

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

**For a route from A to C, currently shown on the Definitive Map as part footpath, part
bridleway to be shown as a Restricted Byway**

Applicant's Reference: ES001

ESCC Ref: RWO 250

8th July 2020

Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map

Sussex 55 11

My name is Sarah Rayfield and I am the applicant on behalf of The British Horse Society. My rights of way experience stems from having been the London & South East Access Field Officer for the British Horse Society since 2016 and having 45 years of riding experience in and around the area. I have also completed the Access training and Public Inquiry training provided for all BHS staff and volunteers as well as the 'Restoring the record' training provided on behalf of the BHS and Ramblers by Phil Wadey and Sarah Bucks and the "Definitive Maps: post DMMO application processes" training provided by Sue Rumfitt on behalf of the Don't Lose Your Way team in Sussex.

This application is made in accordance with the Wildlife and Countryside Act 1981 Section 53(3)(c)(ii) because evidence indicates that a right of way recorded on the Definitive Map and Statement as a bridleway and footpath should be recorded as a restricted byway.

I believe this application will pass the planned Preliminary Assessment Test required by para. 2 Sch. 13A Wildlife and Countryside Act 1981 because:

- a. This application statement includes explanations as to how the evidence applies to the application route, and
- b. The application contains one or more of the following forms of supporting evidence:
 - (1) Legal document(s) relating specifically to the right of way that is the subject of the application (such as Railway Act, Inclosure Act and Award, Finance Act, Court Order or Main Roads Order evidence).
 - (2) Evidence of reputation in legal document(s), even though not written specifically about the right of way that is the subject of the application (such as Tithe Awards and Maps).
 - (3) Documentary evidence of reputation, for example an Ordnance Survey map, coupled with public scrutiny, or evidence of highway status in a landowner produced document.

Maps and other documents which, over a period of time, and taken together, provide evidence of reputation that the order route is part of the public road network

THE APPLICATION ROUTE

The application route, currently shown on the East Sussex definitive map as bridleway Chiddingly 60c and footpaths Chiddingly 60b, Chiddingly 60a, Hellingly 31b and Hellingly 31a is shown on the plan below:

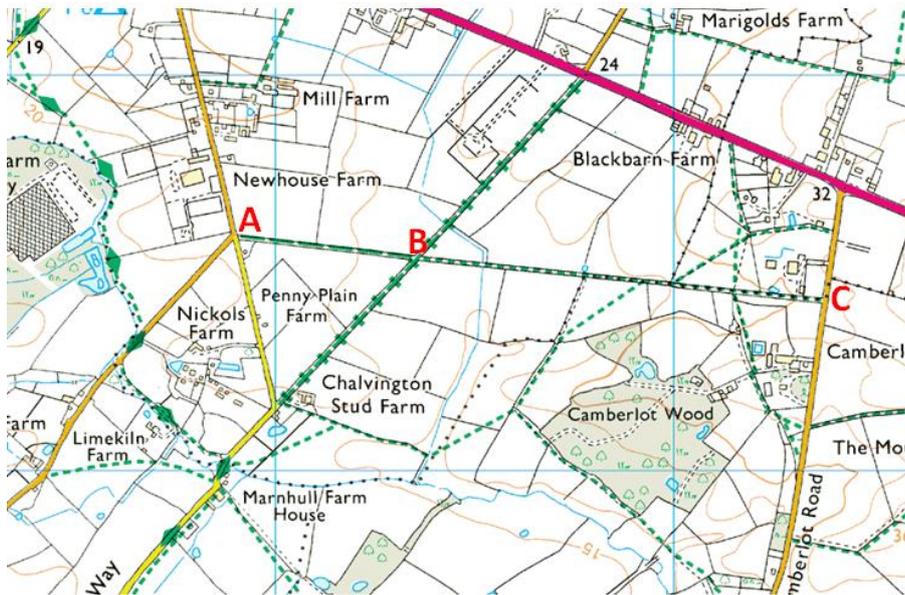
Point A (junction with Chalvington Road/Sheepcote Lane) to Point C (junction with Camberlot Road)

The OS grid coordinates for ease of reference are:-

Point A - TQ 539 115

Point B - TQ 543 115

Point C - TQ 553 114



Copy of Ordnance Survey 1:25 000 scale map extract showing application route

Modern Photographs of The Route



Photograph 1 shows the application route from point A looking eastwards © Copyright [The Saunterer](#) approx.. 2013



Photograph 2 shows the application route from point B. To the left is the byway to the A22. To the right is the application route from B towards C

© Copyright [Peter Jeffery](#) approx. 2006

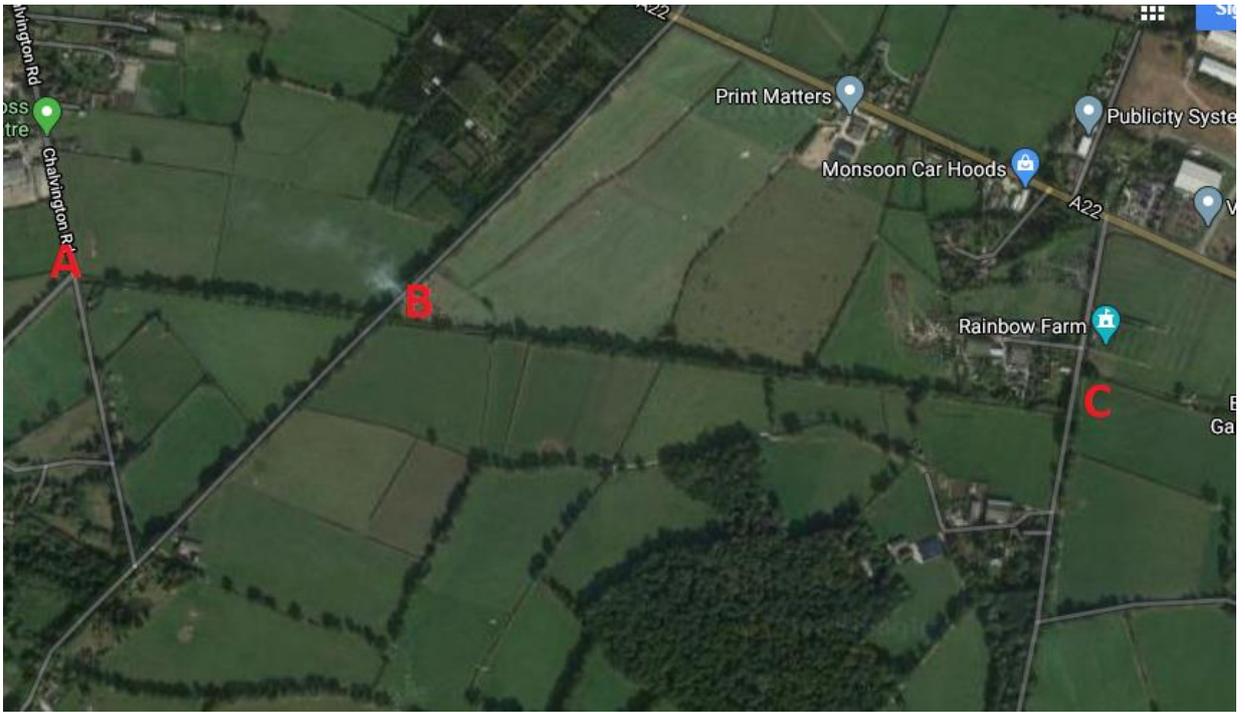


Photograph 3 shows the application route from midway between point B & C

© Copyright [Simon Carey](#) approx. 2007



Photograph 4 shows the application route from point C (junction with Camberlot Road) looking westwards. Image captured 2019 © Google 2020



Photograph 5 shows an aerial view of the application route © Google 2020

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Documentary Evidence of Highway Status

In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in *Todd, Bradley v SOS for EFRA* [2004] 4 All ER 497.

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

"In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless."

As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

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

While no single piece of evidence is conclusive, the applicant believes that, taken as a whole, the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status.

1813 OS First Series 1:63 360 (Lt. Col. Mudge, Tower)

Vision of Britain

https://www.visionofbritain.org.uk/maps/series?xCenter=3333645.14279&yCenter=2722763.15042&scale=63360&viewScale=181417.4208&mapLayer=nineteenth&subLayer=first_edition&title=Ordnance%20Survey%20and%20Ordnance%20Survey%20of%20Scotland%20First%20Series&download=true

Relevance: The one-inch map needed to provide sufficiently accurate geographical information for the purposes of preliminary planning for the moving and quartering of troops, and for the selection of offensive and defensive positions. This means that throughout its evolution the design of the one inch map has taken account of military requirements, one of these being the depiction of route networks.

Meaning: The route appears to be shown as an enclosed road linking it to roads which are today considered to be carriage roads.

Assessment: The map shows the application route shown in the same manner as other local roads leading from what is now a junction with Chalvington Road and Sheepcote Lane at its western end to what is now Camberlot Road at its eastern end. Through roads between public roads which were not gated or otherwise inclosed are generally found to have also been public roads¹



Extract of OS First Series 1:63 360

¹ Fortune & Ors v Wiltshire Council & Anor [2012] EWCA Civ 334 (20 March 2012) [2012] 3 All ER 797, [2012] EWCA Civ 334, [2012] JPL 1092, [2012] 2 P & CR 11, [2013] 1 WLR 808, [2012] WLR(D) 90 <http://www.bailii.org/ew/cases/EWCA/Civ/2012/334.html>

1843 Tithe Map (Chiddingly & Hellingly)

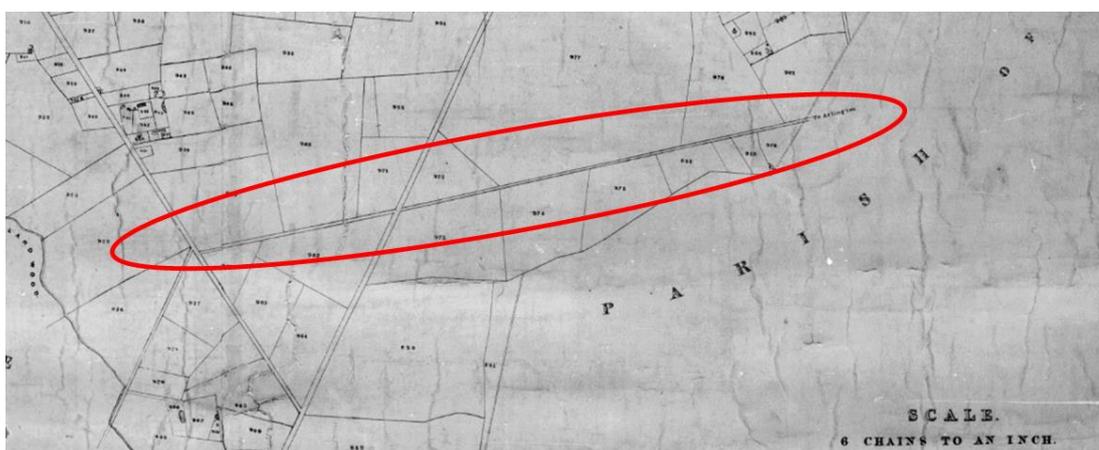
The Genealogist <https://www.thegenealogist.co.uk/>

Relevance:

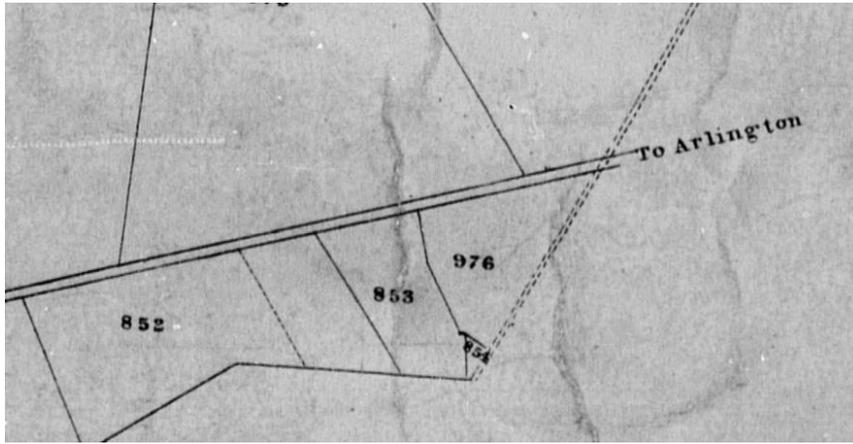
- (1) The Tithe Commutation Act 1836 enabled tithes (literally a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.
- (2) The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status

Meaning: The map shows the application route with double solid lines. It shows as one route leading from what is now a junction with Chalvington Road and Sheepcote Lane at its western end up to the boundary with the neighbouring parish where it is annotated "To Arlington." ..On the Hellingly parish map it is shown joining what is now Camberlot Road. There are braces adjoining the candidate route to Camberlot Road indicating that the route was considered part of the public road system at that time. There are no apportionment numbers allocated to any of the routes which are today public roads.

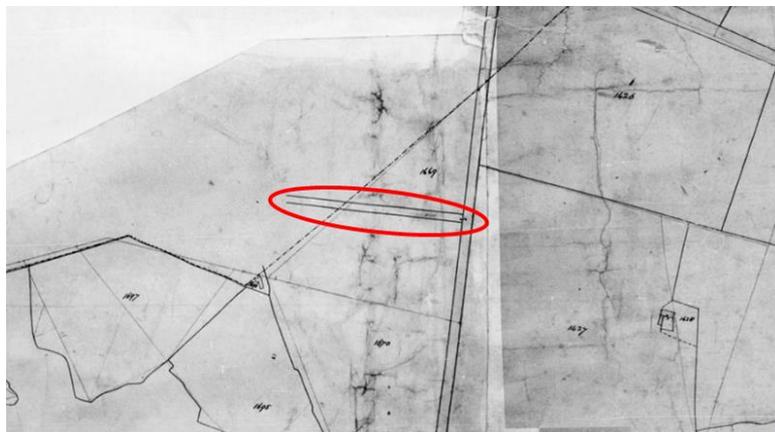
Assessment. The application route is shown in the same way on the tithe map as other public roads both Chiddingly and Hellingly parishes.



Extract from the Tithe Map for Chiddingly Parish.



Extract from the Tithe Map for Chiddingly Parish showing the annotation to the eastern end of the application route.



Extract from the Tithe Map for Hellingly Parish.

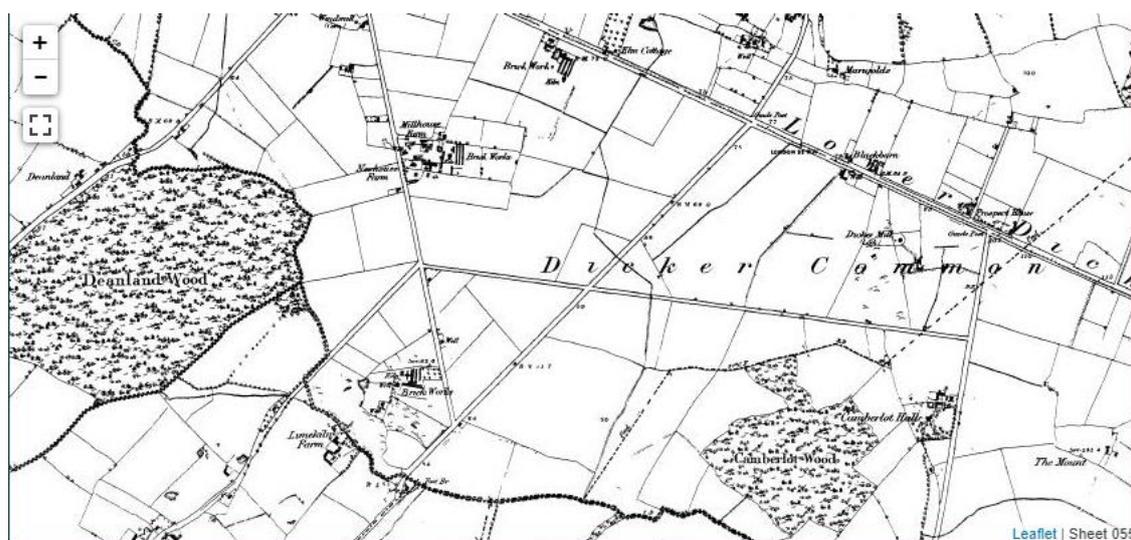
1877 OS County Map 1:10 560

'Sheet 055', in *Map of Sussex* (Southampton, 1877-1880), *British History Online* <http://www.british-history.ac.uk/os-1-to-10560/sussex/055> [accessed 2 April 2020].

Relevance: From the 1840s, the Ordnance Survey began the work of mapping Britain, county by county, at the scale of six inches to the mile (1:10,560). This was partly in response to the Tithe Commutation Act 1836 which led to calls for a large-scale survey of England and Wales.

Meaning: The application route from A to C is shown in its entirety in the same fashion as, and connecting to, other routes which are public carriageways today.

Assessment: This is evidence in favour of the route having been considered to be a route with public vehicular access at the time.



Extract from OS County Map Sheet 55 showing the application route

1902 Bartholomews Map

NLS <https://maps.nls.uk/geo/explore/#zoom=14&lat=50.88522&lon=0.19114&layers=156&b=1>

Relevance: Bartholomew's half inch to the mile maps were marketed to "Tourists & Cyclists". The Cyclists Touring Club were involved for many years, giving credence to the maps and the usage of the routes on them. It is unlikely therefore to show routes that the public could not use. It has a key in which different types of routes are distinguished.

Meaning: The application route is shown from point A to point C as an "indifferent (passable)" road. NB At this time, Camberlot Road and Sheepcote Lane are also shown with the same status.

Assessment: Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club. It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'. In addition, the application route was shown as an "indifferent (passable)" road rather than as a footpath or bridleway, and cyclists at the time of publication had no right to use bridleways, having been declared to be carriages by s.85 Local Government Act 1888, so it is appropriate that at least a little weight be given to this document as evidence of vehicular status.

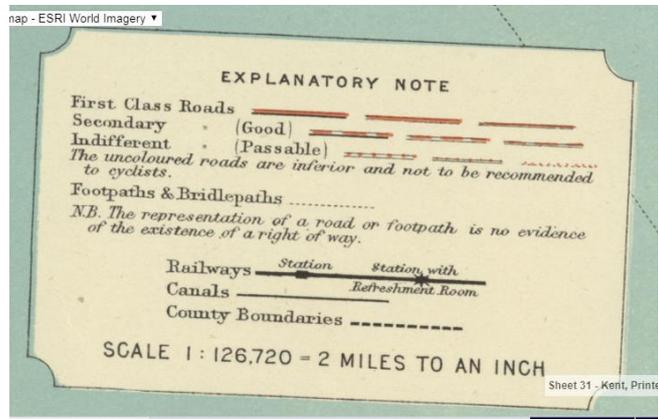
The PINS Consistency Guidelines suggest that little weight can be given to this source, However, in *Commission for New Towns and Another v J. J. Gallagher Ltd* [2002] EWHC 2668 (Ch), the judge stated at para 108:

*"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". **I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways.**"*

This is evidence in favour of the route having been considered to be a route with public vehicular access at the time.



Extract from 1902 Bartholomews map



Key to Bartholomew's Map 1902

1908 OS County Series 1:2500

NLS <https://maps.nls.uk/geo/explore/#zoom=16&lat=50.88208&lon=0.19368&layers=168&b=1>

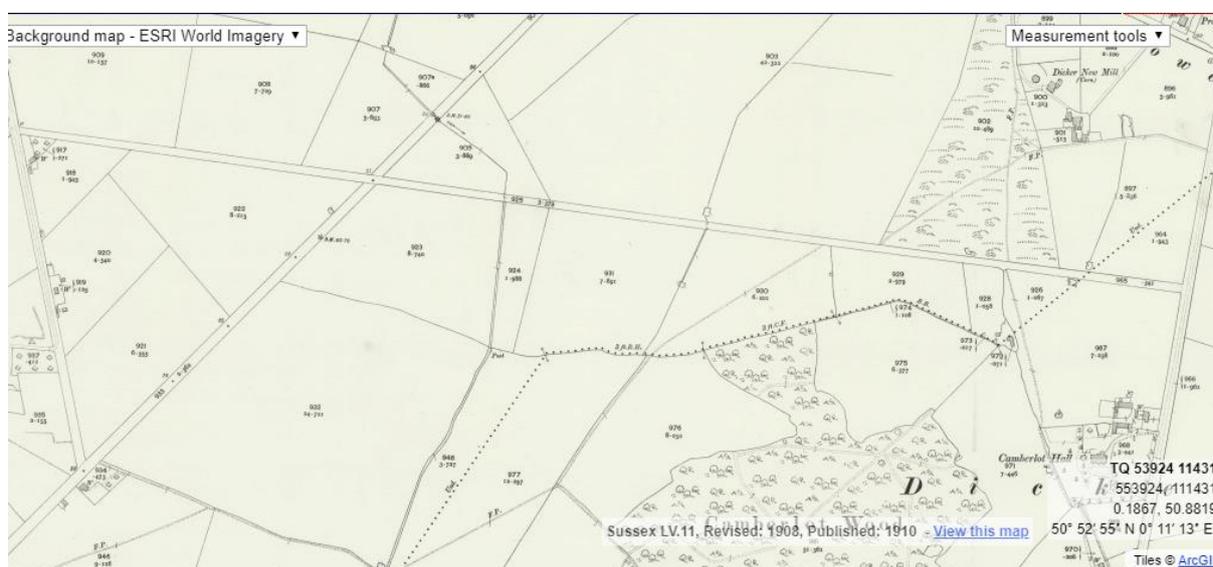
Relevance: This scale of map was not generally for sale to the public. It was the scale at which the country was surveyed and many maps printed at smaller scales have been derived from these maps.

Meaning: The application route is shown in its entirety and open to the public carriageway at either end. In its 1905 "Instruction to Field Examiners" Ordnance Survey instructed,

"A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public"

Despite the caveat on all OS maps regarding status, The Countryside Companion in 1948 (page 320) states "In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation.....A path which is shown, may, however, generally be presumed public."

Assessment: This is evidence in favour of the route having been considered to be a route with public vehicular access at the time.



Extract from 1908 OS County Series Map 1:2500

**Mere convenience footpaths for the use of a household, out-
stage, or farm ; or for the temporary use of workmen, should not
be shown ; but paths leading to any well-defined object of
use or interest, as to a public well, should be shown.**

**N.B.—A clearly marked track on the ground is not in
itself sufficient to justify showing a path, unless it is
in obvious use by the public.**

Extract from 1905 Ordnance Survey Instruction to Field Examiners

1910 Inland Revenue Valuation

TNA, ref. IR 124/4/283, Sussex (East) LV.II

Relevance: The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge a tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’, and discounts could be requested for land crossed by footpaths or bridleways. This is known because s.35 of the 1910 Act provided,

“No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.”

We note that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act), but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and ... [other exclusions.]”

All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

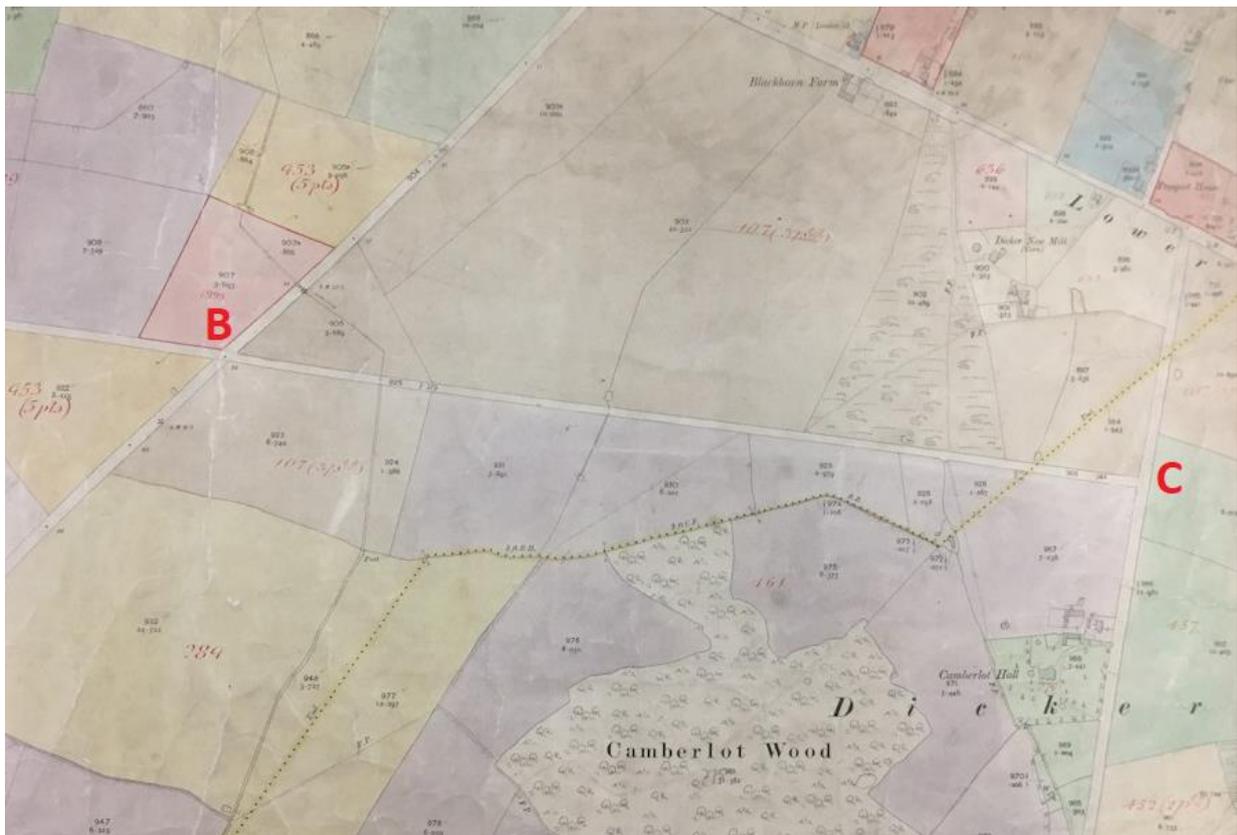
As it appears to be a highway from other evidence, and no duty was assessed in the Inland Revenue Valuation, and the Inland Revenue were under a duty to collect all taxes applying, and hence value the land unless certain that an exemption applied, it is surely for anyone who argues that a different reason for the non-valuation of this white road to show which other exemption could have applied.

Meaning: The extracts below show the application route as a “white road”.

Assessment: The depiction of the route as a white road connecting one public highway to another strongly indicates that this was considered also to be a public road.



Extract of Finance Act Map showing point A to B of application route



Extract of Finance Act Map showing point B to C of application route

1945 OS New Popular Edition 1: 63 360 (Sheet 183 Eastbourne)

Vision of Britain Website

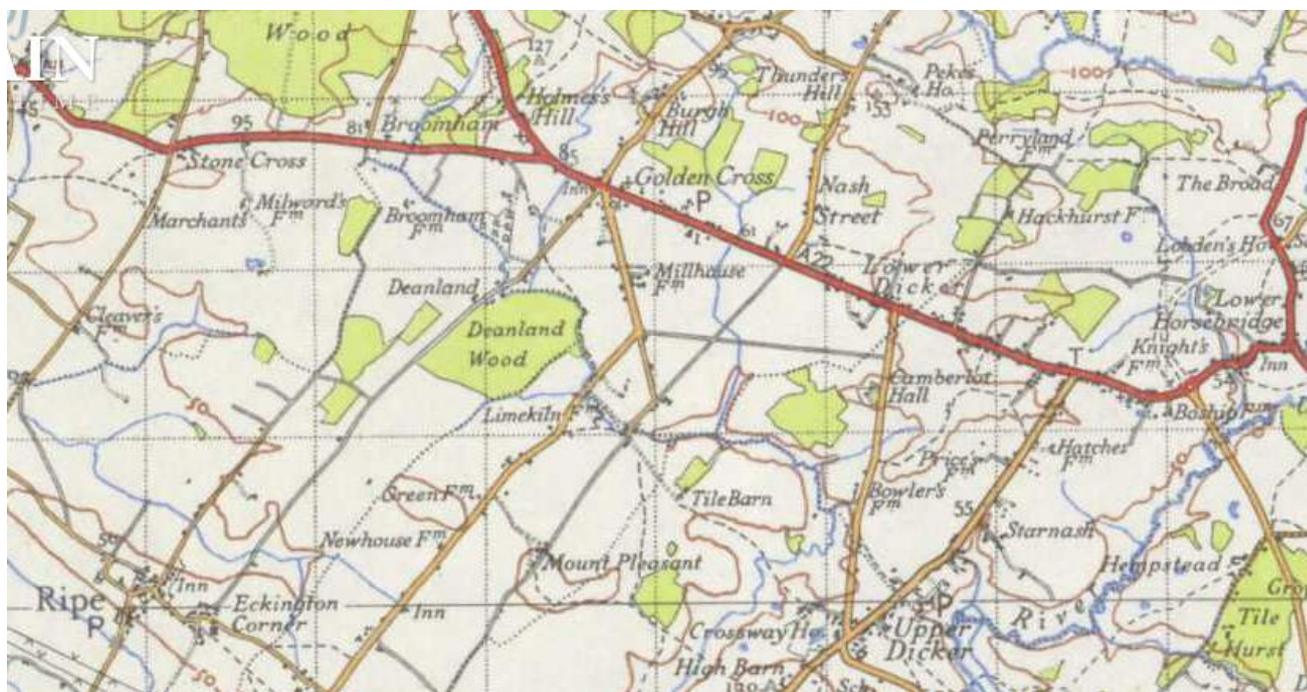
<https://www.visionofbritain.org.uk/maps/?layer=europe&xMin=3334649.75880&yMin=2720870.16456&xMax=3337449.75880&yMax=2723670.16456>

Relevance: The New Popular Edition was not produced from any one revision designed for the creation of the series and so is something of a hybrid: cartographically a stepping stone between the iconic Popular Edition of the 1920s, and the Seventh Series of the 1950s and the metric-scale 1:50,000 maps that followed from it. They provide a record of the country in the immediate aftermath of the Second World War and on the threshold of great social, economic and environmental change. Many rural areas were almost unchanged compared to how they appeared a century or more before, while many urban centres were industrialised, overcrowded and heavily bomb-damaged. Open countryside was still commonplace across the country as a whole, but was fast being eaten into by the suburban sprawl of large cities. The New Popular Edition captures all this 'raw material' which planners and developers in subsequent decades were to use, for better or for worse, to create the Britain that we know today.

The Popular Edition is a potent record of the Britain that was about to be traded for the motor car. By an irony, it also provided the British with their first motoring maps. It would therefore be reasonable to assume that those routes shown were for public use.

Meaning: The application route is shown in its entirety as an unmetalled minor road in a manner similar to other routes which are today public carriageways or Byways Open to All Traffic. Footpaths and bridlepaths were shown as dashed lines. See the key below.

Assessment: This is evidence in favour of the route having been considered to be a route with public vehicular access at the time.



Extract of 1945 New Popular Edition OS Map

Roads	Ministry of Transport, Class 1		Heights in feet above Mean Sea Level	285
	" " " 2		Trigonometrical Point	△
	14 feet of Metalling and over (not classified by M.of T.)		Intersection, Latitude & Longitude at 5' intervals	+
	Under 14 f ² of Metalling, Good " " "		(not shown where it obliterates important detail)	
" " " " Bad " " "		Youth Hostel	Y	
Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Post Office with Telegraph and Telephone	P	
Footpaths & Bridle Paths		Other Post Offices	P	
Steep Gradients, over 1 in 7.....		Telephone Kiosk (G.P.O., A.A., R.A.C.)	T	
	over 1 in 5.....			

Extract of key to 1945 New Popular Edition OS Map

1961 OS 1:10 560

National Library of Scotland website <https://maps.nls.uk/view/189260231> and <https://maps.nls.uk/view/189260240>

Relevance: This map would have been used for travellers meaning that the roads shown would be likely to be public ones.

Meaning: The application route is shown as an “other road” in the key (see below). This is the same as the manner in which Chalvington Road, Sheepcote Lane and byway Chiddingly 61A

Assessment: This is evidence in favour of the route having been considered to be a route with public vehicular access at the time

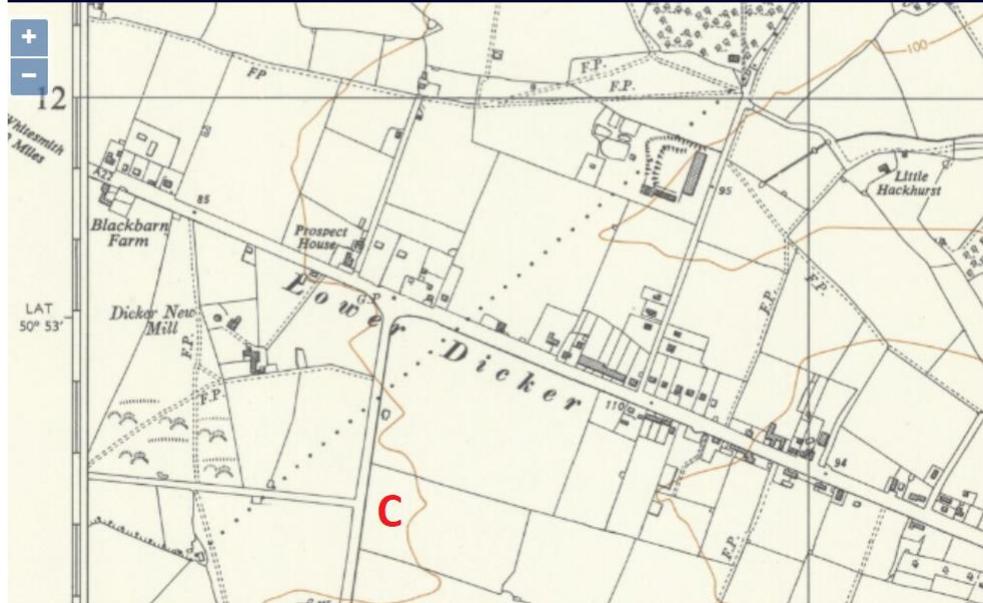


TQ51SW - A (includes: Arlington; Chalvington; Chiddingly; East Hoathly; Hellingly; Laughton)
Surveyed / Revised: Pre-1930 to 1961
Published: 1961



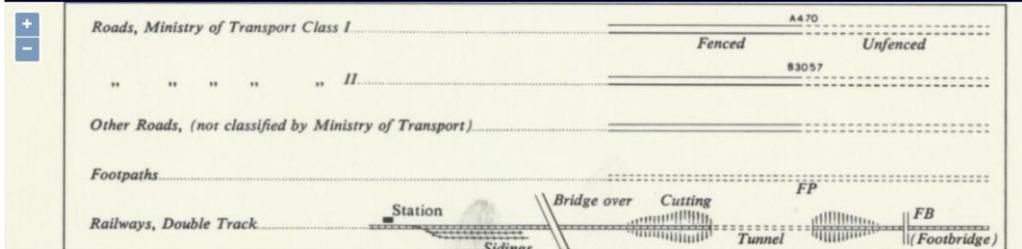
Extract from 1961 OS 1:10 560 Map

Maps home > Ordnance Survey > National Grid maps, 1940s-1960s



Extract from 1961 OS 1:10 560 Map

Maps home > Ordnance Survey > National Grid maps, 1940s-1960s



Key to 1961 OS 1: 10 560 Map

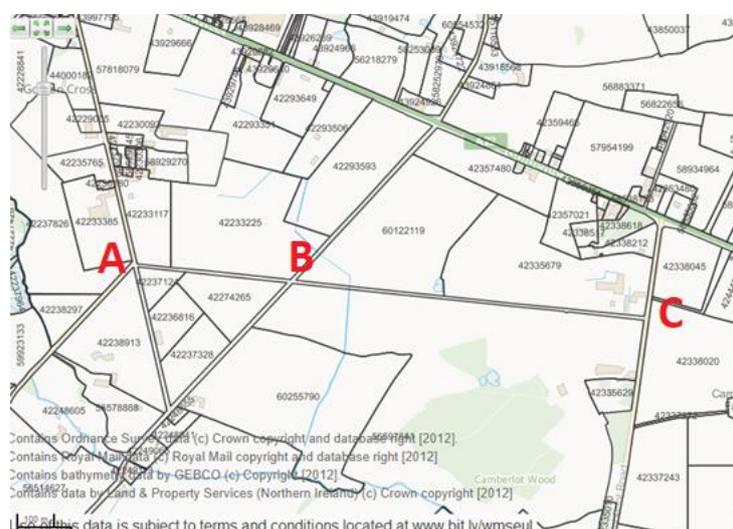
2020 Inspire Dataset Land registry

<https://data.gov.uk/data/map-preview?url=http%3A%2F%2Finspire.landregistry.gov.uk%2Finspire%2Fows%3Fservice%3DWMS%26request%3DGetcapabilities&w=60.8433&n=-8.17167&e=1.74944&s=49.9553>

Relevance: The Land Registry INSPIRE Index Polygons Service is a Web Mapping Service which provides map images of HM Land Registry's INSPIRE index polygons. The INSPIRE index polygon dataset contains only freehold registrations, and the polygons indicate the location of registered land.

Meaning: The application route between points A to C is shown separate from any registered landholding.

Assessment: Vehicular highways of ancient origin are often unregistered land. Where the adjoining land on each side has been registered, but the ancient vehicular highway has not been claimed as part of either land ownership, this is supportive evidence of the ancient vehicular highway status. This lends weight to the idea that this forms part of an ancient vehicular highway.



Extract from Land Registry cadastral open data set

CONCLUSIONS

1. Each piece of evidence presented is either evidence of reputation of vehicular highway, or consistent with there being vehicular highway rights, or indicates that a civil servant thought that there were vehicular highway rights
2. While each document could possibly be explained away by another reason, there is no other reason that explains what all the documents show. It is therefore more likely than not that the explanation for the evidence, as a whole, is that public carriageway rights existed at the times that the various documents were compiled.
3. In examining the evidence as a whole, it will usually be found that the simplest explanation is the best. Suppose that there are three documents capable of being read as providing some evidence of highway status. Each of these documents might be able to be explained away by other reasons. The old map might have shown a private drive to a patron's residence, the tithe map may not have shown land held by the rector, and the Inland Revenue evidence may relate to land held by a rating authority in its local education authority role. However, it is unlikely that all these alternative explanations to highway status will be true for the same path. In such circumstances, the explanation of what the evidence shows is much more likely to be highway status than that the route used to belong to a wealthy owner, was sold to the Church and then became a council-run school. In the absence of positive evidence that these diverse explanations are actually true (as opposed to mere possibilities), the single explanation of the facts that a highway existed is compelling.
4. As a result of the common law maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that a public carriageway existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.
5. The evidence shows that the highway existed prior to 1835. It will therefore be a highway maintainable at the public expense, and so should be added to the List of Streets maintainable by the Council under s.36(6) Highways Act 1980.
6. The applicant requests the surveying authority to add the route to the definitive map as a restricted byway.