

APPEAL FORM

Rights of Way Section
The Planning Inspectorate
3G Hawk Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION N 53 AND SCHEDULE 14

Appeal to the Secretary of State Secretary of State for Environment, Food and Rural Affairs under paragraph 4 (1)

My name: Christopher Smith for and on behalf of the Ramblers

Address [REDACTED]

Email [REDACTED]

Name of surveying authority: East Sussex County Council

Title of Definitive Map: East Sussex County Council Definitive Map

DESCRIPTION OF THE WAY

restricted byway from the Beddingham to Newhaven road at grid reference 544542 106923 (point A) to the South Downs Way at grid reference 544593 105505 (point B)

DATE AND REFERENCE OF APPLICATION TO THE SURVEYING AUTHORITY

9/3/2017 My reference Beddingham D, Authority reference RWO 200

GROUND FOR APPEAL

I made this application in 2017. At the time I served notice on all landowners and people who I thought might have an interest in the land as tenants. With the agreement of the authority I placed notices on site at the extreme northern end of the route because the ownership was not immediately discoverable. There then followed and exchange of submissions between interested parties. I believe these are accurately summarised in the decision report made by the authority.

During the process two issues emerged.

- 1) It became clear that the extreme northern part of the application route, north of the junction with Byway Beddingham 8, was formerly part of the main road from Newhaven to Beddingham. This issue first emerged when I attempted to discover the ownership of this part of the route, and further information

emerged when I attempted to find out why Byway Beddingham 8 appeared to stop short of the road from Newhaven to Beddingham. All the information in this document concerning this section either originates from the authority or has previously been shared with them by me.

- 2) I had made several attempts to contact the Sussex Mills Group to get more information about the Beddingham, Mill but I was unsuccessful in getting more information than I had included in the original applicant's statement. However, shortly before the authority was due to issue a decision, I made one last attempt by posting a request for information on the Group's facebook page. I was fortunate enough to receive a very detailed reply, which I forwarded to the authority. The reply is set out in full in the decision report by the authority. The reply suggested to me that the mill was of more significance to the path than I had originally believed. I am grateful to the authority for considering this evidence at short notice.

I deal with these issues in the detail of the appeal below. The authority has issued a decision not to make the order. I take issue with a number of conclusions that the council has come to in its accompanying report. Below a summary of the points that the council has made are summarised in bold, with my comments on each point in normal text.

There are variations in the claimed route, especially at the southern end.

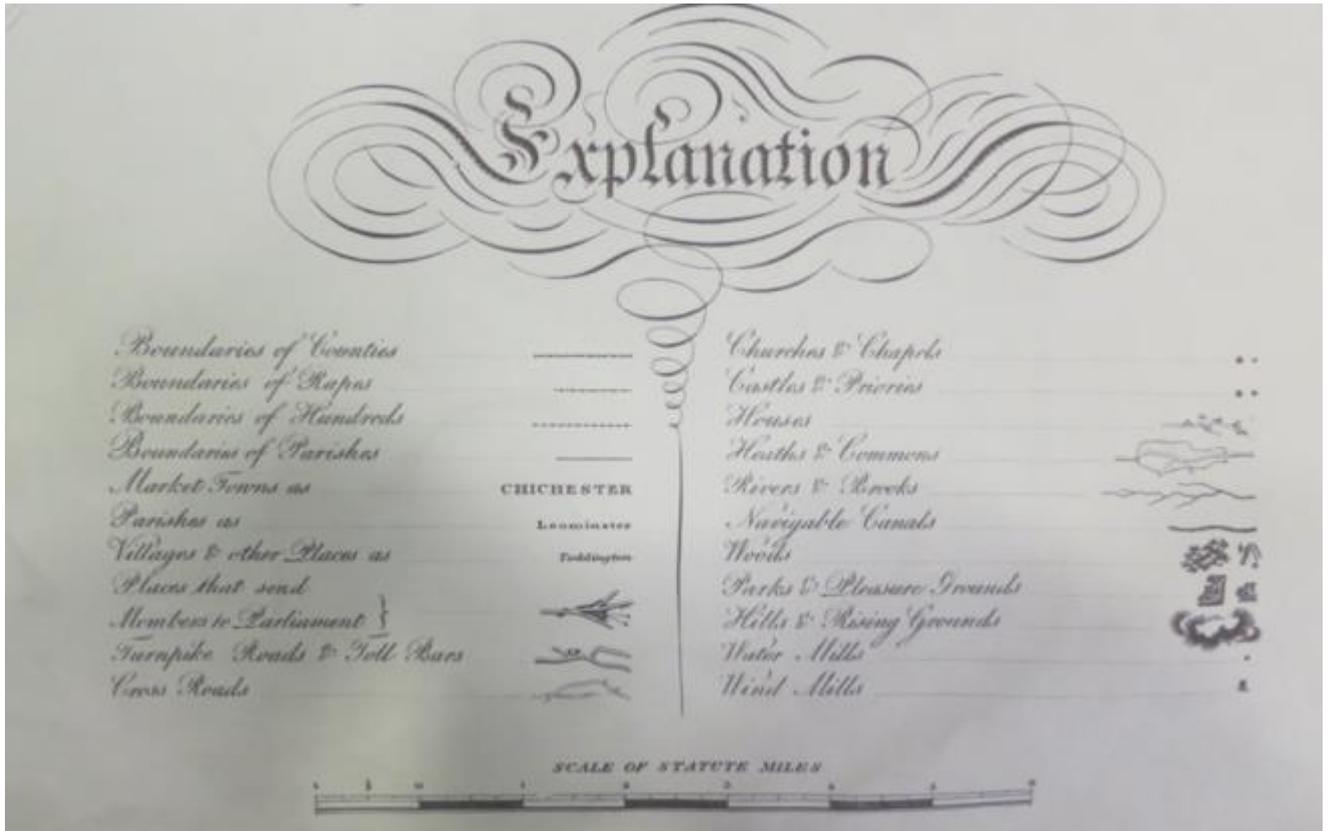
Some variation must be expected on older maps because of the surveying methods. The extreme southern part of the route was and is on open downland and the route may not have been clear at all times. However a site visit will reveal that the application route is clearly marked out today throughout. The open downland is now access land.

It should be noted that Red Lion pond is simply a dry dip in the land, at least for most of the year. So if it is missing from some maps this should not be a surprise.

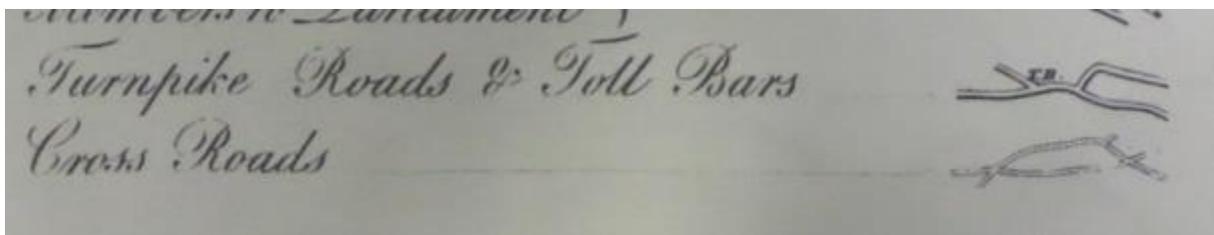
Old maps are not evidence of status

The argument about these maps has been well rehearsed in public rights of way circles for some time, so I will not repeat the debate here. But I suggest that the purpose of these maps was to inform travellers and that if they were inaccurate sales would suffer.

This is particularly the case in the case of the Greenwood and Greenwood map. The map has a key, which is shown below



A close up of the key explains how roads were depicted. (See below)



Paragraph 2.24 of the Planning Inspectorate’s constancy 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.

Few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this map means that it was more likely than not, a public route.

The route appears to me to be shown in the manner of an unfenced cross road.

The tithe map and apportionments are evidence of the course of the route only not its status.

I take the points made in the two decisions referred to, but I believe they refer to cases where the normal convention of not numbering non titheable roads was followed. However in some cases parishes numbered each road and assigned it to the surveyor of highways or the parish. Such evidence is obviously evidence of status. However in Beddingham the unusual practice of numbering all roads with the number 277 was adopted.

I have now had the opportunity of examining the original tithe map held at the East Sussex Record Office under reference PAR/238/21/1/1

It is described in the catalogue as follows

ESRO reference:	PAR 238/21/1/1
Level:	File
Description:	Map surveyed by William Figg; scale 13.3 " : 1m; 1840 Copy apportionment (attached), 1842; sealed by the Tithe Commissioners, 1844
Creator(s)	Parish of Beddingham

I have been unable to find any route labelled 277 on the map which is not a road or byway today and I note that where routes shown in sienna appear to be routes simply to a farmhouse or similar they are blocked off from the main roads.

Below is an image taken from this map showing the cross roads at the north end of the application route. The route leaving the junction to the bottom of the map is the application route. The route to the right is byway Beddingham 8. To the left and the top is the original route of what is now the A26. There seems to be no differentiation between these routes.



Below is a close up from the same map. It shows what is now the junction between what is now the A27 (coming in from the top left and continuing right) and what is now the A26.

I have highlighted the way that routes we would expect to be private are separated from the roads by bars. This practice is followed in other parts of the map. I cannot, however, see such a bar at the council's point B.



The apportionment is as follows:

277	roads River and Waste	32	1	20
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A total value is assigned, but no ownership given. The evidence is not conclusive, but I suggest that the evidence shows that that part of route coloured in sepia and not barred off is a public road like the other routes in 277.

However, on the open downland the issue is different. As has been stated, the purpose of the tithe map and apportionments was to value land for tithing. At the time (although not today!) it would have been possible to graze sheep across any open public route and the land would have value to any underlying owner. So we would expect it to be part of a tithe apportionment.

The fact that the 1910 Finance Act Survey did not show the route as a white road means that this is not public road.

It was a long time between the drawing up of the tithe maps and 1910. During that period riverside routes were re-engineered to avoid flooding and mud, the process of tarmacking was invented and powered vehicular transport was introduced.

Many downland routes that had been previously used by carts and other vehicles were no longer used by them by 1910 because of these changes. So perhaps it is not surprising that the application route was no longer identified as a "road". The

Finance Act evidence suggests that the landowner did not identify, or did not want others to identify, the application route as a road. That does not mean that it had not previously had that function and there is no record of any formal stopping up or downgrading.

The hereditament containing the application route also contains a short length of what is now the South Downs Way, a bridleway, but the size of the deduction suggests that there were more rights of way than simply this. I agree that it cannot simply be said that other tracks shown on the underlying map that they were definitely the routes for which a deduction was made, but I suggest that it is more likely that the deductions referred to these routes than for some other unmarked route.

The council has not seen any evidence to prove that the first definitive map process was flawed in this case.

It is not necessary to show that the process was flawed, only to produce evidence that the council has not examined previously which suggests that the definitive map and statement are not correct.

I have been involved in researching lost rights of way in East Sussex for some time. As a result I have examined the bulk of the documents currently available about the creation of the first definitive map.

At an early stage I agreed to examine and catalogue all of the digital records held by the rights of way team at ESCC. This was in return for access to those documents. For each parish the team has had digitalised all the correspondence now existing between the county, the parish and others, the Ramblers surveys, the observations on the parish schedules by the County and the draft statement. The main material missing is the schedules drawn up by the parishes, which has not yet been digitalised by the county. In order to catalogue the records it was necessary to read each one

Although I was not able to catalogue all of the material, I did manage to catalogue about 2/3 of it, which gave me a fairly clear idea about what went on. I have subsequently looked at quite a lot of the material that I was not able to catalogue.

I have also examined:

- All of the maps held at the East Sussex Records Office which were drawn up by the parishes as the initial part of the survey
- 22 schedules drawn up by the parishes
- All of the minutes of the rights of way committee (which dealt with all objections, with detailed reports in most cases by the clerk)
- About 25 folders held at the East Sussex Records Office containing nearly all the material about individual objections.
- The first draft definitive map for the whole of Sussex (apart from the area around Rye, which is missing from the record at the Record Office)
- The first definitive maps for Battle rural , Chailey, Hailsham, Lewes and Uckfield rural councils.

From these documents it is possible to get a very clear picture of what went on and what documents were and were not examined

A large amount of material from the surveying of the first definitive maps survives in East Sussex, both in the records of the rights of way team and at the East Sussex Archive at the Keep. In most cases it is possible to see the initial maps drawn up by the parishes, the forms filled in by the parish, the survey conducted by members of the Ramblers or other organisations, the first draft definitive maps, the minutes of the relevant county council sub-committee and the first definitive map. Correspondence between the county, district councils and the parish also survives in many cases, as do many of the notes of those county officers charged with examining inclosure and quarter sessions records. This means that it is possible to see what was and what was not examined and taken into account.

The surveys took account of local knowledge, the 1932 rights of way surveys (mostly now lost) and also inclosure and quarter sessions records (although some were missed) It appears that examination of deposited plans and tithe records was inconsistent. Tithe maps were not routinely consulted. They would sometimes be examined where there was a dispute.

No account was taken of inland revenue records, which were not then available, and there appears that older maps were only consulted in some contentious cases. Council minute books do not appear to have been examined. Nor do early private or Ordnance Survey maps appear to have been consulted except in the odd case. In many cases, where a land owner objected the route was simply dropped. This is perhaps not surprising when the council was trying to get through over 2,000 miles of alleged rights of way.

I suggest that the tithe map, mill and inland revenue evidence is all new and casts doubt on the definitive map as it now stands in relation to this route.

Once there has been a discovery of evidence it is open for a decision maker to revisit interpretations of evidence arrived at as part of the decision making process.

The document in 14.1.2 of my original statement makes clear that the application route (which runs from the Lay to Red Lion Pond, was originally admitted in the 1932 act survey but subsequently repudiated as a route to a mill.

Facebook evidence about the mill is unverified.

Facebook rightly has a reputation for unreliable information. But the individual circumstances here are different. I had tried for some time to get information from the Sussex Mills Group without success before I posted on their page. The screenshot below shows that my respondent tried to email me the information.

The exchange is taken from

https://www.facebook.com/permalink.php?story_fbid=1269194439948159&id=200172760183671&comment_id=1269235483277388&reply_comment_id=1269665256567744¬if_id=1580329676797358¬if_t=feed_comment



Chris Lewes ▶ **Sussex Mills Group**

29 January · 🌐

A MILL ON THE DOWNS AT BEDDINGHAM?

Does anyone have any knowledge of, or information about, a mill alleged by a landowner to have once been on top of the downs at Beddingham, near Red Lion pond and just east of Itford hill?

I'm enquiring in connection with a claim for a right of way from the Lay to Red Lion pond which it is claimed was only a private road to this alleged mill, but I cannot find any reference to the mill

👍 1

12 comments

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Justin Brice Did you receive the information I emailed yesterday?

4w



Chris Lewes No, I only got a reply from Simon potter suggesting that I contact SPAC, which I have done, but I was hoping there were some more local people with some knowledge of the existence or otherwise of the mill

4w



Sussex Mills Group Chris Lewes Ok, here's the info I have..
Beddingham Old Post Mill (TQ 451 059).... [See more](#)



There then follows the information which I sent to the authority which is included in their report.

For convenience here is a transcription:

“Beddingham Old Post Mill (TQ 451 059).

stood on north side of the Itford and Alfriston route, now a grass covered track. It stood close to the White Lion Pond, from the west side of which were faint traces of a track which lead up to the spot which clearly marked the site. Millers here include John Wade, 1670 and William Thompsett in 1789.

Sussex Weekly Advertiser, 1763 recounts an accident involving “Jervas, a miller, at Beddingham” who was thrown from his horse and into the river while crossing Glynde bridge. Fortunately he was saved by a passer by.

Sussex Advertiser, February 1769: “on Tuesday morning, about 3 o’clock, we had

here (Lewes), and about 20 miles of this place, a most terrible tempest of thunder, lightning... a mill at Friston had her stones broke, and a pair of stilliards that hung up near by was melted by lightning. Willingdon mill had the doors and windows carried a great distance. One of the stones of Beddingham Mill was broke, and the band that went round it was melted”.

Sun Fire Insurance Policy, 1788, her owner was Thomas Carr who insured the windmill itself for £500 and the utensils and stock therein for £100”.

Sussex Weekly Advertiser, January 1789: “Last Friday, as a man was going over Beddingham Hill, and paying more attention to a windmill lately erected there, than to his road, he walked into a saw pit of snow, but the snow rendered somewhat hard by the frost, it facilitated his escape form danger that might otherwise have proved fatal to him”.

Sussex Advertiser, 1791: “a few nights ago, the windmill on Beddingham hill, belonging to Mr Carr, was broke open and robbed of two sacks of flour”.

Sussex Weekly Advertiser, February 1796 reported “not less than four gallons of good barley flour were to be sold by auction at Beddingham mill”.

Defence Schedule 1, c1801 confirms that only 1 windmill was present in Glynde (the new windmill not built until 1807) and that Mr Carr would supply 2 sacks of flour every 24 hours and would supply his own wheat.

For sale, August 1814 as “a post windmill and drying house adjoining”.

Sussex Advertiser, October 1825: “to be sold by auction the furniture, stock in trade, & other effects of George Webb, miller and farmer, at Beddingham, consisting of a miller’s van, 2 carts, a horse, some flour and some pigs”.

Not shown on 1840 tithe map so it must have been removed before then.

I’ve attached a map showing roughly where I believe the mill stood.
Beddingham Old Post Mill (TQ 451 059).

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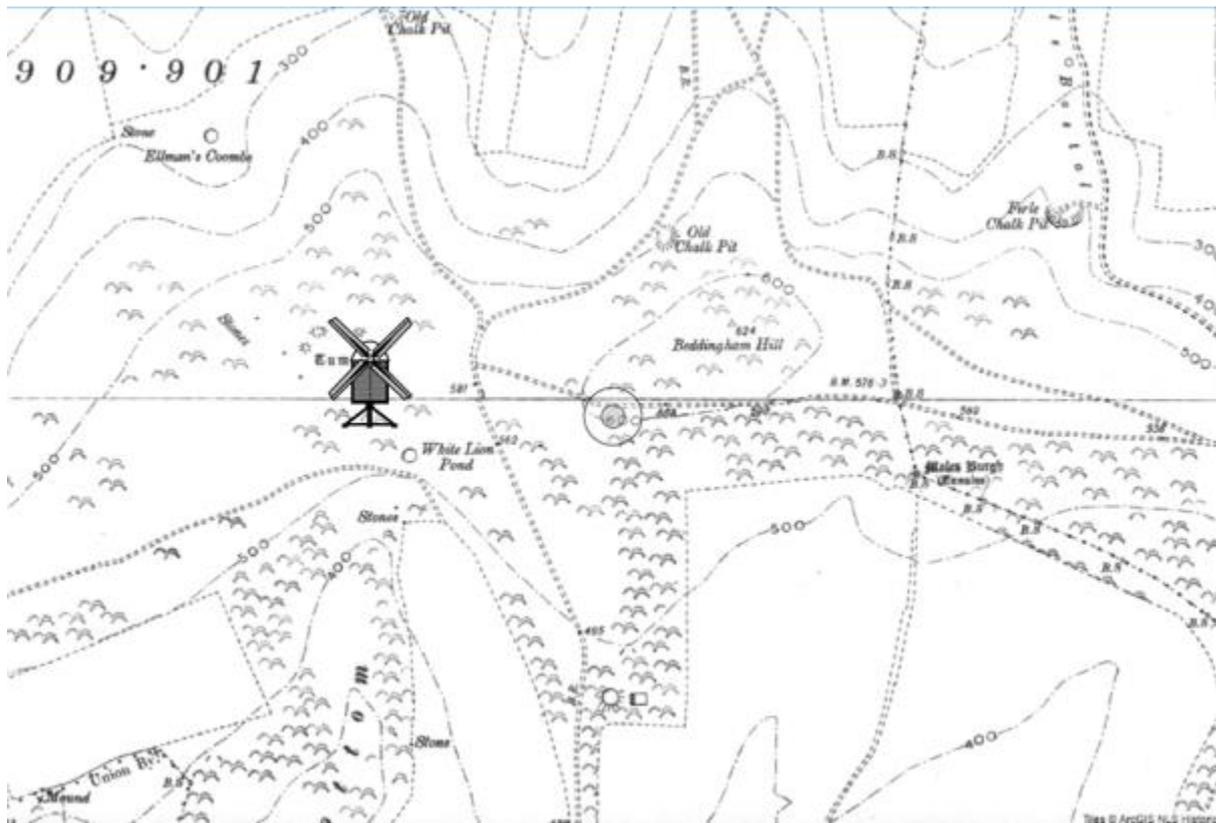
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Not shown on 1840 tithe map so it must have been removed before then.

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[Justin Brice](#)

A visit to the Sussex Mills group web site at <https://sussexmillsgroup.org.uk/contact.htm> reveals that Justin Brice is the newsletter editor of the Mills Group. I suggest that his post in the most knowledgeable group about Mills in Sussex, together with the comprehensiveness of his reply, suggests that his comments should be given weight. I have not yet had the time to research the references made, but would be able to do so before an enquiry.

I noted from Mr Brice's evidence that:

- 1) The mill was at the top of the downs, near the south end of the application route. (first paragraph)
- 2) Although the surrounding land, and most of the land over which the application route passes was and is owned by the Firle Estate, the owner was someone other than the Firle Estate (3rd and 5th paragraph).
- 3) Sales advertised to the public took place at the mill (6th paragraph and possibly 9th paragraph)
- 4) The mill was sold without any significant amount of the surrounding land. (8th paragraph) since it is only the sale of the mill.
- 5) The mill was probably no longer in existence at the time of the creation of the tithe map.(final paragraph)
- 6) The mill is described as the Beddingham mill.

I concluded that:

1). Any use of the application route to get to the mill would have used nearly the whole or the whole of the application route.

2). We do not know whether the millers held the land as freeholders or leaseholders, but their tenure was such that they were described as owners. The mill was also bought and sold separately from the surrounding land. This means that, in the absence of any agreement between the landowner of the application route granting access to the mill to the miller and the public, any access to the mill is likely to be on a public right of way since people visiting the mill would not otherwise have access. The miller would have had no power to allow access over another person's land.

3). I suggest that it is common sense that mills would be visited by members of the public, including farmers bring large quantities of cereal to be ground in carts, and individuals on foot or on horseback buying flour in smaller quantities, but here we also have evidence of publically advertised auctions taking place. The mill is also very near the route from Iford to Alfriston which is today the South Downs Way, but Iford was a very small place in the 18th/19th centuries and the name of the mill suggests that it served Beddingham. The application route is the obvious one from Beddingham to the mill and the landowner suggested that the route was used to access it when objecting to the route in the 1930s.

4) If the purpose of the route was solely or mainly to access the mill, as was suggested in the 1930s, it is strange that it survived in place for nearly 100 years between 1840 and the 1930s



I should add that I do not understand the comments by the authority to the effect that posts on facebook are not public because you are required to register and log in. This is also the case at the East Sussex Records Office, from which much of the

research for this application comes, and where the authority stores old records that it is required to make available to the public.

The mill may not have existed, or there may have been more than one mill, or the Beddingham Mill referred to may not be the one shown on the map.

Mr Brice has provided a map which shows where he believes the mill to have been. It is on the site shown on various maps. He identifies a mill near White Lion Pond

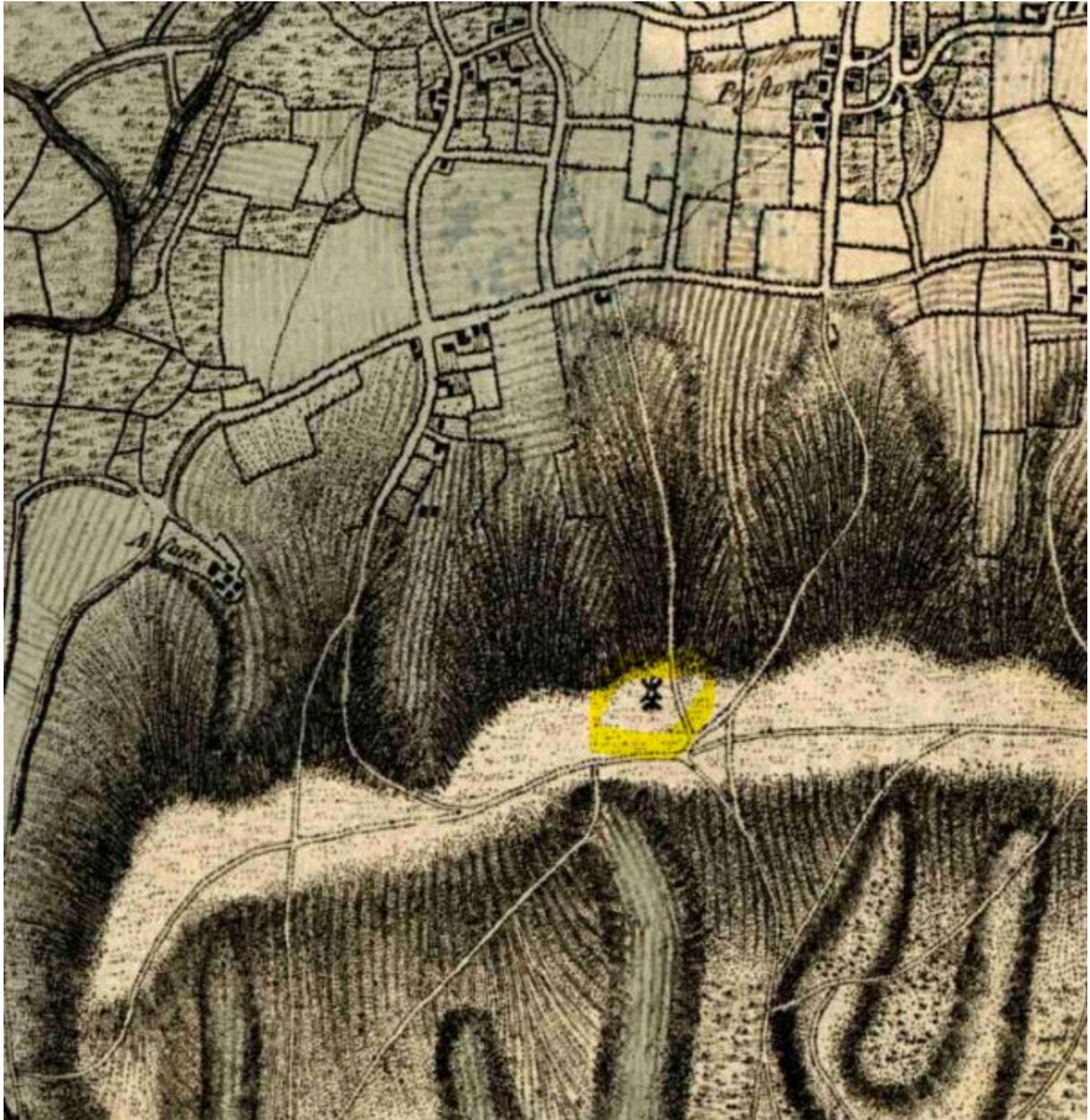
The book "Windmills of Lewes" referred to in section 15 of my original statement identifies only one mill near the application route. It is near White Lion Pond

Maps pre-dating 1840 show a mill and only one mill near the application route.

BUDGENS MAP



YEAKELL AND GARDNER



GARDNER AND GREAM



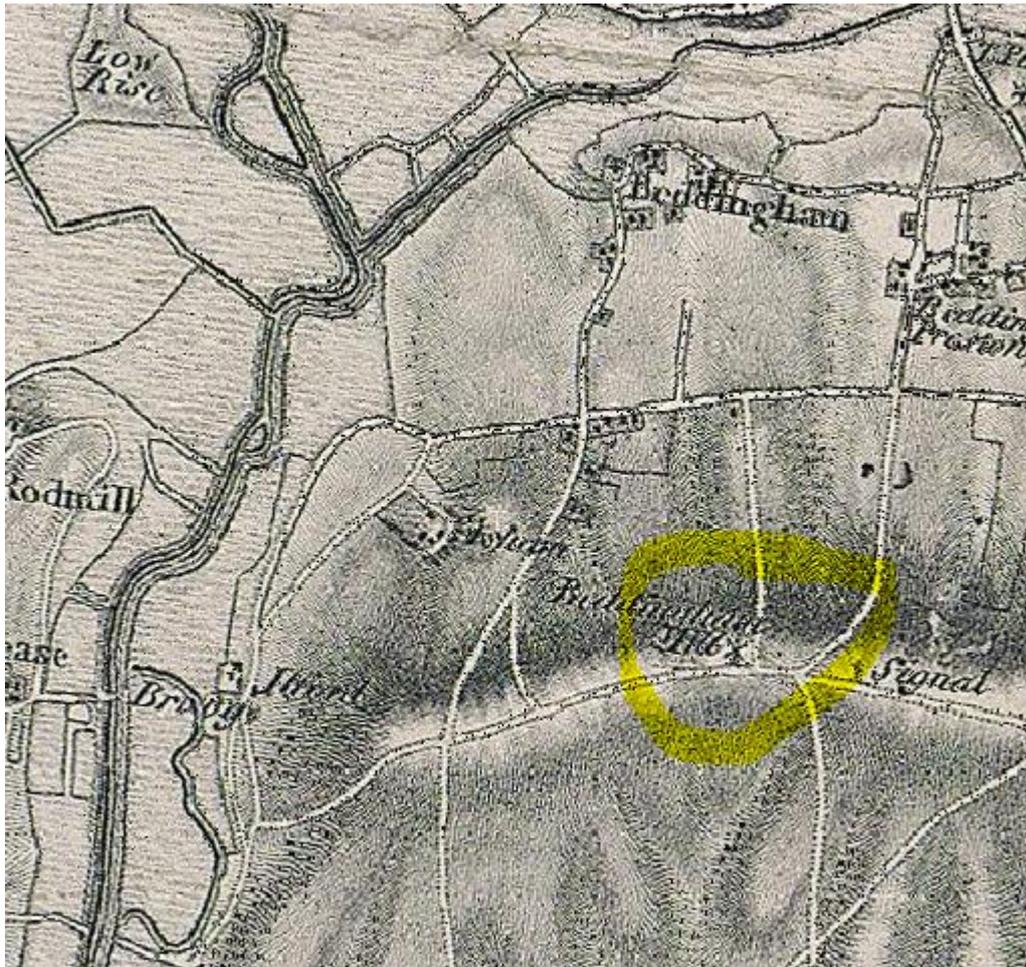
GREENWOOD AND GREENWOOD



MUDGE



1ST EDITION OS ONE INCH MAP



In a number of cases the mill is identified as the Beddingham Mill.

There was another mill in the parish of Beddingham, but it was on the lowlands near Glynde village and served that village.

There is no evidence that the route was used as access to the mill. There may be other routes

There are indeed other routes, but the route is one of the most direct ways of getting to the windmill from Beddingham. The objector in the 1932 rights of way act survey (probably the landowner) said that the route was used to access the mill.

The mill is not on the tithe map

There is no evidence for the existence of the mill after 1825 when it appears the effects of the mill were being sold. This suggests that this was the approximate time the mill closed down. This would probably have been after the survey for the first Ordnance Survey map but before the tithe map survey.

There is no evidence that the public visited the mill

As the email from the Mills Archive on page 27 of my original statements makes clear, it was common practice for the public to visit mills to buy flour. It was also common practice for growers to deliver flour to be milled and either return with the milled product or to sell it to the miller. This is public use of the routes that they used to get there (in the absence of any permissive agreement)

I know of no cases where a miller grew his own cereals, nor where he went to town to sell his produce, although isolated cases may have occurred. Apart from anything else, there would not be time for these activities.

Mr Brice's information suggests that there were sales at the mill. This is clear evidence of public visits.

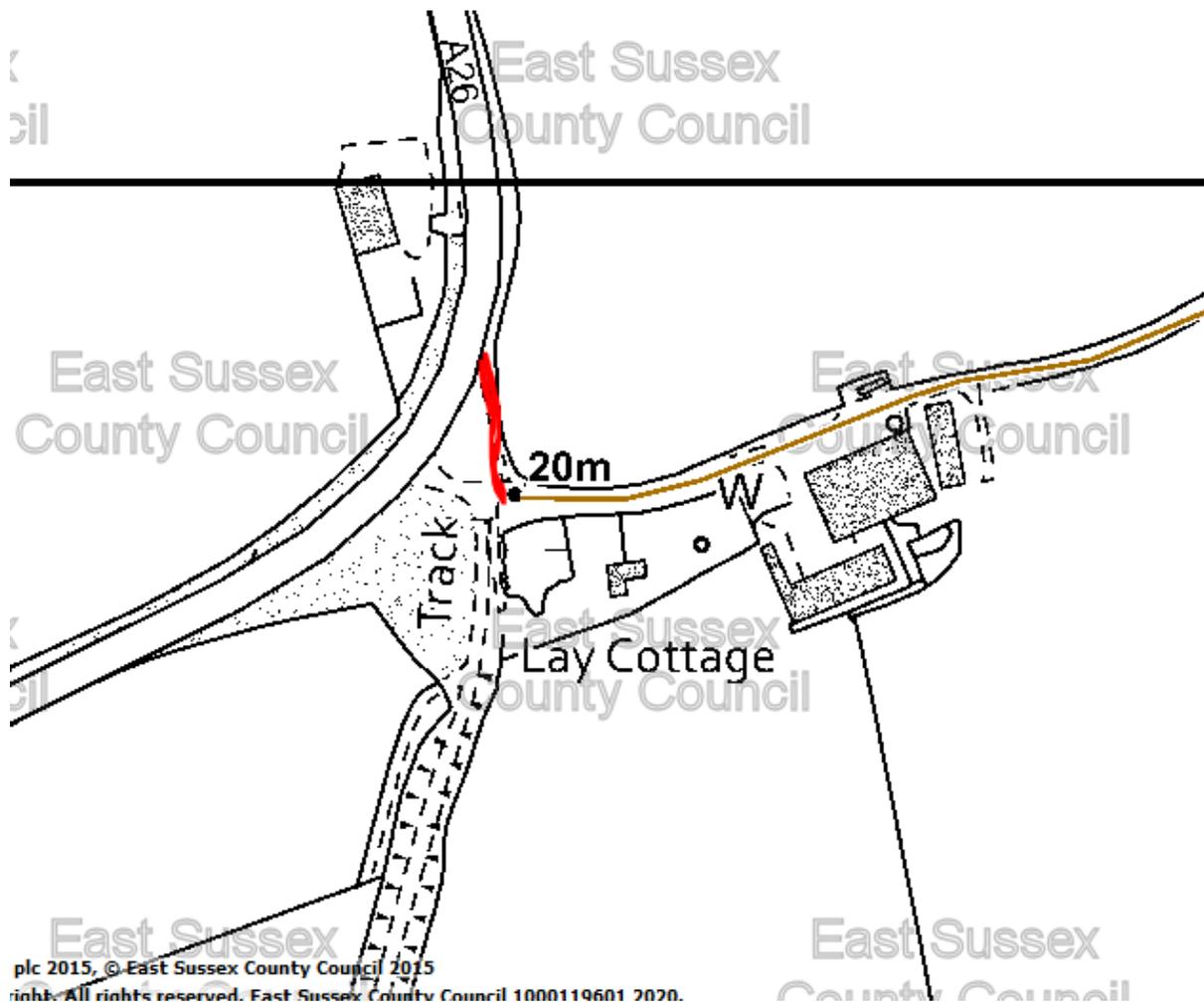
Even if the public did visit the mill that is not evidence of a right of way

The miller is described as the owner of the mill, but not the routes on the surrounding land. Whatever the exact nature of his tenure, it is clear that he did not have the power to authorise access along the application route on a permissive basis. The authority suggests that the landowner might have authorised this on a permissive basis solely for access to the mill. I suggest that this is unlikely. How would such limited access be policed? No documents have emerged which would suggest such a permissive agreement, despite the fact that the landowner and objector is the Firle Estate, which has kept extensive records over a long period of time, much of which are now in the East Sussex archives.

THE EXTREME NORTHERN END OF THE ROUTE

This section of the appeal deals with the section of the application route between the junction with Byway Beddingham 8 and the northern end of the application route. The route is highlighted on the map below, which is taken from the online rights of way map on the authority's web site.

The part of the route concerned is highlighted in red. Beddingham 8 is shown in brown.

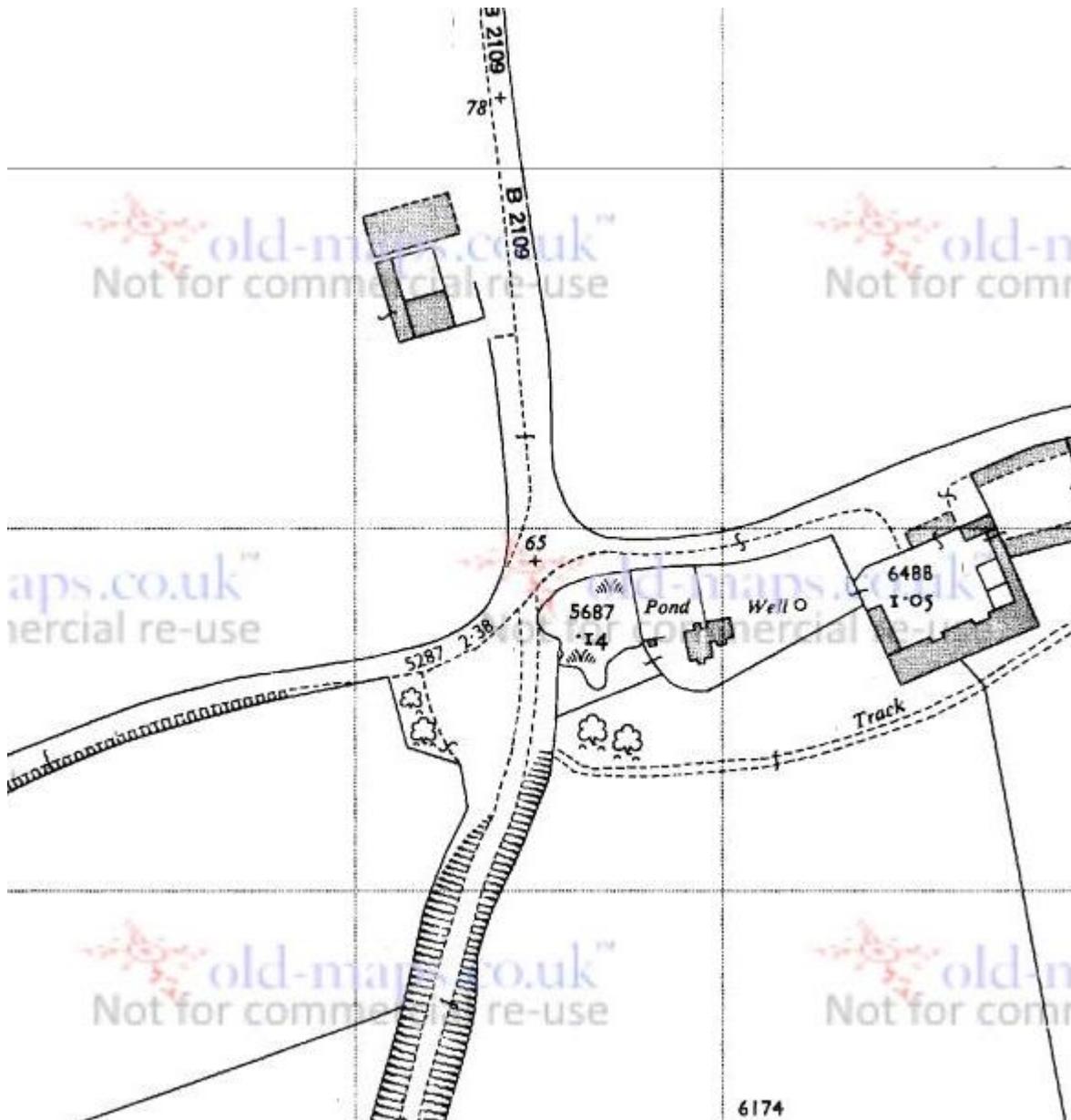


As outlined in the authority's report, information has emerged since the application about the ownership and status of this part of the application route. On the ground it most of it is currently a footpath. There has been some confusion about who owns the land and whether or not it is part of the highway.

My understanding is that if a right of way extends to verges that are part of the highway it has met the highway. But I do not think that this is entirely the case here.

Many of the maps copied as part of this application show the junction of the application route, Beddingham 8 and what is now the A26 as a crossroads.

The most recent large scale map I have been able to find showing the old route is on the old-maps.co.uk web site at <https://www.old-maps.co.uk/#/Map/544500/107500/12/100955> . Below is an extract from that map.

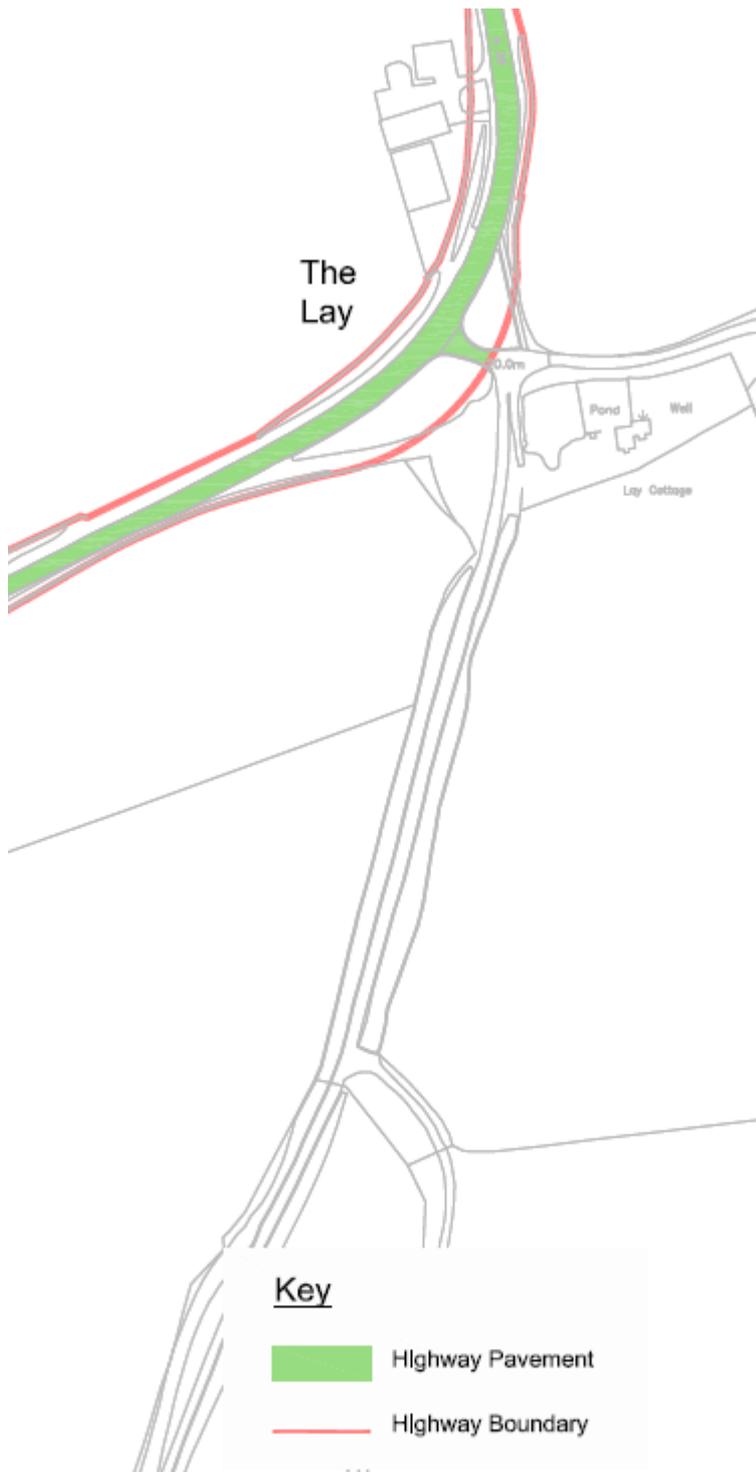


From this map and other maps previously referred to it appears to me that this part of the application route was formerly part of the road from Beddingham to Newhaven, a public highway. I suggest that when the Beddingham 8 was added to the definitive map in the 1970s it is likely that its western end marked the end of the A26.

I believe that the alteration to the route of the A26 was carried out in the late 1970s.

But today this may not be the case.

Below is an extract from the map provided to me by the authority showing what the authority believed to be the extent of the highway before 1981, when the trunking order for this part of the A26 was made.



Created by T.Bush on 13/03/13
 Checked by P.Mayes on 23/03/13
 Approved by K.Saradinova on 15/04/13

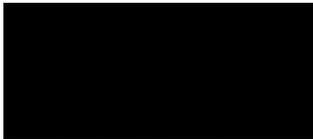
You can see that at least half of this part of the application route does not appear to be part of the A26. There is some uncertainty about the rest.

I have not been able to find any legal event stopping up the this part of the application route

CONCLUSION

CERTIFICATION: I certify that I served notice of this appeal on the surveying authority by emailing them a copy of this appeal.

I understand that a copy of this appeal and supporting papers may be made available for public inspection.

A large black rectangular redaction box covering the signature area.

Signed

DATE 4/3/20