

# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

**Parish:** Carlton & Chellington **Grid Reference:** SP956546

**Map of Path:** Route applied for is shown in RED DASHES starting at School Lane, Carlton goes east along a track to end at bridgeway A5 Carlton & Chellington. The route is shown as a track on OS Maps and is not on the online Definitive Map. The application is for a bridgeway.



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-0298**

### Description of Path:

Path starts at School Lane, Carlton at approximate grid reference SP95515462 goes east along a track to end at bridgeway A5 Carlton & Chellington at approximate grid reference SP95755468. The route is shown as a track 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 School Lane, Carlton at approximate grid reference SP95515462 goes east along a track to end at bridleway A5 Carlton & Chellington at approximate grid reference SP95755468. The route is shown as a track 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*



## **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.

**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 Carlton & Chellington Inclosure Act and associated Carlton & Chellington Inclosure Award in Award Book M.

**Meaning.** The first extract below shows the application route from A to B as a road in the same style as the existing road it leaves from at A and existing bridleway it joins at B and described on the map as no 3 20 feet. The third image is from the Carlton & Chellington Inclosure Award in Book M describing the application route as a private carriage road and drift road no 3 between Grimescroft Road and private carriage road and drift road no 5 (existing bridleway A5 and BW11).

Private Carriage Road & Drift Road no 3 is described in Award Book M for the use of Thomas Alston, Mary Brown, Edward Lambert and Thomas Battens and the owners and occupiers of the respective cottage, ancient inclosures and allotments – in fact a large number of people. However, the next extract below is also from the Inclosure Award in Book M describing private carriage road and drift road 5 and 6 that are both existing bridleways being bridleway A5 and BW 11 (number 5) and bridleway 20 and BW5 (number 6) therefore a precedence has been set that routes described as private carriage roads and drift roads in the Inclosure Award were not in fact considered private roads rather drift roads for the use of the movement of animals for all parties & members of the public.

**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 to B described as No 3 20 feet

N<sup>o</sup> 3. the Homesteads Old inclosures and allotments in the parish of Carlton near and adjoining thereto One other private carriage and Drift road of the breadth of Twenty feet - leading from Grinecroft road at the southward corner of Goddards close in an eastward direction along an ancient lane into and over Allotments of Thomas Alston to a lane between - ancient inclosures of Thomas Alston and William Steff and continuing along the said lane into an allotment to Mary - Brown near a Cottage belonging to Edward Lambert which said road shall be and remain for the use and benefit of - Thomas Alston Mary Brown Edward Lambert and Thomas Bathams and the Owners and Occupiers of their said respective Cottage Ancient inclosures and allotments for the time being One other private carriage and Drift road of the breadth of Twenty feet -

Extract from Carlton & Chellington Inclosure Award describing part of the application route as no 3 private carriage and drift road



N<sup>o</sup> 5. Inclosures and Cottages respectively for the time being One other private carriage and Drift road of the breadth of twenty feet leading out of the road N<sup>o</sup> 3. at the Northwest end of Killingworth close in south and Southeastward directions into and over an allotment to Thomas Alston into an allotment to William Hooper - which said road shall be and remain for the use of Thomas Alston Thomas Battams and William Hooper and the Owners and Occupiers of their allotments and <sup>ancient</sup> inclosures for the time being

N<sup>o</sup> 6. One other private carriage and Drift road and Public footway of the breadth of twenty feet leading from the Pavenham road in Stevenon in a southwestward direction into and over the South East side of an allotment to William Hooper to Blackwell close and over the said close to ancient inclosures belonging to Robert Garstin and to an Allotment in Stevenon to Daniel Hipwell which said Road shall be and remain for the use of the said William Hooper Robert

Extract from Carlton & Chellington Inclosure Award describing the no 5 and 6 private carriage and drift road that are now existing public bridlevays

### Parish Estate and Manorial Maps

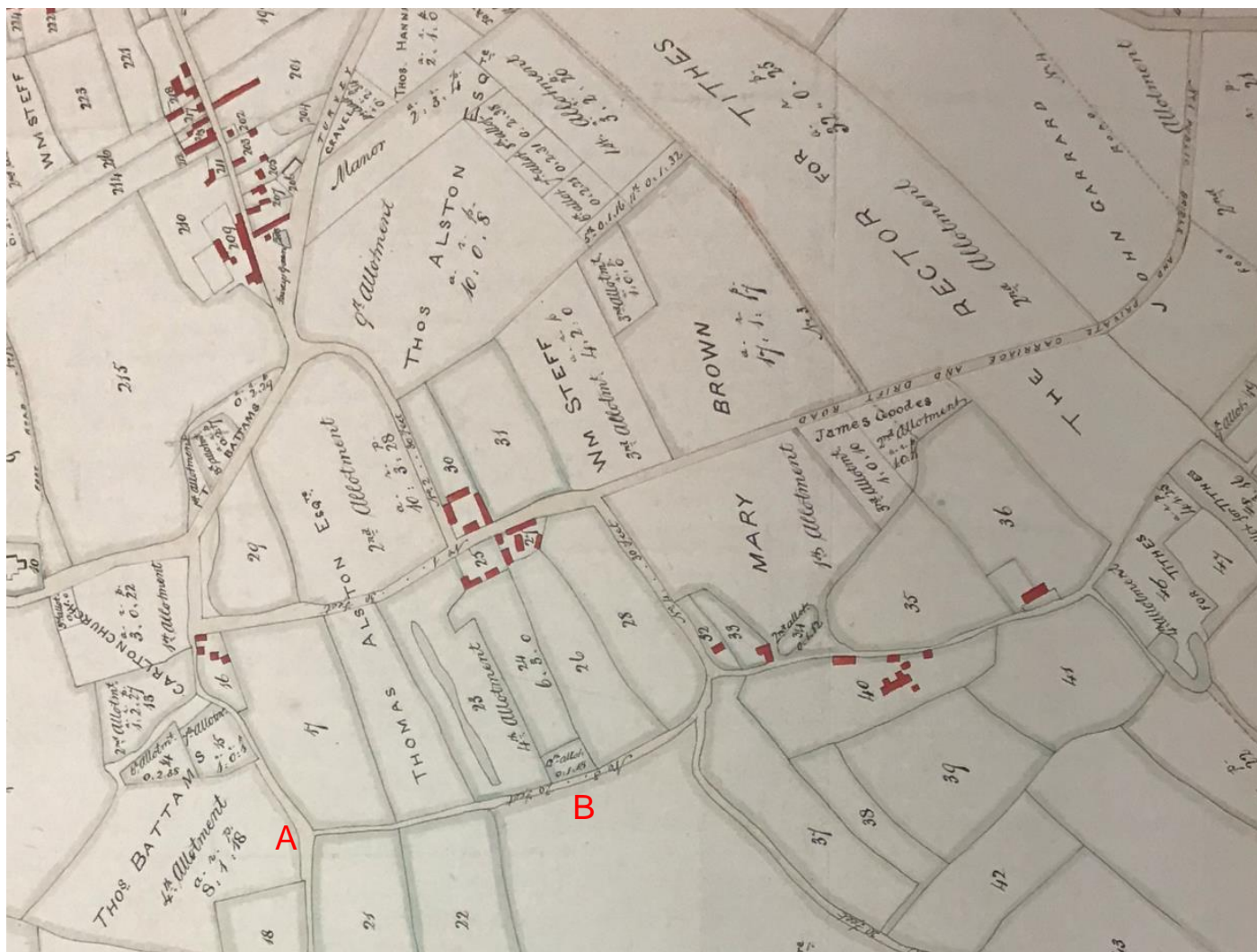
**Date.** Map L33/4: Map of Carlton & Chellington by R.Gee, surveyor, copied from original map attached to Carlton & Chellington Award in Jan 1849 by F.Joyce

**Relevance.** This map is held at the Bedfordshire Archives, reference L33/4 and is a copy made in 1849 of the original Inclosure map from 1806 made by the eminent, well respected surveyor of the time Gee and therefore is highly likely to be a reflection of what existed more than 40 years after Inclosure.

**Archive.** The extracts from this sheet below were obtained from the Bedfordshire Archives under reference L33/4

**Meaning.** The application route is shown on the first extract and second extract in close up below from A to B as a road in a similar style to the existing road it leaves from at A and the existing bridleway it joins at B, described on this map as no 5 20 feet - also in the Inclosure Award as a private carriage road & drift road. The map also describes the route as no 3 20 feet which would support the Inclosure Award information in this application. It should be noted that foot roads are shown in a completely different manner as dotted lines and described as "foot roads" on this map therefore this supports the applicants' assertion that the route is of higher status than public footpath status.

**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 copy of the Inclosure map by Gee showing the application route from A to B in the same style as the existing road it leaves at A and the existing bridleway it joins at B*



Extract from Carlton & Chellington copy of the Inclosure map by Gee showing the application route from A to B in close up

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

**Date.** The Inland Valuation Records, produced in the few years after 1910, references are IR 126/2/85

**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 extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives documents references are IR 126/2/85.

**Meaning.** The extract below shows the application route from A to B initially as a white road between hereditaments in the coloured boundary and is therefore unvalued and in the same style as existing roads in the area. The application route then continues to B in the same style as the existing bridleway it joins labelled as BR, Bridle Road.

**Assessment.** Where the route is shown as a white road, this land is unvalued and 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.

Where the route appears to be shown in the same style as the existing bridleway it joins, albeit the application route section is not specifically labelled as a BR however there is a crossover of the BR track in the same style. This evidence, along with other evidence in the application gives weight towards the route being considered a Bridle Road (BR) at this time.



*Extracts from the Inland Revenue Valuation Map IR 126/2/85 with the application route shown from A to B initially as a white road between hereditaments and then in the same style as the existing bridleway BR, circled, that it joins at B*

## Map of Bedfordshire by Thomas Jefferys 1765

**Date.** Map of Bedfordshire by Thomas Jefferys 1765.

**Relevance.** Thomas Jefferys was the “Geographer to His Majesty” (King George III) was one of the most significant cartographers in the country during the mid-eighteenth century. He enjoyed an international reputation and apparent prosperity as a publisher of American and European maps during the Seven Years War. He has been described as “the leading chart and map supplier of his day” and “most competent English cartographer ... of the eighteenth century”. In the mapping of the British Isles, he played an important role in the promotion of the new topographical surveys which were to revolutionize the basic maps of the country by 1800. Therefore his maps are of major significance of his day.

**Archive.** The extracts from this sheet below were obtained from the Bedfordshire Archives service reference AD3704

**Meaning.** The application route is shown on the first extract below from A to B as a road in the same style as the existing road it leaves from at A. The second extract shows the key to this style and is likely described as “Inclosed Roads”.




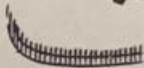
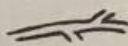

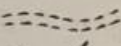
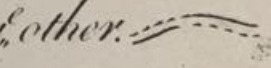
**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus this is evidence in support of the route being a public highway.



*Extract from the Thomas Jefferys map of Bedfordshire showing the application route from A to B as a road in the same style as the existing road it leaves at A*

# EXPLANATION

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LII

Market Towns in Capitals, as.....	POTTON.
Parishes in Print, as.....	Odell.
Churches.....	
Seats or noted Houses.....	
Farms or Cottages.....	
Parks.....	
Turnpike Roads.....	
Inclosed Roads.....	
Open Roads.....	
Roads open on one side & Inclosed on y <sup>e</sup> other.....	
The Print Figures are the distances from London, as Inserted on the Mile stones.....	40
The Common figures are the distances from Bedford, beginning at the Post House.....	15 20
The Roman Roads & Stations in Old Print, as.....	Icknield Way.
In this Survey the great Angles were taken by the Theodolite, & the Roads were measured by the Chain & Transcribed on the Plain Table in the Field.	

Extract from the Thomas Jefferys map of Bedfordshire showing the key where the application route is in the style of "Inclosed Road"

## 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.

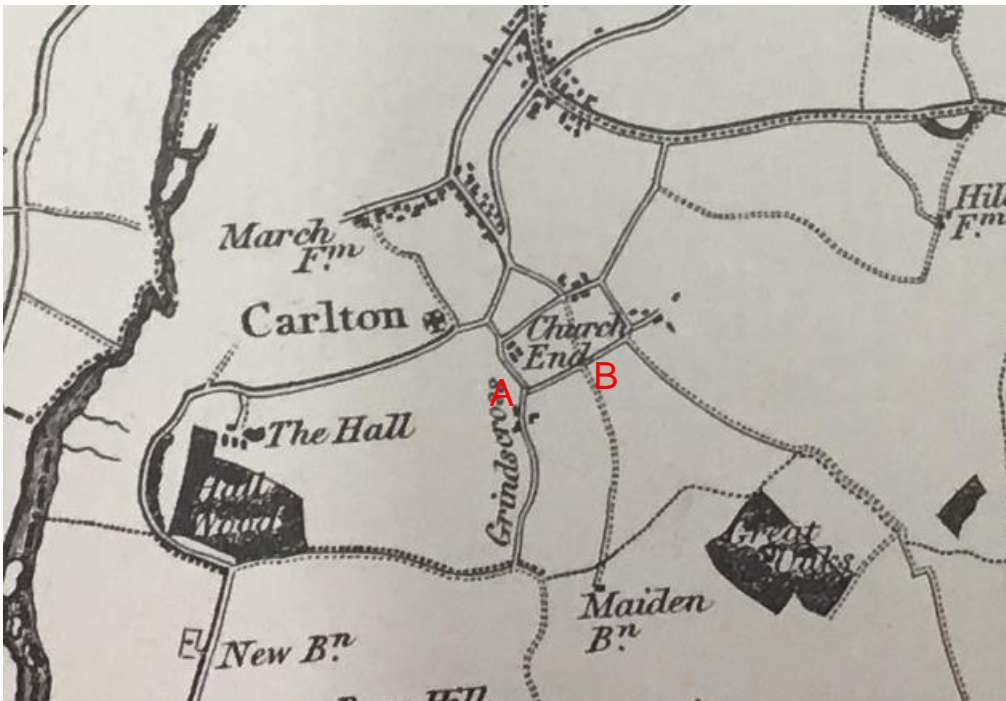


Nonetheless, his cartographic legacy is impressive. The engraving, printing, paper and colouring of the 13 large scale county plans are all of high quality, and yet they are appreciably scarcer than the Greenwood maps to which, where comparison is possible, they appear superior in detail and overall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

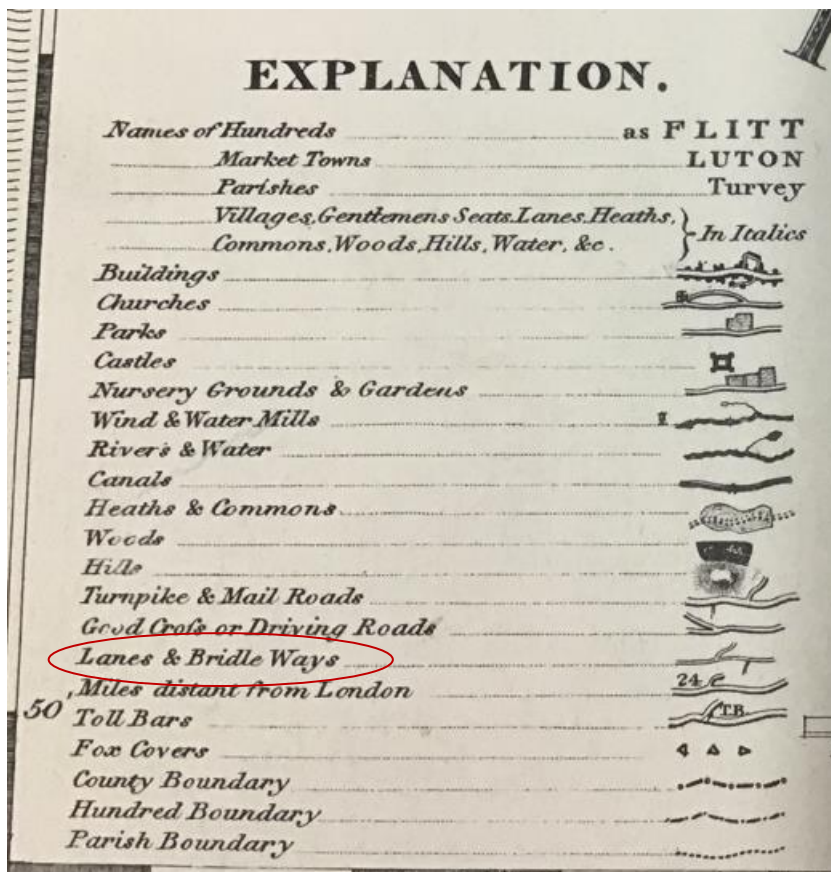
**Archive.** The extracts from this sheet below were obtained from the Bedfordshire Archives service reference X768/27

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



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 the same style as the existing road it leaves from at point A.

**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 the same style as the existing road it leaves from at A*

### **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.

**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*

### **Ordnance Survey Maps - 25 inch England and Wales**

**Date.** OS County Series Bedfordshire X.4 published 1901.

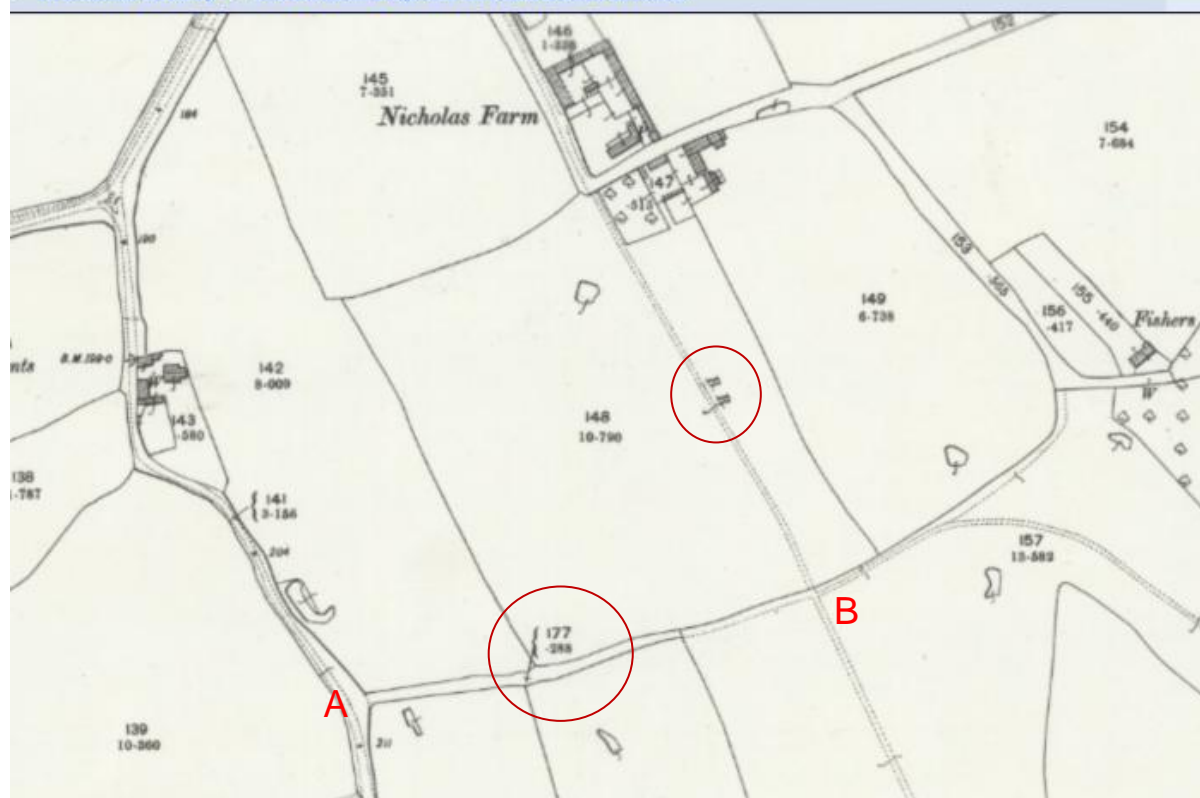
**Relevance.** The OS First and Second Edition County Series mapping was at 25 inch to the mile scale which would predominantly have been used for professional purposes rather than navigation. They were detailed enough to show gates and barriers on road and tracks.

**Archive.** The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114481713>

**Meaning.** The route is shown on the first image below from A to B initially in the same style as the existing road it leaves at A then as an unmarked track with double dashed lines in the same style as the existing bridleway it joins at point B and marked as BR, circled, Bridle Road. As the route is shown at various stages in the same style as the existing road it leaves and the existing bridleway it joins, it is likely the whole of the application route was considered a public highway. Part of the route also has a separate title number.

**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus combined with other evidence in this application this is evidence in support of the route being a public highway. The presence of separate titles along the application route further suggests a status of public road.

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



Extract from OS 25" Map showing the application route marked from A to B initially in the same style as the existing road it leaves at A and then in the same style as the existing bridleway it joins at B, circled BR. The route also has a separate title number, also circled

## OS Six Inch Ordnance Survey Maps - Six-inch England and Wales

**Date.** OS Six inch series Bedfordshire X.NE published 1902

**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/101567711>

**Meaning.** The route is shown on the first image below from A to B initially in the same style as the existing road it leaves at A then as an unmarked track with double dashed lines in the same style as the existing bridleway it joins at point B and marked as BR, circled, Bridle Road. As the route is shown at various stages in the same style as the existing road it leaves and the existing bridleway it joins, it is likely the whole of the application route was considered a public highway.

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

[Home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)



Extract from OS 6 inch Series Map showing the application route from A to B initially as a road in the same style as the existing road it leaves at A and then in the same style as the existing bridleway BR, it joins at B

### Ordnance Survey, 1:25,000 maps of Great Britain

**Date.** OS 25k series 42/95-A published circa 1949

**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.

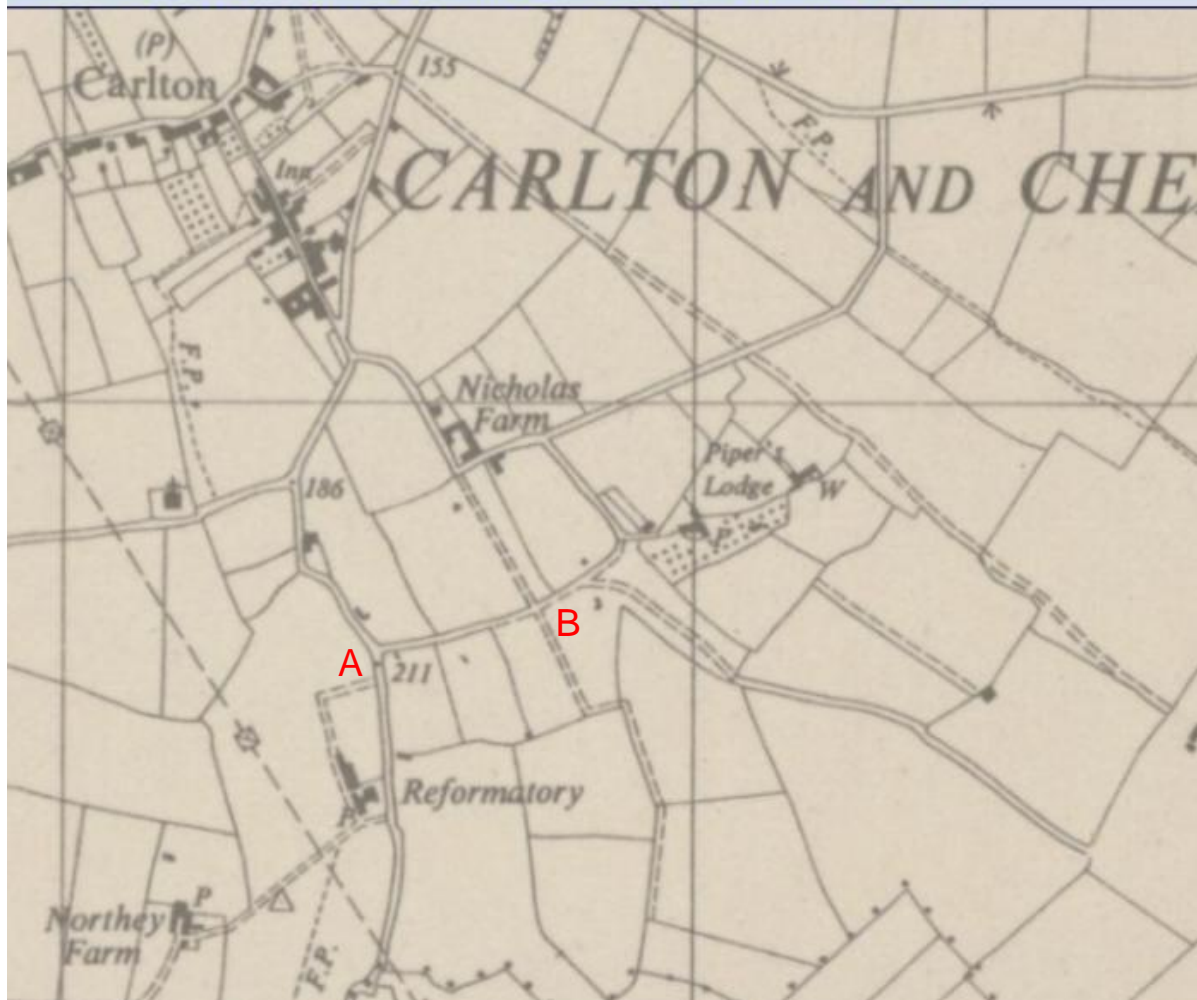
**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/207352355>

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



[Ordnance Survey](#) > [1:25,000 Outline Series of Great Britain, 1945-1970](#)



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