

APPENDIX D



Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

For a route from Main Street, Barrow to Burley Road, Cottesmore via Ashwell Road, Cottesmore to be added as a footpath

Applicant's Reference: LP2

07 Dec 2022

Quick reference path facts to assist the Surveying Authority in its investigation	
OS County series map	Rutland: Sheets V3 and V7
Modern OS Explorer map	234 Rutland Water 247 Grantham
Grid references of ends of route (approximate)	From: Barrow (SK 891151) To: Burley Road (SK 893127) Via: Ashwell Road (SK 893135)

Applicant:	Mick & Jackie Piper on behalf of Ways Around Cottesmore (WARCs)
Reason for application:	The route is currently missing on the definitive map and statement, but there is strong documentary evidence that it was previously a footpath, with public right of way status.

1 Introduction

This application is made because, on the cut off day, 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 rights on a route not shown in the definitive map and statement.

I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981 because:

This application statement includes explanations as to how the evidence applies to the application route, and the application contains one or more of the following forms of supporting evidence:

- I 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).
- II 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 Tithes Awards and Maps).
- III Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
- IV Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
- V 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 route network.

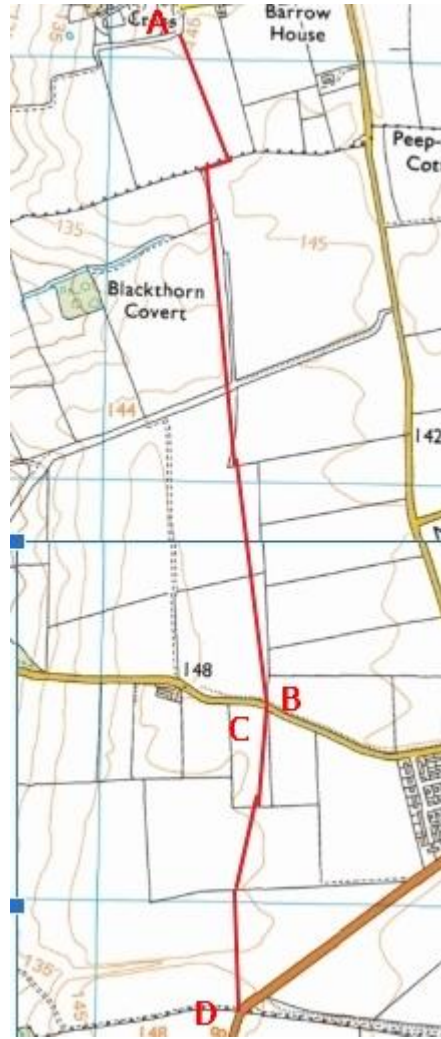
2 The Application Route

The application route is shown on the plan below:

Point A white lane off Main Street, Barrow
Point B is Ashwell Road, north side
Point C is Ashwell Road, south side
Point D is Burley Road, north side

The application route is not currently shown on the definitive map of rights of way for Rutland:

The application route is also not currently shown on the online list of streets.



Ordnance Survey 1:25000 scale map extract showing application route as a red line



Photograph 1 from Point A looking South



Photograph 2 from Point B looking North



Photograph 3 from point C looking South



Photograph 4 from Point D looking North

3 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.

The documentary evidence has been ordered chronologically to show evidence of the routes existence and access rights over time.

Below is a table of summary of documentary evidence provided in support of the application

Earliest Date route seen	Description of Evidence
1884	Ordnance Survey Six-inch map
1885	Ordnance survey 25 inch map
1910	Finance Act Records
1947	Ordnance survey One inch map
>1952	Definitive map Parish Survey returns
1954	Rutland Council Roads and Bridges sub committee minutes

3.1 (1884) Ordnance Survey Six-Inch (County Series)

Date: 1884 OS Sheet Rutland V.NE

Relevance: These maps were made for sale to the travelling public. They showed physical features that appeared on the ground, so if the route became overgrown and unused it would no-longer show on the map. The map has a key in which different types of routes are differentiated.

Archive: Multiple publications of these maps ranging from 1884 to 1933 have been located and all show the same evidence. They are held by the British Library and can also be viewed online at the National Library of Scotland.

Published Date	Link to map via the National Library of Scotland
1884	https://maps.nls.uk/view/101599640
1904	https://maps.nls.uk/view/101599637
1931	https://maps.nls.uk/view/101599634
1933	https://maps.nls.uk/view/102191616

Meaningful feature: The application route is clearly shown on the OS map as a footpath. The route is denoted in the same format used for other known footpaths which exist with public right of way status today.

Assessment: Considering the context of published ordnance survey maps as documentary evidence given in Appendix A: and the presence of the route on the map as a footpath is evidence it was a through public route. It is also significant evidence that the route goes close to a windmill. A windmill would have been a valuable public amenity of the local residents and as such this route would have been the only logical access.



Extract from the Ordnance Survey Six-Inch (Country Series) 1904 Sheet Rutland V.NE. Clearly showing the footpath on the map



*Extract from the Ordnance Survey Six-Inch (Country Series) 1884 Sheet Rutland V.NE.
Showing map of the area and highlighted windmill*



Extract from the Ordnance Survey Six-Inch (Country Series) 1931 Sheet Rutland V.NE. Clearly showing the footpath to the Ashwell Road on the map

3.2 (1885) Ordnance Survey First Edition 25 inch (County Series)

Date: 1885 OS sheet Rutland V.3. & V.7

Relevance: The early first edition county series (25 inch) OS maps are some of the most detailed maps available.

Archive: Copies of the first edition Ordnance Survey 25" maps are held by the British Library. As well as originals, they have created microfiche copies, which can be inspected by the public. Copies can also be viewed at <http://www.old-maps.co.uk> and some sheets are available from the National Library of Scotland at <http://maps.nls.uk/os/25inch-england-and-wales/index.html>.

Published Date	Map Sheet	Link to map via the National Library of Scotland
1885	Rutland V3	https://maps.nls.uk/view/115398902
	Rutland V7	https://maps.nls.uk/view/115399034
1904	Rutland V3	https://maps.nls.uk/view/115398917
	Rutland V7	https://maps.nls.uk/view/115399061
1930	Rutland V3	https://maps.nls.uk/view/115398932
	Rutland V7	https://maps.nls.uk/view/115399076

Meaningful feature: The application route is clearly shown as a footpath on the OS map.

Assessment: Considering the context of published ordnance survey maps as documentary evidence given in Appendix A: and the existence of the route on this most detailed OS map, is good evidence that route existed. As the map again shows the route as a through route passing close to the windmill again supports that the route would have been the only public access route to the public amenity. The 1904 version of the map shows the installation of a footbridge over the mine railway indicating the importance of the route justifying the expense and effort to construct.





Extracts from the Ordnance Survey 1904 25" map of the area sheets Rutland V3 and V7, showing the route as a footpath.



Extract from the Ordnance Survey 1904 edition 25" map of the area and evidence of the windmill and footbridge

3.4 (1910) Inland Revenue Valuation

Date. The valuation records were produced in the few years following 1910, those in Cottesmore were mostly created in 1914.

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. Each property/parcel of land was given a parish Hereditament number which was annotated onto a copy of the 1904 25-inch Ordnance Survey map. The surveyor made notes about the details of the holding in a Field Book, and then a summary valuation was prepared. Both documents record if deductions for footpaths or bridleways as public rights of way were claimed.

Section 25 of the Act authorised discounts for footpaths and bridleways crossing a property if they were claimed by the landowner. There was no obligation for a landowner 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.”

Archive. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew where they are available for public viewing.

National Archive Reference Number	Record Description
IR 130/6/485	Inland Revenue Finance Act 1910 valuation map OS Sheet V3
IR 130/6/489	Inland Revenue Finance Act 1910 valuation map OS Sheet V7
IR 58/76841	Inland Revenue Finance Act 1910 Field book (Hereditaments 1 to 100)
IR 58/76842	Inland Revenue Finance Act 1910 Field book (Hereditaments 101 to 200)

Meaningful Feature.

The application route crosses 6 hereditaments shown on sheets V3 and V7 valuation maps.

- Barrow hereditament 2: crossing two fields south from a lane shown as a white road (not part of any hereditament and likely authority maintainable) in Barrow to the parish boundary.
- Barrow hereditament 23, crossing three fields south towards Ashwell Road
- Cottesmore hereditament 105, crossing 3 fields south towards Ashwell Road
- Cottesmore hereditament 123 crossing one field south towards Burley Road
- Cottesmore hereditament 109 crossing one field south towards Burley road
- Cottesmore hereditament 58 crossing one field south towards Burley Road

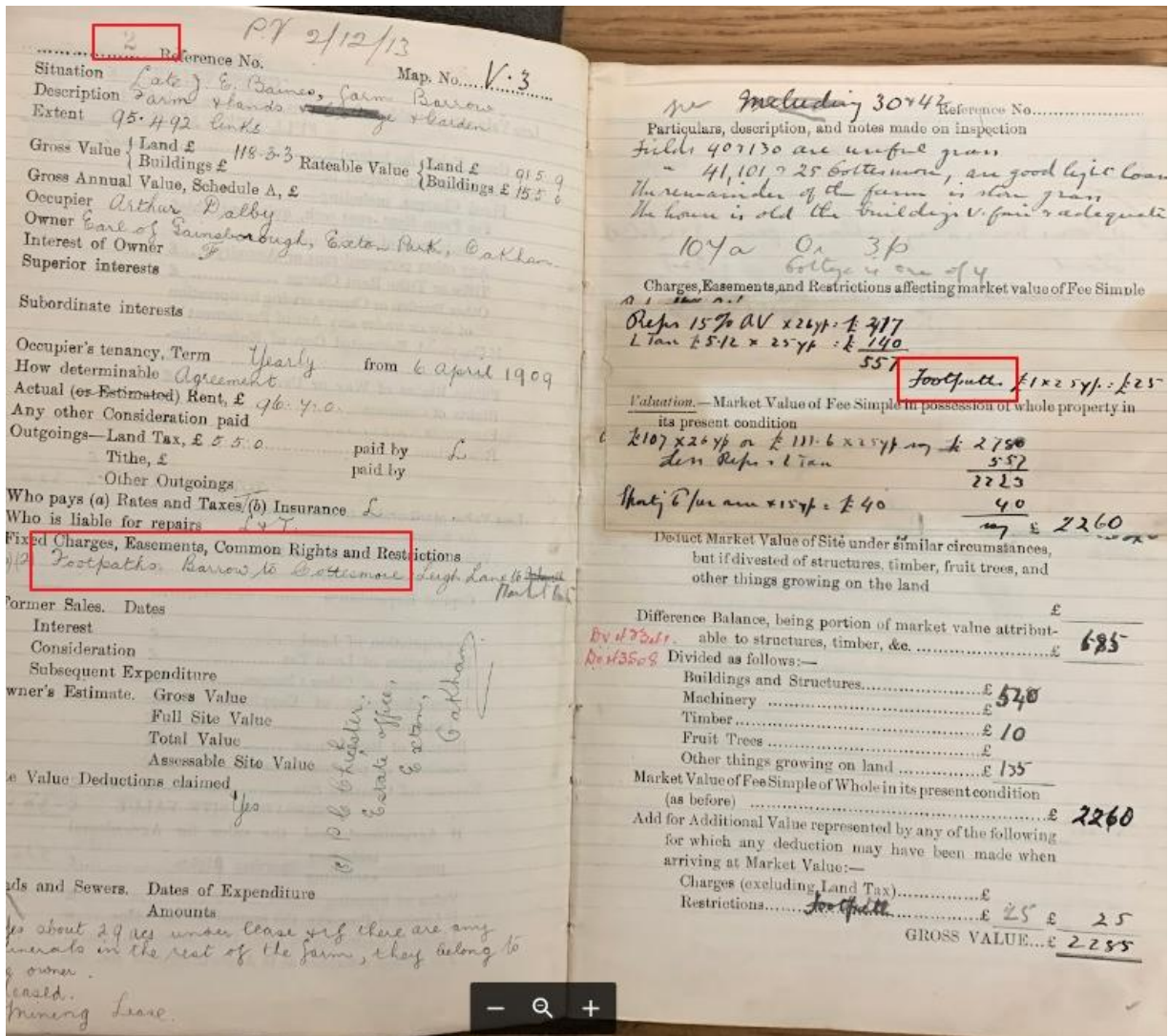
Cross referencing the hereditament numbers with the survey notes in the surveyors field books and provisional valuation records shows the landowners of each of the hereditament landowners, except 123 claimed for a value deduction due on their land because of a footpath running between Cottesmore and Barrow.



The above extract is from the Inland Revenue Valuation Map V3 showing the hereditament numbers 2 and 23 for the northern end of the application route near Barrow



The above extract is from the Inland Revenue Valuation Map V7 showing the hereditament numbers 105, 123, 109 & 58 for the southern end of the application route near Cottesmore



Extract from Inland Revenue field book IR 58/76841 Hereditament 2

9 24 x 106 11/2/13

23 Reference No. Map No. 1.273

Situation *Barrow*

Description *Farm & land & 3 cottages & garden*

Extent *199.599 links* *262.151*

Gross Value { Land £ *150* Rateable Value { Land £ *102.00*
 Buildings £ { Buildings £ *31.15*

Gross Annual Value, Schedule A, £

Occupier *George Seal Matthews*

Owner *Earl of Sainsborough, Selton Park, Latham*

Interest of Owner *7*

Superior interests

Subordinate interests

Occupier's tenancy, Term *Yearly* from *6th April 1907*

How determinable *Agreement*

Actual (or Estimated) Rent, £ *247.40*

Any other Consideration paid

Outgoings—Land Tax, £ *7.50* paid by *L. £11.12.3*
 Tithes, £ paid by
 Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance *L*

Who is liable for repairs

Fixed Charges, Easements, Common Rights and Restrictions
Footpaths Barrow to Cottam & High House to Latham

Former Sales. Dates

Interest

Consideration

Subsequent Expenditure

Owner's Estimate. Gross Value

Full Site Value

Total Value

Assessable Site Value

Site Value Deductions claimed

11/10/13 (1/2) Lease & 1/2 (1/2) Mining Lease

Roads and Sewers. Dates of Expenditure

Amounts

1) P. G. Matthews, 6, Coley St. Barrow, Latham

7425 Reference No.

Particulars, Description, and notes made on inspection

The assable is mostly good light red land & a small grass field adjacent to farm front stone land for most has been fully approached. House & other good & adequate

One new cottage of 4 rooms

Charges, Easements and Restrictions affecting market value of Fee Simple

Rate 10/11.2.3 x 25/100 = £ 642
Less L.T. 11.12.3 x 25/100 = 390
292

Footpath £2 x 25/100 = £ 50

Valuation.—Market Value of Fee Simple in possession of whole property in its present condition

AV £247.40 x 25/100 = £ 618.25
Less Rate & L.T. = 932
525.25
165
£ 560

Defect Market Value of Site under similar circumstances, but if divested of structures, timber, fruit trees, and other things growing on the land

£ 1840

Difference Balance, being portion of market value attributable to structures, timber, &c. £ *1840*

Divided as follows:—

Buildings and Structures £ *1470*

Machinery £

Timber £ *2020*

Fruit Trees £

Other things growing on land £ *350*

Market Value of Fee Simple of Whole in its present condition (as before) £ *5600*

Add for Additional Value represented by any of the following for which any deduction may have been made when arriving at Market Value:—

Charges (including Land Tax) £

Restrictions *Footpath* £ *50* £ *50*

GROSS VALUE... £ *5650*

Extract from Inland Revenue field book IR 58/76841 Hereditament 23

Part Map No. 362. 100 Reference No. 111
 P.V. 30/1/14. Map No. V.2,3,6,7,10

Situation opposite Lily Cottage & in the Parish.
 Description 2 Farms & lands including 3 cottages &c
 Extent 501.803 a. r. p.

Gross Value { Land £ 491.15.0 Rateable Value { Land £ 388.7.0
 Buildings £ Buildings £ 53.15.0
 Gross Annual Value, Schedule A, £

Occupier Joseph Bowyer Marriott.
 Owner Earl of Sandwich, Exton Park, Batham.
 Interest of Owner
 Superior interests

Subordinate interests

Occupier's tenancy, Term Yearly from 6 April 1914
 How determinable Agreement
 Actual (or Estimated) Rent, £ 495.15.0
 Any other Consideration paid

Outgoings—Land Tax, £ 14.14.8. paid by L
 Tithes, £ paid by
 Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance L
 Who is liable for repairs L & T

Fixed Charges, Easements, Common Rights and Restrictions
 (1) Footpath Gotesmore to Barrow
 (2) Ashwell to Barrow

Former Sales. Dates
 Interest
 Consideration
 Subsequent Expenditure
 Owner's Estimate. Gross Value
 Full Site Value
 Total Value
 Assessable Site Value
 Site Value Deductions claimed

Yes 382 acres about, under lease. If there are any mineral
 and the rest of the farm they belong to the owner.
 part of the farm forming parcel 50.

Roads and Sewers. Dates of Expenditure
 Amounts

Particulars, description, and notes made on inspection
 88 acres of good grass north of Village. Home
 Parlor. The Warren farm & other playground
 land in good light red loam. The Warren farm
 buildings are good. There are cottages and a farm
 the rent is paid on the valuation being taken on a simple
 3 cottages, but included which stand in Village.
 timber also is not included in T.V.

Charges, Easements and Restrictions affecting market value of Fee Simple
 Dep't w/o ad. : £ 49.10
 Lien 14.14.8
 64.4.8
 £ 1606 Footpath £ 1 x 25 yds. £ 25

Valuation.—Market Value of Fee Simple in possession of whole property
 in its present condition
 at £ 495 x 25 yds = £ 12375
 Less dep't. & lien 1606
 10769
 Partly open air & 10 yds. 7 247
 11016 7 £ 11015

Deduct Market Value of Site under similar circumstances,
 but if divested of structures, timber, fruit trees, and
 other things growing on the land

Difference Balance, being portion of market value attribut-
 able to structures, timber, &c. £ 3275

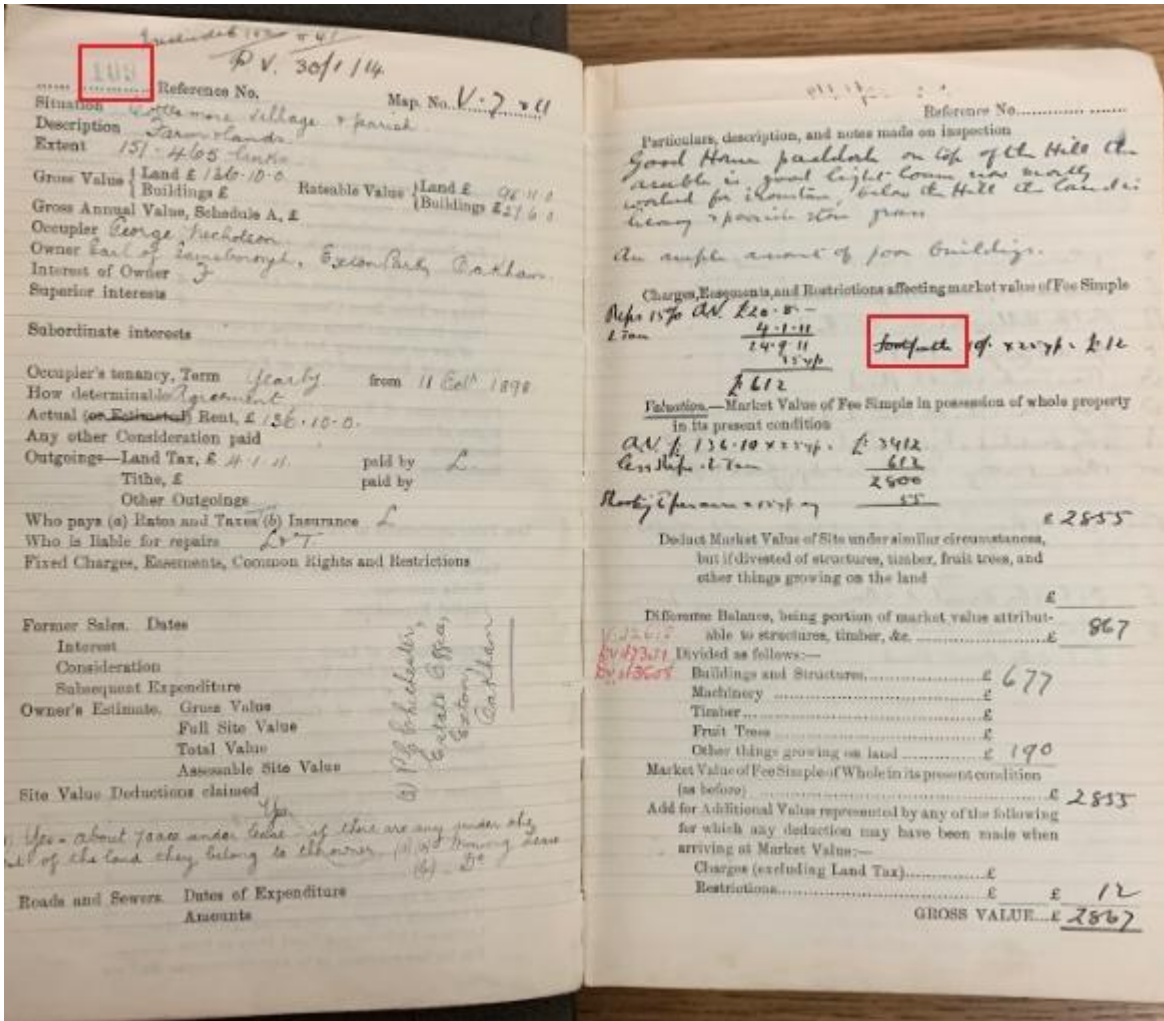
Divided as follows:—
 Buildings and Structures £ 2585
 Machinery £
 Timber £ 65
 Fruit Trees £
 Other things growing on land £ 625

Market Value of Fee Simple of Whole in its present condition
 (as before) £ 11015

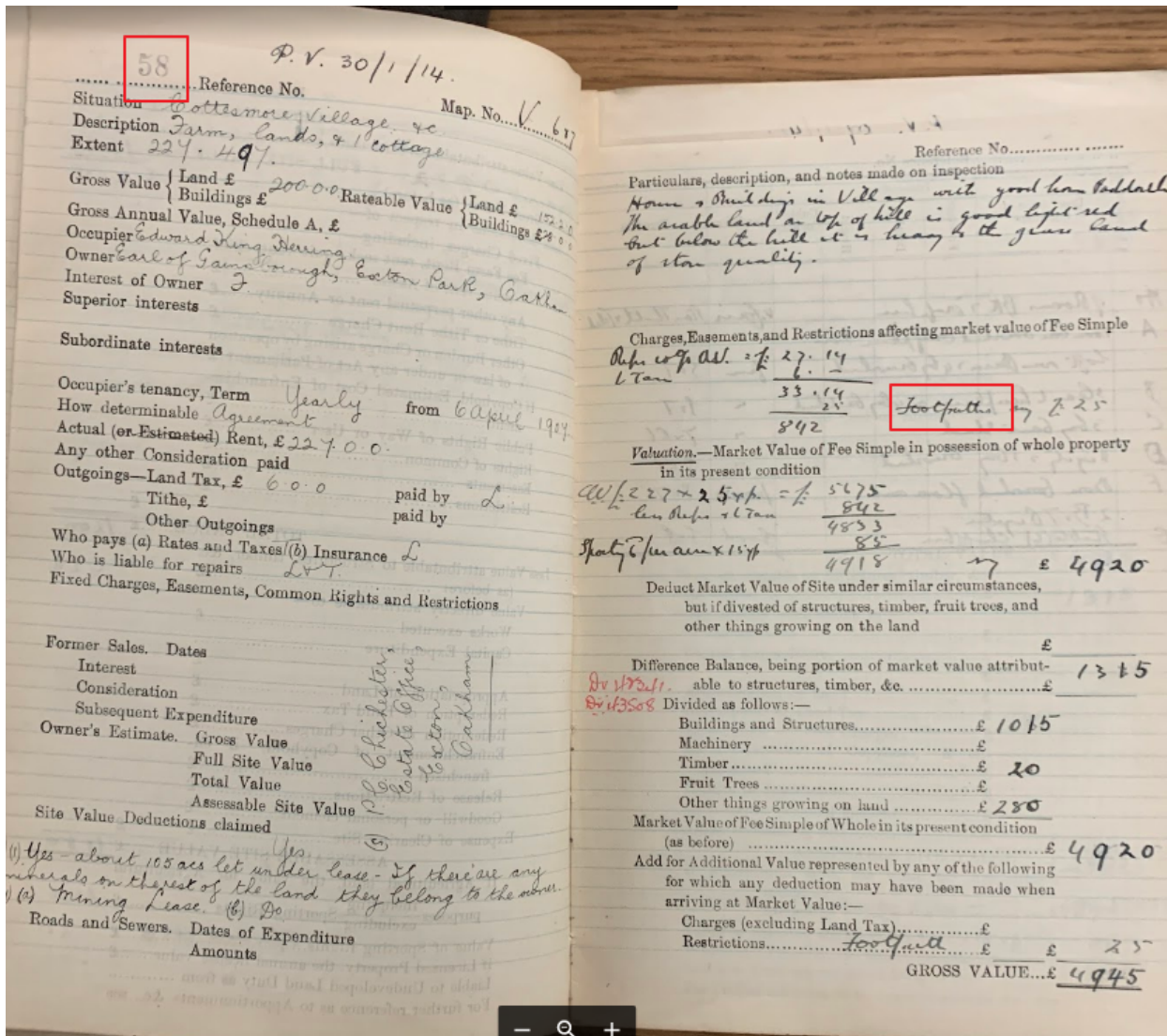
Add for Additional Value represented by any of the following
 for which any deduction may have been made when
 arriving at Market Value:—
 Charges (excluding Land Tax) £
 Restrictions, Footpaths £ 25

GROSS VALUE...£ 11040

Extract from Inland Revenue field book IR 58/76842 Hereditament 105



Extract from Inland Revenue field book IR 58/76842 Hereditament 109



Extract from Inland Revenue field book IR 58/76841 Hereditament 58

3.3 1947 Ordnance Survey One-Inch (Revised New Series)

Date: 1947 OS 122 Sheet Melton Mowbray

Relevance. These maps were made for sale to the travelling public. They showed physical features that appeared on the ground, so if the route became overgrown and unused it would no-longer show on the map. It has a key to differentiate different types of routes.

Archive: Copies of these map are held by the British Library. Copies can also be viewed on line at the National Library of Scotland at : <https://maps.nls.uk/view/101167955>

Meaningful feature: The application route is clearly shown on the OS map as a footpath.

Assessment: Considering the context of published ordnance survey maps as documentary evidence given in Appendix A: and the presence of the route points A to B on the map as a footpath.



Extract from the Ordnance Survey One-Inch (Revised Edition New Series) map of the area key and footnote from sheet 122 Sheet Melton Mowbray

3.5 (>1952) Draft Definitive Map Parish Survey Returns

Date: Exact date is not known but it is believed to have been created between 1949 and 1952

Relevance: Part IV of the National Parks and Access to the Countryside Act 1949 laid the foundations for the definitive maps and statements of public rights of way in England and Wales. It required parish councils and parish meetings to co-operate with surveying authorities in preparing the draft map in each authority's area. The parishes' role was fundamental and ensured that public rights of way were correctly identified for inclusion on the definitive map.

Part IV of the 1949 Act required a surveying authority (the county council, or, at that time, a county borough council) to prepare a definitive map and statement of public rights of way. The authority was to 'carry out a survey of all lands in their area over which a right of way was alleged to subsist',

Under s.28(1) of the 1949 Act, it was required to consult with its district and parish councils on the arrangements for the provision of information to contribute to the draft definitive map.

Under s.28(3), those arrangements were required to include provision for each parish council to hold parish meetings, and for parish meetings to be held where there was no council for a parish.

And under s.28(4), every parish council had a duty 'to collect and furnish to the surveying authority such information, in such manner and at such time, as may be provided for by [the] arrangements agreed or determined'.

In practice, those arrangements typically called upon the parish council to conduct a parish survey and described in a schedule of paths. The survey might have been done by parish council members, local volunteers, or representatives of user groups.

The survey was then considered by the parish council and by the parish meeting, so that the parish council would put forward a revised version of the survey for adoption by the surveying authority.

Archive: Copies of the Parish Survey Returns are held at the records office for Leicestershire, Leicester, and Rutland under reference DE8719.

Meaningful feature: The survey conducted by the Ramblers Association (RA) clearly identified the existence of the application route as a right of way from Barrow, south to Ashwell Road, Cottesmore. It also captures the right of way determination by the parish councillors for Cottesmore and Barrow. There is no mention of the section of the application route south from Ashwell Road to Burley Road, which was likely heavily impacted by quarrying at the time of the survey.

Assessment: The evidence confirms the physical existence of the route on the ground observing kissing gates, stiles, wicket fences along the route. It's highly unlikely that landowners would have gone to the expense of installing these for a route for a personal or private use only. Additionally whilst the route is recognised as not being little used, Cottesmore Parish Council and the Barrow Parish Meeting are clear that under their authority and local knowledge they recognise the route as being a public right of way of importance which they clearly wanted to be retained and have added to the definitive map. It's not clear why the authority therefore didn't include the application route in the final definitive map, but regardless no evidence has been found to suggest the route was formerly subjected to a stopping up or diversion order.

COUNTY OF RUTLAND

National Parks and Access to the Countryside Act, 1949.

SURVEY OF RIGHTS OF WAY.
Cottesmore.
PARISH OF _____
R.A. _____
Survey Carried out by _____ O.S. Ref. No.'s _____
V.N.R. _____

Type of Right of Way Footpath. ~~No~~ 3.

DESCRIPTION.

This leads from the Ashwell Road North to Barrow. It starts by a stile on the North side of the Ashwell Road and follows ledge lines along the whole of its length to its termination at the Green Lane leading South from Barrow village.

It goes through gaps and field gates but only has the one stile at its commencement.

A few yards after its commencement a footpath leads off to the Market Overton Road due East. The footpath runs parallel to the Market Overton road all its length,

Extract from Draft Definitive Map Parish Survey Returns for Cottesmore Parish (DE8719)

COUNTY OF RUTLAND.
National Parks and Access to the Countryside Act 1949.
SURVEY OF RIGHTS OF WAY.
PARISH OF Barrow.
Survey carried out by E.A. O.S. Ref. No's. V.N.E.
Type of Right of Way Footpath. No. 3 & 4.
DESCRIPTION.
Commences at South of village and runs South to Cottesmore to connect to Footpath Nos. 3 and 4 for Cottesmore Parish.
From field gate due South along East hedge line of arable field to Field Gate and along East hedgeline of 2nd arable field to Gap and Parish Boundary. Connect to footpath Nos. 3 & 4. Cottesmore Parish.
Used very little. Ironstone workings moving Eastwards will eventually affect this path. Parish Meeting suggest retention as it is the only Footpath to the South and Cottesmore.

Extract from Draft Definitive Map Parish Survey Returns for Barrow Parish (DE8719)

3.6 Rutland Council Roads and Bridges Committee minutes

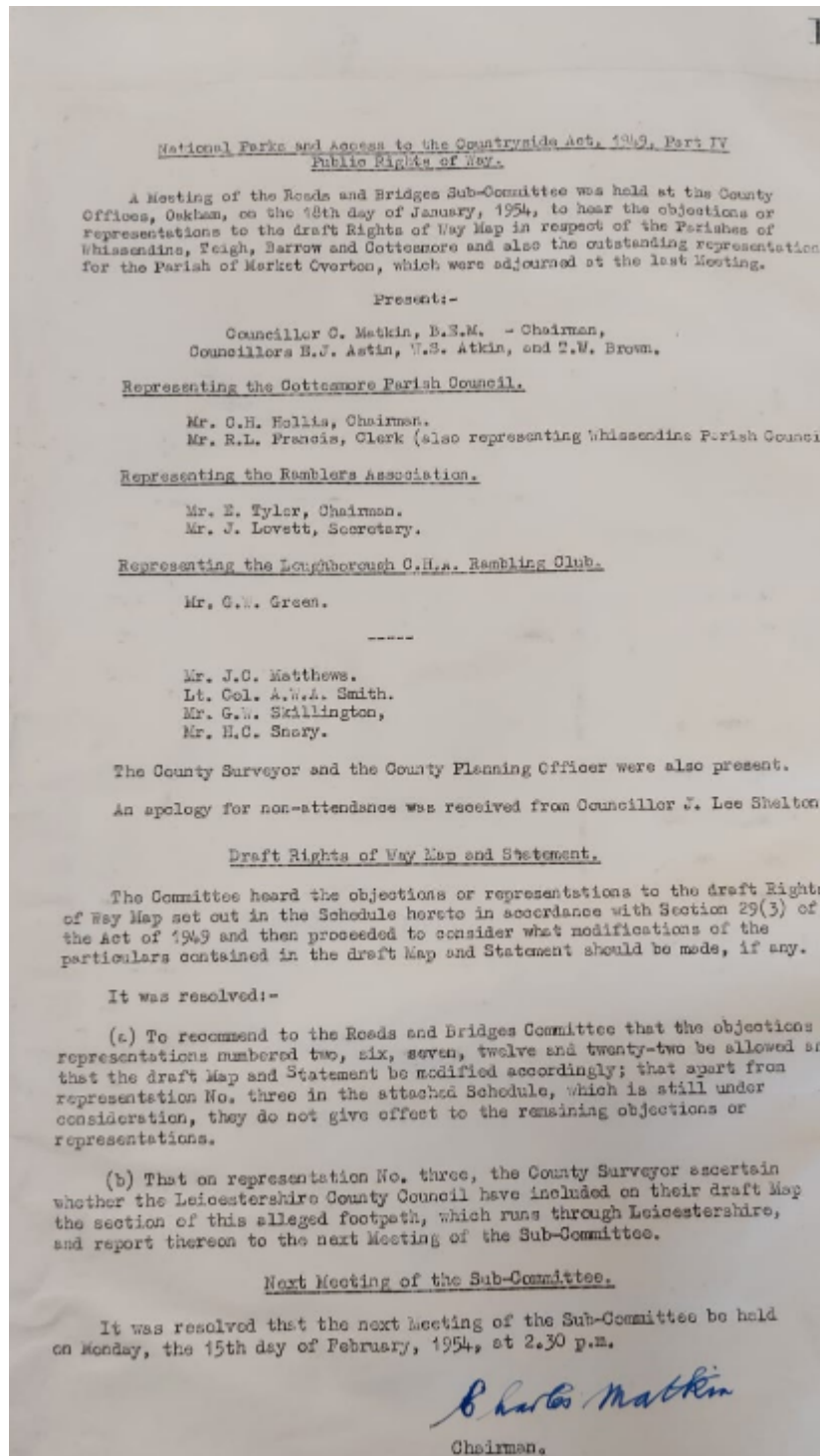
Date; 18th January 1954

Relevance; Rutland County Council Roads and Bridges committee held a meeting in accordance with the requirements of Part IV of the National Parks and Access to the Countryside Act 1949 to hear representations in relation to existing footpaths and their inclusion in the final Definitive map.

Archive; The minutes book is held at the records office for Leicestershire, Leicester, and Rutland under reference DE1381/119, this is a leather bound book with typed loose sheets glued to numbered pages within the book.

Meaningful feature; The minutes book clearly shows that the application footpath Number 3 was discussed and considered as an existing right of way at the time that meeting was held.

Assessment; The evidence confirms the existence of the route. There is no detail of any representations made at the meeting and it is not clear why the authority didn't include the application route in the final definitive map, but regardless no evidence has been found to suggest the route was formally subjected to a stopping up or diversion order.



Extract from Rutland County Council, Roads and Bridges minute book page 17 (DE1381/119)

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R.A.L.A. L.C.R.C.	Commences in O.S. 90, bordering Moor Lane. Proceeds South towards Ashwell. Finishes S.E. corner O.S.159 near brook crossing the Teigh - Ashwell road.	That path should be included on Draft Map Representation.
<u>BARROW.</u>		
R.A.L.A. L.C.R.C. (See 18)	Commences South side of Barrow in O.S.95. Continues South eastwards to Parish Boundary. (Path connects with Path No.4. (Survey Map) (Cottesmore).	That path should be included in Draft Map Representation.
Barrow F.M. (J.C.Matthews Esq.)	Old green lane from South side of village street westwards then South Westwards to old canal to Ashwell Parish Boundary.	That the path so described shall be included in Draft Map Representation.
<u>COTTESMORE.</u>		
R.A.L.A. I.C.R.C. (Contn. of 16) Cottesmore P.C.	Commences N.W. O.S. 27 continues S.E. to Cottesmore Road. Crosses road to K.G. proceeds South Easterly, finishes field gate at O.S. 100 bordering Mill Lane. (Continuation of No.23. (Barrow).	That the path so described shall be included in Draft Map Representation.
R.A.L.A. L.C.R.C. Cottesmore P.C.	Barrow to Cottesmore Ashwell Road. Commences same point on Parish Boundary as previous (18) Proceeds N. to Northwest corner O.S.27. then South - continuing to Cottesmore Ashwell Road.	" "
R.A.L.A. L.C.R.C. Cottesmore P.C.	Cottesmore Glebe. Commences North West corner O.S.47. bordering Barrow Cottesmore Road. Crosses Mill Lane to K.G. and finishes South East corner O.S. 120.	" "
Cottesmore P.C.	Path commencing South West corner O.S.120 crosses O.S. 120 from West to East finishes in South East corner O.S.120.	" "

Extract from Rutland County Council, Roads and Bridges minute book page 20 (DE1381/119)

3.6 Stopping up orders and quarter session records

Stopping up orders and Quarter Session records have been examined, but no documented evidence has been found to reference any stopping up or diversion of the application route.

4 Conclusions

Each piece of evidence presented is either evidence of reputation of highway rights, or consistent with there being highway rights, or indicates that a civil servant thought that there were highway rights. 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 highway rights existed at the times that the various documents were compiled. 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 maps might have shown a private footpath 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, 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.

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 highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006. The antiquity of the route shows that the highway existed prior to 1883. It will therefore be a highway maintainable at the public expense,

and so should be added to the List of Streets maintained by the Council under s.36(6) Highways Act 1980.

The applicant requests the surveying authority to add the route to the definitive map as a public footpath.

Appendix A: Additional Context of Ordnance Survey Maps

The following additional details need to be considered in the assessment of the relevance of published Ordnance Survey maps as documentary evidence.

As with all evidence, it is vital that it is interpreted in line with contemporary expectations and wisdom, not with modern understanding, which can mislead. Ordnance Survey maps are sometimes belittled as having been produced 'for the military' but this is not so, they had widespread public sales and use and comments from the Director General of the OS make this clear.

Brigadier HSL Winterbotham, Director General of Ordnance Survey, said of the 'old series' one-inch maps, "*Administrative boundaries did not appear until long afterwards, and, what must have been a serious drawback, footpaths and inns are not shown.*" And, "*We are almost, without exception, interested in rights of way, either as landowners or as seekers after fresh air and exercise. But these are best seen on the six-inch plans...*" A Key to Maps, 1936.

"Contoured six-inch maps are almost indispensable for engineering projects, such as rail and road alignments, water and power supplies, and drainage, and for town and country planning. Town Planning schemes have had, in fact, by law to be exhibited on six-inch maps. Likewise, are they the statutory deposited maps illustrating acts and orders dealing with boundary alterations. Indeed, the six inch map has been acclaimed and adopted for a wide variety of uses." A Description of Ordnance Survey Medium Scale Maps, Director General of Ordnance Survey, 1949

Many Ordnance Survey maps carry a statement that depiction of a path, track or road on the map is not indication of a public right of way. However, contemporary wisdom was that this was simply to avoid the potential of litigation, as declared in The Countryside Companion (1948 page 320), "*In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation. A path which is shown, may, however, generally be presumed public.*"

Ordnance Survey surveyors were instructed not to investigate public status, but the Instructions to Ordnance Survey Field Examiners 1905 is clear in its direction that, "*Mere convenience footpaths for the use of a household, cottage or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown. N.B. —A clearly marked track on the ground is not in itself sufficient to justify showing a path unless it is in obvious use by the public.*"

"The object of the insertion of F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic." (Ordnance Survey Southampton Circular 1883 signed by Major-General A C Cook). This infers those roads shown were public, since the letters FP were to distinguish those roads which were not suitable for horses and wheeled traffic

"Bridle roads will be shown in the same way as footpaths now are and the initial B.R. written along them." Ordnance Survey Southampton Circular 1884 signed by Major G Hub Bowland. "*Bridle roads are shown to scale and the words (or contraction B.R.) are written to them. They are sometimes the width of cart tracks, sometimes only of footpaths.*" Instructions to OS Field Examiners 1905.

Bridle roads were assumed to be public ways. The definition from this period of the words road and bridleway were:

1800 Johnson's Dictionary – Horse Way: is a broad open way.

1903 Webster's International Dictionary – Road: a place where one may ride, an open place or public passage for vehicles, persons and animals, a track for travel, forming a means of communication between one city or place and another and Bridleroad: same as Bridle path: a path or way for saddle horses and packhorses, as distinguished from a road for vehicles.

1905 Nuttall's Bijou Dictionary – Road: a public way and Bridleway: is a path for horsemen.

These definitions consistently show that prior to the motor age, when horses were used for transport, all roads.