

Statement of Case for a Bridleway Running along Hurns Lane, From the A19 (formerly Shipton Street) to Moorlands in the Parish of Skelton

Presented by: British Horse Society (BHS) c/o Catriona Cook MBE of Burgate Farm, Harwood Dale, Scarborough YO13 0DS

Historically Skelton and Shipton were townships in the parish of Overton. And the area traversed by the order route was known as Hall Moor being part of the Common of Overton, along with Gilt Nook, formerly of the Forest of Galtres. In the days of horse transport it would definitely have been ridden across by horsemen, the parishioners of Overton and the townships of Shipton and Skelton, having rights of turbary on the common. Again, historically the route would have been a thoroughfare through to Moor Lane, with no dead end and would have had the same status throughout.

The Balance of Probability in the Days of Horse Transport: I appreciate that it is difficult in the twenty first century for us to be aware of what life was like, for centuries when the horse and mule were the main means of transport. I used OS maps in my youth, which did not depict any rights of way information. I was also instructed to seek out the eldest inhabitants of an area, who fascinated me since they had been brought up in the days of horse transport (born c1870's). From both sources I learnt that I could use a through route, whether gated or not. And that historically there were far more bridleways and old roads than are acknowledged today.

Horses were ubiquitous for centuries when they were the main means of transport and Yorkshire was a renowned centre for horse breeding. Each parish sending some 300 horses annually to Howden Fair, where they sold 4,000 horses per day. (The English Fair by David Kerr Cameron 1998) If one thinks of the number of cars today, the horse was in that position in the past. If a route existed then the probability was that it would have been used by horsemen for its full length. In practice their use was from need and not constrained by gaps in evidence, which means that commonsense and practical knowledge of horse use needs to be applied, whilst resisting dividing a route into short lengths with varying levels of evidence. The term bridle road is applied in this case across several documents, which cumulatively means that it is more probable than not that it existed. And the sheer manual effort to enclose a lane was simply not entered into by private landholders for private use. There was no need. Enclosed lanes were enclosed to stop the mingling of the using public's stock with the stock belonging to the private landowner. As per the **1899 Neeld v Hendon UDC 81LT 405** court case. Most of the case is irrelevant but summing up at the end JL Williams stated:

"The presumption is that prima facie, if there is nothing to the contrary, the space of ground between the fences on either side of the road; that is to say, that the fences may prima facie be taken to have been originally put up for the purpose of separating land dedicated as a highway from land not so dedicated."

The Thoroughfare Principle: This principle is long-established in highway law, meaning that a way between two public ways is itself public. This was upheld by *Fortune* in 2010¹ and again on appeal (2012). These cases quote from Colin Seymour who was well respected by the legal profession. He represented himself and won in the high court some 30 times and was told by a judge when in his 50's to consider studying for the bar. His most celebrated case being the Flamborough Hedge case, his expertise in inclosure awards being relevant.

"721. On a number of occasions in this judgement, I have made reference to through routes and thoroughfares, stating that certain maps gave me the clear impression that Rowden Lane and Gypsy Lane, connected by a way across field, constituted a through route or thoroughfare leaving and rejoining the A4.

722. Mr Harbour attaches considerable importance to the notion of 'thoroughfare'. He is strongly of the view that the historical evidence demonstrates that Rowden Lane and Gypsy Lane formed one through route, amounting to an extremely ancient thoroughfare. He considered that this thoroughfare was in existence before the inclosure of the common lands in 1669. It not only served those common lands but also the place called Rowden.

*723. He referred to an article by Colin Seymour entitled "The thoroughfare principle" contained in the Byways and Bridleways Trust's Journal (BBT 2000/1/8). The gist of the article was to confirm that ancient through routes were always considered public vehicular highways. The following are extracts from **that article**:*

'The basic concept of the highway was one endless route: a thoroughfare made up of countless ways. All ways, be they public roads or private roads, which led from village to village and did not terminate there, or which led to a great road were properly called a highway. This was the presumption that must be the starting point at any enquiry into the status of a way. If a way is a thoroughfare and does not end as a cul-de-sac it is a highway. Thus the burden of proof shifts at this point from those who seek to prove the way to those who seek to disprove its existence. From time immemorial up to the 1850's only thoroughfares were highways. Ways which terminated at a village, a church, a common field, or a house were termed private ways. A private way and a private road were not strictly the same thing so far as the law were concerned. For the latter could be a highway whilst the former was distinguished from a highway because it was not a thoroughfare ... the difference between a highway and a private way was that the former was a

¹ *Fortune & Ors v Wiltshire Council & Taylor* [2010] EWHC B33 (Ch)

thoroughfare and the latter terminated a cul-de-sac ... **All highways are thoroughfares. All public roads which were thoroughfares were highways. All private roads which were thoroughfares were highways. All occupation roads which were thoroughfares were highways. All cross roads were highways because by their very nature they were thoroughfares leading to other places and were part of the road network.**

... (a statute) requiring sign posts at cross roads referred to them as 'cross highways'. Countless law reports, ancient and modern, start from the premise that if the way was a through route, linking two public roads, that way itself was a highway. The thoroughfare principle was fully understood by the courts at the time and nothing has changed since to alter the law ... therefore it still holds good that: every (ancient) thoroughfare is a highway if it connects to another highway or leads to the next town". (my parenthesis)

The Thoroughfare Principle

'The Highway is infinite and leads from sea to sea'

[Parker LCJ in *R v. Hammond* 1 Str 44, 1717, followed in *R v. Haddock* 1737]

Colin Seymour writes:

The basic concept of the highway was of one endless route; a thoroughfare made up of countless ways. All ways, be they public roads or private roads, which led from village to village and did not terminate there, or which led to a great road, were properly called a highway.

This is the presumption that must be the starting point at any inquiry into the status of a way. If a way is a thoroughfare and does not end as a cul-de-sac it is a highway. Thus the burden of proof shifts at this point from those who seek to prove the way to those who seek to disprove its existence.

From time immemorial up to the 1850s, only thoroughfares were highways. Ways which terminated at a village, a church, a common field, or a house – were termed private ways. A 'private way' and a 'private road' were not strictly the same as far as the law was concerned, for the latter could be a highway whilst the former was distinguished from a highway because it was not a thoroughfare.

As Richard Burn pointed out in 1782 (*Justice of the Peace and Parish Officer* 16th Ed.) the difference between a highway and a private way was that the former was a thoroughfare and the latter terminated as a cul-de-sac. See also Jacob 1744; Hawkins 1787; Shelford 1862; Glen 1883.

The law also recognised the differences in another way, only nuisances committed upon highways could be the subject of an indictment in the name of the Crown. Nuisances committed upon private ways could not be the subject of an indictment (see the *King v. Richards* – 1800) but could only be remedied by the private action (as opposed to a public action) of an individual who had a legal interest in the way.

Two cases heard by Sir Matthew Hale in 1672 demonstrate the thoroughfare principle. In *Austin's Case* he held, upon appeal that the indictment was not good because there was no highway – and in *Thrower's Case* he held that the indictment was good because there was no evidence that the way ended at the church and was therefore a thoroughfare and a highway and thus the nuisance was an indictable offence. Too many law books have failed to get these two cases in perspective as to what they really decided.

It was only after the 1850's that cul-de-sacs were considered by the law to be highways. Thus Inclosure Commissioners when setting out ways which they intended to be used by everyone could not lawfully direct those ways to join other ways which were not highways. For example, at Barkisland, six public bridle roads were set out all ending upon a section of private carriage road, a

road that led from a township to a turnpike and beyond. The presumption must be that by so directing public roads into a private road the Commissioners were indicating that what they had already awarded was not an exclusive way but was a highway. i.e. a thoroughfare. For if it was not intended to be a highway, then the six bridle roads ended as cul-de-sacs and as such were not highways but were private ways. Commissioners were men of their time, and an understanding of what they could do within the law and what they could not do was absolutely fundamental to the inhabitants affected by the Award.

All highways were thoroughfares. All public roads which were thoroughfares were highways. All private roads which were thoroughfares were highways. All occupation roads which were thoroughfares were highways. All crossroads were highways because by their very nature they were thoroughfares leading to other places and were part of the road network (the first statute [8/9 W.3 c.15, s.7 – 1696/7] requiring sign posts at cross roads referred to them as 'cross-highways'). Countless law reports, ancient and modern start from the premise that if the way was a through route, linking two public roads, that way was itself a highway. The thoroughfare principle was fully understood by the courts at the time and nothing has changed since to alter the law – therefore it still holds good that:

Every (ancient) thoroughfare is a highway if it connects to another highway or leads to the next town.

Figure 1 Byway and Bridleway BBT 2000/1/8

Fortune (2012)² on appeal

49. ... His own impression from the map (1784) was that Rowden Lane and Gypsy Lane were roads of some importance. They were hedged on both

² [Fortune & Ors v Wiltshire Council & Anr](#)

sides, had worn or used surfaces and seemed to be important parts of the local public road network. Even if Rowden Lane was not a thoroughfare he would still have regarded Rowden Lane as part of the local road network. It was shown on the map as wider than footpaths and pecked lanes on the map showed a used or surfaced part of the road with verges on each side. This would have accorded with Prof. Williamson's concession that there must have been one or more attractions at the end of Rowden Lane so as to attract the public to go there at all; and with the judge's previous finding that Rowden Lane was used both as access to the Great Coppice and to the place called Rowden. But in fact the judge said that he was persuaded by Mr Harbour that Rowden Lane was part of a thoroughfare."

Hurn Lane was a thoroughfare between Shipton Street (A19) and Gilt Nook Lane (Moor Lane) two public highways, so it too was a public highway. And as outlined above and upheld in the High Court and Court of Appeal was the foundation of our road history. It is my contention therefore that the thoroughfare principle must apply to the order route.

I was a member of the Independent Tribunal Service for many years, where we were taught the importance of the tribunal and in this case the public inquiry being subservient to the courts.

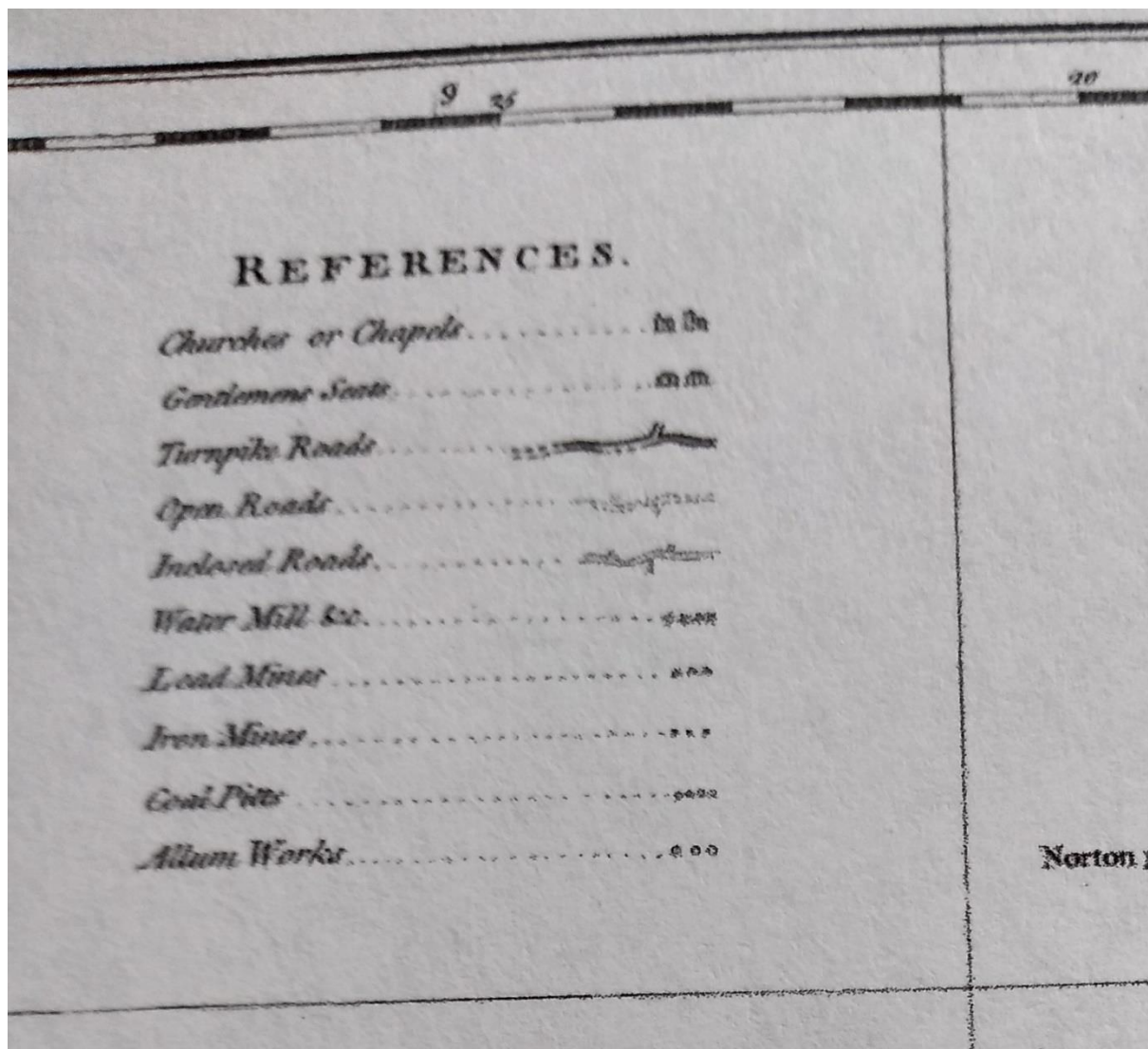
The order route appears to be an ancient road, but not a very important one since it is often only depicted as a stub route on some of the early maps. This was a common practice on the small scale county maps to avoid clutter, but the stub indicated to the travelling public that they could use it. The other very important piece of evidence of its public status is that Hurn Lane is recorded today on the List of Streets, it would also have been part of a direct route for Overton parishioners to access the moorland which they would have had rights over.

The evidence will be presented in chronological order and some have been magnified for clarity.

1630 Map: I would agree with the Order Making Authority (OMA) that the western end of the order route is not the dotted lines, but that the gate opposite 32 Long Lane Brig (Bridge) on Shipton Street is where it starts. But I do not agree with their analysis at the north eastern end which is clearly seen by the Applicants Statement of Case (SoC) at page 20 where he analyses the three maps and the parish boundaries. We are dealing with open country and a time period of 177 years before the Inclosure Award; roads often changed course for a variety of reasons. I believe that the order route from H/I-J and out to Gilt Nook Lane is depicted on this map as the Road from Shipton to Wiggington.

The other reason I think that Road 42 is part of the order route is the fact that when the definitive map was done the full route was registered as a public footpath. The locals knew that it was public, but the mists of time had erased the memory of it being a road. See Applicant's SoC page 21. (having spent 40 years researching this subject I have come across innumerable cases of ancient roads being recorded as footpaths.)

1771 Jeffrey's Map of Yorkshire: The route is only shown as a stub and on the key is depicted as an "*Inclosed Road*". Which means that it would have been used by the public with horses. And when compared with the 1789 Travellers Companion Applicants SoC at pages 16 & 17 shows the stub road to Skelton Hall.





1789 Traveller's Companion

Applicants SoC page 16

I agree with the applicant's analysis, which means that the application route was a road used by the public with horses at this period. It should be noted that the area traversed by the order route via Skelton Hall, on the 1630 Map was "*Halmor*" and subsequent maps as "*Hall Moor*".

1807 Skelton Inclosure Plan & Award

The order route is depicted on the Inclosure Plan, a legal document as a road, being coloured sienna with solid lines when enclosed and dashed lines when unenclosed. The order route is open to the turnpike road at the western end indicating that it was regarded as a public road, which it still is today. The sienna colouring goes as far as Hall Moor, but the route continues uncoloured going east depicted by dashed lines. It goes as far as Moorlands, formerly known as Gilt Nook. It is not coloured sienna which denoted roads, so was more likely to have been used by horsemen rather than carts.

The order route was not actually awarded as an inclosure road yet is mentioned several times in relation to the allotting of land. This coupled with it being shown on the 1771 Jeffrey's map and mentioned in the 1789 Traveller's Companion, indicates that it was a pre-existing road used by the public. The inclosure process did not automatically extinguish the old roads, which had to go through due legal process as outlined by the following court cases. Tired parishioners with under nourished, over burdened horses, simply would not have accepted the loss of this ancient road.

1826 Logan v Burton: page 194 para.2 *“the positive concurrence and order of two magistrates are absolutely necessary for the stopping up of roads, whether they be public roads or private or bridle or footways.”*

1836 King v the Marquis of Downshire: this case quotes Logan v Burton and we know from the **1801 General Inclosure Act** that the roads were set out before the land was allotted.

Page 954 para 5 *“...that, although the commissioners had professed to set it out as a private and occupation way, they had not allotted the soil, and that the new denomination they had given it did not, under the circumstances, deprive it of the character it anciently had, of a public highway.”*

Page 956 para 1 713 *“(Patteson J. It has been held that, where there never was a right of thoroughfare, a jury might find that no public way existed; but it has never been settled that, where there had been a public right of passing through, the right of way was abolished by stopping one end of the passage.)”*

It is mentioned more than once as the road to Hall Moor and acted as an edge to various allotments of land. Hedges along its abutting edge were to be planted and protected from sheep and lambs for 7 years to get them established. Transgressors were to be fined by the Surveyor of Highways and the money spent on the roads for the public good. If the route was only a private easement then the Surveyor of Highways would not have been involved.

By their very nature roads and lanes were part of the community's public assets. They might be repaired by individuals but were used by the public and came under the public office of the Surveyor of Highways.

The following paragraph from the Award also demonstrates that Gilt Nook Common was part of the whole parish of Overton, which included the Townships of Shipton and Skelton. So all the parishioners would have had rights of common on Gilt Nook. Those from Shipton via the Shipton to Wigginton Road, and those from Overton depending where they originated within the parish had a choice via Skelton or Hurns Lane upto Moor Hall and then east along the same road, as exemplified by the 1789 Traveller's Companion.

120 And I do also allot assign and award unto the said Edward Place as heir and devisee as aforesaid his heirs and assigns in severalty 8 acres 2 roods 24 perches of land (subject to a bridle road as herein awarded lying in the Common by Gilt Nook in the Parish of Overton aforesaid bounded by Wigginton Township on or towards the East by Ancient Enclosures of the said Edward Place on or towards the North by the Common Highway called Wigginton Road on or towards the West and by lands hereby allotted to Joshua Hepworth as Lord of the Manor of Skelton on or towards the South,

Inclosure Plan



West end magnified open to turnpike road



Inclosure Award

H15 "...18 perches of land, Parcel of the Lane leading to Hall Moor Farm.....and by the said Hall Moor Lane on or towards the South."

H17 "And I do order and direct that the said Joshua Hepworth and the proprietors....shall make and forever maintain and repair good and sufficient fences and ditches on the West and South sides of the same allotments."

N10 *“And I do award and assign unto the said Joshua Hepworth.....all those several enclosures allotments parcels of ground.....92, 93, 94, 95 and 103 on the said Plan bounded by.....and the road to Hall Moor on or towards the South.”*

Q10 *“And I do also award and direct that the person or persons respectively depasturing or keeping such sheep or lambs and neglecting or refusing to guard and fence off the young quicks as aforesaid shall forfeit and pay any sum not exceeding ten pounds due every such offence which such penalty shall be paid to the Surveyor of Highways of Skelton and shall be applied in the amendment of such Highways.....”*

Q35 *“And I do also award that the several proprietors and occupiers shall maintain good and sufficient bridges leading out of the Highways and Private Roads over the ditches at the gates leading into the same land and tenements...”*

Inclosure Summary: the order route is depicted as a road used by the public on the plan and is described as bordering some of the allotments in the award. Meaning that since the award and plan were legal documents, the order route was a pre-existing public, minor road.

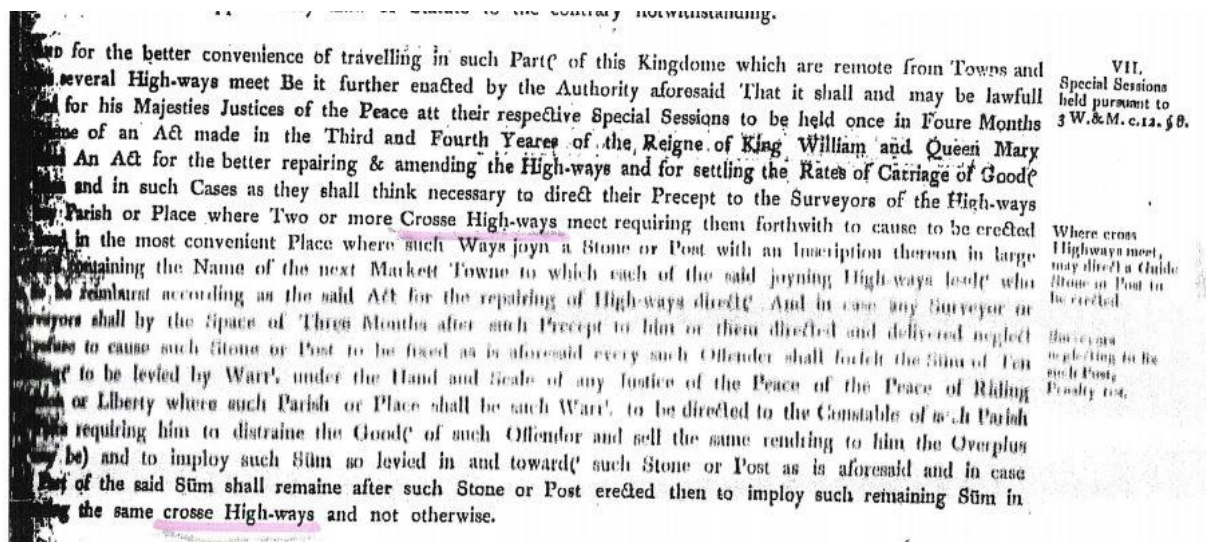
County Maps & Cross Roads: these maps traditionally depicted roads as either Turnpike Roads (subject to a toll, thereby avoided by many of the poor) and cross roads, the minor, local road network. There are statutes, court cases, and dictionary definitions of cross roads explaining that cross roads were by-roads, thereby the local roads. (see What is a Cross Road by Susan Taylor) <https://bhsaccess.org.uk/uploads/what-is-a-cross-road.pdf>

1. **1697 Parliamentary “Act for Enlarging Common Highways”** (House of Lords Record Office)

1. It orders His Majesties Justices of the Peace to erect Guide Posts where two or more cross roads meet to aid the travelling public, which means that the public must have been using these roads. Neither Parliament nor local government would have been involved in expense on truly private (modern meaning) roads.

2. *“to direct their Precept to the Surveyors of High-Ways by Parish or Place where Two or more Crosse High-Ways meet...to erect a stone containing the name of the next market town...”*

“...and in the case part of the said sum shall remain after such Stone or Post erected then to employ such remaining sum in repairing the same crosse High-Ways and not otherwise”



2. 1995 Hollins v Oldham (unreported)

Judge Howarth at page 19 found that Pingot Lane shown as a cross road was a public road.

I do not accept some of the views propounded by Mr. Perkins. In particular, I would mention the following. Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road. This latter category, it seems to me, must mean a public road in respect of which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use. Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.

- **1903 Webster's International Dictionary:** "*Road: a place where one may ride, an open place or public passage for vehicles, persons and animals, a track for travel, forming a means of communication between one city or place and another*"
"Highway: a road or way open to the use of the public; a main road or thoroughfare."
"Cross Road: an obscure road intersecting or avoiding the main road."

“Bridle path, Bridle way: a path or way for saddle horses and packhorses, as distinguished from a road for vehicles.”

- 1905 Nuttall's Bijou Dictionary: *“Road: a public way.”*
- 1932 Shorter Oxford Dictionary: *“Road: 1. The act of riding on horseback; a spell of riding; a journey on horseback 1613. 4. An ordinary line of communication between different places, used by horses, travellers on foot, or vehicles. 1596”*
- 1968 A Medieval Farming Glossary: *“Via: road, Via carectae: cart road, right of way for vehicles, Via communis: public road”*

1816 Tuke

The order route is shown as a stub of “Other Roads” a public vehicular road.



mborough
Head


Explanations.


Market Towns in Capitals as.....YORK

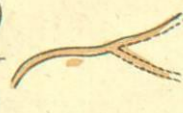
Parishes in small Roman Print as.....Acomb


Other Villages Hamlets & Farm Houses
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Churches or Chapels.....

Seats & noted Houses.....

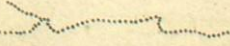
Parks.....

Turnpike Roads inclosed and
uninclosed.....

Other Roads.....

Rivers & Brooks.....

Bounds of the County.....

Divisions of the Wapontakes.....

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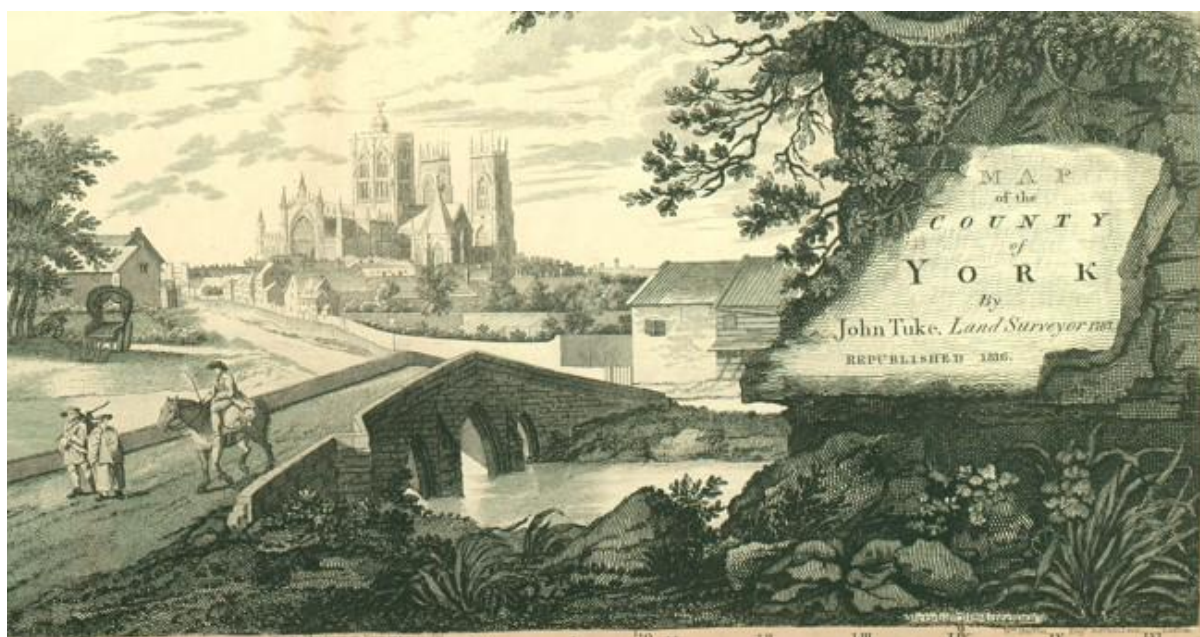
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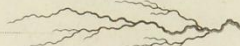
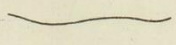






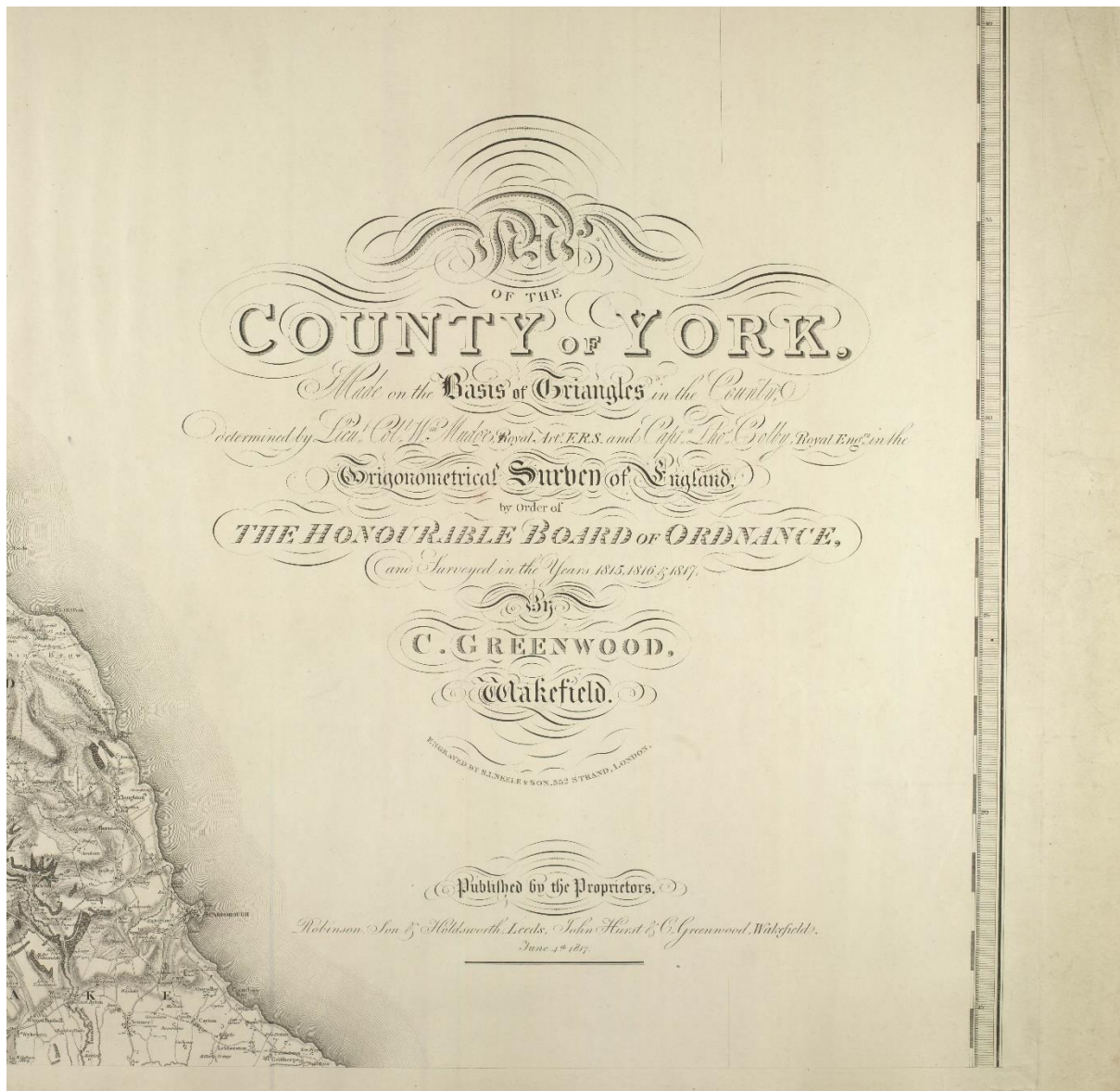
1817 Greenwood

The application route is shown going as far as Hall Moor as a “*Cross Road*” that is a public bye road. The continuation of the route from I to J and out onto Gilt Nook Lane has lost importance, but we know from the earlier evidence that it was the Shipton to Wiggington Road.



Explanation

Churches & Chapels	+	+
Castles & Priories	田	+
Houses	⋈	⋈
Water Mills	⬤	
Wind Mills	✱	
Woods & Plantations		<small>Woods & Plantations are represented by a small, dark, irregular shape.</small>
Heaths & Commons		
Rivers & Brooks		
Navigable Canals		
Turnpike Roads		
Cross Roads		
Towns & other Places that send Members to Parliament		
Boundaries of Counties	-----	
Boundaries of Ridings	-----	
Boundaries of Wapontakes	-----	
Boundaries of the Honor of Pontefract and Manor of Wakefield	-----	
Boundaries of Townships & Parishes	-----	
Hills & Rising Grounds		



1825 Cary

The order route is shown as a “*Parochial Road*” which meant that it was a minor, public road maintained by the parishioners.



Explanation.

Mail Roads

Turnpike Roads

Carriage Roads *which are Parochial Roads*

Parochial Roads

Churches *and* Chapels

Cities

Borough Towns { *The Stars denote the Number of Members
returned to Parliament.*.....

Market Towns... *(The distance from London is prefixed to each Town....)* WELLINGTON 152

Parishes

Villages and Farms

Gentlemen's Houses *and* Grounds

Hills { *The Figures denote their Elevation
above the level of the Sea*

Lakes and Rivers

Navigable Canals

Drains

Iron Rail Road

Antient Earth Work

Roman Roads

Boundaries of Counties

Boundaries of Hundreds

Cliff's

Piers

Rocks *always* uncovered

Rocks covered at high water

Rocks *always covered*

Sands covered at high water

Sands *always covered*

Anchorage

Direction of the Currents

The figures on the coast shew the depth of water in fathoms.



Shown as a "Cross Road" in the key, a road for the use of the public with horses.



Explanation	
Churches & Chapels	+
Castles & Priors	+
Houses	+
Water Mills	+
Wind Mills	+
Woods & Plantations	+
Heaths & Commons	+
Rivers & Brooks	+
Navigable Canals	+
Turnpike Roads	+
Cross Roads	+
Towns & other Places that send Members to Parliament	+
Boundaries of Counties	+
Boundaries of Ridings	+
Boundaries of Wapentakes	+
Boundaries of the Hundred of Pontefract	+






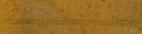



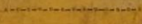
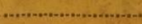


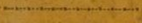




1834 Fowler

The application route is shown as a “*Cross Road*” and bearing in mind the words “*Hall Moor*” and “*Wide Open*” these infer moorland. This means that the route is shown as a cross road for traffic to Hall Moor but it is more probable than not that mounted travellers would have continued across the moor to Moor Lane rather than retracing their steps and going all the way round via Skelton; if they had need to go that way.



EXPLANATION.

Churches & Chapels	+	+
Castles & Prisons	□	+
Houses	•	•
Water Mills	o	
Wind Mills	⊗	
Woods & Plantations		
Heaths & Commons		
Rivers & Brooks		
Navigable Canals		
Rail Roads		
Turnpike Roads		
Cross Roads		
Boroughs that send Members to Parliament		
Boundaries of Counties		
Boundaries of Ridings		
Boundaries of Wapentakes		
Boundaries of the Honor of Pontefract and Manor of Wakefield		
Boundaries of Townships & Parishes		
Hills & Rising Grounds		
Market Towns in Roman Capitals as	MIDDLEHAM	
Parishes & Townships in small Roman as	Melmerby	
Villages Hamlets & other Places in small Itals as	Woodthorpe	
The Clothing District		



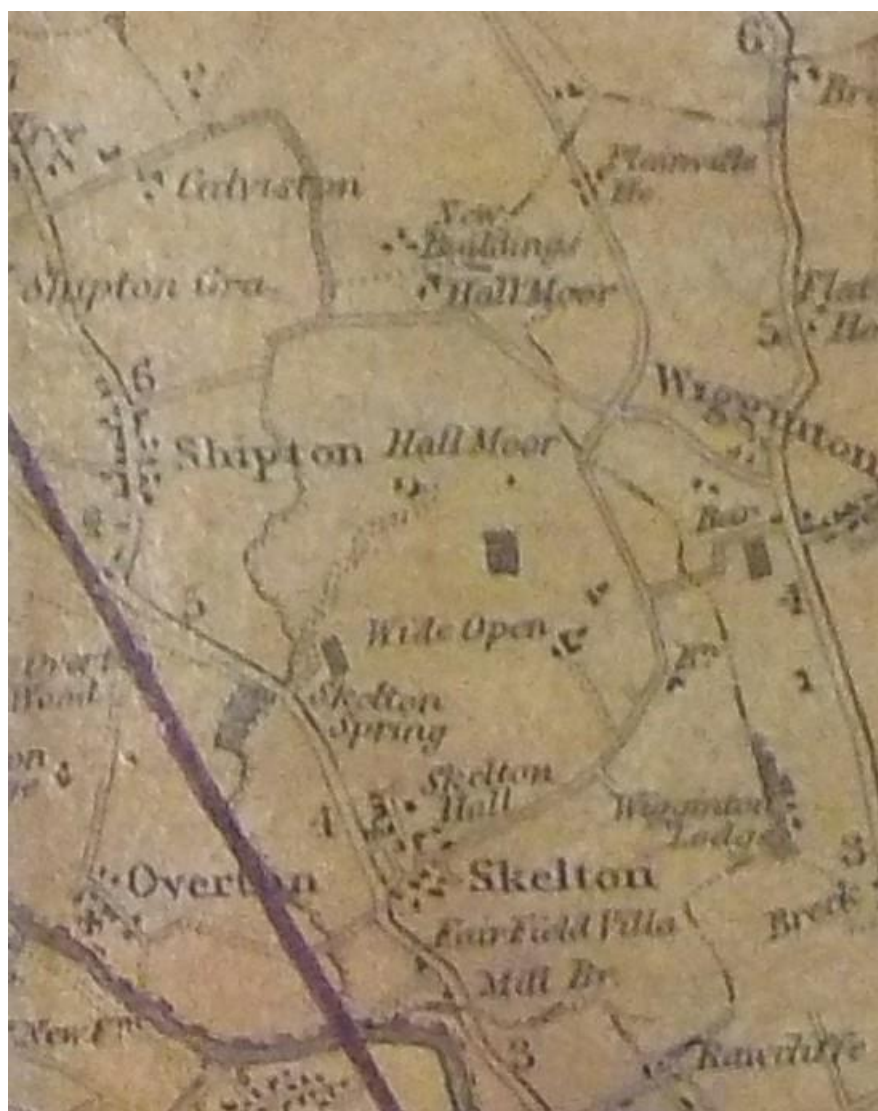
1843 Hobson

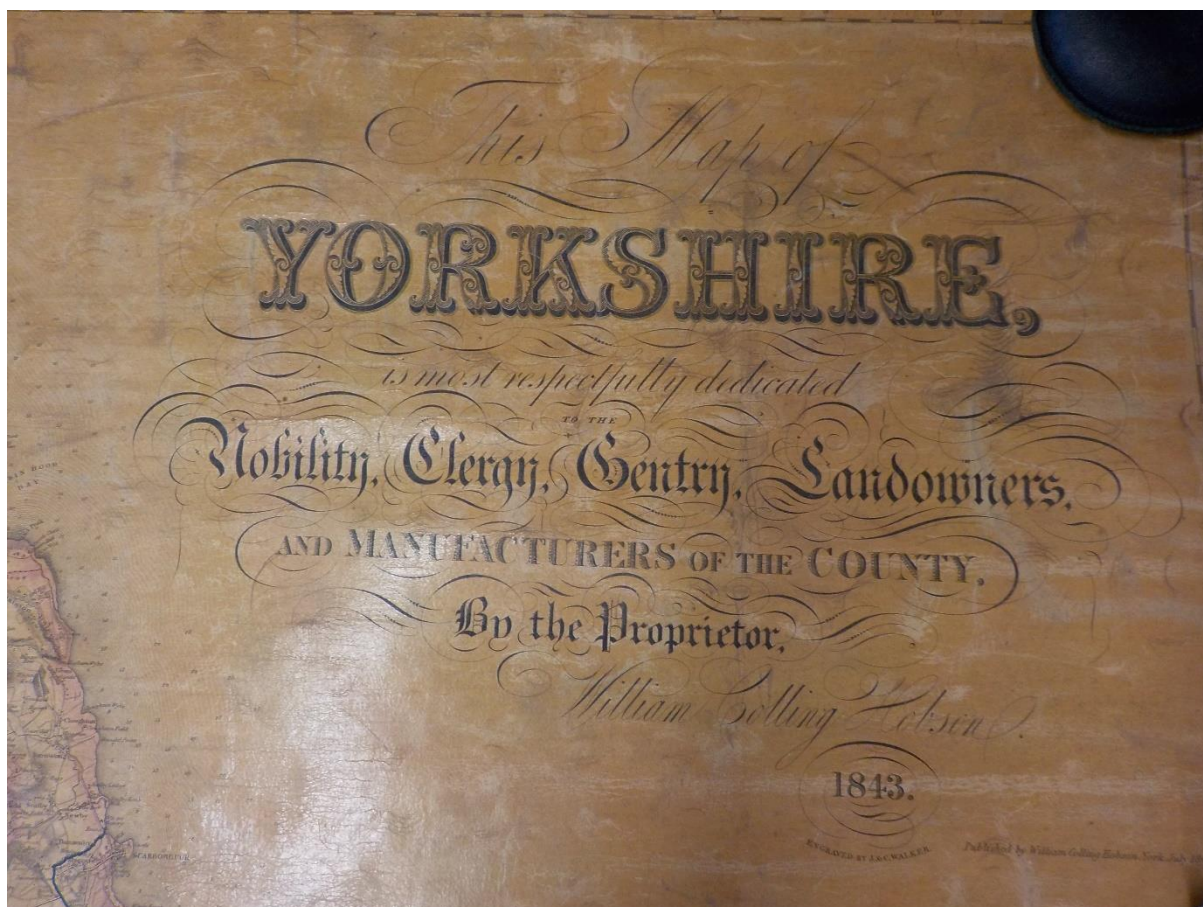
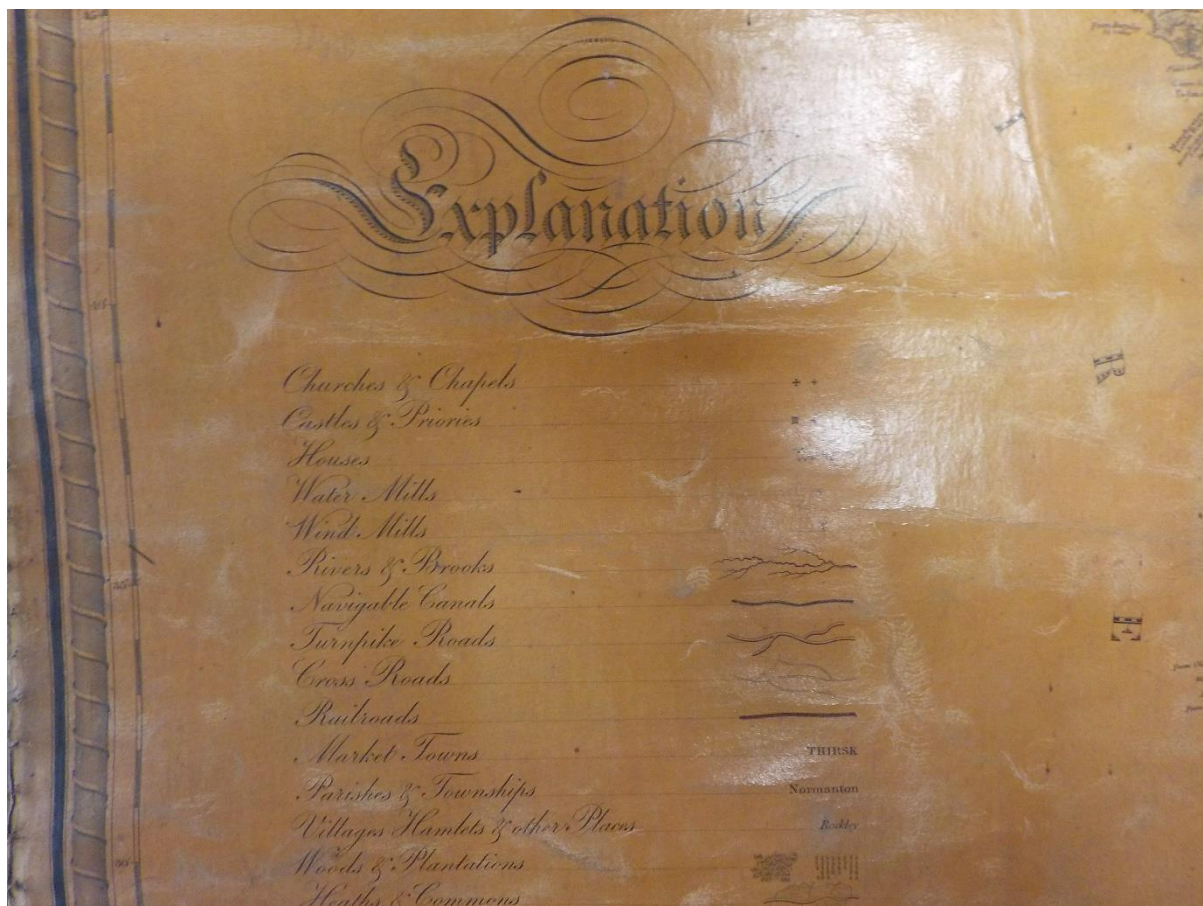
QDP M 84

NYCC Archives

The order route is shown as an "*unenclosed Cross Road*" a minor road for use by the public. This is the seventh County map to show the order route; which was all that was available for the wealthy travelling public, who would expect to be able to use what was shown. We shouldn't compare their accuracy with the later production of OS maps. I have read many a diarist travelling in the 1700 & 1800's who relied upon these County Maps. See extracts from Lord Torrington travelling in 1781-1794 below.

- 3 The Torrington Diaries, Hon. John Byng 1781-1794 edition 1954 page 33 "We are tolerably well accompany'd with touring, road books, maps, etc..."
- page 70 "No information of my road could be got here, so I must proceed by the map..."
- page 242 "I travel by map, for none can inform you; the only people who become acquainted with counties are tourists..."
- page 391 "Tho' I should not forget an excellent map of Yorkshire by Tuke which hung in the parlour, and afforded me many hints of my near and distant progress."
- Page 404 "and then pored over an excellent map of Yorkshire, till supper time."





County Maps Conclusions: the order route is consistently depicted on seven different county maps; as a stub on two maps and more fully on five others, over a period of 72 years. This means that there was no mistake nor did they portray private rights, but indicated to the wealthy traveller where they could go.

Instructions to OS Field Examiners (Surveyors) 1905: The Disclaimer: I was told by my father (who had a photographic memory and was brought up by his grandfather born in 1842) that this was purely to remove the likelihood of the Ordnance Survey being brought into civil litigation. This is backed up by **The Countryside Companion in 1948** at p320 where it states *"In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation.....A path which is shown, may, however, generally be presumed public."* And again by **Ronald English in Adventure Cycling in 1959** at p122 *"As you will see from the footnote on Ordnance Survey maps, the representation of a track or footpath is no evidence of a right of way. However, any track joining main roads or two villages and not simply leading to a farm is likely to be a right of way."* Also by **Yolande Hodson in Rights of Way Law Review in 2003** (OS map expert) *"The disclaimer.....printed in 1889. Its sole purpose was to avoid litigation. It was no more than an early example of the ubiquitous product warnings which are an integral part of daily life today and by which the product manufacturer absolves itself from all responsibility for error, or for any nuisance of the product by the purchaser."*

It should be remembered that the surveying for the first OS maps was a very public business. The public went out to observe and in the days of proper community spirit, all the parish would have known what was going on. There was no public outcry from landowners about the roads, bridleways and footpaths shown across their land.

Despite the disclaimer on all OS maps and the fact that the surveyors were not to investigate into public status, in effect they did, since for both the Boundary Remark Books and the Object Names Books, they consulted the Surveyor of Highways, landowners and other professional men. From 1836 it was a statutory obligation to keep highway records, of which the Surveyor of Highways must have had intimate knowledge. OS surveyors were also instructed, as shown below, to show routes that were **"of use or interest to the public"**, and to only show a clearly marked track if **"it is in obvious use by the public"**. The application route was shown, since it was **"in obvious use by the public"**.

Mere convenience footpaths for the use of a household, cottage, or farm ; or for the temporary use of workmen, should not be shown ; but paths leading to any well-defined object of use or interest, as to a public well, should be shown.

N.B.—A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.

The instruction as regards the notation **FP** below, infers that all roads shown were public, since the letters FP were to distinguish those roads which were not suitable for horses and wheeled traffic.

Except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to foot-paths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic.

OS maps were used by the public for navigational purposes from the first editions in the mid 1800's. This means that for over 100 years what was shown was regarded as public. I spent my youth from the mid 1950's to the late 1970's navigating around 7 different counties with OS maps which did not show rights of way information. The instigation for a definitive map was not because the public were being denied access to the minor road network; but that they were losing the undefined cross field bridle and footpaths.

Use of Ordnance Survey Maps by the Public: I was also brought up that all routes on the 2 ½" OS maps were public as verified by the **Director General of the OS, Brigadier Winterbotham**, who must have known the legal situation, who said in **A Key to Maps in 1936** *"We are almost, without exception, interested in rights of way, either as landowners or as seekers after fresh air and exercise. But these are best seen on the six-inch plans, and are now being officially investigated on them."*

Whilst discussing the First Edition one inch map *"but the roads are easy to follow.....and, what must have been a serious drawback, footpaths and inns are not shown."* Which means the order route could not be a footpath, and was depicted as a road or at least a bridle road.

This shows that these maps were accurate for navigational purposes and that the BR on the 6" OS maps meant that they were bridleroads for the public to use.

I was also told that bridlegates were evidence of a public route. This is endorsed by **Gilcraft in Exploring in 1930** *"As a general rule a stile is good evidence of the existence of a public path, and so are bridle or wicket gates or other erections to facilitate the passage of the public"*

The Great Outdoors in 1931 exhorts one to *"go through the first bridle-gate that invites you."* And when referring to the 1" OS map states *"....they show all roads down to the merest cart-track, most bridle-ways....."* inferring that they are of use to the public.

The Countryside Companion in 1948 reiterates the use of the 1" OS map and the 2" OS map for cyclists stating p 36 *"these do not indicate footpaths, they do show all roads, lanes..."* inferring that these were public.

Map of a Nation 2010: quotes a map lover from **1862** who could *"stand an hour at a time.....tracing a good run, or, if that wasn't his line, planning rides and drives..."*

These quotes, ranging over nearly a hundred years 1862-1948, consistently state how OS maps were used by the travelling public. That is, that before the definitive map, they

indicated that all through roads and ways marked on them were public, and that bridlegates also inferred public status.

Which means that the roads and bridle roads shown on the following maps were indeed public. (see BHS Use of OS Maps Before the Depiction of Rights of Way)

1854 6" OS 157

National Library of Scotland

The order route is clearly shown and annotated by "*Hurn Lane & Bridle Road*" twice, indicating to the public that they could use it with horses. Note the extension to the east exits out onto Gilt Nook Lane as a road too. The full thoroughfare through from Hurns Bridge to Gilt Nook Lane is either shown with Bridle Road or no notation, and historically would have had the same status throughout. Other footpaths are labelled with the word Footpath.

Just south of Moor Hall there is a "*Sand Pit*" beside the order route, which historically would have been used by the parishioners for road and building repairs. Hence the road to it would have been used as a public road. The key for the 6" OS map is the same as shown below under the 1" OS map.

According to the **1850 (reprint 1989) Dictionary of Archaic Words by James Halliwell** The meaning of "*Herne/Hurn: a corner or nook of land*".

Eastern end, showing sand pit.



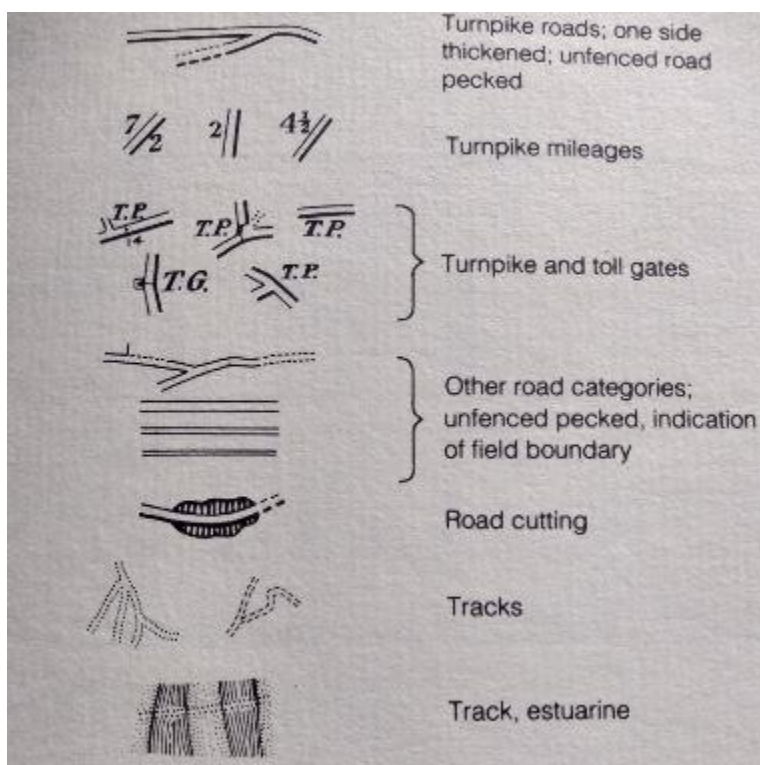
Western end showing Bridle Road



[illegible]

reprint 1991 Harry Margary Vol. 8

30



THE OLD SERIES ORDNANCE SURVEY MAPS OF ENGLAND AND WALES

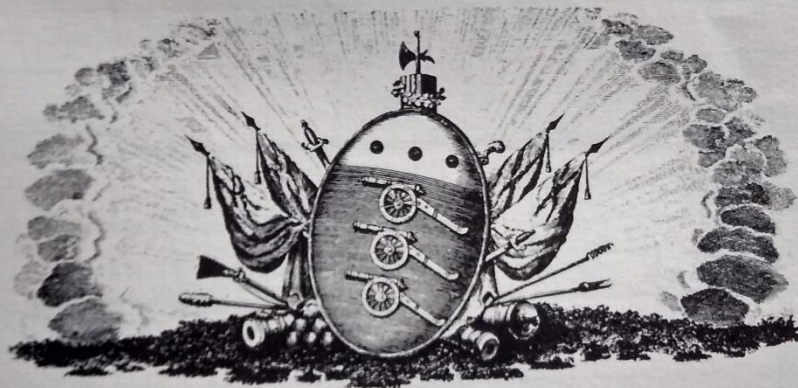
Scale: 1 inch to 1 mile

A REPRODUCTION OF THE 110 SHEETS OF THE SURVEY
IN EARLY STATE IN 8 VOLUMES

Introductory Essay by
J. B. HARLEY AND R. R. OLIVER

Carto-bibliography by
RICHARD OLIVER

Illustrations in text by
RODNEY FRY



VOLUME VIII

Northern England and the Isle of Man

(Cumberland, Durham, Isle of Man, Northumberland, Westmorland and Yorkshire, North Riding,
and parts of Lancashire and Yorkshire, East and West Ridings)

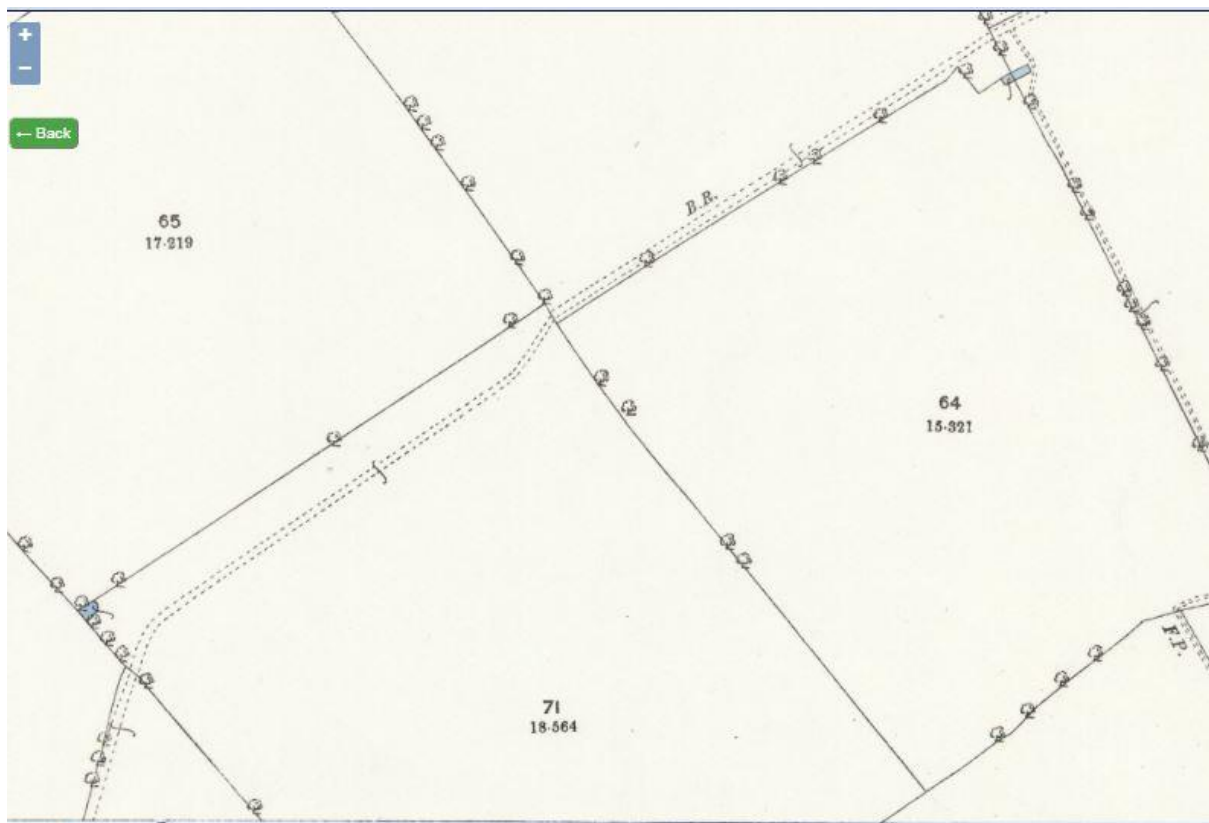
HARRY MARGARY, LYMPNE CASTLE, KENT

The order route along Hurns Lane is depicted as a road with a plot number of "193" indicating it to be a public road which it still is today. The length where the track narrows before Gilt Nook is marked "FP" for footpath but as stated above it meant a road not suitable for horses. It led into a road with a plot number of "23". Historically the route would have had the same status throughout, and an OS surveyor stating FP was not a legal event removing historical higher rights.

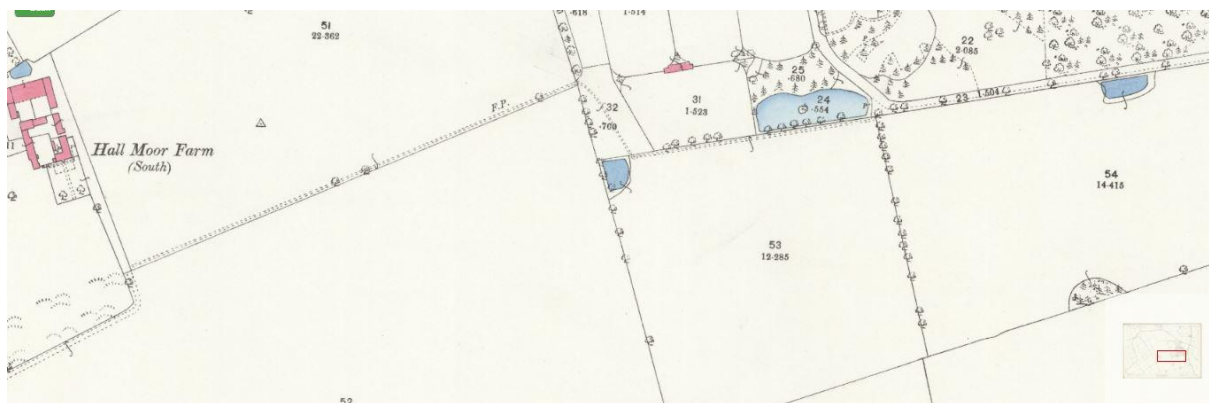
Hurns Lane and plot 193



BR for Bridle Road



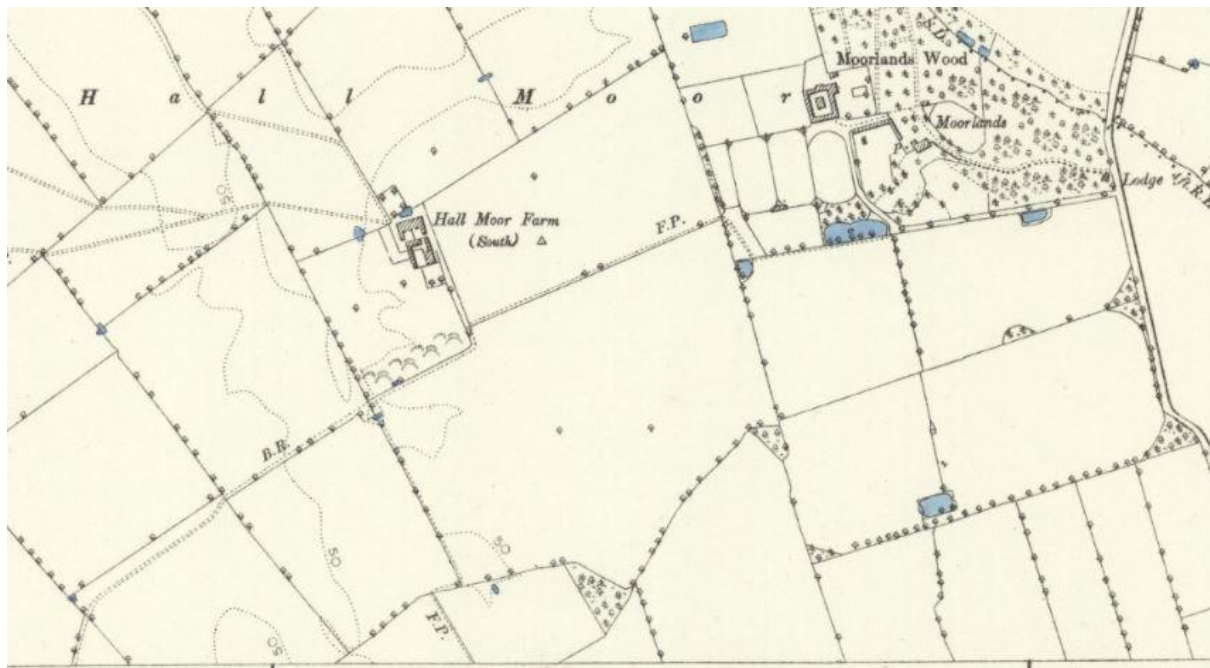
The eastern end road having a plot number of 23



- 1929 *Attorney General v Woolwich* court case.

“... Apart from that there is what I may call local reputation and name ... I also consider the name ‘Plum Lane’ a ‘lane’ usually means a minor road leading between one main road and another main road ...”

The order route is again marked by "BR" for public bridleroad.



This series did not show bridle roads and only had one symbol for public paths, which was black dashes. The order route is depicted as an "*Unmetalled road: fenced & unfenced*" it being fenced at Hurns Lane and again at Gilt Nook, unfenced for the majority of its length and a public path between the sand pit and Gilt Nook. Historically a thoroughfare such as this would have had the same status throughout; probably bridle road as indicated by the OS maps.



<i>Metalled Roads; First Class</i>	Fenced	5 (Mile distance)	Unfenced
" " <i>Second Class</i>		(Altitude) 211	
" " <i>Third Class</i>			
<i>Unmetalled Roads</i>			
<i>Footpaths</i>			

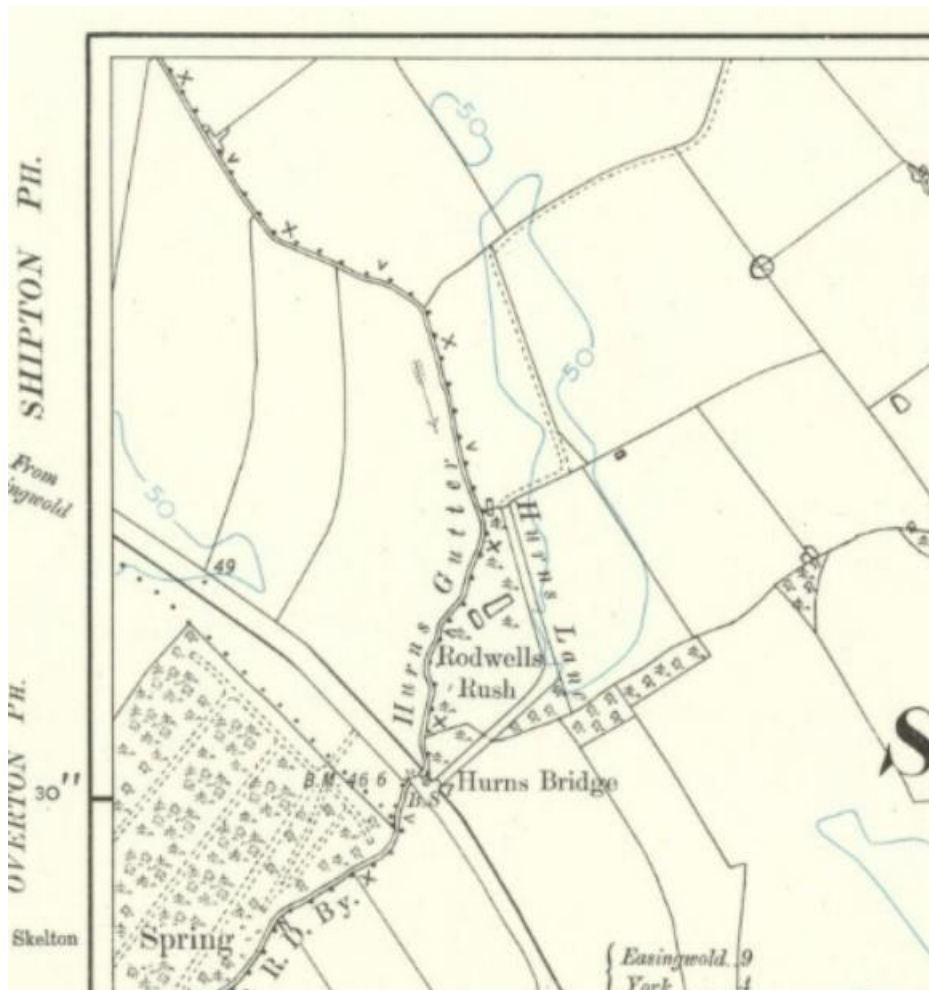
I disagree with the OMA's dismissal of this evidence (OMA SoC paras.46-66). The Field Book clearly states that there was a bridle road, which was not objected to by the landowner. As

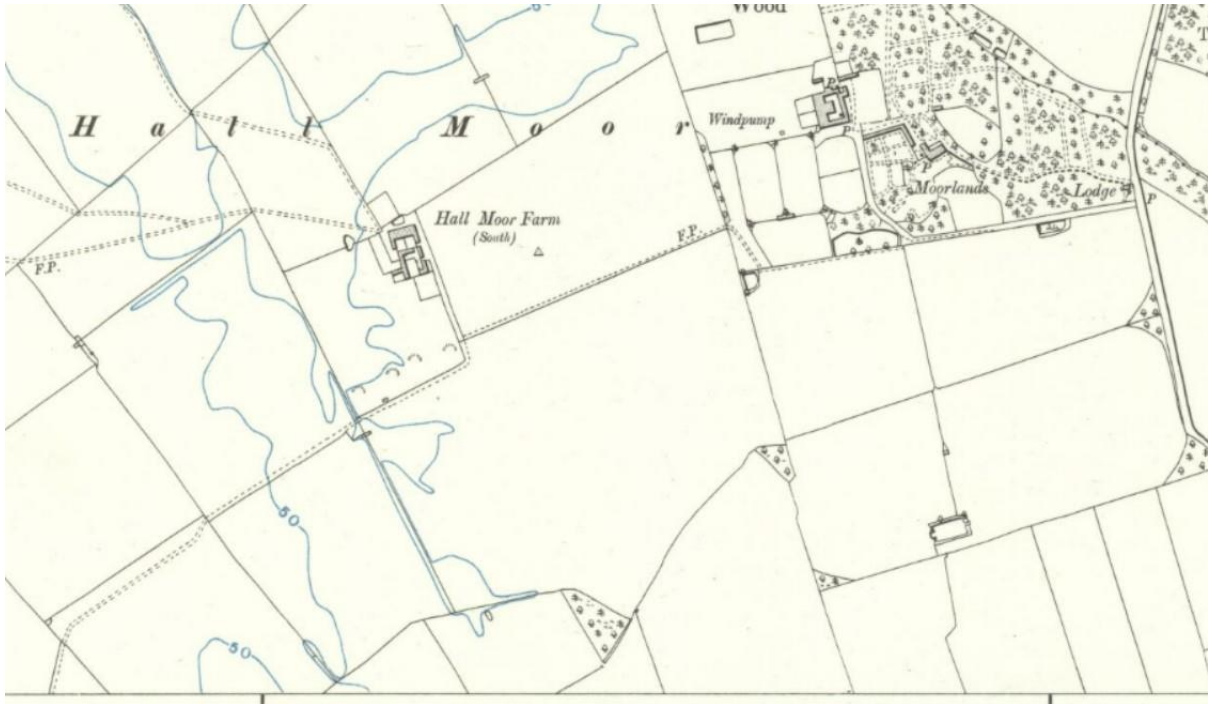
to where it ran it states "*Shipton to Moorlands*" which quite clearly means the ancient route depicted on the 1630 Map the road from Shipton to Wiggington. This is not strong evidence but should not be dismissed; but added to all the other evidence on the side of the scales for a bridleway, it helps to tip the balance in the public's favour for a bridleway.

1910 & 1912 6" OS CLVII.SW & .NW

National Library of Scotland

Shown as a through route but without any bridle road signage, horse transport being replaced by motors.

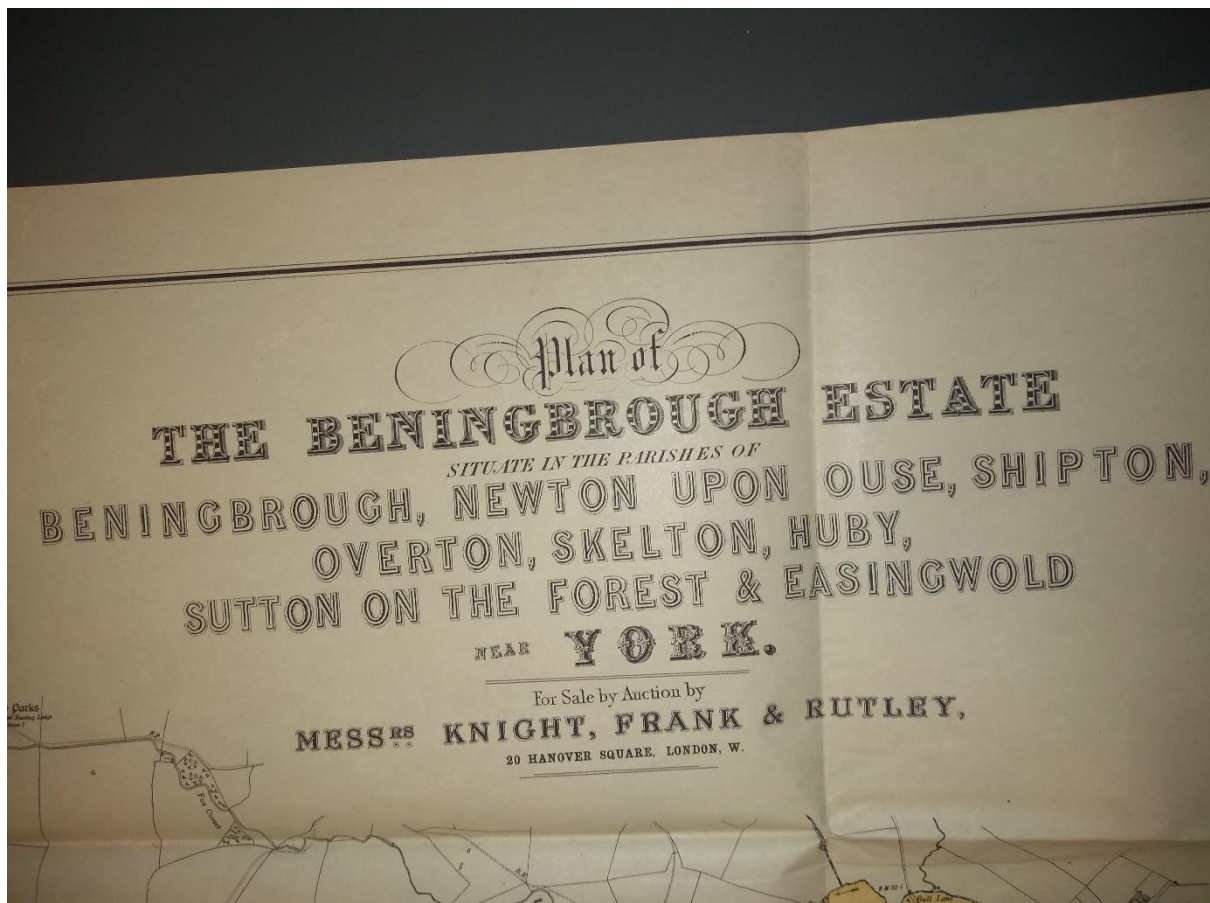


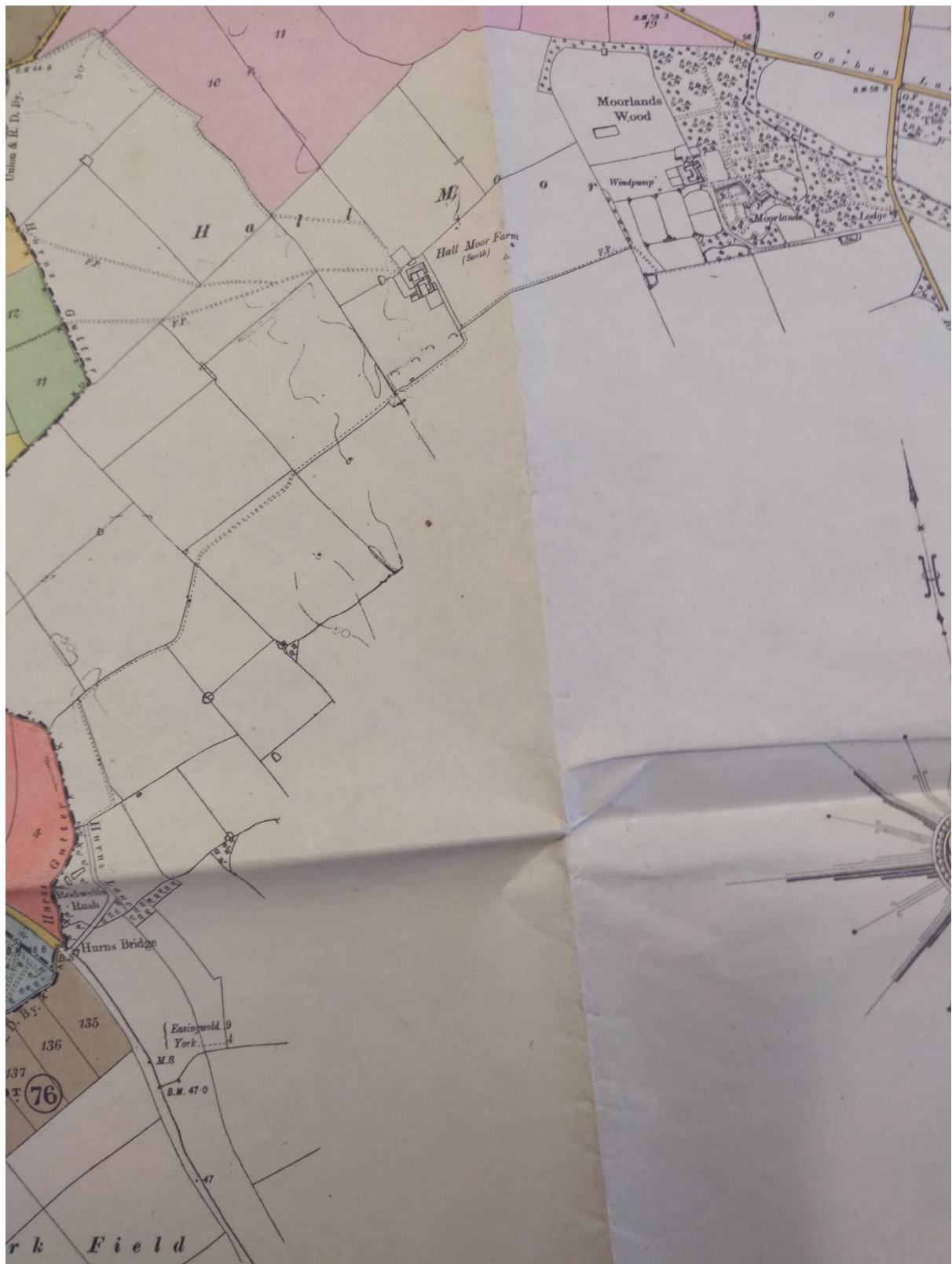


1916 Sales Particulars for the Benningbrough Estate

NYCC Archives

The plan of the estate was based on the OS maps and showed the same information as the previous 1910/1912 maps. A through route with one FP for a short section near Moorlands formerly Gilt Nook.





1920's Bacon's Cycling Map

This again shows the order route as far as Hall Moor depicted as a road which at this date was all that cyclists could use. It was not until the 1968 Act that cyclists could use bridleways.



**CYCLING
ROAD-MAP**

**HARROGATE
DISTRICT**

ALL MAIN ROADS COLOURED.

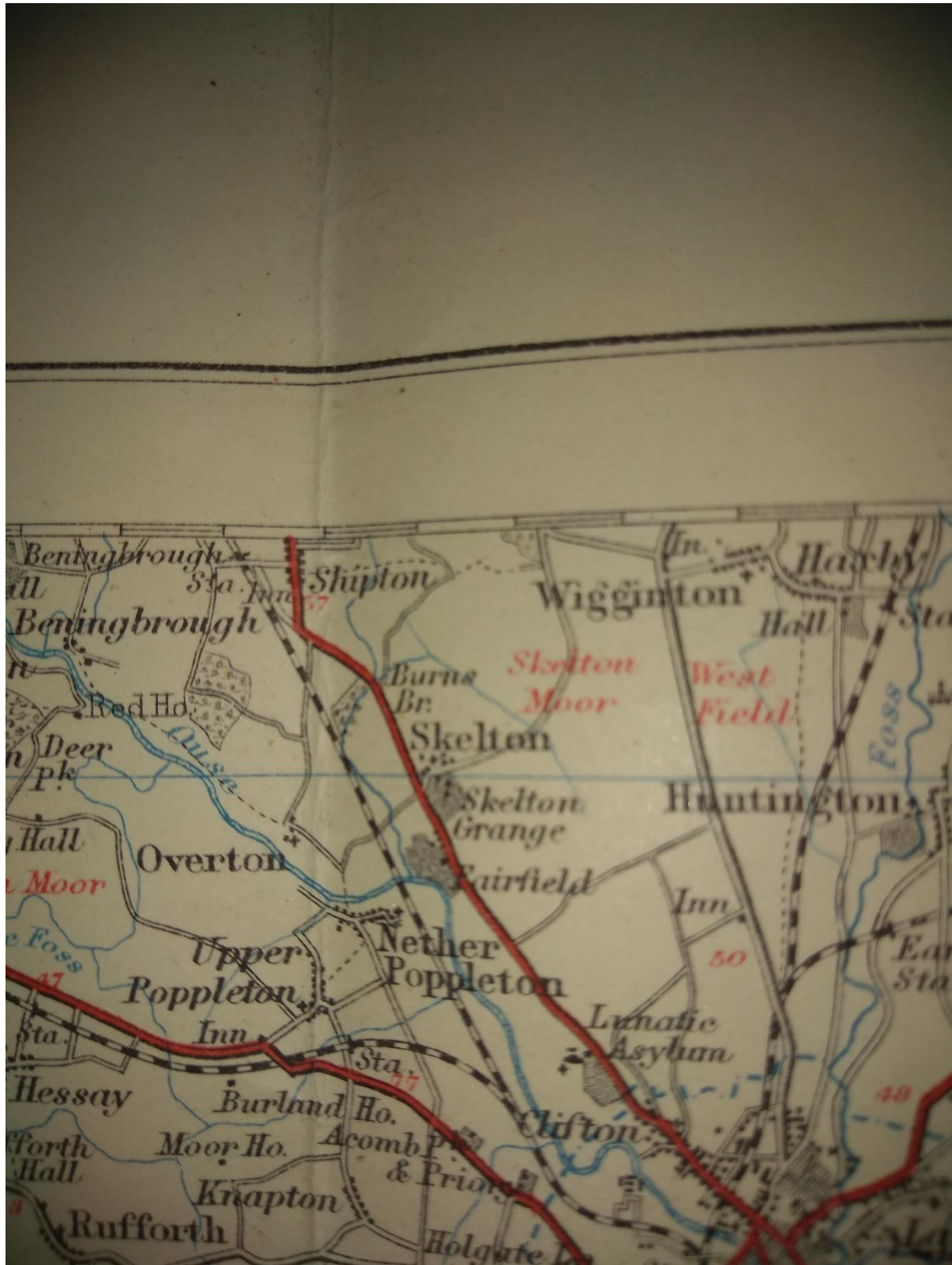
In Cloth Case, . . 6d.

On Cloth, in case, . 1s.

LONDON:
G. W. BACON & CO., Ltd., 127, STRAND.

1920's Johnson's Motoring and Touring Map 3 miles to the inch.

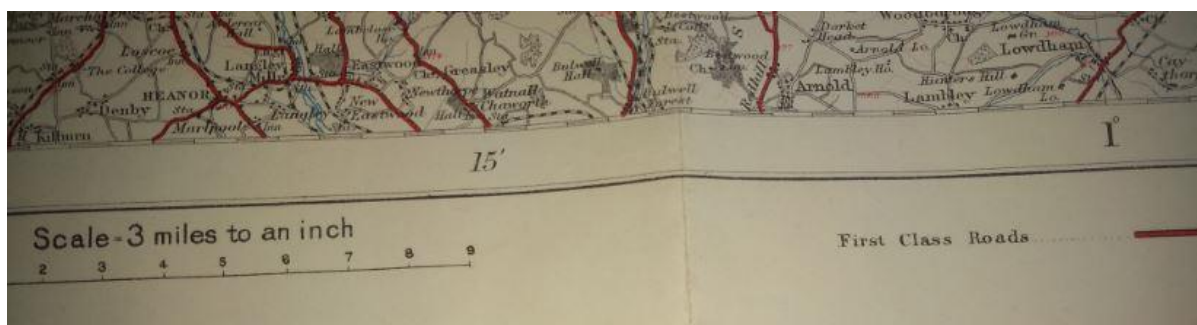
The order route is shown although there is no symbol for minor roads in the key. It can be seen continuing east by dashes which indicated a path. The full thoroughfare of the 1630 Shipton to Wigginton Road is shown but of mixed status



MOTORING and TOURING Map



Including —
Barnsley · Bradford · Chesterfield
Doncaster · Halifax · Harrogate
Huddersfield · Leeds · Mansfield
Newark · Sheffield · York



1920's Bacon's Half-Inch Road Map

The order route is shown as far as Hall Moor as a minor, open road.

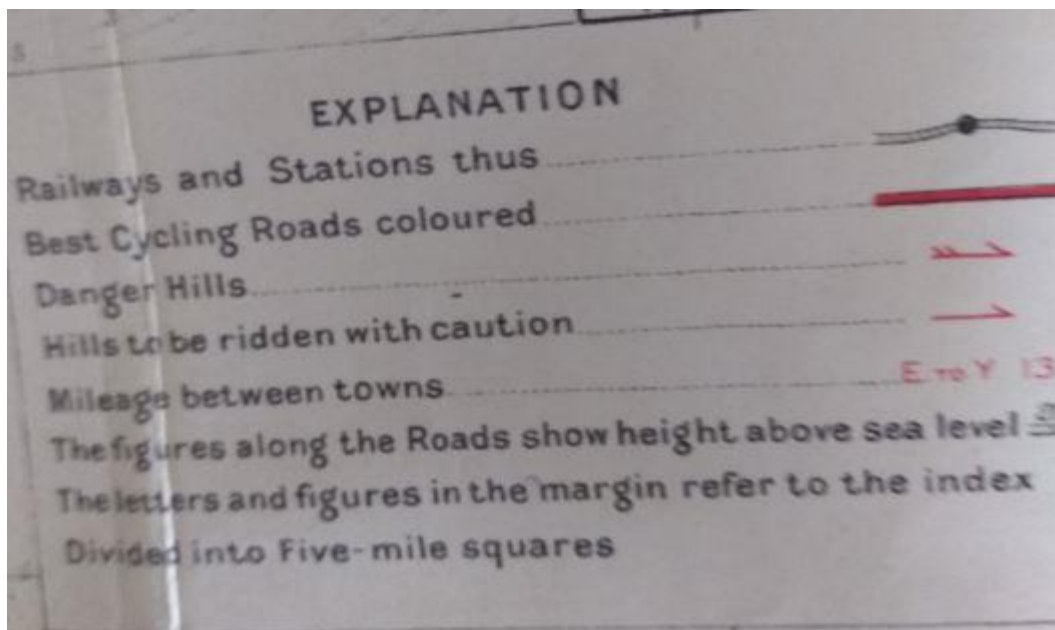


BACON'S
HALF-INCH
ROAD-MAP

LEEDS, YORK
AND
EAST RIDING

On Cloth, in Cloth Case . 2s.

London: G. W. BACON & CO., Ltd.,
127, Strand.



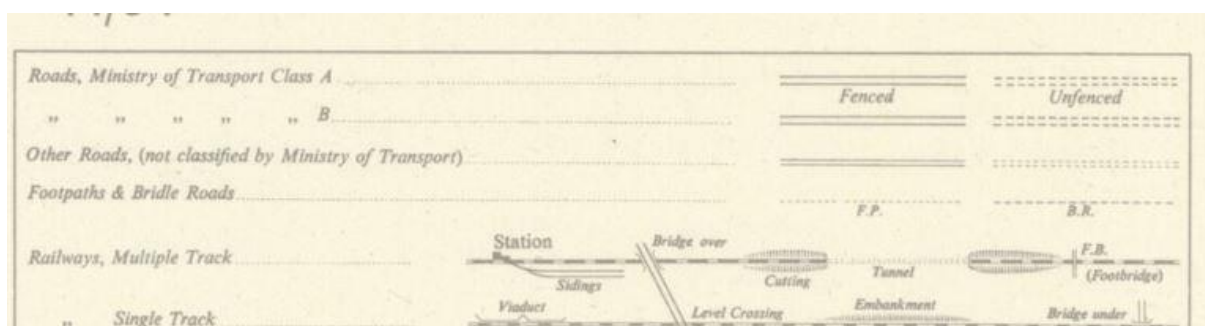
1920's Commercial Maps Conclusions: despite the small scale of these maps they sold in their thousands and were a commercial success. This would not have been so if they were inaccurate and there was no public outcry from either the public nor the landowners that they were inaccurate. They were used particularly by cyclists who could only use roads at this period. All through routes would have been regarded as highways, the Johnstone map showing that fact.

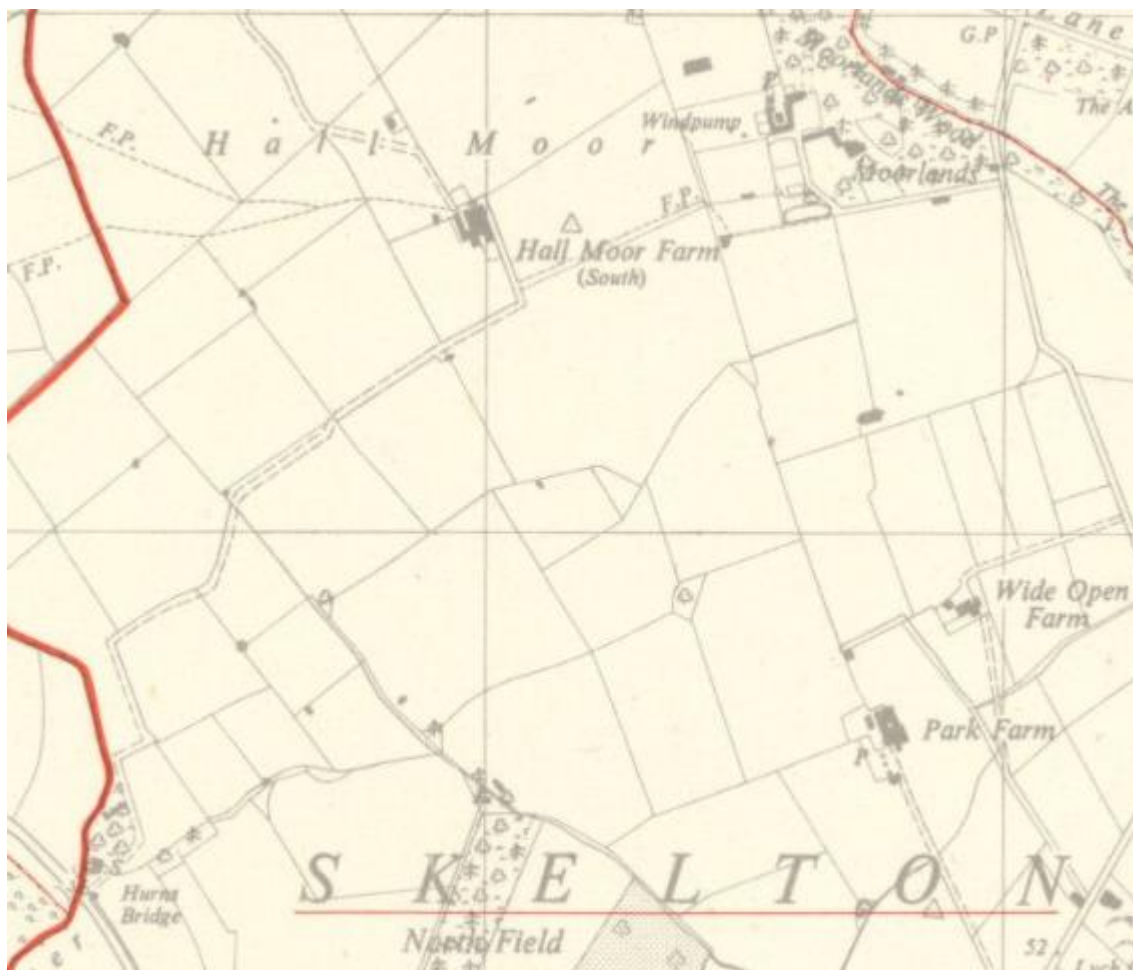
1946 2 ½" OS 44/55 A

National Library of Scotland

These were the leisure maps used by the increasing numbers of the public wanting fresh air and exercise after the war. It is shown as a thoroughfare of mixed status between two highways so is a highway itself.

OS Maps Conclusion: as already stated the disclaimer did not bite as it is interpreted wrongly today. It was purely to avoid litigation on the part of OS. OS maps were used as navigational aids for well over a century before rights of way were depicted. The Bridle Road and BR notation means that the order route was a public bridle road as described.





1950's Definitive Map Process

It is understandable that the order route was not mentioned during the definitive map process since it only covered public paths and did not consider roads. Due to the demise of horse transport, and riding being at a low ebb, the whole process was heavily biased against any rights higher than footpaths, as it is today. After the war horses and riding were dismissed as old fashioned and not needed and roads had the complication of changes, which in some counties were recorded as Roads Used as Public Paths, and others totally ignored.

2023 List of Streets: The enclosed length of Hurn lane is registered as a public road on the List of Streets.

roads (modern meaning as regards user, private historically was to do with land ownership and maintenance, which meant that Private vicinalis roads were used by the public, and Private particularis were private easements).

- **1854-1946 OS Maps:** the disclaimer did not remove the importance of these maps which were a commercial success being sold to the public who used them as navigational aids, since routes were shown because “*they were in obvious use by the public.*” Three editions from 1854-1895 depicted the order route as Bridle Roads for over 40 years with no outcry from landowners that they were inaccurate. Shown for virtually a century across 4 different scales and 6 different series, as a road or bridle road. A short length to the eastern end was shown as a footpath but this had not gone through any formal stopping up process, so the bridle road rights still exist.
- **1910 Finance Act:** a bridle road is mentioned, covering the eastern stretch, which is not a mistake or a coincidence but adds to the fact that a bridle road existed.
- **1920’s Commercial Maps:** still shown on three of these small scale public maps as being a route that may be used by the public.
- **2023 List of Streets: Hurns Lane** has been a public road for two and a half centuries, from 1771, being on the List of Streets, having a public name and being enclosed.

For 72 years across ten different documents (1630, 1789, 1807, & 1771-1843) the order route was shown as a road, including the legal document of the inclosure plan. It was then depicted as a bridle road for 41 years on OS Maps. And mentioned as a bridle road in the 1910 Finance Act documents. This is more than a coincidence or mistake and paints a composite picture that historically the scales are tipped in favour of the order route being used by horsemen.

I respectfully ask you to confirm the bridleway order.

Documents

1836 King v Maquis of Downshire

1929 Attorney General v Woolwich

BHS Use of OS Maps Before the Depiction of Rights of Way

22.2.24

