

APPLICANTS STATEMENT

Our reference- SUS-1225

THE APPLICATION ROUTE



Map taken from the WSCC online map of maintainable streets.

Application is being made to add a restricted byway from a junction with the B2141 road at or around grid reference SU833143 to a junction with bridleway 479 at or around grid reference SU829144

The route is in West Dean Parish.

None of it is currently on the definitive map or statement.

1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

1.1 Discovery of Evidence

1.1.1 In order to be able to modify the definitive map and statement, the surveying authority needs to have a discovery of evidence which shows that it can be reasonably alleged that the map and statement are incorrect.

1.1.2 I believe that all of the evidence set out in this statement is new with the exception of the material about the 1932 rights of way act and the first definitive map.

1.2 Weighing the Evidence

1.2.1 The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and another* (2012) EWCA Civ 334 Levinson LJ said, at paragraph 22 “In the nature of things where an enquiry goes back over many year (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless”. As Pollock CB directed the jury in *R v Exall* (1866) 4 F & F 922: ‘It has been said that circumstantial evidence is to be considered as a chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cord. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength”.

Whilst no single piece of evidence is conclusive, I believe that, taken as a whole, the pieces of evidence demonstrate highway reputation over many years

2. HISTORIC MAPS

2.1.1 Planning Inspectorate consistency guidelines comment on these maps as follows: under "Other post-1800 maps" (page 11) 12.43 "Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour”.

2.2 YEAKELL AND GARDNER'S SUSSEX 1778-1783

2.2.1 This map is available on-line as part of the “Old Sussex Mapped” project of the University of Portsmouth at http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell_36.htm

2.2.2 WHAT THIS EVIDENCE SHOWS

2.2.3 The application route is shown in the same way as other minor roads across open ground. However there are also other routes shown that are shown that do not exist today.



2.2.4 THE SIGNIFICANCE OF THIS EVIDENCE

2.2.5 The prospectus for this series of maps sets out the aim of covering all of Sussex and showing all public and private roads and all bridleways. These aims were not achieved. Only the southern half of the county was covered and few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this map means that it was more likely than not, a public route.

2.3 In this map the main route to the northwest and the west appears to be via the application route further suggesting that it is a public highway

2.3.1 The map does not have a key.

2.4 GARDENER AND GREAM MAP 1795

2.4.1 This map is held at the East Sussex records office at the Keep under reference AMS 608/1/1/29/17 The map at the Keep does not have a key. The map is also available online

on the McMaster University site in two sections. The western section is at <https://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A80921>

2.4.2 WHAT THIS EVIDENCE SHOWS

2.4.3 The application route is shown in the same way as other minor roads across open ground. However there are also other routes shown that are shown that do not exist today.



2.4.4 THE SIGNIFICANCE OF THIS EVIDENCE

2.4.5 Few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this map means that it was more likely than not, a public route. In this map the main route to the northwest and the west appears to be via the application route further suggesting that it is a public highway

2.5 GREENWOOD AND GREENWOOD MAP OF SUSSEX 1825

2.5.1 This map is held at the Keep under reference AMS 6008/1/129

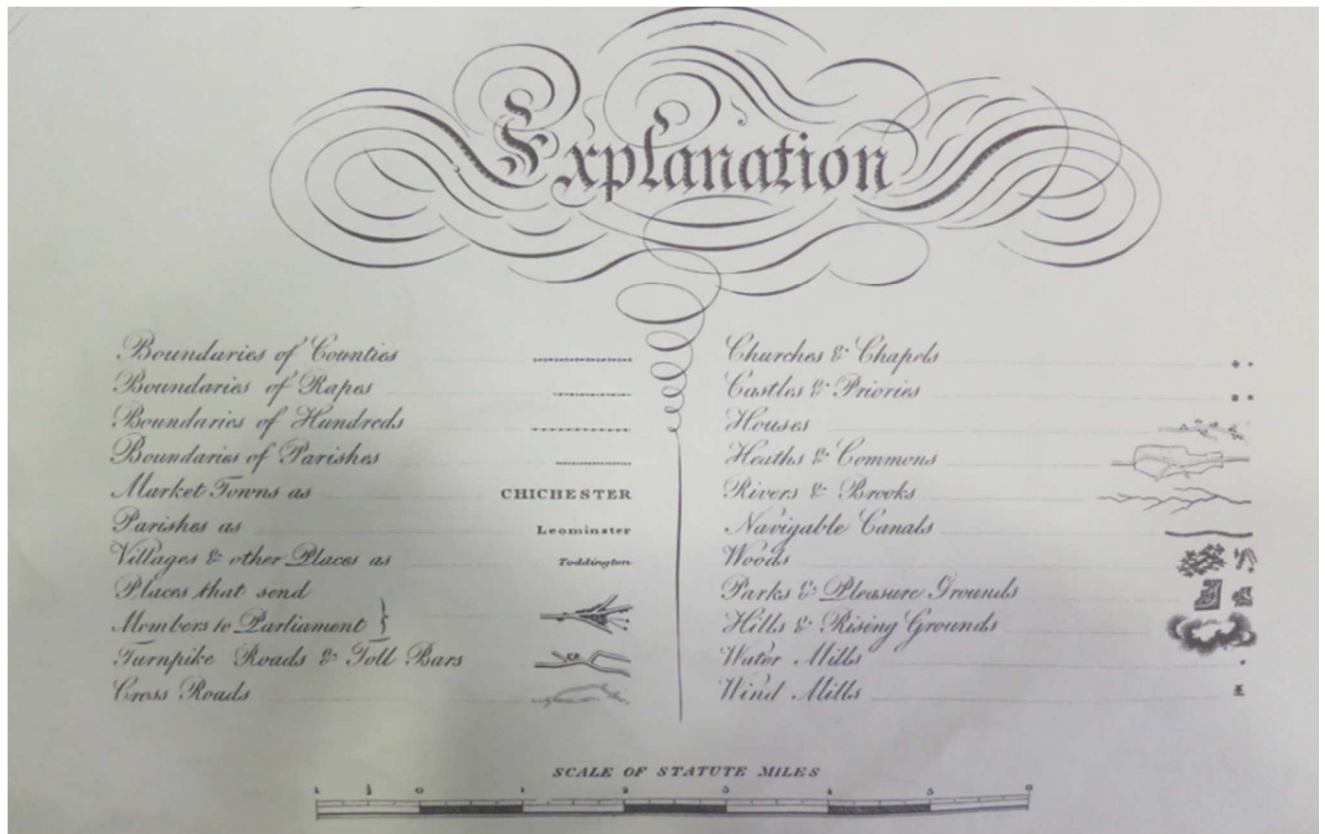
2.5.2 WHAT THIS EVIDENCE SHOWS

2.5.3 The application route is shown in the same way as other minor roads across open ground. However there are also other routes shown that are shown that do not exist today

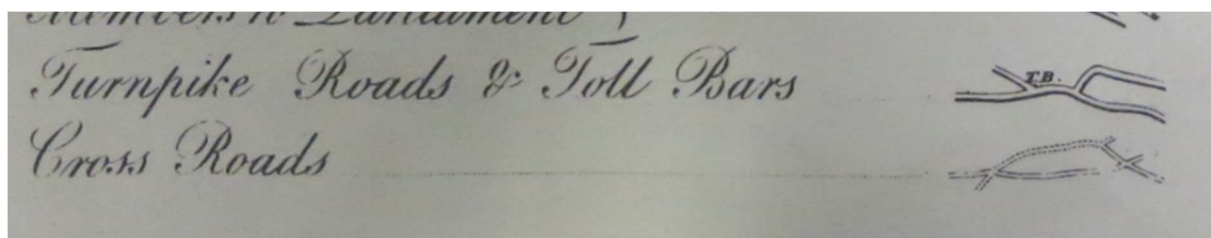


2.5.4 THE SIGNIFICANCE OF THIS EVIDENCE

2.5.5 The map has a key, which is shown below



2.5.6 A close up of the key explains how roads were depicted. (See below)



2.5.7 Paragraph 2.24 of the Planning Inspectorate's constancy guidelines says "In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.

2.5.8 Few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this map means that it was more likely than not, a public route.

2.5.9 In this map the main route to the northwest and the west appears to be via the application route further suggesting that it is a public highway

2.6 MUDGES MAP (UPDATED TO 1873 BUT BASED ON A SURVEY OF 1813)

2.6.1 The map is held at the Keep as part of the Brighton Pavilion collection under reference BHM000009. The map at the Keep does not have a key.

2.6.2 WHAT THIS EVIDENCE SHOWS

2.6.3 The application route is shown in the same way as other minor roads across open ground. However there are also other routes shown that are shown that do not exist today



2.6.4 THE SIGNIFICANCE OF THIS EVIDENCE

2.6.5 Few private roads were shown. (The sheer volume of missed out private roads and tracks can be seen by comparing the number of roads shown on later maps such as the first edition of the ordnance survey 1-2500 series.) The existence of a way on this tracks means that it was more likely than not, a public route. In this map the main route to the northwest and the west appears to be via the application route further suggesting that it is a public highway

3. FIRST EDITION OF THE ORDNANCE SURVEY 1" MAP

3.1.1 Copies of the first edition of these maps can be found at the University of Portsmouth web site at <https://www.visionofbritain.org.uk/> and the National Library of Australia at <https://nla.gov.au/nla.obj-231917049/view>

3.1.2 The maps for Sussex were first published between 1813 and 1819.

3.1.3 Copies of the instructions given about the portrayal of private roads are given in correspondence held at the national archive under reference OS 3/260. The instruction given is "as these plans are intended for military purposes no existing roads 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"

3.1.4 THE EVIDENCE PRESENTED BELOW

3.1.5 This evidence is taken from the National Library of Australia.

3.1.6 WHAT THIS EVIDENCE SHOWS

3.1.7 The route is shown in the same way as other roads over open country. The lines at each end are broken.



3.1.8 THE SIGNIFICANCE OF THIS EVIDENCE

3.1.9 The route appears to be a public road. In this map the main route to the northwest and the west appears to be via the application route further suggesting that it is a public highway

4. TURNPIKE PLANS

4.1.1 There are no turnpike plans relevant to this application.

4.1.2 THE SIGNIFICANCE OF THIS EVIDENCE

5. INCLOSURE RECORDS

5.1.1 The application route does not appear to be covered by any inclosure. order

6. TITHE RECORDS

6.1.1 The Tithe Commutation Act of 1836 enabled tithes to be converted into a monetary payment system. Maps were drawn up to show the tithe-able land in order to assess the amount of money to be paid.

6.1.2 The tithe process received a high level of publicity as landowners would be particularly keen not to be assessed for more tithe payment than necessary. No-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers roads could carry a tithe as they were used as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured in yellow or sienna to indicate public status.

6.1.3 Tithe maps can be accessed at the National Archive in black and white. The maps have been digitalised by the Genealogist web site at <https://www.thegenealogist.co.uk/search/advanced/landowner/tithe-records/> .

6.1.4 I have taken screen shots to show how the route is displayed and any relevant apportionments

6.1.5 THE EVIDENCE PRESENTED BELOW

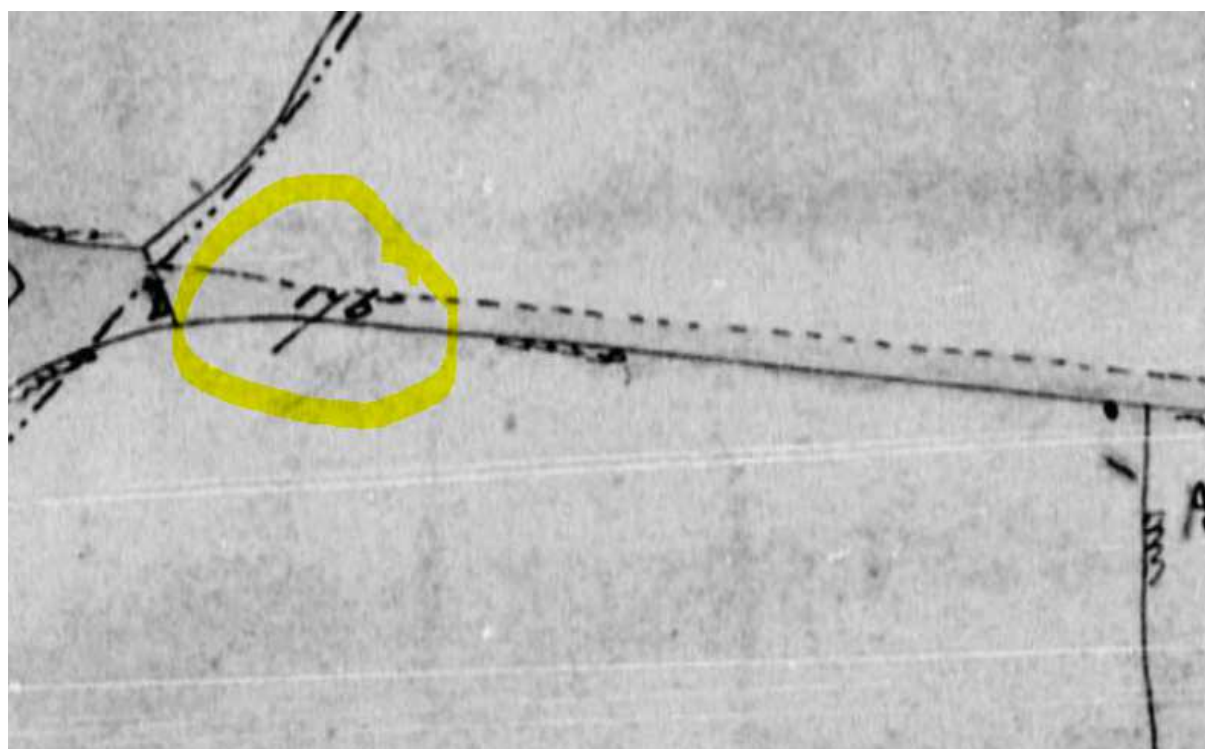
6.1.6 This evidence is taken from the Genealogist site.

6.1.7 WHAT THIS EVIDENCE SHOWS

6.1.8 The Genealogist maps are in black and white but the application route appears to be a darker colour than the surrounding areas. Other routes which are public carriageways today are shaded in the same way.

6.1.9 West is roughly at the top of this map. Where the route comes to a junction at the top of the map (west) the shading continues left but does not carry straight on.

6.1.10 The continuation of the route to the south (left) near the parish boundary is numbered 175. The parish boundary can be seen just to the left (south) of this number



6.1.11 175 is the number used on the West Dean tithe apportionment to describe roads. No owner or occupier is given in the apportionment for these plots. All roads that are public roads today are given this number on the tithe map.

175	Roads 1 st	36	3	38
230	Common	2	2	21
399	Chilgrove Common Down	86	1	27
J.I.		126	.	6

6.1.12 THE SIGNIFICANCE OF THIS EVIDENCE

6.1.13 The case *Dunlop v secretary of state for the environment and Cambridgeshire County council* CO/1560/94 decided by Mr Justice Sedley ruled that Tithe map evidence is that the ways coloured brown can only be public ways (presumably this also applies to non-tithed routes where this colouring was not used). The decision is controversial. Nevertheless it makes case law which is binding on decision makers until overturned.

6.1.14 The application route appears to be a public road linking the Chilgrove area to the next parish.

7. RAILWAY, CANAL AND RIVER RECORDS

7.1.1 There do not appear to be any railway canal or river records relevant to this application.

8. SECOND EDITION OF THE ORDNANCE SURVEY 25 INCH TO THE MILE MAP

8.1.1 The second edition of the Ordnance Survey 1-2500 map can be found online at the National Library Of Scotland at <https://maps.nls.uk/geo/find/#zoom=12&lat=50.91015&lon=-0.76843&layers=101&b=1&z=0&point=50.92660,-0.81203&i=103670239>

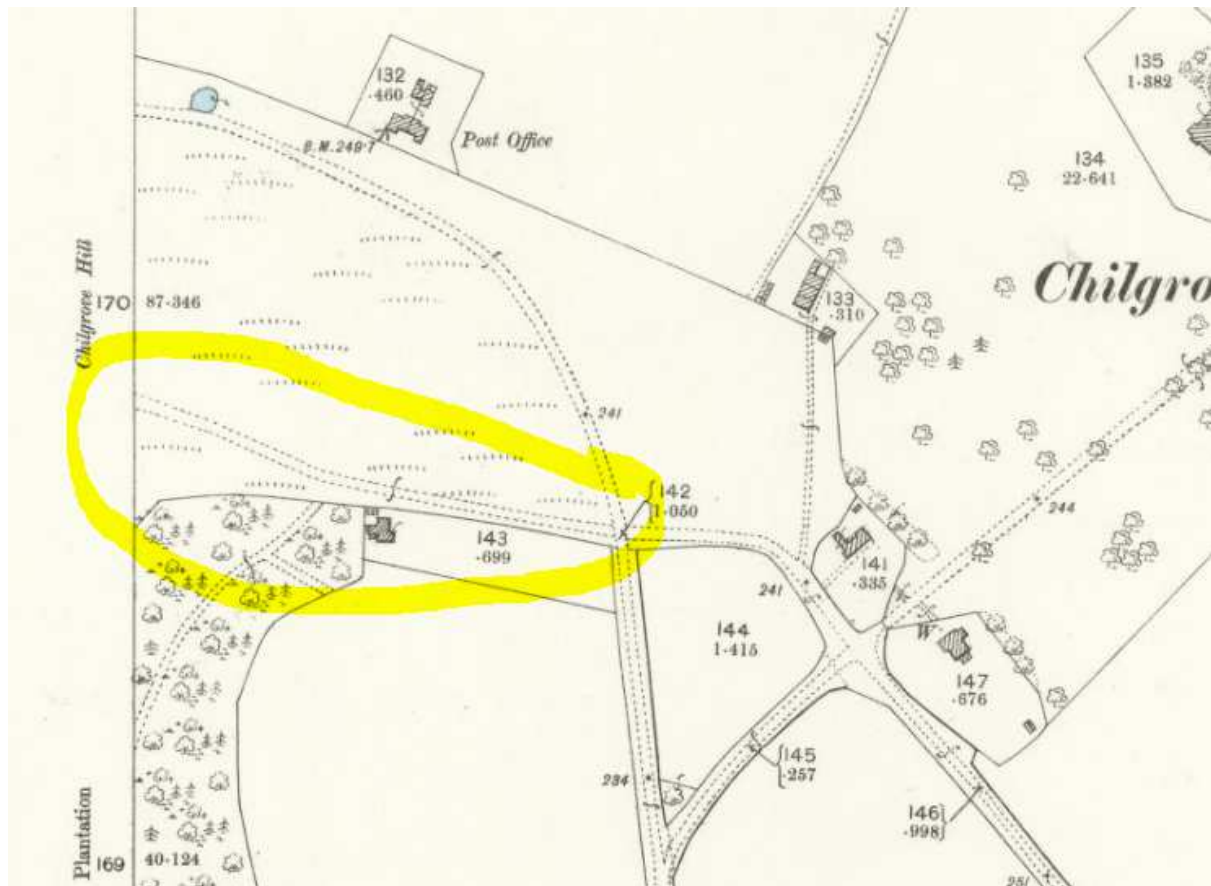
8.1.2 The route is shown on Sussex maps 34 13 and 34 14.

8.1.3 Footpaths and Bridleways were usually shown as FP or BW respectively.

8.1.4 WHAT THIS EVIDENCE SHOWS

8.1.5 The application route is shown in the same way as other roads in the area. It is not labelled FP or BR.





8.1.6 THE SIGNIFICANCE OF THIS EVIDENCE

8.1.7 This evidence suggests that the application route was considered to be a road at the time.

9. THE ADCOCK MAP AND SURVEY FOR WEST SUSSEX

9.1.1 According to the survey report held at West Sussex Records Office under the reference WDC/SU18/1/10, on the 26th February 1890 West Sussex County Council instructed its surveyor, Mr Adcock, to survey parish roads. The County had been formed in 1889 and it seems to have wanted to improve minor roads in its area.

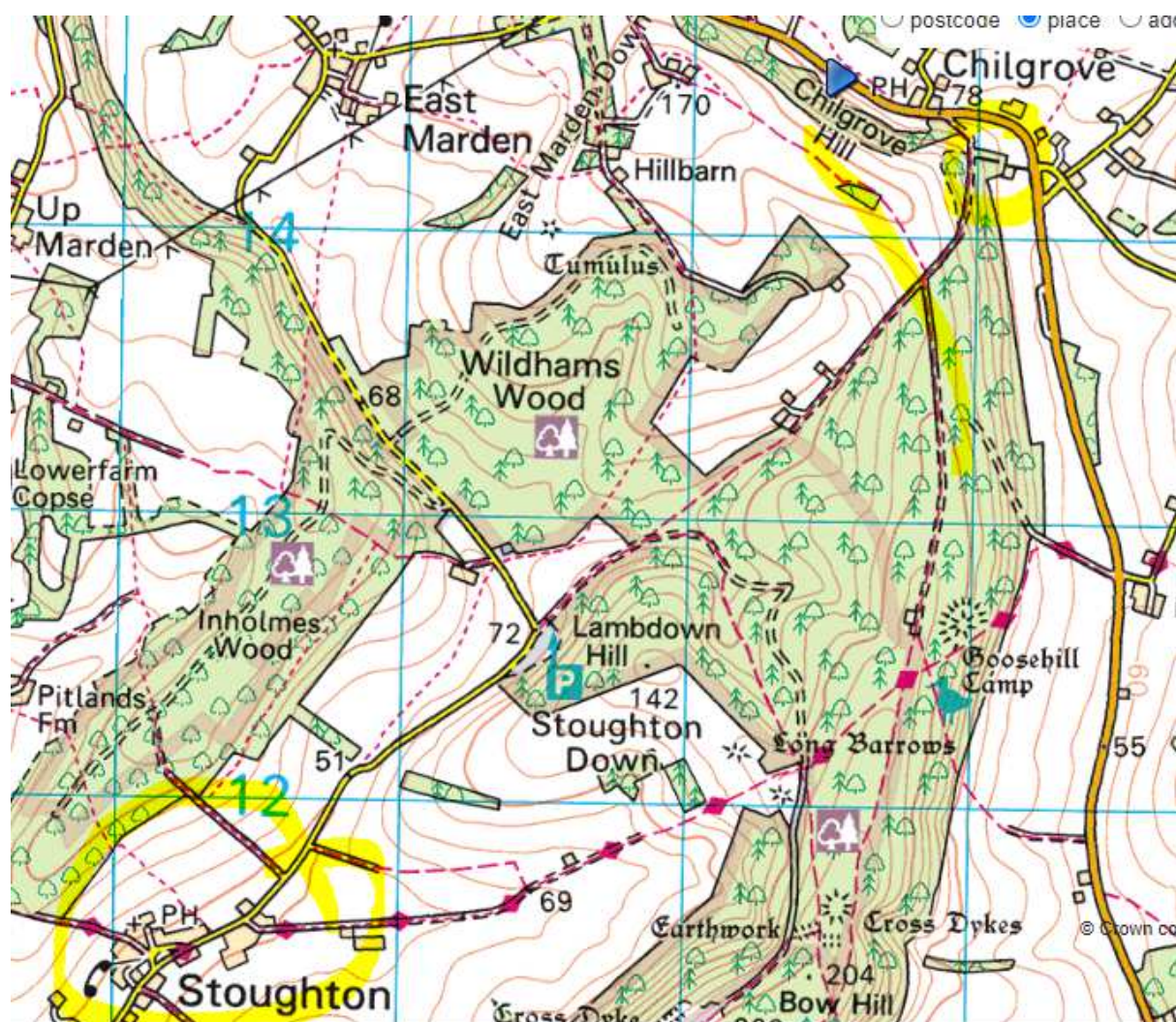
9.1.2 Parishes were then the highway authority for all roads other than main roads. The survey was to divide these roads into classes according to the amount of traffic they carried and to report on their condition. Parish Roads were divided into five classes. The purpose of conducting the survey was so that the County Council could consider making grants to parishes to maintain the roads, subject to their being brought up to and maintained by the parish at a standard suitable for the traffic.

9.1.3 Bridleways and footpaths appear to have been omitted.

9.1.4 The report says that all lengths given are approximate.

9.1.5 Here is how the application route is described in the survey.

9.1.7 The length of Stoughton Lane between its start and finish within the parish is given as 3 furlongs and 40 metres or 0.397 of a mile. I calculate the application route plus the ongoing route to Stoughton to the parish boundary to be 0.41 of a mile.



9.1.8 A MAP

9.1.9 There is a map held at the West Sussex archive under reference WDC/SU18/1/11. The catalogue entry says "Map of West Sussex Highways" and "endorsed 'Adcocks Plan' when first catalogued- this endorsement is now missing". It is in black and white, and does not differentiate between various categories of highway, which is not what you would expect from a map to accompany the Adcock survey.

9.1.10 Here is how the application route is shown on the map. It is shown in the same way as other roads.



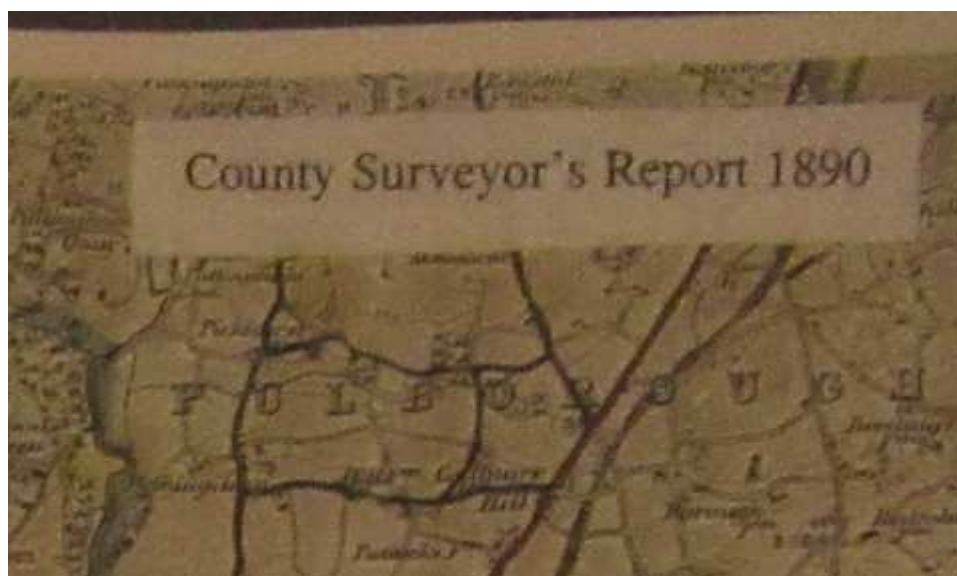
9.1.11 THE SIGNIFICANCE OF THIS EVIDENCE

9.1.12 If this is the map relating to the Adcock survey the portrayal of roads on it is evidence of public highway status.

9.1.13 A FURTHER MAP

9.1.14 I have a map which was sent to me by a person I cannot now contact. It is described as being the plan accompanying this survey.

9.1.15 It is labelled "County Surveyor's Report 1890



9.1.16 This is how the application route is shown on the map. It is shown in black, which appears to be the colour used for parish roads.



9.1.17 THE SIGNIFICANCE OF THIS EVIDENCE as a whole

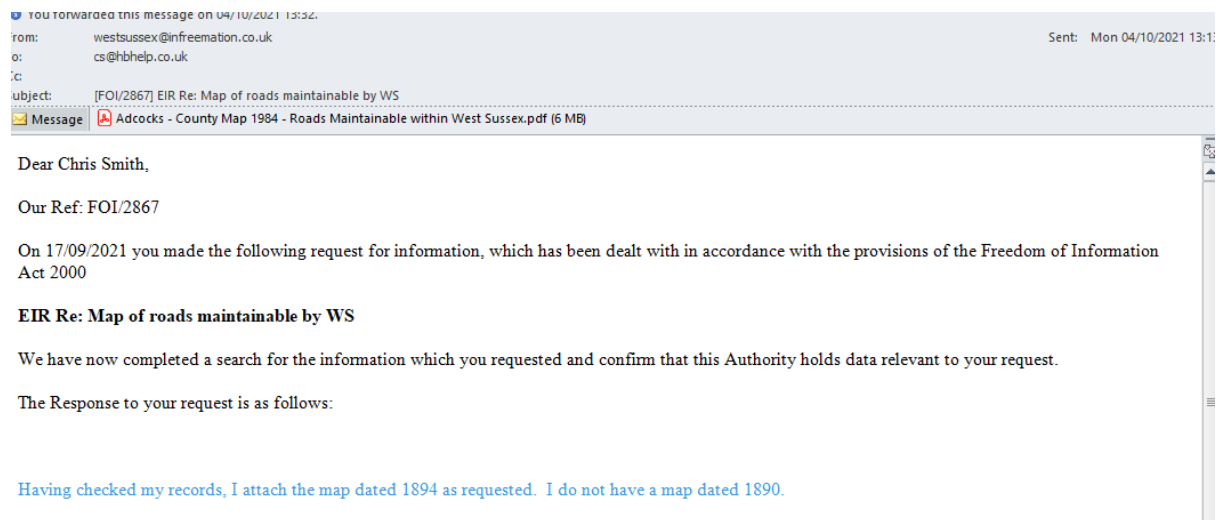
9.1.18 I suggest that it is likely that the surveyor would first have approached the parish councils to find out what roads they saw themselves as responsible for. It is possible that some parishes left out some roads they did not want to admit as their responsibility, but it is highly likely that the County would have checked carefully that no roads were included that were not the responsibility of the parishes, since it was considering making grants to the parishes. These grants and the maintenance of the roads by the parishes would have been ultra-vires if the routes were not public highways.

10. HIGHWAY HANDOVER MAP

10.1.1 THE EVIDENCE PRESENTED BELOW

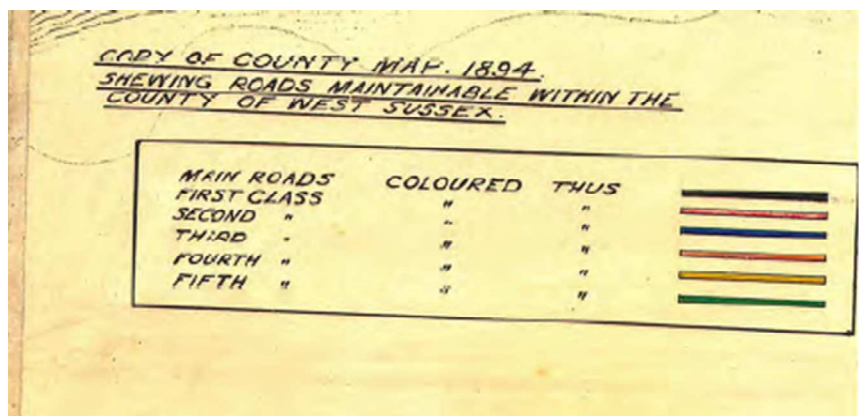
10.1.2 Following a freedom of Information request to provide any highway maps it held for the 1890s, West Sussex County Council provided a copy of a map which showed various

roads in different colours The map is dated 1894 so is most likely to be a “handover map” showing which roads were being handed over from the parish councils to the district councils to maintain. The council did not provide a reference. Here is the email which accompanied the map.



10.1.3 Despite the heading on the attachment I do not believe that this is the Adcock map because of the date. A copy can be obtained from the County Council by quoting the reference on the email.

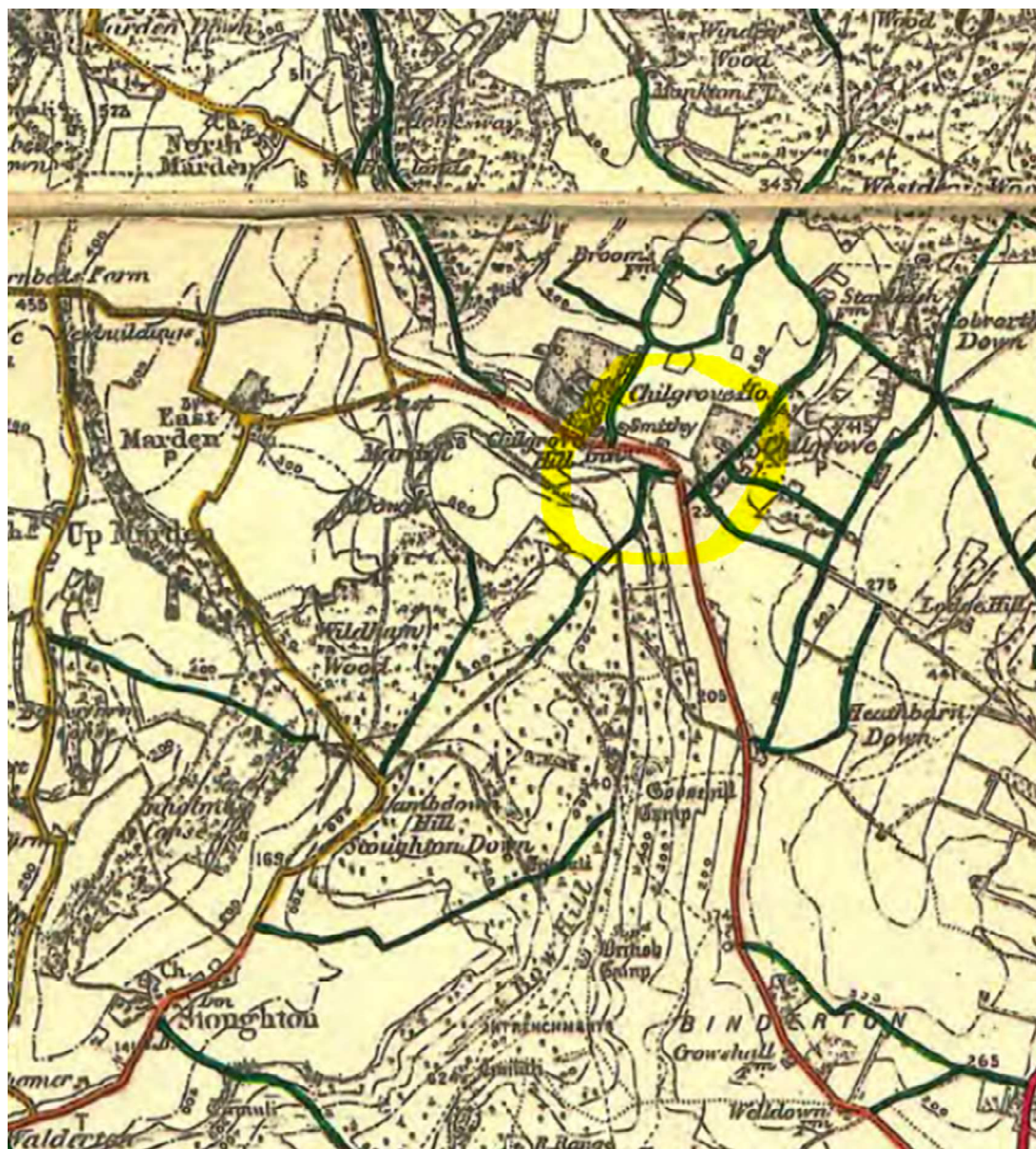
10.1.4 The key shows the colours of the various roads as follows:



10.1.5 Since this map and the Adcock survey are so close together and use the same highway classification, I suggest that they can be considered together

10.1.6 WHAT THIS EVIDENCE SHOWS

10.1.7 The application route is shown as a part of a fifth class road



10.1.8 THE SIGNIFICANCE OF THIS EVIDENCE

10.1.9 I suggest that it is likely that the surveyor would first have approached the parish councils to find out what roads they saw themselves as responsible for. It is possible that some parishes left out some roads they did not want to admit as their responsibility, but it is highly likely that the County would have checked carefully that no roads were included that were not the responsibility of the parishes, since it was considering making grants to the parishes. These grants and the maintenance of the roads by the parishes would have been ultra-vires if the routes were not public highways.

10.1.10 When the time came for the parishes to hand over their responsibility to the district councils those districts would also check carefully what they were taking on.

10.1.11

11. QUARTER SESSIONS RECORDS

11.1.1 I have found no quarter sessions records or any other records of stopping up or diversion affecting this route.

12. INLAND REVENUE VALUATION

12.1.1 The Finance (1909-10) Act 1910 provided for land valuations to take place across the country so that the increase in its value could be taxed. Deductions from the assessable value could be claimed by landowners where the land was crossed by a footpath or bridleway. Where a vehicular highway crossed land, it was often omitted from the valuation, and shown on the Inland Revenue's plans as a "white road". If a route were a private vehicular way, then it could be developed, increase in value and so be taxed. Accordingly, private tracks were not usually excluded from the assessable hereditaments.

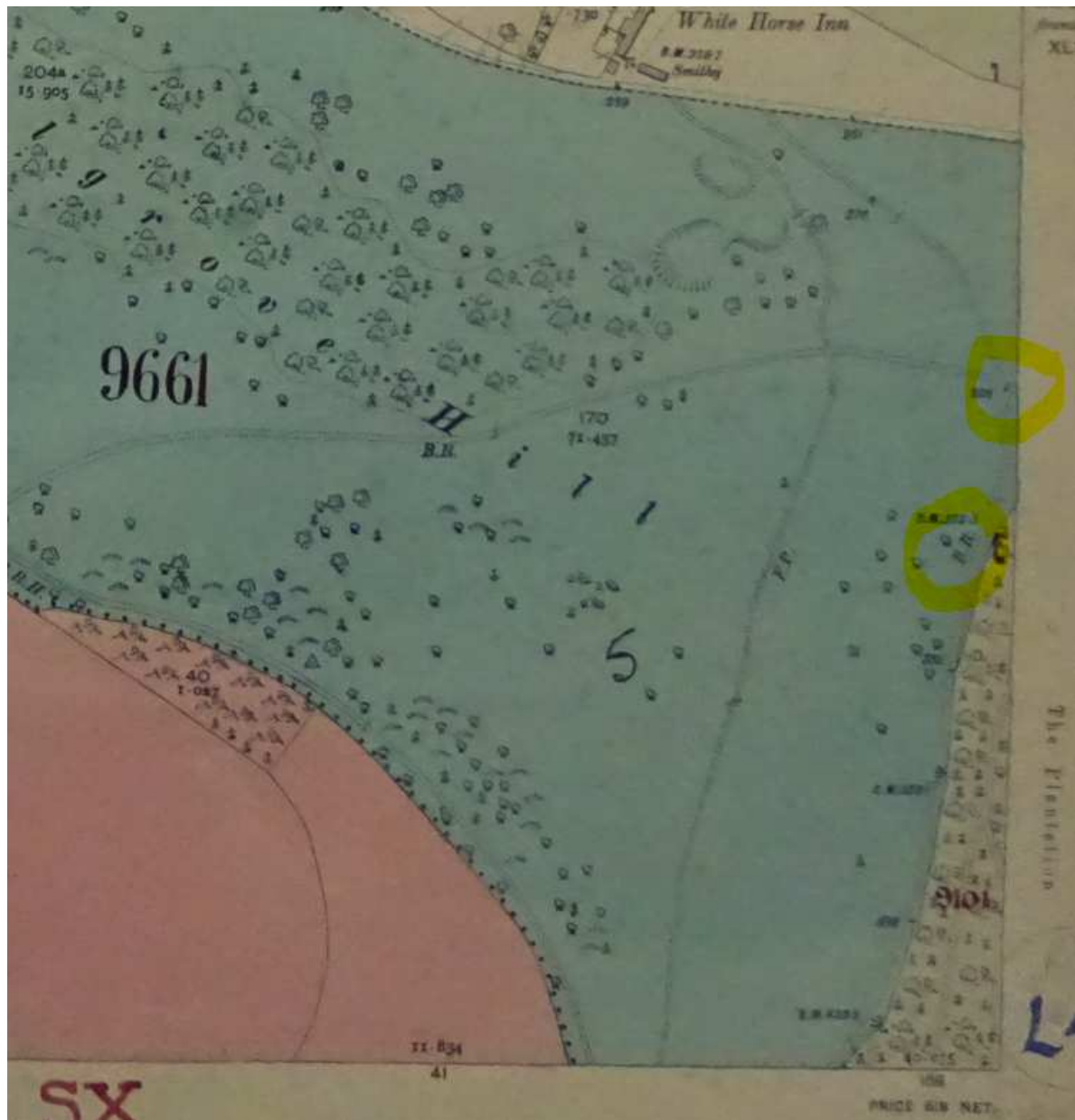
12.1.2 Of these records, the PINS Definitive Map Orders Consistency Guidelines states under the heading "Exclusion of a route on the map record" at para. 11.7 ".... So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular...."

12.1.3 THE EVIDENCE PRESENTED BELOW

12.1.4 The Finance Act 1910 maps are held at the National Archive. The application route is on two sheets. IR 124/9/279 and

12.1.5 WHAT THIS EVIDENCE SHOWS

12.1.6 IR 124/9/279- A very small part of the western end of the route is shown. It appears to be part of hereditament 9661. The continuation of the route to the south is labelled BR.



12.1.7 IR 124/9/280 The remainder of heraditement 9661 is shown to cover the application route, which is not a white road but is shaded BR



12.1.8 THE SIGNIFICANCE OF THIS EVIDENCE

12.1.9 This evidence suggests that the application route was not regarded as a public road at the time, although it may have been considered a bridleway.

13. FIELD BOOKS

13.1.1 The Inland Revenue created Field Books for calculating the value of each numbered hereditament on the map. Where rights of way crossed a hereditament the landowner could (but was not obliged to) claim for a reduction in value on account of this. A deduction made for rights of way in a field book is evidence of the existence of rights of way, but the lack of a deduction may only be evidence that the landowner chose not to make a claim.

13.1.2 I have not been able to find a field book entry corresponding to 9661 in a field book near Chichester at the National archive.

14. OTHER MAPS

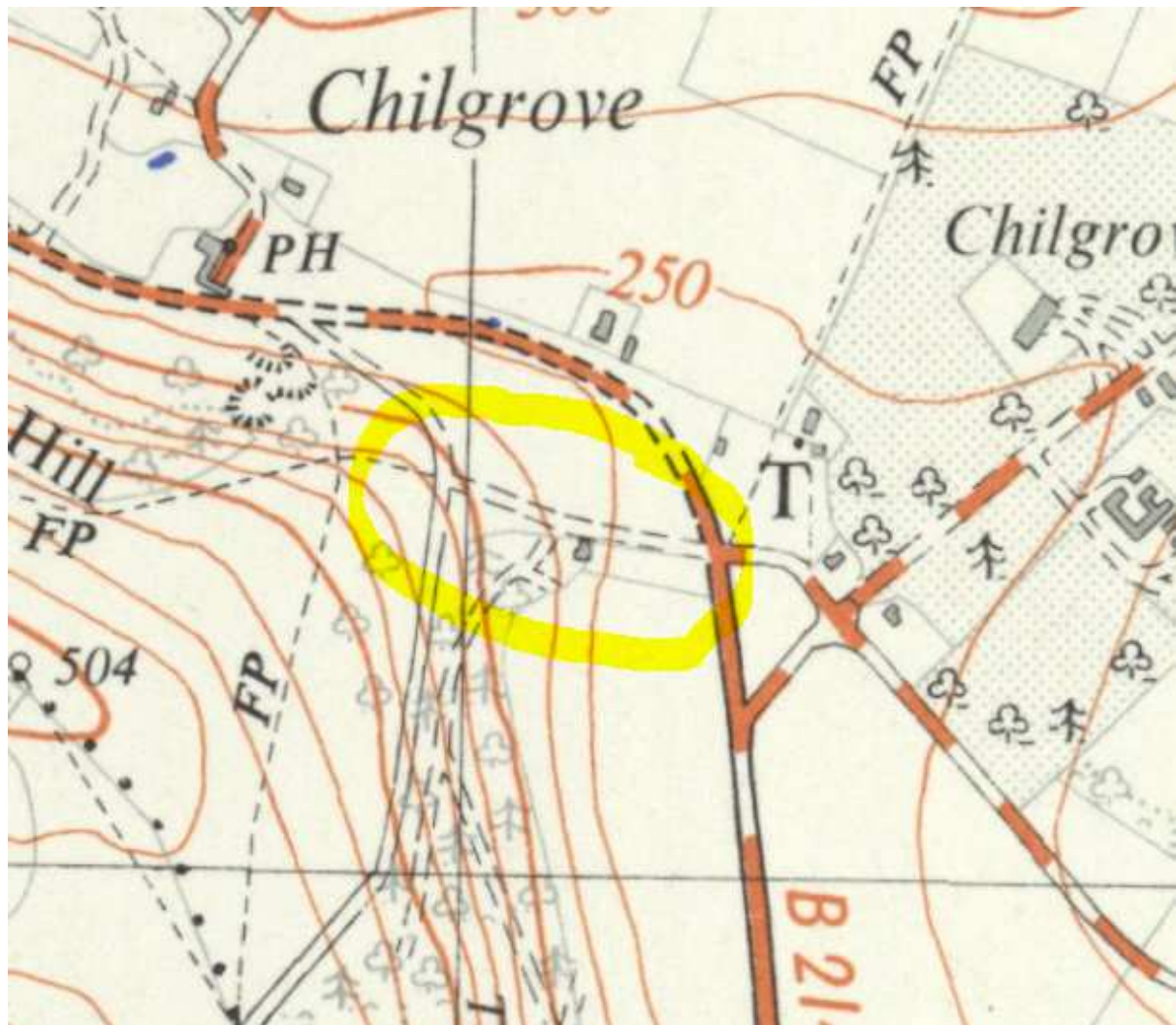
The National Library of Scotland has a number of maps covering the application route at <https://maps.nls.uk/geo/explore/#zoom=15&lat=50.92399&lon=-0.82266&layers=1&b=1>

14.1.1 THE EVIDENCE PRESENTED BELOW

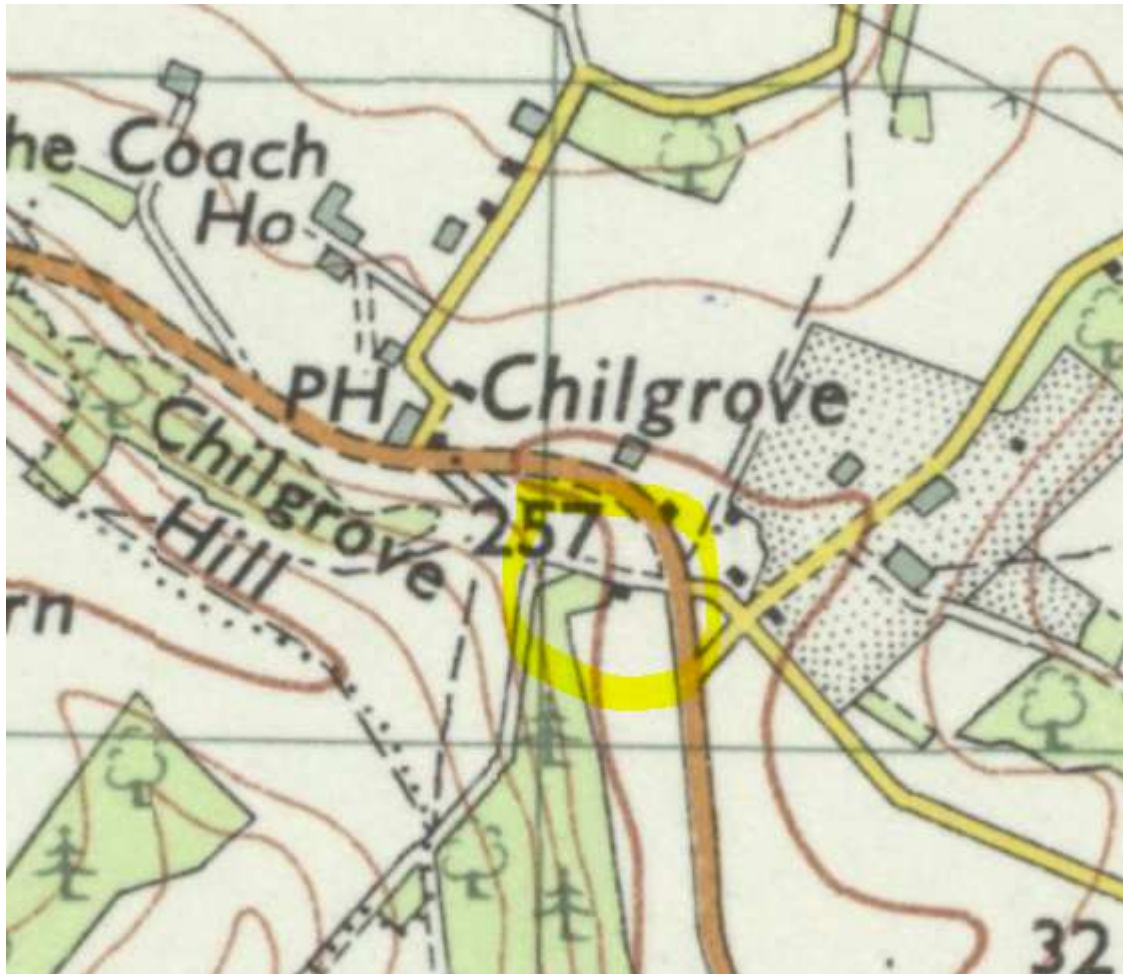
14.1.2 On the Ordnance Survey (OS) one inch outline map of 1895-1900 the route is shown as the only way to access the lane to Stoughton.



14.1.3 On the OS 1-25000 map of 1937-61 the route is shown as an unfenced road or track.



14.1.4 On the OS 7th series of 1952-61 the route is shown as a partially fenced road or track.



14.1.5 THE SIGNIFICANCE OF THIS EVIDENCE

14.1.6 The application route is shown as having been in existence for many years.

15. THE 1932 RIGHTS OF WAY ACT SURVEY

15.1.1 The 1932 Rights of Way Act enabled councils to draw up maps of rights of way if they wished to do so. District Councils were responsible for this. The process was limited to recording what parish councils thought were the rights of way in their area and whether or not landowners admitted their existence.

15.1.2 In West Sussex four maps for the whole county were drawn up, without regard to District Council areas. This may have been done by the County Council.

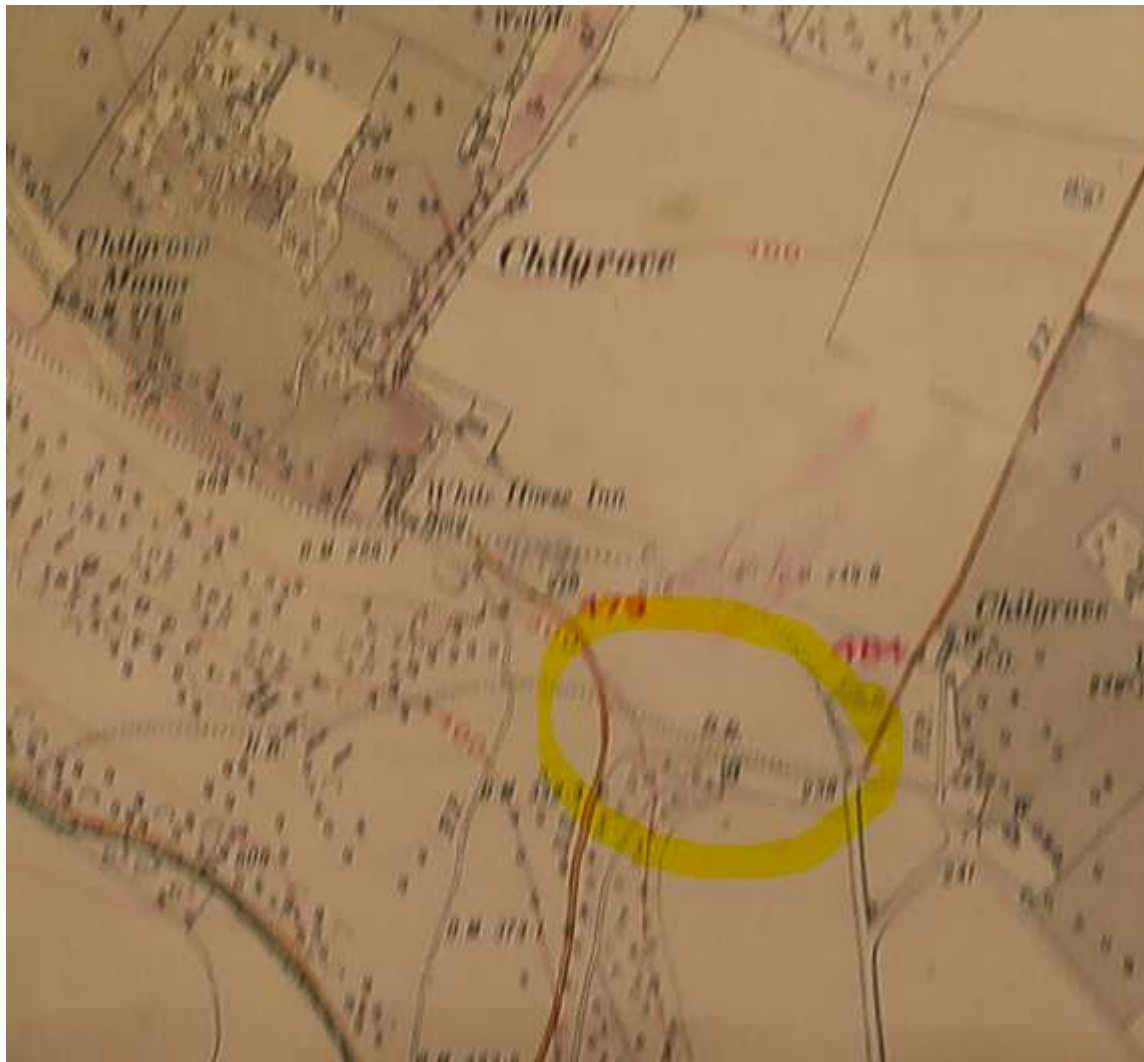
15.1.3 No differentiation was made between footpaths and bridleways. It appears that Roads used as public paths may have been recorded.

15.1.4 There is no key, but it appears that routes agreed with landowners were shown in sepia whilst those not agreed by landowners were shown in blue.

15.1.5 The map made as part of this process is held at the West Sussex Records Office under reference AM 796/13/3 The excerpt below is taken from that map

15.1.6 WHAT THIS EVIDENCE SHOWS

15.1.7 The application route is shown and is marked on the underlying map as “BR” for bridleway, but it is not highlighted in brown as footpaths and bridleways are.



15.1.8 THE SIGNIFICANCE OF THIS EVIDENCE

15.1.9 Those drawing up the map did not believe that the route was a public bridleway or footpath. This means that they either believed that it had no public rights or that it was an ordinary carriageway.

16. 1ST DEFINITIVE MAP SURVEY

16.1.1 Compared with East Sussex, there is little available in the public realm about the process used in drawing up the first definitive map, but the first definitive maps have survived, together with some drafts and later revision.

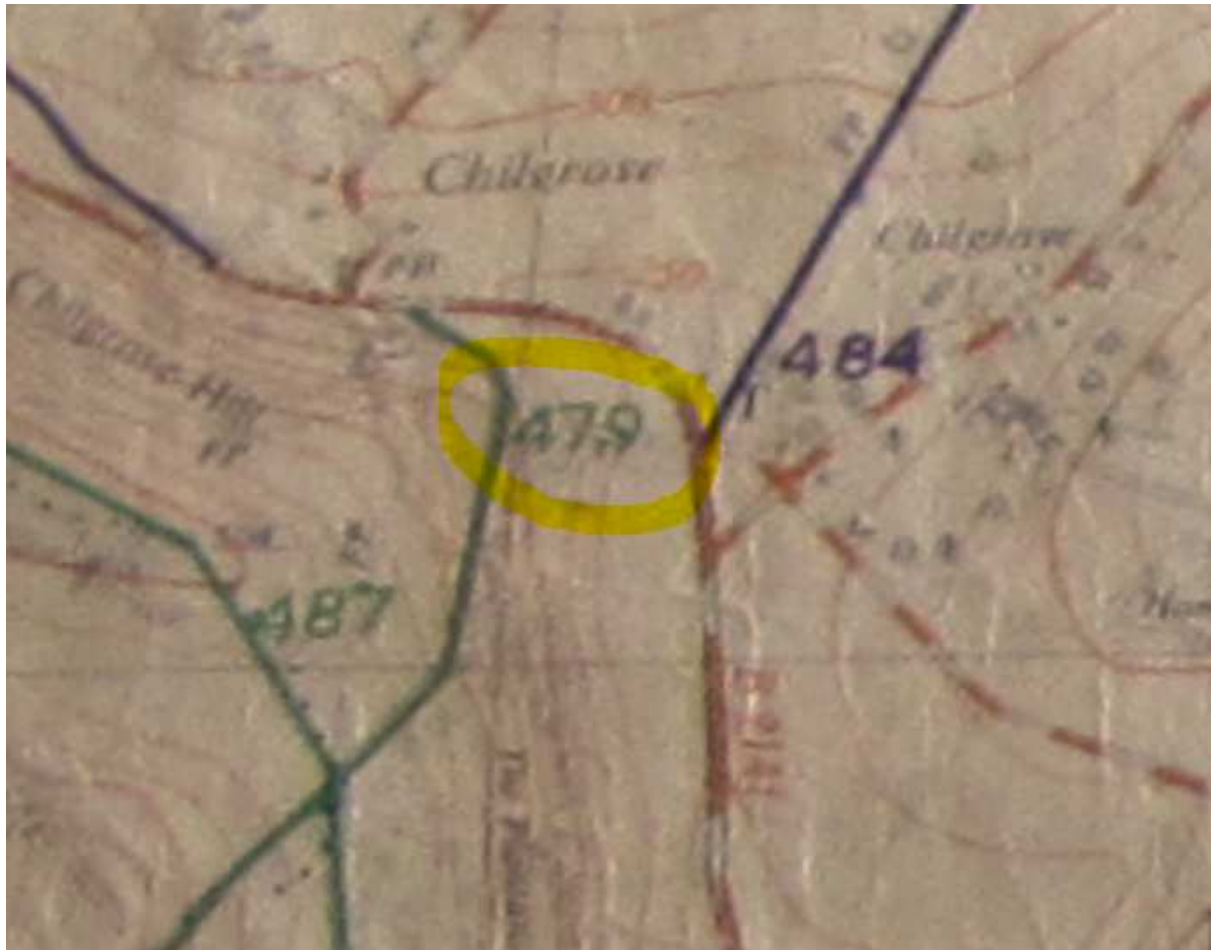
16.1.2 No account was taken of inland revenue records, which were not then available or of OS object names books which were also not in the public realm

16.1.3 THE EVIDENCE PRESENTED BELOW

16.1.4 This evidence is taken from the first definitive map for Chichester held at the West Sussex Records Office under the reference AM 796/1/1

16.1.5 WHAT THIS EVIDENCE SHOWS

16.1.6 The application route can just be made out but is not highlighted as a footpath, bridleway or road used as a public path.



16.1.7 THE SIGNIFICANCE OF THIS EVIDENCE

16.1.8 Those drawing up the map either believed that the application route carried no public rights or that it was an ordinary carriageway.

17. THE ONLINE MAP OF MAINTAINABLE STREETS

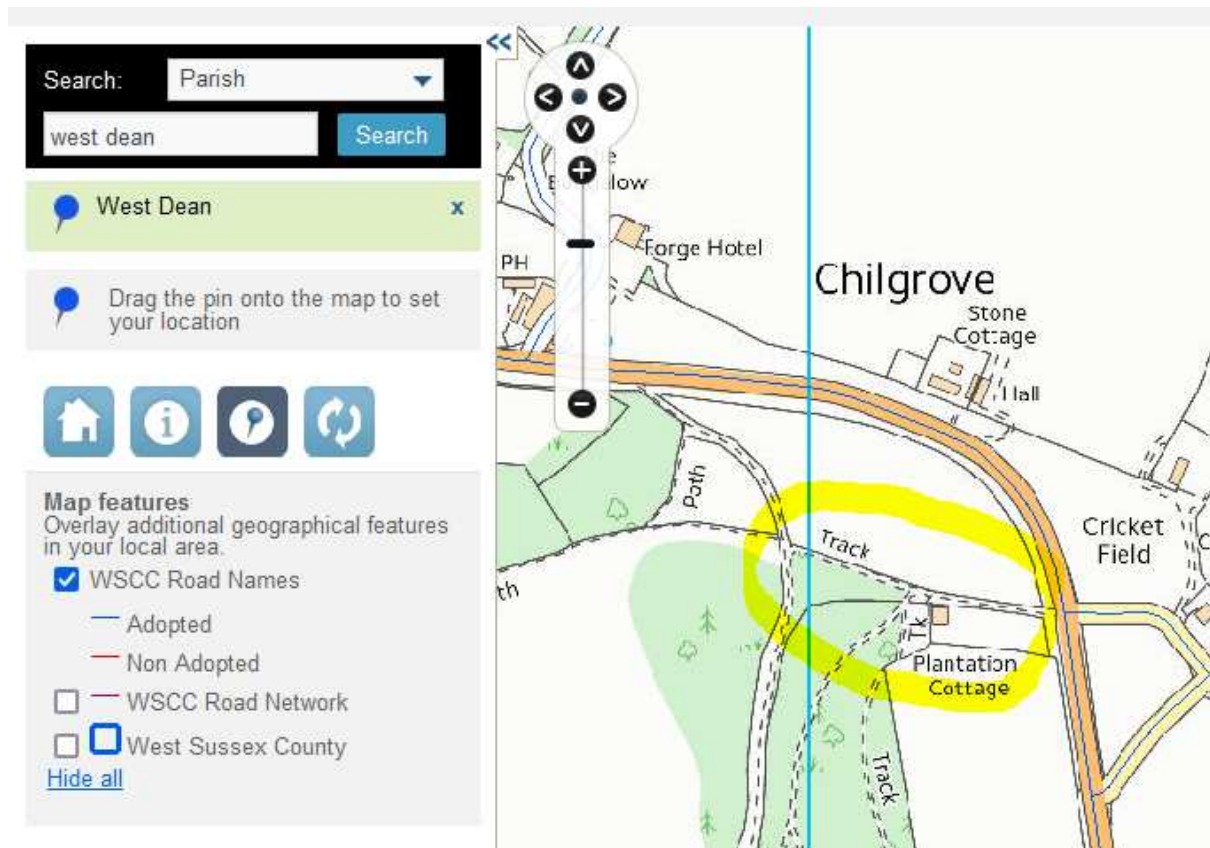
17.1.1 West Sussex Councils maintain an online maps of streets that they are responsible for maintaining at <https://www.westsussex.gov.uk/planning/local-land-charges/local-land-charges-map/>

17.1.2 THE EVIDENCE PRESENTED BELOW

17.1.3 The evidence below is taken from this source.

17.1.4 WHAT THIS EVIDENCE SHOWS

17.1.5 Adopted (maintainable by the highway authority) roads are highlighted in blue. The application route is shown but is not so highlighted.



17.1.6 THE SIGNIFICANCE OF THIS EVIDENCE

17.1.7 The application route is not exempt from the provisions of the NERC Act.

18. CONCLUSION

18.1.1 I suggest that this evidence shows the existence of a public carriageway through to the end of the 19th century, with its use declining and gradually being forgotten during the 20th with traffic using a route which went more directly to Chilgrove Village instead. But the principle of “Once a highway, always a highway” applies.

18.1.2 Whilst no single piece of evidence is conclusive, I believe that, take as a whole, the pieces of evidence demonstrate the existence of a highway over many years. There are possible, if often unlikely, alternative explanations for each individual piece of evidence shows but, I suggest, no explanation other than the existence of a right of way which explains what all of these pieces of evidence show.

18.1.3 The test at this stage is only “Can it reasonably be argued that the right of way exists as suggested”.

18.1.4 The later test at confirmation of any order is “Is it more likely than not that the right of way exists as suggested”.

18.1.5 I believe this application passes both of those tests.

19. REQUEST

19.1.1 I request the surveying authority to add the route to the definitive map and statement as a restricted byway.

19.1.2 I request the authority to add it to the list of maintainable streets.

19.1.3 I make no application in respect of the continuation of Stoughton Lane since it is already recorded as a bridleway. But the authority may feel that it has enough evidence to review the status of this section.

19.1.4 I request the opportunity to respond to any comments made on this application.