

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application Statement

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 SUS-1182
- 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 6844 1748 to (C) TQ 6958 1824

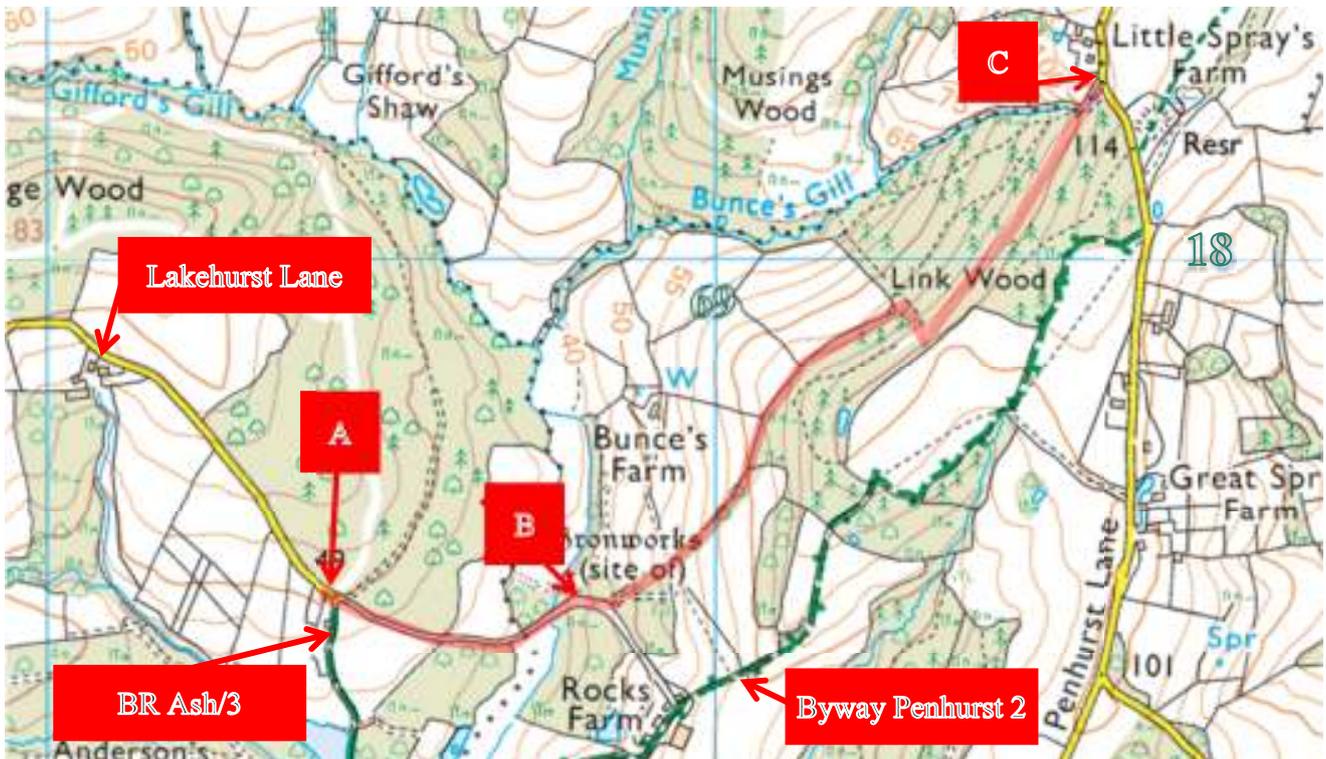


Figure 1 OS 1:25000 map showing the Application route as a red line

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 Lakehurst Lane (TQ 6844 1748)
- B = Application route intersection with old access road to Panningridge Furnace and the Parsonage (latterly Bunce's Farm) (approximately TQ 6879 1749)
- C = Application route intersection with Penhurst Lane, Penhurst (TQ 6958 1824)

- 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, with a minimum width of at least 3 metres, 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
1795	Gardner & Gream map	Shown as road
1797	Ashburnham Estate map	Shown as road
1813	OS Old Series (1st Ed)	Part shown as road
1825	Greenwood & Greenwood map	Shown as road
1834	Ashburnham Estate map	Indication of partial road
1839	Ashburnham Tithe Records	Part shown as road/part indicated as road
1840	Penhurst Tithe Records	Part shown as road/ part indicated as road
1841	Ashburnham Estate map	Shown as road
1842	Dallington Tithe Records	Part shown as road/part indicated as road
1874	OS 25’ County Series map 1st Ed	Part shown as road
1874	OS 25’ County Series 1st Ed Reference Book	Part referenced 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
2018	“The Old Sow Track” Article	Evidence of ancient highway/road
2022	LiDAR	Evidence of ancient highway
2022	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.
- 1.13. All maps included in this document are north orientated unless otherwise stated.

What is a Highway / Road?

- 1.14. 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”.
- 1.15. 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.
- 1.16. 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.

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2. “The Old Sow Track” a Tudor trackway – Panningridge Furnace to Penhurst Lane

Date of publication: 2018	Scale:	Date of Survey: c 2014-2017
Cartographer: N/A	Publisher: Wealden Iron	Edition: Volume 38 Second Series
Source: https://www.wealdeniron.org.uk/wp-content/uploads/2020/07/Vol2-38.pdf (pages 16-42)		

2.1. Foreword

- 2.1.1. The evidence presented in this section is based on an article “THE OLD SOW² TRACK: The journey of the Iron from Panningridge Furnace to Robertsbridge Forge³ in Tudor times” written by Ms Geraldine Crawshaw, published by the Wealden Iron Research Group in 2018.
- 2.1.2. The Wealden Iron Research Group (WIRG) (see www.wealdeniron.org.uk) is a registered charity founded in 1968. It was formed to focus and initiate research into the extinct iron industry of the Sussex, Kent and Surrey Weald with the aims to foster interest in this subject, to work with other groups and institutions having allied aims and, above all, to publish its researches. Ms Geraldine Crawshaw is a long standing member and contributor of the group.
- 2.1.3. This article has been referenced with the kind permission of the publishers, Wealden Iron Research Group and the author Ms Geraldine Crawshaw.
- 2.1.4. The evidence included in this section is specific to this application and is not a direct representation of the above article. For additional detail the full article can be sourced at the web address referenced above.
- 2.1.5. Between 2014 and 2017 the section of the “Old Sow Track” relating to the application route was investigated by Ms Geraldine Crawshaw using access provided by permissive pathways which are no longer available for public access. At present there are no current ROW covering this section of the application route and for this reason photographic data from the original article has been included for evaluation.

2.2. Introduction to “The Old Sow Track” – Panningridge Furnace to Penhurst Lane

- 2.2.1. The Old Sow Track was a trackway used to transport iron sows from Sir William Sidney’s blast furnace at Panningridge (grid reference TQ 687 175)⁴ to his forge at Robertsbridge Abbey (grid reference TQ 755 237).
- 2.2.2. The topographical map shown in Figure 2 (taken from the source article) shows the ancient High Weald ridgeway route which the Old Sow Track utilised. The Old Sow Track is marked by a dotted white line.

² A “Sow” is a large ingot of iron cast in beds of sand at a furnace. A “Sow” weighed about ten cwt and two sows, or one ton of iron, constituted a load.

³ The difference between a Furnace and a Forge is that a Furnace produces the iron (the sow) whilst a Forge shapes the iron

⁴ Grid reference identified by Ancient Monument.uk <https://ancientmonuments.uk/100532-panningridge-iron-furnace-site-ashburnham#.YdrDNdFxdnI>

Archaeological excavation of some of the route suggests this ancient ridgeway was the most likely route used by the Old Sow Track.

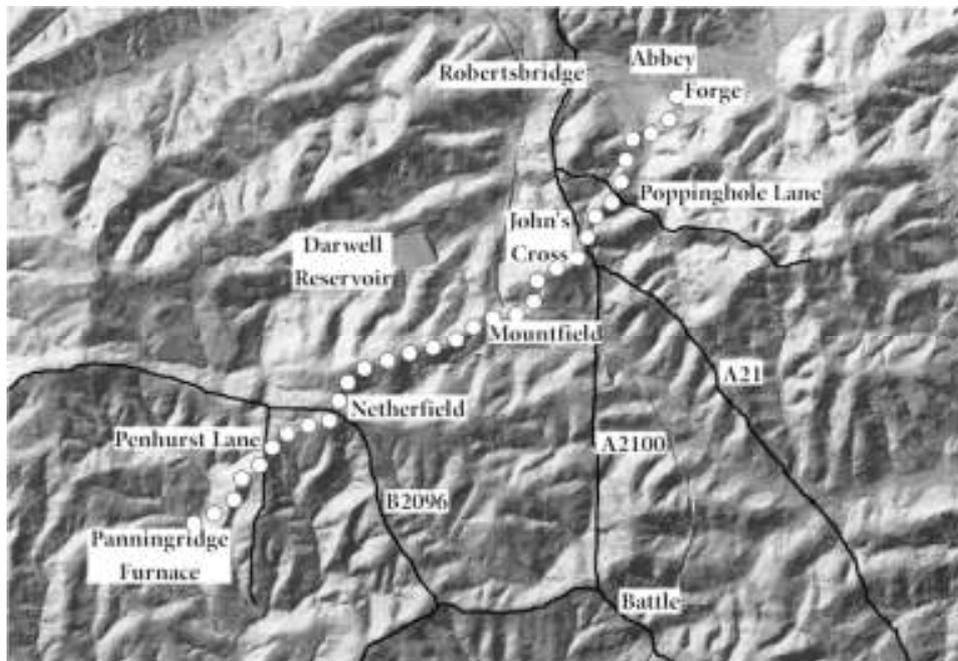


Figure 2 Topographical map of the sow track. Fieldwork suggests using the ridgeway was the most likely route

- 2.2.3. Panningridge Furnace was built circa 1542 with the sole purpose of enabling Sir William Sidney to smelt the ores mined in the area now known as Pannelridge Wood. Pig iron was more than probably carried along an existing High Weald ridgeway hollow way towards Netherfield⁵. It is probable that this High Weald ridgeway had existed since Neolithic times. The part of “The Old Sow” route covered by this application is the section between Panningridge Furnace and Penhurst Lane.

⁵ see <https://www.wealdeniron.org.uk/BullSer1/Series1-01.pdf>

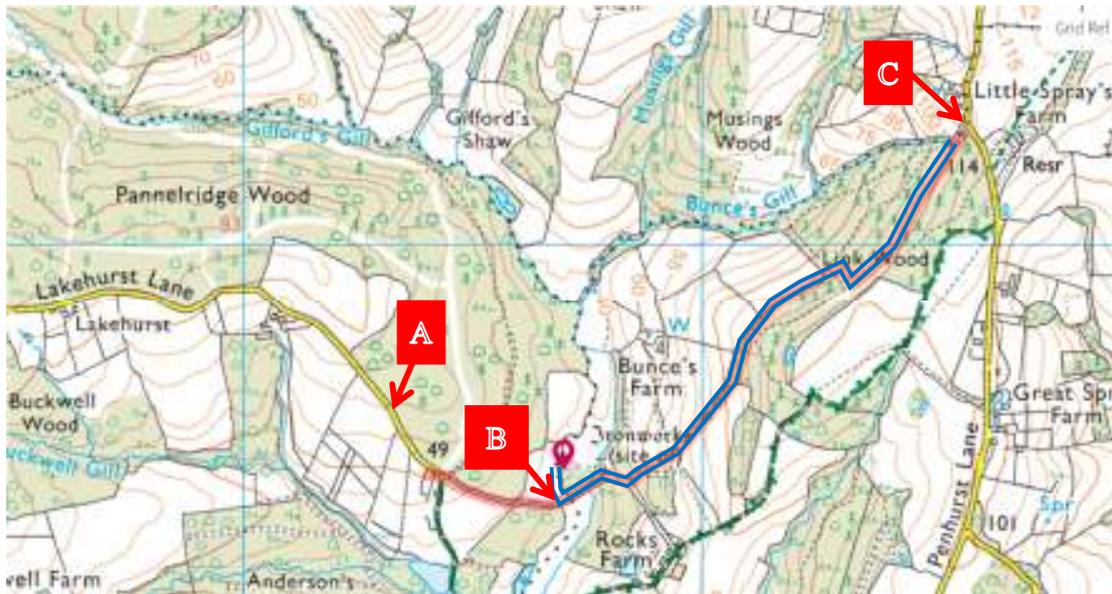


Figure 3 Map showing the position of Panningridge Furnace, The Old Sow route and the application route

2.2.4. Figure 3 shows the site of Panningridge Furnace and its relationship to the application route. The siting of Panningridge Furnace is depicted by the dark red spot near the “Ironworks” site, the application route is highlighted in red and the Old Sow Track is depicted by blue parallel lines.

Evidence

2.2.5. Sir William Sidney acquired the site and lands of the dissolved Robertsbridge Abbey and Forge in 1539. In 1541 he contracted with Richard Clarke, the parson of Penhurst, for a 21-year lease of six acres of Glebe land⁶ at Panningridge, with the intention of building a furnace to supply his Robertsbridge forge with pig iron. The original site lease contract describes a ‘highway South’ bounding the lands leased⁷.

2.2.6. It is more than probable that the “highway” referred was an ancient High Weald Ridgeway route. Historically High Weald Ridgeway routes were the public trunk roads of pre-history and ran along the high sandstone and limestone ridges of the Weald to avoid the areas of the heavy clay common in the Weald which made the transportation of heavy loads difficult. Pig iron was one of these heavy loads and therefore it is more than probable that The Old Sow trackway utilised these ancient Ridgeway routes wherever possible.

2.2.7. This point is mentioned in an article by Ernest Straker in 1936, where he describes an ancient Wealden ridgeway from Winchelsea and Rye to Uckfield.⁸

⁶ Glebe land was in Ecclesiastical ownership and therefore owned by the local Church

⁷ DAVID CROSSLEY (1972) A Sixteenth-Century Wealden Blast Furnace: A Report on Excavations at Panningridge, Sussex, 1964-1970, *Post-Medieval Archaeology*, 6:1, 42-68, DOI: 10.1179/pma.1972.002 <http://dx.doi.org/10.1179/pma.1972.002> *Sidney Accounts*, 41

⁸ E. Straker, ‘A Wealden Ridgeway’, *Sussex Notes and Queries*, 6 (1936-7), 172.

'In order to bring the sows to the forge ... there is little doubt that advantage was taken of the Ridgeway for a great part of the journey from Mountfield to Netherfield. The track is clear through the woods, rising to a height of nearly 500 feet.'

- 2.2.8. With specific reference to the Old Sow Track at Panningridge the assertion that the claimed route was a Ridgeway is supported by Crossley's excavations of 1964-1969⁹ where he found a section of an 'abandoned holloway' continuing from Lakehurst Lane in a north easterly direction from the bridge over Giffords Gill (approximate grid reference: TQ 6875 1746 which was the old Panningridge Furnace spillway). Archaeological evidence suggests that this "abandoned holloway" pre-dated the building of Panningridge Forge. In the excavations report from 1972 Crossley makes mention of evidence of a road and states¹⁰

'Pig iron was carried, probably along the existing holloway towards Netherfield.'

- 2.2.9. In the mid-17th century a Parsonage (approximate grid ref: TQ 6890 1776) was built on Glebe land¹¹, about 250 metres north of Panningridge Furnace site. The Penhurst glebe land map of 1679 (Figure 4), shows the parsonage, the furnace pond still in water, the "sinderbank" south of the pond bay and a well-defined road (the application route and the original "Old Sow Track") clearly notated as Parsonage Lane.



Figure 4 Map of Penhurst Glebe Land dated 1679 (ESRO PAR 441/6/1/1) showing the line of Parsonage Lane (the application route) from Panningridge pond bay to the vicinity of Penhurst Lane.

- 2.2.10. This parsonage in later years became known as Bunces Farm. Bunces Farm is listed in the tenancy analysis produced by the Rape of Hastings Architectural Survey (ROHAS) for Penhurst Parish - an

⁹ Reference Fig. 21 - DAVID CROSSLEY (1972) A Sixteenth-Century Wealden Blast Furnace: A Report on Excavations at Panningridge, Sussex, 1964-1970, *Post-Medieval Archaeology*, 6:1, 42-68, DOI: 10.1179/pma.1972.002 <http://dx.doi.org/10.1179/pma.1972.002>

¹⁰ WIRG *Bulletin* (1969 p.4):

¹¹ Thames Valley Archaeological Services South Report <http://tvas.co.uk/reports/pdf/OFC12-08bs.pdf>

Architectural survey produced by local recorders in the 1970s - as formerly ‘abutting Parsonage Lane on the south’¹².

- 2.2.11. Other sources also verify the existence of this road – the best cartographic evidence for the old road course from Link Wood to where it joins Penhurst Lane is a plan dated October 16th 1717 (Figure 5) showing a tenement farm (Dykes, now Great Sprays) belonging to Lord Ashburnham. On the plan, the application route clearly bears the label ‘The Furnace road’ along the Link Wood boundary¹³.

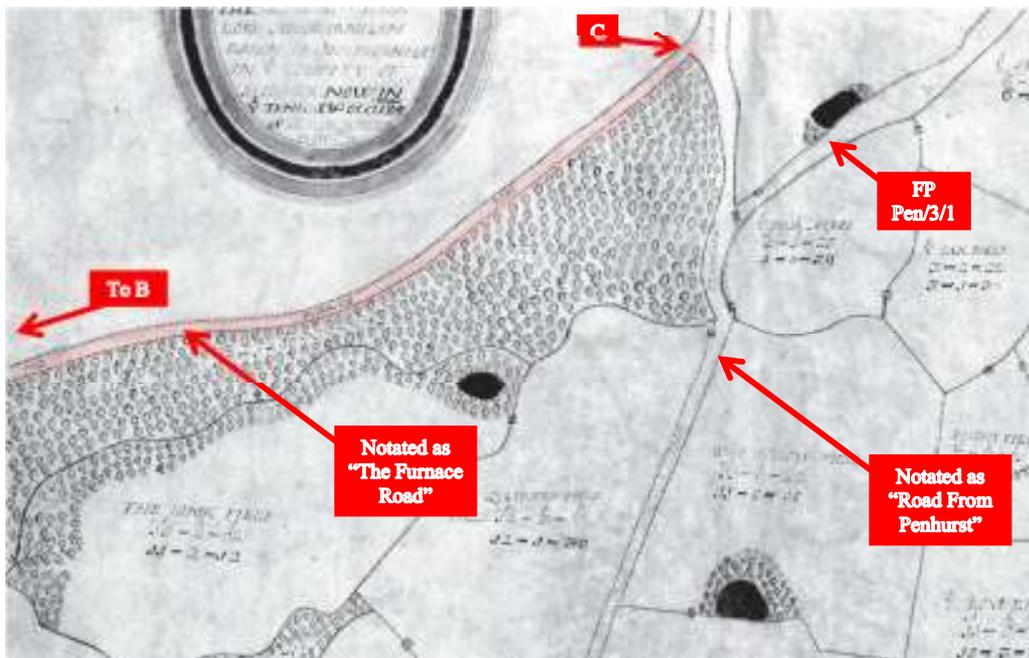


Figure 5 Part of the plan of Dyke Farm 1717 (ESRO, ASH 4382) with ‘The Furnace Road’ (the application route) highlighted in red.

- 2.2.12. Although, due to the construction of a modern roadway to Rocks Farm (TQ 689 174) the previously mentioned Crossley excavation found that large sections of the the Old Sow track (and thereby the application route) holloway had been filled in. Ms Crawshaw states that when she surveyed the area in 2016-2017 the original ridgeway holloway referenced in 2.2.8 was clearly visible 100 metres uphill from the excavation site. Here, it made its way along the woodland boundary, then continued along a shaw dividing two fields (see Figure 6) to where it entered Link Wood (TQ 6905 1768). In 2017 Ms Crawshaw noted that the old road was well preserved through the shaw and other tracks leading from it could be seen, such as the original path to the parsonage and a track to the sandstone quarry.

¹² ESRO, HBR 9/35/9, Rape of Hastings Architectural Survey (hereafter ROHAS) authorised by Hastings Council, Penhurst Tenancy Analysis.

¹³ ESRO, ASH 4382, ‘Land scituate in Penhurst ... now in ye terture & occupation of Peter Gower,’ 1717.



Figure 6 Photo taken in 2017 of the holloway, looking south west towards Panningridge. TQ 690 176

Analysis of this evidence:

- 2.2.13. Legal documentary evidence outlined in paragraph 2.2.5 indicates that when Sir William Sidney leased the Panningridge glebe site in 1541 the application route already existed as a highway. Although in all probability Sir Sidney either owned or rented sections of land on which the Old Sow Track ran, or was willing to pay the “wayleave” (a fee for the right to pass along roads or tracks on private land) on other sections, the ability to utilise an existing network of public highways, ridgeways, routeways and droves could have been a significant consideration in Sir Sidney’s siting of the new furnace. The fact that the 1542 glebe land agreement specifically describes a highway “bounding” the southern boundary of the lease land shows the importance to Sir Sidney of the access to this highway network. Both supplying the forge with the raw materials and carrying “sow” iron from furnace to forge required the carriage of heavy goods which was both time-consuming and expensive. This would have made open access to an unfettered public roads network, especially the High Weald Ridgeway routes which had developed in order to take heavy loads for substantial parts of the year, important. Indeed, access to these pre-existing ancient High Weald Ridgeway route, along with the ready access to raw materials, may have been a fundamental reason for leasing the land and developing the furnace. It may have been this importance which resulted in the existence of the “highway South” on the leased land being made a noted condition of the lease and specifically stated in the contract.
- 2.2.14. Archaeological evidence outlined in paragraph 2.2.7-2.2.8 suggests that the application route was an ancient High Weald Ridgeway route that had existed since Neolithic times.
- 2.2.15. Evidence outlined in paragraph shows 2.2.9-2.2.10 shows that in 1776 the whole of the application route was known as “Parsonage Lane”.
- 2.2.16. Evidence outlined in paragraph 2.2.10 indicates that in the 1970’s Hastings local authority acknowledged the existence and siting of Parsonage Lane.
- 2.2.17. Evidence outlined in paragraph 2.2.11 shows that in 1717 a significant part of the application route was known as “Furnace Road”.
- 2.2.18. Archaeological evidence and on site analysis indicate that in the 20th century significant sections of ancient High Weald Ridgeway route (latterly The Old Sow Track, Parsonage Lane & Furnace Road and now the application route) between Panningridge and Penhurst Lane were evident and well preserved.

Significance of this evidence:

- 2.2.19. The evidence presented shows the existence of the application route as a “highway” in 1542 when Sir Sidney leased Panningridge Glebe land. Evidence referenced later in this document substantiates the siting of this Glebe land as land to the north of the application route and shows that this land continued to be in Church ownership until at least the 1840’s (see paragraphs 2.2.9 & 5.3 Penhurst Tithe), thereby verifying the position of the Glebe land leased in 1541. Other evidence presented indicates that the “highway South” continued to be an acknowledged road until the 1800’s (see paragraphs 2.2.9 & 2.2.11 and section 6. Ashburnham Estate maps).
- 2.2.20. Archaeological evidence indicates that this “highway”, the application route, followed the course of an ancient High Weald ridgeway route. These Ridgeway routes had developed over millennia to facilitate the general movement of goods and livestock by avoiding the heavy clay found in sections of the High Weald. These routeways have been identified as existing since the Neolithic period (c 4300-1400BC) and are accepted as ancient public highways¹⁴.
- 2.2.21. This ancient High Weald Ridgeway route existed as an unnamed “highway” in the 1600’s which then evolved into named public highway(s); namely Parsonage Lane in the 17th Century, and Furnace Road in the 18th Century. This evidence makes it more than probable that a public highway existed over the application route over this period.
- 2.2.22. The fact that these highways were public are indicated by the definitions of “Lane” and “Road”. The definition of “Lane” is¹⁵:
- “a narrow road –especially in rural areas”*
- And the definition of “Road” is:
- “a general purpose vehicular route open to ‘all manner of traffic’”*
- 2.2.23. Therefore as “Lanes” are by definition a type of “road” and “roads” by definition are a public vehicular route then it is more than probable that the whole of the application route has historically held a public highway entitlement of at least Bridle Road but more probably vehicular rights. This would result in the application route holding the modern ROW status of at least Bridleway but more probably Restricted Byway status.
- 2.2.24. It may be suggested that the application route has been confused with the road which is now Byway Penhurst 2 (from Ashburnham Furnace (TQ 6853 1712) to Penhurst Lane (TQ 6963 1804)). Moreover, this Byway Penhurst 2 is known in the locality as Sow Lane and is described as such in the High Weald ‘Welly Walk’ for Netherfield Primary School (produced by the High Weald AONB Joint Advisory Committee)¹⁶.
- 2.2.25. Whilst the road which is now Byway Penhurst 2 was probably used to transport sows of iron, early maps such as 1778 Yeakell and Gardner (see section 3.2) and 1795 Gardner and Gream (see section 3.3) show

¹⁴ see <https://www.highweald.org/learn-about/landscape-stories/the-routeways-story.html>

¹⁵ Collins Dictionary: <https://www.collinsdictionary.com/dictionary/english/lane>

¹⁶ Netherfield Church of England Primary School High Weald Welly Walk.

<http://www.highweald.org/downloads/publications/teaching-resources/schoolspecific-esources/netherfield-school/1013-netherfield-welly-walk.html> (accessed 12 Mar 2018).

the existence of two roads, one of which is the current BR Penhurst 2 and the other takes the course of the application route. Indeed both of these maps show the application route as the principal road whilst Sow Lane – now Byway Penhurst 2 – is shown as the lesser route.

- 2.2.26. An additional consideration is that as Ashburnham ironworks were not established until 1554, 12 years after Panningridge Furnace was built¹⁷, it is more than probable that “Sow Lane” (the road which is now Byway Penhurst 2) was more likely than not to have been used to transport goods from Ashburnham Furnace to the Netherfield road rather than Panningridge Furnace goods to the Robertsbridge Abbey Forge. Also no evidence has been found that “Sows Lane” was in existence when Panningridge Furnace was established.
- 2.2.27. Whilst the evidence presented may be said to be inconclusive in that maps may show only one end or other end of the application route as a road or lane, it should be borne in mind that it is generally accepted that highways, were through-routes. It is therefore submitted that where a map shows the application route as a road or a lane but does not identify the connection with either Lakehurst Lane or Penhurst Lane it remains more than probable that public vehicular highway rights were held for the whole of the application route and not merely for section of the application route specifically shown on the map.

2.3. **The significance of the evidence in “The Old Sow Track – a Tudor Trackway”**

- 2.3.1. The evidence strongly supports the assertion that the section of “The Old Sow Track” between Panningridge Furnace and Penhurst Lane was, since Neolithic times, an ancient High Weald Ridgeway route and therefore a public highway. In addition the whole of the application route has been shown to be initially an unnamed highway and then to be named Parsonage Lane or latterly Furnace Road, both of which were public highways. It is therefore submitted that the application route holds public rights of as a minimum a Bridleroad but more than probably vehicular rights.
- 2.3.2. The information included in the article “THE OLD SOW TRACK: The journey of the Iron from Panningridge Furnace to Robertsbridge Forge in Tudor times” by Ms Geraldine Crawshaw, published by the Wealden Iron Research Group in 2018 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 and therefore the evidence is considered “a discovery of evidence”.

¹⁷ Cleere and Crossley, Iron Industry of the Weald p 310

3. Commercial County Maps Context and Evidence

3.1. Introduction to Commercial County Maps

- 3.1.1. 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.
- 3.1.2. 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.
- 3.1.3. 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.
- 3.1.4. 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".*
- 3.1.5. 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).

3.2. **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		

- 3.2.1. Thomas Yeakell and William Gardner's 'Great Survey' of 1778 was innovative and did a great deal to progress map-making standards.
- 3.2.2. 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.
- 3.2.3. The map was made for sale to the public, and so is unlikely to show routes that the public could not use.
- 3.2.4. 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.
- 3.2.5. The map does not have a key/legend.

Evidence:



Figure 7 Extract from the Yeakell & Gardner 1783 map showing the application route highlighted in red.

Analysis of evidence:

- 3.2.6. Figure 7 shows the application route as an open ended cross-roads, depicted by parallel lines from its junction with Lakehurst Lane (point A) to Penhurst Lane (point C).
- 3.2.7. The application route is depicted in the same manner as other roads which now have a higher ROW status than footpath.
- 3.2.8. The application route appears to be depicted as having a higher status than roads which are now Byways.

Significance of this evidence:

- 3.2.9. The application route is depicted as a “Road” in the same manner as other public roads which are now adopted roads or ROW such as Lakehurst Lane, Penhurst Lane and Byway Penhurst 1.

- 3.2.10. The application route appears to be depicted as having a higher, or equivalent, status than the road which is now Byways Penhurst 2.
- 3.2.11. This evidence supports the assertion that in 1783 the application route was a public road with a highway reputation greater than a Footpath and that it is more than probable that the application route had full vehicular rights when this map was surveyed.
- 3.2.12. The application route is depicted in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 3.2.13. 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 Restricted Byway status.

3.3. 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		

- 3.3.1. 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 maps¹⁸ “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.
- 3.3.2. 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.
- 3.3.3. The map does not have a key/legend.

¹⁸ “Printed Maps of Sussex 1575-1900” David Kingsley Published by Sussex Record Society, Lewes, 1982

Evidence:

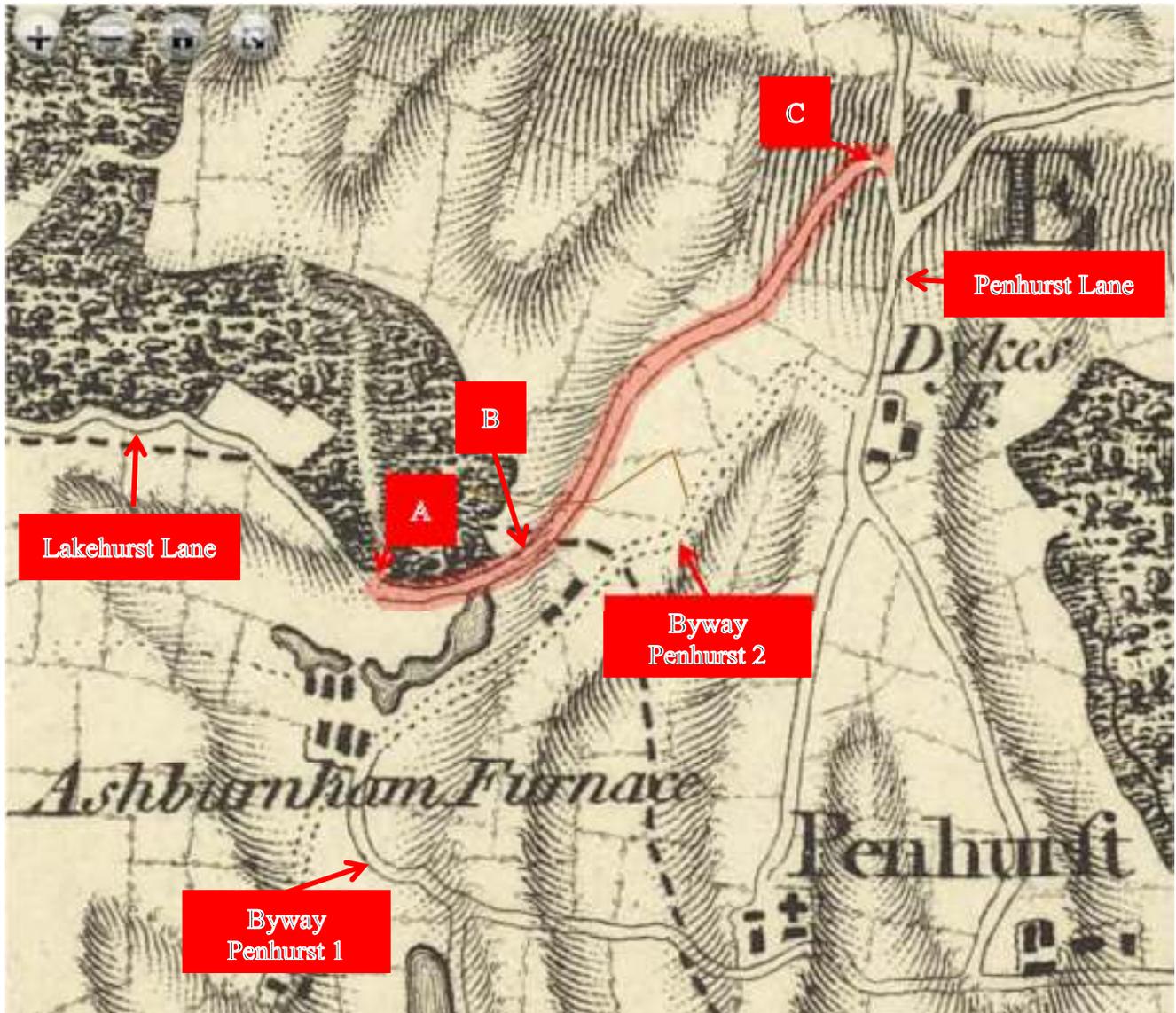


Figure 8 Extract from Gardner and Gream map of 1795 with the application route highlighted in red.

Analysis of evidence:

- 3.3.4. Figure 8 shows the whole of application route as an open ended cross-road, connecting Lakehurst Lane to Penhurst Lane. The application route is depicted by solid parallel lines, separate from any hereditament.
- 3.3.5. This map does not appear to show minor roads. This is verified for when compared to the Yeakell & Gardner map of 1783 this map does not show the road connecting Lakehurst Lane and Ashburnham Furnace (now BR Ashburnham 3).
- 3.3.6. The application route is depicted in the same manner as other roads which now have adopted road, Byway or Bridleway status such as Lakehurst Lane, Penhurst Lane and Byways Penhurst 1.

- 3.3.7. The application route appears to be depicted as having a higher or equivalent status than roads which are now Byways such as Byway Penhurst 2.

Significance of this evidence:

- 3.3.8. The absence of some minor roads, such as the connecting road between Lakehurst Lane and Ashburnham Furnace shown on the Yeakell and Gardner map but absent from the Gardner and Gream map indicate two points. Firstly that the Gardner and Gream map only portray major public roads and secondly that the later map was a result of a new survey.
- 3.3.9. The map shows the whole of the application route as an, open ended cross-road, depicted by solid parallel lines which link Lakehurst Lane to Penhurst Lane. The fact that the application route is shown as a cross-roads connected Lakehurst Lane and Penhurst Lane 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,
- 3.3.10. This road is shown in the same manner as other roads which are now adopted roads, Byways or Bridleway ROW such as Lakehurst Lane, Penhurst Lane and Byway Penhurst 1. It is therefore more than probable that the like these other roads the application route was also considered a public road. This being the case the application route should hold as a minimum Bridleway rights or more than probably vehicular rights.
- 3.3.11. The application route appears to be depicted as having a higher or equivalent status the road which is now Byways Penhurst 2.
- 3.3.12. The application route is depicted in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 3.3.13. 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 vehicular rights.
- 3.3.14. 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.
- 3.3.15. Certain parallels can be drawn between the application route and Planning Appeals and Guidelines which may assist in the evaluation of the validity of the application route. Particularly relevant to this application are the following;
- 3.3.16. 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."*

3.3.17. 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.”

3.3.18. 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”

3.4. **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		

- 3.4.1. This map was made for sale to the public, and so is unlikely to show routes that the public could not use.
- 3.4.2. 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.
- 3.4.3. The map is finely engraved in the manner of the best contemporary firms, although the representation of relief is poor.
- 3.4.4. 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 9 Extract from Greenwood and Greenwood Map of Sussex 1825 showing the application route highlighted in red

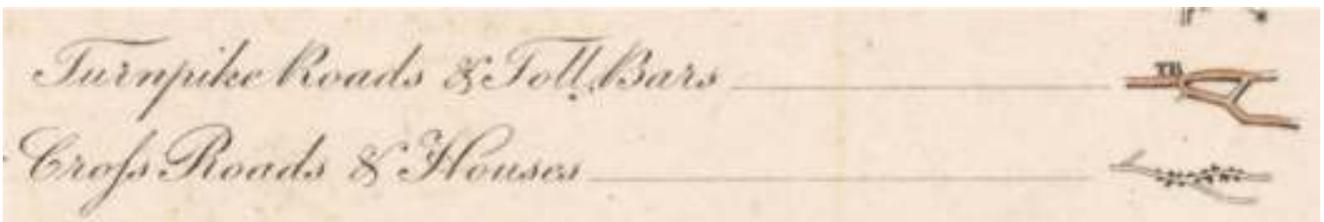


Figure 10 Extract from "Explanation" on Greenwood & Greenwood Map of Sussex 1825

Analysis of evidence:

3.4.5. Figure 9 shows the whole of the application route as an open-ended cross-roads (see Figure 10 - Explanation) depicted by parallel lines connecting Lakehurst Lane and Penhurst Lane.

-
- 3.4.6. The application route is depicted in the same manner as other roads which now have adopted road, Byway or Bridleway status such as Lakehurst Lane, Penhurst Lane and Byways Penhurst 1.
- 3.4.7. The application route appears to be depicted as having a higher status, or as a minimum equal status, as than roads which are now adopted roads or Byways.
- 3.4.8. When compared to the 1795 Gardner & Gream's map changes to the map indicate that this map was the result of a new survey.

Significance of this evidence:

- 3.4.9. Additional details on the map, such as the changes in roads depiction and the siting and naming of villages, indicate that the map was likely to have been the result of a new survey carried out some 30 years after the survey used for the Gardner & Gream map of 1795.
- 3.4.10. The map shows the whole of the application route as an, open ended cross-road, depicted by solid parallel lines connecting Lakehurst Lane to Penhurst Lane.
- 3.4.11. The application route appears to be depicted as having a higher status, or as a minimum equal status as roads which are now Byways such as Byways Penhurst 2.
- 3.4.12. This road is shown in the same manner as other roads which are now adopted roads, Byways or Bridleway ROW such as Lakehurst Lane, Penhurst Lane and Byway Penhurst 1. It is therefore more than probable that the like these other roads the application route was also considered a public road. This being the case the application route should hold as a minimum Bridleway rights or more than probably vehicular rights.
- 3.4.13. The application route is depicted in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 3.4.14. The fact that the application route is shown as a cross-roads connecting Lakehurst Lane to Penhurst Lane endorses that in 1825 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 vehicular rights at the time the map was surveyed.
- 3.4.15. 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 vehicular rights.
- 3.4.16. 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 Vehicular status.
- 3.4.17. Certain parallels can be drawn between the application route and Planning Appeals and Guidelines which may assist in the evaluation of the validity of the application route. Particularly relevant to this application are the following;
- 3.4.18. 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.”

- 3.4.19. 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.”

- 3.4.20. 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”

3.5. The significance of the evidence in Commercial County Maps

- 3.5.1. The conclusion from the commercial map evidence is that the application route was shown as a public road on numerous commercial maps in the 18th and 19th Century and was in the balance of probability a public road with vehicular rights.
- 3.6. This section submits numerous pieces of evidence where the application route is depicted in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 3.6.1. 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.
- 3.6.2. 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.”

- 3.6.3. Certain parallels can be drawn between the application route and Planning Appeals. Particularly relevant to this Application are the following;
- 3.6.4. Planning Appeals Ref: ROW/3181626
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705547/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.”

- 3.6.5. Order Ref: ROW/3200513 Heading 9
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765369/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."

- 3.6.6. 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. Ordnance Survey Maps Context and Evidence

4.1. Introduction to OS Maps

- 4.1.1. Ordnance Survey (OS) maps were originally produced for military purposes but quickly achieved widespread public sales and acceptance.
- 4.1.2. 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.
- 4.1.3. 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.
- 4.1.4. 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.”

- 4.1.5. 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.”

- 4.1.6. 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.

4.2. 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		

- 4.2.1. 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.
- 4.2.2. It was engraved at the Drawing Room in the Tower by Benjn. Baker & Assistants and was printed by Ramshaw.
- 4.2.3. The maps for Sussex were first published between 1813 and 1819.
- 4.2.4. 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.
- 4.2.5. 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”¹⁹.

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”

¹⁹ 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:

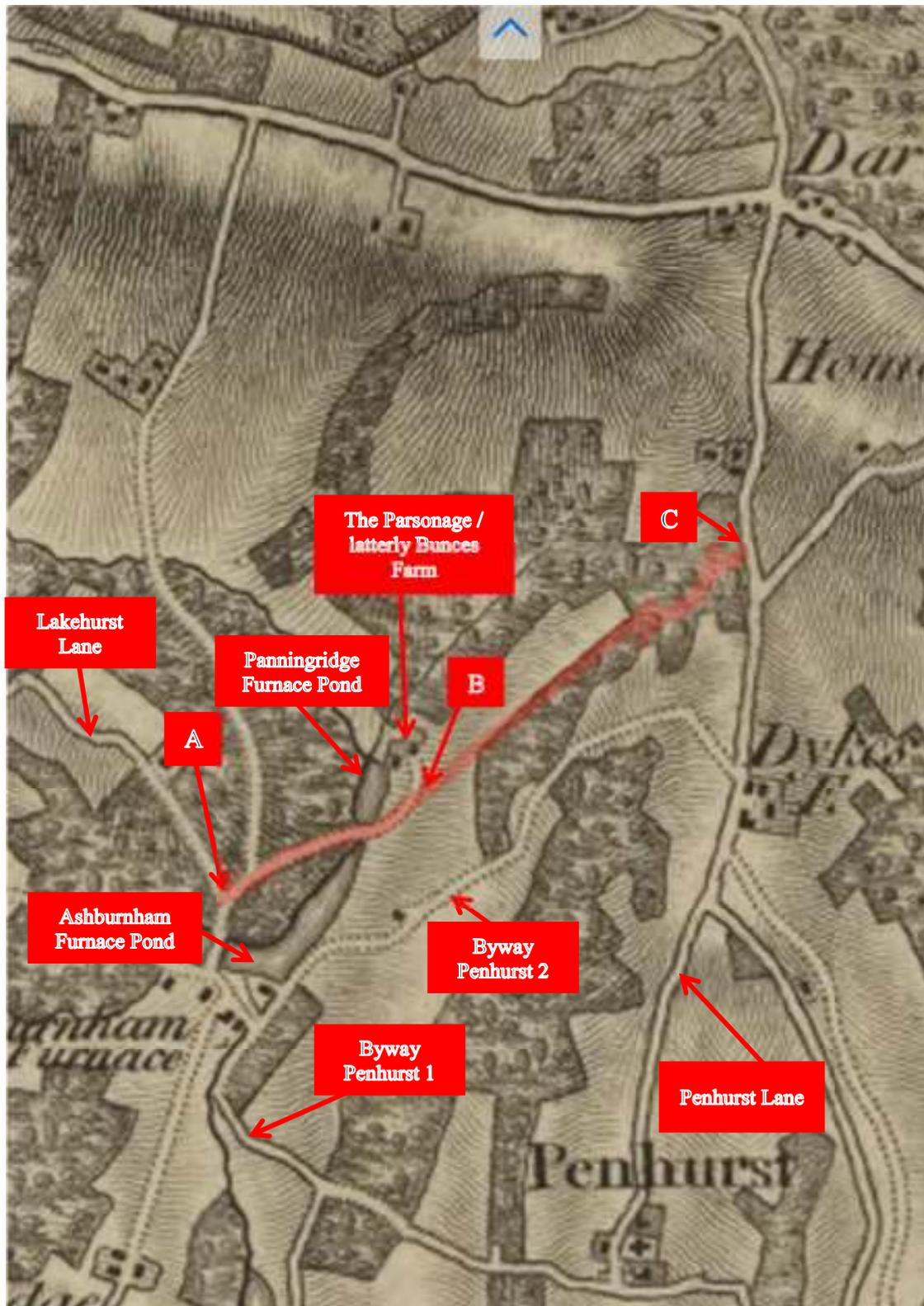


Figure 11 Extract from OS 1813 Old Series map showing the application route highlighted in red.

Analysis of this evidence:

- 4.2.6. Figure 11 shows the section of the application route between point A & B as an open-ended public road, depicted by parallel lines separate from any hereditament.
- 4.2.7. The section of the application route between point A & B 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:

- 4.2.8. When reviewed in light of the surveyors instructions outlined in 4.2.5, the application route between points A & B 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 this section of the application route is depicted by dotted double lines, depicting an un-fenced road and is broken where it intersects with other main roads. This provides strong evidence that this section of the application route was considered a public road.
- 4.2.9. The section of the application route between points A & B is depicted as a “Road” in the same manner as other roads which are now adopted roads or ROW such as Lakehurst Lane, Penhurst Lane, and Byways Penhurst 1 & Penhurst 2. This indicate that this section of 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.
- 4.2.10. The fact that the application route is only partly shown as a public road may firstly be due to the change of usage of the application route and secondly to the military purpose for which the map was surveyed.
- 4.2.11. Firstly when comparing this map to earlier commercial maps one is immediately struck by the increased prominence of the road which is now Byway Penhurst 2. This is in contrast to the application route which after point B is not indicated at all on this map despite the fact that we know from other evidence dated pre 1813, (for example Gardner & Gream map in 1795 and the 1797 Ashburnham Estate maps - see section 6.2) and post this period, (Greenwood and Greenwood 1825, and the Ashburnham Estate maps of 1834 and 1841 - see sections 6.2.12 & 6.4)) that the application route existed. The key may be in the increased prominence of the road which is now Byway Penhurst 2 which with lesser gradients was easier going for heavy vehicles. This may in turn have led to the road which is now Byway Penhurst 2 as being regarded by the surveying authorities as the more viable military route.
- 4.2.12. This piece of evidence demonstrates the existence of a public highway reputation for the section of application route between points A & B over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the section of the application route between points A & B should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

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

- 4.3.1. 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.
- 4.3.2. 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.
- 4.3.3. 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).
- 4.3.4. 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.”²⁰

- 4.3.5. 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/#/>

Books of Reference /Area Books

- 4.3.6. 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 can be accessed in the Bodleian Library in Oxford (<http://dbooks.bodleian.ox.ac.uk>).
- 4.3.7. 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.

²⁰ “A History of the Ordnance Survey” Edited by W A Seymour p.168 <https://www.ordnancesurvey.co.uk/documents/resources/os-history.pdf>

Evidence:

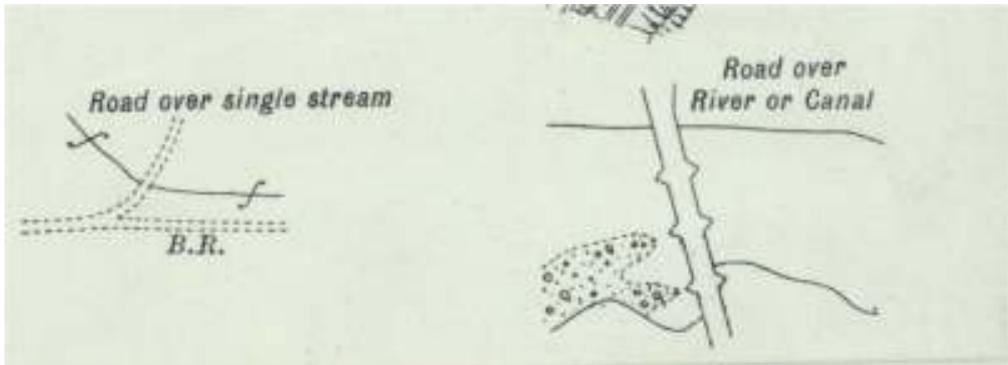


Figure 12 Conventional Signs and Writing Used on the 1:2500 Plans of the Ordnance Survey.

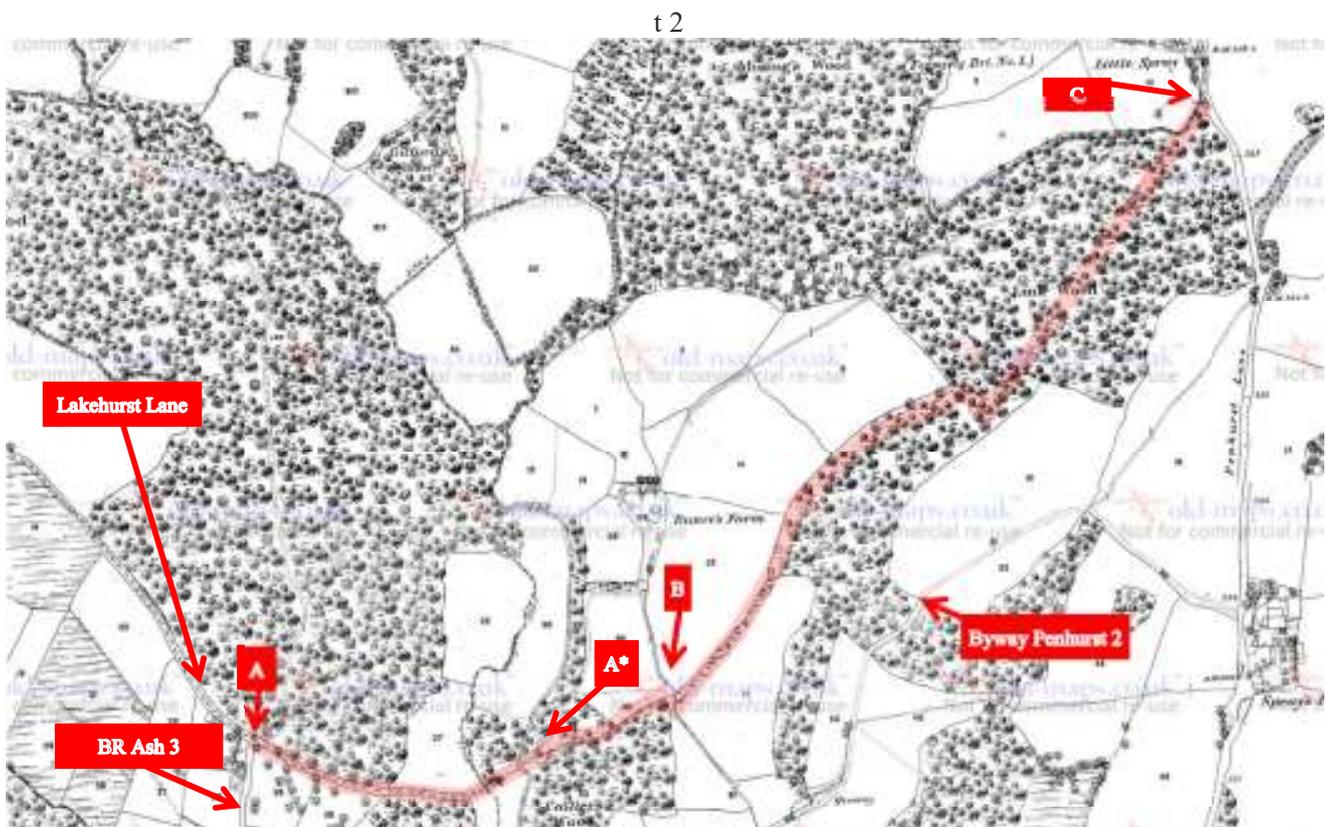


Figure 13 Extract from OS 1874 1:2500 map with the application route shown in red.

Analysis of evidence:

- 4.3.8. Figure 13 shows the section of application route. From point A to point A* as an open ended road, defined by parallel /hashed lines (see map categorisation Figure 12). It is shown as a continuation of Lakehurst Lane.
- 4.3.9. This section of the application route is shown in the same manner as other roads which are now adopted roads or ROW with higher status than footpath such as BR Ashburnham 3 and Byway Penhurst 2.

Significance of this evidence:

- 4.3.10. This map shows the application route between points A & A* the application route is shown as an open ended road, defined by parallel /hashed lines and is shown as part of Lakehurst Lane.
- 4.3.11. The section of the application route between points A & A* is shown as part of the access road to Bunce's Farm
- 4.3.12. Both the fact that it was a continuation of Lakehurst Lane and an access to Bunces Farm indicate that the section of the application rout between points A & A* was more probably than not to have been a public road. The reason for this supposition is twofold.
- 4.3.13. Firstly, if public rights did not exist after the point A, the junction with "The Furnace" (now BR Ashburnham 3) then this would have created a cul-de-sac.
- 4.3.14. It is generally accepted that highways, were generally through-routes and only in exceptional circumstances that cul-de-sacs were historically created (such as providing access to isolated churches etc.). As on this occasion none of these circumstances exist then it is more than probable that public vehicular highway rights existed past point A and along the application route until at least point A*.
- 4.3.15. This supposition is supported by Order Ref: FPS/M1900/7/70M [Microsoft Word - fps_m1900_7_70_m.doc \(nationalarchives.gov.uk\)](#) where the Planning Inspectorate stated;
- "14.3. There are three often-cited cases on culs-de-sac and whether such can be (public) highways: Roberts v. Webster (1967) 66 LGR 298; A.G. v. Antrobus [1905] 2Ch 188; Bourke v. Davis, [1890] 44 ChD 110. In each of these the way in dispute was (apparently) a genuine dead-end with no 'lost' continuation. Fundamental argument in each was whether or not a cul-de-sac (especially in the countryside) could be a (public) highway. In each case the court took the point that the law presumes a highway is a through-route unless there are exceptional local circumstances: e.g. a place of public resort, or that the way was expressly laid out under the authority of statute, such as an inclosure award."*
- 4.3.16. Secondly, it may be proposed that the road between point A & A* was a private occupation road and held no public access rights. However numerous strands of evidence suggests that this may not be the case as it is widely recognised that;
- "If there is a property reached from an application route which is not served by any other public highway....[then if no easements are found]...it would appear that the property was access by a public road..."²¹*
- As this appears to be Bunces Farm main access, and no easement has been found associated to Bunces Farm then it is possible that even if it was "Occupation Road" it is more than probable public vehicular rights existed.
- 4.3.17. 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.

²¹²¹ "Rights of Way – Restoring the record" (2nd Ed) by Sarah Bucks and Phil Wadey p327

4.4. **The significance of the evidence in Ordnance Survey Maps**

- 4.4.1. The conclusion drawn from the OS map evidence above is that as a minimum the section of the application route from A to A* was historically a public road and therefore should at least have a modern-day highway status of a Bridleway.
- 4.4.2. 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.
- 4.4.3. 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:

4.4.4. 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.”

4.4.5. 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.”

4.4.6. 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.

- 4.4.7. 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.”

- 4.4.8. 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.

- 4.4.9. 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.”

- 4.4.10. 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”.

5. Tithe Records

5.1. Introduction to Tithe Records



Figure 14 Extract from 1836 Lieutenant R K Dawson proposed standardised key for Tithe maps

- 5.1.1. 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 14) 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 chains²² 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.
- 5.1.2. The tithe process received a high level of publicity as landowners would have been 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

²² 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.

- 5.1.3. The Tithe data for the application route is complex. This is because the application route is at the intersection of the boundaries of three Tithe parishes, Ashburnham, Penhurst and Dallington, with each of the parishes presenting a different standpoint of the application route.
- 5.1.4. Lakehurst Lane was used as a north-south boundary marker whilst the stream “Bunces Gill” was used as an east-west parish boundary marker. Therefore the northerly section of points A to the vicinity of B of the application route traversed Ashburnham parish with Dallington parish to the south. Section B to C of the application route fell within Penhurst parish which adjoined both Ashburnham & Dallington parishes on its western boundary.
- 5.1.5. In the text below details are given to show how the application route is displayed with respect to each of the Tithe mapping and of any relevant apportionments.

5.2. 1839: Ashburnham Tithe Records

Date of publication: c.1839	Scale: 16 in. to 1m.	Date of Survey: 1839
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 escs.maps.arcgis.com/apps/webappviewer/index.html?id=94d9d72603034a85bb68bce793fb5a59&find=ASHBURNHAM&showLayers=Tithe%20Maps;Labels;MajorARoads;ABRoads;MainRoadNames;AllRoadNames;PlaceNames;Large;LargeMedium;All;Locator;ASHBURNHAM		

- 5.2.1. The Ashburnham Tithe map is a 2nd Class map.
- 5.2.2. The application route ran through the south easterly section of the Ashburnham parish.

Evidence:



Figure 15 Extract from Ashburnham Tithe Map of 1839 with application route highlighted in red

Analysis of evidence

- 5.2.3. Figure 15 shows the application route from point A (notated The Furnace which joins with the road which is now BR Ash/3) to the vicinity to point B (part of Penhurst parish with the stream being the parish boundary) as an unnumbered, ungated public open-ended “Bye or Cross Roads” (see categorisation listed in Figure 14) defined by parallel lines, coloured sienna and separate from any hereditament.
- 5.2.4. It is depicted as an open ended continuation of Lakehurst Lane (circled in red) and is depicted in the same manner as other adopted public highways shown on the Tithe map for example Lakehurst Lane and the road which is now BR Ashburnham 3 (part of Dallington parish)
- 5.2.5. The road on which the application route runs is notated as “To Brightling” (circled in red).

Significance of this evidence

- 5.2.6. The section of the application route from point A to the vicinity to point B is presented on this map as an open ended “Bye or Cross Roads” coloured sienna, separate from any hereditament and untithed. It is depicted in the same manner as other public highways shown on the Tithe map such as Lakehurst Lane and the road which is now BR Ashburnham/3. All these facets make it more than probable that the application route was a public road with a highway reputation higher than a Footpath and more than probably vehicular rights.
- 5.2.7. In the vicinity of point B the application route road is notated “To Brightling”. This notation is unlikely to have been written on roads that were only for a landowner’s private use and were more likely than not to have been a public highway. It is generally accepted that public highways were generally through-routes. Therefore any Tithe road which carried the notation of either “to” or “from” it is more probable than not to have been considered to have held public highway status. This being the case this provides strong evidence that the application route holds a public highway reputation greater than a footpath and more probable than not vehicular rights.
- 5.2.8. It may be proposed that the notation “To Brightling” refers to another road and not to the application route. However consideration of the evidence makes this unlikely. Firstly this notation cannot refer to the Ashburnham Furnace to Penhurst Lane road, now Byway Penhurst 2, which could also be said to lead to Brightling, as the application route, and the notation “To Brightling” is placed after the junction with the road to Ashburnham Furnace (the position of which is notated in the vicinity of point A as “The Furnace”). In addition other evidence, such as the 1797 and 1841 Ashburnham Estate maps (see section 6) show the application route as a road connecting Lakehurst Lane and Penhurst Lane and it is more than probable that it is this road to which the “To Brightling” refers. This being the case this provides strong evidence that the application route holds a highway reputation greater than a footpath and more probable than not vehicular rights.
- 5.2.9. There are differences between the 1797 Ashburnham estate map and the 1839 Tithe map such as additional notations and descriptions, which indicate that the 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 two independent surveys, forty years apart, show/refer to the application route as a road it is more than probable that it existed and that it was as depicted i.e. a public road.
- 5.2.10. The road shown runs over land which has more than one owner. Whilst the northern and southern land plots bounding the road between A & A* were owned by Lord Ashburnham after point A*, in the area notated “to Brightling”, only the southerly land plots are owned by Lord Ashburnham whilst the northerly land plots are shown in the Penhurst apportionment as Glebe Land and owned by the Church (see Figure 16 & Figure 17). As the application route is shown as open ended and ran over two landowners land this

provides strong evidence that the application route held a public highway reputation greater than a footpath and more probable than not vehicular rights.

5.2.11. All this evidence makes it more than probable that the Ashburnham tithe map indicates that the whole of the application route was a public road with a public highway reputation greater than a footpath and more likely public vehicular rights.

5.3. c1840: 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://escs.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		

5.3.1. The Penhurst Tithe map is a 2nd Class map.

5.3.2. The application route ran through the north westerly sections of the Penhurst parish.

Evidence:

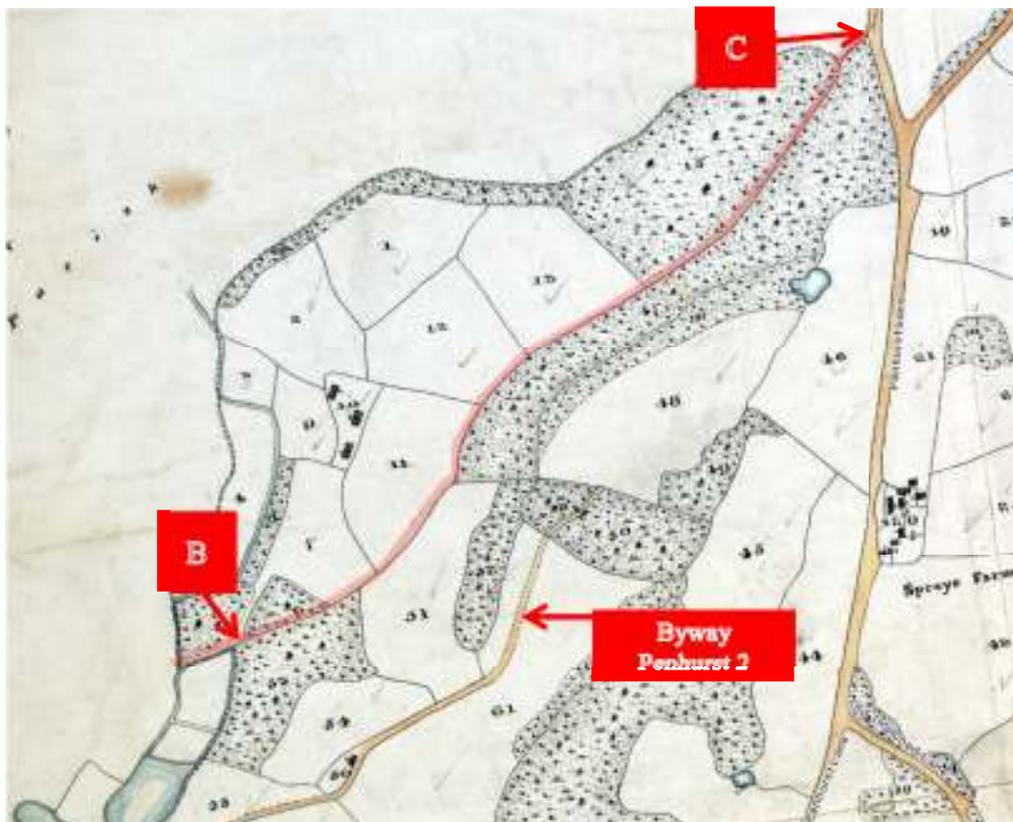


Figure 16 Extract from Penhurst Tithe Map of c.1840 showing application route highlighted in red

11	Munn	Thomas Read, Rev (formerly Rev Edward Warnford)	Ticehurst	William		Lower Six Acres	Arable	Details
12	Munn	Thomas Read, Rev (formerly Rev Edward Warnford)	Ticehurst	William		Middle Six Acres	Arable	Details
13	Munn	Thomas Read, Rev (formerly Rev Edward Warnford)	Ticehurst	William		Upper Six Acres	Arable	Details
14	Munn	Thomas Read, Rev (formerly Rev Edward Warnford)	Ticehurst	William		Shaw	Wood	Details
15	Munn	Thomas Read, Rev (formerly Rev Edward Warnford)	Ticehurst	William		Parsonage Wood	Wood	Details

Figure 17 Extract from Penhurst Tithe Apportionment c.1840 indicating Church ownership of the Land on which the majority of the application route was located

Analysis of evidence

- 5.3.3. Figure 16 shows the application route from the Penhurst parish’s westerly boundary with Ashburnham parish to point B as an unnumbered, uncoloured road. After this point no indication of the application route being a road is either shown on the map or referenced within the apportionment.
- 5.3.4. Figure 17 is an extract from the relevant Apportionment covering plot numbers 11 to 15 showing that the application route ran over land owned by the Church.

Significance of this evidence

- 5.3.5. The section of the application route from the Ashburnham/Penhurst parish boundary to point B, the access road to the “Vicarage”, latterly Bunces Farm, is presented on this map as a white track. This suggests that this section of the application route was accepted as being a road.
- 5.3.6. The section of the application route between point B and C is not shown or referenced to as a road or Bridleway in either on the Tithe map or in the apportionment data. However this does not mean that a public highway did not exist. This is because as Church land (Glebe) were exempt from tithes any details such as highways which ran over Church or Crown land were often omitted from Tithe maps.
- 5.3.7. Figure 17 is an extract from the Penhurst apportionment data which verify that at the time all the land plots over which section B to C of the application route ran, were owned by the Rev Thomas Read (and formally owned by the Rev Edward Warnford) and was therefore more than probable Glebe land and evidence shows it had been so since at least the 1600’s. If this were the case the land would have been exempt from the Tithe Tax. It is therefore more than probable that minimum detail regarding these plots would have been included on this Tithe maps as they would have been considered irrelevant to the Tithe assessment and therefore any details such as public highways (which were also not Tithable) which ran over the land would have be ignored by the Tithe surveyor.
- 5.3.8. Bridleways were also often omitted from Tithe documents if the plots over which the Bridleway ran produce a crop where the Bridleway did not affect the value of the crop. As the Apportionment details show that the plots over which the application route ran were either arable or wood, neither of which

would have been detrimentally affected by the existence of a Bridleway, then it is more than probable that a Bridleway may have existed but was not shown on the map.

5.3.9. This view is substantiated when other evidence, such as the Ashburnham Estate maps, are taken into account. This is because all three of the Ashburnham estate maps, covering the period between 1797 and 1841, show the majority of the land over which the application route runs as “Glebe” [land] and two of the maps, the 1797 & 1841, indicate the existence of a road. Whilst the 1834 map, like the Tithe map, remains silent on the subject.

5.3.10. However whilst this data is generally silent on the existence of the application route as a public highway, thereby neither proving nor disproving the routes existence, probable reasons have been provided as to why the application route is not shown in greater detail.

5.4. c1842: Dallington Tithe Records

Date of publication: c.1842	Scale: 26.6 in. to 1m.	Date of Survey: No date but Award 1842
Surveyor: Unknown	Publisher: Tithe Commission	Edition:
Source: All Tithe maps and Apportionments are to be found on the East Sussex County Council website: Ref https://escc.maps.arcgis.com/apps/webappviewer/index.html?id=94d9d72603034a85bb68bce793fb5a59&find=DALLINGTON&showLayers=Tithe%20Maps;Labels;MajorARoads;ABRoads;MainRoadNames;AllRoadNames;PlaceNames;Large;LargeMedium;All;Locator;DALLINGTON		

5.4.1. The Dallington Tithe map is a 2nd Class map.

5.4.2. The application route ran through the middle easterly sections of Dallington parish.

Evidence:

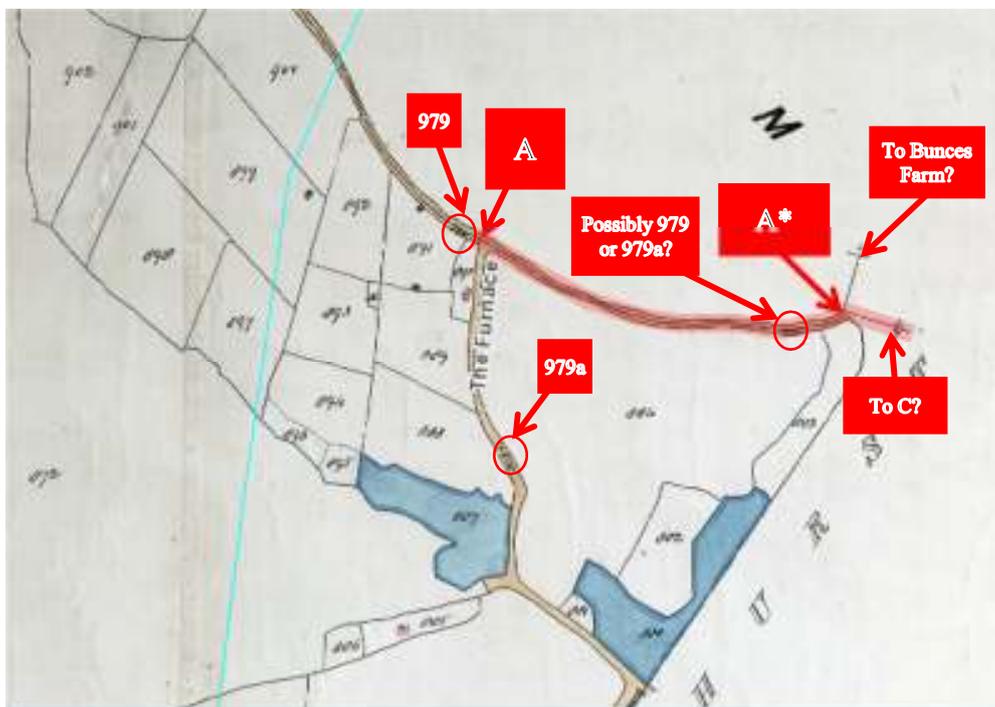


Figure 18 Extract from Dallington Tithe Map of c.1842 showing application route highlighted in red

Plot	Land Owner	Occupier	Farm	Land	Cultivation
976			Parish roads		No data
977			Parish roads		No data
978			Parish roads		No data
979a			Occupation lanes	Road	No data

Plot	Land Owner	Occupier	Farm	Land	Cultivation
	surname	first name	surname	first name	
979					No data

Figure 19 Extract from Dallington Tithe Map of Apportionment

Analysis of evidence

- 5.4.3. Figure 18 shows the application route from point A to point A* as a numbered, ungated “Bye or Cross Roads” defined by parallel lines, coloured sienna (see categorisation listed in Figure 14) and separate from any hereditament. It is depicted in the same manner as other adopted public highways shown on the Tithe map for example Lakehurst Lane and the road which is now BR Ashburnham/3.
- 5.4.4. This map shows the area of Lakehurst Lane, before point A of the application route, as clearly numbered 979 (circled in red). It also shows the road, now BR Ashburnham 3 (notated as “The Furnace”) as clearly numbered 979a. The section of the application route between points A & A* is numbered (circled in red) but it is undecipherable and could either represent 979 or 979a.
- 5.4.5. Figure 19 is an extract from the Dallington Apportionment covering plot numbers 976 to 979. Plot number 979a is defined as “Occupation Lanes” whereas 979 is defined as “Parish Roads”
- 5.4.6. In the vicinity of point A*, just after the Dallington parish boundary two lines are shown, one pointing in a north-north easterly direction and one pointing in a easterly direction

Significance of this evidence

- 5.4.7. The section of the application route from point A to A* is presented on this map as an open ended “Bye or Cross Roads” coloured sienna and separate from any hereditament. It is numbered but is unclear as to whether the number is 979 or 979a. This is important because 979 is defined within the associated apportionment as a “Parish Road” which would therefore have had public vehicular rights whereas 979a was defined as an “Occupational Lane” which may or may not have held public rights.
- 5.4.8. It may be proposed that the road was notated as “979a” and therefore was an occupation lane – presumably to Bunce Farm (though Bunces Farm is not shown on any of the Tithe maps as it resides on Glebe land) and therefore held no public access rights. However numerous strands of evidence suggests that this may not be the case.
- 5.4.9. Firstly it is widely recognised that;

“If there is a property reached from an application route which is not served by any other public highway....[then if no easements are found]...it would appear that the property was access by a public road...”²³

As there is no indication that Bunces Farm had any other access, and no easement has been found associated to Bunces Farm then it is possible that even if the Tithe map described the road as an “Occupation Lane” it is more than probable public vehicular rights existed.

- 5.4.10. The road notated “The Furnace” and 979a is now BR Ashburnham/3. It is more than probable that if the application route between points A & A* was covered by the same definition as “Occupation Lane” then the section of the application route A to A* also held public ROW and should also as a minimum hold the ROW status of that of a Bridleway.
- 5.4.11. Another consideration is that Lakehurst Lane was, and still is a public highway with vehicular rights. Therefore if public vehicular rights did not exist after the point Lakehurst Lane reached point A & the junction with “The Furnace” (now BR Ashburnham 3) then this would have created a cul-de-sac.
- 5.4.12. It is generally accepted that highways, were generally through-routes and only in exceptional circumstances that cul-de-sacs were historically created (such as providing access to isolated churches etc.). As on this occasion none of these circumstances exist then it is more than probable that public vehicular highway rights existed over both “The Furnace” road and the application route.
- 5.4.13. This supposition is supported by Order Ref: FPS/M1900/7/70M [Microsoft Word - fps_m1900_7_70_m.doc \(nationalarchives.gov.uk\)](#) where the Planning Inspectorate stated;
- “14.3. There are three often-cited cases on culs-de-sac and whether such can be (public) highways: Roberts v. Webster (1967) 66 LGR 298; A.G. v. Antrobus [1905] 2Ch 188; Bourke v. Davis, [1890] 44 ChD 110. In each of these the way in dispute was (apparently) a genuine dead-end with no ‘lost’ continuation. Fundamental argument in each was whether or not a cul-de-sac (especially in the countryside) could be a (public) highway. In each case the court took the point that the law presumes a highway is a through-route unless there are exceptional local circumstances: e.g. a place of public resort, or that the way was expressly laid out under the authority of statute, such as an inclosure award.”*
- 5.4.14. As no such vehicular rights exist over “The Furnace” it now being BR Ashburnham 3 then to prevent Lakehurst Lane becoming a cul-de-sac vehicular rights must have existed over the application route.
- 5.4.15. In addition other evidence from the period, such as the 1797 & 1841 Ashburnham Estate map (see sections 6.2 & 6.4,) substantiates that a road following the application route did exist between Lakehurst Lane and Penhurst Lane. This view point is collaborated on the Dallington Tithe map as in the vicinity of point B, two lines are shown, one pointing in a north-north easterly direction – presumably indicating the road to Bunces Farm, and one pointing in a easterly direction, which is more probable than not indicating the routing of the public road connecting Lakehurst Lane and Penhurst Lane, shown on the Ashburnham Estate maps and acknowledged on the Ashburnham Tithe map as “to Brightling”.
- 5.4.16. All this evidence makes it more than probable that the Dallington tithe map indicates that the whole of the application route was a public road with a highway reputation greater than a footpath and more likely vehicular rights.

²³²³ “Rights of Way – Restoring the record” (2nd Ed) by Sarah Bucks and Phil Wadey p327

5.5. The significance of the evidence in Tithe Records

- 5.5.1. The evidence provided in this section is disparate, complex and superficially conflicting. However if one looks beyond the obvious then the evidential facets provide a strong indication that at the time all three referenced Tithe maps were independently produced it was more than probable that the application route was a public road with a highway reputation greater than a Footpath and more than probably held vehicular rights.
- 5.5.2. This being the case 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.
- 5.6. In the Tithe maps, where it is represented, the application route is presented in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway but more likely a Restricted Byway..
- 5.6.1. 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.
- 5.6.2. 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:
- 5.6.3. 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.”*
- 5.6.4. 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.”*
- 5.6.5. 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.”

- 5.6.6. 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. Ashburnham Estate maps

6.1. Introduction to Ashburnham Estate maps

- 6.1.1. 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.
- 6.1.2. 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.
- 6.1.3. This is especially relevant with respect to the Ashburnham Estate maps as they cover a period of over 40 years, were all independently surveyed and were instigated by a number of individuals who held the title of Lord Ashburnham. It is therefore more than probable that any public highway consistently shown on the Ashburnham Estate maps not only existed but was publically acknowledged to exist.

6.2. 1797: Ashburnham Estate map

Date of publication: 1797	Scale: Series	Date of Survey: c1797
Cartographer:	Publisher: Ashburnham Estate	Edition:
Source: ESCC The Keep ESRO/Alt re no: ASH 4454 – Ashburnham, Catsfield & Various Parishes		

Evidence:

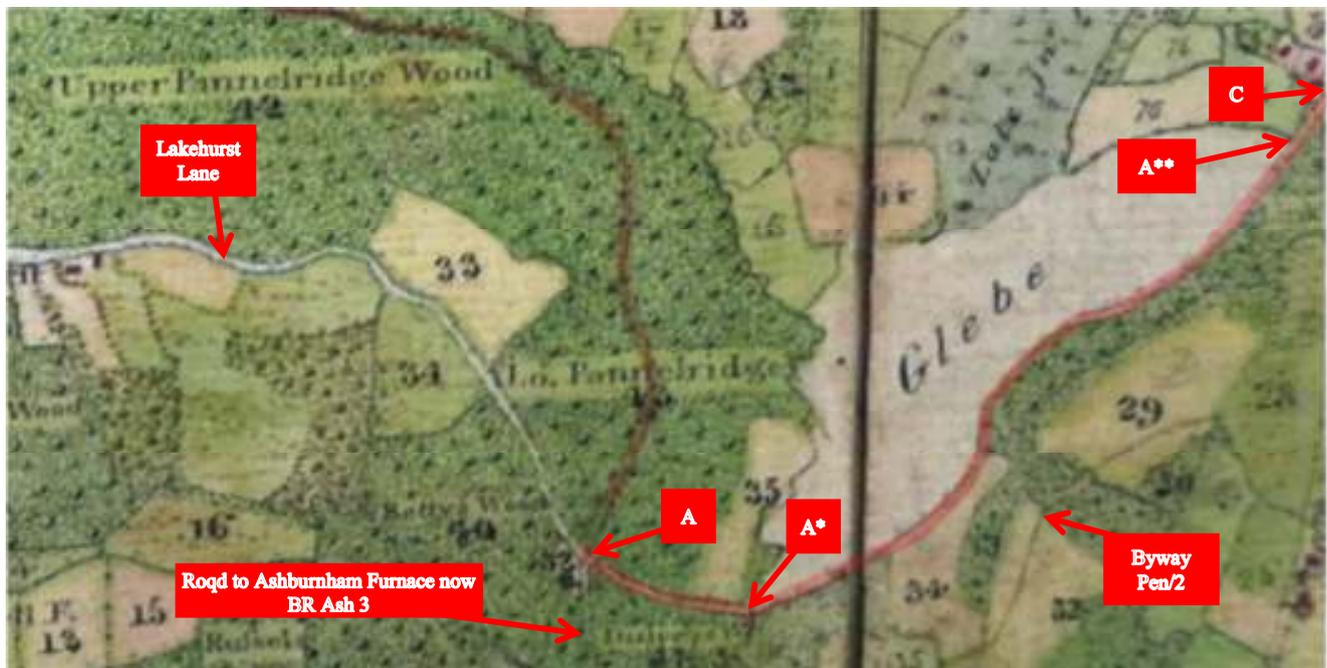


Figure 20 Extract from Ashburnham Estate Map 1797 showing the western siting of the application route (highlighted in red)

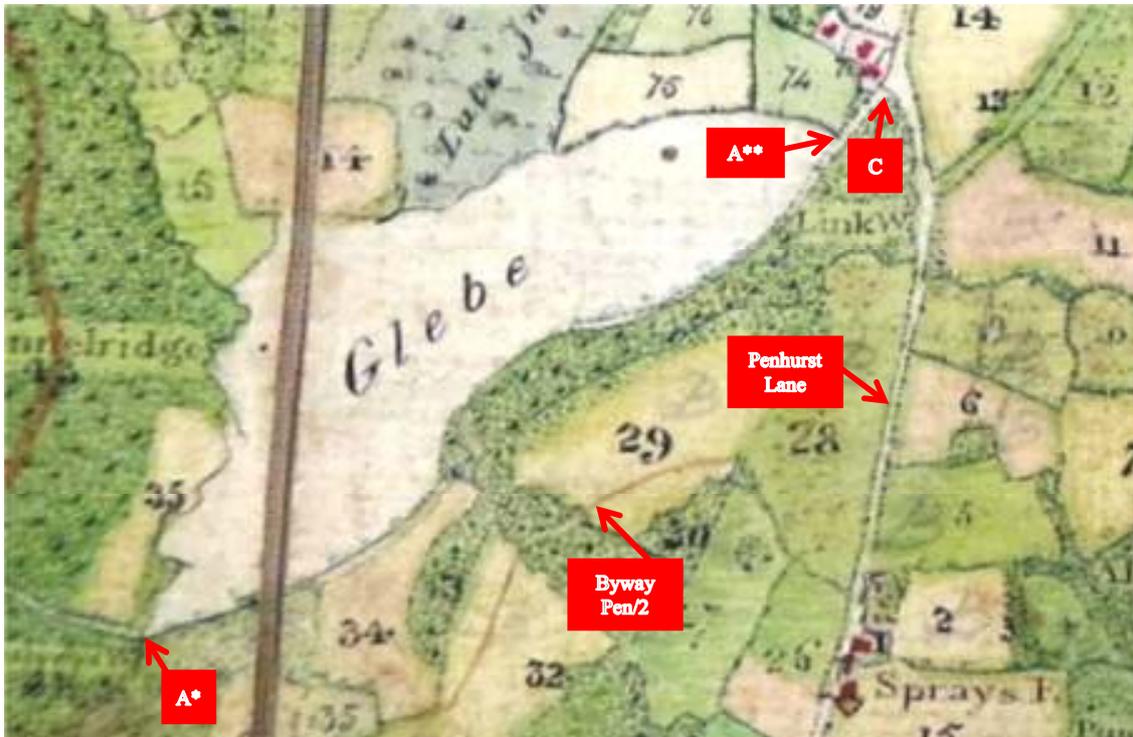


Figure 21 Magnified extract from Ashburnham Estate Map 1797 showing the eastern siting of the application route

Analysis of evidence

- 6.2.1. Figure 20 shows the western situ of the application route in the vicinity to its junction to Lakehurst Lane. It shows the whole of application route as a public road. From point A to A* the application route is shown as a well-defined uncoloured, unnumbered road defined by parallel lines and separate from any hereditament as it runs through woodland. This section of the application route is indicated as an in the same manner other public highways shown on the Estate map such as Lakehurst Lane, Penhurst Lane and the road to Ashburnham Furnace which is now BR Ashburnham 3. It appears to be shown as having a higher ROW than the route which is now Byway Penhurst 2 which appears to be indicated as a Bridleway.
- 6.2.2. Figure 21 shows the eastern situ of the application route. From point A* to A** it indicates the existence of an uncoloured, unnumbered road defined by parallel lines and separate from any hereditament running over Glebe [Church] land along the Glebe's southern border. It is portrayed in the same manner as other public highways shown on the Estate map such as Lakehurst Lane, Penhurst Lane and the road to Ashburnham Furnace which is now BR Ashburnham 3. It appears to be shown as having a higher ROW than the route which is now Byway Penhurst 2 which appears to be indicated as a Bridleway.
- 6.2.3. Despite the section of the application route between point A* and A** not being owned by Lord Ashburnham, and therefore outside the remit of the Estate surveyor, the application route is indicated as an uncoloured, unnumbered road defined by parallel lines in the same manner other public highways shown on the Estate map such as Lakehurst Lane and Penhurst Lane and the Ashburnham Furnace road which is now BR Ashburnham 3. This may indicate the importance of the road and may indicate an acceptance that it was a public right of way.

- 6.2.4. At point A**, where it leave Glebe land and re-enters Lord Ashburnham land, the road (the application route) once again becomes well defined as it runs between plot 74 and Link Wood.
- 6.2.5. At point C, where the applications route intersects with Penhurst Lane, a line is drawn across the application route. This may depict a gate or a field boundary.

Significance of this evidence

- 6.2.6. 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. This he did not do he showed the application route as a public road in the same manner as other public roads which traversed the Ashburnham Estate.
- 6.2.7. This Estate map shows that point A was open ended with no means to restrict public access from Lakehurst Lane. It also shows that points A*, where it left Lord Ashburnham land and entered Glebe land, as open ended with no means to restrict public access. The section of the application route between point A and A* is shown the same manner as other public highways on the Ashburnham estate map for example Lakehurst Lane, Penhurst Lane and the road to Ashburnham Forge which is now BR Ashburnham 3. It is therefore more than probable that at the time the map was surveyed this section of the application route had a public highway reputation greater than a Footpath/Bridlepath and was more likely than not have been accepted by Lord Ashburnham as to have public vehicular rights.
- 6.2.8. The section of the application route from point A* to A** is shown as running over the “Glebe” [Church Land]. As Church land was not owned by Lord Ashburnham the surveyor could have merely defined the Church plot boundaries, however in this case he has depicted an outline of a road running along the southerly perimeter of the Glebe plot. It is more than probable that this road was a continuation of the open access to Lakehurst Lane which traversed Lord Ashburnham’s Estate.
- 6.2.9. At point A** the road (the application route) re-enters Ashburnham Estate land. At point A** the application route is shown as an open ended road with no means to restrict public access by either the Church or Lord Ashburnham. From point A** to C a road is shown, being indicated by parallel lines and separate from any hereditament, and is used as a border separator between plot 74 and Linkwood. It is shown in the same manner as other public highways on the Ashburnham estate map for example Lakehurst Lane, Penhurst Lane and the road to Ashburnham Forge which is now BR Ashburnham 3. It is therefore more than probable that at the time the map was surveyed the application route was accepted by both the Church and Lord Ashburnham that this road had a highway reputation greater than a Footpath/Bridlepath and was more likely than not to have had public vehicular rights.
- 6.2.10. At point C, where the applications route intersects with Penhurst Lane, a line is drawn across the application route. This may depict a gate or a field boundary. However even if gates existed on the road 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/Byways or bridleway.
- 6.2.11. 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.”

6.2.12. The road shown runs over land which has more than one owner Lord Ashburnham and the Church. As the road which is the application route ran over two landowners land this provides strong evidence that the application route held a public highway reputation. As it is shown as a road it indicates that the application route holds rights greater than a footpath and more probable than not vehicular rights.

6.3. 1834: Ashburnham Estate map

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

Evidence:

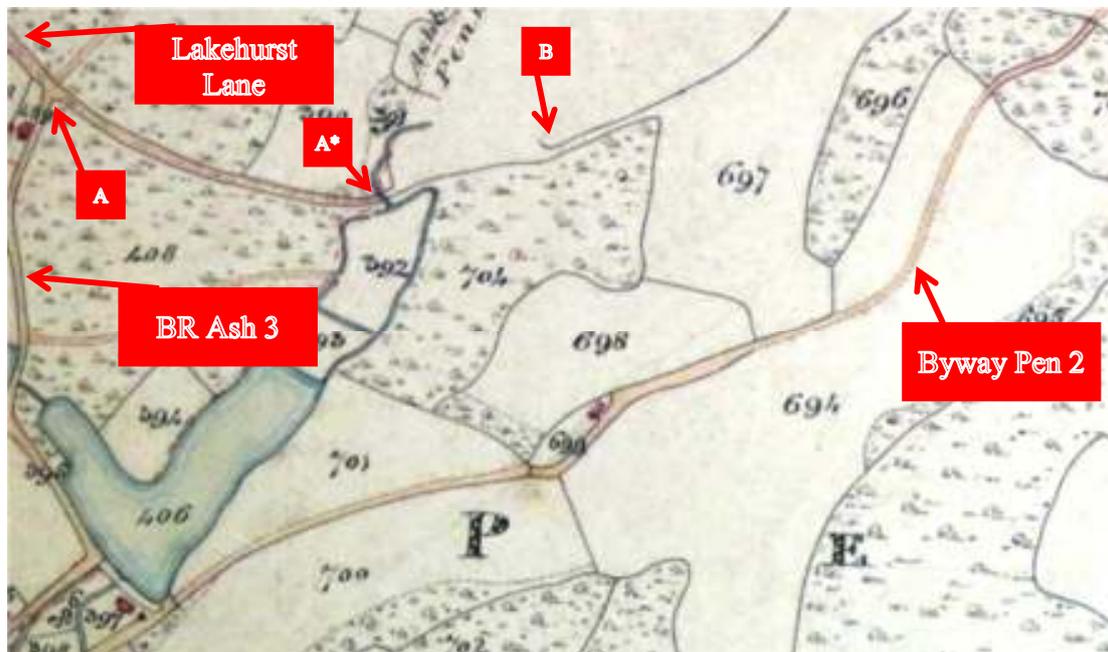


Figure 22 Extract from Ashburnham Estate Map 1797 showing the western siting of the application route

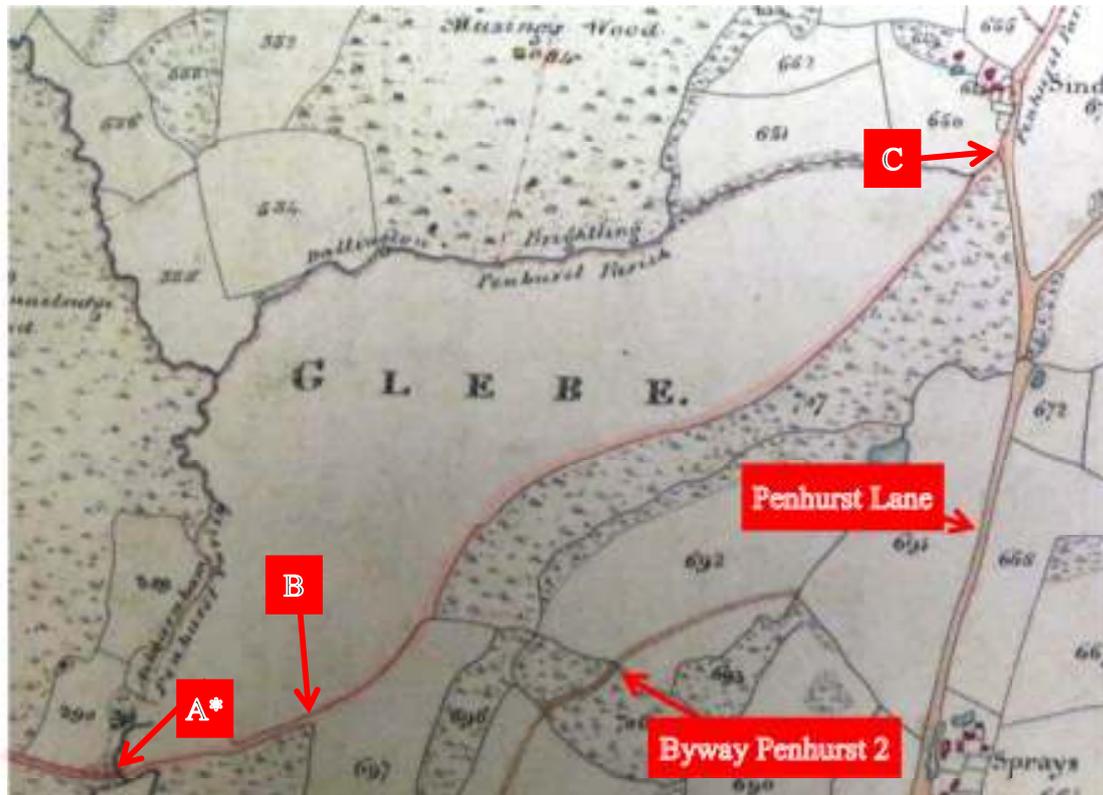


Figure 23 Extract from Ashburnham Estate Map 1834 with application route highlighted in red

Analysis of evidence

- 6.3.1. Figure 22 shows the western situ of the application route. From point A to A* the road is well defined as it runs through woodland and shown as a coloured, unnumbered road defined by parallel lines and separate from hereditaments in the same manner other public highways shown on the Estate map such as Lakehurst Lane, Penhurst Lane and the road to Ashburnham Furnace, BR Ashburnham 3 and Byway Penhurst 2.
- 6.3.2. Figure 23 shows the eastern situ of the application route. It shows the section of the application route from point A* to point B as an uncoloured, unnumbered road defined in part by parallel lines and separate from hereditament, and in part as a road open on one side to Glebe land. It is unclear whether the section of the application route from point A* to point B is part of the Glebe land, part of plot 697 which was owned by Lord Ashburnham or was a public white road.
- 6.3.3. From point B to C no road is indicated along the rest of the application route.

Significance of this evidence

- 6.3.4. 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.
- 6.3.5. This Estate map shows that point A was open ended road with no means to restrict public access from Lakehurst Lane. It also shows that points A*, where it left Lord Ashburnham land and entered Glebe land, as open ended with no means to restrict public access even though it moved into Church ownership. The section of the application route between point A and A* is shown the same manner as other public

highways on the Ashburnham estate map for example Lakehurst Lane, Penhurst Lane and the road to Ashburnham Forge which is now BR Ashburnham 3. It is therefore more than probable that at the time the map was surveyed this section of the application route had a highway reputation greater than a Footpath/Bridlepath and was more likely than not have been accepted by Lord Ashburnham and the Church as to have public rights. This provides strong evidence that this section of the application route had public road status.

- 6.3.6. From point A* to point B the application route is shown as an uncoloured, unnumbered road. It is unclear whether this section of the application route was part of Glebe [Church] land or part of plot 697, which was owned by Lord Ashburnham. If it was considered as part of Glebe land then this may be a reason that a detailed indication of a road is omitted. This would have been because as Church land was not owned by Lord Ashburnham his surveyor could legitimately merely defined the Glebes boundary's and omitted any detail regarding the land other than it was "Glebe".
- 6.3.7. It is also difficult to ascertain the exact positioning of the application route between point B and C. However, other evidence, such as the Ashburnham Estate maps of 1797 and 1841 and the Ashburnham Tithe map, indicate that the road more than probably ran over Glebe land and this may be the reason that the detail of a road is not shown. This would have been because, as previously stated, as Church land was not owned by Lord Ashburnham, the Estates surveyor would have only been required to define the "Glebe" boundary's and was not required to include any additional data, such as the existence of a road, on the land.
- 6.3.8. If the hypothesis that the reason that the application routes road was omitted from this map was due to it residing on Glebe land is accepted then the maps silence on the subject neither proves nor disproves the existence of the road. In such a case other evidence such as the previous Ashburnham Estate map surveyed in 1797, and latter evidence, such as the 1841 Ashburnham Estate maps need to be evaluated. It is therefore of import that on both of these maps a road is shown to have existed.

6.4. 1841: Ashburnham Estate map

Date of publication: 1841	Scale: Series	Date of Survey: c1841
Cartographer:	Publisher: Ashburnham Estate	Edition:
Source: ESCC The Keep ESRO/Alt re no: ASH 4472 – Ashburnham & Various Parishes 1841		

Evidence:

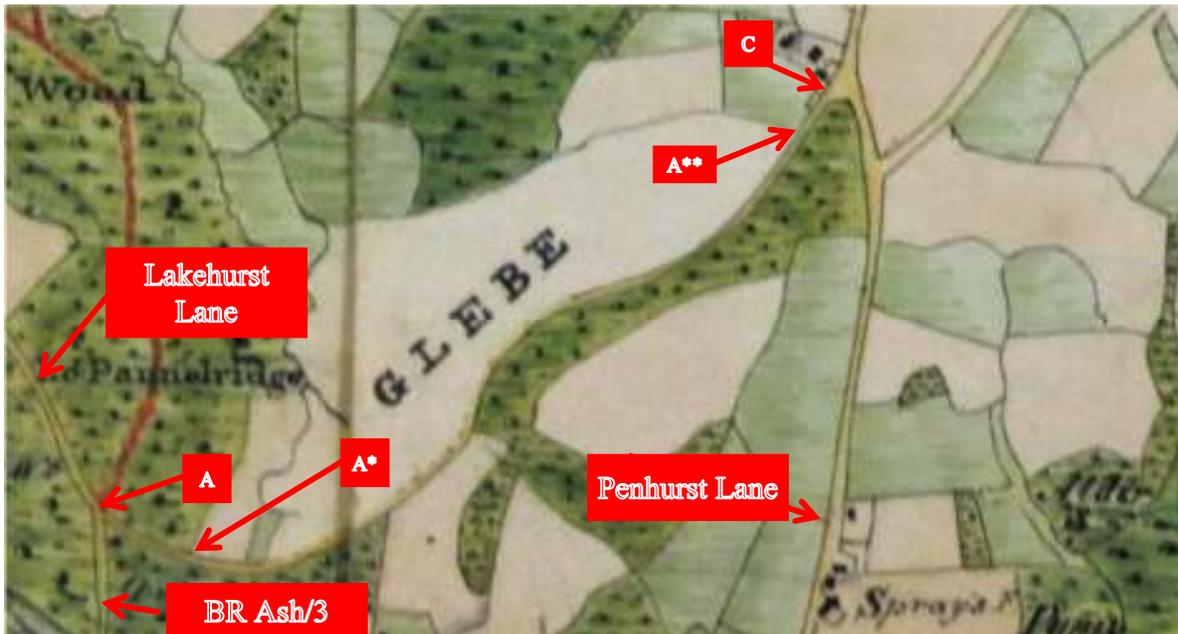


Figure 24 Ashburnham Estate map 1841

Analysis of evidence

- 6.4.1. Figure 24 shows the whole of the application route as an open-ended, sienna shaded, unnumbered road separate from any hereditament running along the southern edge of the “Glebe”.
- 6.4.2. This Estate map shows both points A and C of the application route an open ended road with no means to restrict public access from Lakehurst Lane or Penhurst Lane.
- 6.4.3. It is shown in the same manner as other public highways shown on the Estate map such as Lakehurst Lane and Penhurst Lane and the road which is now BR Ashburnham 3.

Significance of this evidence

- 6.4.4. 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.
- 6.4.5. Despite the section of the application route between point A* and A** being Church owned and not owned by Lord Ashburnham, and therefore outside the remit of the Estate surveyor, the application route is indicated as an uncoloured, unnumbered road defined by parallel lines in the same manner other public highways shown on the Estate map such as Lakehurst Lane and Penhurst Lane and the Ashburnham

Furnace road which is now BR Ashburnham 3. This may indicate the importance of the road and may indicate an acceptance that it was a public right of way.

- 6.4.6. 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 Lakehurst Lane, Penhurst Lane and the road which is now BR Ashburnham 3. Where this is the case it provides strong evidence that the landowner considered that the road shown on the map had public highway status.
- 6.4.7. This Estate map shows that when the map was produced in 1841 the section the application route was a cross roads between Lakehurst Lane and Penhurst Lane. Where this is the case it provides strong evidence that the roads was more than likely to have public vehicular highway status.
- 6.4.8. Both point A, the application routes intersection with Lakehurst Lane, and point C, the application routes intersection with Penhurst Lane are depicted as open-ended. As a result there appears to have been no means by which the either Lord Ashburnham or the Church could have restricted public access. Where this is the case it provides strong evidence that the roads was more than likely to have public vehicular highway status.
- 6.4.9. The road shown runs over land which has more than one owner Lord Ashburnham and the Church. As the application route ran over two landowners land this provides strong evidence that the application route held a public highway reputation. As it is shown as a road it indicates that the application route holds rights greater than a footpath and more probable than not vehicular rights.

6.5. **The significance of the evidence in the Ashburnham Estate Map(s)**

- 6.5.1. These maps are of use because they show how the landowner viewed routes on his estate at the time the maps were compiled. As numerous Lord Ashburnham's could have had non-highway routes stated as "Private" and portrayed in any way that they wished. It is significant that the application route is shown in the same manner as neighbouring routes which are adopted county roads today or roads which now have a status of either Bridleway or Byway. This provides a strong indication that successive Lord Ashburnham's considered that the application route to have had public highway status of at least Bridleroad but more probably than not vehicular status.
- 6.5.2. In addition the application route is depicted as an open ended cross-roads connecting Lakehurst Lane and Penhurst Lane. As a result there appears to have been no means by which the two Landowners who owned the land on which the road ran, namely the Church and Lord Ashburnham, could have restricted public access. As there were multiple owners of land affected by the application route with no means to restrain public access along the way this provides strong evidence that the roads was more than likely to have public vehicular highway status.
- 6.5.3. The conclusion drawn from the above evidence is that the application route was historically a public highway 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.
- 6.6. In the Ashburnham maps, where it is represented, the application route is presented in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway but more likely a Restricted Byway..
- 6.6.1. 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.
- 6.6.2. 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".

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

7.1. Introduction to Inland Revenue Valuation Records 1910

- 7.1.1. 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.”

- 7.1.2. 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.

- 7.1.3. 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.]”

- 7.1.4. 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.”

7.2. **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 25 Extract from 1910 IR map Penhurst IR 124_4_227 showing part of the application route

Analysis of evidence:

- 7.2.1. Figure 25 show the section of the application route between points A to point B as an open ended unnumbered white road separate from the adjoining hereditaments.
- 7.2.2. It is shown in the same manner as other public highways such as Lakehurst Lane, Penhurst Lane, Byways Penhurst 1 & 2 (part) and the road which is now BR Ashburnham 3.

Significance of this evidence:

- 7.2.3. The section of the application route from point A and B is shown as an open ended unnumbered white road separate from the adjoining hereditament which indicates 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.

- 7.2.4. 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.
- 7.2.5. 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 Lakehurst Lane, Penhurst Lane, Byways Penhurst 1 & 2 and the road which is now BR Ashburnham 3.
- 7.2.6. 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. This indicates that this section of the application route should hold at least Bridleway rights but 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.

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

- 7.3.1. 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.
- 7.3.2. 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.
- 7.3.3. 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”.
- 7.3.4. 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:

7.3.5. 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”

7.3.6. 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”

8. Government and Local Authority Data

8.1. East Sussex County Council (ESCC) 1949 Definitive Map Data

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

Introduction to 1949 ESCC Definitive Maps

- 8.1.1. ESCC Definitive maps were produced as a requirement of the National Parks and Access to the Countryside Act 1949.
- 8.1.2. 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.
- 8.1.3. 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”.
- 8.1.4. To fulfil this requirement each County Council carried out a survey, often based on the District Councils’ maps and survey reports prepared by the Ramblers Association. It also referenced footpath evidence forms collected by Parish Councils. Once the draft was prepared it was publicised and objections relating to the inclusion, omission or routes of paths or to their status as shown were received. 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 against 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.

Evidence:

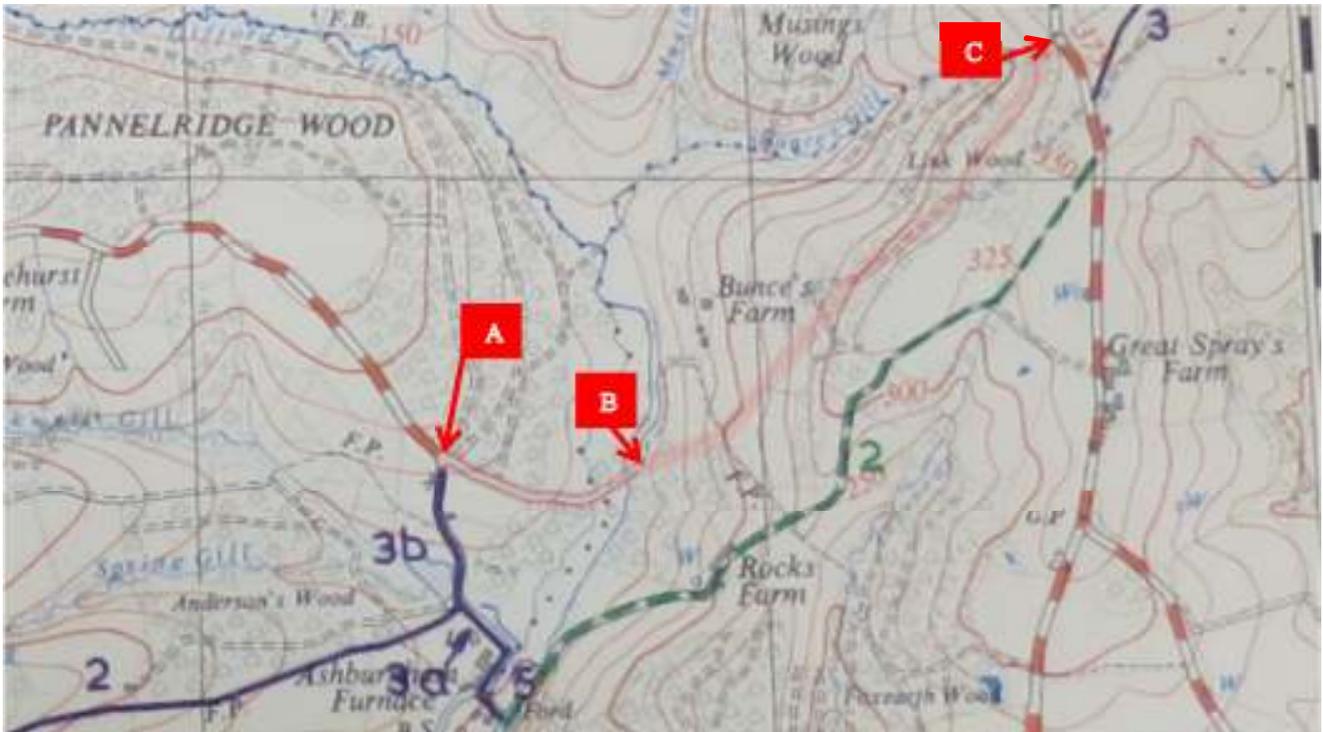


Figure 26 Extract from the 1953 1st ESCC 1st Definitive map (overlaid on OS 2.5 to the mile (1951)) showing the application route highlighted in red

Analysis of evidence

8.1.5. Figure 26 shows the extract from the 1st ESCC definitive map (1953) where the application route is not shown as a Right of Way.

Significance of this evidence

- 8.1.6. The ESCC catalogue of highway diversions (which goes up to the first definitive map and is held at the Keep) shows no diversions or modifications in connection with the application route.
- 8.1.7. As the application route was not included on the 1st definitive map as a right of way, any diversion orders made after this are unlikely to be relevant.

The significance of the evidence of the ESCC Definitive map.

- 8.1.8. 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.
- 8.1.9. As no highway modifications, stop-up or diversions orders have been found to have been issued for the application route then all and any highways rights which have ever existed regarding this application route remain in force.
- 8.1.10. It is also worthy of note that the 1951 OS 2.5 to the mile map, on which the Definitive map was overlaid, shows point A to point B of the application route as a white road.

8.1.11. The conclusion drawn from the above evidence is that if the application route was historically a public highway then all public rights of way associated the application route still exist. The conclusion being that the application route should, as a minimum, be accepted as holding Bridleway rights but is also persuasive of public vehicular rights which would result in Restricted Byway status.

8.2. **The significance of the evidence in Government and Local Authority Data**

8.2.1. The conclusion drawn from the Government and Local Authority Data evidence is if the application route is deemed to have been a public road then all public rights of way associated the application route still exist.

9. LiDAR Data for the Application route

9.1. Introduction to LiDAR data for the Application route

- 9.2. “Laser imaging, detection and ranging” (LiDAR) is a method for determining ranges (distances) by targeting an object with a laser and measuring the time for the reflected light to return to the receiver. It provides a 3D model of the land surface which can provide evidence of historic features that exhibit some form of surface topographic expression and is increasingly used within archaeology to identify historical features such as archaic roads and settlements.
- 9.3. One of LiDAR’s strengths is that it can pinpoint tiny surface anomalies that indicate small sites like graves or large ones like sunken cities. However LiDAR can’t reach beneath the ground, and trees in densely wooded areas can sometimes cause features to be missed.
- 9.4. The LiDAR mapping of the application route shown here is extracted from: <https://houseprices.io/lab/lidar/map?ref=TQ68492%2017076>.
- 9.5. The data presented was extracted in January 2022.

Evidence:

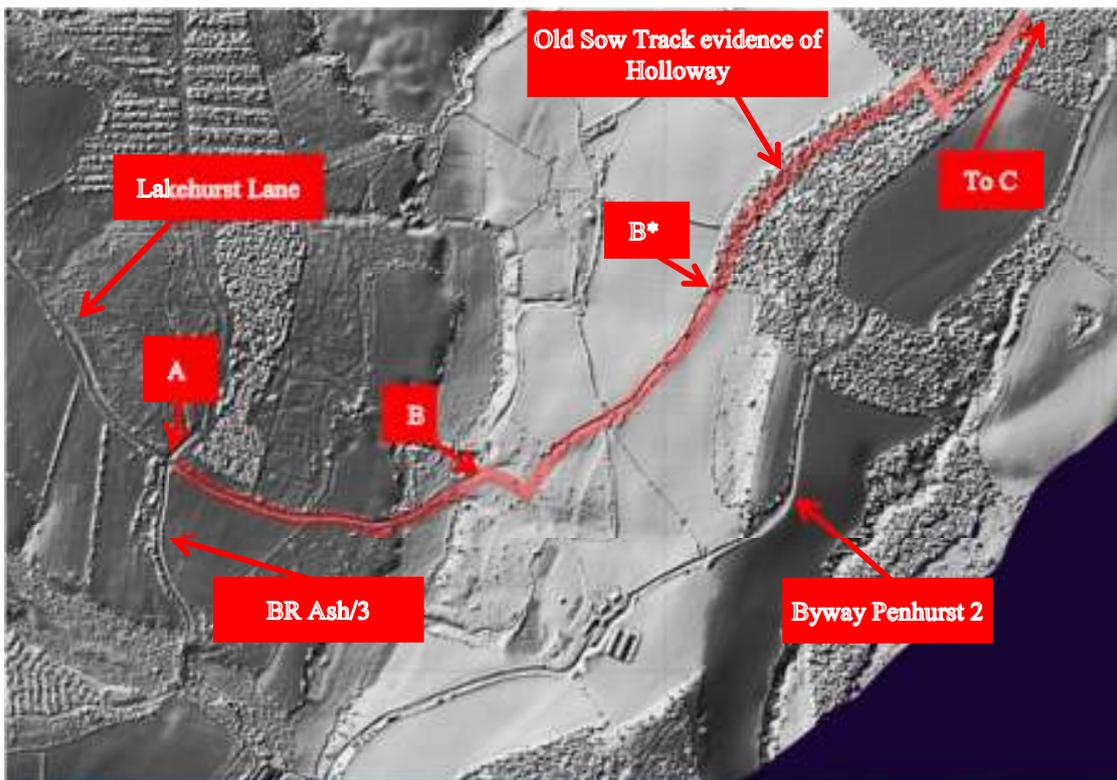


Figure 27 Extract from LiDAR showing the application route highlighted in red.

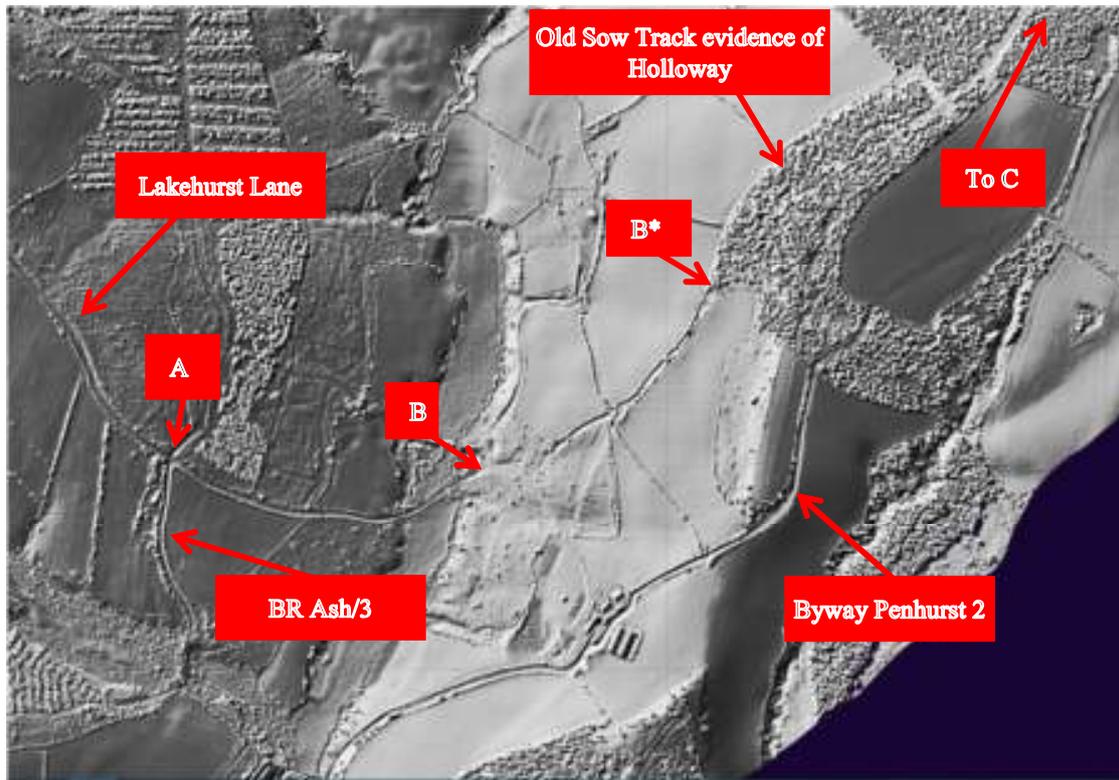


Figure 28 Extract from LiDAR showing the application route (without highlighting)

Analysis of evidence:

9.6. Figure 27 & Figure 28 are LIDAR extracts of the application route. The LiDAR map shows a clear holloway along section A to B of the application route and substantial sections of holloway from point B to B* of the application route. Such holloway’s are accepted by archaeologists as evidence of ancient highways and are indicative of long term usage by vehicles. The LiDAR map shows other holloway’s routes within the area. All these holloway’s routes have a ROW status greater than a Footpath such as Lakehurst Lane, Byway Penhurst 2 and the road which is now BR Ashburnham 3.

Significance of this evidence:

9.7. The LiDAR extract indicates that the application route follows long standing field boundaries and appears to present itself in a similar manner to other existing ROW and county roads such as Lakehurst Lane, Byway Penhurst 2 and BR Ashburnham 3.

9.8. The LiDAR extract shows between points A & B and for significant sections of the application route between points B and B* well-defined holloway(s) exist, indicative of an ancient roadway. Such holloway’s are indicative of long term vehicular usage. This supposition is supported by the fact that the application route presents itself in a similar manner to roads which are existing ROW such as Lakehurst Lane, Byway Penhurst 2 and BR Ashburnham 3.

9.9. The significance of the evidence in LiDAR Data

9.10. From the LiDAR data it appears that a the application route follows long standing field boundaries and contains significant section of well-defined holloway’s indicative of long term vehicular usage.

- 9.11. The conclusion drawn from the LiDAR data is that it is more than probable that as the application route presents itself in the same manner as other ancient roadways which now have greater ROW than a footpath then it is more than probable that the application route was an historic highway and therefore should as a minimum have a modern-day highway status of a Bridleway, however it is also persuasive of Restricted Byway status.
- 9.12. The information gathered in this section was not available during the assessment under the National Parks and Access to the Countryside Act 1949 and therefore the evidence is considered “a discovery of evidence”.

10. Modern Photographs of the application route

10.1. Introduction to Modern Photographs of the application route

10.1.1. Photographs of the application route were taken in January 2022.

10.1.2. 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.

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

10.2. 2022: Modern Photographs

Evidence:



Photo 1 Aerial view notated and with the application route shown highlighted in red.



Photo 2 Photograph of Point A of application route facing a westerly direction. Taken from the junction of Lakehurst Lane and BR Ash/3. The claimed route would proceed along this road.



Photo 3 Point C of the application route where it would join Penhurst Lane. Taken whilst standing on Penhurst Lane facing in a south-westerly direction.

Analysis of evidence:

- 10.2.1. 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 application route follows the existing field boundaries and tracks. This picture also shows how much of the application route appears as an enclosed, hedged holloway for much of the route.
- 10.2.2. Photo 2 was taken at point A of the application route where it would intersect with Lakehurst Lane and BR Ashburnham 3/2. It shows a single width gated tarmacked road of approximately 4 metres wide which runs between two well established hedgerows.
- 10.2.3. Photo 3 was taken at point C of the application route where it would join Penhurst Lane. Although as it can be seen from the picture the area it is overgrown with vegetation from the road a deep sunken holloway can be seen running in a south-westerly direction away from Penhurst Lane. This holloway appears to be approximately 3 metres wide and approximately 4-6 metres in depth with a well-established hedgerow on its northern bank.

Significance of this evidence:

- 10.2.4. From the aerial photographs 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 Lakehurst Lane, Penhurst Lane and Byways Penhurst 1 & 2.
- 10.2.5. The photographs indicate that large sections of the application route follow the course of well-defined ancient holloway(s). Such holloway's are indicative of long term vehicular usage and similar in presentation to other ROW notated on the photograph such as Lakehurst Lane, Penhurst Lane, Byway Penhurst 1 & 2 and BR Ashburnham 3.

10.3. The significance of the evidence in Modern Photographs

- 10.3.1. From the limited access available from the public highways and data gathered from reviewing aerial data it appears a significant part of the application route follows long standing field boundaries and extensive sections follow well-defined holloway(s) indicative of long term vehicular usage which would indicate the existence of an ancient highway.
- 10.3.2. 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".

11. Conclusion

- 11.1. The conclusion drawn from the evidence presented in this Application Statement is that the application route was, between the Neolithic period and Tudor period an unnamed High Weald Ridgeway route, which then in the 17th and 18th centuries, became a named cross-roads connecting Lakehurst Lane and Penhurst Lane (namely Parsonage Lane and Furnace Lane) and whose existence continued to be acknowledged, at least in part, until the 20th century.
- 11.2. Over numerous pieces of evidence the application route is presented in the same manner as other roads which are now adopted roads, Byways or Bridleway. It is therefore suggested that to maintain the integrity of the East Sussex Definitive map and to show a consistent of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 11.3. 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
- 11.4. In summary cumulative evidence (Commercial & OS maps, Estate maps produced over a number of years), and synergistic evidence (e.g. Tithe map, and Inland Revenue 1910 evaluations etc. and academic papers) show that on “the balance of probability” vehicular rights existed at the times the various pieces of evidence were created.
- 11.5. Whilst no single piece of evidence is conclusive,
- “...this co-ordination significantly increases the impact of these documents”²⁴*
- 11.6. 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.
- 11.7. 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.”*
- 11.8. 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.
- 11.9. The test at this stage is only “Can it reasonably be argued that the right of way exists as suggested”.
- 11.10. The later test at confirmation of any order is “Is it more likely than not that the right of way exists as suggested”.

²⁴ Wildlife and Countryside Act 1981 Definitive Map Orders: Consistency Guidelines April 2003

- 11.11. It is asserted that this DMMO Application Statement passes both of those tests.
- 11.12. 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:
- 11.13. 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.”

- 11.14. 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”

12. Request

- 12.1. 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.
- 12.2. 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.