

## **APPLICANT'S STATEMENT**

### **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER IN THE PARISH OF DITCHLING**

The application route runs from the North end of bridleway Ditchling 29d to the South East boundary of Ditchling Common

It is on the definitive map as Footpath Ditchling 29b

Applicant's reference 308-Ditchling B (North)

13<sup>th</sup> August 2020



**Between points B and A looking North**

308-Ditchling B (North)



**At point A looking North – the privately owned protuberance of common with open common area beyond**



**Looking east and west within the privately owned area of common**

## Wildlife and Countryside Act 1981

### Definitive Map Modification Order Application

To upgrade Footpath Number Ditchling 29b and 29a to Bridleway

This application is made by The British Horse Society of Abbey Park, Stareton, Kenilworth, CV8 2XZ under Section 53(2) of the Wildlife and Countryside Act 1981 which requires the surveying authority to keep their Definitive Map and Statement (DMS) under continuous review and to modify them upon the occurrence of specific events cited in Section 53(3).

### THE APPLICATION ROUTE

The application route is from grid reference TQ 336169 to TQ336172 points A and B on the application map below.



The application is to upgrade the footpath to bridleway from points A to B on the application map. C marks the boundary of the registered common. The width to be the full width of the track between the tree lines that run northwards from point A and a similar width for the last few hundred metres south of the common where the way has become encroached by scrub. Between C and B, where the old lane funnels out into the common, the path to be the full width of the land between the boundaries shown on the map.

**Background:**

- The application route is part of an old drove lane that ran between Ditchling Common and Ditchling Village; then via what is East End Lane today, it continues southwards as byway and bridleway to the South Downs.
- Today's path Ditchling 29b, along with its continuation southwards, was scheduled as bridleway on the draft Definitive Map. The section that is the subject of this application had its status reduced to 'footpath' after landowner objection.
- Clearview Farm was previously named Popes Farm.
- This application is submitted alongside one with reference Ditchling B(South) which deals with the section of the old drove lane as it reaches Ditchling Village.

**Characteristics:**

- The application route has the characteristics of a hollow way along its length.
- It is currently a grassed surface along its whole length but with, today, a certain amount of overgrowth at the northern end.

**Abbreviations:**

- ESRO/ The Keep - East Sussex Record Office
- WSRO - West Sussex Record Office
- MSABG - Mid Sussex Area Bridleways Group
- DPC - Ditchling Parish Council
- The 1932 Act - The Rights of Way Act 1932
- The 1948 Act – The National Parks and Access to the Countryside Act

## 1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

1.1 In order to be able to modify the definitive map and statement as described above, the surveying authority needs discovery of evidence. This must be that, on the balance of probabilities, higher highway rights exist for the application route than are currently recorded (Wildlife and Countryside Act 1981, Section 53(3)(c)(ii)).

1.2 The use of the “balance of probabilities” test rather than “beyond reasonable doubt” was confirmed by the High Court in *Todd, Bradley v Secretary of State for EFRA* (2004) 4 All England Reports 497.

1.3 Evidence detailed in this document includes Finance Act records that would not have been available when the First Definitive Map and Statement was drawn up.

1.4 Other evidence uncovered during research of this route is included in this application so that, whether it has been previously considered before or not, it can be considered now as Section 53(3) (c) specifies.

1.5 Whilst no single piece of evidence presented in this application can in itself be considered conclusive, taken as a whole the evidence demonstrates highway reputation and use over many years, which the applicant considers to be at least bridleway.

## 2. HISTORIC MAPS

### 2.1 BUDGEN MAP OF SUSSEX



**Fig. 1 Budgen Map of Sussex 1723**

2.1.1 Date. A map based on original surveys to 1723 and published at 1 inch to the mile in 1724.

2.1.2 Relevance. The prospectus notes that Bugden intended to map ‘... not only the post roads that cross the county but likewise all the principle roads that are of note or use to travellers...’

2.1.3 Archive. This map is held at East Sussex County Archives at the Keep at reference ACC 3762/2 and at the West Sussex County Archive under reference PM 249. The prospectus for the map is on-line at [www.maphistory.info/blmss.html](http://www.maphistory.info/blmss.html)

2.1.4 Meaning The application route is not shown.

2.1.5 Assessment. The application route was probably not considered to be a ‘principle road’ at this time. This is consistent with its reputation today as having been originally a drift/drove route.

## 2.2 OVERTON AND BOWLES MAP 1740

2.2.1 Date. 1740

2.2.2 Relevance. A later published version of Bugden’s map. It contains a key:

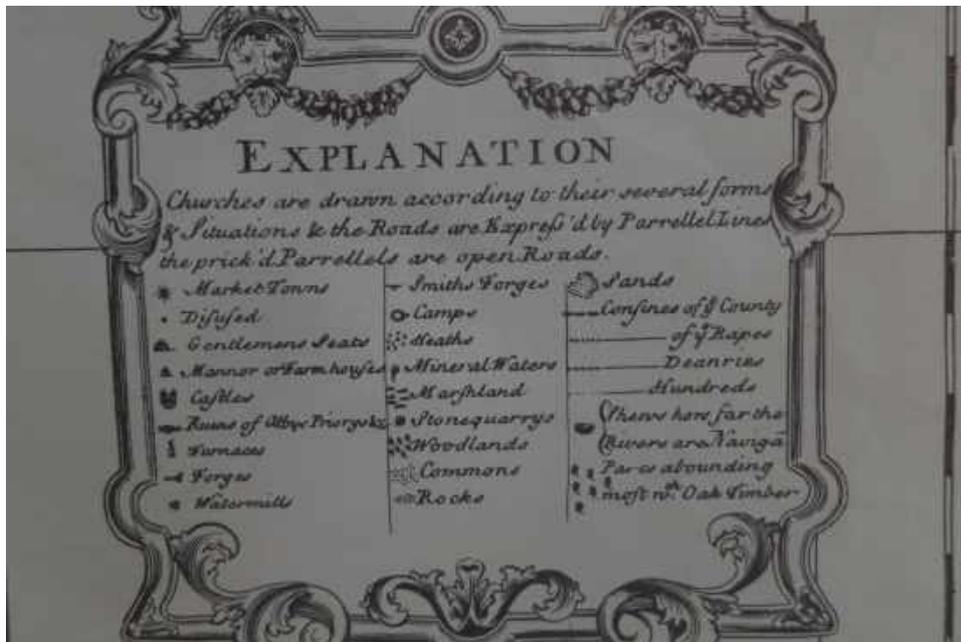
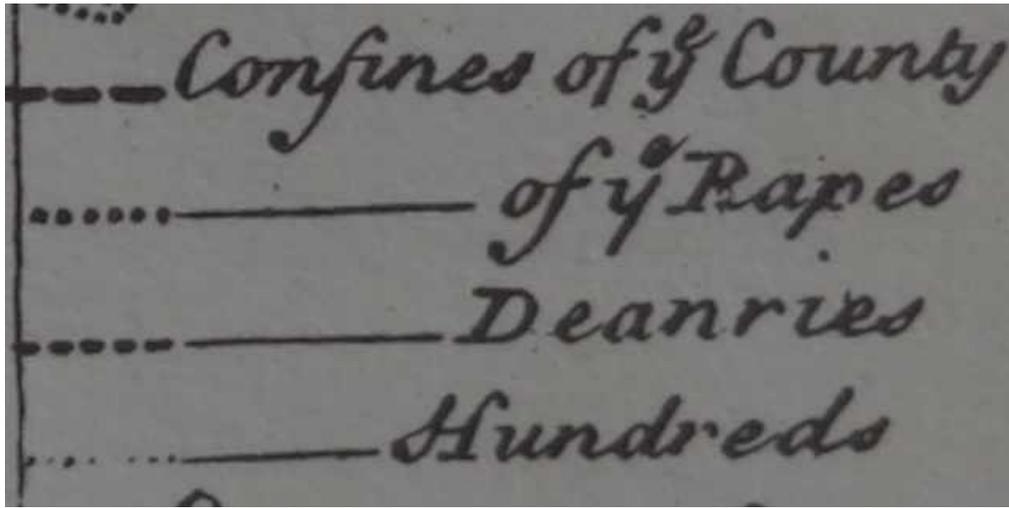


Fig. 2a Overton and Bowles Map Key



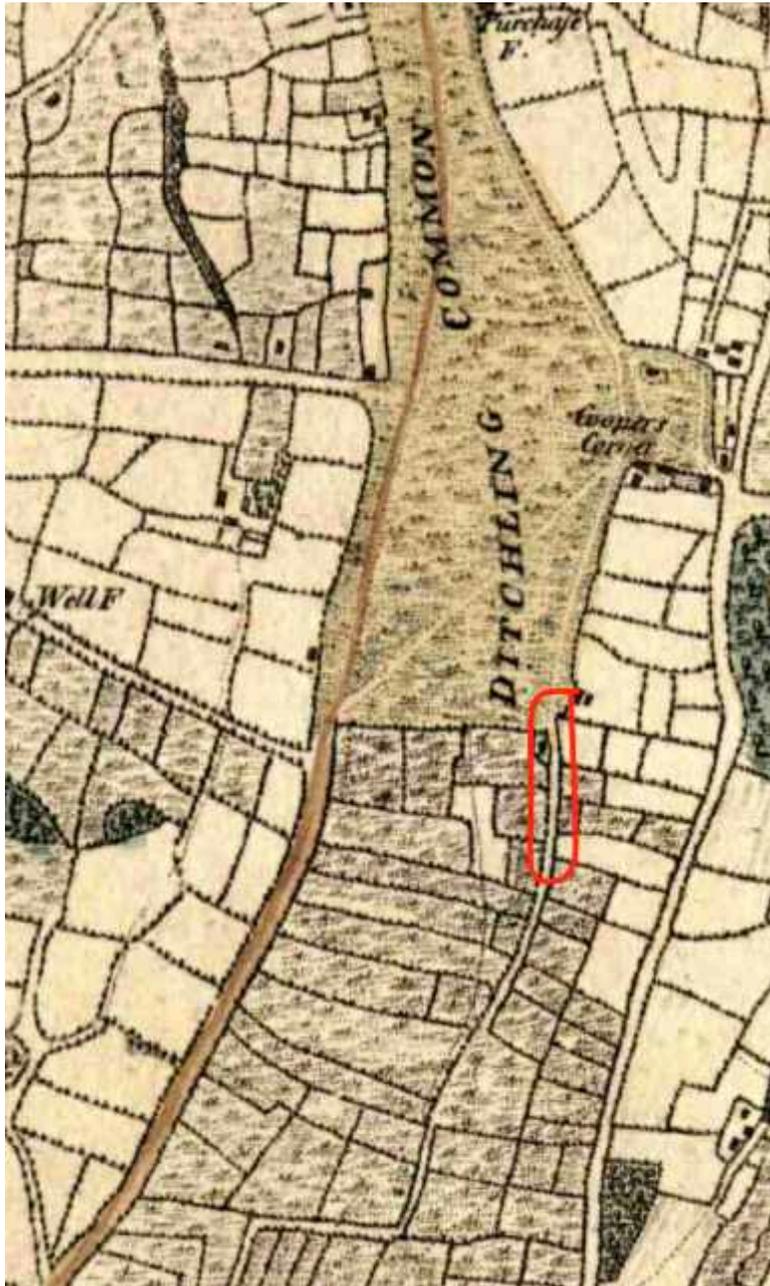
**Fig 2b Overton and Bowles Map Key (close-up)**

2.2.3 Archive. This map is held at the East Sussex County Archive at the Keep at reference AMS 6008/1/29/10. The map has a key. A portion of the map showing a bigger area than the above screenshot and also the key is at Appendix 2 of this application.

2.2.4 Meaning. The application route is not shown. The key suggests that the dotted line on a similar line to the application route shows the boundary of the Rapes. It approximates to the route of Spatham Lane today, which is the line of the parish boundary between Ditchling and Westmeston today.

2.2.5 Assessment. As for Budgen map at 2.1.5 above

## 2.3 YEAKELL AND GARDNER SUSSEX Map



**Fig. 3 Yeakell and Gardner Map 1778**

2.3.1 Date. 1780 (sheet 2)

2.3.2 Relevance. Created from a 'Great Survey' in 1778. At a scale of 2 inches to the mile this map included formal representation of landscape features and man-made structures of any significant size.

2.3.3 Archive. This map is available on-line as part of the "Old Sussex Mapped" project of the University of Portsmouth at [http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell\\_36.htm](http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell_36.htm) The relevant map is the 7<sup>th</sup> tile along the top line of the images. Details of the prospectus, map publication date etc are found in D Kingsley's book 'Printed Maps of Sussex 1575-1900 from page 91 which can be found in the East Sussex Records Office at reference LIB/500449. An excerpt from it describing the Yeakell and Gardner maps is at Appendix 3 of this statement.

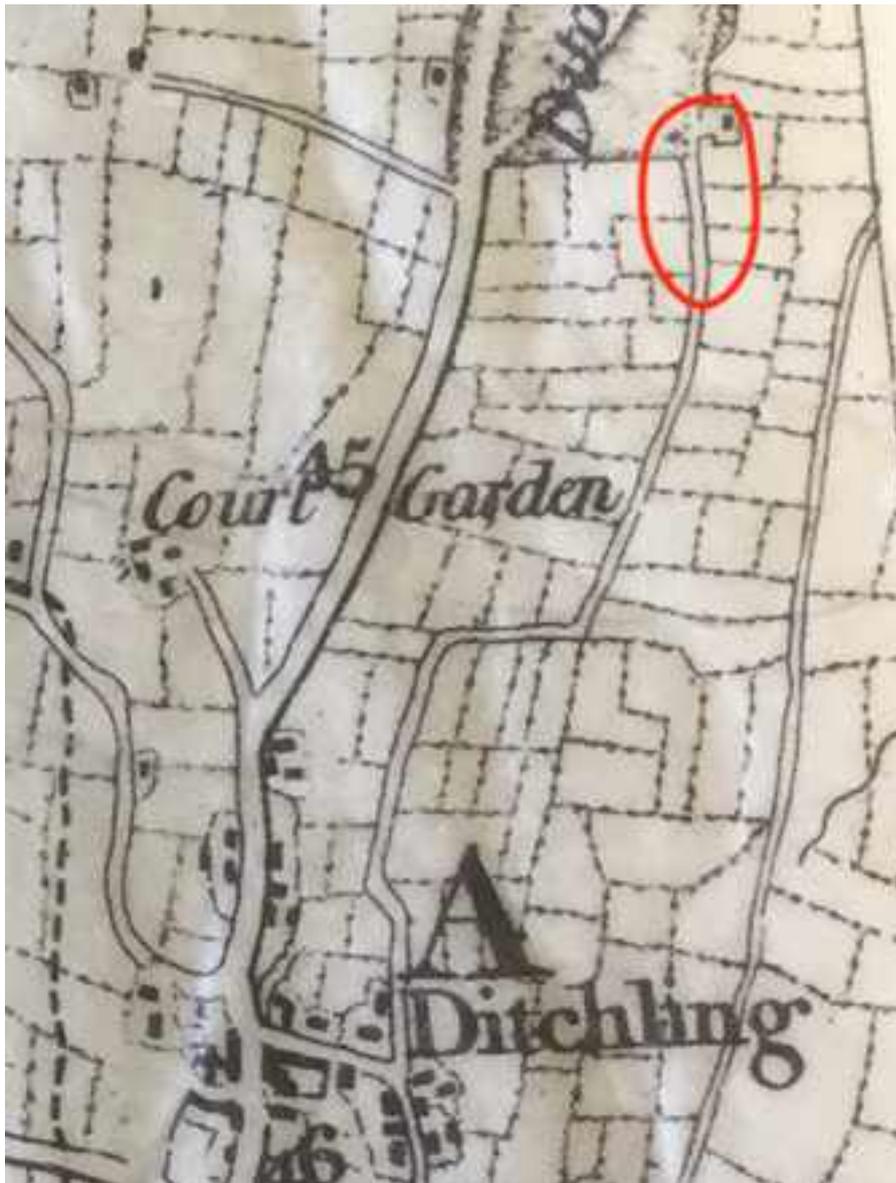
## 308-Ditchling B (North)

A portion of the map, showing a bigger area than the above screenshot, is included as Appendix 4 of this statement.

2.3.4 Meaning. The route is clearly shown as part of a significant way running from the south boundary of the common to the village of Ditchling. It is bounded on both sides by a continuous black line save for a short stretch where the route opens out on one side into a field. The map does not have a key but common sense dictates that the map is depicting major roads of significance that are coloured sienna, lesser roads that are uncoloured but bounded and occasionally lesser ways as single dotted lines across fields.

2.3.5 Assessment. The 1778 prospectus for this series of maps sets out the aim of covering all of Sussex and showing all public and private roads and all bridleways and footpaths (D Kingsley p 93). However, only the first four maps covering the southern half of the county were printed and only a handful of footpaths were shown compared with those marked 'FP' on the early OS 25inch maps that were to follow. Few 'private' roads (ie access roads to properties or land) were shown. The existence of a way on this map means that it was more likely than not, a public route. The application route is depicted as a very significant way (two parallel black lines with hedge/tree depiction in places). While not a major route (not coloured sienna) the depiction is consistent with it being significant highway for traffic of a greater significance than pedestrian. The depiction is 'open' at both ends suggesting a through route with no obstruction of gates/ stiles or the like. The route joins the common at point B, which appears to be at that time the boundary.

## 2.4 GARDNER AND GREAM MAP



**Fig. 4 Gardner and Gream Map 1795**

2.4.1 Date. 1795

2.4.2 Relevance. The application route is shown. This one-inch to the mile map was based on the Yeakell and Gardner map with information from Mudge's trigonometrical survey included in order that the map 'could be corrected'. Gardner had been appointed Chief Surveying Draughtsman to the Board of Ordnance in 1787

2.4.3 Archive. This map is held at the Keep under reference AMS 608/1/1/29/17. The copy from Margary's 250 years of Map-making in Sussex at WSRO, ref PM 249, was consulted. The map does not have a key. D Kingsley's book Printed Maps of Sussex, 1575-1900 is at ESRO reference LIB/500449. Pages relating to the Gardner and Gream map are at Appendix 6 of this application. A portion of the map, showing a larger area than the above screenshot, is included as Appendix 5 of this statement.

2.4.4 Meaning. The application route is shown as a road of the same depiction along all of its length. There is no key to the map but the route can be seen bounded by two identical

black lines. Other routes nearby that are depicted in the same way as the application route are roads, byways or bridledways today. Appendix 5 illustrates some of these. The application route continues southwards to join East End Lane in Ditchling Village.

2.4.5 Assessment. Being based on both the 'Great Survey' of Yeakell and Gardner and with the trigonometrical survey of Mudge the depiction of a road on this map suggests an accurate representation of what was on the ground at the time. The application route is clearly part of a through route between East End Lane in Ditchling Village and the southern boundary of Ditchling Common. The few footpaths shown on the Yeakell and Gardner map have been removed for this smaller scale map. Few private (access) roads are shown compared to the number shown on later, larger scale maps such as the first edition of the ordnance survey 1-2500 series. The existence and manner of depiction of the route on this map suggest that it was more likely than not, a public road, byway or bridledway at this time. The boundary where the path meets the common appears to be at point B.

## 2.5 FIGG MAP OF EAST SUSSEX ROADS

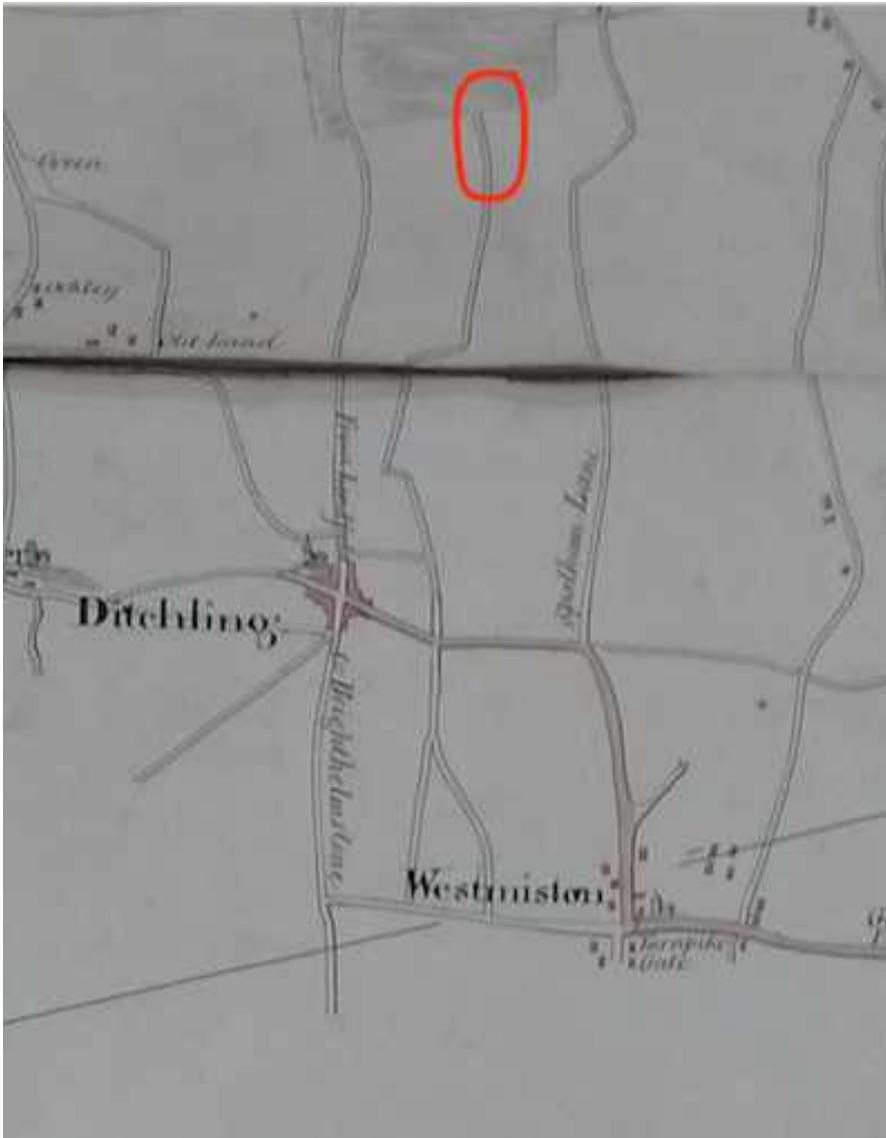


Fig. 5 Figg map of roads of East Sussex 1820

2.5.1 Date. 1820

2.5.2 Relevance. The route is shown as part of a road running from Ditchling Common southwards to Ditchling Village and onwards south towards the South Downs.

2.5.3 Archive. This map is at the Keep at reference ACC3553/1 being a 'Plan (by William Figg) of roads in Eastern Sussex showing turnpike gates and milestones, settlements shown in some detail'.

2.5.4 Meaning. William Figg considered the whole road, of which the application route is part, to be a road at this date. In their Mini Guide to Sources book No 16 'Maps of Sussex; West Sussex Records Office say that the two William Figgs, father and son, were "surveyors at the end of the 18<sup>th</sup> and beginning of the 19<sup>th</sup> centuries' who 'are generally known for their Estate plans'. Against a reproduction of a map of land at Rodmell, East Sussex Records Office describe William Figg as 'one of the most skilled and prolific map makers'.

2.5.5 Assessment. It is not known for whom the map was made or indeed which of the William Figg's produced it. However, both men were held in considerable esteem as map makers. Locally, they produced a huge number of estate maps for wealthy landowners who would not have settled for inferior work. We can be sure that if Figg shows the application route as a road it was a way of some significance/use at the time. The catalogue entry description (2.5.3) suggests that the roads shown were in public use at the time.

## 2.6 GREENWOOD AND GREENWOOD MAP OF SUSSEX



Fig. 6a Greenwood and Greenwood map

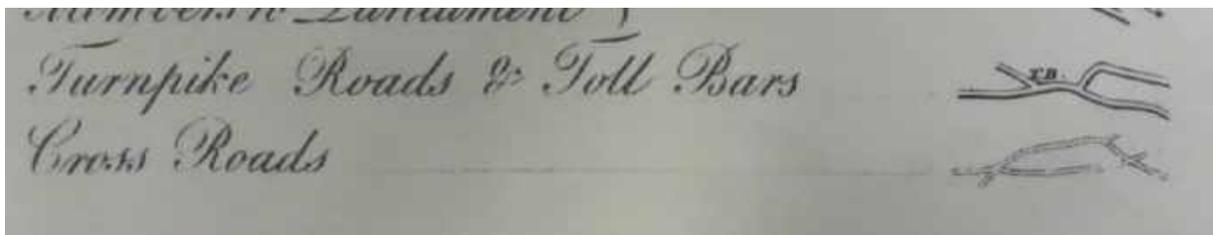
2.6.1 Date. 1825

2.6.2 Relevance. Harry Margary's book "250 Years of Map Making in the County of Sussex" says that 'detail and names demonstrates that he surveyed the county independently' 'he' being surveyor Christopher Greenwood. The map is at scale 1inch to the mile. It has a key. It shows the application route.

2.6.3 Archive. This map is held at the Keep under reference AMS 6008/1/129. A portion of the map, showing a bigger area than the above screenshot, is included as Appendix 7. Margary's book is at the Keep at reference AMS 6095/1.



**Fig. 6b Key to Greenwood and Greenwood Map**



**Fig. 6c Close-up of section of Key to Greenwood and Greenwood Map**

2.6.4 Meaning. This map has a key. The close-up of the key explains how roads were depicted. The application route is depicted as a Cross Road. The key does not detail that footpaths are shown.

2.6.5 Assessment. Paragraph 2.24 of the Planning Inspectorate's consistency guidelines says "In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres". While the application route itself does not join regional centres, the road of which it is a part links Ditchling Common with the village. As such the depiction is most suggestive of the application route being a public road at the time.

## 2.7 MUDGE MAP



**Fig. 7a Mudge Map of Sussex 1813**

2.7.1 Date. Triangulation survey undertaken in two phases in 1792 and 1793. Published 1813.

2.7.2 Relevance. The application route is shown in a manner that suggests that it is a road or way of some substance.

2.7.3 Archive. The map is held at the Keep as part of the Brighton Pavilion collection under reference BHM000009. The map at the Keep does not have a key. A portion of the map, showing a bigger area than the above screenshot, is included as Appendix 8 of this statement. The Legend for 1st Ed 1inch map can be found at <http://www.ancestry-maps.com/page-legend.asp>

2.7.4 Meaning There is no key for this map but as Mudge was also, at this time, working for the Board of Ordnance towards the creation of the first OS maps we can reasonably make the assumption that the depictions were the same. The Cassini map company joined with Dr Richard Oliver to generate a legend based on notations that were consistently used on the first edition OS maps. This legend is shown below. Footpaths are not shown on this map. Paths continue both north and west across the common.

2.7.5 Assessment. Mudge's survey used triangulation methods for greater accuracy than earlier maps and we should be confident that the route shown is correct. The depiction looks to have slightly heavier boundaries than 'unfenced road' but not so heavy as 'Other Road' ie not a main or turnpike road. It is depicted in the same manner as paths across Ditchling Common and St John's Common in addition to many of the routes across the Downs to the south. This suggests that it is more likely than not that the application route was a droveway or a bridleway at this time. There is no 'end' to the application route at the common edge and so the road must pass through both C and B.

## Old Series Surveyed 1791-1874, published 1805-1874

No legends existed on the original Old Series maps. Abbreviations and symbols were always employed but the usage, depiction and meaning evolved during the 70-odd years it took to complete the project. Although a comprehensive legend is therefore impossible, some signs were (with minor variations) consistently used: these are shown here. Note that as Cassini's maps have been created by joining original sheets which may have been published at different dates, it is possible that any one Cassini map might contain more than one style of abbreviation or symbol (and, indeed, other variations of design).

We would like to thank Dr Richard Oliver (B.A., D.Phil., F.B.Cart.S.) of the University of Exeter for his invaluable help in creating this legend.

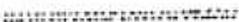
Turnpike or main roads	Railways	
Other roads	Cuttings	
Unfenced roads	Embankments	
		

Fig. 7b Legend for first OS and Mudge maps

### 3. EARLY EDITIONS OF THE ORDNANCE SURVEY 1inch MAP

#### 3.1 Draft 1<sup>st</sup> Edition OS 1inch Map



Fig. 8 Draft 1<sup>st</sup> Ed 1inch OS map

##### 3.1.1 Date. 1795-1805

3.1.2 Relevance. The map illustrates the precursor to the final 1<sup>st</sup> Edition OS 1inch map described in the following section. The maps were properly surveyed and intended to accurately represent what was on the ground at that time. The one inch to the mile small scale maps, when published, necessitated the exclusion of some detail that was shown on

the larger scale drafts. The maps were widely advertised and changes were made after consideration of any objections.

3.1.3 Archive. The map images were provided by ESCC Rights of Way Department from their own archive (not found at ESRO). Appendix 9 of this statement shows the maps from which the above image was taken. The legend as in Section 2.7.4 has been used to understand the map's notation. The private road depiction reminder letter is described below in Section 3.2.4.

3.1.4 Meaning. The application route is clearly shown as a road with boundaries of solid black lines. It leads from the south east corner of Ditchling Common southwards continuing as an 'Unfenced road' which is BW status today. A road running east-west links the application route with Spatham Lane. The boundary lines of the application route and Spatham Lane are closed to this east-west road. The application route appears to lead both to Popes Farm and to unfenced roads that run north and east across the common. Appendix 9 also shows the bottom section of the old road to which the continuation of the application route joins. This has an 'open' junction with the main north-south road through Ditchling Village.

3.1.5 Assessment. The application route was, at this date, a significant enough road to be included on the one-inch map. It is not a footpath – no footpaths are shown. The application route is depicted the same along its whole length and from the Richard Oliver key of 2.7.4 it is depicted as 'Other roads'. The route continues southwards depicted as 'Unfenced roads'. Where it meets the common at Popes Farm the drawing is a little unclear. The road narrows and leads to Popes Farm itself but also appears to be cheek-by-jowl with an unfenced road continuing north across the common. This is clarified when the final version of the map is published – see next section. The boundary lines of Spatham Lane and the application route being not-broken for the east-west road that links them indicates that this link road is either private (see 3.2.4/3.2.5 below) or gated. There must have been objections made and subsequent assessment after the draft map was published as the depictions are different on the final version of the map where the application route can be seen to openly join both the route northwards across the common and the link road to Spatham Lane (see Fig 9).

### 3.2 1813 1<sup>st</sup> Edition 1inch map



**Fig. 9 First Edition 1 inch Ordnance Survey Map**

#### 3.2.1 Date. 1813

3.2.2 Relevance. The maps were properly surveyed and intended to accurately represent what was on the ground at that time. The one inch to the mile small scale necessitated the exclusion of some detail that was shown on the larger scale maps.

3.2.3 Archive. 1813 Edition - West Sussex Records Office catalogue reference PM 249 (ESRO reference unknown). The images used here are from the Cassini reproduction map in the applicant's own possession. A relevant section of the wider area of the map can be found in Appendix 10a of this statement. There is no legend with this map but see 2.7.4 above. Instruction for portrayal of private roads is on the last page of an OS letter book at the National Archive, reference OS 3/260 and is at Appendix 10b.

3.2.4 Meaning. The application route is shown and is depicted consistently along the whole of its length with two solid lines indicating its boundaries. The legend indicates that this represents 'other roads'. It is depicted the same as nearby Spatham Lane to its east and a road that joins the application route with Spatham Lane. Other highways in the area that are byways, bridleways and vehicular roads today are depicted in the same way as the application route. The application route continues northwards across the common.

The instructions given to OS map surveyors about the portrayal of private roads are given in correspondence held at the National Archive under reference OS 3/260. The instruction given is "as these plans are intended for military purposes no existing roads should be omitted; but to distinguish those roads which are entirely on trespass the line of the main road from which they branch is not to be broken for them". The junction with Ditchling common is open and the application route continues southwards as an 'Unfenced Road'. Note from the map in Appendix 10a that the continuation of the old road to Ditchling village

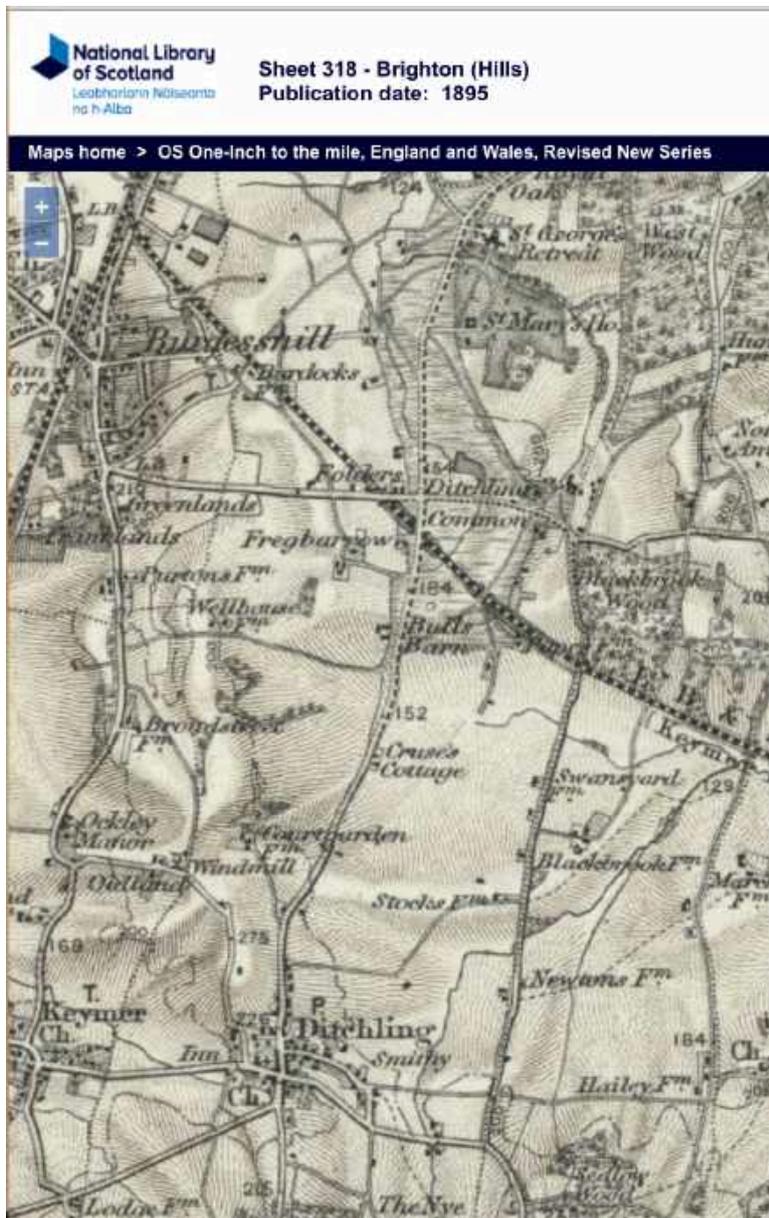
## 308-Ditchling B (North)

also joins the main road in an open manner – the boundary line of the High Street is broken for it.

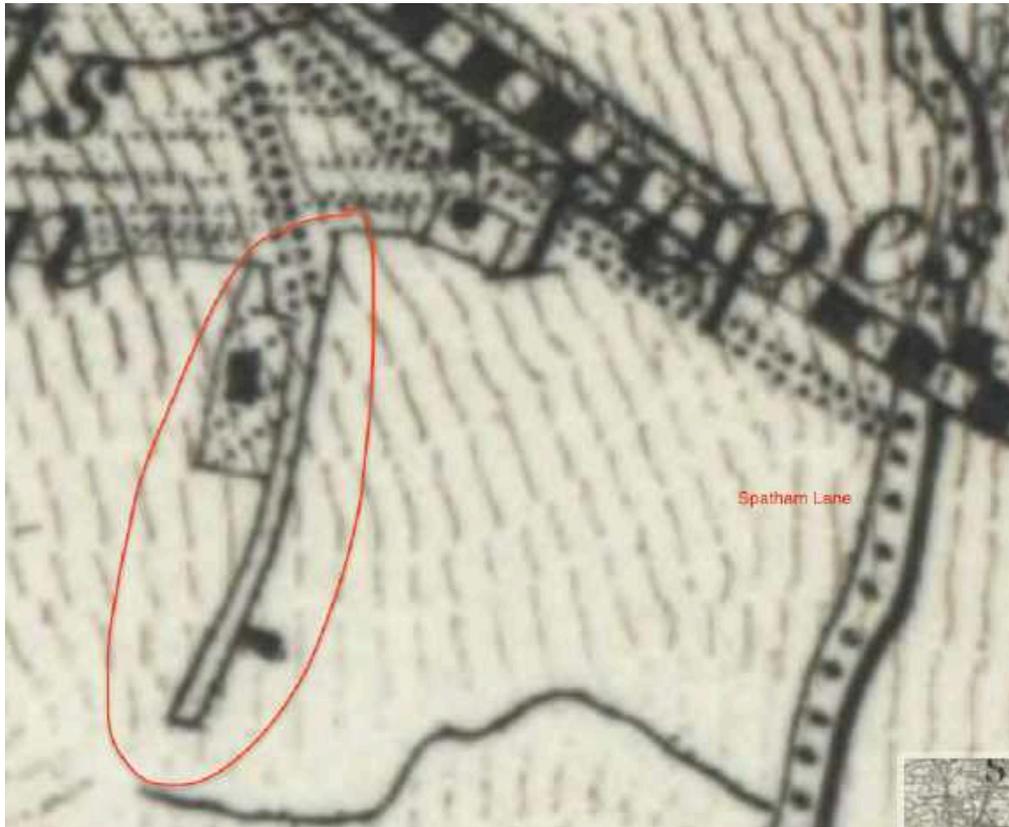
**3.2.5 Assessment** The application route is, at this date, a significant enough road to be included on the one-inch map. It is not a footpath – no footpaths are shown. The application route is depicted the same along its whole length and from the Richard Oliver key of 2.7.4 it is depicted as 'Other roads'. The route continues southwards as an unfenced road. The road is not a private road as its extremities where it meets the common in the north, its continuation to the south and where this continuation meets the main road in the village are all depicted as open. The application route continues north across the common through both C and B. It continues south as a bridleway today. It is thus more probable that not to be itself at least a bridle road at this date.

## 3.3 Other (1895, 1946 and 1960) Ordnance Survey 1 inch maps

### 3.3.1 1895 1inch OS map (Revised New Edition)



**Fig 10a 1895 1inch OS Map (Revised New Edition)**



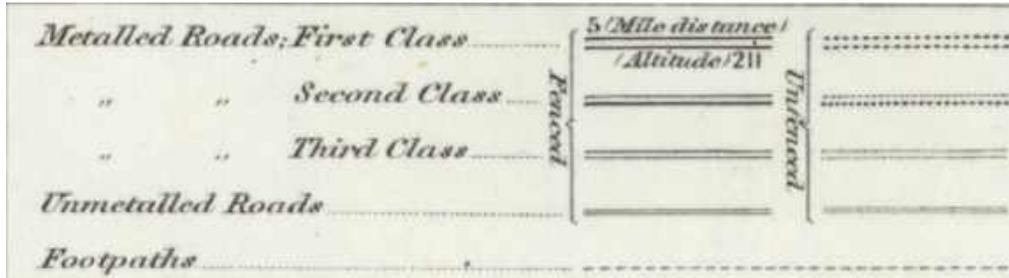
**Fig.10b Close-up 1895 1inch OS Map (Revised New Edition)**

3.3.1.1 Date. 1895

3.3.1.2 Relevance. The application route is shown bounded by continuous lines at its boundaries.

3.3.1.3 Archive The map can be found at the National Library of Scotland on-line map library at <https://maps.nls.uk/view/101169026>

3.3.1.4 Meaning. The key printed on this map indicates that the application route between A and C is a 'third class road' that is 'Fenced'. The application route continues unbroken as an 'Unfenced' road between C and B of the application route then northwards across the common. The widened 'funnel' length of the old lane between C and B is shown. The route's continuation southwards is not shown neither is the east west road that was previously shown linking the application route with Spatham Lane. There is a track shown alongside the railtrack from Spatham Lane to Popes Farm. Footpaths are listed in the legend for this map edition.



**Fig. 10c Key to 1895 OS 1 inch map**

3.3.1.5 Assessment. The route is significant enough to be shown on the 1 inch map at this time. It continues without obstruction giving access to the northwards path across the common through both C and B. The absence of depiction of its continuation south can only be guessed at. Perhaps at this time it was obstructed or there was no use made of the link south to the village. Only routes that were seen on the ground would have been mapped by the OS surveyors. Access to the application route from Spatham Lane, along the earlier east-west road, is not shown. Access to Popes Farm now appears to be along the new rail-side track. However, the application route appears to have remained accessible to the public from the common.

**3.3.2 1946 1 inch OS Map (New Popular Edition)**

308-Ditchling B (North)

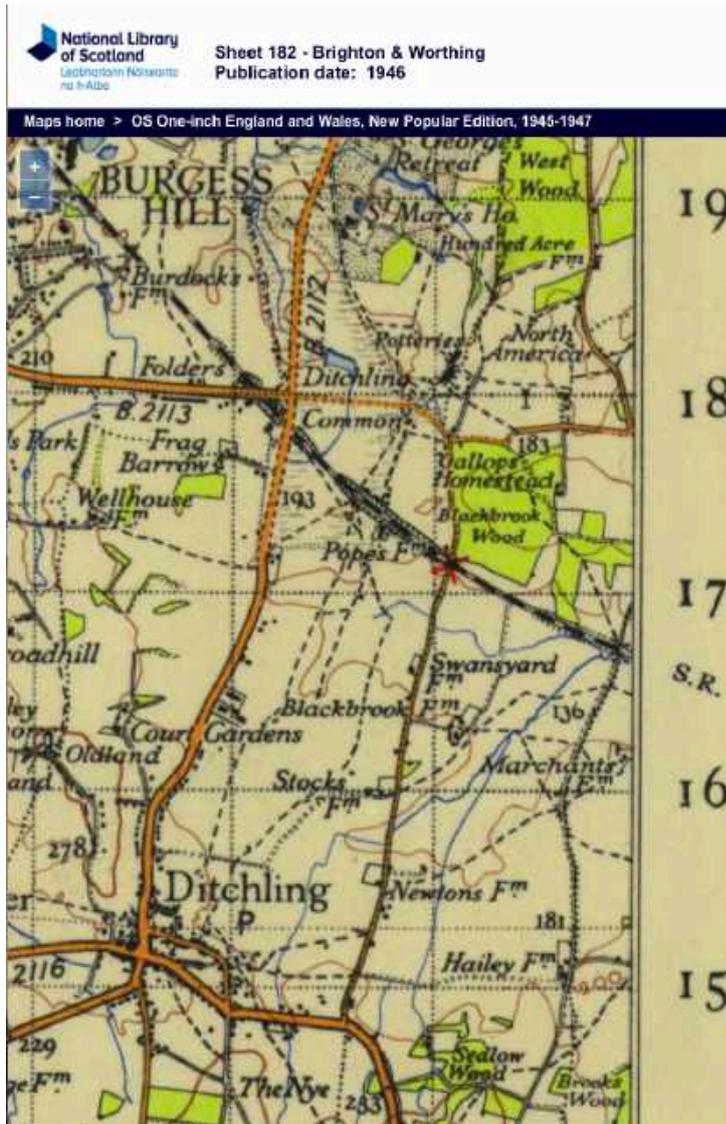


Fig. 11a 1946 OS 1inch OS map (New Popular Edition)

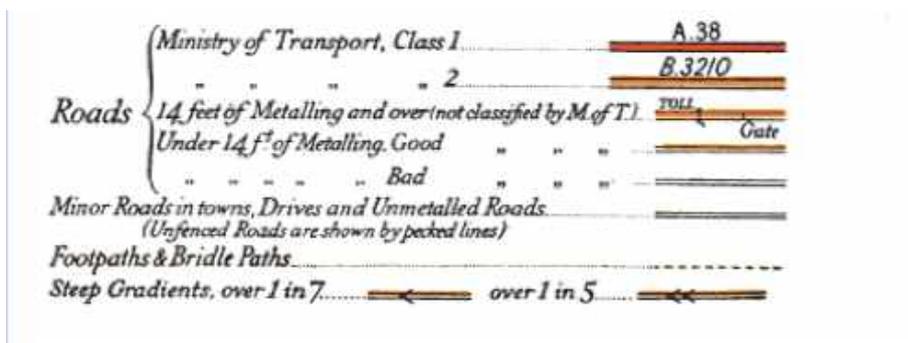


Fig. 11b legend for 1946 OS 1inch OS map (New Popular Edition)

3.3.2.1 Date. 1946

3.3.2.2 Relevance. The application route is shown on the map.

3.3.2.3 Archive. The map can be found at the National Library of Scotland on-line map library at <https://maps.nls.uk/view/74466981>

3.3.2.4 Meaning. The legend at the bottom of the map indicates that Footpaths and Bridle Paths are not distinguished from each other. Both are depicted as a broken black line. The application route is depicted as such. The legend also says that the representation of a road, track and footpath on the map is no evidence of a right of way.

3.3.2.5 Assessment. According to the disclaimer, the application route shown may or may not be public and might be either a footpath or a bridleway. However, it is clear that the surveyor identified that there was a used path of some description on the ground at this date. Just 6 years later in the Parish Survey (see section 13) the path was scheduled as public and so its depiction on this map is more likely to be showing a public way than a private one.

### 3.3.3 1960 1inch OS map (7<sup>th</sup> Series)

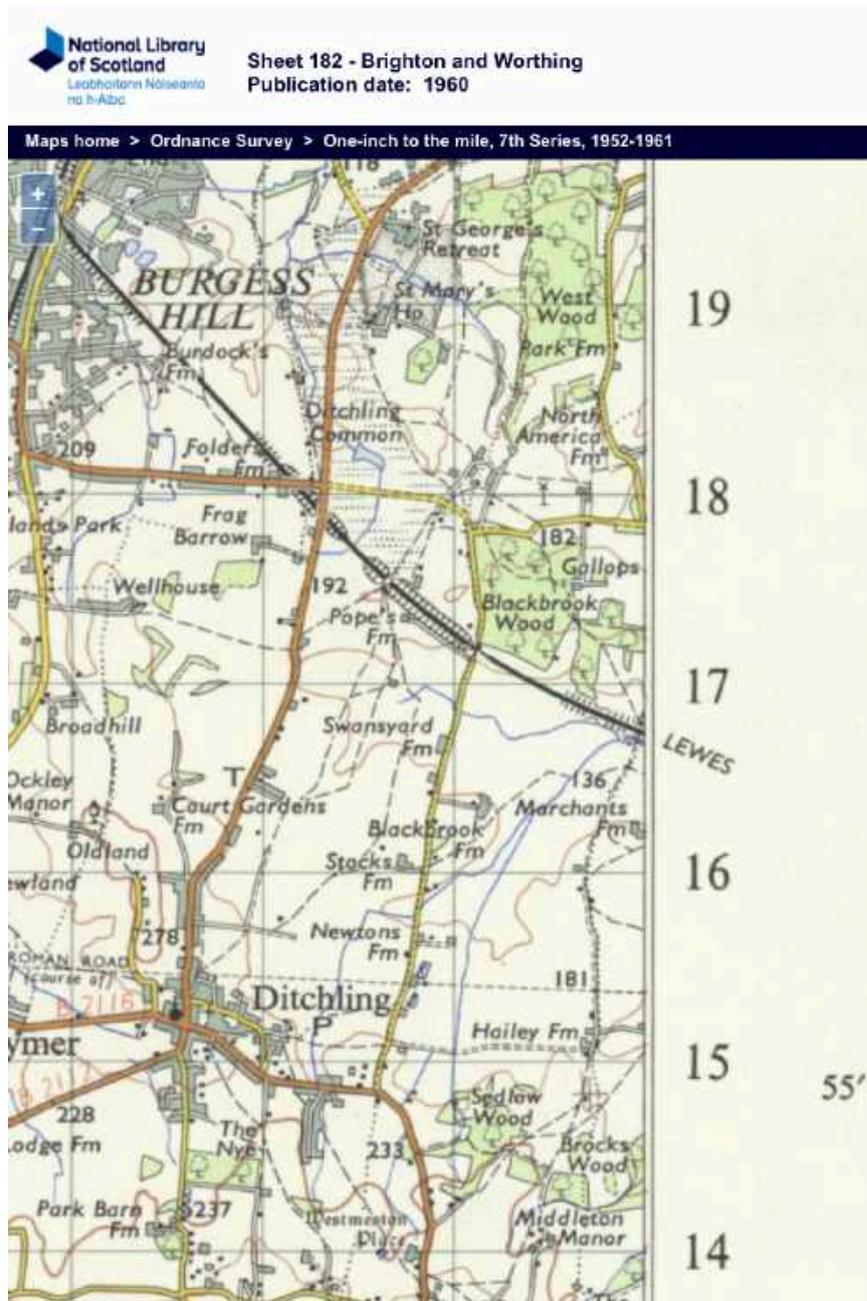


Fig 12a 1960 1inch OS map (7<sup>th</sup> Series)

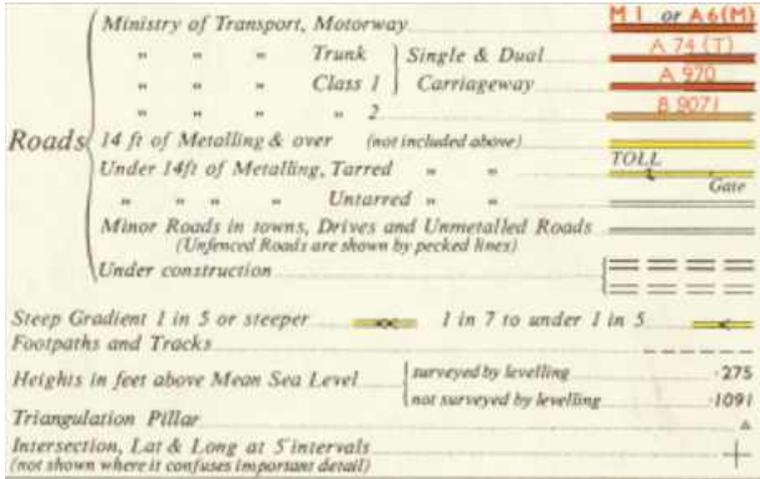


Fig 12b 1960 1inch OS map (7<sup>th</sup> Series)

3.3.3.1 Date. 1960

3.3.3.2 Relevance. The application route is shown on the map.

3.3.3.3 Archive. The map can be found at the National Library of Scotland on-line map library at <https://maps.nls.uk/view/91577517>

3.3.3.4 Meaning. The legend indicates that Footpaths and Tracks are not distinguished from each other. Both are depicted as a broken black line. The application route is depicted as such on this map. The legend also says that the representation of a road, track and footpath on the map is no evidence of a right of way.

3.3.3.5 Assessment. According to the disclaimer, the application route may or may not be public and might be either a footpath or a track. However, it is clear that the surveyor identified that there was a used path of some description on the ground at this date and the path had already been scheduled as a public right of way; first a bridleway on the draft Definitive Map and then as footpath on the final Definitive Map (see Section 13).

## 4. ORDNANCE SURVEY 6 INCH MAPS

### 4.1 OS 6inch map 1879



Fig 13a OS 6inch map 1879

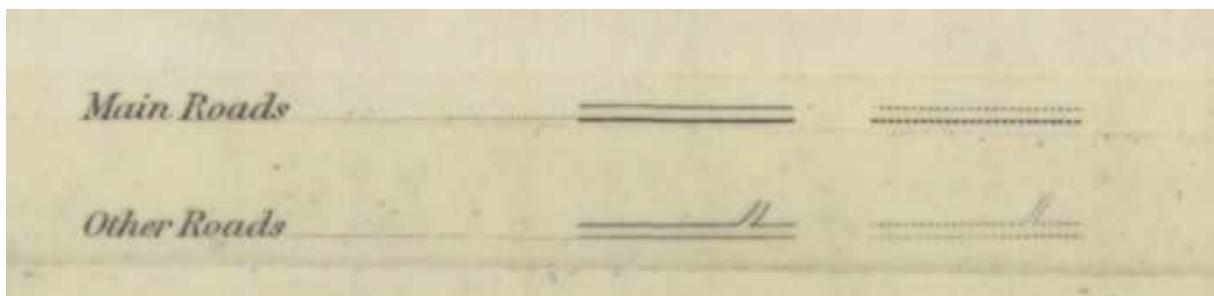


Fig. 13b Legend for OS 6inch map 1879

4.1.1 Date. 1879

4.1.2 Relevance. The application route is shown.

4.1.3 Archive. National Library of Scotland on-line map library at <https://maps.nls.uk/view/102347656>. The legend is at <https://maps.nls.uk/view/74477147>.

4.1.4 Meaning. The application route is shown as an 'Other Road'. The continuous boundary line suggests fence or hedging - the legend lists an alternative of a pecked boundary line which suggests unfenced roads which the application route is not. The southern end of the application route is open. There is a line across the route at C and a line across the east-west path that leads towards Spatham Lane. The east-west road is truncated and no longer meets Spatham Lane.

4.1.5 Assessment. This depiction is consistent with the 1895 1inch map in section 3.3.1. It suggests that the continuation of the application route southwards was not used at this time. There is possibly, a gate or similar, at C. The east-west road seems to be no longer used, there being a new access to Popes Farm, further north and alongside the railway. So access to the application route cannot be gained from Spatham Lane. It is noticeable that the new access is a 'slighter' track than the original east-west road and it is depicted with pecked boundaries. While the original road was more likely than not public, the new route is possibly a new private track to the farm.

## 4.2 Other 6inch OS maps

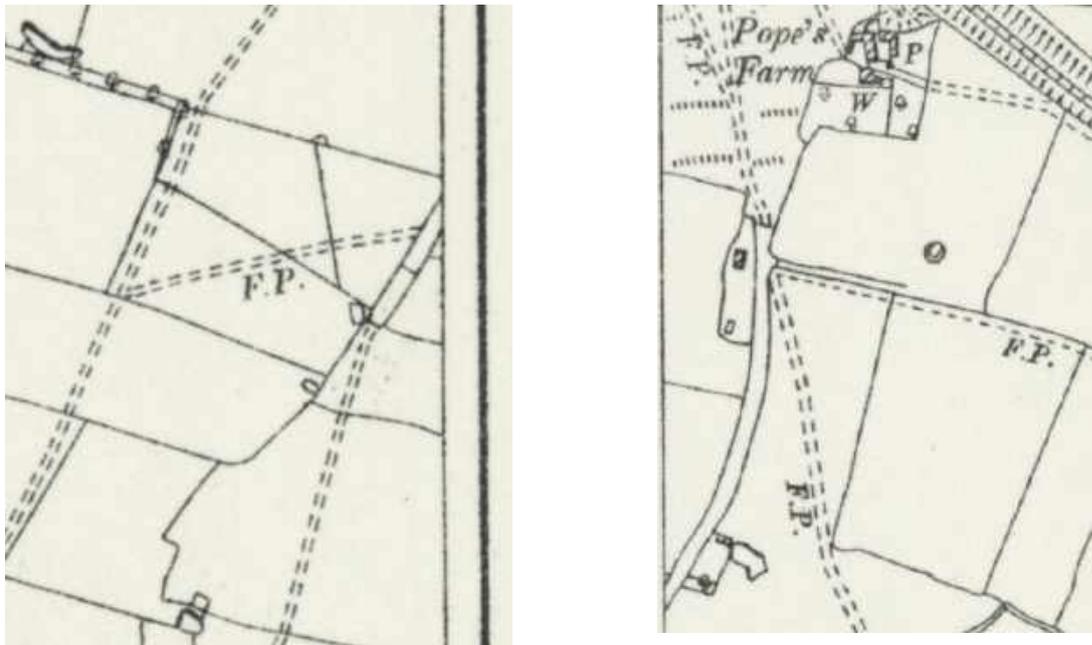


Fig. 14a 1899 6-inch OS maps 39SE and 39SW



Fig 14c 1911/12 6-inch OS maps 39 SE and 39SW



Fig. 14d 1933 6-inch OS map 39SW

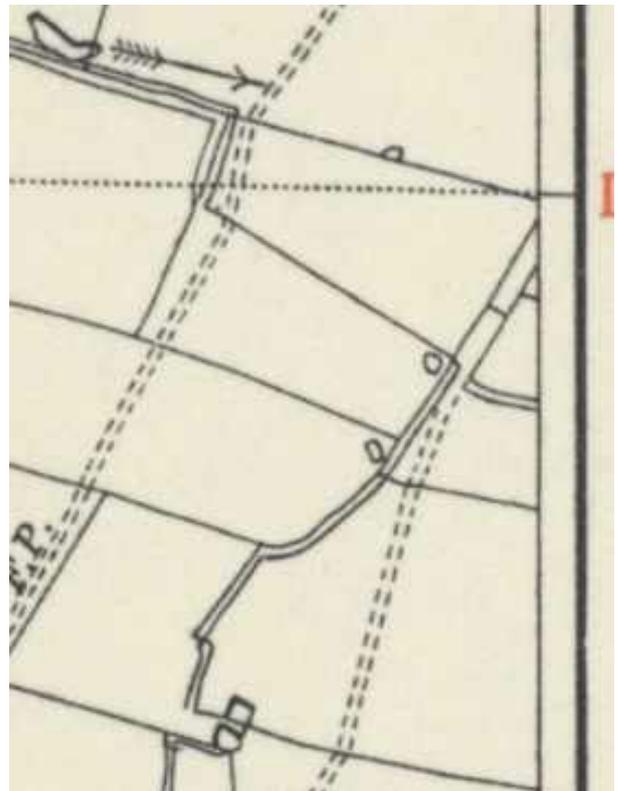


Fig. 14e 1950 6-inch OS map 39SW

4.2.1 Date. 1899 to 1950

4.2.2 Relevance. While all OS maps after the first edition carried a disclaimer that showing paths and tracks on the map did not necessarily imply public access, these maps are instructive in showing changes that were seen on the ground over the years.

4.2.3 Archive. National Library of Scotland at <https://maps.nls.uk/geo/find/index.cfm#zoom=13.176666666666666&lat=50.9542&lon=->

[0.1163&layers=102&b=1&point=50.9363,-0.0829](#) Select the appropriate 'tile' on the map and then the year map from the map miniatures that appear on the right of the screen. For the 1933 and 1950 maps for only the south end are available.

4.2.4 Meaning. All the maps show the application route between A and C as a wide route bounded by solid black lines signifying a hedged or fenced road. The 39SW OS maps show the lower part of the application route. The 1899 published map (1896/7 revision) has two lines across the path but both are beyond the application route at its southern end. The 1912 (1909 revision), the 1933 (1909 revision) and the 1950 (1938 revision) all show just one line across but again this is south of the southern end of the application route. The 39SE maps, which show the upper part of the route, show a line across the path at C in 1899 (1896 revision). An unfenced road is shown across the C to B 'funnel' of the old lane. Only a short stretch of the east-west road that links to Spatham Lane is shown on these two maps. This terminates, open-ended in a field. The 1911 (1909 revision) 39SE map is the same except that the east-west road is shown closed where it ends in the field. On both maps a FP is now shown alongside the old east-west road route but this diverges on to a different line at the eastern end. A new access track to Popes Farm is shown on both maps but has no annotation. There are no later 39SE maps for the upper section of the application route.

4.2.5 Assessment. All the maps show the application route clearly. However there appears to be no access to the application route from Spatham Lane at this time. This looks to synchronise with a change of access to Popes Farm. The varying inclusion of lines across the old lane both south of the application route and at C suggests gates or similar, possibly needed for stock control. All the maps show the application route clearly and being wide between A and C.

## 5. 1<sup>st</sup> EDITION ORDNANCE SURVEY 25INCH MAPS AND BOOKS OF REFERENCE (AREA BOOKS)



Fig. 15a 25inch OS map ref: 39 10

308-Ditchling B (North)

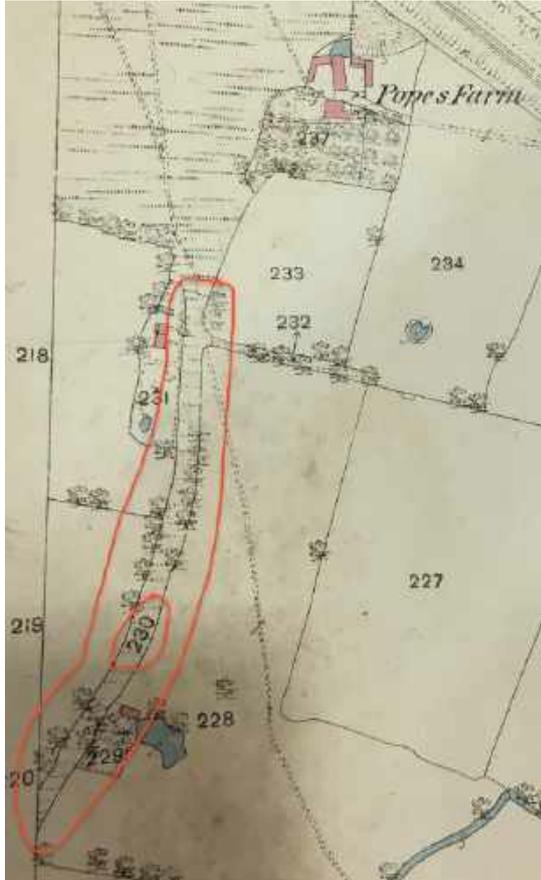


Fig 15b 25inch map OS ref: 39 11

PARISH OF DITCHLING. 3

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
172	10.020	Arable, &c.	220	4.060	Pasture, &c.
173	9.807	Arable, &c.	221	8.179	Pasture, &c.
174	.298	House, sheds, yards, &c.	222	6.802	Pasture, &c.
		Road.	223	1.573	Pasture, &c.
175	13.323	Arable, &c.	224	4.400	Pasture.
176	11.781	Arable, &c.	225	6.591	Pasture, &c.
177	5.268	Arable, &c.	226	2.373	Pasture.
178	7.376	Furze, wood, and osiers.	227	5.355	Pasture.
		Pasture, &c.	228	7.197	Pasture, &c.
179	3.726	Pasture, &c.	229	.156	House and garden.
180	1.115	Pasture, &c.	230	.909	Road.
181	5.051	Arable, &c.	231	.402	Houses and garden.
182	.332	Road.	232	.123	Road.
183	.146	Water.	233	1.738	Pasture.

Fig. 15c Area Book for 1<sup>st</sup> Ed 25inch OS map

5.1 1<sup>st</sup> Edition 25inch OS map and Area book

5.1.1 Date. 1874

5.1.2 Relevance. Ordnance survey maps are not usually of use for rights of way purposes because they usually purport only to show physical features and not legal rights. The disclaimer on the Ordnance survey maps is often said to mean that they are not evidence of public rights. However, the 1<sup>st</sup> Ed 25inch maps provide evidence from which inferences can

be drawn when cross-referenced to the Books of Reference (Area Books) that were published with them. Area Books are indexed by parish. Parcels of land are numbered on the maps and their use is recorded in the book of reference for the relevant parish.

A parcel described as a road in an Area Book might not distinguish between public or private access. If such a road it is over a single landowner's land and leads only to a house or barn on that land, one might reasonably infer it to be a private access road. But if a route goes from one public highway or place of interest or work to another and crosses the land of a number of owners or occupants or a number of occupants were dependent on the way to access their land then, in the absence of evidence of private rights or wayleaves, it can be inferred that public rights are likely to exist. Such evidence is unlikely to be conclusive on its own, but taken with other evidence, may support the existence of public rights.

5.1.3 Archive. The above screenshots are from the sheet maps OS ref: 39 10 and OS 39 11 which are kept in the map shelves at ESRO (the Keep). Area book extracts are from on-line Bodleian Library source

[http://solo.bodleian.ox.ac.uk/primolibweb/action/display.do?tabs=detailsTab&ct=display&fn=search&doc=oxfaleph016252448&indx=1&reclds=oxfaleph016252448&recldxs=0&elementId=0&renderMode=poppedOut&displayMode=full&frbrVersion=&dsCnt=0&fctN=facet\\_frbrgroupid&rfrGrp=frbr&fctV=237494599&scp.scps=scope:%28OX%29&tab=local&dstmp=1440528046119&srt=rank&mode=Basic&lastPag=&tb=t&v1%28353692470UI0%29=any&v1%28464773595UI1%29=all\\_items&v1%28freeText0%29=ordnance%20survey%20area%20book&vid=OXVU1&frbg=237494599&cs=frb&lastPagIdx=1&dum=true&frbrSrt=rank&v1%281UIStartWith0%29=contains&gathStatIcon=true](http://solo.bodleian.ox.ac.uk/primolibweb/action/display.do?tabs=detailsTab&ct=display&fn=search&doc=oxfaleph016252448&indx=1&reclds=oxfaleph016252448&recldxs=0&elementId=0&renderMode=poppedOut&displayMode=full&frbrVersion=&dsCnt=0&fctN=facet_frbrgroupid&rfrGrp=frbr&fctV=237494599&scp.scps=scope:%28OX%29&tab=local&dstmp=1440528046119&srt=rank&mode=Basic&lastPag=&tb=t&v1%28353692470UI0%29=any&v1%28464773595UI1%29=all_items&v1%28freeText0%29=ordnance%20survey%20area%20book&vid=OXVU1&frbg=237494599&cs=frb&lastPagIdx=1&dum=true&frbrSrt=rank&v1%281UIStartWith0%29=contains&gathStatIcon=true)

5.1.4 Meaning. The application route is depicted in the same manner as other roads on the two maps. Land parcel number 230 is marked on the A-C section of the application route on map 39 11 and at the edge of the map, against the route, on map 39 10. Land parcel 230 is recorded in its book of reference as 'Road'. The residue of the east-west road between the application route and Spatham Lane is marked 232. Its entry in the area book also is 'Road'. The C to B section of the application route is depicted in the same manner as the rest of the common immediately to the north.

5.1.5 Assessment. Both the A-C section of the application route and the east-west road (residue of) are depicted in the same manner as other routes that are public roads today. The area book does not distinguish between public and private roads. It is more likely than not that the route could carry public 'road traffic' of the time although the ability for use appears to have been curtailed to the south. However, the application route is open to all-comers from the common and indeed is itself depicted in the same grassland manner. The C-B section of the application route appears to have possibly become part of the common.

## 6. TURNPIKE PLANS

6.1 Organisations wishing to build turnpikes were required to show the owners of all the land within a certain distance of the proposed turnpike, and to place this information on deposit so that it could be inspected by the public and objections made, before Parliament would give the powers needed for the road's construction. Records were well researched, as mistakes would have been costly with the possibility of the private bill being thrown out and a rival organisation being given permission.

6.2 The application route is too far from local turnpike roads to feature on the plans.

6.3 However the old lane, of which the application route is part, may well have been used to avoid payment of tolls. The North South road through Ditchling, now the B2112, was turnpiked in 1770. The Tithe map shows the position of the tollgates. Appendix 27 shows further detail.

## 7. INCLOSURE RECORDS

7.1 No inclosure records showing the application route have been found.

## 8. TITHE RECORDS

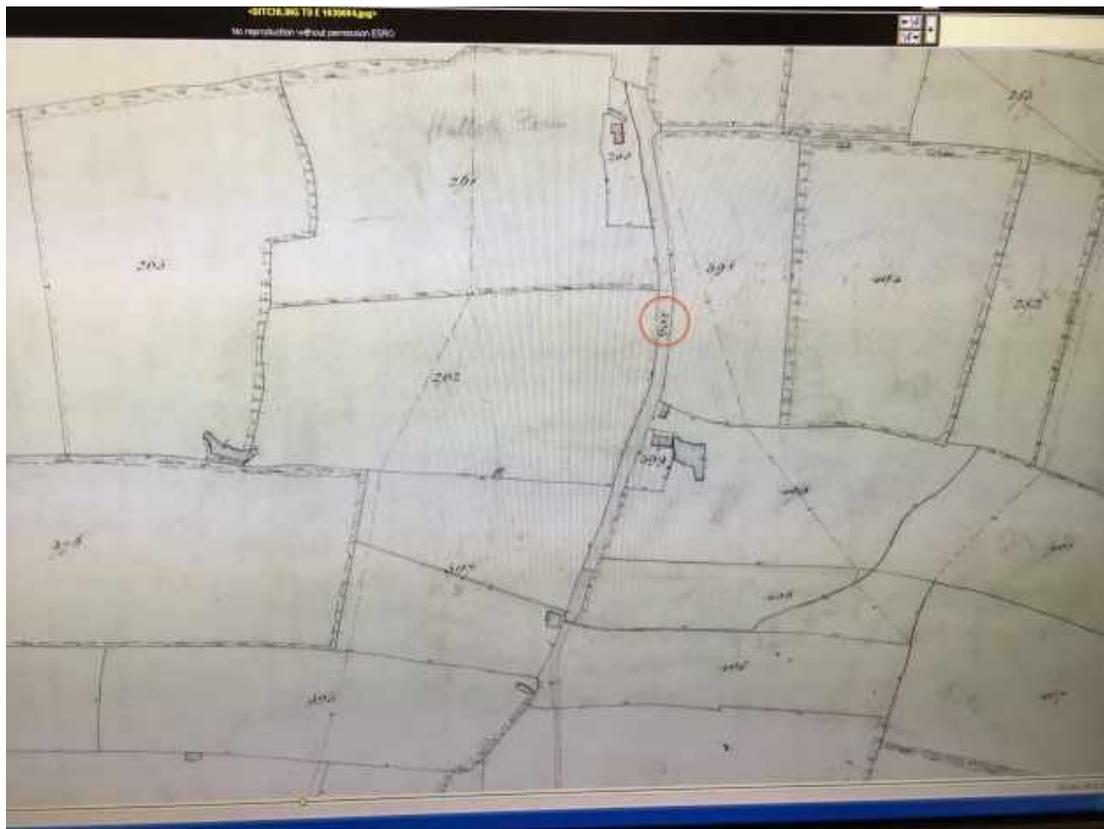


Fig. 16a Ditchling parish tithe map showing application route as parcel 902

308-Ditchling B (North)

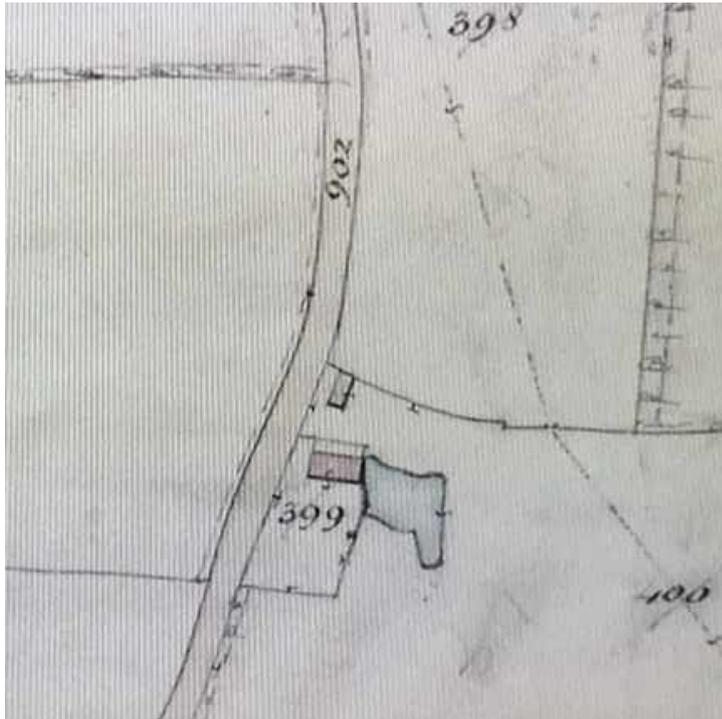


Fig 16b Ditchling parish tithe map close-up showing parcel 902

891	Ditchling	24 Feb 1843	TDE 103/2/892	Plot 892, wood, in Ditchling; wood	Farningworth
892	Ditchling	24 Feb 1843	TDE 103/2/893	Plot 893, roads and wastes, in Ditchling; [not stated]	Pillingworth
893	Ditchling	24 Feb 1843	TDE 103/2/894	Plot 894, roads and wastes, in Ditchling; [not stated]	
894	Ditchling	24 Feb 1843	TDE 103/2/895	Plot 895, roads and wastes, in Ditchling; [not stated]	
895	Ditchling	24 Feb 1843	TDE 103/2/896	Plot 896, roads and wastes, in Ditchling; [not stated]	
896	Ditchling	24 Feb 1843	TDE 103/2/897	Plot 897, roads and wastes, in Ditchling; [not stated]	
897	Ditchling	24 Feb 1843	TDE 103/2/898	Plot 898, roads and wastes, in Ditchling; [not stated]	
898	Ditchling	24 Feb 1843	TDE 103/2/899	Plot 899, roads and wastes, in Ditchling; [not stated]	
899	Ditchling	24 Feb 1843	TDE 103/2/900	Plot 900, roads and wastes, in Ditchling; [not stated]	
900	Ditchling	24 Feb 1843	TDE 103/2/901	Plot 901, roads and wastes, in Ditchling; [not stated]	
901	Ditchling	24 Feb 1843	TDE 103/2/902	Plot 902, roads and wastes, in Ditchling; [not stated]	
902	Ditchling	24 Feb 1843	TDE 103/2/903	Plot 903, roads and wastes, in Ditchling; [not stated]	
903	Ditchling	24 Feb 1843	TDE 103/2/904	Plot 904, roads and wastes, in Ditchling; [not stated]	

Pillingworth Plantations:	1 acres 3 rods 5 perches	CHICHESTER	Lord
	2 acres 3 rods 30 perches	[not named]	
	1 acres 2 rods 2 perches	[not named]	
	1 acres 1 rods 8 perches	[not named]	
	1 acres 1 rods 32 perches	[not named]	
	2 acres 1 rods 6 perches	[not named]	
	0 acres 3 rods 1 perches	[not named]	
	3 acres 0 rods 19 perches	[not named]	
	2 acres 1 rods 15 perches	[not named]	
	1 acres 3 rods 6 perches	[not named]	
	1 acres 3 rods 15 perches	[not named]	
	1 acres 1 rods 0 perches	[not named]	
	3 acres 3 rods 1 perches	[not named]	

Fig 16c Apportionment detail for application route

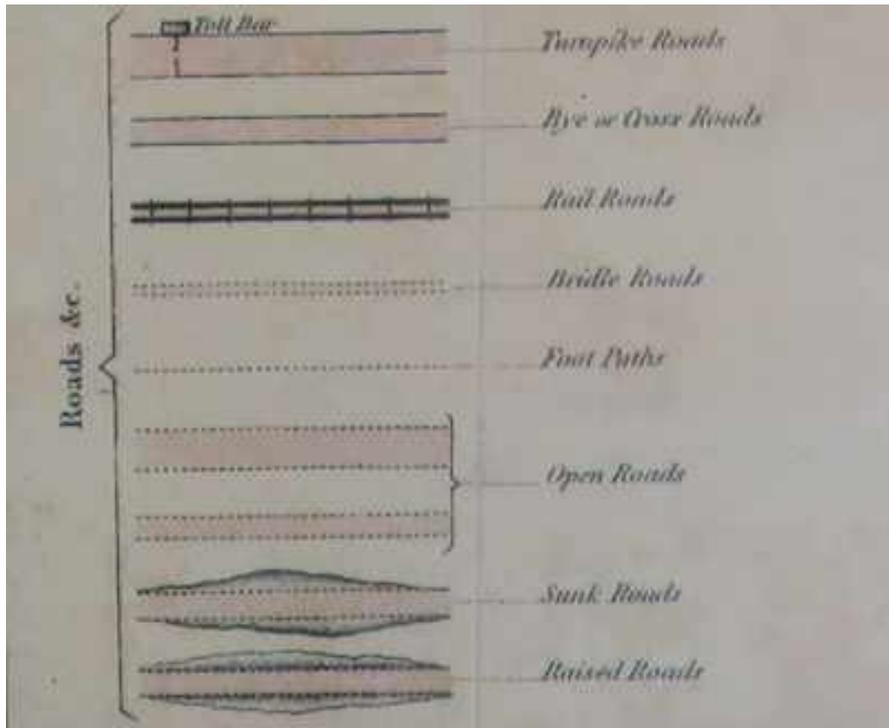


Fig.16d Dawson's Tithe map conventional symbols for roads

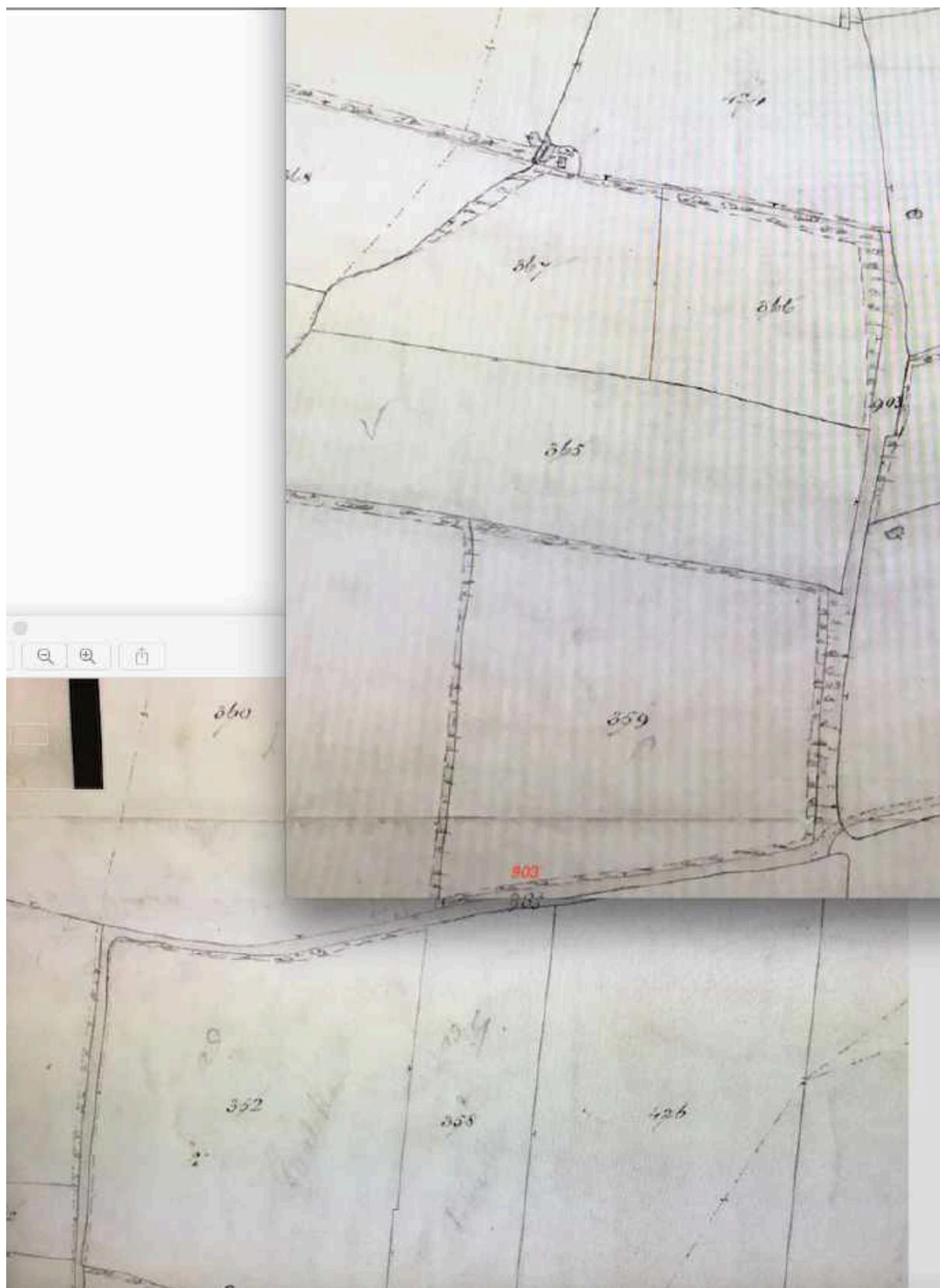


Fig. 16e Further 'road' section of old lane south of application route

## 8.1 Tithe map and apportionments

8.1.1 Date. The Ditchling map was produced 1839 and the apportionment in 1843

8.1.2 Relevance. The Tithe Commutation Act of 1836 required tithes in kind to be converted into a monetary payment system. Maps were drawn up to find out which land parcels were subject to tithes, who owned them how much was payable and to whom. Tithe documents were drawn up under statutory procedures and received a high level of publicity. The final agreements, which formed the basis of the tithe apportionment was legal and binding. Land that was not subject to a tithe payment included unproductive land, land owned by the church or the crown estate or might be public. It is common therefore for no tithe to be payable on public roads, although wide grass drovers roads could carry a tithe as they were used as pasture. It was in the interest of landowners for un-tithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. On some tithe maps highways are coloured in yellow or sienna. This differentiated them from other roads and is often interpreted as indicating public status.

8.1.3 Archive. Digitised tithe maps are in the East Sussex Record Office at the Keep. The screenshots above were obtained from these. The tithe map conventional symbols can be found at ESRO at catalogue reference PAR 324/6/2/2. These symbols were proposed by Lieutenant R K Dawson, one of the Assistant Commissioners at the Ordnance Survey. Lt Dawson produced the first specification (British Parliamentary Papers, Session 1837, Vol XLI 405) for the tithe mapping.

8.1.4 Meaning. The application route between A and C has an apportionment number of 902. The application route and its continuation southwards is coloured sienna. A further section of the old lane, numbered 903 is depicted the same. The description of both sections in the apportionments book is "roads and wastes". There is no owner recorded in the apportionment and nothing recorded under 'Farm Name' for either land parcel.

8.1.5 Assessment. Although the proposed symbols were not authorised by Parliament in time for it to be mandatory that they be used, many of the tithe maps used them. Where they are used it is logical to suppose that the appropriate meaning was implied. Thus a narrow sienna coloured path would imply a 'Bye or Cross Road'. 'Cross Road' simply means not a turnpike or main road – see section 2.6.5 above. The land parcel's manner of depiction is that of a road, not a way of lower use. Where it continues south it is shown narrower, maybe as a bridleway at the time although section 903 is once again shown wider. The colouration of this road on the tithe map is suggestive that it was public according to Dawson's key. All other roads that are coloured on this tithe map are public roads today. It is more likely than not that the A-C route had at least bridle or droving rights for the public at that time.

## 9. BOUNDARY RECORDS

### 9.1 Boundary Sketch map

The Ordnance Survey Act 1841 gave the OS the duty of ascertaining and recording all public boundaries. Boundary Sketch maps and Boundary Remark Books were produced under Parliamentary Authority with the power to summon the Clerk of the Peace and any books maps or documents he held and under provisions that an offence be committed for obstructing the surveyor. The OS boundary Remark Books, held at the National Archives in series OS 26, are the results of the Ordnance Survey's checking of the boundaries with the meresmen from the parish on each side. Public inspection of the survey result was encouraged, by advertising, and so its depictions are unlikely to have gone unchallenged if incorrect.

9.1.1 Date. 1873

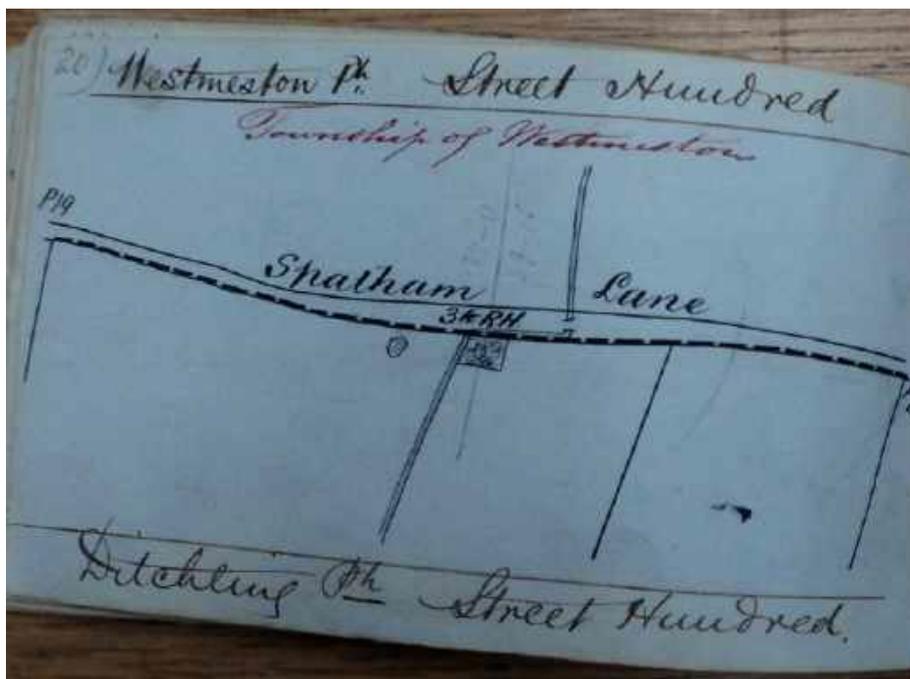
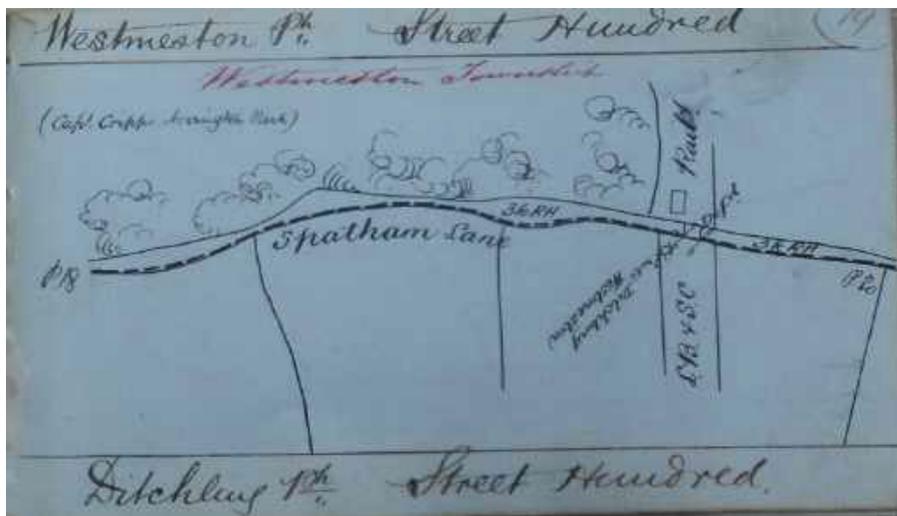
9.1.2 Relevance. The parish boundary between parishes Ditchling and Westmeston runs the length of Spatham Lane, which is parallel and close to the application route.

9.1.3 Archive. The Ditchling Boundary Sketch Map is found at the National Archives at reference OS 27/5299.

9.1.4 Meaning. The Sketch map indicates that pages 18 and 19 show the Spatham Lane section that runs parallel to the application route.

9.1.5 Assessment. Any road or path joining Spatham lane would be shown in the Remark Book for this boundary (see section 6.2).

**9.2 Boundary Remark Book**



**Fig.17 Boundary Records Book pages 18 and 19 showing absence of access road to application route from Spatham Lane**

9.2.1 Date. 13<sup>th</sup> October 1871

9.2.2 Relevance. The Boundary Remark book notes all features along the parish boundary. Places where the boundary crosses or runs adjacent to a junction with a path or road would be noted. The parish boundary between Ditchling and Westmeston runs along Spatham Lane, which is close to the application route. In addition to access from the common in the north and the old lane (now bridleway) in the south there is a lane directly accessing the application route from Spatham Lane. This appears on maps between 1793 and 1879 that have been consulted for this application. The access lane, albeit on a slightly different route at its eastern end, was used by the Parish Surveyor when the Definitive Map surveys were done in 1953.

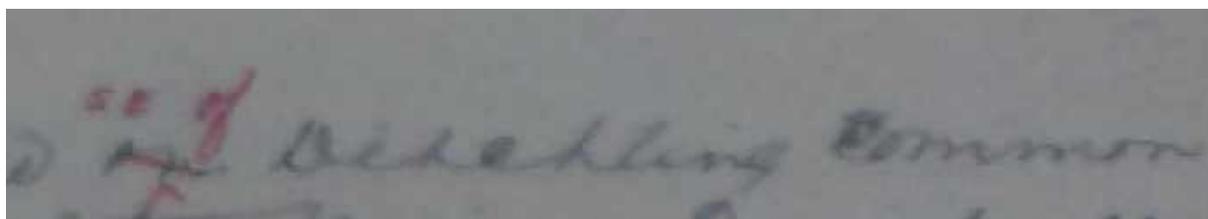
9.2.3 Archive. Boundary Remark Books are held in the National Archive. The one relevant to the application route is at reference OS 26/10475. The relevant pages are shown in Fig 17. Maps showing the whole of the east-west lane are the Mudge map (see section 2.7), the 1<sup>st</sup> Ed OS map (see section 3.2) and the Greenwood and Greenwood map (see section 1825).

9.2.4 Meaning. The application route itself is too far from the boundary to be shown. No path or road joining Spatham Lane is shown. The east-west link from Spatham Lane to the application route (towards Popes Farm) is not shown. No other route connecting Spatham Lane with the application route is shown.

9.2.5 Assessment. The east-west road connecting the application route with Spatham Lane was not seen at this date. And there was no other access from Spatham Lane to the application route. The disappearance of the east-west link between Spatham Lane and the application route could well have been to prevent rat-run use of the application route and its continuation to Ditchling village once Common Lane way was turnpiked in 1770. On many maps a stub of the east-west lane can be seen which suggests that access has been blocked half way along its length.

**10. OBJECT NAMES BOOK**

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Description Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Scale	
Popes Farm	Popes Farm	to Knight remains to 1800				A farmstead on the property of the Messrs. Broomfield, formerly of the Messrs. Broomfield.



**Fig. 18 Close-up of Object Names Book entry for Popes Farm**

10.1.1 Date. 1909 revision

10.1.2 Relevance. For the 2<sup>nd</sup> Ed 25inch (County Series) maps the Ordnance Survey collected accurate names of everything that were to be recorded on the maps. The OS surveyors consulted local persons of note and stature with intention that spellings be correct.

10.1.3 Archive. The Object Names Book is held at the National Archives, catalogue reference OS 35/7073. The instruction to Field Examiners can be found at <https://www.ordnancesurvey.co.uk/docs/ebooks/historical-instructions-to-field-examiners.pdf>

10.1.4 Meaning. The only named object on the application route is Popes Farm, the entry for which is in Fig 16. It is owned by the Misses Dumbrell. Of note – the description ‘on Ditchling Common’ has been altered to ‘SE of Ditchling Common’ at a later date.

10.1.5 Assessment. The C to B section of the application route runs over a small area of Ditchling Common which today is in the registered ownership of Popes Farm (now named Clearview Farm). The alteration of wording suggests that Popes Farm was not in any way ‘on’ the Common at this date.

## 11. RAILWAY, CANAL AND RIVER RECORDS

11.1.1 Companies wishing to build railways or canals were required to show the owners of all the land within a certain distance of the proposed railway, and to place this information on deposit so that it could be inspected by the public and objections made, before Parliament would give the powers needed for the railway’s construction. Records were well researched as mistakes would have been costly with the possibility of the private bill being thrown out and a rival company being given permission

11.1.2 Plans held at ESRO where the rail line runs close to the application route are at reference Q/4/171A, Q/4/182A and QDP/207/1. The first two plans are dated 1839 and the last is dated 1844. All show the very top of the application route. It is not affected directly by the rail line and has no assigned plot number and thus no entry in the books of reference.

11.1.3 The application route is shown open ended to the common on all the maps although there is a line across the application route at point C, on the /182A map. The east-west road linking the application route to Spatham Lane is shown ‘open’ at its junction with the application route on the Q/4/171A map but closed, with a line across it, on the Q/4/182A map. It is indeterminate on the QDP/207/1 map. On both 1839 maps only a residual short section of the original east-west link road, south of Popes Farm, is shown. On the 1844 map this short road length is open to a field.

11.1.4 There is little to conclude from the rail plans other than that the application route existed at the time.



Fig. 19a Q/4/171A Railway plan 1839



Fig 19b Q/4/182A Railway plan 1839

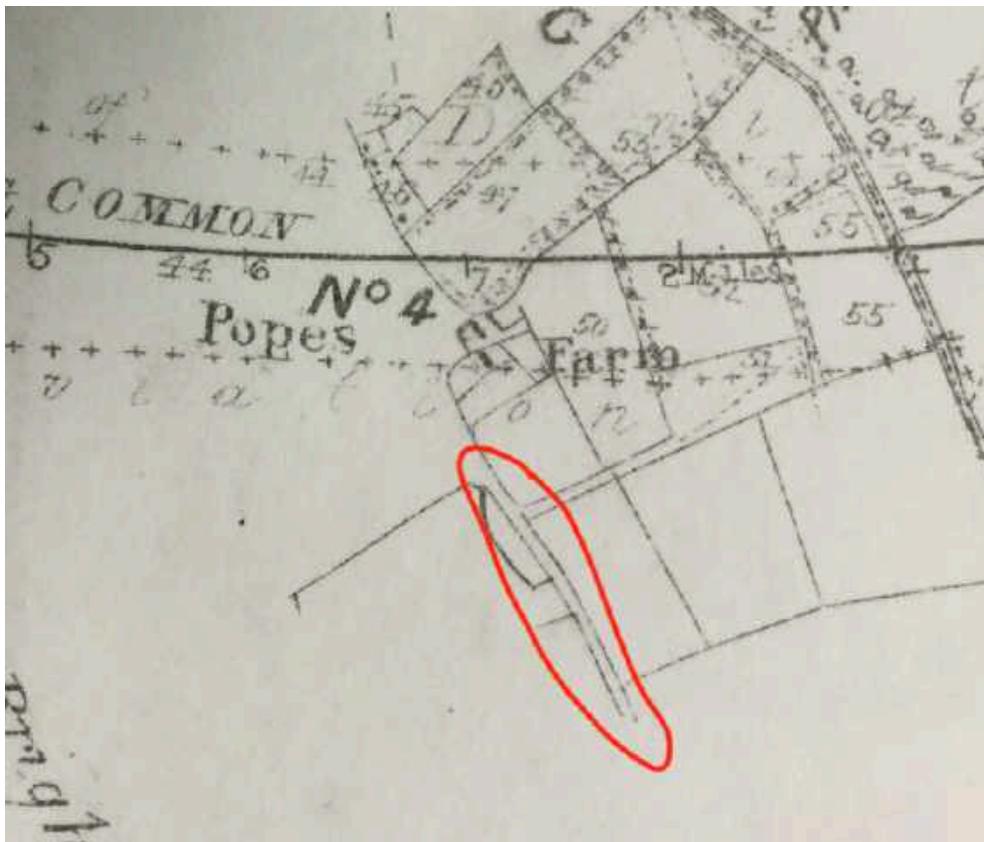
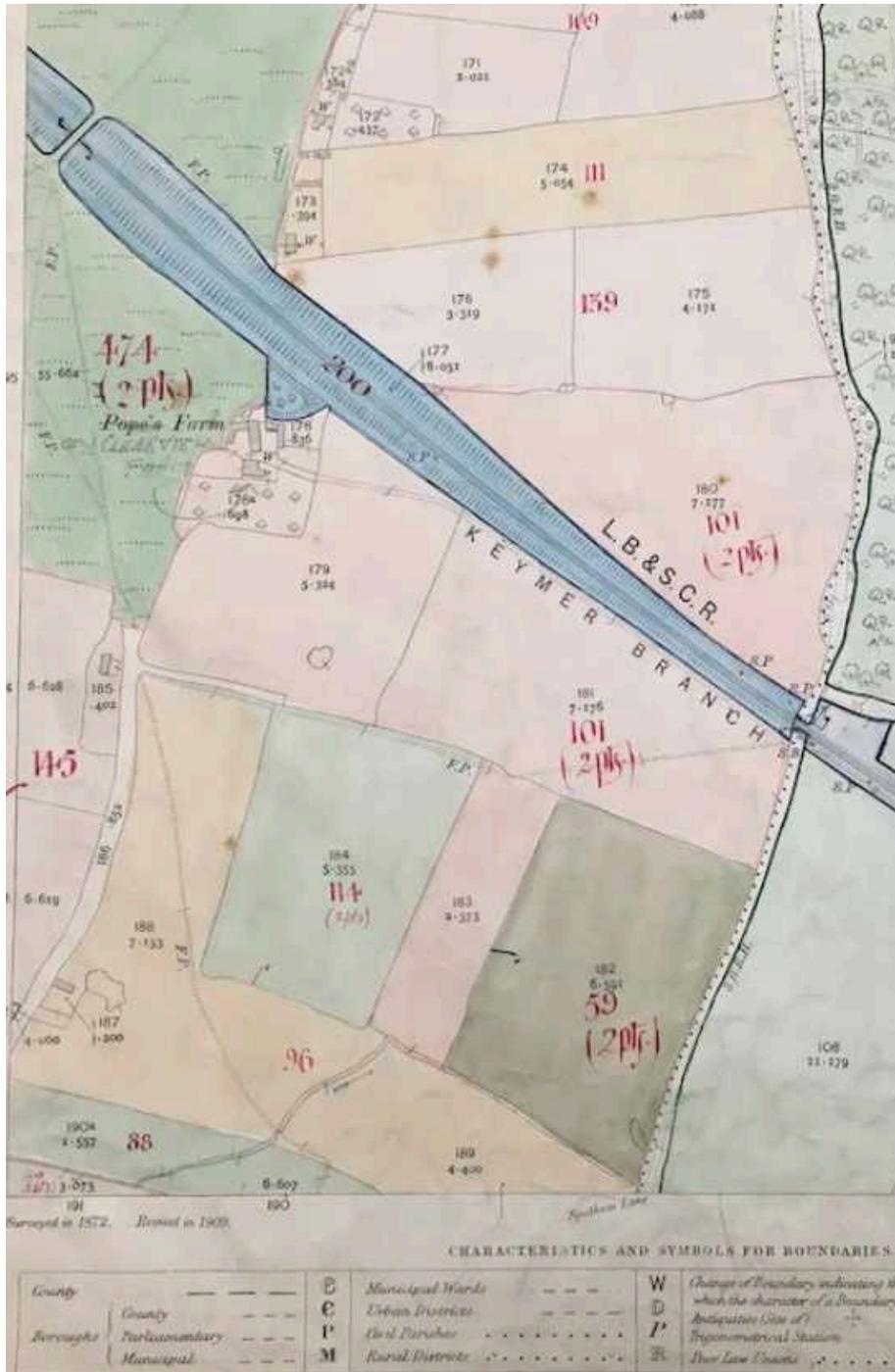
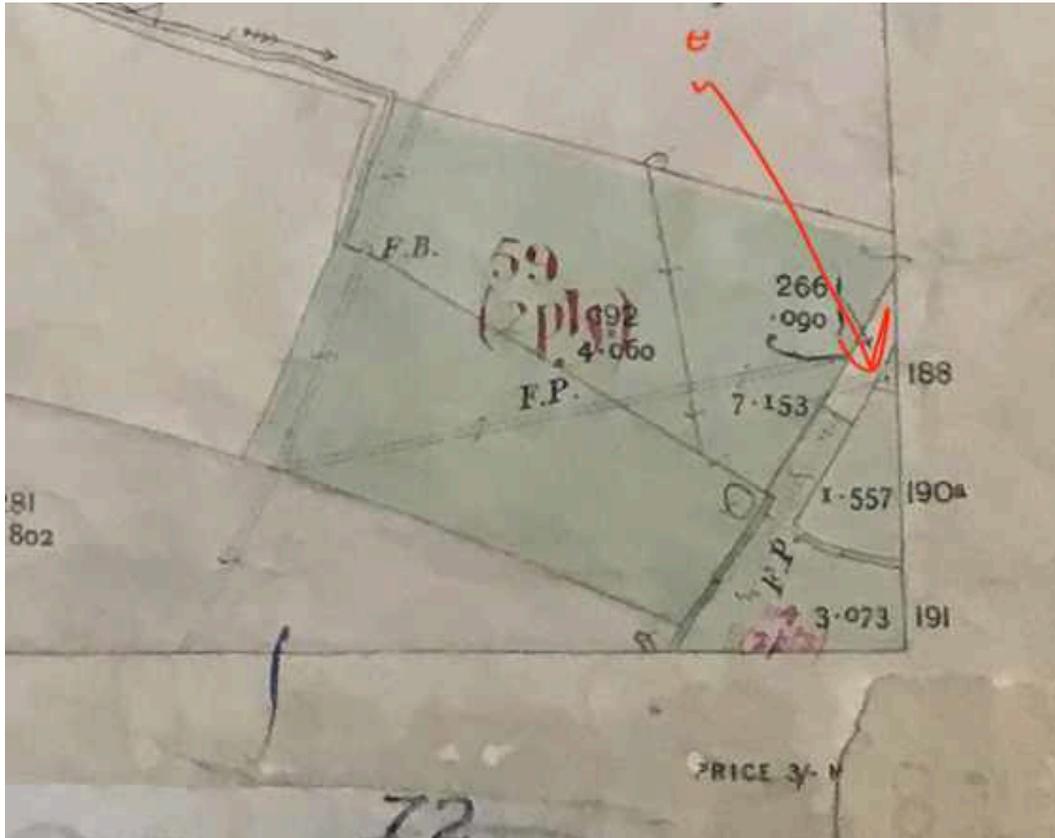


Fig. 19c QDP/207/1 Railway Plan 1844

## 12. INLAND REVENUE VALUATION - MAPS AND FIELD BOOK FOR FINANCE ACT 1910

### 12.1 IR Map





**Fig. 20 IR Map for Finance Act 1910 Valuations of land**

12.1.1 Date. 1910

12.1.2 Relevance. Under the Finance (1909-10) Act 1910 all land in England and Wales was valued so that the increase in its value when ownership changed could be taxed. Under statutory powers, surveys were carried out by the Board of Inland Revenue. It was a criminal offence for any false statement to be made in order to reduce tax liability. Land was divided up into numbered hereditaments and information for each was recorded. Deductions from the assessable value of hereditaments could be claimed if they were crossed by public footpaths or bridleways. Where a vehicular highway crossed a hereditament, it was generally omitted from the valuation, and shown on the Inland Revenue's plans as a "white road". The Finance Act information was annotated on copies of County Series OS maps and field books were produced from the 'Form 4' documents filled out by the landowners. These field books that listed information on numbered hereditament on the map including the tax due. There are no entries in the field books for un-numbered hereditaments as there was no tax value placed on them. The maps were not available at the time that the first definitive maps were drawn up.

12.1.3 Archive. The relevant maps are at The National Archive. The catalogue reference for the top of the path which is drawn on to OS 25inch map 39 11 is IR 124/1/99. The catalogue reference for the bottom of the application route, which is overlaid on OS 25inch map 39 10 is IR 124/9/353. Relevant excerpts are shown in Fig 20. Copies of larger portions of the maps are at Appendix 14 of this statement. The whereabouts of the Form 4s have not been traced and probably was not kept once the field book had been completed.

12.1.4 Meaning. The County Series OS map used was produced predominantly in black and white (ponds and rivers were sometimes blue and buildings sometimes brown). The colouration on the map relates to the Inland Revenue survey with the large red numbers each being a single, coloured hereditament. The application route between A and C is

uncoloured for the whole of its length. The area of land crossed by section C to B of the application route appears to be part of Ditchling Common to the immediate north. The application route continues southwards coloured green, the same as the adjoining hereditaments. Part of the east-west lane that ran from the application route to Spatham Lane is also uncoloured.

12.1.5 Assessment. The depiction of the A-C section of the application route as a white road is indicative of public rights over it. These are most likely vehicular rights as footpaths and bridleways were normally subject to tax deductions rather than exclusion from the hereditaments. The depiction is unlikely to show a way that is for private use only, as such a way could be developed, increase in value and so be taxable. Accordingly, private tracks are unlikely to have been excluded from the assessable hereditaments. There are a few other possibilities (for example the land was 'waste' and of no value) but this is unlikely for a plot of land that looks so much like a road. Unless proof of some other reason can be shown, by anyone wishing to put forward an alternative explanation, the map should be taken to demonstrate that the application route is being shown as a public road at this time. However vehicular access appears to have been compromised as the east-west access road from Spatham Lane, while being partially shown as a 'white road' does not at this time afford access to the application route. It should be noted though that the main north-south route that runs through the common to the west of the application route (currently Common Lane) is itself only uncoloured to the south of the common. This suggests that either both roads were navigable by vehicles or neither was. If neither, then the only vehicular access to the common would be at the north end of Spatham Lane (see Appendix 14). A narrow access is shown but it may be that horse and waggon was still the only vehicular access needed.

## **12.2 IR Field Book**

The Field Book was not consulted as there is no hereditament number for the application route and therefore there would not be an entry for it.

## 13. OTHER MAPS

### 13.1 Bartholomews

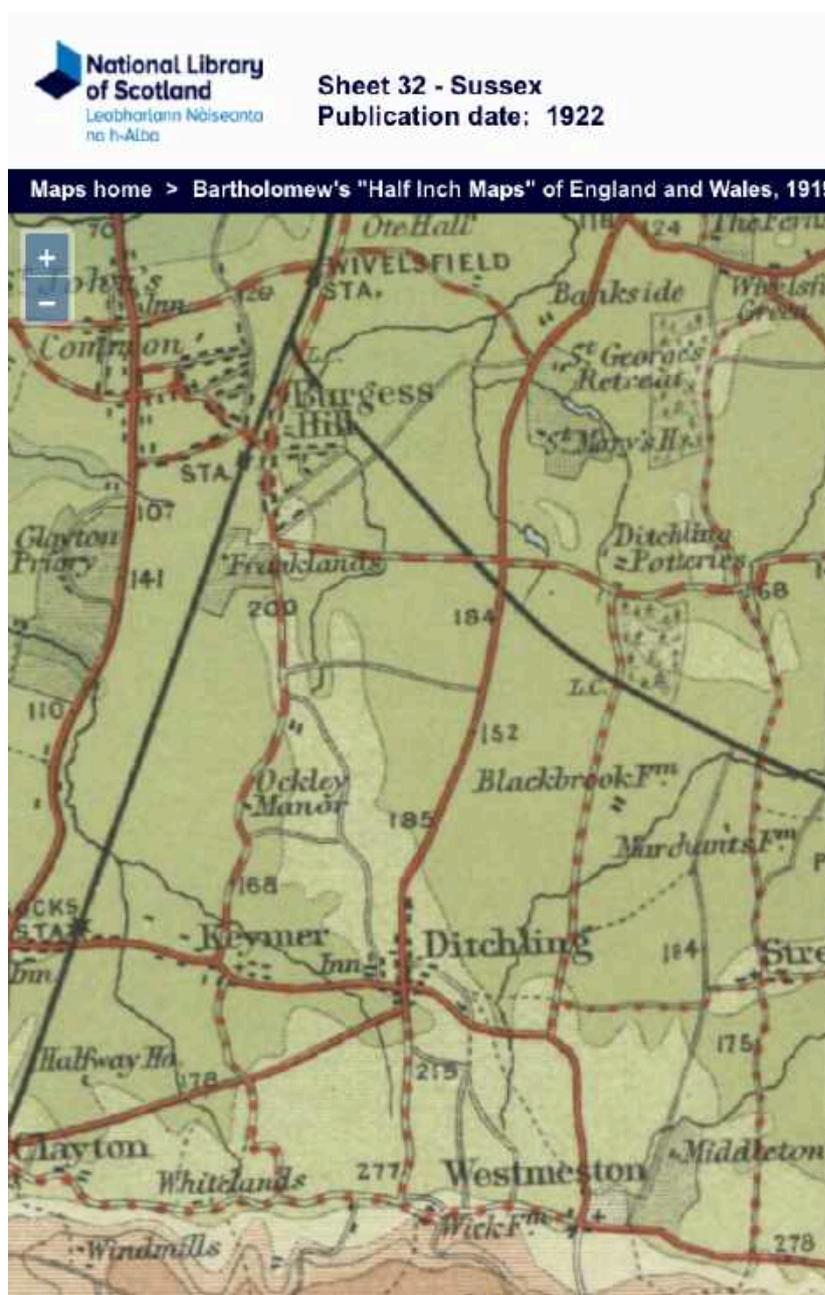


Fig. 21a Bartholomew 'cycling' map does not show the application route

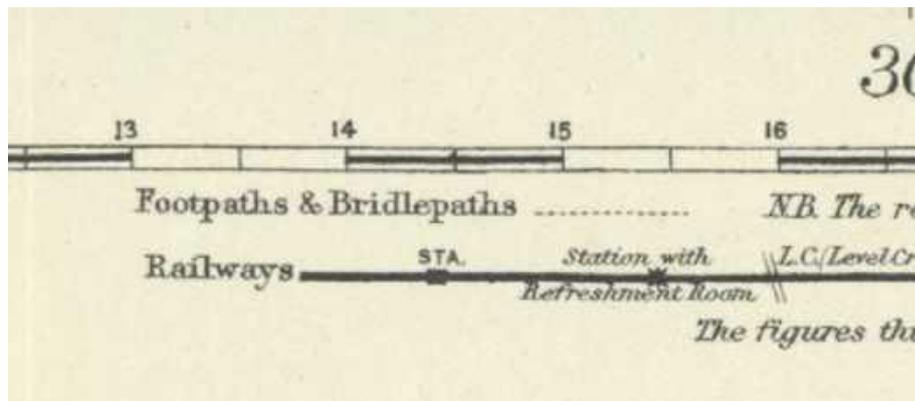
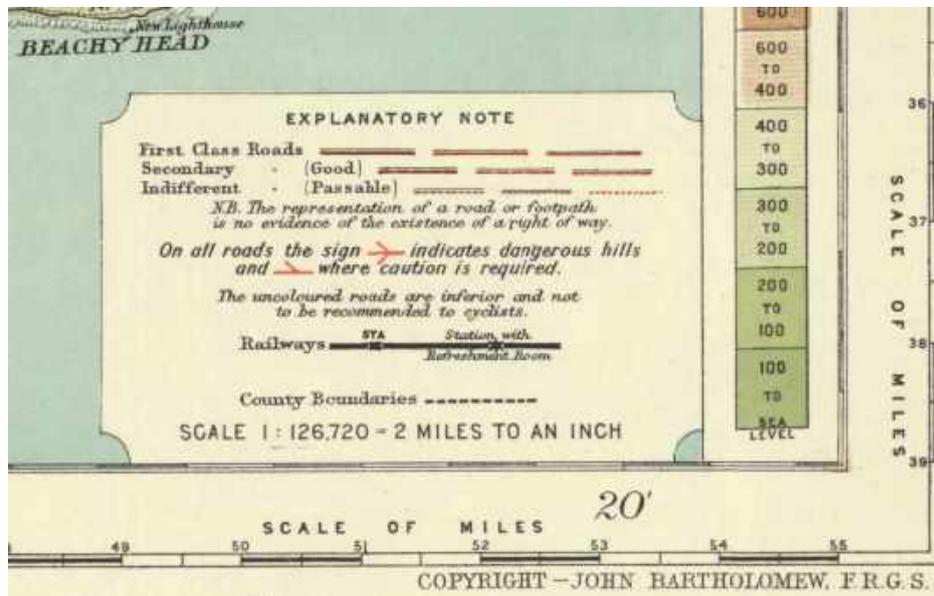
#### 13.1.1 Date. 1902, 1922 and 1944

**13.1.2 Relevance.** The Bartholomew maps were based on OS mapping but were popularly on sale to the travelling public. They used feedback from users to keep their maps in tune with the situation on the ground, particularly the Cycle Touring Club. Their logo is included on some editions of the maps.

**13.1.3 Archive.** The National Library of Scotland has the relevant 1902, 1922 and 1944 Bartholomew maps at

<https://maps.nls.uk/geo/find/index.cfm#zoom=9&lat=50.9988&lon=0.0301&layers=34&b=1&point=50.9308,-0.1154>

**13.1.4 Meaning.** The 1922 map is shown above. All three maps are similar and do not show the application route. The key below, which is printed at the bottom of the map, shows roads usable by cyclists and also shows footpaths.



**Fig. 21b Key to Bartholomews 1902 Map**

**13.1.5 Assessment.** That the application route and its continuation south are not shown at all suggests that access to the application route was not possible at this time. Bartholomews maps were mostly sold to cyclists and so even paths that are footpaths today but which were accessible at that time, appear to be mapped by broken lines. The key tells us these are either Footpath or Bridleway.

## 14. FIRST RIGHTS OF WAY SURVEY AND MAP

### 14.1 Parish Survey after 1932 Act

#### 14.1.1 Date. c1932

**14.1.2 Relevance.** The 1932 Rights of Way Act resulted in District and County Councils to be instructed to mark-up maps of their parishes to show rights of way.

14.1.3 Archive. Sadly the maps do not appear to have survived or at least are not publicly available at East Sussex Records Office at the Keep. However, there are references to a 1933 Survey in the 1953 Survey that was done after the 1948 Act.

14.1.4 Meaning. It is clear that a map for Ditchling was done as there are references in the surveys that were done after the 1948 act. The application route, a part of the whole of path number 29, is said to have been "*Scheduled as public right of way in survey of 1933*" (see Section 13.2). The paragraph before this statement appears to be saying that the application route had been agreed to be part of Ditchling Common but no paperwork relating to this has been uncovered and any incorporation into the common is not reflected in the Commons Registration.

14.1.5 Assessment. Evidence of the rights of way admitted by Ditchling parish and its residents after the 1932 Act is limited to what is referred to in the survey that followed the 1948 Act. This is discussed in the following sections.

## 15. RAMBLERS' SURVEY

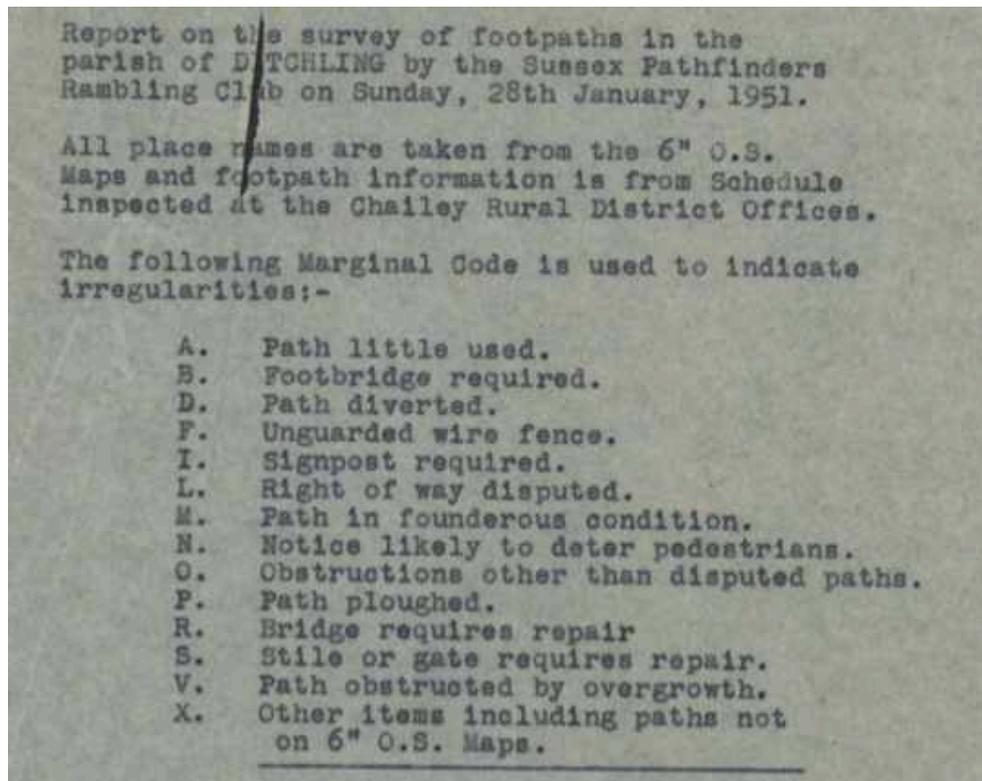
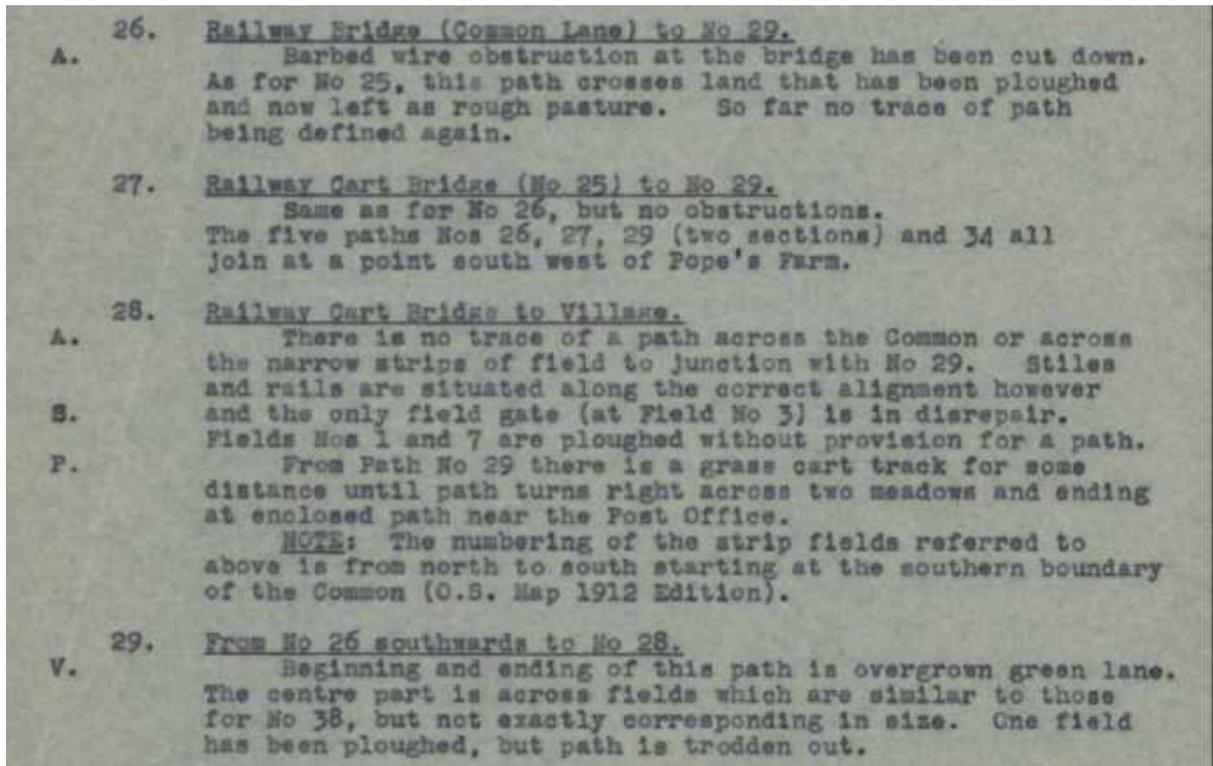


Fig 22a Codes used by the Ramblers for Parish Survey



**Fig 22b Excerpt from Ramblers' Path Summary for path Ditchling 29 and adjoining paths**

15.1 Date. 28<sup>th</sup> January 1951

15.2 Relevance. Prior to the official survey of the parish's rights of way (see section 16) the Sussex Pathfinders Rambling Club appear to have walked the rights of way in Ditchling and reported path condition to Ditchling Parish Council (DPC). They say that the path information is '*from Schedule inspected at the Chailey District Council Offices*'. It is not stated what these schedules are. A written list describes the routes and notes in the margin indicate where there are 'irregularities' which are shortcomings that were found en route. Paths relevant to the application route are all included. The 18<sup>th</sup> October 1951 DPC meeting reports that it received this survey

15.3 Archive. Survey information is from ESRO at reference C/R 67/26 page reference F.2001-Ditchling\_POUCH\_0001.

15.4 Meaning. Paths listed in this document must have been both on the Chailey RDC schedule and on the ground at the time. The application route is said to be a green lane but to be overgrown.

15.5 Assessment. There is no mention of whether the Ramblers considered the application route to be any particular status. This was not surprising, as they appear to have been checking whether paths were passable on foot. However, description of it as a 'green lane' suggest that they consider it a way of some substance that is more than simply a footpath.

## 16. DEFINITIVE MAP

### 16.1 Parish Map – after the 1949 Act

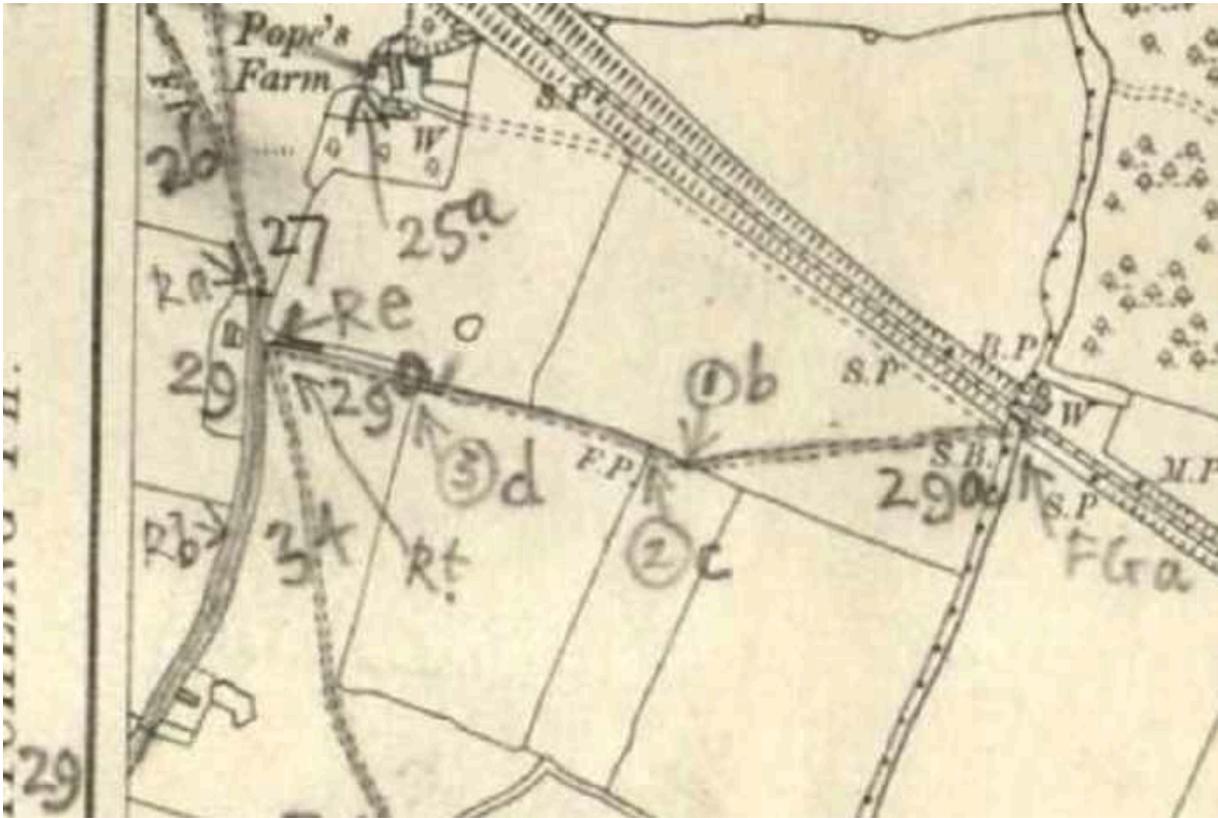
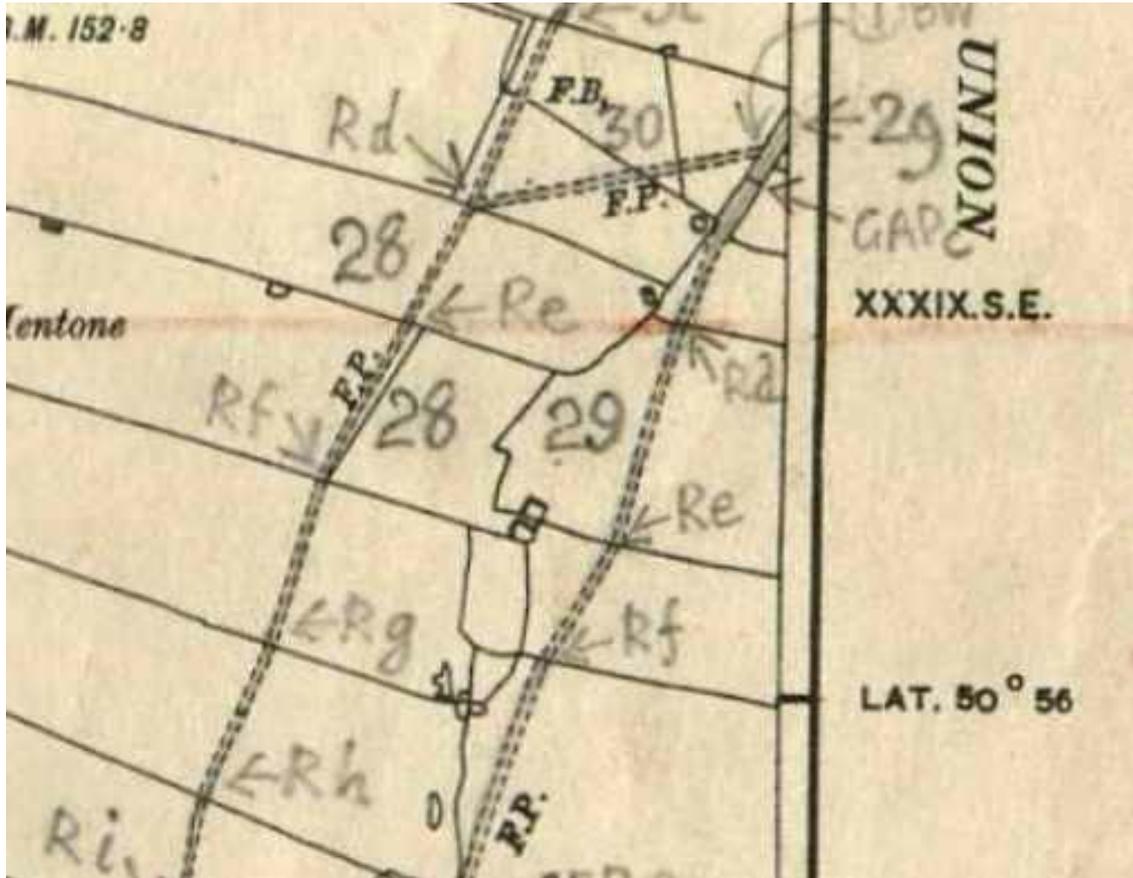


Fig. 23a Close-up of north of application route on Parish Survey map – path 29 and 29a



**Fig. 23b Close-up of south of application route on Parish Survey map – path 29**

16.1.1 Date. 1953

16.1.2 Relevance. The map shows the application route with its furniture and line clearly marked.

16.1.3 Archive. Material from Ditchling Parish's surveying for the first definitive maps is at ESRO. The annotated map is at reference C/R/68/3 – the relevant pages from which the above map screenshots are taken are in Appendix 15 of this statement.

16.1.4 Meaning. Firstly note that the path numbers used in this survey are not always the same as those that appear on the Definitive map today. Path number 29 is shown running south from point C at the south-eastern corner of Ditchling Common. The application route is accessed from the common itself (via paths 26 and 27) and also from the path that was then called 29a leading from Spatham Lane near the rail crossing. The application route between A and C plus the western end of (old)29a are shown as wide routes shaded with graphite pencil. Path 29 continues wide and shaded beyond the southern end of the application route. The section of the application route between C and B appears to be part of path 27 on this map. However it appears to be **on** the common and so bridle traffic would have access over it as a result of the 1925 Law of Property Act.

16.1.5 Assessment. The application route is accessible on horseback from the common and at least on foot from Spatham Lane via path (old)29a

## 16.2 Parish Path Schedules – after the 1949 Act

The 1949 Act required District Councils to provide County Councils with detail of the paths within their parishes which they claimed were public paths. For Ditchling, the survey on the ground was undertaken by members of the Parish Council's Rights of Way committee. The map to which the schedules refer is discussed in section 16.1.

16.2.1 Date. September 1952 and February 1952

16.2.2 Relevance. The northern end of path 29 is the application route A-C. It is described in detail. It is the same number as on today's Definitive Map.

Path No. 29 ..... (Please number (NOT in brackets or circle) each path in the Parish consecutively as mentioned in pamphlet, page 8, paragraph (h). The number should also be marked on the map].  
( & BR along Old Lane: see (4)(i) below )  
Symbol of Path FP ~~XXXXXXXXXX~~ (Please cross out those which do not apply).  
From Path No.26, at S.E. corner of Ditchling Common, S. & then W.,  
To junction with Path No.28, at S. side of Great Complants, O.P. 319 (Edn.1912).

Public user as of right and without previous known interruption from time immemorial. The Old Lane from Ditchling Common south past Rats Castle, along which this path runs in its northern part, has been agreed between the Commoners of Ditchling Common and Tenantry Down and the Chailey Rural District Council to be Common land and part of a link between the Common and the Down. This section, and the southern section between O.P.401 (Edn.1912) and the junction with path No.28, ~~Scheduled as a public right of way by Ditchling Parish Council in Survey of 1933.~~  
where the path again runs along the Old Lane, are certainly parts of an ancient bridle-road.  
Scheduled as a public right of way by Ditchling Parish Council in Survey of 1933.

(5) Other remarks (if any):  
From the Common south to O.P.192 (Edn.1912) the Old Lane along which this path runs is almost completely grown in, being almost impassable, owing to hedges on both sides not having been cut for years. From this point south to O.P.401 (Edn.1912) the stiles are all in fair order. From here the path again enters the Old Lane and is quite passable, users keeping it trimmed out.

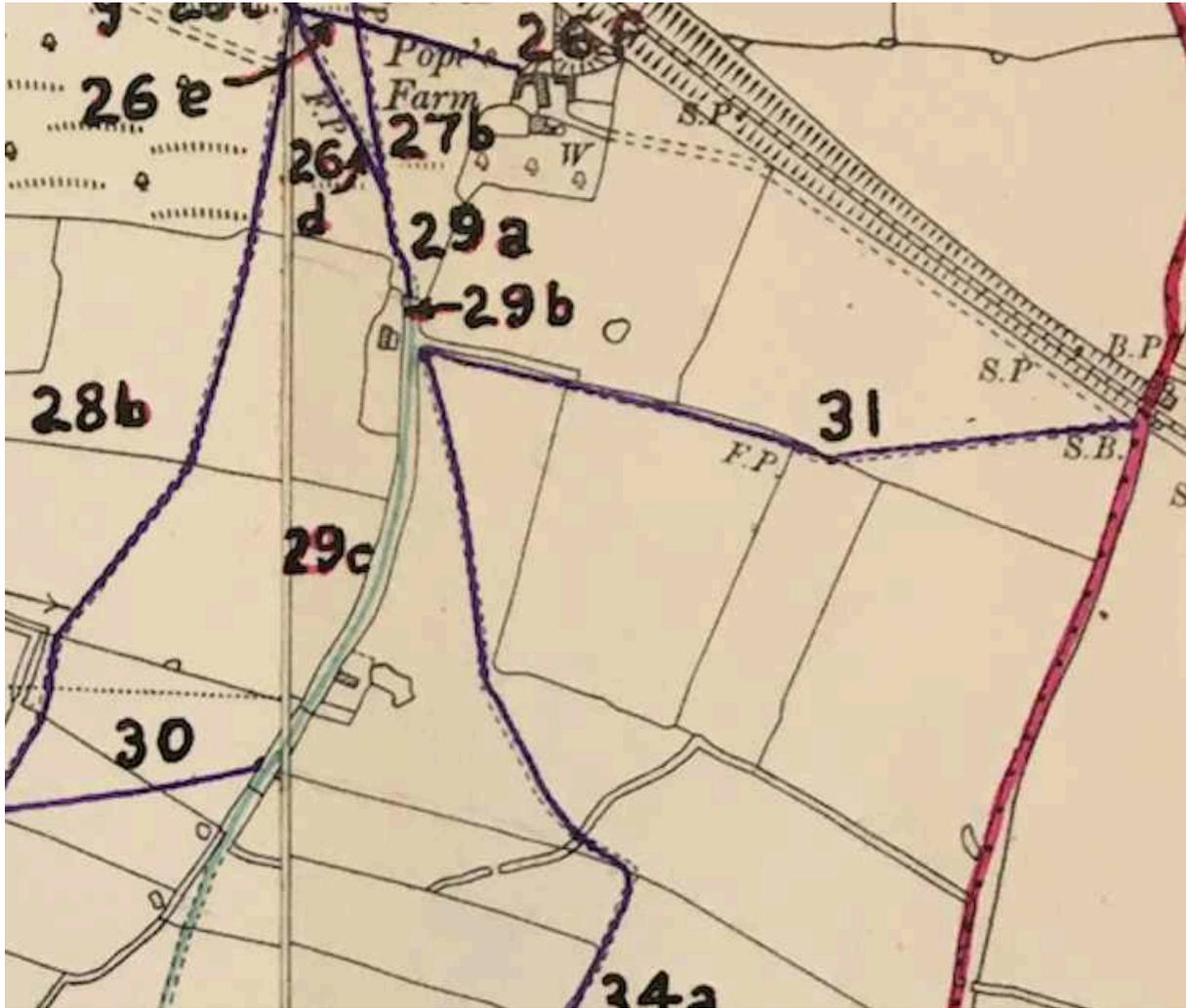
Fig. 24 Excerpts from Schedule for Ditchling 29 path survey

16.2.3 Archive. Survey information is from the Keep at reference C/R 67/26. The individual path Survey Schedule for path 29 is at page F.2001\_RECORD\_29. The schedule is reproduced in Appendix 16a. The path survey schedule for path 29a is at Appendix 16b. The path survey schedules for path 26 and 27 is at Appendix 16c.

16.2.4 Meaning. The 'beginning' of path 29 referred to in the summary can be seen from the map to be the application route where path 29 leaves the common just south of Popes Farm, point C. Contrary to the map depiction it is said to join path 26, not path 27. The surveyor mentions several times that path 29 runs along an Old Lane and at the head of the survey explicitly adds that at least in places it is a Bridle Road along Old Lane. One of those places is the application route. The schedule for path (old)29a notes several obstructions (Appendix 16b).

16.2.5 Assessment. The surveyor clearly indicates that the application route between A and C is considered to be a bridle road at that time and that it runs along an old lane that runs south from the common. The mention of it being overgrown may indicate low usage in the years prior to the survey although good summer growing conditions could also be implicated given the September date. Having been admitted as public right of way in the 1933 schedule along with the significant references to the 'Old Road' in this survey, it is clear that this part of the application route is more likely than not at least a public bridleway and not simply a footpath. It is unclear whether the C-B section of the application route is considered to be crossed by path 26, 27 or is part of 29. Although an agreement for the Old Lane being part of the Common is mentioned, no evidence to reflect this has been found. Path (old)29a's obstruction suggest that there has been landowner intent to prevent access to the application route from Spatham Lane.

### **16.3 Draft Definitive Map**



**Fig. 25 Close-up of application route on Draft Definitive Map**

16.3.1 Date. 1952

16.3.2 Relevance. Draft Definitive maps were drawn up by ESCC based on input from the District Councils who had collated the input from the Parish Councils. No record has been found as to what other documentation, if any, was consulted. Objections were to be dealt with before drawing up the final map.

16.3.3 Archive. The draft map is at ESRO at reference C/C 97/3. An excerpt showing the application route is shown in Fig 25 and a larger section of the map showing this in context is at Appendix 17 of this statement.

16.3.4 Meaning. The application route between A and C is coloured green, which the legend says indicates bridleway status. It is clear that the path is no longer admitted to be accessible on horseback from Spatham Lane by what was path 29a and is, on this map, shown as path 31 drawn in purple, a footpath. The C-B section of the application route is shown a crossed by footpath (new)29a.

16.3.5 Assessment. The parish, the district council and the county council agree that the application route between A and C is a public bridleway.

16.4 Objections to Draft Definitive map

**MEMO OF TELEPHONE CALL.**

For \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Incoming call from \_\_\_\_\_

Outgoing call by \_\_\_\_\_

*WADE*

*Mr Wood the farmer at Ditchling called to have a look at the map he is objection to paths 29b,c,d, 31, 34c, 30, 28b. according to him the Rd is over grown with trees, and FP 31 near junction of 29 hasn't been used for years. FP 30 <sup>is</sup> in under water*

Message taken by \_\_\_\_\_ *J.H.*

Fig. 26 ESCC Note of Objection to path 29 status

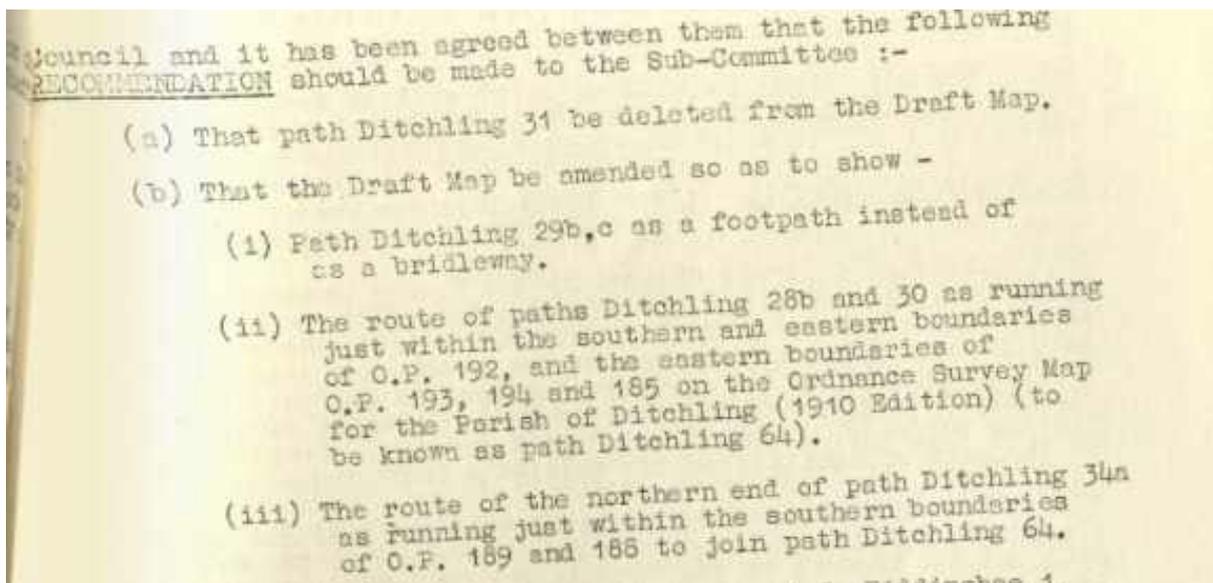
E/NP  
CONFIDENTIAL  
RIGHTS OF WAY SUB-COMMITTEE 29th May, 1956  
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949  
DEFINITIVE MAP OF RIGHTS OF WAY

... of as a "road used as a public path".  
... agree  
... Paths Ditchling 28, 29, 30, 31 & 34a

43. Mr. E.T. Wood and Miss Munston have objected to the Draft Map regarding the above paths to the south and south-east of Pope's Farm. They contend that footpath Ditchling 31 is not a public path; that bridleway Ditchling 29b,c, is only a footpath; and that the routes of footpaths Ditchling 28b, 30 and 34a are incorrectly shown.

44. The objectors have discussed their views with the Parish

6.



**Fig. 27 Three Excerpts from May 1956 RofW meeting**

16.4.1 Date. Date of objection unknown but pre-May 1956

16.4.2 Relevance. This one objection appears to be the source of the application route being recorded as a footpath rather than a bridleway today.

16.4.3 Archive. The memo is at ESRO reference C/R 68/9 page F.2001-DITCHLING\_GENERAL\_objections\_28-34\_0107 and the ESCC Rights of Way sub-committee minutes are at C/C64/3/200. The pages that include the minutes screenshots are at Appendix 18 of this statement. ESRO catalogue entries AMS 6611/11/9 and 6611/7 give information about Mr Wood. The catalogue entries are in Appendix 18.

16.4.4 Meaning. While Mr Wood, the Treasurer of the company that manages Ditchling Common, objects to Sections b, c and d of path number 29 being depicted as of bridleway status, only sections b and c appear to have been changed from bridleway to footpath status as a result of this objection (see section 16.5). The minutes detail that the matter had been discussed with the Parish Council and their agreement was that sections b and c should be changed.

16.4.5 Assessment. Sections b and c of path 29 were changed and the final Definitive Map reflects this. The minutes are detailed about the handling of the objection yet there is no report of any earlier historical information being sought or considered. Horse access is permitted on the whole common (Sec 193 Law of Property Act 1925) and so the change of status of sections b and c effectively bars horse access between the common's south-east boundary and the continuation of path 29 which remained, and remains today, recorded as 29d, a bridleway. This anomaly does not appear to have been addressed at the time. It has resulted in only those persons who have direct access on to the bridleway section of path 29 being able to use a 'stranded' piece of bridleway today.

## 16.5 Final Definitive Map



**Fig 28 Close-up of application route on first Definitive Map**

16.5.1 Date. 1957

16.5.2 Relevance. The map shows the official ESCC recording of the application route. It shows agreed line and status of the application route after the parish surveys, consideration by Chailey Rural District Council and County Council considerations of objections.

16.5.3 Archive. The map can be found at ESRO at reference C/C/97/25. A larger section relevant to the application route along with its legend can be found in Appendix 19.

16.5.4 Meaning. Path section 29c has been removed and it has become part of 29b, which is now recorded as footpath.

16.5.5 Assessment. The 'downgrading' of the status of the application route between A and C (now 29b) appears to have been based solely on the objection of local farmer/treasurer of the common's management company, Mr E T Wood whose view was then upheld by another local, Miss Munston (see section 16.4 and Appendix 18 of this statement.) As far as can be found, there was no consideration at this time of the fact that the path runs along the course of an ancient lane (see section 16.2 and old maps at sections 3). If such evidence had been taken into consideration it is the applicant's opinion that Mr Woods objection would have been rejected.

## **16.6 1971 Definitive Map Review**

### **16.6.1 Date. 1971/2**

16.6.2 Relevance. Part 1 of Schedule 3 of the Countryside Act 1968 contained an amendment to the National Parks and Access to the Countryside Act that allowed the Definitive Maps to be reviewed and corrected.

16.6.3 Archive. The July 1971 minutes of the ESCC Rights of Way Subcommittee of ESCC's Roads and Bridges Committee is at ESRO reference C/C 11/5/107. The relevant sections are at Appendix 20. Circular 22/70 of document "BBR05 Definitive maps historical at 20130731" can be found on-line as a PDF file.

16.6.4 Meaning. The minutes show that a number of people claimed that they had used the path on horseback and that the decision to 'downgrade' the status of the A-C section of the application route from that shown on the definitive map was wrong. Despite the user evidence, the recommendation to persist with the current designation of 'Footpath' was accepted on the basis that there was one barway that had been nailed shut (others were openable) and a sleeper 'causeway' intended for pedestrians.

16.6.5 Assessment. User representation that the application route should be open for ridden use appears to have been given short shrift. There is no discussion that the application route is on an ancient lane. The persistence of horse-riders at the 1971 review gives credibility that they still considered it a bridleway. The odd 'obstacle' on a route is not something to deter most riders of the time. A jump or two simply added to the enjoyment of a ride!

## **16.7 1977 USER CLAIM**

### **16.7.1 Date. 1977**

16.7.2 Relevance. It would appear that some users who had tried to have the 1956 decision to 'downgrade' the bridleway overturned in the 1971 review were not prepared to let it lie. The British Horse Society (BHS) submitted six users' use-of-evidence forms to ESCC in March 1977. No further information has been uncovered about any ESCC action (or lack of it) regarding this evidence of use submission. Miss Lesley Cook, the BHS Officer who picked up this issue in 1991, died some years ago.

16.7.3 Archive. Copies of user- evidence forms and associated BHS letters are now in the possession of Mid Sussex Area Bridleways Group. They are reproduced at Appendix 21 of this statement.

16.7.4 Meaning. Horse-riding users continue in their tenacity for getting the application route and indeed the whole of the old lane, recorded a bridleway. They enlist the aid of the statutory body to which they are affiliated, the BHS, to underwrite their claim.

16.7.5 Assessment. The users' belief that the wrong decision was made in 1956 is expressed in their formal declaration of use. The British Horse Society would not have taken up the cause without due diligence as to the validity of the claim. If they were not convinced that the route should be a bridleway it is unlikely that they would be prepared to work so hard to prove it.

## **16.8 Mid Sussex Area Bridleways Group**

### **16.8.1 Date. 1991 to 2003**

16.8.2 Relevance. This group pursued a later, alternative approach to that in section 16.7 in order to get the application route (and the southern end of the old lane) recorded as a BW. Its members are local horse-riders most likely to benefit. The group asks ESCC to attempt to obtain dedication by the landowners who would likely now be different from the original objecting landowners in 1956. The file of papers is large and has been read in full. Permission to copy has not at present been sought. In 1992 ESCC report failure to get landowner agreement over the application route at the north end of the old lane. They say they will make a creation order for this. Confirmation that this would be done was received by MSABG in August 1992. Amounts of compensation were said to be in the process of being assessed and MSABG offer some money from their member's funds. However, progress is slow and ESCC's reasons for inaction (they are dealing with paths in Ditchling Common Country Park, the issue has been passed to someone new, etc) are recorded between 1993 and 1998. MSABG seem to have had faith that the Creation Order would happen and in 1998 a letter from ESCC does suggest that the issue is actively being dealt with. However nothing is recorded after that until a further push for action in 2003 resulted in stalemate in ESCC's negotiations with landowners.

16.8.3 Archive. MSABG's private files.

16.8.4 Meaning. ESCC's processes are seen to be ponderous and reliant on work being handed from person to person over the long period that this issue was active.

16.8.5 Assessment. ESCC appear to have accepted that the application route should be of bridleway status. They seem to have been unable to act, quite possibly due to changes in staff, lack of manpower and lack of finance for rights of way - compensation would have been needed for the landowners. ESCC's commitment to the notion that the 1956 decision was wrong is evidenced by their suggestion to make a Creation Order.

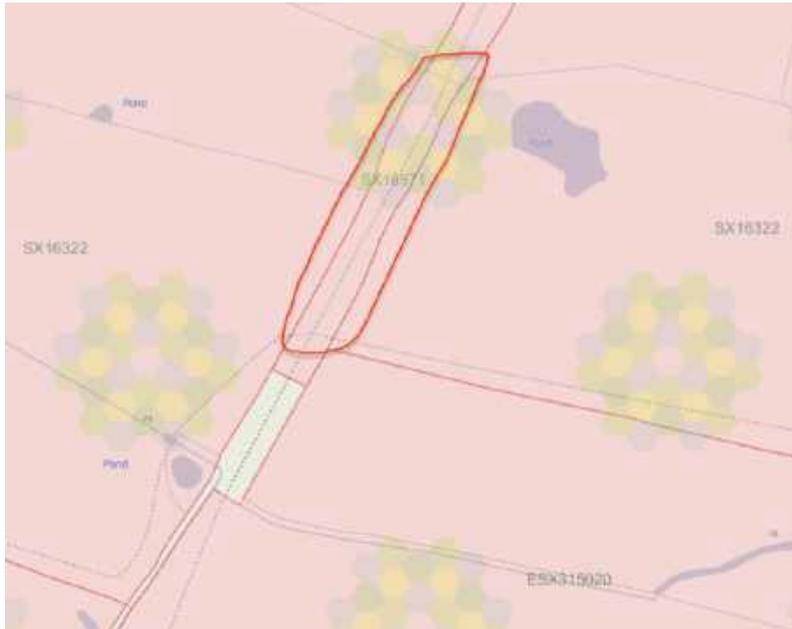
## 17. OWNERSHIP

### 17.1 Current Ownership



Fig. 29a Land registry Map – application route north end

308-Ditchling B (North)



**Fig. 29b Land registry Map – application route south end**



Fig. 29c Plan from ESX130821 (Clearview Farm) Land Registry Title

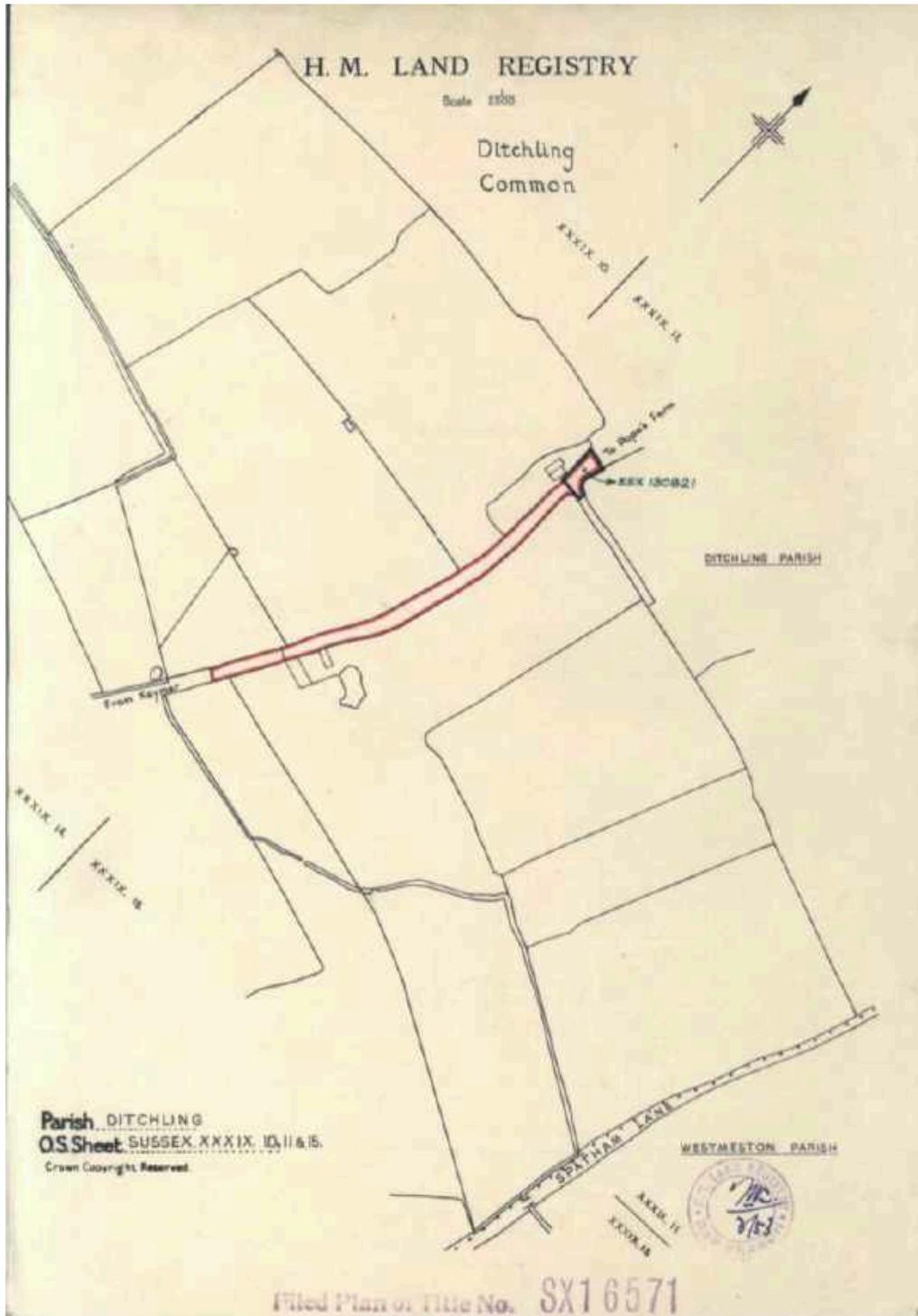


Fig 29d Plan from SX16571 Land Registry Title

17.1.1 Date. HMLR records were consulted in February 2017

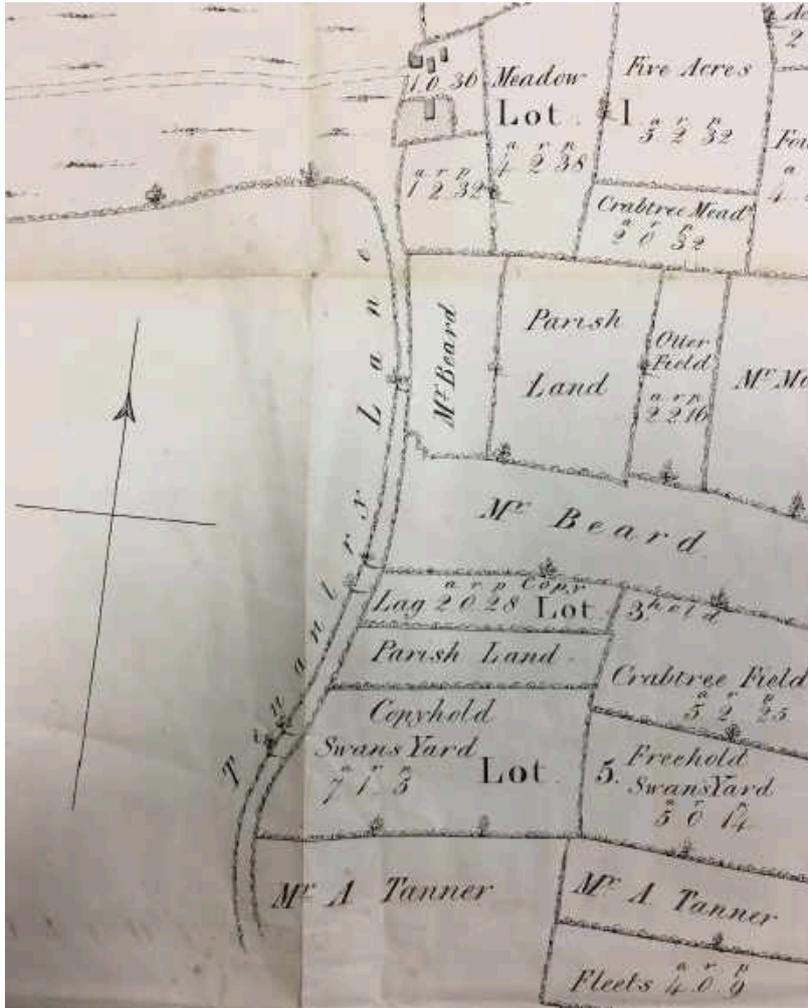
17.1.2 Relevance. The ownership of the land over which the application route runs can potentially give useful indication of public access rights.

17.1.3 Archive. HM Land Registry - from the map of titles at <https://eservices.landregistry.gov.uk/mapsearch/addressSearch> for the whole path in 2017. The relevant maps are shown above.

17.1.4 Meaning. The maps show that the old lane just south of C is coloured white. This is the start of today's path 29b. The protuberance of land at the south-east corner of landholding ESX130821 is part of the registered common land (see section 18). Today's path 29a runs across this piece between C and B. SX 16571 is separately titled. However, the plan in the title register for SX16571 attributes the white coloured plot to be part of holding 130821, Clearview Farm. The plan in the title register for ESX 130821 also shows the 'protuberance' area of the common as part of its holding. To the south of the application route (which stops where a dotted line crosses plot SX 16571) there is another piece of unregistered land.

17.1.5 Assessment. The ribbon parcel of land SX16571 contains most of the application route. At the north end the application route continues north over a continuing ribbon of land that the title deed says is part of the bigger Clearview Farm parcel, ESX130821. However the Land Registry plan shows the continuing ribbon to be un-owned (uncoloured). At the south end the application route stops a little short of the southern end of the SX16571 boundary. Both ribbons of land have the shape and dimension of a road, lane or wide track. That any part of these parcels would be un-owned is consistent with the Tithe map findings (see section 8). The acquisition and registration of the holding SX 16571 is notable for it having been registered in 1953 just when the definitive map negotiations were taking place. The plan showing the white plot being part of holding ESX 130821 is also dated 1953. How these parcels became privately owned when previously, and certainly at the time of the Tithe records, they were un-owned has not been discovered. It seems unlikely that they were acquired by adverse possession as OS maps just prior to the registering depict a path along the route. If the way had been fenced against public use this would not have been so. Whatever was the history, being owned does not preclude public access rights. The depiction of the application route as mainly a separately registered parcel (SX16571) and separately fenced along its whole length, is a good indicator of it having been an old road or lane of significant width.

**17.2 Previous Ownership – Sale of Popes Farm 1830/50**



**Fig. 30 Sale Map for Popes Farm 1830**

17.2.1 Date. 1830 and c1850

17.2.2 Relevance. A plan included shows the application route

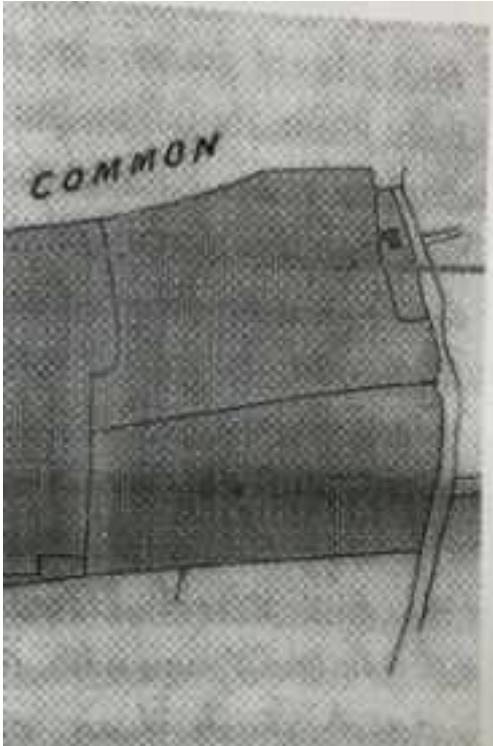
17.2.3 Archive. Identical maps are included at two ESRO references ACC 111108/11/4/A31 (1830) and BRD 4/4 (c1850). The ACC reference describes the sale and is reproduced in Appendix 24. All the numbered Lots appear to be part of Popes Farm at this time. The BRD reference contains only the plan.

17.2.4 Meaning. The map shows the application route labelled Tenantry Lane as it leaves Ditchling Common. It is depicted consistently through both today's 'Footpath' and 'Bridleway' sections. The north edge of Lag field appears to be where today's recorded status changes. The lane is open to the common and separate from adjoining land holdings. No noticeable protuberance of common at its south-east corner is shown, merely a widening of the lane.

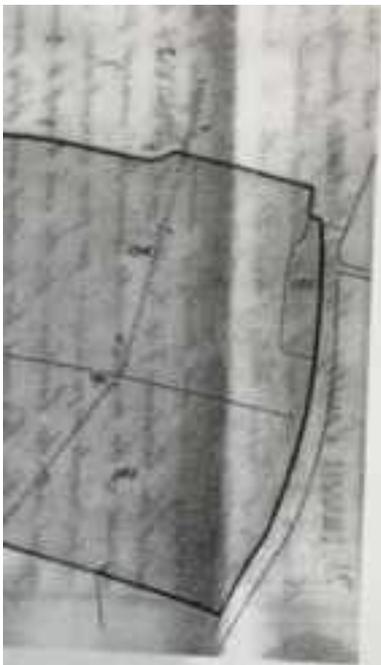
17.2.5 Assessment. If there had been any difference in the 'traffic' that could traverse the lane over different sections then it would likely be depicted on the map. There is no indication that the north end of the lane is within the land holding of Popes Farm at this time as is the case today. It is more likely than not that the lane at this time was outside any

adjacent land holding and provided free access to the common along a consistent way that naturally, with use, fanned out as it reached the common.

### 17.3 Halletts



**Fig. 31a 1906 Conveyance of Halletts and land**



**Fig. 31b 1916 Conveyance of Halletts and land**



**Fig. 31c 1920 Conveyance of Halletts and land**

17.3.1 Date. 1906, 1916 and 1920

17.3.2 Relevance. The application route is shown on plans within a booklet that summarises ownership history of Hallet's, a property in Common Lane that owned land adjacent to the application route.

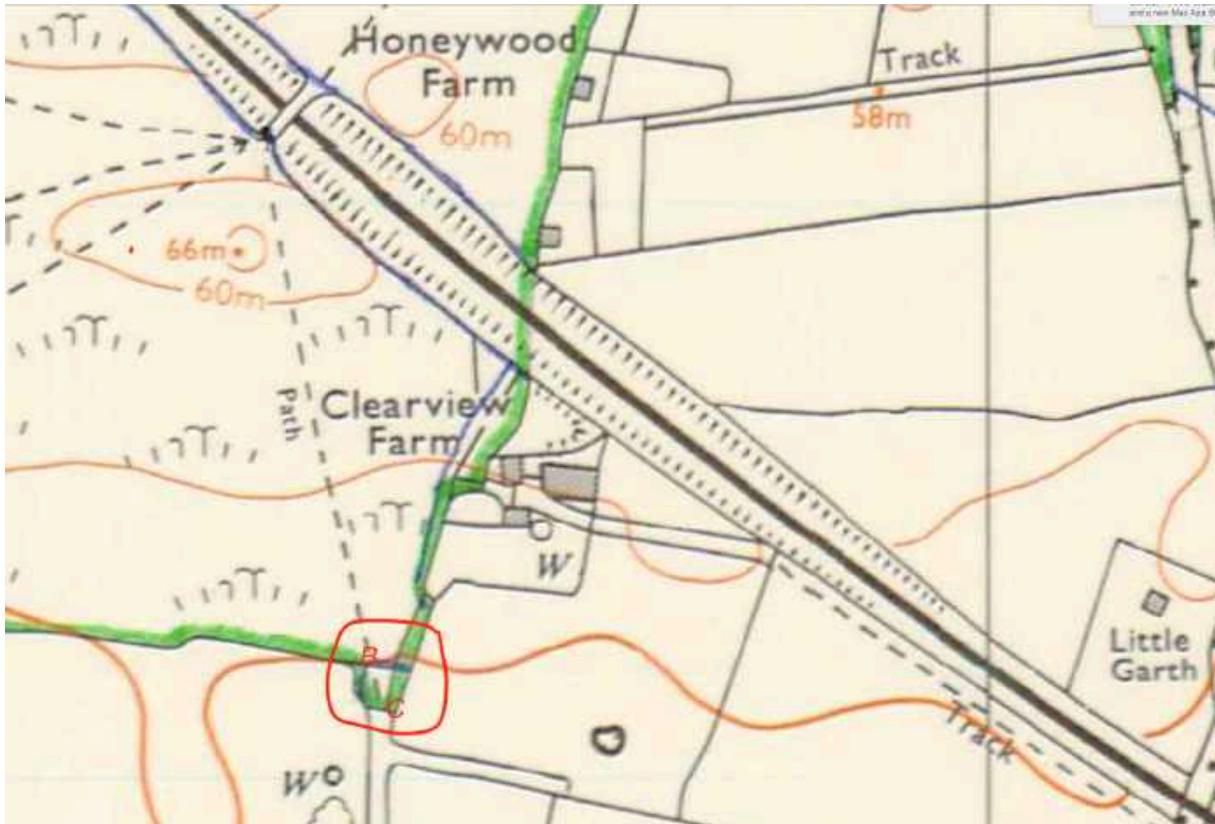
17.3.3 Archive. ESRO reference ACC11108/10/57 The relevant pages are copied in Appendix 25.

17.3.4 Meaning. Where plans were included with the legal documents they are included in this booklet. The application route is shown as a wide and continuous lane or track on several of the plans. All show a line across the way at point C.

17.3.5 Assessment. While these plans may have been copied from existing maps, it is significant that in all cases the land being transferred/mortgaged/etc. excludes the old lane itself. Acquisition of the land over which the lane runs by the current registered owners was at a later date than these documents. It is thus more likely than not that the lane itself was un-owned and publicly used at 1906, 1916 and 1920.

## 18. THE JUNCTION WITH DITCHLING COMMON

Where is the northern end of the old lane?



**Fig. 32a** The separately owned nub of Ditchling Common between C and B = the 'funnel' of the north end of the drive/drift road

## 308-Ditchling B (North)

18.1 The north end of the application route appears from old maps to have been the boundary of the main part of the common at point B. The boundary of today's registered common is slightly south of this at point C. Thus today there is a small protuberance of common land which can be seen below point B on the map below.

18.2 The common, as registered now, is edged green (registration map and document are at Appendix 22 and 23 respectively).

18.3 The blue edging indicates land in the ownership of Clearview Farm (previously called Popes Farm) as detailed in the final entry in the Commons Registration document at appendix 23 of this statement.

18.4 The remainder of the common is in the ownership of the management company for Ditchling Common and Tenantry Down now called Ditchling Beacon and Commons.

18.5 Many of the old maps show the old lane running directly into the common often with no distinction between the two. On other maps the boundary is shown as being on an east-west line through point B. Maps illustrating this are the Mudge map 1793, the Gardner and Gream map 1795, the OS 1 inch maps of 1795 (Fig 32b) and 1813, the Figg map 1820, the 1830 Sales particulars and the Tithe records of 1839/43.

18.6 The 1953 Parish survey schedule supports this in saying that the 1932 parish survey of rights of way indicated that the old lane had been agreed as being part of the common.

18.7 The applicant is of the opinion that the protuberance is part of the old lane. It was a natural 'funnelling out' of the top end of the lane and is consistent with its use as a drift/drove route where the animals push through as they reach their pasture. Path 29a on today's Definitive Map crosses this area and it, plus the whole of the 'funnel' area should thus be upgraded-to/designated-as Bridleway.

18.8 The Law of Property Act 1925 provides for rights of "air and exercise" to the public. The case law of *R v Secretary of State for the Environment ex parte Billson, 1998* establishes that this includes on horseback. This means that pedestrians and horse riders can travel from point C across the common to join bridleway Ditchling 25 at the rail bridge using any route they wish.

18.9 General access rights on the common do not apply to cyclists. A bridleway would need to be dedicated across the Common for cyclists to gain access to the road at the north of the Common (recently re-named as Folders Lane East)

## 19. HEATHER WARNE'S DITCHLING STUDY

19.1 Date. Archeological Survey Project 1985.

19.2 Relevance. Heather Warne is a qualified and respected archivist who undertook this ESCC funded survey for the East Sussex Archaeological Project. Her credentials are summarised in Appendix 29. Information about the land layout and use and about the tracks and roads since mediaeval times shed light on the ancient nature of the application route. The analysis takes Ditchling's history back to before the Norman Conquest with the villagers who made up the original Saxon and Medieval community operating a communal arable system to support themselves. Heather says "One of the most important rights of way for early villagers at Ditchling was the access to their commons. North of the village this was by the main tenants' way, formerly known as Middle Street or Perry Street, leading first through the centre of the village arable fields" ..... "In its original use it would have been periodically grazed by the village cattle, while at the same time the Manor Courts reprimanded those tenants who let their hedges overhang and failed to scour their ditches so as to impede the right of way". A market was granted in 1312 and an annual fair (19<sup>th</sup> -21<sup>st</sup> July)

19.3 Archive. The Ditchling History Project. <http://www.ditchlinghistoryproject.org> has the final copy of the document while maps and text excerpts in Appendix 26 are taken from Heather's own draft.

19.4 Meaning. Land was originally managed by local agreement and local consensus. Everyone had access to primary resources through a communal arable system in an open field system east of Common Lane. Three roads led to and through Ditchling Common. The relevant part of the 1780 Yeakell and Gardner map is included in Appendix 26 as it illustrates field patterns that originated from the old villagers' lands. This map also shows the three roads, Common, Lane the application route (Middle Street/ Perry Street/ Tenantry Lane) and Spatham Lane all of which afforded access to and through the Ditchling Common. Access with stock would be required for the weekly market.

19.5 Assessment. The concept of ownership, as we know the term today, was non-existent in early times as the land essentially belonged to the village. Everyone, irrespective of social standing, was due enough land to support themselves and family. The concept of there being an 'owner' of our path who could grant any easement or right of passage to the villagers thus did not exist. Later, the Manor Courts would not have had jurisdiction over keeping the way open for use if it was private. It stands to reason then that the old lane application route was a public way in pre-conquest Saxon times and probably back to the Roman era. As well as use as a drift way for passage from common to downland, the weekly town market and fairs, from early 14<sup>th</sup> century onwards, is likely to have involved drove use of the old lane for people from north of the village

## 20. HISTORY OF DITCHLING COMMON AND TENANTRY DOWN

20.1 Date. 2010 (History of Ditchling Common) : 2016 (Commons Land Research)

20.2 Relevance. Public use of Ditchling Common as a destination suggests that routes from the village were likely to have been used by the public in later years.

20.3 Archive. A Short History of Ditchling Common By Jenny Kilbride, Secretary of Ditchling Common & Tenantry Down Ltd and Ditchling Commoners Association is at Appendix 29. It was obtained on-line but at the time of writing does not seem to be available. The **Common Land Research** information also no longer seems to be available at <http://contestedcommons.s3-website-eu-west-1.amazonaws.com/index.html%3Fp=673.html>. It is possible that this information is now only within the published work, Christopher Rodgers et al "Contested Common land: Environmental Governance Past and Present". Details of the study are at [www.ahrc.ukri.org/research/case-study-archives/contested-commons/](http://www.ahrc.ukri.org/research/case-study-archives/contested-commons/)

20.4 Meaning. The **Short History of Ditchling Common** tells us “*Lists of Commoners, their land and their grazing rights exist dating back to 1794. Their rights were attached to the land they were farming rather than to the Common itself*”.

*“The total area of land to which the rights were attached was divided into 61 units, called yards, each yardholder having the right to graze either one horse or two bullocks on Ditchling Common and four sheep on Tenantry Down, such rights being known as “leazes”.*

*“The public too have rights over the Common. The registration of the Commons under the Law of Property Act 1925, giving rights of “air and exercise” to the public, recognised in law what had been taken for granted for centuries. The right to “air and exercise” anywhere on the Common now officially applies to both pedestrians and horse-riders.”*

The **Common Land Research** tell us that on Ditchling Common Field sports of fishing, point-to-point racing and grouse shooting were enjoyed by ‘*local people pre-War*’; that various recreational sports etc were enjoyed and that “*a chaleybeate spring existed in Victorian times; many people used to come out from Brighton and elsewhere to take the waters*”; that local residents took part in various social activities including a “*Horn Fair*’ in the nineteenth century – *farmers and drovers presented their branded stock to the Reeve and Looker at the Royal Oak Inn, at the north end of Common*”.

20.5 Assessment. There is continued evidence that the common was used by the public as well as those with specific commons rights. As such the access routes to it, including the application route is likely to have been universally used.

## 21. CONCLUSION

21.1 The evidence discussed in this document suggests that the application route runs along an ancient lane that was more likely than not a drift/drove road. It is part of a route that joined two places of significance, Ditchling Common and Ditchling Village.

21.2 A droveway or driftway (ie a route for driving animals) must be a carriageway or bridleway (Mason v Suffolk (1979)).

21.3 The ancient lane is depicted on many old maps.

21.4 ESCC accepted the parish surveyor's assessment that there were public bridleway rights along the old lane when the draft definitive map was drawn up.

21.5 User evidence submitted after the 1970/71 Rights of Way review upheld that the route had been used on horseback.

21.6 The application route between A and C is a white road on the Finance Act Map of 1910.

21.7 Today's path 29a was part of the old lane and indeed the lane itself was originally said to be part of the common. Any exact point where the lane ended and the common began in the days before the common was formally registered is certainly not well defined. Evidence in this application suggests that today's path 29a should be upgraded to bridleway status. The old lane funnelled into the common and the width given should be the full width of the protuberance of the common area that is now owned by Clearview Farm.

21.8 There are possible, but unlikely, explanations which might be used to reason away individual pieces of evidence. But there is no explanation that can dispute what the sum of the evidence in this statement shows other than that the application route carries higher rights than currently recorded.

21.9 The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* (2012) EWCA Civ 334, Lewison LJ said, at paragraph 22,

*'In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F & F 922:*

*"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite sufficient strength" '.*

## 22. REQUEST

The evidence detailed in this application suggests many independent 'strands' that show that the application route have historic bridleway rights and the applicant requests the surveying authority to record both 29a and 29b as bridleway on the definitive map for Ditchling.