



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

To: Public Rights of Way Team, Cheshire East Council, 2nd Floor, Old Building, Municipal Buildings, Earle Street, Crewe, CW1 2BJ
Shropshire Council Outdoor Partnerships, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

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 Buerton Public Footpath 22 to Public Bridleway which runs from Point A on the application map (OSGR SJ 68447 42369) the western termination of the application route at the junction with Hawkins Heys Lane, Buerton Public Footpath 22 and Buerton Public Footpath 25, to Point B (OSGR SJ 70447 42151) junction of the application route and Buerton Public Footpath 21 and Buerton Public Footpath 22.
- b) Upgrading Buerton Public Footpath 21 to Public Bridleway which runs from Point B on the application map (OSGR SJ 68447 42369) the western termination of the application route at the junction with Hawkins Heys Lane, Buerton Public Footpath 22 and Buerton Public Footpath 25, to Point C (OSGR SJ 70895 42666) eastern termination of the Buerton Public Footpath 21 at the County Boundary with Shropshire.
- c) Adding the Public Bridleway which runs from Point C on the application map (OSGR SJ 70895 42666) eastern termination of the Buerton Public Footpath 21 at the County Boundary with Shropshire, to Point D (OSGR SJ 71025 42758) northern termination of the application route at the junction with Audlem 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 Buerton (1843) and Woore (1838)
- I. Ordnance Survey 25" County Series Map Sheets First Edition Cheshire LXVI.7 (1898), Shropshire III.15 (1880) and Second Edition Sheet Shropshire III.15 (1901)

- II. Ordnance Survey 6" County Series Map Sheet Cheshire LXVI (inset LXVIII) (1882) and Shropshire III.SE (1888)
- III. Ordnance Survey 1" Map Sheet 123 (1889)
- IV. Bartholomew's Half Inch Maps of England and Wales Sheet 12 (1902)
- V. Ordnance Survey 1:25000 Administrative Series Sheet 33/64-A (1948) and 33/74-A (1948)
- VI. Map produced from HM Land Registry INSPIRE database (2022)

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.

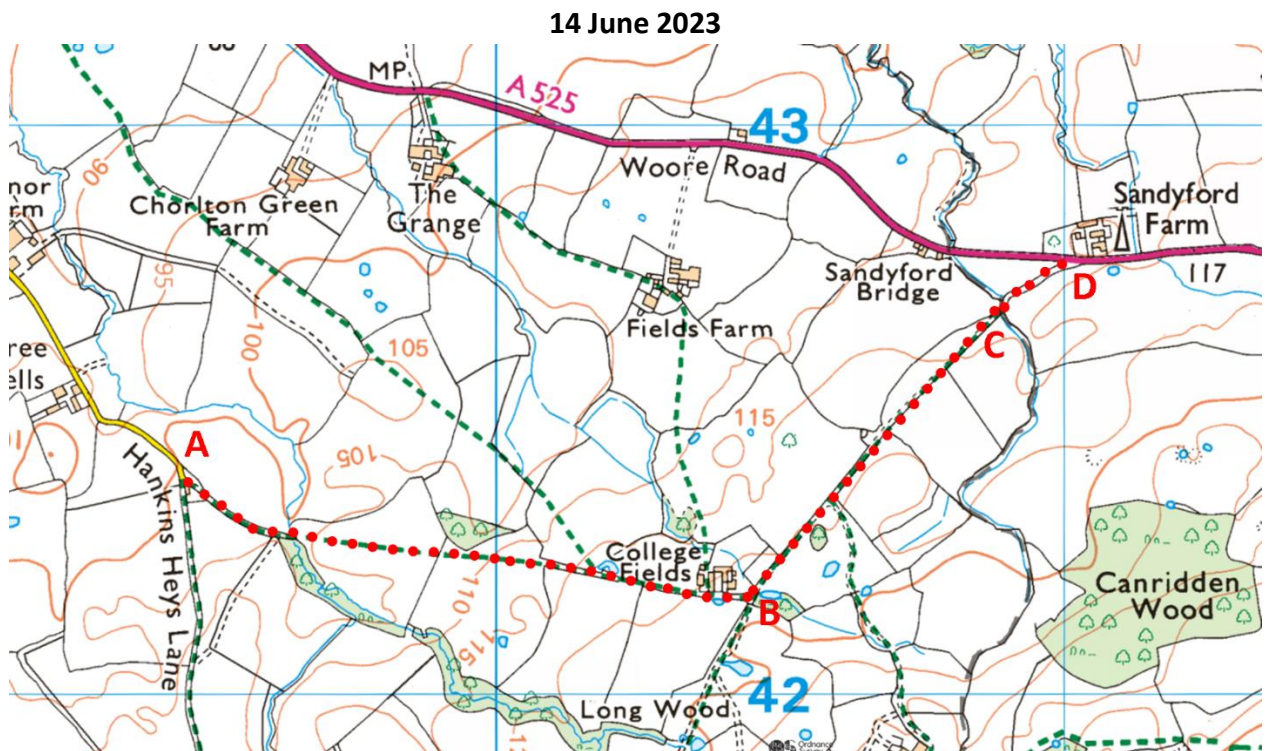
Signed: 

Date: 14th June 2023.

Wildlife and Countryside Act 1981 Map to Accompany

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

Applicant's Reference: CHE-0142



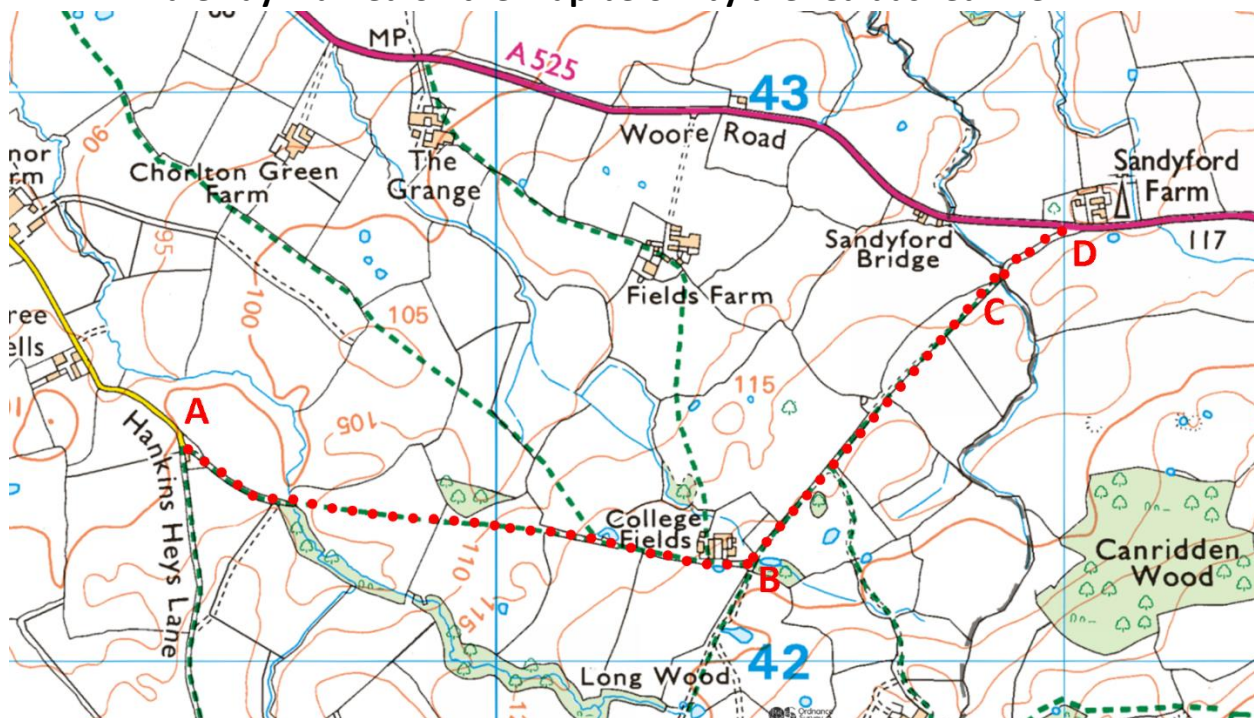
Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Wildlife and Countryside Act 1981

Summary of Evidence

Definitive Map Modification Order Application

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



Applicant's Reference: CHE-0142

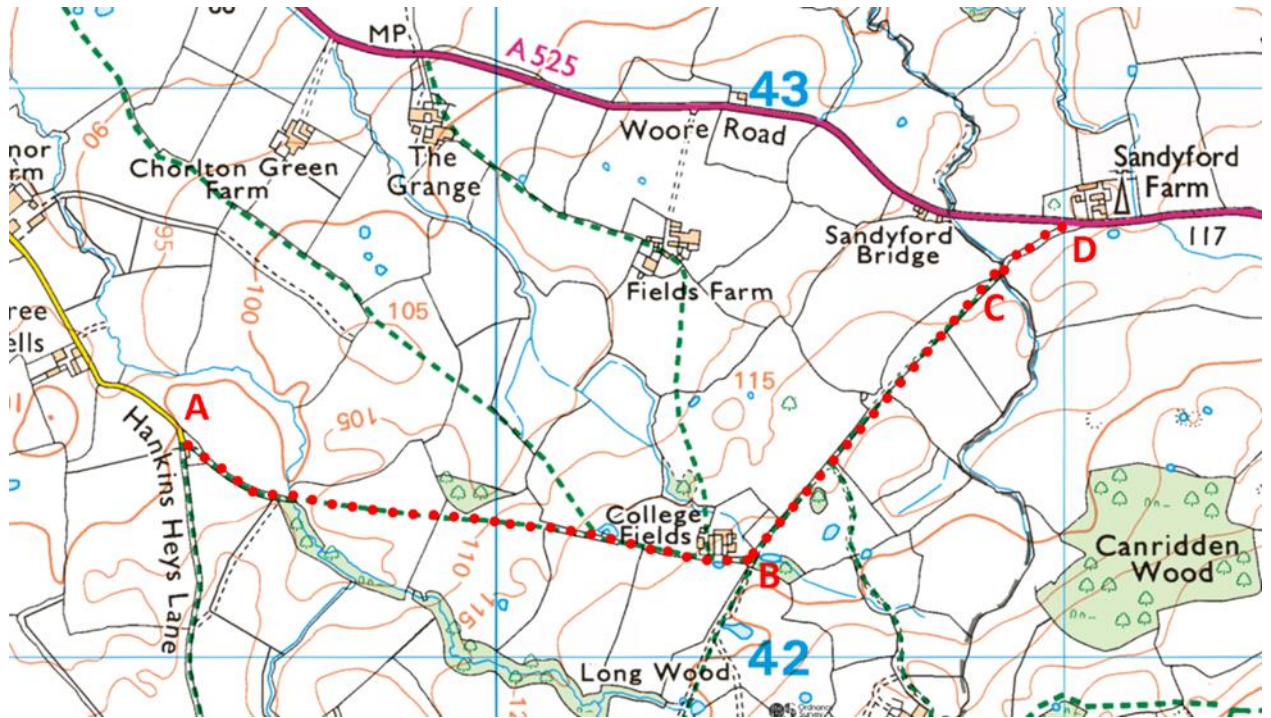
14 June 2023

Quick reference path facts to assist the Surveying Authority in its investigation	
OS County series map	Cheshire LXVI.7 and Shropshire III.5
Modern Definitive Map sheet(s) 'Buerton' and 'Woore'	
Grid references of ends of route	SJ 69447 42369 to SJ 71025 42758 (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 5 years of professional experience in the management of public rights of way primarily for local authorities.
2. This application is made in response to the threat of the extinguishment of unrecorded rights arising from the “2026 cut off” provisions introduced by the Countryside and Rights of Way Act 2000. Regardless of the proposed repeal of the cut-off, the BHS remains convinced that the best way to protect unrecorded equestrian rights from obstruction, neglect or development is to make a DMMO application to have them added to the Definitive Map and Statement.
3. I believe this application will pass the Preliminary Assessment Test proposed to be introduced 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 reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
 - (4) 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

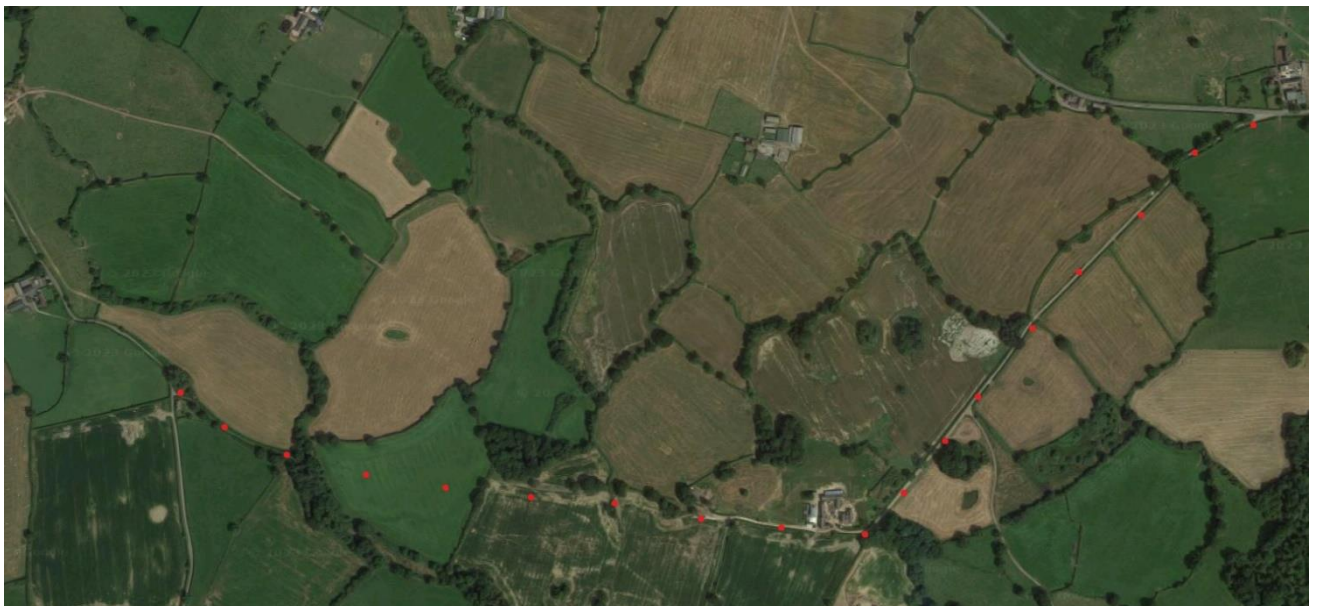
THE APPLICATION ROUTE

4. The application route is shown approximately on the plan below:
 - a. Point A, the eastern end of the route, at OSGR SJ 69447 42369, the junction of the application route, Buerton Public Footpath 22, Buerton Public Footpath 25 and Hankins Heys Lane.
 - b. Point B, at OSGR SJ 70447 42151, junction of the application route with Buerton Public Footpath 21 and Buerton Public Footpath 22.
 - c. Point C, at OSGR SJ 70895 42666, junction of the application route with Buerton Public Footpath 21 and the Shropshire/Cheshire County Boarder.
 - d. Point D, the northern end of the route, at OSGR SJ 71025 42758, the junction of the application route and Audlem Road.
5. The application route is shown in part recorded on the Council’s definitive map on and its online List of Streets as Buerton Public Footpath 21 and Buerton Public Footpath 22.
6. The route’s width is shown by the boundaries depicted on the first and Second Edition 25 inch Ordnance Survey map where it is bounded.



Extract of Ordnance Survey 1:25000 scale map (Explorer 257 Crewe & Nantwich published 2015) showing application route A – B (not to scale)

7. Photographs 1 – 2 are from Google.



Photograph 1 is a Google Aerial View with the route indicated with red dots. The route is a clear landscape feature.



Photograph 2- A Google Streetview photo from 2021 of between Point A and Point B looking generally east along the route. The route is of significant width between hedge boundaries, it is signed as public footpath by Cheshire West and Chester Council it has the characteristics of an old lane and has a tarmac surface.

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 Buerton and Woore.

a. Date. The Buerton tithe map was published in 1843 and the Woore tithe map was 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. 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.

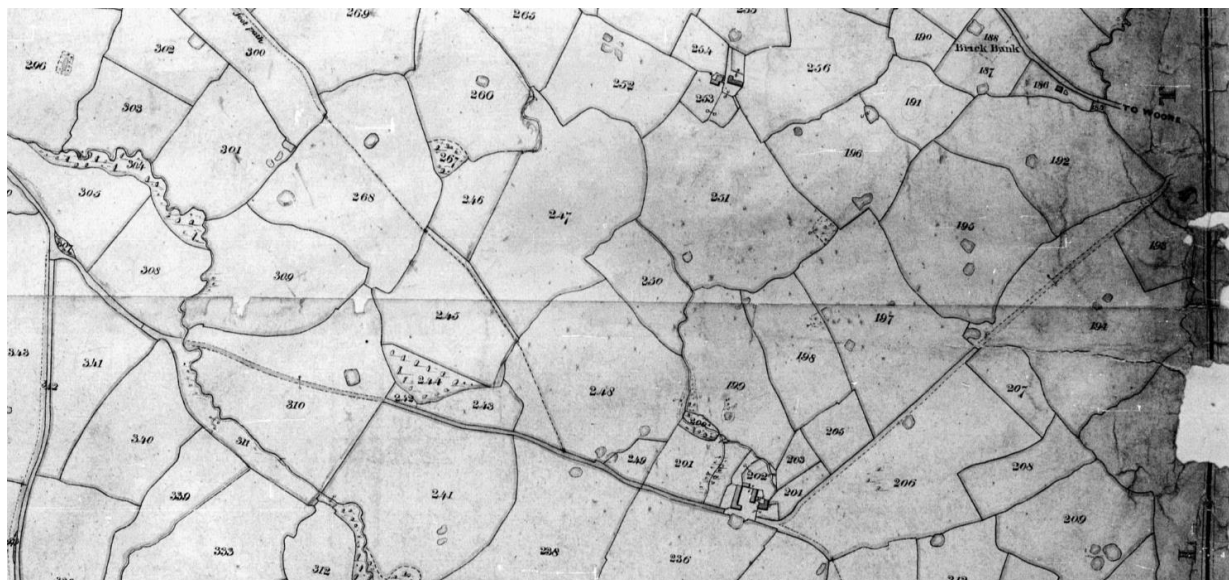
c. Archive and Reference.

(1) The tithe map and apportionments for Buerton and Woore are held by The National Archives Service, map reference IR30/5/81 and IR30/32/156 and apportionment reference IR29/5/81 and IR29/32/156.

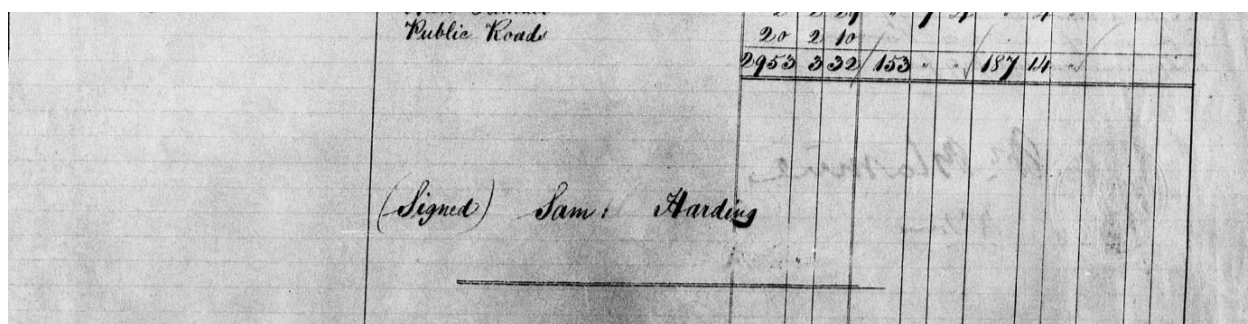
(2) Both tithe maps and apportionments are also available from the www.thegenealogist.co.uk subscription service. This provides scans of the maps and apportionments held by The National Archives.

d. Meaning. The map shows most of the application route as a separate, as an unnumbered parcel of land and appears to be shaded as are other roads and tracks. 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. The route passes through apportionment number 310, 206 and 194, although passing through pasture land it is clearly depicted as a track which displays public rights.

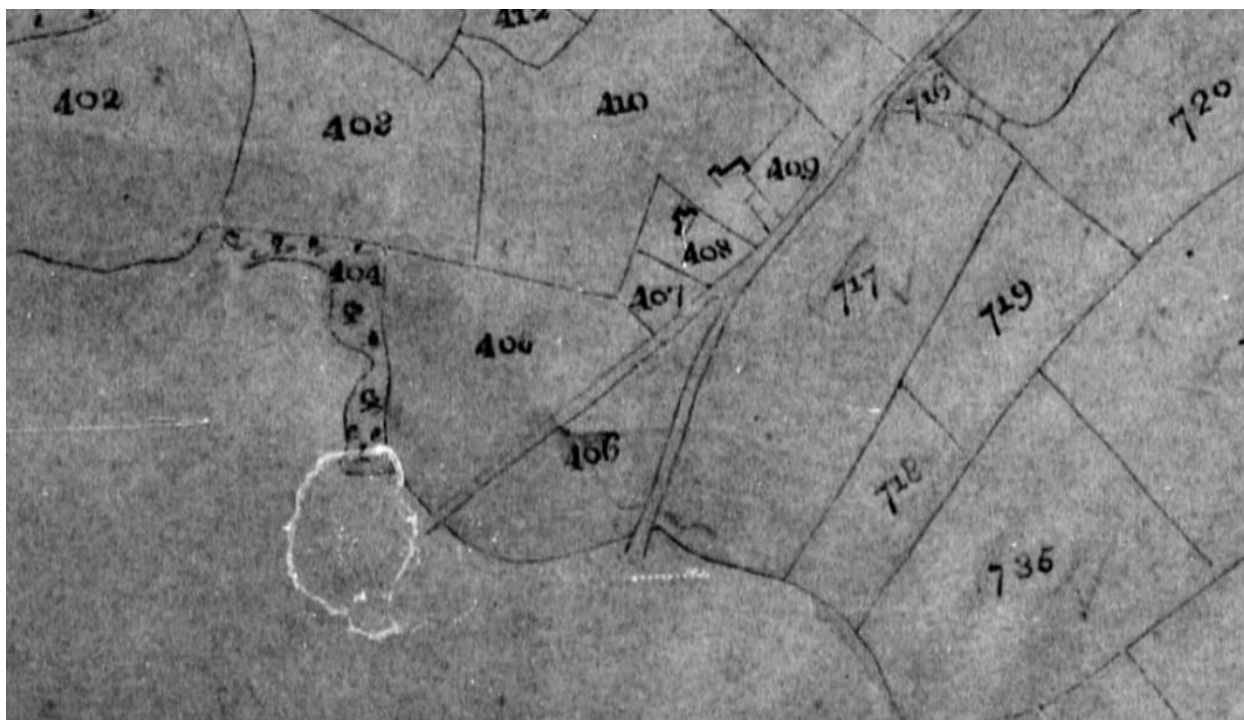
c. Assessment. This is probably a second-class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is listed as a road and depicted in the same way on the tithe map as other 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 Buerton Tithe Map



Extract from Buerton Tithe Apportionment

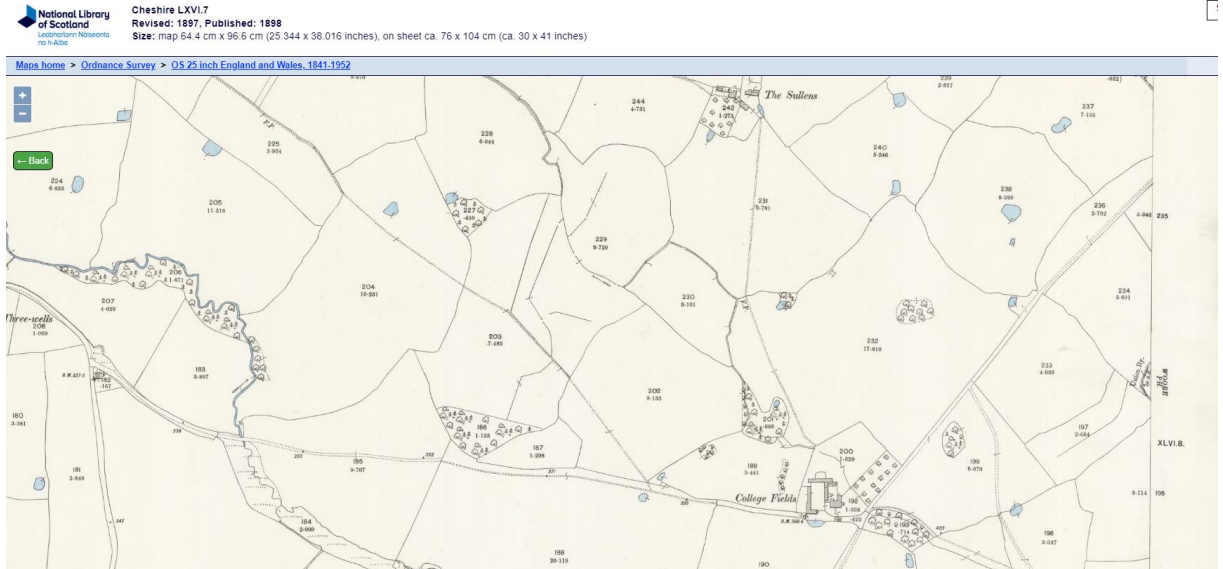


Extract from Woore Tithe Map

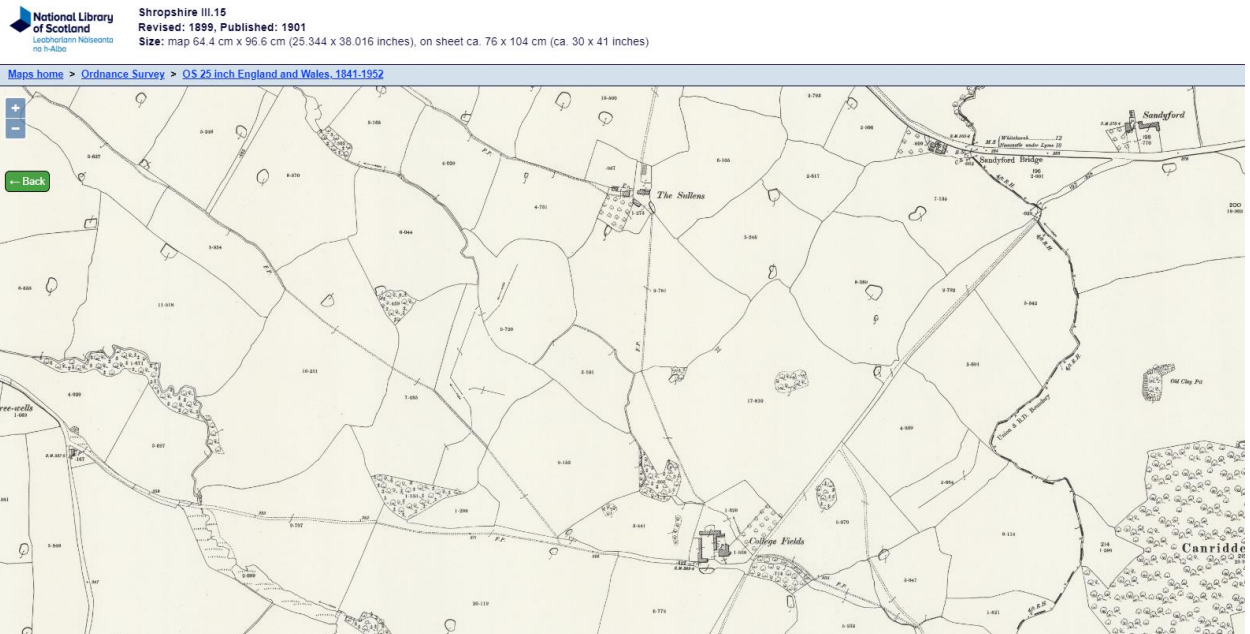
12. Ordnance Survey County Series 25 inch Maps.

- a. Date. The First Edition of OS sheet Cheshire LXVI.7 was surveyed in 1897 and published in 1898, sheet Shropshire III.15 was surveyed in 1879 and published in 1880. The Second Edition of OS sheet was surveyed in 1899 and published in 1901.
- 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. Additionally, on the first edition only, colour was used on some sheets to give significance to certain features (roads, buildings, water features, etc.)
- c. Archive. The extract from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114585826>, <https://maps.nls.uk/view/121147487> and <https://maps.nls.uk/view/121147490>.
- d. Meaning. The route is shown in part as single parcels of land, one part coloured the same as the other highway network and other part as no. 307, with an area of 2.327 acres, no .422, no. 197 with an area of 0.328 acres, no. 90, no. 221 with an area of 2.327, no. 191 with an area of 0.422, within Buerton, the other part is show as a track through fields.

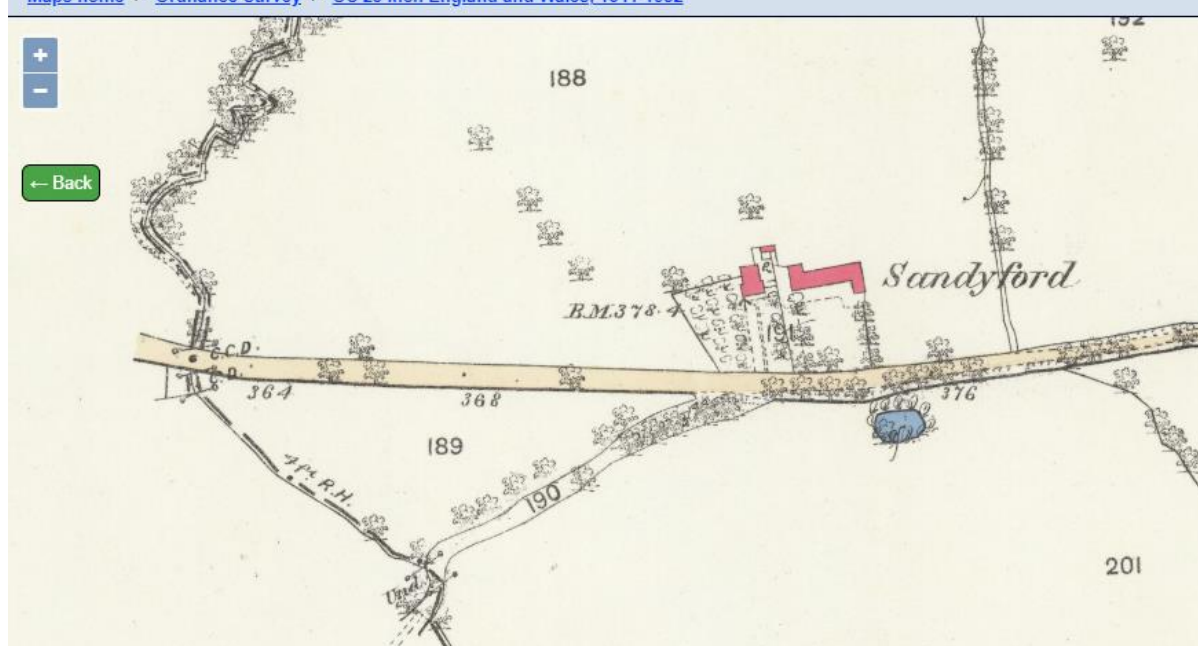
e. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network provides a strong inference that it was also considered to be part of that road network.



Extract from OS 25" Map



Extract from OS 25" Map



Extract from OS 25" Map

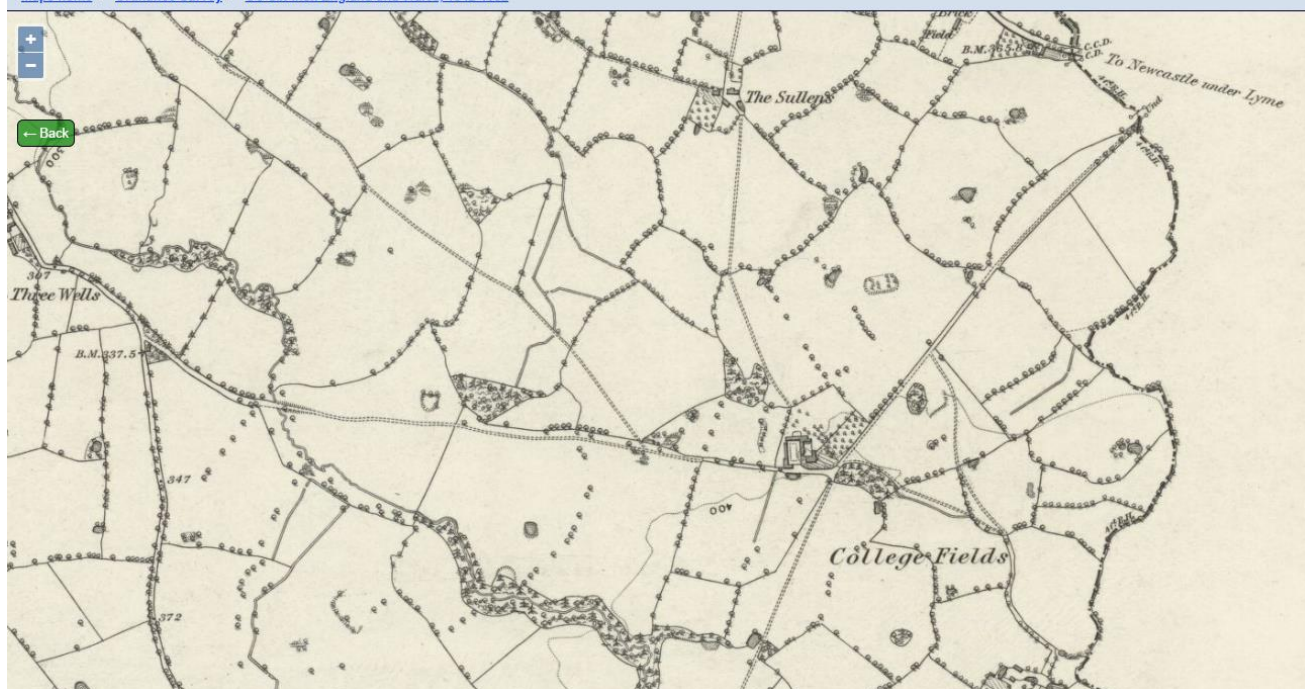
13. Ordnance Survey 6 inch Maps.

- a. Date. OS sheet Cheshire LXVI (inset LXVIII) was surveyed in 1875 and published in 1882 and Shropshire Sheet III.SE was surveyed in 1879 and published in 1888.
- 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/101593417> and <https://maps.nls.uk/view/102341146>.
- f. 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 "Other Roads".
- d. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.



Cheshire Sheet LXVI (inset LXVIII)
 Surveyed: 1875, Published: 1882
 Size: map 61 x 92 cm (ca. 24 x 36 inches), on sheet ca. 70 x 100 cm (28 x 40 inches)

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

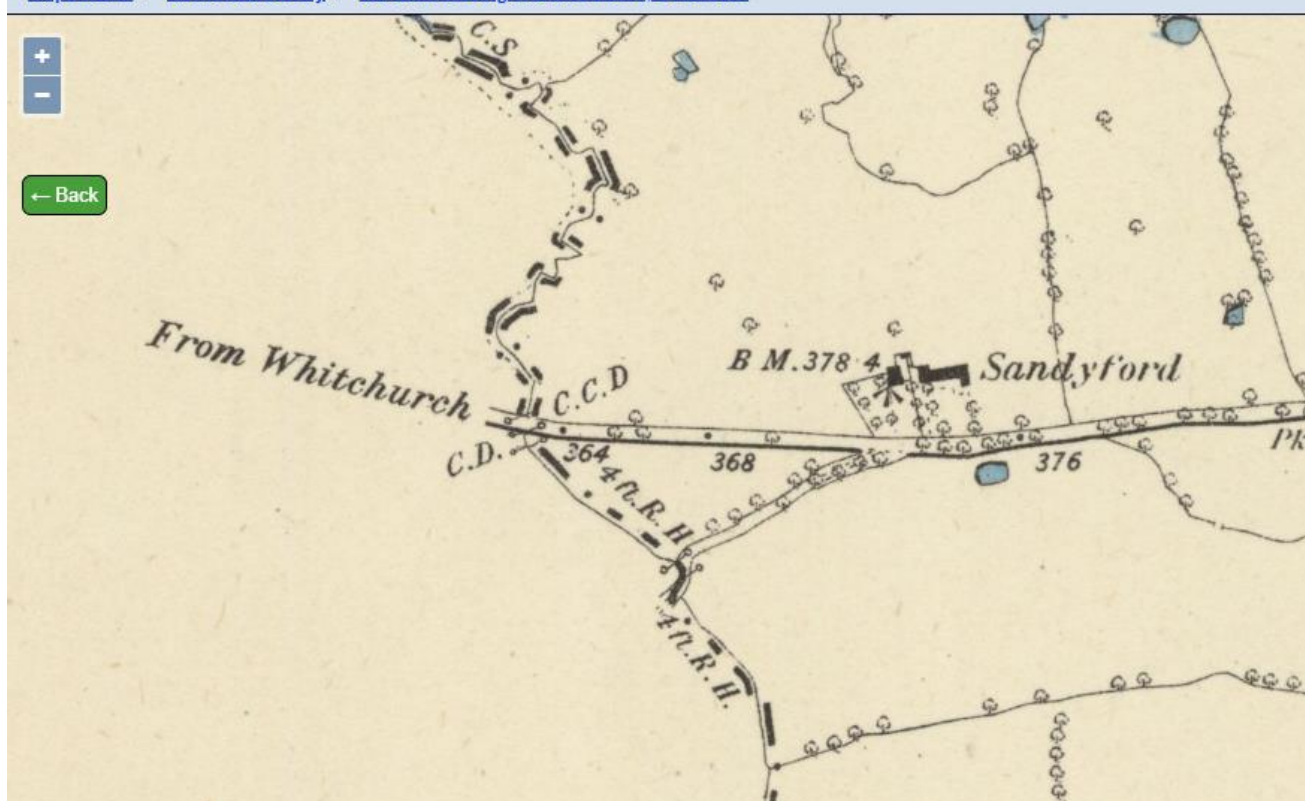


Extract from OS 6" Map

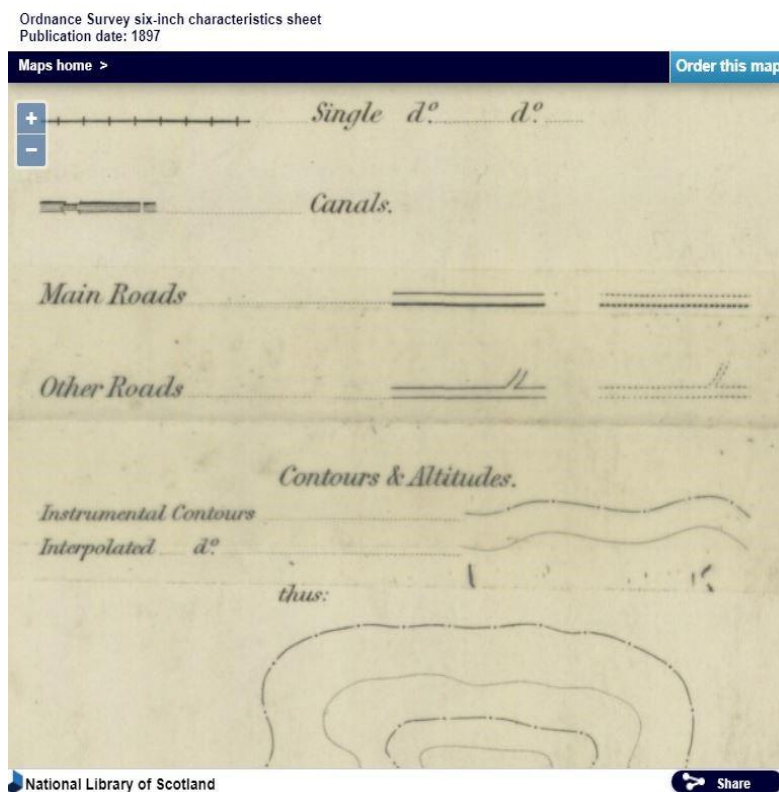


Shropshire Sheet III.SE
 Surveyed: 1879, Published: 1888
 Size: map 31 x 46 cm (ca. 12 x 18 inches), on sheet ca. 43 x 58 cm (ca. 17 x 23 inches)

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



Extract from OS 6" Map



Extract from Key to OS 6" Map

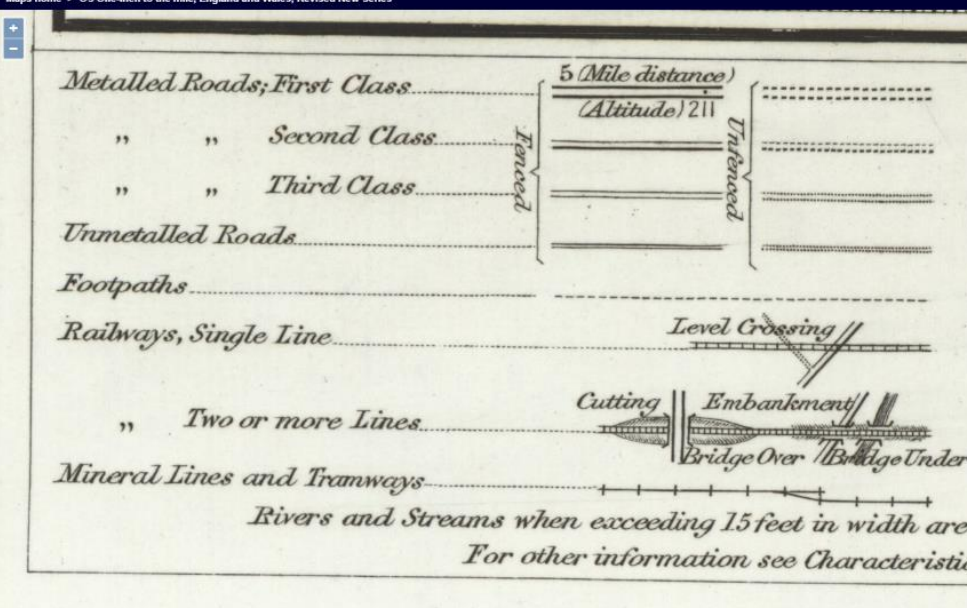
14. Ordnance Survey 1 inch Maps.
- Date. OS sheet 123 Stoke upon Trent was published in 1889.
 - Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them.
 - Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/239763796>.
 - Meaning. The route is shown as "Unmetalled Road".
 - Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.

[Maps home](#) > [Ordnance Survey](#) > [One-Inch, England and Wales, Engraved Maps, 1872-1914](#)



Extract from OS 1" Map

[Maps home](#) > [OS One-Inch to the mile, England and Wales, Revised New Series](#)



Extract from Key to OS 1" Map

15. Bartholomew's Half-Inch Maps

- a. Date. Bartholomew's Sheet 12 Cheshire was published in 1902.
- 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. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131047>.
- d. Meaning. The application route is shown as an 'inferior' road from A-B. That is, according to the key, a road which 'is not to be recommended to cyclists'.
- e. Assessment.

- (1) Although the map carries the standard disclaimer that the representation of a road or footpath is not 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 carriages 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 PNS 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] EWCH 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 categorised 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.

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

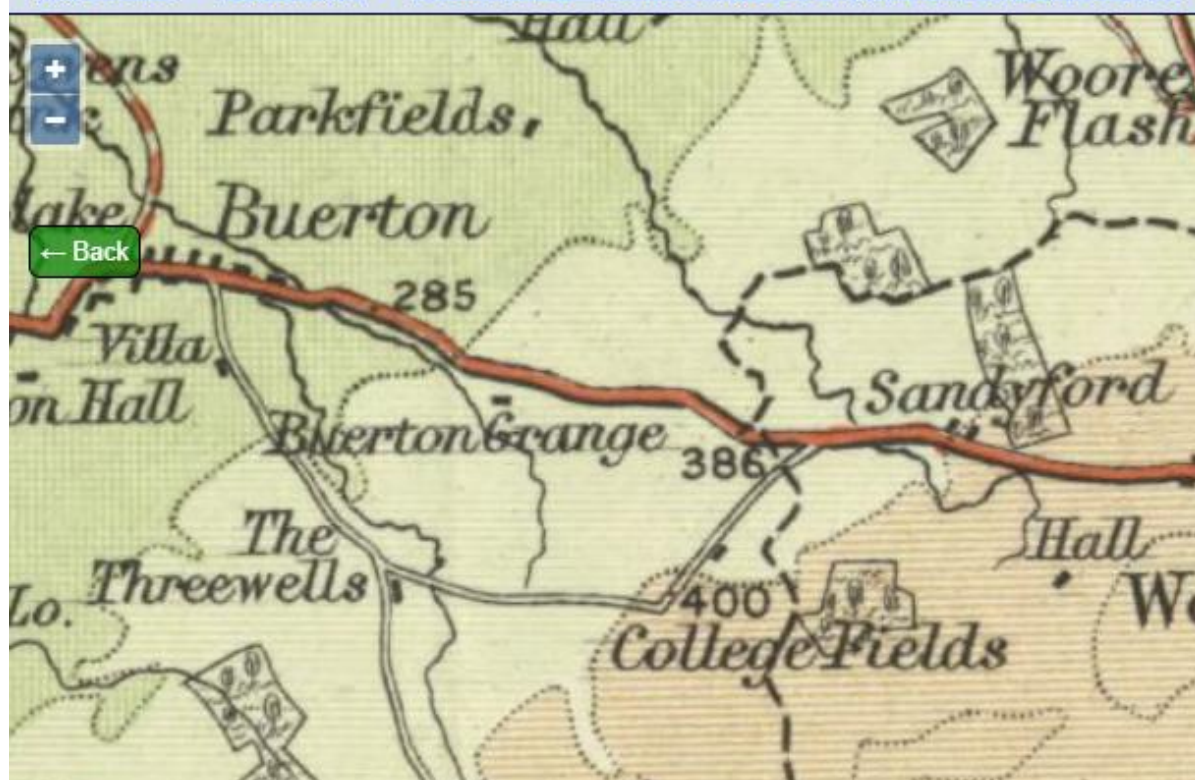


Sheet 12 - Cheshire

Publication date: 1902

Size: sheet ca. 56 x 77 cm (ca. 22 x 30 inches)

[Maps home](#) > [Series maps](#) > [Bartholomew "Half Inch Maps" of England and Wales, 1902-1906](#)



Extract from Bartholomew's Map

16. Ordnance Survey Outline Series

- a. Date. OS Sheet 33/64-A was published in 1948 and 33/74-A was published in 1948.
- 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/196757789> and <https://maps.nls.uk/view/207349982>.
 - b. Meaning. The route is shown as "Other Road" and "F.P.". the route is incorrectly recorded as a footpath, the depiction of 'F.P.' does not indicate that the has been a legal order to reduce the status of the route, only that at the time of survey the surveyor believed the route to be a footpath The depiction of 'F.P' suggests that the physical condition of the route has deteriorated over the intervening years from the maps that

shows the route as a vehicular highway. In the absence of any legal order reducing the status of the application route, this deterioration is only a physical matter. The change highlights the need to correctly record the status of the route on the definitive map.

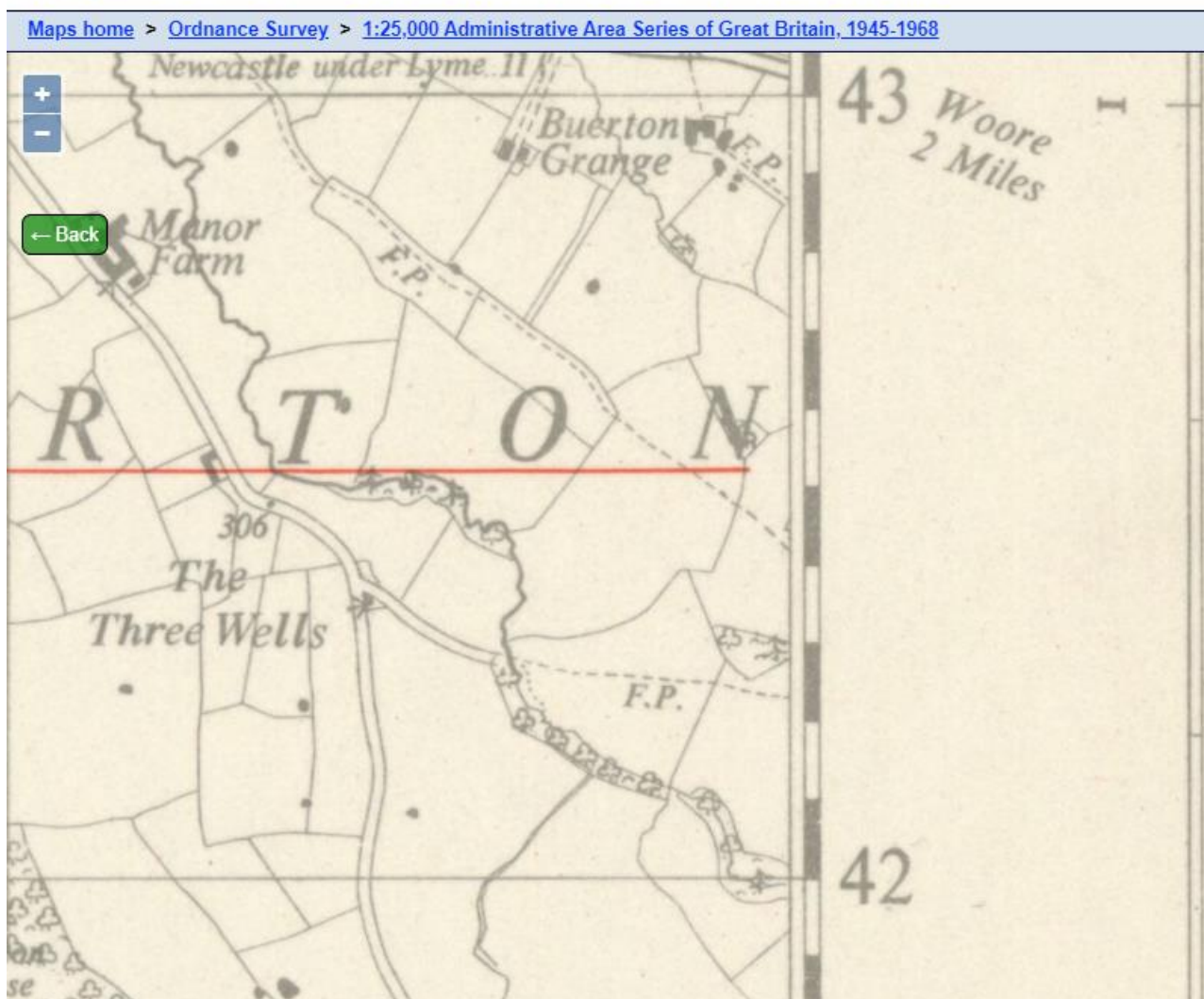
c. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route being a public vehicular carriageway.



33/64 - A

Originally published: 1948; Boundaries: 01/03/1948

Size: map 40 x 40 cm (16 x 16 inches), on sheet ca. 62 x 49 cm (ca. 24 x 20 inches)



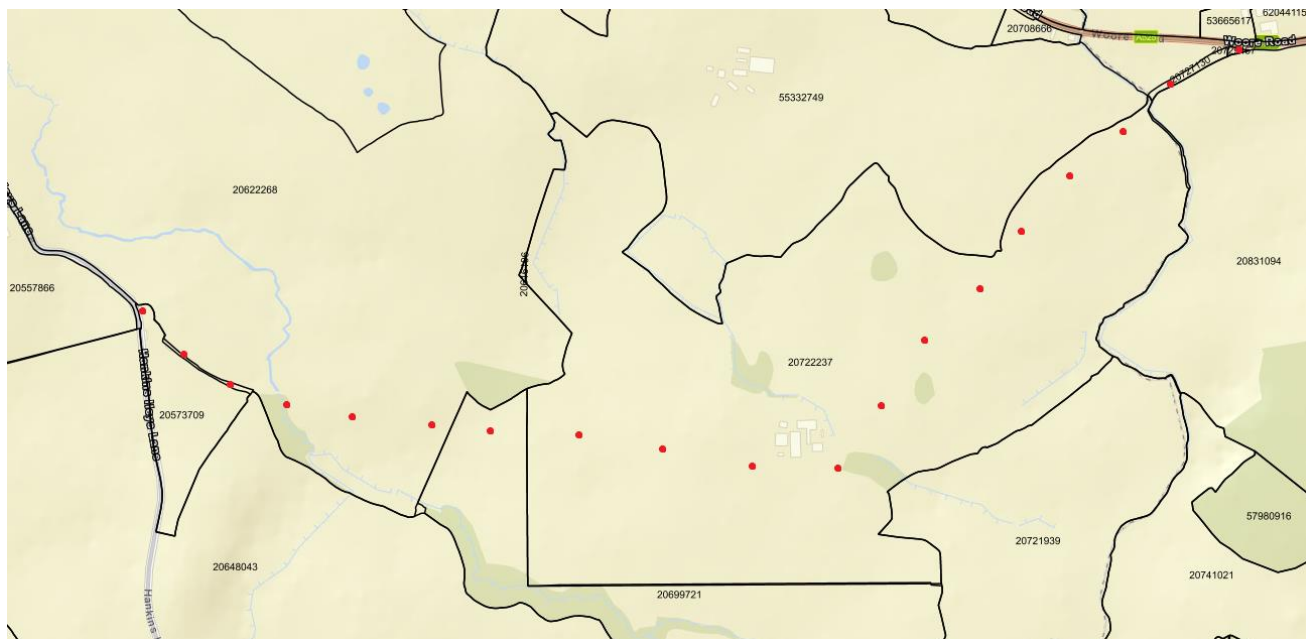
Extract from OS Outline Edition Map



Extract from OS Outline Edition Map

17. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 14th June 2023.
- 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://www.landregistry-uk.com/map-search>. 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, within several land holdings.
- e. Assessment. This information is given purely to show that the landowners have been identified for the purpose of serving notices.



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

CONCLUSIONS

18. 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.
19. Each piece of evidence presented is either evidence of reputation of vehicular highway rights, or consistent with there being either bridleway or vehicular rights, or indicates that a civil servant thought that there were bridleway or 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, the application will be made for bridleway status with an acknowledgement that the surveying authority should make an order for Restricted Byway status if they consider that merited.

Name: Charlotte Ditchburn

Position: Access Field Officer

Organisation: British Horse Society