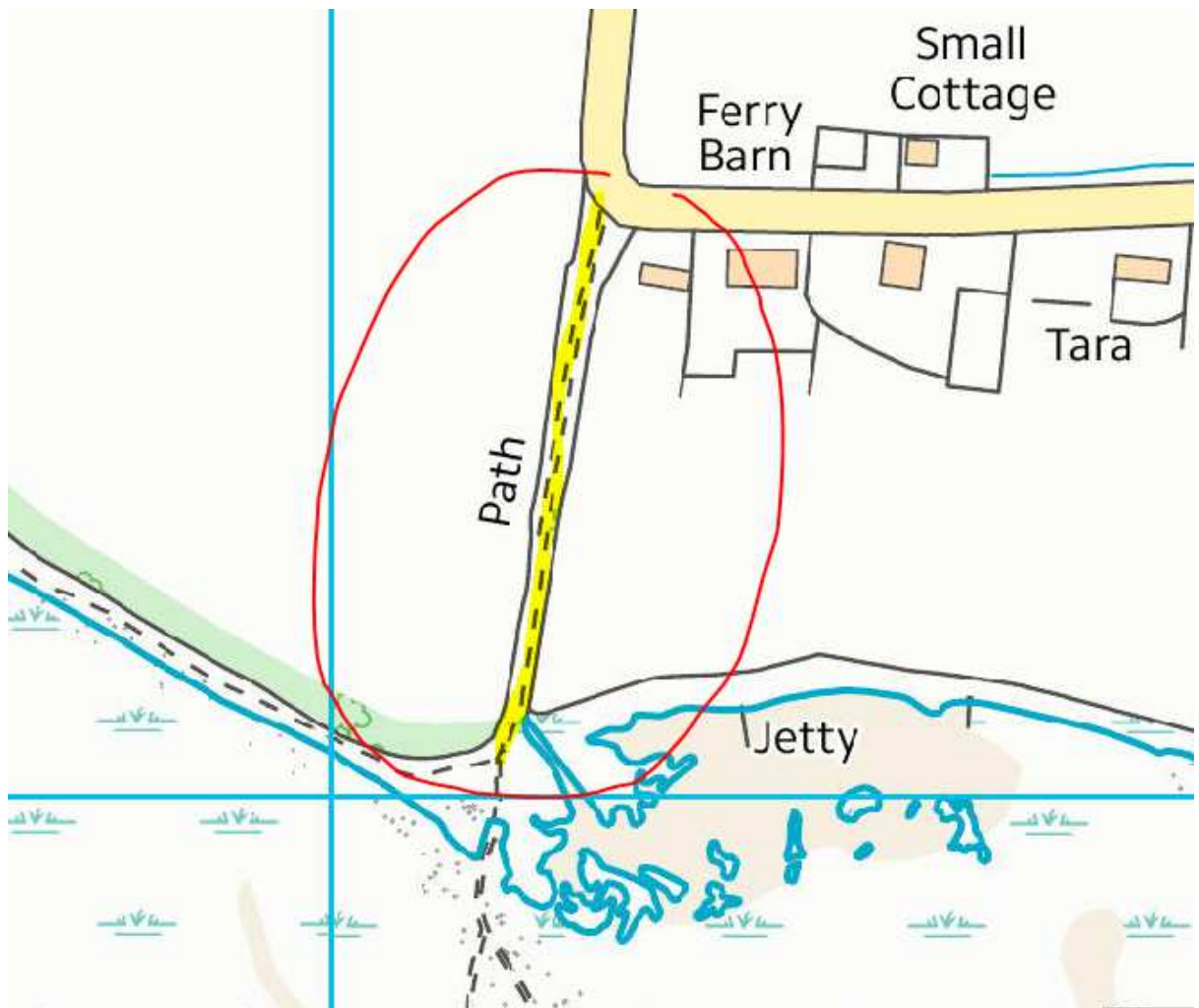


APPLICANTS STATEMENT

Our reference- SUS-1125

THE APPLICATION ROUTE



The application route runs from a junction with a public road near Ferry Barn at grid reference SU801022 to the southern termination of recorded footpath 2952.

The route is in Bosham Parish,.

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

Application is being made to add a bridleway.

No application is being made for the ongoing route to the ferry launch pad as this is protected as part of the English Coastal Path. The application route is an alternative route and so is not protected.

1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

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 highway rights exist.

1.1.2 Because the route does not appear to have been considered at the time of either the making of maps under the 1932 rights of way map or the first definitive map and statement, I believe that the all the evidence below is new, other than material relating to the 1932 act and the first definitive map and statement.

1.1.3 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 famously 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 cords. 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 absolutely conclusive, I believe that, take as a whole, the pieces of evidence demonstrate highway reputation over many years (*amend as necessary*)

2. THE FERRY AND ITS HISTORY

The application route is the main route to the Itchenor Ferry. The web site for the ferry at <https://itchenorferry.co.uk/about-us-directions/> says:

“Since the 17th century, travellers on foot have chosen to use a ferry to cross the water at Itchenor, saving themselves a 13 mile trip on foot around the water.

Over the years, demand waned, and in 1964 the ferryman applied to the House of Lords to discontinue the ferry service, which until then had been operated 24 hours a day. In 1976 the ferry was brought back into service by Chichester Harbour Conservancy to join the footpath network and to provide a taxi service for yachtsmen. Today the seasonal ferry takes passengers and bikes between Ferry Hard and Itchenor Jetty, linking the public footpaths and allowing for a circular walk via Bosham and Fishbourne.”

The web site shows that currently the ferry runs daily during May to September and weekends only outside of these times.

3. HISTORIC MAPS

3.1.1 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 of such status".

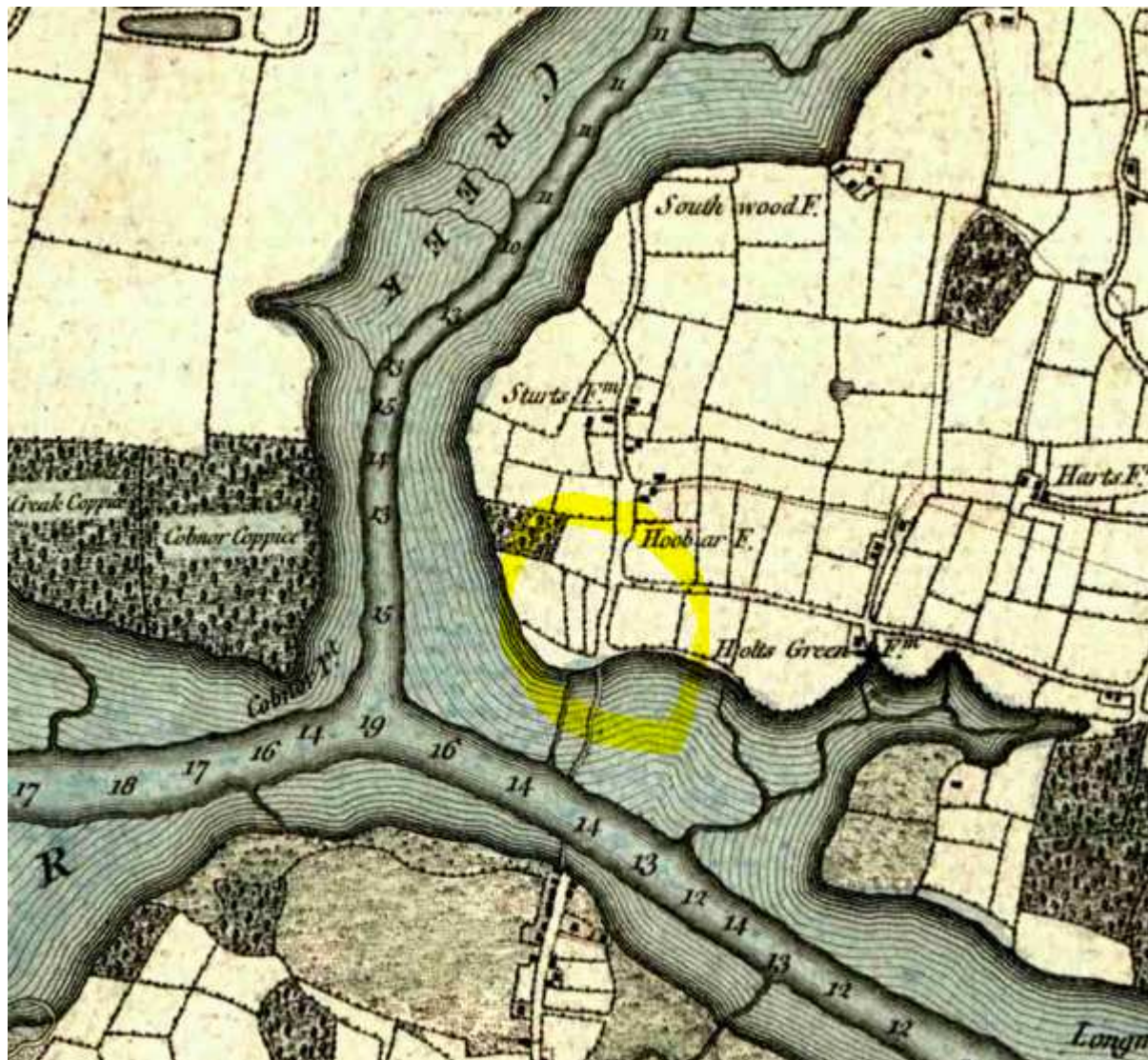
3.2 YEAKELL AND GARDNER'S SUSSEX 1778-1783

3.2.1 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

3.2.2 What this evidence shows

3.2.3 The application route is shown in the same way as other roads



3.2.4 The significance of this evidence

3.2.5 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.

3.2.6 The map does not have a key.

3.3 GARDENER AND GREAM MAP 1795

3.3.1 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> The eastern section is at <https://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A80922>

3.3.2 What this evidence shows

3.3.3 The application route is shown in the same way as other routes that are roads today



3.3.4 The significance of this evidence

3.3.5 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.

3.4 GREENWOOD AND GREENWOOD MAP OF SUSSEX 1825

3.4.1 This map is held at the East Sussex Records office at the Keep under reference AMS 6008/1/129

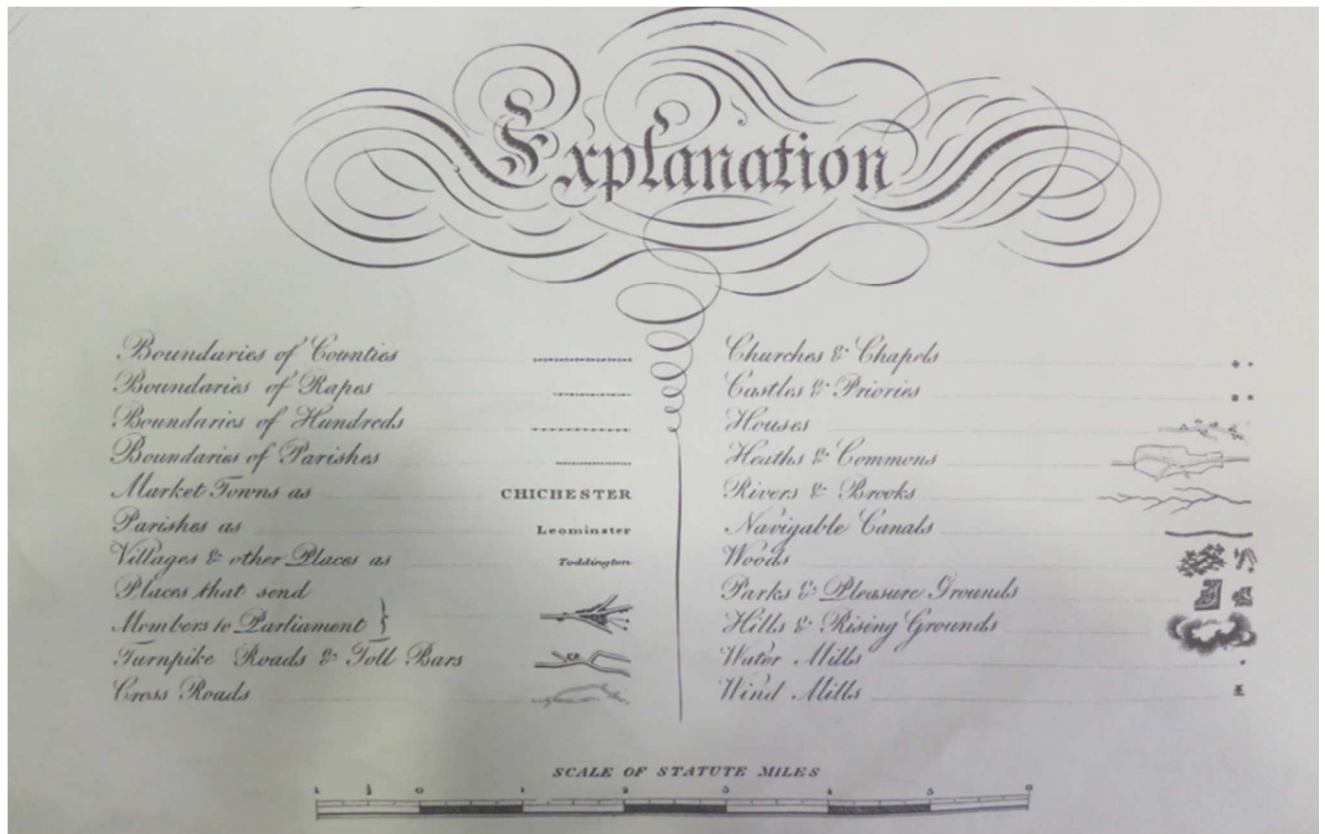
3.4.2 What this evidence shows

3.4.3 The application route is shown as a road, in the same way as other routes that are roads today

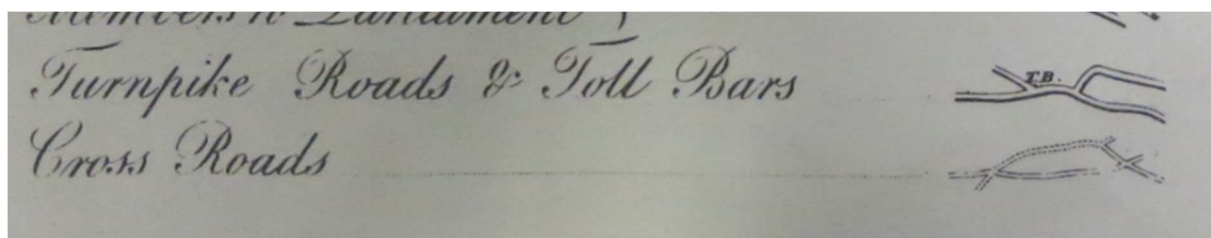


3.4.4 The significance of this evidence

3.4.5 The map has a key, which is shown below



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



3.4.7 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.

3.4.8 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.

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

3.5.1 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.

3.5.2 What this evidence shows

3.5.3 The application route is shown as a road in the same way as other routes that are roads today.



3.5.4 The significance of this evidence

3.5.5 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.

4. FIRST EDITION OF THE ORDNANCE SURVEY 1" MAP

4.1.1 Cassini maps formerly published reproductions of the first edition of the Ordnance Survey 1" map. This extract is taken from a map published by Cassini which is in my possession. According to Cassini, the maps for Sussex were first published between 1813 and 1819.

4.1.2 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"

4.1.3 What this evidence shows

4.1.4 The application route is shown as a road in the same way as other routes that are roads today.



4.1.5 The significance of this evidence

5. TURNPIKE PLANS

5.1.1 There are no turnpike plans relevant to this application.

5.1.2 The significance of this evidence

6. INCLOSURE RECORDS

6.1.1 The evidence presented below.

6.1.2 The application route is included in the area of the Bosham Inclosure of 1834. A photograph of the map for this inclosure is held at the West Sussex Records Office under reference Add Mss 5180. According to the database of inclosures at <http://enclosuremaps.data-archive.ac.uk/search> the map shows the state of the area after inclosure.

6.1.3 What this evidence shows

6.1.4 The application route is shown in the same way as other roads. It is not numbered or lettered in any way. The whole of the map is reproduced in appendix 1. It shows that roads were not numbered.



6.1.5 The award for the Bosham inclosure is held at the West Sussex Records Office under reference PAR25/20/1. As is common, it sets out roads that are included.

6.1.6 The highlighted section in the extract below is taken from a page numbered 6. The section says *"In the first place set out and confirm the several public and private roads ways and footpaths set out and approved by us in the manner hereinafter respectively mentioned, that is to say....."* There then follows a numbered list of those roads ways and footpaths which extends over a number of pages.

6.1.7

6.1.8 The significance of this evidence

7. TITHE RECORDS

7.1.1 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.

7.1.2 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.

7.1.3 Tithe maps can be accessed at the National Archive in black and white. The maps have been digitalised by the Genealogist web site. I have taken screen shots from the Genealogist to show how the route is displayed.

7.1.4 What this evidence shows

7.1.5 The Genealogist map is in black and white but the application route appears to be coloured (probably sepia). It is separated from any apportionment although the very lowest part goes through apportionment 536. However there is a bracing symbol and the application route is in a different colour, suggesting that the route was separate from 536. Details of this apportionment are given below.



James Weston	532	Hebener Croft	Arable	2	2	14
	534	do Lane	ditto	1	3	2
	535	Waste in do	Waste		3	8
	536	Marsh	ditto	2	2	7

7.1.6 The significance of this evidence

7.1.7 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.

8. RAILWAY, CANAL AND RIVER RECORDS

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

9. QUARTER SESSIONS RECORDS

9.1.1 Highway functions were discharged by Justices of the Peace in Quarter Sessions before powers were handed over to what are now the highway authorities. Court records provide conclusive proof of the matters on which decisions were made.

9.1.2 The only quarter sessions records that I have found which are relevant to this route are those which, unusually, implement the inclosure order. These are referred to in the inclosure section above.

10. FIRST EDITION OF THE ORDNANCE SURVEY 25 INCH TO THE MILE MAP

10.1.1 It is often said that the disclaimer on the early OS maps means that they are not evidence of public rights. This is not the case. Whilst before the 1950s it is not possible to say *"It is on the OS map therefore it is a right of way"*, earlier OS maps provide evidence from which inferences can be drawn. For example, if a route is over a single landowner's land and leads only to a barn on that land, it can be inferred that this route was probably private. But if a route goes from one public highway to another and crosses the land of a number of owners or occupants or a number of occupants were dependent on the way to access their land then, in the absence of evidence of private rights or wayleaves, it can be inferred that public rights are likely to exist. Such evidence is unlikely to be conclusive on its own, but taken with other evidence, may support the existence of public rights on the balance of probabilities.

10.1.2 In addition, after observing that the Courts have determined OS maps are not evidence of the status of a way, the Planning Inspectorate Consistency Guidelines say at Section 12, page 9 & 10

10.1.3 *"12.35 Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21 'Evidential Weight' refers)"*

10.1.4 And contemporary wisdom was that the disclaimer on the early OS maps was simply to avoid the potential of litigation, as declared in The Countryside Companion (1948 page 320):

10.1.5 *"In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation.....A path which is shown, may, however, generally be presumed public."*

10.1.6 . Whilst Ordnance Survey surveyors were instructed not to investigate public status the Instructions to Ordnance Survey Field Examiners 1905 is clear in its direction that:

10.1.7 *"Mere convenience footpaths for the use of a household, cottage or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown. N.B. – A clearly marked track on the ground is not in itself sufficient to justify showing a path, **unless it is in obvious use by the public**"*

10.1.8 Ordnance survey maps are not usually of use for rights of way purposes because they usually purport only to show physical features and not legal rights. However the early maps in the first edition series contain valuable extra information when cross referenced to the books of reference that were published with them. These are indexed by parish. There are also books showing the derivation of names shown on the map and surveys of parish boundaries

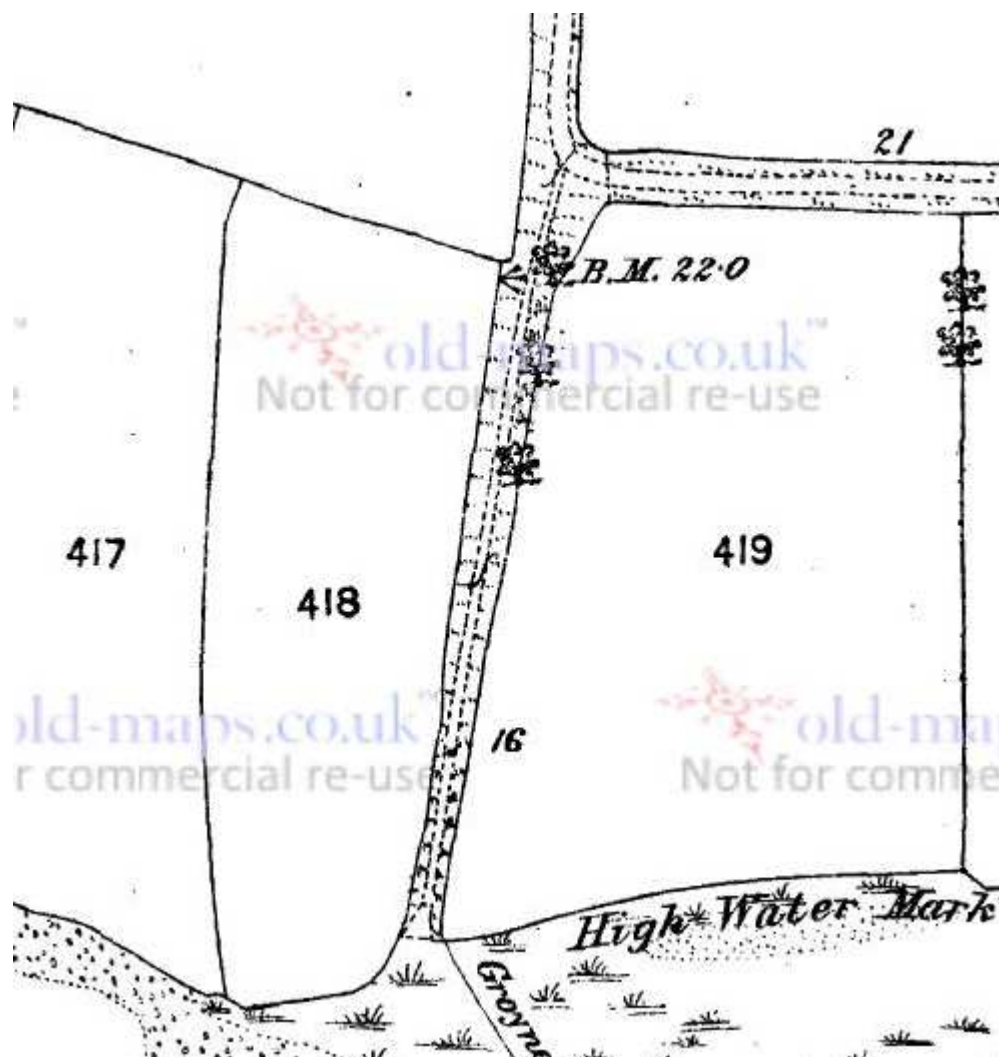
10.1.9 Copies of the first edition of the Ordnance Survey 25 inches to the mile maps could until recently be found online at <https://www.old-maps.co.uk/#/>

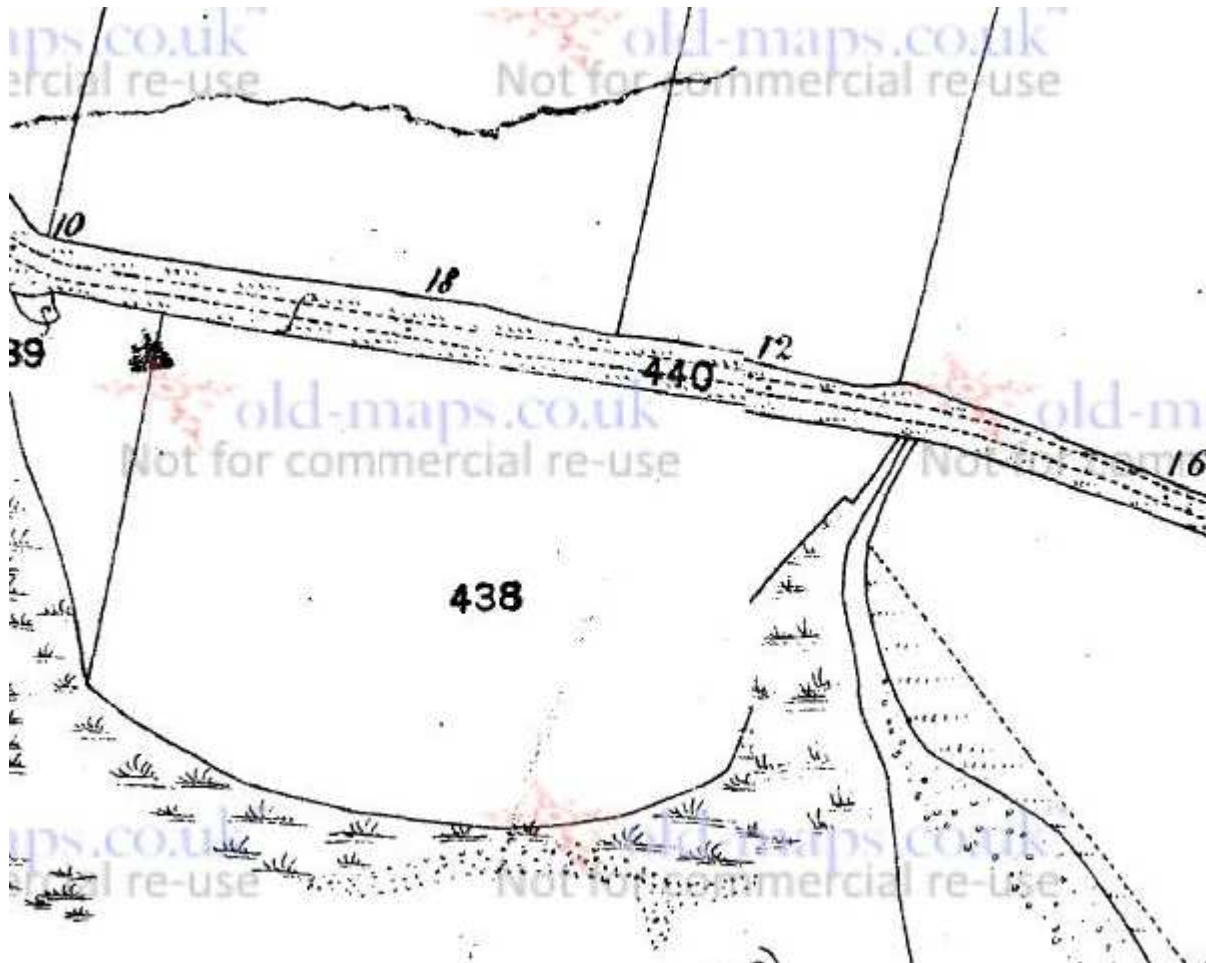
10.1.10 I have copied extracts showing the route map from this source. See below

10.1.11 What this evidence shows

10.1.12 The application route is clearly not part of the surrounding fields numbered 418 and 419. It joins the rest of the road system at a junction at the northern end but it is not clear whether or not it is part of the road system. The road it joins is numbered 440 further to the east. There is no numbering to the north.

10.1.13 The map shows no other way to get to the ferry other than the application route.





10.1.14 The significance of this evidence

10.1.15 Planning Inspectorate consistency guidelines say at Section 14 paragraph 14.2.35 (After observing that the Courts have determined OS maps are not evidence of the status of a way): Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21 'Evidential Weight' refers)".

10.2 BOOKS OF REFERENCE/AREA BOOKS

10.2.1 Area books accompanied the first edition maps contain land use information. Parcels of land were numbered on the maps and the reference book can be used to determine land use.

10.2.2 The evidence presented below

10.2.3 The West Sussex Records Office holds books of reference in a number of volumes. The book of reference for Bosham is contained in volume 8.

10.2.4 What this evidence shows

10.2.5 Land parcel 440 is described as a road.

PARISH OF BOSHAM.			
5			
Remarks.	No. on Plan.	Area in Acres.	Remarks.
	422	5·849	Arable.
	423	·283	Houses, garden, &c.
yards, and	424	2·830	Road.
	425	2·883	Houses, gardens, &c.
	426	3·174	Pasture.
pasture, &c.	427	7·250	Arable.
pasture.	428	10·213	Arable.
	429	6·569	Arable.
	430	8·314	Arable, &c.
	431	2·049	Arable.
	432	4·933	Arable.
pasture.	432a	·527	Farmstead.
and yards.	433	10·372	Arable, &c.
, &c.	434	·882	House, garden, &c.
sh.	435	3·075	Pasture, shed, &c.
	436	1·602	Pasture.
&c.	437	15·025	Rough pasture, furze, &c.
, &c.			
	438	4·599	Arable.
pasture, &c.	439	·933	Pasture, &c.
	440	3·643	Road.
ending.	441	12·121	Arable.
	442	24·750	Arable.
pasture.	443	11·227	Arable.
	444	1·380	Pasture.
	445	5·287	Arable.
and garden.	446	·687	Farmstead.
	447	1·054	Pasture and sheds.
pasture, &c.	448	1·165	Road.
	449	11·607	Arable.
	450	15·613	Arable.
ment.	451	6·827	Arable.
pasture.	452	7·635	Arable.
sh.	453	5·987	Arable and rough pasture.

10.2.6 The significance of this evidence

10.2.7 If the application route was part of land parcel 440 then it had the characteristics of a road.

11. INLAND REVENUE VALUATION

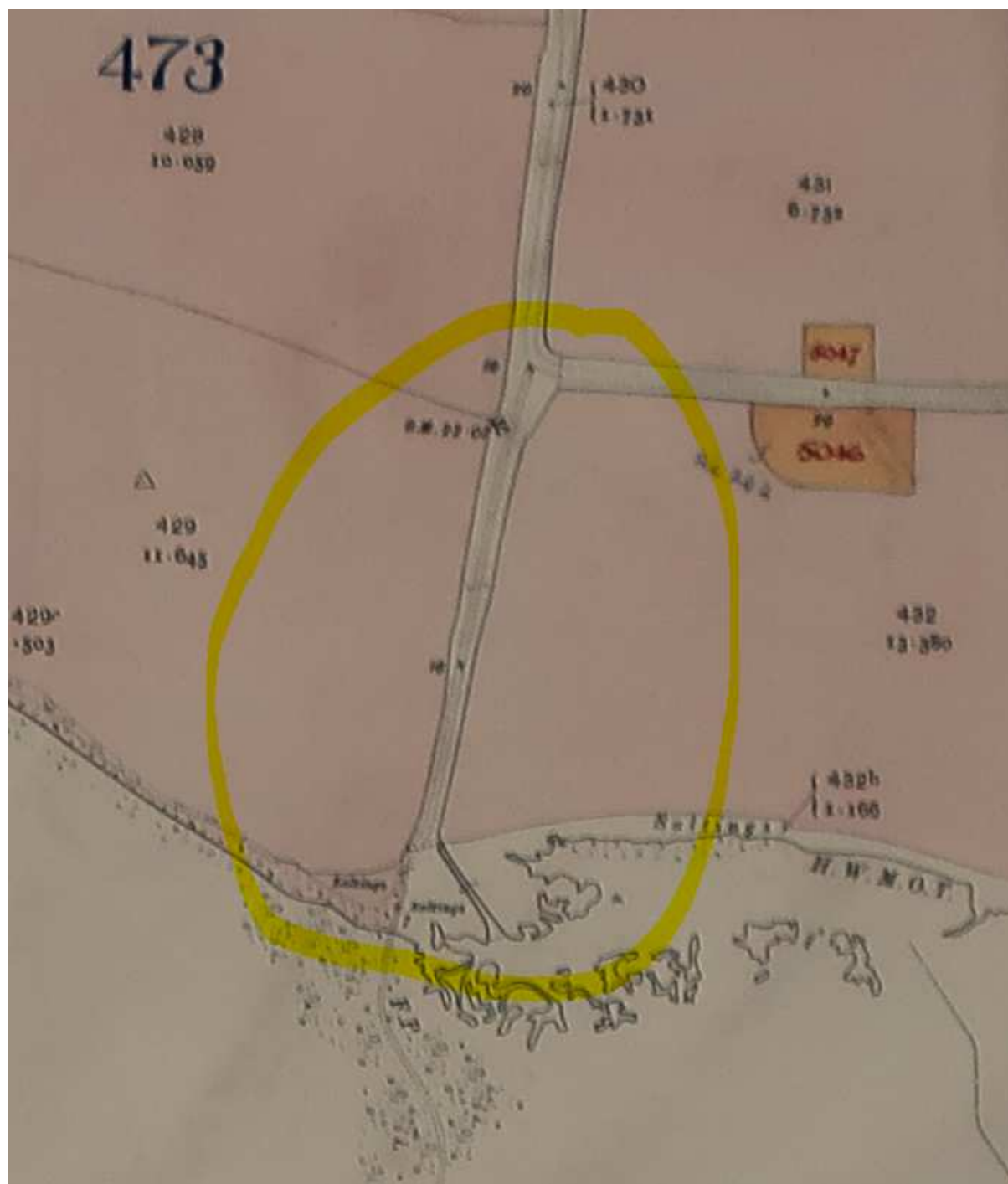
11.1.1 The Finance (1909-10) Act 1910 provided for land valuations to take place across the country so that the increase in its value could be taxed. Deductions from the assessable value could be claimed by landowners where the land was crossed by a footpath or bridleway. Where a vehicular highway crossed 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

11.1.2 The evidence presented below

11.1.3 The relevant map is held at the National Archive under reference IR 124/9/456

11.1.4 What this evidence shows

11.1.5 The application route is shown as a white road.



11.1.6 The significance of this evidence

11.1.7 Where a route is shown as a white road the overwhelming likelihood is that it was a public road. There are a few other possibilities, (for example the land was a waste of no value) but they are so rare that I suggest that the onus of proof is on any party wishing to put forward an alternative explanation.

12. **OTHER MAPS**

The National Library of Scotland has a number of maps covering the application route at <https://maps.nls.uk/geo/explore/#zoom=16&lat=50.81300&lon=-0.86433&layers=171&b=1> .

12.1.1 The evidence presented below

12.1.2 The site has maps of various scales and periods covering the applications route:

12.1.3 The first edition of the six inch to the mile Ordnance Survey map of approximately 1900 below



12.1.4 The application route is shown as the only route to the ferry. It has the characteristics of a road or track. The ongoing path across the mud flats is shown as a footpath.

12.1.5 The Bartholomews map of around 1920 below



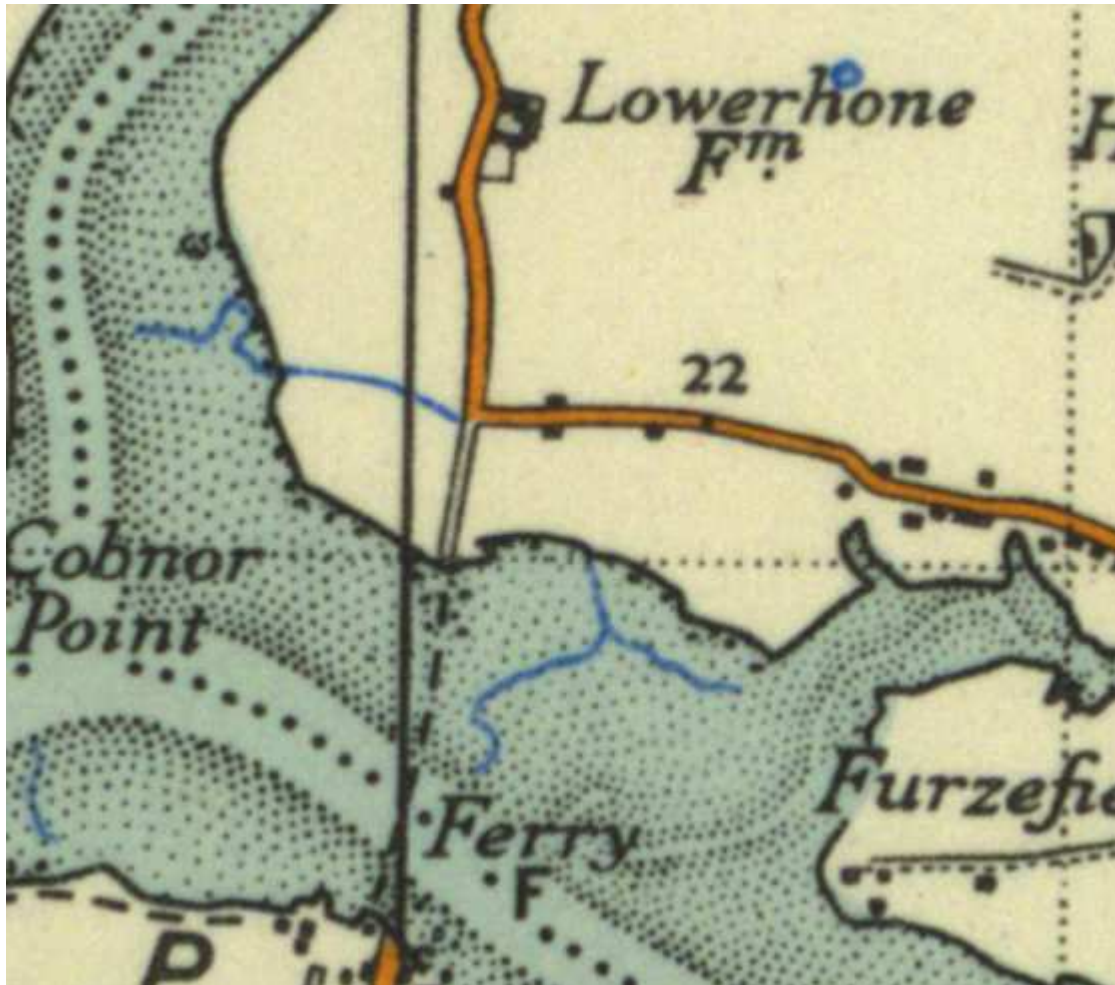
12.1.6 The application route is shown as a road.

12.1.7 The OS 1/25000 map of 1935-61



12.1.8 The application route is described as “FP” but is not drawn in the way that footpaths are usually drawn.

12.1.9 The one inch OS map of 1945-7 below



The application route is shown as a minor road or track.

12.1.10 What this evidence shows

12.1.11 The bulk of this evidence shows this route as a road or as a track.

12.1.12 The significance of this evidence

12.1.13 The evidence shows the application route in existence over a long period as a road or track. It is often shown as the only way to access the public ferry, implying that this route must have been public.

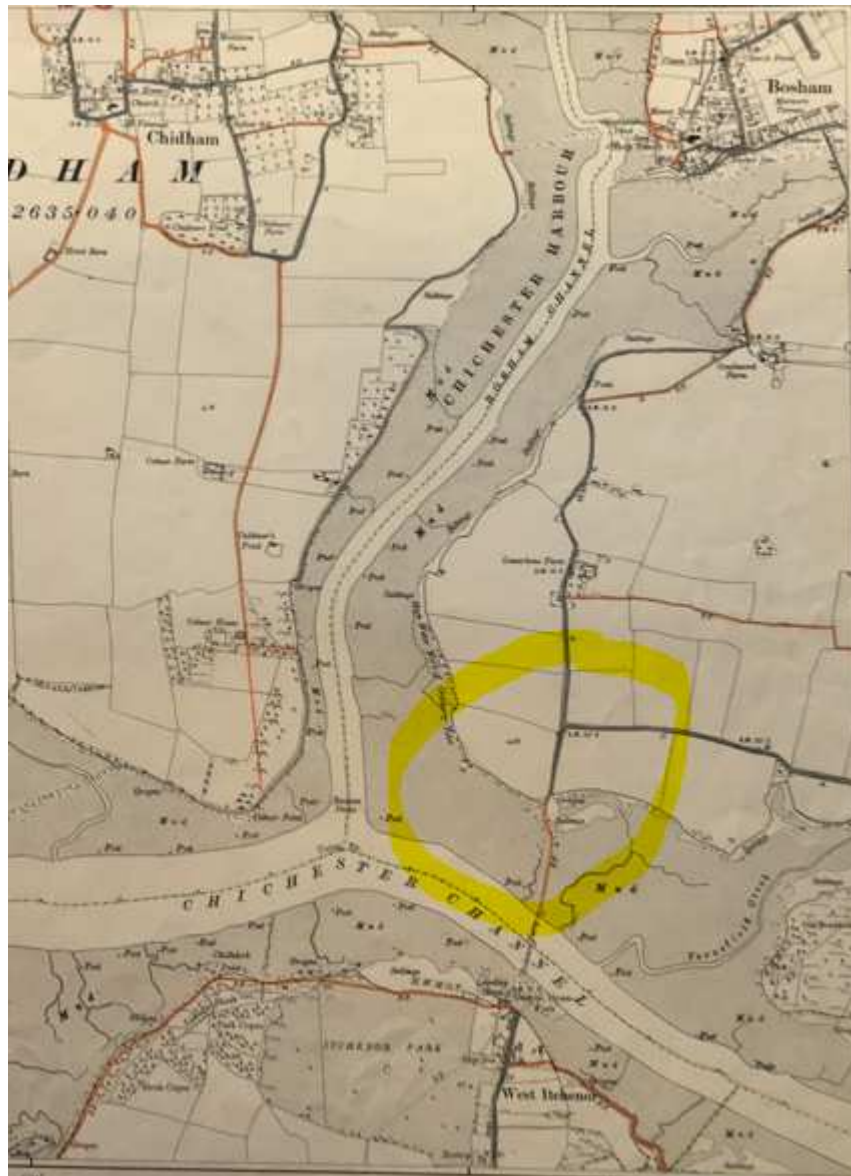
13. THE 1932 RIGHTS OF WAY ACT SURVEY

13.1.1 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.

13.1.2 What this evidence shows

13.1.3 The West Sussex Records Office holds the maps which the parishes drew up under the reference AM796/13/5. Bundle 6 contains the maps drawn up by Bosham Parish. The modern road from Bosham Village to the ferry appears. No other way of reaching the ferry is shown other than the application route.

13.1.4 There is no key but roads appear to be shown in dark grey whereas footpaths are shown in brown.



13.1.5 The significance of this evidence

13.1.6 The application route is considered to be a road and the ongoing route to the ferry is considered to be a footpath or bridleway.

14. 1ST DEFINITIVE MAP SURVEY

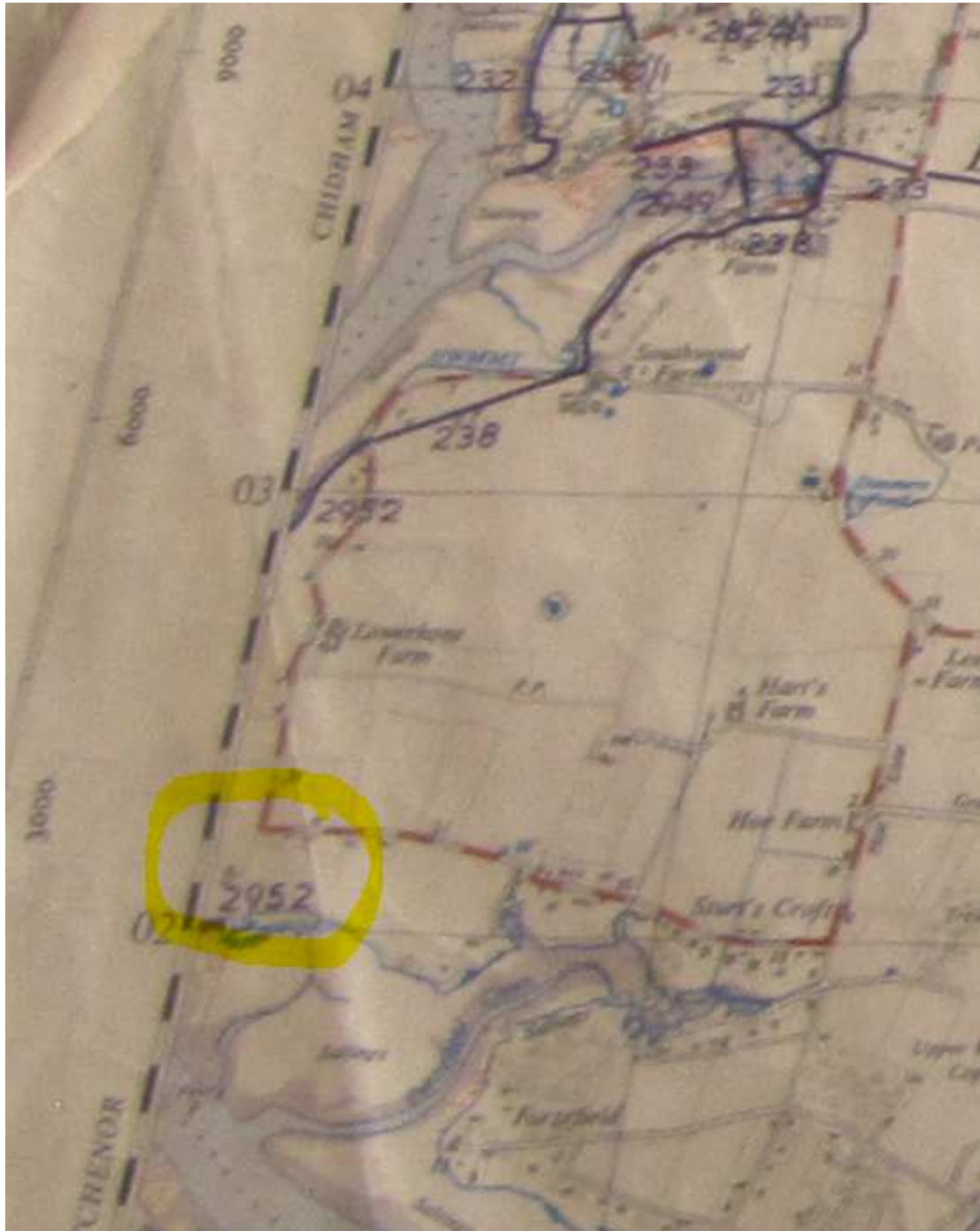
14.1.1 The detailed correspondence and research which led to the drawing up of the first definitive map has not survived, but the maps themselves have.

14.1.2 The evidence presented below

14.1.3 The definitive map for the Chichester area is held at the West Sussex Records Office under reference AM796/1/1

14.1.4 What this evidence shows

14.1.5 The map is not in good condition and it is not possible to see the application route. However the base map appears to be the OS 1/25000 map of 1935-61 shown above. A new path has appeared since the 1932 Act map. It is path 2952 which is shown in purple. It ends at the southern end of the application route.



14.1.6 The significance of this evidence

14.1.7 This evidence suggests that the application route was not considered to be a public footpath at the time of making the route. It may have been considered to be a road.

15. CURRENT OWNERSHIP

15.1.1 The evidence presented below

15.1.2 The evidence below is taken from the online Land Registry map. Land that has changed hands since registration with the Land Registry became compulsory on transfer in 1986 is coloured pink. Land that has not changed hands since that time and is therefore not registered is shown in white.

15.1.3 What this evidence shows

15.1.4 In common with the nearby roads, the application route is shown in white.



15.1.5 The significance of this evidence

15.1.6 The fact that the application route has not changed hands is supportive of highway status, since public roads do not change hands. However it could be part of the adjoining unregistered land

16. CONCLUSION

16.1.1 Whilst no single piece of evidence is conclusive, I believe that, taken 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 shown but, I suggest, no explanation other than the existence of a right of way which explains what all of these pieces of evidence show.

16.1.2 Earlier maps which might be expected to show footpaths show the application route as the only way to the public ferry which suggests that it has public status. Maps portray the route as a road or track in nearly all cases. The portrayal on the tithe map and Finance Act map strongly point to the existence of the application route as a public road.

16.1.3 As the route does not benefit from any of the exceptions in the NERC act this means that it is a restricted byway.

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

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

16.1.6 I believe this application passes both of those tests.

17. REQUEST

I request the surveying authority to add the route to the definitive as a restricted byway

APPENDICES

Appendix 1 map of the Bosham inclosure