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## **APPLICATION FORM FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT WILDLIFE AND COUNTRYSIDE ACT 1981**

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**To: Suffolk County Council** The Definitive Map Manager, Rights of Way and Access, Suffolk County Council, Phoenix House, 3 Goddard Road, Ipswich, IP1 5NP

**I,, for and on behalf of the British Horse Society, of Abbey**

**Park, Stareton, Kenilworth, Warwickshire. CV8 2XZ.**

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by:-

a) Adding the Bridleway which runs from Point A on the application map (OSGR TL 77750 72339) the junction of the application route and The Street, to Point B (OSGR TL 78545 73682) the northern end of the application route.

**and shown on the map accompanying this application.**

**I attach copies of the following documentary evidence in support of this application, namely extracts of:**

### **List of Documents**

- I. Tithe Map for Icknield All Saints (1839)
- II. Ordnance Survey 25" County Series Map Sheets First Edition XXXII.4 (1883) and XXI.16 (1882)
- III. Ordnance Survey 6" County Series Map Sheets XXXII.NE (1884) and XXI.SE (1884)
- IV. Ordnance Survey 1" Map Sheet 189 (1898)
- VI. Ordnance Survey 1:25000 Provisional Series Sheet 52/77-A (1949)
- VII. Map produced from HM Land Registry INSPIRE database (2020)

The copies of the above items of documentary evidence are contained in a Summary of Evidence document also attached.

**I understand that the information I have provided may be imparted to third parties.**

Signed:



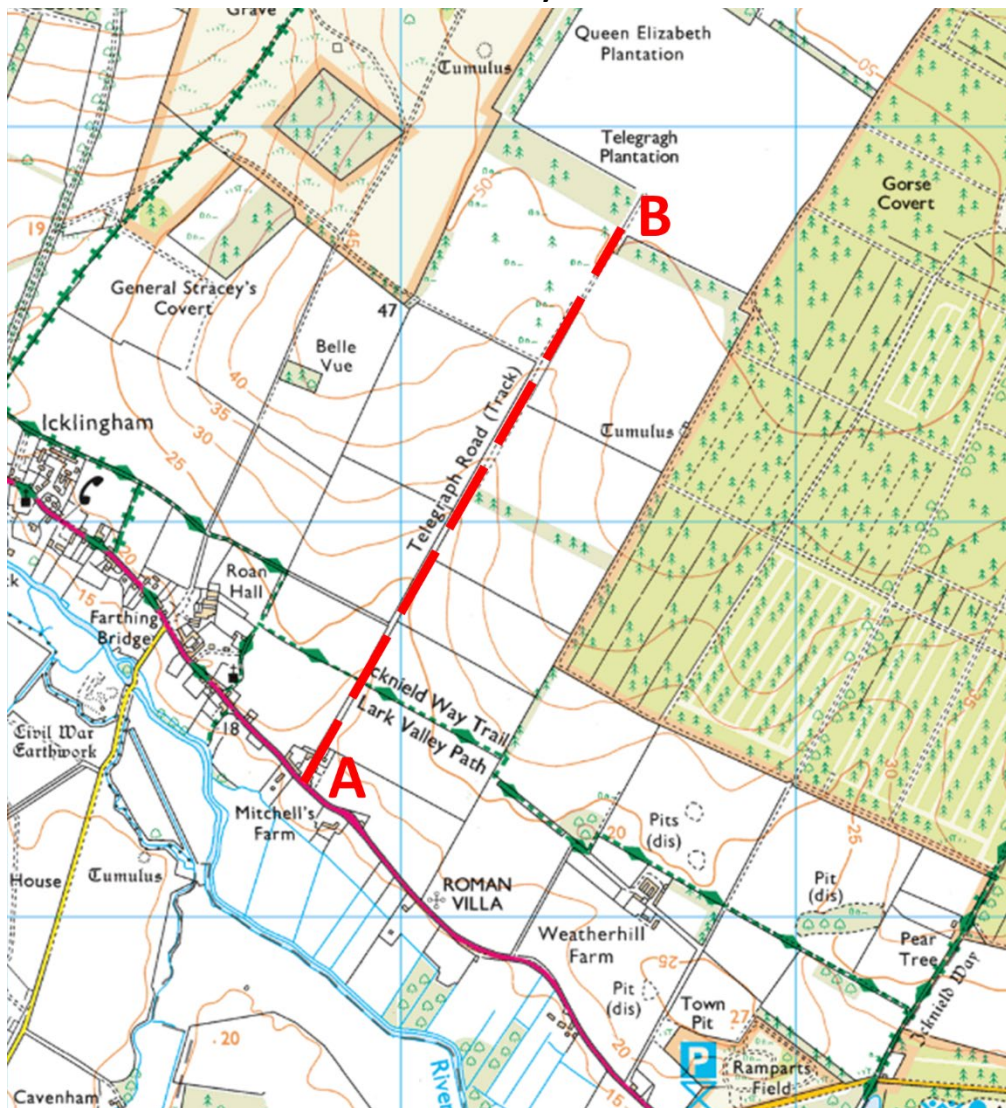
Date: 29<sup>TH</sup> January 2024

## Wildlife and Countryside Act 1981 Map to Accompany

Definitive Map Modification Order Application For a route in the Parish of Icklingham to be shown as a Bridleway marked on the map below by the red dashed line A-B

Applicant's Reference: SUF-0215

28<sup>th</sup> January 2024



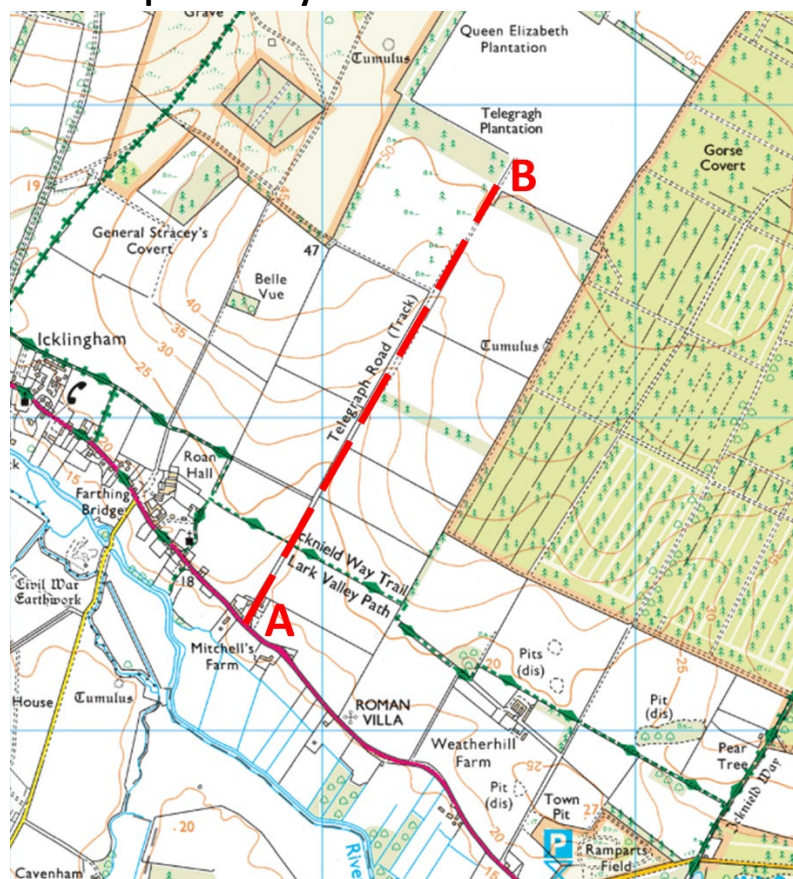
Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

# Wildlife and Countryside Act 1981

## Summary of Evidence

### Definitive Map Modification Order Application

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



Applicant's Reference: SUF-0215

**12 June 2020**

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

OS County series map

Suffolk XXXII.4 and XXI.16

Modern Definitive Map sheet(s) 'Icklingham 334'

Grid references of ends of route

TL 7750 72339 to TL 78545 73682 (approximate)

1. This application is made because on the cut off day, 1<sup>st</sup> January 2031, 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 byway open to all traffic.)
2. I believe this application will pass the planned Preliminary Assessment Test required by para 2 Sch 13A Wildlife and Countryside Act 1981, when introduced, because:
  - a. This application statement includes explanations as to how the evidence applies to the application route, and
  - b. The application contains one or more of the following forms of supporting evidence:
    - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
    - (2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
    - (3) Documentary evidence of expenditure that would be unlawful unless the way was a public highway, for example Highway Board records.
    - (4) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.
    - (5) Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network.

### THE APPLICATION ROUTE

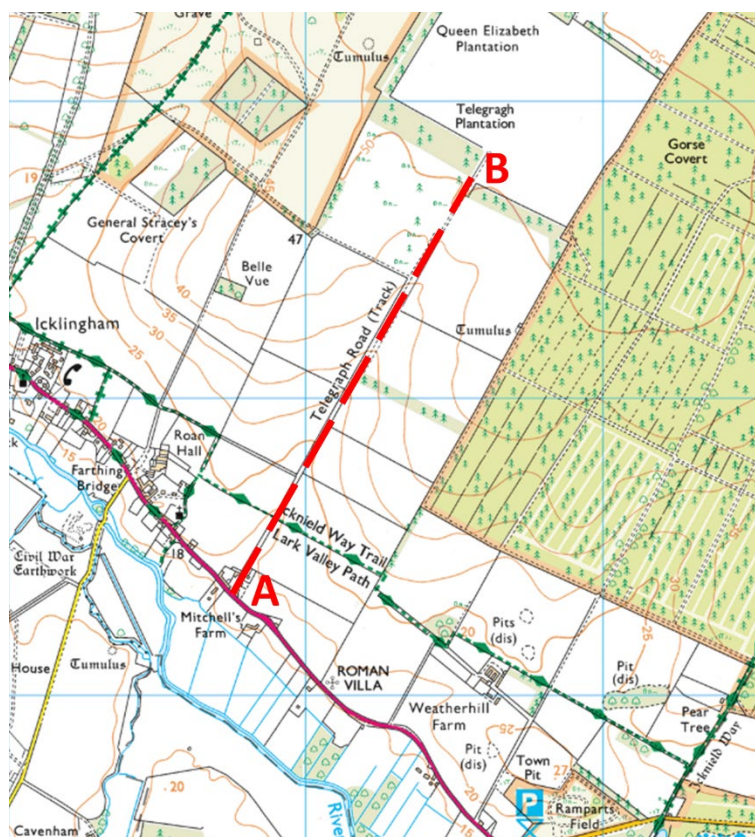
3. The application route is shown approximately on the plan below:
  - a. Point A, the southern end of the route, at OSGR TL 77750 72339, the junction of the application route and The Street.
  - b. Point B, the northern end of the route, at OSGR TL 78545 73682.
4. The application route is shown recorded on the Council's definitive map on and its online List of Streets in part as Telegraph Road at: (<https://www.suffolk.gov.uk/assets/Roads-and-transport/road-adoption/2020-10-05-Suffolk-List-of-Streets.xlsx>).





Extract from working copy of Icklingham 334 Definitive Map from  
<https://www.suffolk.gov.uk/roads-and-transport/public-rights-of-way-in-suffolk/view-definitive-maps-of-public-rights-of-way/>

5. The route's width should be recorded as shown on the Tithe map.



*Extract of Ordnance Survey 1:25000 scale map (Sheet 229 – Thetford Forest in The Brecks published 2015) showing application route A – B (not to scale)*

7. Photographs 1 to 2 are from Google.



*Photograph 1 is a Google Aerial View with the route indicated with red dots. The route is a clear landscape feature.*





*Photograph 2- A Google Street view photo from 2011 of Point A looking generally north along the route. The route is of significant width, the route has characteristics of an old lane and currently has a tarmac then stone surface..*

#### 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. Tithe map for Icklingham All Saints.

a. Date. The Icklingham All Saints tithe map was published in 1839.

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 (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.

(1) The tithe map and apportionment for Icklingham All Saints are held by the Suffolk Archives and Records Service based at Bury St Edmunds, Suffolk map reference IR30/33/232 apportionment references IR29/33/232.

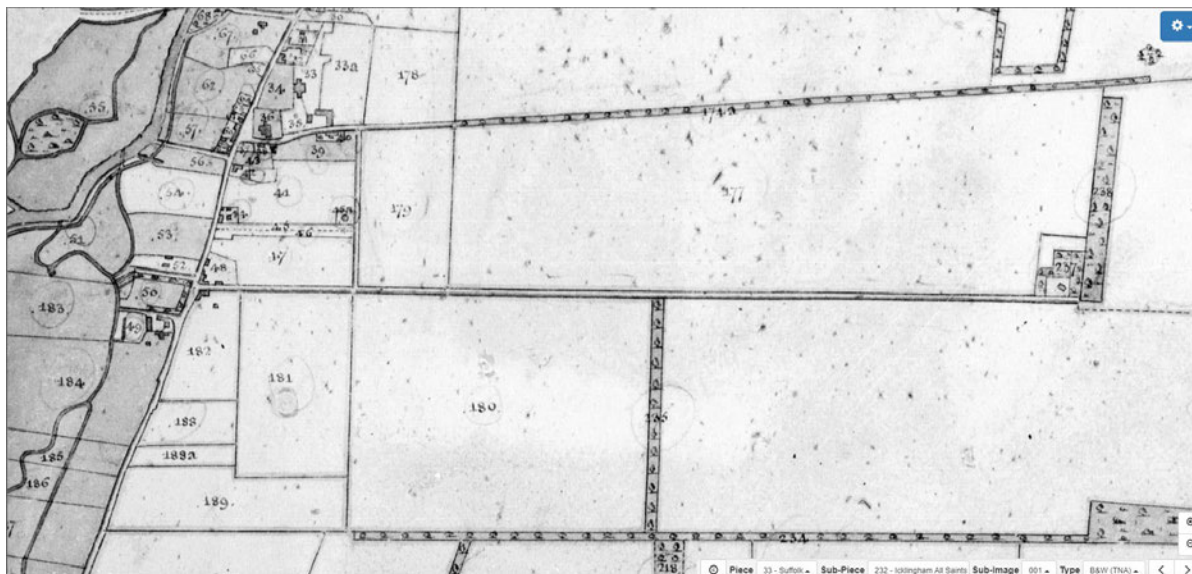
(2) Both tithe maps and apportionments are also available from the [www.thegenealogist.co.uk](http://www.thegenealogist.co.uk) subscription service. This provides scans of the maps and apportionments held by The National Archives.

d. Meaning. The map shows the entirety of the application route as a separate unnumbered parcel of land and appears to be shaded as are other roads and tracks. As a microfiche copy it is not possible to discern colouring. The tithe apportionment has a section giving a total acreage for roads but no parcel numbers and for which no owner or occupier is recorded and for which no tithe is payable. It is of note that Commons, Waste, etc are individually numbered on the map and listed in the apportionment.

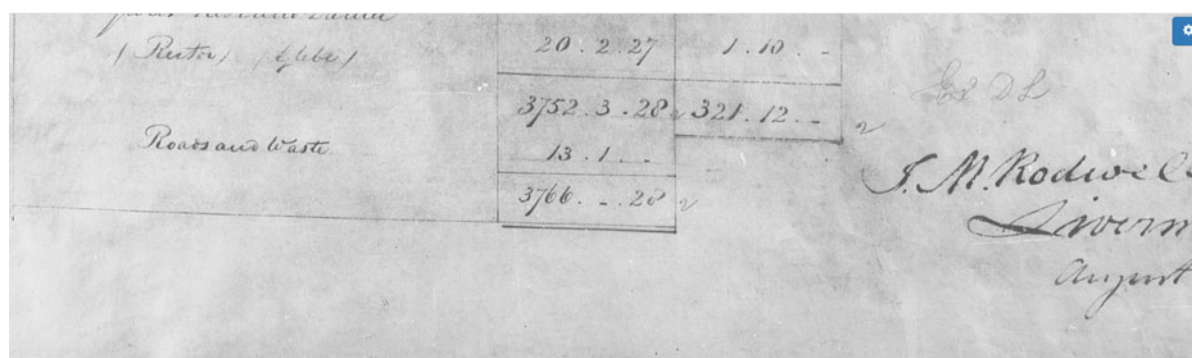
e. Assessment. This is probably a second class map and so is only conclusive of matters of relevance to the tithe commissioners. It nevertheless provides useful information from which inferences may be drawn. The application route is depicted in the same way on the tithe map



as other public roads in the area. This depiction is consistent with the application route being a public vehicular highway at the time of the assessment.



*Extract from Icklingham All Saints Tithe Map*



*Extract from Icklingham All Saints Tithe Apportionment*

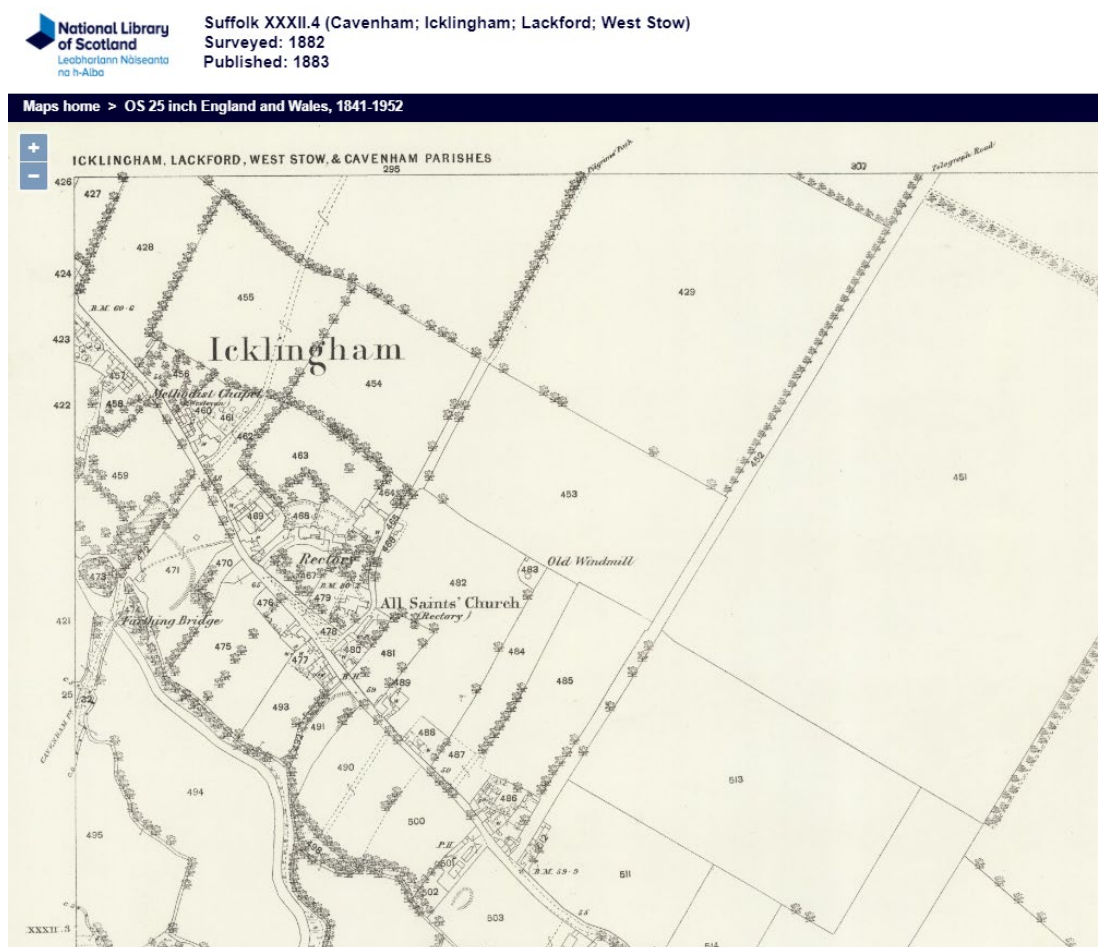
## 12. Ordnance Survey County Series 25 inch Maps.

- a. Date. The First Edition of OS sheet Suffolk XXXII.4 was surveyed in 1882 and published in 1883, and Suffolk XXI.16 was surveyed in 1882 and published in 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". 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. Additionally, on the first edition only, colour was used on some sheets to give significance to certain features (roads, buildings, water features, etc.)

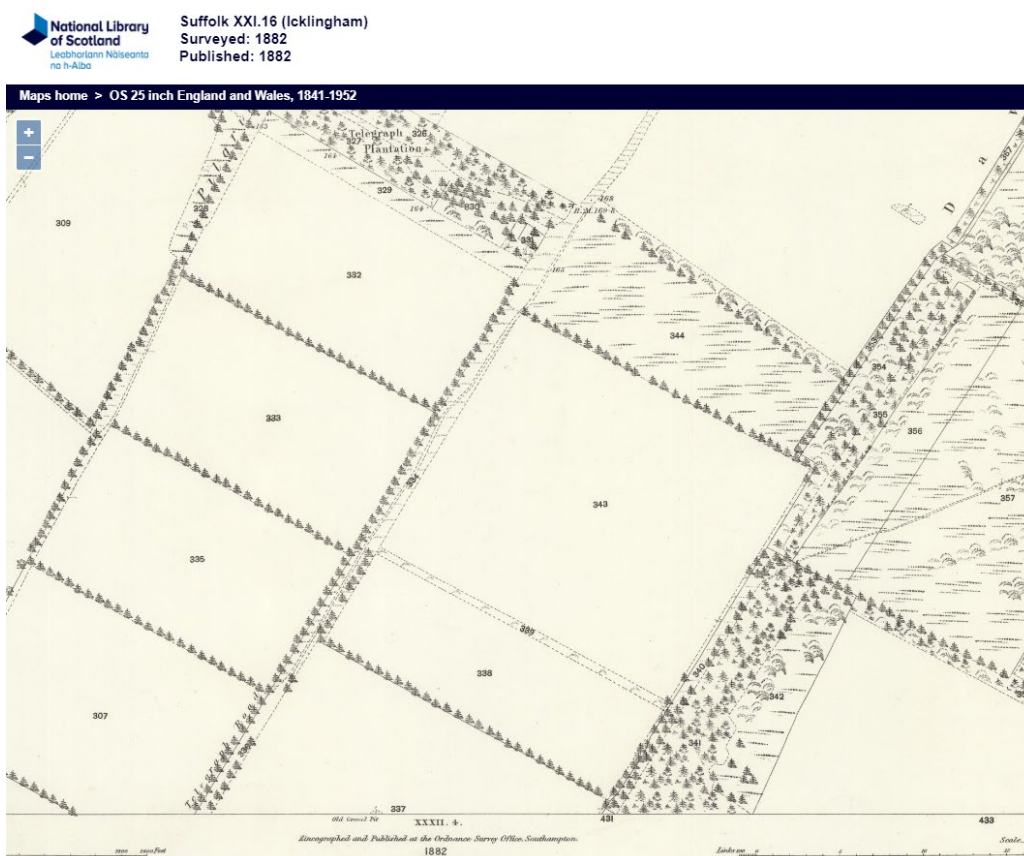
c. Archive. The extract from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114498520> and <https://maps.nls.uk/view/114497740>.

d. Meaning. The route is shown as single parcels of land, no. 452, no.336 and no.334, within Icklingham Parish, separated and separately numbered from the adjoining fields. The route is labelled 'Telegraph Road'. The route appears in an almost identical on the 1904 edition of the sheet.

e. Assessment. The depiction of route, in the same manner as the surrounding ordinary road network provides a strong inference that it was also considered to be part of that road network.



*Extract from OS 25" First Edition Map*



*Extract from OS 25" First Edition Map*

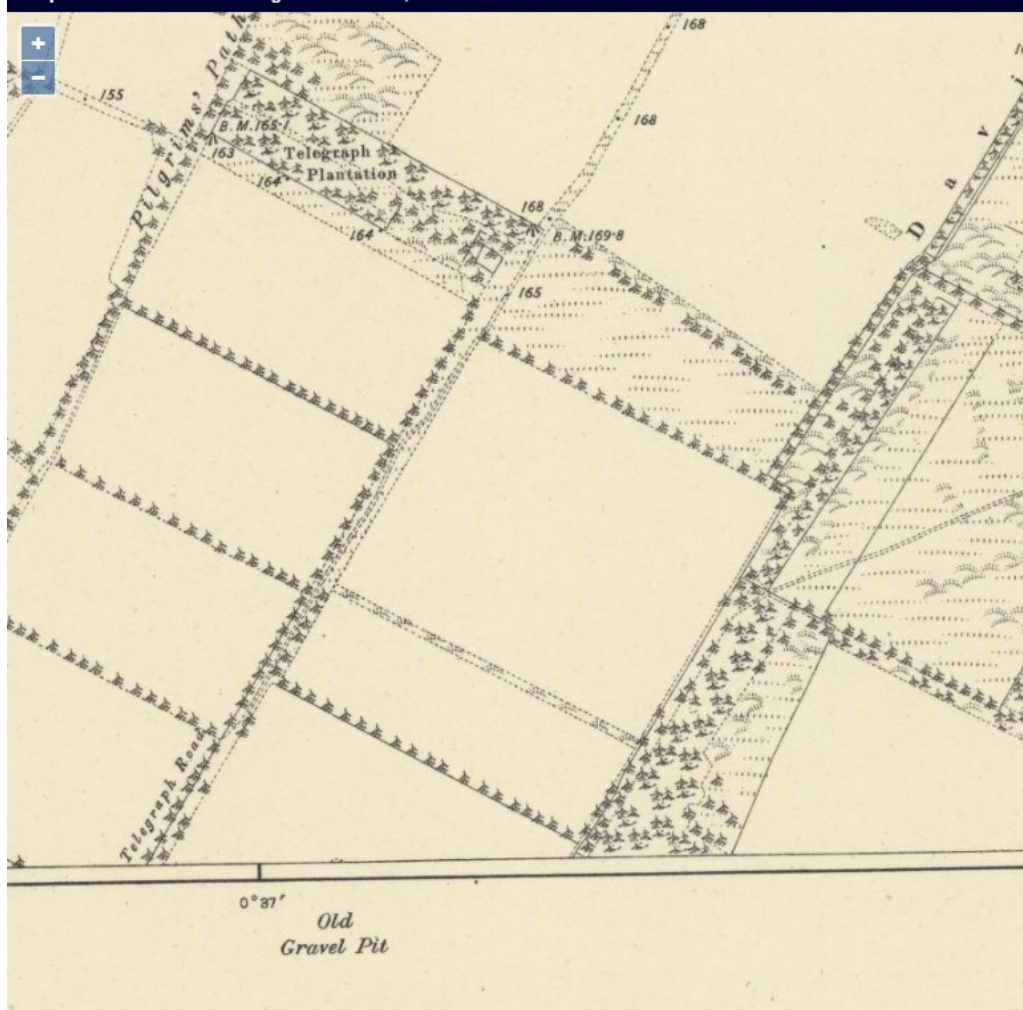
### 13. Ordnance Survey 6 inch Maps.

- a. Date. OS sheet Suffolk XXXII.NE was surveyed in 1882 and published in 1884 and XXI.SE was surveyed between 1881 to 1882 and was published in 1884.
- b. Relevance. The 6" maps were based on and derived from the 25" series. Consequently, they seldom show any topographical differences from the larger scale. However, useful information can sometimes be derived from the particular conventions used to show detail.
- c. Archive. The extracts from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101576888> and <https://maps.nls.uk/view/101576579>.
- 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 road. The claimed route is shown as "Other Roads" and labelled 'Telegraph Road'.
- e. Assessment. This series of maps supports the inference drawn from the 25" maps, that the route is part of the full vehicular road network.

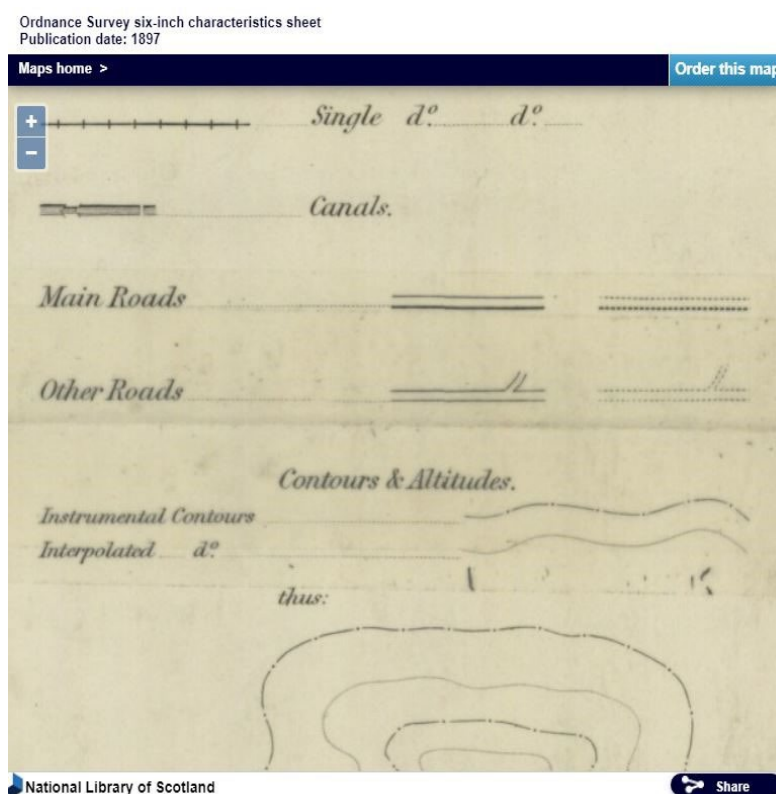




Extract from OS 6" Map showing A-B as "Other Road"



Extract from OS 6" Map showing A-B as "Other Road"



Extract from Key to OS 6" Map

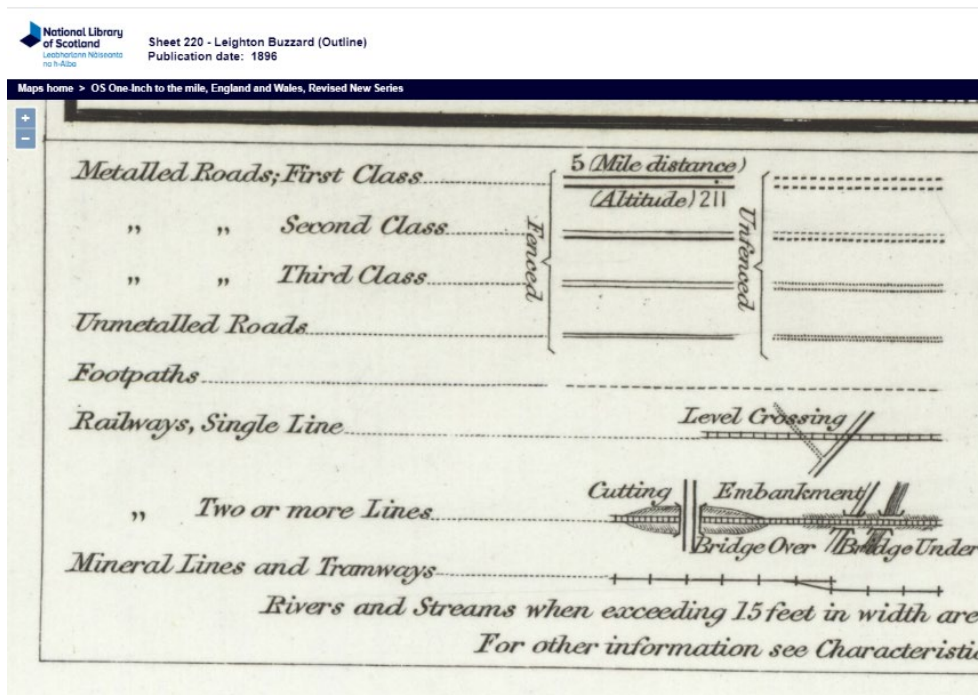
14. Ordnance Survey 1 inch Maps.

- a. Date. OS sheet 189 Bury St Edmunds was published in 1898.
- 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.
- c. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168168>.
- d. Meaning. The route is shown in part as "Unmetalled Road".
- e. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route being a public vehicular carriageway.





Extract from OS 1" Map



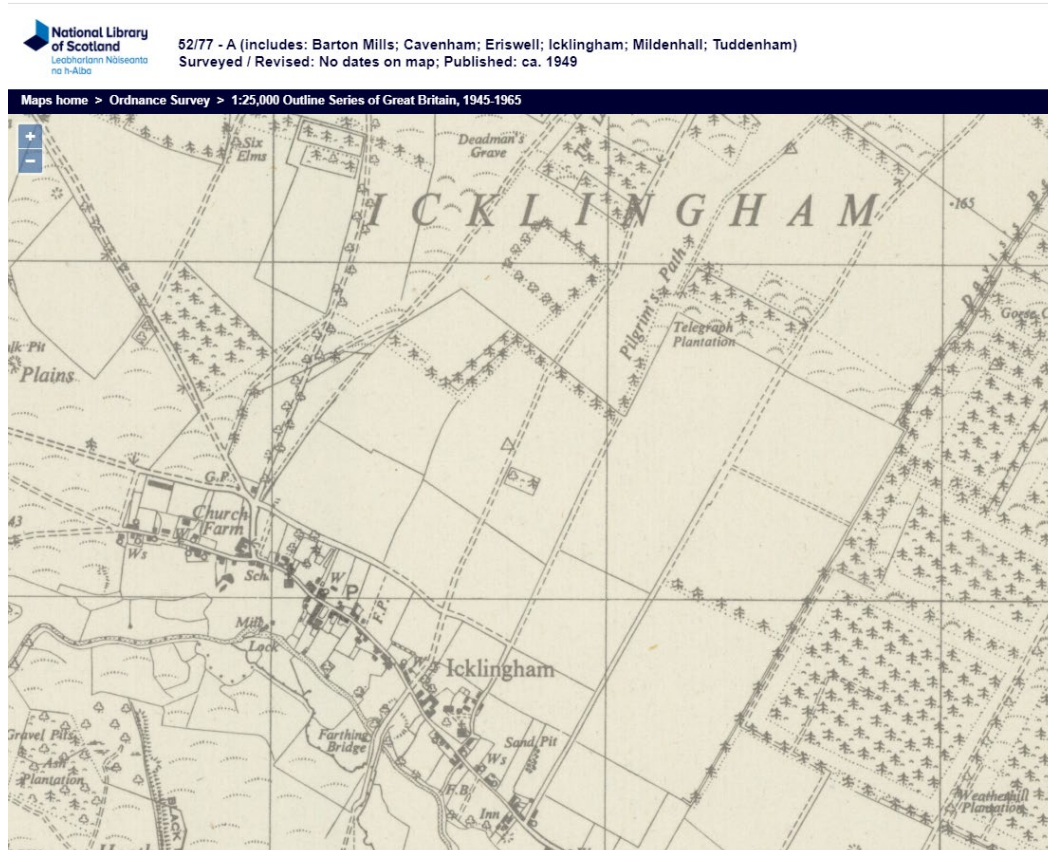
Extract from Key to OS 1" Map

## 17. Ordnance Survey Outline Edition

- Date. OS Sheet 52/77-A was published in 1949.
- Relevance. This series of maps was made for sale to the public to use to travel around the country and thus would only generally show routes of some significance that were available to them. Although this map carries 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.

- a. Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/207356145>.
- b. Meaning. The route is shown as “Other Road”.
- c. Assessment. Other through routes shown in a similar manner are now largely part of the ordinary road network and thus this is evidence in support of the route being a public vehicular carriageway.



*Extract from OS Outline Edition Map showing A-B as “Other Road”*

## 18. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 1<sup>st</sup> December 2020.
- b. Relevance. The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.
- c. Archive. The publicly accessible dataset is found at <https://data.gov.uk/dataset/landregistry-inspire-view-service-and-metadata>. 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 red dots, within two land holdings.
- e. Assessment. This information is given purely to show that the landowners have been identified for the purpose of serving notices.



*Extract from the INSPIRE mapping with approximate line of application route indicated by red dots.*

### CONCLUSIONS

19. This document presents evidence from the last 180 years that consistently indicates that the application route was part of the wider roads network. Whilst no single piece of evidence is conclusive in its own right, taken as whole it paints a compelling picture of the existence of public vehicular rights.
20. 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.
21. The applicant requests the surveying authority to add the route to the definitive map as a Bridleway.

Name: Hilary Carroll

Organisation: British Horse Society