

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

1. Introduction

- 1.1. This Definitive Map Modification Order (DMMO) Application Statement and its associated covering letter are submitted by Ms S Hyden (MBA, MCIPS, BA Bus. Studies (Hons), BSc Psychology (Hons)) BHS Access and Bridleways Officer on behalf of The British Horse Society, of Abbey Park, Stareton, Kenilworth, CV8 2XZ.
- 1.2. The overall application comprises this document (DMMO Application Statement) and its associated covering letter. The **British Horse Society reference for this Application is BHS 302-DallingtonF.**
- 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 6836 1924 to (C) TQ 6843 1749

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.

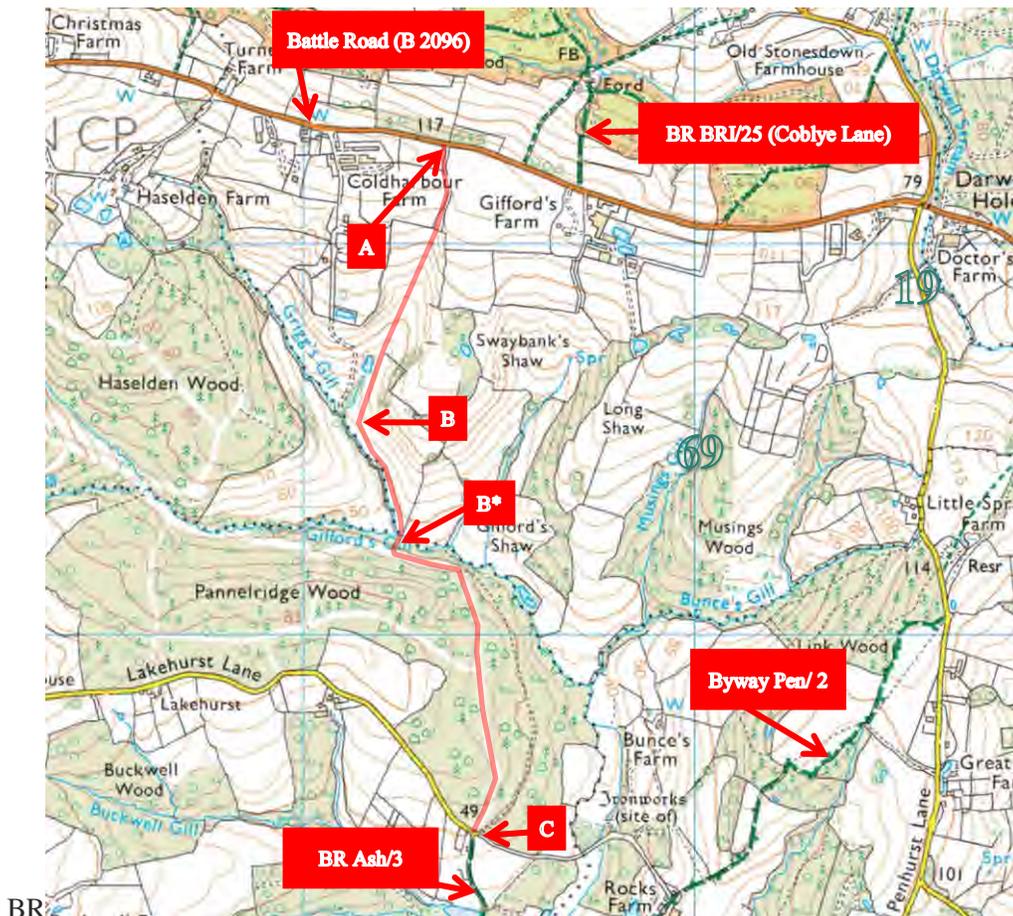


Figure 1 OS 1:25000 map showing the Application route as a red line

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

A = Application route intersection with Battle Road - B2096 (TQ 6836 1924)

B = Joins old road from Haselden Farm & Coldharbour Farm in the vicinity of Ford (approximate grid reference TQ 6813 1852)

B* = Crosses Gifford's Gill (approximate grid reference TQ 6827 1824)

C = Application route intersection Lakehurst Lane (TQ 6843 1749)

- 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 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. The evidence discovered in this DMMO Application Statement includes (in chronological order):

Date	Documentary Evidence	Description
1783	Yeakell & Gardner	Shown as public road
1795	Gardner & Gream map	Shown as public road
1797	Ashburnham Estate map	Shown as public road
1813	OS Old Series (1st Ed)	Shown as public road
1825	Greenwood & Greenwood map	Shown as public road
1834	Ashburnham Estate map	Shown as road
1838	Brightling Tithe Records	Shown as road
1839	Ashburnham Tithe Records	Shown as road
1841	Ashburnham Estate map	Shown as road
1865	Ashburnham Estate Gifford's Farm map	Part shown as public road
1874	OS 25' County Series map 1 st Ed	Shown as road
1874	OS 25' County Series 1 st Ed Reference Book	Part referenced as road
1895	OS 1inch to the mile Sheet 320	Shown as road
1898	OS 25' to the mile – Sussex XLIII.9	Shown as road
1909	OS 25' to the mile – Sussex XLIII.9	Shown as road
1910	Inland Revenue Valuation Record	Part shown as White Road
1949<	ESCC Definitive map	Not shown as ROW. No stopping up or diversion orders found for this route. Ford shown
2016	High Weald Historic Routeways Survey	Part acknowledged as Road
2022	LiDAR	Evidence of ancient highway
2022	Modern Photographs	Displays a well-defined banked route indicative of an old road.

- 1.7. 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).

- 1.8. 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/74789/1/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 unless otherwise stated are north orientated.

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

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.

reference to “Road” prior to 1929 can with confidence be said to imply a general purpose vehicular way. After 1929 that is not the case. It is these interpretations which are applied within this DMMO Application Statement.

Table of Contents

1.	Introduction	1
2.	Commercial County Maps Context and Evidence.....	9
2.1.	Introduction to Commercial County Maps	9
2.2.	1778-1783: Yeakell & Gardner “A Topographical Map of Sussex” Sheet 4.....	10
2.3.	1795: Gardner & Gream: “A Topographical Map of the County of Sussex”.....	13
2.4.	1825: Greenwood and Greenwood: “Map of Sussex”.....	16
2.5.	The significance of the evidence in Commercial County Maps	19
3.	Ordnance Survey Maps Context and Evidence	21
3.1.	Introduction to OS Maps	21
3.2.	1813: Old Series (1 st edition).....	22
3.3.	1895: 1 inch to the mile – Sheet 320 – Hastings (Outline).....	25
3.4.	Ordnance Survey: 25 inch to the mile	29
3.5.	1874: 1 st Edition Ordnance Survey: 25 inch to the mile.....	30
3.6.	1898 OS 25 inch to mile: Sussex XLIII.9.....	39
3.7.	1909 OS 25 inch to mile: Sussex XLIII.9.....	42
3.8.	The significance of the evidence in Ordnance Survey Maps.....	46
4.	Tithe Records.....	48
4.1.	Introduction to Tithe Records.....	48
4.2.	(1838: Brightling Tithe Records.....	49
4.3.	1839: Ashburnham Tithe Records	53
4.4.	The significance of the evidence in Tithe Records.....	57
5.	Ashburnham Estate maps	59
5.1.	Introduction to Ashburnham Estate maps	59
5.2.	1797: Ashburnham Estate map.....	59
5.3.	1834: Ashburnham Estate map.....	63
5.4.	1841: Ashburnham Estate map.....	68
5.5.	c1865: Ashburnham Estate map of Gifford’s Farm	70
5.6.	The significance of the evidence in the Ashburnham Estate Map(s)	72
6.	Inland Revenue (IR) Finance Act 1910 -Valuation Records.....	74
6.1.	Introduction to Inland Revenue Valuation Records 1910	74
6.2.	1910: IR: 124/4/223 Darwell Hole	75
6.3.	The significance of the evidence in IR Finance Act Valuation Records 1910	77
7.	Government and Local Authority Data	78
7.1.	East Sussex County Council (ESCC) Definitive Map.....	78
7.4.	The High Weald Area of Outstanding Natural Beauty (HWAONB) Unit Historic Routeways Survey ..	83
7.5.	The significance of the evidence in Government and Local Authority Data	90

8. LiDAR Data.....93

 8.3. Introduction to LiDAR data for the Application route93

 8.12. The significance of the evidence in LiDAR Data.....97

9. Modern Photographs of the Application route98

 9.1. Introduction to Photographs of the Application route98

 9.2. 2021: Photographs99

 9.3. The significance of the evidence in Modern Photographs.....103

10. Conclusion.....104

11. Request106

Table of Figures

Figure 1 OS 1:25000 map showing the Application route as a red line	1
Figure 2 Extract from the Yeakell & Gardner 1783 map showing the application route highlighted in red.....	11
Figure 3 Extract from Gardner and Gream map of 1795 showing the application route highlighted in red.	14
Figure 4 Extract from Greenwood and Greenwood Map of Sussex 1825 showing the application route highlighted in red.....	16
Figure 5 Extract from “Explanation” on Greenwood & Greenwood Map of Sussex 1825.....	17
Figure 6 Extract from OS 1813 Old Series map showing the application route highlighted in red	23
Figure 7 Extract from OS 1895 Revised New Series map showing the application route highlighted in red.....	26
Figure 8 Extract from OS 1895 Revised New Series Categorisation sheet.....	27
Figure 9 Conventional Signs and Writing Used on the 1:2500 Plans of the Ordnance Survey.	29
Figure 10 Extract from OS 1874 1:2500 map showing between points A & B (Brightling Parish) with the application route highlighted in red.....	30
Figure 11 Magnified extract from OS 1874 1:2500 map showing the vicinity of point A and the notation 482.....	31
Figure 12 Extract from OS 1874 1:2500 map with the application route between points B & B* (Brightling Parish) highlighted in red.	32
Figure 13 is an extract from the front cover of the Brightling Book of Reference with the application route highlighted in red.....	33
Figure 14 Extract from the Brightling Book of Reference for 1874 showing plot number 482 description.....	33
Figure 15 Extract from OS 1874 1:2500 map with the application route in the vicinity of B* highlighted in red.	34
Figure 16 Magnified extract from OS 1874 1:2500 map with the application route in the vicinity of C (Ashburnham Parish) highlighted in red.	35
Figure 17 is an extract from the front cover of the Ashburnham Book of Reference with the application route highlighted and circled in red.	36
Figure 18 Extract from OS 1898 County Series Sussex 1:2500 showing the application route between points A & C* highlighted in red.	39
Figure 19 Extract from OS 1898 County Series Sussex 1:2500 showing the application route highlighted in red.....	40
Figure 20 Extract from OS 1909 County Series Sussex 1:2500 showing the application route between points A & B highlighted in red.	42
Figure 21 Extract from OS 1909 County Series Sussex 1:2500 showing the application route between point B & C highlighted in red.....	43
Figure 22 Extract from OS 1909 County Series Sussex 1:2500 showing the application route in the vicinity of C highlighted in red.....	44
Figure 23 Extract from 1836 Lieutenant R K Dawson proposed standardised key for Tithe maps	48
Figure 24 Extract from Brightling Tithe Map with the application route highlighted in red.....	50
Figure 25 Magnified extract from Brightling Tithe Map showing point A of the application route and land plot numbers 689,691 & 700	51
Figure 26 Magnified Extract from Brightling Tithe Map showing the vicinity of point B of the application route and land plot numbers 690	51
Figure 27 Extract from Brightling Tithe Apportionment showing the entries for 689,690 & 691.....	52
Figure 28 Extract from Brightling Tithe Apportionment showing the entry for 700	52
Figure 29 Extract from Ashburnham Tithe Map of with the application route.	54
Figure 30 Magnified extract from Ashburnham Tithe Map showing point B*of the application route.....	54
Figure 31 Magnified extract from Ashburnham Tithe Map showing point C of the application route.....	55
Figure 32 Extract from Ashburnham Estate Map 1797 showing the application route (not highlighted).....	60
Figure 33 Extract from Ashburnham Estate Map 1797 showing the depiction of the road which is now Byway Penhurst 2 (not highlited)	61
Figure 34 Extract from Ashburnham Estate Map 1834 showing the application route (not highlighted).....	63
Figure 35 Magnified extract from Ashburnham Estate Map 1834 showing the application route between points A & B*	64

Figure 36 Magnified extract from Ashburnham Estate Map 1834 showing the application route between point B* & C.65

Figure 37 Extract from Ashburnham 1834 Estate Map showing the application route in the vicinity of point C and the depiction of the road which is now Byway Penhurst 2.....66

Figure 38 Ashburnham Estate map 184168

Figure 39 Ashburnham Estate map of Giffords Farm c186570

Figure 40 Extract from 1910 IR map Penhurst showing the application route IR 124-4-223.....75

Figure 41 Extract from the 1953 1st ESCC Definitive map showing the area of the application route (overlaid on OS 2.5 to the mile (1951)).....79

Figure 42 Extract from the 2022 ESCC Definitive map showing section of the application route between points A and B.....81

Figure 43 High Weald Historic Routeways Key86

Figure 44 Extract from High Weald Historic Routeways map for Ashburnham Parish (<http://www.highweald.org/downloads/publications/parish-information.html>)87

Figure 45 Extract from the LiDAR map showing the section of the application route which is available on Lidar with the application route shown in red.....93

Figure 46 Magnified extract from the LiDAR map showing section of the application route between points A and B*94

Figure 47 Magnified extract from the LiDAR map showing section of the application route between points B* to C.95

Figure 48 Extract from LiDAR showing BR Ash/3 & Byway Penhurst 2.....96

2. Commercial County Maps Context and Evidence

2.1. Introduction to Commercial County Maps

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

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

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

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

Evidence:

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

Analysis of evidence:

2.2.6. Figure 2 shows the whole of the application route as an open ended, un-gated cross-roads, connecting Battle Road (B2096) to Lakehurst Lane. The whole of the application route is depicted by unbroken & dotted parallel lines in a similar manner to other public roads.

Significance of this evidence:

2.2.7. 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.

2.2.8. The application route is shown as an open ended un-numbered, uncoloured cross-roads separate from any hereditament which joined Battle Road to Lakehurst Lane. No gates are depicted on the application route. As a result there appears to have been no means by which the Landowner could have restricted public access. As both end points were public roads this provides strong evidence that the application route was more likely than not to have public highway status. This 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.

- 2.2.9. The whole of 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 Battle Road (B2096), Penhurst Lane, Lakehurst Lane, Coblye Lane (now BR BRI/25/6), Byway Penhurst 2 and BR Ashburnham 3. This indicates that it was more probable than not to be a public road. It therefore holds a minimum ROW status of at least Bridleway, as per BR Ash/3, but more probably Byway status as per Byway Penhurst 2.
- 2.2.10. 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.
- 2.2.1. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

2.3. 1795: Gardner & Gream: “A Topographical Map of the County of Sussex”

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

- 2.3.1. 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 maps² “the most important of all Sussex maps”. This is because it was commissioned by the 3rd Duke of Richmond, who became Master-General of the Ordnance in 1782. Gardner later followed the Duke to the Board of Ordnance, becoming Chief Draughtsman to the Board.
- 2.3.2. 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.
- 2.3.3. The map does not have a key/legend.

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

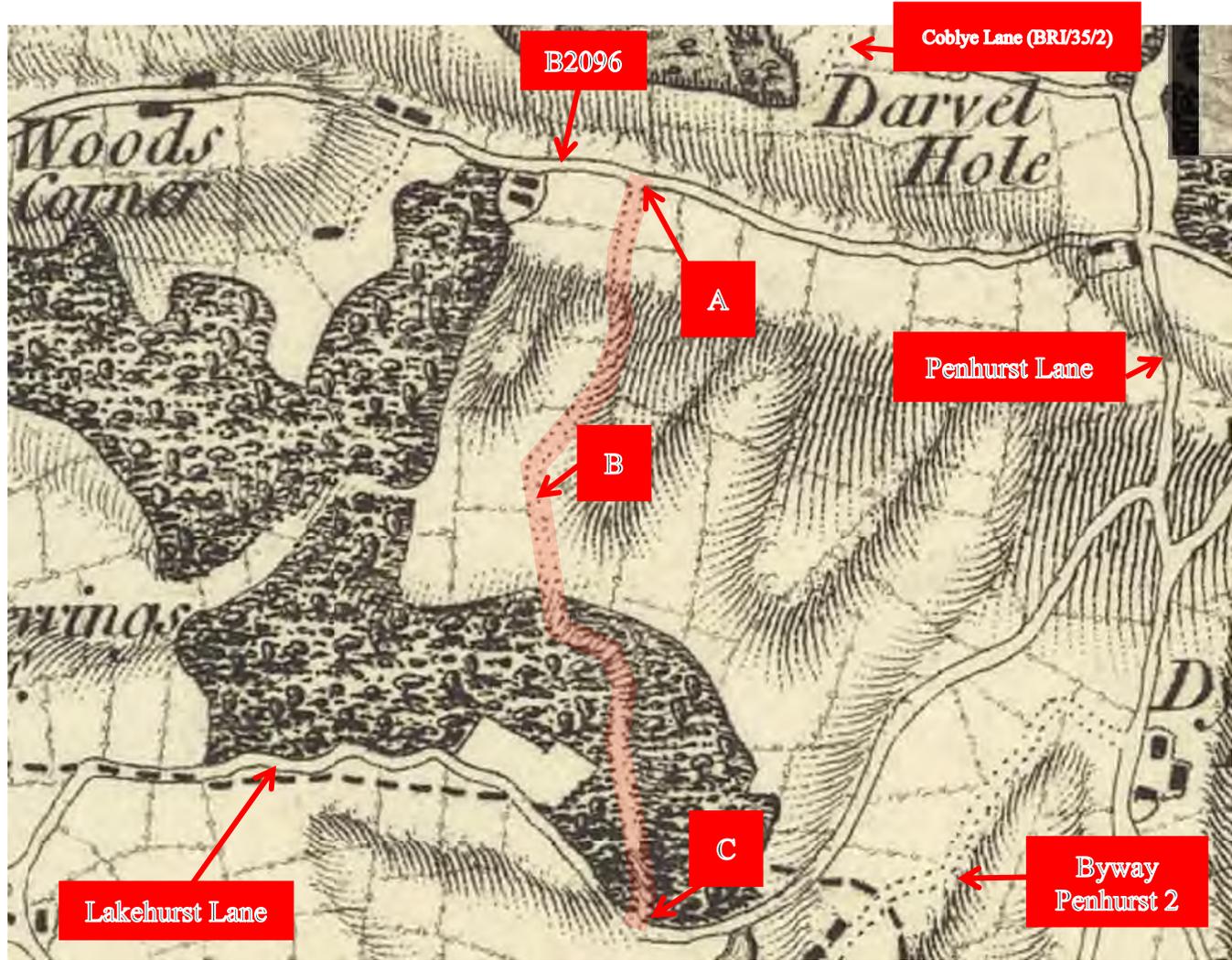
Evidence:

Figure 3 Extract from Gardner and Gream map of 1795 showing the application route highlighted in red.

Analysis of evidence:

2.3.4. Figure 3 shows the whole of the application route as an open ended, ungated cross-roads connecting Battle Road (B2096) to Lakehurst Lane. The whole of the application route is depicted by dotted parallel lines in a similar manner to other public roads shown on the map which are now either Byways or Bridleways.

Significance of this evidence:

2.3.5. Differences between the 1783 Yeakell & Gardner and the Gardner & Gream map of 1795, such as the depiction of the application route, indicate that this map was the result of a new survey.

2.3.6. The whole of the application route is depicted as a “Road” in the same manner as other public roads which are now Byways or Bridleways such as Coblye Lane (now BR BRI/35/2 and Byway Penhurst 2. This indicates that it was more probable than not to be a public road.

- 2.3.7. The application route is shown as an open ended un-numbered, uncoloured cross-roads separate from any hereditament which joined Battle Road to Lakehurst Lane. No gates are depicted on the application route. As a result there appears to have been no means by which the Landowner could have restricted public access. As both end points were public roads this provides strong evidence that the cross-roads was more likely than not to have public highway status. This 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.
- 2.3.8. 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.
- 2.3.9. Few private roads were shown. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series. The existence of a road on this map indicates that the road was more likely than not, a public road with higher rights than that of a Footpath/Bridleway and more than probable was a highway possessing carriageway rights.
- 2.3.1. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 2.3.1. Certain parallels can be drawn between the application route and Planning Appeals and Guidelines. Particularly relevant to this Application are the following;
- 2.3.2. Paragraph 2.24 of the Planning Inspectorate’s Consistency Guidelines says
- “In modern usage, the term “cross road”/“crossroads” is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.”*
- 2.3.3. It is generally accepted that on older maps a ‘cross road’ generally, but not always, depicted a public road. These maps were expensive to purchase and as Judge Howarth commented in *Hollins v Oldham* [1995] there was:
- “...no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use.”*
- 2.3.4. This viewpoint was recently reinforced by the Planning Inspectorate in Appeal Ref: FPS/D0840/7/24M1 (D0840724 The Cornwall Council (Addition of Restricted byway (Penponds) Modification Order 2016 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725563/fps_d0840_7_24M1_final_od.pdf))
- “12. Such a map would be likely to show public routes rather than private ones, which could not be used by those purchasing the map”*

2.4. **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		

- 2.4.1. This map was made for sale to the public, and so is unlikely to show routes that the public could not use.
- 2.4.2. 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.
- 2.4.3. The map is finely engraved in the manner of the best contemporary firms, although the representation of relief is poor.
- 2.4.4. 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:

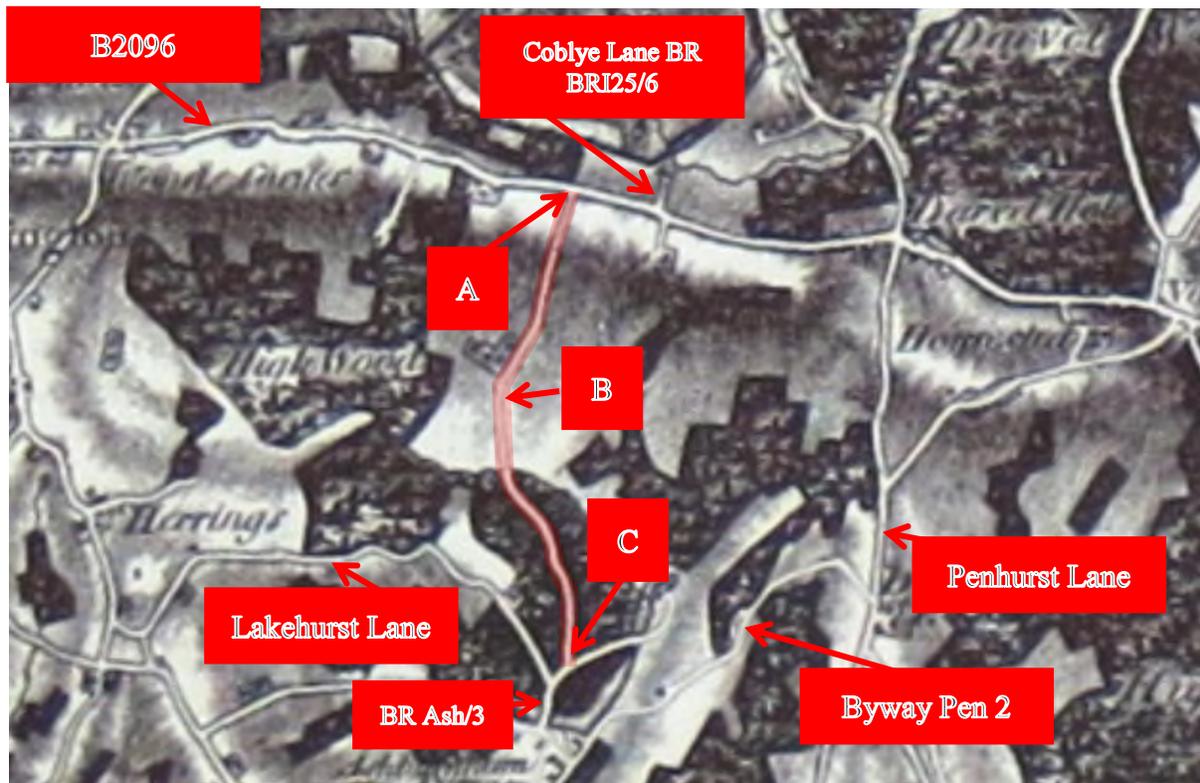


Figure 4 Extract from Greenwood and Greenwood Map of Sussex 1825 showing the application route highlighted in red

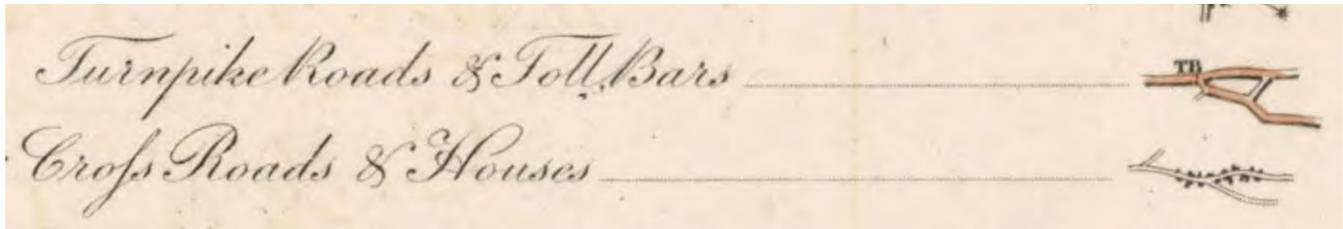


Figure 5 Extract from “Explanation” on Greenwood & Greenwood Map of Sussex 1825

Analysis of evidence:

2.4.5. Figure 4 shows the whole of the application route as an open-ended, un-gated cross-roads (see Figure 5 - Explanation), depicted by parallel lines connecting the Battle Road (B2096) to Lakehurst Lane.

Significance of this evidence:

- 2.4.6. Differences between the 1795 Gardner & Gream’s, such as the depiction of the application route by parallel lines and not dotted lines, indicate that this map was the result of a new survey.
- 2.4.7. The application route is shown as an open ended un-numbered, uncoloured cross-roads separate from any hereditament which joined Battle Road to Lakehurst Lane. No gates are depicted on the application route. As a result there appears to have been no means by which the Landowner could have restricted public access. As both end points were public roads this provides strong evidence that the cross-roads was more likely than not to have public highway status. This 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.
- 2.4.8. The fact that the application route is shown as a cross-roads connecting an arterial road to a local road 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.
- 2.4.9. The whole of 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 Battle Road (B2096), Penhurst Lane, Lakehurst Lane, Coblye Lane (now BR BRI/25/6), Byway Penhurst 2 and BR Ashburnham 3. This indicates that it was more probable than not to be a public road.
- 2.4.10. 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.
- 2.4.11. Few private roads were shown. The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series. The existence of a road on this map indicates that the road was more likely than not, a public highway with higher rights than that of a Footpath/Bridleway and more than probable was a highway possessing carriageway rights.
- 2.4.12. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Carriageway status.

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

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

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

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

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

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

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

2.5. The significance of the evidence in Commercial County Maps

- 2.5.1. The conclusion from the commercial map evidence is that on numerous commercial maps in the 18th and 19th Century the application route was shown in the same manner as roads which are now either public road or have ROW higher than a Footpath. The conclusion drawn from this evidence is that in the 18th and 19th Century it is more than probable that the application route was a public road with vehicular rights.
- 2.5.2. 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.
- 2.5.3. These pieces of evidence demonstrate the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 2.5.4. Whilst depiction of a Road on a map is not in itself evidence of a right of way, Planning Inspectorate Consistency Guidelines for OS and other commercial maps state (in Section 12.43) that:

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

- 2.5.5. Certain parallels can be drawn between the application route and Planning Appeals. Particularly relevant to this Application are the following;
- 2.5.6. 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.”

- 2.5.7. 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."

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

3. Ordnance Survey Maps Context and Evidence

3.1. Introduction to OS Maps

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

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

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

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

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

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

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

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

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

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

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

The following instruction was also given:

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

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

Evidence:



Figure 6 Extract from OS 1813 Old Series map showing the application route highlighted in red

Analysis of this evidence:

- 3.2.6. Figure 6 shows the whole of the application route as an open-ended, ungated public cross-roads, depicted by solid and dotted parallel lines separate from any hereditament.
- 3.2.7. The whole of the application route is a public cross-roads connecting the Battle Road (B2096) to Lakehurst Lane
- 3.2.8. The application route is shown in the same manner as other roads which are now adopted roads or ROW with higher status than footpath.

Significance of this evidence:

- 3.2.9. The whole of 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 Battle Road (B2096), Penhurst Lane, Lakehurst Lane,

Coblye Lane (now BR BRI/25/6), Byway Penhurst 1 and Byway Penhurst 2. This indicates that it was more probable than not to be a public road.

- 3.2.10. The application route is shown as an open ended un-numbered, uncoloured cross-roads separate from any hereditament which joined Battle Road to Lakehurst Lane. No gates are depicted on the application route. As a result there appears to have been no means by which the Landowner could have restricted public access. As both end points were public roads this provides strong evidence that the cross-roads was more likely than not to have public highway status. This 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.
- 3.2.11. The fact that the application route is shown as a cross-roads connecting an arterial road (B2096) to a local road (Lakehurst Lane) endorses that the application route was more likely than not in 1813 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.
- 3.2.12. When reviewed in light of the surveyors instructions outlined in 3.2.5, the application route is shown as a public road. This can be ascertained in that surveyors are instructed that roads are to be “drawn by double lines, solid or dotted for fenced or unfenced” and that public roads are to be notated as “broken” where they intersect with another main road”. The whole of the application route is depicted by either solid double lines depicting a fenced road, or dotted double lines, depicting an unfenced road and is broken where it intersects with other main roads. This provides strong evidence that the application was a public road.
- 3.2.13. 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.
- 3.2.14. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

3.3. **1895: 1 inch to the mile – Sheet 320 – Hastings (Outline)**

Date of publication: 1895	Scale: 1 inches to 1 mile	Date of Survey: 1893-94
Cartographer:	Publisher: Ordnance Survey	Edition: Revised new Series 1892-1908
Source: map: https://maps.nls.uk/view/101169044 & <i>Characterisation sheet</i> https://maps.nls.uk/view/128076819		

- 3.3.1. The OS one-inch series, which the OS Director General Sir Charles Wilson called "the standard map of the country" (1892), was first published in 1805 as the Old Series, covering England and Wales by 1869. The New Series was authorised from 1863,
- 3.3.2. In 1892 it was decided that the one-inch should be improved for military purposes by including new information on roads, railways, landmarks such as church steeples, as well as post and telegraph facilities. The latter recommended that the one-inch should be revised every fifteen years, independently of the revisions to larger-scale maps.
- 3.3.3. In 1893 the Revised New Series was commenced, and was complete by 1898, with all sheets published between 1895 and 1899. The Sussex sheets were revised in the period 1893-1894. One of the most important changes to the New Series sheets was a revised road classification. Metalled roads (i.e. using compacted gravel) were divided into three classes, all distinguished from unmetalled roads or tracks.
- 3.3.4. Ordnance Survey's one-inch to the mile (1:63,360) series had military and civilian purposes behind it, and was of value too for official, administrative, scientific and recreational users. According to an OS circular of 1909, it was intended as a 'touring, cycling and small-scale manoeuvre map, [with] the primary object being that the average man should be able to find his way about unfamiliar country with ease' (quoted in Oliver (2005, p.47)). It is therefore more than probable that any road shown on this map was considered a public road.
- 3.3.5. Essentially the one-inch was a general map, supplementing the main record of landscape change at the larger basic six-inch and 25-inch to the mile scales, so that minor changes may not appear even on full revision. Therefore any changes shown on these maps by the surveyors were considered significant enough to warrant the change.
- 3.3.6. The sheets of the Revised New Series were usually published both in an Outline form, with contours depicting relief, and as a Hills edition, printed with a second copper plate of brown or black hachures to depict relief.

Evidence:

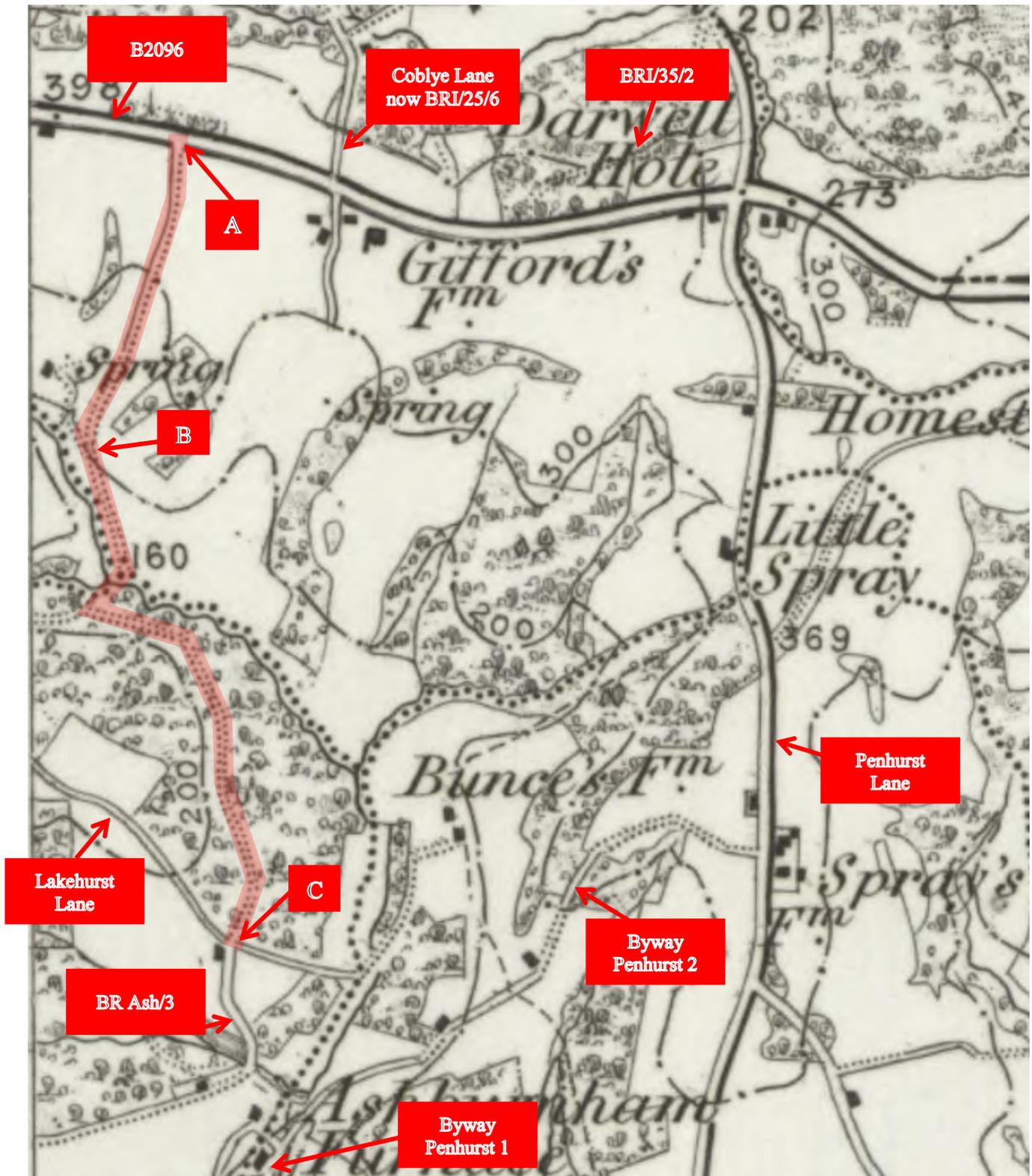


Figure 7 Extract from OS 1895 Revised New Series map showing the application route highlighted in red.

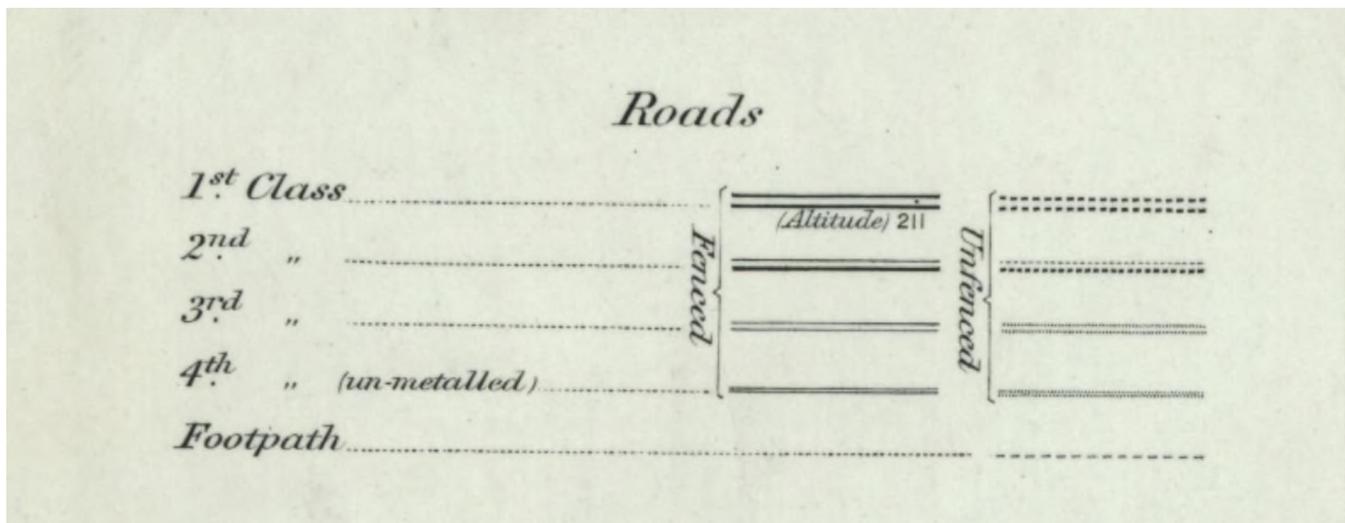


Figure 8 Extract from OS 1895 Revised New Series Categorisation sheet

Analysis of this evidence:

- 3.3.7. Figure 7 shows the whole of the application route as an open-ended, ungated public cross-roads, depicted by unbroken (fenced) & dotted (denoting unfenced) parallel lines separate from any hereditament.
- 3.3.8. Figure 8 indicates that this depiction denotes a fenced/unfenced 3rd Class, or as a minimum a 4th class (un-metalled) road.
- 3.3.9. The application route is shown in the same manner as other roads which are now adopted public roads or ROW with higher status than footpath.

Significance of this evidence:

- 3.3.10. The whole of the application route is depicted as a 3rd Class, or as a minimum a 4th class (un-metalled) road. It is presented in the same manner as other public roads which are now adopted roads or ROW such as Byway Penhurst 2 and BR BRI/35/2. This indicates that it was more probable than not to be a public road.
- 3.3.11. The whole of the application route is shown as an open ended, ungated cross-roads separate from any hereditament which joined Battle Road to Lakehurst Lane. As a result there appears to have been no means by which the Landowner could have restricted public access from other public roads. This makes 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.
- 3.3.12. The fact that the application route is shown as an open-ended cross-roads connecting an arterial road (B2096) to a local road (Lakehurst Lane) endorses that 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.
- 3.3.13. When reviewed in light of the OS circular of 1909, which stated that these maps were intended as a 'touring, cycling and small-scale manoeuvre map, [with] the primary object being that the average man should be able to find his way about unfamiliar country with ease' (quoted in Oliver (2005, p.47)) it is more than probable that a road which was shown on this map was a public road.

- 3.3.14. 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.
- 3.3.15. This piece of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.

3.4. Ordnance Survey: 25 inch to the mile

- 3.4.1. The Ordnance Survey 25 inch to the mile County Series (1841-1952) is commonly held to be the most accurate and most detailed map of the Ordnance Survey. The maps allow practically every feature in the landscape to be shown. They provide good detail of all buildings, streets, railways, industrial premises, parkland, farms, woodland, and rivers.
- 3.4.2. In 1855, the 25 inch was officially authorised as the basic scale for all cultivated rural areas. Their bold style and informative symbols and abbreviations allow easy interpretation which led to them being used for statutory undertakings for the production of the 1910 Finance Act valuation records and in 1941 for the Ministry of Agriculture Farm Survey.
- 3.4.3. For the 1:2500 map the whole country was initially surveyed between 1842 and 1893. These maps are considered of significant importance because they provided the most detailed OS mapping for most parts of England and Wales and as a result were used for land registration, conveyancing, land valuation, tithes and ratings (old title deeds often refer to specific numbered land parcels listed on these maps and detailed within the associated Books of Reference).
- 3.4.4. As a result of its importance to government and legal administration it is regarded as one of the most important OS maps produced. Sir Charles Trevelyan (regarded as the founder of the modern British Civil Service) stated in May 1855:

“...as the relations of landlord and tenant apply to every part of town and country, to give certainty and facility to their transactions is an important item in that aggregate of public utility which constitutes the justification for the 1:2500 scale.”⁴

- 3.4.5. Figure 9 shows the Categorisation used on the 25inch to the mile maps are available from the National Library of Scotland (<https://maps.nls.uk/view/128076891>)

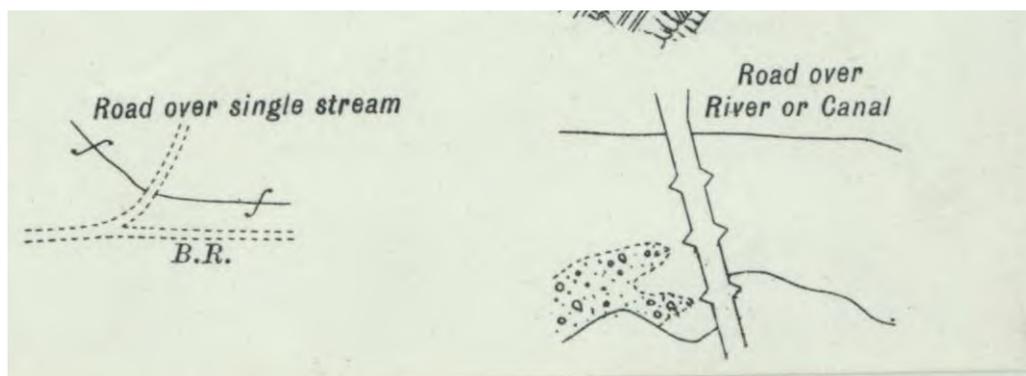


Figure 9 Conventional Signs and Writing Used on the 1:2500 Plans of the Ordnance Survey.

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

3.5. 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: <i>Old-Maps - the online repository of historic maps - Map 568968 117283 12 100315</i>		

Books of Reference /Area Books

- 3.5.1. Books of Reference for the County of Sussex are accompanied the 1st Edition OS 25 inches maps and contained land use information. All Ordnance Survey 1st edition reference books are held at the Bodleian Library (<http://dbooks.bodleian.ox.ac.uk>.)
- 3.5.2. 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 Books of Reference associated with the application route are Brightling Parish and Ashburnham Parish
- 3.5.3. 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 was likely to be a public road unless otherwise noted.

Evidence:

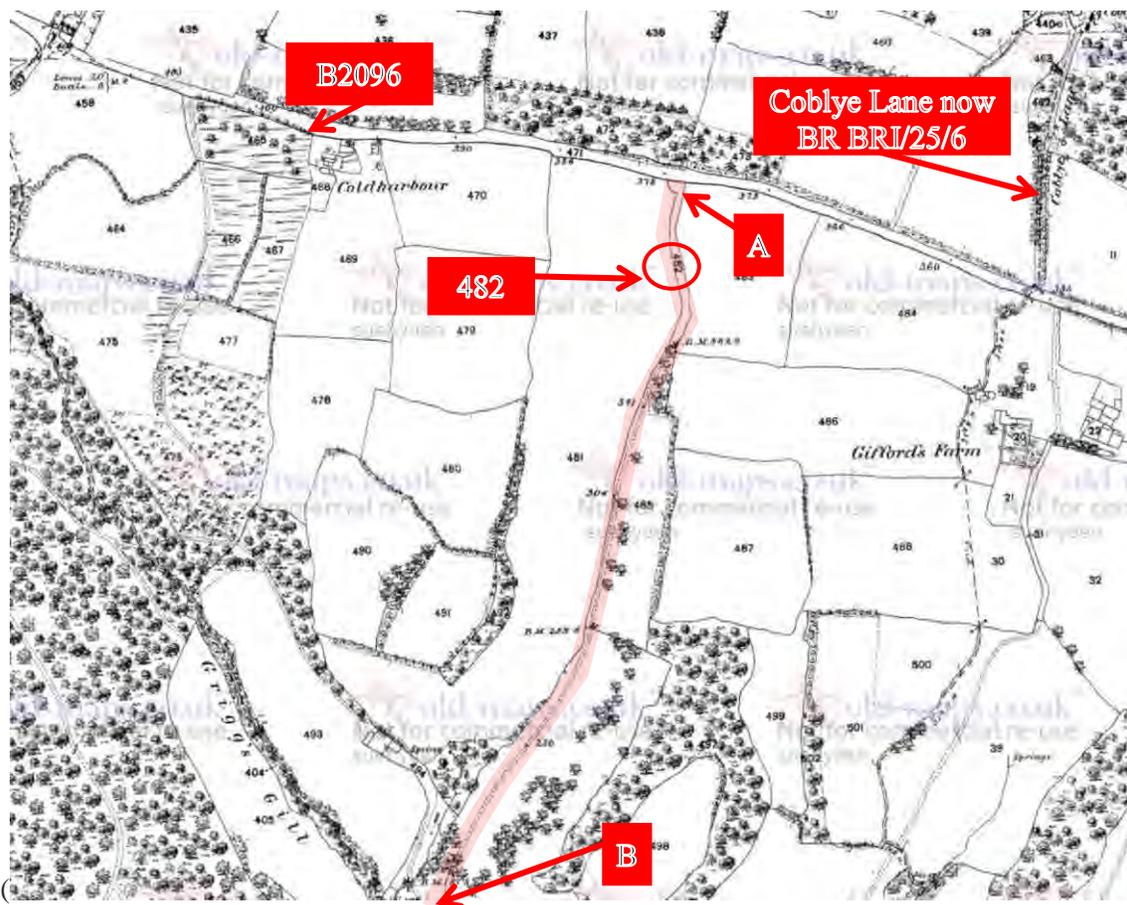


Figure 10 Extract from OS 1874 1:2500 map showing between points A & B (Brightling Parish) with the application route highlighted in red

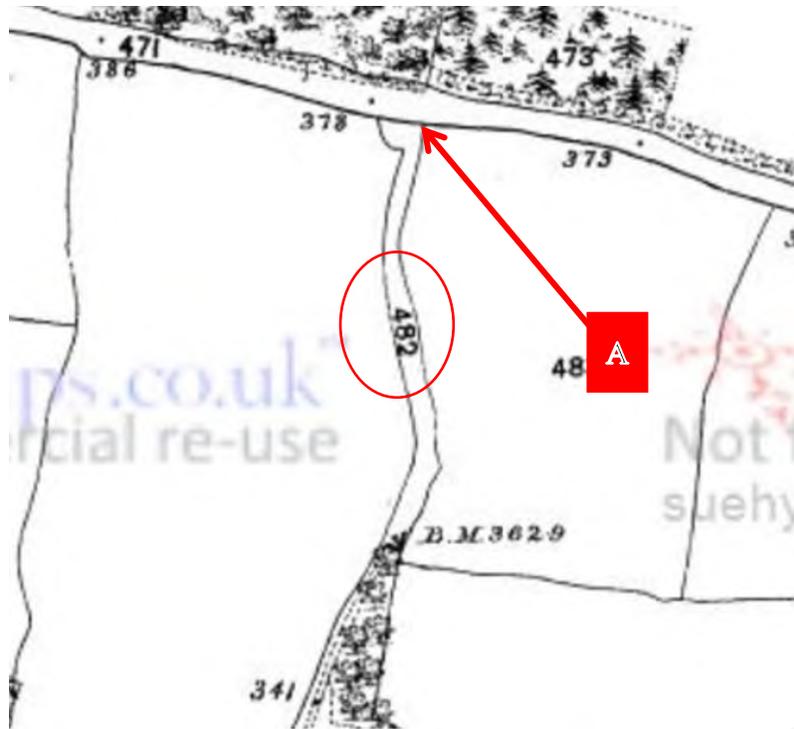


Figure 11 Magnified extract from OS 1874 1:2500 map showing the vicinity of point A and the notation 482

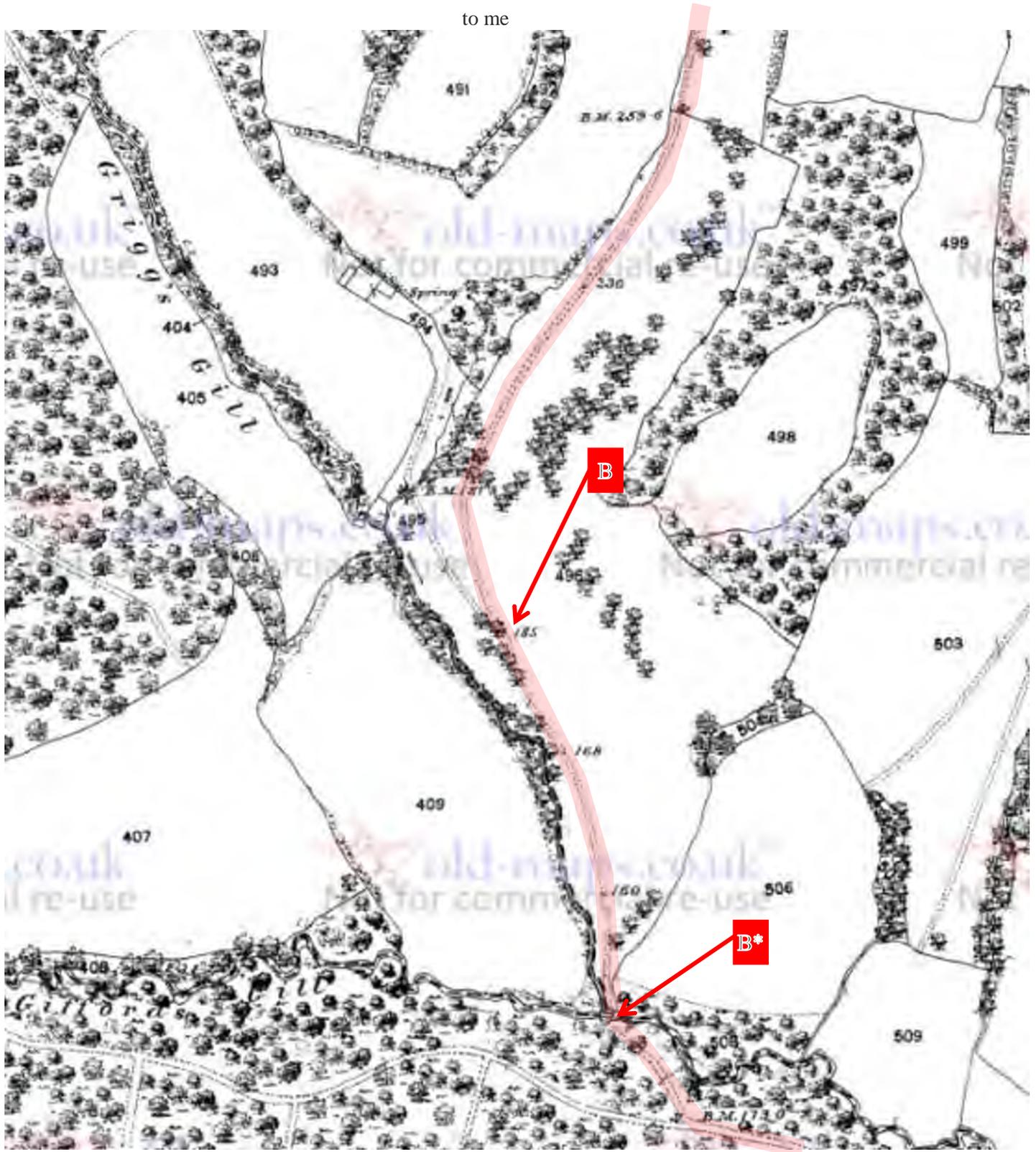


Figure 12 Extract from OS 1874 1:2500 map with the application route between points B & B* (Brightling Parish) highlighted in red.

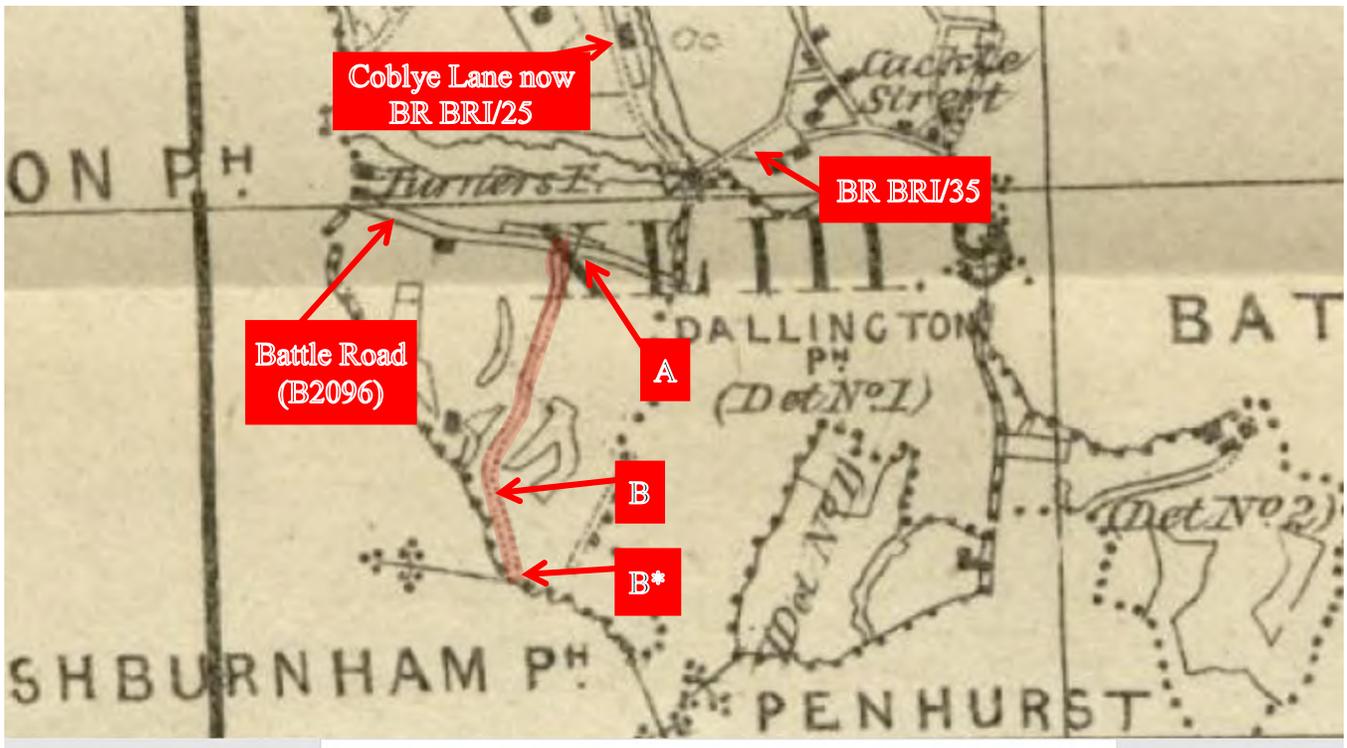


Figure 13 is an extract from the front cover of the Brightling Book of Reference with the application route highlighted in red.

480	3.802	Pasture.
481	16.294	Arable, &c.
482	.315	Road.
483	4.258	Arable.
484	5.773	Pasture.
485	3.200	Pasture, trees, &c.

Figure 14 Extract from the Brightling Book of Reference for 1874 showing plot number 482 description

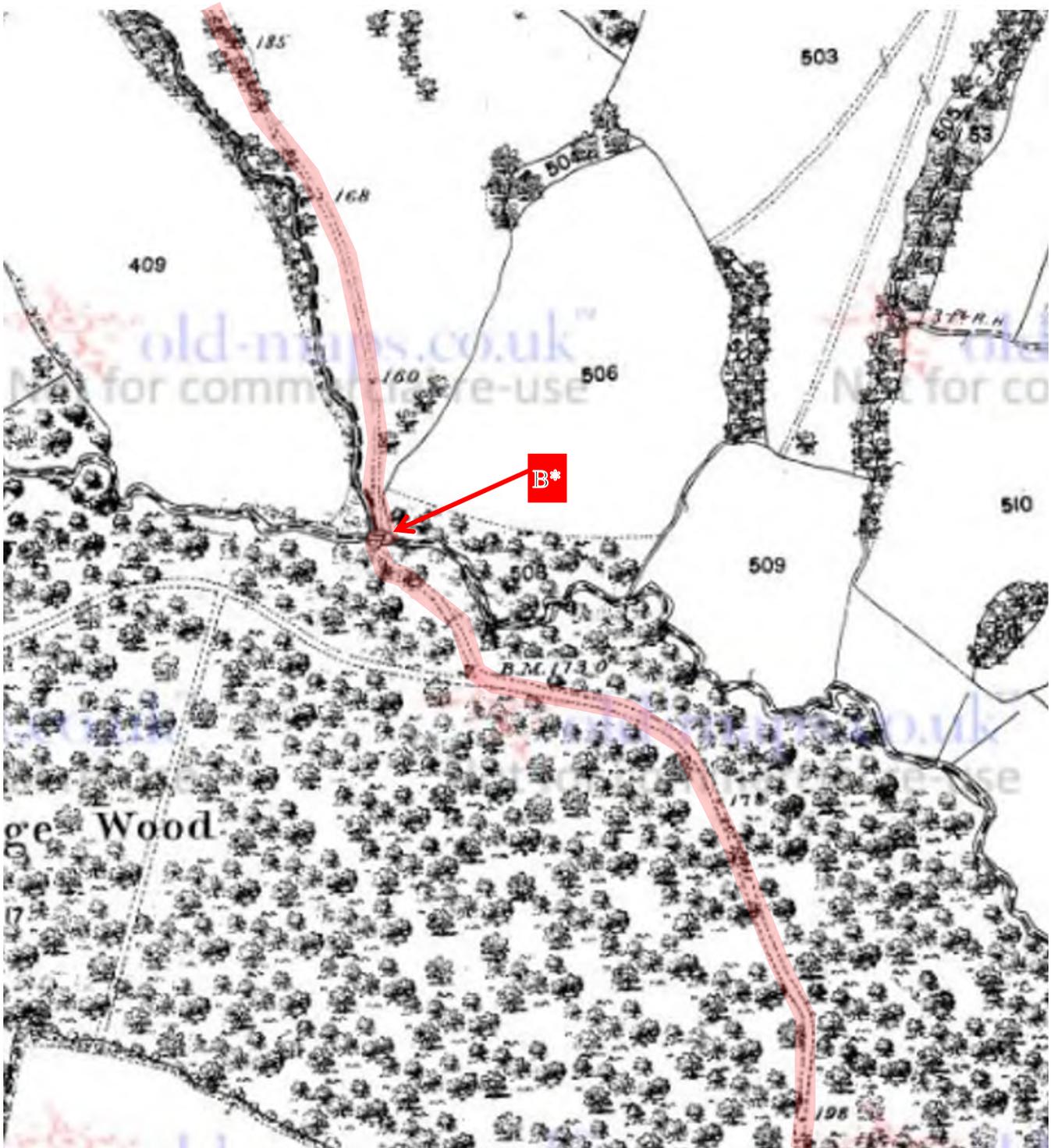


Figure 15 Extract from OS 1874 1:2500 map with the application route in the vicinity of B* highlighted in red.

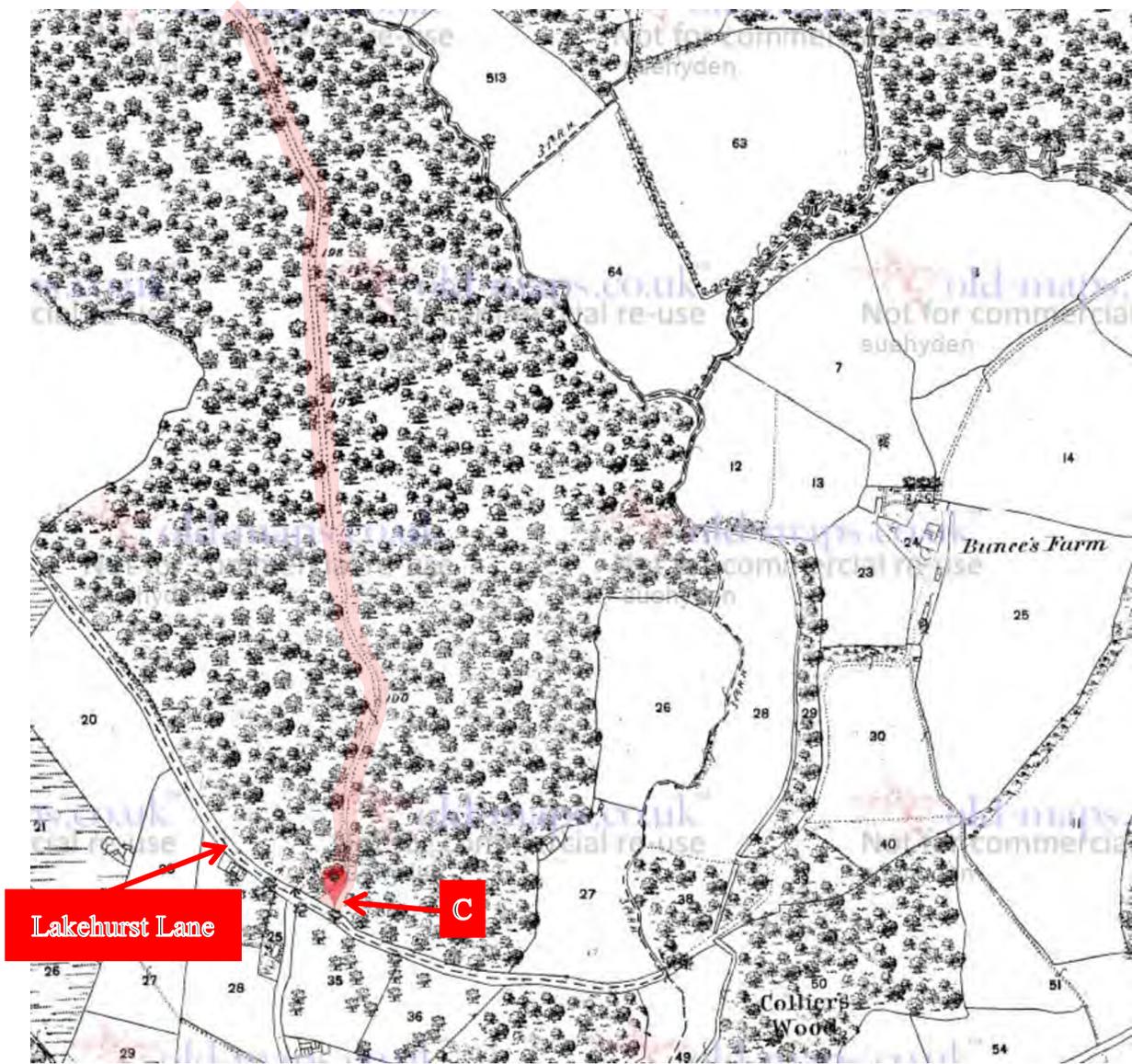


Figure 16 Magnified extract from OS 1874 1:2500 map with the application route in the vicinity of C (Ashburnham Parish) highlighted in red.

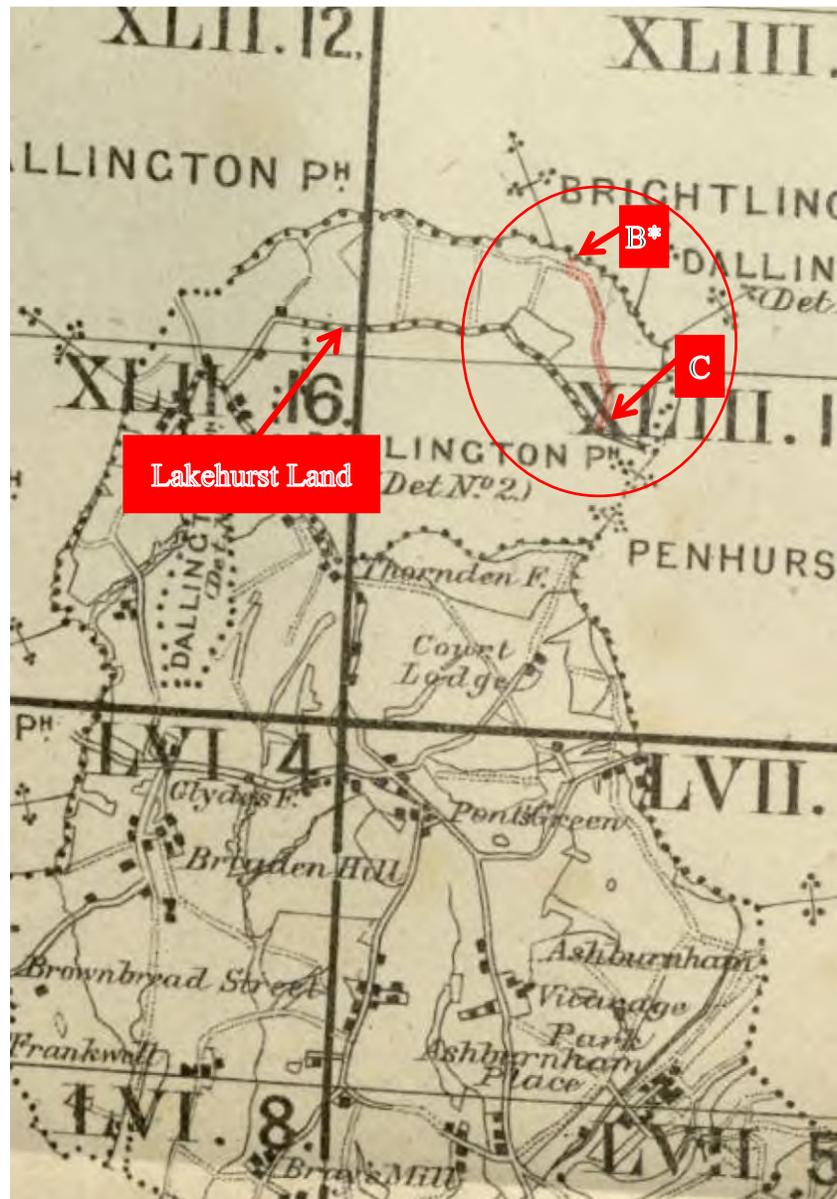


Figure 17 is an extract from the front cover of the Ashburnham Book of Reference with the application route highlighted and circled in red.

Analysis of evidence:

- 3.5.4. Figure 10 to Figure 12 provide data regarding the section of the application route which lies within Brightling Parish.
- 3.5.5. Figure 10 shows the section of the application route from point A to the vicinity of point B. This section of the application route is shown as a road, defined by parallel solid & dotted lines (see map categorisation Figure 9) in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. At point A, the application route junction with the Battle Road (B2096) appears to be gated. No further gates are shown between points A & B of the application route.
- 3.5.6. Figure 11 shows the vicinity of point A where the application route is notated as 482 which is defined within the Brightling reference book (see Figure 14) as “Road”.

- 3.5.7. Figure 12 shows the section of the application from point B to point B*. This section of the application route is shown as a road, defined by parallel dotted lines in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. At B the application route is seen to merge with another road from the direction of Haselden Farm / Coldharbour Farm. At B* the application route crosses Gifford's Gill and leaves Brightling Parish and moves into Ashburnham Parish.
- 3.5.8. Figure 13 shows the front cover of the Brightling Book of Reference It shows the section of the application route which lies within Brightling parish, between points A & B*, as a public road depicted in the same manner as other roads which are now county adopted roads or ROW with higher status than a Footpath.
- 3.5.9. Figure 15 to Figure 17 provide data for the section of the application route between points B* and C which lies within Ashburnham Parish
- 3.5.10. Figure 15 & Figure 16 shows the section of the application from between points B*, where the application route leaves Brightling Parish and enters Ashburnham Parish, to point C where the application route intersects with Lakehurst Lane. This section of the application route is shown as a road, defined by parallel dotted lines in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. The application route appears to only be gated at point C.
- 3.5.11. Figure 17 shows the reference map which is included at the front of in the Ashburnham Book of Reference. It shows the whole of the application route which is contained within Ashburnham Parish in the same manner as roads which now have a higher ROW status than Footpath.

Significance of this evidence:

- 3.5.12. This evidence shows the whole of the application route as defined by parallel dotted lines which is categorised as a road. This road is depicted in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. Such as Battle Road (B2096), Coblye Lane (now BR Brightling/25/6) Lakehurst Lane and the ROW which is now
- 3.5.13. On the front cover of the Brightling Book of Reference the application route is depicted as a public road in the same manner as other roads which are now county adopted roads such as the Battle Road (2096), Cackle Street or ROW with higher status than a Footpath such as Coblye Lane (now BR BRI/25) and the road which is now BR BRI/35. This indicates that it was considered to be of a similar status i.e. a public road.
- 3.5.14. The fact that it was included on the Books of Reference map along with other arterial public roads is also a persuasive that it was considered an integral part of the public road network.
- 3.5.15. Figure 11 shows that in the vicinity of point A the application route is notated as 482 which is defined within the Brightling reference book as "Road". It might be argued that this road ceased at some point further along the application route and therefore no public right of way existed past this point. This is however unlikely to be the case. Firstly other than the gate shown at A directly with the intersection of the Battle Road, and before the application route is notated as "Road", no gates are shown which could restrict public access until point C is reached. In addition it is generally accepted that roads were generally through-routes and only in exceptional circumstances, such as termination at an important local site such as a Forge or a Mill, that cul-de-sacs were historically created. As such circumstances do not exist in this case then in its more than probable that Road/Bridle Road rights existed along the whole of the application route.

- 3.5.16. In addition the fact that there is no habitation shown along the application route the stated Road could not have been an occupation road to a settlement. This also indicates it is more than probable that this road was a public cross-roads which existed to join Battle Road (B2096) to Lakehurst Lane. It is therefore more likely than not that the application route was a public highway that carried vehicular rights.
- 3.5.17. Gates are indicated as points A & C. However such lines are depicted crossing other roads– including currently adopted roads – elsewhere on the map and are therefore are not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated (Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));

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

- 3.5.18. 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.

3.6. 1898 OS 25 inch to mile: Sussex XLIII.9

Date of publication: 1898	Scale: 1:2500	Date of Survey: Rev: 1897
Cartographer:	Publisher: Ordnance Survey	Edition:
Source: https://maps.nls.uk/view/103671274		

Evidence:

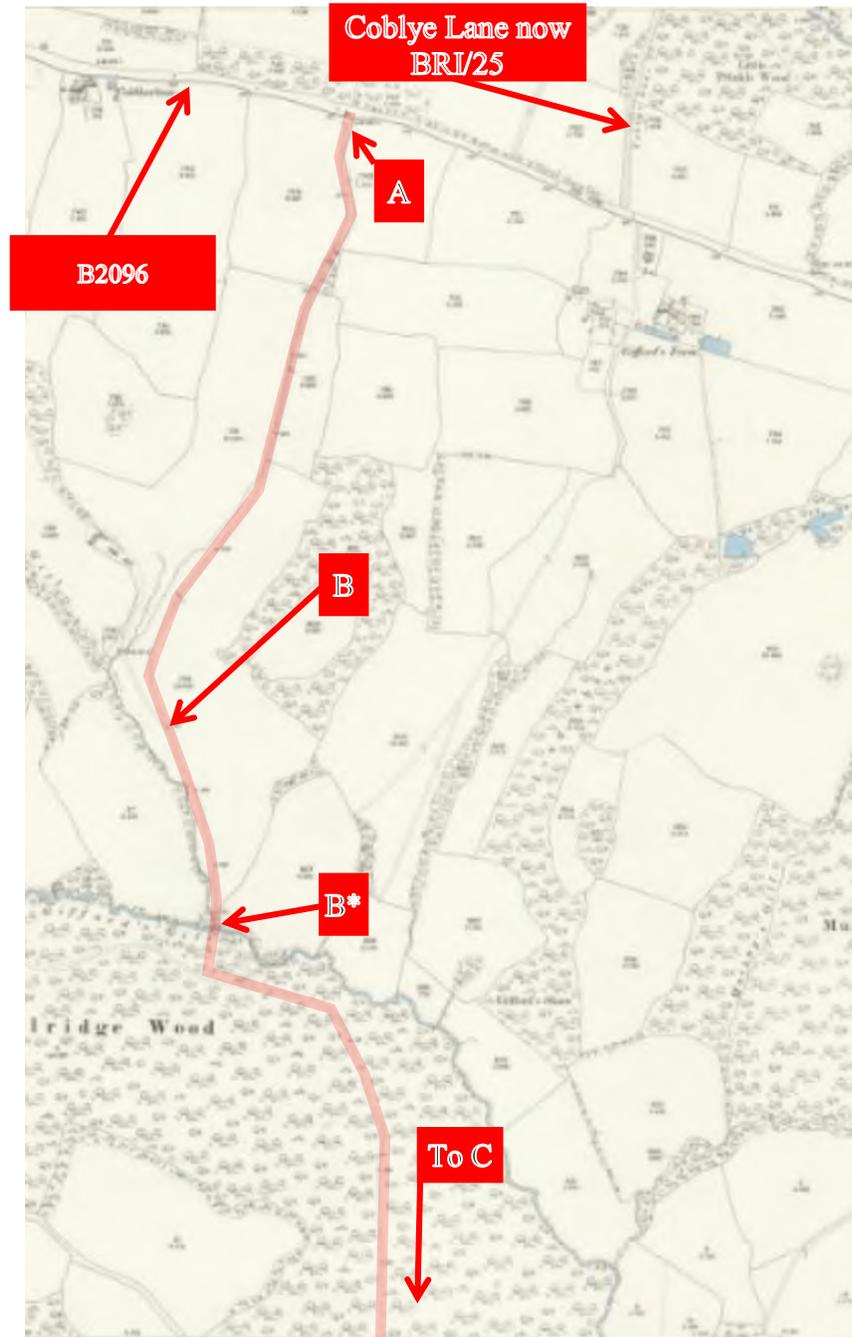


Figure 18 Extract from OS 1898 County Series Sussex 1:2500 showing the application route between points A & B* highlighted in red.

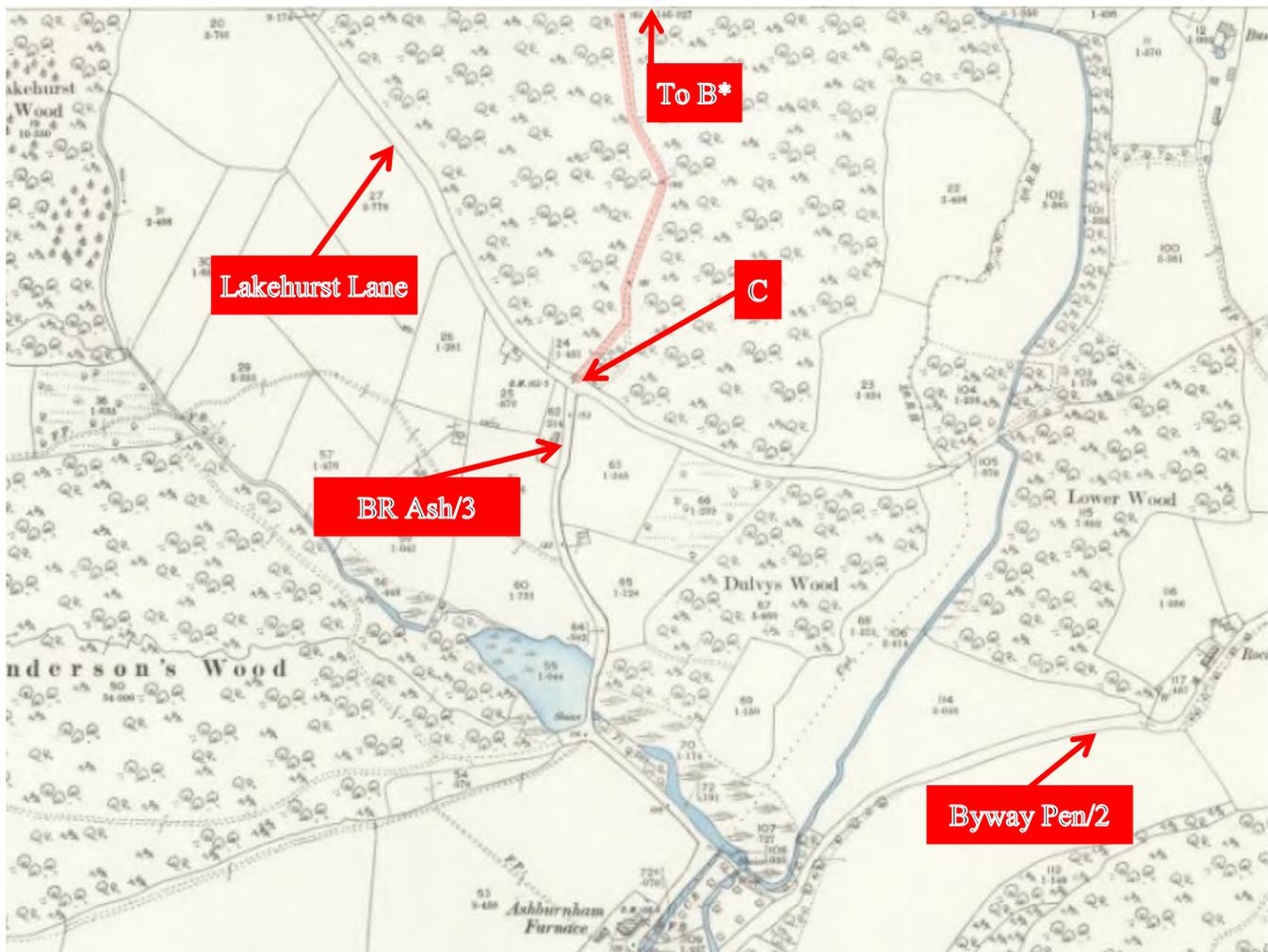


Figure 19 Extract from OS 1898 County Series Sussex 1:2500 showing the application route highlighted in red

Analysis of evidence:

- 3.6.1. Differences to geographical details between the 1874 and the 1898 OS 25 inch to the mile indicate that this map was a result of a new survey.
- 3.6.2. Figure 18 & Figure 19 shows the whole of application route.
- 3.6.3. Figure 18 shows the section of the application from point A to point B* and then part of the application route between point B* and point C. This section of the application route is shown as a road, defined by parallel & dotted lines (see map categorisation Figure 9) in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. At point A, the application route junction with the Battle Road (B2096) it appears to be gated however no further gates are shown in this section of the application route.
- 3.6.4. Figure 19 shows the section of the application route in the vicinity of C. This section of the application route is shown as a road, defined by parallel dotted lines in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath.

3.6.5. The application route appears to only be gated at point A and point C.

Significance of this evidence:

3.6.6. This evidence shows the whole of the application route as defined by parallel unbroken / dotted lines which is categorised as a road. This road is depicted in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. Such as Coblye Lane (now BR Brightling/25/6).

3.6.7. Gates are indicated as points A & C. However at various points along the application route lines are drawn across the application route which may indicate a field boundary or a gate. Such lines are depicted crossing other roads– including currently adopted roads – elsewhere on the map and are therefore are not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated (Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));

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

3.6.8. The fact that there is no habitation shown along the application route indicates it is more than probable that this road was a public cross-roads which existed to join Battle Road (B2096) to Lakehurst Lane. It could not have been an occupation road to a settlement. It is therefore more likely than not that the application route was a public highway that carried vehicular rights.

3.6.9. 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.

3.7. 1909 OS 25 inch to mile: Sussex XLIII.9

Date of publication: 1909	Scale: 1:2500	Date of Survey: Rev: 1908
Cartographer:	Publisher: Ordnance Survey	Edition:
Source: https://maps.nls.uk/view/103671271		

Evidence:

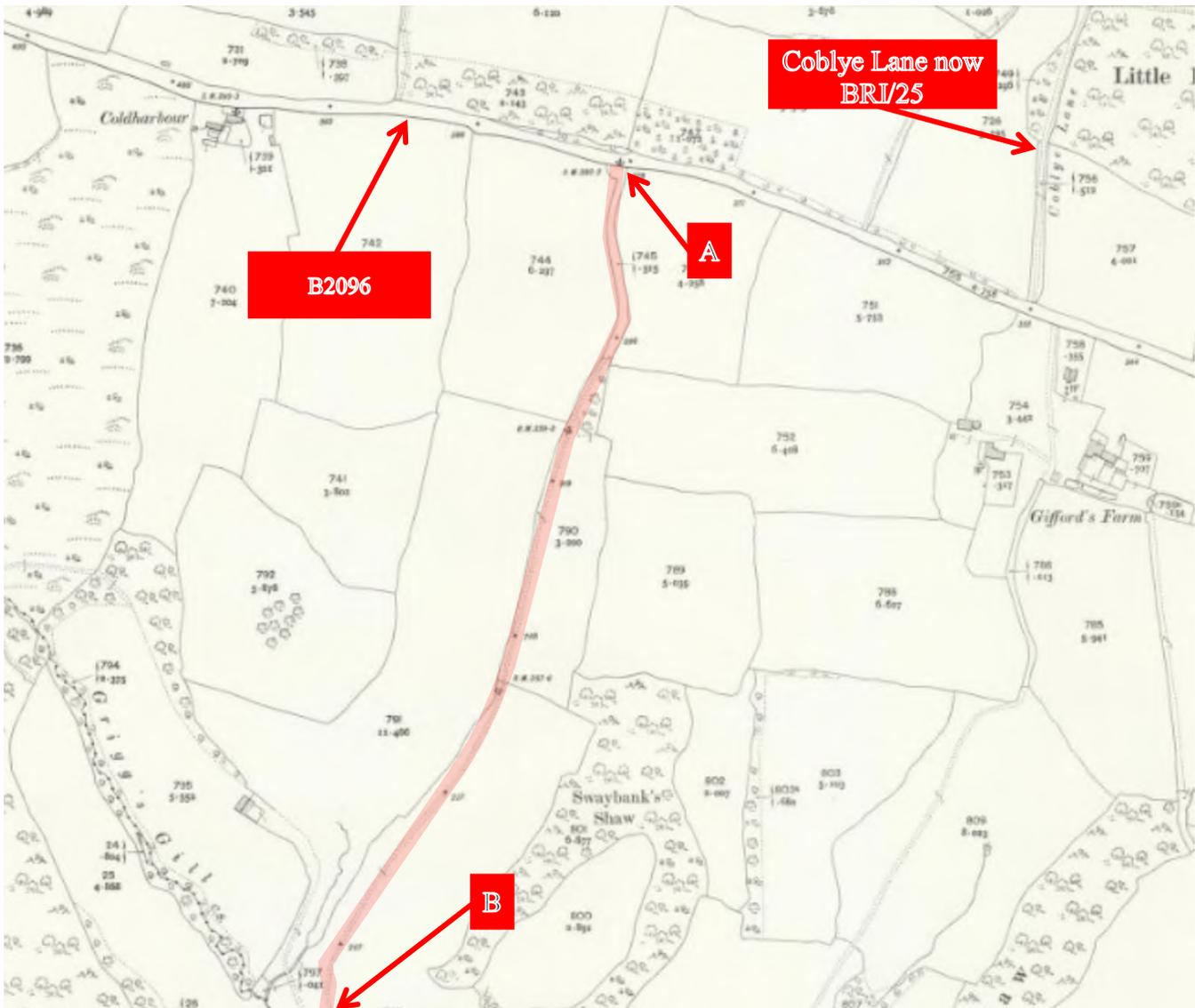


Figure 20 Extract from OS 1909 County Series Sussex 1:2500 showing the application route between points A & B highlighted in red.

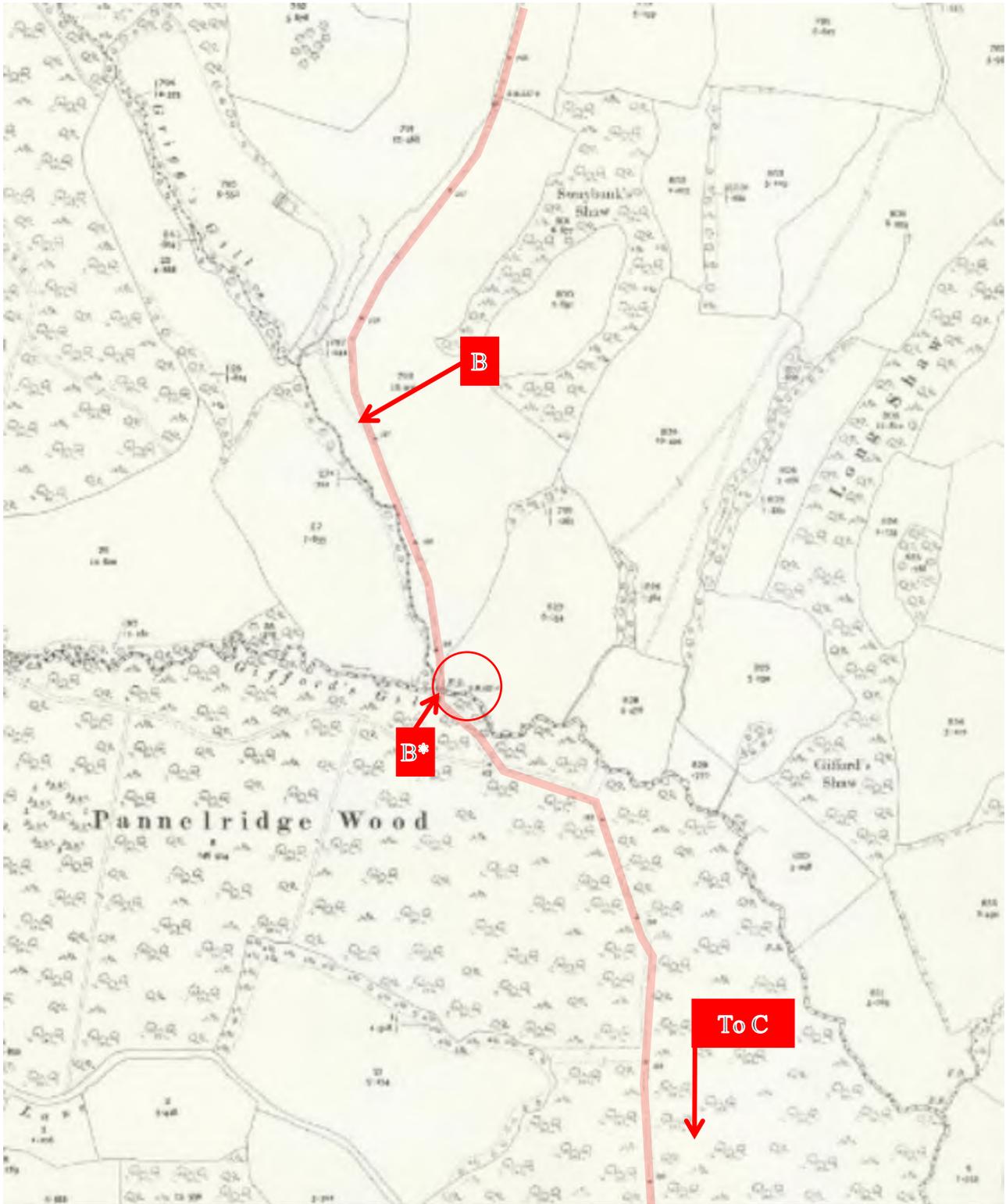


Figure 21 Extract from OS 1909 County Series Sussex 1:2500 showing the application route between point B & C highlighted in red.

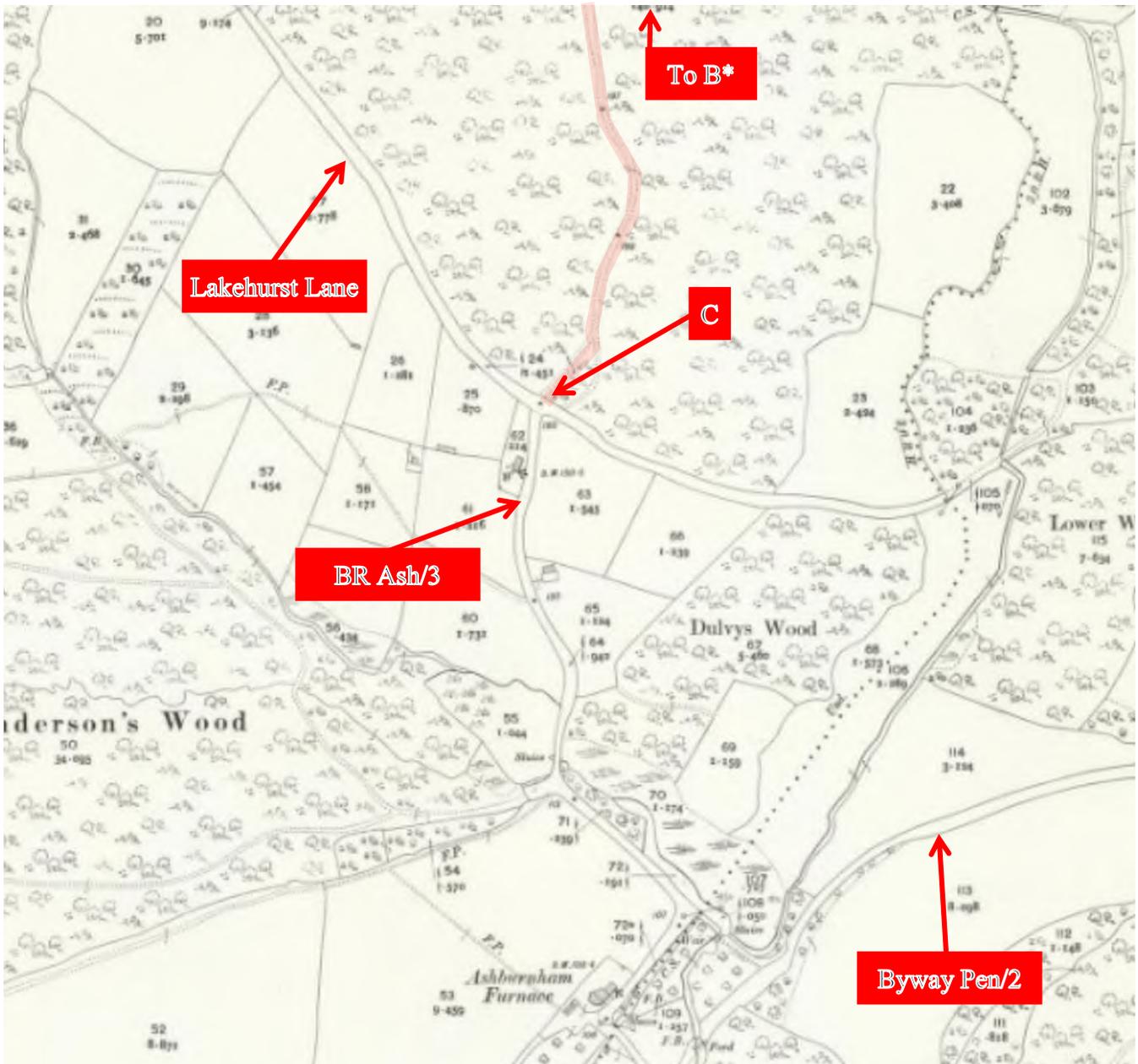


Figure 22 Extract from OS 1909 County Series Sussex 1:2500 showing the application route in the vicinity of C highlighted in red.

Analysis of evidence:

- 3.7.1. Figure 20, Figure 21 & Figure 22 shows the whole of application route.
- 3.7.2. Figure 20 shows the section of the application from point A to point B. This section of the application route is shown as a road, defined by parallel & dotted lines (see map categorisation Figure 9) in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. At point A, the application route junction with the Battle Road (B2096) it appears to be gated. However no further gates are shown in this section of the application route.

- 3.7.3. Figure 21 shows the section of the application route from point B to the vicinity of point C. This section of the application route is shown as a road, defined by parallel dotted lines in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. No gates are shown in this section of the application route. At point B* a Footbridge (FB) is notated.
- 3.7.4. Figure 22 shows the section of the application route at point C. This section of the application route is shown as a road, defined by parallel dotted lines in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath. A gate is indicated at point C the application route junction with Lakehurst Lane.
- 3.7.5. The application route appears to only be gated at point A and point C.

Significance of this evidence:

- 3.7.6. Differences to geographical details between the 1898 and the 1909 OS 25 inch to the mile indicate that this map was a result of a new survey.
- 3.7.7. This evidence shows the whole of the application route as defined by parallel & dotted lines which is categorised as a road. This road is depicted in the same manner as other public roads which are now adopted roads or ROW with higher status than a Footpath such as Coblye Lane (now BR Brightling/25/6).
- 3.7.8. The fact that the application route connected an arterial public roads with a minor public road is also a persuasive that it was considered a cross-roads integral part of the public road network.
- 3.7.9. In addition the fact that there is no habitation shown along the application route the stated Road could not have been an occupation road to a settlement. It is therefore more likely than not that the application route was a public highway that carried vehicular rights.
- 3.7.10. At point B* a Footbridge is shown. This indicates the existence of a public ROW.
- 3.7.11. Gates are indicated as points A & C. However at various points along the application route lines are drawn across the application route which may indicate a field boundary or a gate. Such lines are depicted crossing other roads– including currently adopted roads – elsewhere on the map and are therefore are not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated (Order Ref: FPS/Q1770/7/74 (nationalarchives.gov.uk));
- “24.The Council accepts that notation on the 1872, 1898 and 1912 OS maps could be supportive of there being a gate at point E. However, I concur with the Council that the presence of a gate would not prevent a route from being a vehicular highway.*
- 3.7.12. 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.

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

- 3.8.1. The conclusion drawn from the OS map evidence above is that the application route was historically a public road and therefore should as a minimum have a modern-day highway status of a Bridleway.
- 3.8.2. As 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.
- 3.8.3. These pieces of evidence demonstrates the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 3.8.4. There are numerous Planning Inspectorate decisions which assist in assessing the importance and relevance of OS maps with respect to the application route. All of these orders are dated after the 1949 assessment and should therefore be considered as “a discovery of evidence”. Some of the most relevant to this DMMO Application Statement are:
- 3.8.5. Order Ref: ROW/3181626
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705547/row_3181626_od.pdf

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

And with respect to Roads being open to public use:

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

- 3.8.6. Order Ref: ROW/3200513
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765369/row_3200513_od.pdf

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Tithe Records

4.1. Introduction to Tithe Records

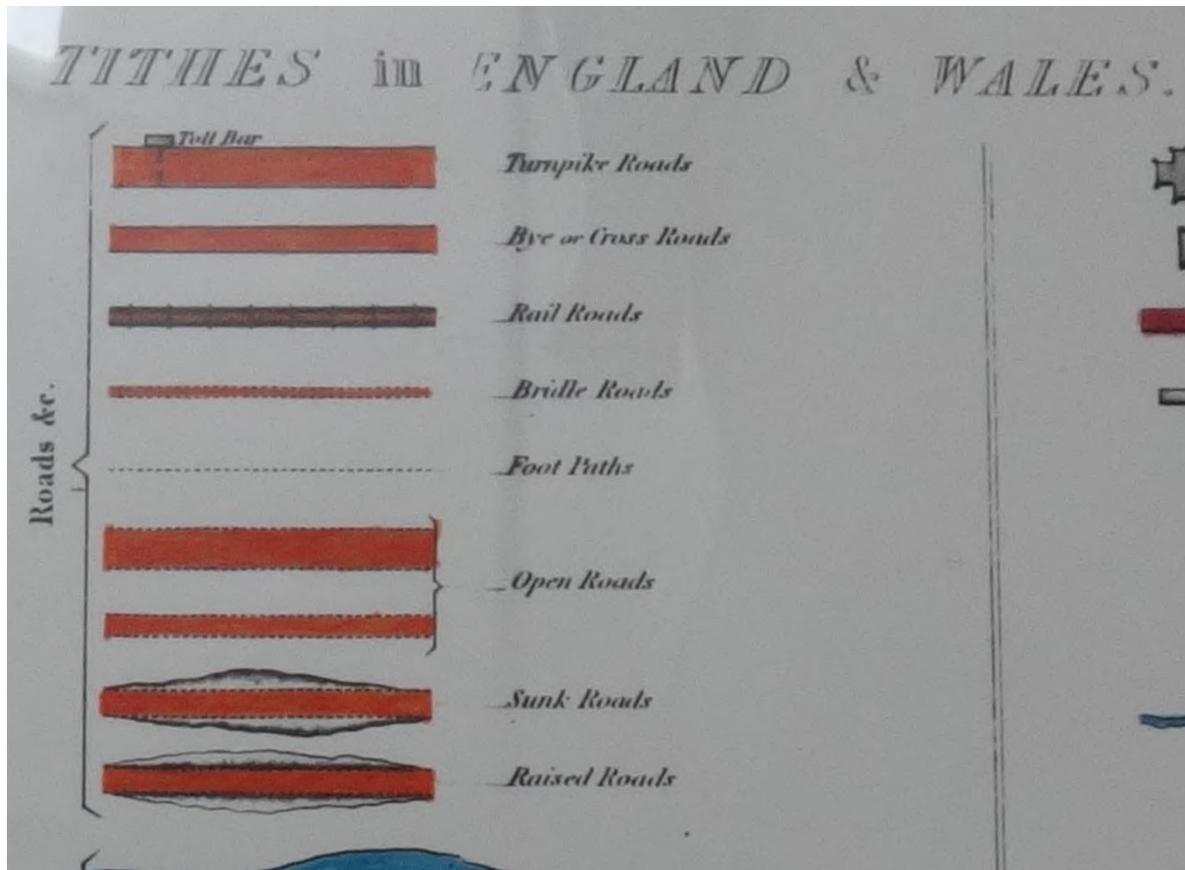


Figure 23 Extract from 1836 Lieutenant R K Dawson proposed standardised key for Tithe maps

- 4.1.1. The Tithe Commutation Act 1836 enabled tithes (a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the tithable land in order to assess the amount of money to be paid. In 1836 Lieutenant R K Dawson proposed a standardised key for Tithe maps (see Figure 23) which was enthusiastically supported by the Board of Tithe Commissioners for England and Wales. Plots of land shown on tithe maps were given plot numbers, and these numbers were then referenced on the associated “Apportionment Records”. The recommended sienna or light brown colouring for “Roads” although widely used was not mandatory. The Act was amended in 1837 to allow maps produced to be either First Class or Second Class of which the First Class maps had to be at least 3 chains⁵ to the inch and signed and stamped by the Commissioners. First Class maps are legal evidence of all matters which they portray whilst Second Class maps, which were required to be signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation.
- 4.1.2. The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. Non-tithable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although Bridleways, Footpaths and Green lanes were more likely to be at least partially productive (for example as

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

pasture or coppice). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured in yellow or sienna to indicate public status.

- 4.1.3. The application route runs over two Tithe parishes, Brightling and Ashburnham with Gifford's Gill being used as the north-south divider.
- 4.1.4. In the text below details are given to show how the application route is displayed and of any relevant apportionments.

4.2. **1838: Brightling Tithe Records**

Date of publication: 1838	Scale: 20in. to 1m.	Date of Survey: 1838
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: https://escc.maps.arcgis.com/apps/webappviewer/index.html?id=94d9d72603034a85bb68bce793fb5a59&find=BRIGHTLING&showLayers=Tithe%20Maps;Labels;MajorARoads;ABRoads;MainRoadNames;AllRoadNames;PlaceNames;Large;LargeMedium;All;Locator;BRIGHTLING		

- 4.2.1. The Brightling Tithe map is a 2nd Class map.
- 4.2.2. The extracts reproduced here are north-oriented.
- 4.2.3. The application route ran through the southern section of the Brightling parish Tithe map.

Evidence:

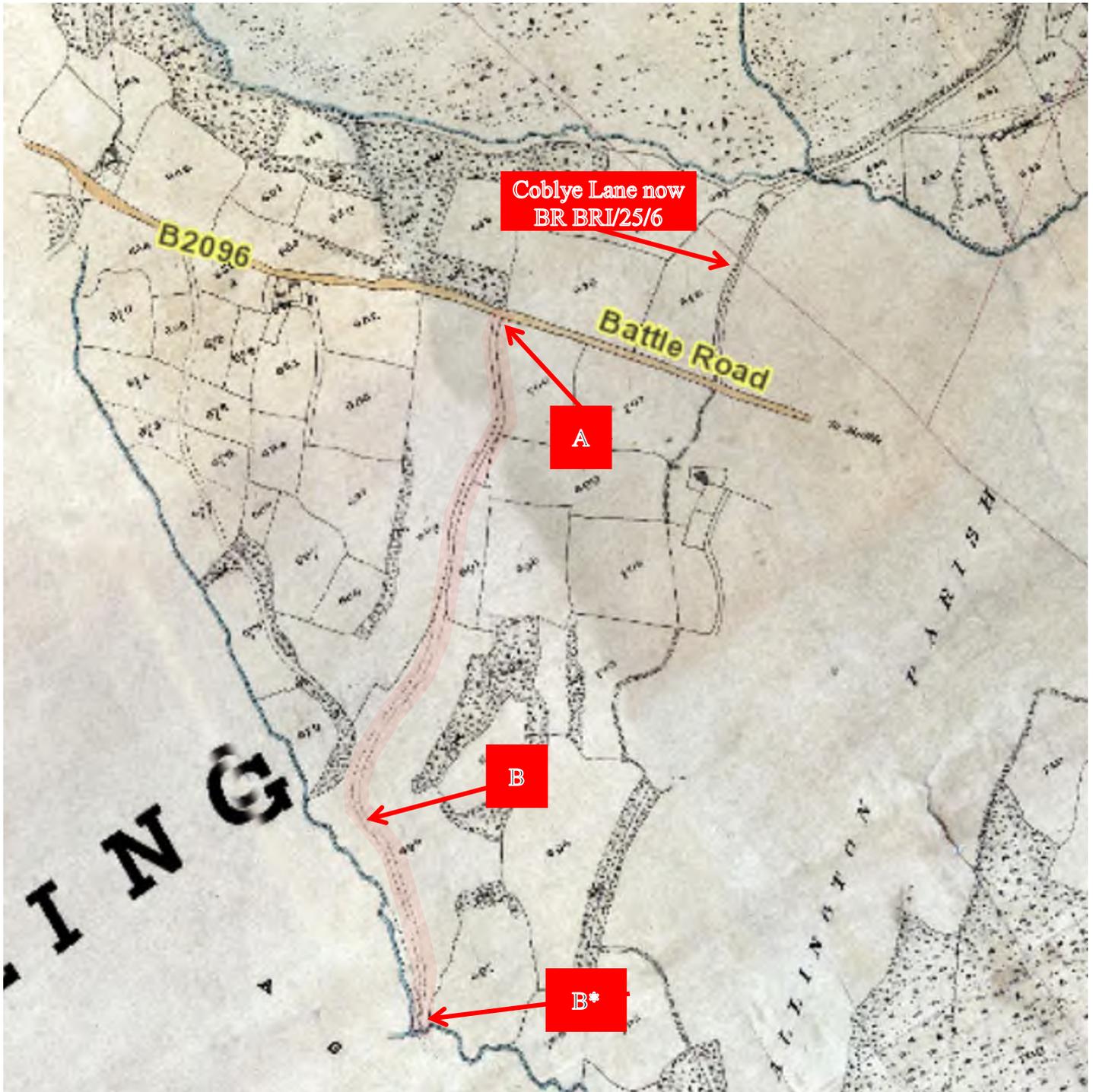


Figure 24 Extract from Brightling Tithe Map with the application route highlighted in red.

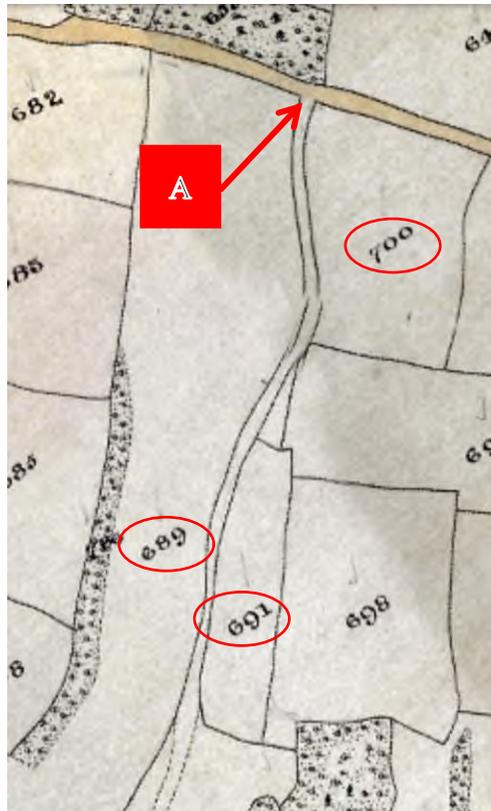


Figure 25 Magnified extract from Brightling Tithe Map showing point A of the application route and land plot numbers 689,691 & 700



Figure 26 Magnified Extract from Brightling Tithe Map showing the vicinity of point B of the application route and land plot numbers 690

687	Ashburnham	Lord	Crouch	William	Cold Harbor	Hop Ground Field	Arable	Details
688	Ashburnham	Lord	Crouch	William	Cold Harbor	Two Acre Field	Arable	Details
689	Ashburnham	Lord	Simmonds	Thomas	Griggs	Great Griggs	Arable	Details
690	Ashburnham	Lord	Simmonds	Thomas	Griggs	Rough Field	Pasture	Details
691	Ashburnham	Lord	Simmonds	Thomas	Griggs	Sandrock Field	Pasture	Details
692	Ashburnham	Lord	Simmonds	Thomas	Griggs	Shaw	Woodland	Details

Figure 27 Extract from Brightling Tithe Apportionment showing the entries for 689,690 & 691

700	Ashburnham	Lord	Marchant	Thomas	Part of Giffords and Coblye	Castle Field	Arable	Details
-----	------------	------	----------	--------	-----------------------------	--------------	--------	-------------------------

Figure 28 Extract from Brightling Tithe Apportionment showing the entry for 700

Analysis of evidence

- 4.2.4. Figure 24 to Figure 26 shows the application route between points A and point B* which lies within Brightling Parish. It is shown as an open ended, ungated, un-numbered uncoloured road often depicted as separate from any hereditament. It is shown in the manner to roads which are now Byways or Bridleways.
- 4.2.5. Although the land over which the whole of this section of the application route runs is stated to be owned by Lord Ashburnham it is attributed to two separate farms and two separate tenants (see Figure 27 & Figure 28).
- 4.2.6. No gates are depicted on this section of the application route.

Significance of this evidence

- 4.2.7. The application route is shown as an open ended un-numbered road uncoloured and separate from any hereditament. No gates are depicted on this section of the application route. As at point A the application route intersects with a public road and is ungated there appears to have been no means by which the Landowner could have restricted public access. This provides strong evidence that the roads was more than likely to have public highway status. This 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.
- 4.2.8. The application route is depicted in the same manner as other roads which now have a higher ROW status. It is shown in the same manner as other roads on this map which are now adopted roads, Bridleway or Byways such as Coblye Lane which is now Bridleway BRI/25/6. This 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.

- 4.2.9. Although all of the application route ran over land which was owned by Lord Ashburnham the section of the application route between section A & B was attributed to two separate farms, Griggs Farm on the western side (Figure 25 plot number 689 & Figure 26 plot number 690 tenanted by Thomas Simmonds (see Brightling Apportionment data Figure 27))) whilst the road and the eastern fields (see Figure 25 plots 700 and 691) were attributed to Gifford's Farm tenanted by Thomas Marchant (see Figure 28). As the application route is shown as open ended and ran over two tenant farmers fields, did not access either a house or farm buildings and provided a cross roads from Battle Road to Lakehurst Lane it is more than probable that the application route held a public highway reputation greater than a footpath and more probable than not vehicular rights.
- 4.2.10. Often Tithe maps were based on existing Landowner Estate maps. However with respect to the Brightling Tithe map this does not appear to have been the case as there are differences between the 1834 Ashburnham Estate map (see section 5.3) and the 1838 Brightling Tithe map, such as field boundaries and depiction of woodland. This strongly indicates that the 1838 Tithe map was the result of a new survey. As this road is depicted on both of these maps as a public road then it is more than likely such a public road existed.
- 4.2.11. All this evidence makes it more than probable that the Brightling 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.

4.3. 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		

- 4.3.1. The Ashburnham Tithe map is a 2nd Class map.
- 4.3.2. The extracts reproduced here are north-oriented.
- 4.3.3. The application route ran through the northern section of the Ashburnham parish.

Evidence: ,



Figure 29 Extract from Ashburnham Tithe Map of with the application route.



Figure 30 Magnified extract from Ashburnham Tithe Map showing point B* of the application route

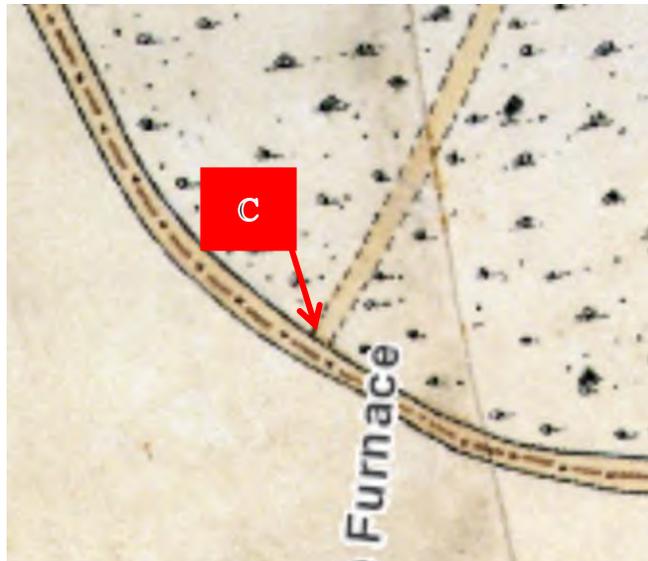


Figure 31 Magnified extract from Ashburnham Tithe Map showing point C of the application route

Analysis of evidence

- 4.3.4. Figure 29 to Figure 31 shows the application route from where it crossed from Brightling Tithe (notated point B*) to point C, its intersection with Lakehurst Lane. The application route is shown as an unnumbered, public “Bye or Cross Roads” defined by parallel lines, coloured sienna (see categorisation listed in Figure 23). It is depicted in the same manner as other adopted public highways shown on Ashburnham Tithe map for example Lakehurst Lane.
- 4.3.5. Figure 30 shows a magnified extract of the application route in the vicinity of point B* - Gifford’s Gill, the delineator between Ashburnham and Brightling Parishes (indicated by dashed lines running in the centre of the Gill). It shows a road depicted as crossing the Gill and continuing within Brightling parish.
- 4.3.6. Figure 31 indicate that the application route was gated at point C.
- 4.3.7. Apportionment data has been reviewed for this section of the application route but as no salient data has been identified it has been omitted.

Significance of this evidence

- 4.3.8. The section of the application route from the parish boundary with Brightling to point C 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 Herring Lane. All these facets make it more than probable that the application route was a public road with a highway reputation higher than a Footpath/Bridleway and more than probably Carriage rights.
- 4.3.9. At point C there is a line crossing the application route. This could depict a field boundary or a gate. Such lines are depicted crossing other roads, including currently adopted roads and Byways (for example Byway Penhurst 2) elsewhere on the map and are therefore are not being considered an indication of restraint to public access. However even if such a gate existed this would not preclude the application route from being a public vehicular highway because the Planning Inspectorate have stated;

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

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

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

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.

- 4.3.10. There are differences between the 1834 Ashburnham estate map (see section 5.3) 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 show/refer to the application route as a public road it is more than probable that it existed and that it was as depicted i.e. a public road.
- 4.3.11. 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 highway reputation greater than a footpath and more likely vehicular rights.

4.4. **The significance of the evidence in Tithe Records**

- 4.4.1. The conclusion from the Tithe Records evidence is that the application route was historically a public road and therefore should as a minimum have the status of a Bridleway or more likely a Restricted Byway.
- 4.5. In the Tithe maps 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.
- 4.5.1. 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.
- 4.5.2. 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:
- 4.5.3. 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.”*
- 4.5.4. 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.”*
- 4.5.5. 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.”

- 4.5.6. 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”.

5. Ashburnham Estate maps

5.1. Introduction to Ashburnham Estate maps

- 5.1.1. Although Estate maps were prepared for different reasons, when taken in conjunction with other maps of the area, often made at different times, they can provide useful supporting evidence of Rights of Way status.
- 5.1.2. Estate maps made for landowners are unlikely to show the status of a route that the landowner did not agree with, so where estate maps show routes within an estate that are shown in the same way as public roads outside the estate then there is evidence of highway status.
- 5.1.3. This is especially relevant with respect to the Ashburnham Estate data as they cover a period of over 60 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.
- 5.1.4. For clarity the map extracts presented in this section are in their natural state and have not been highlighted by the author.

5.2. 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		



Figure 33 Extract from Ashburnham Estate Map 1797 showing the depiction of the road which is now Byway Penhurst 2 (not highlighted)

Analysis of evidence

- 5.2.1. Figure 32 shows the whole of the application route.
- 5.2.2. Gates are indicated at point A and point C of the application route.
- 5.2.3. At point A until the end of plot 27 the application route is depicted as an uncoloured, unnumbered dotted parallel lines separate from any hereditaments. It is depicted in the same manner other public highways shown on the Estate map such as Battle Road (B2096), Coblye Lane (now BR BRI/25/6) and Lakehurst Lane.
- 5.2.4. At the end of plot 27, and throughout plot 21, the application route continues to be shown by two dotted parallel lines but it is now coloured sepia. On entering plot 23 until it reaches Lakehurst Lane (point C) the application route continues to be depicted as a sepia coloured trackway, this is in the same manner other public highways shown on the Estate map such the road which is now Byway Penhurst 2 (see Figure 33).
- 5.2.5. After point B* (the vicinity of the Brightling/Ashburnham parish boundary) the road is shown by a dark red line.

Significance of this evidence

- 5.2.6. 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.

-
- 5.2.7. With respect to the depiction of the application route the section of the route between point A and point B* is depicted in the same manner as other public roads which traversed the Ashburnham Estate such as the road which is now Byway Penhurst 2. This provides evidence that this section of the application route held a similar public highway status and indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 5.2.8. Between point B* and point C the application route is depicted by a heavy red line. This is the same manner as some other roads which traversed the Ashburnham Estate but the significance of the marking has not been found. It may be proposed that as this section of the application route is defined by a heavy red line this could denote a different status – for example “Private” usage. No evidence has been found to support this view however the fact that this section of the application route was a public road at some time in its history is supported by the fact that ESCC have recognised this section of the application route as an ancient routeway road (see section 7.3) and therefore whether or not this road was private at the time this map was produced may be inconsequential.
- 5.2.9. At point A and point C, where the applications route intersects county adopted roads, 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 with are now adopted county roads/Byways or bridleway (e.g. Penhurst Lane).
- 5.2.10. However, whether the application route was gated or not may be inconsequential for as recently considered in a Planning Inspectorate Appeal:

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

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

5.3. 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 ESRO Ref: ASH 4471/1		

Evidence:



Figure 34 Extract from Ashburnham Estate Map 1834 showing the application route (not highlighted)

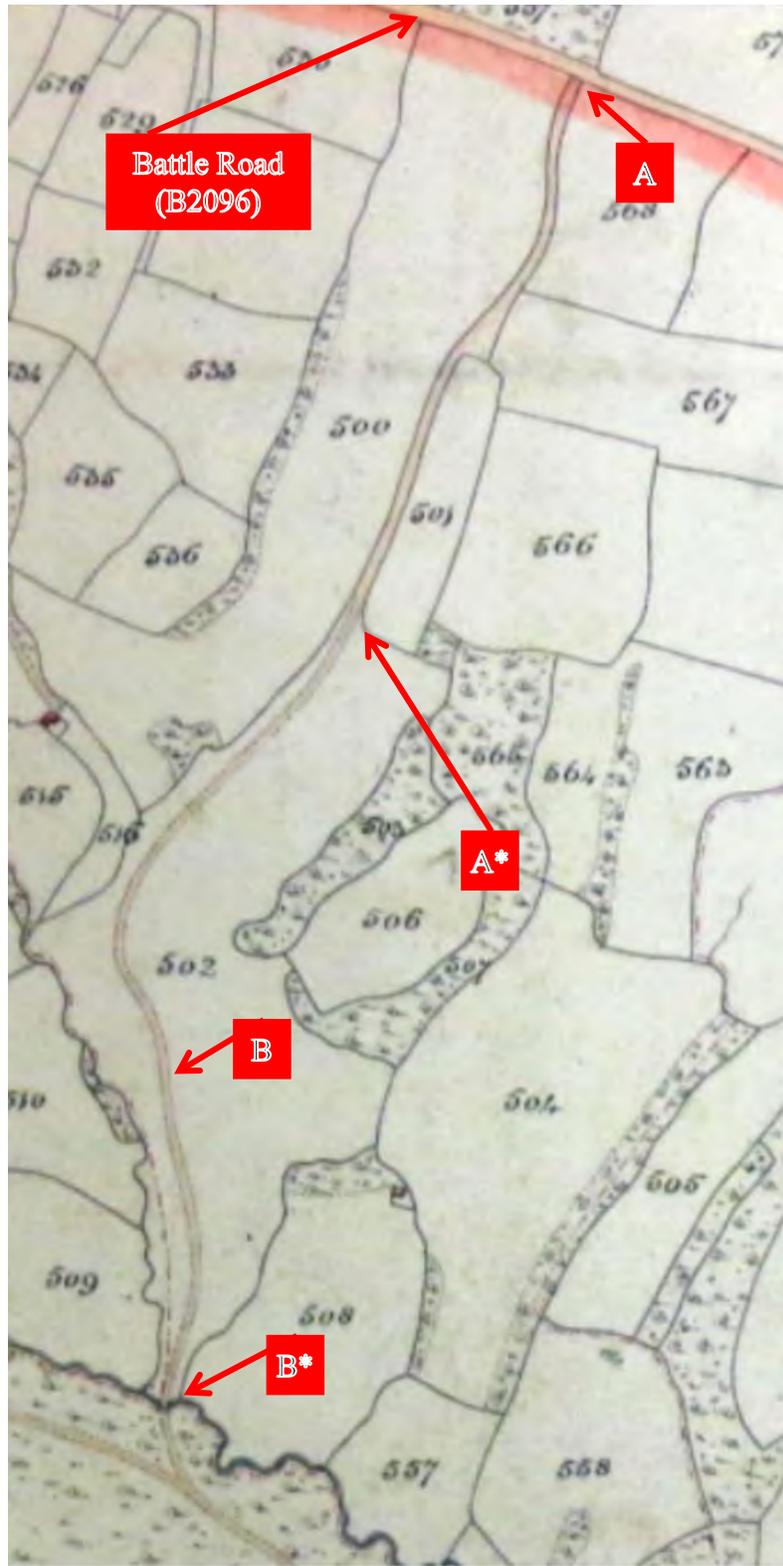


Figure 35 Magnified extract from Ashburnham Estate Map 1834 showing the application route between points A & B*.



Figure 36 Magnified extract from Ashburnham Estate Map 1834 showing the application route between point B* & C.

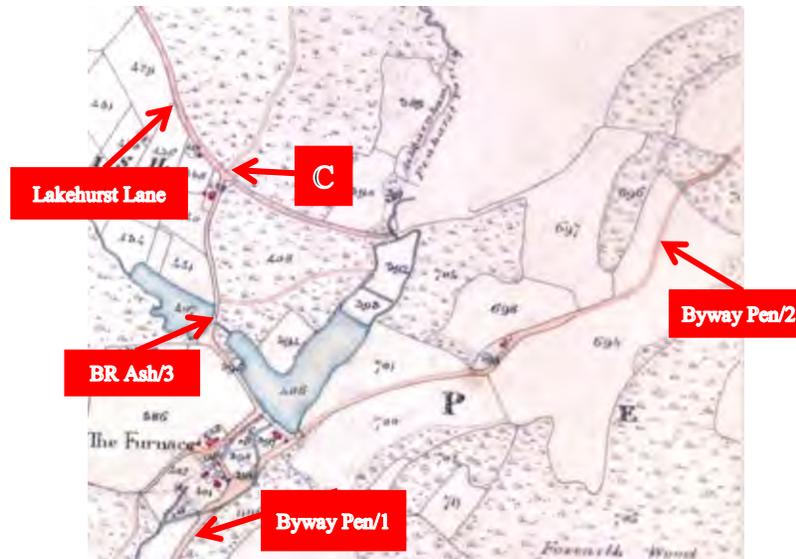


Figure 37 Extract from Ashburnham 1834 Estate Map showing the application route in the vicinity of point C and the depiction of the road which is now Byway Penhurst 2

Analysis of evidence

- 5.3.1. Figure 34 shows the whole of the application route depicted by a sepia coloured, unnumbered cross-road, defined by parallel lines. Much of the application route is separate from any hereditaments. It is depicted in the same manner other public highways shown on the Estate map such as Battle Road (B2096) and Lakehurst Lane, the road which is now BR/Ash/3 and the road which is now Byway Penhurst 2 (see Figure 37).
- 5.3.2. Figure 35 shows the application route from A to B* (the vicinity of the Brightling/Ashburnham parish boundary). From A to A* the application route is shown as sepia coloured, unnumbered cross-road, used as a field boundary partition and separate from any hereditaments. It is defined by coloured parallel line and is depicted in the same manner other public highways shown on the Estate map such as Battle Road (B2096) and Lakehurst Lane the road which is now Byway Penhurst 2. It is shown as gated at point A.
- 5.3.3. From A* to B* the application route is shown as sepia coloured, unnumbered cross-road, defined by parallel dotted lines and is depicted in the same manner other public highways shown on the Estate map such the road which is now Byway Penhurst 2.
- 5.3.4. Figure 36 shows the application route from B* (the vicinity of the Brightling/Ashburnham parish boundary) to point C. The application route is shown as sepia coloured, unnumbered cross-road. It is defined by sepia coloured parallel dotted lines and is depicted in the same manner other public highways shown on the Estate map such as the road which is now Byway Penhurst 2. It is shown as gated at point C.

Significance of this evidence

- 5.3.5. 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. The Numerical Terrier is available for this map at the ESCC Archive “The Keep” (Ref: ASH/4/12/12) and makes no mention of a road or a bridleway along the application route. However as the Terrier, like the Tithe data, was produced to evaluate land productivity, like the

Tithe data it was not unusual for roads or bridleways, where they did not affect the productivity of the land, to be omitted.

- 5.3.6. The whole of the application route is shown in the same manner as roads which are now either adopted county roads, Byway or highways accepted by ESCC as historic public roads. All this provides strong evidence that the application route had public highway status and indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 5.3.7. At point A and point C, where the applications route intersects county adopted roads, 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 with are now adopted county roads/Byways or bridleway (e.g. Penhurst Lane).
- 5.3.8. However, whether the application route was gated or not may be inconsequential for as recently considered in a Planning Inspectorate Appeal:

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

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

5.4. 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:

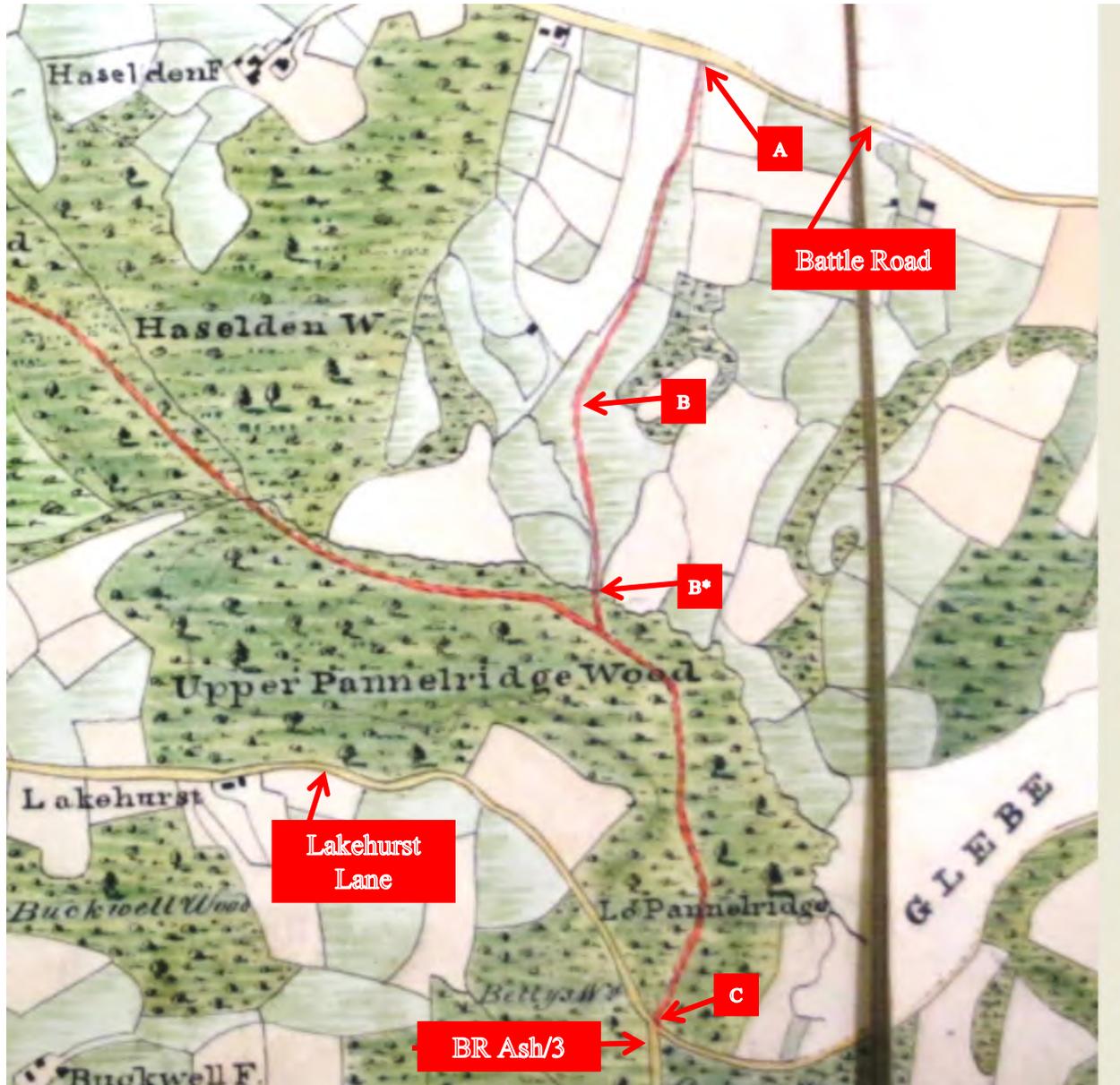


Figure 38 Ashburnham Estate map 1841

Analysis of evidence

5.4.1. Figure 38 shows the whole of the application route as sienna shaded, unnumbered road.

5.4.2. This Estate map shows both points A and C of the application route as gated.

Significance of this evidence

- 5.4.3. 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.
- 5.4.4. The application route is depicted by a heavy red line. This is the same manner as some other roads which traversed the Ashburnham Estate but the significance of the marking has not been found and whilst some existing BR are shown in this manner others are not. It may therefore be proposed that by 1841 the application route could have denoted a different status – for example “Private” usage. No evidence has been found to support this view but it could be suggested that by 1841 Lord Ashburnham had illegally enclosed this road and claimed it as a private road.
- 5.4.5. This claim however can be proven to be unlikely as later Estate documentation (see section 5.5) show that in 1865 point A of the application route was mapped as an open-ended un-gated road with no means by which the Landowner could have restricted public access.
- 5.4.6. In addition, whether or not the application route had been illegally enclosed may be inconsequential as the fact that for at least the section of the application route between points B* and C has been recognised by ESCC as an ancient routeway road (see section 7.3) and therefore whether or not the section of the route was private at this time in its history may be inconsequential. In addition therefore it would be even-handed to conclude that as section A-B* is shown in a similar manner to section B*- C then whatever status is determined for B*- C should also be applied to A –B*.

5.5. **c1865: Ashburnham Estate map of Gifford’s Farm**

Date of publication: c1865	Scale: Not shown	Date of Survey: c1865
Cartographer:	Publisher: Ashburnham Estate	Edition:
Source: ESCC The Keep ESRO/ASH 2378 – Ashburnham Estate		

Evidence:



Figure 39 Ashburnham Estate map of Giffords Farm c1865

Analysis of evidence

- 5.5.1. Figure 39 shows the plan of Gifford's Farm in 1865. Point A of the application route is shown as an open-ended, sienna shaded, unnumbered road separate from any hereditament running along the western border of Gifford's Farm land.
- 5.5.2. The application route is depicted in the same manner as the Battle Road.

Significance of this evidence

- 5.5.3. 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.
- 5.5.4. The application route at point A is shown as an open-ended road and is depicted in the same manner as Battle Road, an adopted county roads. Where this is the case it provides strong evidence that the landowner considered that the road shown on the map had public highway status.
- 5.5.5. The application route is depicted as being open-ended onto Battle Road, which means there appears to have been no means by which the either Lord Ashburnham or the tenant of Gifford's Farm 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 in 1865.

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

- 5.6.1. 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 generally 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 Bridleway but more probably than not vehicular status.
- 5.6.2. This is especially relevant with respect to the Ashburnham Estate maps as they cover a period of over 60 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.
- 5.6.3. The application route is depicted as a cross-roads connecting Battle Road (B2096) and Lakehurst Lane. As the application route does not pass through or near any habitation it was not an occupation road. Evidence provided in this section, and substantiated throughout this document, indicate that as a minimum the section of the application route from point A to A* was unquestionably regarded as a road. It might be argued that this road ceased at point A* of application route and therefore no public right of way existed past this point along the remainder of the application route. This is however unlikely to be the case. Firstly other than the gate sometimes being shown at A where the application route directly intersects with the Battle Road no gates are shown on the route which could restrict public access until point C is reached. In addition it is generally accepted that roads were generally through-routes and only in exceptional circumstances, such as termination at an important local site such as a Forge or a Mill, that cul-de-sacs were historically created. As such circumstances do not exist in this case then it is more than probable that Road/Bridle Road rights existed along the whole of the application route.
- 5.6.4. 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."*
- 5.6.5. The conclusion drawn from the above evidence is that the application route was historically a public road and therefore as a minimum holds at least Bridleway rights. It is also persuasive of carriageway rights which would result in Restricted Byway status in the same manner as the existing Restricted Byways Penhurst 1 & 2.
- 5.7. In the Ashburnham maps, 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 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.

- 5.7.1. 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.
- 5.7.2. 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”.

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

6.1. Introduction to Inland Revenue Valuation Records 1910

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

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

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

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

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

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

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

6.2. **1910: IR: 124/4/223 Darwell Hole**

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 124-4-223		

Evidence:

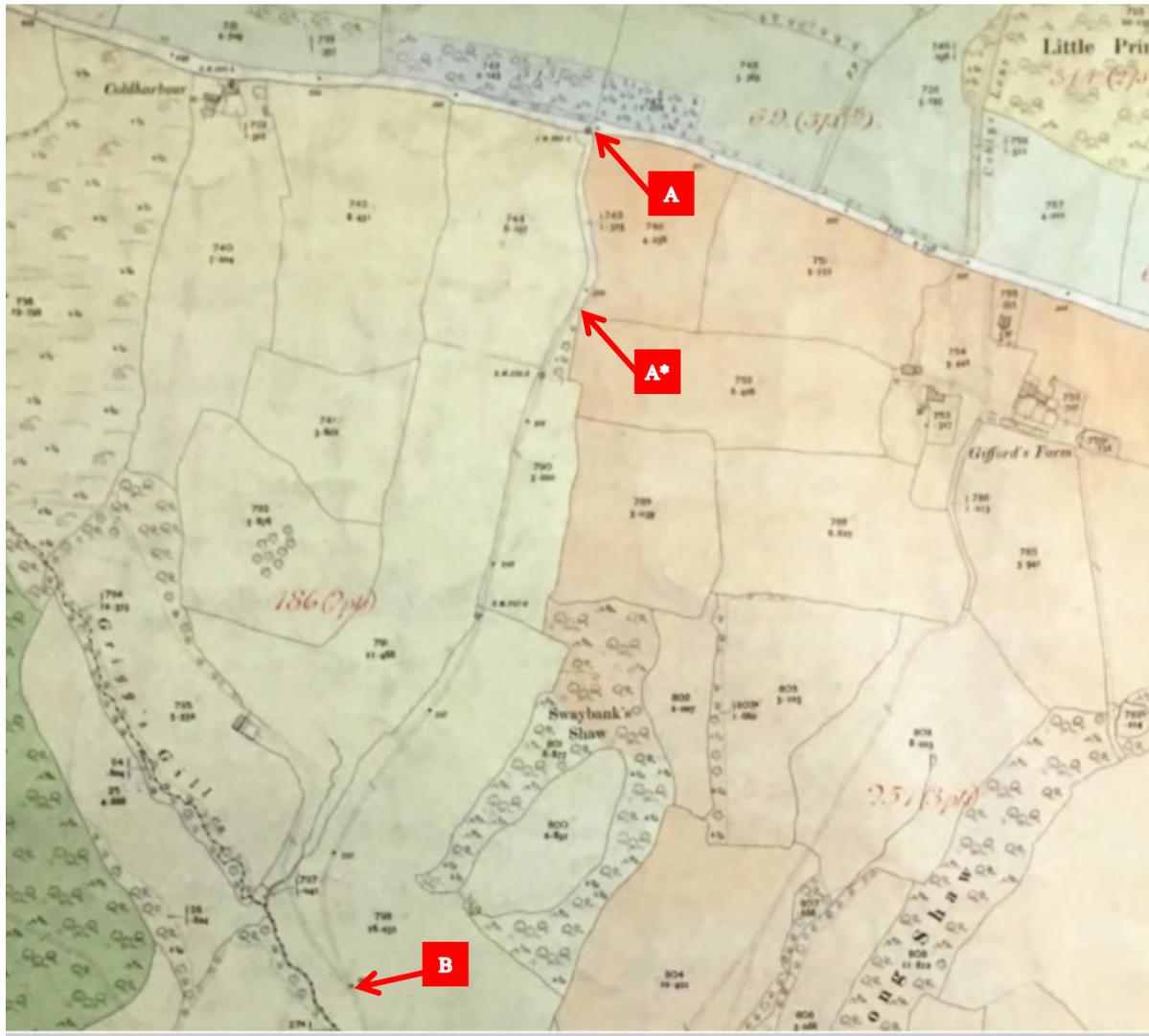


Figure 40 Extract from 1910 IR map Penhurst showing the application route IR 124-4-223

Analysis of evidence:

- 6.2.1. The extracts shown in Figure 40 show the section of the application route between points A and B
- 6.2.2. Point A to A* as shown as a gated unnumbered white road separate from the adjoining hereditaments.
- 6.2.3. It is shown in the same manner as other public highways such as Battle Road.

Significance of this evidence:

- 6.2.4. The section of the application route from point A and A* is shown as an gated 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.
- 6.2.5. It could be argued that this road ceased at point A* and did not continue along the application route and therefore no public right of way existed along the remainder of the application route. This is however unlikely to be the case. Firstly other than the gate shown at A directly with the intersection of the Battle Road no gates are shown which could restrict public access until point C is reached. In addition it is generally accepted that highways were generally through-routes and only in exceptional circumstances, such as termination at an important local site such as a Forge or a Mill, that cul-de-sacs were historically created. As such circumstances do not exist in this case then it is more than probable that Road/Bridle Road rights existed along the whole of the application route.
- 6.2.6. 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.”*
- 6.2.7. The legislation is sufficiently clear that anyone arguing that white road status means something other than the route being a public vehicular highway route must show which other exception from valuation applies.
- 6.2.8. In line with other evidence presented in this document (specifically section 3.5 1874 1st Ed OS map) this evidence strongly indicates that the application route between points A and A* was considered to have highway status of a “Road” at the time of the survey.

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

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

- 6.3.5. Order Ref: ROW/3174351

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

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

- 6.3.6. Order Ref: ROW/3200513

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

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

7. Government and Local Authority Data

7.1. 1953: East Sussex County Council (ESCC) Definitive Map

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

Introduction to ESCC Definitive Maps

- 7.1.1. ESCC Definitive maps were produced as a requirement of the National Parks and Access to the Countryside Act 1949.
- 7.1.2. Under the Rights of Way Act 1932 District Councils had made a survey of public rights of way in their area and had recorded them on maps.
- 7.1.3. The 1949 Act required County Councils to ascertain and record the existence of public paths – footpaths and bridleways – and of roads used as public paths as on 19th May 1953, the “relevant day”.
- 7.1.4. To fulfil this requirement each County Council carried out a survey, often based on the District Councils’ maps referred to in 7.1.2 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.
- 7.1.5. The extract source is the ESCC Archive – the Keep.

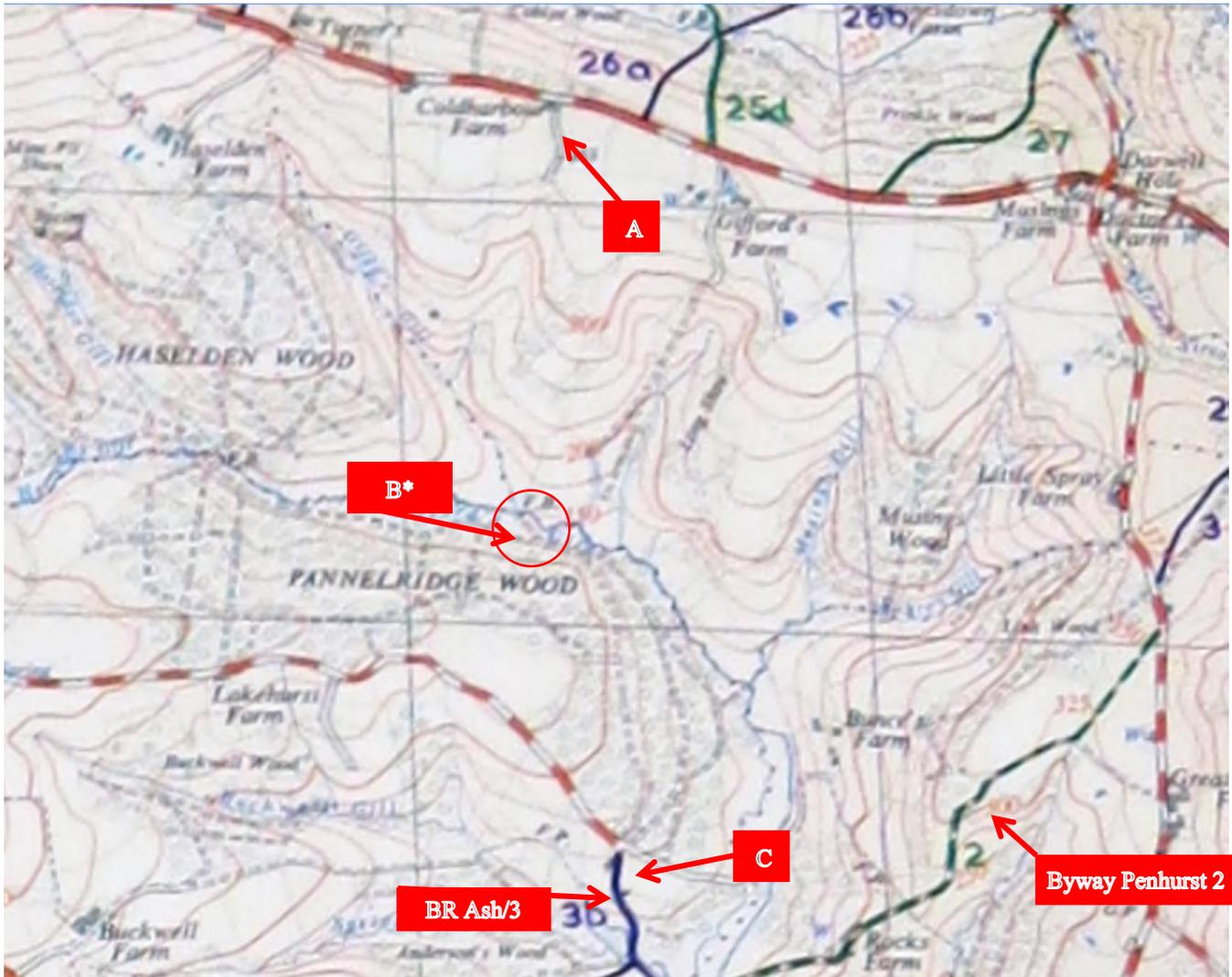
Evidence:

Figure 41 Extract from the 1953 1st ESCC Definitive map showing the area of the application route (overlaid on OS 2.5 to the mile (1951))

Analysis of evidence

7.1.6. Figure 41 shows the extract from the 1st ESCC definitive map Battle (1953) where the application route is not shown as a Right of Way.

Significance of this evidence

- 7.1.7. The ESCC catalogue of highway diversions (which goes up to the first definitive map) does not include either a diversion or a stopping up order for the application route.
- 7.1.8. The application route was not included on the 1st definitive map as a right of way, so diversion orders made after this are unlikely to be relevant. However a ROW is strongly indicated on the application route as “FB” (Footbridge) is clearly shown on the underlying OS map.

The significance of the evidence of the 1953 ESCC Definitive map.

- 7.1.9. During the extensive research for this DMMO Application Statement no stopping up or diversion orders, either in the quarter sessions or in other orders” have been found connected with the application route and therefore the application route still holds its highway status of “Road”.
- 7.1.10. 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.

7.2. 2022: ESCC Definitive Maps

7.2.1. The extract presented below is found at <https://row.eastsussex.gov.uk/standardmap.aspx>

Evidence:

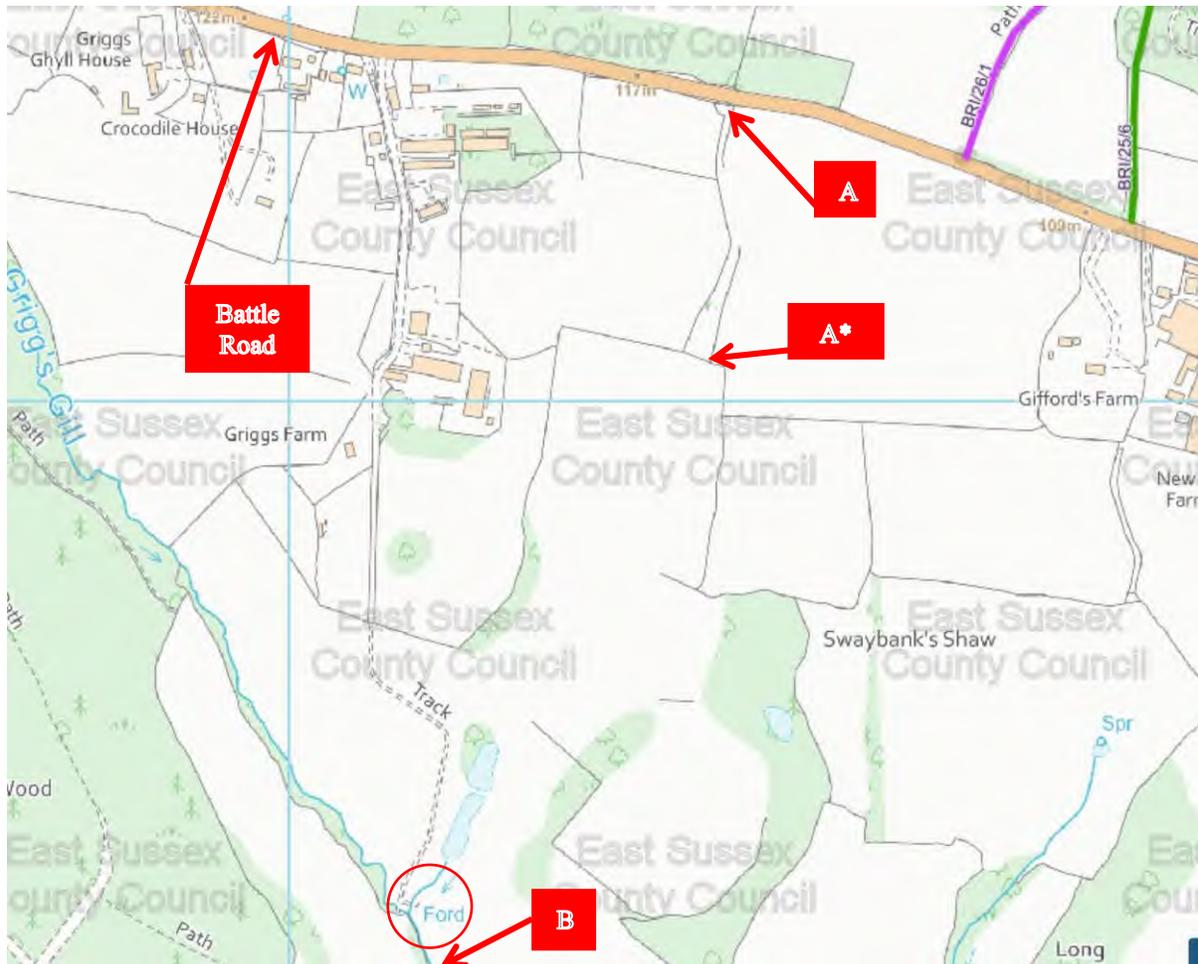


Figure 42 Extract from the 2022 ESCC Definitive map showing section of the application route between points A and B.

Analysis of evidence

- 7.2.2. Figure 42 is an extract from the 2022 ESCC Definitive ROW base map showing section of the application route between point A & B. In the vicinity of point A It shows the remnants of the application route road at its junction with Battle Rd (point A). It then continues to show the remnants of the application route road until it reaches point A*.
- 7.2.3. In the vicinity of point B a track from Griggs Farm is shown which ends as it traverses a stream which is notated as a “Ford”.

Significance of this evidence

- 7.2.4. This data indicate that the remnants of the original application route road continues on mapping today.

- 7.2.5. The acknowledgement of the existence of a “Ford” in the vicinity of point B of the application route indicate the existence of an old road or Bridleway This is because “Fords” were only used by ridden horses and carriages.
- 7.2.6. Whilst it is acknowledged that there is no evidence that the application route between points A & B ever ran over the mapped Ford the existence of this Ford on the map substantiates the supposition that a road existed in the vicinity, probably coming from Griggs Farm or one of the other western farms such as Haselden or Coldharbour Farm, which is then shown as then amalgamating with the application route at point B and then continued along the application route to point C.
- 7.2.7. It might be argued that this road ceased at the Ford and therefore no public right of way existed past this point along the remainder of the application route. This is however unlikely to be the case. Firstly no gates are shown which could restrict public access until point C is reached. In addition it is generally accepted that roads were generally through-routes and only in exceptional circumstances, such as termination at an important local site such as a Forge or a Mill, that cul-de-sacs were historically created. As such circumstances do not exist in this case then it is more than probable that Road/Bridle Road rights existed along the application route from at least point B to point C.
- 7.2.8. 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.”

The significance of the evidence of the ESCC Definitive map.

- 7.2.9. During the extensive research for this DMMO Application Statement no stopping up or diversion orders, either in the quarter sessions or in other orders” have been found connected with the application route and therefore the application route still holds its highway status of “Road”.
- 7.2.10. In addition evidence from ESCC data substantiates that the application route was not only an ancient road but that as a minimum the section between point B and C was an integral part of the local road network.
- 7.2.11. 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. 2016: The High Weald Area of Outstanding Natural Beauty (HWAONB) Unit Historic Routeways Survey

Introduction to the HWAONB Historic Routeways Survey

- 7.3.1. The High Weald Area of Outstanding Natural Beauty unit (HWAONB) Unit, which produced and published this survey, supports the High Weald Joint Advisory Committee (HWJAC) which was set up in response to the Countryside and Rights of Way (CROW) Act 2000. The HWJAC is a collaboration of a number of High Weald County and Parish councils, with the East Sussex County Council (ESCC) being a primary member and one of its main financial sponsors. The HWJAC in turn delegates powers to the HWAONB Unit to carry out many of the core functions legally required by the CROW Act 2000.
- 7.3.2. In 2016 the HWAONB unit produced and published the High Weald Parish Survey, of which the “Routeway” survey is one element.
- 7.3.3. The aims of the High Weald Historic Routeway Survey were:
- To log and maintain the historic pattern and features of High Weald routeways
 - To enhance the ecological function of routeways.
- 7.3.4. Some of the key papers relating to the High Weald Historic Routeway Survey are;
- The Routeways Story (<http://www.highweald.org/learn-about/landscape-stories/the-routeways-story.html>)
 - The Making of the High Weald (2003) (<http://www.highweald.org/downloads/publications/uk-landscape-research-reports/120-the-making-of-the-high-weald-report/file.html>)
 - Routeways survey pack (2011) (<http://www.highweald.org/downloads/publications/land-management-guidance/routeways/1094-routeways-survey-pack/file.html>)
 - High Weald AONB Parish information: (<http://www.highweald.org/downloads/publications/parish-information.html>)

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

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

Routeways:**Routeways Definitions:**

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

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

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

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

(High Weald AONB Management Plan 3rd Ed 2014-2019 Glossary page 56 – found on the Parish Information website detailed in 7.3.4)

“Routeways” - Historic Context:

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

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

7.3.9. This view is supported by The High Weald AONB Management Plan 3rd Ed 2014-2019 (accessed from the Parish Information website detailed in 7.3.4) in that it states;

Section IV Routeways: character defined (page 7):

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

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

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

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

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

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

HWAONB Routeways Survey Methodology:

- 7.3.12. A detailed explanation of the Routeway Survey Methodology is outlined in the Routeways survey pack and the High Weald AONB Management Plan 3rd Ed 2014-2019 accessed from the Parish Information website detailed in 7.3.4
- 7.3.13. In summary the survey methodology was designed to help gather information about the physical features, natural features and local history of routeways.
- 7.3.14. It covered 3 parts, each using different techniques;
- Part 1: Fieldwork
 - Part 2: Historical Evidence
 - Part 3: Data Analysis

Part 1: Fieldwork

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

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

Part 2: Historical Evidence

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

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

Part 3: Data Analysis & Next Steps

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

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

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

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

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

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

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

2016 :HWAONB Unit Routeways Survey 2016– Ashburnham Parish

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

Evidence:

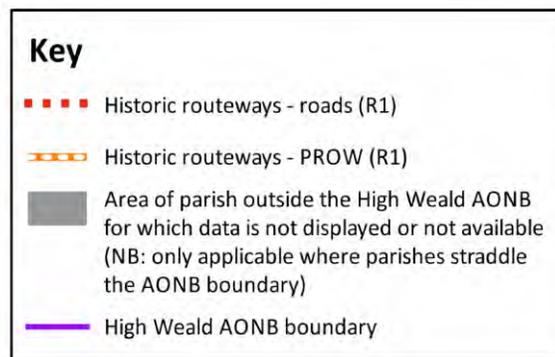


Figure 43 High Weald Historic Routeways Key

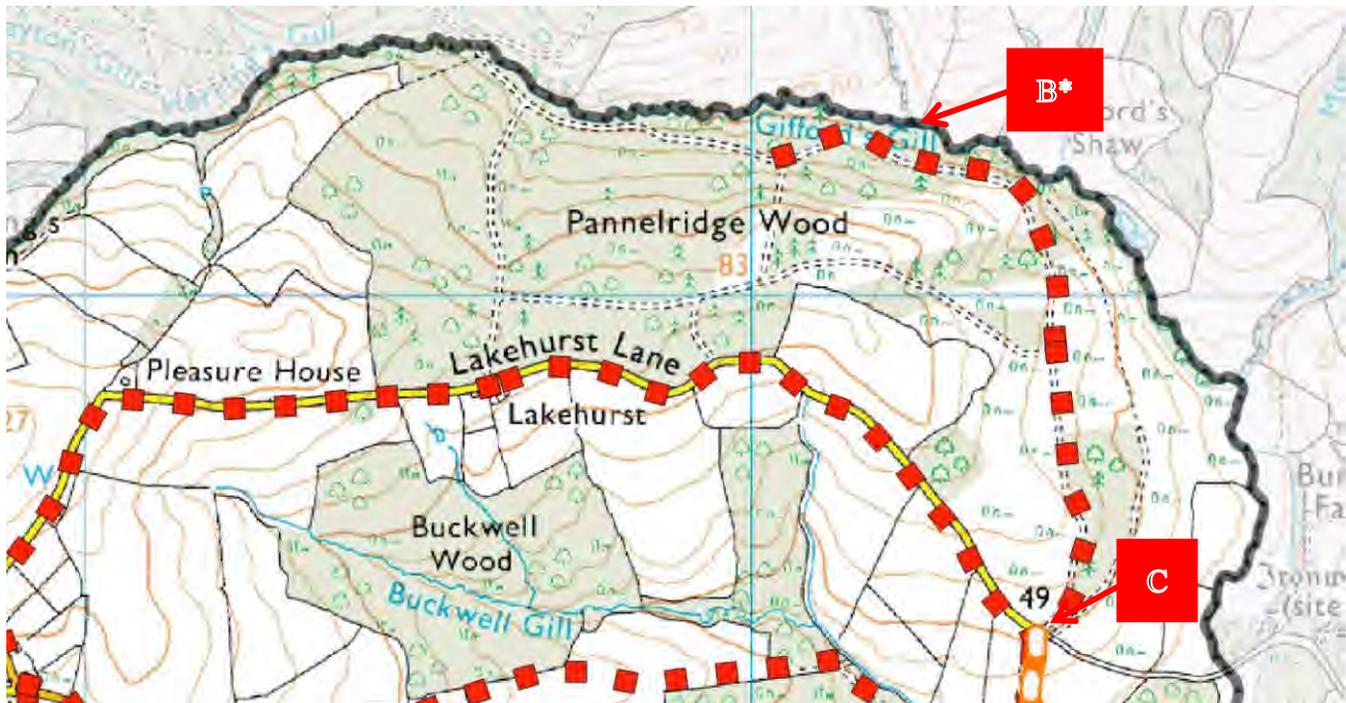


Figure 44 Extract from High Weald Historic Routeways map for Ashburnham Parish
<http://www.highweald.org/downloads/publications/parish-information.html>

Analysis of evidence:

- 7.3.20. The application route from point B* to C is shown (Figure 44) as a “Historic routeways – roads (R1)” (see categorisation Figure 43) which means that the application route has been identified by the survey as both an historic “Road” and “Historic Routeway”
- 7.3.21. The application route is not overlain by “Historic routeways – PROW (R1)” (orange dotted line) which means that the application route has not been identified as having a current Public Right of Way.

Significance of this evidence:

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

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

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

It assessed,

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

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

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

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

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

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

- 7.3.28. When these two strands of evidence are taken in conjunction this provides compelling evidence that any "Historic Routeway - road" shown within the survey carried public vehicular rights at some time in the past.
- 7.3.29. This means that at least Bridleway rights exist over this section of the application route and is also persuasive of Restricted Byway rights.
- 7.3.30. 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.
- 7.3.31. Acceptance of this route as a Bridleway would support the aims of the HWJAC.

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

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

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

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

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

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

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

- 7.4.1. The conclusion drawn from the Government and Local Authority Data evidence is that it is more than probable that the whole of the application route was historically a public road and therefore should as a minimum have a modern-day highway status of a Bridleway, however it is also persuasive of Restricted Byway status.
- 7.4.2. These pieces of evidence demonstrate the existence of a highway reputation for the application route over many years and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights. This indicates that the application route should have a highway entitlement of at least Bridleway but more probably Restricted Byway status.
- 7.4.3. There are numerous Planning Inspectorate decisions which assist in assessing the importance and relevance of Government and Local Authority Data with respect to the application route. Some of the most relevant to this DMMO Application Statement are:
- 7.5. Order Ref: ROW/3200513 Heading 9 (publishing.service.gov.uk)

“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.”

- 7.6. Appeal Ref: FPS/B3600/14A/1 [formerly NATROW/B3600/529A/11/01 [Heading 9 \(nationalarchives.gov.uk\)](http://nationalarchives.gov.uk)]

“25. The appellant states that none of the commons, manorial waste, public roads or other public rights of way are separately listed within the tithe award although private roads were included along with hedgerows, buildings, farms and stackyards, all of which were titheable. Since the appeal route was clearly not tithed as a private road, she submits it must be assumed to fall into the category of public ways.

26. No copy of the Tithe Award has been submitted but the appellant’s report of its contents has not been challenged. Consequently I am inclined to place slightly more weight on the tithe records as proof of a public right over the lane than might otherwise be the case, and whilst this is far from conclusive evidence of a bridleway it does suggest the lane was more than a footpath.

31. It is possible the fact the lane was named might support it having highway status since one of the requirements of the Highways Act 1773 was that all ‘common highways’ had to be named before indictment for obstruction or disrepair could take place, a provision repeated in the Highways Act 1835.”

86. It has been recognised by the Courts¹² that the level of proof necessary to justify the making of a definitive map modification order is lower than that required to confirm it. Both the Bagshaw and Norton and the Emery cases give guidance as to how the question of a right of way being ‘reasonably alleged’ is to be approached. To ‘reasonably allege that a right of

way subsists' requires credible (although not necessarily irrefutable) evidence to support the claimed ways; it also requires that there is no evidence which is of such undeniable substance to show the claimed right could not have been established.

88. I recognise the potentially anomalous situation that may arise if a definitive map modification order is made to record only this central section of Tenchley's Lane whilst the ends retain their present status as footpaths. The practicalities of this on the ground are not my concern, but in terms of the determination of any order made as a result of this appeal, the evidence will apply to the whole route, not just the central section. At that stage either the whole route would be proven, on the balance of probability, to be a bridleway or none of it. Taking a pragmatic approach it would therefore be sensible to make an order for the entire appeal route so that, if any objections are raised, the evidence for the whole of the claimed bridleway may be more thoroughly tested."

7.7. Appeal Ref: APP/F6915/W/2013/515896 Heading 9 (nationalarchives.gov.uk)

"105. The Stoney Middleton tithe documents suggest that Blind Lane was a public road of the same status as other roads for which the Surveyor was responsible; in the tithe apportionment the Surveyors are recorded as being responsible for one 'Bridle Road' amongst the other named lanes and roads. The depiction of the lane in the same manner as the known public carriageways to which it connects and a distinction being drawn between roads, lanes and bridleroads in the apportionment is highly suggestive of route 3 being of a status equal to those routes to which it was connected. Although tithe commutation was not principally concerned with the recording of public rights, these documents provide evidence of some weight that route 3 was considered in 1850 (in Stoney Middleton at least) to be a public carriageway as opposed to being a bridleway.

109. The Finance Act documents reflect the evidence of the earlier tithe documents and show that the Order route was not considered by either the Inland Revenue assessors or the neighbouring landowners to be in private ownership. In Robinson Webster (Holdings) v Agombar [2001] EWHC 510(Ch) and the more recent case of Fortune v Wiltshire County Council [2010] EWHC B33 (Ch)³ the courts considered the weight to be attached to tithe and finance act documents which showed a disputed route excluded from claimed ownership. In both cases the question of whether the documentary evidence demonstrated the existence of public vehicular rights was the central issue.

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."

7.8. Order Ref: FPS/X2600/7/105 Microsoft Word - fps_x2600_7_105.doc (nationalarchives.gov.uk)

"30. In relation to Highfield Lane, I note the submissions of Mr and Mrs Gooderham that for a number of years before 2010 when it was cleared (estimated variously from 2 to at least 10 years), the part of Highfield Lane between points L and M was overgrown with vegetation and therefore could not have been used as had been claimed. However, given my conclusion that the lane was already a public right of way long before living memory, any temporary interruption in use in the twenty-first century would not affect its status as a highway."

- 7.9. Brand & Another v. Philip Lund (Consultants) Ltd (1989) Unreported. Ch 1985 B. No. 532 Agenda Reports Pack (Public) 22/04/2013, 14.00 (staffordshire.gov.uk)

“23.....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.”

2.48, The courts have long recognised that, in certain circumstances, culs-desac in rural areas can be highways. (e.g. Eyre v. New Forest Highways Board 1892, Moser v. Ambleside 1925, A-G and Newton Abbott v. Dyer 1947 and Roberts v. Webster 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.

It is a just observation that if you think Tinkers Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore it seems to me, after all said and done, that the evidence with regard to this little piece across the green cannot be severed from the other... it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green... I am not laying this down as law; but I cannot understand how there could be a public way up to the gate – practically, I mean; I do not mean theoretically, - but how in a locality like this there could be a public highway up to the gate without there being a highway beyond it. If there were a public highway up Tinker’s Lane before 1835, it does not seem to me at all a wrong step to take, or an unreasonable step to take, to say there must have been one across that green.”

- 7.10. As of the referenced Planning Inspectorate decisions clarify our views on applications and are all dated after the 1949 assessment, they should therefore be considered as “a discovery of evidence”.
- 7.10.1. As much of the evidence presented in this section was published post 1949 the data could not have been considered when evaluating the allocation of rights to the application route during the assessment under the National Parks and Access to the Countryside Act 1949 or thereafter and therefore the evidence should be considered “a discovery of evidence”.

8. LiDAR Data

- 8.1. “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. It is increasingly used within archaeology to identify historical features such as archaic roads and settlements.
- 8.2. 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.
- 8.3. Introduction to LiDAR data for the Application route
- 8.4. The LiDAR mapping of the application route shown here is extracted from:
<https://houseprices.io/lab/lidar/map?ref=TQ68492%2017076>.
- 8.5. The data presented was extracted in January 2022.

Evidence

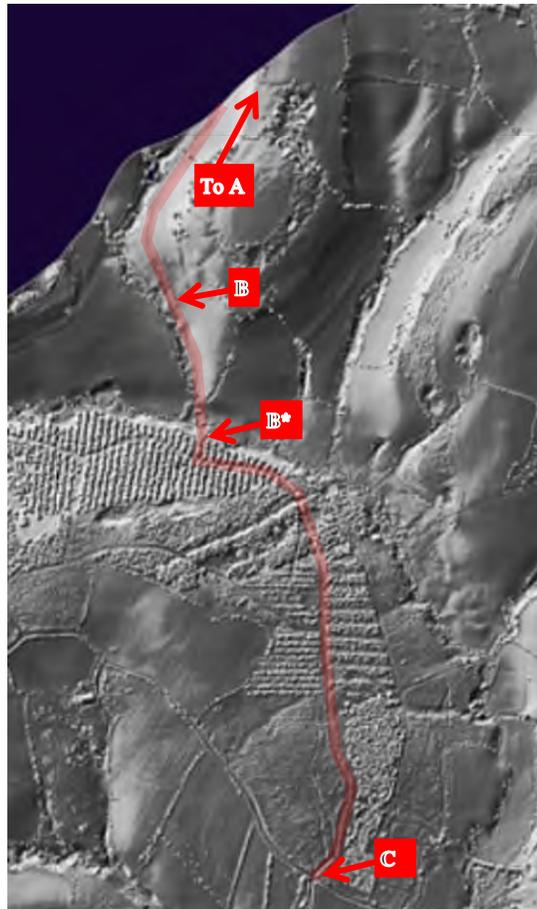


Figure 45 Extract from the LiDAR map showing the section of the application route which is available on Lidar with the application route shown in red.

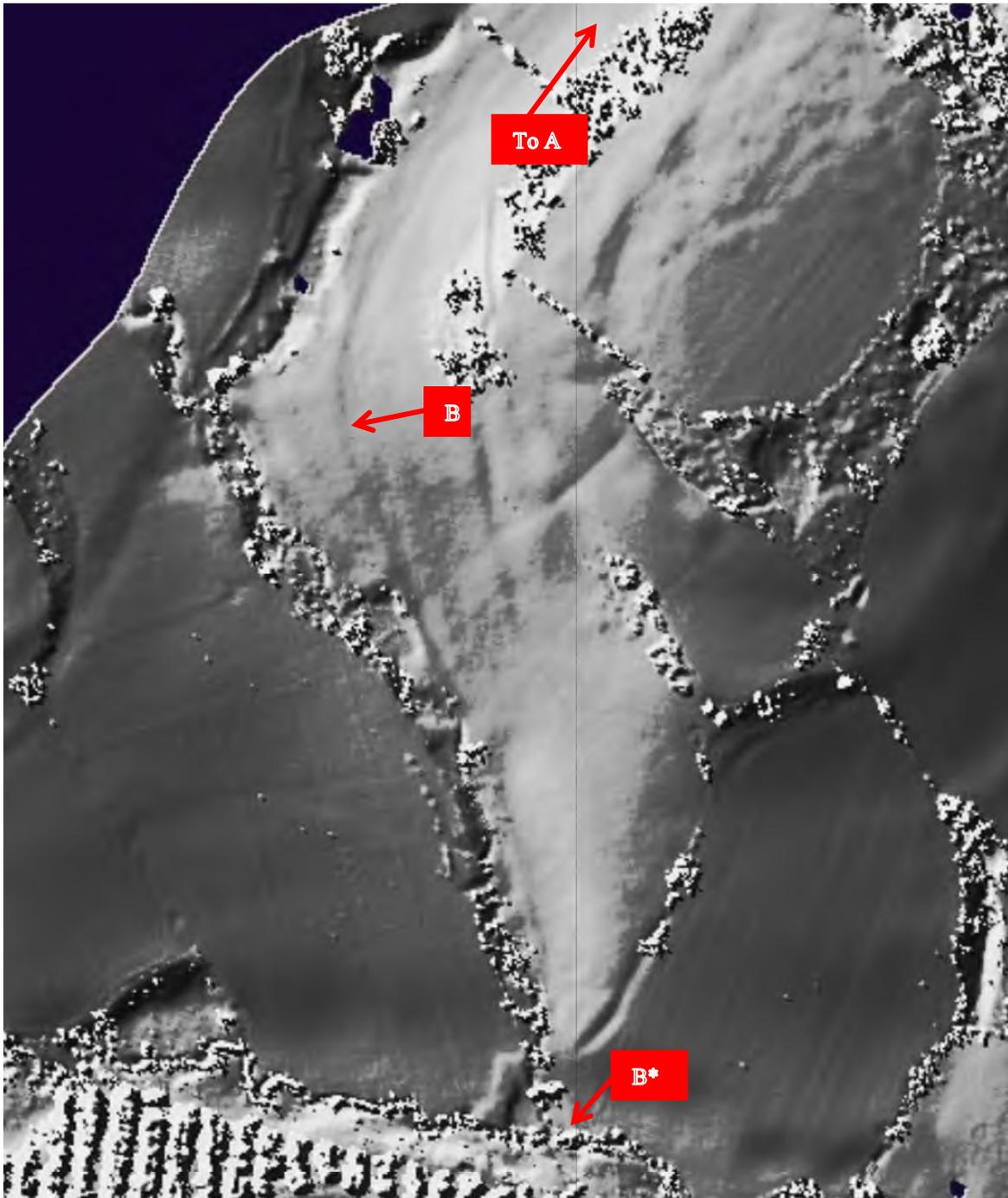


Figure 46 Magnified extract from the LiDAR map showing section of the application route between points A and B*.



Figure 47 Magnified extract from the LiDAR map showing section of the application route between points B* to C.

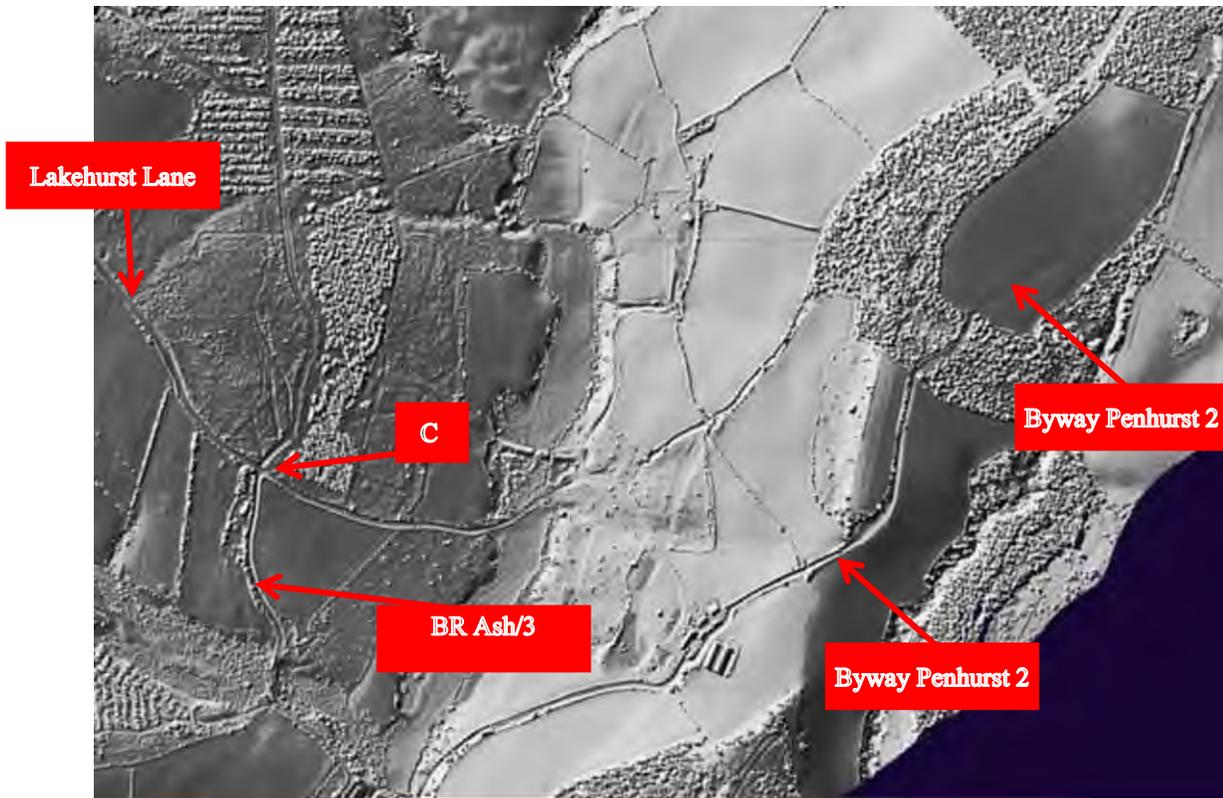


Figure 48 Extract from LiDAR showing BR Ash/3 & Byway Penhurst 2

Analysis of evidence:

- 8.6. Figure 45 shows the available LIDAR imagery of the application route.
- 8.7. Figure 46 shows the magnified LiDAR imagery for the application route between points A and B*. The extract shows a clear indentation along the line of the application route. Such indentations are generally accepted by archaeologists as evidence of ancient highways and are indicative of long term usage by vehicles.
- 8.8. Figure 47 shows the magnified LiDAR imagery for the application route between points B* and C. The extract shows a clear indentation along the line of the application route. This indentation presents itself in a similar manner to existing county roads, Byways and Bridleways such as Lakehurst Lane and the road which is now BR Ash/3.
- 8.9. Figure 48 shows the LiDAR imagery for surrounding area. The extract shows a clear indentation similar to those presented along the application route for existing county roads, Byways and Bridleways such as Lakehurst Lane and the road which is now BR Ash/3 and Byway Penhurst 2.

Significance of this evidence:

- 8.10. 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, Byways Penhurst 2 and BR Ashburnham 3.
- 8.11. The LiDAR extract shows that most of the application route between points A & B* is a well-defined indented track. Such indented track are accepted by archaeologists as evidence of ancient highways and

are indicative of long term vehicle 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.

8.12. **The significance of the evidence in LiDAR Data**

- 8.13. From the LiDAR data it appears that the application route follows long standing field boundaries and follows the course of a well-defined indented track accepted by archaeologists as evidence of ancient highways and are indicative of long term vehicle usage.
- 8.14. The application route presents itself in the same manner as other current ancient ROW or county roads.
- 8.15. The conclusion drawn from the LiDAR data is that it is more than probable that as the application route was an ancient roadways which should have a greater ROW then a footpath. 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.
- 8.16. 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.
- 8.17. 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”.

8.19.

9. Modern Photographs of the Application route

9.1. Introduction to Photographs of the Application route

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

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

9.1.3. Aerial photographs data obtained from Ordinance Survey

https://explore.osmaps.com/?lat=50.940075&lon=0.402721&zoom=13.8480&referrer=OLD_OS_MAPS&overlays=&style=Aerial&type=2d

9.2. 2022: Photographs

Evidence:



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



Photo 2 Photograph of application route at point A, where it would join the Battle Road (B2096) facing in a northerly direction.



Photo 3 Photograph of application route at point A taken whilst standing on the Battle Road (B2096) facing in a southerly direction.



Photo 4 Photograph of application route at point C facing in a northerly direction taken whilst standing on Lakehurst Lane.



Photo 5 Photograph of application route at point C facing in a northerly direction taken whilst standing at the gate on Lakehurst Lane.

Analysis of evidence:

- 9.2.1. Photo 1 is an aerial view of the application route. As the application route currently has no ROW the aerial view has been included for information and to show how the route follows the existing field boundaries and long established woodland tracks.
- 9.2.2. Photo 2 & Photo 3 were taken at point A of the application route. Photo 2 shows an extensive verge of approximately 20-30 yards alongside the Battle Road (B2096) indicative of an carriage turning/ passing/resting place. After leaving the B2096 the application route then continues in a southerly direction along a well-defined sunken lane of about 20 ft. in with and 10ft in depth until it reaches a gate (see Photo 3). From the gate an ancient sunken track can be seen proceeding in a southerly direction.
- 9.2.3. Photo 4 & Photo 5 were taken at point C of the application route whilst standing on/in the vicinity of Lakehurst Lane and facing a northerly direction. It shows a gated well used sunken track of approximately 15 ft. width and approximately 2 ft. deep.

Significance of this evidence:

- 9.2.4. From all these 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 Penhurst Byways 1 & 2 and Lakehurst Lane.
- 9.2.5. They shows a well-defined holloway at points A and C indicative of long term vehicular usage and similar in presentation to the roads which are existing Byway Penhurst 1, Byway Penhurst 2 and Lakehurst Lane.

9.3. The significance of the evidence in Modern Photographs

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

10. Conclusion

- 10.1. The conclusion drawn from the evidence presented in this Application Statement is that the application route was for many years a public cross roads connecting Battle Lane (B2096) to Lakehurst Lane. No evidence has been found that the application route was ever stopped-up or modified and therefore any rights associated with the application route were never formally extinguished and remain in existence. Therefore the evidence presented in this DMMO Application Statement supports the assertion that the application route holding as a minimum Bridle Road rights and more probably vehicular rights.
- 10.2. 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 consistency of approach to ROW within East Sussex, that the application route should hold ROW status of as a minimum a Bridleway.
- 10.3. 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
- 10.4. In summary cumulative evidence (Commercial and OS maps produced over a number of years), and synergistic evidence (e.g. Tithe map, Estate maps and Inland Revenue 1910 evaluations etc.) show that on “the balance of probability” vehicular rights existed at the times the various pieces of evidence were created.
- 10.5. Whilst no single piece of evidence is conclusive,
- “...this co-ordination significantly increases the impact of these documents”⁶*
- 10.6. 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.
- 10.7. 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.”*
- 10.8. 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.
- 10.9. The test at this stage is only “Can it reasonably be argued that the right of way exists as suggested”.
- 10.10. The later test at confirmation of any order is “Is it more likely than not that the right of way exists as suggested”.

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

- 10.11. It is asserted that this DMMO Application Statement passes both of those tests.
- 10.12. 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:
- 10.13. 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.”

- 10.14. 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”

11. Request

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