

Planning and Rights of Way Committee

11 October 2022

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

Report by Director of Law and Assurance

Electoral division: Middleton

Local Member: Jacky Pendleton

Summary

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

Recommendations

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

- 1.1 The application, made by Mrs Julie Robinson, was received on 19 October 2018 to upgrade public footpaths 165 and 166 to bridleway and to add new lengths of bridleway in the Parishes of Yapton, Climping and Middleton-on-Sea. The application is supported by documentary evidence only.
- 1.2 The application is made under Section 53 (3)(c)(i) and (ii) Wildlife and Countryside Act 1980 (WCA), being the discovery, by the County Council of

evidence which shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land.

2. Land ownership

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

3. Consultations

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

3.1 Local member Jacky Pendleton

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

3.2 Yapton Parish Council

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

3.3 Middleton-on-sea Parish council

Confirmed they had no objections to the application

3.4 Arun District Council Planning Department

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

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

3.5 The Open Spaces Society

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

3.6 West Sussex County Council Land and Property Department

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

4. Evidence submitted in support of the application

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

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

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

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

4.3 Yeakell and Gardner's Sussex Map 1778 – 1783

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

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

4.4 First Ordnance Survey Old Series Map of Sussex 1813

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

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

4.5 Greenwood and Greenwood Map of Sussex 1825

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

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

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

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

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

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

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

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

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

4.7 Boundary Remark Books 1872

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

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

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

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

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

4.9 Inclosure Records

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

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

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

4.10 The Victoria County History

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.12 Finance Act Map 1910

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

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

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

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

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

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

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

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

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

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

5. Evidence submitted against the application

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

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

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

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

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

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

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

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

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

5.2 **Crayfern Homes Limited**

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

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

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

5.3 **Amanda Wood**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.5 Frank Smith (previous landowner)

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

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

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

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

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

5.7 Matthew Utting

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

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

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

5.8 **Jane Way**

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

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

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

5.9 **Linda Doubleday**

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

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

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

6. Archive and other evidence

Archive Evidence

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

6.6 Ordnance Survey

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

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

Landowner deposits received by the County Council

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

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

West Sussex Public Path Orders

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

7. Consideration of claim

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

probability a bridleway subsists from points B to C, D to E and F to G, or in the alternative that a bridleway is reasonably alleged to subsist, which is the lower test. This lower test requires that it is reasonable to allege a right of way subsists.

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

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

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

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

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

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

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

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

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

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

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

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

7.8 Claimed route between points D to E

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

7.9 Claimed route between points E to F

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

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

7.10 Claimed route between points F to G

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

7.11 Claimed route as a whole

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

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

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

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

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

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

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

8. Recommendation

7.12 In consideration of all the evidence submitted as set out above, it is recommended that an order under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade public footpath 166 to a bridleway between points A to B and C to D on the application plan be not made.

7.13 In consideration of all the evidence submitted as set out above, it is recommended that an order under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade public footpath 165 to a bridleway between points E to F on the application plan be not made.

7.14 In consideration of all the evidence submitted as set out above, it is recommended that an order under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add new lengths of bridleway between points B to C, D to E and F to G on the application plan be not made.

8. Consultation, engagement and advice

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

9. Finance

- 9.1 The County Council is under a duty to investigate Definitive Map Modification Order applications and all costs associated with the consideration of the application by officers' falls within existing budgets.
- 9.2 Cost implications arise:
- i. In the event of an order being made and objected to, the matter may fall to be considered at a public local inquiry or a public hearing. All fees incurred after the submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, advertising costs etc.
 - ii. Should an order be made and confirmed; if any works are necessary to ensure that the path is open for public use.
 - iii. Should the decision of the committee be challenged by way of Judicial Review.
- 9.3 The recommendation made by the case officer and the decision of the Planning and Rights of Way Committee is based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

10. Risk implications and mitigations

- 10.1 The decision is one that must be taken on strict legal tests:
- i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
 - ii. In the event that an order is made the landowner could appeal to the Secretary of State and the matter be considered by way of written representations, hearing or public inquiry.
 - iii. In the event that an order is not made and the applicant disagrees with the decision then they have a right of appeal pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 to the Secretary of State. The Secretary of State may direct the County Council to make an order, which if objected to could be considered by way of written representations, hearing or public inquiry.
- 10.2 In reaching a recommendation the case officer has considered the evidence in accordance with the law.

11. Policy alignment and compliance

Equality and Human Rights Assessment

- 11.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

- 11.2 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 11.3 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 11.4 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is an interference with these rights and whether the interference is proportionate.
- 11.5 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision-making process as a whole, which includes the right of review by the High Court, complied with Article 6.

Crime and Disorder

- 11.6 The Definitive Map Modification Order process involves the application of legal tests, which mean that it is not possible to give weight to any effect on crime and disorder.

Climate Change

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

Public Health

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

Tony Kershaw

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Appendices

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

Background papers

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