

Report under Delegated Authority

Application details	DMMO 1/2018 Addition of a Restricted Byway and Upgrade of Footpath 342 to a Bridleway in the Parishes of Walberton and Arundel.
Investigating officer	Charlotte Nash
Investigating officers recommendation	That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53(3)(c)(i) and section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, to add a Restricted Byway from East of Binsted Church and upgrade Footpath 342 to a Bridleway from its commencement in Binsted to its termination at point G on the application map be not made.

1. Background to the application**1.1 Application details and the Law**

1.1.1 The application, made by Mrs Julie Robinson on behalf of The British Horse Society of Abbey Park, Stareton, Kenilworth, CV8 2XZ was received on the 23rd January 2018 for the addition of a restricted byway from the highway known as Binsted Lane, east of Binsted Church running in an easterly direction for approximately 280 metres and the upgrade of Footpath 342 to a Bridleway from its commencement in Walberton to its termination near Canada Road in Arundel. Part of the route falls within the boundary of the South Downs National Park (SDNP). The application is supported by archive evidence.

1.1.2 This application is made under Sections 53 (3) (c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. The application is supported by documentary evidence only and is considered with reference to Section 32 Highways Act 1980 which sets out that "A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person

by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

1.2 **Landownership**

1.2.1 Land Registry documents show there to be several different landowners for the claimed route, there is also some unregistered land.

1.2.2 The land owners consist of; Arun District Council, Henry Miles Arundel, Binsted Farms Ltd, Mathew Gibbons, William Gibbons, Janet Tate and Christine Tapson, Dulwich Storage Company Limited, THE RIGHT HONOURABLE PHILLIP ESME BARON HOWARD of Angmering Park Estate Yard, The Old Estate Yard, 210 Blakehurst, Warningcamp, Arundel, West Sussex BN18 9QG as Trustees of The Bernard XVI Duke of Norfolk’s settlement Reserve Fund(contd..), David Napper, Onwood Ltd, Anthony Norman Thomson and Lucy Antonia Jane Thomson.

1.3 **The application route**

The application route, starting at point A on the application map, begins along a track made of brick and compacted earth which appears to be used by tractors (as it is wide enough for vehicles), horses and walkers. The path then opens up into arable fields at point B where there is a finger post way marking public footpaths in four directions including the length A to B despite this length not currently being recorded as a Public Right of Way. From this point the route passes into woods around point C and follows along a wooded track. The route then passes between fences of houses along F to G towards Canada road. There is some evidence of bikes using the entire route.

2. **Consultations**

Standard consultations were sent to the local member, County Council internal departments, amenity groups, including the TRF on a non-statutory basis, the Parish and Town Councils, Arun District Council and the SDNP Authority. The following responses were received:

South Downs National Park Authority

Simon Mockford responded on behalf of the SDNP (South Downs National Park) as a SDNPA ranger in the area in question. He made the following comments

“The appropriateness of upgrading footpath 342 is the issue I would like to highlight in my comments based on my knowledge of the footpath and area it passes through. For much of its length this footpath runs through Binsted Woods the largest block of semi – natural woodland in Sussex south of the A27 and was designated by West Sussex County Council in 1992 as a Site of Nature Conservation Interest. The citation for Binsted Woods states that the paths and

rides are especially species rich. Referring to the applicants map between sections C and D the footpath is currently in poor condition narrow and very boggy in sections with areas of standing water and deep mud in places. In order to avoid these sections users have created numerous unofficial paths where they can. If the footpath is upgraded to bridleway and therefore used by horse riders and cyclists these problems will inevitably become worse and have a detrimental effect on the ecology of Binsted Woods unless significant money is spent to improve the paths surface and structures along it."

Two photos of the route were provided to support the comments above. Binsted Woods, which has SSSI (Sites of Special Scientific Interest) status which the SDNPA asks to be taken into account when considering whether it is appropriate to upgrade the path to a Bridleway.

British Horse Society

The society has no additional archival or user evidence to support the application. As the Applicant they support the application which they state will provide key access from Walberton to Arundel requested by all users in the recent A27 Arundel Bypass Non-Motorised Users workshop. In addition they reinforce the value the route would have as a "utility and recreational link in an area with very few safe off-road routes" this importance is emphasised with the planned housing developments in the area.

Open Spaces society

The Open Spaces Society have no additional archive or user evidence and state that they have no correspondence for this area and so are not likely to comment.

Local Member – Fontwell Division

The local member of the Fontwell division which covers the western end (Points A to C) of the application route stated that

"As a local Member in particular, in all my years of walking the route, or those lengths where it has been possible to keep to the definitive line of the path, I have never seen horses along it and very occasionally a bicycle only for very short lengths where the route is not far from metalled roads, whereas I have often seen mountain style bikes along Old Scotland Lane further north and on woodland fire breaks where there is certainly no public right of way. I note especially the very narrow path at best a metre wide between the housing fencing and walls to the east at Dalloway Road Arundel, leading to the indefinite path through the undergrowth along the rear of the houses down to Canada Road and the complete loss of the definitive route east of Pearson Road where a metalled footpath at the frontage of the bungalows parallels the definitive line which has been impassable for years."

Walberton Parish Council

The Parish council stated they feel it is inappropriate to comment on this application at the time due to the decision on the new route of the A27 being undecided.

3. Evidence Submitted by landowners / against the application

3.1 Arun District Council

No response was received

3.2 Binsted Farms Ltd

- I. Binsted Farms Ltd Own the land in which points A to C of the application route passes through.
- II. The Owner states that there is currently no footpath or Bridleway marked between point A and B and would like this position to remain. They have owned the land since 1960.
- III. The owner points out if the proposed redevelopment of the highway takes place (5A) all the paths will have to be changed.
- IV. The Director of the company also sent a statement on the 1st May to state that his company would strongly object to the upgrade including Points A to B which is currently neither Footpath nor Bridleway. Mr Wishart states that any change would seriously affect their agricultural operations. The path is narrow and there are no passing places on the route which is used by heavy machinery.

3.3 Henry Miles Arundel

No response was received

3.4 Mathew Gibbons, William Gibbons, Janet Tate and Christine Tapson

No response was received

3.5 Norfolk Estate

- I. The Norfolk Estate have owned the land for 30 years
- II. They state that they do not use the route
- III. They recognise the route as a footpath

3.6 David Napper

- I. Mr Napper owns a segment of land from point C and has owned the adjoining land for 3 years
- II. Mr Napper currently considers the route as a Footpath and uses the route himself several times a week to access his land. During his ownership he has not seen anyone using the footpath other than as a footpath or had knowledge of anyone claiming the route to be a Bridleway. He has never seen a motorised vehicle or horse on the route.

- III. Mr Napper states that there is a gate along the route which is permanently locked.
- IV. Mr Napper states "*I object to the application for change of use due to the damage that will be caused to the sensitive nature of the environment and the fragile condition of the soil by horse riders and cyclists.*"

3.7 Onwood Ltd/ Dulwich Storage Co

- I. Ruth Feltham (local manager for Southeast) responded on behalf of Onwood Ltd. The company owns land crossed by the application from point C to just before point D and has done so for approximately 6 years.
- II. They consider the route as a Footpath and use the route themselves. They occasionally see dog walkers using the route.
- III. They state that there are stiles on the route and a locked gate at Binsted Lane marked on their attached map. They also mention a pedestrian Bridge marked Br on their attached map.
- IV. They have given rights to owners of the woods to the North and South of the route to access both on foot and in vehicles.
- V. Ruth mentions in her letter the concern of maintaining a Bridleway in particular the pedestrian bridge outlined above. She also highlights that walkers and owners of the adjacent woods may not be able to use the route if walkers have damaged the surface.

3.8 Mr and Mrs Thompson

- I. Mr and Mrs Thompson own land in which section D to E of the application route passes through and have owned the land for 30 years
- II. They consider the route as a Footpath and they are not prepared for the route to be upgraded to a Bridleway and state it is not suitable for use as a Bridleway.
- III. They use the route for Quarantining horses and rarely see members of the public use the route. They state there are locked gates on the route.

3.9 The Trustees of the Late Duke of Norfolk's 1958 Settlement Reserve Fund(The Angmering Park Estate)

- I. The Angmering Park Estate owns land along a section of the route F to G and state the trust has owned the land pre Magna Carta
- II. They state that the route has never been a Public Bridleway and there is no Bridleway access and their tenant grazes horses in the field and if made a bridleway this would "create immediate conflict and source of disease." They also state "the clay surface is unsuitable for horses and a source of conflict for walkers".

- III. They have provided photographic evidence of a locked gate and style.

3.10 Mr Mike Tristram

Mr Tristram comments on the application were passed on by Simon Mockford from the SDNP as he was away in the weeks leading up to the deadline of the application consultation period. He is an adjoining land owner to Church Lane.

Mr Tristram states

"I should declare an interest as a neighbour to this section, but only in order to note that my objection is not in my capacity as a neighbour. The Old Rectory/Stable Cottage has permanent permission from Luke Wishart to use its 1860s side access on to Church (Muddy) Lane with motorized domestic vehicles and its rear meadow with motorized agricultural vehicles. However I don't think restricted byway access restricts the landowner or by extension those to whom he gives permission, any more than making it a footpath or bridleway, so I'm not worried about it from that point of view, unless advised otherwise.

But why is it proposed to make it a restricted byway rather than a footpath-and-bridleway. I think we should object to restricted byway for 4 reasons

1) Wheeled horse drawn vehicles would be a concern with rut-creation from the narrow wheels.

2) They have nowhere to go at the end so would turn on the farm crops in the National Park beyond the proposed restricted byway to go back, or would have to reverse up the restricted byway between narrow hedges.

3) Safety of walkers-there is not going to be room in the lane to get out of the way of a horse drawn vehicle.

4)It would lead to pressure to make the rest of footpath 342 a restricted byway for which the ground conditions are wholly unsuitable unless significant 'upgrades' are made which would adversely alter the special qualities of parts of the National Park it traverses. Why have they applied for restricted byway in the bit that is outside the Park, and just bridleway in the bit that is inside the Park? "

Finally Mr Tristram comments on the upgrade of Footpath 342 and the need to consider the impact this would have on walkers, the suitability of the route as a Bridleway and how changes needed to make the path suitable would impact the South Downs National Park's special qualities in the area.

While these comments have been recorded it should be noted that the suitability of a path cannot be taken into consideration as to whether to make an order or not.

4 Evidence submitted in support of the application

The application was supported by documentary archive evidence only which, the applicant claims, demonstrates that the route was historically a lane used by the public as both a bridleway and footpath. The applicant has considered 21 cases of documentary archive evidence which are considered below in chronological order and therefore not following the order in the applicant's statement.

4.1 Glebe Terrier for the Vicarage of Binsted 1615 (Appendices 2 and 3 of applicants statement)

The applicant states that the document describes the route twice as a 'lane' and is signed by both the Vicar and two churchwardens. The applicant states that if it was a footway it would have been labelled as such. In corroboration, quotes from books on the status of medieval roads are provided, as although post medieval the applicant believes it is likely not to be new at this point in time.

4.2 A Survey and map of the manor of Tortington 1724 (Appendix 11 of applicants statement)

The applicant claims that a route approximating the application route through Tortington is shown partially as a double dotted line and partially as a single dotted track, although without a key the County Council cannot determine the status with certainty. The applicant compares roads and paths today and how they are portrayed on this map for example today's footpath no. 3401 and 3402 are recorded as Lanes. The only route actually marked as road is Binsted Lane.

It is also stated by the applicant from the maps that, by comparing how known roads today (Priory lane and Binsted Lane) are depicted, it can be inferred that routes shown by single dashed lines must represent routes of higher status than footpath.

4.3 Historic Map Yeakell and Gardner's Sussex 1778-1783 (Appendix 5 of applicants statement)

The applicant states that the route is shown as a road between points A to B and then the rest of the route replicates today's footpath displayed as a dashed line on the map. The applicant claims it cannot be assumed that this dashed line represents a public footpath and state the belief it represents a medieval road based on the interpretation of the book by Paul Hindle "Medieval Roads and tracks".

4.4 First Ordnance Survey(OS) map 1813, scale 1 inch to a mile (Appendix 6 of applicants statement)

The applicant claims that only section A to B is shown as a road and supports the proposal that the application route A to B should be recorded as a restricted byway.

4.5 Greenwood and Greenwood Map of Sussex 1825, scale one inch to 1 mile (Appendix 7 of applicants statement)

The applicant states that the map shows route A and B as a cross road and is therefore evidence for the proposition of a restricted byway from point A to B on the application route. There are no keys for bridle roads or footpaths.

4.6 Tithe maps and apportionments for Binsted 1840 (Appendix 12 of applicants statement)

The applicant claims that the route point A to B is drawn as other public roads in the Parish, Points C to F are interpreted as an unfenced open Bridle or drove road with the possibility that route B to C is footpath. The key used is taken from "Bucks & Wadley's rights of way restoring the record (2017)" providing "Lt Dawson proposed Tithe map key" Fig24 of applicant statement. The applicant states that the National Archive version of the Tithe maps has "weeded out" stamped on the front cover. The applicant considers (referring to Paul Hindles "medieval roads") that as the medieval road was not engineered as it was just an easement across the private land and this might explain why it is not shown coloured sienna as other roads are shown on the tithe map.

4.7 Tithe Map and apportionment for Tortington 1841(Appendix 13 of applicants statement)

The applicant states that the route is shown from Binsted to point F as double dashed lines and the inferred portrayal of the route is thought to likely be a drove road and Bridle road in 1840 by the applicant based on Lt Dawson's tithe map key (Fig24 of applicant statement). The application route from F to G and B to C is shown as a single dashed line. The applicant believes it unlikely that these are only footpaths due to the number of roads leading off the route. As above, the applicant states that the National Archive version of the Tithe maps has "weeded out" stamped on the front cover. The applicant also makes the point that the Old Scotland lane route is not shown despite being very prominent on previous maps.

4.8 First edition of The OS County series Sussex map 1876, 25 inch to the mile (Appendix 10 of applicants statement)

The applicant states that the map demonstrates route A to B as a public vehicular highway as it is shown as an enclosed road with the book of reference describing it as a 'Road'. The remainder of the route is shown on the map but its status is not annotated.

4.9 OS Boundary remark books (OS26) and Boundary Sketch maps (OS27), 1872 and 1873 (12 chains to 1") (Appendix 3,4 ,5 and figure 1, 2 3,4,5,6 & 7 of applicants supplementary statement)

The applicant states that the application route is shown crossing the boundary between Binsted and Tortington in the vicinity of Binsted House and then again towards Arundel. The Applicant compares how the Bridleway known as Old Scotland Lane is not shown in entirety and uses this comparison with the application route to state that it would be difficult to prove Old Scotland lane was a Bridleway without using additional Historical sources such as Victoria Country House as it is not shown in all Historic maps.

4.10 Tortington Parish Highways Record 1880 to 1888 (Appendix 20 of applicants statement)

The applicant states there are records of road improvements in Tortington and the applicant claims that there is evidence of surface improvement by the way of flints and gravel along the route.

4.11 OS – Chichester Street 317, 1895, one inch to one mile (Appendix 8 and 9 of applicants statement)

The applicant states that the route from Point A to B is shown as a fenced un-metalled road. Point B to C on the route is shown partially as a footpath and partially as an un-metalled and unfenced road. Point C to D is also shown as an un-metalled unfenced road and the route between points D to G is not shown. The applicant also claims that as these maps were sold to the public they are unlikely to show routes not open to the public.

The comparison is also made between how the route is shown between point C to D compared to a route known as Old Scotland Lane North of the route today recorded as a Bridleway, they are claimed to be presented in the same way. A general key for OS survey maps is provided by the applicant (fig 7 of applicant's supplementary evidence).

4.12 Second edition of OS 1:2500 map 1897 (Fig 8 and 9 in applicants supplementary evidence)

The applicant states that while between point B and C of the application route is annotated as FP the marked gravel pits between points B and C and D and C and lack of other roads surrounding it mean the route must have been more than a Footpath as the routes would have been used for vehicular access to extract gravel.

4.13 Bartholomew's Map's 1902 and 1922 (Figure 11,12 and 13 of applicants statement)

1902 and 1922 map shows the route between points C and D as an inferior road. The map was produced for sale to the public and was revised by the Cyclists Touring Club (CTC) who could not use Bridleways at the time (s.85 local Government Act 1888). Therefore the applicant

claims that the implication of this map is that at this time point C to D was considered to be a public highway. The applicant also highlights that point C to D is shown as some of today's roads in the area as well as Bridleway 338 (Old Scotland Lane).

4.14 Second edition of the OS County series 1912, 25inch to the mile (figures 15, 16 and 17 of applicants statement)

The applicant states that from point B the route is clearly marked in two places as "B.R" for Bridle Road. The annotation changes to "F.P" for Footpath east of point F and going towards point G and therefore the map shows that the route had higher use than a footpath for the majority of the route.

The applicant states that the change of classification from FP to BR seen in this map would only have been made with the involvement of superiors and prominent local persons and believes this therefore gives greater weight to this change in status (in supplementary evidence provided). The applicant highlights that the route remained as Bridle road until 1961 when it was changed when being added to the definitive maps, there are no records on how this decision was made.

The applicant also mentions a footbridge marked on the map (in supplementary evidence provided) and states they have examined the footbridge and it is wide enough for a horse to cross but not wheeled vehicles possibly explaining why it is annotated as FB. The applicant also provides a series of pictures showing a dilapidated culvert where the FB is marked on the map and states even if the bridge was only suitable for pedestrians, horses could easily have crossed the stream either side. While these comments have been noted the suitability of the path is not something that can be considered under the legal tests when deciding whether or not to make an order.

4.15 OS County Series Sussex Map 1947 and 1940 25 inch to the mile(Figure 18,19 and 20 of applicants statement)

The applicant states that the maps have not changed from the Ordnance Survey map 1912 and so further supports use of the route as a Bridleway.

4.16 Returns by Arundel borough and for Binsted and Tortington under the 1932 Rights of Way Act (Appendix 21 of applicants statement)

The applicant claims that these should not be taken as evidence as the legislation to make these maps was initiated by the Ramblers and tends to have a Footpath bias. All paths on the map are indicated on the maps in the same colour and so give no indication of status.

4.17 Railway, canal and River Records- London & Portsmouth Railway

The applicant states that the plan and Book give no evidence concerning the application route

4.18 Turnpike Plans

The applicant states there are none relevant to this application

4.19 Inclosure Records

The applicant states there are no evidence of parliamentary inclosure relevant to the application in their initial applicant statement however in the supplementary evidence the applicant states the Victoria Country House refers to informal enclosure taking place over a long period of time by the lord of the manor.

The applicant goes on to suggest that any argument that the application route may have been downgraded to Footpath status during the process of enclosure is not in fact possible as, according to the Planning Inspectorate Definitive Map Orders Consistency Guidelines, changing the status of a right of way was not permitted without an Act of Parliament and therefore those involved in enclosure would not have had the power to do so.

4.20 Inland Revenue Valuation records- Finance Act 1910- Base Maps (Appendices 15, 16, 17,18 and 19 of applicants statement)

The applicant states that there are several Hereditaments where money is paid for Footpaths along the route. The applicant claims that the Landowner most likely claims for only footpaths as this avoids prosecution if they had claimed a higher deduction than they were entitled to.

4.21 Painting and description from Binsted Village Website. (Appendix 23 of applicants statement)

The applicant claims that painting by Lorna Wishart and its description clearly portray the application route as it is the only route that would fit the description given other than the application route. The painting and description portray the route as a bridle way although it is pointed out that the painter's family (Wishart) were major landowners in the area and could have used the route as they wish.

4.22 Definitive maps for Chichester prepared as a result of the National Parks and Access to the Countryside Act 1949. (Figure 30 of applicants statement)

The applicant states that they tried to locate these records but were not able to and were told they were removed in 1985 and have not been returned.

4.23 Evidence from the book The Victoria Country House, Volume 5 Part 1- Published 1997 (Appendix 1 of applicants statement).

The applicant states that the book mentions a "road between Binsted and Arundel which survived as a fairly wide footpath in 1992".

4.24 The applicant's statements on the evidence submitted can be summarised as follows:

- i) A route is mentioned as a road or lane in historic documentation from Binsted church to Arundel
- ii) All maps show application route A to B as a form of road or lane.
- iii) Point B to C status varies between maps on some maps it is not marked, marked as a footpath, un-metalled road and in 1912 OS map marked as a Bridleway.
- iv) Point C to D status varies on maps from unannotated to unmetalled fence road, unfenced open bridleway, Inferior road and finally Bridleway. All OS maps above that are annotated state this section as Bridleway.
- v) Points D to F are shown as unfenced open Bridle or drove road on the Tithe maps of Binsted and Tortington 1841 and a Bridleway by all annotated Ordnance Survey maps above. In most of the maps the route from this point is either not shown or unannotated.
- vi) Point F to G status varies from being described as an unfenced bridle or Drove road on the Tithe map of Binsted 1840 and Tortington 1841 and a Footpath on the annotated OS maps. In most of the maps the route from this point is either not shown or unannotated.

5 Archive Evidence

As part of the investigation the County Council has studied the historic evidence submitted by the applicant listed above. Further Historical evidence was also investigated as standard procedure for an archive based application which includes records held by the County Council and West Sussex (WS) Records Office. The evidence below is considered in chronological order.

N: B The route today doesn't match some of the routes on the older maps going through Spinning wheel copse to the Fish ponds at point C. Today's route Footpath 342 heads North on the East side of Spinning Wheel Copse and then turns directly east running along a field boundary until it meets the path just before the Footbridge by the fishing pond. The route shown on many of the historic maps passes almost straight through the spinning wheel Copse.

5.1 Estate Map 1606 of Marsh Farm – Binsted (ref Admss 12170, WS Records Office)

This estate and map covers an area from half way along the application route between points B to C to point C. The area is owned by John Spencer and the maps were created by Johem Nordem. The map shows parcels in cultivation and buildings. The church is shown and the route A to B but as the estate does not cover this area it is likely to be for reference. The fact that the lane from the church is shown as reference confirms its existence, however does not provide any evidence as to whether it is public or private and if public as to its status.

5.2 Evidence from the book The Victoria Country House , Volume 5 Part 1- Published 1997, (accessed online see appendix 1 in applicants statement).

This source can be considered reliable as all editors of the publications are academic historians and an external peer review is carried out on completed manuscripts.

The extract does describe a road between Arundel and Binsted existing in 1615 and having survived as a footpath in 1992. In addition the path is described as passing through the middle of the parish. Looking at today's Parish boundaries the path does pass just above the centre of Walberton Parish. However, the extract goes into no further detail or description on the location and route of the road making it difficult to determine the exact route of the road. Therefore, the only thing that can be confirmed from this extract is that there was a route in existence. We cannot determine with certainty whether this was private or public or followed the route of the application.

5.3 Glebe Terrier for the Vicarage of Binsted 1615 (see appendix 2,3 and 4 of applicants statement)

This is an administrative document written for the Archdeaconry of Chichester and has been transcribed by Dr Caroline Adams a registered archivist. The transcript mentions a lane which could be today's route in question 3 times;

- 1) A lane is mentioned leading from Binsted Church to Arundel on the south side of several fields approximately 4 acres in size, this perhaps matches the lane from route A to B.
- 2) The same section of the lane is mentioned again as a boundary to 4 acres of fields to the south of the lane.
- 3) The lane is then mentioned again being the north boundary of a 1ha field as well as a lane that leads to lower Binsted on the west side.

From these descriptions and size of the field the location of these parts of the lane do appear to match today's path from Binsted Path, point A to B but without a map it is difficult to determine the exact route of the lane mentioned from this point onwards.

It is inferred by the applicant that if the route was a foot way it would not have been called a lane. It is also inferred that the lane dates from the medieval period and several quotes from reputable historic books are provided to reinforce

the nature and status of medieval roads being maintained from continuous use and its use making it a right of way. While it seems these inferences are logical, it should be noted that they are not solid evidence for historic use of the lane and again the exact route from point B onwards cannot be determined from the description.

5.4 A Survey and map of the manor of Tortington 1724 (WS records office Ref Add mss 47691)

This Estate Map shows the area from Point D to G on the application route. A route is shown as a double dashed line across the fork of roads (point D to E) and then a single dashed line across the rest of the route. There is no key to determine the status of this route. While the applicant claims this depiction of the route can be compared to roads today, such as Priory lane; from our study of the maps this comparison has not been found consistent. These roads are depicted by solid black lines running parallel and not dashed lines, as the application route is depicted. However, as the route is shown on the estate map it supports earlier historic reference of a route being in existence but does not provide definite information on the routes status.

5.5 Historic Map Yeakell and Gardner's Sussex 1778-1783 (applicants statement appendix 5)

The Yeakell and Gardner map does show a route from Binsted to Arundel matching that of A to G. The section from A to B appears to be shown as a road, as this section is depicted in the same way as other roads on the map, however there is no key. A dashed line then follows the rest of the route although it is difficult to see in places due to shading on the Map. While the applicant asserts this represents a medieval road considering the historic accounts in the Glebe Terrier, as well as Paul Hindles description of medieval roads, this is an uncertain interpretation and as there is no key provided the County Council cannot confirm whether the route is private or public or indeed the status of the route if it is public at this point.

5.6 Draft Maps For 1st Edition of OS West Sussex 1789-1840 (1" to 1 mile) (WS records office)

Route A to B is shown as a route which appears to stand alone without any continuation towards Arundel. This section is depicted in the same way as other roads on the route but again there is no key accompanying the map. There is also a route shown as a road just North East of Priory Farm going into Arundel which is most likely to be today's Ford Road and not the application route, although this is difficult to determine due to development in the area today. The same is shown on the Greenwood and Greenwood 1825 map and 1813 OS survey (see 5.8 and 5.9 below).

5.7 Estate Map of Binsted Ball farm early 19th century (WS Records Office Ref Addms 9248)

The surveyor of this map is unknown. Binsted Church and lane are described in the catalogue as being shown as a point of reference and the map only shows the route from point C to D. No other part of the path is shown. The catalogue states that the map shows field names, names of adjacent owners and cultivation. Other roads, lanes and tracks are shown.

5.8 First OS map 1813 (scale 1 inch to a mile) (Appendix 6 of applicants statement)

This map only appears to show what are now public roads. The only section shown is a route at section A to B as well as a path going into Arundel near section F to G of the application route, although it is difficult to be certain due to the differences in development on today's map, this is most likely to be today's Ford Road.

5.9 Greenwood and Greenwood Map of Sussex 1825 (scale one inch to 1 mile)(Appendix 7 of applicants statement)

This map shows crossroads (as labelled in the maps key) at today's point A to B and near the route at F to G. Again, the crossroad shown near point F to G is most likely to be today's Ford Road and not the application route.

The term cross road in older maps often meant a highway running between and joining other highways, a byway joining regional centres (The planning inspectorate DMMO guidance). There is no key for bridleways and footpaths on the map and no other part of the route appears to be shown.

5.10 Tithe maps and apportionments for Binsted 1840 (WS records office) (Appendix 1)

The map held at West Sussex County Council archive is not coloured as some tithe maps were. The application route from point A to B is shown in the same manner as surrounding public roads and is described in the apportionment as Church Lane. There is however a line across the entrance to this route just after point A which could denote that there was no public access to the route. The application route from point B to C is shown as a dashed line running along the field boundary which is quite difficult to see. The line passes through Spinning wheel and continues to the fish ponds where there is a mark that looks like a foot bridge. The path becomes a double dashed line after passing over the Parish Boundary. There was no relevant information in the apportionments to indicate

the status of any other point on the route. However, as there is a differentiation in how paths are shown, this may indicate that some parts of the route are of higher or lower status and the key (fig 24 of the applicants statement) utilised by the applicant indicates parallel double dashed lines to be Bridle road or open road. However, there is no overall standard or key which applies to all Tithes so this key can offer a guide but cannot be relied on (National Archives website). It is important to note that the paths status as public was likely to be shown in the Tithe maps if its status influenced the value of the titheable land.

5.11 Tithe Map and apportionment for Tortington 1841(WS records office) (Appendix 1)

Again the map held at West Sussex County Council archive is not coloured. The application route from point C to F appears to be shown as double dashed lines. From point F the application route appears to be shown as double dashed lines initially and then becomes single dashed lines along the field Boundary to point G, which is difficult to see on copies of the map but clearer when looking in WS records office. There was no relevant information in the apportionments to indicate the status of the route going through Tortington. As mentioned in section 5.10, this differentiation in the route depiction could infer a difference in status. The applicant states that the Old Scotland Lane route is not shown in this map, which does perhaps suggest the prominence of the application route, which is shown, but does not prove its status as a Bridleway.

5.12 First edition of The OS County series Sussex map 1876 (25 inch to the mile) (WS Records Office) (Appendix 3/ Appendix 10 of applicants statement)

There are no annotations of status on this map. From Binsted Church there is a route shown to a point where three further paths meet matching point A to B of the application route. At this point onwards the route is shown as double dashed lines. The route then follows through several fields, along the boundaries to Spinning wheel wood. The route continues running above Binsted house where the dashed lines get wider as they go through the lower Woods of Tortington Common. The path passes through a 'fork' of paths which today are roads just North West of Priory Farm and at this point the route is marked as a single dashed line.

From this point onwards, application route F to G, it is difficult to determine where the path runs but there appears to be no path matching that of F to G running into Arundel from where the woods end, only roads.

5.13 OS Sussex Series 1 1863-95 (WSCC software- Local View)

There are no annotations of route status on this map. From the church at Binsted, the route from A to B is shown in the same way as other public roads

on the map. The route from B to C passes along field boundaries, drawn as two dashed lines running parallel to each other. The path then passes through spinning wheel copse woods and appears to narrow as the two dashed lines marking out the route run closer together. There are no markings of a Footbridge (F.B) where the path crosses the stream by the Fish as seen in Series 3 and 4. After crossing Binsted Lane the route then appears to widen again and continues along the bottom of Tortington Common woods (Point C to D). The route continues at about the same width until point F where the route narrows slightly. From point F onwards there is a second wider path running adjacent to a narrower route which is not annotated and carries on through the woods at the point FP is seen on the map on the narrower route shown. This wider track is not shown on the series 3 and 4 OS maps

5.14 OS Boundary Remark Books (OS26) and Boundary Sketch Maps (OS27), 1872 and 1873. (Appendix 3,4,5 and figure 1, 2 3,4,5,6 & 7 of applicants supplementary statement).

The original maps were not looked at first hand as they are held at Kew but the images provided by the applicant were.

It is difficult to determine exactly the paths crossing the boundary, the applicant makes comparisons to today's map and states the application route is shown. However, the County Council's interpretation is that, due to a different orientation of the drawings, the application route is not shown on these drawings.

5.15 Adcock's Survey 1894 of the County's Roads and Adcocks County of West Sussex classification and report 1890 (WSCC/SU18/1/10) (Appendix 2)

The Adcock survey was prepared by Charles Adcock, County Surveyor and aimed to inspect all parish roads and divide them into classes according to the amount of traffic upon them and to report their state of repair. The map at point A to B is difficult to determine, as the route is obscured by the word Binsted. Although it looks like this section could be coloured green and hence a 5th class road maintainable within the county of West Sussex, the section is not listed in the accompanying report and classification book. Therefore it is concluded as the map is unclear and the section not described in the report that it is unlikely this section was a 5th class road. Point C to F is also shown as a black line, similar to that showing the Old Scotland Lane route (Bridleway 338). From point F to G it is difficult to clearly see the route but there appears to be a faint dashed line. The key does not determine the status of the route from point C to F as it is presented but as it is not coloured it is clear that it was not considered as a Highway in 1894. Point B to C is not shown.

5.16 Second edition of OS map 1:2500, 1897 (See Fig 8 and 9 of applicants supplementary statement)

Although this map is the same as the 1899 map below it was accessed online at oldmaps.co.uk. The applicant mentions that the application route is shown to be the only access to gravel pits and therefore suggests that the status of the path is greater than a Footpath. While the application route does seem to be the only connecting route for the "gravel pit" between points B and C just above Binsted House and one of a small number of connecting routes between point C and D to the "old gravel pit", this does not therefore mean that other roads or tracks, which are not marked on the map were not used to access these pits. In addition, if the application route was used to access the gravel pits it would likely have been a small section between points B and D until more major routes were met. 'British History on-line' believes at least 2 of 3 gravel pits mapped in 1896 were still in use. However, access to gravel pits would have been private and so this does not support the application that the route was a public right of way, only that the route was possibly used by vehicles going to and from the gravel pits.

5.17 OS second edition 1899 – WS Records Office (Appendix 4)

From point A to B a route is shown and there is the symbol L.B by point A (although it is unclear if this is along point A to B or along Binsted Lane), LB is likely to stand for letterbox considering general OS key information found online at . A route then follows along the field boundaries to the woods at Spinning wheel and is marked as F.P (Footpath). It is hard to tell at this point if the path is marked as a single dashed line or double due to it running along the field boundary. From Spinning Wheel the path is marked as a double dashed line and is marked again as F.P (Footpath) and passes through the gravel pits and Fish ponds above Binsted house. The double dashed line continues matching point C and D on today's plan through Tortington common, there are no more F.P marks at this point. The path continues through the bottom of Stewards Copse as seen in the OS 1980 and there is another F.P marked on the map as the path comes out of the woods, just above the sewage works which could correspond with the section of path F to G on today's plan.

5.18 OS Sussex Series 2 1896-99 (WSCC software - Local view)

From the church at Binsted the route from A to B is shown as other public roads on the map. The route from B to C passes along field boundaries and is annotated as FP (Footpath) and drawn as two dashed lines running parallel to each other. The route then passes through spinning wheel copse woods and appears to narrow as the two dashed lines marking out the route run closer together. Just before the gravel pits and fish pond the route is marked as F.P. After crossing Binsted Lane, the route then appears to widen again and continues along the bottom of Tortington Common woods (Point C to D). There are no further annotations on the status of the route at this point (C and D). The

path continues at about the same width until point D where the path narrows slightly. Again, there is no further annotation on the route until the path comes out of the wooded area just under half way along F and G and is then marked as F.P (Footpath). From point F onwards there is a second wider path running adjacent to a narrower route, which is not annotated and carries on through the woods at the point FP is seen on the map on the narrower route shown. This wider track is not shown on the series 3 and 4 maps.

5.19 OS –Chichester Street 317, 1895 (one inch to one mile) (accessed online see fig 7 applicants statement)

Point A to B is shown as a route. Point B to C is shown as large single dashed lines until roughly half way along point B to C. This depiction does not match any of the paths outlined in the general OS keys provided by the applicant (Fig 7 of the supplementary applicant's evidence), although Bridleways are not shown on this key. The route is then shown as double dashed lines until Tortington Common, which is labelled in the key (fig 7) as second class un-metalled road. The route finishes at the point where it meets the forked path just North West of Priory Farm at approximately point D. Most of the route from point C to D is shown the same as the path north of the route which is Bridleway 338 (Old Scotland Lane). Bridleways are not annotated in the key provided by the applicant (Fig 7 of the supplementary applicant's evidence).

The applicant makes the point that as the maps were sold to the public they are unlikely to show routes that are not open to the public, however this means little in determining whether the route was used as a footpath or Bridleway and applies to all OS maps, which have always been sold to the public.

5.20 OS Sussex Series 3 1909-19 (WSCC Local View)

From the church at Binsted the route from A to B is shown as other roads on the map. The route from B to C passes along field boundaries and is annotated as a BR and drawn as two dashed lines running parallel to each other. The path then passes through spinning wheel copse woods and appears to narrow as the two dashed lines marking out the route run closer together. There are no further annotations on this part of the route to determine its status until a F.B (footbridge) is reached crossing a small stream above the Fish Pond (this is at around point C). After crossing Binsted Lane the route then appears to widen again and continues along the bottom of Tortington Common woods (Point C to D) and is labelled BR again halfway between Binsted Lane and Tortington Lane (point C and D). The path continues at about the same width until point F, where the path narrows slightly. There is no further annotation on the route until the path comes out of the wooded area just under half way along F and G and is then marked as F.P (Footpath).

5.21 Bartholomew's Map's 1902 to 1906 (Figure 11,12 and 13 of applicants statement)

Route A to B is shown as a single dotted line to point C which is denoted as a Footpath & Bridleway on the key. From point C to D the route is shown as "inferior road" which is stated to be 'not recommended to cyclists' on the explanatory note, although there is an adjacent black line running next to this road. The rest of the application route is shown as a black line. There is no mention of black lines in the key but it is possible they are smaller "other roads" and it is the resolution of the picture that doesn't allow the gap in between the lines to be seen. As the applicant points out the depiction of point C to D is the same as some of today's public roads in that area as well as Bridleway 338 (Old Scotland Lane).

5.22 Second edition of the OS County series 1912 (25inch to the mile) (Appendix 5)

Only the map for the Parish of Binsted was available at this scale. This map shows the same route as the 1914 edition (see 5.21). Again a Footbridge (F.B) is marked above the fish ponds. The rest of the route is marked as B.R except the road at the beginning of the route from A to B. The map does not cover section D to G.

The applicant states that a change in status of FP to Bridleway would not have been made lightly or "without good reason" according to the Ordnance survey Instructions to field examiners. This change in status explains why there is a Footbridge at this point on the route.

5.23 OS map 1914 (Appendix 6)

This map shows A to B the same as other local public roads. The same route is shown by the two older maps 2nd edition OS 1899 and the 1st Edition OS 1880; except in this map the path from the end of the road is marked as B.R until the path reaches the fish ponds above Binsted House, where a Footbridge (F.B.) is marked. Once the route reaches Tortington Common the route is marked as B.R again. A path then runs along the rural district boundary marked with small v's and is labelled as F.P (Along points F to G of the application route). The path is shown as double dashed line across the whole route.

5.24 OS Sussex Series 4 (1930-46) WSCC Local View

From the church at Binsted the route from A to B is shown as other roads on the map. The route from B to C passes along field boundaries and is annotated as a BR and drawn as two dashed lines running parallel to each other merging to two solid lines suggesting a road and is annotated BR at this point (today this section is shown as a road ending by Spinning wheel Copse). The route then passes through spinning wheel copse woods and appears to narrow as the two dashed lines marking out the route run closer together. There are no further annotations on this part of the route to suggest its status until a F.B (footbridge) is reached

crossing a small stream above the Fish Pond (this is at around point C). After crossing Binsted Lane the route then appears to widen again and continues along the bottom of Tortington Common woods (Point C to D) and is labelled BR, again halfway between Binsted Lane and Tortington Lane (point C and D). The path continues at about the same width until point F where the path narrows slightly. There is no further annotation on the route until the path comes out of the wooded area just under half way along F and G and is then marked as Foot path.

5.25 Railway, canal and River Records- London & Portsmouth Railway (WS records office)

There was a proposed railway going through the parishes of Tortington and Binsted which was never built. The maps recording the route show that the railway was further south than the application route. It is possible a deviation line may have passed through the route but there were no details on the parcels the deviation route would have passed through.

5.26 Draft, provisional and Definitive Map produced under the Wildlife and Countryside Act 1981 (WSCC copies)

The route is shown as Footpath 342 on the definitive map from point B to G. Point A to B is unmarked on these maps. Footpath 342 is shown as it was on the Draft and Provisional Maps on today's Definitive Map.

5.27 Inclosure Records

None are held for the application area at West Sussex Records Office. However, the applicant mentions informal enclosures being described in the Victoria Country House. Although the extract describes the enclosure process there is no proof that during enclosure the route was downgraded to a Footpath. This also does not match with dates of other maps which show the route with varying status after the enclosure period.

5.28 Tortington Parish Highways Record 1880 to 1888 (appendix 7)

There are records of flints being put down across the parish of Tortington, however, in most cases the exact location is not provided and where it is nothing that could resemble the application route is mentioned. Therefore, it is not possible to say that these records provide evidence that the application route underwent surface improvement.

5.29 Returns by Arundel borough and for Binsted and Tortington under the 1932 Rights of Way Act

This record was missing from the West Sussex Records Office at time of investigation.

5.30 Painting and description from Binsted Village Website (applicant's statement and online on Binsted Village website)

The description of the Lorna Wishart painting describes her riding along the south edge of Tortington Common from Arundel. This matches the application route which runs along the southern border of Tortington common (application route point C to D) but the rest of the route is not mentioned. The pictures and description appear to have been provided by Binsted Arts committee and have been taken from Binsted Village website. There is no date given on the painting but Lorna Wishart was alive from 1911-1957. The fact that she is riding along the said path in the painting does not prove its status as a public right of way with bridle rights, those rights may well have been private.

6 Consideration of the claim

6.1 The application was submitted with archive evidence summarised in Section 4 and more concisely in section 4.24 of this report. The investigating officer conducted a thorough investigation into the County's archives at the WSCC Record Office and as summarised in Section 5 of this report.

6.2 In determining the application it is necessary to decide:

6.2.1 whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a restricted byway exists between points A and B, or in the alternative that a restricted byway between points A and B and a bridleway between points B and G are reasonably alleged to subsist, which is a lower test. This lower test requires that it is reasonable to allege a right of way subsists.

6.2.2 whether the evidence provided by the applicant, when considered with all other relevant evidence, shows that between points B and G, FP342 ought to be shown as a Bridleway, on the balance of probabilities.

The burden of proving this falls to the applicant.

6.3 Matters relating to suitability and condition of a way and possible nuisance or need are irrelevant and cannot be taken into account when reaching a decision

6.4 Archive Evidence

6.4.1 The application and investigation by the County Council brought forward large amounts of archival information on the application route. The relevance and usefulness varied greatly between each piece of documentary evidence, particularly, as the intention was to prove status of the route historically. The status of a route is difficult to determine from archive evidence as most historic maps do not provide information on status and/or are seen as not sufficient

evidence to prove definitively the status or sometimes even the existence of a public right. In addition, with regards to this application, some parts of the route are given varying status throughout the archive evidence while other parts of the application route are consistently given the same status. It is therefore suggested that the application route be considered in stages e.g. point A to B, B to C etc. as well as a whole.

6.4.2 The Application Route as a whole

The earliest documentary evidence of the entire route is from the 17th century Glebe terrier from 1615 which describes a lane from Binsted Church to Arundel. Following this, Yeakell and Gardner's Sussex (1778-1783) shows the route from point A to B as a route in the same way as other roads which now carry public vehicular rights and then B to G as a single dashed line. It is however the case that the routes status cannot be determined from this record as there is no key. In addition, the Tithe maps of Binsted and Tortington show the application route in its entirety although other than point A to B, which is mentioned in the apportionment, no information on the route status for the entirety of the route is given. It is also the case that the land has not been referenced specifically in the Tithe Map, which one would expect if it carried public rights.

The application route in its entirety, is continuously shown on various maps throughout time, although, on some maps segments of the route are missing, for example point B to C on Bartholomew's' maps. The status of the route is not clearly defined on many of the historic maps and where it is, the given statuses are not always consistent. However, this must be balanced against the evidence that there are segments which are consistently given a higher status than footpath and it seems odd that the small segment of road from Binsted Church would lead nowhere and perhaps supports the claim that it was a historic route, which was once a public route leading from the Church to Arundel.

6.4.3 Point A to B

The application route from point A to B appears to be consistently marked and described as a road or lane. There is, however, no evidence that specifically confirms that the route was regarded as being available for public use. The route is first recorded on a 1606 estate map as a road or lane as a reference point along with Binsted Church. This section of the route is also described in the Glebe Terrier and in Victoria country house as existing in 1615 as a lane and road respectively. The route is shown as a crossroad in Greenwood and Greenwood map of Sussex 1825, which suggests it was a public highway. Continuing through time the route is consistently marked as a road and is labelled as "Church lane" in the 1840 Binsted Tithe map, however there is a line across this route at this point suggesting it was not open to the public. It is

concluded that the Adcock's highway survey does not show this section of the route as publically maintainable highway. All other maps from this point depict this section of the route as a road including today's definitive map. The only record of the route not being shown as a road is Bartholomew's maps in which the route is shown as a Footpath & Bridleway. The fact that the lane is shown on nearly all historic maps and used as a reference point on Estate maps suggests that it was a road. However, there is no clear evidence which defines the status of this section of the application route as a public road and so the question remains whether it was a route for use by the public or whether it was a private route to access the rectory and surrounding fields.

6.4.4 Point B to C

The first time the status of the route at this point is clearly indicated is the West Sussex County Councils Local View Series 2 (1896-99). The route at this point is annotated as Footpath. The Chichester Street 1895 OS map is unclear on the status of the path, for the first half between points B and C is shown as single dashed lines but the second half of this section of the application route, near the Spinning Copse, is denoted as un-metalled road.

Despite being shown as a Footpath by some earlier OS maps the OS Sussex series 3 (1909-19) shows the route as a Bridleway. However, towards point C there is a Foot Bridge marked on the map which is inconsistent with this status. The same annotations appear on the second edition OS county series map 1912, OS map 1914 and the OS county series 4 (1930-46). Although these maps denote the route as Bridleway, a Footbridge remains consistently marked on the maps around point C. The applicant contends that the Footbridge is passable by horse. However, it is important to note that no other maps, other than the Ordnance Surveys here, show the path to have a conclusive bridleway status. Furthermore, Ordnance Surveys carry a disclaimer stating that the representation of a track or way on a map was not evidence of the existence of a public right of way and the courts have treated Ordnance Survey maps as not being evidence of the status of a way (See Planning Inspectorate consistency guidelines).

6.4.5 Point C to D

The first clear indication of the status for this section is from the OS second edition 1899 and OS Sussex Series 2 (1896-99). These are not annotated at this point along the route but are annotated at an earlier point as F.P (footpath). The OS Chichester street map 1895 shows this section as a second class unmetalled road and Bartholomew's map's 1902-1906 show this section as "inferior road" not suitable for cyclists. Moving forward in time the OS series 3 (1909-19), the OS second edition survey county series 1912, 1914 OS map and OS series 4 (1930-46) show this section as a Bridle Road. However, the only maps to clearly show the route with a higher status are the OS maps, which as

stated above (section 6.4.4) cannot be considered conclusive. Bartholomew's map does hint that this section of the route had a higher status than a footpath, as it is labelled as an inferior road. However, the only certain fact obtained from this map is that the route was not suitable for cyclists.

6.4.6 Point D to E

The route at this point is shown by double dashed lines in Ordnance Survey series 2 (1896-99) WSCC Local View but is annotated earlier along the route as Footpath. The OS Series 3 (1909-19) shows the route again at this point as a double dashed line but is annotated before this section as Bridleway. Both the second edition OS county series 1912, 1914 edition and OS series 4 (1930-46) also annotate the route as a Bridleway before this point but there are no further annotations along point D to E. The status of this section is unclear throughout all of the other sources considered. Although the later OS maps mark the section of the route before this point as Bridle Road, the conclusion on OS maps outlined in Section 6.4.4 stands.

6.4.7 Point E to G

The first map potentially showing the route at this point and giving an indication of status is the Tithe map of Tortington 1841. The route is initially shown as a double dashed line and then becomes a single dashed line after point F indicating a change in path status at this point. The OS Sussex series 1 (1863-95) show this section with double dashed lines annotated as F.P (Footpath) after point F. The path is shown in the same way on the OS second edition 1899, OS Sussex Series 2 (1896-99), OS Sussex Series 3 (1909-19), OS Map 1914 and OS Sussex Series 4 (1930-46). Points E to F largely remain unannotated sections but depiction seems consistent with previous sections of the application route D to E. Point F to G is consistently shown as a footpath in the OS maps and this section is difficult to interpret on many of the older maps or not shown.

6.4.8 The applicant has compared the depiction of the application route to that of Old Scotland Lane, which today is Bridleway 338. The application route is shown in some historic maps when Old Scotland Lane is not, for example the Tithe map of Tortington. In addition, often parts of the application route are depicted in the same way as Old Scotland Lane such as in Bartholomew's map, Adcocks Survey and the Ordnance Survey Map 1895. Although this suggests the routes had similar status, it does not prove conclusive about the status of the application route as a Bridleway.

6.4.9 When considering Historic maps it should be noted that the practice of annotating maps to 'F.P' on large scale maps did not occur until 1883 (The Planning Inspectorate DMMO guidance) supporting the conclusion that earlier

maps showing single and double dashed lines cannot be assumed to be Bridleway or Footpath.

6.4.10 From 1883 the OS circular would have been in place providing that "all footpaths over which there is an undisputed public right of way should be shown". However, from 1888 onwards OS maps came with a disclaimer that the representation of a track or way on the map was not evidence of a Public right of way. Bartholomew maps also come with an N.B that the representation of a road or map is no evidence of a right of way.

7. Conclusion

Although the application route is prominent in several early maps most of the earlier historic maps do not have keys providing a clear indication of the routes status. In addition, throughout time the depiction of each section of the route and the route as a whole is inconsistent. Although from 1909 to the making of the definitive map the route is shown by Ordnance Survey maps as a Bridleway to point F, Ordnance Survey maps cannot be relied on to determine the status of a route and there is little support from other historic maps to show the route as a whole had higher rights.

Point A to B is consistently marked as a Road or Lane throughout time, however, the status of this part of the route is uncertain. Although the route has been shown on a number of different maps, there is insufficient evidence to suggest that a status of restricted byway is established on the balance of probabilities and on the lower test of reasonable allegation. It is therefore recommended that an order to add to the definitive map and statement a restricted byway from points A to B be not made.

Points B to C and C to D are marked with a higher status than Footpath on Ordnance Survey maps from around 1909 and 1895 respectively, although a Footbridge remains marked along this point of the route which is inconsistent with such status, furthermore, as mentioned above Ordnance Survey maps cannot be relied on to determine the status of a route. Point F to G is consistently denoted as a Footpath when shown and annotated on historic maps and therefore there is little evidence that points F to G is a Bridleway as although the historic evidence points to a route to Arundel, 20th century development in this area makes this section of the route difficult to determine. The other sections of the route are not clearly annotated but can be assumed to adopt the status of previous sections.

Considering the application to upgrade the footpath from points B to G to bridleway, the evidence is inconclusive and it has not been proven on the balance of probabilities that a bridleway should be shown on the definitive map.

It is therefore recommended that an order to upgrade this footpath (Point B to G) to a bridleway be not made.

Report sign off

Consultation with local member date: **11/10/2018 (Fontwell)**

25/10/2018 (Arundel)

Consultation with Committee Chairman date: **11/10/2018**

Report cleared and signed off by Senior Solicitor / ~~Head of Property and Environment~~ / ~~Director of Law Assurance and Strategy~~ [delete as appropriate]

Sign.....



Print.....

LAURA FLOODGATE

Date.....

29-10-2018

N.B. Please note references to "Victoria County Mouse" should read "Victoria County History" 1/11/2018