

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
Stable Cottage
Of..... Arleston Hill
Telford
..... TF1 2JY

ON BEHALF OF (Name of Applicant)
THE BRITISH (Address of Applicant)
HORSE SOCIETY

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 upgrading the following right of
way

Parish..... BERRINGTON 0407 / 9 / 1
Status: Restricted Byway/Bridleway/Footpath\* 0414 / 10 / 1
No. (if known)..... 0407 / 2R / 1 AND 0407 / 1R / 1
0407 / 2R / 2

to a Byway Open to All Traffic/Bridleway/Footpath\* RESTRICTED BYWAY \* delete as
appropriate

From..... A458 ALONG ROMAN ROAD TO RIVER SEVERN
AND INCLUDING SPUR TO BROMPTON.

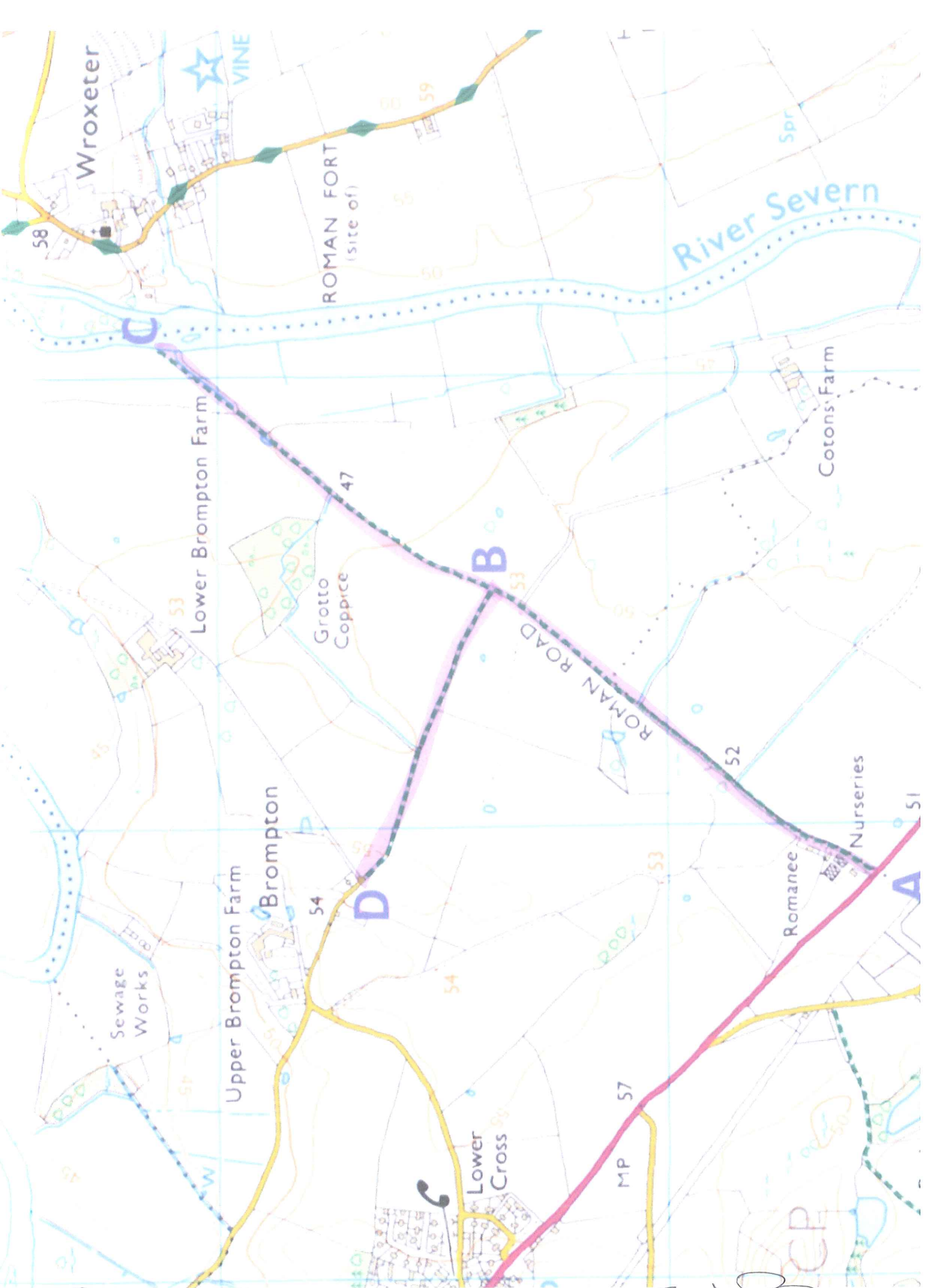
(Location of right of
way)

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:
FIRST EDITION OS MAP; BAUGH'S MAP; GREENWOOD'S MAP;
TITHE MAP; BARTHOLOMEW'S MAP; FINANCE ACT MAP; FURTHER OS MAPS.

Dated..... 22 MAY 2021

Signed [Signature] PRINT
NAME..... SALLY-ANNE ROBINSON



Scale 1:25,000

*Handwritten signature*

# Wildlife and Countryside Act 1981

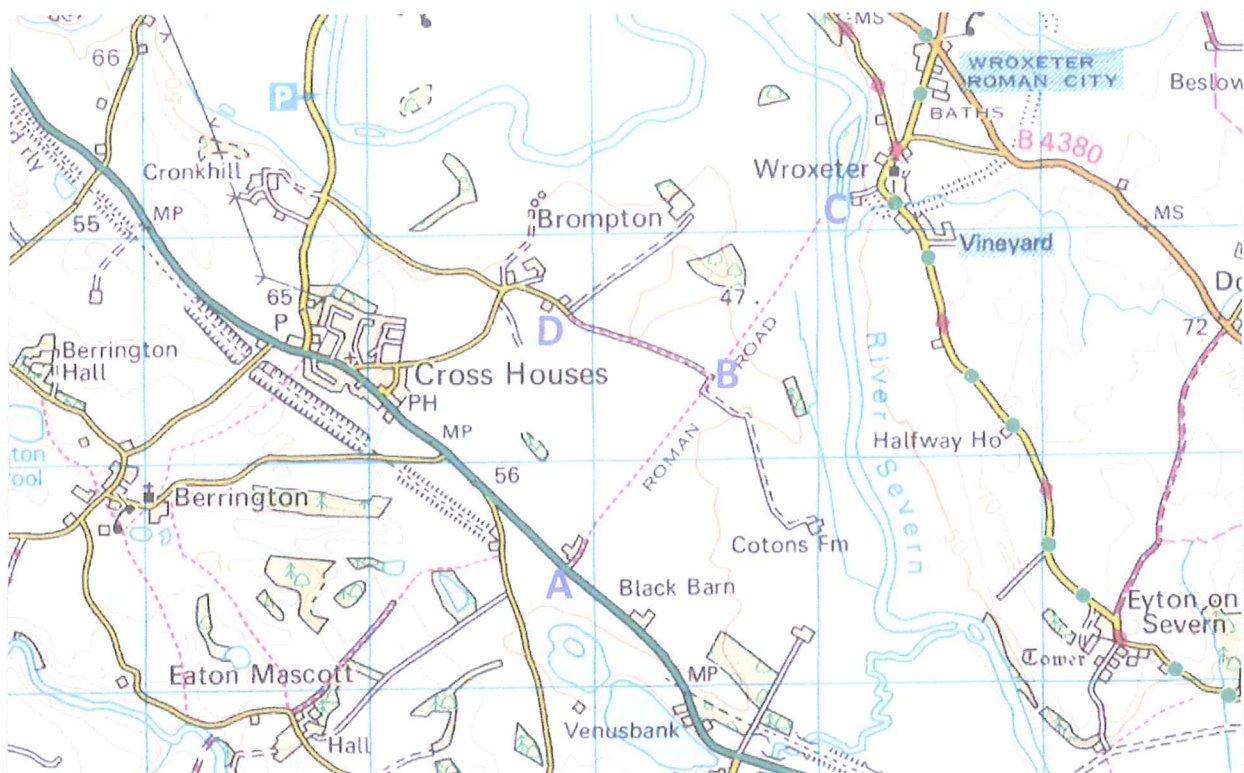
## Definitive Map Modification Order Application

Modification order to upgrade a way on the definitive map.

To claim for public use as a restricted byway the old Roman road running from the River Severn south of Wroxeter to the nurseries on the adopted road A458, and the adjoining spur to Brompton, in the Berrington Parish of Shropshire Council.

Applicant’s Reference: TBA2021 - 09

18<sup>th</sup> May 2021



Quick reference path facts to assist the Surveying Authority in its investigation		
OS County series map	Point A	SJ 54890 06541
	Point B	SJ 55525 07388
	Point C	SJ 56065 08121
	Point D	SJ 54887 07683

1. My name is Sally-Anne Robinson of Stable Cottage, Arleston Hill, Telford, TF1 2JY. I am the co-applicant for the order. I have ridden in the local area for over 40 years and 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 the local area for over 40 years.
2. This application is made because the path has been used historically by walkers, cyclists, horse riders, carriage drivers and motorised vehicles but is either not shown on the definitive map as a public right of way or has higher use rights. It provides a safe of off-road recreational route and access to the River Severn.
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.

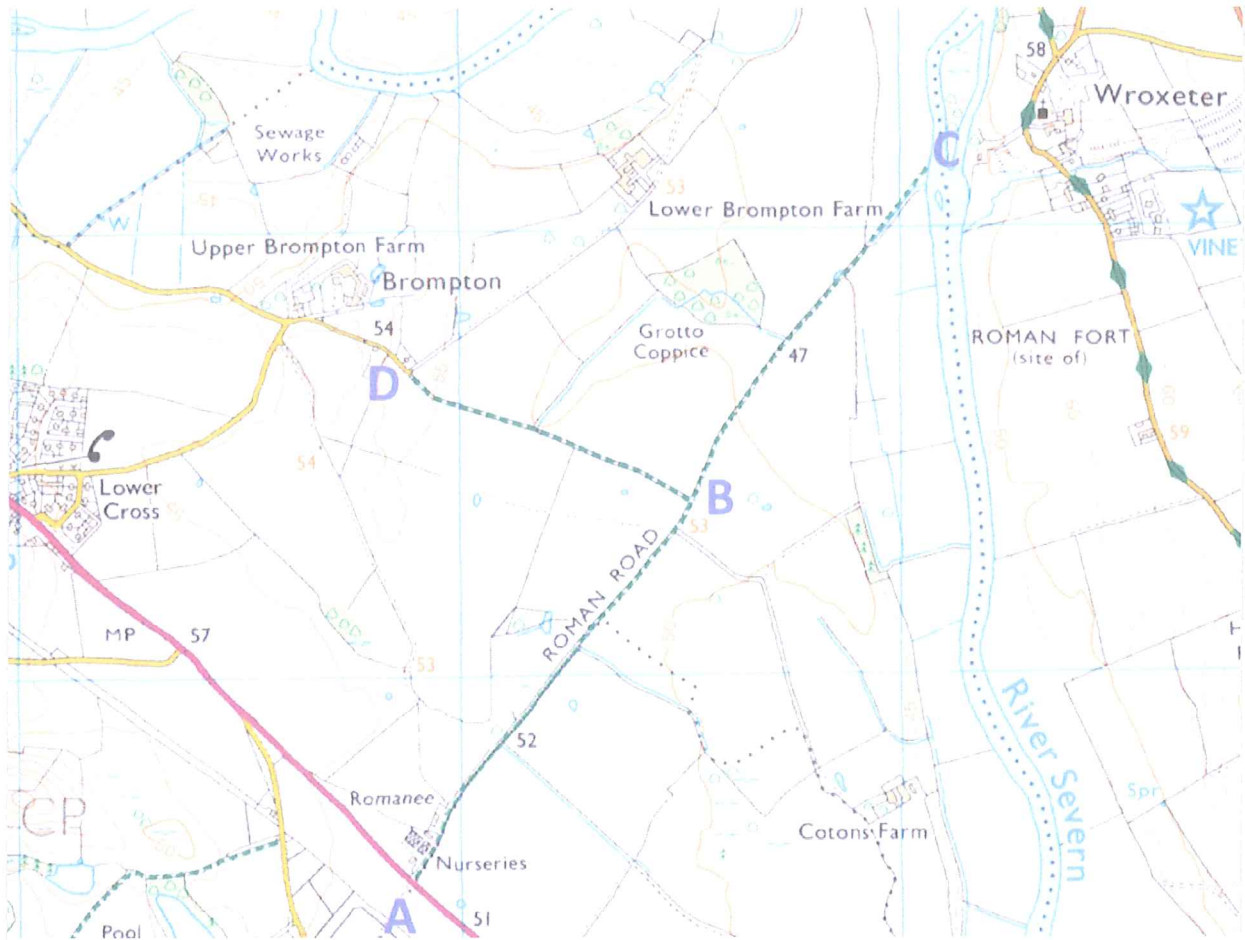
(4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.

(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, B, C and D in blue on the plan below:

- a. Point A is the start point of the application route where it joins with the adopted main road known as the A458 running between Cross Houses and Cressage and follows the line of the old Roman Road travelling towards Wroxeter.
- b. Point B is the mid point where the application route can continue towards the river or turn left towards Brompton.
- c. Point C is where the application route meets the River Severn at an old crossing point.
- d. Point D is the northerly end point where the application route joins with an adopted road from Brompton



*Ordnance Survey 2021 map extract showing the application route.*

6. The application route is currently shown on the OS map and definitive map of rights of way for Shropshire Council as a public footpath. Historical evidence will show that the application route should be classed as a restricted byway.
7. The photographs shown in in the following figures were downloaded from google maps / google earth in May 2021 and are included to help show the application route and its suitability as a public restricted byway in terms of access, width and ground surface.



*View at Point A of the application route facing towards the river at the junction with the adopted road known as the A458 running between Cross Houses and Cressage.*



*Google earth view of the application route travelling north from point D where it joins with the adopted road to the east of Brompton. The route is well established and there is evidence that it is used regularly by motorised vehicles.*



*A close up of the Google earth view of the application route at point D shows that the route is not currently way marked on the ground as a public footpath. In fact signs have been erected that deter the public from using the route stating that the road is private and that trespassers will be prosecuted.*





*Aerial view of the application route from point A travelling towards the River Severn. The application route can clearly still be seen as tree lined and of significant breadth.*

#### 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. Roman Road status

The application route from A through B to C is part of the original roman road known as Watling Street and would have been used by horse drawn vehicles during Roman times. The majority of old roman roads today have at least bridleway status.

#### 12. 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.

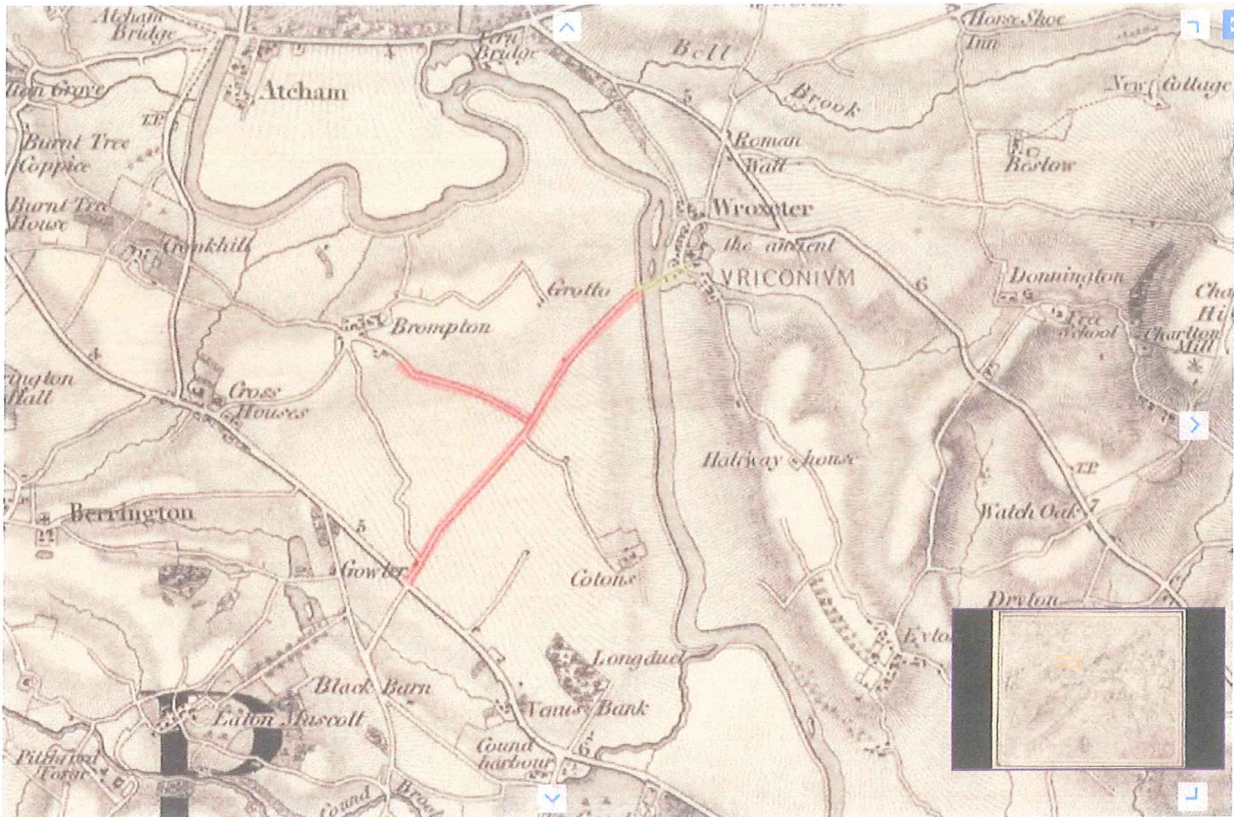
c. Archive. Copies of the first edition Ordnance Survey 6" maps are held by the British Library. An online version is available from The National Library of Australia. Source: <http://nla.gov.au/nla.obj-231924195/view>.

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 Wroxeter, crosses the River Severn, and continues south-west.

(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 61 showing the whole of the application route marked in red for ease of identification. It clearly has highway status and is depicted in the same way as roads which today are adopted.*

### 13. Robert Baugh's Map of Shropshire 1808

- a. Date. This map was produced in 1808.
- b. Rationale. Baugh was an engraver and map-maker from Montgomeryshire, who was awarded a prize by the Royal Society of Arts for this map, which was an early example of vertical mapping. It contains a large amount of information and must have been invaluable for local authority and church administration. In the top right hand corner the map states: "To the Right Honourable Edward, Earl of Powis. This map of Shropshire is humbly and respectfully dedicated by his Lordship's dedicated and obedient servant Robert Baugh." In 1804 Edward Clive, 2nd Baron Clive, was made Earl of Powis, in the County of Montgomeryshire. He had previously represented Ludlow in the House of Commons and served as Lord Lieutenant of Shropshire and Montgomeryshire. The need for an accurate account of the Shropshire countryside and road system would therefore have been of paramount importance for the Earl. The map was later published and made available for sale to the public and reprints are still available to purchase from the Shropshire Archeological Society. It is catalogued as showing the following: The county boundary is bold, marked by dots and dashes, the hundreds' boundaries are pecked. The diocese boundaries are depicted as ooooo. The relief is shown by hachuring, with a south-east light source, so that valleys and ridges can be clearly differentiated. Rivers and streams are drawn with differing widths and the scale allows ample room for labels. Settlements are graded from farmhouses (marked with a square dot) through villages (marked with separate signs for rectories, vicarages and chapels) to towns with a mapped layout.

Castles, abbeys, coal-pits and limekilns are named. Roads are shown by parallel lines; turnpikes are differentiated by one bold side and milestones and tollgates are also marked. Canals are shown as solid lines, with locks and named inclined planes. Gentlemen's residences are depicted as are the estate boundaries.

c. Archive. This map extract is photograph taken of the map held at the Shropshire Archives. The map was produced at a scale of 1" to 1 mile. An original copy is available to view in the Shropshire Archives (available in 9 sheets) ref: CM/2/40/1.

d. Meaning. The application route, circled in red on the Baugh's map extract, is shown to be a highway junctioning with, and having the same status as, other major road systems and has with significant width and boundary.

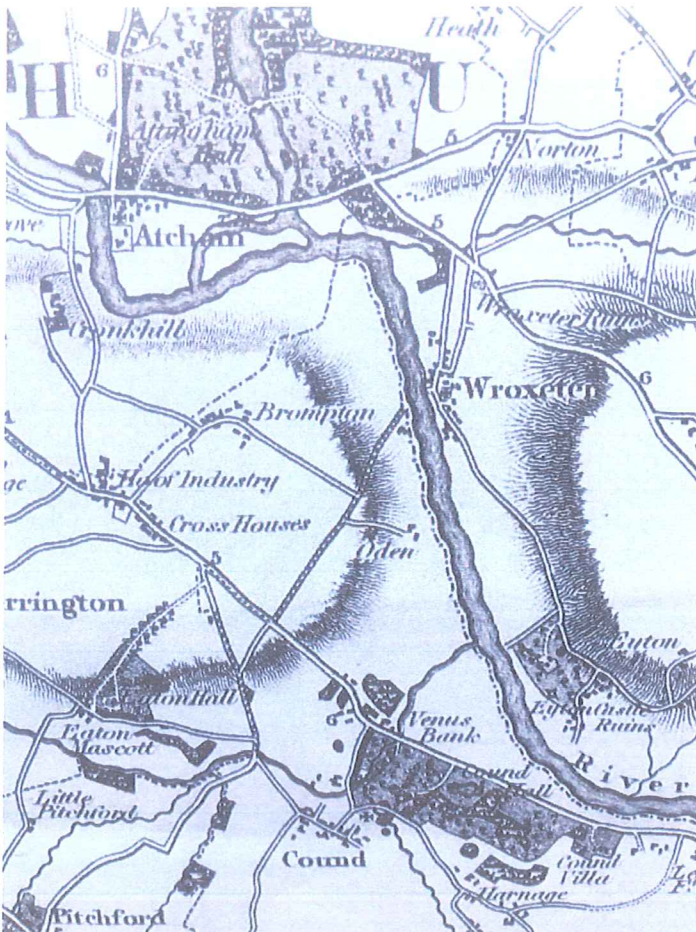
e. Assessment. This is evidence in favour of the proposition that the application route was considered to be a significant feature as it junctions with major roads are depicted on the map.



*Extract from Baugh's map showing the whole of the application route existing as a feature and junctions with major highways as shown by the red circle.*

14. 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 depicted in the same way as adjoining adopted roads and as having same status as the current day A458.*

15. Tithe map for the Township of Brompton in the Parish of Berrington 1844

a. Date. The apportionment and map was produced in 1844 for the Township of Brompton in the Parish of Berrington.

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.

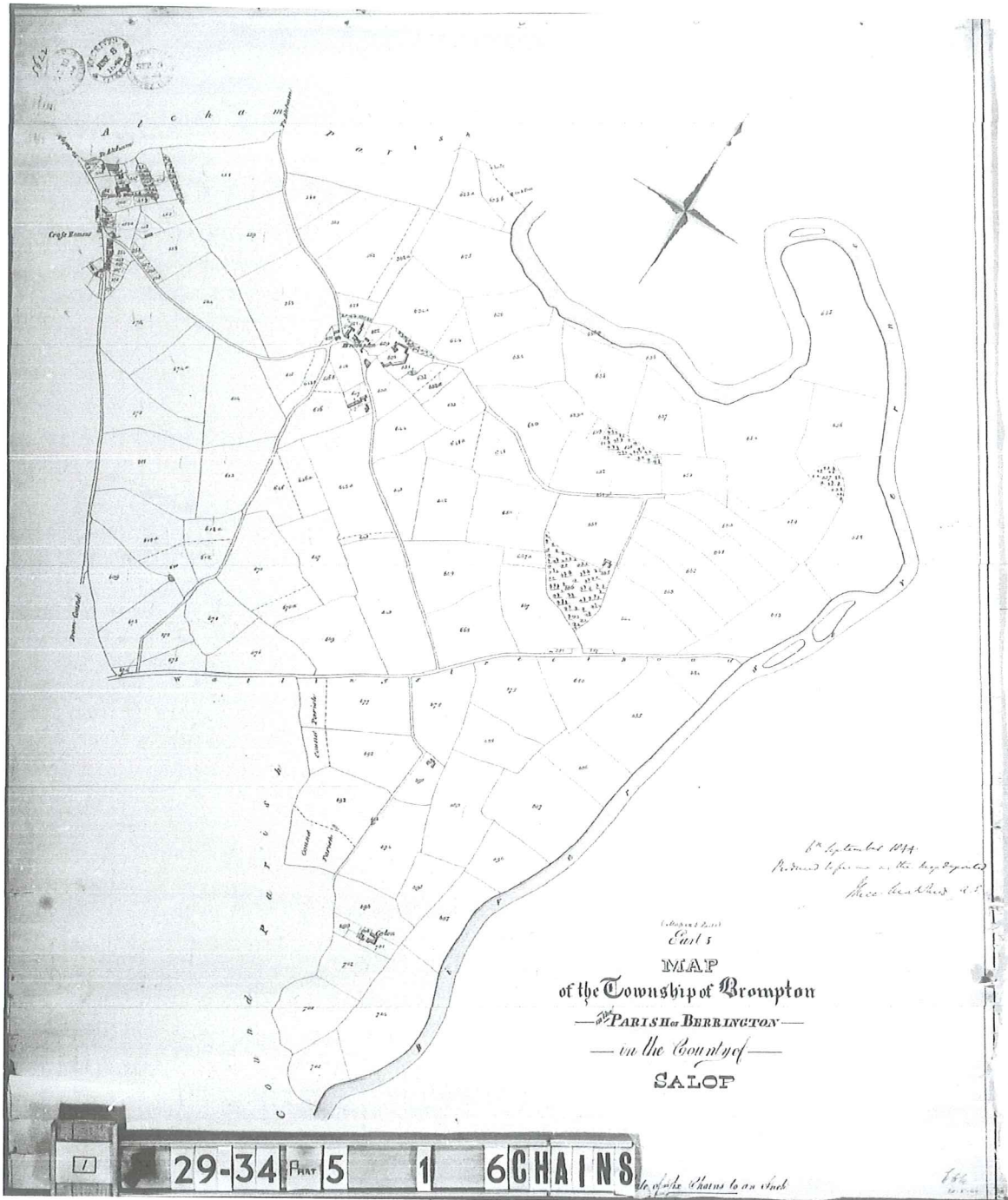
(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe 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. It is described as "Watling Street" road.

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. It is labelled "Watling Street road". This depiction is consistent with the application route being a public vehicular highway at the time of the assessments.



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The Township of Brompton in the Parish of Berrington tithe map of 1844 downloaded from The Genealogist. Note the direction of north.

16. 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 1881 and published in 1887 (sheet Shropshire XLII.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) Benchmarking appears along the length of the application route suggesting that it was a recognised and publicly travelled route.

(4) It is clearly marked as "Watling Street (Roman Road)."

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

(6) At point C it is labelled "Ford" to cross the river Severn showing that it was a recognised through route.

e. Assessment. The showing of the land as being a distinctive road with the recording of boundaries, benchmarking 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 XLII.NW.) published 1887. The application route is marked as Watling Street (ROMAN ROAD). Source: National Library of Scotland.*



*Enlargement of extract from the Ordnance Survey first edition 6" map of the area (sheet Shropshire XLII.NWSE.) published 1887 showing that a ford crossing the river is clearly shown at point C showing that it was a through route.*

17. 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](http://maps.nls.uk/series/bart_half_england.html).
- d. Meaning. The main part of the application route is shown as an '*indifferent*' road. It is not classified as a route suitable for cyclists but is shown to have a higher status than bridleway or footpath.
- e. Assessment.

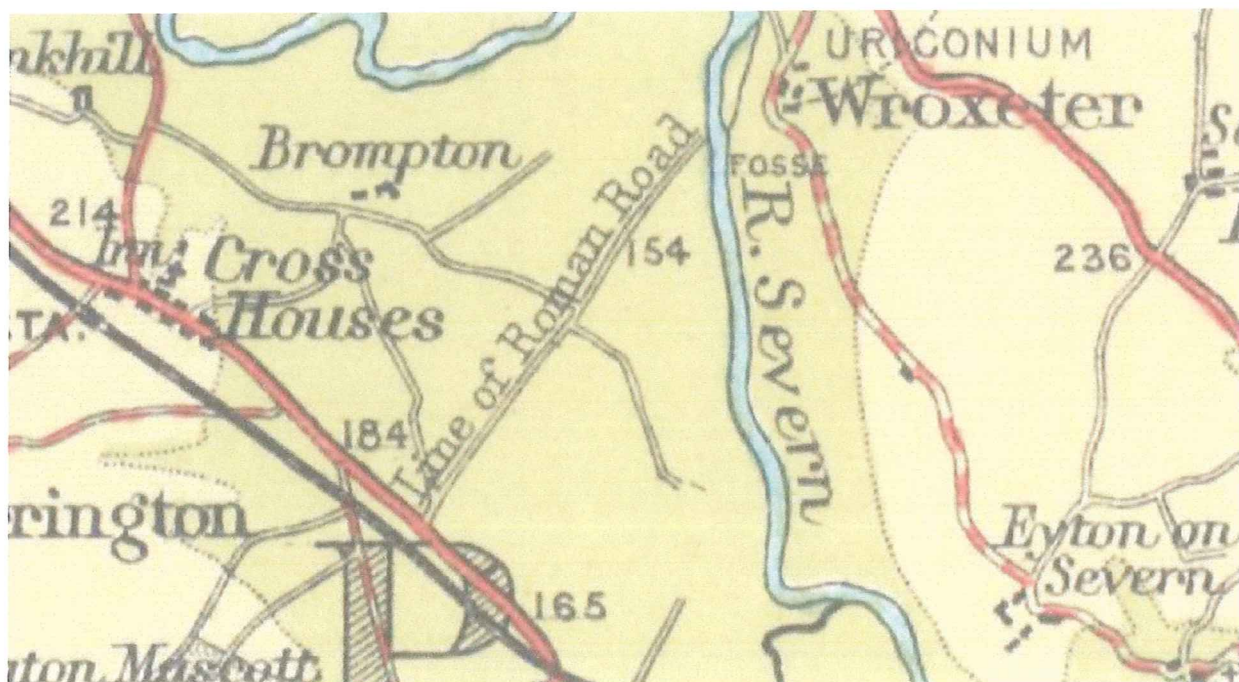
(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was

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 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.

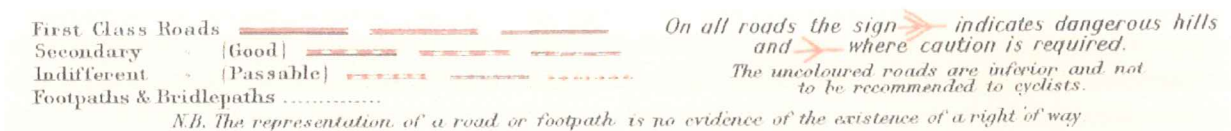
(2) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

"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 part of the application route as a 'indifferent (passable)' road but not recommended to cyclists.*



*Extract from Bartholomew's Map showing the Key*

## 18. 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.

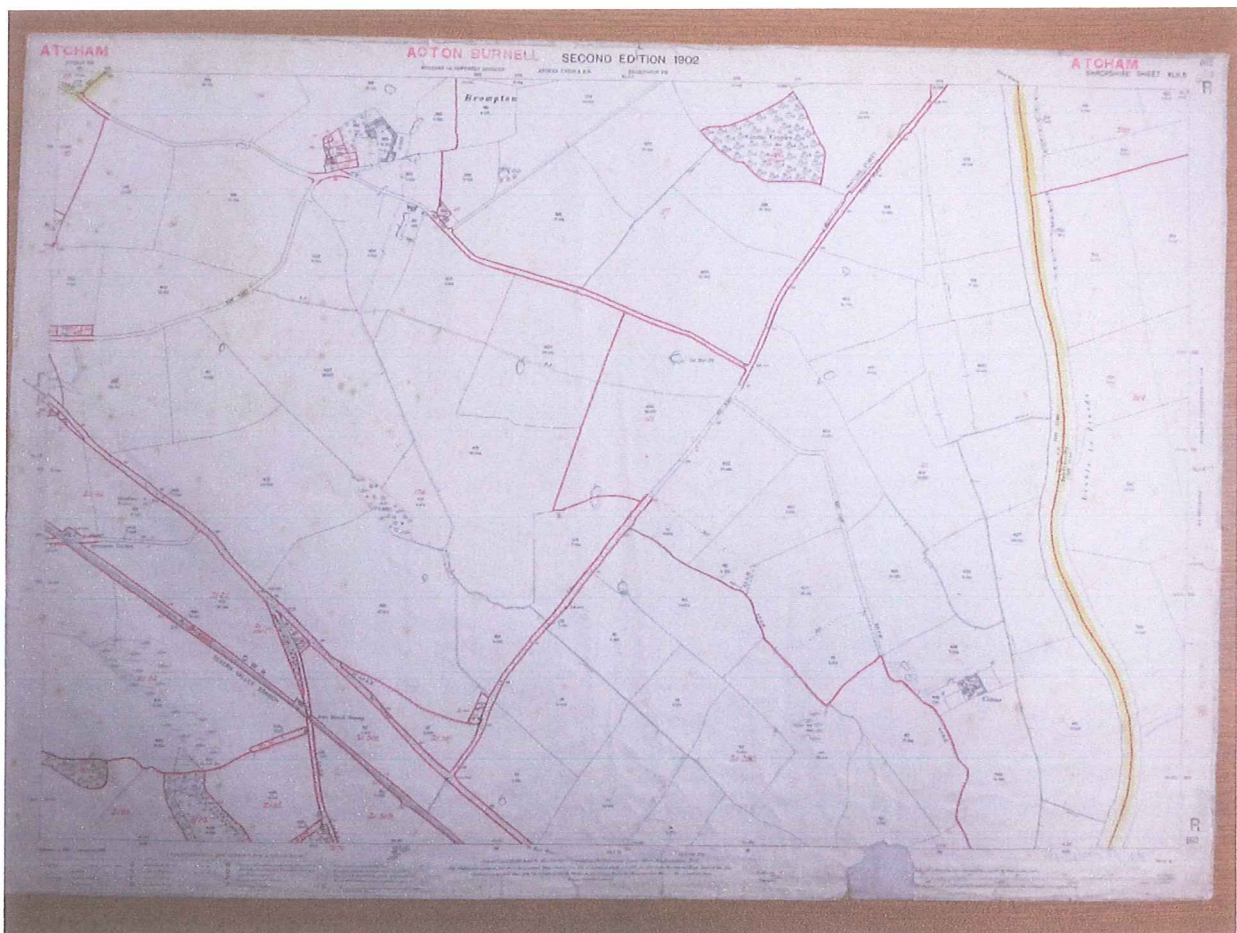
- c. Archive. The picture of the map below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 132/4/481.

d. Meaning. The map below clearly shows the application route as a white continuous road. The majority of the route is shown as separate from the adjoining hereditaments and no tax assessed. A small part of the mid section mid section, where it is not depicted as a road, joins either end with parts that are depicted as roads and is this part of the route is part of a larger separate land parcel for tax evaluation 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 132/4/481.*

## 19. 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 Shrewsbury sheet (no 118) surveyed 1959 and published in 1961.
- 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	M1 or A6(M)
	" " " Trunk } Single & Dual	A5(T)
	" " " Class 1 } Carriageway	A45B
	" " " " 2	B4380
	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.





## CONCLUSIONS

21. 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*.

22. 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.

23. 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.

24. 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.

25. The applicants request the surveying authority to add the route being the total length of the roman road known as Watling Street, and its adjoining spur to Brompton, to the definitive map and statement as a public restricted byway 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

Jan Mees-Robinson

Bridleways Officer, Shropshire, British Driving Society (affiliated to The British Horse Society)