

Public Document Pack

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23 October 2020

Rights of Way Committee

A virtual meeting of the Committee will be held at **2.15 pm** on **Tuesday, 3 November 2020**.

Note: In accordance with regulations in response to the current public health emergency, this meeting will be held virtually with members in remote attendance. Public access is via webcasting.

The meeting will be available to watch live via the Internet at this address:

<http://www.westsussex.public-i.tv/core/portal/home>

Tony Kershaw

Director of Law and Assurance

Agenda

Address by the Chairman on the final meeting of Rights of Way Committee

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 - 12)

The Committee is asked to confirm the minutes of the meeting held on 22 October 2019 (cream paper) and in doing so, in accordance with the Council's leaflet 'Rights of Way Committee - Public Participation', the Committee is also asked to consider a written request to amend the minutes of the meeting of the Committee of 22 October 2019.

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 13 - 16)

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 17 - 20)

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 21 - 40)

Report by the Director of Law and Assurance.

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

Definitive Map Modification Order No 1.19 – The addition of a Footpath from footpath 2704-1 and bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP to the definitive map for Chanctonbury.

6. **Public Rights Of Way Annual Progress Report 2019** (Pages 41 - 44)

Report by the Director of Highways, Transport and Planning and Executive Director for Place Services.

The Committee is asked to note the Public Rights Of Way Annual Progress Report 2019.

7. **Secretary of State Decision** (Pages 45 - 56)

Report by the Director of Law and Assurance.

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

Recent Decision by the Secretary of State's Inspector- West Sussex County Council (Chichester- No.2 (Climping Parish and Town of Littlehampton: Upgrade of public footpath 174 to a restricted byway)) Definitive Map Modification Order 2020.

8. **Date of Next Meeting**

This is the final meeting of Rights of Way Committee. Rights of Way matters will in future be consider at Planning and Rights of Way Committee.

The first meeting of Planning and Rights of Way Committee will be held at 10.30 a.m. on Tuesday, 10 November 2020. In accordance with regulations in response to the current public health emergency, this meeting will be held virtually with members in remote attendance. Public access is via webcasting.

To all members of the Rights of Way Committee

Rights of Way Committee

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

Present: Mr Whittington (Chairman)

Mr Boram, Mrs Purnell and Mr S J Oakley

Apologies were received from Mr Bradbury, Mr Acraman, Mr Baldwin, Mr Buckland and Mr Lea

Substitute: Mr Oakley

Part I

10. Declarations of Interest

10.1 In accordance with the County Council's code of the conduct, there were no declarations of interest made by Committee members.

11. Minutes of the last meeting of the Committee

11.1 Resolved – that the minutes of the meeting held on 25 June 2019 be approved and signed by the Chairman as a correct record.

12. Urgent Matters

12.1 There were no urgent matters.

13. Previous Decisions Progress Report

13.1 The Committee received and noted a report by the Director of Highways, Transport and Planning and 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).

14. Outstanding Applications and Delegated Decisions

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

15. Definitive Map Modification Order

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

15.1 The Committee considered a report by the Director of Law and Assurance, as amended by the Agenda Update Sheet, concerning an application to add to the Definitive Map and Statement for Chichester a restricted byway between points D and E on plan 01733a to upgrade a section of Footpath 829 between points A to D on the plan 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 (copy appended to the signed version of the minutes). Charlotte Nash, Legal Assistant, introduced the report. As per the recommendations in the report, it is considered that the legal tests for making the Orders have not been met.

15.2 Mr Sean Manning representing Littlehampton Golf Club, one of the landowners, spoke in objection to the application. Mr Manning referred to a letter sent to the County Council dated 13 March 2019 (shown by Officers to Committee members following Mr Manning's representation). There are strong concerns particularly in relation to application route D to E which crosses the 12th hole of the golf course, posing significant safety issues for the business, golfers and users of that proposed route. This section was legally stopped up in 1936. The current route (D to Y to Z) is regularly used by families and many children. In relation to section E to F, part of the route runs directly in front of the 16th hole, it is a blind crossing and whilst the golf club has warning signage in place it is felt that this footpath is not suitable for additional traffic that might result from an upgrade to a restricted byway. Furthermore, the golf club is believed to own land beyond footpath 174 and this application raises concerns about the impacts on its ongoing maintenance.

15.3 Mrs Julie Robinson, the applicant, spoke in support of the application. There is good, credible evidence to support the application. Regarding higher rights along section A to X, it is only the Definitive Map which has created a legal restriction; in centuries past the public would have had full access to Climping beach on foot, horse or by horse drawn cart, e.g. use by smugglers, horses to pull up boats and carts to collect seaweed would have occurred. There was no road drawn between Climping and Middleton at this period and the only possible access was via the beach. Route A to X from Climping Street and the Mill was on the public beach even if not always drawn. The old road to the Mill, off the end of Climping Street, is clearly different from the private road which begins further back from the shoreline and shows a distinctive loop further east around the barn and is much later, dating sometime after the 1843 Tithe Map and before the 1876 OS large scale map. It is not shown on earlier maps. Arguments that section A to X was private or only a footpath are highly implausible, the Mill business would have required road access for carts for heavy raw materials and customers taking away sacks of flour. Also, the Mill was described as being located on Common Lane which is not indicative of a private road. It further survived to become a 'public' footpath. Concerns by Littlehampton Golf Club regarding points D to E can be overcome by following the current route D to Y to Z.

15.4 Officers clarified that for the avoidance of doubt the Council is required to consider whether the applicant has shown that with regard to the following sections of the route: A to D and E to F the relevant legal tests are on the balance of probabilities. The exception being for points D

to E, this section of the claimed route deviates from the footpath presently in existence; the proposed restricted byway was diverted in 1936 by the General Quarter Sessions in Chichester Court Order and by that Court Order, all public rights along the path were stopped up including any higher rights; therefore, the application for addition of a restricted byway between points D to E fails on this basis.

15.3 During the debate the Committee made the points below.

Clarification was provided by Officers, where applicable:

- The Committee accepted that due to the stopping up of points D to E in 1936 the application for this section fails on this basis.
- Some of the historic line of the route A to X is no longer in existence due to coastal erosion, over time, along the foreshore. The Committee questioned whether any inherited higher rights of the historic route have been transferred to the line of the current footpath. Officers referred the Committee to section 9.4.3 of the report which summarises for Section A to X that only the Greenwoods 1825 map indicated a route with a status as public route; all maps which show a route between A to X cannot be distinguished from the private road leading to the Mill. Officers clarified that for an upgrade to restricted byway the evidence would need to show that a highway was shown as a byway for use by mechanical vehicles. Officers also clarified that higher rights would not be transferable where the line of a route has changed over time due to the disappearance of the original route, although it is not certain that the route is no longer there. However, irrespective of this, the application must be determined on the basis of the evidence submitted, with appropriate weight attached for the whole of the route A to D, as per application number DMMO 2/17.
- The Chairman noted that where concrete surfacing occurs along route A to X this was put in to facilitate use of the gun emplacements.
- Regarding points A to X to C, the Committee noted that it would appear reasonable to suppose that historic access to the Mill would include use by horse and cart.
- The Committee generally agreed that for points X to C the line of the current footpath follows the historic route shown in archive evidence.
- The Committee asked about the date of the flint wall bordering part of the golf course and whether this was indicative of the border of part of the historic route along section X to E. Officers advised that they did not think the wall is shown in photographic evidence provided by the landowners, the Bairds, of the Mill, dating from the time the golf course was built in the late 1800s but the existence and position of such a wall had not been considered in the report and the historic position of this wall is not known.
- Regarding section E to F, notwithstanding the physical restrictive conditions on the ground, the only historical evidence which clearly suggests the route as having a higher status than a path is the Atherington Estate Map. The Committee considered the purpose for which this map was drawn and the weight to be given to it and concluded that the embankment along part of the route

was likely put in place by the Estate for the purposes of drainage of land and, therefore, on balance, that the route was used as a footpath and so unlikely to have been a byway or as a means of cart access from Littlehampton to the Mill. The Chairman further noted that, in his opinion, farmers would be unlikely to cross a ford whilst carrying loads of grain.

15.4 In respect of DMMO 2/17 (section A to D), the motion below was proposed by Mr Oakley and seconded by Mr Boram, and was voted on by the Committee and approved by a majority:

Having considered the archive evidence summarised in the report and having heard the representations made, the Committee's view on the weight to be given to the archive evidence in respect of DMMO 2/17 including, in particular, the antiquity of the documents and purposes for which the maps were produced; it is concluded that for the claimed route A to D the evidence does show that a highway shown on the Definitive Map and Statement for Chichester as a footpath ought to be there shown as a restricted byway, given that this provided access to the Mill and the Committee infers from this that use was by horse and cart. Therefore, for those reasons, 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 between points A to D as shown on the application plan 01733 a in the parish of Climping and town of Littlehampton to the Definitive Map and Statement for Chichester be made.

15.5 Resolved – For the reasons given in minute 15.4 above, that an order under Section 53 (2) of the Wildlife and Countryside Act 1981 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 between points A to D in the parish of Climping and town of Littlehampton to amend the Definitive Map and Statement for Chichester, *be made*.

15.6 In respect of DMMO 3/17 (section D to E), the recommendation was proposed by Mrs Purnell and seconded by Mr Oakley, and was put to the Committee and approved unanimously.

15.7 Resolved - in respect of DMMO 3/17 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 footpath between points D to E as shown on the application plan 01773a in the parish of Climping and town of Littlehampton to amend the Definitive Map and Statement for Chichester *be not made*.

15.6 In respect of DMMO 4/17 (section E to F), the recommendation was proposed by Mr Boram and seconded by Mr Oakley, and was put to the Committee and approved unanimously.

15.7 Resolved - in respect of DMMO 4/17 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 from point E to F as shown on the application plan 01773a in the parish of Climping and

town of Littlehampton to amend the Definitive Map and Statement for Chichester *be not made*.

16. Secretary of State Decision

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

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

16.2 Resolved – The Committee noted the report.

17. Secretary of State Decision

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

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

17.2 Resolved – The Committee noted the report.

18. Secretary of State Decision

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

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

18.2 Resolved – The Committee noted the report.

19. Date of Next Meeting

19.1 The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday, 10 March 2020.

The meeting ended at 3.34 pm

Chairman

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Proposed amendments to Rights of Way Committee minutes of 22 October 2019.

15. Definitive Map Modification Order

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

15.2 Mr Sean Manning representing Littlehampton Golf Club, one of the landowners, spoke in objection to the application. Mr Manning referred to a letter sent to the County Council dated ~~13~~ **15** March 2019 (shown by Officers to Committee members following Mr Manning's representation). There are strong concerns particularly in relation to application route D to E which crosses the 12th hole of the golf course, posing significant safety issues for the business, golfers and users of that proposed route. This section was legally stopped up in 1936. The current route (D to Y to Z) is regularly used by families, ***cyclists*** and many children. In relation to section E to F, part of the route runs directly in front of the 16th hole ***tee***, it is a blind crossing and whilst the golf club has warning signage in place it is felt that this footpath is not suitable for additional traffic that might result from an upgrade to a restricted byway. Furthermore, the golf club is believed to own land beyond footpath 174 and this application raises concerns about the impacts on its ongoing maintenance.

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Rights Of Way Committee

3 November 2020

Previous Decisions Progress Report

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

* indicates a change in position since the last meeting

Table 1 - Previous Decisions

	Subject	Date Considered by Committee or Date of Delegation	Current Position
1	Slinfold: DMMO 1/15 Addition of a FP from BW 3569 to FP 1467 on land east of Hayes Lane	Delegated decision 08.02.2017	Local public inquiry cancelled due to COVID-19. Matter to be determined by written representations.
2*	Arundel: DMMO 1/16 Addition of a FP from Queen Street to Fitzalan Road	Committee 20.02.2018	Order confirmed with modifications to be advertised by the Planning Inspectorate
3*	Horsham: DMMO 4/16 Addition of a FP from Coney Croft cul-de-sac to FP 1586/2	Committee 20.02.2018	Local public inquiry cancelled due to COVID-19. Matter to be determined by written representations with site visit scheduled for November 2020
4	Rogate: DMMO 5/16 Addition of a FP at Fyning Twitten	Committee 12.06.2018	Local public inquiry scheduled for August 2020 cancelled due to COVID-19. Awaiting rescheduled dates from Planning Inspectorate.
5	Duncton: creation of a new FP	Delegated decision 18.10.2018	Agreement drafted and awaits landowner's signature
6	Billingshurst: Creation of new link to FP 1321	Delegated decision 23.10.2018	Agreement drafted and awaits landowner's signature
8	Haywards Heath FP 28CU Mid Sx District S257 diversion consultation	Delegated decision 31.05.2018	Order made and confirmed by the District Council. The certificate to bring the order into effect to be issued when the works are completed

Previous decisions 03.11.2020

	Subject	Date Considered by Committee or Date of Delegation	Current Position
9	Walberton and Arundel: DMMO 1/18 Addition of a restricted byway and upgrade of FP 342	Delegated decision 29.10.2018	Orders submitted to the Planning Inspectorate May 2020
10	Washington: Creation of BW	Delegated decision 14.02.2019	Agreement to be prepared once landowner has provided evidence of landownership
11 *	Sharpthorne: DMMO 2/16 Addition of BW between Top Road and Sharpthorne Road and upgrade of FP2WH to BW	Committee 05.03.2019	Orders submitted to Planning Inspectorate September 2020
12	Ansty and Staplefield: S119 diversion BW 40CR, Mizbrook's Farmhouse	Committee 25.06.2019	Order made
13 *	Climping: DMMO's 2/17, 3/17 and 4/17 The upgrade of FP 174 to RB, the upgrade FP 829 to RB and the addition of a RB	Committee 22.10.2019	DMMO 2/17 – Order made and objections received DMMO 3/17 & 4/17 – Instructed to make the Orders by the Planning Inspectorate
14 *	Pagham: S119 diversion of FP 133 at Butterlees Farm	Delegated decision 19.06.19	Order confirmed
15	Hassocks : FP 10C Mid Sx District S257 diversion consultation	Delegated decision 07.08.19	Order made and confirmed by the District Council. The certificate to bring the order into effect to be issued when the works are completed
16	Itchingfield/ Southwater:S25 creation of new BW and upgrade of FP to BW to improve connection to Downs Link	Delegated decision 15.10.19	Agreements drafted and await landowners' signatures.

	Subject	Date Considered by Committee or Date of Delegation	Current Position
17	Earnley/Sidlesham: S25 creation of new FPs and permissive FPs and BWs	Delegated decision 25.09.19	Agreements drafted and await landowner's signature
18	Hassocks : FP 9C Mid Sx District S257 diversion consultation	Delegated decision 17.10.19	Order made and confirmed by the District Council. The certificate to bring the order into effect to be issued when the works are completed
19 *	Haywards Heath: FP 104CR Mid Sx District Council S257 diversion consultation	Delegated decision 27.02.20	Order made and confirmed by the District Council. The certificate to bring the order into effect to be issued when the works are completed.
20 *	Lancing : FP 2048 Adur District Council S257 diversion consultation	Delegated decision 22.04.20	Order made and confirmed by the District Council. The certificate to bring the order into effect to be issued when the works are completed.
21 *	Madehurst: SDNPA S25 footpath creation agreement	Delegated decision 06.04.20	Works to install the new path not yet completed by landowner.
22 *	Selsey / Sidlesham:FP 76 permissive bridleway agreement	Delegated decision 06.02.20	Works to install the new path not yet completed and final element of creation to be agreed.
23 *	Thakeham: S25 bridleways creation at Abingworth development	Delegated decision 07.05.20	Agreement completed
24 *	Heyshott: Application to deregister part of CL125 – the Granary, Bex Lane	Delegate decision 19.05.2020	Land deregistered

Matt Davey

Director of Highways, Transport and Planning

Tony Kershaw

Director of Law and Assurance

Contacts:

Previous decisions 03.11.2020

Agenda Item 4a

Definitive map modification orders and common land/town and village greens: **Ami Dye**
ext. 22687

Diversions, extinguishments, creations, permissive path proposals **Judith Grimwood**
ext. 26705

Rights of Way Committee

3 November 2020

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

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

1a. Applications for Definitive Map Modification Orders

Table 1 - Applications for Definitive Map Modification Orders

	Parish	Application No.	Claim	Date application received
1	Arundel and Ford	3/20	Addition of a BW and upgrade parts of FPs 3403 & 361-1 to BW	14.07.20
2	Barnham and Flansham	7/19	Upgrade of FPs 146, 147 and part of 153 to BW and the addition of a BW	01.08.19
3	Bognor, Bersted and Felpham	4/19	Addition of 3 FPs: (1) commencing on Brooks Lane crossing the Aldingbourne Rife and continuing across 2 fields to Downview School and (2) commencing from path 1 cutting across the fields and continuing to Felpham Leisure Centre; and (3) a circular path around the main field adjacent to Aldingbourne Rife	23.05.19
4	Bognor, Bersted and Felpham	5/19	See no. 3 above	23.05.19
5	Bognor, Bersted and Felpham	6/19	See no. 3 above	23.05.19
6	Bramber	4/20	Addition of a FP at Coombe Drove	11.08.2020

Outstanding applications 03.11.2020

	Parish	Application No.	Claim	Date application received
7	Flansham	2/20	Addition of a RB at Hoe Lane Flansham	21.01.2020
8	Henfield and Woodmancote	2/19	Upgrade FP 2540 to RB and addition of a RB	05.03.19
9	Horsham	7-10/18	Addition of 3 FPs in Piries Place	05.02.18
10	Horsham	8/19	Addition of BW from Sedgwick Lane to BW1713	14.10.19
11	Rogate	5/17	Addition of FP from FP 1162 to join with DMMO 5/16	31.10.17
12	Southwater	9/19	Addition of FP from Nutham Lane to Easteds Lane	31.10.19
13	Steyning	1/19	Addition of FP linking FPs 2713 and 2704/1 (Mouse Lane)	27.02.19
14	West Wittering	3/19	Addition of BW from Redlands Lane to the B2179 at Malthouse Cottages (Sheepwash Lane)	28.02.19
15	Walberton and Yapton	1/20	Addition of a FP east of Yapton Lane	15.01.2020
16	Yapton	5/18	Addition of RB off Drove Lane and upgrade of FP 155 to RB	19.04.18
17	Yapton	6/18	Upgrade of FP 157 to RB and addition of BW	19.04.18
18	Yapton and Climping	11/18	Upgrade of FP 166 and FP 165 to BW and the addition of BW	19.10.18
19	Yapton	5/20	Addition of a BOAT along Grevatts Lane	14.07.2020

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
Shipley	TVG 31/50	Application to register land known as Rascal Field as a TVG	28.11.19

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	Eastergate	FP 323	Diversion (Network Rail)	16.02.15		A
6	Fulking	FP 5_1	Diversion	28.06.16		A
7	Hassocks	FP 5K	S257 Diversion (Mid SxDC)	15.04.20	29.06.20	G
9	Kirdford	Fp 614-1	Diversion	11.07.13		B
10	Pulborough	FP 2312	Extinguish-ment (Network Rail)	17.01.13		A
11	Southbourne / Chidham /	FP 258	Extinguish-ment	11.11.12		B

Outstanding applications 03.11.2020

	Parish	Path No	Proposal	Date Received	Date of Decision	Category
	Hambrook		(Network Rail)			
12	Thorney	FP 202	Diversion	22.07.20		B
13	West Wittering	BW 20	Diversion	07.06.13		C

Matt Davey

Director of Highways Transport
and Planning, Place Services

Tony Kershaw

Director of Law and Assurance

Contacts:

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

**Key decision: Not applicable
Unrestricted**

Rights of Way Committee

Date: 3 November 2020

Definitive Map Modification Order No 1.19 – The addition of a Footpath from footpath 2704-1 and bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP to the definitive map for Chanctonbury.

Report by Tony Kershaw Director of Law and Assurance

Electoral division/s: Bramber Castle

Summary

An application, received on 27 February 2019, was made by Steyning Parish Council to add a new footpath in the parish of Steyning CP. It is supported by thirteen public way user evidence forms from eleven different postal addresses attesting to use from 1976 to the present from 3 times a year to daily.

The Landowner, tenant farmer and adjoining landowner's contest the evidence, arguing that the claimed route has only been used with permission and prior to a permissive path being established in 2009 that public use of the route was not permitted.

The establishment of a permissive path in 2009 is the act which brought use by the public into question and therefore the relevant 20 year period, taken back retrospectively from this date, is 1989 to 2009.

Letters found in the County Council's path/parish files and from the landowner indicate use of the claimed route may have been withdrawn from the public in the 1990's but it is not clear as to whether the interruption was to use on foot or on horseback. In addition, while the letters indicate the route was used by the public, it is unclear if use was "as of right" and tolerated by the landowner or with permission.

The user evidence from eleven users attests to frequent use of the claimed route "as of right" during the relevant period. While there is some evidence of an intention not to dedicate on the part of the landowner, it is not considered that this defeats the claim, given there is no evidence that the landowner communicated an intention not to dedicate the claimed route or that use was interrupted by the landowner. Where an applicant for a DMMO produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, but there is a conflict of apparently credible evidence from the landowner in relation to one or other issues arising under Section 31 of the 1980

Act; then the allegation that the right of way has been reasonably alleged to subsist is used.

It is concluded that the reasonable user would have believed they were using the claimed route "as of right" during the relevant period. Therefore, it is concluded that it can be reasonably alleged the claimed route subsists and meets the relevant statutory tests set out in Section 31 Highways Act 1980 on the lower test of a reasonable allegation.

Recommendations

It is recommended that a definitive map modification order to add a footpath from footpath 2704-1 and Bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP for the Definitive Map for Chanctonbury should be made.

1. Introduction

- 1.1 The application, made by the Steyning Parish Council, was received on 27 February 2019 to add a new footpath in the parish of Steyning CP. It is supported by thirteen public way user evidence forms from eleven different postal addresses.
- 1.2 This application is made under Section 53 (3) (c)(i) Wildlife and Countryside Act 1980 (WCA), being the discovery by the County Council of evidence which shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land.
- 1.3 The application is based on user evidence only. The requirements for the presumed dedication of a public right of way under statute are set out in Section 31 of the Highways Act 1980. This requires use of the claimed route by the public to be as of right and without interruption, over a period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public.
- 1.4 In considering the application it must be determined whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a right of way exists, or in the alternative that it can be reasonably alleged to subsist, which is a lower test. The lower test requires that a reasonable person, considering all relevant evidence available could reasonably allege a public right of way subsists over land. The burden of proving this falls to the applicant.
- 1.5 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.

2. Characters and Features of the claimed route

The claimed route commences at the junction of footpath 2704_1 and bridleway 2714 heading in a northerly direction crossing Mouse Lane and then heading up a farm track past Charlton Court Farm for approximately 300 metres until reaching footpath 2713 as shown on plan 01788 and location plan 01789.

3. Land Ownership

- 3.1 The owner of the land over which the claimed route passes is Richard Harry Goring of the Wiston Estate, under HM land registry title WSX305500. Charlton Court Farm is leased to the occupier, John Goring of Fairbank Farm.
- 3.2 James Foottit and Camilla Foottit also have private rights of access to the drive/farm track over which the claimed route passes as owners of Charlton Court Farm under HM land registry title WSX104550.
- 3.3 Nicola Makepeace of 3 Charlton Court Cottages also has a private access right along the drive/farm track to Charlton Court over which the claimed route passes under HM land registry titles WSX413259 and WSX355817.

4. Consultations

- 4.1 Before making a Definitive Map Modification Order, the County Council is obliged to consult the relevant District or Borough and Paris Councils and in this case the SDNP Authority. Consultations have also been carried out with other interested bodies/ standard consultees. Responses received to the consultations carried out can be found in the evidence file of background papers in the member's room. In considering the result of the consultations, members are reminded that when determining this application they can only take into account evidence which demonstrates whether or not the legal tests have been satisfied. The following comments were received;
- 4.2 **Cllr D Barling**
Cllr Barling stated that he supports the application and has used the route personally over the years without difficulty.
- 4.3 **Mike Charman, Ramblers West Sussex Area Footpath Officer**
Mr Charman stated that after visiting the route the Ramblers support the application. Mr Charman states that the addition would greatly enhance the footpath network in the area and allow a number of circular walk alternatives.
- 4.4 **Horsham District Council (HDC) Planning Department**
HDC stated that they can see no evidence from planning histories to suggest the public have not been able to use the path for this period.

5. Evidence submitted in support of the application.

- 5.1 The application is supported by thirteen public way evidence forms, testifying to the use of the claimed route on foot by individuals from 3 to 364 times per year from 1983 to the present day.
- 5.2 All of the user evidence submitted with the application claims the route has been used on foot, either walking or jogging.
- 5.3 One user claims to have also used the route on horseback from 1987-2001. Four of the users claim they have also seen others using the route on horseback and three of the users claim they have seen cyclists using the route.
- 5.4 All users claim to have seen others using the route whether that is on foot, horseback or bicycle.
- 5.5 None of the users report to having been turned away whilst using the route or to have seen any notices stating they could not use the route on foot.
- 5.6 Eight users state there was a gate across the route, however, all but one of these users state the gate was unlocked or had pedestrian access to the side of the gate so it did not prevent use of the claimed route. Another user states that there was a "gate at times unlocked".
- 5.7 Two users note a sign on the gate saying "no bikes or horses dogs must be kept on a lead" and provide photos of the sign. They also provide photos of a notice providing information of a permissive footpath access provided under the Higher Stewardship Scheme with Natural England.
- 5.8 Two Users state that they had sought permission to use the route from Mrs Brine, an occupier of the route at the time and one user notes that they knew Mrs Brine had a private legal right. From letters/notes in the County Council's path and parish file it was established that Mrs Brine was a previous occupier of Charlton Court Farm. These two users also state they used the route to access Charlton Court.

6. Evidence submitted by Landowners and adjoining Landowners

6.1 Richard Goring, Land Owner

Richard Goring stated that the evidence of long term use was interrupted as the footpath was currently open by permission under a Higher Level Stewardship Scheme.

Mr R Goring explains that in 2013 a landowner deposit was made to the County Council, and this does not show the route in question.

Mr R Goring also provides a letter from George Cockman dated the 22nd March 1999 to his father asking if a permissive bridleway would be considered past Charlton Court Farm (along the claimed route) and then east to allow access to the Downs. This proposal was thought to be for the benefit of horse riders and motorist's as it would avoid horse riders using

a dangerous bit of road. In this letter Mr Cockman also states that he understands the access to this route has been withdrawn as a local resident abused the freedom to use the route. A note is provided by Mrs Marlene Carman, a Steyning Parish Councillor, providing a map of the proposed route and further comments. Mrs Carman states that many people already use this access for horses when using fields towards Wiston Pond and Charlton Court for grazing.

Mr R Goring also states that previously the land was tenanted by the How family who were extremely clear on not allowing members of the public on their land due to livestock farming and a desire for privacy.

Mr R Goring states that in their view the route does not meet the requirements to be dedicated as a PROW as the access has either been not available to the public or has been granted by permission.

The route is no longer a permissive path as funding under the Countryside Stewardship scheme for permissive paths has been taken away; the owner is currently in discussion with DEFRA the CLA and SDNPA.

6.2 **John Goring, tenant farmer**

Mr J Goring has been a tenant farmer for 36 years and prior to that was farm manager. Mr J Goring states that a permissive path was created in 2009 under the Countryside Stewardship Scheme but prior access along the path was not permitted and it was not used regularly prior to 2009. Mr J Goring states that prior to 2009 he stopped members of the public trying to use the route. The gate along the route has been kept locked at all times unless there is someone working on the farm and has been in place for at least 15 years.

Mr J Goring provided pictures of the gate showing the narrow path taken around the side of the gate as well as pictures of the sign approved by Natural England showing the permissive path.

Mr Goring states a section of the driveway shown between points A and B on the annotated plan provided is access for himself and farm staff and Mrs Cooper who is an equestrian tenant. Between points B and C is shared access for Mr J Goring and his staff, Mr and Mrs Footit, Sally Johnson and Nicky Makepeace and their families.

6.3 **James Foottit occupier/owner of Charlton Court Farm**

Mr Foottit has been an adjoining property owner for 10 months. Mr Foottit notes that he was informed by his solicitor it was not a public right of way but currently a permissive path. Mr Foottit states the gate is locked and he has seen members of the public use the route daily. Mr Foottit notes that tenant farmers and tenants at the Standings have a private right to use the route.

6.4 **Mrs Susie Cooper, tenant**

Mrs Cooper stated that she has been a tenant for 22 years. She does not consider the route to be a public right of way but a permissive path only and has never known or been informed otherwise. Mrs Cooper uses the route daily by foot or car to access her horses and also sees members of

the public using the route daily. She states the five bar gate is padlocked and there is a sign stating "No vehicles, cyclists or horse riders, Dogs to be kept on leads". Mrs Cooper has stopped and turned back cyclists from using the route in the past. Lastly, Mrs Cooper states that people accessing her horses and employers of Wiston estate have had private rights to use the route.

6.5 Mrs Sally Johnson, Standings Mouse Lane

Mrs Johnson is a tenant of an adjoining property for the last 35 years and she uses the route to access her horse. She does not consider the route to be a public right of way but a farm track with access to three properties. Mrs Johnson has been informed by previous farmers that the route is not public and she frequently sees members of the public using the route on foot. Mrs Johnson states there is a locked gate along the route and a sign saying "no cycling, horse riding or vehicular access" and she has turned back cyclists using the route. People have had a private right to use the route to access the horses.

7 Other evidence

7.1 The County Council's Records and Mapping evidence

Legal Services Path file No 2713

- 7.1.1 A letter dated 24 July 1991** to the County Secretary from Gillian Turner on behalf of RH Goring following a complaint to the state of footpath 2713 which falls across Mr R Goring's land. In this letter Mrs Turner states that *"Up to now I understand the farmer has allowed local people to walk through the farmyard itself. This brings them back into Mouse Lane which makes a round route. I suspect that this privilege is likely to be withdrawn which will be a great pity."*

The route through the farm yard to footpath 2713 appears to be the current claimed route. This letter potentially implies that in 1991 the footpath was used by the public. It is not possible to determine from this letter whether the landowner allowed the public to use the route or merely acquiesced in such use.

- 7.1.2 A letter dated 5 May 1994** from a Mrs S Ford suggests the "footpath through Charlton Court" would provide a good diversion for a Bridleway suggesting that the route is currently used by the public on foot as she refers to the route as a footpath.

These letters indicate that a route was used by the public from 1991, however, it is unclear from these letters whether the route was used 'as of right' or with permission.

Parish File Steyning CP

- 7.1.3 Letter dated 23 May 1990 from BJ O Sullivan, Clerk Steyning Parish.** The letter puts forward new footpaths in Steyning Parish, the claimed route being one. The landowners are stated to be Wiston Estate and Mr and Mrs Brines of Charlton Court Farm. The County Council

responded to explain the process of how to apply to add a route to the definitive map. There appears to be no more correspondence on this matter on file. The letter does not indicate whether or not the route is currently being used by the public.

- 7.1.4 **Letters from Mrs Olive Oldham 1973.** Mrs Oldham wrote to the County Council asking for something to be done about the condition of footpaths along Mouse Lane and Charlton Cottages following a letter she received from Penelope How asking her not to trespass

Draft and Provisional Definitive Map

- 7.1.5 No Public Right of way is shown on the draft or provisional map

S31 (6) Deposits under the Highway Act 1980

- 7.1.6 A Section 31(6) Deposit was made in 2013 by Richard Goring of Wiston estate, no footpath is shown along the claimed route.

In the pre-2013 register an entry for J Goring, Wiston, Horsham has been made at entry number 22 but no date is provided and there is no document saved for entry number 22 therefore it is unclear if this deposit was ever made.

Mapping evidence

- 7.1.7 **West Sussex County Council local view Ordnance Survey (OS) map 1863-95**

There is no indication of a public right of way along the claimed route although a road to Charlton Court is shown. This is most likely the private drive leading to Charlton Court. It is possible a public route is indicated by double dashed lines running in a north easterly direction and joining today's FP 2713, however this does not follow the line of the claimed route. In conclusion, it is considered the claimed route is not shown.

- 7.1.8 **West Sussex County Council local view OS map 1896-90, 1909-46**

Charlton Court is shown in a similar way to the previous local view except no north easterly route is shown through Charlton Court to footpath 2713. As above the claimed route is not shown.

- 7.1.9 **West Sussex County Council Local view OS map 1930-46**

No data

- 7.1.10 **Adcock's Survey 1894**

A road is marked going into Charlton Court Farm but it is not marked as a publicly maintainable highway and is most likely the access drive. There is a dashed line indicating a route going from the road into Charlton court following the line of today's footpath 2713. There is no indication of a route following the line of the claimed route.

7.2 West Sussex Records Office

7.2.1 Inclosure awards and maps, Estate Map 1825 (Wiston Ms 5622)

There is no indication of a public right of way through Charlton Court, some other rights of way are shown on the map but it is unclear if they are public or not

7.2.2 Tithe Map

There is no indication of a right of way or route along the claimed route

7.2.3 Quarter Session QR/W543 July 1778

A highway (bridleway) is mentioned between Wiston parsonage & Washington common but there is no mention of Charlton Court and it is not shown on accompanying map

7.2.4 Quarter Session QR 594

There is no useful information relevant to the claimed route.

8. Consideration of claim- Archive Evidence

- 8.1 Considering all of the evidence outlined in section 7, only the letters found in the County Council's path and parish files indicate use of a route through Charlton Court Farm in the 1990's. Documentary evidence predating these letters and mapping evidence do not indicate that historically the claimed route existed. Therefore, in order to consider the claim, user evidence will be relied on with the support of some documents found in the archive materials as set out below.

9. Consideration of the claim -The 20 year period

- 9.1 Under Section 31 of the Highways Act 1980, a relevant date needs to be established in order to establish the 20 year period. The relevant date is determined as the period when the land has actually been enjoyed by the public as of right and without interruption for a full period of 20 years taken back retrospectively from the first date of challenge.
- 9.2 The application was made following the expiration of the permissive use of the route under a Higher Level Stewardship Scheme; the permissive path was created in 2009 and therefore is taken as the act which brought the public's right to use the route into question. The relevant 20 year period, taken back retrospectively from this date is 1989 to 2009.
- 9.3 Use of the route has been between 3 to 364 times per year by thirteen users during the relevant period. Three users claim to have used the route over 100 times a year, eight users between 15 and 100 times a year and one user 3 to 4 times a year. All users claim to have used the right in its entirety either as a circular route from Mouse lane or to access Wiston Pond, the rifle range or the leisure centre except one user who used the route to access horses she had stabled at Bayards and two users used the

route to access Charlton Court amounting to the use being considered to be with permission as visitors to Charlton Court rather than “as of right”.

9.4 Nine users claim to have used the route throughout the entire relevant period with use ranging from 15-364 times a year. The four other users claim to have used the route for the majority of the relevant period from 1990, 1991 and 1994 to the present day from 3-100 times a year.

9.5 Use of the route was on foot by all users, however, one user also mentions using the route on horseback and several mention having seen people use the route on horseback during the twenty year period.

10. Consideration of the claim - As of right and without interruption?

10.1 “As of right” means use without force, secrecy or permission. It is irrelevant whether the users actually knew they were not entitled to use the route or were indifferent as to whether they could use it. What is important is that looked at objectively they appeared to be using the path as of right.

10.2 With regard to the issue of ‘permission’ a distinction needs to be drawn between toleration and permission. A landowner may be aware of the use of a path but chooses to do nothing to prevent that use. In those circumstances, even if he later makes it clear he did not support the use of the path during the relevant period, his actions could be regarded as toleration of the use during that period. This means the use could still be regarded as being as of right. However, the situation would be different if the landowner permitted the public to use the path but made clear (either expressly e.g. by a sign or through his conduct e.g. by closing the path occasionally) that his consent could be withdrawn in the future. In that case the use would be with permission and not as of right.

10.3 Two of the user’s state they asked for permission to use the route from Mrs Brine, Occupier of Charlton Court. They also state the purpose of using the route was to access Charlton Court indicating they were using the access with permission to visit Charlton Court, therefore, these two users did not use the route ‘as of right’, leaving eleven users who have claimed to use the route as of right during the relevant period.

10.4 None of the eleven users claim to have been stopped from using the route. The fact that the eleven users regularly used the route during the relevant period and all state to have seen others doing so suggests the route was not used in secrecy. However, Tenant farmer Mr J Goring contests this as he states he turned people away from using the route prior to 2009. Several adjoining landowners who have private rights over the access track state that they have also turned away cyclists from using the route, although, this may have been during the period the route was a permissive footpath as dates are not provided.

10.5 Although the gate crossing the path was locked, walkers used the gap to the side of the gate for access. This was also the case during the time the route was a permissive path, therefore the users do not appear to have used force to use the route.

- 10.6 In a letter dated 18th May 2020 tenant farmer John Goring states "Prior to 2009 there was no permitted access down the path" and Mr G Goring also states in an email dated 27th May 2020 that anyone who did use the route did so with permission or the access was not available to the public. Mr G Goring also indicates that when the land was tenanted by the How family they were extremely clear on not allowing members of the public on their land which is also indicated in a letter found on the parish file from 1973 (para 7.1.4) , however, the How's tenancy falls outside of the relevant period.
- 10.7 Looking at the County Council's path and parish files there are several letters that indicate the route has been used by the public dated 1991 and 1994 (para 7), there is also a letter provided by Mr Goring from George Cockman to Mr G Goring's father in 1999 (para 6.1), however, it is unclear if use indicated in these letters was 'as of right' or with permission.
- 10.8 The letter dated 1991 sent on behalf of Mr R Goring to the County Council indicated that Mr R Goring currently allowed the public to walk through the claimed route although this privilege could be revoked. While this could indicate that the public were using the route with permission it could also suggest that until this point use of the route by the public had been tolerated by the farmer, which does not amount to expressly giving permission to the public, therefore the reasonable user may have believed they were using the route "as of right" during the relevant period.
- 10.9 The situation is however a little clearer from a letter in 1999 which is half way through the relevant period. In the letter dated 1999, provided by Mr R Goring, George Cockman asks Mr G Goring's father if they would consider allowing a permissive bridleway through Charlton Court Farm and then east to the Downs. In this letter Mr Cockman states that access to the route has currently been withdrawn. Again, while it is unclear from this letter if, before 1999, the public were given permission to use the route or use was tolerated and it is also uncertain if this use refers to use of the route by horse riders or use by pedestrians, whether use was on foot or on horseback this letter does indicate that use of the route was interrupted in 1999, which is during the relevant period (1989-2009). None of the users state that use of the route was interrupted at any point, however, intention to withdraw access to the public was also indicated in the letter dated 1991 (para 7).
- 10.10 There is some evidence provided by users of use of the route on horseback. However several adjoining landowners keep horses, therefore, it is likely use by horse riders may have been private use. Although, it seems that there have been requests to make the claimed route a Bridleway in the past (see para 6.1 and 7) these letters do imply the route was not being used at the time as a Bridleway, simply that there was a desire to create a Bridleway. Therefore, it is considered there is not sufficient evidence to establish use of the claimed route as a bridleway 'as of right'. Furthermore, the letter dated 1999 from George Cockman (para 6.1) indicates use of the route was interrupted although it is unclear if the use he is referring to was on foot or on horseback.

- 10.11 In summary, there is evidence of use on foot during the relevant period 1989-2009, which ended with the commencement of the permissive path arrangements. Use of the route on foot appears to be fairly high during the relevant period with most users claiming use for the entirety of the relevant period and using the route more than 15 times a year and several users using the route over 100 times a year. It can be concluded that the use has not been in secret or by force. It is not clear cut as to whether the route was used with permission or simply tolerated by the land owner. The letters on files held by the County Council indicate that there was an interruption to the use during the relevant period and therefore for that reason, on the balance of probability, it cannot be concluded that claimed route subsists over land. However, where an applicant for a DMMO produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, but there is a conflict of apparently credible evidence from the owner in relation to one or other issues arising under Section 31 of the 1980 Act; then the allegation that the right of way has been reasonably alleged to subsist is used. That is unless there is documentary evidence produced which must inevitably defeat the claim.
- 10.12 In considering the lower test of reasonably alleged: there is considerable user evidence attesting to use of the route during the relevant period and it is likely the landowner tolerated use of the claimed route. For this reason, it is concluded that use by the public was 'as of right'. There is a conflict of apparently credible evidence and so the lower test of reasonable allegation is used.

11. Consideration of the claim - Evidence of no intention to dedicate

- 11.1 It is considered that the user evidence has met the statutory tests as set out in Section 31 Highways Act 1980. User evidence submitted in support of the application shows that the route has been used 'as of right' and without interruption for a period of 20 years or more. It is therefore necessary to further consider whether there is evidence of no intention to dedicate by the landowner.
- 11.2 Evidence of a landowner's intention not to dedicate a public right of way must be overt and contemporaneous. The landowner cannot assert after the event that there was no intention to dedicate.
- 11.3 Two users indicate a notice was put on site in December 2018 which states no access by bike or horseback, however, this is outside the relevant period 1989-2009. Several adjoining land owners also mention a notice of the similar nature but do not specify date. However, none of the notices described state no access is allowed by foot.
- 11.4 No other users report a notice being put on site during the relevant period indicating the route was private and the landowner had no intention to dedicate.

- 11.5 There was pedestrian access to the side of the locked gate across the route; the users do not note any obstructions that prevented them using the route.
- 11.6 There is communication held on County Council files which may suggest that there was no intention to dedicate the route to the public. In the letter dated 24 July 1991 it is indicated Mr R Goring, the landowner, may proceed to prevent the public using the route. The letter dated 1999 from George Cockman indicates access to the route had been withdrawn therefore suggesting there was no intention to dedicate at this point in time. As also mentioned above at Para 6.2 tenant farmer Mr J Goring indicates he turned people away when using the route which also suggests there was no intention to dedicate the route.
- 11.7 As outlined in para 7.1.6 a landowner deposit was submitted to the County Council in 2013 indicating there was no intention to dedicate the route, however, this is outside the relevant period. The evidence is finely balanced. Evidence suggesting there was no intention to dedicate includes; two letters on the County Council's path/parish files indicating use of the route by the public was to be revoked/or was revoked, tenant farmer Mr J Goring indicating he turned people away using the route on foot, and the landowners indicating the route has only ever been permissive. However, there were no signs placed along the route and none of the users claim to have been turned away or prevented from using the route during the relevant period. The only time an intention not to dedicate the route may have been communicated is when access to the route was indicated to have been revoked at some point in the 1990's as outlined in George Cockman letter. However, none of the users report being aware of access being removed and it is unclear if this revocation of use of the route was to those on horseback and/or pedestrians. Therefore, it is considered the landowner did not clearly communicate an intention not to dedicate so there is a lack of sufficient evidence indicating there was an intention on the part of the landowner not to dedicate the claimed route.

12. Consideration of the claim - Common Law

- 12.1 At Common Law a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to do so and that the public have accepted such dedication. Whilst there is no defined minimum period of continuous use to establish a right of way at Common Law, the use must be shown to have been as of right and must be long enough to justify an inference that there was an intention by the Landowner to dedicate.
- 12.2 For the public to raise an inference of dedication it must be sufficient to carry to the mind of a reasonable landowner the fact that a continuous right of enjoyment is being asserted and ought to be resisted. In this case it has been concluded it can be reasonably alleged the claimed route subsists over land with use of the claimed route being 'as of right' and insufficient evidence of an intention not to dedicate on the part of the

landowner Although use was potentially interrupted in the 1990's, the evidence of use is considerable during the 1980's from 15 times a year to daily by seven users. Evidence for dedication at common law is, however, not conclusive.

13. Overall Conclusion and Recommendation

- a. It is considered that on the balance of probabilities a path has not been proven to subsist.
- b. However, while the evidence is finely balanced, it is concluded a public right of way has been reasonably alleged to subsist over land and a DMMO to add a footpath should be made.

14. Other options considered (and reasons for not proposing)

- 14.1 Not applicable in this instance.

15. Consultation, engagement and advice

- 15.1 See paragraph 4 above which details responses to the statutory consultations as well as responses to additional consultations that were carried out as part of the investigation process.

16. Finance

- 16.1 The County Council is under a duty to investigate Definitive Map Modification Order applications and all costs associated with the consideration of the application by officers' falls within existing budgets.
- 16.2 Cost implications arise:
 - i. 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. All fees incurred after submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, fees relating to advert
 - ii. Should an order be made and confirmed; if any works are necessary to ensure the path is open for public use.
 - iii. Should the decision of the committee be challenged by way of Judicial Review.
- 16.2 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

17. Risk implications and mitigations

- 17.1 The decision is one that must be taken on strict legal tests:

- i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
 - ii. 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.
 - iii. In the event that an order is not made and the applicant disagrees with the decision then they have a right of appeal pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 to the Secretary of State. The Secretary of State may direct the County Council to make an order, which if objected to could be considered by way of written representations, hearing or public inquiry.
- 17.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

18. Policy alignment and compliance

Equality and Human Rights Assessment

- 18.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 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.

Crime and Disorder

- 18.6 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.

Climate Change

- 18.7 Enhancement of the public rights of way network is a positive contribute towards the Council stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when consideration applications against the strict legal tests.

Public Health

- 18.8 The addition of public rights of way through the definitive map modification order process could assist in enhancing the general health and wellbeing of the communities served by the Council. However, such considerations are not matters that can be taken into account when considering applications against the strict legal test.

Tony Kershaw

Director of Law and Assurance

Contact Officer: Charlotte Nash, Legal Assistant, 0330 222 6934

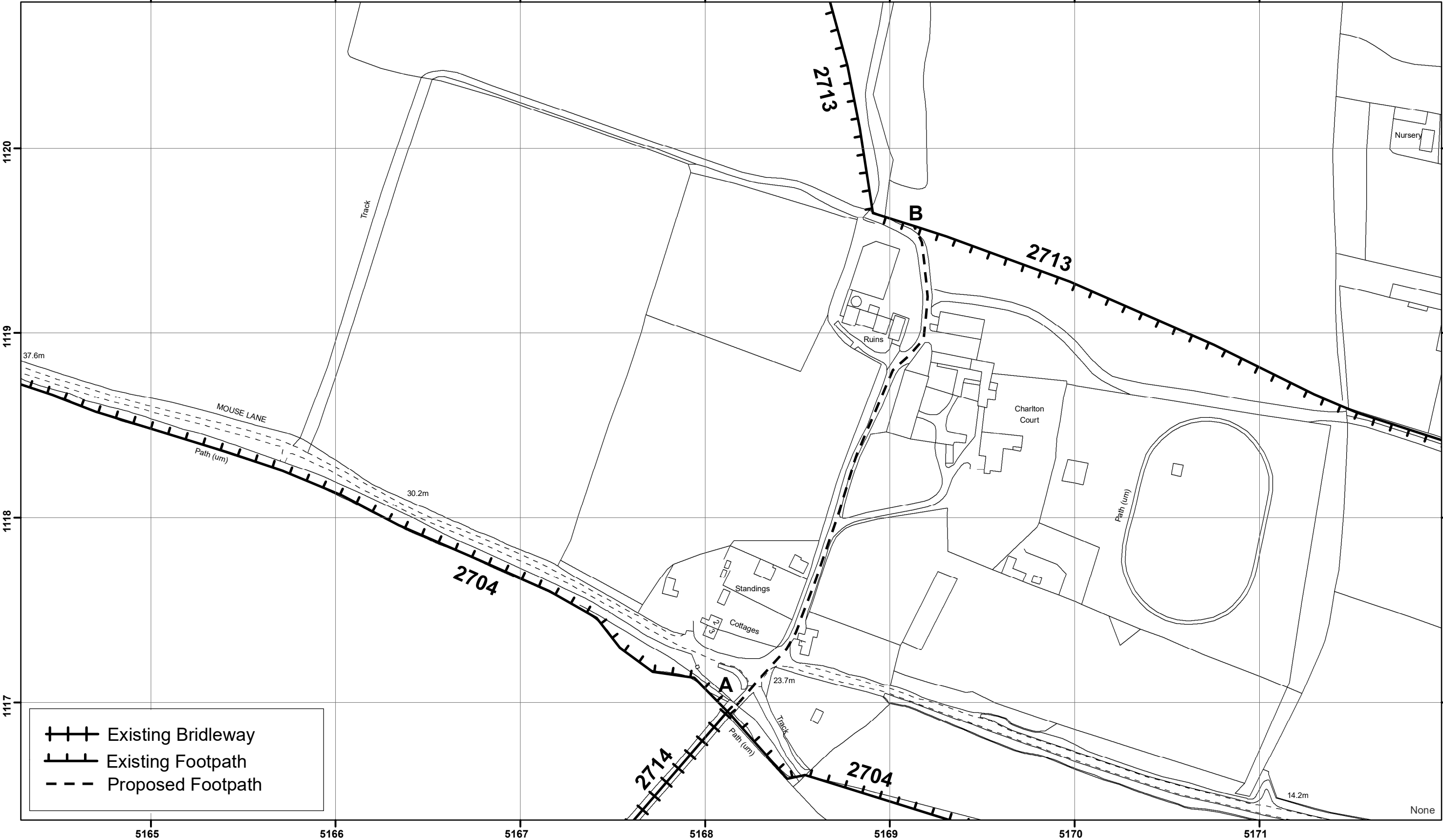
Appendices


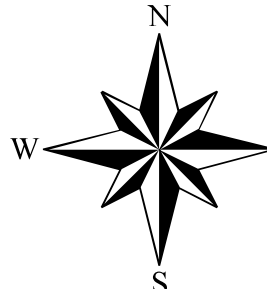
- Appendix 1 - Location Plan 01789
- Appendix 2 – Site Plan 01788a

Background papers

- a) Application and Plan
- b) Consultation responses
- c) Evidence in support of the application
- d) Evidence submitted by and owners
- e) Archive evidence

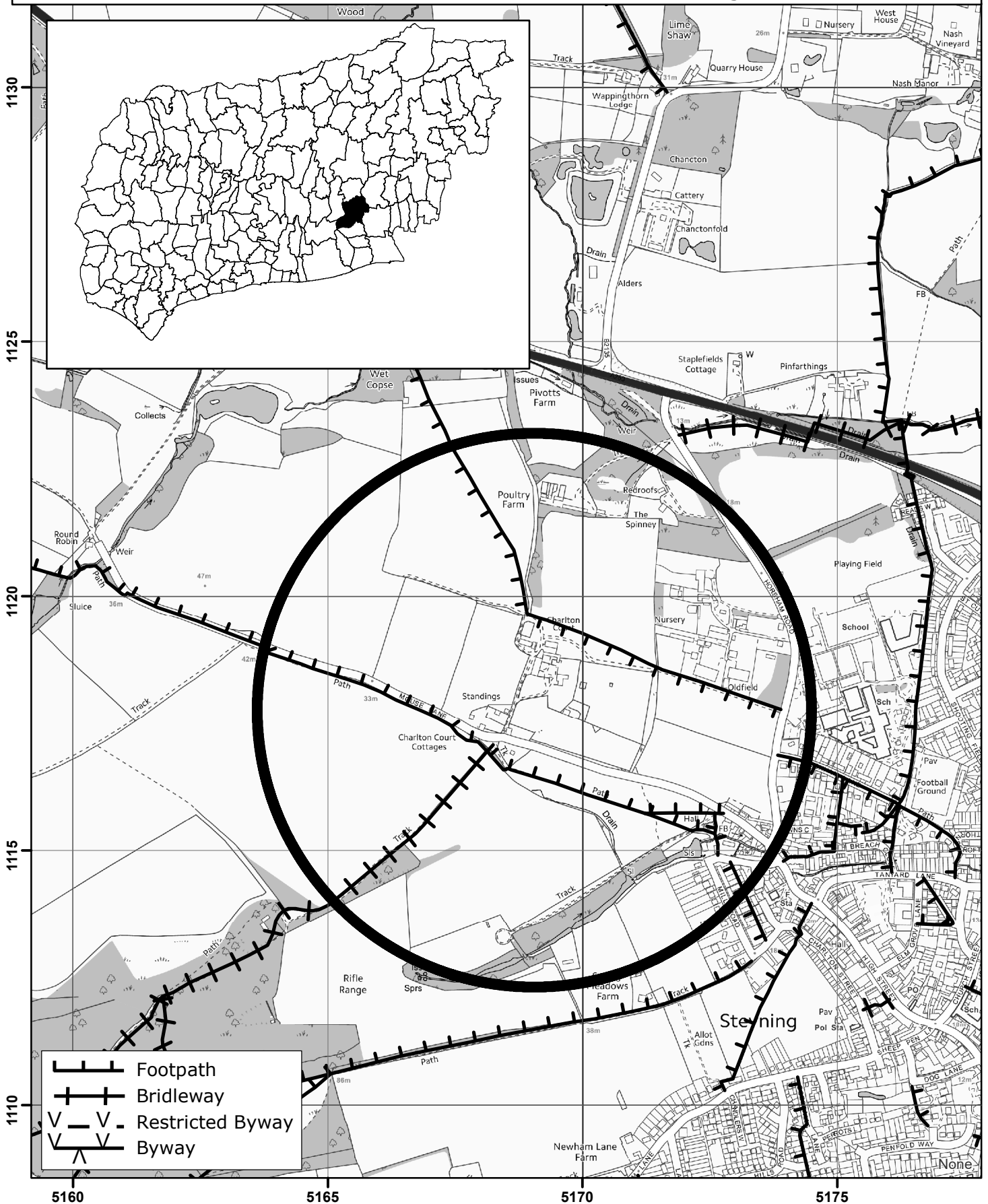
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Plan: 01788	1:2,000	OS Sheet: TQ 11 SE	Photocopy liable to distortion	Matt Davey Director of Highways, Transport and Planning			
Date: 02.10.2020		Grid Ref: 1117 5168					

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Parish: **Steyping**



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Steyping: Proposed addition of Footpath linking FP 2713 to FP2704/1 - Location Plan

Plan: 01789 1:10,000

OS Sheet: TQ 11 SE



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liable to
distortion

Matt Davey
Director of
Highways, Transport
and Planning



Date: 02.10.2020

Grid Ref: 1115 5165

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**Key decision: Not applicable
Unrestricted**

Rights of Way Committee

3 November 2020

Public Rights Of Way Annual Progress Report 2019

Report by Nicholas Scott (Principal Rights of Way Officer)

Electoral division/s: All

Summary

This report contains an annual progress report for the Public Rights of Way team within Countryside Services setting

out our achievements on the network and customer service data during the 2019 calendar year.

Recommendation

That this report be noted by the Committee.

1. Introduction

- 1.1 With over 4,000km of Public Rights of Way (PROW) to maintain across West Sussex the PROW team provide an important service to the residents and visitors of West Sussex. Our responsibilities include maintaining the path surface, negotiating improvements with landowners and working closely with key stakeholders to help support key corporate objectives. The service is supported by considerable input from volunteers who both assist with path inspections and practical tasks across the network.

2. Customer Service

- 2.1 A major element of our service is handling a high volume of enquiries from path users and other parties with 1,120 calls received through the contact centre in relation to PROW.
- 2.2 Between reports from the public and other stakeholders this has generated 4,375 issues that were logged onto our database in 2019 which is a similar number to the previous year. However, with 4,217 resolved in the same period this was an increase of just under 5%.

3. Routine Maintenance

3.1 We continued to deliver our 15-month inspection and maintenance programme. In 2019 our contractor, County Tree Surgeons, amongst other works delivered:

- The replacement of 1,433 signs across the network;
- 174 new bridges;
- 12 new Boardwalks;
- 39 flights of steps; and
- Just under 41km of surface vegetation clearance.

3.2 We also undertook our annual summer clearance programme, separately from the routine maintenance programme, where 339km of surface vegetation was cleared.

4. Volunteers

- Our inspections continue to be greatly assisted by volunteers, working with our local Access Rangers to ensure we keep to the 15-month programme and helping with issues arising. Volunteers also get their hands dirty with a variety of practical works to supplement our maintenance programme and add extra value across the county. On practical task days alone, of which there were 72 totalling 4216 hrs (4 SDNP days), they delivered (amongst other things):

- 12 new bridges;
- 46 new signs and 8 repairs;
- 10 gates to replace existing stiles;
- 211 new steps and 64 repairs and 86m of handrail installed;
- 10 new plank crossings and 2 repaired along with installation of 1 x 5m and 2 x 6m bridges;
- 43 Fallen trees cleared;
- 40m of revetment installed;
- 61 tonnes of surface material laid; and
- Over 8.8km of side and surface vegetation clearance.

4.1 We are again grateful for the continued support of many individuals who give their time free of charge to the PROW surface and the team who support the volunteers work, from office staff through to the Access Rangers and Volunteer Coordinator.

5. Gates for Stiles

- 5.1 The PROW team are continuing our efforts at improving access across the rights of way network by offering free gates to replace existing stiles across the network, due to the restrictive nature of stiles for some users.
- 5.2 During 2019, we provided 48 gates to landowners with the agreement that they install the structure and maintain it in the future, as they would with any structure that exists on their land.

6. Capital Works Programme

- 6.1 As part of the annual Capital programme during 2019 we replaced 6 bridges and any associated works including bank stabilisation and drainage improvements.
- 6.2 Further to this, a capital surface programme was undertaken totalling over 4.5km of improvements on the network with the stand-out improvements being one in West Chiltington, including surfacing and drainage works on Public Bridleways 2344 and 2410 along with G-Road 46. This has provided a key north-south off-road link between local communities and connecting to the surrounding Bridleway network. The second being on Public Bridleway 2758 in Upper Beeding that included heavy clearance and surface improvements. This route is now much easier and safer to use by the public and carries the long-distance path, The Monarchs Way, so very well used.

7. Complaints and Compliments

- 7.1 The County Council's Customer Relations team did record three formal customer complaints in 2019 and 19 compliments. Of the complaints, two were partly upheld and the other not.
- 7.2 All other day to day compliments received by the PROW team are not specifically logged.

8. Recommendation

- 8.1 That this report be noted by the Committee.

9. Other options considered (and reasons for not proposing)

- 9.1 There are no other options considered because this is an update report, which is for information only.

10. Policy alignment and compliance

Equality and Human Rights Assessment

- 10.1 There are no equality and human rights implications because this is an update report, which is for information only. Although, it should be noted that improved public rights of way, such as replacement of stiles with gates, and clearance of vegetation, provide better access for those with disabilities.

Human Rights Act 1998 Implications

- 10.2 There are no Equality and Human Rights implications because this is an update report, which is for information only.

Crime and Disorder

- 10.3 There are no crime and disorder implications because this is an update report, which is for information only.

Climate Change

- 10.4 There are no climate change implications because this is an update report, which is for information only. Although, it should be noted that improved public rights of way can help to promote walking and cycling which can aid in the Council's climate change objectives.

Public Health

- 10.5 There are no climate change implications because this is an update report, which is for information only. Although, it should be noted that improved public rights of way can help to promote walking and cycling, which can have health and wellbeing benefits.

11. Finance

- 11.1 There are no finance implications because this is an update report, which is for information only.

12. Risk implications and mitigations

- 12.2 There are no risk implications because this is an update reports, which is for information only.

Matt Davey

Director of Highways,
Transport and Planning

Lee Harris

Executive Director for Place Services

Contact Officer: Nicholas Scott, Principal Rights of Way Officer (03302 222614)

Appendices

None

Background Papers

None

**Key decision: Not applicable
Unrestricted**

Rights of Way Committee

Date: 3 November 2020

Recent Decision by the Secretary of State's Inspector- West Sussex County Council (Chichester- No.2 (Climping Parish and Town of Littlehampton: Upgrade of public footpath 174 to a restricted byway)) Definitive Map Modification Order 2020

Report by Tony Kershaw Director Law and Assurance

Electoral division/s: Middleton and Littlehampton Town Council

Recommendation

This is a report to be noted

1. Background

- 1.1 In April 2017 the County Council received an application, made by the British Horse Society, for the upgrade of footpath 829 to a restricted byway between the southern tip of Climping Street and continuing east and then north eastwards to Climping Mill and an addition of a restricted byway deviating from the footpath on a short loop by Climping Mill and then the upgrade of footpath 174 continuing in a rough north easterly direction to Rope Walk in the Parish of Climping near Littlehampton, West Sussex.
- 1.2 The application was supported by archive evidence only and was therefore considered with reference to section 32 of the Highways Act 1980.
- 1.3 The legal tests to satisfy before making a Definitive Map Modification Order are:
 - 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 on the balance of probabilities); or
 - 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).
 - 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). An addition of a

right of way can be considered on the lower reasonably alleged test (Test B).

- 1.4 The application route was divided into three parts as described below in reference to plan 01733a (appendix 1):
 - 1.4.1 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).
 - 1.4.2 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)
 - 1.4.3 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)
- 1.5 All three routes were considered at Rights of Way Committee on 22 October 2020.
- 1.6 Committee resolved DMMO 2/17 be made but DMMO 3 & 4/17 be not made.
- 1.7 The County Council made order DMMO 2/17 on the 7 April 2020 and it was advertised on 16 July 2020. Objections have been received so the matter will now be submitted to the Planning Inspectorate for determination.
- 1.8 The applicant appealed against the decision made by the County Council's Rights of Way Committee not to make DMMO 3 & 4/17 under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981.
- 1.9 The Planning Inspectorate has allowed the appeal and directed the County Council to make an order on the 23 July 2020, a summary of the inspectors report is provided below and the report attached.

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. Considering DMMO 3/17 the Inspector agrees with the approach taken by the County Council that in light of the Quarter Sessions Order 1936 the consideration of the claim should be to upgrade the existing footpath between points C-Y-Z (appendix 1) as the addition of a restricted byway along the route originally claimed from D- E would fail as all highway rights were stopped up along this route by the Quarter Session Order.
 - ii. Whether existing footpath 174 should be upgraded to a restricted byway between points C-Y-Z-F, taking the evidence collectively, although finely balanced, there is sufficient evidence to conclude the claimed route (diverted on its current alignment C-Y-Z) should be upgraded to a restricted byway. There is historic evidence describing the route as a road from 1400's to 1800's. There are also a series of maps such as the Tithe

Map, Yeakell and Gardner, Gardners Sussex, Gardner and Gream and Baliffs Court Farm that suggest a road existed carrying a higher status. Although the Inspector highlights these maps may not be conclusive as they do not have a key, taken collectively, it is reasonable to conclude the route had higher status. In addition, the Inspector goes on to say that bearing in mind practices of the time as well as the reasonable conclusion that Climping Mill was connected with Rope Walk by a road of some sort to provide access to the ferry until an alternative route was built, there is a credible case the route had higher status than a footpath.

- 2.2 Overall, the Inspector concluded that the evidence available shows that on the balance of probabilities a restricted byway subsists from C-Y-Z-F. The County Council were therefore directed to make an order under section 53(2) and schedule 15 of the Wildlife and Countryside Act 1981 on the 23 July 2020.
- 2.3 An Order to upgrade part of footpath 174 to a restricted byway from Climping Mill at the junction of FP174 and 829 in a north easterly direction to the Rope Walk was made by the County Council on 24 September 2020 and advertised on the 15 October 2020. The objection/representation period will end on the 26 November 2020. A copy of the order plan is attached at Appendix 2.

3. Finance

- 3.1 The County Council is under a duty to investigate Definitive Map Modification Order applications and all costs associated with the consideration of the application by officers' falls within existing budgets.
- 3.2 Cost implications arise:
 - i. 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. All fees incurred after submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, fees relating to advert
 - ii. Should an order be made and confirmed; if any works are necessary to ensure the path is open for public use.
 - iii. Should the decision of the committee be challenged by way of Judicial Review.
- 3.3 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

4. Risk implications and mitigations

- 5.1 The decision is one that must be taken on strict legal tests:
 - i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.

- ii. 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.
 - iii. In the event that an order is not made and the applicant disagrees with the decision then they have a right of appeal pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 to the Secretary of State. The Secretary of State may direct the County Council to make an order, which if objected to could be considered by way of written representations, hearing or public inquiry.
- 4.3 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

5. Policy alignment and compliance

Equality and Human Rights Assessment

- 5.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.

Crime and Disorder

- 5.6 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

Climate Change

- 5.7 Enhancement of the public rights of way network is a positive contribute towards the Council stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when consideration applications against the strict legal tests

Public Health

- 5.8 The addition of public rights of way through the definitive map modification order process could assist in enhancing the general health and wellbeing of the communities served by the Council. However, such considerations are not matters that can be taken into account when considering applications against the strict legal test.

Tony Kershaw

Director of Law and Assurance

Contact Officer: Charlotte Nash, Legal Assistant, 03302226934

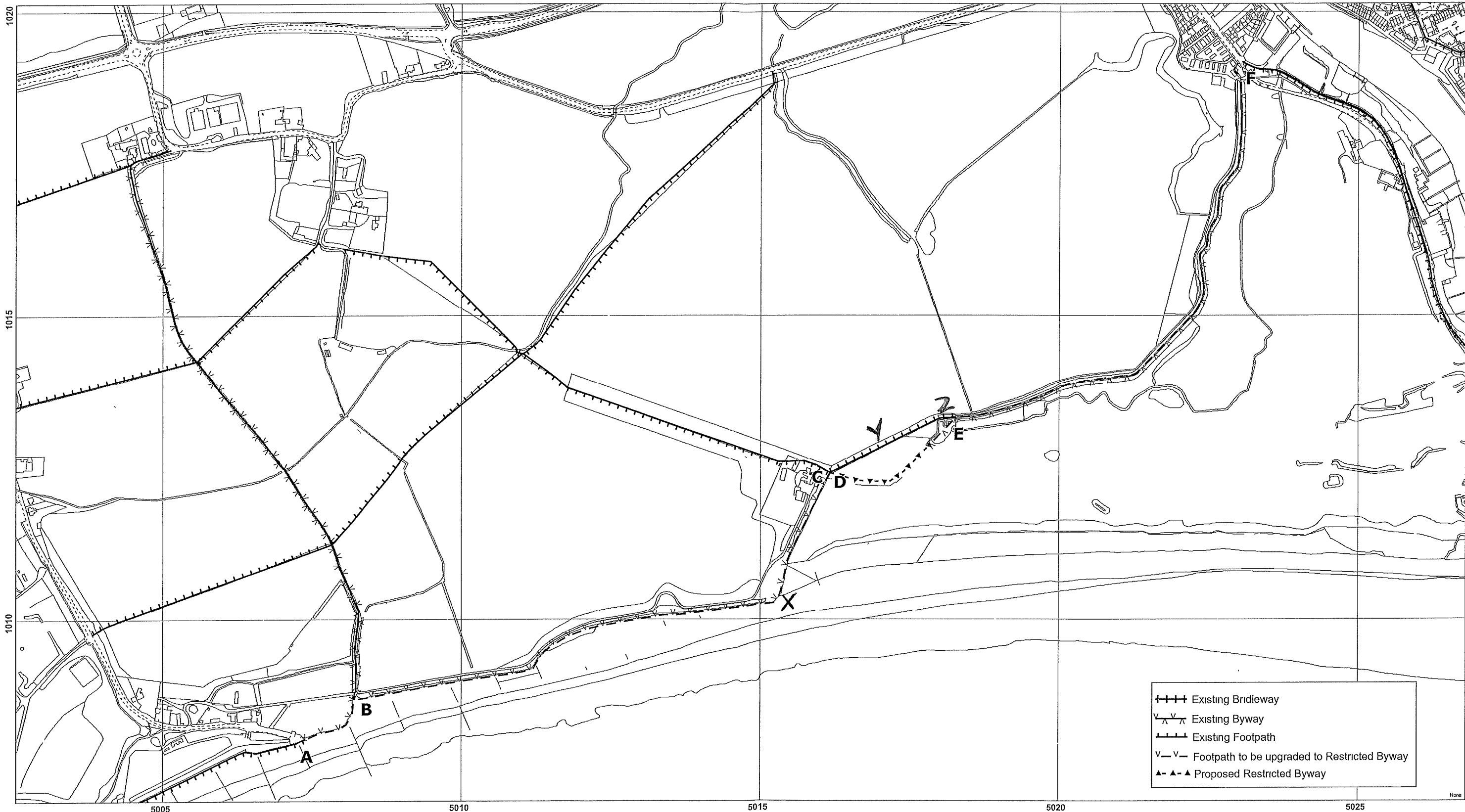
Appendices


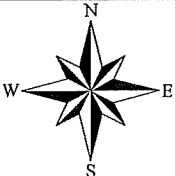
- Appendix 1 – Plan 01733a
- Appendix 2 – Plan 01733b
- Appendix 3 – Plan 01732

Background papers

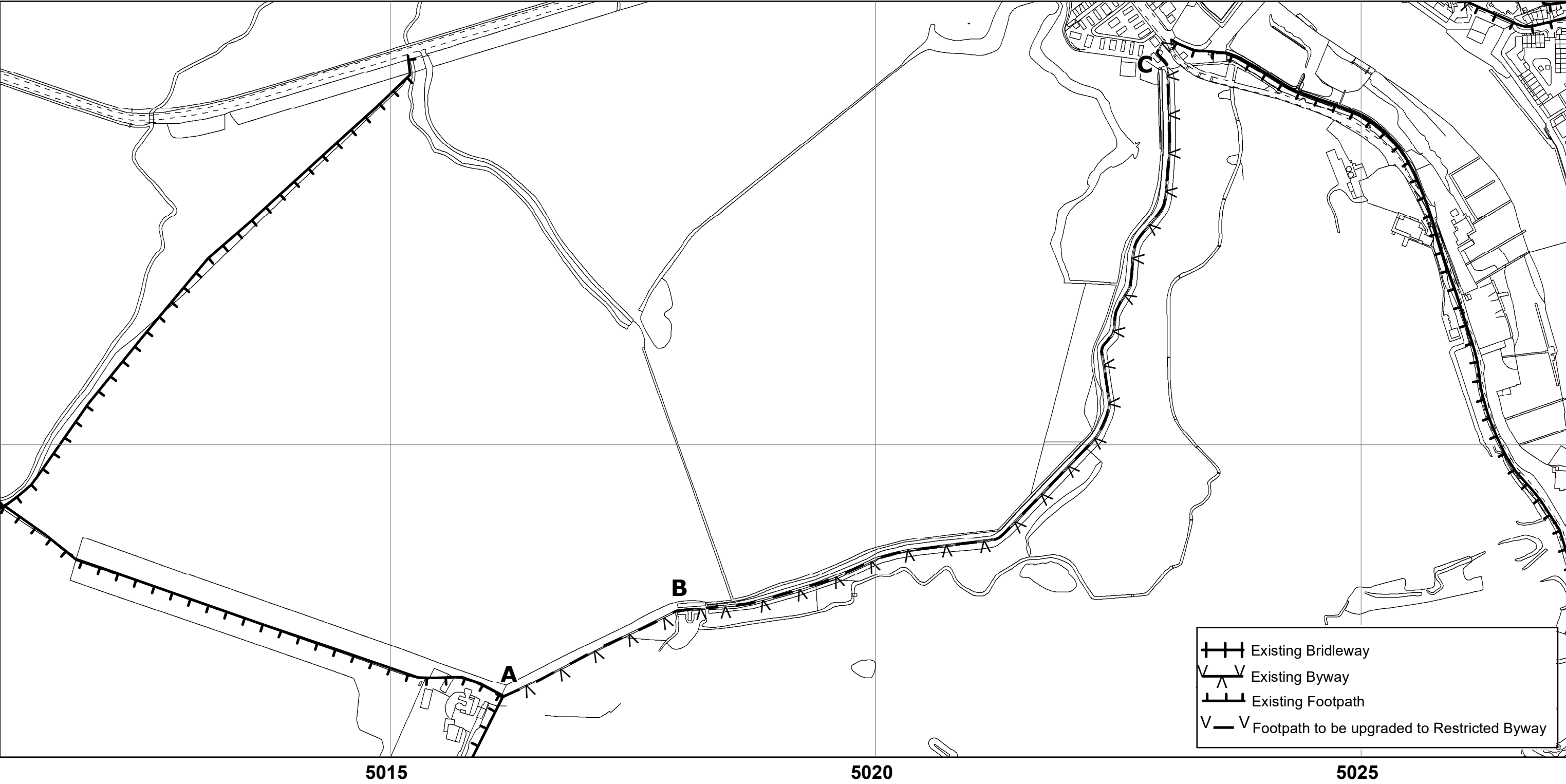
- a) Committee report October 2019 - <https://westsussex.moderngov.co.uk/mgChooseDocPack.aspx?ID=2112>
- b) [Inspectors full decision](#)

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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				

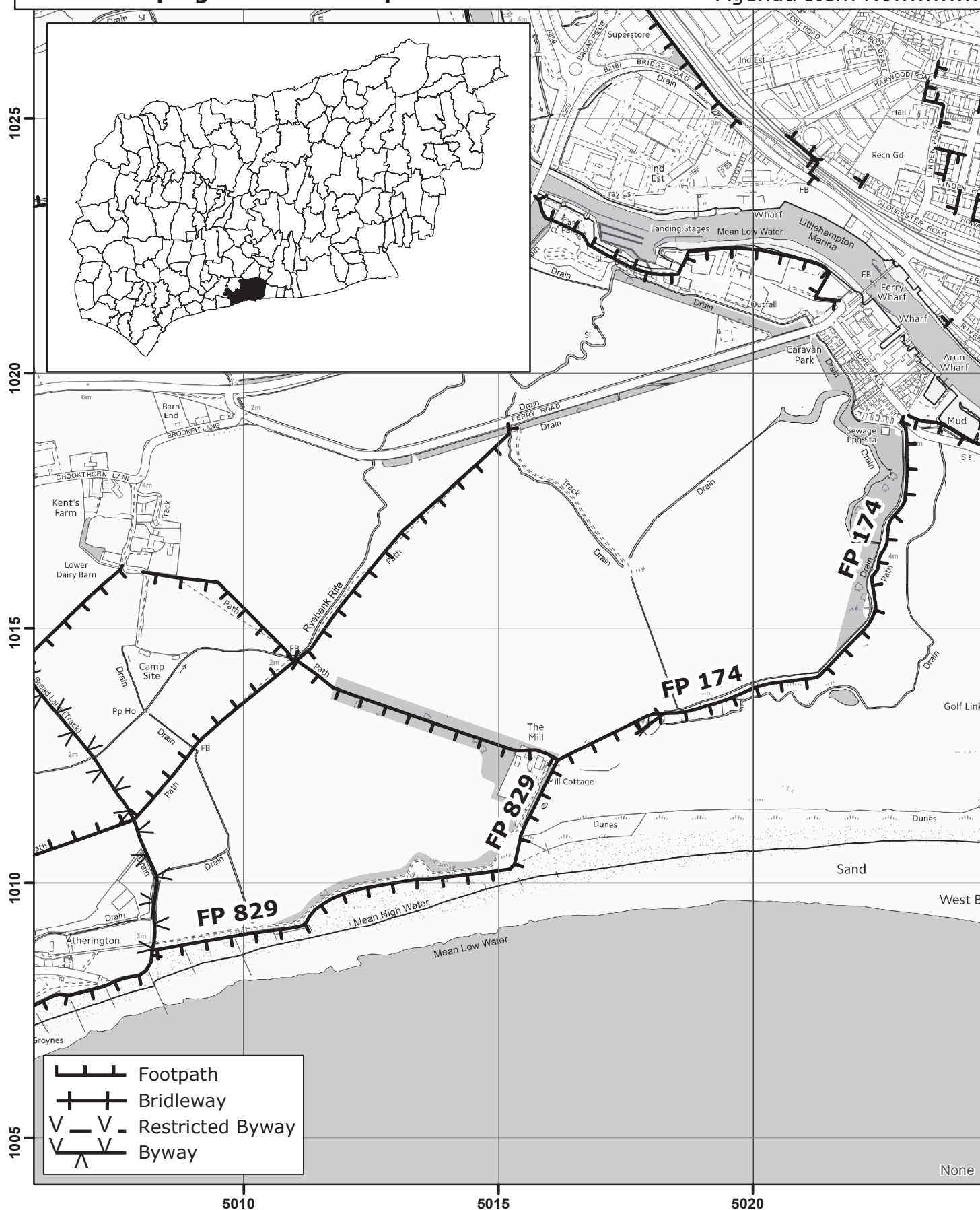
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Plan: 01733b	1:4000 at A3	OS Sheet: TQ 00 SW		Photocopy liable to distortion	Matt Davey Director of Highways, Transport and Planning	
Date: 03.08.2020		Grid Ref: 5015 1010				

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

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