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App. Ref. No. 223

Form A1

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER

DEFINITIVE MAP OF RIGHTS OF WAY FOR SHROPSHIRE

To: The Outdoor Recreation Manager

Outdoor Recreation

Shropshire Council

Shirehall

Abbey Foregate

Shrewsbury

SY2 6ND

I/We SALLY-ANNE ROBINSON } ON BEHALF OF TELFORD  
BRIDLEWAYS  
ASSOCIATION (Name of Applicant)

Of STABLE COTTAGE, ARLESTON HILL, (Address of Applicant)

TELFORD. TF1 2JY.

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 **adding** the following right of way

Parish... SELATTYN AND GORBOWEN .....

Status: ~~Byway Open to All Traffic/Restricted Byway/Bridleway/Footpath\*~~

\* delete as appropriate

From... JUNCTION WITH ADOPTED ROAD AT HILL FARM .....  
JUNCTION WITH EXISTING BRIDLEWAY AT  
To... TOP FROU AND CONTINUE ALONG ..... (Location of right of  
way) UNADOPTED COUNCIL ROAD TO JOIN  
WITH ADOPTED ROAD.

as shown on the map accompanying this application. AS C TO B TO A.

(A map must be supplied with a scale of at least of 1:25,000)

~~I/We~~ attach the following documentary evidence including evidence of use statements, in support of this application:

FINANCE ACT MAP. TITHE MAP. VARIOUS OS MAPS.

.....

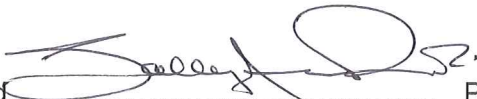
INSPIRE DATA SHOWING LAND OWNED BY PUBLIC.

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Dated... 28 MARCH 2021. .....

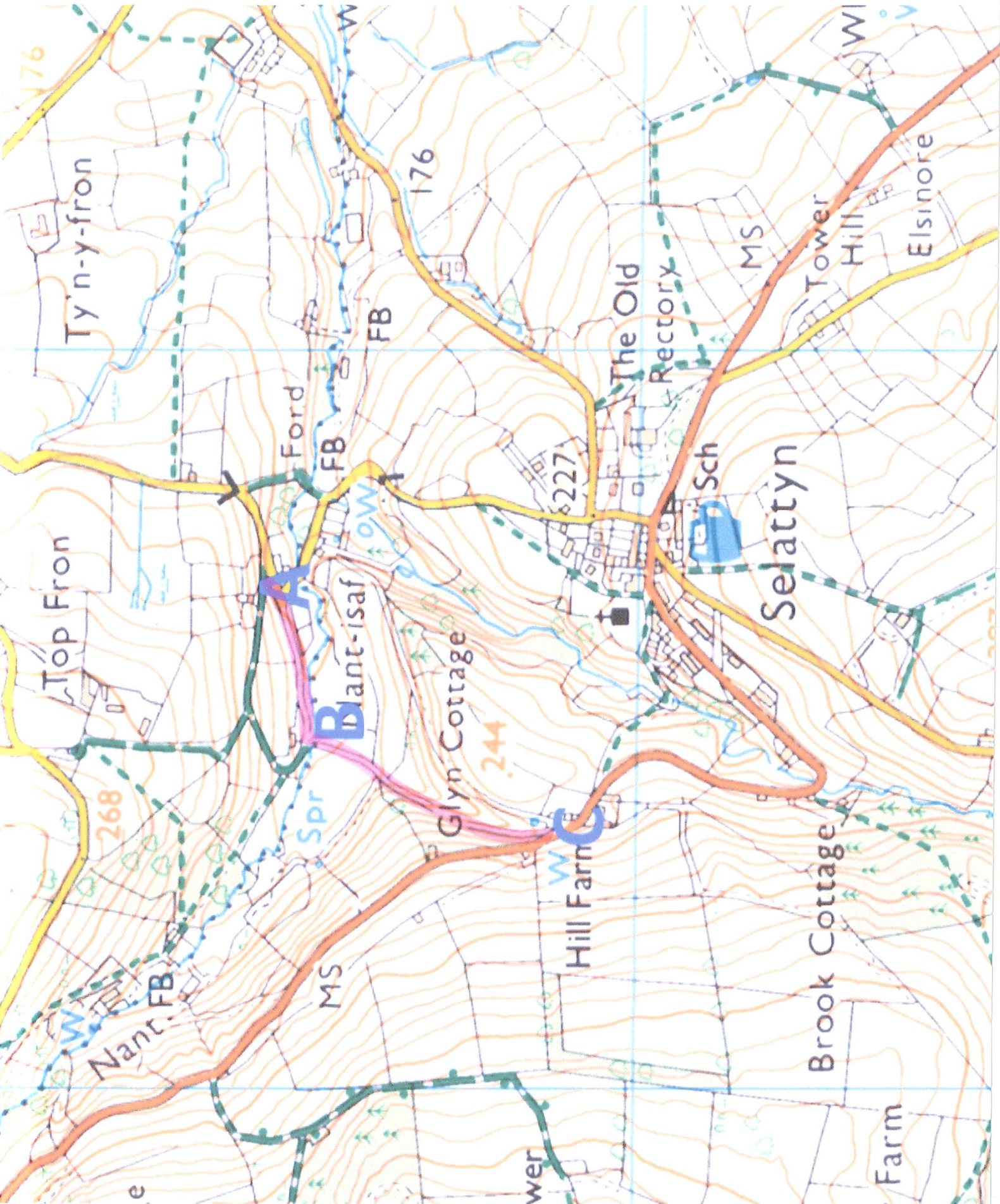
Signed...  ..... PRINT  
NAME... SALLY-ANNE ROBINSON. .....

**Data Protection: Please note that this information may be open to public**

TBA 2021 - 02B.  
Scale 1: 25,000.



28.3.2021.



Map showing application route: A-B-C.

# Wildlife and Countryside Act 1981

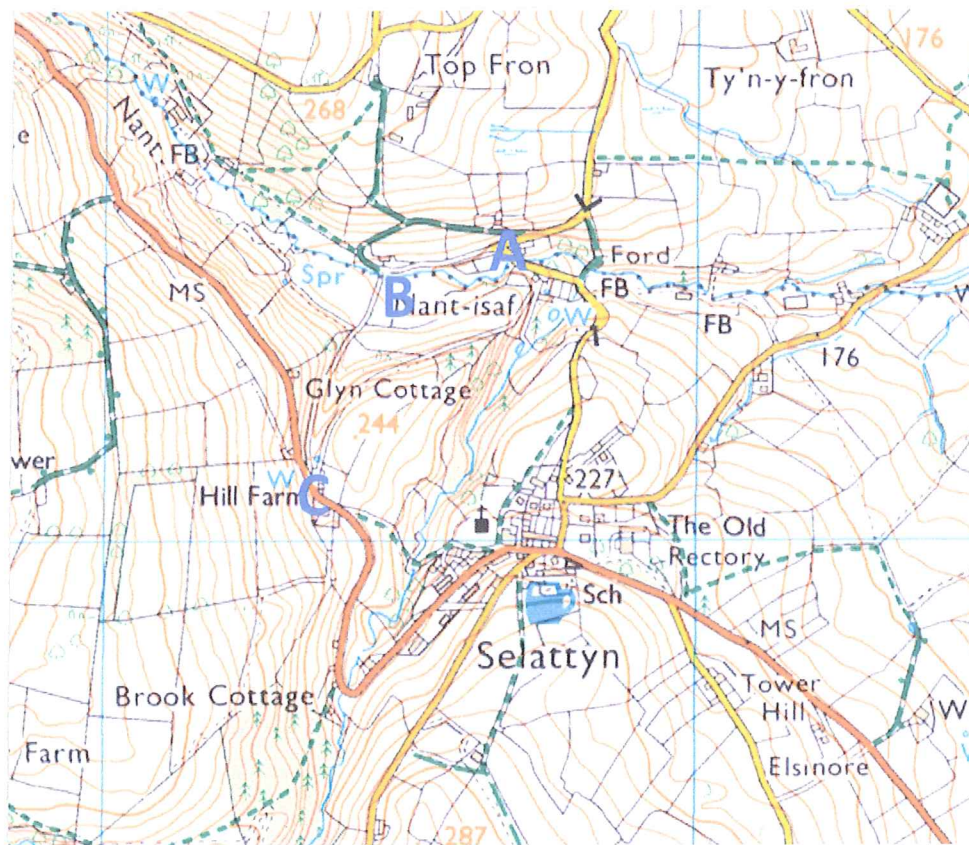
## Definitive Map Modification Order Application

### Modification order to add a way to the definitive map: section 53(3)(b)

To claim for public use as a public bridleway from the junction at Hill Farm to the junction at Top Fron, and along the unadopted council road to adjoin with the adopted road, to the west of Selattyn in the Selattyn and Gobowen Parish of Shropshire Council.

Applicant's Reference: TBA2021 – 02B

28<sup>th</sup> March 2021



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

OS County series map

Point A SJ 26667 34487

Point B SJ 26466 34453

Point C SJ 26358 34103 (approximate)

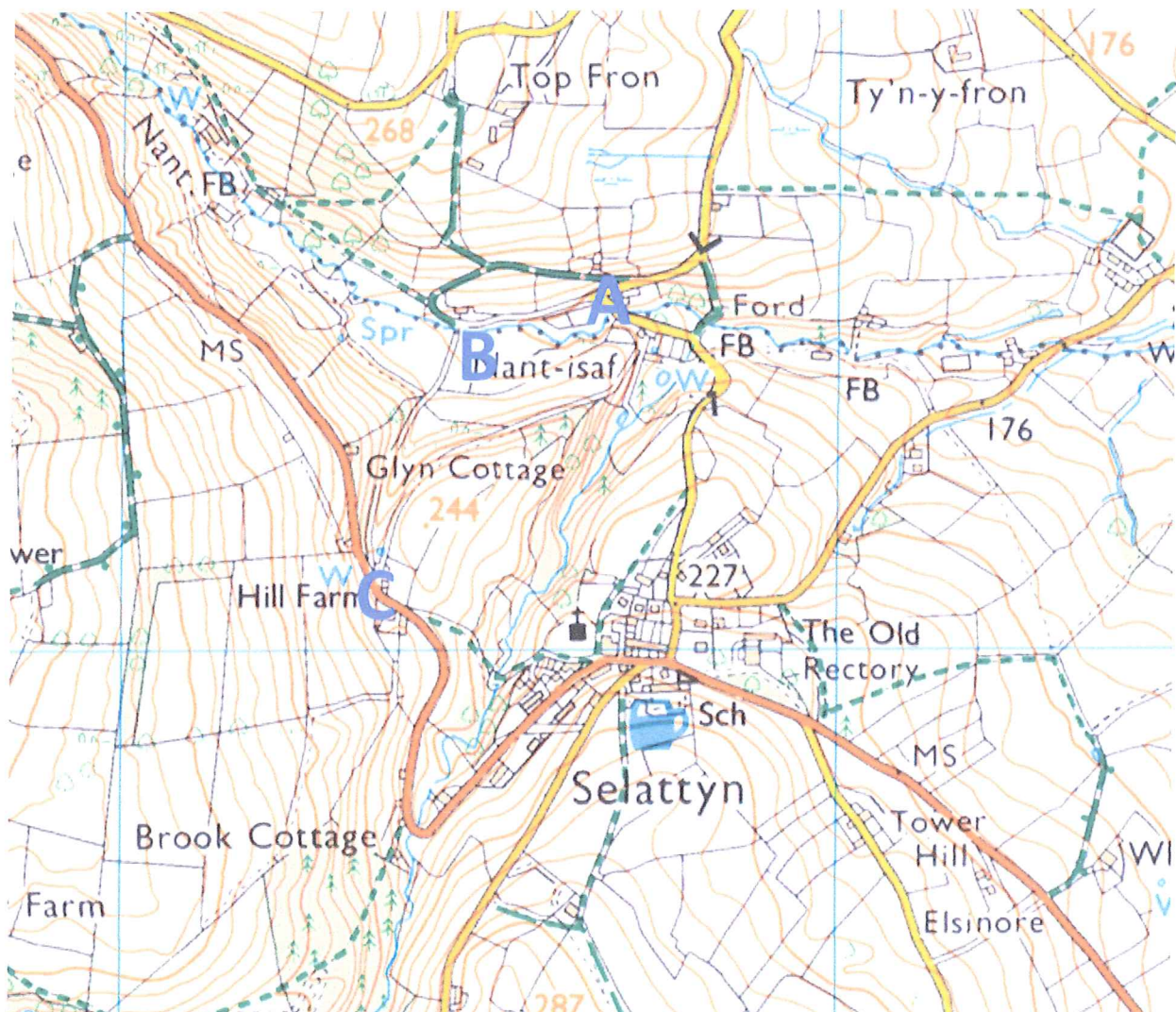
1. My name is Sally-Anne Robinson of Stable Cottage, Arleston Hill, Telford, TF1 2JY. I am the co-applicant for the order. I am the Vice-Chairperson for Telford Bridleways Association which is affiliated to the British Horse Society. The other co-applicant is Jan Mees-Robinson also of Stable Cottage and is the Shropshire Bridleways officer for The British Driving Society and has also lived and ridden in Shropshire for over 40 years.
2. This application is made because the path has been used historically by walkers, cyclists and horse riders but is not shown on the definitive map as a public right of way. It provides a safe off-road recreational route adjoining with other popular public bridleways in the area.
3. This application is made because, on the cut off day,
  - a. 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.)
  - b. The effect of s.53(3) and (4)(a) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949 is to extinguish the bridleway rights and vehicular rights on a route shown in the definitive map and statement as a footpath.
  - c. 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.
  - d. 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.)
4. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 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

5. The application route is shown marked between blue letters on the plan below:
- Point A is the easterly point where the application route joins with an adopted road known as Nant Lane, Selattyn.
  - Point B is the junction point where the unadopted road ends and public bridleway reference number 0312/UN2/4 starts. The application route T-junctions here to travel south to point C.
  - Point C is where the application route joins with the adopted road B4579.



6. The application route is not currently shown on the OS map or definitive map of rights of way for Shropshire Council as either a public footpath, public bridleway, restricted byway or byway open to all traffic. Historical evidence will show that the application route should be classed as a public bridleway.

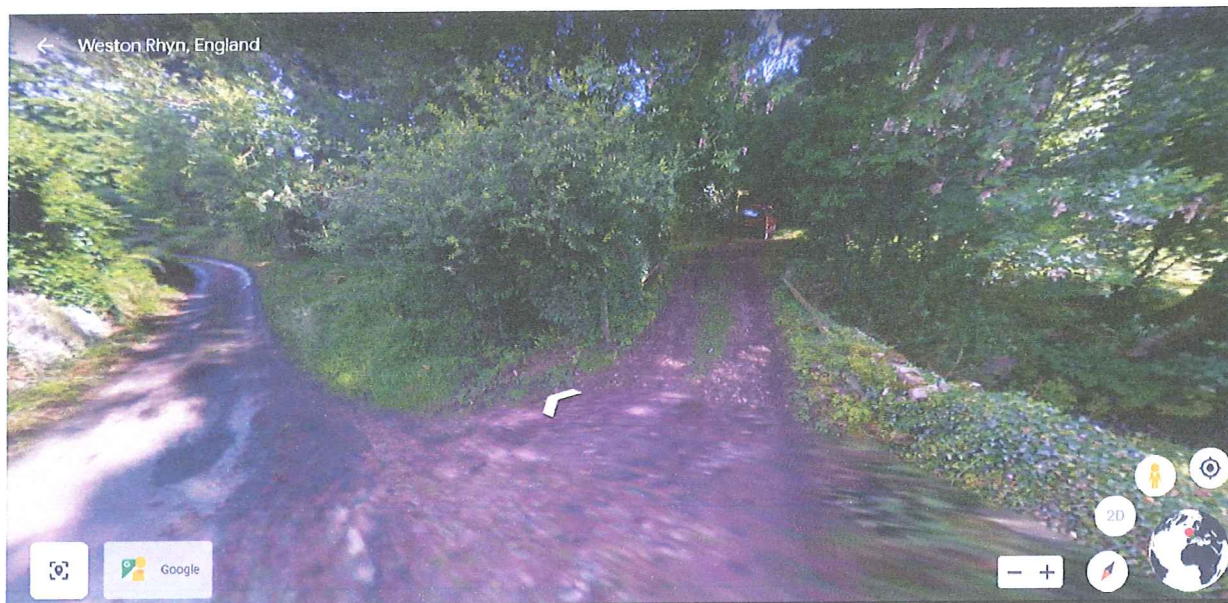
7. The photographs shown in in the following figures were downloaded from google maps / google earth in March 2021 and are included to help show the application route and its suitability as a public bridleway in terms of access, width and ground surface.



*View at Point A of the application route facing west from the junction with the adopted road Nant Lane.*



*Google earth view of the application route at point B. The public bridleway continues and the application route T-junctions to travel south. It is clearly a well used, established wide track with evidence of vehicular use.*



*Point A of the application route facing south.*



*Google earth view of the application route at point C where it joins with the adopted road B4579. Current use is restricted due to the presence of an aged field gate but the line of the old way can clearly be seen from aerial views.*

#### 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 Selattyn 1840

- a. Date. The apportionment and map was produced in 1840 for Selattyn.
- b. Reason.

(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. Non-titheable 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.

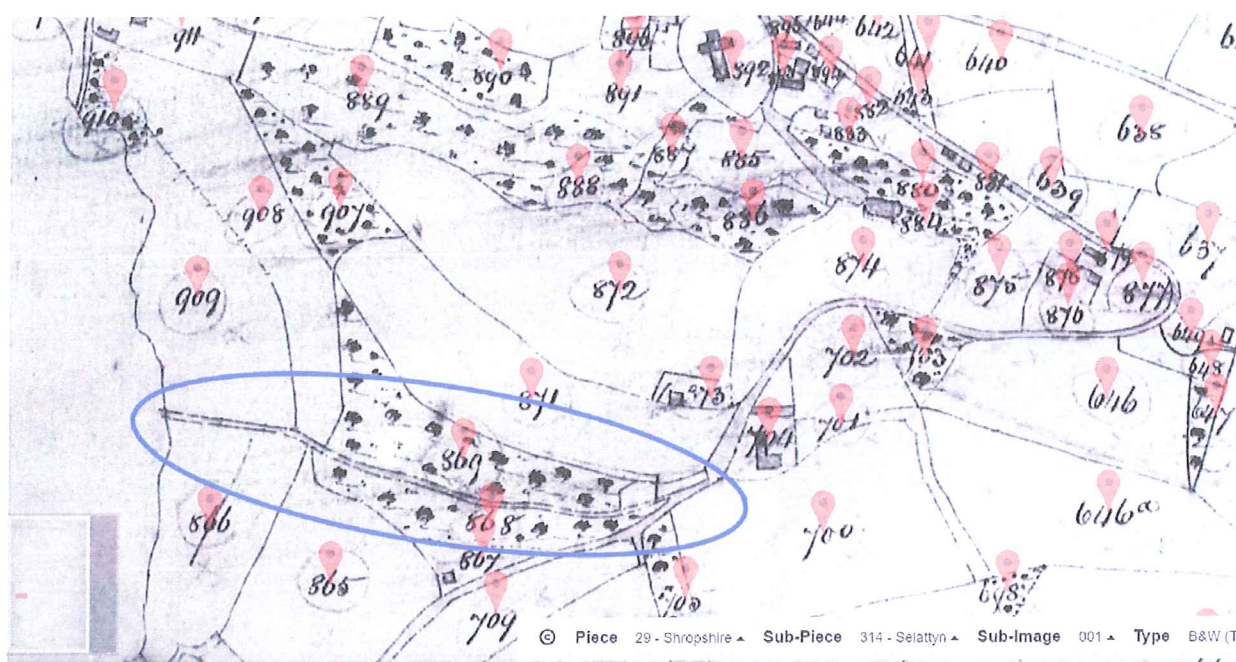
c. Archive and Reference. Tithe maps and apportionments covering Shropshire are held at the Shropshire Archives. However the public are only allowed access to tracings of the original maps. Copies of original maps are available to download online through subscription to the genealogist (<https://www.thegenealogist.co.uk/>). It is a second class map and so is only conclusive of matters of relevance to the tithe commissioners.

d. Meaning. The map shows the application route bounded by two solid lines. This indicates that no tithe was assessable against the land over which these roads pass.

e. Assessment. This is 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 shown in the same way on the tithe map as other public roads in the area. It is described in the apportionment in the same way as other roads in the area, and no tithe was assessed. This depiction is consistent with the application route being a public vehicular highway at the time of the assessments.



The Selattyn tithe map of 1840 downloaded from The Genealogist. The top is believed to be east and the bottom west.



Extract from the Selattyn Tithe map showing that the area over which the application route passes had no tithe assessable against that land and its depiction is consistent with the application route being a public vehicular highway at the time of the assessments. The application route is circled in blue for ease of identification.

710	ditto	Arable	1	2	8	5	1/2	AJ
868	Plantation	plantation	1	1	55	3		A
		Carried forward	18	2	55	5	1/2	

Excerpt from the accompanying reference book for Selattyn tithe map of 1840 which describes the apportionments no. 868 and 869, through which the application route passes, as plantation. The land type is shown as trees whereas the application route is clear and there is a distinct boundary between the application route and the plantations which are in separate ownership.

## 12. Ordnance Survey First Edition 6 inch map revised 1880 published 1884

- a. Date. The Ordnance Survey six-inch to the mile County Series was revised for the whole country twice between 1842-1893 and between 1891-1914, and then updated regularly for urban or rapidly changing areas from 1914 to the 1940s (source: <http://maps.nls.uk/os/6inch-england-and-wales/info1.html>). This area was surveyed in 1874 and published in 1884 (sheet Shropshire XII.NW).
- b. Reason. The ongoing improvements in surveying techniques provided maps of higher quality and definition providing further detailed information, including specific measurements, about the landscape and features at the time of surveyance.
- c. Archive. Copies of the first edition Ordnance Survey 6" maps are held by the British Library. Electronic copies of certain sheets, such as the 1884 series, are available from the

National Library of Scotland at <http://maps.nls.uk/>. The map and books of reference extracts are available from the British Library.

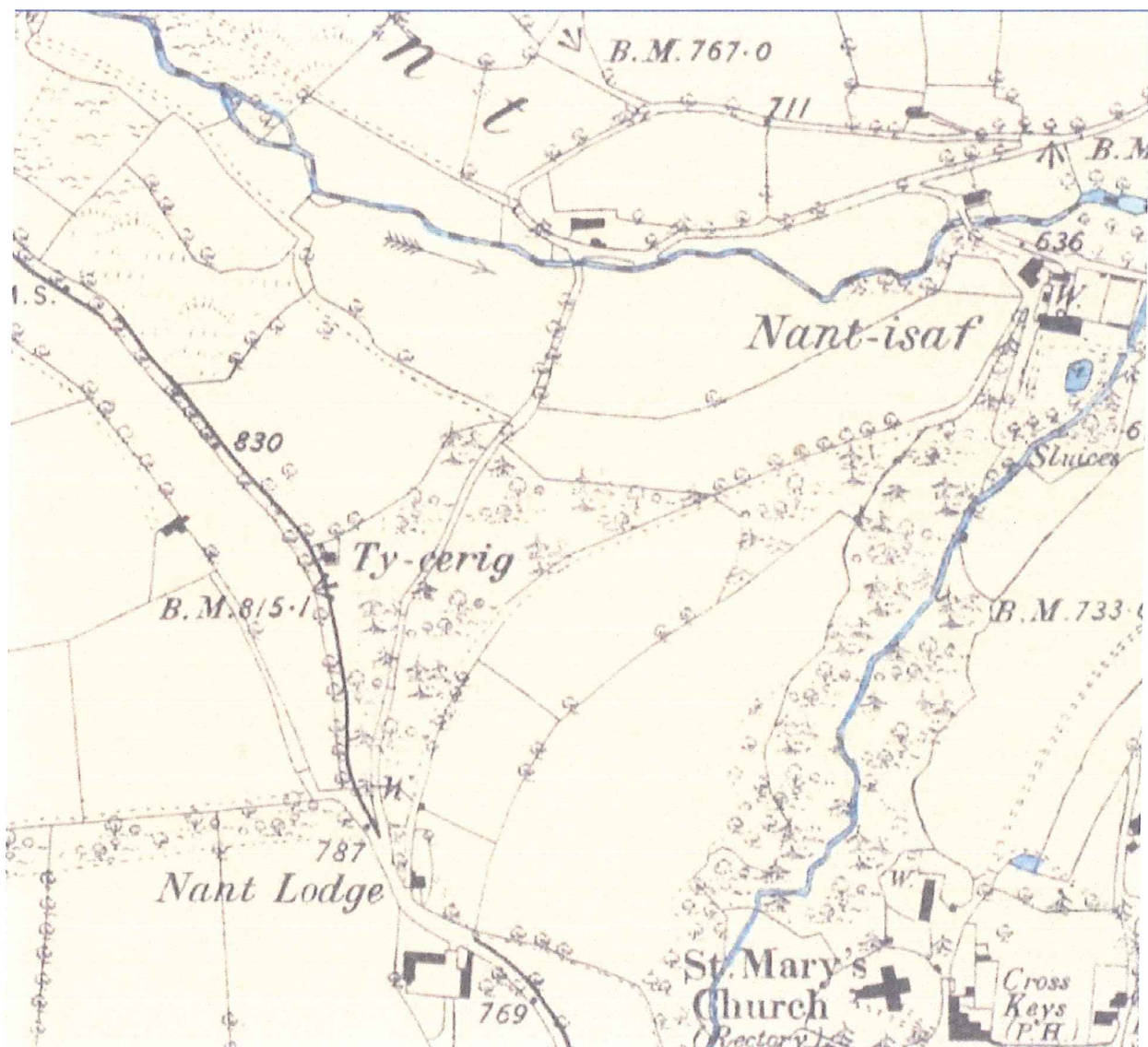
d. Meaning.

(1) The application route is shown as a distinctive road as depicted by the continuous black boundary lines on both sides of the route.

(2) The application route is shown to have specific breadth and junctions with other major roads.

(3) The map shows that the application route had a higher status than footpaths (F.P.).

e. Assessment. The showing of the land as being a distinctive road with the recording of boundaries and junctions with other major roads on the map is evidence of reputation and appearance at the time the documents were compiled.



Extract from the Ordnance Survey first edition 6" map of the area (sheet Shropshire XII.NW.) published 1884. Source: National Library of Scotland.

### 13. Inland Revenue Valuation 1910

- a. Date. The valuation records were produced in the few years after 1910.
- b. 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.”

We note 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.”

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 picture of the map below (a combination of 2 maps) is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document references are IR 132/4/86 and IR 132/4/90.
- d. Meaning. The map below clearly shows the application route as a white continuous road. The northerly section is shown as separate from the adjoining hereditaments and no tax assessed. The southerly part is shown as being part hereditament 283, which is part woodland, however it is continuous with roads which today are council owned and include evidence of parts that were not assessed for tax purposes.
- e. Assessment.

(1) As part of 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 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.



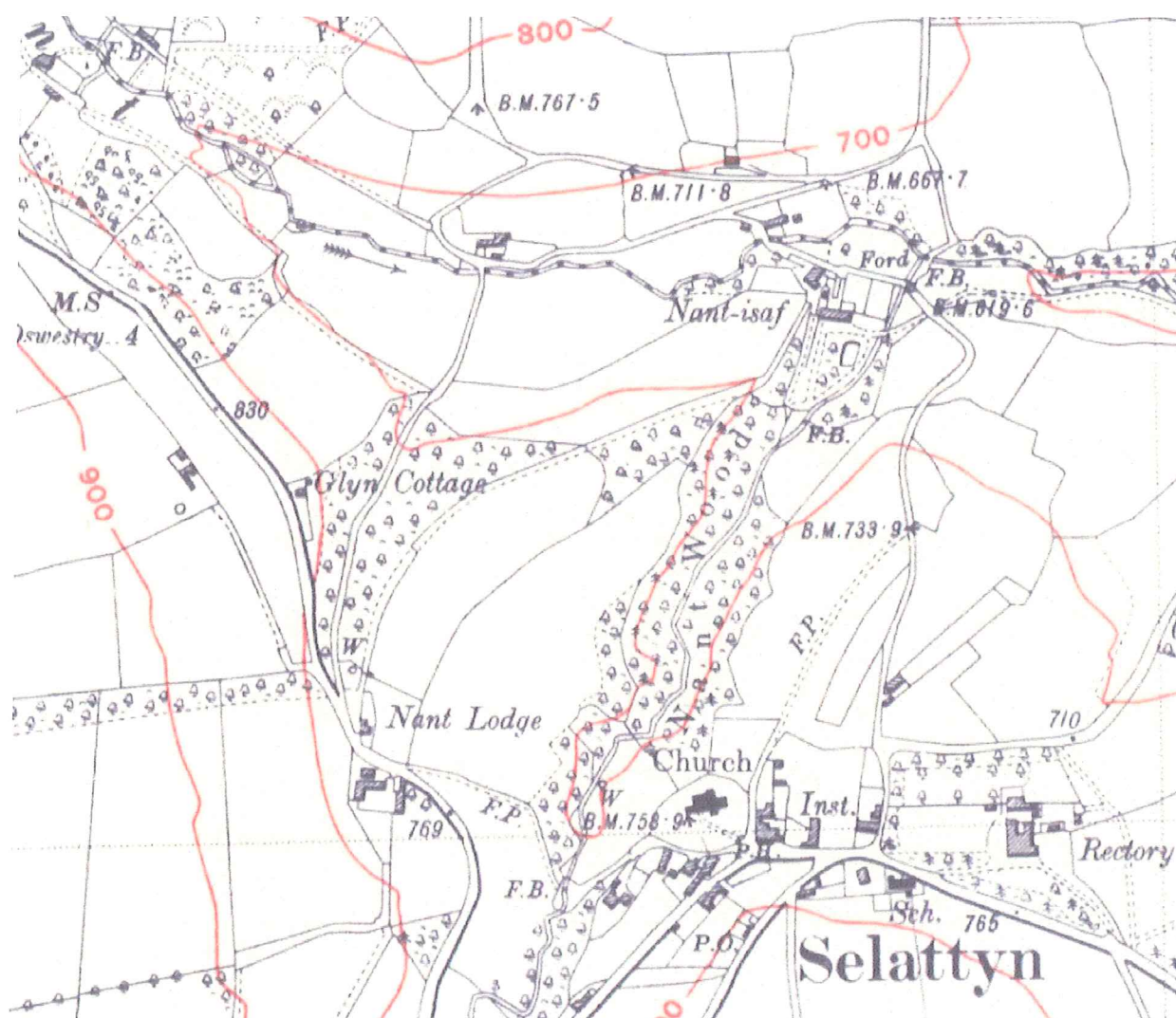
*Inland Revenue Valuation Map reference number 132/4/86 and 132/4/90.*

14. OS Survey - Revision of 1924 with revisions in 1938 and published in 1947, Scale 6" to 1 mile.

The map is available to download on line from The National Library of Scotland (<https://maps.nls.uk/view/101593615>). This is the sheet Shropshire XII N.W.

The map shows the application route to be classed as having higher status than a public footpath and being a continuous and uninterrupted route with roads that today are adopted.

The map is an official map produced and published by the Ordnance Survey, a government organisation, and is considered to be a legal representation of the status of the area at the time.



*Excerpt from the OS Survey - Revision of 1924 with revisions in 1938 and published in 1947, Scale 6" to 1 mile. The application route has a higher status than a footpath or track. It is depicted as having the same status as roads that today are adopted highways or public bridleways.*

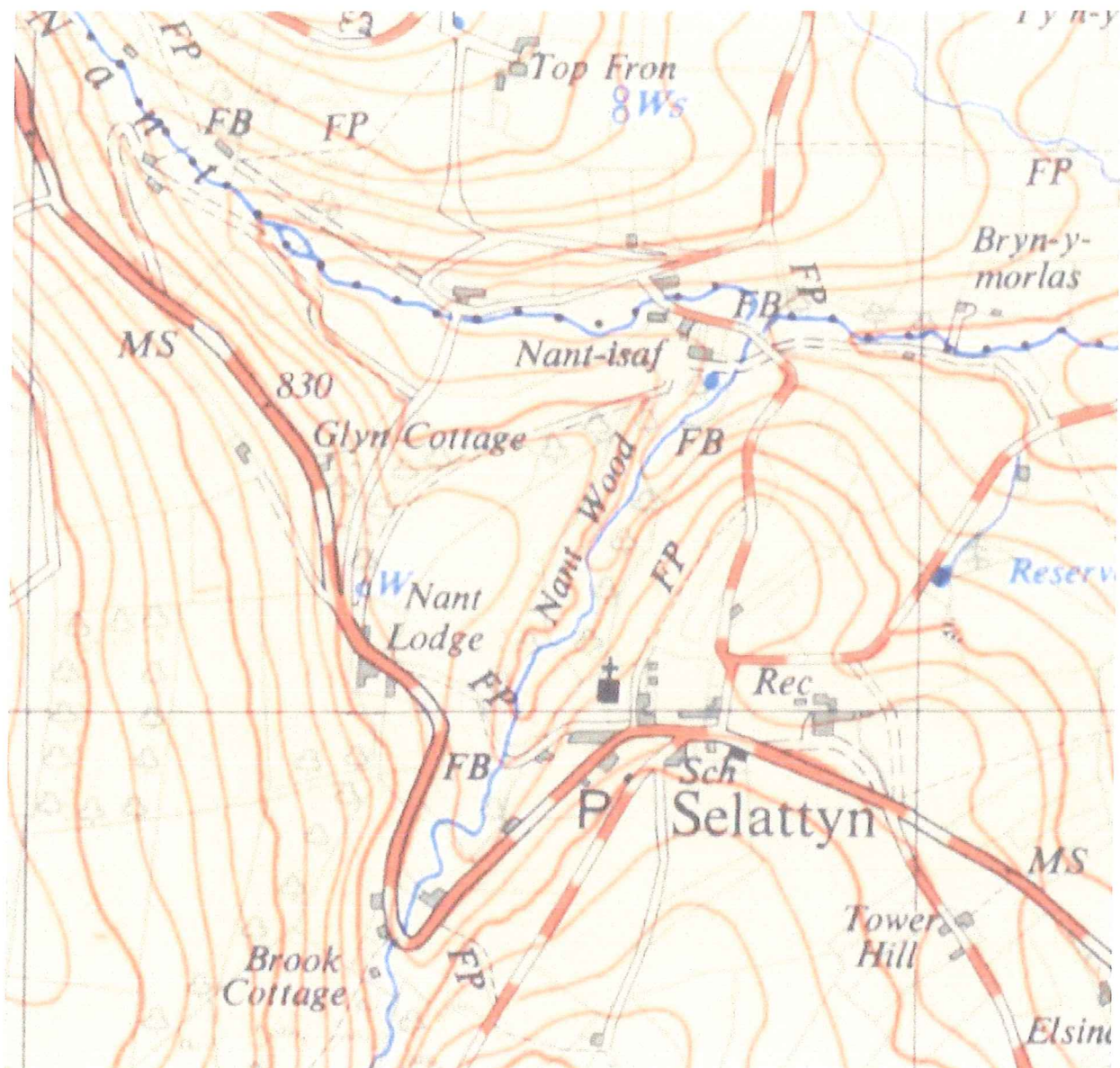


15. OS Survey Provisional edition 1:25,000 published 1957

The map is available to download on line from The National Library of Scotland (<https://maps.nls.uk/view/91791728>). This is the sheet SJ23 published in 1957.

The map shows the application route to be classed as having higher status than a public footpath and being a continuous and uninterrupted route with roads that today are adopted.

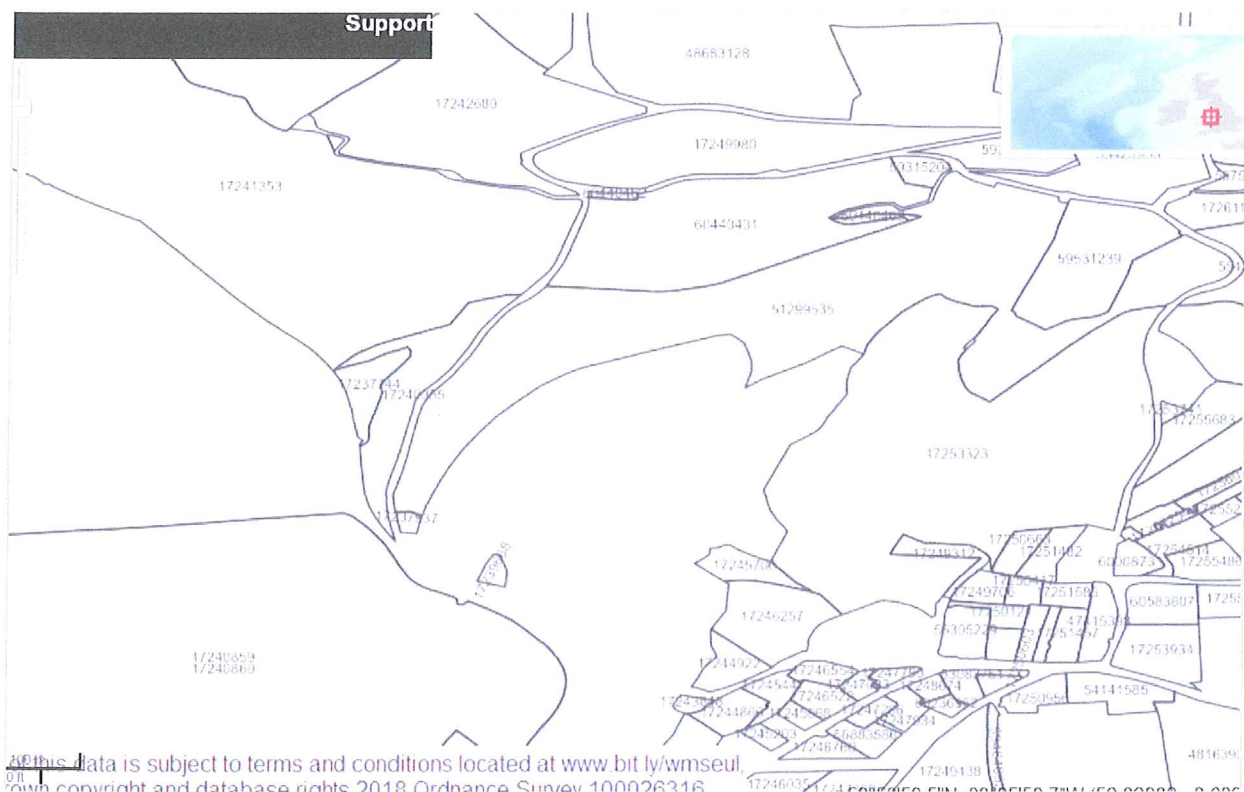
The map is an official map produced and published by the Ordnance Survey, a government organisation, and is considered to be a legal representation of the status of the area at the time.



*Excerpt from the OS Survey Provisional edition 1:25,000 published 1957. The application route has a higher status than a footpath or track. It is depicted as having the same status as roads that today are adopted highways or public bridleways.*

16. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 27<sup>th</sup> March 2021.
- 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 through data.gov.uk/dataset. 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 separate from any registered landholding and continuous with highways belonging to the council.
- 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. 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.



*Extract from the INSPIRE mapping showing the application route is shown separate from any registered landholding and continuous with highways belonging to the council.*

## CONCLUSIONS

17. Each piece of evidence presented is either evidence of reputation of vehicular highway rights, or consistent with there being vehicular highway rights, or indicates that a civil servant thought that there were vehicular highway rights.

18. While each document could possibly be explained away by another reason, there is no other reason that explains what all of the documents show. It is therefore more likely than not that the explanation for the evidence as a whole is that public vehicular highway rights existed at the times that the various documents were compiled.

19. In examining the evidence as a whole, it will usually be found that the simplest explanation is the best. Suppose that there are three documents capable of being read as providing some evidence of highway status. Each of these documents might be able to be explained away by other reasons. The old map might have shown a private drive to a patron's residence, the tithe map may not have shown land held by the rector, and the Inland Revenue evidence may relate to land held by a rating authority in its local education authority role. However, it is unlikely that all of these alternative explanations to highway status will be true for the same path. In such circumstances, the explanation of what the evidence shows is much more likely to be highway status than that the route used to belong to a wealthy owner, was sold to the Church and then became a council-run school. In the absence of positive evidence that these diverse explanations are actually true (as opposed to mere possibilities), the single explanation of the facts that a highway existed is compelling.

20. As a result of the common law 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 applicants request the surveying authority to add the route being the total length of from point A through point B to point C to the definitive map and statement as a public bridleway even if parts of this is included in the List of Streets. This is because the List of Streets is not conclusive evidence of a highway maintainable at public expense unlike the operation of section 56 of the 1981 for ways recorded on the definitive map (reference Trail Riders Fellowship v Secretary of State for the Environment, Food And Rural Affairs [2017] EWHC 1866).

Sally-Anne Robinson  
Vice Chairperson, Telford Bridleways Association (affiliated to The British Horse Society)

Jan Mees-Robinson  
Bridleways Officer, Shropshire, British Driving Society (affiliated to The British Horse Society)