

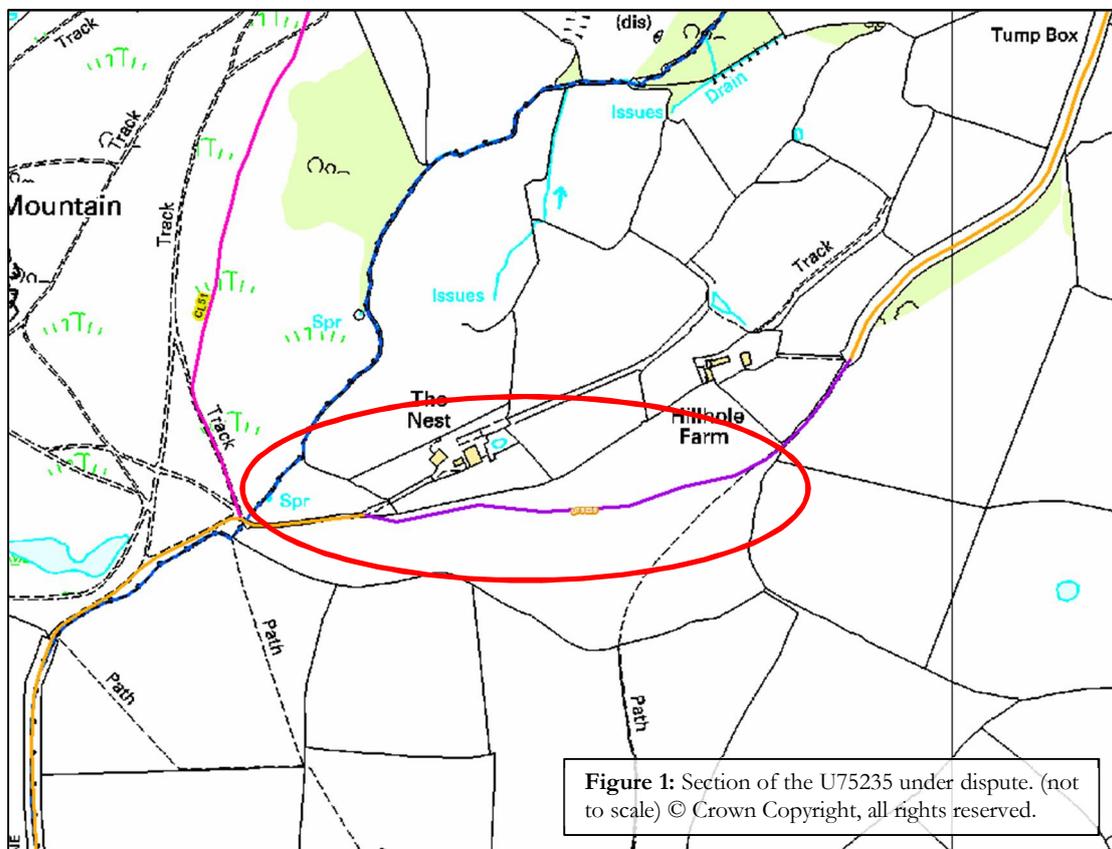
REPORT OF INVESTIGATION INTO STATUS OF THE U75235 ROAD IN THE PARISH OF DORSTONE, HEREFORDSHIRE

Introduction

1. Section 36(6) of the Highways Act, 1980 requires the council of every county to produce and keep up to date a list of streets within their area which are highways maintainable at public expense. The “List of Streets” is a public document and must be kept on deposit by the council, and may be inspected by the public. As defined by section 36(6), the List of Streets is a record of public maintenance liability, it is not a record of the status (of what particular public rights) a particular route carries. That issue must be addressed by other investigations.

Background

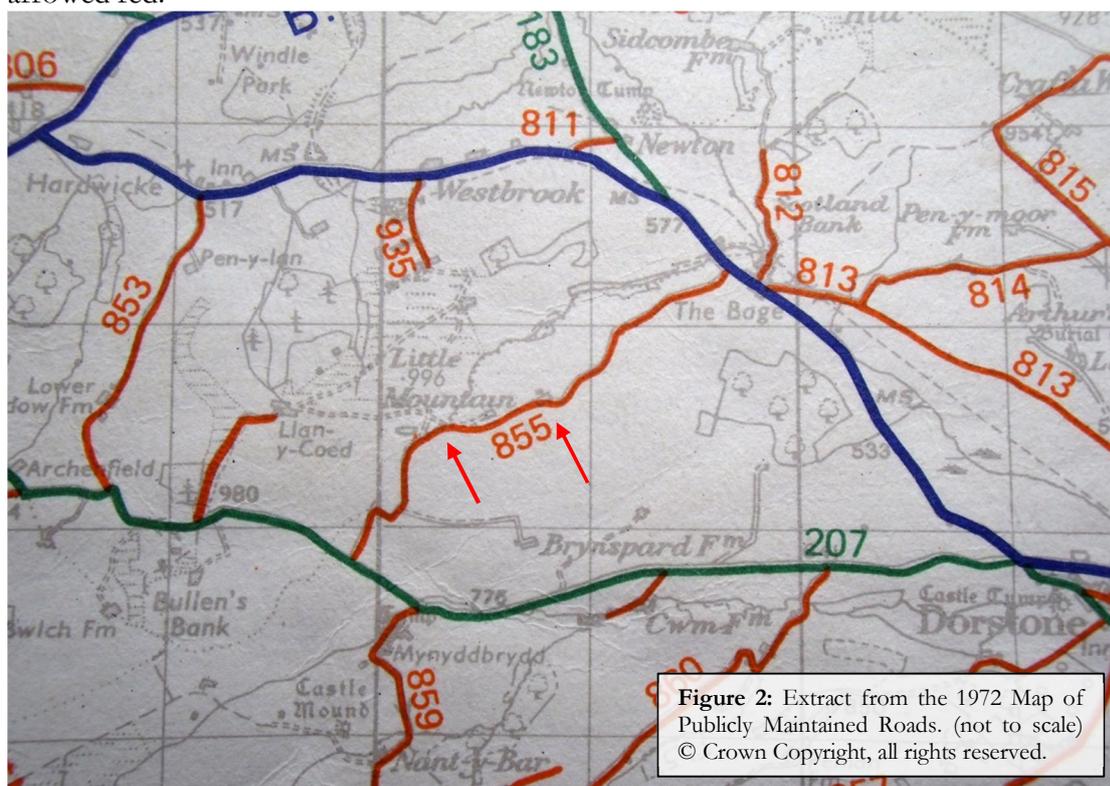
2. In 2011, Herefordshire Council received a number of complaints alleging that a section of the U75235 County Road near Little Mountain in Dorstone Parish was obstructed and not available for public use. The section of road in question is indicated within the red ellipse on the plan below (Figure 1). This section links the southwestern part of the U75235, known as Tomkyn’s Lane to the northeastern part of the U75235, known as Brown’s Lane. When the landowners were approached in order to secure the removal of these obstructions, the status of this section of road was vigorously denied. Consequently, further investigation was carried out to clarify the status of this section of the road.



The 1972 Map of Publicly Maintained Roads

3. This map was prepared as a paper printed map at a scale of one inch to the mile, and on this map, the route in question is shown in orange (denoting it to be an Unclassified Road) with the number 855. It is shown as through road, passing over the

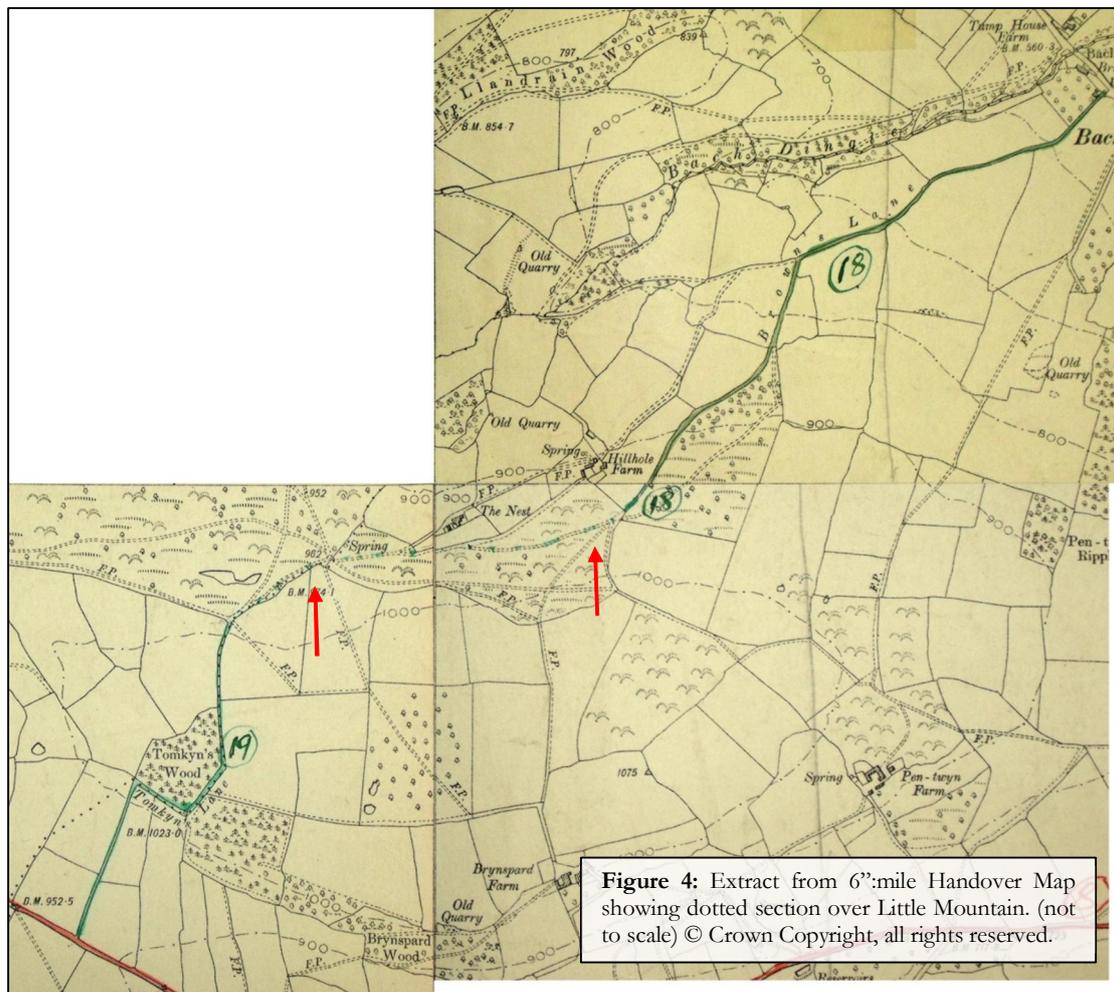
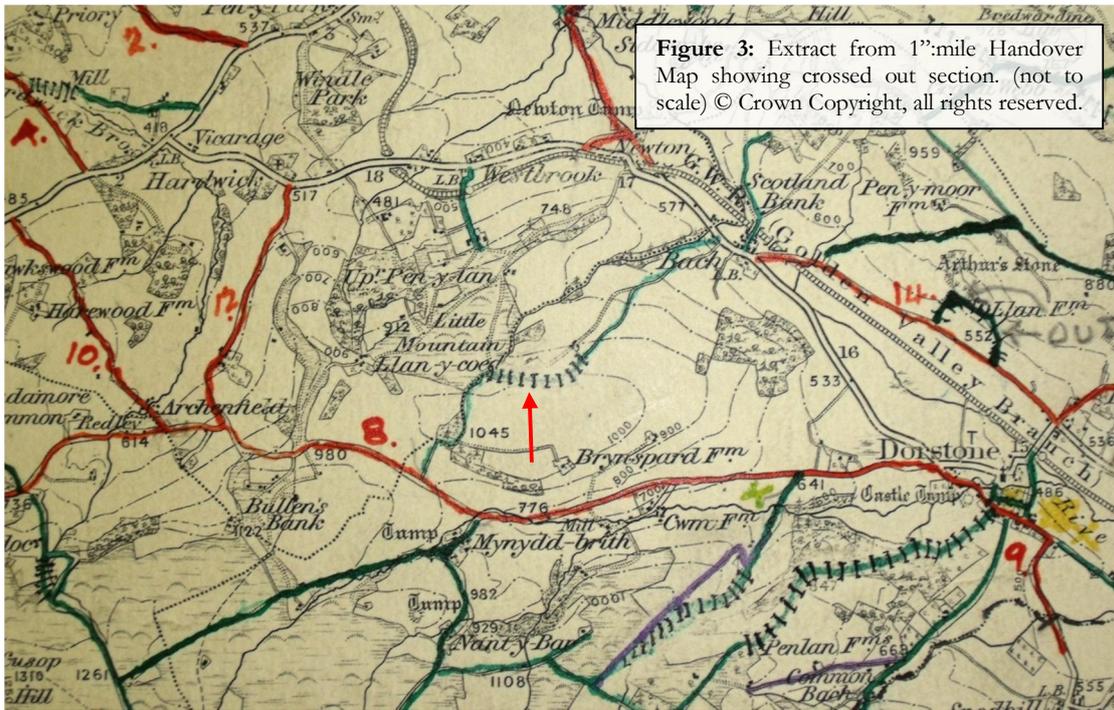
top of Little Mountain. An extract of this map is shown below (Figure 2), with the route arrowed red.



1929 Handover Maps

4. Prior to the 1929 Local Government Act, the maintenance of minor roads was the responsibility of the rural district councils. However, this Act transferred that responsibility to the county councils, which had previously only been responsible for A and B roads. As part of this transfer, or handover, the rural district councils prepared maps showing the roads for which they were responsible, and for which responsibility was to pass to the county councils. It is these maps which became known as the “Handover Maps”. Unfortunately, the quality and coverage of these maps is variable. Two different sets of Handover Maps exist for the Dore and Bredwardine area: one has been prepared on a one inch to the mile O.S. base map, and the other has been compiled on six inch to the mile sheets. There is no indication as to which of these maps is intended to be the “definitive” version.

5. The one inch to the mile version clearly shows the “central section” over Little Mountain as having been erased and crossed out, as shown on the extract below (Figure 3). The six inch to the mile section shows this area at the corner of several sheets. However, once these are matched up and pieced together (see Figure 4, below), they also show that a section running across rough land over Little Mountain is shown with a faint dotted green line – as opposed to the solid line used for the sections of road either side which are numbered 18 for Brown’s Lane, and 19 for Tomkyn’s Lane. It is not entirely clear what was intended by showing this section with a faint dotted line in this manner, but taken into account with the other, smaller-scale map, showing the same section crossed out, it casts considerable doubt over whether this section was considered to be a publicly maintainable highway in 1929/30.



1936 List of Unclassified Roads Maintained by Herefordshire County Council

6. This list was produced by R. G.Gurney, County Surveyor and records the unclassified roads maintained by the County Council as of 1st April 1936. Unfortunately,

no map accompanies this list. Within the list, the county is broken down into several divisions. For the South Western Division the only details given are the road number, its name, and its length in miles. There are two roads listed which may relate to the section of road in question:

- 59. Brown's Road .65 miles
- 60. Tomkyns Wood Road .50 miles

7. Assuming these are indeed the same roads as Brown's Lane and Tomkyn's Lane, the length given for Brown's Road corresponds to a distance from the B4348 road at The Bage to approximately the end of the modern tarmac surface of the U75235 near Hillhole Farm. The length given for Tomkyns Wood Road corresponds with a distance which would (approximately) take it to the southern edge of Little Mountain Common. Allowing for the absence of a map, it would seem, therefore, that in 1936, the section linking these two roads was not considered a publicly maintained road.

8. It is therefore necessary to consider whether evidence of highway status for this central section can be found in other archival sources.

1951 Parish Submissions for Draft Map and Statement of Public Rights of Way

9. In the early 1950s the parish councils compiled submissions to the county council in preparation for the production of the first Definitive Map and Statement. The parish submissions consisted of maps showing the routes which were believed to be public rights of way, and written descriptions of those routes.

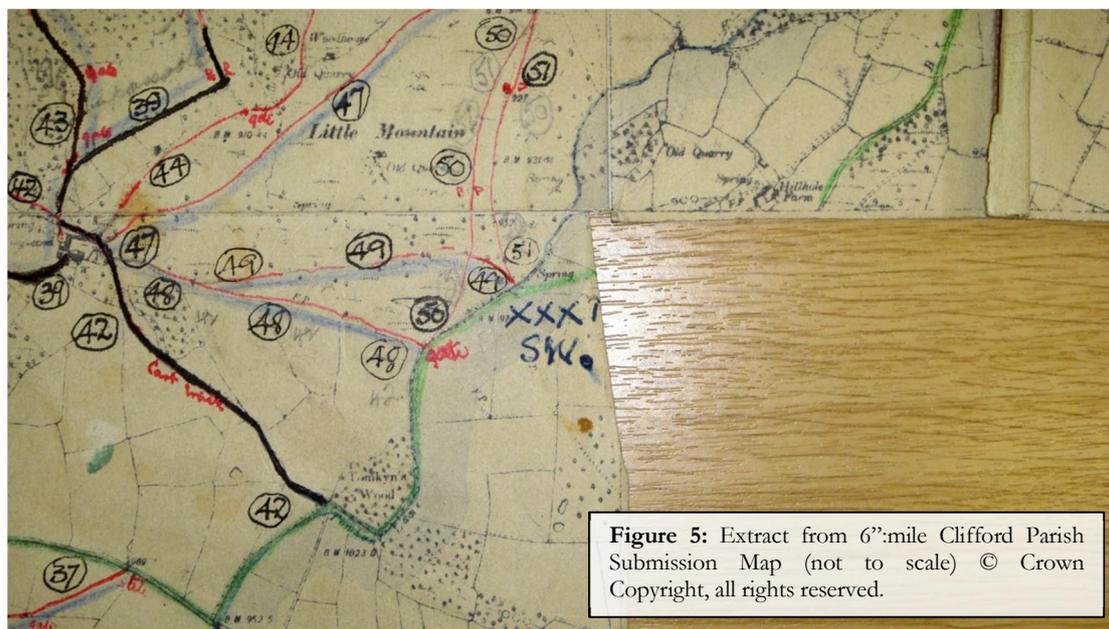


Figure 5: Extract from 6"=mile Clifford Parish Submission Map (not to scale) © Crown Copyright, all rights reserved.

10. The parish submission map for Clifford depicts four alleged rights of way crossing Little Mountain Common and terminating at the Dorstone parish boundary, which is coincident with the line of the U75235. These are 48, 49, 50 and 51 – see the extract of the parish submission map (Figure 5, above). Of these alleged footpaths, only one, Clifford CL51 was approved for inclusion on the first Definitive Map. The route of the U75235 appears to be shown with a green coloured line, as are other roads on this map, and this may suggest that the parish council considered that this route was a road. However, there is no mention of the road in any of the parish council's four written descriptions for these four paths. Instead, the points of termination or commencement for these paths are specified as the parish boundary. The written description in the

submission for footpath CL51 describes its *eastern* point of termination as being at a public road, but the description of the south-western end reads, “Leaves S.E. parish boundary...” The lack of mention of the road in the descriptions (despite *another* road being mentioned as a termination point) suggests that the route in question may *not* have been recognised as road at that time.

11. The current Definitive Statement for footpath Clifford CL51 also describes it as commencing from the “S.E. [south east] *parish boundary*” and there is no reference to the road.

12. As mentioned above, the parish submission map for Dorstone parish shows the route of the U75235 coloured green. However, this map shows another road (a loop off the U75218, Spoon Lane) also coloured green, and this, like the disputed section of the U75235, is also shown crossed out on the one-inch scale 1929 Handover Map (it isn’t shown at all on the six-inch version). This loop of road is not shown on the 1972 Map of Publicly maintained Roads, nor is it shown in the current List of Streets. The parish submission maps were not prepared with the purpose of recording public roads, and it is not clear where the roads information was taken from. An example such as this where another road appears to be shown in error, casts doubt as to their reliability for that purpose.

Large-Scale Ordnance Survey Plans

13. The large-scale (1:2500) Ordnance Survey plans are a valuable source of topographic information which dates back to the 1880s when the original surveys were conducted.

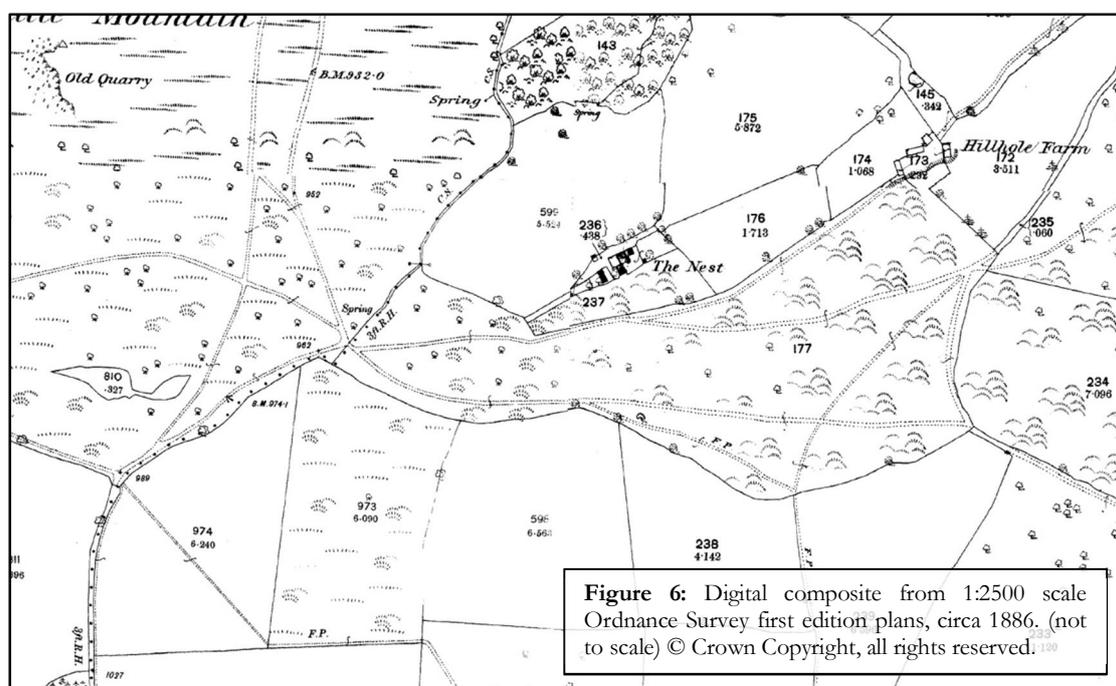


Figure 6: Digital composite from 1:2500 scale Ordnance Survey first edition plans, circa 1886. (not to scale) © Crown Copyright, all rights reserved.

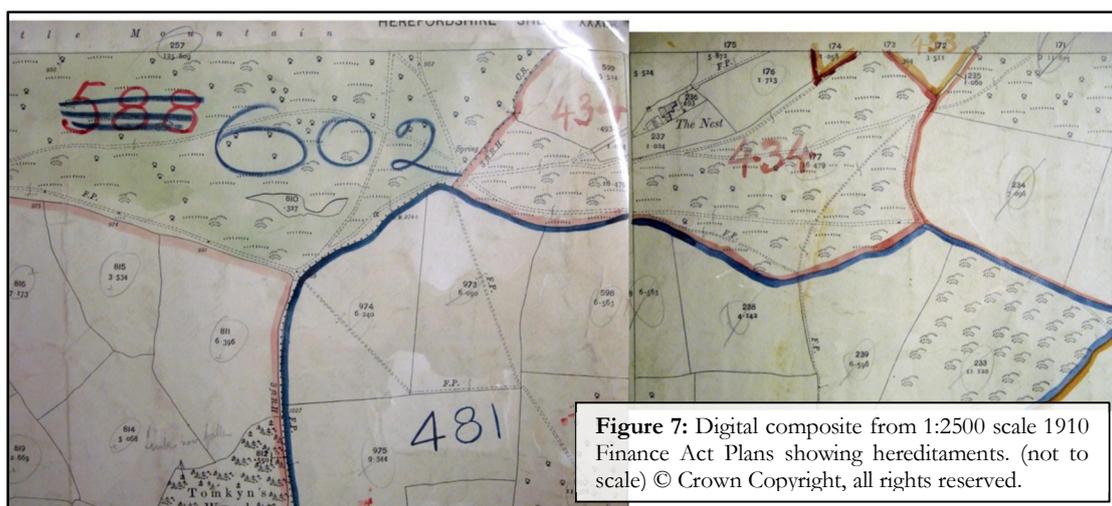
14. The digital composite copy of the first edition 1:2500-scale plans (Figure 6, above) shows a number of tracks crossing this area of land, including one track which corresponds to the disputed route. However, this is not of much assistance: the Ordnance Survey plans from this era carry a disclaimer stating that the showing of a road, track or path is not evidence of the existence of a public right of way. The Ordnance Survey plans from this period were concerned with showing what physical features existed on the ground, they were not particularly concerned with the existence

(or otherwise) of public rights. Whilst it is probable that many of the roads, tracks, and paths depicted did carry public rights, these plans, on their own, do not give evidence of those rights.

1910 Finance Act Records

15. The Finance Act 1909 - 1910 provided for the levying of a tax upon the incremental value of all land when sold. Detailed plans were prepared, based on Ordnance Survey maps, to show the land assessed. The valuation book includes details relevant to the valuation, and shows if any deductions were allowed for rights of way across the plots of land.

16. These maps (Figure 7, below) were prepared using the printed 1903/04 Edition of the 1:2500 scale Ordnance Survey plans as the base map, onto which plots and plot numbers were marked. It is noteworthy that where the route runs along enclosed lanes toward Little Mountain, it is shown un-coloured and excluded from the hereditaments, and this would be entirely consistent with these sections being vehicular highways. The route passes through plot numbers 602 and 434 as shown on Figure 7 (below). In the detailed Field Book entry for plot number 602, this plot is described as common land, and a deduction of £514 has been allowed for rights of common, but no deductions have been allowed for public rights of way or user across this plot. In contrast, plot 434 is referred to as Upper House or The Nest, with buildings (barn, stable, hay barn, pig sty, beast house) and includes about 16½ acres of rough hill land. Importantly, no deductions were allowed for any rights of common, or for any public rights of way or user. This is a useful indication that by this date, this area of land was not regarded as part of Little Mountain common, and no public rights of way were admitted over it. Had a publicly maintained road run across this land, it is likely that it would have been recorded in the Field Book entry: that it wasn't recorded strongly suggests that at the time of the entry in the Field Book in 1915, no such road was recognised.



Tithe Maps and Apportionments

17. Traditionally, tithes were one tenth of a farmer's annual produce which was taken to support the Church. Under the Tithe Commutation Act of 1836, this was converted to a money rate, which was simpler to administer. In each parish, Tithe Commissioners were appointed to oversee a survey to assess the productive value of each field, and a map and schedule were drawn up to record the results of the survey. Although not directly concerned with Rights of Way, tithe maps and apportionments can provide useful evidence.

18. The original maps and apportionments, sealed and approved by the commissioners were retained by the Tithe Commissioners, and are now kept in the National Archive. Two other copies were ordered to be made, one lodged with the parish and one with the Diocese. The Diocesan copies are now held at the County Records Office. The disputed route crosses land which was once contiguous with little Mountain Common. The Clifford Tithe map (1842) stops at the parish boundary, but it doesn't show any other feature than the parish boundary at the continuation over into Dorstone. It also shows Tomkyn's Lane as far as the common – arrowed in Figure 8 (below). The “Well” marked on the tithe map (Figure 9) corresponds to the “Spring” shown on the 1904 1:2500 Ordnance Survey. The Epoch 1 (c.1886) and 1904 OS map show a hedge running alongside the parish boundary and the parish boundary is mered to the hedge as indicated by the mereing “3ft. R.H.”. This possibly suggests that the hedge was established sometime between the Tithe map (1842) and the 1880s when the O.S. did the surveys for their large scale plans, and may mean that the present disputed section of land was annexed from Little Mountain Common during this period.

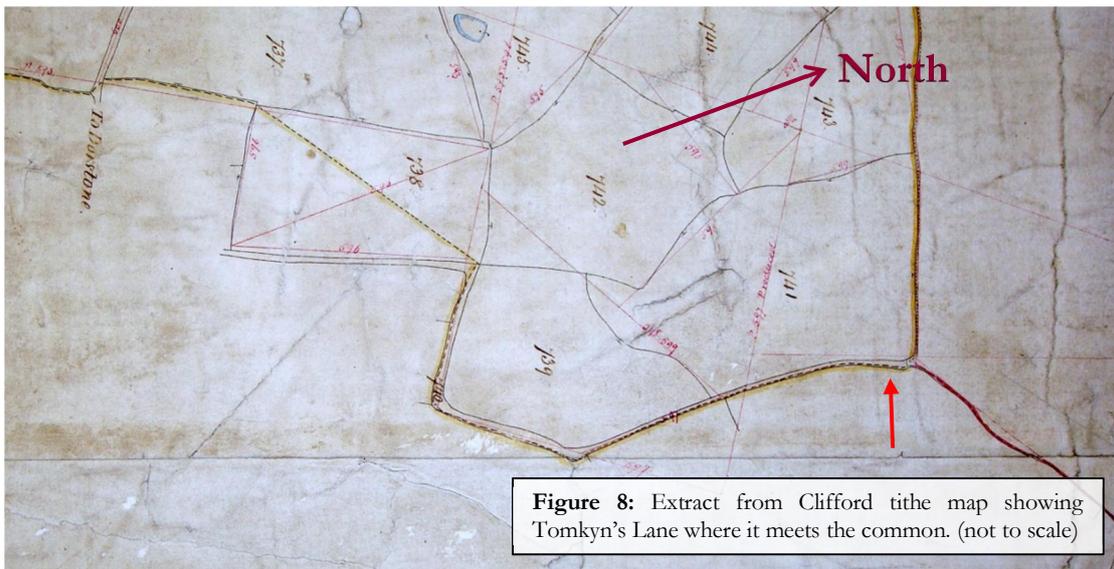


Figure 8: Extract from Clifford tithe map showing Tomkyn's Lane where it meets the common. (not to scale)

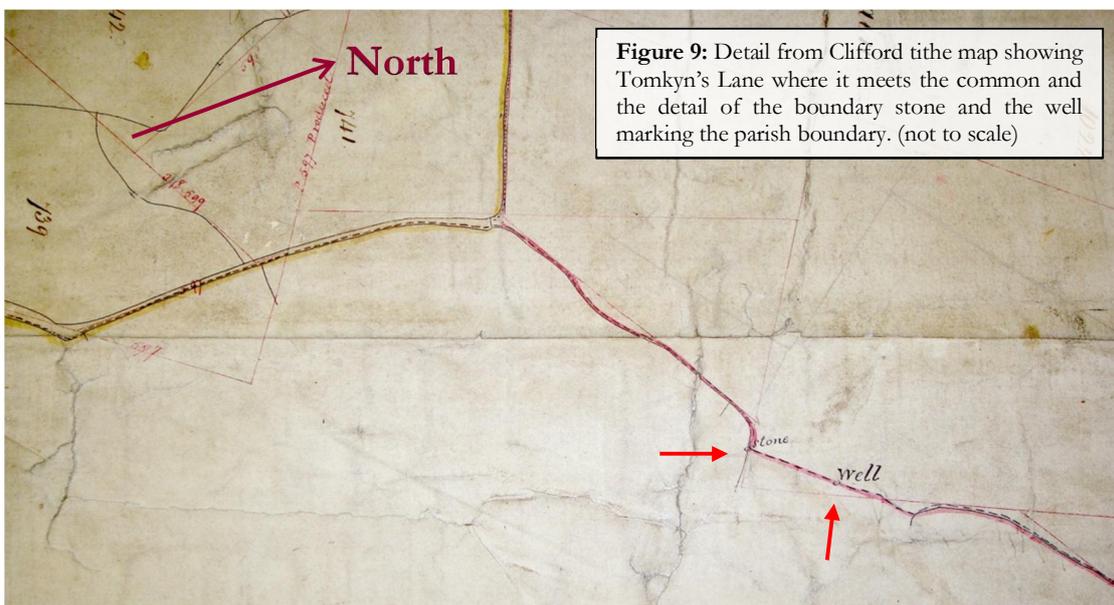
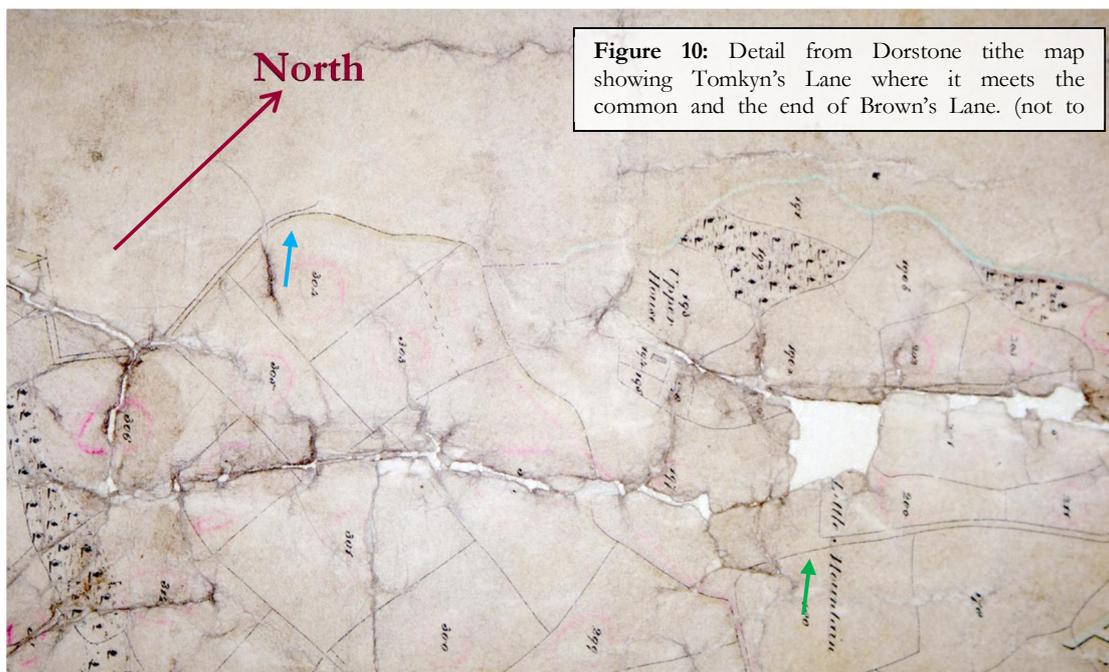


Figure 9: Detail from Clifford tithe map showing Tomkyn's Lane where it meets the common and the detail of the boundary stone and the well marking the parish boundary. (not to scale)

19. The Dorstone tithe map (extract shown at Figure 10, below) shows Tomkyn's Lane running up to the common (blue arrow), and it also shows Brown's Lane (green arrow) running up to the common from The Bache, but it does not show any connection between the two. However, it was commonplace for tithe maps not to show roads where they cross common land.



Inclosure Records

20. Inclosure Awards are particularly significant legal documents which often created new rights of way, and sometimes extinguished old ones. Unfortunately, whilst there are a number of surviving Inclosure Awards in the vicinity, none of them covers the land crossed by the route in question.

Early County Maps

21. In the 18th and 19th centuries, map makers started to produce county maps. Individual surveyors saw an opportunity to produce small-scale maps of counties which could be purchased by individuals. A surveyor was generally concerned to show on these maps only those routes which the traveller could use. These showed features such as Turnpike roads, cross roads, lanes and bridleways. They can be useful supporting evidence in rights of way claims. In addition, the Ordnance Survey began its systematic survey of the country to produce its First Edition one-inch scale maps.

Ordnance Survey Two-Inch Working Drawings, c. 1815

22. The working drawings were produced by the Ordnance Survey circa 1815, and served as the basis for the published First Series one inch to the mile maps of the country. However, the working drawings were produced to a larger scale, and in the case of Herefordshire, twenty years were to pass before the production of the one-inch maps, during which time there was considerable landscape change. They therefore often show rather different detail than the later, published maps.

23. The extract from the working drawings (Figure 11, below) shows Tomkyn's Lane entering Little Mountain Common from the south (blue arrow), and Brown's Lane entering from the east near Hillhole Farm (green arrow). The extract does not show any connecting roads or tracks across the common. However, it does seem to indicate that

the land over which the disputed section of route runs was once contiguous with Little Mountain Common.

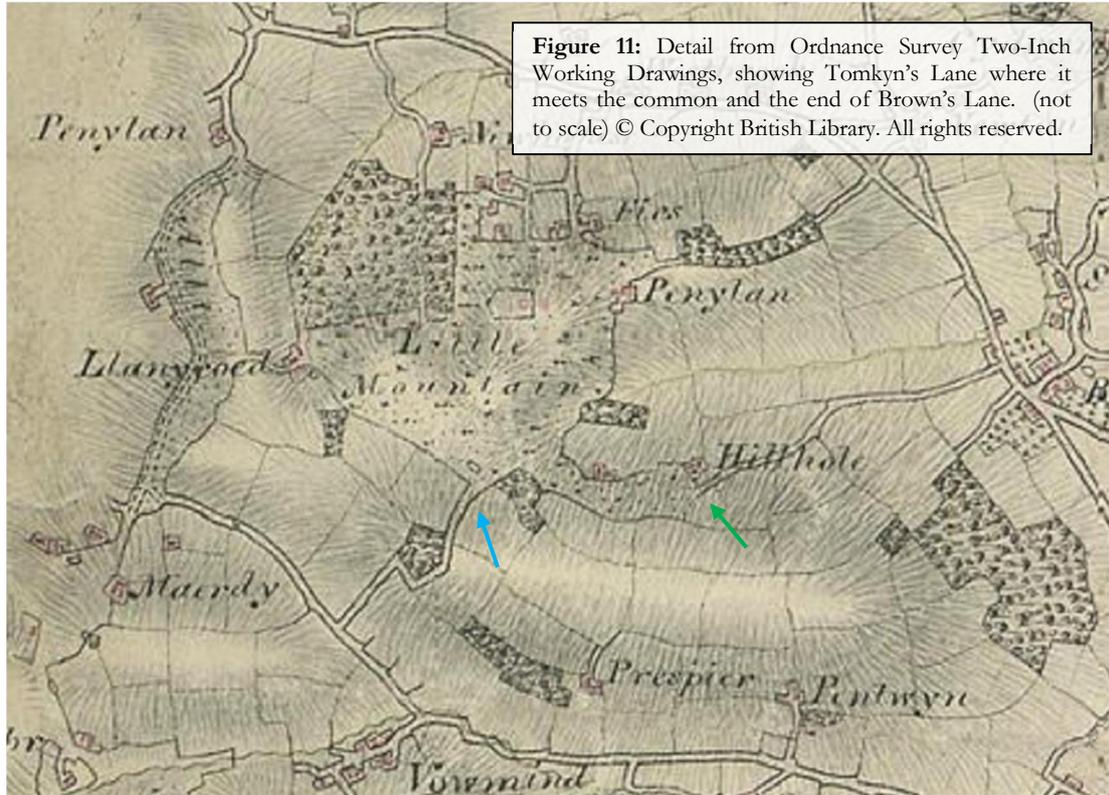


Figure 11: Detail from Ordnance Survey Two-Inch Working Drawings, showing Tomkyn's Lane where it meets the common and the end of Brown's Lane. (not to scale) © Copyright British Library. All rights reserved.

Henry Price's Map, 1817

24. Price's map was actually derived from the Ordnance Survey Two-Inch Working Drawings, so it is not surprising that it shows rather similar details, as can be seen from the extract below (Figure 12). Price's map shows indications of tracks across the common. How much reliance can be placed on these is questionable, but they do not appear to correspond closely to the disputed section of the U75235 road.

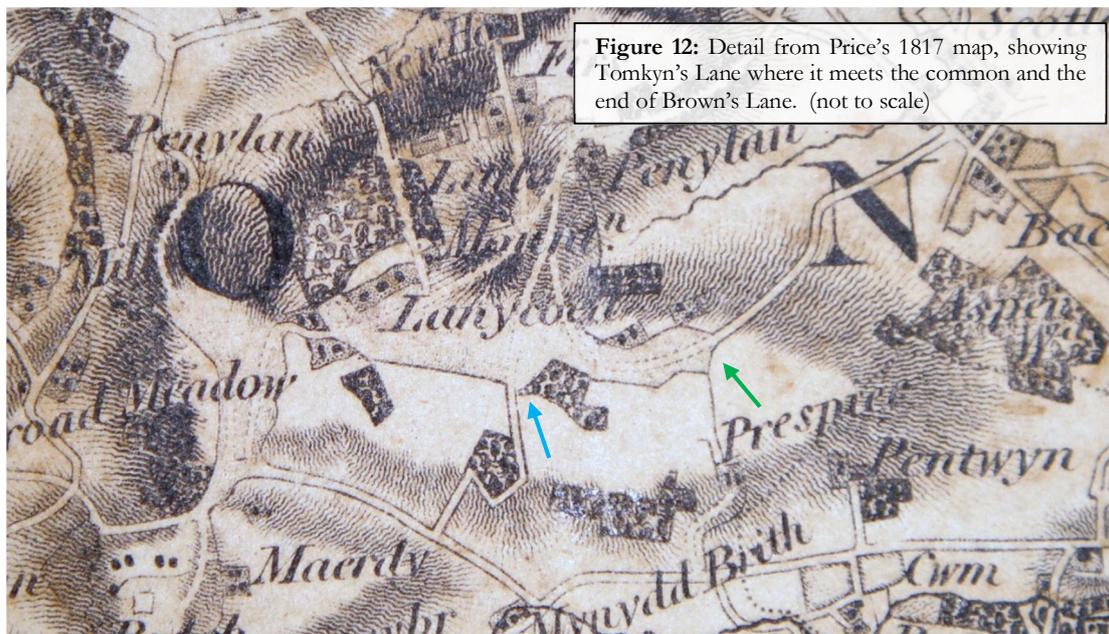


Figure 12: Detail from Price's 1817 map, showing Tomkyn's Lane where it meets the common and the end of Brown's Lane. (not to scale)

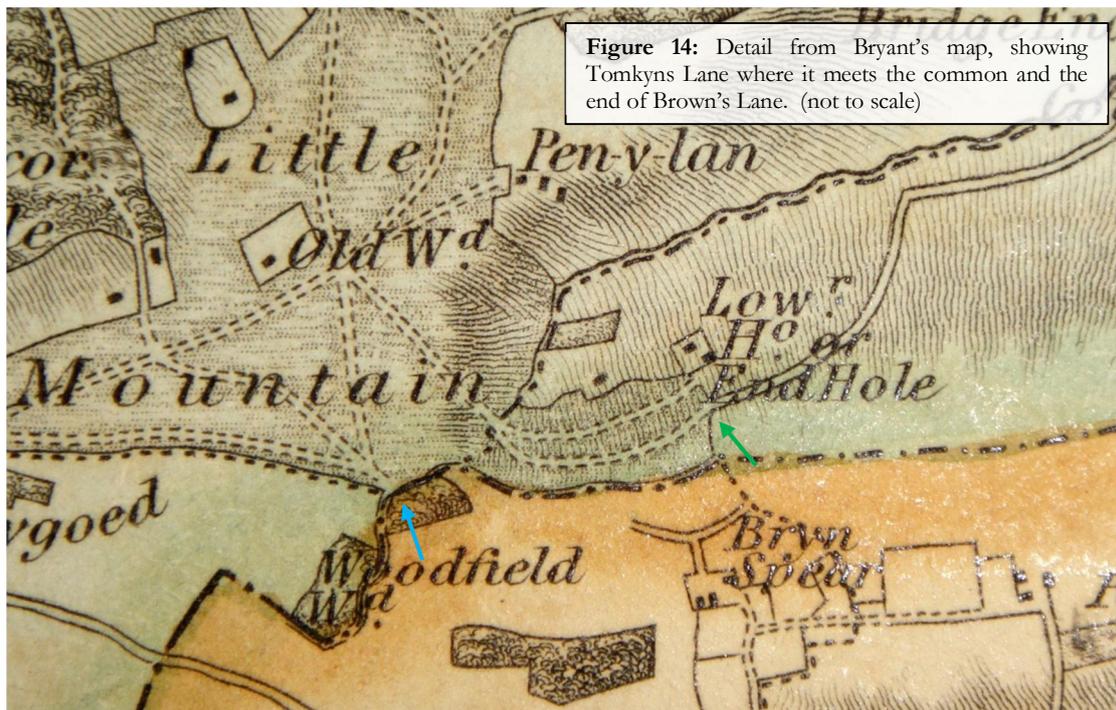
The Ordnance Survey First Edition One-Inch Map, c. 1831

25. Once again, this map (Figure 13, below) shows similar details, although it indicates a track continuing northwards from Tomkyn's Lane across Little Mountain. There does not appear to be any obvious connection between the end of Brown's Lane and Tomkyn's Lane.



Bryant's Map, 1835

26. Bryant was a private surveyor who produced maps of thirteen counties, including one of Herefordshire. For the area in question, his map shows a number of differences compared to the Ordnance Survey derived maps, and some of the place names differ.



27. However, Brown's Lane (green arrow) and Tomkyn's Lane (blue arrow) can clearly be identified on Figure 14 (above), and, as with the other maps, although tracks are shown across Little Mountain, these do not correspond well with the disputed section of the U75235.

28. Taken together, these maps appear to indicate that the land crossed by the disputed section of the U75235 road was once contiguous with what is now recorded as Little Mountain Common. In addition, the common land as a whole was traversed by a number of tracks, though none of these appear to correspond closely to the route in question. It is certainly not clear whether there was a direct, through route linking Tomkyn's Lane to Brown's Lane.

Quarter Sessions Records

29. The only indication that there is a highway across the disputed section of land is a Quarter Sessions record of 24th October on the 52nd year of the King (George III – 1812) which refers to "Browns Lane leading from the village of Bach otherwise Bage in the County aforesaid towards and unto the Town of Hay in the County of Brecon used for all the King's subjects with their Horses Carts and Carriages to return and pass at their will..." A section of this lane commencing from the Dorstone – Hay Road (now the B4348) for 700 yards ending at a place called Butcher's Gate was found to be out of repair. A distance of 700 yards only reaches about half way along Brown's Lane to a point where a track turns off to the north to a wood and a limekiln. This is nowhere near to the disputed section of road over Little Mountain. The Quarter Sessions roll is good evidence that there was a highway or road over the top of Little Mountain from Brown's Lane towards Hay, but it gives no further indication as to what route it may have taken.

Summary

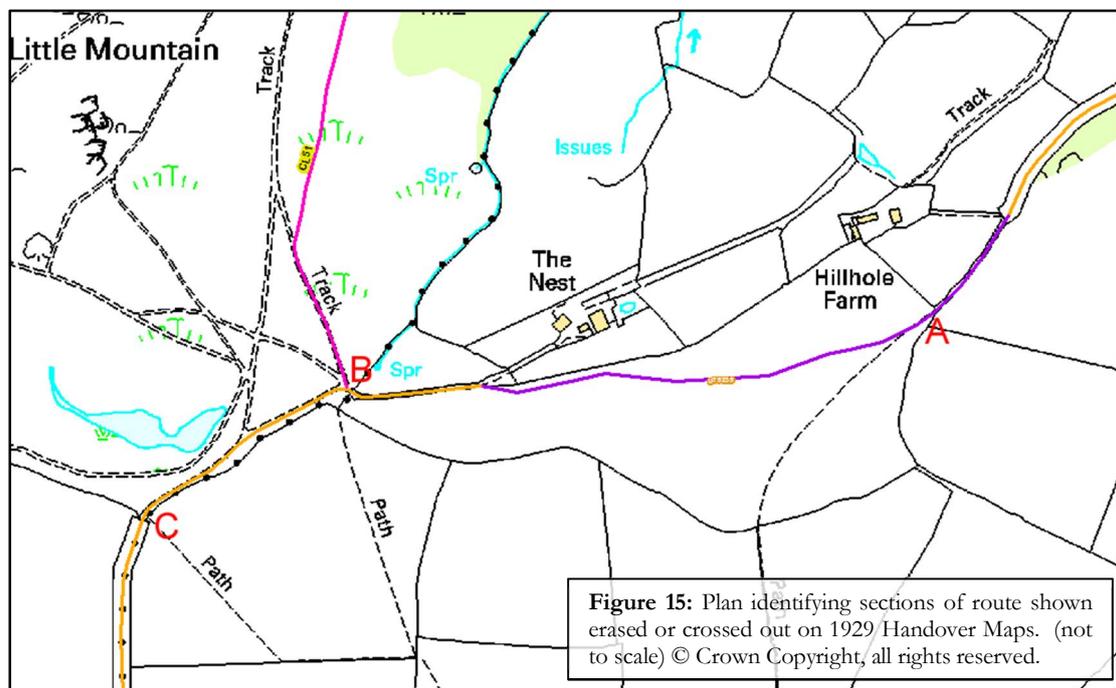
30. The map evidence from the early 1800s indicates that the land over which the disputed section of the U75235 runs was once a contiguous part of Little Mountain Common. However, it appears to have been hedged off from the main area of the common sometime between the 1842 Clifford Tithe Map (which indicates it not hedged off) and the 1880s First Edition 1:2500-scale Ordnance Survey plan (which indicates a hedge). Certainly, by the time of the completion of the Finance Act Field Book in 1915, this land was no longer regarded as common land.

32. The 1812 Quarter Sessions Roll entry for a section of Brown's Lane being out of repair is good evidence that there was a highway running over the land in question and continuing to Hay, but unfortunately, it gives no reliable evidence as to its course. The maps produced in the early 1800s by Price and Bryant and by the Ordnance Survey (2" Working Drawings and 1" First Series) also fail to provide consistent evidence of the course of such a road – and it is unlikely that such a route would continue along Tomkyn's Lane.

33. Neither the Dorstone Tithe Map (1840) nor the Clifford Tithe Map (1842) provide any evidence of a road across this land, although tithe maps frequently do not show roads across commons.

34. The 1910 Finance Act records for the land crossed by the disputed section of the route show that no deductions were allowed from the assessed value for any public rights of way or user. Whilst this is by no means conclusive, it is also significant that there are no references in the Field Book entries to a road across the affected parcels of land.

35. The county council highways records from the era when responsibility for minor roads was transferred from the rural district council to Herefordshire County Council also cast doubt on the existence of this section of road. The one-inch to the mile version of the 1929 Handover Map shows the disputed section of route (from the parish boundary and the boundary with the common land, eastward for approximately 520 metres) as erased and crossed out (see Figure 3, above). This section is shown as section A – B on the plan below (Figure 15). The six-inch to the mile scale version (see Figure 4) shows this section and an additional 220 metres (approximately) southwest across the common from point B to the enclosed section of Tomkyn’s Lane with a very feint dotted line, as opposed to the solid green of the other sections of the road. This corresponds to sections A – B – C on Figure 15 (below).



36. In addition the 1936 List of Unclassified Roads Maintained by the County Council suggests that the disputed section was not maintained as a road. The maintained length of Brown’s Road given in the list would extend to a point approximately 100 metres northeast of point A on Figure 15 – the point where the colouring for the road line changes from orange to purple on the plan. The measurement for Tomkyn’s Wood Road would extend along the length of the enclosed section of Tomkyn’s Lane to the edge of the common at point C, above.

37. The parish submissions do not give a clear picture one way or the other in relation to the status of the disputed section of the U75235. On the one hand, it is shown coloured green on the submission maps, but on the other, none of the four paths which terminate at the parish boundary make any reference to it, and at least one other route which is shown green on the Dorstone parish submission map, is also shown crossed out on the 1929 Handover Map (and is not recorded in the current List of Streets).

38. Although the 1:2500-scale Ordnance Survey plans show a number of tracks across the land, one of which happens to correspond with the disputed section of road, these maps were intended primarily to record physical features, and carry a disclaimer relating to evidence of rights of way. All that can really be established from these plans

(in the absence of other supporting evidence) is that there were tracks over the land at the time of survey.

39. The only documents specifically showing the disputed section as a publicly maintained road are the recent (1972 and present day) maps showing publicly maintained roads, and in the light of the research conducted, on the balance of probabilities there is insufficient evidence to substantiate the continued recording of the disputed section of the U75235 on the Council's highway records including the list of streets.

Conclusion and Recommendation

40. From the evidence, there is some question over the length of the section of road that should be removed from the records. However, the balance of the evidence, including the larger-scale Handover Maps and the 1936 list of roads and most of the historic maps, indicates that the publicly maintained roads would have extended as far as the boundary of the common land (including the land that may once have been part of the common).

41. Therefore, on the basis of the evidence discovered, it is recommended that the section A – B – C shown on Figure 15 (above) should be removed from the List of Streets and the map records of highways maintainable at public expense. Whilst it is not strictly relevant to the status of the road, the removal of this section of the U75235 from the List of Streets would appear to leave the south end of footpath Clifford CL51 as a cul-de-sac. However, Little Mountain Common is now Access Land, and as such rights of pedestrian access exist from the termination of footpath CL51 at point B on the plan at Figure 15 to the edge of the common at point C on the plan.