

## SECTION 12 MAPS (COMMERCIAL, ORDNANCE SURVEY, ESTATE ETC) AND AERIAL PHOTOGRAPHS

### REFERENCE MATERIAL

#### Statutes

Survey Act 1841

#### Case Law

*Hollins v Oldham 1995 C94/0206, unreported.* Judicial view on cross roads: 'Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads ... This latter category, it seems to me, must mean a public road in respect of which no toll was payable'.

*Kent County Council v Loughlin 1975* (see also Section 8) Denning LJ stated 'The county council archivist produced maps between 1769 and 1819. None showed Fairly Lane at all, but they were to so small a scale that they showed only public carriageway roads'. This remark is taken by some to mean that Lord Denning considered that all highways on pre-1820 maps are public highways. However, it is unlikely that he was generalising on all highways on such maps.

*Attorney General v Antrobus (1905)* – Judicial view on whether OS maps are evidence of a way being public or private: "Such maps are not evidence on questions of title, or questions whether a road is public or private.....in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey".

*Clode and Others v LCC 1913* - Judicial views on some commercial maps 'I do not think that the Horwood maps were admissible in evidence ... they were apparently but the speculations of a publisher, not official productions, put forth as topographical guides to parts of London. In my opinion these maps are not admissible for that purpose, the maps were just a private adventure for the purpose of profit on the sale of them'.

*Attorney General v Horner, 1913* – Some judicial views on the Ordnance Survey map of 1874. 'Such maps are not evidence on questions of title, or questions whether a road is public or private, but...set out every track visible on the face of the ground and are in my opinion admissible on the question of whether or not there was in fact a visible track at the time of the survey'.

*Merstham Manor Ltd v Coulsdon UDC 1936* Some judicial views on various maps 'The road is again shown on the map of 1802 by Faden and again in Greenwood's map of 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the

*topographer-author was intending to represent the road on his map as a public highway. All the Ordnance Survey maps show the road, but it was admitted by Mr Godley, a witness from the Ordnance Survey Department, that they show any road which is there on the surface whether it is a public highway or not'.*

*Masters v SSE [1999] WL 809077:* the inferences that can be drawn from thickened casing lines or 'shading' on the south and east sides of roads shown on OS maps. Where evidence is presented which shows that, on the basis of detailed comparison with other public roads in the locality, the shading of the route in question resembles the way other known public carriageways were depicted by OS, the inference may be drawn that the status is similar.

*Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR:* Contains a useful discussion on the value of a wide range of mapping evidence in a case where the expert witnesses were Dr Hodson and Professor R Kain

*Norfolk County Council v Mason [2004]:* Contains a discussion on the value of a number of different map sources as evidence.

### **Planning Inspectorate Guidance**

[Rights of Way Advice Note No.4](#) – meaning of 'cross road' See paragraph 2.24 et seq.

### **Other Publications**

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association Chapter 6.4).

'OS Maps – a concise guide for historians' - R Oliver 1993. As well as providing a concise history of the OS, it includes a lengthy chapter on the depiction of detail on OS maps, comprising a comprehensive dictionary from 'Accuracy' through to 'Zincography.' This is a very useful book for detailed information on OS maps.

'Ordnance Survey instructions to field examiners and revisers and internal Circulars (various dates 1884 – 1961) list in detail the tasks of field examiners engaged in the revision of Ordnance Survey maps at various scales in relation to roads, bridle roads and footpaths.

'Ordnance Survey Maps – a descriptive manual' - J B Harley, 1975 - A comprehensive study of the development of OS maps.

'Maps and Air Photographs,' - G C Dickinson - The first chapter is particularly good on the different mathematical projections developed for maps.

'The Early Years of the Ordnance Survey,' - C Close (published in 1926 and reprinted in 1969), - The early history of the OS, by the Director of the OS from 1911 – 1920.

'Map of a Nation – A biography of the Ordnance Survey' – Rachel Hewitt  
2010

'The Ordnance Survey of the United Kingdom' – T. Pilkington White, 1886 –  
A history of the OS by its serving Executive Officer. Available as a reprint on  
demand.

'Maps and Map-Makers' - R V Tooley 1952 – Chapter viii covers the County  
maps in detail.

## GUIDANCE

### Introduction

- 12.1 The fundamental problem with all maps is that they incorporate compromises in their efforts to represent a spherical surface onto a flat surface. Thus, no one map is capable of simultaneously representing accurately the four factors involved of distance, direction, area and shape. That said, the 17<sup>th</sup> and 18<sup>th</sup> centuries saw a tremendous surge in the development of the mathematical requirements of maps, and in the manufacture of the precision instruments required for the accurate assessment of bearing and level.
- 12.2 In many instances, the purpose of the presentation of a map at an inquiry is to support arguments regarding the status of a route. Any route on such a map needs to be assessed carefully against the route shown on the Order Map, to ensure that the routes substantially agree. The age of the map may also be significant in relation to its accuracy, as will the key attached labelling the types or status of the routes inscribed on the map.

### Pre-1800 Maps and Atlases

- 12.3 The value of pre-1800 maps and atlases is variable, as they are generally compromised by a lack of sophistication. Colonel Close, a former Director General of the OS, considered that *picturesque and interesting as old county maps are, they leave a great deal to be desired on the score of accuracy ..... errors of up to 10% can be found in Elizabethan maps*'. Only a few were based on trigonometric surveys, or on a recognised mathematical projection.
- 12.4 The original six 'Great Post Roads' are shown on Thomas Gardiner's maps of 1677. Secondary roads are also shown on these maps branching off at the main Post Towns. The key attached to some of the maps shows several of these branch routes as 'By posts (foot and horse)'. However, if the key does not accompany the maps, they are unlikely to be good evidence regarding the status of these secondary routes.
- 12.5 Most of the county maps produced in considerable numbers in the second half of the 18<sup>th</sup> century were in response to an offer by the Royal Society of Arts of a prize of £100 for a map of any county on a scale of 1 inch to the mile. In 1765, Benjamin Donn won the £100 award offered by the Royal Society for his map of Derbyshire.
- 12.6 Many of these early map makers made use of trigonometric surveys in the production of their County maps, including Burdett for Cheshire and Derbyshire, Yates for Lincolnshire, Staffordshire and Warwickshire, Armstrong for Durham, Prior for Leicestershire, Hodskinson for Suffolk and Strachey for Somerset. Cary maintained a high standard with his maps, and in 1794 was employed by the Postmaster General to supervise the survey of 9000 miles of turnpike roads. Cary also employed Aaron Arrowsmith to be the land surveyor for his 'Map of the Great Post Roads between London and Falmouth,' produced in 1784. It was as a result of

Cary's belief that he could copy OS maps without restriction that, in 1817, the OS took steps to copyright the maps it produced.

- 12.7 Although the second half of the 18<sup>th</sup> century saw considerable progress, both in the number of maps produced and in their technical accuracy, they were not always reliable for their topographical details. Dr Hodson maintains that *the greatest scope for error ... lies with the county map, few of which were surveyed entirely de novo.*<sup>19</sup> Nevertheless, in *Gallagher* Neuberger J was satisfied that the historical maps he was considering demonstrated that Beoley Lane had existed as an identified way since about 1722, accepting that old maps contained inevitable inaccuracies. He was less able to draw confident conclusions from any of the historical maps as to whether or not it was a public carriageway. The map on which he placed most reliance was that of Cary (dated post-1800).
- 12.8 However the evidential value of the older maps can be significant in helping to determine the location of a way, and may be helpful in determining the status of a route, especially in conjunction with other maps. Although the level of accuracy of sketch maps may be difficult to determine, they too can be of value in some circumstances.

#### **Ordnance Survey Maps**

- 12.9 The formation of the Ordnance Survey in 1791 reflected the experience gained in the military survey of Scotland by William Roy, the intellectual founder of OS, and was in response to a military need for accurate maps of southern England in preparation for a possible Napoleonic War. Whilst the earliest one-inch maps were produced in response to these military concerns, there was a shortage of trained military surveyors and many of the early maps were produced by local civilian surveyors. The suggestion that all road or ways shown on the first edition of the one inch maps are of roads or ways suitable for wheeled artillery is likely to be no more than a generalisation. However, the Old Series 1 inch maps did label turnpike roads and distinguished them from other roads by a thickening of the casing lines on the south and east side of the road.
- 12.10 Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century, although the sale of maps to the public had occurred throughout its existence.
- 12.11 The first one-inch maps (1:63,360) were produced in 1801 and covered Kent, part of Essex and London. It was not until 1873 that the whole of the UK was covered. They were relatively unsophisticated monochrome maps, with relief indicated solely by hachures. Inspectors may also be presented with copies of the Ordnance Drawings, which were carried out for southern England over the period 1789 – 1840. They were drawn to a variety of scales, 2 inches, 3 inches and 6 inches to the mile. Some of the drawings were made 20 years before the relevant one-inch map was

<sup>19</sup> RWLR article 'The evaluation of older maps' July 1999, section 9.3, page 31

published. Some larger scale drawings show footpaths which did not appear on the printed map.

- 12.12 A demand for maps showing the countryside on a larger scale led to a six inch to the mile map of Ireland, (1:10,560). This was then extended to the rest of the UK. From 1840, the one inch maps of northern England and Scotland were reductions of the six-inch survey.
- 12.13 The industrial development of the Victorian era, followed by the rapid expansion of towns and communications, led to a demand for even larger scale plans. In 1858, it was decided to publish the whole of the UK on a scale of 1:2500 (approximately 25 inches to the mile).
- 12.14 The first edition OS maps, in the eyes of Colby, the Superintendent of the Survey, were *prodigies of excellence in comparison with earlier maps*, but it became apparent that some of the early one-inch maps suffered from errors as they *had been made in a hasty manner during the war*. This was particularly true regarding the maps for Lincolnshire, Hampshire and Lundy Island, although Colby had sought to identify, correct and eliminate inaccuracies found during the surveying process. In addition, the maps had been constructed using a mathematical projection which had some inherent inaccuracies at the extremes of the map to the north and south. To overcome this problem, the OS utilised a series of meridians for differing parts of England and Wales. As a result, roads and paths on adjacent maps at county boundaries do not always match precisely, and reflect the north/south errors in the projection. However, since this mismatch is created by the projection process used for the making of the map, the positional accuracy is not significant.
- 12.15 The process of refashioning the old County Series scale maps to National Grid standards was undertaken between 1948 and 1980. The process, referred to by the OS as 'Overhaul' or the 'Cotswold Adjustment', attempted to eliminate errors, particularly those of distortion and mismatching. The methodology used involved a degree of 'cut and paste' technique to align the former projection with the National Grid. Recent advances in global positioning systems and their ready availability have revealed positional discrepancies on the ground. These differences, where they occur, are normally of 3 – 5 metres, but can be up to 10 metres in places. However, the fact that satellite technology may demonstrate that all the objects in a given area are a few metres out in relation to their current depiction on a two-dimensional plan will have little impact upon the relative position of one feature to another on the ground. Any positional inaccuracy revealed by GPS technology does not detract from the usefulness of pre-GPS Ordnance Survey maps as a record of what was observable on the ground at the time of the maps were surveyed.
- 12.16 The status of routes on early OS maps is still a matter of debate at inquiries. The following points may assist in reaching a decision on the evidence provided by a particular map.
- 12.17 Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the

middle of private land. Consequently it cannot be assumed that a bench mark is indicative of a public right of way.

- 12.18 Access for surveyors was governed by the Survey Act of 1841, which gave surveyors virtually unlimited access. Thus, the indication of spot heights along a route would not necessarily be proof of a public right of way.
- 12.19 The practice of annotating paths 'F.P.' on large scale maps from 1883 arose from an instruction to surveyors issued in February of that year (quoted by Dr R Oliver in *'OS Maps – a Concise Guide for Historians'*) that *'the object of... 'F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic'*. The inclusion of "F.P." gave rise in 1885 to letters being written to *The Times* complaining that the public were likely to view such annotations as indicating the existence of a public footpath. On behalf of the OS, Col. Pilkington-White responded that it was the practice to show paths on the ground, irrespective of whether they were public or private. From 1888, Ordnance Survey maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way<sup>20</sup>.
- 12.20 An 1893 OS circular instructed that *"all footpaths over which there is a well-known and undisputed public right of way should be shown"*. This instruction appears to be at odds with the disclaimer that the post-1888 maps carried and with the 1885 response of Col. Pilkington-White in *The Times*. The 1893 Circular was also issued after the 1893 Dorrington Committee had concluded that no inquiry by the surveyor could determine whether a path was a public or private one.
- 12.21 The Instructions to Surveyors (see 'Other Publications' above) set out the parameters under which the surveyors were to undertake their task. It was not until 1905 that surveyors were instructed that 'OS does not concern itself with rights of way, and survey employees are not to inquire into them.' However in the same paragraph of these Instructions, there is a note stating that *'A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public'*. The 1905 instructions appear therefore to be somewhat ambiguous; subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.
- 12.22 The Dorrington Committee also recommended the adoption of a fourfold classification scheme for roads being shown on OS maps, with each classification being dependant on the width of the road at issue and the type of traffic each road could carry. In relation to what were to be shown as first and second class roads, the committee considered that it was *'desirable that the roads thus classified as first and second class should be of such a nature that the public are certain of having free access over*

<sup>20</sup> On late 20<sup>th</sup> century OS maps which show those ways which are recorded in definitive maps and statements, the disclaimer is modified to acknowledge that some routes shown are public rights of way.

*them, not disturbed either by their physical condition or by their being private' and that 'any of the roads in these two classes which are not repaired by an authority under legal obligation to maintain them, and are in consequence not highways, should be indicated by a slight modification of the characteristic adopted, such as dotted lines. This paragraph would apply principally to roads in public and private parks, private roads of good character, but not necessarily open to the public.'*

- 12.23 A number of other documents were produced in connection with the production of OS maps which can be of assistance in providing supporting evidence of the existence and status of some routes. Information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Some of the County Series maps were accompanied by Books of Reference, which contain details of the numbered land parcels. Other sources of information include Boundary Remark Books and the subsequent Boundary Record Maps.
- 12.24 In 'OS Maps – a concise guide for historians,' Oliver states that *Footpaths and bridleways were not normally identified as such on 1:10,560 and larger scale mapping prepared before c1883, although occasional exceptions are encountered, e.g. on several 1:10,560 or 1:2500 first edition sheets in Yorkshire, North Riding and southern Durham. Otherwise, particularly on 1:10,560 maps, foot and bridleways, tracks and very minor roads look much the same.* Oliver also states that pecked lines were used for features which were not obstructions to pedestrians, which were indefinite, or surveyed to a lower standard than usual. They could also be used to indicate overhead details such as electricity transmission lines.
- 12.25 From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road. In a paper by Yolande Hodson 'Roads on OS 1:2500 Plans 1884-1914' (RWLR July 1999) explains the background to this practice and Dr Hodson remarks that the primary purpose of the shading of roads on the large-scale maps was to guide the draftsman in the preparation of revisions to the 1" maps. Although Dr Hodson concludes that shaded lines are not necessarily an indication that such roads shown in such a manner were public, the judgment of Hooper J in the case of *Masters* at first instance suggests that, in some circumstances, this may have been the case.
- 12.26 The 1" series of maps produced from the 1890s onwards (including the 'Popular' series) were marketed at the touring and walking public and paved the way for the current small-scale Explorer and Landranger series. These maps were produced to compete with the product of the commercial map makers in business at the time (primarily Bartholemew, whose 1/2" series had been extensively used by the military in the Great War as it contained a coloured road classification system). In 1912 a War Office Committee had recommended the introduction of a coloured system of road classification for OS maps which was used in the



preparation of the Popular Edition (1919 – 1926). The Committee recommended that “*Carriage Drives, private roads and minor roads are never coloured*”; whereas on the popular edition the key stated “*private roads are uncoloured*”.

- 12.27 Until 1931, the OS and highway authorities used different systems to classify roads. Although the numbers used in the Ministry/Department of Transport’s national classification began to appear on 1:2500 maps from 1938 and on 1:10,560 maps from 1945, OS had begun publishing the half inch Ministry of Transport Roads Map series showing the national classification in 1922.
- 12.28 Most roads on OS current 1:25,000 and 1:50000 maps are coloured according to their category, as identified in the key/legend. However, some minor ways may be left uncoloured. These are known informally as “White Roads.” The OS has consistently felt unable to identify the status of these minor ways which are described as “other road, drive or track.”
- 12.29 The areas of each field were published on 1:2500 maps, with a parcel number to identify the particular field. Bracing indicates parcels that were measured together. A road braced with a private field may be suggestive of private status. But this would be no more than the surveyor’s perception and would carry little evidential weight.
- 12.30 Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage. It has been argued that all parcels which have the shape of a way and are so numbered and measured are therefore highways. This argument has not been substantiated. Such depiction is far from conclusive for the confirmation of highway status.
- 12.31 Later OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey. The inaccuracies of the earlier projection were virtually eliminated by the development of an alternative form of map projection. However, it should be emphasised that the depiction of a way on an OS map is not, of itself, evidence of a highway. The courts have treated Ordnance Survey maps as not being evidence of the status of a way. For example, in the case of *Attorney-General v Antrobus* [1905] 2 Ch 188 at 203, Farwell J stated in relation to an Ordnance map of 1874:
- “Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey”.*
- 12.32 Similarly, in *Moser v Ambleside Urban District Council* (1925) 89 JP 118 at 119, Pollock MR stated:
- “If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they*

*are only indicative of what are the physical qualities of the area which they delineate....."*

- 12.33 In *Norfolk CC v Mason* [2004] NR205111, Cooke J observed "*Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights—though no doubt it is obvious what a blue line labelled "M1" must mean.*"
- 12.34 Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21, 'Evidential Weight' refers).

#### **Other post-1800 Maps**

- 12.35 The 19<sup>th</sup> century saw a considerable increase in the production of maps in the UK. Estate Maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate. They usually form part of a collection of estate papers, which may be deposited in county record offices.
- 12.36 Bryant and Greenwood produced well-made maps, using surveyors and a triangulation system. Greenwood published surveys of 38 counties between 1817 and 1834, while Bryant covered 11 English counties between 1822 and 1835. There was considerable competition between them, with both publishing maps virtually simultaneously for Surrey (1822/1823) and Gloucestershire (1824). The competition between Bryant and Greenwood, and the other map makers, may explain why the standards of accuracy of some of the maps produced differ from county to county. Though Greenwood employed his own surveyor for his triangulation work, there was criticism by Thomas Hodgson, also a surveyor, that Greenwood's system of measuring distances for his maps was based on 'pacing' not 'chaining.' Hodgson suggests that *the high costs of Greenwood's surveys and the speed with which they were done, reinforces the view that his topographical mapping was imperfectly executed*<sup>21</sup>.
- 12.37 Other map makers producing County maps at the time included Baker, Campbell, Donald, Drinkwater, Ellis, Fryer, Green, Hennet, Hutchings, Jeffreys, Lindley and Crossley, Phillips, Price, Ruff, Swine and Teesdale. Most of these businesses collapsed due to the increasing competition from the OS.
- 12.38 Maps produced to record specific activities, such as mining and encroachment, are generally good evidence of what they portray.
- 12.39 In 1901, the War Office was using large numbers of the half-inch series maps produced by Bartholomew. These had been reduced from OS

<sup>21</sup> RWLR article 'The evaluation of older maps' July 1999, section 9.3, page 31

maps, but Bartholomew's maps included a new method of layer relief colouring, which was particularly popular with the War Office.

- 12.40 Some Motorists' or Cyclists' maps are occasionally quoted as evidence that routes had been used by vehicles prior to the date when the Road Traffic Act 1930 made the use of motor vehicles on bridleways and footpaths an offence without lawful authority. Certainly there is some evidence that the CTC (Cyclists Touring Club) corresponded with Bartholomew regarding routes used by their members. However, current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists. Neither do they appear to have assessed the legal status of the roads on their Motorists' Maps prior to publication.
- 12.41 As a result of the OS taking HG Rowe and Co to the High Court in 1913 for infringement of its copyright, it was legally established that Rowe's New Road Map for Cyclists and Motorists was no more than a direct photographic reduction from the OS map.
- 12.42 Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.

#### **Aerial Photography**

- 12.43 Aerial photographs may be presented at an inquiry in order to confirm the existence of a route at the time the photographs were taken. Confirmation is often difficult, especially if confirmation of a footpath is sought from a single photograph. It must be borne in mind that it is hard to determine the correct orientation of the photograph unless the direction of the flight has been indicated on the back of the photograph. It is essential to try and find 3 points on the photograph which are shown on the map. The orientation of the photograph should be checked with a map and it must be remembered that the scale of the map and the photograph is likely to differ. The time of day a photograph was taken can be significant, as shadows can hide or distort the line of a narrow path. An oblique photograph may also hide a number of features which exist on the map.
- 12.44 An aerial photograph cannot be taken as evidence of what rights might exist over a route, only that a route might be discernible on the ground at the date when the photograph was taken.

#### **Concluding Comment**

- 12.45 Most maps are potentially helpful evidence of the physical existence of routes, especially if consistently shown. However, they are less helpful in

terms of determining the status of the routes shown, and all mapping evidence is more helpful in conjunction with other evidence.

## **SECTION 6     HIGHWAY RECORDS AND RELATED DOCUMENTS**

### **REFERENCE MATERIAL**

#### **Statutes**

Highway Act 1835 – sections 5 & 23

Highways Act 1862

Public Health Act 1872

Highways and Locomotives Act 1878 (see 'Turnpikes')

Local Government Act 1894

Local Government Acts 1924, 1929

Rights of Way Act 1932

National Parks and Access to the Countryside Act 1949

Highways Act 1980

Note: The above list is not exhaustive. They are some of the acts from which Highway Records may emanate.

#### **Case Law**

*R v SSE & Somerset CC ex parte Masters [1999] CO3453/97* – amongst other things, evidential status of 1929 Handover Maps

*Fortune and others and Wiltshire County Council [2010] EWHC 2683 (Ch) and [2012] EWCA Civ 334* – thorough examination of relevant highway documents and their evidential value

#### **Other Publications**

Articles in Sections 1 (History) and 9 (Evidence of the Existence of Highways) of the RWLR.

## **GUIDANCE**

### **Introduction**

- 6.1 All highway records have to be interpreted carefully, with particular attention paid to the meanings of words within the given context. Usually they will provide suggestive, rather than conclusive, evidence on the case as a whole, but they may be conclusive evidence of what they purport to show. Below are listed some of the types of highway records that may be presented at inquiries, with some general commentary. It is helpful, in understanding 19<sup>th</sup> century evidence, to know something of the development of the highway network in England and the legal framework within which the development took place. The RWLR article on 'Highway Use and Control up to 1895' provides a useful outline.

### **Manorial Records**

- 6.2 Manorial records may include Court Rolls (which carry the same weight as their successors in Quarter Sessions); and books and papers relating to a variety of matters, including references to issues connected with highways and bridges.

### **Quarter Sessions and Petty Sessions**

- 6.3 Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required. Petty Sessional records may also be a source of evidence.

### **Deposited Plans of Public Undertakings**

- 6.4 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters of canal or waterworks bills (and later bills for other public undertakings) were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, although in practice local deposit had been taking place from a much earlier date.
- 6.5 Plans of canals, river navigations and highway diversions are common from 1793 onwards. By the early 19<sup>th</sup> century, records of harbour works and turnpike improvements are also found. From 1829 until the late 19<sup>th</sup> century railway undertakings predominate. (Canal, Railway and Turnpike

documentary evidence is covered in more detail in later sections of these guidelines). Papers relating to schemes for street lighting, tramways, gas, electricity and water undertakings become numerous in the late 19<sup>th</sup> century.

- 6.6 Any of these various types of document may provide evidence on adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways.

### **County Records**

- 6.7 County records go back into the 19<sup>th</sup> century and may consist of any of the following, in addition to those items already mentioned:

County Surveyor's Annual/Quarterly Reports

Report of County Works Committee

Special Reports on Main Roads

Various minutes, estimates, tenders and grants

Rights of Way Reports

1929 Handover Maps and Records

County List of Streets

County Surveyor's Map and other records of Roads and Bridges

Aerial Photographs

Definitive Maps and Statements

Often these records bear notes relating to rights of way. Some of the annotations may have been for internal administrative purposes and may sometimes reflect only the views of the surveyor or engineer of the day. The evidence they provide therefore needs to be viewed in context. An article in Section 9 of the RWLR called 'Highway Authority Records' provides helpful background, particularly on those relating to County Roads and the Definitive Map.

### **1929 Handover Maps**

- 6.8 The following comments apply to the 1929 and all other formal handover/takeover documents and to today's List of Streets<sup>8</sup>. The view that this form of documentary evidence may be relevant appears to have been endorsed by Hooper J in *R v SSE and Somerset County Council ex parte Masters 1999*. The Secretary of State for the Environment (SSE) had argued that such documents were a positive indication of what the Highway Authority then believed to be the status of the roads listed.

<sup>8</sup> Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up to date, a list of streets within its area which are highways maintainable at the public expense.

Hooper J rejected as irrelevant a counter argument that SSE's conclusion was one which could not lawfully be reached in the light of *Stevens v SSE 1998*. He found that SSE's decision to treat the handover documentary evidence as a relevant consideration had not been one that no reasonable tribunal could have taken on the evidence available, i.e. it was not 'Wednesbury unreasonable'<sup>9</sup>. It should be noted that it is unsafe to hold that the fact that a road does not appear to have been accepted by the new highway authority at the time of handover necessarily suggests that it can not have been a highway.

- 6.9 The evidential strength of handover and similar documents is that they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment that would not normally have been undertaken lightly. However, Inspectors should be mindful that these documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights. Consequently, while such evidence may weigh in favour of the existence of public rights, their evidential weight will be for the Inspector to decide in the context of other evidence.

#### **Highways Act 1980 Section 56**

- 6.10 It is sometimes argued that a successful claim against a highway authority under HA80, s56, at the Magistrates' Court and is a legal event which establishes a public right. The Court's decision may be legal evidence of a maintenance responsibility, and may be evidence in support of public rights; but it is not, in itself, conclusive in that respect.

#### **Deposited Maps of Admitted Rights of Way**

- 6.11 Under s31(6) of the Highways Act 1980 a landowner can deposit with the appropriate Council a map of their land on a scale of not less than 6 inches to the mile with a statement indicating what ways (if any) over the land they admit to have been dedicated as highways. If this is done, a statutory declaration by the owner or his successors in title should be lodged within 10 years to the effect that no additional way (other than specifically indicated in the declaration) has been dedicated. Similar statutory declarations should be made every subsequent 10 years.<sup>10</sup> As this procedure was first introduced in the Rights of Way Act 1932, records of any statutory declarations made can go back many years. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner or his successors in title to dedicate any additional highway during the associated relevant period. Councils are required to keep a register of these deposits and declarations for public inspection.<sup>11</sup>

<sup>9</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB223

<sup>10</sup> This figure was amended from six years to 10 years by the Countryside and ROW Act 2000 and came into force in England on 13 February 2004 and in Wales on 31 May 2005. Transitional provisions apply to deposits and declarations made prior to the change.

<sup>11</sup> Brought into force in England on 1 October 2007 (Statutory Instrument 2007/2334) and in Wales on 15 January 2006



- 6.12 Following the 1932 Act, many local authorities began to produce lists and maps usually only of non-vehicular rights of way, which may survive in more or less detail. Such documents may reflect the view of the authority, and may provide supporting evidence of the status of a way, but are not conclusive.

### **Parish Records**

- 6.13 Prior to 1894 when the Local Government Act transferred responsibility for the maintenance of public highways to Rural District Councils, such responsibility generally belonged to the parish. Relevant Acts often included provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. Some of these records survive, usually in county archives. Under the 1862 Act parishes could combine to form Highway Boards, and their records are also found in county archives.
- 6.14 It is generally accepted that longer distance use of horse drawn vehicles increased significantly during the late 18<sup>th</sup> and early 19<sup>th</sup> century. Some highways which had been adequate for hooped traffic were unsuitable for wheeled traffic and consequently fell into disuse. Parishes were often reluctant to expend time, money and effort for the benefit of travellers who merely passed through. It was frequently the maintenance of highways, which was the main point of contention in legal wrangles concerning the highway network, not the rights to use a particular highway.
- 6.15 Because of the reluctance of some parishes to spend money on highway maintenance, a rebuttable presumption can arise from an entry in a local Highway Surveyor's Account Book. However, it is necessary to check that the highway can be identified accurately from the records. Some of the names used may since have been changed, corrupted or, like some highways, have fallen into disuse.
- 6.16 More recent parish records are also of great importance, particularly those relating to the Parish Survey from which the Definitive Map followed. These usually include a statement which accompanied the Draft Map, a survey card and also the relevant contemporary parish council minutes.

### **Deeds of Sale (Conveyance or Transfer)**

- 6.17 The inclusion of a specific reference to a public right of way within (or adjacent to) land being conveyed is of some evidential value. However, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. Similarly, the inclusion in a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is no public right over it. Mutual private rights might have been included by the conveyancer out of

abundant caution. The evidence provided by a conveyance or transfer needs to be considered along with all other relevant evidence.

- i Sales particulars, as opposed to the actual conveyance document, should be treated with special caution. The art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

## SECTION 8 TITHE COMMUTATION DOCUMENTATION

### REFERENCE MATERIAL

#### Statute

Tithe Commutation Act 1836 ((as amended by the Tithe Act Amendment Act, 1837)

#### Case Law

*Robinson Webster (Holdings) Ltd v Agombar (2001)*(9 April 2001 HC 000095); weight attached to evidence of occupation of land by the parish officers

*Attorney – General v Antrobus [1905] 2 Ch 188*: Whether or not a piece of land is a road *is one of the matters material to the preparation of the award and plans*. This is subsequently qualified by... *I must not be understood as deciding that, in my opinion, the tithe map would be evidence on any matter (although it is a public document) which is not within the scope and purview of the authority of the Commissioners who made it*

*Copestake v West Sussex County Council [1911] 75 JP 465*: The tithe map is not admissible as evidence of the extent of a public right ... *It was the business of the person responsible for making this map to ascertain what land in the parish was, and was not, titheable. It was not their business to define the extent of public rights of way*. However, this would not be regarded as correct today. (See *Maltbridge Island Management Co v SSE* below)

*Maltbridge Island Management Co v SSE and Hertfordshire County Council [1998] EWHC Admin 820*: Sullivan J held that evidence based on an analysis of Tithe Maps and Apportionments may be admissible as to the existence or non-existence of a public right of way. The weight to be attached is a matter for the Inspector. It cannot be conclusive. He also approved the passage in *Sauvain*, 2<sup>nd</sup> Ed, p47, paragraphs 2-72

*Kent County Council v Loughlin [1975] JPEL 348, 235 EG 681*: The judgment asserts that *on the question of whether there was a road at the specific place the tithe map was of much importance*. The judgment continues that the absence of a lane from the tithe map is sufficient to show that the lane did not exist as a road at the time, but Lord Denning MR acknowledged that it could have existed as a footpath. (But see also *Gallagher*)

*Giffard v Williams (1869) 38 LJ Ch 597*: It is impossible to treat the tithe map otherwise than as a public document

*Smith v Lister (1895) 64 LJ QB 709:* Accepts both first and second-class maps as evidence

*Stoney v Eastbourne Rural District Council [1927] 1 Ch 367:* The judgment maintains that ..to say that an ordinary pasture or arable field, over which a right of public footpath exists, has its titheability confined to other parts of the field, not including the small strip of land covered by the footpath, seems to me quite contrary to common sense and to the documents which we have before us

*Attorney – General v Stokesley Rural District Council [1928] 26 LGR 440:* If produced from proper custody, tithe maps may, in cases where the question is whether a highway was dedicated to the public before or after 1836, be used in conjunction with evidence of uninterrupted user within living memory as evidence that the way was dedicated to the public

*Webb v Eastleigh Borough Council 1957:* Although maps may be evidence of the existence of a highway, they are not evidence of the legal boundaries of the highway

*Merstham Manor Ltd v Coulsdon and Purley Urban District Council [1937] 2 KB 77:* Tithe maps make no distinction between a public and a private road, their object is to show what is titheable and the roadways are marked upon them as untitheable parts of land whether they are public or private

*Attorney-General v Beynon [1970] 1 Ch 1,* a tithe map was stated to be admissible evidence for determining the physical boundary of a road

*Commission for New Towns v J J Gallagher Ltd [2002] 2 P & CR 24:* A lane, owned by two people, farmed as pastureland with tithe rent-charge apportioned to it is not inconsistent with it being a public carriageway

### **Other Publications**

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association), pages 139 and 140

The Tithe Surveys of England and Wales, by Roger Kain and Hugh Prince, CUP 1985

The Tithe Maps of England and Wales, by Roger Kain and Richard Oliver, CUP 1995

The Planimetric Accuracy of Tithe Maps, *The Cartographic Journal* vol 13 part 2 (Dec 1976) pages 177-183

Tithe Surveys for Historians' by Roger J P Kain and Hugh C Prince (published by Phillimore & Co. Ltd) 2000

Instructions issued by the Tithe Commissioners to the tithe map surveyors for the purpose of the Tithe Commutation Act 1836 (PRO IR18 14586)

'Conventional Signs to be used in the Plans made under the Act for the Commutation of Tithes in England and Wales (British Parliamentary Paper 1837 XLI 405)

Relevant articles may be found in the Rights of Way Law Review

## **GUIDANCE**

### **Introduction**

- 8.1 The 1836 Act converted tithes (the tenth part of the annual produce of agriculture), provided for the support of the priesthood and religious establishments, into a tithe rent-charge, a monetary payment based on the seven year average price of wheat, oats and barley. This was normally done parish by parish and resulted in some 12,000 documents which apportioned the payment fairly over the different lands in the tithe district. The apportionment of tithes was recorded in a schedule and on a map. Files containing correspondence pertaining to the production of the documents occasionally survive in local record offices.
- 8.2 Tithe documents are solely concerned with identifying titheable land. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good evidence as to whether land was titheable or not titheable. However, tithe maps were not intended to establish or record rights of way. There are a number of reasons why land might not have been subject to tithe in addition to the possibility of it being highway land. One of these was that the land was barren, but other examples include land held either by the church or some other religious community, or land which had only recently been converted to productive land from previous barren heath or waste land. It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain, or to lay down rigid rules for their interpretation. Tithe commutation documents vary considerably from one to another in quality and detail.
- 8.3 The referenced article 'Interpreting Tithe Map Evidence', includes a useful extract from the instructions issued to the tithe map surveyors, and provides a helpful insight into the subject. The remaining 'other publications' provide additional insight into the tithe commutation process. However, the importance and interpretation they place on the depiction of a route as a separate parcel of land is not altogether agreed.

### **Case Law**

- 8.4 While there appears to be some divergence of opinion between some of the judgments, this is not necessarily the case. Both *A – G v Antrobus* and *Kent County Council v Loughlin* relate to roads which would have crossed someone's titheable landholding and which were not shown on

the tithe map (negative evidence). In *Copestake v West Sussex County Council* the road was shown bounded on either side by the fences of old enclosures (positive evidence). In the former cases, but not the latter, the presence, or not, of a road was clearly a material matter, as it would have affected the productivity of the landholding and hence the rent payable. (See also *Gallagher*.)

### **Evidential Value**

- 8.5 Tithe documents can generally give no more than an indication as to whether any way is public or private. This is because a private right of way can diminish to no less an extent than a highway the productiveness of the land for tithe assessment. Nevertheless, the absence of a route from a Tithe Map does not necessarily mean that no highway existed. It may simply mean that its existence had no effect on the tithable value of the land (see also 'Status' below). Where tithe maps are shown to have been based on earlier parish or estate maps (see below at 8.10, they may have evidential value relating to the purpose for which they were originally produced.

### **First and Second Class Maps**

- 8.6 The Tithe Commissioners appointed Lieutenant R K Dawson as the Assistant Tithe Commissioner and Superintendent of the surveys. He produced advice and instructions on the technical specifications for the maps which, in part, led to the amendment of the Tithe Commutation Act.
- 8.7 The amending Act of 1837 established two classes of tithe map. First class maps had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed. However, second class maps, which failed in some, often minor, way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Both first and second class maps have been accepted by the courts as evidence.
- 8.8 Following the amendment to the 1836 Act, the Tithe Commissioners revised their instructions on the form of maps, setting out that the most acceptable plans would be the plain working plans containing little ornamentation and colour. (See below with regard to copies.) Whilst First Class Maps still had to conform to the prescribed technical specifications in terms of surveying techniques, the Commissioners no longer considered it essential for a system of conventional signs to be used.
- 8.9 Maps may have been newly prepared for the tithe survey, but existing maps could also be used as a base. These varied from estate maps to Township and Parish Maps, some of which may have dated from many years prior to the tithe commutation process. The decision on whether or not to commission a new survey was entirely a matter for the landowners concerned.

## **Statutory Copies**

- 8.10 The 1836 Act required three maps to be produced: an original and two statutory copies. The original was retained by the Tithe Commissioners; one copy was for the relevant diocesan office and the second copy was for local deposit in the tithe district. The original map may be less colourful than the copies produced for local use and there may be variations between the maps. Some of the variations may be due to copying error and some may be deliberate (for example the use of extra colour or adornment). It is therefore important to identify which copy of the map is being examined. The original maps are generally the ones to be found in the Public Record Office.

## **Other Related Documents**

- 8.11 Each Tithe Map will have been accompanied by an Apportionment giving the details of the way in which payment of the commuted tithes had been divided up or 'apportioned'. In addition there may be a file of incidental notes and documentation containing information on a variety of related matters and in varying detail. Either of these documents may provide information which can assist in the interpretation of the map in relation to the existence of highway rights. Without reference to these documents, the value of the evidence of the map alone may be affected.

## **Colouring of Roads**

- 8.11 The colouring of a road (usually sienna) on a tithe map is not, in itself good evidence of public vehicular rights. There is general agreement among the RWLR authors that the colouring on maps varies. It is therefore important to establish whether there is a key or other information in the tithe documents which provides an explanation. In the absence of such an explanation or other corroborative evidence the colouring is arguably of little evidential value in itself.

## **Status**

- 8.12 Both public and private roads had the capacity to diminish the productiveness of land for the assessment of tithe. It follows therefore that the inclusion of a road under the heading 'roads and waste' is not, in itself, good evidence that it was public. However, the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights. Where a road is shown braced to adjacent titheable land, this indicates that the parcels have been measured together and tithe apportioned accordingly. It is not inconsistent with the existence of highway rights (see *Gallagher*). The Award will sometimes establish the ownership of the way depicted, but again, this does not preclude the existence of highway rights. It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.

## **Concluding Comment**

- 8.13 Tithe maps are generally good evidence of the topography of the roads they portray, especially those which form boundaries of titheable land.

They may not necessarily be good evidence either of public rights or the nature of any public right that may exist. The full value of a particular map can only be determined by careful consideration of all the available tithe documents, including any relevant contemporaneous instructions or keys, and by comparing it with other reputable maps of the time to establish the relevance of the way to the overall road network. However, as statutory documents, where they do provide evidence it should be given the appropriate weight bearing in mind the original purpose of the documents concerned and the issues identified above.



## **SECTION 11 PART 1 - FINANCE ACT 1910**

### **REFERENCE MATERIAL**

#### **Statute**

Finance (1909 – 1910) Act 1910

*Inspectors should be familiar with the following sections:*

- Sections 7 –10; 35, 37 & 38: Exceptions
- Section 25: Allowable deductions
- Sections 26 & 27: Valuation of land for the purposes of the Act
- Section 30: Duties of Commissioners to keep records

#### **Case Law**

*Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (ch) (9 April 2001)* – weight attached to evidence of non-inclusion of a route in the taxable land of a hereditament

*Maltbridge Island Management Co v SSE (31/7/98)* – whether weight may be attached to Finance Act evidence

*Fortune v Wiltshire CC [2012] EWCA Civ 334* – significance of the exclusion of a route from adjacent hereditaments when weighed with all other relevant evidence

#### **Other Publications**

'Valuation Office Records Created under the Finance (1909-10) Act 1910', National Archives Information Leaflet no. 68

'Land and Society in Edwardian Britain', Brian Short, Cambridge University Press, 1997

Maps for Family and Local History, The records of the Tithe, Valuation Office and National Farm Surveys of England and Wales, 1836 – 1943, Geraldine Beech and Rose Mitchell, published by The National Archives, second edition, 2004

The National Archives Research Guide, National Farm Surveys of England & Wales, 1940 – 1943

The National Farm Survey 1941 – 1943; State Surveillance and the Countryside in England and Wales in the Second World War, Brian Short,

Charles Watkins, William Foot and Phil Kinsman, published by CABI Publishing, 1999

The following articles, which are of interest, have appeared in the RWLR

'Rights of Way and the 1910 Finance Act,' - Zara Bowles, RWLR Sept 1990 (see below at 11.2);

'Uncoloured roads on 1910 Finance Act maps,' David Braham Q.C. May 2002

## **GUIDANCE**

### **Introduction**

11.1 The 1910 Act provided for the levying of tax ('Increment Value Duty') on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, *the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land* (Section 25(3)).

11.2 Whilst numerous articles of relevance have appeared in the RWLR, 'Rights of Way and the 1910 Finance Act' by Zara Bowles (RWLR Sept 1990) provides a short overview of the Act in relation to public rights of way. However, some of the views and conclusions expressed should now be seen as questionable as subsequent research has informed general understanding of these records. Professor Short's book and the National Archives leaflet set the historical context.

### **Evidential Value**

11.3 Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways-

- reference to it in one or more of the various documents forming part of the valuation process, or
- exclusion of a route from the assessable parcels of land shown on the map record.

#### *Reference to a possible route in the documentation*

11.4 An early part of the valuation process was the completion of a 'Form 4' by the landowner. This form asked whether the relevant unit of land ownership (these were known as 'hereditaments') was subject to any public rights of way or any public rights of user. Information from Forms 4 was copied into Field Books in the District Valuation Office before the valuers went into the field to inspect and assess the hereditaments. In these books, and in other forms such as Form 36, sent back to landowners with the provisional valuation, and Form 37, the office copy

of Form 36, the distinct categories were run together into 'public rights of way or user'. Information from the Field Books (which are kept in the National Archive at Kew), including deductions in value for 'public rights of way or user', was copied into the relevant columns in the Valuation Books, which are normally now found in Local Record Offices. Working plans (see below at 11.7), sometimes with detailed annotations, were completed in the field and the final record plans, which normally show only hereditament boundaries, were compiled from them.

- 11.5 Although direct evidence of the acknowledgment by a landowner of a public right of way from an entry on a Form 4 may be considered to be very strong, the vast majority of them were destroyed after the transcription of their information into the Field Books. However, evidence of the existence of a public way across a hereditament may be deduced from, for example, a Field Book entry showing a deduction under 'public rights of way or user', with further clear hand-written details, such as use of the words 'public footpath'. The position of such a way may be shown by annotations on the working plans or written information in the Field Book. But where hereditaments were large and crossed by numerous paths it may not be possible to conclude from written information that a particular route was referred to. Even where field plans are annotated, and paths marked as 'public', it may be unclear when and by whom annotations were made. Evidence from Field Books and plans may provide good evidence of the reputation of a way as public, but care should be exercised when drawing conclusions from material not known to be provided directly by or on the authority of the landowner.
- 11.6 It has been asserted that the term 'public right of user' refers to private rights of way, but, apart from some apparently anomalous entries on a few surviving Forms 4, there is no evidence of this use of the term. It would normally refer, when distinguished from a public right of way, to a non-linear public right, such as a right of recreation. A private right of way is normally a form of easement, and a deduction for such a way would be expected to be found under the heading of easements.

*Exclusion of a route on the map record*

- 11.7 Working copies of the plans are normally found in Local Record Offices. Most final record plans are in the National Archive. They are based on large-scale Ordnance Survey plans. The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. It is possible, but by no means certain, that this is related to s.35(1) of the Act: *No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.* The practice would also be compatible with s.25(3) which states that *The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to... any public rights of way.* So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was

considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award (see section 7) for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach. Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of 'roadways' from plans, but do not explicitly spell out all the circumstances in which such an exclusion would apply.

- 11.8 In his article 'Uncoloured roads on 1910 Finance Act maps' (RWLR May 2002) David Braham Q.C. considers the significance of exclusion of a route from assessable land. This approach received judicial endorsement in the case of *Fortune v Wiltshire CC [2012]* in which Lewison J gave careful consideration to the interpretation of routes excluded from adjacent hereditaments. In essence he concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle" to be considered along with other relevant material particular to each case.

#### **Concluding Comment**

- 11.9 Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.