

Highways Act 1980 S118, 119 and S25
Fittleworth – Request for Extinguishment of Part of Footpath 702
and Footpath 2866; Diversion of Part of Footpath 701 and
Creation of Additional Footpath at Warren Barn

Inspecting Officer's Summary Report (to be read with Mike Walker's Consultation Report)

1 The background to the proposal- location plan 01669 and proposal plan 01670

An application for the above path changes has been received from Mike Walker – Public Rights of Way and Countryside Access Professional, on behalf of the owners of Warren Barn, Bedham Lane, Fittleworth. The site was inspected by the Rights of Way Officer on 21 November 2014 and, together with Mike Walker, on 18 June 2015 .

The owners of Warren Barn would like part of footpath 702, which passes close to their house, to be removed. They are unable to offer an acceptable diversion route and so request consideration is given to extinguishment of the path on the grounds it is not needed owing to a nearby alternative route via the existing path network. As a consequence of the extinguishment proposal some smaller changes to adjoining paths are also proposed. The proposal the applicants have put forward as shown on plan 01670 follows discussion with the Rights of Way Officer and Mike Walker.

Mr Walker has examined the proposal in detail and has considered the issues involved for each element in the context of the relevant legal tests. His statement, which is titled 'Consultation Report. Highways Act 1980 S119, S118 and s25', is to be read in conjunction with this report. It concludes that the necessary legal tests for each element of the extinguishment and diversion proposals are met.

Although the statement considers some issues which may extend beyond the scope of the legal tests for extinguishment, it is accepted that a reasonable case for the legal tests having been met appears to have been demonstrated. However, in order that a neutral position be retained until the results of consultation became known, letters of consultation were sent out using Mike Walker's Statement to provide the information about the proposal, accompanied by the usual WSCC plan, together with a covering letter requesting comments as usual but not making a recommendation of support or not. The responses received are summarised as follows.

2. Consultations

On 20 November 2015 letters of consultation were sent to the relevant user groups and other interested parties with the request that any comments be submitted by 8 January 2016. Notice of the consultation was included in the Members Information Sheet.

Some of those who replied raised a number of minor points and queries which were later resolved following discussion with the Rights of Way Officer as follows. The Parish Council sought reassurance about the measurements of the lengths of path affected and required clarification that the diversion of the route F to G simply formalised the existing situation on the ground.

The South Downs National Park Authority's Rights of Way and Access Officer raised some doubts about the strength of the grounds for extinguishment and made suggestions about further monitoring of the present level of use. However, in view of the general acceptance of the proposal by other consultees he concluded his response by advising he does not wish to object to the proposal but may review his position if there is strong user objection at the Order making stage.

The Ramblers advised that they have no objections and Horsham District Council replied to consultation but had no comments. Both the South Downs Society and the Sussex Police advised that they fully support the proposal.

In conclusion, there are no adverse comments about the proposal in response to the consultation.

3. Landownership

The owner of the land crossed by the length of existing footpath 702, points A to E, at Fitzleroi Farm, has confirmed his support for the proposal. The Stopham Estate, who own land to the south and east of the applicant and are affected by the proposed new link path J to H and also the formalisation of the used route G to F, has indicated consent which is yet to be confirmed.

The rest of the land affected by the proposals is owned by the applicants.

4. Rights of Way Improvement Plan Considerations

The proposal has been examined in the context of the Rights of Way Improvement Plan and is considered to be in accordance with relevant provisions of the Plan.

5. The Equality Act 2010

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

Eliminate discrimination, harassment, victimisation or other prohibited conduct;

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

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

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

In considering this application the County Council's responsibilities under the provisions of the Equality Act 2010 have been taken into account.

6. Crime and Disorder Act 1998 Implications

The Sussex Police Crime Prevention Design Advisor supports the proposal.

7. Human Rights Act 1998 Implications

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.

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.

Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The

main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.

The County Council should be aware of Article 6, the focus of which 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.

8. Overall Conclusion

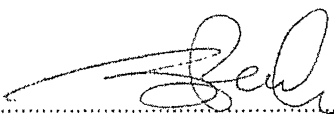
This application includes some fairly small changes to adjoining paths but the main focus of the proposal is the extinguishment of a substantial length of footpath 702. From the applicants' point of view there are a great many issues and points of concern behind the request but largely these are not relevant to the legal tests for extinguishment. The main question of whether the path is not needed for public use, having regard to the extent it is likely to be used and the effect on land crossed by the path is set out in detail in paragraphs 7i and 8 of Mike Walker's report. The report concludes that the legal tests have been met.

Whilst it could be argued that the public's need for the path will only be clearly determined by the publication of the Extinguishment Order, on the basis of the information presently available it is fair to accept that a reasonable case has been demonstrated for the legal tests having been met. It is therefore recommended that the necessary Public Path Orders be made.

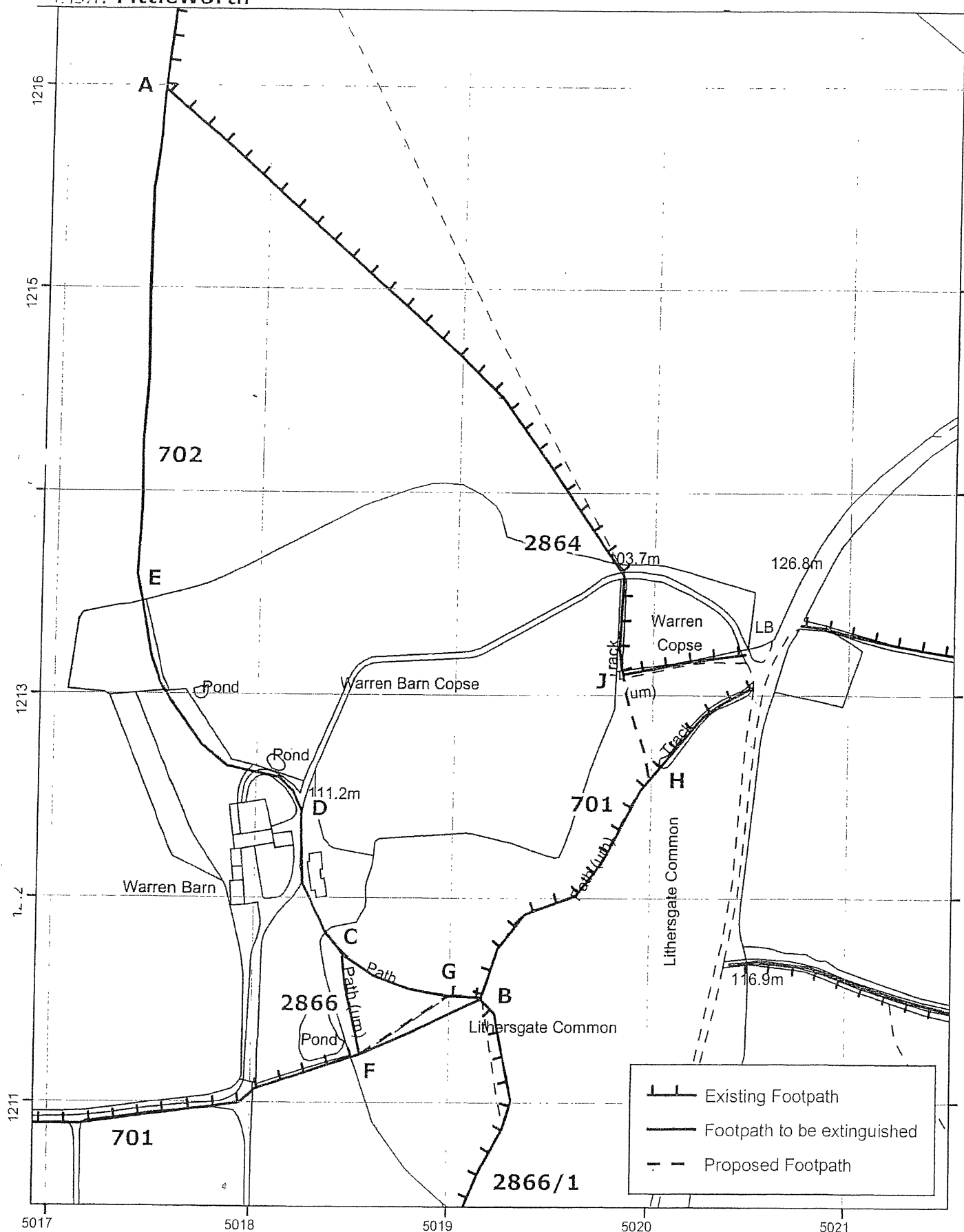
Judith Grimwood
Public Rights of Way Officer
February 2016

DECISION of PRINCIPAL RIGHTS of WAY OFFICER:

It is proposed that Orders be made under Section 118 and 119 of the Highways Act 1980 for the Extinguishment of Part of Footpath 702 and Footpath 2866 and Diversion of Part of Footpath 701; and Creation of an Additional Footpath under the provisions of Section 25 of the Highways Act as shown on attached plan 01670.

PROPOSAL APPROVED..........Jon Perks23/2/16.....date

ish: Fittleworth

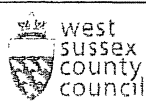


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Fittleworth: Proposed extinguishment of part of Footpath 702, extinguishment of Footpath 2866, diversion of Footpath 701 and creation of a new Footpath - Site Plan

Plan: 01670 1:2,500
Date: 28.07.2015

OS Sheet: TQ 02 SW
Grid Ref: 5018 1211

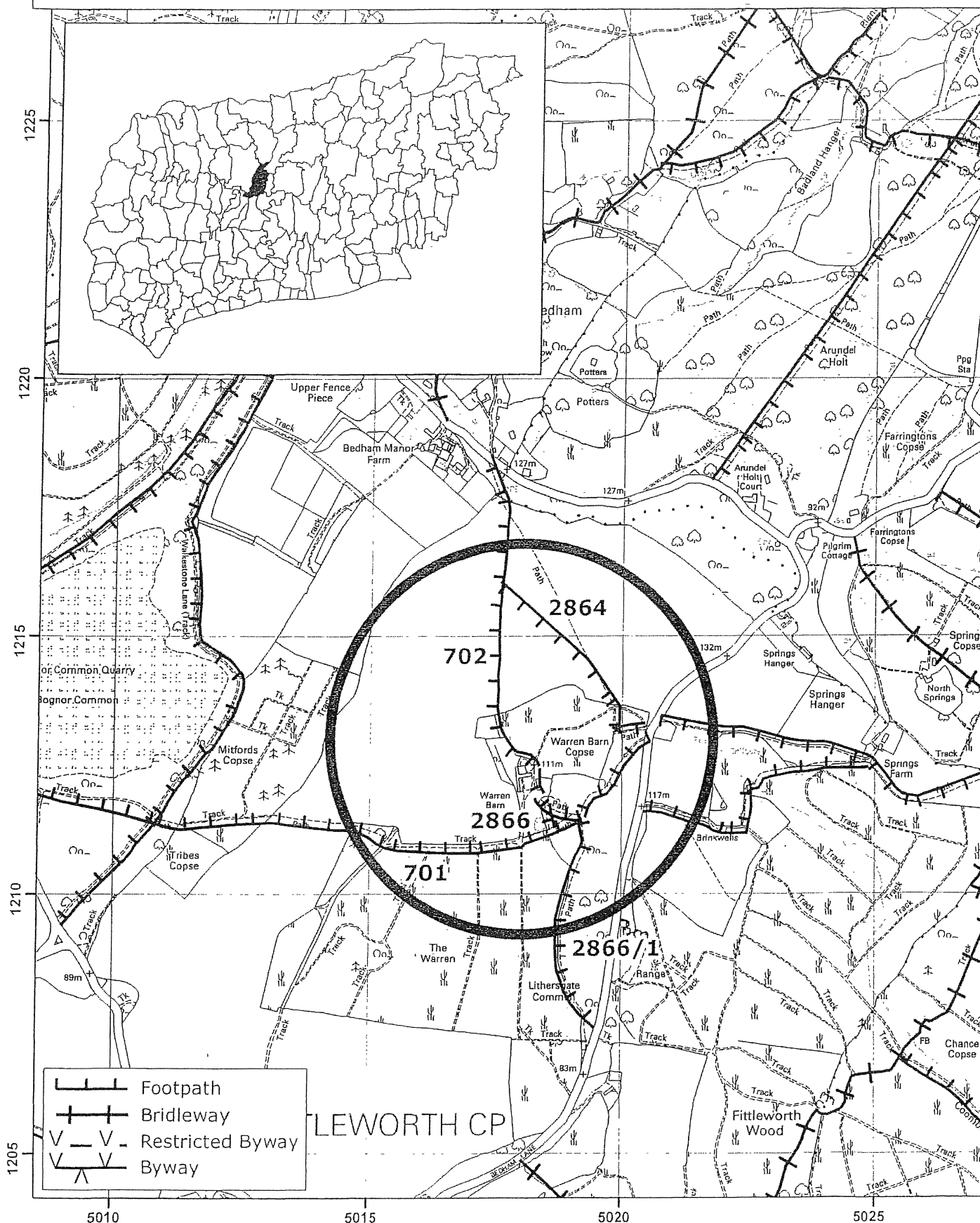


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Nicola Debnam
Director of
Highways
and Transport



Parish: **Fittleworth**



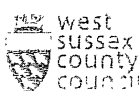
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West Sussex County Council, 10002347, 2015

Fittleworth: Proposed extinguishment of part of Footpath 702, extinguishment of Footpath 2866, diversion of Footpath 701 and creation of a new Footpath - Location Plan

Plan: 01669

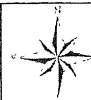
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OS Sheet: TQ 02 SW



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Nicola Debnam
Director of
Highways
and Transport



Date: 27.07.2015

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