

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

1. Introduction

- 1.1. This Definitive Map Modification Order (DMMO) Application Statement and its associated covering letter are submitted by Ms S Hyden (MBA, MCIPS, BA Bus. Studies (Hons), BSc Psychology (Hons)) BHS Access and Bridleways Officer on behalf of The British Horse Society, of Abbey Park, Stareton, Kenilworth, CV8 2XZ.
- 1.2. The overall application comprises this document (DMMO Application Statement) and its associated covering letter. The **British Horse Society reference for this Application is BHS 233-Penhurst H.**
- 1.3. The location of the application route may be found on Ordnance Survey (OS) maps as follows:

OS Landranger 1:50000 map:	199 Eastbourne and Hastings
OS Explorer 1:25000 map:	124 Hastings & Bexhill
OS Grid References:	(A) TQ 6854 1676 to (C) TQ 6915 1648

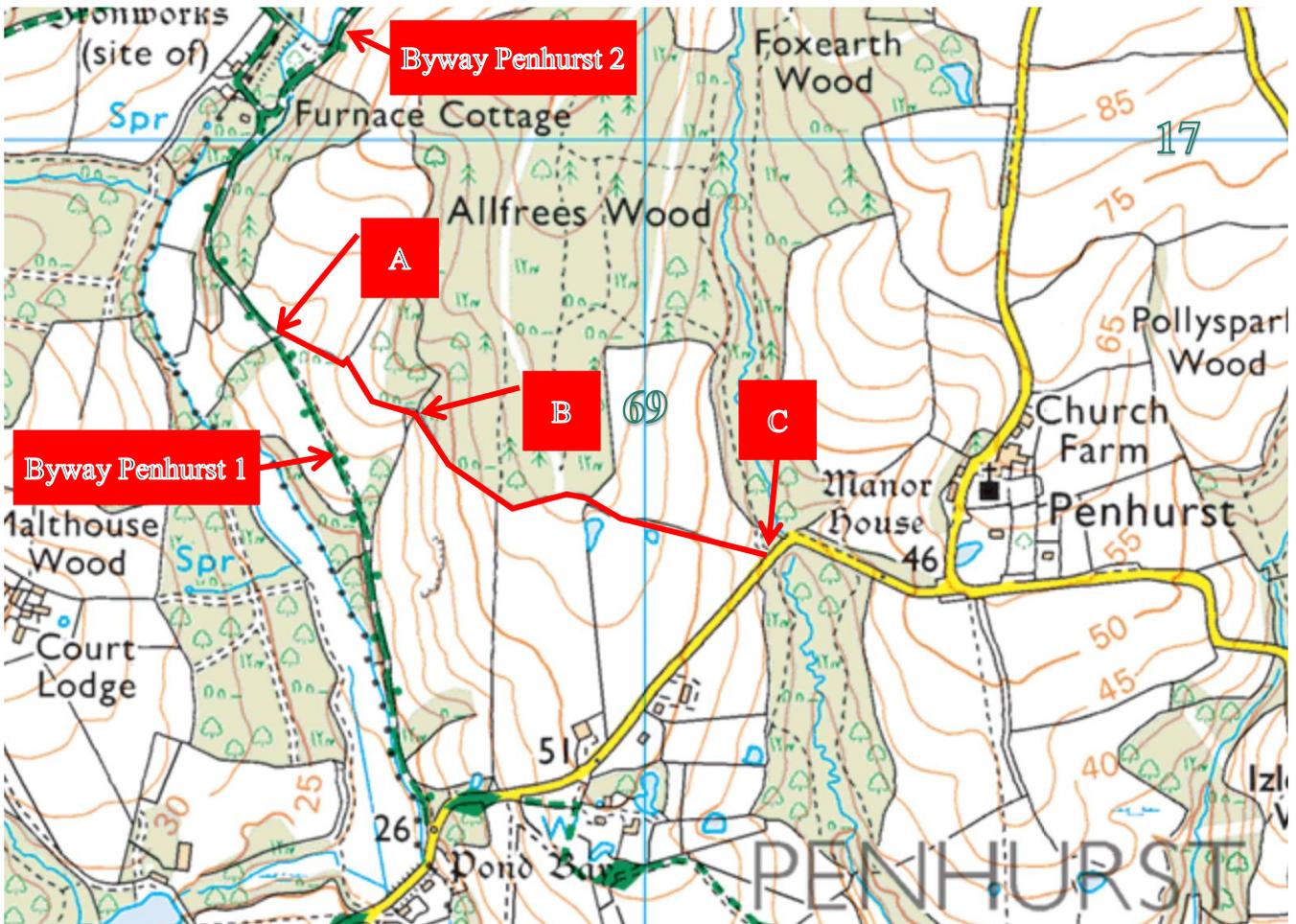


Figure 1 OS 1:25000 map showing the Application route as a red line

Map produced from extract of Ordnance Survey 1:25,000 scale mapping. When printed on A4 paper, the scale will be not less than 1:25,000 and thus meets the requirement of regulation 2 and regulation 8(2) of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

Key points on the application route shown in Figure 1 are:

A = Application route intersection with Byway Penhurst 1 (TQ 6854 1676)

B = Application route intersection with old Ashburnham Furnace to Ashburnham road (TQ 6871 1666)

C = Application route intersection with current Forge Lane, Penhurst (TQ 6915 1648)

- 1.4. The applicant’s legal experience was gained via professional qualifications (see above) and over 30 years as a Commercial Negotiator working at Senior Civil Service and Ministerial level. Her rights of way experience stems from having 40 years of riding experience in and around the area and the completion of Access training Stage 1, 2 and 3 provided for all BHS staff and volunteers.
- 1.5. This DMMO Application requests that the Application route, shown in Figure 1, be recorded as a **Right of Way with a status of Bridleway** in accordance with its historical use, and in line with the principle ‘once a highway, always a highway’ [*Dawes v Hawkins* (1860)].

Documentary Evidence of Highway Status

- 1.6. To be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows (on the balance of probabilities) that highway rights exist. The use of the ‘balance of probabilities’ test rather than ‘beyond reasonable doubt’ was confirmed by the High Court in *Todd & Anor v Secretary of State for Environment Food & Rural Affairs Rev 2* [2004] EWHC 1450 (Admin).
- 1.7. The evidence discovered in this DMMO Application Statement includes (in chronological order):

Date	Documentary Evidence	Description
1783	Yeakell & Gardner	Shown as Road
1794	Cary map	Shown as Road
1795	Gardner & Gream map	Shown as Road
1813	OS Old Series (1 st Ed)	Shown as Road
1825	Greenwood & Greenwood map	Shown as Road
1834	Ashburnham Estate map	Shown as unnumbered Road
1840	Penhurst Tithe map	Shown as unnumbered Road
1874	OS 25’ County Series map 1 st Ed	Shown as Road
1874	OS 25’ County Series 1st Ed Reference Book	Referenced as Road
1898	OS 25’ County Series	Shown as Road
1910	Inland Revenue Valuation Record	Part shown as White Road
1949<	ESCC Definitive map	Not shown as ROW. No stopping up or diversion orders found for this route
2016	High Weald Historic Routeway Survey	Identified as “Historic routeways – Road”
2021	Modern Photographs	Displays a well-defined banked route indicative of an old road.

- 1.8. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* (2012) EWCA Civ 334 Levinson LJ said, at paragraph 22:

“In the nature of things where an enquiry goes back over many year (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that

the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless”

- 1.9. As Pollock CB famously directed the jury in *R v Exall (1866)*
https://assets.cambridge.org/97811070/20337/excerpt/9781107020337_excerpt.pdf :

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

- 1.10. In addition the Planning Inspectorate states in ROW/3186868
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747891/row_3186868_interim_od.pdf):

“Evidence of the use of a way by the public as of right may support an inference of dedication and may also show acceptance of the dedication by the public”

- 1.11. Whilst no single piece of evidence is conclusive, taken as a whole, the pieces of evidence demonstrate highway reputation for the application route over many years.
- 1.12. Where web pages have been accessed to provide information, the URLs used at the time are given as references in good faith, but such websites are beyond the author’s control and may change over time.

What is a Highway / Road?

- 1.13. For the purpose of interpreting early maps, plans, road books etc. it is important that the usage of the period, when the document was made, is considered when deciding the rights belonging to any particular route. This is because the meaning of the words Highway, Road, Lane etc. have changed significantly over time. During the 17th Century and into the first quarter of the 18th century, Road and Highway were equivalent, both meaning general purpose ways for all manner of traffic. However from 1835, a number of Acts of Parliament specified that ‘highway’ could be applied to any type of way, including bridleways and footpaths (thereby losing its special significance as a vehicular route) whilst the definition of ‘Road’ remained as a general purpose vehicular route open to “all manner of traffic”.
- 1.14. It was not until the Local Government Act 1929, that a “road” was defined as a “highway repairable by the inhabitants at large” and thereby lost its unique distinction as a “general purpose way”¹. Therefore a reference to “Road” prior to 1929 can with confidence be said to imply a general purpose vehicular way. After 1929 that is not the case. It is these interpretations which are applied within this DMMO Application Statement.

¹ Extract from *Road and Way - An analysis of these expressions in the Highways and related Acts of Parliament c1500 to 1929 (with notes on uses of these words in Dictionaries and Relevant Documents of the Period)* by AW Fry FCA 2003.

Table of Contents

1.	Introduction	1
2.	Commercial County Maps Context and Evidence.....	7
2.1.	Introduction to Commercial County Maps	7
2.2.	1778-1783: Yeakell & Gardner “A Topographical Map of Sussex” Sheet 4	8
2.3.	1794 Cary’s “New Maps of England & Wales” Sheet 17 - 18.....	10
2.4.	1795: Gardner & Gream: “A Topographical Map of the County of Sussex”	12
2.5.	1825: Greenwood and Greenwood: “Map of Sussex”	15
2.6.	The significance of the evidence in Commercial County Maps	18
3.	Ordnance Survey Maps Context and Evidence	20
3.1.	Introduction to OS Maps	20
3.2.	1813: Old Series (1 st edition).....	21
3.3.	1874: 1 st Edition Ordnance Survey: 25 inch to the mile.....	24
3.4.	1898: County Series: “Sussex XLIII.13 (Ashburnham; Penhurst)”	30
3.5.	The significance of the evidence in Ordnance Survey Maps.....	32
4.	Tithe Records.....	34
4.1.	Introduction to Tithe Records.....	34
4.2.	1840 (circa): Penhurst Tithe Records	35
4.3.	The significance of the evidence in Tithe Records.....	38
5.	Estate maps.....	39
5.1.	Introduction to Ashburnham Estate maps	39
5.2.	1834: Ashburnham Estate map.....	39
5.3.	The significance of the evidence in the Ashburnham Estate Map.....	44
6.	Inland Revenue (IR) Finance Act 1910 -Valuation Records.....	45
6.1.	Introduction to Inland Revenue Valuation Records 1910	45
6.2.	1910: IR: 124/4/227 Penhurst.....	46
6.3.	The significance of the evidence in IR Finance Act Valuation Records 1910	49
7.	1953: East Sussex County Council (ESCC) Definitive Map.....	50
7.1.	Introduction to ESCC Definitive Maps	50
7.2.	1949<: ESCC Definitive Maps.....	51
7.3.	The significance of the evidence of the ESCC Definitive map.	52
8.	The High Weald Area of Outstanding Natural Beauty (HWAONB) Unit Historic Routeways Survey	53
8.1.	Introduction to the HWAONB Historic Routeways Survey.....	53
8.2.	2016 :HWAONB Unit Routeways Survey 2016– Penhurst Parish	56
8.3.	The significance of the evidence of the HWAONB Unit Historic Routeways Survey	58
9.	Modern Photographs of the Application route	60
9.1.	Introduction to Photographs of the Application route	60

9.2. 2021: Photographs	61
9.3. The significance of the evidence in Modern Photographs.....	69
10. Conclusion.....	70
11. Request	72

Table of Figures

Figure 1 OS 1:25000 map showing the Application route as a red line	1
Figure 2 Extract from the Yeakell & Gardner 1783 map showing the application route.....	8
Figure 3 Extract from the Carey’s 1794 map showing the application route.....	10
Figure 4 Extract from Gardner and Gream map of 1795.....	12
Figure 5 Extract from Greenwood and Greenwood Map of Sussex 1825 showing the application route	15
Figure 6 Extract from “Explanation” on Greenwood & Greenwood Map of Sussex 1825.....	16
Figure 7 Extract from OS 1813 Old Series map showing the application route.	22
Figure 8 Book of Reference for 1874 1:2500 OS map for Parish of Ashburnham & Penhurst	25
Figure 9 Conventional Signs and Writing Used on the 1:2500 Plans of the Ordnance Survey. (https://maps.nls.uk/view/128076891)	25
Figure 10 Extract from OS 1874 1:2500 map	26
Figure 11 Magnified extract from OS 1874 1:2500 map showing the western end of the application route.....	26
Figure 12 Magnified extract from OS 1874 1:2500 map showing the eastern end of the application route	27
Figure 13 Extract from the Penhurst Book of Reference for 1874 showing plot number 93a description.....	27
Figure 14 Extract from the Penhurst Book of Reference for 1874 showing plot numbers 89 & 92 descriptions.	28
Figure 15 Extract from OS 1898 County Series Sussex 1:2500 showing the application route.	30
Figure 16 Extract from 1836 Lieutenant R K Dawson proposed standardised key for Tithe maps	34
Figure 17 Extract from Penhurst Tithe Map of c.1840.....	35
Figure 18 Magnified extract from Penhurst Tithe Map of c.1840 depicting points the application route.	36
Figure 19 Ashburnham Estate Map 1834 ESCC Reference Label.....	39
Figure 20 Extract from Ashburnham Estate Map 1834.....	40
Figure 21 Magnified extract from Ashburnham Estate Map 1834.....	41
Figure 22 Magnified extract from Ashburnham Estate Map 1834 showing point C of the application route and the barrier across public road	42
Figure 23 Copy of Penhurst Inland Revenue map label IR 124_4_227	46
Figure 24 Extract from 1910 IR map Penhurst IR 124_4_227 showing the application route	46
Figure 25 Magnified section of 1910 IR map Penhurst IR 124_4_227 showing the application route	47
Figure 26 Extract from the 1953 1 st ESCC Definitive map showing the application route (overlaid on OS 2.5 to the mile (1951))	51
Figure 27 Extract from the ESCC highway diversion showing the only diversion order for Parish of Ashburnham & Penhurst.....	52
Figure 28 High Weald Historic Routeways Key	56
Figure 29 Extract from High Weald Historic Routeways map for Penhurst Parish (http://www.highweald.org/downloads/publications/parish-information.html)	57

2. Commercial County Maps Context and Evidence

2.1. Introduction to Commercial County Maps

- 2.1.1. Although the Ordnance Survey had been preparing maps for government use for some years, it only began to publish maps for the public in 1801. Many other map makers and cartographers had produced maps for sale to the travelling public before this date. The depiction of a route on such a map suggests that it could be used by the map's purchaser on horseback or by vehicle; word would soon get round that a map was useless for navigation if it contained many apparent roads that were not open to the public.
- 2.1.2. The maps considered in this Application Statement show all relevant Turnpike and Cross Roads. Mapmakers from at least as early as 1675 through to 1912 used the following terminology:
- Mail Road, Mail Coach Road, Post Road: a direct road between two towns/cities, used by mail coaches in order to deliver mail as quickly as possible.
 - Turnpike: a toll road; turnpikes were maintained by turnpike trusts established by Acts of Parliament.
 - Cross Road: a road which ran between the main roads mentioned above, presented as a public highway available to all travellers.
- 2.1.3. Some maps of this period were created for specific landowners for decoration and may not show public highways accurately but the maps used in evidence to support this Application Statement are not of that category.
- 2.1.4. Planning Inspectorate Consistency Guidelines comment on these maps as follows (under "Other post-1800 maps" (page 11) 12.43):
- "Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status".*
- 2.1.5. A number of Commercial County maps show evidence of the application route being a road in the past, as follows (in chronological order of publication).

2.2. 1778-1783: Yeakell & Gardner “A Topographical Map of Sussex” Sheet 4

Date of publication: 1783	Scale: 1 miles to 2 inch	Date of Survey: 1778-1783
Cartographer:	Publisher:	Edition:
Source: https://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakelllarge41.htm		

- 2.2.1. Thomas Yeakell and William Gardner's 'Great Survey' of 1778 was innovative and did a great deal to progress map-making standards.
- 2.2.2. Employed by Charles Lennox, 3rd Duke of Richmond, on his Goodwood Estate, Yeakell and Gardner abandoned previous cartography picturesque style (such as Budgen's) for a more formal representation of all of the features on the landscape. At a scale of two inches to the mile they eschewed the use of symbols or textual information, other than place-names, but included every prominent physical feature as well as man-made structures of any significant size.
- 2.2.3. The map was made for sale to the public, and so is unlikely to show routes that the public could not use.
- 2.2.4. Few private roads were shown. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1:2500 series. The existence of a way on this map means that it was more likely than not, a public route.
- 2.2.5. The map does not have a key/legend.

Evidence:

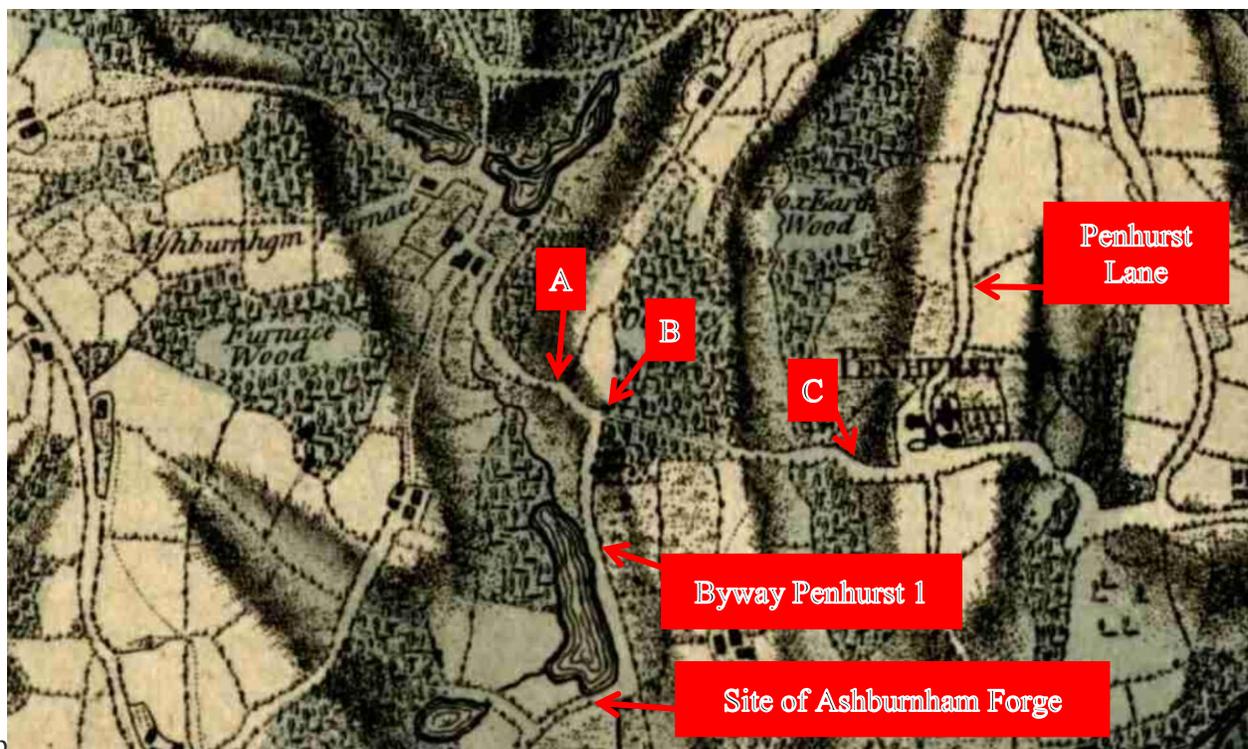


Figure 2 Extract from the Yeakell & Gardner 1783 map showing the application route.

Analysis of evidence:

- 2.2.6. Figure 3 shows the application route as an open ended cross-roads, depicted by parallel lines from the environs of Ashburnham Furnace (point A) to the environs of Penhurst village (point C). It is the only road connecting these two settlements.
- 2.2.7. The road connecting Ashburnham Furnace and Ashburnham Forge, now Byway Penhurst 1, is shown.
- 2.2.8. The application route is depicted in the same manner as other roads which now have a higher ROW status than footpath.

Significance of this evidence:

- 2.2.9. The application route is depicted as a “Road” in the same manner as other roads which are now adopted roads or ROW such as Penhurst Lane and Byway Penhurst 1.
- 2.2.10. It is part of the only road connecting Ashburnham Furnace to Penhurst village which indicates that it was more than probable to be a public road.
- 2.2.11. This evidence supports the assertion that the application route was a public road with a highway reputation greater than a Footpath/Bridlepath in 1783 and that it is more than probable that the application route had full carriage rights at the time the 1783 map was surveyed.
- 2.2.1. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

2.3. 1794 Cary’s “New Maps of England & Wales” Sheet 17 - 18

Date of publication: 1794	Scale:5 miles to 1 inch	Date of Survey:
Cartographer:	Publisher: Cary	Edition:
Source: https://www.britainexpress.com/Articles/1794-Carys-England-Wales-and-Scotland.htm . - <i>David Rumsey Historical Map Collection</i>		

2.3.1. John Cary (c.1754-1835) was a commercial English cartographer, engraver, globe maker & publisher.

2.3.2. Cary's New and Correct English Atlas which was first published in 1787 and continued into a number of editions in succeeding years.

2.3.3. The 1794 publications stated;

“Cary's New Map of England And Wales, With Part Of Scotland. On Which Are Carefully Laid Down All the Direct and Principal Cross Roads, the Course of the Rivers And Navigable Canals ... Delineated from Actual Surveys: and materially assisted From Authentic Documents Liberally supplied by the Right Honourable the Post Masters General”

2.3.4. The map was made for sale to the public, and so is unlikely to show routes that the public could not use.

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

2.3.6. The map does not have a key/legend.

Evidence:

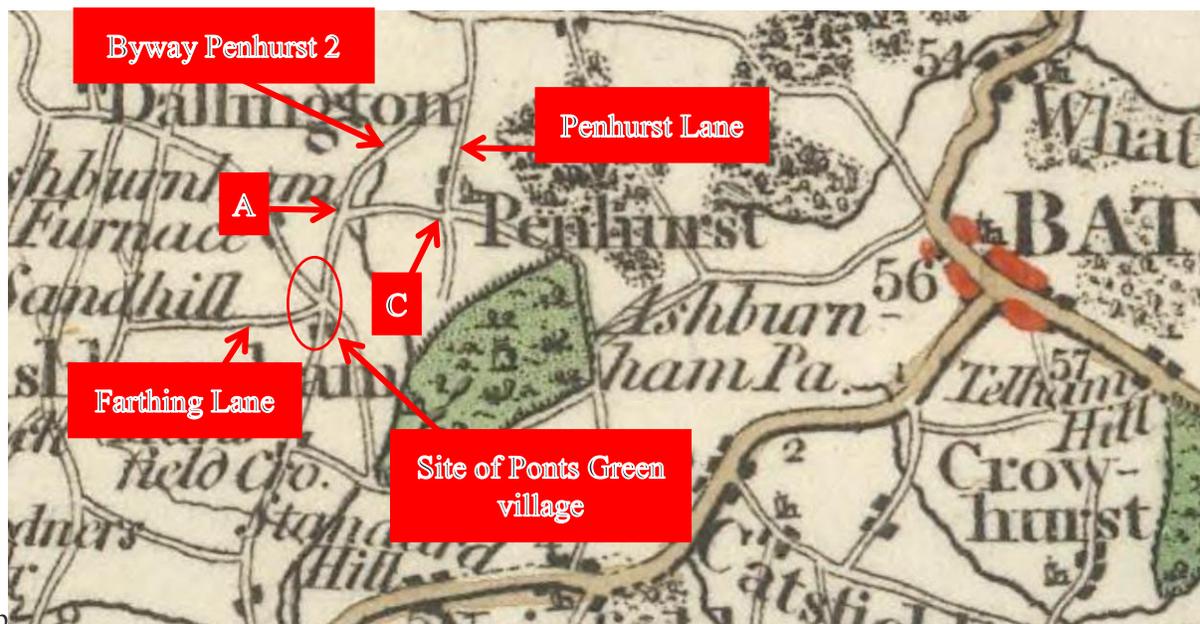


Figure 3 Extract from the Carey’s 1794 map showing the application route.

Analysis of evidence:

- 2.3.7. Figure 3 shows the application route as an open ended cross-roads, depicted by parallel lines from Ashburnham Furnace (point A) to Penhurst (point C). It is the only road connecting these two settlements.
- 2.3.8. Pont's Green which, due to its pentagonal road system, is both unique and distinctive is circled in red and is provided as a reference point.
- 2.3.9. The road connecting Ashburnham Furnace and Ashburnham, now Byway Penhurst 1, is not shown.
- 2.3.10. The application route is depicted in the same manner as other roads which now have a higher ROW status than footpath.

Significance of this evidence:

- 2.3.11. Although the small scale of the map means that some details are missing or their positioning uncertain. For example the exact positioning of point A, B and C of the application route is difficult to ascertain however the whole of the application route is clearly identifiable. However if one triangulates a number of sites such as the 5 point road junction at Ponto Green, the siting of Penhurst village and the positioning of the road which is now Byway Penhurst 2, and then compare these siting's with later maps the positioning of the application route becomes distinct.
- 2.3.12. The application route is depicted as a "Road" in the same manner as other roads which are now adopted roads or ROW such as Penhurst Lane, Farthing Lane and Byway Penhurst 2.
- 2.3.13. This evidence supports the assertion that the application route was a public road with a highway reputation greater than a Footpath/Bridlepath in 1794 and that it is more than probable that the application route had full carriage rights at the time the 1794 map was surveyed.
- 2.3.14. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

2.4. **1795: Gardner & Gream: “A Topographical Map of the County of Sussex”**

Date of publication: 1795	Scale: 1 inch to the mile	Date of Survey: 1778 - 1783
Cartographer: Gream	Publisher: Faden	Edition: 2nd
Surveyor: Gardner, Yeakell and Gream		
Source: http://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A80922		

2.4.1. Gardner & Gream’s “A Topographical Map of the County of Sussex Reduced from the Large Survey in Four Sheets” was produced as a result of a new survey by William Gardner, Thomas Yeakell, and Thomas Gream. It is, according to Kingsley's classic record of Sussex maps² “the most important of all Sussex maps”. This is because it was commissioned by the 3rd Duke of Richmond, who became Master-General of the Ordnance in 1782. Gardner later followed the Duke to the Board of Ordnance, becoming Chief Draughtsman to the Board.

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

2.4.3. The map does not have a key/legend.

Evidence:

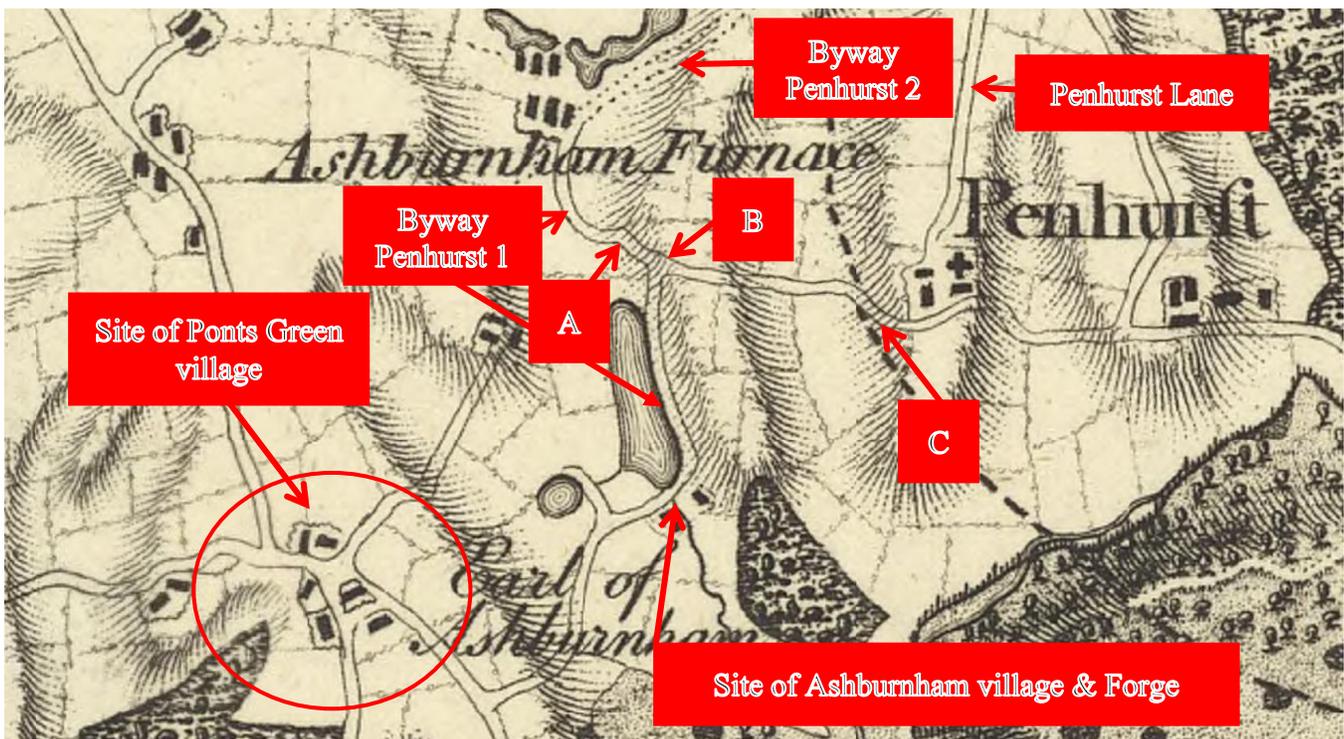


Figure 4 Extract from Gardner and Gream map of 1795

² “Printed Maps of Sussex 1575-1900” David Kingsley Published by Sussex Record Society, Lewes, 1982

Analysis of evidence:

- 2.4.4. Compared to Cary's map the increased scale (1' to the mile compared to Cary's 5' mile to the inch) and additional details shown on the map (details such as ponds, woods and field boundaries) allow point's A, B and C to be pinpointed with accuracy.
- 2.4.5. Figure 4 shows the whole of application route as an open ended cross-road, which is part of the route connecting Ashburnham Furnace and Penhurst. The application route is depicted by solid parallel lines, separate from any hereditament.
- 2.4.6. Figure 4 shows the section of the application route between points A and B as part of the open ended cross-road, depicted by solid parallel lines connecting Ashburnham Furnace and Ashburnham, (though the siting of Ashburnham village is not named on this map)
- 2.4.7. Pont's Green is shown as a major cross-roads but is not named. (The pentagonal road junction at Pont's Green is both unique and distinctive within the area and has been circled in red to provide a reference point)
- 2.4.8. When compared to Cary's 1794 map some roads have been omitted, for example at Penhurst cross-roads the southerly continuation road is not shown, and some roads added, for example the cross-roads between Ashburnham Furnace and Ashburnham village (now Byway Penhurst 1)
- 2.4.9. The application route is depicted in the same manner as other roads which now have adopted road, Byway or Bridleway status such as Penhurst Lane and Byways Penhurst 1 & 2.

Significance of this evidence:

- 2.4.10. There are numerous differences between Gardner and Gream's 1795 map and Cary's 1794 map. For example additional topographical detail are included such as lakes, ponds, woods, field boundaries and an attempt to indicate terrain has been made. Some roads have been removed and some roads added. All this suggests that this map was a result of a new survey
- 2.4.1. The map shows the whole of the application route as an, open ended cross-road, depicted by solid parallel lines which is part of the roads linking Ashburnham Furnace to Penhurst, Ashburnham Furnace to Ashburnham and Penhurst to Ashburnham . This road is shown in the same manner as other roads which are now adopted roads or Byway and Bridleway ROW such as Penhurst Lane and Byway Penhurst 1 and Byway Penhurst 2.
- 2.4.2. The fact that the application route is shown as a cross-roads connected Ashburnham Furnace, Penhurst village and Ashburnham village endorses that in 1794 the application route was more likely than not to have been a public road with a highway reputation greater than a Footpath/Bridlepath, and therefore was more likely than not to have had carriage rights at the time the map was surveyed.
- 2.4.3. Few private roads were shown. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series. The existence of a road on this map indicates that the road was more likely than not, a public road with higher rights than that of a Footpath/Bridleway and more than probable was a highway possessing carriageway rights.
- 2.4.1. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

2.4.1. Certain parallels can be drawn between the application route and Planning Appeals and Guidelines. Particularly relevant to this Application are the following;

2.4.2. Paragraph 2.24 of the Planning Inspectorate's Consistency Guidelines says

"In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres."

2.4.3. It is generally accepted that on older maps a 'cross road' generally, but not always, depicted a public road. These maps were expensive to purchase and as Judge Howarth commented in *Hollins v Oldham* [1995] there was:

"...no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use."

2.4.4. This viewpoint was recently reinforced by the Planning Inspectorate in Appeal Ref: FPS/D0840/7/24M1 (D0840724 The Cornwall Council (Addition of Restricted byway (Penponds) Modification Order 2016 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725563/fps_d0840_7_24M1_final_od.pdf))

"12. Such a map would be likely to show public routes rather than private ones, which could not be used by those purchasing the map"

2.5. 1825: Greenwood and Greenwood: “Map of Sussex”

Date of publication: 1825	Scale: 1 inch to 1 mile	Date of Survey: 1823-1824
Cartographer: Greenwood and Greenwood	Publisher: Greenwood Pringle & Co, 13 Regent Street, Pall Mall, London	Edition:
Source: www.theweald.org/m00.asp?PicIdto=61010304		

- 2.5.1. This map was made for sale to the public, and so is unlikely to show routes that the public could not use.
- 2.5.2. Although the Ordnance Survey sheets for Sussex were already available, Greenwood’s selection of detail and names demonstrates that he surveyed the county independently, supplementing his fieldwork from printed topographical and statistical sources.
- 2.5.3. The map is finely engraved in the manner of the best contemporary firms, although the representation of relief is poor.
- 2.5.4. Few private roads were shown on older maps. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the Ordnance Survey 1-2500 series. The existence of a way on this map means that it was more likely than not, a public route.

Evidence:

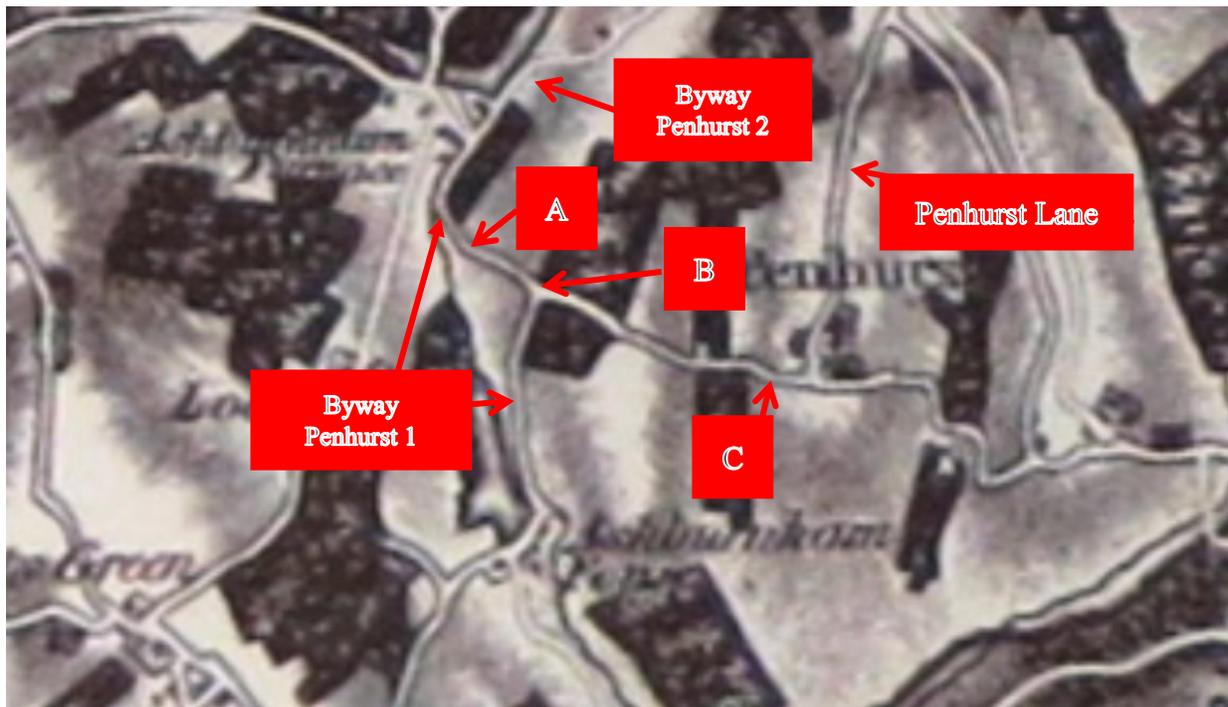


Figure 5 Extract from Greenwood and Greenwood Map of Sussex 1825 showing the application route

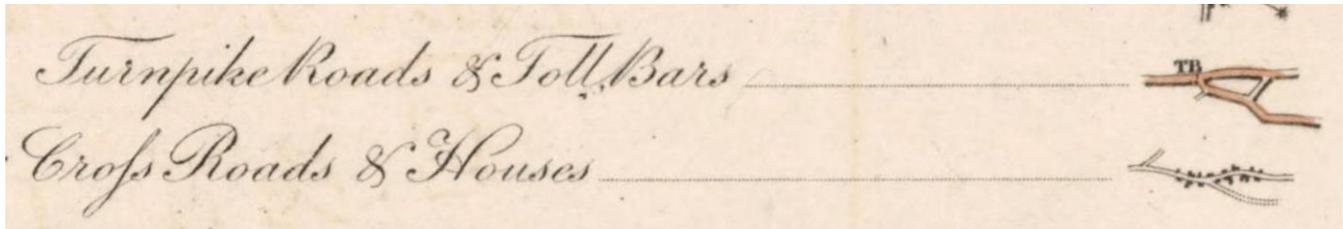


Figure 6 Extract from “Explanation” on Greenwood & Greenwood Map of Sussex 1825

Analysis of evidence:

- 2.5.5. When compared to the 1795 Gardner & Gream’s map additional details are included. Road depictions have changed, for example the road which is now Byway Penhurst 2 and the road from Court Lodge Farm are now depicted by parallel lines, used to depict cross roads (see Figure 6) and not dotted lines as per Gardner and Cream. In addition Ashburnham Forge is now named and sited.
- 2.5.6. Figure 5 shows the whole of the application route as an open-ended cross-roads (see Figure 6 - Explanation), depicted by parallel lines connecting Ashburnham Furnace and Penhurst.
- 2.5.7. Figure 5 shows the section of the application route between points A and B as part of the open ended cross-road, depicted by solid parallel lines which is part of the route connecting Ashburnham Furnace and Ashburnham.

Significance of this evidence:

- 2.5.8. Additional details on the map, such as the changes in roads depiction and the siting and naming of Ashburnham and Pontoons Green villages, indicate that the map was likely to have been the result of a new survey carried out some 30-40 years after the survey used for the Gardner & Gream map of 1795.
- 2.5.9. The map shows the whole of the application route as an, open ended cross-road, depicted by solid parallel lines which is part of the roads linking Ashburnham Furnace to Penhurst. The section of the claimed route between points A and B is part of the road connecting Ashburnham Furnace to Ashburnham. The section of the claimed route between points B and C is part of the road connecting and Penhurst to Ashburnham.
- 2.5.10. The fact that the application route is shown as a cross-roads connecting Ashburnham Furnace, Penhurst village and Ashburnham endorses that the application route was more likely than not in 1825 to have been a public road with a highway reputation greater than a Footpath/Bridlepath, and therefore was more likely than not to have had carriage rights at the time the map was surveyed.
- 2.5.11. The application route is shown in the same manner as other roads which are now adopted roads or ROW such as Penhurst Lane, Byway Penhurst 1 & Penhurst 2 and many of the roads around Pontoons Green
- 2.5.12. Few private roads were shown. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series. The existence of a road on this map indicates that the road was more likely than not, a public highway with higher rights than that of a Footpath/Bridleway and more than probable was a highway possessing carriageway rights.
- 2.5.13. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Carriageway status.

2.5.14. Certain parallels can be drawn between the application route and Planning Appeals and Guidelines. Particularly relevant to this Application are the following;

2.5.15. Paragraph 2.24 of the Planning Inspectorate's consistency guidelines says

"In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres."

2.5.16. It is generally accepted that on older maps a 'cross road' generally, but not always, depicted a public road. These maps were expensive to purchase and as Judge Howarth commented in *Hollins v Oldham* [1995] there was:

"...no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use."

2.5.17. This viewpoint was recently reinforced by the Planning Inspectorate in Appeal Ref: FPS/D0840/7/24M1 (D0840724 The Cornwall Council (Addition of Restricted byway (Penponds) Modification Order 2016 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725563/fps_d0840_7_24M1_final_od.pdf))

"12. Such a map would be likely to show public routes rather than private ones, which could not be used by those purchasing the map"

2.6. The significance of the evidence in Commercial County Maps

- 2.6.1. The conclusion from the commercial map evidence is that the application route was shown on numerous commercial maps in the 18th and 19th Century and was in the balance of probability a public road with vehicular rights.
- 2.6.2. These pieces of evidence demonstrate the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 2.6.3. Whilst depiction of a Road on a map is not in itself evidence of a right of way, Planning Inspectorate Consistency Guidelines for OS and other commercial maps state (in Section 12.43) that:

“Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.”

- 2.6.4. Certain parallels can be drawn between the application route and Planning Appeals. Particularly relevant to this Application are the following;
- 2.6.5. Planning Appeals Ref: ROW/3181626
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/70554/7/row_3181626_od.pdf)

Where the Inspector concluded that;

“Given that they were prepared to assist travellers the routes appear to be related to public access. In objection it is argued that use would have been on foot to access Cuby church, situated to the north-west of point A. However, there is no evidence that such access would have only been on foot; given the small scale of these maps, it does not appear that footpaths would be likely to be depicted. I agree with the Ramblers that weight should be placed on the depiction..... as supporting higher rights over the Order route.”

- 2.6.6. Order Ref: ROW/3200513 Heading 9
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/76536/9/row_3200513_od.pdf)

“40. Whilst accepting that Postle’s Lane is visible on some of the maps, the objector contends that many of the maps have been misinterpreted. Rather than highway, he asserts that they show nothing more than farm tracks used by farmers and estate workers for daily farming duties on horseback with carts and to access stock. The objector maintains that there is no evidence to support the view they were used by the public and the main highways link communities whereas the tracks do not.

41. Although the presence of the route could be depicted on some maps as nothing more than a farm track, such as Faden’s map and possibly the OS maps, it is inconsistent with other documentation.

42. Trunch Tithe Map and Apportionment indicate that the Order route is a public road. This is supported by the OS ‘Object Name Book’ of 1906 which positively identifies Postle’s Lane as a ‘public road’. Bryant’s map further lends support to Order Decision ROW/3200513

<https://www.gov.uk/planning-inspectorate> 6 this being a road with public rights and the Ministry of Food Farm Survey map infers that it is a highway.

43. The exclusion of the Order route from adjacent hereditaments on the Finance Act map gives rise to a strong possibility of the existence of public carriageway rights in the circumstances where its status as a public road is supported in other historical plans.”

- 2.6.7. During the extensive research for this DMMO Application Statement nothing was found to indicate that the above evidence was considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

3. Ordnance Survey Maps Context and Evidence

3.1. Introduction to OS Maps

- 3.1.1. Ordnance Survey (OS) maps were originally produced for military purposes but quickly achieved widespread public sales and acceptance.
- 3.1.2. OS maps from before the 1950s 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 Ordnance Survey 1st Edition 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.
- 3.1.3. It is often said that the disclaimer on the early OS maps means that they are not evidence of public rights. This is not the case. Whilst before the 1950s it is not possible to say “It is on the OS map therefore it is a right of way”, earlier OS maps provide evidence from which inferences can be drawn. For example, if a route is over a single landowner’s land and leads only to a barn on that land, it can be inferred that this route was probably private. But if a route goes from one public highway to another and crosses the land of a number of owners or occupants or a number of occupants were dependent on the way to access their land then, in the absence of evidence of private rights or wayleaves, it can be inferred that public rights are likely to exist. Such evidence is unlikely to be conclusive on its own, but taken with other evidence, may support the existence of public rights on the balance of probabilities.
- 3.1.4. In addition, after observing that the Courts have determined OS maps are not evidence of the status of a way, the Planning Inspectorate Consistency Guidelines say at Section 12, page 9 & 10

“12.35 Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21 ‘Evidential Weight’ refers)”

And contemporary wisdom was that the disclaimer on the early OS maps was simply to avoid the potential of litigation, as declared in *The Countryside Companion* (1948 page 320):

“In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation.....A path which is shown, may, however, generally be presumed public.”

- 3.1.5. Whilst Ordnance Survey surveyors were instructed not to investigate public status the Instructions to Ordnance Survey Field Examiners 1905 is clear in its direction that:

“Mere convenience footpaths for the use of a household, cottage or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown. N.B. – A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.”

- 3.1.6. It is generally considered that when horses were used for transport, prior to the motor age, all roads and bridleways and bridle roads, unless specifically denoted as “Private”, were regarded as public facilities and therefore carried all rights associated with Roads and Highways.

3.2. **1813: Old Series (1st edition)**

Date of publication: 1813	Scale: 1¼ inches to 1 mile	Date of Survey: c.1784-1869.
Cartographer: Lt. Col. Mudge	Publisher: Ordnance Survey	Edition: Sussex
Source: https://nla.gov.au/nla.obj-231917584/view		

- 3.2.1. This map was the “Old series Ordnance Survey maps of England and Wales”. Published by Lt. Col. Mudge, Tower [and later] by Lt. Col Colby of the Royal Engineers; Sold by Jas. Gardner, Agent for the sale of the Ordnance maps, 163 Regent St.
- 3.2.2. It was engraved at the Drawing Room in the Tower by Benjn. Baker & Assistants and was printed by Ramshaw.
- 3.2.3. The maps for Sussex were first published between 1813 and 1819.
- 3.2.4. These maps were used for official planning, as the basis for index maps to larger scale map series and for military planning to inform the defence of the south coast if Britain was invaded by the French. A detailed network of roads is shown on this map.
- 3.2.5. Copies of the instructions given about the portrayal of private roads are given in correspondence held at the national archive under reference OS 3/260. Explanatory notes on these maps state that:

“Roads are drawn by double lines, solid or dotted for fenced or unfenced. A line at right angles to the road at the end of a dotted edge, indicates a field boundary delimiting unenclosed land. Roads are drawn with slightly different widths; broader roads with one line bolder are turnpike roads, narrower roads are minor roads. Tracks are drawn by a single dotted line”³.

The following instruction was also given:

“as these plans are intended for military purposes no existing roads should be omitted; but to distinguish those roads which are entirely on trespass the line of the main road from which they branch is not to be broken for them”

³ Extract from Old Series 1 inch maps Categorisation notes for 1810 OS maps
<http://www.geog.port.ac.uk/webmap/hantscat/html/ordnce6.htm>

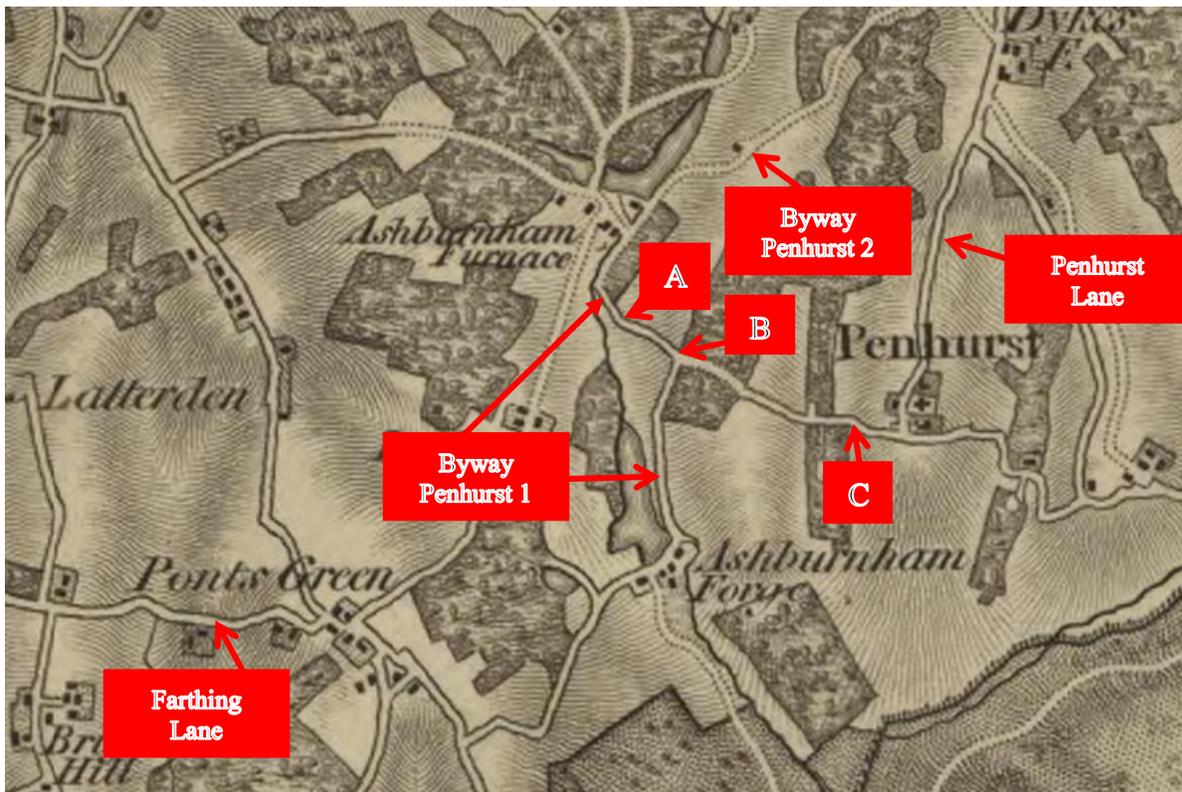
Evidence:

Figure 7 Extract from OS 1813 Old Series map showing the application route.

Analysis of this evidence:

- 3.2.6. Figure 7 shows the whole of the application route as an open-ended public cross-roads, depicted by parallel lines separate from any hereditament running from point A to point C.
- 3.2.7. The whole of the application route is part of the public cross-roads connecting Ashburnham Furnace and Penhurst.
- 3.2.8. The section of the application route between points A and B is part of the open ended public cross-road, connecting Ashburnham Furnace and Ashburnham Forge.
- 3.2.9. The section of the application route between points B and C is part of the public cross-road connecting Penhurst village and Ashburnham Forge.
- 3.2.10. The application route is shown in the same manner as other roads which are now adopted roads or ROW with higher status than footpath.

Significance of this evidence:

- 3.2.11. When reviewed in light of the surveyors instructions outlined in 3.2.5, the application route is shown as a public road. This can be ascertained in that surveyors are instructed that roads are to be “drawn by double lines, solid or dotted for fenced or unfenced” and that public roads are to be notated as “broken” where they intersect with another main road”. The whole of the application route is depicted by solid double

lines, depicting a fenced road and is broken where it intersects with other main roads. This provides strong evidence that the application was a public road.

- 3.2.12. The fact that the application route is shown as part of the public cross-roads connected Penhurst and Ashburnham Furnace, part of the public cross roads connecting Ashburnham Furnace and Ashburnham Forge, and part of the cross-roads connecting Penhurst and Ashburnham Forge endorses that the application route was a public road with a highway reputation greater than a Footpath/Bridlepath, when the map was surveyed.
- 3.2.13. The application route is depicted as a “Road” in the same manner as other roads which are now adopted roads or ROW such as Penhurst Lane, all the roads around Ponds Green, and Byway Penhurst 1 & Byway Penhurst 2. This indicate that the application route was a more than likely to have been a public road with a highway reputation greater than a Footpath/Bridlepath, and therefore was more likely than not to have had carriage rights at the time the map was surveyed.
- 3.2.14. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

3.3. 1874: 1st Edition Ordnance Survey: 25 inch to the mile

Date of publication: 1874	Scale: 25inch to 1 mile County Series	Date of Survey: 1872 (circa)
Cartographer:	Publisher: Ordnance Survey	Edition: Sussex XXIX.16 Rev1
Source: Old-Maps - the online repository of historic maps - Map 568968 117283 12 100315		

- 3.3.1. The Ordnance Survey 25 inch to the mile County Series (1841-1952) is commonly held to be the most accurate and most detailed map of the Ordnance Survey. The maps allow practically every feature in the landscape to be shown. They provide good detail of all buildings, streets, railways, industrial premises, parkland, farms, woodland, and rivers.
- 3.3.2. In 1855, the 25 inch was officially authorised as the basic scale for all cultivated rural areas. Their bold style and informative symbols and abbreviations allow easy interpretation which led to them being used for statutory undertakings for the production of the 1910 Finance Act valuation records and in 1941 for the Ministry of Agriculture Farm Survey.
- 3.3.3. For the 1:2500 map the whole country was initially surveyed between 1842 and 1893. These maps are considered of significant importance because they provided the most detailed OS mapping for most parts of England and Wales and as a result were used for land registration, conveyancing, land valuation, tithes and ratings (old title deeds often refer to specific numbered land parcels listed on these maps and detailed within the associated Books of Reference).
- 3.3.4. As a result of its importance to government and legal administration it is regarded as one of the most important OS maps produced. Sir Charles Trevelyan (regarded as the founder of the modern British Civil Service) stated in May 1855:
- “...as the relations of landlord and tenant apply to every part of town and country, to give certainty and facility to their transactions is an important item in that aggregate of public utility which constitutes the justification for the 1:2500 scale.”⁴*
- 3.3.5. Copies of the first edition of the OS 25 inches to the mile maps can be found online at <https://www.old-maps.co.uk/#/>

⁴ “A History of the Ordnance Survey” Edited by W A Seymour p.168 <https://www.ordnancesurvey.co.uk/documents/resources/os-history.pdf>

Books of Reference /Area Books

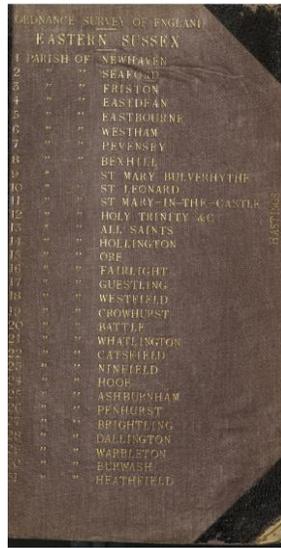


Figure 8 Book of Reference for 1874 1:2500 OS map for Parish of Ashburnham & Penhurst

- 3.3.6. Books of Reference for the County of Sussex accompanied the 1st Edition OS 25 inches maps and contained land use information. Parcels of land were numbered on the maps and the Book of Reference can be used to determine land use. Details and descriptions of relevant plots are outlined as appropriate in this document. The Book of Reference for Penhurst (see Figure 8) can be accessed in the Bodleian Library in Oxford (<http://dbooks.bodleian.ox.ac.uk/books/PDFs/555055185.pdf>).
- 3.3.7. Considering the above it is therefore very likely that a road depicted on this map and defined as “Road” within the associated Book of Reference did exist and was likely to be a public road unless otherwise notated.

Evidence:

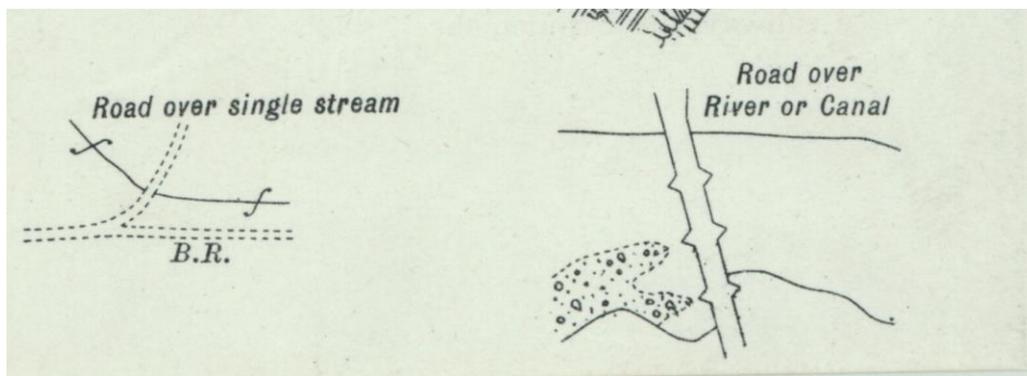


Figure 9 Conventional Signs and Writing Used on the 1:2500 Plans of the Ordnance Survey.
 (<https://maps.nls.uk/view/128076891>)

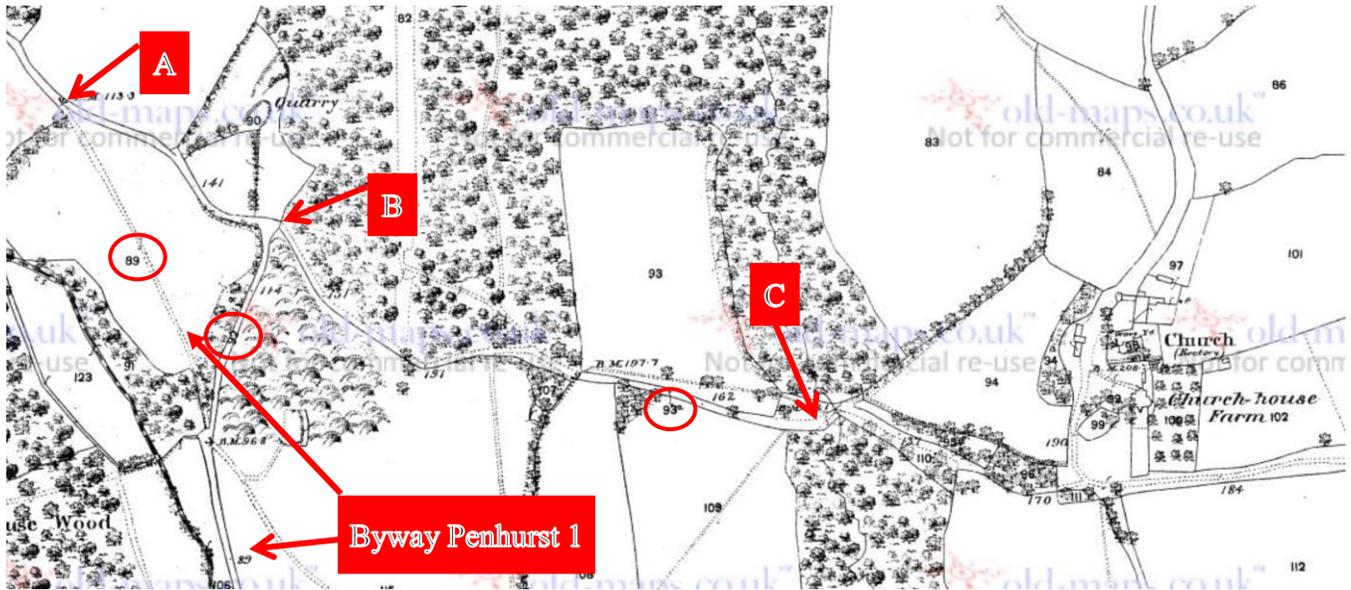


Figure 10 Extract from OS 1874 1:2500 map

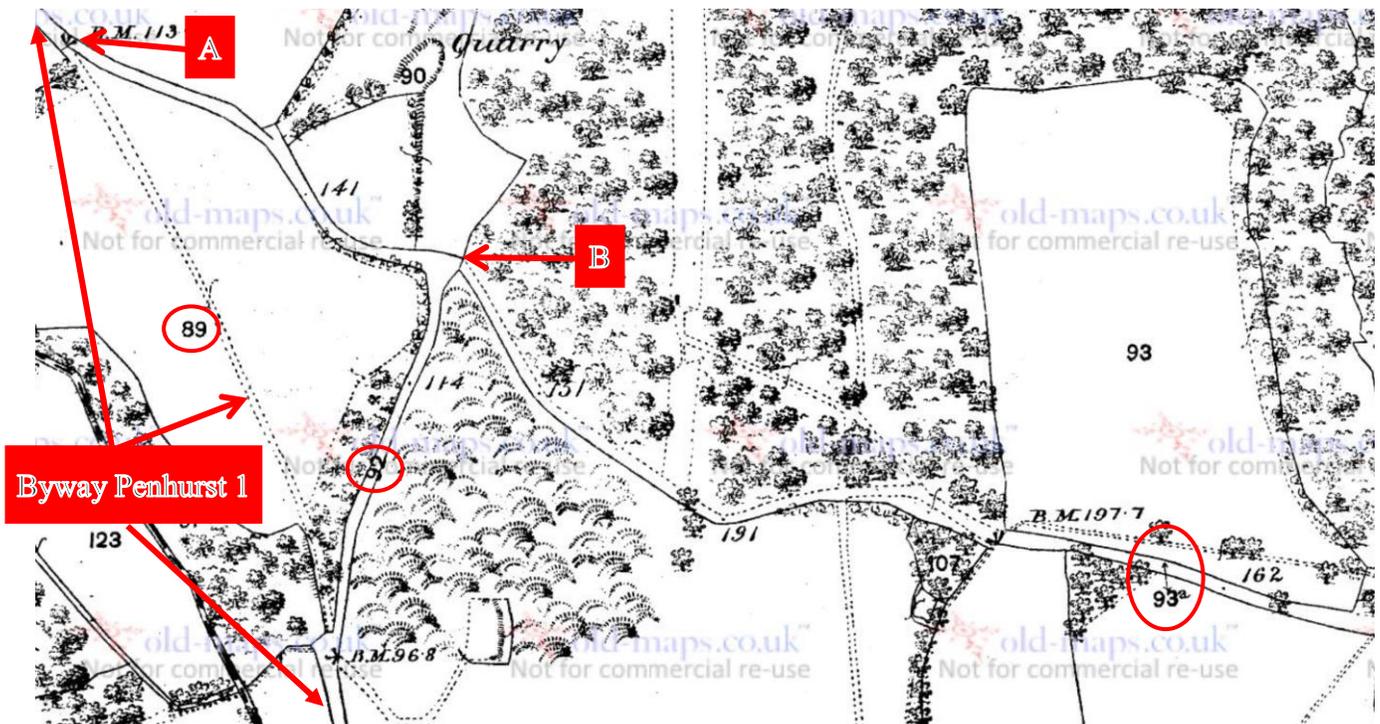


Figure 11 Magnified extract from OS 1874 1:2500 map showing the western end of the application route

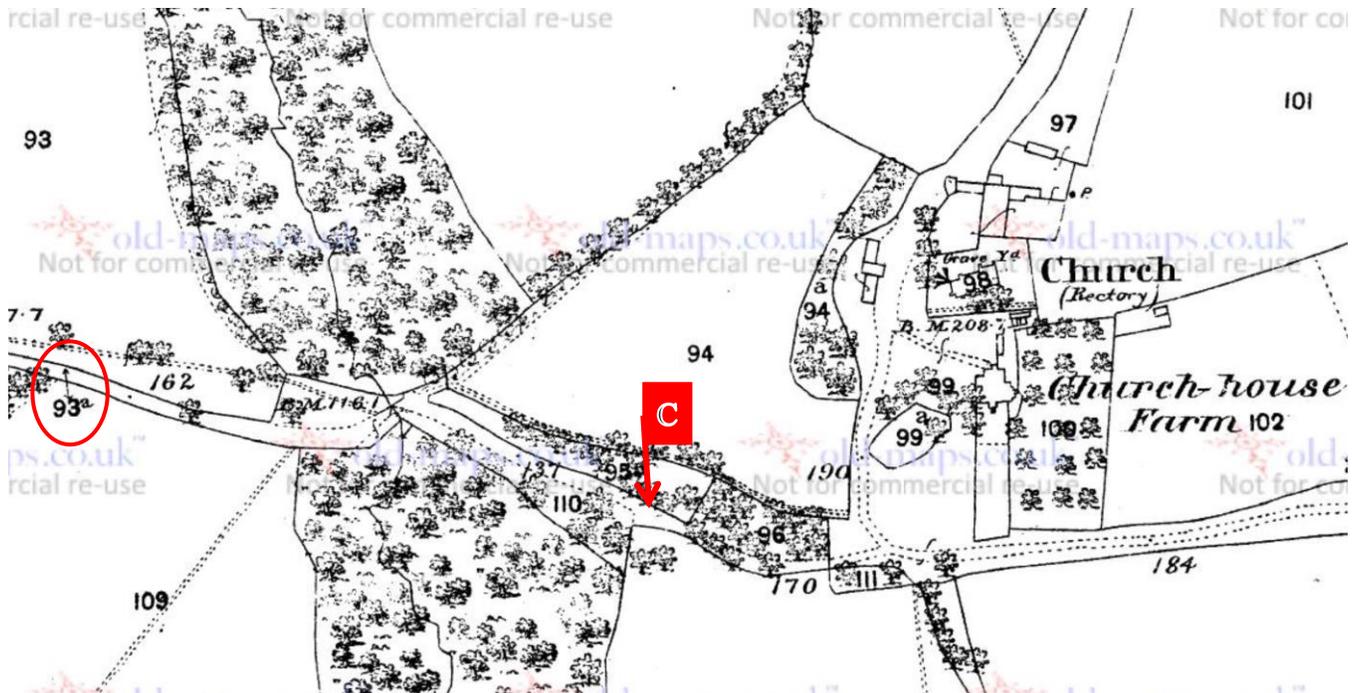


Figure 12 Magnified extract from OS 1874 1:2500 map showing the eastern end of the application route

91	1.683	Arable, pasture, &c.	137
92	1.699	Wood, &c.	138
93	7.680	Road.	139
93a	1.411	Pasture, &c.	140
94	4.002	Road.	141
94a	.456	Arable, &c.	142
95		Wood.	

Figure 13 Extract from the Penhurst Book of Reference for 1874 showing plot number 93a description

88	·239	Wood, &c.
89	7·172	Pasture, wood, &c.
90	2·653	Arable, pasture, &c.
91	1·683	Wood, &c.
92	1·699	Road.
93	7·680	Pasture, &c.

Figure 14 Extract from the Penhurst Book of Reference for 1874 showing plot numbers 89 & 92 descriptions.

Analysis of evidence:

- 3.3.8. Figure 10 shows the whole of application route. From point A to point B and from point B to point C as an open ended road, defined by parallel /hashed lines (see map categorisation Figure 9). Critical points such as identification letters, Reference Book plot numbers (see Figure 8) and existing ROW are identified in red.
- 3.3.9. Figure 11 shows the magnified western end of application route from point A to plot description 93a. It shows point A where the application route adjoins the current Byway Penhurst 1. The application route between points A and B, is shown as part of the old road from Ashburnham Furnace to Ashburnham village (a significant part of this road is now Byway Penhurst 1) and is included in plot 92 which is described in the Penhurst Book of Reference (see Figure 14) as “Road”.
- 3.3.10. Figure 11 also shows Plot 89, which is the location of the current Byway Penhurst 1. Figure 14 shows plot 89 is described in the Penhurst Book of Reference as “Pasture, wood, &c”.
- 3.3.11. Figure 11 shows that at point B there is a line crossing the application route.
- 3.3.12. Figure 12 shows the magnified eastern end of application route from plot 93a to point C. This section of the application route shows an open ended road, defined by parallel /hashed lines. The whole of the section of the application route between point B and C is defined as plot 93a.
- 3.3.13. Figure 13 shows that the Penhurst Book of Reference describes plot 93a as “Road”.

Significance of this evidence:

- 3.3.14. This map shows the application route as an open ended road, defined by parallel /hashed lines from point A to point B and an open ended road, defined by parallel /hashed lines from point B to point C. At point B there is a line crossing the application route which may indicate a field boundary or a gate. Such lines are depicted crossing other roads– including currently adopted roads – elsewhere on the map and are therefore not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated (Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));

“24. The Council accepts that notation on the 1872, 1898 and 1912 OS maps could be supportive of there being a gate at point E. However, I concur with the Council that the presence of a gate would not prevent a route from being a vehicular highway.

- 3.3.15. The section of the application route between points A and B is part of the road from Ashburnham Furnace to Ashburnham village. It is part of plot 92 which is defined within the Penhurst Book of Reference accompanying this map as “Road”. The fact that this road connects two settlements indicates that it is more likely than not that this section of the application route was a public highway that carried vehicular rights.
- 3.3.16. The section of the application route between points B and C is part of the road from Ashburnham Furnace to Penhurst village and also part of the road system connecting Penhurst to Ashburnham Forge and village. It is notated as plot 93a and is defined within the Penhurst Book of Reference accompanying this map as “Road” (see Figure 13). The fact that the application route connects three settlements indicates that this was likely to be a public highway that carried vehicular rights.
- 3.3.17. The current Byway Penhurst 1, which is the only current access between Ashburnham Furnace and Ashburnham, runs along the “Road”, defined by hashed parallel lines, included in plot 89. However in the Penhurst Book of Reference plot 89 is described as “Pasture, Wood & co” and makes no reference to a road. This indicates that at the time of this maps survey the main route was most likely to have been via the claimed route between points A and B which were encompassed in plot 92 and not via the road encompassed within plot 89.
- 3.3.18. This evidence confirm that at the time of this survey in 1874 the section of the application route between points A and B was regarded as a part of the public road from Ashburnham Furnace to Ashburnham Forge and village and the section of the application route between points B and C was regarded as part of the public road connecting Ashburnham Furnace to Penhurst and Penhurst to Ashburnham Forge and village.
- 3.3.19. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

3.4. 1898: County Series: “Sussex XLIII.13 (Ashburnham; Penhurst)”

Date of publication: 1898	Scale: 1:2500	Date of Survey: Rev: 1898
Cartographer:	Publisher: Ordnance Survey	Edition:
Source: https://maps.nls.uk/view/103671316 https://www.old-maps.co.uk/-/Map/567152/116282/12/100547		

Evidence:

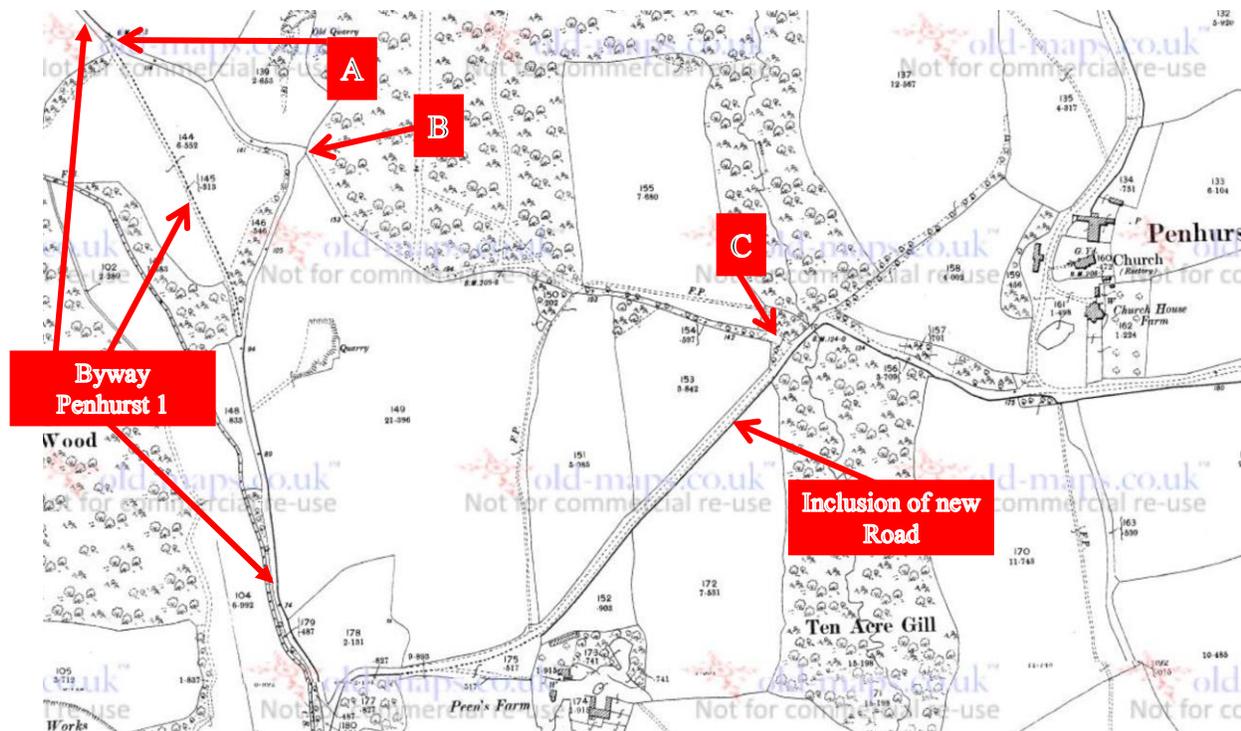


Figure 15 Extract from OS 1898 County Series Sussex 1:2500 showing the application route.

Analysis of evidence:

- 3.4.1. Figure 15 show the whole of the application route as an open ended road, defined by parallel lines (see map categorisation Figure 9) from Point A to Point B in a similar manner to the southern section of the road which is now Byway Penhurst 1.
- 3.4.2. At point B there is a line crossing the application route
- 3.4.3. The map show the application route from point B to point C as an ungated road, defined by parallel lines (see map categorisation Figure 9) in a similar manner to the road which is notated on the extract as the middle section of Byway Penhurst 1.
- 3.4.4. At point C there is a line crossing the application route
- 3.4.5. The mapping of a new road connecting Ashburnham and Penhurst via Penn’s Farm indicates that the map was produced from a new survey, later than the survey used for the 1875 OS 1:2500 map discussed in section 3.3

Significance of this evidence:

- 3.4.6. The map shows the application route from Point A to Point B as an open ended road, defined by parallel unbroken lines in a similar manner to the southern section of the road which is now Byway Penhurst 1.
- 3.4.7. The map shows the application route from point B to point C as an ungated road, defined by parallel unbroken and hashed lines in a similar manner to the road which is now Byway Penhurst 1.
- 3.4.8. At point B & C there are lines crossing the application route. Such lines are depicted crossing other roads – including currently adopted roads – elsewhere on the map and are therefore not being considered an indication of restraint to public access.
- 3.4.9. However even if such gates existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated (Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));
- “24. The Council accepts that notation on the 1872, 1898 and 1912 OS maps could be supportive of there being a gate at point E. However, I concur with the Council that the presence of a gate would not prevent a route from being a vehicular highway.*
- 3.4.10. The inclusion of the new road connecting Ashburnham and Penhurst, indicates that the map was a result of a new survey.
- 3.4.11. These maps confirm that at the time of this survey in 1897 the application route from point A to point B was part of the cross roads between Ashburnham Furnace to Ashburnham Forge and village. As such it is more than probable that this section of the application route was a public road with a highway reputation greater than a footpath and more likely vehicular rights.
- 3.4.12. These maps show that at the time of this survey in 1897 the application route from point B to point C was still part of the cross roads between Ashburnham Furnace and Penhurst. However with the inauguration of the new road it was probably no longer considered the main route between Penhurst and Ashburnham Forge and village.
- 3.4.13. This being the case it remains more than probable that the section of the application route from B to C remained a public road, though probably less used, with a highway reputation greater than a footpath and more likely Bridleway/Carriage rights.
- 3.4.14. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

3.5. The significance of the evidence in Ordnance Survey Maps

- 3.5.1. The conclusion drawn from the OS map evidence above is that the application route was historically a public road and therefore should as a minimum have a modern-day highway status of a Bridleway.
- 3.5.2. These pieces of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 3.5.3. There are numerous Planning Inspectorate decisions which assist in assessing the importance and relevance of OS maps with respect to the application route. All of these orders are dated after the 1949 assessment and should therefore be considered as “a discovery of evidence”. Some of the most relevant to this DMMO Application Statement are:

3.5.4. Order Ref: ROW/3181626

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705547/row_3181626_od.pdf

“OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey.”

And with respect to Roads being open to public use:

“The 1875 – 1901 and 1906 – 08 OS maps clearly show the Order routes without barriers or gates to prevent use I consider that the OS mapping demonstrates that the Order route sections were open and available for use at end of the nineteenth and beginning of the twentieth century. The OS maps do not show whether they were public or private but may assist in conjunction with other information.”

3.5.5. Order Ref: ROW/3200513

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765369/row_3200513_od.pdf

“17. The Order route is shown by solid parallel lines on the OS Old Series map of c1838. It is similarly shown on the OS County Series 1st edition map of 1885 along with the 1st edition 1886 and 2nd edition 1905. All depict the route in the same way as roads to the north and south which are public highways, including with colour wash on the 1885 edition.”

3.5.6. Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk)

“9. The small-scale maps would be unlikely to show footpaths or bridleways due to limitations on scale, and the depiction of the route is consistent with others which are now surfaced public roads.”.....

“13.There was no evidence of any gates across the route until after these highway changes, by which time it can be inferred, the route had already been dedicated as a highway not subject to such limitations.”

“14. No evidence was presented to show that there had been any legal change to the status of the Order route at any time and so no-one had the legal right to obstruct the existing highway in this way.”

“24. The Council accepts that notation on the 1872, 1898 and 1912 OS maps could be supportive of there being a gate at point E. However, I concur with the Council that the presence of a gate would not prevent a route from being a vehicular highway.

- 3.5.7. Order Ref: FPS/J1155/7/85 Microsoft Word - fps_j1155_7_85.doc (nationalarchives.gov.uk)

“17. As to the assertion by one of the objectors that the lane is shown as being gated on the 1889 map and that this did not give the appearance of a public carriageway. I do not think that this necessarily demonstrates the way is private. It is not uncommon for public highways in a rural setting to be gated for the retention of livestock.”

- 3.5.8. Order Ref: FPS/Z1585/7/62 Microsoft Word - fps_z1585_7_62.doc (nationalarchives.gov.uk)

“12....In a period before motor vehicles, the network of paths connecting villages were an important, if not essential, element in fostering social and economic links within the countryside.

- 3.5.9. Order Ref: FPS/M1900/7/70M Microsoft Word - fps_m1900_7_70_m.doc (nationalarchives.gov.uk)

“The existence of such a gate, unless locked, is not inconsistent with the Unsealed Unclassified Roads: Their History, Status, & the Effect of NERCA 2006. Revision Date: 31.3.2013. 45/57 Page 54 existence of a vehicular highway. It may simply be a means of restraining cattle and horses.”

These maps show that for a period of over two hundred years the lane has existed and there is no reason to suppose that it did not exist for a long period before 1770. The depicting of a track on the Ordnance Survey maps is not in itself evidence of the existence of a right of way. It merely purports to show the physical features on the ground. However, its existence for so long un-changed is not without significance and may lend support to the inference that public rights exist over it.”

- 3.5.10. During the extensive research for this DMMO Application Statement nothing was found to indicate that the above evidence was considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

4. Tithe Records

4.1. Introduction to Tithe Records

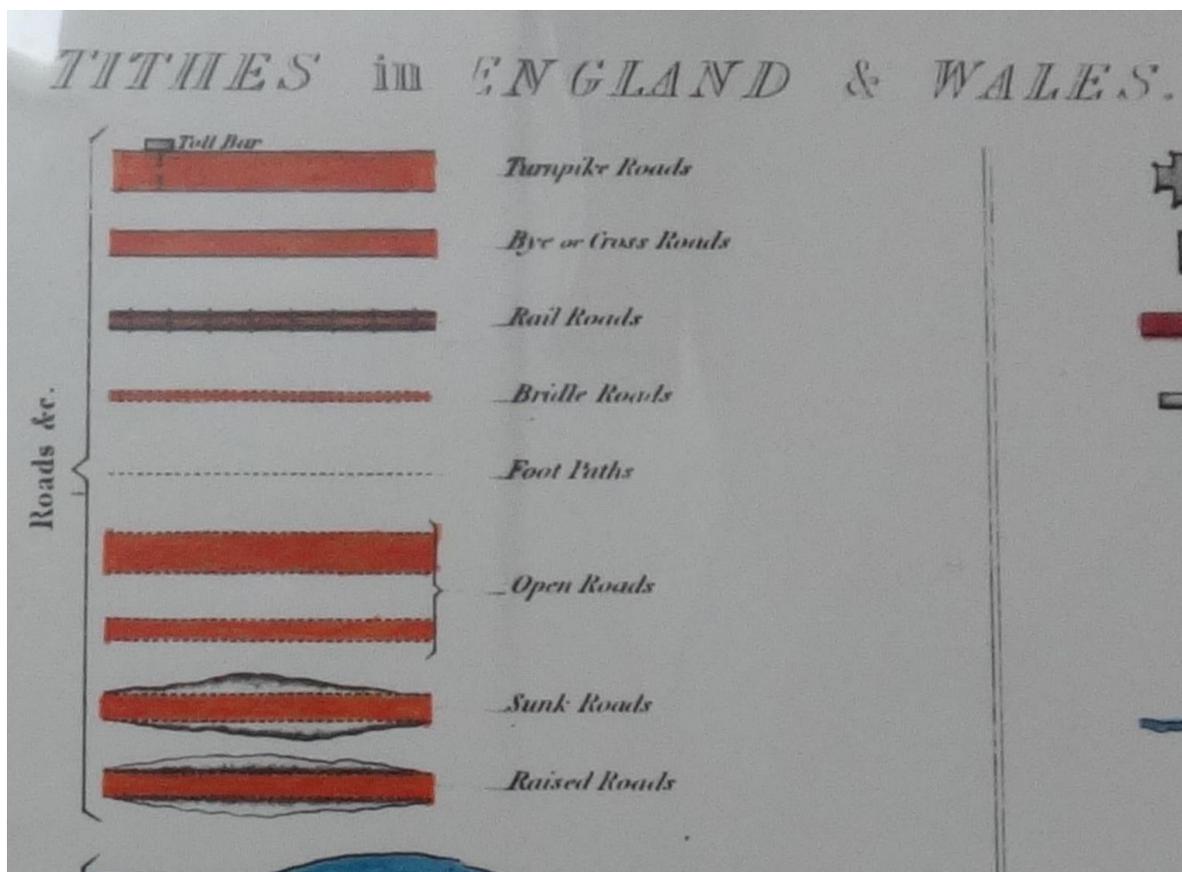


Figure 16 Extract from 1836 Lieutenant R K Dawson proposed standardised key for Tithe maps

- 4.1.1. The Tithe Commutation Act 1836 enabled tithes (a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the tithable land in order to assess the amount of money to be paid. In 1836 Lieutenant R K Dawson proposed a standardised key for Tithe maps (see Figure 16) which was enthusiastically supported by the Board of Tithe Commissioners for England and Wales. Plots of land shown on tithe maps were given plot numbers, and these numbers were then referenced on the associated “Apportionment Records”. The recommended sienna or light brown colouring for “Roads” although widely used was not mandatory. The Act was amended in 1837 to allow maps produced to be either First Class or Second Class of which the First Class maps had to be at least 3 chains⁵ to the inch and signed and stamped by the Commissioners. First Class maps are legal evidence of all matters which they portray whilst Second Class maps, which were required to be signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation.
- 4.1.2. The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although Bridleways, Footpaths and Green lanes were more likely to be at least partially productive (for example as

⁵ A chain is 66 feet, or just over 20 metres

pasture or coppice). 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.

4.1.3. In the text below details are given to show how the application route is displayed and of any relevant apportionments.

4.2. **1840 (circa): Penhurst Tithe Records**

Date of publication: c.1840	Scale: 16 in. to 1m.	Date of Survey: c.1840
Surveyor: W. Rider C.E	Publisher: Tithe Commission	Edition:
Source: All Tithe maps and Apportionments are to be found on the East Sussex County Council website: Ref TD/E109		
https://escr.maps.arcgis.com/apps/webappviewer/index.html?id=94d9d72603034a85bb68bce793fb5a59&find=PENHURST&showLayers=Tithe%20Maps;Labels;MajorARoads;ABRoads;MainRoadNames;AllRoadNames;PlaceNames;Large;LargeMedium;All;Locator;PENHURST		

4.2.1. The Penhurst Tithe map is a 2nd Class map for although it is signed by the Commissioners it has a scale of 5 chains to the inch and not 3 chains to the inch as required by 1st Class maps.

4.2.2. The extracts reproduced here are north-oriented.

Evidence:

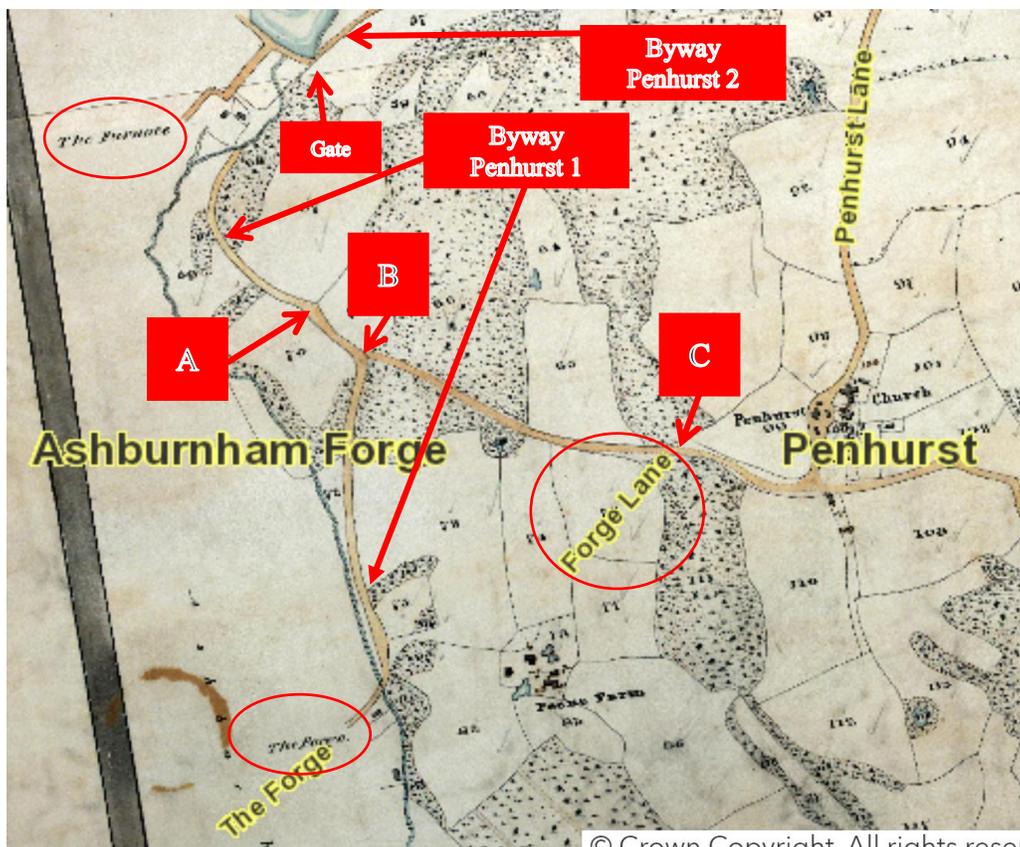


Figure 17 Extract from Penhurst Tithe Map of c.1840

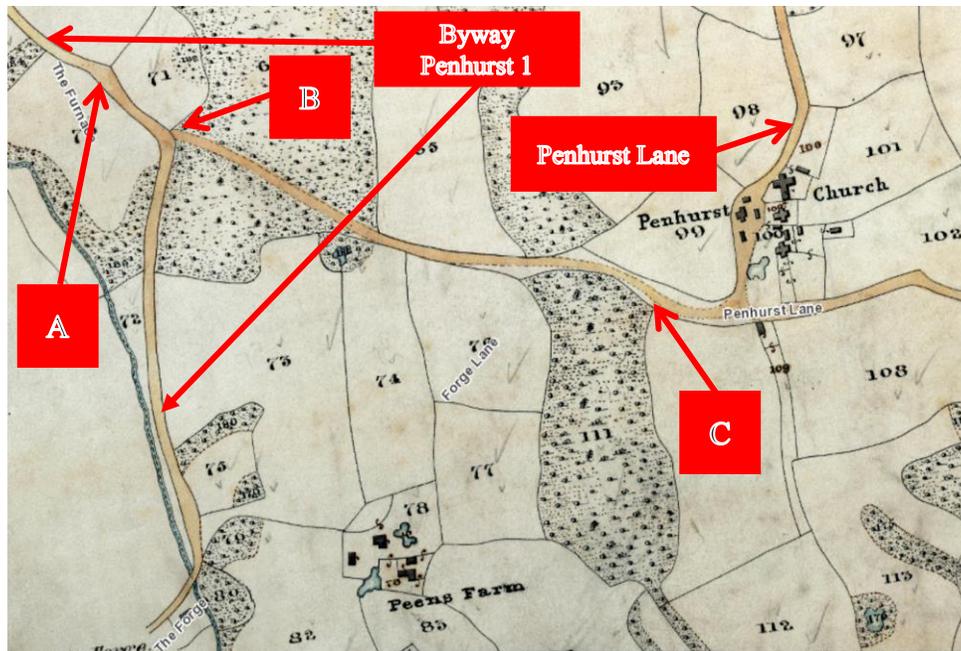


Figure 18 Magnified extract from Penhurst Tithe Map of c.1840 depicting points the application route.

Analysis of evidence

- 4.2.3. Figure 17 shows the whole of the application route is shown as an unnumbered road, coloured sienna and separate from any hereditament.
- 4.2.4. This map shows on the North West corner of the map an inscription states the road is [to Ashburnham] “The Furnace” whilst in the south west corner the road is notated as [to Ashburnham] “The Forge” (both circled in red)
- 4.2.5. This map shows the application route between point A and point B as unnumbered, ungated and shaded sienna in the same manner as other public highways shown on the Tithe map. It appears to be part of the public road between Ashburnham Furnace and Ashburnham village & Forge. A substantial section of this road is now Byway Penhurst 1.
- 4.2.6. This map shows the application route between point B and C as notated and accepted as “Forge Lane” (circled in red). It is also unnumbered and shaded sienna in the same manner as other public highways shown on the Tithe map. It appears to be part of the public road connecting Ashburnham Furnace and Penhurst.
- 4.2.7. Figure 18 shows that at point B there appears to be a line crossing the application route which could possibly either indicate a field boundary or a gate. In Figure 17 a similar line is shown on the section of road which is now Byway Penhurst 2.
- 4.2.8. Figure 18 shows point C as open ended.

Significance of this evidence

- 4.2.9. The whole of the application route is shown as a distinct road coloured sienna, separate from any hereditament and untithed. All these facets provide a strong indication that it was a public road with a highway reputation higher than a Footpath/Bridleway and more than probably Carriage rights.

- 4.2.10. The application route between points A and B appears to be part of the public road between Ashburnham Furnace and Ashburnham Forge and village. This road includes the notations (to) “The Furnace” and [to] “The Forge”. As these inscriptions do not appear on any other maps of the same era (e.g. Ashburnham Estate maps) this strongly indicates that this map was the result of a new survey. These instructions also provide strong evidence that this section of the application route was a public road with a highway reputation greater than a footpath and more likely vehicular rights.
- 4.2.11. The section between point A and point B of the application route is depicted in the same manner as other public highways shown on the Tithe map. An example of this is Penhurst Lane and the roads which are now Penhurst Byway 1 & Penhurst Byway 2.
- 4.2.12. At point B there is a line crossing the application route. This could depict a field boundary or a gate. Such lines are depicted crossing other roads, including currently adopted roads and Byways (for example Penhurst 2) elsewhere on the map and are therefore are not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated;

(Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));

“24. The Council accepts that notation on the 1872, 1898 and 1912 OS maps could be supportive of there being a gate at point E. However, I concur with the Council that the presence of a gate would not prevent a route from being a vehicular highway.

Order Ref: FPS/J1155/7/85 [Microsoft Word - fps_j1155_7_85.doc \(nationalarchives.gov.uk\)](http://nationalarchives.gov.uk)

17. As to the assertion by one of the objectors that the lane is shown as being gated on the 1889 map and that this did not give the appearance of a public carriageway. I do not think that this necessarily demonstrates the way is private. It is not uncommon for public highways in a rural setting to be gated for the retention of livestock.

- 4.2.13. The section between point B and point C of the application route is unnumbered and ungated and is part of the public road between Ashburnham Furnace and Penhurst and part of the road connecting Penhurst to Ashburnham Forge and village. It is shaded sienna in the same manner as other public highways shown on the Tithe map. An example of this is Penhurst Lane and the roads which are now Penhurst Byway 1 & Penhurst Byway 2. As this is the only road shown connecting Penhurst and Ashburnham village this endorses the claim that the application route was a public road with a highway reputation greater than a Footpath/Bridlepath, and most probably vehicular rights, when the map was surveyed.
- 4.2.14. The 1840 Tithe map was produced six years later than the Ashburnham 1834 estate map (see Figure 20 & Figure 21). There are differences between the two maps. For instance on the 1840 Tithe map in plot 65, part of the section of the application route between point B and point C, appears to run through open fields whereas in the 1834 Ashburnham Estate map it is depicted as wooded. In addition the Estate map shows a number of gates along the application route which are not shown on the Tithe map.
- 4.2.15. The fact that there are differences between the 1834 Ashburnham Estate map and the 1840 Tithe map strongly indicates that the 1840 Tithe map was the result of a new survey and was not based on existing local maps as was sometimes the case. It is therefore more than likely that as the application route is shown as a road on this map it was considered a public road at the time the Tithe map was surveyed.

4.3. The significance of the evidence in Tithe Records

- 4.3.1. The conclusion is that the application route was historically a public road and therefore should as a minimum have the status of a Bridleway or more likely a Restricted Byway.
- 4.3.2. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 4.3.3. There are numerous relevant Planning Inspectorate orders which assist in assessing the importance and relevance of Tithe maps. All of these orders are dated after the 1949 assessment and should therefore be considered as “a discovery of evidence”. Some of the most relevant to this DMMO Application Statement are:
- 4.3.4. Order Ref: FPS/D0840/7/24M1 D0840724
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725563/fps_d0840_7_24M1_final_od.pdf
- “15. It is the acknowledged that tithe maps can only give an indication of whether a route is public or private..... I am satisfied that tithe map suggests, on the balance of probabilities, that the Order route was the main public route in this location at this time. As such, I consider it would have been used by all classes of user.”*
- 4.3.5. Order Ref: ROW/3181626 The Cornwall Council (upgrade of Footpath 2 Tregony to Restricted Byway and Additional of Restricted Byways in the Parishes of Tregony and Cuby) Modification Order 2016.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705547/row_3181626_od.pdf
- “20. It is shaded sienna in the same manner as other public highways, I note the submission from the Ramblers that “Roads and Wastes” are unnumbered in this apportionment and the Order routes would have been numbered and recorded if they were private roads.”*
- “22. I agree with the Ramblers that “Public Roads” recorded in the apportionment are unnumbered.”*
- “23. There are no indications of gates or barriers of any type across any section of the Order routes or their junctions with public roads.”*
- 4.3.6. Appeal Ref: APP/F6915/W/2013/515896 Heading 9 (nationalarchives.gov.uk)
- “110. In Agombar, Etherington J concluded that the exclusion of a route from tithe and Finance Act records provided a strong inference that the route at issue was a carriageway maintainable at public expense; in Fortune (at first instance) McCahill HHJ arrived at the same conclusion. I consider that the exclusion of the Order route from claimed private ownership on both the Finance Act and tithe documents is highly persuasive evidence of the existence of a public carriageway over route 3.”*
- 4.3.7. During the extensive research for this DMMO Application Statement nothing was found to indicate that the above evidence was considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

5. Estate maps

5.1. Introduction to Ashburnham Estate maps

- 5.1.1. Although Estate maps were prepared for different reasons, when taken in conjunction with other maps of the area, often made at different times, they can provide useful supporting evidence of Rights of Way status.
- 5.1.2. Estate maps made for landowners are unlikely to show the status of a route that the landowner did not agree with, so where estate maps show routes within an estate that are shown in the same way as public roads outside the estate then there is evidence of highway status.

5.2. 1834: Ashburnham Estate map

Date of publication: 1834	Scale: Series	Date of Survey: 1834
Cartographer: E & G.N Driver	Publisher: Ashburnham Estate	Edition: Sussex XXIX.16 Rev1
Source: ESCC The Keep		

Evidence:

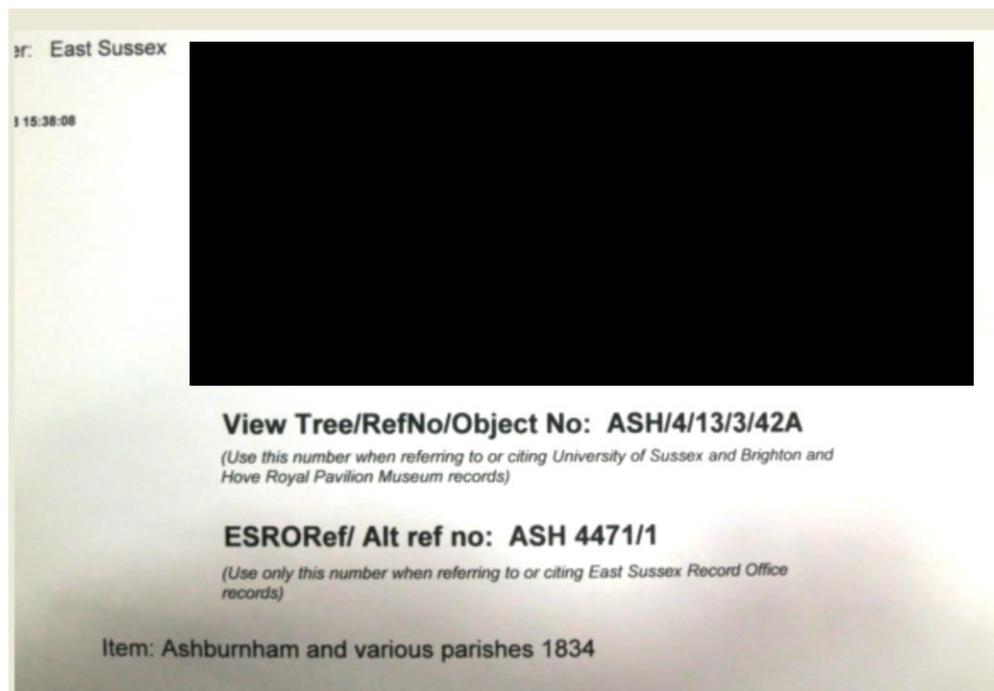


Figure 19 Ashburnham Estate Map 1834 ESCC Reference Label

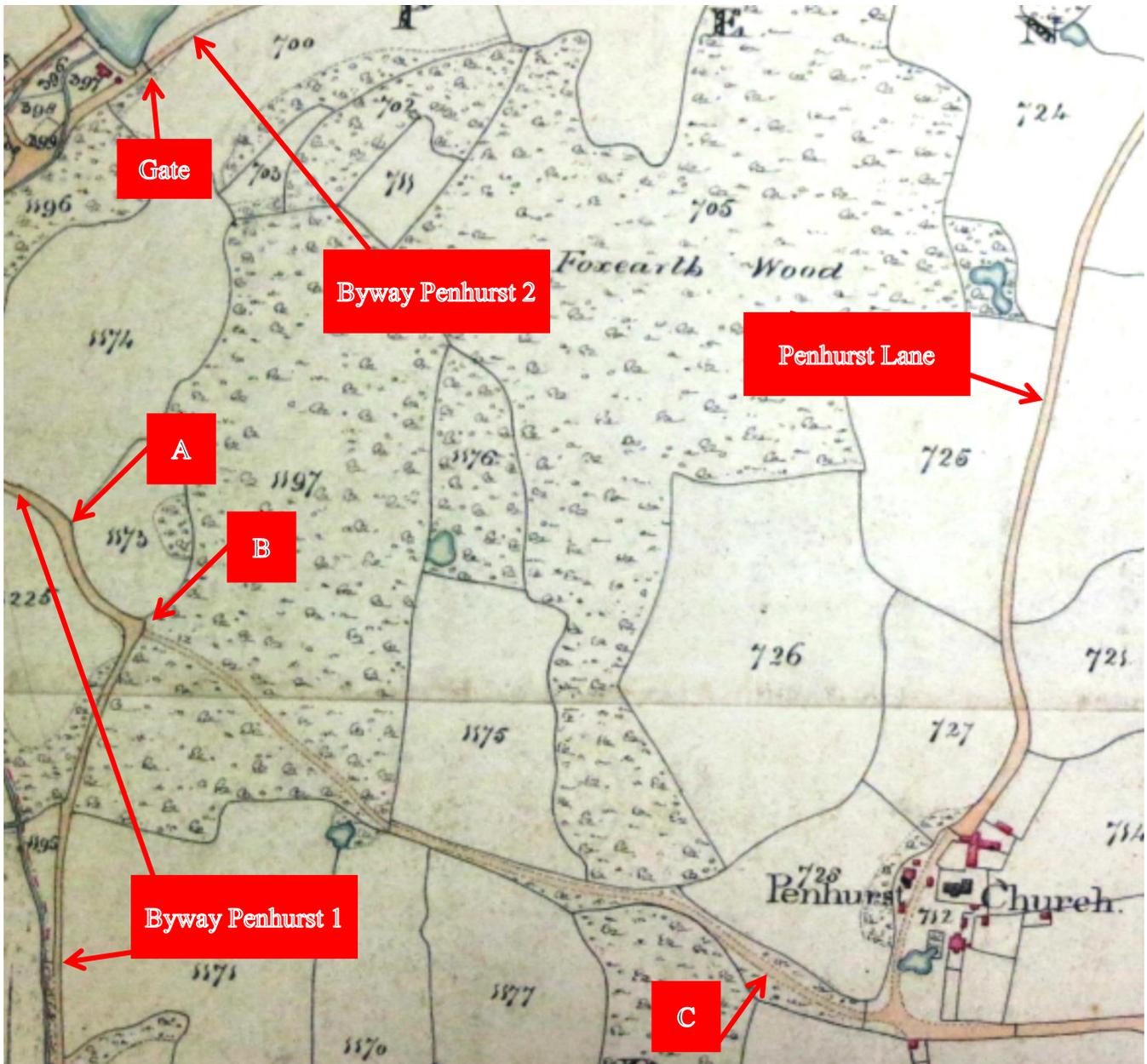


Figure 20 Extract from Ashburnham Estate Map 1834

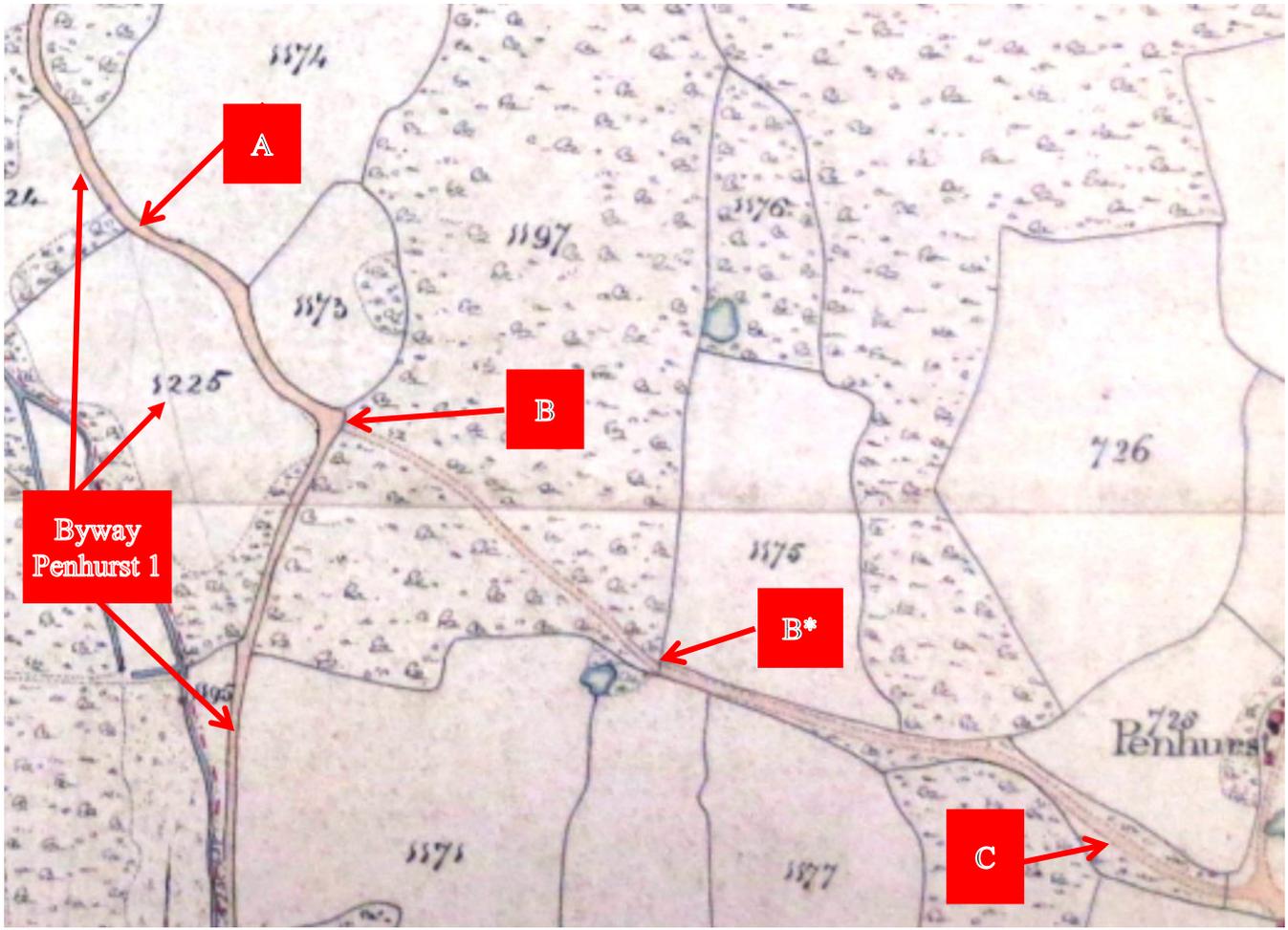


Figure 21 Magnified extract from Ashburnham Estate Map 1834



Figure 22 Magnified extract from Ashburnham Estate Map 1834 showing point C of the application route and the barrier across public road

Analysis of evidence

- 5.2.1. Figure 20 shows the general situ of the whole of application route. Critical points such as identification letters, existing ROW and references worthy of note are identified in red.
- 5.2.2. Figure 21 shows a magnified extract of the whole of the application route as a shaded sienna, unnumbered distinct road separate from any hereditament in the same manner as other public highways shown on the Estate map.
- 5.2.3. The section between points A and B is shown as open ended, un-gated road, defined by parallel lines
- 5.2.4. In Figure 21 at point B and B* a gate or a field boundary are shown.
- 5.2.5. In Figure 21 the current route – Byway Penhurst 1 – is depicted in its northern and southern sections as a sienna shaded road defined by parallel lines and in part as a single dotted line (section notated as 1225) which could depict “footpath”. Whilst the section between A and B of the application route is shown as part of the main cross roads.
- 5.2.6. Figure 22 shows that whilst point C of the application route is ungated gates (where it would join onto the existing Forge Lane) gates are indicated where this road adjoins “Forge Lane”. In addition gates are shown on Penhurst Lane.

Significance of this evidence

- 5.2.7. These maps are of use because they show how the landowner viewed routes on his estate at the time the maps were compiled. As the landowner could have had non-highway routes stated as “Private” and portrayed in any way that he wished, it is significant the application route is shown in the same manner as neighbouring routes which are now adopted county roads, Bridleways or Byways. Examples of this are Penhurst Lane and Byways Penhurst 1 & 2. Where this is the case it provides strong evidence that the landowner considered that the roads shown on the map had public highway status.
- 5.2.8. This Estate map shows that when the map was produced in 1840 the section of the application route between points A and B was part of the main cross roads between Ashburnham Furnace and Ashburnham Forge. It is depicted in the same manner as other public highways shown on the Estate map. The majority of this road is now ROW Byway Penhurst 1, however the central section of this Byway, where it crosses plot 1225, was likely to have been no more than a track.
- 5.2.9. The section between point B and point C of the application route is unnumbered and ungated and appears to be part of the public road between Ashburnham Furnace and Penhurst and part of the road connecting Penhurst to Ashburnham Forge. It is shaded sienna in the same manner as other public highways shown on the Estate map. An example of this is Penhurst Lane and the roads which are now Penhurst Byway 1 & Penhurst Byway 2. As this is the only road shown connecting Penhurst and Ashburnham Forge this endorses the claim that the application route was a public road with a highway reputation greater than a Footpath/Bridlepath, and most probably vehicular rights, when the map was surveyed.
- 5.2.10. Although there are indications of gates at points B and B* of the application route this should not be taken to indicate that the road was not a public highway. This is because there are many examples on the map of gates being shown on roads which are now adopted county roads. An example of this is shown in Figure 20 on the roads which is now Byway Penhurst 2 and on Penhurst Lane and Forge Lane (see Figure 22), now both adopted county roads, which are all shown as being gated.

However, whether the application route was gated or not may be inconsequential for as recently considered in a Planning Inspectorate Appeal:

Order Ref: FPS/J1155/7/85 Microsoft Word - fps_j1155_7_85.doc (nationalarchives.gov.uk)

“17. As to the assertion by one of the objectors that the lane is shown as being gated on the 1889 map and that this did not give the appearance of a public carriageway. I do not think that this necessarily demonstrates the way is private. It is not uncommon for public highways in a rural setting to be gated for the retention of livestock.”

5.3. **The significance of the evidence in the Ashburnham Estate Map**

- 5.3.1. These maps are of use because they show how the landowner viewed routes on his estate at the time the maps were compiled. As the landowner could have had non-highway routes stated as “Private” and portrayed in any way that he wished, it is significant the Application route is shown in the same manner as neighbouring routes which are adopted county roads today. As this is the case it provides strong evidence that the landowner considered that the application route to have had public highway status.
- 5.3.2. The conclusion drawn from the above evidence is that the application route was historically a public road and therefore as a minimum holds at least Bridleway rights. It is also persuasive of carriageway rights which would result in Restricted Byway status in the same manner as the existing Restricted Byways Penhurst 1 & 2.
- 5.3.3. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 5.3.4. During the extensive research for this DMMO Application Statement nothing was found to indicate that the above evidence was considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

6. Inland Revenue (IR) Finance Act 1910 -Valuation Records

6.1. Introduction to Inland Revenue Valuation Records 1910

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

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

- 6.1.2. If a route were a private vehicular way, then it could be developed, which would increase the value of the land and so be taxed. Accordingly, private tracks were not usually excluded from the assessable hereditaments. **Therefore where a route is shown as a white road the overwhelming likelihood is that it was a public road.** There are a few other possibilities, (for example the land was a waste, of no value) but they are very rare.

- 6.1.3. A Highway Authority was a rating authority. There was no obligation for a land owner to claim any of the discounts available (applying for discounts was entirely voluntary), but Section 25 authorised the discounts for footpaths and bridleways if they were claimed:

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

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

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

6.2. **1910: IR: 124/4/227 Penhurst**

Date of publication: 1910	Scale:1:2500	Date of Survey: circa 1909
Surveyor: OS	Publisher: OS	Edition:
Source: The National Archives at Kew document ref: IR 124-4-227		

Evidence:

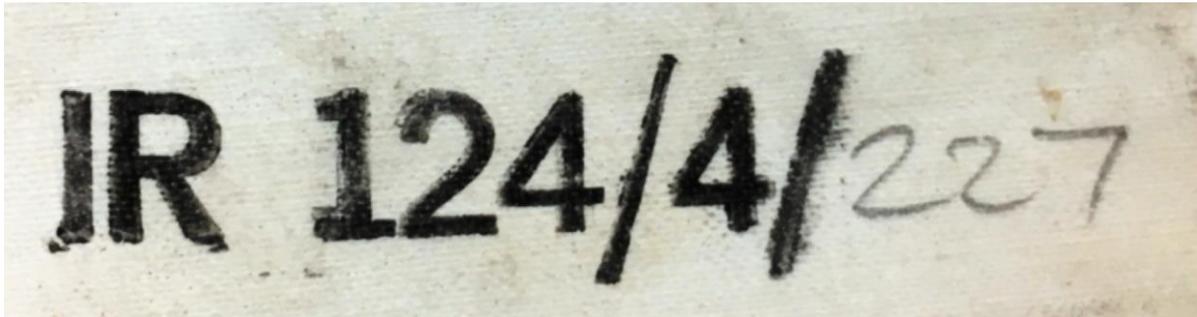


Figure 23 Copy of Penhurst Inland Revenue map label IR 124_4_227

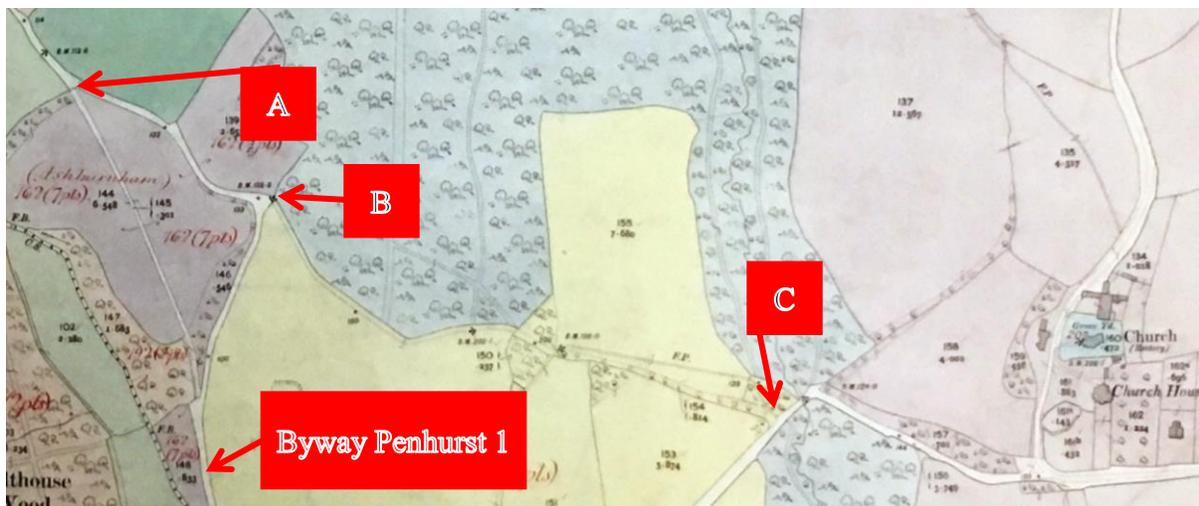


Figure 24 Extract from 1910 IR map Penhurst IR 124_4_227 showing the application route

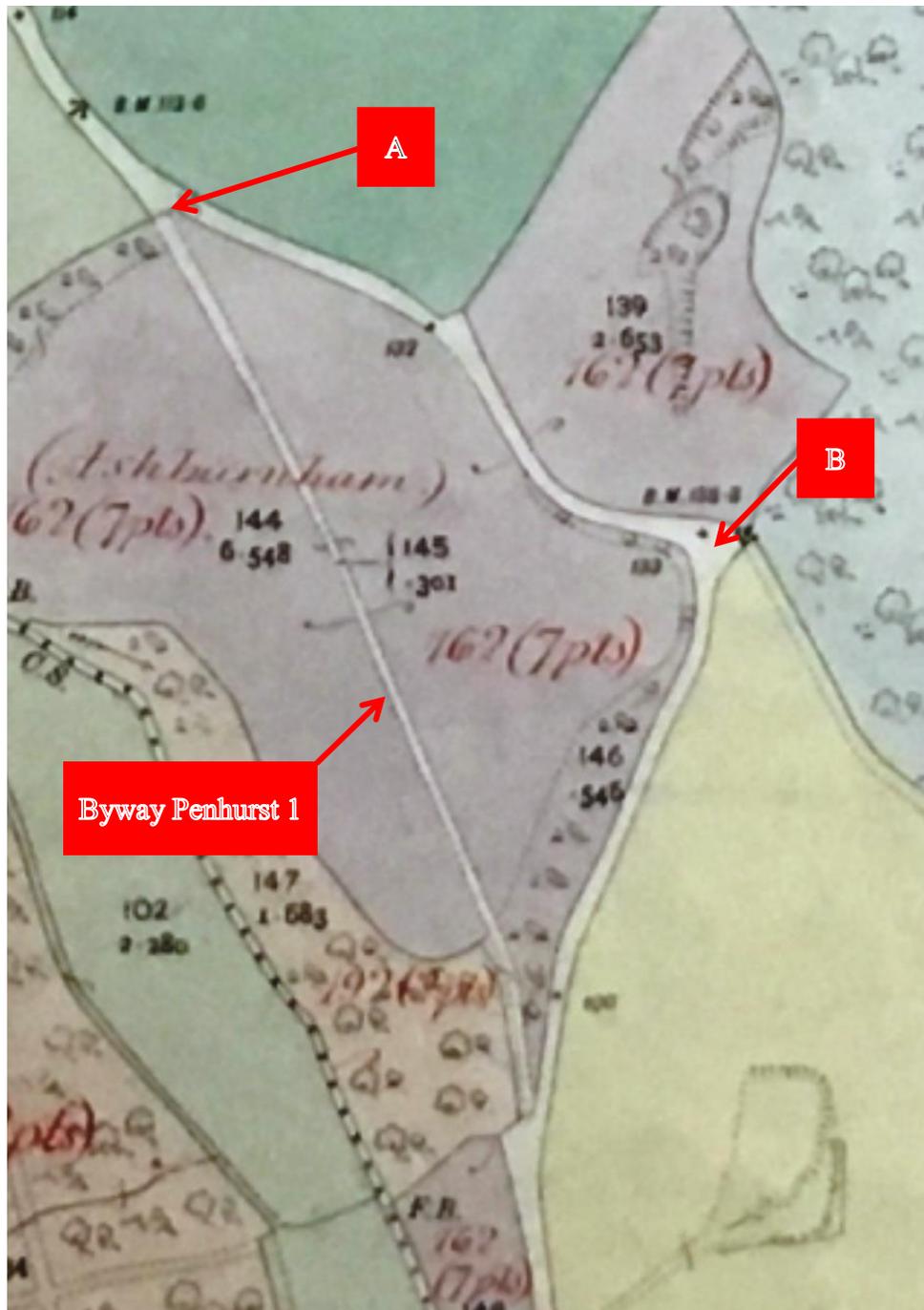


Figure 25 Magnified section of 1910 IR map Penhurst IR 124_4_227 showing the application route

Analysis of evidence:

- 6.2.1. The extracts shown in Figure 24 and Figure 25 show the section of the application route between points A and B as an open ended unnumbered white road separate from the adjoining hereditaments.
- 6.2.2. Byway Penhurst 1 is shown as a lesser route, indicated by its reduced width.

Significance of this evidence:

- 6.2.3. Both the route currently identified as Byway Penhurst 1 and the application route between points A and B are shown on IR 124-4-227. However part of Byway Penhurst 1 is shown at a smaller width which indicates that it was not considered the main route and that the section of the application route, points A to B, was the primary road.
- 6.2.4. As the land between point A and B of the application route is shown as unnumbered and outside the coloured hereditaments it is unvalued. This suggests it belongs to the rating authority. As it is not held by a local authority or government department for any other known reason, this suggests that it belonged to a highway authority. Had it only been a bridleway, the Inland Revenue would have valued the land and allowed a deduction instead, since this would have resulted in a greater tax levy. Had it been held by the rating authority for another purpose there would be some evidence of that holding but none has been found.
- 6.2.5. The application route between points A and B is depicted in the same manner as other roads which now have a higher ROW status such as Penhurst Lane and Byway Penhurst 1.
- 6.2.6. The legislation is sufficiently clear that anyone arguing that white road status means something other than the route being a public vehicular highway route must show which other exception from valuation applies.
- 6.2.7. This evidence strongly indicates that the application route between points A and B was considered to have highway status of a "Road" at the time of the survey.

6.3. **The significance of the evidence in IR Finance Act Valuation Records 1910**

- 6.3.1. The conclusion drawn from the Inland Revenue Valuation Records Finance Act 1910 evidence is that when the 1910 map was surveyed the application route between points A and B was historically a public road and therefore had as a minimum at least Bridleway rights over the route. It is also persuasive of carriageway rights which would result in Restricted Byway status.
- 6.3.2. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 6.3.3. The Inland Revenue Finance Act 1910 documents did not become available until 1967 and therefore could not have been considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949. This information should therefore be considered “a discovery of evidence”.
- 6.3.4. There are numerous relevant Planning Inspectorate statements which assist in assessing the importance and relevance of Inland Revenue Finance Act 1910 information. All of these orders are dated after the 1949 assessment and should therefore be considered as “a discovery of evidence”. Some of the most relevant to this DMMO Application Statement are:

- 6.3.5. Order Ref: ROW/3174351

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709507/row_3174351_od.pdf

“20. The exclusion of a route from hereditaments in a Finance Act survey raises the possibility that it was regarded as a public highway and probably one of a higher status than footpath or bridleway, which were usually dealt with by deductions from value rather than exclusion”

- 6.3.6. Order Ref: ROW/3200513

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765369/row_3200513_od.pdf

“13. Under the 1910 Act all land was required to be valued unless exempted. Routes shown on the base plans which correspond with known public highways, usually vehicular, are not normally shown as included in the hereditaments. Instead, they will be uncoloured and unnumbered”

7. 1953: East Sussex County Council (ESCC) Definitive Map

Date of publication: 1953	Scale:	Date of Survey: 1949<
Cartographer:	Publisher: ESCC	Edition:
Source: ESCC The Keep		

7.1. Introduction to ESCC Definitive Maps

- 7.1.1. ESCC Definitive maps were produced as a requirement of the National Parks and Access to the Countryside Act 1949.
- 7.1.2. Under the Rights of Way Act 1932 District Councils had made a survey of public rights of way in their area and had recorded them on maps.
- 7.1.3. The 1949 Act required County Councils to ascertain and record the existence of public paths – footpaths and bridleways – and of roads used as public paths as on 19th May 1953, the “relevant day”.
- 7.1.4. To fulfil this requirement County Council’s carried out a survey, often based on the district councils maps referred to in 7.1.2 survey reports prepared by the Ramblers Association and footpath evidence forms collected by parish councils. Once the draft was prepared it was publicised and objections received, relating to the inclusion, omission or routes of paths or to their status as shown. After hearing the objections the Council, through its Rights of way Sub-Committee, made determinations which were incorporated in the provisional map and statement. Before the definitive map was prepared aggrieved objectors might appeal from the determination and the Minister of Housing and Local Government would hold a local inquiry or the Appeal Committee of quarter sessions would settle the issue.

7.2. 1949<: ESCC Definitive Maps

Evidence:

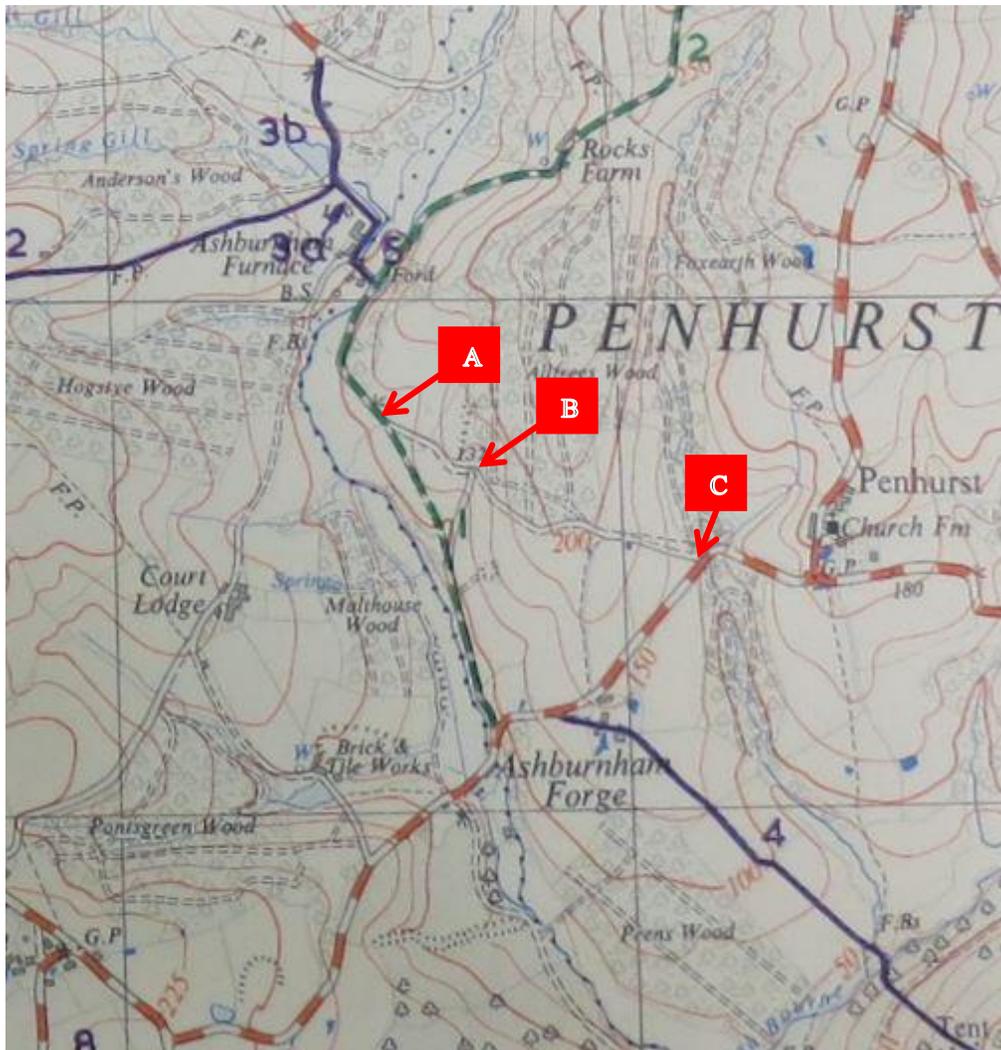


Figure 26 Extract from the 1953 1st ESCC Definitive map showing the application route (overlaid on OS 2.5 to the mile (1951))

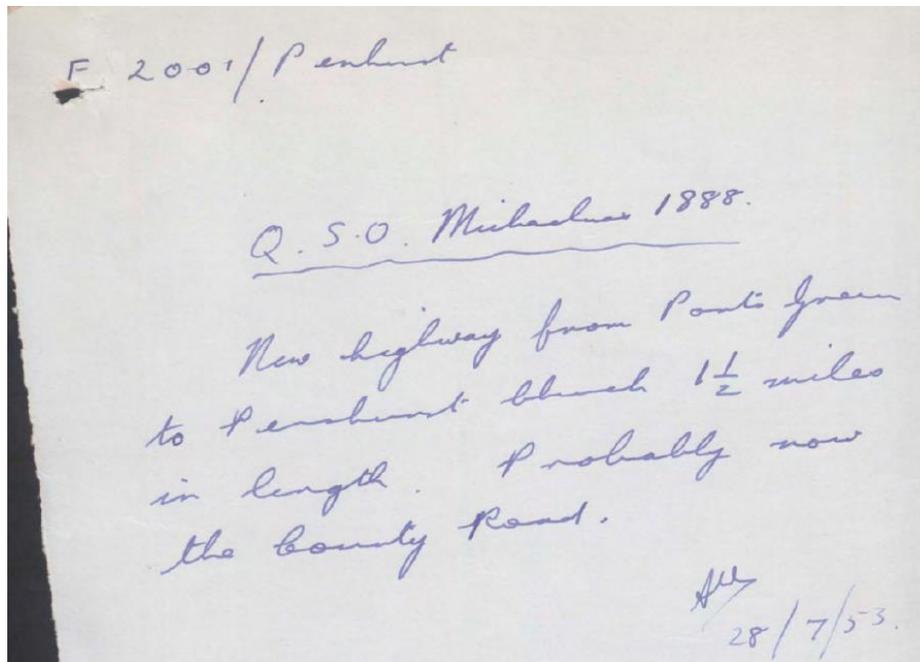


Figure 27 Extract from the ESCC highway diversion showing the only diversion order for Parish of Ashburnham & Penhurst

Analysis of evidence

- 7.2.1. Figure 26 shows the extract from the 1st ESCC definitive map Penhurst (1953) where the application route is not shown as a Right of Way.
- 7.2.2. Figure 27 shows the single diversion for Parish of Ashburnham & Penhurst found in the ESCC catalogue of Highway diversions held in the ESCC Archive at “The Keep”.

Significance of this evidence

- 7.2.3. The ESCC catalogue of highway diversions (which goes up to the first definitive map and is held at the Keep) shows one diversion for Penhurst parish. This diversion is not for the application route.
- 7.2.4. The application route was not included on the 1st definitive map as a right of way, so diversion orders made after this are unlikely to be relevant.
- 7.2.5. It is also worthy of note that the 1951 OS 2.5 to the mile map, on which the Definitive map was overlaid, shows the application route as a white road.

7.3. The significance of the evidence of the ESCC Definitive map.

- 7.3.1. During the extensive research for this DMMO Application Statement no stopping up or diversion orders, either in the quarter sessions or in other orders have been found connected with the application route and therefore the application route still holds its highway status of “Road”.

8. The High Weald Area of Outstanding Natural Beauty (HWAONB) Unit Historic Routeways Survey

8.1. Introduction to the HWAONB Historic Routeways Survey

8.1.1. The High Weald Area of Outstanding Natural Beauty unit (HWAONB) Unit, which produced and published this survey, supports the High Weald Joint Advisory Committee (HWJAC) which was set up in response to the Countryside and Rights of Way (CRoW) Act 2000. The HWJAC is a collaboration of a number of High Weald County and Parish councils, with the East Sussex County Council (ESCC) being a primary member and one of its main financial sponsors. The HWJAC in turn delegates powers to the HWAONB Unit to carry out many of the core functions legally required by the CROW Act 2000.

8.1.2. In 2016 the HWAONB unit produced and published the High Weald Parish Survey, of which the “Routeway” survey is one element.

8.1.3. The aims of the High Weald Historic Routeway Survey were:

- To log and maintain the historic pattern and features of High Weald routeways
- To enhance the ecological function of routeways.

8.1.4. Some of the key papers relating to the High Weald Historic Routeway Survey are;

- The Routeways Story (<http://www.highweald.org/learn-about/landscape-stories/the-routeways-story.html>)
- The Making of the High Weald (2003) (<http://www.highweald.org/downloads/publications/uk-landscape-research-reports/120-the-making-of-the-high-weald-report/file.html>)
- Routeways survey pack (2011) (<http://www.highweald.org/downloads/publications/land-management-guidance/routeways/1094-routeways-survey-pack/file.html>)
- High Weald AONB Parish information: (<http://www.highweald.org/downloads/publications/parish-information.html>)

This web page provides access to the individual Parish information collated under the survey. The Parish information is contained in individual zipped folders which contain data regarding the different aspects of the landscape character and background information (metadata) on each Parish. **It is from this source that the maps referenced below can be obtained.** In addition each folder contains a copy of the High Weald AONB Management Plan 3rd Ed 2014-2019 which outlines the aims, methodology, analysis, definition of success and conclusions for the survey overall as of 2014.

- High Weald AONB Management Plan 4th Ed 2019-2024 (<http://www.highweald.org/downloads/publications/high-weald-aonb-management-plan-documents/2291-high-weald-managment-plan-4th-edition-2019-2024/file.html>)
- Vision for routeways: (<http://www.highweald.org/look-after/438-high-weald-character-defined/1473-routeways-character-defined.html>)

Routeways:**Routeways Definitions:**

8.1.5. The Collins English dictionary defines a “Routeway” as:

“a track, road, waterway, etc., used as a route to somewhere”

8.1.6. The definition of “Routeway” used in the HWAONB survey is;

“Routeways – communication routes of roads, tracks, lanes and paths”

(High Weald AONB Management Plan 3rd Ed 2014-2019 Glossary page 56 – found on the Parish Information website detailed in 8.1.4)

“Routeways” - Historic Context:

8.1.7. Since pre-history people and animals have, on an annual basis in the late summer, relocated from the Downs into the High Weald wood-pastures (named dens). Over time these “dens” became permanent, if isolated settlements. These pastures were detached (often by 20 miles or more) from their parent settlements and connected by a network of radial lanes (droves), which survive in the subparallel pattern of roads and tracks today. It is these droves and tracks which often latterly developed into our existing road system and Rights of Way paths.

8.1.8. The above pattern of behaviour has resulted in the High Weald having an enclosed agricultural landscape of small irregularly-shaped fields, small-scale underpopulated holdings and the absence of communal farming of large open fields. In essence, the High Weald landscape was enclosed before the post-medieval period of Enclosure and has changed little since the early fourteenth century

8.1.9. This view is supported by The High Weald AONB Management Plan 3rd Ed 2014-2019 (accessed from the Parish Information website detailed in 8.1.4) in that it states;

Section IV Routeways: character defined (page 7):

“The dense and sub-radial pattern of narrow lanes and Rights of Way in the Weald represents a very visible survival of ancient transhumant routes – the droves. Along with the prehistoric ridge-top ways, these were one of the most distinctive characteristics of the High Weald in the fourteenth century and remain so. The narrowness of droves, their frequently deeply sunken form (a result of age-old wear into soft geologies), their increasing irregularity in response to the relief of the High Weald, and their boundary banks added, and continue to add, to their distinctive pattern”

8.1.10. In addition The Making of the High Weald (2003) (page 7) states:

“ancient routeways (often now roads and Rights of Way) in the form of ridge-top roads and a dense system of radiating droveways. The droveways are often narrow, deeply sunken and edged with trees, hedges, wildflower-rich verges and boundary banks. Routes between natural resources (water, woods etc.) and settlements (farmsteads) would have developed and changed over time and remind us of peoples movements across the landscape.”

8.1.11. The Routeways survey pack (page 1) also states:

“Routeways are much more than the roads and paths we see today. Understanding them involves understanding settlements and the wider landscape. Routeways in the High Weald potentially developed in three ways:

- 1. From the space left between enclosures (areas of owned land), which developed into paths or local routes between farms and small settlements.*
- 2. As routeways with a specific purpose from the outset, such as long distance ridge top routes, designed to move produce long distances heading to settlements like London.*
- 3. As routes from the coast to primary and secondary settlements inland.”*

HWAONB Routeways Survey Methodology:

- 8.1.12. A detailed explanation of the Routeway Survey Methodology is outlined in the Routeways survey pack and the High Weald AONB Management Plan 3rd Ed 2014-2019 accessed from the Parish Information website detailed in 8.1.4
- 8.1.13. In summary the survey methodology was designed to help gather information about the physical features, natural features and local history of routeways.
- 8.1.14. It covered 3 parts, each using different techniques;
- Part 1: Fieldwork
 - Part 2: Historical Evidence
 - Part 3: Data Analysis

Part 1: Fieldwork

This part of the survey was observational and was predominantly carried out based on historic map evidence (see Part 2). The methodology gathered data regarding the character of the routeway with special attention being given to:

- a) Physical features of the routeway
- b) Ecological features (used as an indicator of the routeway age)

Part 2: Historical Evidence

This part of the survey highlighted lost and possible routeways, and was used to indicate how a route might have been used. Documents analysed included Tithe maps and their apportionments, Turnpike maps, routeways maps, road maps, title deeds, mortgage documents and other records of land sales or use and ownership. Quarter Sessions were evaluated to provide evidence of missing routes, enclosing or metalling. Key sources for the Survey were:

- Epoch 1 (1843-1893)
- Maps (1891-1912)
- Tithe maps (1837-1858)
- OSD maps (1780-1840)
- OS drafts from 1899

Part 3: Data Analysis & Next Steps

- 8.1.15. Once all the data had been gathered, the HWAONB Unit digitised the information and analysed the data. The analysis looked to generate statistics and discernible patterns in the data that would highlight links between routeways and the surrounding landscape.

8.1.16. The routes which emerged were then classified into two categories:

- Historic routeways – roads (R1)
- Historic routeways – PROW (R1)

8.1.17. (NB: PROW = Public Right of Way shown on the ESCC Definitive map 2016)

8.1.18. The results of this analysis were then overlaid onto the ESCC Definitive map (2016) to show the historical “communication routeways”.

8.1.19. Where analysis shows that the historic routeway is both a “Historic routeways – roads (R1)” (red dotted line) and a “Historic routeways – PROW (R1)” (orange dotted line) the route is depicted with a red dotted line overlaid with an orange dotted line.

8.1.20. HWAONB have been contacted but are unable to provide maps which show each categorisation individually. In addition the HWAONB were unable to provide the applicant with detailed data for individual paths.

8.2. 2016 :HWAONB Unit Routeways Survey 2016– Penhurst Parish

Date of publication: 2016 (ongoing)	Scale:	Date of Survey: 2011 (ongoing)
Surveyor:	Publisher: High Weald AONB Unit	Edition:
Source: http://www.highweald.org		

Evidence:

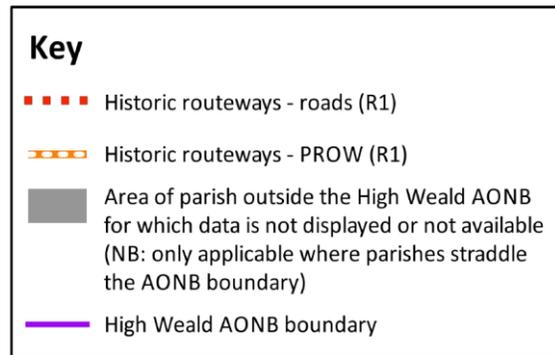


Figure 28 High Weald Historic Routeways Key

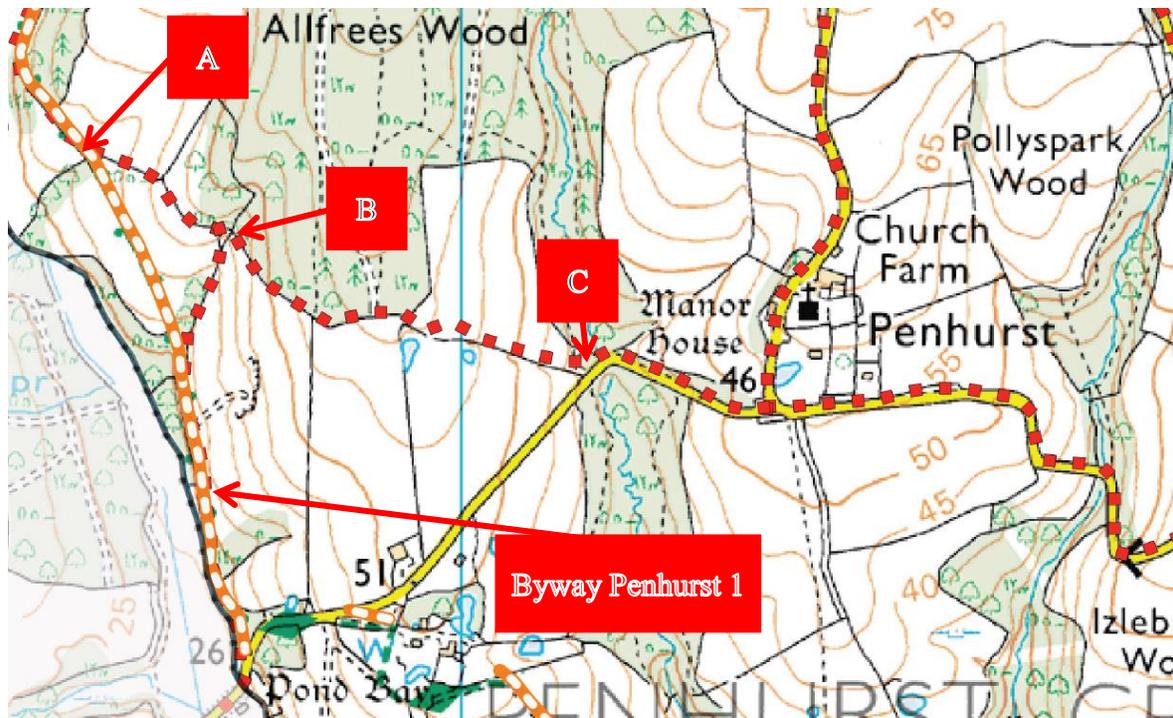


Figure 29 Extract from High Weald Historic Routeways map for Penhurst Parish
<http://www.highweald.org/downloads/publications/parish-information.html>

Analysis of evidence:

- 8.2.1. The application route is shown (Figure 29) as a “Historic routeways – roads (R1)” (see categorisation Figure 28) which means that the application route has been identified by the survey as both an historic “Road” and “Historic Routeway”
- 8.2.2. The application route is not overlain by “Historic routeways – PROW (R1)” (orange dotted line) which means that the application route has not been identified as having a Public Right of Way.

Significance of this evidence:

- 8.2.3. This evidence shows that High Weald AONB Unit accepts that the application route has been a “Road” at some time in its history and that this “Road” was recognised as a “communications routeway”. As the surveys remit was to record “Roads” that were “communication routeways” to comply with this definition it would be manifest that such roads would have been public.
- 8.2.4. This data provides compelling evidence that at least Bridleway rights exist over the application route and is also persuasive of Restricted Byway rights.

8.3. The significance of the evidence of the HWAONB Unit Historic Routeways Survey

- 8.3.1. This data shows that the HWAONB Unit's Routeways Survey, published in 2016 by the HWAONB unit on behalf of the HWJAC accepts that historically the application route has been depicted as a "Road" and is accepted by the survey as a "Historic Routeway".
- 8.3.2. However in this study "Historic Routeways - roads" is more than a cataloguing of historical roads. For example many old roads shown on historical maps are omitted, including some which are currently designated as Byways, and numerous roads defined as "Occupational Roads" - unless there is additional data indicating that the road had open public access at some time.
- 8.3.3. The omissions listed above are valid because the focus of the "Historic Routeways" section of the survey was not to identify old roads but to ascertain how people have communicated within the Weald since prehistory.

It assessed,

- How societies' needs created "communication routes"
- How these "communication routes" affected the physical and ecological aspects of the Weald
- How the physical and ecological indicators of these routes are evinced today
- How these ecological indicators can be used to identify these communication routes as "Historic Routeways"

Therefore for a "communication route" to be classed as a "Historic Routeway - road" the route had to:

- Be identified in historical data as a "Road".
- Be substantiated by the in-depth study and analysis of the physical, geological and ecological features of the way with the aim of identifying tell-tale remnants of social usage, often over many millennia.
- Comply with the statistical and discernible pattern analysis developed by the HWAONB unit to identify the existence of a "Historic Routeway – road".

These additional facets of the survey adds verisimilitude to the definition of "Historic Routeway - road" as an ancient "communication route" which must by definition have been freely and openly available for traverse by the public.

- 8.3.4. In addition, to qualify as a "Historic Routeway – road" the route must also have been identified by the survey as an historic road. The legal definition, both historically and in modern times of a "Road" is:

"a general purpose vehicular route ... open to all manner of traffic".

- 8.3.5. When these two strands of evidence are taken in conjunction this provides compelling evidence that any "Historic Routeway - road" shown within the survey carried public vehicular rights at some time in the past.
- 8.3.6. This means that at least Bridleway rights exist over the application route and is also persuasive of Restricted Byway rights.
- 8.3.7. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

8.3.8. Acceptance of this route as a Bridleway would support the aims of the HWJAC.

This is because The High Weald AONB Management Plan 3rd Ed 2014-2019 (printed 2014) states (page 34) one of its aims is:

“e. An understanding of ancient routeways and their associated settlements informing rights of way planning and management including footpath diversions;”

8.3.9. Also in The High Weald AONB Vision for routeways (ref: <http://www.highweald.org/look-after/438-high-weald-character-defined/1473-routeways-character-defined.html>):

“A landscape in which the character of the distinctive lanes and Rights of Way is protected and a balance achieved between the comparative quietness and rurality of the roads of the High Weald and their function as communications central to the economic and social well-being of the area. The management will take account of, and indeed is partly stimulated by increasing road traffic, safety concerns, increased leisure activities (riding, cycling, walking and off-road driving), under use of many Rights of Way, and expanding development.

The vision can be realised through refinement of existing policies and designations that seek to protect archaeology and ecology, and that restrict ribbon development, and through refinement of policies and guidelines that seek to respect the character of lanes and Rights of Way by encouraging use of sympathetic surfacing materials and boundary types; reducing unnecessary use of highway furniture; and by promoting selected walking, cycling and riding routes.”

8.3.10. As the Historic Routeways Survey was published in 2016 by the HWAONB Unit on behalf of East Sussex County Council its findings could not have been considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

9. Modern Photographs of the Application route

9.1. Introduction to Photographs of the Application route

9.1.1. Photographs of the application route were taken in October 2021.

9.1.2. As there is currently no ROW along the application route a physical in-depth assessment of the route was not undertaken. Therefore photographs have been limited to that which could be seen from public ROW.

9.1.3. Aerial photographs data obtained from Ordnance Survey
<https://osmaps.ordnancesurvey.co.uk/50.92306,0.39619,15>

9.1.4. The Light Detection and Radar (LiDAR) mapping is extracted from
<https://houseprices.io/lab/lidar/map?ref=TQ68492%2017076>

LiDAR provides a 3D model of the land surface that can be examined for evidence of historic features that exhibit some form of surface topographic expression. It is increasing used within archaeology to identify historical features such as archaic roads and settlements.

9.2. 2021: Photographs

Evidence:

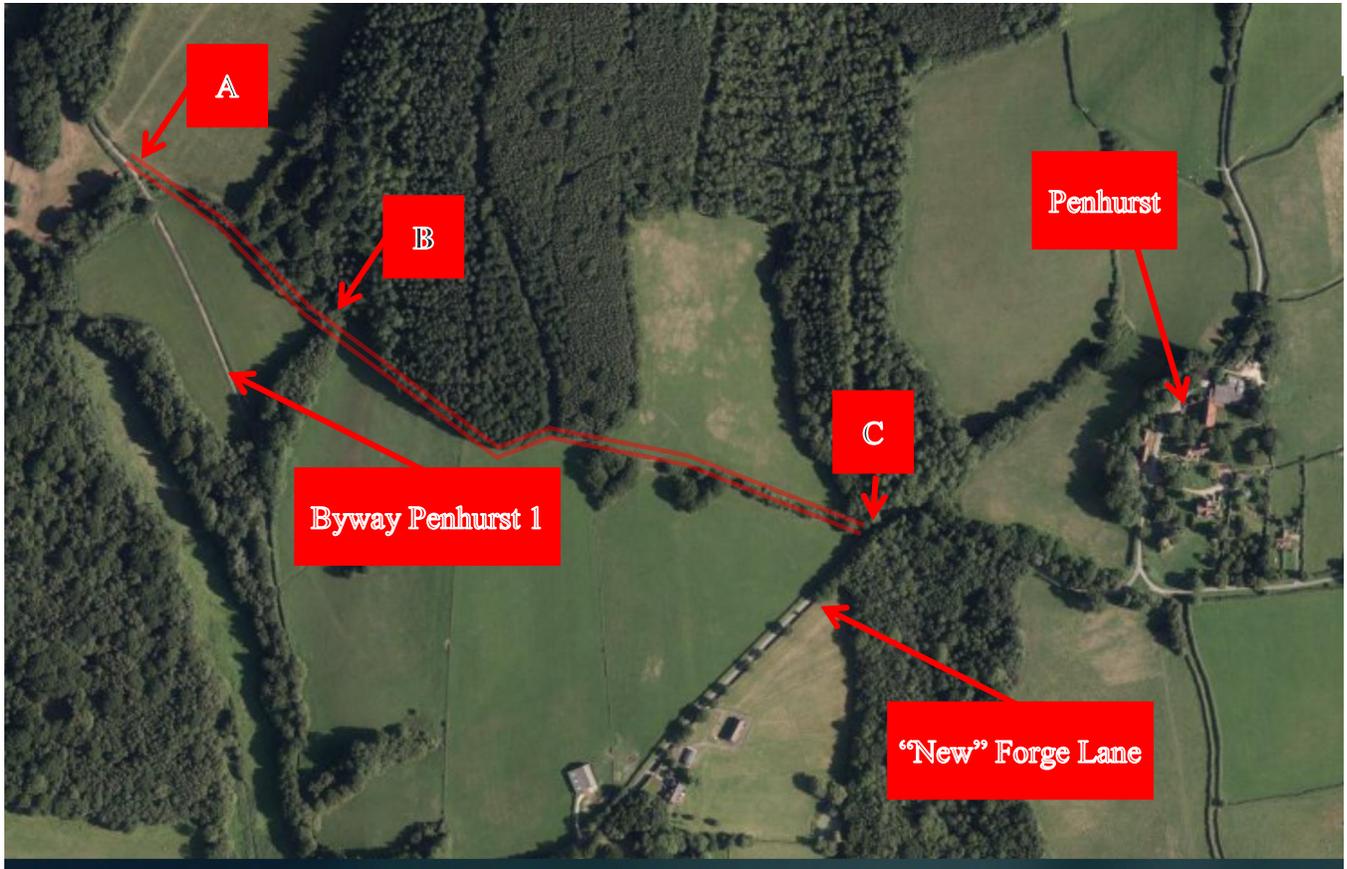


Photo 1 Aerial view notated and with the application route shown by red parallel lines.

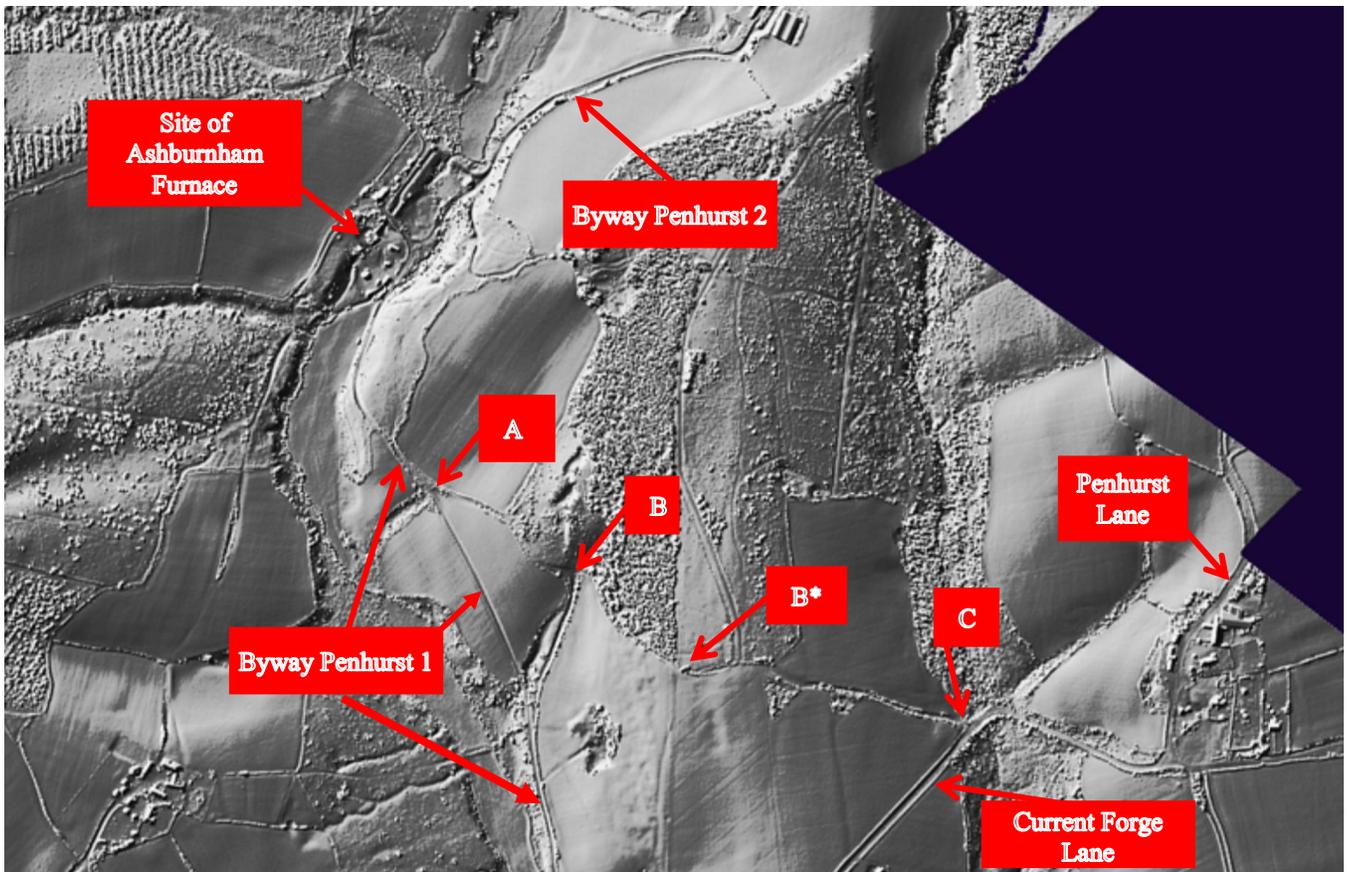


Photo 2 Extract from LiDAR showing the application route and other significant features.



Photo 3 Photograph of Point A of application route facing a south-easterly direction. Taken from Byway Penhurst1. The claimed route would join Byway Penhurst 1 on the left



Photo 4 A close up photograph of Point A of the application route where it would join Byway Penhurst 1. Taken from Byway Penhurst 1 facing a south-easterly direction.



Photo 5 Photograph of application route between Point A and Point B facing in a south-easterly direction. Taken from Byway Penhurst 1.



Photo 6 Magnified photograph of application route between Point A and Point B facing in a south-easterly direction taken from Byway Penhurst 1 showing the banked trackway.



Photo 7 Photograph of application route near Point C facing a westerly direction whilst standing at the gate at junction with Forge Lane.



Photo 8 Photograph of Point C of the application route facing a westerly direction taken at the junction with Forge Lane.

Analysis of evidence:

- 9.2.1. Photo 1 is an aerial view of the application route. As the application route currently has no ROW the aerial view has been included for information and to show how the route follows the existing field boundaries and appears to be an enclosed, hedged holloway for much of the route.
- 9.2.2. Photo 2 is the LIDAR view of the application route. The LiDAR map shows a clear holloway along substantial sections of the application route, which indicative of the existence of an ancient road. The LiDAR map shows that such holloways are evidence in existing ROW such as Byways Penhurst 1 & 2 and Penhurst Lane,
- 9.2.3. Photo 3 was taken near Point A of the application route and shows an extensive verge alongside Byway Penhurst 1 which widens to approximately 4 metres in width. It is more than probable that the addition width of verge indicates where the claimed route veered off the existing ROW. The photograph shows that within 10 metres of point A the verge along the ROW reduces to a width of approximately 1 metre.

-
- 9.2.4. Photo 4 provides a closer view of Point A and a closer view of the 4 metre verge
- 9.2.5. Photo 5 provides a view of the application route approximately 30 metres from Point A intersection. On close inspection a sunken track can be seen (just in front of the hay pile) which may be indicative of long term usage by vehicles.
- 9.2.6. Photo 6 provides a closer view of the application route shown in Photo 5 which clearly shows evidence of a sunken holloway indicative of long term usage by vehicles.
- 9.2.7. Photo 7 was taken at point C of the application route and depicts what can be viewed from the gate shown in Photo 8. It shows a well-defined, high banked holloway of approximated 3 metre's in width which is hedged on one side.
- 9.2.8. Photo 8 was taken at point C of application route facing a westerly direction where the application route joins Forge Lane, Penhurst.

Significance of this evidence:

- 9.2.9. From both the aerial photographs and the LiDAR extract it can be ascertained that the application route follows long standing field boundaries and appears to present itself in a similar manner to other existing Roads and Byways in the area such as Penhurst Byways 1 & 2 and Penhurst Lane.
- 9.2.10. Both the aerial photographs and the LiDAR extract shows the well-defined holloway between points A and B and again between point B* and point C. Such holloway's are indicative of long term vehicular usage and similar in presentation to the roads which are existing Byway Penhurst 1, Byway Penhurst 2 and Penhurst Lane.
- 9.2.11. At point A the verges along Byway Penhurst 1 widen to approximately 4 metres in width and there is evidence of the existence of a well-defined cart track leading away from the existing ROW. The normal verge width along Byway Penhurst 1 varies between 1-2 metres. The additional verge, and the fact it is such a variation from most of the verge bordering Byway Penhurst 1 more likely than not indicates the additional verge width is the remnants of where the application route historically joined the existing ROW.
- 9.2.12. In the aerial photo, the LIDAR extract and Photograph 5, 6 and 7, appear to indicate that a significant part of the route consists of a well-defined sunken holloway, of approximately 4 to 5 metres in width, indicative of an ancient roadway.

9.3. The significance of the evidence in Modern Photographs

- 9.3.1. From the limited access available from the public highways and data gathered from reviewing aerial and LiDAR data it appears a significant part of the application route follows long standing field boundaries and presents a well-defined holloway indicative of long term vehicular usage.
- 9.3.2. During the extensive research for this DMMO Application Statement nothing was found to indicate that the above evidence was considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered "a discovery of evidence".

10. Conclusion

- 10.1. The conclusion drawn from the evidence presented in this Application Statement is that section A to B of the application route was for many years a part of the cross roads between Ashburnham Furnace and Ashburnham Forge and that section B to C was for many years part of the cross roads between Ashburnham Furnace and Penhurst village, and part of cross roads between Penhurst village and Ashburnham Forge. The Inland Revenue Valuation evidence shows that section A – B was still considered part of the main cross roads between Ashburnham Furnace and Ashburnham Forge in 1910. However with respect to section B to C of the application route sometime between 1875 – 1898, with the creation of the new road connecting Penhurst and Ashburnham Forge, the section of the application route was superseded without ever being formally extinguished. Therefore the evidence presented in this DMMO Application Statement supports the assertion that the application route should, as a minimum, be allocated the status of a Bridleway, but is also supportive of Restricted Byway status, the current status of the Penhurst Byway1 which was during much of history, a lesser route.
- 10.2. In summary cumulative evidence (Commercial and OS maps produced over a number of years), and synergistic evidence (e.g. Tithe map, Estate maps and Inland Revenue 1910 evaluations etc.) show that on “the balance of probability” vehicular rights existed at the times the various pieces of evidence were created.
- 10.3. Whilst no single piece of evidence is conclusive,
- “...this co-ordination significantly increases the impact of these documents”⁶*
- 10.4. These pieces of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 10.5. This is substantiated by the view in R v Exall (1866) that
https://assets.cambridge.org/97811070/20337/excerpt/9781107020337_excerpt.pdf :
- “It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”*
- 10.6. Whilst there are possible, if often unlikely, alternative explanations for each individual piece of evidence, no explanation other than the existence of a right of way explains these pieces of evidence as a whole.
- 10.7. The test at this stage is only “Can it reasonably be argued that the right of way exists as suggested”.
- 10.8. The later test at confirmation of any order is “Is it more likely than not that the right of way exists as suggested”.
- 10.9. It is asserted that this DMMO Application Statement passes both of those tests.

⁶ Wildlife and Countryside Act 1981 Definitive Map Orders: Consistency Guidelines April 2003

10.10. There are numerous relevant Planning Inspectorate statements which assist in assessing the evidence presented in this DMMO Application Statement. All of these orders are dated after the 1949 assessment and should therefore be considered as “a discovery of evidence”. Some of the most relevant to this DMMO Application Statement are:

10.11. Order Ref: ROW/3181626

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705547/row_3181626_od.pdf

“10. Most public highways have been accepted by the public since beyond memory. The law presumes that, at some time in the past, the landowner dedicated the way to the public either expressly, with evidence of such dedication now being lost, or impliedly, by making no objection to use of the way by the public. The evidence to show that such dedication has occurred may arise from documentary and/or user evidence.”

And,

“45. The documentary evidence shows that there has been a physical feature in the landscape from at least the mid-eighteenth century. The suggestion of higher public rights arises from a number of strands of evidence, in particular the Martyn map, the tithe records and the Finance Act records.

46. The evidence as a whole supports the dedication of the route in the past by an unknown landowner with acceptance by the public demonstrated through use, for which the evidence currently before me dates back to the early – mid twentieth century. Looking at the combination of documentary and user evidence submitted I am satisfied that public rights subsist on the Order route.

47. Taking account of the evidence as a whole I consider, on the balance of probabilities, it is sufficient to show that a public right of way subsists over the Order route. Given the effect of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”), I agree with the OMA that the vehicular rights have not been exempted, so saving the carriageway rights. The appropriate status is therefore restricted byway. The 2006 Act does not affect vehicular rights relating to private access to land and property.”

10.12. Order Ref: ROW/3219390

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827090/row_3219390_od.pdf

“4. The physical existence of the Order route as part of a longer route between the county boundary and Woodlinkin is consistently shown on maps depicting the area from the 1830s onwards”

11. Request

- 11.1. The evidence presented in this DMMO Application Statement shows that the application route has, on the ‘balance of probabilities’, been a public highway of at least a Bridle Road but more probably vehicular status in the past. No evidence has been found that these rights were ever formally extinguished. Therefore on the principle of ‘**once a highway, always a highway**’ [*Dawes v Hawkins* (1860)] the applicant requests the Surveying Authority to add the application route to the Definitive Map and Statement with a minimum status of Bridleway.
- 11.2. The evidence presented in this DMMO Application Statement suggests that Restricted Byway rights existed over the application route. However due to the current construction of the law and the proposed extinguishment of unrecorded rights in 2026, this DMMO Application Statement is being made for Bridleway status with an acknowledgement that the surveying authority should make an order for Restricted Byway status if they consider it merited.