

Hurns Gutter – Moorlands ROW-3318409

David Blacker response to other evidence.

BHS page 1

BHS Evidence

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.

David Blacker Response

- I also used to ride in my Youth and used OS maps. I chose to stick to the rights of way marked on the map that clearly showed which routes could be ridden and where.
- The elders in my day taught me to stick to these routes and not ride on land where routes were not shown.
- If a map did not show a route as a road or a bridleway I was educated to keep off or I would be trespassing on private property and had no right to be there.

BHS Page 2, The Throughfare Principle



- The British Horse Society (BHS) has submitted multiple maps that show the application Route is not a throughfare. The route terminates at Hall Moor Farm and extends NO further.
- Points I to J on the application route do not exist.
- The route does not go from village to village or even Highway to Highway. It is a dead end, the only destination is Hall Moor Farm.
- The evidence from BHS states “the difference between a highway and a private way was that the former was a thoroughfare and the latter terminated a cul-de-sac” *Fortune & Ors v Wiltshire Council & Taylor [2010] EWHC B33 (Ch)*
- Cul-de-Sac definition – A short route that is blocked off at one end or that leads nowhere.

BHS Page 3

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

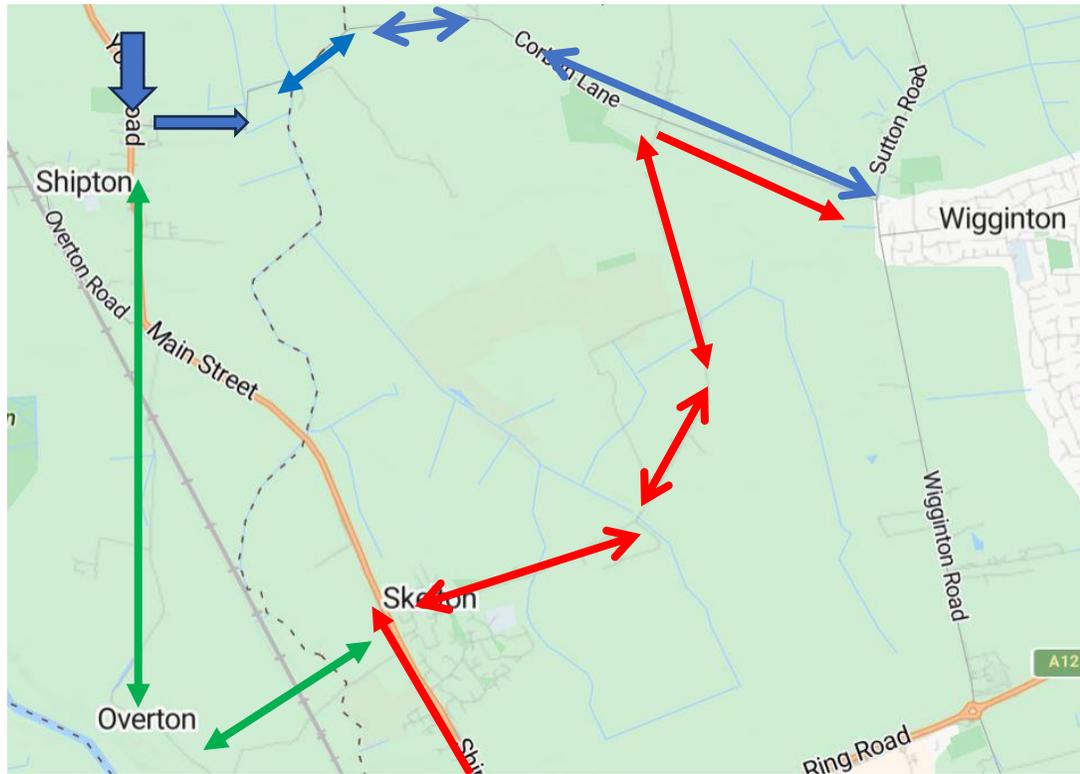
road that led from a township to a turnpike and beyond. The presumption must be that by so directing public roads into a private road the Commissioners were indicating that what they had already awarded was not an exclusive way but was a highway, i.e. a thoroughfare. For if it was not intended to be a highway, then the six bridleroads 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.

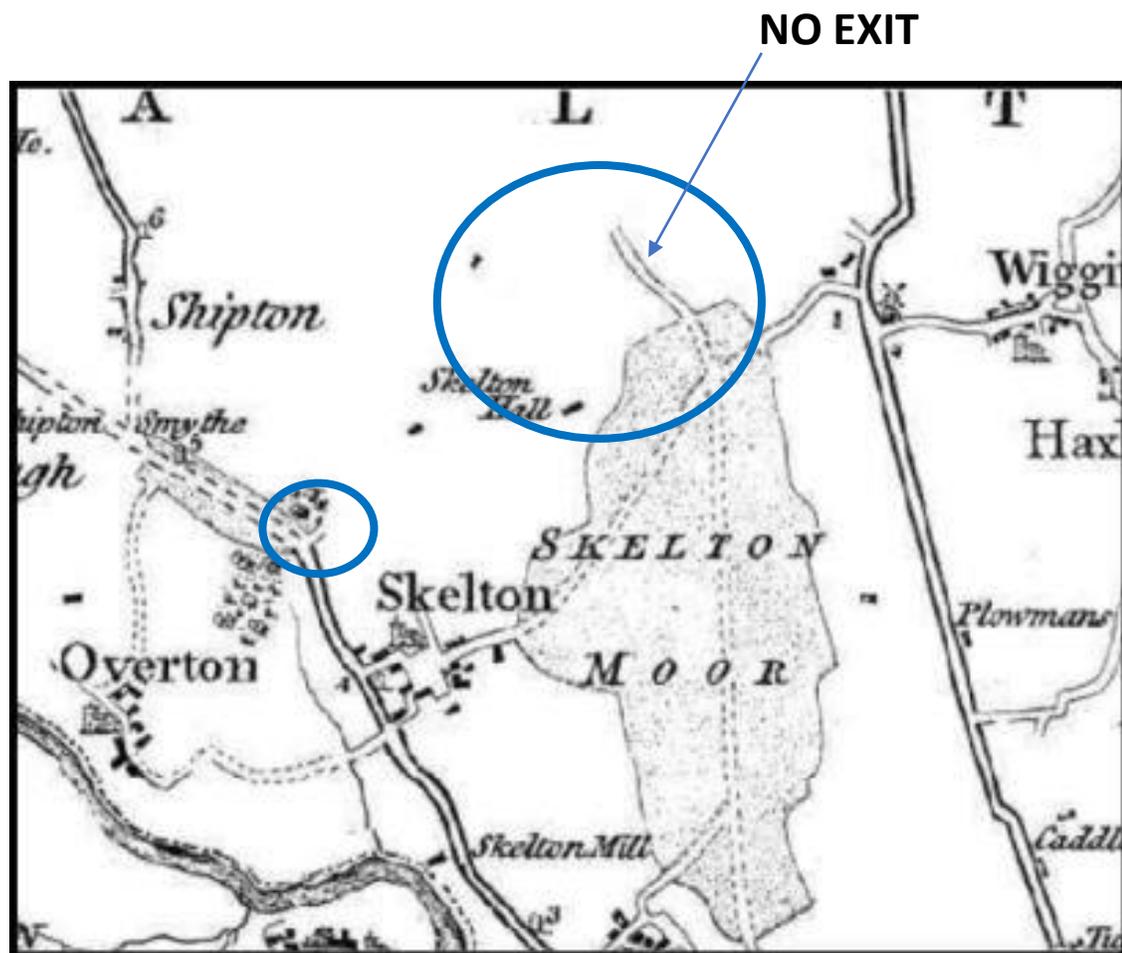
- All maps presented show the application route as a cul-de-sac.
- The thoroughfare principle is not proved.
- Nor is it proved that it was used by the public. There is no evidence of this.
- From the text page 3 "The six bridleroads ended as cul-de-sacs and as such were not highways but were private ways"

Through Route Cont.



- Travelers heading to Wigginton would have used the following routes.
- From the North Shipton to Wigginton would have followed the route in Blue.
- From the South Skelton to Wigginton would have used the route in Red
- From Overton the route in Green.
- There were no other properties between Shipton and Skelton that needed further routes.
- There was no actual need for anyone to use the application route as a through route. Wigginton was well served from all direction by more direct routes.
- Travelers from the Shipton or Skelton direction would have had to travel 1 mile in the wrong direction to get to moorlands or Wigginton when more direct routes were available.
- The Route to Hall Moor Farm was only needed to access the Farm.

BHS page 5/6 Jeffery's Map.



- The Jeffery's Map is once again referenced by BHS as showing a stub.
- If the application route was a through route as claimed, and an ancient road as claimed. Where is the marked exit of this historically significant route?
- What is shown is the start of what became the entrance to Hall Moor Farm. A landlocked farm with no way in or out.
- Other markings of a similar nature appear on other maps relating to other farm dwellings. As time progresses, so does the infrastructure and necessity to access farms.

Maps Over time

Greenwood 1817



Sheet 63 York OS map 1898



Carey 1832



- 1** Greenwood 1817 shows the entrance to Hall Moor Farm, (not a through route) Wide Open Farm (Now Park Farm) and the start of a second entrance shown as a stub, to what is now called Wide Open Farm. (A Stub Just like the Jeffery's map shows)
- 2** Carey 1832 Shows the entrance to Hall Moor Farm (Not a through Route), and Wide Open Farm (Now Park Farm) but no second entrance to the current Wide Open Farm! Has it vanished/been stolen/changed their minds, in 15 years? Was Greenwood's map wrong? Is Carey's map wrong? Both routes to Hall Moor Farm are different!!
- 3** The sheet 63 York OS Map 1898 shows the entrance to all 3 farms .
What can we Conclude? Access routes to private farms have developed over time, Some old maps are less accurate than others.
- 4** All maps differ, None show a bridleway or suggest that Public Rights were ever considered to extend over the routes. These were private farm entrances.

BHS Page 7 & 9

Page 7

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.

Page 9

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.....”*

- It has already been established that the application route was not given the status of a road, be it public or private in the enclosure award.
- The passage Q10 on page 9 from the enclosure award text is referring to fields surrounding the roads that were given Highway status.
- The surveyor of Highways was responsible for the awarded Public highways and Roads.
- The application Route to Hall Moor wasn't one of them.
- The Surveyor of Highways was not involved in the application route as wrongly implied by BHS on page 7 as it had not been awarded Highway status.

BHS PAGE 8



- The statement below has been referenced several times in the evidence.
- “Lane leading to Hall Moor Farm” as described because that is what it was.
- It is not referred to as a Bridleway leading to Hall Moor Farm. Other routes were described as Bridleways in the enclosure award.
- Nor described as a footpath,
- It doesn’t say “to Wigginton”
- It is simply described as “lane leading to Hall Moor Farm” because that’s where it went. It did not extend further than that.
- At no point are public rights ever suggested to have extended across it.

Inclosure Award

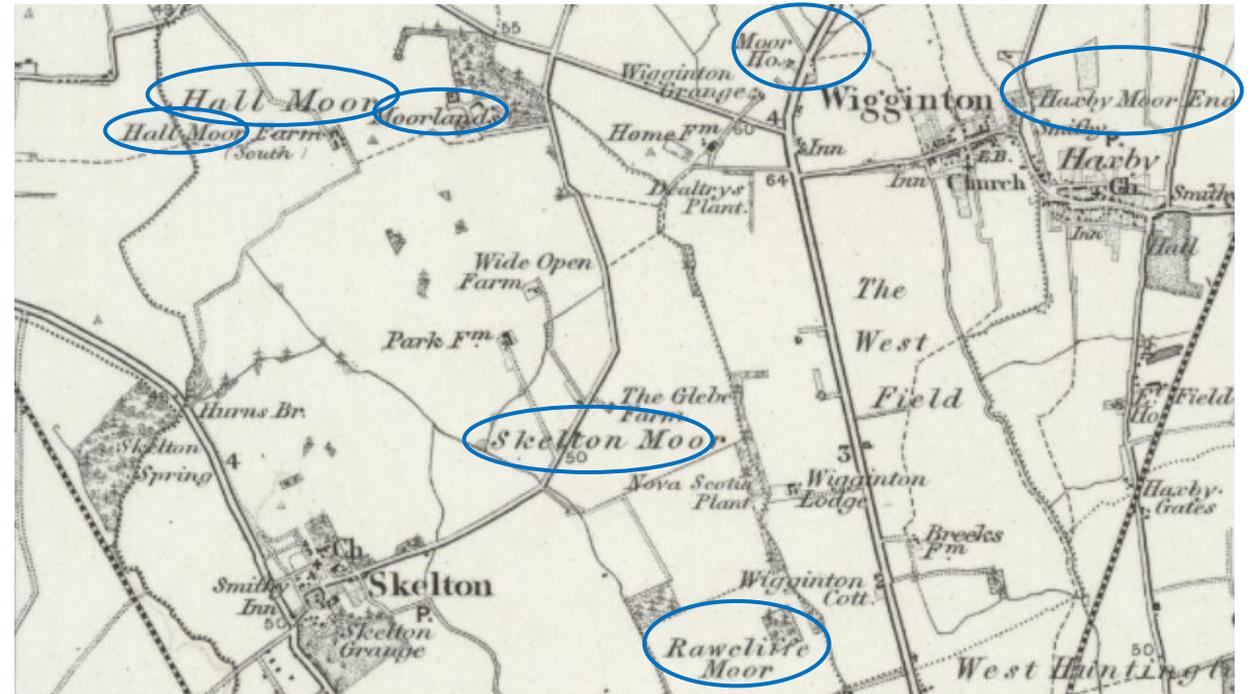
H15 “...18 perches of land, Parcel of the Lane leading to Hall Moor Farm.....and by the said Hall Moor Lane on or towards the South.”

BHS Page 21

1834 Fowler

No it doesn't

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.



Hall Moor as shown on the 1834 Fowler map was showing an area of land that Hall Moor Farm South was named after. The name Moor was used to mark many areas – Skelton moor, Rawcliffe Moor, Hall Moor. As well as many places Moor House, Haxby Moor End, Hall Moor Farm South. The map shows no such crossroads, merely different farms with different names. No through route, nothing connecting village to village or highway to highway. Just a farm entrances.

BHS Page 26

- 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.”
- The track simply leads to a farm though. So Not a Right of Way at all.
- It is a private farm entrance.

BHS Page 30



1858 1" OS

reprint 1991 Harry Margary Vol. 8

The order route is shown to just beyond Moor Hall, it is then shown as an amalgam of the order route and one of the footpaths. But the far eastern road off Gilt Nook Lane is shown. As stated above by the Director General of OS, this edition **did not show footpaths** meaning that the routes shown were traversable by horses.

Sheet 63 - York

Surveyed: 1845 to 1852, Revised: 1896, Published: 1898

Size: Sheet ca. 44 x 56 cm (ca. 17 x 22 inches)

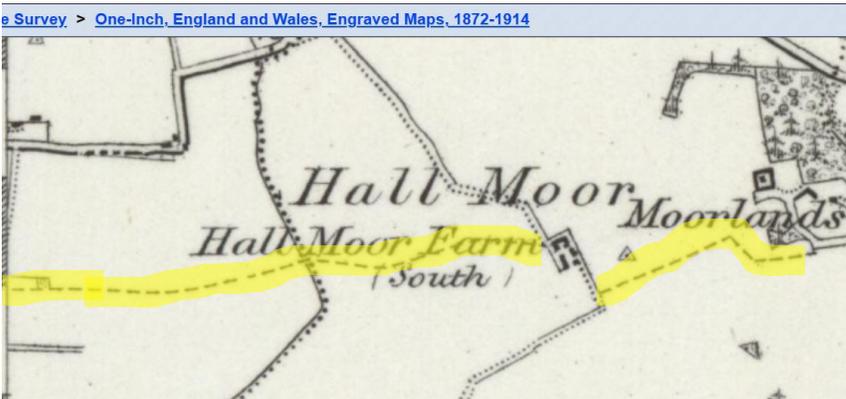
- This seems to be a misunderstanding of what was said and what BHS understood. That the 63 series of maps did not show footpaths.????
- If this edition of maps did not show footpaths. Why are footpaths clearly marked on the MAP.
- The map key clearly shows footpaths as dashed lines. Whilst it may not have been written as footpath, the footpaths were still clearly marked and shown on the KEY as footpaths.
- I greet this statement with incredulous suspicion.

Sheet 63 - York

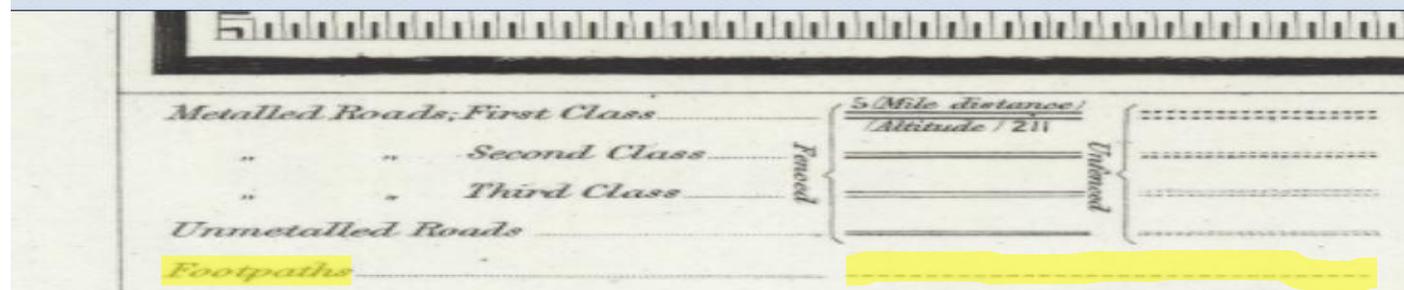
Surveyed: 1845 to 1852, Revised: 1896, Published: 1898

Size: Sheet ca. 44 x 56 cm (ca. 17 x 22 inches)

Survey > One-Inch, England and Wales, Engraved Maps, 1872-1914



Survey > One-Inch, England and Wales, Engraved Maps, 1872-1914



BHS Page 35

No map states "Public"

1895 6" OS CLVII.NW

National Library of Scotland

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



- There is no evidence that the order route was ever intended for public use.
- It was only an access to a land locked farm with no other way in or out. Like all other farms with entrances marked on the map.
- I to J on the application route is clearly marked as a footpath and was part of a separate route that was legally diverted in 1977.
- BHS has provided and referenced multiple maps (Tukes, Greenwood, Carey, Teesdale, Fowler, Hobson) and all show the route to be a farm access terminating at Hall Moor Farm and going no further.
- Evidence from BHS on page 27 States **“the letters FP were to distinguish those roads which were not suitable for horses and wheeled traffic”**

63 Map Continued

- The passage below, previously submitted to City of York and can be found in Appendix 2, Page 44.
- From this we can see that the 63 series of maps originally for military use, showed everything that was on the ground. Roads, tracks, footpaths, drives. Both public and private routes.
- This explains the disclaimer on the bottom of the maps that they were not evidence of a public right of way. Private routes were also shown.

Ordnance Survey

Small scale 1" to 1 mile (1:63,360): this was the earliest to be published by the Ordnance Survey. Surveyors drawings were produced by the Ordnance Survey for their first survey of England and Wales from around 1801. Most of the information on the drawings was eventually reproduced on the published one inch maps. Mapping was originally for military purposes to record all roads and tracks which could be used in time of war. This included both public and private routes. In 1820 an instruction was given to surveyors that "no existing road shall be omitted". These maps accurately record the physical road network, developing a descriptive categorisation over time.

BHS Page 36

1898 1" OS 63

National Library of Scotland

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.



Metalled Roads, First Class	Fenced	5 (Mile distance)	Unfenced
" " Second Class		(Altitude) 2W	
" " Third Class			
Unmetalled Roads			
Footpaths			

1910 Finance Act

TNA

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

- After previously claiming on page 30 by the Director General of the OS, Brigadier Winterbotham that "footpaths were not shown on the York 63 1 inch map" even though they are marked and shown on the key as footpaths!
 - BHS now on page 36 claims the 63 series did not show bridleroads and only had one symbol for public footpaths?
 - In summary of York 63 map by BHS –
 - Page 30 = Its not a footpath it's a bridle road all of them.
 - Page 36 = It did not show Bridle roads at all. None of them... only footpaths.
- Enid Blyton wrote some great stories, but at least hers made sense!

BHS Page 36. Private Farm Entrances.

1898 1" OS 63

Or Probably Not

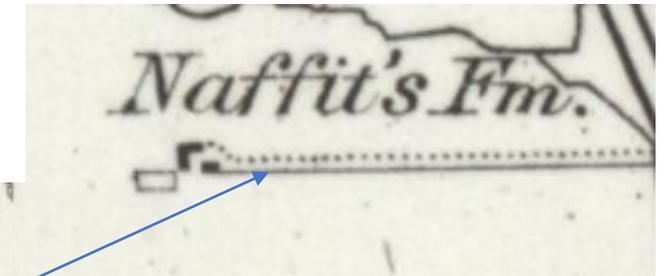
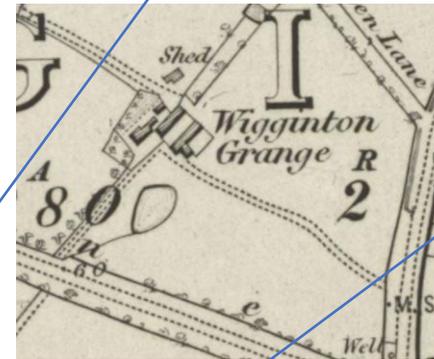
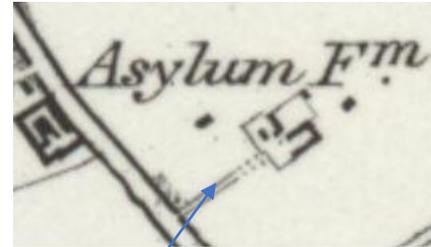
National Library of Scotland

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.



Metalled Roads, First Class	Fenced	5 (Mile distance)	Turf road
" " Second Class		(Altitude) 211	
" " Third Class			
Unmetalled Roads			
Footpaths			

Private Farm Entrances



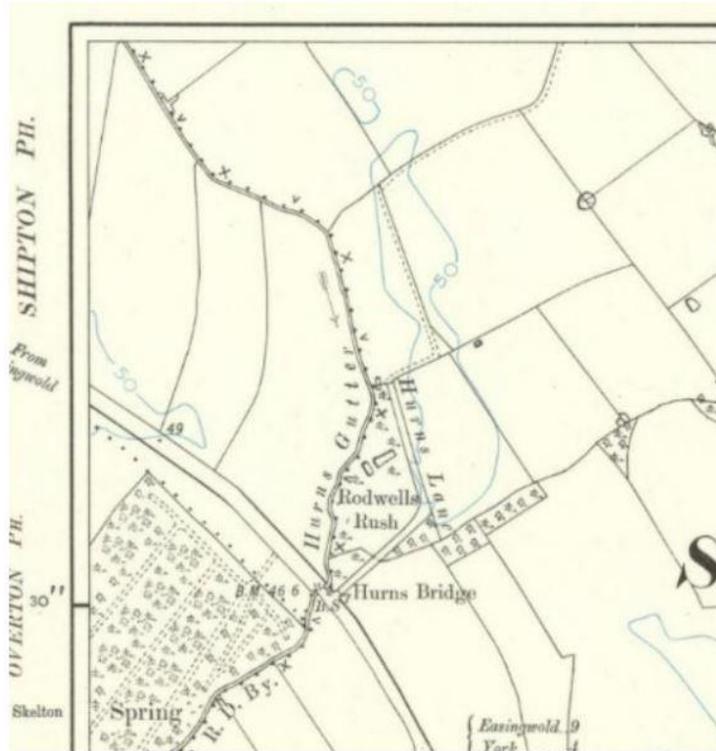
The OS maps – York 63 series - Shows private farm entrances drawn in the same way as the application route. Solid lines and dashed lines. The above were not public footpaths to farms or public bridleways to farms. They were private farm entrances as was the application route.

BHS Page 37

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.



- BHS page 37 shows the 1910 & 1912 OS CLVII.SW & NW map with NO Bridle Road signage.
- This is not because horse transport was replaced by Motors.
- In 1910 Horses were still widely used on farm as the only means of cultivation. The mechanization and motorization of farms didn't happen until the 1930's and not widely adopted till the 1950's
- It is not shown as a Bridle Road because it wasn't one.
- It is not shown as a through route because it wasn't one.

BHS Page 39 Benningborough Hall Map



BR

- The Benningborough Hall map again does not show the application route as a Bridle Road.
- The map clearly shows Bridle Roads were marked.
- The Application route wasn't one of them.
- The status of the application route from Point A to H was correctly recognized as a farm entrance that had no public rights.
- Points I to J is marked as a footpath. Part of a totally different route altogether.
- The footpath part has been legally moved back in 1977 so as not to run through the farm yard.

York City Council view of BHS evidence

43. The commercial maps kindly supplied by Mrs Cook also support the existence of the Order Route on the ground. Where the full route is shown it extends as far as Hall Moor Farm but no further.
44. There is nothing in this evidence that indicates the Order Route connected to any place or property other than Hall Moor Farm. Consequently, there is a reasonable case that any member of public using the Order Route was doing so under an implied licence to access Hall Moor Farm granted by the owner or tenant of that property. As such this use would not be as of right and therefore not bring a public right of way into being.

Summary of Maps

Name	Published	Entrance Type	Village to Village Or Highway to Highway	Cul-de-sac Or Dead end	Through route	Other Private Farm entrances shown in same way	Are points I to J Shown on the map.
Jeffreys	1771	Stub	N/a	N/a	N/a	N/a	No
Tuke	1816	Stub	N/a	N/a	N/a	N/a	No
Greenwood	1817	Farm Only	No	Yes	No	Yes	No
Cary	1825	Farm Only	No	Yes	No	Yes	No
Teesdale	1828	Farm Only	No	Yes	No	Yes	No
Fowler	1834	Farm Only	No	Yes	No	Yes	No
Hobson	1843	Farm Only	No	Yes	No	Yes	No

List of Streets – A Council Tip.



Approximate area of Tip

- An area of what is marked as Rodwells Rush is known to have been used as a council tip.
- I believe this use is to have happened before my grandfather purchased the land in 1939. I remember him being extremely aggrieved by the small amount of top soil that the tip was covered by. It “was not what was in the agreement”.
- There was an agreement that was with Ryedale District Council. This I know to be true. Who the landowner that agreement was with at the time is unclear.
- Ironically the tip was within York City Council’s parish, Hambleton were at the other side. Ryedale were not willing to dump on their own door step!!
- Evidence of it being a tip and lack of topsoil is easily proved onsite as glass and plastic are easy to find in the surface.
- Glass and plastic do not rot down.
- I believe this is the only reason it wrongly appears on the list of streets. At some point in the past it was used by a local council as a local refuse tip. This was by agreement and therefore should never have been given “street” status.
- Since my grandfathers purchase, the entrance had been gated and secured. He was a livestock farmer. Livestock and roads don’t mix well.
- I am trying to find further contractual evidence. The farm today still trades under my Grandfathers’ name so GDPR regulations shouldn’t prevent my enquiries should the contract be with him.
- Ryedale was one of 7 councils that were merged in 2023 and became North Yorkshire Council. Finding the necessary information may take more time to than this application allows.

Summary of Evidence from BHS

- The application route was not awarded highway status in the enclosure award. It was not regarded as a highway.
- Part of the route was awarded to Joshua Hepworth in the enclosure award. Access to use it by anyone else would be permissively granted by him only and not a public right.
- All maps show points A-H of the route as a dead end or Cul-de-sac. Not a through route.
- The diverted footpath was part of a different route altogether. The necessary legal procedure to have this diverted in 1977 were followed. The application was legally granted.
- The Application route has the same markings on OS and commercial maps as multiple other private farm entrances with nothing to distinguish between them.
- The application route only leads to Hall Moor Farm. The only way in or out to a landlocked property.
- Points I to J are not shown so it is not a through route.
- There is no evidence the farm entrance has public rights extending over it.