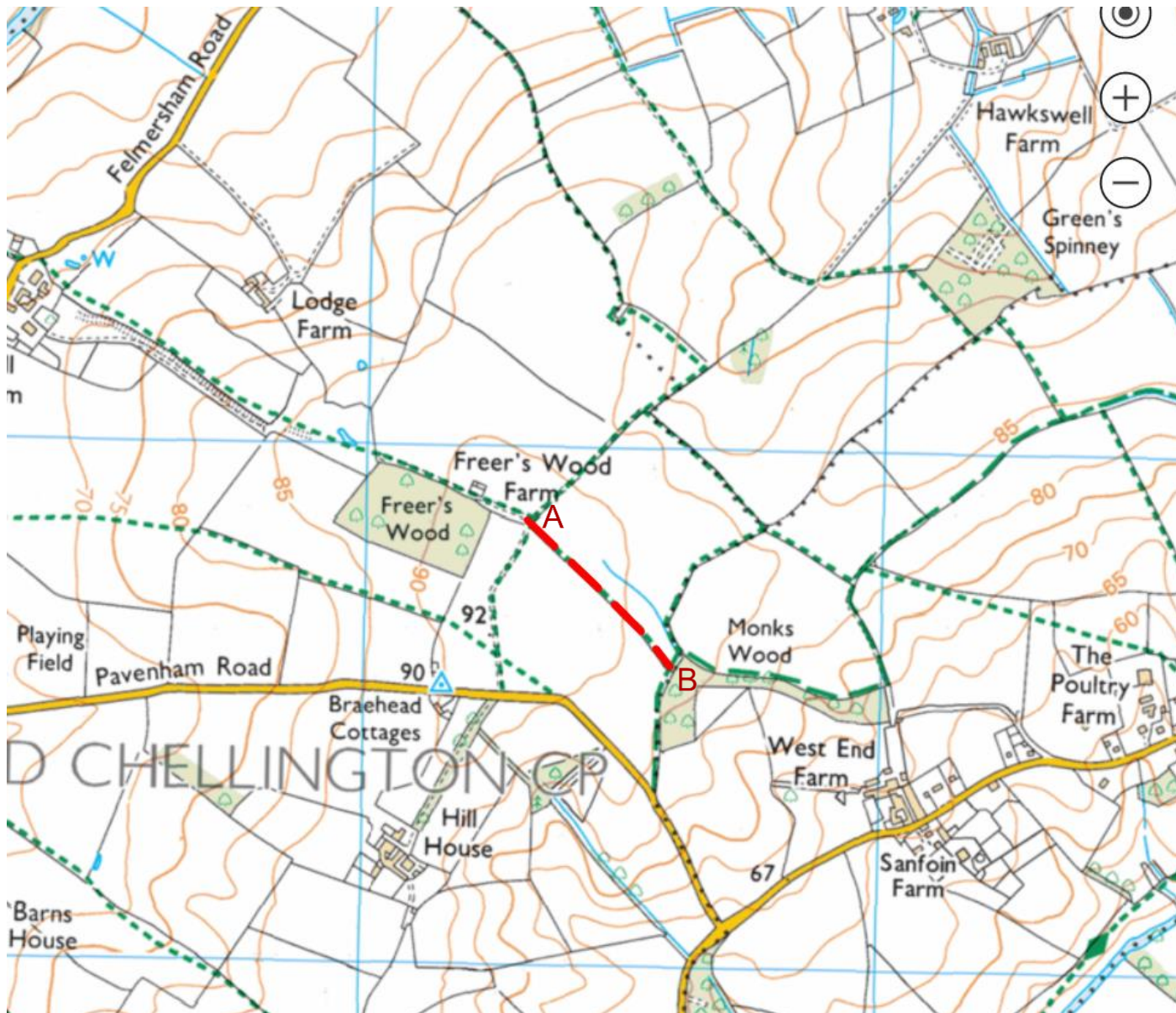


# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

**Parish:** Carlton & Chellington **Grid Reference:** SP974557

**Map of Path:** Route applied for is shown in RED DASHES starting at the junction of footpath A7 and A9 Carlton and Chellington, goes south east along footpath A6 Carlton & Chellington to end where it joins bridleway 23 Carlton & Chellington at Monks Wood. The route is shown as a footpath on OS Maps and 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-0267**

## Description of Path:

Path starts at the junction of footpath A7 and A9 Carlton and Chellington at approximate grid reference SP97305586, goes south east along footpath A6 Carlton & Chellington to end where it joins bridleway 23 Carlton & Chellington at Monks Wood at approximate grid reference SP97595558 The route is shown as a footpath on OS Maps and 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 the junction of footpath A7 and A9 Carlton and Chellington at approximate grid reference SP97305586, goes south east along footpath A6 Carlton & Chellington to end where it joins bridleway 23 Carlton & Chellington at Monks Wood at approximate grid reference SP97595558 The route is shown as a footpath on OS Maps and on 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.

## **Inclosure Records**

**Date.** Map MA51/2: Map of the parishes of Carlton and Chellington in the County of Bedfordshire attached to Parliamentary Inclosure Award of 1807 and associated Carlton & Chellington Inclosure Award. Chellington Inclosure Award 51/2 dated 1807. 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 MA51/2, attached to the Inclosure Act and Carlton & Chellington Inclosure Award in Award Book M. Chellington Inclosure Award reference Award 51/2. Pavenham Inclosure Award in Award Book H. Attempted reconstruction of Pavenham Inclosure Map MA27

**Meaning.** The first two extracts below from the Carlton & Chellington Inclosure map shows the application route as a "Road" in the direction of Pavenham, circled and shown in close up on the second extract.

The third extract from the Carlton & Chellington Inclosure Award and the fourth extract from the Chellington Inclosure Award refers to Freers Wood Lane. The relevance of this is made clear in the Pavenham Inclosure Award that refers to a public road leading from Pavenham West End and joining Chellington Lane which is very likely to have been renamed as Freers Wood Lane as it is this wood that the route goes beside.

The fifth extract is from the Pavenham Inclosure Award describes the public road no 3 that links from Pavenham West End at Spring Close to Chellington Lane – note that the application route comes directly from Chellington and Chellington Church therefore it is highly likely a neighbouring parish would know this route as "Chellington Lane". Therefore the application route is highly likely to be part of the public road number 3 described in the Pavenham Inclosure Award.

The next 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 (Inclosure in 1770), 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 3 marked on the map from Spring Close that is specifically referred to in the Pavenham Inclosure Award and marked on the map as an awarded road, circled. The application route would form part of this awarded road that leads to Chellington Lane.

**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 Carlton & Chellington Inclosure Map showing the application route from A towards B described as a road, circled*



Extract from Carlton & Chellington Inclosure Map showing the application route from A towards B described as a road, circled

N<sup>o</sup> 7.

Garstin and Daniel Higwell and the Owners and Occupiers of their several Allotments and ancient inclosures respectively for the time being One other private carriage and Drift road of the breadth of Twenty feet leading from the Pavenham and Steventon road at the east side of Highgroves in North and westward directions into and over an allotment to Lord Hampden to Fryers wood lane which said Road shall be and remain for the use of the said Lord Viscount Hampden and John Lawender and the Owners and Occupiers of their several Allotments and ancient Inclosures for the time being One other private carriage and Drift road of the breadth of twenty feet leading out of the Pavenham and Steventon

N<sup>o</sup> 8.

Extract from Carlton & Chellington Inclosure Award refers to Freers Wood Lane (circled)

① No 2. **O**ne other private Carriage and Drift Road in a north-westward direction into and over the said Road shall be and remain for the use of the said Lord Allotments for the time being **O**ne other private Carriage and Drift Road in a north-westward direction into and over the said Road shall be and remain for the use of the said Lord Allotments for the time being

Carriage and Drift Road of the breadth of twenty feet leading from the direction into and over an allotment to Lord Viscount Albemarle into and over the said Lord Viscount Albemarle and John Savender and the other private Carriage Road of the breadth of twenty feet leading from the direction into and over an allotment to Lord Viscount Albemarle

of twenty feet leading from the north west end of Freers Wood Lane into an allotment to John Savender within said allotment to John Savender and the owners and occupiers of the said respective allotments of twenty feet leading out of the Fulmerham Road in a

Extract from Chellington Inclosure Award refers to Freers Wood Lane circled



allotment to the said Earl of ~~Shrewsbury~~ <sup>3</sup> Lane called ~~Helmerham Lane~~ <sup>3</sup> one other Publick road leading from and out of the west end of a certain Lane lying between an old Inclosure of the said Archibald Rodick in the Parish of Pavenham aforesaid called Spring Close and an old Inclosure of the said Sir Thomas Alston in the said Parish called Little pasture into through and over the third Allotment to the said Archibald Rodick for part of his freehold Estate in Dorniture and from thence into through and over the said Allotment to him for the said freehold Estate by him purchased of the said Lydia Knight Matthew Appleby and Mary his wife to a certain Lane called

4 Chellington Lane <sup>4</sup> One other Publick road leading from and out of the west end of the Town of Pavenham aforesaid in to through and over the first Allotment to the

Extract from Pavenham Inclosure Award describing public road 3 between Spring Close & Chellington Lane, circled. The application route would be part of public road 3



AN ATTEMPTED RE-CONSTRUCTION  
of  
PAVENHAM AWARD MAP.

FIRST Traced in pencil on Map of 1850.

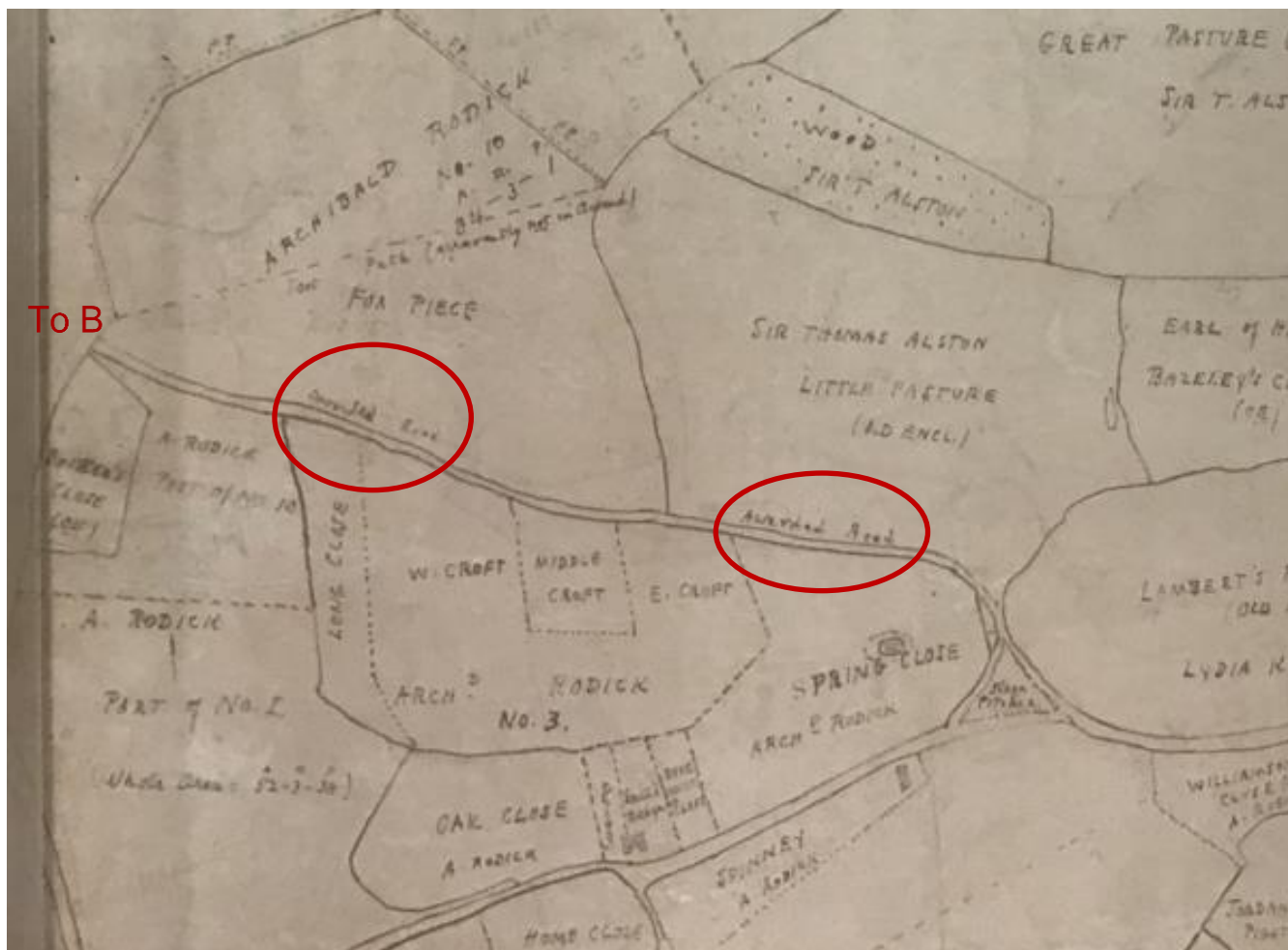
Corrected, as far as possible, by Map of 1832 and  
the statements of the AWARD itself.

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 3 from Spring Close described as “Awarded Road”, circled. The application route forms part of public road 3

## Evidence from Maps:

### Greenwood Map of the County of Bedford (1786-1855)

**Date.** 1825 map of the County of Bedford by Charles & John Greenwood

**Relevance.** Greenwood's county atlas, engraved by J & C Walker Published April 1st 1831. Atlas consists of engraved title page, with hand coloured index map of England and Wales, showing counties and major towns in each county, and 46 engraved hand coloured unnumbered maps, including 4 maps of counties of Wales and 1 index map. Each map shows the boundaries of the county, parishes, villages, roads, churches, chapels, railways, parks, rivers, canals, woods, watermills and windmills. Includes reference to the wards, liberties and boroughs, place of election and polling places. Relief shown by hachures.

**Archive.** The extracts from this sheet below were obtained from the Yale University Library at <https://collections.library.yale.edu/catalog/15339124>

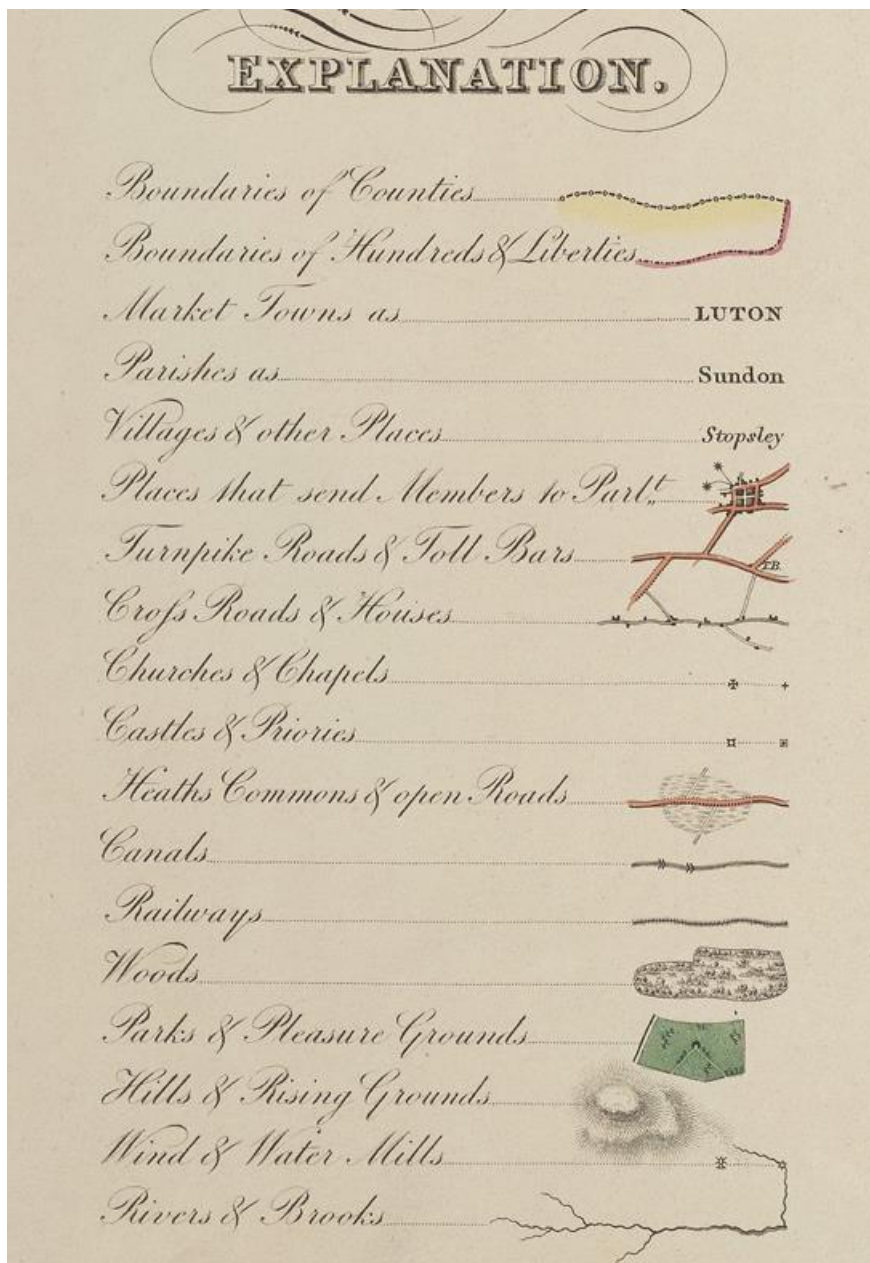
**Meaning.** The route is shown on the extract below from A to B as a road between Chellington Church and Pavenham in similar style to existing highways in the area such as all other existing roads around the parishes of Chellington, Felmersham, Pavenham & Carlton. The second extract show the key to this map where the style is identified as a Cross Road.

**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 1825 Greenwood map of the county of Bedford showing the application route from A to B as a road





*Extract from the key of the 1825 Greenwood map of the county of Bedford*

### **Thomas Moule & William Schmollinger County map of Bedfordshire 1837**

**Date.** Map of the County of Bedfordshire by Moule & Schmollinger 1837.

**Relevance.** A decorative and detailed 19th century Thomas Moule map of Bedfordshire, with inset views of Dunstable Priory and Woburn Abbey, which was engraved by William Schmollinger and published in Moules English Counties Delineated (London: George Virtue, 1837).

The Moule county maps were unusual for the period in that they were highly decorative. The scientific rationality of the late 18th & early 19th century had seen a move away from the flamboyance of earlier map making, emphasizing instead, a greater desire for accuracy and detail. Thomas Moule, like many of his contemporaries, however, was drawn to a more simplistic, pre-industrial age. This was clearly reflected in his maps with their neo-Gothic borders, heraldic shields and views of ancient buildings; ironically, the Moule maps issued later in the 1840s were amongst the first to show the newly constructed railways.

**Archive.** The extracts from this sheet below were obtained from the applicant's private collection

**Meaning.** The route is shown on the extract below from A to B as a road between Chellington church and Pavenham in similar style to existing highways in the area such as all other existing roads around the parishes of Chellington, Felmersham, Pavenham & Carlton. The second extract show the key to this map where the style is identified as a Cross Road.

**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 Bedfordshire by Moule & Schmollinger 1837 showing the application route from A to B as a road*

#### **Weller Map of the County of Bedford (1819-1884)**

**Date.** Map of the County of Bedford by Weller 1866.

**Relevance.** Edward Weller (1819-1884) was a British engraver and cartographer who was one of the first to produce maps using lithography. He was a "London-based engraver, cartographer and publisher, working from offices in Red Lion Square and later, Bloomsbury", who produced detailed steel plate engraved maps. He is best known for his maps for Cassells "Weekly Dispatch Atlas" (c1862), including the detailed street plans of London & suburbs, plus some English county maps. He was unofficial cartographer to the Royal Geographic Society.

**Archive.** The extracts from this sheet below were obtained from the Bedfordshire Archives Service reference MC2/63

**Meaning.** The application route is shown on the extract below from A to B as a road between Chellington Church and Pavenham in the same style as the existing bridleways to the north of Pavenham and around West End Farm.

**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 Edward Weller 1866 showing the application route from A to B as a road in the same style as the existing bridleways to the north of Pavenham and around West End Farm*

#### **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 between Chellington Church and Pavenham in a similar style to existing highways in the area.

**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 between Chellington Church and Pavenham in similar style to existing highways in the area.

**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*

## **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: 9 September 2022

Organisation: British Horse Society