Definitive Map Modification Order **Date: July 26**

Report under Delegated Authority

Application details	DMMO No.5/20 Addition of a BOAT along Grevatts Lane West Yapton
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) of the Wildlife and Countryside Act 1981 to add a Byway Open to All Traffic from Grevatts Lane West in the Parish of Yapton CP between point A and B on the Application Plan be not made.

1. BACKGROUND TO THE APPLICATION

1.1 APPLICATION DETAILS AND THE LAW

1.1.1 The application, made by the British Horse Society was received on 14th July 2020 to add a Byway Open to All Traffic (BOAT) along Grevatts Lane West (GLW) in the parish of Yapton CP.

1.1.2 This application, made under Section 53 (3) (c)(i) Wildlife and Countryside Act 1981 ("the 1981 Act"), relies on there being the discovery, by WSCC of evidence which shows that a right of way which is not shown in the Definitive Map and Statement (DMS) subsists or is reasonably alleged to subsist over land.

1.1.3 The application is supported by documentary evidence only and is therefore 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 The whole of GLW is unregistered.

1.2.2 Notice was put up on site by the applicant in July 2020 when the application was received by WSCC as required under paragraph 2 (2) Schedule 14 Wildlife and Countryside Act 1981.

1.2.3 Neighbouring landowners were also consulted on the application.

1.2.4 WSCC property team confirmed WSCC own sections of the verge along Grevatts Lane West which are within the highway boundary, please see the plan at Annex 4 of the Background Papers.

1.3 THE CLAIMED ROUTE

1.3.1 The claimed route is for the addition of a BOAT along the majority of GLW.

1.3.2 The claimed route starts at point A on the Application Plan (Annex 1) at Grid reference SU976017 to the western end of GLW just after Bilsham Cottages where a five bar gate is located. The claimed route then goes in a westerly direction along GLW to where it meets the A259 shown as Point B on the Application Plan at Grid reference SU982015, with an approximate length of 650m.

1.3.3 The claimed route is recorded as publicly maintainable D class Highway. D class Highway is defined as an "unclassified road". Unclassified roads are generally roads with low volumes of local vehicular traffic[1].

1.3.4 At the time the application was submitted in July 2020 the claimed route was closed off at both ends at point A and B, by five bar padlocked gates, at point B there was also wire fencing blocking off access to the A259.

1.3.5 In October 2020 planning permission Y/103/18/PL was granted on appeal for a crematorium to be built along GLW. As part of this application, access to the A259 from the crematorium along GLW was opened up. The crematorium has now been constructed and is about 250m off the A259 along GLW. As part of the planning consent the section of vehicular highway along GLW from the A259 to the crematorium was constructed/improved under a section 278/38 Agreement dated the 5 August 2022. Access from the crematorium along GLW to the B2132 is to remain closed.

1.3.6 As part of the planning consent an Agreement under Section 106 Town and Country Planning Act 1990 was entered into which provided funds for a Traffic Regulation Order (TRO)to be made to restrict vehicular access if a certain level of vehicle movements was found along GLW securing an additional contribution of £975 to fund lockable bollards to be installed if the TRO was implemented. The c lockable bollards would be installed adjacent to the crematorium access as well as replacing the existing gate to the western end of GLW. To date the vehicular movements past the crematorium has not been sufficient for a TRO to be implemented along this section of GLW.

1.3.7 The claimed route remains blocked off at point A by a padlocked five bar gate. There is space to the side of the gate for walkers and cyclists on single bikes to pass by. It is also understood from accounts by local residents/landowners that the gate is open from time to time to allow farm traffic through.

1.3.8 WSCC have not been able to find any record of a stopping up order for GLW and have also found no record of a gating order for the gate currently at point A of the claimed route.

[1] Guidance on road classification and the primary route network - GOV.UK

1.3.9 It should be noted that historically the claimed route was known as Grevatts Lane, in the 1960's Grevatts Lane was realigned as part of Comet Corner and the claimed route became known as GLW.

2. CONSULTATIONS

2.1 Standard consultations were sent to local councils, the County Councillor, internal departments, amenity groups and neighbouring landowners to the claimed route. The following responses were received which can be found in full at Annex 3:

2.2 Arun District Council

Had no comments on the application

2.3 Neighbouring Landowners, Mr and Mrs Foy, 27th May 2025

Mr and Mrs Foy provide a detailed memorandum in objection to the application summarised below:

- Historically GLW was part of the A259 coastal route, but this all changed in the 1960's when the A259 (Grevatts Lane) was diverted. The intention was not for the GLW to become a through route to the B2132. Farm traffic uses the route, but this is through a double set of padlocked farm gates. It is not known when these gates where installed.
- A gate was also erected at the eastern end of GLW where it meets the A259 and the hard surface of the road petered out at this point. As far as they were aware GLW was not maintained by WSCC. It is also believed a barrier gate was erected on the west side at the entrance to the industrial estate, but this was later removed and re-erected on the west side of the entrance directly next to the farm gate.
- When GLW was closed for repairs by WSCC on 7 July 2020 through a temporary Traffic Regulation Order the notice stated that an alternative route was not provided as it was considered to be a "No through route".
- It is questioned how horses will get to point A of the claimed route as there are no adjoining Bridleways.
- A Crematorium was built in 2022/2023 and an entry/exit junction placed at the junction to the A259 the road is now made up to the crematorium but not beyond this point.
- Upon the building of the Crematorium a statement of common ground was made between WSCC and the owners of the Crematorium stating that there would be no through route from the A259 to the B2132, the access was for visitors to the crematorium only.
- In conclusion, the classification of the route as a BOAT would "destroy 55 years of quiet enjoyment of the route by walkers and cyclists" and be in direct conflict with WSCC's intention for the route.

2.4 Neighbouring Landowner, Mr Timm Rudd, 27th May 25

Mr Rudd objects to the application, in summary;

- Mr Rudd has lived at his property since 1994 and has regularly used GLW to exercise his dogs, he has seen cyclists but never horse riders.

- Mr Rudd has noticed misdirected traffic using GLW trying to access the crematorium since it was built.
- In January 2025 when gas works were taking place along Bilsham Road Mr Rudd states the padlock on the gate was cut which meant the claimed route became a "rat run". WSCC resecured the gate.
- If GLW became a BOAT it would be dangerous for motorists, farm traffic, cyclists and walkers. Horse riders could pass by the side of the gate if it was modified slightly.

2.5 Neighbouring Landowner, Susan Abbot, 25th May 25

Mrs Abbot expresses her concern about the claimed route becoming a BOAT and her representation is summarised below;

- Ms Abbot owns Northwood farm for which one of the entrances to the farm is along GLW.
- In the 1940s the claimed route was part of the A259 but the A259 was then diverted and GLW was closed off to stop traffic passing through.
- They have accessed their land through the locked gate off Bilsham road (B2132) but since the crematorium has been built they have accessed the farmland from the A259 without opening the gate.
- Ms Abbott considers it would be dangerous to allow traffic to use the route due to farm traffic and people working there.

2.6 Neighbouring Landowners, Mr Jonathan Cheal on behalf of DW Langmead.

Mr Cheal provided a letter from the County Council's Highways Boundaries Team dated April 2006 in which it was highlighted that while WSCC confirm GLW is publicly maintainable vehicular highway it is stated that it is "gated to prevent general vehicular access". Mr Cheal asked that this should be take into consideration when considering the lawfulness of the gate.

2.7 In considering the result of the consultations, officers can only take into account evidence which demonstrates whether or not the tests in Section 53 have been satisfied. Matters concerning safety, desirability and suitability are not relevant to the legal tests.

3. EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

3.1 The application is supported by documentary evidence only which can be found in full at Annex 2.

3.2 The applicant believes the route would provide a direct link to the 3m wide pedestrian and cycle path along the A259 between Flansham and the road Bridge over the River Arun allowing those on horseback and cyclists travelling from the B2132 to avoid the dangerous Comet Corner.

3.3 The applicant outlines a history of the claimed route stating that prior to 1824 the claimed route was a fenced road but ended at fields to its eastern end. The applicant provides evidence that the claimed route was historically part of the main road along the coast before being bypassed, however, it was not a publicly maintainable road in the late 1800's as the claimed route was controlled by the board of commissioners for the Chain Ferry connecting Littlehampton and Climping.

3.4 The route was first indicated as a publicly maintainable highway in 1908 when Littlehampton Urban District Council acquired the road as part of an Act of Parliament for a new swing bridge across the Arun. There is evidence that WSCC held the claimed route as publicly maintainable from 1933. By 1967 the claimed route which was part of the A259 at this point was bypassed by a new road and junction to the south and renamed GLW. The applicant contends that locals recall the route being used by those on foot and bicycle but blocked off for vehicular use by gates.

3.5 The applicant has found no evidence that the public vehicular rights along GLW were ever stopped up by legal order and believes the highway is therefore unlawfully obstructed by the erection of gates.

3.6 The applicant considers that section 67(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act") is exempted because before 2nd May 2006 GLW was not shown on the DMS but was shown on WSCC's list of streets under section 36(6) Highways Act 1980 ("the 1980 Act"). It is therefore considered that the claimed route satisfies the definition of a BOAT under Section 66(1) of the 1981 Act and should therefore be added to the DMS as such.

3.7 The applicant believes the claimed route should be shown as a BOAT as the route satisfies the definition set out in s66(1) the 1981 Act *"byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used"* .

3.8 The applicant also highlights that the case Masters v SoS for the Environment Transport and the Regions 2000 which held that it is possible to record a BOAT even if there is no use at the time of the application if, once recorded, use of the route would be predominantly by walkers and riders instead of vehicles.

3.9 A summary of the historic/documentary evidence the applicant presents to support their case summarised above are set out below;

3.9.1 <u>DOCUMENTARY EVIDENCE PRESENTED BY THE APPLICANT</u>

3.9.2 <u>1813 Ordnance Survey Map</u>

<u>Pg 3 of applicant's statement(Annex 2) and Annex 5</u>

The applicant states the map shows the claimed route as a fenced road ending in fields to the east.

Officer Comment

A route is shown denoted by solid parallel lines ending in fields to the east of today's GLW suggesting the route was a prominent way at this point in time, likely a cartway.

3.9.3 County Map 1894, Roads maintainable within the County of West Sussex, (coloured routes based on Adcock's report). Page 4 of the applicant's statement (Annex 2) and Annex 5

The applicant states that the claimed route was left uncoloured on this County Map 1894 and therefore it was not considered publicly maintainable highway at this point in time.

Officer Comment

The applicant is referring to the County Map 1894 Roads Maintainable within the County of West Sussex coloured routes based on Adcock's report 1890. The claimed route is uncoloured on this map. There is also no reference to GLW in the accompanying book of reference to the County Map 1894.

3.9.4 Act, 5 Geo IV c.xciv WSRO AM 14881-2 and Deposited plans - WSCC ref QDP/W42/A

Page 4 of the Applicants Statement (Annex 2) and Annex 5

The applicant considers that the route was not publicly maintainable at the time of Adcock's report because the road connected to the chain ferry connecting Climping and Littlehampton and the road was therefore controlled by the Board of Commissioners this is demonstrated on The Act, 5 Geo IV c.xciv HL/PO/PB/1/182/5G4n161 titled "An Act for establishing a ferry over the river at the River Arun at Littlehampton" held at the Parliamentary Archives.

Officer Comment

The above Act held in WSCC's record office under reference WSRO AM 14881-2 states that the Ferry and connecting Roads are vested in the trustees of the Ferry board under the Act. Grevatts Lane is named as one of the roads to be made "*on the West side of the River Arun to and into the Road leading from Bognor to Arundel at the West End of Grevatts Lane West in the Parish of Yapton*". The accompanying plan to the above Act (WSCC ref QDP/W42) is dated 1821 and shows Grevatts Lane marked as an "Occupation Road" this is also stated in the Book of reference showing the individual landowners. These two records accord with what the applicant states about the status of the claimed route at

this time, that it was privately owned but used by the public to access the new chain ferry across the river Arun.

3.9.5 Littlehampton Urban Bridge Plans 1905 (WSCC ref QDP/W226 A) and Book of reference Littlehampton Urban District Council (Arun Bridge) In Parliament Session 1905 WSCC ref QDP/W226

Page 4-5 of Applicants Statement (Annex 2) and Annex 5

The applicant states that in 1908 Littlehampton Urban District Council acquired consent to build a new swing bridge over the River Arun. The claimed route is shown as part of a road considered public vehicular highway in the deposited plans and book of reference. The applicant states that the route is considered as public highway from this point onwards.

Officer Comment

In these records there is an article/notice "In Parliament Session 1905" stating that the Ferry Rights and the connecting Roads and Property will be acquired by Littlehampton Urban District Council. The article specifically states Grevatts Lane "the road known as Grevatts-Lane commencing by a junction with the road from Yapton to Climping near hobs farm and proceeding westward terminating at the western boundary of the Parish of Climping" However "Cancelled is written on the left hand side of the paper. In the book of reference "Grevatts Lane is listed with the Owners stated as "the said Ferry Trust" and Occupiers "the public". This is possibly the first record of the route indicating it was to become publicly maintainable vehicular highway.

3.9.6 Commercial Maps

Page 7-13 of applicant's statement (Annex 2)

The applicant provides entries from the Ordnance Survey Object names book held at the National Archives, entries in OS35/7159 marked as entries from 1896 describe "Grevatts Lane" as a "Public Highway road leading from the north end of the village of Climping in a westerly direction to Bilsham Lane". The Object names book shows an entry in 1936 in OS35/7158 also describing Grevatts lane as a "Public Highway".

The applicant provides Ordnance Survey Maps from 1910, 1950, 1962 and 1967 taken from National Library Scotland (NLS). All four maps depict the claimed route as a road with the first three showing the route as the main road from Bilsham onwards. The fourth map dated 1967 Map shows GLW having been bypassed by todays Grevatts Lane (A259). Bartholomew's map dated 1922 shows the route as a first class road marked A259.

Officers Comment

Although Ordnance survey maps and Bartholomew's map were designed to show what was on the ground and are not evidence of legal status of a route on their own, the maps above together with the Object Names books clearly demonstrate that Grevatts Lane, (todays GLW) before the old Grevatts Lane was bypassed was a prominent route used by the public for vehicular use. Bartholomew's shows Grevatts Lane marked as a main A road in 1922.

3.9.7 Finance Act 1910 (National Archives references IR124/9/487 and IR124/9/488 and maps IR 124/9/484 and IR124/9/489

Page 13-15 of the Applicants Statement (Annex 2) and Annex 5

The applicant states that the claimed route is shown as a "white road" or "uncoloured road" labelled "Grevatts Lane". This is often considered indicative that the route is a public highway as the purpose of the Finance Act 1910 was for property to be valued in order to calculate tax, public highways were excluded from the valuation.

Officers Comment

As the applicant indicates map IR 124/9/488 clearly shows the claimed route, then Grevatts Lane, excluded from neighbouring hereditaments suggesting it was not titheable and therefore a strong possibility the route was considered public highway and most likely vehicular.

3.9.8 West Sussex County Council Highway Records (West Sussex Records Office WDC/SU18/1/1 and WDC/SU18/1/2 and Add Mss 49777)

Page 16-20 Applicants Statement (Annex 2) and Annex 5

The applicant presents WDC/SU18/1/1 which is a map titled "County Roads and Bridges 1933" the claimed route is shown as a first class road numbered A259. WDC/SU18/1/2 is also presented, a map date stamped 1946 which again shows the claimed route as a class 1 road. The applicant also provides a screenshot of the entry for ADD MSS 49777 which is documents relating to the realignment of the road at Comet Corner, the applicant did not view the documents at the time as the record office was closed due to the Covid 19 pandemic.

Officers Comment

It is agreed that the claimed route is clearly shown as a first class road or A road in 1933 map and 1946 and also labelled as the A259 in the 1946 map therefore carrying public vehicular rights. ADD MSS 49777 showing a plan of the realignment of Comet Corner (the A259) was viewed in the record office, GLW can still be seen on the top right hand corner of the plan depicted as a road.

3.9.9 West Sussex Local Land charges

Page 20-21 of the applicant's statement (Annex 2) and Annex 5

On WSCC's land charges map accessed online by the applicant the claimed route is shown as publicly maintainable class D (unclassified) highway.

Officer Comment

As indicated above GLW upon which the claimed route passes is recorded by WSCC as a publicly maintainable vehicular D class highway, unclassified road. WSCC land charges team have provided a plan showing the extent of the publicly maintainable highway along GLW which can be seen at Annex 4.

3.9.10 Planning documents from Arun District Council planning application Y/103/18/PL

Page 20-22 Applicants Statement (Annex 2)

A Copy of a TTRO from 2020 is provided which closes GLW for pothole repairs. The applicant states this confirms WSCC are responsible for maintaining the route. The applicant provides an extract of "Highway Statement of Common Ground" between Paul Basham Associates on behalf of the applicant for planning permission to the planning application (Y/103/18/PL) and the Highways Authority (WSCC). The applicant states that this confirms there is no formal order removing highway rights on GLW onto the A259.

Officer Comment

As indicated already WSCC agree that GLW is publicly maintainable vehicular highway and confirm that no stopping up order has been found demonstrating the removal of any highway rights along GLW and there is no formal gating order. Paragraphs 4.11 below go into more detail on the status of GLW.

4. FURTHER RESEARCH FROM WSCC'S RECORDS AND MAPPING EVIDENCE (Annex 5)

4.1 Internal Parish File.

There was no information relevant to the application on the Parish file.

4.2 Other Internal WSCC Files

WSCC records were searched for files relating to Grevatts Lane and Grevatts Lane West. Two relevant files were found which demonstrate that GLW was considered publicly maintainable vehicular highway. The first file contains inquiries in relation to the gate at the western end of GLW in 2013. The correspondence discusses travellers being in that location in 1980 and suggesting that this was when the gate was put in place. At this

time land charges confirm the routes status as publicly maintainable highway. The second file is for a Section 50 licence under the New Roads and Street Works Act 1991 being granted to a neighbouring landowner for installation of irrigation pipes in 2010 again confirming that WSCC considered the route to be publicly maintainable vehicular highway.

4.3 Quarter Sessions and Petty Sessions.

No relevant records were found.

4.4 Inclosure Award and Map

WSCC records office have confirmed there are no Inclosure awards that cover the claimed route.

4.5 Tithe Map

The Tithe map shows the claimed route enclosed by two black parallel lines and given apportionment number 419 which states "Grevatts Lane" and "Roads Waste Water". This makes it clear the claimed route was a road at this point in time but the Tithe map does not provide evidence of status as public or private.

4.6 Draft & Provisional Definitive Map

The claimed route is not shown as a public right of way on the draft or provisional definitive map.

4.7 Yeakell and Gardner Map (1798 & 1795)

A route is denoted by two solid parallel lines from Bisham ("Bilfom") leading to some fields which is likely GLW suggesting it was a prominent route at the time.

4.8 Ordnance Survey Maps & Book of reference

Maps dated 1876 1st edition, 1898 2nd edition ,1912, 1937,1947 and 1983 were viewed in the records office.

1876 1st edition, denotes the route by parallel black lines coloured yellow and with dashed parallel lines in the middle labelled "275" until reaching Hobbs Farm in Climping.

1898 2nd edition – the claimed route is shown in the same way as above except it is not coloured yellow and is labelled "Grevatts Lane".

1912- the claimed route is denoted by solid parallel black lines and labelled "Grevatts Lane" the first part of Grevatts Lane is coloured pink.

1937/39, the route is shown in the same manner as the 1912 map but is not coloured and the claimed route is marked "a259 to Littlehampton" and numbered "135" and "262".

1947, only the sheet for the west of the route is held at the record office showing the start of the claimed route denoted by solid black parallel lines and labelled "Grevatts Lane".

1983, the claimed route is shown in the same manner as the 1912 map but uncoloured. It is possible to see the realignment of the A259 which is now shown to the south on the map.

Ordnance Survey Book of reference WSCC Record Office which is for the 1st edition OS County Series 1:2500. 275 and 135 for Yapton mentioned above are labelled as "Road".

4.9 Sussex Series OS Maps held on WSCC's digital mapping systems Earthlight

Epoch 1 1876, as described above for the 1876 1st edition.

Epoch 2 1898, as described above for the 1898 map.

Epoch 3 1912, as described for the 1912 map but no pink colouring.

Epoch 4 1937, as described above for the 1937 map.

4.10 Summary of OS maps

It is clear from the maps looked at above that the claimed route has long been an established road marked as such since 1876. However, as indicated above at para 3.9.6 Ordnance Survey maps were not determinative on a routes status as public or private. However, as the claimed route is shown as a main A road from 1937 it is likely the claimed route was publicly maintainable vehicular highway at this point.

4.11 WSCC Highway Records

4.11.1 Roads and Bridges Committee Minutes (WSCC records office reference WOC/CMS/1/20- 22)

Minutes from the Roads and Bridges Committee were looked at from Jun 1958- Feb 1963 which was around the time the A259 was realigned. Minutes were found relating to the realignment of the A259 dated 17th March 1961 but there was no mention of any stopping up order. Other entries were found for the 15 September 1961 and 18 May 1962 referring to improvements of Grevatts Lane suggesting the claimed route was considered publicly maintainable vehicular highway at the time.

4.11.2 Land Charges

4.11.3 Records confirm GLW as a D class highway (unclassified road). WSCC's land charges team were able to find records from 1976 of GLW being surveyed for maintenance purposes. Land charges also provided a map they hold annotated in 1947 in which GLW is annotated in red as other

publicly maintainable vehicular highways are on the map, indicating it was adopted at the time although, this cannot be said with certainty as no key is provided with the map.

4.11.4 Land charges hold a map titled "1937-39 with additions in 1947 & 1950" which shows the claimed route coloured red, again likely indicating it was publicly maintainable vehicular highway but as there is no key to the map this is not certain.

4.11.5 List of streets, *S.36 (7) of the 1980 Act*

The list of streets is held by WSCC in accordance with S36(7) Highways Act 1980, the purpose of the list is to provide a public record of roads maintainable at public expense. WSCC's internal records suggest that the claimed route was added to the list of streets in 2005.

4.11.6 WSCC's Highway Departments records

WSCC's highways department have confirmed that they have records of maintenance for GLW from 2006 with 14 pages of records mainly repairing potholes. Highways confirmed their system does not hold records older than 30 years but had no records of maintenance between 1996-2005 for GLW on their system. As indicated above at paragraph 1.3.4 GLW was subject to a s278/38 agreement signed in 2022 as part of the planning permission for the crematorium again demonstrating the routes status as public vehicular highway. A review of WSCC's internal files on GLW (considered above at paragraph 4.2) also indicates GLW was considered public maintainable highway in 2010 and 2013.

4.12 Summary of archive

In summary, it is clear that GLW has historically been an important route likely used by horse and cart and later vehicles since the earliest documentary records considered above, the OS map in 1876. While it is clear the route was likely used by the public when the chain ferry was established around 1821, GLW did not appear to become publicly maintainable vehicular highway until the swing bridge was built in 1908.

The claimed route appears to have been under WSCC's maintenance from at least 1933 as the map showing county roads and bridges 1933 shows the claimed route as a first class road. Furthermore, the OS maps from 1937/9 show the claimed route marked as the A259. This coincides with the Local Government Act 1929 (came into force in 1930) which transferred the responsibility of vehicular highways to the County Council. Prior to this point GLW appears to be under the control of Littlehampton Urban District Council from 1908.

There are not many records following the realignment of the A259 in the

1960's to indicate the status of the claimed route. However, WSCC's land charges do have surveys from 1976 indicating the route was publicly maintained vehicular highway at this point. GLW was added to the list of streets as a D class publicly maintainable vehicular highway in 2005. In addition, internal files and records demonstrate the route has always been considered publicly maintainable vehicular highway in 2010 and 2013 and WSCC's highways have maintenance records from 2006. No records have been found to indicate GLW vehicular highway rights were stopped up at any point. In conclusion, it appears that the claimed route was formally part of the A259 from the 1930's and GLW status as publicly maintainable vehicular highway did not change from this point onwards and has remained as such since at least 1933, though likely has been publicly maintainable vehicular highway since 1908.

Lastly, with regards to the gate at point A, the only explanation found for the gate is in the internal files at paragraph 4.2. WSCC have been unable to find any other record of a TRO or gating order in our files/records to explain the presence of the gates

5. CONSIDERATION OF THE CLAIM

5.1 The application is made under Section 53(3)(c)(i) of the 1981 Act being the discovery of evidence which (when considered with all other relevant evidence available to the authority) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway, or subject to section 54A a byway open to all traffic. Therefore, it is necessary to consider whether the evidence provided by the applicant, together with all other relevant evidence available shows that on the balance of probability a BOAT subsists between points A to B on the Application Plan or if it can be reasonably alleged to subsist.

5.2 Section 53 requires there to be a "discovery" of evidence. The applicant relies on archive evidence. Section 32 Highways Act 1980 provides that a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, 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.

5.3 It is clear from the evidence presented by the applicant and the evidence considered as part of WSCC's additional research that the claimed route

has been an important route that has been considered to be a road since the earliest documentary evidence considered in this report (OS Map 1876). The claimed route has also been recorded as a publicly maintainable vehicular highway by WSCC since the 1930's and publicly maintainable since 1908. WSCC have found no evidence to suggest the claimed routes highway rights have been stopped up when the A259 was diverted in the 1960's and evidence demonstrates that the renamed GLW has remained and, despite the existence of gates, has been maintained as publicly vehicular maintainable highway since this point.

5.4 Consequently, there is no dispute as to whether the route is a vehicular highway maintainable at public expense, but the applicant contends that the claimed route should also be recorded on the DMS as a BOAT.

5.5 In order to add a BOAT to the DMS it is necessary to consider whether the exemptions of the Natural Environment and Rural Communities Act 2006 apply. Section 67(1) of this Act extinguished public rights for mechanically propelled vehicles (subject to certain exemptions) at commencement on 2 May 2006, while S66 restricts the creation of new such rights. Unless any of the conditions for the exemptions set out in S67(2) or (3) were met, from this point, no further rights of way for mechanically propelled vehicles could be added to the DMS. Instead, such rights would be added as restricted byways.

5.6 Under S67(2) it is necessary to show both that: (a) a public right of way for mechanically propelled vehicles existed at the commencement of section 67 (on 2 May 2006); and (b) that those rights had not been extinguished, because one of the exceptions in 67(2) or 67(3) applies.

5.7 In this instance it is clear that vehicular rights existed prior to commencement in 2006 and the exemption 67(2) (b) NERC 2006 applies, "*immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense)*". GLW was on the list of streets before 2006.

5.8 <u>Status as a BOAT</u>

5.8.1 As well as determining whether or not vehicular rights have been extinguished under NERC 2006, to be able to add a BOAT to the DMS it is necessary to establish whether the claimed route has the character of a BOAT.

5.8.2 A BOAT is defined under s66 of the 1981 Act as a "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are used."

5.8.3 The applicant has correctly referred to the case of *Masters v SoS for the Environment Transport and the Regions 2000 2 All ER 788* which addressed the difficulty in interpreting the part of the s66 definition "used for the purposes for which footpaths and bridleways are used". As indicated by the applicant it was held that the test for a carriageway being a BOAT depends on its character and type, greater pedestrian and equestrian use is not a strict requirement.

5.8.4 The application is based on archive evidence only and there has been no evidence of use presented. However, when consulting on the application, two neighbouring landowners mention use of the route in the responses submitted. One states he uses the claimed route to exercise his dogs and mentions seeing cyclists use the route but never equestrians and another indicates the route has been enjoyed by walkers and cyclists for the past 55 years. The applicant also states that they have spoken to long term residents who remember people using the route on foot and bicycles.

5.8.5 After the realignment of the A259, GLW was shut off at the eastern and western end to vehicular traffic as gates were erected at both ends. It is not clear the exact dates these gates were erected but there is some suggestion it was in the 1980's (see paragraph 4.2 above). After the diversion of the A259 and the installation of gates, it perhaps could be said that GLW would have met the test for a BOAT as it was a carriageway that was not frequently used for vehicles other than farm traffic. This also remains the case today for most of the claimed route to the east of the crematorium which is not used as an access to the crematorium (which was constructed after submission of this application). However, as indicated above there is very little evidence of whether the route has been used as a footpath or bridleway.

5.8.6 The historic documentary evidence presented provides little indication as to the routes status as a BOAT. In nearly all sources the route is shown as a road and later a publicly maintainable vehicular highway. From the 1930's to 1960's it is shown as a main A road, the A259. None of the documents presented indicate the route was a road used mainly for the purpose of a footpath and bridleway. Nevertheless, this would not necessarily be expected as the purpose of many of these sources would not have been to distinguish between a road and a footpath or bridleway if the route was already considered a publicly vehicular maintainable highway.

5.8.7 In summary, there is some evidence from the accounts of neighbouring landowners and the fact that gates have been present to restrict vehicular use that indicate the claimed route could have the characteristics of a BOAT. This is because the restriction to vehicular access could have meant the route had the character of a road used "mainly for the purposes for

which footpaths and bridleways are used". As indicated in the case *Masters* it is not necessary to demonstrate current use by walkers or riders or that non-vehicular use was greater than vehicular. Nonetheless, in this instance we have little evidence of any use by walkers and horse riders/cyclists.

5.9 Discovery of Evidence

5.9.1 Establishing that the claimed route meets the exceptions under 67(2) (b) NERC 2006 and that the claimed route could also have the characteristic of a BOAT it is necessary to consider whether the legal tests in the 1981 Act have been met.

5.9.2 Section 53 (3) (c)(i) 1981 Act requires that there is a "discovery of evidence". As already established GLW is recorded as a D class highway on WSCC's list of streets kept under S36(6) Highways Act 180 and therefore publicly maintained vehicular highway by WSCC. WSCC's records indicate the claimed route was publicly maintainable vehicular highway from the 1930's and therefore its status was known when the DMS for Chichester was prepared in 1952 and then consolidated in December 1994 and 2004. Therefore, the question arises whether there has been a "discovery of evidence" as the nature of the claimed route is already known and was known when the definitive map was finalised.

5.9.3 The courts have considered what the "discovery of evidence means. *Mayhew v Secretary of State for the Environment, Food and Rural Affairs 1992* discusses "evidence", in this case J Potts states that evidence is not to be restricted to new evidence or evidence not previously considered but to be given its ordinary meaning. Potts states that

""*to discover", means to find out or become aware. Discovery, "means finding out or making known (Concise Oxford Dictionary). It connotes a mental process in the sense of the discoverer applying his mind to something previously unknown to him. In my judgment, the "event" in section 53 (3) (c) is concerned with the finding out of some information which was not known to the surveying authority when the earlier definitive map was prepared. Were it otherwise, the surveying authority or a member of the public would be unable to take steps to correct a previously mistaken decision. Such a state of affairs would be at variance with the purpose and scheme of the legislation as well as good sense."*

5.9.4 *Burrows v Secretary of State for the Environment, Food and Rural Affairs 2004 EWHC 132 (admin)* followed the principle that for there to be a discovery the same evidence cannot simply be re-examined, any new evidence needs to be considered in combination with previous evidence given which together demonstrate modification.

5.9.5 In *Kotarski v SoS for the Environment and Rural Affairs [2010] EWHC 1036 (Admin),* Mr Justice Simon expressed that he agreed with Mr Nicol QC;s view in *Burrows v. Secretary of State for Environment Food and Rural Affairs [2004] EWHC 132 (admin)* on the discovery of evidence described above. In this case it was found that it was sufficient that there had been a "discovery" of a drafting error when considering the relevant evidence, the evidence did not strictly have to be characterised as "new evidence".

5.9.6 In *R.(on the application of Roxlena Ltd.) v Cumbria County Council v Peter Lamb [2019] EWCA Civ 1639* Lindblom LJ stated that evidence can be discovered but not considered by the surveying authority. The consideration of evidence could happen "some time after the point of discovery". The authority must undertake a "mental process" on the discovery of evidence for it to have been "considered" and an event to have occurred under S53 3 (c) of the 1981 Act.

5.9.7 The *Moore v Secretary of State for the Environment, Food and Rural Affairs 2025* case reiterated Kotarski. "A precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the DMS require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as 'new evidence'.

5.10 <u>Has there been a "discovery" of evidence?</u>

5.10.1 The applicant presents a series of historical documents as part of the application as well as more recent documents which all point towards the status of claimed route as publicly maintainable vehicular highway. The question is whether these documents along with the other sources of evidence considered by WSCC present a discovery of evidence that the claimed route has rights on foot, cycling or horseback.

5.10.2 As the case law indicates evidence previously considered can be looked at again and does not strictly have to be classified as new evidence, however, it must demonstrate something unknown to the Authority. The same evidence cannot simply be re-examined without presenting something new (*Burrows*). While it is not possible to be certain what documents would have been considered at the time the DMS was drawn up, the evidence presented does not appear to present new information to what is known about the status of GLW by WSCC. The evidence demonstrates vehicular rights confirming the known status for the claimed route as a publicly maintainable D class highway. There is very little evidence to suggest the route has been used by pedestrians and/or cyclists/ those on horseback.

5.10.3 One piece of evidence that would not have been available when the DMS was drawn up was the Finance Act 1910. While this document does indicate the claimed route was likely a public road, again, it does not provide any further evidence towards the characteristic of the claimed route as a BOAT and does not present any new evidence to change what was already known about the status of the claimed route at that time.

5.10.4 Since the DMS was finalised in 1952 the nature of the claimed route has changed as the A259 was diverted leaving GLW as a minor road and no longer a major through route. Furthermore, at some point after the A259 was diverted (exact dates are not known) the claimed route was closed to most vehicles by the presence of gates at the eastern and western ends. This change could be argued to have made the claimed route more aligned with the characteristic of a BOAT. However, as indicated above there is very little evidence to suggest the claimed route has actually been used by those on foot or horseback/or bicycle. In addition, WSCC have had knowledge of the route's status and presence of the gates which is confirmed when looking at internal maintenance records and correspondence. WSCC have continued to maintain the claimed route as a D class highway, evidenced by records from land charges, WSCC's highways department and WSCC's internal files and the applicant providing details of a TTRO being put in place in 2020 so that potholes could be prepared.

5.10.5 On balance, the evidence presented above does not amount to a discovery of evidence as there is no divergence from what is already known to WSCC about the route's status.

5.11 It is also considered that adding a D class publicly maintainable vehicular highway to the DMS is inconsistent with the intentions of legislation concerning the recording of mechanically vehicular rights on the DMS, which aims to prevent the addition of previously unrecorded vehicular rights to the DMS. A BOAT is defined under S.66 of the 1981 Act as 'a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are used', which illustrates the point that the legislation was and is not concerned with recording ordinary roads to the definitive map. Discussion in case law makes it clear that the DMS has never been concerned with the addition of ordinary roads. In the case of *R v Secretary of State for the environment ex.parte Hood 1975 QB 1891* Lord Denning stated that the purpose of the National Parks and Access to the Countryside Act 1949 was as follows;

> ""the object of the draftsman was to include cartways over which there is a public right of cartway, but which are now used mainly by people walking or riding horses, like the Berkshire Ridgeway or the

ways over the South Downs. The draftsman intended to exclude metalled roads used by motor cars."

5.12 In the later cases of *Suffolk County Council v Mason 1979* and *Masters v Secretary of State for the Environment, Transport and the Regions 2000* it is again made clear that later legislation is also not concerned with adding ordinary roads but protecting the rights of those on foot and horseback.

6. CONCLUSION

6.1 In summary, it is considered that this application does not meet the legal tests as set out in S53 (3) (c) (i) the 1981 Act. This is because WSCC have been aware of the status of the claimed route as D class highway since before preparation of the first DMS in 1952, and the application does not present any new evidence which WSCC considers amounts to a discovery of evidence for the purposes of making an order to add the claimed route to the DMS as a BOAT.

6.2 It is therefore recommended that an order under Section 53 (2) in consequence of an event specified in sub-section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981, to add a Byway Open to All Traffic from Grevatts Lane West in the Parish of Yapton CP between point A and B on the Application Plan to the Definitive Map and Statement for Chichester be not made

BACKGROUND PAPERS

Annex 1- Application Plan

Annex 2- Application and Applicants Statement

Annex 3- Consultation responses

Annex 4- Consultation responses -WSCC land ownership plan

Annex 5- WSCC's Archive research

Annex 5a Tithe Map

Annex 5b Draft & Provisional Draft

Annex 5c Roads and Bridges Committee Minutes (WOC/CMS/1/20-22)

Annex 5d Yeakell and Gardner Map

Annex 5e Ordnance Survey Maps & Book of reference

Annex 5f Sussex Series Maps (Earthlight)

Annex 5g Land Charges records

Annex 5h County Map 1894 and Adcock's report

Annex 5i Act 5 Geo IV cxciv and deposited plans

Annex 5j Littlehampton Urban Bridge Plans 1905 and book of reference

Annex 5k WSCC County Highway Records

Annex 6– Photos from Site Visit

Report sign off

Consultation with local member date: 20/08/2026

Consultation with Committee Chairman date: 20/08/2026

Report cleared and signed off by Senior Solicitor

[redacted]

Sign..... Print...Becky Moutrey

Date 14 September 2026