

# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

**Parish:** Carlton & Chellington **Grid Reference:** SP955548

**Map of Path:** Route applied for is shown in RED DASHES starting at School Lane, Carlton goes east to end at Eden's Lane, Carlton near Nicholas Farm. 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-0338**

### Description of Path:

Path starts at School Lane, Carlton at approximate grid reference SP95375481 goes east to end at Eden's Lane, Carlton near Nicholas Farm at approximate grid reference SP95625489. 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 School Lane, Carlton at approximate grid reference SP95375481 goes east to end at Eden's Lane, Carlton near Nicholas Farm at approximate grid reference SP95625489. 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

#### **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 two extracts below (the second in close up) show the application route from A to B as a road in the same style as the existing road it leaves from at A joins at B and described on the map as no 1 30 feet. The third image is from the Carlton & Chellington Inclosure Award in Book M describing the application route as a public bridle road, private carriage road and drift road no 1 between Grimescroft Road and the Pavenham and Steventon road. Road no 1 from the Inclosure is now a combination of the application route, Eden's Lane and bridleway 13.

**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 1 30 feet*





Extract from Carlton & Chellington Inclosure Map showing the application route from A to B described as No 1 30 feet

Private carriage  
and  
Drift roads.  
No 1.

by all persons and to all intents and purposes whatsoever  
One Public bridle and Private carriage and Drift  
road of the breadth of thirty feet leading out of the green  
road at the Homestead of Thomas Pinkard in North-east  
directions into and over the allotments of Thomas Alston  
William Stett Mary Brown William Hooper and John  
Garrard respectively into the Paventham and Steventon  
road near the North west corner of Hannahkin lane  
furlong which shall be and remain as a Public bridle  
road and as a Private carriage and Drift road for the  
use of the Owners and Occupiers and Homesteads Old  
inclosures and allotments in the parish of Carlton  
and adjoining thereto One other public bridle and

Extract from Carlton & Chellington Inclosure Award describing part of the application route as no 1 public bridle and private carriage and drift road

## 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 joins at B, described on this map as no 1 30 feet – also in the Inclosure Award as a public bridle, private carriage road & drift 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 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 joins at B described as No 1 30ft





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 joins at B described as No 1 30ft

## Evidence from Maps:

### 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 and joins at B. The second extract shows the key to this style and is likely described as “Inclosed Roads” and “Roads open on one side & inclosed on the other”.

**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.




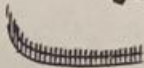
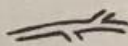

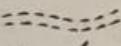
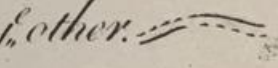


*Extract from the Thomas Jefferys map of Bedfordshire showing the application route from A to B as a road in the same style as the existing road it leaves at A and joins at B*



# 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" and "Roads open on one side & inclosed on the other"

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

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

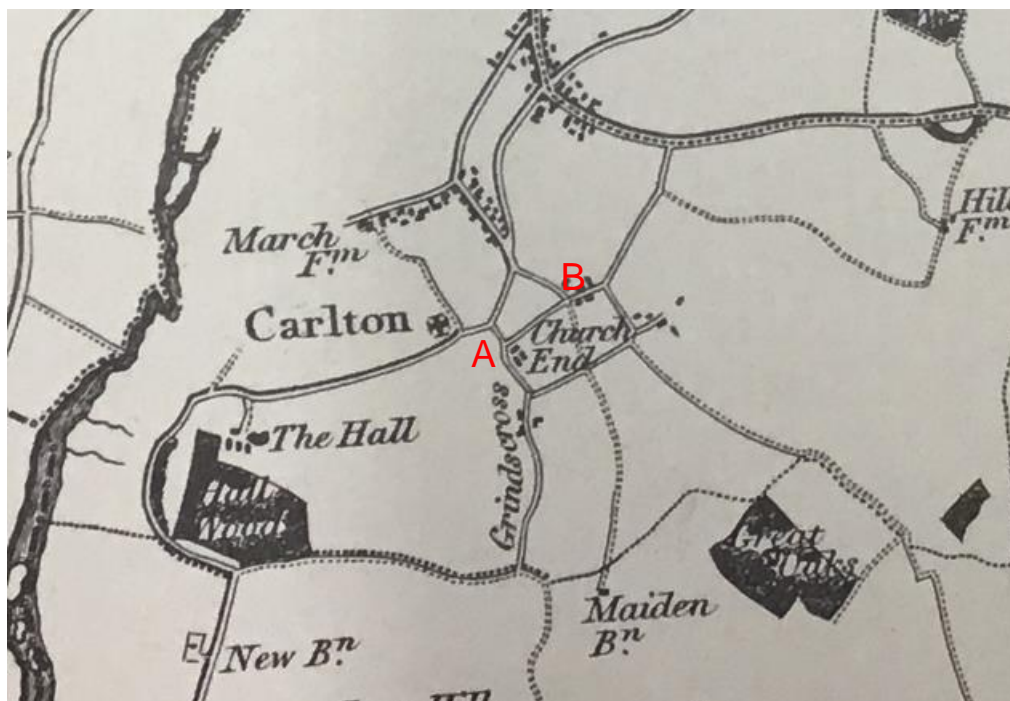
**Relevance.** Andrew Bryant, as he preferred to call himself, was one of the last land surveyors in private practice to endeavour to publish a series of large-scale maps of the English counties, in the face of increasing competition from the Ordnance Survey, the official mapping agency of the British 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

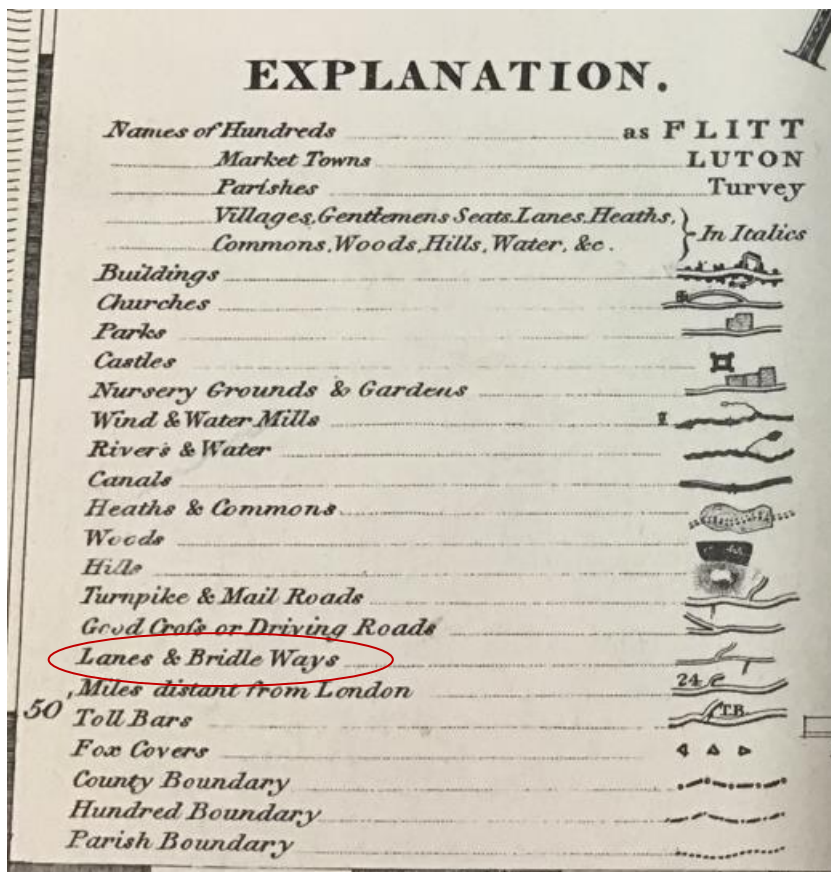
**Meaning.** The application route is shown on the first extract below from A to B as a road in the same style as the existing road it leaves at A and joins at B. The second extract shows the key to this style and is described as “Lanes and Bridle Ways”

**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 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 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 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 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 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*

## **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