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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:** Bedford Borough Council Public Rights of Way, Definitive Map Team, Bedford Borough Council, 4<sup>th</sup> Floor Borough Hall, Cauldwell Street, Bedford, MK42 9AP

[REDACTED] on behalf of the British Horse

Society, of Abbey Park, Stareton, Kenilworth, Warwickshire.

CV8 2XZ.

I 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) Upgrading Biddenham Footpath 12 to restricted byway which runs from Point A on the application map (OSGR TL 02817 50436) the junction of the application route and Bromham Road (A4280), to Point B (OSGR TL 02336 49941) the junction of the application route and Main Road.

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. Ordnance Survey 25" County Series Map Sheet First Edition XI.15 (1884) and Second Edition XI.15 (1901)
- II. Ordnance Survey 6" County Series Map Sheet XI.SE (1884)
- III. Ordnance Survey 1" Map Sheet 203 (1896)
- IV. Bartholomew's Half Inch Maps of England and Wales (1902)
- VI. Map prepared in connection with the Finance (1909-10) Act 1910
- VII. Ordnance Survey 1:25000 Outline Series Sheet 52/054A and 52/05-A (1949)
- VIII. Ordnance Survey 1:25000 Provisional Series Sheet TL04 and TL05 (1956)
- IX. 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:

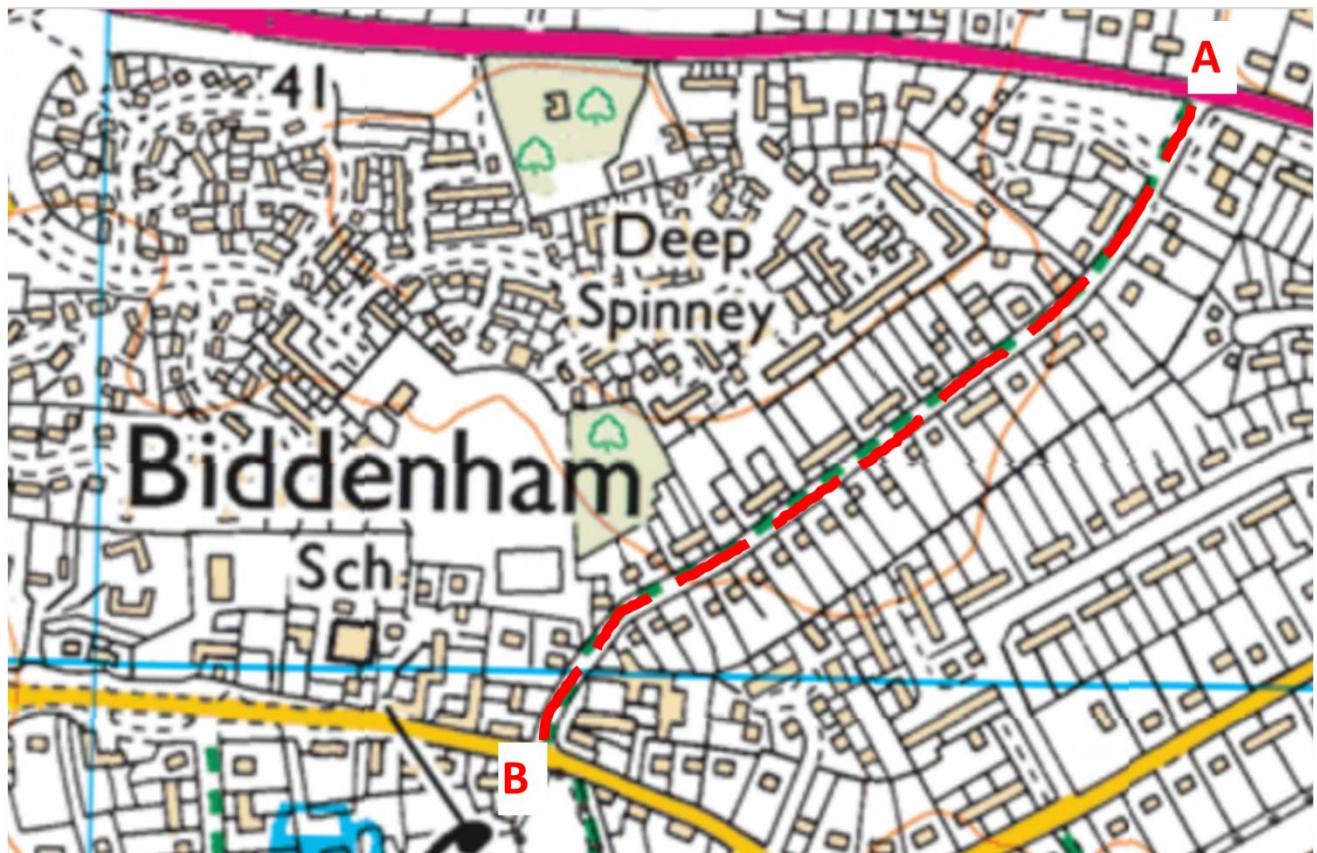
Date: 12<sup>th</sup> June 2020.

## Wildlife and Countryside Act 1981 Map to Accompany

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

Applicant's Reference: BED-0072

12 June 2020



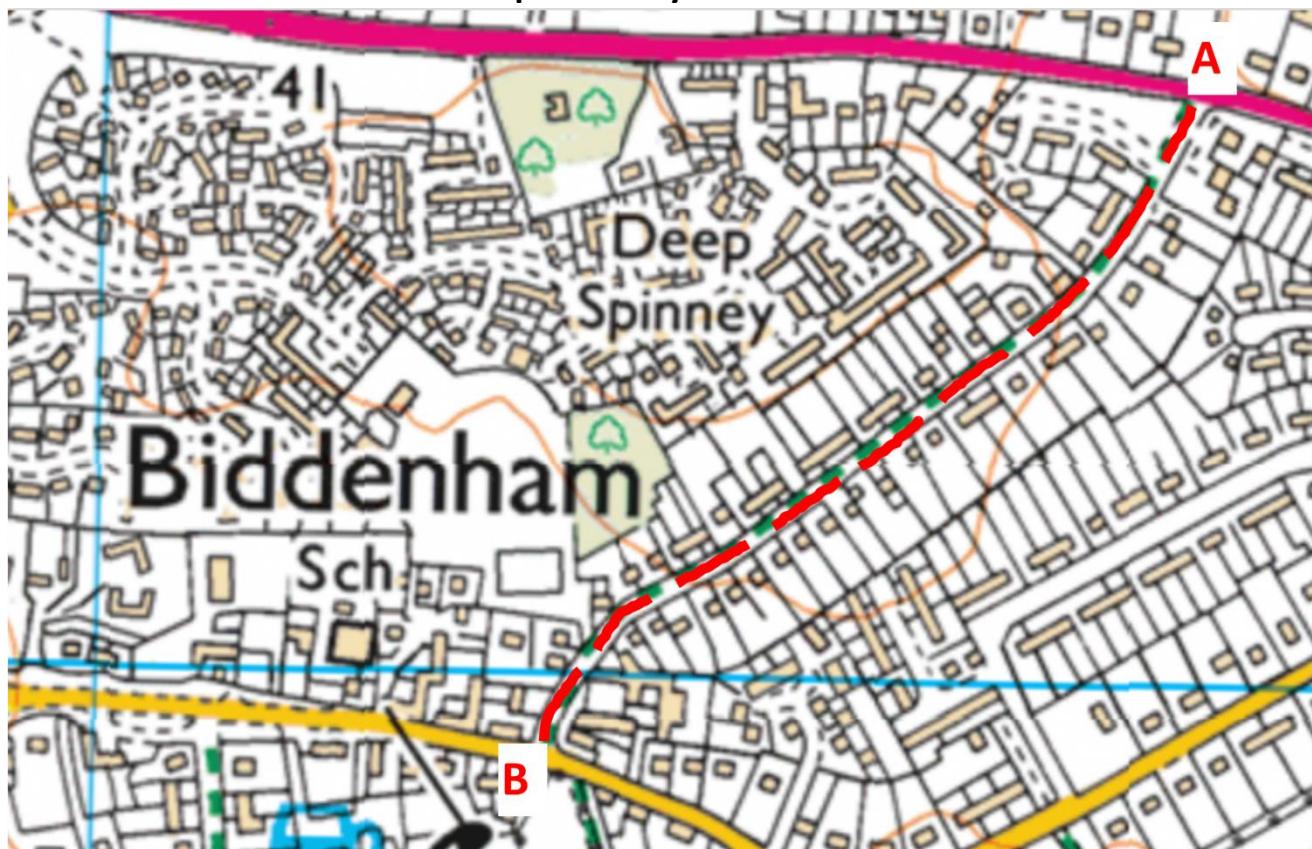
Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

## Wildlife and Countryside Act 1981

### Summary of Evidence

#### Definitive Map Modification Order Application

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



Applicant's Reference: BED-0072

**12 May 2020**

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

OS County series map

Bedfordshire XI.15

Modern Definitive Map sheet(s) 'Definitive Map and Statement for North Bedfordshire Definitive Map'

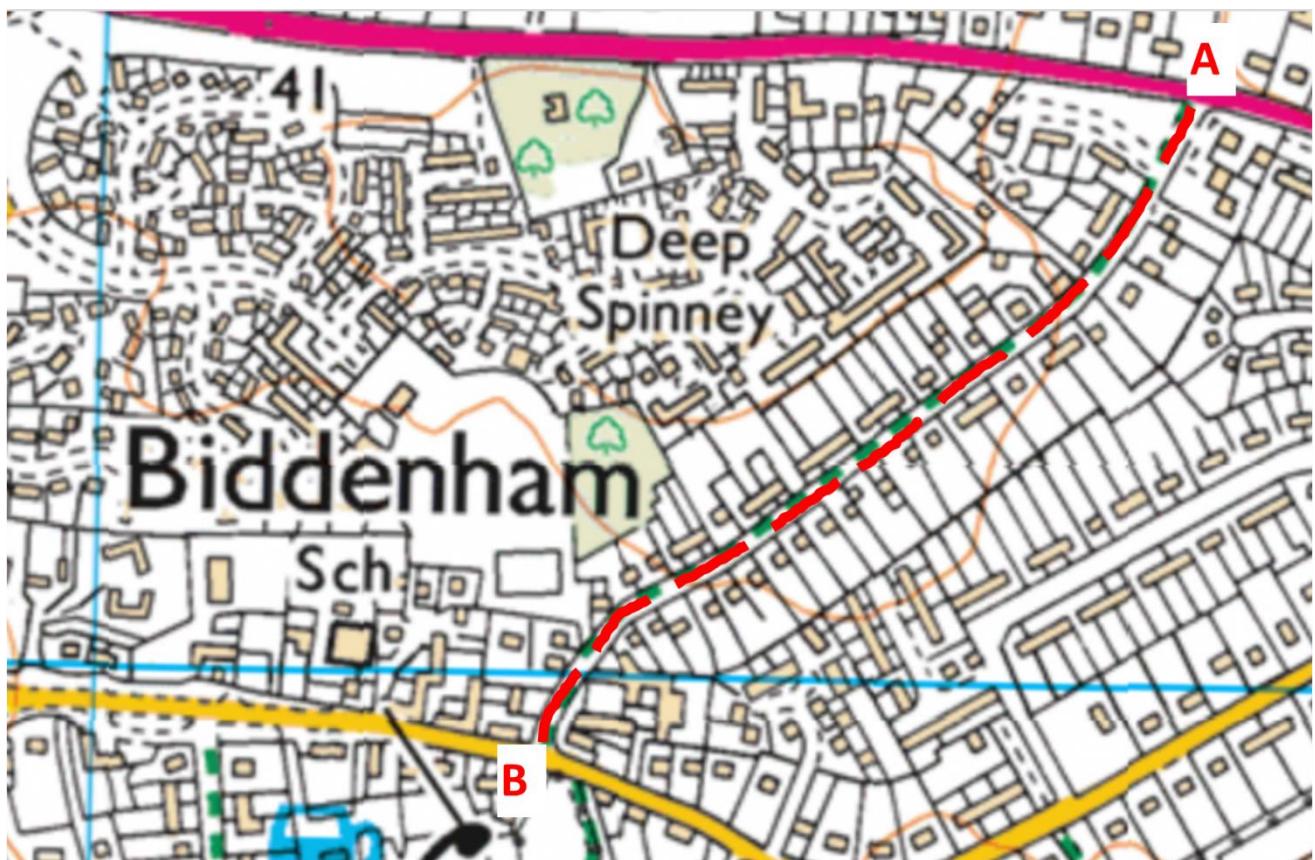
Grid references of ends of route      TL 02817 50436 to TL 02336 49941 (approximate)

1. [REDACTED] I am the applicant for the order, for and on behalf of the British Horse Society (BHS). I am employed by the BHS as one of their Access Field Officers and have 2 years of professional experience in the management of public rights of way primarily for local authorities.
2. This application is made because, on the cut off day, 1<sup>st</sup> 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.)
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 road network.

#### THE APPLICATION ROUTE

4. The application route is shown approximately on the plan below:
  - a. Point A, the northern end of the route, at OSGR TL 02817 50436, the junction of the application route and Bromham Road (A4280).
  - b. Point B, the southern end of the route, at OSGR TL 02336 49941, the junction of the application route and Main Road.
5. The application route is shown recorded on the Council's definitive map on its online List of Streets as Biddenham Footpath 12 at:  
[\(https://www.centralbedfordshire.gov.uk/info/55/transport\\_roads\\_and\\_parking/625/central bedfordshire list of streets\)](https://www.centralbedfordshire.gov.uk/info/55/transport_roads_and_parking/625/central_bedfordshire_list_of_streets).

6. The route's width should be recorded as shown uncoloured on the Inland Revenue Valuation Plan.



*Extract of Ordnance Survey 1:25000 scale map (Sheet 208 Bedford & St Neots published 2015)  
showing application route A – B (not to scale)*

7. Photographs 1 to 4 are from Google.



*Photograph 1 is a Google Aerial View with the route indicated with red dots. The route is a clear landscape feature, typical of an old enclosed highway.*



*Photograph 2- A Google Street view photo from 2019 of Point A looking generally south along the route. The route is of significant width between and has a tarmac surface.*



*Photograph 3- A Google Street view photo from 2012 of Point B looking generally north along the route. The route is currently a private road along Day's Lane.*

#### 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,

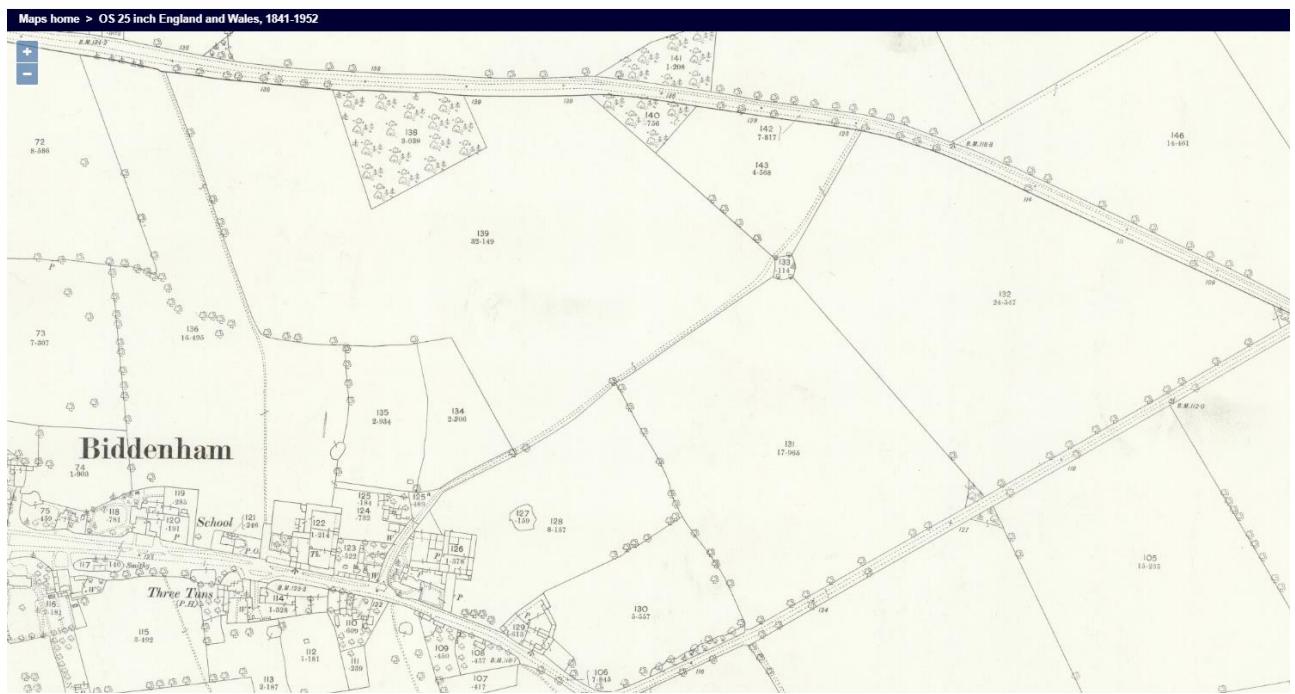
*'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal 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. Ordnance Survey County Series 25 inch Maps.
  - a. Date. The First Edition of OS sheet Bedfordshire XI.15 was surveyed between 1881 to 1882 and published in 1884. The Second Edition of OS Sheet XI.15 was surveyed in 1900 and published in 1901.
  - 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.
  - c. Archive. The extract from these sheets below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/114481863> and <https://maps.nls.uk/view/114481866>.
  - d. Meaning. On the First Edition Sheet the route is shown as 'Other Road' within Biddenham parish, separated from the adjoining fields on the First Edition. On the Second Edition Sheet the route is shown as single parcels of land, no 66, with an area of 0.844 acres and no 100, with an area of 0.267 acres.
  - e. Assessment. The depiction of route is in the same manner as the surrounding ordinary road network which provides a strong inference that it was also considered to be part of that road network.



**Bedfordshire XI.15 (Bedford; Biddenham; Kempston)**  
Surveyed: 1881 to 1882  
Published: 1884



*Extract from OS 25" First Edition Map showing A-B*



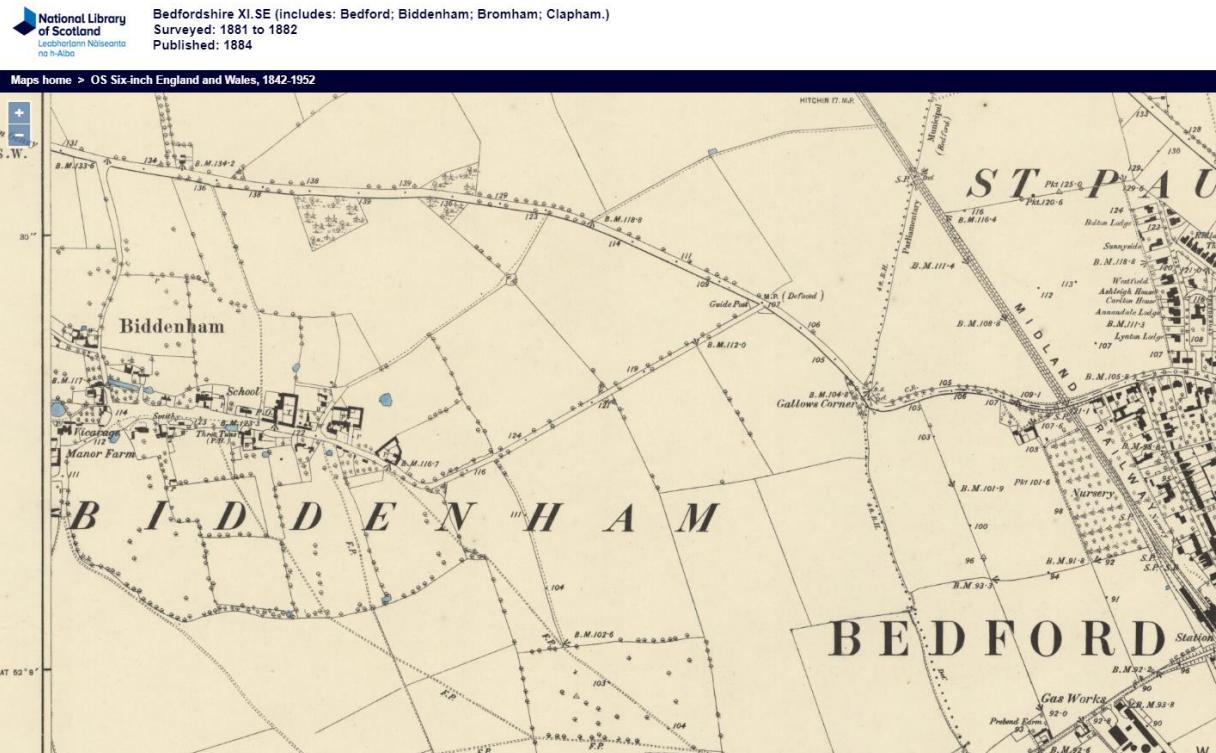
**Bedfordshire XI.15 (Bedford; Biddenham; Kempston)**  
Surveyed: 1900  
Published: 1901



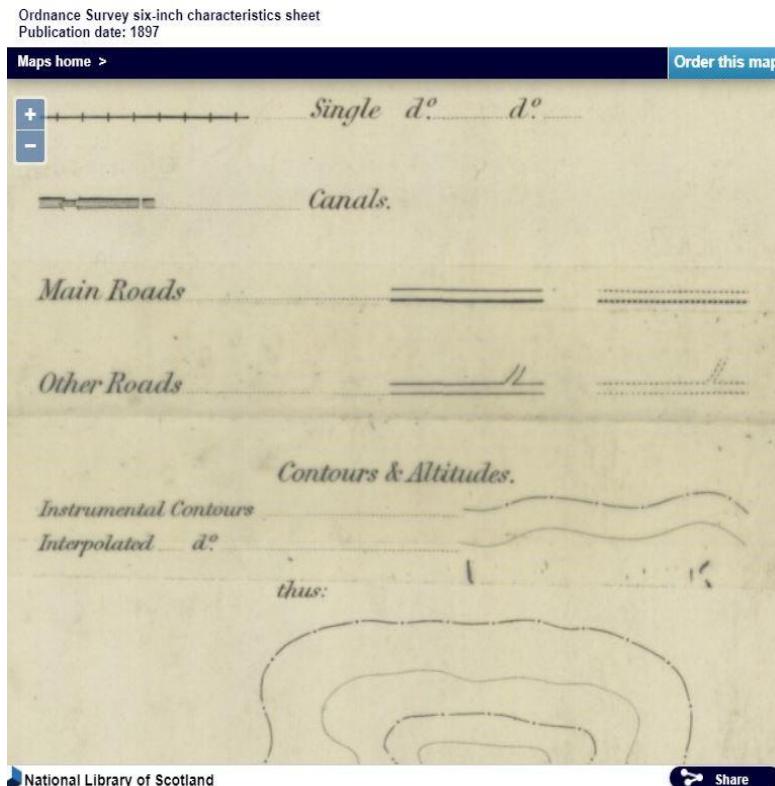
*Extract from OS 25" Second Edition Map showing A-B*

## 12. Ordnance Survey 6 inch Maps.

- a. Date. OS sheet Bedfordshire XI.SE was surveyed between 1881 to 1882 and 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/101567774>.
- 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".
- 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.



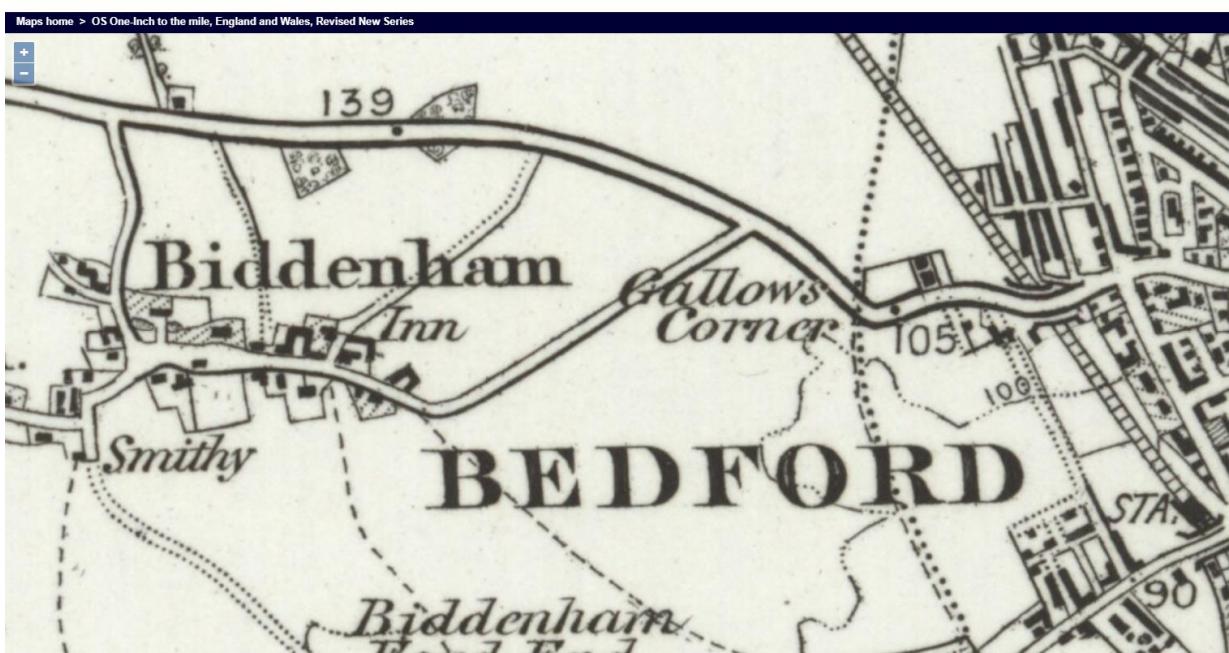
*Extract from OS 6" Map showing A-B as "Other Road"*



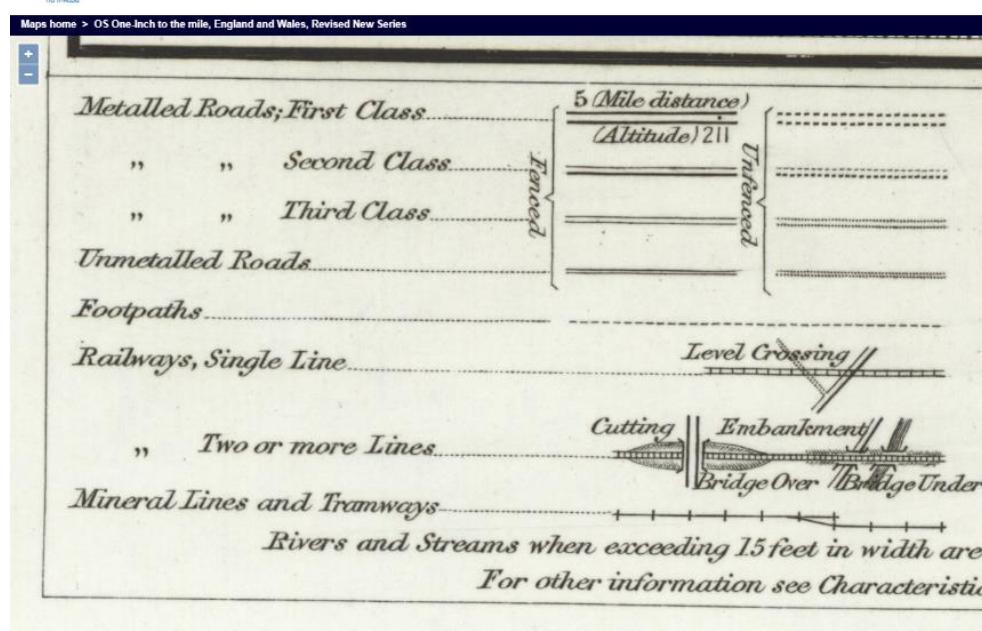
*Extract from Key to OS 6" Map*

13. Ordnance Survey 1 inch Maps.

- Date. OS sheet 204 Biggleswade was published in 1896.
- 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.
- Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/101168267>.
- Meaning. The route is shown as "Third Class Road".
- 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 showing A-B as "Third Class Road"*



*Extract from Key to OS 1" Map*

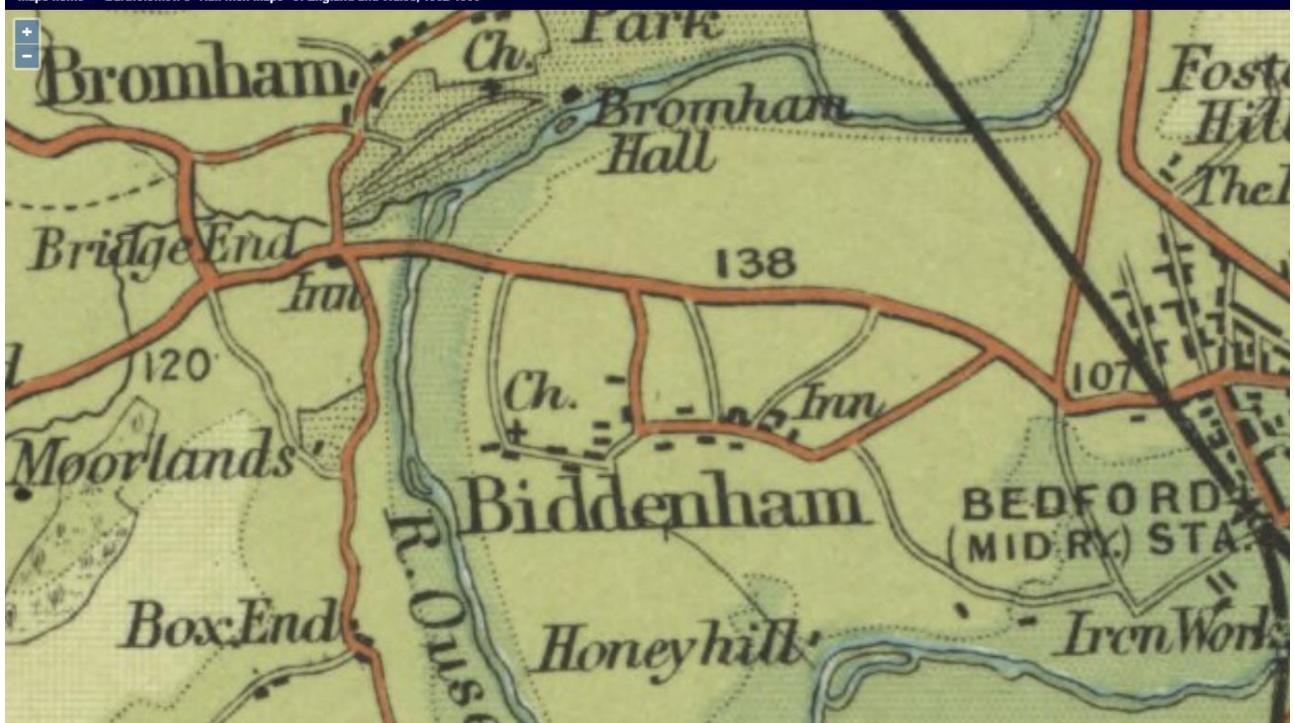
#### 14. Bartholomew's Half-Inch Maps of England and Wales

- Date.** This map was published in 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.

- c. Archive. An original of Sheet 19 (Cambridge, Huntingdon) is held by the National Library of Scotland (NLS) and can be viewed via [http://maps.nls.uk/series/bart\\_half\\_england.html](http://maps.nls.uk/series/bart_half_england.html).
- d. Meaning. The application route is shown as an 'inferior' road. That is, according to the key, a road which 'is not to be recommended to cyclists'.
- e. Assessment.
  - (1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'. In addition, the application route was shown as this 'inferior' road rather than as a footpath or bridleway, and cyclists at the time of publication (1903) had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.
  - (2) The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". **I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance**, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways."

  - (3) The conclusion is that at least some weight must be given to this source.



Extract from Bartholomew's Map showing the application route as an 'inferior' road

First Class Roads	— — — — —
Secondary " (Good)	— — — — —
Indifferent " (Passable)	— — — — —
Footpaths & Bridlepaths	.....

On all roads the sign indicates dangerous hills and where caution is required.  
The uncoloured roads are inferior and not to be recommended to cyclists.

N.B. The representation of a road or footpath is no evidence of the existence of a right of way.

Extract from Bartholomew's Map showing the Key

## 15. Inland Revenue Valuation / Finance Act 1910 Maps

- Date.** The valuation records were produced in the few years after 1910.
- 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 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."*

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 extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 126/2/106.
- c. Meaning. The extract below clearly shows the application route in a white road, separated from the adjoining hereditaments by continuous colour-washed boundaries.
- c. Assessment.
  - (1) As this land is unvalued, this suggests it belonged to a rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would probably have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.
  - (2) The legislation is sufficiently clear that anyone arguing that white road status means something other than the route is a public vehicular highway must show which other exception from valuation the route falls under.



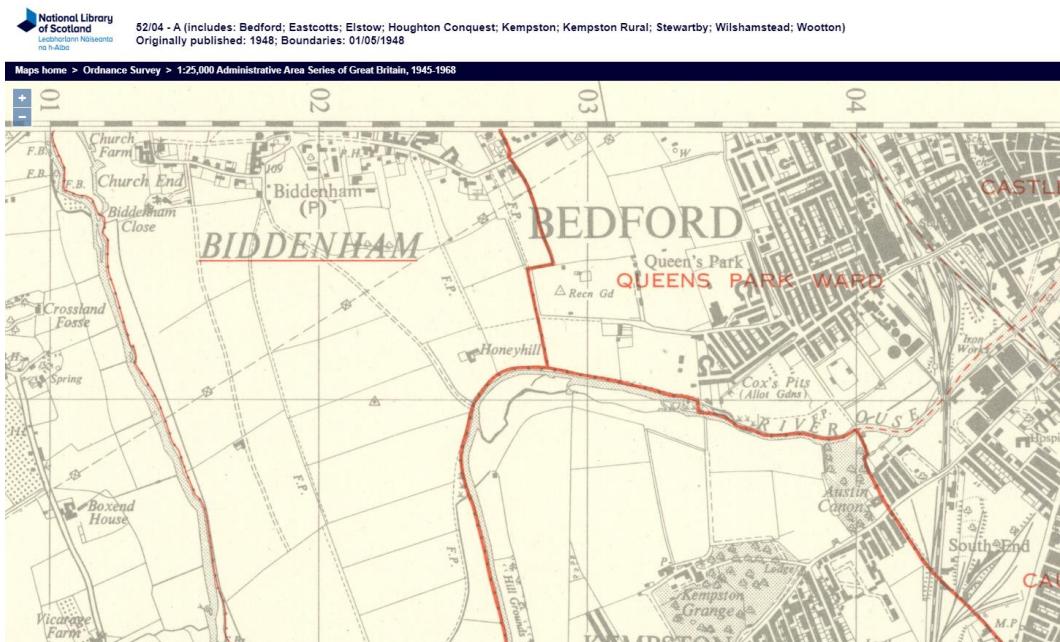
*Extract from the Inland Revenue Valuation Map IR 126/2/106 showing A-B as "white road" labelled "Day's Lane"*

## 17. Ordnance Survey Outline Edition

- Date. OS Sheet 52/04-A and 52/05-A were published in 1948.
- 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.
- Archive. The extracts from this sheet below were obtained from the National Library of Scotland at <https://maps.nls.uk/view/196759337> and <https://maps.nls.uk/view/196759340>.
- Meaning. The route is shown as "Other Road".
- 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 52/05-A showing A-B as "Other Road"*

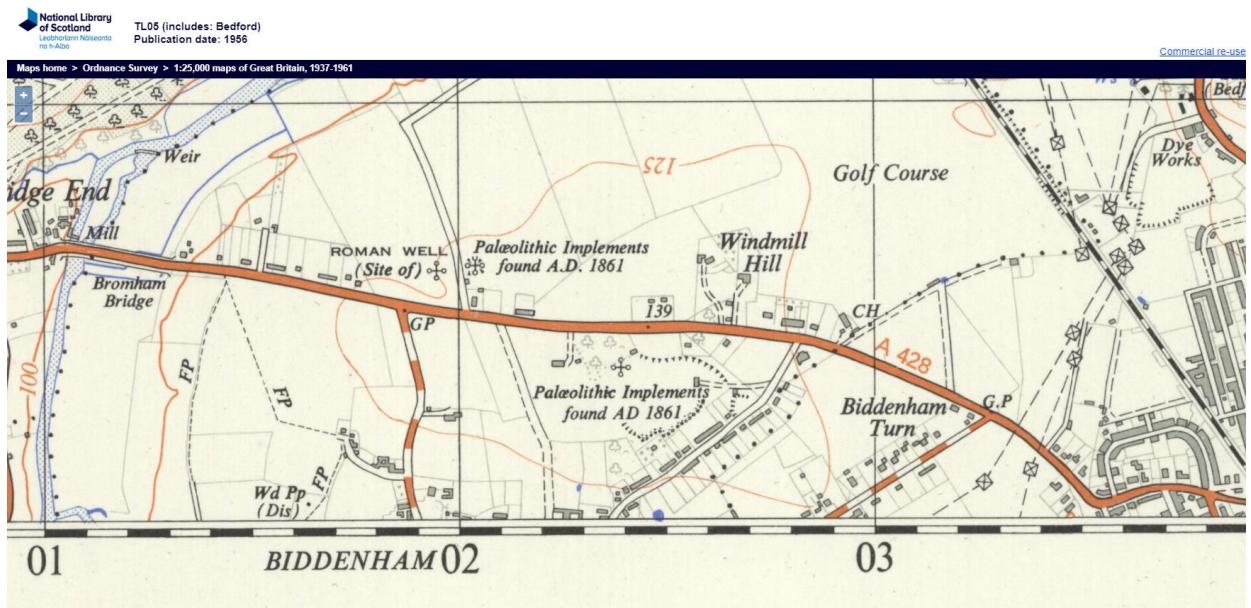


*Extract from OS Outline Edition Map 52/05-A showing A-B as "Other Road"*

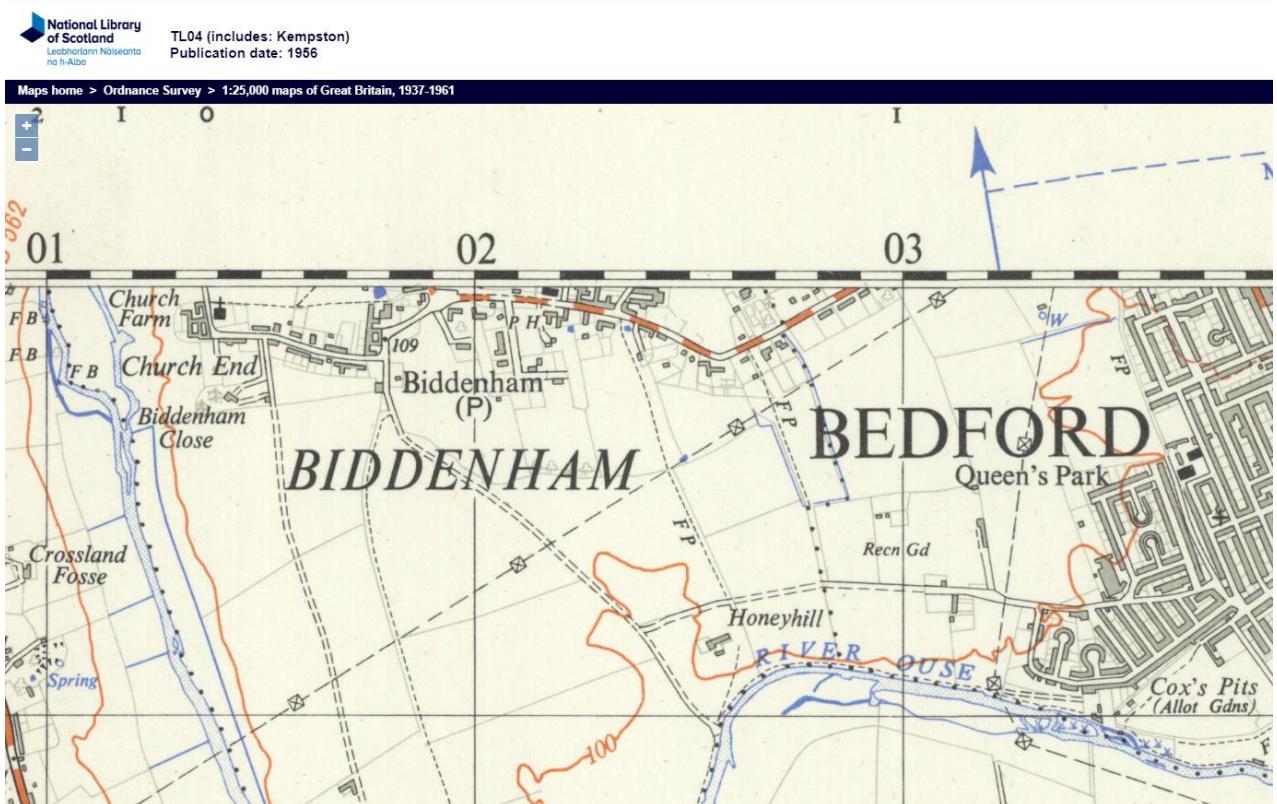
## 18. Ordnance Survey Provisional Edition

- Date. OS Sheet TL04 and TL05 were published in 1956.
- 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.
- Archive. The extracts from this sheet below were obtained from the National Library of Scotland at

- e. Meaning. The route is shown as “Indifferent Road”.
- f. 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.



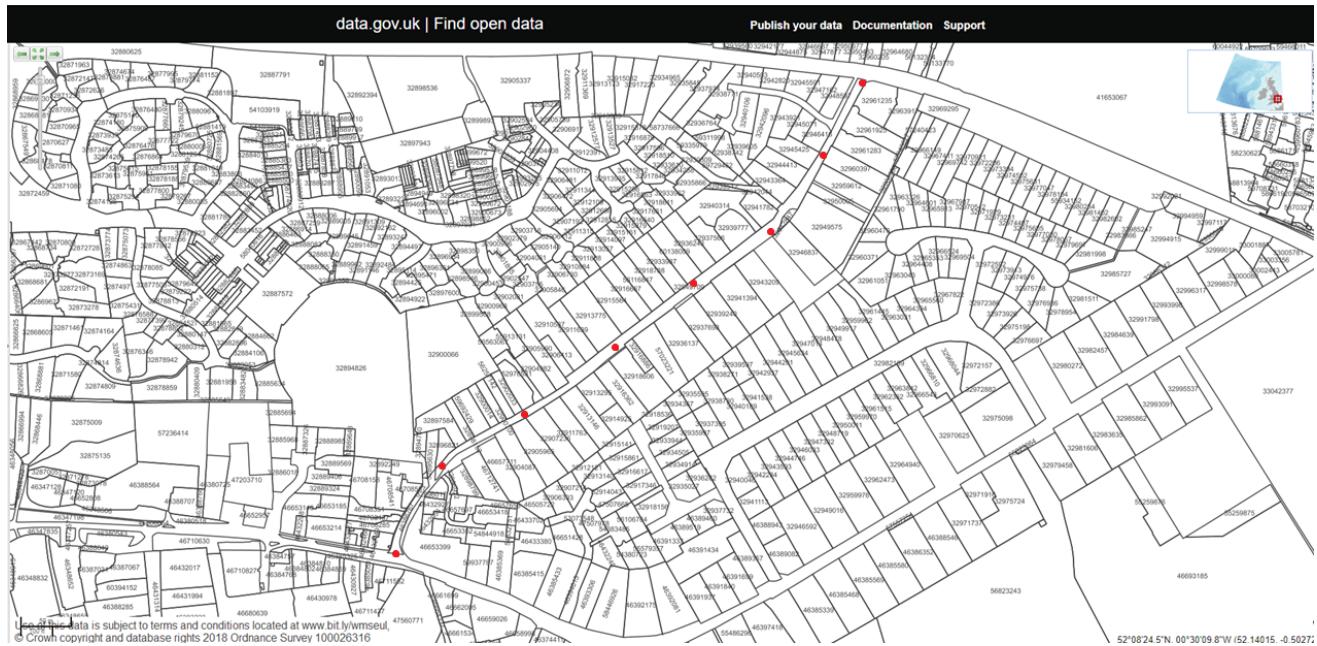
*Extract from OS Provisional Edition Map TL05 showing A-B as “Indifferent Road”*



*Extract from OS Provisional Edition Map TL04 showing A-B as “Indifferent Road”*

## 19. INSPIRE.

- a. Date. This extract from the INSPIRE database was taken on 9<sup>th</sup> June 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, separate from any registered landholding.
- e. Assessment. Vehicular highways of ancient origin are often on unregistered land. Where the adjoining land on each side has been registered, but the ancient vehicular highway has not been claimed as part of either land ownership, this is supportive evidence of the ancient vehicular highway status. In the absence of any other explanation why neither adjoining landowner would lay claim to the land, the applicant draws the conclusion that this supports the view that the application route is a vehicular highway of ancient origin.



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

## CONCLUSIONS

- 20. 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.

21. 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.
22. The antiquity of the route shows that the highway existed prior to 1835. 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.
23. The applicant requests the surveying authority to add the route to the definitive map as a restricted byway.

Name: [REDACTED]

Position: Access Field Officer

Organisation: British Horse Society