



## **STATEMENT OF CASE**

Definitive Map Modification Orders

Parish of Aston Cantlow

AL223

## **CONTENTS**

<b>1.</b>	<b>Introduction</b>	<b>3</b>
<b>2.</b>	<b>Location</b>	<b>5</b>
<b>3.</b>	<b>Documentary Evidence and Interpretation</b>	<b>6</b>
<b>4.</b>	<b>User Evidence</b>	<b>26</b>
<b>5.</b>	<b>Other Information</b>	<b>28</b>
<b>6.</b>	<b>Relevant Legislation and Case Law</b>	<b>33</b>
<b>7.</b>	<b>Consultations</b>	<b>36</b>
<b>8.</b>	<b>Assessment of Evidence</b>	<b>38</b>
<b>9.</b>	<b>Order</b>	<b>44</b>
<b>10.</b>	<b>Formal Objections</b>	<b>45</b>
<b>11.</b>	<b>Conclusion</b>	<b>47</b>

## 1. Introduction

- 1.1 No application to modify the Warwickshire Definitive Map and Statement has been received by Warwickshire County Council regarding the Order route but the status of the route has been in dispute for many years.
- 1.2 The route is recorded on the List of Streets (the s36 Highways Act List) as Newnham Lane (Appendix 1). The List of Streets is a record of routes maintainable at public expense and gives no indication of status. The List of Streets should include any Public Rights of Way maintainable at public expense. The Warwickshire List of Streets title page states that it does not provide information on the level of public rights of highway
- 1.3 One side of the dispute is that the status of the Order route has historically been and remains a bridleway and as such should be recorded on the Definitive Map and Statement. The opposing view is that as the route is recorded on the List of Streets the status is vehicular. In order to settle the dispute and to provide the appropriate maintenance and enforcement the correct status and level of public rights on the route needs to be determined.
- 1.4 Under section 53(2)(b) of the Wildlife and Countryside Act 1981 the County Council, as Surveying Authority, is under a duty to keep the Definitive Map under continuous review (Appendix 2) and as there was an allegation that the route should be recorded on the Definitive Map, the process under the Wildlife and Countryside Act was the appropriate route to take.
- 1.5 The definitive map process allows for all parties to present evidence supporting their case and then should an order be made that they disagree with to present their case at public inquiry for an independent decision to be made.
- 1.6 Following extensive research into historical documentary sources and analysis of the evidence that came to light, in conjunction with evidence put forward by witnesses on both sides of the dispute, the County Council concluded that the

section 53(3)(c)(i) test was met and an Order (Appendix 3) was made on 10 July 2019 to modify the Definitive Map and Statement by adding a bridleway. The Order attracted objections and has had to be submitted to the Secretary of State for confirmation.

## **2. Location**

- 2.1 The Order route lies within the parish of Aston Cantlow in the district of Stratford-upon-Avon.
- 2.2 The route can be found to the east of the village of Aston Cantlow, terminating in the village of Newnham. It runs between C100 Bearley Road and D5341 Newnham Lane (see map at Appendix 4).
- 2.3 It starts on the Bearley Road (Grid reference SP 2402 6017) and runs generally in an easterly direction to a point south of the hamlet/village of Newnham where it turns to head in a generally northerly direction to its junction with D5341 Newnham Lane (Grid Reference SP 1578 6030).
- 2.4 The route runs through mainly agricultural land either on headland or cross field but it does run up a steep slope through a small area of woodland (between Points D and E on the Order plan (Appendix 3)).
- 2.5 Photographs of the Order route can be found at Appendix 5. The photographs were taken in early 2020 after a period of considerable rain.
- 2.6 The Order route intersects with bridleways AL88 and AL81, and footpaths AL90, AL83a and AL83 (see Definitive Map extract at Appendix 6).

### **3. Documentary Evidence and Interpretation**

#### **3.1 Henry Beighton - 1725 – CR1316**

3.1.1 The map is very detailed, showing the location of windmills, churches etc and the routes that are depicted are those Henry Beighton regarded as being significant at that time.

3.1.2 Henry Beighton surveyed the county before drawing the map and thus it can be regarded as an accurate map. Henry Beighton was a respected surveyor and map producer.

3.1.3 The Order route is not shown on the map (Appendix 7). Newnham is shown, as is Aston Cantlow. The road running north-south through Aston Cantlow is not shown although there is an indication that the road does exist through the sections of routes to the north and south. The current C39 Salters Lane is partly shown as is C41 Aston Cantlow Road.

#### **3.2 Proposal for Inclosure including Aston Cantlow Inclosure Act - CR1886/1247**

3.2.1 The proposal for Inclosure document (Appendix 8) presents the demands of Lord Brooke for his fair entitlement of the common fields of Aston Cantlow in proportion to his tithes and that any lands allotted will be close together. There is no mention of any roads, bridle roads or footpaths in the document.

3.2.2 The Inclosure Act is dated 1744 (Appendix 9). It sets out the background to the reasoning behind the Inclosure and the main parties involved. It also details how public and private roads/ways are to be dealt with (at pp5-6, after providing for allotments to be hedged, ditched and fenced within 12 months of the Award):

“Provided nevertheless, That convenient Gaps and Openings shall be left in each of the said Lots and Shares, to continue for the Space of Twelve Calendar Months next ensuing the Execution of the said Instrument or Writing, for the Passage of Cattle, Carts and Carriages, in, by and through the same, unless the several Parties interested shall agree, that the same shall be sooner fenced in, made up and inclosed.

Provided nevertheless, and it is hereby Declared and Enacted, That the said Commissioners, or any Five or more of them, shall and may ascertain, set out and appoint private Ways to and from the new Inclosures, so to be made as aforesaid, of the Breadth of Twenty-five Feet at the least, with Directions for repairing and maintaining the same; and also shall and may ascertain, set out and appoint publick Ways and Roads through the said Inclosures, with the Assizes and Breadth thereof, so as all publick Roads to be made shall be and remain Forty Feet broad at the least, between the Ditches, and that it shall not be lawful for any Person thereafter to use any Roads or Ways, either publick or private, over the said new Inclosures, either on Foot, or with Horses, Cattle or Carriages other than such Roads or Ways as shall be so ascertained, set out and appointed.

Provided always, That there shall be a Gate set up at each End of every Lane, which shall be made and appointed as and for a publick Road over any Part of the said Inclosures, and such Lanes and Gates so to be made and erected respectively, shall be repaired and maintained at the common Charge of the Parish of Aston Cantlow aforesaid, in such manner as the publick Roads in the said Parish were and are repaired and maintained at and immediately before the passing this Act.”

- 3.2.3 The Act states that the Commissioners have authority to set out and appoint “publick Ways and Roads”, but makes no separation into footways or bridleways. Public Roads are to be of the breadth of forty feet at least between the ditches, but no particular width is specified for Public Ways. It is implicit that Ways are distinct from Roads and that Ways (unlike Roads) can

be narrower than forty feet, which suggests that they are of lesser (non-vehicular) status.

### **3.3 Aston Cantlow Inclosure Award 1744**

3.3.1 The Inclosure Award (Appendix 10) details the division of the land in Aston Cantlow and surrounding areas to the landholders. Once the plots have been allocated and the rent charges determined, the highways are set out. Some routes are easy to identify because they are existing routes – current roads or public rights of way. Others are harder to identify from the description.

#### **3.3.2 The Award states**

“And whereas by the said Act it is provided declared and enacted that the said Commissioners or any five or more of them should and might ascertain set out and Appoint publick and private ways and Roads through the said new Inclosures to be made in pursuance of the said Act with the Assises and Breadth thereof So as all publick Roads to be made should be and remain forty feet Broad at the least between the ditches and that it should not be lawful for any person thereafter to use any Roads or Ways either publick or private over the said new Inclosures either on foot or with Horses Cattle or Carriages other than such Roads or Ways as should be so Ascertained set out and appointed”.

An extract of a transcript of the Inclosure Award prepared by the Warwickshire County Council Record Office is also provided in Appendix 10. This extract covers the “publick and private ways and Roads” that were awarded (pages 21 to 26).

3.3.3 There is no mention of a road being set out between Aston Cantlow and Newnham.

3.3.4 The Inclosure Award sets out a route:



“One Bridle or Churchway from the said Little Alne Road in meadow furlong field near (Daviss Close) up the said two ?part furlong field through Newnham Millway field and Water place Lays to Newnham Sally Lanes end of the breadth of twenty five feet at least between the ditches in the way the same now is ???? and ???? anciently been used”.

3.3.5 It sets out another route as:

“One other footway from Aston Cantlow aforesaid called Churchway beginning at the northwest side of the cottage plot herein allotted to John Robers through the same and into and over new ? and part of the said Little Alne Meadow furlong field herein allotted to the said Elizabeth Huchell up to Newnham Hill thence through the said Newnham Millway field then through the south end of the allotment of the said Francis Charles in Little Meadow and Wenne price from thence to Newnham Town as the same hath been heretofore and now is used.”

3.3.6 There is no contemporary inclosure map available. A map was reconstructed by a County Record Office volunteer (Appendix 11) which shows the majority of the plots as set out and some of the roads, bridleways and footpaths. The volunteer used the current Definitive Map as the base map as it provided a reliable OS base. It is acknowledged in the reconstruction that some plots and roads/ways cannot be identified. The volunteer has reconstructed all of Warwickshire’s Inclosure Awards as an academic exercise.

3.3.7 Another reconstruction, for the purpose of investigating the evidence for this case, was created using the information given within the inclosure and using the 1<sup>st</sup> Edition Ordnance Survey map (1881-1890) as the basis for the field boundaries (Appendix 12). This reconstruction identifies some plots and ways that were not identified in the first reconstruction. The Ordnance Survey map was used for the reconstruction because an accurate base map was needed on which to draw the plots and ways and that is the first map produced which provides adequate detail on the field shapes and boundaries to allow the Inclosure to be reconstructed.

- 3.3.8 Despite using mapping approximately 100 years apart, the reconstructions are consistent with each other. The field pattern from the 1880s has not changed much in the intermediate time and is unlikely to have changed significantly between the time of the inclosure and the OS mapping used.
- 3.3.9 The description of the bridleway starting from the Little Alne Road in Meadow Furlong fits with its starting point being on the current Bearley Road. The Bearley Road forms part of the first public road mentioned in the Inclosure Award, which also has Meadow Furlong field as part of its description. Part of Meadow Furlong was the field to the east of the current Bearley Road and was allocated in part to Elizabeth Huchell through whose plot the bridleway appears to run.
- 3.3.10 The position of Sally Lane appears to start in Newnham using the description provided in Victoria County History (see section 3.23) and then goes southward towards the current C41 Aston Cantlow Road following the line of public bridleway AL81 but this cannot be determined with certainty. Sally Lane was not set out in the Inclosure Award and is mentioned twice within the Award. Whilst there are two fields with Sally in their name, these are on the southern side of the C41 Aston Cantlow Road, as is Gallows Green (Appendix 13 Survey of Estates of Thomas Wood 1879).
- 3.3.11 The terminology “bridle or churchway” does not suggest that this was intended to be a road. If it had been it would have been included under the roads section of the Award, and assigned a width of forty feet or more. Elsewhere a footpath called Churchway is set out which appears to run over the same land or if not precisely the same very close as the bridleway.
- 3.3.12 Highways Act 1835 provides a definition of highway (Appendix 14) which includes bridleway and churchway. It gives no indication of the rights of a user on a churchway.

3.3.13 Whilst it is not possible to be certain without a contemporary map of the Inclosure, the description of the bridle/churchway, certainly at its eastern end, does suggest that this may be the contested route.

3.3.14 The date of the Inclosure Award is 1744 and the use of mechanically propelled vehicles would not have been considered within the definition of carriage when the Commissioners drew up the Award.

### **3.4 A Map of Warwickshire (Cary) – 1787 – MA1787**

3.4.1 The Order route is not shown on the map (Appendix 15).

3.4.2 The map is not cartographically accurate and fairly crude in its depiction of settlements and routes between them. The map mainly shows the routes Cary regarded as being more important although smaller routes are indicated – this being the case to the north and south of the village of Aston Cantlow.

### **3.5 John Haywood 1788 – MA1788**

3.5.1 The route is not shown (Appendix 16).

3.5.2 There are few routes shown and the cartographic accuracy is suspect.

### **3.6 Yates 1789**

3.6.1 The route is not shown (Appendix 17).

3.6.2 The current C100 Bearley Road is shown passing through Aston Cantlow and the current D5341 Newnham Lane is shown terminating in Newnham. There is no connecting route shown between the two.

### **3.7 Noble (engraved Cary) 1789 – MA1787**

3.7.2 The route is not shown (Appendix 18).

### 3.8 Plan of Lord Abergavenny's Estate 1804 – CR882

3.8.1 The plan shows the extent of Lord Abergavenny's Estate (Appendix 19). The title plate says

“ESTATE OF THE Rt Hon George Nevill Baron of Abergavenny situate in the Manor and Parish of Aston Cantlow in the County of Warwick copied from the original map made by Mr Joshua ??? by ?????”.

3.8.2 This was a copy of the original plan drawn up in 1776. It is possible that errors in transcription may have occurred.

3.8.3 The estate does not include all of the land through which the Order route runs (the section of the Order route not shown is that between points A and E on the Order plan). As a consequence it cannot be stated with certainty whether the full extent of the route existed at that time.

3.8.4 All that part of the Order route which passes through the estate is shown on the plan (subject to paragraph 3.8.6 below). It is depicted in a significantly different manner to other routes which are now vehicular highways, which may suggest a lower status route. Current vehicular highways are shown as much wider and clearly bounded on either side - the route is shown as running through fields and is relatively narrow.

3.8.5 Another route in the same area is shown in the same manner – this route ends at a field boundary with a building within the field. This might indicate that this other route was used as an access route to the property. The second route is currently shown on the Definitive Map as part of bridleway AL81.

3.8.6 The alignment of the depicted route is slightly different, certainly towards the eastern end at Newnham, to the alignment of the Order route. The depicted route crosses the field “Cow Pasture” at an angle rather than in the straight manner the Order route does.

### **3.9 Smith 1808 – MA1808**

3.9.1 The route is not shown (Appendix 20).

### **3.10 A New Map of Warwickshire by John Cary (Engraver) 1811**

3.10.1 The route is not shown (Appendix 21).

3.10.2 The current C100 Bearley Road is shown passing through Aston Cantlow and the current D5341 Newnham Lane is shown terminating in Newnham. There is no connecting route shown between the two. The ridge between Aston Cantlow and Newnham is shown.

### **3.11 Dix 1820 – MA1820**

3.11.1 The route is not shown (Appendix 22).

3.11.2 There are few routes shown and the cartographic accuracy is suspect.

### **3.12 A Map of the County of Warwickshire (Greenwoods) 1820-1821 – MA1822**

3.12.1 The route is not shown (Appendix 23).

3.12.2 The map was drawn from an actual survey made in the years 1820/1821 and is generally regarded as being a reliable map for the indication of routes. In this area there are some routes indicated that are not current highways and some which are shown on the Definitive Map. Cartographically the map is reasonably accurate.

### **3.13 Greenwoods 1827 – MA1827**

3.13.1 The route is not shown (Appendix 24).

### **3.14 Greenwoods 1830 – MA1830**

3.14.1 The route is not shown (Appendix 25).

### **3.15 Walker 1836 – MA1836**

3.15.1 The route is not shown (Appendix 26).

### **3.16 Pigot**

3.16.1 The route is not shown (Appendix 27).

3.16.2 There is a route shown which appears in a similar position to the D5341 Newnham Lane and ending where it would be expected to see Newnham. There is no continuation of this route

### **3.17 Copy of Plan One Deed 1858**

3.17.1 The plan, which was provided by a current landowner, shows plots of land surrounding the village of Aston Cantlow including an area to the east of C100 Bearley Road (Appendix 28). It is not clear for what purpose the original plan was drawn up but the field names, state and acreage are indicated in the key. Neighbouring landowners are identified by name.

3.17.2 The western end of the Order route is shown passing through plots 5 (Farm Piece), 7 (Farm Piece Meadow), 8 (Long Ground) and 11 (Newnham Hill). It is annotated in two places with the words Bridle Road. At the eastern end it is described as 'to Newnham'.

### **3.18 Rough Plans of Aston Cantlow 1859 – DR259/14/1-3**

3.18.1 The purpose behind these sketches (Appendix 29) is not clear. The rough plans are pencil sketches of various parts of Aston Cantlow parish with numbering and possible names but the actual meaning is not obvious.

3.18.2 There is a crude sketch of Newnham which gives an imprecise depiction of the area and possible roads or ways. The alleged route may be indicated but its positioning, as with other features, is not precise. There is no indication of status.

3.18.3 The sketch of the Aston Cantlow area does not show the route.

### **3.19 Weller c1861 – QS/23/11**

3.19.1 The route is not shown (Appendix 30).

### **3.20 Survey of Estates of Thomas Wood 1874**

3.20.1 The route is not indicated on the larger map showing all of the holdings of Thomas Wood (Appendix 13). It is also not shown on the individual plan of Tutnel Field Farm.

3.20.2 The route would run through plots 145 (Cross Piece), 133 (Cosset Meadow) and 132 (Cow Pasture). There is a thin section of land indicated from plot 134 (Hither Bittam) which goes to the farm buildings but is not open to the road through Newnham. The road is shown with a slightly darker colouring. No mention is made in the associated schedule for Tutnel Field Farm of any route.

### **3.21 Sale Catalogue Aston Cantlow Estate 1918 – DR679/24**

3.21.1 The catalogue comprises a plan and details of the estate being sold which amounts to approximately 3000 acres broken down into a number of lots (Appendix 31).

3.21.2 The terms of sale state that the property is sold subject to, amongst other things, rights of way “without any obligation on the part of the vendors to define such rights ... if any” (special condition 4).

3.21.3 The Order route crosses part of the land within Lot 2. Lot 2 is described as Tutnell Field Farm, Newnham. No mention is made of the route or a road crossing the Lot. The remaining section of the route does not fall within any other sale lots.

3.21.4 It is not separately delineated on the plan but is indicated on the base mapping, passing through plots 199 (Cross Piece), 200 (Goset Meadow), 201 (Cow Pasture) and 238 (Foredrift) and shown with the lettering BR. The names of the plots are found within the Schedule of Lands comprised in Lot 2.

3.21.5 It would be expected that if the route were a public road then it would be excluded from the sale of the estate as are other public vehicular highways. The route clearly falls within the sale lot.

### **3.22 Victoria County History.**

3.22.1 The section on Aston Cantlow Parish was published in 1945 (Appendix 32).

3.22.2 Sally Lane is mentioned as a road of historical interest. It is mentioned as starting in Newnham continuing towards Wilmcote. Its exact position is not known, particularly to the south and can only be assumed. The section at Newnham will be in the vicinity of the Order route but the alignment in this area has changed over time.

3.22.3 Newnham itself is described as two farms and a number of cottages which are on a blind lane running south from the Little Alne – Bearley cross road, now named Salters Lane. A blind lane being a cul-de-sac.

### **3.23 Aerial photographs.**

3.23.1 An image of the area, taken from GoogleEarth, dated 1945 shows the area clearly (Appendix 33). There is evidence of a track running south from



Newnham (along the alignment of a section AL88 (from point G to H on the Order Plan) and another along a section of AL81. There is no indication of the east-west section of the Order route, including the section that crosses the escarpment. Other roads are clearly identifiable.

### **3.24 Ordnance Survey**

#### **3.24.1 CS 2500 1<sup>st</sup> Edition 1881-1890**

3.24.1.1 A route is indicated on the map (Appendix 34). It starts to the north of Aston Cantlow and has a junction with the road into the village – the current C100 Bearley Road. It passes in an easterly direction through several fields and then bears northwards to the south of Newnham. It terminates at a triangular open area of land to the south of the road passing through Newnham – the current public vehicular road Newnham Lane.

3.24.1.2 The triangular open area is separated from the route, indicated by a solid line which may show a hedge or fence, and there is no indication of a route through it. This area of land appears to be linked (via the use of tie bars) with a larger number of plots relating to number 243.

3.24.1.3 The route is shown by double pecked lines (through plots numbered 228, 199, 200 and 201 and through the wooded area numbered 212) except in some cases where it is close to a field boundary when a single pecked line is used (plots numbered 213, 198 and 201). It is shown with double solid lines in the section running northwards to Newnham (plot number 238) It is indicated by the letters B.R.

3.24.1.4 At the junction with the road into Aston Cantlow there is a solid lined boundary i.e. the route is not directly open onto the road. This could suggest that a gate existed at this position. At points where the route crosses field boundaries there are also solid lines across the route indicating the possibility of gates.

3.24.1.5 The route is not indicated in the same way as public vehicular highways in the area, in as much as it is labelled BR, drawn as a dashed line and is unnamed. Routes are depicted as wider routes delineated with solid lines and are named.

3.24.1.6 The Ordnance Survey maps show a depiction of what the surveyor examined and give no indication as to the public nature or otherwise of any route shown.

### 3.24.2 CS 2500 2<sup>nd</sup> Edition 1900-1905

3.24.2.1 The depiction of the route on the second edition Ordnance Survey map (Appendix 35) is similar to that on the first edition, save at the eastern end. The route is indicated with the lettering BR.

3.24.2.2 At the Newnham end, the route is now shown passing through part of plot 243 (the triangular area adjacent to the current D5341 Newnham Lane), as a double pecked line curling westwards and then northwards through the plot to its junction with the road through Newnham.

### 3.24.3 CS 10560 1<sup>st</sup> Edition 1884-1897

3.24.3.1 The depiction on this map (Appendix 36) is similar to that on the CS 2500 1<sup>st</sup> Edition. The route is indicated with the lettering BR.

3.24.3.2 In Newnham the triangular area appears to be open at its northern end. There is no depiction of a route through this area.

### 3.24.4 CS 10560 2<sup>nd</sup> Edition 1900-1906

3.24.4.1 The route is depicted on this map (Appendix 37) in a similar way to the CS 10560 1<sup>st</sup> Edition, but with an extension through the triangular area similar to that on the CS 2500 2<sup>nd</sup> Edition.

### 3.25 Aston Cantlow Parish Minutes – 1895-1955

#### 3.25.1 Copies of minutes containing relevant material can be seen at Appendix 38.

All available minutes were examined. Despite a thorough investigation no minutes later than 1955 were discovered.

August 26<sup>th</sup> 1895

Consideration of the Bridle Road from the village of Newnham to Aston Cantlow adjourned to the next Council Meeting.

September 23<sup>rd</sup> 1895

Resolved that the Clerk should write to Messrs Bucknall and Hancox respecting material and drainage for Aston Newnham Bridle Road with a view to the work being done as soon as possible.

December 23<sup>rd</sup> 1895

Resolved that the Bridle Road from the green gate at the village of Newnham be temporarily repaired

September 24<sup>rd</sup> 1900

A letter was read concerning the “dirty state” of the Bridle Road from Newnham to Aston Cantlow which in some places was “inches deep with water and almost impassable”. This meant the children coming to school were wet footed all day. It was resolved that the Clerk write to the Surveyor of the Alcester R.D.C asking him to put it in proper repair as once.

September 27<sup>th</sup> 1950

The minutes show how the Parish intended to conduct the survey requested as a result of the National Parks and Access to the Countryside Act 1949. On advice of the clerk to the Rural District Council and whilst awaiting instructions from the County Council, the Parish Council would pass the work to survey the parish (other than Wilmcote) to members residing in Aston Cantlow.

March 28<sup>th</sup> 1951

The necessary maps and report forms had been received from the County Council in respect of the Survey of Rights of Way. These were handed to the members who had undertaken to carry out the work of collecting the requisite information.

May 23<sup>rd</sup> 1951

Work on the Survey of Rights of Way was “proceeding satisfactorily”.

September 7<sup>th</sup> 1955

The minutes refer to a letter received from the Ramblers Association regarding “certain footpaths in the parish” which the Association considered to be Public Rights of Way. The path numbered (1) in the letter (“Path from the road north of Aston Cantlow village approximately 100 yards N.E. of the road fork, proceeding over the hill in an easterly direction to join a way given on the draft map which proceeds to Newnham”) was decided to be the same as the one numbered 22 on the map submitted by the Parish Council to the County Council. This is the Order route.

December 14<sup>th</sup> 1955

No further communication had been received from the Ramblers Association so that matter was considered closed

### **3.26 Finance Act 1910**

- 3.26.1 The 1910 Act provided for the levying of tax upon the incremental value of the land. A survey of the whole of the United Kingdom was carried out by the Board of the Inland Revenue under the Act. The purpose of the survey was to provide a complete record of the value of all land as at 30th April 1909. This record was then to be used to apply a tax on the increase in the land value every time the land was sold (‘increment value duty’). Since public roads were untaxed they were not coloured on the Finance Act maps and are often referred to as being excluded.

- 3.26.2 It was an offence to knowingly make any false statement or representation for the purpose of obtaining any reduction in respect of any duty under the 1910 Act. This would have included falsely claiming a public right of way, for which there was a deduction. The offence was punishable by up to six months imprisonment. This threat of criminal sanction and the fact that the survey was carried out by a public body under statutory powers make the Finance Act records reliable in what they show. Further explanation of the process of Finance Act recording and its relevance to public rights of way cases can be found in the High Court Case of Robinson Webster (Holdings) Limited v Agombar 2001 (extract at Appendix 39).
- 3.26.3 The route is shown on the base map used for the Finance Act map (Appendix 40) with the notation BR. It is shown as passing through hereditaments 840 and 837. It is not excluded from these hereditaments in the way that roads such as Bearley Road and D5341 Newnham Lane are excluded from the neighbouring hereditaments.
- 3.26.4 The so-called Domesday Book (Appendix 41) gives the valuations associated with each hereditament shown on the map. Hereditament 837 has a deduction of £20 for public rights of way. The base map shows footpaths and a bridleway within the plot. Hereditament 840 also has a deduction of £20 for public rights of way – again, the base map shows footpaths and a bridleway within the plot.

### **3.27 Warwickshire Street Map - 1921 MA1921**

- 3.27.1 The map (Appendix 42) shows some highlighted roads with names and numbering. The Order route is not highlighted. It is not shown on the base map. It is unclear what the purpose of the map is or who drew it up.

### **3.28 Handover 1929**

- 3.28.1 The 1929 Handover Maps record those highways maintainable at public expense for which the maintenance liability was transferred to the County

Council under the provisions of the Local Government Act 1929. It was not mandatory to produce these documents and they were internal to the Council, i.e. they were not open to public scrutiny. They had no formal legal standing and could be changed at any time.

- 3.28.2 The Order route is shown on the base map with the notation of BR. It is highlighted by a hand drawn brown line and is numbered 72 (Appendix 43). The alignment of the route at the eastern end is shown following the alignment on the base map and bends in a westerly and then northerly direction to its junction with the current D5341 Newnham Lane (numbered 58 on the map).
- 3.28.3 The Handover Schedule shows number 72 under the heading 'Other roads, including Bridle Roads' and the further subheading 'unmetalled' (Appendix 44). It is described as "Aston Cantlow-Newnham" with the length of 1.36 miles.
- 3.28.4 The notation in the Schedule gives no indication of the status of the route, other than it falls under the heading of 'other roads including bridle roads'. This would be an appropriate place to record a bridleway or a minor vehicular highway. The recording under this heading does not automatically mean that the route was believed to be a vehicular highway. It could just as well have been a recognised bridleway.
- 3.28.5 Each district in Warwickshire had a different method of recording routes on the handover record. There is no consistency in recording of routes. A few recorded footpaths but most did not. Alcester RDC did however record footpaths, starting at number 73 in the Schedule (Appendix 45). It is therefore probable, given that footpaths were recorded, that bridleways would have been recorded under the "other roads including bridle roads" heading – there being no other place to record them and it being most unlikely that the RDC would have recorded vehicular highway and footpaths but omitted to record the intermediate category of bridleways.

### 3.29 Aston Cantlow Parish Survey 1951

- 3.29.1 The Parish Council completed the survey of routes they believed to be Rights of Way within Aston Cantlow (Appendix 46). The depiction of the Order route on the survey map is as follows. The majority (from the C 100 to bridleway AL88) is shown in red and numbered 22 (as is AL88). The section between points G and H on the Order map is shown in red and numbered 24, as is bridleway AL81. The part between AL88 and AL81 is not coloured red and is labelled "NOT USED". It is labelled with the letters BR in red (as are AL88 and AL81). A number of field gates are marked with the letters FG in red.
- 3.29.2 A pencil drawn arrow and notation saying Uncl Co Rd (Unmetalled) has been added to the map, which may have been intended to relate to the Order route. It is not clear when this was done or by whom it was done.
- 3.29.3 The associated schedule for route 22 (Appendix 47) allocated it symbol B.R, although this has been circled at a later date and had the inscription Partly Unmetalled County Road added in a different hand to the rest of the schedule. The route was claimed to have been used throughout living memory and to consist of hard road in places, padded track in others, with a width of 4-5 ft. Reference was made to the gates. The condition was said to be very rough in places but with no obstructions.
- 3.29.4 The route was walked in September 1951 and it is clear that at that time the parish thought the route was a bridleway.
- 3.29.5 The pencil remarks mentioning the unmetalled county road were added later at an unknown time and by an unknown person. Similar remarks have been added to other Parish Survey maps (Appendix 48) which also had routes recorded on the Handover Record. It is clear that these were made by someone not involved with the Parish.

### **3.30 1960s Definitive Map Process**

3.30.1 The Definitive Maps and Statements of Public Rights of Way were drawn up under a requirement of the National Parks and Access to the Countryside Act 1949.

#### **3.30.2 Draft Definitive Map and Statement – 1954**

3.30.2.1 The draft map (Appendix 49) is drawn on a base which notates the route in part with the letters FP and the in part with the letters BR.

3.30.2.2 The draft map has the Rights of Way drawn and numbered by hand. The Order route is not so shown but two bridleways (AL81 and AL88) are so shown. The Order route is marked by a hand drawn pencil line with the annotation Uncl, Co. Rd. Two other routes are shown drawn in pencil with the labels Q450 and Q455 (which were two routes regarding which an objection was made to their omission from the map). It is not clear why or by whom the pencil lines were drawn.

3.30.2.3 The draft statement (Appendix 50) describes both bridleways AL81 and AL88 and footpath AL83a as terminating at the Newnham - Aston Cantlow road.

3.30.2.4 An objection to the draft Definitive Map was made in respect of the missing bridleway (Appendix 51). A response was made by the County Surveyor on 9<sup>th</sup> November 1954 that the route was an unclassified county road and hence not shown on the draft Map (Appendix 52). It is not known whether the County Surveyor ever visited the routes that he was considering.

3.30.2.5 A further decision was made on 26<sup>th</sup> May 1955 after an objection from a member of the public (Appendix 53). The evidence in support of showing the track from Newnham to Aston Cantlow as a bridle road was that it was shown on old maps as a bridle road. The observation was that “the route



described appears to be an unclassified county road and as such cannot be included in the survey” and the recommendation was not to modify the draft Map. No evidence was provided to show that the route was a road other than ‘it appears to be’. It is not stated that a site visit was actually made and no assumption can be made that any took place.

3.30.2.6 The Draft Definitive Map was drawn up using both the Handover Record and the Parish Survey submissions as the base data. It seems that a route which was recorded on the Handover Record under the Other Roads including Bridle Roads heading was not recorded on the Definitive Map on the ground that it was an Unclassified County Road, despite the uncertainty of status provided by inclusion under that heading on the Handover Record.

### 3.30.3 Modified Draft Map - 1958

3.30.3.1 The base map for the modified draft map (Appendix 54) shows the Order route annotated with the lettering BR, but it is not drawn as a Public Right of Way, unlike Bridleways AL88 and AL81.

3.30.3.2 The modified draft statement (Appendix 55) describes both AL81 and AL88 and footpath AL83a as terminating at the Newnham - Aston Cantlow road.

### 3.30.4 Provisional Map – 1960 and Definitive Map – 1961

3.30.4.1 The base map for the provisional (Appendix 56) and the final (Appendix 57) Definitive Map shows the Order route annotated with the lettering FP but it is not drawn on either map as a Public Right of Way.

3.30.4.2 The statements accompanying both the provisional map (Appendix 58) and the Definitive Map (Appendix 69) describe bridleways AL81 and AL88 and footpath AL83a terminating at the Newnham - Aston Cantlow road.

3.30.4.3 The public were unable to participate in the later stages of the definitive map process.

## 4 User Evidence

- 4.1 User evidence forms (Appendix 60) were submitted by 83 people over a number of years. The first forms were received in 2004(21), others in 2006 (14), in 2008 (47) and 2019 (2). There is no duplication.
- 4.2 The first set of forms were submitted by local residents of long standing, who were very familiar with the history of the Order route. Their recollections and experience of using the route extended back as far as 1912 (Marrion Reed), 1917 Beatrix Bullock), 1922 (John Steed), 1930 (Francis Parish), 1934 (Philip Woodfield), 1939 (Charles Godfrey), 1940 (Kathleen Dobbs), 1944 (Anthony Dumsby), 1945 (FW Cureton-Taylor), 1950 (C Godfrey Junior), 1953 (Jeremy Harris), 1957 (Lita Major), 1966 (John and Carol Davis) and 1981 (Michael Anslow). Forms were also submitted by 6 members of the Suffield family, including Anthony Suffield who owned and farmed part of the land crossed by the Order Route, between points A and E on the Order map
- 4.3 One of the forms (Mr Anthony Suffield's included evidence of use (on foot and as to part of the route, with a tractor for farm work) from 1935. This should not be taken as the start of public vehicular use. The user was the landowner and this evidence of use has to be disregarded, being use by right. Nor can the form be interpreted as necessarily meaning that all modes of user mentioned began at the earliest date of user. That caveat applies to all the user evidence forms.
- 4.4 These forms were submitted it appears following a meeting and phone calls with a member of the public in Aston Cantlow in 2002. Some user evidence appears to have been completed but that there was now a requirement to complete the County Council's standard user evidence forms. Some correspondence (Appendix 80) has been found that shows that communication was being made at that time, but no other information has

been discovered despite intensive searching. The user evidence forms submitted in 2004 appear to be as a result of this information.

- 4.5 The second set of forms were submitted by members of user groups concerned to establish a right of public vehicular user of the Order route, none of whom lived locally. Most belonged to the West Midlands or Worcestershire TRF but Mr James Savage belonged to GLASS and Midland Rover Owners Club Ltd. Some of these forms asserted that TRF members had used it for decades, but only three (Messrs Williams, Cookson and Hughes) claimed personal use predating the mid-1980s (when the date was demolished). There is clearly a conflict of factual evidence as to whether there was any use of the route with mechanically proposed vehicles by members of the public before that event, but even taken at face value, these forms evidence a very low level of use, in terms of numbers and frequency, both before and after it.
- 4.6 The forms submitted during 2008 can be divided into 3 categories. First, they included an additional 7 forms claiming vehicular use, of which only 2 (M Banner and D Wright) claimed use before the mid-1980s (in each case, motorcycle use from 1982). Second, there were another 28 forms from people (mostly local residents) who knew the Order route as a bridleway and had only used it on foot and/or horseback. They claimed user periods varying from 49 years (Andrea Boyle) to 1 year (Madeleine Kent and Sally Riddlesworth). The remaining 12 signatories said that they believed the Order route to be a byway open to all traffic, but only 1 of them (Richard Holmes) said that he personally had used it with vehicles, during 2007-2008. That is a special case because he was living at Retreat Farm next to the route and had no other means of access to his home, so he might have had the benefit of a private right or easement. It is to be observed that all but one of that group (Mr John Buckley) had only begun using the route after the mid-1980s.
- 4.7 In 2019 a form supporting bridleway status was received from Ms Greta Needham, who said that she had lived in Salters Lane (in what had been the family home since 1915) and used the Order route on foot from 1950 to 2018

(as had her family before her). A form was also received from Mr Archer who has used the route with a motor vehicle between 1988 and 2018.

## 5 Other Information

### 5.1 Gates and Gate Removal

- 5.1.1 There is a very substantial body of evidence to the effect that a ‘clap’ (or hunting) gate was in place at the top of the escarpment (see map at Appendix 61) and other gates existed on the section of the route between the top of the escarpment and Aston Cantlow. The significance of the ‘clap’ gate is that while it could be negotiated by walkers, horse riders and pedal cyclists, it was too narrow for vehicles to pass through, and the remaining width of the route was occupied by a fence. So for as long as it remained in place, the Order route could not be used as a through route by vehicles. That gate marked the boundary between different land ownerships. The other gates mentioned in the evidence were 5 bar field gates located at field boundaries (at points A, B, and D on the Order map).
- 5.1.2 The evidence is that the ‘clap’ gate was forcibly removed in about 1984/5 with a chainsaw by a group of vehicular users. The users were challenged by the landowners of the eastern section of the route regarding the removal of the gate, damage to private property and the use of the route with vehicles. The landowners have said that the users told them the route was a road and they were entitled to remove the gate. The landowners responded by saying the route was a bridleway and not for use with vehicles. The landowners have said that they were going to call the police until one of the users said that he was a policeman and made other remarks about what would happen if they replaced the gate. The landowners have said that they felt intimidated.
- 5.1.3 A letter was received from the NFU dated 17 December 1986 (Appendix 62) which provides information about the removal of the gate ‘a couple of years’ before, the length of time the gate had been in place and the then local perception of the route’s status. The letter requests that the route be officially classified as a bridleway.

- 5.1.4 A second letter from the NFU was received in May 1987 (Appendix 63). This refers to a meeting which took place in August 1985 which mentions the uncertainty over the status of the route. It also refers to a pre-1929 Handover schedule describing “a 1.3 miles unmetalled ‘bridle road’ at right angles from the Newnham to Quarry Road” but no document with this information has been found.
- 5.1.5 These letters corroborate the evidence provided by users and the landowners who have stated that there was such a gate in place until the 1980s. There is some inconsistency between the user evidence forms with regard to the date of its removal, quite a few witnesses remembering it as having taken place in the late 1980s, but otherwise there is consensus as to what happened. The evidence is also consistent as to the continuous presence of the gate from at latest 1917.
- 5.1.6 The status of the route was brought into question by the deliberate destruction of the gate and the ensuing confrontation, which seem to have become locally notorious. The residents and landowners believed the route to be a bridleway and this status was being challenged by the user group’s action to open up the route to use with mechanically propelled vehicles by force.
- 5.1.7 A number of older local witnesses have referred to the presence of a “please keep gate shut” sign on the ‘clap’ gate which was destroyed along with the gate, and almost as many have referred to the presence of a Bridleway sign at the junction of the Order route with the C100 Bearley Road. Some witnesses mentioned that bridleway signs existed on the route.

## 5.2 Condition of the route

- 5.2.1 From the outset of vehicular user following removal of the 'clap' gate, there have been numerous complaints about its adverse effects on the condition of the route and on other users. The NFU letters at Appendices 62-63 refer to its being "almost impassable due to churned up ground" and land rover clubs and motorcyclists making other uses "almost impossible". These complaints are reflected in the user evidence forms of Charles Godfrey Senior, Kathleen Dobbs, Hilary Howell, Steve Barlow, Caroline Ellis, Sophie Ellis, Mrs B Tustain, Madeline Kent, Margaret Whatmore, Michael Barnsley, Sheila Creedy Smith, Ms KE Brighton, Mrs C Evans, WA Evans, Stephen Dennison, John Buckley and Greta Needham.
- 5.2.2 Many site visits were made over a number of years following complaints about the surface of the route. Remedial and improvement work was undertaken to make the route usable and less likely to be damaged.

## 5.3 Traffic Regulation Orders

- 5.3.1 Traffic Regulation Orders (Appendix 64) have been made for the route. One was placed on the route in January 2007 to prevent serious damage to the route and applied to all users except for pedestrians.
- 5.3.2 Two further Traffic Regulation Orders were placed on the route in late 2008 to prevent serious damage to the route and were applicable to all motorised vehicles.
- 5.3.3 The route was listed on the List of Streets and of uncertain unknown status. It was not unreasonable to prevent motorised vehicles from using the route because they had been using it and damage was being caused by vehicles. The use of Traffic Regulation Orders does not give evidence of the status of the route but is meant to prevent further damage occurring.

## 5.4 DETR Letters

5.4.1 Two letters were received from the DETR, one in August 1998 (Appendix 65) and one in May 2001 (Appendix 66). Both of these letters were concerned with the treatment of Unclassified County Roads. The first letter (the Carter letter) stated that the term “unclassified road” was made redundant by the Local Government Act 1972. It goes on to say that inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights but this must be considered with all other relevant evidence to determine the nature and extent of those rights. It would therefore be possible for such a way to be added to the Definitive Map and Statement if it fulfilled the criteria of the Wildlife and Countryside Act. The status of such routes and the rights over them will need to be resolved on a case-by-case basis by the appropriate authorities.

5.4.2 The second letter states that the List of Streets is a record of highways maintainable at public expense and that “it is not, in any way, proof of vehicular rights” and should include footpaths and bridleways which are publicly maintainable. Other evidence would need to be provided to establish the existence of vehicular rights.

5.4.3 These letters confirm that each route has to be treated on a case by case basis and that the appearance of a route on the List of Streets is not conclusive evidence that the route carries mechanically propelled vehicular rights.

## 5.5 Challenge

5.5.1 A Rights of Way Survey form (Appendix 81) completed by members of GLASS (Green Lane Association), dated 13/12/98 states that a ‘landowner from Homelea Farm interested to know why were driving a bridleway! Took photos and registration numbers to report us – don’t know to whom’. It is not clear when or why this document was received by the County Council.



## 6. Relevant Legislation and Case Law

6.1 The status of the route is being considered under the Wildlife and Countryside Act 1981.

6.2 Section 53(2)(b) of the Wildlife and Countryside Act 1981 (Appendix 2) places a duty on the County Council to keep the Definitive Map and Statement under continuous review and to make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of certain events.

6.3 Section 53(3)(c)(i) states that one of the events is the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.”

6.4 Having received an allegation, supported by evidence, that the route should be recorded on the Definitive Map and Statement as a bridleway, the County Council carried out a thorough investigation and determined that the totality of the available evidence did support that allegation. It accordingly made the Order. After reviewing the formal objections, the County Council considers that on the balance of probabilities, the true legal status of the Order route is bridleway and the Order should be confirmed (see further below).

6.5 The Natural Environment and Rural Communities Act 2006 (NERC) (Appendix 67) has an effect on this case.

6.6 The route is not recorded on the Definitive Map and Statement but is recorded on the List of Streets. Although s67(1) states that an existing public right of way for mechanically propelled vehicles is extinguished if it is not shown on a

definitive map and statement as at 2 May 2006, this is subject to the provisions of s67(2) which states that s67(1) does not apply if any of the tests in (a)-(e) is met.

- 6.7 s67(2)(b) is applicable – the route was shown on a list of highways maintainable at public expense. The remaining subsections are not applicable: - No evidence has been discovered to suggest that the route was created as a right of way for mechanically propelled vehicles (s67(2)(d) and s67(2)(c)). The evidence submitted does not suggest that the main lawful use of the route for 5 years prior to commencement was use for mechanically propelled vehicles (s67(2)(a)) and there is no evidence that it was created by virtue of use by mechanically propelled vehicles before 1<sup>st</sup> December 1930 (s67(2)(e)).
- 6.8 No application made under s53 Wildlife and Countryside Act 1981 was received and therefore s67(3) is not applicable.
- 6.9 If s67 NERC is considered in isolation then there is the possibility that the mere recording on the List of Streets may preserve the rights for mechanically propelled vehicles. The explanatory notes (Appendix 68) explain that this provision was to ensure that unclassified and other minor roads are not bought within the scope of the extinguishment. However, the List of Streets is merely a list of routes that are maintainable at public expense. It still needs to be shown that the route has a vehicular status – mere listing does not provide that. s67 does not expressly state that the routes on the List of Streets are for mechanically propelled vehicles, the section preserves the vehicular rights that may exist but these rights have to be proven.
- 6.10 s66 NERC needs to be considered. This states that no public right of way for mechanically propelled vehicles is created after commencement unless it is expressly done. s66(2) states that for the purposes of the creation after commencement of a public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded. This means that if the

route was shown to be of the historical status of a bridleway, then it cannot be created a carriageway through use with mechanically propelled vehicles post-dating 2 May 2006. The explanatory notes for s66 provide more information (Appendix 69).

## 7 Consultations

- 7.1 An informal consultation was carried out in 2007 (Appendix 70). It does not appear that evidence was submitted at the time but more user evidence was submitted in 2008. This evidence is included within the user evidence in Appendix 60. No progress was made to determine the status of the route following the consultation. Letters sent and received as a result of the consultation can be found at Appendix 71.
- 7.2 The first consultation could have been used to meet the requirements under s53 Wildlife and Countryside Act 1981 but a decision was made to re-consult in 2018 because of the number of years that had passed.
- 7.3 A consultation was issued in May 2018 (Appendix 72) and requested any information that parties might hold be provided to the County Council by late June 2018. The interested parties contacted included statutory undertakers, user groups, Parish and District Council and councillors, landowners and other known interested parties.
- 7.4 Eight replies were received to the consultation (Appendix 73).
- 7.5 One response was from an individual (Mr Tom Archer) who wrote that he and friends had used the route with mechanically propelled vehicles since 1988 and had been challenged about their use by local residents on a number of occasion, including by a local farmer in 1992.
- 7.6 One response was received from a user group (West Midlands TRF) representative. This said that he had received information from members regarding use over the “last 30 plus years”: the group believed that the route was a public carriageway for use by all traffic; and members would continue to use the route as such and would report any action to prevent use to the appropriate authorities. The evidence regarding the alleged use of the route by members was not provided and therefore could not be taken into

consideration as part of the decision process. (Save to the extent that it might have been provided previously and is included in Appendix 61).

- 7.7 Five emails were received from residents of Newnham and Aston Cantlow. These gave some background history of the route and its status, described the way that the route was being used (and abused) and express concerns about the situation. Information was provided by the owners of Meadow Barn about private rights of access along the route, explicitly given within property title documents (which would have been redundant had the Order route been a public carriageway), and by Mrs Holmes of Retreat Farm about maintenance of the route by residents.
- 7.8 At the close of the consultation, a decision was made based on the evidence available at that time, to add the route to the Definitive Map and Statement (Appendix 74). Landowners were informed of the decision as required by Schedule 14 Wildlife and Countryside Act 1981 (Appendix 75).

## 8. Assessment of Evidence

- 8.1 Whilst examining the evidence, a history of the area can be built up and deductions made regarding the use of the route and the actions taken by the landowners. It is important to consider the Order route as part of a wider area and not just in the isolation presented for Definitive Map Modification purposes.
- 8.2 The route is not shown on early large scale mapping. Although this does not preclude the status being that of a vehicular route it does suggest that it was not perceived to be an important route and potentially therefore of lesser status. In the later maps (Greenwoods for example), which are more detailed than some of the earlier ones, it would be expected that a vehicular route would be shown, possibly as a cross road. There is no evidence on these maps of the Order route. The alternative explanation is that the route did not exist, on the ground or in law, prior to the late 19<sup>th</sup> century when it appears in OS mapping. However, that disregards indications of its existence in other earlier documents.
- 8.3 The lack of an Inclosure Map does mean that it is not possible to be absolutely certain of the location of any awarded plots, although the major roads still exist and can be used as a good guide to the plots. The field patterns have not changed significantly between the time of the first map and the present day suggesting that there has been consistency over the centuries. The field pattern shown in the OS mapping reflects those of the estate plans. Using the available mapping it is therefore possible to reconstruct the Inclosure Award in a way that can be regarded as reasonably accurate in the absence of an Inclosure Map. The Inclosure Award sets out a churchway from Aston Cantlow to Newnham which falls into two elements: a bridleway; and a footpath. This corresponds with the Ordnance Survey maps of the 1880s where the routes into Newnham from Aston Cantlow are shown as a bridleway with a footpath branching from it. There are no roads set out in the Inclosure Award which have any resemblance to the route. No other

routes appear to fit the description given in the Inclosure Award. Then there are the partial depictions of the Order route in Lord Abergavenny's estate plan 1804 and the plan one deed 1858 where it is specifically annotated "Bridle Road".

- 8.4 The late 19<sup>th</sup> century and early 20<sup>th</sup> century Ordnance Survey maps are consistent in their depiction of the Order route and indicate that the route was believed by the surveyors to be a bridleway. The depiction of a route on an Ordnance Survey map is not conclusive proof that the route is public or of the status indicated but can provide good supporting evidence, and taking it together with the contemporary Aston Cantlow Parish Council minutes, it would be perverse to find that the route was other than a bridleway at that time. The alignment and the status of the route is consistent on the early Ordnance Survey maps.
- 8.5 Estate maps either do not show the route or indicate it as a bridleway.
- 8.6 The Finance Act map does not show the route as being excluded from surrounding hereditaments. The fact that it is not excluded does not preclude the route from being a public vehicular road but when taken with the other available evidence its treatment in the Finance Act process does suggest that it is of a lower status.
- 8.7 The Handover Record depicts the route on the map with a description in the Schedule falling under the heading of "Other Roads including Bridle Roads". This information needs to be taken into consideration alongside the other evidence. The recording of routes on the Handover Record varies from district to district within the County and is not consistent throughout. Appearance on the Handover Record does not automatically mean the route was believed to be a vehicular highway but indicates only that it was a route maintained at public expense, and even footpaths were included in this particular Schedule. The treatment of the Order route in the Handover Record is entirely consistent with its being, and being regarded as, a bridleway. The appropriate place to record it was under the given heading.

- 8.8 The Parish Surveys, produced by the Parish Council in 1951, indicate that the route was locally still regarded as being a bridleway, consistently with the Parish minutes of earlier date. Evidently that is how it was actually used during the first half of the 20<sup>th</sup> century (as the older user witnesses testify). The Ramblers Association though it was a footpath (see the 7 September 1955 Parish Council minute).
- 8.9 It would seem that the route was not shown on the first Definitive Map because it “appeared to be an unclassified County Road” and as such was believed to be ineligible for addition to the Definitive Map. The obvious inference is that it had been mistakenly extrapolated from the Handover Record that the Order route was in fact a vehicular highway although it was clear from the headings that it could have the status of bridleway, or that it was mistakenly believed that as a matter of law, an unclassified county road could not be shown on a definitive map. The omission from the Definitive Map was questioned but the process allowed limited scope for challenge by a member of the public.
- 8.10 There is no evidence that a proper investigation into the status of the Order route was undertaken, in the sense of an examination of the historical evidence or questioning of witnesses. Had that been done, it is unlikely that the route would have been determined to be a publicly maintainable public vehicular highway because there is no underlying evidence to justify that conclusion. Where for example is the evidence of compliance with the procedure laid down in section 23 of the Highway Act 1835? And so far as the Parish was concerned, the bridleway status of the route was not in doubt until it was challenged by the removal of the ‘clap’ gate in the mid-1980s and mechanically propelled vehicles (other than farm traffic) started using the route.
- 8.11 The fact that the route was not recorded on the first Definitive Map and Statement is not in itself sufficient evidence to suggest that the route must be a vehicular highway.



- 8.12 As the historical evidence suggests that the route was a bridleway then the user evidence needs to be considered to determine whether a higher right has come into being.
- 8.13 The evidence provided by local residents about the 'clap' gate is that it prevented through vehicular use until it was forcibly removed in the mid-1980s and that its removal was challenged at the time. This indicates that the start of public use with mechanically propelled vehicles was not before the mid-1980s and was achieved through force, rendering all use facilitated by that act *the* and not "as of right". There is also witness evidence of subsequent challenges to vehicular users regarding the status of the route by their being told that it was a bridleway and that they were not able to use it with motor vehicles. Such challenges would have rendered user contentious (vi) and/or constituted evidence of no intention to dedicate the route as a vehicular highway and/or a bringing into question.
- 8.14 The removal of the gate in about 1984/5 brought the status of the route into question. There is little evidence that use with mechanically propelled vehicles by members of the public occurred during the preceding 20 years and that is disputed. If the local residents' evidence about the gate is accepted at inquiry, there could have been no use as a through route during that period. There is insufficient evidence to support a claim that a right of way for mechanically propelled vehicles could have come into existence on the basis of pre-1984/5 use. A challenge to users with motorised vehicles is documented as occurring in October 1998 and again brought the route into question.-
- 8.15 If as an alternative, the date of 2004 when the first user evidence was submitted is taken as the date of bringing into question, then the twenty year period for dedication of a right of way under the Highways Act 1980 s31 would run from 1984 to 2004. There is an issue as to whether there was sufficient user by members of the public with mechanically propelled vehicles during the early part of this period for the statutory test to be satisfied.

- 8.16 s66 NERC is applicable and provides a cut off date of 2 May 2006. Evidence of user after that date cannot be used to show the creation of a vehicular right.
- 8.17 Further, it is the County Council's view that the Order route could not have become a vehicular right of way by virtue of user for the following reasons. Because it was a bridleway, it was a criminal offence to use it with mechanically propelled vehicles without lawful authority (i.e. as of right) under the Road Traffic Acts. Lawful authority for general public use with mechanically propelled vehicles could not have been given in the case of the Order route, because of the character and condition. There are numerous expressions of concern by local residents and by pedestrian and equestrian users of the route about the inconvenience and danger caused to those users by motorcycles, land rovers and other such vehicles. In particular, the narrowness of the way, the steepness of the escarpment, and the rutting caused by 4 wheel drive vehicles are mentioned in this connection. See for example the consultation responses of Mrs Holmes, Mr and Mrs Summerfield, and Mr Green (Appendix 74), and paragraph 10.10 below. See also the user evidence forms of Hilary Howell, Steve Barlow, Caroline Ellis, Sophie Ellis, Michael Barnsley, Sheila Creedy Smith, Ms KE Brighton, Mrs C Evans, WA Evans, Stephen Dennison and John Buckley (Appendix 61). The County Council agrees with these concerns and takes the view that general use by mechanically propelled vehicles would be a public nuisance that could not be and could never have been legitimised by the landowners by express dedication even if they wanted to so. See for example *R v Mathias* (1861) 2 F&F 570, *Sherringham UDC v Halsey* (1904) 68 JP 395, *Bakewell Management Ltd v Brandwood* [2004] 2 AC 519.
- 8.18 Moreover, the surface of the Order route (as a publicly maintainable bridleway) has been vested in the County Council under section 263 of the Highways Act 1980 and its predecessor section at all material times. The County Council takes the view that its participation in an express, presumed or deemed dedication of the Order route as a public vehicular highway would

have been necessary, and that it could not lawfully and consistently with its statutory duties under the Highways Act (in particular 130) have given authority for such a dedication.

## **9 Order**

- 9.1 An Order was made on 10 July 2019 to add a bridleway to the Definitive Map and Statement (Appendix 3).
- 9.2 An advertisement was placed in the Stratford Observer on 12 July 2019 (Appendix 76). Notices were erected and maintained at each end of the Order route for the statutory period including notices addressed “to the owners and any occupiers of the land” (Appendix 77). These notices were under the direction of the Secretary of State for the Environment, Food and Rural Affairs (letter at Appendix 78). Copies of the notices and the Orders were sent to all the informal consultees and occupiers. Copies of the Orders were placed on deposit at Stratford Library, Stratford District Council offices and Shire Hall, Warwick.

## 10 Formal Objections

- 10.1 Twenty nine objections were received along with twenty four letters of support. All correspondence was acknowledged.
- 10.2 A list of objectors and supporters can be found at Appendix 79 along with copies of the letters.
- 10.3 A summary of the objections and support is provided below.
- 10.4 The majority of objectors to the Order did so on the grounds that they had used the route with a mechanically propelled vehicle and wished to carry on doing so, and/or that the route was recorded on the List of Streets and/or signposted as a UCR. A number had only begun to use the route after 2006 and very few claimed pre-1986 use.
- 10.5 One objector stated that it was discriminatory against disabled people to classify the route as a bridleway as it meant they would be unable to access the countryside.
- 10.6 One objector (Mr Phil Hobson on behalf of GLASS) provided an interpretation of the historical evidence and an analysis of their perception of how the first Definitive Map process was undertaken and the importance of the decisions made at that time. He maintains that “an investigation” was undertaken before the conclusion was reached that the route should not be shown on the draft map, but there is no evidence of that whatsoever in the document at Appendix 54 or any where else.
- 10.7 A couple of objectors (Mr Richard Hawker and Dr Richard Lillington) said that they had evidence that supported the allegation that the route was a road but did not provide copies of the evidence. Reference was made to documents allegedly held by Warwickshire County Council – but copies were not provided. Council archives were searched without result.

- 10.8 There were some emails and letters received in support of the Order which contained only a statement of support. However, other supporters provided information on their use of the route and their perceptions on how the route was being used.
- 10.9 Some supporters provided some historical background and interpretation of documents showing they believed the route to be a bridleway.
- 10.10 Supporters stated that the route is more suitable as a bridleway and that vehicles damage the surface making it difficult for others to use it. Concerns were expressed by a number (Jeremy Harris, Anna Sutcliffe, Jennifer Court, David and Jan Doyle, Richard and Paula Holmes, Phil Summerfield, Ben and Fiona Harris, Robert Green, Anthony Barnett, Adam and Sarah Harris) that the vehicular use being made of the route not only inconveniences, but positively endangers and deters, pedestrian and equestrian users.
- 10.11 Supporters mentioned that use with vehicles had only occurred after the clap gate was removed.
- 10.12 One supporter (Greta Needham) included a user evidence form which is included alongside the other user forms in Appendix 61.

## **11 Conclusion**

- 11.1 The County Council is satisfied that it has discovered evidence which (when considered with all other relevant available evidence) is sufficient to meet the test set out in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely to show (on the balance of probabilities) that the Order route should be shown as a bridleway in its Definitive Map and Statement.
- 11.2 The County Council confirms that all the procedures required by the legislation have been complied with.
- 11.3 Warwickshire County Council would respectfully ask that the Secretary of State for the Environment, Food and Rural Affairs confirms the Warwickshire County Council Definitive Map Modification Order titled The Warwickshire County Council Definitive Map Modification Order, Parish of Aston Cantlow, Sheets SP16SW, SP16SE, SP15NE, Order No. 1 2019, Path No. AL223.

