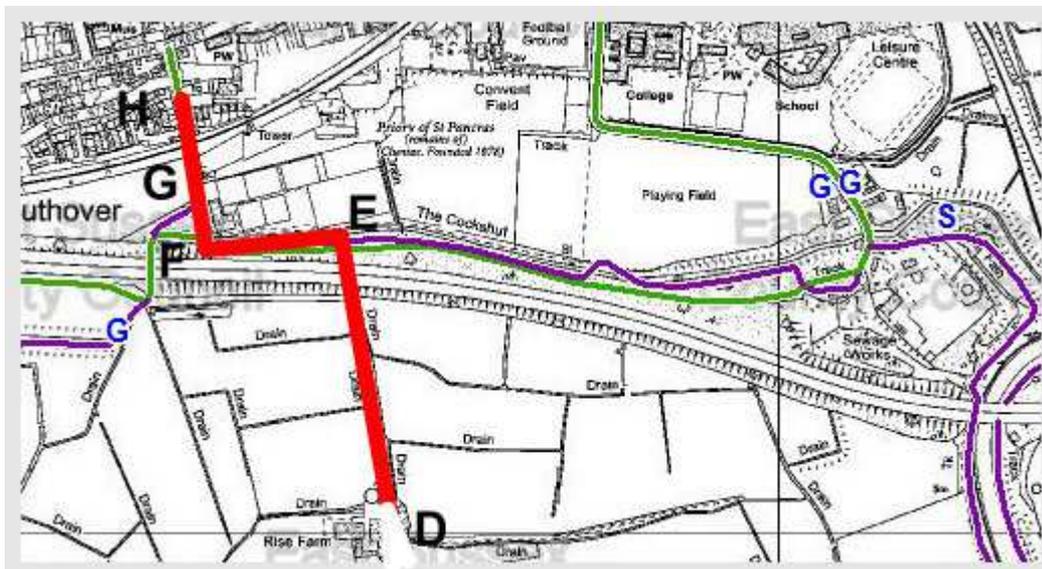


APPLICANTS STATEMENT SUS-1243

Our reference- SUS-1243

THE APPLICATION ROUTE



The application route runs from point D, the northern end of brideway Iford 13, to point H in Cockshut Road, at grid reference 541213 10957. From point H north Cockshut Road is accepted by East Sussex Council as a public highway maintainable by the council.

That part of the application route which lies between E-F-G-H is currently shown on the definitive map and statement as a bridleway. The remainder is not at present on the definitive map and statement or the list of streets maintainable by the highway authority.

Application is being made to:

- Upgrade bridleway Lewes 3 to a restricted byway between point H at grid reference 541213 10957 to point E at grid reference TQ41415 09377
- Add a restricted byway between point E and the northern end of bridleway Iford 13.

The route is in Lewes Town. It was formerly in Southover parish.

1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

1.1.1 In order to be able to modify the definitive map and statement, the surveying authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the “balance of probabilities” test rather than “beyond reasonable doubt” was confirmed by the High Court in *Todd, Bradley v Secretary of State for EFRA* (2004) 4 All England Reports 497.

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

2. HISTORIC MAPS

2.1 YEAKELL AND GARDNER'S SUSSEX 1778-1783

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

2.1.2 I have cut and pasted two segments of the map to show the application route.

2.1.3 D-E-F-G-H is clearly shown.



2.2 GARDENER AND GREAM MAP 1795

2.2.1 This map is held at the Keep under reference AMS 608/1/1/29/17

2.2.2 The portrayal of the application route is similar to that of the Yeakell and Gardner map



2.3 GREENWOOD AND GREENWOOD MAP OF SUSSEX 1825

2.3.1 A copy of part of this map is held at the Sussex Archaeology Society Library in Lewes. It is part of a book of maps. There is no reference

2.3.2 The application route is shown from D-E-F-G-H.



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

2.4.1 The map is held at the Keep as part of the Brighton Pavilion collection under reference BHM000009

2.4.2 D-E-F-G-H is clearly shown.



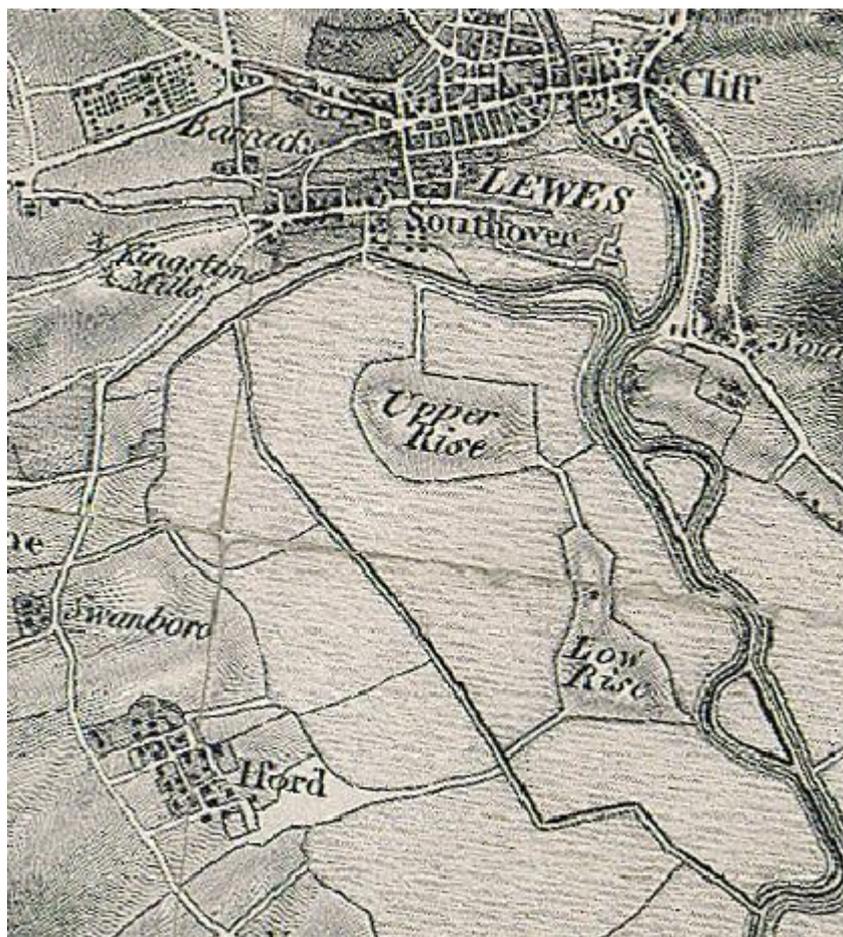
Conclusion to this section

2.4.3 In most early maps D-E-F-G-H is clearly shown.

3. FIRST EDITION OF THE ORDNANCE SURVEY 1" MAP

3.1.1 Cassini maps formerly published reproductions of the first edition of the Ordnance Survey 1" map. This extract is taken from a map published by Cassini which is in my possession.

3.1.2 Once again the route is shown.



4. TURNPIKE PLANS

4.1.1 There are no turnpike plans relevant to this application.

5. INCLOSURE RECORDS

5.1.1 There are no inclosure records relevant to this application.

6. TITHE RECORDS

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

6.1.2 The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. No-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers roads could carry a tithe as they were sued as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured in yellow or sienna to indicate public status

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

6.1.4 Other versions are held at the national archives. The National Archive refers readers to the black and white photos of their maps available on line at the Geneologist Web site

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

SOUTHOVER

6.1.6 The map shown as the tithe map at both the National Archive and the Keep for Southover is, in fact a map of land in central Southover, where an alternative to tithes was paid. The full tithe map for the parish is lost. The available map shows a small part of the northern portion of the application route, before the route leaves the area covered by the map.

6.1.7 The application route is shown in the same way as Southover High Street, which is a road today. Point H is towards the bottom on the map, which is taken from the East Sussex web site.

6.1.8 The application route is not given an apportionment number, suggesting that it was public road.



CONCLUSION TO THIS SECTION

Where evidence is available, the material in this section suggests that the public had the right to use the application route on foot, in horseback and using the sort of carts necessary for agriculture. This suggests that the route was a road at the time.

7. RAILWAY, CANAL AND RIVER RECORDS

7.1.1 Companies wishing to build railways or canals were required to show the owners of all the land within a certain distance of the proposed railway, and to place this information on deposit so that it could be inspected by the public and objections made, before Parliament would give the powers needed for the railway's construction. Records were well researched

as mistakes would have been costly with the possibility of the private bill being thrown out and a rival company being given permission.

THE PROPOSED BRIGHTON TO LEWES CANAL 1825

7.1.2 The application route was not near enough the proposed course of the canal for it to be listed in the book of reference, but a small portion of the northern section is shown on the plans, which are held at the Keep under reference QDP 93/1.

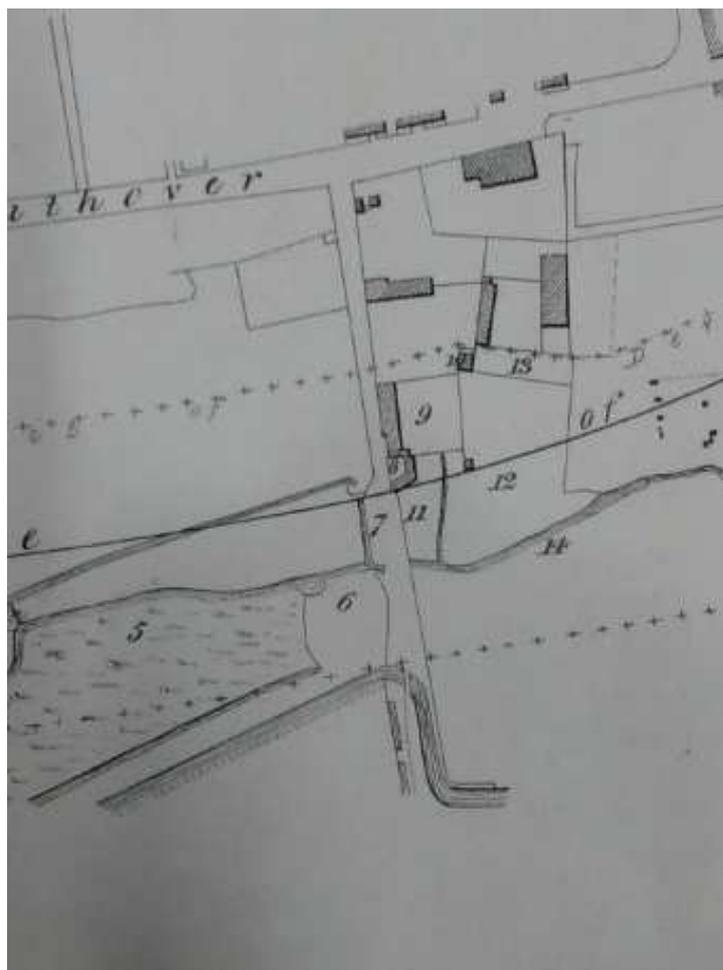
7.1.3 There is some distortion of colour in the extract below, but it will be seen that the northern part of the application route is depicted in the same way as the Southover to Newhaven road, suggesting that the application route had the same status at the time.



BRIGHTON TO LEWES RAILWAY 1843

7.1.4 The deposited plans for this railway are held at the Keep under reference QDP 190/1

7.1.5 The excerpt from these plans below shows where the railway crossed the application route. Point H is north of the crossing, roughly at the northern deviation limit boundary. Point F is at the bottom of the map.



7.1.6 The application route is given the number 7 on the plans. It is shown in the same way as Southover High Street. The deposited book of reference is held at the Keep under reference QDP 190/2. An extract, below, shows that this land parcel was described as a private road owned by Mr Verrall.

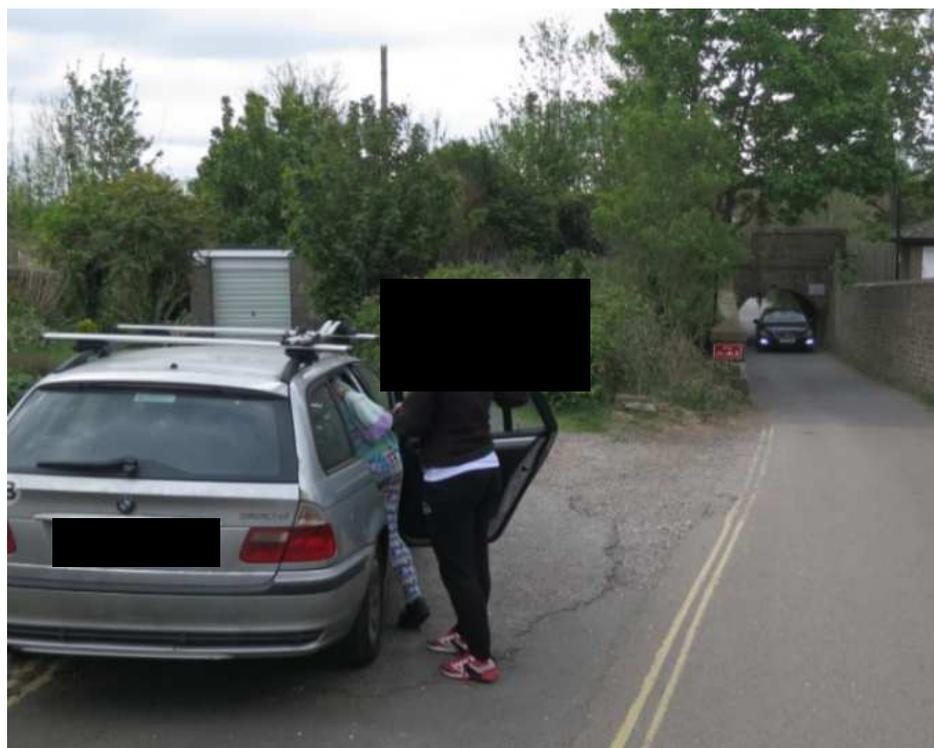
The Parish of Saint John the Baptist Southover in the County of Sussex.

No. or PLAN.	DESCRIPTION OF PROPERTY.	NAME OF OWNER OR REPUTED OWNER.	NAME OF LESSEE OR REPUTED LESSEE.	NAME OF OCCUPIER.
1	Plantation	William Verrall		William Verrall
2	Pasture	— Ditto —		— Ditto —
4	Pasture	— Ditto —		— Ditto —
5	Osier Ground	— Ditto —		— Ditto —
6	Pasture	— Ditto —		— Ditto —
7	Private Road	Miles Verrall		Miles Verrall William Verrall William Moxon The Jackson of the Trustees under the will of Henry Stampliny Jackson

7.1.7 This suggests that the route here was a road, but it was not the responsibility of the council. The route was quite wide at the point that it crossed the railway, wider than it was further north. The bridge which was actually built can be seen below. The view is from the south. It cannot be traversed by anything larger than a van. However on the right there is a ramp leading up from the road to the railway line. The ramp and the bridge together take up the whole width of the application route as shown on the plan above. There is no wall on the right, at the top of the ramp.



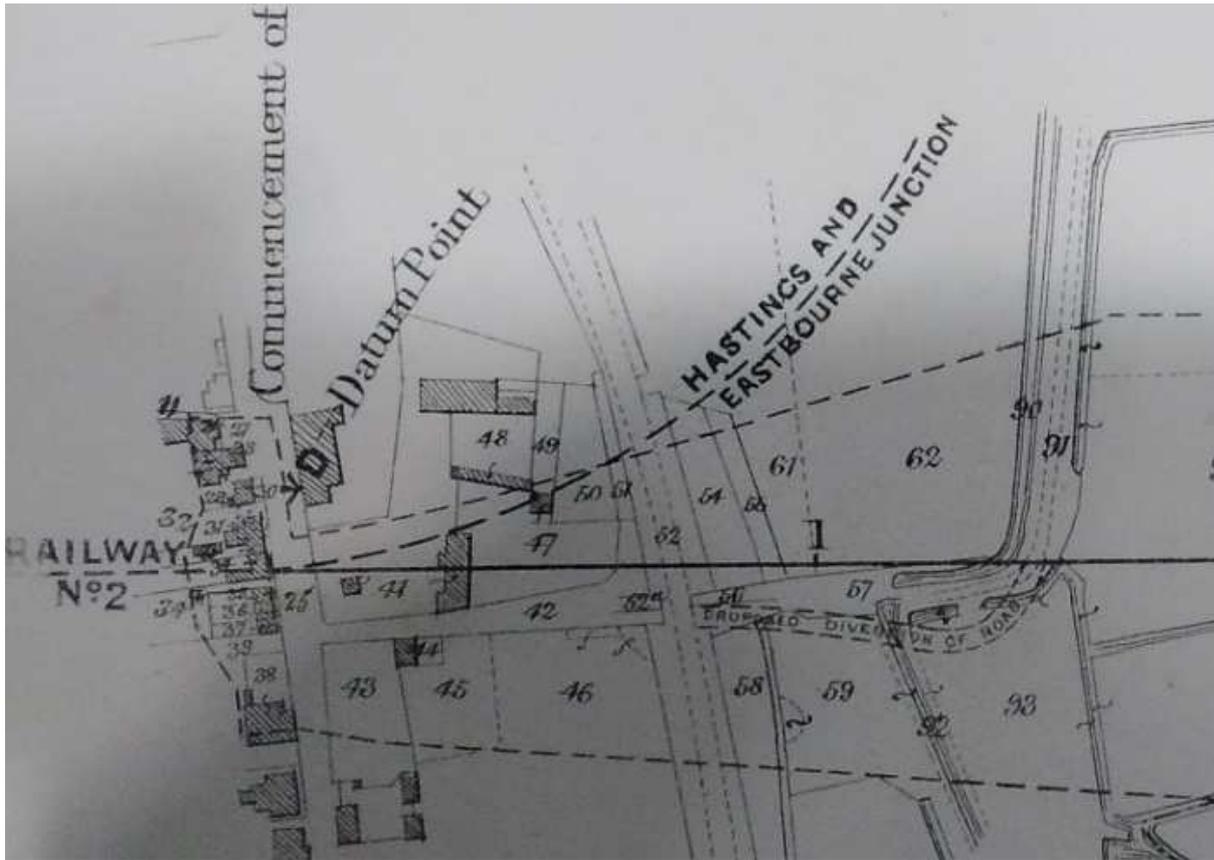
7.1.8 There is a corresponding ramp on the other side of the railway, now very overgrown.



7.1.9 It should be noted that this line pre-dates the Railway Clauses consolidation act of 1845, which set minimum dimensions for bridges over roads. I suggest that the existence of the ramps, even if these were only open on a permissive basis, may be the reason that a low bridge was considered acceptable.

PROPOSED BECKENHAM, LEWES AND BRIGHTON RAILWAY 1862

The deposited plans for this unbuilt railway are held at the Keep under reference QDP 308/1. The railway would have run south through Southover, parallel with the top of the application route, as the extract of the plan below shows:



7.1.10 The application route from H to F is shown with Southover High Street on the left. In the middle is the existing crossing of the Brighton-Lewes line. The application route is numbered 42, 57 and 91. There is a proposed diversion to accommodate the proposed line. This is labelled "proposed diversion of road" suggesting that the existing route was a road at the time.

7.1.11 The book of reference for this line is held at the Keep under reference QDP 308/2 The extracts below show that:

7.1.12 42 was a public highway which was the responsibility of the surveyor of highways

No. or Plan.	DESCRIPTION OF PROPERTY.	OWNERS, OR REPUTED OWNERS.	LESSEES, OR REPUTED LESSEES.	OCCUPIERS.
42	Public Highway and Waste	The Surveyors of Highways William Venall The London Brighton and South Coast Railway Company and John Blaker		The Surveyors of Highways William Venall The London Brighton and South Coast Railway Company and John Blaker.
43	Garden Ground	William Venall		William Venall.

7.1.13 57 was a public highway that was the responsibility of the surveyor of highways as was 91 (see below). The book of reference also give descriptions of land portion 56, and 52d which which are the ramps that are still there today, although overgrown. These are described as occupation roads for the railway company.

Railway, 1834

Lewes to Brighton

Parish of St. John the Baptist Southover in the County of Sussex

No. on Plan	DESCRIPTION OF PROPERTY.	OWNERS, OR REPUTED OWNERS.	LESSEES, OR REPUTED LESSEES.	OCCUPIERS.
52 ^a	Occupation Road	The London Brighton and South Coast Railway Company		The London Brighton and South Coast Railway Company
53	Stable	The London Brighton and South Coast Railway Company		The London Brighton and South Coast Railway Company and Robert Whiston (Black)
55	Orchard and garden ground	William Mercer		William Mercer
56	Occupation Road	The London Brighton and South Coast Railway Company		The London Brighton and South Coast Railway Company
57	Public Highway	The Surveyors of Highways		
58	Pasture and ditch	William Verrall		William Verrall
59	Pasture heus and ditch	William Verrall		William Verrall
61	Pasture field heus and ditch	John Blaker	The Trustees of the Sussex Archaeological Society The Reverend William Swell Mark Antony Law William Harvey and John Clay Lucas	The Trustees of the Sussex Archaeological Society The Reverend William Swell Mark Antony Law William Harvey John Clay Lucas and William Verrall
62	Pasture field and ditch	William Verrall		William Verrall
90	Lever or Ditch	The Commissioners of Levers of Lewes and Loughon Levels		
91	Parish Road	The Surveyor of Highways		

7.1.14 I suggest that these ramps were alternative ways that the public could cross the line if using vehicles too big for the bridge. There seems no other reason to build them. The railway company would not need ramps on both sides for maintenance purposes and the proximity of Lewes station raises questions as to whether or not they would need access here at all.

7.1.15 I note that the Beckenham line says that a part of the land contained in 42 is owned by Mr Verrall. I suggest that the Brighton surveyors found one owner and left it at that without looking further.

CONCLUSION TO THIS SECTION

7.1.16 The evidence in this section suggests that the parts of the application route featured in these plans had the status of a road at the time. The canal plans show the route like other roads and the Beckenham railway plans say that it was a public highway which was the responsibility of the council. I suggest that the records for this railway should be preferred to those of the Brighton-Lewes line because they are later, are concerned with more of the application route, and because, while the surveyor of highways might be relaxed about the rights of the council, it is unlikely that private owners affected by the Beckenham plans would be so backward in claiming compensation if their property was wrongly allocated to the council.

8. QUARTER SESSIONS RECORDS and other records of stoppages and diversions

8.1.1 I have found no record of any stoppages or diversions on the application route. As the route was not regarded as a highway in the 1970s there would have been no formal diversion when the Lewes bypass on the A27 was built.

9. ROUGH PLAN OF BROOKS AT IFORD, KINGSTON AND RODMELL FOR LEVEL COMMISSIONERS

9.1.1 This plan, which according to the catalogue at the Keep, dates from September 1867. The Keep holds it under reference ACC 5611/2/80. An extract is shown below. East is to the top of the plan. The route is clearly shown between points D and E on the application map. The application route leaves the levels at point E



CONCLUSION TO THIS SECTION

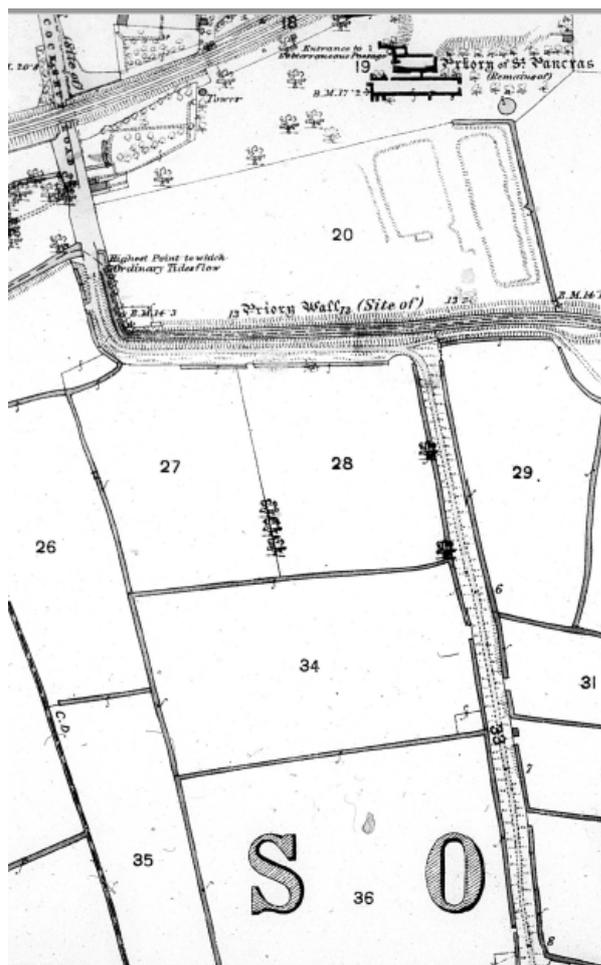
9.1.2 Where the application route crosses the levels on this map it is clearly shown as separate from the land parcels around it and is given no land parcel number. This suggests that it was a separate road at the time of the survey.

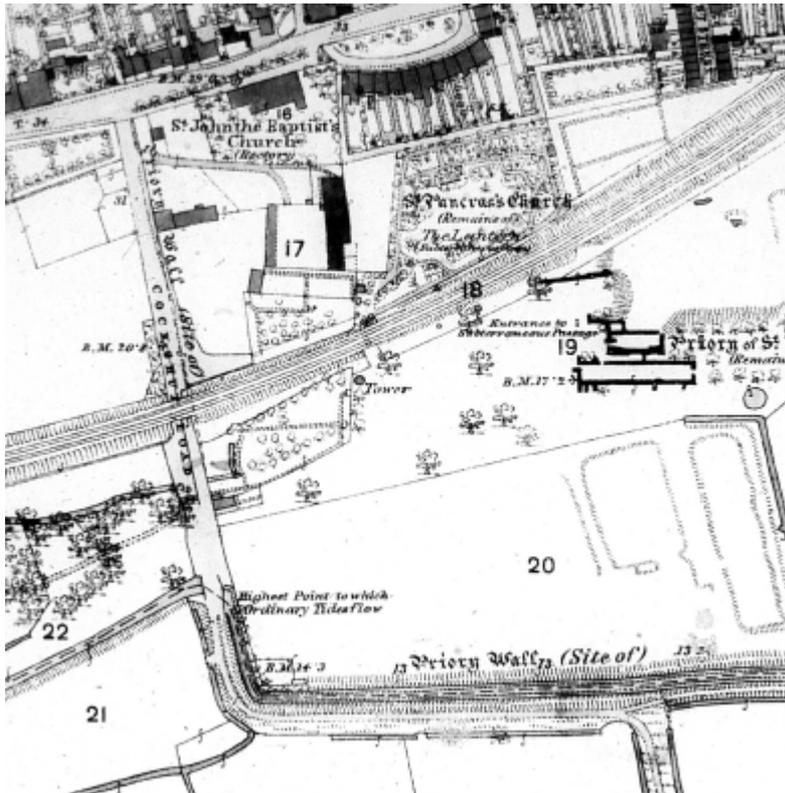
10. FIRST EDITION OF THE ORDNANCE SURVEY 25 INCH TO THE MILE MAP

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

10.1.2 Copies of the first edition of the Ordnance Survey 25 inches to the mile maps can be found online at the National Library of Scotland (incomplete set) and at the East Sussex Archive at the Keep. The extracts below are from the Keep where they are held on microfiche.

10.1.3 Reference number of map below 54 14





10.1.4 The application route appears separate from the surrounding land portions, and is given the number 33. North of Rise Farm to point H the application route appears separate from the surrounding land portions, and is given the number 33.

10.2 BOOKS OF REFERENCE/AREA BOOKS

10.2.1 Area books accompanied the first edition maps contain land use information. Parcels of land were numbered on the maps and the reference book can be used to determine land use. Books of reference are held in bound volumes on the open shelves at the Keep.

10.2.2 Here is an extract from the Southover reference book.

**PARISH OF ST. JOHN THE BAPTIST,
SOUTHOVER,**

IN THE
COUNTY OF SUSSEX—(EASTERN DIVISION).

HUNDRED OF SOUTHOVER.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	1-811	Pasture, &c.	36	5-644	Pasture, &c.
2	3-280	Marsh, &c.	37	2-602	Pasture, &c.
3	1-534	Pasture.	38	2-219	Pasture, &c.
4	7-078	Pasture.	39	2-345	Pasture, &c.
5	322	Houses and garden (part of).	40	4-570	Pasture, &c.
6	069	Road.	41	3-518	Pasture, &c.
7	749	Pasture.	42	1-780	Pasture, &c.
8	387	Road.	43	2-522	Pasture, &c.
9	2-600	Pasture, &c.	44	1-611	Pasture, &c.
10	1-128	Pasture, &c.	45	2-190	Pasture, &c.
11	1-190	Pasture.	46	132	Road (pasture).
12	1-654	Pasture.	47	1-765	Pasture, &c.
13	1-528	Pasture.	48	3-131	Pasture, &c.
14	4-276	House, garden, ornamental ground, &c.	49	2-202	Pasture, &c.
15	087	Railway.	50	1-448	Pasture, &c.
16	526	Church and graveyard.	51	1-945	Road, &c.
17	2-004	Houses, garden, &c.	52	1-834	Pasture, &c.
18	8-015	Railway.	53	1-304	Pasture, &c.
19	4-935	Ornamental pasture, &c.	54	1-251	Pasture, &c.
20	5-672	Pasture, &c.	55	3-898	Pasture, &c.
21	1-733	Pasture, &c.	56	1-705	Pasture, &c.
22	1-492	Pasture, &c.	57	1-361	Pasture, &c.
23	1-052	Pasture.	58	1-917	Pasture, &c.
24	1-558	Pasture.	59	1-296	Road (rough pasture).
25	3-267	Pasture.	60	2-356	Pasture, &c.
26	2-825	Pasture.	61	6-960	Pasture, &c.
27	2-780	Pasture, &c.	62	3-568	Pasture, &c.
28	2-852	Pasture, &c.	63	4-510	Pasture.
29	2-780	Pasture, &c.	64	2-328	Ornamental ground, house, &c.
30	2-202	Pasture, &c.	65	3-235	Ornamental pasture.
31	1-450	Pasture, &c.	66	4-183	Pasture.
32	1-515	Pasture, &c.	67	8-359	Pasture.
33	3-427	Road.	68	1-132	Road.
34	4-528	Pasture, &c.	69	6-443	Pasture.
35	2-554	Pasture, &c.	70	5-989	Pasture.
			71	1-548	Houses and gardens.
			72	1-027	Garden and ornamental ground (part of).

33912.

10.2.3 Land portion 33 in Southover is described as a road.

11. INLAND REVENUE VALUATION

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

11.1.2 The map below produced for the survey have been copied from the map at the National Archive held under reference IR 124/1/160



11.1.3 The whole of the application route is in a white apportionment 142c

CONCLUSION TO THIS SECTION

I do not think that any inferences can be drawn from this information.

12. OTHER MAPS

12.1.1 The National Library of Scotland has a number of maps covering the application route at

<http://maps.nls.uk/geo/explore/#zoom=15&lat=50.8548&lon=0.0026&layers=171&b=1>

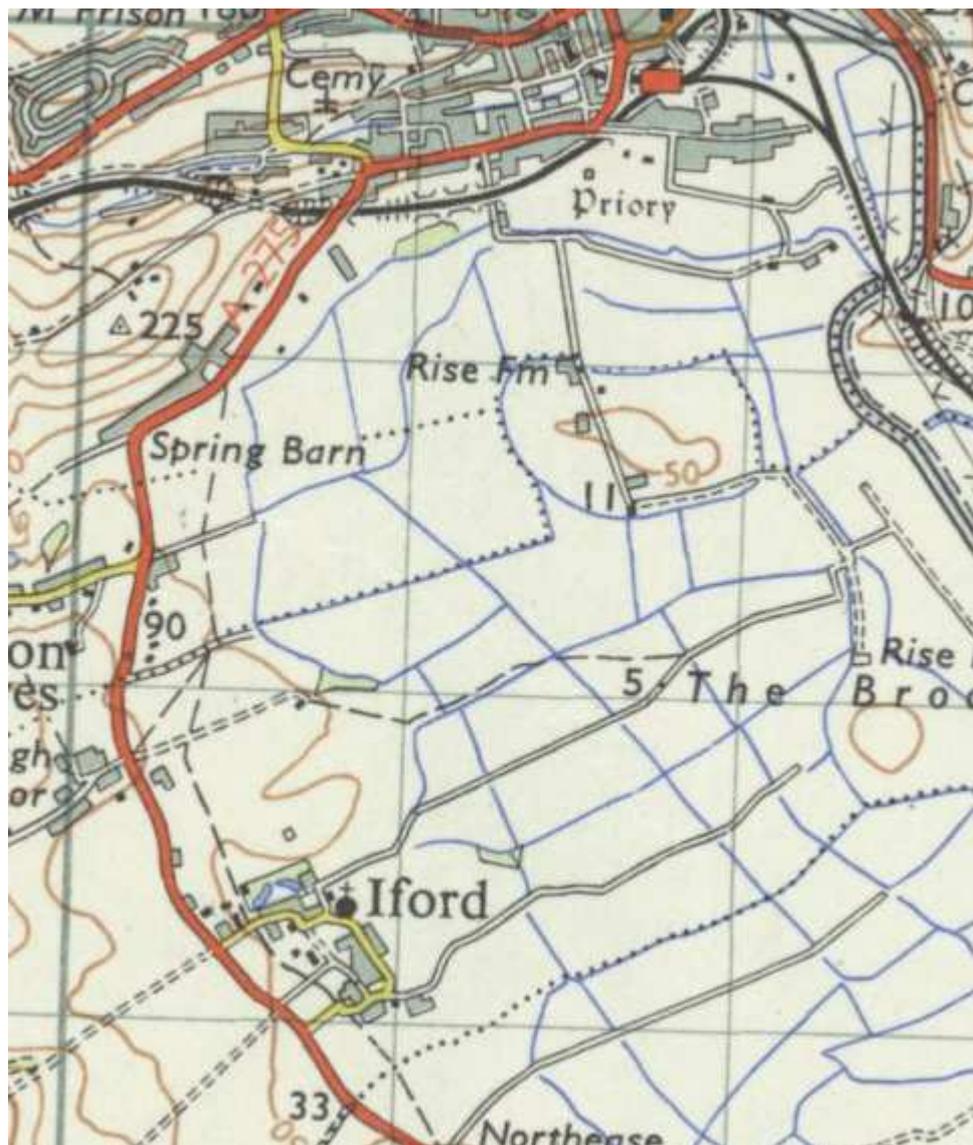
12.1.2 Here is the first edition of the OS 6 inch map 1888-1913. The route is clearly shown and the lower map shows that the only way to Rise Farm at the time was via the application route. I consider it more likely that the usual route to Rise Farm would be from the north via the railway crossing or bridge.



Below is the OS 1-25k map from the period 1937-61 from the same source. The application route is again clearly shown.



12.1.3 Below is and extract from the 7th series one inch OS map dated 1955-61 from the same source. Again the application route and linking footpath are clearly shown.



CONCLUSION TO THIS SECTION

These maps show the existence of the application route on the ground over a long period of time.

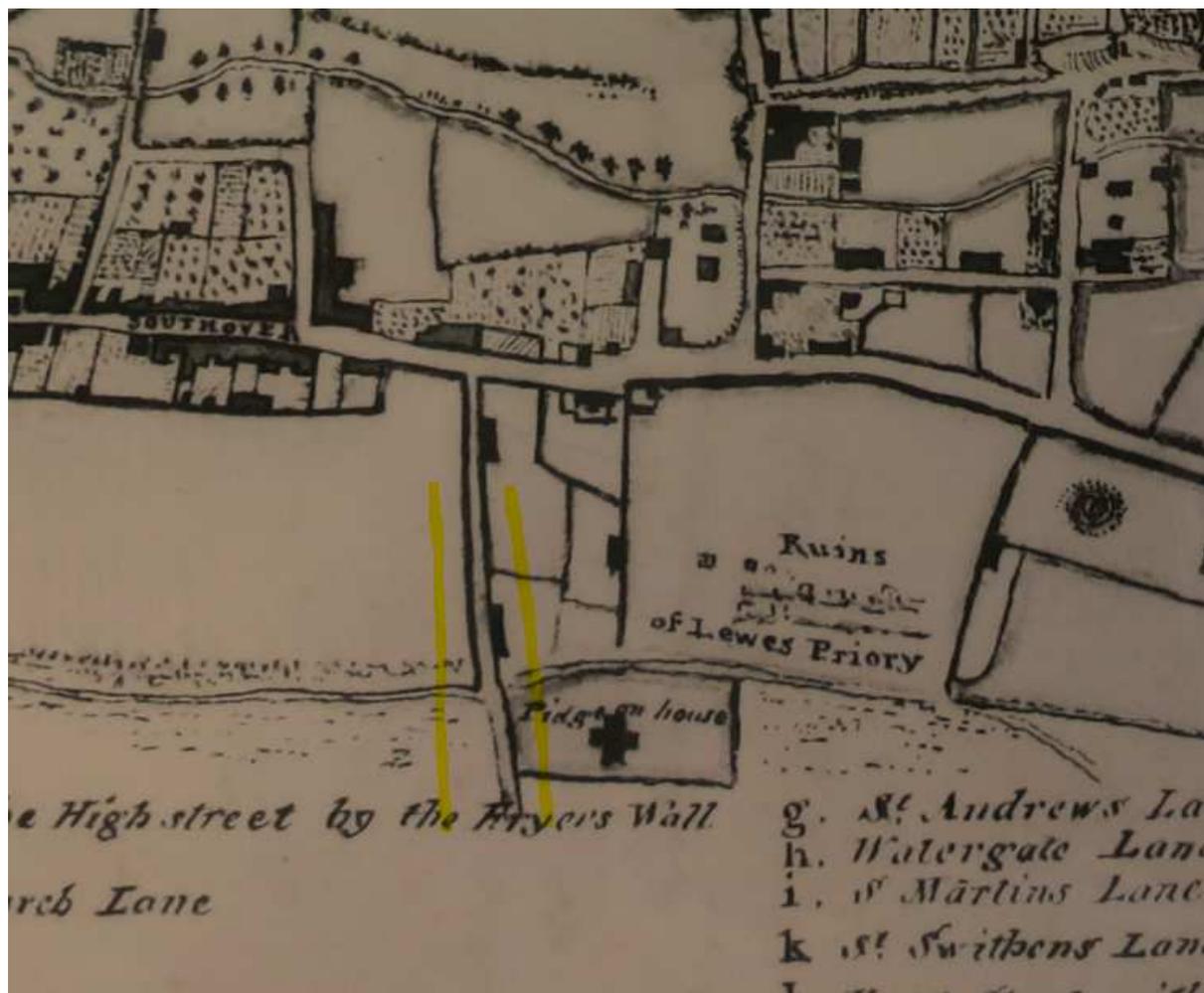
13. LEWES TOWN MAPS

13.1.1 Since Lewes is the county town a number of maps have been made of it. This is how some of them show the application route.

13.2 Lambert the Younger's map

13.2.1 This is held at the Keep under reference AMS 6008/3/6/10. The catalogue dates it as 1788

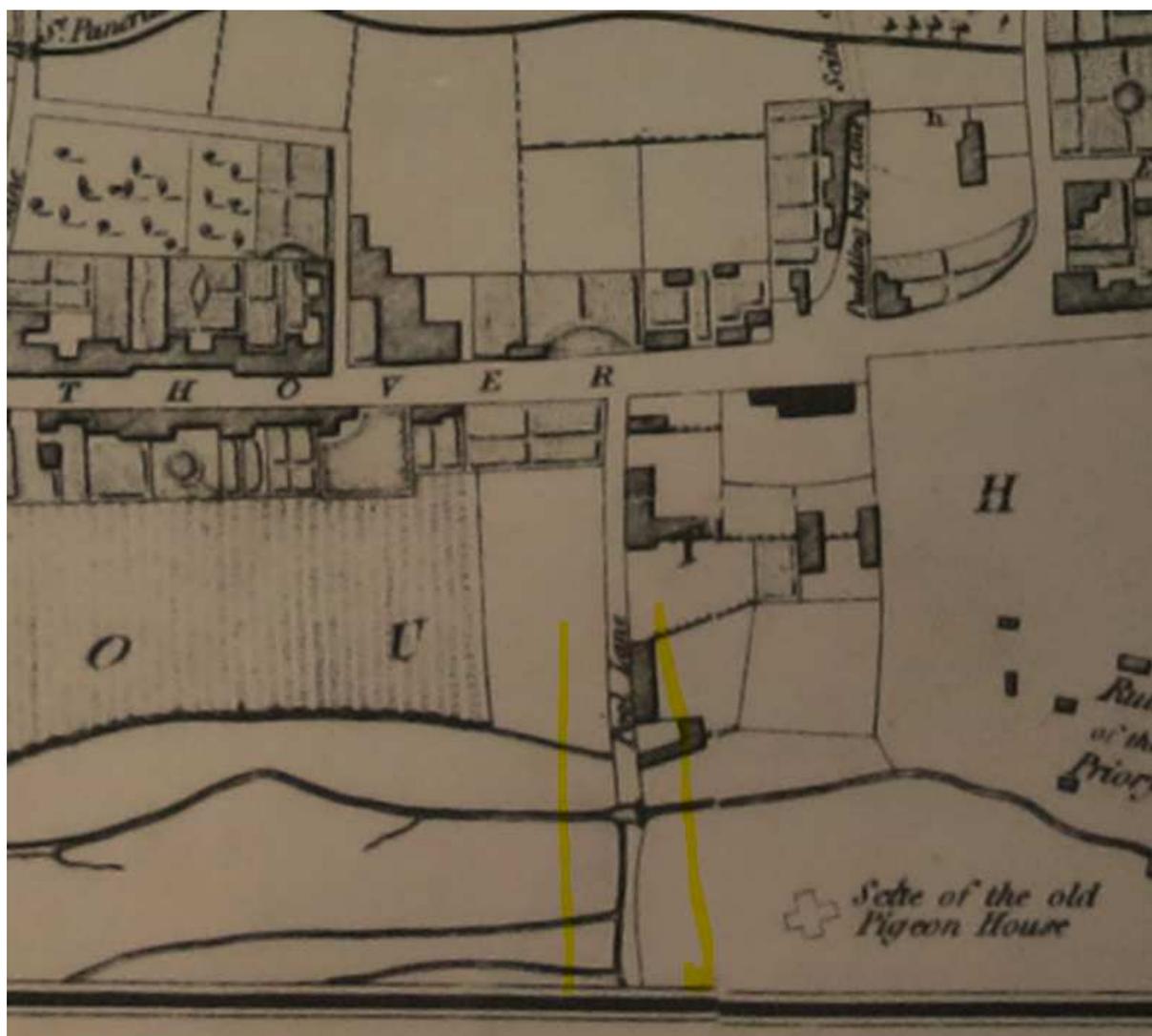
13.2.2 The northern part of the route is shown in the same way as other roads.



13.3 Marchants Map

13.3.1 This map is held at the Keep under reference AMS 6008/3/6/4 The catalogue dates the map as 1824

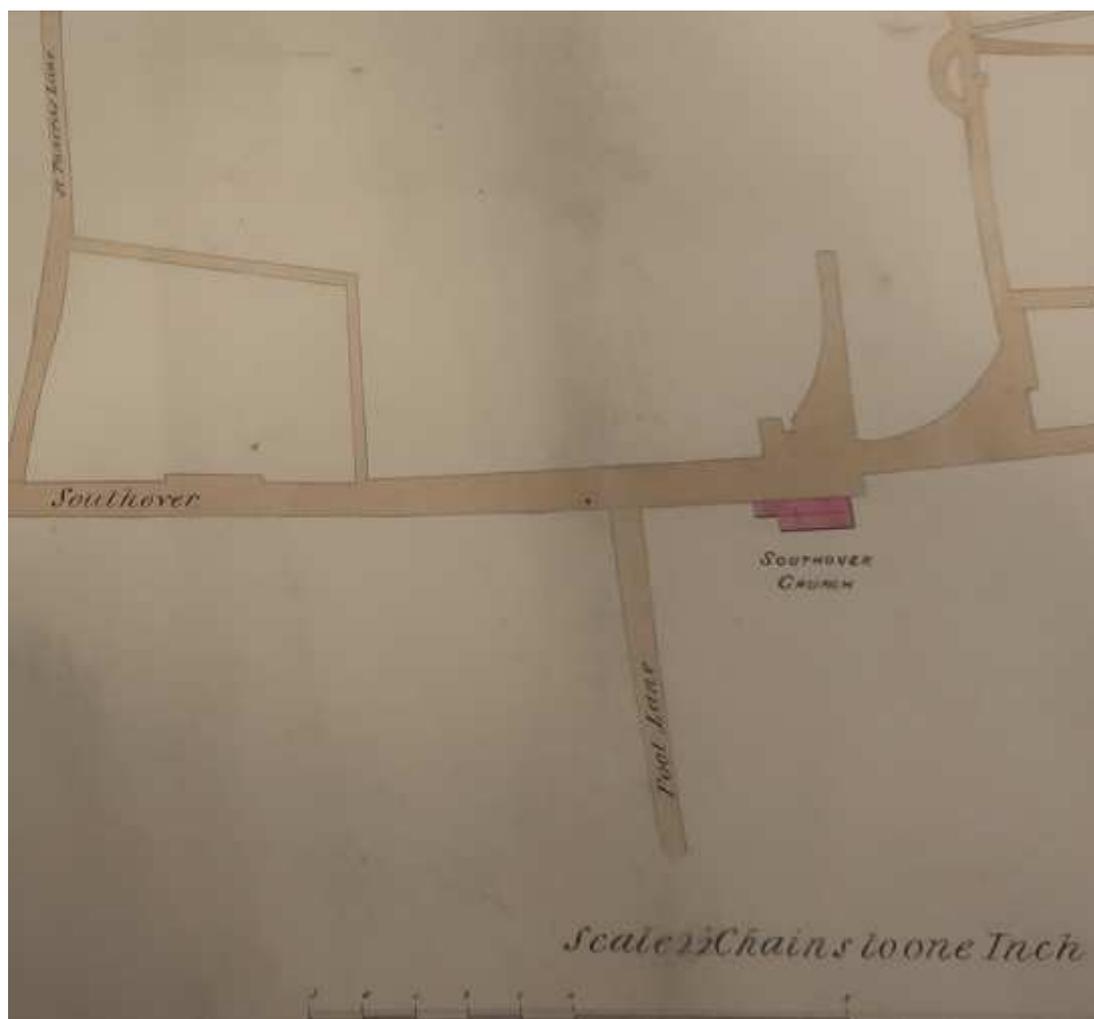
13.3.2 The northern part of the application route is shown in the same way as other roads and is named Pool Lane.



13.4 A map of Dec 1868

13.4.1 The Keep holds a map of Lewes made by George Fuller. The catalogue says that it was made in 1868.

13.4.2 The northern part of the route is shown and named as Pool Lane.



13.4.3 The map appears to show roads in order of their importance or width. Pool Lane is quite wide. All the other roads on this section of the map are public roads today.

13.4.4 These maps of Lewes suggest that the northern part of the application route was a public road in the same way as the other routes marked on the maps, which are public roads today.

14. PARISH AND ESTATE MAPS

14.1 Parish map

14.1.1 A map of Southover by Fuller and Askew, Lewes, surveyors and architects is held at the Keep under reference ACC 3412/3/703. The catalogue dates it as 1828. There is a book of reference.

14.1.2 The application is shown in sepia, the colour often used for public roads. The other ways shown in sepia on this map are public ways today. The proposed railway is shown in pink.

14.1.3 Owners names appear to be shown in red, but there is no owner shown for the application route. There are a number of owners who could only get to their land via the application route.

14.1.4 The application route is numbered 60 and 24, or possibly 6024. This appears to be a reference to the area covered by the route.



14.2 Estate map

14.2.1 These maps are of use because they show how the parish or the landowner viewed routes within the parish at the time the maps were compiled.

14.2.2 An auction catalogue for some of the Marquess of Abergavenny's settled estates is held at the Keep under reference ACC 7677/14. According to the Keep catalogue the document is dated 29 April 1919.

14.2.3 It includes the sale of Rise Farm. Extracts from the sales particulars and accompanying map are shown below. Rise Farm is lot 6.

GENERAL REMARKS.

NEARLY the whole of the Lots are situated within, or a short distance from, the important County Town of Lewes, from whence there is an excellent train service to London and all parts of the South of England.

The farms are approached by roads of easy gradient, and the completion of the important scheme (now in hand) for the widening and reconstruction of the main Lewes-Newhaven Road, which intersects Northease and Rodmell Farms, should give an additional value to the whole of the lots in the parish of Rodmell.

The properties, most of which become vacant at Michaelmas next, will be sold subject to the existing tenancies and to the rights of the tenants, including payment of any valuation or compensation to which they may be entitled under their agreements, custom of the county or the Agricultural Holdings Acts.

The hedges or fences marked T on plan form part of the lots upon which such mark appears, and where a ditch adjoins such hedge or fence, it shall be considered as belonging thereto. In the absence of a ditch, however, the boundary of the lot upon which the mark T appears shall extend three feet beyond the centre of the hedge. A dyke separating two or more lots shall be considered as a party dyke. Any dispute as to the boundaries of the various lots shall be settled by the Auctioneers, whose decision shall be final.

The growing timber will be included in the sale.

The Estates are sold subject to all rights of way, water drainage and other easements which may exist thereon or affect the same, or may become necessary owing to the property being sold in lots, whether shown upon the plan or stated in the Particulars or not.

The lots are sold subject to the Tithe Rent Charge, Land Tax, Quit Rents, and other out-goings (if any) in respect thereof.

The whole of the properties with the exception of Lot 16 are believed to be free from Land Tax.

There are written agreements with some of the tenants and such agreements will be produced at the time of sale, and may be seen previously at the offices of the Vendor's Solicitors.

LOT 6—(Coloured Green on Plan). AN EXCEEDINGLY DESIRABLE

Freehold Dairy Farm,

KNOWN AS

RISE FARM,

Situate in the Parish of SOUTHOVER Without, on the Outskirts of Lewes, and comprising :

A SUBSTANTIAL

Brick and Stone-built and Tiled FARM HOUSE

Containing Three Bedrooms, Attic Bedroom, large Dining Room with bay window, Sitting Room, Office, Kitchen, Larder, etc., and

EXCELLENT COTTAGE ADJOINING.

The Farm Buildings comprise Cowsheds for about 38, Milk Cooling Room, Stabling for 15, Barn, Waggon Shed, 2 Cart Lodges, Implement Shed, Store Shed with Granary over, 2 Calving Boxes, Loose Box, Cattle Yards, etc., also a DETACHED RANGE OF CATTLE LODGES in Field No. 47a, together with about

11a 1r 22p 4800

of exceedingly Productive Upland Pasture, Marsh Grazing and Arable Land, divided as follows :—

PARTICULARS—continued. 5

NO. ON PLAN.	DESCRIPTION.	AREA.		
		A.	R.	P.
56	Landway	28	1	15
44	Arable	0	2	11
45	Farmhouse and Buildings	19	1	31
47A	Pasture (upland)	22	1	32
47	Arable	3	1	7
38	Marsh	3	0	24
53	Marsh	3	1	5
48	Marsh	4	2	34
52	Marsh	4	0	39
51	Marsh	1	2	19
49	Marsh	5	1	1
35	Marsh	2	1	4
37	Marsh	4	2	8
39	Marsh	3	2	5
21	Marsh	4	1	16
24	Marsh			
		111	1	22

The farm is let to Mr. R. W. E. MORSE, together with Lots 1, 2, 3, 4 and 5, on a yearly Michaelmas tenancy expiring on 29th September next.

There is a right of way over enclosure No. 56 in favour of certain neighbouring owners and occupiers.

This lot is tithe free, but subject to an annual rent charge of £15/4/8, payable half-yearly to Sackville College, East Grinstead.

LOT 7—(Coloured Pink on Plan).



1.1.2 The general remarks state that all the properties are approached by good roads (my emphasis) and there is no mention of a right of way over other land being necessary to reach the farm from Southover, even though the access passes through land which will not be owned by the purchaser. This suggests that the application route from D to H is a public road.

15. 1ST DEFINITIVE MAP SURVEY

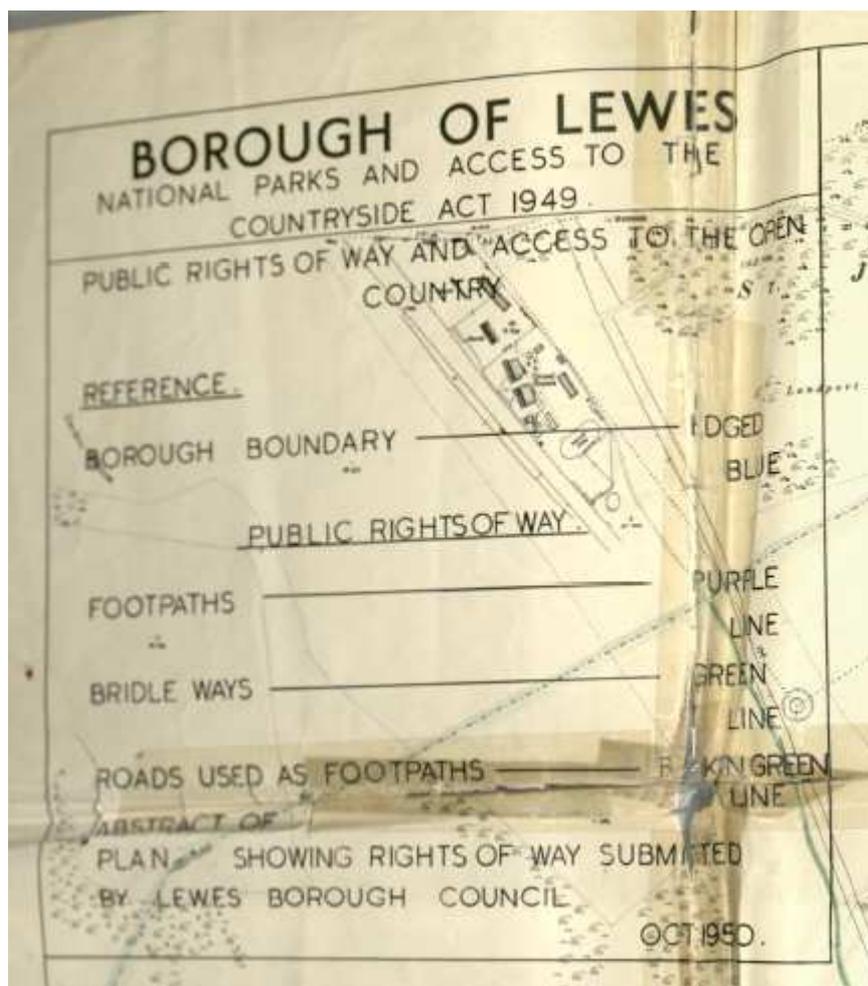
15.1.1 By the time of the definitive map creation in the 1950s, the boundary had shifted from point B to point D and the relevant authority to the north was Lewes Borough Council.

15.1.2 The map of rights of way that Iford parish believed to exist at the initial stage of the survey is part of a document held at the Keep under reference C/R 68/3. An extract is shown below. The application route is shown as route 10.



15.1.3 The file containing information about the survey in Lewes is held at the Keep under reference C/R 67/63

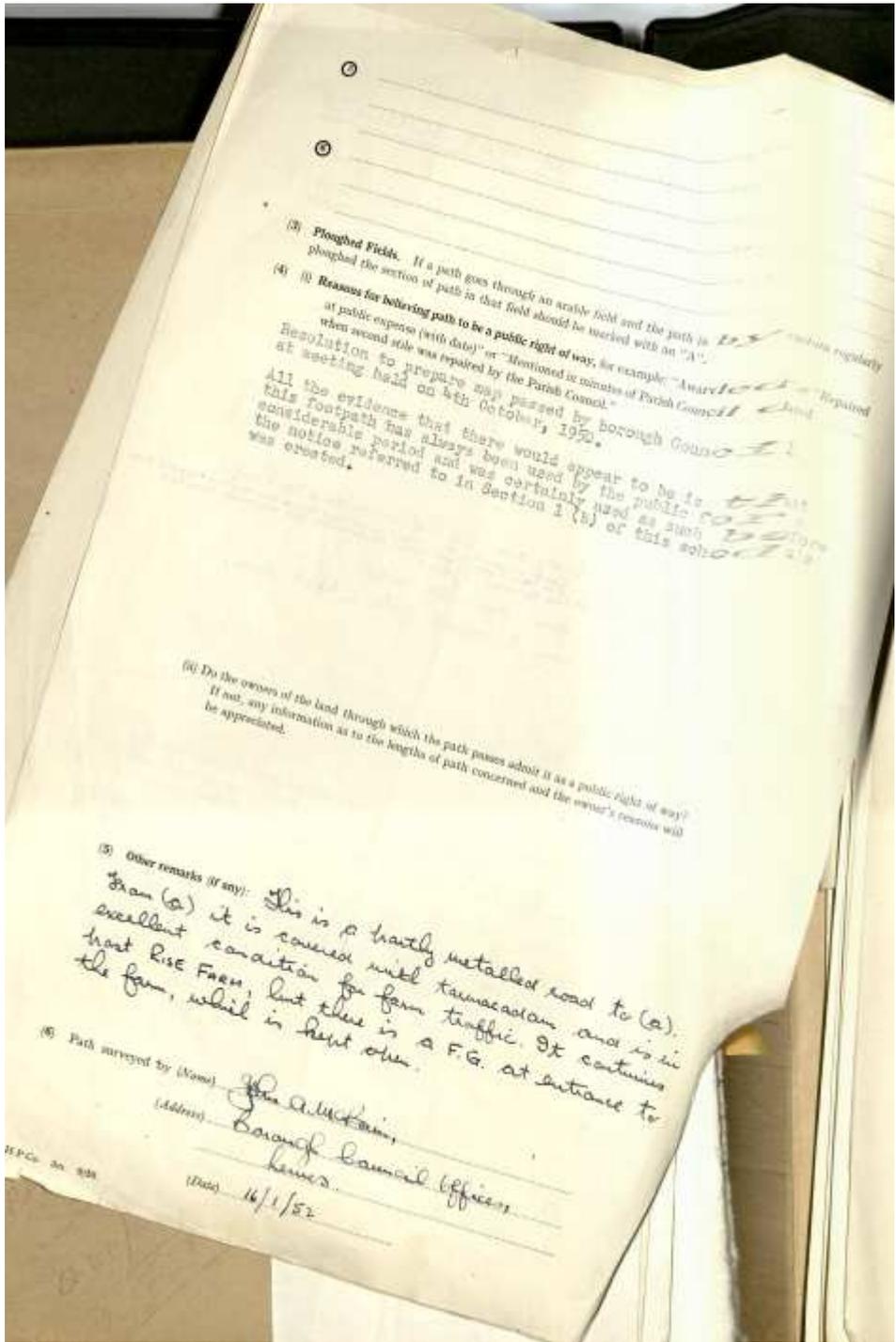
15.1.4 It contains a number of maps, including one that is shown as the routes submitted by Lewes Council. Roads used as footpaths are shown by a broken green line.



15.1.5 The application route in Lewes is shown with a broken green line. The council regarded it as a road used as a footpath. The route is numbered 3

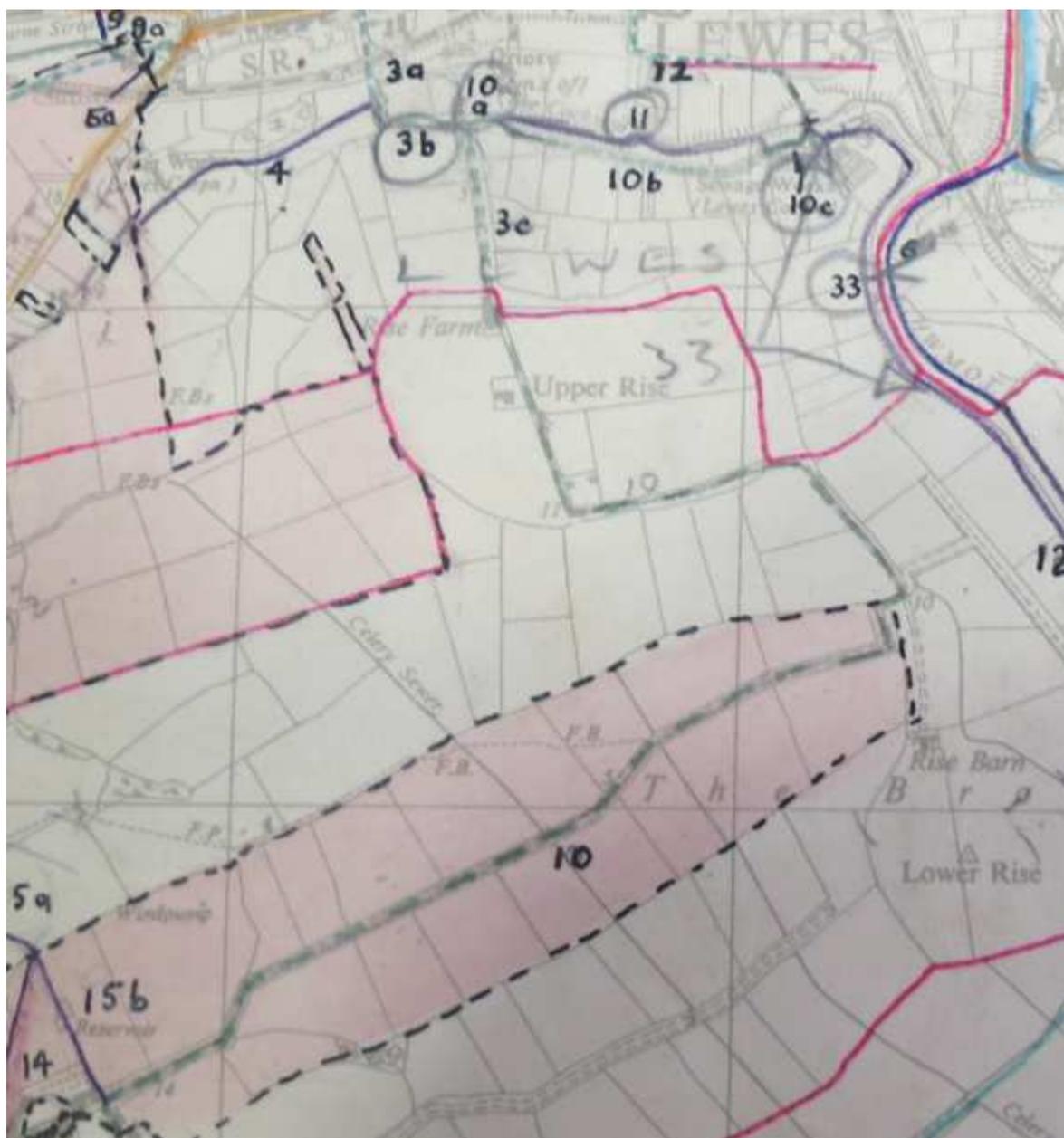


15.1.6 The survey form for this route filled in by the council in the same file contains the following information:



15.1.7 The same file contains the Ramblers Association survey but this does not appear to mention the route.

Based on the information provided East Sussex County Council drew up a draft map and statement. Copies of the map are held at the Keep under reference C/R 68/9. The extract below shows the relevant part of the map. The application route is shown in full as a road used as a path, as Lewes 3 and Iford 10.



15.1.8 The purpose of publishing the draft map and statement was to enable objections to be made to it. A rights of way subcommittee of the county council was set up to consider these objections, which could be against a decision to include a route, to not include a route or to include a route with a status that the objector thought incorrect.

15.1.9 The minutes of the sub-committee for the period June 1954 to February 1956 are held at the Keep under the reference C/C 11/5/105. They contain the following information:

15.1.10 On the 20th May the clerk reported to the sub-committee that the British Transport Commission had made an objection to the part of Lewes 3 that included their land but had withdrawn it.- that is they now accepted that the route was a public road used as a path.

Lewes 3b,c, Iford 10

10. The Draft Map shows an alleged "road used as a public path" from the southern end of the Cockshut Road generally south-eastwards and then south-westwards to Iford Village. The Iford Parish Meeting agree with the landowners' contention that this is not a public right of way and Lewes Borough consider that it is not more than a public footpath but have only supplied one evidence form of its use by the public as a footpath and that by a man aged 33 who used it nearly every week during the prewar period but not very frequently since.

11. The landowner states that on the very rare occasions when he has found a stranger walking along this path he has stopped him and informed him that it is a private way, and also that before he bought the Brooks near the Lower Rise some years ago he paid the late Mr. Harry Willett the sum of £1 per annum for the right to pass along that part of this track which runs close to the Pool Bar Sewer between the Upper Rise and the Lower Rise.

REC. 12. It is RECOMMENDED that paths Lewes 3b,c, Iford 10 be deleted from the Draft Map.

Lewes 10 and 11

15.1.13 At the same meeting the sub-committee agreed to delete routes 10 and 11, which joined the application route at point E.

Lewes 10 and 11

13. The Draft Map shows an alleged public bridleway (Lewes 10) and an alleged public footpath (Lewes 11) immediately south of the Cockshut from near the Southdown Tennis Club Courts to the south-eastern end of Ham Lane. Lewes Borough are prepared to admit that path Lewes 10 is probably not more than a public footpath but the landowner denies any right of way at all over either path and as it is considered that insufficient evidence has been supplied of the use of either path by the public as of right and without interruption it is RECOMMENDED that paths Lewes 10 and 11 be deleted from the Draft Map.

C.

15.1.14 The minutes record that these recommendations were accepted.

23rd May, 1950

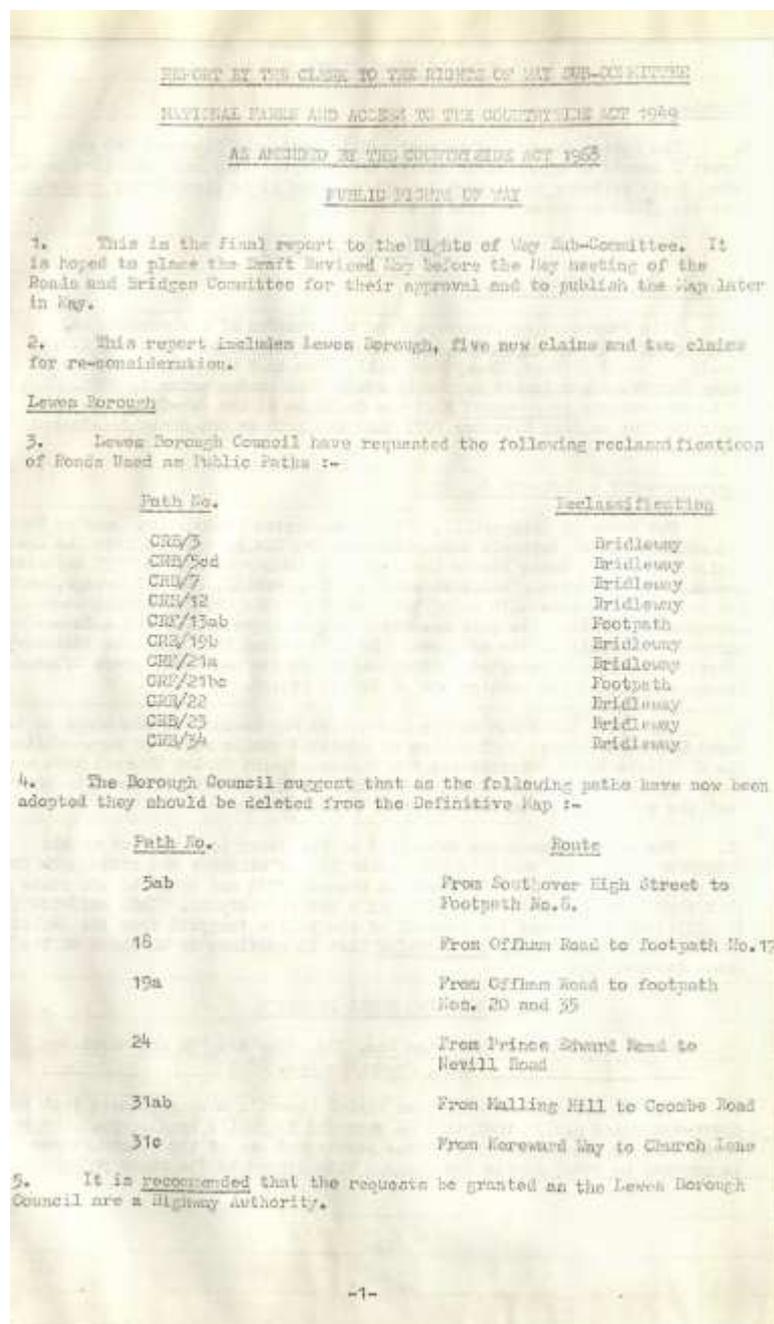
4. RESOLVED - That the report be received and the recommendations contained therein approved and adopted except that as regards the recommendation in paragraph 46, paths Piddinghoe 8 and 9 be substituted for paths Beddingham 8 and 9.

5. With reference to paragraphs 47 and 48 the Clerk reported

15.1.15 This left only Lewes 3a, as a road used as a path.

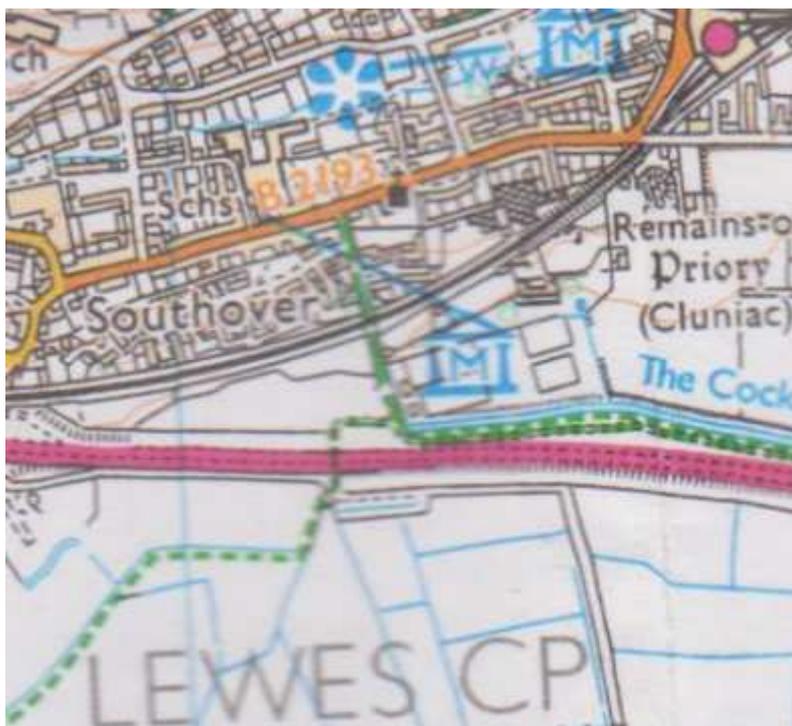
15.1.16 The final first definitive map for Lewes is held by the Keep under reference R/C 147/1. It shows application route section G-H as a road used as a public path. However G-E is now part of footpath 11. The remainder of the route in Lewes has been deleted. I can find no evidence of the reason for this change.

15.2.3 On 11th April 1972 the sub-committee had before them a report from the clerk recommending that Lewes 3 be downgraded from a road used public path to a bridleway. The reason given was that Lewes Borough, as the highway authority had requested it. There is no evidence that the authority considered the relevant factors.



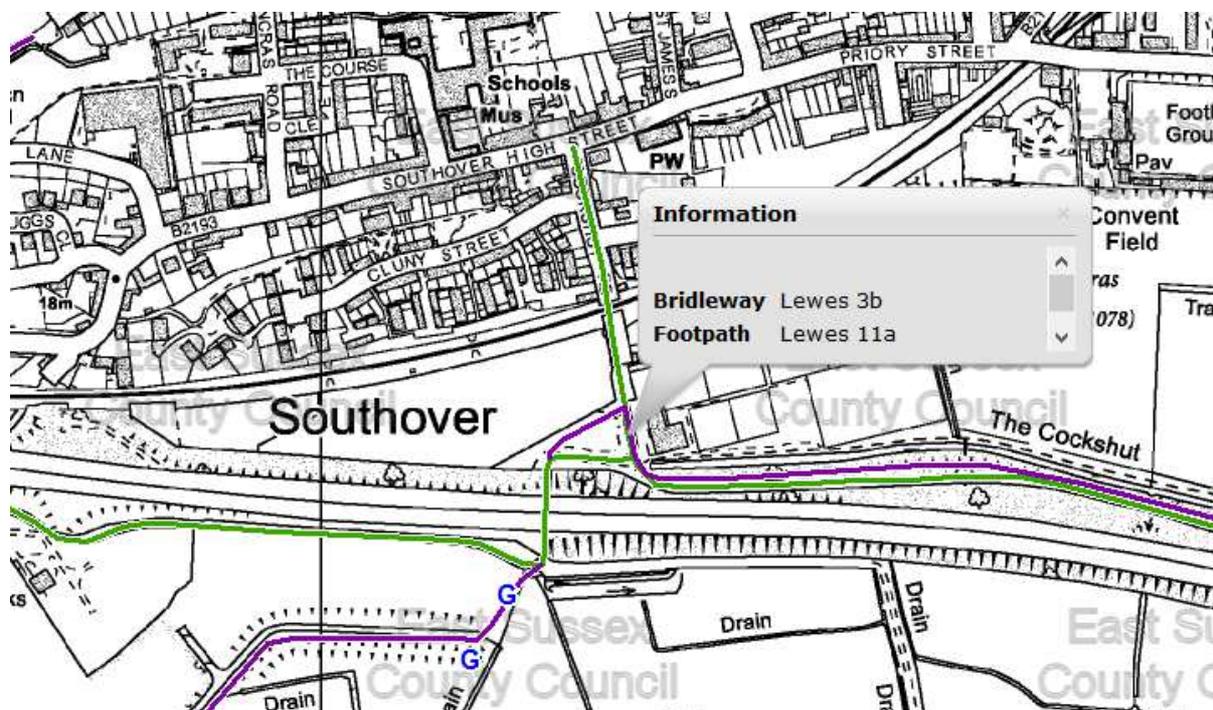
15.2.4 The recommendation appears to have been accepted but I believe the decision may have been outside the council's powers because they had not taken into account the factors required by law. Even if it was correct then, it has not been correct for at least the last 20 years.

15.2.5 The position following this review is shown on the extract of a recent ordnance survey map below



15.2.6 I have been unable to find evidence as to how the bridleway from point G to point E and eastwards came into being.

15.2.7 In recent years a bridleway has been created in the area by sealed order. It has upgraded the application route between Fand G to Bridleway status. An extract from the East Sussex on line rights of way map is shown below. It is available at <https://www.eastsussex.gov.uk/leisureandtourism/countryside/rightsofway/map/map.aspx>



CONCLUSION TO THIS SECTION

15.2.8 The fact that the application route was recorded in the parish survey shows that some people, at least regarded the route as a road used as a public path at the time.

15.2.9 The route is clearly described in the Ramblers survey and the survey notes that walkers were welcome, although no right of way was admitted. This is strong evidence that the route was in use, at least by pedestrians, at the time.

15.2.10 No obstructions are recorded either in the parish or the Ramblers survey.

15.2.11 Lewes at the time was a council covering a small area and it is likely that officers would be very familiar with their patch. The confident statement by an officer entrusted to fill in the survey forms to the effect that "All the evidence appears that this footpath has been used by the public for a considerable period and it was certainly used as such before the notice referred to in section 1(b) of this schedule was erected" should be given considerable weight. I suggest that the fact that the council only subsequently came up with one witness was more due to pressure of work than the absence of witnesses. It appears from the statements that the signs denying a right of way had only recently been erected. Since the route has no junctions with other rights of way, I suggest that the statement by the Lewes officer can be applied to the whole of the path.

15.2.12 The alleged statement by the land owner that walkers were always turned away when found is flatly contradicted by the "walkers welcome" signs that no one suggested were not genuine, so the landlord's statements must be treated with some scepticism. No evidence was provided for the alleged payment mentioned.

15.2.13 The British Transport Commission accepted that there was a road used as a public path on and near their property.

15.2.14 Little or no historical evidence appears to have been considered.

15.2.15 I suggest that, on balance, the evidence in this section supports the existence of highway status. It may be that regular through access by vehicles had ceased, but I suggest that the route was still correctly identified as a road used as a public path on the principle "Once a highway, always a highway"

16. HIGHWAY AUTHORITY MINUTES and other records

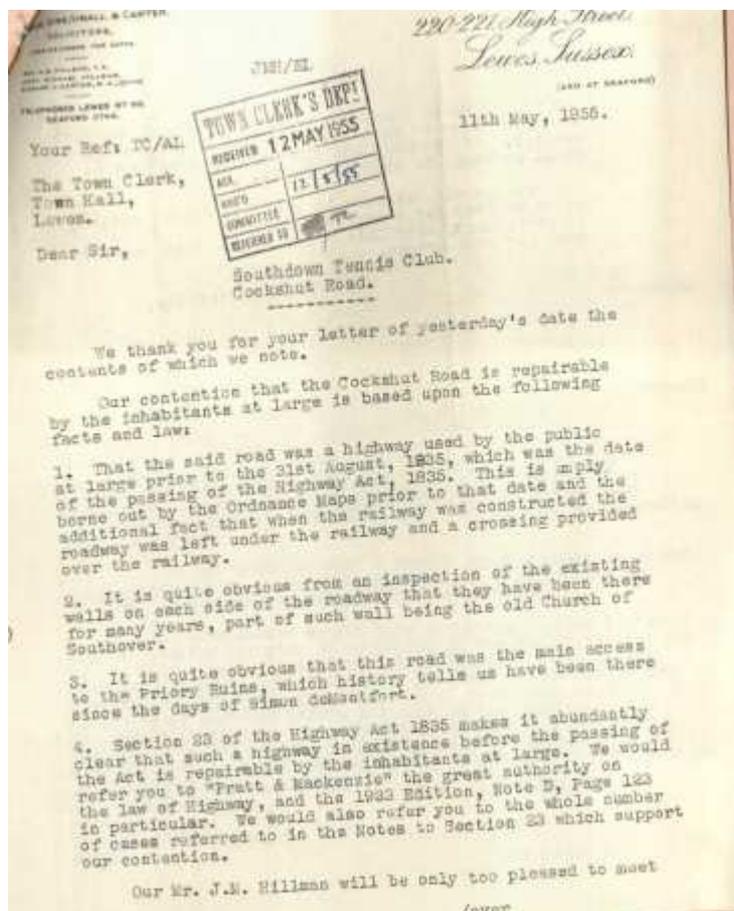
16.1.1 In East Sussex the majority of roads and other ways were the responsibility of the Parish up to 1894. From 1894 the responsibility passed to district councils, with an important exception that main roads could be made the responsibility of the county. In 1930 East Sussex county council became the highway authority for roads and other ways except in boroughs like Lewes, which remained as highway authorities up to 1974.

16.1.2 The Keep maintains a file under the reference DL/D 97/1. It contains correspondence and documents about the liability for the maintenance of Cockshut Road..

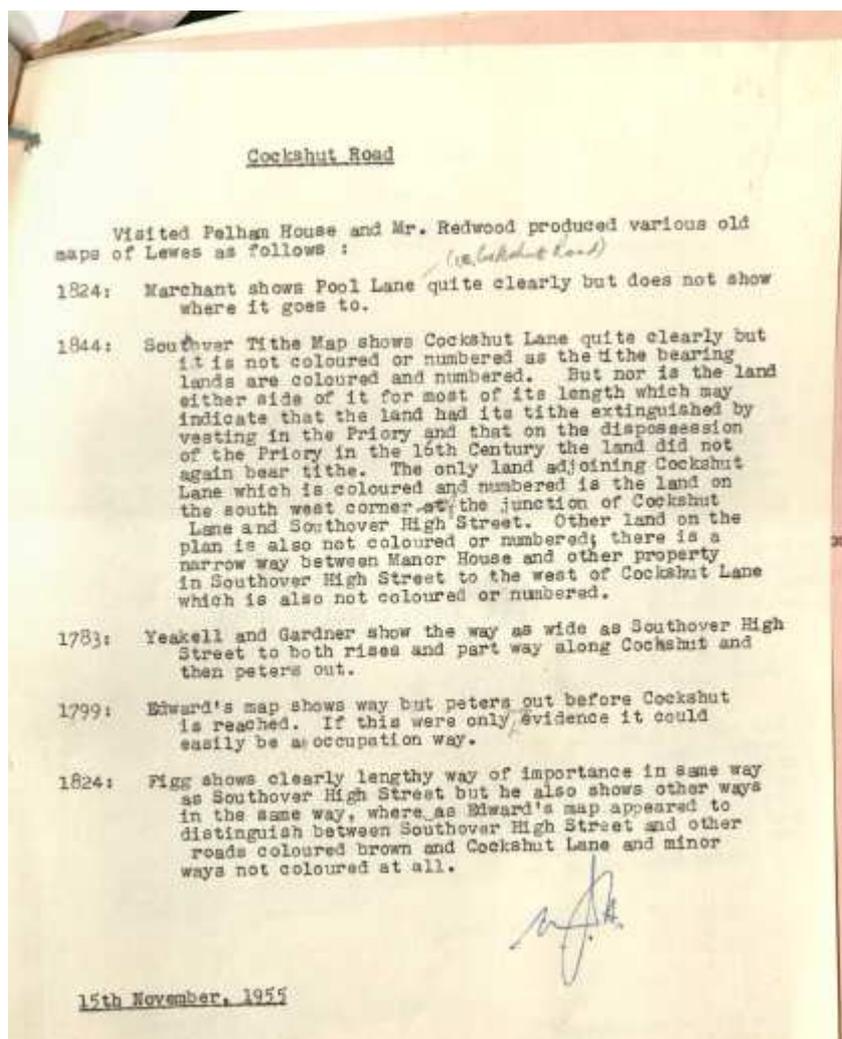
16.1.3 The relevant material from the file is copied in this application as appendix 3. A summary of the significant findings is given below.

16.1.4 In 1932 the Southdown Club asked Lewes Council to repair the road, as it was not safe for vehicles. The council said it was a private road, but agreed to contribute some money. In 1949 the matter came up again, and the council agreed to make a contribution, again without admitting responsibility for the road

16.1.5 In 1955 solicitors acting for the Southdown Club wrote to the council suggesting that Cockshut Road was an ancient highway that the council had a liability to repair. The council initially replied agreeing that there was a right of way but saying that it was unlikely that this was a road for which the council had liability because it dead ended at Rise Farm. The case made by the solicitors is set out below.



16.1.6 A considerable amount of correspondence then ensued. Much of it reproduces material in this statement. As part of this to-ing and fro-ing someone visited Pelham House with the following results



16.1.7 Although this is clearly Cockshut Road, it is referred to as Cockshut Lane. The now lost tithe map is referred to. It seems that the application route was tithe free, but so was the surrounding land.

16.1.8 In 1956 the solicitors expanded their arguments:

HELLMAN, BONS, DONNELL & CARTER,
SOLICITORS,
220-221 High Street,
Lewes, Sussex.
(AND AT BRADFORD)

JNEV/EL

220-221 High Street,
Lewes, Sussex.

Your Ref: TC/RPI/R/2/19. 25th June, 1956.

The Town Clerk,
Town Hall,
Lewes.

Dear Sir,

Cockshut Road,

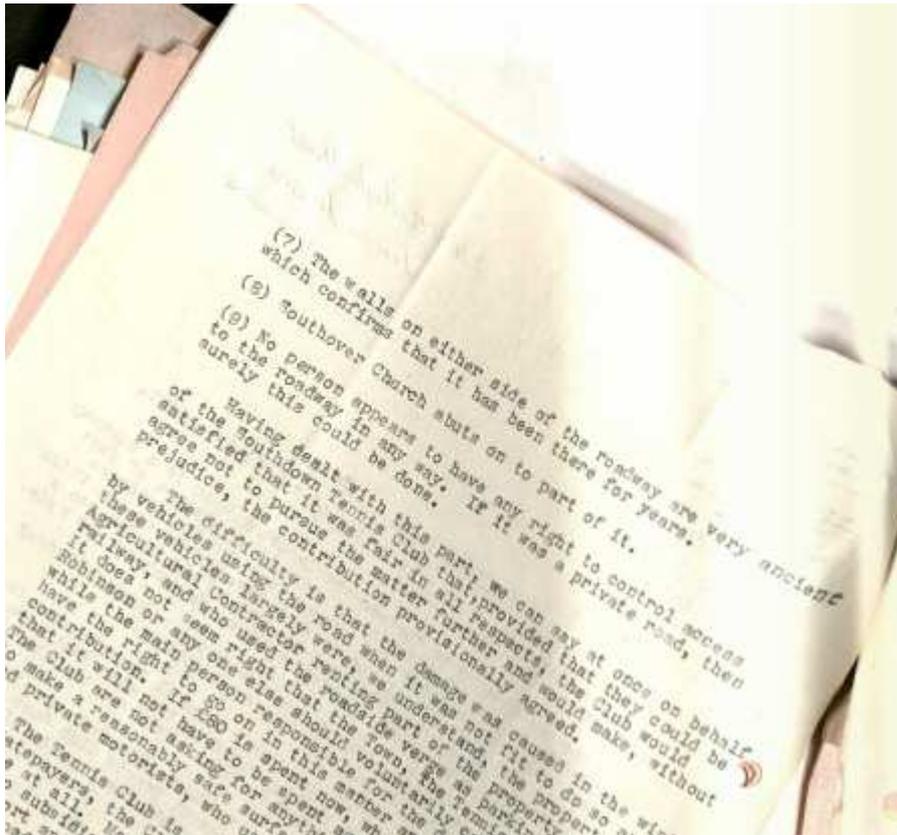
We are in receipt of your letter of the 21st instant, the contents of which we note.

The question as to whether the Cockshut Road is a highway repairable by the inhabitants at large is a question of fact which could be decided by the proper Court on the evidence which is now available at the present day, and we do not think that anyone is bound by what was thought by the predecessors of the British Transport Commission when the railway was made.

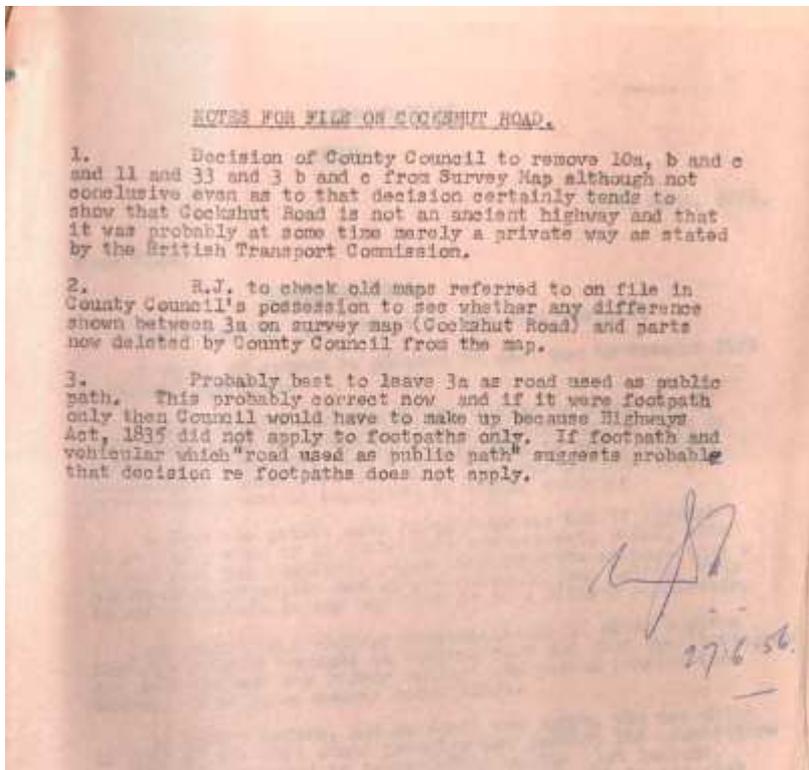
The facts in support of the road being a public highway are collectively, in our opinion, overwhelming.

- (1) All the old maps in the County Council records show the road as a public road leading round to the main Eastbourne Road. The road existed before Friars Walk was thought of.
- (2) There used to be a Monastery which extended over the whole of the Priory Ruins and the present Tennis Club down to the Cockshut River. In times of drought, the remains of the walls of the ruins are clearly visible.
- (3) There was undoubtedly a large house near the Railway many years ago.
- (4) There are public rights of way which branch off from the road at various points.
- (5) There is some evidence that small barges used to come up the Cockshut river to the Priory.
- (6) No owner of the land adjoining the roadway has been granted a right of way. This includes, we believe the Priory Ruins.

/over



16.1.9 Later, a council official considered the issue of the rights of way status of this part of the route and concluded:



16.1.10 A request from the council for Counsel's opinion is in the file, but the response is not recorded. The Southdown club appear to have let the matter drop. The

remainder of the file relates to the subsequent making up of Cockshut Road from point H north to Southover High Street as a result of a development off of the lane.

CONCLUSION TO THIS SECTION

16.1.11 The solicitors for the Southdown Club had access to material that it now lost. Lewes council does not appear to have challenged the authenticity of this material, although they disagreed on interpretation. So I wish to adopt the arguments made by the solicitors at the time in support of this application

16.1.12 The main arguments put forward by the council appear to be:

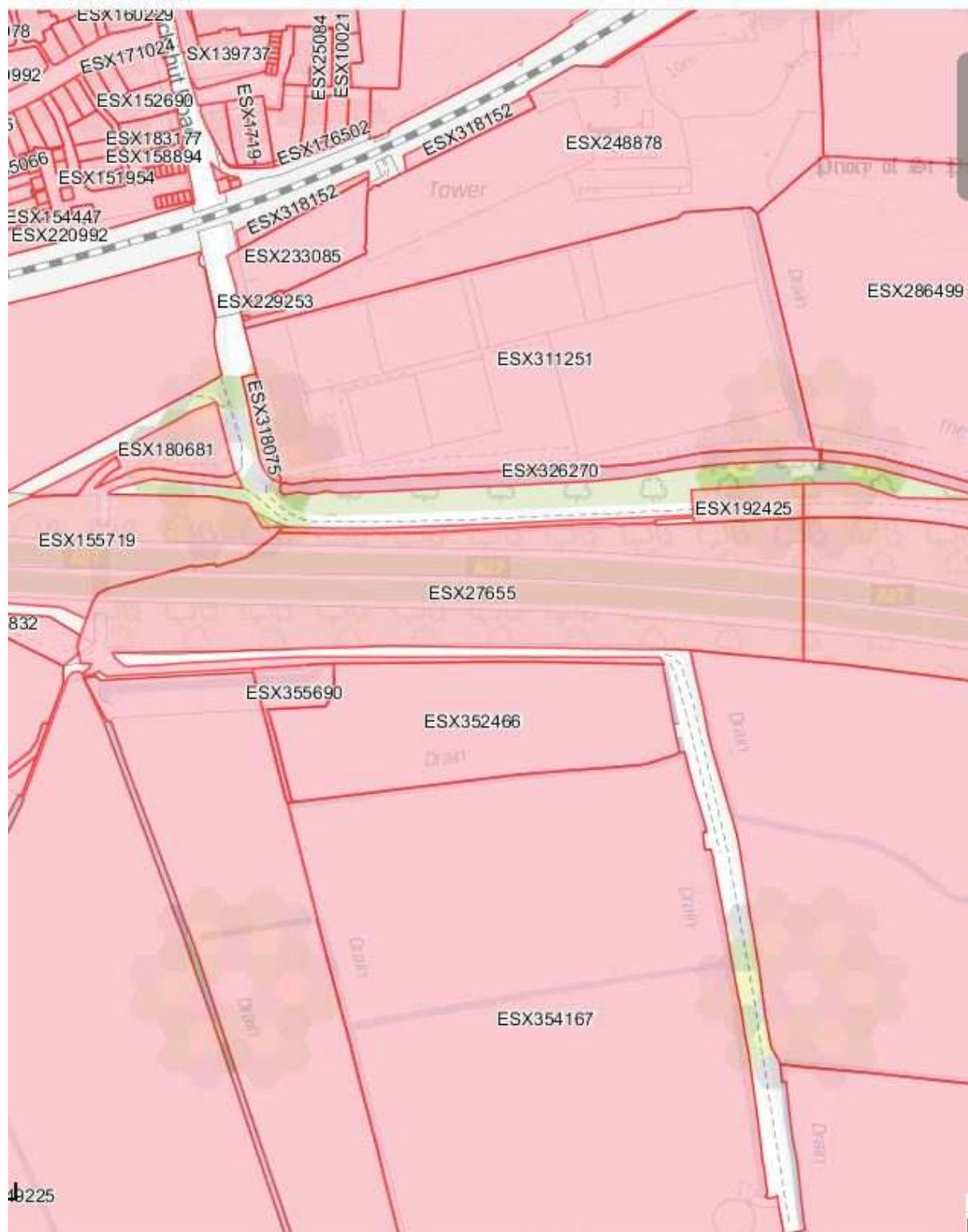
16.1.13 The Lewes-Brighton Railway plans and the view of the Transport Commission that this was a private road.

16.1.14 The idea that the route was a dead end.

16.1.15 However no account seems to have been taken of the evidence from the Lewes canal plans and the Beckenham, Lewes and Brighton Railway. Nor does the possibility that the route might not have been a dead end been considered.

17. OWNERSHIP

17.1.1 The maps below are downloaded from the Land Registry web site and show the Registry numbers for land on the application route and nearby. The sequence starts at point D and continues to point H.



17.1.2 Apart from the land taken by the Highways Agency for the A27 Lewes bypass, none of the application route from D to H has changed hands since registration became compulsory. On the other hand the land around the route has changed hands. This means that it is highly unlikely that any of the owners of the surrounding land own that part of the application route. Further, my understanding is that the highway authority did not allow the owner of the land to dedicate the part of the route south of the bypass as a bridleway because they did not own it.

17.1.3 It is more likely to be a public highway.

17.1.4 ESX27655 crosses the application route but no mention is made of the application route.

17.1.5 The following land parcels are not on the application route, but they abut on to it. There is no access to them except via the application route but there is no evidence of any wayleaves or easements, which would be necessary if the route was not public: ESX 354167, ESX192425, ESX318075, ESX 311251, ESX 233085

17.1.6 ESX180681 abuts onto the application route and the only access to it is via the application route. Additionally, a covenant in the title deed restricts its use to that of a car park.

CONCLUSION TO THIS SECTION

I conclude that the evidence in this section shows that there is property which has no access to the rest of the world except via the application route, suggesting highway status. Given past and present use it is likely that this access would be with vehicles. **CONCLUSION**

17.1.7 The route is shown on detailed maps as early as the 1830s and consistently on other larger scale maps over a long period. Its depiction is consistent with the depiction of fenced roads, except for the middle section where the depiction is consistent with the provision of a road through open fields. In many cases the route is shown in the same ways as routes that are today public roads.

17.1.8 In the sections for which tithe evidence is available the application route is not subject to tithes and is shown in the same way as surrounding roads.

17.1.9 The Brighton to Lewes Canal plan shows the part of the route in the same way as ways which are roads today. The Beckenham, Lewes and Brighton railway plans and book of reference specifically describes the part of the route that it traverses as a public road which is the responsibility of the surveyor of highways. The Brighton to Lewes plans and book of reference also describe the route as a road where the railway crosses it. I suggest that they may have made an error in describing the ownership.

17.1.10 Various plans and documents make clear that, over time there have been a number of plots of land which could only be accessed via the application route, but there is no verifiable evidence of any easements which would allow this absent the existence of a public highway. The agricultural nature of the access required would almost certainly have required access by vehicles.

17.1.11 The application route is described as a "road" in a considerable number of documents and an Ordnance survey boundary remark book describes the parish of Iford as paying for the use of a continuation from the route which was outside their boundary, suggesting that they were liable to maintain A-B on the application route.

17.1.12 At the time of the first definitive map surveys there were at least some people who thought this was a public road.

17.1.13 Planning documents and covenants on land show strong evidence of use of the northern part of the route as a road to this day but it is not on the list of maintained streets.

17.1.14 Although there is no one piece of information that puts the matter beyond doubt, I believe that there is strong evidence of highway status as a road over a long period of time.

18. REQUEST

18.1.1 I request the surveying authority to add the route to the definitive map as a byway open to all traffic

18.1.2 This is because I do not think that the exemptions in the NERC act It would obviously be sensible, if the order is made, to make a diversion order at the same time, so that the route is diverted through the existing tunnel rather than running across the A27.

18.1.3 I will withdraw this application if and when the route south of the bypass is added to the map as a bridleway linking to Lewes bridleway 52.

19. APPENDIX

Appendix: File containing documents relating to liability for maintenance of Cockshut Road.