

Public Document Pack

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30 September 2022

Planning and Rights of Way Committee

A meeting of the committee will be held at **10.30 am** on **Tuesday, 11 October 2022** at **County Hall, Chichester, PO19 1RQ**.

Tony Kershaw
Director of Law and Assurance

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

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

Agenda

1. **Declarations of Interest**

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

2. **Minutes of the last meeting of the Committee** (Pages 3 - 20)

The Committee is asked to confirm the minutes of the meeting held on 18 May 2022 (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. **Definitive Map Modification Order** (Pages 21 - 46)

Report by the Director of Law and Assurance.

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

DMMO 11/18 - To upgrade parts of public footpaths 165 and 166 to bridleway and to add new lengths of bridleway in the parishes of Yapton, Climping and Middleton-on-Sea

5. **Public Rights of Way Annual Progress Report 2021** (Pages 47 - 50)

Report by the Principal Rights of Way Officer

The Committee is asked to note the following report:

Public Rights Of Way Annual Progress Report 2021

6. **Date of Next Meeting**

The next meeting of the Committee will be held at 10.30 am on Tuesday, 8 November 2022.

To all members of the Planning and Rights of Way Committee

Webcasting

Please note: this meeting may be filmed for live or subsequent broadcast via the County Council's website on the internet - at the start of the meeting the Chairman will confirm if all or part of the meeting is to be filmed. The images and sound recording may be used for training purposes by the Council.

Generally the public gallery is not filmed. However, by entering the meeting room and using the public seating area you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes.

Planning and Rights of Way Committee

18 May 2022 – At a meeting of the Committee held at County Hall, Chichester, PO19 1RQ

Present: Cllr Burrett (Chairman)

Cllr Atkins, Cllr Ali, Cllr Duncton, Cllr Gibson, Cllr Hall, Cllr Joy, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Sharp

Apologies were received from Cllr Hall and Cllr Joy (for the afternoon session only) and Cllr Quinn (for the whole Committee meeting)

Also in attendance: Cllr Kenyon

Part I

Declarations of Interest

1.1 The following declarations of interest were made in relation to Agenda Item 4 - Planning Application WSCC/030/21:

- In accordance with the County Council's Code of Conduct, the following members of the Planning and Rights of Way Committee declared personal interests:
 - Cllr Duncton as the local County Councillor for Petworth. Cllr Duncton elected not to speak as local Member, but to retain her seat on the Committee in order to better serve the County Council in respect of this application. Cllr Duncton stated she has taken no part in any discussions in relation to the planning application either prior to or since its submission, and has kept an open mind until she has heard all the evidence.
 - Cllr Simon Oakley and Cllr Sarah Sharp as Chichester District Councillors, which body is a statutory consultee on the application.
- In accordance with the County Council's Constitution: Code of Practice on Probity and Protocol on Public Participation in Planning and Rights of Way Committees, all members of the Committee declared they had been lobbied.

1.2 The following declarations of interest were made in relation to Agenda Item 5 - Planning Applications WSCC/001/22 and WSCC/002/22:
In accordance with the County Council's Code of Conduct, the following members of the Planning and Rights of Way Committee declared personal interests:

- Cllr Gibson declared a Pecuniary Interest that does not become Prejudicial in respect of his wife's business.
- In accordance with the County Council's Constitution: Code of Practice on Probity and Protocol on Public Participation in Planning and Rights

of Way Committees, all members of the Committee declared they had been lobbied.

1.3 The following declarations of interest were made in relation to Agenda Item 6 - DMMO 2/16 West Hoathly (also known as DMMO/2/16 Sharpthorne):

- Cllr Gibson declared a Personal Interest due to his membership of the British Horse Society and their support for the original application. Cllr Gibson would take no part in any discussion on this matter.

Minutes of the last meeting of the Committee

2.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 1 March 2022 be approved and that they be signed by the Chairman.

Urgent Matters

3.1 There were no urgent matters.

Planning Application: Mineral and Waste

WSCC/030/21 – A clay quarry and construction materials recycling facility (CMRF) for CD&E wastes, including the use of an existing access from Loxwood Road, the extraction and exportation of clay, and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies and wetland habitats. Pallinghurst Woods, Loxwood Road, Loxwood, West Sussex RH14 0RW.

4.1 The Chairman advised all present that he had been made aware of representations from members of the public who were concerned that there has not been a physical site visit for Committee members in advance of considering the Loxwood application. National guidance and the County Council's own Constitution make it clear that site visits are not mandatory to enable a Committee to take a decision on an application. The County Council's Constitution (Part 3 Section 3 - Code of Practice on Probity in Planning, para 8.1 Committee Site Visits) sets out that "A site visit may be justified where the complexity or technical aspects of the proposals or public concern at the issues raised is such that Members' understanding would substantially benefit from a site visit.". In view of the rough terrain and remote location of the site it was considered preferable to have a virtual site visit as opposed to an in-person one. This ensured that Committee members were able to remotely view the site and gain an appreciation of the issues involved. This had not precluded individual members of the Committee from visiting the site on their own.

4.2 Michael Elkington, Head of Planning Services, advised that a letter from the applicant's agent, dated 13 May 2022, was received by Planning Officers and Mr Tony Kershaw, Director of Law and Assurance in his capacity as Monitoring Officer. It requested that the Committee report be withdrawn in order to correct alleged inaccuracies in information on which the Committee decision would be based. The report has not been withdrawn. An Agenda Update Sheet was published on 17 May 2022. Both the letter and Agenda Update Sheet are

available on the planning website. Concerns were also stated that not all emails and requests for information have been responded to. The Committee was reassured that Officers have engaged as appropriate with the agent, due process has been followed and all relevant information in relation to the application has been properly considered.

4.3 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by Chris Bartlett, Principal Planner, who gave a presentation on the proposals, details of the consultation and key issues in respect of the application. In respect of the Agenda Update Sheet Mr Bartlett noted that since the publication of the Committee report the following has occurred:

- The Council has published its Annual Monitoring Report for minerals and waste planning, affecting some details in the Committee report, as noted.
- A final response to the planning consultation has been received from Natural England. This document does not affect the overall recommendation in the Committee report, but in light of this a revised recommendation is advised which would give officers delegated powers in consultation with the Chairman to address the matters highlighted in the update sheet with regards to The Mens Special Area of Conservation and Ebernoe Common Special Area of Conservation (see Minute 4.15 for details).

4.4 The Chairman advised that due to the level of interest in the application, he had used his discretion to guarantee Loxwood Parish Council and one of the Chichester District Councillors the right to speak as elected representatives of the community. Because five people have been permitted to speak in objection to the application, the applicant and his agent were permitted additional time to speak in support of the application. Additionally, a statement from Cllr Christian Mitchell, County Councillor for Broadbridge, had been accepted.

4.5 Cllr Gareth Evans, Loxwood Ward Councillor for Chichester District Council, spoke in objection to the application. He grew up in the area and has walked and played in Pallinghurst Woods. It is a beautiful natural habitat providing many benefits. It is a community asset, which has been used by some residents for the whole of their lives. Its loss would be a devastation, including to future users. There are climate and biodiversity sensitivities; the woodland contains wild and ancient flowers, bats, badgers and birds of prey and other birds such as nightingales. The installation of a wheel wash would affect water neutrality. There are traffic and safety concerns because of the use of HGVs in the woodland, as well as road safety concerns in Loxwood and Rudgwick. There is no demand for additional clay. The proposed site does not conform to the Loxwood Neighbourhood Plan nor the Chichester Local Plan. There is no benefit to the community.

4.6 Cllr Annette Gardner of Loxwood Parish Council spoke in objection to the application on behalf of Tony Colling, Chair of the Parish Council's Planning Committee. The Parish Council has strongly objected to the application. Most of Pallinghurst Woods consist of ancient woodland. The Parish Council's own expert

planning consultant stated that the application does not comply with the following policies: Policies M5, M17, M18 and M20 of the West Sussex Joint Minerals Local Plan (JMLP), Policies W1, W3, W4, W9, W10 and W12 of the West Sussex Waste Local Plan (WLP), and Policy 12 of the Loxwood Neighbourhood Plan. The application would result in loss of a vital amenity to the whole community. Cllr Colling has lived in Loxwood and walked in Pallinghurst Woods for over 36 years. The woods are a quiet, tranquil place that provides for reflection and a sense of wellbeing; an encounter with a deer was provided as an example. This was especially germane during the pandemic. The 50 or more HGV movements per day, along the 1.4 km of track, the noise and activities of recycling and the clay extraction would completely destroy the sense of place and tranquillity. Residents would stop walking in the woods and the wildlife would be forced out. It would be a travesty if this happens.

4.7 Mr Roger Nash, local resident and representative for Rudgwick Preservation Society, spoke in objection to the application. Vehicle movements on the access track would impact flora and fauna and endanger users. The numerous rights of way or ancient green lanes are in an historic landscape and ancient woodland. A farmer whose land would be crossed by HGVs stated: "The ... plans represent a significant change of use of our land. the proposed increase in vehicle movements represents an unacceptable intensification of the right of way across our land.". The wheel wash and parking area would be located in Pephurst ancient woodland. Mature oaks would be removed. Biodiversity offsetting would not compensate for the loss. Alfold Bars and Tisman's Common are only a few hundred yards from the proposed site. Residents would be impacted by noise, dust, air and light pollution and disturbance, as would the residential Rikkyo School. All traffic would be via Tisman's Common to the A281 in Bucks Green, putting Rudgwick in the spotlight. HGV traffic could double on Loxwood Road. It is narrow, with many side roads, bends and hidden dips and a 60mph speed limit up to the built-up area. There are issues for HGVs and other road users passing along its length. There is no cost-effective way to improve the road. The site is 3 miles to the Local Lorry Network, 9 miles to the Strategic Lorry Network and 16 miles to Guildford. The lay-by at Pephurst is on a bend with limited visibility. Improvement proposals are unsatisfactory and pose a risk to road users. Climate change should mean prioritising activities where they do least harm, as noted in the National Planning Policy Framework (NPPF) (2021) and county mineral and waste reports. This clay pit would make a negligible contribution to need. Waste journeys are excessive. The wheel wash would not achieve sustainable water neutrality. There is no need to spoil this sensitive environment.

4.8 Cllr Richard Landeryou, Rudgwick Ward Councillor for Horsham District Council, spoke in objection to the application. His concerned residents make up nearly half of the 1,629 objectors. The site is very close to Rudgwick, which would bear all of the proposed heavy commercial traffic. Rudgwick Parish Council has provided comprehensive objections. A much loved local amenity enjoyed by dog walkers, ramblers and riders would be lost. Noise would have a detrimental effect on nearby hamlets. Rikkyo School sits on a raised position directly north-east of the proposed site. Prevailing winds mean it is in line with noise and other pollution. The application is about digging a large hole in the middle of a beautiful woodland for the extraction of clay and then to use the hole

for what, by another name, is a landfill operation, together with a recycling operation. There is no shortage of clay in the district. Most brick making takes place next to the extraction site. Usually, manufacture is for in excess of 70 years before the clay runs out. The 33 year time-table demonstrates how little clay would be extracted. It would make an insignificant difference to supplies in the area. It would take another 30 years for newly planted saplings to generate sufficient carbon absorption for a biodiversity net gain, actually resulting in a 63 year biodiversity net loss. Loxwood Road is not much more than a country lane. In places it is impossible for HGVs to pass at more than walking pace without damaging verges. The safety of pedestrians and other road users on a road without pavements is a major issue. Safety on the A281 is also a concern. Fatalities have occurred on both roads in the past two years.

4.9 Mrs Fiona Wallace, local resident and representative for the Stop the Clay Pit group, spoke in objection to the application. The application fails to meet all material planning considerations. The volume of clay at the site is commercially insignificant and could only be used for bricks, for which there is no demonstrable market. There is no need for additional construction material recycling capacity. The proposed site, in the midst of wonderful woodland, is wholly inappropriate. The application fails the minimum tests of both the JMLP and the WLP, specific Chichester Local Plan policies, NPPF requirements and the National Planning Policy for Waste (NPPW) (2014). There would be a biodiversity net loss of 36%. Habitats are irreplaceable. Mitigation measures are proposed for land not in the applicant's ownership, so cannot be guaranteed. The goals and challenges of the Climate and Biodiversity Emergencies or UK National Policy are not met. This rural, pastoral and wooded part of the Low Weald should not be subjected to an industrial scale operation. There would be 12,600 HGV movements per year on wholly inadequate rural country lanes. HGV movements could be understated by as much as 50%. There could be significant, dangerous impacts where the access track crosses established Public Rights of Way and paths at multiple intersections. A 1,400 square metre, 8.5 metre high building with associated industrial equipment is proposed in the middle of woodland. Operations would be up to 6 days a week. Noise and dust would destroy the tranquillity and visual beauty of this area. The applicant may not own the mineral rights.

4.10 Mr Chris Williamson, Protreat Ltd, agent for the applicant Loxwood Clay Pits Ltd (LCP), spoke in support of the application. The Annual Monitoring Report (2020-21), which has been written for some months, shows a 17.5% reduction in clay supply. The latest response from Natural England was not on the Planning website. Protreat's letter of 13 May was published at the last minute and feedback was sought regarding whether Committee members had read this. Mineral Policy M5 has been used as the basis for the foundation of the report; it is opaque and reading it in isolation is not helpful. The definition of brick clay is not specified in the JMLP, but the Department for Communities and Local Government's 2006 definition stands and was quoted. DEFRA's 2021 Flood and Coastal Erosion Risk Management Policy Statement requires planning authorities to develop a more comprehensive local plan; Weald Clay could be used as part of flood defence embankments. The February 2019 NPPF, issued after the JMLP, recognises that large tonnages of clay are used in concrete and concrete products. Since the closure of Shoreham cement works, cement has been imported from Kent to West Sussex. All clay markets were analysed in the

applicant's planning statement. The NPPF places importance on co-operation with neighbouring authorities. The proposal is on the Surrey border. Surrey has a large clay deficit. Surrey County Council did not object to the application. NPPF paras. 6.5.1, 6.5.2, 6.5.3 and para. 6.5.6 of the JMLP recognise the shortcomings of a one clay pit to one brickworks policy, however, Policy M5 of the JMLP does not provide the same clarity, although the Planning Inspector made it clear other clay sites could come forward because the 25 year clay reserve is an absolute minimum. The restoration of clay pit voids with inert waste is standard practice; Rudgwick, which uses the same three waste types, was cited as an example of this and also of the need for such sites. The matter should be deferred due to many shortcomings in the report.

4.11 Mr Nigel Danhash, Director, Loxwood Clay Pits Ltd (LCP), spoke in support of the application. Details of the application and investment in the process and investment in woodland management in the family owned land were advised. The report makes no mention of Chichester District Council's revocation of a Tree Preservation Order. If planning permission were granted, refreshed Forestry Commission licences would be required, satisfying mitigation for tree felling. There is no evidence that Planning Officers passed on LCP's response to Natural England's concerns to that body. There is no explanation of how Planning has reached its conclusion on the impact of the felling of 7 acres of trees with replantation over a 30 year period, the majority of which would occur after 15 years from commencement of the development. The Forestry Commission has approved a 10 year plan for felling 50 acres of woodland with replantation. The process has been ongoing for over 60 years. LCP has agreed to Section 106 agreements and covenants to ensure a net biodiversity gain could be achieved. DEFRA's model does not allow for gains outside the planning red-line area, so mitigation throughout the entire 300 acres of woodland is not credited. The report makes no mention of LCP's plans for a brickworks at another location. The 2-3 years before clay could be sold is enough time to establish this facility. Of the 8 brickworks cited in the 2003 Joint Minerals Local Plan, only 4 remain and only 2 have the minimum 25 year clay reserves. Brexit and the UK's exit from the Waste Shipment Regulations is impacting on the 10,000 tonnes per day of waste that used to be exported. The need for clay and a waste recycling facility was provided with the application. It is believed the application has not been handled fairly, including the publication of the Agenda Update Sheet on the evening before the Committee meeting. The County Planning Team Manager stated the Team does not have the resources to handle an application of this type and five extensions of time have been agreed to by LCP to help out the Planning Team.

4.12 The Chairman read out a statement from Cllr Christian Mitchell, County Councillor for Broadbridge. The western part of the Broadbridge Division is significantly affected by the application. 8 hectares from the tranquil woodland would be dug up for a quarry and the site building and works would have significant harm on the landscape and countryside. There is no need for such clay works and no economic case to be made to depart from local and national planning policies to outweigh the significant harm that this site would have on the countryside. The site access would see daily use by many HGVs adding to pressure on rural roads and make them unsafe. Tisman's Common and Rudgwick would be significantly affected with large HGVs on the road seeking access to the A281, to either go onwards to the north or southbound to the A29

or A24. There is already too much traffic on the A281, which is particularly carrying unsuitable HGV traffic. The application is strongly objected to.

4.13 In response to points made by speakers, Planning Officers clarified the following:

- Regulation 25 information was passed to Natural England and other statutory consultees at the appropriate time.

4.14 During the debate the Committee raised the points below and a response or clarification was provided by the Planning and Legal Officers, where applicable, as follows:

Approach to the application by Planning and Rights of Way Committee members

Points raised – Some Committee members made it clear that they have approached the application in a fair manner and aimed to see both sides. Some members also clarified that they had read the agent's letter of 13 May 2022. Additionally some members also clarified that they had made visits to the site. One member pointed out that the Committee report must be cross referenced with planning documents.

Response – The Committee report provides a concise summary of key issues. It is not possible to include all material or points within the report. [NOTE: the County Council places planning documents on its planning website at: <https://westsussex.planning-register.co.uk/Planning/Display/WSCC/030/21>].

Need for and Uses of Clay

Points raised – The argument on both sides regarding the need for clay could be seen. In reference to the applicant's comments about use of clay for flood defence, it is noted that Policy M5 of the JMLP has differing criteria for approval of clay extraction sites for brickmaking and other uses. Additionally, it was queried if there is evidence of the need for clay from brick makers for blending, as per Policy M5 and clarification was sought regarding whether there is a sufficiently robust supply to satisfy the 25 year supply both in West Sussex and Surrey. It is not clear in Policy M5 where brickworks would be in relation to the link between quarries and brickworks. Clarification was sought regarding where clay is expected to be sent to, because it is not demonstrated that there is any link regarding the proposed clay production and existing brickworks, although the applicant advised they intend to start a brick making facility. There is a duty to co-operate with neighbouring planning authorities regarding the supply of clay. The impacts of Brexit and plans for future housing in West Sussex may have relevance to the review of the JMLP.

Response – Within West Sussex, two brickworks have a minimum of 25 years supply and two do not. There are two active clay production sites in Surrey, which has no need for additional clay, because they have sufficient for 25 years. Surrey County Council has not objected to the

application; however, the site is not in their county. The applicant has advised they intend to start a brick making facility although this is speculative; no planning application has been submitted. Otherwise, other markets for the clay have not been specified. The JMLP allows for new clay extraction sites to come forward. The 25 year reserves of clay applies to individual brickworks. There is a duty to co-operate on the JMLP, but this does not apply to planning applications. The JMLP was adopted in 2018 and formal review is carried out every 5 years, with the next due in 2023, which will consider all policies and context. An Annual Monitoring Report is produced. There is nothing to suggest that the JMLP is out of date or has been superseded. The applicant has not demonstrated there is a need for this clay quarry, nor demonstrated a link between extraction and brickworks in West Sussex or elsewhere, nor use for other purposes.

Highway Safety and Road Capacity

Points raised – Routeing via the A281 would be no better than routeing via the opposite direction [through Loxwood Village] which also has residential properties and a difficult junction. Some members stated that the local roads are not suitable for the HGV traffic, e.g. the right turn onto Loxwood Road would need attention. One member noted that it was not clear that reasons for refusal on the grounds of highway safety are based on WSCC Highways' concerns, so clarification was sought regarding site access and the road east towards Rudgwick and whether issues might be overcome by condition or whether there is insufficient information to determine if issues could be overcome. Two of the three proposed HGV movements are from recycling activities, not clay production.

Response – Para. 9.96 of the Committee report addresses information supplied regarding road and access track safety. During visits, Planning Officers have noted visibility problems at the access and on Loxwood Road. Officers have not received sufficient information to determine if concerns regarding road safety could be resolved. The onus is on the applicant to supply the relevant information.

Proposed Access Track

Points raised – Concerns were raised regarding the risks associated with vehicles, including HGVs, using the access track through the woods and the risks to walkers, riders, etc., on the Public Right of Way and other woodland paths where they intersect with the access track. Despite the inclusion of lay-bys, concern was raised regarding sight lines and how HGVs might pass, so it was queried how this would be managed. Any addition of barriers and signage may help with safety but would not add to the enjoyment of the woods. Concern was also raised about HGVs encroaching on verges. There is no information about whether ditches alongside the access track would need to be maintained. It was suggested that impacts on the Public Rights of Way be referenced within any recommendation for refusal and the reasons for refusal, should the Committee refuse the application.

Response – Outgoing HGVs would have priority on the access track. If planning permission were approved, condition to control access would be included, requiring the submission of a Construction Management Plan. (Please also see response to 'Highway Safety and Road Capacity' within Minute 4.14, above). Should the Committee decide to refuse the application and consider it appropriate, the impacts on the Public Rights of Way could be referenced within any recommendation for refusal and the reasons for refusal.

Landscape Character

Points raised – Although the area is not in the South Downs National Park, it is beautiful. The area is not protected; however, it is deep woodland and the protection of the countryside is stated in national policies. It was queried, further to the applicant's letter, whether there is a need for a WSCC landscape and visual impact assessment. Concern was raised about the movement of livestock, which does not seem to have been covered. Clarification was sought on whether there would be a permanent loss of ancient woodland.

Response – Loss of ancient woodland would be in the car parking area, wheel wash (located in Pephurst Wood) and the layby located in Hurst Wood. The applicants have stated they would restore these areas.

Comment by the applicant: Mr Danhash disputed this statement and advised that from the start it has been stated that there would be no loss of ancient woodland.

Biodiversity, including Water Neutrality

Points raised – It was stated that there is clear assurance that Natural England has had sufficient time to consider any new information. The net biodiversity loss within the red-line site versus the biodiversity gain within the blue-line site was noted. It was stated that it is a pity that a site could not be found where there could be a net biodiversity gain. The licensing process for tree felling and the need to consider the bird nesting season were noted. Concerns about water neutrality were raised, including the requirement for water as part of the operations and the ability to maintain water neutrality. Clarification was sought whether the lagoon would be sufficient for the water needs on site. Clarification was sought regarding the 15 metre and 50 metre buffers mentioned in para. 9.68 of the report.

Response – The Agenda Update Sheet provides relevant references regarding Natural England's final response received on 17 May. If planning permission were to be approved, appropriate conditions and informatives would be included to ensure the protection of trees. Water neutrality is intrinsic to biodiversity policies. The 15 metre buffer would protect woodland trees and fauna, the 50 metre buffer would protect the deep excavation site. This would effectively be a buffer within a buffer.

Land Restoration and Inert Waste Recycling

Points raised – 50% recycled material is a low rate for land filling operations, which goes against the circular economy; however, if the rate were to be improved this would increase the number of HGV movements through the woods. The matter of exemption from landfill tax if material is used for land restoration was raised. It was noted that some concern has been highlighted regarding use of trommel fines. Clarification was sought regarding the 'headroom' of c.174,000 tonnes per annum of recycled inert waste and whether this would be used up in years to come.

Response – The revised statistics in the new Annual Monitoring Report are likely to be due to new waste facilities becoming operational. The Annual Monitoring Report is a statutory requirement, produced by the County Council's Planning Policy Team. Information provided through a survey of all operators is taken into account. The Committee must decide the application on the basis of the current position rather than on what might happen in the future.

Construction Materials Recycling Facility

Points raised – The large building and 4.5 metre high stockpiles would have an impact on the amenity of the area. There is no power source in the woods so generators would need to be used. This is not compliant with carbon reduction policies and it was suggested that solar power ought to be used instead.

Response – None required.

Loxwood Neighbourhood Plan

Points raised – Relevant policies in the Loxwood Neighbourhood Plan were queried and it was suggested that the Plan be referenced within any recommendation for refusal and the reasons for refusal, should the Committee refuse the application.

Response – The relevant sections of the Loxwood Neighbourhood Plan are outlined in the Committee Report [section 6.13]. Should the Committee refuse the application, it is recommended that delegated authority be given to officers to include appropriate references to the Neighbourhood Plan.

Planning Process - Extensions of Time

Points raised – Clarification was sought regarding the reasons for the five extensions of time mentioned by the applicant.

Response – Extensions of time are not unusual in the planning process and are usually as a result of awaited information, the processing of information and review of such. The Committee was again reassured that all relevant information submitted has been shared with all parties and consultees and taken into account.

Possible Precedent

Points raised – One third of West Sussex is Weald Clay. If the application were to be approved, this could set an alarming precedent. There is a need to respect greenfield and ancient woodland sites.

Response – None required.

Western Arm of the Access Road Triangle

Points raised – Clarification was sought regarding the reference to the “western arm of the access road triangle” in para. 9.55 of the Committee report.

Response – This refers to the layby by Loxwood Road.

Public Right of Way Status

Points raised – Clarification was sought on whether Public Rights of Way are considered to be highways.

Response – Public Rights of Way are considered to be highways.

Overview of Reasons for Refusal

Points raised – Aside from the discussion of the need for clay and inert waste recycling, as discussed by the Committee, Officers have provided four other reasons for refusal of which landscape character, amenity and biodiversity and the impacts of HGV movements, including safety concerns, may be considered key.

Response – None required.

4.15 As noted in Minute 4.3, Bullet Point 2 above, and also in response to suggestions made by the Committee, Planning Officers put forward the following revised recommendation, which was proposed by Cllr Duncton and seconded by Cllr Atkins:

“That planning permission be refused for the reasons set out in Appendix 1 of this report, subject to the final wording for Reason for Refusal 5 (Biodiversity) being delegated to officers and the Chairman following the completion of an appropriate assessment to assess the likely impacts of the proposal on the conservation objectives for The Mens Special Area of Conservation and Ebernoe Common Special Area of Conservation, that authority be delegated to officers and the Chairman to, as appropriate, include policies from the Loxwood Neighbourhood Plan in the reasons for refusal and also that authority be delegated to officers and the Chairman to ensure that the Reason for Refusal 6 (Highways) is clear about the potential impacts on the Public Rights of Way.”

The proposal was put to the Committee and approved unanimously.

4.16 It was resolved that planning permission be refused for the reasons set out in Minute 4.15, above.

4.17 The Committee recessed for lunch at 1.16 p.m.

4.18 Cllr Hall and Cllr Joy left the meeting, having given apologies for the afternoon session.

4.19 The Committee reconvened at 2.16 p.m.

Planning Applications: Mineral

WSCC/001/22 - Amendment of condition no. 1 of planning permission WSCC/078/19/WC to enable the retention of security fencing, gates and cabins for a further 24 months

WSCC/002/22 - Amendment of condition no. 1 of planning permission WSCC/079/19/WC extending the permission by 24 months to enable the completion of phase 4 site retention and restoration

at Wood Barn Farm, Adversane Lane, Broadford Bridge, Billingshurst, West Sussex, RH14 9ED

5.1 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by James Neave, Principal Planner, who gave a presentation on the proposals, details of the consultation and key issues in respect of the applications. In addition, a further third-party representation had been received on the day of the meeting; however, the content did not affect the Officer's recommendation to the Committee.

5.2 Dr Jill Sutcliffe, an environmental scientist, representing the Keep Kirdford and Wisborough Green group spoke in objection to the applications. The applicant has previously stated four times that the site will be restored, so it is questioned how many times this can be permitted to go on. An independent observer has made the following comment about the site: "low reservoir productivity indicates zone likely not economically viable" and the company itself has stated "flow rates...are likely sub commercial". This Committee report describes the site as being "of an industrial character within a rural setting". It is a rural part of both the country and the county, which should not be subjected to an industrial scale operation. The infrastructure is not suitable. Concerns have been raised about well integrity and the possibility of toxic chemicals having leaked out. The NPPF paras. 210 h) and 211 e) state that restoration should take place at the "earliest opportunity". Para. 55 states that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.", hence the reason for applying a time limit on the previous planning permission. Para. 59 states, "Effective enforcement is important to maintain public confidence in the planning system." There is no real evidence to support that more time is needed. The climate emergency and the drive towards net zero carbon emissions are vitally important. Climate policy should consider such planning applications.

5.3 Mr Matt Cartwright, Commercial Director, UK Oil & Gas PLC, the applicant, spoke in support of the application. The well site, built in 2014, only undertook 7 months of exploration activity in the next 36 months whilst UKOG took ownership. Oil to surface has been achieved. The 'Kimmeridge' reserve is regional, but it must be confirmed. In 2020 the Committee was informed about planning consent at Horse Hill in Surrey, but a legal challenge has delayed progress. It is hoped to progress later this year. The required data from this site is still needed for analysis for the Broadford Bridge oil site. Wider world events are acknowledged. Although Covid showed we can live greener lifestyles, the need for a secure supply chain, e.g. for PPE, was demonstrated. The bedding-in of net zero is happening, but it is a challenge that will take years. The Broadford Bridge oil site's primary aim is to contribute to UK domestic supply, but a secondary aim is to repurpose the well for geothermal energy. The war in Ukraine has shown how the impacts of Russia, as a commodity superpower, have affected costs - businesses have been particularly affected by price increases - and dependence on external supply and the UK's neglect of our own energy security. Right now, there is a perfect storm of insufficient renewables combined with insufficient fossil fuels. UK supply would mean not outsourcing to countries with less regulation and poor environmental records and would reduce international transport. It would free the UK from the whims of dictators.

5.4 Mr Nigel Moore, Planning Manager at Zetland Group Ltd, agent for the applicant, spoke in support of the application. The application is to extend the life of a temporary planning consent. The additional 24 months will allow time for review, followed by site restoration. No new drilling works are planned, no new impacts are predicted, and the proposal remains temporary and reversible. The proposal seeks to defer restoration to enable a review of existing data in light of data to come, including the mix of oil and gas and pressures and flow rates. Restoring the Broadford Bridge oil site prematurely would sever the link to a possible vital source of oil and gas. UKOG is exploring new, less harmful, methods of oil recovery, which could be used at Broadford Bridge if it matures to production. Under this application, actions remaining would be to seal the wells, remove fencing, scrape back the top soil and re-seed, so residential amenity would not be harmed. Effects of landscape character, ecology, water environment and water neutrality are acceptable or can be made so through conditions already approved. There are very few objections and no statutory consultees have objected.

5.5 Cllr Charlotte Kenyon, the local County Councillor for Pulborough, spoke on the application. All of the previous speakers' points were of interest, including the climate consequences, but also the need for a domestic oil and gas supply and stability of energy supply. However, it is understood that this site will provide only a small contribution to supply. It is not fully clear that the extension is justified given what has been found to date. This is the fourth extension requested for this site in nine years. Repeated extensions can undermine public confidence in the planning system, particularly if reasons don't appear to be new or based on new evidence. The South Downs National Park Authority has had to issue an Enforcement Notice for the restoration of UKOG's site at Markwells Wood, leading to concern about their commitment to the restoration of the site at Wood Barn Farm. The definition of temporary is

something lasting only for a limited period of time. It was queried how this can be a temporary borehole or if it is not to be limited by enforcement of the restoration requirement. How long does the applicant go on looking for oil and what is to prevent a further request for temporary planning permission? West Chiltington Parish Council has raised objections and it would be useful to understand how these objections have been unpicked.

5.6 In response to points made by speakers Planning Officers clarified the following:

- The application is to retain existing infrastructure and restore the site at the end of the 24 month period.
- No application for exploration has been received and that matter cannot be considered.
- Planning applications must be considered on their merits each time they are received.
- This planning application was received prior to the expiration of the previous planning permission.
- The site is regulated through permits from the Environment Agency (EA) and other authorities. The applicant has an EA permit that controls potential impacts to the water environment.
- The site had planning permission prior to Natural England's water neutrality statement being issued.
- West Chiltington Parish Council stated the site should be restored immediately and raised a question about a bond to secure the restoration. Para. 9.17 of the Committee report addresses the matter of bonds or guarantees; however, bonds should only be required in exceptional circumstances.

5.7 The Chairman pointed out that previous planning applications cannot bind future applications.

5.8 During the debate the Committee raised the points below and a response or clarification was provided by the Planning and Legal Officers, where applicable, as follows:

Need for a UK Oil and Gas Supply

Points raised – Both sides of the argument for and against oil production could be seen. The possibility of the Broadford Bridge oil site adding to UK supply may help with price stability, which is important given the current cost of living crisis. It was also stated that onshore oil production is only 1.71% of the whole UK production and 80% of UK oil is exported. This site would provide a commercial production in a global market, so it cannot be expected to provide cheaper oil for UK residents. Clarification was sought on whether The British Energy Security Strategy is orientated

towards promoting production as opposed to maintaining the background potential capabilities for future production and how this has a bearing on the application site. Clarification was sought on how this site fits into the overall resource in the south-east versus its viability as a standalone site, noting that in the original planning application the site was described as being located within the Willow Prospect, and whether there is enough evidence to suggest that this site is dependent on the Horse Hill site in Surrey and the Loxley site.

Response – In relation to The British Energy Security Strategy, this has not changed the overall national context contained within the NPPF with regard to the provision of minerals extraction as part of the national economy and the need for oil. The JMLP also provides for hydrocarbon exploration as part of minerals extraction. Without checking back on the detail of previous planning applications, it cannot be stated whether the site was originally proposed as a standalone site; however, it has been made clear that the application site forms part of the same geological formation as other sites that the applicant is awaiting data on, including Horse Hill in Surrey.

Need for Proposed Extension in Time and Site Restoration

Points raised – The site does not yet appear to have proved that there is enough flow from the well or an available oil resource and all evidence appears to indicate the Broadford Bridge well is not commercially viable. A decision to approve the planning application may just push the restoration of the site further away. The South Downs National Park Authority has had to take court action to force the applicant to restore their Markwells Wood site; this does not inspire confidence that the Broadford Bridge oil site would be restored at the appropriate time, and it is likely to affect the public's confidence in the planning process. One member pointed out that if the previous planning permission ran out in March 2022 and site restoration takes 6 weeks, then restoration work should really have started in February 2022; so, it was queried why a commencement date is not applied by condition, rather than a completion date.

Response – Paras. 9.2 to 9.7 of the Committee report address the need for the proposed extension of time. The applicant has stressed the commonality of the sites through the same oil reserve and the time that would be required to analyse and evaluate data. Para. 100 of the relevant PPG guidance states that the evaluation stage and available appraisal phases can be reliant on information received from other sites. The Committee must balance the need for time for analysis and testing against any impacts associated with the delay to restoration of the site. Under the previous planning permission, the site was due to be restored by the end of March 2022. If a new planning application had not been received, then enforcement action could be considered to require the site's restoration. In setting dates for restoration, planting seasons must be taken into consideration. The necessary conditions and safeguards are in place to ensure site restoration at the relevant point.

Impacts of Fossil Fuel Development / Environmental Concerns

Points raised – The Committee report does not place enough emphasis on the impacts of fossil fuel development or climate change, and it was questioned what weight should be given to The British Energy Security Strategy when weighed against other policies and guidance. The report makes reference to areas outside the red-line application site and the applicant relies on studies, some of which are in other counties; it is questioned why this application is different from other applications where only the area within the red-line can be considered. Fossil fuel exploration is much more expensive than renewables. Whilst this application would see no impact on water neutrality, any future exploration or production at the site would have an impact.

Response – Matters pertaining to The British Energy Security Strategy are addressed in para. 6.20 of the Committee report. However, this is not an application for oil extraction, but to maintain the site in its current dormant state and restore it at the end of a 24 month period. The question of water neutrality would only be relevant to any future applications.

Temporary Planning Permission and Public Confidence in the Planning System

Points raised – Clarification was sought regarding what is temporary planning permission, bearing in mind that the NPPF states that sites should be restored at the “earliest opportunity”. One member noted that the site is lying dormant and because of this there is no harm, so no reason not to extend the temporary permission once again.

Response – Policy M23 and para. 8.12.8 of the JMLP provide for extensions of planning applications, provided there is a need. Temporary planning permission depends on the nature of the application, but temporary can be for a number of years. The Committee needs to balance any impacts of delayed restoration of the site against the need for the proposed extension of time.

Number of Objectors

Points raised – The number of objectors was raised by one of the speakers. It was noted that there were over 500 objectors to the previous planning applications for this site (applications: WSCC/078/19 and WSCC/079/19), which had permission granted in March 2020.

Response – The applications have been advertised and notified in the same way as the previous applications. It is difficult to speculate on the higher level of interest in the previous applications; however, it could have been driven by a number of factors including interest in the Balcombe oil site, media coverage and interest from campaign groups at the time.

Community Liaison

Points raised – Clarification was sought on what previous engagement has taken place with the local community and whether or not a Community Liaison Group exists.

Response – During a previous phase of the oil site development there was community engagement by the applicant. However, there is no conditional requirement for community engagement via a formal liaison group, and this is not recommended for this application, since the site lies dormant.

Concerns about the Well Integrity

Points raised – In the absence of any contrary information from the Environment Agency, any concerns about the integrity of the well would not be reasons for refusal of the application.

Response – None required.

Public Rights of Way

Points raised – One member stated that he had asked at the virtual site visit whether any Public Rights of Way had been closed off and the answer from the Planning Officer was no.

Response – None required.

5.9 The substantive recommendation including changes to Conditions and Informatives as set out in Appendix 1 of the Committee report, as amended by the Agenda Update Sheet, was proposed by Cllr Montyn and seconded by Cllr Atkins and approved by a majority.

5.10 Resolved – That planning permission be granted subject to the Conditions and Informatives as set out in Appendix 1 of the report and amended, as agreed, by the Committee.

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

6.1 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).

6.2 The Committee noted that the appeal highlights the complexity of dealing with applications based on archive evidence and the need for clear documents for future generations, as well as highlighting the complexity of the appeals process.

6.3 Cllr Gibson took no part in the vote to note the report due to his declared personal interest in the item. Otherwise, the Committee voted unanimously to note the report.

Agenda Item 2

6.4 Resolved – That the Committee notes the report.

Date of the next meeting

7.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 14 June 2021 at 10.30 a.m.

The meeting concluded at 3.48 p.m.

Chairman

**Key decision: Not applicable
Unrestricted**

Planning and Rights of Way Committee

11 October 2022

**DMMO 11/18 To upgrade parts of public footpaths 165 and 166 to
bridleway and to add new lengths of bridleway in the parishes of
Yapton, Climping and Middleton-on-Sea**

Report by Director of Law and Assurance

Electoral division: Middleton

Local Member: Jacky Pendleton

Summary

The application seeks to upgrade public footpath 166 between sections A to B and C to D and upgrade public footpath 165 between sections E to F to bridleway and add new lengths of public bridleway between points B to C, D to E and F to G in the Parishes of Yapton, Climping and Middleton-on-Sea. The application is supported by documentary evidence only.

Recommendations

- (1) That 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 public footpath 166 to a bridleway between points A to B and C to D on the application plan be not made.
- (2) That 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 public footpath 165 to a bridleway between points E to F on the application plan be not made.
- (3) That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a bridleway between points B to C, D to E and F to G on the application plan be not made.

1. Application details and the Law

- 1.1 The application, made by Mrs Julie Robinson, was received on 19 October 2018 to upgrade public footpaths 165 and 166 to bridleway and to add new lengths of bridleway in the Parishes of Yapton, Climping and Middleton-on-Sea. The application is supported by documentary evidence only.
- 1.2 The application is made under Section 53 (3)(c)(i) and (ii) 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.

2. Land ownership

- 2.1 Land Registry documents show there to be several different landowners for the claimed route, there is also some unregistered land.
- 2.2 The landowners consist of; Amanda Wood, John and Alison Baird, David Langmead, Susan Mary Abbot, Yapton Parish Council, Crayfern Homes Limited, James D Baird (Home Farm) Limited and West Sussex County Council.
- 2.3 The unregistered land is situated at point D on the application plan at Grevatt's Lane.

3. Consultations

Standard consultations were sent to the amenity groups, the District and Parish Councils and local members. The following comments were received:

3.1 Local member Jacky Pendleton

"I support the upgrading of these 2 footpaths to a bridleway"

3.2 Yapton Parish Council

"The Parish Council resolved to object to this footpath diversion on the grounds that it will disrupt and lose valuable and well used allotment space, and does not follow the parishes desire to upgrade existing footpaths where possible"

3.3 Middleton-on-sea Parish council

Confirmed they had no objections to the application

3.4 Arun District Council Planning Department

"The line shown B-C benefits from two outline planning permissions following allocation in the Yapton Neighbourhood Development Plan. The application references are Y/5/17/OUT and Y/32/17/OUT.

I have some knowledge of the southern section of the site on the line B-C. This was fenced off on its eastern side against the existing footpath some years ago so it is unlikely that it has been used as a footpath/bridleway due to difficulty gaining access through/over the metal fence."

3.5 The Open Spaces Society

"OSS is supportive of this DMMO Application of the upgrading of this route to bridleway."

3.6 West Sussex County Council Land and Property Department

"I confirm as a landowner that we do not have any objection with this upgrade."

4. Evidence submitted in support of the application

4.1 The application is supported by archival evidence only. The applicant has submitted a large volume of archive evidence in support of the claim including an applicant statement containing interpretation of the evidence and addendum to applicant's statement with revisions dated 28 September 2018. The applicant asserts the evidence demonstrates that the claimed route was historically a route used by the public as a bridleway. Copious material has been provided and whilst this has all been taken into account, explicit mention is not made of each and every document supplied, its alleged meaning or its content.

4.2 Sheriff of West Sussex Court Session held at Madehurst in 1564

The applicant states that a record is held at the Arundel Castle Archives which gives evidence that a road, described at the time as "the Queen's Highway" and used by horsemen and by pedestrians, ran through Ford Park. The applicant claims that, on the balance of probability, this can only refer to the claimed route.

Officer comment: This evidence describes a Queen's Highway which was used by horsemen and pedestrians, however, there is no map to support the record. The evidence does not provide a specific description of the route and it is not possible to determine the exact route that is described.

4.3 Yeakell and Gardner's Sussex Map 1778 – 1783

The applicant claims that only two of the routes within the former Park seem to have been consistently through time regarded as public rights of way. One is the east/west route between Park Farm and Bilsham Road (now recorded on the Definitive Map as FP 144) and the other is the claimed route.

Officer comment: The Yeakell and Gardner's Map did not only show public routes. There is no key and the status of the route is not shown conclusively.

4.4 First Ordnance Survey Old Series Map of Sussex 1813

This map depicts the claimed route between points A to B and half of the route from B to C to Park Farm. The remainder of the claimed route is not shown and there is no key.

Officer comment: Ordnance Survey maps are useful in determining the existence of a route however they are not determinative as to status. The entirety of the claimed route is not shown on the map.

4.5 Greenwood and Greenwood Map of Sussex 1825

The applicant states that this map only has a key for vehicular roads not minor highways. However, the applicant notes that the map records a portion of the claimed route from point A to half way down point C as a crossroad.

Officer comment: The Greenwood and Greenwood Maps were for the benefit of wealthy people and depicted cross roads and turnpikes. They were expensive to purchase, and it was often said that there was 'no point in showing a road to a purchaser if he did not have the right to use it'. The claimed route is shown from points A to B and part of the route from B to C, terminating at Park Farm. The applicant asserts that the route is shown as cross roads, however, the route does not cross any other highways and it terminates at a private property known as Park Farm. The depiction on the map might suggest a private route rather than a public one.

4.6 Tithe Maps for Middleton 1838, Yapton 1839, Climping 1843 and Felpham 1844

The applicant notes that the Tithe Maps for Felpham and Climping either do not show public rights of way or do not show the claimed route.

The applicant notes that the Middleton Tithe Map depicts a route from Felpham Parish to the west and then going in a northerly direction to Yapton Parish.

With regards to the Yapton Tithe Map, the applicant notes that Cinders Lane, the claimed route between points A to B, is shown coloured sepia and given apportionment number 224. The apportionment is excluded from tithe but not listed under Roads, Water, Waste & C. with other roads in the village. The applicant notes that the claimed route continues from point B in a line of dots and dashes. The applicant claims that this is consistent with an easement over private land for a bridleway. The claimed route can also be seen crossing parcel 254 between points C to D and leading to Grevatt's Lane and then proceeding in a southern direction down the eastern side of parcel 257 to the bridge over the rife.

Officer comment: The claimed route between points A to B has features at either end and is enclosed on the Yapton Tithe Map. The applicant suggests that the depiction on the map is consistent with an easement over private land for a bridleway, however, if this is the case it might be more likely to conclude that the track was a private one to access the property at Park Farm.

The applicant claims that the Tithe Maps for Yapton and Middleton clearly show a route treated as a minor public highway which closely resembles the claimed route and also show it entering and leaving from the parishes of Felpham and Climping. The applicant advises that the only public rights of way shown leaving Yapton Parish and going into the area of Park Farm are the claimed route and the east/west route from Bilsham Road, today recorded as FP 144.

Officer comment: Tithe maps were not intended to establish or record public rights of way. The maps are only conclusive of matters of relevance to the tithe commissioners and generally give no more than an indication as to whether any way is public or private because a private right of way can also diminish the productivity of the land for tithe assessment.

4.7 Boundary Remark Books 1872

The applicant claims that the boundary remark books show the claimed route at numerous points but by this time the claimed route was only able to be used as a footpath as the records show the route having a stile on one of the parish boundaries of Yapton with Climping and another one on the boundary of Middleton with Felpham.

Officer comment: Boundary Remark Books were produced with the purpose of determining boundaries for each parish and can be of evidential value when trying to establish the existence and status of a route. Here, the Boundary Remarks Book identifies the claimed route as a footpath.

4.8 First Edition of the Ordnance Survey County Series Map 1874-76

The applicant claims that the maps of 1874-76 show the claimed route following a very similar course to that seen on the Yeakell and Gardner map. The claimed route from A to B along Cinders Lane has been referred to as a "road" in the accompanying Book of Reference. The claimed route is depicted using dashed lines, the maps are not labelled and do not have a key.

Officer comment: Ordnance Survey Maps can provide an accurate picture of the landscape at the date of survey, and carry strong evidential weight, but it should be noted that the surveyors mapped physical features and not legal rights.

4.9 Inclosure Records

The applicant advises that there are no Inclosure Awards for Climping or Middleton. The applicant notes that there is an Inclosure Award for Felpham, which mostly relates to the hamlet of Flansham.

The applicant notes that the Inclosure Map for Felpham has a small inset section which relates to Ancton and shows some lands which were exchanged. A dotted line is shown on the map along part of the claimed route between F and G but the applicant cannot find that it was set out in the Award or otherwise referred to. The map appears to be indicating the existence of something along the line of the claimed route in that location, which the applicant suggests indicates that Felpham parish acknowledged there was a public highway there.

Officer comment: It is accepted that the Inclosure Map does depict a faint dotted line along part of the claimed route between F to G, however, it does not extend as far as point G at Ancton Lane. There is no key provided with the map.

4.10 The Victoria County History

The applicant claims that the information the Victoria County History provides in relation to Climping parish is that the former park associated with Ford, Climping and Ilsham Manor later came to be known as Park Farm and that in 1564 a road between Felpham and Madehurst passed through the park.

Officer comment: Whilst this publication is deemed to be reliable because it is edited by academic historians, it is not certain or definitive. The publication references a former road, however, it does not include a plan or a specific description of the actual route it is referring to.

4.11 Differences between the routes recorded on the Definitive Map for footpaths 165 and 166 and the claimed route between points B-C, D-E and F-G

4.11.1 Difference between points B-C of this application and FP 166

The applicant claims that the path was claimed by Yapton Parish Council subsequent to the 1933 Rights of Way Act and notes that the northerly extent of the route is drawn as going along Cinders Lane and then as per points B-C of this application. Between the initial recording of paths by the parishes in 1935 and the drawing up of the first Definitive Map it appears that this section of path had been moved to the northern and eastern boundary of the parcel of land off the eastern end of Cinders Lane down to as far as point C, instead of going diagonally across it.

The applicant suggests that the reason for the change between the historic course represented by the claimed route B-C and what was recorded upon the Definitive Map may be due to the location of the Yapton allotment site changing from a site slightly further north off the Bilsham Road to a site off Cinders Lane east of point B of this application.

The applicant notes that the Auction Sale Particulars Plan 1862 recorded the claimed route as a footpath and noted that the claimed route between points A to B, also known as Cinders Lane, was considered to be a private road as it formed part of the land sold.

Officer comment: It is acknowledged that the route from B to C was depicted on the initial draft maps in a different way to what was shown on the first Definitive Map. No further information has been found relating to this depiction to explain why the footpath was moved, however, it is noted that the route that was recorded on the first Definitive Map correctly reflects the current legal line of public FP 166.

4.11.2 Difference between points D-E of this application and FP 165

The applicant notes that a discrepancy occurs on the Yapton Tithe Map which shows the route at this point apparently having to head east along Grevatt's Lane and then south following the parish boundary with Climping to Grevatt's Bridge instead of going across the field parcel 257.

The applicant claims that apart from what is recorded on the Tithe Map, there would appear to be more evidence that the actual course that the public took was directly across the fields between these points.

Officer comment: It is agreed that the documentary evidence shows the existence of a route between points D to E on the application plan,

however, it is not possible to conclusively determine the status of the route.

4.11.3 Difference between points F-G of this application and FP 165

The applicant notes that this portion of the claimed route was diverted by Chichester Rural District Council in 1954. However, the applicant claims that there has been a discovery of new evidence that this route has higher rights than that of a footpath and those higher rights should therefore remain on the original line.

Officer comment: The applicant claims a discovery of new evidence that this route has higher rights than that of a footpath. Whilst it is agreed that there has been a discovery of new evidence, it is not accepted that this evidence represents the existence of a bridleway.

4.12 Finance Act Map 1910

The applicant notes that this map depicts the claimed route from points A to B as an uncoloured white road labelled as Cinders Lane. The applicant asserts that this depiction is an indicator that the route was considered to have public vehicular status. A section of the route between points B to C is also shown on the map depicted with dashed lines. The applicant further states that as the claimed route begins at a higher status, this is a strong indicator that the route likely continued at a higher status.

Officer comment: It could be argued that this depiction might suggest that this section of the claimed route had public vehicular status at the time the maps were formulated. However, it is not possible to determine the status of the claimed route between points B to C as there is no key and it is not labelled. It should also be noted that the Yapton Tithe Map 1839 shows this section of the claimed route to be enclosed and the Auction Sale Particulars Plan 1862 considered this section between points A to B as a private road.

4.13 Evidence which points to changes to the highway network in Yapton

For this portion of evidence, the applicant has consulted a Bargain and Sale Deed dated 1646, the Yeakell & Gardner Map 1778, the Gardner & Gream Map 1795 and a Conveyance dated 1678. The applicant notes that this evidence is not part of the claimed route but advises that it is relevant to it.

The applicant states that the claimed route can be seen to fit the description of a highway between Felpham and Madehurst.

The applicant notes that the earliest reference in the Victoria County History to the present day public highway Bilsham Road was in 1646 and that no earlier evidence existed before this date. The Yeakell & Gardner and Gardner & Gream maps show a road existing between the top of Bilsham Road and the Church, though the route is not depicted on later maps. The applicant also states that a 1678 deed describes a "highway from Yapton Church to Arundel".

The applicant believes she has managed to calculate, using the above sources of information, the possible route that was described in the Sheriff of West Sussex Court Session in 1564. The applicant asserts the route

described in 1564 and the above documents, follows the claimed route as no evidence was found of Bilsham Road existing prior to 1646.

The applicant states that whilst this is circumstantial evidence, it may indicate a more direct route through Yapton for the original road described in 1564 than was possible later.

Officer comment: This evidence, as stated by the applicant, is speculative and although the above documents do describe a highway, they provide no further descriptions or plans of the route.

5. Evidence submitted against the application

5.1 Mrs S Abbot and Mr D Langmead (“the landowners”)

5.1.1 Mrs Abbot owns the land comprised in title number WSX313749 which leads from the central section of point C, southwards to the parish boundary and Mr Langmead owns the section of land comprised in title number WSX296992 which leads from the parish boundary of section C to point D on the application plan. **The objection therefore relates only to the upgrade of footpath 166 to public bridleway between points C to D on the application plan.**

5.1.2 The landowners state that the applicant suggests that the evidence shows there was once an old road leading from Felpham to Madehurst and has asserted that she believes this to be the claimed route. The landowners assert that the applicant must provide actual evidence and speculation is insufficient.

5.1.3 The landowners acknowledge that the Yeakell & Gardner Map 1778 shows a vague dotted line but state that this is so imprecise that there is no basis for asserting that this is the claimed route. The landowners also state that there is no basis for assuming that the route shown on the map is anything more than a footpath. The landowners confirm that the applicant’s assessment of this map is unjustified, insupportable and does not amount to evidence of more than footpath status. The landowners acknowledge that the dotted line shown on the map is recorded on maps consistently as a footpath and argue that it is more likely to have been intended to show the route as a footpath and not as a bridleway if it was public at all.

5.1.4 The landowners note that the applicant advises that historically, the majority of the local public did not have horses to ride and argue that this explains why the greater majority of public paths were and still are only footpaths.

5.1.5 The landowners acknowledge that the Greenwood and Greenwood Map 1825 depicts every way, even estate roads, private roads and obvious cul-de-sacs. The landowners note that the map shows a double dotted track running down as far as Park Farm but no further.

5.1.6 The landowners state that the Climping Tithe Map 1843, which covers the area from point C down to the Parish boundary, shows no footpaths or bridleway and alleges that this absence is significant. The landowners note that the applicant claims that the claimed route is an

ancient road through Ford Park, the landowners assert that if this was the case then you would expect to see the ancient road on the Climping Tithe Map.

- 5.1.7 The landowners confirm that the Yapton Tithe Map shows a dotted line running diagonal at Cinders and state that other maps and the Sales Particulars of 1862 label this route as a footpath.
- 5.1.8 The landowners refer to the Boundary records between Yapton and Climping and acknowledges that they show a route labelled as "footpath" and note that "stile" is described at the boundary. The landowners assert that this clearly demonstrates footpath status.
- 5.1.9 The landowners note that there are no Inclosure or Quarter Sessions evidence to support the claim and further state that the Climping Tithe Map does not depict the route at all. The landowners confirm that the OS First and Second Edition Maps show the route as a double pecked line with as many as five gates across it, with the Second Edition map labelling the route "FP". The landowners therefore note that the Yeakell and Gardner Map is the earliest source of evidence provided by the applicant and again confirm that this map was intended to show both public and private ways.
- 5.1.10 The landowners conclude by saying that there is no (or no sufficient) basis to justify an upgrade to bridleway status from points C to D on the application plan.
- 5.1.11 Mrs Abbot has provided a witness statement which states that she has never seen the footpath being used by horse riders, Mrs Abbot has farmed the land for the last 42 years. Mrs Abbot confirms that the route is used on a regular basis by local walkers. Mrs Abbot further notes that she deposited a landowners statement and declaration with the County Council in 1993 and confirms that this has been kept up to date ever since.

5.2 **Crayfern Homes Limited**

- 5.2.1 Crayfern Homes Limited own the land at Cinders Nursery as shown between points B to C on the application plan.
- 5.2.2 Crayfern Homes Limited confirm that they object in the strongest possible terms to the application. The grounds for the objection are as follows:
 - (i) The proposed bridleway passes through an existing dwelling and the applicant has no grounds to establish it has ever used the claimed route from B to C for the purpose stated in the application;
 - (ii) There is already an existing public footpath running along the outside of the property and there is no benefit or purpose to the creation of a new bridleway over the property;
 - (iii) The applicant has submitted two objections to the proposed development (planning application Y/5/17/OUT) and neither of

the objections refer to the property being subject to the right of way or bridleway stated in the application. Instead, the applicant recommended that a new bridleway is created as part of the development. It appears that the application has been submitted out of spite that the recommendations were not granted as part of the planning permission;

- (iv) The proposed claimed route will prevent development and mean that community benefits and affordable housing will not be implemented;
- (v) The application is flawed and has no grounds to succeed.

5.3 **Amanda Wood**

5.3.1 Ms Wood is the freehold owner of the land comprised in title number SX14870 and which is affected by points F to G. Ms Wood confirms that her property is significantly affected by the application.

5.3.2 Ms Wood notes that the claimed route from points F to G was a public footpath until it was legally diverted by Chichester Rural District Council in 1954. Ms Wood states that she does not dispute the archive evidence.

5.3.3 Ms Wood asserts that the addition of a bridleway between points F to G would have a negative effect on horse owners at Lane End Farm for the following reasons:

- (i) Horses are grazed on the field and the addition of a bridleway would increase the risk of disease;
- (ii) The proposed bridleway would remove a significant amount of grazing land;
- (iii) The field has a padlock on the field gate to protect the current animals that are kept on the land, if the application is allowed this would have to be removed and it could lead to horses escaping.

5.3.4 Ms Wood runs a caravan site on the land and notes the claimed route would cut across the caravan site and run through the recreation area. The land is currently private to protect families and young children and claims that the current security would be affected if the land had to be opened up to the public.

5.3.5 Ms Wood states that the whole of the claimed route from A to G is impractical and provides the following grounds for this statement:

- (i) The claimed route from F to G is short and does not link anything of interest;
- (ii) The bridleway would cross the A259 at the busiest part and it would be extremely dangerous for horses and bikes to cross;

- (iii) The northern end of the claimed route goes through a private dwelling and allotments and it would not be possible to re-route it around the outside as the path is very narrow;
- (iv) Several parts of the claimed route has footbridges over deep ditches and is currently not safe for horses;
- (v) The section of the claimed route which crosses woodland would have to be drastically modified with trees being removed, it is currently not safe for horses;
- (vi) Horses and mountain bikers would churn up the path making it unpleasant and dangerous for elderly pedestrians who currently use the route;
- (vii) There are no horses kept within easy access of the route except for Ms Wood's horses at Lane End Farm, any visiting riders would have to lorry their horses to one of the access points.

5.3.6 In relation to the documentary evidence submitted in support of the application, Ms Wood suggests that she has not seen any actual evidence of the previous existence of a bridleway along this route. Ms Wood notes that the archive evidence submitted by the applicant shows where the current footpaths are and where they were historically but states that this is not evidence of a bridleway. Ms Wood further states that the supporting evidence is based on an assumption that all footpaths would, before the invention of a motor car, have been used by horses.

5.4 Shirley-Ann Thompson, Audrey Jane Hawkins, Michael and Lucille Fildes (previous landowners)

5.4.1 Shirley-Ann Thompson, Audrey Jane Hawkins and Michael and Lucille Fildes were the previous owners of the property known as Cinders Lane Nursery, now owned by Crayfern Homes Limited, and have submitted a joint objection to the claimed route from point B to C.

5.4.2 The previous owners state that no evidence whatsoever has been provided by the applicant to support the addition of a bridleway between points B to C on the application plan. The grounds for the objection are as follows:

- (i) Mr and Mrs Fildes owned their part of the property since 1996, Miss Hawkins since February 2000 and Miss Thompson since March 2003. Prior to Miss Hawkins and Miss Thompson acquiring their respective properties, they were in the ownership of their families. The landowners assert that at no point whatsoever during their periods of ownership has the property ever been subject to the suggested access stated in the application;
- (ii) The land cannot be accessed by the route as shown on the application and proposed route runs through Miss Thompson's existing dwelling;

- (iii) There is an existing public footpath which runs along the outside of the land and there can be no rationale or benefit for creating a new bridleway through the middle of the property;
- (iv) During the planning process, the applicant submitted two objections to the application and neither of these objections refer to the property as being subject to the right of way or bridleway stated in the application;
- (v) If allowed, the application will prevent the development.

5.5 Frank Smith (previous landowner)

5.5.1 Mr Smith used to own the land registered under title reference WSX256383 which is now owned by Crayfern Homes Limited and affected by points B to C on the application plan.

5.5.2 Mr Smith strongly objects to the application and claims that the applicant asked for permission to ride across the allotments approximately 4 years ago to which Mr Smith declined. Mr Smith confirmed that this was because the footpath around the edge of the allotments is too narrow for a horse.

5.6 Martin Loveys, Jeremy Loveys and Francis Newbould (previous landowners)

5.6.1 Martin Loveys, Jeremy Loveys and Francis Newbould were the previous landowners of the land now owned by Yapton Parish Council, registered under title reference WSX85205, and affected by points B to C on the application plan.

5.6.2 The Landowners object to the application on the grounds that this proposal would result in the loss of amenity for Yapton residents. The Landowners advise that the allotments have been used by many people over the years and confirm that they hope this use will be allowed to continue in perpetuity. The Landowners suggest that the proposed bridleway would have a negative impact.

5.7 Matthew Utting

5.7.1 Mr Utting is the Planning Consultant for Crayfern Homes and has submitted the following comments which are to be read in conjunction with those of Crayfern Homes Limited:

- (i) The land in control of Crayfern Homes Limited benefits from outline planning permission for development with 51 dwellings, the outline permission pre-dates the footpath/bridleway diversion/upgrade that is being applied for. The proposed route would directly conflict with the approved terms of the outline planning permission;
- (ii) The claimed route would cross the north western corner of the allotments to the north of the site owned by Crayfern Homes Limited. If approved, the claimed route would cause a direct and deleterious effect on the allotments' functioning and integrity;

- (iii) The claimed route would lead to inevitable conflicts, diminish the attractiveness and utility and would not be in the public interest.

5.8 **Jane Way**

5.8.1 Ms Way is a local resident and has made the following comments in relation to the application:

5.8.2 **The proposed route from B to C:** Ms Way first commented on the claimed route from points B to C and expressed concerns relating to horse droppings and the fact that the path was too narrow for bridleway use however, Ms Way had incorrectly assumed that the new length of bridleway would follow the current public footpath and go around the allotments. The case officer advised Ms Way that her interpretation of the evidence was incorrect and that the proposed route seeks to cut diagonally across the allotment space. Ms Way advised that this was reassuring and that her earlier concerns regarding horse droppings would be to a lesser extent.

5.8.3 **The proposed route at point A and exit onto Bilsham Road:** Ms Way advised that this point of the junction is very busy with local corner shop traffic, a busy doctors surgery car park, allotment users parking and a bus route and advised that the addition of horses here would pose a serious danger in what is already a potentially hazardous area.

5.9 **Linda Doubleday**

5.9.1 Ms Doubleday owns a static caravan on the Lane End Farm Caravan Site which is situated between points F to G on the application plan. Ms Doubleday states that the application, if approved, would detrimentally affect the site in the following ways:

- (i) The security of the caravans and owners' property on the site, the site is open between March to October and there is no resident manager on site;
- (ii) Safety at the access to the site, due to restricted visibility at the junction;
- (iii) Security and safety of horses;
- (iv) Peace and tranquillity of the site, thereby affecting the site owner's business should the caravan owners dislike the intrusion;
- (v) Safety and security of the children at the entrance, on the site, in the playing field and in the woods as they are currently able to roam freely without the need for constant parental supervision;
- (vi) Safety of dog walkers and dogs in the woods.

5.9.2 Ms Doubleday notes that the application is based on historical evidence and advises that she has not seen any actual evidence of the previous existence of a bridleway along this route.

6. Archive and other evidence

Archive Evidence

- 6.1 The application and subsequent investigation by the County Council has brought forward large amounts of archival information on the claimed route. The relevance and usefulness varies greatly between each piece of documentary evidence, particularly, as the intention was to find evidence to prove the status of the route. The status of a route is difficult to determine from archive evidence as most historic maps do not provide information on status and/or are not seen as sufficient evidence to prove definitively the status or sometimes even the existence of a public right. Many maps and documents were examined but the following maps are considered to be of particular relevance:
- 6.2 Greenwood and Greenwood Map 1825: The claimed route is depicted from A to B and part of B to C using double dashed lines. The applicant argues that this depiction is described as a cross road on the maps key, however, this is not the view of the investigating officer. The route leads from the main highway, known as B2132, and leads to Park Farm, with no further continuation and so not a cross road.
- 6.3 Yapton Inclosure Map 1826: This document was the map produced for Allotments and Exchanges in the Parish of Yapton in 1826. Part of the claimed route between points F to G is depicted using a faint dotted line, however, it should be noted that the full length of the route is not shown and the dotted line does not extend to point G at Ancton Lane. There is no key on the map and it is not possible to determine the status of the route shown on the map.
- 6.4 Quarter Sessions Map 1905: This map was produced for purposes relating to a new proposed bridge and covers the area of Littlehampton, Climping, Yapton and Rustington. The map does not show the claimed route from points A to B but it does depict the rest of the claimed route in dashed lines. The route is labelled as a "FP" in several places between points B to C, C to D, D to E and E to F. There is no key on the map. Bridge papers relating to the building and repair of bridges were deposited as Quarter Sessions to give them legal validity. The documents provided land to be crossed, including existing public highways. These documents are considered a good source of evidence for the existence and status of public routes.
- 6.5 Quarter Sessions Map 1920: This map was produced for the Ford and Climping Light Railway and covers the areas of Yapton, Ford and Climping. The plan of the railway does not show the claimed route. The map of the area depicts the claimed route using dashed lines and the map key labels this depiction as a footpath. Plans of the intended routes of railways were deposited at Parliament at the same time as Bills seeking authorisation for their construction. Not all railways were built but plans and accompanying books of reference detailing the proposed line were required to provide details of the land to be crossed, including existing public highways. In general, these plans are a good source of evidence for the existence and status of public routes.

6.6 Ordnance Survey

Ordnance Survey Maps can provide an accurate picture of the landscape at the date of survey, and carry strong evidential weight, but it should be noted that the surveyors mapped physical features and not legal rights.

- 6.6.1 OS Map Sheet LMV (74) 1879 (1885): This map shows the claimed route from points E to G as a faint dotted line. The rest of the claimed route is not shown and there is no key for the map.
- 6.6.2 OS 1st Edition LXXIV 1876: This map depicts the claimed route from points E to G using single dashed lines. The rest of the claimed route is not shown and there is no key for the map.
- 6.6.3 OS LXII (62) 1880: This map shows the claimed route from points B to C and part of the route from C to D. Some of the claimed route from the beginning of points C to D may possibly be shown but it is met by a hedge so it is not possible to determine whether the route is definitely shown. The claimed route at the above points is depicted by a faint dotted/dashed line. The claimed route from Park Farm to point D is possibly shown by double dashed lines. The rest of the claimed route is not shown and there is no key for the map.
- 6.6.4 OS 62/16 Sheet 62 1876: This map shows the claimed route from points A to D. The claimed route is depicted using double dashed lines from B to D. The rest of the claimed route is not shown and there is no key for the map.
- 6.7 Yapton Tithe Map: This map shows the claimed route from A to B coloured sepia and the land parcel is described as 'Cinders Lane', however there is a feature at either end which shows this section of the route to be enclosed. The majority of the claimed route from B to C is depicted using broken dashed and dotted lines.
- 6.8 West Sussex County Council Adcocks Map 1894: This map shows the claimed route from A to D depicted as a single dashed line. It also shows a portion of the claimed route from Ancton Farm from points G to F as a single dashed line. The rest of the claimed route is not shown and there is no key for single dashed lines shown on the map.
- 6.9 Draft Definitive Map: This map shows the majority of the claimed route as footpaths 165 and 166. The application route A to B and C to D is shown as a purple line and is labelled "FP 166". The claimed route from E to G is shown as a purple line and is labelled "FP 165". The claimed route from B to C and D to E is depicted using double dashed lines and is labelled as "FP".
- 6.10 Provisional Definitive Map: This map largely replicates what is shown on the Draft Definitive Map, however, only part of the claimed route from points B to C is depicted using double dashed lines.

Landowner deposits received by the County Council

- 6.11 Mrs Susan Abbot submitted a landowner deposit in 1993 and renewed the deposit in 1999, 2005 and 2015. Landowner deposits can be useful in demonstrating that a landowner did not intend to dedicate any ways across

their private land, other than those already recorded on the Definitive Map and Statement as public rights of way, for public use. However, it should be noted that this application is based on archive documentary evidence as opposed to user evidence and this deposit is therefore not relevant for the purposes of negating the claim.

West Sussex Public Path Orders

- 6.12 On 3 March 1954 a Diversion Order (“the Order”) was made which sought to divert public footpath 165 (as shown between points F to G on the application plan). The Order was confirmed on the 2 September 1954 by Chichester Rural District Council under the National Parks and Access to Countryside Act 1949.
- 6.13 The Order extinguished part of the legal line of public footpath 165 which commenced at Ancton Lane via Lane End Farm in a north easterly direction for 410 yards and diverted it so the new length of part of public footpath 165 lead around the field boundary and proceeded in an easterly direction for a distance of 35 yards and southwards for approximately 463 yards to join the existing public right of way leading from Ancton way to Ancton Lane.

7. Consideration of claim

- 7.1 The application was submitted with archive evidence summarised in Section 4 and contained in the background papers of this report. Evidence and comments submitted against the application are summarised in Section 5 and contained in the background papers. The case officer also conducted a thorough investigation of the County’s archives and this evidence is set out in Section 6 of this report.
- 7.2 Section 53 requires there to be a “discovery” of evidence. This is not disputed. The applicant relies on archive evidence. Section 32 Highways Act 1980 provides that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, 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. In doing so, account must be taken of the antiquity of the 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.
- 7.3 The burden of proof rests with the applicant. In this case there are different standards of proof to be applied when considering each claimed route. In determining the application, it is necessary to decide:
- i. In relation to the upgrade of footpath to bridleway for points A to B, C to D and E to F, whether the evidence provided by the applicant, when considered with all other relevant evidence, on the balance of probabilities, shows that points A to B, C to D and E to F ought to be shown as a bridleway.
 - ii. In relation to the addition of bridleways for points B to C, D to E and F to G, whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of

probability a bridleway subsists from points B to C, D to E and F to G, or in the alternative that a bridleway 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.

7.4 In making a recommendation all the submitted evidence has been considered in accordance with Section 32 of the Highways Act 1980, the relevant legal tests in Section 53 WCA 1981 and case law. In the case of claimed highways, direct evidence is often impossible to find and so it is necessary to draw inferences from circumstantial evidence. The nature of the evidence that may be considered in deciding whether or not to draw an inference is almost limitless.

7.5 **Claimed route between points A to B**

7.5.1 This section of the claimed route has been depicted on various maps over time with some maps labelling the route between these points as a footpath.

7.5.2 Many of the above-mentioned maps, such as the First Ordnance Survey Old Series Map of Sussex 1813, show the claimed route between points A to B as opening from the public highway B2132 and depicted using solid lines.

7.5.3 The Finance Act Map 1910 shows the claimed route between points A to B as a white uncoloured road, which could be argued that public rights existed along this section of the claimed route at the time the maps were produced. However, the Auction Sale Particulars Plan 1862 considered Cinders Lane between points A to B as a private road as it was part of the land sold.

7.5.4 Whilst the Yapton Tithe Map 1839 depicts this section of the claimed route in sepia, it is shown to be enclosed at either end and this would suggest that public access was not freely available at either end. This depiction might suggest that this section of the claimed route was considered to be private.

7.5.5 This section of the claimed route is currently recorded as a public footpath, public vehicular rights do not currently exist along this section of the route and there is insufficient evidence to suggest that bridleway rights exist here.

7.6 **Claimed route between points B to C**

The claimed route between points B to C is depicted on many maps, the First Ordnance Survey Old Series Map of Sussex 1813 and the Greenwood and Greenwood Map of Sussex 1825 depict the route using double dashed lines and leading to a property labelled 'Park Farm', the route does not continue past this point, and this might suggest that the route shown on the maps was a private access route leading to the Farm.

7.7 **Claimed route between points C to D**

The claimed route between points C to D is a little more difficult to determine as many maps depict only part of the route between points C to D. Various

old maps show a property described as 'Park Farm' which, historically, was positioned about a third of the way down between points C to D on the application plan. Various maps, such as the First Ordnance Survey and the Greenwood and Greenwood Map 1825, only show the route from point C to Park Farm.

7.8 Claimed route between points D to E

The claimed route between points D to E is only depicted on a few maps. The Quarter Sessions Maps 1905 and 1920 and Draft and Provisional Definitive Maps label this section of the route as a footpath.

7.9 Claimed route between points E to F

7.9.1 The claimed route between points E to F has been depicted on various maps and is usually shown as dotted or dashed lines. The Quarter Sessions Map 1905 labels this section of the route as a "FP".

7.9.2 The Boundary Remark Books 1872 depict two stiles along the claimed route and is labelled as a footpath between points E to F, this description and the presence of two stiles along the route are considered good evidence to suggest that this section of the claimed route was considered to be a footpath at the time the maps were formulated.

7.10 Claimed route between points F to G

The claimed route between points F to G is depicted on only a few maps. This section of the claimed route was previously recorded as public footpath 165 until it was diverted by Chichester Rural District Council in 1984. Even though some maps do show the existence of a route, there is insufficient evidence to determine that bridleway rights previously existed on this section of the claimed route.

7.11 Claimed route as a whole

7.11.1 The claimed route in parts is shown on various maps over time. Most maps depict the claimed route using either single dotted or dashed lines and some maps even label various sections of the route as a footpath.

7.11.2 The applicant relies on the Sheriff of West Sussex Court Session held at Madehurst in 1564, however, there is no map accompanying this and it is not possible to properly establish the route being described and so is of very limited weight.

7.11.3 The documentary evidence that has been consulted throughout the investigation of this application appears to record all or part of the claimed route as a feature, however, it is not possible to determine the status of the route as bridleway.

7.11.4 The Greenwood and Greenwood Map 1825 shows the claimed route from point A to B and part of the claimed route between points B to C, terminating at Park Farm. The applicant asserts that the map key identifies this route as a crossroad, however, this assertion is not

accepted by the investigating officer. The route that is shown on the map leads from the public highway and terminates at Park Farm, it does not cross any other highways or routes on the map. On historic maps and documents, the description of a cross road usually means a public road. Here, the route shown on the map does not include all of the section between points B to C and the remainder of the claimed route from points C to G is not present. In the absence of the entirety of the claimed route on this map and the way in which the route shown on the map is mapped as terminating at Park Farm, it is considered of limited weight in determining the public status of the claimed route.

7.11.5 In relation to the upgrade of footpaths 165 and 166 between points A to B, C to D and E to F, whilst it is agreed that the evidence produced or considered as part of this application, is new evidence which would not have already been considered during the first recording of the route under the provisions of the National Parks and Access to the Countryside Act 1949, it is not agreed that the evidence supports the existence of a bridleway between these points and it has not met the standard of proof, namely the balance of probabilities.

7.11.6 In relation to the addition of a bridleway between points B to C, D to E and F to G, despite evidence of a route on some maps it is not possible to conclude from the evidence that historic public bridleway rights subsisted or are reasonably alleged to subsist on these sections of the claimed route.

8. Recommendation

7.12 In consideration of all the evidence submitted as set out above, it is recommended that an 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 public footpath 166 to a bridleway between points A to B and C to D on the application plan be not made.

7.13 In consideration of all the evidence submitted as set out above, it is recommended that an 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 public footpath 165 to a bridleway between points E to F on the application plan be not made.

7.14 In consideration of all the evidence submitted as set out above, it is recommended that an 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 new lengths of bridleway between points B to C, D to E and F to G on the application plan be not made.

8. Consultation, engagement and advice

8.1 See paragraph 3 above which details responses to statutory consultations as well as responses to additional consultations that were carried out as part of the investigation process.

9. Finance

- 9.1 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.
- 9.2 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 the submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, advertising costs etc.
 - ii. Should an order be made and confirmed; if any works are necessary to ensure that the path is open for public use.
 - iii. Should the decision of the committee be challenged by way of Judicial Review.
- 9.3 The recommendation made by the case officer and the decision of the Planning and Rights of Way Committee is based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

10. Risk implications and mitigations

- 10.1 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.
- 10.2 In reaching a recommendation the case officer has considered the evidence in accordance with the law.

11. Policy alignment and compliance

Equality and Human Rights Assessment

- 11.1 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

- 11.2 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.
- 11.3 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.
- 11.4 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 an interference with these rights and whether the interference is proportionate.
- 11.5 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, 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

- 11.6 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

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

Public Health

- 11.8 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 tests.

Tony Kershaw

Director of Law and Assurance

Case Officer: Georgia Hickland, Trainee Legal Executive, Legal Services
Telephone: 0330 222 5360

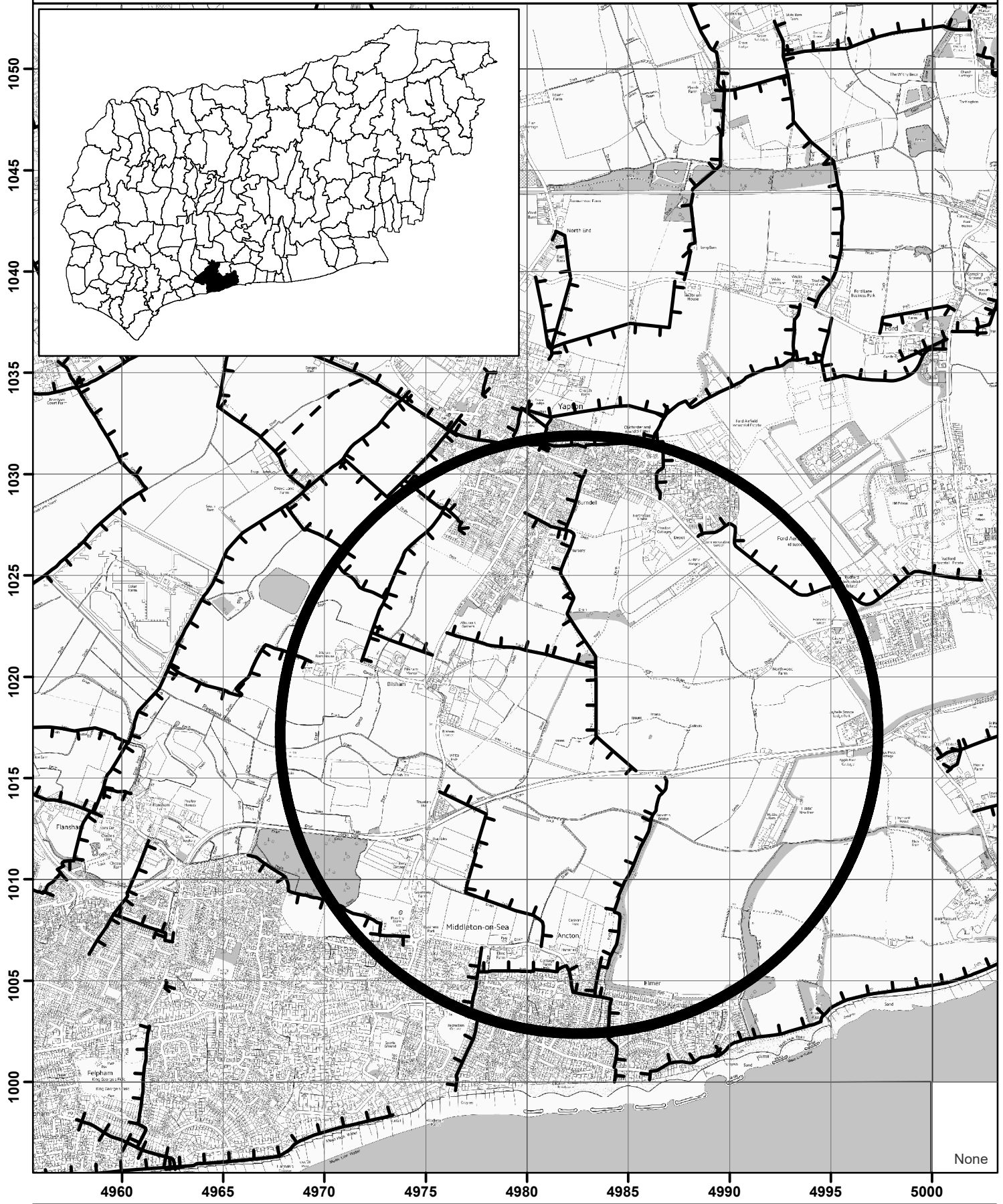
Appendices

- Appendix A – Location Plan, No. 01810
- Appendix B – Site Plan, No. 01811

Background papers

1. Application and plan
2. Consultation responses
3. Evidence submitted in support of the application
4. Evidence submitted against the application
5. Archive Evidence

Parish: **Yapton, Climping, and Middleton-on-Sea**



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**Yapton, Climping, and Middleton-on-Sea:
Proposed Upgrades from Footpath to Bridleway and
Addition of Bridleways - Location Plan**

Plan: 01810

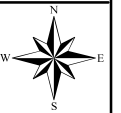
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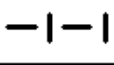
Matt Davey
Director of
Highways, Transport
and Planning

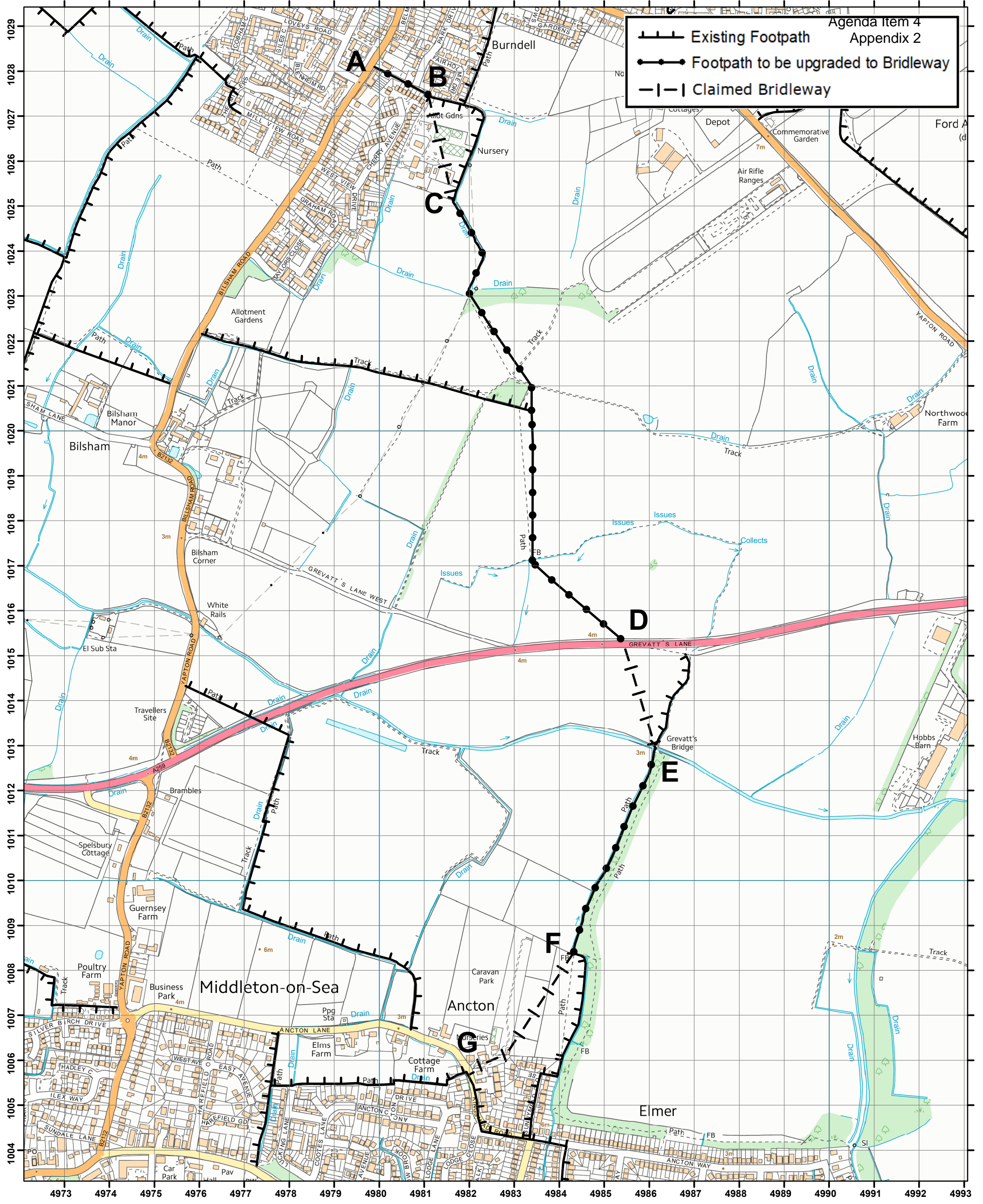


Date: 22.07.2022

Grid Ref: 4983 1017

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 Existing Footpath
 Footpath to be upgraded to Bridleway
 Claimed Bridleway



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Yapton, Climping, and Middleton-on-Sea: Proposed Upgrades from Footpath to Bridleway and Addition of Bridleways - Location Plan

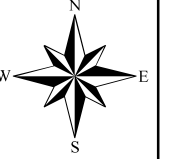
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**Key decision: Not applicable
Unrestricted**

Rights of Way Committee

11 October 2022

Public Rights Of Way Annual Progress Report 2021

Report by Principal Rights of Way Officer

Electoral division/s: Countywide

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 2021 calendar year.

1. Introduction

1.1 With over 4000km 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 1,301 calls received through the contact centre in relation to PROW.

2.2 Between reports from the public and other stakeholders this has generated 4,002 issues that were logged onto our database in 2021 (3,866 in 2020) with 3,824 issues were resolved in the same period (3,176 in 2020).

3. Routine Maintenance

3.1 We continued to deliver our 15-month inspection and maintenance programme as much as possible, but inspections were paused for a month in February to allow our routine maintenance contractor to catch up following COVID related delays. During 2021 our routine maintenance contractor, County Tree Surgeons, amongst other works, delivered:

- 1,356 signs;
- 139 bridges;

- 5 boardwalks;
- 51 flights of steps;
- Just under 28km of surface vegetation clearance.

3.2 2021 saw a significant increase in the amount of out of cycle maintenance works carried out by County Tree Surgeons. We are grateful to them for being flexible and accommodating to be able to respond swiftly, in particular carrying out bridge repairs and tree safety works where the landowner could not be traced.

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

4 Volunteers

4.1 Our inspections continue to be greatly assisted by Parish Path Inspector volunteers working with our local Access Rangers to inspect every path at least every 15 months, on a parish-by-parish basis. Usually our volunteers also get their hands dirty with a variety of practical works to supplement our maintenance programme and add extra value across the county. Volunteer tasks days resumed in April 2021 and the volunteers delivered:

- 4,185m of vegetation clearance
- 31 tonnes of Type 1 stone laid on surfaces of PROW
- 10 x 5+6m bridges installed and 1 x plank crossing
- 74m (over 5 sites) of boardwalk installed
- 140m of revetments installed
- 20 x fallen trees cleared
- 13 new or repaired signs

This totalled 3,033 volunteer hours over 57 task days.

4.2 In addition, we have an active volunteer group in Horsted Keynes working in partnership with WSCC. They carry out much PROW maintenance and improvement work within the parish, including sign installation and repair, vegetation clearance and replacing stiles with kissing gates.

4.3 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 to improve access across the rights of way network by offering gates to replace existing stiles across the network, due to the restrictive nature of stiles for some users.

5.2 During 2021 we provided 48 gates to landowners (the same number as 2020), with the agreement that they install the structure and maintain it in the future as they would with other structures that exists on their land.

6 Capital Works Programme

- 6.1 As part of the annual Capital programme during 2020 we replaced/repaired 5 bridges and any associated works including bank stabilisation and drainage improvements. This programme also included design of 3 further bridges to scheduled for replacement during the 2022/23 Capital Programme.
- 6.2 Further to this a capital surface programme was undertaken totalling over 3km of improvements on the network including drainage and revetment works in Rusper, resurfacing of a BOAT in Angmering and surface improvements in Ashurst, Fulking and Nuthurst amongst others.
- 6.3 Some works have been carried over to the 2022/23 Capital Programme due to them not being able to be completed for a number of reasons and these include surfacing works in Kirdford and drainage and surface works in Aldingbourne.
- 6.4 As part of the Capital Programme the PROW team have utilised over £60,000 of s.106 funding to support delivery in 2021.

7 Complaints and Compliments

- 7.1 The County Council's Customer Relations team did record 4 formal customer complaints (3 in 2020) in 2021 and 6 compliments (down from 19 in 2020). Of the complaints, 1 was upheld and related to a complaint about a failure to respond to a customer following reports of serial flooding on a PROW.
- 7.2 All other day to day compliments received by the PROW team are not specifically logged.

Nicholas Scott

Principal Rights of Way Officer

Contact Officer: Nick Scott (03302 22614)

Appendices

None

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