

FORM OF APPLICATION FOR MODIFICATION ORDER

Wildlife and Countryside Act 1981

Definitive Map and Statement of Public Rights of Way for the County of  
Cambridgeshire dated 11<sup>th</sup> May 2016

To: Cambridgeshire County Council, Asset Information Team, Highways Service,  
Box No. STA2101, Stanton Way Depot, Huntingdon, PE29 6PY

I / We British Horse Society.....

of Abbey Park, Stareton, Kenilworth 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:

[deleting the [footpath] [bridleway] [restricted byway] [byway open to all traffic] from

.....

to.....]

[adding the [footpath] [bridleway] [restricted byway] from.....

.....

to.....]

~~[[upgrading] [downgrading] to a [footpath] [bridleway] [restricted byway] the [footpath]~~

~~[bridleway] [restricted byway] [byway open to all traffic]~~

Little Thetford bridleway 1 off the Bedwell Hey Lane opposite Ely Fields Farm at approximate grid reference TL 5216 7748 going south west  
from .along Little Thetford footpath 2 past Bedwell Hey Farm .....

to.....  
dead end of Little Thetford footpath 2 at approximate grid reference TL 5196 7684  
.....]

[[varying] [adding to] the particulars relating to the [footpath] [bridleway] [byway open  
to all traffic] from.....

to.....

by providing that.....]

and shown on the map accompanying this application.

I / We attach copies of the following documentary evidence (including statements of  
witnesses) in support of this application:

List of documents: (continue on reverse if necessary)

Tithe map 19 Cambridgeshire 029 Ely of 1843

Map 121 Cambridge University library "Ely Saint Mary. Spade Husbandry Allotments, Grunty Fen" created 1876

Map 142 Cambridge University library "A plan of the estates of the late Mr. Henry Lawrence, in Ely, Stuntney, Coveney, near Downham, in Witchford,  
Witcham, and Wentworth, in the Isle of Ely" created 1867

Bartholomew map of Great Britain, Sheet 19 – Cambridge, Huntingdon published 1902

Signed:  ..... Dated: 25 September ..... 20<sup>21</sup>.....

Evidence continued

First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869. OS One Inch sheet 173 –Ely (Outline) published in  
1898. OS County Series Cambridgeshire XXX.1 and Cambridgeshire XXX.5 both published 1887. OS Six inch series Cambridgeshire XXV.NW published 1887  
OS 25k series 52/57 published circa 1949

# Cambridgeshire County Council

## PUBLIC RIGHTS OF WAY DOCUMENTARY EVIDENCE CHECKLIST Wildlife and Countryside Act 1981

To: Asset Information Team, Highways Service, Box STA2101, Cambridgeshire County Council, Stanton Way Depot, Huntingdon, PE29 6PY

### PATH DETAILS:

**PARISH:** Little Thetford **DISTRICT:** Cambridgeshire

**BELIEVED STATUS OF PATH:** ~~footpath~~ / ~~bridleway~~ / ~~restricted byway~~ / ~~byway open to all traffic~~ [delete as appropriate]

**DESCRIPTION OF PATH** [please indicate route on a map - 1:2500 scale if possible] Little Thetford bridleway 1 off the Bedwell Hey Lane opposite Ely Fields Farm at approximate grid reference TL 5216 7748 going south west along Little Thetford footpath 2 past Bedwell Hey Farm

**FROM:** \_\_\_\_\_

**TO:** dead end of Little Thetford footpath 2 at approximate grid reference TL 5196 7684

**I/We:** British Horse Society

**Of:** Abbey Park, Stareton, Kenilworth CV8 2XZ

have carried out research at the Cambridgeshire Archives and/or The National Archives and wish the following documents to be considered in support of my application:

Document	Tick	CRO/HRO/Nat Archives Reference if relevant
Inclosure Award and Map		
Tithe Apportionment and Map	YES	Genealogist website
Finance Act Maps		
Ordnance Survey Maps	YES	National Library of Australia & National Library of Scotland
Railway/Canal Survey Maps and Schedules		
Estate Maps and Records	YES	Cambridge University Library
Quarter Session Rolls		
Sale Catalogues		
Highway Board Minute Books		
Photographs (aerial or otherwise)	YES	Google maps
Others [please state]		

**Signed:**  **Date:** 25 September 2021

# Definitive Map Modification Order Application

Parish: Little Thetford **Grid Reference:** TL521773

**Map of Path:** Route applied for is shown in RED DASHES on the map below starting from Little Thetford bridlway 1 off the Bedwell Hey Lane opposite Ely Fields Farm going south west along Little Thetford footpath 2 past Bedwell Hey Farm and to end at the dead end of footpath 2. The route is shown as a footpath on OS Maps and the online Definitive Map. The applicant does not yet have enough historic evidence to prove the continuation of the route towards Thetford Corner therefore the application is to upgrade the footpath to a bridlway.



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.

**Applicants Path Reference: CAM-0369**

# Wildlife and Countryside Act 1981 Summary of Evidence

## Definitive Map Modification Order Application

Parish: Little Thetford Grid Reference: TL521773

**Map of Path:** Route applied for is shown in RED DASHES on the map below starting from Little Thetford bridleyway 1 off the Bedwell Hey Lane opposite Ely Fields Farm going south west along Little Thetford footpath 2 past Bedwell Hey Farm and to end at the dead end of footpath 2. The route is shown as a footpath on OS Maps and the online Definitive Map. The applicant does not yet have enough historic evidence to prove the continuation of the route towards Thetford Corner therefore the application is to upgrade the footpath to a bridleyway.



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.

**Applicants Path Reference: CAM-0369**

## **Description of Path:**

Path starts from Little Thetford bridleway 1 off the Bedwell Hey Lane opposite Ely Fields Farm at approximate grid reference TL 5216 7748 going south west along Little Thetford footpath 2 past Bedwell Hey Farm and to end at the dead end of Little Thetford footpath 2 at approximate grid reference TL 5196 7684. The route is shown as a footpath on OS Maps and the online Definitive Map.

The applicant for the order is the British Horse Society (BHS) whose key objective is to support and progress Project 2026 in the region.

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, OR
- s.53(3) and (4)(a) of the Countryside and Rights of Way Act 2000 on a bridleway or byway but shown as a footpath on a definitive map, is to extinguish all those bridleway or byway rights on that route. OR
- 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. OR
- 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.)

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:

- 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).
- 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).
- Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
- Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
- 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**

The application route is shown on the photos below and starts from Little Thetford bridleway 1 off the Bedwell Hey Lane opposite Ely Fields Farm at approximate grid reference TL 5216 7748 going south west along Little Thetford footpath 2 past Bedwell Hey Farm and to end at the dead end of Little Thetford footpath 2 at approximate grid reference TL 5196 7684. The route is shown as a footpath on OS Maps and the online Definitive Map.



Extract from a Google Satellite image from 2009, showing the application route from A to B

## DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

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.

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."

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.

## **Tithe Records**

**Source.** Tithe map 19 Cambridgeshire 029 Ely of 1843

### **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.

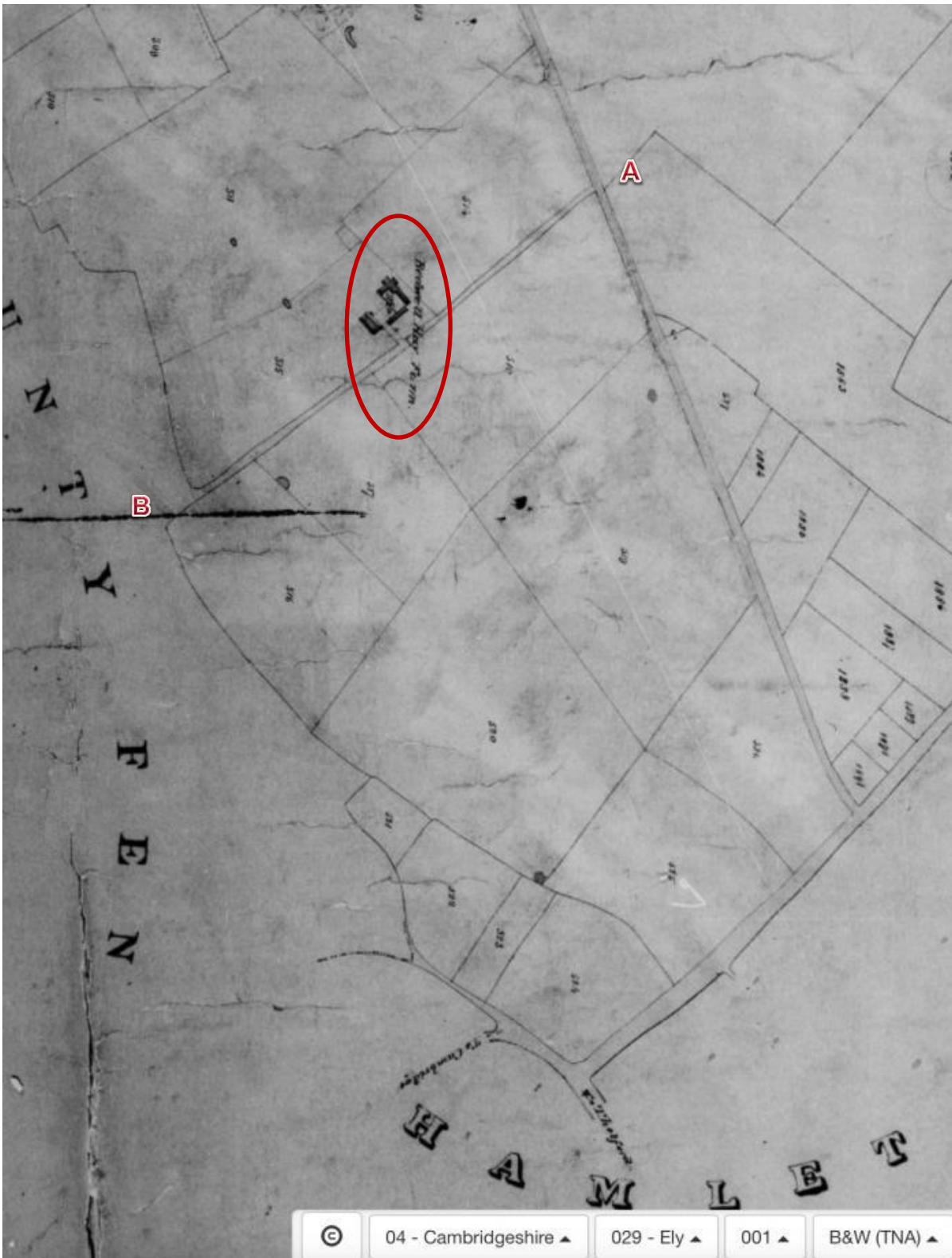
(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance 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.

**Archive.** The tithe maps have been accessed via the Genealogist website and the extracts shown below.

**Meaning.** The extract below from the Ely tithe map shows the application route as a road from A to B in the same style as the existing bridleway it leaves from at point A going past Bedwell Hay Farm, circled.

**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 shown as a road in similar style to other existing roads within the parish including the existing bridleway it leaves. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



*Extract from the Ely tithe map of the application route from A to B as a road going past Bedwell Hay Farm (circled)*

### **Parish Estate and Manorial Maps**

**Date.** Map 121 Cambridge University library "Ely Saint Mary. Spade Husbandry Allotments, Grunty Fen" created 1876

**Relevance.** This map is held at the Cambridge University Library and includes allotment numbers, owners and was presented to Cambridge University library by Mr Arthur Bull, of Cottenham, 27 April, 1910

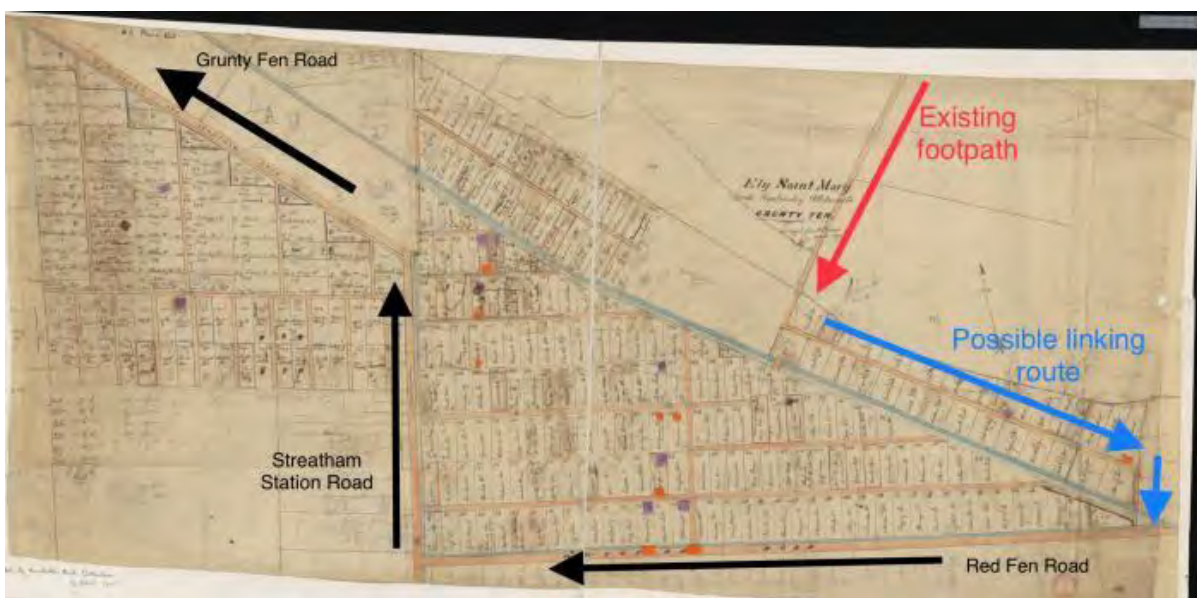
**Archive.** The extracts from this sheet below were obtained from the Cambridge University Library online at <https://cudl.lib.cam.ac.uk/view/MS-MAPS-MS-PLANS-00121/1>

**Meaning.** The application route is shown on the first extract below from the direction of A to B as a road in the same style as other existing roads in the area. The second extract is annotated to show the existing roads in the same style as the application route such as Red Fen Road, additionally the map shows an extension from B in the direction of Thetford Corner that appears to follow the parish boundary however the applicant does not yet have enough evidence to extend the application route beyond the existing footpath.

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



*Extract from Spade Husbandry Allotments map showing the application route from A to B in the same style as the existing roads in the area with a possible extension from the dead end at B going towards Thetford Corner*



*Extract from Spade Husbandry Allotments map showing the application route from A to B in the same style as the existing roads in the area with a possible extension from the dead end at B going towards Thetford Corner. Copy of the map above but annotated*

## Parish Estate and Manorial Maps

**Date.** Map 142 Cambridge University library "A plan of the estates of the late Mr. Henry Lawrence, in Ely, Stuntney, Coveney, near Downham, in Witchford, Witcham, and Wentworth, in the Isle of Ely" created 1867

**Relevance.** This map is held at the Cambridge University Library and includes land acreage table entitled "Particulars of the Freehold & Copyhold Lands" and described as "Original plans of all Henry Lawrence's land prepared by M. F." (written on the back). It was presented to Cambridge University library by Mr Arthur Bull, of Cottenham, 27 April, 1910

**Archive.** The extracts from this sheet below were obtained from the Cambridge University Library online at <https://cudl.lib.cam.ac.uk/view/MS-MAPS-MS-PLANS-00142/1>

**Meaning.** The application route is shown on the extract below from A to B as a road in the same style as other existing routes in the area such as the existing brideway it leaves from at A. Bedwell Hay Farm is also labeled on the map.

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



*Extract from Mr Henry Lawrence's estate map showing the application route from A to B in the same style as the existing brideway it leaves from at point A*

## **Evidence from Maps:**

### OS First Edition Ordnance Survey Maps - One-inch England and Wales, 1784-1869

**Date.** First edition Ordnance survey maps of the topographic series of England and Wales, surveyed 1784-1869

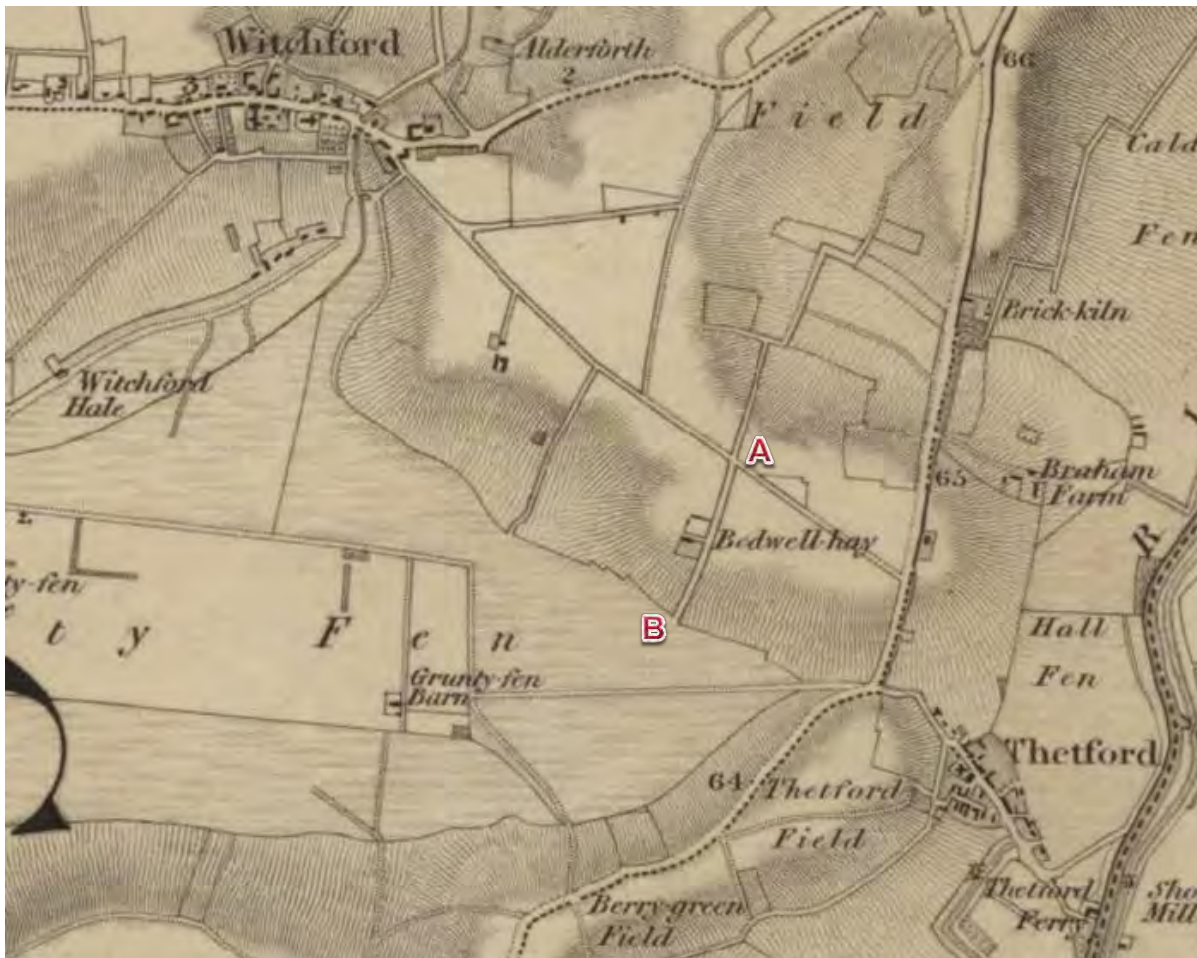
**Relevance.** These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the

ground. They were published by Lt. Col Mudge and later by Lieu M Colonel Colby of the Royal Engineers. They were sold by Jas. Gardner, agent for the sale of Ordnance Survey maps.

**Archive.** The extracts from this sheet below were obtained from the National Library of Australia at OS First Series 1813 <https://nla.gov.au/nla.obj-231923090/view>

**Meaning.** The route is shown on the extract below from A to B as a road in the same style as the existing bridleway it leaves at A. Bedwell Hay farm is also marked on the map.

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



*Extract from OS First Edition Map showing the application route marked from A to B*

### **OS One Inch Ordnance Survey Maps - One-inch England and Wales**

**Date.** OS One Inch sheet 173 –Ely (Outline) published in 1898.

**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.

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168063>

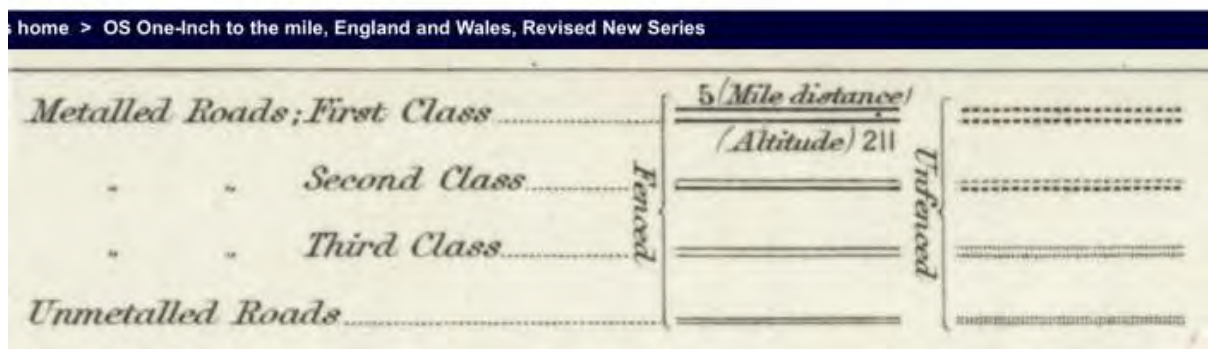
**Meaning.** The application route is shown on the extract below from A to B likely as a “third class metalled road” likely fenced, in the same style as the existing bridleway it leaves at point A.

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

Library Sheet 173 - Ely (Outline)  
 nd Publication date: 1898  
 Nôlseanta Size: map 31 x 46 cm (ca. 12 x 18 inches) on sheet ca. 43 x 56 cm (ca. 17 x 22 inches)



Extract from OS 1" Map showing the application route from A to B



Extract from OS 1" Map showing the key to the roads

**Ordnance Survey Maps - 25 inch England and Wales**

**Date.** OS County Series Cambridgeshire XXX.1 and Cambridgeshire XXX.5 both published 1887.

**Relevance.** The OS First and Second Edition County Series mapping was at 25 inch to the mile scale which would predominantly have been used for professional purposes rather than navigation. They were detailed enough to show gates and barriers on road and tracks.

**Archive.** The extract from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114485986> And <https://maps.nls.uk/view/114486022>

**Meaning.** The route is shown on the first image below from A towards B in the same style as the existing bridleway it leaves at A and with separate title number circled. The second image shows the application route continuing from A to B also in the same style and with separate title numbers circled.

**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus combined with other evidence in this application this is evidence in support of the route being a public highway. The presence of separate titles and the application route labeled as a drove further supports this assertion.

Cambridgeshire XXX.1 (Ely Holy Trinity With St Mary; Thetford; Wi...

Surveyed: 1886, Published: 1887

Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

[Maps home](#) > [Ordnance Survey](#) > [OS 25 inch England and Wales, 1841-1952](#)



Extract from OS 25" Map showing the application route marked from A towards B and in the same style as the existing bridleway it leaves at A, with separate title circled

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Cambridgeshire XXX.5 (Ely Holy Trinity With St Mary; Stretham; Th...  
Surveyed: 1886, Published: 1887  
Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x inches)

Ordnance Survey > OS 25 inch England and Wales, 1841-1952



*Extract from OS 25" Map showing the application route marked from A to B, with separate title circled*

### OS Six Inch Ordnance Survey Maps - Six-inch England and Wales

**Date.** OS Six inch series Cambridgeshire XXV.NW published 1887

**Relevance.** The OS Six Inch Series were the most comprehensive, topographic mapping covering all of England and Wales from the 1840s to the 1950s. Two editions for all areas were published, and then regular updates in the 20th century for urban or rapidly changing areas.

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101571469>

**Meaning.** The route is shown on the image below from A to B as a road in the same style as the existing bridleway it leaves at A. Bedwell Hay Farm is also marked on the map.

**Assessment.** Other through routes shown in a similar manner are now largely part of the ordinary highway network and thus combined with other evidence in this application this is evidence in support of the route being a public highway.

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



*Extract from OS 6 inch Series Map showing the application route from A to B as a road in the same style as the existing bridleway it leaves at A*

**Ordnance Survey, 1:25,000 maps of Great Britain**

**Date.** OS 25k series 52/57 published circa 1949

**Relevance.** The 1:25,000 'Provisional edition' or 'First Series', was Ordnance Survey's first civilian map series at this medium scale, the forerunner of the modern *Explorer* and *Outdoor Leisure* maps.

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/207356007>

**Meaning.** The application route is shown on the extract below from A to B as a road in the same style as the existing bridleway it leaves at A.

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

Ordnance Survey > 1:25,000 Outline Series of Great Britain, 1945-1965



*Extract from OS 25k Series Map showing the application route from A to B*

### **Bartholomew's Half Inch to the Mile Maps of England and Wales**

**Date.** Bartholomew map of Great Britain, Sheet 19 – Cambridge, Huntingdon published 1902

**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. This enables us to draw inferences from how routes are shown.

**Archive.** The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/97131068>

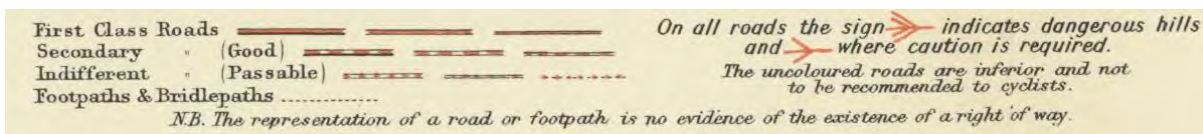
**Meaning.** The application route is shown on the extract below from A to B as an “indifferent road” as shown on the key in the second image, and in the same style as the existing bridleway it leaves at A.

**Assessment.** 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 public. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action. The application route is shown as a road. The depiction of the route in this manner is evidence in favour of the proposition that the application route was considered to have equestrian and probably vehicular rights.

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



Extract from Bartholomew's Map showing the application route from A to B



Extract from Bartholomew's Map showing the key

## **CONCLUSIONS**

This document presents evidence from many years that consistently indicate that the application route was part of the wider highway network. Whilst no single piece of evidence is conclusive in its own right, taken as a whole it paints a sound picture of the existence of public vehicular rights.

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.

The applicant requests the surveying authority to add the route to the definitive map as a Bridleway

Date: 2 August 2021

Organisation: British Horse Society

