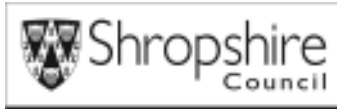


Data Protection: Please note that this information may be open to public examination



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

I/We Wendy Bannerman.....(Name of Applicant)

Of British Horse Society, Abbey Park, Stareton, Kenilworth.....(Address of Applicant)

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 **adding** the following right of way

Parish Moreton Say.....

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

* delete as appropriate

From Point A at OSGR SJ61723469, from the junction of the bridleway 0220/9/1 and footpath 0220/10/1.....

To Point B, at OSGR SJ61903474, linking with the unclassified road subject to a claim SH-126-007 (our ref SHR-0068).....(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:

Tithe 29 Shropshire 226 Moreton Say 1840; OS 25 inch XV.3 (1881) and XV.4 (1880); OS six inch XV.NE (1884); OS one inch sheet 138 - Wem (1899); Finance Act 1910 IR 132/4/136 and IR 132/4/137; OS 1:25,000 33/63 (1949);

INSPIRE HM Land Registry
.....
.....

Dated 17 September.....2020...

Signed W.Banner..... PRINT
NAME Wendy Bannerman.....

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

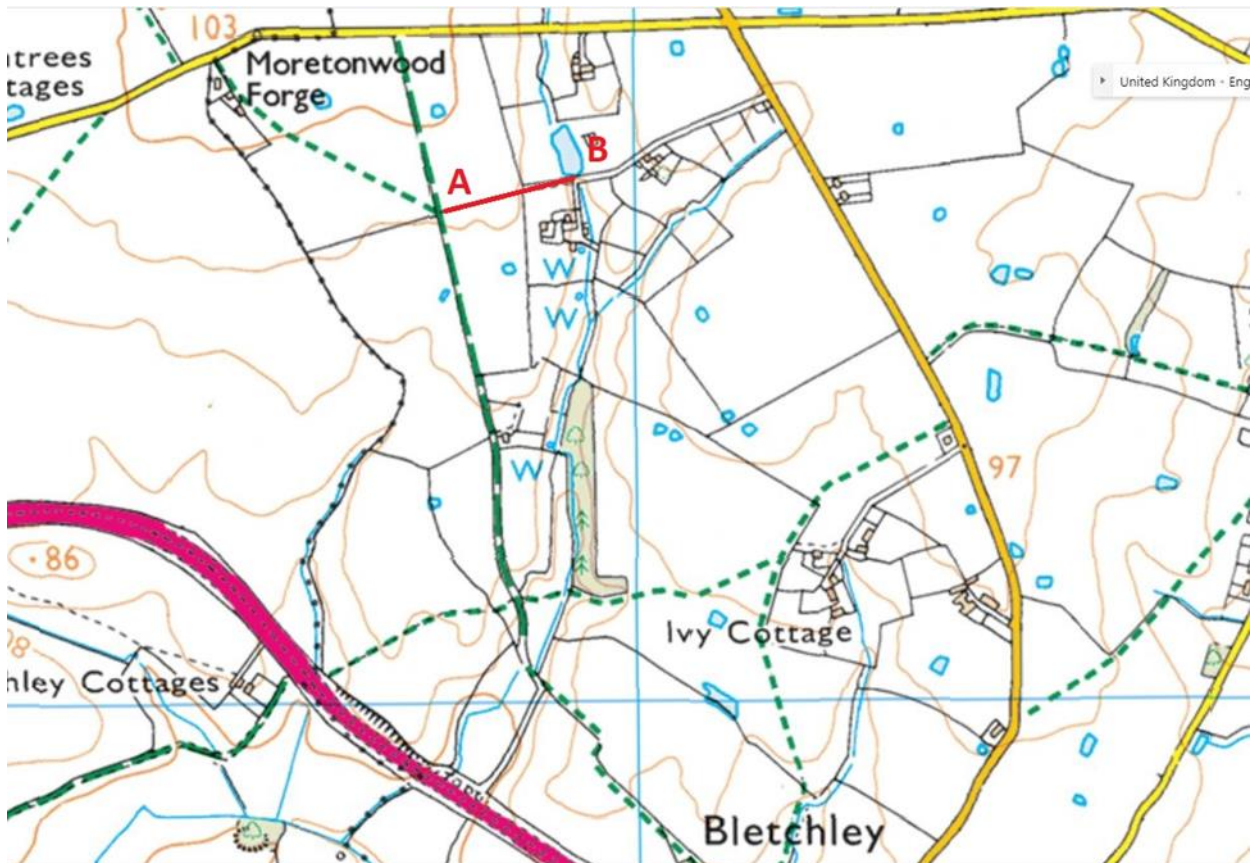
Wildlife and Countryside Act 1981

**Map to Accompany
Definitive Map Modification Order Application**

**For the addition of a Bridleway in the Parish of Moreton Say as marked on the
map extract below by the red line A-B**

Applicant's Reference: SHR-0104

17 September 2020



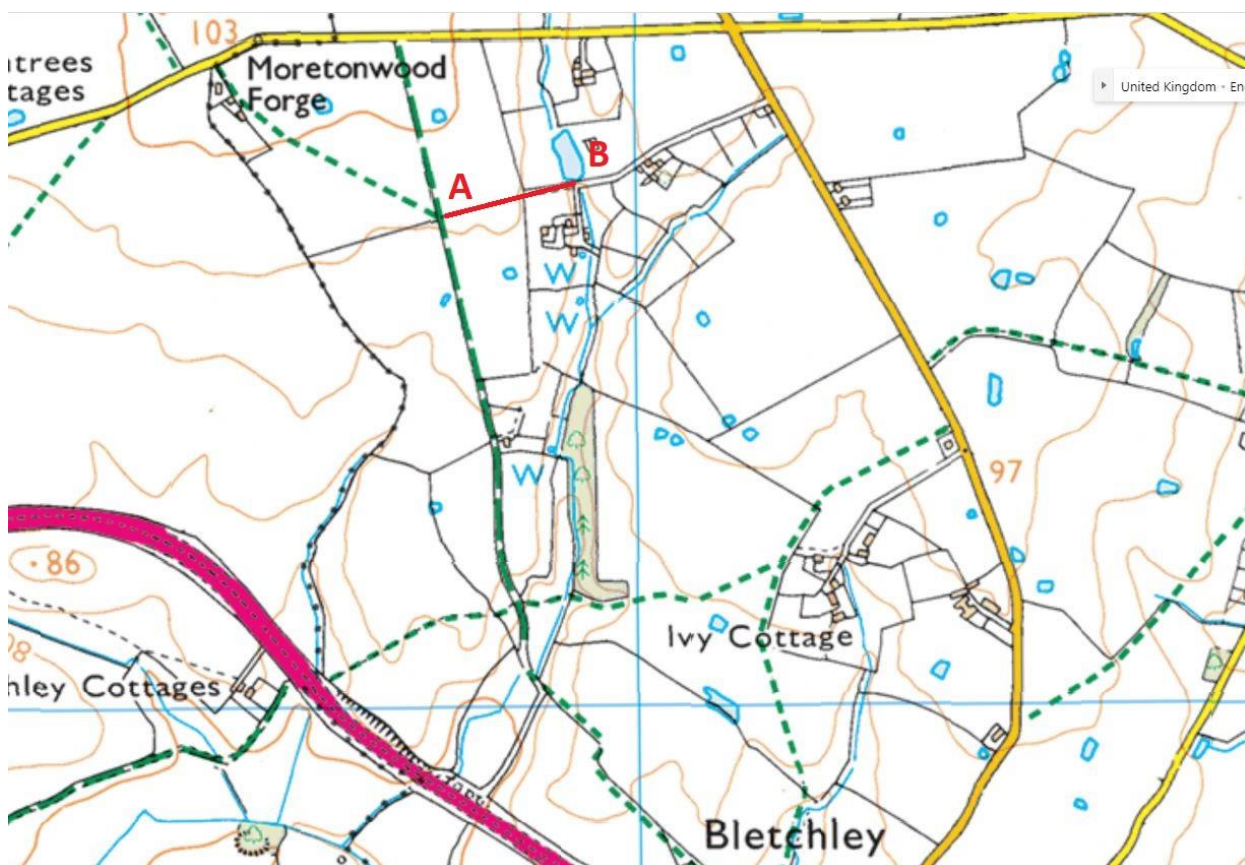
Maps produced from extracts of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Wildlife and Countryside Act 1981

Summary of Evidence

Definitive Map Modification Order Application

For a route in the Parish of Moreton Say to be shown as a Bridleway marked on the map below by the red A-B



Extract from Ordnance Survey 1:25000
Applicant's Reference: SHR-0104

17 September 2020

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

Grid references of ends of route SJ61723469 to SJ61903474
(approximate)

1. My name is Wendy Bannerman. I am the applicant for the order, for and on behalf of the British Horse Society (BHS). I am employed by the BHS as an Access Field Officer for the East and West Midlands with a key objective to support and progress Project 2026 in the region.
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 unrecorded on the Definitive Map and Statement and is shown approximately on the plan above:
 - a. Point A at OSGR SJ61723469, from the junction of the bridleway 0220/9/1 and footpath 0220/10/1
 - b. Point B, at OSGR SJ61903474, linking with the unclassified road subject to a claim SH-126-007 our ref SHR-0068)
5. The application route is not recorded on the Council's online interactive map
6. Photograph 1 is from Google.



Photograph 1 is a Google Aerial View with the route indicated with a red line. The route is approximate due to being obscured in places by the trees.

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

7. 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.

8. 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."

9. 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.

10. Tithe map and apportionment

a. Date The map was produced in 1840 (29 Shropshire 226 Moreton Say)

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 (s.2 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 road, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of 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 the tithe documents regarding the existence of public rights, and, in particular, public vehicular rights. In some cases highways are coloured sienna or light brown which typically indicates public status.

c. Archive and Reference The tithe map has been accessed via the Genealogist website: https://www.thegenealogist.co.uk/search/master/?type=person&source=&search_type=person&master_event=Tithe+%26+Landowner&person_event=&fn=&phonetic_mode_fn=1&sn=&phonetic_mode_sn=1&kw=prees&yr=&range=10&search=Search#loadwindow_906335153 (29 Shropshire 226 Moreton Say 1840)



Extract from Tithe map 29 Shropshire 226 Moreton Say (1840)



Close up of extract

d. Meaning The route is shown as a dotted and dashed line along the boundary for the land parcels it passes through 609 and 649. The route is not excluded from the hereditaments on the apportionment transcripts. The route is presented in the same way as the bridleway now known as 0220/9/1.

e. Assessment This provides useful information from which inferences may be drawn. The majority of the application route is shown in the same way on the map as other public highways in the area including the current bridleway 0220/9/1. This suggests the route has bridleway status.

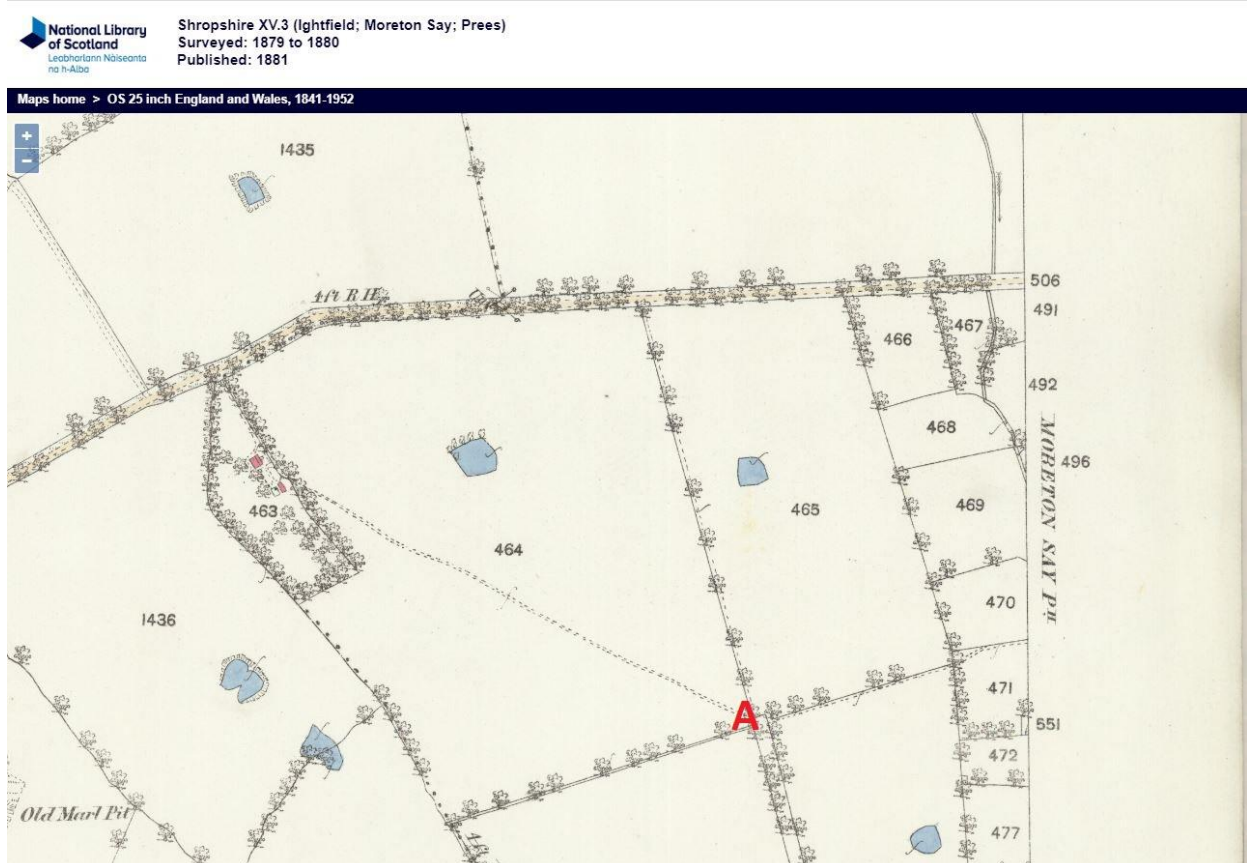
11. Ordnance Survey County Series 25 inch Maps.

a. Date. The First Editions of OS sheet Shropshire XV.3 was surveyed in 1879 to 1880 and published in 1881 and XV.4 was surveyed in 1879 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” (on some First Edition sheets). 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 extracts from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/121148498> and <https://maps.nls.uk/view/121148492>
- d. Meaning. The route is shown as a track presented with 2 dashed lines or a dashed line alongside the land parcel boundary. It connects with the bridleway route shown in the same way.
- e. Assessment. The appearance of the route is a sound inference that it was also considered to be part of that highway network. The showing of the route on the map is evidence of reputation and appearance at the time the documents were compiled.



Extract from OS 25 inch Shropshire XV.3 surveyed 1879 to 1880 published 1881

Maps home > OS 25 inch England and Wales, 1841-1952



Extract from OS 25 inch Shropshire XV.4 surveyed 1879 published 1880

12. Ordnance Survey 6 inch Maps.

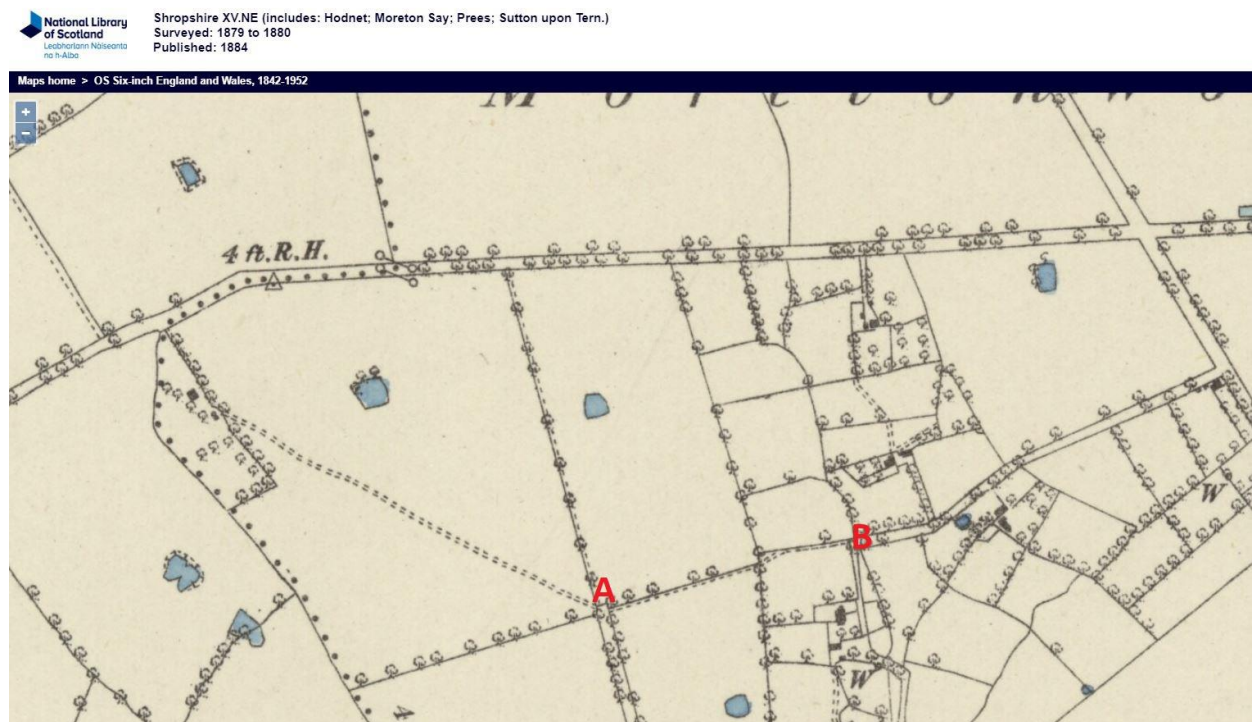
- a. Date. OS sheet Shropshire XV.NE surveyed 1879 to 1880 and published in 1884.
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently, they seldom show any topographical differences from the larger scale.

However, useful information can sometimes be derived from the particular conventions used to show detail.

c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101593750>

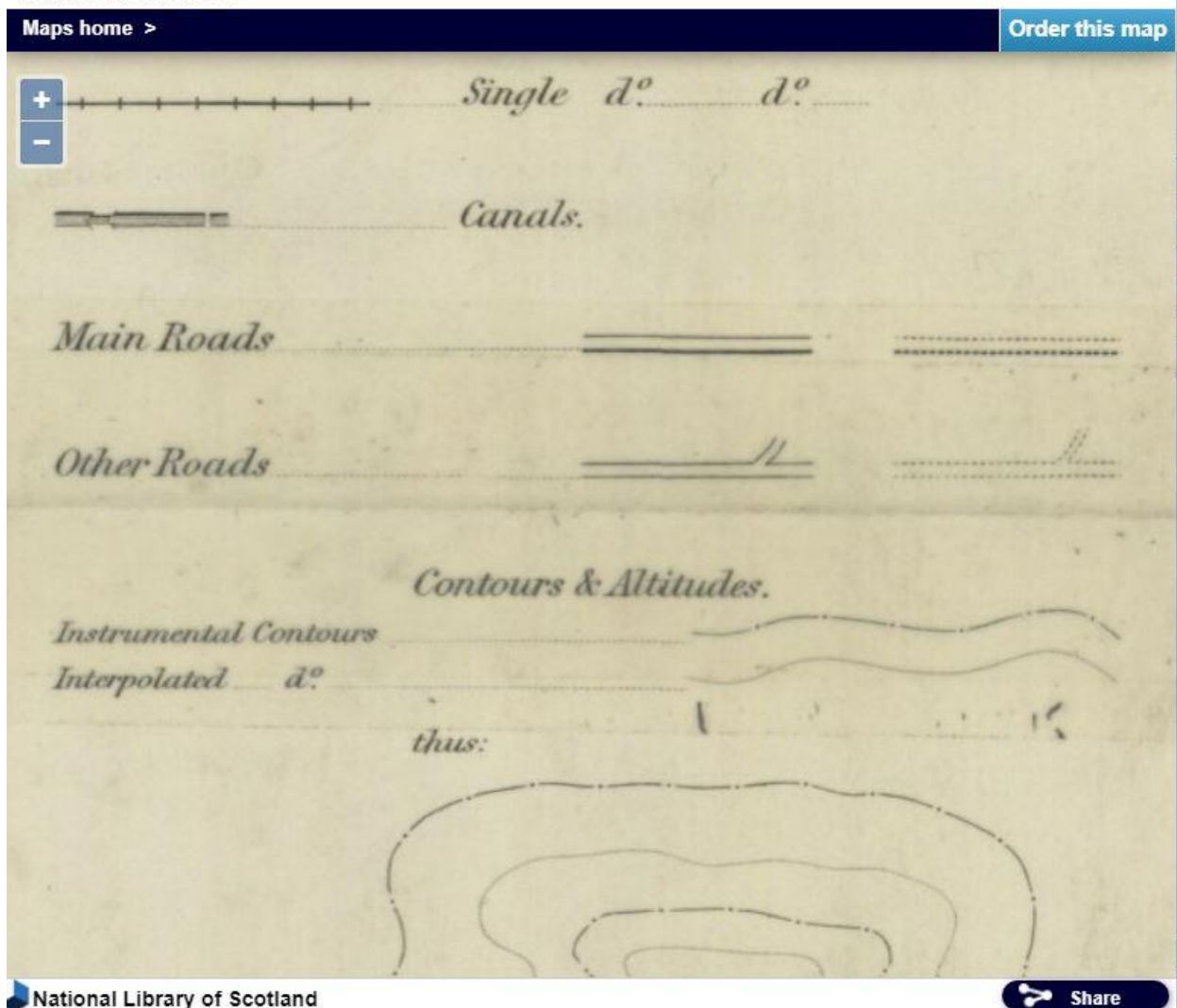
d. Meaning. The Characteristics Sheet for the 6" Maps differentiate between main and other roads through the use of a bold boundary on one side of a main road. The claimed route is shown as "Other Roads" with dashed lines.

e. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the road network.



Extract from OS Six-inch Shropshire XV.NE (1884)

Ordnance Survey six-inch characteristics sheet
 Publication date: 1897



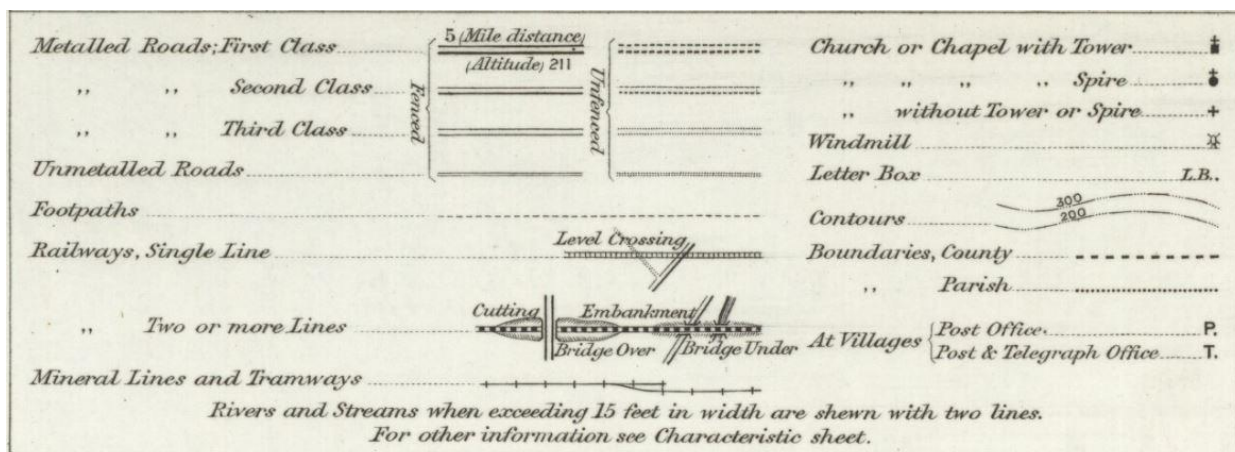
13. Ordnance Survey 1 inch Maps.

- Date. OS sheet 138 – Wem published 1899.
- Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the ground.

- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101167829>
- d. Meaning. The route is shown as “footpath”.
- e. Assessment. Other through routes shown in a similar manner are now largely part of the highways network. Footpaths was a term used to describe other routes which were not roads and it could therefore be inferred that a higher status of bridleway applies here.



Extract from OS 1" Map showing the application route as “footpath” with a single dashed line



Extract from Key to OS 1" Map

14. Inland Revenue Valuation / Finance Act 1910 Maps

- 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."

It is noted 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."

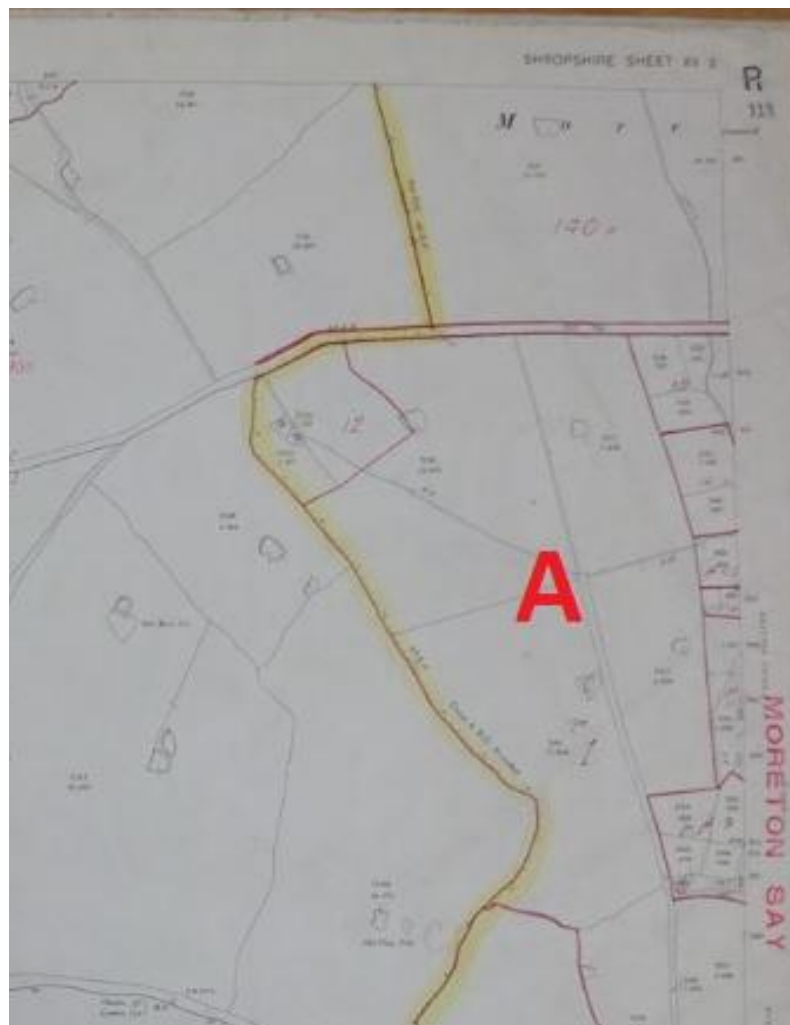
c. Archive. The extract below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives documents references are IR 132/4/136 and IR 132/4/137.

d. Meaning. The extract below clearly shows the application route linking to white roads to the south of the route in IR 132/4/136 and to the east of the route IR 132/4/137. The route appears to be represented in the map in the same way to the bridleway now known as 0220/9/1.

e. Assessment.

(1) The route is not a white road but the connection with the highway network suggests it is part of that highway network.

(2) There records provide some evidence that the claimed route was a public highway.



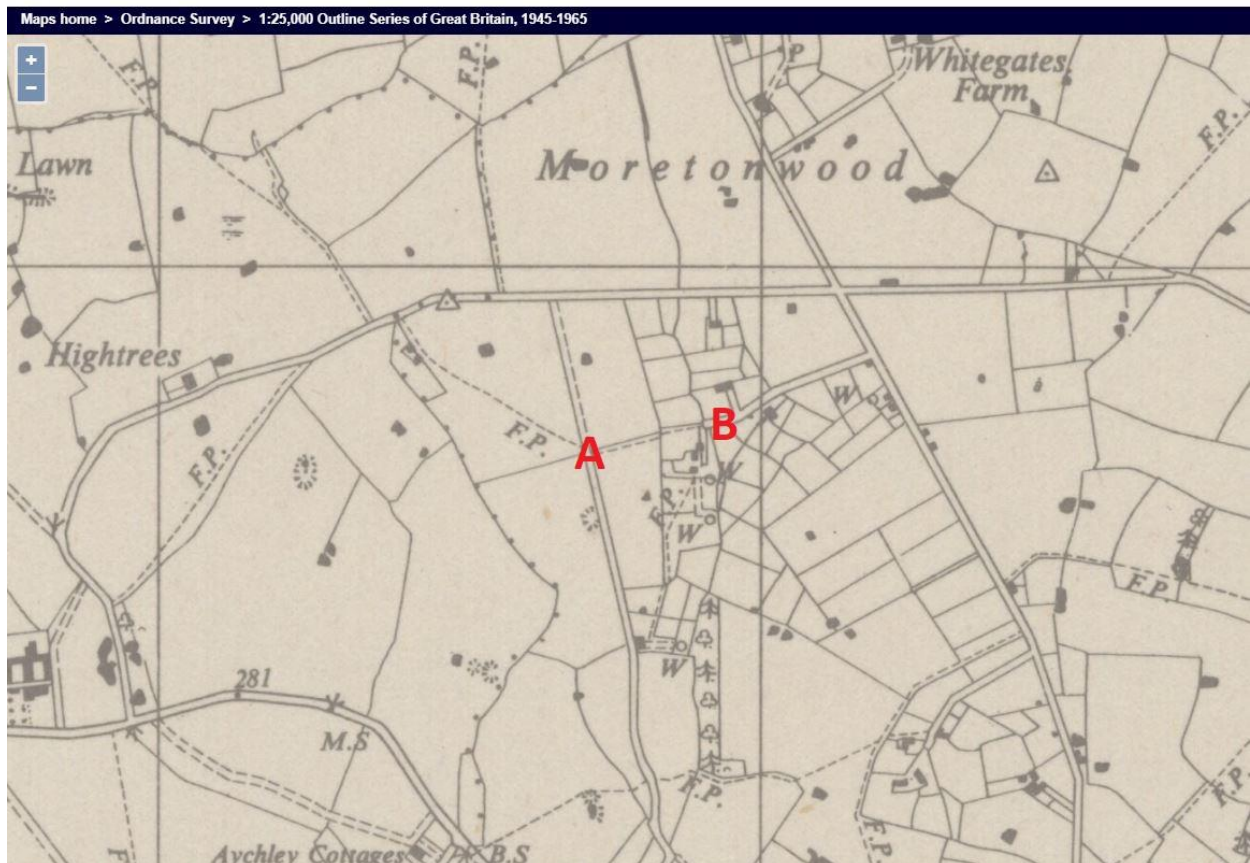
Extract from the Inland Revenue Valuation Map IR 132/4/136



Extract from the Inland Revenue Valuation Map IR 132/4/136

15. OS 1:25000

- a. Date This map 33/63 - A was published in 1949.
- b. Relevance This map was made for sale to the travelling to the public.
- c. Archive This map is available via the Library of Scotland site <https://maps.nls.uk/view/207349907>
- d. Meaning This map shows the application route partially as a 'Poor or unmetalled road'.
- e. Assessment The map shows the application route as part of the highway network. The map indicates that the route originally had public rights.



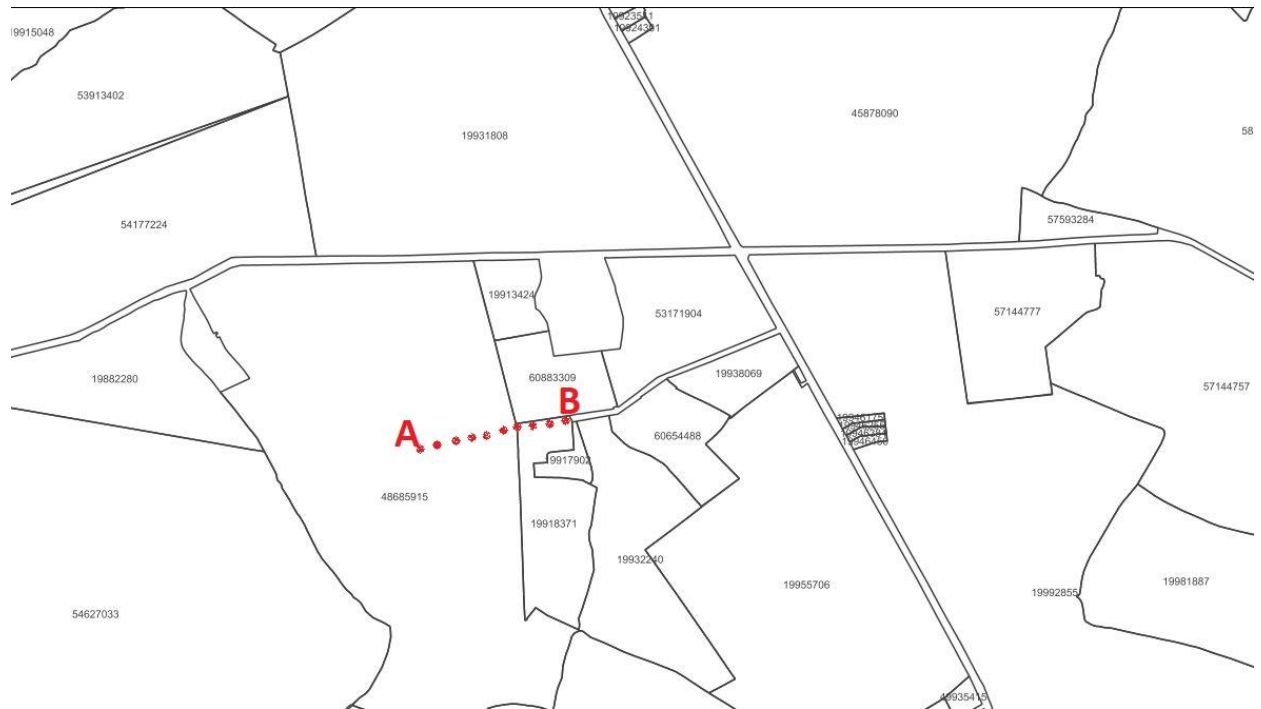
Extract from OS 1:25000 33/63 - A (1949)

Conventional Signs		
<i>Note:- Road fillings and numbers are shown in orange on the map.</i>		
<i>Motorway, Trunk and Main Road (Dual Carriageway)</i>	M 4 or A 6(M)	A 123 or A 123(T)
<i>Trunk & Main Road</i>	A 123 or A 123(T)	Fenced B 2314 Unfenced
<i>Secondary Road</i>	Fenced B 2314	Unfenced
<i>Road Under Construction</i>	=====	=====
<i>Other Roads</i>	Good, metalled	Poor, or unmetalled
<i>Footpaths</i>	FP Fenced	FP Unfenced

Extract of the index for 1:25000 First Series (Provisional Edition)

16. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 27 May 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/data/map-preview?e=1.74944&n=60.8433&s=49.9553&url=http%3A%2F%2Finspire.landregistry.gov.uk%2Finspire%2Fows%3FService%3DWMS%26Request%3DGetcapabilities&w=-8.17167> The extract below is taken from a screen shot taken by the Applicant on the date stated above.
- d. Meaning. The application route is not indicated on the map as is the case for other public rights of way in the vicinity of bridleway status.
- e. Assessment. Although the route is not distinct on the map, this does not rule out the route being in existence.



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

CONCLUSIONS

17. This document presents evidence from the last 180 years that consistently indicates that the application route was part of the highway 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.

18. Employing the well-established legal maxim ‘Once a highway always a highway’, in the absence of a stopping up order, it follows that highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

19. The applicant requests the surveying authority to add the route to the definitive map as a bridleway.

Date: 17 September 2020

Name: Wendy Bannerman

Position: Access Field Officer

Organisation: British Horse Society