



1. SECOND SET OF COMMENTS, RWO 199/LONG MAN A

1.1.1 I now reply to the second response made on behalf of the landowner.

1.1.2 The second response consists of a statement by Dr K Jones, with appendices and a statement by Mr M Sullivan, with photographs. I will deal with these in turn.

1.1.3 On 9/4/18 I made a supplementary statement. Since the main part of the issues I raised in that statement is covered in some detail in the statement by Mr Sullivan, I wish to withdraw that statement, to avoid further complication. I include the matters raised there in this statement.

2. CORRECTION TO MY FIRST SET OF COMMENTS

2.1.1 In my comments on the statement by the landowner I inadvertently made a significant typing error in paragraph 6.3.1

I said "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."

2.1.2 What I meant to say was "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 NO 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."

2.1.3 I am sorry for this error.

3. STATEMENT BY DR JONES

3.1.1 EXECUTIVE SUMMARY

3.1.2 In paragraph 1 of the executive summary Dr Jones points out that part of the application route has traditionally been enclosed and part has not. I agree with this statement. I suggest that you should ask yourself "How would the enclosed part of the route have been portrayed and described (particularly on maps) if it was a public road? Does the portrayal agree with this? How might it be portrayed and described if it was an unenclosed public road, as many roads were in the period under consideration? Does the portrayal agree with this?"

In paragraph 5 of the executive summary it is suggested that, had the application route been a public road action would have been taken to block it up because of its effect on the Hailsham turnpike. The Sussex record society maintains an abstract of turnpike acts by G. D. Johnson at <https://sussexpast.co.uk/wp-content/uploads/2011/09/Turnpike-Acts-Sussex.pdf>. It shows that the turnpike south from Hailsham was created in 1759. It was operated by a different trust from the two turnpikes involved with the application route.

Turnpike trusts were parochial affairs, often run by local people to boost their own businesses. I can see no evidence of any route being stopped up by the various acts applicable to the Hailsham Turnpike. Nor can I see any evidence of any co-operation between the two trusts. The copy of "Turnpike Territory" written and published by Peter Longstaff Tyrell, http://www.tyrrellsussexbooks.com/books_4.php which is perhaps the most comprehensive history of the Lewes to Eastbourne trust and is in my possession, does not mention any co-operation. Neither of the trusts whose route touched the application route attempted to stop up north-south routes. In particular I note that no attempt was made to block up Robin Post Lane, which the application route joins at point A and which is today a byway.

3.1.3 The original response made by or on behalf of the landowner made considerable play of this history of the application route as part of a through route from the Folkington and the Downs to Hailsham, albeit, in the view of the landowner, a private one. I agree with the original view that there were important north/south routes, although I assert them to be public. Dr Jones, however, appears to more or less accept the existence of a public road from D to E, but wishes to argue that the way went no further. I suggest that this is contradictory. I agree with the landowner's original view that this is a through route.

3.1.4 MAPS

3.1.5 Dr Jones suggests that there is evidence of plagiarism in the maps used in the statement of case, but does not give any evidence of this.

3.1.6 References are made to a route that is shown in the same way as part of the application route. This route is under investigation as a possible lost right of way. I accept that some private routes are shown on the Yeakell and Gardner maps including the Wooton Farm, but I do not accept the suggestion made in section 5 that the adoption of hatched lines indicates a private route. Rather, I suggest that it suggests an unfenced road. I have dealt with the portrayal of roads in early maps in my previous comments.

3.1.7 It is often said that the existence of a route on an ordnance survey map is not evidence of public status. This stems from the disclaimer on all ordnance survey maps after the first edition of the one inch map. That means that it is not possible to say "It is shown on an ordnance survey map therefore there must be public rights." But this does not mean that inferences cannot be drawn. In the original applicant's statement, for example, I showed that, while the route between C and D is largely through open fields, part of it, which leads from one field to another is described in the relevant book of reference as a road. We have to ask why this was. Unless it is suggested that this is a short bit of road in the middle of nowhere then it is evidence that the parts of the route before and after were also roads. The first edition of the ordnance survey 1-2500 map suggests that the route as a whole was a road. If it was a road, what, on the balance of probabilities, was its purpose? I suggest that it was most likely to be a public road, leading from the public roads to the north and the south, rather than a private road leading to some facility used by the landowner.

3.1.8 I suggest that Oggs Lane may well be an old road. Since it already has bridleway status, however, a DMMO application will not be made by me, since this would only benefit carriage riders and I am not aware of any in this area.

3.1.9 I note that the boundary records show the parish boundary as passing along the CR (centre of the road) of the application route. This suggests that the route was a road. It is also the case that it was common, for the purposes of avoiding doubt, for boundaries to be located along ancient roads. This may well be the case here.

3.1.10 I suggest that the depiction of the application route is consistent within the limits of accuracy of early maps.

3.1.11 THE TURNPIKE AND RAILWAY PLANS

3.1.12 I have already commented on the errors in the 1817 turnpike plan and the use of only very local destinations in branch roads in the 1819 plan. I have also commented on the placing of the toll gates.

3.1.13 I suggest that the turnpike plans cannot be considered to have equal status when compared with the railway plan. The railway proposals were part of a rush of a huge number of similar proposals which were part of railway mania. It is clear from even a glance at the plans that Parliament was requiring more detailed and accurate plans to cope with this.

3.1.14 I comment more specifically on the railway plans in my comments on Mr Sullivan's statement.

3.1.15 TITHE MAP

3.1.16 I have dealt with this in my previous comments. I repeat that, if a public road is open through a field there is unlikely to be any evidence of its existence, but where a route is not subject to tithe because it is enclosed this is consistent with the existence of highway rights.

3.1.17 QUARTER SESSIONS RECORDS

3.1.18 The significance of the quarter sessions rolls is not in any possible interpretation by the court, but in the fact that they maps were drawn up by the landowner or (more likely) under his supervision. A landowner would hardly allow a plan to go forward to the court which suggested something that might prejudice his rights. For example he was hardly likely to allow a map to go forward which showed a through route to Hailsham, if no such route existed.

3.1.19 I am unable to locate the dead end routes that are alleged to be shown on the map, since they are not identified. If this is a reference to point B I would point out that the route to the south of here is the subject of an application for a DMMO.

3.1.20 JAMES GWYNNE AND HIS VARIOUS DISPUTES

3.1.21 A considerable number of references were made in the first landowner's submission on the to various documents which were alleged to refer to a dispute between Mr James Gwynne and the Duke of Devonshire. However the majority of these documents were not produced. Where they were they were not legible or either referred to roads stopped up by the new turnpike act or to unidentifiable roads. I note that the opportunity has not been taken to produce these documents.

3.1.22 One document that has been produced is a copy of a letter written by the Duke of Devonshire's. In it they assert that rights of way have been denied along a way called "Wooton Lane". It is clear that this route crosses the railway line but it is not necessarily the application route. The drive to the House and on to the application route also crossed the railway. It is not said where this document lives or how it can be inspected. I note that the land owner refers to the application route as the Back Drive and not Wooton Lane.

3.1.23 If "Wooton Lane" is the application route then I comment as follows:

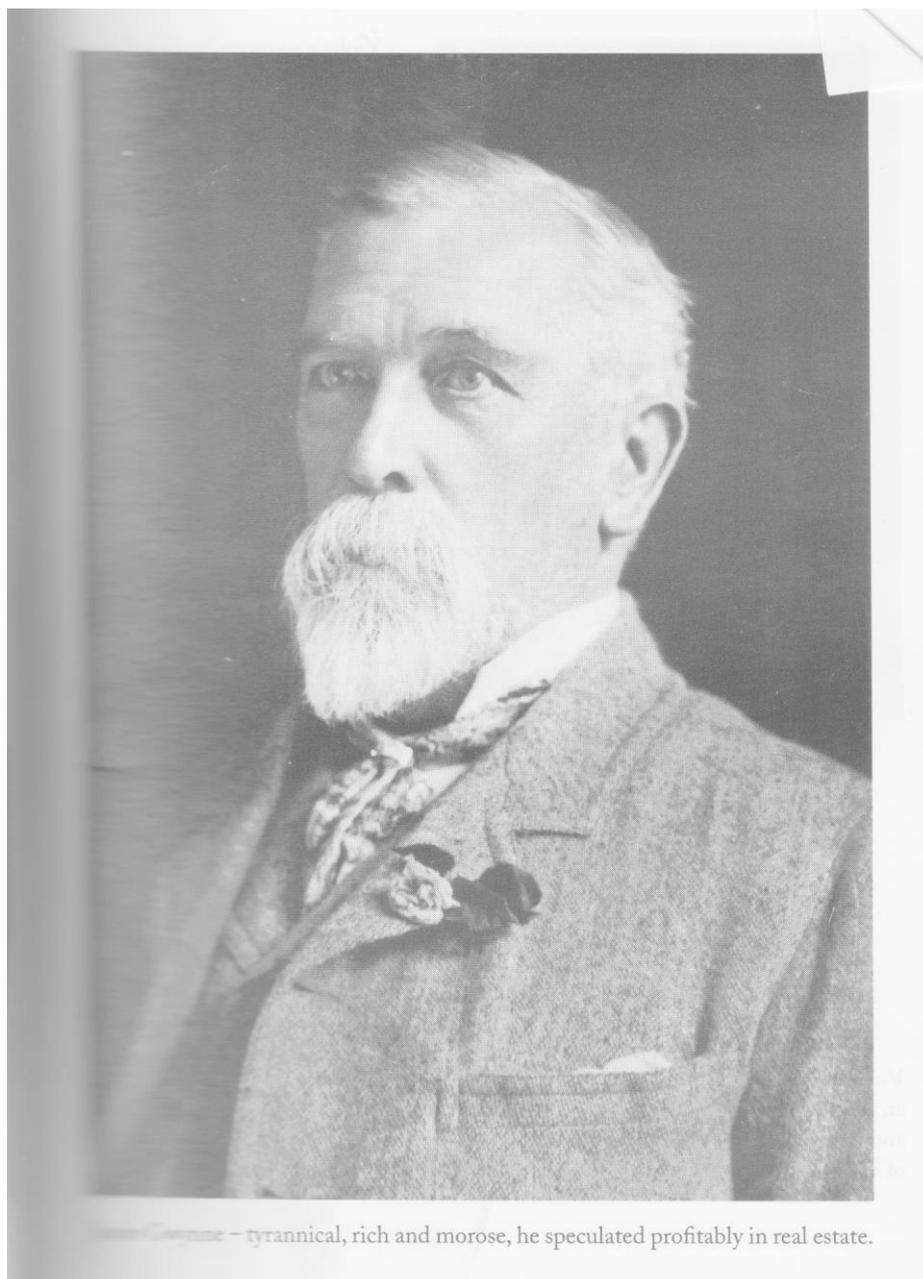
3.1.24 The solicitors do not say that these rights are particular to the Duke. They refer to use by others, including his tenants.

3.1.25 Although the solicitors say that Mr Gwynne has “again” obstructed Wooton Lane, the fact that there does not appear to be any earlier correspondence suggests that this is a fairly recent event. So up to comparatively recently it appears that “Wooton Lane” had been open and unobstructed.

3.1.26 I have already commented in my last set of comments that Mr Gwynne was fond of asserting rights that he may not have had and have illustrated this by reference to the Milton Hide dispute.

3.1.27 I have now had the opportunity to read “Violet” by Jessica Douglas-Home, published by the Harvill Press in 1996, ISBN 1 86046 360 6. Violet Gordon Woodhouse (nee Gwynne) was a daughter of James Gwynne and grew up at Folkington. This book is her biography. The book gives us an idea of the man’s character which is important when trying to interpret his actions.

3.1.28 In the photographs section there is a plate showing James Gwynne



3.1.29 Note the caption “tyrannical, rich and morose”

3.1.30 On page 11 we are told that James bought so much land in the area that the hunt could run all day without leaving his land. Plainly this was a man who had a lot of power, and might even close down a public right of way if he chose. We are also told on the same page that he became ever more authoritarian and heavy-hearted.

The rise of the middle classes was to some extent at the expense of the upper classes, and James's will identifies land and houses bought from neighbouring estates of the Duke of Devonshire, Lord Sackville and Lord Gage. He acquired as much of the property around Folkington as he could, until by the end of his life it might be said that "the hunt could run all day without ever leaving Squire Gwynne's boundaries." Bearded, tall and heavy, with steely light blue eyes behind gold-rimmed spectacles, James Gwynne grew insensibly into the role of the landowner, becoming ever more authoritarian and heavy-hearted. Of their nine children, two boys, Ernest and Hubert, died, one of diphtheria and the other of a fever, before they were a year old. Violet, who was born on 23 April 1871, was the fourth of the surviving seven, preceded by Reginald, Evelyn (known as Eva) and Nevile (the author's grandfather), and followed by Rupert, Dorothy and Roland. Violet was such a tiny baby that, at birth, the doctor could hold her in the palm of his hand and her face would have fitted into a teacup.

3.1.31 Page 16 tells us about his "black moods and unforgiving nature" and the way he terrorised his family

Happiest in the early morning, May liked to rise at six and go for a ride, from which she would arrive back radiant to sit over breakfast laughing and exchanging animated small talk with Kate and the children, until the sound of heavy footsteps announced the approach of James. Upon entering he would give a frown all round, while everyone got up to say "Good morning, Papa", and have their faces brushed by his beard. As he sat down to his meal, the smiles and conversation died away. May, who suffered deeply from his black moods and unforgiving nature, appeased him, having a horror of angry voices and developing over the years the misleading protective colouring of someone rather childish and fragile, who had to be spared the harder realities of life. "Mother must not be worried" was the family saying. The adolescent Violet instinctively understood, but could not help slightly despising her mother for her inability either to charm her father into a different frame of mind or to stand up to him directly.

3.1.32 A paragraph spread over pages 19 and 20 describes his violent temper, unreasonable outbursts and profound sulks, which only Violet could withstand.

anything she wanted. She appeared to be the only one in the family who was impervious to his violent temper, which in any case was never directed at her. Nothing was more infuriating to Dorothy and Eva than to find Violet serene and carefree while the rest of the family was trembling at one of James's unreasonable outbursts, or in a state of suspended anxiety over

VIOLET

one of his prolonged sulks. This, however, was something of an act, for beneath the surface Violet also yearned for steady warmth and affection from her father.

3.1.33 The book also describes how he fell out with his brothers, who were angry enough to enter business in competition and his two eldest sons, who he disinherited.

3.1.34 Lest it be felt that Jessica Douglas-Home simply has it in for James Gwynne, there is another book which mentions him. Its title is "Writing at the Kitchen Table by Artemis Cooper and published in Harpur Collins in New York in 2000. ISBN0 06 019828 1. This is a biography of Elizabeth David (nee Gwynne), who grew up in Folkington. James Gwynne was her Grandfather.

3.1.35 On page 10 James is described as "jealous and mistrustful". His retribution is described as "severe and long lasting". He appears to be a man who was horrible even to his relatives.

day without ever leaving Squire Gwynne's land.

As James Gwynne's children grew up, their father grew ever more jealous and mistrustful, as if he suspected them all of trying to steal his money and usurp his power. To keep them under his control they were kept on the most miserable allowances, which they overspent at their peril. James's retribution was severe and long-lasting, and he never forgot a grudge. His eldest son Reginald was cut out of his will for reckless extravagance at Eton and Oxford. He fled to Canada, settled there, and eventually prospered, though he and his father were never reconciled. The second son, Nevile, took a degree in engineering at Cambridge and then joined 'the works', as the family firm was known. James treated him in the same way he had treated his younger brothers: Nevile was kept overworked, underpaid and without authority in the firm, despite the fact that James had all but lost interest in it.

3.1.36 Here, I suggest, was a man who was powerful enough and fanatical enough to try to obstruct a public road in pursuit of some argument, particularly when events of some years before, which I referred to in my second set of comments, meant that it was little used.

3.1.37 I note that there does not seem to be any further correspondence and that the case did not go to court. The lack of further complaint by the Duke suggests that any obstructions had been removed and the road remained open.

3.1.38 FINANCE ACT

3.1.39 So it is perhaps not surprising that this man who "speculated profitably in real estate" was able to convince the inland revenue inspectors carrying out their tasks, that application

route D to E was not liable to tax on any increase in capital value. There could be a number of reasons why this was the case. For example the land could be a waste area, but when the land in question is a long thin strip which is used as a road, I suggest that the alternatives to it being a public road are so few that I suggest the onus is on an objector to suggest what alternative explanation there is. I note that this has not been attempted.

3.1.40 Had Mr Gwynne attempted to exempt the rest of the route, though, he would not have succeeded. Where an unfenced public road was part of a field or wood he could only claim for a deduction on the grounds that there was a right of way. He did so, but this does not help us much because there are other rights of way in the relevant hereditament.

4. MR SULLIVAN'S REPORT

4.1.1 At this point I should describe my own expertise.

4.1.2 Much of my working career was in housing. In the 1980s I was development and maintenance officer for a small community housing association. Our work involved renovating and converting Victorian housing in north London. As such I became familiar with the issues of restoring, rebuilding and maintaining Victorian brick structures.

4.1.3 I have been a railway enthusiast for around 55 years, with a particular interest in the railways of Sussex, Kent, Surrey and London. As such I have been familiar with railway architecture over a long period.

4.1.4 Mr Sullivan accepts that, prior to the coming of the railway, a public road existed which crossed the route of the proposed railway. This is the application route which is, of course, shown only where it interfaces with the proposed railway.

4.1.5 He refers to public road number 10. The road is referred to in the deposited plans and the book of reference deposited with the act as 2. This number is used in both sets of deposited plans But it is clear that we are talking about the same bridge, so the number is immaterial.

4.1.6 Mr Sullivan has noted that the railway was built on a different alignment to that set out in the deposited plans. He cites section 247 of the Act as authority for this. I had not noted this and thank him for pointing this out.

4.1.7 The section illustrates that the then landowner, Thomas Sheppard, was involved with the railway plans to the extent of appointing an agent to protect his interests and was able to negotiate an amendment to the route. So the fact that Mr Sheppard did not challenge the book of reference included in the Act which showed a public road across his property gains heightened significance in view of his involvement.

4.1.8 The Act of Parliament enabling the building of the railway is held at the Sussex Record office at the Keep under reference BHSR 146. Section 286 of the enabling Act gives the railway company the power to substitute roads for existing roads providing that they are of "a substantial condition equally convenient..... OR AS NEAR THERETO AS CIRCUMSTANCES WILL ALLOW" (my emphasis). So moving a road was permitted. I maintain that the moving of the road a short distance to the west would either be considered de minimis or as near equivalent as circumstances allowed. The new route would be a slight advantage for those going west and a slight disadvantage to those going south or east.

286. 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 permanently 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.

4.1.9 Sections 281 and 282 of the Act refers to rules about bridges. For public roads the width must be 25ft (or 20ft for narrow roads). The ascent must be no more than 1 in 20 for a public road. Lower standards were allowed for private roads.

281. Bridges over railway.

And be it enacted, That every bridge erected for carrying any road over the railway shall be built in conformity with the following regulations: (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet;

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike-road, and twenty-five feet if a public carriage-road, and twelve feet if a private road;

The ascent shall not be more than one foot in thirty feet if the road be a turnpike-road, one foot in twenty feet if it be a public carriage-road, and one foot in sixteen feet if it be a private carriage-road.

No. 13. Provided

Provided always and be it enacted, That in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the said railway, then and in such case the width of such bridges need not be greater than such average available width of such roads; but so nevertheless that such bridges be not of less width in the case of a turnpike-road or public highway than twenty feet: Provided also, That if, at any time after the construction of the said railway, the average available width of any such turnpike road or public highway shall for the distance aforesaid be increased beyond the width of any such bridge on each side thereof, it shall be lawful for the persons having the care and management of such road to apply to two justices of the peace, who, after summoning the said Company to appear before them, shall determine whether such bridge shall be widened, and if so, to what extent, not exceeding the width of such road as altered; and in case the said justices shall determine that such bridge shall be widened, the said Company shall be bound at their own expense to widen the same accordingly: Provided nevertheless, That nothing herein contained shall require the said Company to increase the width of any such bridge to an extent exceeding the maximum width hereinbefore prescribed for bridges over or under the railway.

282.
Width of the bridges need not exceed the width of road in certain cases.

THE ASCENT

4.1.10 Mr Sullivan appears to consider that only the gradients on the actual bridge itself are significant. I suggest that that is obviously wrong. Only very rarely will all of the gradient be on the actual bridge itself. Such a bridge would achieve little height gain. What is significant is the gradient from the original line of the road to the highest point, and then the gradient down the other side.

4.1.11 The plans shown in Mr Sullivan's pictures show that these gradients were carefully constructed to meet the public road standard of 1 in 20. However when the line of the railway was moved south, there was a smaller distance between the railway and the road. It is unlikely that the required gradient could have been achieved in the distance with the road on the original line. However if the approaches were skewed then the road would be lengthened and the gradient eased. The most significant approach is the southern one. I have measured the length of the approach from what is now the A27 to the centre of the bridge. I used a tape measure, which is not the most accurate of ways to measure, but I made the length of the approach 410ft. The original height to be gained was 17ft 3inches as Mr Sullivan says. My rough calculations therefore suggest an average gradient of 1 in 23. This is a very rough calculation and I cannot say that the gradient was uniform. We must accept that the gradient may have changed over the years. However the attempt to maintain the gradient must be taken to be evidence of highway status.

4.1.12 It is clear that the actual bridge has had work done on the surface. As I have said previously, it has been treated with tarmac, a process not available when the bridge was built. Pavements have been introduced. We do not know what is underneath the tarmac and

the under-surface may well have been raised in the middle as part of a strengthening exercise. So I suggest that measuring the current gradient on the bridge itself is not useful. Where a railway overbridge is strengthened, as Mr Sullivan says this bridge has been, there is a limit to the amount of work that can be done underneath the bridge because of the height of the trains (the loading gauge), so some work would probably have been done on the top.

4.1.13 I consider that the evidence of gradient supports highway status rather than the status of a private road.

WIDTH

4.1.14 Mr Sullivan's pictures show us that there are no hard and permanent objects which would have determined the width of the road. Instead there is natural growth on both sides of the road on the application route. Obviously over the years natural growth can grow or be cut back, so we have no way of knowing the width of the road at the time of the building of the bridge. So there is no way of knowing whether the required width was 25ft or 20ft.

4.1.15 Mr Sullivan says that the photos he has produced show that the bulk of the bridge is original. But he does not say why he says this. With the exception of some clearly modern repairs the bricks appear homogeneous in the pictures. The white staining is caused by salts leaching out of the brickwork. But this does not explain anything. My experience is that if you take down Victorian brickwork and rebuild it with the same bricks the brickwork is indistinguishable from the original after a remarkably short time. If new bricks are used of the same type then the process takes a little longer, but over time they will look the same.

4.1.16 My belief that the bridge has been rebuilt comes from its design.

4.1.17 The first public railway had been opened in 1830, shortly before the line under discussion was proposed. The Brighton to Hastings line was built at the beginning of the decade 1840-1850 which was to see more railway routes launched than have been launched in the period since 1850. Railways were a revolutionary technology, exciting yet frightening. Railway architecture had to deal with this. It had to reflect the grandeur of this exciting new enterprise, but also to offer reassurance that the technology was safe. The most spectacular example of this in the area may be the Clayton tunnel on the London to Brighton line, whose portals were built to look like castle entrances. But even the most humble construction got the same treatment to some degree.

4.1.18 As an example on the Brighton to Lewes line here is a picture of a humble pedestrian underbridge in Lewes at grid reference 541306 109546. Its purpose seems to have been to enable a smallholder to get from one part of their holding to another after it had been bisected by the railway.



4.1.19 Notice the ornamental stonework and the interesting details.

4.1.20 Unfortunately there are few comparable overbridges on the line. Much of it is level, so level crossings were used. Between Brighton and Lewes there were underbridges, but few overbridges. The only comparable one is the bridge for the Wooton Farm Drive, to the east of the application route.

4.1.21 Below are some pictures of it. Note in particular the thinness and grace of the parapet walls. This sort of parapet wall width (about a foot thinner than those of the bridge on the application route) that, in my experience, is typical of small road bridges. Typical construction would be to make the parapet the length of one brick plus the width of a brick. Brick sizes did vary in the 19th century but this gives an approximate width of around 1ft. This kind of width can be seen on many railway bridge parapets. The two foot parapet width of the bridge on the application route suggests a later repair, perhaps with the intention of narrowing the width of vehicles that could use the road.

4.1.22 Note also that there are three layers of horizontal brickwork on the parapet picking out the shape of the parapet as opposed to the two on the application route bridge.

4.1.23 Note also the difference in the shape of the underside of the bridge when compared with Mr Sullivan's pictures of the bridge over the application route. Even though the terrain is similar and the width of the double track is the same, the aperture through which trains pass on the farm drive bridge is much rounder and more typical of the style of bridges built at around the time the railway was constructed. The bridge over the application route is flatter. Mr Sullivan makes clear that there has been some strengthening on the underside of the bridge on the application route. I must make clear that this is not just a matter of strapping some supports to the underside. Bridges are built to tight clearances and this course of action would result in trains crashing into the bridge. Instead it would have been necessary to raise the new supports to the level of the old brick aperture, displacing the old brickwork and, probably, the surface.



Photo above by Google



Photo above by me



Photo above by me.

4.1.24 I suggest that these photos show that the bridge over the application route has been the subject of major rebuilding and that the width of the road has been reduced from around 20 ft to 18ft.

4.1.25 However it is possible that, since the amended route was not subject to the full examination of the publication of plans locally, the railway scamped on the bridge and got away with it. The bridge would have been subject to less public scrutiny than other features which were in the original plans.

4.1.26 It has been suggested that the railway company somehow replaced a public road with a private one. Given that this private road would have gone only for a very short way, with no obvious purpose en-route and would have ended and begun at public roads, I say that this suggestion is absurd. Had this been the case the railway company would no doubt have built the bridge to the same width as the private one on the track to Wooton Farm.

5. CONCLUSION

5.1.1 As with many historical claims for rights of way, there is no one piece of conclusive evidence which puts the matter beyond doubt. For each piece of evidence there are other possible, though often frankly unlikely explanations. But taken as a whole, there is no other explanation that explains what all these pieces of evidence show other than that the application road is a road which, up to the NERC Act carried full vehicular rights.

Chris Smith for the Open Spaces Society 1/5/18.