

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

For the route which extends from the junction of Park Barn Lane and Copse Lane at the north west corner of Everyys Copse in Ashill, extending east-south-eastwards over the railway line to Pound Corner in Ilton where it is known as Merryfield Lane, to be shown as Restricted Byway

18th. December 2016

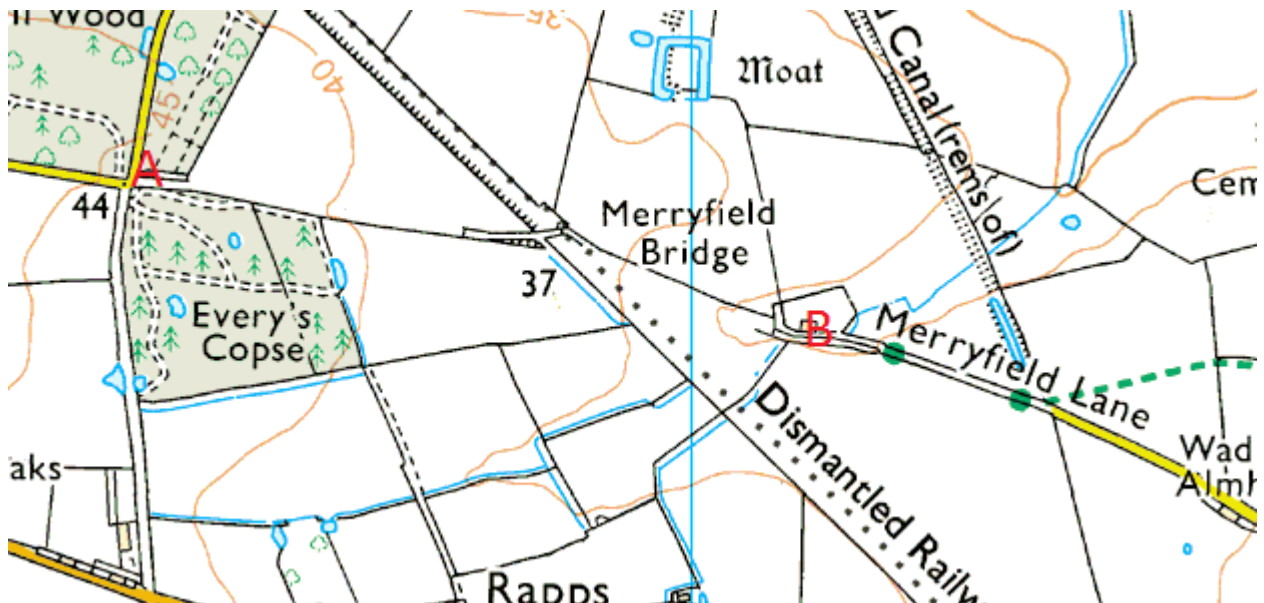
Quick reference path facts to assist the Surveying Authority in its investigation	
Explorer map	128 Taunton and the Blackdown Hills
OS County series map	Somerset 80-12, 80-16 and 81-13
Coordinates	ST 3330 1765 to ST 3414 1746
Current definitive status shown	No definitive status

My name is Sarah Bucks. I am the applicant for the order. My rights of way experience stems from having been a volunteer access and bridleways officer for the British Horse Society since 1994, including 5 years as chair of the Society's Access and Rights of Way Advisory Committee. I chair the South Somerset Bridleways Association.

1. This application is made because, on the cut off day,
 - a. 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.

THE APPLICATION ROUTE

2. The route which extends from the junction of Park Barn Lane and Copse Lane at the north west corner of Every's Copse in Ashill (point A), extending east-south-eastwards over the railway line and into Ilton where it is known as Merryfield Lane, to the north western end of the unclassified highway (point B), which continues on as Merryfield Lane to Pound Corner in Ilton to be shown as Restricted Byway
3. The route's width is as shown uncoloured on the Inland Revenue Valuation Plan.



Ordnance Survey 1:25000 scale map extract showing application route



Photo of Merryfield Lane to the east of the end of the unclassified highway (the 'private, no public access' notice is east of the end of the unclassified highway).



Photo of the western end of Merryfield Lane at the junction of Copse Lane and Park Barn Lane

DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

4. 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.

5. 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."

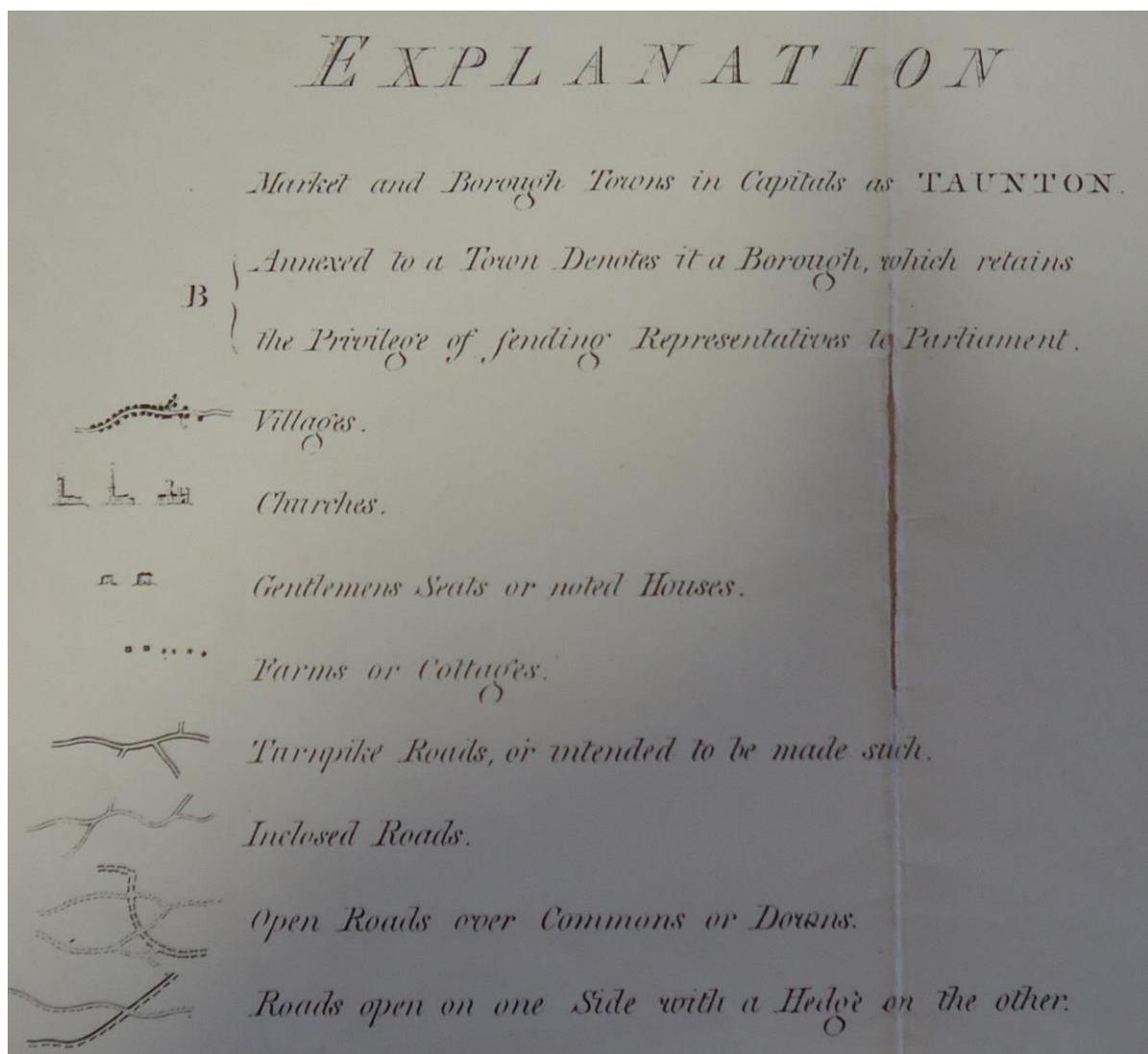
6. List of historical documents referred to:

1782	Day and Master's map
1803	map of the Earl of Egremont's lands in Ilton
1809-1811	OS Old Series
1838	tithe map for Ashill
1839	tithe map for Ilton
1845	Tithe map for Broadway
1852	map of the lands of the late Earl of Egremont in Ashill
1868	Ashill – altered apportionment
1868	Exchange of lands
1880	map of Somerset turnpikes
1884	Boundary Sketch Map
1883	Boundary Remark Book
1888	OS 25 inch map
1893 – 1894	Chard Branch line of the Bristol and Exeter railway
1898 – 1900	OS New Revised Series
1902	OS Object Name Books
1903	OS 25 inch scale map
1910	1910 Finance Act records
1915	sales particulars from the Ilton portion of the sale of the Earl of Egremont's estate
1919	OS Popular Edition
1919	OS Road map, 1 inch scale
1927	Bartholomew's map

1928	OS road map
1937	OS 1 inch scale map
1940	OS 2nd. War Revision map, sheet 129, Chard and Axminster
1958	OS First Series 31
1960	Stopping up order
1971	Stopping up order

7. Day and Master's Map of Somerset (1782).

- a. An original is held by the Somerset Heritage Centre on the open shelves.
- b. This was made for sale to the public, 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.



Extract from Day and Masters' Map (1782) showing the Key.

c. The route is shown in the manner of an 'inclosed road'. In addition, this map did not usually show footpaths or bridleways. The depiction as a road is evidence in favour of the proposition that the application route was considered to have vehicular rights in 1782.



Extract from Day and Masters' Map (1782) showing the application route.

8. Map of lands in Ilton Manor belonging to the Earl of Egremont, dated 1803

- a. This record is held by the Somerset Heritage Centre under reference DD/WY box 121.
- b. This map was made by the agent of the landowner and is unlikely to show inaccurate information.
- c. The application route is shown in the same manner as roads that are public today and as part of the through route from Ashill to Ilton.
- d. This is good evidence that in 1803 the Lord of the Manor of Ilton believed the application route to be public and not part of the agricultural land.



Extracts from the map showing lands owned by Earl Egremont in the Manor of Ilton

9. 1809 to 1811 OS Old Series

a. The original maps were made for sale to the public, and so are unlikely to show routes that the public could not use. They did not generally show footpaths or bridleways. The application route is shown.

b. Timeline Maps have reprinted the Ordnance Survey One Inch series on the same scale as the modern Landranger Maps. The extract below is the reprint from part of Map 193 showing the area of the application route. This shows that the route was well defined on the ground at the time of the survey and in the same manner as routes which are all public today. It has properties accessed from the route and appears as much of a through route as the other roads depicted on the map. This is good evidence that the route carried vehicular rights.



Extract from the OS Old Series' Timeline reprint

10. Tithe maps and apportionments

- a. 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.
- b. 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.
- c. 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.

11. Tithe map for Ashill (1838)

- a. The tithe map of Ashill is held at the National Archives under reference IR 30/30/10. It is a second class map and so is only conclusive of matters of relevance to the tithe commissioners.
- b. The map shows the application route, for its whole section within the parish of Ashill. The apportionment number on the route is 483. There is no entry for this number in the book of apportionments. This suggests that no tithe value was apportioned to the route. Since tithe owners were intent on collecting tithes, it suggests that no tithe could be collected, and the inference is that the route was not private, ie public.



extract from the Tithe Map for Ashill Parish.

1845 Broadway tithe map

This map is held by the National Archives under reference IR 30/30/65.

There are no apportionment numbers on the route which indicates that no tithe was due.

The route is clearly shown and annotated 'from Ashill' to 'Isle Abbotts'. This indicates that the tithe commissioners and those compiling the map believed the application route to be a through route.



Extract from the tithe map of Broadway

1839 Ilton tithe map

This map is held by the National Archives under reference IR 30/30/235.

The section of the application route in Ilton is depicted in exactly the same manner as the rest of Merryfield Lane extending to the cross roads at Pound Corner. It extends as far as the driveway to Merryfield House. There is no apportionment number on any section of the route.

This indicates that the land was not part of the agricultural lands surrounding it, which did have apportionment numbers.

This is supporting evidence that the application route had the same status as the rest of Merryfield Lane which is a public unclassified highway.

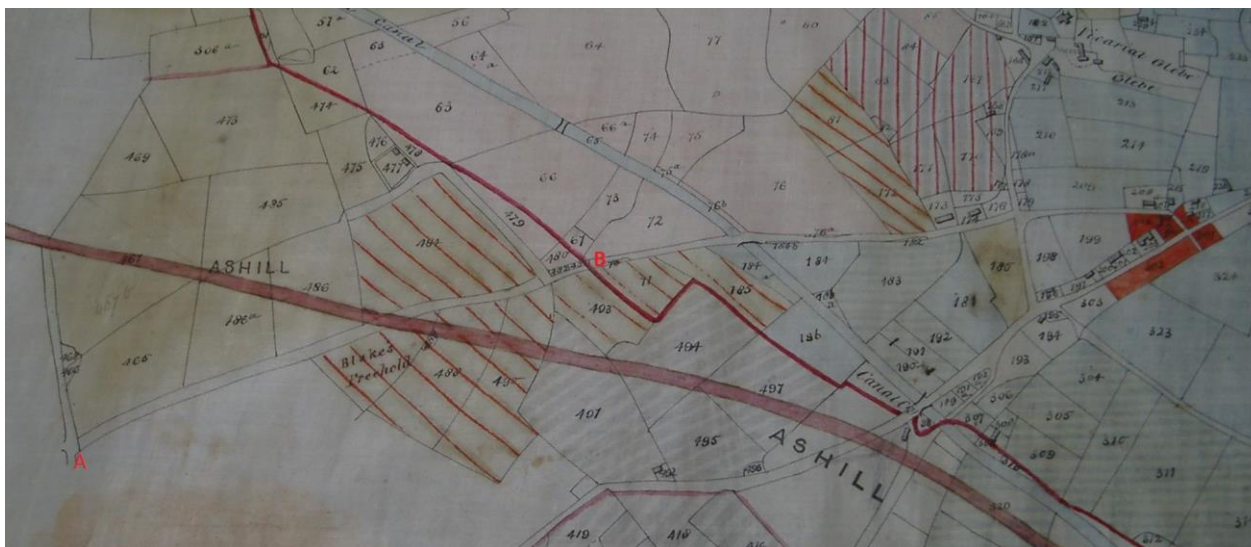


Extract from the Ilton tithe map

12. 1852 map of Earl of Egremont's lands in Ashill

- a. These maps were made to show the lands of the late Earl of Egremont
- b. They are held by the Somerset Reference Centre under references DD/WY/c/306.
- c. There are two maps showing the same area around Merryfield Lane. The first shows the land without the line of the railway being fully shown. There would have been every opportunity to change the appearance of Merryfield Lane between the making of the two maps.
- d. The application route (from point A to point B) is shown excluded from surrounding agricultural lands. The complete length of Merryfield Lane from Ashill to Ilton, both the application route and the eastern end of Merryfield Lane which is public highway today, are shown in the same manner without any distinction between the two sections.
- e. The land on either side was in the same ownership but the map is drawn to show that Merryfield Lane was not included in the agricultural parcels.
- f. The canal is clearly shown, and the route of the railway is also shown. The second map marks the railway more clearly, which suggests that the route had been agreed.
- g. This is good evidence that the route was considered a through route by the landowner's agents in 1852, ie a public highway.

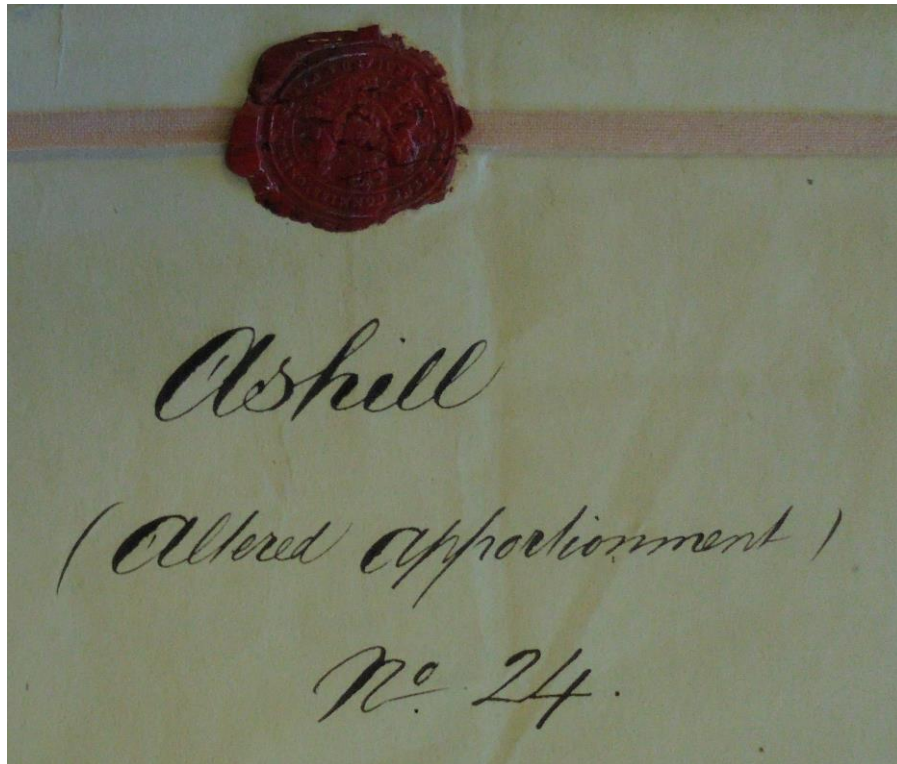




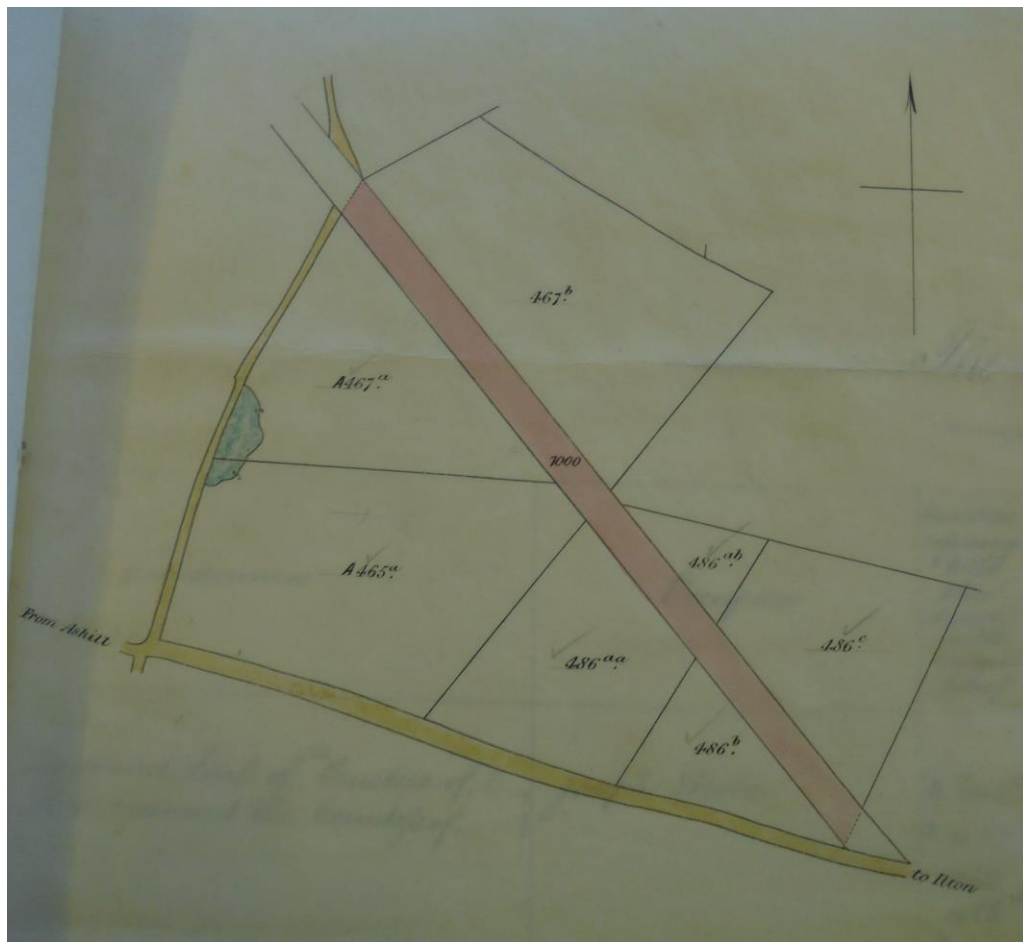
Extracts from the maps showing the lands of the late Earl of Egremont

13. Altered apportionment, 1868

- a. This is a similar record to the Exchange of Lands document shown below. The record is held by the Somerset Heritage Centre as part of the Apportionment document. The Exchange document below has been held by the National Archives, so both records have been held in good custody.
- b. This document concerns the north western part of the application route from Merryfield Bridge north-westwards to Copse Lane and Park Barn Lane.
- c. It shows the route of the railway line and the alteration of the apportionment numbers where the fields lying to the northeast of the application route were going to be severed and some land taken for the railway.
- d. This record has been kept in good custody and the information is duplicated in other documents of a similar date. The map for the Exchange document is coloured differently from the altered apportionment document, yet they give the same information. This is good evidence that all concerned agreed with the information provided by these legal documents.
- e. The application route is shown clearly and annotated 'from Ashill' and 'to Ilton'.
- f. The route is shown coloured burnt ochre and in the same manner as the road it connects to which is a public road today.
- g. This is very strong evidence that the railway company and the tithe commissioners accepted that the application route was part of the network of public roads.

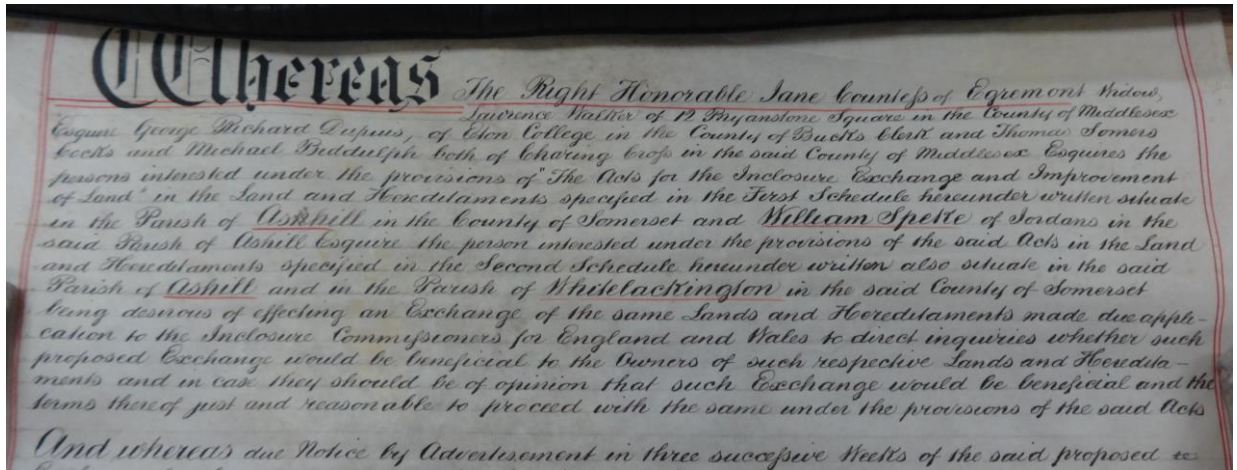


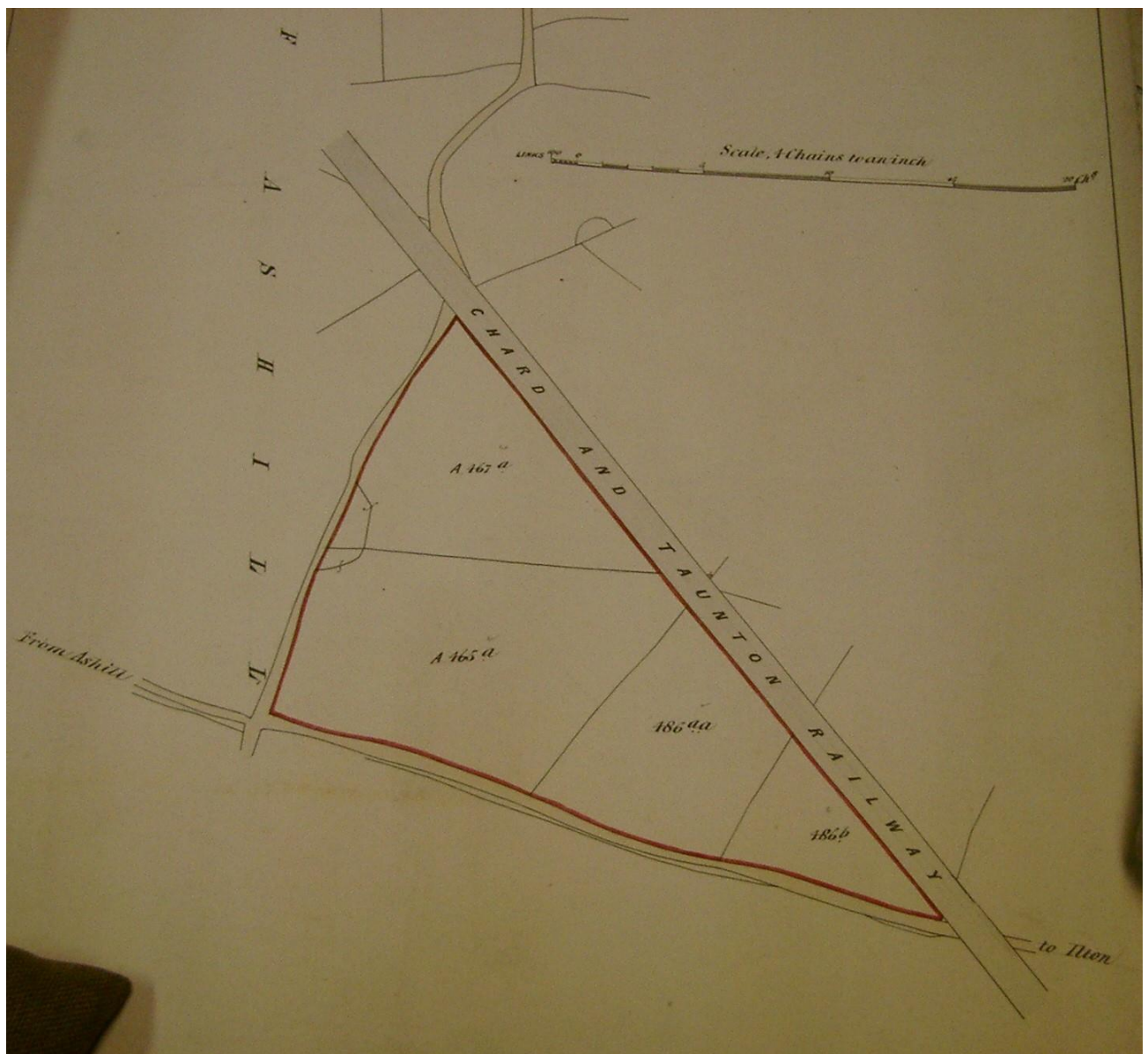
Extract from the Ashill altered apportionment



f. Merryfield Lane is shown coloured burnt ochre, and the same as other roads which are public vehicular highways today.

g. This is strong evidence that the parties concerned, who owned land either side of the application route, did not believe that they owned any part of the application route.





N ^o on Plan	Description	Extent	
		a	r
A 165 ^a	Bushell Land	9	"
A 167 ^a	Great Land	6	1
186 ^{aa}	Higher Eight acres (part of)	11	2
186 ^b	Five acres (part of)	2	1
		22	1

15. 1880 Map of Somerset turnpikes

- a. This map is held by the Somerset Heritage Centre under reference A/QH/15.
- b. The application route would have provided an alternative to the turnpike road.
- c. The application route was not a turnpike route, yet it was thought relevant enough to be shown on the map. Although not evidence in itself, this record, does indicate that the route existed and was shown in the same manner as other roads.

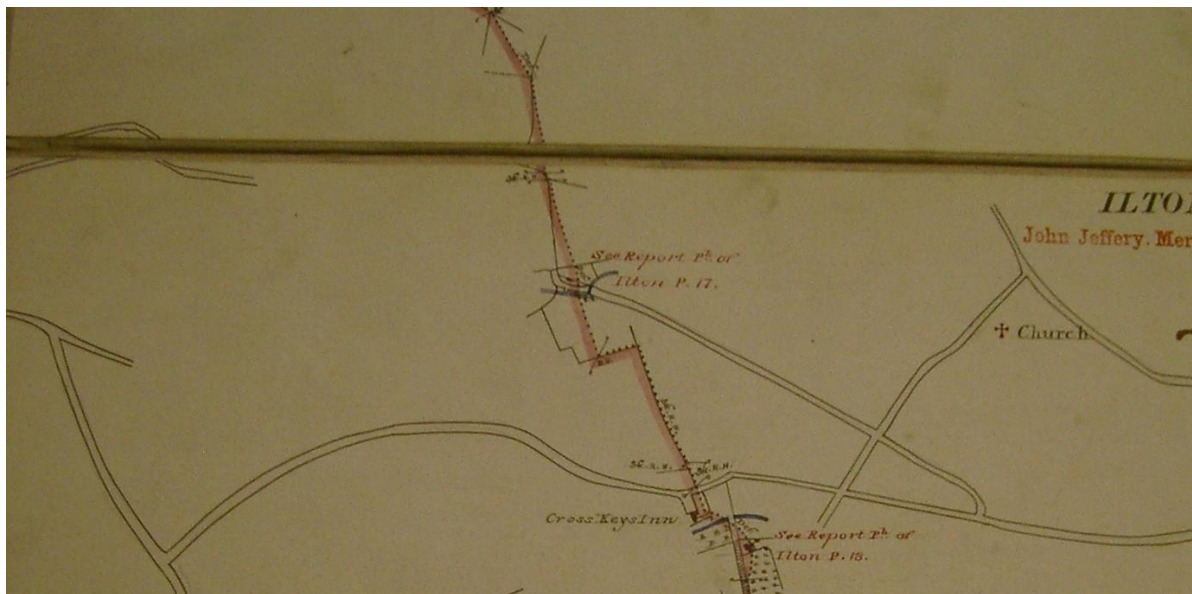


Extract from the map of Somerset turnpikes

16. 1884 Ordnance Survey Boundary Sketch Map.

- a. The Ordnance Survey was given the duty of ascertaining and recording all public boundaries by the Ordnance Survey Act 1841. Of particular value for determining highway status are the Boundary Sketch Maps (OS 27) and Boundary Remark Books (OS 26). These were produced under Parliamentary authority (the 1841 Act), with the power to summon the Clerk of the Peace and any books, maps, papers or other documents he held (s.5 of the 1841 Act) and under provisions that an offence be committed for obstructing or hindering the surveyor appointed under the 1841 Act (s.8 of the 1841 Act). The Boundary Sketch Map was advertised for public inspection. The records have been held in official custody, firstly by the Ordnance Survey, and latterly by The National Archives.
- b. The OS Boundary Sketch Maps in TNA class OS 27 shows a group of parishes, and indicate which of the Boundary Remark Books is needed to look at a specific section of the parish boundary. The Boundary Sketch Maps were compiled from the information in the Boundary Remark Books and therefore are usually dated the following year, ie, in this case, 1884.

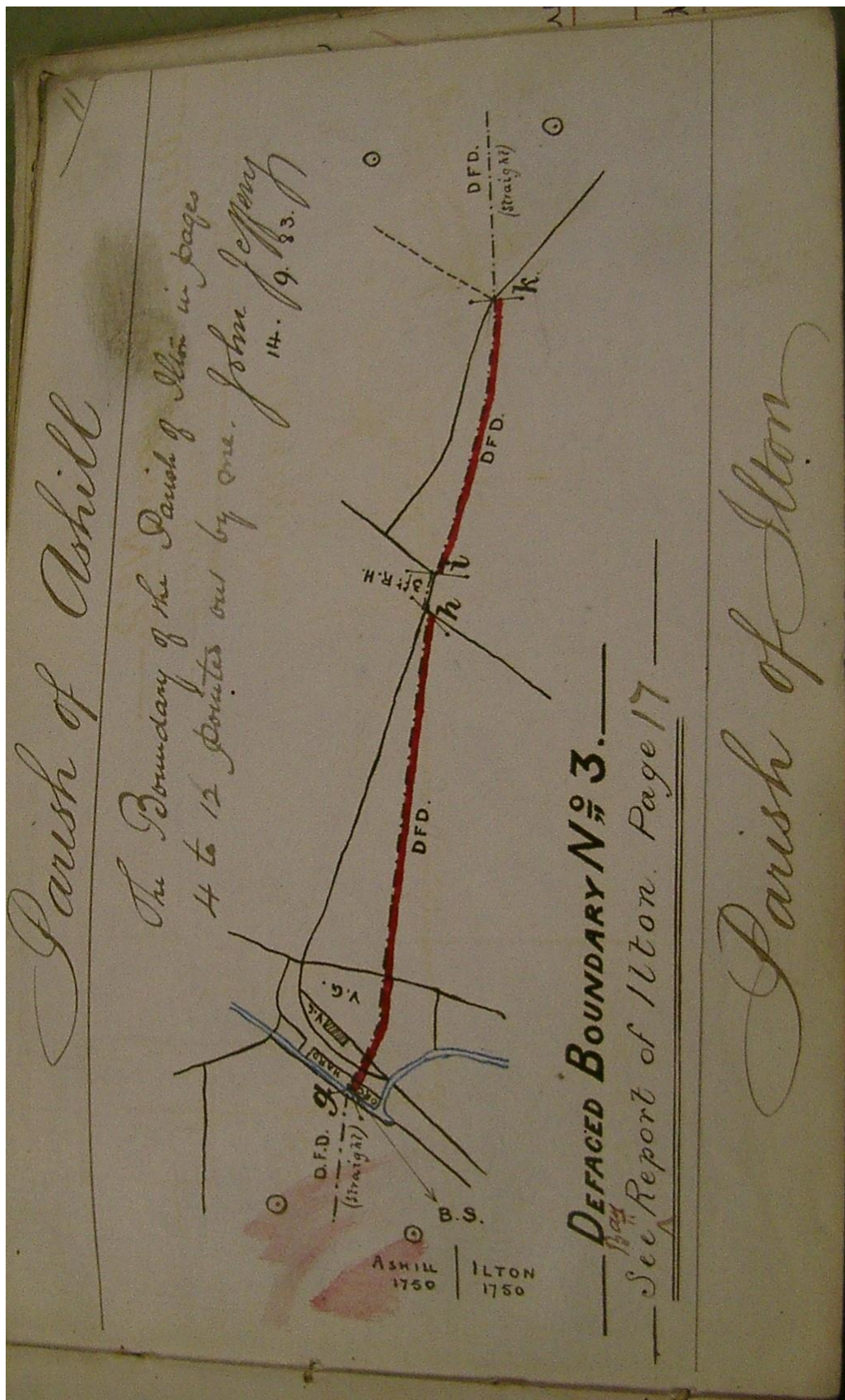
c. The Boundary Sketch Map for Ashill, Ilminster, Ilton and Donyatt, held as TNA document OS 27/4602 shows Merryfield Lane where it is in Ilton parish. And also part of the western end.



Extract from the OS Boundary Sketch Map for Ashill, Ilminster, Ilton and Donyat parishes.

17. 1883 Ordnance Survey Boundary Remark Books

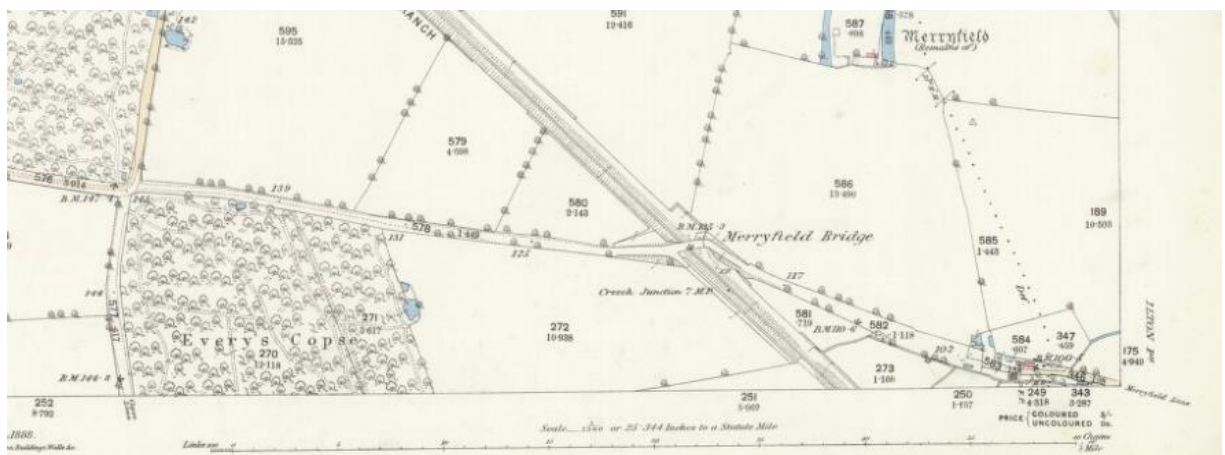
- a. The Ordnance Survey was given the duty of ascertaining and recording all public boundaries by the Ordnance Survey Act 1841. The OS Boundary Remark Books, held at The National Archives ('TNA') in class OS 26, are the results of the Ordnance Survey's checking of the boundaries with the meresmen from the parish each side.
- b. TNA document OS 26/9456 is the boundary book for the parish of Ilton. The boundary survey, which was approved by representatives from each parish, shows the application route as a physical feature in the same way as other roads at that time.
- c. The reference to page 17 has produced no further evidence as that page in the Ilton Boundary Remark Book is blank.
- d. The meresmen note the 'B.S.' indicating a boundary stone. Boundary stones were generally put where the parish boundary turned a corner or crossed a highway. In this position the parish boundary was crossing Merryfield Lane where neither were changing directions. It follows therefore that this boundary stone was on a highway, ie Merryfield Lane. This indicates that the meresmen believed Merryfield Lane to be a highway, and this was accepted by the OS surveyors and the information added to the Ordnance Survey maps.



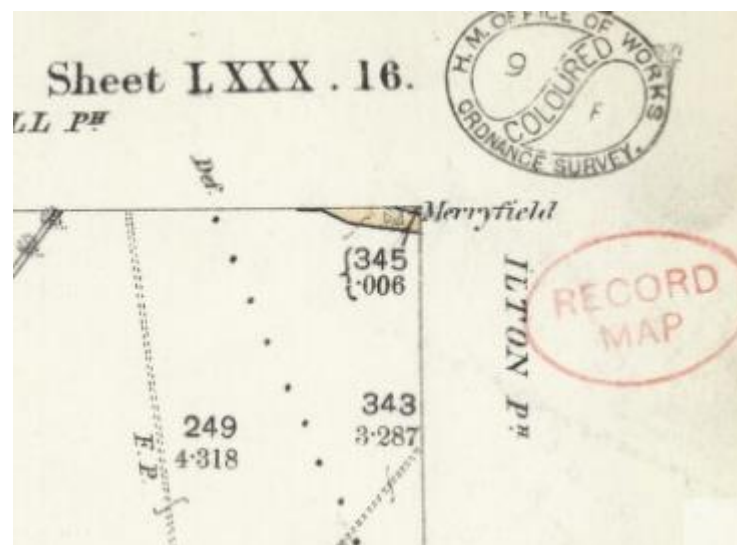
Extract (p11) from the OS Boundary Remark Book for Ilton parish.

18. 1887 - 1888 OS 25 inch map from survey taken in 1886 and 1887

- a. The National Library of Scotland has digitised these maps and this extract is taken from their website.
- b. On this map the application route is shown with a separate land parcel number and excluded from the surrounding agricultural plots. It is depicted in the same manner as roads that are public today or the subject of a DMMO application. This supports the supposition that the route was not part of the agricultural land.
- c. The map sheets 80-16 and 81-13 are coloured and they both show the application route in burnt ochre which is how other routes are shown which are public vehicular routes today.
- d. The conclusion drawn is that the Ordnance Survey believed the application route to be public at the time these records were made.



Extract from the 1887 OS map sheet 80-12



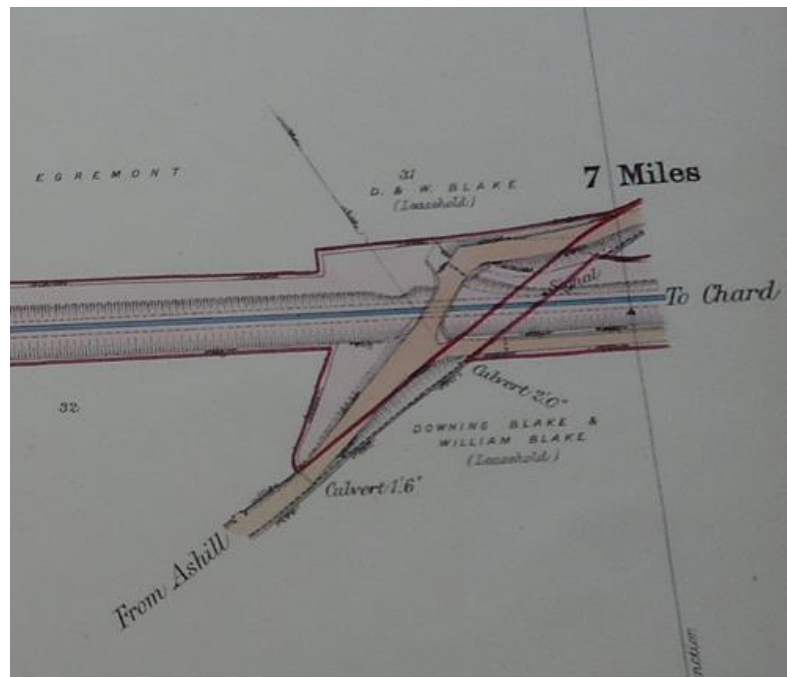
Extract from the 1888 OS map sheet 80-16



Extract from the 1888 map sheet 81-12

19. 1893-94 Taunton to Chard Railway line Deposited plans

- a. This record is held by the National Archives under reference RAIL 274/178.
- b. It shows the railway crossing Merryfield Lane.
- c. Merryfield Lane is annotated to show that it comes 'from Ashill'. Merryfield Lane is coloured ochre which is the same depiction used to show public vehicular roads.



Extract from the Railway deposited plan showing Merryfield Lane coming 'from Ashill'

20. 1898 - 1900

OS Revised New Series

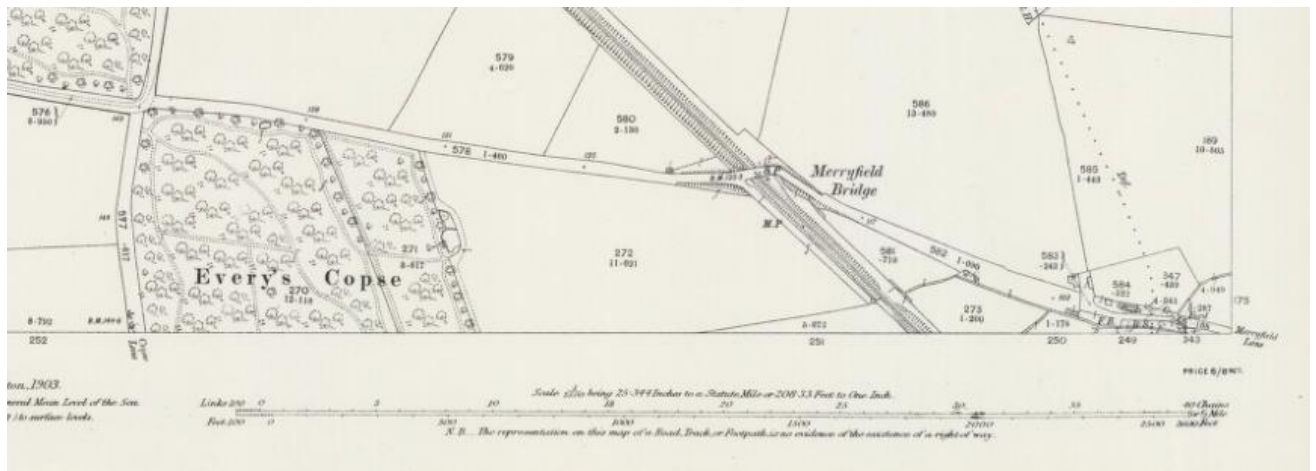
- a. Timeline Maps have reprinted the Ordnance Survey One Inch series on the same scale as the modern Landranger Maps. The extract below is the reprint from part of Map 193 showing the area of the application route. This shows that the physical route existed at the time of the survey.
- b. These maps were made for sale to the public, and so are unlikely to show routes that the public could not use.
- c. The application route is shown in the same manner as the eastern end of Merryfield Lane and public roads it connects to. The conclusion is that it has the same status, ie vehicular.



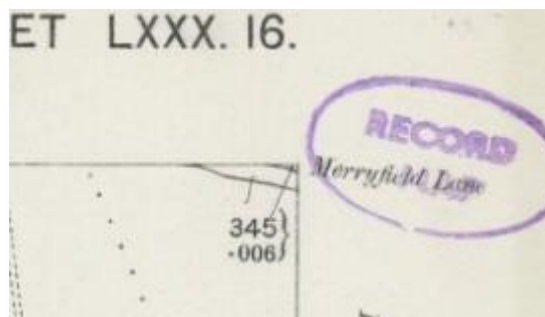
Extract from the OS Revised New Edition

21. 1903 25 inch scale Ordnance Survey maps

- a. The National Library of Scotland has digitised these maps and this extract is taken from their website.
- b. On this map the application route is shown with a separate land parcel number and excluded from the surrounding agricultural plots. It is depicted in the same manner as roads that are public today or the subject of a DMMO application. This supports the supposition that the route was not part of the agricultural land.
- c. The conclusion drawn is that the Ordnance Survey believed the application route to be public at the time these records were made.



Extract from map sheet 80-12



Extract from map sheet 80-16

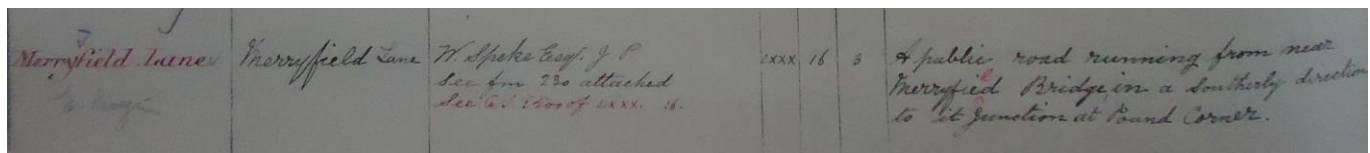


extract from map sheet 81-13

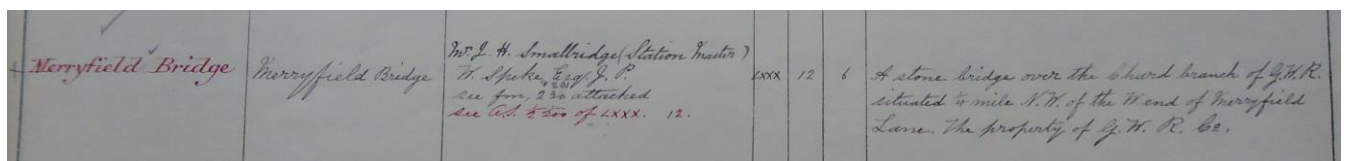
22. Ordnance Survey Object Name Book.

- a. The Ordnance Survey needed a reliable way of determining the names put on their maps. They recorded the authority for the names and the modes of spelling. Their record books give other information.

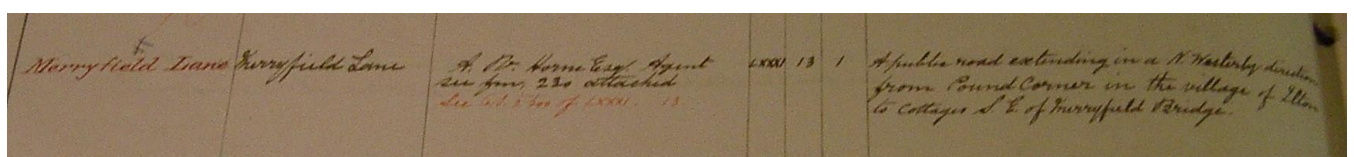
- b. The Object Name Book for map sheets LXXX 12 and LXXX 16 is held as TNA document OS 35/6412 and records the name of the application route as Merryfield Lane. The description given is 'A public road running from near Merryfield Bridge in a southerly direction to the junction at Pound Corner'.
- c. This is important information as it shows that the route was considered to be a named public road from the railway bridge to Pound Corner, which includes the part of the application route which is no definitive status and part ORPA /unclassified highway.
- d. Merryfield House, all evidence of which has disappeared, was to the north of Merryfield Lane and it is logical that the name, Merryfield Lane, applied to that section of public road which extended at least as far as the driveway to Merryfield House.
- e. The second extract from the same Object Name Book gives the entry for Merryfield Bridge. This one is described as 'A stone bridge over the Chard branch of the GWR situated 1/4 mile NW of the western end of Merryfield Lane. The property of the GWR'.
- f. The fact that the Ordnance Survey used Merryfield Lane as a reference point gives credibility to the route being well known at the time.
- g. The Object Name Book for map sheet LXXXI 13 is held as TNA document OS 35/6415 and records the name of the application route as Merryfield Lane. The description given is 'A public road extending in a N Westerly direction from Pound Corner in the village of Ilton to cottages S E of Merryfield Bridge'.
- h. This description is consistent with the name, Merryfield Lane, at this time only applying to the eastern section of application route.



First extract from the OS Object Name Book OS35/6412, covering sheets 80-12 and 80-16.



Second extract from the OS Object Name Book OS35/6412 covering sheets 80-12 and 80-16.



Extract from OS Object Name Book OS 35/6415 covering sheet 81-13

23. 1910 Finance Act Inland Revenue Valuation records

a. 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.”

We note 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. 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.

b. The extracts below are from the records that were passed from the IR Valuation Offices to The National Archives at Kew.

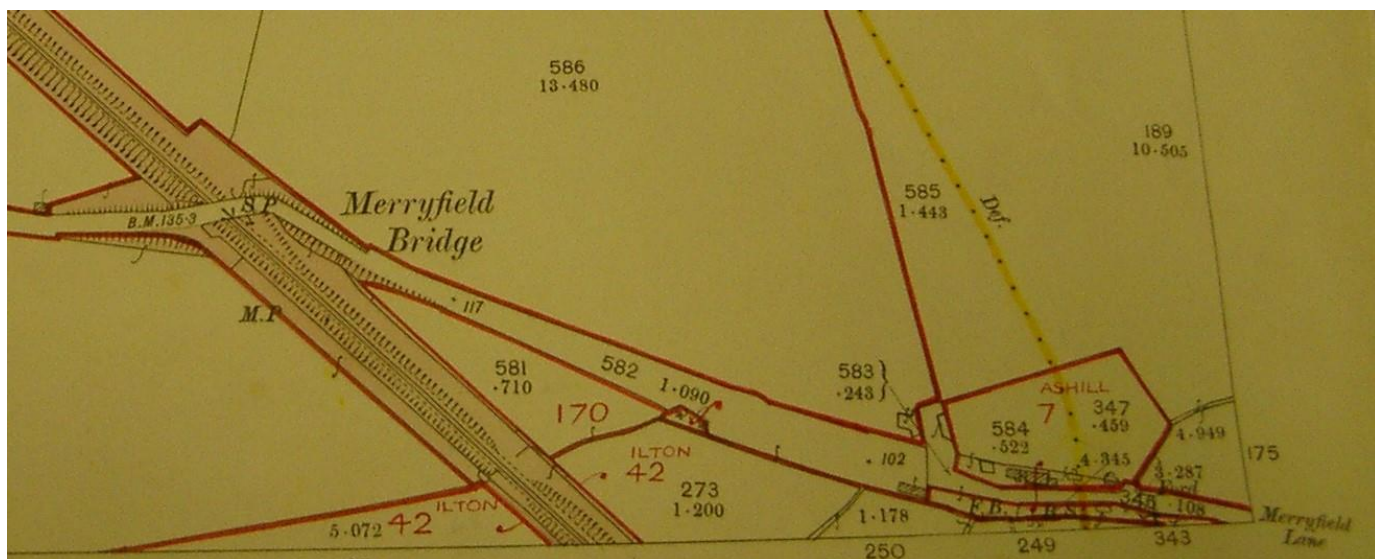
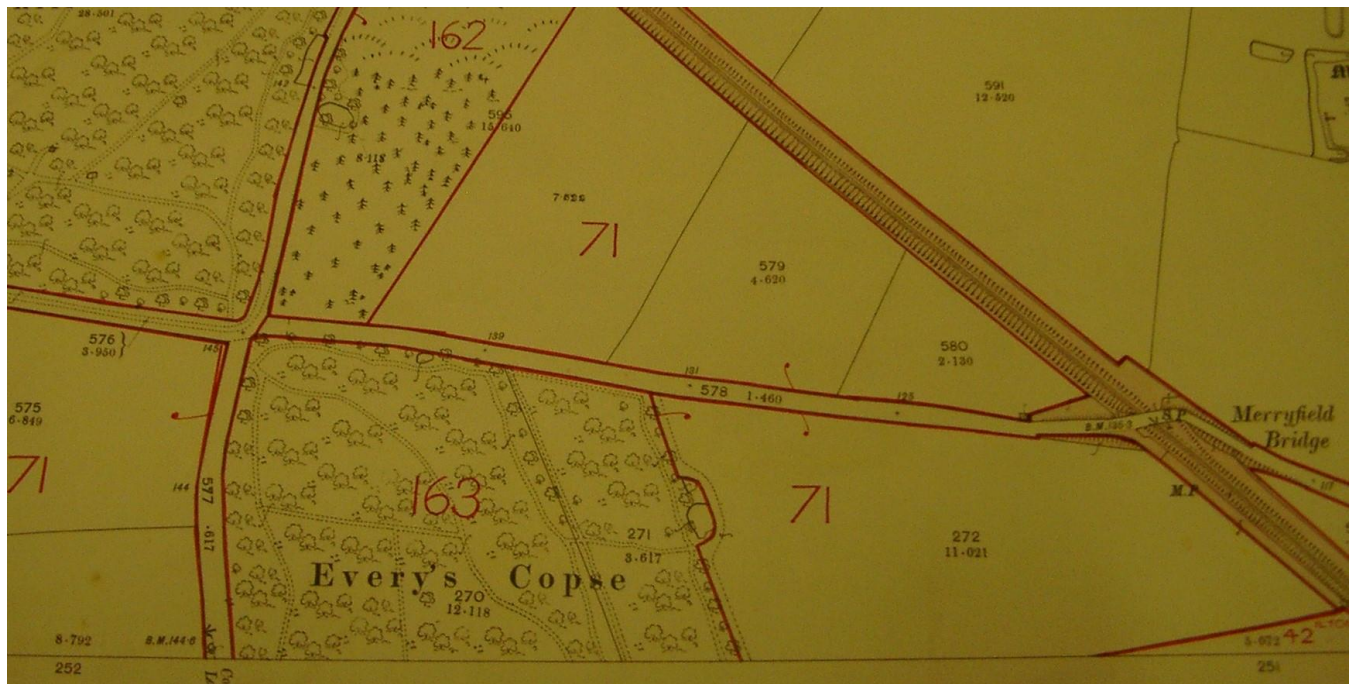
c. The National Archives document reference is IR 128/9/978. The extract below clearly shows the application route as a white road, separate from the adjoining hereditaments.

d. Hereditament 7 in Ashill has land on both sides of the application route near where the unclassified public highway currently ends. The entry for this hereditament is in the field book held by the National Archives under reference IR 58/82079. An analysis of the parcel numbers and acreage is in appendix A.

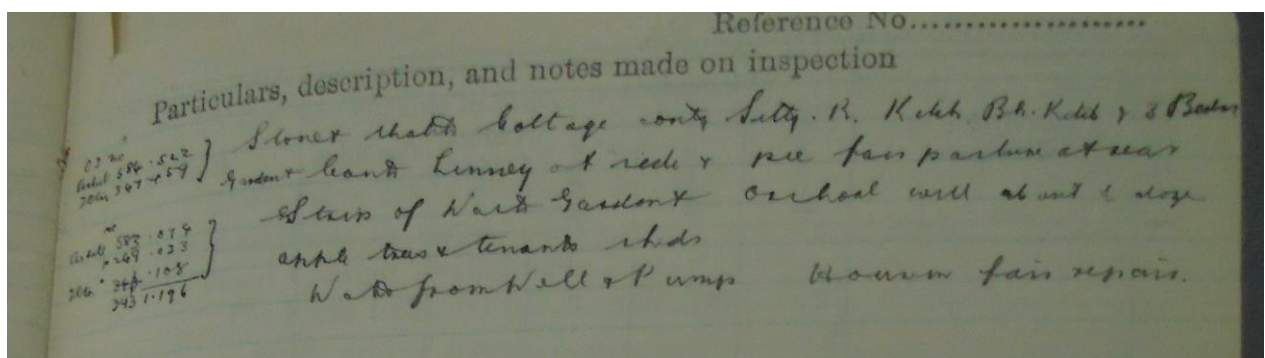
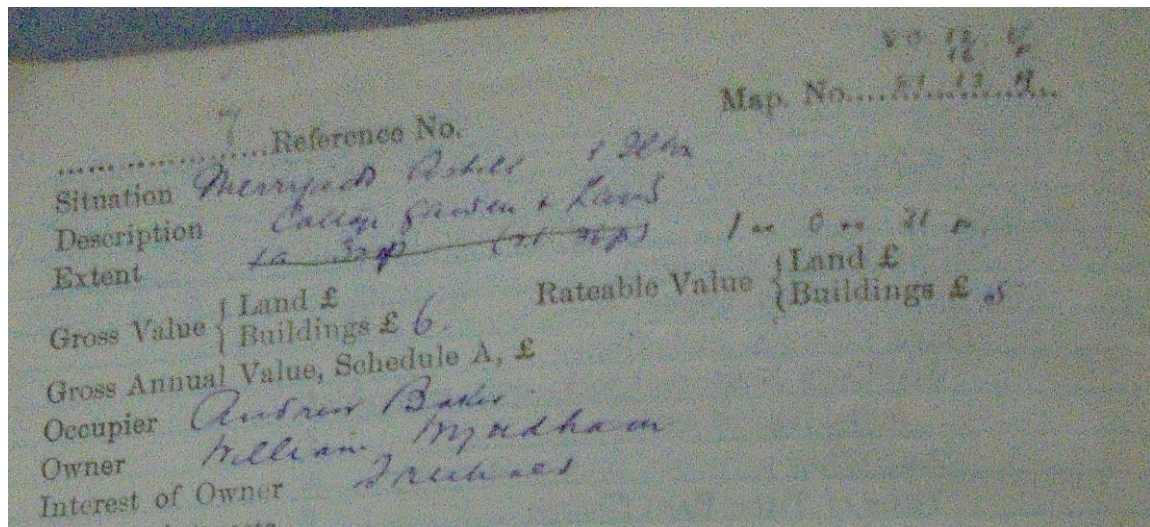
e. As the land over which the application route runs is not held by a private landowner, and therefore comes under the local surveying authority or government, this suggests that it belonged to a highway authority.

f. 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. Had it been held by a rating authority for another purpose there would be some evidence of that holding, yet none has been found.

g. 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, sheet 80-12



Extracts from the field book for hereditament 7 in Ashill

24. 1915 Sales particulars from the Ilton portion of the Earl of Egremont's estate

- a. This document is held by the Somerset Heritage Centre under reference DD/KW 1. The lot details were taken from Somerset Heritage Centre reference DD/WY box 140 which is a copy of the same document but the map has some damage.
- b. This sale concerned lands which had been owned by succeeding Earls of Egremont for at least 100 years.
- c. At no time was any suggestion that the application route was not a through route from Ashill to Ilton.
- d. The document shows that lands either side of the application route were to be sold and that none of Merryfield Lane was included in these lots. Lot 7 is shown straddling the application route. On the damaged map, held by the Somerset Heritage Centre under reference DD/WY box 140, there is some bleeding of the colouring over the route, where the eastern side of the lot goes over the route. This is on what is now designated as OS parcel number 346. This colouring is not on the better quality copy, and, as shown later, parcel number OS 346 is not included in lot 7; it is now part of the network of unclassified highways maintained by the surveying authority.
- e. Lot 7 does include some of OS parcel number 583. It does not include the whole width of the track at this section, and an analysis of the acreages of the OS parcel numbers

contained within the lot (detailed in appendix A.) indicate that only part of OS parcel number 583 was included in the lot.

f. It shows, amongst other lots, those abutting Merryfield Lane. None of the lots encroached upon Merryfield Lane and the application route is shown exclude from all surrounding properties from Pound Corner going north-westwards to past Merryfield Bridge and beyond. The lots are described as being intersected by good roads.

g. The landowner who owned properties either side of the application route did not believe he had any ownership of the route, and there were no easements required to access any of the properties.

h. The conclusion to be drawn is that in 1915 the application route, Merryfield Lane, was was thought by all concerned, including the Earl of Egremont and his agents, to be public and not considered to be in private ownership.

U

Plan of
THE ILTON PORTION
of the
EGREMONT ESTATES.
Somerset.

FOR SALE BY AUCTION, AT
THE GEORGE HOTEL, ILMINSTER,
ON THURSDAY THE 8TH DAY OF JULY, 1915,
— AT 2 P.M., BY —
MESSRS. C. R. MORRIS, SONS & PEARD.
A. W. FORD & CO. LTD. BRISTOL.

C. R. MORRIS, SONS & PEARD
LAND SURVEYORS, ESTATE AGENTS, & AUCTIONEERS
NORTH CURRY, TAUNTON
SOMERSET



LOT 7.

A COMPACT SMALL HOLDING

comprising Cottage, and Closes of productive Meadow, Pasture and Garden Ground,
described as:—

Ord. No.	Name.	Description.	Ordinance.		
			A.	R.	P.
584	Cottage, Garden, &c. ...	Garden ...	0	2	17
583	Merryfield Garden ...	Buildings, &c. ...	0	0	25
273	Part of Hardington ...	Arable now Grass	1	0	27
250	Part of Long Meadow ...	Meadow ...	1	0	29
347	Garden (Ilton Parish) ...	Garden ...	0	1	34
Acreage			3	2	12

The **Cottage**, occupied by Mr. Andrew Baker, is stone built and has 2 living rooms on ground floor and 3 Bedrooms over and there are Furnace House and Garden.

Nos. 250 and 273 are let with other lands to Mr. James Warfield on a yearly Michaelmas tenancy. Apportioned rent

The remainder is let to Mr. Andrew Baker at the annual rent of

The Tithe Rent Charges now payable amount to about £0 0s. 2d. and the Land Tax to 3/7

Extracts from the sales particulars dated 1915

25. 1919 OS Popular Edition

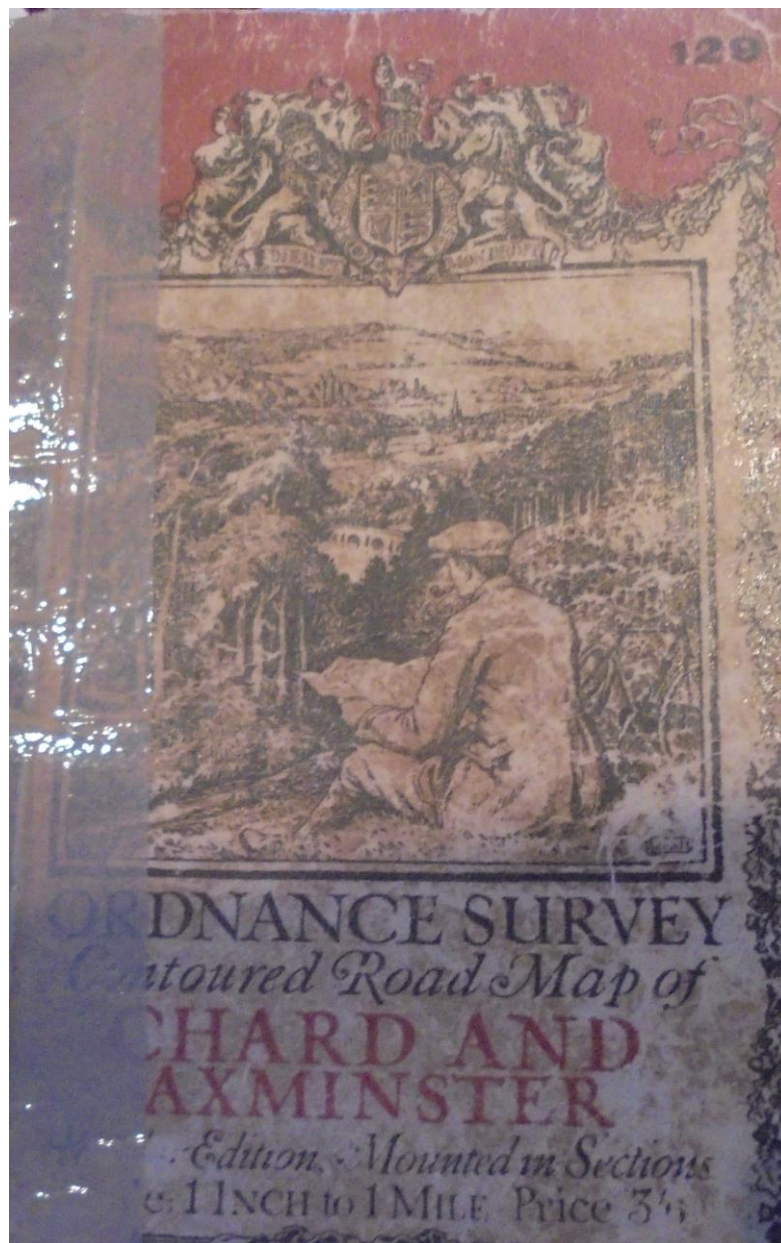
- a. Timeline Maps have reprinted the Ordnance Survey One Inch series on the same scale as the modern Landranger Maps. The extract below is the reprint from part of Map 183 showing the area of the application route. This shows that the physical route existed at the time of the survey.
- b. These maps were made for sale to the public, and so are unlikely to show routes that the public could not use.
- c. The application route is shown in the same manner as the eastern end of Merryfield Lane and public roads it connects to. The conclusion is that it has the same status, ie vehicular.



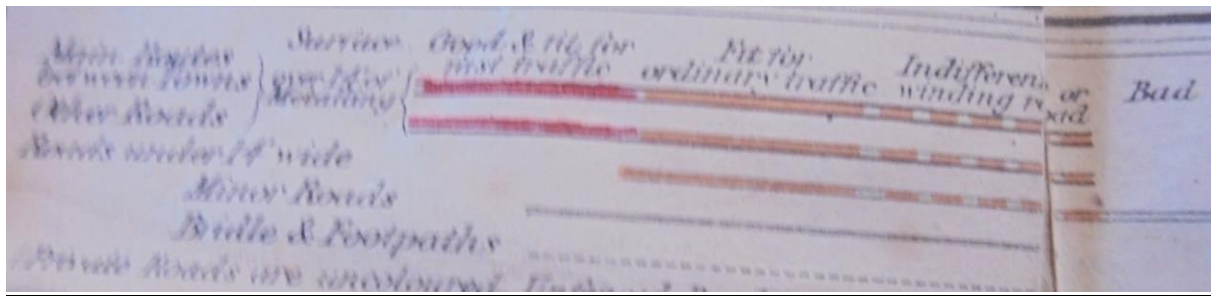
Extract from the OS Popular edition

26. 1919 OS Road map, scale 1 inch to the mile

- a. A copy of this map is owned by the applicant.
- b. The map was from an original survey in 1884 and was subsequently revised on several occasions. Thus had the information been incorrect, it would have been changed during one of the revisions.
- c. The application route is shown in the same way as the continuing part of Merryfield Lane to Pound Corner, and also as Park Barn Road, both of which are public vehicular highways today.
- d. The key indicates that the application route is a minor road.
- e. Although this map carries the usual OS disclaimer, it is nevertheless a useful document to show that the public were being given the information that the application route was a minor road and connected Ashill with Ilton.



at the ORDNANCE SURVEY OFFICE, Southampton.
Engraved in 1884-8 and Published in 1892-4.
Surveyed 1896-7 and in 1904-8.
Revised and Revision in 1913-14.
Revised by Colonel Sir Charles Close, KBE, C.B., CMG, Director General.
Published by the Ordnance Survey Office, Southampton, 1919.
 Printed



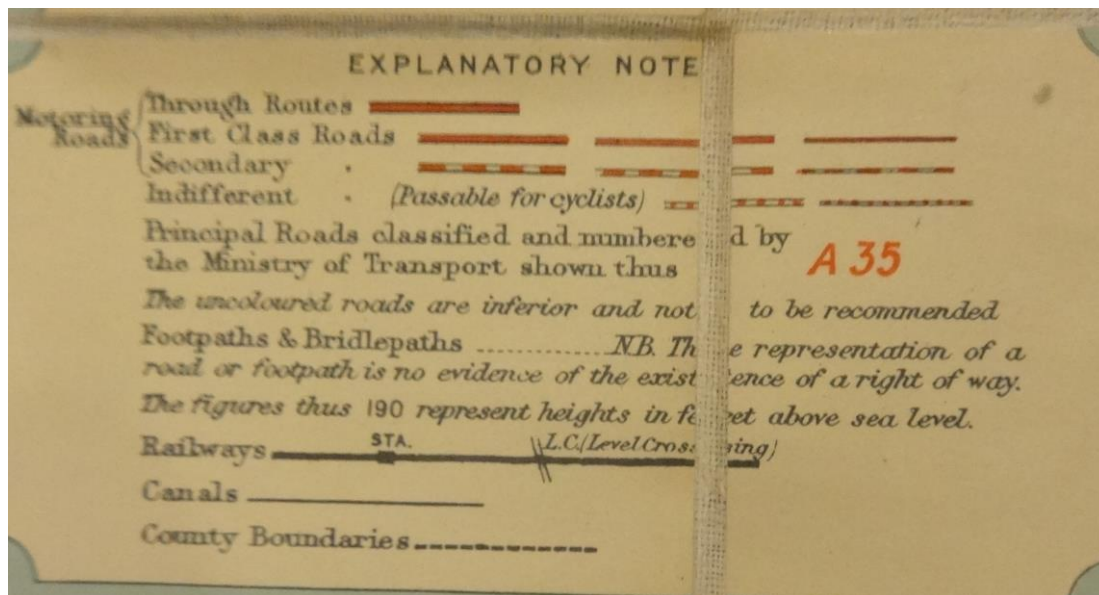
Extracts from the OS Road map dated 1919

27. 1927 Bartholomew's map

- a. This map was made for sale to the travelling public.
- b. A copy of this map is owned by the applicant.
- c. The application route is shown in the same manner as other public highways, including the part of Merryfield Lane extending to Pound Corner.
- d. There is no distinction between the application route and the rest of Merryfield Lane, which indicates that it was considered to have the same status, ie vehicular.



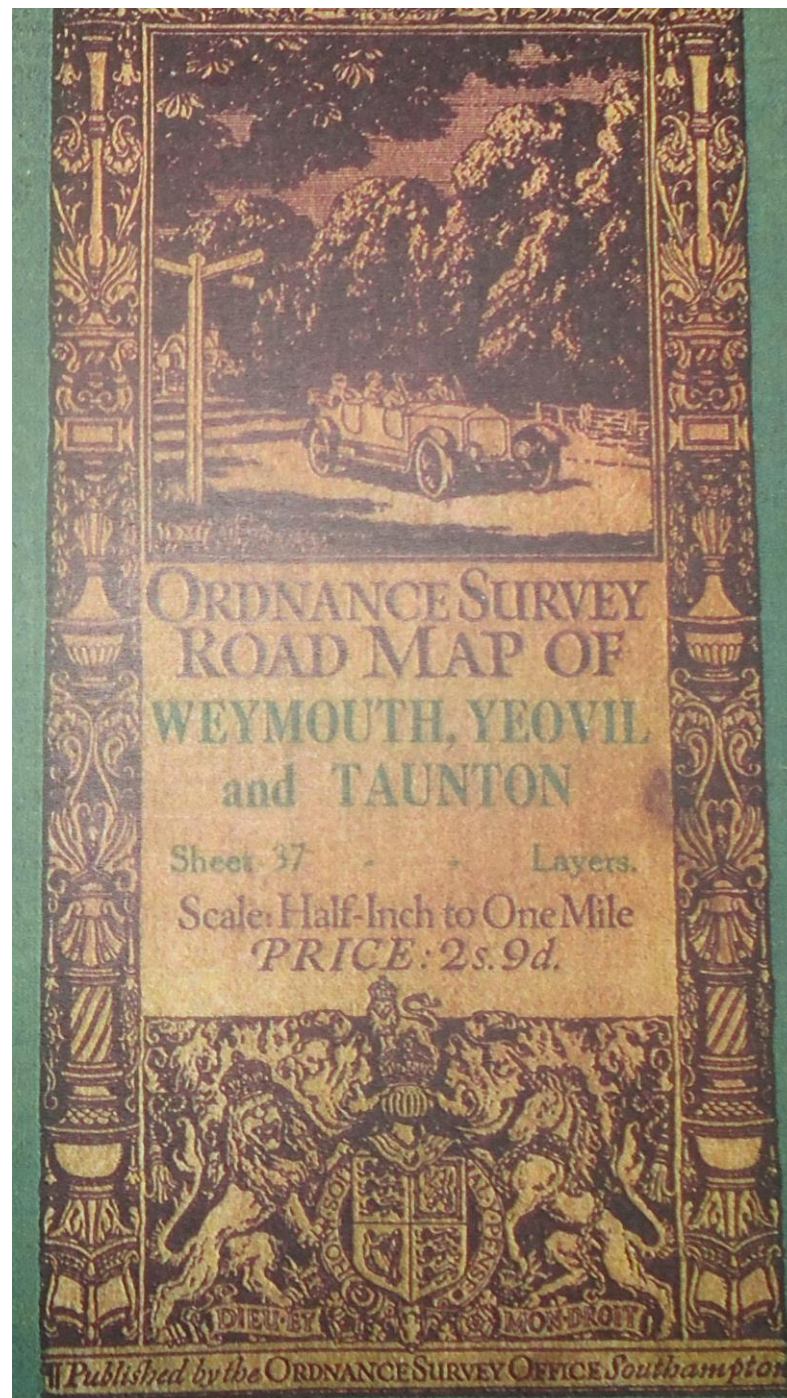
Extract from Bartholomew's map dated 1927



Extract showing key to the 1927 Bartholomew's map

28. 1928 OS Road map, sheet 37, scale of $\frac{1}{2}$ inch to the mile.

- a. A copy of this map is owned by the applicant.
- b. This map was sold to the travelling public.
- c. There is a key and the route is depicted as a motor road, albeit 'bad' rather than 'good'.
- d. This is good evidence that at the time the map was made, the application route was considered to be part of a through motor route connecting Ashill to Ilton. If it had been a bridleway or footpath it would have been depicted by a single dashed or dotted line.



Ministry of Transport 'A' Roads	.....	.....
Other Motor Roads	.....	.....
" " " narrow	.....	.....
Minor Roads	.....	.....
Bridle & Footpaths	.....	.....
Slopes steeper than $\frac{1}{4}$	.....	.....

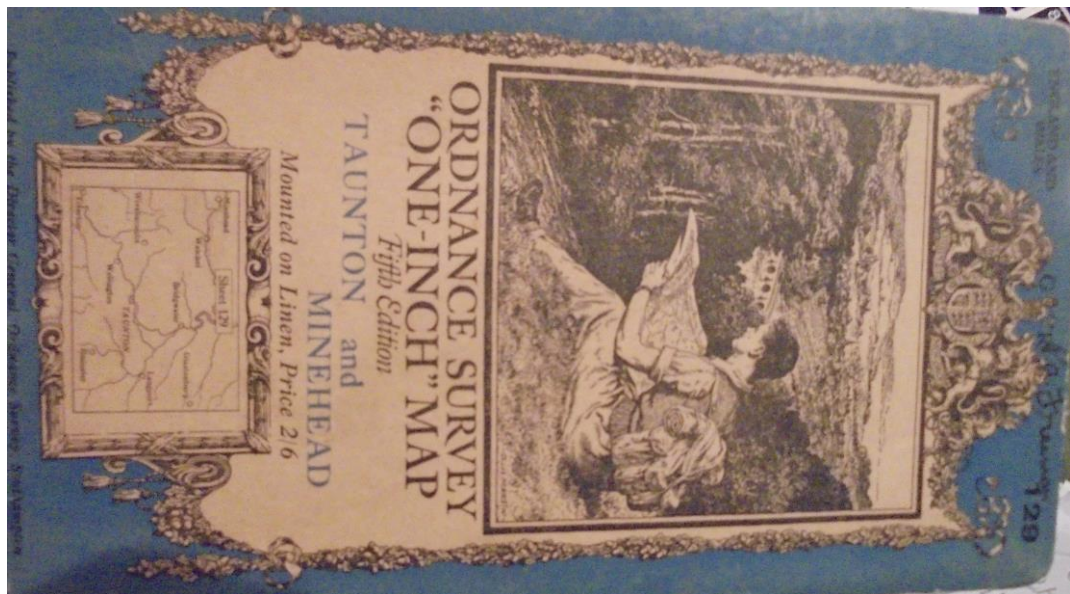
Cover and key to the OS Road Map dated 1928

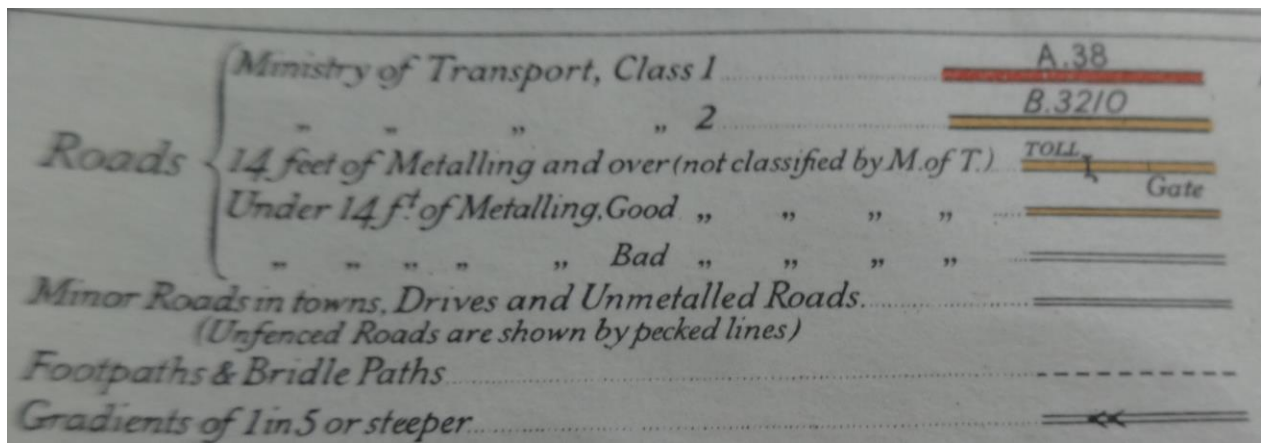


Extract from the OS Road map dated 1928

29. 1937 OS map.

- a. A copy of this map is owned by the applicant.
- b. This map was sold to the travelling public.
- c. There is a key and the route is depicted as an 'unmetalled road'.
- d. This is good evidence that at the time the map was made, the application route was considered to be part of a through route connecting Ashill to Ilton. If it had been a bridleway or footpath it would have been depicted by a single dashed or dotted line.

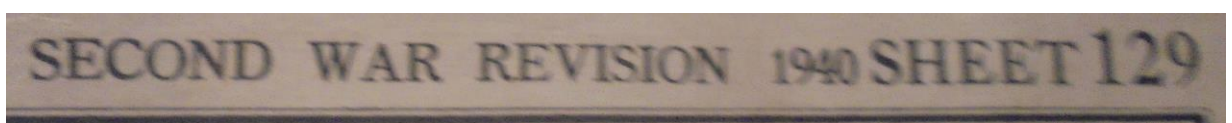




Extracts from the 1937 OS half inch map

30. 1940 War Revision map

- a. A copy of this map is owned by the applicant.
- b. There is no key to this map.
- c. The route is shown in the same manner from the junction of Park Barn Lane and Copse Lane through to Pound Corner. There is no difference between the application route and the section of Merryfield Lane which is an unclassified public highway today. The route going north from the Park Barn Lane and Copse Lane junction is also shown in this way and that is a public road today.
- d. This is good evidence that at the time the map was made, the application route was considered to be part of a through route connecting Ashill to Ilton and of the same status as the public road going northwards from its western end.

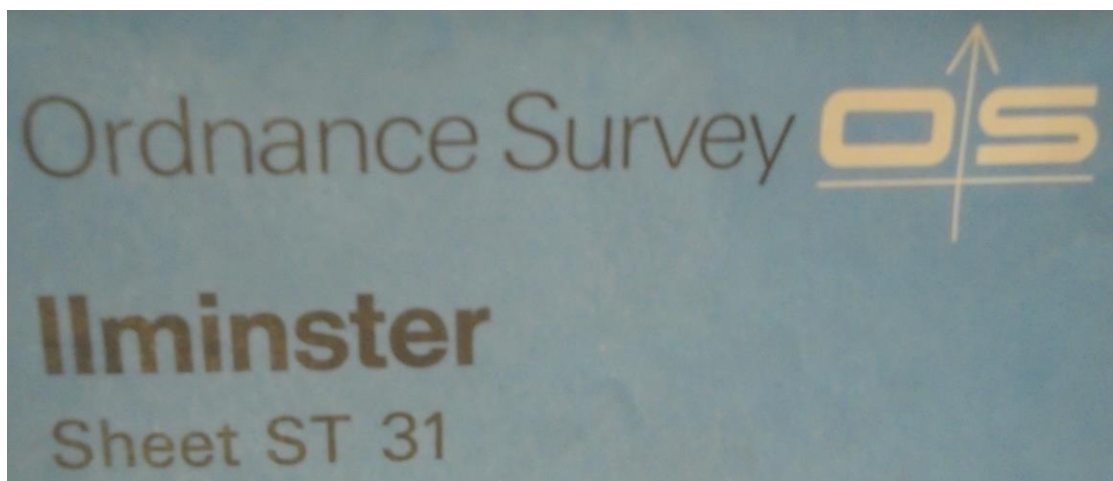




Extracts from the 1940 war revision map

31. 1958 OS First Series 1:25000 scale

- a. A copy of this map is owned by the applicant.
- b. The application route is shown in the same manner and as a continuation of the section of Merryfield Lane which is an unclassified public highway.
- c. The map has a key which indicates that footpaths are marked with 'f.p.' and the application route is not shown as such.





Conventional Signs		
Note:- Road fillings and numbers are shown in orange on the map.		
Motorway, Trunk and Main Road (Dual Carriageway)	M 4 or A 6(M)	A 123 or A 123(T)
Trunk & Main Road	A 123 or A 123(T)	
Secondary Road	Fenced B 2314	Unfenced
Road Under Construction		
Other Roads	Good, metalled	Poor, or unmetalled
Footpaths	FP Fenced	FP Unfenced

Extracts from the OS First Series map

32. 1960 Stopping up order

- This record was created by the Ministry of Transport and related to the stopping up of roads across Merryfield Airfield.
- The record is held by the National Archives under reference MT 78/189/19.
- The application route was not part of this order, however, the legal draftsman hand wrote the name 'MERRYFIELD LANE' along the application route. It suggests that this was a good point of reference and preferable to using Park Lane as a reference point.
- They were not likely to have used Merryfield Lane if it was private while Park Lane was, and still is, a public highway.
- This offers strong support to the supposition that Merryfield Lane was considered public by the professionals in the Ministry of Transport.



Extract from the map accompanying the stopping up order

33. Stopping up order 1971

- a. This record was created by the Department of the Environment under both Planning and Defence Acts of Parliament to authorise the stopping up of a route across Merryfield airfield.
- b. The record is held by the National Archives under reference MT 78/356/35.
- c. Whilst the stopping up order does not include any part of Merryfield Lane, it is helpful to show that the application route was known and considered significant at the time with the name referring to the western end of the application route.
- d. The route to be stopped up is described as originating 943 yards north of its junction with the end of Merryfield Lane. This indicates that the name Merryfield Lane applied, at that time, to the full extent of the application route from the junction of Copse Lane and Park Ban Lane.
- e. The legal draftsman at the time could have described the route as extending from Park Lane which was and is a public highway, however the description using Merryfield Lane was chosen instead. It is reasonable to assume that Merryfield Lane was considered a known point of reference and therefore more likely than less likely to be relevant to the road network of that time.
- f. This suggests that Merryfield Lane had public status at that time.

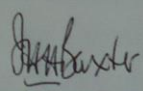
Town and Country Planning Acts 1962 and 1968 and Land Powers (Defence) Act 1958
THE STOPPING UP OF HIGHWAYS (COUNTY OF SOMERSET)
(NO. 2) ORDER 1971

Made 25 October 1971

The Secretary of State for the Environment makes this Order in exercise of his powers under section 153 of the Town and Country Planning Act 1962, as extended by section 8 of the Land Powers (Defence) Act 1958, and of all other enabling powers:-

1. The Secretary of State authorises the stopping up of the highway described in the Schedule to this Order being satisfied that the stopping up is necessary to enable land to be used efficiently for a defence installation without danger to the public.
2. Where immediately before the date on which a highway is stopped up in pursuance of this Order there is apparatus under, in, on, over, along or across that highway belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall (subject to the provisions of section 32(3) of the Mineral Workings Act 1951) continue to have the same rights in respect of the apparatus as they then had.
3. In this Order "the deposited plan" means the plan numbered "SH 8/35-87", marked Highway at Ilton in the County of Somerset", signed by authority of the Secretary of State and deposited at the Department of the Environment, St. Christopher House, Southwark Street, London, S.E.1.
4. This Order shall come into operation on the date on which notice that it has been made is first published in accordance with section 154(6) of the Town and Country Planning Act 1962, and may be cited as the Stopping up of Highways (County of Somerset) (No. 2) Order 1971.

Signed by authority of
the Secretary of State
25 October 1971.


An Assistant Secretary in the
Department of the Environment

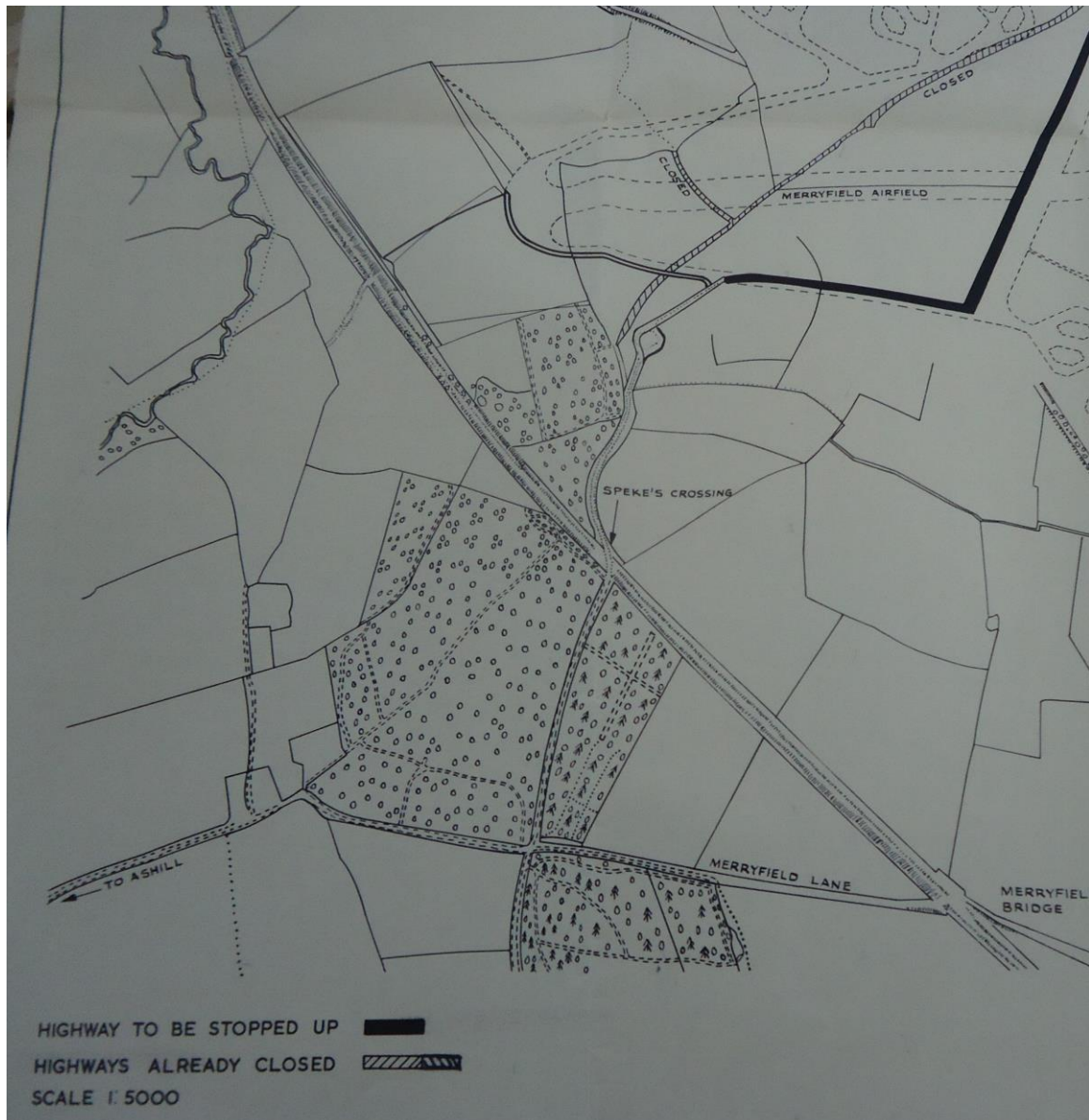
THE SCHEDULE

Description of highway to be stopped up
(The distances are approximate)

The highway to be stopped up is in the Parish of Ilton in the Rural District of Chard in the County of Somerset.

It is shown solid black on the deposited plan and is a length of the unnamed road which leads from Ashill across Merryfield Airfield to Isle Abbots starting 943 yards north of its junction with Merryfield Lane and extending eastwards and then north eastwards for 1314 yards.

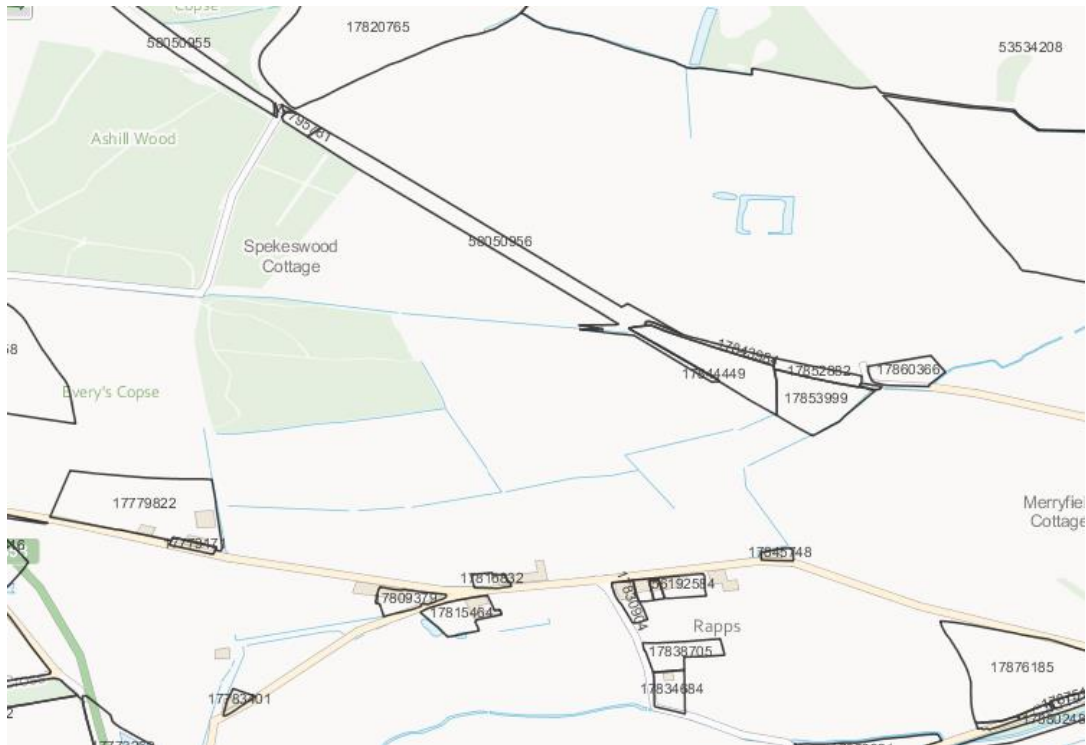
Extract from stopping up order



Extract from the map accompanying the stopping up order

34. INSPIRE (2016).

- a. 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. The publicly accessible dataset is found at <https://data.gov.uk/dataset/land-registry-inspire-view-service-and-metadata>.
- b. The section of the application route from the north western end at Copse Lane and Park Barn Lane to Merryfield Bridge is on unregistered land. There are two short sections of registered land east of Merryfield Bridge which are on the section of Merryfield Lane which has, as earlier documents show, been referred to as a public road.



Extract from the INSPIRE mapping showing application route unregistered

Road Records Somerset County Council's Road Records

- The extract below shows the extent of the current unclassified public highway which ends at point B of the application route, at ST 3413 1746
- It is noted that there is both a ford and a footbridge towards the western end of the recorded public highway.



Extract from Road Records department.

CONCLUSIONS

35. All the evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created.

36. 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.

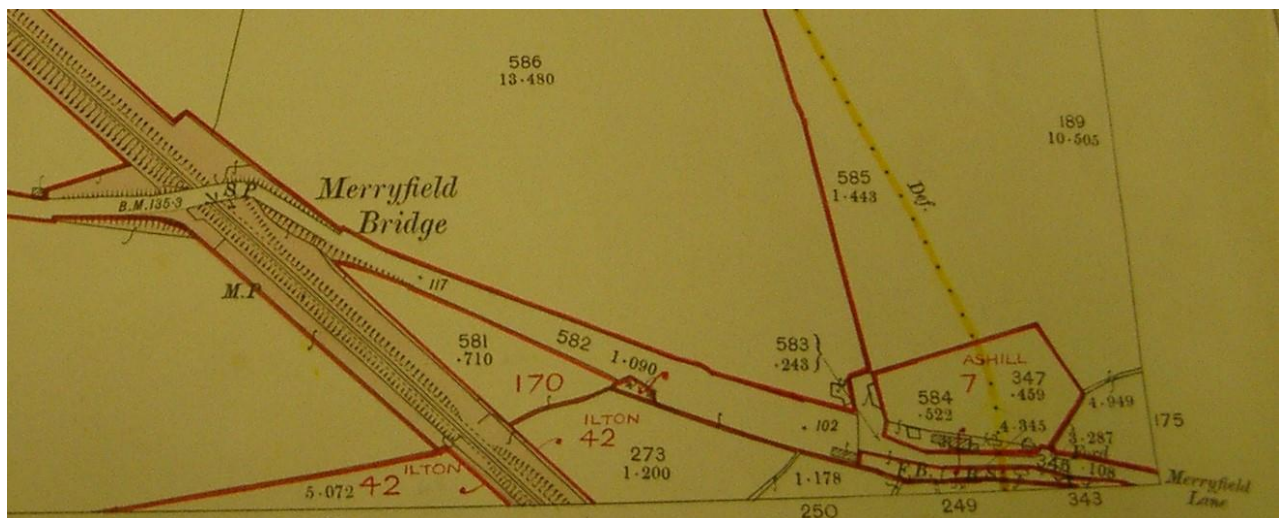
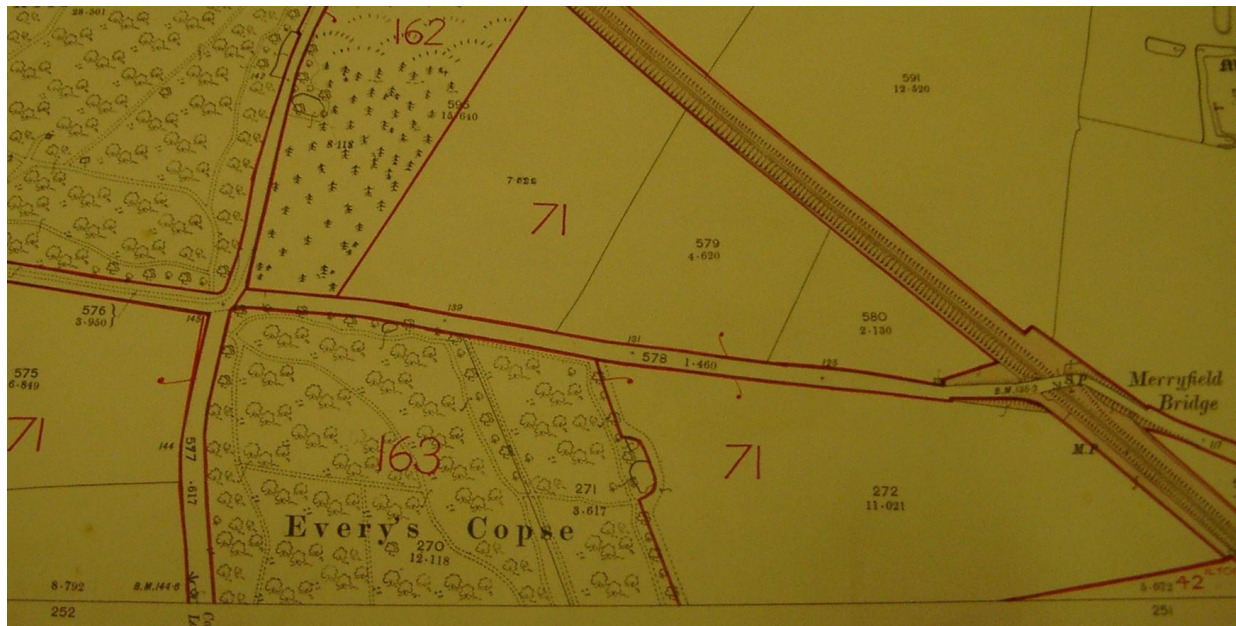
37. The surrounding land parcels had been in the ownership of the Earls of Egremont for at least 100 years leading up to 1915 and at no stage had any of them ever suggested that the route was owned by them or was not a public route.

38. The records make no distinction between the application route and the section of unclassified highway which is the continuation to Pound Corner in Ilton. This is evidence that there was no change in status along the route from the junction of Park Barn Lane and Copse Lane, along the application route, and to Pound Corner in Ilton.

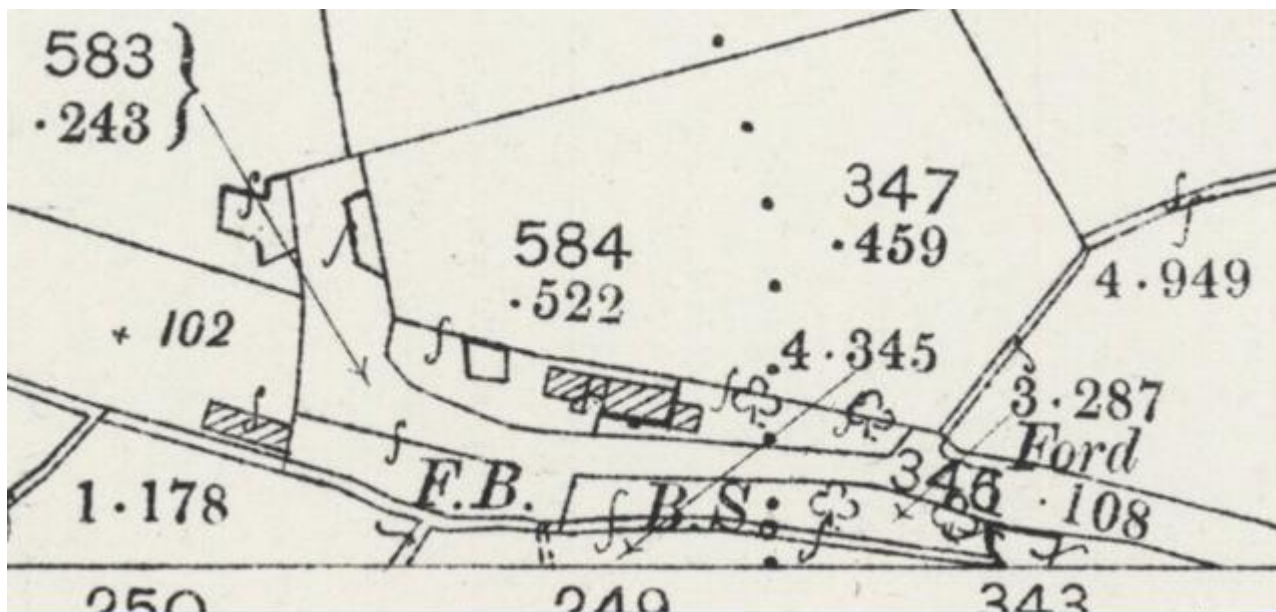
39. The applicant requests the surveying authority to add the route to the definitive map as a byway. (The type of byway – restricted or open to all traffic – will depend on the application of the Natural Environment and Rural Communities Act 2006. In the event that motor vehicular rights have not been extinguished, the applicant notes that the route is clearly more used by the public for walking and riding than by motor vehicle, and so would meet the criterion for being recorded on the definitive map and statement.)

Sarah Bucks
South Somerset Bridleways Association

Appendix A audit of abutting hereditaments:



Extract from the 1910 Finance Act valuation map, sheet 80-12



Extract from the NLS's image of the 1903 OS map sheet 80-12

Ord. No.	Name.	described as :—			Description.	Ordnance.		
						A.	R.	P.
584	Cottage, Garden, &c.	...	...		Garden	0	2	17
583	Merryfield Garden	...	...		Buildings, &c.	0	0	25
273	Part of Hardington	...	...		Arable now Grass	1	0	27
250	Part of Long Meadow	...	...		Meadow	1	0	29
347	Garden (Ilton Parish)	...	...		Garden	0	1	34
Acreage						3	2	12

The Cottage, occupied by Mr. Andrew P. ...
and 3 P. ...

Extract from lot 7 of the 1915 estate sale



Starting from the NW end of the application route

OS parcel number 578 which is excluded from surrounding hereditaments (hereditament 71). From the north western end of the application route at the junction with Park Barn Lane and Copse Lane to the top of Merryfield Bridge at ST 33842 17591.

OS parcel number 582 which is excluded from surrounding hereditaments. It covers the part of the application route from the top of Merryfield Bridge at ST 33842 17591 to the point where the application route broadens at ST 34105 17478 on the western edge of OS parcel number 583.

OS parcel number 583 which is excluded from surrounding hereditaments and runs from ST 34105 17478 to OS parcel number 346.

Parcel number 346 is also excluded from surrounding hereditaments and is part of the network of unclassified highways. See appendix B

Thus it is clear from the 1910 Finance Act map that the valuers showed the application route was not within any hereditament. Where a hereditament has land on both sides of an intervening hereditament, it is shown with open bracing over the route, eg parcel numbers 7 and 71, just as hereditament 41 straddles the railway line.

However, the sales particulars for lot 7 in the 1915 estate sale includes one of the parcel numbers 583, which is excluded by the Inland Revenue valuers. It is noted, however, that the OS parcel number covers an acreage of 0.243 acres (equates approximately to 1 rood which is 40 perches). The land included in the sale was 25 perches. Thus even allowing that some of parcel number 583 was included in the sale, this would have been just over half the area, and not the full parcel number. This is consistent with the application route being excluded from the hereditament and thus part of the land owned by the surveying authority.

Map sheet LXXXI -12 has the following helpful information:

'to convert decimal parts of an acre into Roods, multiply by 4. This will give roods and decimals part of a Rood, multiply this by 40 thus giving perches and decimals of a perch.'