

Date: 12 February 2021

Report To: Team Manager, Rights of Way and Countryside Team, Communities, Environment & Transport

Title of Report: Claimed Public Footpath: Adding a public footpath from the southern end of existing public footpath Tarring Neville 1 at TQ 4439 0301 to join existing public footpath South Heighton 17a at TQ 4439 0255.

Purpose of Report: To consider whether public rights of way exist under Section 53(5) of the Wildlife and Countryside Act 1981 for an Order modifying the County Council's Definitive Map and Statement of Public Rights of Way.

RESOLUTION OF THE DIRECTOR OF COMMUNITIES, ENVIRONMENT AND TRANSPORT in accordance with the delegation agreed by the Governance Committee on 23 January 2018, I approve the recommendation of the report.

SIGNED:



DATE: 12th February 2021

BREAKDOWN OF SECTIONS

SECTION A – Introduction, Description of Route, Land Ownership

SECTION B – Evidence provided in the Application

SECTION C – Consultation Process

SECTION D – Collation of Evidence of Use

SECTION E – Council's Review and Response

SECTION F - Conclusions

East Sussex County Council ("The Council") makes its comments on the evidence throughout the report. Where the Council is making its own comment on a particular piece of the evidence, it will be written underneath it, indicated as 'Council:'

SECTION A – Introduction, Description of Route, Land Ownership

1. Introduction

- 1.1 An application has been received by the County Council (“the Council”) to make an Order modifying its Definitive Map and Statement for the Lewes area by adding a public footpath. Mr Christopher Smith submitted the application on 4 July 2018 on behalf of the Open Spaces Society, 25A Bell Street, Henley-on-Thames RG9 2BA.
- 1.2 The Applicant has not added numbered or lettered points along the course of the claimed route however the Council has added lettered reference points showing the claimed route between the points A-B-C-D as on the accompanying report map.
- 1.3 The application was accompanied by historical documents and associated paperwork. An Applicant’s Statement has been submitted to substantiate the claim along with Appendices 1-4. This written evidence is based on historical mapping evidence and other reports and documents. It presents maps and paperwork along with a discussion and analysis as to what they show to support the claim.
- 1.4 No user evidence has been provided in support of the application.
- 1.5 The Applicant has outlined the claimed route as below:

Adding a footpath from an end-on junction with footpath Tarring Neville 1 at the parish boundary at grid reference 544395 103008 to the riverside path South Heighton 17, at grid reference 544391 102555 and shown on the map accompanying this application.

- 1.6 After carrying out an initial investigation, the Council is satisfied that all relevant application forms have been received and all the relevant landowners have been notified of the application by the Applicant. The Application form (Schedule 7), Notice of Application (Schedule 8), Certificate of Service (Schedule 9) and application map (DMMO plan) respectively have been correctly completed and provided with the Applicant’s evidence.

2. Legal Position

- 2.1 The application has been made under Section 53 of the Wildlife and Countryside Act 1981 which requires the authority to keep the Definitive Map and Statement of public rights of way up to date and amend it where necessary.
- 2.2 The Statutory Test - Section 31 of the Highways Act 1980 states that a highway can be created if there are 20 years uninterrupted use of it by the public. The onus falls on the landowner to show that he/she did not intend to dedicate it as a public right of way. This can be by means of notices, verbal challenges, locked gates, barriers or depositions with the Highways Authority. A path may also be deemed to have become a public right of way under common law over a shorter period of time if the landowner has acquiesced to the public use.
- 2.3 A decision must be based on a consideration of all available relevant evidence. It is a question of whether or not public rights exist or can be reasonably alleged to exist. The desirability and/or suitability of having a public right of way cannot be taken into account under either the Highways Act 1980 or the Wildlife and Countryside Act 1981. This report only considers whether highway rights exist along the claimed route. It is not within the scope of the report to consider the implications of having a right of way where one has been claimed.

- 2.4 In essence, dedication of a right of way may be presumed where the public have actually enjoyed use of the claimed route for 20 years, without interrupted, as of right.
- 2.5 This is not applicable in this case as no user evidence has been provided. However, the Highways Act 1980, section 32 sets out how any court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was compiled, and the custody in which it has been kept and from which it is produced.

3. The Common Law Test

- 3.1 A path may also be deemed to have become a public right of way under common law over a shorter period of time if the landowner has acquiesced to the public use.
- 3.2 Dedication at common law is possible if the landowner has dedicated the way and the public have accepted such dedication. Mr Justice Dyson held in the case of *Nicholson v Secretary of State for the Environment (DC) (1998) 76 P & CR 191* that:

The more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication.

4. The Standard of Evidence

- 4.1 There are two tests that must be applied, as set out in the case of *R v Secretary of State for the Environment ex parte Mrs Norton and Mr Bagshaw (1994) 68 P&CR 402*.

Test A: Does a right of way subsist on the balance of probabilities? This requires clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a public right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.

- 4.2 The Council should make the Order if either of the tests is made out.
- 4.3 Burden of Proof - The onus falls on the landowner to show that he/she did not intend to dedicate the claimed route as a public right of way. This can be by means of notices, verbal challenges, locked gates, barriers, or depositions (made under section 36 of the Highways Act 1980) submitted to the Council.
- 4.4 In terms of submitting an application such as this based on historical evidence, for example OS mapping, Tithe maps and maps of the Finance Act 1910, the Council has to consider whether the evidence confirms if a public right of way is reasonably alleged to exist. The Council also needs to consider if the evidence is new evidence that was not assessed in the past.
- 4.5 The relevant statutory provisions which apply to adding a path to the Definitive Map and Statement are contained in the Wildlife and Countryside Act 1981 [sections 53(3)(b)]

[and] [53(3)(c)(i)] which require the Council, as the Registration Authority, to modify the Definitive Map and Statement following: -

“the expiration in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path” (s53(3)(b))

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;” (s53(3)(c)(i)).

5. Description of the Claimed Public Footpath

5.1 The Applicant claims the southern end of the footpath goes to the riverside on South Heighton 17 at TQ 4439 0255. South Heighton 17 at or near this location is now subdivided into footpath South Heighton 17a and footpath South Heighton 17b, with the addition of footpath South Heighton 21 running close by and parallel about 8 metres to the East. There was a discussion with the Applicant at the start of the investigation about the precise location of the southernmost point of the claimed route. The Applicant thought this to be just south of the northernmost point of South Heighton 17a, as per his grid reference of TQ 4439 0255. Comparing this point to the Applicant’s map (based on a historical base map) and seeing that the line of the Applicant’s claimed route on this map reached the riverbank at about the location of a water course (drain) entering the east bank of the River Ouse, and being able to identify this water course on today’s maps, the Council agrees with the Applicant that their location of TQ 4439 0255 is approximately just south of the northern end of South Heighton 17a and that TQ 4439 0255 is an accurate grid reference for this location. The Council will use TQ 4439 0255 going forward. However, should the investigation and evidence suggest that TQ 4439 0255 is not the location of the southernmost point of the claimed route, the Council will amend this location as applicable. According to the Council’s maps and Definitive Statement, the point where South Heighton footpaths 17a, 17b and 21 all meet is TQ 4438 0256.

5.2 The Applicant’s route falls within the civil parish of South Heighton in the Lewes District of East Sussex about 1 mile north of the centre of the coastal town of Newhaven and about 5 miles south south-west of the county town of Lewes. It lies within the South Down National Park. The claimed route is about half a mile West of South Heighton Village Green which is located on Heighton Road within the urban area of the village of South Heighton. The immediate area of the claimed route itself is rural, falling across grassy fields, passing close by an oxbow lake of the River Ouse and crossing over the railway line between Lewes and Seaford.

5.3 Due to the Covid-19 pandemic which was still ongoing at the time of this report, Council’s restrictions do not allow for site visits on grounds of health & safety, apart from those absolutely necessary (which is not applicable to this application). Therefore, unfortunately it has not been possible to carry out a site visit for this application. We do not feel this has affected the assessment of the application. However, we will endeavour to carry out an inspection when circumstances allow and it is deemed necessary.

5.4 However, using the Applicant’s map and the Council’s mapping systems including aerial imagery, the following description can be given. The description is simplified and approximate, based on the mapping evidence, and subject to correction and change in

light of further information. The Applicant has not used any referenced points in his submission and the Council has suggested points A-B-C-D to assist the application.

5.5 The route begins at point A at the southernmost point of footpath Tarring Neville 1 at TQ 4439 0301, close to the riverbank of an ox-bow lake of the River Ouse on the land owned by the Glynde Estate. It then travels in a generally south-east direction for approximately 30 metres over grassland or meadow along the riverbank to approximately TQ 4442 0300. It then continues in a generally south south-easterly direction for approximately 35 metres over grassland or meadow near the riverbank to approximately TQ 4443 0296. It continues in a generally south south-westerly direction either through, next to or near a row of trees/woodland first near the riverbank and then gradually moving away from it through a field for approximately 120 metres to approximately TQ 4439 0284 at point B. It then crosses the land owned by Network Rail, running from B at TQ 4439 0284 continuing in a generally south-westerly direction across the railway line and through scrubby ground and bushes for approximately 35 metres until it reaches the land owned by East Sussex County Council at approximately TQ 4436 4283 at point C. From here it travels across the land owned by East Sussex County Council in a generally southerly direction for approximately 275 metres across what looks like open grassland and field, crossing the northern part of footpath South Heighton 21 at approximately TQ 4439 0256 and terminating near the northern tip of footpath South Heighton 17a, on the riverbank, at approximately TQ 4439 0255 at point D.

5.6 From the aerial image there appears to be a path marked in the grass from point A to TQ 4442 0300. This may be a continuation of a path from the West along the riverbank, which could be Tarring Neville 1, or the used route of it, given that Tarring Neville 1 has been inaccessible to the public for many years, possibly decades. There does not appear to be any other trace of the claimed route from the aerial images. Between C and D there are various channels or bumps in the ground seen from the satellites, but it cannot be told if these are paths, natural features or man-made features. The route is of a rural nature, generally riverbank and open grassland thought to be for grazing animals and partly given up for the course of the railway line.

5.7 The total length of the route is thought to be approximately 495 metres, or c. 0.31 miles.

6. Land Ownership

6.1 Upon conducting a Land Registry search, it was revealed that the claimed route runs over land owned by the Glynde Estate, Network Rail and East Sussex County Council. This is detailed and outlined in the following table below.

6.2 Table 1 – Land Ownership

Number	Title Number	Name	Years of ownership (according to Land Registry)	Section of claimed route
1	<p>ESX277821</p> <p>Land lying to the west of South Heighton Farm, South Heighton, Newhaven (BN9 0JH).</p>	<p>Simon Jonathan Atkinson and The Right Honourable Caroline Virginia Viscountess Hampden of 21 Buckingham Gate, London SW1E 6LS.</p>	<p>26 May 2011</p> <p>Presumed part of the larger Glynde Estate prior to this.</p>	A-B
2	<p>Unregistered land, the railway line between Lewes and Seaford</p>	<p>Established it is owned by Network Rail.</p> <p>Contact: Pamela Elkington (Liability Negotiations Adviser Wessex) Network Rail Campus, Gresley Road Basingstoke, Hampshire RG21 4FS. Pamela.elkington@networkrail.co.uk</p>	Not known.	B-C
3	<p>ESX88026</p> <p>Land lying to the North West of New Road, Newhaven.</p>	<p>East Sussex County Council of (Legal & Democratic Services), County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1SW</p> <p>(The Council has liaised with John Tripp, Senior Estates Surveyor, County Hall, Lewes).</p>	18 January 2013	C-D

6.3 Adjoining land

6.4 It is not thought the following is land over which the claimed route falls upon, but land which the claimed route goes to at point D.

Table 2 – Adjoining Land Ownership

4	ESX317333 Foreshore and bed of the River Ouse, Piddinghoe, Newhaven.	The Queen's Most Excellent Majesty in Right of Her Crown Care of The Crown Estate Commissioners, 1 St James's Market, London SW1Y 4AH.	6 August 2008.	NA
---	---	---	----------------	----

SECTION B – Evidence provided in the Application

APPLICANT'S EVIDENCE

7. Evidence in Support of the application from the Applicant

7.1 Applicant's Statement – Table 2 below contains historical maps and evidence provided by the Applicant in their Applicant's Statement in order to support the claim of the footpath. This evidence has been checked where possible.

This table also includes The Council's comments on the Applicant's evidence as well as other evidence and maps it has found itself, combining its research with that of the Applicant's.

The Council has carried out its own historical research on the area of the claimed footpath. This is summarised in the table below. The full research and accompanying maps are contained in the file of evidence.

7.2 Historical and Medieval County maps

The Council holds its own copies of a number of historic maps of the County of Sussex. The majority of these, while providing an interesting record of historical place names and approximate locations, such as John Norden's 1595 map and John Ogilby's 1675 map, do not provide the level of accuracy, provenance and detail required, and are of too large a scale, to realistically support the existence of historical public rights of way. This principle also applies to the maps by Budgen (1724) and Overton & Bowles (c. 1740).

The Council will consult its copy of the Gardner & Gream (1795) map which helpfully appears to show more detail such as field boundaries and more minor roads. In a similar manner the Christopher & John Greenwood (1825) map will also be reviewed.

However, little weight can be applied to this type of evidence as they were not created to record public rights of way.

7.3 The Keep – East Sussex Record Office

Officers have visited the East Sussex Record Office, known as The Keep (www.thekeep.info) at Falmer to inspect historical records where applicable and necessary. These may typically include resources such as railway records, Finance Act (1910) documents, Estate maps, the Inclosure Award index and the Council's paperwork concerning preparing the Definitive Maps, which may include surveys and objections. Usually, these resources will only be checked and reviewed further if such evidence is raised by the Applicant, however the Council will check the parish and Ramblers surveys to see if there is anything relevant. Beyond this, the onus is on the Applicant to carry out relevant research at The Keep, or elsewhere, and to provide that to the Council as part of their evidence. It is not always considered necessary for the Council to go in search of information not mentioned by the Applicant in their evidence or to seek out further documentation to support the Applicant's point of view. However, the Council will review, include and act upon any relevant and additional evidence it finds during the course of its investigations, beyond that provided by the Applicant.

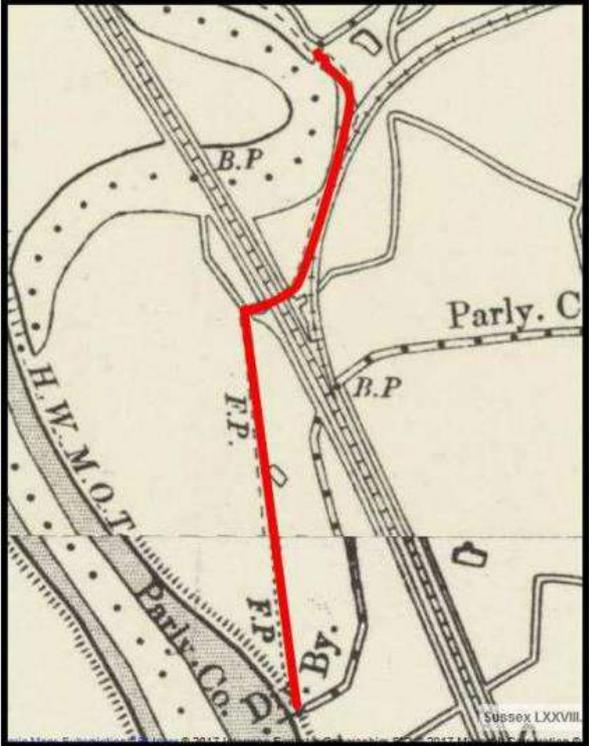
Historic OS maps were obtained from the website of the National Library of Scotland (www.nls.uk). The Council will only carry out a limited search of the OS maps, and similar 20th century 'Old Touring' maps and 'Rural District' maps because such maps contain a disclaimer that states that their maps do not confirm, convey or confer in any way the status or nature

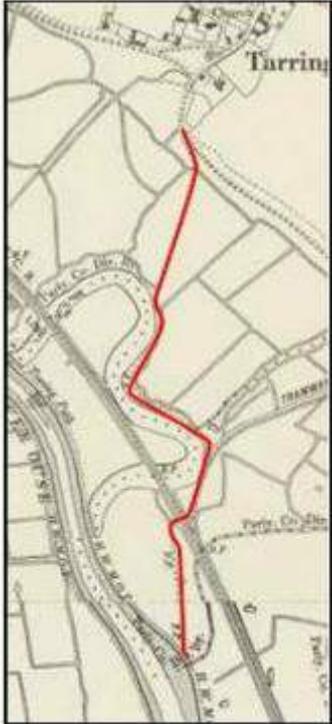
of the routes shown. It is considered that they are generally produced to show physical features on the ground and remain silent on whether a route is a public right of way or not.

Tithe maps, the Quarter Sessions Index, the Council's original 1950s and 1960s draft, provisional and definitive maps, relevant surveys, Deposit records, Highway Terrier and current Definitive maps can all be inspected on the Council's internal systems and will be consulted as standard even if the Applicant has not referred to them.

At the time of writing this report the Covid-19 pandemic is reducing the opening frequency and opening times of the Keep and impacting on the services it provides. The number of documents available to be seen on one day is limited. This has reduced the number of times the Council can visit the Keep and the amount of time it can spend there. Priority was given to seeing those documents which give considerable weight to the investigation.

7.4 Table 3 – The Applicant's Statement with the Council's comments and its own research

Applicant's Statement Numbered Point or Council's own Map No.	Document Name (Bold=Applicant's evidence)	Summary of Applicant's Comments (from Applicant's Statement) And Council Comments
	The Application Route	 <p>(The base map is the first edition of the Ordnance survey six inch to the mile map, chosen because it clearly shows the route and because most of the significant</p>

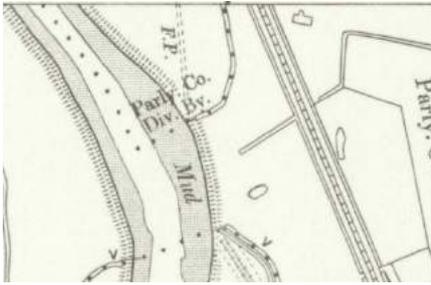
		<p>features, such as the river and the main line railway are still in place)</p> <p>The application route runs from an end-on junction with footpath Tarring Nevill 1 at the parish boundary at grid reference 544395 103008 to the riverside path South Heighton 17, at grid reference 544391 102555</p> <p>The route is in South Heighton Parish,</p> <p>None of it is currently on the definitive map or statement.</p> <p>Application is being made to add the route to the definitive map and statement as a footpath.</p> <p>The path being applied for is referred to here as the “application route”.</p>
	<p>The path as a whole</p>	 <p>The application route is part of a path that runs from the main road at Tarring Neville to the bank of the River Ouse. The northern part of the route is in Tarring Neville parish and is recorded on the definitive map and statement as Tarring Neville footpath 1.</p>

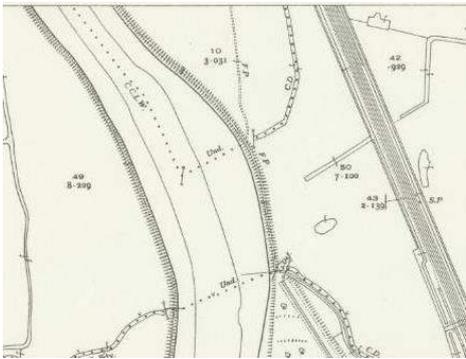
		References in this document to “the path as a whole” refer to the whole route from Tarring Neville to the River.
	The Council:	Tarring Neville 1 is on the Council’s definitive map, although has not been accessible to the public for many years. While it may join up with the claimed route to make one longer ‘path as a whole’ as the Applicant states, it is a separate footpath running from the A26 Beddingham Road at TQ 4435 0358 to the parish boundary at TQ 4439 0301. However, should the claimed route be accepted and join up with this it would form one long footpath from the A26 to the River Ouse, changing name only as a result of crossing the Tarring Neville and South Heighton parish boundary.
1	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, that it can reasonably be asserted that highway rights exist. 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.
	The Council:	The purpose of this report is to discuss and determine the status of the claimed route. The Council agrees that, as the surveying authority, it needs to have a discovery of evidence which shows that it can be reasonably alleged that highway rights exist.
2	Historic Maps	The claimed route does not appear on any early, privately produced maps. I do not think anything can be inferred from this as these maps rarely showed footpaths.

	The Council:	From the historical maps inspected as maps 1 and 2, as below, the claimed route does not appear to show on them.
1	1795 Gardner and Gream map	<p>The River Ouse is shown using the course which is today broken off into an ox bow lake. There appears to be a dotted line running along the eastern bank/side of the river north-south which could be a path crossing the claimed route.</p> <p>The claimed route is not shown.</p> 
2	Christopher and John Greenwood's Map of Sussex (1825) (1" to 1 mile)	<p>The River Ouse is shown using the course which is more like that used today and the old course appears to be breaking off into a narrower channel or ox bow lake. There appears to be a dotted/dashed line running along the eastern bank/side of the river north-south which could be a path crossing the claimed route. There is also a similar line going from the river towards the land between Tarring Neville and South Heighton.</p> <p>The claimed route is not shown.</p>

		
3	FIRST EDITION OF THE ORDNANCE SURVEY 1" MAP	<p>The application route does not appear on the first edition of the Ordnance Survey 1" map. I do not think that anything can be inferred from this as footpaths did not normally appear on these maps.</p>
	The Council:	The Applicant has not provided a copy of this map.
3a	OS Map Sussex LXXVII 6 inch to 1 mile 1879	<p>This does appear to show a track of some kind along the same route, or close to it, as claimed.</p> 
3b	OS Map Sussex LXXVIII 6 inch to 1 mile 1879	<p>This does appear to show a track of some kind along the same route, or close to it, as claimed.</p> 

<p>4a</p>	<p>OS Map Sussex LXVII.15 25 inch to 1 mile 1899</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P.' as claimed.</p> 
<p>4b</p>	<p>OS Map Sussex LXXVIII.3 25 inch to 1 mile 1899</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P.' as claimed.</p> 
<p>5a</p>	<p>OS Map Sussex LXVII.SE 6 inch to 1 mile 1911</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P.' as claimed.</p> 

<p>5b</p>	<p>OS Map Sussex LXXVIII.NE 6 inch to 1 mile 1911</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P' as claimed.</p> 
<p>6a</p>	<p>OS Map Sussex LXVII.SE 6 inch to 1 mile 1933</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P' as claimed.</p> 
<p>6b</p>	<p>OS Map Sussex LXXVII.NE 6 inch to 1 mile 1933</p>	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P' as claimed.</p> 

7a	OS Map Sussex LXVII.15 25 inch to 1 mile 1943	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P' as claimed.</p> 
7b	OS Map Sussex LXXVIII.3 25 inch to 1 mile 1940	<p>This does appear to show a track of some kind along the same route, or close to it, annotated as 'F.P' as claimed.</p> 
4	Turnpike Plans	<p>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</p>

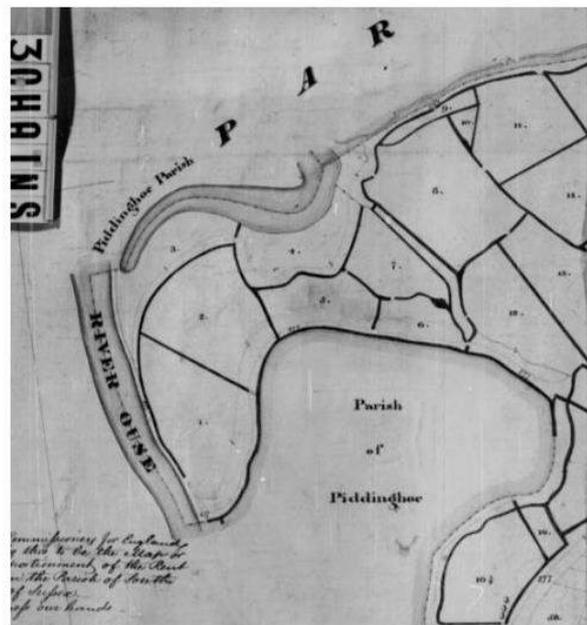
		<p>bill being thrown out and a rival organisation being given permission.</p> <p>There are no turnpike plans relevant to this application.</p>
	The Council:	The Council accepts the Applicant's statement that there are no turnpike plans relevant to this application.
5	INCLOSURE RECORDS	The application route does not appear to be covered by any inclosure order
8a-8c	The Council:	<p>The Council has checked the Inclosure record book and agrees with the Applicant, that there is no record of any Inclosure affecting the claimed route.</p> <p>The Inclosure Book is found at the Keep, in the Reading Room, under the map table, in drawer '22-18-01', also labelled '41'.</p> 
6	TITHE RECORDS	<p>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.</p> <p>The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for</p>

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. Tithe maps and apportionments for East Sussex are available on line on the East Sussex County Council web site at <https://apps.eastsussex.gov.uk/leisureandtourism/localandfamilyhistory/tithemaps/>

Tithe maps are also held at the national archive where access is given via access to the Geneologist web site

The map below is taken from this web site. The application route is not shown.



The map shows that the application route passed through land parcels 1,2 and 4. The East Sussex web site has information about these appportionments. This information is set out below.

Apportionments

Plot	LandOwner surname	LandOwner first name	Occupier surname	Occupier first name	Farm name	Land Description	Cultivation	
1	Bates	John	Geere	Charles		The Halls	Pasture	Details
2	Bates	John	Geere	Charles		The Halls	Pasture	Details
3	Bates	John	Geere	Charles		The Salts	Pasture	Details
4	Geere		Geere			The Salts	Pasture	Details

I think only a very limited amount can be inferred from this information. An examination of the South Heighton tithe map reveals that footpaths were not shown on it. The link below will take you to the map on the East Sussex Council web site. The link is to the part showing the application route, but you can navigate round the whole map.

https://apps.eastsussex.gov.uk/leisureandtourism/localandfamilyhistory/tithemaps/MapViewDual.aspx?ID=112709&X=544482.508&Y=103020.0965&SF=1.5875&Ref=&L=tm_south_heighton&px=0&py=0

However, it should be noted that the land through which the application route is described as “pasture”. This is compatible with the existence of a footpath.

9

The Council:
Tithe Map as on the Council’s internal ‘Heritage Viewer’ (HV).

Title: South Heighton tithe

Description: By W. Figg, Lewes.
26.6 in. to 1 m.
29.5x89

The Council agrees that the claimed route appears to go through Apportionments 1, 2 and 4.

Date:1841

Ref No: TD/E65



There does not appear to be any route as claimed that is not tithed and it appears that the claimed route was subject to tithe taxation and therefore not public.

The Apportionment table below matches that provided by the Applicant, and it seems the whole land over which the claimed route falls is under cultivation of 'pasture'.

Apportionments

Plot	LandOwner surname	LandOwner first name	Occupier surname	Occupier first name	Farm name	Land Description	Cultivation	
1	Bates	John	Geere	Charles		The Halls	Pasture	Details
2	Bates	John	Geere	Charles		The Halls	Pasture	Details
3	Bates	John	Geere	Charles		The Salts	Pasture	Details
4	Geere		Geere			The Salts	Pasture	Details

The Tithe map evidence does not support the application.

7

RAILWAY, CANAL, RIVER AND SIMILAR DEPOSITED PLANS

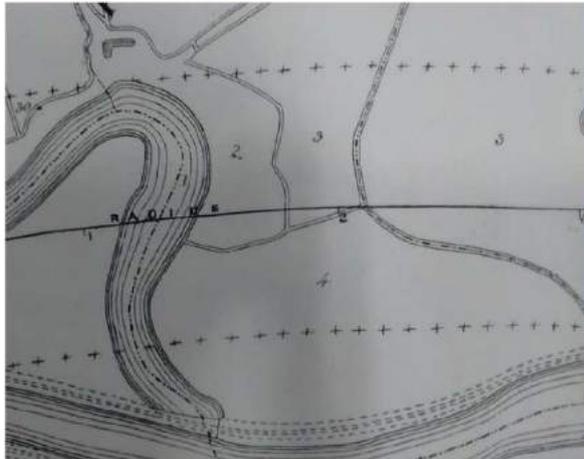
The railway deposited plan

Companies wishing to build railways or canals or similar were required to show the owners of all the land within a certain distance of the proposed railway, 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 railway's construction

The 1845 deposited plan for the railway that railway that was built between Lewes and Seaford is held at the East Sussex Record Office at the Keep under reference QDP/218/1. The book of reference for the same railway is held under reference QDP/218/2.

They are reproduced as appendices 1 and 2 in this statement.

Below is the relevant section of the plan



Here is the relevant extract from the book of reference.

P parish of South Mighton — in the County of Sussex.

DESCRIPTION OF PROPERTY.	NAME OF OWNER OR REPUTED OWNER.	NAME OF LESSEE OR REPUTED LESSEE.	NAME OF OCCUPIER.
1. <i>piece of Old Kew</i>	<i>The Trustees of the Sea-Looce Navigation</i>		
2. <i>pasture</i>	<i>Thomas Wainwright</i>		<i>Thomas Wainwright</i>
3. <i>pasture</i>	<i>Thomas Wainwright</i>		<i>Thomas Wainwright</i>
4. <i>pasture</i>	<i>Henry William Bates</i>		<i>Henry William Bates and John Spink</i>

Neither records the application route. This may be because the application route came into existence later or it may be that the deposited plan is inaccurate.

The Council:

The Council agrees. These documents were put on public display, held on deposit and advertised in the local newspaper as well as coming before Parliament. A high degree of accuracy, research and attention to detail was applied to them.

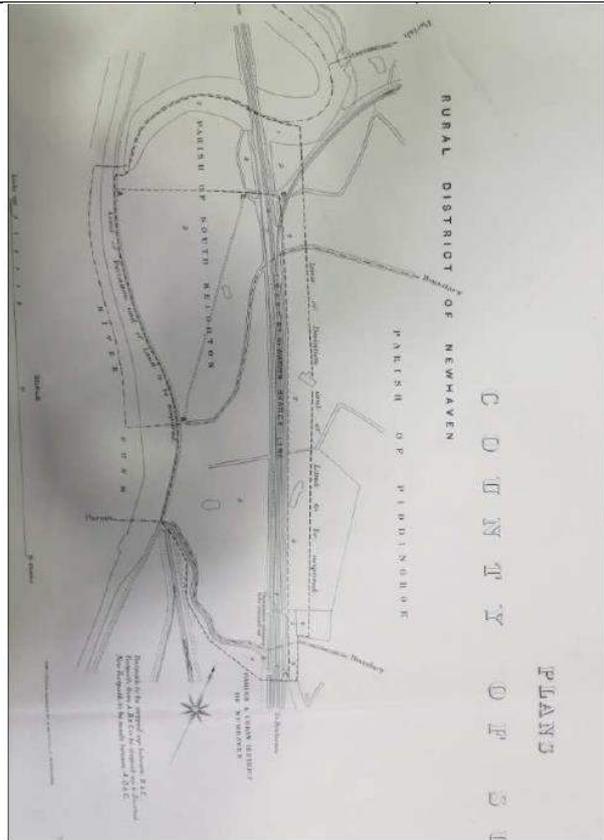
Railway Plans (Applicant's Appendix 1)

The claimed route cannot be seen on the Railway Plans. It looks like the claimed route would pass through property numbers 4 and 2 and possibly 3.

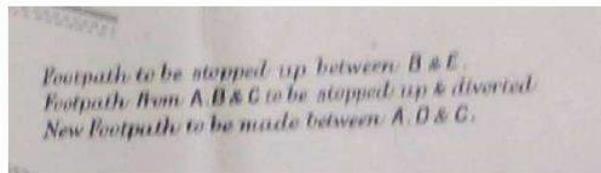
Book of Reference (Applicant's Appendix 2)

		<p>This states that properties 4,2 and 3 are Pasture. It does not mention the claimed route.</p> <p>The 1845 Railway Plans do not support the application.</p>
<p>8</p>	<p>THE LONDON BRIGHTON AND SOUTH COAST RAILWAY ACT 1914</p> <p>(‘The 1914 Railway Act’)</p>	<p>From time to time the London, Brighton, and South Coast railway, along with other railways, promoted private acts in order to carry out minor work that required legislation.</p> <p>In 1914 the Company sought and obtained such an Act. The act is held at the Parliamentary archive under reference Local Act 1914 c. cii. London Brighton and South Coast Railway. It is reproduced in full in appendix 3, but relevant excerpts are set out below.</p> <p><small>22.—(1) The Company may in the manner shown on the deposited plans divert the public footpath in the parish and urban district of Newhaven in the county of Sussex leading from the roadway on the eastern side of the Company's Newhaven Branch Railway crossing the Company's said railway on the level and passing along the northern boundary of the Company's north quay to the eastern bank of the River Ouse and subject to the provisions of this Act may stop up and cause the said existing footpath to be discontinued as a footpath.</small></p> <p><small>(2) The Company may in the manner shown on the deposited plans divert the public footpaths over the lands in the said parishes of Piddinghoe and South Heighton which may be acquired under the powers of this Act and subject to the provisions of this Act may stop up and cause to be discontinued as a footpath so much of each such footpath as is shown on the deposited plans as to be stopped up.</small></p> <p><small>29</small></p> <p>This section of the act specifies that there is a public footpath running from the road on the East side of the railway in Newhaven which crosses the railway and then passes along the north quay, which is to be stopped up. This is not part of the application route.</p> <p>It also specifies that there are public footpaths in Piddinghoe and in South Heighton which may be stopped up. These footpaths are shown on the deposited plans</p>

		<p>A.13, 1914. Special provisions affecting stopping up of footpaths at Newhaven and Mitcham.</p> <p>23. The stopping up of the footpaths in the said parishes of Newhaven Piddinghoe and South Heighton and in the said parish of Mitcham shall not take place until two justices shall have certified in the case of the footpaths in the said parishes of Newhaven Piddinghoe and South Heighton that the new footpath or footpaths to be constructed by the Company as shown on the deposited plans has or have been completed to their satisfaction and is or are open for public use and in the case of the footpaths in the said parish of Mitcham that the new footpath to be constructed by the Company and referred to in the section of this Act of which the marginal note is "For protection of the rural district council of Croydon" and the footbridge across the Company's Wimbledon and Croydon Railway have been completed to their satisfaction and are open for public use. As from the date of the certificate by the justices in the case of the footpaths in the said parishes of Newhaven Piddinghoe and South Heighton all rights of way over or along the existing footpaths or portions thereof shown on the deposited plans as to be stopped up shall be extinguished and as from the date of the certificate by the justices in the case of the footpaths in the said parish of Mitcham all rights of way upon across and alongside of the Company's railway between the site of the said footbridge and Beddington Lane shall be extinguished and the Company may appropriate and use for the purposes of their undertaking the site of the footpaths or portions of footpaths in the said parishes of Newhaven Piddinghoe South Heighton and Mitcham as far as the same are bounded on both sides by lands of the Company.</p> <p>As to private rights of way over lands taken compulsorily or footpaths stopped up.</p> <p>24. All private rights of way over any lands which shall under the powers of this Act be acquired compulsorily and over any footpaths authorised to be stopped up shall as from the date of such acquisition or stopping up be extinguished. Provided that the Company shall make full compensation to all parties interested in respect of any such rights and such compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.</p> <p>Section 23 specifies that the paths referred to in section 22 can only be stopped up when new paths in Newhaven, Piddinghoe and South Heighton set out in the deposited plans have been inspected and seen to be open.</p> <p>Section 24 refers to other private rights, emphasising that the paths set out in sections 22 and 23 are public.</p> <p>The deposited plans for this Act are held at the Keep in a document held under reference QDP 727/1</p> <p>The plan of the proposals for Piddinghoe and South Heighton has been extracted from that document and is reproduced below. North is at the top of the map.</p>
--	--	---



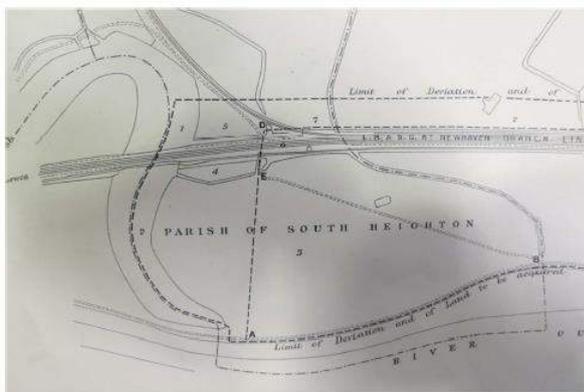
The plan has a key which shows what footpaths are to be stopped and diverted and what new footpaths are to be created.



Reading the key with the plan and the Act you can see that the land between the railway and river was to be acquired, and the existing paths along the river (ABC) and across the land (part of the application way, EB) stopped up, with a replacement footpath crossing the north end of the land to be acquired (AE), across the railway on the existing crossing (ED), and following the east side of the railway to C. The proposal specifically did not propose to create a new crossing ED, because it was already a right of way.

There was also an occupation crossing which was to be stopped up.

The plan below is a close up of the application route. It shows that the application route includes the section B-E-D on the deposited plan



The book of reference for this act is held at the Keep under reference QDP 727/2. The relevant section is reproduced below:

IN PARLIAMENT—SESSION 1914. 29
LONDON BRIGHTON AND SOUTH COAST RAILWAY BILL.
ADDITIONAL LANDS AT NEWHAVEN.
Parish of SOUTH HEIGHTON, Rural District of Newhaven, County of Sussex.

Number on Plan.	Description of Property.	Owner, or reputed Owner.	Lessee, or reputed Lessee.	Occupier.
1	Duckwater (River Cross)	London Brighton and South Coast Railway Company (John Jennings Brown, Secretary) The Honorable Thomas Seymour Druell	...	In hand.
2	Duckwater (River Cross)	London Brighton and South Coast Railway Company Estates under the Will of Isaac Vissel, viz. Esther Vissel	...	In hand.
3	Rough pasture, footpath, stream, pond, river bank and footpath (River Cross)	London Brighton and South Coast Railway Company Estates under the Will of Isaac Vissel Parish Council of South Heighton (George Henry Wharrett, Clerk)	British Portland Cement Manufacturing Co. Ltd. (John Gilbert Wilson, Secretary) Trustees under the Will of Isaac Vissel	George Boston, John Charles White, Trustees of the Newhaven Harbour and Docks (Lover Navigation) Frederick Watson, Clerk.
4	Garden ground	London Brighton and South Coast Rail.	...	Joseph Bebban Webber

The parts of the application route covered by the deposited plan and statement are all in land portion 3, which covers land on both sides of the railway. The description includes a footpath as well as the towpath.

The owners include the Parish Council of South Heighton which was the Highway Authority up to the 1890s. By the time of the Act Newhaven Rural District Council were the Highway authority, but they steadfastly refused to deal with footpaths, deeming them to be the responsibility of parish councils. There is no reason for a reference to a council to be

made in the owners list unless the land parcel is subject to public rights of way.

The railway company never used the powers they had obtained. The map below is taken from the current on line East Sussex Council rights of way map at <https://www.eastsussex.gov.uk/leisureandtourism/countryside/rightsofway/map/map.aspx>



It shows that the right of way down the river is still in place. There has been a diversion of the right of way at point C in the deposited plan in recent years. The map also shows that part of the route is closed for maintenance (marked xxxx)

There is no record of any footpath down the east side of the railway line and Network Rail, as successors to the railway company, do not own any land near the application route other than the railway line shown on the map above.

Conclusion to this section

The act, together with its deposited plan and statement, shows that there was a public right of way between B and E on the deposited plans. Although this was to be

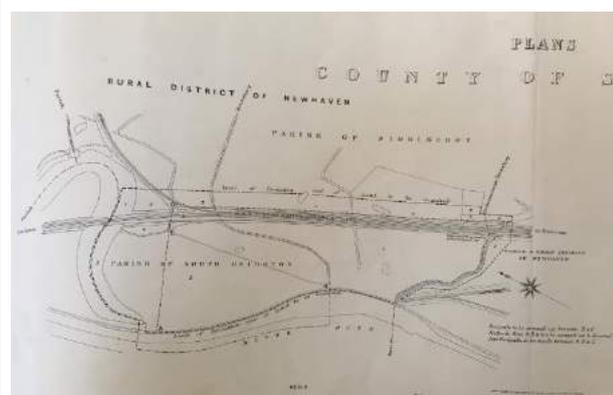
		<p>stopped up, the fact that the alternative paths were not created means that it remains as a right of way</p> <p>None of these documents say explicitly that there was an existing right of way between D and E. However it is hard to see the purpose of a public path between B and E if it did not continue across the railway and then on to the agreed right of way in Tarring Neville parish. It is also hard to explain the motivation for the railway company if it is not to reduce the number of public crossings of its land. The company was put to the expense of buying a substantial plot of land. It could have no doubt extinguished any private rights by agreement at a much cheaper cost.</p> <p>The faint possibility of the rights between D and B being only private rights can be discounted because of the involvement of a council as having an interest in the land recorded in the land and the fact that the Act refers to the stopping up of public paths, when the only path to be stopped up which could be public was B-E. There would be no need to stop up any private rights on B-E because any such rights would almost certainly accrue to the landowner, and the railway company was buying the land.</p> <p>The documents say nothing about the application route north of point D although the route is shown, but it is difficult to see the purpose of the paths in the documents if the route north of D was not a continuation of the public path.</p>
<p>10a-10c 11a-11c</p>	<p>The Council:</p>	<p>The Council agrees with the general assessment made by the Applicant and on the premise of his argument.</p> <p>The lettered points mentioned below are as on the Railway plan documents, not as on the report plan.</p> <p>The route E-B on the 1914 Railway plans does look like it is the same line as the claimed route and it was this line that was to be stopped up but wasn't.</p>

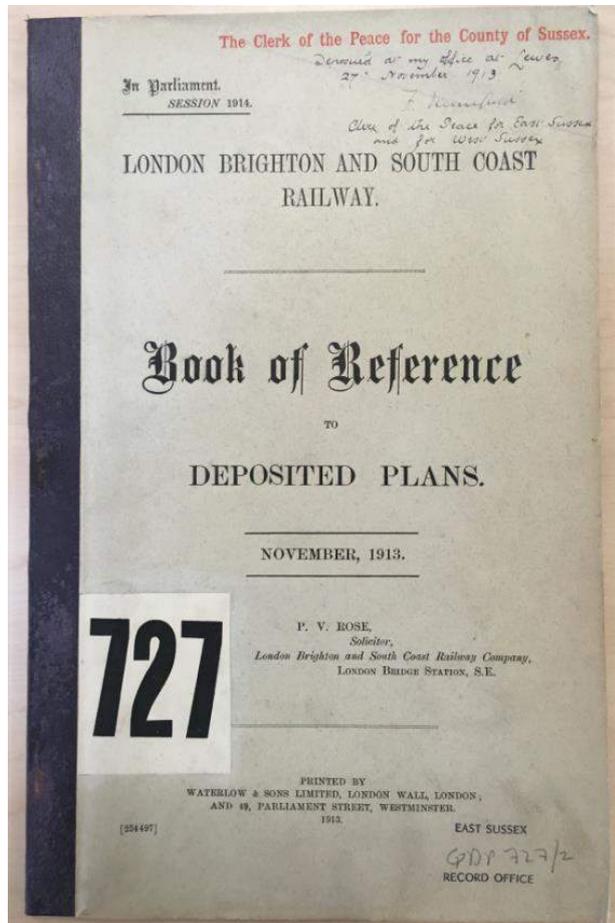
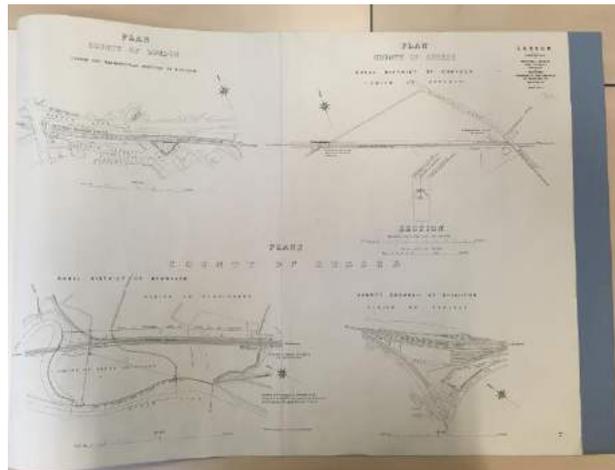
		<p>E-D crosses the railway line and is also part of the claimed route. It would seem that this was not being stopped up and the rights already existed.</p> <p>The plan does not mention the rest of the claimed route from D to the parish boundary with Tarring Neville, by the boat house, but the route is marked on the map and it would be sensible to suggest that this route was also public, given the evidence of the OS maps and the fact that it would be less likely that the B-E-D was designed to be a dead end.</p> <p>It is unlikely that the railway company would go to the trouble of arranging for B-E-D to be stopped up if the route was not public. If it was a private right then that right would likely become the right of the railway company themselves as the new owner of the land.</p> <p><u>Is this new evidence?</u></p> <p>There is a note in the Council's documentation that suggest railway plans were looked at.</p> <p>Document: 'F.2001- SOUTHHEIGHTON_GENERAL_1_0019' says: '<i>no reference to path no 1 in Deposited Railway maps</i>', a note made on 15 April 1953.</p> <p>The Council believes this refers to the 1845 deposited plan for the railway that railway that was built between Lewes and Seaford and held at the East Sussex Record Office at the Keep under reference QDP/218/1, assessed above. The map for this did not show the claimed route and it would make sense that this was the railway plan that was being referred to by this note. Presumably, if it was the 1845 plans that were looked at, it would seem sensible that a natural conclusion would be that there was no evidence of the footpath and that is more likely to explain the note that says there is no trace of the footpath. It is not known if the book of reference for the same railway held under reference QDP/218/2 was looked at. In his assessment of the 1845 plans, and the absence of the claimed route, the Applicant says that the right of way was either created after the plans or the plans are wrong. It is</p>
--	--	---

more likely that the former is true. Historical maps prior to the 1845 railway plans do not show the route, though as discussed, the accuracy of historical maps is debateable. However, by the 1879 OS map, the claimed route is shown, though in a similar manner of historical maps, the status of routes shown on OS maps is debateable. However, taking all this evidence as a whole it would seem likely that the right of way probably came into existence after 1824 and was shown on the OS maps from 1879. Therefore, it was taken into account in the 1914 railway Act.

However, the Council does not believe that there is sufficient evidence to suggest that the 1914 railway Act material was assessed during the preparation of the first Definitive Map in the 1950s. As such, the 1914 railway Act material constitutes new evidence that can be used to reassess the decision made in the 1950s.

On a visit to the Keep the Council obtained its own copies of the 1914 Railway Plans and Book of Reference as below:





ADDITIONAL LANDS AT NEWHAVEN.

PARISH OF SOUTH HEIGHTON.

RURAL DISTRICT OF NEWHAVEN.

COUNTY OF SUSSEX.

IN PARLIAMENT—SESSION 1914.
LONDON BRIGHTON AND SOUTH COAST RAILWAY BILL.
ADDITIONAL LANDS AT NEWHAVEN.
Parish of SOUTH HEIGHTON, Rural District of Newhaven, County of Sussex.

Number in Bill.	Description of Property.	Owners, or proposed Owners.	Leases, or special Leases.	Occupiers.
1	Backwater (River Ouse) ...	London Brighton and South Coast Railway Company (John Jennings Brewer, Secretary) The Honourable Thomas Seymour Brand	In hand.
2	Backwater (River Ouse) ...	London Brighton and South Coast Railway Company Trustees under the Will of Isaac Vinal, viz., Esther Vinal	In hand.
3	Rough pasture, foot-path, stream, pond, river bank and tow-path (River Ouse)	London Brighton and South Coast Railway Company Trustees under the Will of Isaac Vinal Parish Council of South Heighton (George Henry Wharrett, Clerk)	British Portland Cement Manufacturers Limited (John O'Brien Wilson, Secretary) Trustees under the Will of Isaac Vinal	George Benton John Charles Webber Trustees of the Newhaven Harbour and Ouse Lower Navigation (Frederick Holman, Clerk)
4	Garden ground ...	London Brighton and South Coast Railway Company	Jessie Rebecca Webber
5	Allotment gardens and railway siding	Trustees under the Will of Isaac Vinal The Honourable Thomas Seymour Brand.	British Portland Cement Manufacturers, Limited	British Portland Cement Manufacturers, Limited
6	Railway and works, telegraph and telephone posts and wires and occupation crossing	London Brighton and South Coast Railway Company His Majesty's Postmaster-General	British Portland Cement Manufacturers, Limited George Benton His Majesty's Postmaster-General
7	Rough pasture and ditches	London Brighton and South Coast Railway Company The Honourable Thomas Seymour Brand	Jessie Rebecca Webber David Eldridge
		The Commissioners of Sewers of the Lewes and Laughton Levels (Montague Spencer Baker, Clerk).		In respect of banks and drains.

9	QUARTER SESSIONS RECORDS	<p>Highway functions were discharged by Justices of the Peace in Quarter Sessions before powers were handed over to what are now the highway authorities. Court records provide conclusive proof of the matters on which decisions were made.</p> <p>I have found no relevant quarter session records.</p>
	The Council:	<p>The Council agrees and can find nothing in the relevant 'Index to Highway and Footpath Diversions Etc 1773-1949' for South Heighton, or Tarring Neville. There is nothing listed (no record at all) under either parish for any diversion or stopping up order, either for the claimed route or any other route.</p>

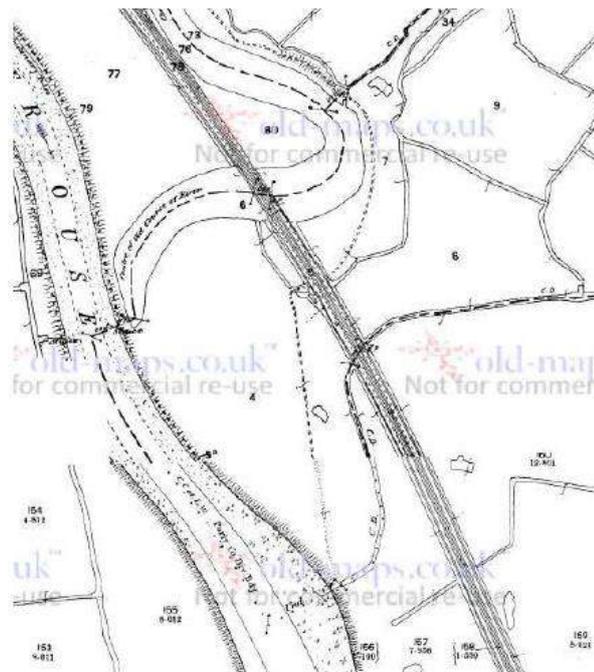
10

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

Ordnance survey maps 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.

The map below is a copy of the first edition of the Ordnance Survey map taken from Old Maps.co.uk at <https://www.old-maps.co.uk/#/Map/544590/102737/12/100315>

The application route can be clearly seen. The change in the way it is portrayed results from the fact that the web site has stitched together what was originally two maps to make a continuous image.



BOOKS OF REFERENCE/AREA BOOKS

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. The reference books for East Sussex are held on the open shelves at the Keep

The application route goes through land parcels 4, 5 and 7. The area book for South Heighton says that were pasture and etc., railway and pasture and etc. respectively. This is compatible with right of way status.

PARISH OF SOUTH HEIGHTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION),
HUNDRED OF PLENBOROUGH (Dersano).

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	15-044	Arable.	38	2-637	Pasture, &c.
2	2-976	Rough pasture.	39	2-295	Water.
3	3-961	Arable.	40	50-555	Rough pasture, &c.
4	11-339	Pasture, &c.	41	4-168	Water.
5	1-558	Railway.	42	85-476	Arable, &c.
5a	1-279	Towing path.	43	4-1	Stable yards, &c.
6	1-385	Water.	44	1-320	Road.
7	2-715	Pasture, &c.	45	16-206	Road.
8	4-094	Pasture, &c.	46	9-632	Rough pasture.
9	4-730	Pasture, &c.	47	4-531	Enclosure.
10	3-741	Pasture, &c.	48	70-729	Arable.
11	3-855	Pasture, &c.	49	4-883	Stable yard, &c.
12	1-693	Pasture, &c.	50	20-634	Arable, &c.
13	1-747	Rough pasture.	51	17-323	Arable.
14	2-273	Pasture, &c.	52	9-782	Arable.
15	3-288	Pasture, &c.	53	35-067	Arable.
16	1-598	Pasture.	54	2-932	Arable.

CONCLUSION TO THIS SECTION

I conclude that the evidence in this section shows that the application route existed on the ground at the time the map was surveyed. This is the first general map of the area made to a scale large enough that the path might be expected to be shown, if on the ground.

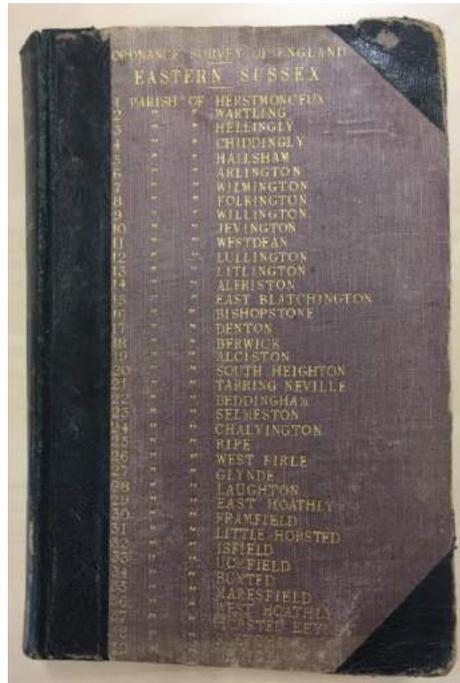
12a-12e

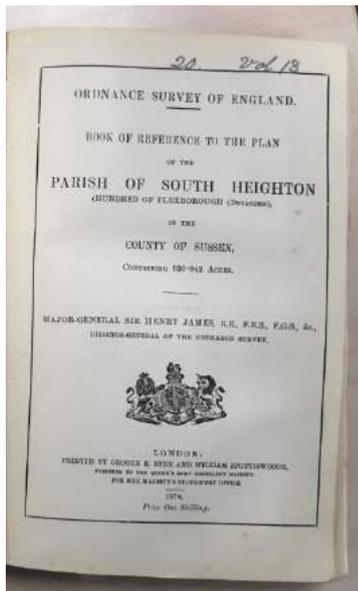
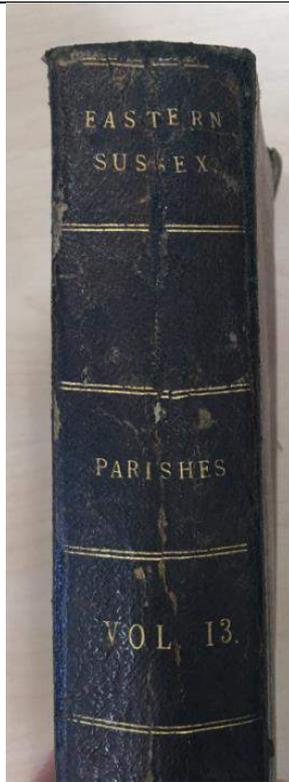
The Council:

On a visit to the Keep the Council obtained its own copies of the OS map Book of Reference as below.

It agrees with the Applicant that a line of the claimed route passes through land numbers 4, 5 and 7 listed in the Book of Reference as Pasture, Railway and Pasture respectively.

While there is no mention of a footpath in the Book of Reference, the maps indicate there was a path as claimed of some description, although they do not say what its status was.



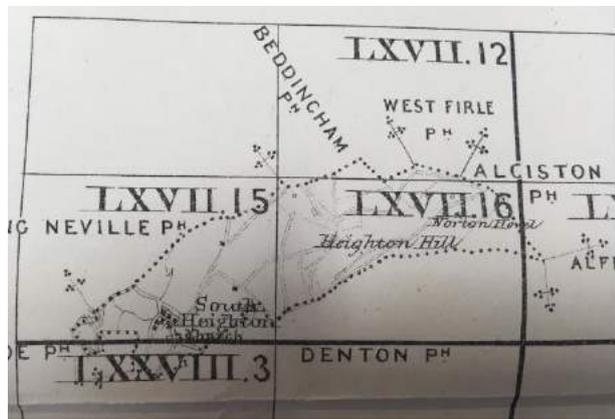


PARISH OF SOUTH HEIGHTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION),
HUNDRED OF FLEXBOROUGH (DETACHED).

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	14-044	Arable.	38	2-667	Pasture, &c.
2	2-978	Rough pasture.	39	2-255	Water.
3	3-964	Arable.	40	20-995	Rough pasture, &c.
4	11-339	Pasture, &c.	41	1-188	Water.
5	558	Railway.	42	83-476	Arable, &c.
5a	274	Towing path.	43	401	Sheds, yards, &c.
6	1-582	Water.	44	1-320	Road.
7	2-708	Pasture, &c.	45	16-506	Road.
8	4-064	Pasture, &c.			

PARISH OF SOUTH HEIGHTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION),
HUNDRED OF FLEXBOROUGH (DETACHED).

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	14-044	Arable.	38	2-667	Pasture, &c.
2	2-978	Rough pasture.	39	2-255	Water.
3	3-964	Arable.	40	20-995	Rough pasture, &c.
4	11-339	Pasture, &c.	41	1-188	Water.
5	558	Railway.	42	83-476	Arable, &c.
5a	274	Towing path.	43	401	Sheds, yards, &c.
6	1-582	Water.	44	1-320	Road.
7	2-708	Pasture, &c.	45	16-506	Road.
8	4-064	Pasture, &c.			



11	HIGHWAY AUTHORITY MINUTES and other records	<p>In East Sussex the majority of roads and other ways were the responsibility of the Parish up to 1894. There are no records at the East Sussex County record office at the Keep for Heighton Parish for this period. 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.</p> <p>I have examined the highway records of Newhaven Rural District Council and have not found any relevant material. I have found no reference to any footpaths in most of the minutes. The first reference to a footpath I found was in the 1920s, when the council told a parish council that footpaths were their responsibility. Information formerly held by the county council is detailed in the section on the first definitive map</p>
	The Council:	As the Applicant has not uncovered any relevant information, the Council has not pursued this further and accepts the Applicant's comments subject to anything being discovered to the contrary.
12	INLAND REVENUE VALUATION	<p>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</p> <p>The maps were based on the second edition of the ordnance survey 1/2500 series. In the extract below the application</p>

route can be clearly seen but it is not a white road.

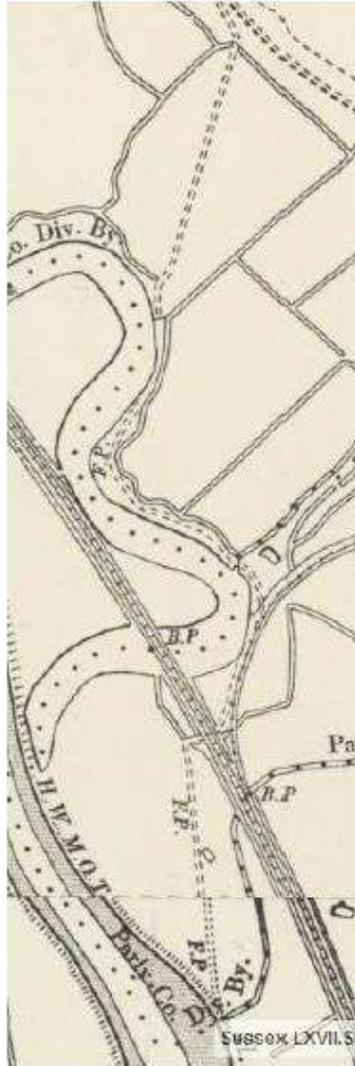


FIELD BOOKS

The Inland Revenue created Field Books for calculating the value of each numbered hereditament on the map. Where rights of way crossed a hereditament the landowner could (but was not obliged to) claim for a reduction in value on account of this. A deduction made for rights of way in a field book is evidence of the existence of rights of way, but the lack of a deduction may only be evidence that the landowner chose not to make a claim.

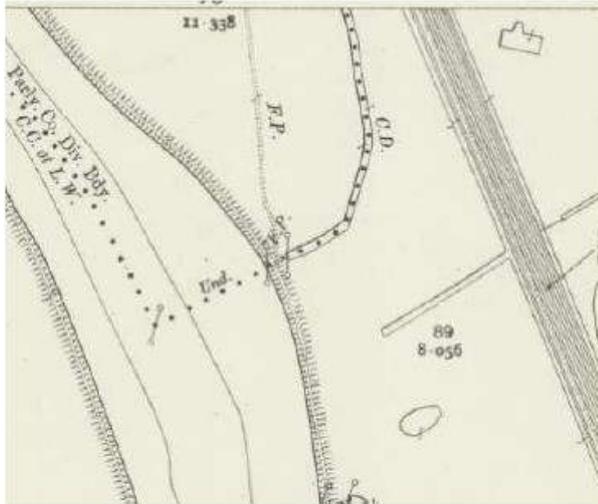
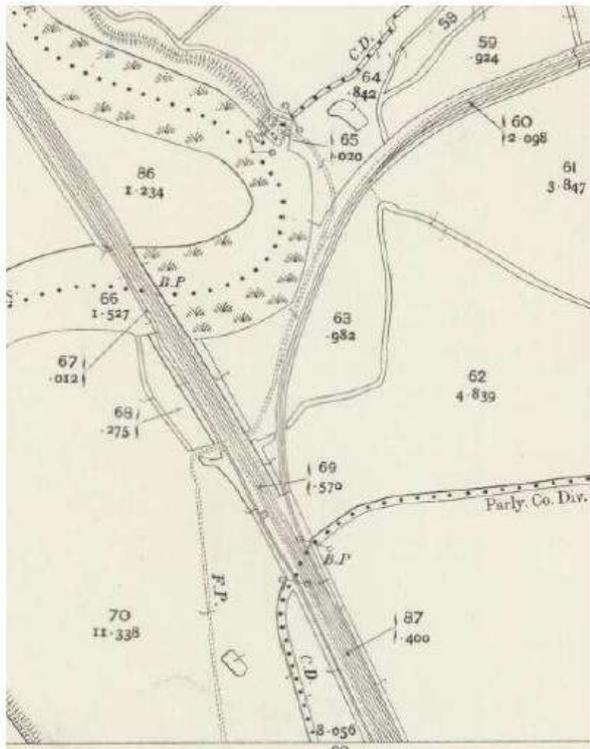
		<p>No claim is recorded in the field books for any of the hereditaments through which the application route passed, but I do not think that any inference can be drawn from this as there was no obligation to make a claim. In particular I note that there is a well-established right of way through hereditament 203, along the river bank, even though no claim has been made.</p>
	<p>The Council:</p>	<p>The Council does not have its own copies of the 1910 Finance Act material and relies on the Applicant's copies, as provided.</p> <p>Most of the claimed route can just about be seen, albeit faintly, on the Finance Act maps, but this may well be because it appears there as part of the base map and not a reflection of the material connected to the Act. It does not appear as a white road outside of a hereditament but as a dashed line annotated 'F.P.' in hereditament 200, 206 and 203.</p> <p>If no deduction was claimed by the landowner for the public right of way in this hereditament then, as the Applicant says, this is because either a public right of way did not exist, or the landowner chose not to claim for the deduction if a right of way did exist.</p> <p>This evidence as it stands does not support the application.</p> <p>It is interesting that the ox-bow lake part of the River Ouse appears to be within the parish of Piddinghoe, which now comes under the parish of Tarring Neville, and must have been transferred to that parish sometime in the past since the 1910 Act.</p> <p>The fact that no deduction was made for the riverbank path also within hereditament 203 cannot be fully explored in this report. The Council does not know if a deduction could have been made for the so-called well establish footpath along the riverbank or if there could have been if this has a reflection on the claimed route. The landowner could have decided to make a claim, or not make a claim for either path, or it could be that neither was a public way. However, a few years later in the 1914 railway Act a footpath was identified on the Act's map as running</p>

		<p>between points A-B on the map which looked like it ran along the side of the River Ouse and was considered public as the Act looked to stop it up. There is currently a public footpath running alongside the river here as South Heighton 17b. Moreover, in the same Act, much of the claimed route (from C-D), as discussed above, was by then considered a public right of way as well.</p>
<p>13</p>	<p>OTHER MAPS</p>	<p>Copies of the second edition of the ordnance survey 1-2500 map, dated around the turn of the 19th/20th century, can be seen as the base map for the inland revenue valuation above. You can see that the application route is clearly shown as “fp”</p> <p>The National Library of Scotland has a number of maps covering the application route at http://maps.nls.uk/geo/explore/#zoom=16&lat=50.8089&lon=0.0441&layers=176&b=1</p> <p>The first edition of the OS 6 inch to the mile map shows the route and labels it “fp”</p>

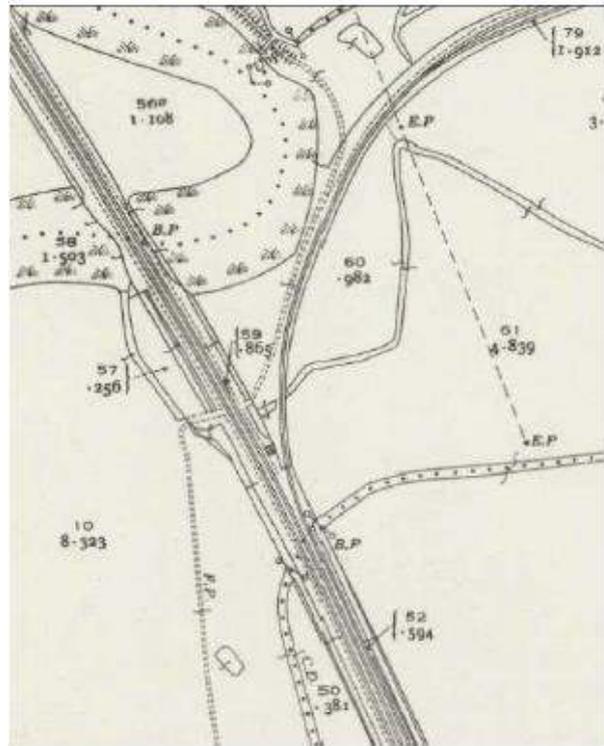


Individual 1-2500 maps can be found the National Library of Scotland at <http://maps.nls.uk/geo/find/#zoom=12&lat=50.8259&lon=0.0232&layers=64&b=1&point=50.8116,0.0476>

Here is an extract from the third edition dated 1908

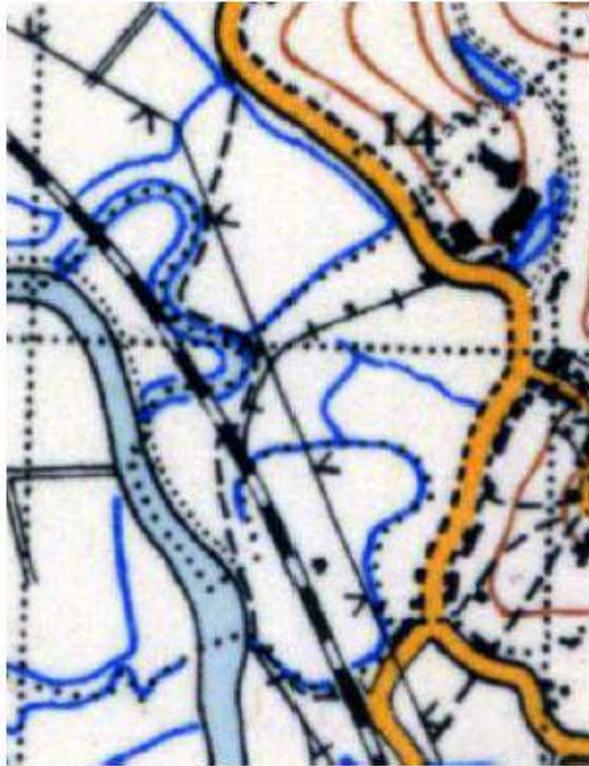


Here is the 1939 revision from the same source:



You will see that the route is clearly shown in each case and marked “fp”

The National Library of Scotland also displays an OS one inch map showing the route dated 1945-47 at <http://maps.nls.uk/geo/explore/#zoom=15&lat=50.8083&lon=0.0460&layers=12&b=1>



The route is not shown on the 7th edition of the Ordnance Survey one inch map revised in the 1950s and does not appear on later maps

CONCLUSION TO THIS SECTION

All Ordnance Survey maps subsequent to the first edition of the 1:2500 map carry the disclaimer that the existence of a route on the map does not mean that it is a right of way. But the maps are evidence of what existed on the ground and how it was used.

The maps are strong evidence that the application route existed on the ground from the first maps, likely to be of large enough scale to show the route to sometime around the second world war.

Further, I suggest that the designation of "fp" is strong evidence of how the route was used and how it appeared on the ground.

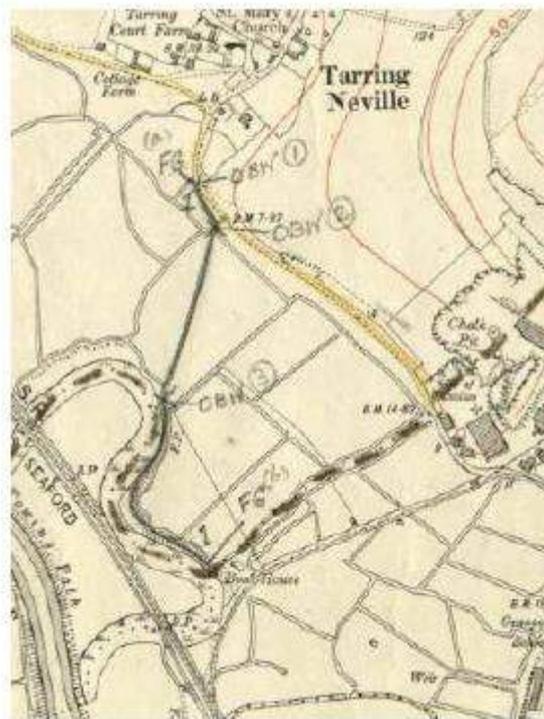
Of course, there can be private footpaths, but this route is part of a path that went from one highway to another. Unless it can be shown that there was a place that a private owner would have resorted to along

		<p>the route I suggest that the path as a whole was used to get from one highway to the other and that it is likely that this use was by members of the public.</p>
	Council:	<p>The Applicant's 'first edition of the OS 6 inch to the mile map' looks similar to the Council's 5a and 5b maps of 1911, see comments there.</p>
14	1ST DEFINITIVE MAP SURVEY	<p>A large amount of material from the surveying of the first definitive maps survives in East Sussex, both in the records of the rights of way team and at the East Sussex Archive at the Keep. In most cases it is possible to see the initial maps drawn up by the parishes, the forms filled in by the parish, the survey conducted by members of the Ramblers or other organisations, the first draft definitive maps, the minutes of the relevant county council subcommittee and the first definitive map. Correspondence between the county, district councils and the parish also survives in many cases, as do many of the notes of those county officers charged with examining inclosure and quarter sessions records. This means that it is possible to see what was and what was not examined and taken into account.</p> <p>The surveys took account of local knowledge, the 1932 rights of way surveys (mostly now lost) and also inclosure and quarter sessions records (although some were missed) It appears that examination of deposited plans and tithe records was inconsistent. There does not appear to have been any examination of plans for railway lines that were not built, nor any examination of subsequent plans for modifications after initial construction. No account was taken of inland revenue records, which were not then available, and there appears that older maps were only consulted in some contentious cases. Council minute books do not appear to have been examined.</p> <p>A preliminary stage of the process of drawing up the first definitive map and statement of rights of way was for the relevant parishes to draw up maps</p>

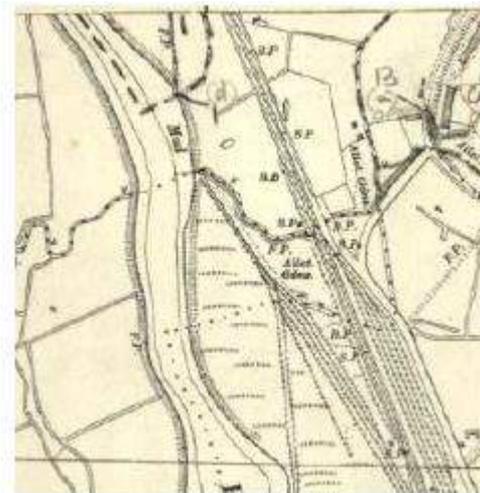
showing what they believed to be rights of way. The maps for South Heighton and Tarring Neville are held at the Keep under reference CR68/4. The route as a whole appears on these maps.

Both parishes seem to have been under the apprehension that they did not need to include the river tow path. Although they do not say that it is not a right of way they do not include it. The towpath seems to have been added quickly by the county council.

Tarring Neville



South Highton



Note that the field gates by the railway in South Highton are labelled b and c.

The parishes also recorded routes on a double sided record sheet and numbered the routes. Both parishes numbered their parts of the path as a whole with the number 1. These records are held at the Keep in a folder for each parish, which also contains the survey done by Ramblers members or other walkers as well as related correspondence. The folder for South Highton is held at the Keep under reference CR67/95 for South

Heighton and CR67/102 for Tarring Neville.
Below are the relevant parish records

Tarring Neville 1

National Parks and Access to the Countryside Act, 1949

SURVEY OF RIGHTS OF WAY SCHEDULE

Chilley Rural District Council *Tarring Neville*

ALL MARKINGS ON MAPS SHOULD BE MADE IN ORDINARY PENCIL.
In completing this form please use the symbols set out on pages 10 and 11 of the Pamphlet.

Path No. _____ (Please number (NOT in brackets or ticks) each path in the
order mentioned in paragraph 1 of the Pamphlet, page 8, paragraph (b). The number should also
be marked on the map.)

Symbol of Path PD ~~to be used~~ (Please cross out those which do not apply):

From *Readingham Wood*
To *Gate House and South Heigham Wood, Bonway*

(1) Details of gates, stile, bridges, etc., in paths:

Notes: (i) Please give a short description of each in the order they come in the direction
"From" and "To" given above.
(ii) The site of each gate or stile, etc., should be shown on the map by an arrow
and the appropriate symbol followed by the letter (a), (b), etc., to which it
refers.

(a) *FIELD GATE*
(b) *FIELD GATE*
(c) _____
(d) _____
(e) _____
(f) _____
(g) _____
(h) _____
(i) _____

(2) Obstructions to passage on the paths. Please show on map by a number in a circle (1-10) the
position of any obstruction to the passage, such as barbed wire, iron-gate hinges, wooden
minning, faulty stile, gate or bridge, etc., and below, set out against the number the nature
of the obstruction and body whom it is required to remedy the matter.

① *Obstruction by barbed wire fence. Proper
means of passing through required, e.g. stile*
② *as for (1)*
③ *as for (1)*
④ _____
⑤ _____

South Heighton 1 (the application route)

National Parks and Access to the Countryside Act, 1949

SURVEY OF RIGHTS OF WAY SCHEDULE

Charley Rural District Council South Heighton

ALL MARKINGS on maps should be made in ORDINARY PENCIL.

In completing this form please use the symbols set out on pages 10 and 11 of the Pamphlet.

Path No. 1 Please number (NOT in brackets or circles) each path in the Parish consecutively as mentioned in pamphlet, page 8, paragraph (b). The number should also be marked on the map.

Kind of Path: Footpath (Please cross out those which do not apply.)

From Bank Street

To River Bank

A) Outside of gates, stile, bridge, etc., in path:

Notes: (i) Please give a short description of each in the order they come in the direction 'From' and 'To' given above.

(ii) The site of each gate or stile, etc., should be shown on the map by an arrow and the appropriate symbol indicated by the letter (a), (b), (c), in which it occurs.

(1) Field GATE

(2) Field GATE

(3) Field GATE

(4) OPENING AT BOUNDARY

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

(26)

(27)

(28)

(29)

(30)

(31)

(32)

(33)

(34)

(35)

(36)

(37)

(38)

(39)

(40)

(41)

(42)

(43)

(44)

(45)

(46)

(47)

(48)

(49)

(50)

(51)

(52)

(53)

(54)

(55)

(56)

(57)

(58)

(59)

(60)

(61)

(62)

(63)

(64)

(65)

(66)

(67)

(68)

(69)

(70)

(71)

(72)

(73)

(74)

(75)

(76)

(77)

(78)

(79)

(80)

(81)

(82)

(83)

(84)

(85)

(86)

(87)

(88)

(89)

(90)

(91)

(92)

(93)

(94)

(95)

(96)

(97)

(98)

(99)

(100)

(101)

(102)

(103)

(104)

(105)

(106)

(107)

(108)

(109)

(110)

(111)

(112)

(113)

(114)

(115)

(116)

(117)

(118)

(119)

(120)

(121)

(122)

(123)

(124)

(125)

(126)

(127)

(128)

(129)

(130)

(131)

(132)

(133)

(134)

(135)

(136)

(137)

(138)

(139)

(140)

(141)

(142)

(143)

(144)

(145)

(146)

(147)

(148)

(149)

(150)

(151)

(152)

(153)

(154)

(155)

(156)

(157)

(158)

(159)

(160)

(161)

(162)

(163)

(164)

(165)

(166)

(167)

(168)

(169)

(170)

(171)

(172)

(173)

(174)

(175)

(176)

(177)

(178)

(179)

(180)

(181)

(182)

(183)

(184)

(185)

(186)

(187)

(188)

(189)

(190)

(191)

(192)

(193)

(194)

(195)

(196)

(197)

(198)

(199)

(200)

(201)

(202)

(203)

(204)

(205)

(206)

(207)

(208)

(209)

(210)

(211)

(212)

(213)

(214)

(215)

(216)

(217)

(218)

(219)

(220)

(221)

(222)

(223)

(224)

(225)

(226)

(227)

(228)

(229)

(230)

(231)

(232)

(233)

(234)

(235)

(236)

(237)

(238)

(239)

(240)

(241)

(242)

(243)

(244)

(245)

(246)

(247)

(248)

(249)

(250)

(251)

(252)

(253)

(254)

(255)

(256)

(257)

(258)

(259)

(260)

(261)

(262)

(263)

(264)

(265)

(266)

(267)

(268)

(269)

(270)

(271)

(272)

(273)

(274)

(275)

(276)

(277)

(278)

(279)

(280)

(281)

(282)

(283)

(284)

(285)

(286)

(287)

(288)

(289)

(290)

(291)

(292)

(293)

(294)

(295)

(296)

(297)

(298)

(299)

(300)

(301)

(302)

(303)

(304)

(305)

(306)

(307)

(308)

(309)

(310)

(311)

(312)

(313)

(314)

(315)

(316)

(317)

(318)

(319)

(320)

(321)

(322)

(323)

(324)

(325)

(326)

(327)

(328)

(329)

(330)

(331)

(332)

(333)

(334)

(335)

(336)

(337)

(338)

(339)

(340)

(341)

(342)

(343)

(344)

(345)

(346)

(347)

(348)

(349)

(350)

(351)

(352)

(353)

(354)

(355)

(356)

(357)

(358)

(359)

(360)

(361)

(362)

(363)

(364)

(365)

(366)

(367)

(368)

(369)

(370)

(371)

(372)

(373)

(374)

(375)

(376)

(377)

(378)

(379)

(380)

(381)

(382)

(383)

(384)

(385)

(386)

(387)

(388)

(389)

(390)

(391)

(392)

(393)

(394)

(395)

(396)

(397)

(398)

(399)

(400)

(401)

(402)

(403)

(404)

(405)

(406)

(407)

(408)

(409)

(410)

(411)

(412)

(413)

(414)

(415)

(416)

(417)

(418)

(419)

(420)

(421)

(422)

(423)

(424)

(425)

(426)

(427)

(428)

(429)

(430)

(431)

(432)

(433)

(434)

(435)

(436)

(437)

(438)

(439)

(440)

(441)

(442)

(443)

(444)

(445)

(446)

(447)

(448)

(449)

(450)

(451)

(452)

(453)

(454)

(455)

(456)

(457)

(458)

(459)

(460)

(461)

(462)

(463)

(464)

(465)

(466)

(467)

(468)

(469)

(470)

(471)

(472)

(473)

(474)

(475)

(476)

(477)

(478)

(479)

(480)

(481)

(482)

(483)

(484)

(485)

(486)

(487)

(488)

(489)

(490)

(491)

(492)

(493)

(494)

(495)

(496)

(497)

(498)

(499)

(500)

(501)

(502)

(503)

(504)

(505)

(506)

(507)

(508)

(509)

(510)

(511)

(512)

(513)

(514)

(515)

(516)

(517)

(518)

(519)

(520)

(521)

(522)

(523)

(524)

(525)

(526)

(527)

(528)

(529)

(530)

(531)

(532)

(533)

(534)

(535)

(536)

(537)

(538)

(539)

(540)

(541)

(542)

(543)

(544)

(545)

(546)

(547)

(548)

(549)

(550)

(551)

(552)

(553)

(554)

(555)

(556)

(557)

(558)

(559)

(560)

(561)

(562)

(563)

(564)

(565)

(566)

(567)

(568)

(569)

(570)

(571)

(572)

(573)

(574)

(575)

(576)

(577)

(578)

(579)

(580)

(581)

(582)

(583)

(584)

(585)

(586)

(587)

(588)

(589)

(590)

(591)

(592)

(593)

(594)

(595)

(596)

(597)

(598)

(599)

(600)

(601)

(602)

(603)

(604)

(605)

(606)

(607)

(608)

(609)

(610)

(611)

(612)

(613)

(614)

(615)

(616)

(617)

(618)

(619)

(620)

(621)

(622)

(623)

(624)

(625)

(626)

(627)

(628)

(629)

(630)

(631)

(632)

(633)

(634)

(635)

(636)

(637)

(638)

(639)

(640)

(641)

(642)

(643)

(644)

(645)

(646)

(647)

(648)

(649)

(650)

(651)

(652)

(653)

(654)

(655)

(656)

(657)

(658)

(659)

(660)

(661)

(662)

(663)

(664)

(665)

(666)

(667)

(668)

(669)

(670)

(671)

(672)

(673)

(674)

(675)

(676)

(677)

(678)

(679)

(680)

(681)

(682)

(683)

(684)

(685)

(686)

(687)

(688)

(689)

(690)

(691)

(692)

(693)

(694)

(695)

(696)

(697)

(698)

(699)

(700)

(701)

(702)

(703)

(704)

(705)

(706)

(707)

(708)

(709)

(710)

(711)

(712)

(713)

(714)

(715)

(716)

(717)

(718)

(719)

(720)

(721)

(722)

(723)

(724)

(725)

(726)

(727)

(728)

(729)

(730)

(731)

(732)

(733)

(734)

(735)

(736)

(737)

(738)

(739)

(740)

(741)

(742)

(743)

(744)

(745)

(746)

(747)

(748)

(749)

(750)

(751)

(752)

(753)

(754)

(755)

(756)

(757)

(758)

(759)

(760)

(761)

(762)

(763)

(764)

(765)

(766)

(767)

(768)

(769)

(770)

(771)

(772)

(773)

(774)

(775)

(776)

(777)

(778)

(779)

(780)

(781)

(782)

(783)

(784)

(785)

(786)

(787)

(788)

(789)

(790)

(791)

(792)

(793)

(794)

(795)

(796)

(797)

(798)

(799)

(800)

(801)

(802)

(803)

(804)

(805)

(806)

(807)

(808)

(809)

(810)

(811)

(812)

(813)

(814)

(815)

(816)

(817)

(818)

(819)

(820)

(821)

(822)

(823)

(824)

(825)

(826)

(827)

(828)

(829)

(830)

(831)

(832)

(833)

(834)

(835)

(836)

(837)

(838)

(839)

(840)

(841)

(842)

(843)

(844)

(845)

(846)

(847)

(848)

(849)

(850)

(851)

(852)

(853)

(854)

(855)

(856)

(857)

(858)

(859)

(860)

(861)

(862)

(863)

(864)

(865)

(866)

(867)

(868)

(869)

(870)

(871)

(872)

(873)

(874)

(875)

(876)

(877)

(878)

(879)

(880)

(881)

(882)

(883)

(884)

(885)

(886)

(887)

(888)

(889)

(890)

(891)

(892)

(893)

(894)

(895)

(896)

(897)

(898)

(899)

(900)

(901)

(902)

(903)

(904)

(905)

(906)

(907)

(908)

(909)

(910)

(911)

(912)

(913)

(914)

(915)

(916)

(917)

(918)

(919)

(920)

(921)

(922)

(923)

(924)

(925)

(926)

(927)

(928)

(929)

(930)

(931)

(932)

(933)

(934)

(935)

(936)

(937)

(938)

(939)

(940)

(941)

(942)

(943)

(944)

(945)

(946)

(947)

(948)

(949)

(950)

(951)

(952)

(953)

(954)

(955)

(956)

(957)

(958)

(959)

(960)

(961)

(962)

(963)

(964)

(965)

(966)

(967)

(968)

(969)

(970)

(971)

(972)

(973)

(974)

(975)

(976)

(977)

(978)

(979)

(980)

(981)

(982)

(983)

(984)

(985)

(986)

(987)

(988)

(989)

(990)

(991)

(992)

(993)

(994)

(995)

(996)

(997)

(998)

(999)

(1000)

(1001)

(1002)

(1003)

(1004)

(1005)

(1006)

(1007)

(1008)

(1009)

(1010)

(1011)

(1012)

(1013)

(1014)

(1015)

(1016)

(1017)

(1018)

(1019)

(1020)

(1021)

(1022)

(1023)

(1024)

(1025)

(1026)

(1027)

(1028)

(1029)

(1030)

(1031)

(1032)

(1033)

(1034)

(1035)

(1036)

(1037)

(1038)

(1039)

(1040)

(1041)

(1042)

(1043)

(1044)

(1045)

(1046)

(1047)

(1048)

(1049)

(1050)

(1051)

(1052)

(1053)

(1054)

(1055)

(1056)

(1057)

(1058)

(1059)

(1060)

(1061)

(1062)

(1063)

(1064)

(1065)

(1066)

(1067)

(1068)

(1069)

(1070)

(1071)

(1072)

(1073)

(1074)

(1075)

(1076)

(1077)

(1078)

(1079)

(1080)

(1081)

(1082)

(1083)

(1084)

(1085)

(1086)

(1087)

(1088)

(1089)

(1090)

(1091)

(1092)

(1093)

(1094)

(1095)

(1096)

(1097)

(1098)

(1099)

(1100)

(1101)

(1102)

(1103)

(1104)

(1105)

(1106)

(1107)

(1108)

(1109)

(1110)

(1111)

(1112)

(1113)

(1114)

(1115)

(1116)

(1117)

(1118)

(1119)

(1120)

(1121)

(1122)

(1123)

(1124)

(1125)

(1126)

(1127)

(1128)

(1129)

(1130)

(1131)

(1132)

(1133)

(1134)

(1135)

(1136)

(1137)

(1138)

(1139)

(1140)

(1141)

(1142)

(1143)

(1144)

(1145)

(1146)

(1147)

(1148)

(1149)

(1150)

(1151)

(1152)

(1153)

(1154)

(1155)

(1156)

(1157)

(1158)

(1159)

(1160)

(1161)

(1162)

(1163)

(1164)

(1165)

(1166)

(1167)

(1168)

(1169)

(1170)

(1171)

(1172)

(1173)

(1174)

(1175)

(1176)

(1177)

(1178)

(1179)

(1180)

(1181)

(1182)

(1183)

(1184)

(1185)

(1186)

(1187)

(1188)

(1189)

(1190)

(1191)

(1192)

(1193)

(1194)

(1195)

(1196)

(1197)

(1198)

(1199)

(1200)

(1201)

(1202)

(1203)

(1204)

(1205)

(1206)

(1207)

(1208)

(1209)

(1210)

(1211)

(1212)

(1213)

(1214)

(1215)

(1216)

(1217)

(1218)

(1219)

(1220)

(1221)

(1222)

(1223)

(1224)

(1225)

(1226)

(1227)

(1228)

(1229)

(1230)

(1231)

(1232)

(1233)

(1234)

(1235)

(1236)

(1237)

(1238)

(1239)

(1240)

(1241)

(1242)

(1243)

(1244)

(1245)

(1246)

(1247)

(1248)

(1249)

(1250)

(1251)

(1252)

(1253)

(1254)

(1255)

(1256)

(1257)

(1258)

(1259)

(1260)

(1261)

(1262)

(1263)

(1264)

(1265)

(1266)

(1267)

(1268)

(1269)

(1270)

(1271)

(1272)

(1273)

(1274)

(1275)

(1276)

(1277)

(1278)

(1279)

(1280)

(1281)

(1282)

(1283)

(1284)

(1285)

(1286)

(1287)

(1288)

(1289)

(1290)

(1291)

(1292)

(1293)

(1294)

(1295)

(1296)

(1297)

(1298)

(1299)

(1300)

(1301)

(1302)

(1303)

(1304)

(1305)

(1306)

(1307)

(1308)

(1309)

(1310)

(1311)

(1312)

(1313)

(1314)

(1315)

(1316)

(1317)

(1318)

(1319)

(1320)

(1321)

(1322)

(1323)

(1324)

(1325)

(1326)

(1327)

(1328)

(1329)

(1330)

(1331)

(1332)

(1333)

(1334)

(1335)

(1336)

(1337)

(1338)

(1339)

(1340)

(1341)

(1342)

(1343)

(1344)

(1345)

(1346)

(1347)

(1348)

(1349)

(1350)

(1351)

(1352)

(1353)

(1354)

(1355)

(1356)

(1357)

(1358)

(1359)

(1360)

(1361)

(1362)

(1363)

(1364)

(1365)

(1366)

(1367)

(1368)

(1369)

(1370)

(1371)

(1372)

(1373)

(1374)

(1375)

(1376)

(1377)

(1378)

(1379)

(1380)

(1381)

(1382)

(1383)

(1384)

(1385)

(1386)

(1387)

(1388)

(1389)

(1390)

(1391)

(1392)

(1393)

(1394)

(1395)

(1396)

(1397)

(1398)

(1399)

(1400)

(1401)

(1402)

(1403)

(1404)

(1405)

(1406)

(1407)

(1408)

(1409)

(1410)

(1411)

(1412)

(1413)

(1414)

(1415)

(1416)

(1417)

(1418)

(1419)

(1420)

(1421)

(1422)

(1423)

(1424)

(1425)

(1426)

(1427)

(1428)

(1429)

(1430)

(1431)

(1432)

(1433)

(1434)

(1435)

(1436)

(1437)

(1438)

(1439)

(1440)

(1441)

(1442)

(1443)

(1444)

(1445)

(1446)

(1447)

(1448)

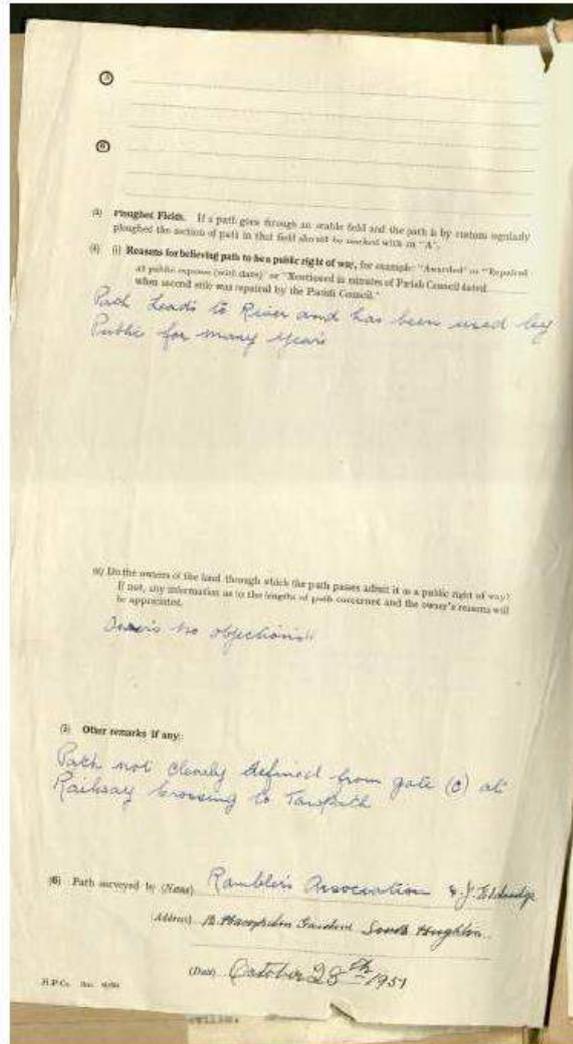
(1449)

(1450)

(1451)

(1452)

(1453)</



Note that, although gate (a) is recorded as locked closed, suggesting that this would be recorded if this were the case, the gates over the railway are not so recorded.

The landowners are also recorded as not objecting.

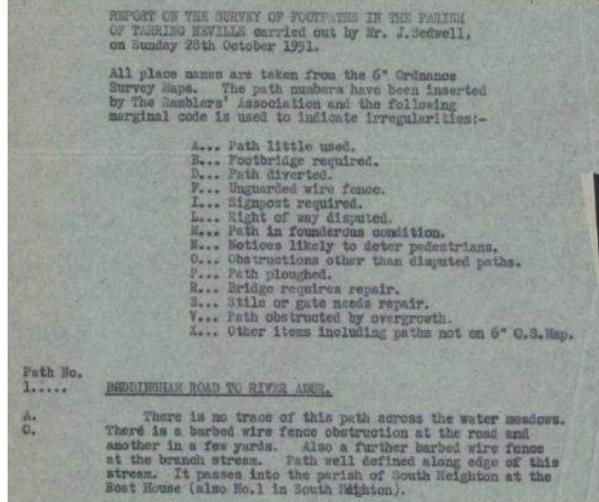
Although the form seems to have been filled in by a member of the Ramblers Association, it has been endorsed by a local person, (presumably the parish clerk).

It is commented that the path has been used by the public for many years.

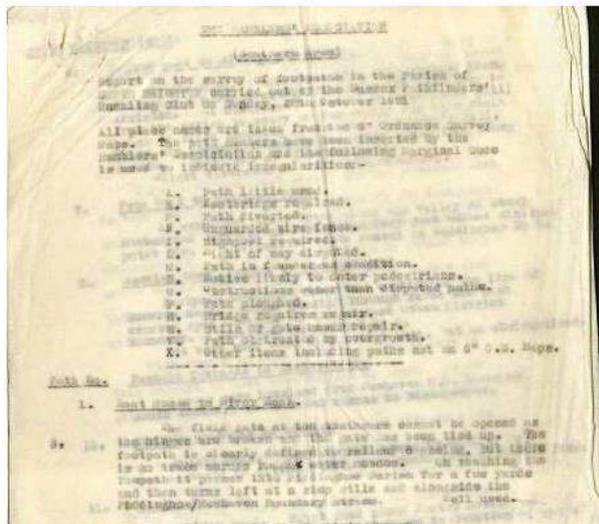
Once the forms had been filled in someone (often a member of the Ramblers Association) walked the routes and made a report.

Here are extracts from the reports for the parishes (held under the references for the reports above) for the path as a whole

Tarring Neville



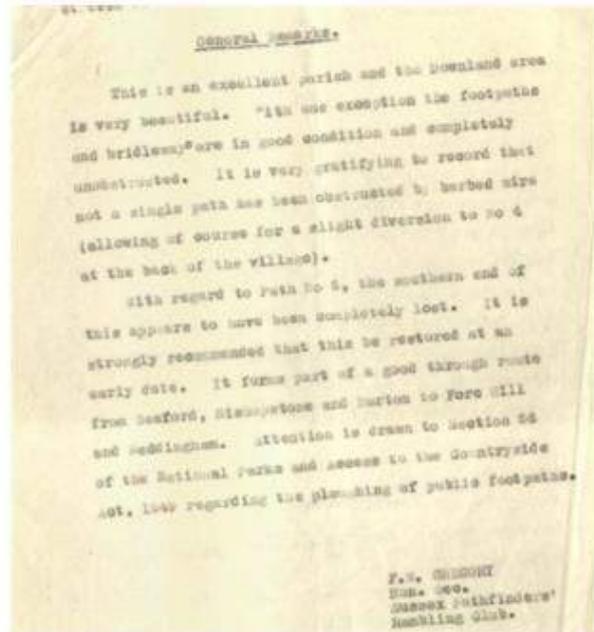
South Heighton (the application route)



The comments are a little difficult to read but on closer inspection can be seen to say "The fieldgate at the boathouse cannot be opened as the hinges are broken and the gate has been tied up. The path is clearly defined to the railway crossing, but there is a tree across rough water meadow. On reaching the towpath it passes into Piddinghoe Parish for a few yards and then turns left at a step stile and alongside the Piddinghoe/Newhaven boundary stream. Well used."

One stile or gate is noted as needing repair (presumably gate a) but there is no mention of locked gates or any other obstruction at the railway crossing, or any prohibitive signs. Given the nature of the survey, we might expect any such obstruction to be recorded.

There is no mention of any obstruction at the railway line in the concluding comments either:



The path as a whole appeared on the first draft definitive map. No objections were received to the inclusion of the Tarring Neville 1 and it appeared on the first definitive map and statement.

There is little correspondence in the South Heighton Folder, but the Tarring Neville folder contains this letter:

 HARVEYS.
GLYNDE, LEWES, SUSSEX.
2nd December 1952

FROM
T. W. PICKARD, F.L.A.S.
CHARTERED LAND AGENT

Tarring Neville Parish
Notes on Survey of Rights of way.

Path No. 1 - No remarks

Path No. 2 - There is no right of way from the Muggery Pope Cottages through Tarring Neville. When they were occupied the tenants made a small annual payment to the Glynde Estate to enable them to use the way.

Path No. 3 - No remarks

Path No. 4 - No remarks

Path No. 5 - Right to old ferry only

Path No. 6 - There is no right of way on the river bank, in the Parish.

There is no right of way at back of old Cement Works. The owner would oppose both this and No. 6.

I personally have known the River Guse for more than 80 years and have no recollection of craft being towed between Newhaven & Lewes. They come to and fro with the tide or were propelled by

 LETTER. P.T.O.

the bargemen with Quant-poles.

The owner has always turned back trespassers, particularly those with guns.

It would be interesting to hear of anyone who did remember towing.

All trespassers are prohibited through the North Quay by the Railway Company.

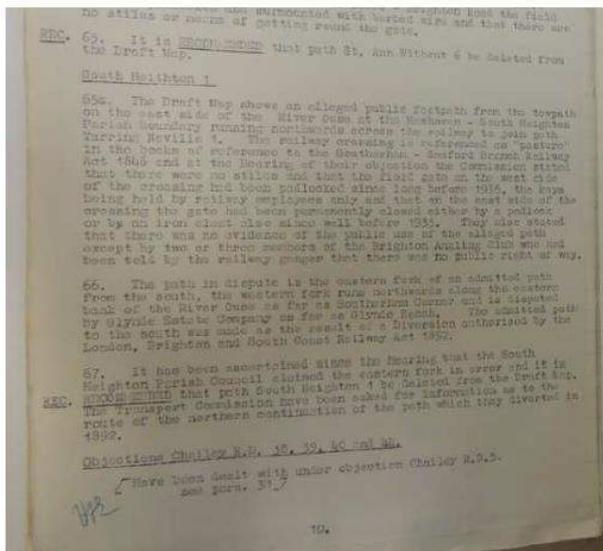
Thos W Pickard

The author clearly knows the area well and acts in the interests of land owners. He does not object to Tarring Neville 1 (and by implication, South Heighton 1) even though he is not backward in raising all possible objections, even on land that he clearly does not manage, such as the railway quay. I think it likely that Mr Pickard was agent for the Hampden estate, who are the major land owners in the area, and who are

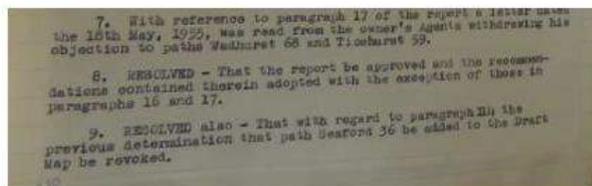
likely to have owned the land on which the path as a whole runs.

No objections were received from agricultural landowners to South Heighton 1 (the application route), but an objection was received from the British Railways Board. In East Sussex objections were initially dealt with by the rights of way sub-committee, advised by their clerk.

The minute book of the Rights of Way sub-committee held at the Keep under reference C/C 11/5/105 contains the following entries:



The above is a report from the clerk dated 13/1/55 which recommends deletion of South Heighton 1.



The extract above shows that the report was accepted.

But subsequently the matter came before the committee again. The proceedings are recorded in the minute book held at the keep under the reference C/C11/5/106.

On 25/9/56 the committee had before them a report by the clerk which included the following:

General Inquiry by the Minister.
Objection Chalkley R.P. 25. Path South Highton 1

41. The Draft Map showed an alleged public footpath from the South Highton Parish boundary running northwards across the railway to join path Tarring Neville 1 leading to the Village of Tarring Neville. The British Transport Commission objected on the ground that there was no public footpath across their railway and receiving a letter from the Clerk of the South Highton Parish Council stating that the Parish Council had claimed the alleged path in error. The Sub-Committee, at their meeting on the 25th May, 1955, determined that path South Highton 1 be deleted from the Draft Map.

42. Objections to this determination have been received from the South Highton Parish Council (who now say they did not claim the path in error) Mr. J. Eldridge and Mr. S.A. Gravott, and at the hearing of these objections on the 17th September, 1956, it was stated on behalf of the British Transport Commission:-

(a) That the disputed plans and book of reference landing to the London and Brighton Railway (Hove Station - Bonford Branch) Act 1846, referenced the crossing as "pasture" in the nomenclature of Thomas Swarard, no reference being made to the Surveyor of Highways.

HFE

(b) The crossing was constructed as an accommodation crossing only in accordance with the terms of the Conveyance dated 20th January 1855, by the Genl and Chaptl of Chichester to the Railway Company.

(c) The Railway Company's working plan for their Brighton to South Highton crossing between 1846 and 1855 showed the crossing as an existing track but did not mark the route of path South Highton 1.

(d) The crossing was provided because the new railway line between the ownership of Thomas Swarard and had there been a public footpath the Company would have been obliged to provide greater stiles or small gates each side of the crossing. None were so provided.

(e) That the field gates at each side of the crossing were hung so as to open away from the railway line, while if there had been a public footpath such gates would have been hung so as to open across the railway line.

(f) That one or both of such gates have been pulled up as long as can be remembered, a boy being in the possession of the owner of the covered land.

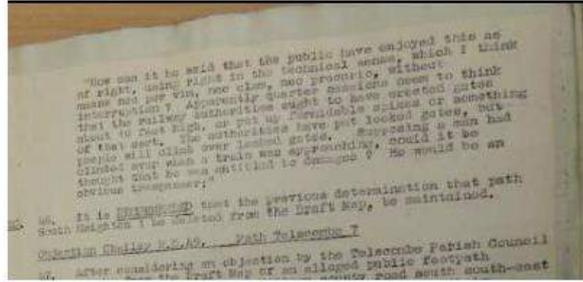
(g) There has never been any complaint of the obstruction of a public footpath.

43. Mr. Eldridge (who also represented the Parish Council) called four witnesses who testified to the use of the alleged path for over 60 years but both he and his witnesses agreed that throughout that period one or both of the railway crossing gates had always been locked. One of the witnesses, a Mr. Adams, originally stated that there had been stiles fixed in the ground near the middle of each crossing gate but when asked how it had then been possible to open the crossing gates he stated that on reconsideration he thought that there must have been small opening gates beside each of the two railway field gates. Mr. Luff, who used the path once or twice a week from 1942 until 1946, and who used the path once or twice a week from 1942 until 1946, and again after the first World War until 1925, stated that there had been no small gates but that battens had been fixed to each of the railway crossing gates which enabled people to climb over the gate as though it were a stile. Mr. Eldridge confirmed the existence of such battens which he said disappeared during the last war and that since he became a member of the Parish Council in 1922 the Parish Council had not received any complaints of the locking of the railway gates or of the non-repairs of the battens. Mr. Bennett, who used the path regularly from 1896 to 1914 and intermittently from 1920 to 1935, also thought there might have been some battens on the gates, who used to be employed on the farm and used the path regularly from 1896 until 1914 was unable to remember any small gates beside the crossing gates or any battens on the crossing gates. Mr. Savage's employer had a key to open the railway gates when they wished to take cattle through.

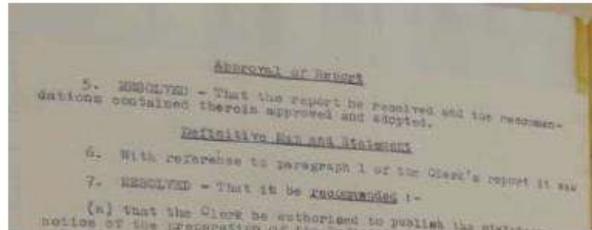
44. Mr. Gravott, who is an artist, stated that he had used the path three or four times a year since 1928 for pleasure purposes and had never seen any battens on the railway gates, which he claimed over. He had occasionally seen other persons using the path.

45. In a recent case in which the evidence was that certain level crossing gates had been kept locked but that for over 30 years members of the public had climbed over them and crossed the railway line, the Divisional Court held that no public right or way had been acquired and in the course of his judgment the Lord Chief Justice stated:-

HFE



It was resolved to agree the recommendations. See below. The application route did not appear on the definitive map and statement.

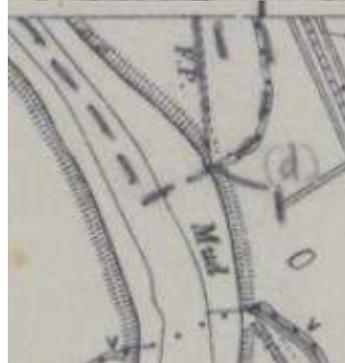


The significant points relied on by the committee seem to have been (a) the absence of stiles, (b) the contention that the gates were put in by the railway company in order to allow Mr Everard access to his land and that they had been locked for some time (c) the fact that there has been no complaint of obstruction and (d) the contradictory statements of witnesses.

Against this, it may be said that there seems to be a suggestion of some sort of stile within the gate. The fact that Mr Everard needed access to his land does not preclude a right of way also existing at the time or coming to being subsequently. The lack of complaints may be accounted for by the fact that people seem to have been able to use the path, as the witness statements suggest. The witness statements do appear to contradict themselves, but it must be remembered that in some cases they were trying to recall things quite a long time ago.

No effort seems to have been made to look at any historical evidence other than the railway deposited plan and book of reference, or to cross reference the application route with Tarring Neville 1. I suggest that this decision bears the marks

		<p>of one taken in a hurry in the middle of a long and time-consuming exercise, without consideration of all the evidence.</p> <p>CONCLUSION TO THIS SECTION</p> <p>Against the evidence of the Railway Board must be set the following:</p> <p>(a) The lack of objection by any other landowners, which suggests that they agreed the existence of the path. In particular I note the lack of objection by the land agent, Mr Pickard</p> <p>(b) The belief of local people that this is a right of way and had been for many years.</p> <p>(c) The evidence of the Sussex Pathfinders' surveyor, who found no problems with the railway gates, even though specifically briefed to note such issues.</p> <p>(d) The fact that there is no record of the taking into account the 1914 LBSC Act or the The transport board's evidence is contradicted by the actions of its predecessor in procuring the 1914 Act and in failing to object to the description of the path in the sewerage Bill.</p> <p>On balance I suggest that the evidence from the process of drawing up the first definitive map and statement points towards highway status.</p>
<p>13a-13c</p> <p>14a-14e</p> <p>15a-15g</p>	<p>The Council:</p>	<p><u>Parish maps</u></p> <p>The Council has found the same copy of the parish map for South Heighton and agrees that the claimed route is shown, as South Heighton 1. Clearer copies of the precise area below.</p>



The Council has found the same parish map for Tarring Neville and agrees the path shown as no. 1 is Tarring Neville 1.

Parish surveys/schedule forms

The Council has found the same copy of the parish survey for South Heighton path no. 1 and agrees this is the claimed route.

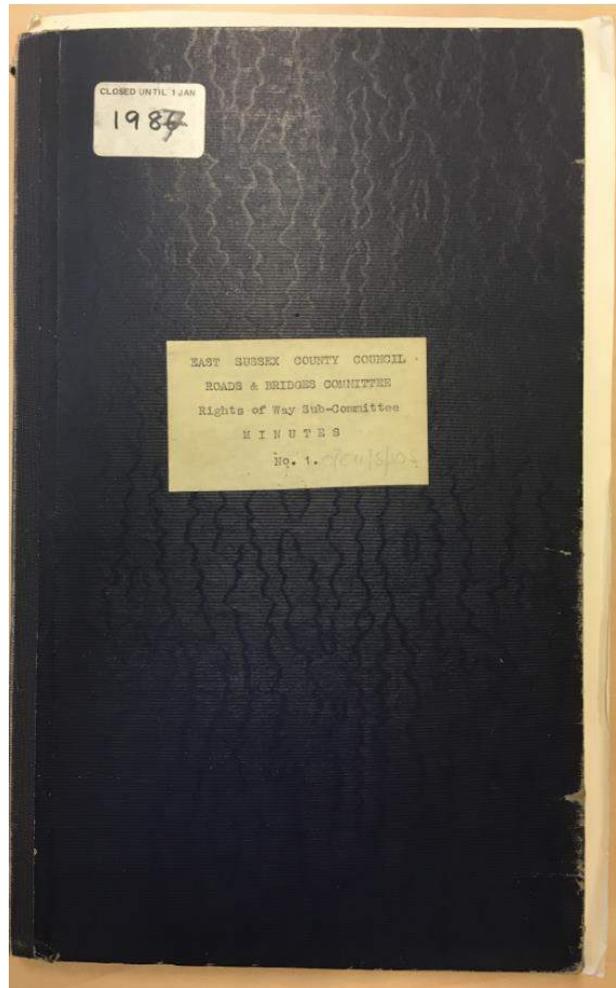
The Council cannot open the electronic file for its copy of the parish survey for Tarring Neville path no. 1 and so relies on the Applicant's copy.

Parish reports

The Council has found the same copy of the parish report for South Heighton path no. 1, and agrees with the Applicant's translation of

		<p>the faint copy and the word's that he thinks it says.</p> <p>The Council has found the same copy of the parish report for Tarring Neville path no. 1. In this report, it says, for path no. 1 that it goes to the River Adur but this must be a mistake by the author as it goes to the River Ouse (flowing from Lewes out to sea at Newhaven), not the Adur. The River Adur flows via out to sea further to the West at Shoreham-by-Sea. In the Tarring Neville parish survey (only the Applicant's copy is available), the word Adur has been crossed out and the word Ouse written over it.</p> <p><u>Correspondence in file</u></p> <p>The Council has found its own copy of the letter by Mr Pickard in the Tarring Neville folder. While this letter comments on path no. 1 in Tarring Neville, and not South Heighton, the Applicant is correct in that this person clearly has knowledge of the local area and would have potentially mentioned or objected to South Heighton 1 if he wanted to. Of note is that Mr Pickard mentioned the North Quay area, which is not in Tarring Neville and today in Newhaven (south of South Heighton).</p> <p><u>Objection, Minute Book of Rights of Way sub-committee</u></p> <p>The Council believes that the objection from the British Railways Board (British Transport Commission) is the reason for the claimed route not appearing on the provisional map despite it appearing on the draft map. The report mentions that they looked at the 1846 Railway Act which the Applicant has provided. The clerk's report states the railway crossing was not passable as there were no stiles, and gates both sides (West and East) had been padlocked since before 1935 and that there was no evidence of alleged use apart from a few members of the Brighton Angling Club who had been told by the railway that there was no public right of way. A description of the disputed path is given which matches part of the claimed route. It says South Heighton Parish Council admitted to the path in error. The clerk recommended South Heighton 1 be removed from the draft map.</p>
--	--	--

On a visit to the Keep the Council obtained its own copies of the 1955 clerk's report to the Rights of Way sub committee as below:



EAST SUSSEX COUNTY COUNCIL
ROADS AND BRIDGES COMMITTEE
RIGHTS OF WAY SUB-COMMITTEE

20th May, 1955 At a meeting of the Sub-Committee held at Pelham House, Lewes.

PRESENT - Mr. G.J. Belline, Col. Sir Ralph S. Clarke, K.B.E.,
Mr. A.G.A. Fisher, The Rt. Hon. The Viscount Gage,
I.C.V.D., Mr. A.E. Haworth-Booth, Mr. S.L.R.
Lepierre, Mr. J.A. Owen, Cmdr. R.S. Egerton, D.S.O. and
Mr. D.A. Warburton.

APPOINTMENT OF CHAIRMAN

1. RESOLVED - That Cmdr. R.S. Egerton, D.S.O. be appointed Chairman of this Sub-Committee. Cmdr. Egerton thereupon took the Chair.

MINUTES

2. The minutes of the last meeting were taken as read and were signed by the Chairman.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1962
PUBLIC RIGHTS OF WAY

3. The Sub-Committee had before them the Clerk's report dated the 13th May, 1955.

4/5

CONFIDENTIAL

RIGHTS OF WAY SUB-COMMITTEE

20th Nov. 1962

NATIONAL PARKS AND ACCESS TO THE COASTWIDE ACT 1949

DRAFT MAP OF RIGHTS OF WAY

1. In addition to notices of appeal to the Minister of Housing and Local Government as respects two alleged paths in Battle Rural District, one in Cuckfield Rural District and one in Hailsham Rural District, objections to the County Council's determinations have been received regarding the following number of alleged paths :-

Bexhill and Rye Ra.	(Nil)
Burgess Hill, Cuckfield and Portslade U.Ds.	(Nil)
East Grinstead U.D.	2
Hovehaven U.D.	1
Seaford U.D.	2
Battle R.D.	22
Hailsham R.D.	4

2. The above objections will be heard in due course and the Sub-Committee are now PROCEEDING to approve the Provisional Map and Statement for the boroughs of Bexhill and Rye and the urban districts of Burgess Hill, Cuckfield and Portslade-by-Sea.

3. The following part of this Report deals with alleged paths in :-

The county of Kent
The boroughs of Lewes and Rye
The rural districts of Battle, Challey, Cuckfield and Uckfield
The urban district of Seaford.

4. Objections regarding the inclusion of the following paths in the Draft Map were duly made but subsequently withdrawn and accordingly no modification of the Draft Map is required :-

<u>Objection No.</u>	<u>Paths</u>	<u>Objector</u>
Lewes B. 2	Lewes 3a	British Transport Commission
Challey R.D. 9	South Heighton 3	Ramblers Association
Challey R.D. 29	Challey 45b	British Transport Commission
Challey R.D. 53	Stichling 58	W.L. Manning
Cuckfield R.D. 24	Cuckfield Rural 86	Ramblers Association
Cuckfield R.D. 38	Clayton 13c	Danny Netate
Cuckfield R.D. 52	Clayton 17;	W.L. Manning
	Keywar 15b, 17b,c.	
Cuckfield R.D. 5	Maresfield 1b	H. Samuel

5. Objections to the exclusion of the following paths from the Draft Map were duly made and subsequently withdrawn and accordingly no modification of the Draft Map is required :-

<u>Objection No.</u>	<u>Paths</u>	<u>Objector</u>
Challey R.D. 9	1 path in Parish of St. Andrew Without	Ramblers Association
Challey R.D. 47	1 path in Parish of Westwiston	Westwiston Parish Meeting
Cuckfield R.D. 24	1 path in Parish of Newfister	Ramblers Association

47th February explained that it was provided in 1909 solely for the benefit of Mr. Hodgkinson as owner of Hilders Farm in consideration of his giving up a private right which he had to cross the railway on the level near Plumpton Station. Since 1929 the Commission have exhibited at both ends of path Plumpton 16a a notice that the path is a private one. In the circumstances it is recommended that path Plumpton 16c be deleted from the Draft Map.

St. Ann Without 6

64. The Draft Map shows a public bridleway from the Lows - Brighton Road 500 yards east of Newmarket Inn generally southwards beneath the railway to the Parish boundary at Southy Brow where it would join a bridleway set out under the Kingston and Icknham Enclosure Award 1830. The Transport Commission contend that no such public path exists. It was not claimed by the St. Ann Without Parish Meeting for the purpose of the present survey and the railway crossing is referenced in Railway Books of Reference 1836, 1843 and 1844 as "grable". At the hearing of their objection the Commission pointed out that where the alleged path emerges on to the Lows - Brighton Road the field gate is padlocked and surrounded with barbed wire and that there are no signs or marks of getting round the gate.

65. It is recommended that path St. Ann Without 6 be deleted from the Draft Map.

South Heighton 1

65a. The Draft Map shows an alleged public footpath from the towpath on the east side of the River Cuse at the Newhaven - South Heighton Parish boundary running northwards across the railway to join path Tarring Nevill 1. The railway crossing is referenced as "structure" in the books of reference to the Southern - Seaford Branch Railway Act 1845 and at the hearing of their objection the Commission stated that there were no signs and that the field gates on the west side of the crossing had been padlocked since long before 1915, the keys being held by railway employees only and that on the east side of the crossing the gate had been permanently closed either by a padlock or by an iron bolt since some well before 1915. They also stated that there was no evidence of the public use of the alleged path except by two or three members of the Brighton Angling Club who had been told by the railway ganger that there was no public right of way.

66. The path in dispute is the eastern fork of an admitted path from the south, the western fork runs northwards along the eastern bank of the River Cuse as far as Southington Corner and is disputed by Glynde Estate Company as far as Glynde Road. The admitted path to the south was made as the result of a Liasation authorized by the London, Brighton and South Coast Railway Act 1892.

67. It has been ascertained since the hearing that the South Heighton Parish Council claimed the eastern fork in error and it is recommended that path South Heighton 1 be deleted from the Draft Map. The Transport Commission have been asked for information as to the route of the northern continuation of the path which they diverged in 1892.

Objections Chailley R.D. 26, 28, 29 and 31

Have been dealt with under objection Chailley R.D. 5.
see para. 31

Objection Seaford U.D. 5. Path Seaford 36.

141. At their meeting on the 6th June, 1954, the Sub-Committee decided to amend the Draft Map so as to show a public footpath from Clynton Farm Buildings over Walls Brow to join path Seaford 28c along the route marked on the Ordnance Survey Map. This decision was reached as the result of an objection by Mr. Price Jones that he had used the alleged path and that Mr. Paul, the tenant farmer, had several times seen him using it and had never objected. The alleged path runs mostly over land owned by the Seaford Urban District Council.

142. Mr. Paul has now objected to the County Council's determination and contends that there is no public right of way, and it is understood that the Seaford U.D.C. do not admit the alleged path.

143. Mr. Price Jones has now written that in view of the lack of local interest in the path and the fact that there is an alternative route to the Duckmore Haven, and lastly having no desire to do anything that would hinder the farmer should he desire to keep an attached barn on the house, he wishes to withdraw his application to have the path shown on the new Map.

144. The matter is brought before the Committee at this stage because if, in the circumstances, they are prepared to restore the status quo by deleting the path Mr. Paul does not wish to be heard in support of his objection but otherwise he does wish to be so heard.

H. G. MARTIN,

15th May, 1955. Clerk of the County Council

4. With reference to paragraph 1 the Clerk reported that the appeal to the Minister as respects an alleged path in the Hailman Rural District had been withdrawn, and that objections to the County Council's determinations had been received regarding four alleged paths in the East Grinstead Urban District.

5. With reference to paragraph 16 of the report a letter dated the 16th May, 1955, was read from the Chairman of the Westfield Parish Council stating that the Parish Council recommend that path Westfield 11b be removed from the Draft Map and it was

6. RESOLVED - That path Westfield 11b be deleted from the Draft Map.

7. With reference to paragraph 17 of the report a letter dated the 18th May, 1955, was read from the owner's Agents withdrawing his objection to paths Wadhurst 68 and Tickhurst 59.

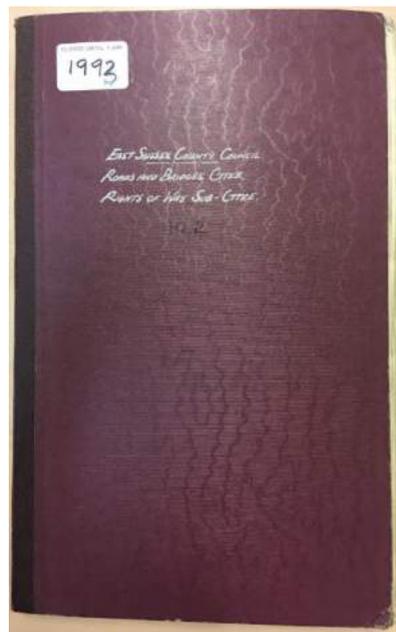
8. RESOLVED - That the report be approved and the recommendations contained therein adopted with the exception of those in paragraphs 16 and 17.

9. RESOLVED also - That with regard to paragraph 14, the previous determination that path Seaford 36 be added to the Draft Map be revoked.

		<p>The matter, however, was discussed again later, in a further clerk's report. At that time, South Heighton Parish Council said they did not claim the route in error. The British Transport Commission referred to the Railway Act 1846 which made no mention or accommodation for the claimed route as a public right of way, which is generally agreed upon. However, South Heighton Parish Council provided a number of witnesses as evidence of public use however much of this was contradictory and admitted to, to various degrees, the existence of locked gates and/or stiles. The clerk's report referred to a similar case before the Divisional Court, of people climbing over locked gates to cross a railway line, where the Lord Chief Justice has said that no public right of way had been acquired. The clerk recommended that the deletion of South Heighton 1 remained.</p> <p>The clerk's recommendations in the report were accepted as the report was approved.</p> <p>While the Council agrees with the Applicant that there was some evidence of use, and it is true that the access for the landowner does not mean a public way didn't exist, and the lack of complaints could be because the public were able to use the route, the Council has to accept the decision made on this evidence by those preparing the definitive map in the 1950s.</p> <p>However, the Council appreciates the Applicant's argument that there may have been some evidence of use, such as the Ramblers survey of the claimed route, which it is noted was written by a Mr. J Eldridge (spelling unclear on survey report), which looks like it may be the same person the clerk referred to in his report of September 1956 (again spelling unclear in report but looks similar) who was listed as a representative of South Heighton Parish Council.</p> <p>As far as the evidence suggests, the Council considers that the objection from the British Transport Commission was dealt with at the time, and reviewed at least twice, and in doing so had representations from both sides, and in this respect this decision based on the evidence at the time remains.</p>
--	--	--

The Council believes the claimed route was added to the draft map because it was considered to be a public right of way, only to be removed from subsequent maps, and the definitive map process, because of the objection by the British Transport Commission.

On a visit to the Keep, the Council obtained its own copies of the 1956 clerk's report to the Rights of Way sub-committee as below:



EAST SUSSEX COUNTY COUNCIL
ROADS AND BRIDGES COMMITTEE
RIGHTS OF WAY SUB-COMMITTEE

25th September, 1956. At a meeting of the Sub-Committee held at Pelham House, Lewes.

PRESENT - Cndr. H.S. Egerton, D.S.O. (Chairman),
Mr. G.J. Collins, Col. Sir Ralph S.
Clarke, K.B.E., Mr. W.R. Dunlop,
The Rt.Hon.The Viscount Gage, K.C.V.O.,
Mr. A.K.L. Harvey, Mr. J.R. Owen and
Mr. G.A. Warburton.

MINUTES

1. The minutes of the last meeting were taken as read and were signed by the Chairman.

UCKFIELD RURAL DISTRICT - OBJECTION NO. 33

2. The Sub-Committee considered a letter from the Mayfield Parish Council protesting about the attitude of the County Council through their representative at the Ministerial Hearing concerning an alleged bridle path. The Clerk reported that the decision of the Minister had since been received; the Minister had not accepted the contentions of the Parish Council.

3. RESOLVED - That the Clerk be instructed to reply to the effect that while it is regretted that the views of the County Council differ from the views of the Parish Council it was nevertheless necessary to ensure that the question at issue was fully investigated at the Hearing.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949
Public Rights of Way

4. The Sub-Committee had before them the following report by the Clerk dated the 19th September, 1956 :-

R/NP

CONFIDENTIAL

RIGHTS OF WAY SUB-COMMITTEE

25th September, 1956

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

DEFINITIVE MAP OF RIGHTS OF WAY

REC. 1. Notice of the preparation of the Provisional Map and Statement for the Urban District of Seaford and the Rural District of Hailsham was duly published as required by the above Act and as there has been no application to Quarter Sessions the Sub-Committee are now RECOMMENDED to recommend the County Council to approve the Definitive Map and Statement for the Urban District of Seaford and the Rural District of Hailsham.

APPEALS TO THE MINISTER

2. Since the last meeting of the Sub-Committee the Minister has dismissed the appeals against the County Council's decision regarding alleged public paths across the Trentrees, Highley Manor and Paddockhurst Estates (paths Beacombe 18a,b, 23, 24a,b, 25 and Worth 57). The Minister has also dismissed the appeal by the Mayfield Parish Council against the County Council's decision that a path through Great Froggers Farm, Mayfield, was only a public footpath and not a bridleway as claimed by the Parish Council (path Mayfield 29, 30b, 31).

PROVISIONAL MAP OF RIGHTS OF WAY

REC. 3. The Sub-Committee are now RECOMMENDED (a) to approve the Provisional Map and Statement for the Borough of Hove and the Rural District of Cuckfield and (b) that the County Council be recommended to delegate to the Sub-Committee the powers and duties of the County Council under the National Parks and Access to the Countryside Act 1949, Section 31 (Determination by Quarter Sessions of Disputes as to Provisional Maps and Statements) as regards the Borough of Hove and the Rural District of Cuckfield.

4. It is hoped to submit to the next meeting of the Sub-Committee the Provisional Map and Statement for the Rural District of Uckfield.

DRAFT MAP OF RIGHTS OF WAY

5. The following part of this report deals with alleged paths in the Battle, Chalvey and Uckfield Rural Districts.

Objection Battle R.D. 14. Paths Icklesham 8, 9, 10c, 13, 14

6. The Draft Map shows the following alleged public footpaths which were also marked as such on the Battle Rural District Council's 1935 Map :-

A. Icklesham 8b, 8c and 9. From Castle Farm generally northwards towards Camber Castle bifurcating to become Icklesham 8a and 9 west of the Castle and continuing respectively as 13c and 14 in the Borough of Rye.

B. Eye 8. Icklesham 10c. From Rye Harbour Road level crossing in the Borough of Rye generally southwards past Eye Rifle Range to the southern corner of field O.P. 128a.

C. Icklesham 14a, b. From the southern end of Icklesham 10c south-eastwards past a sheepfold to Fisherman's Walk with a branch, Icklesham 14a, d from such sheepfold generally southwards to join Fisherman's Walk just east of the Watch Houses.

D. Icklesham 13. From the Watch Houses near Fisherman's Walk to the south-eastern corner of field O.P. 101 east of Castle Farm.

35. Evidence of the frequent use of the alleged paths (subject to minor deviations) for many years was given by J & F. Saunders, C & D. Cutting, B. Downey (path 66 only), W & A. Milgate and A. Mills. A. Mills, A. Milgate and D. Cutting are employees of J. and F. Saunders - A. Mills, B. Downey, C. Cutting and J and F. Saunders are, or have been, allotment holders.

36. Since the above Hearing the landowners and the Parish Council have agreed that the Parish Council will drop their claim to path 71 and the landowners will admit paths 72 and 68 a,b, construct a 10' wide vehicular access from the county road via Fishermans Walk to the allotments and dedicate a public footpath along the northern boundary of the allotments to join up with path 72.

REC. 37. It is accordingly RECOMMENDED (a) that the previous determination, that path 71 be added to the Draft Map, be revoked, and (b) that the previous determination, that paths 72 and 68a,b, be added to the Draft Map, be maintained.

Objection Chailley R.D. 28. Path Newick 6b

38. At their meeting on 11th October, 1955, the Sub-Committee determined that the Draft Map be amended so as to show path Newick 6b as following the route set out in the Quarter Sessions Diversion Order of Easter 1837.

39. The Newick Parish Council had previously objected that the Draft Map did not show a westerly variation of the northern end of this path which they claimed was the route now used but at the Hearing of their objection on 15th July, 1955, the only evidence which they produced of the public use of their variation was a statement by their Clerk that he had used it for evening walks three or four times altogether between the years 1927 and 1940.

REC. 40. The Parish Council have appealed to the Minister against the omission from the Draft Map of the route which they claim and, as it has since been ascertained that the three landowners affected do not object to it, it is RECOMMENDED that the Minister be informed that the County Council do not propose to resist the Parish Council's appeal as this may avoid the holding of a formal inquiry by the Minister.

Objection Chailley R.D. 29. Path South Heighton 1

41. The Draft Map showed an alleged public footpath from the towpath on the east side of the River Ouse at the Piddingham/South Heighton Parish boundary running northwards across the railway to join path Tarring Neville 1 leading to the Village of Tarring Neville. The British Transport Commission objected on the ground that there was no public footpath across their railway and, after hearing the Commission in support of their objection and receiving a letter from the Clerk of the South Heighton Parish Council stating that the Parish Council had claimed the alleged path in error, the Sub-Committee, at their meeting on the 20th May, 1955, determined that path South Heighton 1 be deleted from the Draft Map.

42. Objections to this determination have been received from the South Heighton Parish Council (who now say they did not claim the path in error) Mr. J. Eldridge and Mr. S.A. Gravett, and at the Hearing of these objections on the 17th September, 1956, it was stated on behalf of the British Transport Commission:

(a) That the deposited plans and book of reference leading to the London and Brighton Railway (Newhaven - Seaford Branch) Act 1846, referenced the crossing as "pasture" in the ownership of Thomas Eversard, no reference being made to the Surveyor of Highways.

(b) The crossing was constructed as an accommodation crossing only, in accordance with the terms of the Conveyance dated 20th January 1853, by the Dean and Chapter of Chichester to the Railway Company.

(c) The Railway Company's working plan for their Newhaven contract which was prepared between 1846 and 1853 showed the towpath as an existing track but did not mark the route of path South Highton 4.

(d) The crossing was provided because the new railway line severed lands in the ownership of Thomas Everard and had there been a public footpath the Company would have been obliged to provide proper stiles or small gates each side of the crossing. None were so provided.

(e) That the field gates at each side of the crossing were hung so as to open away from the railway line, while if there had been a public footpath such gates would have been hung so as to open across the railway line.

(f) That one or both of such gates have been padlocked as long as can be remembered, a key being in the possession of the owner of the severed lands.

(g) There has never been any complaint of the obstruction of a public footpath.

43. Mr. Elfridge (who also represented the Parish Council) called four witnesses who testified to the use of the alleged path for over 60 years but both he and his witnesses agreed that throughout that period one or both of the railway crossing gates had always been locked. One of the witnesses, a Mr. Ashdown, originally stated that there had been stiles fixed in the ground near the middle of each crossing gate but when asked how it had then been possible to open the crossing gates had stated that on reconsideration he thought that there must have been small swing gates beside each of the two railway field gates. Mr. Luff, who used the path once or twice a week from 1912 until 1914, and again after the first World War until 1925, stated that there had been no small gates but that battens had been fixed to each of the railway crossing gates which enabled people to climb over the gate as though it were a stile. Mr. Elfridge confirmed the existence of such battens which he said disappeared during the last war and that since he became a member of the Parish Council in 1922 the Parish Council had not received any complaints of the locking of the railway gates or of the non-repair of the battens. Mr. Bennett, who used the path regularly from 1896 to 1914 and intermittently from 1920 to 1935, also thought there might have been some battens on the gates to make it easier for people to get over them. Mr. Gamage, who used to be employed on the farm and used the path regularly from 1896 until 1916 was unable to remember any small gates beside the crossing gates or any battens on the crossing gates. Mr. Gamage's employer had a key to open the railway gates when they wished to take cattle through.

44. Mr. Gravett, who is an artist, stated that he had used the path three or four times a year since 1928 for pleasure purposes and had never seen any battens on the railway gates, which he climbed over. He had occasionally seen other persons using the path.

45. In a recent case in which the evidence was that certain level crossing gates had been kept locked but that for over 20 years members of the public had climbed over them and crossed the railway line, the Divisional Court held that no public right of way had been acquired and in the course of his judgment the Lord Chief Justice stated :-

"How can it be said that the public have enjoyed this as of right, using right in the technical sense, which I think means not per vim, nec clam, nec precario, without interruption? Apparently quarter sessions seem to think that the railway authorities ought to have erected gates about 40 feet high, or put up formidable spikes or something of that sort. The authorities have got locked gates, but people will climb over locked gates. Supposing a man had climbed over when a train was approaching, could it be thought that he was entitled to damages? He would be an obvious trespasser."

REC. 46. It is ~~RECOMMENDED~~ that the previous determination that path South Highton 1 be deleted from the Draft Map, be maintained.

Objection Cheshire R.D. 10. Path Tolacomb 7

47. After considering an objection by the Tolacomb Parish Council to the inclusion from the Draft Map of an alleged public footpath from the south end of Tolacomb Village county road south eastward for 450 yards to path Tolacomb 6 and the Oak-Comditch, at their meeting on the 19th May, 1956, determined that the Draft Map be amended so as to show the footpath claimed by the Parish Council. The Trustees of Berian's Gift and Mr. Guy Farnham subsequently objected to the addition of this footpath and the Parish Council have now stated that they do not wish to proceed with their claim to the path.

REC. 48. It is accordingly ~~RECOMMENDED~~ that the previous determination that the Draft Map be amended so as to show path Tolacomb 7, be revoked.

Objection Uckfield R.D. 26. Path Wadhurst 11a

49. The Draft Map shows an alleged public footpath from the village of Wadhurst along Wadhurst Lane as far as the Sheepwash and then diagonally across field O.P. 1085 to connect with path Wadhurst 11b. The route marked on the Draft Map follows the route marked on the Ordnance Map and also on the Uckfield R.D.C.'s 1955 Map.

50. Mr. and Mrs. Fitzgerald, who have recently purchased a large part of Wadhurst Castle Estate, including field O.P. 1085, have submitted a late objection through their solicitors on the ground that instead of crossing O.P. 1085 the alleged path continues round their field along Wadhurst Lane to join path Wadhurst 11b which connects with path Wadhurst 11b. The landowners' solicitors have declined to submit any evidence in support of their late objection until the County Council have decided whether or not to entertain it.

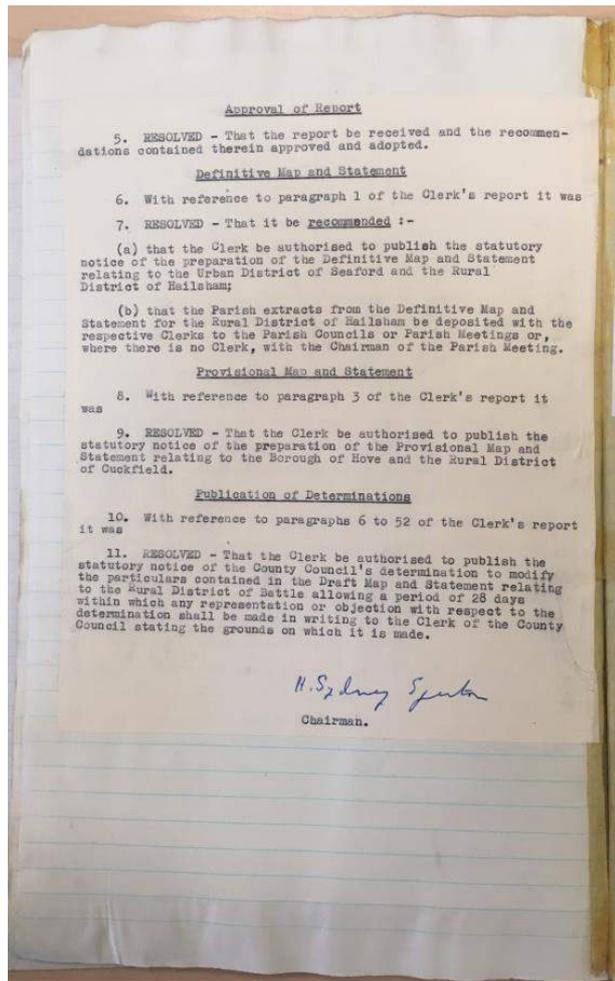
51. The Wadhurst Parish Council have submitted evidence (stating that more will follow) from three persons who have used the path (a) every Sunday in summer and frequently in winter for 50 years, (b) for 45 years, and (c) dozens of times each year for over 70 years.

REC. 52. On the information available it is ~~RECOMMENDED~~ that the late objection by the landowners be not entertained and accordingly that no alteration be made in the Draft Map.

H. S. HARTIS

Clerk of the County Council.

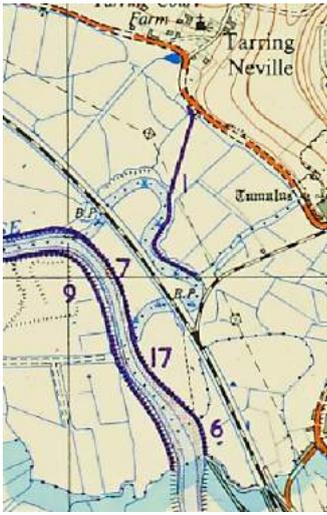
19th September, 1956.



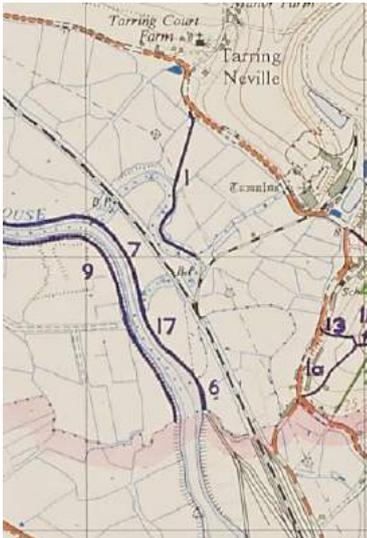
While the Council accepts this decision, as made in the 1950s, the Council does not believe, from the evidence before it, that the 'London Brighton and South Coast Railway Act 1914' was looked at or considered when this decision was made and therefore considers the 1914 Railway Act as new evidence.

As such, the Council will consider the merits of this new evidence to ascertain whether it is strong enough to challenge the original decision and if it is can now be reasonably alleged that a public right of way exists (Test B), or even if Test A is satisfied.

If the 1914 Act had been seen, which says that a public right of way existed along most of the southern section of the claimed route below the railway line, it is possible, even likely, that the objection would have been looked into further, quite possibly overturned and a different decision reached. This new

		evidence, together with the opinion of the South Heighton Parish Council that a right of way existed, may have resulted in the sub-committee believing that a public right of way existed despite, and from before, the alleged locked gates on the railway crossing.
16	C/C 97/3 Chailey Rural District (RD) draft map 1954	<p>The claimed route appears on this map within the parish of South Heighton as path no. 1.</p> 
17	C/C 97/14 Chailey RD Provisional map 1957	<p>Path no. 1 in South Heighton parish does not now appear and it seems it has been removed from the definitive map process and not included on the provisional map.</p> 

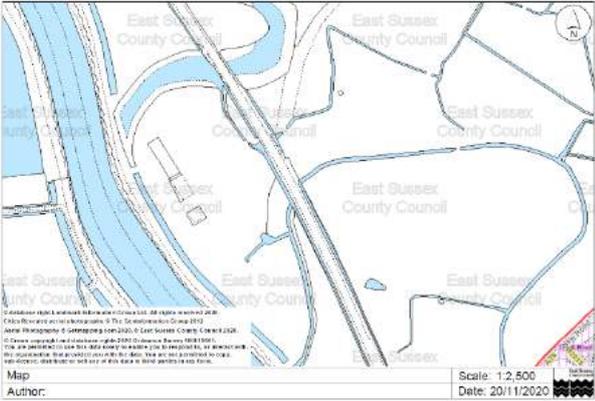
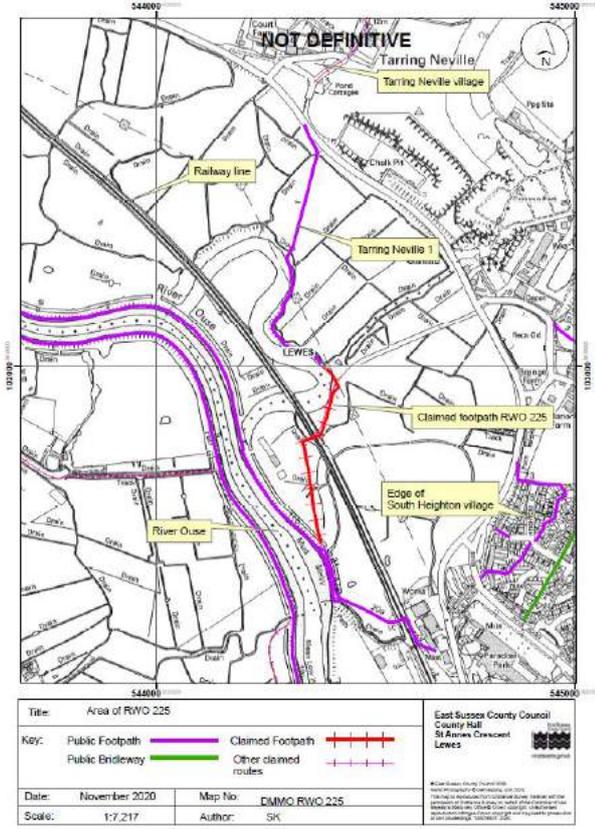
<p>18</p>	<p>C/C 97/25 Chailey RD Definitive map 1957</p>	<p>The claimed route is not shown.</p> 
<p>19</p>	<p>C/C 97/28 Chailey RD Draft revised map 1960</p>	<p>The claimed route is not shown.</p> 
<p>20</p>	<p>C/C 97/34 Chailey RD Provisional revised 1963</p>	<p>The claimed route is not shown.</p>

		
21	C/C 97/40 Chailey RD revised definitive map 1963	<p>The claimed route is not shown.</p> 
22	C/C 97/53 Chailey RD Draft revised map 1971	<p>The claimed route is not shown.</p>

		
<p>OS maps; 4, 5, 6, 7,</p> <p>Inclosure maps: 8b, 8c,</p> <p>1914 Railway Plans: 10b, 10c,</p> <p>Parish maps: 13a, 13b</p> <p>Definitive maps: 16-21</p>	<p>Tramway</p>	<p>Branching off of the railway from just below point B heading north for a short distance then to the East, is another form of railway track labelled on some maps as 'Tramway'. It seems to lead to an old industrial site on the eastern side of the now A26, possibly an old chalk quarry. It seems to pass very close to the oxbow lake section of the River Ouse. The existence of a footpath at B-C may have a connection to this junction of railway and tramway. Indeed, the footpath A-B may pass very close to the banks of the ox-bow lake at roughly the point TQ 4442 0300 between the river bank and the tramway. The Council holds maps from 1899 to 1956 showing this tramway. It does not provide any direct evidence of a public right of way but could suggest that the claimed route ran as such between A and B because it was running alongside the tramway, or between the river and the tramway and avoided crossing it by crossing the railway at B-C instead.</p>
<p>15</p>	<p>CONCLUSION</p>	<p>I suggest that the evidence contained in the 1914 railway act strongly supports the existence of footpath rights on the application route.</p> <p>I submit that the evidence provided by ordnance survey maps from the 1870s onwards suggests that the path has been physically in existence since maps of sufficient scale to show the route were first</p>

		<p>created. The evidence of the surveys done at the time of the first definitive map creation, coupled with the disappearance of the path as a whole from subsequent mapping, suggests that sometime in the 1930s, 1940s or 1950s the path gradually fell out of use, either because of the blocking of the route by the railway company, or because of some other obstructions.</p> <p>The maps of the Ordnance Survey after the 2nd edition of the 1inch map are not evidence of the existence of a right of way. But they do provide evidence of the existence of a path and its use. If the route was a private way then we have to ask, why would a private owner want to use it? There is only one building that might be visited- the boathouse that is on the parish boundary and is mentioned on some maps and in the definitive map surveys. But the path continues beyond here and it is unlikely that anyone would want to approach the boathouse via the long walk from the nearest road in this direction.</p> <p>It could be that the route was used to get animals or farm equipment to the land between the railway and the river, but, although the path as a whole is gated, there is no evidence that it was used as anything other than a footpath and it was described as such on maps. Use as a farm track would imply something much wider and, with one exception on one part of the route in the definitive map survey, the route is not described as a track. The route goes between one public highway and another and so I suggest that it was almost certainly used by the public as a highway.</p> <p>For each individual piece of evidence there are alternative, if unlikely, explanations but I suggest that, when added together there is no reason other than the existence of a public footpath which explains what all of these documents show. It is therefore more likely than not that the application route is a public footpath.</p>
--	--	--

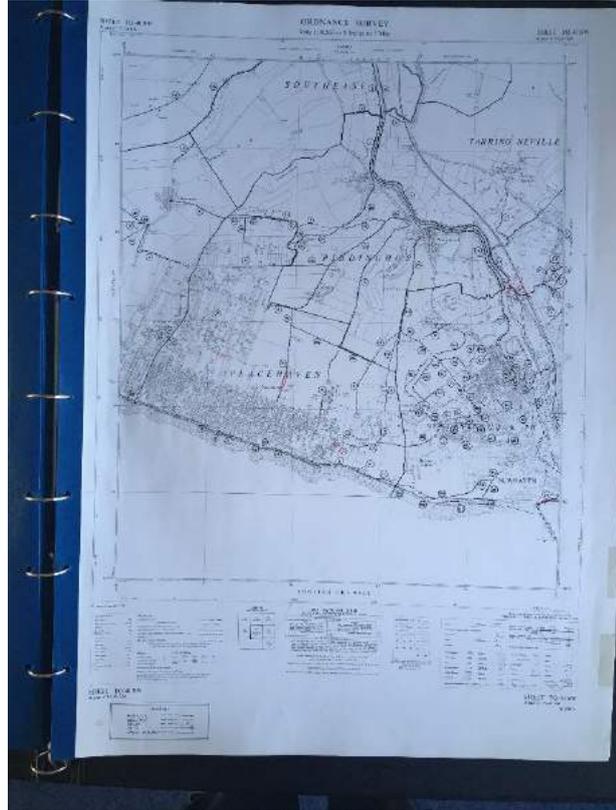
	The Council:	The 1914 Railway Act says that a public right of way existed from point C to point D as claimed which is supported by the OS maps. Attempts may have been made by the railway company to block this route between the time of this Act and the time of the draft definitive map but obstructions such as this do not mean a public right of way becomes private as a result.
16	REQUEST	I request the surveying authority to add the route to the definitive map and statement as a footpath
	The Council:	The purpose of this report is to decide if there is enough evidence for either Test A or B to be satisfied and this will be confirmed in the Conclusion.
	APPENDICES	<p>Appendix 1 deposited plans for the Lewes to Seaford Railway</p> <p>Appendix 2 deposited book of reference for the Lewes to Seaford Railway.</p> <p>Appendix 3 London Brighton and South Coast Railway Act 1914</p> <p>Appendix 4 LBSC Railway act 1914 deposited plans and book of reference</p>
	The Council:	The above Appendices were provided by the Applicant as part of his evidence.
23	Deposits	<p>There is one Deposited Map and Statement that affects the claimed route, called 'Glynde Estate' which was deposited with the Council on 2 April 2014 and which expires on 2 April 2034. The deposit covers a large area including the villages of Tarring Neville and South Heighton. All of the claimed route north of the railway line, to Tarring Neville 1/parish boundary, on land owned by landowner 1 (Glynde Estate) is covered by this large Deposit.</p> <p>The rest of the claimed route, that which crosses the railway line, and land owned by</p>

		<p>ESCC down to the River Ouse, is not covered by a Deposit.</p> <p>This Deposit has no impact on the decision of this application as the evidence is based on historical mapping not user evidence.</p>
<p>24</p>	<p>Terrier</p>	<p>There are no Highway Rights that match the route of the claimed route on the Council's Highway Terrier map.</p> 
<p>25</p>	<p>Definitive Map Digital ArcMap</p>	<p>There is no record of a public right of way along the claimed route.</p> 

26a-26b

Definitive Map
Paper Version

There is no record of a public right of way
along the claimed route.



7.5 Applicant's Appendices provided by the Applicant as part of the Application
(to support the Applicant's Statement)

The Applicant also provided the following documents, available in the File of Evidence.

Appendix 1 – Deposited Plans, Lewes to Seaford Railway

Appendix 2 – Book of Reference, Lewes to Seaford Railway

Appendix 3 – Local Act 1914 C. Cii London Brighton and South Coast Railway

Appendix 4 – Book of Reference, 1914 Powers and Map

These are discussed in the above table.

8. Applicant's Request to the Planning Inspectorate for a Direction

8.1 On 15 September 2019 the Applicant emailed the Council to advise that he had applied to the Planning Inspectorate for a Direction of the Council to determine the application.

8.2 On 30 January 2020 the Planning inspectorate confirmed to the Council that they should determine the application within 6 months of this date, ie by 30 July 2020.

8.3 Unfortunately, as a result of Covid-19 having an impact on Council processes and other work pressures, this deadline was not able to be met.

SECTION C – Consultation Process

9. Consultations with User Groups and Statutory Consultees

9.1 On 24 April 2020 the Council wrote to all Statutory Consultees with a copy of the Schedule 7 application form and the plan of the route asking for comments by 12 June 2020.

9.2 On 24 April 2020 Lewes District Council replied to say that as they do not own any of the land in question, therefore they have no comment or representation to make.

9.3 On 10 June 2020 David Finney on behalf of the Society of Sussex Wealdmen replied to say:

‘Our Society has no evidence of use to offer but we welcome all reasonable additions to the RoW network. This proposal would appear to complement the existing local RoW network by improving access to the river bank from Tarring Neville village and perhaps removing some pedestrian movements between the village and South Heighton, and beyond, from the A26 verges, which may bring some road safety benefit. On the other hand it would appear to require the creation of a new rail line crossing with its attendant safety and cost implications. On balance therefore, we would give only tentative and qualified support to the claim. ‘

10. Consultations with Landowners

Initial Response of the Landowners to the Application

10.1 On 24 April 2020 the Council wrote to all landowners with a copy of the application and all the evidence provided by the applicant, asking for comments by 12 June 2020.

Glynde Estate and Network Rail have responded using the lettered reference points referred to in the Railway Act plans. Their comments and those of the Council use these letters as seen on the railway plans in this section.

10.2 On 27 April 2020 Mr Michael Wood of ET Landnet Ltd emailed to say that he had been passed the Council’s letter of 24 April sent to the Glynde Estate and been asked by them to review and respond on their behalf.

10.3 On 7 May 2020 Mr Wood replied with the comments of the Glynde Estate as below:

10.4 Table 4, Initial Response of the Landowner - Comments by Glynde Estate 7 May 2020

Numbered point Or Council response	Comment by Glynde Estate
1.	The status of this route has been the subject of a claim under the National Parks and Access to the Countryside Act 1949 in connection with the preparation of the Definitive Map. There is no evidence of an error in the

	process and the Applicant is wrong to criticise this procedure (Applicant's paragraph 14.1.27).
Council	The Council will consider whether any of the evidence provided by the Applicant, or from any other sources, is new evidence that was not looked at during the preparation of the definitive map.
2	In order for the matter to be determined afresh by the County Council it is necessary for there to be new evidence which would challenge the earlier decision to remove the route from the Draft Map.
Council:	As above.
3	The London Brighton and South Coast Railway Act 1914 is the sole evidence which the Applicant can adduce in support that some of the application route was a public footpath. The Plan appears to identify a section of path west and south of the railway (Section B-E on that plan) which was to be stopped up. The Applicant contends that this depiction demonstrates that this section of the route was a public right of way and that by extension, the remaining section from point E on that plan through to the terminal point of Tarring Neville 1.
Council:	Railway Acts are reliable sources of information. They needed to be accurate in order to be scrutinised and reviewed by Parliament and the general public and were subject to a consultation process. The Railway Plans claim that B-E and E-D were public rights of way. It would be unusual for that public right of way to end at D. It is likely that it continued as a public right of way and to join another public right of way or highway, and the most likely route is the claimed route, as outlined on the railway plans and the OS map, which joins up with Tarring Neville 1.
4	The plan makes no direct reference to the section east and north of point E being an existing public path.
Council:	E-B was to be stopped up, but it is unlikely that the existing public footpath to E stopped at E. A likely course it would take is as that recorded on the OS maps to Tarring Neville 1. When zooming in closely on the 1914 plans, it is possible to see that the line of the footpath E-D across the railway line goes very closely to and from the

	<p>railway line itself and continues on to the north-east from D. It would seem likely that there was some sort of crossing over the railway at this point. Given that the railway company had chosen to create a new public footpath that used this point to cross the railway line it would seem likely that they were choosing this point as a crossing point was already established there.</p>
5	<p>The minutes of the evidence from the 1956 Sub-Committee hearing set out in detail the purpose of the crossing and the arrangement of the gates. That this was consistent with the status of an occupation crossing was not challenged. The assertion was that it was nonetheless possible to cross the railway at this point notwithstanding that the gates were kept locked.</p>
Council:	<p>As well as the railway company stating that the gates were locked, and some of the users also saying this, there is some evidence of use by the witnesses some of which may not have involved locked gates.</p>
6	<p>There is no evidence of the express dedication or statutory creation of a crossing of the railway at the point of the claimed route. This is the only way that it could have become a public right of way.</p>
Council:	<p>As point 4</p>
7	<p>If (which is not supported by documentary evidence) the route had been formally created (by express dedication or otherwise), this would have required the provision of stiles to ensure compliance with railway regulations and there is no evidence that this was done. There is unchallenged evidence of the locking of the gates to control access and the evidence to the sub-committee of the action to control the access in 1956 support this. No user of the railway crossing by the public could lead to a finding of a public right of way because such user would be a criminal offence, namely trespass on the railway, which has been a statutory provision since 1840.</p>
Council:	<p>The railway company acknowledged in the 1914 Act a public footpath along E-B. It is not clear how or when this came into being and it is not acknowledged in the 1836 Act. It may be possible that the public way was in existence before 1836, pre-dating the railway and a crossing had to be provided, though the 1836 Act and the historical maps do not support this. It may have been created after 1836 and a crossing provided, though no</p>

	<p>record of this has been found. Given that the railway company did recognise a public footpath E-B and the likelihood that it continued by crossing the railway, it is also likely that there was a crossing between E-D. The locking of gates either side of the railway by the railway company does not mean that the right of way that they acknowledged is extinguished by these acts.</p> <p>On the other hand, it has to be said that a possible reason why the railway company did not carry out the proposed changes to the rights of way here, as laid out in the Act and plan, is that they later understood that E-B was not a public right of way, didn't feel the need to therefore stop it up and consequently began locking the gates either side of the railway line either to prevent further dedication or trespass or to make sure any claim of a possible existing right of way was pursued. However, there is no evidence that this is the reason why the railway company did not carry out the changes to the rights of way here and this is pure speculation. Indeed, this suggestion would have to also apply to the other paths affected other than the claimed route, e.g. A-B-C and again there is no evidence available for this.</p> <p>Moreover, the railway company had gone to great lengths in creating the 1914 Act and plans which were to be put before Parliament and open to public consultation and it is unlikely that recognising so many public rights of way in error would have occurred. The fact remains that the railway company believed there was a public right of way E-B, with a likely crossing E-D and locking the gates either side of the railway line would not change its status.</p> <p>It is important to question the need for gates by the side of the railway line here if there was no crossing, and if this was a private crossing for farm access, then why was E-B recognised as public by the railway company.</p> <p>It is possible the right of way went under the railway line, and the railway line over the public way, but there is no evidence of this. As a site visit was not possible it is difficult to gauge the current situation on the ground but all the evidence suggests the right of way crossed over the railway line.</p> <p>It is unfortunate that the 1914 railway plans do not appear to draw a line on the map to show the routes to be stopped up, (B-E; A-B-C) in the same way that a dashed line is drawn on the map to show the routes to be created (A-D-C). Some of these routes can be seen with double-dashed lines (B-E) but others cannot (C-the riverbank towards B).</p>
8	<p>The evidence in support of the Applicant's claim can only therefore relate to a section of the claimed route (between the railway and the riverbank). It cannot be implied that this relates to the remainder of the claimed route which cannot be a public right of way.</p>
Council:	<p>As discussed elsewhere in the report, the merits of the remaining part of the claimed route north of the railway line joining up with Tarring Neville 1 will be assessed as part of the investigation. If E-B was a public right of way, and crossed the railway line, it is more likely than not that it continued on, and in so doing, the most likely route is that it followed the claim line to Tarring Neville 1.</p>

9	<p>No other evidence supports public status for the section between the railway and the riverbank. The proposed diversion set out in the 1914 Act was not implemented, and the reason for this is unknown. It may have been the position that it was realised that the physical track shown on the plan was not in fact a public path so that removing it from the land was not necessary.</p>
Council:	<p>The Railway Act looks at E-B as being public but so does the clerk's report in the sub-committee Minutes which includes user testimony and the support of South Heighton Parish Council.</p> <p>Please see comments in point 7 regarding the railway company's belief that the route was not in fact a public path.</p>
10	<p>In any event, as the route should either join to another highway or go to a point of public interest (which it would not do by terminating at the railway) the appropriate finding on the 1914 Railway Act evidence is that no part of the claimed route is a public right of way.</p>
Council:	<p>It is unlikely that the public path terminated at the railway line and more likely than not that it crossed the railway. However, it could still be a public right of way if it did terminate at E and such cul-de-sac routes are possible. Indeed, Tarring Neville 1 is a cul-de-sac.</p>
11	<p>To make a Modification Order the Council must be satisfied that the allegation that a right of way exists is reasonable. There is no basis upon which it can reasonably be said that the whole of the route was ever a public right of way. The application should be refused.</p>
Council:	<p>The Council will assess both sides of the argument and review all available evidence in order to determine if the evidence satisfies either Test A, or B or both.</p>

10.5 On 3 June 2020 Pamela Elkington of Network Rail replied by email with a letter dated 2 June 2020, as outlined below.

10.6 Network Rail objects to the application affecting its property and requests the Order should not be made.

10.7 Table 5, Initial Response of the Landowner - Comments by Network Rail, 2 June 2020.

Numbered point Or Council response	Comment by Network Rail
1.	<p>London, Brighton & South Coast Railway Act 1914 (the 1914 Act)</p> <ul style="list-style-type: none"> a) The application correctly concludes at 8.1.16 that the land acquisition powers and powers for stopping up and diversion of the existing public footpaths given in the 1914 Act were not exercised. b) The 1914 Act gave the railway company the power to stop up certain sections of the existing footpaths. Section E-D on the 1914 deposited plan (at Cement Company's LC (CC LC) was not included. It gave the powers for a new footpath to be made at A-D, which encompasses E-D. This is strong evidence that no public footpath existed at D-E at this time. The conclusion made at 8.1.10 that E-D was already a public right of way is therefore incorrect. c) 8.2.2 states it is 'hard to see the purpose of a public path between B and E if it did not continue across the railway'. The purpose of the public footpath at B-E is not in question here, and an assumption on such should not be made, and is simply not relevant. The application extrapolates unjustifiably on this point and provides no evidence upon which this is based. The purpose of a public inquiry, if one was to follow, would be to determine whether it is more likely than not that a public footpath is in existence, not what the purpose of its existence is.
The Council:	See comments above, by the Council to point 7 of the response from Glynde Estate. It seems unlikely that the public right of way on the 1914 railway plans terminated at E and did not cross the railway line, particularly as this particular crossing and route was shown to continue

	(albeit as a route of unknown status) as such towards D on the railway plans and the OS maps.
2	<p>OS maps referred to in Paragraph 13.</p> <p>a) OS maps are not conclusive as to the status of any path, and do not purport to be. They ordinarily do not distinguish between public and private paths.</p> <p>b) The application makes an unjustifiable interpretation that 'fp' must refer to a public footpath. This is incorrect.</p>
The Council:	Agreed. However, in certain circumstances, the physical existence of a route on an OS map can be helpful in determining the course of a route when it is considered to be public.
3	<p>Level Crossing status and closure</p> <p>CC LC was an accommodation work, provided only for field to field access for the landowner whose land was severed by the construction of the railway. It was closed in 1961 because, in our view, by operation of the law, the sole occupation of the land on both sides of the railway came to an end, which extinguished Network Rail's predecessor's statutory obligation to continue to provide the accommodation work. It was therefore removed.</p> <p>Reference to a letter as opposed to a deed of release (for a private transaction releasing crossing rights for the landowner) or to an order (for the stopping up of a public footpath) is indicative that the closure occurred by operation of law, as described above.</p> <p>Reference is made to CC LC on the Terrier of the London, Brighton & South Coast Railway, which is annotated with 'Level Crossing at 55m 31chs closed. 30.08.1961 C..C.E's letter 11.12.1961'. Although the letter has been unable to be found to date, this further confirms that no public footpath existed over CC LC. 'Closed' is used as opposed to 'stopping up', as it would have been for any public crossing being removed.</p> <p>The annotation of the Terrier would be carried out only by either a surveyor or an Infrastructure Liability Officer, both of whom would have been well versed in the terminology of level crossing and footpath closure mechanisms. It is highly probable that, if CC LC carried a public footpath, 'stopping up' would have been used in the annotation. This is therefore evidentially corroborative that no public footpath existed over CC LC.</p>
Council:	This information suggests the crossing E-D was closed in 1961. Because South Heighton 1 was not included on the definitive map in the 1950s, it meant that it was not a recorded public right of way at the time of the closure. This would have meant it was easier to close the route as it was not being used by the public and only by local occupiers. It is the purpose

	of this report to ascertain if the route should have been recorded on the definitive map.
4	<p>Presumed dedication</p> <p>Considering the above, the only means by which a public footpath may be claimed is by presumed dedication. This can be discounted, due to the interruption to the footpath by CC LC's gates being locked during any period of use which may be claimed. Paragraph 14 of the application confirms, by means of witness statements, that the gates have always been locked, and any use made by those witnesses was done so by climbing over the gates. No stiles were in situ, and the landowner was the only person who held a key to the gates.</p>
The Council:	No specific user evidence has been provided by the Applicant and the application rests on historical evidence and maps. Indirectly, within the evidence, is mention of use by users described in the clerk's report of the Rights of Way sub-committee in 1956.

10.8 On 15 June 2020 John Tripp, Senior Estates Surveyor of East Sussex County Council replied as below:

10.9 Table 6, Initial Response of the Landowner - Comments by John Trip, 15 June 2020

Numbered point Or Council response	Comment by John Tripp, East Sussex County Council, as Landowner.
Not applicable	We have passed all the details to the farmer that has a grazing licence for the land: Paul Collinson of Norton Farm Partnership. He has not responded with any specific comments. We have no further comments to make.
The Council:	The Council contacted Paul Collinson in order to discuss access for the site visit, to which Paul agreed should be possible, but unfortunately at the time of writing this report site visits were advised against due to Covid-19.

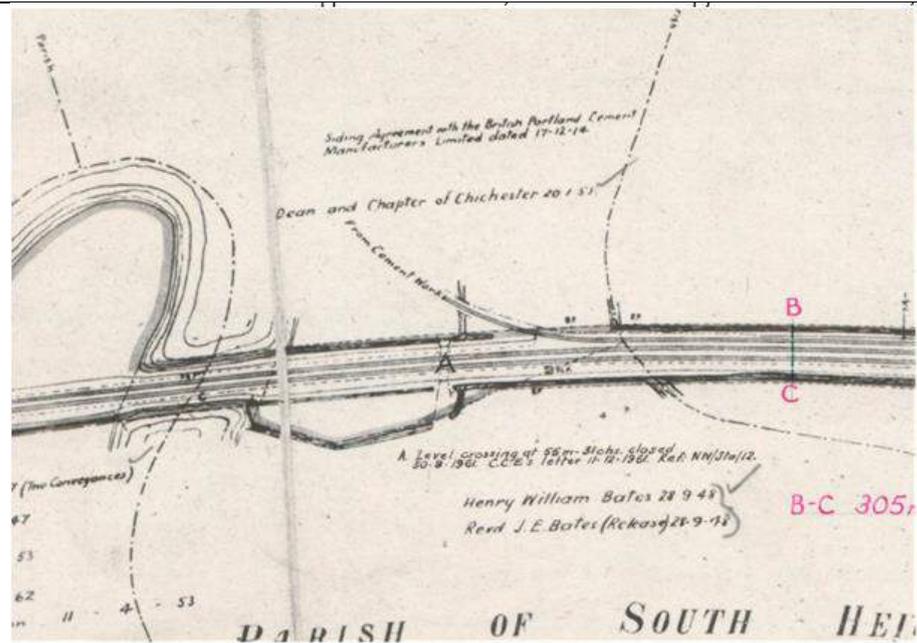
Initial Rebuttal from the Applicant

10.10 On 2 July 2020 the Council wrote to the Applicant advising that all further representations and comments received so far were now available on the webpage and asked for comments by 30 July 2020.

10.11 On 2 July 2020 the Applicant replied to say as follows:

10.12 Table 7, Initial Rebuttal from the Applicant - Comments from the Applicant, 2 July 2020

<p>Numbered point</p> <p>Or Council response</p>	<p>Comment by the Applicant, 2 July 2020.</p>
<p>Not applicable</p>	<p>No new evidence had been produced by the objectors (The Network Rail submission referred to a document but it had not been produced). Comments are limited to the interpretation of evidence, and in one case, the desirability of the path.</p> <p>I therefore have no comments to make and look forward to a decision within the timescale set by the Planning Inspectorate.</p>
<p>The Council:</p>	<p>On 27 November 2020, the Council emailed Network Rail to ask what they referred to by CC LC, a Terrier and with reference to a letter, in their point 3 of their response above. On the same day they received the following reply:</p> <p><i>CC LC is an abbreviation for Cement Company's Level Crossing (see 1b). This is the name of the (removed) level crossing in question.</i></p> <p><i>The Terrier is not included in the applicant's statement, but we do hold a copy which I had looked at;</i></p>



The paragraph beginning 'reference to a letter' relates to the paragraph 2 below that one, where it is stated that the Terrier is annotated with reference to a letter- this is just to explain the relevance of a letter being referred to on the Terrier- as shown, the letter is missing, and so we cannot provide a copy. Apologies for any confusion from the wording.

The same day the Council forwarded the reply from Network Rail to the Applicant asking for comments, but the Applicant was unable to respond to it at the time.

This information does not change the Council's opinion as detailed in its answer to point 3 in Table 5. Although this crossing was closed in 1961, this does not mean that an unrecorded public right of way could not have existed.

According to Land Registry, Guidance, Practice guide 52; easements claimed by prescription, updated 16 March 2020, <https://www.gov.uk/government/publications/easements-claimed-by-prescription/practice-guide-52-easements-claimed-by-prescription>

1.5 Railway land

Since the passing of the British Transport Commission Act 1949, it has not been possible to acquire a right of way by prescription over land owned by the commission and forming an access or approach to, among other things, any station, depot, dock or harbour belonging to the commission (section 57 of the British Transport Commission Act 1949). The references to the commission must now be read to include successor rail authorities and the Canal & River Trust.

The 1914 Railway Act and map acknowledged a public right of way that appears to have come into being before the 1949 Act.

11. End of Consultation Process

11.1 As the Applicant had no more to say, this ended the consultation process.

11.2 On 3 July 2020 the Council wrote to all 3 landowners and South Heighton Farm to confirm the consultation period had ended and the Council will now consider the evidence and write this report.

SECTION D – Collation of Evidence of Use

12. The following collates the evidence of use uncovered from the evidence provided to the Council from the Applicant and/or the Landowners and what now follows is the Council's comments on it.

12.1 Horses - There is no record in the evidence of public use by horse.

12.2 Vehicles - There is no record in the evidence of public use by vehicles.

12.3 Cyclists - There is no record in the evidence of public use by cyclists.

12.4 Walking - In the clerk's report of 1956 to the Rights of Way sub-committee there is reference to witnesses describing their use of the claimed route, although this is a summarised version of the evidence for the purposes of that particular report.

12.5 Verbal Challenges to Use

- a) In support of the claim – None
- b) In opposition to the claim - In the clerk's report of 1956 to the Rights of Way sub-committee there is reference to someone of the railway telling 2-3 members of the Brighton Angling Club that there was no right of way there.

12.6 Signs and Notices

- a) In support of the claim – None
- b) In opposition to the claim – None

12.7 Stiles, Gates and Structures

- a) In support of the claim – None
- b) In opposition to the claim – In the clerk's report of 1956 to the Rights of Way sub-committee there is reference to testimony by the railway company that there were locked gates either side of the railway line and there is also mention that some of the users noticed locked gates across the railway line.

Looking from above using the aerial images, the railway line crosses the claimed route from B-C. It's possible that there are other structures preventing access, but this cannot be established without a site visit.

12.8 Other Use considered

- a) Use under Secrecy. There is no record of any use by secrecy.
- b) Use under Force. Some of the use by the witnesses as detailed by the clerk in the 1956 report to the Right of Way sub-committee, which mentions locked gates, could be considered use by force if they climbed over locked gates to use the route.
- c) Permissive Use or Use by Licence. There is no record of any use by licence.

SECTION E – Council’s Summary and Response

13 Summaries of Evidence from Both Parties

13.1 Summary of Applicant’s Evidence

The Applicant states that the claimed route should appear on the Definitive Map and Statement because the 1914 Railway Act shows a public right of way for the claimed route south of the railway line, and its continuation north of this up to Tarring Neville 1 is supported by the OS maps. The removal of the claimed route from the 1950s draft map, and the decision not to include it on the provisional map, and in subsequent maps of the first definitive map process, was due to incorrectly allowing an objection by the British Transport Commission (the railway) and a failure to inspect the 1914 Railway Act and plan.

13.2 Summary of Landowners’ Evidence

The Landowners do not support the view that historical mapping is strong enough to support the existence of a public right of way. The Glynde Estate maintain that the 1950s definitive map process make the correct decision to remove South Heighton 1. They add that the 1914 railway plans are the only piece of evidence that mention part of the claimed route (C to D), that no dedication could have occurred by use over the railway line and there is no evidence for other parts of the route. Network Rail insist that there has never been a public right of way crossing the railway line, that the crossing has been closed since 1961 as it was no longer needed by local private users and that obstructions before 1961 would have negated dedication by use. East Sussex County Council’s Estates department has no information to offer.

14. Council’s response to the Historical Evidence

The Council has responded to individual points raised throughout the report above.

Much of the historical evidence (the historical maps, Tithe maps, 1845 railway Act, 1910 Finance Act and provisional Definitive Map onwards) does not provide sufficient strength to support the application. The main piece of evidence in support of the application is the 1914 London Brighton and South Coast Railway Act which shows part of the claimed route as a public right of way with the remainder of the route backed up by the OS maps.

The Council cannot overturn the decision made by the Rights of Way sub-committee in 1956 to accept the objection by the British Transport Commission. However, it believes there is insufficient evidence to show that the 1914 Railway Act was looked at during the 1950s preparation of the definitive map and therefore considers this ‘new evidence’ which when examined could lead to a different result that followed the allowing of the Commission’s objection.

The Council believes the 1914 Railway Act plans do show the claimed route (C to D) as a public right of way and that the obvious continuation of this route would be as claimed, and the physical existence of this is supported by the OS maps. This is further supported by the Ramblers’ survey of the entire claimed route and its subsequent inclusion on the draft definitive map, along with the backing of South Heighton Parish Council.

15. Council's response to the Comments from the Consultation

The Council has responded to individual points raised throughout the report above.

The comments from the user groups, and other similar statutory consultees, do not offer satisfactory evidence to prove the public right of way exists.

In response to the Glynde Estate's assessment of the 1950s definitive map process, the Council states that the evidence points to the 1914 Railway Act as being new evidence not previously looked at. There is limited evidence of actual use of the claimed route but the Railway Act does acknowledge a public way along part of the claimed route nonetheless.

While trespassing a railway line today would not allow for deemed dedication to be made, it is argued that the public right of way had already been created prior to this ruling. The Glynde Estate state that the Railway Act evidence could only apply to part of the claimed route and not the whole route, which is true. In just considering this part of the claimed route, a cul-de-sac route would result.

However, Glynde Estate further say that this part of the route couldn't be public as it did not go to and from and/or meet another public highway. If so, then it has to be questioned why this part of the claimed route appeared on the Railway Act plan as a public route, going from the riverbank to the railway line if it didn't continue on elsewhere, and the OS mapping evidence suggests this continuation was over the railway line.

The response from Network Rail does not dispute that the 1914 Railway Act described part of the claimed route as a public footpath and it adds that the powers to stop up C to D were not carried out suggesting it still exists. It does state that there was no public right of way over the railway.

In discussing 'purpose' the Council believes the Applicant means that it is unlikely that there would be the 'need' for a route in that direction to terminate at the railway line but rather for a route to cross it and continue onwards for whatever reason and that the Applicant did not mean that the route had a specific reason to cross the railway as perhaps Network Rail have taken it to mean. Network Rail's confirmation that the crossing was closed in 1961 and obstructed prior to that do not take into account that a public right of way may already be in existence prior to that (albeit unrecorded) and that locked gates and crossing closures do not alter the status.

There was no comment from East Sussex County Council as landowner. The local farmer who farmed the land, Paul Collinson of Norton Farm Partnership, was agreeable to a site visit however Council site visits were not possible during the Covid-19 pandemic. No further comment was provided from this source.

16 Council's response to Evidence of Use

The Council has seen no direct evidence of use by the general public at large. Some use was mentioned indirectly in the 1956 clerk's report to the Rights of Way sub-committee in which limited evidence of use up to the 1950s was recorded. However, in conclusion, there is insufficient evidence to support the existence of the claimed route through public 'as of right' usage.

SECTION F - Conclusions

17. Conclusion

- 17.1 The County Council considers that it has investigated the matter fully, having carried out historical research, consulted with relevant bodies, by taking into account the evidence of the Applicant, and the submissions of the affected landowners.
- 17.2 The main issue is whether the evidence discovered, when considered with all other relevant evidence available, shows that it can be reasonably alleged that a public right of way subsists on the claimed route. That is, a route which is not shown on the definitive map and statement but subsists along the route in question such that the map and statement require modification.
- 17.3 For user evidence-based claims, the test which must be applied is whether there has been evidence of use sufficient to raise a presumption of dedication. That is, that the claimed route has been used by the public as of right without interruption for 20 years. However, as no user evidence has been submitted for this claim, and none uncovered, this does not apply to this application. Moreover, in this case, there is no requirement to determine a date of challenge, i.e. a time when the use of the route was first called into question by the general public or the need to establish a relevant 20-year period of use. Instead, the test must be whether the historical evidence proves it is reasonable to allege that a right of way subsists.
- 17.4 The Application relies on evidence found in historical documents. The whole claimed route was surveyed as a public footpath by the Ramblers in 1951 and added to the draft definitive map in 1954. The claimed route was removed from the definitive map process and not included on the 1957 provisional map due to an objection by the British Transport Commission (the railway). The Council agrees with the Applicant that the 1914 London Brighton and South Coast Railway Act, in which the railway company acknowledged a public right of way subsists between C and D (part of the claimed route) is new evidence that was not seen by those preparing the first definitive map in the 1950s and that had they had seen it they would have likely added it to the provisional definitive map. The Railway company labelled C-D on their map as E-B and the railway crossing B-C as D-E, however all references here refer to the A-B-C-D layout as on the Council's report map.

Although the 1914 Act only refers to part of the claimed route of C-D, the evidence of the 1951 Ramblers survey, the 1954 draft definitive map and the OS maps support the belief that the route continued as claimed to join Tarring Neville 1 (as C-B-A). South Highton Parish Council had reinstated their initial claim that the claimed route was public with evidence of use from witnesses. The Railway Companies' objection to the claimed route rested on the references to the fact that the route was not mentioned in the 1846 plans for the line, but they did not mention their acceptance of C-D as a public footpath in 1914.

Without the 1914 Railway Act material, it is reasonable to conclude that the railway company's objection carried more weight than the parish council's claim as their evidence of use, which could be seen as trespass. However, with the 1914 Railway Act material added to the evidence, it is likely that the evidence of the parish council would have outweighed that of the railway company's objection. The evidence suggests the 1914 Railway Act material was not discussed as part of this objection. If it had been, it is reasonable to expect it to be mentioned in the report to the sub-committee and for the railway company to be asked to comment on it, but it was

not and they are not asked. Moreover, the railway company's admission of the public path in 1914 is dated after the 1846 material which formed most of their objection.

It seems more likely that at some point after 1914 the railway company began to block the crossing B-C, limiting the use of the claimed route by the public, certainly between B-C, but that by some people it was still, in all or part, used as a public right of way and this knowledge remained for it to be added to the 1954 draft definitive map. It is also likely that there was some form of crossing point possible of the railway line for it to be added and for the Ramblers survey to be completed as such. Although the Ramblers survey says the route from point C to the river is not clearly defined, it does mention the railway line as a 'railway crossing' and does not mention any obstruction or difficulty in crossing the railway line. The railway company's blocking of the crossing does not diminish the public right of way or their earlier admission of it, which is why it was still used, and considered public on the first draft of the definitive map.

This new evidence of the 1914 railway Act suggests that it was wrong to remove South Heighton 1 from the draft map and that it should have been included on the provisional map. This, along with the other evidence discussed in this report, is sufficient to reasonably allege that a public right of way subsists on the claimed route.

- 17.5 With reference to the location of point D, mentioned in 5.1, the Council retains its opinion that the location of this is approximately TQ 4439 0255, where a water drain meets the riverbank of the River Ouse as shown on the Applicant's application map and on the report plan. While it is acceptable to think that the course of this drain may well have naturally altered over the last few hundred years which the evidence covers, the evidence suggests that this is where the footpath meets the river. None of the evidence suggests anything other than this to any reasonable degree.

18. Common Law dedication

- 18.1 Alternatively, a Public Right of Way may be established over a shorter period of time under Common Law. A dedication of a route as a Public Right of Way can be implied from evidence of use by the public and of acquiescence in that use by the landowner. Dedication at Common Law is possible if the landowner has dedicated the way and the public have accepted such dedication. Mr Justice Dyson held in *Nicholson*¹ that;
- 18.2 *The more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication.*²
- 18.3 Section 5 of the Planning Inspectorates Definitive Map Orders: Consistency Guidelines suggest that even where a claim meets the tests under Section 3 of the Highways Act 1980 for dedication under statute law, there should be consideration of the matter at Common Law.
- 18.4 Dedication at Common Law may be considered where a way has been used by the public for less than 20 years. Where the origin of a highway is not known, its status at common law depends on the inference that the way was in fact dedicated at some point in the past.

¹ *Nicholson v Secretary of State for the Environment* (1996) QBD OT

² *Ibid*

18.5 Relatively few highways can be shown to have been expressly dedicated. In this case, there is no evidence before the Council that the landowners have carried out any express act of dedication over the claimed route during the relevant period.

19. Other Matters

19.1 Safeguarding Considerations

Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

19.2 Public Health Implications

Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

19.3 Environmental Impact of the Proposal

Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

19.4 Equalities Impact of the Proposal

Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

19.5 Risk Assessment

Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

20. Rights of Appeal

20.1 If the Council declines to grant the application, the applicant has a right of appeal to the Secretary of State. The applicant must serve notice of appeal on the Council within 28 days of the Council's decision.

20.2 If the Council grants the application and makes an Order, public notice of the Order is given. If any objections are received within a specified period of time the matter is referred to the Secretary of State for a decision.

21. Final Conclusion

- 21.1 To make an Order, it is necessary for the evidence to have found a reasonable allegation of the existence of public rights. Having considered the evidence submitted in support of the claim and that submitted by the landowners, and all matters raised in the written representations, the Council has concluded that there has been a discovery of evidence, which when considered with all the other relevant evidence, is sufficient for it to be reasonably alleged that a right for the public subsists over the land in question.
- 21.2 This is because the application for a modification order was accompanied by sufficient evidence to confirm that the current definitive map for the area was incorrect.
- 21.3 To confirm any order, the more onerous test of whether the evidence shows, on the balance of probabilities, that public rights actually exist must be satisfied. Furthermore, the Officer believes, on the balance of probabilities, a right of way exists.
- 21.4 Therefore, the only option open to the Council, as the Registration Authority, is to make a definitive map modification order which would amend the definitive map and statement.

22. Formal Recommendations

22.1 It is recommended that an Order to amend the Definitive Map and Statement for the area is to be made to add a public footpath, or any other public right of way, as applied for.

23. Background Documents

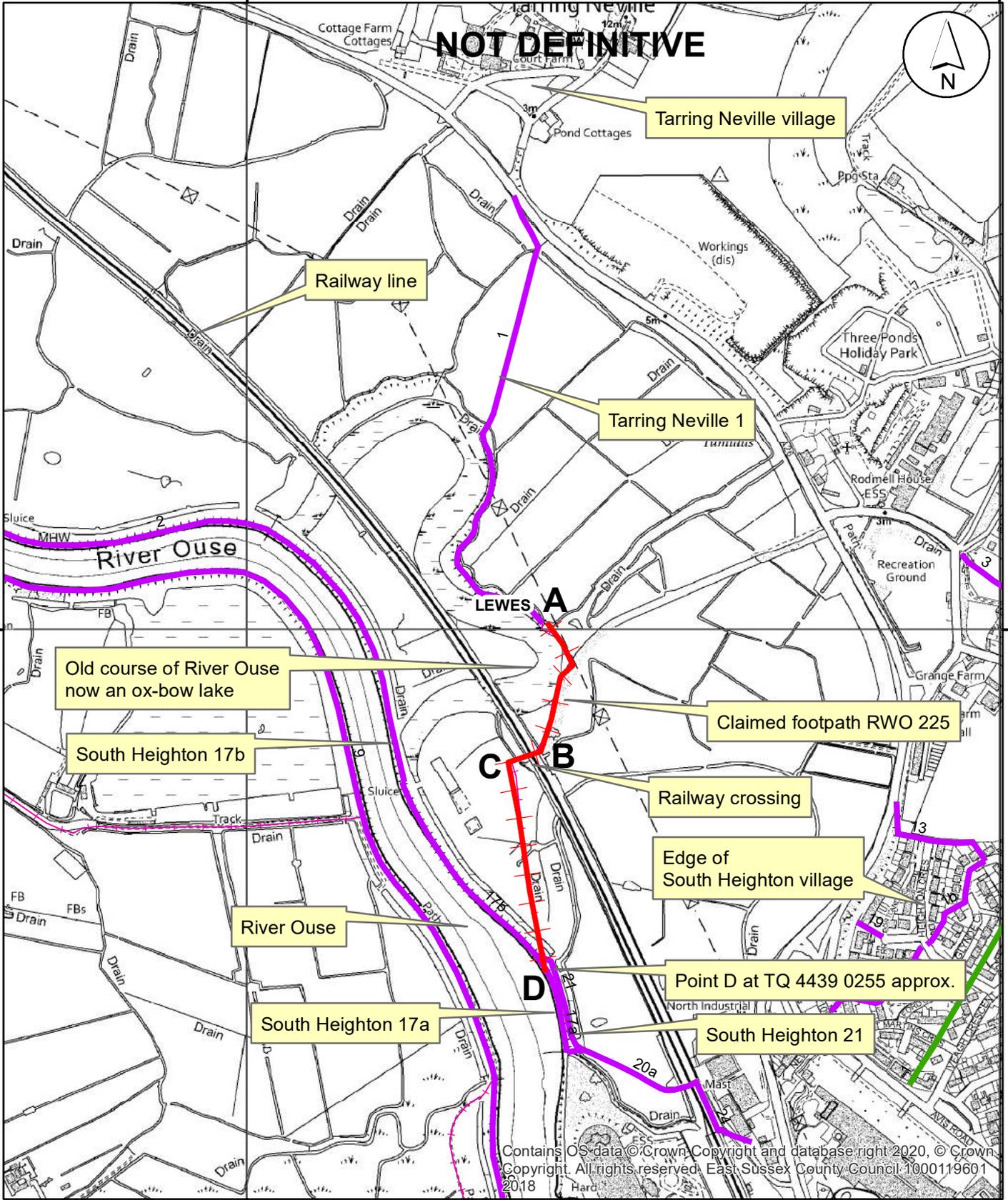
Evidence submitted by the applicant, site inspection report and accompanying photographs, consultations, historical research and land registry documents are all contained in the file of evidence.

Contact Officer: Mr Stephen Kisko, Definitive Map Officer, Rights of Way.

Team Manager: Mr Andrew Le Gresley, Rights of Way & Countryside

Local Member: Councillor Darren Grover (Newhaven and Bishopstone)

NOT DEFINITIVE



Contains OS data © Crown Copyright and database right 2020, © Crown Copyright. All rights reserved. East Sussex County Council 1000119601 2018

Title: Report Plan - RWO 225 South Heighton		East Sussex County Council County Hall St Annes Crescent Lewes  <small>eastsussex.gov.uk</small>	
Key:	Public Footpath 	Claimed Footpath 	
	Public Bridleway 	Other claimed routes 	
Date:	November 2020	Map No:	DMMO RWO 225
Scale:	1:7,217	Author:	SK

© East Sussex County Council 2020.
 Aerial Photography © Getmapping.com 2020.
 This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. 100019601. 2020.