

## **APPLICANT'S STATEMENT**

### **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER**



**FOR THE ADDITION OF A RESTRICTED BYWAY AND THE  
UPGRADE OF FOOTPATH 342 TO A BRIDLEWAY  
IN THE PARISHES OF WALBERTON AND ARUNDEL**

## **APPLICANT'S STATEMENT**

This application is made by The British Horse Society of Abbey Park, Stareton, Kenilworth, CV8 2XZ.

### **A. THE APPLICATION ROUTE**

The application route is within the parish of Walberton (which includes the villages of Fontwell and Binsted) and that of Arundel, in the County of West Sussex. It is shown between the points marked A. to G. on the Ordnance Survey 1/25000 map extract accompanying this application. Grid references are as follows:

Point A – SU 983 061

Point B – SU 985 063

Point C – SU 993 064

Point D – TQ 002 064

Point E – TQ 003 065

Point F – TQ 005 065

Point G - TQ 010 069

Points A. to B. are outside the bounds of the South Downs National Park (SDNP). Points B. to D. fall within the bounds of the SDNP. Points D. to F. are outside the SDNP. Part of the application route F. to G. lies along the boundary of the SDNP.

The following photographs are included for information purposes, they are taken from the easterly extent of the path, at the Arundel end, towards the westerly extent in Binsted village.



Photograph taken of route near to Point G. in Arundel

Grid Reference TQ 011 069





Photograph taken of route in the parish of Arundel

Grid reference TQ 001 063





Photograph of route taken in Binsted village

Grid reference SU 989 062

The route between points B. to G. is currently shown on the Definitive Map for Chichester as Footpath number 342. The route between points A. to B. is not on the Definitive Map. Prior to later boundary changes, the application route historically crossed the parishes of Binsted and Tortington and terminated approximately at the boundary of Tortington with Arundel. In 1902 the north east corner of Tortington parish was added to Arundel. In 1933 Tortington acquired the whole of Binsted parish, however, in 1985, the enlarged parish was divided up with portions going to Arundel, Ford, Slindon and Walberton.

With the exception of some field crossings and places where 20<sup>th</sup> Century residential development has crossed the route, there is evidence along the whole route, and particularly through what was Tortington Parish, of surface improvement, by way of flint stones and gravel – the photograph overleaf being an example:



The applicant believes that historic public use of this route means that it should be recorded between points A. to B. as a restricted byway, and between points B. to G. as a bridleway, based upon the following evidence.



## **B. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS**

In order to be able to modify the definitive map and statement, the surveying authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. The use of the "balance of probabilities" test rather than "beyond reasonable doubt" was confirmed by the High Court in *Todd, Bradley v Secretary of State for EFRA* (2004) 4 All ER 497.

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, Lewison LJ said, at paragraph 22,

'In the nature of things where an inquiry goes back over many years (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, and each piece of evidence as a link in the 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 sufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

Within this Statement, the applicant has used quotes from two books, *Medieval Roads and Tracks* by Paul Hindle (Shire, 2008 – ISBN 978-0-74780-390-4) and *Roads and Tracks of Britain* by Christopher Taylor (Dent, 1979 – ISBN 0-460-04329-3).

Paul Hindle is a former Senior University Lecturer now concentrating on researching, writing and lecturing in various fields of historical geography and whose main academic interests include old maps, roads and tracks and towns and roads in medieval England. He has published several books including "Roads and Tracks for Historians" (Phillimore, 2001).

Christopher Taylor FBA is the former Head of Archaeological Survey for the Royal Commission on the Historical Monuments of England and winner of the Landscape Archaeology Medal in 2013. He is also the author of several published books.

## **1. EVIDENCE FROM THE VICTORIA COUNTY HISTORY**

### **(a) Date**

Volume 5, Part 1 - Published 1997.



(b) Relevance

The Victoria History of Sussex is part of the national series planned to create a comprehensive encyclopaedia of English local history. It was started around the time of Queen Victoria's Diamond Jubilee in 1897. For each of the 39 historic English counties there exists, or is planned, a set of volumes containing a separate history of each town and rural parish. Work on the history of Sussex is still ongoing with 12 volumes already published.

British History Online is run by and from the Institute of Historical Research (IHR) in London and offers free access to a range of highly reputable sources, including publications of the Victoria County History (VCH).

The History of Binsted available via the BHO is taken from the volume concerning the Arundel Rape: South Western Part Volume 5 Part 1, published in 1997.

The research involved in the production of the history of each parish can be of particular use and relevance to persons researching rights of way recorded on the Definitive Map and Statement if it reveals information concerning the historic use of routes.

(c) Archive

Volumes of the Victoria County History are available to view in the West Sussex Record Office (WSRO).

The History of Binsted is also available online via British History Online at:

<http://www.british-history.ac.uk/vch/sussex/vol5/pt1/pp117-125>

(d) Meaning

Attached as **Appendix 1** is an extract from the Victoria County History for Binsted relating to the roads in the parish and with piece relating to the history of this route highlighted yellow. This history was downloaded from the British History Online website on 11 July 2017.

The applicant notes that the history of Binsted was written by A.P. Baggs and H.M. Warne – Heather Warne is the Archivist Emeritus at Arundel Castle.

Within the history it is stated that:

"A third east-west road crossing the centre of the parish, mentioned in 1615 as a road between Binsted and Arundel, (fn. 18) survived in 1992 as a fairly wide footpath for most of its course within Binsted..."

(e) Assessment

The history was very useful in pointing the applicant to the source of the evidence contained within 2..

## 2. GLEBE TERRIER FOR VICARAGE OF BINSTED

(a) Date

1615

(b) Relevance

A Glebe Terrier describes property assigned to the incumbent of the church, which was intended to support him and his family. The terriers were written up for the Archdeaconry Court, for administrative purposes. This document is one of a bundle of short glebe terriers for parishes within the Archdeaconry of Chichester.

(c) Archive

This document is held at the WSRO under reference Ep.I/25/1. It is the document cited in the VCH for Binsted as evidence that the application route was formerly a road, above. The applicant had a transcript of the document made by Dr C J Adams in July 2017. Photographs of the original document are on a disc provided with this statement as **Appendix 2**. A copy of the transcript of it is attached as **Appendix 3** and of Dr Adam's CV at **Appendix 4**.

(d) Meaning

The document clearly describes the application route twice within the said document as "the lane leading from Binsted Church to Arrundell". The document is not only signed by the Vicar but also by the two Churchwardens.

Later in the document it describes "... one acre more bounded with the same lane on the north syde & with the lane that goeth to lower Binsted on the west side".

From this description it is clear that here they are describing Binsted Lane, which is today, for the most part, an adopted public highway.

(e) Assessment

It is rare to be able to find such good early evidence of the historic use of a route. The application route is described as a lane, it describes where it goes from and to, and it is not only signed by the Vicar, a respected member of the community, but witnessed by the Churchwardens. Also described within the document as a "lane" and not "the highway" is the road going south east from the church to lower Binsted, which road is today an adopted public vehicular highway.

Had the route only been a footpath it would have been described as "the foot way from Binsted Church to Arundel", or similar, it would not have been described as a lane.

Whilst the Applicant is aware that 1615 is post medieval not medieval, the lane is unlikely to be new at this time. It most likely dates from the medieval period and so the following quotes are relevant:

## **Page 10 of 46**

(1) Christopher Taylor from "Roads and Tracks of Britain"

Chapter on Medieval Roads,

Page 113

"It is very rare to find that a documented medieval road has disappeared without trace. Almost invariably it has lost its original importance and changed its role, but it is nearly always there in some form today."

(2) Paul Hindle from "Medieval Roads and Tracks

From the Introduction

Pages 6-7

"The greatest problem in attempting to trace medieval roads is that if the route is no longer in use then, not having been engineered, it will largely have disappeared ... In order to trace medieval roads, therefore, one must begin in the library rather than in the field". At the top of page 6 he also quotes C T Flower who, in describing these routes that grew from habitual lines of travel, says that they "made and maintained themselves".

Within the Glebe Terrier it states "bounded with the same lane on the north side which leads from the church to Arrundell which lane is parcel of the gleabe land ..."

Paul Hindle gives useful insight into the legal situation regarding medieval roads below – also from Introduction, Page 6:

"The nature of these new medieval roads differed from that of Roman or modern roads; essentially the road was not a physical entity, a thin strip of land with definite boundaries; rather it was a right of way, an 'easement' with both legal and customary status, leading from one village or town to the next. If the route was much frequented it became a physical track, with two important provisos. The first was that if the road was obstructed or had become 'foundrous' in wet weather, then the traveller had the right to diverge from the road, even if that entailed trampling crops. The second proviso was that where the road had to climb a hill or bank then multiple tracks would develop, the traveller taking the easiest route then available. Many of the surviving sections of medieval roads come in this category, where roads left uncultivated land and the tracks have thus not been ploughed out or otherwise destroyed".

### **3. HISTORIC MAPS**

#### **3.1 YEAKELL AND GARDNER'S SUSSEX**

a) Date

All the sections of this map were never finished but the sections that were, were published between 1778 and 1783. It is at a scale of two inches to one mile.



b) Relevance

Thomas Yeakell and William Gardner were two young surveyors who began this map of the whole of Sussex "the Great Survey" sponsored by the 3<sup>rd</sup> Duke of Richmond. Unfortunately the project for the whole County was never completed. They were among the first cartographers to be employed by the Board of Ordnance in 1790 when it started the great Ordnance Survey. This map was the first engraved map of Sussex and employed many of the techniques later adopted by the Ordnance Survey. In the book "Printed Maps of Sussex" (1982) by David Kingsley there is an extract for a Prospectus for this map dated 11 June 1778 which states that "Every Inclosure, however small, is described; every Road, public and private, every Bridle-way and Foot-path; ...". Aside from roads enclosed with definite boundaries on the map, other routes are represented by dotted tracks.

c) Archive

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](http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell_36.htm)

A copy is also held at West Sussex Record Office in the maps area under reference PM 249.

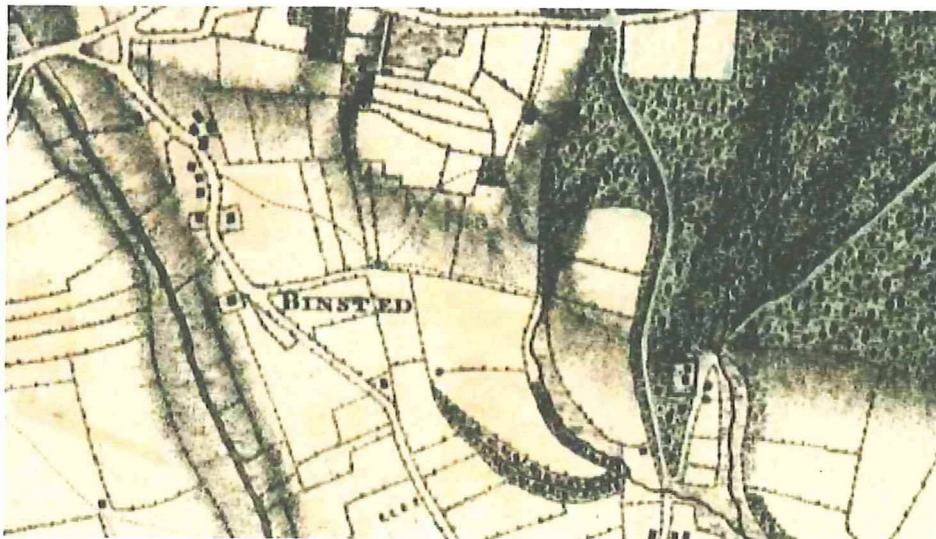


Fig. 1 - Extract from Yeakell & Gardner Sussex taken from above website

A photocopy of a section of the map, taken from the WSRO copy, is attached as **Appendix 5**.

d) Meaning

The application route is depicted as a road enclosed by hedges between points A. to B. This continues as a dotted track across fields alongside a hedge and then appears to follow the edge of the woods and largely replicate the line today recorded as Footpath 342 to point G.

The following two pictures were taken on 29<sup>th</sup> November 2017.



Fig. 2 Part of the application route A. – B. looking back towards Binsted Church.  
Both sides of road enclosed.





Fig. 3 - Continuation from Point B. looking east - showing route, one side bounded by hedge.

e) Assessment

This map was published 163 years after the Glebe Terrier which is the earliest known evidence of the route. The depiction is consistent with a road enclosed both sides existing between points A. to B. and the route appears to continue across fields and possibly along the edge of the woods to Arundel.

We cannot assume that because a route is shown by Yeakell & Gardner on this map as merely a dotted track this indicates that it is a footpath simply because we are accustomed today to modern OS maps depicting footpaths in that way. It is relevant to point out that the VCH for nearby Ford cites a historic document as evidence for a former road between Tortington and Ford and the VCH for Tortington evidence of another between Arundel and Tortington and these are also depicted on this map as dotted tracks. I believe these dotted tracks can represent typical medieval roads of the type outlined by Paul Hindle on page 10 of this Statement.



The photographs taken on 29<sup>th</sup> November 2017 reveal the similarities today in the features depicted on the Yeakell & Gardner map of 1778.

### 3.2 FIRST ORDNANCE SURVEY OLD SERIES MAP OF SUSSEX

#### a) Date

The Ordnance Survey Old Series Map at a scale of one inch to one mile was published in 1813.

#### b) Relevance

The map is based upon the OS Drawings Map of 1805-6 held at WSRO under reference PM280.

#### c) Archive

A copy of this Old Series Ordnance Survey map is held at WSRO under reference PM 249. A photocopy extract from the WSRO map is enclosed as **Appendix 6**.



Fig. 4 – Extract from OS Old Series 1813

#### d) Meaning

Only the section of road heading east from the church, the application route from points A. to B. is shown. It is shown as a road enclosed both sides. The map does not appear to show routes like bridleways.

#### e) Assessment

The depiction is consistent with the proposition that the application route A. to B. should be recorded as a restricted byway.

### 3.3 GREENWOOD AND GREENWOOD MAP OF SUSSEX

#### a) Date

This map was published in 1825. It is at a scale of one inch to one mile.

#### b) Relevance

Christopher (1786-1855) and John Greenwood (fl. 1821-1840) were brother cartographers who produced large scale maps of England and Wales in the 1820's. Their output includes superb maps that were finely drafted and elegantly engraved. Between 1817 and 1830 they produced a series of splendid large scale folding maps of most of the Counties based upon their own surveys.

In Hollins and Oldham (1995) Judge Howard examined various maps from 1777 to 1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive to purchase. There was "no point showing a road to a purchaser if he did not have the right to use it".

#### c) Archive

A copy of this map is held at WSRO in the maps section under reference PM 249. A photocopy extract with attached copy of the "Explanation" is attached as **Appendix 7**.



Fig. 5 – Extract from Greenwood and Greenwood 1825



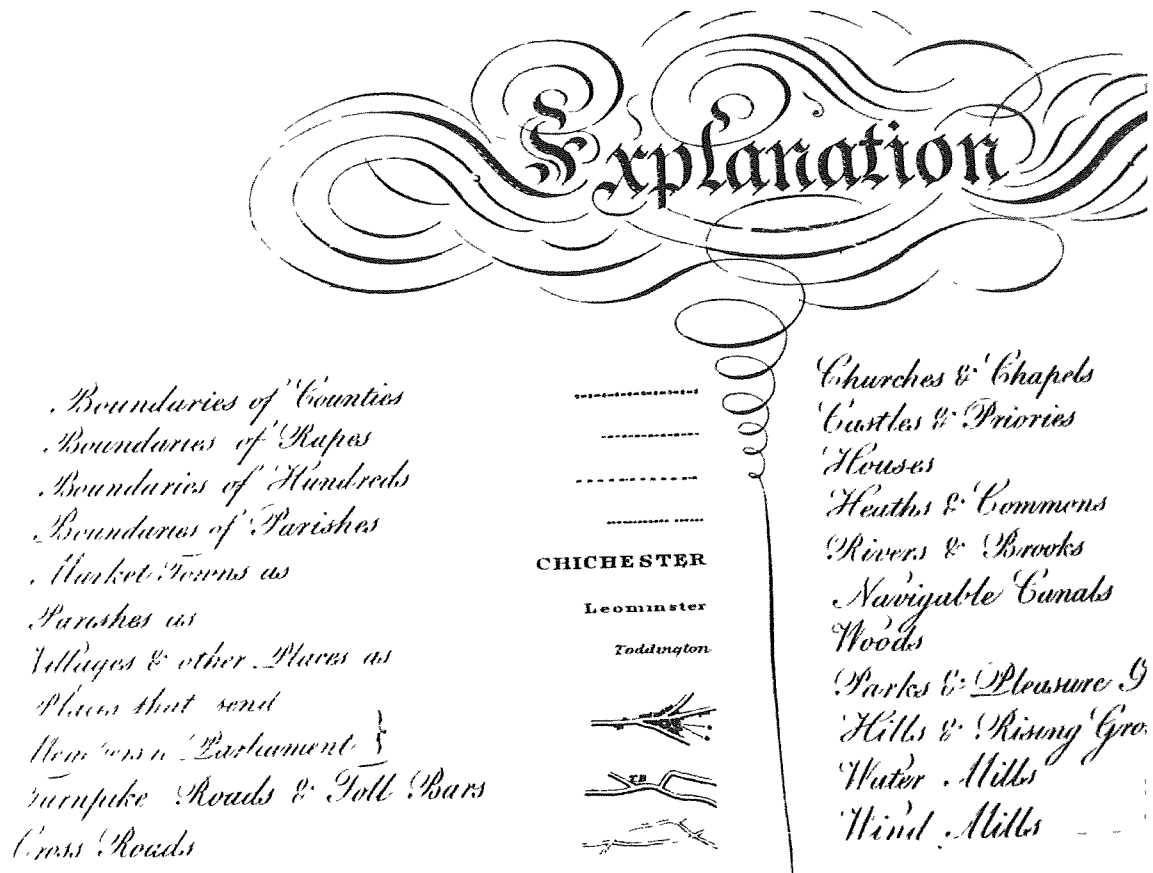


Fig. 6 - Extract from Explanation on Greenwood Map

#### d) Meaning

The map shows the application route from A. to B. as a road (partially obscured by the word "Binsted"). The Explanation (or key) reveals that the road is depicted in the style of a cross road. There is no key for bridle roads or footpaths.

#### e) Assessment

The depiction is evidence in favour of the proposition that the application route from A. to B. was a road in 1825 and therefore should be recorded as a restricted byway.

### 3.4 ORDNANCE SURVEY ONE INCH TO ONE MILE REVISED NEW SERIES MAP - CHICHESTER SHEET 317

#### (a) Date

The map was revised in 1893 and published in 1895

#### (b) Relevance

These maps were made for sale to the public and so unlikely to show routes the public could not use.

(c) Archive

The applicant found this map on the website of the National Library of Scotland. <http://maps.nls.uk/os/one-inch-rev-new-series/> Fig. 7. is an extract taken from the screen. A copy is on the disc attached to this Statement as **Appendix 8**. A copy of the key is on disc as **Appendix 9**.



Fig. 7 – extract from OS Revised New Series 1895

(d) Meaning

From the key to the Revised New Series maps found on the Cassini website, extracts of which are shown below in Figs. 8 and 9. the application route is shown as a fenced unmetalled road between points A. to B. Part of the application route B. to C. is shown as a footpath with the remainder shown as an unmetalled unfenced road. The application route C. to D. is shown as an unmetalled and unfenced road. The route between points D. and G. is not shown.

Revised New Series (colour)		Surveyed 1842-1893 (New Series); revised 1893-1898 (Revised New Series) Coloured Edition published 1897-1904	
Metalled Roads; First Class	Fenced	5 (Mile distance) [Altitude] 211	Turfed
" " Second Class			
" " Third Class			
Unmetalled Roads			

Fig. 8 – extract from key to OS Revised New Series



*Rivers and Streams when exceeding 15 feet in width are shewn with two lines.*

*Footpaths* .....

*At Villages* .....

*Post Office* .....

P

*Post & Telegraph Office* ..... T.

Fig. 9 – extract from key to OS Revised New Series

#### (e) Assessment

The depiction supports the applicant's assertion that the application route between points A. to B. should be recorded as a restricted byway.

The route between points B. to C. is partially shown as a footpath and partially as an unmetalled and unfenced road (see picture on memory stick for clarity). However, these maps had no separate key for bridleway.

The route C. to D. is shown as an unfenced and unmetalled road. The applicant draws your attention to the east/west route to the north of the application route on the map, which is known today as Old Scotland Lane (path no. 338). Approximately two thirds of the route known as Old Scotland Lane is shown in the same way as the application route C. to D. Old Scotland Lane is today recorded on the Definitive Map as a bridleway (see Fig. 10). Evidence from the Victoria County History that the route was "mentioned in the 13<sup>th</sup> or 14<sup>th</sup> centuries as the King's highway", "called Arundel Highway in 1727" and "partly Andrew's Lane and partly Scotland Lane in 1840" suggests that perhaps it should, in fact, be recorded as a restricted byway. It does illustrate how the popularity of routes changes over time and thus their appearance on the ground at the times the various maps were compiled.

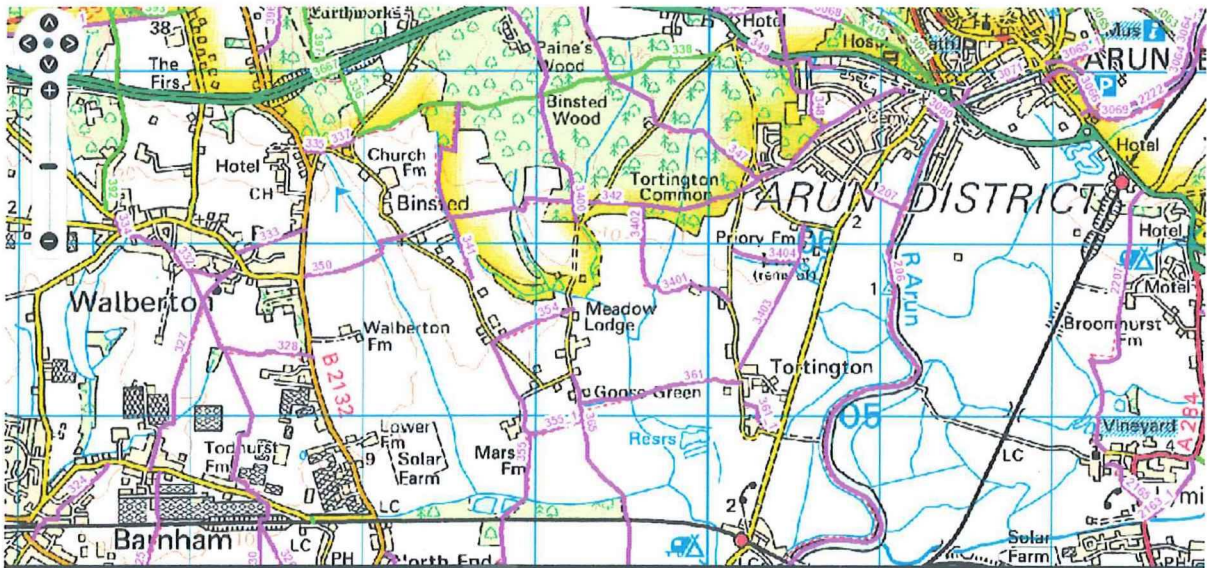


Fig. 10 - extract from iMap of current Definitive Map for Chichester, showing Old Scotland Lane (path no. 338) in green, the colour used to depict bridleways

### 3.5 BARTHOLOMEW'S MAPS

#### a) Date

The dates of the maps shown as Fig. 11 and Fig. 12 are 1902 and 1922 respectively.

#### b) Relevance

These maps were made for sale to the public, particularly for tourists and cyclists, and so are unlikely to show routes that the public could not use. Bartholomews maps have a key in which different types of route are distinguished.

#### c) Archive

Original maps of Sheet 32 Sussex are held by the National Library of Scotland (NLS) and can be viewed via [http://maps.nls.uk/series/bart\\_half\\_england.html](http://maps.nls.uk/series/bart_half_england.html)

Figures 11. and 12. have been taken from the above source.

#### d) Meaning

In the 1902 map the application route between the points C. and D. is shown, according to the key, as an "inferior road".

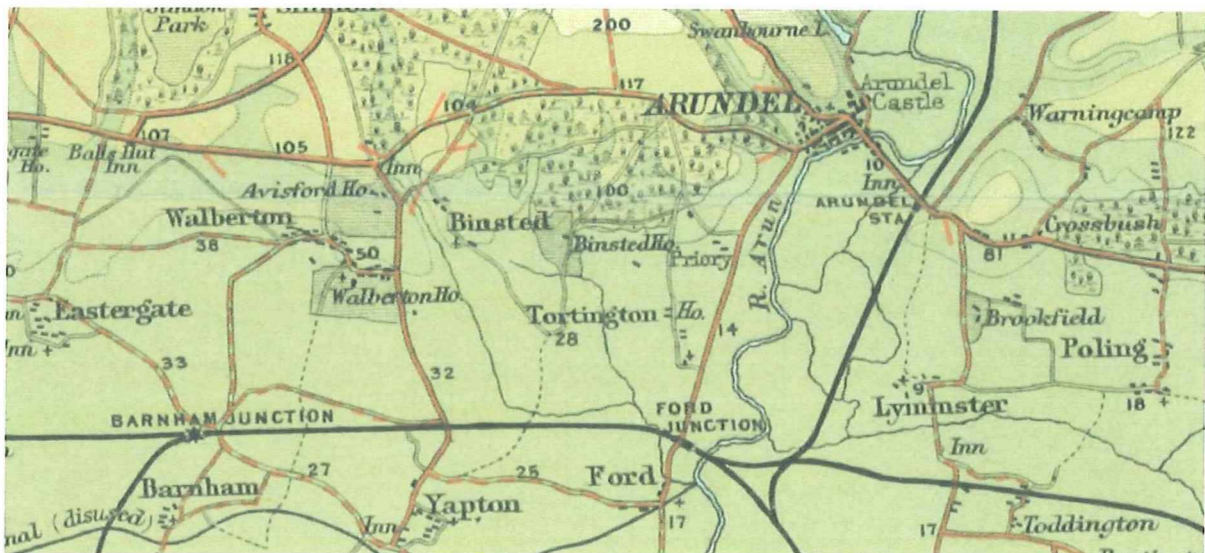


Fig. 11 - Extract from Sheet 32 Sussex 1902



In the 1922 map the application route C. to D. is also shown as an “inferior road”.

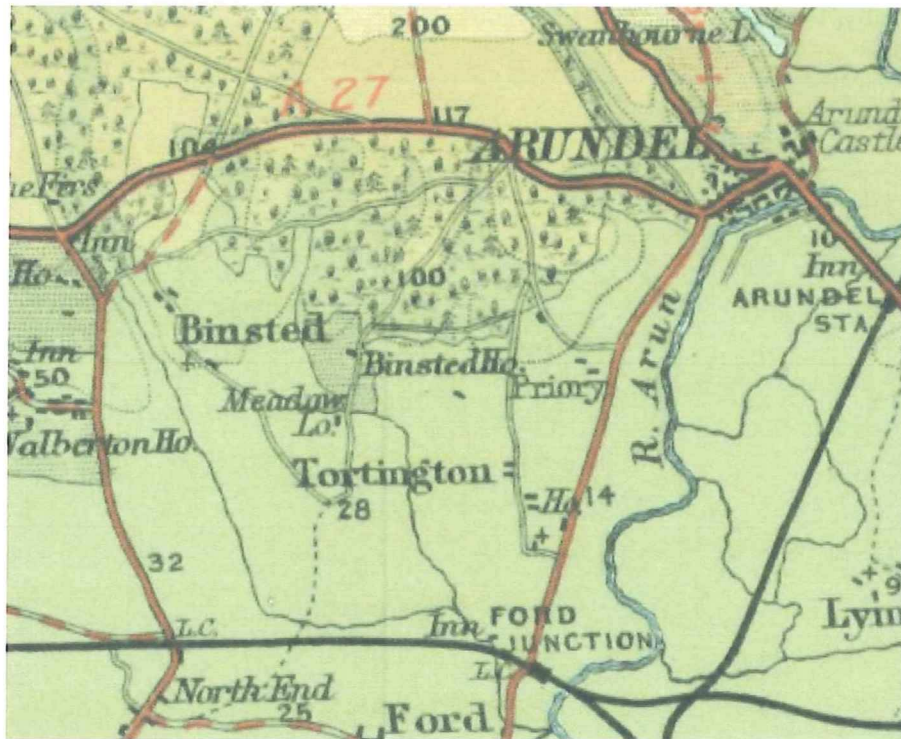


Fig. 12 - Extract from Sheet 32 Sussex 1922

According to the key, the “uncoloured roads are inferior and not to be recommended to cyclists”.

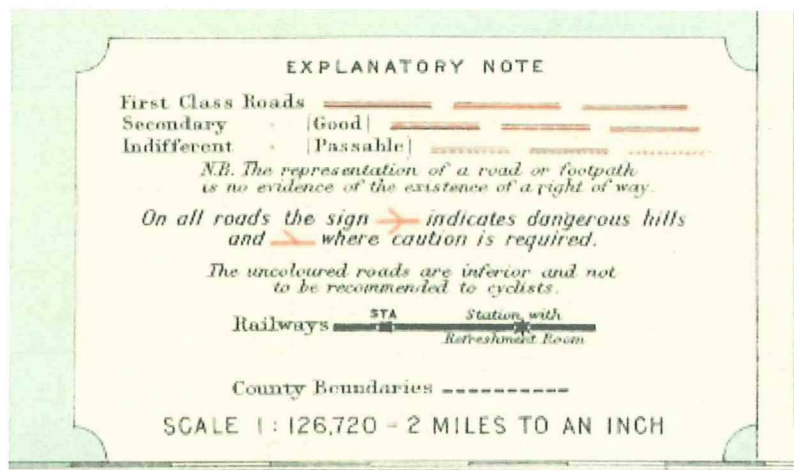


Fig. 13 - Extract from Bartholomews Maps showing key

#### e) Assessment

(1) Although the map carries the standard disclaimer that the representation of a road or footpath is no evidence of a right of way, it remains the case that this map was produced for sale to the travelling and cycling public, and the roads were revised by the Cyclists' Touring Club (CTC). It seems likely that the disclaimer is to avoid the publishers from finding themselves in the midst of legal action, and that their true beliefs come from the fact that the CTC assessed the roads as suitable or 'inferior'. Cyclists at the time of publication (1902 and 1922) had no right to use

bridleways, having been declared to be carriages by s.85 Local Government Act 1888.

(2) The PINS Consistency Guidelines suggest that little weight can be given to this source. However, in *Commission for New Towns and Another v J.J. Gallagher Ltd* (2002) EWHC 2668 (Ch), the judge stated at para 108:

"Bartholomew's Map of England, 1901 and 1911 editions, has three categories of coloured roads. They are 'first class roads', 'secondary roads (good)', and 'indifferent roads (passable)'. There are two other categories, namely uncoloured roads and 'footpaths and bridlepaths'. Beoley Lane is marked in each of the two editions as an uncoloured road. The legend to each of the Bartholomew maps states that 'the uncoloured roads are inferior and not to be recommended to cyclists'. The implication of the demarcation of Beoley Lane on these maps appears to me that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can be lawfully used by cyclists which, as at 1901 and 1911, would have meant they were public carriageways. However, it is important to mention that there is a note to the effect that 'the representation of a road or footpath is not evidence of the existence of a right of way'. I do not consider that this means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed any map which does not have the positive function of identifying public carriageways".

The conclusion one can draw from this previous case is that at least some weight must be given to this source.

Looking at these maps, the majority of the roads within Binsted and Tortington, south of the marked A27 and within the area bounded by Yapton Lane and Ford Road, are depicted as uncoloured roads. These roads are today either public vehicular highways or public bridleways. The implication from these maps is that the application route between points C. to D. was considered at this time to be a public vehicular highway.

### **3.6 FIRST EDITION OF THE ORDNANCE SURVEY COUNTY SERIES 25 INCH TO THE MILE MAP SUSSEX**

#### **a) Date**

1876

#### **(b) Relevance**

The early 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 land use information when cross referenced to the Books of Reference that were published with them. These books are indexed by Parish. This map only really contains information of relevance to the application route A. to B. The remainder of the route is shown but not annotated with its status.



(c) Archive

The above map may be viewed online on the [old-maps.co.uk](http://old-maps.co.uk) website, from which Fig. 14 was taken. The WSRO also has a set of the Books of Reference (Area Books) that go with these maps. A photocopy of the relevant page for Binsted is attached as **Appendix 10**.

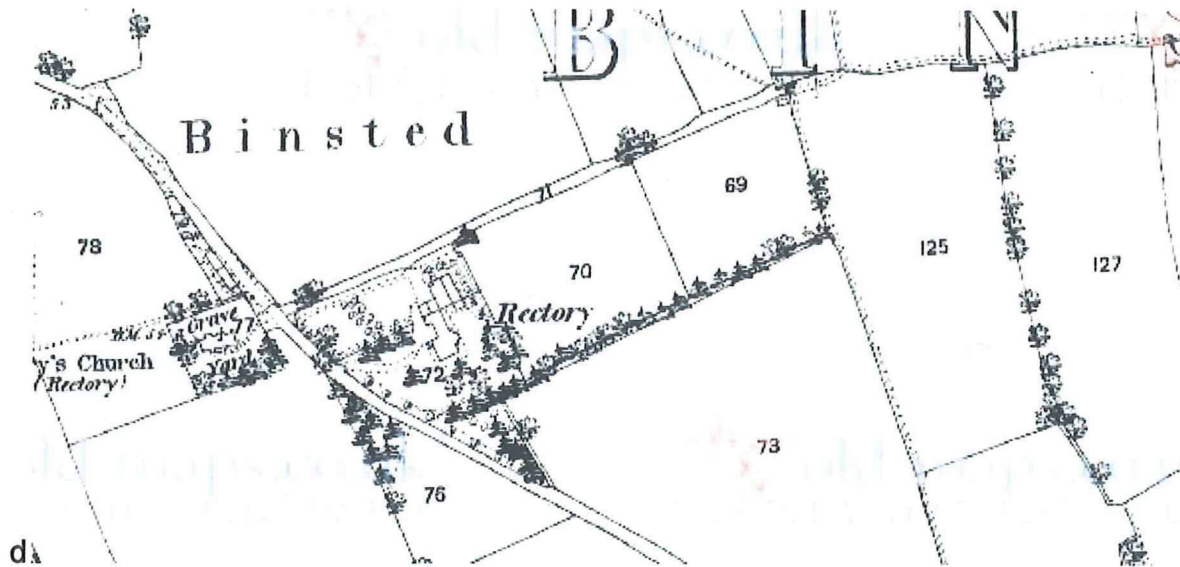


Fig.14. - Extract from OS First Ed. Sussex 1876 1:2500

(d) Meaning

The application route A. to B. is depicted as an enclosed road with the number 71. The Book of Reference for parcel 71 in the parish of Binsted reads "Road".

(e) Assessment

The depiction is consistent with the application route A. to B. being a public vehicular highway in 1876 and consistent with the applicant's assertion that it should today be recorded on the Definitive Map as a restricted byway.

### 3.7 SECOND EDITION OF THE ORDNANCE SURVEY COUNTY SERIES 25 INCH TO THE MILE MAP SUSSEX

(a) Date

Revised 1910, Published 1912

(b) Relevance

Old maps of this scale are not generally on sale to the public. It was the scale at which the country was surveyed and many maps printed at larger scales were derived from them. For research purposes the County Series are used for more detailed work. The second edition maps were used as the base maps for the 1910 Finance Act information.

(c) Archive

The extracts in Figs. 15 to 17 were taken from the [old-maps.co.uk](http://old-maps.co.uk) website. The appropriate sheets that cover the application route are Sussex (West) Sheets 62-8, 63-1 and 63-5.

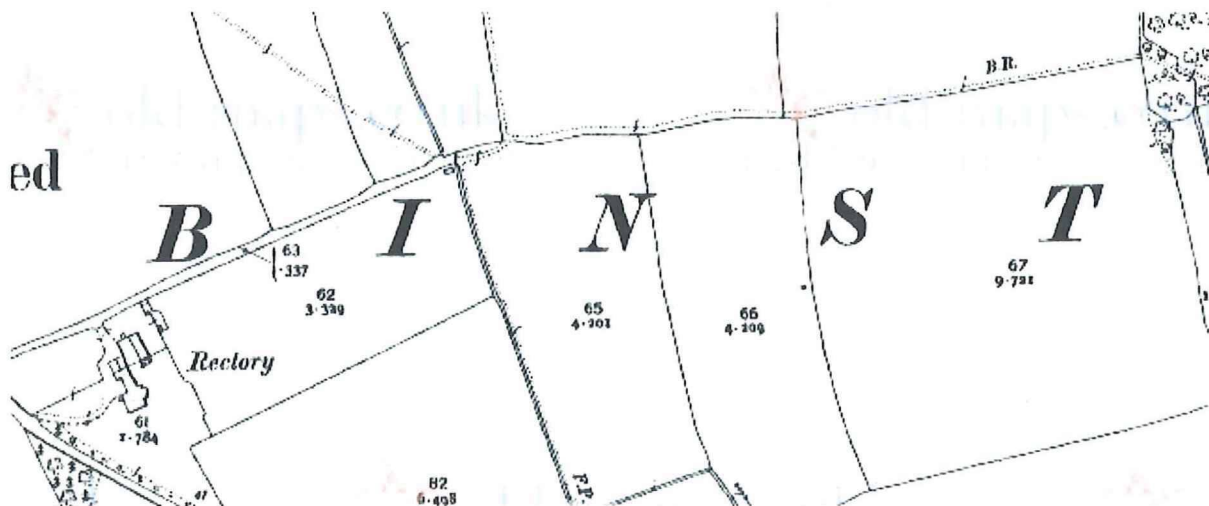


Fig. 15 – extract from 1910 OS 1:2500 Sussex (West) sheet 62-8 showing application route A. to B. and partially B. to C. with annotation B.R.

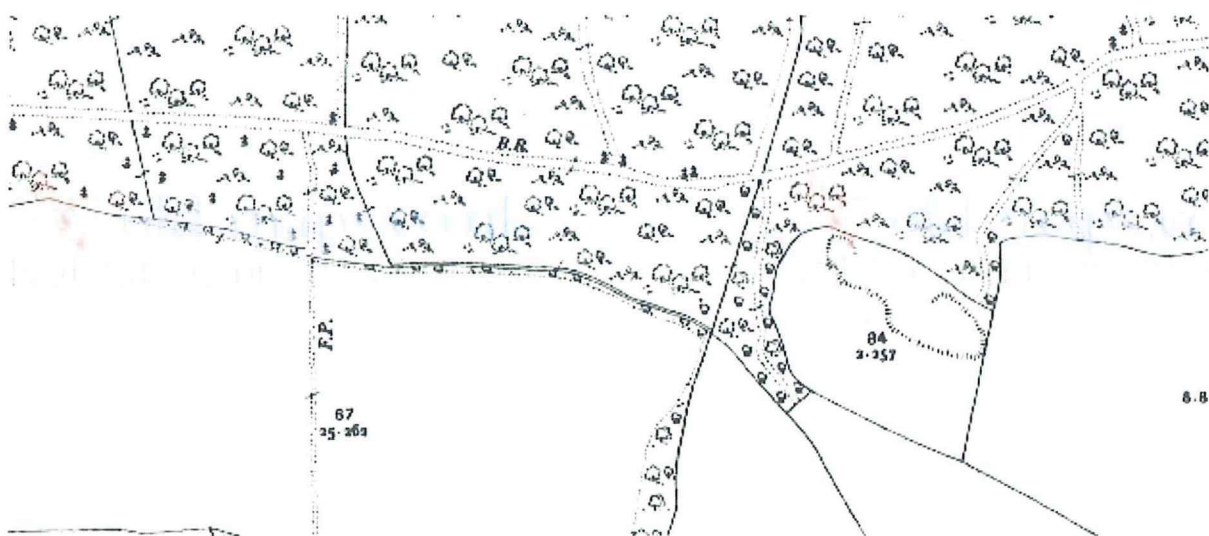


Fig. 16 – extract from 1910 OS 1:2500 Sussex (West) sheet 62-8 showing part of application route between points C. and D. with annotation B.R.



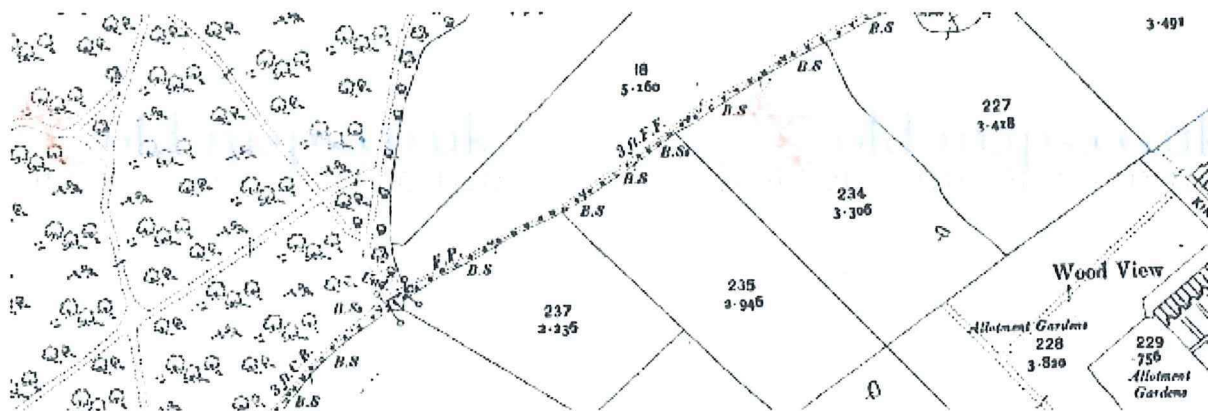


Fig. 17 – extract from 1910 OS 1:2500 Sussex (West) sheet 63-1 showing part of application route between points F. and G. marked F.P.

(d) Meaning

From point B. of this application on the map 62-8 and heading towards Arundel, the route is clearly marked in two places "B.R." for bridle road. A very small section of the route is shown on the map 63-5 with no annotation. On the map 63-1 from a place east of point F. and going towards point G. of this application, the annotation changes to "F.P." for footpath.

(e) Assessment

The depiction is consistent with other evidence that the application route has higher rights than that of footpath. It confirms when the route was surveyed by the Ordnance surveyor he saw evidence of use as a bridle road along the majority of the route with the exception of the section nearest to Arundel.

### 3.8 ORDNANCE SURVEY COUNTY SERIES 25 INCH TO THE MILE MAP SUSSEX

(a) Dates

Sheet 62-8 Revised 1939, published 1947. Sheet 63-1 Revised 1937, published 1940. Sheet 63-5 Revised 1940, Published 1947

(b) Relevance

These maps show the position more than 25 years after the map above and subsequent revisions.

(c) Archive

The extracts in Figs. 18 to 20 were taken from the same old-maps.co.uk source as those above.



Fig. 18 - Extract from 1939 OS 1:2500 Sussex sheet 62-8 showing the application route A. to B. and partially B. to C. with annotation B.R.

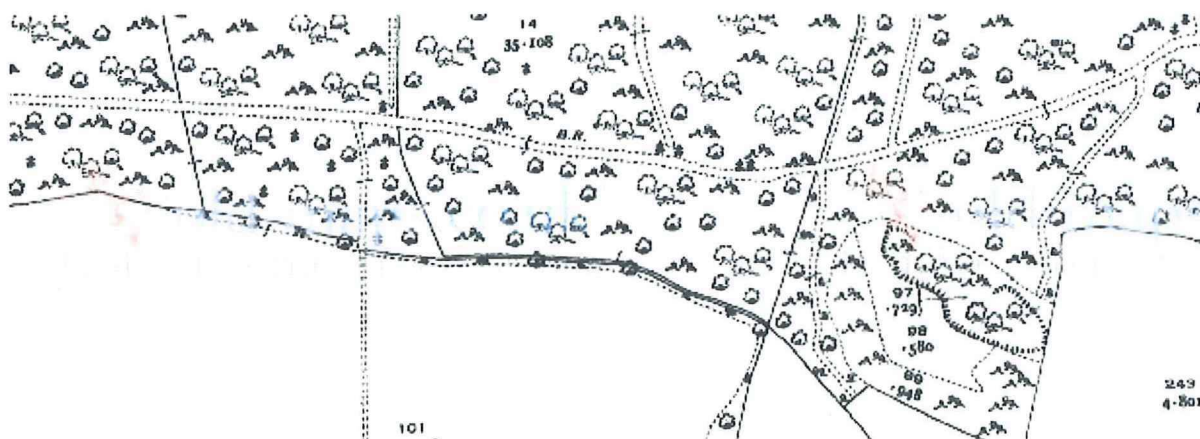


Fig. 19 - Extract from 1939 OS 1:2500 Sussex sheet 62-8 showing part of application route between points C. and D. with annotation B.R.



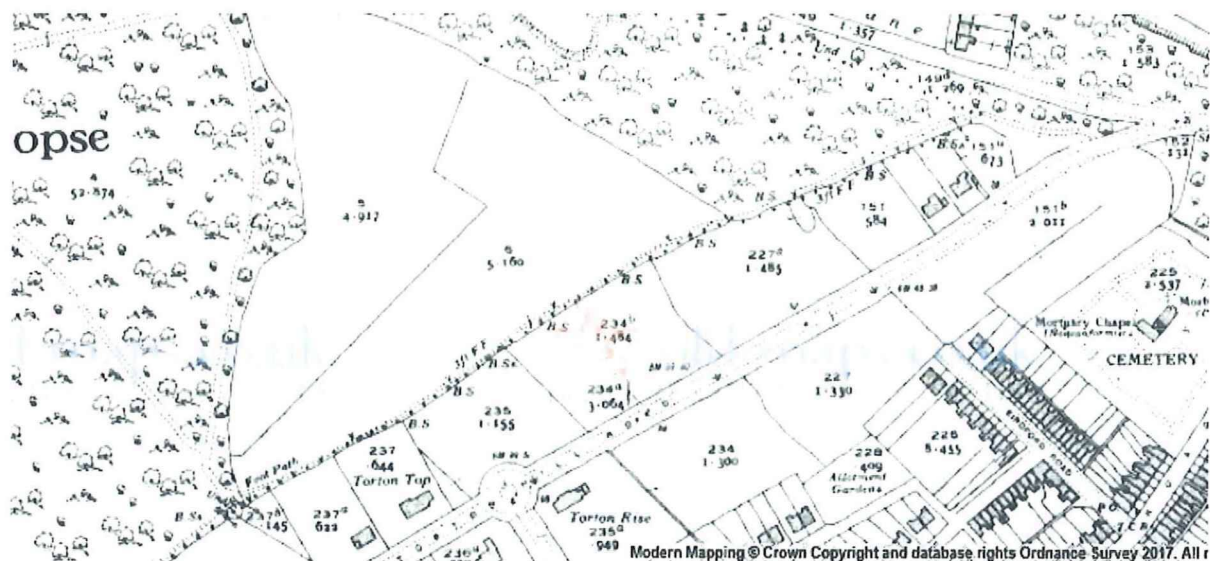


Fig. 20 – Extract from 1939 OS 1:2500 Sussex sheet 63-1 showing part of application route between points F. and G. marked F.P.

(d) Meaning

The maps show that the depiction on the earlier maps has not changed.

(e) Assessment

Despite a period of over 25 years and subsequent revision, the Ordnance surveyors still record the majority of the application route as a bridle road.

#### 4. PARISH AND ESTATE MAPS

These maps are of use because they show how the parish or the landowner viewed routes within the parish at the time the maps were compiled.

##### **4.1 A SURVEY AND MAP OF THE MANOR OF TORTINGTON**

(a) Date

1724

(b) Relevance

The map was compiled by Samuel Jenner for the owner of the Manor of Tortington, Richard Leeves, and shows part of the application route through Tortington parish, just over 100 years after the Binsted Glebe Terrier.

(c) Archive

The map is held at WSRO under reference Add Mss 47691. Photographs of the map (which is the size of a dinner table!) are on the disc attached to this Statement as **Appendix 11**.

(d) Meaning

The application route through Tortington is shown partially as a double dotted and partially as a single dotted track. It is not possible to say with certainty what this represents as there is no key. However, the map through somewhat crudely drawn compared to today's standards, gives a lot of information about Tortington at the time. From it, it is possible to ascertain the following:

(i) Priory Lane's only connection to the outside world is via single and double dotted line tracks.

(ii) Tortington Lane as we know it today did not exist. The lower part of Tortington, including the Manor house and Church is reached via a section of road, which today does not exist on OS maps in any form, which branches off a route marked "Road" (today known as Binsted Lane) and via the route annotated on the map "Green Lane". This section is recorded on the Definitive Map as Footpath Nos. 3401 and 3402 and the evidence would therefore suggest this should also be recorded with a higher status.

(iii) South of the main Chichester to Arundel Road, the only route actually marked "Road" is the road now known as Binsted Lane. Even that is partially represented by a single dotted line track.

(iv) A study of the two dotted track routes running through the land on the north east section of the map, said to be in the ownership of the Duke of Norfolk, most likely represent (1) the route the subject of this application and (2) the old road from Arundel to Tortington (known today as *Priory Road*). The VCH for Tortington (accessed via British History Online on 16 December 2017) tells us that the northern section of the old road from Arundel to Tortington had ceased to be used by 1795 in favour of another route that ran south east from the Chichester Arundel Road, at the point where a public house (today the site of the Arundel Resort Hotel) existed by 1772. The former old road from Arundel to Tortington may be seen on old maps such as the 1813 Old Series OS Map thus:



Fig. 21 – extract from 1813 Old Series Map showing old road from Arundel to Tortington circled red



The more easterly of the two dotted track routes shown on the 1724 map appears to show this old route to Tortington, which joins with the road today known as *Priory Lane* by Priory Farm. There is no other road shown on the map that could be the route in question, which one would certainly expect to be shown on a map of 1724. By reference to the 1778 map by Yeakell & Gardner you will note that they also depict this route as a dotted track.

(v) Note that the Old Scotland Lane route is very clearly drawn through Tortington.

**(e) Assessment**

The map is useful to show that a route approximating the application route existed through Tortington Parish in 1724. It is shown coming in from the west from the Parish of Binsted, going through Tortington parish and north east through lands in the ownership of the Duke of Norfolk. By comparison with how the routes known today as Priory Lane and Binsted Lane are depicted it is obvious that the routes shown by single and dotted lines must represent routes of higher status than footpath.

The applicant has also brought evidence of another old road known to have existed, that from Arundel to Tortington (the remains of which is today known as Priory Road) and, by comparison with the application route, the depiction on the 1724 map as a single dotted track is the same.

## **5. TITHE MAPS AND APPORTIONMENTS**

### **5.1 TITHE MAP AND APPORTIONMENT FOR BINSTED**

**(a) Date**

The Tithe Map of Binsted is a first class map, by E. Fuller of Chichester and dated 1838. The apportionment is by Thomas Drewitt of Guildford and Thomas Boniface of Climping and dated 1840.

**(b) Relevance**

The Tithe Commutation Act of 1836 enabled tithes (literally a tenth of the produce of the land) to be converted into a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. The Act was amended in 1837 to allow maps produced to be either first class or second class.

First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners (s. 2 Tithes Act 1847). They had to be at a scale of at least 3 chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to the tithe commutation, and are often at 6 chains to the inch. There was a proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, but this was not strictly adhered to.

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. Non-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 sienna or light brown which typically indicates public status.

### (c) Archive and Reference

Tithe maps and apportionments for West Sussex are available at the Records Office on the map viewer. The Binsted Tithe Map is held at WSRO under reference TDW15. The map is part of a series formerly in the custody of the Diocesan Registrar and transferred to the Record Office on the direction of the Master of the Rolls. A photograph of the section showing the application route A. to B. and part of the route B. to C. is shown in Fig. 22.



Fig. 22 – extract from Binsted Tithe Map

The original Tithe Commissioner's copy of the Binsted Tithe Map is held at the National Archives under reference IR30/35/32. A photograph was obtained on a 3 month subscription to The Genealogist and is on the disc accompanying this Statement as **Appendix 12**. Copies of sections showing the application route printed from the Map Viewer at WSRO are attached as **Appendix 13**.

of Binsted 18th August 1840 (Transcribed:D.Jennings,Checked:C.Hutchins)

Occupier's Surname	Occupier's First Name Title (s)	Name of Farm	Res. ref. to the Plan	Extra Characters	Name & Description of
Upton	Henry		04 & 05		Lake Copse
Upton	Henry		75		Church Lane
Upton	Henry		185	a	Hors Lane
Upton	Henry		185		Road

Print out first headers to include / exclude from search (bold when included)

Fig. 23 – screen shot of tithe apportionment showing plan ref. no. 75 and, at the bottom, plan ref. no. 185



(d) Meaning

The Binsted Tithe Map is a first class map and so is legally conclusive of all matters it portrays. The map shows the application route A. to B. as a road coloured sienna in the same way as other main roads in the parish considered to be public. It is given apportionment no. 75. The roads in the parish are not listed under "Roads, Wastes etc as in some other Tithe Apportionments but all under the names of the landowners. Under the apportionments it is described as "Church Lane" with no tithe payable. The main road around Binsted, today (except for a short section) adopted as a public vehicular highway, is given the number 185 and called "Road" – this may also be seen in Fig. 23 above. The route known as Old Scotland Lane is shown numbered and coloured sienna for the most part. The section numbered 35 of it is not coloured sienna and the route apparently stops short of the parish boundary.

Apart from enclosed roads which are numbered and coloured and clearly considered to be public vehicular highways, there are other double dashed line routes which are shown coloured sienna but not separately numbered and further routes drawn in brown pen shown on the Tithe Commissioners map as single dashed lines. On the Diocesan map lodged at WSCC, these are shown as lines of dots and dashes.

The double dashed lines are similar to Lt. Dawson's proposed tithe map key for the depiction of open or bridle roads (an extract from which is shown below as Fig.26). On this map though some of the double dashed line routes coloured sienna become very thin and continue as a line of dots and dashes. What might be being represented is the width of a route – ie. Referring back to the quotes from Paul Hindle's book "Medieval Roads and Tracks" on page 10 where he refers to typical medieval roads not being engineered but just being an easement across private land. If the application route was in places by 1840 merely a narrow track through woods or a field margin track, for instance, wide enough for pedestrian or horse rider but not more, this could explain the difference in how the route is depicted along its length.

The applicant has enclosed an extract showing Lt. Dawson's proposed tithe map key for completeness, but many surveyors did not follow it. E. Fuller did the maps for many other local parishes. On others, where the same use of the lines of dots and dashes are also used, Kain & Oliver's *The Tithe Maps of England and Wales* (1995) describes the maps as showing "footpaths and/or bridleways".

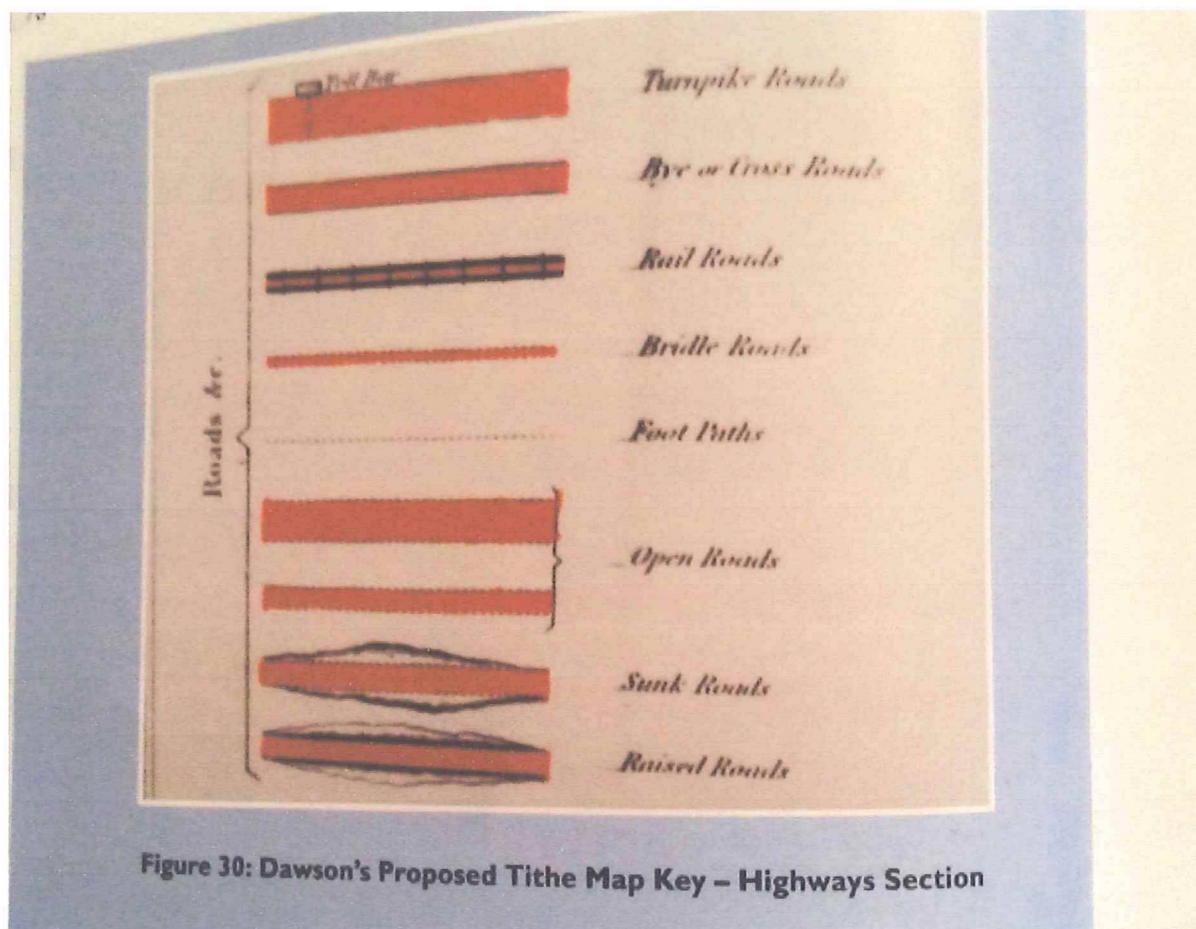


Fig. 24 – extract from Bucks & Wadey's Rights of Way Restoring the Record (2017) showing highways section to Lt Dawson's proposed tithe map key



**(e) Assessment**

The application route A. to B. is shown coloured sienna and in the same way on the tithe map as other public roads in the parish. It is also listed in the apportionments in the same way as the other public roads, and no tithe was assessed. This depiction is consistent with the application route A. to B. being a public vehicular highway at the time of the assessments.

Both the Binsted and Tortington Tithe Maps were done by E. Fuller of Chichester; that of Binsted in 1838 and Tortington in 1840. His style seems to have changed slightly in the Tortington map. There is a definite difference in how the application route B. to C. is shown in the parish of Binsted compared to its continuation through Tortington between points C. to F. and then the portrayal of the application route F. to G. The application route between points C. to F. in Tortington looks as if it is being portrayed as an unfenced open, bridle or drove road. It is possible that the route B. to C. is being portrayed as a footpath but as the route leads off a vehicular highway and was clearly, according to the early evidence, a lane leading all the way from Binsted Church to Arundel, it seems unlikely that it was not ridden especially as the map does not show any obvious barrier to it being so.

**5.2 TITHE MAP AND APPORTIONMENT FOR TORTINGTON**

**(a) Date**

The Tortington Tithe Map is dated 1840 and is by E. Fuller of Chichester. The apportionment is by Thomas Boniface of Climping and dated 1841.

**(b) Relevance**

The relevance of the evidence contained within Tithe Maps and Apportionments has already been outlined under that for Binsted.

**(c) Archive**

The Tortington Tithe Map and apportionment is held at WSRO under reference TD/W128 and is available to view on the Map Viewer. It is from the series formerly in the custody of the Diocesan Registrar and transferred to the Record Office by the direction of the Master of the Rolls. The map that was originally lodged with the Tithe Commissioners is held at The National Archives under reference IR 30/35/266, a copy of which was obtained on a 3 month subscription to The Genealogist and is on the disc accompanying this Statement as **Appendix 14**.

**(d) Meaning**

From the western boundary with Binsted, to point F. of this application, within the historic parish of Tortington, the application route is shown as double dashed lines. It is not numbered, coloured sienna or exempt from tithe, so was not treated as a public vehicular highway. According to Lt. Dawson's proposed tithe map key shown in Fig.24 on page 31, the portrayal is similar to that suggested for an open or bridle road.

To the south of the application route, coming up from the main settlement of Tortington, can be seen many routes indicated in the same fashion which link with the application route and have gates on them. The area north of the application

route was Tortington Common. It therefore seems highly likely that these were drove roads which connected with the application route and then took the animals to the main market or port at Arundel. Drove roads which took herds of animals were of necessity wide. It would not be unusual for such routes not to be exempt from tithe if they were capable of being grazed or for pannage for example.



Fig. 25 – extract from IR/30/35/266 showing application route from point C. at boundary with Binsted and heading east



Fig. 26 – extract from IR/30/35/266 showing application route at points D.-E.-F.

The route between the points F. to G. of this application is portrayed as a line of dashes and dots in brown ink (the same as the representation of the route B. to C. in the parish of Binsted). It seems unlikely the representation shows a footpath since, not only the application route, but also other routes apparently shown as open roads, lead directly off it.

It is relevant to note that the route known as Old Scotland Lane is not shown in the parish of Tortington at all, despite being very prominent on the parish map of only 100 years or so before, and clearly obvious on Yeakell & Gardner's map of only some 50 years before. A route is shown going approximately half of the distance towards Binsted Lane, but looks to be too far north to be the Old Scotland Lane route. This is further evidence of how routes change through time and particularly at the period since enclosure.



**(e) Assessment**

The depiction is consistent with the application route within the ancient parish of Tortington to point F. of this application being a drove and bridle road in 1840, both of which uses give rise to bridleway status. We do not know what the surveyor intended to portray with the line of dashes and dots on the application route F. to G., but judging by the amount of routes leading onto and off it that are apparently also portrayed as open roads, it seems unlikely it is only a footpath.

**6. RAILWAY, CANAL AND RIVER RECORDS – LONDON & PORTSMOUTH RAILWAY**

**(a) Date 1844**

**(b) Relevance**

Companies wishing to build railways or canals were required to show the owners of all the land within a certain distance of the proposed route, and to place this information on deposit so that it could be inspected by the public and objections made, before Parliament would give the powers needed for construction. Records were well researched as mistakes would have been costly with the possibility of the private bill being thrown out and a rival company being given permission.

**(c) Archive**

The plan and book of reference to the above is held at WSRO under reference QDP/W86.

**(d) Meaning**

The line had a proposed "deviation line" which was never built going north from Yapton through Binsted and Tortington to Arundel. The map has little detail so it is not easy to be definitive, but the line does not appear to cross the application route.

**(e) Assessment**

The Plan and Book of Reference give no evidence concerning the application route.

**7. TURNPIKE PLANS**

Organisations wishing to build turnpikes were required to show the owners of all the land within a certain distance of the proposed turnpike, and to place this information on deposit so that it could be inspected by the public and objections made, before Parliament would give the powers needed for the road's construction. Records were well researched as mistakes would have been costly, with the possibility of the private bill being thrown out and a rival organisation being given permission.

There are no turnpike plans relevant to this application.

## **8. INCLOSURE RECORDS**

These records were compiled when a few landowners grouped together to combine and reallocate lands in order to improve methods of agriculture. This process ring fenced lands and reduced the common grazing areas. The landowners would apply to Parliament for an Inclosure Act to be passed, after which Commissioners were appointed to carry out their survey, prepare the map(s), set out the new road network and make the distribution/award and land ownership allocations. Because the process was authorised by Act of Parliament and followed a statutory process including rights of complaint by the public, such records can have substantial weight.

The applicant has, however, not found any Inclosure Records relevant to this application.

## **9. INLAND REVENUE VALUATION RECORDS – FINANCE ACT 1910**

### **(a) Date**

The valuation records were produced in the few years after 1910.

### **(b) Relevance**

The Finance (1909-10) Act 1910 caused every property in England and Wales to be valued. The purpose was to charge tax on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways: public vehicular roads were usually excluded from adjoining landholdings and shown as “white roads”, and discounts could be requested for land crossed by footpaths and bridleways. This is known because s.35 of the 1910 Act provided:

“No duty under this Part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority”.

We note that a highway authority was a rating authority. There was no obligation for a land owner to claim any of the other discounts available (applying for discounts was an entirely voluntary act) but Section 25 authorised the discount for footpaths and bridleways if they were claimed:

“The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and... (other exclusions).”



All land had to be valued unless it was exempted by the Act. There were harsh penalties for making false declarations, and Section 94 provided:

“If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.”

**(c) Archive**

The extracts below are from records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document references are IR124/9/480 and IR124/9/489 for sheets Sussex 62-8 and 63-1 respectively. The applicant did not order up IR/124/9/492 for sheet Sussex 63-5 as it only shows a tiny portion of the route which was within a larger hereditament covered by the other sheets. Photographs of the two maps are on the disc accompanying this Statement as **Appendices 15 and 16**. The field books to accompany these maps are also held at TNA, under references IR 58/22714, IR 58/22720 and IR5822721. Photographs of the appropriate entries for hereditaments along the application route are also on the disc accompanying this Statement as **Appendices 17, 18 and 19**.

**(d) Meaning**

The base maps used for the 1910 Finance Act were the 1:2500 maps under point 3.7 of this Statement, namely Sussex 62-8 and Sussex 63-1, revision of 1910, published 1912. They therefore show the annotation of B.R. and F.P. in the places outlined under 3.7 of this Statement.

The Hereditaments that are crossed by the application route from point A. to point G. are as follows:

86, 736, 95, 90, 631, 769 and 632

Hereditament 86 – claims no deduction for rights of way.

Hereditament 736 – is awarded a £10 reduction for a footpath, and has a footpath as well as the application route within the hereditament.

Hereditament 95 – is awarded £200 for footpaths. It has other footpaths within the various parcels numbered 95, including not only the application route but also part of Old Scotland Lane, which is recorded on the Definitive Map as a bridleway and, as previously mentioned, qualifies for at least that status if not higher.

Hereditament 90 – is awarded £200 for footpaths. It also has another footpath within the parcel, as well as the application route and the continuation of the Old Scotland Lane route.

Hereditament 631 – the applicant has tried two field books to try to find the appropriate entry. IR58/22720 has the number 631 but no entries on the pages. Another book, for Arundel district, was another hereditament 631 but clearly not this property.

Hereditament 769 – the applicant has not been unable to locate the correct field book.

Hereditament 632 – the same applies to the comments for 631.

The field book entries for 86, 90 and 95 are in IR 58/22714 – **Appendix 17**.

The field book entries for 631 and 632 are in IR 58/22720 – **Appendix 18**.

The field book entries for 736 and 769 are in IR 58/22721 – **Appendix 19**.

**(e) Assessment**

It is only possible to make some assessment from those entries that have been found, or where landowners claimed some deduction for rights of way.

There is a major problem today with a dearth of routes on the West Sussex coast, south of the A27, which have bridleway or higher status. The reasons for this have not been the subject of formal research, but one wonders whether, in the period from when more records start to become available, it was because the local population of this area tended to be mostly very poor (often illiterate) labourers and therefore unlikely to make legal challenges to landowners regarding what public routes could be used for. There are many more recorded bridleways, for instance, in the area of the South Downs north of this route in the vicinity of Arundel where historically many merchants and traders would have been regularly traversing, and certainly likely to take issue if routes they were used to using became “footpaths”.

Going forward into the 20<sup>th</sup> century, it does not surprise the applicant at all that the landowners of hereditaments 90 and 95 only claim for footpaths and not bridleways, since this would not be the first time in this coastal plain area that the applicant has come across landowners only claiming a deduction for a footpath under this Act for a previously warranted bridle road. By doing so, they were not committing a crime, since they could only have been prosecuted if they had claimed a higher deduction than they were entitled to. The fact that the Old Scotland Lane route is not shown as a white road and is also therefore presumably included under these “footpaths” deductions, is worthy of note for direct comparison purposes.

**10. TORTINGTON PARISH HIGHWAY RECORDS**

**(a) Date**

1880 to 1888

**(b) Relevance**

Parish Highway Records can be helpful in ascertaining a route's status. In this particular case the records are quite vague and only occasionally mention specific roads. For this reason, the applicant has not photographed every page in the book.

**(c) Archive**

The Stock and Stores Account Book is held at WSRO under reference Par/198/41/1. Pictures of it and some of its pages are on the memory stick sent with this Statement as **Appendix 20**.



(d) Meaning

The applicant refers back to the comments made at the beginning of this Statement concerning the visible evidence of surface improvement to the route, particularly through what was then the parish of Tortington. These records were made towards the end of the nineteenth century prior to the 1:2500 OS maps recording the majority of the route with the annotation B.R.

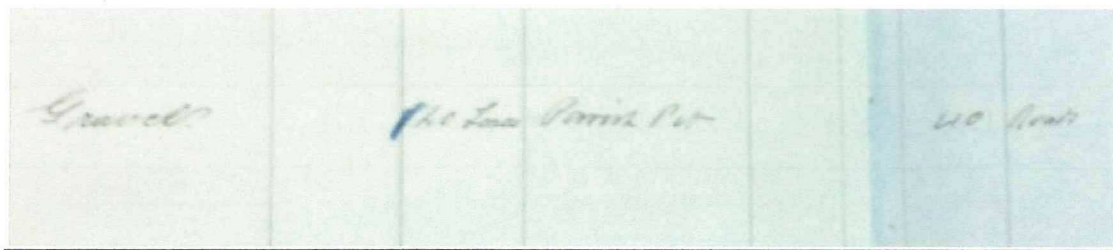
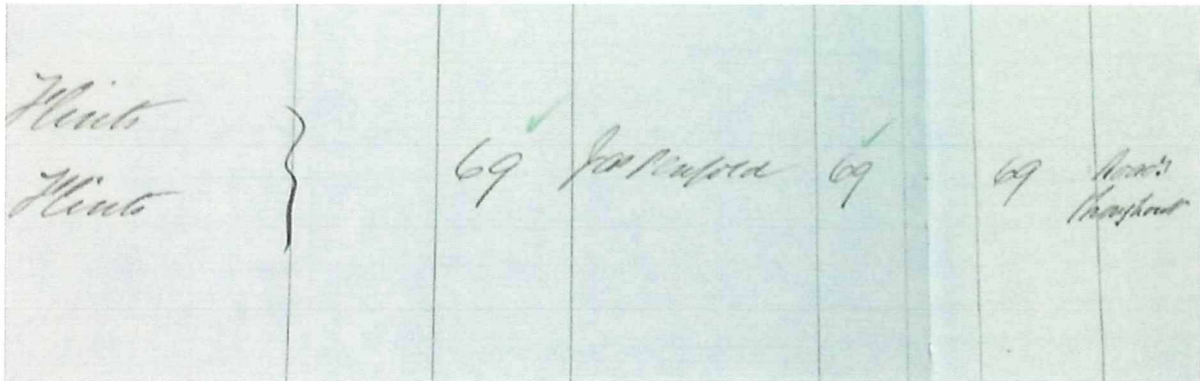


Fig. 27 – extracts from Par/198/41/1 showing entries for materials used on parish roads

(e) Assessment

Whilst the application route is not mentioned, there is evidence today of former surface improvement to it by way of flints and gravel. The Account Book is rarely specific and often just refers to "Roads" or "Roads Throughout". Clearly, at some point, the route had such materials added to it.

**11. RETURNS BY ARUNDEL BOROUGH AND FOR BINSTED AND TORTINGTON UNDER THE 1932 RIGHTS OF WAY ACT**

(a) Date

c. 1936

(b) Relevance

The 1932 Rights of Way Act was commonly at the time referred to as "the Footpath Survey". The legislation provided for landowners to be able to lodge Section 31 notices in order to protect themselves from claims for new public paths across their land. Without a record of those paths already considered to be public, then there was a serious risk of the loss of historic paths under this process and, therefore, the legislation had the affect of Local Authorities needing to make a record of those

paths in their area that were considered public paths. Locally, parishes were asked by District Councils to provide a record of those paths they considered public on 6" to the mile OS maps and return them. In places where the Parish Council was largely or wholly comprised of local landowners, there was obviously a temptation to overlook or alter the course of some routes that were considered inconvenient! At this point what the status of those routes were did not locally seem to have been important and all routes were claimed as if of the lowest status ie. footpath. Accordingly, it is no surprise to find in the West Sussex Record Office a list of paths submitted for this purpose for Arundel under the heading "Borough of Arundel Public Footpaths". It is not until the Definitive Maps were drawn up as a result of the 1949 National Parks and Access to the Countryside Act that locally public paths were recorded with a status.

(c) Archive

The records for the Borough of Arundel are held at the WSRO under reference BO/AR/24/2/6. Pictures of the copy of the submitted list and relevant portion of the annotated map are on a file on the disc submitted with this Statement as **Appendix 21**.

Photographs of maps annotated with paths claimed for Binsted and Tortington, held within a file at the WSRO under reference AM/796/13/5, and showing the application route, as well as Old Scotland Lane, are on the disc accompanying this Statement as **Appendix 22**.

(d) Meaning

Borough of Arundel

Item No. 10 concerns that part of the application route north east of point F. and going towards point G., apparently known by the nickname "The Mountain".

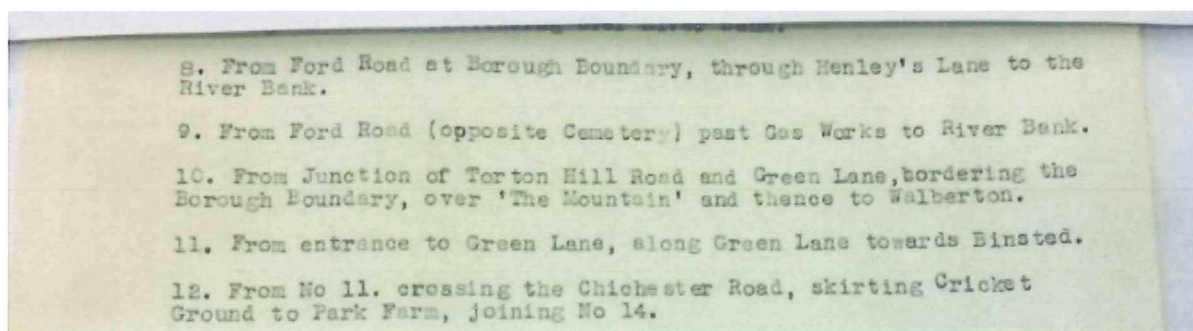


Fig. 28 – extract from list of paths submitted by Arundel Borough under 1932 Rights of Way Act



(e) Assessment

The effect of the 1932 Rights of Way Act was to encourage local authorities to keep records of those paths that parishes regarded as being public in order to have such evidence available in the event of landowners lodging Section 31 Notices that may have had the effect of the loss of those paths. Because the legislation was initiated by the Ramblers it tended to have a footpath bias. Locally, many of the paths that are today recorded on the Definitive Map as bridleways, were also marked as footpaths under the records that were made as a result of this legislation. These records should not, therefore, be taken as evidence that paths do not have a higher status.

**12. PAINTING AND DESCRIPTION FROM BINSTED VILLAGE WEBSITE**

(a) Date

Probably c.1950

(b) Relevance

The evidence contained within the article is relevant to the applicant's assertion that the application route has higher rights than that of footpath.

(c) Archive

The following was taken from the Binsted Village website <http://www.binsted.org/> under the "Arts Pages" tab and then the link to "The Wishart family of Artists". The Binsted Village site is described as being a "Community site for villagers and friends of Binsted near Arundel in West Sussex". This article presumably emanates from the Binsted Arts Committee, Camilla Lambert (Chair), Shirley Park, Yapton Lane, Walberton, West Sussex, BN18 0AN. A print out of the website article is enclosed as **Appendix 23**.

(d) Meaning

The article describes the life and work of Binsted resident Lorna Wishart (1911-1997), who is known to the wider public for her role in the artistic lives of people of the 1930s and 40s and for being the lover of both Laurie Lee and Lucian Freud.

A painting by her is shown and described in the article. It says "...She is riding in springtime, when the young leaves are translucent. She has come from Arundel, idealised by the castle on the right, along the south edge of Tortington Common where at that time there was a remaining narrow belt of deciduous trees bordering what was then a dense young conifer plantation in ancient woodland"... "As she rides on towards Binsted, before her is the first of the ancient trees of Binsted Woods, perhaps a giant of Binsted Park, to which she would come next after passing the pond where she erected the shrine"...



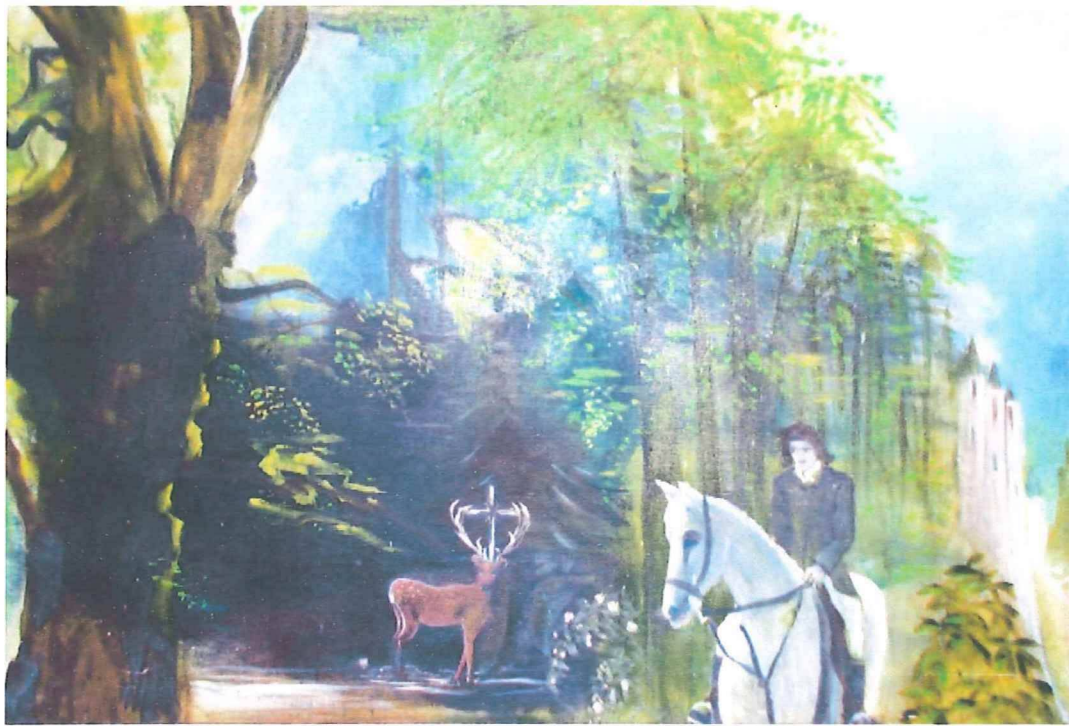


Fig. 31 – extract from Binsted Arts article on The Wishart family of Artists  
Showing painting by Lorna Wishart

The description of what is shown clearly represents the application route. No other path has been seen on any map of any period that would fit the description given other than the application route.

An extract from the current WSCC Public Rights of Way iMap is shown below at Fig. 32. It shows the application route crossing Binsted Lane at point C. of this application and, close to it, the pond and shrine mentioned in the description of the painting.

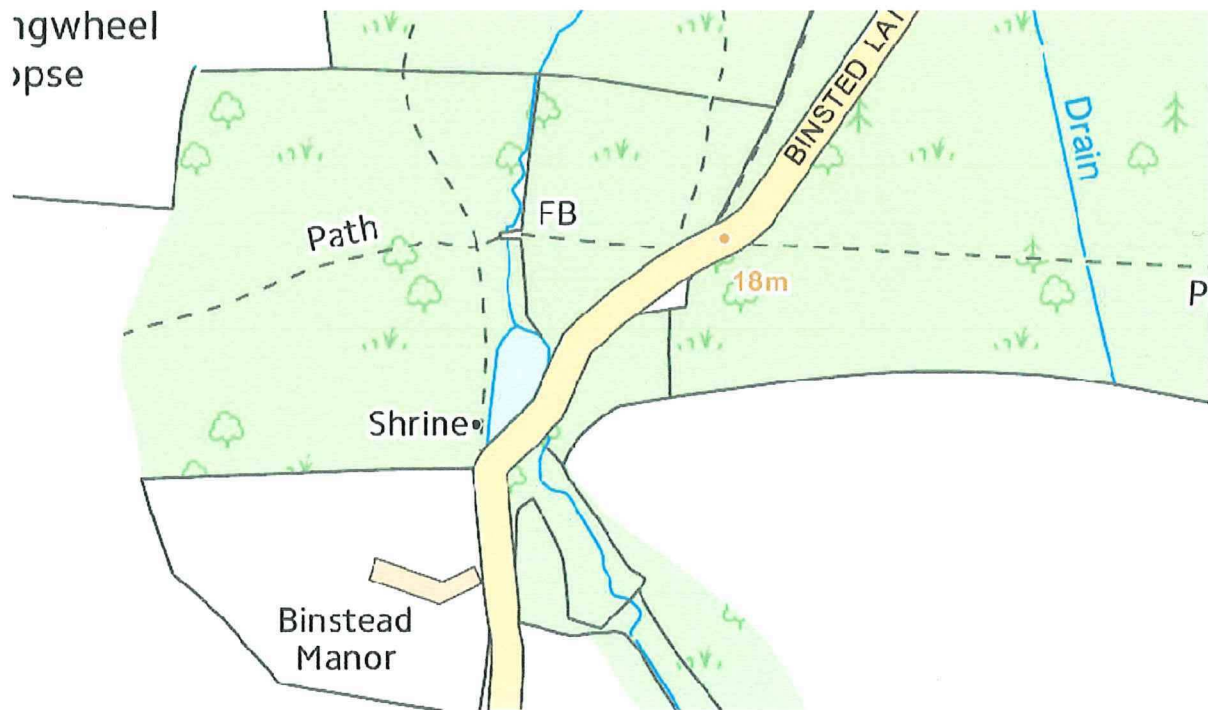


Fig. 32 – extract from current WSCC Public Rights of Way iMap showing application route ("Path") running east/west and crossing Binsted Lane at point C. of this application

(e) Assessment

Whilst it might be argued that the Wishart family are major landowners in Binsted, and were at liberty to ride on their own land; even if they owned land adjoining part of the route they would not have owned the whole route between Binsted and Arundel that is described. It is further evidence that the application route was indeed used as a bridle road.

**13. DEFINITIVE MAP FOR CHICHESTER PREPARED AS A RESULT OF THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949**

The application route from points B. to G. was recorded on the Definitive Map as a footpath, whereas Old Scotland Lane was recorded in its entirety as a bridleway.

The application route from points A. to B. was not recorded on the Definitive Map, although is on the map of paths claimed as public rights of way by the parish under the 1932 Rights of Way Act, as may be seen in Fig. 30.

The applicant has made attempts to locate at the West Sussex Record Office, and through enquiry of the Legal team, any records or correspondence concerning the Definitive Map process and what was decided at the time, but there appear to be no records existing of which the whereabouts are known at this time.

The applicant also requested the records of Binsted and Tortington Parish Councils shown catalogued under the records held for Tortington Parish at the WSRO. However, apparently these were removed in 1985 and have not been returned.

### C. CONCLUSION

The earliest evidence of the application route available is the Glebe Terrier of 1615 in which the Vicar describes the route as the lane going from Binsted Church to Arundel. This is additionally witnessed by the Church Wardens. Also described as a "lane" is the road going to lower Binsted, which is today an adopted highway and also coloured sepia on the Binsted Tithe Map. The implication that may be drawn from the Vicar's description is that in 1615 the application route was considered to have the same status as the road to Lower Binsted. It may at this period have been used as a cart track, but this cannot be proven and, therefore, only that portion of the route, from A. to B. of this application, that has additional evidence of highway status, is claimed as a restricted byway. The remainder of the route is claimed as a bridleway. Any argument that the lane was of a purely private nature is belied by the later evidence which shows public access and highly unlikely given that it crossed two parishes to a destination at a third.

Going forward in time, the evidence for the various parts of the route is varied and not easy to decipher when many of the historic maps and Tithe maps either had no clear key or only showed public vehicular highways and not other rights of way. However, with the use of the evidence of historic roads provided by the Victoria County History and then comparison with how both Yeakell & Gardner and the Map of Tortington parish of 1724 showed those routes, it is possible to say that old roads or lanes were depicted by single dotted or double dotted tracks. It is also possible to conclude this from the fact that on the Tortington parish map of 1724 such routes in some cases provided the only access to the outside world. On many of the later historic maps the application route from A. to B. and/or that from C. to D. is shown as a vehicular highway or an inferior road. The most likely interpretation of how the Tortington Tithe Map shows the application route between points C. to F. is a bridle or drove road.

Once the Ordnance Survey maps become more sophisticated and not only contain public vehicular highways but also public rights of way with a stated status, the application route is marked for the majority of the route, with the exception of a small section near Arundel (north east of point F. towards point G. of this application), with B.R. for Bridle Road. This means that the early evidence of 1615 is also supported by much more recent evidence. Whilst the later evidence did not include the section of the route near point G. as a bridle road, the section not destroyed by modern development close to point G. is clearly, from its appearance, a "holloway" confirming its probable use as a lane from the medieval period or earlier.

The applicant has also previously made reference to the evidence of surface improvement along a considerable proportion of the route, even those sections well away from areas of habitation. Whilst some of this may be of more recent origin, in other places the evidence of gravel and stones grins through what are now narrow woodland paths. The applicant believes that the fact that this route has such improvement, compared to other similar paths which do not, is further confirmation that the route was historically a lane and therefore used by the public both on foot and on horseback.



On the basis that all the later pieces of evidence are underpinned by the early evidence from 1615 and that the rule "once a highway always a highway" applies, the applicant believes that there is sufficient good evidence to say that, on the balance of probabilities, the application route has the status of restricted byway between points A. to B. and of bridleway between points B. to G.

**D. REQUEST**

The applicant requests that the Authority add the application route from points A. to B. to the Definitive Map as a restricted byway and upgrades the application route between points B. to G. to that of public bridleway.

**20 January 2018.**

**APPENDICES**

1.	Extract from Victoria County History for Binsted published 1997	On memory stick
2	Photographs of Glebe Terrier of 1615 from WSRO reference Ep.I/25/1	On memory stick
3.	Transcript of Ep.I/25/1 by Dr. C J Adams	On memory stick
4.	Dr. C J Adams' C V.	On memory stick
5.	Photocopy extract from Yeakell & Gardner Sussex 1778 from WSRO copy	Photocopy
6.	Photocopy extract from OS Old Series Map of Sussex of 1813 from WSRO copy	Photocopy
7.	Photocopy extract of Greenwood & Greenwood map of Sussex 1825 and the Explanation from WSRO copy	Photocopy
8.	Photograph extract of OS Revised New Series map – scale 1" to 1 mile - Chichester Sheet 317, taken from the National Library of Scotland website	On memory stick
9.	Key to 8. above from Cassini maps website	On memory stick
10	Photocopy from Book of Reference to First Edition of 25" to 1 mile OS map of 1876 relating to Binsted Parish from WSRO	Photocopy
11.	Photographs of Survey and Map of the Manor of Tortington 1724 WSRO Add Mss 47691	On memory stick
12	Photograph of Binsted Tithe Map held at The National Archives under reference IR30/35/32 obtained on a 3 month subscription to The Genealogist.	On memory stick

13.	Copies of Sections of Binsted Tithe Map, reference from Map Viewer at WSRO	Paper copies
14	Photograph of Tortington Tithe Map held at The National Archives under reference IR30/35/266 obtained on a 3 month subscription to The Genealogist.	On memory stick
15	Photographs of OS map Sussex 62-8 produced under The Finance Act 1910 from The National Archives reference IR124/9/480	On memory stick
16	Photographs of OS map Sussex 63-1 produced under The Finance Act 1910 from The National Archives reference IR124/9/489	On memory stick
17	Photographs of Field Book entries for hereditaments 86, 90 and 95 from The National Archives reference IR58/22714	On memory stick
18	Photographs of Field Book entries for hereditaments 631 and 632 from The National Archives reference IR58/22720	On memory stick
19.	Photographs of Field Book entries for hereditaments 736 and 769 from The National Archives reference IR58/22721	On memory stick
20.	Photographs of Pages from Stock & Stores Accounts Book Tortington Parish held at WSRO under Par/198/41/1	On memory stick
21	Photograph extracts from WSRO BO/AR/24/2/6 relating to 1932 Rights of Way Act	On memory stick
22	Photographs of maps showing Binsted and Tortington from WSRO AM/796/13/5	On memory stick
23.	Downloaded article relating to the Wishart Family of Artists from the Binsted Village website	Paper copy
	Figs. 1 to 32 from this Statement	On memory stick