

Public Document Pack

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17 June 2019

Rights of Way Committee

A meeting of the committee will be held at **2.15 pm** on **Tuesday, 25 June 2019** at **County Hall, Chichester**.

Tony Kershaw
Director of Law and Assurance

Agenda

1. Declarations of Interest

Members and officers must declare any pecuniary or personal interest in any business on the agenda. They should also make declarations at any stage such as an interest becomes apparent during the meeting. Consideration should be given to leaving the meeting if the nature of the interest warrants it. If in doubt, contact Democratic Services before the meeting.

2. Minutes of the last meeting of the Committee (Pages 3 - 8)

The Committee is asked to confirm the minutes of the meeting held on 5 March 2019 (cream paper).

3. Urgent Matters

Items not on the agenda that the Chairman of the Committee is of the opinion should be considered as a matter of urgency by reason of special circumstances.

4. Previous Decisions Progress, Outstanding Applications and Delegated Decisions

(a) Previous Decisions Progress Report (Pages 9 - 10)

The Committee is asked to consider a progress report by the Director of Law and Assurance (on pink paper).

(b) Outstanding Applications and Delegated Decisions (Pages 11 - 14)

The Committee is asked to consider a progress report by the Director of Law and Assurance (on pink paper).

N.B. If members have any queries in connection with items 4(a) and 4(b) they are asked to raise them with officers before the meeting.

5. **Public Path Order Proposal** (Pages 15 - 28)

Report by the Director of Highways, Transport and Planning.

The Committee is asked to consider and determine the following application:

Ansty and Staplefield: Request for Diversion of Part of Bridleway (Bw) 40CR at Mizbrooks Farmhouse.

6. **Definitive Map Modification Order** (Pages 29 - 48)

Report by the Director of Law and Assurance.

The Committee is asked to consider and determine the following application:

Yapton: Application for a Definitive Map Modification Order (Application No: 3/18) to add to the Definitive Map and Statement for Chichester a footpath from West of Drove Lane off FP200-1 at Point A (SU972034), to point B (SU971034) and terminating at point C (SU907031), in the Parish of Yapton.

7. **Date of Next Meeting**

The next meeting of the Committee will be held at 2.15 p.m. on Tuesday, 22 October 2019 at County Hall, Chichester.

To all members of the Rights of Way Committee

Rights of Way Committee

5 March 2019 – At a meeting of the Rights of Way Committee held at 2.15 pm at County Hall, Chichester.

Present: Mr Whittington (Chairman)

Mr Bradbury, Mr Acraman, Mr Baldwin, Mrs Duncton, Mr Quinn and Mrs Russell

Apologies were received from Dr O'Kelly and Mrs Purnell

Part I

10. Declarations of Interest

10.1 In accordance with the County Council's code of the conduct, the following declarations of interest were made:

- Mr Bradbury declared a personal interest in 'West Hoathly: application for a Definitive Map Modification Order (Application No: 2/16) the addition of a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway' because his partner is the Mid Sussex District Councillor for High Weald, the electoral division of the application site.

11. Minutes of the Last Meeting of the Committee

11.1 Resolved – that the minutes of the meeting held on 12 June 2018 be approved and signed by the Chairman as a correct record.

12. Urgent Matters

12.1 There were no urgent matters.

13. Previous Decisions Progress Report

13.1 The Committee received and noted a report from the Director of Highways and Transport and the Director of Law and Assurance outlining applications awaiting consideration (copy attached to the signed minutes).

14. Outstanding Applications and Delegated Decisions

14.1 The Committee received and noted a report by the Director of Law and Assurance setting out the progress on previous delegated decisions and decisions made by the Committee (copy attached to the signed minutes).

15. Definitive Map Modification Order

West Hoathly: Application for a Definitive Map Modification Order (Application No: 2/16) the addition of a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway.

15.1 The Committee considered a report by the Director of Law and Assurance, concerning an application to add to the Definitive Map and Statement a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway (copy appended to the signed version of the minutes). Georgia Hickland, Legal Assistant, introduced the report. It is considered that the legal tests for making the order have not been met. For the avoidance of doubt the County Council is required to consider in relation to making an Order under S.53 (2) in consequence of an event in relation to 1) Point A – B on the application plan: under Section 53(3)(c)(i) Wildlife and Countryside Act 1981 whether evidence submitted by the applicant shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land; and in relation to 2) Point B – C on the application plan under Section 53(3)(c)(ii) Wildlife and Countryside Act 1981 being the discovery of evidence which shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description on the balance of probability.

15.2 Mr Martin Robinson, Manager at Blackland Farm Girlguiding Activity Centre spoke in objection to the application. Girlguiding along with other landowners have researched maps for the route and concluded that where the proposed route is shown there is nothing to indicate it was ever a right of way. Current Ordnance Survey maps show routes that are private tracks and driveways to farms that are not rights of way. Any upgrade to FP 51ESx would necessitate the felling of trees to ensure the minimum required bridleway width of 3m. There is no evidence to support the claim for the map modification to be made.

15.3 Mr Paul Brown, the applicant, spoke in support of the application. The 1724 Budgen map, 1840 East Grinstead Tithe map, and 1831 1st Edition OS map do provide evidence of the route, contrary to the conclusions in the Committee report, and paragraph 8.1, in relation to existence of a 'feature' (a gate), is disputed because many bridleways do have gates. The evidence of Major Grubb, supplied with the application, shows the route was used until the turn of the 20th century/before WWI. Regarding points B to C on the route, the Budgens maps, Major Grubb's evidence, 1873 East Grinstead parish boundary sketchbook and 1997 archaeological study for the clay quarry extension would not have been considered in the 1950s. Regarding points A to B a bridleway can be reasonably alleged to exist. Regarding points B to C the higher legal test on 'balance of probability' may apply, quoting a Planning Inspectorate appeal on a similar application in 2017 who stated that where there are "different tests applied to the same evidence" which "may lead to different conclusions" and a "pragmatic approach would be for an order to be made...to a route as a whole".

15.4 During the debate the Committee raised the points below. Clarification was provided by Officers, where applicable:

- The application should be considered as a whole.
- Access to the route at point A is difficult to find; there is no signpost and it is accessed via a driveway between properties.
- The route is steep at points along point A to B.

- The conflict over the interpretation of archival evidence was acknowledged but the Committee noted that, as stated in the report, “none of the maps identified are produced for the purpose of confirming highway status” and it was, therefore, agreed there was no evidence of status.

15.5. The recommendation was proposed by Mr Bradbury and seconded by Mrs Russell, and was put to the Committee and approved unanimously.

15.6 Resolved – That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, 1) to add a bridleway from point A, Top Road, Sharpthorne to point B, and 2) to upgrade footpath 51ESx to a bridleway from its commencement at point B to its termination at point C, Grinstead Lane, West Hoathly be not made.

16. Definitive Map Modification Order

Henfield: Application for a Definitive Map Modification Order (Application No: 1/17) to add to the Definitive Map and Statement a public footpath along Dagbrook Lane

16.1 The Committee considered a report by the Director of Law and Assurance, amended by the Agenda Update Sheet, concerning an application to add to the Definitive Map and Statement a public footpath along Dagbrook Lane (copy appended to the signed version of the minutes). Charlotte Nash, Legal Assistant, introduced the report. It is considered that the legal tests for making the order have not been met. For the avoidance of doubt the Council is required to consider whether the applicant has shown that on the balance of probability a right of way subsists, or that it is reasonably alleged to subsist.

16.2 Mr Mark Elsam, owner of Brookside Farm, spoke in objection to the application. The route is an ‘occupation road’ linking Brookside, Pokerlea and Rye Farms; this is supported by archive maps. Brookside Farm, including Dagbrook Lane which is part of the farm, has been owned by the Elsam family since 1940. The proposed route is an important woodland wildlife corridor. There are historical and ongoing problems with uncontrolled dogs causing a detrimental impact on wildlife and if the proposed route is allowed then even more people will roam off the route as well as on it causing even more harm. The family has always sought to stop trespassing. There have been many incidences of fencing being cut, locks damaged and gates propped open all over the farm. Signs have been put up and repeatedly illicitly removed for years. Suggestions that the family has not opposed trespassing over the years are untrue. The family objects to the proposal in the strongest possible terms.

16.3 Mrs Hilary Pierce, an interested party, spoke in support of the application. ‘Occupation road’ cannot equate to private access only; maps demonstrate the majority of the 24 occupation roads in Henfield, shown on the Henfield Tithe apportionment, now have rights of access of various highway statuses. Early map evidence does suggest public access rights for the whole length of Dagbrook Lane, which is shown as a road on the first one inch OS map and the OS Survey Book of Reference and it is also

shown on the Finance Act Map in 1910 which almost always supports public vehicular rights. It is probable that routes like this, that join two other roads, are for use by the public. The Committee should be sure that evidence provided of ownership of the route along Dagbrook Lane is sound because it has no registered owner. The public have probably used the whole lane for centuries. Good 'User Evidence' has been supplied with the application.

16.4 During the debate the Committee raised the points below. Clarification was provided by Officers, where applicable:

- Ownership of the proposed route along Dagbrook Lane was queried. At the invitation of the Committee, Mr Elsam reiterated his ownership.
- It is clearly evidenced that the Elsam family has continually tried to restrict access and that notices have been repeatedly removed.
- The impact of harm to wildlife was acknowledged, but the Committee noted that this is not material to the application.
- The proposed route does not lead to a place of public interest or a special view point and whilst at point C it does lead to a connecting path, that path is a permissive track used with permission and not 'as of right'.
- The conflict over the interpretation of archival evidence was acknowledged but the Committee noted that whilst the path is listed on several maps as an 'occupation road', as stated in the report, "none of the maps identified are produced for the purpose of confirming highway status". The meaning of 'occupation road' is a matter of interpretation but is understood to be a term used to describe a road laid out for the benefit of occupiers of adjoining properties and not a public highway.
- The archive evidence considered as part of this application was not strong enough on its own to recommend an order be made and, therefore, the evidence of use submitted under S.31 Highways Act 1980 has been considered. Officers concluded that while there is a conflict of evidence, given the account of locked gates and notices on site, as well as a user's account of obtaining permission to use Dagbrook Lane, it is reasonable to conclude that the land owner has throughout time attempted to prevent the public using the route and that use of the route has not been shown to be 'as of right'.

16.5. The recommendation was proposed by Mr Patel and seconded by Mr Quinn, and was put to the Committee and approved unanimously.

16.6 Resolved – That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, to add a footpath from FP 2563 and then east along Dagbrook Lane to an unmarked track in Henfield be not made.

17. Urgent Action

**Adur and Worthing Council's Public Path Diversion Order
Town and Country Planning Act 1990 S 257
Public Footpath 2048 (Shoreham Adur Tidal Walls Development)
Diversion Order 2018**

17.1 The Committee received and noted a report by the Director of Highways and Transport setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

17.2 Officers provided an update and advised that works are close to completion and the pathway is now in public use, although it may need to be temporarily closed to allow the surface to consolidate.

17.3 Resolved – The Committee noted the Urgent Action decision published on 15 August 2018.

18. Secretary of State Decision

**West Sussex County Council (Warnham) Public Path (No. 1577)
Diversion Order 2013
West Sussex County Council (Warnham) Public Path (No. 1578)
Diversion Order 2013**

18.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes). An error was noted in paragraph 1.4 of the report: 27 September '2019' should read '2013'.

18.2 Resolved – The Committee noted the report.

19. Secretary of State Decision

**West Sussex County Council (Petworth No.1 (Parish of Loxwood
addition of Footpath)) Definitive Map Modification Order 2014**

19.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

19.2 Resolved – The Committee noted the report.

20. Secretary of State Decision

**West Sussex County Council (Southwater) Public Path (no. 2642)
Part Special Diversion Order 2016
West Sussex County Council (Southwater) Public Path (no. 1650)
Part Special Extinguishment Order**

20.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

20.2 The Committee noted that an interested party has raised concerns to a Committee member relating to this application, which will be passed to Officers to check and action, where required.

20.2 Resolved – The Committee noted the report.

21. Secretary of State Decision

Application for a Definitive Map Modification Order (Application No. 5/16) to add a public footpath from bridleway 1163 to Fyning Lane in the Parish of Rogate

21.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

21.2 Officers provided an update and advised that the order has now been made, and that consultation ends on 11 April 2019.

21.3 Resolved – The Committee noted the report.

22. Update on Delivery of Works

22.1 The Committee noted a verbal update on delivery works in the last year. The report was introduced by Judith Grimwood, Senior Rights of Way Officer. The update was circulated to Committee members following the meeting.

22.2 The Committee requested that in future the update on delivery of works should be appended to the agenda as a written report to allow members to study the report and consider any questions in advance of the Committee meeting.

22.3 Resolved – That future updates to the Rights of Way Committee on delivery of works be presented to the Committee as a written report.

23. Date of Next Meeting

23.1. The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday 25 June 2019.

The meeting ended at 3.56 pm

Chairman

**Rights of Way Committee
25 June 2019**

Previous Decisions Progress Report

Key:	DMMO	-	Definitive Map Modification Order
	TRO	-	Traffic Regulation Order
	FP	-	Footpath
	BW	-	Bridleway
	RB	-	Restricted Byway
	BOAT	-	Byway Open to All Traffic
	TVG	-	Town or Village Green
	CL	-	Common Land
	TCPA	-	Town and Country Planning Act

* indicates a change in position since the last meeting

	Subject	Date Considered by Committee or Date of Delegation	Current Position
1*	Haywards Heath: FP 25CU diversion	21.2.05	S119 Highways Act Diversion Order to be made following officer delegated decision 30.05.19. The diversion will formalise the presently used route.
2	Bramber: DMMO 3/14 – addition of BW from RB 2059 to used route of BW 3183	7.6.16	Agreements circulated for signing.
3	Elsted: FPs 871 and 872, diversions	Delegated decision 1.12.16	Orders made and objections received. Orders have been submitted to the Secretary of State for determination.
4*	Slinfold: DMMO 1/15 Addition of FP from BW 3569 to FP 1467 on land east of Hayes Lane	Delegated decision 8.2.17	Order made and objections received. To be submitted to the Secretary of State for determination.
5	Arundel: DMMO 1/16 Addition of a FP from Queens street to Fitzalan Road	20.2.2018	Order made and objections received submitted to the Secretary of State for determination
6*	Horsham: DMMO 4/16 Addition of a FP from Coney Croft cul-de-sac to FP 1586/2	20.2.2018	Orders made and objections received. Orders have been submitted to the Secretary of State for determination.
7	Lancing FP 2048 Adur & Worthing S257 diversion consultation	12.06.18	Order made and confirmed by Adur and Worthing Councils. The certificate to bring the order into effect to be issued when the works are completed.

Agenda Item 4a

8*	Duncton: creation of new footpath	Delegated decision 18.10.18	Agreement drafted and awaits landowner's signature.
9*	Billingshurst: Creation of new link to FP 1321	Delegated decision 23.10.18	Agreement drafted and awaits landowners' signature.
10*	Billingshurst: FP 1928 diversion and S25 dedication	Delegated decision 25.10.18	S119 Highways Act Diversion Order and Section 25 dedication to be made following officer delegation. Order plan to be amended due to boundary issue.
11	Walberton and Arundel: DMMO 1/18 Addition of a restricted byway and upgrade of FP 342	Delegated decision 29.10.18	Decision not to make Orders. Applicant has appealed and currently with the Planning Inspectorate to determine.
12	Washington: Creation of bridleway	Delegated decision 14.2.19	Agreement to be prepared once landowner has provided evidence of landownership.
13*	Sharpthorne: DMMO 2/16 Addition of BW between Top Road and Sharpthorne Road and upgrade of FP2WH to BW	05.03.19	Decision not to make Orders. Applicant has appealed and currently with the Planning Inspectorate to determine.
14*	Henfield: Dagbrook Lane 1/17 addition of a public footpath	02.03.19	Decision not to make order
15*	Horsham: DMMO 6/17 Addition of a FP at Dickins Way	Delegated decision	Orders made
16*	Horsham: DMMO 4/18 Addition of a FP at Mil Bay Lane	Delegated decision	Orders made
17*	TVG 30/48: The Sunken Gardens, Bognor Regis Application to register the Sunken Garden as a TVG	Delegated decision	Application rejected

Tony Kershaw

Director of Law and Assurance

Contacts:

Ami Dye ext. 22687 and Judith Grimwood ext. 26705

Previous decisions 25.06.19

**Rights of Way Committee
25 June 2019**

**Changes to the Network of Public Rights of Way,
Common Land / Town or Village Greens**

Key:	DMMO	-	Definitive Map Modification Order
	FP	-	Footpath
	BW	-	Bridleway
	RB	-	Restricted Byway
	BOAT	-	Byway Open to All Traffic
	TVG	-	Town or Village Green
	CL	-	Common Land

1a. Applications for Definitive Map Modification Orders

	Parish	Application No.	Claim	Date application received
1	Climping	2/17	Upgrade FP 174 to RB	11.04.17
2	Climping	3/17	Upgrade FP 829 to RB	11.04.17
3	Climping	4/17	Addition of RB	11.04.17
4	Henfield and Woodmancote	2/19	Upgrade FP 2540 to RB and to addition of a RB	05.03.19
5	Horsham	7-10/18	Addition of FP in Piries Place	05.02.18
6	Pulborough	2/15	Addition of FP from FP 2337 to FP 2409	13.03.15
7	Rogate	5/16	Addition of FP at Fyning Twitten	06.12.16
8	Rogate	5/17	Addition of FP Fyning Lane	31.10.17
9	Steyning	1/19	Addition of FP which links FP 2713 to FP 2704/1 (Mouse Lane)	27.02.19
10	West Hoathly	3/16	Addition of FP between Top Road and Station Road	17.08.16
11	West Wittering	3/19	Addition of BW from Redlands Lane to the B2179 at Malthouse Cottages (Sheepwash Lane)	28.02.19
12	Yapton	3/18	Addition of FP west of Drove Ln	12.03.18
13	Yapton	5/18	Addition of RB off Drove Lane and upgrade of FP 155 to RB	19.04.18

14	Yapton	6/18	Upgrade of FP 157 to RB and addition of BW	19.04.18
15	Yapton and Climping	11/18	Upgrade of FP 166 and FP 165 to BW and the addition of BW	19.10.18

1b. Applications to register land as Town or Village Green and applications to amend the Registers of Common Land / Town or Village Greens

Parish	Application No. / Reference	Proposal	Date application received
Horsham Town	TVG 30/47 – Land at 14A New Street, Horsham	Application withdrawn	21.05.18
Slaugham	CL319	De-registration of part of the common land at Lower Ashfold, Coos Lane, Slaugham	22.03.19

2. Creations and permissive path proposals, diversion and extinguishment applications and District Council consultations received

- Key
- A - Awaiting investigation
 - B - Under investigation
 - C - Held in abeyance / additional information required
 - D - Withdrawn
 - E - Report before this meeting
 - G - Supported through officer delegation
 - H - Turned down at officer level

	Parish	Path No	Proposal	Date Received	Date of Decision	Category
1	Ansty & Staplefield	bw 40CR	Diversion	12.07.16		E
2	Ashurst	fp 2502	Diversion	21.01.16		A
3	Barlavington	New footpath	Permissive path proposal	01.05.18		B
4	Bosham	fp 238	Diversion	25.07.16		A
5	Cowfold	fp 1773	Diversion	04.05.14		C
6	Crawley	fp 360Sy	S257 Diversion (Crawley BC)	11.03.19		B

7	Earnley / Sidlesham	New footpaths and permissive footpaths and bridleway	Path creation	22.10.18		A
8	Eastergate	fp 323	Diversion (Network Rail)	16.02.15		A
9	Fulking	fp 5_1	Diversion	28.06.16		A
10	Haywards Heath	fp 25CU	Diversion	Ongoing	30.05.19	G
11	Kirdford	fp 614_1	Diversion	11.07.13		C
12	Pagham	fp 133	Diversion	01.08.16		B
13	Pulborough	fp 2312	Extinguishment (Network Rail)	17.01.13		A
14	Selsey / Sidlesham	fp 76	Path creation	06.12.18		A
15	Southbourne / Chidham / Hambrook	fp 258	Extinguishment (Network Rail)	11.11.12		B
16	Washington	bw 2086	S257 Diversion (SDNPA)	11.04.19	30.05.19	G
17	West Wittering	bw 20	Diversion	07.06.13		C
18	Worthing	New footpath	Path creation	12.10.12		C

Matt Davey

Director of Highways, Transport and Planning

Tony Kershaw

Director of Law and Assurance

Contacts:

- Definitive map modification order applications and common land / town or village green applications: Ami Dye Ext. 22687
- Creations and permissive path proposals, diversion and extinguishment applications and District Council consultations: Judith Grimwood ext. 26705

Outstanding applications 25.06.19

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Rights of Way Committee

25 June 2019

Highways Act 1980 Section 119

Ansty and Staplefield – Request for Diversion of Part of Bridleway (Bw) 40CR at Mizbrooks Farmhouse

Report by Director for Highways, Transport and Planning

Executive Summary

A request has been received for the diversion of part of Public Bridleway 40CR at Mizbrooks Farm near Cuckfield. The definitive line runs on the access drive to the farmhouse, enters the garden and runs close to the house. An alternative route just outside the garden appears to have become established as the used route for some years. Paragraph 2 of this report refers.

The application is made under the provisions of Section 119 of the Highways Act 1980. Members are requested to refer to paragraphs 4.2 and 4.4 of the "Guide to the Law for the Rights of Way Committee".

Officers are able to support the proposal because the legal tests for the making and confirmation of Diversion Orders, as set out in paragraphs 5.1 to 5.3, are considered to be met. However, in response to consultation, adverse comments were received from the Open Spaces Society (OSS) which is opposed to this diversion for the reasons summarised in paragraphs 7.1 to 7.5. The applicant has requested the proposal is still considered and so, in line with agreed practice, and as officer delegation powers are invalid, the Committee is asked to decide whether an Order should be made and submitted for confirmation.

Conclusion

Having reviewed the points of concern about the diversion of Bw 40CR raised by the OSS, the officers' view remains that the tests for the making and confirmation of a Diversion Order under S119 of the Highways Act 1980 are met and it is recommended that an Order *be made*.

Recommendation

That the Director of Law and Assurance be authorised to make a diversion Order under Section 119 of the Highways Act 1980 in respect of bridleway 40CR and to take reasonable steps to implement the proposal.

1. Introduction

- 1.1 A request has been received from Savills on behalf of the Borde Hill Estate for the diversion of part of the above bridleway at Mizbrooks

Farmhouse. The site was inspected by the Rights of Way Officer on 28 February 2019.

2. Location of Bw 40CR and the Existing Route – Location plan 01760

- 2.1 Bridleway 40CR runs east from Cleavers Lane in the parish of Ansty and Staplefield to the north west of Cuckfield. It runs on the access drive to Mizbrooks Farmhouse and on reaching the farm buildings passes to the south of barns at **A** before approaching the brick and tile hung traditional style farmhouse. The definitive line runs immediately alongside the southern elevation of the house passing through an old bridlegate at **B** to enter the presently unmanaged garden area surrounding the house.
- 2.2 Records indicate that the legal route over this stretch has fallen into disuse over some years and a slightly more southerly line to the south of a ditch and outside the garden has become established and waymarked as the used route.
- 2.3 On exiting the eastern boundary of the garden via a slight embankment at **C**, Bw 40CR descends a slope where scrub clearance and levelling has recently taken place to restore the grazing land. At point **D** a field gate and substantial culvert over a deep ditch provide access into woodland, from where a well defined woodland track takes the bridleway on a gradually rising route to a field gate at **E**, which allows access into the adjoining grazing field.
- 2.4 The bridleway route continues eastwards beyond the length proposed for diversion on an unfenced southern headland. It enters woodland adjoining Cuckfield Golf Course before continuing east via Sparks Lane towards Brooks Street.

3. Reasons for the Application

- 3.1 The applicant states that on its present route the bridleway has a considerable impact on the tenants' privacy and on the security of the house and garden. The definitive line enters the garden area surrounding the farmhouse and passes extremely close to the house itself, thereby reducing the residents' feeling of privacy and their enjoyment of the house, or if sitting out in the garden.
- 3.2 Mizbrooks Farmhouse is a fairly secluded property and the fact that the definitive line would allow a potential burglar direct views into ground floor windows is a security concern.
- 3.3 The need to allow access into the garden also means that gates cannot be secured to make the garden dog proof – a dog kept by the residents could not be given free access to the garden.
- 3.4 There are plans to improve the house and to landscape the garden and the bridleway on its present route would be a limitation to this. The applicant would therefore like to improve the privacy and security of the

farmhouse by diverting the bridleway away from the house onto a field edge route to the north, as shown on plan 01761a.

4. The Proposed Diversion of Bw 40CR – Plan 01761a

- 4.1 It is proposed that from its western end at **A** the proposed bridleway will turn north on a 3.5m wide hard surfaced farm access track. After approximately 118m the route turns east north-east at point **G** to enter a field via a gate with hard standing, and continues on the southern headland of grassland adjoining a hedge. The route offers a firm grassland surface with attractive long distance views northwards over woodland and farmland. At point **F** the proposed route crosses into the adjoining field via a gate and culvert over a fairly small drainage ditch. Some improvements around the gates will be required to ensure convenient access at points **G** and **F**. Beyond **F** the proposed route continues north-east on southern headland adjoining woodland to rejoin the definitive line at point **E**. There is evidence the route is already in use by horse riders.

5. The Tests

5.1 The Making Test for the Diversion of part of Bw 40CR

5.1.1 *The grounds:*

An authority may make an order to divert a public path if it is satisfied that it is expedient that the line of the path or way, or part of it, should be diverted in the interests of the owner, lessee or occupier of land crossed by the way; or in the interests of the public; or both.

The application to divert the bridleway is made in the interests of the owner. The reasons given, as outlined in paragraph 3, are that on its present route the path has an adverse impact on the privacy of the tenants who live at Mizbrooks Farmhouse and on the security of the property. A diversion of the path onto a route away from the house and garden would enable this situation to be much improved.

5.1.2 *The point of termination and convenience:*

The authority must also be satisfied that the diversion order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public.

The points of termination of the path would not be changed.

5.1.3 Conclusion on the Making Test

The applicant has demonstrated that it would be in his interests for the path to be diverted away from the area surrounding the house because it would enable the residents' privacy and security to be improved. Therefore, the part of the tests concerning the making of the Diversion Order is satisfactorily met.

5.2 The Confirmation Test for the Diversion of part of Bw 40CR

5.2.1 Is the proposed route substantially less convenient to the public?

The present route proposed for diversion **A-B-C-D-E** is some 295 metres (m) in length and the proposed path **A-G-F-E** is a little shorter at 276m. The present route requires users to negotiate 4 gates whereas on the proposed route this will reduce to 2. On balance, the diversion is not considered to be substantially less convenient to the public.

5.2.2 Is it expedient having regard to:-

- a) the effect on public enjoyment of the way as a whole?*
- b) the effect on other land served by the existing way?*
- c) the effect on land over which the way is created?*

a) The present path allows some close views of Mizbrooks Farmhouse, an attractive traditionally built building, but it will still be available to view from the existing/ proposed path although at a slightly greater distance. The new route offers attractive long distance views over wooded countryside, especially to the north. Many path users prefer to avoid passing through a private area close to a house, especially in an isolated rural location, and so in this respect may find the proposed route more enjoyable.

b) It is not anticipated that other land will be directly affected by the diversion.

c) It is understood that the applicant owns all the land over which the path is to run and the tenant farmer has been consulted.

5.3 Conclusion on the Confirmation Test

The proposed route is not considered substantially less convenient to the public, and walkers' and riders' enjoyment of the path as a whole is not likely to be significantly adversely affected as a result of the diversion. On balance it is considered the legal test for confirmation, as set out in Section 119 of the Highways Act 1980, is met.

6. Costs and Works to be undertaken by the applicant

- A width of 3m is to be provided for the new bridleway along its full length.
- The gate at **G** is to be improved for horse riders by the removal of the barbed wire adjacent to the latch end of the gate. The existing latch is suitable for equestrian use but the chain and hook cannot be easily operated from horseback and must be removed.
- The gate at **F** also has a satisfactory equestrian latch but there needs to be a guard rail to protect against stepping off the edge into the ditch at the latch end of the gate.
- Waymarking will be adjusted and new waymarkers installed by the County Council as necessary.

The costs associated with the diversion order process, the usual administrative fees plus advertising charges will be borne by the applicant together with the cost of all works and adjusting the waymarking.

7. Consultations

- 7.1 Letters of consultation were sent to the relevant user groups, district and parish councils and other interested parties, and notice of the proposal was included in the Members Information Sheet. The Society of Sussex Wealdmen advised that it has no objection to the diversion. The British Horse Society also do not object, their County Access & Bridleways Officer for West Sussex commenting that the proposed route "is in the main a very pleasant field edge path, which would be enjoyable to use" and also, as a user of the path, would prefer not to be in such close proximity to the house and garden.
- 7.2 The Open Spaces Society (OSS) representative replied to the consultation with adverse comments in opposition to this diversion. These are summarized in the context of the legal tests and comments provided as follows.
- 7.3 The Making Test
Is the diversion in the interests of the owner, lessee or occupier of land?

OSS Comment: It has been cited that the bridleway has an adverse impact on privacy and security but it is noted that a former hedge on the perimeter of the garden has been removed and a new hedge planted. No evidence of privacy or security issues having been suffered has been provided and so it is difficult to see how the diversion can be in the interests of the applicant.

Applicant Comment: The impact of the bridleway on the residents is set out in para 3. The new hedge on the perimeter of the garden, when grown, will offer partial screening from the unofficially used route but would not provide benefit if the true definitive route is used. The applicant is aware that the new hedge must allow access for the definitive line.

Officer Comment: The applicant has demonstrated that it would be in the interests of the owner, occupier or lessee of the land for the path to be diverted for the reasons set out in paragraph 3 of this report. Furthermore, it should be noted that the privacy and security issues reported by the present residents of Mizbrooks Farmhouse relate mainly to the use of the bridleway on its unofficially used route slightly to the south and outside the garden. Current file records indicate that a route other than the definitive line has been in use at least since 2004 and aerial photographs would suggest much earlier. So, in terms of the adverse effect of the actual definitive line of the bridleway, if in use, the impact would inevitably be greater than is currently experienced by the residents.

7.4 The Confirmation Test

Is the proposed route substantially less convenient to the public?

OSS Comment: The existing route B to D has been obliterated by earth movements and re-grading of the field. The re-instatement of the definitive route should be enforced.

Applicant Comment: The farmer is in the process of bringing this field back into agricultural condition after it became overgrown. Scrub vegetation has been cleared and the surface regraded. Further cultivations will follow in due course prior to it being re-seeded to create a grass field. The farmer has in hand the re-instatement of the line of the bridleway.

Officer Comment: At the time of inspection the surface was found to be devoid of vegetation but not difficult to use. The farmer has agreed to define the line of the bridleway as required.

OSS Comment: The proposed route uses a private road A to G which appears to serve other dwellings and fields. OSS policy is to oppose diversions along farm tracks.

Applicant Comment: The track serves Sidnye Farm to the north and is only used by the farm to access fields and the farm buildings at Mizbrooks for agricultural purposes.

Officer Comment: The existing route runs east from Cleavers Lane on the access drive to Mizbrooks, and between A and B passes through the entrance area where vehicles are parked and manoeuvre. This area is avoided by the diversion. The farm track A-G takes farm traffic as explained by the applicant and is not considered likely to present difficulty or inconvenience to path users.

OSS Comment: There is concern that cyclists would find the proposed arrangement significantly inferior to the existing route because the proposed field edge route G-E would deteriorate under use by equestrians over unsuitable terrain, making cycling difficult or impossible.

Applicant Comment: There is no reason to expect the ground conditions on the proposed bridleway to be any worse than the existing route or for G-F-E to deteriorate any more than the existing route east of E, which is in good condition.

Officer Comment: This is a bridleway and so subject to use by horses. The proposed route has a greater length of hardened surface than the present route. The field-edge section has been in use for some time with no deterioration to the surface or evidence to suggest that this route would be more subject to wear or less convenient than the present route. Cycling UK together with a local cyclist group was included in the consultation but no response received.

7.5 *Is it expedient having regard to the effect on public enjoyment of the Way as a whole?*

OSS Comment: Between D and E the delightful ancient track of the existing bridleway, both cambered and hard, though in a woodland setting would be abandoned by this proposal, creating loss of enjoyment

to users. The confirmation test in s.119 (6) and the effect on public enjoyment of the way is not met.

Officer Comment: Part of the existing route, which is a pleasant woodland bridleway, will not be available to users if the path is diverted. However, the enjoyment of a route is a matter of individual preference and may balance a number of issues. The character of the proposed route is different but will provide a pleasant farmland route with attractive long distance views over wooded countryside, especially to the north. Further, as cited by another consultee, many bridleway users prefer to avoid passing close to a house and garden and so, in this respect, may find the proposed route more enjoyable. It is considered that, on balance, the proposed diversion will not make the way as a whole less enjoyable to users.

7.6 Other adverse comment:

OSS Comment: *The Rights of Way Review Committee Practical Guidance Note 6 2007* recommends at para 8, "where ways are not enclosed, footpaths should be of a minimum width of 2 metres and bridleways and byways 3.5 metres. If the way is to be enclosed by fencing, hedging or buildings then footpaths should be of a minimum width of 4 metres and bridleways and byways 6 metres". It is presumed that the diverted way G-F-E would be enclosed, particularly where other horses might be grazing in the field.

Applicant Comment: There is no requirement to enclose the proposed route G-F-E by fencing – it will run on the field edge in the same way as the existing route east of E. The landowner is aware of the width requirement.

Officer Comment: The continuation of this route eastwards, beyond the diversion, runs along the field edge and is unfenced. In rights of way terms this is the preferred option and it is understood the landowner has no need to fence this bridleway.

8. West Sussex Rights of Way Management Plan Considerations

- 8.1 The proposal has been examined in the context of the Rights of Way Management Plan and is considered to be in accordance with relevant provisions of the Plan, such as reducing the number of gates and thereby improving accessibility.

9. The Equality Act 2010 and Equality Impact Report

- 9.1 The Committee should be aware that the Equality Act 2010 bans unfair treatment, and seeks equal opportunities in the workplace and in wider society. It also introduced a Public Sector Equality Duty (PSED). The PSED requires the County Council to have due regard in all decision-making processes to the need to:

a) Eliminate discrimination, harassment, victimisation or other prohibited conduct;

b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and

c) Foster good relations between those who share a relevant characteristic and those that do not share it.

9.2 The relevant protected characteristics are age, disability, gender reassignment, marriage/ civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

9.3 The protected characteristic that could, potentially, be impacted upon by a bridleway diversion is disability. It is an overriding aim of the County Council to provide a path network that is accessible to all users and the needs of the disabled was a consideration of this application. The provision of a gap in place of a stile may make the path more accessible to the less mobile user. No other relevant impact upon any of the protected characteristics in the Equality Act 2010 emerged during the consideration of this application.

10. Crime and Disorder Act 1998 – Implications

10.1 The Sussex Police Designing Out Crime Officer has been consulted and advises that he supports the proposal.

11. Human Rights Act 1998 – Implications

11.1 It is unlawful for a public authority to act in any way which is incompatible with a convention right. The rights which should be considered are rights pursuant to Article 8, Article 1 Protocol 1, and Article 6.

11.2 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.

11.3 Article 1, Protocol 1 deals with the protection of property. Again this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.

11.4 The Committee should be aware of Article 6, the focus of which (for the purpose of this report) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complies with Article 6.

12. Resource Implications and Value for Money

- 12.1 It is the County Council's practise to exercise its power to consider applications for diversions from landowners. The applicant for this diversion has undertaken to pay the cost of making and advertising the Order and for works necessary to implement it as referred to in para 6. In the event of objections being received the cost of referring an Order to the Secretary of State cannot be charged to the applicant and must be covered by existing resources. Should the Secretary of State decide to hold a public inquiry or hearing, the County Council would bear this cost.
- 12.2 Cost/resource implications could also arise if the decision of the Committee should be challenged by way of Judicial Review.

13. Risk Management Implications

- 13.1 The decision to make a public Path Order is one that must be taken on strict legal tests. Officers believe that the tests have been satisfied in this case. If the application has not been determined in accordance with the tests, this could lead to a successful legal challenge by way of Judicial Review.

14. Overall Conclusion

- 14.1 The tests for the making and confirmation of a Diversion Order under S119 of the Highways Act 1980 are considered to have been met and it is recommended that an Order be made.

Matt Davey

Director of Highways, Transport and Planning

Background Papers

- (a) Applicant's letters dated 12 July 2016, 30 May 2017 and 28 February 2019 from Savills to the Rights of Way Officer.
- (b) Consultation documents dated 22 March 2019 and 10 April 2019 sent to: Ansty and Staplefield Parish Council; Mr Pete Bradbury, local County Council Member and Chairman of Central and South Mid Sussex County Local Committee; Mid Sussex District Council; the Ramblers; the Open Spaces Society; the South Downs Society; the Society of Sussex Wealdmen; The British Horse Society, County Access & Bridleways Officer for West Sussex; CyclingUk; West Sussex Cycling Forum; Sussex Police Designing Out Crime Officer and the utility companies.
- (c) Consultation replies from the Society of Sussex Wealdmen (27 March 2019), the Open Spaces Society (4 April 2019, 26 April 2019, 9 May 2019), the Sussex Police (1 May 2019), the British Horse Society (15 May 2019).
- (d) Equality Impact Report.

Agenda Item 5

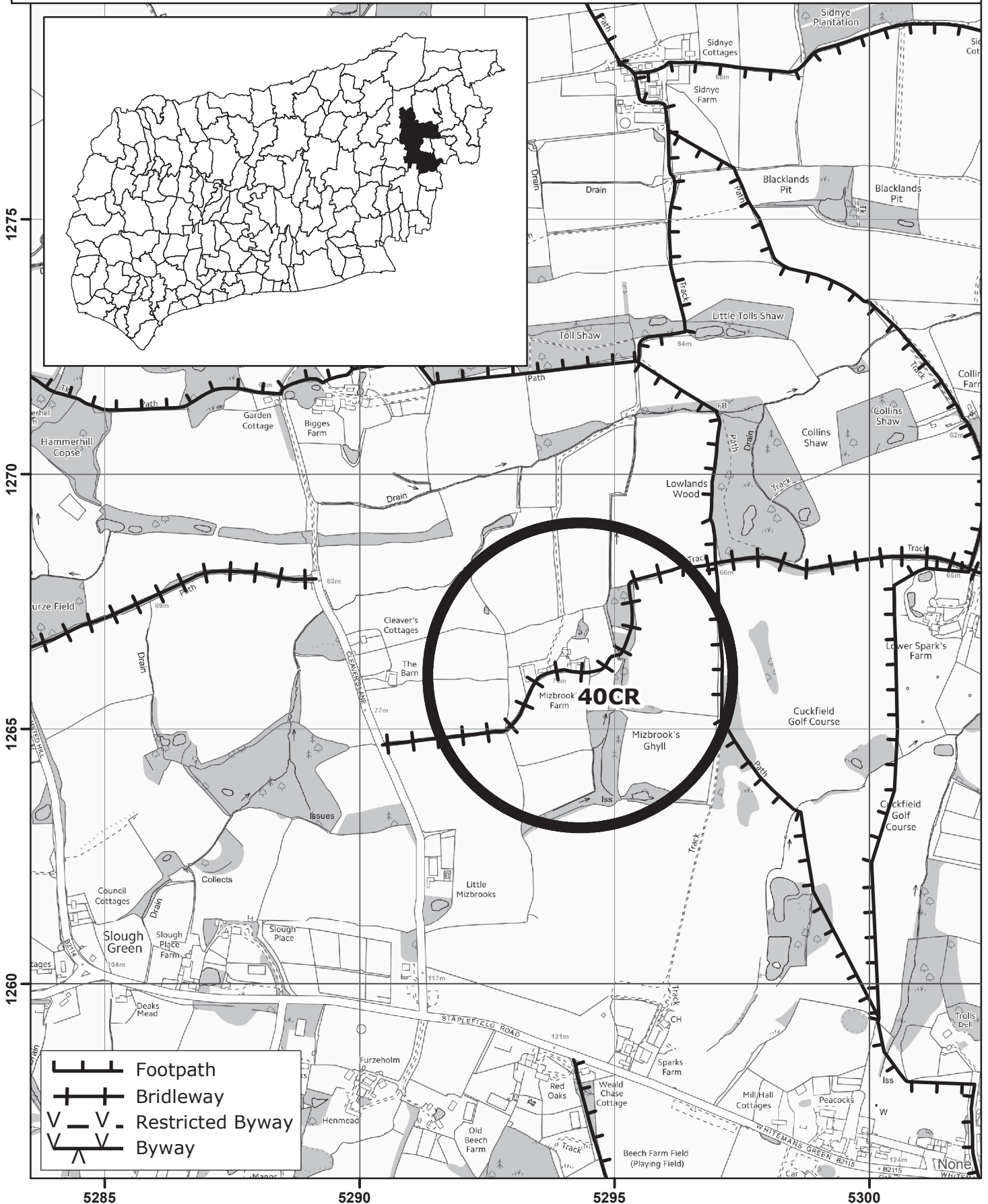
- (e) Rights of Way Officers emails to Open Spaces Society (24 April 2019, 8 May 2019).
- (f) Rights of Way Officers emails to Savills (29 July 2016, 6 March 2019, 9 May 2019)
- (g) Email dated 21 May 2019 from Savills to the Rights of Way Officer.

Appendices

Appendix 1 - Location Plan 01760
Appendix 2 - Proposal Plan 01761

Contact: Judith Grimwood
Tel: 03302 226 705

Parish: **Ansty and Staplefield**



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Ansty and Staplefield: Proposed Diversion of Part of Bridleway 40CR - Location Plan

Plan: 01760 1:10,000
Date: 11.03.2019

OS Sheet: TQ 22 NE
Grid Ref: 5290 1265







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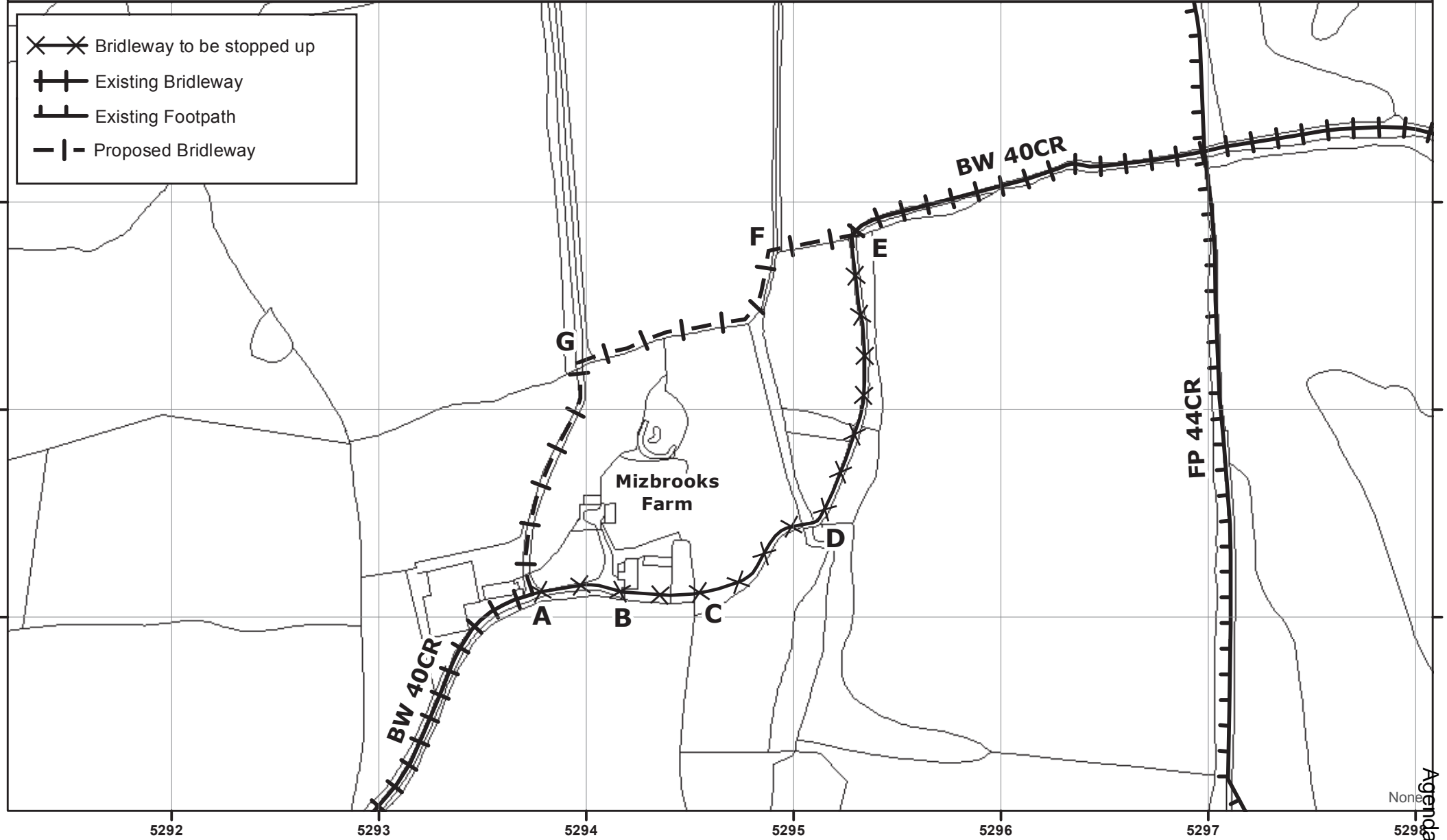
Matt Davey
Director of Highways and Transport




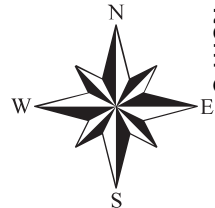
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 Bridleway to be stopped up
 Existing Bridleway
 Existing Footpath
 Proposed Bridleway

Page 27



Agenda Item 5

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Plan: 01761a	1:2,500	OS Sheet: TQ 22 NE	Photocopy liable to distortion	Matt Davey Director of Highways and Transport		
Date: 03.06.2019		Grid Ref: 5290 1265				

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Rights of Way Committee:**25 June 2019**

Yapton: Application for a Definitive Map Modification Order (Application No: 3/18) to add to the Definitive Map and Statement for Chichester a footpath from West of Drove Lane off FP200-1 at Point A (SU972034), to point B (SU971034) and terminating at point C (SU907031), in the Parish of Yapton.

Report by Director of Law and Assurance**Executive Summary**

The application, submitted by Mr Chris Smith and received on 12 March 2018 seeks to modify the Definitive Map and Statement for Chichester by adding a footpath from West of Drove Lane off FP200-1 at Point A (SU972034), to point B (SU971034) and terminating at point C (SU907031), in the Parish of Yapton.

All evidence in respect of this claim is available from Officers.

1. The application is made under Sections 53 (3)(c)(i) of the Wildlife and Countryside Act 1981.
2. The application is supported by documentary evidence only and is considered with reference to Section 32 Highways Act 1980.
3. The claimed route from points B to C is shown as a footpath on early Ordnance Survey maps pre 1909 and also on other archival evidence; the Boundary Remark Sketch map and remark books 1872 show the claimed route from points B to C annotated as a footpath; Yeakell and Gardner's Sussex also show a similar route to the claimed route.
4. It is considered that the claimed route from points A to B being shown as a route in Yeakell and Gardner 1778, depicted as a road in the Inclosure awards 1867 and the fact that it was the only access to the clearly marked footpath in the Boundary Remark Book 1872 and Boundary Sketch Map 1873 it can be concluded that historically a right of way can be reasonably alleged to have subsisted from points A to B.
5. On balance, it is concluded that on the basis of the documentary evidence produced the claimed route can be reasonably alleged to subsist as a footpath from points A to C.

Recommendation

That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981, to add a footpath to the Chichester Definitive Map and Statement for points A to C *be made*.

1. Characters and features of the route

- 1.1 The claimed route starts approximately 100 metres west of Drove Lane along the Chichester to Arundel canal shown as point A on the plan. The route continues heading west a few metres to the south and running parallel to the canal path. At point B, the route heads in a south westerly direction initially following the line of a drain/ditch and then diverting towards Frogs Lodge, where the claimed route meets Footpath 158 at point C and terminates. The application is supported by archive evidence alone. There is no user evidence supporting the application.

2. Land ownership

- 2.1 Land registry searches show there is one landowner for the claimed route and several tenants.
- 2.2 The landowner is Mr David Winston Langmead.
- 2.3 Adjoining land owners/tenants served notice of the application for an order include; Mr R Hocking of Drove Lane Farm, Drove Lane, Yapton BN18 OEB; D.Dean of 1st Yapton and Ford Scout Group, c/o 25 Tacklee road, Yapton BN18 OEB; the Occupiers of Frogs Lodge, Drove Lane, Main Road, Yapton, BN18 OEB; The Occupiers of 1 Drove lane, Main Road, Yapton BN18 OEB; The Occupiers of 2 Drove Lane, Main Road, Yapton BN18 OEB.

3. Consultations

- 3.1 Standard consultations were sent to the amenity groups, County Council internal departments, the District Council and the local member. The following comments were received:
- 3.2 Local Member, Jacky Pendleton, supports this application as a multi-user footpath for the use of walking, cycling & horse-riding.
- 3.3 The British Horse Society stated that they had no archival or user evidence to provide. They did however state that if the application was successful they would ask for consideration given to a possible upgrade of the route for the benefit of all including the land owner.
- 3.4 In considering the result of the consultations, members of the Committee are requested to bear in mind that, when determining this application they can only take into account evidence which demonstrates whether or not the tests in Section 53 have been satisfied.

4. Evidence submitted in support of the application

- 4.1 The application is supported by the following documentary archive evidence submitted with the application including a supplementary statement which was submitted on the 26 April 2018. The evidence is presented in order of consideration in the applicant's statement.

- 4.2 History of the application route
The applicant states that prior to construction of the Portsmouth and Arundel Canal, land to the west of Drove Lane was accessed off the main Yapton road by Rush Piece Lane which is shown in the deposited plan for the Portsmouth and Arundel Canal 1815. The applicant infers that a decision was taken not to put a bridge to serve Rush Piece Lane and instead this was put over Drove Lane. The claimed route along A to B is claimed to have been a cart track which ran south of today's footpath 200-1, the canal towpath. The applicant states that this cart track would have been required (being separate to the towpath) to avoid the steep incline down the embankment in order to reach Denges Barn. An extract from PAL Vines London's Lost Route to sea describes the difficulty of crossing such bridges at this time in history.
- 4.3 Yeakell and Gardner's Sussex 1778 and 1783 (Appendix 1 of applicant's statement)
The map was produced before the section of the canal was constructed. The applicant claims it is relevant to the application as it shows a route from Drove Lane via Denges barn through to Barnham was in existence before construction of the canal, although, it does not follow the exact line of the claimed route.
- 4.4 First Edition of the Ordnance survey County Series 25 inch to the mile map Sussex 1876. (Figure 6-8 of the applicant's statement)
The applicant states that the claimed route is clearly shown as a feature on the ground on this map although the status is not given. The accompanying book of reference marks the land which A to B passes over as "Towing path, &c.".
- 4.5 Second Edition of the Ordnance Survey County Series 25 inch to the mile map Sussex 1897 (Appendix 2 of the applicant's statement)
The applicant states that the claimed route is shown in the same way as the earlier Ordnance Survey maps but is now annotated as F.P. (footpath).
- 4.6 Ordnance Survey 25" to the mile county series map Sussex 62-11- Revised 1910, published 1912 (fig 9 of the applicant's statement)
The applicant states that the claimed route does not appear on this map or later maps.
- 4.7 Tithe map and apportionment for Barnham Parish (Appendix 3 of the applicant's statement)
The applicant states that the Tithe map shows a clear distinction between the towpath, canal and area of land immediately south; all of which is labelled as "Road and Water" on the Tithe map where application route A to B runs. The applicant highlights that there is a distinction from how the canal is depicted to the towpath alongside the canal.
- 4.8 Inclosure awards – order of exchange – R. Redford and A. D white 1867 (Appendix 4 of the applicant's statement)
The applicant states that the claimed route point A to B is shown on the plan attached to the order coloured sepia which is the same depiction as

Drove Lane and the main road. Points B to C are not shown, and the applicant points out that other footpaths known today are also not shown. The applicant asserts the claimed route may have come into being later than this document but concludes that the absence of other routes known to have existed means the accuracy of this as a record of rights of way cannot be relied upon.

- 4.9 Boundary Remark Book 1872 (Appendix 5 of the applicant's statement)
The applicant claims that the claimed route runs along or very close to the boundary being surveyed and appears on several pages of the boundary remark book. It is suggested this is strong evidence for the existence of the claimed route citing acceptance by both Parishes of the existence of the path, given the records were signed by the Meresmen of the parishes and nearly the entire claimed route is drawn over various pages in the book. The applicant also notes that all those footpaths which were so recorded in these books with no additional word "public" are today on the Definitive Map and are shown as "Footpath".
- 4.10 Boundary Sketch Map 1873 signed by Col. Bayly of the Royal Engineers (Appendix 6 of the applicant's statement)
The applicant states that the claimed route is clearly seen and annotated as "F.Path". The applicant states that these maps were advertised for public inspection and so provide good evidence for the existence of the path. They were also signed and approved by Meresmen of both Yapton and Barnham Parish.
- 4.11 Quarter Sessions
The applicant states that the claimed route does not appear to have been stopped up by an application to quarter sessions as there are no entries in this period.
- 4.12 Inland revenue Act 1910
The applicant states that the footpath was not on the ordnance survey edition 1:25000 base map used for these valuations so no conclusions can be drawn.
- 4.13 The Rights of Way Act 1932 (AM/796/13/5) Appendix 7
The applicant states that the claimed route was identified and numbered by Yapton Parish but was never claimed. The applicant also asserts that the claimed route was referred to in the Minutes between 1894 and 1954, which is the period when paths were recorded by the Parish under the 1932 Rights of Way Act and the 1949 National Parks and Access to the Countryside Act. Further, the applicant presents the map in figure 17 of their statement showing that the claimed route was identified and numbered on Yapton Parish maps but never adopted.
- 4.14 Supplementary applicant's statement
- 4.14.1 Ordnance Survey Instructions to Field examiners
The applicant submitted an additional statement on 26 April 2018. The additional statement drew reference from the Ordnance Survey Instructions to Field examiners by C Duncan *et al.*, 1905 accessed on the

Ordnance Survey Website. The applicant takes from this guide that although Ordnance survey maps are not considered evidence of public rights of way if footpaths can be seen going between well-defined objects of interest they are likely to be in use by the public. The applicant therefore suggests that the claimed route connects FP200-1 and 158. The applicant states that the fact the footpath was not shown from 1899 was likely to be because it was no longer apparent as the public ceased to use it in favour of an alternative route or because it became unusable as it was blocked. Ordnance survey maps only surveyed and marked visible tracks or routes. The applicant also makes reference to the fact that the evidence presented meets the test of reasonably alleged to subsist.

4.13.2 Boundary Remark Book 1872 (supplementary applicant's statement)

This was accessed by the applicant from the National Archives, Kew. The Boundary Remark Book page presented shows a Footbridge crossing the Boundaries between Yapton and Felpham which is marked as private. The applicant infers that the application route would have therefore been marked as private if it was considered so.

5. Evidence submitted in opposition /from the landowners/tenants

5.1 Richard N Hocking of Drove Lane Farm, Yapton, Arundel, West Sussex BN18 OEB

5.1.1 Richard Hocking has been a tenant farmer of the land in question for 48 years. He occupies the land in which the entire claimed route passes through.

5.1.2 He does not consider the claimed route to be a public right of way and states that 100+ years ago the route joined Frog Lodge to the canal.

5.1.3 Richard Hocking states that he has never seen the public use the route and it is visible from his residence.

5.1.4 Richard Hocking states that there is a post and wire fence which obstructs the claimed route just above point C which divides a paddock and arable field

5.1.5 Mr Hocking believes that the claimed route "serves no benefit to the public and crosses arable land and horse paddocks" He also states that the claimed route would be "an extreme inconvenience" to himself and it is "totally unnecessary".

6. Investigation by the County Council

The Archive evidence presented by the applicant as well as further archive evidence considered by the County Council is considered below in Chronological order and not in the same order as the applicant's statement and supplementary statement

6.1 Yeakel and Gardner's Sussex 1778 and 1783 (appendix 1 of applicant's statement)

There is a dotted line on this map indicating a route which appears to match the claimed route from A to B and then continues in a similar direction from points B to C, suggesting there may have been a route as a means of accessing Barnham, the status of the route cannot be determined from this map as there is no key.

6.2 Tithe Map Yapton Parish 1839 WSRO TD/W153 (appendix 1) and Tithe map Yapton national Archives IR30/35/306 (appendix 3 of the applicants statement)

The Tithe map obtained by the applicant (see section 4.6 and appendix 3 of the applicant's statement) is determined as being first class by the applicant. However, the National Archives have confirmed there is no evidence of the map being first class. The Tithe map held by West Sussex records office is a second class map, although second class maps were not sealed as they often had a minor flaw they were not necessarily inferior from a cartographer point of view (Planning Inspectorate DMMO guidance).

Considering the Tithe map in appendix 3 of the applicant's statement, a route is shown enclosed by two solid black lines along the application route A to C, towards point C the area opens up into a larger parcel labelled as 9a. The applicant states that the apportionment from A to B, 12a, is described as "road and water" there is a line separating the section corresponding to B to C labelled as apportionment 9a. Unfortunately it has not been possible to access the apportionments in the National Archives.

Considering the second class Tithe map obtained at West Sussex records office, no clear route is shown for point B to C. However, the area where a drain/ditch is shown in today's map running alongside the claimed route point B to C is shown as an enclosed strip of field leading into a larger section of field which is labelled "3.2.29". There is also a section with a small amount of water shown towards point C. This enclosed area could be interpreted as a path, however, there is no apportionment to confirm this. For points A to B of the claimed route, there is a single dashed line running along the canal and an apportionment 313, which is labelled as "Path waste land and Road".

Although both maps distinguish points A to B as a path and road, it is not possible to distinguish this section of the route from the present day's definitive footpath 200-1 which runs along the tow-path of the canal. Therefore, the Tithe maps do not determine whether or not a footpath was in existence at this time for points B to C or that a separate route exists alongside today's footpath 200-1 for points A to B.

6.3 Inclosure Awards – Order of Exchange 1867 WSCC Records Office reference Add Mss 28,658 (appendix 4 of applicants statement)

The plan does show a route from points A to B depicted by two solid parallel lines, however there is a line across the route at point B and although it is not clear it is considered the route is coloured sepia. A route is shown in a similar way from B to half way to point C, this section is not coloured.

The route is not mentioned in any of the plots described in the Order, Drove Lane is the only route/lane/road mentioned in the Order, this does not mean the right of way did not exist as it may simply not have been the purpose of the map to indicate public rights of way.

The applicant purports that the application footpath may have come into existence at a later date and that is why it is not shown, however, contradictorily the applicant also states that the footpath from A to B is shown on the earlier map Yeakell and Gardner 1778.

Despite this and the fact there is no key to the Inclosure award, it is considered that the depiction of the route A to B is an indication of the existence of a Highway as the plan depicts other highways (such as towards Climping and Drove lane) in the same way as point A to B.

6.4 Boundary Remark Book 1872 (applicants statement appendix 5 and supplementary applicant's statement)

The claimed route from C to B is clearly shown and marked as footpath with Frogs Lodge as a reference point. The applicant claims that Figure 12 shows a cart road which would be the claimed route from A to B. It is considered more likely that this cart road is beyond point B of the claimed route forming the route shown also on Ordnance Survey maps heading towards Denges Barn. Along A to B a single dashed line shows a route along the canal until it merges into a double dashed line marked as "cart road" (figure 12). In addition, thick dashed lines are shown marked as "Def" (meaning defaced) this is considered to show a parish boundary. There are no other images from the boundary remark book which show the claimed route A to B.

The map shown in the supplementary applicant's statement does not show the claimed route but shows another area where a Foot Bridge on the boundary is marked as private. The applicant concludes from this that the footpath on the boundary remark books showing the claimed route (section 6.4) would have been marked private if it was. This seems a logical conclusion and supports the claim that the claimed route had public status as a footpath as it is not annotated as private on the boundary remark book and clearly marked as a "Footpath" from points B to C.

The Boundary remark book 1872 provides fairly strong evidence that the claimed route B to C was public as it is labelled as footpath. The Boundary remark books were prepared by Ordnance Survey and the applicant states that they were checked by the Mersemen of each parish which is confirmed to be correct according to the National Archives. This

means these documents can be taken as good evidence a footpath was in existence from points B to C.

This record could also suggest the existence of a footpath along points A to B as although "Footpath" is not written along this section of the route it appears to be the only access to the clearly marked footpath along points B to C. In addition the fact that it merges into a cart road heading slightly southwards away from the canal indicates it did not follow the line of today's footpath 200-1 along the canal towpath and was in fact a separate route.

6.5 Boundary Sketch Map 1873 signed by Col. Bayly of the Royal Engineers (appendix 6 of applicants statement)

The claimed route is shown as a double dashed line from Frogs Lodge (roughly point C), following the "defaced" boundary in a northerly direction and is annotated with "FP". As the applicant states, this document would have been signed by both Parishes. Therefore the Boundary Sketch map clearly shows a footpath along the claimed route points B to C. Along point A to B a route seems to be shown as other roads depicted by two solid black lines running parallel to each other, however, there is no indication of the status of this route. The route does not appear to continue on beyond point B of the claimed route and again appears to be the only access point to the clearly marked footpath along points B to C.

6.6 Sussex Series 1 (1863-95) Local View (appendix 6)

Running immediately along the canal (A to B of the claimed route) is a single dashed line running within two parallel black lines. The single dashed line at point B continues westwards, now as a double dashed line, running parallel but south of the canal towards Denges Barn. There are also larger dashed markings with the wording "Def" (meaning defaced) running parallel to the canal but just inside the field boundary to the south, considering later maps (see paragraph 6.12) this marking is likely to be the parish boundary.

A route is marked by double dashed lines running along the drain/ditch to about 1/3 of the way towards definitive Footpath 158, where the route diverges from the drain/ditch (labelled 3ft R.H on this map), continues down to a tree and road and definitive footpath 158, which matches the line of the claimed route C to B. There is also a dotted line running in a similar direction to the claimed route from point B to C, which is also marked by "Def" which is most likely the parish boundary according to the Ordnance Survey maps general key held at the records office and comparing to other boundaries on the map.

Although a route does seem to be marked from B to C the nature and status of the route is not defined. The single dashed line also running from point A to B demonstrates the existence of a route. While it is difficult to separate footpath 200-1 to the claimed route, considering the continuation of the route to Denges Barn, it is thought likely that an additional route to the towpath would have been in existence from just after point A to allow access to Denges barn avoiding the steep bank of

the canal at point B. This is also indicated by the fact that the single dashed line merges into the double dashed line leading to Denges barn. Despite this inference the nature or status of the route as public or private is not confirmed and it could be the case that it was used as a private access to Denges Barn.

6.7 First Edition Ordnance Survey Sussex 1875 25 inch to the mile (Fig 6 and 7 of applicants statement and appendix 2)

The same route is shown as described in Sussex Series 1, except the dotted lines described along point B to C above are shown as thick single dashed lines. In addition, as stated by the applicant in paragraph 4.3 the parcel along the claimed route A to B just before point A is labelled 3 which is described as "Towing path &c" in the OS Book of reference.

6.8 Sussex Series 2 (1896-99) Local View (appendix 7)

The same route is shown as in the Sussex Series 1 map above, except in this map the route is annotated as FP (Footpath) along point B to C and becomes a single dashed line where the route meets the line of the drain/ditch heading north towards the canal between point B and C. In addition, no defaced path is shown along the canal. Although the status of the route is defined in this map from points B to C as footpath, Ordnance Survey maps cannot be relied on in determining whether a route is public or private as they came with a disclaimer to state that the representation of a track or way on a map was not evidence of the existence of a public right of way (See Planning Inspectorate consistency guidelines).

6.9 Second edition Ordnance Survey County Series 25 inch to the mile map 1897(Fig 9 of the applicants statement and appendix 3)

The same route is shown as in Sussex Series 2.

6.10 Sussex Series 3 (1909-16) and Sussex Series 4 (1930-46) Local View (appendix 8 and 9)

In both of these maps the route is no longer shown from points B to C. A route is still shown along the canal and the defaced dotted line is shown, both as described in Series 1 (section 6.6).

6.11 Ordnance Survey map 25 inch to the mile County Series Map Sussex 1912

The claimed route B to C is not marked. Where a drain/ditch is marked today is denoted by two solid black lines running parallel to each other. As in earlier Ordnance Survey maps there is a single dashed line running parallel and south to the canal which merges into a double dashed line at point B and then continues as a double dashed line to Denges Barn indicating the continuation of the way was used as access to Denges Barn and was perhaps private, although the status is not indicated on the map.

As also mentioned above in Paragraph 6.6, the continuation of the route from A to B onwards to Denges Barn suggests that this was not today's FP 200-1, which continues onwards along the towpath indicating there was likely a separate route to today's FP 200-1.

6.12 West Sussex Records Office National Parks and Access to the Countryside Act 1949 (AM/796/13/5) - Map Ordnance Survey map 1913 (appendix 4)

The claimed route from points C to B is not marked on the map, however, the route depicted as thick single dashed lines in the 1897 Ordnance Survey map and the dots in 1912 Ordnance Survey map are highlighted in green. The key states that the path marked in green is the correct path. However, looking at the Ordnance Survey key the marking of this route is similar to those of Parish boundary (dots) and the parliamentary division boundary (thick dashed lines). Other boundaries are shown in the same way on the map. It is therefore concluded that these markings are in fact the Parish Boundary and not the claimed route. This evidence is presented by the applicant under the Rights of Way Act 1932. Along Points A to B a route is depicted by a red line, however, this continues onwards along the canal towpath and therefore it is considered to show footpath 200-1 and not the claimed route.

6.13 Map from Yapton Parish council believed to be held as part of the Rights of Way Act 1932 (figure 17 of applicants statement)

The applicant also submitted a document held at Yapton Parish Council Office and although this was not looked at directly, the picture provided by the applicant (Fig 17 of the applicant's statement) has been reviewed. The claimed route from points B to C is marked on the map as FP and is marked with the number 16 in pencil. It is unclear if the FP line is scribbled out or ticked. The applicant also states that although it is assumed the map was used by the Parish to record paths it is not annotated as such and so this is a presumption but provides evidence that the existence of a route was perhaps debated at this time.

Points A to B of the claimed route is numbered 22. However, it is not clear this section joins the route B to C and it is difficult to separate from FP 200-1, although there does seem to be divergence at about point A into two routes; the towpath (fp 200-1) and a route that continues onwards past point B.

6.14 Ordnance Survey Sussex 1938, 25 inch to the mile fourth edition (appendix 11)

This map is the same as the 1912 edition.

6.15 Inland Revenue Act 1910

The book was held but no maps accompanied it so it did not provide any useful information.

6.16 Draft and provisional Definitive Map

Neither of these maps show the claimed route from point A to C. However, along section B to C a yellow line with black dots is shown and seems to meet Footpath 200-1 at point B. This dotted line is also shown on all four of the Sussex Series maps (see descriptions below sections 6.6, 6.8 & 6.10) as well as the 1897 Ordnance Survey map and Ordnance Survey Map 1913. The dots run on a similar path to the claimed route, however, the markings do resemble that marking Parish Boundaries (as defined by an Ordnance Survey general key) and the

Parish Boundary for Yapton/Barnham today is located to the west of the claimed route at the far end of the field where the route is located.

6.17 Adcock's survey (1974)

The route is not recorded on this map.

6.18 Definitive Map

There is currently no Right of Way marked on the definitive map from points A to C. Although along point A to B footpath 200-1 runs along the canal.

6.19 Supplementary applicant's statement - Ordnance Survey Instructions to Field examiners

Although the claimed route does connect two points of interest as the applicant states (section 4.13.1) this does not alter the fact that Ordnance Surveys carry a disclaimer stating that the representation of a track or way on a map was not evidence of the existence of a public right of way and the courts have treated Ordnance Survey maps as not being evidence of the status of a way (Planning Inspectorate consistency guidelines) on their own. The applicant also states that the route was likely no longer shown after 1899 because it was no longer in use and Ordnance survey maps only marked visible tracks and routes on the ground. While this is a reasonable suggestion as Ordnance Survey maps show features on the ground, it is an assumption only. However, as the applicant highlights, the evidence is enough to reasonably allege existence of a right of way prior to 1899 particularly considering all other evidence as well as the Ordnance Survey maps.

7 Consideration of claim

7.1 The application was submitted with archive evidence summarised in section 4 of this report. The investigating officer conducted a thorough investigation into the evidence submitted and the County Council's archives at the WSCC record Office as summarised in section 6 of this report. Evidence against the claimed route is summarised in section 5 of this report. The Rights of Way Ranger for Yapton conducted a site visit and took photographs of the northern section of the route.

7.2 In determining the application it is necessary to decide whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a footpath exists between points A and C, or in the alternative that a footpath between points A and C is reasonably alleged to subsist, which is a lower test. This lower test requires that a reasonable person, considering all relevant evidence available could reasonably allege a public right of way subsists. The burden of proving this falls to the applicant.

7.3 Matters relating to suitability and condition of a way and possible nuisance or need are irrelevant and cannot be taken into account when reaching a decision

7.4 **Archive Evidence**

7.4.1 The applicant and County Council's investigation has brought forward considerable archival information on the claimed route. The earliest historic evidence considered is Yeakel and Gardner's Sussex 1778 and 1783 and the latest being the Adcock's Survey 1974. The claimed route has been considered in two sections A to B and B to C.

7.4.2 **The claimed route from A to B.** This section of the route is difficult to determine as on some of the historic maps it is difficult to decide if the route shown along the canal is the claimed route or definitive footpath 200-1 already in existence. In addition its status is not clearly defined in any of the maps considered.

Despite this, it is considered that although no single piece of evidence confirms the claimed route points A to B as a footpath, taking the following evidence together the claimed route can be reasonably alleged to be a footpath; Yeakell and Gardner 1778 in which it is depicted as a single dashed line, the Boundary Remark Book 1872 depicted as a single dashed line providing access to the footpath between B to C, the Boundary Sketch Map 1873 depicted as other roads and again providing the only access to the marked footpath points B to C and the Order of Exchange 1867 depicted as other roads, suggesting status as a highway.

In relation to distinguishing the claimed route from footpath 200-1, it is concluded that it can be reasonably alleged that in the OS maps the clear continuation from point B to Denges Barn suggests that this was not today's FP 200-1 which continues along the towpath and not to Denges Barn. Thereby indicating it was likely there was a separate route to today's FP 200-1. In addition, although this continuation to Denges Barn could indicate private access, the change in depiction from a single dashed line (points A to B) to a double dashed line (points B onwards parallel to the canal) in the OS maps could also indicate a change in status in the route from point B onwards.

Lastly, the route A to B seems to be the only access to the claimed route along B to C, which is clearly marked as a footpath in the Boundary Remark Book 1872 and Boundary Sketch Map 1973; therefore suggesting the claimed route along A to B could be reasonably alleged to subsist as a public right of way.

7.4.4 **The claimed route from B to C.** A route heading in a similar direction to the claimed route is shown in Yeakell and Gardner's Sussex 1778. Part of the claimed route is first shown, following the same line as the claimed route from point C to B in the early Ordnance Survey maps series 1 and the 1875 Ordnance Survey map as a double dashed line. The path is then annotated as "FP" (footpath) in later versions, Ordnance Survey Series 2 and the Ordnance Survey map 1897. Part B to C of the claimed route is shown on the "Boundary Sketch Map" in 1873 and annotated as "FP". The Boundary remark book 1872 also shows the route from points B to C annotated as "footpath". From 1909 onwards, the route from point B to C is not shown on the Ordnance Survey maps. It

could be alleged that the claimed route is shown on maps from the 1932 Rights of Way Act, although it is unclear if the annotation of this footpath labelled as number 16 is ticked or crossed out.

- 7.4.5 It should be noted that the practice of annotating footpaths on Ordnance Survey maps on a large scale began in 1893 and from 1888 Ordnance survey maps carried a disclaimer that evidence of a track or way on the map is not evidence of the existence of a public right of way.

8 Conclusion

- 8.1 The application route from points B to C is shown as a footpath on early Ordnance Survey maps pre 1909 and also on other archival evidence; the Boundary Remark Sketch map and remark books 1872 shows the claimed route from points B to C annotated as a footpath, Yeakell and Gardner's Sussex also show a similar route to the claimed route and it is therefore be concluded that historically a right of way can be reasonably alleged to have subsisted from points B to C.
- 8.2 On balance, it is considered that the claimed route from points A to B being shown as a route in Yeakell and Gardner 1778, depicted as a road in the Inclosure awards 1867 and the fact that it was the only access to the clearly marked footpath in the Boundary Remark Book 1872 and Boundary Sketch Map 1873 it can be concluded that historically a right of way can be reasonably alleged to have subsisted from points A to B.
- 8.3 Therefore, on balance, it is concluded that on the basis of the documentary evidence produced that the claimed route can be reasonably alleged to subsist as a footpath from points A to C.
- 8.4 It is therefore recommended:
that a Definitive Map Modification order under Section 53 (2) in consequence of an event specified in sub-section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981, to add a footpath to the Definitive Map and Statement or points A to C be made.

9. Resource Implications and Value for Money

- 9.1 The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.
- 9.2 Cost implications arise:
- In the event of an order being made and objected to;
 - The matter may fall to be considered at a public local inquiry or a public hearing.
 - Should an order be made and confirmed;
 - if any works are necessary to ensure the path is open for public use.
 - Should the decision of the committee be challenged by way of Judicial Review.

- 9.3 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on legal tests and the above costs cannot be a consideration in the determination of the application.

10. Risk Management Implications

- 10.1 The decision is one that must be taken on strict legal tests:
- If the application is not determined in accordance with the relevant legal tests this could lead to a successful legal challenge by way of Judicial Review.
 - In the event that an order is made the landowner could object to the making of an order to the Secretary of State and the matter be considered by way of written representations, hearing or public inquiry.
- 10.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

11. Crime and Disorder Act Implications

- 11.1 The Definitive Map Modification Order process involves the application of legal tests, which mean that it is not possible to give weight to any effect on crime and disorder.

12. Human Rights Act 1998 Implications

- 12.1 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 12.2 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 12.3 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.
- 12.4 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

13. Equality Act 2010 – Equality Impact Report

- 13.1 The Committee should be aware that the Equality Act 2010 bans unfair treatment, and seeks equal opportunities in the workplace and in wider society. It also introduced a Public Sector Equality Duty (PSED). The PSED requires us to have due regard in all decision making processes to the need to:
- a) Eliminate discrimination, harassment, victimisation or other prohibited conduct;
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
 - c) Foster good relations between those who share a relevant characteristic and those that do not share it.
- 13.2 The relevant protected characteristics are age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 13.3 No relevant impact upon any of the protected characteristics in the Equality Act 2010 emerged during the consideration of this application.

Tony Kershaw

Director of Law and Assurance

Background Papers

- (a) Application plan and map (DMMO3/18)
- (b) Evidence submitted in support of the application (archive evidence)
- (c) Evidence submitted against the application
- (d) Archive evidence
- (e) Equality Impact Report

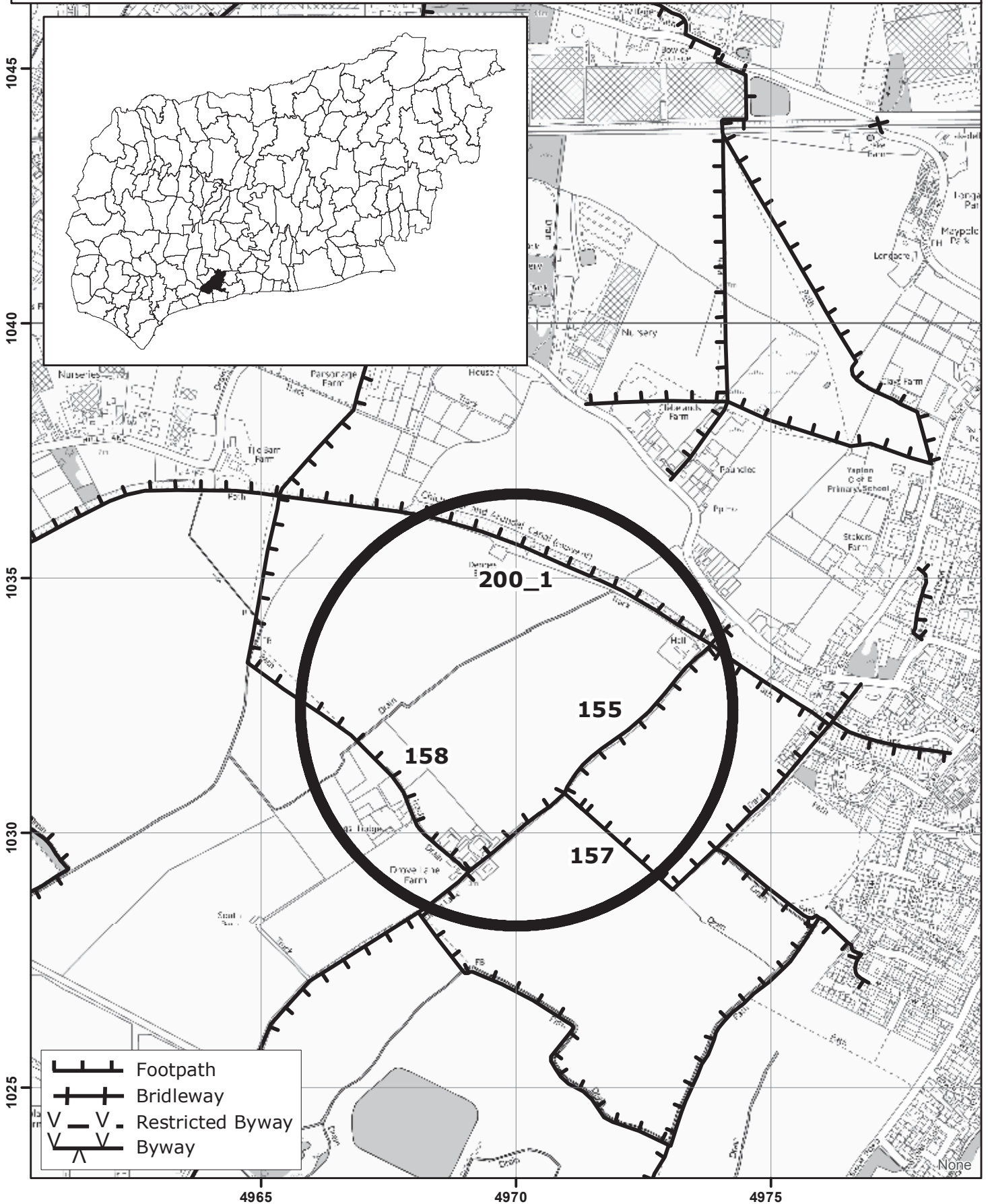
Appendices

Appendix 1 - Location Plan 01771
Appendix 2 - Proposal Plan 01772

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Parish: **Yapton**

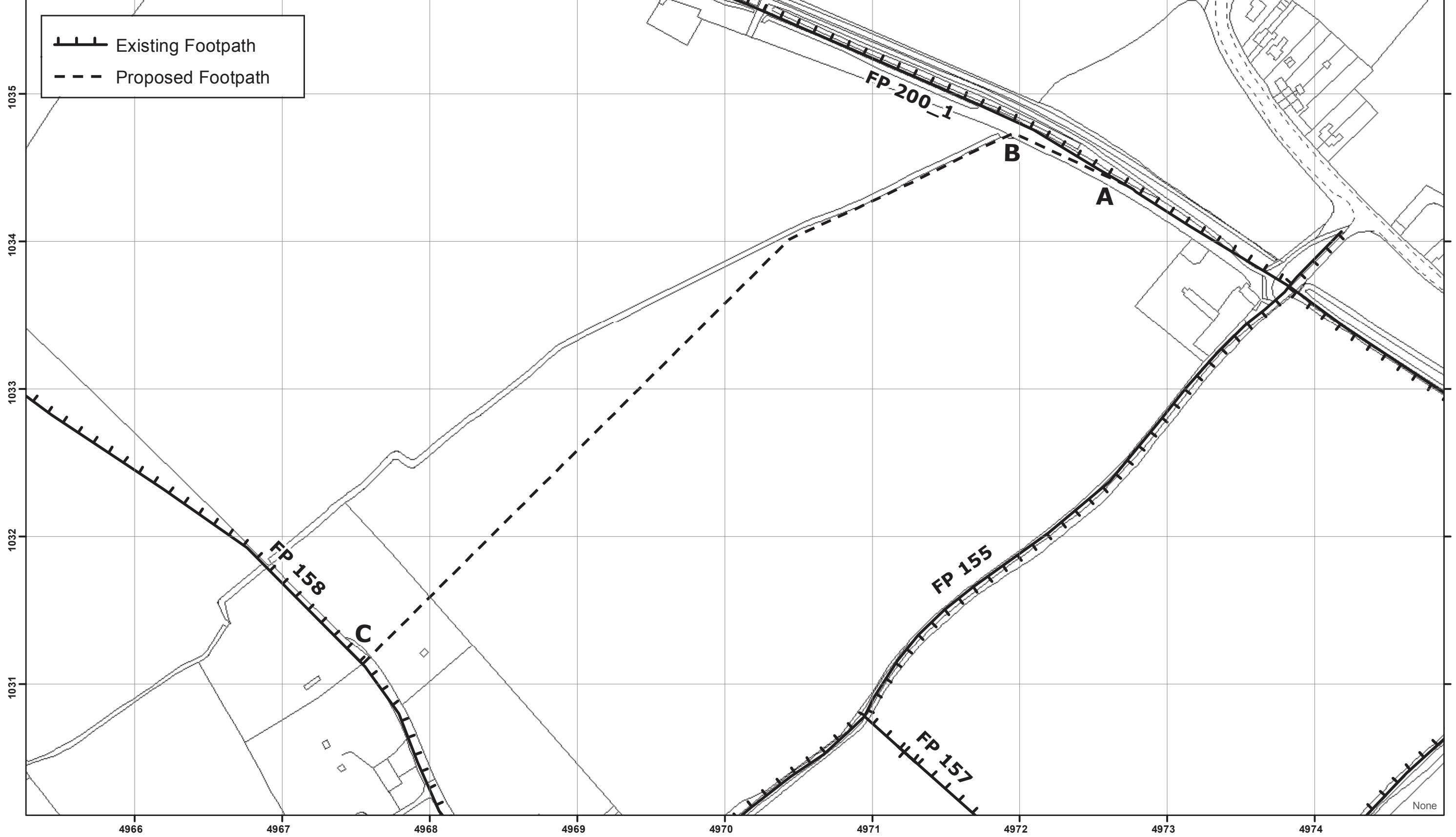


Yapton: Proposed addition of a FP - Location Plan

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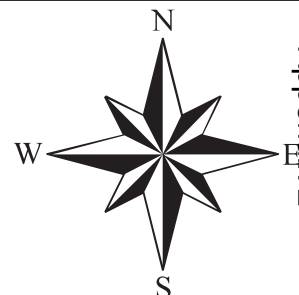
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**Yapton: Proposed addition of a FP
- Site Plan**



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Matt Davey
Director of Highways,
Transport and Planning

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