

Planning and Rights of Way Committee

6 June 2023

DMMO 8/21 – Definitive Map Modification Order to add to the Definitive Map and Statement for Cuckfield Rural a footpath from the southern end of footpath 11Ar to footpath 25Ar near Stone Barn Cottages, in the Parish of Ardingly

Report by Director of Law and Assurance

Electoral division: Worth Forest

Local Member: Bruce Forbes

Summary

The application has been submitted by the Open Spaces Society and seeks to modify the Definitive Map and Statement for Cuckfield Rural by adding a footpath from the southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly. The application is based on archive 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 footpath from the southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly be made.

1. Introduction

- 1.1 The application has been submitted by the Open Spaces Society and seeks to modify the Definitive Map and Statement for Cuckfield Rural by adding a footpath from the southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly.
- 1.2 The application is based on archive evidence only.
- 1.3 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.
- 1.4 The claimed route begins at Stone Barn Cottages off footpath 25Ar and then continues in a northerly direction passing through an old railway

bridge to join footpath 11Ar in the parish of Ardingly as shown on the attached site plan 01821 marked points A to B.

2. Land ownership

- 2.1 The landowner of the land over which most of the claimed route passes is Ann Grovesnor Knowles under title number WSX287170.
- 2.2 The landowner of the northern end of the claimed route where the claimed route meets footpath 11Ar is the Bluebell Railway Plc under title number WSX235678

3. Background

- 3.1 The claimed route is included on the Cuckfield Rural District Definitive Map area. This fell within East Sussex County Council (ESCC) until 1974 when the County boundaries were amended and Cuckfield Rural then became part of West Sussex County Council.
- 3.2 A Permissive Path agreement between Mrs A Knowles of Burstye Farm and the County Council goes from footpath 25Ar to the west of the claimed route heading in a north easterly direction until meeting the old railway and following this to meet public footpath 11Ar on the northern side of the railway bridge.

4. Consultations

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

- 3.1 Bruce Forbes, local member for Worth Forest

Mr Forbes stated he fully supported the application.

- 3.2 Mid Sussex District Council

Have no objections to the proposal

5. Evidence submitted in support of the application

The applicant's submission can be read in full at Background Paper C. The application is based on archive evidence only. The applicant asserts, taken as a whole, the historic evidence presented demonstrates the existence of a highway over many years. The applicant asserts the application passes both the reasonable allegation test and the balance of probability test. A summary of the evidence considered by the applicant is presented below.

- 5.1 First Edition of the Ordnance Survey Map 25

The applicant asserts that claimed route is shown from Burstye Farm to today's public footpath 11Ar denoted by a double dashed line. The railway has not yet been built.

Officer comment: It is agreed that the claimed route is shown on the Ordnance Survey map.

5.2 Railway records, plan 1877 and book of reference QDP/428/1 and QDP/428/2

The application states that the claimed route is shown below the proposed railway line and footpath 11Ar is also shown. Similarly, to the first edition of the Ordnance Survey map, a route is shown branching to the left. The claimed route goes through parcels 44 and 45. The applicant states the book of reference describes parcel 44 as a "field and footpath" and 45 as "field, stream, occupation road and footpath".

The applicant contends that of the nearby land parcels, as only parcel 44 and 45 have footpaths through them it is likely that the claimed route and path 11Ar is the footpath referred to in the book of reference. The occupation road is likely to be the route to the right passing through parcel 45 and 49 as both have occupation roads in the book of reference.

Officer comment: It is agreed the claimed route is shown on the railway plan. However, it is not possible to determine conclusively that this is the footpath referred to in the book of reference.

5.3 Finance Act Maps IR124/1/44 and IR124/1/61 National Archives

The applicant states that this evidence shows there are 3 rights of way in the hereditament (no. 36) and suggests these are the claimed route and part of today's public footpath 11Ar, the path to Avins Farm (today's public footpath 25Ar) and the path going off to the north-east (today's public footpath 17AR).

Officer comment: It is agreed that the claimed route is shown on the map denoted by double dashed lines and the other two routes follow the same course as today's public footpaths 17Ar and 25Ar.

5.4 Finance Act Field books IR58/40184

The field book states that there was a bridleway and two paths in the hereditament (No.36) for which a reduction of £50 is awarded. The applicant suggests that it is likely the bridleway went from one road to another and so may have extended from Avins Farm. The applicant suggests that the claimed route is one of the footpaths for which a deduction is claimed in the hereditament

Officer comment: It is agreed that a deduction of £50 is awarded for a bridleway and a path, however, as the finance maps are not annotated it is not possible to be certain one of these paths was the claimed route, although it is possible.

5.5 Rights of way Act 1932 Survey and First Definitive Map (C/C 11/5/105)

The applicant presents evidence from East Sussex Rights of Way Sub-Committee relating to the creation of the first Definitive Map on the 23/11/1954. The minutes indicate that an extension of path 11Ar, path

11c, was shown on the Cuckfield R. D 1935 map. It is stated in the minutes that

"the Draft map shows a public footpath from Stone Barn Cottages northwards under the railway line to join path Ardingly 14 in the east of Ardingly Cottage".

It is also stated in the minutes that the landowner north of the railway admits to a public right of way but the Railway deposited plans do not. The minutes go on to indicate that the railway company believed it would be "*ultra vires*" for them to show the footpath on their plans and would have prevented them filling in the space under the bridge. The committee go on to outline that there is a locked gate under the railway bridge and the path is obstructed.

The applicant outlines that the minutes show that the committee recommended for the path to be deleted from the draft map. The applicant contends this decision by East Sussex County Council likely overlooked other evidence mentioned above and took the Railway Board's word for it.

Officer comment: The minutes state, as outlined by the applicant, that the committee recommended path 11c was deleted from the draft map. The reasoning from this evidence appears to be because of the objection from the Transport Commission and the fact the route is obstructed.

6. Evidence submitted against the application

6.1 Objection from Mrs AG. Knowles and Bluebell Railway Plc 16 Feb 2023 (referred to throughout the report as "the Bluebell Railway Objection") (Background Paper D)

6.1.1 Mrs Knowles and the Bluebell Railway are not stating the claimed route did not exist but they claim that the route shown was used by those farming Burstye to access the lower fields and woodland to the north of the railway and does not have public rights as a footpath. The full objection can be read under Background paper D, below is a short summary of the objection.

6.1.2 Ordnance Survey Maps. It is considered the Ordnance Survey maps do not present evidence to indicate the route was public.

6.1.3 Deposited Plans and Book of reference. The Bluebell Railway Objection states that they do not agree with the interpretation that the absence of the Surveyor of Highways in the ownership column was an error. They believe the information in the book of reference is correct and the status of the route beneath the railway bridge is accurately recorded as private.

6.1.4 It is highlighted that a Conveyance dated 7 May 1883 records the construction of the bridge for the benefit of the adjoining owners "An occupation bridge under the railway at or near point C on the plan" thereby indicating its private status.

- 6.1.5 Finance Act 1910. It is not considered the Finance Field Books can be considered as proof of the claimed route being a public right of way as the term "Public rights of Way or User" in field books did not distinguish between private rights of way and public rights of way.
- 6.2 Martin & Anna Collins, 3 Stonebarn Cottages, Burstye Farm, Ardingly Road, Lindfield, West Sussex- adjacent Land Owner, 24th March 2023 (Background Paper E)
- 6.2.1 The full objection can be seen under Background paper E, a brief summary is provided below.
- 6.2.2 Mr and Mrs Collins state they have lived in their property since 1985 and have never been aware of a footpath along the claimed route, they are only aware of a permissive path being in place. They also state general objection due to disturbance of wildlife and proximity to their property and resultant infrastructure required to secure their property as a result. Mr and Mrs Collins also indicate that they believe the applicant has mistakenly referred to Hobhouse Farm as they are not aware of any such named farm.
- 6.3 Report by Routewise Consulting on behalf of Warners Solicitors acting on behalf of Mrs Anne Knowles, April 2023 (referred to throughout as "the Routewise Report") (Background Paper F)
- 6.3.1 An objection was received in April 2023 in the form of a report by Routewise Consulting on behalf of Warners Solicitors acting for Mrs Anne Knowles. The report can be seen in full at Background Paper F and a summary is provided in the Annex to this report.
- 6.3.2 The Routewise Report states that Mrs Knowles has owned the land since 1957 and has carried out research on the history of the farm concluding that the claimed route is an occupation road to the farm bringing harvest from the north of the farm to the old tithe barn that was located on the site of Stone Barn Cottages.
- 6.3.3 The Railway documents: the documents considered Lewes and East Grinstead Railway Documents 1877; Lewes and East Grinstead Railway Act 1977; Railway Clauses Consolidation 1845 (para 20- 40 of the Routewise Report).
- 6.3.4 The Routewise Report outlines that the bridge measures at 12 feet on a recent site visit. It is contended that under the Railway Clauses Consolidation Act 1985 private roads were to be a width of 12 feet.
- 6.3.5 The Routewise Report contends that in the 1877 Book of Reference (document 4 of the Routewise Report appendices) the claimed route had William Jolland listed as the owner rather than the Surveyor of Highways indicating that the route was private and not public.
- 6.3.6 The Routewise Report agrees that Parcel 45 is described as "Field, Stream, occupation road and footpath" in the book of reference and several routes are shown crossing the parcel on the railway plans.

However, the Routewise Report states that it is not possible to determine the status of the claimed route from the plans and reference book.

- 6.3.7 Conveyance of land from Lt. Col. Sampson to the Railway Company 1883 (para 32 of the Routewise Report)
- 6.3.8 The Routewise Report states that Parcel 45 which is conveyed describes a "Field, Stream, Occupation Road and Footpath", it is stated that a bridge is also mentioned but described as "an Occupation Bridge under the Railway at or near the point marked C on the said plan".
- 6.3.9 Ordnance Survey Plans (para 41-49 of the Routewise Report)
- 6.3.10 The Routewise Report does not contend that a route has not been shown along the claimed route stating the route is shown between 1874 and 1959 on Ordnance Survey maps. The Ordnance Survey 1959 denotes the claimed route as "F.P.". The 1963 Map labels the claimed route as a track. However, it is contended that due to the Ordnance Survey disclaimer the plans do not provide supporting evidence that the route was a public footpath. It is also stated that the first date that the claimed route was labelled as "FP" was after the County Council's Sub-Committee decided to delete the footpath from the Definitive Map.
- 6.3.11 Lease 1894 between Lt.Col.Dudley Thomas Heatley Sampson of Buxshalls and Mathew Madge for Avens Farm (Document 8 and para 50-53 of the Routewise Report).
- 6.3.12 The Routewise Report states that the lease indicates that the landowner (the Sampsons) did not consider the route from Burstye to Avins Farm to be a public highway as the Lessors reserved a right of way from the Lindfield or Ardingly road through or over the meadow adjoining the road on the east. It is stated that this indicates that they did not consider the claimed route as a public highway as they required to reserve another access from the tenanted land to the Ardingly road.
- 6.3.13 Finance Act 1910 - Plans - IR 124/1/44 (OS Sussex sheet XV.15); IR 124/1/61 (OS Sussex sheet XXVI.3) Field Books - IR 58/40184; IR 58/40185 and IR 58/40186 (Para 54-66)
- 6.3.14 The Routewise Report accepts that there is evidence two footpaths and a bridleway were claimed by the public across Burstye Farm but contends that reference automatically meant the claim was accepted and warranted a reduction. It is also contended that the exact location of these routes cannot be identified and therefore nor can the reduction granted or the status of the claimed route be confirmed.
- 6.3.15 The Definitive Map Process West Sussex Record Office Ref: Draft Map - AM 796/9/1WA 218; Revised Draft Map - AM 796/9/10; Provisional Map - AM 796/9/2 First Definitive Map - AM 796/9/3 (Para 67-78 of the Routewise Report)
- 6.3.16 The Routewise Report outlines that the claimed route was added to the Draft Definitive Map for Cuckfield Rural District 1935 and statement but

then deleted from the provisional Definitive Map for Cuckfield Rural District after an objection from the British Transport Commission (BTC) was considered by the East Sussex Rights of way sub-committee. The Maps held in the West Sussex Records Office support this.

- 6.3.17 Conclusion – The Routewise report concludes that there is clear evidence a track has existed for 150 years along the line of the claimed route. It is contended that there is no clear evidence that the claimed route has ever had public rights and from the evidence it could not be concluded as such on the balance of probability. The Routewise Report concludes that from the evidence the route existed as farm access.

7. Archive evidence considered by the County Council

The County Council have considered the historical records presented by the applicant and objectors as well as relevant records held at the West Sussex records Office and East Sussex Records Office. Below is a summary of the findings in alphabetical order.

- 7.1 Conveyance of land from Lt. Col. Sampson to the Railway Company 7th May 1883 (para 32 of the Routewise Report and page 5-6 of the Bluebell Railways Objection)
- 7.1.1 The images of the conveyance provided are difficult to read, however, the plan does appear to show the claimed route where it passes under the railway bridge marked "C".
- 7.1.2 The Bluebell Railway Objection and the Routewise Report state that the above-mentioned title deed states the bridge under the proposed railway, where the claimed route terminates, is recorded as being constructed for the benefit of the owner "*an occupation bridge under the railway near point C on the plan*". This conveyance is also referred to in East Sussex County Council's minutes (see para 7.1.14 below).
- 7.1.3 The parcel of land conveyed to the railway company is described as "*Field, Stream, Occupation road and footpath*". This is consistent with the description in the railway plans book of reference
- 7.1.4 However, the conveyance was dealing with private rights of property. A transfer of a private right does not mean there can be no public right (Planning Inspectorate Consistency Guidelines).
- 7.1.5 Therefore, while these records indicate the claimed route was used as an occupation road it does not mean the occupation road could not also have had rights on foot as a public footpath. There is mention of a footpath in the conveyance as the parcel of land is described as "*Field stream occupation road and footpath*" but the location of the footpath is not made clear, therefore the conveyance does not provide conclusive evidence either way.

- 7.1.6 County Council Records, West Sussex County Council and East Sussex County Council (Background Paper G)
- 7.1.7 Ardingly Parish File West Sussex County Council
- 7.1.8 There are several letters on the parish file concerning the claimed route from 1929 to 1997.
- 7.1.9 In 1929 the claimed route is described on a document describing Ardingly's footpaths signed by the chairman of the Parish Council. The path is described as a continuation of path 11 "*Upper Lodge Carriageway. Turn into fields on the left by Culpepers' sheds. Leads to Burstye crossed by numbers 14,19,22 and 23*".
- 7.1.10 In 1985 there are a series of letters between WSCC and Ardingly Parish Council as the Parish Council expresses a wish to claim an extension of footpath 11, which is the claimed route.
- 7.1.11 The claimed route is then brought up again in 1992 as Mid Sussex District Council proposes reinstatement of the path having included the proposed reinstatement of the footpath in their draft local plan. WSCC explain the various options to add the route to the Definitive Map.
- 7.1.12 On 29 September 1992 Ardingly Parish Council provide evidence for the reinstatement of the claimed route which includes letters from local groups as well as an extract from the Parish Council minute book 1927-57. The main points of interest from the Parish Council minute book are summarised below;
- There are various entries in the minute book from 1929 to 1942 discussing maintenance of a footpath leading to Burstye such as requiring a hedge to be trimmed and the installation of a finger post.
 - On 21 November 1955 it is stated that the Clerk objected to deletion of the footpath from Upper Lodge leading to Burstye as shown in the deposited map at the post office and schedule in MS Times 2 Nov 1995. This would have been the Draft Definitive Map described at para 7.2.
 - The entry on 19 March 1956 describes the outcome of an enquiry into the deletion of the path held on 15 Feb 1956
- "evidence was given of the use of this path to and from Burstye Farm to Ardingly for many years. The Railway Co. produced evidence that Creep Bridge was built for the convenience of the owner of the land through which the Railway was built when it cut the land in two. A Letter dated 14 March was produced by which it appeared the East Sussex County Council had decided to delete Ardingly 11C from their map. After full discussion it was proposed by Mr. Burcher. Sec. by Mr. Wallis and carried that the County Council's ruling be accepted."*

- 7.1.13 East Sussex Records Office
- 7.1.14 Committee Minutes – East Sussex Rights of Way Sub-Committee Meeting date 23/11/54. East Sussex Records Office C/C 11/5/105 (Background paper G and applicant’s statement pg 18-19).
- 7.1.15 The minutes outline that the railway bridge was provided in accordance with the terms of the Conveyance under which the railway company acquired the land from Colonel Sampson in 1883. The Railway Company object to the footpath as they state the path was not indicated on the railway plans deposited and the footpath would have been ultra vires to the BTC’s use of the land as a railway bridge.
- 7.1.16 It is also stated that there is a gate under the railway bridge which is sometimes locked and the claimed route is obstructed by a pig run and barbed wire.
- 7.1.17 The recommendation is for the path to be deleted from the Draft Map.
- 7.1.18 Inclusion or classification of paths. East Sussex County Council ref C/C/173-29 Ardingly 11 b-c, 26a, Balcombe 16, Horsted Keynes 13, Pyecombe 15, 24 crossing railway lines, by the British Transport Commission.
- 7.1.19 There are a series of letters on file in relation to the deletion of footpath 11c objections and subsequent hearings. The points to note from the correspondence are outlined below.
- 7.1.20 Within this file is a document titled - EAST SUSSEX COUNTY COUNCIL SUMMARY OF EVIDENCE. The document appears to outline documents considered as evidence and it would be assumed this would be when East Sussex County Council considered objections to the deletion of the claimed route from the Draft Definitive Map as the document is concerned with “inclusion”. In addition, the reference given at the top of the documents “Cuckfield R.D 29” is provided on the top of correspondence throughout the file discussing the deletion of footpath 11c from the Draft Definitive Map.
- 7.1.21 The document indicates that the historic documents considered were the Railway Plans, the Tithe map and landowner depositions.
- 7.1.22 21st June 1957- A letter to Cuckfield Rural District which explains the different circumstances between footpath 11c and footpath 26a which was not deleted but also crosses the railway line after the deletion of 11 c was questioned by the district council. It is explained that path 11c was deleted from the Draft Definitive Map and provisional map as *they “were not satisfied there was sufficient evidence of use by the public as of right and without interruption. The County Council were in no way deterred by the Transport Commission’s Legal points.” “The only evidence which was given of the use of the path by the public was by the Brighton and Sussex Path Finders Rambling Clubs once a year since prior to 1939 and two to three times a year since the 1931 respectively but omitting the war years. According to the Parish Councils survey report*

dated 17 February 1951 "the gate under the railway bridge was sometimes locked" and the Rambling Clubs stated there had been barbed wire across the path south of the railway since 1953 and more recently also across the path to the north of the railway. It was agreed that there was no indication on the ground of the path south of the railway and the Parish Councils survey report of 1951 stated that it was difficult to follow."

7.1.23 Summary of County Council records

7.1.24 From the various records above the following course of events in relation to path 11c occurred

- Prior to the Draft Definitive Map there are records suggesting that the path was considered public.
- The claimed route was added to the Draft Definitive Map dated 1953 labelled path "11c".
- An objection is received by the BTC to the inclusion of path 11c on the Draft Definitive Map, though a copy of this objection has not been found.
- In the Committee Minutes (C/11/5/105) from a meeting on the 23/11/23 Committee determine that path 11c should be deleted from the map.
- Objections are then received to the deletion of the path from the Draft Definitive Map.
- A hearing is held on 15 February 1956 to hear the evidence relating to path 11c.
- On 13 March 1956 East Sussex County Council Rights of Way Sub-Committee determined to maintain the deletion of the path. The summary of evidence described above at para 7.1.20-22 indicates East Sussex County Council reviewed a series of historic documents when considering the inclusion of 11c on the Draft Definitive Map. The letter at para 7.1.23 explaining how the committee came to their decision indicates that the Council largely considered evidence of use and concluded at that time the evidence of use was not sufficient and it was apparent from the locked gate there was no intention to dedicate.
- Following the decision to maintain the deletion in 1957, there are letters indicating Cuckfield Rural District Council and the Ardingly Parish Council question the decision made.
- In the 1980's and 1990's there is correspondence indicating the Parish Council's desire to reinstate the path.

- 7.2 Draft and Provisional Definitive Map, West Sussex Records Office (Background Paper H)
- 7.2.1 East Sussex County Council National Parks and Access to the Countryside Act 1949 Survey of rights of Way Draft Map for Cuckfield Rural District 1953 – West Sussex Records Office Ref AM796/9/1. The claimed route is shown on the Draft Map.
- 7.2.2 Cuckfield Rural District Provisional Map with Statement, 1956, West Sussex Records Office ref AM 796/9/2. The claimed route is no longer shown on the Draft Map.
- 7.2.3 Cuckfield Rural District 1st Definitive Map and Statement, 1957, West Sussex Records Office ref AM 796/9/3. The claimed route is not mentioned.
- 7.2.4 Cuckfield Rural District Provisional Revised Map, circa 1960, West Sussex Records Office ref AM 796/9/5. The claimed route is not shown.
- 7.2.5 Statement Annexed to the Draft Revised Map, West Sussex Records Office ref AM 796/9/9. The date of review is given as 25 Jan 1971-related map is AM 796/9/8. The claimed route is not shown.
- 7.2.6 Cuckfield Rural District Draft Revised Map 1971, West Sussex Records Office ref AM 796/9/8. The claimed route is not shown as a footpath but is marked as "tk" on the base OS map. Key states 'tk'= track. The OS sheets are provisional edition dated 1961-68.
- 7.2.7 Cuckfield Rural District Statement for Definitive Revised Map 1960, West Sussex Records Office ref AM 796/9/6. Statement annexed to the Definitive revised map for CR District dated 1960. The claimed route is not recorded.
- 7.2.8 Cuckfield Rural District Revised Definitive Map 1964, West Sussex Records Office ref AM 796/9/7. There are two parts to this map, second part labelled Folio II. Folio II is labelled 1964 and has handwritten annotations going up to 1996. The claimed route is not shown.
- 7.2.9 Determinations regarding Draft Map, West Sussex Records Office ref AM 796/9/10. The records office catalogue gives date of 1955. The claimed route is shown as a footpath to be deleted.
- 7.2.10 Summary of Definitive Map evidence.
- 7.2.11 The claimed route is shown on the Draft Definitive Map but is then deleted from the Provisional Map. Under the National Parks and Access to the Countryside Act 1949 Councils, as surveying authorities, were required to carry out a survey of their lands and prepare a Draft Definitive Map showing all rights of way in their area. Copies of the Draft Definitive Map were then made available for inspection and representations or objections to the draft statement could then be made. If an objection was made then the authority would determine if a modification should be made. The authority was required to serve notice and publish any decisions made following an objection or representation.

- 7.2.12 The evidence demonstrates that under the National Parks and Access to the Countryside Act 1949, East Sussex County Council (with responsibility at the time), determined the claimed route should be deleted from the Draft Definitive Map and not be recorded as a public right of way. The County Council Records outlined in section 7.1 explain the reason for the deletion of the claimed route.
- 7.3 Finance Act 1910
- 7.3.1 National Archives Record, IR 124/1/44 and IR 124/1/61 and accompanying Field Book National Archives ref R58/40184 (see pg 12-18 of the applicants statement)
- 7.3.2 The above two Finance Act maps cover Burstye Farm which is labelled as hereditament 36. The claimed route appears to be shown denoted by double dashed lines from Stone Barn Cottages to the railway line and continuing north of the railway. A route is also shown to the northeast following the line of today's public footpath 17Ar and another route to the west following the line of today's public footpath 25Ar. The routes are all shown denoted by double dashed lines.
- 7.3.3 The field book describes hereditament 36 as Burstye Farm. It is stated that there is a "Bridleway and 2 footpaths claimed by the public". A Deduction is made of £50 for Public Rights of Way or User on the second page under "Charges, Easements and Restrictions affecting market value of fee simple" it is noted as a "B.R and Path". Further down this page by Restrictions it is noted "BR & Path" with £50 with a star and £25 noted next to it.
- 7.3.4 The 1910 Act provided for the levying of tax on land from its valuation at 30 April 1909 to its subsequent sale or transfer. Deductions were made for public rights of way. Reference to a right of way usually occurs by reference to it in one of the documents under the valuation process and exclusion of the route from the assessable parcels of land shown on the map records. Public rights of way or public rights of way user were placed together under "public rights of way or user". (Planning Inspectorates Consistency Guidelinesⁱ).
- 7.3.5 In this instance a clear deduction is made in the field book for Public Rights of Way or User and it has been noted that these are for a "BR and path". It appears under the section "Charges, Easements and Restrictions affecting market value of fee simple" only one path is mentioned as receiving a deduction.
- 7.3.6 The Bluebell Railway Objection states that "Public rights of way or user" incorporates the term public right of way user which included private rights of way. However, the Planning Inspectorate Consistency Guidelines state there is no evidence of this, and the two terms usually distinguished a public right of way to a non-linear public right such as recreation.
- 7.3.7 The applicant contends that the claimed route is likely one of the paths referred to in field book. It is possible that this is the case as only 3

routes are shown crossing the hereditament and two paths appear to have been awarded a deduction, but, this is not certain as the accompanying map is not annotated.

7.3.8 In conclusion, while Finance Act field books and maps can provide good evidence that a right of way existed, in this instance it is not clear where the paths are that the field book refers to. As a result, it is not possible to conclude the claimed route was one of the public rights of way for which a deduction was made. However, it also cannot be ruled out that it was one of the paths for which a deduction was awarded.

7.4 Historic Mapping Evidence (Background paper I)

7.4.1 Ordnance Survey Maps

7.4.2 Ordnance Survey Map 1874 XXVI N.W, First Edition (page 4 of the applicant's statement). The claimed route is shown denoted by double dashed lines. Public footpath 11Ar is also shown to the north. The railway has not been built yet. A double dashed line, which is not recorded as a footpath today, is shown on the map branching to the west of the claimed route just after a stream.

7.4.3 Ordnance Survey Map 1898, Microfiche XXVI N.W. The claimed route is shown denoted by double dashed lines. The Railway line is also shown.

7.4.4 Ordnance Survey Map 1899 2nd edition. The claimed route is shown in the same manner as the 1898 Ordnance Survey Map.

7.4.5 Ordnance Survey Map 1910 edition. The claimed route is shown in the same manner as the 1898 Ordnance Survey Map

7.4.6 Ordnance Survey Map 1912 edition. The claimed route is shown in the same manner as the 1898 Ordnance Survey Map

7.4.7 6" Provisional ORDNANCE SURVEY map Published in 1950 but revision of 1909 with editions in 1938. The claimed route is shown denoted by double dashed lines.

7.4.8 Ordnance Survey 1956 TQ3427. The claimed route is denoted by double dashed lines and labelled as a track.

7.4.9 Ordnance Survey Mapping Sussex Series 1 – 4 dating from 1863 – 1943. In series 1 to 3 the claimed route is shown by double dashed lines. Series 1 to 3 cover the dates 1843 to 1939. Series 4 does not cover the area we are looking at.

7.4.10 Ordnance Survey Map 1:25,000, revised 1937-57 and published 1959. This map is taken from National Library of Scotland and used as the base map on the claimed route plan submitted by the applicant. The claimed route is denoted by a single dashed line running alongside a solid black line and marked as "FP". Public footpath 11Ar is shown denoted in the same way to the north of the railway. The Map Key provided on the website does not give an indication of the definition of FP.

- 7.4.11 Ordnance Survey 1:10,560 published 1963. This map is also taken from the National Library of Scotland and shows the claimed route denoted by a single dashed line and marked by "tk" which the key states means track. Other routes that are footpaths today are also shown in the same manner, such as footpath 17Ar.
- 7.4.12 Tithe Map 1841. A single dashed line follows the path of the claimed route. There is no mention of a path in the apportionments. Tithe maps are solely concerned with identifying titheable land and therefore were rarely concerned with recording or establishing a right of way. While the tithe map provides evidence of existence of a route it does not help ascertain the routes status.
- 7.4.13 Summary of Mapping Evidence
- 7.4.14 Ordnance Survey maps are not indicative of the rights of parties but are indicative of physical features on the ground, however, they can help provide evidential weight when considered alongside other evidence (Planning Inspectorate Consistency Guidelines).
- 7.4.15 From 1883 the Ordnance Survey circular would have been in place that "all footpaths over which there are an undisputed public right of way should be shown". However, from 1888 onwards Ordnance Survey maps came with a disclaimer that the representation of a track or way on the map was not evidence of a public right of way.
- 7.4.16 The claimed route is consistently shown from the earliest Ordnance Survey map in 1874 to the 1963 series.
- 7.4.17 On the 1956 and 1963 version the claimed route is shown denoted as a track. Today's public footpath 17Ar was also shown as a track in the 1963 edition. The 1959 OS map denotes the route as FP, footpath. While this map was published after the decision to delete the route from the Definitive Map it is perhaps suggestive that when the Ordnance Survey map was drawn up the route was established. Having said that, denotation of a route as "FP" does not necessarily mean the route was considered a public footpath as explained above.
- 7.4.18 In conclusion, the Ordnance Survey Map evidence shows that there was a physical route on the ground, however, other evidence will need to be considered to determine whether the claimed route was public footpath or private.

7.5 Inclosure Awards

There were no relevant inclosure awards held at West Sussex or East Sussex Records Office

- 7.6 Lease 1894 between Lt.Col.Dudley Thomas Heatley Sampson of Buxshalls and Mathew Madge for Avens Farm (Document 8 and para 50-53 of the Routewise Report)
- 7.6.1 The pictures provided of the lease are difficult to read, however, from the description provided the lease is referring to land to the east and north of the claimed route and therefore does not mean that the landowner did not have access to land to the north of the railway along the claimed route but was simply reserving a right of access to the road to the west. Without a plan it is difficult to determine exactly where the route for the reserved rights was.
- 7.7 Railway records
- 7.7.1 Lewes and East Grinstead Railway. Session 1876-1877 John Wolfe Barry Engineer Map and Reference Book – East Sussex Records Office QDP/428/1 (see doc 4- 12 of the applicant’s statement)
- 7.7.2 The claimed route is shown, denoted by double dashed lines, crossing the proposed railway within Parcel 45. It is possible the claimed route also crosses Parcel 44 but it is difficult to determine the parcel boundaries.
- 7.7.3 The book of reference accompanying the railway plans describes parcel 45 as “Field, Stream, occupation road and footpath” and Parcel 44 as “Field and footpath” both with the Owner stated to be “William Dixon Jollands”.
- 7.7.4 It is difficult to determine which routes the reference book refers to, however, it is possible the claimed route could be one of the footpaths referred to in the parcel descriptions.
- 7.7.5 If an entry in the book of reference is labelled under the ownership of the “Surveyor of Highways” this is persuasive evidence the route was public. Within the reference book accompanying the railway plans the entries in parcel 44 and 45 are labelled under the ownership of William Dixon Jollands, which points towards the routes being private.
- 7.7.6 The applicant highlights that within the book of reference for these railway plans no parcel other than a road is marked as being owned by the “Surveyor of Highways”. Looking through the document, and as also pointed out by the Routewise Report, there is one entry being Parcel 34 for an Occupation Road, bridleway and footpath in The Parish of East Grinstead stated as being owned by the Surveyor of Highway for the Parish of West Hoathly. The applicant contends this is a mistake as the parish of West Hoathly are stated as owners and the parcel is in East Grinstead. While this is possible it is also possible that it is not a mistake as East Grinstead borders West Hoathly.
- 7.7.7 While it was normal practice for public ways to be marked as “Surveyor of Highways” each document needs to be considered alongside other evidence and with its purpose in mind. The Inclosure Act 1845 created a requirement for railways to retain public rights of way which crossed the

railway route, as a result, deposited plans can be a good indication of status of a route. Landowners, Highway Authorities and Parish Councils would all have scrutinised railway plans, however, recording rights of way was not their primary purpose. Therefore, this evidence must still be considered alongside all other evidence presented in this report (Planning Inspectorate Consistency Guidelines).

- 7.7.8 The Routewise Report states that the Bridge which passed under the railway measures at 12 feet and under the Railway Clauses Consolidation Act 1863 private roads were to be a width of 12 feet. However, this does not mean that it did not have public rights of foot over it.
- 7.7.9 In conclusion it is not possible to conclusively determine the status of the claimed route from the book of reference as it is not clear if it is one of the routes to which the book of reference refers. It is also not clear what the status of the routes were, public or private. While the routes are not marked as owned by the Surveyor of Highways, only one other entry, other than a road, is labelled as such.
- 7.8 Section 31(6) Highways Act 1980 – landowner deposits
 - 7.8.1 A declaration under Section 31(6) Highways Act 1980 was submitted by the landowner, Mrs A Knowles, on 1 February 1993 and a statement on the 27 February 1999. The claimed route was not declared
 - 7.8.2 A further Statutory declaration dated 8 February 2005 was submitted by the landowner, again the claimed route was not a declared footpath.
 - 7.8.3 A Statement and declaration under Section 31(6) HA 1980 was submitted on 8 February 2019, the claimed route was not declared as a footpath.
 - 7.8.4 Whilst this demonstrates no intention to dedicate from 1993, this does not prevent the claim for footpath being made based on historic evidence. The evidence considered in this report predates the landowner deposits.

8. Consideration of claim

- 8.1 In determining this application, it is necessary to decide:
 - 8.1.1 Whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a footpath subsists between points A and B, or in the alternative that a footpath between points A and B is reasonably alleged to subsist, which is the lower test. This lower test requires that it is reasonable to allege a right of way subsists.

The burden of proving this falls to the applicant.
 - 8.1.2 Matters relating to suitability and condition of a way and possible nuisance or need are irrelevant and cannot be taken into account when reaching a decision.

8.2 Archive Evidence

- 8.3 The County Council Records of Parish Council minutes indicate that the claimed route was considered a public footpath in the early 1900's.
- 8.4 In 1956 East Sussex County Council held a hearing in which they heard evidence regarding the deletion of the path from the Draft Definitive Map. Records held by East Sussex and West Sussex County Council give an indication of what was considered at the time. It appears the decision not to include the claimed route was largely based on a lack of user evidence and the landowner's intention not to dedicate the route.
- 8.5 This application is concerned with archive evidence only and therefore evidence of use is not considered when determining this claim.
- 8.6 In determining this application, slightly less weight should be given to records already considered by East Sussex County Council when determining whether to delete the claimed route from the Draft Definitive Map in 1956. However, as we do not have minutes for the hearing on 11 February 1956 or a report by East Sussex County Council at the time, it is not possible to be certain precisely which evidence was considered at the time. Furthermore, the historic evidence must be considered as a whole, including evidence considered in 1956 as well as any additional historic evidence presented in this report.
- 8.7 Historic documents that were considered when it was determined to delete the claimed route from the Draft Definitive Map considered in this report appear to include the Railway Plans and Tithe Map (see para 7.1.21).
- 8.8 The claimed route has been shown consistently overtime, however, the status of the route, either public or private is in dispute.
- 8.9 The claimed route was clearly used as an occupation road which is confirmed in the Conveyance dated 1883. However, this does not mean the route could not also have had public rights on foot. The route is shown throughout time on the Ordnance Survey Maps and the 1959 Ordnance Survey Map marks the route as FP, however, Ordnance survey maps cannot be relied on for status of a right of way. The Finance Act 1910 shows the claimed route, but it is not clearly marked as a public footpath, although it is possible the field books do refer to it as such. The Railway records are inconclusive as we cannot clearly determine if the claimed route is one of the routes described in the book of reference, it is also unclear if rights of way (other than roads) were indicated as being public by being labelled as under the ownership of the Surveyor of Highways.
- 8.10 Taking the evidence as a whole, nearly all of the records considered; Railway Plans, Finance Act Map and Field Book and Historic Maps show the claimed route confirming its existence.

- 8.11 While the archive evidence does not clearly label the claimed route as public it cannot be ruled out and there is no conclusive evidence to demonstrate that the route was not a public footpath.
- 8.12 The County Council Records indicate that the claimed route was considered a public footpath by the Parish Council in the early to mid-1900's and the continued interest after its deletion from the Draft Definitive Map to reinstate, suggests the route was remembered by members of the public. Although East Sussex County Council determined the evidence was not sufficient in 1956 it appears that decision rested on evidence of use at that point in time.
- 8.13 There is a conflict of evidence between that provided by the applicant and the evidence submitted by the landowner in objection. It is usual in such cases to use the lower test, that the right of way has been reasonably alleged to subsist.
- 8.13.1 The matter for determination is whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a footpath subsists between points A and B, or in the alternative that a footpath between points A and B is reasonably alleged to subsist, which is the lower test. This lower test requires that it is reasonable to allege a right of way subsists.
- 8.14 Considering the evidence provided by the applicant, together with all other relevant evidence available, it is not considered that the balance of probability test is met but that a footpath between points A and B can be reasonably alleged to subsist, which is the lower test. Therefore, an order to add a footpath from the southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly should be made.

9. Recommendation

That an order to add a footpath from the southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly should be made.

10. Consultation, engagement and advice

- 10.1 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.

11. Finance

- 11.1 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.
- 11.2 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.

11.3 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.

12. Risk implications and mitigations

12.1 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.

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

13. Policy alignment and compliance

Equality and Human Rights Assessment

13.1 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

13.2 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.

- 13.3 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.
- 13.4 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.
- 13.5 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

- 13.6 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

- 13.7 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

- 13.8 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

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Appendices

- Appendix 1 – Site Plan 01821

- Appendix 2 – Location Plan 01821A
- Appendix 3- Location Plan Parish 01821B

Background papers

- A. Application and plan
- B. Consultation responses
- C. Evidence in support, Applicants Statement
- D. Evidence in opposition, the Bluebell Railway Objection
- E. Evidence in opposition, Mr and Mrs Collins
- F. Evidence in opposition, The Routewise Report
- G. Archive evidence, County Council Records
- H. Archive evidence, Draft and Provisional Definitive Map
- I. Archive Evidence, Historic Mapping Evidence

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