

Map of Path: Route applied for is shown in RED DASHES starting at Church Lane Pavenham going in a southerly direction through Pavenham Park Golf Club to end at High Street Pavenham near The Lodge. The route is not shown on OS Maps and is not on 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-0430

Description of Path:

Path starts at Church Lane Pavenham at approximate grid reference SP99255634 going in a southerly direction through Pavenham Park Golf Club to end at High Street Pavenham near The Lodge at approximate grid reference SP99805553. The route is not shown on OS Maps and is not on 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:

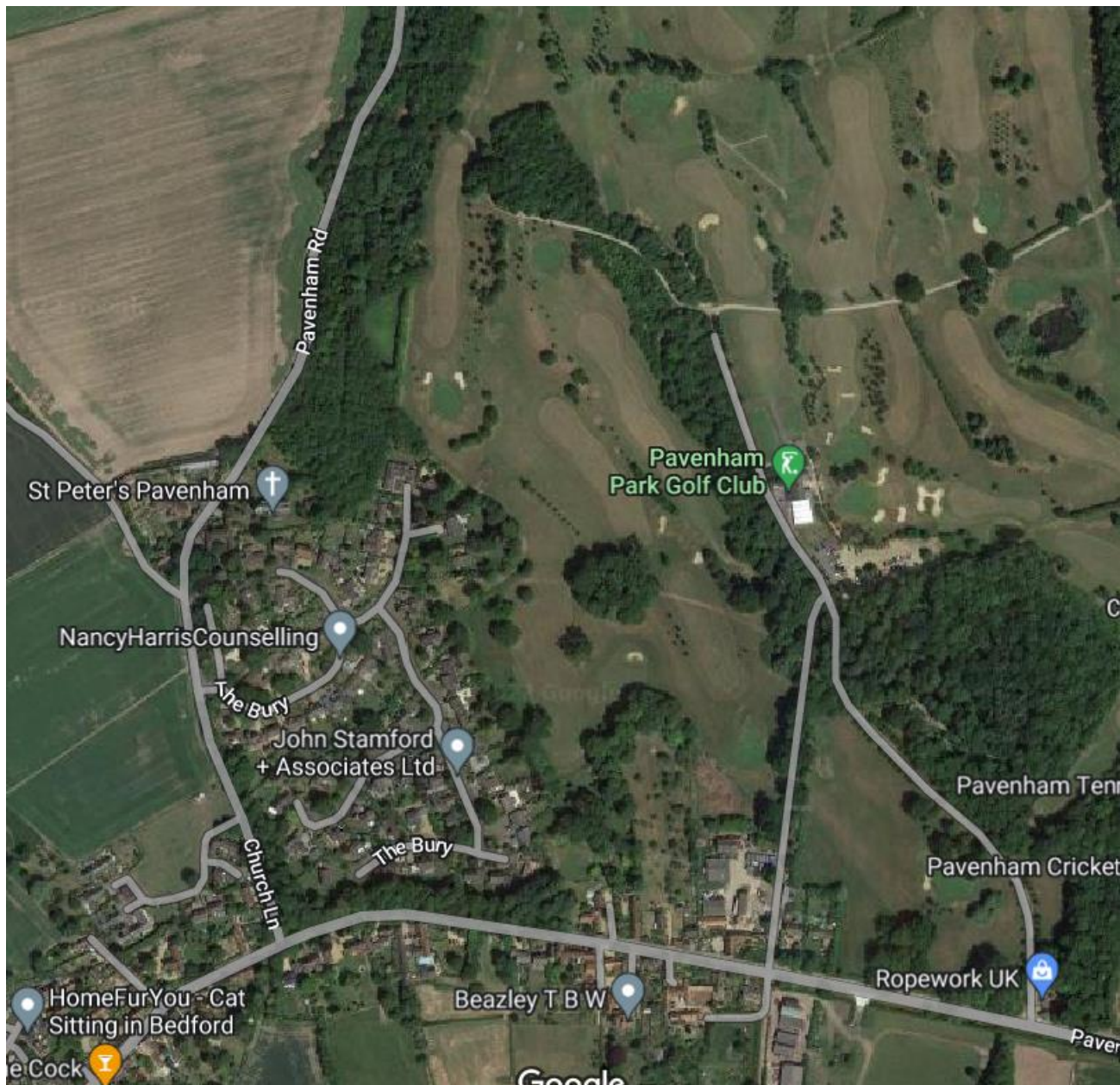
a. This application statement includes explanations as to how the evidence applies to the application route, and

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 Church Lane Pavenham at approximate grid reference SP99255634 going in a southerly direction through Pavenham Park Golf Club to end at High Street Pavenham near The Lodge at approximate grid reference SP99805553. The route is not shown on OS Maps and is not on the online Definitive Map.



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



Extract from a Google Streetview image from 2009, showing the application route from approximately point A looking towards B



Extract from a Google Streetview image from 2009, showing the application route from approximately point B looking towards A

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.

Inclosure Records

Date. Pavenham Inclosure Award dated 1770. Attempted reconstruction of Pavenham Inclosure map by Linnell compiled 1929 initially from 1850 and 1832.

Relevance. These records were compiled when a few landowners grouped together to combine and reallocate lands in order to improve methods of agriculture. This process ring fenced lands and reduced the common grazing areas. The landowners would apply to Parliament for an Inclosure Act to be passed, after which Commissioners were appointed to carry out their survey, prepare the map (s), set out the new road network and make the distribution/award and land ownership allocations. Because the process was authorised by Act of Parliament, and followed a statutory process including rights of complaint by the public, any road or other highway set out at inclosure is highly conclusive evidence of highway status.

Archive. The extracts below were taken from the Bedfordshire Record Office reference Pavenham Inclosure Award in Award Book H. Attempted reconstruction of Pavenham Inclosure Map MA27

Meaning. The first extract below is from the Pavenham Inclosure Award describing public road no 2 describing the application route from B north next to land belonging to Elizabeth Makeham, then northwest over the second allotment of the Earl of Hardwick, to Colters Lane over the second allotment to Richard Sutton, into Lane called Thomasins Green to Felmersham Lane at point A the road between Pavenham and Felmersham.

The second extract below shows the title and description of the following map being an attempted reconstruction of the Pavenham Inclosure map that has been lost, was first traced in pencil in 1850, corrected as far as possible with reference to an unknown map from 1832 and also using the Pavenham Inclosure Award from 1770.

The final extract from this reconstructed Pavenham Inclosure map shows the public road number 2 marked on the map and the various landowners mentioned in the Inclosure Award circled or underlined showing that the route described in the Inclosure Award is indeed the application route described from B to A. Also note that the route goes past a field named Colters Lane Close that is mentioned in the Inclosure Award description of public road 2.

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.

leading South or south
William Sanderson and his Successors Vicar
called Stafford Bridge. One other Publick road leading from and out of
the last described Road at or near the South West Corner of Stone Shot furlong
Northwards into through and over the several Allotments to the said houses
of the said Elizabeth Makeham and Harnell Makeham and from thence in a
North-West direction into through and over the second Allotment to the said
Earl of Hardwicke into a certain Lane called Follers Lane and from thence
going through and over the said Lane into through and over the said second
allotment to the said Richard Sutton for part of his freehold Estate into a
certain Lane called Thomasins Green and the xx field Lands and from thence
into through and over the South-west and North-west sides of the said fourth
allotment to the said Earl of Hardwicke to the South-East end of a certain
Lane called Helmersham Lane. One other Publick road leading from and out
of the West end of a certain Lane lying between

Extract from Pavenham Inclosure Award describing public road 2 with various landmarks highlighted

AN ATTEMPTED RE-CONSTRUCTION
of
PAVENHAM AWARD MAP.

FIRST Traced in pencil on Map of 1850.

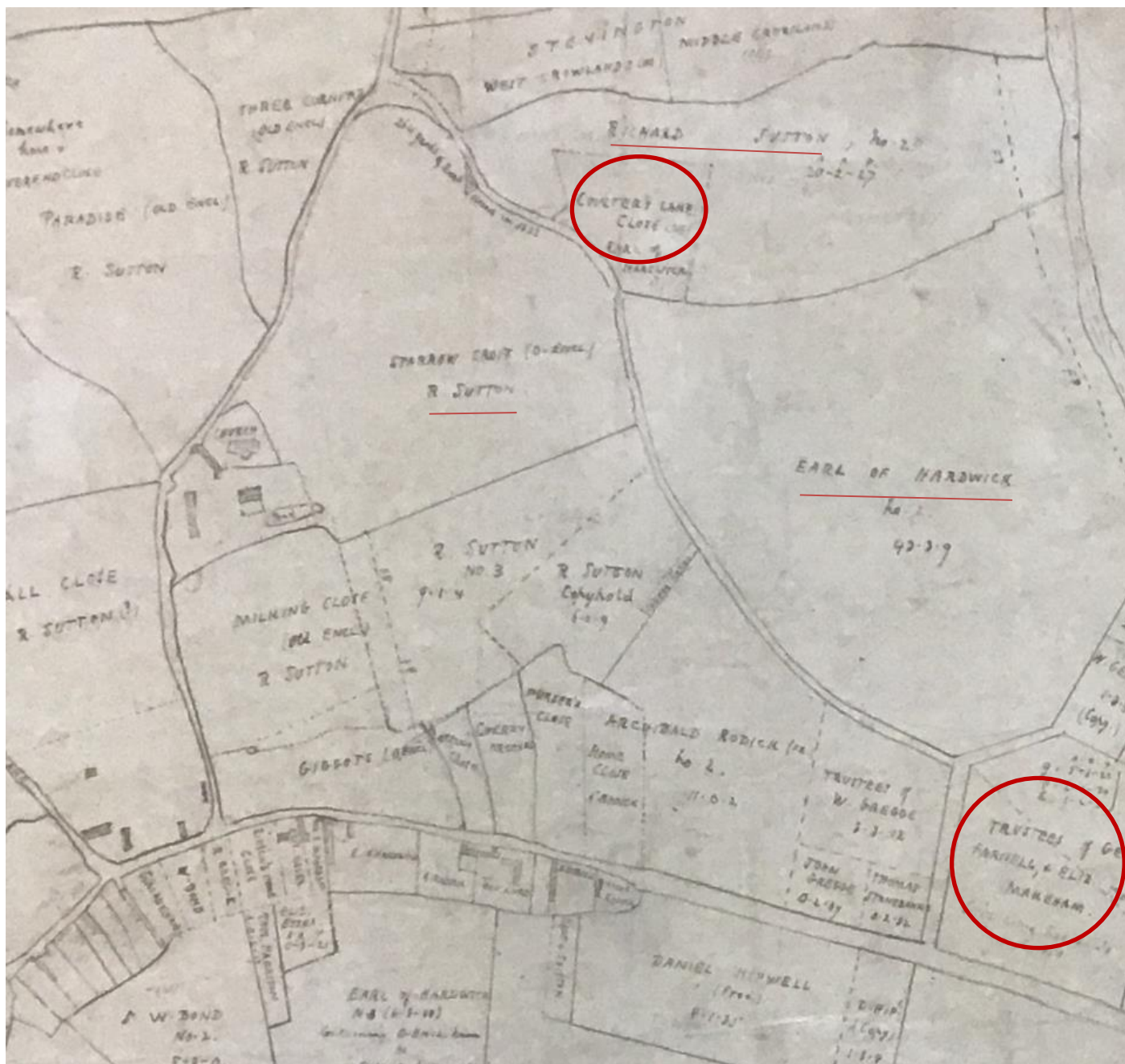
Corrected, as far as possible, by Map of 1832 and
the statements of the AWARD itself.

Boundaries which are certain or reasonably certain are
drawn in firmly. Uncertain boundaries are
drawn with dotted lines.

HOUSES ARE PUT IN AS THEY EXISTED IN 1832.



Extract from attempted reconstruction of the Pavenham Inclosure map describing the dates and process of the reconstruction



Extract from attempted reconstruction of the Pavenham Inclosure map showing public road 2 various highlighted landmarks shown in the Inclosure Award description

Evidence from Maps:

William Bryant Map of the County of Bedford (1799-1878)

Date. Map of the County of Bedford by William Bryant 1826.

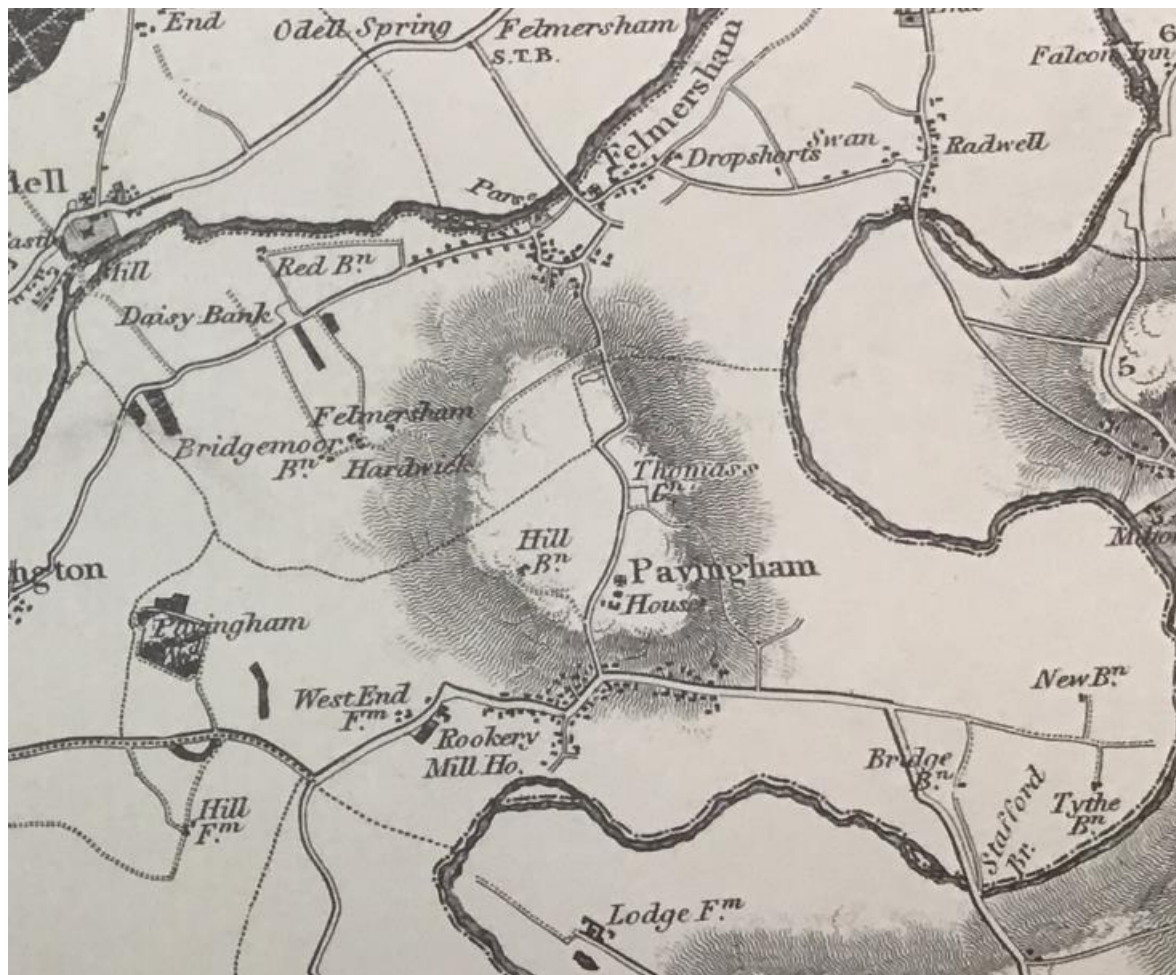
Relevance. Andrew Bryant, as he preferred to call himself, was one of the last land surveyors in private practice to endeavour to publish a series of large-scale maps of the English counties, in the face of increasing competition from the Ordnance Survey, the official mapping agency of the British government. It can be no surprise that Bryant failed in his grand scheme; as with many before him, and as with his rivals the Greenwoods, he simply did not have the resources, or the necessary income from his work, to continue the project to completion. That said, he managed to publish 13 maps in the series.

Nonetheless, his cartographic legacy is impressive. The engraving, printing, paper and colouring of the 13 large scale county plans are all of high quality, and yet they are appreciably scarcer than the Greenwood maps to which, where comparison is possible, they appear superior in detail and overall accuracy.

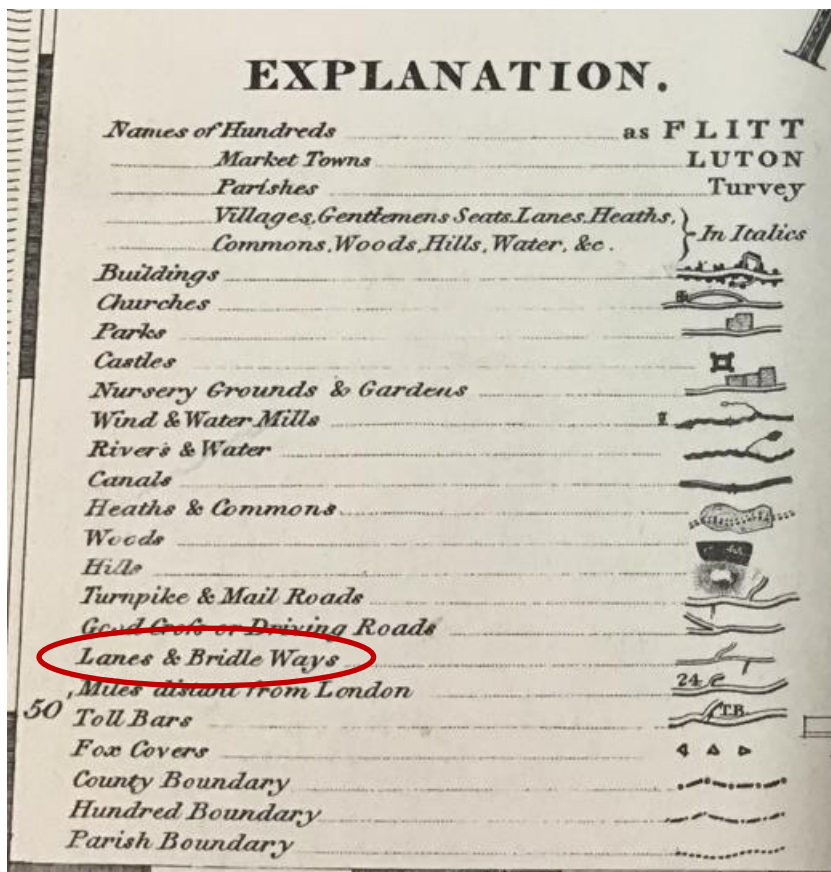
Archive. The extracts from this sheet below were obtained from the Bedfordshire Archives service reference X768/27

Meaning. The application route is shown on the first extract below from A to B as a road. The second extract shows the key to this style and is described as “Lanes and Bridle Ways”

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 the County map of Bedford by William Bryant 1826 showing the application route from A to B as a road described in the key to the map as “Lanes & Bridle Ways”



Extract from the County map of Bedford by William Bryant 1826 showing the key where the application route is in the style of "Lanes and Bridle Ways" circled

Harvey's book: The History and Antiquities of the Hundred of Willey in the county of Bedford. 1872

Date. Harvey's book: The History and Antiquities of the Hundred of Willey in the county of Bedford. 1872

Relevance. William Marsh Harvey published a book on the county of Bedford in 1872 that included a number of plates and maps. This book has been digitized and is now freely available on the British Library website.

Archive. The extracts from this sheet below were obtained from the British Library at <https://www.flickr.com/photos/britishlibrary/11096579613>

Meaning. The route is shown on the extract below from A to B as a road in a similar style as the existing road it leaves from at point A and joins at point B.

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 the 1872 map within Harvey's book on the Hundred's of Willey in the County of Bedford showing the application route from A to B as a road in a similar style as the existing road it leaves from at A and joins at B

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/>

Meaning. The route is shown on the extract below from A to B as a road in the same style as the existing road it leaves from at A and joins at B.

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 for Bedford showing the application route from A to B

OS First Edition Ordnance Survey Maps - One-inch England and Wales, 1784-1869

Date. First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869

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. They were published by Lt. Col Mudge and later by Lieu M Colonel Colby of the Royal Engineers. They were sold by Jas. Gardner, agent for the sale of Ordnance Survey maps.

Archive. The extracts from this sheet below were obtained from the National Library of Australia at OS First Series 1813 <https://nla.gov.au/nla.obj-231923201/view>

Meaning. The route is shown on the extract below from A to B as a road in the same style to existing highways such as the existing road from where the application starts at point A and joins at B.

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 First Edition Map showing the application route marked from A to B

OS Early Edition Ordnance Survey Maps - One-inch England and Wales, 1865

Date. Early edition Ordnance survey maps of the topographic series of England and Wales, 1865

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. They were published by Lt. Col Mudge and later by Lieu M Colonel Colby of the Royal Engineers. They were sold by Jas. Gardner, agent for the sale of Ordnance Survey maps.

Archive. The extracts from this sheet below were obtained from the Rights of Way officer for Central Bedfordshire

Meaning. The route is shown on the extract below from A to B as a road in similar style to existing highways such as the existing road from where the application starts at point A and joins at B.

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 Early Edition Map showing the application route marked 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 Bridleway.

Date: 10 September 2022

Organisation: British Horse Society