

COMMENTS ON THE RESPONSE BY THE LAND OWNER TO DMMO APPLICATION LONG MAN A

1.1.1 Below you will find comments made on behalf of the Open Spaces Society on the response made by or on behalf of the land owner (the responder) in this application

1.1.2 The comments are made on the documents sent to me by East Sussex County Council. These consist of a time line and a separate 55 page document. I have received no other documents. I asked the council whether they had received anything else and I was told that they had not. I raise this issue because in a number of cases the response makes statements without apparently providing evidence and also documents are referred to which are not in the public domain and which appear not to have been produced (for example the Wootton Archive). I also note that the response refers on page 37 to a number of photographs concerning court cases which, it is said have been provided to the council. I have not received these and the council has confirmed to me that it has not received them.

2. GENERAL ISSUES

2.1.1 The responder makes two important general points the application route:

2.1.2 Firstly, the land to the north of the current A27 and to the south of that road was in single ownership and managed as one estate for the significant periods. (See numbered paragraph 2 on page 4 of the response) I do not wish to dispute this.

2.1.3 Secondly the route from Folkington to Nate Wood was entirely for the purposes of the internal management of the estate (numbered paragraphs 2 and 4 of page 4 of the response) and had no public rights. This latter point is easily disproved.

3. QUARTER SESSIONS RECORDS- THE 1844 DIVERSION

3.1.1 Highway functions were discharged by Justices of the Peace in Quarter Sessions before powers were handed over to what are now the highway authorities. Court records provide conclusive proof of the matters on which decisions were made. The court was not concerned with changes made to private roads

3.1.2 The record for the session for Easter 1844 in East Sussex is held at the Keep under the reference QO/59 on microfilm XA/55/19-20 An extract is reproduced below.

3.1.3 The relevant section says that the justices decided that "so much of a certain highway leading from the Lewes by Polegate to Eastbourne turnpike road to Folkington church" should be diverted.

Order for diverting
Highway, Footway,
and Bridleways
in Folkington.

Be it remembered that at this present Sessions or certain Certificate, of which the following is a transcript, was read by the Clerk of the Peace in open Court, and by him enrolled amongst the Records of the said Sessions, pursuant to the Statute in that behalf made and provided:.

Sussex, to wit. We the undersigned John Hym and Nicholas Willard Esquires two of Her Majesty's Justices of the Peace in and for the County of Sussex having upon View had and taken by us on the seventeenth day of January in the year of our Lord one thousand eight hundred and forty four found that so much of a certain Highway leading from the Leazes by polegate to Eastbourne Turnpike Road to Folkington Church as is of the length of five hundred and fifty one yards commencing at a spot marked **A.** in the Map or plan herunto annexed near unto a certain Cottage and Garden belonging to Thomas Sheppard of Folkington in the said County Esquire in the Occupation of Stephen Prodyer and running in a South westerly direction for the distance of one hundred and sixty five yards and thence turning in a South easterly direction for the length of one hundred and sixty five yards and thence running in a Southerly direction for the length of five hundred and fifty one yards unto and terminating at a point marked **B.** in the said Map or plan where the said Highway turns in a Westerly direction near unto a certain Cottage there of the said Thomas Sheppard in the Occupation of John Eilton and Richard Dennis, and also the whole of a certain Footway of the length of four hundred and twenty four yards which runs across through and over a certain Meadow of the said Thomas Sheppard called Blackland in the Occupation of Richard King Sampson Esquire in a straight line in a South westerly direction from a certain Highway at a point marked **D.** in the said Map or plan at or near to certain Cottages belonging to the said Thomas Sheppard in the Occupation of James Wood and others, unto and terminating in the said first mentioned Highway at a point marked **C.** in the said Map or plan at a certain hedge upon the Western side of the said Meadow and also so much of a certain Bridleway as runs in a Westerly direction from a certain Street at the point marked **F.** in the said Map or plan along the Southern side of the said

3.1.4 This is conclusive proof that the road from Folkington Church to the Turnpike was a public Highway at that date.

3.1.5 The map of the proposed diversion contained in the relevant roll formed part of my original applicant's statement.

3.1.6 The purpose of the diversion was to move the highway away from the applicant's house. It is hardly likely that he would have created, or allowed to come into being, a

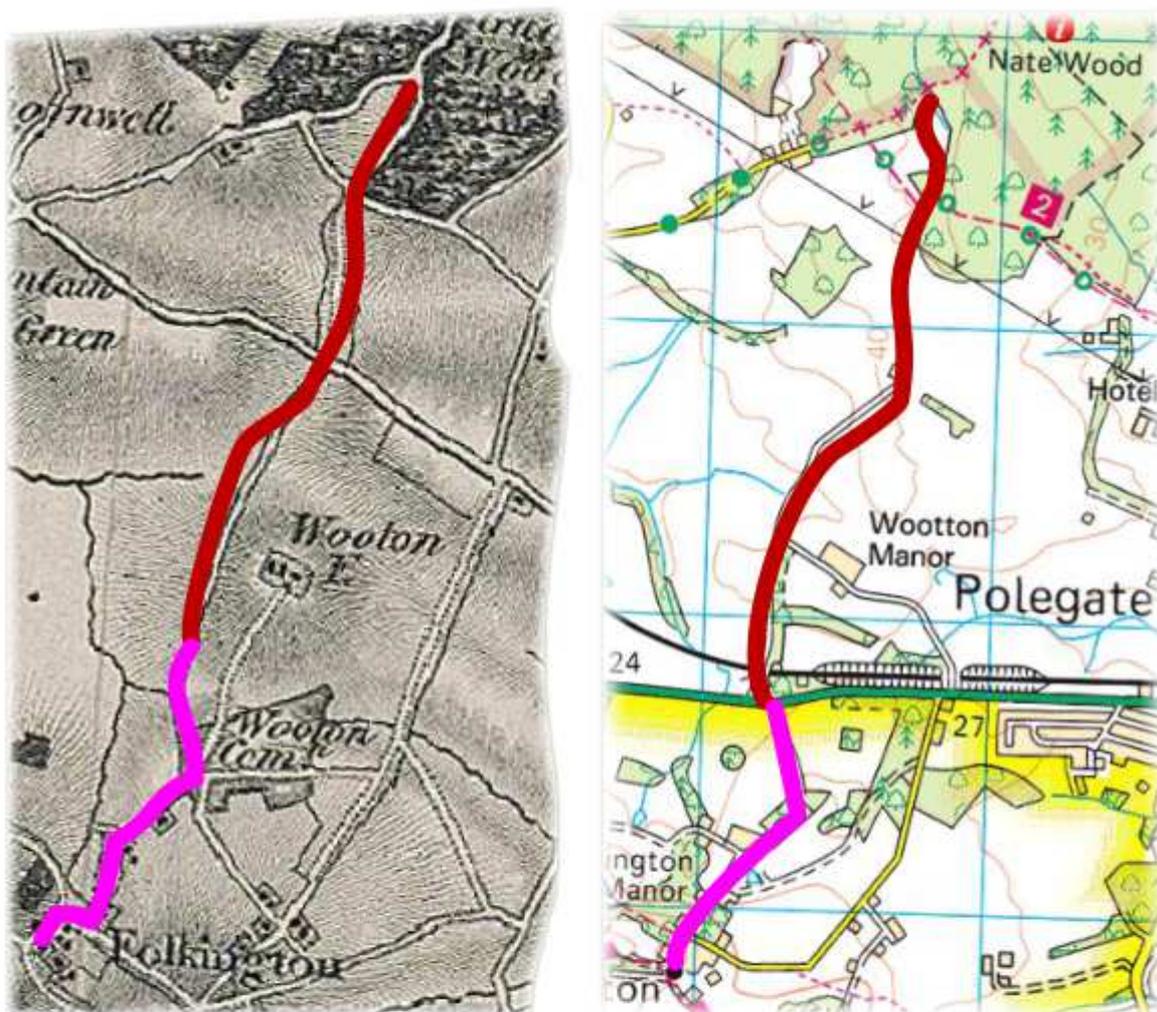
highway and then shortly afterwards applied to have diverted. This suggests that the highway had been there for some time.

3.1.7 The diversion was not carried out. There is no certificate of completion. So the highway remained on its original route.

3.1.8 If the road between the church and the turnpike was a public highway at this point, how long had it been so? There is no record of any previous legal event that would have created a highway, so we can say that it is probably that it had been a public highway for as long as it had been shown on maps. Since the turnpike had arrived only about 25 years before, we can be fairly sure that it was a highway before the coming of the turnpike.

3.1.9 A highway goes from one highway to another, or to a place of public resort. Below I compare the highway identified in the 1844 quarter session record with the application route. The maps used are the first edition of the ordnance survey one inch map and a modern OS

map.



Comparison of first edition of the one inch ordnance survey map with a modern OS map.

The application route is shown in red.

The route identified as a highway in 1844 is shown in magenta

3.1.10 I suggest that this indicates that, on the balance of possibilities, highway rights extended north from the route extended north at least to the old turnpike which is shown on the earlier map.

3.1.11 I also suggest that we can go further than this. The responder has provided evidence that the landowner for the application route and the 1844 proposed diversion were the same. Plans for proposed diversions were drawn up by the applicants or their agents. You will see from the plans made for the 1844 quarter sessions, which are contained in the applicant's statement, that the owner's agent coloured the route to be diverted, the turnpike and the application route in the same manner, suggesting that they had the same status. Further, the applicant or agent has labelled the application route as going to Hailsham. This

is very strong evidence that the land owner believed, and the court accepted, that this was a public through route to that place.

3.1.12 Hailsham was an old established market town and the most convenient for villages such as Folkington, Jevington and East Dean. I would expect there to have been a road between these villages and Hailsham since early times. The evidence from old maps in both the applicant's statement and below suggests that this was the case.

4. THE 1877 QUARTER SESSIONS DIVERSIONS

4.1.1 I have not previously mentioned these, but in view of the responder's case about the continuity of the route north and south of the current A27, I now set out information from these records

4.1.2 The record for the quarter session for December 1877 in East Sussex is held at the Keep under reference QO 81. The roll for the same session is held under reference QR 1080. A number of diversions on what was now Mr Gwynne's estate are set out.

4.1.3 Below you can see four extracts from the roll. They show that the 1844 diversion had not been carried out and that a highway for "horses carriages and foot passengers" continued to exist from the turnpike to Folkington Church. There was also another highway for the same classes, which branched off to point A. These routes were to be extinguished and replaced with a highway on the current site of the road to Folkington from the A27.

4.1.4 This is conclusive evidence of the highway status of the route immediately south of the application route in 1877, but is perhaps more significant for the way it portrays the application route. The applicant's agent created a map on which public highways were differentiated from private estate roads. The fourth extract shows part of the application route, which is portrayed in the same way and in the same colour as the highways to be diverted and the turnpike. By contrast, private ways are shown uncoloured. For example see the routes around Wooton Farm.

4.1.5 Given that this map was drawn up by the applicant or their agent, this is strong evidence that the applicant accepted that the application route was a public highway.

Notice is Herely Given,

THAT on the thirty-first day of December next application will be made to Her Majesty's Justices of the Peace assembled at Quarter Sessions in and for the Eastern Division of the County of Sussex, at Lewes, in the said County of Sussex, for an Order or Orders to stop up, divert, and turn a certain Highway for Horses, Carriages, and Foot Passengers, situate in the Parish of Folkington, in the said County of Sussex, which branches out of a certain Highway for Horses, Carriages, and Foot Passengers, being the High Road from Eastbourne, in the said County of Sussex, to Lewes, in the same County, at a point marked **A** on a plan which is deposited with James Eglenton Anderson Gwynne, of Folkington Manor, in the said Parish of Folkington, Esquire, and may be seen at Folkington Manor aforesaid, and leads thence through land belonging to the said James Eglenton Anderson Gwynne partly in a Southerly and partly in a South-Westerly direction into a certain Highway for Horses, Carriages, and Foot Passengers leading to the Parish Church, at a point marked **C** on the said plan, and which said first-mentioned Highway hereinbefore described is of the length of Three thousand and eighty feet or thereabouts, and of a breadth varying from Eleven feet to Twenty-eight feet throughout the same, and is shown on the said plan by being thereon colored Blue. *And also* to stop up, divert, and turn so much as lies between the points marked respectively **D** and **B** on the said plan, of a certain other Highway for Horses, Carriages, and Foot Passengers, situate in the said Parish of Folkington, which branches out of the first-mentioned Highway hereinbefore described, at the said point marked **D** on the said plan, and leads thence through land belonging to the said James Eglenton Anderson Gwynne, partly in a South-

colored Blue. *And also* to stop up, divert, and turn so much as lies between the points marked respectively **D** and **B** on the said plan, of a certain other Highway for Horses, Carriages, and Foot Passengers, situate in the said Parish of Folkington, which branches out of the first-mentioned Highway hereinbefore described, at the said point marked **D** on the said plan, and leads thence through land belonging to the said James Eglenton Anderson Gwynne, partly in a South-Easterly and partly in a Southerly direction, to the said point marked **B** on the said plan, and which said Highway hereinbefore described, between the said points marked respectively **D** and **B**, is of the length of One thousand three hundred and forty feet or thereabouts, and of a breadth varying from Fourteen feet to Twenty-eight feet throughout the same, and is shewn on the said plan by being thereon also colored Blue. *And to substitute* in lieu of the said Highways hereinbefore described, a certain Highway for Horses, Carriages, and Foot Passengers proposed and intended to branch out of the said High Road from Eastbourne to Lewes at a point marked **E** on the said plan (which said point **E** is of the distance along the said High Road from Eastbourne to Lewes of Two thousand feet or thereabouts from the said point marked **A** on the said plan) and to lead from the said point marked **E** on the said plan through land belonging to the said James Eglenton Anderson Gwynne in a South-Westerly direction for a distance of Two thousand six hundred feet or thereabouts, to the said point marked **B** on the said plan, and thence through land belonging to the said James Eglenton Anderson Gwynne partly in a South-Westerly, and partly in a Westerly and North-Westerly direction, for a distance of Two thousand and fifty feet or thereabouts into the said Highway leading to the Parish Church at the said point marked **C** on the said plan, and which said proposed new Highway for Horses, Carriages, and Foot Passengers is of the total length of Four thousand six hundred and fifty feet or thereabouts, and of the breadth of Thirty feet, and

Walter J. Ho





4.1.6 The certificate of completion is contained in quarter sessions records for Midsummer 1880, which are held at the Keep under reference QO/83

5. BUDGEN MAPS

5.1.1 It must be agreed that the Budgen map of the county of Sussex contains errors and inaccuracies. Below is the commentary on the map contained in "Printed Maps of Sussex 1575-1900 published by the Sussex Record Society on page 57

24 RICHARD BUDGEN

1723

Size: 1500 mm × 660 mm (10 mm)

1:86,500

Based on original surveys by Budgen. See plates 12 and 13.

The first large-scale map of Sussex, and one of the first large-scale county surveys.¹ It incorporates a great deal of information not previously published, in particular the location of many iron furnaces and forges, a theme represented in the framework of the title panel. Gough's² judgement that it 'deserves but the name of a map at most, and even as such is neither correct nor well executed' has been qualified by Skelton,³ who points out that Gough was writing in 1780, only two years after the publication of the first sheet of the Yeakell and Gardner map (no. 47), with which it cannot be compared. It is significant that Gough does not make the same criticism in *Anecdotes of British topography* (1768). Nevertheless, Harley,⁴ writing about pre-1750 county surveys, notes that they '... were justly censured by their users, as was that of Richard Budgen.' A balanced assessment is that of William Roy, who wrote in 1766: 'There are already good surveys made by different people, of the undermentioned counties, viz. Middlesex, Hertfordshire, Berkshire, Hampshire, Dorsetshire, Devonshire, Herefordshire and Shropshire; there is also a tolerable map of Sussex and another of Cornwall ...'⁵ Lower⁶ refers to it as 'a very useful document'.

5.1.2 Errors can be expected, as they can on any map of this period and before. I suggest that the map is evidence that a route existed between Folkington and Hailsham but that no further inference can be drawn. I think it is entirely possible that the route is shown incorrectly.

5.1.3 There is no evidence for the inference drawn about the 1725 Wilmington map by the responder. Such portrayal is not evidence of drove status.

6. THE YEAKELL AND GARDNER MAP

6.1.1 It is wrong to say that Yeakell and Gardner "decided" to include every private and public road etc. We do not know what they decided to do. The claim referred to in the response was set out in the prospectus, for the sale of the maps, as the excerpt below taken from page 93 of *Printed Maps of Sussex* shows.:

The 1778–83 map of Sussex described below was known as the Great (or Large) Survey. It was intended to cover the whole county on eight sheets. A prospectus⁵ dated 11 June 1778 included the following: 'The First Sheet of an Actual Topographical SURVEY of the County of Sussex, on a Scale of two Inches to a Mile; containing CHICHESTER, ARUNDEL, and Sixty Parishes: In which is not only laid down an accurate Plan of every Town and Village, but every Farm-House, Barn, and Garden has its Place. Every Inclosure, however small, is described; every Road, public and private, every Bridle-way and Foot-path; the Rivers, with their Bends, Fords, and Bridges; each Rivulet is traced; the Hills and Valleys clearly distinguished from the Low Lands, their Shape and even Height are expressed sensible to the Eye. . . . It will employ us, from first to last, six Years, and cost more than 2400l. for Surveying, Drawing, and Engraving. . . . Many Gentlemen are apprehensive that from the infinite Detail and Precision of our Work it can never be finished; . . .' This advertisement, which was printed by W. Lee of Lewes, concluded by stating that subscriptions would be taken by Mr. Lee in Lewes, Mr. Thomas at Brighthelmston, Mr. Hogben at Rye, Mr. Watts at Petworth, Mrs. Jaques at Midhurst, Mr. Weire at East-Grinstead, Mr. Jaques at Chichester, Mr. Peadle at Arundel, Mr. Breadhower at Portsmouth, Mrs. Dury in St. Martin's Lane, and Mr. Faden at the Corner of St. Martin's Lane, Strand, London.

The apprehensions of the 'Many Gentlemen' proved justified. Only 250 of the 400 subscriptions required were forthcoming, and only four of the intended eight sheets were ever published. Some years later an unsuccessful attempt was made to complete

6.1.2 Yeakell and Gardner were not the first nor the last sales people to make claims about their product that were not fulfilled and it is clear that they did not achieve what they set out to do. Only half the maps intended to be produced were in fact completed. The map does not appear to show bridleways. In particular the bridleway blocked up by the turnpike legislation is not shown.

6.1.3 There is no key to the maps but we can say that the bulk of the application route is shown in the same way as other routes that are today highways, or were at the time. The remainder of the route (immediately north of the old turnpike) which is on open land, is shown in the same way as route across open land on Wooton Common which was a highway in 1844 (and, in my view, almost certainly in 1778)

6.1.4 I note that the maps were sold for sale to the travelling public. There would be little point in showing a route in the same way as other public highways if travellers could not use it.

6.2 GATES

6.2.1 In the commentary on the Yeakell and Gardner map and elsewhere, the response cites the existence of gates as evidence of lack of highway status. I suggest that this inference cannot be drawn. Gates were common across highways at this time. In particular I note that the Yeakell and Gardner map shows a gate, which is highlighted in the response, and which is shown as being across the route of a road that was a public highway in 1844 and almost certainly was so at the time of the making of the map.

6.3 THE APPLICATION ROUTE- DID IT CHANGE?

6.3.1 At various points the response suggests that the route changed prior to the coming of the railway. I suggest that there is evidence, subject to the limitations of the mapping, that this was the case. Allowance must, of course, be made, for the accuracy of the mapping at that period.

7. DRAFT ORDNANCE SURVEY MAP

7.1.1 I have made my own copy of the draft, from the same source as used by the responder. It can be seen below.

7.1.2 I make the following comments:

7.1.3 Firstly, the bulk of the application route is shown in the same way as roads which were undisputedly highways at the time in 1844, such as the road from Wooton Common to Folkington. The remainder(immediately north of the old turnpike) is shown in the same way as roads across open land, such the road across Wooton Common and the road south from Folkington, which leads to Jevington and which is today a byway.



8. GARDNER AND GREAM MAP

8.1.1 I suggest that there is no evidence for the comment that there is no attempt to differentiate between public and private roads. All routes are not shown in the same way.

8.1.2 Again this was a map for sale to the travelling public. The public needed to know what they could and could not use.

9. MUDGES MAP

9.1.1 I note that no attempt has been made to comment on this map, which shows the application route as a road

10. THE FIRST EDITION OF THE ONE INCH ORDNANCE SURVEY MAP

10.1.1 I note that no attempt has been made to comment on this map, which shows the application route as a road

11. THE IMPLICATIONS OF EARLY MAPS

11.1.0 I have already commented that these early maps were for sale to the travelling public and that map makers would have soon heard about it if they included routes that travellers could not use. The application route is shown in the same way as other roads.

11.1.1 But perhaps the most significant thing is that the maps from Yeakell and Gardner onwards show the route as part of a route from Folkington to Hailsham, part of which was undoubtedly a public highway in 1844 and almost certainly prior to this.

11.1.2 As you can see from the draft ordnance survey map above, this route continued south to Jevington. It also continued further south to Friston and East Dean. Other than the application route, the whole of the route from Hailsham to Friston is today either a road, a byway or a road that has been diverted by order of the quarter sessions.

11.1.3 This strongly suggests that the application route was a highway for carriages, riders and pedestrians.

11.1.4 I also suggest that had it been a private route for the use of the landowner it would not have been part of the most direct route between Folkington and Nate Wood, but would rather have diverted via Wooton Farm. However a separate route from Wooton Farm to the south is shown in many maps. I suggest that this was the private road at the time.

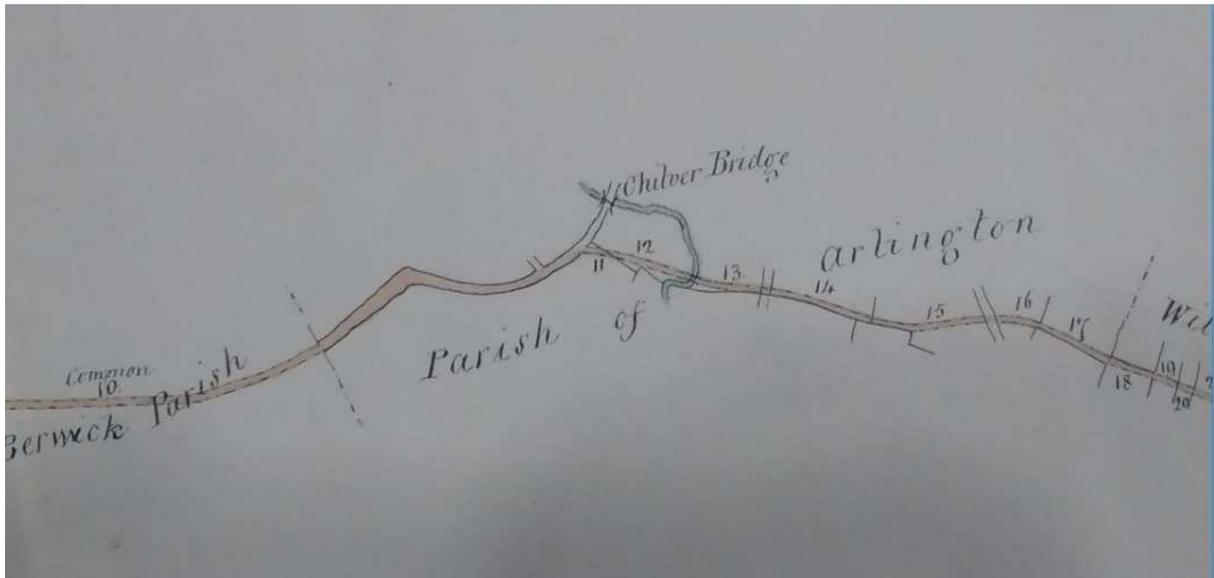
12. THE TURNPIKE PLANS

12.1.1 I made a mistake in assuming that there were only one set of turnpike plans. I am grateful to the responder for pointing out that this was not the case. I have now examined both sets of plans and my comments are as follows:

12.1.2 A comparison between the first set of plans and the first edition of the ordnance survey one inch maps shows at least one error. The road from Berwick north to the Dicker is not shown even though this would probably have been quite an important road.

12.1.3 Little care seems to have been taken with the description of cross routes. They are shown briefly and usually identified with a direction.

12.1.4 I do not think that anything can be inferred from the absence of the application route on the plans.



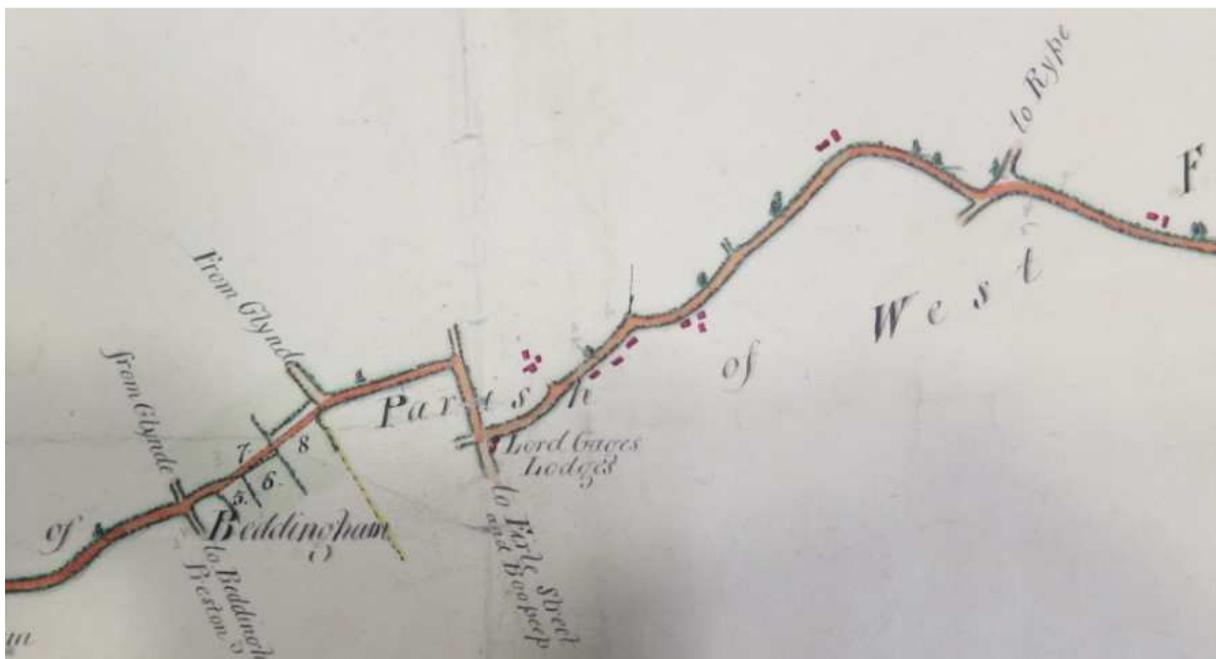
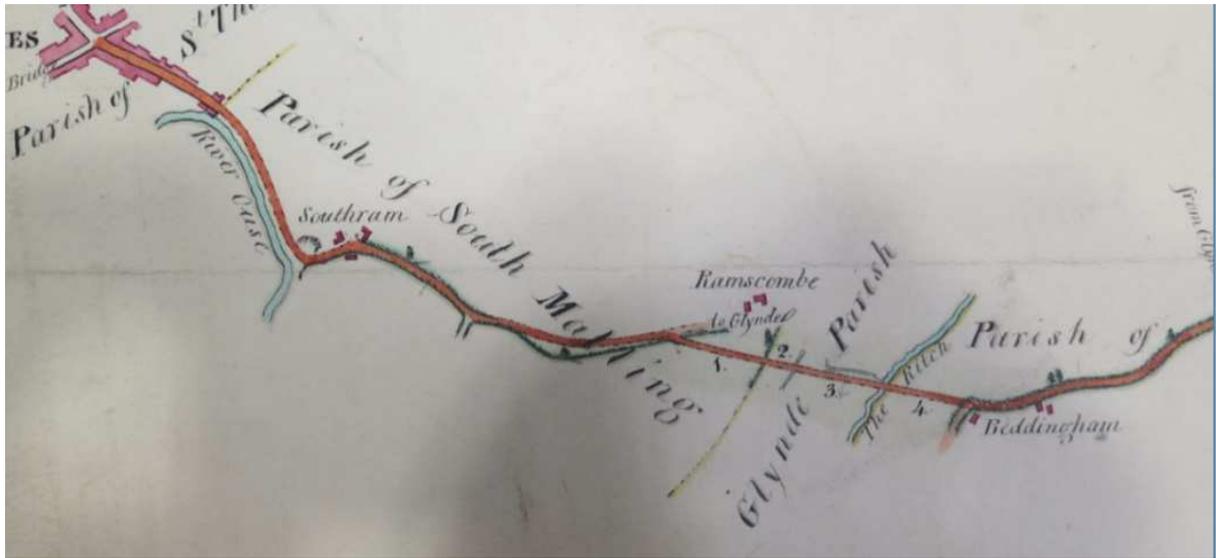
12.1.5 By contrast, as the responder points out the second set of plans does show the application route leaving the turnpike route. However it does not show the route to the south, which we know was a highway immediately after the plans were drawn up, so there were clearly limitations in what we can infer from the plans

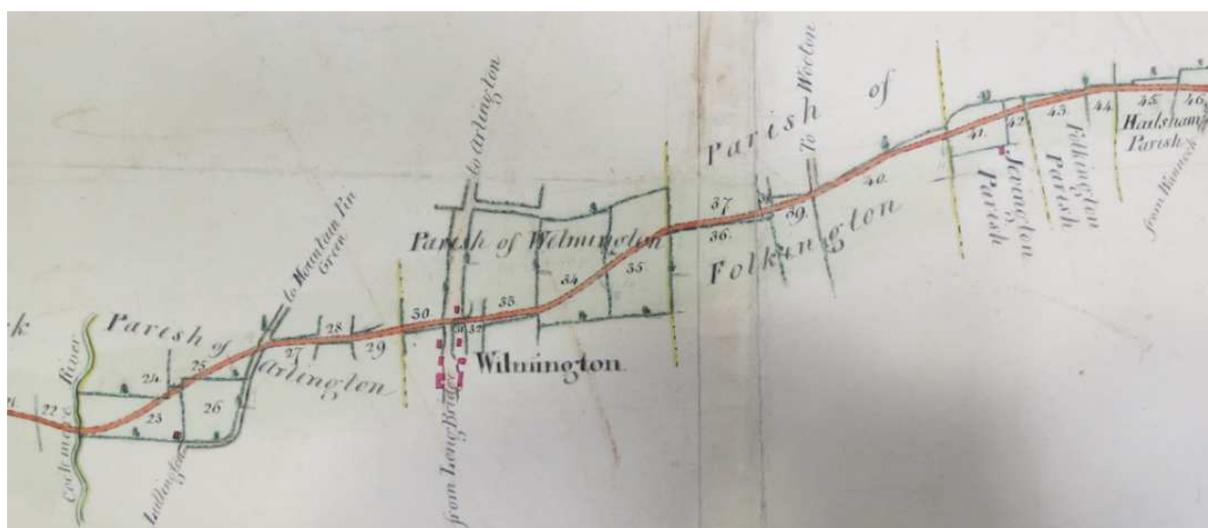
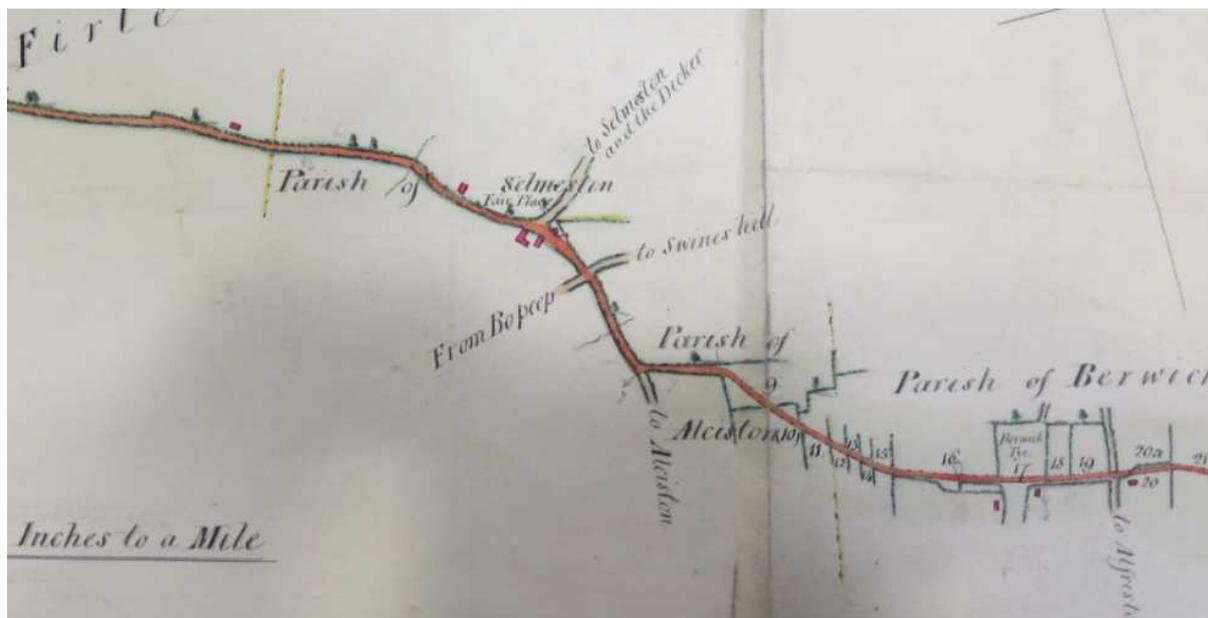
12.1.6 The second set of plans had a number of characteristics:

12.1.7 Firstly, generally only public roads which left or crossed the turnpike were shown. They were shown in sepia. (There is one track near Southram, but it is shown in white). The application route is shown in sepia.

12.1.8 Secondly the directions on the diverging routes were only generally shown to nearby places, even if the route went further. For example the diverging route at Beddingham for

Newhaven is not shown as going anywhere, since there is no village for some way. So the fact that the application route is shown as going to Wooton does not tell us anything about where it went after that.





12.2 TOLL GATES

12.2.1 It is suggested that the absence of a toll gate means that there could not have been a highway junction at the southern end of the application route. I agree that no toll gate was ever built here. But we know for certain that there was a junction at this point in 1844, so clearly a toll gate was not built at every junction.

12.2.2 There is no evidence in the response for the suggestion that a toll gate would be built at every road junction. Common sense suggests that this would not be the case. The need to collect all tolls due had to be tempered with a desire not to slow traffic down or to incur extra expense on maintaining and staffing gates. The whole idea of turnpikes was to speed traffic up. Revenue would be lost if users were stopped very frequently since they would choose alternative routes. And in order to collect the very maximum tolls a maximum of a toll gate at every other junction would be needed. According to Sussex Industrial History 45, the Glyndebridge Turnpike from Lewes to Alfriston originally made do with one toll gate at Glynde (although others were added later. and the new turnpike locally had gates at West Firle, Milton and Polegate, omitting the junctions at Selmeston, Bopeep and the crossing of the Alfriston/Berwick Road

12.3 ALLEGED REORGANISATION OF FIELDS

12.3.1 On page 18 of the response and elsewhere it is suggested that fields were re-organised in the area with the coming of the turnpike and possibly later. The implication seems to be that the route might have been moved. However no evidence is offered in support of the suggestion that the application route moved (except when the railway was built, in the vicinity of the railway), so I suggest it carries no weight.

13. TITHE RECORDS

13.1.1 At this point it may be convenient to repeat how I assert the application route was set out at the time of the creation of these records and later. I assert that it was a boundaried road from its commencement in the south up to the point where it crosses the old turnpike. I then say that it was open where it crossed fields before continuing as a woodland road to the point where it joins Robin Post Lane.

13.1.2 The portrayal of the application route in the tithe records is consistent with this.

13.1.3 The majority of the route is coloured sienna, the colour that was envisaged as being used for public roads. The remainder of the route is through fields. We would expect these to be subject to tithes since a crop could be obtained from the road itself or it could be grazed. This is shown to be the case.

13.1.4 The responder suggests that Wllm. Figg was an experienced map maker and would have adopted his own annotations. I suggest that the opposite is the case. An experienced map maker would almost certainly have employed the suggested conventions and appears to have done so. I have not found any other deviations from the suggested layout on the proposed map and it would be odd indeed if an experienced map maker chose exactly the same colour (sienna) and used it to mean something other than what was suggested.

13.1.5 The responder suggests that the fact that a road was tithe free does not mean that it was public. There are other reasons why land may be tithe free. It may be a waste, or owned by the church or the crown. On the balance of probabilities, however, it was because it was a public road. A private road would have normally private value. I have not been able to locate any private roads in the parish that were tithe free and I note that the responder has not put any forward.

14. SHOESMITH VALUATION OF WOOTON

14.1.1 No evidence is given that the information referred to is in the public realm and it has not been produced. So it has no value.

15. RAILWAY PLANS

15.1.1 The responder suggests that the fact that the application route was shown as a public road in the railway book of reference is either due to a mistake or manipulation by the landlord.

15.1.2 The second suggestion is easily dealt with. It is hard to see what possible reason the owner would have for misrepresenting the route as a public highway when it was not and I note that none has been suggested.

15.1.3 I suggest that the first proposal is equally absurd. This was one of the first railway schemes and would have generated a huge amount of interest. The plans were put out for

public examination locally and then again in Parliament. The land owner at the time was person of substance, who had already possibly had the route of the turnpike amended. I suggest that it is highly unlikely that he would have allowed such a statement, which impinged so seriously on his rights, to go unchallenged if incorrect.

15.1.4 This line pre-dates the Railway Clauses consolidation act of 1845, which set standards for bridges and other structures but the authorising act contains standards.

15.1.5 A copy of the Act authorising the line is held at the Keep under reference BHSR 146 Excerpts from the Act are given below:

15.1.6 The company had the powers to alter roads (which it appears to have done in this case) See below

And be it enacted, That if in the exercise of the powers by this Act granted any part of any road, whether carriage-road, horse-road, tramroad or railway, either public or private, be found necessary to be gone across, cut through, raised, sunk or taken, so that it will be so much injured thereby as to be impassable for or dangerous to travellers, passengers or carriages,

294.
Before roads be interfered with, orders to be submitted.

or

(96)

or to the persons entitled to the use thereof, the Company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with; and such substituted road shall, at the expense of the Company, be made and maintained in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as can be.

295.
Penalty for not substituting a road.

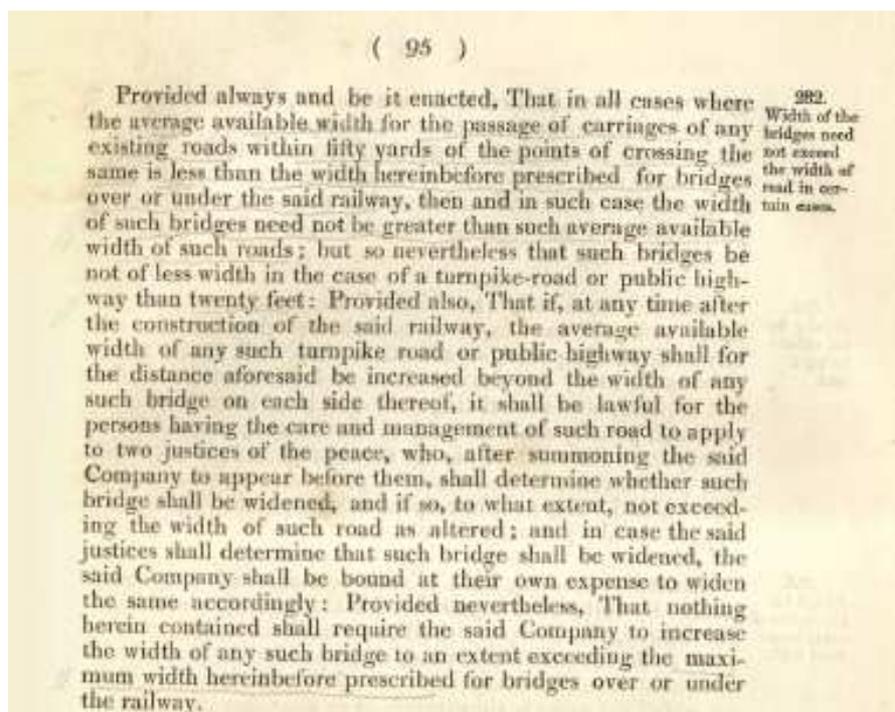
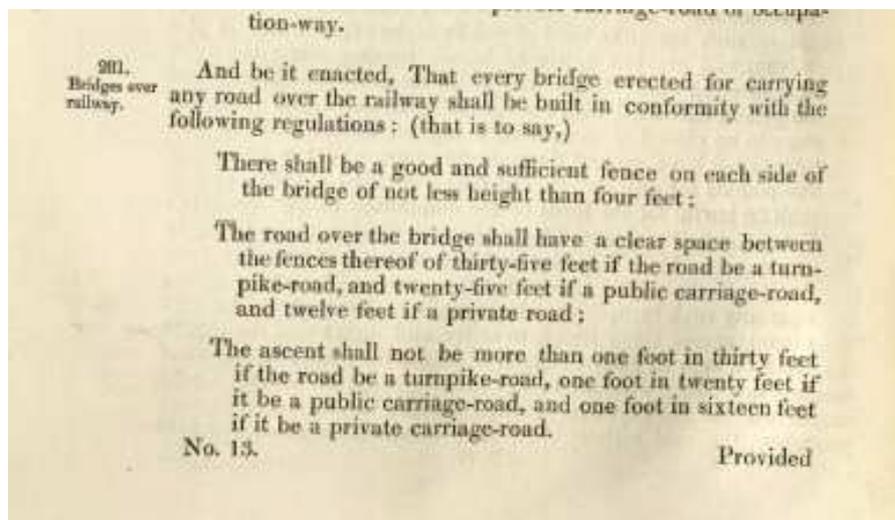
And be it enacted, That if the Company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor or other person having the management of such road, if a public road, or in case of a private road, to the owner thereof, and when paid in respect of any public road shall be applied for the purposes thereof.

296.
Period for restoration of roads interfered with.

And be it enacted, That if such former road as aforesaid cannot be restored compatibly with the formation and use of the railway, the Company shall cause such new road, or some other sufficient substituted road, to be put into as permanent a substantial condition equally convenient as the road or railway for which the same is substituted, or as near thereto as circumstances will allow; and if such former road can be restored compatibly with the formation and use of the railway, such restoration shall be made, and the former road shall be restored or the substituted road shall be put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having charge of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period, (that is to say,) if the road be a turnpike-road within six months, and if the road be not a turnpike-road within twelve months.

15.1.7 The reason for the alteration would probably have been to ensure that the road conformed to the requirements of the act that the gradient approaching the bridge would be

no more than the 1 in 20 set as the maximum by the act in the case of public roads. The response shows that these requirements were met. (A gradient of 1 in 16 would have been acceptable had the route been a private road.)



15.1.8 The above sections of the act provided that the width of the bridge, if it were a public road should be 25ft. However if the road was already narrower than that, this width could be reduced to a minimum of 20 ft.

15.1.9 I have taken measurements of the current bridge, which is pictured below



15.1.10 I measured it as 18ft 6 inches wide between the walls at its narrowest point in the middle. The width is greater at the ends of the bridge (about 20 ft). The walls are each over 2 ft wide and show signs of having been strengthened, narrowing the width (See picture). The good condition of the walls is surprising given the age of the bridge so they may not be the originals. I suggest that this is evidence (taken with the listing in the book of reference included with the act to a public highway, and the care apparently taken to meet the gradient standards for public roads), that this was a public road. I suggest that if this had been a private road the company would have saved a considerable amount of money by limiting the width to 12 ft and having steeper gradients. I suggest that the bridge may have been slightly narrowed since it was built. Of course, this may not be the original bridge.

15.1.11 The bridge does not appear to be narrower than the road on either side of it (with the exception that there are sidewalks (shown in the picture), although the width may have altered over the years. Some improvements have certainly been made, since the surface and sidewalks are tarmacked, a process not available until the end of the 19th century.

15.1.12 All the evidence that is available from the time at which the railway was built strongly suggests highway status. The evidence of the bridge width has been obtained now, so is of less value, however, on the balance of probabilities I suggest that indicates highway status.

16. DID THE HIGHWAY AUTHORITY MAINTAIN THE ROUTE?

16.1.1 The responder suggests that there is no evidence that the highway authorities maintained the route. It can equally be said that there is no evidence that they did not. Folkington Parish Council was the highway authority up to the mid-1890s. All their records are lost.

16.1.2 After this the responsible highway authority was Eastbourne Rural District Council. I have examined their minutes up to 1911. Not all roads that they maintained appear in the

minutes, but there is no evidence that suggests that they declined to maintain the application route.

17. OS 25 INCH FIRST EDITION

The responder appears to agree with me about the significance of this map. Whilst it does not display the status of the application route it shows that the route was in existence and that it had the characteristics of a road throughout.

18. THE 1876 SALE AND THE COMING OF MR GWYNNE

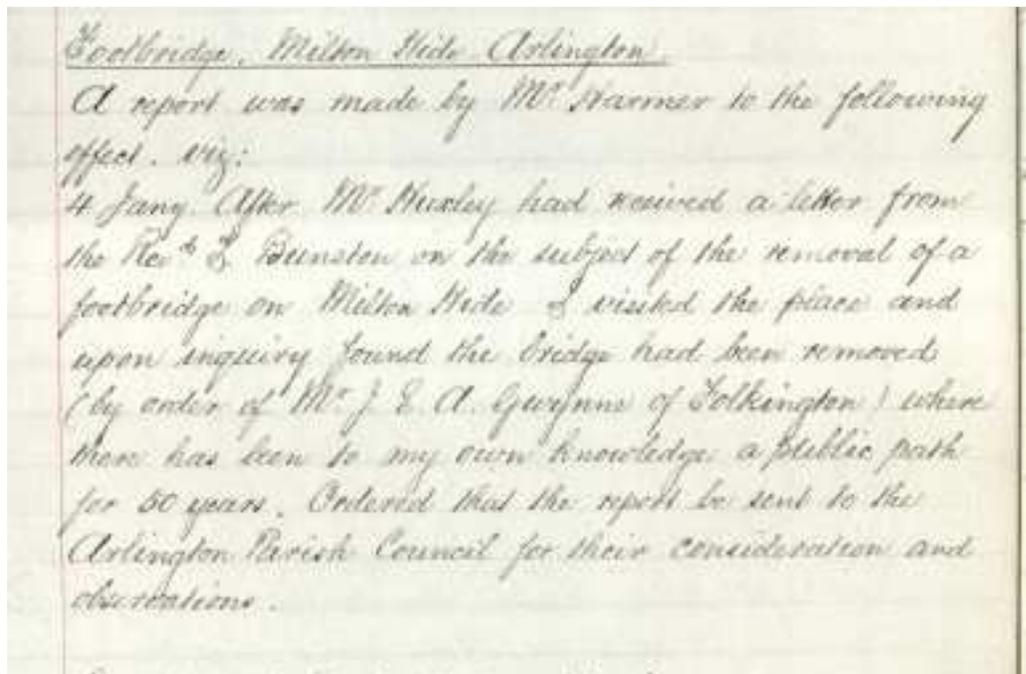
18.1.1 The 1876 sale particulars produced by the responder show the application route but not its status.

18.1.2 As the responder points out, the estate was sold to Mr Gwyne, who had no previous link with the area or background in agriculture. It is pointed out by the responder that, like Madonna and incomers, he was rigorous in protecting his "rights".

18.1.3 As has often been found with incomers who are unfamiliar with the area into which they have moved, this included "rights" that he did not have.

18.2 THE MILTON HYDE DISPUTE

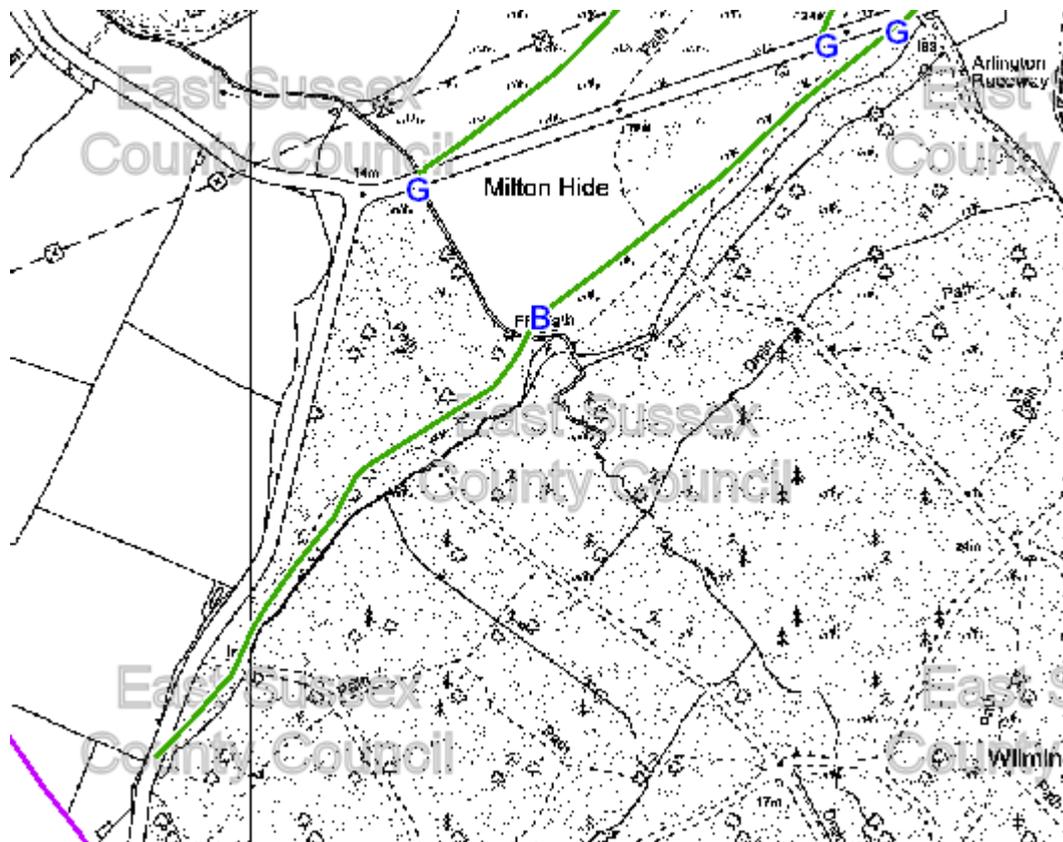
18.2.1 For example, the minutes of Hailsham District Council show for the period April 1997-March 1998 are held at the Keep under reference DW B 20/19. On page 84 of the minutes there is a report that Mr Gwynne has removed a footbridge on a right of way at Milton Hide. See below



18.2.2 The dispute is referred to again on pages 107,135, 161, 200, 251, 280 and 314 and in minutes for subsequent years. Mr Gwynne repeatedly caused the bridge to be removed and denied that the route was a right of way. The outcome is not recorded. Presumably one side or the other got tired of pursuing the matter.

18.2.3 The only path of any status that I have been able to find in any period which was at Milton Hide, on land formerly owned by Mr Gwynne and which has a bridge, is that recorded on the on-line rights of way map for East Sussex (extract below) as Bridleway Arlington 16.

18.2.4 So that fact that Mr Gwynne asserted a route was not a right of way does not mean that it was not.



18.3 OTHER DISPUTES

The response documents three other disputes:

18.4 GWYNNE V DRUITT

18.4.1 This case does not involve the application route. The statement of claim in the case describes three routes which are alleged to carry no public rights.

18.4.2 The statement of claim is reproduced below.

1893.—G.—No. 1337.

In the High Court of Justice,

CHANCERY DIVISION.

MR. JUSTICE CHITTY.

Fos. 9.

Writ issued 4th July, 1893.

BETWEEN—JAMES EGLINTON ANDERSON GWYNNE Plaintiff,

AND

WILLIAM DREWITT and } Defendants.
JESSE DREWITT }

Statement of Claim.

1. The Plaintiff is the owner and in possession of a farm known as Woolton Farm situate in the Parishes of Folkington and Jevington in the County of Sussex and of a strip of land in the Parish of Jevington adjoining such farm on the east side thereof.

2. The Defendants respectively allege contrary to the fact that they are respectively entitled to three several rights of way namely (1) a right of way in the said Parish of Folkington across Wootton Farm aforesaid from the boundary between the Parishes of Folkington and Wilmington through a strip of wood ground skirting the north side of the Upper Clapends Field thence along the south side of the Hide Field thence along a private road known as Old Jane to a gate leading into a farm belonging to the Duke of Devonshire called Hook's Farm (2) a right of way also in the said Parish of Folkington across Wootton Farm aforesaid from the boundary between the said Parishes of Folkington and Wilmington at the north-west corner of Clapends Field running in a south-easterly direction past the south side of Wootton homestead and thence in the same direction to the roadway which crosses by a bridge over the railway from Brighton to Polegate into the high road from Lewes to Polegate (3) A right of way in the said Parish of Jevington along the said strip of land from the boundary of Hook's Farm aforesaid past Bay Cottage into the high road from Polegate to Hailsham. The Defendants are not nor is either of them entitled to any such right of way as aforesaid or to any right of way whatsoever over the said farm or strip of land or any part thereof respectively.

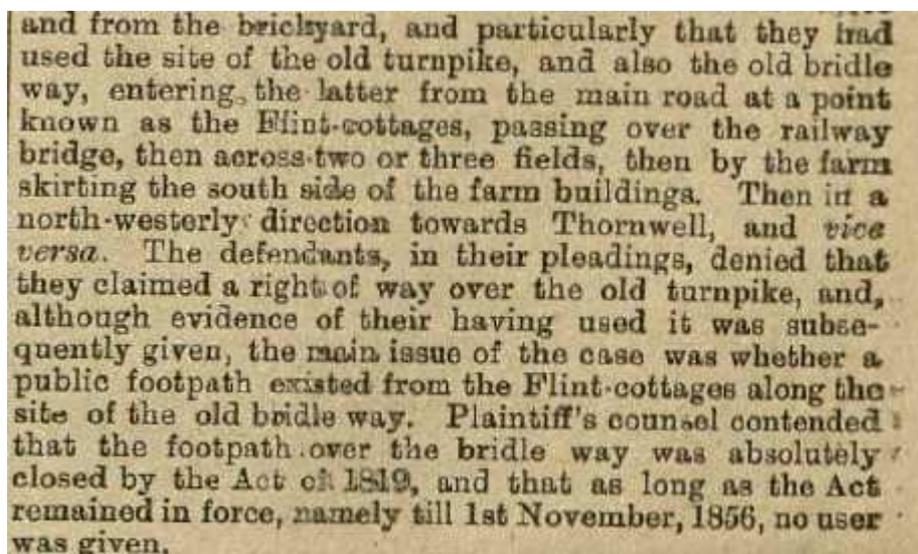
18.4.3 The first route is stated as being from the Wilmington boundary to Hooks Farm by a strip of woodland. This appears to be the old turnpike.

18.4.4 The second route goes from the Wilmington boundary and runs in a South easterly direction past the side of Wooton Farmhouse to a junction with the railway and then the

turnpike. This appears to be the old bridleway that was closed by the Act creating the turnpike.

18.4.5 A right of way in Jevington which may be an extension of the old turnpike in that parish. None of the application route was in Jevington.

18.4.6 The report of the case in the Sussex express for 2nd June 1894 confirms this.



and from the brickyard, and particularly that they had used the site of the old turnpike, and also the old bridle way, entering the latter from the main road at a point known as the Flint-cottages, passing over the railway bridge, then across two or three fields, then by the farm skirting the south side of the farm buildings. Then in a north-westerly direction towards Thornwell, and *vice versa*. The defendants, in their pleadings, denied that they claimed a right of way over the old turnpike, and, although evidence of their having used it was subsequently given, the main issue of the case was whether a public footpath existed from the Flint-cottages along the site of the old bridle way. Plaintiff's counsel contended that the footpath over the bridle way was absolutely closed by the Act of 1819, and that as long as the Act remained in force, namely till 1st November, 1856, no user was given.

18.4.7 It is clear that the disputed routes are the old turnpike and the stopped up bridleway. A map showing the route of these is set out in the applicant's statement. The application route does not run along these routes.

18.5 GWYNNE V VINALL

18.5.1 The Keep holds a number of box files each containing hundreds of documents relating to legal matters involving the Gwynne estate. One of these box files is held under reference ACC 2300/127. It contains a small group of documents relating to this case, which does not appear to have reached the courts.

18.5.2 A letter from Mr Gwynne contained in these documents sets out what the dispute is about.

Wilmington.
Prelate.
Sussex.

Mr. Aug. Kaper Esq.,
Battle,
Sussex.

April 11th. 1893.

My dear Sir,

Referring to our conversation of yesterday, re Mr. Vinal's trespass. I have looked up the map that I have got, but I believe you had my maps away on loan. However I find on a small scale map, that the land belonging to me, which Mr. Vinal trespasses over, is the land in the Parish of Polington shown by the dotted lines running from Thornwell Cottage & Monastou in the Parish of Wilmington, passing through Westton Farm & down through the small piece, Wilmington Detached No. 1 known as Chamber's piece, all of which belongs to me, passing over the Railway & coming out at the Flint Cottages.

I see that this particular bridle-way & foot-way is described on pages 26, 27 & 28 of the Turnpike Act that got the Royal Assent in March 1819. But the land was absolutely fenced in my predecessor in title & the Act declared that it should no longer be lawful for any person to use or claim a right over it either as a foot-way or to go along the road on footways that they were liable to a fine of 40/. if they used it after the passing of the Act.

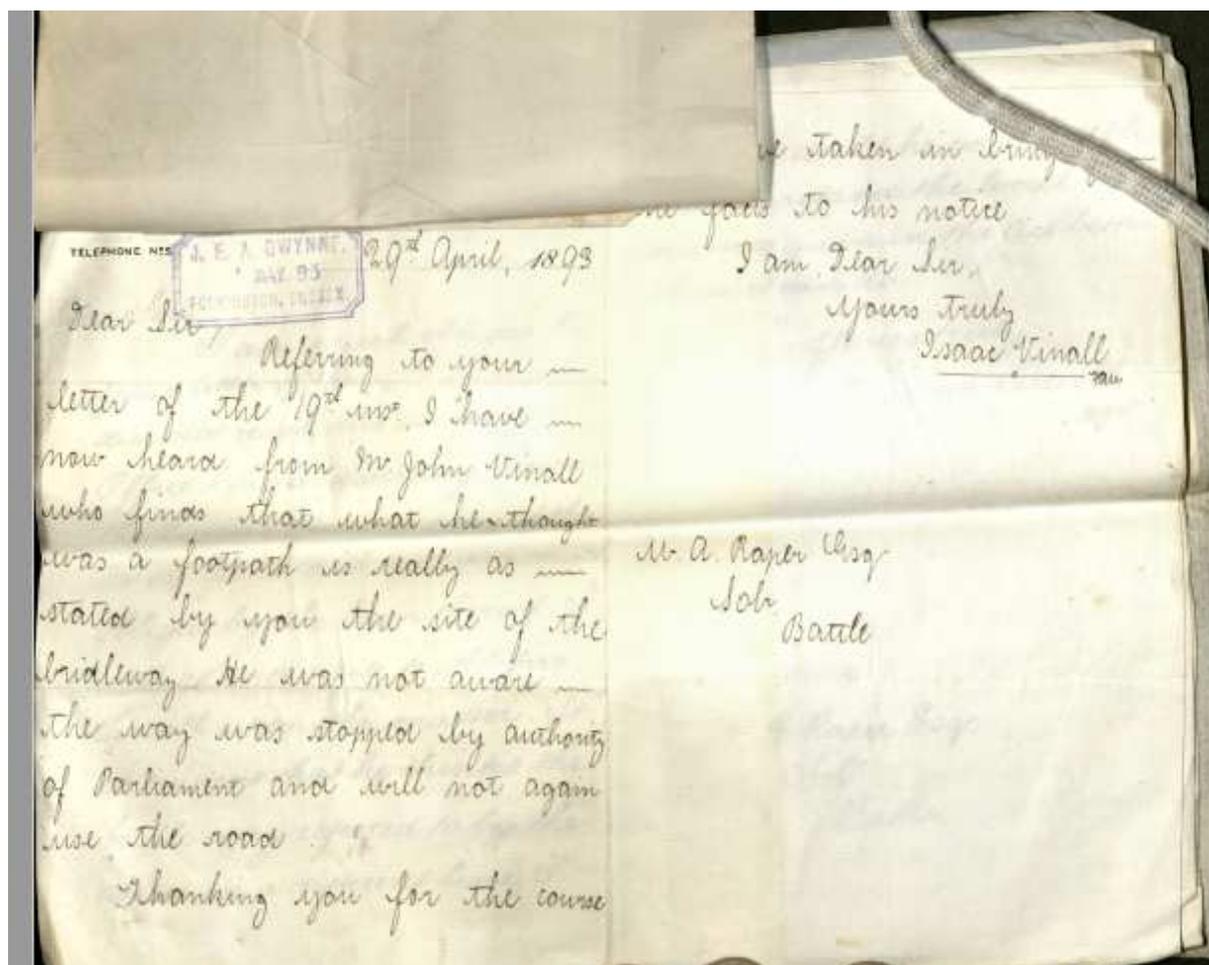
Ever since I have been in the possession of the property I have distinctly warned people off, & turned people back who attempted to use it. But Mr. Vinal is continually sending people in that direction & making a point of proclaiming that there is a right of way.

Possibly if you refer his brother to this Act of Parliament (& if he cannot get it lent it to him) it may be stopped - what is now annoying & troublesome & likely to be more so as time goes on.

Yours faithfully,
[Redacted]

The name of the Surveyor of Highways at Jovington is Herbert Goldsmith.

18.5.3 It is clear that it is the stopped up bridleway that is being referred to and no other route. As suggested, a copy of the Act was sent to Mr Vinal's brother with the result that the brother wrote back as follows:



18.5.4 The letter confirms that Mr Vinall had been using only the old bridgeway referred to in the Act and that he would no longer use it.

18.5.5 Clearly, this had nothing to do with the application route.

18.6 GWYNNE V THE DUKE OF DEVONSHIRE

18.6.1 The response includes three documents about this case, which I suggest do not have any value:

18.6.2 A barrister's opinion which suggests that it would be very difficult to prove that there was no right of way on the route or routes in question. This is of little value because we are not shown the brief or any evidence submitted on which the opinion was based.

18.6.3 A letter which forms notes of a meeting with the Duke of Devonshire's agent- this letter is nearly illegible in the form that it is presented and I suggest that if the responder wants to rely on it they should be asked to supply a transcript. From what I can make out the majority of the letter is about the old turnpike. I also note that both parties seem frightened of the footpath society being involved and wish to avoid any court case. I do not think anything can be inferred from this letter in its present form.

18.6.4 A letter, also nearly illegible in the form presented in which the responder says suggests that Mr Gwynne did not believe that there was a right of way over the application route. It is difficult to make anything of this. There appears to be reference to a number of points on a map that appears on the following page of the response. These are all on or

near the old turnpike and not near the application route. I do not think that this is of any value. I cannot see any clear evidence that the application route is referred to.

18.6.5 There are also a number references in appendices to documents that are allegedly in the box files relating to Gwynne's legal affairs. I have not found them in these boxes and the references do not mean anything to me. There is a summary of what they are alleged to contain but there is no direct connection with the argument in the main part of the response. Until the excerpts are produced I do not think this material has any value as evidence.

18.6.6 I note that this case did not come to court where statements could be tested.

19. INLAND REVENUE VALUATION

19.1.1 I note that the response does not comment on this material, which was included in the applicant's statement. The material shows that a substantial part of the application was a white road- It was not subject to duty.

19.1.2 There can be other reasons for this, but the exemptions under the relevant legislation are so few that I suggest the onus is on any objector to explain why "white road status" does not mean that the route was not a road in the control of a highway authority.

20. WHEN DID THE APPLICATION ROUTE FALL OUT OF USE?

20.1.1 The application route is not set out in the maps of roads provided by Eastbourne Rural District Council when it handed over responsibility for highways in the 1930s. The last evidence of highway status is the Inland Revenue survey of the early 20th century

20.1.2 It is comparatively unusual for roads to fall out of use in East Sussex. The continual growth in population means that traffic increases. But this particular corner is different. There are a substantial number of routes, such as Robin Post Lane and the Old Coach Road, which are now byways. Where the route runs parallel with the Lewes to Eastbourne Turnpike this may be explained by the stopping up of these routes.

20.1.3 But this does not explain why a number of the north/south routes are no longer roads maintained by the county. I suggest that the answer lies in the improvement of roads, such as the Polegate to Hailsham road, which offered alternatives. I suggest that this may be the reason why Robin Post Lane, which was the direct route between Hailsham and Wilmington, fell out of use. The application route would have been more vulnerable to nearby improvements since it was nearer the Hailsham to Polegate Road. It would not take much improvement to make the latter road a better choice for traffic between Hailsham and Jevington and East Dean.

20.1.4 According to Sussex Industrial History number 45 (2015) the powers of the Lewes to Eastbourne Turnpike Trust expired on 1/11/1878. After this it would have been quicker and just as economical to use the improved alternatives to the east instead of the application route. I suggest that that the use of the application route may have dramatically declined after this and it may well have fallen out of use as a road subsequently

20.1.5 It is interesting that the earlier proposed diversion of 1844 of the road south of the application route was quite modest and ended at the same point on the turnpike, even though it was open to the land owner to propose a diversion of the route further to the east, as was done later. It is clear that the motivation is to move the road further away from the land owner's house. The decision to go with a modest diversion is consistent with the suggestion that there would otherwise have been local opposition from people who would

have a longer journey and might technically be liable for tolls, even if there was no way to collect them.

20.1.6 By contrast the second diversion was completed a year after tolls ceased on the turnpike. Mr Gwynne was able to move the road further from his house, and locals travelling to Hailsham found their journey shortened.

20.1.7 However the common law rule “once a highway, always a highway” still applies.

21. CONCLUSION

21.1.1 I assert that there is very strong evidence that in the early part of the 19th century the application route was a highway used by carriages, equestrians and users on foot and that this highway had been in use for many years. In the latter part of that century it is likely that use declined although it can still be traced on maps. Ultimately this lack of use led the route becoming impassable in parts leading to the mistaken belief that it was a private way.

Chris Smith for the Open Space Society 26/10/17