

## **Planning and Rights of Way Committee**

**5 December 2023**

**DMMO 2/19 - Definitive Map Modification Order to modify the definitive map and statement for Chanctonbury to upgrade footpath number 2540 from its western extremity at point A along Furners Lane to point B to a Restricted Byway and to add a Restricted Byway from Point B to Blackstone Lane at point C.**

**Report by Director of Law and Assurance**

**Electoral division: Henfield and Bramber Castle**

---

### **Summary**

The application seeks to upgrade part of footpath 2540 to a Restricted Byway and add a Restricted Byway along Furners Lane from the commencement of footpath 2540 at its western end to where the route meets Blackstone Lane, in the parishes of Henfield and Woodmancote. The application is based on archive evidence.

A similar application was submitted to the County Council in 1983 to upgrade footpath 2540 to a Bridleway and add a Bridleway along Furners Lane, which application was based on user evidence. The matter went to the secretary of state to determine in 1991. The secretary of state turned down the appeal to make an order and it was concluded that the application did not show the route had public status.

The application subject to this report differs to the 1983 application which was for a bridleway. However, given there is new archive evidence presented not considered in 1983, the historic evidence must be considered as a whole, including evidence considered from the 1983 application.

The historic evidence presented and considered clearly demonstrates that the route is of some antiquity, however, there is conflicting evidence as to whether the claimed route had public status or was in fact simply an occupation road with private status.

In conclusion, it is considered that the new evidence presented alongside previous archive documents considered, together, do not demonstrate that on the balance of probability footpath 2450 should be upgraded to a Restricted Byway nor that a restricted Byway should be added between points B and C. It is also considered that there is not sufficient evidence to reasonably allege a restricted byway should be added between points B and C.

## **Recommendations**

That a Definitive Map Modification Order under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 2540 to a restricted byway between points A and B and to add a restricted byway between points B and C on plan 01824 to the definitive map and statement for Chanctonbury, should not be made.

---

### **1. Introduction**

- 1.1 The application, made by Mrs Hilary Pierce on behalf of the British Horse Society, was received on 5 March 2019 and seeks to modify the definitive map for Chanctonbury by upgrading public footpath 2540 to a restricted byway between points A and B and adding a restricted byway from points B to C as shown on plan 01824. It is supported by documentary evidence submitted by the applicant.
- 1.2 The application is made under Section 53 (5) and is reliant on Section 53 (3) (c) (i) and (ii) 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 in the definitive map and statement subsists or is reasonably alleged to subsist over land and that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. The burden of proof rests with the applicant.

### **2. Characters and Features of the Claimed Route**

- 2.1 The claimed route is shown on Plan 01824 attached to this report, running between points A and C.
- 2.2 The route claimed for an upgrade to restricted byway begins at the western end of public footpath 2540 and then heads east along Furner's Lane until the point where footpath 2540 leaves the lane at point B on Plan 01824 (grid reference 523497,116262). At this point the route no longer follows footpath 2540 but continues along Furner's Lane to where it meets Blackstone Lane at Point C, this section is claimed as an addition of a restricted byway. The claimed route is tarmacked until Bilsborough Barn Cottages (grid reference 523015, 116103) after which it becomes a track enclosed by trees/hedges either side until it reaches Blackstone Lane.

### **3. Land Ownership**

- 3.1 A land registry search of the claimed route was carried out which showed that the majority of route is unregistered land. Notice of the application was served on landowners by the applicant and requisitions for information were sent as part of this investigation. Site Notices were also put at both ends of the claimed route.
- 3.2 The ownership of the registered sections of the claimed route is as follows:

- a) Two small sections are under a caution titles WSX303919 and WSX300069 held by South-Eastern Power Networks Limited.
  - b) Another small section is under a caution title WSX407587 held by Rampion Offshore Wind Limited, the same section is also held under leasehold title number WSX412445 the proprietor being TC Rampion OFTO Limited
  - c) A large section to the west is under title WSX350458 held under the DC Allen Will Trust. There are also several leases of the land.
- 3.3 UK Power Networks stated that they have no objections to the proposal providing the statutory rights of protection associated with the cables in the area are protected/incorporated into the order.
- 3.4 Rampion Offshore Wind Limited did not respond to our consultation.
- 3.5 The DC Allen Will Trust have objected to the application as outlined below at Paragraph 6.

#### **4. Consultations (Background Paper B)**

4.1 Standard consultations were sent to amenity groups, internal departments, Horsham District Council, Henfield Parish Council, Woodmancote Parish and the local member (local County Councillor).

4.2 The following comments were received:

4.3 Henfield Parish Council

The Parish Council is aware that the route has been used by horses since the 1970's and believe it should continue to be used as such. They therefore agree the claimed route should become a Restricted Byway. The Parish Council request that WSCC put in "street furniture" to prevent trail bikes and motorised bikes using the route whilst allowing horses free access.

**Officer Comment:** The Parish council presented no further historic evidence to be considered as part of the application.

4.4 Woodmancote Parish Council

Woodmancote Parish Council object to the application. The Parish Council object on grounds of safety at the west and eastern ends of the route, suitability of the route due to its boggy nature and a narrow pedestrian bridge and based on the fact that the landowners object due to security concerns.

The Parish council also state that while the route is an occupation route the Woodmancote end does not have rights of access higher than by horse. Lastly, the Parish Council indicate that no new evidence has been produced since the 1991 application.

**Officer Comment:** When determining this application only evidence which demonstrates whether the tests in Section 53 have been satisfied

can be considered, this does not include comments on the safety and suitability of the route. The 1991 application mentioned refers to DMMO 6/83 ("the 1983 application") which is discussed below at paragraph 7.1.

#### 4.5 The Trail Riders Fellowship (the TRF)

The TRF provided a response by email on the 12 April 2023 and the 15 April 2023, and submitted a further statement on the 19 June 2023. The main points the TRF make are as follows:

- i. Furners Lane is recorded in the 1890 Parish Highways Classification and Report by Charles Adcock, County Surveyor.
- ii. Furners Lane is shown on WSCC list of streets maintainable at public expense.
- iii. A proportion of Furners lane consists of a footway and made-up carriageway.
- iv. The TRF distinguish between Furners Lane and a "way" shown on the Ordnance Survey Map 25 inch published in 1897 (source: National Library of Scotland) where today's FP 2540 commences passing at the side but not contiguous with Furners Lane and not running the full length of Furners Lane.
- v. The TRF state that a "way" is used to describe the physical feature on land which the public uses for the purpose of passage and that this applies to Furners Lane.
- vi. The TRF state the definitive map is not consistent with the definitive statement.
- vii. The TRF ask that it is considered whether Furners Lane is a public carriageway and support the applicants view.
- viii. It is recommended FP 2540 is not upgraded to a Restricted Byway without accurately recording its width and position as it is considered that the footpath is a separate way to Furners Lane.
- ix. It is believed that the exemption in S.67(2)(b) Natural Environment Rural Communities Act 2006 applies to Furners Lane which appears in the List of Streets.
- x. As Furners Lane appears to be a public road mainly used by the public with motor vehicles it is a minor rural public road therefore the exemption in NERC section 67(2)(a) appears to be available.

**Officer Comment:** References to Furners Lane being on the list of streets, Adcock's map and being a publicly maintainable route is only applicable to the most western section of Furners Lane which is publicly maintainable highway but does not form part of the claimed route. The definitive statement does not describe FP 2540 leaving Furners Lane, however, the description of the route simply lacks detail and is not inconsistent with the definitive map.

#### 4.6 Consultation responses from members of the public

- 4.6.1 Ten letters in support have been received, mainly from residents of Blackstone who state the claimed route would provide a safe access route for families and children going to school to Henfield. The claimed route would help reduce the carbon footprint as the alternative is a round trip by road.
- 4.6.2 Several residents highlight the history of the route. One states that "Furners lane was the Roman sand way linking local communities and the Henfield Cattle market". Another states that historically the claimed route was a road from Blackstone's to Henfield used to drive cattle as well as attracting Sunday visitors to the Methodist Church at Blackstone end.
- 4.6.3 Several supporters state recently the route has been blocked off to prevent bike and pushchair access, there was previously a space to the side of a stile users could pass to the side.
- 4.6.4 Three letters in objection have been submitted, which raise points on safety, suitability of use, climate change and biodiversity.
- 4.6.5 An objection from the four Occupants of 1 and 2 Bilsborough Barn Cottages outlines the following:
- i. The occupiers have resided since 2007 and the route has not been used as a Bridleway. This is the case for 20 years as the previous owners would also confirm this to be the case.
  - ii. A kissing gate was installed just to the east of Bilsborough Barn Cottages by Woodmancote Parish Council a few years ago to prevent motor bikes and cyclists using the route. It replaced a stile that walkers with mobility issues found hard to climb.
  - iii. A section of the tarmacked Furners Lane is the responsibility of the residences of 1 and 2 Bilsborough Barn Cottages, the residents have asked who would pay to maintain this if became a restricted byway.
  - iv. The road floods in the winter which could be dangerous for horse riders.
  - v. Access from the tarmac section to Furners Lane just outside Bilsborough Cottages has been used for parking for over 20 years and would not be suitable for access by horse.
  - vi. Sections would become poached due to use by horses.
  - vii. Where the route is flooded in the winter and the ground poached this could lead to increased risk of flooding of 1 and 2 Bilsborough cottages, again the residents have asked if the council take responsibility for this.
  - viii. Furners Lane is not suitable as there are few passing points and the visibility is poor in places.

ix. Encouraging higher use of the unmade path will influence biodiversity in this area. Horse riding can damage the soil and soil biodiversity.

4.6.6 An objection from the resident of Oldfields, Furners Lane outlines the following:

i. Furners lane for the first mile is a narrow tarmac track with blind bends and has become busier in recent years due to commercial vehicles accessing Pear Tree Farm, this would be hazardous for horse riders.

ii. The track narrows to a grass track where there is a kissing gate. There has been a locked gate or fence since 1972.

iii. The lane is prone to flooding.

iv. A picture of a report by the County Secretary for the rights of way sub- committee is produced from the 25 November 1991 for an application to upgrade FP 2540 to a bridleway and for the addition of a Bridleway. The recommendation of the report was for the application not to be approved.

4.7 In considering the result of the consultations, members of the Committee are requested to bear in mind that, when determining this application, they can only take into account evidence which demonstrates whether or not the tests in Section 53 have been satisfied. Matters of suitability of the route are not relevant to the legal tests.

## **5. Evidence in Support of the Application (Background Paper C)**

5.1 As mentioned above at paragraph 4.6.1, ten letters of support were received from members of the public.

5.2 The applicant asserts that the independent strands of evidence presented when considered together show that the claimed route had at least Bridleway rights as the route was an ancient highway having been described as a lane, road or highway from 1469. The applicant states that there is no record of ownership of the claimed route which is consistent with public use. The applicant's submission can be read in full at Background Paper C. A summary of the evidence presented by the applicant is set out below followed by the officer's interpretation of the evidence presented. The evidence is presented in the order it appears in the applicant's statement.

5.3 Historic Maps

5.3.1 Budgen Map 1723

West Sussex Records Office (WSRO) reference PM 249 and page 4 of the applicant's statement

The claimed route is not shown.

**Officer Comment:** A route is shown from Henfield to Blackstone but it does not follow the same line as the claimed route.

### 5.3.2 Yeakell and Gardner Sussex Map 1778

WSRO reference PM 249 and page 5-6 and appendix 1 of the applicant's statement

The route is clearly shown bound by black lines on each side. The applicant contends that few private roads were shown on the Yeakell and Gardner Map, therefore, it is more likely than not the route was public, and the depiction is consistent with a vehicular highway.

**Officer comment:** The claimed route is shown depicted as described above and could have been used by wheeled vehicles, however, without a key it can only be concluded that the route was prominent at the time. It is not possible to determine if the route was public or private.

### 5.3.3 Gardner and Gream Map 1795

WSRO reference PM 249 and page 7-8 and Appendix 2 of the applicant's statement

The applicant states that the claimed route is clearly shown as a wide road denoted as bounded by two black lines. The claimed route is shown as a through route from Henfield to Blackstone which continues eastwards and is more likely than not consistent with public road.

**Officer comment:** The claimed route is depicted as described above, which suggests it was a prominent route which could have been used by wheeled vehicles, however, without a key or similar the map is not conclusive as to its status either public or private or as to what rights it carries.

### 5.3.4 Greenwood and Greenwood Map of Sussex 1825

WSRO reference PM 249 and page 9 and appendix 3 of the applicant's statement

The applicant asserts that the claimed route falls within the definition of a crossroad and therefore the depiction of the route is most suggestive of the application being a public road.

**Officer Comment:** The claimed route is shown enclosed by parallel black lines which is consistent with a crossroad as shown on the map key. Depiction as a crossroad is indicative of a route over which the public had a right of way on horseback or with vehicles. This supports an emerging picture of a prominent route which could have been used by wheeled vehicles.

### 5.3.5 Mudge Map of Sussex 1793

Map sourced from Brighton Pavilion centre reference BHM000009 and page 11 and appendix 4 of the applicant's statement

The applicant asserts the route is depicted as a road and it is assumed the Ordnance Survey map key showing the route as "other road" would apply as Mudge worked for the board of Ordnance Survey at this time.

The applicant contends that the route is also depicted in the same manner as Blackstone Lane as well as several other roads and bridleways today.

**Officer Comment:** The claimed route's depiction is consistent with other roads shown on the map. However, it is conjecture that the Ordnance Survey key would apply to this map and the key does not indicate status as public or private. Therefore, while this document suggests the claimed route was prominent and likely used by horse and cart it is not conclusive as to its status either public or private.

### 5.3.6 Early Editions of the Ordnance Survey 1" Map

#### 1813 Ordnance Survey – First Edition

WSRO reference PM 249, page 12-13 and Appendix 5 of the Applicants statement

The applicant states that the claimed route is depicted in the same way as the roads it adjoins. The applicant states that no footpaths are shown on the map and contends that as the claimed route links two settlement points it is unlikely to be a private access road. The applicant asserts that the line across the application route where it meets Henfield high street is likely due to the fact the high street was turnpiked rather than the route having private status.

**Officer comment:** It is agreed that the claimed route is shown as other roads are shown on the map and therefore likely used by horse and cart, but we cannot be certain of the status as public or private from this map. The depiction of the line across the route at the Henfield end is where Furners Lane is today public Highway and not part of the claimed route.

### 5.3.7 1895 Ordnance Survey 1 inch Map

Sourced from National Library of Scotland on-line map, page 14 of the applicant's statement

The claimed route is shown with a wider eastern end up to the Parish Boundary, depicted by solid black parallel lines except at two small points. The northern border of the route is denoted by dashed lines. The Key accompanying the map indicates it is a third class metalled road.

Correspondence on how privately owned roads should be portrayed is given in correspondence at the National Archives under reference OS 3/260 (a Manuscript letter book dated 1799-1822) which states "as these plans are intended for military purposes no existing road should be omitted; but to distinguish those roads which are entirely on trespass the line of the main road from which they branch is not to be broken for them." The applicant contends that as the claimed route is broken at both ends it is likely to be a public road.

**Officer Comment:** The claimed route is shown in accordance with the key as a fenced, metalled third class road. The two points with northern

dashed lines are likely where the route is unfenced. It is agreed that the reference provided by the applicant to an unbroken line suggesting the claimed route is public could suggest the claimed route is public, however, this source has not been looked at first hand and reference to this interpretation has not been found elsewhere. In addition, while the founding of Ordnance Survey was in response to a military need often the 1 inch maps were produced by local civilian surveyors and it is considered a generalisation that all roads or ways shown were suitable for wheeled artillery (Planning Inspectorate Consistency Guidelines).

### 5.3.8 Ordnance Survey 6inch maps 1879, 1899 and 1912, 1952

Sourced from National Library of Scotland online, page 15 of the applicant's statement

The claimed route is shown consistently along its length in all three maps. There is a broken line running just to the north of the claimed route along certain sections. Along one small section the broken line is shown to the south of the claimed route. The applicant asserts that the broken line depicts a footpath running alongside the claimed route. The applicant claims that this means Furners Lane itself is not footpath only but is a road carrying other wheeled/and or drove traffic. The route may have a line across it where it reaches Blackstone Lane but it is hard to tell as there is writing over the route at this section. There are some changes to the depiction of footpath to the north of the claimed route in the 1899 map and then in the 1899, 1912 and 1952 maps the broken line is now denoted with "F.P" in places. The stretch to the south is no longer depicted in the 1912 and 1952 map.

**Officers comment:** The claimed route is depicted by solid black parallel lines as other roads are shown, however, as the applicant states it is difficult to see if there is a line across the end of the claimed route where it meets Blackstone Lane on the 1879 map. There appear to be lines across the end of the route on the 1912 and 1952 map but not the 1899 map. Lines across the way could indicate a gate or similar, however, as Ordnance Survey maps are not determinative of status but simply show what was on the ground it does not mean the route was private if there was a gate and consequently, not determinative as to the route's status. These maps also imply that a footpath was separate to Furners Lane, although do not all show the same line as today's footpath 2540.

### 5.3.9 Turnpike Plans

The claimed route was not shown on Turnpikes plans for the area in West Sussex Records Office.

### 5.3.10 Inclosure Records

The claimed route is not shown on any Inclosure order.

### 5.3.11 Tithe Records

#### 5.3.11.1 Henfield and Woodmancote Tithe Maps (1845 and 1840) including Woodmancote Parochial Tithe Map

Page 16-20 of the applicant's statement

The Henfield Parish end of the claimed route is uncoloured labelled with apportionment number 1116 which is listed as "Occupation Road". The Woodmancote Parish end is coloured and has no apportionment number. It is suggested that considering the Key at ESRO catalogue ref PAR 324/6/2/2 the colouration depicts this Woodmancote section of the claimed route as a road. All other roads coloured are public roads today. The applicant asserts that occupation roads likely had public access and that was likely vehicular at the time. The applicant also highlights that the DMMO consistency guidelines state that the annotation of a road to and from a point is suggestive of public rights, both maps are marked to their neighbouring Parish.

It is asserted that the difference in depiction between the two Tithe maps is likely due to different surveyors.

**Officer Comment:** The Henfield Tithe map clearly marks the route as an occupation road which means it would have been used for the benefit of occupiers accessing their property and indicates the route was likely not a public road, however, this does not mean the claimed application route did not also have public rights. Although, it does seem unlikely that residents would require an occupation road if the claimed routes already had public vehicular rights.

The Woodmancote Tithe Map shows the claimed route as coloured bound by solid black parallel lines. While other public roads today on the Tithe map are shown in the same way there is no apportionment of the road and as set out in the Planning Inspectorate Consistency Guidelines "the colouring of a road on a tithe map is not in itself good evidence of public vehicular rights". While the key provided by the applicant suggests the depiction is of a road, the key provided is a generic key for tithe maps and not specifically for the Henfield or Woodmancote map.

The Parochial copy of the Woodmancote Tithe map is also considered by the applicant, the map denotes the route in the same manner but the colouring is not as clear, three copies of the Tithe map were produced at the time and while they can vary in quality, they are ostensibly copies of the same map.

5.3.11.2 Altered Tithe Apportionment Woodmancote

1843 WSRO reference ADD MSS/42491 & 42489 , page 21 of the applicant's report

The applicant states that a portion of the claimed route is shown marked "to Henfield" and "to Blackstone" and is coloured yellow suggesting a road.

**Officer Comment:** As mentioned above, the colouring of the route does not necessarily mean the route had status as a road and no key is provided with the map to confirm one way or the other.

The Planning Inspectorate Consistency Guidelines seem to imply the marking of a route "to" and "from" a named settlement is suggestive of public rights applies when determining the status of a road labelled as such in the apportionments, which is not the case here.

5.3.12 1st Edition Ordnance Survey 25 Inch Map to the Mile Map and Book of Reference

5.3.12.1 1st Edition Ordnance Survey 25 Inch Map to the Mile Map 1874 & 1875

WSRO reference County Series 1:25000, page22- 24 of the applicant's statement

The claimed route is depicted in the same manner as other roads on the map, labelled parcel numbers 687,134 and 192 which are described as "road" in the book of reference. While the book of reference does not distinguish public and private roads the fact that it was a through route suggests public use.

**Officer Comment:** The claimed route is denoted as other roads, by solid black parallel lines, but not coloured. The route is labelled "Furners Lane" to the east around Furners Farm. While the parcel numbers 192, 134 and 687 are described as "road" in the book of reference this does not give an indication of private or public status.

As in the Ordnance Survey Maps described above a route is shown to the north of the claimed route denoted by double dashed lines and single dashed lines. Some of this depiction coincides with today's footpath 2540.

5.3.12.2 Boundary Remark Book 1871

National Archives reference OS 26/10448 and page 24 and appendix 10 of the applicant's statement

The claimed route is shown and labelled at the Parish boundary and is likely to have been of more significance than a footpath or private access track.

**Officer Comment:** The claimed route is shown and labelled "Furners Lane" to the west. The route is shown by two parallel solid lines consistent with the depiction of roads, therefore, the route was prominent, but it is not clear from this record whether the route was public or private.

5.3.13 Object Names Book 1896

National Archives reference OS 35/7070 and page 26 of the Applicants Statement

The applicant states that Furners Lane is described as "occupation lane" and "ending at the crossroads 8 chains of Bilsborough Barn". Thomas Becket who owns Furners Farm is authority for the spelling. The applicant asserts that today Furners Lane covers the whole of the

claimed route and it seems the description was incorrectly assessed by Mr Beckett. The applicant also asserts that there is no guidance for the term occupation road when this record was made.

**Officer Comment:** As indicated above the use of the term occupation road or lane usually indicates it was used for the benefit of occupiers of adjoining properties and not a public highway but does not mean public rights over the route could not exist, however, if the route had public status as a restricted byway it seems unlikely that Occupiers would need private access. The fact that Furners Lane is only named until Bilsborough does not help indicate the claimed routes status.

#### 5.4 Railway, Canal and River Records

The claimed route is not shown.

#### 5.5 Highway Records

##### 5.5.1 Highway Surveyor's Map 1915

WSRO reference Add Mss 40406, Page 28-29 and appendix 12 of the applicant's statement

The applicant states that the map was intended to show three major classes of roads in West Sussex. The whole claimed route is shown denoted by a black line and while there is no certainty as to what this indicates as it is not noted in the key it is likely that it is a route of some significance and it provides a link.

**Officer Comment:** The record is useful in indicating the route was significant but is not conclusive in determining status as the map key does not indicate the status of routes depicted in this way.

##### 5.5.2 Highway Surveyors "County of West Sussex Parish Highways Classification and Report" Charles Adcock 1890

Page 30 of the applicant's statement

The claimed route is listed in the Henfield Parish entry as a fifth-class road (road, not byway, bridleway or footpath) for a length of 95 yards, the inclusion in this record means the Parish maintained the section and the County would do so in the future.

**Officer Comment:** A section of Furners Lane at the western end for 95 yards is considered a fifth-class maintainable road according to the classification report. It is likely that this section is the section immediately off Henfield High Street which is not part of the claimed route and is currently publicly maintainable highway. The accompanying map is considered below at paragraph 7.3.

##### 5.5.3 Highway Divisional Surveyor Letter to the Brighton and District Motorcycle Club 25th September 1962

Page 32 of the applicant's statement

The applicant presents a letter from WSCC's surveyors office to Brighton and District M.C.C in the Trial Riders Fellowship's possession which states that from 0.16 miles east of Henfield High Street Furners Lane (the claimed route) is "a Bridleway only". It is asserted by the applicant that the letter refers to the whole of the claimed route known as Furners Lane. The applicant states that this is consistent with the depiction of the route in the 1932 Rights of Way Survey Map see paragraph 5.7.2 below (paragraph 13.1 of the applicant's statement).

**Officers Comment:** It is not certain if the letter refers to the entirety of the claimed route without a map or further correspondence to consider, however, it is considered likely to refer to the whole of Furners Lane. This letter demonstrates that WSCC considered the route a Bridleway, this could have been a mistake made by the Surveyors office as there is no other evidence to indicate the route was considered anything other than a footpath at the time considering the draft and provisional definitive map.

## 5.6 Finance Act 1910- Inland Revenue Valuation

National Archives reference IR124/9/344 and Page 33 of the applicant's statement

The depiction of the claimed route as a white road is indicative of public rights over it and these were most likely vehicular rights as footpaths and bridleways were normally subject to tax deductions rather than exclusion from the hereditament, a private road is likely taxable. The applicant did not consider the field books.

**Officer Comment:** The Planning Consistency Guidelines outline that usually known public highways (most commonly vehicular as footpath and bridleway were usually subject to tax deductions) will be shown uncoloured and unnumbered as appears to be the case with the claimed route. However, it is possible there are other explanations, for example, if the route is private for the use of many but ownership is not assigned. In order to fully assess this record the field books and hereditament entries should also be considered together, these are considered below at Paragraph 7.4. The field books do not appear to provide for any deductions for the claimed route.

## 5.7 Other Maps

### 5.7.1 Bartholomew's 1902

Source, National Library of Scotland, Applicants statement page 35 of the applicant's statement

The applicant states that the whole of the claimed route is shown denoted by an orange and white broken line, the key to the map indicates that this is a "Secondary Road (good)". The applicant highlights Planning Inspectorate Consistency Guidelines which outline that although not much weight can be given to such a map it should still be considered.

**Officer Comment:** The Planning Inspectorate's consistency guidelines state that as Bartholomew's maps were not concerned with the legal status of routes, little weight can be given to the evidence presented that the route was a public road suitable for bicycles.

#### 5.7.2 WSCC Rights of Way Survey and Map 1932

Parish Mark up of Rights of Way - AM 796/13/5 Bundle 3

West Sussex Records office reference AM 796/13/5, page 37 and Appendix 14 of the applicant's statement

The applicant states that the claimed route is shown marked as a "Drift Road", which is "generally taken to mean a road over which cattle can be driven" and as a result the highway must have had at least Bridleway status to drive cattle over it.

**Officer Comment:** The mark up as Drift Road by the Parish Council implies that the Parish Council considered the route had rights higher than Bridleway status, however, this does not mean the route had public rights to the status of a Drift Road.

#### 5.7.3 Map prepared under 1932 Rights of Way Act

West Sussex Records Office reference AM/796/13/1, Page 38 and appendix 15 of the Applicant's Statement

The applicant states that while the claimed route is shown brown following the "FP" to the north of the lane at points, no key is provided so the status of the routes shown is not clear.

**Officer Comment:** The route shown does not follow the path of the claimed route along its entirety but follows the line of today's public footpath 2540 with a slight diversion to the north of the lane just after Furners Farm. The route is numbered 2540 as it is known today and labelled FP.

#### 5.7.4 Definitive Map Survey, First Definitive Map 1952

West Sussex Records Office reference AM/796/2/1 and page 41 and appendix 16 of the applicant's statement

The applicant states from the minutes of Woodmancote and Henfield Parish meetings only a survey of footpaths was considered. The provisional and draft definitive map could not be found at WSRO. The first copy of the definitive map dated 5 September 1952 is found under reference AM 796/2/1 at WSRO and shows the claimed route as a footpath. The scale makes it hard to see the exact route, whether along or beside the lane.

**Officer Comment:** Bridleways are shown in this area on the first definitive map and therefore they must have been considered at the time. The route shown follows the route of today's footpath 2540.

5.7.5 Previous Application to record Furners Lane as a Bridleway 1984/1991  
Appendix 18 of the Applicants Statement

The applicant highlights a few points from the DMMO application made in 1983 to record Furners Lane as a Bridleway by the Mid Sussex Bridleway Group which was considered by the Rights of Way Sub- Committee meeting in November 1991. The applicant asserts that if the ownership of the Lane and the historical evidence had been considered in more detail the outcome of the claim may have been very different.

**Officer Comment:** This application is considered in detail below at paragraph 7.1.

5.8 Property Sales Documents

5.8.1 Blackstone Farm Sales Particulars 1919

WSRO ref SP 1916, page 43 and Appendix 20 of the Applicants Statement

The applicant states that the eastern end of the claimed route is shown on the plan depicted as other vehicular roads today. The applicant asserts that this means the claimed route was at least as substantial as other roads in the area but it cannot be deduced what rights of access the route had.

**Officer Comment:** A small section of the eastern end is depicted as described.

5.8.2 Woodhouse Farm Sales Particulars 1939

WSRO ref SP 2409, Page 44-45 and Appendix 21 of the Applicants Statement

The claimed route is referred to in the Sales Particulars stating that the owners or occupiers benefit from a right of way over the roadway until the lane is made up for heavier traffic by the Local Authority implying the route is currently only suitable for light traffic.

**Officer Comment:** This record asserts the occupiers had private rights over this section of the claimed route and the route was likely private as it was not maintained with carriage/vehicular rights by the Council.

5.8.3 Blackstone Grange Sales Particulars 1961

WSRO ref AM 291/3/124/21, Page 46 and Appendix 22 of the Applicants Statement

The eastern end of the claimed route is referred to in the sale particulars, but the claimed route is excluded from the sale lot.

**Officer Comment:** The eastern end is shown as a footpath on the plan accompanying the sale particulars following the route of Footpath 2540 today.

## 5.9 Estate Plans

Bilsbury, Park and Woodhouse Estate Plan 1817 and Wantley Estate Map 1810

WSRO ref Add Mss 45367, page 48 and appendix 23 of the applicant's statement and WSCC ref ADD MSS 1981, Page 49 and Appendix 24 of the applicant's statement

A section of the claimed route is shown in both Estate maps labelled "Blackstone Lane" and "To Blackstone" and "From Henfield" in the Bilsbury map and "To Blackstone" in the Wantley Map. These notations suggest it was a through route and depictions of the claimed route suggest that it carried more than just foot traffic and was likely to have been used for public traffic both wheeled and on horseback.

**Officer Comment:** The depiction in the Estate maps suggests a prominent route, however, the Estate Maps were produced to show landowners' land and does not suggest the status of the claimed route as public or private, therefore, these maps are only helpful in suggesting the claimed route was a prominent route.

## 5.10 Legal Documents, Mortgages, Conveyances and Memorandum of Agreements dated 1689- 1922

WSRO ref Add Mss 17002, SAS EG/239, SAS-S/309 and SAS-S/420, Wilberforce Add Mss 209 and 210, Lytton MSS 398 and Wilberforce MSS 252-263

Page 49-58 and appendix 25 of the applicant's statement

The applicant presents a series of legal documents held at WSRO showing or describing the claimed route/part of the claimed route. The applicant states the claimed route is either referred to as a highway or a lane and that vendors convey access "with or without horses, carts and carriages" which is indicative of the traffic using the route.

**Officer Comment:** The following legal documents mention the claimed route as a Highway leading from Bilsborough or Blaxton to Henfield; Counterpart release of land March 1689 (WSCC ref SAS EG/239), Conveyance and Deed 1730 (WSCC ref SAS-S/309 and SAS-S/420) and Wymark Indenture March 1747 (WSRO ref Wilberforce Add Mss 209 and 210). While the reference to the route as highway indicates the route was public we cannot be certain to what status and the documents are concerned with private rights not public rights of way.

The Indenture 1770 (WSRO ref Lytton MSS 398) and Title Deeds relating to Backsettown 1602-1805 and 1791-1855 (WSRO ref Wilberforce MSS 262 & 263) describe the route as a "lane". Description as a lane does not indicate whether the route was public or private or to what status the route was used. Where records just show the part of the claimed route on a plan it is shown as a prominent route often as other roads, however, these documents are concerned with private matters and not determinative as to status.

The applicant states that the Memorandum of Agreement 1907 (WSRO ref Wilberforce MSS 255) mentions the route as "in repair as a county lane". Looking at the plan this appears to be the section of Furners Lane to the west, off Henfield High Street that is publicly maintainable highway today and does not form part of the claimed route.

A Mortgage dated 1916 (WSSC reference Wilberforce MSS 256) describes the claimed route as a private road and the mortgagor is said to bear a proportion of the expense for maintaining the road. While, the route could also have had public rights this document implies it is a private road.

The Indenture 1922 (WSSC ref Wilberforce MSS 257) and Conveyance 1922 (Wilberforce MSS 258) refer to a right of access along part of the claimed route "with or without horses carts and carriages". The documents also mention contributing a fair proportion to the roads maintenance and the Indenture of 1922 calls the claimed route a "private road". While these documents are concerned with private rights they suggests private status of the claimed route as it is labelled as private and if the route was used by the public for vehicular access it likely would not require access to be granted for horse and carts.

5.11 British History online, West Sussex Records office ref ADD MSS 30977, Appendix 26 and 27 of the applicant's statement

In the Henfield section, this document purports that the claimed route was part of a route from Henfield to Hurstpierpoint. The Woodmancote section outlines that the route was called the Henfield-Hurstpierpoint road in 1469 but in 1984 it was only a track.

**Officer comment:** The description implies that the claimed route was a substantial route around the 1500s and likely had higher rights than a footpath. However, the document provides no plan so it is not possible to know the exact route described.

5.12 Archaeological Surveys

Backsettown 2003 and Furners Mead 1999

Page 60 to 62 of the applicant's statement

The area is described as "two arable fields adjacent to a known medieval house and road". The applicant asserts from the coordinates that the medieval road is the claimed route and that the survey also suggests Roman origins. The Furners Mead survey states that the medieval ditch found as part of this survey was adjacent to the claimed route and was likely there for drainage purposes.

**Officer Comment:** The Survey describes the assessment area being adjacent to a medieval house (Backsettown) and a medieval road which from the coordinates is likely to be the claimed route. While this survey demonstrates the antiquity of the route it is not conclusive in demonstrating whether the route had public rights. The ditch mentioned

could have been used for a variety of purposes and is not helpful in determining the claimed route's status.

#### 5.13 Ownership

Land Registry searches and a Charge dated 25.05.2012 from title WSX350458 for a Conveyance between Landowners and Chanctonbury Rural District Council 1949

It is asserted that as the majority of the route is unregistered, which is consistent with the tithe map, this is typical of an ancient highway. The applicant was unable to locate the above-mentioned conveyance but suggests this stretch of land may have become private as CRDC had a right of way interest.

**Officer Comment:** There could be many reasons as to why the claimed route is unregistered land and this is not necessarily evidence that the route is public highway. Without seeing the conveyance and history behind it there is no certainty of which section of land it refers or why this section of the claimed route became privately owned.

#### 5.14 Ordnance Survey 1" Map 1798

The application route is shown depicted as other roads that are today public vehicular highway, the applicant states that this confirms the route was depicted as a road in 1798.

**Officer Comment:** The claimed route is shown depicted as other roads suggesting it was a prominent route at the time which was likely used by horse and cart, however, as stated above we cannot be certain from Ordnance Survey maps if the routes status was public or private.

### **6. Evidence Submitted Against the Application (Background Paper D)**

6.1 As mentioned above at paragraph 4.6.4, three letters of objection were submitted by members of the public.

6.2 Response on behalf of D C Allen Will Trust by ET Landnet Limited 2 May 2023 (the "ET Landnet objection")

- i. The DC Allen Will Trust have a legal interest in Blackstone Farm which is located in Woodmancote at the eastern end of the claimed route.
- ii. It is stated that as Furners Farm is located at the end of the route the naming of the route as Furners Lane is considered consistent with the description of an occupation road and not a public highway.
- iii. It is highlighted that in the 1897 25 inch Ordnance Survey map a solid line crosses the route where it meets Blackstone Lane indicating it is not a public highway as this signifies a permanent structure such as a gate.

- iv. The DC Allen Will trust also state that where the route meets Blackstone Lane the 1897 Ordnance Survey map shows a track to the north and therefore does not follow the same line as the claimed route. If it was highway a formal order would have been required to alter the route and there is no evidence of this.
- v. The ET Landnet objection states that the Planning Inspectorate Consistency Guidelines outline that metalled public roads kept in repair by the local authority were shaded by thickened lines on the east and south sides of the road, the claimed route does not feature heavier shading.
- vi. In summary the objection concludes that there is no new evidence since the status was settled in 1991. Furthermore, the description and the depiction of the route is consistent with that of an occupation road which did not have highway status.

**Officer Comment:** The first section of Furners Lane to the west is publicly maintained highway. There is a line across the end of the way where it meets Blackstone Lane which could indicate a gate or similar structure and therefore imply the route was not public, however, this is not entirely consistent with the historic map's depiction, as today's public footpath is shown to the north of the claimed route and access appears to be at the same point where potentially a gate is shown. Furthermore, as indicated at paragraph 5.3.8, Ordnance survey maps were concerned with showing what was on the ground, the presence of a gate doesn't necessarily mean the route was private.

As outlined in the ET Landnet objection the 1897 Ordnance Survey 25 inch map showing the claimed route does not have thickened lines to the east or south. In addition, no other Ordnance Survey maps considered by the County Council in section 7.2 present thickened lines post 1894. . However, while the Planning Inspectorate Consistency Guidelines suggest shaded lines to the south and east of a route are a potential indication of metalled public roads from 1894 onwards it is also stated that this is not necessarily an indication of public status. Furthermore the depiction must be compared with that of other known public roads, the 1910 and 1897 Ordnance Survey Maps do appear to show thickened lines to the east for today's publicly maintainable highway, Blackstone Lane. Therefore, given the comparison to other roads on the map it is considered likely the claimed route was not a metalled public road.

ET Landnet Limited highlight that there is no new evidence since the 1991 application, this is addressed at Section 7 and 9 below.

## **7. Additional Archive and Other Evidence Considered by West Sussex County Council (Background Paper E)**

- 7.1 1983 Definitive Map Modification Order Application – Application to upgrade part of FP 2540 to Bridleway Status and adding a Bridleway at Furners Lane (“the 1983 application”)
  - 7.1.1 The application was submitted by the Mid-Sussex Area Bridleways Group and was based on user evidence.

- 7.1.2 The matter was considered at the rights of way sub-committee on 25 November 1991 and the officer recommended that an order be not made.
- 7.1.3 The following archive evidence was considered as part of the claim; 1778 Yeakell and Gardner through to the 1910 Ordnance Survey Maps, the definitive map including draft and provisional, 1845 Tithe map for Henfield, 1839 Tithe map for Woodmancote, Book titled "Henfield in the news" by Lucie Bishop 1938, Victoria History of the County of Sussex, Various records relating to the Wilberforce archives, Domesday Book of the Finance Act 1910.
- 7.1.4 The report states that "When the Parish survey was carried out, Henfield claimed FP 2540 to be a road used as a public path, whereas, Woodmancote only claimed a footpath. After discussion between the parishes in the early 1950's it was decided to proceed with a footpath.
- 7.1.5 It was concluded that "the archive evidence is not particularly helpful to either side except that it does show the track to be of some antiquity. There is no specific indication that the route was public, however, and it is likely that its origin and purpose was to serve the adjacent properties and farm fields for which private rights of way have been shown to exist. This is, however, only conjecture."
- 7.1.6 Committee agreed with the officer's recommendation and resolved that the DMMO should not be made.
- 7.1.7 The applicant appealed the committees' decision, the matter was then determined by the Secretary of State.
- 7.1.8 The Inspector on behalf of the Secretary of State concluded that "the documentary evidence presented demonstrates that the route has been in existence for a long time but none of it suggests that it was a public right of way. Indeed, the Henfield Tithe Map and the conveyance for Furners Farm indicate that the route was for private use."
- 7.1.9 While the application was not based on archive evidence but on user evidence the Secretary of State concluded the report by dismissing the appeal.

## 7.2 Mapping Evidence not considered by the applicant

### 7.2.1 Ordnance Survey

#### 7.2.1.1 Ordnance Survey Mapping West Sussex County Council Sussex Series 1 – 3 dating from 1843 – 1939

The claimed route is shown denoted by two solid parallel lines and labelled "Furners Lane". Dashed lines are shown above the claimed route in all three maps to the west and east of the route. In series 2 and 3 this is labelled as "FP". The route does not have thickened lines in any of the series. In series 2 thickened lines are shown on other public roads this suggests the route was not a metalled public road (Planning Inspectorate Consistency Guidelines) although the claimed

routes depiction does indicate it was a prominent route. There is no data available for Series 4 map.

7.2.1.2 Ordnance Survey 2nd Edition 1897, Ordnance Survey 1910, Ordnance Survey Map 6 inch to the mile 1963, Ordnance Survey 1974 1:10,000, Ordnance Survey 1991, census districts, Ordnance Survey 1:10,000 Jan 1996

In all of the Ordnance Survey Maps the claimed route is denoted as other roads, by solid black parallel lines, but not coloured. The route is also labelled "Furners Lane" to the east around Furners Farm. In all the maps a route is shown to the north and in some a route to the south is also shown denoted by double and single dashed lines. In some of the maps the route to the north of the claimed route is marked as "FP". The claimed route does not have thickened lines to the south. The 1897 and 1910 Ordnance Survey Maps show thickened lines for neighbouring known public roads today such as Blackstone Lane. As above this suggests the route was not a metalled public road (Planning Inspectorate Consistency Guidelines) although the claimed routes depiction does indicate it was a prominent route.

7.2.2 Draft and Provisional Definitive Maps

Both maps show a footpath on the line of today's footpath 2540

7.3 Highways Survey Records - "County of West Sussex Parish Highways Classification and Report" Charles Adcock 1890

As mentioned at paragraph 5.5.2 of this report the report states that 95 yards of Furners Lane is a fifth-class road. It is considered that this would likely be the section which is today considered highway maintainable at public expense just before the start of the claimed route off Henfield High Street. The accompanying map to the survey held by the County Council was also considered. This shows the claimed route denoted by solid parallel lines and then dashed lines. None of the claimed route is marked as a road on the map according to the Map Key.

7.4 Finance Act 1910 - Field Books Albourne (Henfield). National Archives ref IR58/93882

Hereditaments numbers 766,767,787,796 are considered which lie to the immediate north and south of the claimed route. 766 mentions "alleged public rights" but no deduction is awarded and there is not indication where this is. 767 has a deduction for a footpath but again no details are provided of its location. 787 mentions again mentions "alleged rights of way" but once again no deduction is awarded for a public right of way and there is no indication of the location. It is also stated that there is an "alleged obligation to repair portion of road in Park Farm" but it is unclear of the location of Park Farm looking at the accompanying Finance Act Map. 796 mentions a footpath along the western boundary but this does not align with the claimed route.

As mentioned above at paragraph 5.6 exclusion of a route from Hereditaments can suggest the route was a known public highway. While

it appears, there is no mention of the claimed route in the hereditaments it is not clear from the Finance Act Map 1910 if the claimed route was excluded from the hereditaments as the hereditament boundaries are unclear. In addition, it should not be assumed that exclusion of the route means it had public carriageway rights as there could be other explanations such as ownership not being assigned to one individual, in this instance the claimed route is unregistered and we have seen from the conveyances at paragraph 5.10 that neighbouring owners have had maintenance responsibilities over time (Planning Inspectorate Consistency Guidelines).

## **8. Consideration of the 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, between points A and B, public footpath 2540 ought to be shown as a restricted byway; and

8.1.2 whether the evidence provided by the applicant, together with all other relevant evidence available shows that on the balance of probability a restricted byway subsists between points B and C, or in the alternative, that a restricted byway between points B and C 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.

8.2 The Burden of proving this falls on the applicant.

8.3 As outlined at paragraph 7.1 an application for a Definitive Map Modification Order to add a Bridleway and upgrade Footpath 2540 to a Bridleway along Furners Lane, Henfield and Woodmancote was made in 1983 to the County Council ("the 1983 application"). The Secretary of State dismissed the appeal to make the order on 5 February 1993. While this application was based on user evidence, archive evidence was also considered at the time.

8.4. 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.

8.5 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.

8.6 The application subject to this report differs to the 1983 application in that it is based on archive evidence only rather than user and concerns an upgrading of Footpath 2540 to a Restricted Byway and adding a section of Restricted Byway to the definitive map, rather than a Bridleway. However, it is largely considering the same historic evidence and so when determining this application slightly less weight should be given to archive records already considered in the 1983 application. That said, given there is new evidence presented not considered in 1983, the matter can be reconsidered, and the historic evidence presented must be considered as a whole.

8.7 Paragraph 7.1.3 outlines the archive documents considered as part of the 1983 application. Historic documents that do not appear to have been considered as part of the 1983 application and therefore considered new evidence presented include the following;

- a) Budgens Map 1723
- b) Greenwood and Greenwood 1825
- c) Mudge Map of Sussex 1825
- d) Ordnance Survey Maps 1912 and 1952
- e) Highway Surveyor's Map 1915
- f) Highway Divisional Surveyor Letter to the Brighton and District Motorcycle Club 25 September 1962
- g) Finance Act Map 1910
- h) Bartholomew's Map 1902
- i) Blackstone Farm Sales Particulars 1919
- j) Woodhouse Farm Sales Particulars 1939
- k) Blackstone Grange Sales Particulars 1961
- l) Bilsbury Park and Woodhouse Estate Plan 1817
- m) Wantley Estate Map 1810
- n) Mortgage land in Bilsberough (July 1688)
- o) Counterpart release of land (March 1689)
- p) Conveyance and Deed (1730)
- q) Wymark Indenture (March 1747)
- r) Archaeological Surveys - Backsettown 2003
- s) Archaeological Surveys - Furners Mead 1999

Other new evidence considered by the County Council as part of this investigation also includes Ordnance Survey Maps post 1910 and the Finance Act 1910 Field Book.

8.8 The historic evidence presented as part of this application consistently shows the claimed route as a significant route from Henfield through to Blackstone.

8.9 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 reference to Furners Lane being on the List of Streets is only applicable to the most western section of Furners Lane which is Publicly maintainable highway but does not form part of the claimed route. The part of the claimed route which is Furners Lane does not appear on the List of Streets. 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.

- 8.10 British History Online describes the claimed route as a route from Henfield to Hurstpierpoint in 1469, local residents have made several claims to the antiquity of the route and archaeological surveys of the area suggest the claimed route could have had medieval origin. However, these sources do not provide a specific indication that the route was public and must be considered alongside the other documents presented.
- 8.11 On nearly all the maps considered from the Yeakell and Gardner Sussex Map 1778 to the most recent Ordnance Survey Map of 1991 the route is shown as other roads are depicted or as a very prominent route but few of the maps are conclusive as to the status, either public or private.
- 8.12 Ordnance Survey Maps, while giving an accurate picture of the landscape at the date of survey and carry strong evidential weight, were concerned with mapping physical features and not legal rights.
- 8.13 Three mortgages and conveyances dated between 1689- 1747 describe the claimed route as a highway but we cannot be as certain as to what status of highway i.e. footpath or vehicular highway. These documents were private documents and not produced to show public rights of way.
- 8.14 The Greenwood and Greenwood Map of Sussex 1825 shows the route as a crossroad which is generally used to describe a highway joining other highways or a road joining two regional centres (Planning Inspectorate Consistency Guidelines) although this depends on the purpose of the maps. It has been accepted that depiction of a cross- road on a commercial map of the 18<sup>th</sup> to 19<sup>th</sup> century indicates a public route. It is not clear if this map was considered as part of the 1983 application and therefore what weight can be given to the document.
- 8.15 The Woodmancote Tithe map 1840 shows the route coloured as other roads today but there is no apportionment to describe the route and the Planning Inspectorate guidelines indicate that colouring of a road is not necessarily good indication of public status. The applicant argues that Woodmancote altered Tithe map and the marking of a route "to" and "from" a named settlement is suggestive of public rights as stated in the Planning Inspectorate Consistency Guidelines and this is the case on all the Tithe maps presented. Officers reading of the guidelines is that this applies when determining the status of a road labelled as such in the apportionments, which is not the case here. Furthermore, the Henfield Tithe map 1845 describes the western section of the route as an "Occupation Road" suggesting it was a private route used to allow

owners and occupiers to access their property and this was noted by the Inspector when determining the matter in 1991.

- 8.16 The Charles Adcock 1890 Survey and Map do not show the claimed route as a publicly maintainable highway, indicating the route did not have public status at the time.
- 8.17 The 1895 Ordnance Survey Map shows the route as either a third class metalled road or possibly an unmetalled road. In addition, the 1<sup>st</sup> edition of the 1874 Ordnance Survey Map and accompanying book of reference denote and label the claimed route as a "Road". However, again, this does not necessarily mean the route was a public road as indicated above at paragraph 8.12. While the applicant presents evidence to suggest the public status of the route shown in 1895, reference to this interpretation has not been found elsewhere.
- 8.18 The Object Names Book 1896 labels the western end of the claimed route as an occupation lane suggesting it's status as a private route and as mentioned above the Henfield Tithe Map also labels the western Henfield end of the claimed route as an "Occupation Road".
- 8.19 Bartholomew's 1902 map shows the route as a good secondary road for cyclists, however, the maps were not produced to show the legal status of a road and so can only be given limited weight.
- 8.20 The Inland Revenue Valuation 1910 (Finance Act 1910) shows the route as uncoloured and unnumbered which can be how public highways were shown but it is also possible the route could be shown in this way if the route was private for the use of many but ownership is not assigned (Planning Inspectorate Consistency Guidelines). This would fit the circumstances in this case. The Finance Act field books also do not appear to reference the claimed route and while this may support the exclusion of the route from the hereditaments we cannot be certain, therefore, for this reason as well as those already mentioned it is concluded that the Finance Act records are not conclusive as to the claimed route's status.
- 8.21 Several of the later documents in contrast, Mortgage 1916 and Indenture and Conveyance 1922, indicate that the route had private status as they grant a right of access by horse and horse and cart along the claimed route. The 1922 Conveyance and Indenture also outline that the landowner would be partly responsible for repairs of a section of the claimed route. And the 1922 Conveyance specifically calls the claimed route a "private road". The Woodhouse Farm Sales Particulars from 1939 refer to private rights of access along part of the claimed route. While it is possible public rights could exist alongside these private rights, it seems unlikely that there would be a need to grant a private right along the claimed route if it did indeed have public status.
- 8.22 One of the maps kept as part of the Parish Surveys carried out under the Rights of Way Act 1932 (ROWA), marks the route as a "Drift Road", while this indicates it was considered that this meant the claimed route had higher rights at the time it does not necessarily mean that the Drift Road

was considered public, particularly as the later rights of way survey maps showed only a footpath along and beside the claimed route.

- 8.23 Throughout the ROWA surveys and the consolidation of the draft and provisional definitive map, a route has only been shown as a footpath along the line of today's footpath 2540. The letter from the County Surveyor in 1962 which states Furners Lane is Bridleway only, is likely an administrative error as no other evidence has been found to suggest the route was considered a Bridleway at this point in time.
- 8.24 In summary, it is clear from the evidence presented that the route is of some antiquity, however, there is conflicting evidence as to whether the claimed route had public status or was in fact simply an occupation road which is and was normally used to describe a road laid out for the benefit of occupiers of adjoining properties and not a public highway.
- 8.25 Most of the mapping evidence presented above was considered as part of the 1983 application. The conclusion by the Secretary of State was that they did not provide sufficient evidence to indicate the claimed route should have the status of a public Bridleway.
- 8.26 Of the new evidence presented in this application the early mortgage and conveyances from 1689- 1747 could indicate public status of the route but this is not conclusive. The archaeological surveys which suggest medieval status of the route are not conclusive in determining the status as public. The Greenwood and Greenwood Map of Sussex 1825 does appear to suggest the route was public being labelled as a crossroad and it is not clear if this record was considered at the time of the 1983 application, therefore, some weight should be given to the document. Bartholomew's Map 1902 shows the route as a good secondary road for cyclists, although little weight can be given to this map. The Finance Act Map and field books 1910 possibly show the route as excluded from the hereditament which can indicate public highway, usually vehicular highway, however this is not conclusive.
- 8.27 Several documents appear to indicate private status of the route, these include the Henfield Tithe Map, Object Names Book 1896, Mortgage 1916, Indenture and Conveyance 1922 and Woodhouse Farm Sales Particulars from 1939.
- 8.28 In conclusion, it is considered that the new evidence presented alongside previous archive documents considered, together, do not demonstrate that on the balance of probability footpath 2450 should be upgraded to a Restricted Byway nor that a restricted Byway should be added between points B and C.
- 8.29 It is also concluded that while there is evidence demonstrating the antiquity of the route between points B to C, it is not considered there is sufficient evidence to reasonably allege the claimed route between points B to C had public rights and that a restricted byway should be added between points B and C on this lower test.

## **9. Overall Conclusion and Recommendation**

9.1 In consideration of the evidence submitted both in support of and against the application and as set out above, it is concluded that the relevant statutory legal tests have not been met and an order should not be made.

## **10. Consultation, Engagement and Advice**

10.1 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.

## **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 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.

11.3 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.

## **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 investigating 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.
- 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 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**

- 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 Council's stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when consideration applications against the strict legal tests.

### **Public Health**

- 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 test.

### **Tony Kershaw**

Director of Law and Assurance

**Contact Officer:** Charlotte Nash, Trainee Legal Executive, Environment  
0330 222 6934

### **Appendices**

- Appendix 1- Site plan 01824
- Appendix 2- Site Plan insert 01824
- Appendix 3- Location plan 01824A
- Appendix 4- Location Plan Parish 01824A

### **Background Papers \*\***

- A. Application and plan
- B. Consultation responses
- C. Evidence in support of the application, Applicants Statement
- D. Evidence submitted against the application
- E. Additional archive and other evidence considered by the County Council

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