



**APPLICATION FORM
FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT
WILDLIFE AND COUNTRYSIDE ACT 1981**

To: Luton Borough Council Integrated services, Futures House, Coulter Building/The Moakes, Luton, LU3 3QB

I, Charlotte Ditchburn, for and on behalf of the British Horse

Society, of Abbey Park, Stareton, Kenilworth, Warwickshire.

CV8 2XZ.

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

- a) Upgrading to a bridleway the footpath from Point A on the application map (OSGR TL 07366 26439), the eastern termination of Streatley Footpath Number 3 to Point B (OSGR TL 07447 26536), the northern termination of Streatley Footpath Number 3.
- b) Adding the public bridleway which runs from Point B on the application map (OSGR TL 07447 26536) the northern termination of Streatley Footpath Number 3, to Point C (OSGR TL 08014 26544) the termination of Other Road with Public Access along Great Bramingham Lane maintainable road junction with Barton Road.

and shown on the map accompanying this application.

I attach copies of the following documentary evidence in support of this application, namely extracts of:

List of Documents

- I. Tithe Maps for the Parishes of Streatley and Luton (1842)
- II. Ordnance Survey 25" County Series Map Sheet XXX.5 and XXX.9 (1880)
- III. Ordnance Survey 6" County Series Map Sheet XXX.SW and XXX.NW (1887)
- IV. Ordnance Survey 1" Map Sheet 220 (1896)
- VI. Map prepared in connection with the Finance (1909-10) Act 1910
- VII. Ordnance Survey 1:25000 Area Provisional Series Sheet TL02 (1956)
- VIII. Map produced from HM Land Registry INSPIRE database (2020)

The copies of the above items of documentary evidence are contained in a Summary of Evidence document also attached.

I understand that the information I have provided may be imparted to third parties.

Signed:



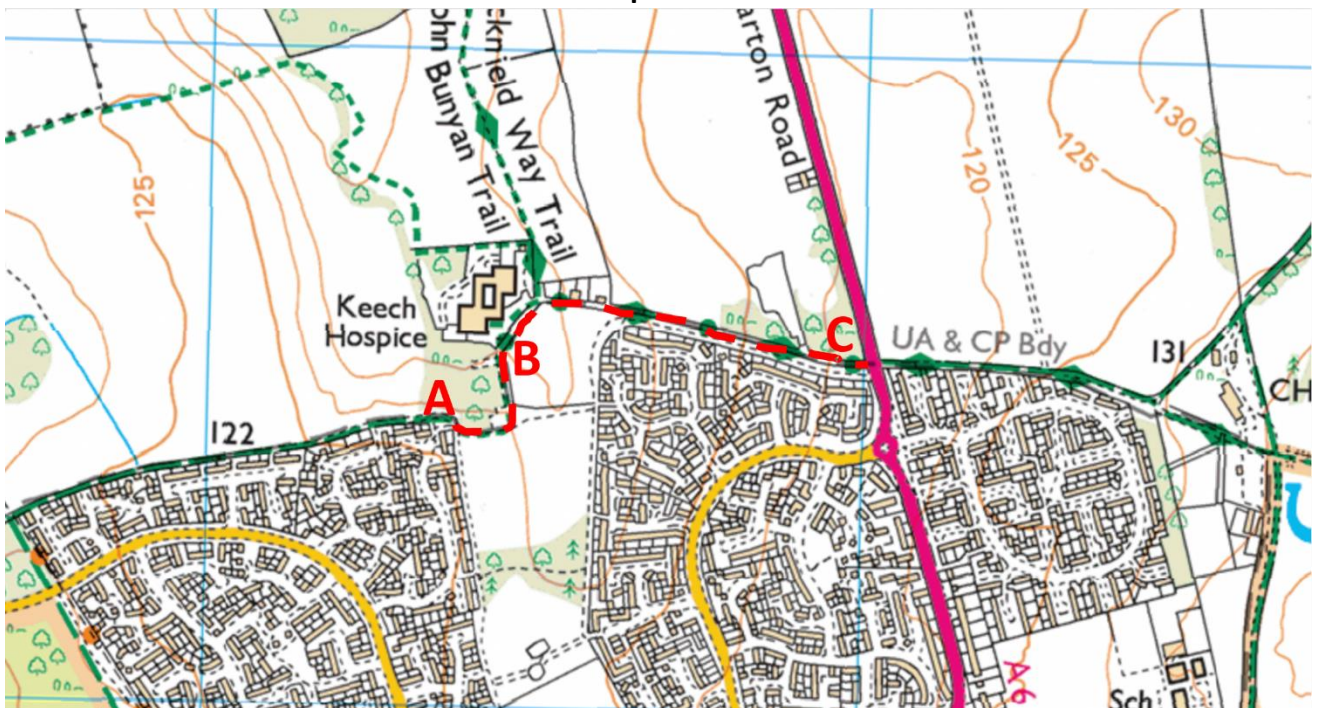
Date: 23rd April 2020.

Wildlife and Countryside Act 1981 Map to Accompany

Definitive Map Modification Order Application For a route in the Parishes of Streatley and Luton to be shown as a Public Bridleway marked on the map below by the red dashed line A-C

Applicant's Reference: BED-0007

23 April 2020



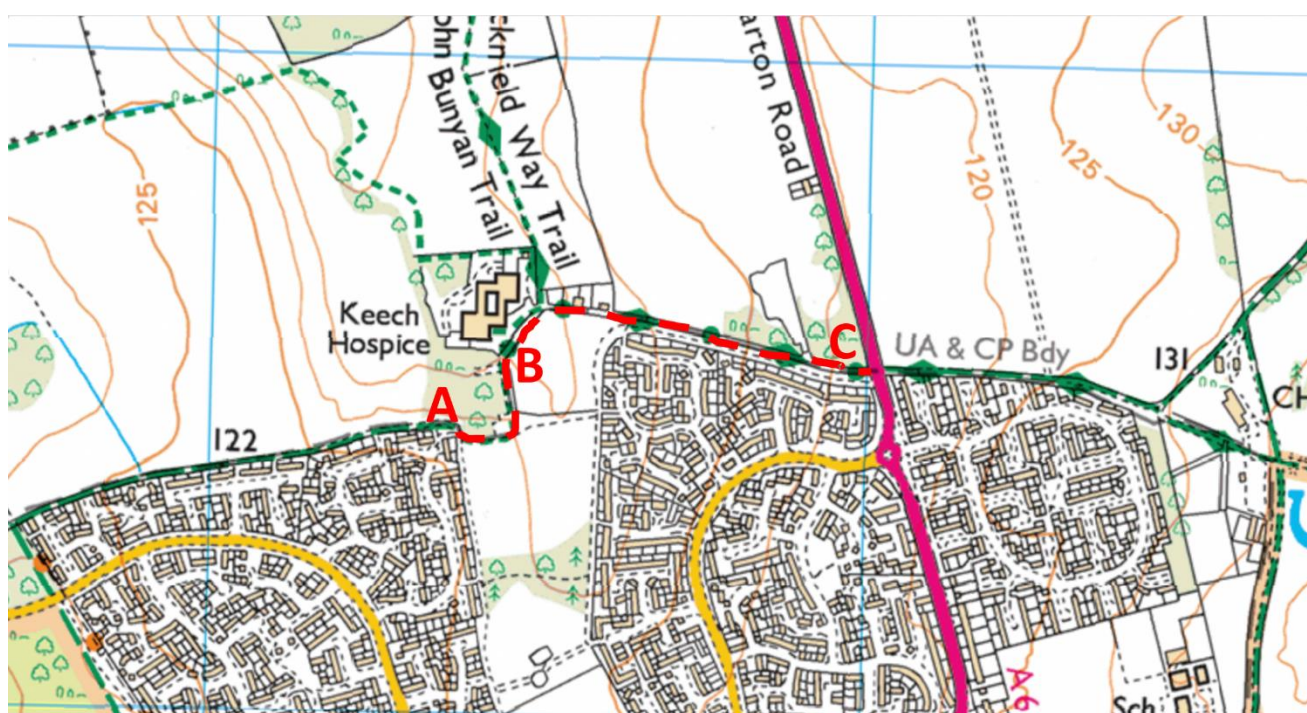
Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Wildlife and Countryside Act 1981

Summary of Evidence

Definitive Map Modification Order Application

For a route in the Parishes of Streatley and Luton to be shown as a Public Bridleway marked on the map below by the red dashed line A-C



Applicant's Reference: BED-0007

23 April 2020

Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map

Bedfordshire XXX.5 and XXX.9

Grid references of ends of route

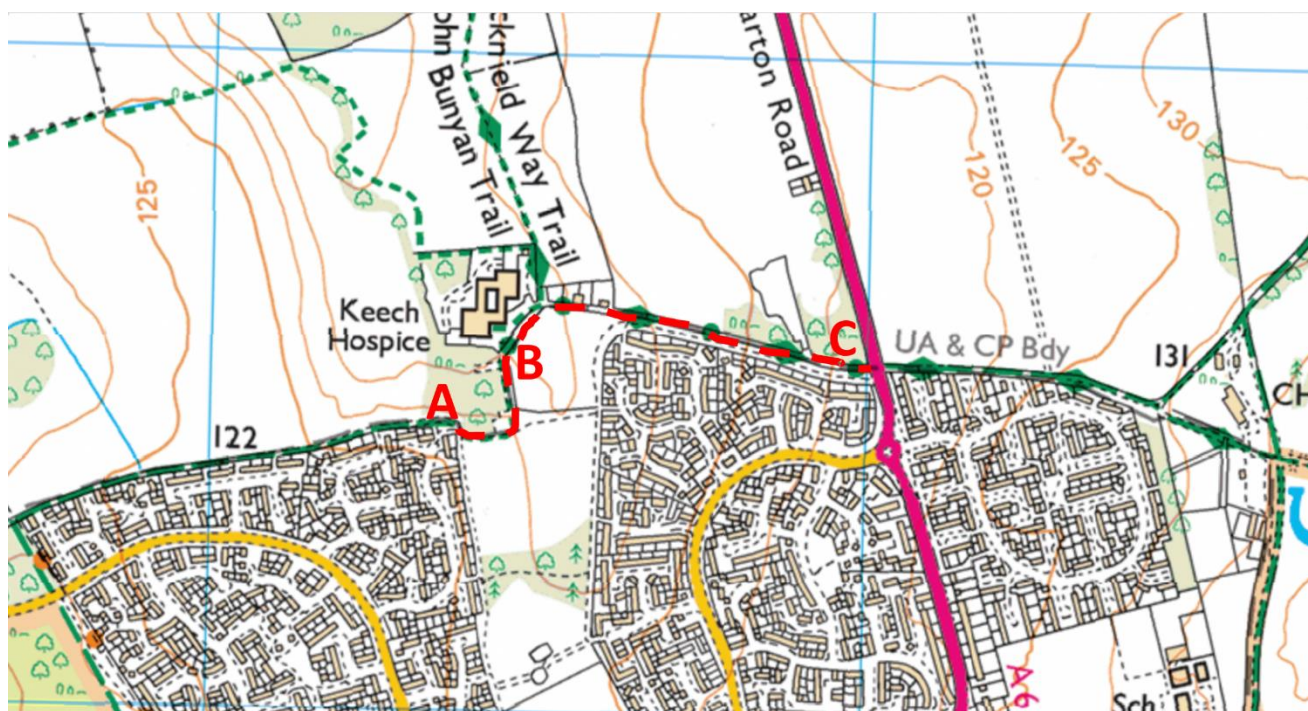
TL 07366 26439 to TL 08014 26544 (approximate)

1. My name is Charlotte Ditchburn. I am the applicant for the order, for and on behalf of the British Horse Society (BHS). I am employed by the BHS as one of their Access Field Officers and have 2 years of professional experience in the management of public rights of way primarily for local authorities.

2. 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.)
3. 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:
 - (1) 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).
 - (2) 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).
 - (3) Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
 - (4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
 - (5) 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

4. The application route is shown approximately on the plan below:
 - a. Point A, the eastern end of the route, at OSGR TL 07366 26439, the eastern termination of Streatley Footpath Number 3.
 - b. Point B, at OSGR TL 07447 26536, the western termination of Streatley Footpath Number 3.
 - c. Point C, the western end of the route, at OSGR TL 08014 26544, the western termination of Great Bramingham Lane at its junction with Barton Road.
5. The application route is shown recorded on the Council's definitive map in part as public footpaths and in part on its online List of Streets as maintainable highway at its western end as Great Bramingham Lane at: (<https://www.findmystreet.co.uk/>).
6. The route's width should be recorded as shown uncoloured on the Inland Revenue Valuation Plan.



Extract of Ordnance Survey 1:25000 scale map (Sheet 193 – Luton & Stevenage published 2015) showing application route A – C (not to scale)

7. Photographs 1 to 3 are from Google.



Photograph 1 is a Google Aerial View with the route indicated with red dots. The route is a clear landscape feature, typical of an old enclosed highway.



Photograph 2- A Google Street view photo from 2009 just north of Point B looking generally south along the route. The route is of significant width between hedge boundaries and has a tarmac surface.



Photograph 3- A Google Streetview photo from 2019 of Point C at the end of Great Bramingham Lane looking generally west along the route. The route has a tarmac surface, an Other Route with Public Access maintained at the public's expense providing access to Keech Hospice.

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

8. 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.

9. 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."

10. 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.

11. Tithe map for the Parishes of Streatley and Luton

- a. Date. The tithe map of Streatley and Luton were published in 1838.
- b. Relevance.

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

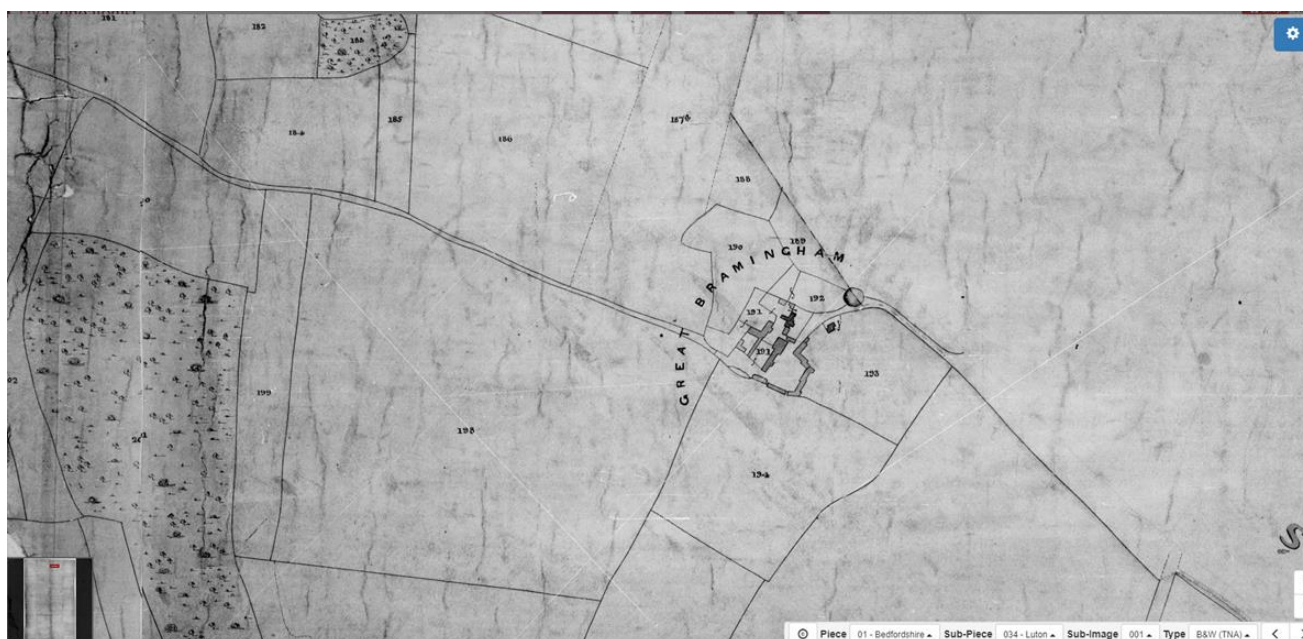
(3) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Nontitheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents

regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status.

c. Archive and Reference. The tithe map for Streatley and Luton are available to examine at the National Archives under reference IR30/1/34 and IR30/1/51. It is believed to be a second class map and so is only conclusive of matters of relevance to the tithe commissioners.

d. Meaning. The maps shows the entirety of the application route as a separate unnumbered parcel of land and appears to be shaded as are other roads and tracks, the absence of a parcel number itself infers that the route is untithable. The tithe apportionment has a section giving a total acreage for roads but no parcel numbers and for which no owner or occupier is recorded and for which no tithe is payable. It is of note that Commons, Waste, etc are individually numbered on the map and listed in the apportionment.

e. Assessment. This is probably a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is not numbered on either tithe maps which infers the route is a public highway and are depicted in the same way on the tithe maps as other public roads in the area. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



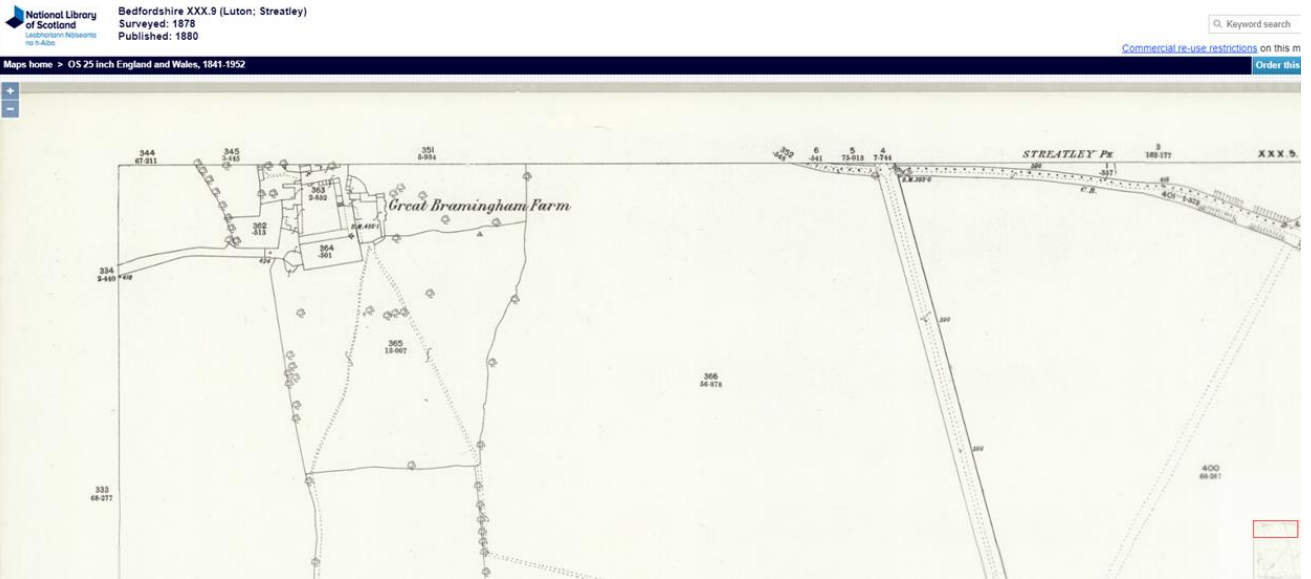
Extract from the Tithe Map for Luton (1842)



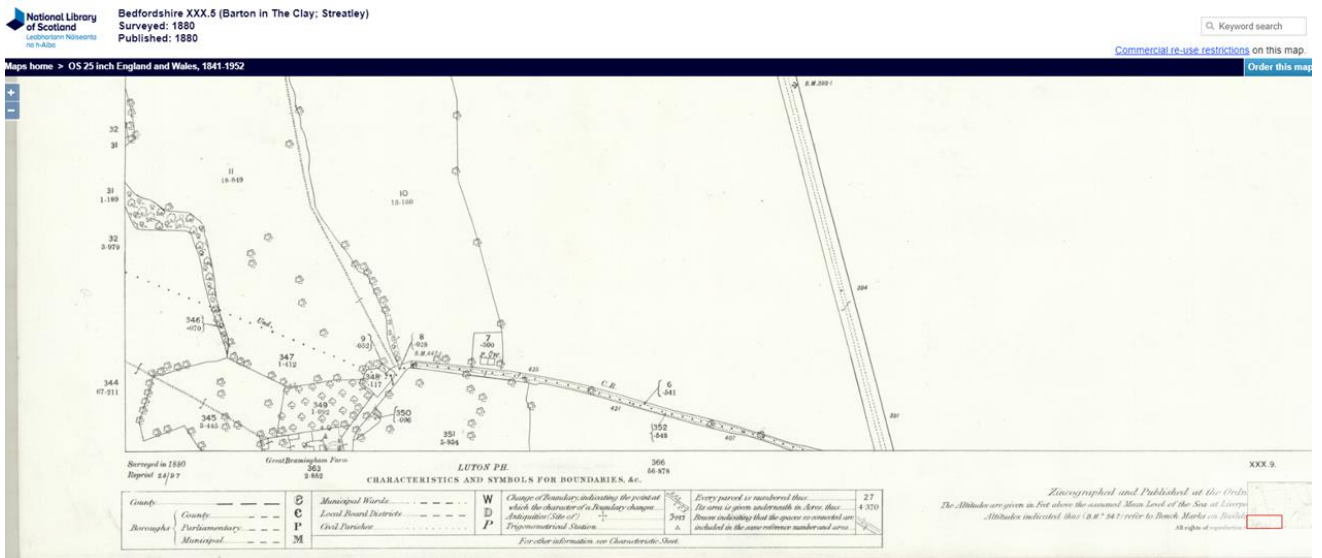
Extract from the Tithe Map for Streatley (1842)

12. Ordnance Survey County Series 25 inch Maps.

- a. Date. The First Edition of OS sheet Bedfordshire XXX.5 and XXX.9 were surveyed in 1878 and published in 1880.
- b. Relevance. The OS County Series 25 Inch mapping was predominantly used for professional purposes rather than for navigation. They are detailed enough to show gates / barriers on roads, tracks and paths. Parcels of land are numbered, and areas shown either under the parcel number or in separate "Area Books". Second edition and later maps generally carry the disclaimer "The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way". However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn.
- c. Archive. The extract from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114483534> and <https://maps.nls.uk/view/114483519>.
- d. Meaning. The route is shown as single parcels of land, no. 6, with an area of 0.541 acres, no. 352, with an area of 0.548, no. 364, with an area of 0.501, and no. 334, with an area of 0.2.440 acres, within Streatley parishes, separated and separately numbered from the adjoining fields. For the eastern section near point C, the parish boundary is marked "C.R." for "Centre of Road".
- e. Assessment. The depiction of route is in the same manner as the surrounding ordinary road network which provides a strong inference that it was also considered to be part of that road network.



Extract from OS 25" Second Edition Map showing A-B

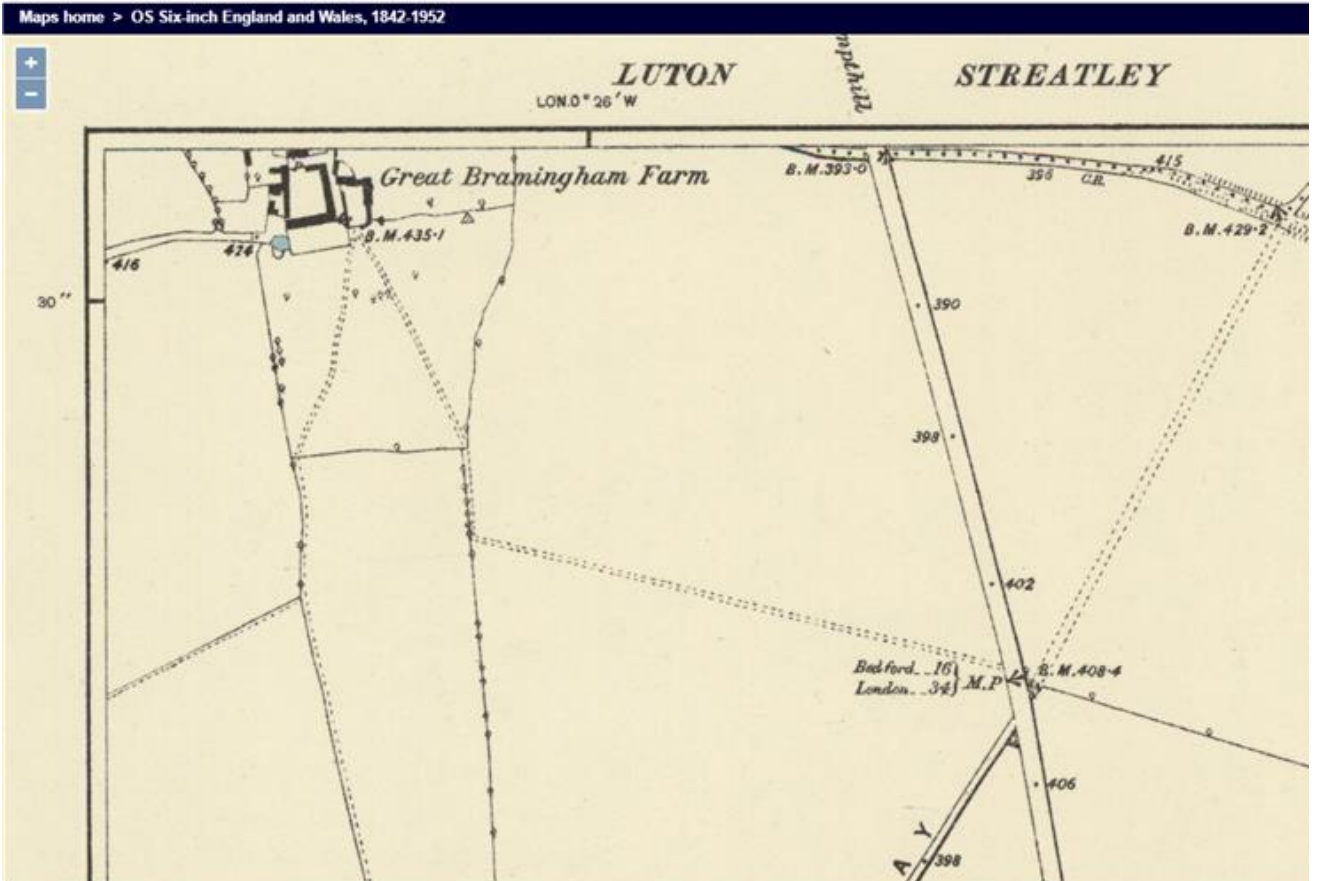


Extract from OS 25" Second Edition Map showing B-C and northern section

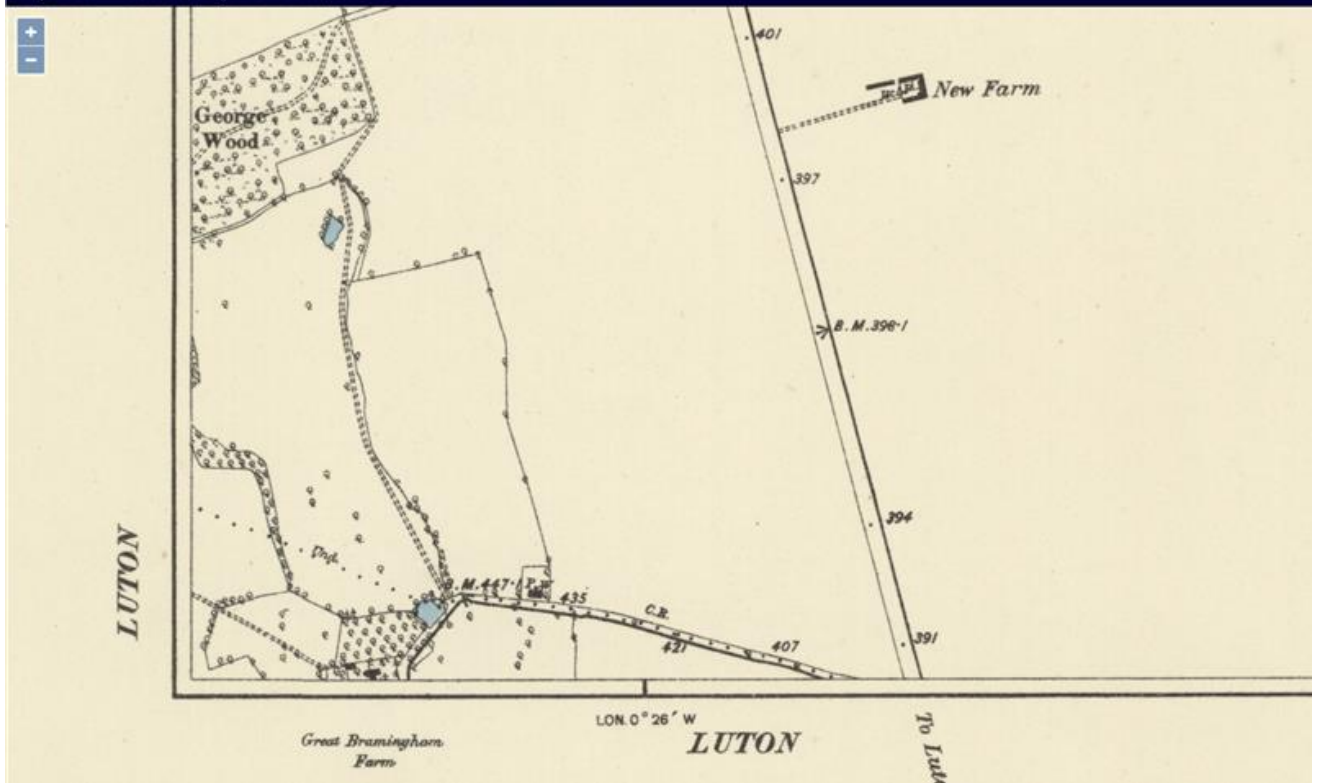
13. Ordnance Survey 6 inch Maps.

- a. Date. OS sheet Bedfordshire XXX.NW was surveyed in 1880 to 1881 and published in 1887 and XXX.SW was surveyed in 1879 to 1880 and published in 1887.
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.
- c. Archive. The extracts from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101568566> and <https://maps.nls.uk/view/101568539>.

- d. Meaning. The Characteristics Sheet for the 6" Maps differentiate between main and other roads through the use of a bold boundary on one side of a road. The claimed route is shown as "Main Road" and "Other Roads". For the eastern section near point C, the parish boundary is marked "C.R." for "Centre of Road".
- e. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.

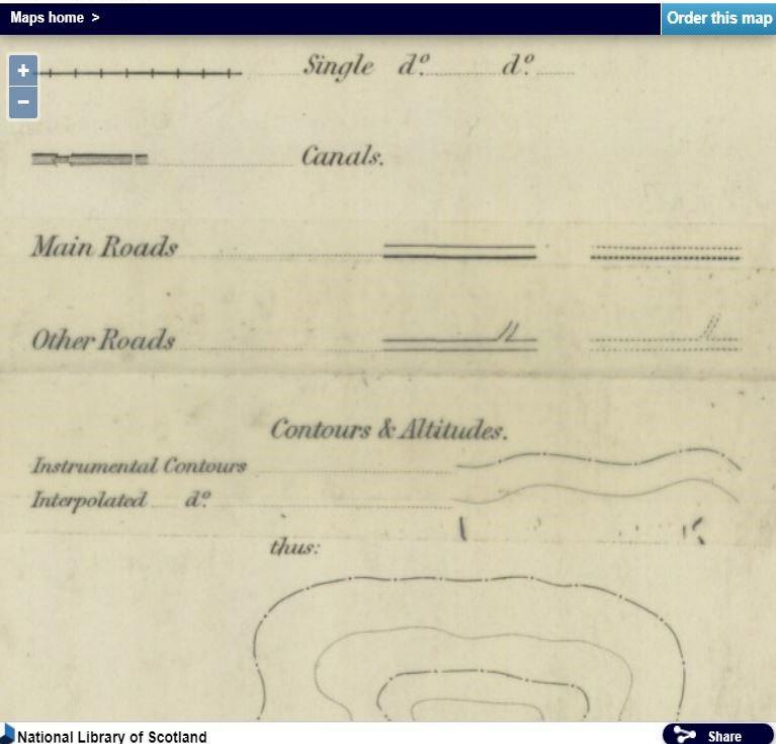


Extract from OS 6" Map showing A-B as "Other Road"



Extract from OS 6" Map showing B-C as "Main Road"

Ordnance Survey six-inch characteristics sheet
Publication date: 1897



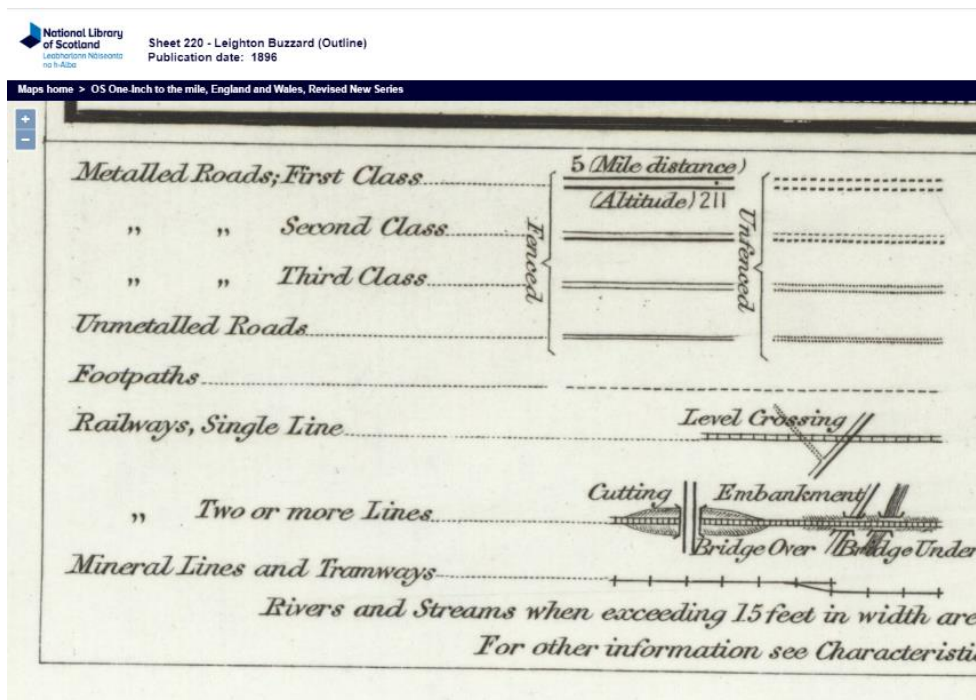
Extract from Key to OS 6" Map

14. Ordnance Survey 1 inch Maps.

- a. Date. OS sheet 220 Leighton Buzzard was published in 1896.
- b. 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.
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168381>.
- d. Meaning. The route is shown as “Unmetalled Road”.
- e. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route being a public vehicular carriageway.



Extract from OS 1" Map showing A- as “Unmetalled Road”



Extract from Key to OS 1" Map

15. Inland Revenue Valuation / Finance Act 1910 Maps

- Date. The valuation records were produced in the few years after 1910.
- 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 landowner 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."

As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

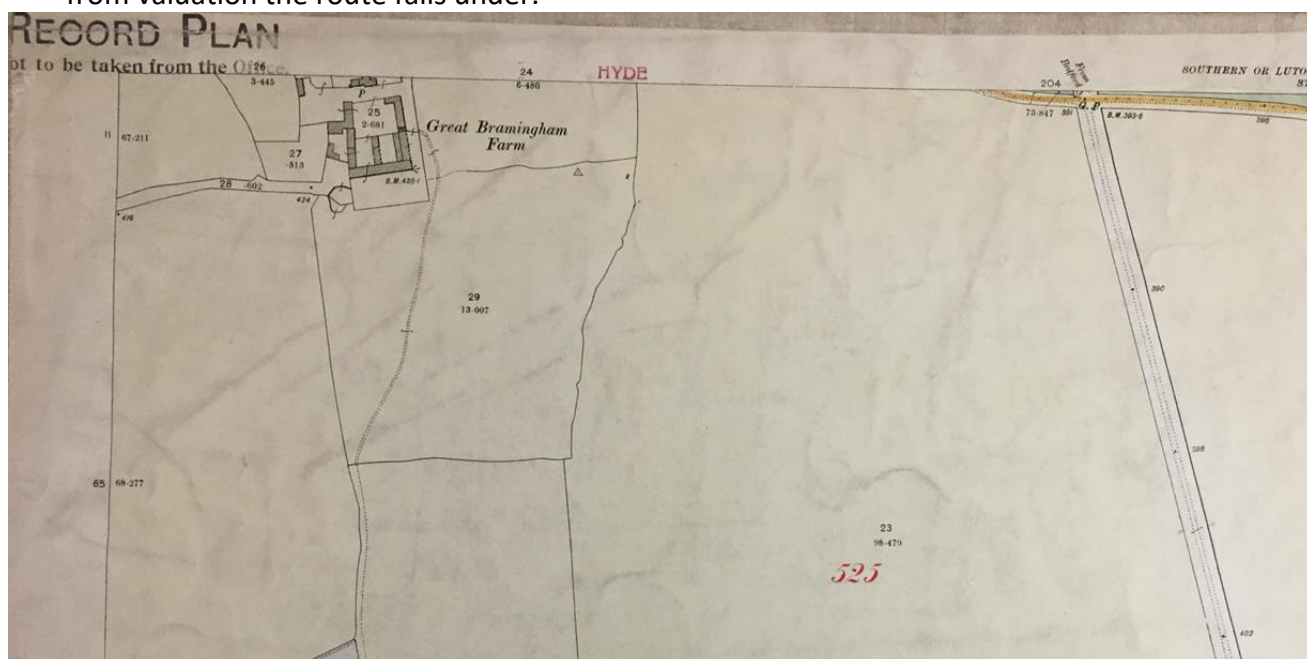
c. Archive. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document references are IR 126/2/328 and IR 126/2/330.

c. Meaning. The extract below clearly shows the application route in a white road and bridleway, separated from the adjoining hereditaments by continuous colour-washed boundaries. Where hereditaments continue either side of the route connected by braces broken over the route, that is an indication that the route did not form part of the hereditament.

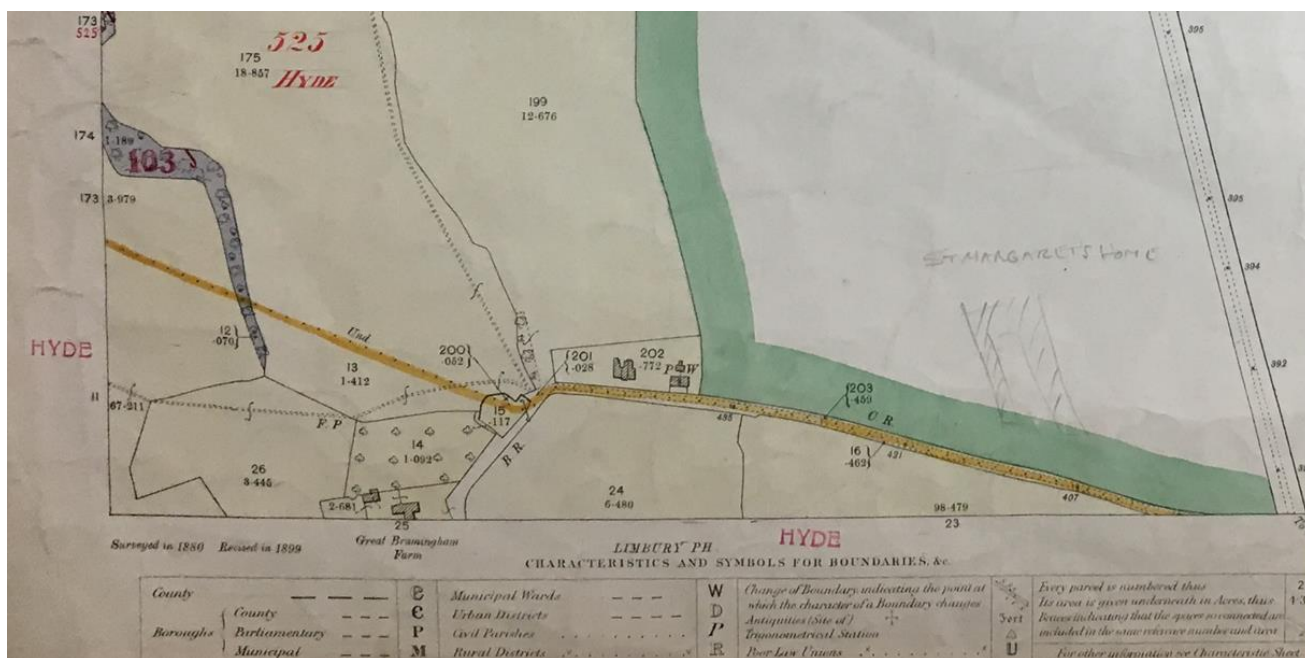
c. Assessment.

(1) As this land is unvalued, this suggests it belonged to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would probably 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.

(2) 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.



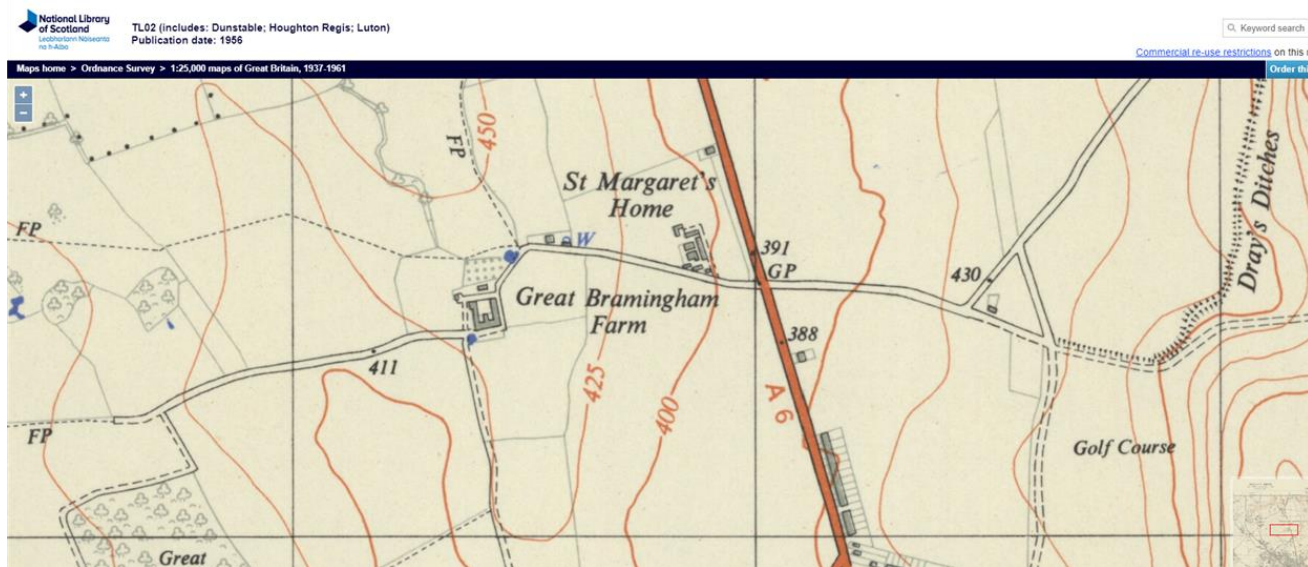
Extract from the Inland Revenue Valuation Map IR 126/2/330 showing A-B as a “white road”



Extract from the Inland Revenue Valuation Map IR 126/2/238 showing B-C as “white road” also denoted as “Bridleway”

17. Ordnance Survey Provisional Edition

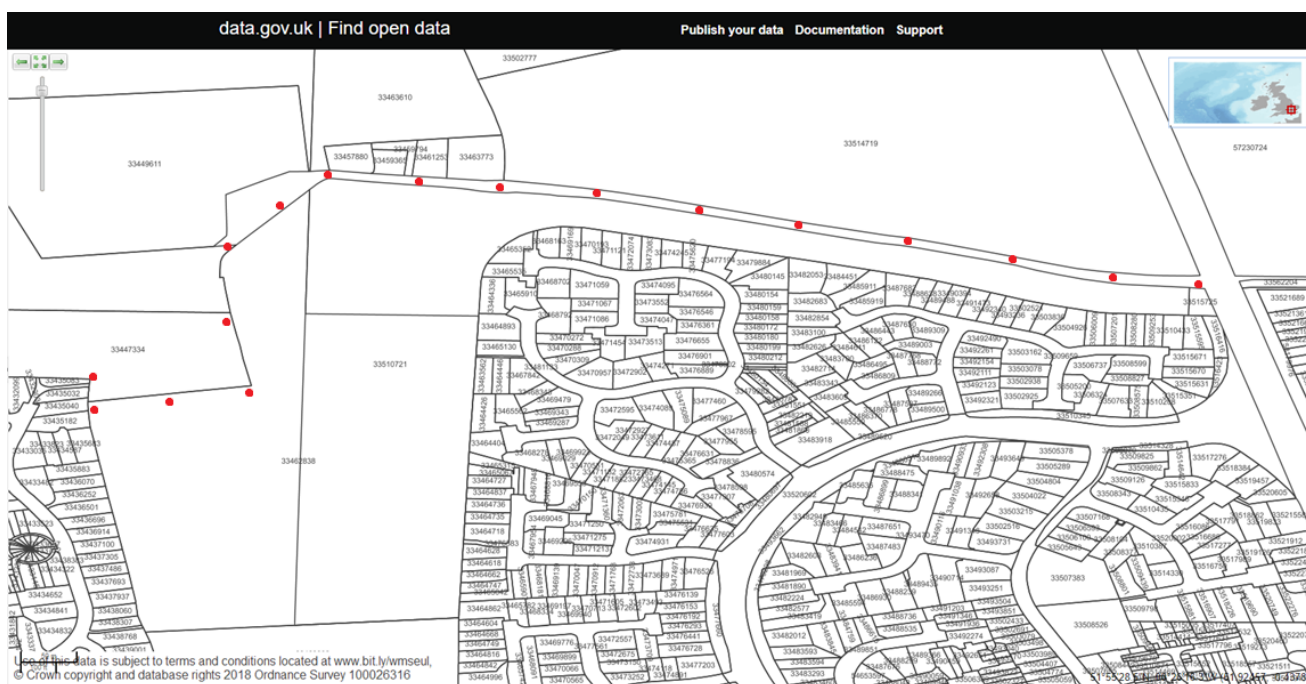
- a. Date. OS Sheet TL02 was published in 1956.
- b. Relevance. This series of maps was made for sale to the public to use to travel around the country and thus would only generally show routes of some significance that were available to them. Although this map carries the disclaimer “The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way”. However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn.
 - a. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/94815765>.
 - b. Meaning. The route is shown as “Other Road”.
 - c. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route being a public vehicular carriageway.



Extract from OS Administrative Provisional Edition Map showing A-C as “Other Road”

18. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 6th April 2020.
- b. Relevance. The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.
- c. Archive. The publicly accessible dataset is found at <https://data.gov.uk/dataset/landregistry-inspire-view-service-and-metadata>. The extract below is taken from a screen shot taken by the Applicant on the date stated above.
- d. Meaning. The application route is shown, indicated by red dots, across several registered landholdings.
- e. Assessment. Vehicular highways of ancient origin are often on unregistered land. Where the adjoining land on each side has been registered, but the ancient vehicular highway has not been claimed as part of either land ownership, this is supportive evidence of the ancient vehicular highway status between points B-C. In the absence of any other explanation why neither adjoining landowner would lay claim to the land, the applicant draws the conclusion that this supports the view that the application route is a vehicular highway of ancient origin for the eastern section. Point A-B have landowners lay claim to the land as this has been incorrectly recorded as a footpath.



Extract from the INSPIRE mapping with approximate line of application route indicated by red dots.

CONCLUSIONS

19. This document presents evidence from the last 180 years that consistently indicates that the application route was part of the wider roads network. Whilst no single piece of evidence is conclusive in its own right, taken as whole it paints a compelling picture of the existence of public vehicular rights.
20. 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.
21. The applicant requests the surveying authority to add the route to the definitive map as a bridleway. It is arguable that the evidence suggests that carriageway rights exist over the route, however due to the current construction of the law and the proposed extinguishment of unrecorded rights in 2026, the application will be made for bridleway status with an acknowledgement that the surveying authority should make an order for Restricted Byway status for part or all of the route if they consider that merited.

Name: Charlotte Ditchburn
 Position: Access Field Officer
 Organisation: British Horse Society