

# Advice on Researching an Unrecorded Route in England and Wales

**The law and management of public access rights varies between the four countries of the United Kingdom. This advice note applies to England and Wales only. There is an equivalent factsheet for Scotland. [www.bhs.org.uk/accessadvice](http://www.bhs.org.uk/accessadvice).**

If this is a printed copy, please check the website to see if it is the latest version (date top of page 2).

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The advice note is intended as a sequel to the *2026 Toolkit Help us preserve your equestrian routes*, giving you further information on how to research an unrecorded route with a view to making an application for a Definitive Map Modification Order to add the right of way to the record. You can download the *Toolkit* and companion guide *Recording a right of way* from [www.bhs.org.uk/accessadvice](http://www.bhs.org.uk/accessadvice).

The Definitive Map of Public Rights of Way is the legal document held by each highway authority which records bridleways and byways. It is known to be incomplete, especially regarding equestrian rights of way, which were often omitted or put on as footpaths. It is very important that all equestrian rights are recorded correctly on the map otherwise they could be lost to riders and carriage drivers at any time. The BHS strongly encourages all equestrians to check whether the routes they use, or could use, are recorded on the Definitive Map as bridleway or restricted byway and to undertake the process to add them if they are missing. The process involves researching the route and making an application for a Definitive Map Modification Order to the highway authority.

## Researching a Route

There are various ways of researching routes, either individually or by area; the process for each route is the same. There are five steps:

- Work in progress
- Documentary evidence
- Physical appearance
- Use
- Negation

The order of the steps is not important; you may first wonder about a route because people have been using it, or because you come across it in a document, or because you see it while out. It is helpful to check all steps, especially the first and last, which can avoid you wasting your efforts.

**Work in progress** means that something may be in hand with the highway authority which does not show on the Ordnance Survey map. Any modifications to the Definitive Map are not shown on the OS map until its next revision. Examples of work in progress are that a right has recently been recorded and is not yet shown or that the highway authority is already aware of evidence of an unrecorded right.

For the latter, this may be because someone else has made an application, or the authority has discovered evidence about an unrecorded right. In either case, depending on the stage of the investigation, it could be valuable for you to search for additional evidence when you know what has already been discovered. It may also be advisable to submit an application in your own name so that you are in a position to appeal to the Secretary of State if the authority decides not to make an order.

The route may also be recorded on the highway authority's List of Streets. These are known to be public routes, but their actual status may not be certain. Most require an evidential modification order process to determine their status. Ask the highway authority to confirm in writing the status of the route. Keep that letter safely as you may need it at a future date. If the authority can only state "at least a highway on foot" (which is a common response) you should continue with your case, incorporating the highway records as part of your research and evidence. If the status is confirmed as having equestrian or vehicular rights, you may wish to concentrate your efforts on another route, although inclusion on the List of Streets is not as conclusive as being recorded on the Definitive Map because it is a record of maintenance liability only, not of status, and there has been little regulation over how its records are kept.

**Documentary** evidence comprises the documents such as maps and other records which show or mention the route and what that implies about its status.

**Physical** appearance requires a site visit (or aerial photographs may help if it is inaccessible) to know whether it has clear boundaries (hedges, ditches, fences, walls), is surfaced and with what, shows signs of use, has route markers (milepost, guide stone), has bridges or fords or gates.

**Use** means talking to local people to find out whether it is used now or has it been used in living memory and what is the users' understanding of its status – have they used it as if it was a right of way or do they know it only as access to land by its occupiers.

**Negation** means something may have happened that has removed a historic right or prevented a right coming into being such as a court order which closed the road. If this should be the case then any evidence prior to that date is likely to be negated or irrelevant so your efforts should focus on evidence that the right arose after the negation.

## Getting Started

Photocopy the relevant part of the current 1:25,000 Ordnance Survey map. You will refer back to it many times as you check other sources of evidence against it and having an A4 page can be more convenient than using the full map sheet.

You may want to highlight the route on your copy. This is helpful if you are working on a case (or an area) with others. If you are covering an area, highlighting and numbering all the routes you are considering helps ensure everyone involved, now or in future, is always referring to the same route.

Cassini Publishing prints each of the old Ordnance Survey map series – the Old, Popular and Revised New – and they are available individually or as a box set for any area. The box set costs £25 (2014) but could be worth it if you research more than one route in the map area. Many people find a paper map easier to deal with and they are more likely to see something useful. Alternatively, there are several websites with old maps which can be printed at home in small areas or saved as images.

## Check List of Documents

This is a comprehensive list and a route is very unlikely to be covered by all sources. Some of the documents will not be available or were never produced for some areas. Many may have no relevance for one route but may for another. You are therefore recommended to collect as much information as possible from a document, not only for the route in immediate question, but others in the vicinity as the accumulation of evidence for more than one route in the area can improve the case for each individually. It also saves re-visiting documents when you, or a colleague, decide to research another route at the same time. This often happens as you start researching because other unrecorded routes become obvious and gathering the evidence for all at once is very efficient.

Some records, such as tithe, may have duplicates in more than one place. If, for instance, you find an apportionment document and no map at the local record office, the missing map may be available at a diocesan record office or the National Archives. The 1910 Inland Revenue records were created in two stages, records for the first may be located locally and the final ones at the National Archives. They may differ so always check those at the National Archives to be certain.

Documents may be available primarily on microfiche. If at all possible, check the hard copy because features, especially colour washes or fine detail, may not be apparent on the microfiche. It may also be difficult to obtain images of reasonable quality from the microfiche.

It is good practice to work through the check list to make sure that all primary sources have been considered. This may become important later and saves you having to retrace your steps. It will also assist you or others with research for other cases in the area.

Take a photograph of the relevant part of any document along with its title page, its archive reference and any other information such as a key or description of the document, its purpose or who compiled it. You may find it helpful to note the date if your camera does not automatically do so.

*At the Local Records Office*

- County maps\* and other pre-Ordnance Survey maps
- Ordnance Survey maps
- Turnpike
- Inclosure
- Tithe records
- Parish, Estate maps
- River and or drainage
- Railway Plans
- Railway Book of Reference
- Ordnance Survey Area Book (may only be at the British Library)
- Highway Board minutes and other records
- Highway maps
- Main Road records
- Quarter Sessions
- Sales Documents
- Handover Maps (transition of highway maintenance to county councils)
- Landowner supplied information

\* This will vary by county or area. You are recommended to compile a list of your local maps and incorporate it in your checklist so that you know you have checked each one and recorded what it shows.

*At The National Archives (TNA)*

- Ordnance Survey Boundary Records
- Ordnance Survey Object Name Book
- Tithe records
- Inland Revenue (1910 Finance Act records)
- Stopping Up Orders
- Ministry of Farming

Note which records you have checked and what they showed, even if it is negative (no reference or route not shown), or not checked, not applicable, does not exist. It may also be helpful to note the date you saw the document.

Mark each record on the list with its record office or National Archives reference number.

For Inclosure records, check that there was an Act and an Award and preferably evidence that the Award was carried out, such as a Magistrate's Certificate, or entry in the Quarter Sessions, or that the awarded field pattern and roads are shown on later maps. The description of routes awarded varies quite considerably; there is no national consistency even after the 1801 Act which aimed to create standards in the process.

The term private (private carriage road, private road) is ambiguous. In some awards it appears to mean maintained by occupiers but not exclusive to their use; in others it appears to mean a road that did not extend outside the area of the award, whereas a public road was one that went outside the parish. In the latter situations, it is very unlikely that the 'private' roads were not for the use of any in the parish (which means they were public highways). Any road awarded as an occupation road or 'private' road, for the use of the occupiers and maintained by the occupiers, could have subsequently become a public highway.

County maps vary in their value as evidence. Look for the date of the survey as well as publication; there is more room for doubt if the survey is more than a couple of years prior to publication surveys. Surveys and even lithographic plates were sometimes re-used by other mapmakers or publishers. Note the purpose of the map; was it only for certain people (a decorative item or centred on a landowner's holding) or was it intended for sale to the public? Check what other routes are shown in the same way as your route and their status today, and be alert to how they too are shown on any records you check. Evidence of reputation of the surveyor and mapmaker can also be helpful.

Maps such as Bartholomew, Bacon and Geograph can also be important because they were road atlases, intended for the travelling public and were therefore unlikely to depict a road that was not a public highway.

The Inland Revenue records are not always conclusive but they can be excellent evidence when a route is excluded or an allowance made for a right of way and may add considerable weight to the evidence as a whole.

It is rare that any one document or reference is conclusive in itself but the cumulative effect of evidence becomes more substantive so that on the balance of probabilities (the test on which all modification order cases are judged) there is greater suggestion of the right having existed than of it not.

## Putting It Together

With these indicators of a good case, put them in chronological order which should logically explain when and how the route came into being and its use since then. This becomes a report which is the basis of an application statement, setting out the individual pieces of evidence with an explanation of their relevance and importance in justifying the request to have the route recorded as a bridleway or restricted byway. For each piece of evidence in the application statement, include where the document is located and its reference and arrange them chronologically, with a list of them at the beginning along with grid references and other details of the application.

The application is a statutory process with specific forms which must be completed in order for the application to be considered duly made and valid. Most authorities produce a pack for applicants which includes all the relevant forms and guidance on the process. If they do not, use the BHS pack [www.bhsaccess.org.uk/wiki/uploads/MOapplicationforms.pdf](http://www.bhsaccess.org.uk/wiki/uploads/MOapplicationforms.pdf).

You are strongly recommended to have an application checked by an experienced volunteer or by BHS staff to ensure that it is fully compliant to avoid wasting your time (or the authority's) with a poor application. Any application should be as good as it can be because if it is refused by the authority, new evidence will have to be found for the application to be re-submitted. It is much better to ensure that an application is adequate before submitting it.

It is best to submit your application in your own name so that you can appeal if the application is not determined within a year and you are kept informed. An authority, if it already has evidence of a route, and is given a sparse application, may decide to take a case forward itself, rather than in the applicant's name. However, in such a scenario, if the case should be rejected by the officer or committee with delegated decision-making power, the applicant would not be able to appeal to the Secretary of State without additional evidence.

Sometimes it is appropriate to make an application in the name of the BHS. In such a case, it is BHS policy that landowners are given opportunity to discuss an application before the formal service of notice of an application. A draft application, with correspondence with landowners should be approved by the BHS prior to the application being made in its name.

You are recommended to deliver your application by hand or recorded delivery. If by hand, you may wish to ask for a receipt. Keep the proof of delivery in your file; you may need to refer to it later.

Once the authority has checked that the application complies with the requirements of Schedule 14, it should be added to the register of applications within twenty eight days of receipt. The register should be on the authority's website, although some are difficult to find and are updated periodically rather than immediately an application has been accepted. If it is not added to the register, you may need to remind the authority or seek a commitment to when it will be registered.

If an authority deems an application to be defective, it should notify the applicant with the reasons why and offer a timescale in which the defects may be rectified. There is no statutory period but a

month to six weeks is generally held as reasonable, however, if you cannot improve the application within the period offered, reply to the authority saying why and what you intend to do, with the date which you can achieve. If you maintain a chain of correspondence which links the application to any revision that you submit, this will assist in lengthening the period in which you may rectify a defective application, although it should still be done as soon as possible. One reason for having an application checked by an experienced volunteer or staff is to ensure that applications are complete and adequate. It wastes your time and the authority's if defective applications are submitted.

The authority should investigate and determine whether or not to make an order within twelve months. If the decision is not to make an order, you should receive formal notice of the decision, with the reasons, and information on your right to appeal the decision to the Secretary of State. An appeal must be lodged within twenty eight days of the notice. If an authority has agreed to make an order, the applicant will be informed of the likely timescale in which this will occur. Most authorities have a backlog of applications waiting for orders and a statement of priorities for dealing with them. It may be some years before an order will be made for cases which are low in priority. While this is disappointing, without huge additional funding, it is unlikely to change and the important factor is that the application has been made and therefore the route cannot be lost to the 2026 cut-off date.

The potential delay of years is an important reason for ensuring your record-keeping and filing of the evidence is thorough and protected so that if you, or someone else, should pick up the case in several years, there is no loss of time or repeated effort. If your case has evidence which is in private ownership, make provision for the evidence to still be available in future. Holding a copy of the evidence is good, but it may be necessary for a future investigator to see the original, so keep contact details up to date.

If your case includes user evidence or witness statements, it is advisable to have affidavits made and signed by the witness in case he or she should die or be incapacitated. Recording interviews and keeping the files is also helpful.

Below is the process gone through by one of our volunteers to prepare evidence for an application. More detail on evidence and writing an application statement are in the book *Rights of Way Restoring the Record* available from the [BHS Bookshop](#).

## Points to remember in researching a route

### Names change

Roads change their names, as in the example of Streaked Lane, so be alert for variations in spelling, sometimes even within the same document, as well as complete name changes or even the name that was one route may become associated with a different route locally. Some names are very common and may occur in many parishes, which can be confusing where parishes have combined or greatly altered boundaries so that there are two Mill Roads or High Lanes.

## Lines change

It is common for the shape of routes to vary on maps, particularly prior to Ordnance Survey. This may mean that the actual line did change, perhaps because one line had become founderous or obstructed. Prior to tarmac surfaces, the line travelled commonly shifted with use just as now where people deviate round a boggy patch or fallen tree and the new line may become permanent. Sometimes changes in line may have been formal, such as straightening a road, which will probably be documented in the Quarter Sessions (court) records. This could provide excellent evidence though can be time-consuming to find unless the likely date of change can be narrowed by dates of maps showing before and after lines.

## Parishes change

Many routes will cross parish boundaries. While this increases the work with the need to look at further sets of documents, it can also be helpful because parish boundaries have been very important and therefore have their own sets of records. Parishes have also changed over the years, perhaps amalgamated or their boundaries have changed, or names changed (though this is less common). There is also the chance that records for one parish may have been kept in more detail than the other, or to still exist where another parish's records have been destroyed.

### **Example: Streaked/Strakey Lane, Lyng and North Curry, Somerset by Sarah Bucks**

This route caught my eye on the Ordnance Survey Explorer map (1:25,000) because it appears as a lane, an uncoloured track between two ditches, but with no status. They are sometimes referred to as 'white roads'.

I like to start an investigation by going to look at a route. This is easy if it is already a public footpath or known to be in use by the public and if it appears well used and not gated it should be all right to go and have a look. In this case, Streaked Lane is part of a web of routes, similarly without any status on the Explorer map. From local people I found that they are all, including Streaked Lane, walked and ridden by the general public.

Walking a route (I always walk a route the first time unless I know it is well used by riders) gives me a unique feel for it. I may see features which suggest documents to consider, for instance if it has a bridge, or goes past a building that could have been a mill. Its appearance may also indicate whether it is likely to be mediaeval or its hedges or vegetation could contain species which indicate its age. You can see from the photographs below that Streaked Lane has boundaries on both sides throughout, either thick old hedges or ditches and that a railway crosses it by a bridge. It may also be obvious how it is used from hoof, boot or tyre prints, and piles of dung!

A check of Somerset County Council's records showed that the route had not been recently recorded as a bridleway or byway, was not on the List of Streets and not the subject of a DMMO application. I found nothing to indicate that it had been stopped up.

Next was a trip to the local record office, the Somerset Heritage Centre in Taunton. The lane appears on various records and the descriptions and purpose of the documents strongly suggest that it was laid out around 1800 and was intended to be used by the general public on horseback and with carts.

To complete the research, I looked at some additional documents in the National Archives and all these confirmed the local research results.

The next stage was to put everything together into an application statement to accompany the statutory forms for applying for a definitive map modification order.

I start a statement with the key information, in this case:

*For a route in Lyng and North Curry, known as Streaked Lane or Streaked Lane Drove, running from the main road in Lyng opposite West Lyng Farm in a south easterly direction then south westerly direction to the junction with Currymoor Drove and Stoke Drove to be shown as Restricted Byway.*

followed by the grid references, the Ordnance Survey map sheet numbers and the Land Registry report (whether registered or not, many old enclosed lanes are not registered land).

I then include an image of the Ordnance Survey 1:25,000 map, probably with a red ring round the route, photographs of the ends of the route and any particular features such as bridges or a milestone.

The next page of the application statement has a list of the documents given as evidence. This is followed by each document in chronological order with its date and reference number, image of the extracts (including things like title pages and keys as well as the incidence of the route).

It is sometimes helpful on an image to insert a red ring or oval round the relevant feature or text to make it clear.

The entry for each document includes a short explanation of why the document is relevant, the interpretation and the relevance and importance of the item to the case. Sometimes it is helpful to mention comparisons (other routes coloured or depicted the same way). This can become very repetitious, but that does not matter, it makes it easy to copy and paste, but it is essential to be careful over doing so and be sure not to ascribe an interpretation or value that does not exist. It is important to state the meaning or inference of any evidence. Simply including it is not enough, the application statement is the first step of building the case and it has to be enough to convince the surveying authority to make the order you have requested. Although authorities do undertake their own investigations, as rights of way budgets in councils are steadily reducing, it may not be possible for these to be as deep as would be ideal and the easier you can make the task, the better.