

Public Document Pack

Tony Kershaw

Director of Law and Assurance

If calling please ask for:

Tracey Guinea on 033 022 28679

Email: tracey.guinea@westsussex.gov.uk

www.westsussex.gov.uk

County Hall
Chichester
West Sussex
PO19 1RQ
Switchboard
Tel no (01243) 777100



27 January 2023

Planning and Rights of Way Committee

A meeting of the Committee will be held at **10.30 am** on **Tuesday, 7 February 2023** at **County Hall, Chichester, PO19 1RQ**.

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

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

Tony Kershaw

Director of Law and Assurance

Agenda

- 10.30 am 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 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.
- 10.35 am 2. **Minutes of the last meeting of the Committee** (Pages 3 - 14)
- The Committee is asked to confirm the minutes of the meeting held on 10 January 2023 (cream paper).
- 10.38 am 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.

- 10.40 am 4. **Definitive Map Modification Order** (Pages 15 - 28)
- Report by the Director of Law and Assurance.
- The Committee is asked to consider and determine the following application:
- DMMO 10/20 – Definitive Map Modification Order application to add a restricted byway to the Definitive Map and Statement for Cuckfield Rural linking Birchgrove Lane and School Lane in the parish of Horsted Keynes**
- 11.55 am 5. **Definitive Map Modification Order** (Pages 29 - 74)
- Report by the Director of Law and Assurance.
- The Committee is asked to consider and determine the following application:
- DMMO 4/20 - Definitive Map Modification Order application to modify the Definitive Map and Statement for Chanctonbury to add a footpath from Coombe Drove, Bramber to Bostal Road, Steyning in the parishes of Bramber and Steyning**
- 1.10 pm 6. **Date of Next Meeting**
- The next meeting of the Committee will be held at 10.30 am on Tuesday, 28 February 2023.

To all members of the Planning and Rights of Way Committee

Webcasting

Please note: this meeting is being filmed for live and subsequent broadcast via the County Council's website on the internet. 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

10 January 2023 – At a meeting of the Planning and Rights of Way Committee held at 10.30 am at County Hall, Chichester, PO19 1RQ.

Present: Cllr Burrett (Chairman)

Cllr Ali, Cllr Duncton, Cllr Gibson, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Quinn and Cllr Wild

Apologies were received from Cllr Atkins and Cllr Joy

Part I

20. Declarations of Interest

20.1 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, the following members declared that they have been lobbied in relation to Item 4 - Planning Application WSCC/015/22: Cllr Ali, Cllr Burrett, Cllr Duncton, Cllr Gibson, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Quinn and Cllr Wild.

21. Minutes of the last meeting of the Committee

21.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 8 November 2022 be approved and that they be signed by the Chairman.

22. Urgent Matters

22.1 There were no urgent matters.

23. Planning Application: Waste

WSCC/015/22 - Change of use of existing hangar building from B2/B8 industrial/storage to sui generis, installation of combined heat and power plant, receipt of up to 15,000 tonnes per year of feedstock, generation and export of up to 1.25mW electricity and 5.5mW thermal and installation of HV meter cabinet. South Coast Skip Hire, Unit H9-H10 Ford Road, Ford, Arundel, BN18 0BD.

23.1 The Committee considered a report by the Head of Planning Services. The report was introduced by Edward Anderson, Planner, who gave a presentation on the proposals, details of the consultation, key issues in respect of the application and the following updates that were proposed:

- Regarding Recommendation (b), the deletion of all words following the word "crossing" because there is no need to refer

to deliveries/pickup at the locations mentioned in the original wording. The amended Recommendation (b) would read:

(b) the completion of a S106 legal agreement controlling movements of HGVs associated with the operation of the EfW CHP unit so as to prohibit the movements of HGVs along Horsemere Green Lane and beyond the northern side of the Ford railway crossing.

- Conditions 14 and 23 to be merged because they essentially covered the same issue. Condition 23 would be removed and the updated Condition 14 and its title would read:

Condition 14 - Storage and Processing of Waste

14. No waste types, other than those set out in the approved application details included in Condition No. 2 (RDF Composition), and any process residuals, shall be imported, sorted, stockpiled or processed on the site. All feedstock and residuals shall only be stored within the building, with no materials to be stored outside.

Reason: in the interests of safeguarding the amenity of nearby residential and commercial properties.

23.2 Cllr Amanda Worne, representing Yapton Ward, Arun District Council and being also a Ford Parish Councillor and a Yapton Parish Councillor, spoke in objection to the application on behalf of the residents of Yapton, Ford and Climping. The Government's 'Net Zero Strategy' sets out policies and proposals for decarbonisation as per the Climate Change Act 2008. In November 2022 at COP 27 it was stated how, so far, we are failing miserably to achieve this. The proposed incinerator would be very close to existing housing and new housing developments and is not suitable for the area. People living near other incinerators complain of noise, litter, increased vehicle traffic, air pollution and smells, especially in summer. Toxic ash will be produced and this still has to go to landfill. The incinerator will increase air pollution and produce CO₂. The generation of heat is not worth these things. The Greenpeace document 'Unearthed' states that waste incinerators are three times more likely to be built in the UK's most deprived neighbourhoods. Residents in Ford, which is not a rich area, feel it is being used as a dumping ground. The facility will not really benefit the local economy. Concerns were raised regarding the height of the chimney [flue] including views from the surrounding area and whether it would carry toxins high enough above houses in the locality. Use of landfill should be reduced but recycling, reusing and changing the materials that we use is the way forward; burning waste disincentivises this in a climate of finite resources with over 7 billion people on Earth.

23.3 Mr Chris Jarvis, Planning and Development Consultant, MEWP Ltd, agent for the applicant, spoke in support of the application. The proposal is for a small-scale combined heat and power plant to generate low carbon heat and power, located in an existing building. The operator's current waste transfer station and recycling facility, immediately to the south and

within the same building, manages a maximum 65,000 tonnes of commercial waste each year. 30% is not recyclable and is currently exported to the Netherlands and Sweden as refuse derived fuel (RDF). The RDF would be utilised within West Sussex instead. Up to 1.25We of electricity could be exported to the National Grid, with the ability to supply up to 5.5Wt of heat to customers. Whilst small, these figures should not be underestimated in a time of high energy costs. The proposal would help towards meeting the shortfall in non-inert waste recovery capacity identified in Policy W1 of the Waste Local Plan (WLP), which has grown since 2014 by around 60% to 451,000 tonnes. It will also help towards self-sufficiency. Rudford Industrial Estate is identified as an Area of Search for waste management facilities in Policy W3, which supports proposals for new facilities when they are "in built-up areas or on suitable previously developed land outside built-up areas". In the Arun Local Plan, this land is defined as such. The proposal is likely to give rise to a net reduction in HGV movements on the public highway. It would not give rise to significant impacts on air quality, either individually or cumulatively with other development, nor noise. There would be limited visual impact.

23.4 Cllr Jacky Pendleton, West Sussex County Councillor for Middleton, spoke in objection to the application. Over 250 objections by local residents equates to a big proportion of Ford's population. The All-Party Parliamentary Group on Air Pollution's paper 'Pollution from Waste Incineration' opposes further permissions such as this being granted and calls for a moratorium on additional incineration capacity. At first glance, the site could be seen to be acceptable, being on an existing site. But it is in a built-up area, very close to existing housing and approved new housing that will be built in the near future. It is the worst kind of industrial development in the wrong place. Rudford Industrial Estate is higgledy-piggledy with disorganised HGV movements and close buildings. The proposal enhances fire risk. The EfW would not sit well alongside plans to improve environmental pursuits such as walking and cycling tourism along the coastal route. The impacts would risk the prosperity of the area. Harmful particles and toxins will be released including heavy metals and fly-ash. Studies have linked incineration to a wide range of health impacts. CO₂ would accelerate climate change and any benefit would be negated by construction. Incineration undermines recycling and is incompatible with carbon net zero 2050 targets. The chimney [flue] would be visible from the Grade I listed church and other listed buildings, the South Downs National Park, Arundel and footpaths by the River Arun. The additional odour would be objectionable. It is only stated that a decrease in HGV movements would be "likely". The new EfW site due to be built just outside Horsham should be sufficient to handle the shortfall in non-inert waste recovery. The Waste Management Plan, which was put together in 2004, is out of date and was rolled over (possibly in 2009); it was not changed but Ford and Climping have developed as a residential area since then. There is no design quality in either the building or the proposed flue. There will be increased background noise. There is a concern about the impact on local water sources.

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

References to the generation of electricity and heat

Point raised – Clarification was sought regarding different references in the Committee report to the amount of electricity and heat that would be generated.

Response – References throughout the Committee report to 1.235We of electricity and 2.4Wt of heat are taken from the Planning Statement provided by the applicant. However, as per the description of the application, this could be up to 1.25We of electricity and up to 2.5Wt of heat.

Status of the site in the WLP

Points raised – Clarification was sought regarding the status of the site being an unallocated site in the WLP, whilst noting that the applicant operates an existing waste transfer station on Rudford Industrial Estate.

Response – Policy W10 of the WLP allocates sites in West Sussex for built waste facilities. The proposed site is not included within this list. However, because the WLP seeks to manage waste within the county it allows, in principle, that waste management occurs on other unallocated sites around the county. Under Policy W3, the applicant must demonstrate that the proposal could not be delivered on an allocated site, which they have done. For clarification, it should be noted that the operator's current waste transfer station is outside the red-line boundary of the application.

Environmental concerns - general

Points raised – Concern was raised that the application does not address environmental matters including the production of more greenhouse gases, concerns about air pollution, particulates and toxins such as fly-ash and the risks posed to human health, the need for more recycling as opposed to the burning of waste and the possible burning of asbestos and toxic waste. The proposal would be subject to an Environmental Permit and the responsibility for this lies with another agency that must be assumed to carry out their role correctly. It is a challenge to strike a balance between the aims of carbon net zero and the requirements of waste management policy, noting that all applications must be determined against material considerations.

Response – In this case, the Environmental Permit would be issued by Arun District Council, as the responsible pollution control authority, because this proposal is for a small-scale facility. The Committee must assume that other agencies will carry out their role appropriately. In determining the application, the Committee must decide if the proposal is an acceptable use of the land. Through the provision of an Air Quality Assessment, the applicant has demonstrated that air pollution will be within set standards, to be

regulated and enforced via the Environmental Permit. The Environmental Permit would specify the type of waste to be burned.

Moratoria on EfW facilities

Point raised – It has been stated there is a moratorium on EfW facilities in Wales and Scotland.

Response – In Scotland there is no outright ban on EfWs, although the Scottish Government has a long term plan to phase out energy from waste by 2050. The current position in England is that the Government continues to support energy from waste, as set out in the 2021 'Waste Management Plan for England', which states that it "supports efficient energy recovery from energy from waste".

UK Health Security Agency

Points raised – The UK Health Security Agency has stated that there is insufficient information contained in the planning application to be able to fully assess the impact of the proposed development on public health. Is the Committee in a position to proceed to a decision on that basis? Is the Health Security Agency a statutory consultee?

Response – The UK Health Security Agency has made it clear that well run and regulated municipal waste incinerators are not a significant risk to public health. The UK Health Security Agency is not a statutory consultee; however, West Sussex County Council seeks expertise on planning applications from sources that would be helpful as well as from statutory consultees.

Third-party objections

Point raised – Were third-party objections to the application individual objections, generic or part of a petition?

Response – Over 95% of the objections were individual and diverse. A very small number were from linked family members and were broadly similar.

Waste recovery shortfall

Points raised – Is the production of electricity alone sufficient to comply with recovery of waste or does heat produced and exported also need to be factored in to ensure that it complies? The figure of 15,000 tonnes of waste is being judged against a figure of 131 tonnes of shortfall in waste recovery capacity (from a review dated 2019/20 and so not up-to-date) if all anticipated waste management sites were to be on line. This differs greatly if judged against 451,000 tonnes of shortfall should these sites not become operational. The site must be considered in the context of other waste disposal facilities in West Sussex that have been approved, and whether there is still a need for this site to help meet the shortfall in waste recovery.

Response – The definition of waste recovery is set out in the glossary to the WLP. Para. 9.16 of the Committee report details the energy to be produced and how this has been shown to be sufficient to demonstrate the proposals would genuinely qualify as 'recovery' in the waste hierarchy. Sites including the Horsham EfW and the Ford Airfield site gasification plant account for consented, but as yet unbuilt, capacity. However, irrespective of these, there remains a substantial shortfall in waste recovery capacity in West Sussex. The 15,000 tonnes of waste is a reliable waste supply, sourced adjacent to the proposed EfW.

HGV movements

Points raised – The proposed utilisation of RDF next to the site on which it is produced would reduce vehicle movements when compared against its exportation. Have HGV movements been balanced against the relocation of companies currently utilising the application site for B2/B8 use and their likely HGV movements elsewhere? Of the 15,000 tonnes of RDF, 2,500 tonnes of residual waste will still need to be moved off site.

Response – The relocation of existing B2 uses within the building has not been considered. In terms of the proposal and the operator's current waste transfer operations, there would likely be an overall net reduction of 2.5 HGV movements per day on the highway network.

Volume of CO₂ produced

Point raised – The transport of RDF to the Netherlands and Sweden currently produces CO₂. If there is an alternative use for the RDF what would be the amount of CO₂ produced?

Response – Carbon net zero and zero waste to landfill are strategic objectives. There is a 131,000 tonne shortfall in waste recovery capacity for dealing with non-inert waste, if all permitted but not operational facilities are taken into account. The RDF has already had all recyclable material removed so there are no alternative uses for it. 15,000 tonnes of RDF utilised in a local West Sussex EfW instead of being sold abroad would result in a reduced amount of CO₂ being produced. Additionally, it would also move most of this waste up the waste hierarchy.

Site access

Points raised – What is the planning status of the currently closed-up access onto Church Road/Ford Road that forms part of the application red-line boundary? If it is to be opened for use, have the likely highways impacts been assessed?

Response – Use of the site access that is part of the application red-line boundary is understood to be a private agreement between the site operator and the owners of Rudford Industrial Estate. This

access could be used; however, the applicant's intention is to continue to use the main entrance to Rudford Industrial Estate. An approved Delivery and Service Management Plan would be required by pre-commencement condition. This would secure routing details for the movement of the RDF from the waste transfer station to the EfW and the movement of residual waste off site.

The site building/hangar

Points raised – What is the age of the site building/hangar? Would it be considered a non-designated heritage asset?

Response – The building is believed to date from the 1950s. It is not a listed building nor is it considered to be a heritage asset.

Visual impact of the development

Points raised – There is not likely to be a significant visual impact caused by the flue, although it would be visible from some views. There are other large buildings in the locality and the flue is not of a scale commensurate with other proposals or buildings. The operator has stated that a plume from the flue will be visible for approximately 1 hour per year. This seems unlikely but is difficult to dispute without expertise.

Response – None required.

Fire Risk

Points raised – Concerns were raised regarding potential fire risks due to the layout of both Rudford Industrial Estate, the building in which the facility would be housed and what was felt to be the disorganised state of the applicant's current waste transfer station, including concerns about litter and stockpiles of wood. How would fire risk be managed and would this be a material planning consideration?

Response – The operator's current waste transfer station is existing permitted development; the Committee can only make a decision about the planning application. Fire risk would be managed through the Environmental Permit. The planning process includes consultation with the Fire Authority that focuses on whether there is sufficient infrastructure to manage fire risk; see paragraph 7.15 of the report.

Benefits of energy generation

Point raised – Could the generation and exportation of heat open up avenues of funding and would this be considered a benefit?

Response – Exportation of heat could open up avenues of funding to the operator and others in the locality. However, the exportation of heat has been afforded little weight because it is not guaranteed at this stage. The Environmental Permit would require the operator

to demonstrate that the EfW is operating as efficiently as possible. The facility is expected to achieve at least a 20% efficiency rating for electricity generation; this is comparable with other similar sites.

Covering of RDF

Points raised – Currently, the RDF is wrapped in black plastic for transfer out of the country and there would be a minor benefit if this did not continue. How will the RDF be kept dry whilst being transported from the waste transfer station to the EfW?

Response – The RDF is likely to be loose at point of origin and would be placed in a skip for transfer to the EfW. Condition 12 'Sheeting of Vehicles' would require that all vehicles delivering to or removing materials from the site must have their loads enclosed within the vehicle or container or be covered/sheeted. The Environmental Permit would cover matters including dust and litter.

Responses from Environment Agency

Point raised – Clarification was sought regarding the Environment Agency response, as noted on page 26 of the Committee report, which states that the development may require an Environmental Permit or modification of such "unless an exemption applies".

Response – In this case, a Part B Environmental Permit would be required, which would be issued by Arun District Council due to the small scale of the facility.

Energy provision against the backdrop of the cost of living crisis

Point raised – Whilst not a material planning matter, the provision of UK sourced energy against the backdrop of the cost of living crisis has been in the news.

Response – Issues do arise that people have strong views or principle about, but a decision on the application must be made in accordance with the Development Plan.

Removal of residual waste

Point raised – How will residual waste be moved off site without impacting on the environment?

Response – The current waste transfer station operation requires that all recyclable material is removed to the best of the operator's economic practicability. The recovered recyclate is moved up the waste hierarchy with the environmental benefits associated with this. The remaining RDF would be thermally treated using the best technology available at this time in relation to energy and emissions outputs. The Environmental Permit, which would be the

responsibility of Arun District Council, would control air quality, dust, noise, vibrations, etc.

Other EfW facilities

Point made – There are 53 operational EfW facilities in the country, 20 in construction and 3 being commissioned. The Newhaven EfW facility, which is close to the town, attracts few complaints.

Response – None required.

Comments from businesses on Rudford Industrial Estate

Point made – Have any businesses on Rudford Industrial Estate raised any concerns or objections to the transfer of materials from the current waste transfer site to the EfW facility?

Response – No, unless some had submitted objections as private or personal responses to the planning consultation.

Management of stockpiles for feedstock

Point made – If deliveries are not permitted after 18.00 hours on Fridays, 13.00 hours on Saturdays and over a bank holiday, how will stockpiles of RDF be managed in order to maintain a sufficient supply of feedstock for the 24 hour operation of the Combined Heat and Power (CHP) plant?

Response – It would be for the operator to stockpile sufficient feedstock during permitted delivery hours to maintain the operation of the CHP throughout its 24 hours of permitted operation. If there is insufficient feedstock, which is dependent on the type of waste being received at the transfer station, then the facility would operate at reduced levels or cease operation.

Heat transfer off site and Condition 22 'Combined Heat and Power'

Points raised – Where does the heat go if it is not going to be sold? Does Condition 22 'Combined Heat and Power' need to be amended to include interim arrangements to ensure that heat is suitably and safely dissipated or exported until such time that it can be made available to local businesses?

Response – Electricity is generated through the thermal processing of the RDF. Another explanation is that heat drives the turbines to generate electricity. Any remaining heat would be lost to the atmosphere or stored locally and then dispersed. Planning officers requested that the Committee delegate authority to the Head of Planning Services to amend Condition 22, to allow it to determine which authority is responsible for the capture and dissipation of heat until it can be made available to local businesses, and to ensure that any relevant amendments be made to the condition, if appropriate.

Condition 6 'Car Parking'

Point made – A word or words appear to be missing from the end of the reason for Condition 6 'Car Parking', explaining who the car parking is intended for.

Response – This should read "Reason: to provide car parking spaces for the users of the site". Planning Officers requested that the Committee delegate authority to the Head of Planning Services to amend the reason for Condition 6 to correct the wording.

Condition 11 'Permitted Feedstock'

Point made – Clarification was sought regarding Condition 11 'Permitted Feedstock' and whether the "Reason - to minimise the impact of the development on the local highway" is sufficient.

Response – Feedstock will only be sourced from the operator's current waste transfer station on Rudford Industrial Estate and no feedstock will be delivered from elsewhere using the highway network, so this is sufficient to clarify that.

Condition 12 'Sheeting of Vehicles'

Point made – Regarding Condition 12 'Sheeting of Vehicles', clarification was sought that it is sufficient to cover any relevant matters relating to "all materials, including residuals, entering or exiting the building shall be covered or enclosed at all times" that would have been covered in the proposed to be removed Condition 23 'Storage of Materials', the main details of which are now to be combined into the amended proposed Condition 14 'Storage and Processing of Waste'.

Response – The applicant would be required to submit a Dust Suppression Scheme for approval prior to the commencement of the development, which would be in addition to management of dust being part of the Environmental Permit. Condition 12 covers the sheeting of vehicles entering or exiting the proposed EfW facility. The proposed amended Condition 14 would cover the storage of feedstock and residual materials, which must be within the building.

Condition 15 'Recording Imports and Exports'

Points made – Clarification was sought regarding Condition 15 'Recording Imports and Exports' and its "Reason: To ensure that the site operatives are conversant with the terms of the planning permission", is this sufficient to support the wording of the condition, which is broadly about record keeping and documents being available for inspection? The standard wording regarding the availability of documents for inspection can be seen in Condition 20 'Decision Notice Availability'.

Response – This was an error. Planning Officers requested that the Committee delegate authority to the Head of Planning Services to amend the Reason for Condition 15 to ensure that it reflects that the purpose is to effectively monitor the amount of waste that goes through the facility.

23.6 Planning and Legal officers proposed that the substantive recommendations be amended, as discussed by the Committee, as follows:

That planning permission be granted subject to:

(a) the conditions and informatives set out at Appendix 1 **and authority being delegated to the Head of Planning Services to amend the Reason for Condition 15, the Reason for Condition 6, the deletion of Condition 23 and replacement with an amalgamated Condition 14, as worded [in Minute 23.1 above] and, regarding Condition 22, to check the responsibility for heat dissipation and include appropriate wording in the Condition, should it be necessary if it is a matter for the Waste Planning Authority;** and

(b) the completion of a S106 legal agreement controlling movements of HGVs associated with the operation of the EfW CHP unit so as to prohibit the movement of HGVs along Horsemere Green Lane and beyond the northern side of the Ford railway crossing, ~~unless delivering or collecting from a premises between the crossing and Arundel or Horsemere Green Lane, or a lane or road that runs from Horsemere Green Lane.~~

23.7 The substantive recommendations, as amended in Minute 23.6 above and in relation to Condition 14 in Minute 23.1, were proposed by Cllr Duncton and seconded by Cllr Ali, and voted on by the Committee and approved by a majority.

23.8 Resolved:-

That planning permission be granted subject to:

(a) the conditions and informatives set out at Appendix 1 and authority being delegated to the Head of Planning Services to amend the Reason for Condition 15, the Reason for Condition 6, the deletion of Condition 23 and replacement with an amalgamated Condition 14, as worded, and, regarding Condition 22, to check the responsibility for heat dissipation and include appropriate wording in the Condition, should it be necessary if it is a matter for the Waste Planning Authority; and

(b) the completion of a S106 legal agreement controlling movements of HGVs associated with the operation of the EfW CHP unit so as to prohibit the movement of HGVs along Horsemere Green Lane and beyond the northern side of the Ford railway crossing.

24. Date of Next Meeting

24.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 7 February 2023 at 10.30 am.

The meeting ended at 12.57 pm

Chairman

**Key decision: Not applicable
Unrestricted**

Planning and Rights of Way Committee

7 February 2023

DMMO 10/20 – Definitive Map Modification Order application to add a restricted byway to the Definitive Map and Statement for Cuckfield Rural linking Birchgrove Lane and School Lane in the parish of Horsted Keynes

Report by Director of Law and Assurance

Electoral division: Lindfield & High Weald

Local Member: Garry Wall

Summary

The application seeks to add a restricted byway to the Definitive Map and Statement for Cuckfield Rural between School Lane and Birchgrove Lane in the parish of Horsted Keynes. The application is supported by documentary evidence only

Recommendation

That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a restricted byway to the Definitive Map and Statement for Cuckfield Rural between School Lane and Birchgrove Lane be made.

1. Introduction

- 1.1 The application, made by the Open Spaces Society, was received on 9th December 2020 to add a restricted byway to the Definitive Map and Statement for Cuckfield Rural in the parish of Horsted Keynes. The application is supported by documentary evidence only.
- 1.2 The application is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (WCA), being the discovery, by the County Council of evidence which shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over land.
- 1.3 The claimed route links Birchgrove Lane to School Lane between grid references 540186, 130205 and 540209, 130356 in the Parish of Horsted Keynes. The claimed route is approximately 156m in distance.

2. Land ownership

- 2.1 Land Registry documents confirm that the landowners for the claimed route are Timothy William Dalton and Judith May Badham.

3. Consultations

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

3.1 Horsted Parish Council

"Horsted Parish Council supports this application"

3.2 British Horse Society

"A primary objective of the British Horse Society is to promote and secure the provision, protection and preservation of rights of way and of access for ridden and driven horses over public roads, highways, footpaths, bridleways, carriageways, public paths and other land. As such, we would support an order which seeks to protect historic rights of way for both ridden horses and carriage driven horses."

4. Evidence submitted in support of the application

- 4.1 The application is supported by archival evidence only. The applicant asserts the evidence demonstrates that the claimed route was historically a route used by the public as a restricted byway.

4.2 Gardener and Gream Map 1795

The applicant advises that the claimed route is shown on the map as a road. The applicant states that few private roads were shown on the map and the existence of the claimed route means that it was more likely than not, a public route.

Officer comment: It is agreed that the claimed route is shown on the map as a road. The route connects openly to the other roads in the vicinity.

4.3 Greenwood and Greenwood Map of Sussex 1825

The applicant notes that the claimed route is depicted as a road. The applicant advises that the map key shows the route as a cross-road.

Officer comment: It is agreed that the route is depicted in the same way that a cross-road would be, as shown on the key.

4.4 Mudges Map 1873

The applicant notes that the claimed route is depicted as a road.

Officer comment: The claimed route seems to be depicted in the same way as a public road, however, it is noted that the photo provided with the applicant's evidence is blurry.

4.5 First Edition Ordnance Survey Map 1813-1819

The applicant states that the claimed route is shown as a road and that each end of the route is open. The applicant asserts that this depiction appears to show a public road.

Officer comment: The claimed route seems to be depicted as a public road. The claimed route openly connects either side to routes now recorded as public highways.

4.6 West Hoathly Tithe Map

The applicant advises that the claimed route is shown coloured sepia on the map and does not have an apportionment number. The applicant states that this is consistent with public status and further notes that other routes shown in this way in the vicinity are public routes today.

Officer comment: The Tithe Map is a second class map and is therefore only conclusive evidence in respect of the information relating to tithes, however, it is noted that the claimed route is depicted in the same way as other public roads in the vicinity.

4.7 First Edition Ordnance Survey 25" Map and Book of Reference

The applicant notes that whilst Ordnance Survey maps are not usually useful for determining public rights of way, the early maps in the first edition series contain valuable information when cross referenced with the books of reference that were published with them. The applicant states that the claimed route is shown as a road and that it is part of the road that runs to the south of the claimed route, numbered 849a. 849a is labelled as a road in the Book of Reference. The applicant suggests that as the claimed route has the same number as the road below it, it had the same status. The road to the south is today a county maintained road.

Officer comment: The OS Map and Book of Reference both depict and label the claimed route as a road. This is considered to be good evidence when considering whether the claimed route had public access rights at the time the maps were formulated, though not conclusive as to status.

4.8 Finance Act Map

The applicant states that the claimed route is shown as a "white road". The applicant asserts that where a route is shown as a white road the overwhelming likelihood is that it was a public road.

Officer comment: The Finance Act Map depicts the claimed route as a white road and this is considered to be good evidence on the status of the route at the time the maps were produced. Documents and plans produced under the Finance Act can provide good evidence on the status of a way, although the production of information on such ways was very much incidental to the main purpose of the legislation.

4.9 Handover Map

The applicant notes that in 1930 the responsibility for minor roads passed from District Councils to County Councils and that the District Councils prepared handover maps showing the roads that they were responsible for and for which the County Council would take over responsibility for. The applicant advises that the claimed route is shown in yellow ochre. The applicant states that the road is numbered 58 and is described as running southwards and eastwards to road 13. The applicant asserts that this evidence shows that the claimed route was maintainable by the District Council at this time and that it would not be depicted in this way if it was a bridleway or footpath.

Officer comment: The claimed route is coloured yellow, in the same way as other public roads in the vicinity. This would indicate that the claimed route was maintained by the District Council when the maps were produced.

5. **Evidence submitted against the application**

5.1 Timothy Dalton, who is the landowner of The Key, Birchgrove affected by the application, has objected to the application. Mr Dalton provided the following comments:

- I do not believe and have never believed that the claimed route is a public right of way. The route is impassable for its entire length due to trees and dense vegetation in the woodland.
- I have never seen or been aware of members of the public using the claimed route on foot, horseback, bicycle or with any other non-motorised or motorised vehicles during my ownership.
- There are no notices or signs stating that the claimed route is not public as it is unnecessary due to the route being impassable.
- The previous owner of The Key and woodland have not notified me that they were aware of any public use of the claimed route during their ownership.
- If the claimed route was used historically, it is more likely that it would have been used as a private access for the purposes of accessing the woodland.
- The early map evidence submitted by the applicant is insufficiently precise. The evidence is circumstantial and not capable of being determinative as to the status of the route. Whilst the mapping evidence may indicate the existence of a route it does not determine the status or nature of the route.
- The fact that the claimed route may be shown as a road in some of the historic maps does not mean that it was a public road and it is more likely to have been a private route.
- Historic OS maps do not determine the status of routes shown and are not definitive. The First Edition OS map shows the claimed route as a road but

it does not provide any information about the status and you cannot determine whether it is a private or public road.

- Tithe maps were not intended to establish or record rights of way. Tithe maps are only conclusive of matters of relevance to the Tithe commissioners. The claimed route is shown in sepia and it does not have an apportionment number. The claimed route is not shown in yellow or sienna which may indicate public status.
- The applicant has not shown on the balance of probabilities that the claimed route was a public highway which should now be designated as a restricted byway.

6. Archive evidence

6.1 The application and subsequent investigation by the County Council has brought forward a variety of archival information on the claimed route. The relevance and usefulness differs 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.

6.2 Ordnance Survey mapping:

6.2.1 The following Ordnance Survey maps were consulted at the West Sussex Record Office – OS XVI (16) 1879, OS 2nd Edition 1988, OS Edition of 1911 and OS 3rd Edition 1910/14.

6.2.2 The Ordnance Survey maps all depict the claimed route in the same way. The claimed route is shown as linking Birchgrove Lane to School Lane and is depicted using solid lines. There are no visible features which would suggest that the claimed route was not freely accessible.

6.2.3 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.

6.3 West Hoathly Tithe Map 1841: The claimed route is shown coloured sepia and is depicted using solid lines. The claimed route does not have an apportionment number. There are no visible features on the map to suggest that access along the claimed route was restricted. However, it should be noted that 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.

6.4 Survey of Rights of Way under the National Parks and Access to the Countryside Act 1949:

6.4.1 The following maps were consulted at the West Sussex Record Office – Draft Definitive Map 1953, Definitive Map 1957 and Draft Revised Definitive Map 1960.

6.4.2 The maps all depict the claimed route in the same way. The claimed route is shown as linking Birchgrove Lane to School Lane. It is not designated as a public right of way at the time the maps were formulated. No features are present which would suggest that access was not freely available. The maps depict 'County Roads' using orange shading. The claimed route is uncoloured.

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. 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 determining the application, it is necessary to decide whether the evidence provided by the applicant, together with all of the relevant evidence available, shows that on the balance of probability a restricted byway subsists, or in the alternative that a restricted byway is reasonably alleged to subsist, which is the lower test.

7.4 This application is concerned with whether the documentary evidence supports the route being a restricted byway, on the basis that it would have been an ancient vehicular highway, it is necessary to have regard to the provisions of S.67 of the Natural Environment and Rural Communities Act 2006 (NERC 2006), which extinguished public rights for mechanically propelled vehicles subject to certain exemptions. County Council records have been checked and there is no record of the route being recorded despite the route being marked on historic maps. It is therefore concluded that the S.67 NERC 2006 exemptions do not apply and if there were any rights for mechanically propelled vehicles then they would have been extinguished by NERC 2006.

7.5 In making a recommendation all the 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.

- 7.6 The claimed route has been depicted on various maps over time. Many of the routes show the claimed route as freely linking Birchgrove Lane with School Lane. There are no physical features shown on any of the maps which would suggest that access was restricted along the claimed route or that the claimed route was one which may be used as private access to land or a dwelling.
- 7.7 Both Mr Dalton and the applicant note that the First Edition Ordnance Survey 25" Map and Book of Reference label the claimed route as a road. Whilst Ordnance Survey maps can provide an accurate picture of the landscape at the date of survey, and carry strong evidential weight, it should be noted that the surveyors mapped physical features and not legal rights. However, when considering the evidence as a whole and the reference made in the First Edition OS Book of Reference, it could be interpreted that the claimed route was in fact a road when the maps were formulated and, without the existence of any restrictive features depicted, it could be argued that the claimed route was one which was open and available to the public.
- 7.8 The applicant also notes that the Finance Act Map shows the route as a "white road". 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 created.
- 7.9 Mr Dalton states in his evidence against the application that the route shown on the Tithe Map is not coloured "yellow or ochre" which would indicate that the route had public status. This is not entirely correct as some Tithe Maps also show public roads in either sepia/light brown as well as a light yellow colour. What is important to note here is that the claimed route is depicted in the same way as the other roads in the vicinity and which are now recorded as public highways. The claimed route connects to the roads freely and without restrictions.
- 7.10 Whilst no single piece of evidence is conclusive, on balance it could be argued that the claimed route did have historic public rights. Whilst it is noted that some of the maps were not produced for the sole purpose of establishing private or public rights of access, they do seem to depict the claimed route in a way that would be consistent with a public highway at that time.

8. Recommendation

- 8.1 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 a restricted byway to the Definitive Map and Statement for Cuckfield Rural between Birchgrove Lane and School Lane, be made.

9. Consultation, engagement and advice

- 9.1 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.

10. Finance

- 10.1 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.

- 10.2 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.

- 10.3 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.

11. Risk implications and mitigations

- 11.1 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.

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

12. Policy alignment and compliance

Equality and Human Rights Assessment

- 12.1 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

- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 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

- 12.6 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

- 12.7 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

- 12.8 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, Chartered Legal Executive, Legal Services 0330 222 7763

Appendices

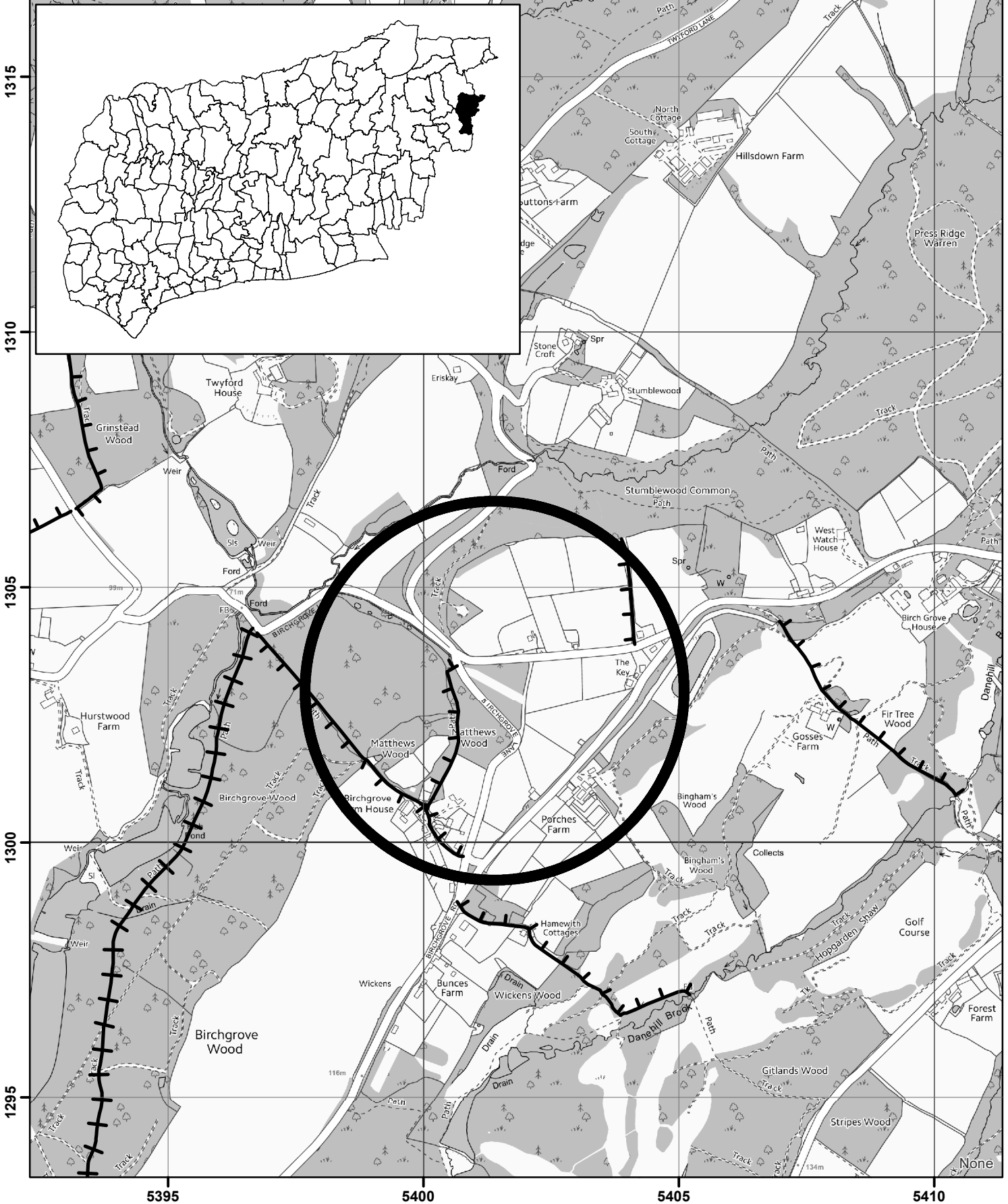
- Appendix 1 – Location Plan 01816
- Appendix 2 – Site Plan 01817

Background papers

- (1) Application and plan
- (2) Consultation responses
- (3) Evidence in support
- (4) Evidence in opposition
- (5) Archive evidence

**** Please contact the contact officer to request a copy of the background papers**

Parish: **Horsted Keynes**



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office (c) Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. West Sussex County Council, 100023447, 2015.

**Horsted Keynes:
Proposed Addition of a Restricted Byway - Location Plan**

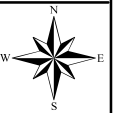
Plan: 01816 1:10,000
Date: 03.01.2023

OS Sheet: TQ 43 SW
Grid Ref: 5401 1302



Photocopy
liable to
distortion

Matt Davey
Director of
Highways, Transport
and Planning



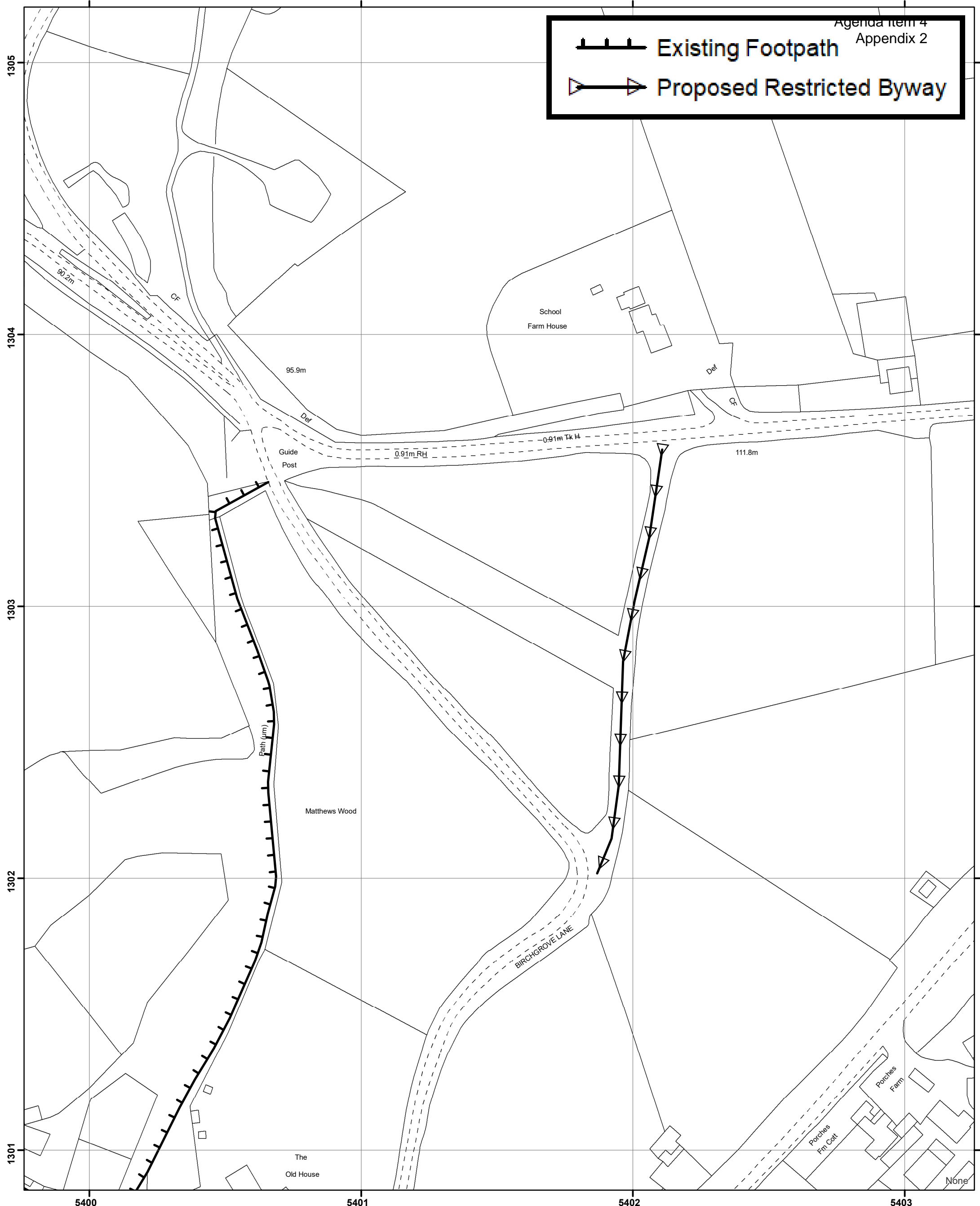
This page is intentionally left blank



Existing Footpath



Proposed Restricted Byway



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. West Sussex County Council, 100023447, 2015.

Horsted Keynes: Proposed Addition of a Restricted Byway

Plan: 01817

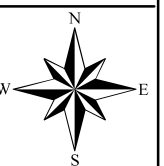
1:1,250

OS Sheet: TQ 43 SQ



Photocopy
liable to
distortion

Matt Davey
Director of
Highways, Transport
and Planning



Date: 03.01.2023

Grid Ref: 5401 1302

This page is intentionally left blank

**Key decision: Not applicable
Unrestricted**

Rights of Way Committee

7 February 2023

DMMO 4/20 - Definitive Map Modification Order application to modify the Definitive Map and Statement for Chanctonbury to add a footpath from Coombe Drove, Bramber to Bostal Road, Steyning in the parishes of Bramber and Steyning

Report by Director of Law and Assurance

Electoral division: Bramber Castle

Local Member: Paul Linehan

Summary

The application seeks to add a footpath from Coombe Drove, Bramber to Bostal Road, Steyning and was submitted with 127 public way evidence forms or individual statements testifying to use of the claimed route between 1964 – 2020.

The relevant 20-year period of continuous use for the purpose of the application is 1976 – 1996.

It is concluded that the credible evidence from a significant number of users meets the legal tests and that the original route of the path has, on the balance of probabilities, been proven to subsist. Therefore, an order should be made to add the path to the Definitive Map.

Recommendation

That a Definitive Map Modification Order under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement for Chanctonbury from Coombe Drove, Bramber to Bostal Road, Steyning should be made.

1. Introduction

- 1.1 The application was made by Paul Richards on joint behalf of Bramber and Steyning Parish Councils, and was received on 11th August 2020. It seeks to add to the Definitive Map and Statement a new footpath running between the parishes of Bramber and Steyning. The initial application was supported by 14 public way user evidence forms and 113 other user statements, testifying to the use of 127 users in total. The path claimed by the application is shown on the application plan.

- 1.2 The application is made under Section 53(5) and is reliant on 53(3)(c)(i) Wildlife and Countryside Act 1980 (WCA), being the discovery by the County Council of evidence which shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist over land. The burden of proof rests with the applicant.
- 1.3 The requirements for the presumed dedication of a public right of way under statute are set out in Section 31 of the Highways Act 1980. This requires use of the claimed route by the public as of right and without interruption, over a period of 20 years immediately prior to its status being brought into question, so as to raise a presumption that the route had been dedicated. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public.

2. Character and features of the claimed route

- 2.1 The claimed route begins at Coombe Drove (grid reference 517852, 110644) and proceeds in an overall north-west direction on a path to Bostal Road (grid reference 517839, 110664). Through the narrow part of its route, the path varies in width between 0.95m and 1.4m. It widens at each end where it joins the existing highway. The route has been made up with tarmac.
- 2.2 During the course of the investigation, it was discovered that from the earliest user evidence submitted in the 1950s until approximately the mid-1990s, the path had been straighter and wider, following the course shown in the map in Appendix 2a, which is a typical example of the evidence sent in. Where given, evidence suggests this path covered the width of the gap between the eastern boundary of 12 Coombe Drove and the western wall of Penland Cottage, and was approximately 10' (3m) wide. According to user evidence, its surface during this period was gravel and stones, with some grassy verge in places (see Appendix 2b). These changes will be discussed further in paragraph 9.8.

3. Land Ownership

- 3.1 Land Registry documents show the land to be either owned by Mr and Mrs Harding, of Penland Cottage, Bramber Road, Steyning BN44 3PB, or to be unregistered.
- 3.2 The applicant served notice of the application on the registered landowners on 6th August 2020. The case officer gained dispensation from the Planning Inspectorate to dispense with notifying the owners of the unregistered land in person on 15th September 2022, and notice was displayed on this land from 16th to 30th September 2022 inclusive.

4. Consultations

- 4.1 Standard consultations were sent to the local member, local access ranger, amenity groups and Horsham District Council. They were not sent to either Bramber or Steyning Parish Councils as they are the applicants, and although the South Downs National Park Authority was consulted, the location falls just outside the Park boundary.

4.2 The following comments were received:

4.3 Steyning Access Ranger, Nigel Bird, on behalf of Bramber Access Ranger, Katrina Harper, and himself:

"The path provides a useful pedestrian link between the public highways of Coombe Drove and Bramber Road."

4.4 Tricia Butcher, Access & Bridleways Officer, The British Horse Society:

"My only observation is that I have been informed by a colleague in Bramber this has been a path since before she moved here, over 40 years ago. It is a short cut which is very useful to avoid using a narrow pavement next to a busy road. I have been asked to forward her comments below:

"Yes I use this path often, it is my walking route from home to Steyning and I know it is well used by other locals including students walking to school. A few years ago the surface was tarmacked following a request to the parish from residents. It is more of an urban twitten but a very useful safer route avoiding the narrow path on Clays Hill."

4.5 Louise Mathie, Principal Planning Lawyer, Horsham District Council, responded to notify that there is a Tree Preservation Order in place at the Coombe Drove end of the twitten (A0002 1961).

5. Evidence submitted in support of the application

5.1 The application was made following the erection of a notice by the landowner at the Bostal Road end of the twitten, stating that the path was not a public right of way but used with permission of the landowner. This sign was apparently removed soon afterwards.

5.2 The application was supported initially by 14 public way user evidence forms, testifying to the use by 14 individuals from 14 unique postal addresses over the period of 1964 to 2020. Additionally, there were 113 individual user statements in the form of letters from 72 unique addresses, testifying to use of the path over the period 1964 to 2020.

5.3 The 14 user evidence forms initially submitted with the application show the following type of use:

5.3.1 all users claim to have used the routes on foot

5.3.2 six users claim to have used the routes on a bicycle

5.4 One of the 14 users reports having seen someone be turned away whilst using the route, and four claim to have seen a notice stating the path was used with permission only, rather than being a public right of way. None have been otherwise prevented from using the route.

5.5 All of the initial 14 user statements claim regular use of the path on foot, and many also state that they have used it on a bicycle in the past. None of them claim to have been turned back or to have seen others prevented from using the path. Many claim to have seen the notices stating the path was a permissive way not a right of way.

- 5.6 All users report to have seen others using the routes either on bicycles and/or walking. Three of the initial 14 who completed evidence forms report seeing people use the path on horseback.
- 5.7 Eleven of the 14 users who initially completed evidence forms claim that the path was historically much wider and running a straighter course, but that fencing has been erected at Penland Cottage, making the route narrower and adding corners. Many of those writing letters in support corroborate this evidence. Maps dating to the 1960s showing this were submitted by several individuals; again a typical example can be seen at Appendix 2a and further consideration of this route is given in paragraph 9.8.

6. Evidence submitted against the application

- 6.1 An objection was received from Mr Harding, the current owner (with his wife) of Penland Cottage. He stated that he considered that people had only ever used the path with his permission, and that he had adopted this position on the basis of what the previous landowners had done. On the standard form requesting evidence from landowners, Mr Harding stated that he had kept the Parish Council informed that the footpath was permissive. Requests were made for copies of this correspondence on two occasions by the investigating officer, but none have been received.
- 6.2 In an email to the investigating officer, Mr Harding wrote:
- "We will be strongly opposing the DMMO Application which we argue is vexatious and unnecessary."*
- 6.3 On investigation, it was discovered that the above landowners deposited a section 31(6) Highways Act 1980 landowner statement and map with the County Council in September 2009, but to date this has not been followed up by a statutory declaration, and as it was made before October 2013, it expired in 2019 as it has not been renewed. Additionally, the previous owners of Penland Cottage had also submitted a deposit in May 1996, with a declaration in May 2002.

Officer comment: The effect of the previous owners' Landowner Deposit was to protect their land from Rights of Way claims between the period of May 1996 and May 2006. In any case they sold Penland Cottage to Mr and Mrs Harding in August 2006. The Deposit made by Mr and Mrs Harding is not in current effect as it expired in 2019, having not been renewed.

- 6.4 No response or evidence was received from the unidentified owner of the unregistered land covered by the route.

7. Archive evidence

- 7.1 The following were consulted: Sussex Ordnance Survey Map dated 1875, the Tithe Maps for Bramber and Steyning Parishes, and the Sussex Estate Maps for Bramber (dated 1729) and Steyning (dated 1825). It is concluded that none of these maps show evidence of a historic right of way.
- 7.2 The Draft and Provisional Definitive Maps were consulted and neither map show evidence of a historic right of way.

- 7.3 The Parish file for Steyning contained evidence of correspondence dated between 1994 and 1996 between the previous owners of Penland Cottage, and the County Secretary's Office at WSCC, and also between the County Secretary's office and George Cockman, of 12 Coombe Drove, which is the other property that borders the claimed path, and which is still owned and occupied by Mr Cockman's widow.
- 7.4 In summary, this correspondence (copies of which can be found at Appendix 3) included:
- 7.4.1 A letter with an initial request on the part of the previous owners of Penland Cottage (dated 19th May 1994) into whether the footpath that ran alongside their house could be moved over by a few feet, following at least two instances where they claimed that a window in their property overlooking the path had been smashed. The request proposed that moving the path would allow them to erect fencing to protect their property;
- 7.4.2 A response from the County Secretary's office (dated 31st May 1994) stating that the footpath was not registered as a public right of way;
- 7.4.3 A file note detailing:
- 7.4.3.1 A conversation between the County Secretary's office and Mr Cockman (on 11th March 1996) wherein Mr Cockman rang to ask what the position was regarding the previous owners of Penland Cottage having recently moved the path closer to his property, and to tell the County Secretary's office that the path in its previous format had been in regular use by the public for at least 32 years. Mr Cockman was given details of how to make a DMMO application for the route of the original path, even though it had now incorporated it into the garden of Penland Cottage.
- 7.4.3.2 A conversation between the County Secretary's office and the previous owners of Penland Cottage (on 13th March 1996) where they reported that they did not think they had done anything wrong, based on the information given to them in the exchange of letters with WSCC in 1994. It was again explained that a DMMO application may conceivably be made to claim the original route as a right of way, which would involve the removal of any new obstacles. The owners reportedly "*hoped that the provision of an alternative route would head off a claim,*" and agreed to fax over a plan of the original route, and the new available route;
- 7.4.3.3 A note that the previous owners of Penland Cottage had called again on 13th March and expressed grievance that they were not informed of a potential DMMO claim when they contacted WSCC in 1994, but did not want to make an issue of it;
- 7.4.3.4 A note that the then Clerk to Steyning Parish Council had called two days later on 15th March to ask the situation, as

had the then local footpath secretary of The Ramblers' Association. The latter had contributed that the northern end of the path was part of the highway network and publicly maintainable, but the rest of it was not;

- 7.4.4 A faxed note dated 13th March 1996 from the previous owners of Penland Cottage to the County Secretary's office including the promised plan;
- 7.4.5 A (faxed) letter from the previous owners of Penland Cottage to the County Secretary's office dated 14th March 1996 confirming the details of their earlier telephone conversation and their frustrated position, while also stating they would consider dedicating the new footpath as a public right of way, and challenge an application claiming a right of way on the existing route;
- 7.4.6 Letters from the County Secretary's office to both Mr Cockman (dated 15th March 1996) and the previous owners of Penland Cottage (dated 18th March 1996) confirming their conversations, and thanking the latter for sending the plans;
- 7.4.7 A letter from the then local footpath secretary of the Ramblers' Association dated 17th March 1996 in which he gives details of the path and states that he himself has used it for around 25 years. He also points out that he believes the public will find the changes to the path to be "unacceptable", as they have enjoyed the use of a much wider area for many years, but he feels that a width of at least 6' [1.8m] should be maintained;
- 7.4.8 A (faxed) letter from Mr Cockman to the County Secretary's office dated 18th March 1996 detailing conversations between himself and the previous owners of Penland Cottage which took place on 15th March and 17th March, in which negotiation on what width the new path and its boundary should take, and expressing the "distress" felt by him and his wife on the subsequent actions of the previous owners of Penland Cottage. This letter included plans given to Mr Cockman of the new path layout;
- 7.4.9 A letter dated 22nd March 1996 from the County Secretary's office to the then local secretary of the Rambler's Association acknowledging the latter's letter, confirming information on the maintainable status of the various areas of the path, and advising of the potential to make a DMMO application;
- 7.4.10 A letter dated 22nd March 1996 from the County Secretary's office to Mr Cockman acknowledging his letter of 18th March and reminding him of the possibility to make a DMMO application for the original route;
- 7.4.11 A letter from the previous owners of Penland Cottage to the County Secretary's office (dated 20th March 1996 and stamped received by WSCC on 26th March) stating that where they had previously considered dedicating the footpath on the new route as a public right of way, they now no longer intend to, owing to the potential of an

impending DMMO application adding a second right of way over their land, and finally

7.4.12 A letter from the County Secretary's office to the previous owners of Penland Cottage (dated 29th March 1996) acknowledging the reasons for them changing their minds about path dedication, and advising that they can protect the new path against rights of way claims by making a Landowner Deposit under Section 31(6) Highways Act 1980.

7.5 The overall picture presented by this correspondence is the history of the changes to the path and the reasoning and intentions of the landowners around potential dedication of the new path and the lodging of the S31(6) Deposit. Further discussion of these factors can be found in paragraph 9.8 below.

8. Consideration of claim

8.1 In determining the application, there are two tests to consider. The Committee has to decide whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a right of way subsists, or is reasonably alleged to subsist. The burden of proving this falls to the applicant. DMMO applications have to be determined on the basis of the available evidence and the rule of law. Matters such as suitability of a way and possible nuisance or need, are irrelevant and cannot be taken into account when reaching a decision.

8.2 In the absence of map-based archival evidence the application has been considered under Section 31 of the Highways Act 1980, deemed dedication of a way after uninterrupted use of 20 years.

8.3 Section 31 of the Highways Act 1980 requires consideration of whether there has been use of a way by the public as of right and without interruption for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

9. The 20-Year Period

9.1 A relevant date needs to be determined in order to establish the 20-year period. The relevant date is the period when the land has actually been enjoyed by the public as of right (without permission, without force and without secrecy) and without interruption for a full period of 20 years taken back retrospectively from the first date of challenge.

9.2 In this instance, the application claims that some users saw a notice in 2020 posted briefly on the fence at Penland Cottage stating that use of the footpath was permissive, rather than by right, which is the event that triggered the current DMMO application. Therefore, the relevant 20-year period for the purpose of determining this application should be 2000-2020.

9.3 However, owing to the Section 31(6) Landowner Deposit – made the previous owners of Penland Cottage in 1996, as a consequence of the events summarised in paragraph 7.4 – which protected the land against Rights of Way claims, there has not been 20 years' usage by the public as of right and

without interruption since 2006, when the Deposit expired, as only 14 years elapsed between that date and the application being made.

- 9.4 Nonetheless, the significant quantity of evidence submitted in the first instance by the applicant shows that 91 members of the public claim usage of the path for some or all of the period 1976 to 1996 (either through user evidence forms or through personal statements) before the Landowner Deposit came into effect, and 24 of these individuals claim to have used it for the whole 20-year period.
- 9.5 Therefore, owing to the evidence produced with the original application, and the common law rule "once a highway, always a highway" ([*Dawes Hawkins \(1860\) 141 E.R. 1399*](#) and [*Eyre v New Forest Highway Board \[1892\] 56 JP 517*](#)), the 20-year period can be pushed back, and considered as 1976-1996, i.e. the 20 year period before the previous owners of Penland Cottage made their changes to the path, and then registered their Landowner Deposit, with the act of challenge being the changes themselves.
- 9.6 Whilst it is not necessary for all users to demonstrate continuous use throughout the 20-year period, they must demonstrate that the use has been made by the public continually during that period.
- 9.7 As detailed in paragraph 9.4 above, evidence was provided with the initial application of a significant level of use of a path by members of the public during the relevant 20-year period, and where numbers have been submitted for frequency of use of this path, the number of times given ranges between 20 to 730 times a year.
- 9.8 However, before considering the claim any further, it is necessary to consider the actual route of the path. As explained in paragraphs 2.2 and 5.7 above, and evidenced in the correspondence described in paragraph 7.4, the course of the route changed in early 1996, when the previous owners of Penland Cottage erected their fencing. As the relevant period of 20 years ends in 1996, the route that should actually be claimed is the one used between 1976 and these changes, and which now runs through the fenced-in garden of Penland Cottage. This route can be seen in Appendices 2a and 2b.
- 9.9 With a large quantity of the original user evidence having been submitted as statements, rather than on a standard public way user evidence form, it was considered appropriate, given the adjustment to the relevant 20-year period, that those members of the public claiming usage in the 1976-1996 period via a statement should be asked to complete the standard form, which gives more detail about their usage of the path.
- 9.10 Requests and forms were sent to 73 of those people who had written statements in favour of the application. They were also sent plans with a request to depict the changes to the path over the time of their usage (see appendix 2). These plans were also sent to the 14 people who returned user evidence forms in the first instance.
- 9.11 Of the 73 requests sent out, 29 were returned showing use of the original path during the 20-year period. The total number of users giving detailed evidence of their use of the path between 1976-96 therefore increased to 43. All of these users claim to have used the route on foot, and 13 of them claim

to have used it on a bicycle. They have all seen others use it on foot, 19 claim to have seen it used on a bicycle and five claim to have seen others use it on horseback.

- 9.12 Significantly, 33 out of 43 claim that the path in its current form is not the same as it was in the past. 29 users give detailed descriptions of how the path has changed, including such factors as it being (much) narrower and having bends where before it was wide and more or less straight. 10 individuals specifically state that what was part of the path is now in the garden of Penland Cottage.
- 9.13 If this route is added to the Definitive Map as a public right of way, it will mean significant change to what is now Mr and Mrs Harding's garden to reinstate the line of the path as it was up until 1996. Such considerations are not relevant to the legal tests for presumed dedication pursuant to S31 Highways Act 1980 and for committee decision. Any required changes to the path would be a matter for the future should an Order be made, and eventually confirmed. Consideration has to be to the route which would have been in use by the public for the relevant 20-year period from 1976 to 1996 and whether this meets the tests. It is concluded that the evidence of use for this period is credible and from a significant number of users which meets the legal tests in S31 Highways Act 1980.

10. As of right and without interruption?

- 10.1 "As of right" means use without force, secrecy or permission. It is irrelevant whether the users actually knew they were not entitled to use the route or were indifferent as to whether they could use it. What is important is that looked at objectively they appeared to be using the path as of right.
- 10.2 As detailed in paragraph 9.4 above, evidence submitted in all forms in support of the application has shown that the route has been used by 91 users, 24 of whom used the route continuously from 1976 – 1996, and who continued to use it at the time of application in 2020. This is a significant number of users, especially considered against the length of time since the relevant 20-year period elapsed.
- 10.3 During 1976-1996, none of the users claim to have been stopped from using the route, or to have been given permission to do so. It therefore appears that access to the route has been available throughout the relevant period.
- 10.4 With regard to the issue of 'permission' a distinction needs to be drawn between toleration and permission. A landowner may be aware of the use of a path but chooses to do nothing to prevent that use. In those circumstances, even if they later make it clear they did not support the use of the path during the relevant period (i.e. by giving their permission), their actions could be regarded as toleration of the use during that period. This means the use could still be regarded as being as of right.
- 10.5 In their correspondence with WSCC, the previous owners of Penland Cottage confirmed that they were aware of the public use of the application routes across their land and her only objection was to people loitering on the path and damaging her property. It can be concluded in this instance that she

and her husband tolerated normal use of the path, i.e. it being used as a means of walking from Bostal Road to Coombe Drove or vice versa.

- 10.6 However, the situation would be different if the landowners permitted the public to use the path but made clear (either expressly e.g. by a sign or through their conduct e.g. by closing the path occasionally) that consent could be withdrawn in the future. In that case the use would be with permission and not as of right.
- 10.7 Between 1976 and 1996, until the path was changed, no landowner (the previous owners of Penland Cottage or their predecessors in title) appears to have prevented the use of the path by the public by way of signage, or told anyone they may use it only with permission. In summary therefore, the significant use by substantial numbers of people of the route between 1976 and 1996 which the previous landowners did not prevent or explicitly permit, indicates that the use during the relevant period was as of right and without interruption.

11. Evidence of no intention to dedicate

- 11.1 It is considered that the user evidence has met the statutory tests as set out in Section 31 Highways Act 1980. User evidence submitted in support of the application shows that the original route had been used as of right and without interruption for a period of 20 years or more.
- 11.2 It is therefore necessary to further consider whether there is sufficient evidence of no intention during the relevant 20-year period to dedicate by the landowner.
- 11.3 Evidence of a landowner's intention not to dedicate a public right of way must be overt and contemporaneous. The landowner cannot assert after the event that there was no intention to dedicate.
- 11.4 With regard to the original line of the path, it is clear that the previous owners of Penland Cottage had no intention to dedicate once they actively fenced the area into their garden to prevent it being used as a public footpath. With regard to the new route, their lack of intention to dedicate is evidenced by their submission of a S31(6) Landowner Deposit. However, these actions are what precipitate the end of the 20-year period and do not have any bearing on the relevant time period beforehand.
- 11.5 No evidence is available that any previous landowner of Penland Cottage, or any owner of the unregistered section of land, had any intention not to dedicate the land, as such information would be held on record. The freely available use of the path without restriction speaks to, at very least, the tolerance of other landowners of its use by the public, and that of the previous owners of Penland Cottage s before they changed the path.

12. Common Law

- 12.1 At Common Law a right of way may be created through expressed or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to do so and that the public have accepted such dedication. Whilst there is no defined

minimum period of continuous use to establish a right of way at Common Law, the use must be shown to have been as of right.

- 12.2 Dedication at common law is presumed if the way has been used by the public as of right. There is no defined length of time over which the use must occur and it simply must be long enough to justify an inference that there was an intention by the Landowner to dedicate. A Landowner needs to be legally capable of dedicating the way as public, therefore any periods in which the land was occupied by tenants could not be included in the period of user.
- 12.3 In this case there is a significant amount of evidence of use, which spans a considerable period of time, and this use by the public demonstrates their acceptance of the dedication. It could therefore be concluded that rights of way have been created at common law.

13. Overall Conclusion and Recommendation

- 13.1 The applicant has produced a substantial amount of credible evidence which demonstrates clear use of the application route, as of right, during the 20-year period. The landowners, by closing off the path, could be argued to show that they did not intend to dedicate a public footpath across their land. However, as previously described, these actions are what precipitated the end of the relevant period. As such, it is not considered that there is a conflict of credible evidence of use and landowner submissions.
- 13.2 It is concluded that the legal tests have been met and that on the balance of probabilities the original route of the footpath as depicted in Appendix 2a has been proven to subsist.
- 13.3 It is therefore recommended that an order should be made to add the original route to the Definitive Map.

14. Consultation, engagement and advice

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

15. Finance

- 15.1 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.
- 15.2 Cost implications arise:
- i. In the event of an order being made and objected to, the matter may fall to be considered at a public local inquiry or a public hearing. All fees incurred after submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, fees relating to advert
 - ii. Should an order be made and confirmed; if any works are necessary to ensure the path is open for public use.

- iii. Should the decision of the committee be challenged by way of Judicial Review.

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

16. Risk implications and mitigations

16.1 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.

16.2 In reaching a recommendation the investigating officer has considered the evidence in accordance with the law.

17. Policy alignment and compliance

Equality and Human Rights Assessment

17.1 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

17.2 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.

17.3 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.

17.3.1 In this instance, the home of Mr and Mrs Harding may suffer interference if the route is added according to the recommendation. WSCC would be acting to protect the rights of way of the general

public, here, rather than intentionally causing interference to the Hardings.

17.4 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.

17.4.1 In this instance, the home of Mr and Mrs Harding may suffer interference if the route is added according to the recommendation. WSCC would be acting to protect the rights of way of the general public, here, rather than intentionally to cause interference to the Hardings.

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

Crime and Disorder

17.6 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

17.7 Enhancement of the public rights of way network is a positive contribution towards the 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

17.8 The addition of public rights of way through the Definitive Map Modification Order process could assist in enhancing the general health and wellbeing of the communities served by the Council. However, such considerations are not matters that can be taken into account when considering applications against the strict legal test.

Tony Kershaw

Director of Law and Assurance

Contact Officer: Naomi Taite, Legal Assistant, 0330 222 5375

Appendices

- Appendix 1 – Sample of plan to show evidence of changes to route, sent to users providing statements of support
- Appendices 2 - Evidence submitted by users of previous route:
 - Appendix 2a – development plan from 1963 showing the path between Penland Cottage and the plot at 12 Coombe Drove.
 - Appendix 2b – A plan from Appendix 1, submitted as part of user evidence to show the change in the route since 1976.
- Appendices 3a and 3b – 1990s correspondence between WSCC and various interested parties
- Appendix 4 – Location Plan
- Appendix 5 – Site Plan

Background papers

- (1) Application and plan
- (2) Witness list
- (3) Letters and emails of support
- (4) Landowner objections

**** Please contact the contact officer to request a copy of the background papers**

Name _____
Signature _____
Path as it was when I commenced using it in _____ (year)
Date _____



Contains OS data © Crown copyright and database rights 2022. You are not permitted to copy, sub-license, distribute, sell or otherwise make available the Licensed Data to third parties in any form. Third party rights to enforce the terms of this licence shall be reserved to OS. West Sussex County Council Licence No. 100023447.



DMMO Application 4/20: Coombe Drove Twitten



A

Name _____
Signature _____
Date _____

Path as it was in 2020 at the time of DMMO Application



Contains OS data © Crown copyright and database rights 2022. You are not permitted to copy, sub-license, distribute, sell or otherwise make available the Licensed Data to third parties in any form. Third party rights to enforce the terms of this licence shall be reserved to OS. West Sussex County Council Licence No. 100023447.

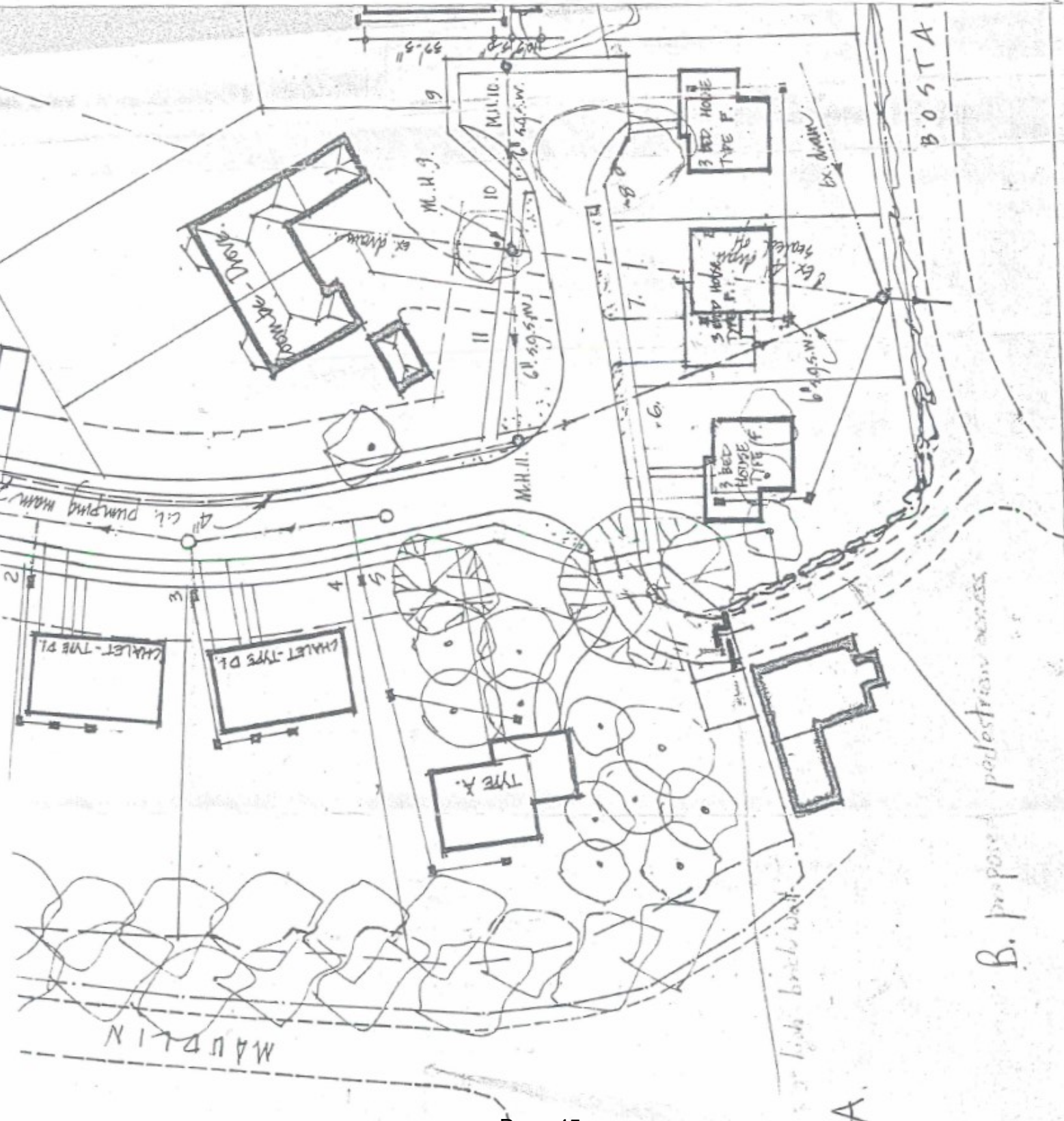


DMMO Application 4/20: Coombe Drove Twitten

1964
1963

A. 5" HIGH
BRICK WALL

B. Proposed
pedestrian
ACCESS



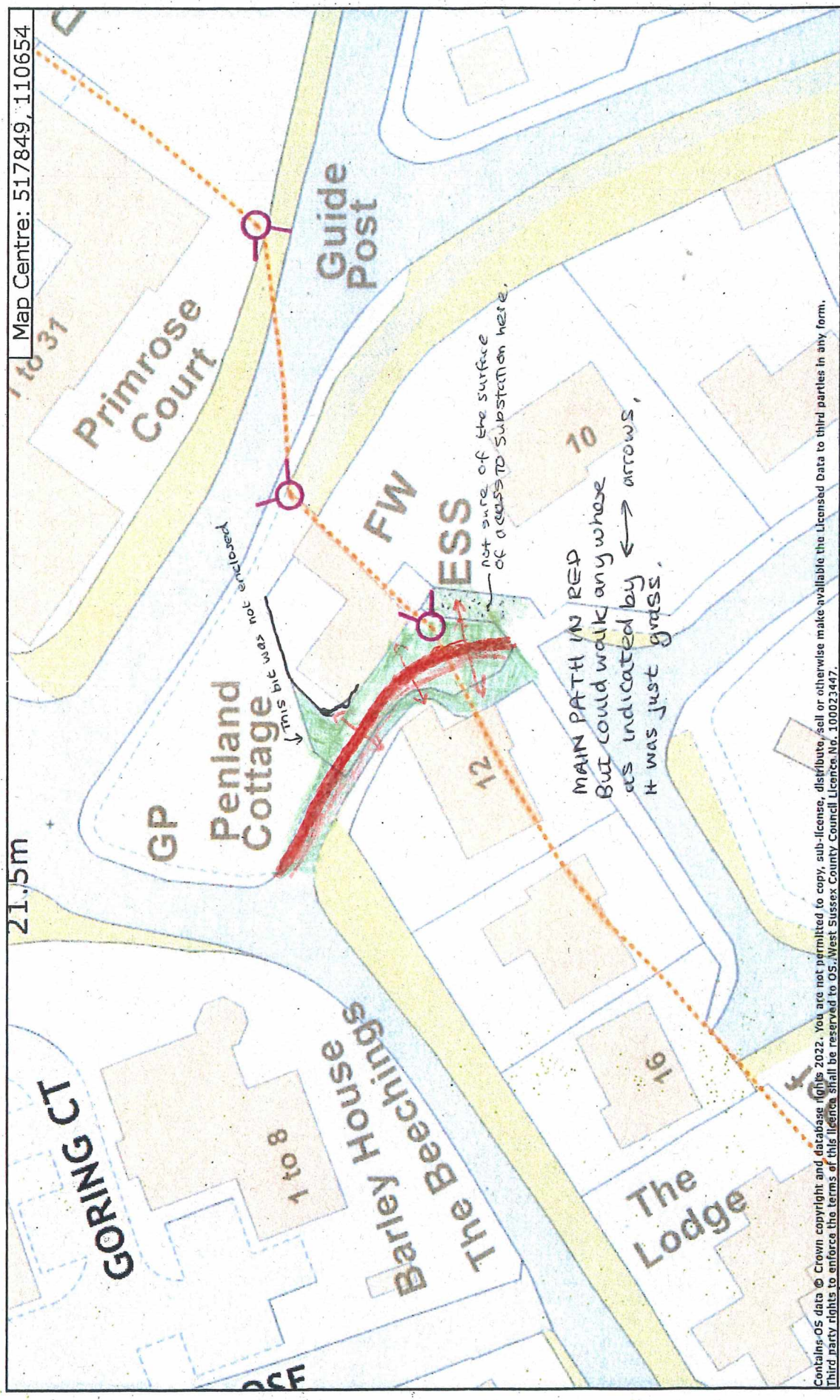
B. Proposed pedestrian access

This page is intentionally left blank

1988
(year)

Path as it was when I commenced using it in
Date 6/10/22

Name SUSAN WILLIAMS
Signature



Map Centre: 517849, 110654
 Contains OS data © Crown copyright and database rights 2022. You are not permitted to copy, sub-license, distribute, sell or otherwise make available the Licensed data to third parties in any form. Third party rights to enforce the terms of this licence shall be reserved to OS. West Sussex County Council Licence No. 100023447.

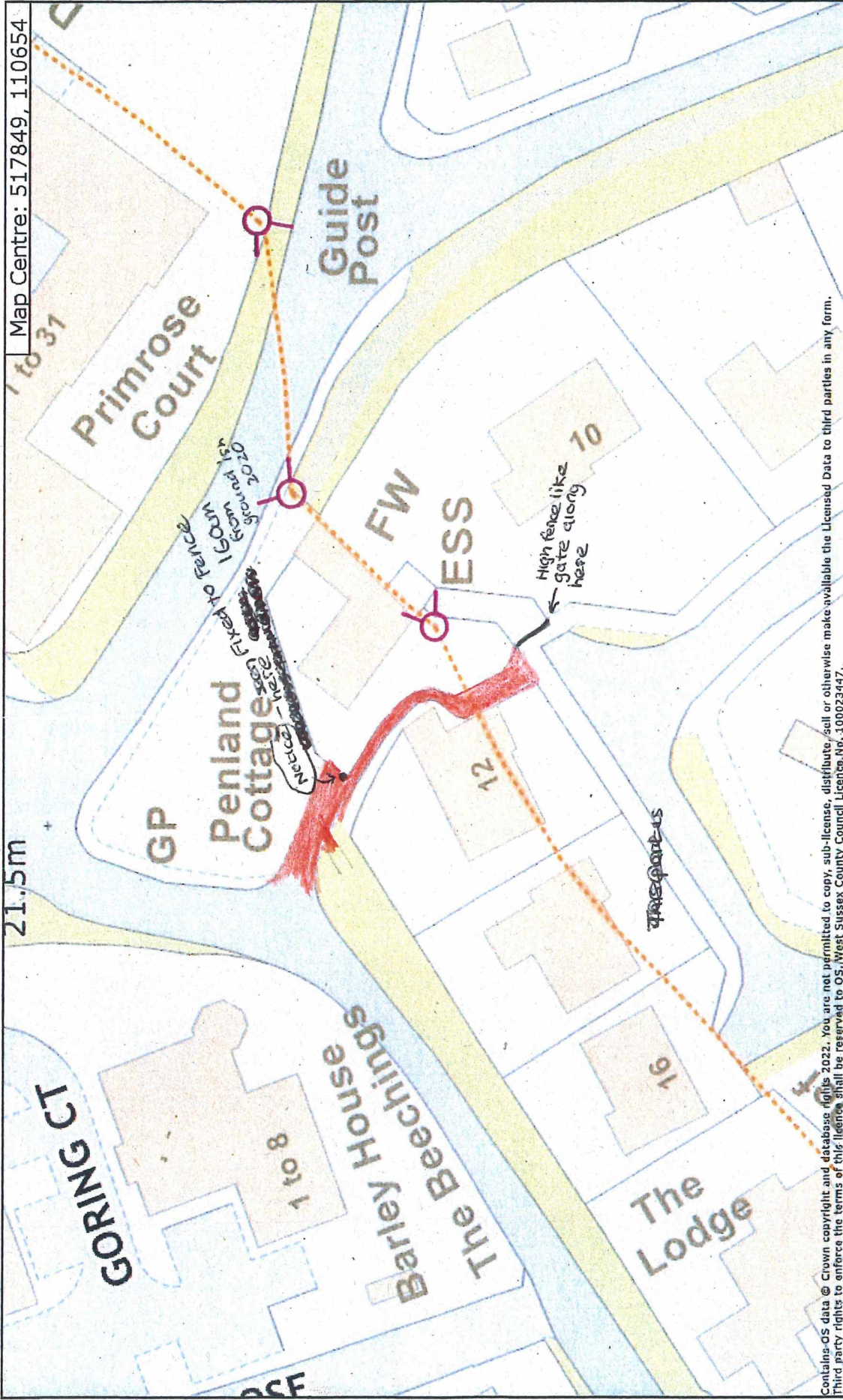


DMMO Application 4/20: Coombe Drove Twitten

A

Name Susan Williams Williams
Signature _____
Path as it was in 2020 at the time of DMMO Application

Date 6/10/22 and in 1999 Aug - possibly even earlier



DMMO Application 4/20: Coombe Drove Twitten

APPENDIX 3 - Correspondence from 1994

Agenda Item 5

Appendix 3a

COUNTY	
COUNTY CHAIR	
RECEIVED: 23 MAY 1994	
ACTION BY:	DATE TO ACT BY: 23/5
	DATE TO REPLY BY:

Perland Cottage
Bramber Road
Steyping
West Sussex
0903 813211
19 May 1994

FAO Ms

Dear Madam,

Your name was given to me by our neighbour, Councilor Susan Lee. I am writing in connection with a footpath to the rear of our property as shown on the enclosed plans.

On Friday night we had a window broken to the rear of our property. This is not the first time this has happened.

When we inspected the damage, it became apparent that the bushes opposite have grown forcing the footpath closer to our property. We have therefore cut back the bushes to their original line but in doing so, it occurred to us that if the footpath were to be raised against the opposite boundary (a distance of just a few feet), it would impair our security.

The area to the rear of the property is very scruffy as no-one maintains it & youths often loiter in this area. We were hoping to acquire this land to improve its appearance & discourage people from gathering on the footpath.

This proposal would also mean that we could bring our car off the road, where we park at present involves crossing a dangerous junction with a young baby to reach our house. In addition, the people living in the retirement flats opposite object to our parking outside their property.

We are wondering whether it would be possible to have the footpath over by a matter of a few feet at a distance of about 30 yards, as indicated on the enclosed plans. The move would involve some minor levelling & removal of some shrubs & a small deciduous tree. We would of course be willing to reconstruct the

footpath (my husband is a civil engineer)
& to erect fencing, as approved by
yourselves.

I would be happy to meet you or
a member of your staff on site to discuss
this matter if it would be helpful.

Yours Faithfully

MRS



911

HEW/Steypning

31st May, 1994.

Dear

Further to your letter dated 19th May, 1994. My enquiries have shown that the path in question is not shown on the Definitive Map and statement as a public right of way, nor is it a highway maintainable by the County Council.

In the circumstances, it would appear that there is nothing that the County Council can do. May I therefore suggest you contact the landowner.

Yours sincerely,

County Secretary.

Penland Cottage,
Bramber Road,
STEYNING,
West Sussex.

PS\CS.21

FILE NOTE

My ref. CL/FP.Steyning

Steyning: Footpath between Bostal Road and Coombe Drove

Mr. George Cockman (works telephone No. 01903) of No.12 Coombe Drove, Steyning, telephoned on the 11th March, 1996.

He was telephoning in connection with the footpath link between Bostal Road and Coombe Drove. The path is not shown on the Definitive Map, but has been in regular use for the last 32 years he reports. The owners, now wish to incorporate the land crossed by the footpath into their garden and are preparing an alternative route a few yards from the existing path and quite close to Mr. Cockman's property. He asks what the position was.

I explained that it was open to the public to claim the original route on the basis of long-standing use, and to make an application to the County Council for a Definitive Map Modification Order. If the claim was eventually successful, I would be required to remove any obstructions on the claimed route, notwithstanding the fact that they have provided an alternative.

Mr. Cockman said that Steyning Parish Council may be contacting us. He would also suggest to that they talk to us, so that they are aware of the position.

If residents/the Parish Council do decide, in due course, to make a formal claim, I explained that this procedure needed to be co-ordinated by one of the claimants, and perhaps the Parish Council would take the role on. I would explain what was involved, if the Parish Council does contact me.

I got the impression that Mr. Cockman was on the whole satisfied and would not be pursuing a claim and his one concern is that the alternative route passes closer to his property. He may be able to agree a slight variation to the route with the owners.

telephoned on the 13th March. She had, she explained, been in touch with us in 1994 (our letter dated the 31st May) and she and her husband thought that they were doing nothing wrong by constructing an alternative route and stopping-up the existing used route. I explained that, as things stood at the moment, the path was not shown on the Definitive Map, we had not received a claim in respect of it and we did not have any proof of its public status at the present time.

I went on to explain the claim procedure and that if, eventually, a claim was proved and an Order made and confirmed to add the path to the Definitive Map, we would require the removal of any obstructions placed over it. hoped that the provision of an alternative route would head off a claim.

agreed to let me have a plan showing the existing used route and the proposed alternative and I would then write to Mr. Cockman to seek his views.

subsequently faxed the information to me the same day.

telephoned + sent a fax, on 15.3.96.
They are a bit aggrieved with the "less than fuel" information given by us in 1994, but don't seem to want to make an issue of it.

New Staying Parish Clerk, called 15/3/96 what we knew. Explained + sent ^{him} a copy of the letter to Mr. Cockman.

Christine Luff

Ramblers Ass local FP See phoned 15.3.96 - again what did we know + I explained. The top end of the route has a CC signpost on it he says - this part (highlighted yellow on plan) is publicly maintained but not the rest of the route.

13.3.96

13th March 1996

FAO

[REDACTED]

Please find attached the plan as requested. I have indicated approximate lines of the existing & proposed footpaths, cross hatched & hatched respectively. I shall write & confirm on telephone conversation & enclose a more detailed plan of the proposals. If you have any queries or wish to discuss this further, please do not hesitate to contact me. I shall be available on 01403 [REDACTED] for the rest of today or 01903 [REDACTED] on Thursday or Friday.

21.5m
+




STEYNING

Primrose
Court

GP

Penland
Collage

Guide
Post

-  original route
-  alternative route
-  publicly maintained length.

12

10

16

18

COOMBE DRIVE

2

Penland Cottage
Bramber Road
Steyping
West Sussex
BN44 3PB

14th March 1996

[REDACTED]
West Sussex County Council
County Hall
Chichester
West Sussex
PO19 1RQ

Dear [REDACTED]

FOOTPATH TO THE REAR OF PENLAND COTTAGE, BRAMBER ROAD, STEYNING

I am writing to confirm our telephone conversation yesterday.

I wrote to West Sussex County Council on the 19th May 1994, questioning whether it would be necessary to obtain permission to divert the footpath to the rear of our property. I received a reply on the 31st May 1994 confirming that the path is not on the Definitive Map, that there was nothing the Council could do and that we should contact the land owner.

In January 1995, we agreed to purchase the land on which the footpath was located. Prior to purchase, I telephoned West Sussex County Council and spoke to [REDACTED] on the 5th January 1995, questioning whether we could proceed to move the path. A message was left on our answering machine as follows "... Having checked the file, as you [will be] the legal land owner, you are entitled to do as you wish with the footpath, so just to let you know there isn't a problem with that".

On the 15th February 1996, prior to commencement of the works, I wrote to Horsham District Council to explain our proposals, including the diversion of the footpath, and to seek confirmation that no statutory consents were required. I received a reply stating that providing the fencing did not exceed 2 metres in height along the footpath or 1 metre in height where it fronts onto the cul-de-sac, no consents were required.

We consequently commenced works, satisfied that we had fulfilled all the statutory requirements. We have to date, spent in excess of £500 and at least 100 hours on the project. We are also committed by way of firm orders for fencing (due to be delivered on the 15th) and french windows (currently being constructed) to a further sum in the region of £1500.

Cont/d

Agenda Item 5

Appendix 3b

-2-

The new path has been constructed and is of a superior finish to the existing earth path.


It is very frustrating to discover at this late stage, that the position is not as clear cut as we had been led to believe. We would not have commenced work on the project if we had been aware of the uncertainties.

In view of the late stage this knowledge has come to our attention, we have decided to proceed with the diversion of the footpath as planned. I would stress that we are moving the footpath by only a matter of 10/15 feet and that we have no intention of obstructing the footpath. The alterations will cause no inconvenience to those wishing to use the path and indeed, as it is of superior surface, it represents an improvement. We have fully explained our plans to anyone who has asked and they have been received positively.

Clearly, it would be a long and complex process to establish whether a public right of way does exist. However, we would consider dedicating the footpath to the public, providing it follows the new route but we would challenge the existence of the right of way on it's existing course. Perhaps you would be kind enough to advise on the dedication procedure and it's implications.

If you wish to discuss this matter further or if you would like to meet on site, please do not hesitate to contact us.

Yours sincerely



579

██████████ CL/FP.Steyning

15th March, 1996

Dear Mr. Cockman,

Steyning: Footpath between Bostal Road and Coombe Drove

Thank you for telephoning ██████████ recently.

I would confirm that the path running between Bostal Road and Coombe Drove is not recorded on the Definitive Map of Public Rights of Way. There is provision, however, under Section 53 of the Wildlife and Countryside Act, 1981 for a claim to be made to the County Council that the path should be added to the Definitive Map, by virtue of long standing use (a minimum of 20 years' uninterrupted use) or historical evidence.

Subsequently, if, upon investigation, the County Council considered the evidence to be strong, a Definitive Map Modification Order would be made and when confirmed, would have the effect of adding the path to the Map. If you would like further details of the claim procedure, perhaps you could kindly let me know.

As you explained on the telephone, the owners are in the process of constructing an alternative route, in place of the original path and ██████████ has been in touch with ██████████ recently and has supplied the attached plan showing the original route and the proposed new path. The new path may be acceptable, perhaps, as an alternative to making a formal claim for the original path and your views would be much appreciated please. I enclose a prepaid envelope for your use. I would just add that I have sent a copy of this letter to ██████████ and to Steyning Parish Council.

Yours sincerely,

County Secretary

G. Cockman, Esq.,
12 Coombe Drove,
STEYNING,
West Sussex

DS\CS.101

579

FB
15th March, 1996

[REDACTED] CL/FP.Steyning

Dear [REDACTED]

Steyning: Footpath between Bostal Road and Coombe Drove

Thank you for your fax dated the 13th March, 1996 and for the plan.

I have now written to Mr. Cockman and a copy of my letter is enclosed for your information. I shall, of course, keep you informed of any developments.

Yours sincerely,

County Secretary

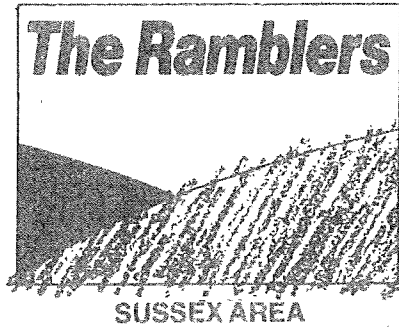
[REDACTED],
Penland Cottage,
Bramber Road,
STEYNING,
West Sussex

PS Thank you for your further
fax of 14 March. I shall be
in touch.

DS\CS.101

BF 13/7

Appendix 3b
The Ramblers' Association promotes rambling, protects rights of way campaigns for access to open country and defends the beauty of the countryside.



[Redacted]
Steyning
West Sussex
[Redacted]

Rights of Way Department
W S C C.
County Hall
Chichester
West Sussex
PO19 1RQ

17.3.96

Dear [Redacted],

PUBLIC PATH FROM COOMBE DROVE TO BOSTAL ROAD
STEYNING

There is a short section of path that provides a "cut through" from Coombe Drove to where Bostal Road joins the main road coming up from Bramber Castle to Steyning.

I have used the path for something like 25 years. It is signposted "Footpath, no Bridleway" on the WSCC design of sign. It is an unmade up section of path that comes from the made up roadway of Coombe Drove through to a track that leads along the side of an area of generally well maintained grass butting onto Bostal Road.

There are signs of low level building activity between the 2 houses. I have heard locally that the path is going to be reduced to about 4 feet wide. If this is so then I would have thought it to be unacceptable as the public has enjoyed a much wider area than this for many years in the past. Whereas I am not saying that the full historic width should be maintained, I think that a minimum of 6 feet would be desirable from a legal point of view.

I have also heard that the person in one of the adjacent properties who is carrying out the alterations may be planning to use the short track from Bostal Road to his property as a vehicle access. This may already be a legal access point of course. If it so then an occasional vehicle going in or out of this private residence should not create much of a problem as far as the right of way is concerned.

I would be grateful if you would keep an eye on this matter and keep me advised of any adverse developments that may occur.

Yours sincerely,

[Redacted Signature]

[Redacted Name]

LOCAL FOOTPATH SECRETARY

Agenda Item 5

Appendix 3b

12 COOMBE DROVE STEYNING WEST SUSSEX BN44 3PW

The County Secretary

(
County Hall
Chichester

18th March 1996

Dear Sir,

I spoke at length with [REDACTED] on Friday 15th March to find out what he proposed to do following his conversations with you. He seemed convinced that there was basically no reason why he should not go ahead as he had planned.

He said that when he had told you that there was not a 6' path at either end of the existing footpath, you had agreed that this diminished the argument for maintaining a 6' width to the path he was building. I thought the more relevant comparison was with the existing route.

I told [REDACTED] that the information I had received both from County and locally made me believe that the new path should be laid out in such a way that would minimise the risk of (a) a demand for the original right of way to be restored or (b) the new path to be widened.

If [REDACTED] insisted on laying a 4' path on the new alignment and allowed only a 2' margin along the line of our garage and garage driveway - he had previously told me he would allow 3' and had drawn a plan which also showed a 3' margin - I pointed out the obvious danger from our point of view was that any demand to widen the path once his fence was erected would almost certainly lead to the path being extended right up to the boundary or very close indeed to my property. On the very first occasion when [REDACTED] told us of his plans (which was after he had dug test trenches into the bank alongside my garden wall) it was made very clear that the major concern on our part was to avoid a footpath running adjacent to our property.

In view of these considerations I told [REDACTED] that I would only be satisfied with his fence line 9' from the boundary wall along the section which ran parallel with our garage and driveway. Whatever then happened by way of complaint or objection was unlikely to result in any requirement for him to move his fence or the line of his path because he had made adequate alternative provision. While my wife and I would have preferred no change to be made to the existing path, we would have accepted this as a reasonable compromise: the [REDACTED] get their garden and we have some protection from a path which runs close to our property. In our view both parties also have much greater security from future objections.

I spoke to [REDACTED] again on site on Sunday morning 17th March. On the

previous day he had erected a fence along that part of the path closer to the Bostal Rd. He was already preparing to work with an assistant on the section close to our garage. He said he was going to place the fence 6' from my wall. I stated my objection. We talked further. I said I would go down to 8' in my requirement. (This would have allowed the margin of 3' and a path of 5' which I thought could be accommodated within the bounds of good practice.) He said he would go to 7'. We could not agree and he said that if I did not accept 7' he would take the 6' line. His assistant was actually digging a post hole while we were discussing the matter. He said he would rather put the fence up on the 6' line then and take it down later if he had to than erect it on any other line.

I made it clear I objected very strongly to what he was doing. He has since erected the fence along the 6' line.

We feel very distressed about what [REDACTED] has done. I have also made it clear to him that we did not approve of his digging into the bank outside my garden wall before he had even told us of his intentions. He had no more right to that ground than we had; we have planted and pruned the shrubs along that stretch of the path for many years. Again, his plan showed what he said he would give on the Coombe Drove end of the path: 3'; he had allowed only 2' and made the change without reference to us. Having put him in touch with County Rights of Way, I do not think he has paid due attention to what he has been told. The work he has done on Sunday 17th March he has done knowing it to be against my strong objections. He may have heard something different from what I heard by way of County advice but there should have been time to attempt to reconcile those views.

For the twenty six and a half years we have lived in 12 Coombe Drove, our house has not been adjacent to a public footpath. The privacy and security of our property are affected by the re-alignment that is being carried out. We deeply regret that there has not been more time to consider compromises and make sure that we have the most complete information; until I made contact with you last week and passed the information onto [REDACTED], they had not known they should communicate with County Rights of Way.

We now anticipate the real possibility that the 3' margin, already reduced to 2' without consultation, will be reduced to 1' or nothing and we will find ourselves living adjacent to a footpath. To this we make the strongest possible objection and seek your assistance in facilitating a solution.

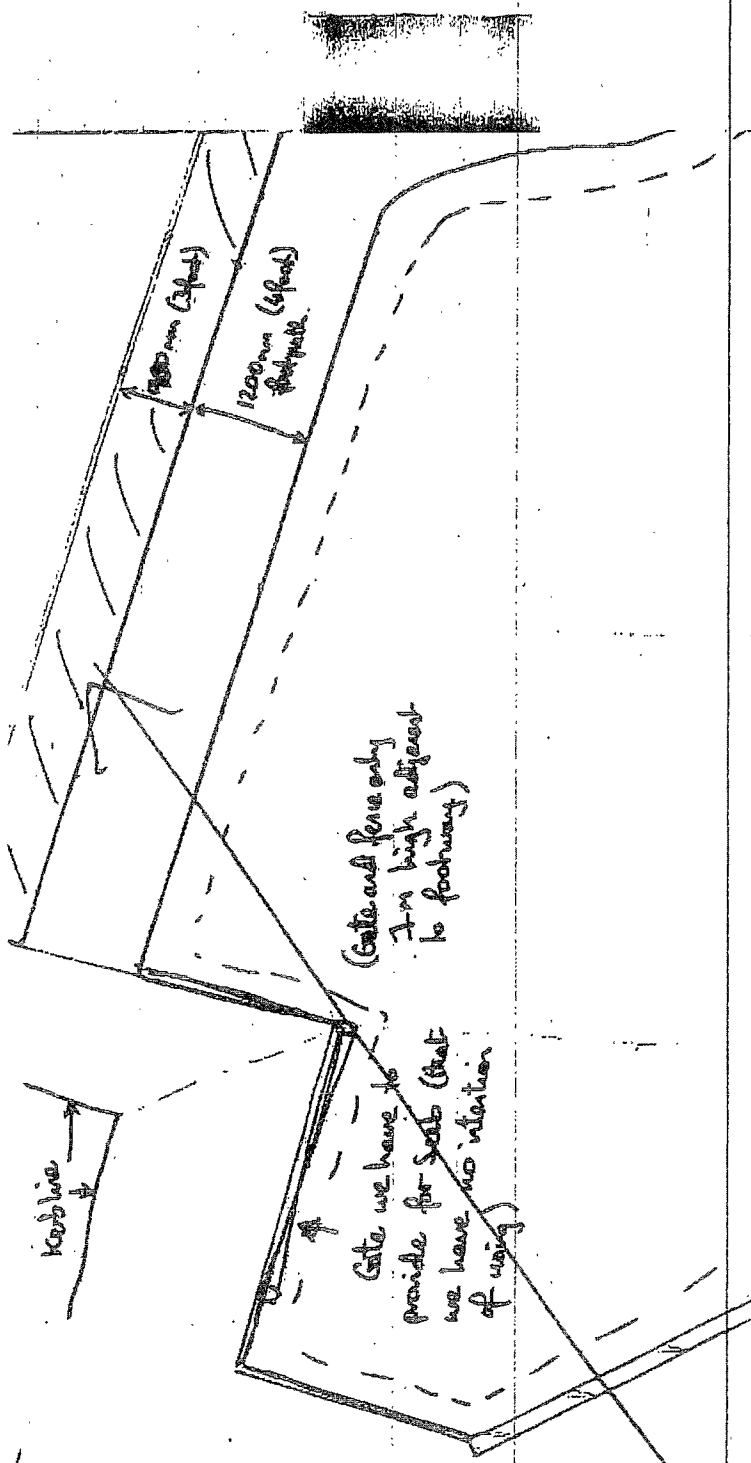
Yours faithfully,

GA Cockman

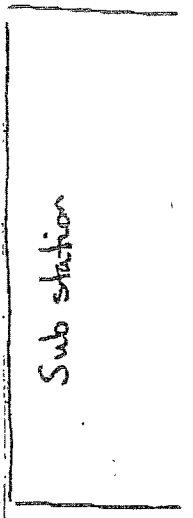
GA COCKMAN.

[REDACTED] plan follows in two sections.

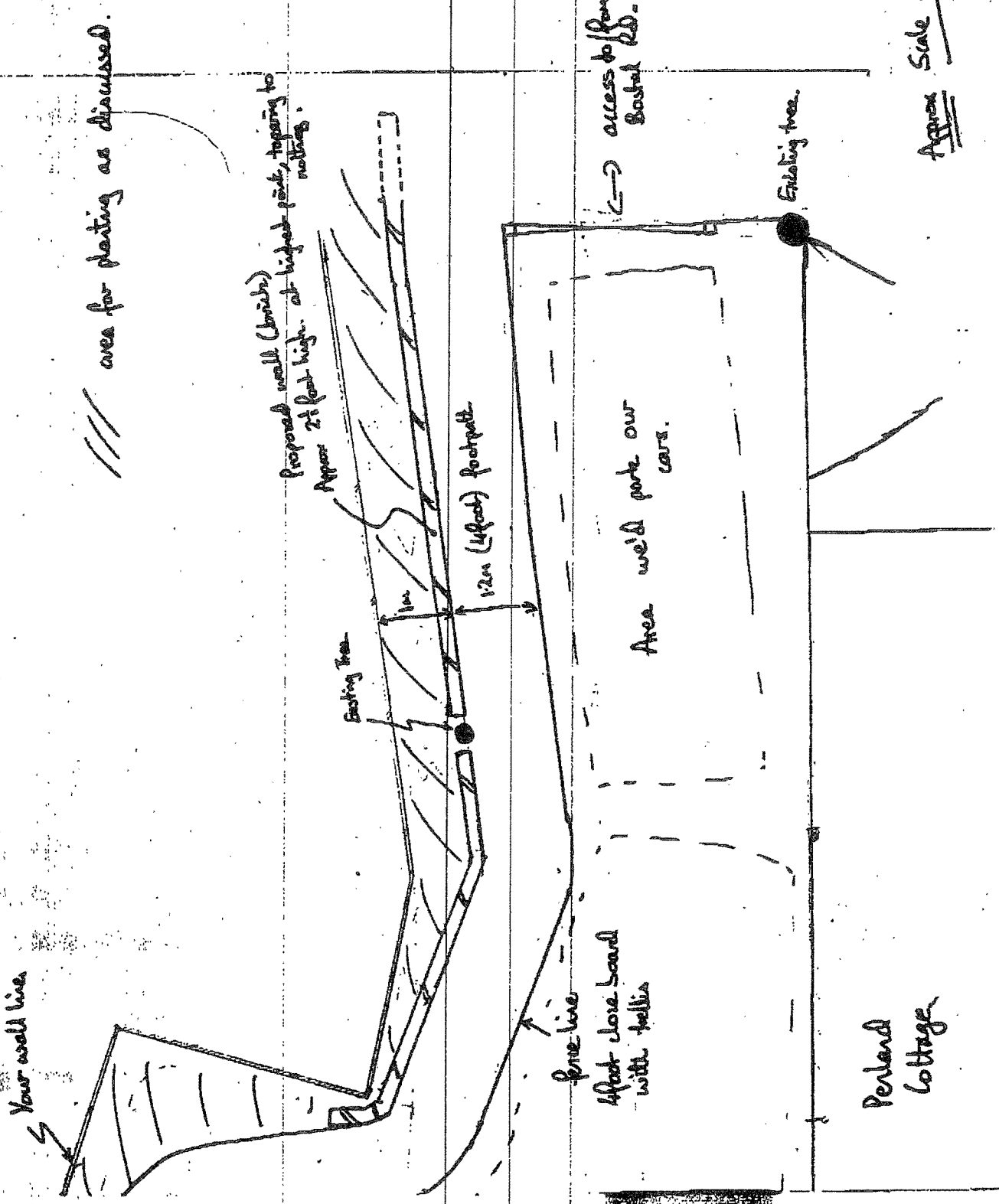
Agenda Item 5
Appendix 3b



Area for garden.



[Redacted] own
 plan given to us
 shows the 3' margin
 be agreed orally.
 Without further consultation
 be reduced this to 2'



579

Mrs. Luft

CL/FP.Steyning

22nd March, 1996

Dear Mr. Ford,

Steyning: Footpath Between Bostal Road and Coombe Drove

Thank you for your letter dated the 17th March, 1996.

Only a small length of the route is publicly maintained, as highlighted yellow on the attached plan. The remainder (in pink) is not formally recorded as being public, although I understand that people have used it for many years. As you may be aware, it is open to members of the public who have known and used the route (we usually look for 20 years' uninterrupted use) to make an application to the County Council, under the provisions of Section 53 of the Wildlife and Countryside Act, 1981, for an Order in respect of the claimed route. Once made and confirmed, the Order would have the effect of adding the route to the Definitive Map. No such claim has been received in respect of this path to date.

As you know, the owner of the land has now taken steps to divert the pink route on to the line shown in green on the plan and this action may satisfy users who would otherwise consider making a claim application. However, I do know, as you also report, that the width of the alternative route (4 feet or so) is not acceptable to at least one local person. I have advised this person of the claim procedure, but I do not know whether he proposes to pursue the claim.

I hope that this information has been of some help - please do not hesitate to contact me again if I can be of further assistance.

Yours sincerely,

County Secretary

J. G. Ford, Esq.,
Local Footpath Secretary,
14 Coxham Lane,
STEYNING,
West Sussex BN4 3LG

DS\CS.130

579

██████████ CL/FP.Steyning

22nd March, 1996

Dear Mr. Cockman,

Steyning: Footpath Between Bostal Road and Coombe Drove

Thank you for your letter dated the 18th March, 1996.

I am sorry to learn of the distress caused to you by ██████████'s actions in erecting the fence in a position that is not acceptable to you. In the circumstances, you may now wish to consider making a formal claim to me in respect of the original route (i.e. as shown in pink on the plan previously sent to you). Perhaps you will kindly advise me - I would be more than happy to give the necessary help and guidance.

If it is your wish, I shall write to ██████████ at this stage, to pass on your concern and to give him advance notice that a formal claim may be made in respect of the original path. If this claim results in the making and confirmation of a formal Order, the route will be added to the Definitive Map and we will require the removal of any obstructions on the route at that time.

Yours sincerely,

County Secretary

G. A. Cockman, Esq.,
12 Coombe Drove,
STEYNING,
West Sussex
BN44 3PW

DS\CS.130

Penland Cottage
Braumber Road
Steyning

20 March 1996

Dear [REDACTED],

Path between Bostal Road & Coombe Drive.

We were considering dedicating the "alternative route" as highlighted in green on the plan attached to your letter dated 18 March 1996 (ref. CL/FP. Steyning).

However, we understand that if we were to do this & some-one were to object to the closure of the original path & it was established that the original path was a public right of way, we run the risk of having 2 dedicated paths on our land.

We have consequently decided that we do not wish to dedicate the new path.

Yours Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

579

██████████ CL/FP.Steyning

29th March, 1996.

Dear ██████████,

Steyning: Footpath between Bostal Road and Coombe Road

Thank you for your letter dated 20th March 1996.

I do appreciate the reasons why you are not prepared to enter into a Public Path Creation Agreement with the County Council in respect of the route you have recently provided. You are correct in your understanding that it is open to a member of the public, at some time in the future, to make a claim to the County Council for the "original route," and in the event that the claim succeeded, and you had earlier dedicated the alternative route, there would be two public rights of way over your land.

I would just mention that under Section 31(6) of the Highways Act 1980, you can deposit a statement with the County Council which would have the effect of negating any possible future claim in respect of the "alternative" route (but such a statement could not negate a claim relating to the "original" route). If you would like details of the procedure, perhaps you could kindly let me know.

If and when a claim is made to me for the "original" route, I will, of course, let you know.

Yours sincerely,

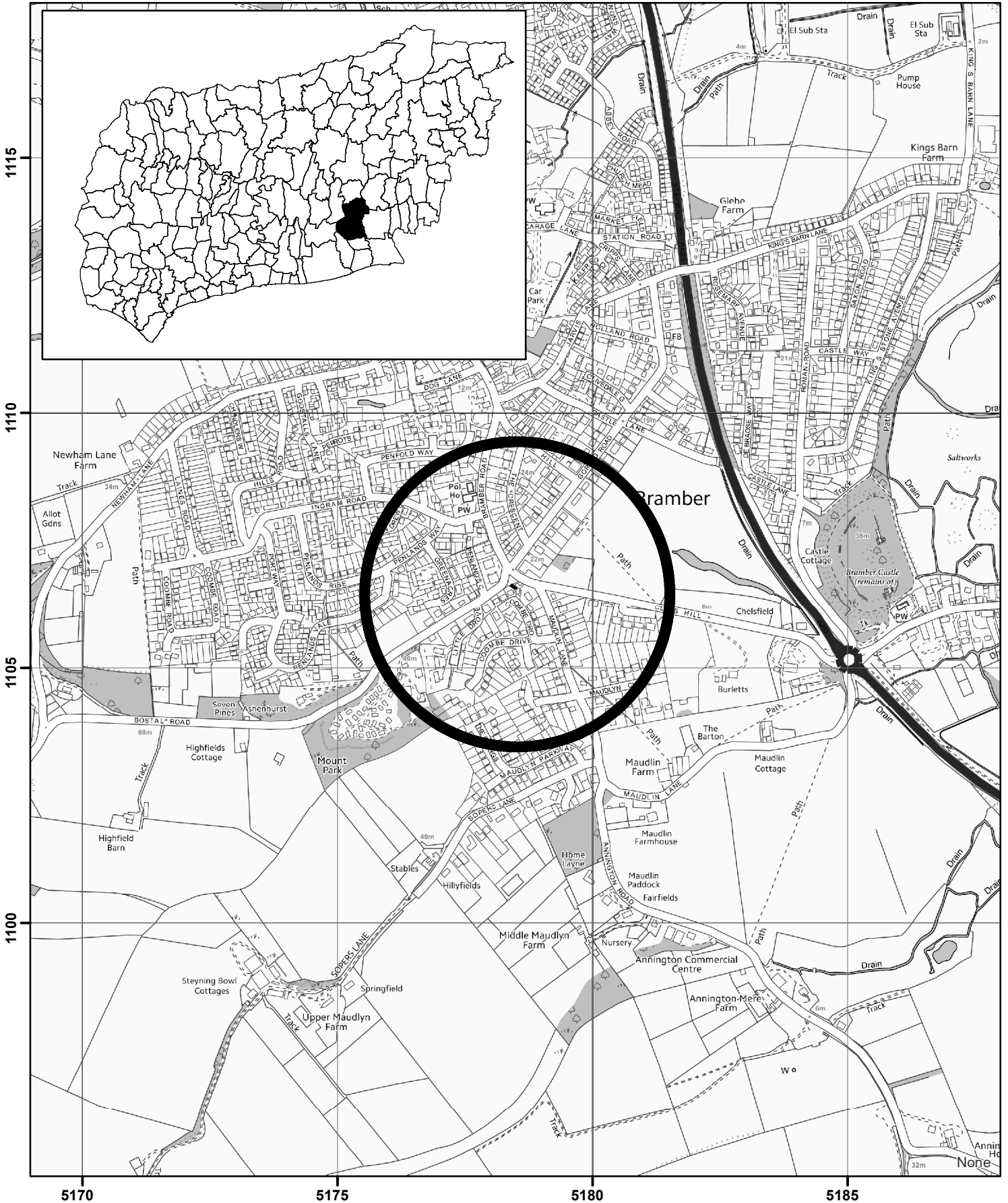
County Secretary

██████████
Penland Cottage,
Bramber Road,
STEYNING,
West Sussex.

RW/CS.9

This page is intentionally left blank

Parish: **Bramber/Steyping**



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. West Sussex County Council, 100023447, 2022.

Coombe Drove to Bostal Road Twitten - Location Plan

Plan: 01814
Date: 24.11.2022

1:10,000
OS Sheet: TQ 11 SE
Grid Ref: 5178 1106



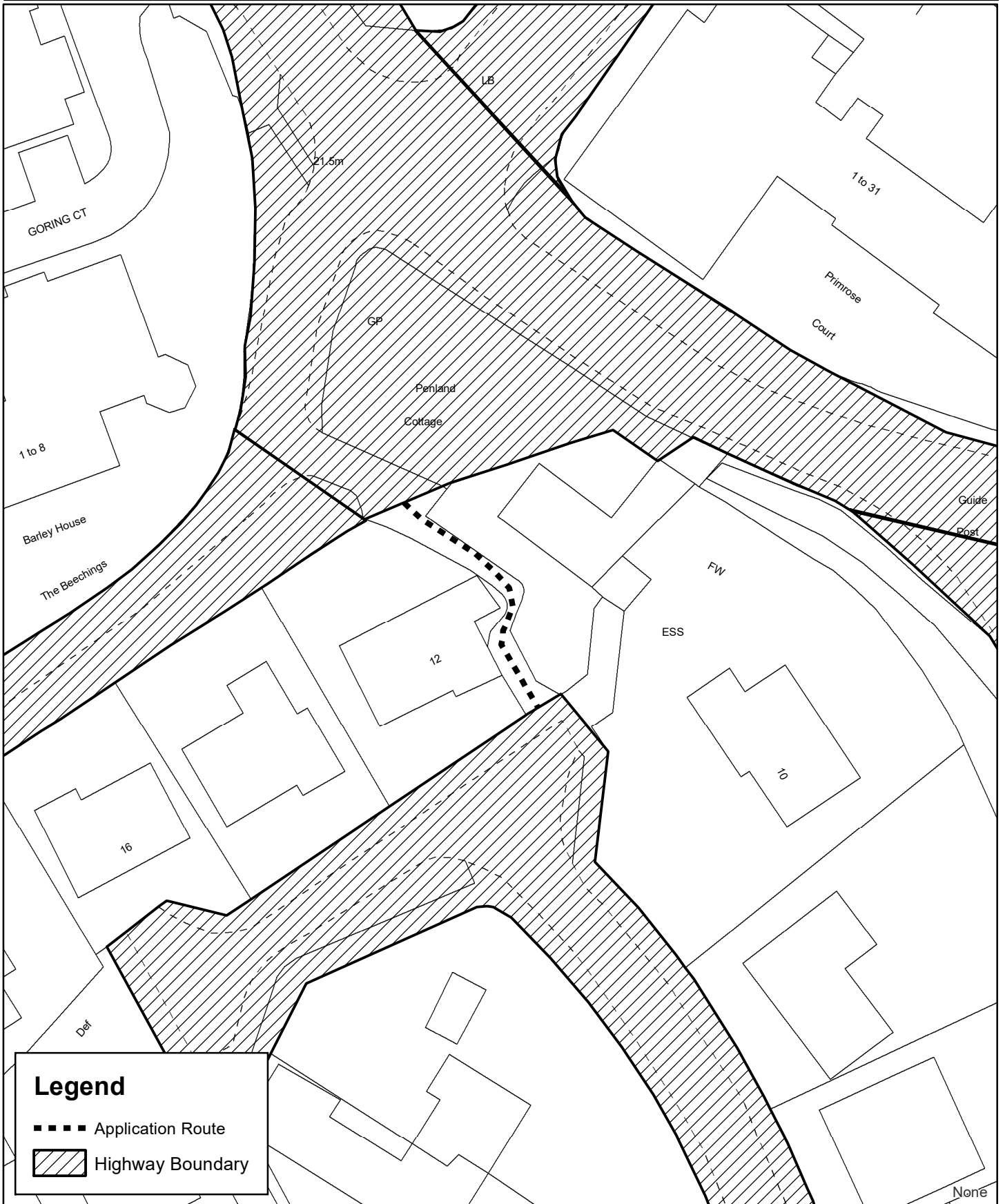
Photocopy
liable to
distortion

Matt Davey
Director of
Highways, Transport
and Planning



This page is intentionally left blank

Parish: **Bramber/Steyping**



Legend

- Application Route
- ▨ Highway Boundary

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office (c) Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. West Sussex County Council, 100023447, 2022.

Coombe Drove to Bostal Road Twitten

Plan: 01815 1:500
Date: 24.11.2022

OS Sheet: TQ 11 SE
Grid Ref: 5178 1106



Photocopy liable to distortion

Matt Davey
Director of Highways, Transport and Planning



This page is intentionally left blank