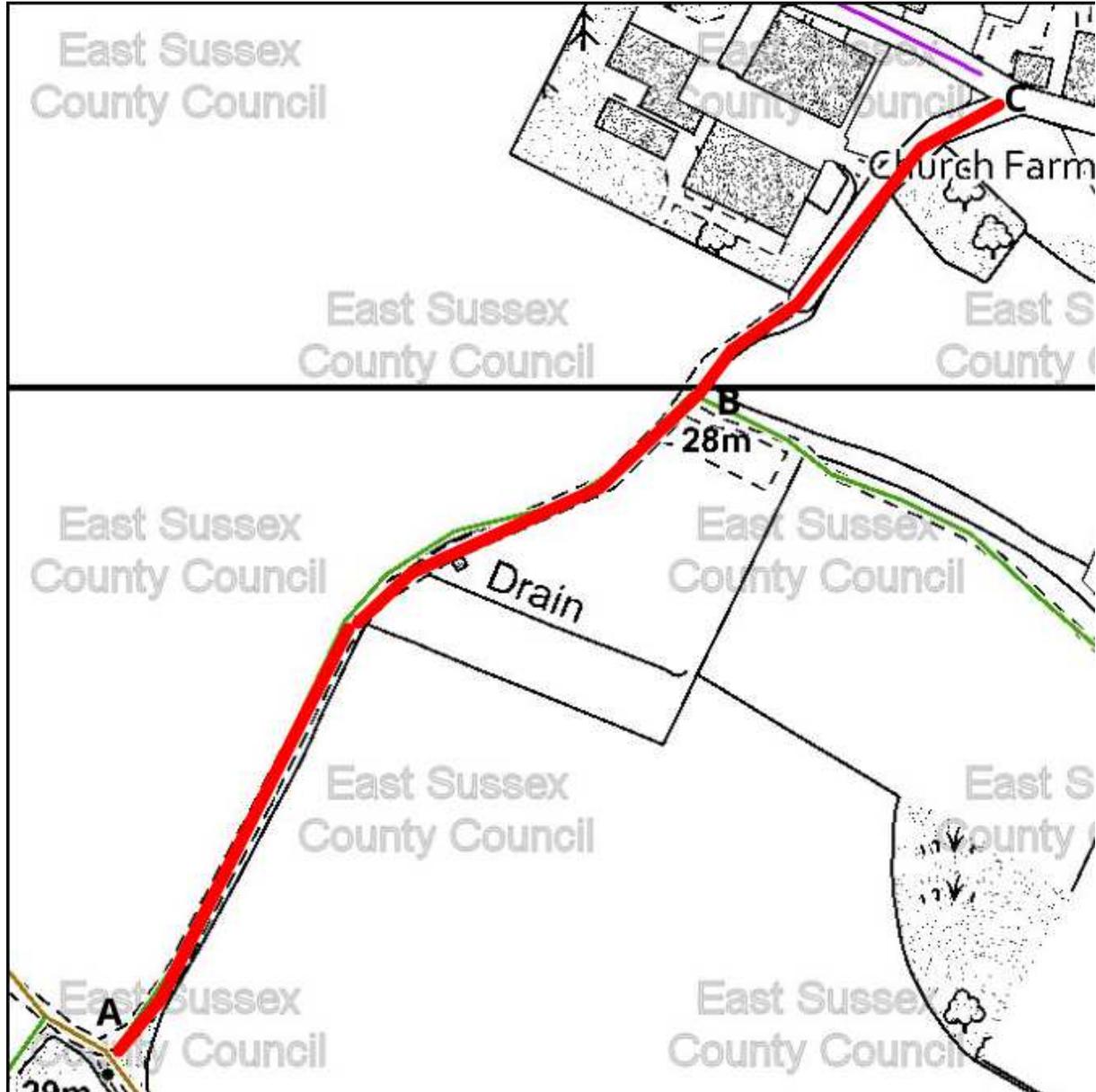


APPLICANTS STATEMENT

Our reference- Berwick A

THE APPLICATION ROUTE



The application route runs from point A, a junction with byway 7, to point B, the termination of Bridleway 6b and on to point C at grid reference 551783 105115

The route is in Berwick Parish,.

A-B is currently on the definitive statement as a bridleway

Application is being made to add upgrade A-B to a restricted byway and to add B-C as a byway open to all traffic.

1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

1.1.1 In order to be able to modify the definitive map and statement, the surveying authority needs to have a discovery of evidence which shows that it can be reasonably alleged that highway rights exist.

1.1.2 Evidence discovered for this application includes a site visit and survey of literature to determine current use, records from the Finance Act of 1910 surveys, an examination of historic maps and an examination of the Eastbourne Rural District Council handover map.

1.1.3 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 Levinson LJ said, at paragraph 22 "In the nature of things where an enquiry 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, 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.'

Whilst no single piece of evidence is conclusive, I believe that, taken as a whole, the pieces of evidence demonstrate highway reputation over many years

2. HISTORIC MAPS

2.1.1 Planning Inspectorate consistency guidelines comment on these maps as follows: under "Other post-1800 maps" (page 11) 12.43 "Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status".

2.2 BUDGEN'S MAP 1724

2.2.1 This map is held at the East Sussex County Archive at the Keep under reference ACC 3762/2 The prospectus for the map can be viewed at <https://www.maphistory.info/blmss.html> It says that he will map '....not only the post roads that cross the county but likewise all the principal roads that are of note or use to travellers.....'

2.2.2 What this evidence shows

2.2.3 The route is shown as a road, partly unfenced. It is shown as one of the only 2 ways into and out of Berwick



2.2.4 The significance of this evidence

2.2.5 This evidence suggests that the route was used as a public route to access Berwick.

2.3 OVERTON AND BOWLES MAP 1740

2.3.1 This map is held at the East Sussex County Archive at the Keep under reference AMS 6008/1/29/10

2.3.1 What this evidence shows

2.3.2 The route is shown as a road, partly unfenced. It is shown as one of only two ways into and out of Berwick



2.3.3 The significance of this evidence

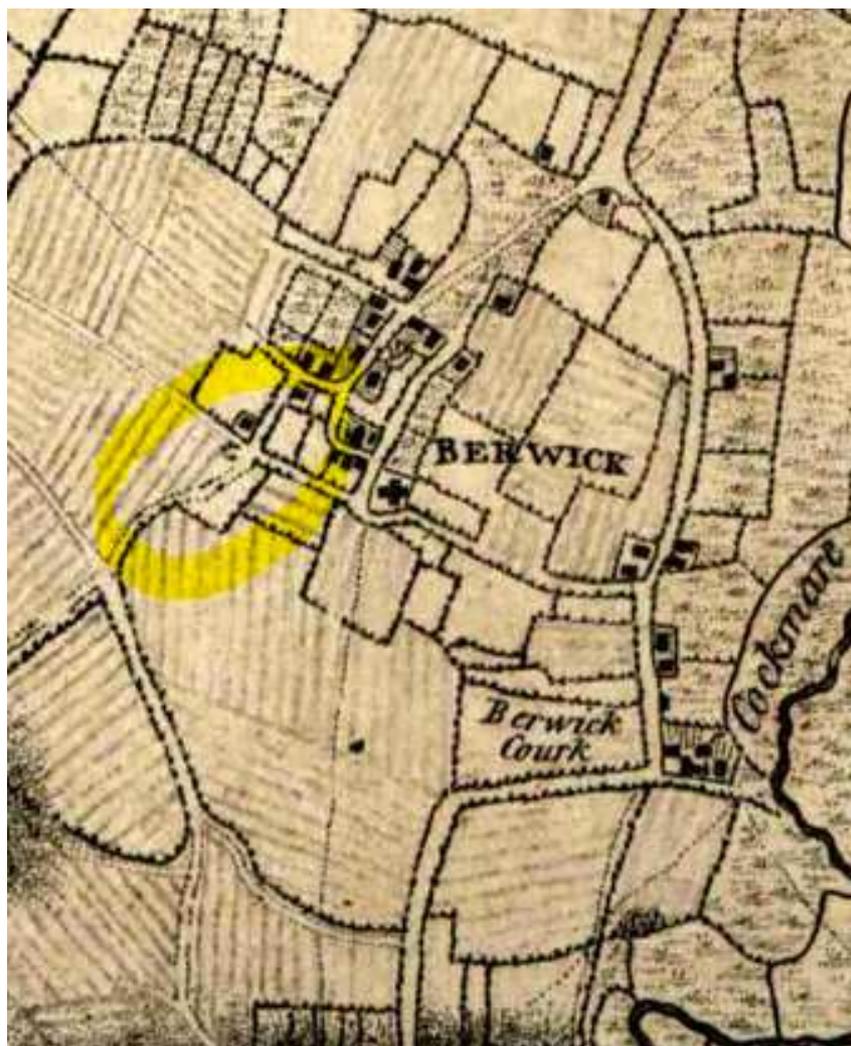
2.3.4 This evidence suggests that the route was used as a public route to access Berwick

2.4 **YEAHELL AND GARDNER'S SUSSEX 1778-1783**

2.4.1 This map is available on-line as part of the "Old Sussex Mapped" project of the University of Portsmouth at http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell_36.htm

2.4.2 What this evidence shows

2.4.3 There are now other ways out of Berwick, but the route is still shown as a partly fenced road.



2.4.4 The significance of this evidence

2.4.5 The prospectus for this series of maps sets out the aim of covering all of Sussex and showing all public and private roads and all bridleways. These aims were not achieved. Only the southern half of the country was covered and few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this map means that it was more likely than not, a public route.

2.4.6 The map does not have a key.

2.5 GARDENER AND GREAM MAP 1795

2.5.1 This map is held at the Keep under reference AMS 608/1/1/29/17 The map at the Keep does not have a key.

2.5.2 What this evidence shows

2.5.3 The northern part of the route is shown. The southern part may be shown. If it is shown, it is on a slightly different route from previous maps.



2.5.4 The significance of this evidence

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

2.6 GREENWOOD AND GREENWOOD MAP OF SUSSEX 1825

2.6.1 This map is held at the Keep under reference AMS 6008/1/129

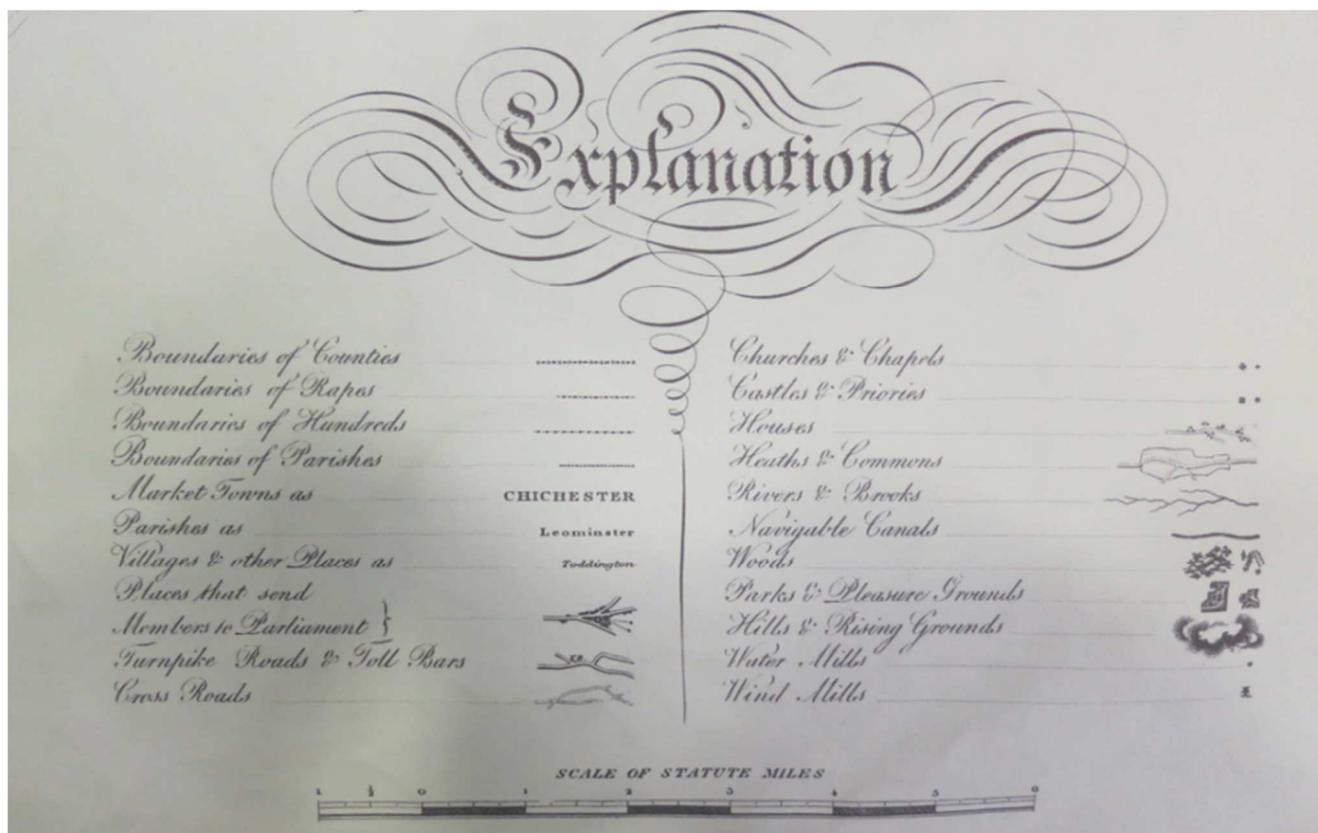
2.6.2 What this evidence shows

2.6.3 The route is shown in the same way as the Gardner and Gream map.

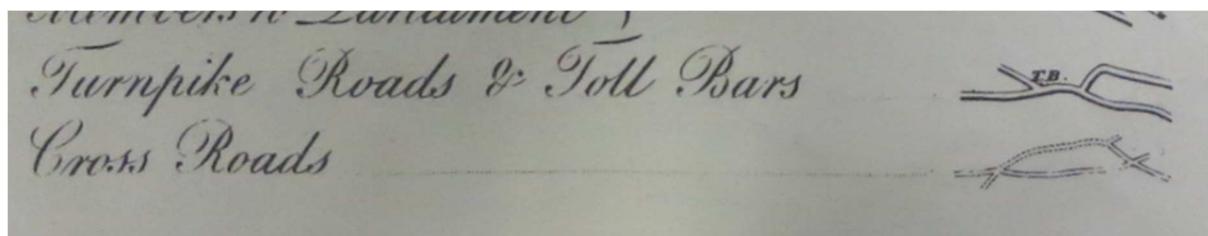


2.6.4 The significance of this evidence

2.6.5 The map has a key, which is shown below



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



2.6.7 Paragraph 2.24 of the Planning Inspectorate’s constancy guidelines says “In modern usage, the term “cross road”/“crossroads” is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.

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

2.7 MUDGES MAP (UPDATED TO 1873 BUT BASED ON A SURVEY OF 1813)

2.7.1 The map is held at the Keep as part of the Brighton Pavilion collection under reference BHM000009. The map at the Keep does not have a key.

2.7.2 What this evidence shows

2.7.3 The route is shown as a road.



2.7.4 The significance of this evidence

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

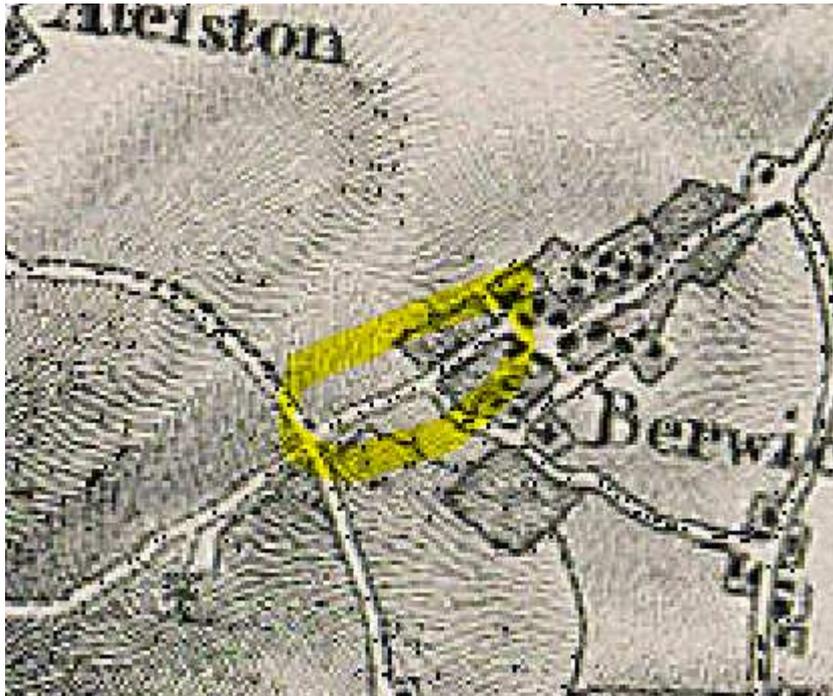
3. FIRST EDITION OF THE ORDNANCE SURVEY 1" MAP

3.1.1 Cassini maps formerly published reproductions of the first edition of the Ordnance Survey 1" map. This extract is taken from a map published by Cassini which is in my possession. According to Cassini, the maps for Sussex were first published between 1813 and 1819.

3.1.2 Copies of the instructions given about the portrayal of private roads are given in correspondence held at the national archive under reference OS 3/260. The instruction given is "as these plans are intended for military purposes no existing roads should be omitted; but to distinguish those roads which are entirely on trespass the line of the main road from which they branch is not to be broken for them"

3.1.3 What this evidence shows

3.1.4 The route is shown as a road. At junctions the line is broken



3.1.5 The significance of this evidence

3.1.6 The route appears to be a public road

4. TURNPIKE PLANS

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

4.1.2 I have not found any deposited turnpike plans connected with this application, but the Book "Turnpike Territory" is a detailed survey of local turnpikes. It is written by Peter Longstaff-Tyrell and published by the Eastbourne Local History Society. ISBN 9780954764739

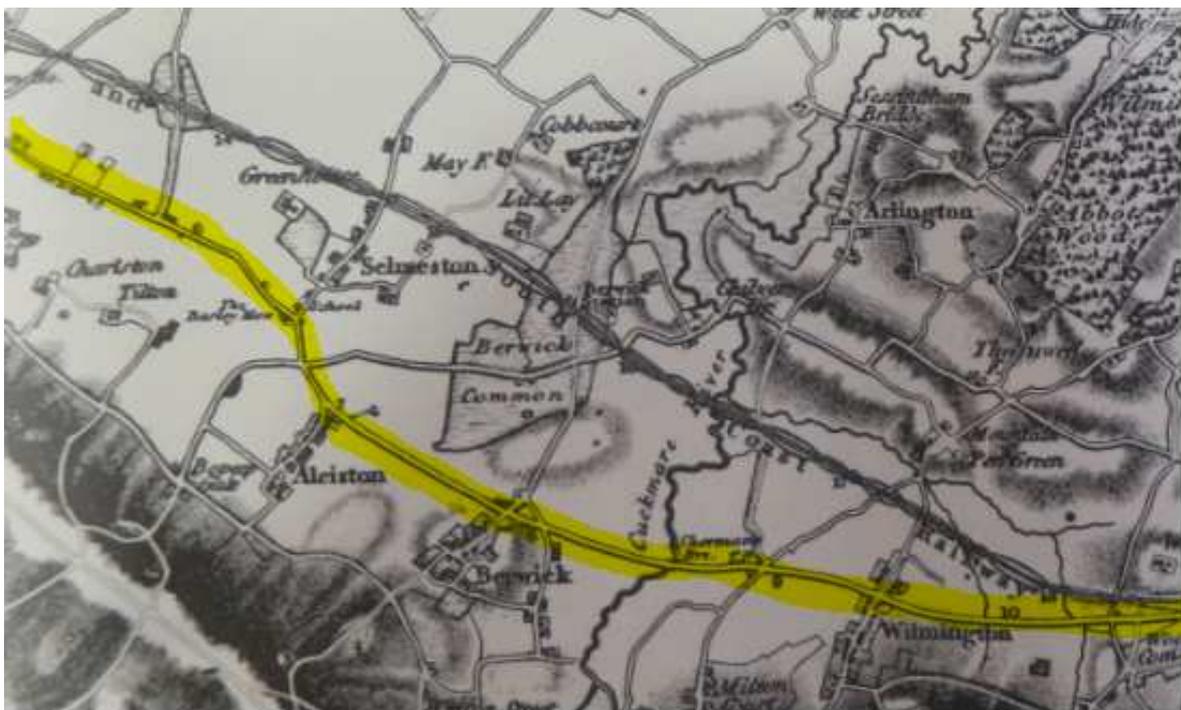
4.1.3 The book records on page 13 that the Glyndbridge Trust was created by an Act of 1752. It ran from Lewes to Alfriston via Glynde, Firle and Bopeep (near Alciston) near Berwick to Alfriston. Initially there was only one toll gate, at Glynde, so local people in Firle, Alciston and Berwick could use the road for free. Later there was a gate at Bopeep. It largely used existing roads

4.1.4 Page 14 records that in 1792 an Act diverted the turnpike to the north from Bopeep. The section east of Bopeep to Alfriston no longer formed part of the turnpike, although there is no evidence that it was no longer used. The section of Yeakell and Gardner's map below shows the diverted turnpike in sepia. I have shown the old route in red.



4.1.1 Page 20 records that the Glyndebridge Trust was almost bankrupt by 1819, when a new Act created the Lewes to Eastbourne Turnpike Trust, which took over the older Trust and built a new route between Lewes and Polegate which was more direct.

4.1.2 Muges map shows that the new route passed to the north of Berwick on a newly built route.



4.1.3 The Act for the new turnpike authorised the stopping up of much of the old turnpike, and some associated roads.

4.1.4 A copy of the Turnpike Act, 59 Geo III c 10: Lewes to Polegate thence to Eastbourne and from Polegate to Hailsham Common is held at the Keep under reference ACC 4458. This set out a new turnpike between Lewes and Polegate to replace the existing Glyndebridge Turnpike. The act is dated 1819.

4.1.5 The route of the old Glyndebridge turnpike meets the application route at the latter route's southern end. As part of the act a number of nearby routes were stopped up. These were normally routes that ran parallel with the new turnpike.

4.1.6 These are detailed on page 257. They are

4.1.7 Turnpike/Highway over Poorpitt from the junction of Beddingham Lane, near Glynde turnpike gate to the Eastern end of Blind Lane

4.1.8 Highway from Beddingham Preston (Preflon?) by the windmill to Lord Gages lodges

4.1.9 Highway from Crossways at the Ley by the crossways above Beddingham Preston and by New Elm to the Upper Part of Firle Street

4.1.10 Turnpike or Highway from the upper part of Firle Street, to Bo-peep in Alciston

4.1.11 Turnpike/Highway from Thornwell in Wilmington to Swines Hill in Hailsham

4.1.12 Bridleway from Monkpin in Wilmington to Wannock Lane in Jevington

a separate Account thereof, and shall pay and apply the same to the Purposes, and in the Order and Manner aforesaid, and shall especially keep a separate Account of the said Sinking Fund, and of the Application thereof.

LI. And whereas by the making of the new Line of Road herein-before described, several considerable Parts herein-after mentioned of the present Turnpike Road, and also several other Roads herein-after described, will become uselefs, and will, if not stopped up, be the Means of enabling Persons to evade the Tolls hereby granted; be it further enacted, That immediately after the said Turnpike Road shall be open for the passing of Horses and other Cattle, Coaches, and other Carriages thereon, and shall be certified so to be by any Two Justices of the Peace for the said County of *Suffex*, the several Highways following shall be stopped up, and the same are hereby declared to be stopped up and discontinued; (that is to say), the present Turnpike or Highway over *Poorpitt*, from the Junction of the *Beddingham Lane*, near *Glynd Turnpike Gate*, to the Eastern End of the *Blind Lane*; the Highway from *Beddingham Preston*, by the Windmill, to Lord Viscount *Gage's Lodges*; the Highway leading from the Cross-ways at the *Ley* in *Beddingham*, by the Cross-ways above *Beddingham Preston*, and by *New Elm*, to the Upper Part of *Firle Street*; the present Turnpike or Highway from the Upper End of *Firle Street* to *Bopeep*, in the Parish of *Alciston*; the present Turnpike or Highway from *Thornwell*, in the Parish of *Wilmington*, to *Swines Hill*, in the Parish of *Hailsham*; and the Bridle-way from *Monkinpin*, in the said Parish of *Wilmington*, by *Wootton*, to *Wannock Lane*, in the Parish of *Jevington*; and that the said present Turnpike or Highway over *Poorpitt*, from the Junction of the *Beddingham Lane* near *Glynd Turnpike Gate*, to the Eastern End of the *Blind Lane*; and also so much of the said Highway from *Beddingham Preston*, by the Windmill, to Lord Viscount *Gage's Lodges*, as lies in the said Parish of *Beddingham*; and also so much of the said Highway leading from the Cross-ways at the *Ley*, by the Cross-ways above *Beddingham Preston*, and by *New Elm*, to the Upper Part of *Firle Street*, as lies in the said Parish of *Beddingham*, shall be and are hereby declared to be from henceforth vested in the Right Honourable *Thomas* Lord Viscount *Hampden*, in Exchange for his Lands which are to be taken and used for the Purposes of this Act; and the Value thereof shall be settled or ascertained in the same Manner as the Value of the Lands of the said *Thomas* Lord Viscount *Hampden*, so to be taken and used for the Purposes of this Act, is by virtue hereof to be settled or ascertained; and any Difference in Value is to be paid by either Party to the other so as to make the Exchange equal, and if such Difference shall be received by the said Trustees, it shall be applied by them to the general Purposes of this Act; and that the Residue of the said Highway from *Beddingham Preston*, by the Windmill, to Lord Viscount *Gage's Lodges*, which lies in the said Parish of *Westfirle*; and also the Residue of the said Highway leading from the Cross-ways at the *Ley*, by the Cross-ways above *Beddingham Preston*, and by *New Elm*, to the Upper Part of *Firle Street*, which lies in the said Parish of *Westfirle*; and also the said present Turnpike or Highway from the Upper End of *Firle Street* to *Bopeep*, in the Parish of *Alciston*, shall be and are hereby declared to be vested in the said *Henry Hall* Lord Viscount *Gage*, in Exchange for his Lands which are to be taken and used for the Purposes of this Act; and that so much of the said present Turnpike or Highway from

Power to stop up certain parallel Roads.

[Local.]

3 T

Thornwell

It is clear that the old turnpike from Bopeep to Alfriston was not stopped up. Neither was the application route.

4.1.13 The significance of this evidence

4.1.14 If the route was in existence, as the maps of the time suggest, it was not stopped up as a public highway.

5. INCLOSURE RECORDS

5.1.1 The application route does not appear to be covered by any inclosure order

6. TITHE RECORDS

6.1.1 The Tithe Commutation Act of 1836 enabled tithes to be converted into a monetary payment system. Maps were drawn up to show the tithe-able land in order to assess the amount of money to be paid.

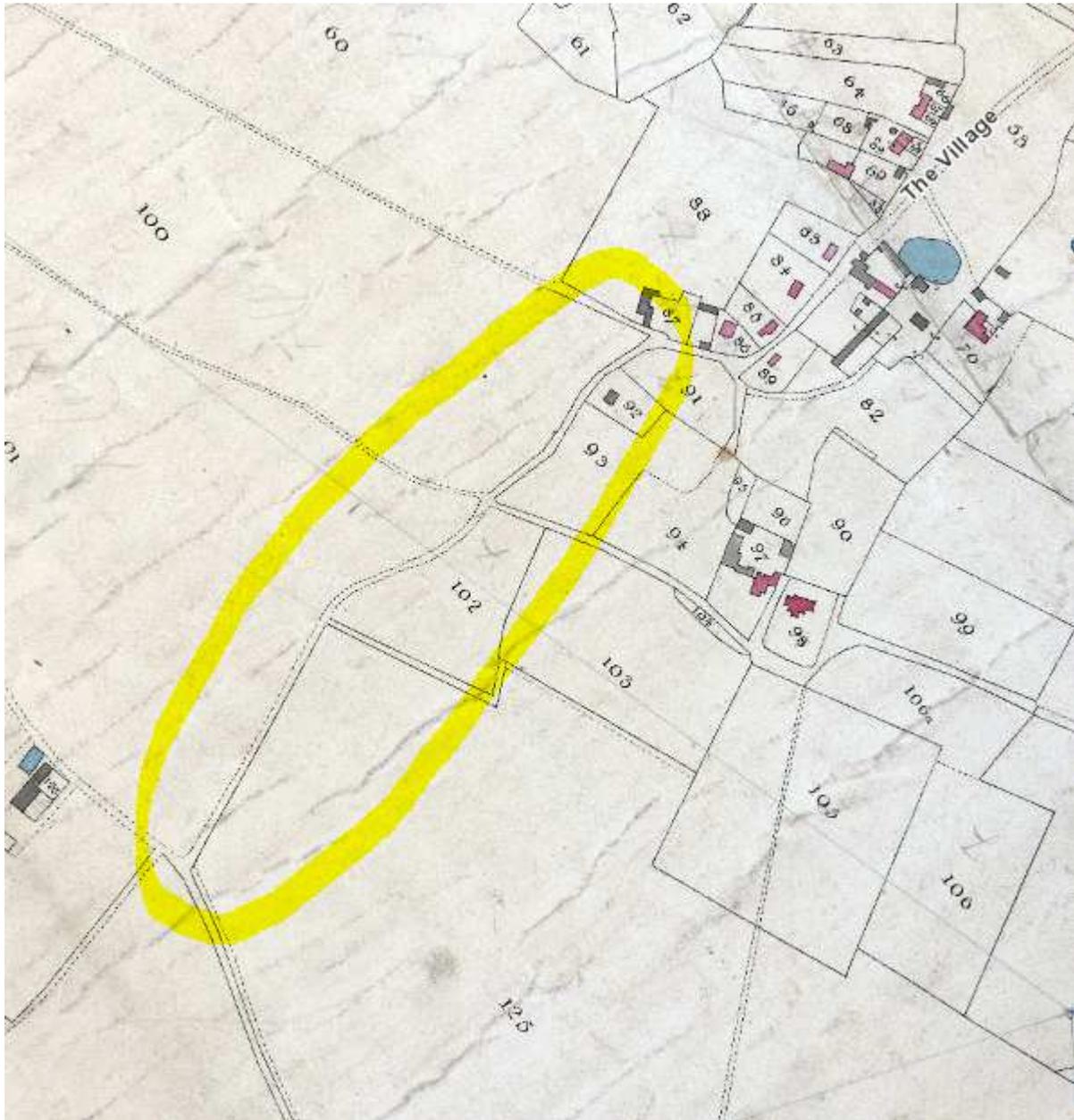
6.1.2 The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. No-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers roads could carry a tithe as they were used as pasture. It was in the interest of 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 in yellow or sienna to indicate public status.

6.1.3 . Tithe maps and apportionments for East Sussex are also available on line at <https://apps.eastsussex.gov.uk/leisureandtourism/localandfamilyhistory/tithemaps/>

6.1.4 I have taken screen shots to show how the route is displayed and of any relevant apportionments.

6.1.5 What this evidence shows

6.1.6 The application route is shown as a road. It is not numbered or part of any apportionment.



6.1.7 The significance of this evidence

6.1.8 This portrayal is consistent with highway status as a road. Bridleways and footpaths were not usually shown on tithe maps

7. RAILWAY, CANAL AND RIVER RECORDS

7.1.1 There do not appear to be any railway canal or river records relevant to this application.

8. QUARTER SESSIONS RECORDS

8.1.1 There appear to be no quarter sessions relevant to this application.

9. FIRST EDITION OF THE ORDNANCE SURVEY 25 INCH TO THE MILE MAP

9.1.1 Ordnance survey maps are not usually of use for rights of way purposes because they usually purport only to show physical features and not legal rights. However the early maps in the first edition series contain valuable extra information when cross referenced to the books of reference that were published with them. These are indexed by parish. There are also books showing the derivation of names shown on the map and surveys of parish boundaries

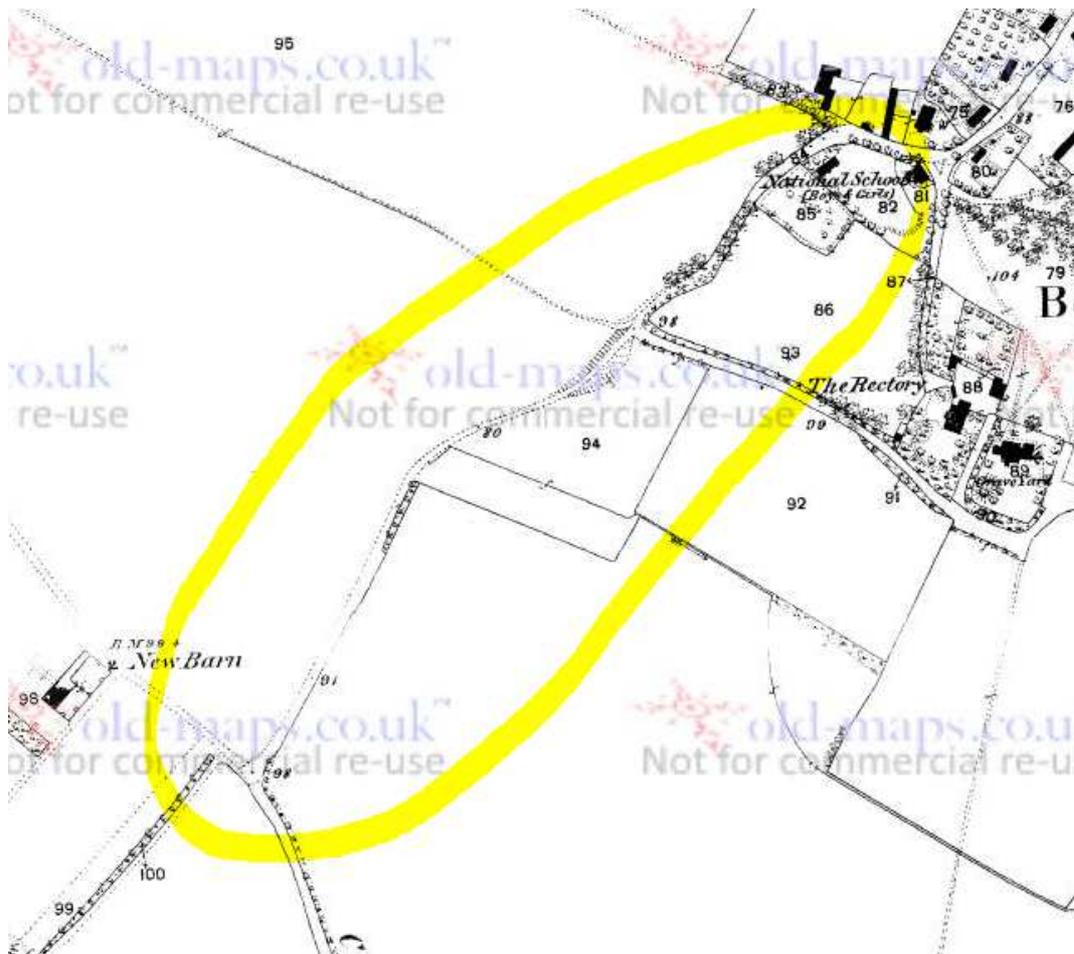
9.1.2 It is often said that the disclaimer on the Ordnance Survey maps means that they are not evidence of public rights. This is not the case. While it is obvious that it is not possible to say "It is on the OS map therefore it is a right of way", these maps provide evidence from which inferences can be drawn. For example, if a route is over one landowner's land and leads only to a barn on that land, it can be inferred that this route was probably private. But if a route goes from one public highway to another and crosses the land of a number of owners or occupants or a number of occupants were dependent on the way to access their land then, in the absence of evidence of private rights or wayleaves, it can be inferred that public rights are likely to exist. Such evidence is unlikely to be conclusive on its own, but taken with other evidence, may support the existence of public rights.

9.1.3 Copies of the first edition of the Ordnance Survey 25 inches to the mile maps can be found online at <https://www.old-maps.co.uk/#/>

9.1.4 I have copied extracts showing the route map from these sources.

9.1.5 What this evidence shows

9.1.6 The application route is shown throughout as a road or track. It is numbered in the north as 84.



9.1.7 The significance of this evidence

9.1.8 Planning Inspectorate consistency guidelines say at Section 12, page 9 & 10: (After observing that the Courts have determined OS maps are not evidence of the status of a way): "12.35 Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21 'Evidential Weight' refers)".

9.2 BOOKS OF REFERENCE/AREA BOOKS

9.2.1 Area books accompanied the first edition maps contain land use information. Parcels of land were numbered on the maps and the reference book can be used to determine land use.

9.2.2 What this evidence shows

9.2.3 84 is described as a road 1.619 acres in area.

2 PARISH OF BERWICK.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
71	1-147	Pasture.	118	19-877	Pasture.
72	489	Pasture.	119	627	Pasture.
73	1-231	Houses, yards, gardens, &c.	120	8-374	Road.
74	5-108	Pasture.	121	24-397	Pasture, &c.
75	1-844	Houses, yards, gardens, &c.	122	2-743	Pasture, &c.
76	1-734	Houses, yards, &c.	123	4-657	Pasture, &c.
77	271	Pond.	124	2-911	Pasture, &c.
78	5-186	House, gardens, &c.	125	10-124	Pasture, &c.
79	4-264	Pasture, &c.	126	495	Pasture.
80	287	House and gardens.	127	7-187	Pasture, &c.
81	145	House, garden, and yard.	128	9-998	Pasture, &c.
82	681	House, pasture, &c.	129	11-946	Pasture, &c.
83	186	Road.	130	17-368	Pasture, &c.
84	1-619	Road.	131	618	Houses, yards, gardens, &c.
85	437	Garden.	132	7-994	Pasture.
86	3-164	Pasture.	133	11-233	Arable.
87	221	Road.	134	119	House and yards.
88	1-338	Houses, ornamental ground, &c.	135	17-180	Pasture, &c.
89	447	Church and	136	6-600	Pasture, &c.
			137	9-754	Pasture, &c.
			138	112	River.

9.2.4 The significance of this evidence

9.2.5 The route was considered to be a road rather than a bridleway or footpath.

10. HIGHWAY AUTHORITY MINUTES and other records

10.1.1 In East Sussex the majority of roads and other ways were the responsibility of the Parish up to 1894. From 1894 the responsibility passed to district councils, with an important exception that main roads could be made the responsibility of the county. In 1930 East Sussex county council became the highway authority for roads and other ways. However district councils were delegated to continue to manage local roads and rights of way until 1934.

10.1.2 HIGHWAY AUTHORITY RECORDS

10.1.3 Parish records for the period prior to 1894, when parishes were responsible for highways, are very thin on the ground and I have not been able to find any records.

10.1.4 However in 1894 responsibility for this area was assumed by the short lived Firle Rural District Council.

10.1.5 The Council had plans for the Old Coach Road, which the application route meets at its southern end. These may impact on how the application route has been seen.

10.1.6 Records of Firle Rural District Council

This is the report of the Road committee of West Firle RDC in 1895. It forms part of the minutes of the RDC on page 168-170 of the minute book held as DL/D 139/2 at the Keep

<i>Report of Road Committee</i>		
<i>May 13th 1895</i>		
<i>Parish of</i>	<i>Recommended -</i>	
<i>Alciston</i>	<i>Old Coach Road</i>	<i>To be closed as Highway and kept open as Bridle Road</i>
	<i>From Berwick and Alciston</i>	<i>In want of amendment and</i>
	<i>Across Road to Bopeep</i>	<i>Manual labour</i>
		<i>Parish should subscribe towards repairs</i>
	<i>Bopeep to top of Hill</i>	<i>In very bad order - unfit to be taken over considered unnecessary</i>

10.1.7 The former turnpike had acquired the name of the Old Coach Road. From Berwick and Alciston to Bopeep it was in want of amendment and manual labour. The council wanted the parish to contribute.

10.1.8 The extract below shows that the committee wanted to reduce what it called "the Old Coach Road" in Berwick and elsewhere from a highway open to all vehicles to a bridle road.

		To be repaired at the Public Expense)
Parish of Beddington	Old Coach Road Littledene Cross Roads to Top of Hill	To be closed as Highway and Kept open as Bridle Road Recommended to be taken over as far as turning to Furlong's From there to top of Hill - unnecessary
Parish of Berwick	Old Coach Road From Berwick Street to New Barn and Comps	To be closed as Highway and Kept open as Bridle Road Unnecessary South of School The rest to be taken over
Parish of Chalvington	Old Lane from Townfield Corner N.E. to boundary of Parish	Closed as Highway - kept open as Bridle Road

10.1.9 The following extracts show that the council accepted the recommendation. The extracts below from pages 179 and 180 show what the council wanted to downgrade in Berwick Parish. (The description refers to the whole of the former turnpike). They clearly agreed with their committee.

...highway and ought to be kept open as a Bridle Road
 Carried many
 Moved by Mr. Harry Gracey and seconded by Mr. P. Ashwin
 that notice be given to the Parish Meeting for Berwick that
 the West Hill Rural District Council being the authority
 liable to keep the Highways in the said Parish (not being
 main roads) in repair is of opinion that the Highway
 under the Hill in the said Parish known as the "old
 Coach Road or Turnpike" commencing from the Western

boundary of the said Parish and running in a South
 Easterly direction by New Barn as far as Camp Barn (on
 the Southern boundary of the said Parish) and also known
 at the lower end as Camp Lane and containing in length
 three quarters of a mile or thereabouts is unnecessary and
 ought to be closed as a Highway and kept open as a Bridle
 Road
 And also that the Highway from Berwick Street to New
 Barn and Comps (that portion commencing 200 yards or
 thereabouts south of the Schools) and known as Street end
 of the length of one furlong and a half or thereabouts is
 unnecessary for public use and ought not to be maintained
 or be repairable at the public expense
 Carried many

10.1.10 The minutes of the council meeting held on 20/3/1896, from page page 227 onwards show that the council had adopted a course of action to achieve their aims. The notes of their resolution below for Alciston parish show that they had decided to apply to the Court of Summary Jurisdiction of the Lewes Petty Sessions to downgrade the highway to a bridle road.

to Messrs Martin to abate the nuisance
 Alceston Parish Cardinally
 It was Moved by Capt Brand and
 seconded by Mr. A. Sugamells that the
 Clerk to this Council be and is hereby
 authorised to apply to the Court of Summary
 Jurisdiction of the Queen's Bench at the County
 of Essex sitting at the County
 Hall Leves on Tuesday the thirty first day
 of March 1896 to view by two or more
 Justices the Highway commonly known as
 "The Old Coach Road" in the Parish of

Alceston commencing at the West end of
 the Parish about a furlong west of Upper
 Barn at a point on the boundary between
 the parishes of Alceston and West Fild and
 running thence in a south easterly direction
 through Bopceep to the boundary between the
 Parishes of Alceston and Berwick and of the
 length of one mile and a half or thereabouts
 and that the same may be declared
 unnecessary as a Highway and kept open
 as a Bridle Road

10.1.11 Later on in the minutes it is recorded that they agreed to make the same application in Berwick.

Berwick Parish

And also to make the like application to open by two or more justices the Highway under the Hill in the Parish of Berwick known as the "Old Coach Road" or "Turnpike" commencing from the western boundary of the said Parish and running in a South easterly direction by New Barn as far as Camp Barn (on the southern boundary of the said Parish) and also known at the lower end as Camp Lane and three quarters of a mile in length or thereabouts and that the same may be declared unnecessary as a Highway and be kept open as a Bridle Road.

And also that the Highway from Berwick Street to New Barn and Camps (that portion commencing 200 yards or thereabouts south of the Schools) and known as "Street End" of the length of one furlong and a half or thereabouts and that the same may be declared unnecessary for Public use and ought not to be maintained

10.1.12

On page 233 the clerk reports that the applications have been made.

approved

The Clerk reported that he applied on the 2^d March last to the Justices in Petty Sessions to appoint two or more Justices to view the Highways set forth in the previous Minutes and that Mr Aubrey Hillman & Capt Shiffner were appointed for that purpose & would appoint a day to view

10.1.13 The notices for Alciston and Beddingham (only) are pasted into page 246 of the minutes. They show that, rather than apply to downgrade routes, the council had applied to not maintain them. There is no mention of a bridleway.

10.1.14 Presumably the notice for Berwick was the same.

**HIGHWAYS AND LOCOMOTIVES (AMENDMENT)
ACT 1878
RURAL PARISH OF BEDDINGHAM**

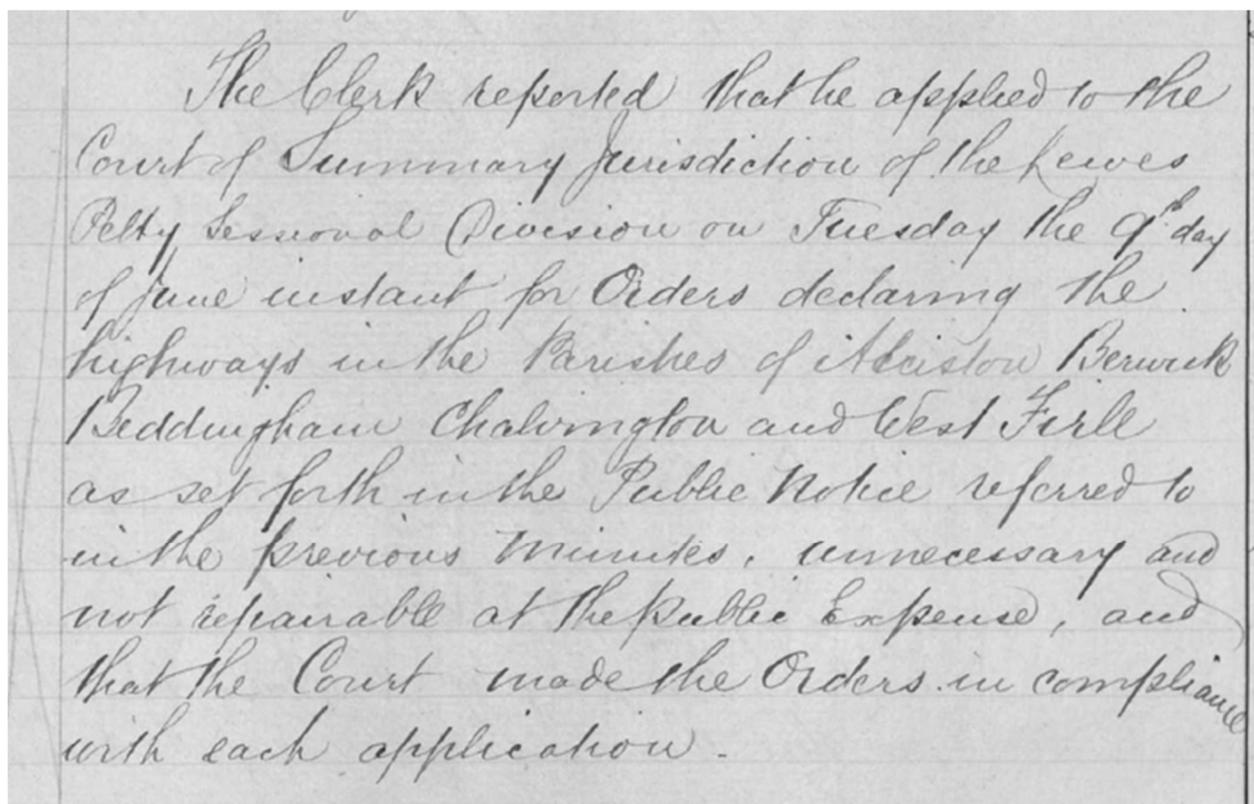
NOTICE IS HEREBY GIVEN that the Rural District Council of West Fife having applied to the Court of Summary Jurisdiction of the Lewes Petty Sessional Division in the County of Sussex sitting at the County Hall Lewes in the said County to view by two or more Justices a certain Highway in the Parish of Beddingham in the said County and in the said Petty Sessional Division and which said Highway leads from the turning to the Furlongs near the Plantation known as the Crumbles to the top of the Hill and is of the length of one mile or thereabouts AND ALSO the Highway commonly known as the "Old Coach Road" or Turnpike in the said Parish of Beddingham commencing at or near the Lay and running thence in an easterly direction to the Furlongs turning aforesaid and of the length of $\frac{3}{4}$ of a mile or thereabouts and the right of way from the Furlongs turning aforesaid to the Boundary of the said Parish of Beddingham on the east and one third of a mile in length or thereabouts AND ALLEGING that such District Council was the Authority liable to keep such Highways in repair and that such Council were of opinion that such Highways were unnecessary for public use and therefore ought not to be maintained at the public expense

NOW we the undersigned Justices of the Peace being two Justices and Members of the Court to which such application was made having together on the 25th day of April 1896 viewed such Highways or Roads are of opinion that the said application ought to be proceeded with AND WE DO HEREBY GIVE NOTICE in writing to the Owners or reputed Owners and Occupiers of all Lands abutting upon such Highways or either of them that the Court of Summary Jurisdiction appoints Tuesday the 9th day of June 1896 at the County Hall Lewes aforesaid at Eleven o'clock in the Forenoon as the date when it will be prepared to hear all Persons objecting to such Highways being declared unnecessary for public use and not repairable at the expense of the public and will then and there hear any persons objecting to an order being made by the Court that such Highways are or either of them is unnecessary and ought not to be repaired at the public expense and will make an order either dismissing the application or declaring such Highways or either of them unnecessary and that they or either of them ought not to be repaired at the public expense

GIVEN under our hands this 5th day of May 1896

JOHN SHIFFNER } Justices of the Peace
AUBREY HILLMAN } for the County of
Sussex.

10.1.15 On page 250 the clerk reports that the court has made the orders as requested.



The Clerk reported that he applied to the Court of Summary Jurisdiction of the Lewes Petty Sessions Division on Tuesday the 9th day of June instant for Orders declaring the highways in the Parishes of Hicistow Berwick Beddingham Chalvington and West Firl as set forth in the Public Notice referred to in the previous Minutes, unnecessary and not repairable at the Public Expense, and that the Court made the Orders in compliance with each application.

10.1.16 The order means that the highway through Berwick is no longer maintainable at public expense and is made under Section 24 of the [Highways and Locomotives \(Amendment\) Act 1878 section 24](#)

10.1.17 However the council did not achieve their aim of reducing the status to bridleway, even though it appears that it was widely believed in the area that this was the status of the Old Coach Road. The road is shown on later maps as a bridleway and it was labelled as such in the first definitive map process.

10.1.18 Instead they merely relieved themselves of the liability to maintain it. I have consulted with a number of experts, all of whom believe that the status of the highway is not affected.

10.1.19 There is further mention in the minutes. The council was abolished in May 1898.

10.1.20 I have not found any reference to the application route or the Old Coach Road in the minutes of Eastbourne Rural District Council, which took over from West Firl.

10.1.21 The significance of this evidence

10.1.22 The Old Coach Road at the southern terminus of the application route was clearly a public highway for all traffic before the council took action. It was not stopped up or turned into a bridleway as the council believed.

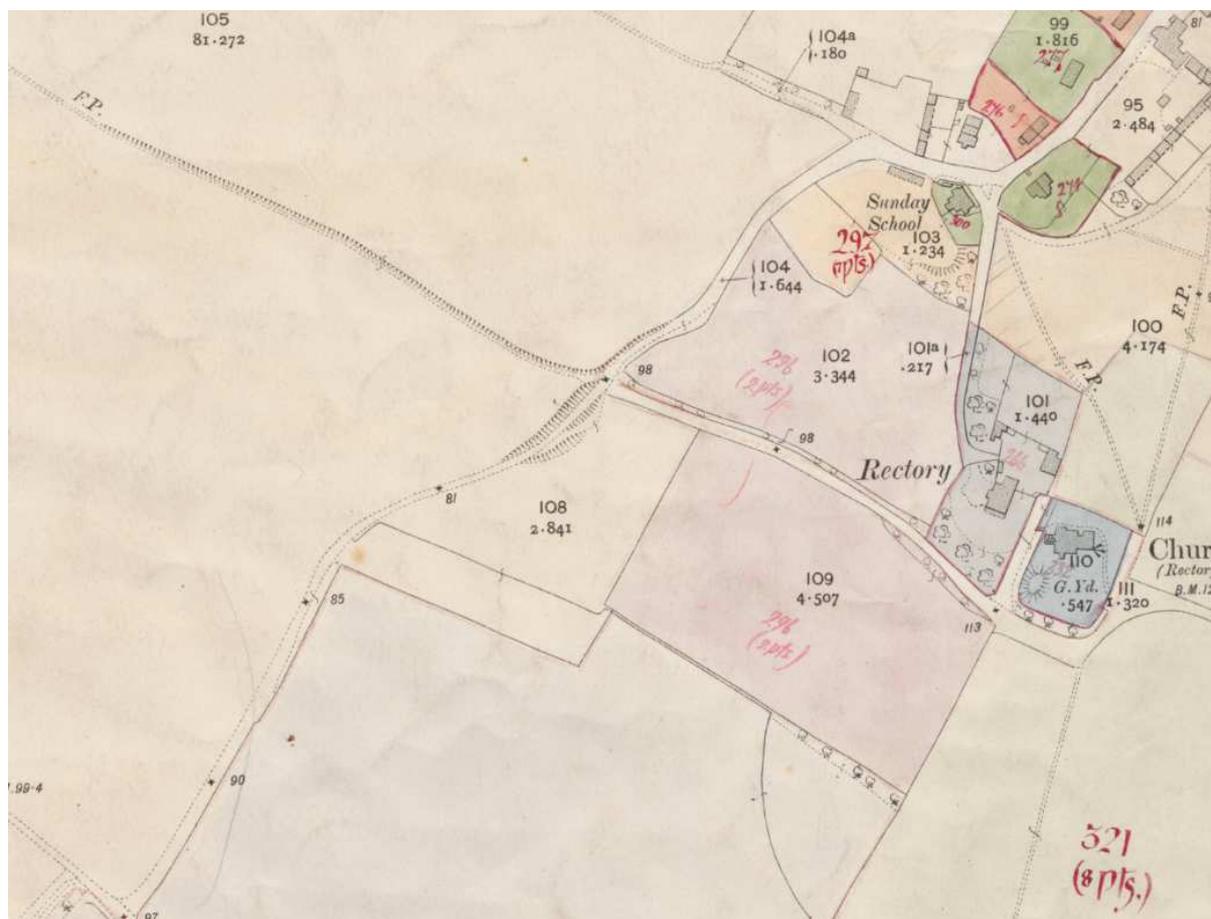
10.1.23 The incorrect belief that the Old Coach Road, which forms one end of the application route was a bridleway is likely to have affected how the application route was seen. If a route is a bridleway, then a route joining it is likely to be a bridleway or lower.

11. INLAND REVENUE VALUATION

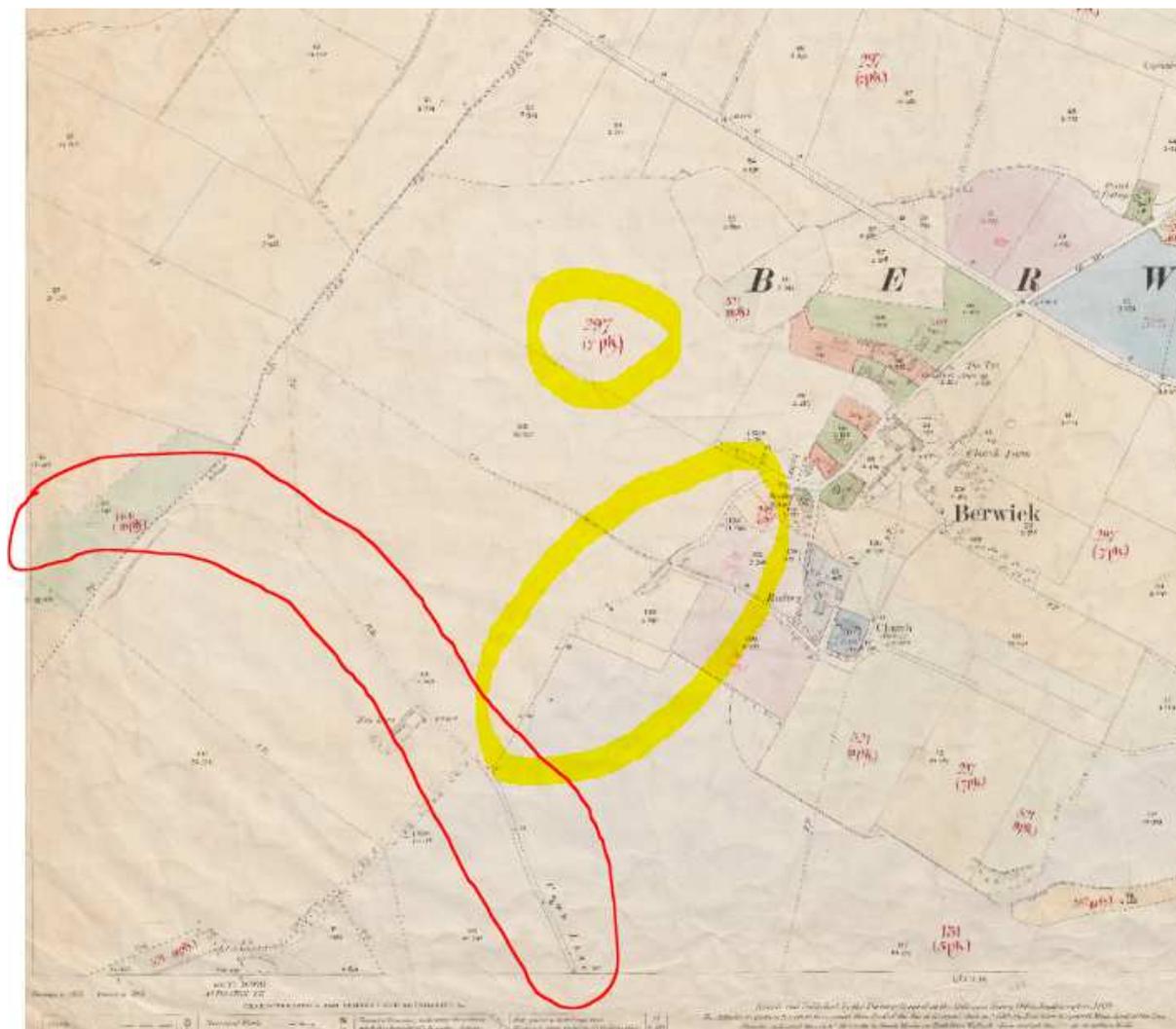
11.1.1 The Finance (1909-10) Act 1910 provided for land valuations to take place across the country so that the increase in its value could be taxed. Deductions from the assessable value could be claimed by landowners where the land was crossed by a footpath or bridleway. Where a vehicular highway crossed land, it was often omitted from the valuation, and shown on the Inland Revenue's plans as a "white road". If a route were a private vehicular way, then it could be developed, increase in value and so be taxed. Accordingly, private tracks were not usually excluded from the assessable hereditaments

11.1.2 The Inland Revenue map covering the application routes is held at the National Archive under reference IR124/4/354. The screenshots below are taken from that map.

11.1.3 Below is a close up of the application route



11.1.4 Below is a smaller scale map with the application route circled in yellow. The hereditament number (297) is also circled in yellow. The old coach road is circled in red.



11.1.5 What this evidence shows

11.1.6 In common with many Inland Revenue maps, the map has faded, and this makes it difficult to read. Things are not helped by the fact that parts of hereditament 297 are shown in a deeper orange (for example the bit round the Sunday School) than others (for example the land to the west of the application route)

11.1.7 The road coming in from the north-east to point C is clearly a white road because it is picked out against the surrounding hereditaments. There is no clear barrier across the route where it changes colour until point A, where there is a line across the road. But the route between B and C is more clearly a white road than A to B.

11.1.8 The Old Coach Road, which is today a byway open to all traffic, is clearly shown as part of the hereditaments through which it passes.

11.1.9 The significance of this evidence

11.1.10 Where a route is shown as a white road the overwhelming likelihood is that it was a public road. There are a few other possibilities, (for example the land was a waste of no value) but they are so rare that I suggest that the onus of proof is on any party wishing to put forward an alternative explanation.

11.1.11 In my view B-C is clearly a white road. The position of A-B is less clear, but if it is not a white road I suggest that comparison should be made with the Old Coach Road, which is today a byway open to all traffic.

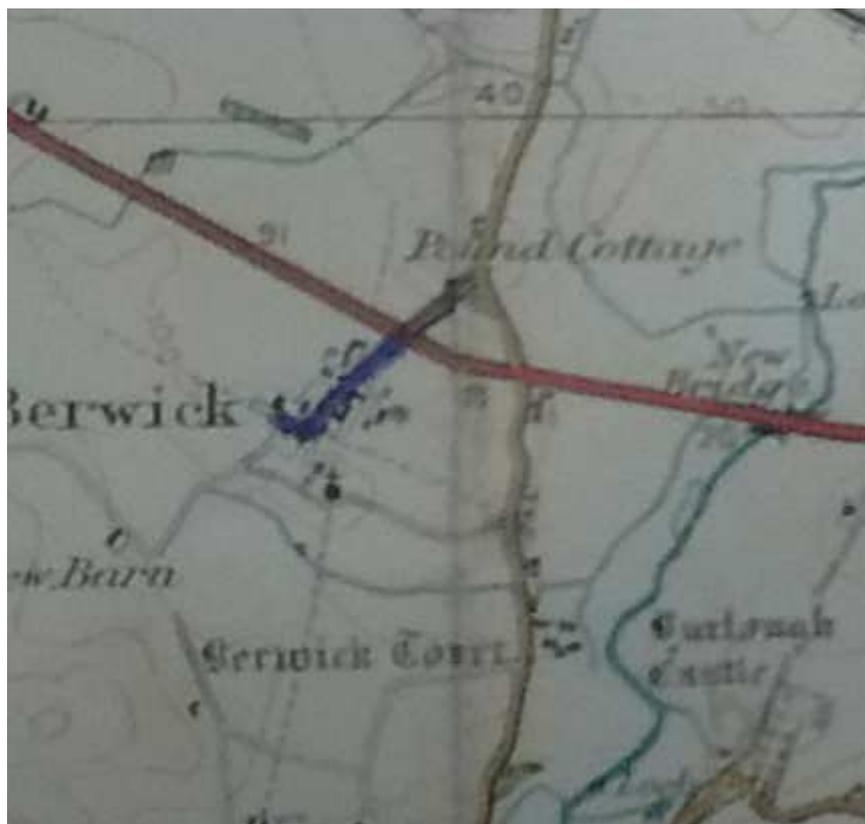
11.1.12 I have not examined the field book entry for hereditament 297. This is a very large hereditament containing a number of rights of way. I do not think that anything could be deduced either from the existence of a rights of way deduction or a lack of such a deduction.

12. THE HANDOVER OF RESPONSIBILITY FOR HIGHWAYS

12.1.1 In 1930 responsibility for minor roads passed from district councils to county councils. However until 1934 East Sussex delegated responsibility for these roads back to the district councils. District Councils prepared handover maps and schedules showing the roads that they were responsible for and for which the county council would now take over responsibility. The application route was in the Eastbourne Rural District Council area at the time.

12.1.2 What this evidence shows

12.1.3 The handover map for Eastbourne RDC shows that the application route was not included in the roads handed over to East Sussex County Council.



12.1.4 The significance of this evidence

12.1.5 This map casts doubt on the idea that the application route was and is a route maintainable by the highway authority.

13. 1ST DEFINITIVE MAP SURVEY

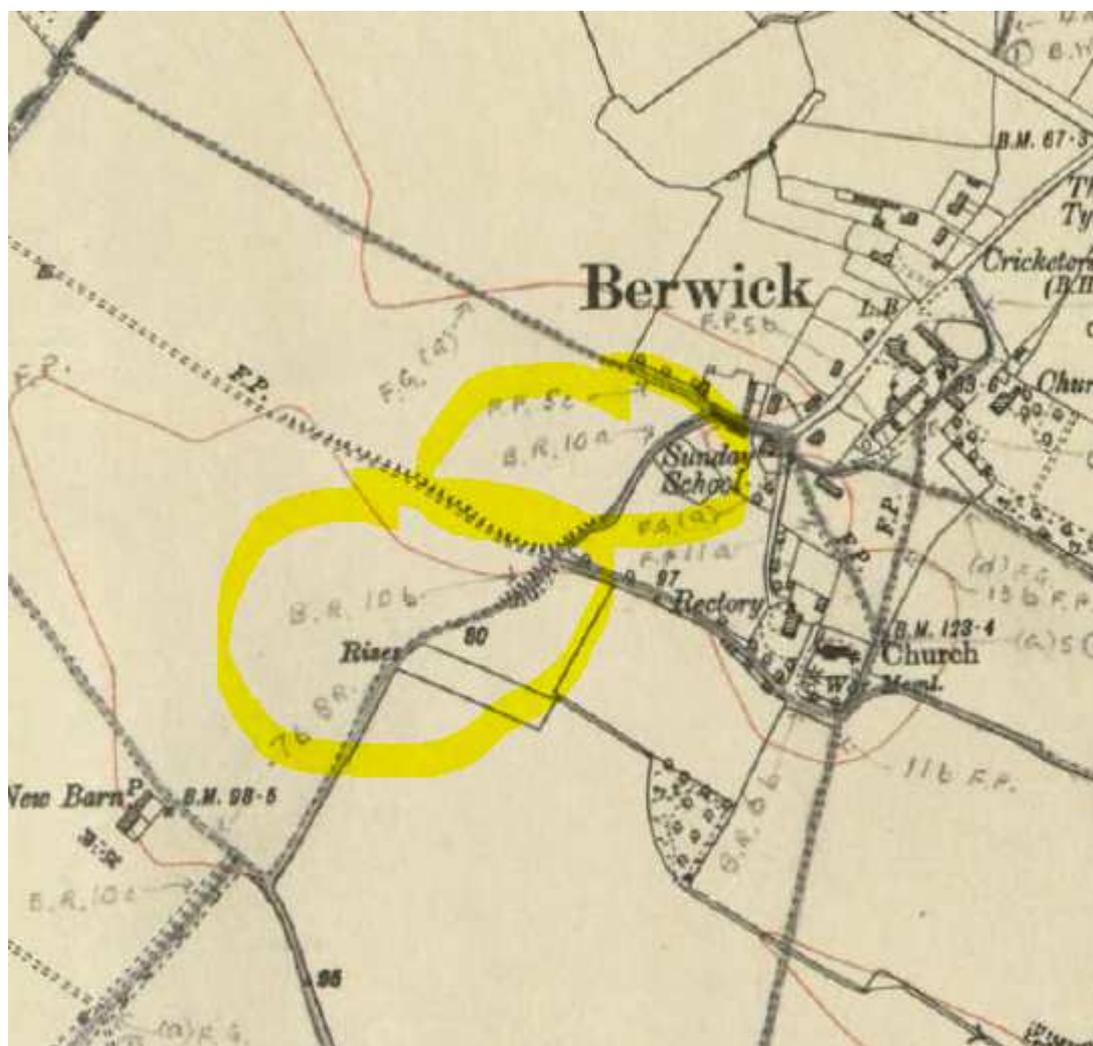
13.1.1 The evidence presented below

13.1.2 The first stage of the process was for parishes to make a map of rights of way that they considered existed in their area and to draw up schedules for each route. Walking organisations were then asked to walk the paths and report. There then followed a certain amount of correspondence before the draft maps were prepared. This correspondence included a set of observations by the county council which parishes were asked to comment on. After the draft map was consulted on a final definitive map and statement were published.

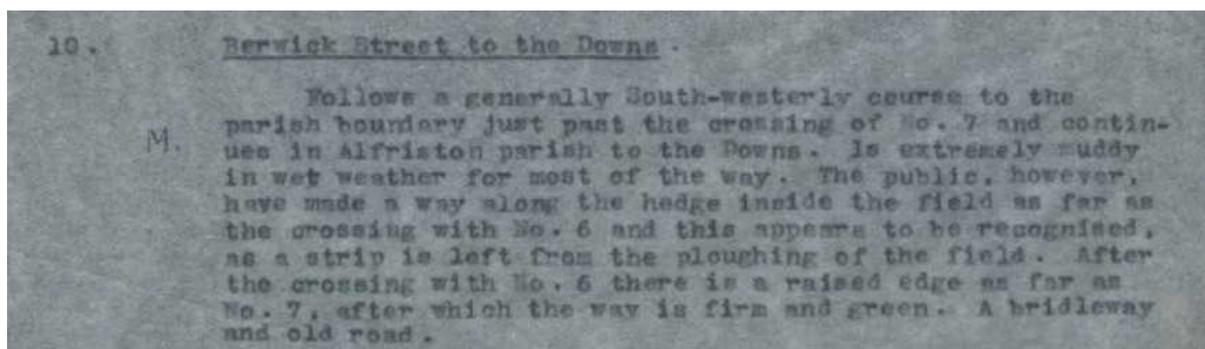
13.1.3 What this evidence shows

13.1.4 The parish map and walkers report below are taken from material held by the East Sussex rights of way team.

13.1.5 The parish identified the application route as bridleways 10a and 10b



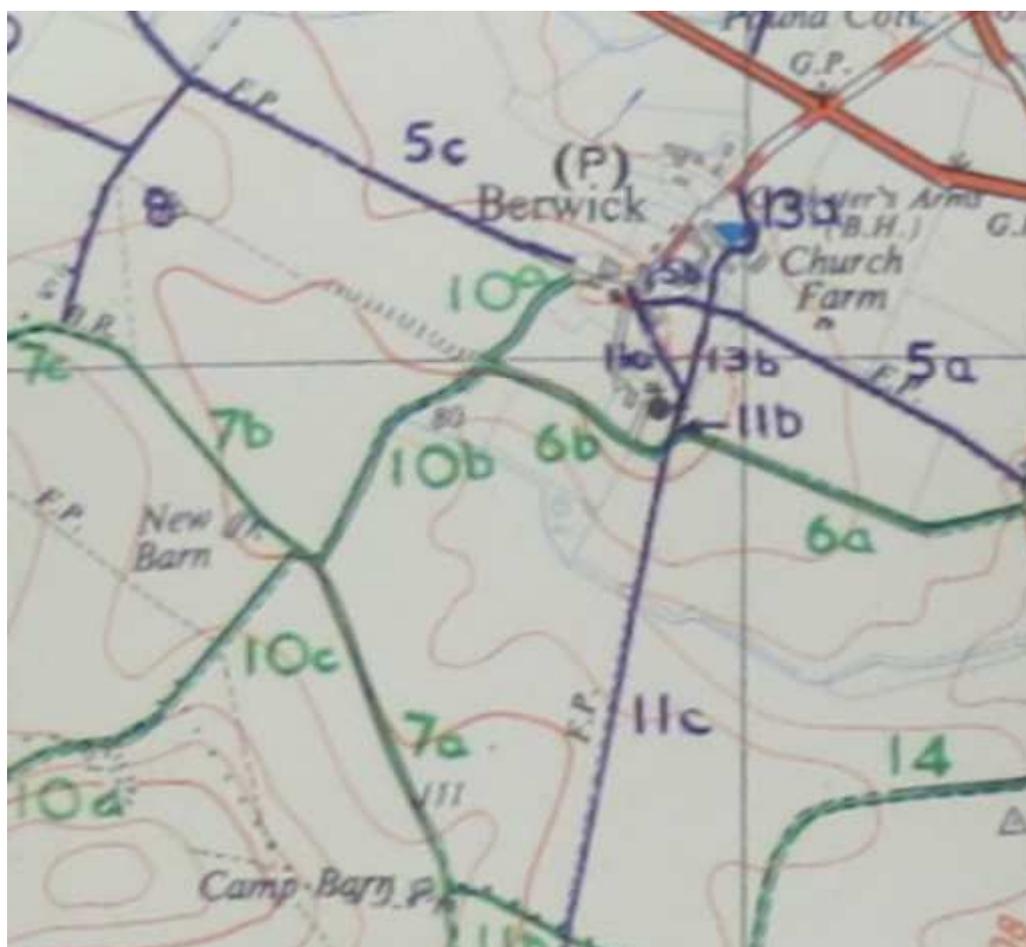
13.1.6 The inspection by Eastbourne Rambling Club resulted in a report saying that the way was a bridleway and old road in poor condition for most of the way.



13.1.7 Much of the subsequent correspondence, including the observations, has been lost.

13.1.8 The first definitive map covering the route is held at the Keep under reference R/C 65/4

13.1.9 The application route is shown as on the parish survey. The Old Coach Road is shown as bridleways 7a and 7b.



13.1.10 The significance of this evidence

13.1.11 The Eastbourne Rambling Club, at least regarded the application route as an old road, although their comments on it suggest that it was not being maintained by the highway authority.

13.1.12 I suggest that the depiction of 10a and 10b as bridleways were influenced by the belief that the old coach road was a bridleway. Why would a road end at a bridleway?

14. THE RUPP REVIEW

14.1.1 In 1971 East Sussex Council commenced a review of roads used as public paths, in line with legislation which said that these should be reclassified. Some other revisions were made. The rights of way subcommittee was reconvened. Its minutes are held at the Keep under reference CC/11/5/107

14.1.2 On 11/5/1971 The clerk to the committee prepared a report for the next meeting An extract is copied below. Someone had evidently discovered the old West Firle minutes.

Public Bridleways West Firie 10 - 6 abc - 13,
Beddingham 4a, Alciaston 11 abc, Berwick 7 abc -
10b, Alfriston 22 ab

22. It would appear that the above public bridleways which are lettered on the attached plan may strictly be ancient highways which the then Highway Authority were relieved from the obligation to repair in about 1897 by an order of the Justices under Section 24 of the Highways and Locomotives (Amendment) Act, 1878. The obligation of the Highway Authority to repair any of these tracks can be revived by the Justices at any time on application being made by the landowner. It is recommended that these tracks should now be shown on the Draft Map as 'byways open to all traffic'. They are the tracks which on the attached plan are lettered CDEG - EF and GJ and will be shown coloured green on a plan to be produced to the Sub Committee.

S. 12

23. There is no evidence of the Justices having made a Discontinuance Order as regards the track lettered GH (which will be coloured red on the plan to be produced to the Sub-Committee) but it is similar in character to the others and it is recommended that it also should be shown as a 'byway open to all traffic'.

S. 13

24. The track lettered ABC (which will be coloured yellow on the plan to be produced) is the subject matter of a Discontinuance Order but has never been shown on any Definitive Map as a public right of way, as it is considered that it should have been, and it is accordingly recommended that it should now be shown as a 'byway open to all traffic'.

S. 14

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RES.15 25. GENERAL. The Sub-Committee are also recommended to authorize that appropriate extracts from the existing Revised Definitive Map, further revised so as to show their decisions on the above matters and also any closures and diversions of paths which have been legally effected since the 17th March, 1960, be now sent to the Hailsham Rural District Council and the Parishes concerned for their observations in order that such observations may be considered by the Sub-Committee and the new Draft Map subsequently prepared for publication when any aggrieved person will be able to object to it.

J. Atkinson,
Clerk of the County Council.

11th May, 1971.

HL

14.1.3 The maps referred to are not with the minutes, but from the description these appear to include routes we are concerned with. It is recommended that they be added to the definitive map as byways. It is also recommended that certain other routes be upgraded from bridleways to byways.

14.1.4 The next minutes are the minutes of the meeting of 20th July. However it is clear that there had been a meeting on 15th June at which the report had been considered. From the

appearance of the routes on the definitive map I conclude that the committee had agreed with the recommendations. The routes were amended to be shown as byways.

14.1.5 There is no record of any consideration of Berwick bridleway 10. This could be because the committee did not consider it to be a byway, but since it is not mentioned in the report of the clerk, I suggest that the route was not considered because it was not mentioned in the West Fille minutes.

15. ADOPTION OF PART OF THE ROUTE

15.1.1 The East Sussex Highway Land team have provided me with a map, which they say predates the 1970s, showing that part of the application route had been adopted. An extract is shown below.



15.1.2 The significance of this evidence

15.1.3 The team has not been able to tell me how this part of the route came to be adopted, so it is difficult to say why this had occurred and by what mechanism but the route remains on the list of maintainable streets today.

16. A DEFINITIVE MAP MODIFICATION ORDER

16.1.1 The Highway Land team has also provided me with a copy of a definitive map modification order made in 1996. See below

FORMER HAILSHAM RURAL DISTRICT DEFINITIVE MAP AND STATEMENT

(Parishes of Alciston, Arlington, Berwick, Chalvington, Pevensey, Polegate, Ripe, Selmeston, Westham and Wilmington)

East Sussex County Council (Former Hailsham Rural District - No. 8) Definitive Map Modification Order 1996

16.1.2 The order appears to be a “tidying up order”, making a number of modifications which resulted in changes over previous years.

16.1.3 What this evidence shows

16.1.4 Changes are to be made to bridleway 10a because it is an adopted highway over which maintenance has been resumed in 1966.

23	Berwick	BR10a	Adopted Highway, Resumption of Maintenance 8 March 1966	1
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16.1.5 10a is to be deleted.

PEVENSEY, POLEGATE, RIPE, SELMESTON, WESTHAM AND WILMINGTON)

a) Description of paths to be deleted.

Ref No	Parish/Town	Path No	Description	Map No
20	Berwick	BR15	Part of the public bridleway running in an east-south-easterly direction to its junction with the parish boundary at public bridleway Arlington 62 between points J-K on the map and having a length of approximately 63 metres.	2
21	Berwick	BR6b	Part of the public bridleway running in an east-south-easterly direction from a point just west of its junction with the public highway to a point south of the Old Rectory between A-B on the map and having a length of approximately 178 metres.	1
22	Berwick	FP2b	Part of the public footpath running from its junction with the public highway just north of Berwick Railway Station in a north-north-easterly direction between points B-A on the map and having a length of approximately 77 metres.	2
23	Berwick	BR10a	Part of the public bridleway running in a south-westerly direction from its junction with the public highway adjacent to the Sunday School and with footpath 5c between points A-B on the map and having a length of approximately 135 metres.	1

16.1.6 It is not known if there were any objections to the order. It may have been seen as just a tidying up exercise of no importance.

16.1.7 The significance of this evidence

16.1.8 This evidence explains why bridleway 10a was taken off of the definitive map and statement. But I suggest that it was done incorrectly. It is widely believed that a route should not be on the definitive map and statement if it is maintainable by the highway authority, but this is not the case. The question is whether or not the route is more used by motorised vehicles than by walkers, pedestrians and cyclists. The evidence suggests that this issue was not considered. the test for a legal event order in s.53(3)(a)(ii) is whether 'a

highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description'. Merely resolving to 'resume' maintenance as a road does not cause the highway to cease to be a highway of the description of bridleway. If it was considered to be wrongly recorded, the proper approach was to make a definitive map modification order under s.53(3)(c)(ii) to record the way as a BOAT — but only if it satisfied the BOAT character test. There is no power in s.53 to remove a public path from the definitive map merely because it is now being maintained as a road.

16.1.9 Although a route cannot be on the list of maintained streets if there are no public rights over it, there is now no record of what those rights are.

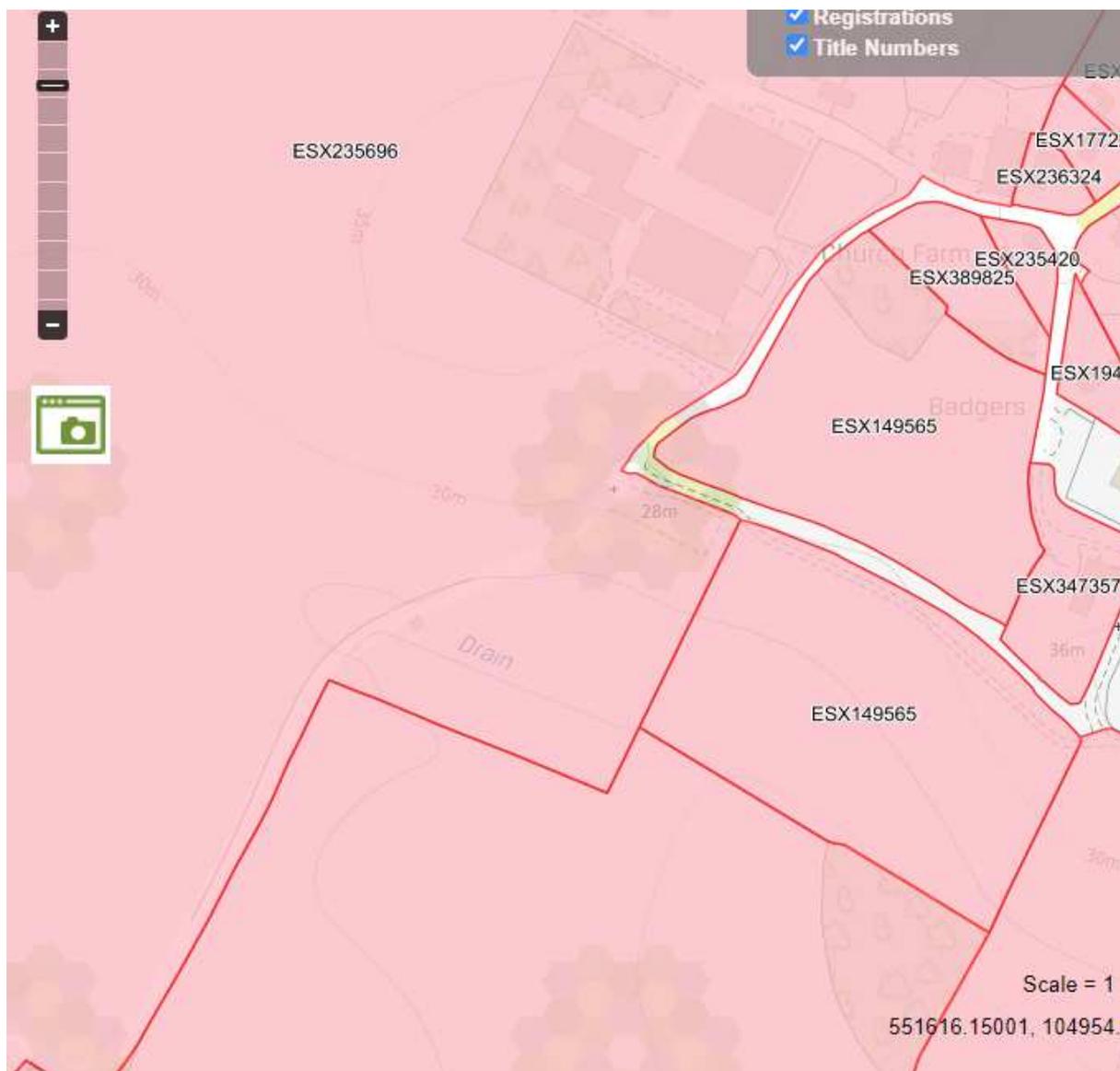
17. CURRENT OWNERSHIP

17.1.1 The evidence presented below

17.1.2 This evidence is taken from the land registry online map

17.1.3 What this evidence shows

17.1.4 The northern part of the route is not registered. The southern part is part of land parcel ESX234696 which also includes Church Farm, which adjoins the northern part of the route.



17.1.5 The significance of this evidence

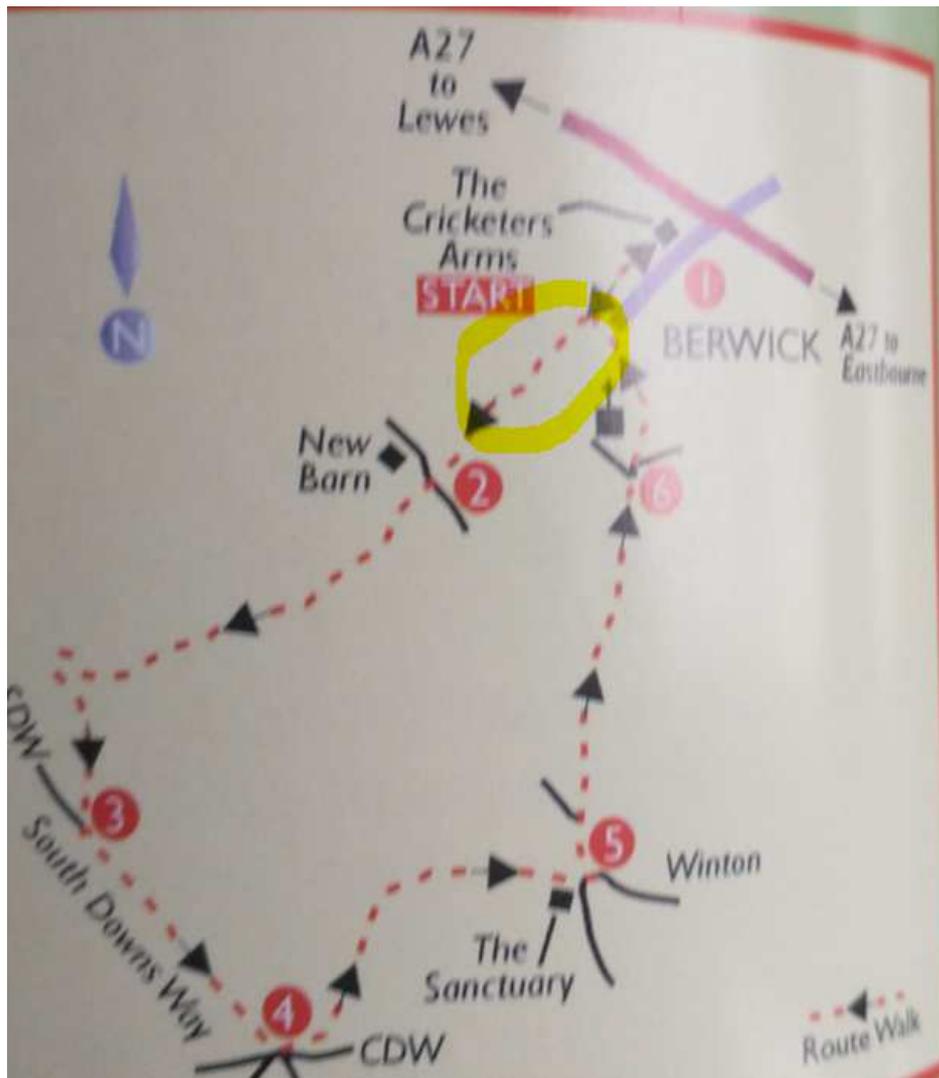
17.1.6 In accordance with long-standing convention, any frontager's title is shown as excluding public roads, because the title is subject to the presumption of *ad medium filum*. The highway authority will own the surface of the road if it is publicly maintainable, regardless of what is shown in the register of title (and such vesting is not registered). The highway authority never owns the soil of the highway unless it expressly has acquired it (for example, for road improvements). Similarly the fact that the route is part of a land parcel does not mean that it is not public.

17.1.7 Any use of the southern section by vehicles from Church Farm would not be public use.

18. CURRENT USE

18.1.1 The application route is a very popular footpath. It is in an area of the Downs that sees a lot of walkers. Probably because of this, walks over the route are described in a number of walks guides in my collection.

18.1.2 In "Pub Strolls in East Sussex published by Countryside Books the route is shown in

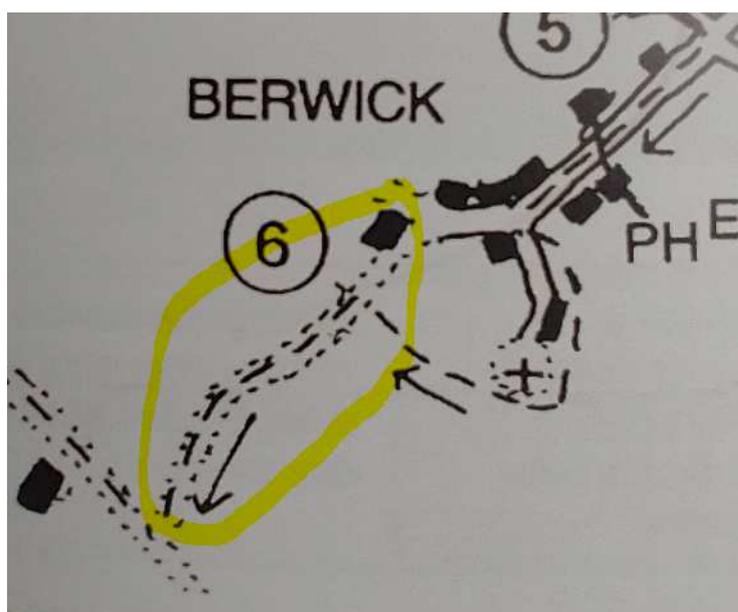


Walk 11

18.1.3 In "East Sussex Walks" published by the Evening Argus the route is used in the first walk in the book



In "Village Walks in East Sussex" published by the Countryside Press the southern part of the route is used.



18.1.4 At the northern end of the route there is a (rather decrepit) sign indicating that the route is a bridleway and that only farm vehicles are allowed beyond the sign



18.1.5 A little to the south of this sign, by the side of Church Farm is a gate which is can be closed across the way, with a smaller gate suitable for equestrians at the side. The route is surfaced with rough concrete.



18.1.6 South of point B the track becomes unsurfaced on bare chalk.



18.1.1 I have personally walked this route about 3-4 times a year over the last 22 years and have only seen farm vehicles using the route on one or two occasions.

18.1.2 The significance of this evidence

18.1.3 The evidence suggests heavy use by walkers. The sign at the north end is likely to deter public vehicular use, although I believe it to be incorrect. The gate and concrete surface do not suggest a maintained road, but rather one with public rights which is not maintained. The surface of the southern part of the route would deter ordinary vehicular users. Any use by farm vehicles from Chapel Farm over this stretch would not be public use.

So I conclude that use by pedestrians, equestrians and cyclists exceeds public vehicular use and that the route should be on the definitive map.

19. CONCLUSION

19.1.1 There are, at the moment, no recorded rights over part of the route, and the main purpose of this application is to record them.

19.1.2 So far as I know, no one disputes that there are public rights over the whole route. It is just a question of deciding what they are and how they should be recorded.

19.1.3 There are two issues- firstly whether or not it was correct to take 10a off of the definitive map and secondly whether the route should be shown as a byway or a bridleway. I suggest that the bulk of the evidence shows that the route is historically a road and that it was wrong to take part of it off of the definitive map.

19.1.4 The test at this stage for B-C "Can it reasonably be argued that the right of way exists as suggested".

19.1.5 For A-B and for all the route at confirmation of any order is "Is it more likely than not that the right of way exists as suggested".

19.1.6 I believe this application passes both of those tests.

20. REQUEST

I request the surveying authority to add the route to the definitive map as a restricted byway from point A to point B and a byway open to all traffic between B and C.