

Please note: the following report was amended from the previous version dated 9 December 2020 to this updated version below on 30 September 2021 by the insertion of section 20.13.

There were no other changes.

Council Report for Definitive Map Modification Order (DMMO) RWO 213

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

Title of Report: **Claimed Public Right of Way: Adding the restricted byway from Robin Post Lane (Long Man 16) at point A on the accompanying map (grid reference 556846) to the Lewes/Polegate Road at point E on the accompanying map (grid reference 556169 104741).**

Purpose of Report: **To consider whether public footpaths rights 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: 30th September 2021**

Andrew Le Gresley

(this report replaces report of 9 December 2020 as section 20.13 was added)

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 Summary 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 Wealden area by adding a public restricted byway. Mr Christopher Smith submitted the application on 2 February 2017 on behalf of the Open Spaces Society, 25A Bell Street, Henley-on-Thames RG9 2BA.
- 1.2 The claimed restricted byway is shown between points A and E on the accompanying report plan (see tab A, p. 146a).
- 1.3 The application was accompanied with an Applicant’s Statement based on historical maps and other associated historical documents and research, which been submitted to substantiate the claim (see tab C, p. 153-211).
- 1.4 No user evidence has been provided in support of the application.
- 1.5 Please refer to the file of evidence to find the copies of the letters, maps and documents referred to herein. Signatures, email address and telephone numbers have been redacted.
- 1.6 The Applicant has outlined the claimed route as below:

Adding the restricted byway from Robin Post Lane (Long Man 16) at point A on the accompanying map (grid reference 556846) to the Lewes/Polegate Road at point E on the accompanying map (grid reference 556169 104741).

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 interruption; and

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 Ordnance Survey (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 right of way 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 following description is given using the Applicant’s plan, description of the route and the Council’s best knowledge of the route using its own mapping systems and materials, aerial mapping and details collected from the site visits. The Council has continued with use the Applicant’s lettered points.
- 5.2 Today the entire claimed route falls within the civil parish of Long Man, a rural parish about 5 miles to the West of central Eastbourne. The southern part of the parish, though not the claimed route, falls within the South Downs National Park. The parish was created in the past by a merger of the 2 separate smaller parishes of Wilmington and Folkington. The claimed route would have fallen within Folkington, or in the case of A-B, within Folkington or possibly along the border with Wilmington.
- 5.3 The claimed route begins at point A on existing public Byway Long Man 16a (a track known locally as Robin Post Lane) at approximately TQ 5686 0687.
- 5.4 It begins in a generally southern direction for approximately 420 metres, through what appears to be woodland (from aerial photography, 2018) to a point B on existing public bridleway Long Man 18c at approximately TQ 5677 0646.
- 5.5 It continues in a southerly direction for approximately 260 metres, through what appears to be woodland (from aerial photography, 2018) to a point C at approximately TQ 5677 0621.
- 5.6 The claimed route continues in a generally south, south-south westerly direction for approximately 385 metres through what appears to be fields (aerial photography, 2018 and site visit 2020) to a point D, by Hide Cottage, at approximately TQ 5666 0583.
- 5.7 Then the route continues in a generally south-westerly direction for approximately 540 metres along a gravel farm track bounded by trees and bushes to a point approximately at TQ 5629 0542, followed by a further section running in a generally southerly direction for approximately 600 metres also bounded by trees and bushes to reach a bridge over the railway at approximately TQ 5622 0484. A road bridge crosses the railway line that goes between Lewes and Eastbourne. The track continues the other side in a generally southerly direction for a further approximately 100 metres until it ends where it meets the main truck road of the A27 at point E at approximately TQ 5617 0473.

Site Visit

- 5.8 The Council's Definitive Map Officer Stephen Kisko carried out a site visit to some of the claimed route on Tuesday 29 September 2020 between the hours of approximately 9am and 12 noon, with the landowner's knowledge.
- 5.9 He managed to access sections E-D, and points B and A (which are on current public rights of way). The route was not accessed in the same order as the lettered route is claimed (of A-B-C-D-E) and not all of the claimed route was accessed as A-B, B-C, C-D was inaccessible.
- 5.10 He first walked in the direction of E-D which consists of a gravel farm track suitable for vehicles but only wide enough for a standard width car or tractor to use in single file. The route is bounded by trees and bushes with entrances into adjacent fields. At D a half T-junction is reached with no access to the West or North, Hide Cottage property to the immediate left and a short section of wide grass to the East (right) which could be the remnants of the old turnpike road.
- 5.11 Point B was accessed via existing bridleway Long Man 18c but no trace of the claimed route could be successfully identified.
- 5.12 Point A was accessed via existing Byway Long Man 16b but no trace of the claimed route could be successfully identified other than a short section of a vehicle track that was blocked off with wooden posts and which continued beyond for a short distance in the line of sight. Joining this track, from the West was a sunken track or ditch bounded by steep banks either side (not thought to be the claimed route).
- 5.13 See Site Visit report for more details.
- 5.14 A second site visit to part of the route, ie of the bridge and road immediate to it, just north of E, occurred on Monday 2 November 2020, also with the landowner's knowledge, to attempt to measure the width and gradient of the bridge and road either side. See 20.4-20.12 for details.

6. Land Ownership

6.1 Upon conducting a Land Registry search it was revealed that the claimed route runs over land owned as outlined below. Documents can be found in tab D, p. 212-229)

6.2 Table 1 – Land Ownership – over which the claimed route falls.

Listed in order of land over which the claimed route passes, from points A-E

Owner Number	Title Number and Property Description	Owner Name and Contact Address	Years of ownership	Location
1	ESX349447 Hide Cottage, Folkington, Polegate	Sabrina Jane Harcourt-Smith	Registered date: 7 January 2015	A-B-C

	(BN26 5RXZ) and Land lying to the east of New House Farm, Robin Post Lane, Wilmington, Polegate (BN26 6RP)	Of Wootton Manor, Folkington, Polegate BN26 5RY.		
2	ESX335845 Land lying to the east of New House Farm, Robin Post Lane, Wilmington, Polegate.	Timothy Mark Morgan Raikes Charles Harcourt- Smith Christopher Whittick Care of R H & R W Clutton, 92 High Street, East Grinstead RH19 3DF the trustees of The Folkington 1982 Settlement.	Registered date: 5 April 2011	C-D A smaller parcel of land within this title number abuts close to the West of the claimed route, near the start between A-B for approximately 155 metres.
3	ESX335735 Wootton Manor, Folkington, Polegate (BN26 5RY), The Gate House, Wootton Manor, Folkington, Polegate (BN26 5RY) The Lodge, Wootton Manor, Folkington, Polegate (BN26 5RY) The Flat, Wootton Manor,	Sabrina Jane Harcourt-Smith Of Wootton Manor, Folkington, Polegate BN26 5RY (same as Owner Number 1)	Registered date: 7 January 2015	D-E

	Folkington Polegate (BN26 5RY) Land adjoining Wootton Manor, Folkington, Polegate.			
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6.5 Table 2 – Land Ownership of Adjoining Landowners

Listed in order of land over which the claimed route adjoins

Owner Number	Title Number and Property Description	Owner Name and Contact Address	Years of ownership	Location
4	ESX203025 Land and buildings at Wootton Manor Farmhouse, Folkington, Polegate (BN26 5RY)	Pelham Harper Maitland Of 6 New Square, Lincoln's Inn, London, WC2A 3RP Timothy Mark Morgan Raikes Of 92 High Street, East Grinstead, E Sussex, RH19 3DF (same as the first person listed as Owner Number 2) John Roy Wynter Bee Of 1 St John's Gate, Valpy Street, Reading, Berks RG1 1AS trustees for the time being of the Folkington 1982 Settlement.	Registered date: 4 October 1994	To the immediate West of the approximately southernmost 165 metres of the section C-D.

SECTION B – Evidence provided in the Application.

7. Evidence in Support of the application from the Applicant

7.1 Applicant's Statement – Table 3 below contains historical maps and evidence provided by the Applicant in their Applicant's Statement in order to support the claim. 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 route. 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 did 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 was also reviewed.

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

7.3 The Keep – East Sussex Record Office

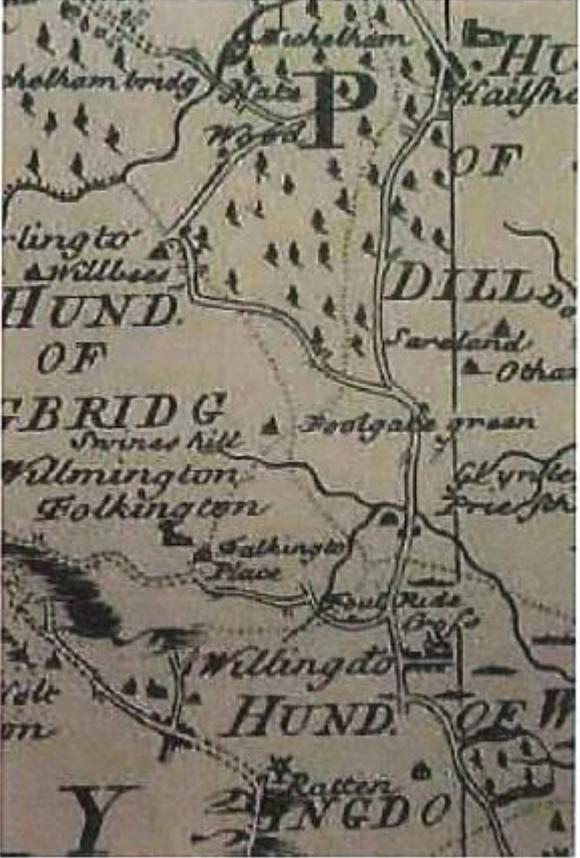
Officers have visited the East Sussex Record Office, known as The Keep (www.thekeep.info) at Moulsecoomb (Brighton) to inspect historical records where applicable and necessary. These may typically include resources such as railway records, Finance Act (1910) documents, Estate maps, the Inclosure Award 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 look through 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.

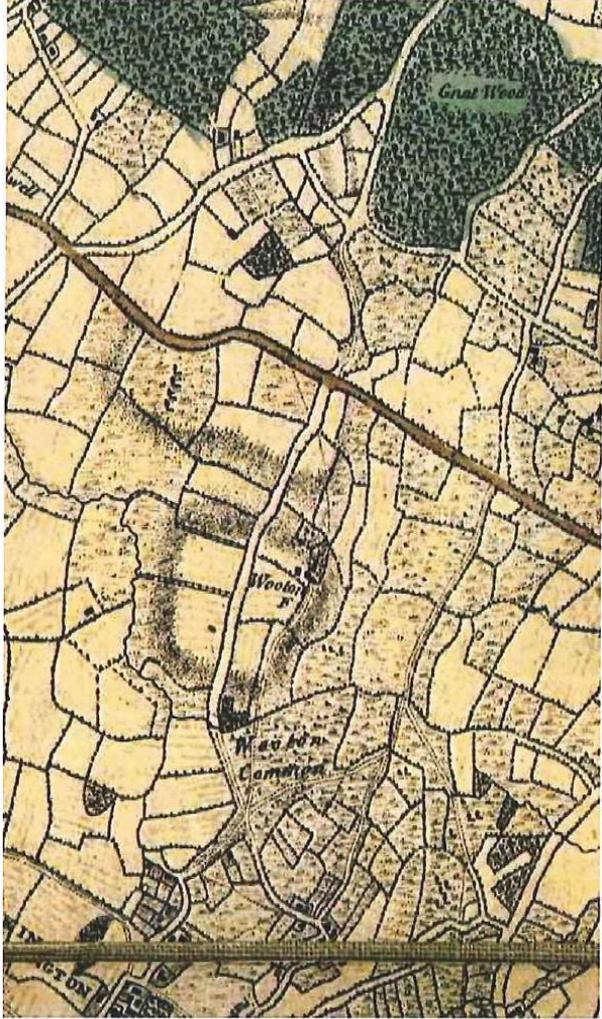
Historic OS maps were obtained from the website of the National Library of Scotland (www.nls.uk). The Council will only carry out a limited search of the OS maps, and similar 20th century 'Old Touring' maps and 'Rural District' maps because such maps contain a disclaimer that states that their maps do 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 mostly all be inspected on the Council's internal systems and will be consulted as standard even if the Applicant has not referred to them.

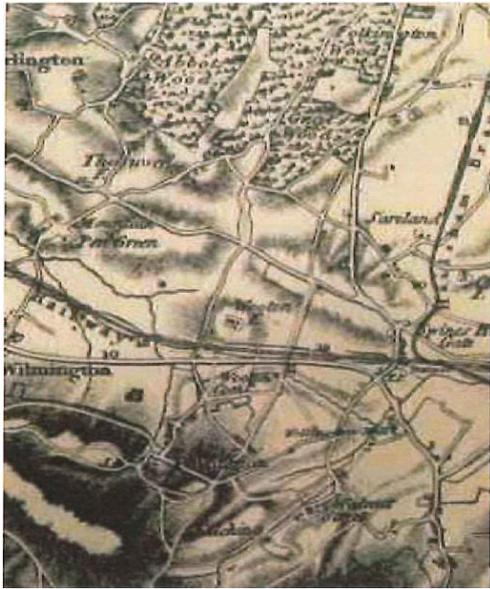
7.4 Table 3 – The Applicant's Statement with the Council's comments and its own research

See Applicant's Statement or Council's own Map No.	Document Name (Bold=Applicant's evidence)	Summary of Applicant's Comments (from Applicant's Statement, in Bold) And Council Comments
	1.Documentary Evidence of Highway Status	<p>In order to be able to modify the definitive map and statement, the surveying authority needs to have a discovery of evidence which shows that it can be reasonably alleged that highway rights exist. The use of the "balance of probabilities" test rather than "beyond reasonable doubt" was confirmed by the High Court in <i>Todd, Bradley v Secretary of State for EFRA (2004) 4 All England Reports 497.</i></p> <p>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, indicating that the route does indeed have highway status and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. I make reference to "Restoring the Record" by Bucks and Wadey. This is perhaps the leading work on the subject and has been used for research. "Restoring the Record" uses a points scoring system to assess the weight of evidence. The book suggests that where 7 points are awarded highway rights are likely to exist and that 5 points will satisfy the basic evidential test. But of course it is for the decision maker to decide how to assess the evidence.</p>
	The Council:	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.

	<p>BUDGEN'S MAP 1724</p>	<p>This map is held at the East Sussex County Archive at the Keep under reference AMS 6008/1/1/29/10</p> <p>The extract below shows a rough approximation of the application route in place.</p> 
	<p>The Council:</p>	<p>While it gives an approximate location of place names and roads, it is impossible to determine if the claimed route is depicted on this map given its scale and lack of key and questionable accuracy. Wootton Manor is not identified on the map.</p>
	<p>YEAKELL AND GARDNER'S SUSSEX 1778-1783</p>	<p>This map is available on-line as part of the "Old Sussex Mapped" project of the University of Portsmouth at http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakelllarge36.htm</p> <p>The route is partly shown in the manner of main roads and partly shown in the manner of minor roads on this extract</p>

		
	<p>The Council:</p>	<p>It looks like the section A-B appears as a road of some description on this map.</p> <p>It also appears to show a road heading south from point D (Hide Cottage) but in a straighter line than the claimed route and does not appear to end at another road as point E does today.</p> <p>The whole route is not shown as claimed.</p> <p>The map does not confer or confirm the status of any routes shown.</p> <p>The Council has its own version of this map but not of the area covered by the claimed route.</p>

	<p>YEAKELL AND GREAM MAP 1795</p>	<p>This map is held at the Keep under reference ASH/9/5</p> <p>The route is shown in the manner of a road on this extract.</p> 
	<p>The Council:</p>	<p>It looks like the section A-B appears as a road of some description on this map.</p> <p>It appears to show a wide road (wider than those surrounding it), or perhaps a large and long open field layout, on the section B-C-D.</p> <p>It also appears to show a road heading south from point D (Hide Cottage) but in a straighter line than the claimed route and does not appear to end at another road as point E does today.</p> <p>The whole route is not shown as claimed or cannot be clearly identified in full as claimed.</p>

		<p>The map does not confer or confirm the status of any routes shown.</p>
<p>1</p>	<p>The Council: 1795 Gardner and Gream map</p>	<p>The Council does not have a copy of the 'Yeakell and Gream Map 1795' provided by the Applicant above, but does have this 1795 Gardner and Gream map, which it will consult as standard. This map does cover the area in question and the image appears very similar, if not the same, as the 1795 Yeakell and Gream map provided by the Applicant. Indeed, on closer inspection of this, the Council's version, it says that the map was begun by W. Gardner and T. Yeakell and completed by Thomas Gream.</p> <p>The Council's comment is the same as given for the response above to the Applicant's 'Yeakell and Gream map 1795'.</p>
	<p>MUDGES MAP (UPDATED TO 1873 BUT BASED ON A SURVEY OF 1813)</p>	<p>The map is held at the Keep as part of the Brighton Pavilion collection under reference BHM000009</p> <p>The route is shown in the manner of a road as shown by the extract below.</p> 

	The Council:	<p>This map appears to show a road that in most places matches the course of the claimed route although the route shown is perhaps a little straighter than the claimed route between D-E.</p> <p>The map shows the railway on its current course as well as a road that is now the A27 on its current course. These features help to identify the area and locate the claimed route.</p> <p>The map does not confer or confirm the status of any routes shown.</p>
2	<p>The Council:</p> <p>Christopher and John Greenwood's Map of Sussex (1825) (1" to 1 mile)</p>	<p>This appears to show the route A-B as a road.</p> <p>It shows B-C-D as a route but with dashed lines as opposed to solid black lines but this route ends at D</p> <p>It also shows a road coming up from E which arcs East to, and ends at, 'Wooton' (assumed to be Wootton Farm/Manor and does not extend north to D.</p> <p>The map does not confer or confirm the status of any routes shown.</p>
	Applicant's comment	<p>These maps were made for sale to the public, so is unlikely to show routes that the public could not use. Errors would quickly lead the public to boycott the maps.</p> <p>I conclude that the existence of the application route on these maps is evidence that it carried full vehicular rights at the times the maps were made.</p> <p>In "Restoring the Record", the evidence from these maps is rated as 4 points.</p>
	The Council:	<p>The Council understands the Applicant point of view but there is no direct evidence to support this.</p> <p>It is recommended that caution should be applied when considering the accuracy of these maps and their intended purpose. Often the scale is too large to determine the exact route shown in any detail and it is unknown why routes were shown, if any permission had</p>

	<p>The Council:</p> <p>Review of Ordnance Survey (OS) maps</p>	<p>This comment applies to all the OS maps the Council reviews.</p> <p>The Council will review as standard a number of OS maps where the claimed route is located.</p> <p>They are listed below in date order, and then in order of the route using the lettered points on the plan in alphabetical order. The maps can be found in the Council's File of Evidence folder.</p> <p>OS maps remain silent on the status of routes and contain a disclaimer that any depiction of a route or footpath does not necessarily indicate a public right of way. OS maps depict physical features on the ground.</p>
3	<p>The Council:</p> <p>OS map Sussex LXVIII.8 25 inch to 1 mile 1875</p>	<p>This shows a track running through woodland between A-B and through open ground to C.</p>
4	<p>The Council:</p> <p>OS map Sussex LXVIII.12 25 inch to 1 mile 1875</p>	<p>This shows a track running through fields between C-D.</p> <p>It shows a route or road mostly bordered by trees from D down to E.</p>
5	<p>The Council:</p> <p>OS map Sussex LXVIII 6 inch to 1 mile, 1878</p>	<p>This shows a track running through woodland between A-B and through open ground to C and onto D.</p> <p>It shows a route mostly bordered by trees from D down to E.</p>

6	<p>The Council:</p> <p>OS map Sheet 319 1 inch to 1 mile 1895</p>	<p>This shows a track with dotted lines between A-B-C-D.</p> <p>It shows the section D-E as a road with solid black lines.</p>
7	<p>The Council:</p> <p>OS map Sussex LXVIII.8 25 inch to 1 mile 1909</p>	<p>This shows the section A-B as a track through woodland then continuing as a track from B-C across open land.</p>
8	<p>The Council:</p> <p>OS map Sussex LXV111.12 25 inch to 1 mile 1909</p>	<p>This shows the section C-D as a track through open land and the continuing as D-E as what looks more like a road bordered by trees or bushes.</p>
9	<p>The Council:</p> <p>OS map Sussex LXV111.NE 6 inch to 1 mile 1910</p>	<p>This shows the section A-B as a track through woodland then continuing as a track from B-C across open land</p>
10	<p>The Council:</p> <p>OS map Sussex LXV111.SE 6 inch to 1 mile 1910</p>	<p>This shows the section C-D as a track through open land and the continuing as D-E as what looks more like a road bordered by trees or bushes.</p>
11	<p>The Council:</p> <p>OS map Sussex LXV111.8 25 inch to 1 mile 1928</p>	<p>This shows the section A-B as a track through woodland then continuing as a track from B-C across open land</p>

12	<p>The Council:</p> <p>OS map Sussex LXV111.12 25 inch to 1 mile 1939</p>	<p>This shows the section C-D as a track through open land and the continuing as D-E as what looks more like a road bordered by trees or bushes.</p>
	<p>THE TURNPIKE ACT</p>	<p>A copy of the Turnpike Act, 59 Geo III c 10: Lewes to Polegate thence to Eastbourne and from Polegate to Hailsham Common is held at the Keep under reference ACC 4458. This set out a new turnpike between Lewes and Polegate to replace the existing Glyndebridge Turnpike</p> <p>The route of the turnpike meets the application route at the latter route's southern end. As part of the Act a number of nearby routes were stopped up. These were normally routes that ran parallel with the new turnpike.</p> <p>These are detailed on page 257. The majority of them are in the Firle and Beddingham area, but there are routes stopped up near the application route. These are:</p> <p>"The present Turnpike or Highway from Thornwell in the Parish of Wilmington, to Swines Hill in the Parish of Hailsham</p> <p>(The old Glyndebridge Turnpike)</p> <p>"the Bridle-way from Monkpin, in the said Parish of Wilmington, by Wooton in the Parish of Jevington"</p>

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

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

Power to stop up certain parallel Roads.

reproduced from the original in the National Archives

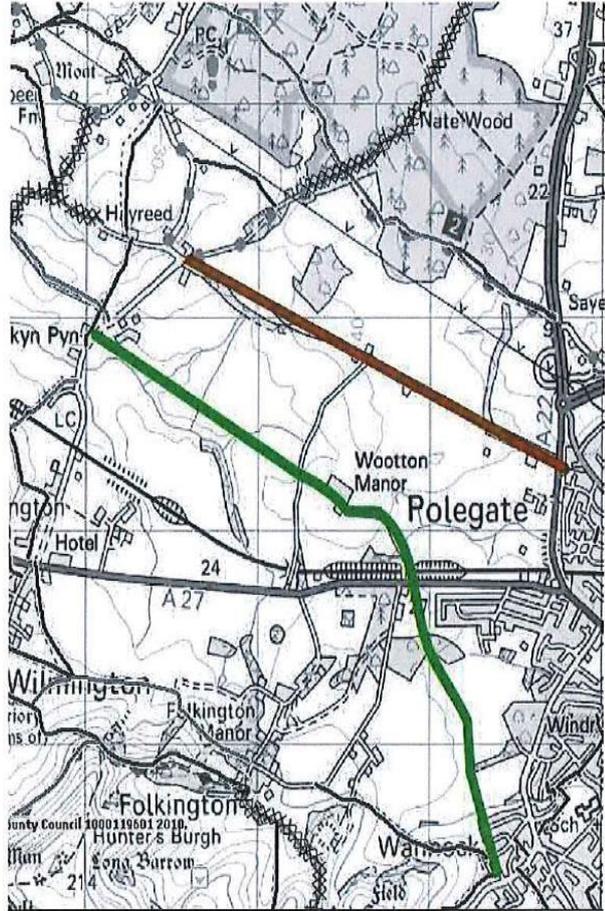
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I have drawn these routes on a base map using the ESCC on-line map of rights of way.

The route of the old turnpike is well clearly shown on maps. It crosses the application route at point D.

The route of the old bridleway is now completely lost, but from the description, which omits Folkington, I conclude the route would be something like that shown on the map below.



The brown route is the old turnpike and the green route is the bridleway from Monkyn Pin to Wannock.

It will be seen that both stopped up routes run across the application route but not along it. I conclude that the application route was not stopped up by this act. However it is likely that the route would have seen much less use with the stopping up of the old turnpike.

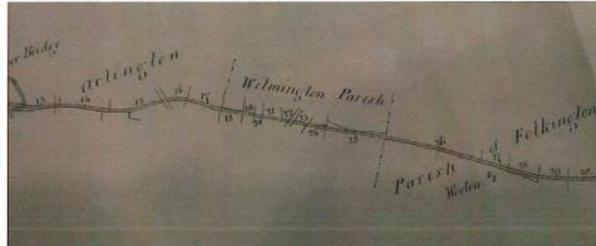
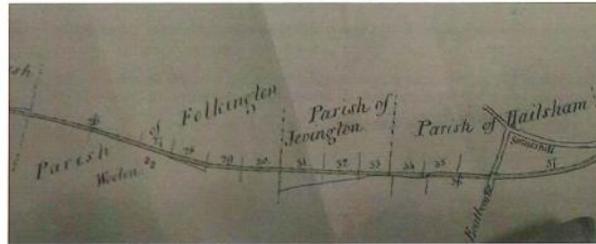
The Council:

The Turnpike Act did not stop up the claimed route but this does not determine the status of the route.

**TURNPIKE
PLANS**

The plan of the proposed turnpike made by William Figg in 1817 is held at the Keep under the reference QDP/63/1

Surprisingly, it does not show the application route, as you can see in the extract below, but in fact no turnings from the route are shown at all between Arlington and Hailsham, even though contemporary maps above make it clear that such roads existed.



There is also no reference to any roads on the accompanying book of reference, which is held at the Keep under reference QDP/63/2

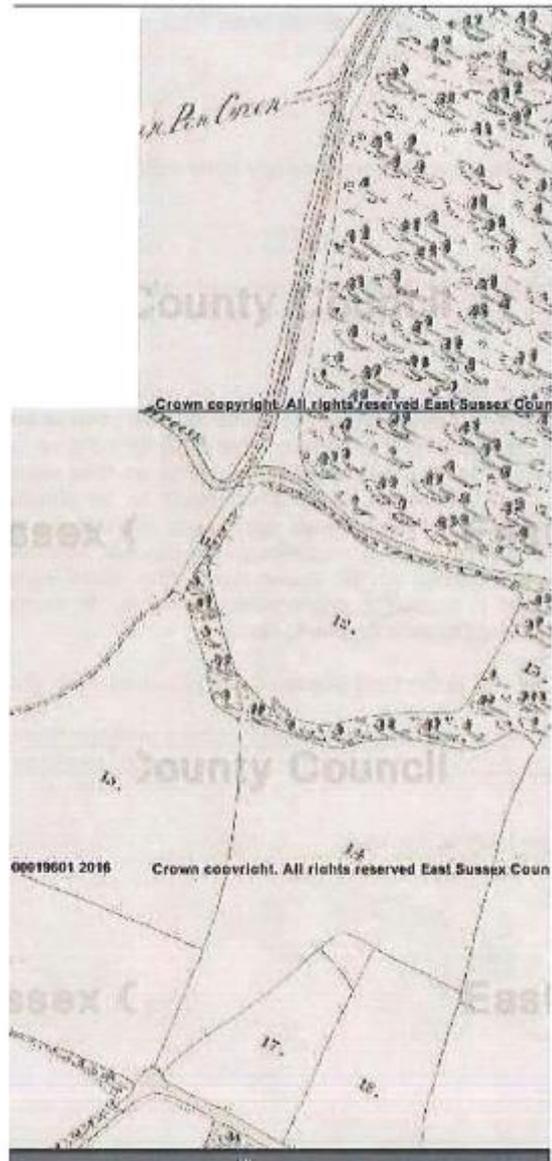
Parish of Felkington	
Proprietor	Occupier
21 22 23 24 25	William Harrison Esq
Parish of Lewington	
26 27 28	William Fidge

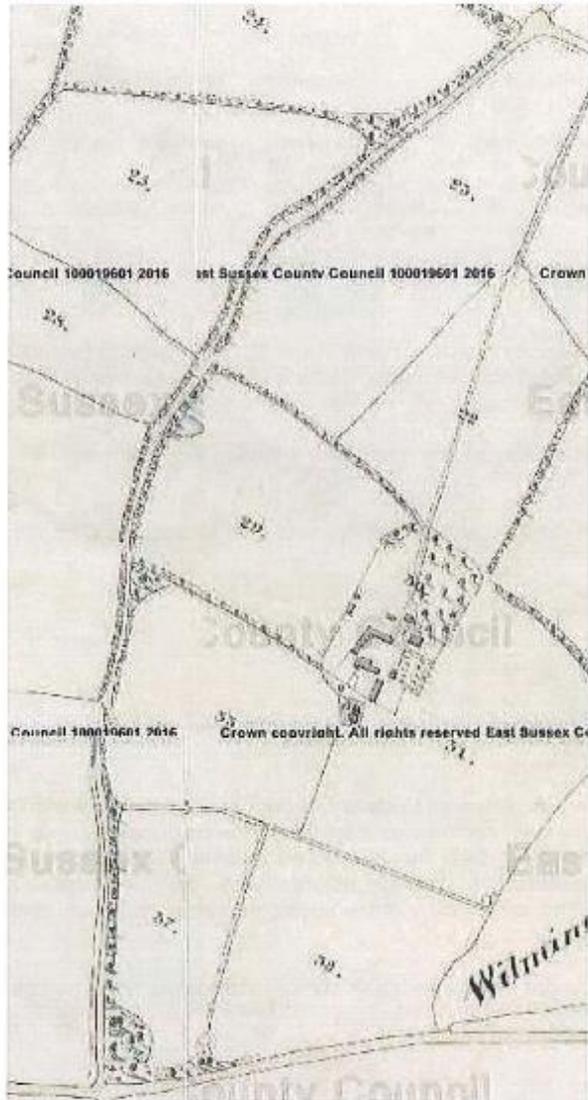
Because no roads at all are shown in the plan or book of reference I conclude that no inference can be drawn from the absence of the application route.

13	The Council:	Plans (63/1) does not show the claimed route. Interestingly it shows Wootton as being south of the road as this was the original proposed route before a more southerly route was agreed upon.
14		Plans (63/2) show the land was owned by William Harrison.
15	INCLOSURE RECORDS	The route does not appear to be part of the Hailsham inclosure or any other inclosure.
	The Council:	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.
	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 titheable 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 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</p> <p>The Tithe Map of Folkington is available on line at the East Sussex County Council Web site at</p>

[https://apps.eastsussex.00v.uk/leisureandtourism/localandfamilvhistory/tithema
ps/MapView
Dual.aspx?ID=112738&X=556948&Y=106
284.5&SF=6.35&Ref=&L=tm
folkington&px=0&PV=0](https://apps.eastsussex.00v.uk/leisureandtourism/localandfamilvhistory/tithema
ps/MapView
Dual.aspx?ID=112738&X=556948&Y=106
284.5&SF=6.35&Ref=&L=tm
folkington&px=0&PV=0)

I have taken screen shots to show how the route is displayed.





In the first map you can see the application route starting where Robin Post Lane (which is today a byway) branches off to the west. It is shown in the sienna colouring that was often used to show roads. It is not part of any apportionment. This is consistent with highway status.

The route then crosses apportionments 12, 13 and 14.

The apportionment is also available from the same site at <https://apps.eastsussex.gov.uk/leisureandtourism/localandfamilyhistory/tithemaps/Appointment.aspx?ID=112738&pacie=2>

		<table border="1" data-bbox="767 344 1353 524"> <thead> <tr> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th>of Gorse Lands</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>12</td> <td>Harrison</td> <td>William</td> <td>Shoemith</td> <td>John, the elder</td> <td></td> <td>Gorse Downs</td> <td>Pasture</td> <td>Details</td> </tr> <tr> <td>13</td> <td>Harrison</td> <td>William</td> <td>Gosden</td> <td>James</td> <td></td> <td>Gorseland Shaw</td> <td>Underwood</td> <td>Details</td> </tr> <tr> <td>14</td> <td>Harrison</td> <td>William</td> <td>Gosden</td> <td>James</td> <td>Wotton Lands</td> <td>The Hide</td> <td>Pasture</td> <td>Details</td> </tr> <tr> <td>15</td> <td>Harrison</td> <td>William</td> <td>Gosden</td> <td>James</td> <td>Wotton</td> <td>North Ends</td> <td>Arable</td> <td>Details</td> </tr> </tbody> </table> <p data-bbox="751 577 1366 739">This information is consistent with highway status. Where the route went through pasture, tithes would be payable because it would have been possible for a crop to be harvested from the land.</p> <p data-bbox="751 770 1366 869">The southern part of the route is coloured in sienna, the colour intended to show roads. It is not part of any apportionment.</p> <p data-bbox="751 900 1366 999">I conclude that the tithe evidence supports the view that this was a route with full vehicular rights at the time.</p> <p data-bbox="751 1030 1366 1093">In "Restoring the Record" this evidence is worth 5 points.</p>							of Gorse Lands			12	Harrison	William	Shoemith	John, the elder		Gorse Downs	Pasture	Details	13	Harrison	William	Gosden	James		Gorseland Shaw	Underwood	Details	14	Harrison	William	Gosden	James	Wotton Lands	The Hide	Pasture	Details	15	Harrison	William	Gosden	James	Wotton	North Ends	Arable	Details
						of Gorse Lands																																									
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15	Harrison	William	Gosden	James	Wotton	North Ends	Arable	Details																																							
16	<p data-bbox="427 1209 711 1375">The Council: From the Council's Heritage Viewer (HV) Tithe map for Folkington</p> <p data-bbox="427 1411 703 1442">Title: Folkington tithe</p> <p data-bbox="427 1478 703 1576">Description:By W. Figg, Lewes. 13.3 in. to 1 m. 58 x 37</p> <p data-bbox="427 1612 576 1644">Date: 1839</p> <p data-bbox="427 1680 655 1711">Ref No: TD/E100</p>	<p data-bbox="751 1209 1342 1308">This shows the section A-B as a track coloured sienna which would indicate it is not titheable.</p> <p data-bbox="751 1344 1342 1442">It does not show the route B-C-D but it would cross Apportionment 12, 13 and 14 as the Applicant states.</p> <p data-bbox="751 1478 1302 1541">An extract from the Apportionment table is shown below, taken from the HV.</p> <p data-bbox="751 1576 1302 1639">This states that the land was titheable and therefore not for public access.</p> <p data-bbox="751 1675 1342 1774">This shows the section D-E as a track coloured sienna which would indicate it is not titheable.</p> <p data-bbox="751 1809 1342 2007">While the non-titheable routes can be identified, it is not so easy to establish if the same routes were part of a public highway or not. While D-E is shown as non-titheable and possibly thought of as a public road, the approach access road (now disused) to</p>																																													

Plot	LandOwner surname	LandOwner first name	Occupier surname	Occupier first name	Farm name	Land Description	Cultivation
12	Harison	William	Shoesmith	John, the elder		Gorse Downs	Pasture
13	Harison	William	Gosden	James		Gorseland Shaw	Underwood
14	Harison	William	Gosden	James	Wotton Lands	The Hide	Pasture

	<p>RAILWAY RECORDS</p>	<p>This record is part of the Lewes to Hastings section of the London Brighton and South Coast Railway</p> <p>Companies wishing to build railways 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. Railway records were well researched as mistakes would have been costly, with the possibility of the private bill being thrown out and a rival company being given permission.</p> <p>This plan is held by the Keep under reference QDP 171/2 and dated 1839. The accompanying book of reference is held as QDP 171/5</p>
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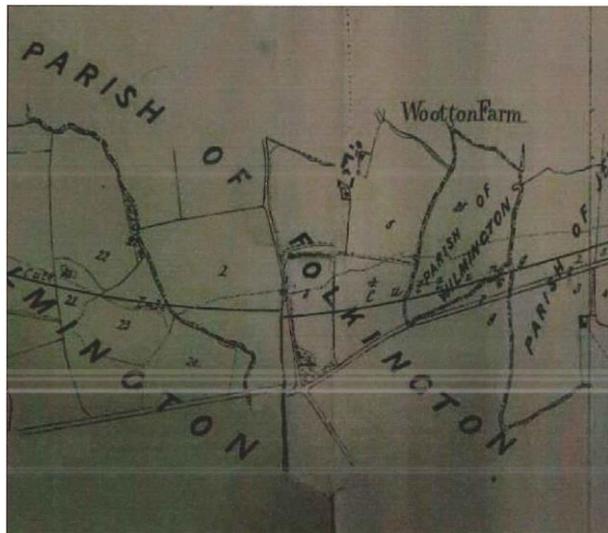
The application route crosses the railway to the south west of Wooton Farm. It is given the number 2.

The Parish of Folkington in the County of Yorks.

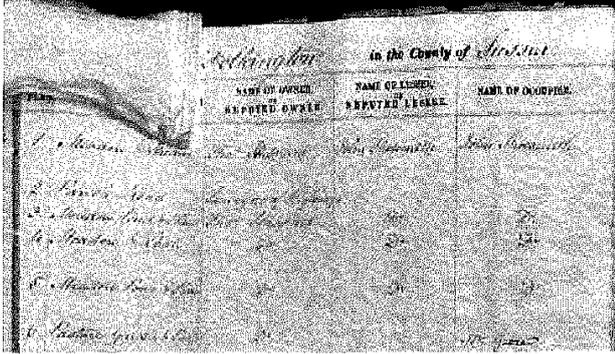
No. of PARISH	DESCRIPTION OF POSSESS.	NAME OF OWNER, REPUTED OWNER	NAME OF LESSEE, REPUTED LESSEE	NAME OF OCCUPIER
1	Wooden & Stone	Charles Harrison	John Harrison	John Harrison
2	Earth Road	Surveyors of Highways		
3	Wooden Road & Stone	Charles Harrison	John Harrison	John Harrison
4	Wooden & Stone	d.	d.	d.
5	Wooden & Stone	d.	d.	d.

In the book of reference Folkington property 2 is described as a Parish Road which is the responsibility of the surveyors of highways.

A subsequent survey was undertaken for the same line was done in 1843. The plan is held at the Keep under reference QDP 182/1 The accompanying book of reference is held under reference 182/2



The plan is torn at the point at which the application route is numbered but on the original it is just possible to see that the road is numbered as 2. (note that this number is not given to anything else).

		 <p>Apportionment 2 is described as a parish road which is the responsibility of the surveyor of Highways.</p> <p>I suggest that these records are strong evidence of the existence of a public road with full vehicular rights at the time of the survey. Such a highway would either go from one highway to another or from a highway to a place of public resort. Since there are no likely places of public resort on the highway and, after the stopping up of the old Turnpike, no highways crossing the application route until nearly its northerly end, I conclude that this is evidence that the whole application route, at least up to its junction with Long Man byway 18, was a highway at the time.</p> <p>In Restoring the Record this is worth 5 points.</p>
<p>17 (171/2)</p> <p>18 (171/5)</p> <p>19 (182/1)</p> <p>20 (182/2)</p>	<p>The Council:</p>	<p>The 1839 Railway Plans (Keep reference 171/2) shows part of E-D as road number 2. It is coloured white, or not coloured in, whereas the new public turnpike and the public lane to Folkington are both coloured an orange tint. This could still mean it was public, but it was considered a minor road as compared to the new turnpike.</p> <p>The 1839 Railway Plans accompanying Book of Reference (Keep reference 171/5) lists the road number 2 as a 'Parish Road' and the owner as 'Surveyor of Highways'. At the very least we know this is certainly in the same area of the claimed route as 1 and 3 are owned by William Harrison who we know owned Wootton at this time. Also number 3 is described as 'Meadow Pond and Shaw' and the outline of the meadow and the location of a pond in a shaw as shown on the 1839 map is</p>

		<p>as it is shown today. Therefore road 2 is the claimed route.</p> <p>The 1843 Railway Plans (Keep reference 182/1) shows part of E-D but unfortunately it is torn near to the claimed route, in such a way that it is not immediately obvious if it is named as road number 2. However, it was called number 2 on the 1839 map and the same numbering system would fit in here based on the surrounding numbers and when you look closely it does look like it is numbered as 2. The cross section of road number 2 indicates that the road will need to be raised (by means of a bridge) as the railway track will go underneath it. It suggests the new gradient of the road is to be 1 in 20.</p> <p>Using the Rate of Inclination part of the plan, and using the scale provided of 80 chains to 1 mile, the Council would suggest that the distance according to the map, between public road no. 2 and the brook to the West is about 30 chains, or 0.375 miles. This brook may be where a water course crosses the railway line today north of Newbarn Farm. However, Stephen Kisko has measured the distance on a modern map between this point and the claimed route and it measures about 0.68 miles. This may nor may not be the same water course and the course may have changed position over time. Therefore, due to a lack of ability to interpret this part of the plan faithfully the Council does not attribute -great weight to this.</p> <p>The enlarged plan, Part No. 32, unfortunately does not list the claimed route with any number. The map is black and white so none of the roads are coloured any differently to one another. The plan does not show the claimed route extending up to D and beyond but this doesn't mean it didn't continue as the railway company were only interested in the area of the railway line and many other roads were not shown to their full extent.</p> <p>The 1843 Railway Plans accompanying Book of Reference (Keep reference 182/2) lists the road number 2 as a 'Parish Road' and the owner as 'Surveyor of Highways'. At the very least we know this is certainly in the same area of the claimed route as 1 and 3 are now owned by Thomas Sheppard who we know owned Wootton at this time and bought it from Harrison. Also number 3 is described as</p>
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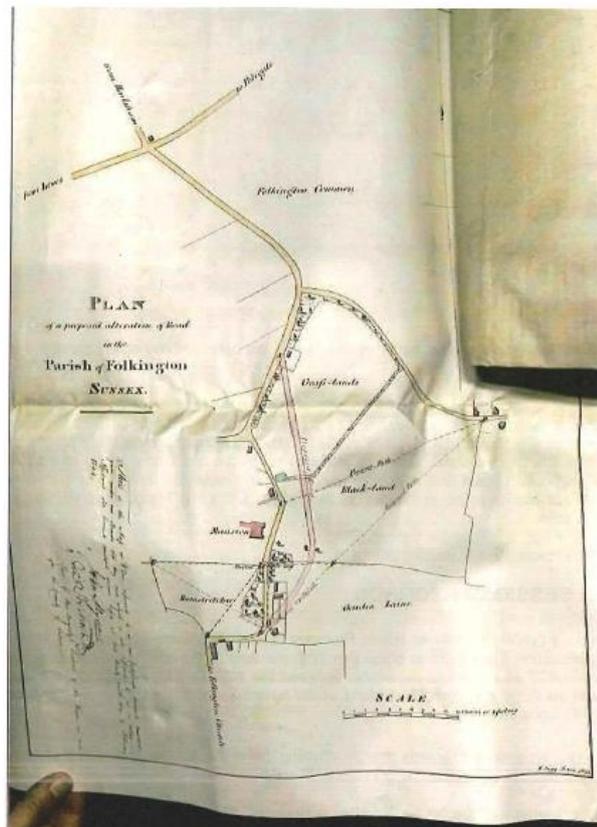
		<p>'Meadow Pond and Shaw' and the outline of the meadow and the location of a pond in a shaw as shown on the 1839 map is as it is shown today. Therefore road 2 is the claimed route.</p> <p>This is strong evidence that this section of the claimed route, from E towards D was considered at the time by the railway company to be a public road.</p> <p>The course of the road/claimed route south of the railway crossing is today further to the West than the railway plans show. The Council would suggest that the road was moved to the West and joined the new turnpike at a point about 75 metres to the West of its original location, removing the old 4-way crossroads it had with the lane to Folkington that used to be opposite it on the new turnpike. There is nothing in the index to the Quarter Sessions for Folkington that says that this section south of the railway or any other part of the claimed route was stopped up and there are no records around the time of the railway construction. The landowner claims the moving of the road was possible because it was a private road. The Applicant argues that it had to be moved to allow a gradient suitable for a public road, as the distance between the new turnpike and the railway on the old course of the road was too short and would not have allowed for a road below the maximum gradient.</p> <p>This issue is connected to the fact that it appears that the actual railway built, and that exists today, looks like it is ever so slightly further south than that shown on the 1839 and 1843 railway plans, perhaps only by as little as 100 metres (Council estimate), which perhaps then resulted in the moving of the road to allow for a road to be built within the maximum gradient for a public road, which would not have been possible if the road had remained on its original course. However, maybe an allowance should be made for a degree of deviation for the width of the railway and the railway line drawn on the maps. Today the southern edge of the railway track runs about 20 metres north of the northern edge of the A27 road (Council estimate) parallel with the road for about 0.5 miles but the distance between the railway and the road looks like</p>
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		<p>more than 20 metres on the historic railway plans.</p> <p>Both the 1839 and 1843 railway plans show road 2 going as far north as the now back farm entrance track going from the West side of Wootton Manor to the claimed route/Back Drive (a track was according to the landowners built later from the late 19 Century). We cannot be certain if or where the road continues to from here using these plans.</p> <p>The Railway Acts allowed for compulsory purchase of land to build railways. Although the main purpose of the Acts was not to record public rights of way, they still provide strong evidence of their locations. Most plans used the 1805 OS maps as a base map. The plans were accompanied by a Book of Reference which had numbered plots and the name of the landowner. There was a high level of public consultation, through Parliament, the London Gazette, with all landowners and through public inspection. The Railway Clauses Consolidation Act of 1845 states the minimum width for a bridge is 25 feet for public roads. The Railway Act that created the railway discussed in this case also said 25 feet.</p> <p>The fact that the book of reference says the 'Surveyor of Highways' was the landowner indicates the Highway Authority had to maintain it for the public. They would not want to take on responsibility for this if it was not the case.</p> <p>This is strong evidence that it can be reasonably alleged that a public right of way exists here.</p>
	<p>QUARTER SESSIONS RECORDS</p>	<p>(In other sections 1 refer to tithe and Inland Revenue records to show evidence of Highway status. In this section I use them to show that both the land to the south and the north of what is now the A27 was in single ownership between the 1830s and the early 20th century and that therefore those proposing diversions would have had an interest in recording land north of the A27 accurately)</p> <p>There are no quarter sessions records directly affecting this route, but the</p>

southern end does appear on maps deposited for diversions in the South of Folkington.

The roll for the quarter session for Easter 1844 is held at the Keep under the reference QR 899.

It contains a map showing the proposed diversion and also the southern end of the application route. This is shown in sienna, in the manner of a road and is clearly labelled "from Hailsham"

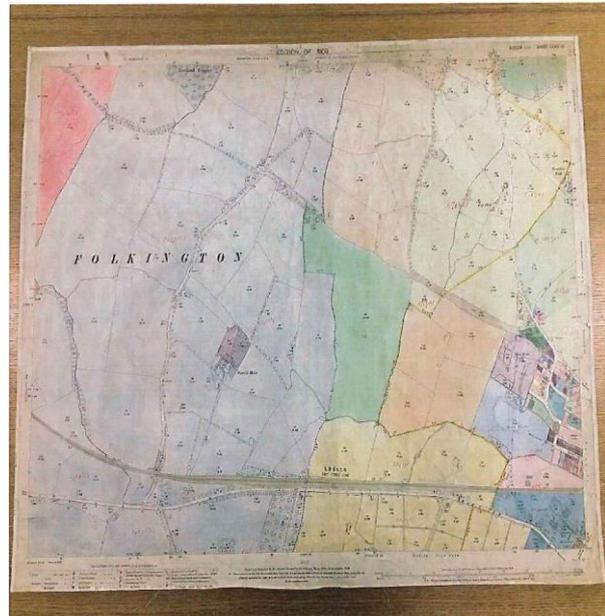


The tithe apportionment for Folkington is available online on the East Sussex County Council web site at <https://apps.eastsussex.gov.uk/leisureandtourism/localandfamilyhistorvitithemaps/Apportionment.aspx?ID=112738>

It shows that a large part of the parish was in single ownership at the time of the survey (Mr Harison) This included both the land covered by the proposed diversion and the bulk of the application route. So at the time of the diversion in 1844 Mr Harison or a subsequent owner owned both the land covered by the diversion and the land through which the road to Hailsham passed. He is unlikely to have

allowed a map to go forward which showed a road he did not believe existed.

Maps made as part of the Inland Revenue survey of 1910 show that much of the parish was still in single ownership as hereditament 2 (coloured in blue on both maps)
The maps shown are IR124 4 356 (above) and IR124 4 300 (below)



4 356 (above) and IR124 4 300 (below)

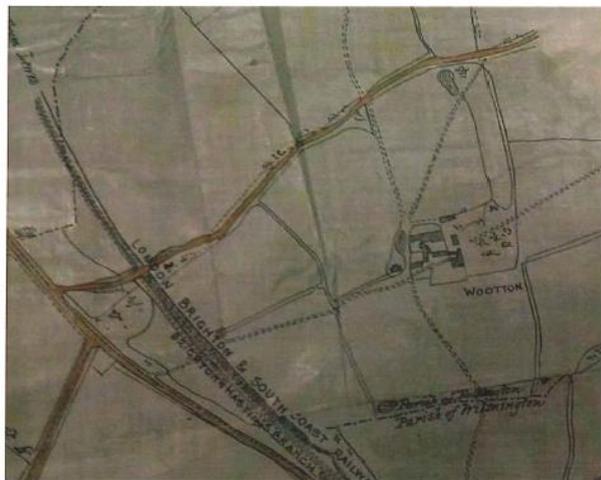


Parish of Folkington.

No. of Plot	Holder Name and Name of Occupier	Number and Name of Occupier with this Particular	Description of Property	Area, Poles, Roods, and Furlongs or Acre, Roods, and Furlongs	Estimated Rent	Value Annual Value	Value Rental Value	Value as Estimated for Value
1	Coacher John	J. S. O. Gwynne	Agri-cultural land	16 1 10	1 10	1 10	1 10	
2		J. S. O. Gwynne	Buildings		1 2	1 2	1 2	47 17
3		J. S. O. Gwynne	College's Garden		1 2	1 2	1 2	
4	Gwynne James Glynne	Henry	Agri-cultural land	5 3 10	1 10	1 10	1 10	
5			Agri-cultural land	1 6	1 6	1 6	1 6	
6			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
7			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
8			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
9			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
10			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
11			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
12			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
13			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
14			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
15			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
16			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
17			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
18			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
19			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
20			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
21			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
22			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
23			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
24			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
25			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
26			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
27			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
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40			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
41			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
42			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
43			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
44			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
45			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
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53			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
54			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
55			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
56			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
57			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
58			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
59			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
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71			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
72			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
73			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
74			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
75			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
76			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
77			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
78			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
79			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
80			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
81			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
82			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
83			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
84			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
85			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
86			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
87			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
88			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
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91			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
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96			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
97			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
98			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
99			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	
100			Agri-cultural land	2 1 10	2 1 10	2 1 10	2 1 10	

The accompanying Domesday book is held at the Keep under reference IRV 1/57. It shows that hereditament 2 was owned by James Gwyne.

In 1874 a second quarter sessions award was made which also diverted routes in the south of Folkington. The roll for December 1877 is held at the Keep as QR/1080. It includes a map of the area showing the proposed diversions. Part of the map is reproduced below. The southern end of the application route is shown in the manner of a road.

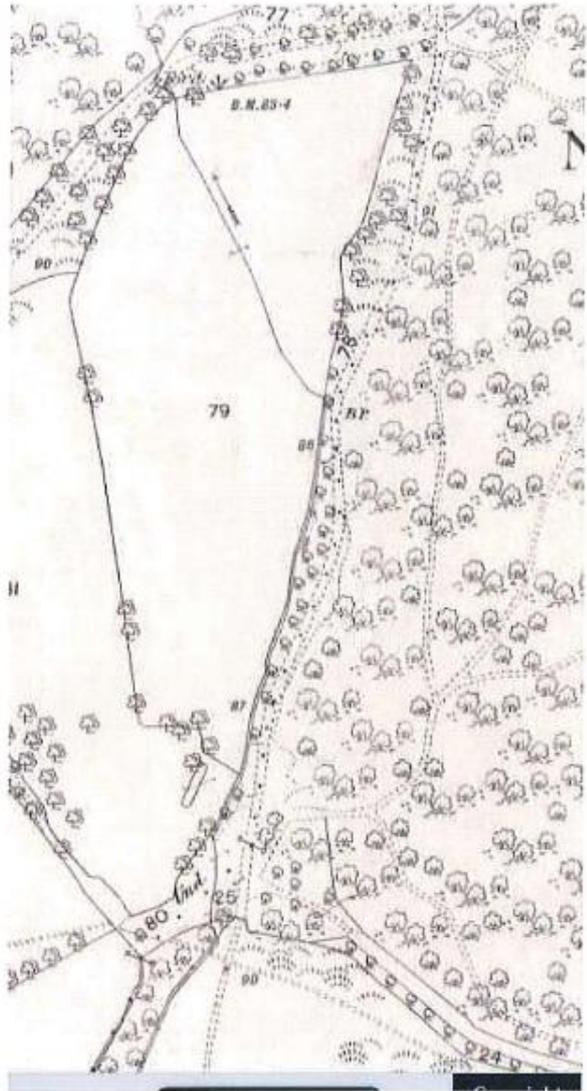


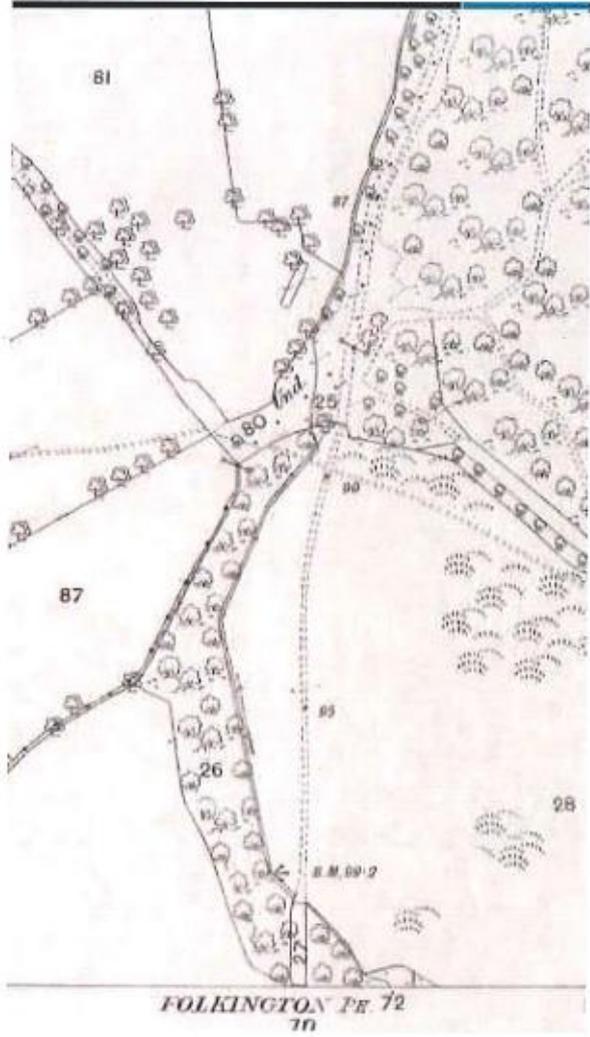
I suggest that these maps are strong evidence of highway status for the whole of the application route. It is unlikely that a landowner would allow a map to go forward to the court which admitted a highway across their land which did not exist.

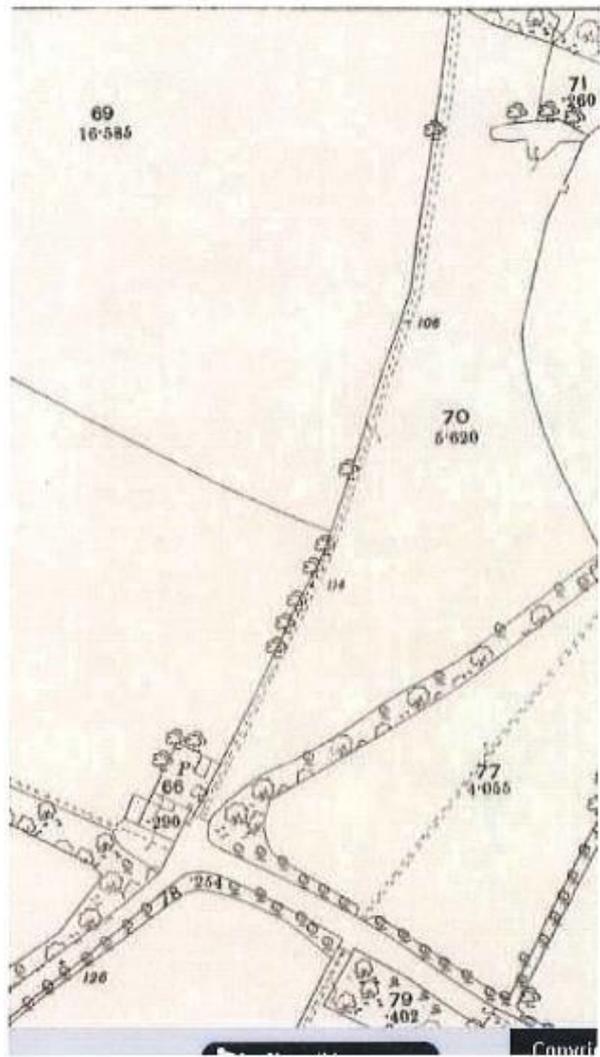
This evidence is worth 5 points in Restoring the Record.

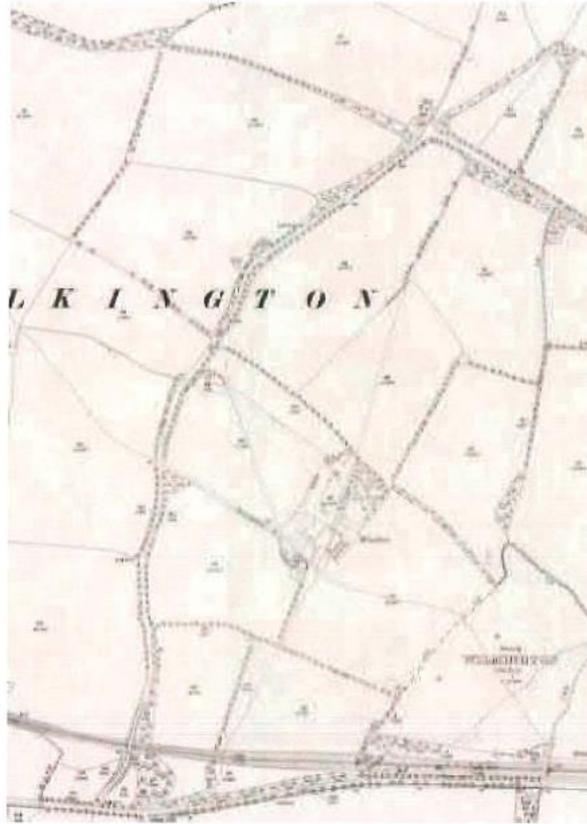
21	The Council:	<p>The Quarter Sessions roll 899 of 1844 does contain a map in connection to the diversion near Folkington Manor which includes the southernmost section of the claimed route which is annotated as 'from Hailsham'. It still shows the junction of the claimed route and the new turnpike as a 4-way crossroads junction, whereas the moving of the southern end of the claimed route to the West removed this feature. This must have been shortly before the railway was constructed, in 1847, when the 4-way crossroads was moved. However, if this shows that the claimed route extended to Hailsham then it is interesting that on Greenwoods earlier map of 1825 the claimed route from the south is shown as going from the 4-way crossroads to Wootton Farm only, with the northern half of E-D missing and not shown. Having said that, it is later shown as a dotted outlined road from the old turnpike at D to C and then as a more solid lined road from B-A.</p> <p>The Council agrees that at the time of the Tithe map in 1839 most of the claimed route and the land subject to the later 1844 diversion was in the hands of Mr Harison. It is understood that the lands were then bought by Mr Sheppard in 1840 who owned the land at the time of the proposed 1844 diversion.</p> <p>The blue tint colouring on the 1910 Finance Act maps may indicate that it is all owned by the same person and/or part of the same estate but it cannot be certain it is all one hereditament or part of one large hereditament, or that it is labelled as number 2, due to the quality of the photograph. The Council accepts the book of apportionment (Domesday Book) that Mr J Gwynne was the owner then as this is known to be the case. Mr Gwynne purchased the lands in 1876 from Mr Sheppard.</p> <p>The Quarter Sessions roll 1080 of 1877 does contain a number of coloured plans of the diversions near Folkington Manor which include the southernmost section of the claimed route, now on its new alignment to the West and the 4-way crossroads has been removed. The claimed route is coloured a tint of orange in the same way the new turnpike is and the new road to Folkington created from the diversion. They actually show the claimed</p>
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		<p>route going a little further north than the railway plans show, going past the farm track created in the 19 Century as a back entrance to Wootton Manor from the Back Drive.</p> <p>The Council agrees that as these diversions were subject to public consultation and scrutiny, it is unlikely official plans would be drawn up and allowed by the landowner to show roads represented as public roads if these routes were not public or considered to be public at the time.</p>
	<p>FIRST EDITION OF THE ORDANCE SURVEY 25 INCH TO THE MILE MAP</p>	<p>Ordnance survey maps are not usually of use for rights of way purposes because they usually purport only to show physical features and not legal rights. However the early maps in the first edition series contain valuable extra information when cross referenced to the books of reference that were published with them. These are indexed by parish. There are also books showing the derivation of names shown on the map and surveys of parish boundaries. Copies of the first edition of the Ordnance Survey 25 inches to the mile maps can be found online at the National Library of Scotland. The bulk of the route can be found at http://maps.n1s.uk/view/103674424 The northern part of the route can be found at http://maps.n1s.uk/view/05636548 I have copied extracts showing the route map from these sources. The maps are displayed from north to south. The route in its entirety is recorded as a physical feature on the maps</p>

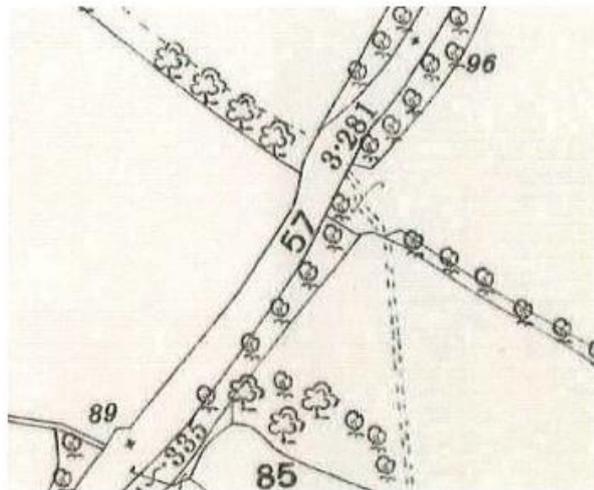








Below is a close up of the road at roughly the mid-point of the map above.



It will be seen that the application route is in the following land parcels, 78(Wilmington) 28, 27, 70, 57 (Folkington) Ordnance survey books of reference are held on the open shelves in the Keep.. Volume 13 contains information about Wilmington and Folkington. The extracts below have been taken from these books

2
PARISH OF WILMINGTON.

No. in Plan.	Area in Acres.	Remarks.	No. in Plan.	Area in Acres.	Remarks.
75	246.601	Wood, &c.	126	2.042	Arable.
76	.252	Wood.	127	2.824	Pasture.
77	7.686	Wood, furze, &c.	128	1.035	Pasture.
78	1.087	Wood and furze.	129	10.470	Pasture.
79	7.174	Arable.	130	.511	Houses, gardens, &c.
80	.329	Pasture.	131	5.283	Arable.
81	6.958	Pasture and furze.	132	1.852	Pasture, &c.
82	.723	Road.	133	1.299	Pasture.
83	5.615	Pasture.	134	2.983	Pasture.

In the entries for Wilmington 78 is recorded and wood and furze, but this is the same description as for 76, which is Robin Post Lane (today recorded as a byway.)

PARISH OF FOLKINGTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION).
HUNDRED OF LONGBRIDGE.

No. in Plan.	Area in Acres.	Remarks.	No. in Plan.	Area in Acres.	Remarks.
1	.337	Wood.	39	.531	Pasture.
2	88.085	Wood.	40	.129	Embankment.
3	.893	Wood.	41	.064	Wood.
4	1.127	Road.	42	.094	Embankment.
5	10.674	Pasture.	43	2.306	Pasture.
6	5.448	Pasture.	44	20.686	Pasture.
7	.623	Wood.	45	.541	Wood.
8	1.054	Road.	46	6.959	Pasture, &c.
9	.584	Wood.	47	.238	Wood, &c.
10	.070	Wood.	48	.546	Wood.
11	14.998	Arable.	49	10.414	Arable.
12	.085	Garden.	50	.456	Wood.
13	.312	Wood and rough pasture.	51	.160	Wood.
14	.206	Houses, gardens, &c.	52	.211	Wood.
15	.341	Wood.	53	10.803	Pasture.
16	9.353	Pasture.	54	13.679	Arable.
17	12.680	Pasture.	55	27.530	Pasture.
18	.125	Houses and yards.	56	7.889	Pasture.
19	11.629	Pasture.	57	3.281	Road.
20	.343	Road.	58	.303	Wood.
21	183.370	Wood, &c.	59	14.353	Arable.
22	1.266	Wood and road.	60	.182	Wood.
23	.569	Road.	61	24.084	Arable.
24	.851	Wood.	62	.875	Wood.
25	.138	Pasture.	63	.262	Wood.
26	1.303	Wood.	64	15.479	Arable.
27	.059	Road.	65	1.654	Wood.
28	12.370	Pasture, furze, &c.	66	.260	Houses, yards, and gardens.
29	.062	House and yard.	67	15.843	Arable.
30	.069	Road.	68	.241	Wood.
31	20.284	Arable.	69	16.585	Arable.
32	12.017	Arable.	70	5.620	Pasture and pond.
33	.479	Wood.	71	.260	Pasture.
34	.138	Garden.	72	4.429	Wood.
35	.771	Wood.	73	11.379	Arable.
36	2.283	Pasture, &c.	74	1.461	Wood.
37	1.349	Wood.	75	6.247	Arable.
38	.639	House and yard.	76	.235	Wood.

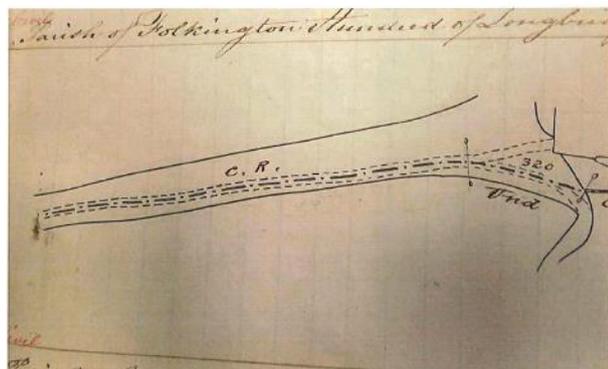
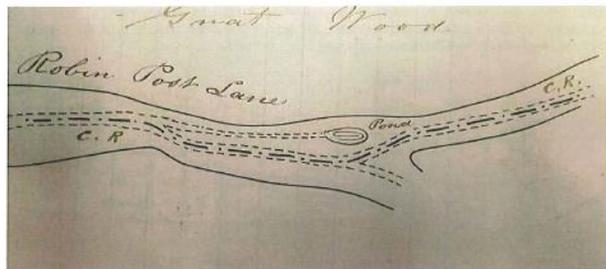
27315. A

In Folkington 28 is recorded as pasture, 27 is recorded as a road. 70 is recorded as pasture and 57 is recorded as a road. This is consistent with a route that passed through open fields and was only shown separately where enclosed. Note however that the route is shown throughout as a distinct way along a consistent route.

The northern part of the route formed a boundary between Wilmington and Folkington parishes. As such it features in the boundary remarks book.

The Ordnance Survey was given the duty of ascertaining and recording all public boundaries by the Ordnance Survey Act 1841. The OS boundary Remark Books, held at the National Archives in series OS 26, are the results of the Ordnance Survey's checking of the boundaries with the meresmen from the parish on each side.

The boundary remark book covering the boundary between Folkington and Wilmington is held at the National Archive under reference OS 26 10514. The extracts below have north at the left.



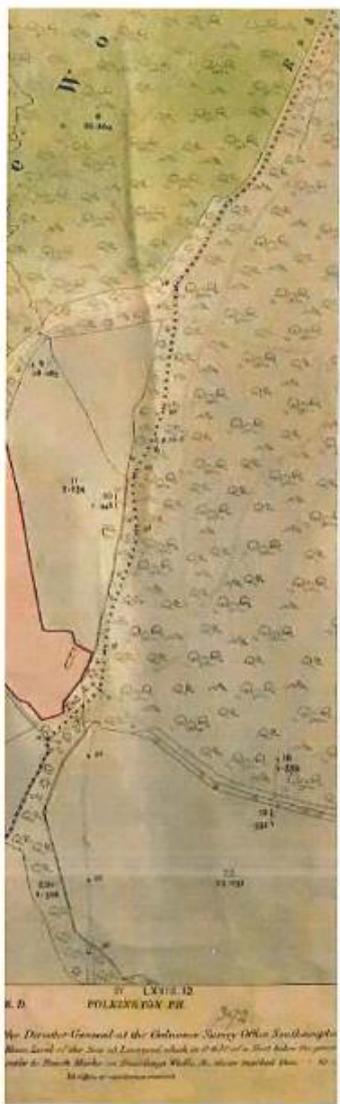
The application route is seen as a clear track, shown in the same manner as Robin Post Lane, which is today registered as a byway. The boundary then veers off to the southwest, whilst the application route continues straight ahead.

I suggest that the information in recorded by the Ordnance Survey is strong evidence to support highway status.

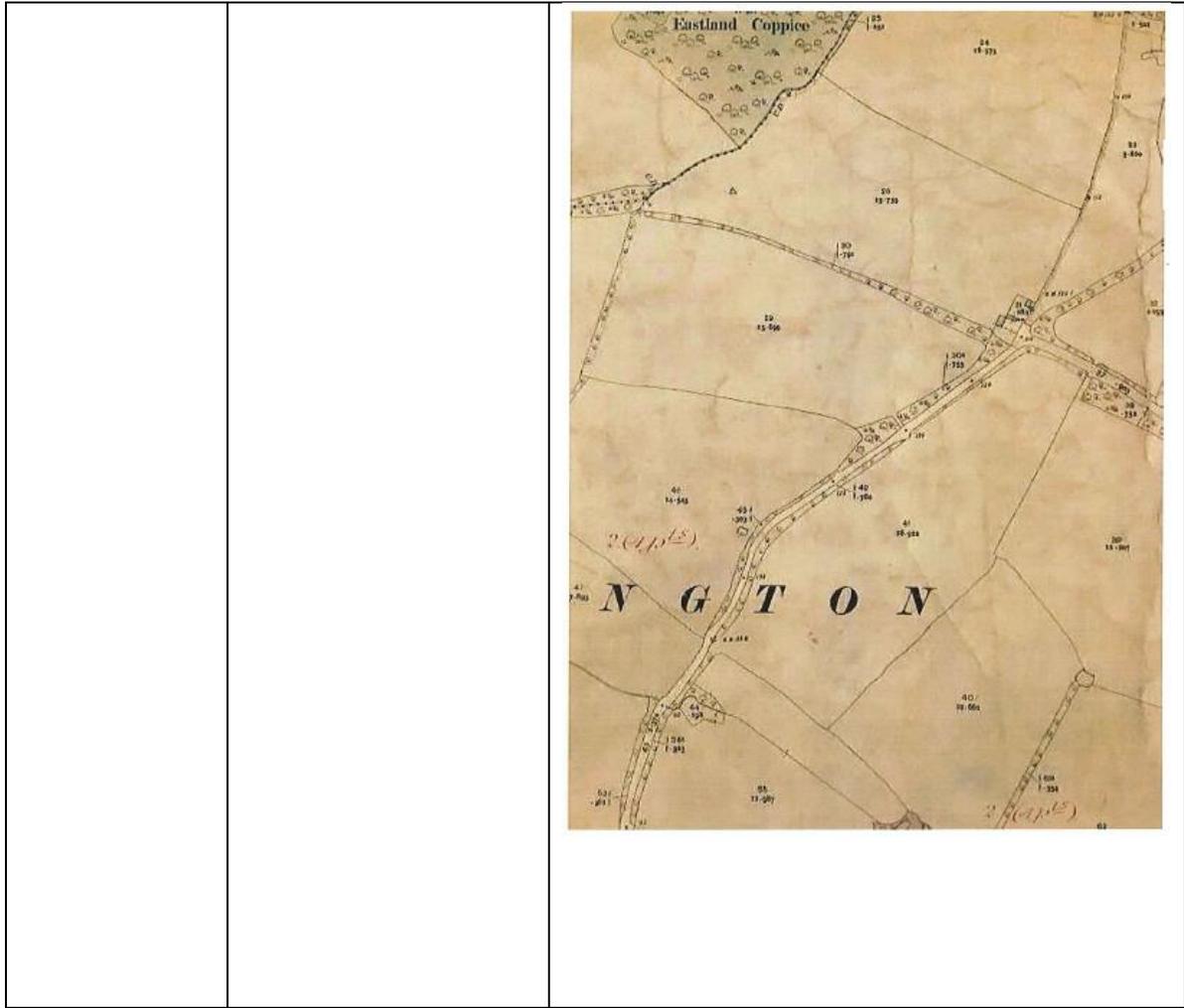
In Restoring the Record this evidence is worth 5 points.

	<p>The Council:</p>	<p>While OS maps are normally less important in determining claimed highways, and remain silent on the statuses of routes, they do record physical features on the ground and in this way may be helpful in determining routes that are not shown elsewhere.</p> <p>If the railway plans and the plans for the Folkington 1844 and 1877 diversions do suggest that the claimed route was public and existed in part up to about half way between E-D, they do not show or represent the claimed route north of this point. However, it may now be possible to see if it did continue north, as claimed, as if such a route physically existed on the ground it may be recorded on the OS in the 19 Century.</p> <p>The OS maps of 1875, 1878, 18995, 1909, 1910, 1928, 1939 all show E-D as a physical route on the ground. While D-C is not very clear, C-B-A is shown on the ground, as claimed, perhaps not as a vehicle route but as a track, partly through woodland, joining Robin Post Lane, which itself does lead in the direction of Hailsham. While we cannot be certain of the status of this route from the OS maps, we can be more certain that it mostly existed as a physical feature on the ground, as claimed, and in the direction of to and from Hailsham as the 1844 diversion map claimed.</p> <p>In terms of the Applicant's maps presented here, the Applicant has not provided the date of the maps or said it they are all from the same date.</p> <p>The Council was unable to view the OS book of reference itself as the shelves it was on were sealed off in the Keep record office from public viewing as part of Covid-19 restrictions and therefore the Council takes the Applicant's evidence on face value.</p> <p>The Council cannot locate the close up of the 'mid-point' provided by the Applicant or the road labelled as 57.</p> <p>The Council has not seen the original OS boundary Remark Books and takes the Applicant's evidence on face value. The Council estimates that from A northwards Robin Post Lane forms the boundary between Folkington and Wilmington. It also concludes from the map of the old parish boundaries and the dotted boundary lines on the OS maps, that B-A formed the old parish boundary</p>
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		<p>between Folkington and Wilmington. Unfortunately from the evidence and the copies of the Remark Books the Council is unable to orientate or interpret the images in such a way as to successfully identify the parish boundaries, the claimed route or Robin Post Lane.</p>
	<p>INLAND REVENUE VALUATION</p>	<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"</p>



**Extract from map held under reference IR
124 4 352**



The Inland Revenue created Field Books for calculating the value of each numbered hereditament on the map. The field book for Folkington hereditaments 1-100 is held at the National Archives under reference IR 58 54293

The Route is in hereditament 2

Reference No.....	2
GROSS VALUE.....	£ 44.778
Less Value attributable to Structures, timber, &c. (as before) £	27.100
FULL SITE VALUE.....	£ 16.678
Gross Value (as before).....	£ 44.778
Less deductions in respect of—	
Fixed Charges, including—	
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£
Any other perpetual rent or Annuity.....	£ 4.55
Tithe or Tithe Rent Charge	£ 3.363
Other Burden or Charge arising by operation of law or under any Act of Parliament	£
If Copyhold, Estimated Cost of Enfranchisement.....	£
Public Rights of Way or User	£ 60
Rights of Common.....	£
Easements	£
Restrictions.....	£
	£ 3.878
TOTAL VALUE.....	£ 40.900
Less Value attributable to Structures, timber, &c. (as before)	£ 18.100
Value directly attributable to—	
Works executed	£
Capital Expenditure	£
Appropriation of Land.....	£
Redemption of Land Tax.....	£
Redemption of Other Charges.....	£
Enfranchisement of Copyhold, if enfranchised	£
Release of Restrictions.....	£
Goodwill or personal element.....	£
Expense of Clearing Site.....	£ 28.100
ASSESSABLE SITE VALUE	£ 12.900
If Agricultural land, the value for Agricultural purposes	
including Sporting Rights	£ 22.185
excluding	£
Value of Sporting Rights.....	£
If Licensed Property, the annual license value.....	£
Liable to Undeveloped Land Duty as from	£
For further reference as to Apportionments &c., see	

This extract from the field book shows that £60 was deducted for rights of way. However little inference can be drawn from this because there are other rights of way in the hereditament.

The Council:

These are clearer copies of the Finance Act plans than provided above and earlier mentioned. The Applicant has confirmed they are extracts or close ups of the original maps. However, when reproduced in this way they do appear to either lose their original colouring or change colour slightly, in the sense that the

original maps show the claimed route in a hereditament coloured blue but the close ups show a colour of either brown or yellow. Moreover, the Applicant has suggested that the colouring on the original maps does tend to fade and even the same colour varies across each map (assuming the same colouring in part was meant to be uniform). The Applicant has provided further close ups of the claimed route as below:





The Applicant states this shows a white road on the southern part of the route, E-D. Despite the difference in colouring and shading the Council agrees because it looks like the colouring of the claimed route is different to the neighbouring lands. The original colour, blue is suggested of the neighbouring fields must have faded so that it looks more like the colour of the claimed route in white.

However, it would be expected that if the road was a 'white road' cutting through one hereditament it would have brace marks along it so indicate that the lands on either side are part of the same hereditament but it doesn't. This may be because the hereditament is of such a large size that the need for brace marks would be numerous and perhaps it was thought that the colouring (blue) would do this job instead, of notifying the viewer that all the land in blue was under the same ownership.

Also the claimed route E-D is of a lighter white colour as is the A27 which is and was a public road.

The Council suggests that the route E-D was not part of the 'blue' hereditament and not subject to the tax implications of the Finance Act which strongly suggests it was a public way.

Interestingly, the landowner has stated that A-D was included in the hereditament of 1910, which it appears to be, (Applicant and Landowner are in agreement here) but made no mention of E-D (Landowners Further comments, point 5, p.1-2 of their report).

Note: The Council has taken it that the Applicant's frequent use of the term 'herediment' means 'hereditament'.

OTHER MAPS

The National Library of Scotland has a number of maps covering the application route at .
<http://maps.nls.uk/geo/find/#zoom=9&lat=50.9197&lon=0.0037&lavers=64&b=1&point=50.84000.0.2262>
 The route is unchanged from the first edition of the 25 inch scale map up to 1937 when the middle part of the route is shown as "F.P." See below



The 1895 version of the one inch map at <http://maps.nls.uk/view/101169032> on sheet 319 shows the route (see below)

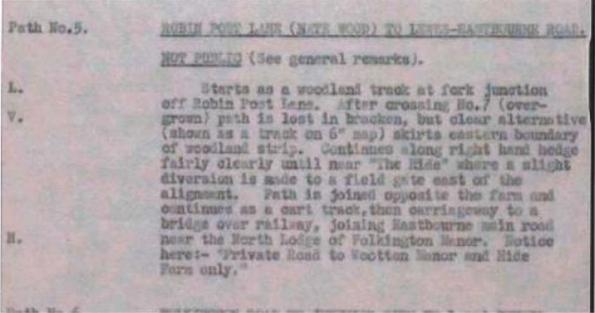


So does the 1946 edition of sheet 183 of the new popular edition to this scale. <http://maps.nls.uk/view/74466982> (below)



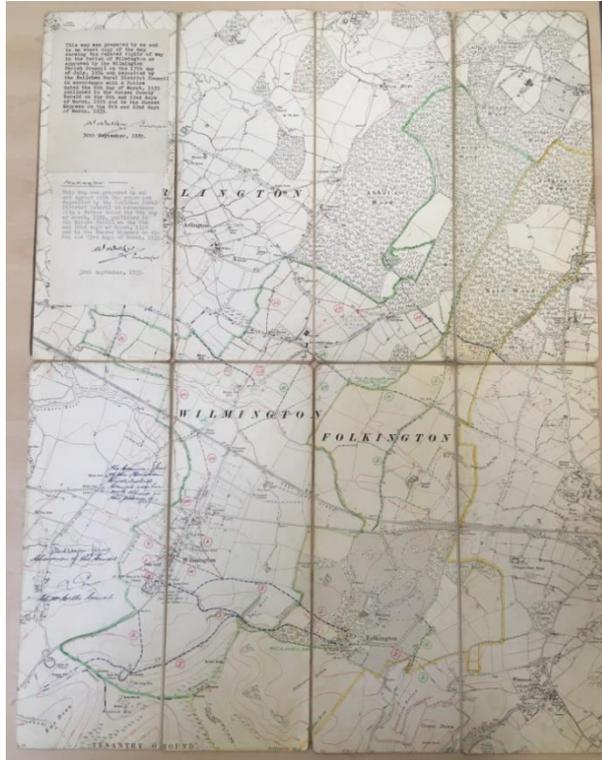
The Council:

OS maps show physical features on the ground but remain silent on the status of routes.

	<p>1ST EDITION DEFINITIVE MAP SURVEY</p>	<p>A copy of the survey of rights of way for the first definitive map is held by East Sussex Rights of Way under reference F.2001-FOLKINGTON_SURVEY_1-7_0002. It contains the information shown below</p>  <p>It is clear that the route existed on the ground at the time of the survey, but that private signs had been erected. (The parish survey at the Keep does not include path 5)</p>
	<p>The Council:</p>	<p>The Council has its own copy of the document mentioned here. It is clear from the Ramblers survey of 1950 that the description of path no. 5 refers to the claimed route.</p> <p>However, the annotations also make it clear that the public route was disputed, there were notices to deter pedestrians and it was overgrown.</p> <p>The Applicant has not provided the individual path survey (schedule) for path no. 5, nor has the Council been able to find it.</p> <p>The earlier 1935 survey by the Hailsham Rural District Council also described the route as no.5 and also as not public.</p>

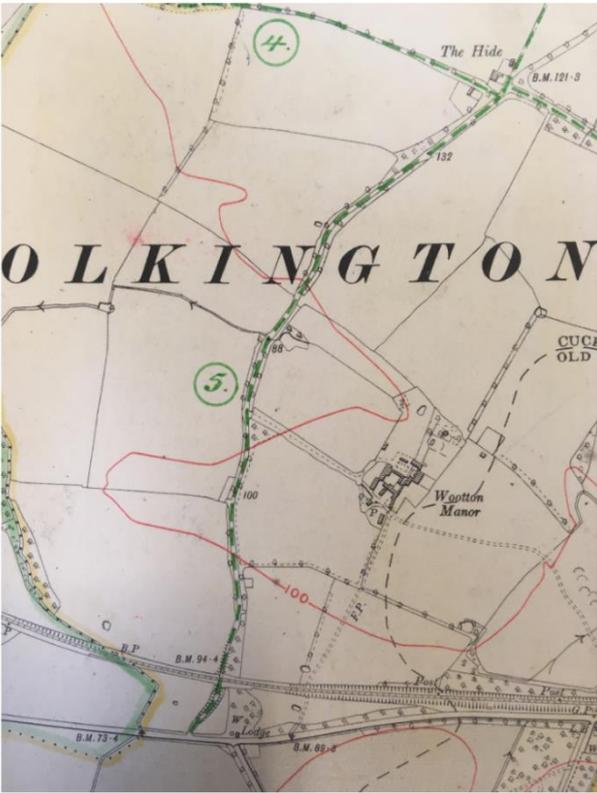
DW/B/1/9
1935
Rights of Way map
Folkington and
Wilmington
Prepared by the
Hailsham District
Rural Council

This shows the claimed route, as claimed, and
labelled as number 5.



Below: The whole claimed route



		<p>Below: E-D and part of D-C.</p> 
22	C/C 97/4 Hailsham Rural District (RD) draft map 1954	Claimed route not shown as a public right of way.
23	C/C 97/15 Hailsham RD provisional map May 1956	<p>Sheet 50/51 with key-Claimed route not shown as a public right of way, though this version only showed routes to be changed ie added or deleted.</p> <p>Claimed route not shown as a public right of way.</p>
24	C/C 97/26 Hailsham RD definitive map November 1957	Claimed route not shown as a public right of way.
25	C/C 97/28 Hailsham RD revised draft map September 1960	Claimed route not shown as a public right of way.

26	C/C 97/34 Hailsham RD revised provisional map March 1963	Claimed route not shown as a public right of way.
27	C/C 97/40 Hailsham RD revised definitive map November 1963	Claimed route not shown as a public right of way.
28	C/C 97/54 Hailsham RD draft revised map 1971	Claimed route not shown as a public right of way.
	CONCLUSION	<p>Maps and plans over a couple of hundred years have shown the route either as a vehicular highway or have shown the route in a manner that is consistent with it being a vehicular highway. There are no sources of negative evidence of vehicular rights up to the definitive map survey.</p> <p>In the absence of any stopping up order the principle "Once a highway, always a highway applies.</p> <p>Unless one of the exemptions in the National Environment and Rural Communities Act applies, this is a restricted byway.</p> <p>In the scoring scheme suggested in Restoring the Records the evidence appears to be worth 28 points. This is more than the value for the basic evidential test (5)</p>
	The Council:	<p>The Council will assess this evidence in its conclusion.</p> <p>The Natural Environment and Rural Communities Act 2006 (the 'NERC' Act) extinguished rights of way for mechanically propelled vehicles over route not shown on the definitive maps as byways open to all traffic subject to a number of exceptions. If the Authority consider those rights to have been extinguished, the way will be recorded as a restricted byway, if an Order is confirmed.</p>

	REQUEST	I request the surveying authority to add the route to the definitive map and statement as a byway. The type of byway will depend on the application of the Natural Environment and Rural Communities Act 2006.
	The Council:	The Council will assess this evidence in its conclusion.
	APPENDICES	1812 Turnpike Act
	The Council:	A copy of this is included in the Applicant's Statement.

SECTION C – Consultation Process

The Consultation Process – with User Groups, Landowner, Applicant

8. Consultations with User Groups and Statutory Consultees

8.1 On 30 November 2017 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 within 42 days.

8.2 On 5 December 2017 Claire Reynolds, Clerk of Long Man Parish Council replied to say that the matter would be discussed at their next meeting on 8 January 2018. On 12 January Ms Reynolds replied further to state that they oppose the application. Their understanding is that there has been no path on the route since the 1870s. There are old houses and gardens along the route that would be severely adversely impacted. It doesn't connect to an existing footpath.

8.3 On 12 December 2017 Graham Kean, Engineer and Countryside Officer of Wealden District Council wrote to provide a copy of the 1935 footpath survey by the Hailsham Rural District Council for the relevant area (Folkington parish) and said that the map to accompany it is at The Keep under reference DW/B/1. He suggests routes 3 and 6 may relate to this claim but as he was responding as well in connection to 2 other letters from us (1 about a claim at Folkington Manor also sent to him on 30 November, and 1 about a claim at Folkington Reservoir sent to him on 11 December) he may have been referring to those. Looking at the list in the footpath survey again, route 5 looks like it most likely refers to the claimed route and is listed as 'Not a public way'.

8.4 On 18 December 2017 Mr Tony Kempster of the Auto Cycle Union (ACU) replied to say that he does not wish to comment on the application.

8.5 On 30 December 2017 David Finney, Footpath Secretary for East Sussex, Brighton and Hove, of the Society of Sussex Wealdmen replied to say that it has no tangible evidence to offer but said that it was 'supportive in principle' to the claim, and of all opportunities to increase the stock of non-motor vehicle routes where access to the countryside would be enhanced.

9. Following Comments made by the Applicant and the Landowner.

The upcoming tables summarise the comments made by the landowner, the landowner's representatives, the Applicant and where necessary, the Council. They attempt to cover all the points raised in a succinct manner. For consistency, where the claimed route has been referred to in their evidence as 'the application route' or similar, the Council has used the phrase 'claimed route' instead and throughout.

10. Initial Rebuttal of the Landowner to the Application

10.1 On 23 February 2017 the application was sent to Oliver Harwood, Partner of RH & HW Clutton estate agents and land managers at his request following his email to the Council stating that he acted for both landowners. He objected to the application on their behalf.

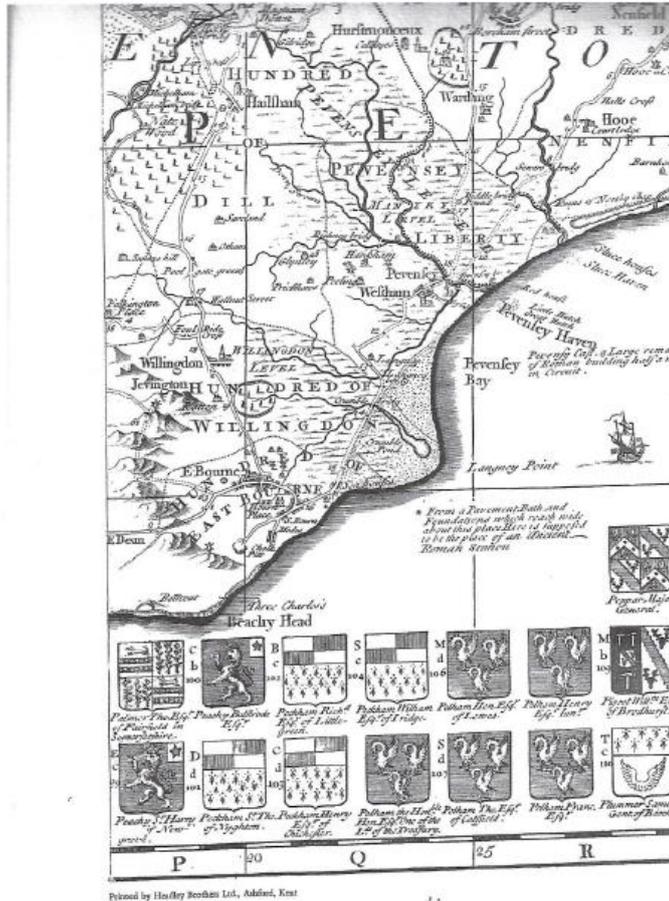
10.2 The first stage initial consultation period with the landowners via Mr Harwood was then outlined as from 9 March 2017 to 20 April 2017, though this was extended until

11 May 2017, and later extended until 1 September 2017, and again until 1 October 2017.

10.3 On 2 October 2017 the Council received the Initial Rebuttal reply from Mr Harwood containing a 55-page report to rebut the Applicant's evidence along with a separate document of a timeline of the estate in a historical context. The full text can be seen in the File of Evidence.

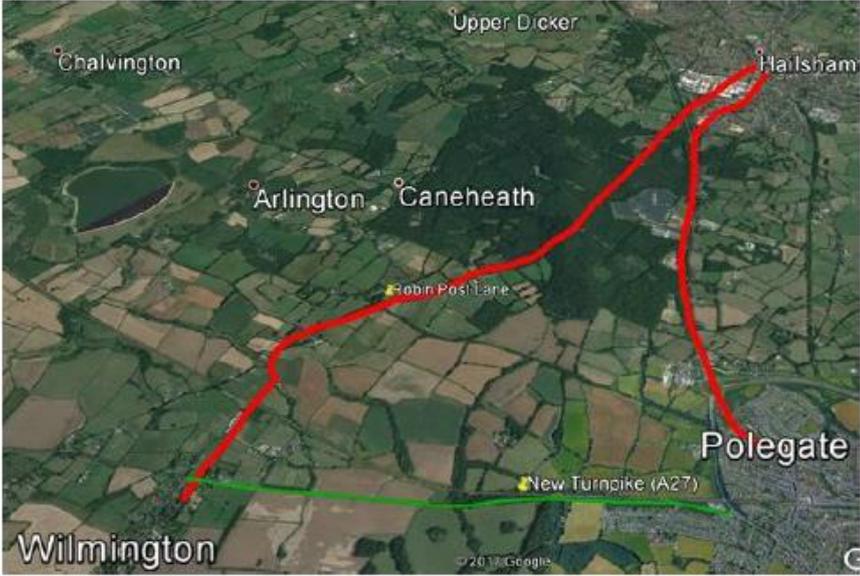
10.4 Table 4 – Landowner's Initial Response Comments:
 'Wootton Manor Estate Historic Drove Response & Objection'

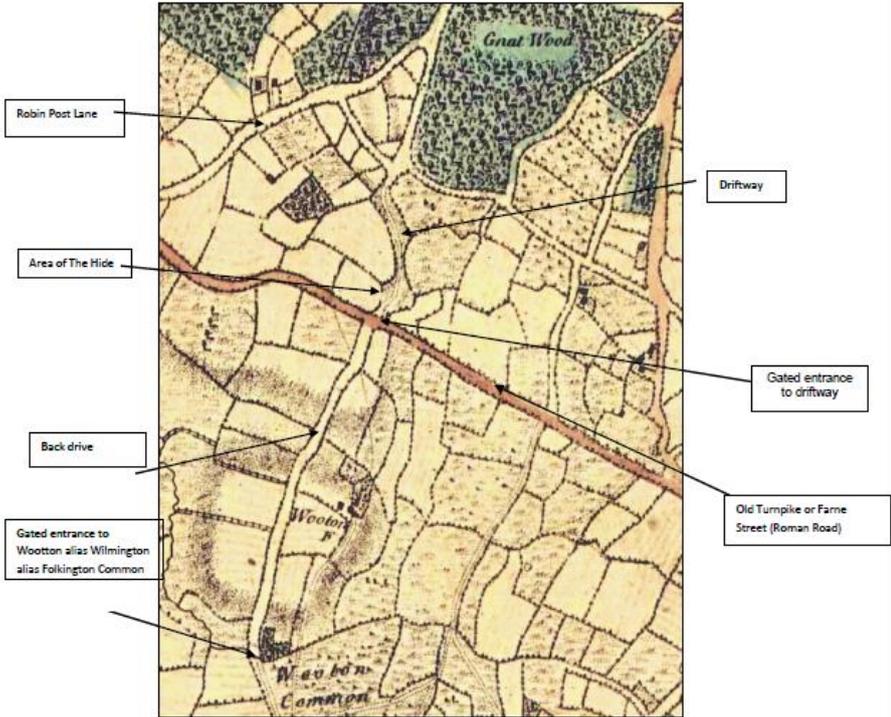
Section in Landowner's Initial Rebuttal	The Landowner's comments received 2 October 2017.
Introduction	The landowner refutes and objects to this claim. The land has been a private access route from Folkington to estate lands to the north. The route is known by the Estate as The Back Drive.
1	Summary of Findings We have been researching for 7 months and everything points to it being private. The only evidence that refers to it not being private is written in 1839 in connection to the railway construction.
2	There are no records about public ways prior to the unification of the Wootton and Folkington Estates in 1610.
3	The map produced on page 11 does not show the back drive.



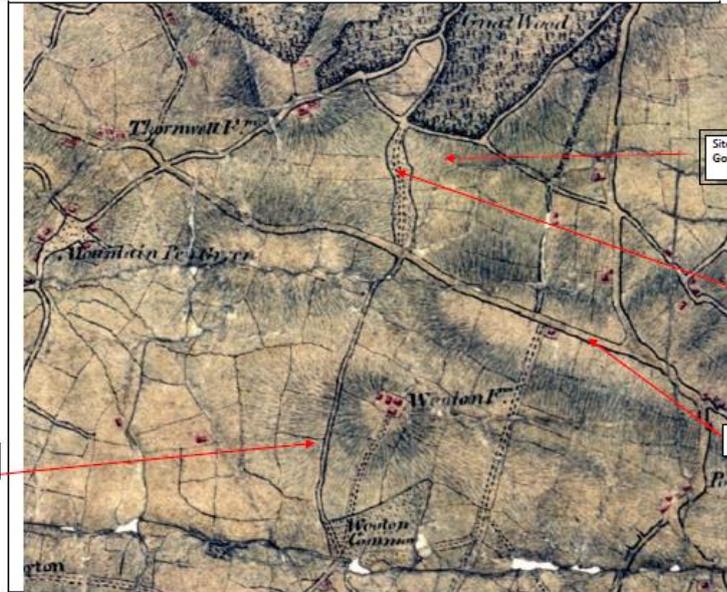
4	A route from Folkington to Nate Wood is shown on some 18 Century maps but this does not mean it is public. The route north of the old turnpike was a drift way and a farm track. Yeakell and Gardner maps show it as gated indicating private use.
5	The new turnpike (1821) (now A27) closed the old turnpike and the bridgeway from Wannock Lane to Monkypin. The landowners then reorganised their fields north of the old turnpike without objection.
6	The Turnpike Map said this was a lane to 'Wootton' as an estate map, going from the turnpike to the Hide and then East for a short distance to private fields.
7	Turnpike Acts closed routes parallel to turnpikes to avoid alternative routes. Roads not going in the same direction we not closed. The fact that there is no 'side roads order' is inconclusive.
8	The lack of a toll house at the end of the Back Drive is good evidence that it was not public. They were put where a public road gave access to a toll road. There was one at Polegate and Wilmington. The lodge

	on the Back Drive by the A27 was built by Mr Gwynne in the late 19 Century.
9	<p>The railway books of 1839 and 1843 record Wootton Lane as a parish road. There is no record of any parish maintenance. We consider the reference to a parish road as a mistake.</p> <ul style="list-style-type: none"> -The bridge was built some distance to the West of the original road. -the route to the north of the bridge at the time was gated in two places as per maps. -This is the only bridge in the area that is humped and not flat.
10	The railway provided a separate private access for Wootton Farm. The second private bridge was to service Chambers Piece (separate holding at the time).
11	Mr Gwynne was involved in several litigation cases concerning public access. Gwynne versus Drewitt concerned access up the back drive and along part of the old Roman road. Gwynne won the case at the High Court.
12	The Duke of Devonshire claimed public use along the old turnpike to reach his lands at The Hooks and also along the back drive. This was resolved in the owner's favour.
13	The back drive has always been private for farming the 600 acres of the estate. The balance of evidence is that it remains private.
Timeline	A timeline from 1555 to c. 1894 outlines the existence of various maps and Acts of Parliament.
The Rebuttal	<p>The approach taken to the claim, was to work through each piece of evidence provided by the Applicant.</p> <p>Background to the farming of the area. The area between the South Downs and the Weald has many droving paths running North-South, for moving sheep. Some became highways eg the public route to Hailsham (A22) is now Robins Post Lane. A route is shown on 18 Century maps going from Wilmington Common to the old turnpike. These maps show features not status. The public routes to Hailsham are shown below:</p>

	 <p>Droves like Wootton were private links between lands of the same owner. The main drove road at Wootton was to move stock around. The droving system declined during the Napoleonic Wars.</p> <p>Mr Harison enclosed the small drove at the Hide and reorganised fields in the 19 Century. No further maps show the claimed route.</p> <p>There is no evidence that this closure was objected to by the public.</p> <p>Constructing Folkington Manor removed the upper link of the drove road.</p> <p>The weight to be carried to old maps. It is incorrect that just because a road is shown in a certain colour or form it is public.</p> <p>The Tithe Maps excluded all private tracks and public rights of way.</p> <p>Other maps show physical features and droves were large features.</p>
<p>The Council:</p>	<p>The Objector says that there are no routes between The Hide and Nate Wood because in the early 19th century the field boundaries were enclosed and re-organised by William Harison. However, some OS maps, eg 1875 and 1909 versions: Sussex LXV111.8, 25 inch to 1 mile show a route that could possibly be the claimed route, in the area north of The Hide running through Nate Wood.</p>
<p>1724 Budgen Map of Sussex</p>	<p>Evidence for Back Drive not being a Public Way</p> <p>This was the first to show detailed roads when there were no turnpikes and when parishes provided roads. The dotted line the Applicant claims is the back drive is not it and a different route.</p>

	<p>As it is not on the map then it is not an accepted route. There is a dotted line from Folkington to A22 but this is not claimed.</p>
<p>1725 Budgen Map of Wilmington</p>	<p>This shows a parallel line at the norther end of the claimed route but there is no indication of status or route direction. A Pound shown Mountain Pen Green track suggests it is a droveway.</p>
<p>Margery (1970) 250 Years of Map making in Sussex</p>	<p>Map, 1725, The back drive is not on the map and the route the Applicant claims is another route. It is not known what the dotted lines refer to and there is no evidence to support this alternative.</p>
<p>1778 Yeakell and Gardner</p>	<p>Yeakell and Gardner mapped the Goodwood Estate for Charles Lennox and then the whole of Sussex. They said their map would contain 'every road public or private'.</p> <p style="text-align: center;">1778 Extract from the Map of Sussex by Yeakell and Gardiner 1778 [Reproduced with permission of ESRO]</p>  <p>This extract shows the turnpikes coloured and other roads not but did not differentiate being public and private roads.</p> <p>1778-1783 'Actual Topographical Survey of Sussex' covered only 4 maps of the southern part of Sussex.</p> <p>In 1791 Charles Lennox appointed Edward Williams and William Mudge to the Board of Ordnance who then made a map of the nation – the OS. This led to the Map of Sussex in 1795 by William Faden.</p>

	<p>Other maps were made. This was not only a record of landscape but important for the military.</p>
<p>1795 Gardner and Gream</p>	<p>[Extract from Margary, H. 1970 Two Hundred Years of Map Making in the County of Sussex]</p>  <p>This did not differentiate between public and private roads but preferred physical features. Routes shown on this map do not mean they were public.</p>
<p>1789-1806 OS Draft Drawings (OSD)</p>	<p>Turnpikes were coloured fawn and other routes had no colour.</p>

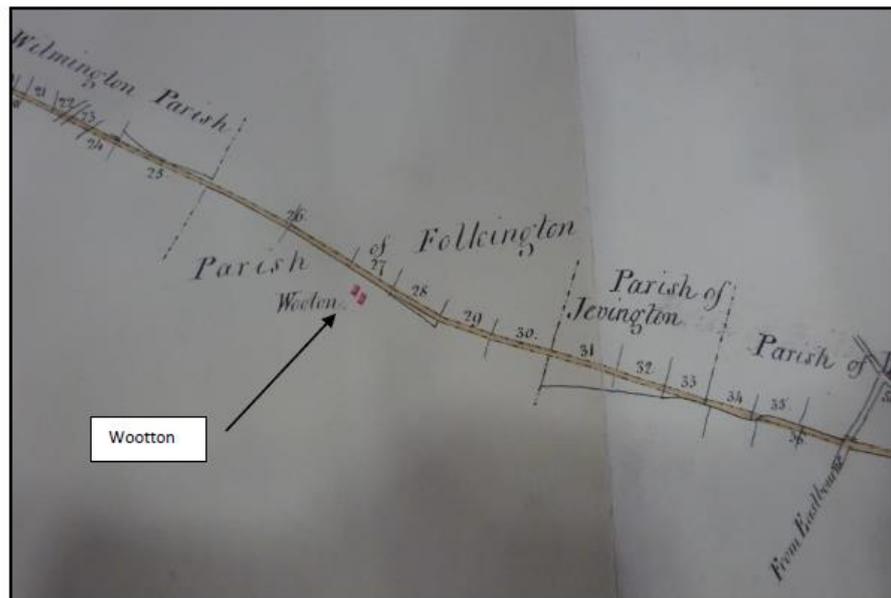


This shows the back drive from Wootton Common north to the old turnpike and as a driftway north further. The driftway was gated.

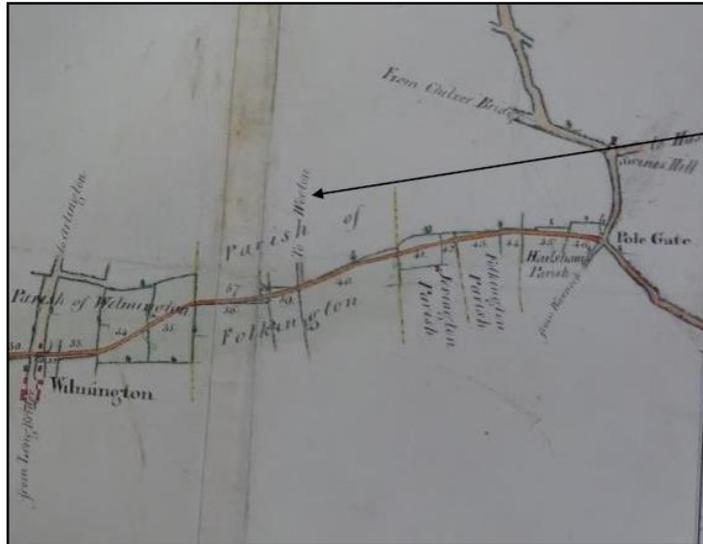
The 1792 Glyndebridge Turnpike Act had been passed but this map comes just before the alignment of the new turnpike of 1819 which closed the old turnpike and the bridleway (from South East to Mountain Pen Green, not shown).

The Turnpike Acts and the impact of the New Turnpike on the back drive.

A history of the turnpike is given in Austen (2015). The Glyndbridge Trust was set up in 1759. It promoted an extension east of Lewes to Swines Hill (Polegate). See map below from 1817.



It does not show cross drives in Folkington but does show them in Wilmington and Arlington. This route was not proceeded with and the Committee pursued a more southerly route as deposited in 1819.



The labelling of the road indicates that William Harison had already started to re-organise the fields north of the old Turnpike before 1819. In order to do this as land-owner he had the right to do it as the 'driftway' was not in use by the public.

Harison obtained the freehold of the old turnpike and the Jevington route bridleway in exchange for the lands of the new turnpike.

John McAdam was the surveyor to build the new turnpike. He makes no mention of the Back Drive. There is no mention of any tollhouse near here.

Impact of the New Turnpike on William Harison's Estate at Wootton

Between 1819 and 1839 Harison reorganised the fields north of the old turnpike. William Figg annotates the road as 'To Wootton' not to Nate Wood or Hailsham. The 1819 more southerly route crossed better drained land. The Harisons wanted to reorganised lands themselves. 1827-1828-Harison kept a diary but there are no references to Wootton Lane. In 1840 William Thomas sold the lands to Thomas Sheppard.

The Tithe
Maps for
Folkington
Estate 1839



*Tithe Map of Folkington [ESRO TD/E 100 Folkington]
[Reproduced with permission of East Sussex Record Office]*

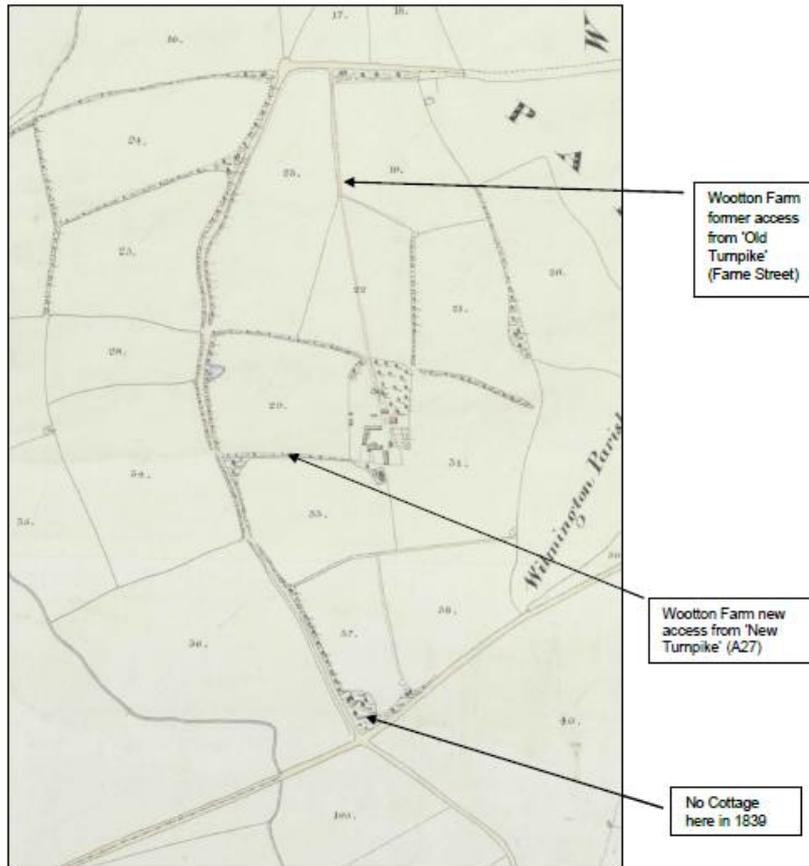
This shows the Back Drive from A27 north to the Hide and a track north from Wootton Farm to the old turnpike coloured the same as other roads. Some argue this shows highways. But the track from Wootton to the old turnpike is private.

On the map below, a small track to a pond is also coloured the same as other roads. Figg, the land surveyor probably used his own annotations. It was to record all non-farmed pieces of land not just public ways. There is a plot called 11 and the tithe apportionment calls this 'shaw west end of Gorselands'



There is no track between A and B, just boundaries of fields.

*Enlarged Extract from Tithe Map of Folkington (ESRO TD/E
100 Folkington)
[Reproduced with permission of East Sussex Record Office]*

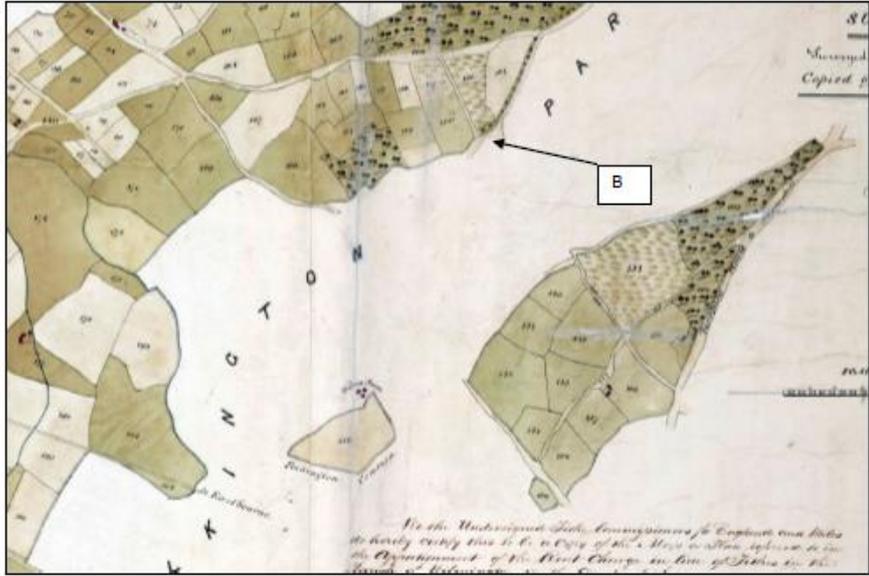


This map extract shows the line of the back drive from the new Turnpike opened in 1821 to the area of the Hide. This part of the back drive served as a means of accessing Wootton Farm.

On the map above the Back Drive was a means of accessing Wootton.

The old bridleway was closed so the only access to the farm was from the old turnpike from the north.

ESRO TD/E 117; Wilmington Tithe Map of Wilmington surveyed 1801 by P Potter and copied 1839 by William Leach



This map which is adjacent to Folkington shows where the proposed route runs through and joins with routes in Wilmington parish. This Tithe map shows all tracks, roads and lanes in an indeterminate colour. There is no naming of the routes in this area nor where they go to or come from.

Point B is point B on the map above. All routes not titheable were coloured whether public or private.

The Abstract of Title of Folkington Estate 1840 [ESRO GWY 3/1/7 1840]





74

The maps above are from the conveyance of Folkington and Wootton. The old turnpike is gated to the Back Drive and elsewhere. There is no indication of a track here at all. It shows Robin Post Lane, a public route from Wilmington to Hailsham.

The Council:

Please refer to the Council's comments on Tithe Maps.

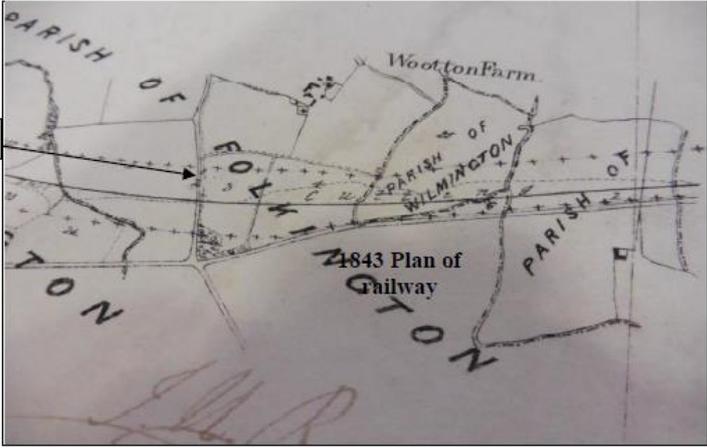
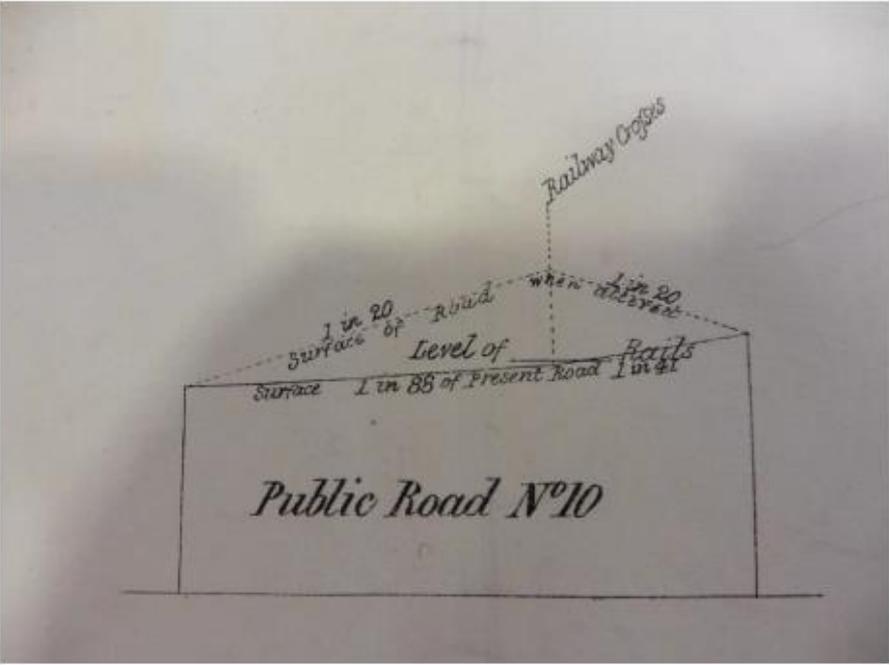
1841
John
Shoesmith
Valuation of
Wootton

Shoesmith was a tenant of Wootton 1834-1841. It was valued when he died and it describes the old turnpike and the Back Drive.

The Railway
Plans

They indicate the Back Drive was 'Public Roads' as the railway crossed it.

1843 plan shows the cross-section of the proposed public road over the bridge.

	 <p style="text-align: center;">ESRO QDP 171[Plan No 2]</p> 
<p>1843 Section of railway</p>	<p>934-Below is Page from the Book of Reference of the 1839 proposal. Harrison is the owner of plots 1,3,4,5 and 6.</p>

The Parish of *Hitchington* in the County of *Sussex*

NO. OF PLOTS	DESCRIPTION OF PROPERTY.	NAME OF OWNER OR SUPPOSED OWNER.	NAME OF LESSEE OR SUPPOSED LESSEE.	NAME OF OCCUPIER.
1	Wood & Stone	Charles Harrison	John Shearnith	John Shearnith
2	Track Road	Surveyors of Highways		
3	Wood & Stone	Charles Harrison	John Shearnith	John Shearnith
4	Wood & Stone	ditto	ditto	ditto
5	Wood & Stone	ditto	ditto	ditto
6	Woods & Garden	ditto		Rev. Henry Nelson
7	Woods & Garden	ditto		Rev. Henry Nelson
8	Woods & Garden	ditto		Rev. Henry Nelson
9	Woods & Garden	ditto		Rev. Henry Nelson
10	Woods & Garden	ditto		Rev. Henry Nelson
11	Woods & Garden	ditto		Rev. Henry Nelson
12	Woods & Garden	ditto		Rev. Henry Nelson
13	Woods & Garden	ditto		Rev. Henry Nelson
14	Woods & Garden	ditto		Rev. Henry Nelson
15	Woods & Garden	ditto		Rev. Henry Nelson
16	Woods & Garden	ditto		Rev. Henry Nelson
17	Woods & Garden	ditto		Rev. Henry Nelson
18	Woods & Garden	ditto		Rev. Henry Nelson
19	Woods & Garden	ditto		Rev. Henry Nelson
20	Woods & Garden	ditto		Rev. Henry Nelson
21	Woods & Garden	ditto		Rev. Henry Nelson
22	Woods & Garden	ditto		Rev. Henry Nelson
23	Woods & Garden	ditto		Rev. Henry Nelson
24	Woods & Garden	ditto		Rev. Henry Nelson
25	Woods & Garden	ditto		Rev. Henry Nelson
26	Woods & Garden	ditto		Rev. Henry Nelson
27	Woods & Garden	ditto		Rev. Henry Nelson
28	Woods & Garden	ditto		Rev. Henry Nelson
29	Woods & Garden	ditto		Rev. Henry Nelson
30	Woods & Garden	ditto		Rev. Henry Nelson
31	Woods & Garden	ditto		Rev. Henry Nelson
32	Woods & Garden	ditto		Rev. Henry Nelson
33	Woods & Garden	ditto		Rev. Henry Nelson
34	Woods & Garden	ditto		Rev. Henry Nelson
35	Woods & Garden	ditto		Rev. Henry Nelson
36	Woods & Garden	ditto		Rev. Henry Nelson
37	Woods & Garden	ditto		Rev. Henry Nelson
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42	Woods & Garden	ditto		Rev. Henry Nelson
43	Woods & Garden	ditto		Rev. Henry Nelson
44	Woods & Garden	ditto		Rev. Henry Nelson
45	Woods & Garden	ditto		Rev. Henry Nelson
46	Woods & Garden	ditto		Rev. Henry Nelson
47	Woods & Garden	ditto		Rev. Henry Nelson
48	Woods & Garden	ditto		Rev. Henry Nelson
49	Woods & Garden	ditto		Rev. Henry Nelson
50	Woods & Garden	ditto		Rev. Henry Nelson

Plot 2 is the road. Listed as Parish Road. Owner Surveyor of Highways.

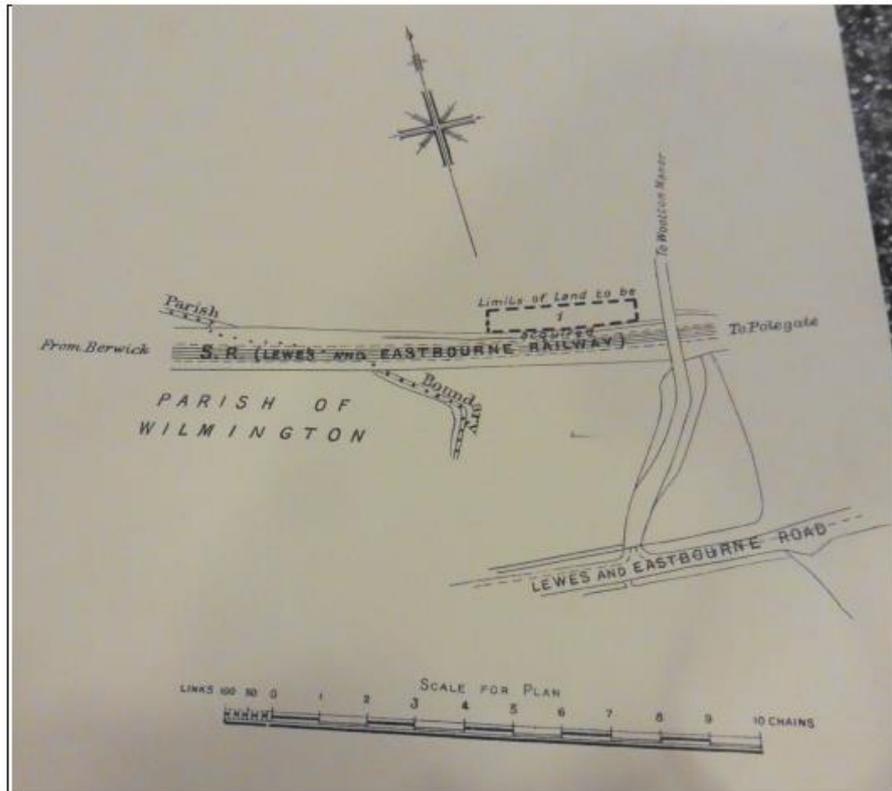
Below is page from the Book of Reference for 1843. Owner for plots 1,3,4,5 and 6 is Sheppard.

Plot 2 is the road. Listed as Parish Road. Owner Surveyor of Highways.

The Parish of *Hitchington* in the County of *Sussex*

NO. OF PLOTS	DESCRIPTION OF PROPERTY.	NAME OF OWNER OR SUPPOSED OWNER.	NAME OF LESSEE OR SUPPOSED LESSEE.	NAME OF OCCUPIER.
1	Wood & Stone	Thomas Sheppard	John Shearnith	John Shearnith
2	Track Road	Surveyors of Highways		
3	Wood & Stone	Thomas Sheppard	ditto	ditto
4	Wood & Stone	ditto	ditto	ditto
5	Wood & Stone	ditto	ditto	ditto
6	Wood & Stone	ditto	ditto	ditto
7	Woods & Garden	ditto		Rev. Henry Nelson
8	Woods & Garden	ditto		Rev. Henry Nelson
9	Woods & Garden	ditto		Rev. Henry Nelson
10	Woods & Garden	ditto		Rev. Henry Nelson
11	Woods & Garden	ditto		Rev. Henry Nelson
12	Woods & Garden	ditto		Rev. Henry Nelson
13	Woods & Garden	ditto		Rev. Henry Nelson
14	Woods & Garden	ditto		Rev. Henry Nelson
15	Woods & Garden	ditto		Rev. Henry Nelson
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49	Woods & Garden	ditto		Rev. Henry Nelson
50	Woods & Garden	ditto		Rev. Henry Nelson

Below is page from deposited drawings in the Southern Railway Bill of 1833. It shows the location for a substation for the third-rail electrification completed in 1935. The substation was built to the east of the bridge on the south side in woodland. The Back Drive is marked as 'to Wootton Manor'.



The Back Drive is 'Parish Road'.

The bridge over the railway was not built in the line of the parish road as the road was moved West. The gradients both side of the bridge are steep and unsuitable for public use. Wilmington Green, Berwick and Selmeston and Ripe crossings are flat and continue to be crossings. Sheppard persuaded the engineer for the railway to provide a bridge for farm traffic only with a humpback alignment.

The 1841 book of reference saying it was a public road is a mistake.

- There is no record of the parish maintaining the route.
- The bridge was built to the West.
- The route to the north of the bridge at the time was gated.
- This is the only humped bridge in the area.

The second bridge to Wootton front drive was built for what was at the time a separate property called Chambers Piece.

The single notation on the plan and book of reference for the railway is the only document in 7 months of research that we have found...[sentence unclear] (Council assumes the writer means this to continue to mean that it is the only document found that shows it as public.)

The Council:

Please refer to the Council's comments on the Railway Act.

1876 Sale
Particulars

These are for when Sheppard sold Folkington to Gwynne.

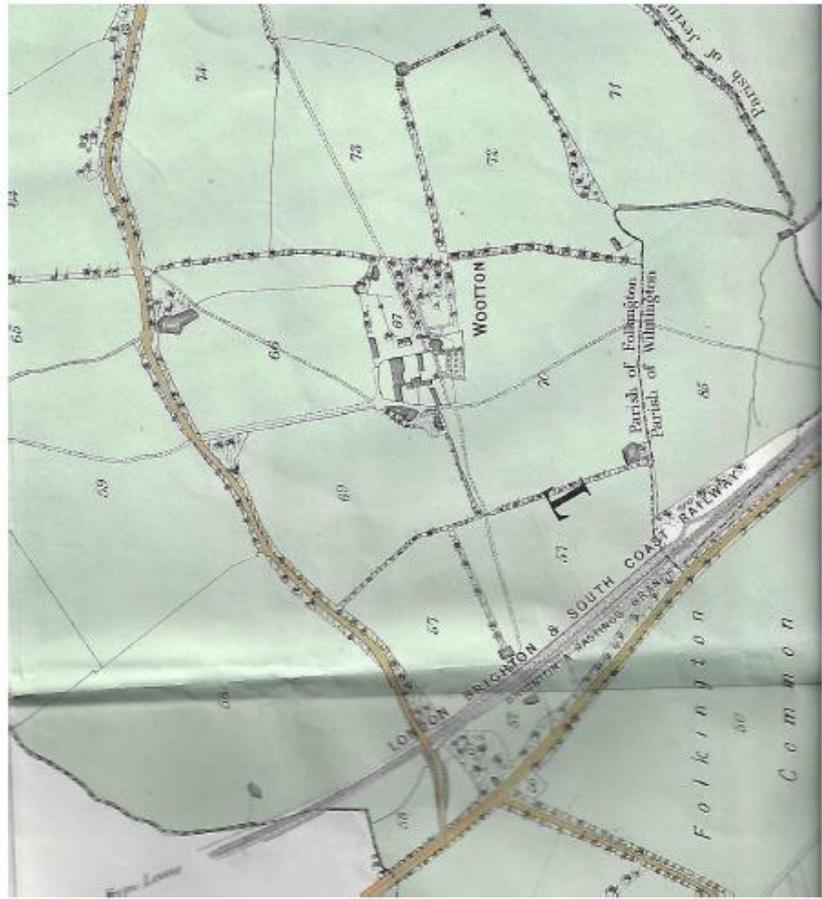
It

shows

OS 25" 2nd Edition Sheet 68 1898 – The Hide Lands



the section of the claimed route from the new Turnpike to the old Turnpike but does not show the statutory rights of the routes.

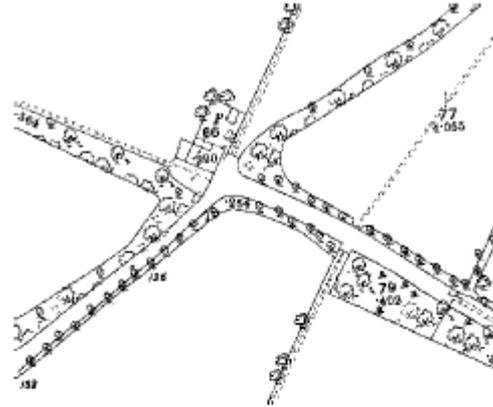


See below for the OS maps

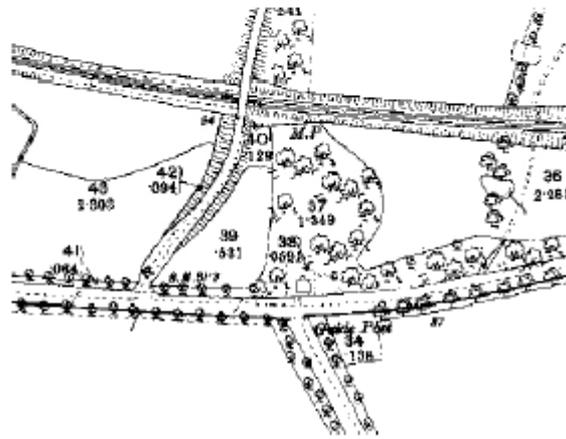
OS 25" 1st Edition Surveyed 1874 published 1876 Sheets 68: 8, 11,12



The OS 6 and 25" maps showed all tracks, lanes etc according to form not designation of a public right of way. The stopped up bridleway is shown, as well as the access from the south and from the north into Wootton Farmstead. The back drive is prominent because it is a landscape feature: a track bounded by shaws on both sides. This does not mean it was a by-way. The Mountain Pen green bridleway was just as old but it served just as a footway. The Back drive was a drove and needed to be well bounded to prevent stock wandering over the arable fields. North of the Old Turnpike it was a driftway in the C18 where the drove crossed wet ground on the clays. Harison enclosed and probably put in land drains to improve the drainage. A farm footpath is shown going across the Hidefields.



OS 25" 2nd Edition The Hide



Re-aligned back drive and railway bridge

OS 25" 2nd Edition Sheet 68 1898 – The Hide Lands



JEA Gywnne
Trespass
Cases

-The trespass case of Gywnne versus Drewitt over Wootton Farm, suggested the old bridleway (Wannock Lane to Monken Pin) closed by the new Turnpike and which crossed the claimed route was now open to the public. The Chancery confirmed that the 1856 Act did not mean the closure was not permanent and that the closure by the 1796 Act still stood. There is no record in the newspapers and Solicitors papers of the claimed route as a public alternative route.

Extracts from the 1819 Turnpike Act below:

And whereas it is expedient for the Causes aforesaid, that the said several Acts should be repealed, and that a new Act should be passed for the making, amending, widening, diverting, altering, straightening, improving, and keeping in Repair the new Turnpike Road so proposed to be made as aforesaid, instead of the said present Roads and of such other Roads adjacent or near thereto, as are or shall become useless to the Public by making the said intended new Turnpike Road;

And be it further enacted, That for the Purpose of collecting and receiving the Tolls hereby granted, the Trustees appointed, or to be appointed in or by virtue of this Act, shall and may, and they are hereby authorized and required to erect, or cause to be erected, Toll Gates, in, upon, or across the said Turnpike Road, at the several Places hereinafter mentioned and described (that is to say), One Toll Gate at Southern Corner, in Southmalling; one other Toll Gate at the Beddingham Cross-way, in Beddingham; one other Toll Gate at Selmarston Fair Place, in Selmarston; one other Toll Gate at the Cuckmere River; one other Toll Gate at Polegate, where that Part of the said Turnpike Road which leads through the several Toll Gates aforesaid, will join the other Part of the said Turnpike Road which leads from Hailsham Common to Eastbourne; and one other Toll Gate at or near Polegate aforesaid, across that Part of the said Turnpike Road which leads from Hailsham Common to Eastbourne; and also one Side Gate at Westfield, at the Entrance of the Lane commonly called Ripe Lane, leading from the Cross-way at Stanford Pound to Ripe; and also such and so many other Toll Gates in, upon, or across such Parts of the said Turnpike Road, and also such and so many Toll Gates on the Sides of the said Turnpike Road, and in, upon,

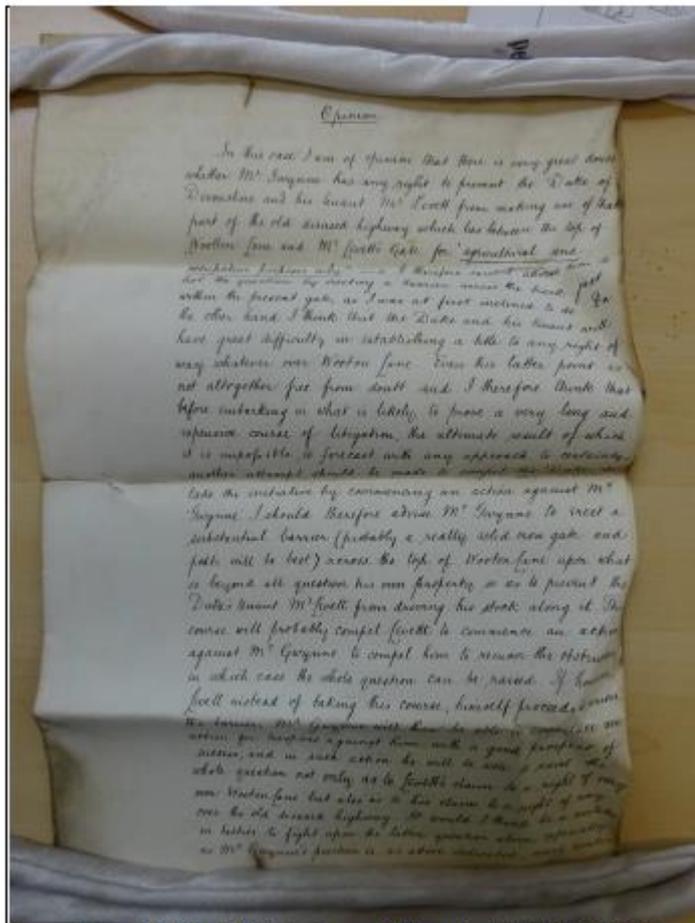
15
or across any Lane or Highway that does or shall lead into or out of the same respectively, as they the said Trustees shall think proper and expedient (subject nevertheless to such Restrictions and Directions as are hereinafter mentioned or contained concerning the same); and also shall and may erect and provide a Toll House, with suitable Buildings, a Garden and other Conveniences, not exceeding Ten Perches of Land, at or near each of the said Toll Gates.

-Mr Gwynne took proceedings against Mr Issac Vinall using and trespassing along the old bridleway and part of the claimed route and won his case.

-The Duke of Devonshire and his tenant Mr Levett wished to use the old Turnpike and the claimed route (from the new Turnpike to the Hide and then east for a short distance along the old Turnpike) to access their lands called The Hooks. Five boxes of correspondence (1889-1894) were found about this in the papers of Raper and Forvague Solicitors, mostly one-sided towards Gwynne, but they essentially imply that the claimed route was never public, not maintained by the parish, and only an access road to Wootton.



Opinion of Mr E Marshall Hall [Barrister] on the status of 'Wootton Lane' [ESRO AC 2300/217]



Opinion of Mr E Marshall Hall on the status of 'Wootton Lane' [ESRO AC 2300/217]

with regard to the old disused highway than it is with
regard to Wootton Lane. I should therefore not recommend
Mr Gywnne to challenge proceedings by erecting a
barrier across the old highway at the spot where the existing
gate stands. - The matter is muchly complicated by the
act of Parliament since repealed, and it is impossible
to say absolutely what the exact position of the parties
affected by the act of George is at the present time.

Edwards Hall

5 Temple Gardens E.C.
November 10th 1893

Opinion of Mr E Marshall Hall on the status of 'Wootton Lane' [ESRO AC 2300/217]

Below is a letter from Gywnne to Mr Raper about a meeting his son had with the Duke of Devonshire's agent about the right of access to the Hooks and also about the Dreweatt (assumed Drewitt) case.

Private

W. Raper Esq. Dulle, Essex
FOLKINGHAM
PULLEGATE, HRO.
BISHOP
Feb 5th 1774

Dear Mr Raper,

My Son Raper, was in last town
yesterday, he said he had a long talk with Mr
P. & Walter the Duke of Devonshire's agent, as
he thought of the purchase of the Duke's farm, & also
of my Son's & Dr. Dulle's - Mr. D. said I was to be very
sensible & nice. He said he generally had done as
little as he could in the matter, & that he had his
best to keep out of the case. Walter was the man in
the matter, he had got of the evidence himself, or
witnesses (I know from things) & that it went to
Mr. Carver. - Mr. W. states that the Duke knows all
about the affair, & he would suggest that a letter should
be written to Carver by you, asking for a conference
with the Duke & myself, having an objection to be
present, and that he had no doubt it could be arranged
he said he had to suggest (if) & he had no doubt of such
a meeting both places, that times shall be arranged without
any appeal to litigation. - The Duke only wanted what he
was his right, for the sake of his tenant, who
said the farm was under to him against the right, & that
as Mr. Carver wanted to want only the same, he would
not strongly of opinion. - That when the Duke &
Mr. W. met, the difference said & said soon he arranged
that altho' the Duke was one of the hardest workmen
in nature, altho' he could not all details, & that they
was done many of the farms, & that he had
knowledge & consent. After the dispute was first
settled, he thought it would be best, the purchase
of a sole might then be also arranged, but did
not be while any question was pending.
As to the trespass or Dr. Dulle. He said he had
nothing to do with this, that the Footpath Society
of London had taken it up, & he had plenty of money
which they were ready to spend on any case.

My son had thought not to trouble Duke's case also
but the Duke would not allow it (his looks as if
Carver, Walter & someone that they have had thought
the case before their society). He said he was his
an affair, & he wanted no outside interference.
Mr. W. said if Dr. Dulle's party should sue
Carver, then he thought it would be another right
not reasonable to expect it. This is why
I have asked Mr. Walter to meet me, & go over
of the land, for I can soon convince him that
my land is very much better & more
valued than the Duke's, which Mr. Walter
& I went over on Friday last.
Now as to the Dr. Dulle & Footpath claim,
as we know who are behind in this case,
it is necessary that we should be more than
taken careful, & it will need to be
proceed to deal with the case, unless our
evidence is entirely satisfactory & convincing,
as it would only make my position for worse.
Now if you is - if the Duke's case question
was settled amicably, Mr. Walter & I could get
the Duke or Walter to help me, as the
Duke's land as both ends is affected by the
Footpath, as well as mine, also Mr. Dulle's
in the meantime it will be well to keep
the case back, & not let it come forward
for hearing, until we can gather more
through & evidence to make the case
certain, before we go to a hearing. - He only
say will get people to swear very hard,
and beyond a doubt people have from time to
time trespassed on almost every field on
the Wootton farm, & indeed on all the Duke's.
I suggest Mr. Walter to take Mr. Dulle's
very subject to consider that, & if
will then act him as their resolution
Charles J. Footpath & range.
Yours very faithfully
J. E. H. Gwynne

Letter from JEA Gwynne to Mr Raper re the trespass by the Duke's tenants [2 Images DSC05253 from ESRO AC2300/127]

It concludes Wootton Lane was private and the old turnpike was closed but that adjoining landowners could pass with wagons and horses.

Below is a letter about the 2 trespasses. There is a draft response by Gwynne which states the route is private to the old turnpike.



The Council:

1892 Drewitt case. This related to the old bridleway which all parties accept was stopped up by the turnpike act and does not relate to the claimed route.

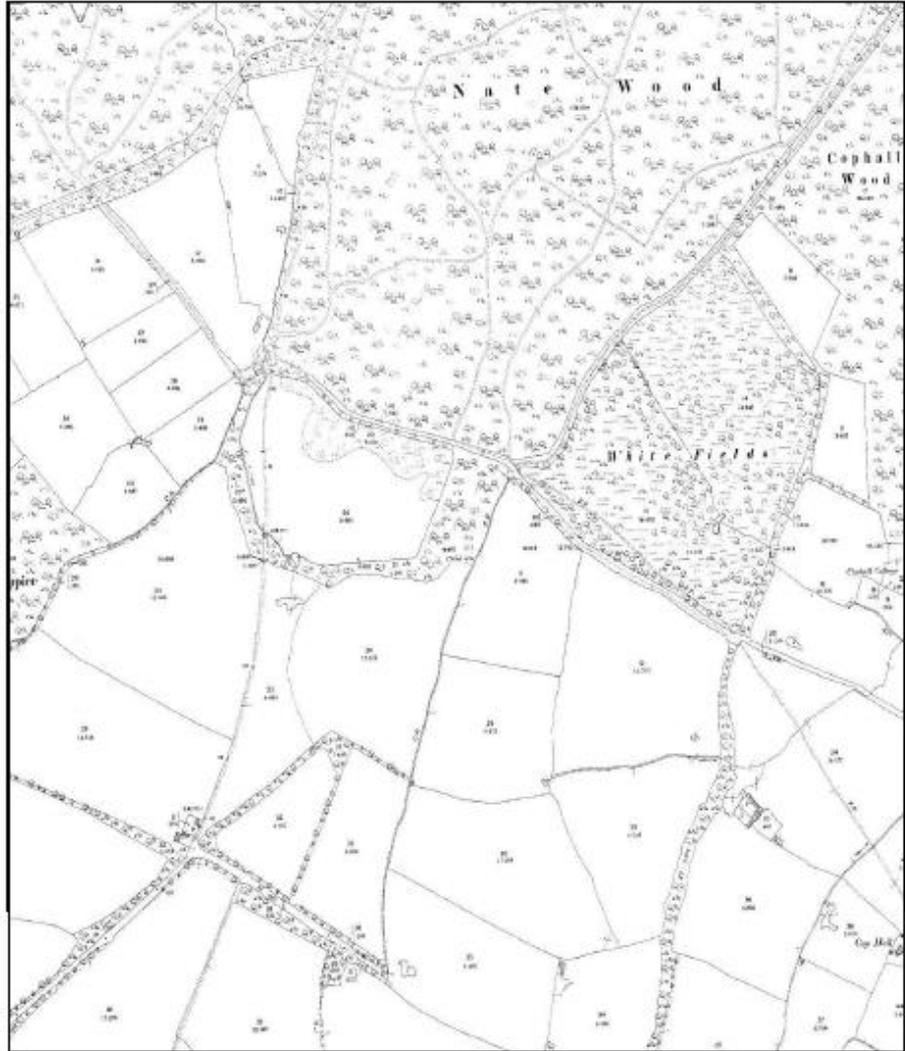
1893 Vinall case. Again, this relates to the stopped-up bridleway and not the claimed route.

1894 The Duke of Devonshire case. This seems to have been partly concerning part of the claimed route but was resolved privately so no inference can be made. There seems to have been some allowance for neighbouring landowners to use the claimed route, but not the public at large.

OS 25 inch
2nd Edition
Sheet 68
1898
Wootton

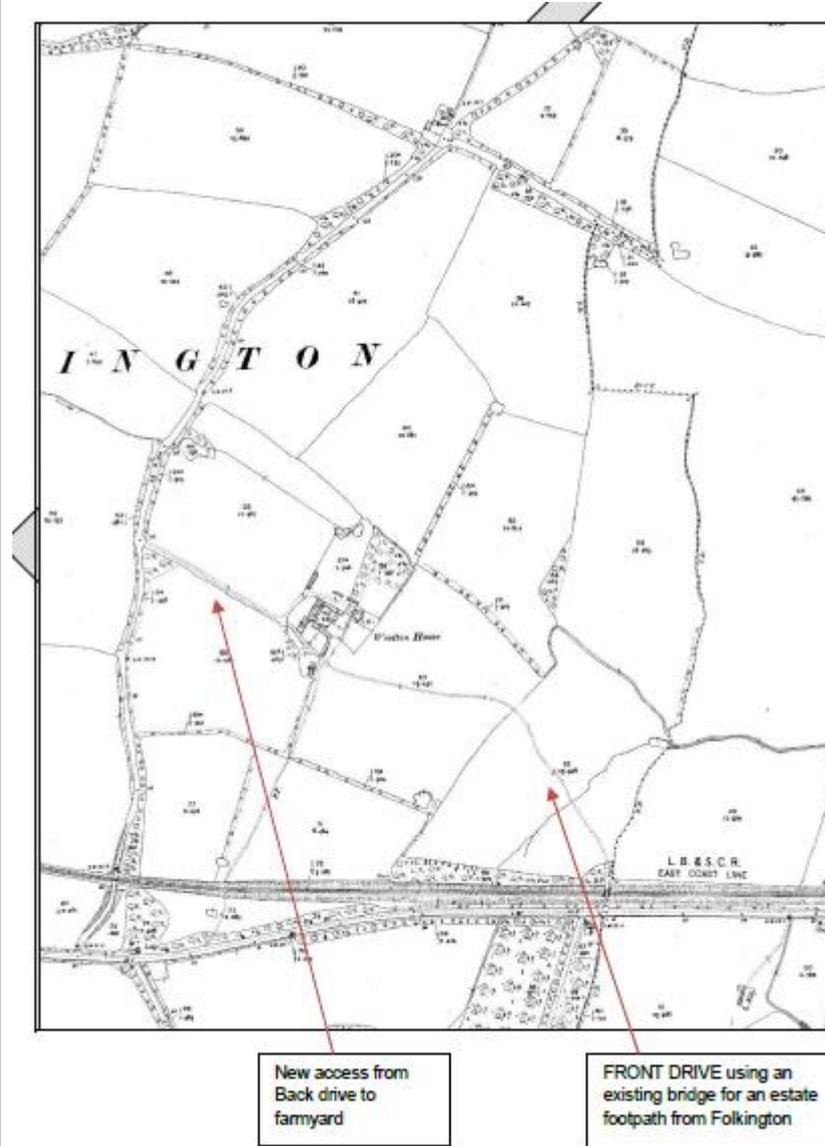


IS 25 inch
2nd Edition
Sheet 68
1898
The Hide
Lands



OS 25 inch
3rd Edition
1925

1898-1925 the new front drive was laid out across Chambers Piece. The front drive provided access to the house and the track provided access from the old back drive to the farms at the back of the house.



Conclusion

Seven months of research has resulted in all the evidence pointing to the fact that the claimed route is private, apart from the documents for the construction of the railway.

We strongly refute the claim.

Appendix 1	Listed photographs of documents from the Keep
8 pages	Listed photographs of documents from Wootton

	<u>Wootton Manor and Folkington Estate Timeline</u>
	Wootton Manor provide a written timeline annotated with maps and portraits outlining key events from 1555 to 1894 such as the changing ownership of Wootton, the passing of Tithe and Railway Acts, the creation of OS maps and the crowning of Queen Victoria. The full text can be seen in the File of Evidence.
The Council:	While this acts as a useful and informative tool to accompany the rebuttal evidence provided thus far, it has a tendency to repeat some of what was said in the main Objection Report, and to offer irrelevant information, and as such it does not give a great deal of specific argument either way.

11 Initial Rebuttal from the Applicant

11.1 On 3 October 2017 the Council emailed the Initial Rebuttal from Mr Harwood to the Applicant.

11.2 On 26 October 2017 the Council received an Initial Rebuttal Reply from the Applicant.

11.3 Table 5 - Applicant's Initial Rebuttal Comments

Section in Applicant's Initial Rebuttal	The Applicant's comments
Initial Comments	I have received a timeline and a 55-page document only. I have checked with the Council and they have not received anything else.
General Issues	I do not dispute that the land to the north of the current A27 and to the south was in single ownership as one estate for significant periods. The objector says the route from Folkington to Nate Wood was entirely for the purposes of internal management of the estate and had no public rights. This is easily disproved.

<p>Quarter Sessions 1844 Diversion</p>	<p>Easter 1844 says “so much of a certain highway leading from the Lewes by Polegate to Eastbourne turnpike to Folkington church” should be diverted. This is conclusive proof that the road from Folkington Church to the turnpike was a public road. The diversion was not carried out. The road was probably a public road before the turnpike. I suggest this public road had highway rights that extended north of this and to at least the old turnpike. In the 1844 quarter session plans the route to be diverted, the turnpike and the claimed route are all coloured the same ie, same status, and labelled it as going to Hailsham.</p>
<p>Quarter Sessions 1877</p>	<p>December 1877 show that a highway for “horses carriages and foot passengers” existed from the turnpike to Folkington church. This was to be extinguished in favour of the existing road to Folkington from the A27. This proves the road south of the A27 was a public highway. Maps by the landowner for this show the claimed route coloured in the same way as the route to be diverted and the turnpike.</p>
<p>Council:</p>	<p>This adds some weight to the southernmost part of the claimed route being thought of as a public at this time.</p>
<p>Historical maps And OS maps</p>	<p>Richard Budgen maps contain errors and inaccuracies. It shows a route being Folkington and Hailsham but it may well be incorrect.</p> <p>We do not know that Yeakell and Gardner decided to include every private and public road. It does not show bridleways nor keys. The bulk of the route was shown as other highways at the time or now. The part of the claimed route above the old turnpike is shown the same as Wootton Common which was a highway in 1844.</p> <p>Maps were sold to the travelling public so they could use them.</p> <p>Gates should not infer lack of highway status. Yeakell and Gardner show a gate on a road that was a public highway in 1844.</p> <p>The objector suggests the claimed route changed prior to the railway. I suggest there was no evidence that this was the case, with allowances for mapping at this time.</p> <p>In the Draft OS maps, the bulk of the claimed route is shown the same way as roads which were undisputed highways at the time. The remainder, north of old turnpike, is shown the same as open land such as Wootton Common and the road south of Folkington (today a byway).</p> <p>Gardner and Gream shows all roads in the same way. It was sold to the public who needed to know where they could go.</p>

	<p>The objector has not commented on Mudges map, which shows the claimed route as a road.</p> <p>The objector has not commented on the First Edition of the 1 inch OS map which shows the claimed route as a road.</p> <p>From Yeakell and Gardner onwards, maps show the route as part of a route from Folkington to Hailsham which was a public highway in 1844. The draft OS maps show the claimed route continuing south to Jevington and on to Friston. Other than the claimed route the whole route from Hailsham to Friston is today a road or byway. If it had been a private route it would not have been part of the direct route to Hailsham and would have diverted to Wootton Farm. A separate route from Wootton Farm to the south is shown in many maps and I suggest this was private.</p>
Turnpike	<p>I made a mistake in assuming that there was only one set of turnpike plans and the objector is correct that I was wrong.</p> <p>The road from Berwick north to the Dicker is not shown even though it would have been important. Little care is taken for cross routes. Nothing can be inferred by the lack of the claimed route. As the objector says the second set of plans show the claimed route leaving the turnpike but it doesn't show the route to the south which we know was a highway so there are limitations here. On the second set, public roads were usually shown, in sepia, as is the claimed route. Diverging routes were only shown going as far as nearby places even if they went further so the claimed route may have gone further than Wootton Farm.</p> <p>I agree no toll gate was at the southern end of the claimed route, but there was a junction here in 1844 so not all junctions had toll gates. Stopping people to collect tolls would slow traffic down when the idea was to be a fast road.</p> <p>Apart from the information about the building of the railway, no evidence is provided in support of the objector's suggestion that the claimed route moved and the fields were reorganised as part of the turnpike. So this carried no weight.</p>
Council:	<p>The Council is not sure on which map the road from Berwick north to the Dicker is not shown.</p> <p>When discussing historical maps the Applicant claims the claimed route may have changed route however here discussing turnpikes the Applicant is suggesting there is no evidence of this.</p>
Tithe records	<p>The claimed route was bounded from the southern end to the old turnpike and then open in fields before being a woodland road to Robins Post Lane. Most of the route is coloured sienna, used for</p>

	public roads. As an experienced map maker William Figg would not have made his own annotations but followed convention and did so. It was tithe-free because it was a public road.
Shoesmith Valuation	This has no value as there is no evidence that this is in the public realm.
Railway Plans	<p>It is hard to see why a landowner would misrepresent the claimed route as a public highway when it was not. The plans were put out for public examination locally and in Parliament, so manipulation is absurd. The landowner would have challenged this if incorrect.</p> <p>This line pre-dates the Railway Clauses consolidation Act of 1845 which set standards for structures such as bridges. The Act authorising this line gave the company powers to alter roads. The alteration would have been to ensure the gradient approaching the bridge conformed to the Act (no more than 1 in 20) and this was met as a gradient of 1 in 16 would have been accepted if the road was private.</p> <p>The Act said the bridge had to be 25 feet wide but if the road was already narrower it could be 20 feet minimum. I measured it as 18 feet 6 inches in the middle and 20 feet at the ends. The walls show signs of being strengthened and may not be the originals. This suggests it is a public road. If private the company may have narrowed it to 12 feet with steeper gradients. It may not be the original bridge. The bridge does not appear to be narrower than the road. Improvements such as tarmac have been made since the end of the nineteenth century.</p>
Did the Authority maintain the route?	Folkington parish council was the highway authority until the 1890s but all their records are lost. The responsibility after this was Eastbourne Rural District Council. I have seen their Minutes up to 1911, and while not all roads they maintained appear, there is no evidence they declined to maintain the claimed route.
OS 25-inch First Edition	While it does not infer status, it does show the existence of the route and that it was a road throughout.
1876 Sale and the Coming of Mr Gwynne	<p>The sales particulars show the claimed route but not its status.</p> <p>Mr Gwynne was not a local and he may have thought he has 'rights' over the claimed route that he did not.</p>
Milton Hyde Dispute	The Minutes for Hailsham District Council show for 1997-1998 that Mr Gwynne removed a footbridge on a right of way at Milton Hide denying it was a right of way. The dispute continued for many years but no outcome is recorded. I think this was about current bridleway

	Arlington 16. It shows Mr Gwynne asserted a route was not public when it was.
Council:	It is assumed the Applicant does not mean the years '1997-1998' as this would seem too recent to refer to Mr Gwynne.
Trespass cases	<p>Gwynne versus Druitt. This is not about the claimed route but rather the stopped-up bridleway and the old turnpike.</p> <p>Gwynne versus Vinall. This is about the stopped-up bridleway.</p> <p>Gwynne versus The Duke of Devonshire. None of the three documents the objector provides have any value. There is no evidence to support the barrister's opinion. The letter about the Duke's agent is illegible and a transcript is needed but what can be seen is mostly about the old turnpike. A further letter where Mr Gwynne believes there is no public right of way is also illegible and again about the old turnpike. Documents referred to in the appendices relating to Gwynne's legal affairs have not been found. The summary has no direct connection to the argument. The case did not come to court so the statements were not tested.</p>
Inland Revenue valuation	The objector has not commented on this. A substantial portion of the claimed route is a white road, and not subject to taxation. The objector needs to explain why the white road status does not mean the road was not public.
When did the claimed route fall out of use?	<p>The claimed route is not on the maps of Eastbourne Rural District Council when it passed responsibility over in the 1930s. The last evidence of highway status was the Inland Revenue survey. It probably fell out of use when the Hailsham to Polegate route was improved. The powers of the Lewes to Eastbourne Turnpike Trust ended in 1878 after which it would have been more economical to use the improved routes to the East rather than the claimed route. The proposed 1844 diversion that didn't happen was modest to avoid local opposition to a longer journey or being subject to tolls. The second diversion, which was the one that went ahead, completed a year after tolls ceased and travellers to Hailsham found their journeys shortened.</p> <p>The common law rule "once a highway, always a highway" still applies.</p>
Conclusion	There is strong evidence that in the early part of the nineteenth century the claimed route was a highway for carriages, equestrians and users on foot with use declining in the latter part of the century meaning that it became impassable in parts leading to it being mistaken as a private way.

12. Further Response from the Landowner

12.1 On 31 October 2017 the Council emailed the Initial Rebuttal from the Applicant to the landowner asking for their Further Response comments by 12 December 2017, extended to 16 March 2018.

12.2 On 7 April 2018 the Council received the Further Response from the landowner consisting of a second documentary report from the Wootton Manor Estate, written by Dr Karen Jones, Tanfield Chambers WC1R 5DJ on 4 April 2018.

12.3 Table 6 – Landowners Further Response comments.

Section in Landowner's Further Response	The Landowner's comments, 7 April 2018
Executive Summary	
1.	The claimed route runs north-south from points A-E. D-E has been traditionally enclosed. A-D has not.
2.	The Applicant is not claiming the route is used currently but basing his claim on historical documents and that the route is an ancient highway that has fallen into disuse.
3.	The claimed route is an enclosed way that joins the original East-West turnpike at D. North of the turnpike, north of D, maps shows it was gated and largely unenclosed. This is a change in character of the claimed route north and south of D where it crosses the old turnpike.
4.	The original turnpike was stopped up in 1819 in favour of the new one (A27). It also stopped up a bridleway to the south running E-W.
5.	<p>Section A-D. The Applicant has merged evidence of E-D being a public road to justify this for A-D. It cannot be assumed that use of E-D as a public way was to continue on D-A as it may have been more likely used to join the old turnpike.</p> <ul style="list-style-type: none"> -North of D has not been a consistent alignment. -If A-D was public it would have allowed the turnpike to Hailsham to be circumvented. -If A-E was public it would have allowed the new turnpike to be circumvented. -A-D was included in hereditaments in the 1910 Finance Act.

6.	There is no evidence that A-D was public. There is evidence that it was not. There is no reasonable allegation that A-E was public.
7.	Section D-E. The only reference of the claimed route as a parish road is for D-E in the Railway Records. -The alignment of the very southern section was moved for a new bridge. A survey shows the original route and structure did not meet the minimum statutory standards. -The Railway Company would be acting ultra vires if they did not build the bridge correctly on the old parish road. -The Railway Plans do not concur with the Turnpike Plans which are public documents and which either fail to show the route or show it to a private property.
8.	The evidence could only show a cul de sac public highway from E-D. The case for making the Order over E-D is not made out.
Introduction	
1.	These comments are made on behalf of Wootton Manor Estate.
2.	The Applicant relies on the book 'Restoring the Record' but this is not an impartial publication as one of the authors is a Trustee of the OSS who published it. Under current legislation there is no basic evidential test as referred to by the Applicant.
3.	The Applicant's reliance on historical maps to prove routes had public status because they show the physical existence of routes is not legitimate. Maps did not show status.
4.	The Applicant cannot state that Yeakell and Gardner intended to show public and private routes if they did not state this themselves. -On the Yeakell and Gardner map the route from Oggs Lane to Nate Farm is shown but is not a public way today. The track go Wootton Farm is private and shown as dotted lines, as is north of D. The colouring does not indicate the claimed route being public. -The alignment shown on 18/19 Century maps for B-D is not the same maps from the late 19 Century.
5.	The map evidence does not support public status and the changing alignment is evidence against.
6.	Turnpike roads, plans and legislation 1817, 1819 There are 2 sets of turnpike plans, 1817 and 1819 which are just as important as the Railway Plans.

7.	<p>If the claimed route was public then:</p> <ul style="list-style-type: none"> -The surveyor in 1817 ignored a public road running past Wootton Farm. -The surveyor in 1819 marked the track as to Wootton Farm, which was private. -If D to Hailsham was public it would have circumvented the pre-1819 turnpike road. -The 1819 Act required toll gates at Polegate (joining Hailsham to Eastbourne road) which would have been redundant if the claimed route was public to Hailsham.
8.	The Turnpike evidence undermines the claim was public.
9.	<p>Railway Plans c.1840. These are the Applicant's strongest evidence of a parish road.</p>
10.	They only show a short section of the claimed route and provide no evidence of public status.
11.	A new section of track 265 yards on a different alignment with a different bridge was built.
12.	<p>The Railway Act said any bridge if public should be 25 feet wide. And if the average width of the road 50 yards from the crossing was less than 25 feet then the minimum width was 20 feet.</p>
13.	The Applicant's reason for the bridge not meeting the statutory requirements is due to subsequent works.
14.	Mr Sullivan undertook a survey and thinks the bridge is original and his measurements show the bridge is not wide enough.
15.	Mr Sullivan states the bridge's gradient is steeper than the maximum allowed of 1:20 and was not affected by later works.
16.	As the bridge's measurements were not of the statutory requirements this lessens the strength of the Railway records.
17.	The original road was diverted but this diverted road was not as equally convenient as the original, as it was supposed to be.

18.	There is no explanation as to why the bridge was not built to the statutory requirements if it was a public road. The landowner Thomas Sheppard had discussions with the Railway Company indicating a private road.
19.	If the claimed route here was public, and the bridge and new part of the road were not built correctly, then they would be ineffective and the public way would be on the original route, now across the railway.
20.	Tithe map and apportionment These maps are not evidence of public status, nor are their colourings.
21.	The private route to Wootton Farm is coloured as is the bridleway crossing the claimed route.
22.	Much of the claimed route north of the old turnpike is incorporated in fields. This does not indicate a permanent public highway.
23.	The tithe map evidence is limited in weight.
24.	Folkington Estate Abstract of Title The plan does not show the whole route physically existed, especially north of D. No road is described.
25.	It does not point to a public way to Hailsham.
26.	1844 diversion plan The diversion order was not concerned with the claimed route.
27.	There is no merit that the existence of a public road in 1844 south of the new turnpike means that it continued north of the new turnpike, as claimed. Roads to the south of the new turnpike may have come into being as public as a result of the new turnpike.
28.	The short section of the claimed route marked to Hailsham on the plan was not part of the diversion. Previous comments about avoidance of tolls point away from any through route to Hailsham.
29.	The evidence is very limited in value.

30.	1876 Sales particulars These do not show a through route to Hailsham.
31.	Diversion Plan It is unsustainable to see the colouring on this diversion plan as indicating public status.
32.	The diversion was not concerned with the claimed route, there is no explanation of the colouring or that it was to show public roads. Cul de sacs are also coloured. The Estate plan for a similar period shows the claimed route coloured the same as the diversion and also the old Turnpike but the old turnpike had extinguished in 1819, so perhaps the surveyor was using this colour to indicate surface quality.
33.	The owner at the time James Gwynne did not believe E-D was public
34.	The diversion records are of no importance.
35.	OS maps and boundary records The Applicant considers these as strong evidence in support.
36.	This is erroneous. OS maps did not show public status but the physical existence of a way and contained disclaimers. It shows A-B existed physically but doesn't mean it was public just because it joined a public way.
37.	Dispute with the Duke of Devonshire. 1892-4 dispute between Duke who wanted to access The Hooks via the claimed route and old turnpike and landowner Mr Gwynne. This was private and settled by agreement.
38.	Letter from Duke's solicitor to Mr Gwynne's solicitor 1894 contain assertions not from Mr Gwynne but a third party and were not disputed.
39.	The letter says Mr Gwynne gated the claimed route near the Railway in preceding years and locked it. This would have been illegal if it was public. Mr Gwynne did not consider it public.
40.	1910 Finance Act Mr Gwynne was landowner at this time.

41.	It is difficult to see the limits due to the pale grey colour. It seems D-E is excluded from hereditaments. All of the claimed route north of the old turnpike is within the hereditament. This does not support a public way on all of the claimed route.
42.	The Planning Inspectorate Consistency Guidelines suggest that there may have been other reasons why roadways were excluded from hereditaments, other than from being public, and that the main purpose of the maps was not to indicate highway status.
43.	The landowner of 1910 disputed the claimed route as public in 1894. It is unlikely the landowner changed his mind and agreed that a section of the claimed route was then public.
44.	No mention is made of the claimed route in any maintenance records of nearby roads despite the Applicant believing works were carried out on the bridge. No part of the claimed route was shown on the 1930 handover records and was recognised as being a private road. The claimed route was not claimed on the definitive records.
45.	The Finance records do not show the whole route as excluded and do not support A-D as public.
46.	<p>Conclusion</p> <p>The Applicant must prove there is a reasonable allegation that the whole of the claimed route is public, not for the objector to disprove it. For the Council to support confirmation, the case would have to meet the balance of probabilities test.</p>
47.	The Applicant's approach is flawed. It has taken maps, joined public highways with tracks and assumed they are public. The maps do not show this, it is not known how the map maker would have known this and they show private roads coloured the same as the claimed route.
48.	With areas of large estates, some tracks may be used by various landowners but were still not public. The Applicant needs to provide evidence they were public not just evidence they physically existed.
49.	There is no evidence to support a public way north of D. It has been gated and fields changed. There is not one document that describes this section as public. If it was public, it would have made both turnpike roads redundant. It cannot be reasonably alleged that

	this section is public and any Order for this section would be vulnerable to judicial review.
50.	The evidence up to the mid-1800s that D-E being public is equivocal. The strongest evidence is the Railway Plans but this does not suggest public status. A through route would have made the A27 redundant. The turnpike plans omit any mention of the claimed route as public.
51.	The late 19 Century-mid 20 Century evidence is not supportive. Mr Gwynne did not treat it as public. The Finance Act lacks clarity on exclusions though does exclude the northern section. Although the remaining part of the route is excluded from the hereditament, the other evidence makes it apparent that this was not an acknowledgement of a public road.
52.	Even for E-D there is insufficient evidence to make an Order and certainly no confirmation. The Estate asks the application be rejected.

12.4 It also included:

Appendix 1-Statement of Mark Sullivan (survey of bridge and claimed route)
(Not actually included in the same document as the landowner's report but split into 2 separate attached documents of the Statement and Photographs)

Appendix 2-Tithe Map - see File of Evidence

Appendix 3-Folkington Estate plan and survey - see File of Evidence

Appendix 4-1877 Diversion Plan - see File of Evidence

Appendix 5-Curry and Co correspondence 1894 - see File of Evidence

12.5 Table 7 - Appendix 1 – first report by Mr Mark Sullivan, Chartered Town Planner, Leamington Spa, CV32 5RF.

1	Mark Sullivan, a Chartered Town Planner and a Chartered Member of the Institute of Logistics and Transport.
2.	I was asked by Folkington Estate to -examine the plans for the Brighton, Lewes & Hastings Railway, for the railway 1839-1843. -copy and study the Brighton, Lewes & Hastings Railway Act 1844. -carry out a survey of the claimed route and the bridge over the railway.

3.	The plans and the 1844 Act were inspected at the East Sussex Record Office and a photographic record made.
4.	The drawings of the 1843 Bill show the alignment proposed and the proposal for a Public Road Bridge where the line crossed the claimed route on its then alignment.
5.	The bridge proposed was to have ascents of 1 in 20 on both sides and to raise the existing road by 17 feet 3 inches.
6.	I have compared the horizontal alignment of the railway as per the Bill and the position of the bridge with what was in fact built in 1845-46.
7.	The railway was built on a different alignment to the Bill of about 55 yards further south, and closer to the A27.
8.	This I believe to be the implementation of Section 247 of the 1844 Act.
9.	No bridge was built on the alignment in the Bill or any other location. A new section of farm access road with a bridge over the railway to private carriage-road standards or lower was built to the West.
10.	The gradients of the bridge are too steep for public traffic and the vertical curve requires care when driving over it. There is low forward visibility. Vehicles cannot pass on the bridge or on the roadway either side of it.
11.	My survey shows a parapet wall 5 feet high on both sides.
12.	The central portion of the parapet wall is the original brickwork and not amended since construction. Some brickwork has been repaired and concrete arch sections has been added to the underside of the bridge, possibly from around the 1960s. They do not alter the width of the bridge or the vertical alignment of the road. The bridge is the original bridge.
13.	The width of the bridge is 17 feet 8 inches wall to wall. The modern mini-pavements are 32 inches and 30 inches wide within the overall width of the bridge. At the northern end of the bridge where the parapet walls end the width is 19 feet 9 inches.
14.	On the bridge the gradients are between 1 foot in 8 and 1 foot in 10 on both sides of the crest. The gradients indicated by the slope relative to the level course of

	bricks on the bridge over the railway is very different to that over the Wootton Manor Front Drive bridge. The gradients on the railway bridge are at least twice as steep as the 1 foot in 20 ascent proposed for the public road in the Bill.
15.	The front drive to Wootton Manor that was constructed at the same time (as a private access road from the A27) has gradients on the roadway of 1 foot in 16.
16.	<p>Current aerial photograph:</p>  <p>-Red line shows the roadway up to when the railway was built. -Yellow line shows the private access road for Wootton Farm built by the Railway Company agreed with Thomas Sheppard under Section 247 of the 1844 Act.</p>
17.	The length of the yellow line is 265 yards. The length of the old road now in woodland is 245 yards.
18.	The width of the embankment that carries the new road either side of the bridge is 13 feet across the top. Within that the width that can carry vehicles is generally 10 feet 6 inches wide.
19.	The width of the new road built 1845-46 is significantly less than the width of the original road. The width of the claimed route further north is between 20 feet 6 inches and 22 feet bank to bank and the hard service is 13 feet wide.
20.	The width of the new road on the sloping section south of the bridge halfway between A27 and the bridge is 15 feet between embankment slopes and the width of the hard surface is 10 feet 6 inches.

21.	The claimed route further north is wide enough for 2 vehicles to pass each other slowly. On the new road the width is only wide enough for 1 vehicle.
22.	The facts are stated as true and dated 6 April 2018.

12.6 -photographic evidence by Mr Mark Sullivan, Chartered Town Planner, Leamington Spa, CV32 5RF. Contained 18 numbered images referred to his report above. See File of Evidence.

13. Applicant's Supplementary Submission

The Applicant provided a 'supplementary statement' on 9 April 2018 to correct and accompany his earlier submissions.

13.1 Table 8 – Applicant's Supplementary Submission

Section in Applicant's Supplementary Submission	The Applicant's comments – Supplementary Submission
Typing error	<p>In my comments on the statement by the landowner I made a typing error in 6.3.1 (Applicant's Initial Rebuttal of 26 October 2017, section 'Historical maps and OS maps'), and wrote:</p> <p><i>'I suggest that there is evidence, subject to the limitations of the mapping, that this was the case.'</i></p> <p>but I meant:</p> <p><i>'I suggest that there is NO evidence, subject to the limitations of the mapping, that this was the case.'</i></p>
Public and Private bridges	Here is a photograph taken on that bridge from Google Streetview,

	 <p data-bbox="592 786 1353 949">It shows the bridge is narrower than the bridge over the railway. If the Railway Company had thought the claimed route to be private, they would have built a bridge over the railway to the same width as the bridge to Wootton Manor to save money.</p>
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This was forwarded to the landowner on 11 April 2018.

The next comments received from the landowners were in their reply of 29 June 2018.

14 Further Response from the Applicant

14.1 On 11 April 2018 the Council emailed the Further Response comments from the landowner to the Applicant.

14.2 On 1 May 2018 the Council received the Further Response comments from the Applicant.

14.3 Table 9 – Applicant’s Further Response Comments.

Section in Applicant’s Further Response	The Applicant’s comments, 1 May 2018
1 Second Set of Comments	I wish to withdraw my Supplementary Statement as the main part of the issues are covered in Mr Sullivan’s Statement.

<p>2</p> <p>Correction of my First Set of Comments</p>	<p>In my previously comments I made a typing error in my section 6.3.1 and wrote:</p> <p><i>'I suggest that there is evidence, subject to the limitations of the mapping, that this was the case.</i></p> <p>but I meant:</p> <p><i>'I suggest that there is NO evidence, subject to the limitations of the mapping, that this was the case.</i></p>
<p>3</p> <p>Statement by Dr Jones</p>	<p>Executive Summary</p> <p>In paragraph 1 it says part of the claimed route has been enclosed and part has not. I agree. How would the enclosed part, or an unenclosed part, be portrayed if it was a public road?</p> <p>In paragraph 5, it says if the claimed route was public it would have been blocked up to protect the Hailsham turnpike. The abstract of turnpike acts by G. D. Johnson shows the turnpike south from Hailsham was created in 1759, by a different trust. I see no stopping up for the Hailsham turnpike. 'Turnpike Territory' by Peter Longstaff Tyrell does not mention any cooperation between the Lewes to Eastbourne turnpike trust and the Hailsham one. Robin Post Lane which joins the route at A was not blocked up and is today a byway.</p> <p>The landowner says that the route was a through route from Folkington/Downs to Hailsham and private but I think it was public. The landowner accepts the existence of D-E but says it didn't go further. This is contradictory and I agree that it went further, as a through route.</p> <p>Maps</p> <p>Plagiarism is suggested in the maps used but no evidence of this is given.</p> <p>I accept that some private routes on Yeakell and Gardner are shown but I do not accept that hatched lines indicate a private road. I think it suggests an unfenced road.</p> <p>Even though OS maps have a disclaimer it doesn't mean inferences cannot be drawn. Part of C-D goes between fields and in the book of reference is described as a road. It is evidence that the parts for and after were roads. The First Edition of the OS suggests the whole route was a road. I suggest it was a public road.</p> <p>Oggs Lane may well be an old road. It already has bridleway status. I am not aware of any carriage way riders in the area and therefore a DMMO is not worth making.</p> <p>The parish boundary passes along the middle of the route, and it was common for boundaries to be located along ancient roads as I suggest here.</p>

The depiction of the claimed route is consistent with the limits of early maps.

Turnpike/Railway Plans

There were errors on the 1817 plan and 1819 plan only listed local destinations on branch lines.

The turnpike plans cannot have equal status to railway plans. Parliament required more detailed and accurate plans.

Tithe Map

If a public road is open through a field there is unlikely to be any evidence of it, but where it is not tithed it is enclosed and has highway rights.

Quarter Sessions Records

Maps were drawn up by the landowner and he would hardly allow it to show a through route to Hailsham if it didn't exist.

I cannot find the dead-end routes alleged to be on the map as they are not identified. If point B is meant then the route to the south of here is subject to a DMMO.

James Gwynne and his disputes

The majority of the documents referred to between Mr Gwynne and The Duke of Devonshire were not produced. Where they were they were illegible, referred to roads stopped up by the turnpike or unidentifiable road.

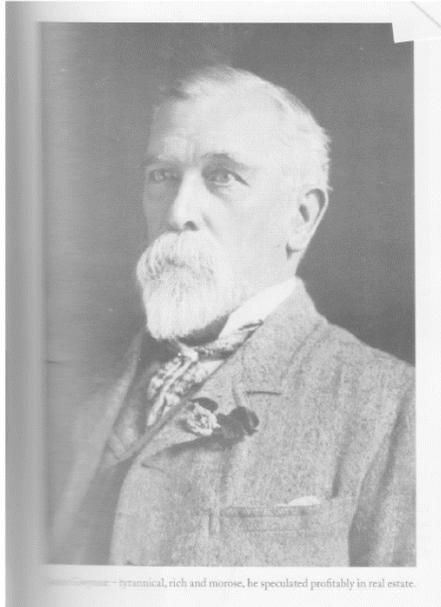
One letter from the Duke of Devonshire does not make it clear where Wootton Lane is. If Wootton Lane is the claimed route, the solicitors do not say the rights are just for the Duke, but also for his tenants.

The lack of earlier correspondence suggests the solicitors comment that Mr Gwynne has blocked Wootton Lane again was recent and prior to that it had been open.

Mr Gwynne was fond of asserting rights he did not have, for example the Milton Hide dispute.

In 'Violet' (1996), a biography of Mr Gwynne's daughter Violet Gordon Woodhouse, by Jessica Douglas-Home, we get an idea of Mr Gwynne's character.

Below is a photograph of Mr Gwynne from the book.



The caption says “tyrannical, rich and morose”.

Page 11 says he bought enough land for the hunt to run all day without leaving his land. He had a lot of power and might close a public right of way if he chose.

Page 16 says he had ‘black moods and unforgiving nature’ and terrorised his family.

Pages 19 and 20 describe his violent temper, outbursts and sulks.

The book also says he fell out with his brothers and his two eldest sons.

In ‘Writing at the Kitchen Table’ (2000), a biography of Mr Gwynne’s granddaughter Elizabeth David, by Artemis Cooper, we get more mention of him.

Page 10 he is described as ‘jealous and mistrustful’ and his retribution is ‘severe and long lasting’. He was horrible to his relatives.

He was powerful enough to obstruct a public road.

The case did not go to court. Perhaps the Duke did not complain further because obstructions had been moved and the road was kept open.

Finance Act

It is not surprising that he convinced the Inspectors that the claimed route was not liable to tax. The land in question is a long narrow strip of road. There are few alternatives to it not being a public road and these have not been suggested.

He did not attempt to get the rest of the route exempt. However, he did claim for deductions by accepting rights of way in the hereditament but there were rights of way there other than the claimed route.

4

Mr
Sullivan's
Report

Much of my career is in housing, working for a housing association, renovating and converting Victorian housing in London and I have become familiar with restoring, rebuilding Victorian brick structures.

I have been a railway enthusiast for 55 years. I have been familiar with railway architecture.

Mr Sullivan accepts that a public road existed where the claimed route is, shown where it interfaces with the proposed railway.

He refers to public road number 10 which is referred to as 2 in the deposited plans and book of reference. We are talking about the same bridge.

I thank him for pointing out that the railway was built on a different alignment to that in the deposited plans.

The fact that the landowner Thomas Sheppard did not challenge the book of reference showing a public road is significant given his involvement with the amendment of the route.

The Act allowed a road to be moved and the movement of the road to the West would be near equivalent and a slight advantage to those going West and a slight disadvantage to those going South or East.

The Ascent

It is wrong that only the gradients of the actual bridge are significant. The gradient from the original line of the road to the highest point and down the other side are significant.

Mr Sullivan's plans show the gradients met the public road standard of 1 in 20. When the railway was moved South it is unlikely the required gradient would have been achieved as there was then less distance between the railway and the road (A27) on the original line of the road but it might be possible if the road was moved. I have measured the distance from the A27 to the centre of the bridge by tape measure and it is 410 feet. The original height to be gained was 17 feet 3 inches. I suggest a gradient of 1 in 23. It may have changed over time. The attempt to maintain the gradient must be taken as evidence of a highway.

The bridge has had work done to the surface, treated with tarmac which was not available when built. The middle may have been raised to strengthen it. Measuring the current gradient is not useful. Because of the height of the trains work would probably have to be done on top of it.

Width

We have no way of telling the width of the road at the time of building the bridge, if it was 25 feet or 20 feet, and natural growth can grow or be cut back on either side.

Mr Sullivan does not say why the photographs show the bridge as original White staining is caused by leaching salts. Reusing the same

Victorian bricks to rebuild the same wall will usually mean it will look the same soon after.

I believe the design suggests the bridge has been rebuilt.

Railway architecture had to offer reassurance it was safe.

Below is a pedestrian underbridge on the Brighton to Lewes line. Notice the ornamental stonework and detail.



The only comparable overbridge on this line is the bridge to Wootton Farm Drive to the East.

Below are photographs of this. The parapet walls are thin. The width, about a foot thinner than the bridge on the claimed route, is for small road bridges. The parapet width is about 1 foot. The bridge on the claimed route is 2 feet suggesting later repair to perhaps narrow the width of vehicles that could use it.

There are 3 layers of horizontal brickwork on the parapet as opposed to 2 on the claimed route.

The shape of the underside of this bridge and the aperture is much rounder and typical of the style when the railway was built, than the bridge over the claimed route which is flatter. The strengthening to the bridge on the claimed route is not just strapping supports to the underside but the supports were raised to the level of the old aperture displacing the old brickwork and the surface.



Photo above by Google



	 <p data-bbox="512 663 683 685">Photo above by me.</p> <p data-bbox="432 723 1353 790">These show the bridge over the claimed route have been majorly rebuilt and the width of the road reduced from 20 feet to 18 feet.</p> <p data-bbox="432 824 1353 925">Possibly, the amended route was not subject to the same examination as the plans locally, less public scrutiny than the original plans and the railway got away with it.</p> <p data-bbox="432 958 1353 1093">It is absurd to say that the public road was replaced with a private one, as it would have begun and ended with public ones. If so the railway company would have built the bridge to the same width as the private one to Wootton Farm.</p>
Council:	Using the Council's internal systems, the Council measured the distance from the A27 to the middle of the bridge to be roughly 380 feet.
Conclusion	There is no one piece of conclusive evidence and for each piece there are other possible explanations. Taken as a whole, there is no other explanation other than all these pieces of evidence show that the claimed route is a road which up until the NERC Act carried full vehicular rights.

15. Final Response from the Landowner

15.1 In May 2018, the Council emailed the Applicant's Further Response comments to the landowner for their Final Response comments, which was extended to the end of June 2018 and they replied with their Final Response comments on 29 June 2018. This consisted of the following:

15.2 Third Rebuttal report by RH & RH Clutton (92 High Street, RH19 3DF) on behalf of the Wootton Manor Estate.

15.3 Table 10 – Landowner's Final Response Comments

Section in Landowner's Final Response	The Landowner's comments, 29 June 2018
1.	<p>Correspondence with the Duke of Devonshire. The Chatsworth correspondence between the Duke and JEA Gwynne are held at the Compton Archives in Eastbourne and are available on request. We were given permission to take digital images for our own research but not to put them in the public domain. The Applicant should make his own application to see the referenced letters if he wishes to see the originals. This correspondence supports the private nature of the back drive.</p>
2.	<p>Parish Boundaries Parish boundaries could be along public roads, but could be along private tracks, streams, ditches and field boundaries. No weight should be given to the fact that the back drive is also in part the parish boundary.</p>
3.	<p>Reorganisation of the fields when the track was removed and enclosed. The fields bounded by the driftway at the north end were reorganised in the early 19 Century. This is shown in these maps:</p> <ul style="list-style-type: none"> -1778 Map of Sussex, Yeakell and Gardiner, shows the driftway and irregular fields. -1795, Gardiner and Gream, shows the dirtway and fields. -1789-1806, OS draft drawings for 1" 1st edition shows the driftway and fields. -1839 Survey for Tithe maps, shows field pattern reorganised and no driftway. <p>Between 1819 (new turnpike) and 1839-40 (Tithe map) William Harison reorganised the fields and removed the trackway north of the old turnpike at The Hide. Dr Bannister commented on the Archaeology and said that the field boundary from The Hide to Gorselands is late post medieval or early modern. Other Wootton boundaries are indicative of older field boundaries. The boundary has a slightly curved alignment mirroring the driftway. The Western boundary of the driftway is of antiquity but the physical boundary is 19 Century. The Eastern boundary no longer exists. The organisation of the fields would have also laid out drains, ditches and ponds East of the boundary. Since 1819-1840 some of these boundaries have been removed creating the larger fields of today. The Western drift way line is medieval, but the physical hedge today is 19 Century. The fact that Mr Harison was able to do away with his driftway remains good evidence it was a private way.</p>

4.	<p>Maps and the evidence they provide.</p> <p>The Applicant says old maps are inaccurate but also relies on them. It is nonsense that any unproductive land that was not tithed was public.</p> <p>He states that despite the OS warning, inferences can still be made that routes were public without providing other evidence.</p>
5.	<p>Mr Smith's assertions on the character of Mr Gwynne</p> <p>We find the assertion that the public way can be discovered by a biography as meaningless. Either the wider public used the claimed route or they didn't. What the landowner thought about it even if revealed by a family biography is irrelevant.</p>
6.	<p>Conclusions.</p> <p>The Applicant has not proved on the balance of evidence that the route was public. The route has been for Wootton Farm, wider Estate, farm workers tenants and employees. The southern section was done away with by the Railway Act and the new route agreed. Later, the new route was defended as private by Mr Gwynne. The northern end no longer exists after being removed by the landowner. If taken to a Public Inquiry, the Applicant's evidence would bear no weight. We ask the Council to reject the application.</p>

15.4 Table 11 - a second Statement report with photographs, dated 29 June 2018, by Mr Mark Sullivan

	<p>Comments by Mark Sullivan, a Chartered Town Planner and a Chartered Member of the Institute of Logistics and Transport, 29 June 2018.</p>
1.	<p>I have experience of railway design and practice from work on transport over many years.</p>
2.	<p>I was asked to:</p> <ul style="list-style-type: none"> -examine the plans for the Brighton, Lewes and Hastings Railway for the proposed railway 1839-1843. -copy and study the Brighton, Lewes and Hastings Railway Act 1844. -carry out a survey of the route and the bridge over the railway.
3.	<p>My original statement, 6 April 2018, covers these subjects. The photographs in that and this were taken by me in January 2018.</p>
4.	<p>I have seen the Applicant's comments of 1 May 2018.</p>

5.	<p>The Applicant says the Back Drive was built to the standards of a public carriage-road. He says:</p> <ul style="list-style-type: none"> -The gradients are to public standard, -The bridge is not original, its current dimensions do not conform with those for a public road in the Act, but the original bridge did. -Sections of the route north and south of the bridge built in 1845-46 are to the minimum width of a public road and natural growth obscures this.
6.	<p>The Applicant says this section of the Back Drive was built by the railway company as a public road.</p>
7.	<p>The Applicant's 3 assumptions are incorrect.</p> <ul style="list-style-type: none"> -The gradients approaching the crest are as steep as 1 in 8 compared to 1 in 20 as required. -The bridge is original, though repaired and strengthened. Its 1846 form is clear. Its architecture is the same as the Wootton Farm front bridge which the Applicant says is the same date. It has a width less than the minimum for a public road and not much above required for a private road. -Sections of the Back Drive north and south of the bridge have a width below the minimum for a public road and are narrower than the minimum for a private road as per the 1844 Act.
8.	<p>The 265 yards of the Back Drive built by the Railway Company were to the standards of a private road as per the 1844 Act.</p>
9.	<p>The section of Back Drive was built by agreement of the Railway Company and the landowner Mr Sheppard as a private road as per section 247 of the Act. No public road was built.</p>
10.	<p>The gradients (ascents) The Applicant does not challenge the measured gradients on either side of the bridge as he says the average gradient from A27 to centre of bridge is 1 in 23.</p>
11.	<p>The Act says the steepest gradients must not be more than 1 in 30 for a turnpike road, 1 in 20 for a public road, and 1 in 16 for a private road. There was no minimum gradient set for a farm traffic road as per Back Drive. No part of the ascent can be steeper than 1 in 20 for a public road.</p>
Council:	<p>Council contacted Mr Sullivan regarding this, see section 20.</p>
12.	<p>The Applicant overlooks that the bridge is 59 feet in length. Only the middle one-third spans the railway. One-third is north of the railway and includes most of the slope between the level section of Back Drive to the crest of the bridge. Another one-third is to the south and includes a quarter of the slope of the Back Drive to the crest of the bridge.</p>

13.	Photos 1, 2 and 3 of the bridge demonstrate this clearly.
14.	The slope of the horizontal three-brick course is also the slope of the roadway crossing the bridge. It is the base of the parapet wall. The Applicant's assertion that there is a difference between the front drive and back drive bridges in brick courses is incorrect and both have three-courses of bricks.
15.	Photos 1 and 2 show the 1960s reinforced-concrete arch sections to strengthen the bridge. The overall shape of the bridge has not altered. The slope of the horizontal three-bridge course was not affected nor were the gradients.
16.	The age of the bridge and whether it has been rebuilt The Applicant says the bridge has been rebuilt as he sees differences between it and the Wootton Manor front drive bridge.
17.	Photos 1, 2, 4 and 5 shown the two bridges have the same design, features, bricks and age. The differences are because: -the front drive bridge is in a cutting and flatter. -a supporting wall has been added to the Back Drive bridge abutment south of the railway on the West side with later bricks of 1900-1920. -the 1960s strengthening works cur away the bridge soffit without affecting the parapet or slope of the three-bridge course.



Photo 1: View of Back Drive Bridge from W showing original 1846 architectural design and brickwork, replaced sections (red brick), strengthened arch sections and additional support (right-hand side)



Photo 2 View of bridge from E showing original 1846 architecture and brickwork and 1960s strengthening using reinforced-concrete arch sections



Photo 3 Close-up view of bridge from E showing the slope of the brick courses marking the road surface, indicating gradient of 1 in 8 to 1 in 10.



Photo 4 Wootton Manor Front Drive bridge from E built 1846 showing identical architecture and brickwork to Back Drive bridge. House in photo is on the far side of the A27.



Photo 5 Wootton Manor Front Drive bridge from W



Photo 6 Close-up of Front Drive bridge viewed from E showing the slope of the brick courses marking the road surface, indicating gradient of 1 in 16



Photo 7 Front Drive bridge looking S to A27, showing gradient of 1 in 16

18.	The reason for the 1960s repairs is not known, but possibly due to heavy farm vehicles. Large vehicles are not allowed to use the front drive. The reinforced concrete arches are identical to those used to rebuild bridges for overhead electrification in the 1960s.
19.	The Applicant says the two-foot parapet width on the bridge of the claimed route suggest a later repair.
20.	19. is incorrect. Both bridges have the same width, height and parapet wall. Both walls are 1.5 bricks in thickness. Both are 13 foot wide. The end abutments are 2 bricks wide and 17.5 wide. None of the parapet walls are 2 foot wide. See photo 8.
21.	The Back bridge is original. Repairs have not altered the gradients of the road or the width of the road between the parapets.



Photo 8 Back Drive bridge viewed from N showing steep gradient 1 in 8 to 1 in 10 and parapet wall – 5 ft high and 13 inches wide

22.	<p>The width of the Back Drive built as part of the railway works.</p> <p>The Applicant says the Back Drive north and south of the bridge were built in 1845-46 to the minimum width of a public road and natural growth either side obscures this.</p>
23.	<p>We have no way of telling the width of the road at the time the bridge was built.</p>
24.	<p>The Applicant claims the Back Drive was built to the public road specified width in section 281 of the 1844 Act. Natural growth has spread to produce the current farm drive width.</p>
25.	<p>I measured the embankment that carried the road either side of the bridge and it is around 13 feet wide and the hard surface is 10 feet 6 inches wide.</p>
26.	<p>The formation width is very clear and has not changed. See photos 9 and 10.</p>
27.	<p>The road north and south of the bridge have a width well below the minimum (20 feet) and slightly narrower than the minimum width for a private road (12 feet)</p>

28.

The Back Drive built in 1845-46 are narrower than the width of Wootton Lane where it is severed by the railway. See photo 11. It was 22-24 feet wide. The next section to the south, in use today, is Photo 12, is a former lane south of the new turnpike and is now Folkington Manor Back Drive and the road surface is 13-14 feet wide with a total width of 22 feet between hedges.



Photo 9 Back Drive looking S to bridge showing width of hard surface (10 ft 6 in) and slopes either side – width between slopes 13 ft



Photo 10 Back Drive S of bridge on embankment looking N showing width of hard surface (10 ft 6 in) and slopes either side (width between slopes 15 ft)

10



Photo 11 The remains of the original Wootton Lane south of the railway: looking S to the A27. The width is 22-24 ft between what were ditches.



Photo 12 The drive to Folkington Manor just south of the A27 (new turnpike) – looking S at location OS TQ 563046. The width of the hard surface is 13 ft and width between hedges is 22 ft.

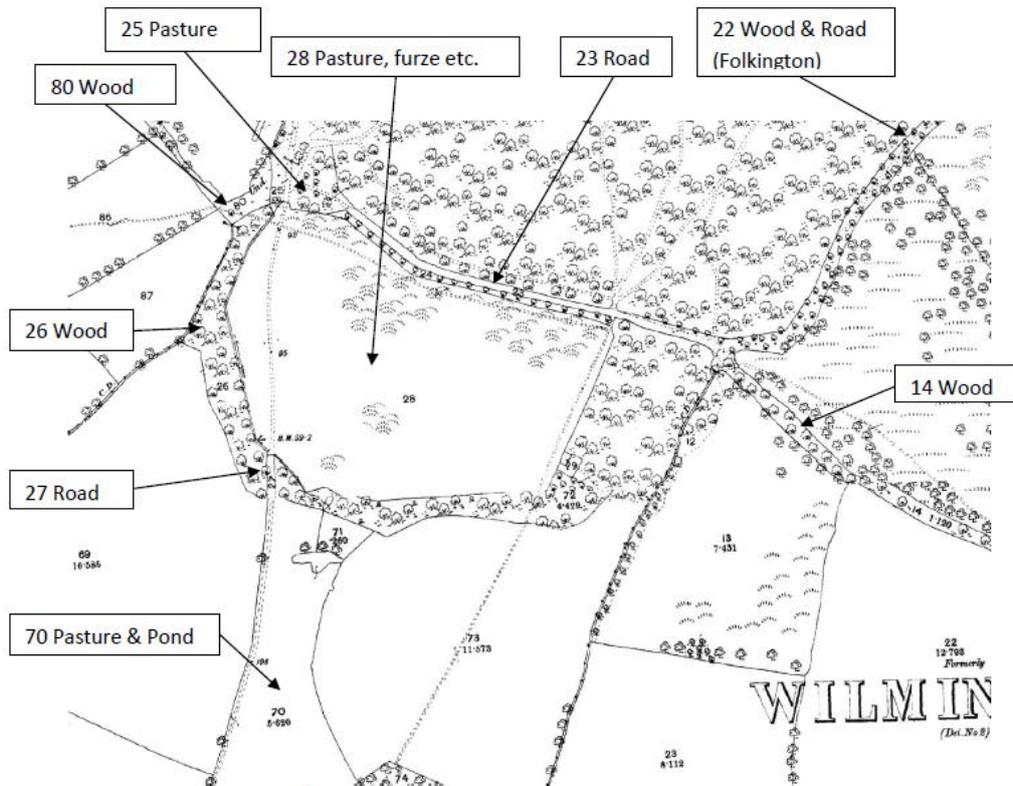
29.	<p>Additional evidence of the date of construction on the Back Drive bridge.</p> <p>The Applicant says the Back Drive bridge has been rebuilt and the only bridge to compare it with is the Wootton Farm Drive.</p>
30.	<p>See my comments on this in 16 and 17. The line between Keymer Junction and Lewes were built at the same time by the same engineer and bridges there are of the same design and bricks as the Back Drive bridge. Original bridges are at TQ 337 170 and TQ 332 180.</p>
31.	<p>Conclusion</p> <p>The Back Drive was built to private road standards or lower. The bridge is original with some repairs.</p>
32.	<p>The gradients on this section of the Back Drive are well below those required for a public road (1844 Act) and below those for a private road.</p>
33.	<p>The Back Drive bridge is original and not rebuilt. Repairs did not alter gradients, width of parapet or width of bridge.</p>
34.	<p>The Back Drive north and south of the bridge are farm drive standard. They are well below the minimum width for a public road (1844 Act).</p>

35.	<p>Special clause section 247 of the 1844 Act was applied, and a private drive and bridge were built for Wootton Farm, meaning</p> <ul style="list-style-type: none"> -The bridge for Public Road No 10 was not built. -The 265 yards of the Back Drive built because of the railway, and the resulting bridge, were and are not public but private. -The original Wootton Lane has ceased to exist 245 yards north of the new turnpike (A27).
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15.5. Table 12 - a Statement report, dated 29 June 2018, by Dr Nicola Bannister, Landscape Archaeologist, and updated with a further version on 24 July 2018 to include 3 additional paragraphs at the end missing from the 29 June 2018 edition.

	Comments by Dr Nicola Bannister, Landscape Archaeologist, 24 July 2018
	I am Nicola Bannister, Landscape Archaeologist and Associate Member of the Chartered Institute of Archaeology.
	I have over 30 years' experience in surveying hedgerows and boundaries and over 25 years' experience as a Landscape Archaeologist.
	My doctorate from University of London researched management regimes on hedgerows. I have corresponded over the years with Dr Max Hooper, Dr Ernest Pollard and Dr Peter Brandon all who have researched field boundaries.
	I worked on 'Fieldsapes Assessment Methodology and Character Statement for the High Weald, published here http://highweald.org/downloads/publications
	I am co-author of the Ancient Woodland Inventory Handbook for England http://Publications.naturalengland.org.uk/publication/4876500800634880
	I can interpret ancient text and maps and understand interventions made by man in the landscape.
	The Field Books I have reviewed describe land use not legal status.
	The Applicant has placed evidential value on notations which is misplaced.
	To demonstrate OS field book field references 1876 Folkington

OS field book references Jevington



OS 25 inch 1st edition of the area of Gorselands and Hide, south of Nate Wood,
Item 27 is a track through woods, not a public highway.

PARISH OF FOLKINGTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION).

HUNDRED OF LONGBRIDGE.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	.357	Wood.	39	.531	Pasture.
2	88.695	Wood.	40	.129	Embankment.
3	.893	Wood.	41	.064	Wood.
4	1.127	Road.	42	.094	Embankment.
5	10.654	Pasture.	43	2.303	Pasture.
6	5.448	Pasture.	44	23.596	Pasture.
7	.623	Wood.	45	.541	Wood.
8	1.054	Road.	46	6.099	Pasture, &c.
9	.584	Wood.	47	.258	Wood, &c.
10	.070	Wood.	48	.546	Wood.
11	14.998	Arable.	49	10.415	Arable.
12	.685	Garden.	50	.456	Wood.
13	.312	Wood and rough pasture.	51	.160	Wood.
14	.306	Houses, gardens, &c.	52	.211	Wood.
15	.341	Wood.	53	19.803	Pasture.
16	9.365	Pasture.	54	12.679	Arable.
17	12.680	Pasture.	55	27.580	Pasture.
18	.135	Houses and yards.	56	7.889	Pasture.
19	11.629	Pasture.	57	3.281	Road.
20	.343	Road.	58	.303	Wood.
21	133.370	Wood, &c.	59	14.353	Arable.
22	1.266	Wood and road.	60	.192	Wood.
23	.559	Road.	61	24.034	Arable.
24	.351	Wood.	62	.875	Wood.
25	.138	Pasture.	63	.302	Wood.
26	1.503	Wood.	64	15.379	Arable.
27	.059	Road.	65	1.564	Wood.
28	12.970	Pasture, furze, &c.	66	.290	Houses, yards, and gardens.
29	.062	House and yard.	67	15.843	Arable.
30	.009	Road.	68	.241	Wood.
31	20.984	Arable.	69	16.585	Arable.
32	12.017	Arable.	70	5.620	Pasture and pond.
33	.479	Wood.	71	.260	Pasture.
34	.138	Garden.	72	4.429	Wood.
35	.771	Wood.	73	11.573	Arable.
36	2.283	Pasture, &c.	74	1.461	Wood.
37	1.349	Wood.	75	6.247	Arable.
38	.059	House and yard.	76	.236	Wood.

37513.

Extract from the OS Field Book [ESRO] showing the entries

PARISH OF FOLKINGTON.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
			125	12.494	Arable.
77	4.055	Pasture.	126	.381	Ponds.
78	.254	Wood.	127	1.341	Wood.
79	.402	Wood.	128	3.471	Pasture.
80	.550	Wood.	129	2.186	Houses, ornamental grounds, &c.
81	12.207	Arable.		.209	Wood.
82	16.771	Arable.	130	.599	Houses, gardens, &c.
83	.525	Wood.	131	.653	Wood.
84	.245	Wood.	132	4.195	Pasture.
85	.398	Pond.	133	1.013	Wood.
86	11.990	Pasture.	134	2.336	Pasture.
87	.355	Wood.	135	4.109	Pasture.
88	10.546	Pasture.	136	1.743	Pasture.
89	.354	Wood.	137	1.320	Houses, ornamental ground, &c.
90	10.629	Arable, &c.	138	.370	Church and graveyard.
91	.687	Wood.		5.908	Houses, yards, gardens, wood, &c.
92	.757	Wood.		3.992	Pasture.
93	15.082	Arable.	141	.407	Wood.
94	.440	Wood.	142	.018	Pasture.
95	4.400	Houses, yards, gardens, orchard, &c.	143	19.794	Arable.
96	.461	Houses, pond, gardens, &c.	144	.443	Wood.
97	15.233	Pasture.	145	.390	Houses, gardens, and yards.
98	.294	Wood.		6.865	Pasture.
99	8.299	Pasture.	146	.259	Houses and gardens.
100	2.717	Railway.	147	.470	Houses, gardens, and yards.
101	1.957	Road.		.460	House and garden.
102	.474	Wood.	151	1.407	Road.
103	.298	Wood.	152	3.618	Arable.
104	1.367	Railway.	153	.445	Houses and gardens.
105	.106	Road.	154	21.784	Pasture and pond.
106	.487	Houses, gardens, &c.	155	3.537	Road.
107	38.796	Arable.	156	.405	Wood.
108	11.554	Pasture.	157	10.078	Pasture.
109	18.796	Arable.	158	.182	Wood.
110	81.611	Arable.	159	.250	Houses and gardens.
111	136.459	Rough pasture, furze, &c.	160	.659	Wood.
112	57.459	Arable.	161	.561	Wood.
113	2.555	Wood.	162	.407	Wood.
114	11.021	Pasture, &c.	163	3.800	Pasture.
115	.938	Wood and stream.	164	.128	Pond.
116	11.631	Arable.	165	13.211	Pasture, &c.
117	10.649	Arable.	166	7.470	Arable.
118	.250	Garden.	167	.255	Wood.
119	2.784	Pasture.	168	7.747	Wood and furze.
120	.637	Houses, gardens, orchard, &c.	169	.228	Pasture.
121	2.640	Pasture.	170	3.687	Wood.
122	.476	Road.			
123	.099	Wood and stream.			
124	.102	House, garden, &c.			

Extract from the OS Field Book [ESRO] showing the entries

PARISH OF JEVINGTON,
IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION).

HUNDRED OF WILLINGDON.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	-212	Wood.	40	-340	Pasture.
2	-303	Wood.	41	1-125	Pasture.
3	45-889	Arable.	42	-988	Osiers.
4	11-924	Arable.	43	2-248	Arable.
5	2-477	Pasture.	44	2-184	Pasture.
6	2-643	Railway.	45	-237	Osiers.
7	-817	Road.	46	12-369	Arable.
8	2-786	Pasture.	47	+661	Wood.
9	-185	Houses and yards.	48	5-208	Arable.
10	14-879	Arable.	49	6-920	Arable.
11	-290	Wood.	50	-991	Wood.
12	10-597	Pasture.	51	6-006	Pasture.
13	4-757	Pasture.	52	-184	Road.
14	1-102	Wood.	53	-531	Wood.
15	11-944	Pasture.	54	-258	Wood.
16	1-474	Arable.	55	9-162	Arable.
17	3-726	Pasture.	56	21-627	Arable.
18	-149	Wood.	57	-052	Road.
19	-962	Pasture.	58	5-449	Arable.
20	16-516	Pasture.	59	2-335	Wood.
21	-435	Road.	60	-992	Arable.
22	23-162	Pasture.	61	-406	Houses and yards.
23	2-319	Road.	62	-435	Pasture.
24	-196	Wood.	63	-633	Arable.
25	3-340	Pasture, &c.	64	-948	Wood and embankment.
26	1-209	Wood.	65	21-339	Pasture, &c.
27	13-425	Pasture.	66	12-900	Clank pits and rough pasture.
28	20-428	Pasture, &c.	67	1-571	Wood.
29	-550	Road.	68	1-641	Wood.
30	11-610	Wood.	69	-298	Wood.
31	-918	Wood.	70	-144	Water.
32	2-351	Pasture.	71	3-973	Pasture.
33	3-596	Arable.	72	2-995	Houses, yards, gardens, &c.
34	2-182	Pasture.	73	-109	Wood, &c.
35	-531	Pond.	74	1-903	Pasture.
36	3-409	Pasture, &c.	75	-426	Pasture.
37	-282	Pond.			
38	4-743	Arable.			
39	-230	Wood.			

37519.

Extract from the OS Field Book [ESRO] showing the entries



Tithe Map of Folkington circa 1840 [ESRO TDE 100 Folkington]

- 11 = Underwood
- 12 = Pasture "Gorselands"

The Tithe Map shows the fields with no evidence of the claimed route. The dotted line through the shaw was used to access Gorselands and the Hide from Wootton. This was not public.

It shows the old drove removed and only traces in the landscape. The OS have recorded traces of the old road and farm access tracks. It does not mean it was public. Across England there are traces of former land use but it doesn't mean it confers the legal status of their original function.

The Council:

The OS field books provided indicate that the claimed route was a 'road' which adds to the evidence that it existed, and the route it took, which adds to evidence of a public road provided by the Railway Act material.

16. Final Response from the Applicant

- 16.1 On 19 July 2018 the Council emailed the landowner's Final Response comments (third Rebuttal comments) and accompanying reports to the Applicant asking for his Final Response by 29 August 2018.
- 16.2 The Applicant pointed out that the statement from Dr Bannister may not have been completed and on 24 July 2018 the landowner forwarded the complete statement (as summarised above), which was forwarded to the Applicant.
- 16.3 On 25 July 2018 the Council received the Final Response comments from the Applicant, who said they he had no further comments to make other than:
- he had dealt with Dr Bannister's points in earlier submissions.
 - he disagrees with Mr Sullivan about the facts that exist on the ground, suggests the OMA (Order Making Authority; ie The Council) should go out and see who is correct, and that it is up to the Authority to determine these points further.

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

- 17.1 On 26 July 2018 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.
- 17.2 On 1 April 2019 the Planning inspectorate confirmed to the Council that they should determine the application by 29 March 2020.
- 17.3 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.

18. Review of claim November 2019

- 18.1 On 7 November 2019 the Council emailed Mr Harwood asking him to confirm his connection to some of the landowners and how he acted on their behalf. It asked him to confirm that he acted for Ms Harcourt-Smith (Owner 1 and 3, see Table 1) and if he acted for those listed under Owner 2 and 4. On the same day Mr Harwood replied to confirm that he and his firm (RH & RW Clutton) represent Owners 1, 2 and 3 (1 and 3 being Ms Harcourt-Smith and 2 being 'Trustees of the Children's Settlement').

19. Response of Adjoining Landowner

- 19.1 The adjoining land is partly owned, as Owner 4, by Timothy Raikes who is listed as one of Owner 2 and therefore the Council considers any comment from the adjoining landowner of Owner 4 would be represented by the Owner 2 response from Mr Harwood.
- 19.2 The Council is satisfied all landowners have been notified.

20. Contact with Mark Sullivan and Second Site Visit

20.1 On 9 September 2020 the Council wrote to Mr Sullivan to ask a number of questions regarding the gradient of the road in general and in connection to the maximum gradients mentioned in the Act.

20.2 On 28 September 2020 the Council received the following response:

20.3 Table 13 – Reply Comments by Mark Sullivan

Numbered point and reference	Comment by Mark Sullivan
1 Road gradient in principle	A gradient of 1 in 1 means that for every metre horizontally the road would rise by 1 metre. 1 in 19 is steeper than 1 in 20. 1 in 10 is twice as steep as 1 in 20.
2 Gradients of the Back Drive	<p>The 1844 Railway Act, clause 281 says: ‘The ascent shall not be more than 1 foot in 30 feet if a turnpike, 1 foot in 20 feet if a public road, 1 foot in 16 if private road.</p> <p>The ascent cannot be more than 1 in 20. The ascent is in fact 1 in 10 or steeper on both sides of the Back Drive bridge.</p> <p>The Applicant states, 1 May 2018, that his rough calculations are a gradient of 1 in 23. Part of the Applicant’s measurements include a waiting area that is not part of the ascent at all. Part of the Back Drive is narrower than required for a public road.</p> <p>The private road has ascents in parts twice as steep as the maximum permitted under the 1844 Act for a public road.</p> <p>Also, it doesn’t meet the width for a public road of the 1844 Act.</p> <p>The evidence suggests it was built for the private needs of the landowner in agreement with the railway company under clause 247.</p>

20.4 Second site visit

20.5 A second site visit by Stephen Kisko and an East Sussex County Council colleague on Monday 2 November 2020 between 9am and 10.30am. Measurements of the width and gradient of the bridge and road were taken along with an investigation as to where the original road on this section would have been. The weather was clear but with spitting rain at times.

The results are summarised in the table below:

Northern end of bridge and to the north
 Middle section of bridge
 Southern end of bridge and to the south.

20.6 Table 14 – Measurements taken by the Council of the width and gradient of the bridge and road, second site visit.

Measurement location (approximate)	Measurement (by tape measure) Feet and inches	Gradient (by inclinometer) Degrees Grade as % Grade as Ratio
Width of road 44 feet 8 inches to the north of the bridge	18 feet 9 inches	1.4 degrees 2.44% 1 in 41
Width of road 10 feet north of bridge	18 feet 8 inches	9 degrees 15.84% 1 in 6
Width of road at start of northern end of bridge	12 feet 7 inches	
Width of entire bridge structure, ie outer edge of bricked parapet West to outer edge of bricked parapet East, northern end.	22 feet 5-8 inches	8 degrees 14.05% 1 in 7
Width of pavement, northern end, West	3 feet 7 inches	
Width of pavement, northern end, East	3 feet 5 inches	
Width of bricked parapet, northern end, West	1 foot 5 inches	
Width of bricked parapet, northern end, East	1 foot 5 inches	
Roughly between northern end of bridge and middle of bridge		13.1 degrees 23.27% 1 in 4 6.1 degrees 10.68% 1 in 9

Width of road in middle of bridge (useable by vehicles)	12 feet 3 inches	
Width of entire bridge structure, ie outer edge of bricked parapet West to outer edge of bricked parapet East, middle of bridge	19 feet 7-8 inches	1.5% 2.70% 1 in 38
Width of pavement, middle, West	2 feet 6 inches	
Width of pavement, middle, East	2 feet 8 inches	
Width of bricked parapet, middle, West	1 foot 1 inch	
Width of bricked parapet, middle, East	1 foot 1 inch	
Roughly between southern end of bridge and middle of bridge		7.8 degrees 13.70% 1 in 7
Width of pavement, southern end, West	4 feet	
Width of pavement, southern end, East	3 feet 5 inches	
Width of bricked parapet, southern end, West	1 foot 5 inches	
Width of bricked parapet, southern end, East	1 foot 5 inches	
Width of entire bridge structure, ie outer edge of bricked parapet West to outer edge of bricked parapet East, southern end.	23 feet 9 inches	10.1 degrees 17.81% 1 in 6
Width of road at start of southern end of bridge (useable by vehicles)	12 feet 10 inches	
Width of road 10 feet south of bridge	21 feet	4.6 degrees 8.22% 1 in 12

Width of road 44 feet 8 inches to the south of the bridge	18 feet 6 inches	3.5 degrees 6.12% 1 in 16
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20.7 Limitations: The above measurements are subject to the accuracies and limitations of using a tape measure and human error, are approximate and should include a small degree of deviation either way. For example, the degree gradient measured by the inclinometer could be affected by gravel on the road surface making it artificially uneven in places.

20.8 Results:

Width: The section of road immediately south of the bridge appears to vary around 18-21 feet wide and to the north appears to be around 18 feet 8-9 inches. Ignoring the parapet and pavement, the useable width of the road appears to vary between 12 feet 10 inches to the south, narrowing to 12 feet 3 inches in the middle, widening to 12 feet 7 inches to the north.

Gradient: The section of road immediately leading up to the bridge from the south appears to be between 1 in 16 to 1 in 12. The southern slopes of the bridge itself appears to be around 1 in 6-7. The northern slope of the bridge appears to be around 1 in 9 to 1 in 4. The section of road immediately leading north of the bridge appears to be 1 in 6-7 and later 1 in 41.

20.9 Observations: The road either side of the bridge seems to be somewhere between 18 and 19 feet wide and the useable part of the bridge itself seems to average out at about 12 feet 5 inches wide. The road leading up to the bridge from the south appears to be slightly steeper than the road leading off it to the north and the bridge itself seems to be slighter steeper on the northern side than the southern side. Parts of the northern slope vary in gradient as there are visible differences in the quality of the surface and shape of the road. The road sections are surfaced with gravel stones and the bridge itself is mostly tarmacked but with some parts showing signs of wear. Some brickwork on the parapets look newer, or certainly a lighter colour, than other sections, possibly indicating a repair or rebuild but it is not obvious how this affected the dimensions if it did. The road section immediately north of the bridge appears to have been built on higher ground than that either side of it suggesting the surface of the road has been laid out on land artificially raised, probably done when this course of the road was moved to its current location during the railway construction.

20.10 Analysis: The width of the road and bridge is not 25 feet wide, or 20 feet if already 20 feet, as specified by the Railway Act. However, it is difficult to say if some of the road has been lost to the side undergrowth. Certainly, the useable part of the bridge is less than 20 feet. The bridge may be original, to meet the needs of a private road, or the railway company failed to provide a bridge wide enough to meet the requirements of a public road. The bridge may not be original and a rebuild may have resulted in the current narrower bridge despite the road being public. The gradient of the road to the south and the slope of the bridge, is more than the 1 in 20 laid out by the railway plans. The same principle applies here as to the width of the road, in that the bridge, and the level of the road, may not be original and/or may not have been built as they should have been. It would be interesting to know why the pavements between the parapet and the road surface were installed, if the road was considered for private use as their existence is more likely to have been for public pedestrians.

20.11 The old road: It is not immediately obvious where the old road, the southernmost approximate 500 feet section of the claimed route, used to be. A section of woodland to the immediate East of the road just north of the bridge was inspected (north-east of bridge). Here the ground is higher than the claimed route and there does appear to be a strip of land heading south which is bordered to the East by an old fence and to the West by the claimed route and bridge. This area is overgrown and appears to go down to a lower level at about

in line with the bridge. There is so much vegetation and woodland that it is impossible to determine with any certainty if an early 19 Century road used to run here. Another location was inspected, 250 feet to the East of point E, in the woodland to the immediate north of the A27, opposite the entrance drive to Folkington Manor Farm to the south. Interestingly, there is a metal field gate leading off the A27, now overgrown with weeds, which is bounded either side by a simple wooden fence running for about 30 feet either side before ending open ended. This suggests that some form of access was required into this area of woodland at some time. The same principle here applies to the land to the north east of the bridge, in that it is not obvious if a road used to pass through this woodland, although about 180 years has passed since it was moved by the railway construction. The ground appears level here but there is little indication of the width and gradient of the road that once ran here. The road may once have run here may have been private and moved as a private road to its current location, however the railway plans said it was a public road. It may have been stopped up as a public road and moved to the West as a private road, but there is no stopping up order, which would suggest the old road in the woodland is still public. It may have been a public road that was not stopped up but moved to another public road in its current location. The Council continues that, in lieu of evidence to the contrary, that if as a result of this report the Council concludes there is enough evidence for it to be reasonably alleged that a public right of way exists, this means that the course of the old road was public and was moved to the current location, and it will be this route (current location), as claimed, that will be the route the Council will support.

20.12 Conclusion: The width and gradient of the bridge and road immediately next to it do not appear to meet the required measurements as laid out by the Railway Act. However, the problem remains that it is difficult to know if these measurements were as intended by the railway company, are still the same as they were when the railway was built and whether subsequent changes have been made and if these changes could affect our interpretation of the infrastructure. The course of the old road forming the alternative southernmost part of the claimed route cannot be sufficiently identified and therefore no inference can be made as to its width or gradient or whether this could translate into identifying its original status.

20.13 Width of the Restricted Byway:

- a) A consideration has been given to what the width of the claimed route should be, if it is determined that an Order should be made.
- b) It is proposed that if an Order is to be made the width of the restricted byway along the section A-B-C-D should be 3 metres wide which is a reasonable width for a restricted byway where there is no boundary such as here.
- c) It is proposed that if an Order is to be made the width along the section D-E should be 3.7 metres wide on the basis that this is the approximate width of the usable part of the bridge over the railway and anyone using the bridge should also be able to use this section D-E which falls upon a track with boundaries.

SECTION D – Collation of Evidence of Use

21. Evidence of Use - The following collates the evidence of use uncovered from the evidence provided to the Council from the Applicant and/or the Landowners.

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

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

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

21.4 Walking -There is no record in the evidence of public use by pedestrians.

22. Verbal Challenges to Use

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

23. Signs and Notices

- a) In support of the claim – None
- b) In opposition to the claim –
 - Sign at E on A27, saying 'Folkington Estate, Entrance to Wootton Farm'. Does not say private.
 - Several signs soon after E towards D before bridge over railway saying 'Private Road', 'Private' and 'CCTV'.
 - 'CCTV' sign on northern side of bridge over railway.
 - Several signs on bridge over railway to identify the bridge as part of the railway infrastructure.

24 Stiles, Gates and Structures

- a) In support of the claim – None
- b) In opposition to the claim – On his site visit, Stephen Kisko identified a number of obstacles along the claimed route, that which could be accessed, which would currently hinder passing and re-passing freely, as detailed below:
 - i. Looking north at D, a gate and fence line restricting access to the claimed route further north.
 - ii. Looking south at A, a row of 4 4 vertical vehicle barrier or wooden posts about 1 foot high appear about 10 metres south of A.

25 Other Use considered

- a) Use under Secrecy. There is no record of any use by secrecy.
- b) Use under Force. There is no record of any use by force.
- c) Permissive Use or Use by Licence. There is no record of any use with permission or by licence.

SECTION E – Council’s Summary and Response

26 Summaries of Evidence from Both Parties

26.1 Summary of Applicant’s Evidence

The Applicant states that the historical evidence shows that the claimed public right of way exists as per their application map and rejects the landowner’s rebuttal arguments.

26.2 Summary of Landowner’s Evidence

The Landowners do not support the view that historical mapping is strong enough to support the existence of a public right of way and reject the Applicant’s interpretation of his evidence. They accept the Railway Act material is the only evidence to suggest any public rights of way.

27. Council’s response to the Applicant’s Historical Evidence

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

The Applicant relies on evidence from old historical maps of Sussex, later OS maps, the Turnpike Act and maps, Tithe maps, the Railway Act, Quarter Sessions, Finance Act 1910 and the original 1950s Definitive Map process.

The historical maps show part of the route at various times, but their accuracy and purpose remain unresolved and they do not confer status.

While the OS maps were mainly designed to show, and/or take their knowledge from, physical features on the ground and cannot be relied upon to confirm status of routes, they can in this circumstance give an indication as to the line of the route from D through to A. In lieu of any other obvious route, and the fact that the claimed route follows a path marked on the OS map, the Council assumes that the line of the route D through to A follows that as claimed.

The Turnpike Act did not directly affect the claimed route which is not mentioned or detailed on the plans. It is difficult to see how they either support or refute the application. It is difficult to understand with clarity how the closure of the old turnpike and the creation of the new one impacted the claimed route.

The Tithe Map does show some of the claimed route, but it is not clear as to how the status of the route can be identified with any certainty.

The Council believes the Railway Act and plans strongly suggest that a public right of way could have existed from E, certainly towards D and probably through D-C-B and to A. The book of reference clearly states that the claimed route from E northwards was a ‘parish road’ and the owner was the ‘Surveyor of Highways’.

The fact that the diversion plans of the 1877 Quarter Sessions show the southernmost part of E-D coming ‘from Hailsham’ also suggest that this was a public road. Despite these plans relating to a diversion of a public right of way further south at/to Folkington Manor, they make it increasingly possible to reasonably alleged that the claimed route was public.

The Council believes that E-D is a 'white road' on the Inland Revenue maps for the Finance Act 1910 and was excluded from taxation because it was considered public. The rest of the claimed route does not appear as a white road but could possibly be one of the rights of way in the hereditament for which a tax discount was applied for.

The Hailsham District Council map of 1935 shows the entire claimed route as a reputed public right of way, but only as a bridleway.

The Council acknowledges the landowner's claim that the evidence does not suggest that the claimed route was public and that the only piece of evidence they have found in support of the claim is the Railway Act material.

The Council suggests that between 1910 and 1935 the status of the route had possibly incorrectly been reduced from a public road to a bridleway and by the 1950s definitive map process was no longer considered a public right of way.

The Council believes there is sufficient evidence in the historical material of the 1839 Railway Plans, 1877 Quarter Sessions, 1910 Finance Act, along with supporting OS maps, for it to be reasonably alleged that a public right of way still exists as claimed.

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

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

In summary, the comments from the user groups, and other similar statutory consultees, do not offer satisfactory evidence to prove the public right of way is alleged to exist. However, the 1935 Folkington parish map mentioned by Wealden District Council does include the claimed route as a reputed right of way.

The landowner has disputed and refused the comments made by the Applicant to the application evidence and provided counter evidence along with testimony from representatives which in turn has been rejected by the Applicant.

The turnpike records that relate to the closing of the old turnpike and the opening up of the new turnpike (the current A27) offer little either way in relation to the status of the claimed route. The Council acknowledges, according to the landowner, that soon after the closing of the old turnpike the landowner probably reorganised the fields to the north, however on later OS maps a route can still be seen through this section, albeit perhaps of a route with a lower status than a road.

The landowner introduces the topic of the trespass cases in the 19th Century. The Council takes the view that much of this does not refer to the claimed route or is settled out of court, and that the evidence is inconclusive to the extent that it does not refute the application.

The discussion over the Tithe map is inconclusive in that some of the claimed route can be seen to be un-tithed but whether this was a public route cannot be determined by the Tithe map evidence.

Both parties seem to agree that the Railway Act and plans do say that part of the claimed route was public, in particular E-D, though the landowner suggests this was a mistake made at the time. Again, the Council believes that the Railway Act evidence is strong enough for it to be reasonably alleged that a public right of way exists along the claimed route.

It is difficult to use the Sales Particulars to locate the claimed route or to determine its status.

The Applicant introduced the topic of the width and gradient of the bridge and road. Attempts have been made by the Applicant, the landowner and the Council to obtain the current measurements of the width and gradient of the current bridge and road, with varying degrees of success and results.

The Applicant measured the width of the bridge as 18 feet 6 inches. The landowner's representative Mr Sullivan measured it as 17 feet 8 inches. The Council's measurement is 17 feet 5-6 inches (inside of parapet to inside of parapet) which is closer to the landowner's than the Applicant's.

The Applicant believes the gradients of the bridge and road fall within that allowed for a public road under the Railway Act but Mr Sullivan's report states the gradients are too steep for a public road under the Act. The Council's own limited assessment of the gradients favour Mr Sullivan's interpretation. Attempts were made by the Council to obtain further independent measurements in order to get a more professional view than the Council officer's but the cost proved prohibitive.

The route of the southernmost part of the claimed route appears to have moved to the West during the construction of the railway. The Council considers it more likely that the route was changed to accommodate a lower gradient suitable for public use, as the Applicant claims. The Council cannot be sure if the bridge is original or not. While the Council welcomes Mr Sullivan's report, it also has to bear in mind that Mr Sullivan's report was written on behalf of the landowner and a second opinion is not provided. Ultimately, taking measurements of what is there today has its limitations. They may be original, or they could represent changes that have occurred over time, since the original bridge and road were created. The current dimensions of the bridge and road, if assumed to be the same as when they were built, could be used to argue that the road more likely was, and still is, a private road or became a private road, but other interpretations and measurements could suggest the opposite. If the current dimensions represent changes since they were originally built, this could mean they now have the appearance of a private road but remain public, and indeed vice versa. Current dimensions, and changes in dimensions, do not alone provide sufficient proof of the status of ways.

The Council considers, on balance, that the evidence that it was listed as a public road in the Railway Act is stronger evidence than relying on measurements taken today and comparing them with the Railway Act requirements. In this way, the Council sets aside the discussion over the width and gradient of the bridge and road in favour of the evidence provided in the 1839 Railway Act and plans

The Applicant introduced the issue of the Quarter Sessions of 1877 concerning the diversion of Folkington Lane to the south. While this does not intend to directly relate to the claimed route, the evidence that part of the claimed route at the south was thought of as public does support the application rather than go against it. Along with Railway Acts, the Quarter Session records had to be accurate and were subject to public consultation and publication. This evidence demonstrates that before the road diversion, the old road from Folkington to the A27 was the more direct road, now the private drive to the Manor. Before this road was stopped up it would have met the A27. The road itself predates the A27 which was the new turnpike built in 1819. Therefore, before 1819 this old road must have been a public road that continued north beyond what is now the A27, most likely along the claimed route. It is unlikely it would have been a public road to a dead end. Much of the mapping evidence suggests the road continued to the north as claimed. It would seem that it

continued north along the old version of the claimed route towards The Hide and Hailsham beyond.

The Council acknowledges the landowner's claim that the evidence does not suggest that the claimed route was public and that the only piece of evidence they have found in support of the claim is the Railway Act material. However, the Council also acknowledges evidence provided by the Applicant which may support the claim.

The Council believes there is sufficient evidence in the historical material of the 1839 Railway Plans, 1877 Quarter Sessions, 1910 Finance Act, along with supporting OS maps, for it to be reasonably alleged that a public right of way still exists as claimed.

29. Council's response to Evidence of Use

The Council has seen no evidence of use by the general public at large. There is insufficient evidence to support the existence of the route through public 'as of right' usage.

SECTION F - Conclusions

30. Conclusion

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.

30.1 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.

30.2 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, ie 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.

30.3 The Application relies on evidence found in historical documents. There is enough evidence provided and/or found to reasonably allege that a public right of way subsists on the claimed route.

31 Common Law dedication

31.1 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;

31.2 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

31.3 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.

31.4 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*

31.5 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.

32 Other Matters

32.1 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.

32.2 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.

32.3 Environmental Impact of the Proposal

Considerations relating to the environmental impact of the making and confirmation 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.

32.4 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.

32.5 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.

33. Rights of Appeal

33.1 If the County 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 within 28 days after notification of the Council's decision.

33.2 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.

34. The Natural Environment and Rural Communities Act 2006 (the ‘NERC’ Act)

34.1 According to the above-named Act, the Council believes the rights of mechanically propelled vehicles along the claimed route to be extinguished, and that none of the exceptions to this rule apply to the claimed route. Therefore, the Order will state that the claimed route is to be added to the Definitive Map as a restricted byway, as per the application.

35. Final Conclusion

35.1 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 by the Applicant in support of the claim and that submitted by the landowners, the Officer has concluded that there is sufficient evidence for it to be reasonably alleged that a right for the public subsists over the land in question.

35.2 This is because the application for a modification order was accompanied by sufficient evidence for it to be reasonably alleged that a right for the public subsists over the land in question. The Council believes the evidence presented in the Railway Act and plans, the 1877 Quarter Sessions, the 1910 Finance Act, supported by the OS maps, is sufficient for this purpose, when balanced against the other evidence available.

35.3 The statutory Test B has been passed.

35.4 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.

36. Formal Recommendations

*It is **recommended** that an Order to amend the Definitive Map and Statement for the area be made to add a public restricted byway.*

37. Background Documents

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

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