



App. Ref. No. 256

Form V1 01

WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER

DEFINITIVE MAP OF RIGHTS OF WAY FOR SHROPSHIRE

To: The Outdoor Recreation Manager
Outdoor Recreation
Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

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

Of The British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire CV82XZ.....(Address of Applicant)

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 **varying/adding to the particulars** relating to the following right of way :-

Parish Pontesbury.....
Status: ~~Byway Open to All Traffic/Restricted Byway/Bridleway/Footpath~~*
delete as appropriate
No. (if known) 0431/87/5.....

From OSGR SJ 4366 0810.....

To OSGR SJ 4387 0851.....(Location of right of way)

Nature of change requested Upgrade to Public Bridleway.....

as shown on the map accompanying this application.
(A map must be supplied with a scale of at least of 1:25,000)

I/We attach the following documentary evidence including evidence of use statements, in support of this application:

Tithe map Pontesbury (1837), OS 6 inch maps Shropshire XL.NE, published 1887,

OS sheet 152 - Shrewsbury published 1892 , Ordnance Survey 25 inch Shropshire XL.4 and XL.8

published 1882, Bartholomew 1903 Sheet 17 – Shropshire, Finance Act map IR 132/4/448 and IR 132/4/452, INSPIRE

Dated 21 December.....2023....

Signed WED..... PRINT NAME Wendy Bannerman.....

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

Wildlife and Countryside Act 1981

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

**For the upgrade to bridleway of part of a footpath and addition of a
bridleway in the Parish of Pontesbury, Shropshire as marked on the map
below by the red line A-B-C**



Applicant's Reference: SHR-0213

21 December 2023

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

Wildlife and Countryside Act 1981

Summary of Evidence

Definitive Map Modification Order Application

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



Extract from Ordnance Survey 1:25000
Applicant's Reference: SHR-0213

21 December 2023.

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

Grid references of ends of route
(approximate)

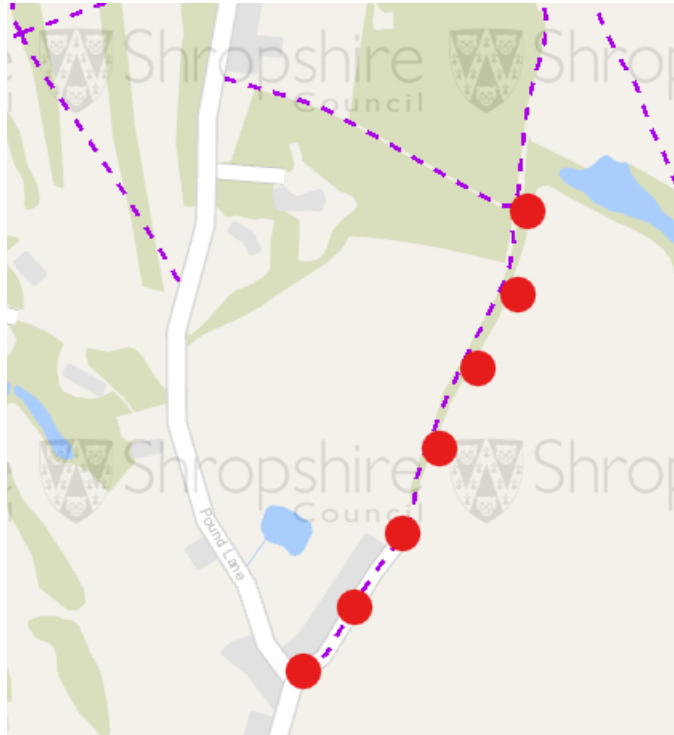
SJ 4366 0810 to SJ 4387 0851

1. My name is Wendy Bannerman, I am the applicant for the order, for and on behalf of the British Horse Society (BHS). I am employed by the BHS as an Access Field Officer for the East and West Midlands with a key objective to support and progress Project 2026 in the region.
2. This application is made because the effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route. (This applies if the route is determined to be a footpath or bridleway.)
3. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, because:
 - a. This application statement includes explanations as to how the evidence applies to the application route, and
 - b. The application contains one or more of the following forms of supporting evidence:
 - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 - (2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
 - ~~(3) Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.~~
 - (4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
 - (5) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public highway network.

THE APPLICATION ROUTE

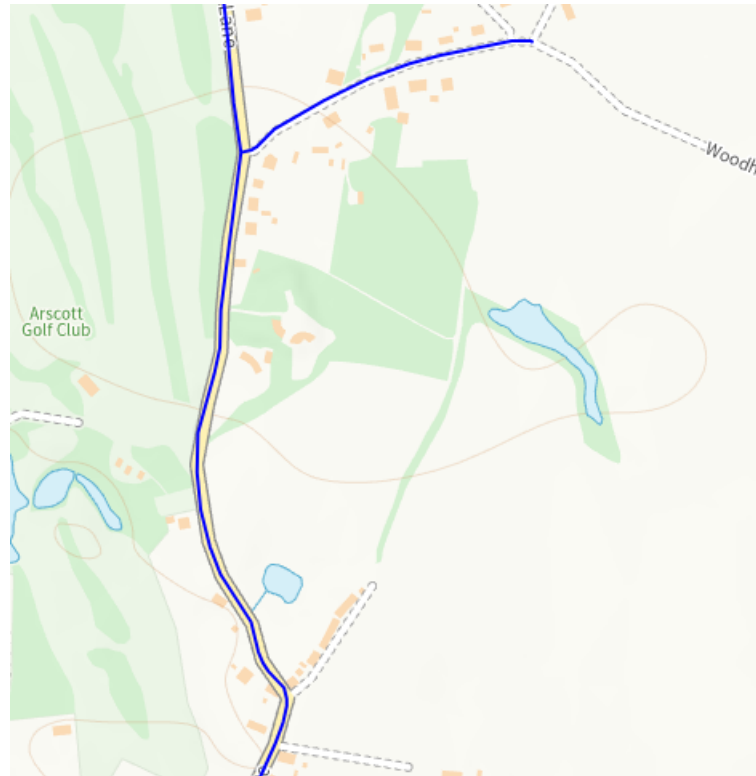
4. The application route is shown approximately on the plan above:
 - a. Point A at OSGR SJ 4366 0810 from Pound Lane
 - b. Point B at OSGR SJ 4376 0822 where footpath 0431 87/5 leaves the track
 - c. Point C, at OSGR SJ 4387 0851 at the woodland

5. The application route is partially on the Shropshire CC representation of the Definitive Map as 0431/87/5



<https://shropshire.maps.arcgis.com/apps/webappviewer/index.html?id=00a0e03e79ee453ab6b787961ab192ec>

6. The application route is not on the online List of Streets



7. The images below are from Google earth.



Image 1 is a Google Aerial View with the route indicated with a red line A to B to C



Image 2 is a Google Streetview image from point A looking north.

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.

11. Tithe map and apportionment

a. Date The map was produced in Arscott, the Hamlets (Onslow, Moathall, Woodhall, Panson and Little Hanwood), Cruckmeole, Plealey, Sibberscott and Shorthill (Townships In the Parish of Pontesbury) (1837)

b. Relevance

(1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

(2) First class maps are legal evidence of all matters which they portray and were signed and sealed by the Commissioners (s.2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

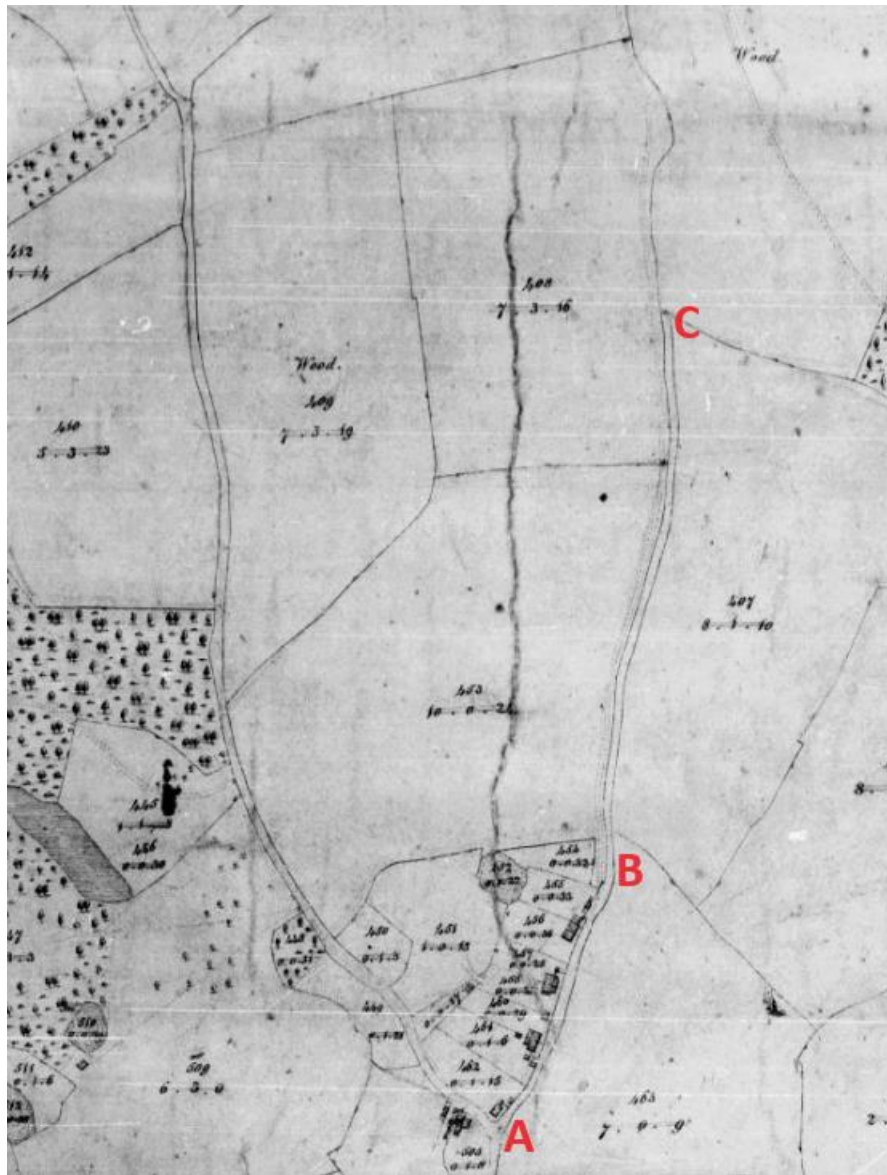
(3) The Tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on road, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from the tithe documents regarding the existence of public rights, and, in particular, public vehicular rights. In some cases highways are coloured sienna or light brown which typically indicates public status.

c. Archive and Reference The tithe map has been accessed via the Genealogist

https://www.thegenealogist.co.uk/search/advanced/landowner/tithe-records/?fn=&fn_ph=ph&sn=&sn_ph=ph&county=Shropshire&parish%5B%5D=&parish%5B%5D=Arscott%2C+the+Hamlets+%28Onslow%2C+Moathall%2C+Woodhall%2C+Panson+and+Little+Hanwood%29%2C+Cruckmeole%2C+Plealey%2C+Sibberscott+and+Shorthill+%28Townships+In+the+Parish+of+Pontesbury%29&plan_no=74&organisation=&kw=&a=Search#loadwindow_1370427446

d. Meaning The map shows the application route as bounded by 2 solid lines to differentiate it from the surrounding land and it is contiguous with the road network.

e. Assessment This provides useful information from which inferences may be drawn. The application route is shown in the same way on the map as other highways in the area such as the modern pound Lane. This suggests that the application route was a public highway at the time of assessment and should be recorded at least as bridleway status.

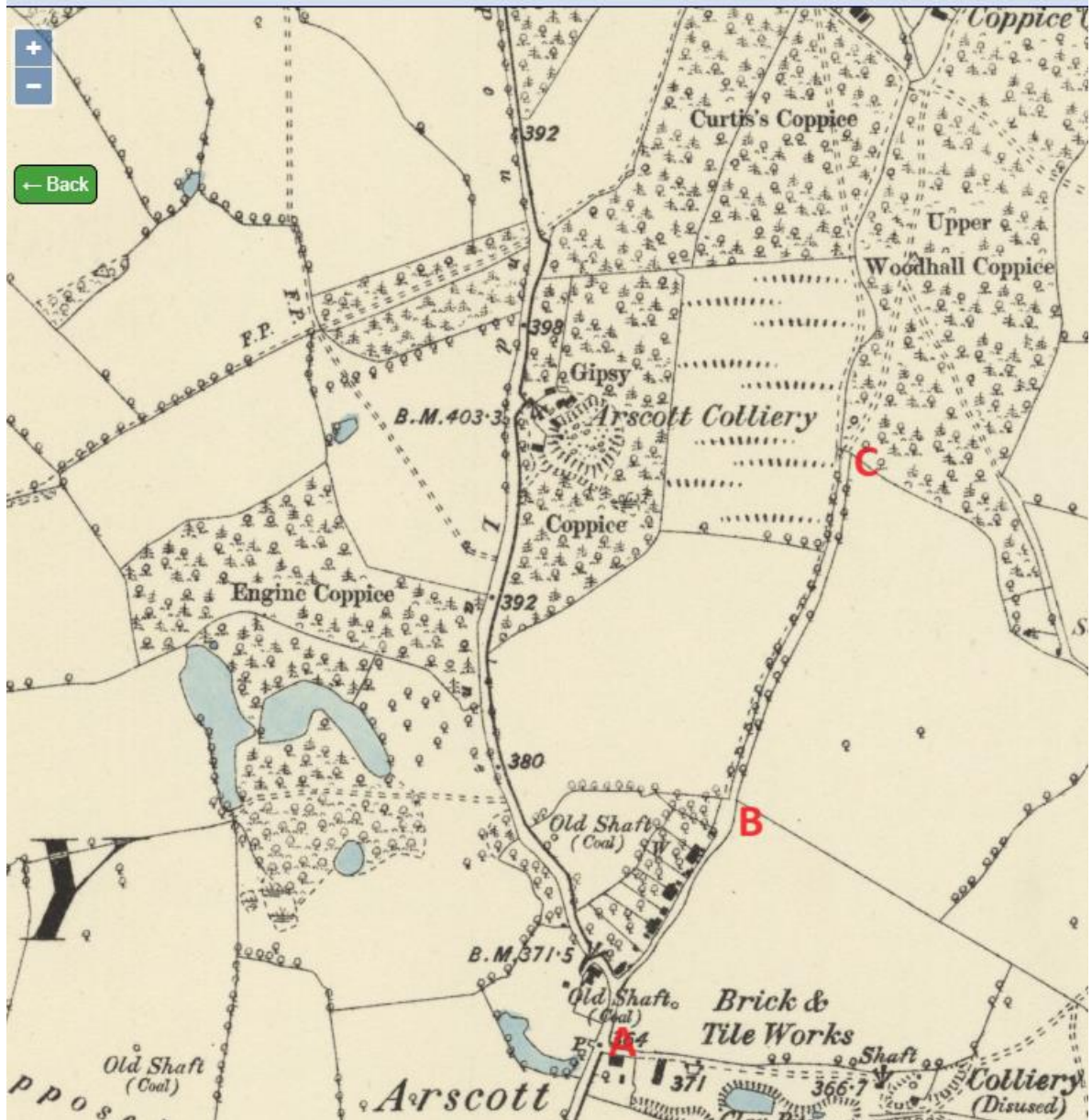


Extract from tithe showing the application route

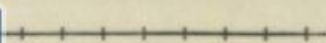
12. Ordnance Survey 6 inch Maps.

- a. Date. Shropshire XL.NE, published 1887
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently, they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101594371>
- d. Meaning. The Characteristics Sheet for the 6" Maps differentiate between main and other roads through the use of a bold boundary on one side of a main road. The claimed route does not have the bold boundary and is therefore shown as *other road*, fenced.
- e. Assessment. This series of maps supports the inference that the route is part of the highway network, as it is similar to other highways in the wider network on the modern map.

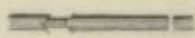
[Maps home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)



Extracts from OS Six-inch map

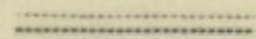
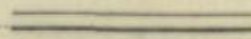


Single d° d°

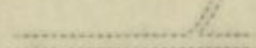
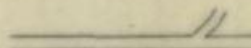


Canals.

Main Roads

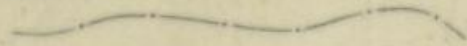


Other Roads

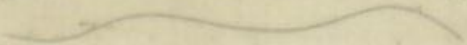


Contours & Altitudes.

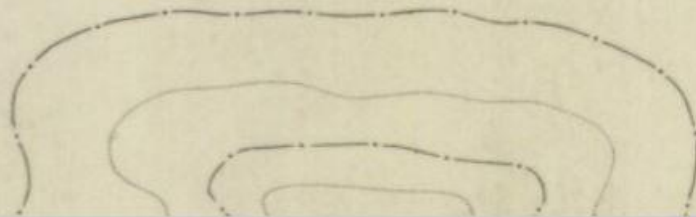
Instrumental Contours



Interpolated d°



thus:



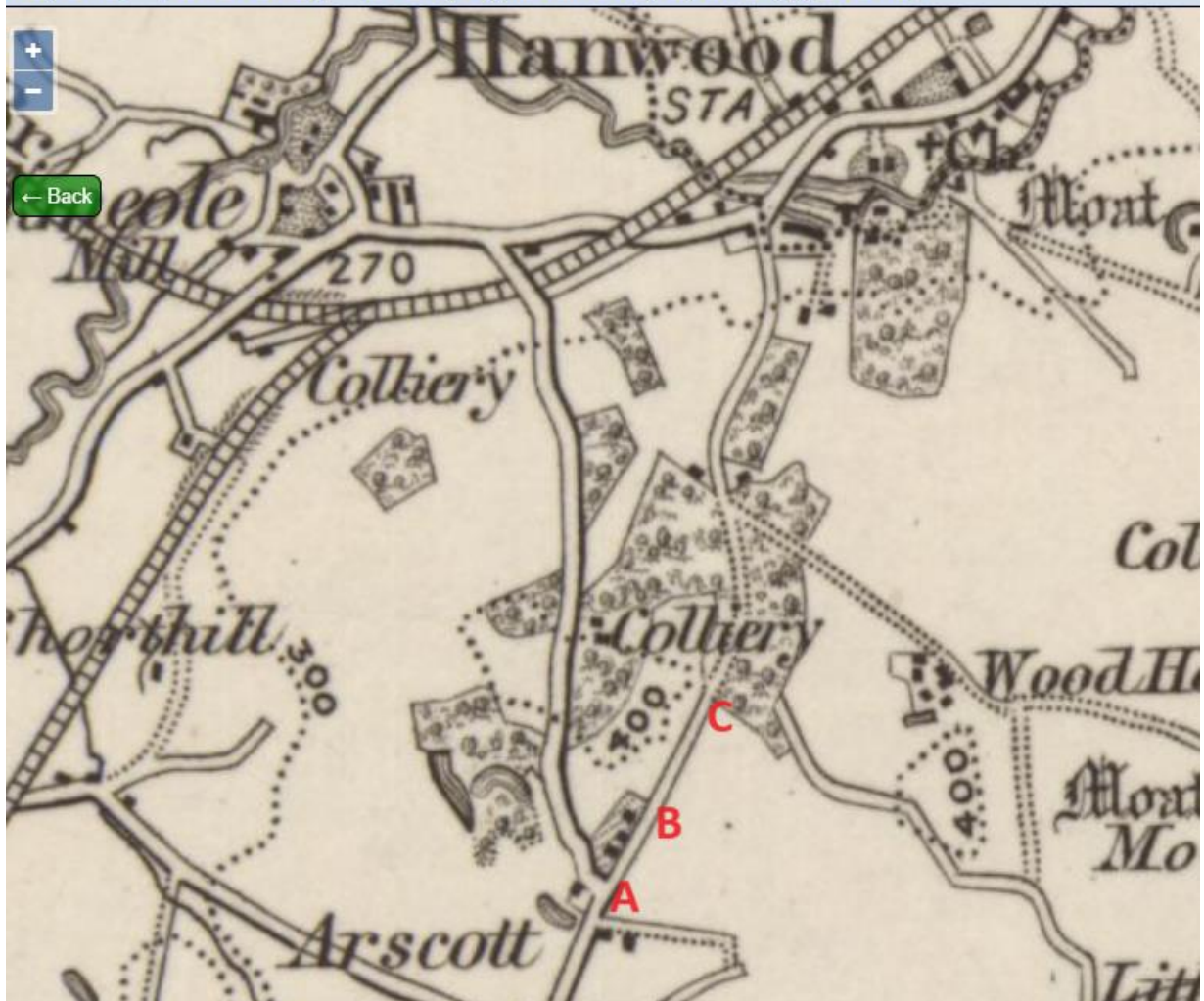
13. Ordnance Survey 1 inch Maps.

- a. Date. OS sheet 152 - Shrewsbury published 1892
- b. Relevance. These maps were made for sale to the travelling public and thus would only generally show routes of some significance that were available to them. They purported to show physical features that appeared on the ground.
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/239764381>
- d. Meaning. The route is shown as “fenced” third class road.
- e. Assessment. The presentation of the route on the map suggests the route was a public highway and probably a through route beyond to meet what is now Public Bridleway 0431 90/1 north to the A448.



Sheet 152 - Shrewsbury
Surveyed: 1880 to 1882, Published: 1892
Size: Sheet ca. 47 x 62 cm (ca. 18 x 24 inches)

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



Extracts from OS 1" Map showing the application route as a “unmetalled road”

<i>Metalled Roads: First Class</i>	<i>5 (Mile distance)</i> <i>(Altitude) 211</i> <i>Keen</i> / <i>Trifurcated</i>		<i>Church or Chapel with Tower</i>	
" " <i>Second Class</i>			" " " " <i>Spire</i>	
" " <i>Third Class</i>			" " " " <i>without Tower or Spire</i>	
<i>Unmetalled Roads</i>			<i>Windmill</i>	
<i>Footpaths</i>			<i>Letter Box</i>	<i>L.B.</i>
<i>Railways, Single Line</i>			<i>Contours</i>	
" " <i>Two or more Lines</i>	<i>Level Crossing</i> <i>Cutting</i> / <i>Embankment</i> <i>Bridge Over</i> // <i>Bridge Under</i>		<i>Boundaries, County</i>	
<i>Mineral Lines and Tramways</i>			" " " " <i>Parish</i>	
			<i>At Villages</i> { <i>Post Office</i>	<i>P.</i>
			{ <i>Post & Telegraph Office</i>	<i>T.</i>

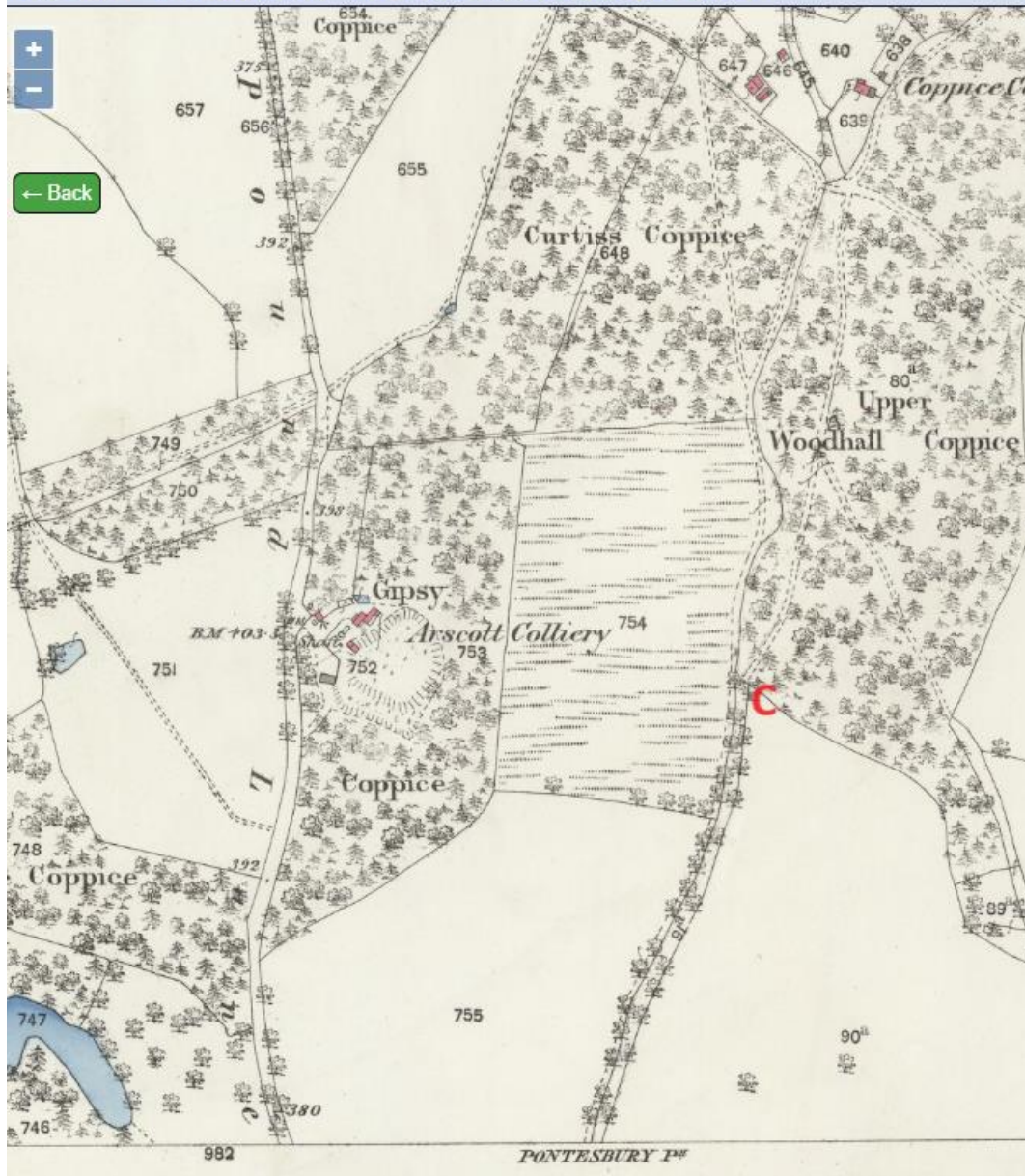
*Rivers and Streams when exceeding 15 feet in width are shewn with two lines.
For other information see Characteristic sheet.*

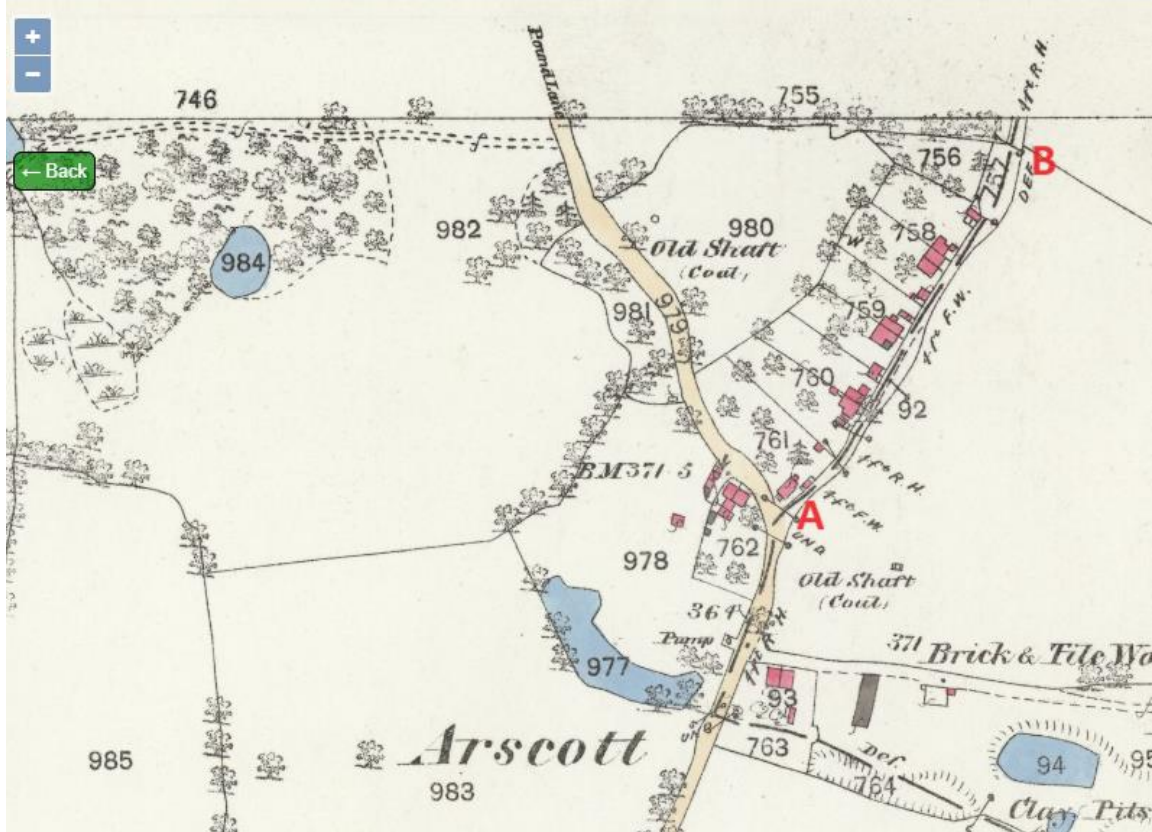
Extract from Key to OS 1" Map

14. Ordnance Survey County Series 25 inch Maps.

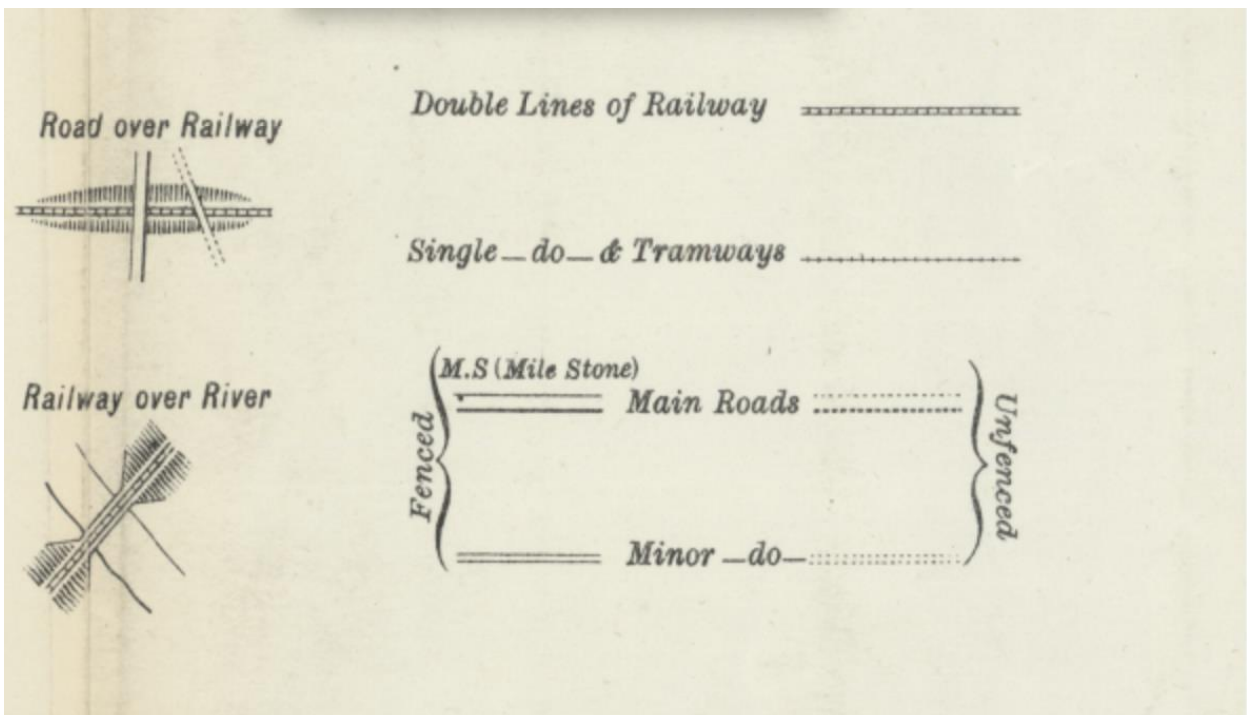
- a. Date. Ordnance Survey 25 inch Shropshire XL.4 and XL.8 published 1882
- b. Relevance. The OS County Series 25 Inch mapping was predominantly used for professional purposes rather than for navigation. They are detailed enough to show gates / barriers on roads, tracks and paths. Parcels of land are numbered and areas shown either under the parcel number or in separate "Area Books" (on some First Edition sheets). Second edition and later maps generally carry the disclaimer "The representation on this map of a Road, Track or (Foot)path is no evidence of the existence of a right of way". However, scrutiny of some of the detail contained along with contemporary published guidance allows some inferences as to status of routes to be drawn.
- c. Archive. The extract from this sheet below was obtained from the National Library of Scotland at <https://maps.nls.uk/view/121150472> and <https://maps.nls.uk/view/121150496>
- d. Meaning. The majority of the route is bounded by 2 solid lines, numbered 91a.
- e. Assessment. The depiction of the route as connecting to the surrounding network, provides an inference that it was also considered to be part of that highway network. The showing of the route on the map is evidence of reputation and appearance at the time the documents were compiled, suggesting the application route should be recorded as bridleway at least.

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





Extract from OS 25 inch map sheets



OS 25 inch map key

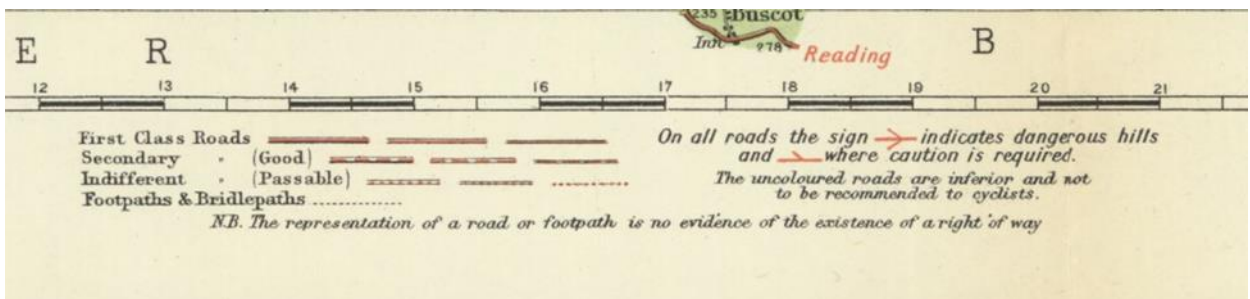
15. Bartholomew's "Half-Inch" Maps of England and Wales, 1902-1906.

- a. Date. This map was produced in 1903 Sheet 17 – Shropshire
- 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. This enables us to draw inferences from how routes are shown.
- c. Archives. An original of sheet is held by the National Library of Scotland and can be viewed via <https://maps.nls.uk/view/97131062>
- d. Meaning. The application route, is represented as a “uncoloured, inferior” road in the same way as the current road to which it connects and the bridleway 0431/90/1 to the north.
- e. 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 which is an “uncoloured, inferior” road which is significant as at this time cyclists had no right to use bridleways (s.88 Local Government Act 1888). 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 in 1903.

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



Extract from Bartholomew's map



Map key

16. Inland Revenue Valuation / Finance Act 1910 Maps

- a. Date. The valuation records were produced in the few years after 1910.
- b. Relevance. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’, and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

It is noted that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

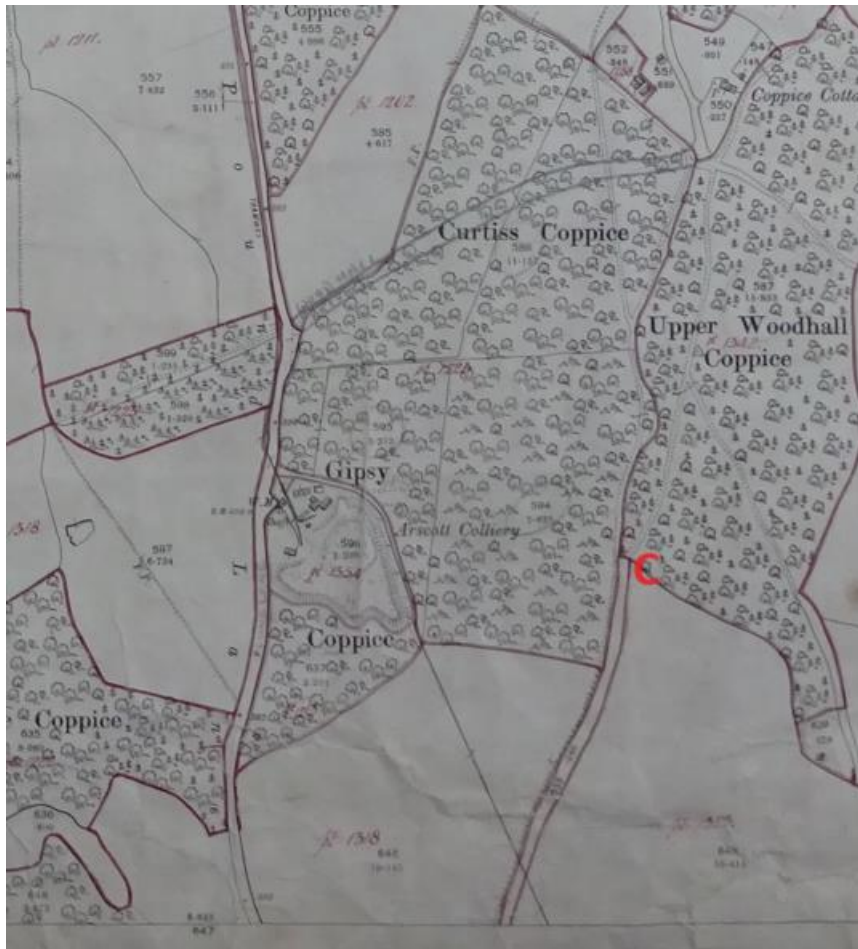
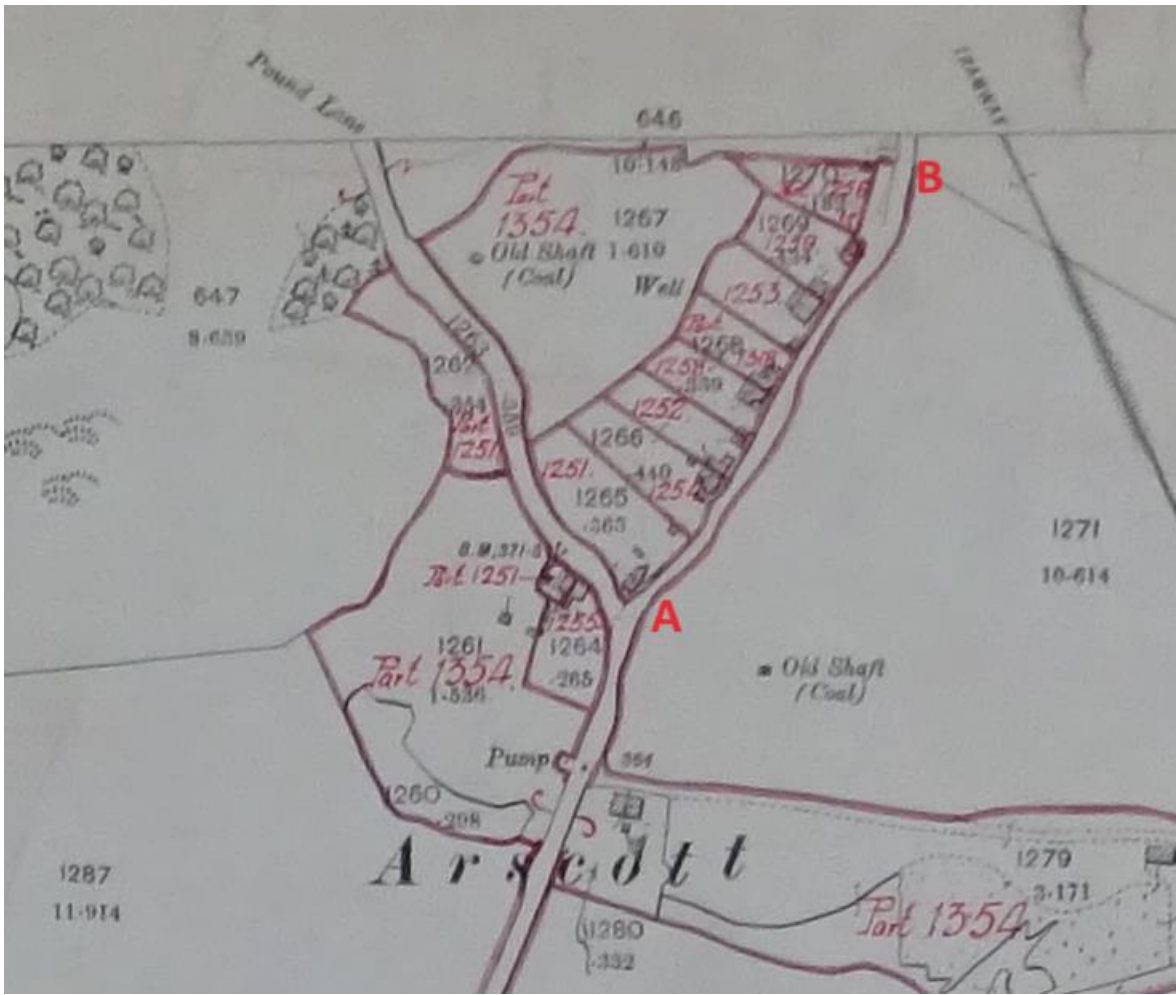
“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

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.

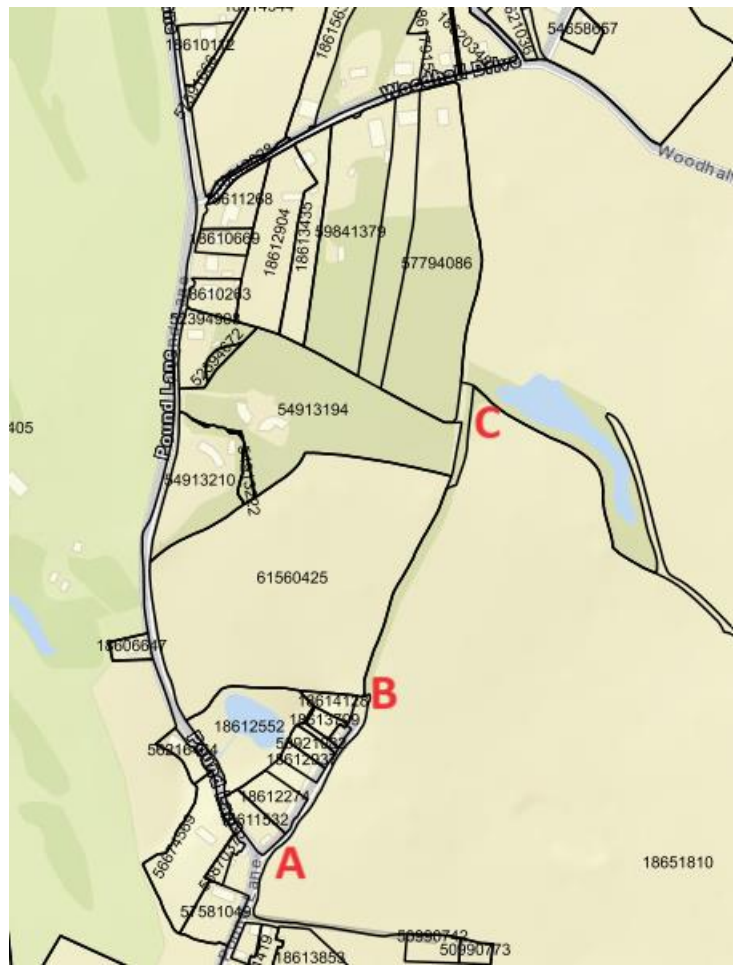
- c. Archive. The extract below is from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 132/4/448 and IR 132/4/452.
- d. Meaning. The extract below shows the application route as a white road, separate from the adjoining hereditaments.
- e. Assessment.
 - (1) As this land is unvalued, this suggests it belongs 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 highways 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 (and this may apply to the short section south of the water course).
 - (2) The legislation is sufficiently clear that anyone arguing that white road status means something other than the route is a public highway must show which other exception from valuation the route falls under.



Extract from Finance Act maps

17. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 31 Oct 2023.
- b. Relevance. The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.
- c. Archive. The publicly accessible dataset is found at <https://www.arcgis.com/apps/StorytellingSwipe/index.html?appid=c445c71c1d494f38b13e0dc0f4e8f584> The extract below is taken from a screen shot taken by the Applicant on the date stated above.
- d. Meaning. The application route is shown, indicated by a red A-B-C.
- e. Assessment. The application route A-B is unregistered and can therefore be considered as part of the highway network. The northern end of the application route also appears as unregistered land. The mid-section is registered 18651810, title number SL154378, registered owners, Lea Hall Energy Limited, Lea Hall Farm, The Lea, Lea Cross, Shrewsbury SY5 8HY





Extract from the INSPIRE mapping with approximate line of application route indicated by a A-B-C

CONCLUSIONS

18. This document presents evidence from the last 180 years that suggests 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 whole it paints a sound picture of the existence of public rights.

19. Employing the well-established legal maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that highway rights existed.

20. The applicant requests the surveying authority to upgrade the route A-B-C to the definitive map as a Public Bridleway, although further assessment may infer higher rights exist.

Date: 21 Dec 2023

Name: Wendy Bannerman

Position: Access Field Officer East and West Midlands

Organisation: British Horse Society