

Public Document Pack

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11 October 2019

Rights of Way Committee

A meeting of the committee will be held at **2.15 pm** on **Tuesday, 22 October 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 5 - 10)

The Committee is asked to confirm the minutes of the meeting held on 25 June 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 11 - 14)

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 15 - 18)

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. **Definitive Map Modification Order** (Pages 19 - 46)

Report by the Director of Law and Assurance.

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

Climping and Littlehampton CP: Applications for Definitive Map Modification Orders (Application No's: 2/17, 3/17 and 4/17) to add to the Definitive Map and Statement for Chichester a *restricted byway* between points D and E on plan 01733a and upgrade of a section of Footpath 829 between points A to D on Plan 01733a and to upgrade footpath 174 between points E and F on the Plan to a restricted byway, in the parish of Climping and town of Littlehampton

6. **Secretary of State Decision** (Pages 47 - 50)

Report by the Director of Law and Assurance.

The Committee is invited to note the following decisions by the Secretary of State:

West Sussex County Council (Elsted & Treyford and Harting) Public Path (No. 871) Diversion Order 2017

West Sussex County Council (Elsted & Treyford) Public Path (No. 872) Diversion Order 2017

West Sussex County Council (Elsted & Treyford) Public Path (No. 873) Diversion Order 2017

7. **Secretary of State Decision** (Pages 51 - 54)

Report by the Director of Law and Assurance.

The Committee is invited to note the following decision by the Secretary of State:

West Sussex County Council (Chichester No. 1 (Parish of Walberton and Arundel addition of a Restricted Byway and Upgrade of Footpath 342 to a Bridleway)) Definitive Map Modification Order 2018

8. **Secretary of State Decision** (Pages 55 - 58)

Report by the Director of Law and Assurance.

The Committee is invited to note the following decision by the Secretary of State:

DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly

9. **Date of Next Meeting**

The next meeting of the Committee will be held at 2.15 p.m. on Tuesday 10 March 2020.

To all members of the Rights of Way Committee

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Rights of Way Committee

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

Present: Mr Whittington (Chairman)

Mr Acraman, Mr Boram, Dr O'Kelly, Mr Quinn, Mrs Russell, Lt Col Barton and Mr Patel

Apologies were received from Mr Bradbury, Mr Baldwin and Mrs Purnell

Substitutes: Lt Col Barton and Mr Patel

Also in attendance: Mrs Pendleton

Part I

1. Committee Members

1.1 The Committee thanked Mrs Duncton for her work on the Committee and welcomed Mr Boram as a member. The Committee also wished it noted that Mr Baldwin is unwell and wished him a speedy recovery.

2. Declarations of Interest

2.1 No declarations of interest were made.

3. Minutes of the last meeting of the Committee

3.1 The Committee noted an error in minute 20; the title of the first of the Southwater public paths should read '1642', not '2642'.

3.2 Resolved – that the amended minutes of the meeting held on 5 March 2019 be approved and signed by the Chairman as a correct record.

4. Urgent Matters

4.1 There were no urgent matters.

5. Previous Decisions Progress Report

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

6. Outstanding Applications and Delegated Decisions

6.1 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).

7. Public Path Order Proposal

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

7.1 The Committee considered a report by the Director of Highways, Transport and Planning concerning an application to divert part of Public Bridleway 40CR at Mizbrooks Farm near Cuckfield. Judith Grimwood, Senior Rights of Way Officer introduced the report. It is considered that the legal tests for making and confirming the order have been met.

7.2 The Chairman read out the following statement from Mr Bradbury, local member for Cuckfield and Lucastes who was unable to attend:

“Unfortunately I am unable to attend Rights of Way Committee on 25 [June 2019]. However, this application is in my division, I have no objections to it and to date have received no submissions about it either for or against.”

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

- The application site is very rural and in a particularly attractive part of West Sussex.
- The comments of the British Horse Society’s County Access & Bridleway’s Officer for West Sussex that the proposed diversion would be “enjoyable to use”, as recorded in 7.1 of the Committee report, were highlighted; whilst this is subjective the preference “not to be in close proximity to the house and garden” supports the case for better privacy and security of the landowner’s property.
- Empathy was expressed for situations, such as in the case of this application, where landowners have public rights of way through their gardens.
- The objection made by the Open Spaces Society is considered to be unreasonable in the case of this application, where the proposed diversion route is a perfectly acceptable alternative route.

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

7.5 Resolved – 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.

8. 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.

8.1 The Committee considered a report by the Director of Law and Assurance concerning an application to add to the Definitive Map and Statement a footpath from West of Drove Lane off FP200-1 at Point A, to point B and terminating at point C, in the Parish of Yapton. Charlotte Nash, Legal Assistant, introduced the report. It is considered that the lower legal test for making the order have been met, that is that it can be reasonably alleged that a footpath subsists. For the avoidance of doubt the Council is required to consider whether the applicant has shown on the balance of probability that a right of way subsists, or that it is reasonably alleged to subsist.

8.2 Mr Jonathan Cheal, solicitor, Moggers, Drewett, Wells, Somerset, representing Mr Langmead, the landowner spoke in objection to the application. Evidence in favour is unusually thin, evidence against is strong. The law requires that documentary evidence should show, on balance, that it is sufficiently strong to infer dedication. The land is and has always been privately owned farm land and there is no evidence of express dedication or acceptance/use by the public. Route A-B forms part of an existing footpath, which historically will have formed a farm access to Denges Barn. B-C is a non-existent route; maps are misleading – there is a drain [ditch/watercourse] immediately west of the route which looks like a path but is not, and also the alleged route is along the eastern boundary of a section of the parish. The OS First Edition 1876, the 1896 OS Map and boundary remarks sketchbook plans are insufficient to prove a public right of way (PROW); these may show footpaths markings but they are not necessarily evidence of a PROW. Section 5 of the report does not summarise evidential material against, but only contains the information provided by the tenant farmer: a balancing exercise would include primary sources where the route is not shown, which are: Yeakell & Gardner 1778, 1839 Yapton Tithe Map, 1867 Inclosure, 1910 Finance Act, 1949 Act (parish survey and definitive map), adding weight to the body of evidence against this being PROW.

8.3 Mrs Hilary Pierce, representing Mr Chris Smith, the applicant, and also a member of Mid Sussex Bridleways Group spoke in support of the application. Mrs Pierce stated that the Committee report is fair and balanced in its conclusions to the recommendation that the order be made. A similar route can be seen on Yeakell & Gardner's 1778 map and is likely to be an ancient customary way. The altered course of the route seen later was the result of the construction of the Portsmouth and Arundel canal around 1820. It is unlikely that Ordnance Survey would have regarded a purely private path used by one household as a feature worthy of note on the boundary records. It is asserted that the route is blocked by a post and wire fence and that no public have been seen using the route during the tenant farmer's 48 year tenure. Mrs Pierce stated that maps have not shown the route since 1910, but there is a legal maxim "once a highway, always a highway" and a highway continues to exist unless there is evidence the route has been legally stopped up. Lack of use does not stop a route from carrying highway rights. Concerns about inconvenience and amenity value are not relevant.

8.4 The Chairman noted that Mrs Jacky Pendleton, local member for Middleton is in support of the application. Mrs Pendleton had no evidence but supports the addition of the route, which she considered could be a multi user path. In order to avoid possible confusion, the Chairman confirmed that the application was not about a multi-user path but about the route of a footpath.

8.5 During the debate the Committee made the points below.

Clarification was provided by Officers, where applicable:

- There is no evidence of use and this is a case made on historic archive evidence only. Officers clarified that from the historic archive evidence provided it is possible to determine that the footpath may be reasonably alleged to subsist, which is a lower test than balance of probabilities. If the evidence is finely balanced but there is no incontrovertible evidence that the claimed route could not subsist, then the test is met and an order should be made. With reference to S.32 Highways Act 1980, the weight to be given to the archive evidence is at the discretion of the Committee. The Committee noted that Mr Cheal made a strong case in opposition against the recommendation and the five documents mentioned by him, which support the case against, are significant. The fact that old documents show 'F' or 'FP' is not necessarily determinative of public status.
- Opinions were stated that route B-C does not go anywhere and that there is nothing of note at the end of the claimed route, but also that this should be considered irrelevant in determining the application. Additionally, it was noted that there are other paths close by.
- The case in support of the application has not been made and evidence would not hold up under the test of 'balance of probabilities'. It was also not considered that the evidence showed it was reasonable to allege the subsistence of a way. The Committee requested clarification on whether additional exploration of the archive evidence would be helpful. Officers advised that this would be unlikely to provide any further evidence or clarity – all archival evidence has been considered and commented on.

8.6 The motion below was proposed by Mr Boram and seconded by Mr Patel, and was voted on by the Committee and approved by a majority.

8.7 That, having considered the archive evidence summarised in the report and having heard the representations, the Committee's view on weight to be given to the archive evidence including, in particular, the antiquity of the documents and purposes for which the maps were produced, it is concluded that the claimed route is not reasonably alleged to subsist for the following reasons:

- Yeakell & Gardner 1778 was produced before the Portsmouth and Arundel Canal was constructed and so is not strong or persuasive evidence of the existence of the claimed route A-C.
- Tithe Mapping - While the mapping does distinguish a route A-B it is not possible to be certain this is different to FP200-1, which

runs along the tow path. Route B – C is not clearly shown on the Order of Exchange - while route A-B is shown coloured sepia (like Drove Lane); route B-C is not shown.

- While shown on early OS mapping, the status of the Claimed Route is not defined. OS maps are not determinative as to status.
- The claimed route did not appear on OS mapping after 1897.
- The claimed route was not included on the original Definitive Map.

8.8 Resolved – For the reasons given in minute 8.7 above, that an order under S.53 (2) of the Wildlife and Countryside Act 1981, 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 West of Drove Lane off FP200-1 at Point A, to point B and terminating at point C (SU907031), in the Parish of Yapton to the Chichester Definitive Map and Statement *be not made*.

9. Date of Next Meeting

9.1. The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday, 22 October 2019.

The meeting ended at 3.14 pm.

Chairman

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Rights of Way Committee 22 October 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

Table 1: Previous Decisions Progress

* indicates a change in position since the last meeting

	Subject	Date Considered by Committee or Date of Delegation	Current Position
1*	Bramber: DMMO 3/14 Addition of BW from RB 2059 to used route of BW 3183	Committee 07.06.16	Agreement completed
2*	Elsted: FPs 871 and 872, diversions	Delegated decision 01.12.16	Report to note before this Committee
3*	Slinfold: DMMO 1/15 Addition of FP from BW 3569 to FP 1467 on land east of Hayes Lane	Delegated decision 08.02.17	Order submitted to the Secretary of State for determination on the 25.06.19
4*	West Hoathly: Addition of a FP between Top Road and Station Road	Delegated decision 17.11.17	Agreement completed
5*	Arundel: DMMO 1/16 Addition of a FP from Queens street to Fitzalan Road	Committee 20.02.18	Order to be determined by written representations
6*	Horsham: DMMO 4/16 Addition of a FP from Coney Croft cul-de-sac to FP 1586/2	Committee 20.02.18	Order submitted to the Secretary of State for determination on the 09.03.19

	Subject	Date Considered by Committee or Date of Delegation	Current Position
7*	Pulborough: DMMO 2/15 Addition of a FP from FP2337 to FP2409	Delegated decision 20.04.18	Orders made
8	Lancing: FP 2048 Adur & Worthing S257 diversion consultation	Committee 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.
9*	Rogate: DMMO 5/16 Addition of a FP at Fyning Twitten	Committee 12.06.18	Order submitted to the Secretary of State for determination on 26.06.19
10	Dunton: Creation of new FP	Delegated decision 18.10.18	Agreement drafted and awaits landowner's signature.=
11	Billingshurst: Creation of new link to FP 1321	Delegated decision 23.10.18	Agreement drafted and awaits landowners' signature.=
12*	Billingshurst: FP 1928 diversion and S25 dedication	Delegated decision 25.10.18	Orders made
13	Haywards Heath: FP 28CU Mid Sussex District S257 diversion consultation	Delegated decision 31.05.18	Order made by the District Council
14*	Walberton and Arundel: DMMO 1/18 Addition of a restricted byway and upgrade of FP 342	Delegated decision 29.10.18	Report to note before this Committee
15	Washington: Creation of BW	Delegated decision 14.02.19	Agreement to be prepared once landowner has provided evidence of landownership
16*	Sharpthorne: DMMO 2/16 Addition of BW between Top Road and Sharpthorne Road and upgrade of FP2WH to BW	Committee 05.03.19	Report to note before this Committee
17*	Horsham: DMMO 6/17 Addition of a FP at Dickins Way	Delegated decision 29.04.19	Order confirmed
18*	Horsham: DMMO 4/18 Addition of a FP at Mill Bay Lane	Delegated decision 24.04.19	Order confirmed

	Subject	Date Considered by Committee or Date of Delegation	Current Position
19	Horsham: TVG 30/47 Proposed registration Land at 14A New Street, Horsham	Application withdrawn	Application withdrawn
20*	Slaugham: CL319 De-registration of part of the common land at Lower Ashfold, Coos Lane, Slaugham	Delegated decision 21.05.19	Land de-registered
21*	Haywards Heath: FP 25CU diversion	Delegated decision 30.05.19	Order made
22*	Ansty and Staplefield: S119 diversion BW 40CR, Mizbrook Farmhouse	Committee 25.06.19	Order to be made
23	Yapton: DMMO 3/18 Addition of FP west of Drove Lane	Committee 25.06.19	Decision not to make order. Decision has been appealed by applicant, currently with the Planning Inspectorate

Matt Davey

Director of Highways, Transport and Planning

Tony Kershaw

Director of Law and Assurance

Contacts:

Definitive map modification orders and common land/town and village greens:

Ami Dye: ext. 22687

Divisions, extinguishments, creations, permissive path proposals:

Judith Grimwood: ext. 26705

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**Rights of Way Committee
22 October 2019**

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

1a. Applications for Definitive Map Modification Orders

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

Table 1: Applications for Definitive Map Modification Orders

	Parish	Application No.	Claim	Date application received
1	Barnham and Flansham	7/19	Upgrade of FP's 146, 147 and part of 153 to BW and the addition of a BW	01.08.19
2	Bognor, Bersted and Felpham (1)	4/19	Addition of FP commencing on Brooks Lane crossing the Aldingbourne Rife and continuing across two fields to Downview School and path (3)	23.05.19
3	Bognor, Bersted and Felpham (2)	5/19	Addition of FP commencing from path (1) cutting across the fields and continuing to Felpham Leisure Centre; and	23.05.19
4	Bognor, Bersted and Felpham (3)	6/19	Addition of a circular path around the main field adjacent to Aldingbourne rife	23.05.19
5	Climping	2/17	Upgrade FP 174 to RB	11.04.17
6	Climping	3/17	Upgrade FP 829 to RB	11.04.17
7	Climping	4/17	Addition of RB	11.04.17
8	Henfield and Woodmancote	2/19	Upgrade FP 2540 to RB and to addition of a RB	05.03.19
9	Horsham	7-10/18	Addition of 3 FPs in Piries Place	05.02.18
10	Rogate	5/17	Addition of FP Fyning Lane from FP 1162 to join with DMMO 5/16	31.10.17
11	Steyning	1/19	Addition of FP which links FP 2713 to FP 2704/1 (Mouse Lane)	27.02.19

	Parish	Application No.	Claim	Date application received
12	West Wittering	3/19	Addition of BW from Redlands Lane to the B2179 at Malthouse Cottages (Sheepwash Lane)	28.02.19
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

Table 2: 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
Shoreham-by-Sea	TVG 30/49	Application to deregister part of VG51 Kingston Beach – buildings and curtilage wrongly registered as town and/or village green	08.08.19

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

Table 3: Creations and permissive path proposals, diversion and extinguishment applications and District Council consultations received

	Parish	Path No	Proposal	Date Received	Date of Decision	Category
1	Ashurst	FP 2502	Diversion	21.01.16		A
2	Barlavington	New footpath	Permissive path proposal	01.05.18		B
3	Bosham	FP 238	Diversion	25.07.16		A
4	Cowfold	FP 1773	Diversion	04.05.14		C
5	Crawley	FP 360Sy	S257 Diversion (Crawley Borough Council)	11.03.19		B
6	Earnley / Sidlesham	New footpaths, permissive footpaths and bridleway	Path creation	22.10.18	25.09.19	G
7	Eastergate	FP 323	Diversion (Network Rail)	16.02.15		A
8	Fulking	FP 5_1	Diversion	28.06.16		A
9	Hassocks	FP 10C	S257 Diversion (Mid Sussex District Council)	04.06.19	07.08.19	G
10	Itchingfield / Southwater	New path links	S25 creation of new BW and upgrade of FP to BW to improve connection to Downs Link	ongoing		G
11	Kirdford	FP 614_1	Diversion	11.07.13		C
12	Pagham	FP 133	Diversion	01.08.16	19.06.19	G
13	Pulborough	FP 2312	Extinguishment (Network Rail)	17.01.13		A
14	Selsey / Sidlesham	FP 76	Path creation	06.12.18		B
15	Southbourne / Chidham / Hambrook	FP 258	Extinguishment (Network Rail)	11.11.12		B
16	West Wittering	BW 20	Diversion	07.06.13		C

Matt Davey

Director of Highways, Transport
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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**

Unrestricted

Rights of Way Committee**22 October 2019**

Climping and Littlehampton CP: Applications for Definitive Map Modification Orders (Application No's: 2/17, 3/17 and 4/17) to add to the Definitive Map and Statement for Chichester a *restricted byway* between points D and E on plan 01733a and upgrade of a section of Footpath 829 between points A to D on Plan 01733a and to upgrade footpath 174 between points E and F on the Plan to a restricted byway, in the parish of Climping and town of Littlehampton

Report by Director of Law and Assurance**Electoral divisions: Middleton / Littlehampton Town**

Summary

The application has been submitted by the British Horse Society and seeks to modify the Definitive Map and Statement for Chichester by adding a *restricted byway* between points D and E as shown on plan 01733a and the upgrade of part of footpath 829 to a restricted byway from points A to D on the application plan and to upgrade footpath 174 to a restricted byway between points E to F in the parish of Climping and town of Littlehampton.

All evidence in respect of this claim is available for inspection in the Members' Room prior to the meeting.

1. The applications are made under section 53 (3)c (i) and 53 (3)c (ii) of the Wildlife and countryside Act 1981.
2. The applications are based on archive evidence only and are considered with reference to Section 32 of the Highways Act 1980.
3. The landowners of Littlehampton Golf club have submitted evidence demonstrating the historic diversion of the claimed route between points D and E by Quarter Session in 1936 and also indicated their concern over safety of an upgrade to bridleway at certain points along the claimed route.
4. James Baird submitted historic photos of the Mill but did not indicate whether or not the application was supported.
5. A historic diversion by Quarter Session in 1936 diverted footpath 174 to its current definitive line and therefore stopped up all highway rights along the claimed route D to E and therefore this part of the claimed route fails

on this basis. The Council have therefore considered whether the archive evidence supports higher rights on today's definitive line pre-1936.

6. The history of Climping provided in the History of the County of Sussex (appendix 2) suggests that a route from A to F was in existence, possibly as a road to access Littlehampton; this is also supported by appendix 14. Throughout history, mapping evidence suggests that sections of the route could have had a higher status as sections are interpreted as being shown as roads, turnpike and crossroads or common land.
7. Despite this, few sources provide clear status of the route as public or private or clearly state the status of the route (i.e. footpath or higher) and only the OS map 1973 shows the route in its entirety possibly as a road, although no key is provided.
8. In addition, for the claimed route from points A to X, it is not possible to determine if historic sources show the claimed route or a private road leading to the residential property the Mill (previously Climping Mill).
9. In conclusion, it is considered that on balance the evidence considered does not indicate that the route from A to F had a higher.

Recommendations

- (1) That in respect of DMMO application DMMO 2/17, a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981, to upgrade footpath 829 to a restricted byway from points A to D as shown on the application plan in the parish of Climping be not made.
- (2) That, in respect of DMMO application DMMO 3/17, 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 restricted byway from points to D to E as shown on the application plan in the parish of Climping be not made.
- (3) That, in respect of DMMO application DMMO 4/17, a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981, to upgrade footpath 174 from point E to F on the application plan in the Parish of Climping be not made.

1. Introduction

- 1.1 The applications represent the addition of a continuous length of restricted byway from point A to F on the plan attached to this report ("the application map"). It is broken down as follows:-

- i. DMMO 2/17 - The upgrade of public footpath 829 to restricted byway between points A and C/D pursuant to Section 53 (3) (c) (ii) Wildlife and Countryside Act 1981 (where a highway already exists but it should be shown on the definitive map as a different description)
 - ii. DMMO 3/17 - The addition of restricted byway between points D and E under Section 53 (3) (c) (i) Wildlife and Countryside Act 1981 (that a path subsists or is reasonably alleged to subsist).
 - iii. DMMO 4/17 - The upgrade of public footpath 174 to restricted byway between points E and F under Section 53 pursuant to Section 53 (3) (c) (ii) Wildlife and Countryside Act 1981 (where a highway already exists but it should be shown on the definitive map as a different description).
- 1.2 The applications are made under Sections 53 (3) (c) (i)) and 53(3) (c) (ii) of the Wildlife and Countryside Act 1981 and supported by documentary evidence only. They are therefore considered with reference to Section 32 Highways Act 1980 which sets out that "A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced."

2. Characters and features of the routes

- 2.1 The applications represent the addition of a continuous length of restricted byway from point A to point F on the plan attached to this report.
- 2.2 The claimed route begins to the east of the car park at Climping Beach at point A on Plan 01733a, and runs along the definitive line of FP 829. The footpath runs along the top of the beach from point B for approximately 750 metres until reaching a footpath sign and entering through a gate at the edge of Littlehampton golf course (point X), at this point the route begins to head in a northerly direction continuing to follow the definitive line of FP 829, for approximately 230 metres, towards the Mill (points C /D) where FP 829 meets FP 174.
- 2.3 From point B to X there is a private lane which runs alongside which runs parallel to footpath 829 and leads to the residential property, the Mill.
- 2.4 At point C/D the claimed route runs to the south east of the existing definitive line of footpath 174 between points D and E for approximately 200 metres. It is not possible to walk along the route D to E as this section falls within Littlehampton golf course.
- 2.5 Points E to F of the claimed route follows the line of the present day definitive footpath number 174, which is initially enclosed by shrubbery either side. The path continues in an easterly direction for approximately

300 metres and heads in a more northerly direction for approximately 700 metres following field borders until meeting the highway named Ropewalk and terminating at this point (point F).

3. Land ownership

- 3.1 There are four owners of the land over which the route passes: John Lambie and Alison Tait Baird (titles WSX60950, WSX188053, WSX61415); Lisa Marie Smith (title WSX138063), Littlehampton Golf Club Limited (title WSX61746) and Gary Love (title WSX63711).

4. Consultations

- 4.1 Consultations were sent to the local member, County Council internal departments, amenity groups, including the TRF on a non-statutory basis, the Parish, Town councils and Land Owners.

4.2 Littlehampton Golf Club (Land Owner)

Littlehampton Golf Club provided evidence of the historic diversion of the public footpath and highway of that part of the claimed route between points D and E. The public footpath and highway was diverted and turned and the old public footpath and highway stopped up by a Court Order dated the 31st December 1936 and made at the General Quarter Sessions in Chichester.

The Golf Club also highlighted concerns about the upgrade of footpath at point F of the claimed route (which is in the vicinity of the golf club, pictures were provided) due to the path passing along a steep, narrow bank and the close proximity to a golfing tee. It is also highlighted that other sections of the footpath from point F to the beach would currently be unsafe as a bridleway and state they therefore believe the route would require significant investment in order to suitably upgrade the path.

4.3 James Baird

James Baird submitted historic photos of the Mill and golf course but did not indicate whether or not he and his parents John Lambie and Alison Tait Baird supported the application.

4.4 Littlehampton Town Council

The town council stated that they supported the application with no further comments

- 4.5 No other consultation responses were received.

- 4.6 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.

5. Evidence in support of the application

- 5.1 All evidence submitted in support of the application is archive evidence submitted by the applicant. The applicant presents the case that historic documents indicate that historically the claimed route had higher status than footpath.
- 5.2 In summary, the applicant indicates the route is shown to have higher status in maps of Atherington Manor 1606, Baliff's Court Farm 1772, Yeakell and Gardner 1778 and 1795, the Ordnance Survey 1813, Greenwood & Greenwood 1825 and the Climping Tithe Map 1843. In addition, the applicant believes two legal documents refer to the route as "the Common Lane" or "Mill Lane". The applicant also highlights that the claimed route is described as a historic route to Littlehampton in the Victoria History of Sussex which was likely to be used by horse and cart. Lastly, the applicant believes there is evidence of part of the route being recorded as maintained as Highway in 1879.
- 5.3 A summary of each piece of evidence submitted by the applicant with the applicant's statements is summarised in **Annex 1** of this report. The evidence in full can be viewed by Members should they wish to do so.

6. Evidence against the application

- 6.1 The only evidence submitted in opposition to the application was that of Littlehampton golf club which is summarised above in section 3.2.
- 6.2 The evidence considered by the Council below in sections 7 and 8 of this report attempts to weigh up the evidence and consider both whether the evidence does or does not support the application when applying the relevant legal tests, outlined in section 9, the findings are summarised and concluded also in section 9 of the report.

7. Archive Evidence Analysis

- 7.1 The evidence below is considered in chronological order rather in order of appearance within the applicant's statement.

N.B. 1- Footpath 829 runs along the beach front (described in the definitive map and statement as running "along the foreshore in Climping Parish and thence to the Littlehampton Town council boundary"), however, there is also a private road or drive which runs parallel to the beach and then heads up towards the old Mill. The applicant has applied to upgrade the footpath running along the foreshore (between A and C) and not to create a new public right of way (restricted byway) along the private road / lane. It is difficult to distinguish between the two routes in historical mapping evidence.

N.B.2 - The section of the application to add a restricted byway between points D and E was, prior to 1936, the line of public footpath 174. This part of footpath 174 was diverted by Court Order in 1936, General Quarter Sessions (see section 3.2) onto the definitive line that it now follows (to the north of the proposed restricted byway) (C/D-Y-Z).

The Quarter Session records of 1936 explain that the public footpath and highway was turned and diverted, a new public footpath and highway was provided and the old public footpath and highway was stopped up. It is a reasonable assumption that the reference to 'highway' will have been used to ensure that any higher rights were also diverted and stopped up. Any public rights associated with the public footpath and highway between points D and E were therefore legally removed in 1936. All of the maps considered below except those after 1936 (Sussex series 4) show the claimed route following the line of public footpath 174 before it was diverted. When a public right of way is stopped up the rights of the public to pass and re-pass are destroyed.

7.2 **Appendix 3(a), 3(b) and 3 (c) – (Littlehampton and Atherington Estate map 1606) (West Sussex records office reference Add MSS 2031)**

Studying the map, a possible route is shown as an area enclosed between parcels from just before the Mill (where footpath 829 heads in a northerly direction away from the foreshore) and along point C, D to F. After the Mill at about point D the enclosed area is marked as common. For the claimed route point A to just before point C where the path heads north, no clearly marked route is shown.

As a result this map does suggest a route was in existence from just before the Mill to point F and may have been used by horse and cart from point D onwards, however, the map does not clearly depict any route along the foreshore.

7.3 **Appendix 4 – Transcript of Assignment Deed 1660 (ref GOODWOOD/E1938)**

This document mentions a "common lane" between Millfeild common field and East Cudlow (East Cudlow- a farm in the south east corner of Climping parish according to British History online available at <https://www.british-history.ac.uk/vch/sussex/vol5/pt1/pp126-147>, which was later brought by Littlehampton golf club) and also mentions the "common lane" passing a windmill. It is reasonable to infer this Common Lane could be the claimed route from point C/D to F. It is also reasonable to conclude, but by no means certain that the common lane passing the Mill may have been used by horse and cart accessing the Mill. In addition, without a plan it is difficult to be certain of the exact route of the "common lane". The claimed route A to just before C is not mentioned, although it is unclear where "Millfeild common field" was located. It must also be borne in mind that a Transcript of assignment Deed would have mainly been concerned with private rights.

7.4 **Appendix 5 – Map of Bailiff's Court Farm 1772 (tracing from original map MP 2072)**

Although the photographs of the map are a little blurred, a route leading up to Climping Mill (heading north) just before Points D and E and then passing the Mill is visible and marked by two solid lines running parallel indicating a road based on the depiction of other roads on the map,

although there is no key to confirm this. The route continues (depicted by similar markings to above) to point F. The claimed route is therefore shown on the Map of Bailiff's Court Farm from just before point C and D to point F. The map does not show the claimed route between points A to C on the plan.

As suggested in appendix 2 of the applicant's statement, no routes for persons travelling on horseback or with horse drawn carriages towards Littlehampton are shown other than the claimed route. Therefore, it could reasonably be inferred the route shown was the only means of accessing Littlehampton from the Mill and therefore would have been used by horse and cart and had a higher status than footpath, however this is not certain and without a key accompanying the map the status of the route shown is also not certain. However, the map was produced to show the Estate and would not necessarily have shown all roads in the area.

7.5 Appendix 6 – Photocopy extract from Yeakell & Gardner's 2:1 mile Map of Sussex of 1778 (reference PM 249)

A route is not marked from point A to the point where the claimed route takes a northerly direction to the Mill; this section is simply shown as a beach/coastal area. There is a route depicted as other roads on the map (two parallel solid lines) that follows just before points C and D where the route begins to head in a northerly direction towards The Mill to point F. While the map depicts the claimed route from just before points C/D to point F as a road, suggesting higher status there is no key accompanying the map and no indication of whether the route is public or private; therefore the status of the route from the map is not certain.

7.6 Appendix 7 – Mortgage Deed dated 1 April 1780 – Reference Add MSS 12,630 (also available on the National Archives website)

The deed gives details of the lay of the land surrounding the Mill. Although the deed may refer to the claimed route as "Mill Lane" which is also mentioned in the Victoria County History (Appendix 2), there is no determining reference made to the claimed route's status as public or private. However, the mention of "Climping Common field on N" indicates, as seen in Appendix 3 and 4, there was a common field to the north of Climping Mill and again the mortgage deed would not necessarily have mentioned public rights of way as it dealt with private property.

7.7 Appendix 8 – Gardner & Green Map dated 1795 (reference PM 249)

The claimed route from point A to X is shown as coastal area and not a clearly marked route. The map shows a route depicted along the rest of the claimed route in the same way as other routes which today are public roads. There is however no reference made to the claimed route's status and no accompanying key to the map therefore again we cannot determine for certain from this map the routes status or if the route is public or private.

7.8 **Appendix 10(a) – Extract from the Greenwoods’ 1”:1 mile map of Sussex dated 1825 (reference PM 249) and Appendix 10(b) – Extract from the explanation key of the Greenwoods’ 1”:1 mile map of Sussex dated 1825 (reference PM 249)**

The map shows a photocopy extract from the Greenwoods’ map. From point A to point D the claimed route is marked by two parallel dashed lines, which is denoted as crossroads in the key appendix 10 b. The route passes Climping Mill and from this point, marked as points D and E on the map the route is denoted by solid parallel lines which are labelled as a Turnpike road & Toll Bar in the key accompanying key 10b. The claimed route is not shown from point E to F.

Crossroads can be taken in older maps to mean any of the following; a highway running between and joining other highways or a byway and a road joining regional centres. Turnpike routes were often adopted as highway; however, this does not mean all ex-turnpikes carry public rights as many that were not public before turnpike status were reverted back to their original status

This map was published to be sold to the public (<https://www.crouchrarebooks.com/maps/view/greenwood-christopher-map-of-the-county-of-sussex1>) and provides some weight that the claimed route in its entirety had a higher status than footpath. However, it is difficult to separate the route from point A to X between footpath 829 and the private road/driveway today that runs parallel to this section of footpath 829 and leads to the Mill.

7.9 **Appendix 11(a) and (b) – Climping Tithe Map dated 1843 (reference TD/W33)**

The Tithe map does not show the claimed route running from point A to just before C (before the route heads north towards the Mill). Along this section of coast there are two apportionments; 283 (Sea Beach) and 263 (Cottage & Garden) which are within the fields and have the following descriptions; Apportionment 250 “The little common (arable)” and 251 “Little Mill field (arable)”, apportionment 251 could be the Millfield Common mentioned in the Transcript of Assignment Deed 1660, however this is speculation. A route depicted as other roads although slightly wider runs from this point to point E of the claimed route passing the Mill. Apportionments along this section are 262, which is labelled as “pasture”. There are no other apportionments for this section. The path then opens up into a larger field from midway between points D to E. At point E the route seems to be depicted again as a road but is narrower than the previous section and coloured Sienna. The apportionment to the north of the route at this point, 266, is labelled as the “Miller marsh and pasture”.

Although the depiction of the route in this way does seem to suggest that from just before the Mill (where footpath 174 starts) to point F there was a route which is depicted in a similar way to other roads and consequently could have had a higher status than footpath, without a clear key the depiction of the claimed route on the Tithe map as a road does not carry great weight and is not conclusive in determining whether the route had a

higher status or whether or not the route at this time was public or private.

7.10 Appendix 9 – Extract from Old Series Ordnance Survey 1":1 mile map of Sussex dated 1873 (Reference PM 249)

The map shows a photocopy extract from an old Ordnance Survey map published by Lt.Col. Mudge held at the West Sussex Records Office. The entire route is depicted as a road according to OS map general key (marked by two solid lines running parallel to each). Although the route does appear to be depicted as a road this does not mean it was public and there is no key accompanying the map or description to determine the status.

7.11 Appendix 12 – Extracts from the Stock and Stores Account book dated 26 May 1879 (Reference PAR/51/41)

The extracts relate to the Climping Highway Parish which is held at West Sussex Record Office. The extracts are from periods between 25 March 1880 and 25 March 1889. The applicant draws attention to various entries for the purchase and invoicing of flints used on "Street and Millborough", various entries for sea gravel used on "Street and Millborough and entries for pipes used on "Millborough Hill Road". From these entries, the applicant draws the conclusion that the Parish Council viewed the claimed route, being in existence during the 1880 to 1889 period, as a route, road or footpath needing to be maintained on the basis that there are no other similar roads which could be the "Millborough Hill Road" nearby. The account extracts do not refer to anything more specific than the name "Millborough Hill Road". There is no name of such a road on any of the maps that is easily identifiable and therefore it is unclear if these named roads are in fact the claimed route. While it is plausible, by way of deduction that the claimed route was maintained and the account book is a record of that this does not provide any definite indication of status of the highway as higher than footpath (or being maintained as such).

7.12 PARISH Highways of West Sussex Classification and Report of October 1890 (WDc/SU18/1/10) (appendix 11 (b))

The applicant highlights that this document states that none of the parish roads were metalled at this time and were formed of fine beach shingle. While this may be accurate this does not confirm the claimed route was one of these roads or indicate the status of the claimed route at the time.

7.13 Appendix 2 - the History of the County of Sussex: Volume 5 Part 1, Arundel Rape: South-Western Part, Including Arundel, ed. T P Hudson (London, 1997), pages 126-147

The History of the County of Sussex is a book published on the British History Online which is a non-for-profit digital library publishing primary and secondary sources from collections from museums, libraries, archives and academics. The Book was originally published by Victoria County History which is a long running research project for local history supported

by the Institute of Historical Research of the University of London. This is not a primary source, as the books basis is from the VCH project, it can be considered reliable as all editors of the publications are academic historians.

The information provided in this extract, highlighted in Annex 1 para 4.2 above, suggests that historically there was a road leading to Climping Mill (which is mentioned from 1378), from 1485 it was known as Totsham Mill and by 1780 Climping Mill, by 1914 the Mill had been converted to two cottages. However, without a map it is difficult to ascertain if this would have been point A to C/D of the claimed route or the private road which runs parallel to the current footpath to the Mill.

From the Mill a road is described heading towards a crossing point to Littlehampton (possibly points D to F of the claimed route) from 1606 and it could be inferred the route was likely to be public and used by horse and cart being one of the only access routes to the ferry at Littlehampton until the new road was built in 1824. While it is agreed that is a reasonable assumption the route was used to access the Mill and then travel onwards to access a Ferry to Littlehampton, this description does not provide the exact path of the route as there are no accompanying plan or maps.

7.14 **Appendix 13 - Extract of the Land Charges Map/ imap accessed 16th March 2017**

The applicant's map provided in appendix 13 shows the claimed route as a footpath only and is taken from WSCC land charges online i-map. A blue line is shown from half way along the claimed route in the print out submitted by the applicant however this is not shown when looking at the local land charges map online. Land Charges at West Sussex County Council also confirmed that their records dating from Adcock's in 1894 show that at no point has any of the claimed route been maintained at public expense other than as a footpath.

The i-map showing public rights of way shows the route as a footpath along its length. There is a track marked running along the inside of the public footpath, which is perhaps the old road leading to the Mill. Today, the footpath runs along the top of the beach to point X. It is concluded the land charges map does not show the route marked with a higher status than footpath at any point along the route.

7.15 **Bread Lane**

As outlined in Annex 1 para 4.15 the applicant refers to Bread Lane as a comparison to the claimed route stating that this lane has a shorter history than the claimed route as it is stated in the Victoria County History of Climping that Bread lane was not recorded before the 19th century, yet is recorded as a Byway today.

While this is noted, Bread Lane was classified as a RUPP and then considered for reclassification under section 54 of the Wildlife and Countryside Act 1981. Both historic and user evidence was considered for

the reclassification. This evidence was unique to this to this public right of way; therefore, the classification of Bread lane does not provide evidence that the claimed route should have a higher status than footpath just because it possibly has a longer history.

7.16 Appendix 22 - Photographs of the Mill submitted by Mr James Baird

The photographs submitted by James Baird show pictures of people at the forefront of the Mill and on the lane leading up to it as well as on the golf course. However, there is no other description about who the people are in the pictures. They neither support nor contradict the claimed route for a restricted byway as there is no indication from the picture whether the lane leading to the Mill in the pictures is public or private or what status it had.

7.17 Appendix 14 - Extract from "Sussex Notes and Queries" Vol 17 1968-1971

This source is a quarterly journal produced by the British Archaeological Society and therefore can be given some weight. A picture of an extract from volume 17, which describes Arun Mouth Ford which was submitted by the applicant at a later date to the applicants statement. The extract describes how millers, including those of Climping Mill, would take their wagons at low tide across the sand and shingle at the Bar. In 1824 a horse ferry was opened to cross the ford at this point. The applicant asserts this supports all the other evidence that the claimed route from the Mill would have been used by horse and cart historically.

7.18 Appendix 15 - Title WSX63711

The title register describes the road from Atherington to Climping Mill (B to C) stating that the land has the benefit of a right of way granted by a conveyance dated 1982 "together with a right of way with or without vehicles at all times and for all purposes". This indicates that the road leading to the Mill was private and not public.

7.19 Appendix 1 - Map of the coast from South Bersted to the Western area of Littlehampton (current OS map)

This map does not show any evidence that the route was once a restricted byway but simply shows the claimed route on an Ordnance Survey map at a scale of 1:2500. The claimed route follows the line of Footpath 829 and 174 except between points D and E which follows the diverted route completed in 1936 along a marked boundary shown by dotted lines (dotted lines are denoted as parish/ district boundary markings in Ordnance Survey General Key held at WS records office).

8. Further Archive research carried out by the County Council

Further to the evidence submitted by the applicant and considered by the County Council in section 7 above, the following historical maps of the area have been examined as part of the research into this claim.

8.1 **Appendix 16 - Ordnance Survey Maps Local View Sussex Series 1 (1863-95)**

The Sussex series map Series 1 shows the claimed route between point A and B enclosed by black lines with parallel dashed lines in the middle. The claimed route from point B is shown as a double dashed line following the same path as the road leading up to Climping mill, three-quarters of the way along this section, there is a building labelled as "Common Barn". The double dashed lines continue past the Mill and the same path as the claimed route between points D and E which is following today's Parish boundary. At point E on the claimed route the path is depicted in the same lines of triangles as in today's application map.

Depiction of double dashed lines could suggest the route was either a Bridle Road or open road using the conventional signs in the plans made under the Act for the commutation of titles in England and Wales obtained from WSCC records Office. However, this should not be relied on and considered as definitive for interpreting these OS maps. In addition, it is difficult to determine if this route is showing the private road leading to the Mill or the claimed route, footpath 174 along the shoreline.

It should also be mentioned that although the building labelled "Common Barn" is labelled common it does appear to be a private barn. This is indicated as such by its inclusion as Lot 201 of Kent farm in the particulars of Ford and Climping Estate dated 6 July 1915 included in a statutory Declaration submitted by John Baird in 1997 as part of the process of gathering evidence for the reclassification of RUPP, Bread Lane (Appendix 24).

8.2 **Appendix 17 - Ordnance Survey Map Local View Sussex series 2 (1896-99)**

This map shows the route in the same way as Series 1 except there are F.P (footpath) annotations between point E and F as well as just past the Mill at points C and D.

8.3 **Appendix 18 - Ordnance Survey Maps Local View Sussex Series 3 (1909-16)**

The route is depicted in the same way as Series 1, except there is no F.P annotation just after points C and D but the F.P annotation remains along points E to F of the claimed route.

8.4 **Appendix 19 - Ordnance Survey Map Local View Series 4 (1930-46)**

The route is depicted in the same way as Series 2 except along from point B to Just before the Mill (where footpath 829 starts) the route is shown as a road would be, by two parallel black lines, and between points D and E the path has now been diverted and follows a more similar line to today's footpath 174. However, this map post-dates the 1936 Quarter session diverting the route.

8.5 **Appendix 20 - Draft and Provisional Definitive maps**

Both Maps show the whole of the claimed route as a footpath.

8.6 **Appendix 21 - Adcock's Survey 1894**

None of the route is marked as a publicly maintainable highway on the Adcock's map. It is possible the route is shown enclosed by parallel solid lines between points A and X, however this then continues along the foreshore so this could equally be the sea wall, remnants of which can be seen today. This is not indicative of the routes status but it does suggest it was a prominent route on the ground.

9. **Consideration of application**

9.1 The application was submitted with archive evidence summarised in Section 6 and Annex 1 of this report. Comments against the application and other comments from land owners are summarised in section 3. The investigating officer also conducted a thorough investigation of the County's archives as well as undertaking a detailed consideration of the archive evidence submitted by the applicant as set out in Section 7 and 8 of this report.

9.2 In determining the applications it is necessary to decide:

9.2.1 Whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a restricted byway subsists between points D and E, or in the alternative that a restricted byway between points D and E is reasonably alleged to subsist, which is the lower test. This lower test requires that it is reasonable to allege a right of way subsists.

9.2.2 Whether the evidence provided by the applicant, when considered with all other relevant evidence, on the balance of probabilities, shows that between points A and D and E and F the relevant footpaths ought to be shown as a restricted byway.

The burden of proving this falls to the applicant.

9.3 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.

9.4 **Archive evidence**

9.4.1 The application and investigation by the County Council have considered a substantial amount of archive evidence on the entire route from A to F. The mapping evidence lends itself to consideration of sections of the route that differ to those used by the applicant.

9.4.2 **An overview of the route as a whole**

The history of Climping provided in the History of the County of Sussex (appendix 2) suggests that a route from A to F was in existence, possibly as a road, to access Littlehampton which is supported by appendix 14. Appendix 2 also suggests use of the route as a road may have ended in 1824 when Ferry road was built and the Mill was no longer in use after being converted to two cottages in the early 19th century. The opening of alternative routes to Littlehampton and end of use of the Mill could explain why the route today has a footpath status. However, this is not conclusive evidence.

Throughout history, the maps and other evidence considered above suggest that sections of the route could have had a higher status, given sections are depicted as other known roads shown on the records, turnpike and crossroads or common land. Only the Ordnance Survey 1" to a mile map 1873 shows the entire route depicted in the same way as other roads. Few sources provide clear status of the route as either public or private as they do not clearly state the status of the route (i.e. footpath or higher). No sources clearly indicate the entire route had a higher status. After 1883, when annotating maps with footpaths became Policy, Ordnance Survey maps mark most of the route as a footpath, however, Ordnance Survey maps are not considered conclusive evidence of a public right of way.

In conclusion, it is considered that on balance the evidence does not indicate that the route from A to F had a higher status of restricted byway.

9.4.3 **Section A to X**

Evidence of the existence of the claimed route with higher rights between points A to X is first indicated in the Assignment Deed dated 1660 (appendix 4), which mentions a common lane leading past the Mill. This suggests the route may have been public, however, without a map it is unclear if the route led from Atherington (point A of the claimed route). Later records such as the transcript of Mortgage deed dated 1780 (appendix 7) also mentions a lane "Mill lane" suggesting a public road, but again the exact route of this lane is unclear. The mention of a common lane/ lane does however fit with the description of a road leading to Climping Mill from 1378 in appendix 2, supported by appendix 14. Later on in time, a route along this section is interpreted as a road in the Ordnance survey map of 1873 (appendix 9). Greenwoods' 1":1 1825 (appendix 10) map also depicts this section as a crossroad, which were considered public highway at the time.

Throughout the Sussex series on WSCC's local view (dated 1863 through to 1946) a route along section A to B is portrayed in the same way as other known roads on the maps while Section B to X is depicted by double dashed lines, which could indicate a bridle road see section 8.1, except in the Local view Ordnance Survey series 4 (1930-46) where this section is interpreted as a road.

Despite this, none of the above mentioned maps, except Greenwoods 1825 have a key or other to clearly determine the status of the claimed route. This section of the claimed route is also not shown or mentioned as a route in Manor of Atherington estate map 1606 (appendix 3), Map of Baliff Court Farm 1772 (appendix 5), Yeakell and Gardner's Sussex 1778 (appendix 6), Gardner & Green map 1795 (appendix 8) or the Tithe map 1843 (appendix 11). Furthermore, it remains unclear if the documents described above, which are alleged by the applicant to describe the claimed route, are actually showing the private road running parallel to the present day definitive footpath to the Mill.

In summary, Greenwoods 1":1 1825 is the only document which clearly indicates a route with a status as a public road. All maps which show the claimed route between points A to X as possibly having higher status cannot be distinguished from the private road leading to the Mill. Therefore, while it is possible that there was a public road historically leading to the Mill and onwards, as the section A to X is for an upgrade of footpath 829 to restricted byway, the relevant legal test for whether it has been shown that a highway which already exists, should be shown on the definitive map as a highway of a different description, is the balance of probabilities. In conclusion, it is not possible to say on the balance of probabilities that this is the claimed route as it could equally be the private road running parallel to the present day public footpath.

9.4.4 **Point X to C/D**

The Transcript of Assignment Deed 1660 mentions a common lane from the beach (point X) to the Mill (point C/D). Going through time the map of Baliff's Court Farm 1772 (appendix 5), Yeakells & Gardners 2:1 mile map of Sussex 1778 (appendix 6), Gardner & Green Map 1795 (appendix 8), Greenwoods 1":1 map of Sussex 1825 (appendix 10), Ordnance Survey 1":1 1873 (appendix 9) and Climping Tithe map 1843 (appendix 11) are interpreted as showing this section of the route as a road, historically used by horse and cart and therefore potentially having a higher status as restricted byway. A road is also mentioned leading past the Mill to F in the County History of Sussex (appendix 2 and supported by appendix 14) from the 1400's to the late 1800's, suggesting its public use by horse and cart as it was used to access Littlehampton; however, this is by no means determinative of public status. Lastly, Sussex Series 1-4 (1863-1946) shows this section depicted by double dashed lines potentially indicating higher status (see section 8.1).

As with section A to X, most of the above sources (appendix 5,6,8,9 and 11) do not have keys or define the status of the route as public or private. Sussex Series 1-4 (1863-1946) shows this section as double dashed lines, which are unannotated, although as mentioned above this could indicate a bridle road (see section 8.1), the route further along is annotated as FP from Sussex Series 2 onwards. Greenwoods 1":1 map of Sussex 1825 is the only document which clearly outlines the status of the route at this section as a public road at the time.

The estate map 1606 (appendix 3) is unclear of this section's status, showing the area enclosed by parcels. The Transcript of a Mortgage Deed

1780 (appendix 7) mentions a common lane named Mill Lane but as previously mentioned there is no plan making it difficult to determine the path of this common lane.

As the section X to C/D is for an upgrade of footpath 829 to restricted byway, the relevant legal test as to whether it has been shown that a highway which already exists, should be shown on the definitive map as a highway of a different description, is the balance of probabilities. In conclusion, while it is possible that historically a route of higher status could have subsisted it is considered that there is not sufficient evidence to support that the route should subsist as a restricted byway on the balance of probabilities.

9.4.5 **Section D to E – Addition of a restricted Byway**

This section of the claimed route deviates from the footpath presently in existence. The proposed restricted byway passes along the golf course to the east and follows the line of a footpath that was diverted in 1936 by the General Quarter Sessions in Chichester Court Order. By this Court Order, all public rights along the path were stopped up (see N.B.2 above). It is also the case that higher rights were stopped up at the same time. Therefore, the application for an addition of a restricted byway between points D to E fails on this basis.

However, it is necessary for the County Council to consider whether “other highway rights”, in addition to footpath rights, were diverted onto today’s definitive footpath 174 at the time of the Court Order in 1936. In doing so, it is necessary to consider the historic evidence pre 1936. If this were the case, it would mean an upgrade of the footpath on its diverted line (points D to Y to Z). The relevant legal test as to whether a highway which already exists, should be shown on the definitive map as a highway of a different description, is the balance of probabilities.

The evidence pre 1936 is analysed as follows. From the 1400’s to the late 1800’s a road is described from the Mill to the river Arun to access either a ferry or crossing Bridge across to Littlehampton (Appendix 2 and supported by appendix 14) suggesting said road was used by horse and cart and could have been public, although this is by no means determinative of public status. The Atherington Estate Map 1606 (appendix 3) shows this section of the route as an enclosed area which is marked as “common” at point D.

This section, as the previous section, is also interpreted as a road in The Map of Baliff’s Court Farm 1772 (appendix 5), Yeakells & Gardners 2:1 mile map of Sussex 1778 (appendix 6), Gardner & Green Map 1795 (appendix 8), Ordnance Survey 1”:1 map of Sussex 1813 (appendix 9) and Climping tithe map 1843 (appendix 11). Sussex Series 1 shows this section with double dashed lines, which could indicate a bridle road but is not conclusive see section 8.1. Greenwoods 1”:1 map of Sussex 1825 depicts this section of the claimed route as a Turnpike and toll bar, indicating the route was public and had higher status at the time.

The transcript of assignment deed 1660 (appendix 4) and Transcript of a Mortgagee (appendix 7) do not mention the route, although this may be as they did not cover this area of the claimed route so is by no means determinative.

Greenwoods 1":1 map of Sussex 1825 and the Atherington Estate map which marks this section as "common" are the only documents which indicate the route's status as having higher rights than a footpath and as public; all other sources do not have keys/do not label the claimed route and cannot be considered determinative evidence. The claimed route is also annotated as footpath in Sussex series 2 (1863-95).

In conclusion, it is considered that on the balance of probabilities the claimed route did not have a higher status than footpath before it was diverted in 1936 and therefore no highway rights other than as footpath were diverted by the Court Order in 1936.

9.5.6 Section E to F

From the 1400's to the late 1800's a road is described from the Mill to the river Arun to access either a ferry or crossing Bridge across to Littlehampton throughout this time (Appendix 2 supported by appendix 14); suggesting the road was used by horse and cart and could have been public, although this is by no means determinative of public status. The Atherington Estate map 1606 (appendix 3) shows this section of the route as an enclosed area which is marked as "common" but it is unclear if this extends to point F. This section, as the previous section, is also interpreted as a road in The Map of Baliff's Court Farm 1772 (appendix 3), Yeakells & Gardners 2:1 mile map of Sussex 1778 (appendix 6), Gardner & Green Map 1795 (appendix 8) and Ordnance Survey 1":1 map of Sussex 1813 (appendix 9) and Climping tithe map 1843 (appendix 11).

However, although the above sources can be interpreted as a road, none have a key defining the status of the claimed route as public, private, footpath or higher.

Greenwoods 1":1mile 1825 (appendix 10) does not show the claimed route between points E to F. Sussex series 1-4 (1863- 1946) local view shows this section triangles annotated as footpath from Series 2 onwards. Therefore, the Atherington Estate map is the only piece of evidence which clearly suggest the route having a higher status than footpath and the ordnance survey maps from Sussex Series 2 (1896-99) denote the route at this section as footpath. As the section E to F is for an upgrade of footpath 174 to restricted byway, the relevant legal test as to whether it has been shown that a highway which already exists should be shown on the definitive map as a highway of a different description, is the balance of probabilities. It is therefore concluded that, on balance, the claimed route does not have a higher status than public footpath.

- 9.4.6 It should be noted that it was said in *R v Winter (1828) 8 B & C 785: R v Mellor (1830) 1 B & Ad 32: R v Thomas 1857: If a road had been a highway before the legislature made it a turnpike road, it remained as an ordinary highway if the powers of the Turnpike Act expired. If a road was*

first made under the Turnpike Act, upon the expiring of the Act the public right of passage was at an end unless some other means were taken to renew or continue the right

- 9.4.7 From 1883 the Ordnance Survey circular would have been in place that "all footpaths over which there are an undisputed public right of way should be shown". However, from 1888 onwards Ordnance Survey maps came with a disclaimer that the representation of a track or way on the map was not evidence of a Public right of way.

10. Conclusion

- 10.1 It is therefore recommended that the Committee resolve as follows:

- (1) In respect of DMMO 2/17 that an order under Section 53 (2) in consequence of an event specified in Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 829 to a restricted byway from points A to C to the Definitive Map and Statement for Chichester be not made
- (2) In respect of DMMO 3/17 that an order under Section 53 (2) in consequence of an event specified in Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 174 to a restricted byway from points E to F to the Definitive Map and Statement for Chichester be not made
- (3) In respect of DMMO 4/17 – that an order under Section 53 (2) in consequence of an event specified in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a restricted byway from points C/D to point E to the Definitive Map and Statement for Chichester be not made.

11. Resource Implications and Value for Money

- 11.1 The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.

- 11.2 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?

- 11.3 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.

12. Risk Management Implications

- 12.1 The decision is one that must be taken on strict legal tests:
- the application is not determined in accordance with the 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 appeal to the Secretary of State and the matter be considered by way of written representations, hearing or public inquiry.
- 12.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

13. Crime and Disorder Act Implications

- 13.1 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.

14. Human Rights Act 1998 Implications

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.

15. Equality Act 2010 – Equality Impact Report

- 15.1 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

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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.

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

15.3 An Equality Impact Report has been undertaken and is detailed below/ attached as an Appendix.

15.4 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

Contact: Charlotte Nash: ext. 26934

Annex

Additional information provided by the applicant

Appendices

- (a) Location Plan
- (b) Site Plan

Background papers

None

ANNEX

Appendix 1 – Map of the coast from South Bersted to the Western area of Littlehampton

The applicant has highlighted the route of the application on this map marked A to F.

Appendix 2 - the History of the County of Sussex: Volume 5 Part 1, Arundel Rape: South-Western Part, Including Arundel, ed. T P Hudson (London, 1997), pages 126-147

The applicant highlights that the Victoria County History of Sussex is part of a national series and is compiled from reputable sources. The applicant highlights sections that detail the history of Climping in this extract. They reference a road leading to the Mill in the Middle Ages which is suggested to also be recorded as Mill Street in 1490 and Mill Lane in 1780. In addition, a road is described running north-east from Climping Mill by 1606 to reach the ferry to Littlehampton. A wooden bridge is said to have crossed the river Arun between Atherington and Littlehampton in 1417. The river is also described to be crossed near its mouth but the ford was described as rarely usable. In the early 19th century a shingle bar outside the piers of Littlehampton Harbour provided passage for wagons and carriages several hours a day, it is thought to have been used by the millers of Climping, Littlehampton and Rustington. From 1824 a new road, Ferry road was made to provide access to a new chain ferry which crossed the river Arun.

Appendix 3(a), 3(b) and 3 (c) – Add MSS 2031 (Littlehampton and Atherington Estate map 1606)

The applicant states that the map shows Climping Street coloured sepia leading down to the beach and from here a route along a passage of common land runs past Climping Mill until reaching a road coloured sepia running beside Adur River. The applicant therefore concludes that this map shows the existence of the route in 1606 and that the public had access to all parts of the route. In addition they claim that the existence of the Mill indicates public access to it and also access by horse drawn cart to transport bags of grain.

Appendix 4 – Transcript of Assignment Deed 1660 (ref GOODWOOD/E1938)

The applicant claims that the third paragraph stating “windmill on the common lane between Millfeild common field and East Cudlow, with the Mill “bororeugh” and Mill plot belonging.” gives weight to this road being considered a public road at the time.

Appendix 5 – Map of Bailiff’s Court Farm 1772 (tracing from original map MP 2072)

The applicant provides photographs of the traced map of Thomas Gream (cartographer) from 1772. The applicant noted that the map was too large to photocopy.

The applicant also notes in their application that "there was no other road giving access to the road that led to where the river could be forded, except the road (which) is the subject of this application, prior to 1824, when Ferry Road was made to give access to a new chain ferry across Arun". The claimed route is therefore shown on the original map and it is likely that it was used by members of the public at the time either on foot or on horseback as this does appear to be the only access route to and from Arundel from Atherington.

Appendix 6 – Photocopy extract from Yeakell & Gardner’s 2:1 mile Map of Sussex of 1778 (reference PM 249)

The applicant states that the map clearly shows the claimed route from the beach northwards to Climping Mill and thence in a north easterly direction as a road while the southern tip of Climping Street to the road connecting with Climping Mill is via Beach.

Appendix 7 – Mortgage Deed dated 1 April 1780 – Reference Add MSS 12,630 (also available on the National Archives website)

The applicant states that this document supports the reputation of the claimed route being a public road as the second paragraph describes "lying between Climping Poor House on E; lands of John Boniface called the twenty acres of W; Climping Common field on N and a lane called Mill Lane leading to the coast on S;"

Appendix 8 – Gardner & Green Map dated 1795 (reference PM 249)

The map shows a photocopy extract from Gardner & Gream’s 1”:1 mile map of Sussex 1795 held at the West Sussex Registry Office. The map was started by Thomas Yeakell and William Gardner and finished by Thomas Gream. The applicant states that the route from the beach heading in a north easterly direction is shown as a road and that this suggests it was a route of some prominence.

Appendix 9 – Extract from Old Series Ordnance Survey 1”:1 mile map of Sussex dated 1813 (Reference PM 249)

The applicant states that the map shows the route from the southern tip of Climping Street running in an easterly direction and then up to Climping Mill in a north easterly direction clearly shown as a road.

Appendix 10(a) – Extract from the Greenwoods’ 1”:1 mile map of Sussex dated 1825 (reference PM 249) and Appendix 10(b) - Extract from the explanation key of the Greenwoods’ 1”:1 mile map of Sussex dated 1825 (reference PM 249)

The applicant states that the route is shown from Climping Street to Climping Mill and beyond in the style of "cross roads".

Appendix 11(a) and (b) – Climping Tithe Map dated 1843 (reference TD/W33)

The applicant states the road passing the Mill to point F is shown in the same way as other public roads and that this depiction is consistent with the road being public vehicular highway at the time of assessment.

PARISH Highways of West Sussex Classification and Report of October 1890 (WDc/SU18/1/10) (appendix 11 (b)written statement)

The applicant highlights that this document states that none of the parish roads were metalled at this time and were formed of fine beach shingle and includes accounts relating to Millborough Hill and therefore indicates the Parish considered the claimed route as a Parish Highway at the time.

Appendix 12 – Extracts from the Stock and Stores Account book dated 26 May 1879 (Reference PAR/51/41)

The extracts relate to the Climping Highway Parish which is held at West Sussex Record Office. The extracts are from periods between 25 March 1880 and 25 March 1889. The applicant draws attention to various entries for the purchase and invoicing of flints used on "Street and Millborough", various entries for sea gravel used on "Street and Millborough" and entries for pipes used on "Millborough Hill Road". The applicant infers from this that the Parish viewed the claimed route as Parish Highway at the time.

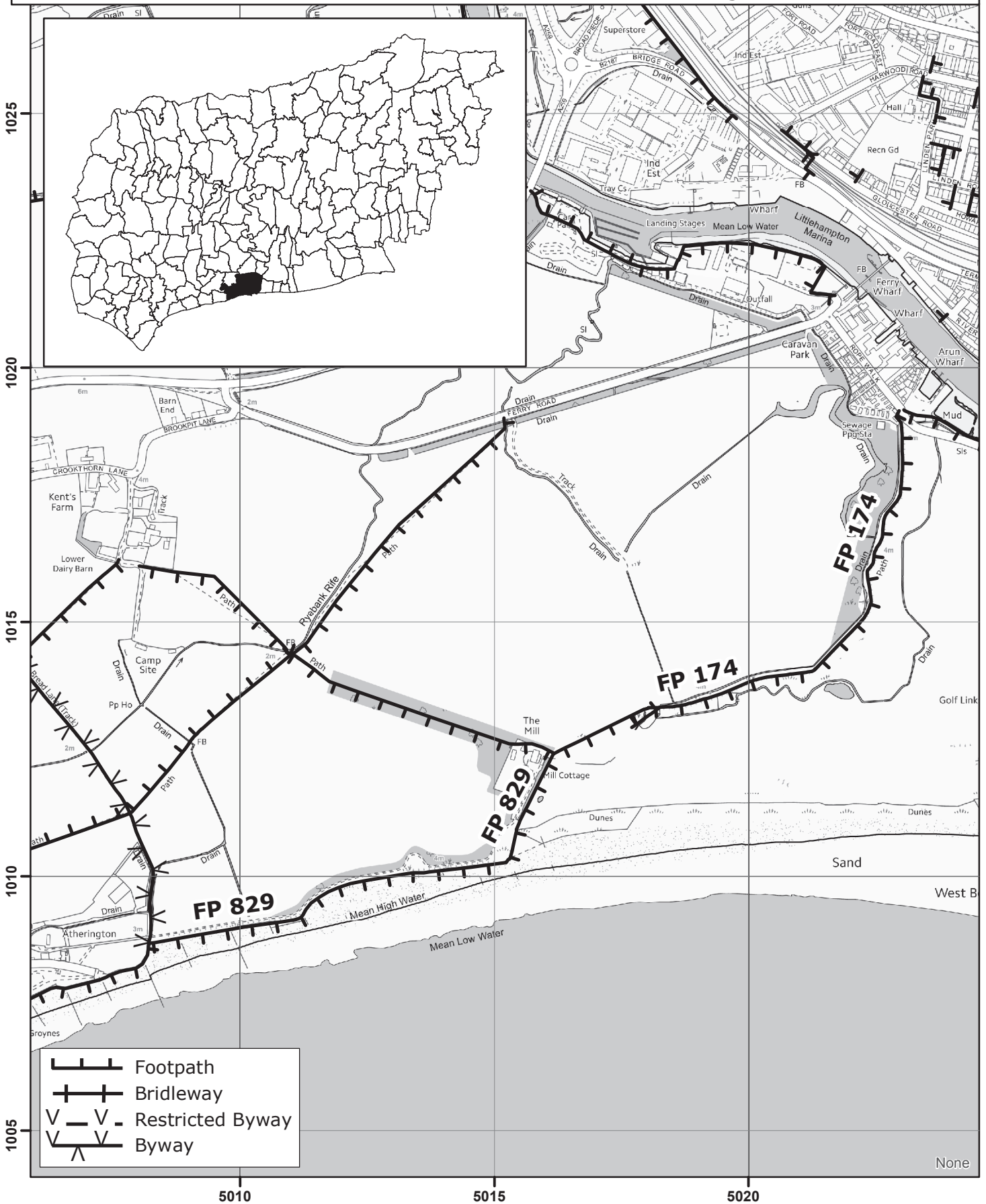
Appendix 13 – Extract of the Land Charges Map/ imap

The applicant claims that half the route from just south west of Climping Mill is coloured blue indicating a route maintainable at public expense. The applicant also states that the route is Class T no 01103725 and as it is not usual to show a footpath indicates the route carries public vehicular rights. The applicant also states the belief from previous evidence that the route ceased to be a road from the late 19th century due to more convenient ways of gaining access to the river and Littlehampton becoming available.

Bread Lane

The applicant refers to Bread Lane as a comparison stating that this lane has a shorter history than today's route as it is stated in the Victoria County History of Climping that Bread lane was not recorded before the 19th century yet is recorded as a Byway today.

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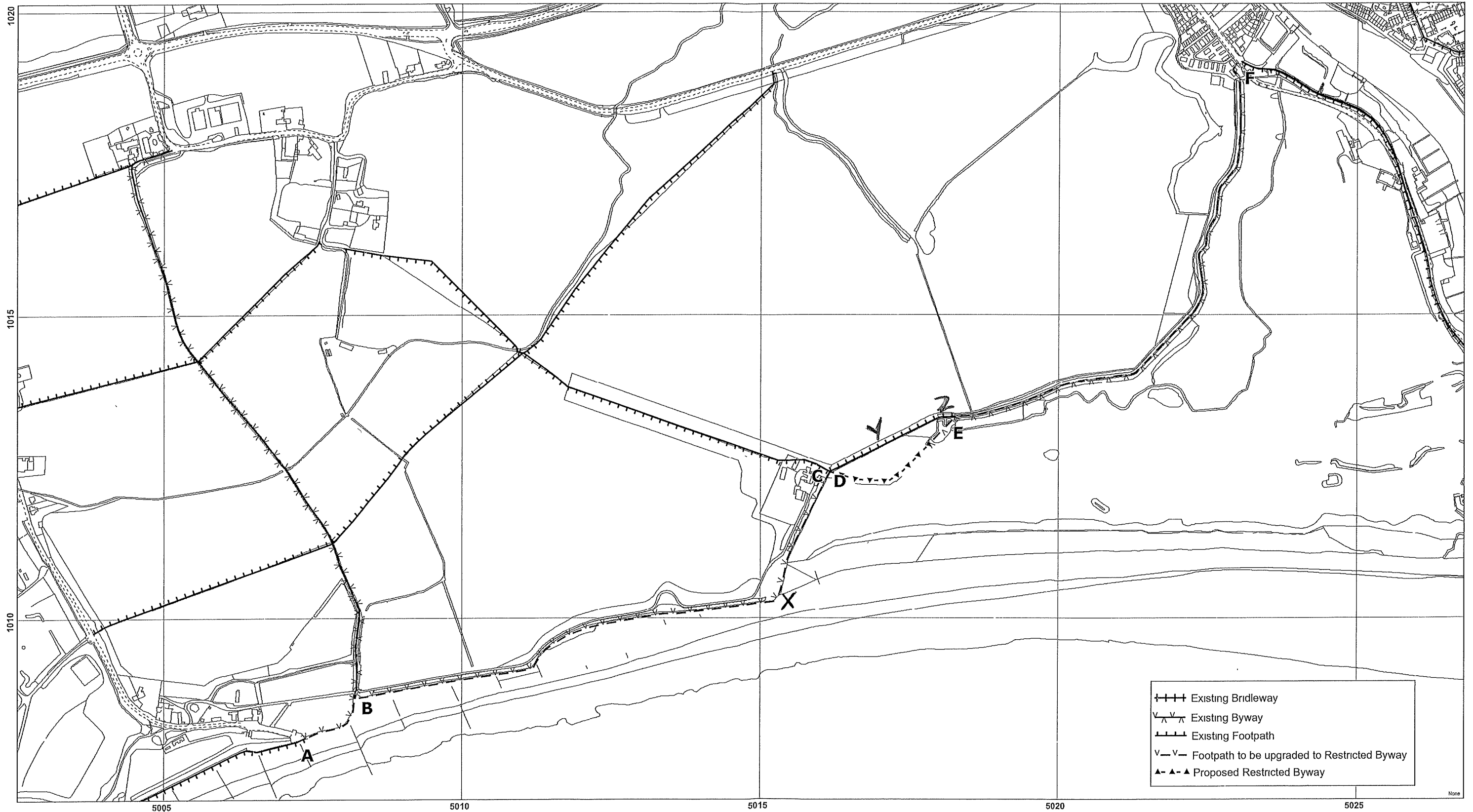


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Climping and Littlehampton: Upgrade of FP 829 and FP 174 to Restricted Byway status - Location Plan


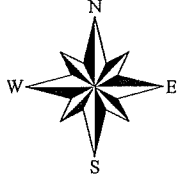
Plan: 01732	1:10,000	OS Sheet: TQ 00 SW		Photocopy liable to distortion	Matt Davey Director of Highways and Transport	
Date: 05.04.2018	Grid Ref: 5015 1010					

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Climping and Littlehampton - Upgrade of FP 829 and FP 174 to Restricted Byway status - Site Plan

Plan: 01733a	1:3000 at A1	OS Sheet: TQ 00 SW		Photocopy liable to distortion	Matt Davey Director of Highways, Transport and Planning	
Date: 02.07.2019		Grid Ref: 5015 1010				

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Unrestricted

Rights of Way Committee**22 October 2019****Recent Decision by the Secretary of State's Inspector:****West Sussex County Council (Elsted & Treyford and Harting)
Public Path (No. 871) Diversion Order 2017****West Sussex County Council (Elsted & Treyford) Public Path
(No. 872) Diversion Order 2017****West Sussex County Council (Elsted & Treyford) Public Path
(No. 873) Diversion Order 2017****Report by Director of Law and Assurance****Electoral division: Midhurst**

RecommendationThat this report be noted.

1. Background

- 1.1 The County Council received an application made by Mr Nigel Hanbury to divert part of public footpaths 871, 872 and 873 at Woodhouse Farm just north of Elsted and East Harting. The application also included the provision of two new public footpaths.
- 1.2 The application to divert the above paths was made due to the considerable impact on the management of the farmland and conservation aims and for the privacy and security of the farm.
- 1.3 A delegated decision was made on 1 December 2016 to allow the application and to make the necessary orders. The orders were made in March 2017.
- 1.4 The orders attracted two objections so, in line with the agreed practice when an order made following officer delegated decision is opposed, the Committee was asked to decide whether the orders should be submitted for confirmation.

- 1.5 The legal tests to satisfy before making a diversion order are:
- The 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 public, or both.
 - 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 users as the path to be stopped up.
- 1.6 The Committee agreed with the Officer recommendation that the tests for making of the orders could be met and approved the officer recommendation.
- 1.7 On 6 September 2018, the opposed orders were submitted to the Secretary of State for the Environment, Food and Rural Affairs. The matter was dealt with by way of written representations.

2. The Inspector's Decision

- 2.1 A full copy of the Inspector's decision report is attached, however, once the matter was submitted to the Planning Inspectorate one of the two objectors withdrew their objection.
- 2.2 The Inspector advised that the diverted routes of the paths would not be less convenient to the public. The Inspector also agreed that greater weight should be given to the landowner in this instance in order to facilitate land management for conservation purposes.
- 2.3 The Inspector concluded that the legal tests for confirmation of the orders could be met and therefore confirmed the orders.

3 Resource Implications and Value for Money

- 3.1 The County Council has the power, but not the duty, to investigate applications for diversion and extinguishment applications made under the Highways Act 1980. Applicants are required to reimburse the County Council's costs up to the point where an opposed order is submitted to the Secretary of State for determination and while there is no obligation to submit such an opposed order, if the order is submitted, the County Council must bear the costs from that point.

Tony Kershaw

Director of Law and Assurance

Contact: Charlotte Nash ext. 26934

Appendices

None

Background papers

- a) [Committee Report dated 12 June 2018](#)
- b) [Inspectors full decision dated 26 June 2019](#)
- c) [Site Plan](#)

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Unrestricted

Rights of Way Committee**22 October 2019****Recent Decision by the Secretary of State's Inspector:****West Sussex County Council (Chichester No. 1 (Parish of Walberton and Arundel addition of a Restricted Byway and Upgrade of Footpath 342 to a Bridleway)) Definitive Map Modification Order 2018****Report by Director of Law and Assurance****Electoral divisions: Fontwell / Arundel and Courtwick**

RecommendationThat this report be noted.

1. Background

- 1.1 In January 2018 WSCC received a DMMO application, made by the British Horse Society for the addition of a restricted byway and upgrade of footpath 342 to a bridleway in the parish of Walberton and Arundel, under Section 53 (3) c (i) and c (ii) of the Wildlife and Countryside Act 1981.
- 1.2 The application was supported by documentary evidence only and was therefore considered with reference to section 32 of the Highways Act 1980.
- 1.3 Several landowners objected to the application with concerns relating to the suitability of the path being upgraded and impact that would have on the landowners.
- 1.4 The application was considered in two parts 1) the addition of a restricted byway from points A to B and 2) the upgrade of footpath 342 to a bridleway, points B to G.
- 1.5 The legal tests to satisfy before making a Definitive Map Modification Order are:
 - i. Test A – whether a public right of way subsists (in order for Test A to be fulfilled, the standard of proof is to show that a right of way does exist is the balance of probabilities); or

- ii. Test B – whether a public right of way has been reasonably alleged to subsist (in order for Test B to be fulfilled it must be shown that the reasonable person, considering all relevant evidence available could reasonably allege a public right way to subsist).
 - iii. An upgrade of a public right of way under section 53 (3) c (ii) must meet the higher test of balance of probability (Test A) and therefore only section A to B of the application route, for an addition of a restricted byway can be considered against the lower test of reasonably alleged (Test B).
- 1.6 The investigating officer considered that there was insufficient evidence to suggest that a status of restricted byway was established on the balance of probabilities or on the lower test of reasonable allegation for section A to B. For the application to upgrade the footpath 342 from points B to G to bridleway, it was also considered the evidence was inconclusive and it could not be proven on the balance of probabilities that a bridleway should be shown on the definitive map.
- 1.7 The application was considered under delegated authority and the decision was made on 30 October 2018 for an order to not be made.
- 1.8 The applicant appealed against the delegated decision under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981.
- 1.9 The Inspector has allowed the appeal and directed WSCC to make an order, a summary of the Inspector’s report is provided below and the report attached.

2. The Inspector’s Decision

- 2.1 A full copy of the Inspector’s decision is attached. By way of summary, the Inspector concluded that;
- i. For Points A-B there is a reasonable case for a public road to have existed from A-B as the application route appears to be consistently marked as a road or lane on historic maps and its public use is supported by evidence from the Tithe map, apportionment for Binsted and Finance map. The inspector highlighted that the evidence does not need to be conclusive as this section of the route is only required to meet the lower test of reasonably alleged.
 - ii. For points B to G the evidence such as the Glebe Terrier, estate maps 1724, county map 1778 and OS maps could indicate a bridleway existed. The inspector also concludes that A-B would not have existed in isolation and that extracts provided by the applicant provide the historical context for a route to have been used to travel by horse and foot from the Church towards Arundel. It was therefore concluded, although finely balanced, that drawing the evidence together it can be shown on balance a bridleway subsisted.

- 2.2 Overall, the Inspector found that on the balance of probabilities it can be reasonably alleged a byway existed between points A to B and she was satisfied, on the balance of probabilities that a bridleway subsists between points B-G. WSCC were therefore directed to make an order on 12 July 2019.
- 2.3 An Order to add a restricted byway and upgrade footpath 342 to a bridleway in the parish of Walberton and Arundel was made by WSCC on 13 August 2019. The objection/representation period will end on 11 October 2019.

3 Resource Implications and Value for Money

- 3.1 The County Council has the duty to investigate applications for Definitive Map Modification Orders made under the Wildlife and Countryside Act 1981. Applicants are not required to reimburse the County Council's costs for considering and determining these applications.

Tony Kershaw

Director of Law and Assurance

Contact: Charlotte Nash ext. 26934

Appendices

None

Background papers

- (a) [Delegated Report 9 October 2018](#)
- (b) [Inspectors full decision dated 12 July 2019](#)
- (c) [Location Plan](#)

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Unrestricted

Rights of Way Committee

22 October 2019

Recent Decision by the Secretary of State's Inspector:

DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly

Report by Director of Law and Assurance

Electoral division: Lindfield and High Weald

Recommendation

That this report be noted.

1. Background

- 1.1 In March 2019 the Committee considered a DMMO application, made by Mr Paul Brown, to add a bridleway and upgrade an existing length of footpath (FP 51ESx) to bridleway status.
- 1.2 With regards to the addition of a new length of bridleway (being points A – B on the plan) the legal tests to satisfy before making a Definitive Map Modification Order are:
 - i. Test A – whether a public right of way subsists (in order for Test A to be fulfilled, the standard of proof is to show that a right of way does exist is the balance of probabilities); or
 - ii. Test B – whether a public right of way has been reasonably alleged to subsist (in order for Test B to be fulfilled it must be shown that the reasonable person, considering all relevant evidence available could reasonably allege a public right way to subsist).
- 1.3 In relation to the upgrade of FP 51ESX (being points B – C on the plan) Section 53(3)(c)(ii) states that an order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other evidence shows that a highway shown on the map and statement as a highway of one description ought to be there shown as a highway of a different description. The test to apply in such circumstance is the balance of probabilities.
- 1.4 The application was supported by documentary archival evidence only. No user evidence was submitted with the application.

- 1.5 The affected landowners (Ibstock Bricks Limited, the Mayes Estate and the Guide Association) objected to the application and submitted their objection as a consortium. The consortium's objection argued that the claimed route did not appear consistently on the maps provided by the applicant and that where the claimed route was visible there is nothing to differentiate it from private ways or otherwise to indicate its status. Comments on the application were also received from the adjoining landowners.
- 1.6 The reporting officer concluded that the evidence provided by the applicant was not sufficient and did not meet the required legal tests applicable in both instances. It was therefore recommended that an order should not be made.
- 1.7 Committee agreed with the Officer recommendation and it was resolved that an order be not made.
- 1.8 On 25 March 2019 the applicant appealed the County Council's decision by making an application to the Planning Inspectorate.

2. The Inspector's Decision

- 2.1 A full copy of the Inspectors decision report is attached, however, after reviewing the appeal documentation the Inspector concluded that;
 - i. In relation to part A –B, being the addition of a bridleway, evidence that a route physically existed on the ground was strongly supported by the mapping evidence. The inspector therefore concluded that the requirements of the lower test, being that a right of way has been reasonably alleged to subsist, had been met.
 - ii. In relation to part B – C, being the upgrade of the exiting footpath to bridleway, the inspector concluded that the appearance of the path suggests a route of more significance than a footpath.
- 2.2 In conclusion, when taking a pragmatic approach when considering the route as a whole the Inspector directed that an order for the whole route be made.
- 2.2 On 17 September 2019 the West Sussex County Council (Cuckfield Rural No.1 (Addition of public bridleway and upgrade public footpath 51ESx to public bridleway)) Definitive Map Modification Order 2019 was made.

3 Resource Implications and Value for Money

- 3.1 The County Council has the duty to investigate applications for Definitive Map Modification Orders made under the Wildlife and Countryside Act 1981. Applicants are not required to reimburse the County Council's costs for considering and determining these applications.

Tony Kershaw

Director of Law and Assurance

Contact: Georgia Hickland: ext. 25360

Appendices

None

Background papers

- (a) [Committee Report 5 March 2019](#)
- (b) [Inspectors full decision dated 9 August 2019](#)
- (c) [Site Plan](#)

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