

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



App. Ref. No.....

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

SALLY-ANNE ROBINSON
I/We ON BEHALF OF TELFORD BRIDLEWAYS ASS. (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..... WHITTON

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

* delete as appropriate

From..... WOOTON JUNCTION

To..... WHITEWAY HEAD LANE(Location of right of way)

as shown on the map accompanying this application.

(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:

GREENWOOD. 1ST OS MAP. TITHE.

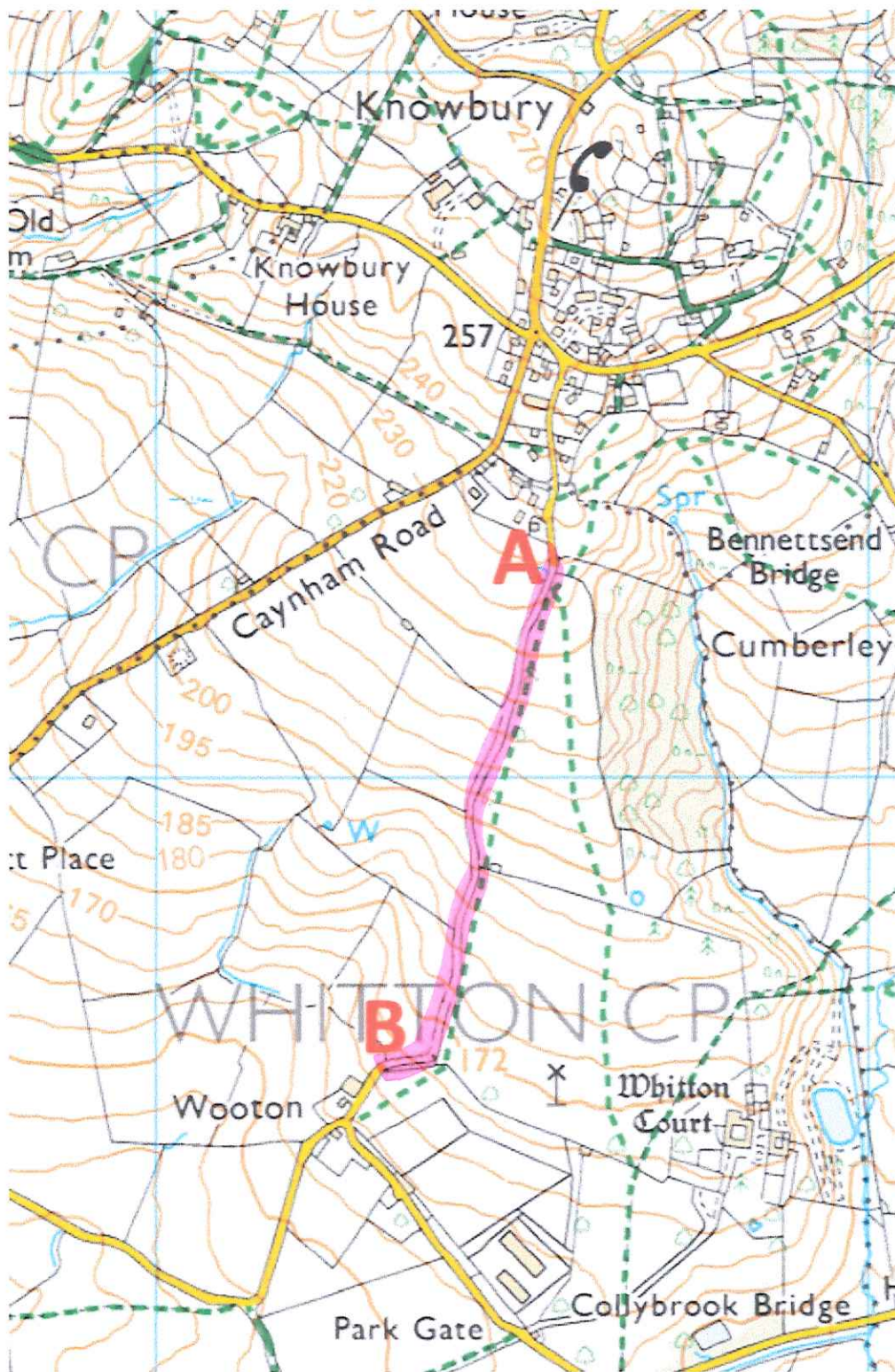
FINANCE ACT. BARTHOLOMEW.

SEE ATTACHED.

Dated. 28 MARCH 2022.

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

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Scale: 1:25,000

Wildlife and Countryside Act 1981

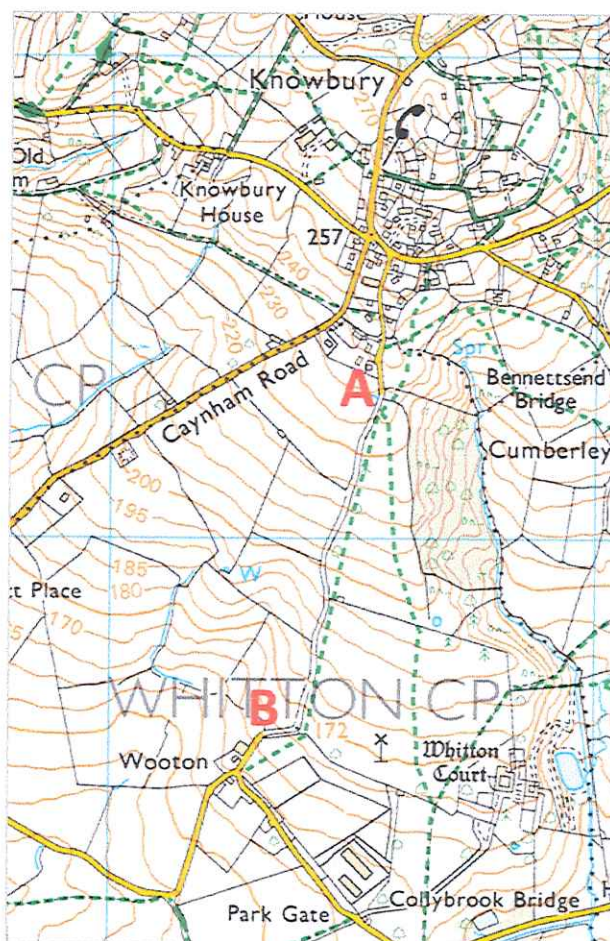
Definitive Map Modification Order Application

Modification order to add a way on the definitive map.

To claim for public use as a public restricted byway Wooton Junction to end of Whitewayhead Lane in the Whitton Parish of Shropshire Council.

Applicant's Reference: TBA2022 – 01

28th March 2022



Quick reference path facts to assist the Surveying Authority in its investigation	
OS County series map	Point A SO 57561 74310
	Point B SO 57323 73586

1. My name is Sally-Anne Robinson of Stable Cottage, Arleston Hill, Telford, TF1 2JY. I am the applicant for the order. I am the Vice-Chairperson for Telford Bridleways Association, the Shropshire Access Officer for The British Driving Society and a volunteer Access and Bridleways Officer for the British Horse Society. I have been researching lost ways and submitted over 50 DMMO's covering Shropshire, Cheshire and Worcestershire.
2. This application is made because the route existed historically as a road. It provides a safe and suitable route for carriage drivers, horse riders and cyclists and is maintained at public expense. However it is not shown on the definitive map as an adopted road with public right of way status.
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.

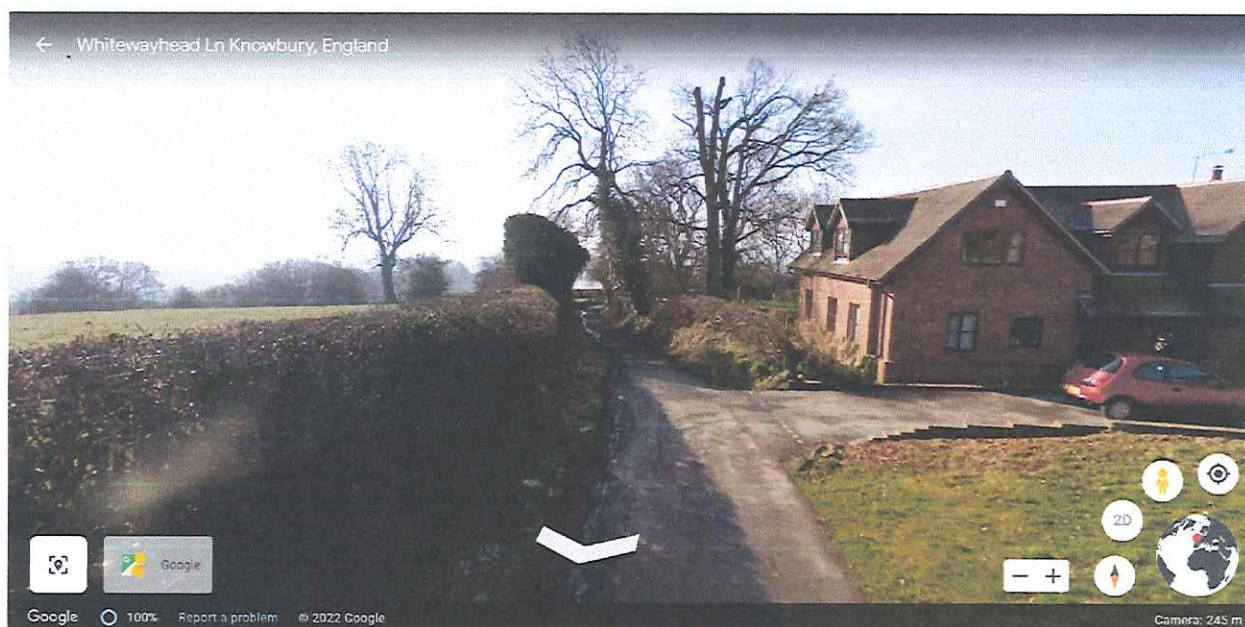
(5) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

THE APPLICATION ROUTE

5. The application route is shown marked between letters A and B in red on the plan above:
 - a. Point A is the start point of the application route where the adopted road becomes unadopted as shown on the OS map.
 - b. Point B is the end point where the unadopted road continues with adopted status road at Wooton.

6. The application route is not currently shown on the OS map and definitive map of rights of way for Shropshire Council as a public right of way. Historical evidence will show that the application route should be classed as a public restricted byway to permit access by walkers, cyclists, wheelchair bound outdoor enthusiasts, horse riders and carriage drivers.

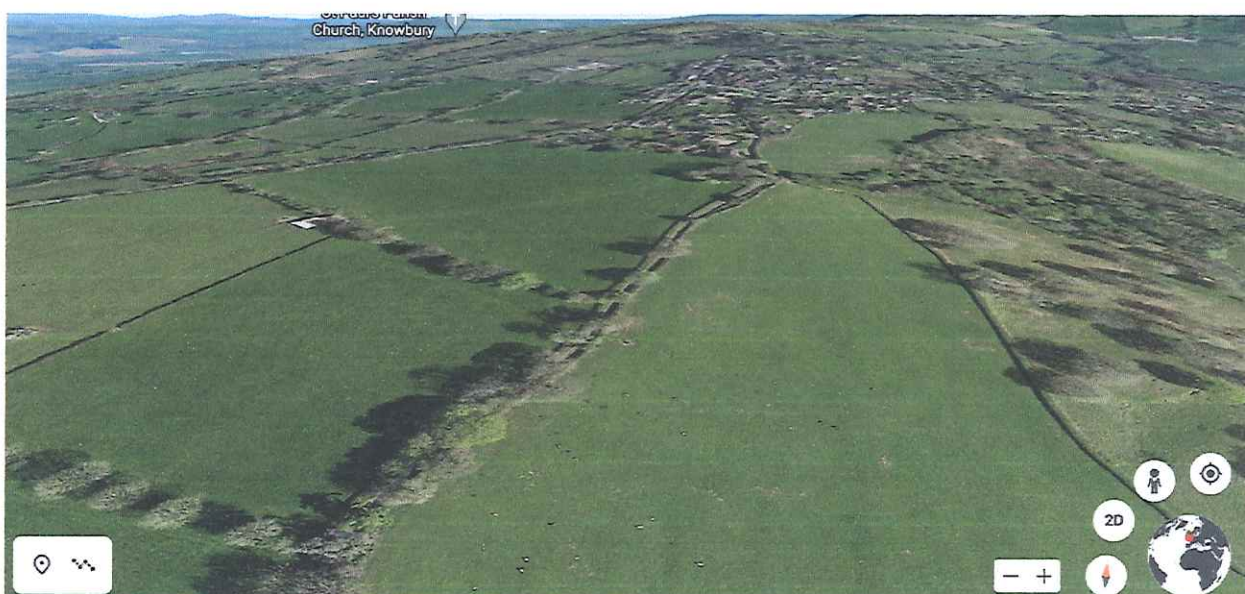
7. The photographs shown in in the following figures were downloaded from google maps / google earth in March 2022 and are included to help show the application route and its suitability as a public restricted byway in terms of access and minimal disturbance to existing land owners.



Google Earth street view of the proposed application route at Point A facing south. The lane clearly continues in an unobstructed manner.



View south of Point B of the application route facing north east and the junction with the adopted road. There is a sign saying unsuitable for motor vehicles.



Google Earth aerial view showing that a lane clearly exists along the length of the application route.

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. First edition OS old series map 1805

a. Date. The OS one-inch series, which the OS Director General Sir Charles Wilson called "the standard map of the country" (1892), was first published in 1805 as the Old Series.

b. Reason. The first survey was carried out by members of the Royal Military Surveyors and Draftsmen on behalf of the Board of Ordnance.

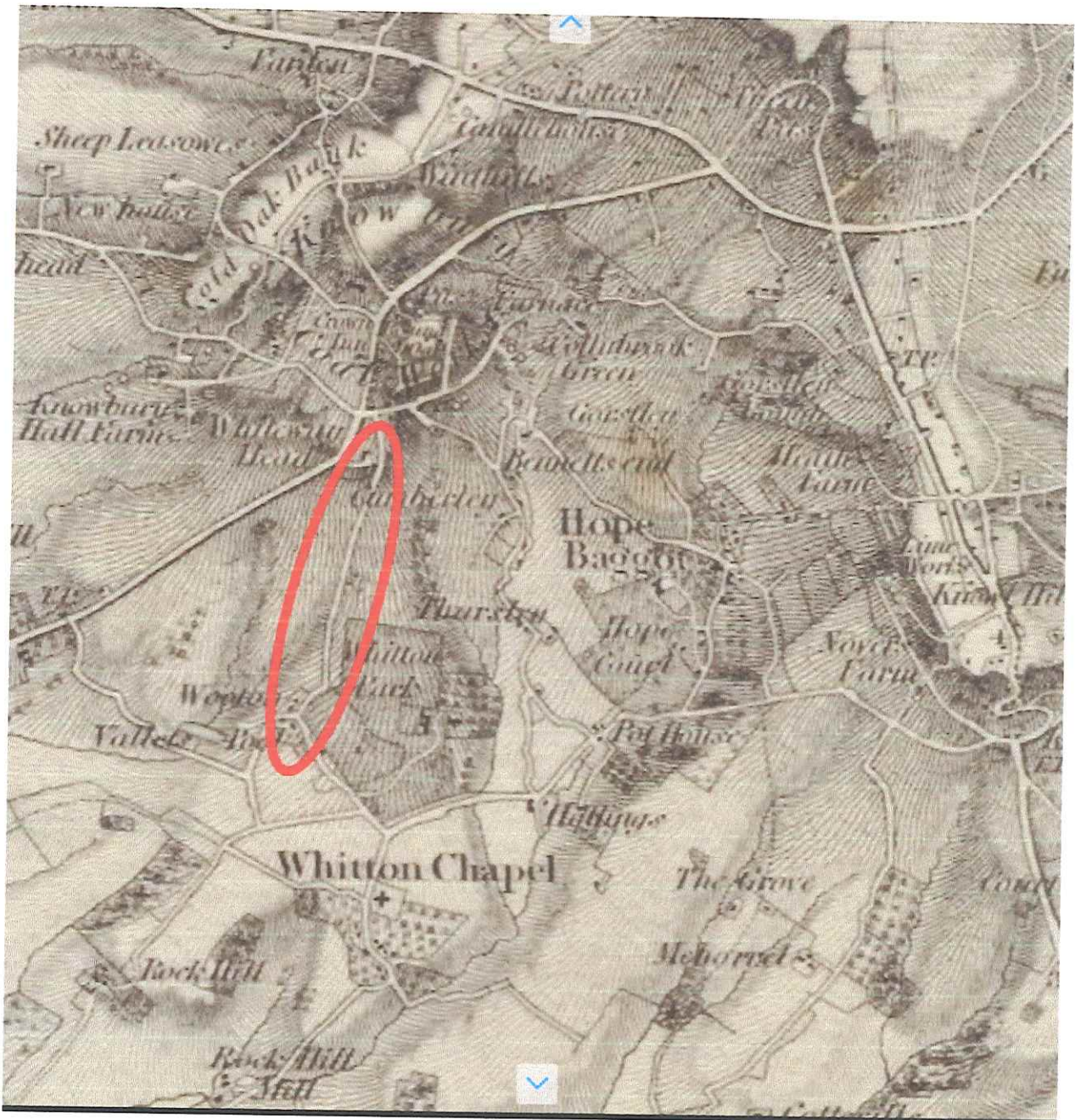
c. Archive. Copies of the first edition Ordnance Survey 6" maps are held by the British Library. An online version is available from The National Library of Australia. Source: <https://nla.gov.au/nla.obj-231923532/view>.

d. Meaning.

(1) The land over which the application route passes is shown on the OS map as having open access and passing in an unrestricted manner from its start to end point and continuous with highways which today are adopted.

(2) The application route is shown to exist as a significant track, with double edged solid lines, along its total length showing that it was a confirmed at the time to be a highway.

- e. **Assessment.** The showing of the route on the map as a track or road is evidence of reputation and appearance at the time the documents were compiled.



Extract from sheet 56 showing the whole of the application route circled in red for ease of identification. It clearly has highway status and is depicted in the same way as roads which today are adopted.

12. Greenwoods Map 1827.

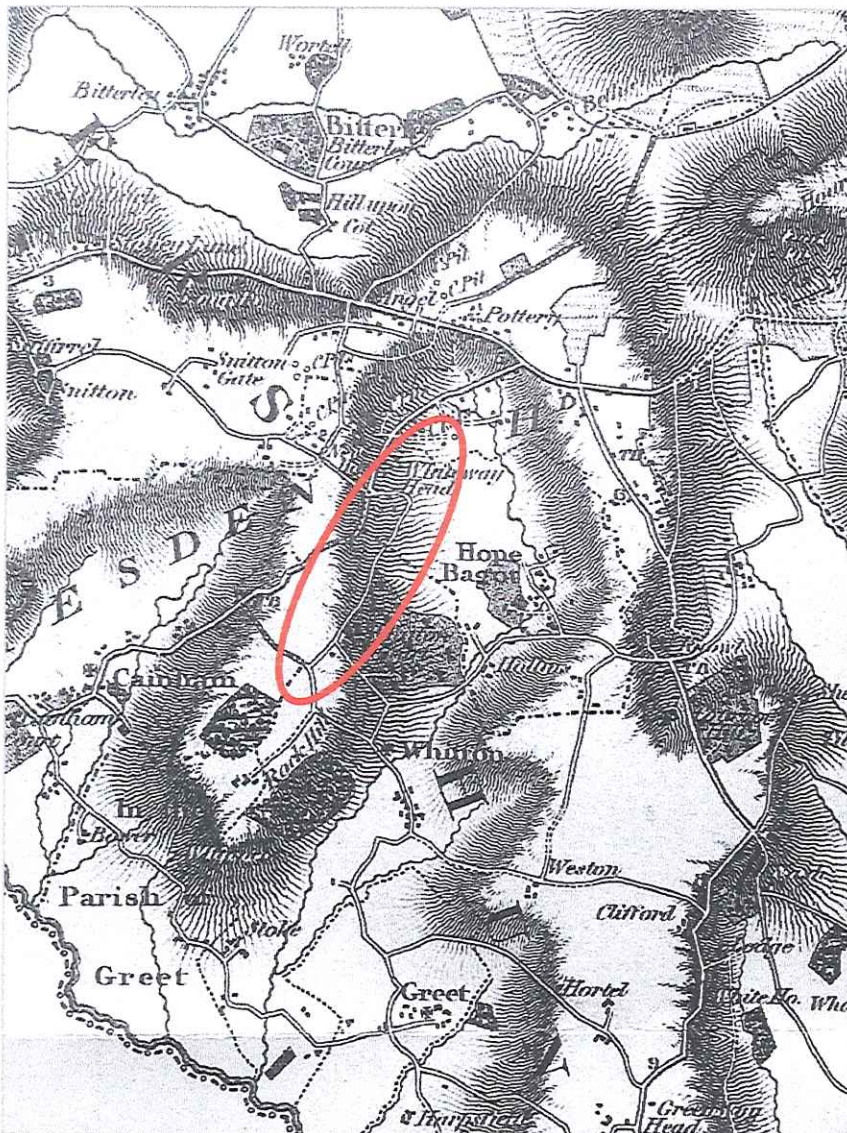
- a. **Date.** This map was produced in 1827.
- b. **Rationale.** Christopher Greenwood's map of Shropshire was the most accurate 1" to the mile map of the county to be published before the first Ordnance Survey maps. It was part of an ambitious series intended to cover the entire country — an expensive project designed to appeal to country gentlemen - the map was made for sale to the public, and so

is unlikely to show routes that the public could not use. Published in February 1830 it was made from an actual survey in 1826 and 1827. The Numerous watermills, windmills, estates both large and small, turnpike roads and milestones, antiquities and industrial sites and other features are shown.

c. Archive. This map extract is photographed from a black and white reprint purchased from the Shropshire Archeological and History Society. The map was produced in colour at a scale of 3 miles to 1" and also in Black and White. An original copy is available to view in the Shropshire Archives.

d. Meaning. The application route is shown as a continuous track bounded with solid black lines and as having significance width. It is depicted as having the same significance as connecting roads which today are classed as adopted roads.

e. Assessment. This is evidence in favour of the proposition that the application route was considered to have the same status or reputation at the time it was made (1830), that is, as a vehicular highway, as the connecting roads with which it joins.



Extract from Greenwood's map (1827) showing the application route depicted in the same way as adjoining adopted roads showing that highway rights existed.

13. Tithe map for the Township of Whitton in the Parish of Burford in the County of Salop 1844

a. Date. The apportionment and maps were produced in 1844 for Township of Whitton in the Parish of Burford.

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.

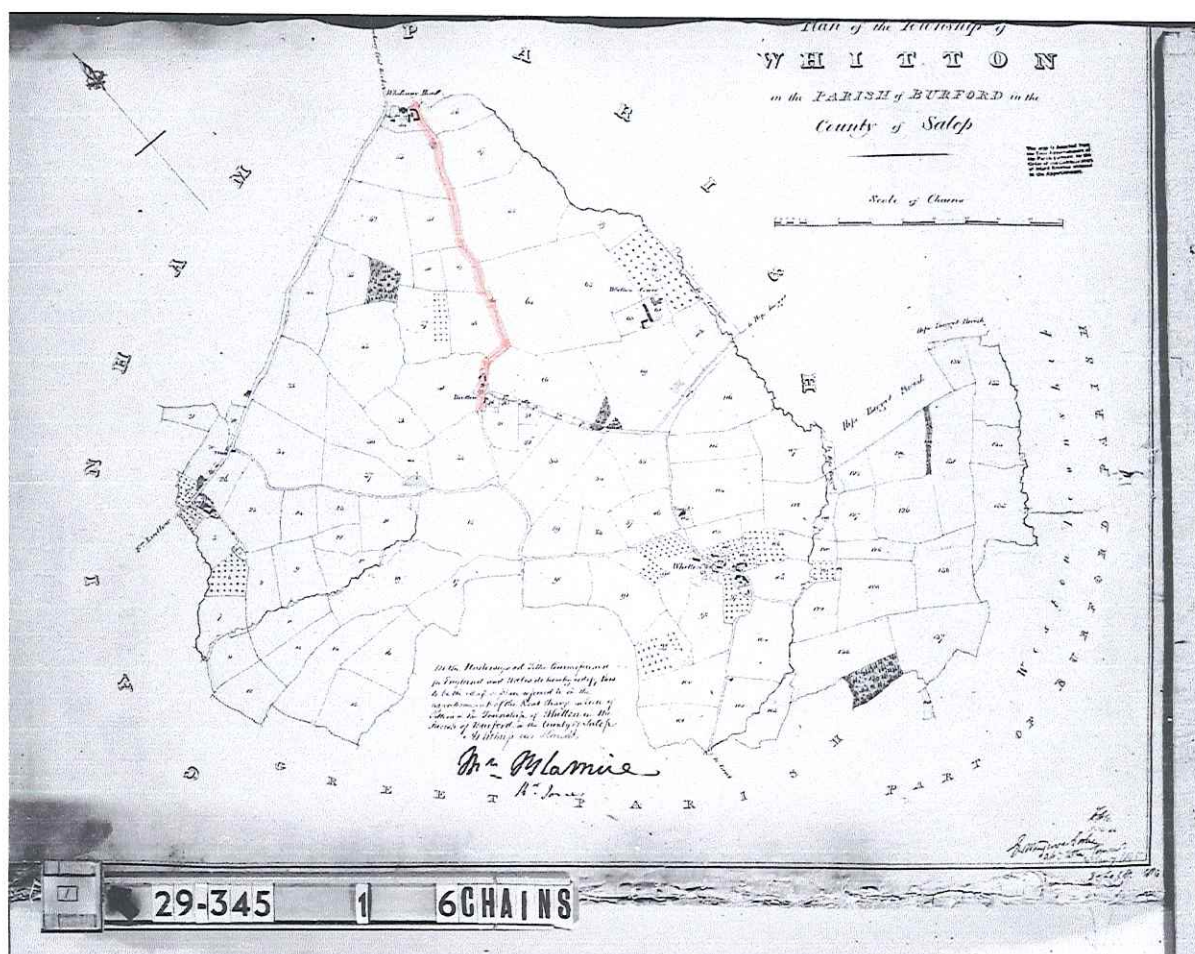
(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe 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. The application route is continuous with roads which in modern times are adopted / public owned.

e. Assessment. These are second class maps and so are only conclusive of matters of relevance to the tithe commissioners. They nevertheless provide useful information from which inferences may be drawn. The application route is shown in the same way on the tithe maps as other public roads in the area. They are not listed as owned by the local land owner at the time and the land is not listed as being assessed for tithe.



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The Township of Whitton in the Parish of Burford in the County of Salop tithe map of 1844 downloaded from The Genealogist. Note the direction of north. The application route is shaded in red for ease of identification.

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

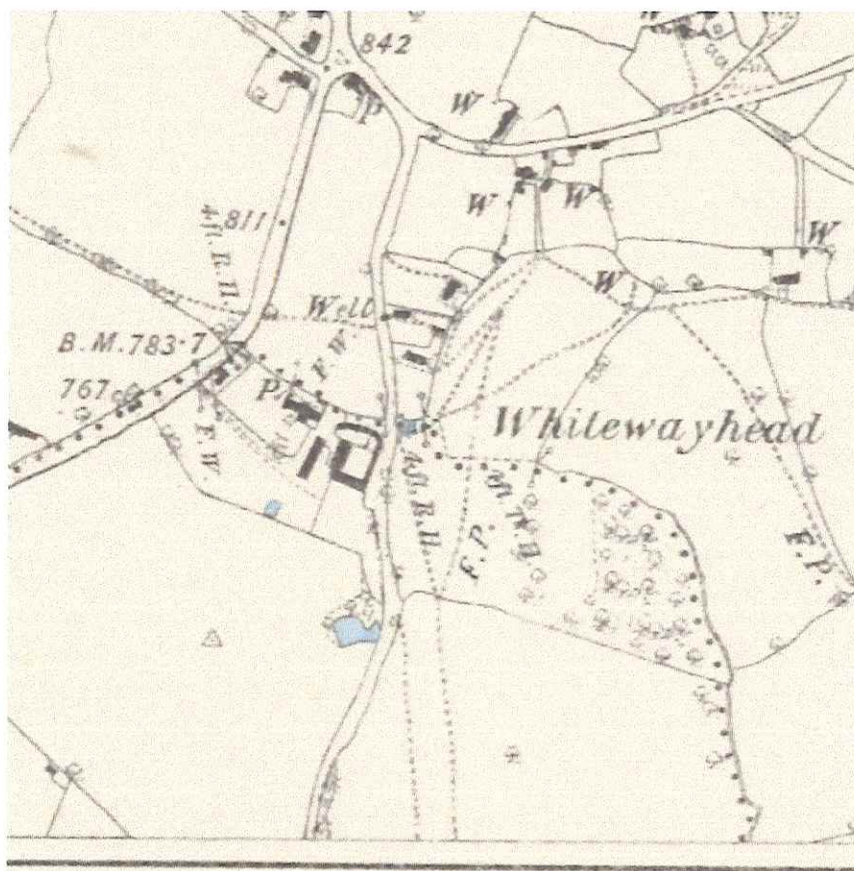
- a. Date. The Ordnance Survey six-inch to the mile County Series was revised for the whole country twice between 1842-1893 and between 1891-1914, and then updated regularly for urban or rapidly changing areas from 1914 to the 1940s (source: <http://maps.nls.uk/os/6inch-england-and-wales/info1.html>). This area was surveyed in 1883 to 1884 and published in 1884 (sheets Shropshire LXXIX.NW and LXXIX.SW).
- 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.

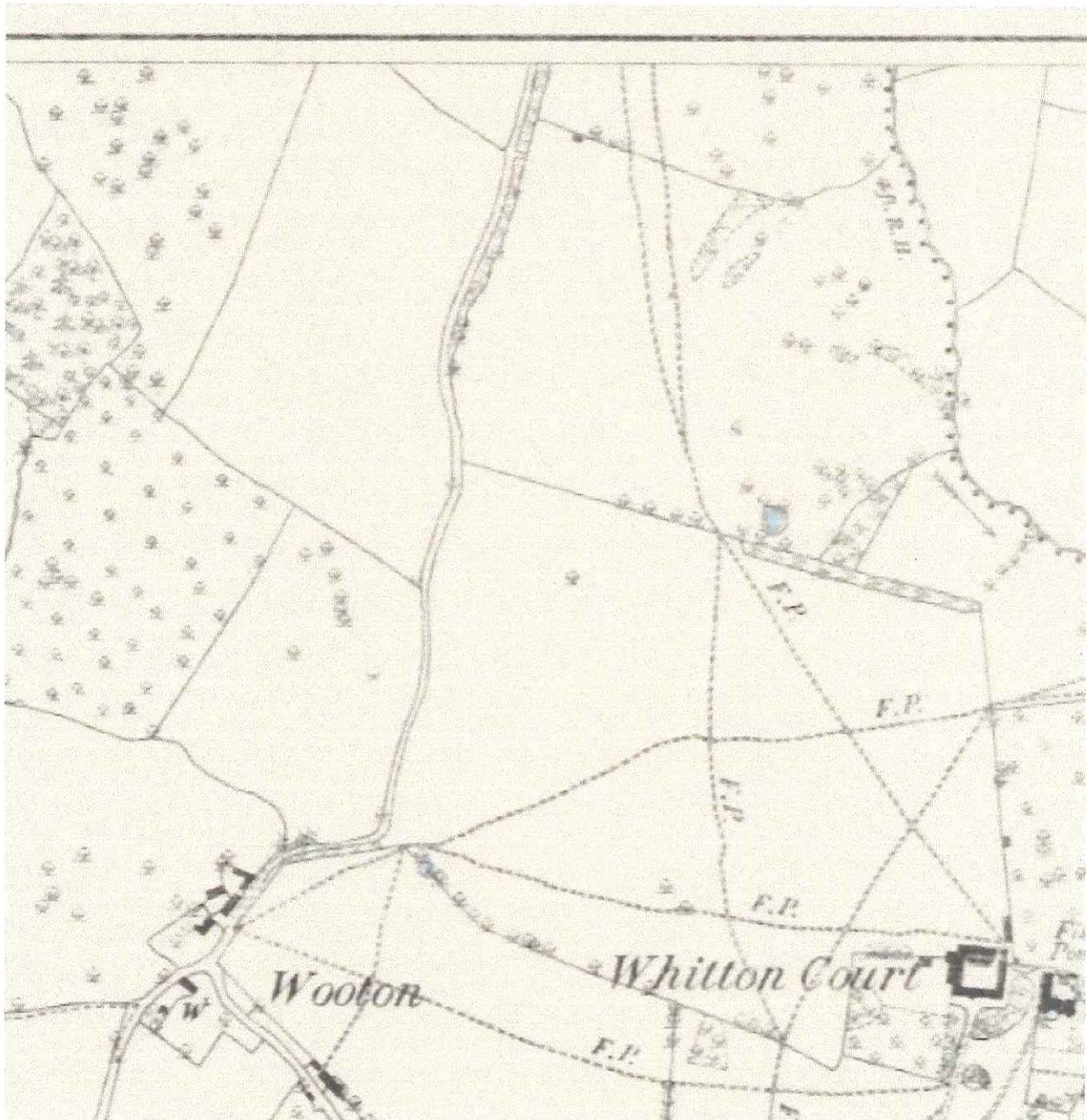
(2) The application route is shown to have specific breadth and junctions with other major roads.

(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.



Enlargement of extract from the Ordnance Survey first edition 6" map of the area sheet Shropshire LXXIX.NW. showing the route as continuous with other routes which are today adopted and with higher status than foot path.



Enlargement of extract from the Ordnance Survey first edition 6" map of the area sheet Shropshire LXXIX.SW. showing the route as continuous with other routes which are today adopted and with higher status than foot path.

15. Bartholomew's Half-Inch Maps of England and Wales 1903

- a. Date. This map was published in 1903.
- b. Relevance. The map was made for sale to the public, particularly for tourists and cyclists, and so is unlikely to show routes that the public could not use. It has a key in which different types of route are distinguished.
- c. Archive. An original of Sheet 17 (Shropshire) is held by the National Library of Scotland (NLS) and can be viewed via http://maps.nls.uk/series/bart_half_england.html.

d. Meaning. The application route is shown as a **‘secondary good’** road. It is classified as a **route suitable for cyclists** and is shown to have a higher status than a bridleway or footpath and is depicted in the same manner as roads, with which it joins, which today are adopted.

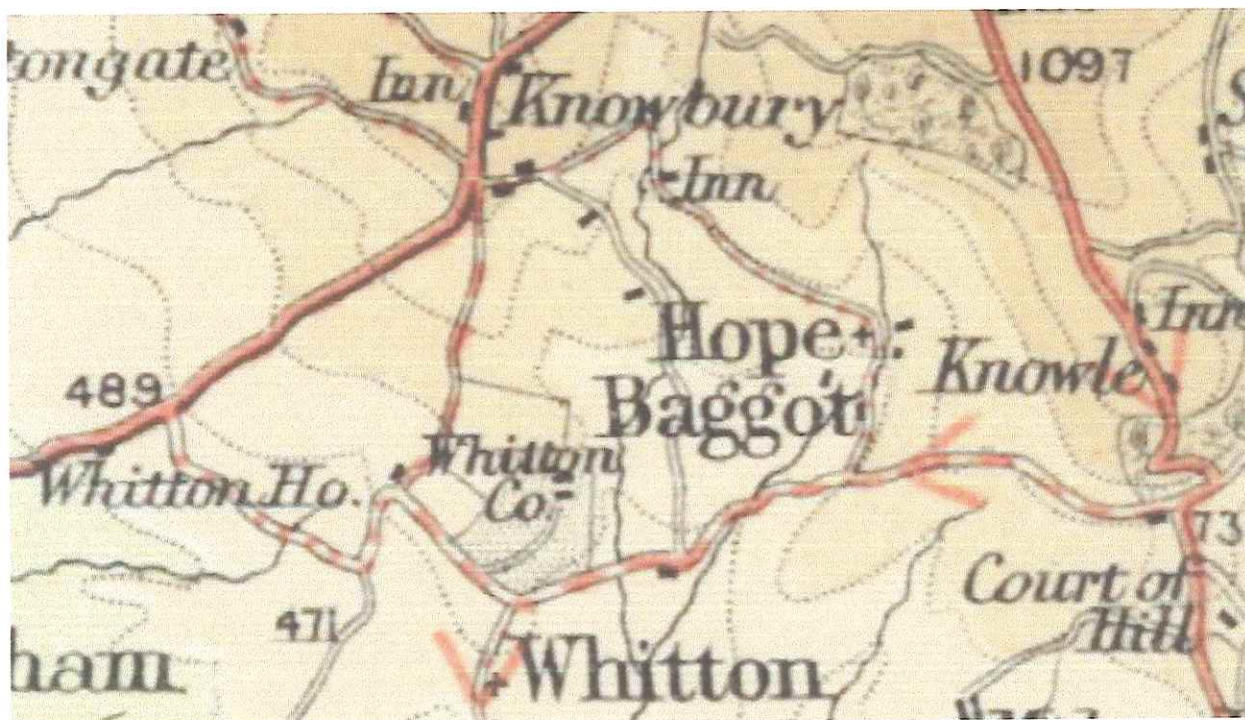
e. Assessment.

(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or ‘inferior’. In addition, the application route was shown as this ‘inferior’ road rather than as a footpath or bridleway, and cyclists at the time of publication (1903) had no right to use bridleways, having been declared to be carriageways by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

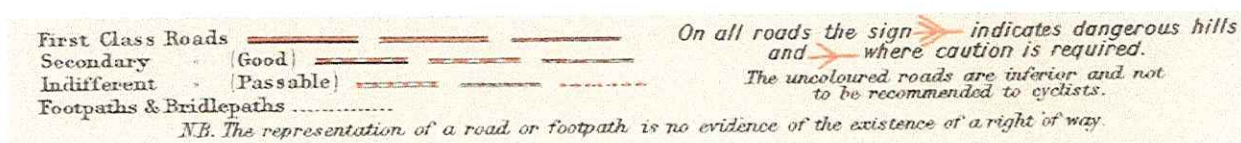
(2) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

“Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". **I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance**, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways.”

(3) The conclusion is that at least some weight must be given to this source.



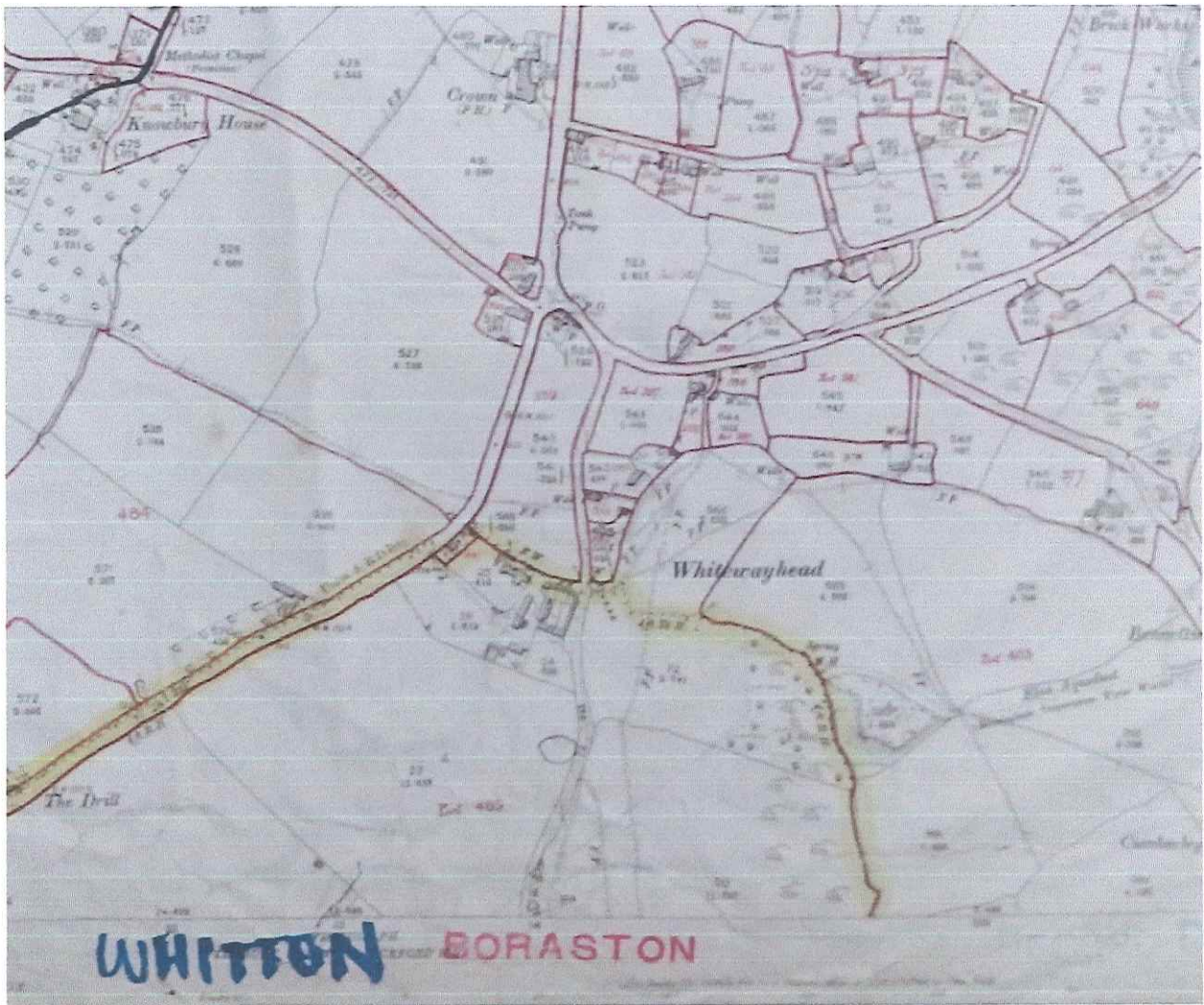
Extract from Bartholomew's Map showing the application route as a 'secondary good' road, suitable for cyclists, and depicted as joining with roads which today are adopted.



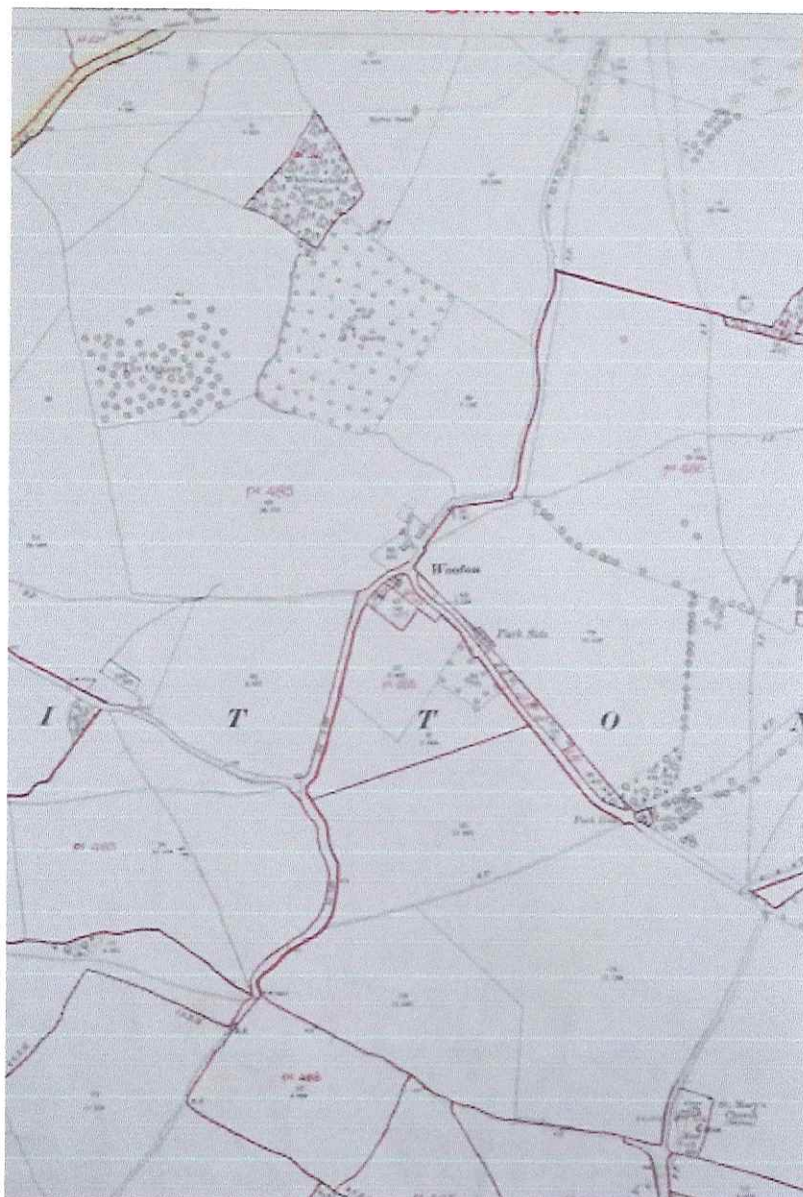
Extract from Bartholomew's Map showing the Key

16. Inland Revenue Valuation 1910

The application route is shown as being part of a larger land area for valuation purposes at the time of survey. However at both point A and point B the application route continues into land where it is shown as separate from the adjoining hereditaments and no tax assessed. At both point A and B the adjoining highways, where no tax assessed, do not stop at a particular feature so it can be assumed that the public continued along the application route and used it as a public right of way.



Excerpt from Inland Revenue Valuation Map reference number 132/4/974.



Excerpt from Inland Revenue Valuation Map reference number 132/4/978.

17. OS One-inch, Seventh Series, 1952-1961

a. Date. The Ordnance Survey 'Seventh Series' provides an excellent overview of the landscape of Great Britain in the 1950s. It was the only standard one-inch to the mile (1:63,360) uniform series to cover the whole of Great Britain, and for Ordnance Survey, it represented the final flowering of their one-inch map before its replacement in the 1970s by 1:50,000 scale mapping.

b. Reason. The 'Seventh Series' maps depicted a number of distinctive categories of information: more categories of road were shown than on the New Popular, including motorways, trunk roads, class 1 and class 2 main roads, minor roads, and untarred / unmetalled roads; footpaths and tracks were shown with a black dashed line. From 1960, some sheets started to also include public rights of way (shown in red) from the growing local authority Definitive Maps of Public Rights of Way.

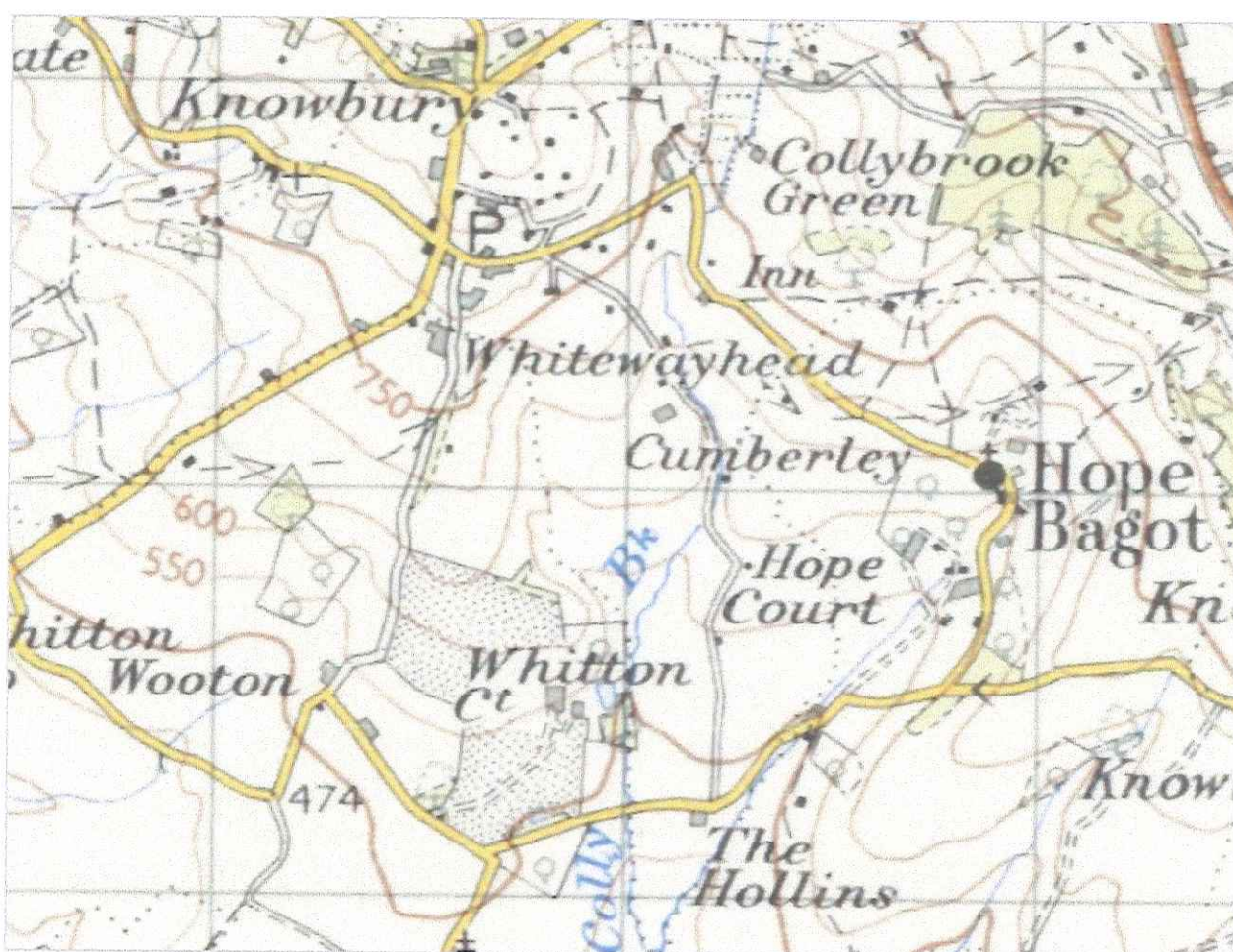
c. Archive. The map is available to download on line from The National Library of Scotland (<https://maps.nls.uk/os/one-inch-seventh-series/index.html>). This is the Ludlow sheet (no 1129) published in 1952.

d. Meaning.

(1) The map shows the application route to be classed under the regular highway section as a fenced unmetalled road.

(2) The route is continuous and unobstructed. It is classed in the same way as other tracks which today are adopted.

e. Assessment. 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.

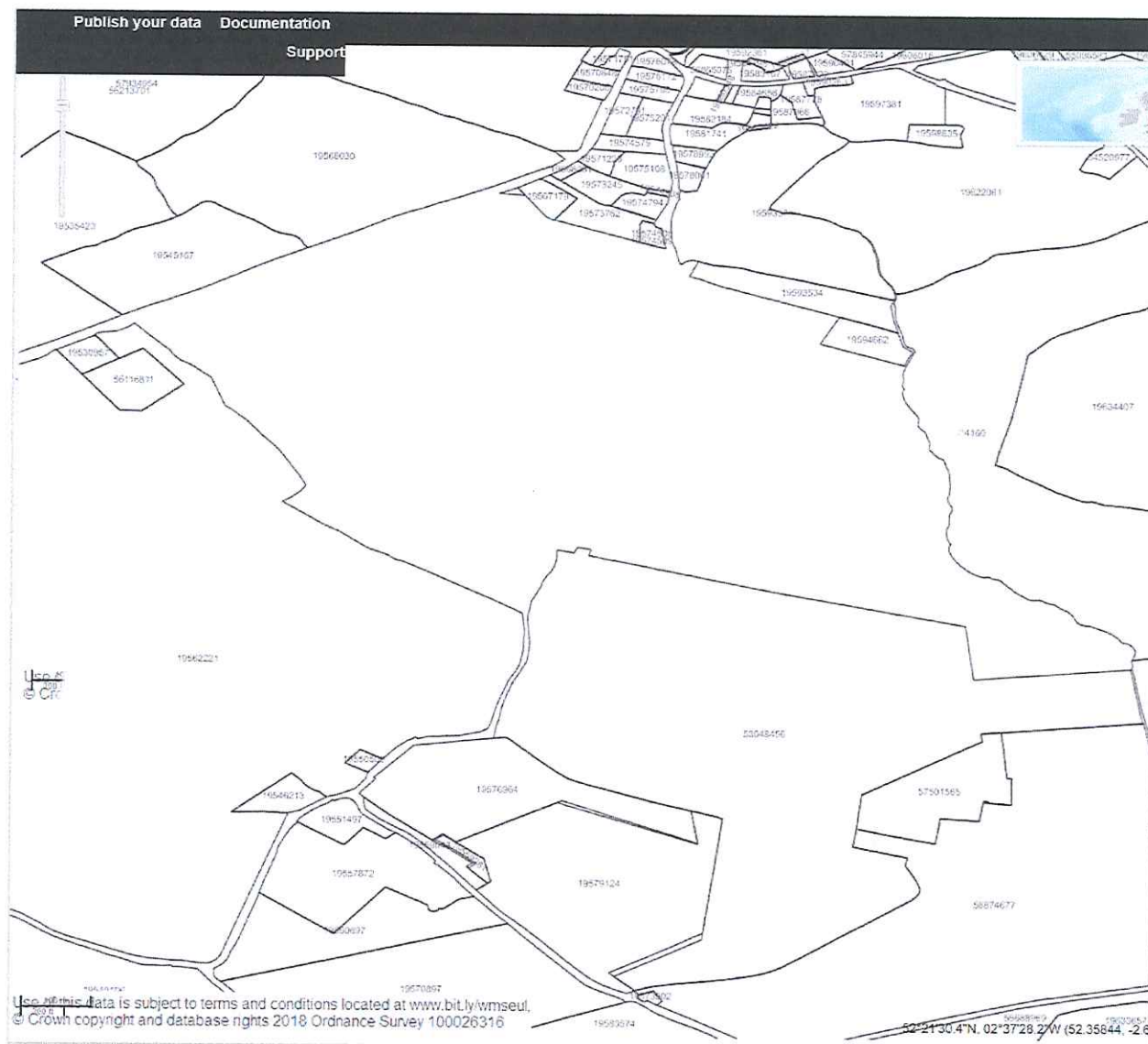


Roads	Ministry of Transport, Motorway	M 1 or A 6(M)
	" " " Trunk } Single & Dual	A 5 (T)
	" " " Class 1 } Carriageway	A 458
	" " " " 2	B 4380
	14 ft of Metalling & over (not included above)	
	Under 14ft of Metalling, Tarred " "	TOLL
	" " " " Untarred " "	Gate
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)	
Under construction	(=====)	

Excerpt from the Seventh OS Map Series, and reference guide, showing in greater detail the classification of public rights of way. The application route has a higher status than a footpath or track. It is classed under the regular highway section as a fenced unmetalled road.

18. INSPIRE.

This extract from the INSPIRE database was taken on 27th March 2022. From Point A to B the application route appears to cross unregistered land and is continuous with highways belonging to the council.



CONCLUSIONS

19. 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.

20. 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.

21. 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.

22. 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.

23. The applicants request the surveying authority to add the route from point A, through B, to C and the junction with the adopted road, 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)
Access and Bridleways Officer for Shrewsbury and Atcham, British Horse Society
Access Officer, Shropshire, British Driving Society (affiliated to The British Horse Society)