

APPLICANT'S STATEMENT

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER FOR DAGBROOK LANE AND WINDMILL LANE IN THE PARISH OF HENFIELD

The route links Mill End, Nep Town, Henfield with the A 2037, Barrow Hill
via Windmill Lane, Dagbrook Lane and Broadmare Common

Applicant's Reference 100-Henfield B/C

Date 4th October 2021



100-Henfield B - At D looking east along Dagbrook Lane (14th April 2019)

100-Henfield B/C



100-Henfield B - At C looking west along Dagbrook Lane (13th April 2019)



100-Henfield C – Just south of point G looking south down Windmill Lane

100-Henfield B/C



100-Henfield C – Between E and F, just east of rail line looking westward

Wildlife and Countryside Act 1981

Definitive Map Modification Order Application

For part of the route called **100-Henfield C**:

Application is being made to upgrade to public bridleway part of path 2563_1 from Mill End Road at grid reference TQ21081571 to its junction with path 2566_1

AND from that point to upgrade to public bridleway path 2566_1 to its junction with path 2567

AND from that point to upgrade to public bridleway the part of path 2567 westwards to its junction with path 2563

AND from that point to upgrade to public bridleway the part of path 2563 westwards to grid reference TQ20751534, just beyond where path 2563 turns south

AND to add a public bridleway from that point southwards and parallel to path 2563 to join Dagbrook Lane west of the old rail line at grid reference TQ20721516

ALSO, for part of the route called **100-Henfield B**:

Application is being made to add a new length of public bridleway along Dagbrook Lane from grid reference TQ20721516 (its junction with 100-Henfield C) to path 2575

AND to upgrade path 2575 to public bridleway

And to upgrade part of path 2574 to public bridleway from its junction with footpath 2575 to the A2037 road southeast of Henfield at grid reference TQ21691524

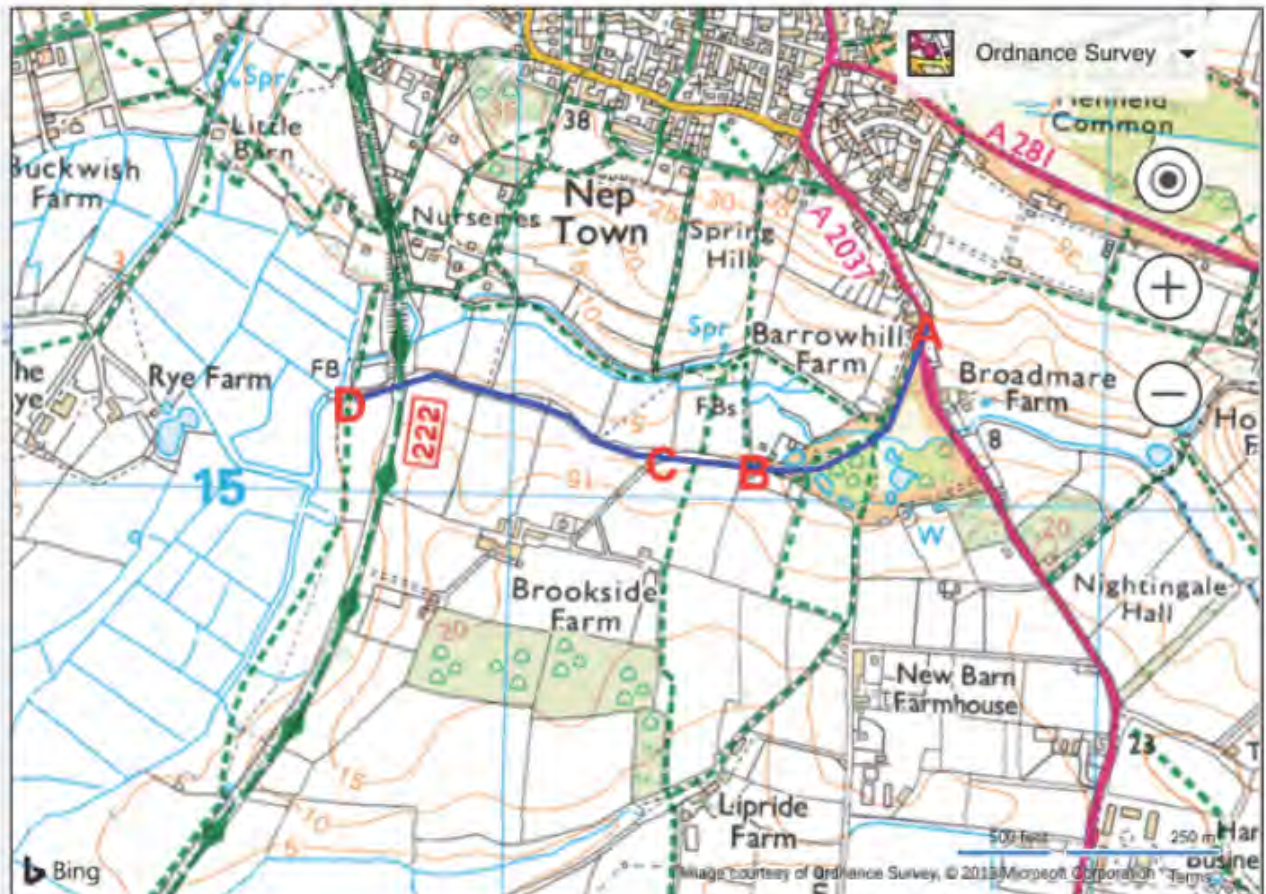
The routes to be recorded the full width of the existing tracks/roads with reference to the depictions on the 1st Ed 25inch map.

This application is made by The British Horse Society of Abbey Park, Stareton, Kenilworth, CV8 2XZ under Section 53(2) of the Wildlife and Countryside Act 1981 which requires the surveying authority to keep their Definitive Map and Statement (DMS) under continuous review and to modify them upon the occurrence of specific events cited in Section 53(3).

THE APPLICATION ROUTE

The application route is between points A and G on the application maps below. The application is presented as two sections with applicant reference 100-Henfield B and 100-Henfield C, which should be considered together. For either to be recorded with bridleway or higher status the other should ideally have at least the same status in order that each section meets routes of equal or higher status at their end points.

100-Henfield B/C



100-Henfield B application map



100-Henfield C application map

Background

- Between points B and D, Henfield B has had no public rights recorded since the Definitive Map and Statement was drawn up.
- Between points G and D, Henfield C has had footpath rights recorded except between E and D where the route runs alongside and to the west of the footpath.
- Between A and B, Henfield B has public rights commensurate with it being on Common Land.
- Between point D and a point between the rail bridge and C, local use resulted in a DMMO application based on public use on foot. This was considered at Rights of Way committee 5th March 2019. The order was not made. The claimed route did not connect with a public way of the same or higher right nor was it said to terminate at a place of public interest.
- Some time after the DMMO decision and April 2020 two lines of barbed wire fencing were erected across Henfield B, at a point between C and the rail line.

Characteristics

- Between A and C route Henfield B has tarmac surface.
- Between points C and D, route Henfield B is an overgrown track that shows signs of a previous substantial width with large old trees along the route.
- Henfield C is a 'single car' width lane where it leaves Mill End Road. It serves several properties down the lane.
- At F the route narrows where there is close board fencing bounding a residential property's garden to the south-east.
- Approaching the rail bridge and point E the path widens out again to pass under the rail bridge.
- Between points E and D only the footpath alongside the claimed route could be traversed.
- From D to C the track is initially wide and well trodden but is then obstructed by fencing across the width. It can be seen to continue as a wide, overgrown track.

1. DOCUMENTARY EVIDENCE OF HIGHWAY STATUS

1.1 In order to be able to modify the definitive map and statement, the surveying authority needs to have a “discovery of evidence”. For sections of the claimed routes that are already recorded as ‘footpath’ this evidence should show, on the balance of probabilities, that higher highway rights exist than are currently recorded (Wildlife and Countryside Act 1981, Section 53(3)(c)(ii)). For sections that are not recorded this evidence should show that, on the balance of probabilities, a right of way subsists or is reasonably alleged to subsist.

1.2 The use of the “balance of probabilities” test rather than “beyond reasonable doubt” was confirmed by the High Court in *Todd, Bradley v Secretary of State for EFRA* (2004) 4 All England Reports 497.

1.3 In the absence of clear information as to what documents were or were not taken into account when the Definitive Map and Statement (DMS) was established it is probable that not all the evidence included in this application was considered at the time. Finance Act 1910 records certainly were not available.

1.4 Other evidence uncovered during research of this route is included in this application so that, whether it has been previously considered before or not, it can be considered now as Section 53(3) (c) specifies.

1.5 Whilst no single piece of evidence presented in this application can in itself be considered conclusive, taken as a whole the evidence demonstrates highway reputation and use over many years, which the applicant considers to be at least bridleway.

2. HISTORIC MAPS

2.1 BUDGEN'S MAP of SUSSEX 1724



2.1.1 Date. A map based on original surveys to 1723 and published at 1 inch to the mile in 1724.

100-Henfield B/C

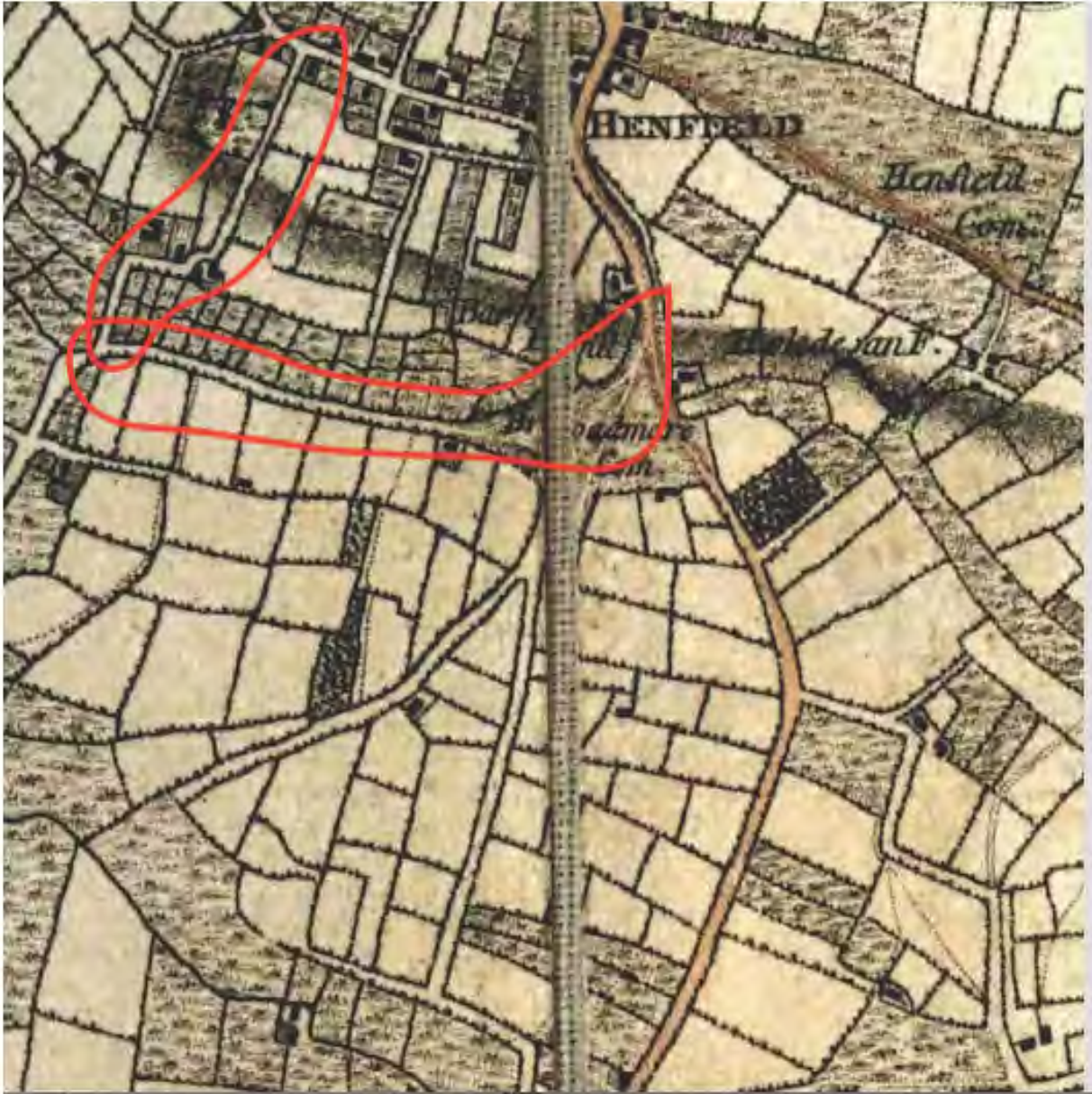
2.1.2 Relevance. The prospectus for the maps says that it will map ‘....not only the post roads that cross the county but likewise all the principal roads that are of note or use to travellers.....’

2.1.3 Archive. This map is held at WSRO under reference PM 249. The prospectus for the map can be found at <https://www.maphistory.info/blmss.html>

2.1.4 Meaning. The relevant excerpt of Budgen’s map is at Appendix 1. The application route is not shown.

2.1.5 Assessment. Either the road did not exist at the time or Budgen considered it neither a ‘principle road’ nor sufficiently “of note or use to travellers”. Other evidence suggests both application routes to be droveways. A droveway would likely not be considered a ‘principle road’ in the same way that byways and bridleways would be considered ‘principle roads’ today. The map was published at a small scale and today’s lesser roads appear often to be not shown on this map.

2.2 YEAKELL AND GARDNER'S SUSSEX 1778-1783



2.2.1 Date. 1780

2.2.2 Relevance. Created from a 'Great Survey' in 1778. At a scale of 2in to the mile, this map included formal representation of landscape features and man-made structures of any significant size.

2.2.3 Archive. This map is available on-line as part of the "Old Sussex Mapped" project of the University of Portsmouth at http://www.envf.port.ac.uk/geo/research/historical/webmap/sussexmap/Yeakell_36.htm .The relevant map is the 6th tile along the top line of the images. Details of the prospectus, map publication date etc are found in D Kingsley's book 'Printed Maps of Sussex 1575-1900 from page 91 which can be found in the East Sussex Records Office at reference LIB/500449. An excerpt from it describing the Yeakell and Gardner maps is at Appendix 2 of this statement. A portion of the map, showing a bigger area than the above screenshot, is included as Appendix 3 of this statement. The map does not have a key.

100-Henfield B/C

2.2.4 Meaning. Both application routes, Henfield A and Henfield B are shown as part of a network of roads. They are not ways of lesser status – some of these can be seen as single lines on the map. The single lines often correspond to recorded footpaths today though some have been overtaken by development (railway, business development etc). The application routes are shown as reasonably wide but not as wide as those roads that are main roads today. Henfield A is shown as segueing westward from Broadmare Common. Continuing south from the junction of Henfield B and C (point D) is a wide ‘road’ leading to a large patchwork of fields.

2.2.5 Assessment. The 1778 prospectus for this series of maps sets out the aim of covering all of Sussex and showing all public and private roads and all bridleways (D Kingsley p 93). However only the first four maps, covering the southern half of the county, were printed and only a handful of footpaths were shown compared with those marked FP on the early OS 25inch maps that were to follow. Few ‘private’ roads were shown (ie access roads to properties or land). The inclusion of a way on this map means that it was more likely than not, a public route. The application routes are shown as roads of some stature. Henfield B links what is now the main A2307 to Henfield C and Henfield C links both Henfield B and a wide road from the south up to Henfield Town. While being shown sizeable enough for all traffic, both routes might also have served as drove routes to Henfield livestock market from Broadmare Common (Henfield B) and for the field system to the south (Henfield C).

2.3 GARDNER AND GREAM MAP 1795



2.3.1 Date. 1795

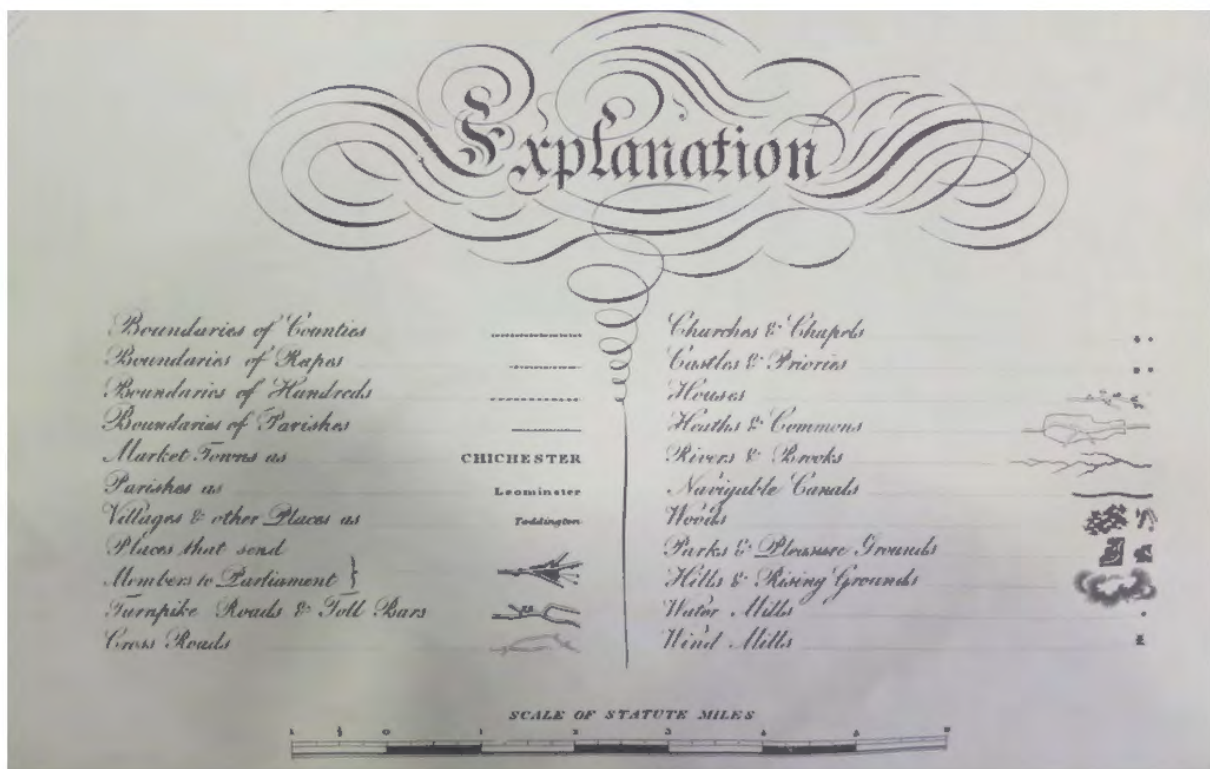
2.3.2 Relevance. The application routes are shown. This one-inch to the mile map was based on the Yeakell and Gardner map with information from Mudge's trigonometrical survey included in order that the map ‘could be corrected’. Gardner had been appointed Chief Surveying Draughtsman to the Board of Ordnance in 1787. David Kingsley's 1982 book “Printed Maps of Sussex”, 1575-1900” gives provenance for the map.

2.3.3 Archive This map is held at WSRO under reference AMS956/1/2 but is in fragile condition. The copy from Margary's 250 years of Map-making in Sussex at WSRO, ref PM 249, was consulted. The map does not have a key. D Kingsley's book Printed Maps of Sussex, 1575-1900 is at WSRO reference LIB/8352. Pages relating to the Gardner and Gream map are at Appendix 4 of this statement. A portion of the map, showing a larger area than the above screenshot, is included as Appendix 5 of this statement. Appendix 5 also contains a screenshot of an on-line version of this map found at <http://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A92708> .

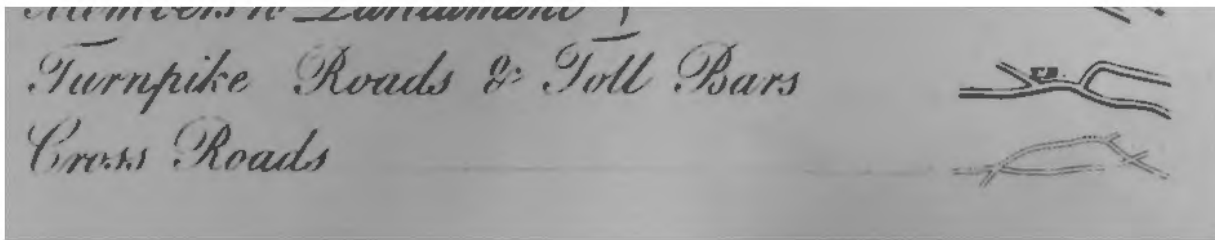
2.3.4 Meaning. The application routes are both shown as roads of the same depiction along all their length. There is no key to the map but the route can be seen bounded by two identical black lines except where Henfield B crosses Broadmare Common. A faint lighter road depiction can be discerned running parallel to the north boundary of the common showing the route of the road continuing to the main Henfield/London road Other routes nearby that are depicted in the same way as the application routes are roads, byways or bridleways today. Application route Henfield C is shown continuing southwards to buildings and a large field network. The few footpaths shown on the Yeakell and Gardner map have been removed for this smaller scale map.

2.3.5 Assessment. Being based on both the 'Great Survey' of Yeakell and Gardner and with the trigonometrical survey of Mudge the depiction of a road on this map suggests an accurate representation of what was on the ground at the time. The application routes are clearly of significant size and connect both Broadmare Common and the south Henfield field system to the town. Few private (access) roads are shown compared to the number shown on later, larger scale maps such as the first edition of the ordnance survey 1-2500 series. The existence and manner of depiction of the application routes on this map suggest that they were more likely than not public roads, drove roads, byways or bridleways at this time.

2.4 GREENWOOD AND GREENWOOD MAP OF SUSSEX 1825



Key for Greenwood and Greenwood map



Close-up of relevant entry in Key

2.4.1 Date. 1825

2.4.2 Relevance. Harry Margary's book "250 Years of Map Making in the County of Sussex" says that 'detail and names demonstrates that he surveyed the county independently'. 'He', being the surveyor Christopher Greenwood. The map is at a scale of 1 inch to the mile. It has a key. It shows both the application routes.

2.4.3 Archive. This map, as pages from Margary's book, is held at WSRO under reference PM 259. A larger portion of the map is included as Appendix 6.

2.4.4 Meaning. This map has a key. The close-up of the key above explains how roads were depicted. The application routes are both depicted as 'Cross Road'. The key does not detail that footpaths are shown. The railtrack is shown running to the west of the application routes.

2.4.5 Assessment. Paragraph 2.24 of the Planning Inspectorate's consistency guidelines says "*In modern usage, the term "cross road"/"crossroads" is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways, a byway and a road that joined regional centres.*" The application routes together run between other highways and additionally link Broadmare Common to Henfield town. The depiction is suggestive of the application routes both being public roads. The railtrack shown is not that which was eventually built (see section 11.2). The plan for the line as built is dated 1857 and so the line depicted on the Greenwood map must represent a rail route that was not subsequently adopted. There were several rail routes proposed through Henfield around this time.

2.5 MUDGE MAP



Old Series Surveyed 1791-1874, published 1805-1874

No legends existed on the original Old Series maps. Abbreviations and symbols were always employed but the usage, depiction and meaning evolved during the 70-odd years it took to complete the project. Although a comprehensive legend is therefore impossible, some signs were (with minor variations) consistently used; these are shown here. Note that as Cassini's maps have been created by joining original sheets which may have been published at different dates, it is possible that any one Cassini map might contain more than one style of abbreviation or symbol (and, indeed, other variations of design).

We would like to thank Dr Richard Oliver (B.A., D.Phil., F.B.Cart.S.) of the University of Exeter for his invaluable help in creating this legend.

Turnpike or main roads	Railways	
Other roads	Cuttings	
Unfenced roads	Embankments	

2.5.1 Date Triangulation survey undertaken in two phases in 1792 and 1793. Published 1813.

2.5.2 Relevance. The application routes are shown. Mudge was a top class surveyor who was simultaneously working for the Board of Ordnance.

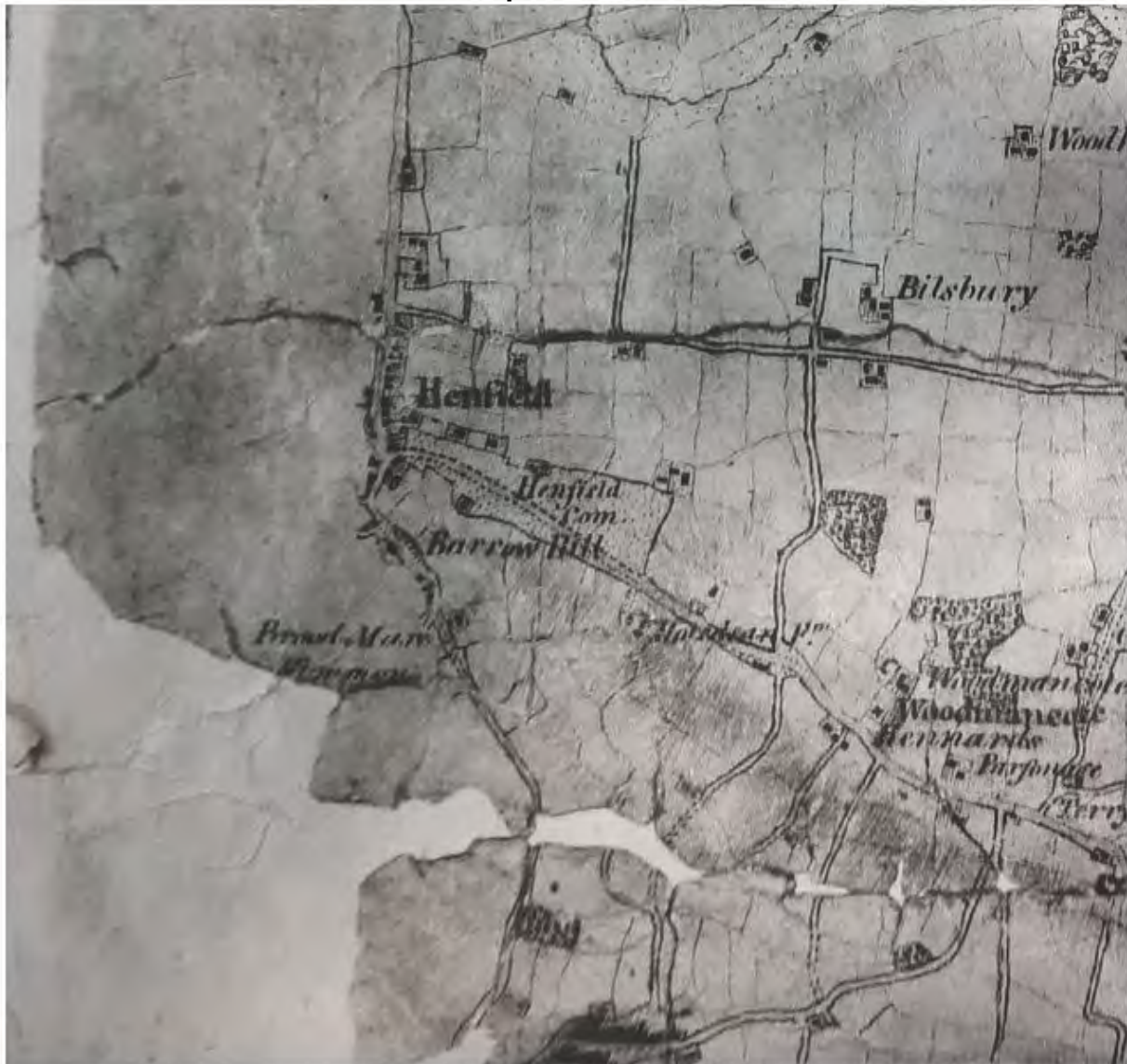
2.5.3 Archive. The map is held at the Keep as part of the Brighton Pavilion collection at reference BHM000009. The map at the Keep does not have a key. A portion of the map, showing a bigger area than the above screenshot, is included as Appendix 8 of this statement. The Legend for 1st Ed 1inch map can be found at <http://www.ancestry-maps.com/page-legend.asp>

2.5.4 Meaning. There is no key for this map but as Mudge was also, at this time, working towards the creation of the first OS maps we can reasonably make the assumption that the depictions were the same. The Cassini map company joined with Dr Richard Oliver to generate a legend based on notations that were consistently used on the first edition OS maps. This legend is shown above. Footpaths are not shown on this map. The rail line is shown to the west of the application routes.

2.5.5 Assessment. Mudge's survey used triangulation methods for greater accuracy than earlier maps and we should be confident that the routes shown are correct. The routes are both depicted as 'Other roads'. It is more likely than not that both roads are public roads as very few private roads are shown. The rail track is shown not on the alignment of the one that was eventually built (see 1857 plan at section 11.2). It is likely that this map is showing a route of the track proposed earlier than the one built.

3. EARLY EDITIONS OF THE ORDNANCE SURVEY 1inch MAP

3.1 Draft 1st Edition 1inch OS Map



3.1.1 Date. Surveyed: 1789-1803 by Thomas Budgen. Published: 1801-1803.

100-Henfield B/C

3.1.2 Relevance. The map illustrates the precursor to the final 1st Edition OS 1inch map described in the following section. The maps were properly surveyed and intended to accurately represent what was on the ground at that time. This map was produced at a scale of 2inches to the mile. The one inch to the mile small-scale maps, when published, necessitated the exclusion of some detail that was shown on the larger scale draft maps.

3.1.3 Archive. The map is at East Sussex Records Office at catalogue ref AMS 6008/2/1/1a-b

3.1.4 Meaning. Sadly the map is damaged in the relevant area.

3.1.5 Assessment. No meaningful information can be deduced.

3.2 1813 1st Edition 1inch OS map



3.2.1 Date. Surveys 1813 -1819

3.2.2 Relevance. The maps were properly surveyed and intended to accurately represent what was on the ground at that time. The one inch to the mile small scale necessitated the exclusion of some detail that was shown on the larger scale maps.

3.2.3 Archive. West Sussex Records Office catalogue reference PM 249. Cassini maps formerly published reproductions of the first edition of the Ordnance Survey 1" map. The images used here are from the Cassini reproduction map in the applicant's own possession. A larger area of the map can be found in Appendix 8. There is no legend with this map but

see Section 2.5 above. Instruction for portrayal of private roads is on the last page of OS letter book at the National Archive, reference OS 3/260 and is at Appendix 9.

3.2.4 Meaning. The application routes are shown and are depicted consistently along the whole of their lengths with two solid lines indicating the boundaries. The section across Broadmare Common is shaded grey where the road meets vegetation (grass?). The Cassini/Oliver legend indicates that this represents 'other roads'. Other highways in the area that are byways, bridleways and vehicular roads today are depicted in the same way as the application route.

Instructions given to OS map surveyors about the portrayal of private roads are referred to in correspondence held at the National Archive at reference OS 3/260. The instruction given is "*as these plans are intended for military purposes no existing roads should be omitted; but to distinguish those roads which are entirely on trespass the line of the main road from which they branch is not to be broken for them*". The line of the southern part of Henfield C is not broken for the northern part at point E. At this date D-E appears to continue north on to Windmill Hill itself.

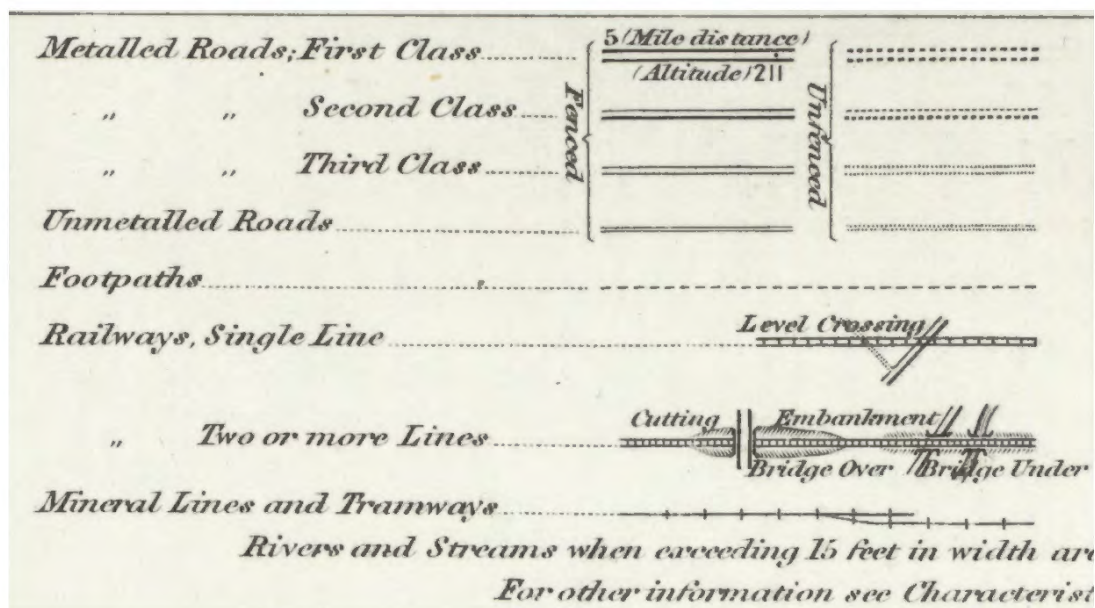
3.2.5 Assessment. The application routes are, at this date, significant enough roads to be included on the one-inch map. They are not footpaths – footpaths are not shown. The application routes are depicted the same along their whole length and from the Richard Oliver key of Section 2.5 they are both depicted as 'Other road'. The portrayal of section E-G of Henfield C is potentially portrayed as a private road as the road to Windmill Hill is not broken for the E-G road to Henfield town. The route to the town from Henfield B could have been across Windmill Hill itself at this date. Alternatively the closed line could be depicting a gate as otherwise grazing or driven animals might need to be prevented from wandering up the open road E-G. E-G certainly does not look to qualify as a '*main road from which*' E-G branches. However the map suggests that at least A-E is a public road, droveway, byway or bridle route at this time.

3.3 Other 1inch OS maps – 1895, 1946, 1960, 1963, 1967 and 1970

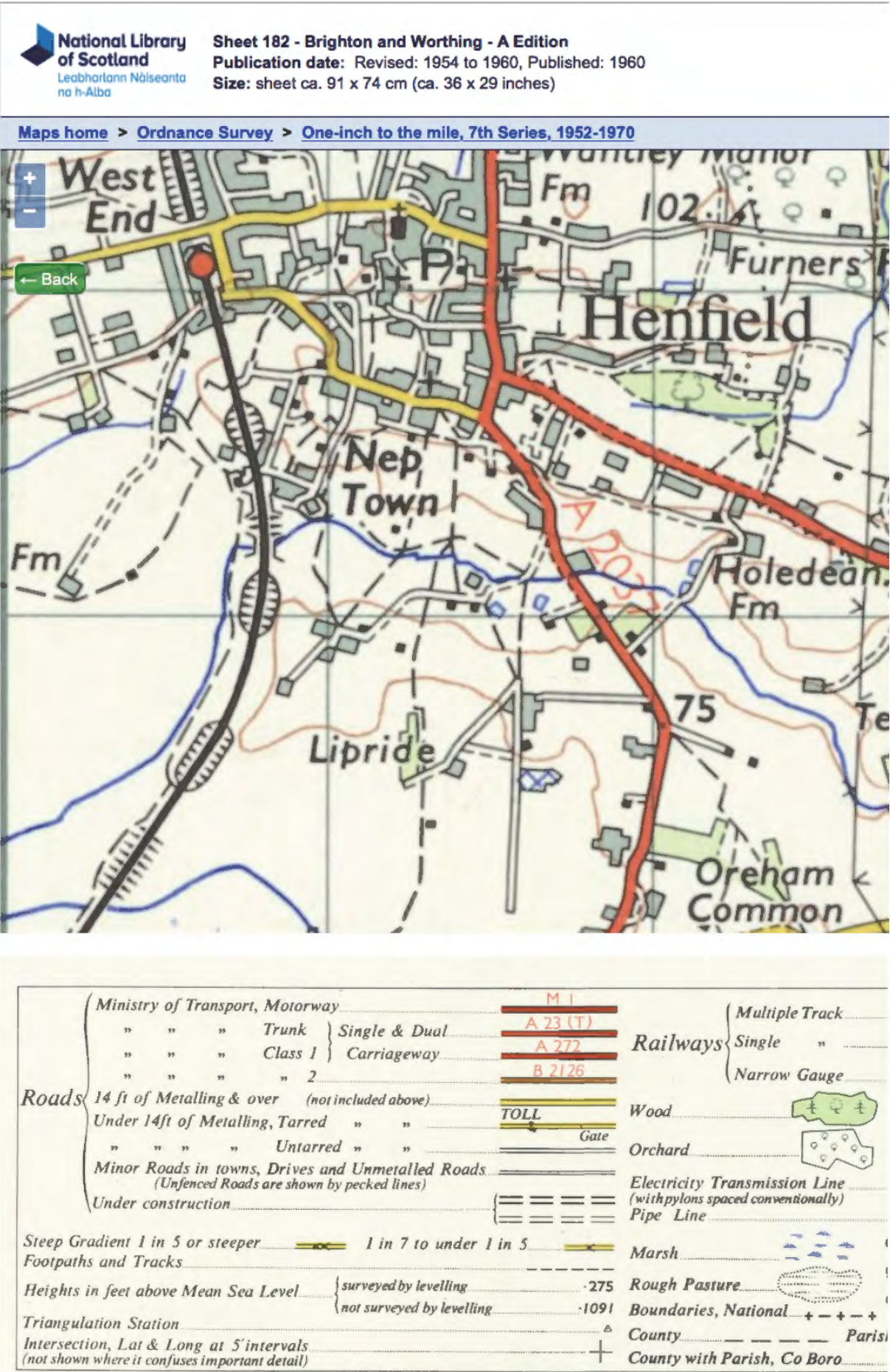


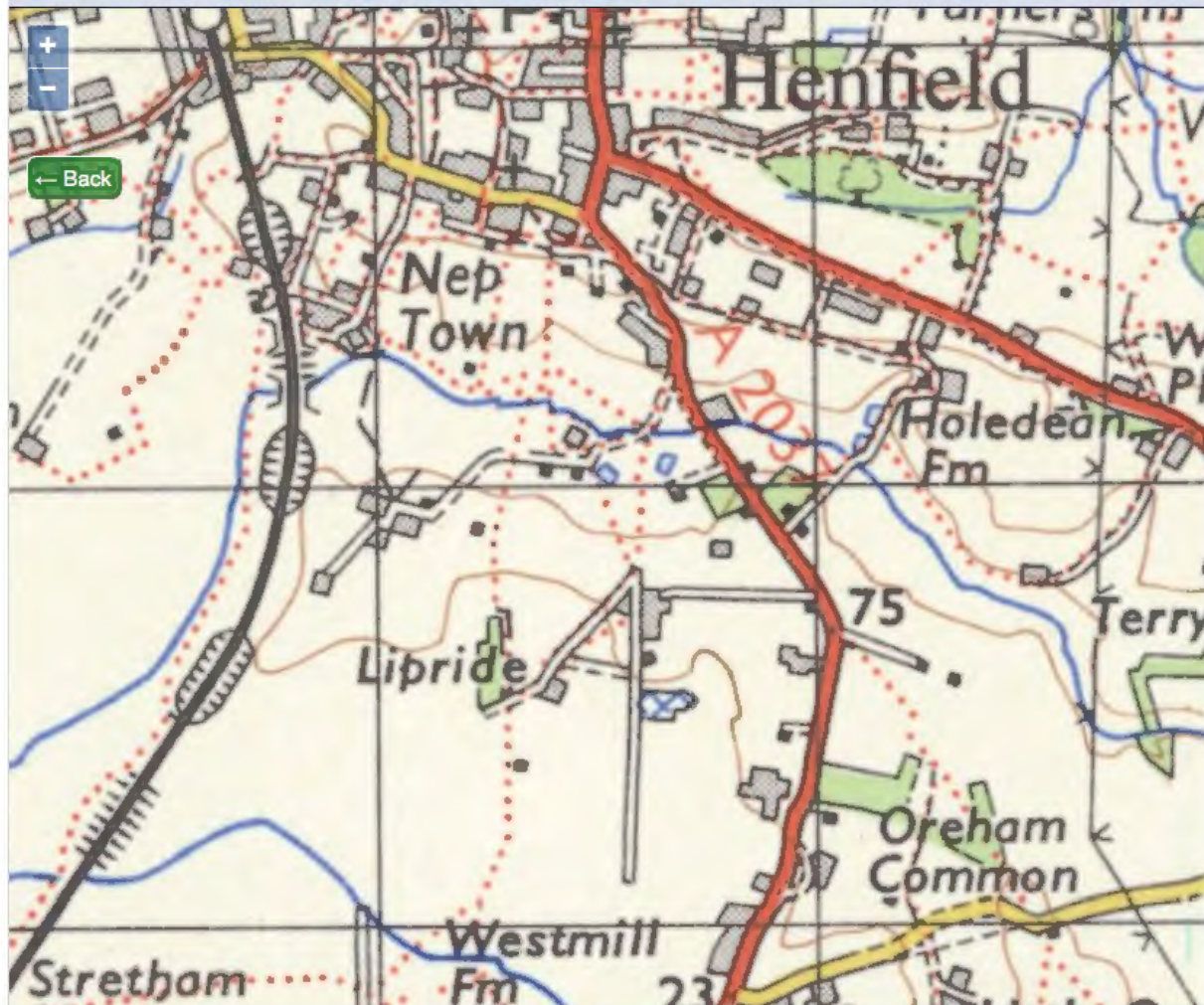
Sheet 318 - Brighton (Outline)
 Publication date: 1895
 Size: map 31 x 46 cm (ca. 12 x 18 inches) on sheet ca. 43 x 56 cm (ca. 17 x 22 inches)

[Maps home](#) > [Ordnance Survey](#) > [One-Inch, England and Wales, Revised New Series, 1892-1908](#)

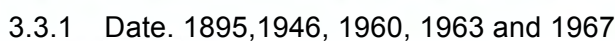








[Maps home](#) > [Ordnance Survey](#) > [One-inch to the mile, 7th Series, 1952-1970](#)

[Maps home](#) > [Ordnance Survey](#) > [One-inch to the mile, 7th Series, 1952-1970](#)

3.3.2 Relevance. On the one-inch maps some information that is on the larger scale maps necessarily has had to be omitted. While there are peculiarities in the representation of 'lesser' ways especially bridleways on all the maps, both the applications routes are fully shown as roads on the earlier maps but both shown truncated from 1960.

3.3.3 Archive. National Library of Scotland on-line digitised maps at <https://maps.nls.uk/geo/find/index.cfm#zoom=12.99&lat=50.92987&lon=-0.27719&layers=103&b=1&z=0&point=50.92954,-0.26103> All the maps are at Appendix 10. A sample of the maps over the years, are shown above.

3.3.4 Meaning. On all maps where the two application routes are shown, they are shown as roads (two parallel lines). They are not shown as footpaths or tracks of any other kind. Until the 1960 map both routes are shown in their entirety. The 1895 map shows Henfield C, Windmill Lane going under the rail line though a bridge while Henfield B, Dagbrook Lane appears to cross the rail line at grade. The 1946 map shows two bridges with Dagbrook Lane traversing the rail line through a bridge in the same manner as Windmill Lane. The 1946 map also shows a new track from point C of the application map leading southwest to the new position of Brookside Farm. From 1960 Dagbrook Lane is shown not going as far west as the rail line but stopping at this new track.

3.3.5 Assessment. The application route, wherever it is depicted, is as a road. Where tracks, bridleways or footpaths are shown on any of the maps, depictions other than two parallel lines are used (see keys to maps). Both application routes are more likely than not public ways as, at least in early years, together they linked two significant thoroughfares. The maps were sold to the travelling public and so it is likely that from some time between 1946 and 1960 the stretches C-D (Henfield B) and D-E (Henfield C) became unusable. Potentially this was due to the repositioning of Brookfield Farm buildings and expansion of activities there post-war. The increase in car and other vehicle use would have made journeys via the bigger roads of Henfield more attractive – the bridges under the railway line that carry both application routes are not wide enough for two modern vehicles to easily pass.

100-Henfield B/C



National Library of Scotland
Leabharlann Nàiseanta na h-Alba

Sussex XXXVIII.SW (includes: Henfield; Woodmancote.)
Revised: 1896, Published: 1899
Size: map 31 x 46 cm (ca. 12 x 18 inches), on sheet ca. 43 x 58 cm (ca. 17 x 23 inches)

Keywor

Re-use: (

[Commercial re-use restriction](#)

[Maps home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)

[Or](#)





National Library of Scotland
Leabharlann Nàiseanta na h-Alba

Sussex XXXVIII.SW (includes: Henfield; Woodmancote.)
Revised: 1909, Published: 1912
Size: map 31 x 46 cm (ca. 12 x 18 inches), on sheet ca. 43 x 58 cm (ca. 17 x 23 inches)

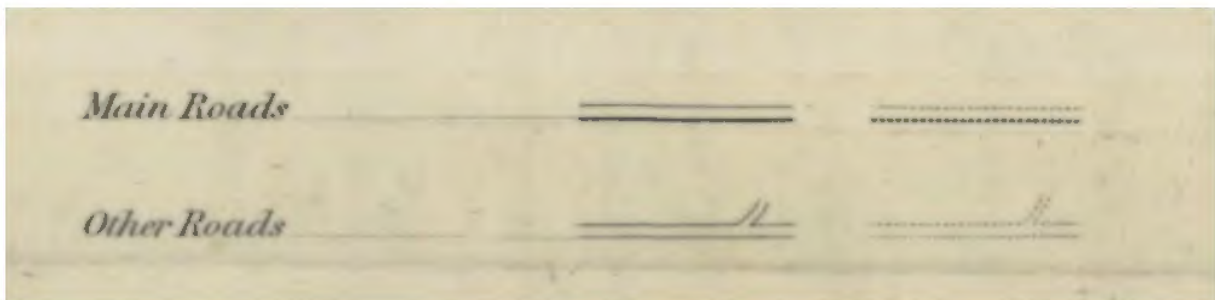
[Commercial re-use](#)

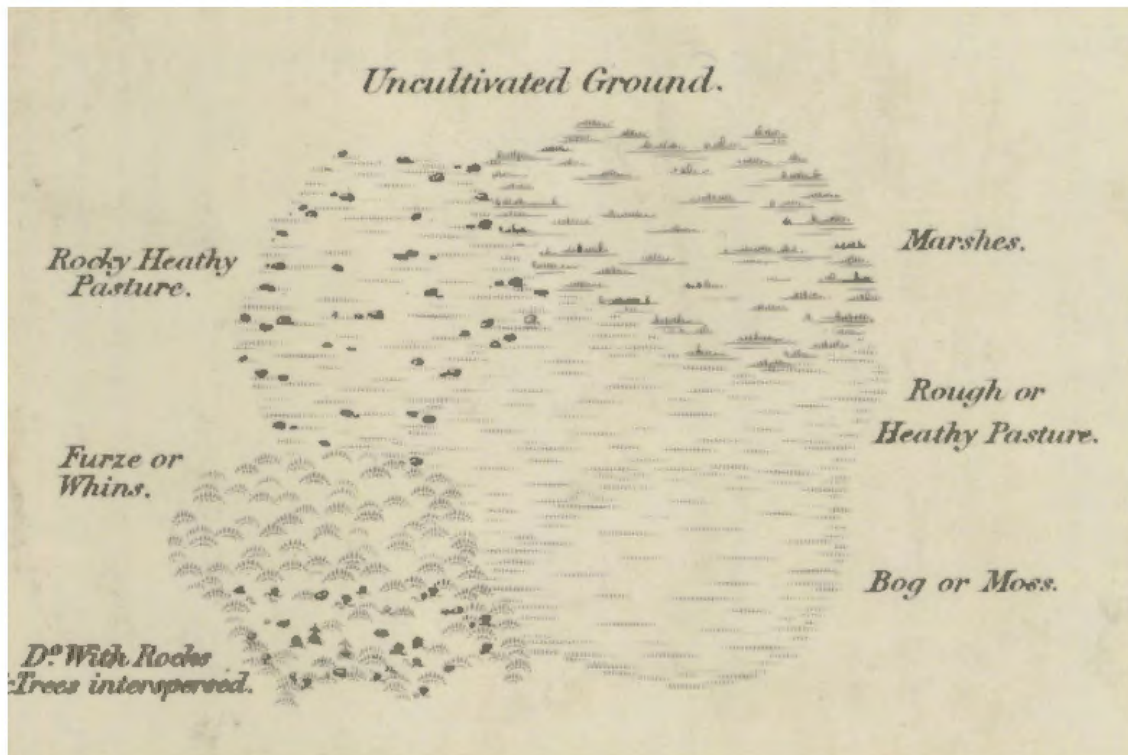
[Maps home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)



100-Henfield B/C

[Maps home](#) > [Ordnance Survey](#) > [OS Six-inch England and Wales, 1842-1952](#)





4.1.1 Date. 1879, 1899, 1912, 1946

4.1.2 Relevance. The 6-inch maps showed a great deal of information and were updated frequently. The application route is shown with very little change through the years.

4.1.3 Archive. National Library of Scotland on-line map library at <https://maps.nls.uk/geo/find/index.cfm#zoom=13&lat=50.92993&lon=-0.27726&layers=102&b=1&z=0&point=50.92993,-0.27726> .The legend is at <https://maps.nls.uk/view/74477147> . The maps are at Appendix 11.

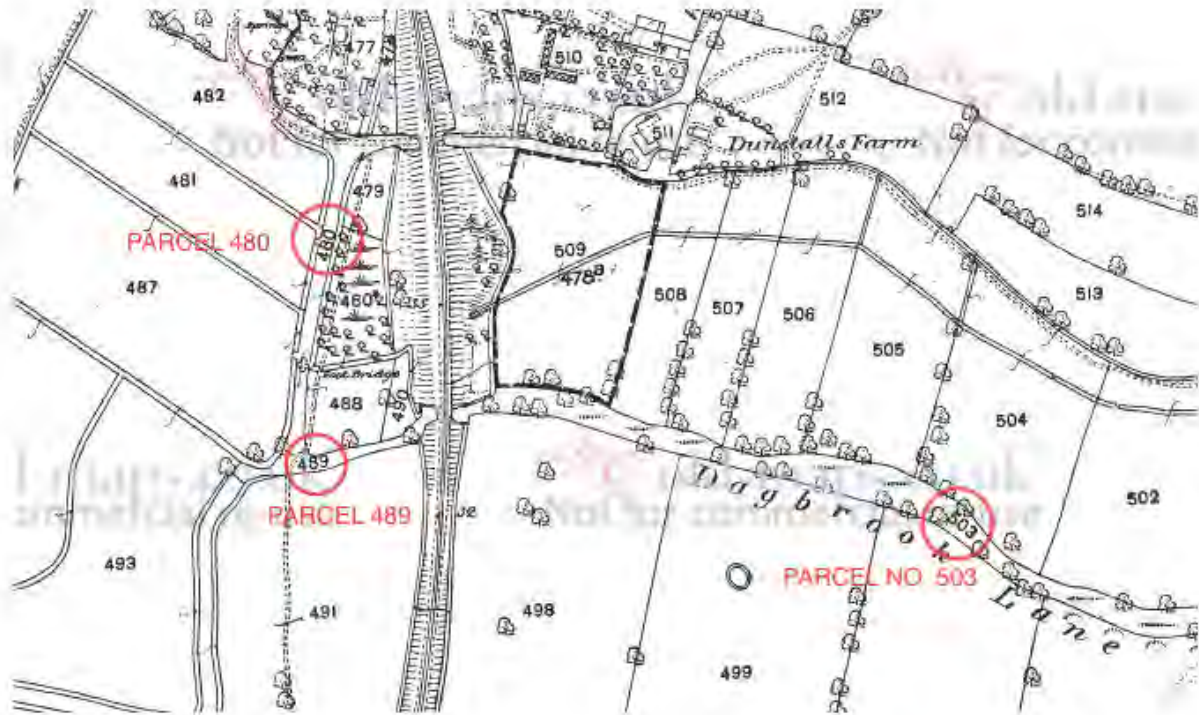
4.1.4 Meaning. The application routes Henfield B and C are shown as 'Other Road' with Henfield B indicated as having a surface of 'Rough or Healthy Pasture'. The continuous boundary line of Henfield C and most of Henfield B suggests fence or hedging. The legend lists an alternative of a pecked boundary line for roads, which can be seen where Henfield B crosses Broadmare Common, suggesting that there the road is unfenced. Henfield B, Dagbrook Lane joins openly with the southern end of Windmill Lane at point D. D-E appears to have a ditch or stream alongside some of its length and a footpath runs parallel on its eastern side. There is a marking across stretch D-E on all the maps. In 1879 it is a single line, in 1899 a double line while in 1912 and 1946 it is possibly an arrow. From 1899 onwards, levelling height spot points and/or benchmarks are shown along Henfield B between point A and the railway track.

4.1.5 Assessment. Both routes Henfield A and B are shown as roads of significant width from 1897 to 1946. There appears to be no impediment to use at each end (points A and G), the route being accessed directly from other roads of significant size that are main vehicular roads today. The surface and variable width of most of Henfield B on the earlier maps suggest that it was a droveway. While not exclusively so, spot heights and benchmarks often lie on public roads as access to these were easier to obtain by the surveyors.

5. 1ST EDITION ORDNANCE SURVEY 25INCH MAPS AND BOOKS OF REFERENCE (AREA BOOKS)

5.1 1st Edition 25inch OS map and Area Book

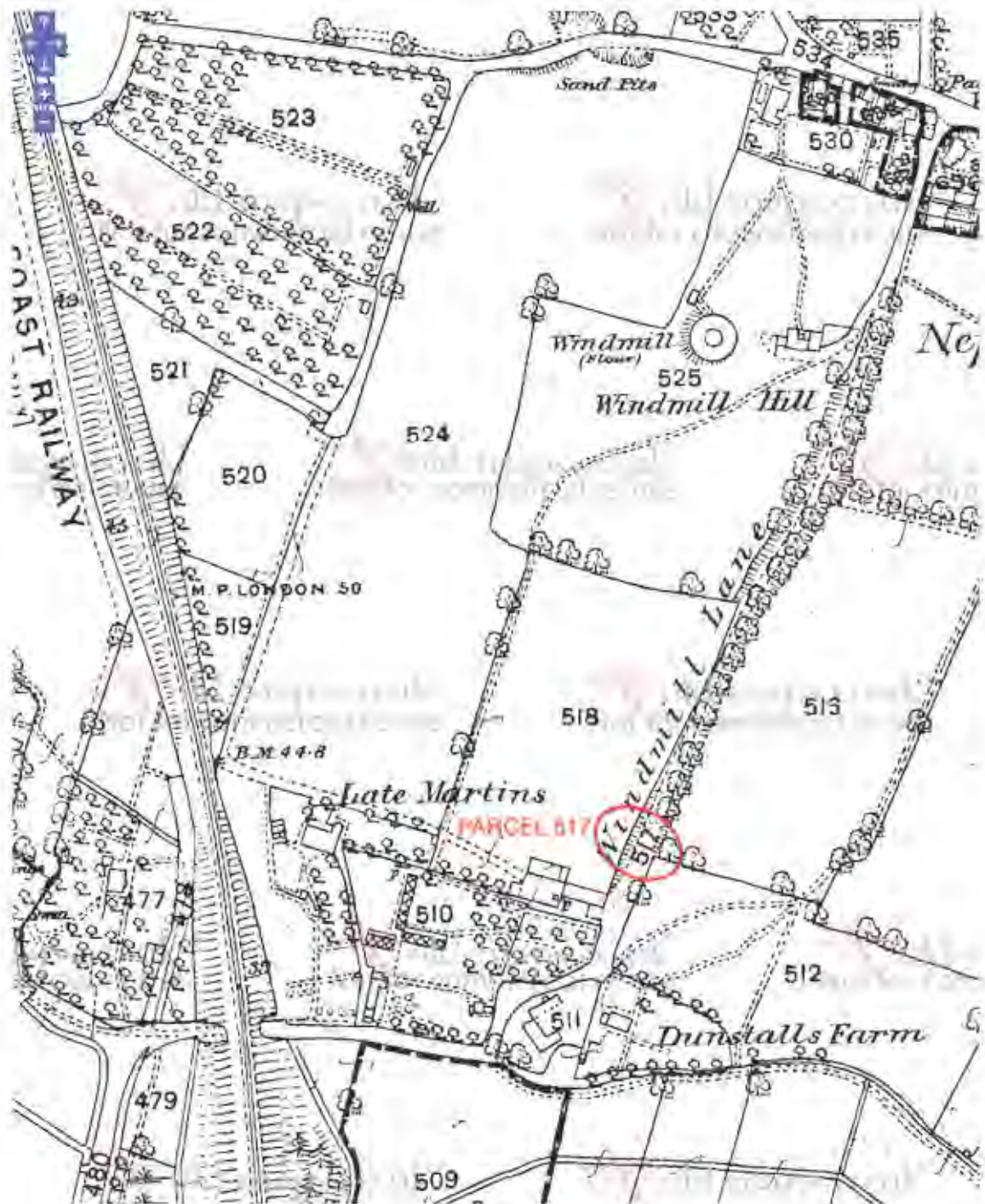
MAP EXTRACTS:



Western half of 100-Henfield B and southern end of 100-Henfield C



Eastern half of 100-Henfield B



Northern part of 100-Henfield C



Southern part of 100-Henfield C

AREA BOOK EXTRACTS:

22 635 665						
No. or Plan	Area	Description	Name	Given	Owner	Occupied

659	1.17	House & garden				
660	1.20	Pasture				
661	12.0.11	Rough Pasture	Broadwater Cow			
662	2.26	House & garden				

502	2.2.25	Pasture	Dag Brook	Included in	Dickens	J. D. Wright
503	2.0.11	Road	Dag Brook			
504	2.2.31	Pasture	Dag Brook			D. Harmer, J. Kuchish
505	2.1.16	Pasture	Dag Brook			J. M. Gray, J. Thomas
506	1.3.16	Pasture	Dag Brook			J. G. Smith, H. Brownings
507	1.1.17	Pasture	Dag Brook	Quinstalls		J. D. Hall, J. D. Hall
508	1.0.32	Pasture	Dag Brook			J. D. Hall, J. D. Hall
509	2.3.3	Pasture	Dag Brook			J. D. Hall, W. Page

488	2.3	Pasture	Tolt Brook			J. D. Hall, J. D. Hall
489	38	Road	Tolt Brook			J. D. Hall, J. D. Hall
490	23	Pasture	Tolt Brook			J. D. Hall, J. D. Hall

499	26	Road	Point of W.			J. D. Hall, J. D. Hall
480	1.1	Pasture	Roadway			J. D. Hall, J. D. Hall
480a	2.13	Pasture	Willow Bed			J. D. Hall, J. D. Hall
481	2.19	Orchard				J. D. Hall, J. D. Hall
481	1.3.38	Pasture				J. D. Hall, J. D. Hall

515	10.0.18	Orchard	1 Field	Quinstalls	J. D. Hall, J. D. Hall	J. D. Hall
516	3.0.22	Orchard	Upright Field	"	"	"
517	1.0.30	Road	Pt. of Long Field	Old Mill	W. Miller	H. Brownings
518	1.2.2	Orchard				J. Kuchish

5.1.1 Date. 1874-76

5.1.2 Relevance. Ordnance survey maps are not usually of use for rights of way purposes because they usually purport only to show physical features and not legal rights. The disclaimer on the Ordnance survey maps is often said to mean that they are not evidence of public rights. However, the 1st Ed 25inch maps provide evidence from which inferences can be drawn when cross-referenced to the Books of Reference (Area Books) that were published with them. Area Books, indexed 'by parish', recorded land use information. Parcels of land are numbered on the maps and their use is recorded in the book of reference for the relevant parish.

A parcel described as a road in an Area Book might not distinguish between public or private access. If such a road is over a single landowner's land and leads only to a house or barn on that land, one might reasonably infer it to be a private access road. But if a route goes from one public highway or place of interest or work to another and crosses the land of a number of owners or occupants or a number of occupants were dependent on the way to access their land then, in the absence of evidence of private rights or wayleaves, it can be inferred that public rights are likely to exist. Such evidence is unlikely to be conclusive on its own, but taken with other evidence, may support the existence of public rights.

5.1.3 Archive. The screenshots are from the Old-Maps on-line repository at www.old-maps.co.uk. The area shown is from physical maps Sussex XXXVIII.13 and XXXVIII.14. The Area Book extracts are from the on-line Bodleian Library at <http://solo.bodleian.ox.ac.uk/permalink/f/10tg26t/oxfaleph016252448> Relevant screenshots and Area Book pages are at Appendix 12.

5.1.4 Meaning. Land parcel numbers 503, 489 (Dagbrook Lane) and 517 (Windmill Lane) are recorded in the Book of Reference as 'Road'. These entries show no owner or occupier and no farm to which the land parcels belong. Parcel 480, which links the western end of Dagbrook Lane with Windmill Lane, is described as 'Roadway' and again no owner, occupier or farm is listed. Parcel 661 in which the application route Henfield B is shown as an integral part, is listed as Broadmare Common with no owner, occupier or farm noted.

Assessment. The application routes are depicted in the same manner as other routes that are public roads today. The area book does not distinguish between public and private roads. However no part of the two application routes are shown as having any owner or occupier and are not noted as being part of any farm. The application routes are depicted on the map as being open to all-comers from the eastern boundary of Broadmare Common and at the northern end of Windmill Hill (Henfield town). These observations suggest that the route is more likely than not to be available for use by the general public. The depiction of Dagbrook Lane as pasture, at least as far as the 'new' rail line, suggests that it is a grassed track. This suggests its origin is a driveway (see Tithe Records, section 8)

6. TURNPIKE PLANS

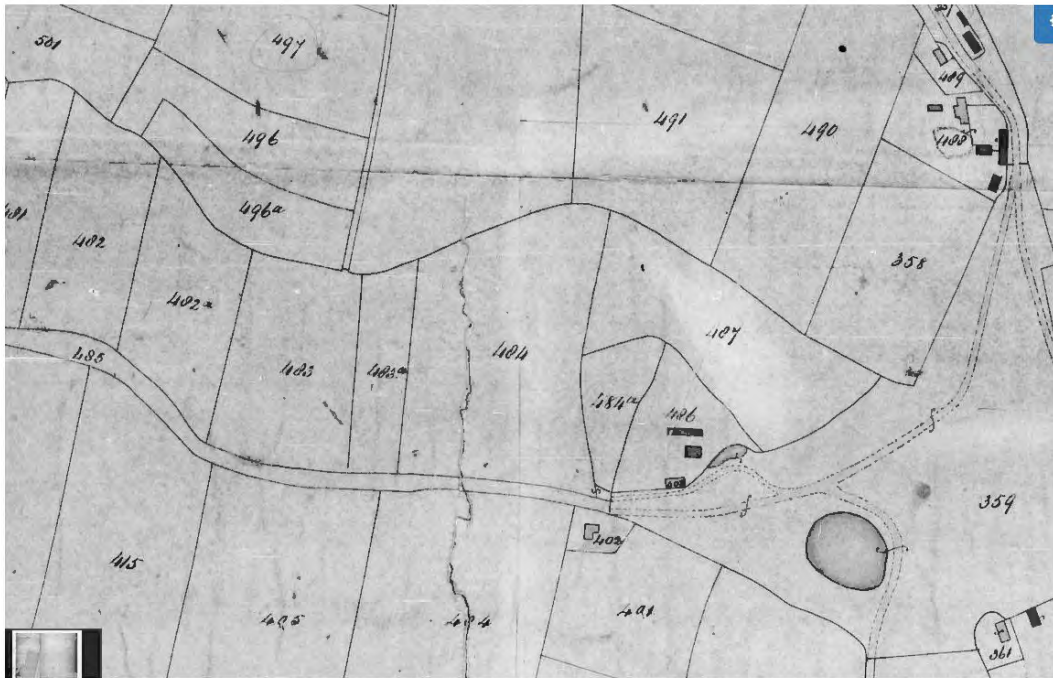
Turnpike plans for Henfield do not show anything of relevance to these application routes.

7. INCLOSURE RECORDS

No inclosure records showing these application routes have been found.

8. TITHE RECORDS

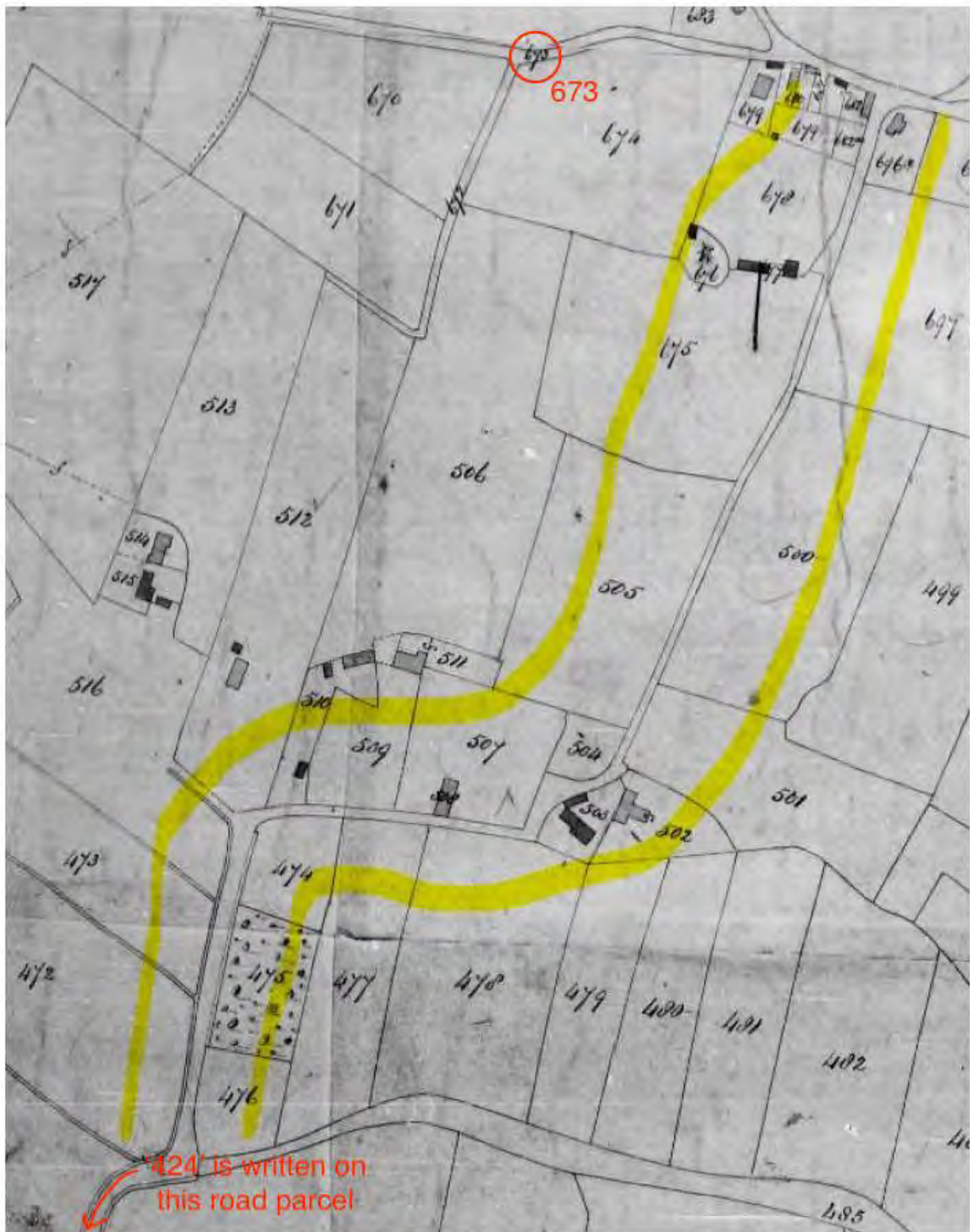
8.1 Tithe Maps and Apportionments



100-Henfield B eastern end (359)



100-Henfield B western end (No. 485) and southern continuation of 100-Henfield C (no. 424)



100-Henfield C – potentially part of parcel 424

43

LANDOWNERS	OCCUPIERS	Duties assessed on the Plot	NAME AND DESCRIPTION LANDS AND PREMISES	STATE CULTIVATION	QUANTITIES				PAYABLE TO		REMARKS
					STATUTE MEASURE	ACRES	RODS	PERCHES	Tithes	Occupation	
Yoho Stephen	Himself	524	House & garden					16			
	Hedgecock Widow	525	House and garden					2			
	Wye John	527	Tenement & garden					8			
Buy Tho Rev ^d . George (Stoke)	Burtonshaw Mrs	582	Kitchen & garden					2			
		579	Church & churchyard					2			
			Waste Lands					22	5		
		111	Knockham Common					1	20		
		298	Hundred Stedde waste					3	30		
		359	Brookside Common					12	30		
		736	Henfield Common					46	30		
		1065	Stockbridge green					3	22		
			Turnpike Roads					78	12		
		289	London and Brighton					14			
		1765	Henfield & Hurst					7	1		
			Parish Roads					21	1		
		4	Mannings Road					1			
		114	Road to Knockham Common					2	30		
		194	Knock Lane					3	10		
		205	Knock Cross Lane (1st 1/2)					1	30		
		614	Knock Lane					4	20		
		575	Church Lane					1	18		
			Occupation Roads					10	3	25	
		13	Mannings Lane					2	32		
		57						1	36		
		142						1			
		157	Tele Barn Lane					3	26		
		164						2	26		
		311						1	3	15	
		200						2	16		
		228						1	38		
		257						1	8	22	
			Carried forward					7	2	20	

43

List of roads in Henfield with no tithes assessed – first page – includes Occupation Roads

99

C—Land Tax Printed and Published by H. B. 1836, by S. S. & Co., Stationers, London.

LANDOWNERS.	OCCUPIERS.	Number of Acres of the Plot.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES.		PAYABLE TO THE OCCUPIER.		PAYABLE TO THE LANDOWNER.		REMARKS.
					STATUTE MEASURE.	LOCAL MEASURE.	£	s	£	s	
			<i>Occupation Roads</i>	<i>Brought forward</i>	7	2	20				
		256				3	4				
		317	<i>Road from Bunting to Henfield</i>		12	1	20				
		375			4	1	10				
		444	<i>Driveway</i>		1	3	36				
		454	<i>do</i>		1	3	36				
		459	<i>do</i>		1	3	36				
		461	<i>do</i>		2						
		486			1	28					
		496			3	33					
		532			3	20					
		546			1	10					
		611			1	30					
		631			1	30					
		649			1	26					
		660			4	1					
		672			1	24					
		673			1	26					
		688	<i>Footwell Lane</i>		1	35					
		908			1	12					
		960			4	10					
		986	<i>Birtley Lane</i>		1	32					
		988			1	30					
		997	<i>West end Lane</i>		2	12					
		1071			1	32					
		1116			2						
		1213			52	3	19				
		785	<i>Manor ground</i>	<i>Wash</i>	1	2					
		33	<i>River Adur (p'of.)</i>		1	30					
		609			9						
					10	30					

44

35--133

Continuation page showing Henfield B (No. 485) and Henfield C (No. 424)

8.1.1 Date. 1844

8.1.2 Relevance. The Tithe Commutation Act of 1836 required tithes in kind to be converted into a monetary payment system. Maps were drawn up to find out which land parcels were subject to tithes, who owned them how much was payable and to whom. Tithe documents were drawn up under statutory procedures and received a high level of publicity. The final agreements, which formed the basis of the tithe apportionment was legal and binding. Land that was not subject to a tithe payment included unproductive land, land owned by the church or the crown estate or might be public. It is common therefore for no tithe to be payable on public roads, although wide grass drovers roads and bridle roads could carry a tithe as they were used as pasture. It was in the interest of landowners for untithed roads to be shown correctly to minimise their payments. Footpaths and bridleways were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. On some tithe maps highways are coloured in yellow or sienna. This differentiated them from other roads and is often interpreted as indicating public status.

8.1.3 Archive. Digitised tithe maps are at the West Sussex Record Office and also on the Genealogist website. The screenshots above were obtained from the genealogist website – larger copies are in Appendix 13. An analysis of apportionments mentioning roads and lanes

is at Appendix 13a. A comparison of apportionments described as occupation roads against their status today is at Appendix 15.

8.1.4 Meaning. Both application routes have apportionment numbers. At its eastern end Henfield B has braces that indicate it as part of Broadmare Common, apportionment number 359 and the remainder is number 485. Henfield C is the northern part of the roadway with apportionment number 424. The apportionment list shows Broadmare Common described as 'Waste Lands' while 424 and 485 are under a heading of 'Occupation Roads' with 424 additionally described as 'Droeway'. None of these three parcels have any owner, occupier or tithe assessment shown. 17 roads and lanes have ownership recorded in the apportionment book (Appendix 13a) with only one explicitly described as 'Private' (parcel 257a).

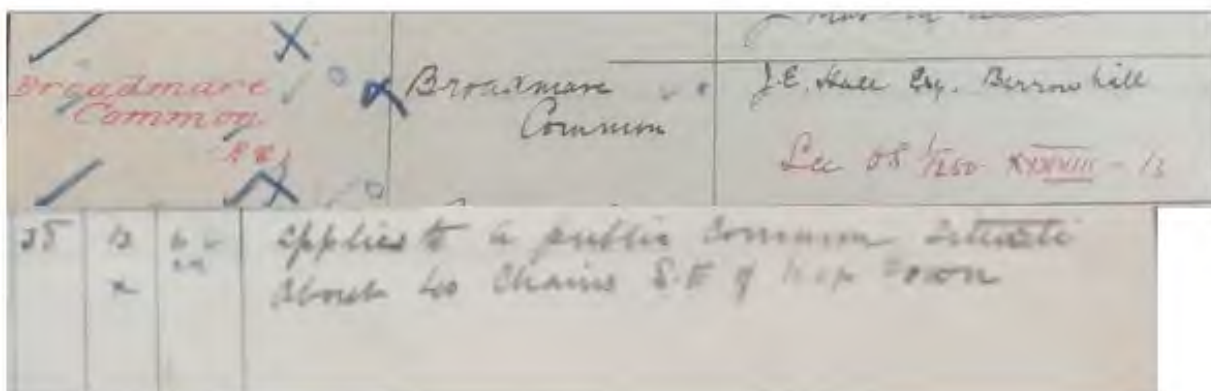
8.1.5 Assessment. The land parcels of both Henfield C and the western end of Henfield B are both depicted in the manner of a road, not a way of lower status. Henfield C is described as a droeway. If such a droeway was private then it ought to have been assessed and a tithe would have been due. This is not the case – no tithe was indicated as payable on any part of the two application routes. While not described as such it is more likely than not that Dagbrook Lane B-D was also a drove route as it links the public common to a drove route leading to the market town, Henfield. Its non-linear boundaries, still visible today give support for this. So it is more likely than not that both the routes were public and had at least bridle and driving rights at that time. The case *Mason v Suffolk* (1979) established that a droeway or driftway (ie a route for driving animals) must be a highway that is either a carriageway or bridleway.

The descriptor 'Occupation Road' is sometimes interpreted to mean 'private'. This is not so for Henfield. The applicant's analysis of the 35 parcel entries listed under heading Occupation Roads (see Appendix 15) shows that 30 can be identified with public access today. 11 of these are roads (7 adopted, 4 unadopted), 3 are public bridleways and 16 are public footpaths. Only 5 are not recorded with public access today. It is thus more likely than not that the occupation roads listed enjoyed public access except for the single parcel described in the apportionment book as 'Private Road'.

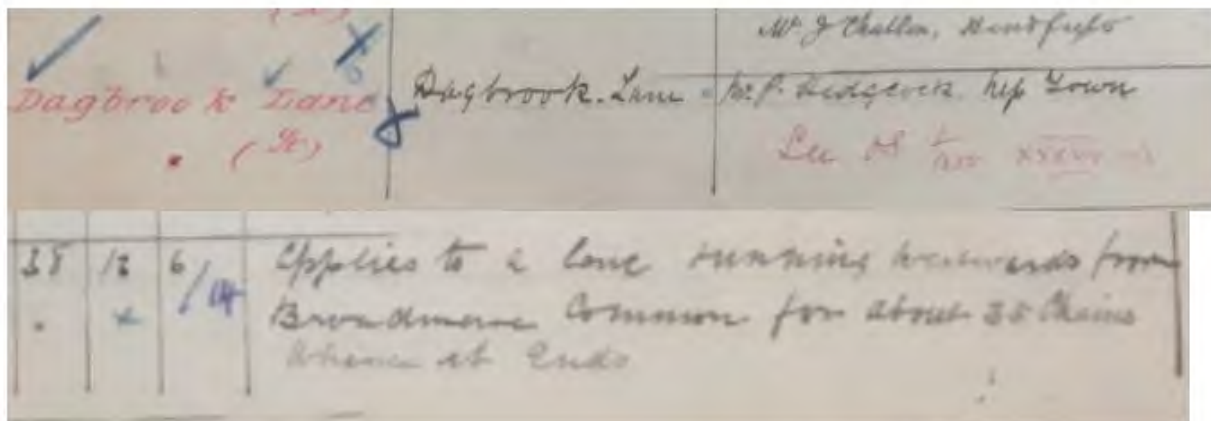
9. BOUNDARY RECORDS

The applications routes are not near the parish boundary and so the Boundary Sketch Map and Boundary Remark Book are not relevant to this application.

10. OBJECT NAMES BOOK



Close-up, in two parts, of the single line entry for Broadmare Common, part of 100-HenfieldB



Close-up, in two parts, of the single line entry for Dagbrook Lane, part of 100-Henfield B

List of Names as written on the Plan			Various modes of Spelling the same Names	Authority for those modes of Spelling
Windmill Lane (R)			Windmill Lane No change 44.10.13	Mr. G. Edwards Springlands See OS 7.50 XXXVII - 13
Situation			Descriptive Remarks, or other General Observations which may be considered of Interest	
Sheet	Plan	Trace		
65	13	6/5	Applies to a lane running from the west end of up. Down to the 1st 3. R. 40 chains S.W. of SPRINGLANDS COTTAGES	

Close-up, in two parts, of the single line entry for Windmill Lane, part of 100-Henfield C

10.1.1 Date. 1896 with relevant revision 1937

10.1.2 Relevance. For the 2nd Ed 25 inch (County Series) maps the Ordnance Survey aimed to collect accurate names and descriptions of everything that was to be recorded on the maps. The OS surveyors consulted local persons of note and stature with intention that spellings be correct. Broadmare Common, Dagbrook Lane and Windmill Lane are all included.

10.1.3 Archive. The Object Names Book is held at the National Archive, catalogue reference OS 35/7070. The relevant pages are shown in Appendix 14. Excerpts for relevant objects are pictured above.

10.1.4 Meaning. Broadmare Common is described as a 'public common'. Dagbrook Lane is said to run from the western boundary of Broadmare Common for 'about 35 chains'.

Windmill Lane was said to run as far as the railtrack in 1896 but has been amended in 1937 to be clearer about *where* at the railtrack it joins.

10.1.5 Assessment. Broadmare Common carried public rights although the ONB does not assist in detailing what these are. DEFRA's Magic system online was used to ascertain whether Dagbrook Lane ends at the rail line or at the junction of the two application routes (point D). The measurements (see appendix 14) show the length to point D (722 metres) most likely. It is nearer '35 chains' (704 metres) than the distance to the railtrack (633 metres). The ONB gives no indication of whether Dagbrook Lane carries public rights. However as it leads on from the common which IS recorded as public it is more likely that not to have itself been public. Windmill Lane is recorded here as leading from 'the west end of Nep Town', a public place. The fact that there was need for a correction to indicate its line in 1937 suggests that perhaps the public were using the alternative bridge under the rail line that involved passing Springland Cottages (see map at Appendix 14).

11. RAILWAY, CANAL AND RIVER RECORDS

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

11.1 Dorking, Brighton and Arundel Railway



(39)

THE PARISH OF HENFIELD—continued.

Number on Plan.	Description of Property.	Owners, or Reputed Owners.	Lessors, or Reputed Lessors.	Occupiers.
61	Occupation road	John Leighton Wade Dennett, Mary Edie, Thomas Wisden, Richard Weekes, Mary Sowton, Robert Upperton, Jane Becket, Edward Fuller Upperton, Charles Newland, Dawson Borrer, William Borrer.	Stephen Stammer, George Longley	John Leighton Wade Dennett, James Trusler, Thomas Wisden, Stephen Stammer, George Longley, Robert Upperton, Thomas Becket, Edward Ridge, John Bartenshaw
80	Occupation road	ditto	ditto	ditto
80a	Pasture and occupation road	ditto	ditto	ditto
81	Footpath			
82	Occupation road	John Leighton Wade Dennett, Mary Edie, Thomas Wisden, Richard Weekes, Mary Sowton, Robert Upperton, Jane Becket, Edward Fuller Upperton, Charles Newland, Dawson Borrer, William Borrer	Stephen Stammer, George Longley	John Leighton Wade Dennett, Thomas Wisden, Stephen Stammer, George Longley, Robert Upperton, Thomas Becket, John Bartenshaw

11.1.1 Date. 1845

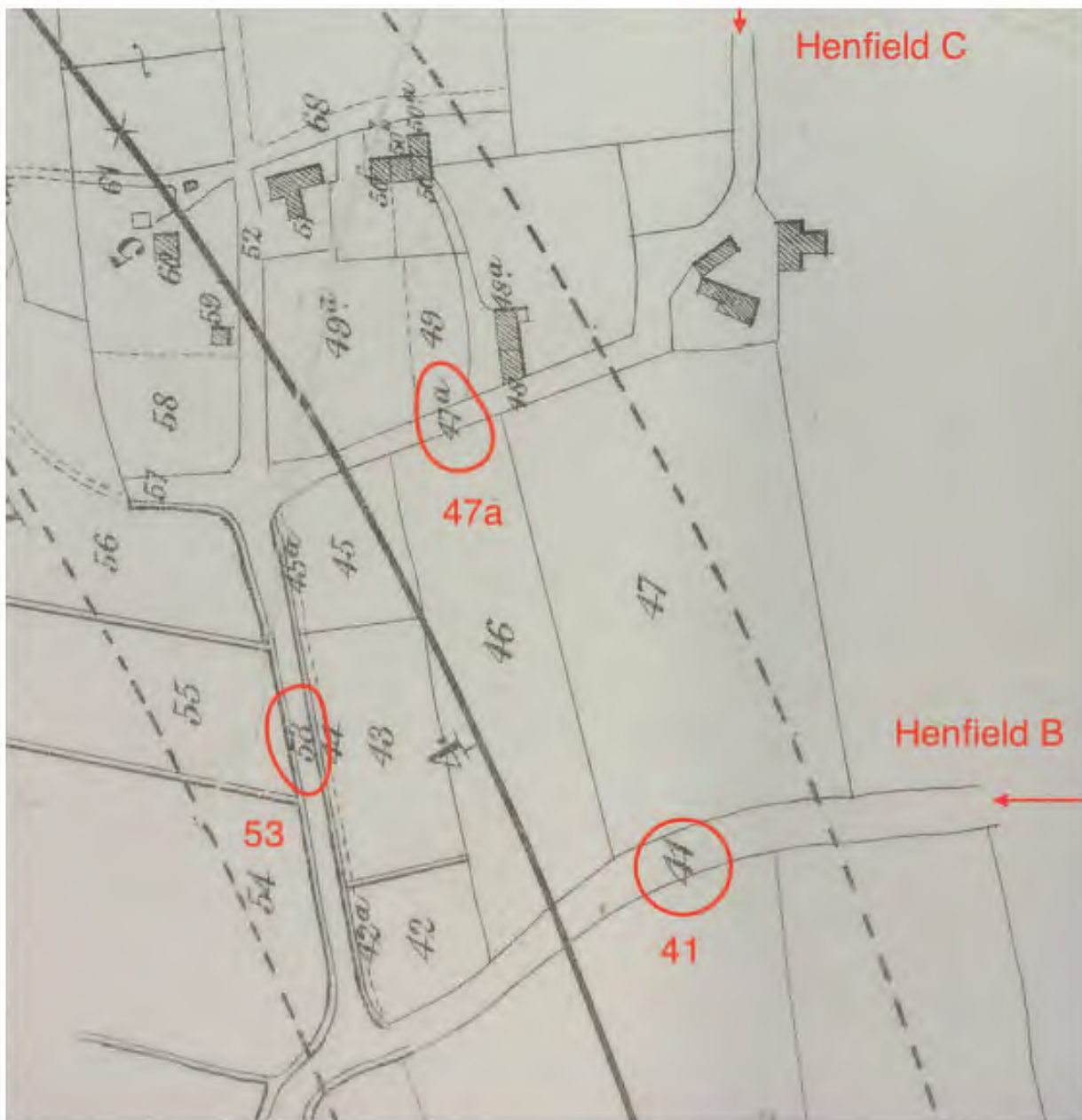
11.1.2 Relevance. The plan and book of reference are likely to correctly reflect information about the land and persons affected by the proposed railway (see 11 above).

11.1.3 Archive. WSRO: catalogue reference QDP W/97: Plan and Book of Reference. Relevant pages of these are in Appendix 19 with excerpts shown above.

11.1.4 Meaning. Land parcel 61 is the part of Henfield C (Windmill Lane) between points D and E. The continuation southwards beyond the Henfield B/Henfield C junction (point D) is shown as parcel 82. Both land parcels are described as 'Occupation road'. Twenty parcels listed in the book of reference are described as 'occupation road'. Two parcels (35a and 41a) are described as 'public highway' owned by the surveyor of highways. One (18a) is described as a 'public foot road and one (106) as a 'public footpath'. 'Dagbrook Lane has no parcel number.

11.1.5 Assessment. Land parcel 61 would have been affected if the proposed railway were built. The landowners/occupiers would need compensation if the build went ahead. Any landowner who needed to access land plots adjacent to the lane would be affected, eg a bridge or crossing would have to be provided and monetary compensation for land taken for the build. The lane is described as 'Occupation road', the owners/occupiers requiring access for going about their day-to-day business, in this case use of the adjoining fields for farming. This does not preclude there being public rights over the route. In fact the demonstration of private rights ensures against future problems should there be any change to the public rights (eg a stopping up). It is likely that many of the 20 occupation roads listed in the book of reference would have also had public rights along with the private rights of the nominated owner/occupiers. Dagbrook Lane (Henfield B) has no assigned number suggesting that it would not be detrimentally affected by the railtrack proposal.

11.2 London, Brighton and South Coast Railway



100-Henfield B/C

147	Pasture field	Devisee in trust under the will of the late John Hall, Edward Fuller Appurtenances Mary Weekes, William Borer	Stephen Woodgate Stephen Hammar Richard Tilly John Pennell
147 ⁹	Occupation Road		

Shoreham and Henfield Railway - Railway No. 1			County of Sussex		58
The Parish of Henfield in the					
Number in Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.	
41	Occupation Road	Devisee in trust under the will of the late John Hall, Edward Fuller Appurtenances. Mary Weekes, William Borer, John Pennell, Dawson Borer, Thomas Widen, James Embling, Frederick Morgan		Stephen Woodgate Stephen Hammar Richard Tilly, John Pennell, Stephen Legg, and Frederick Morgan	

147	Pasture field	Devisee in trust under the will of the late John Hall, Edward Fuller Appurtenances Mary Weekes, William Borer	Stephen Woodgate Stephen Hammar Richard Tilly John Pennell
147 ⁹	Occupation Road		

Number in Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.	
		John Pennell, Dawson Borer, Thomas Widen, James Embling, Frederick Morgan and Richard Tilly		Stephen Legg, Frederick Morgan and Thomas Shudlers	
				Thomas Shudlers	

53	Occupation Road	Devisee under the will of the late John Hall, Edward Fuller Appurtenances, Mary Weekes,		Stephen Woodgate Stephen Hammar Richard Tilly	
----	-----------------	---	--	---	--

Number in Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.	
		William Borer, John Pennell, Dawson Borer, Thomas Widen, James Embling, Frederick Morgan and Richard Tilly		John Pennell, Stephen Legg, Frederick Morgan and Thomas Shudlers	
				John Pennell	

143 ⁹	Public footpath	Surveyors of Highways of the Parish		John Pennell	
143	Cover Bed and ditch	John Pennell			
144	Public footpath	Surveyors of Highways of the Parish			
145	Pasture field and ditch	Dawson Borer	Stephen Legg	Stephen Legg	
145 ⁹	Public footpath	Surveyors of Highways of the Parish			

11.2.1 Date. 1857

11.2.2 Relevance. As above 11.1.2

11.2.3 Archive. WSRO: catalogue reference QDP W/117: Plan and Book of Reference. Relevant pages of these are in Appendix 20 with excerpts shown above.

100-Henfield B/C

11.2.4 Meaning. Land parcel 41 is the western end of application route Henfield B (Dagbrook Lane). Parcel 47a is part of application route Henfield C (Windmill Lane) between points E and F. Parcel number 53 is the D to E stretch of Henfield C. These three parcels are depicted as wide roads. Numbers 45a, 44 and 42a appear to refer to a continuous single broken line parallel and to the east of parcel 53. All these parcels are listed in the Book of Reference. Parcels 41, 47a and 53 are described as 'Occupation Road' and 47a/45a/44 as 'Public footpath'.

11.2.5 Assessment. Land parcel 53+47a corresponds with parcel 61 of the Dorking, Brighton and Arundel proposal of the previous section. The owners and occupiers listed have changed a little in the intervening 12 years but the same observations apply as detailed in section 11.1.5. Appendix 20 contains a copy of the plan area annotated with the parcel numbers and coloured showing whether they were described as Public footpath, Occupation Road or Parish Road. This suggests that there must have been public access on the occupation roads or else some of the Public footpaths would be dead ends. One might accept this as a possibility if there was a point of interest but, for example Public footpath 45a-44-42a, would have no purpose without public access on Occupation roads 41 (application route Henfield B) and 57/47a. Parcel 47a is described as an Occupation Road when this rail line was built but a public road bridge of some width was built over Windmill Lane (Henfield C) between points E and F – see section 12.3. The Henfield C occupation road thus appears to have had public access at this time with the specific private access requirements of individuals with land holdings spelled out in the Book of Reference. It is more likely than not that the Henfield B occupation road had the same access rights, especially as it is a road from a public common (Broadmare) to the publicly used road, Henfield C.

11.3 Parham railway plan – proposed railway on lands of Hon Robert Curzon

11.3.1 Date. c1840

11.3.2 Relevance. As above, 11.1.2

11.3.3 Archive. WSRO reference Parham 1/4/1/25. Relevant sections are reproduced in Appendix 22.

11.3.4 Meaning. The plan numbering is the same as the London, Brighton and South Coast Railway proposal 17 years later– see above section 11.3. The book of reference has only one page. It details land owned by Hon Robert Curzon and farmed by Alfred Mitchell. It is to the north of the application routes area at Streatham Farm and is not relevant to this application. A cross section drawn on the plan shows and describes the roads the railway would cross. It describes both Henfield B and Henfield C as Occupation Roads.

11.3.5 Assessment. Without Book of Reference information for the area of the application routes little can be deduced. The application routes are occupation roads that may or may not carry public rights. It is possible that this plan and book is a precursor to the final, as built L, B and SC railway of section 11.2.

Fr
E

H N F

H U re re

re L ar

re re

ru

12.1.2 Relevance. The report was requested by the County Council's Main Roads and Bridges Committee 26th February 1890 in order to assess contributions to be made to Parish funds for roads that were not main roads but which were used by "through and foreign traffic". The report was prepared by the then County Surveyor, Charles Adcock.

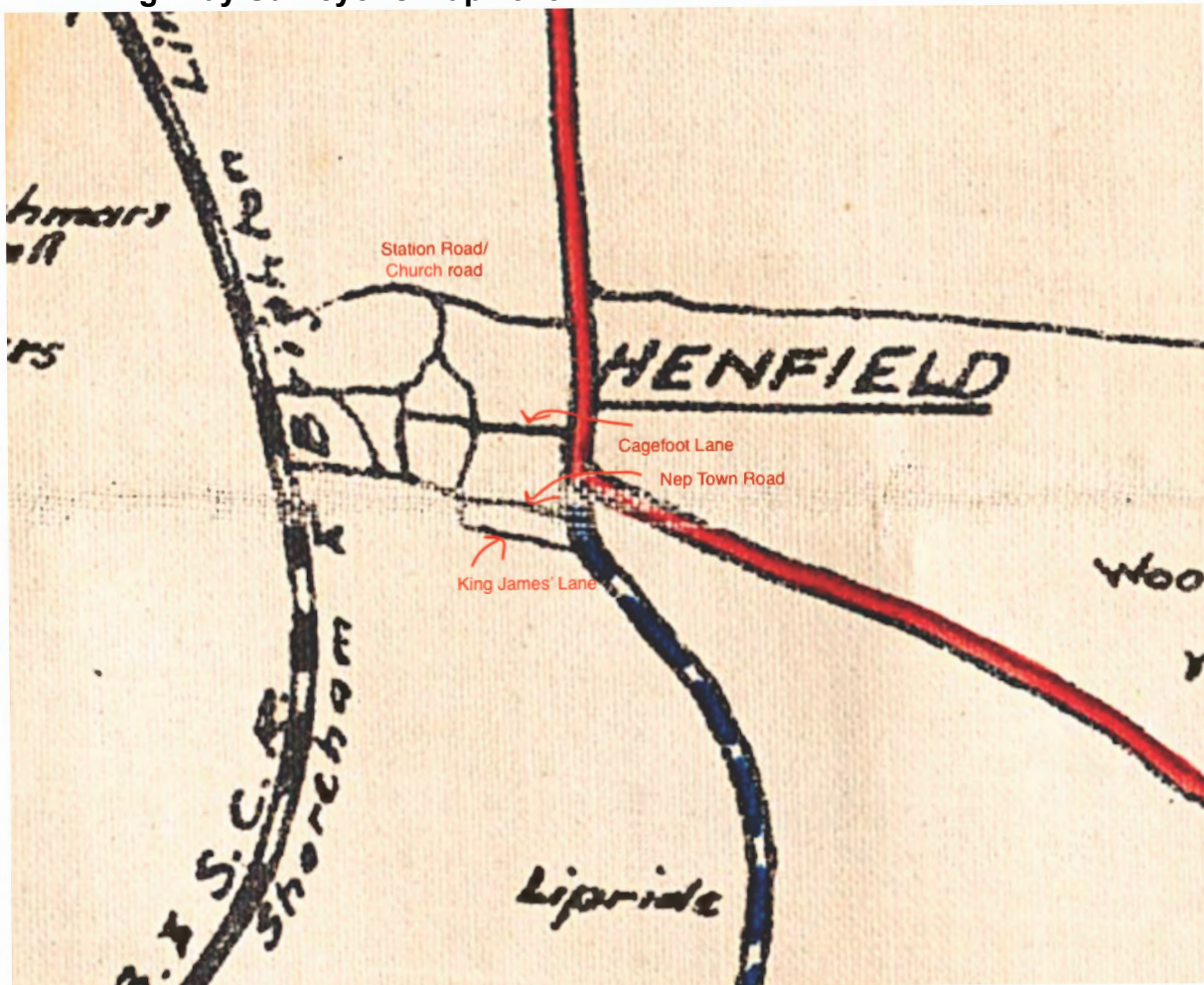
12.1.4 Meaning. While Windmill Lane (Henfield C) is not listed by name, there is an entry for “Road Leading South off Lower Station Road”. Windmill Lane is one of two roads that lead south off Lower Station Road. The other is King James’ Lane. The annotated 25inch OS maps in Appendix 16 show these. Dagbrook Lane (Henfield B) is not listed.

44

100-Henfield B/C

support for maintenance. King James' Lane is potentially more of a through road and Windmill Lane is only a through route if Dagbrook Lane is included in the report, which it is not.

12.2 Highway Surveyor's Map 1915



CLASSIFICATION OF ROADS.			
REFERENCE.			
EXISTING MAIN ROADS PROPOSED AS FIRST CLASS ROADS SHEWN THUS			186·80 MILES
DISTRICT			65·89
SECOND			104·93
TOTAL MILEAGE OF BOTH CLASSES			357·62

H.W. Bowen, M.Inst.C.E.,
County Engineer & Surveyor,
Jan. 1915.

12.2.1 Date. 1915

12.2.2 Relevance. The map of first and second class roads was compiled for County Engineer and surveyor, W.H. Bowen. Such a map must be assumed to accurately portray the information intended, which was classification of class 1 and 2 roads at the time.

100-Henfield B/C

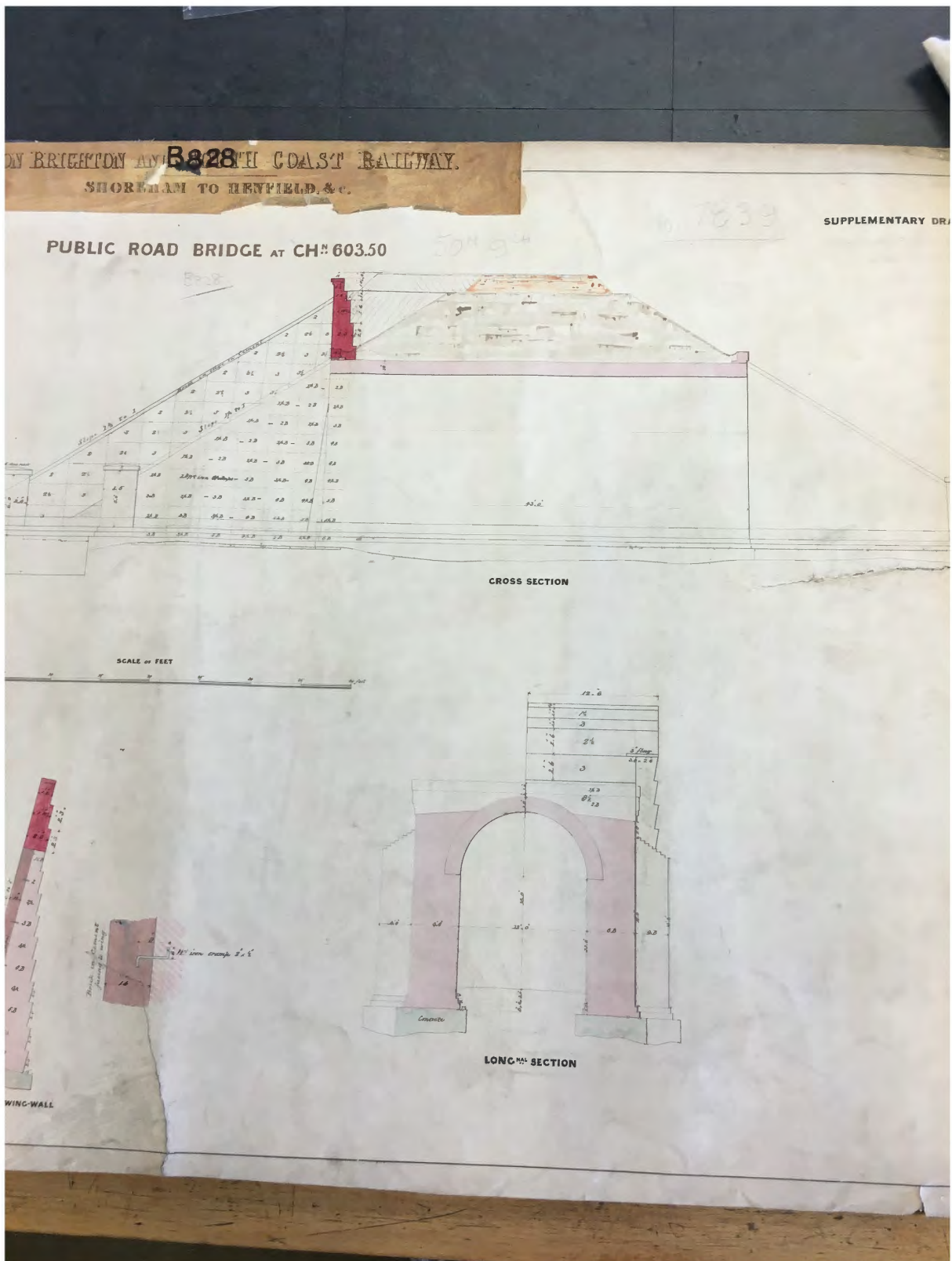
12.2.3 Archive. The map is in the West Sussex records Office catalogue reference Add Mss 40406. A full copy of the map is in Appendix 17.

12.2.4 Meaning. While the map's intention is to show first and second class roads there are additional black lines which correspond with other roads in the county. These are labelled in the above figure and Appendix 17 also illustrates this.

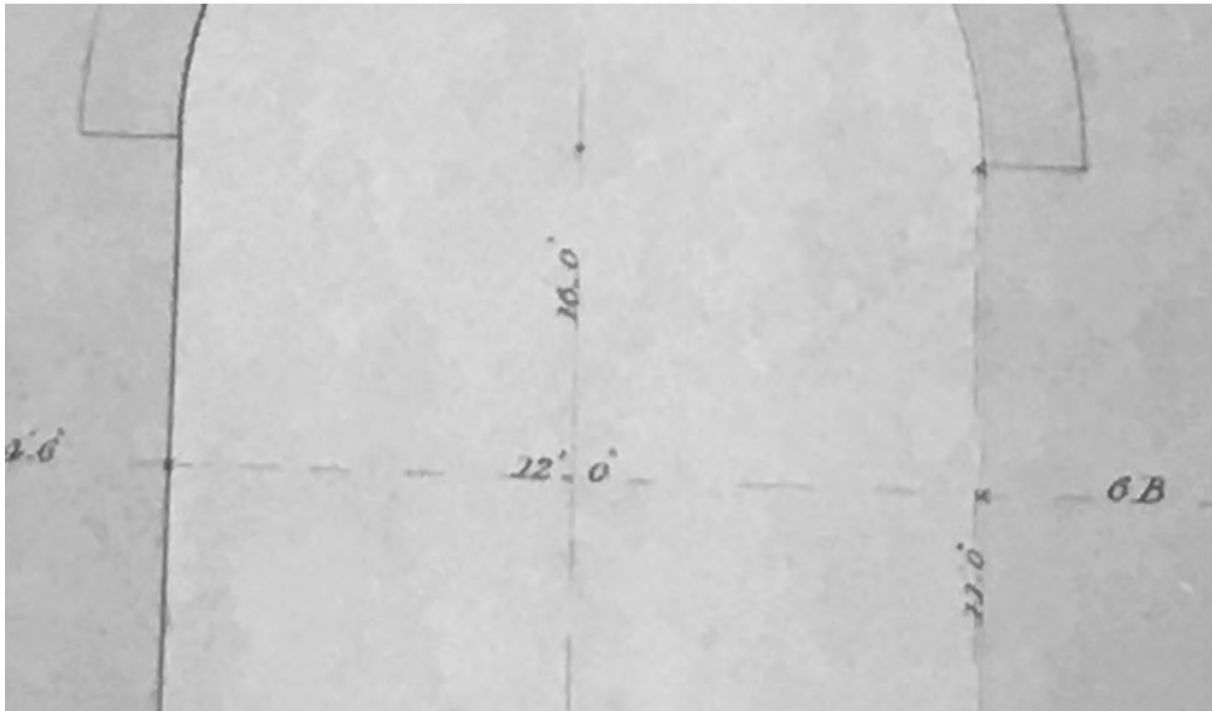
12.2.5 Assessment. Neither Dagbrook Lane (Henfield B) nor Windmill Lane (Henfield C) are shown. The additional black lines correspond to roads that are 'lesser' vehicular roads today. By extrapolation it could be argued that the application routes either carried even lesser rights than those indicated by the black lines or were simply less or not used by vehicular through traffic.

100-Henfield B/C

12.3 Public Road Bridge at Windmill Lane 1859



Bridge is for a public road



Bridge width is 22 ft



12.3.1 Date. 1859

12.3.2 Relevance. The plan is for a rail bridge over a Public Road near Brookfield Farm.

12.3.3 Archive. The bridge plan is at West Sussex Records Office, catalogue reference WDC/SU16/1/12 and the railway plan for the London, Brighton and South Coast railway is catalogue reference QDP W/117 also at WSRO. Appendix 18 contains excerpts from both the bridge plan and the railway plan

100-Henfield B/C

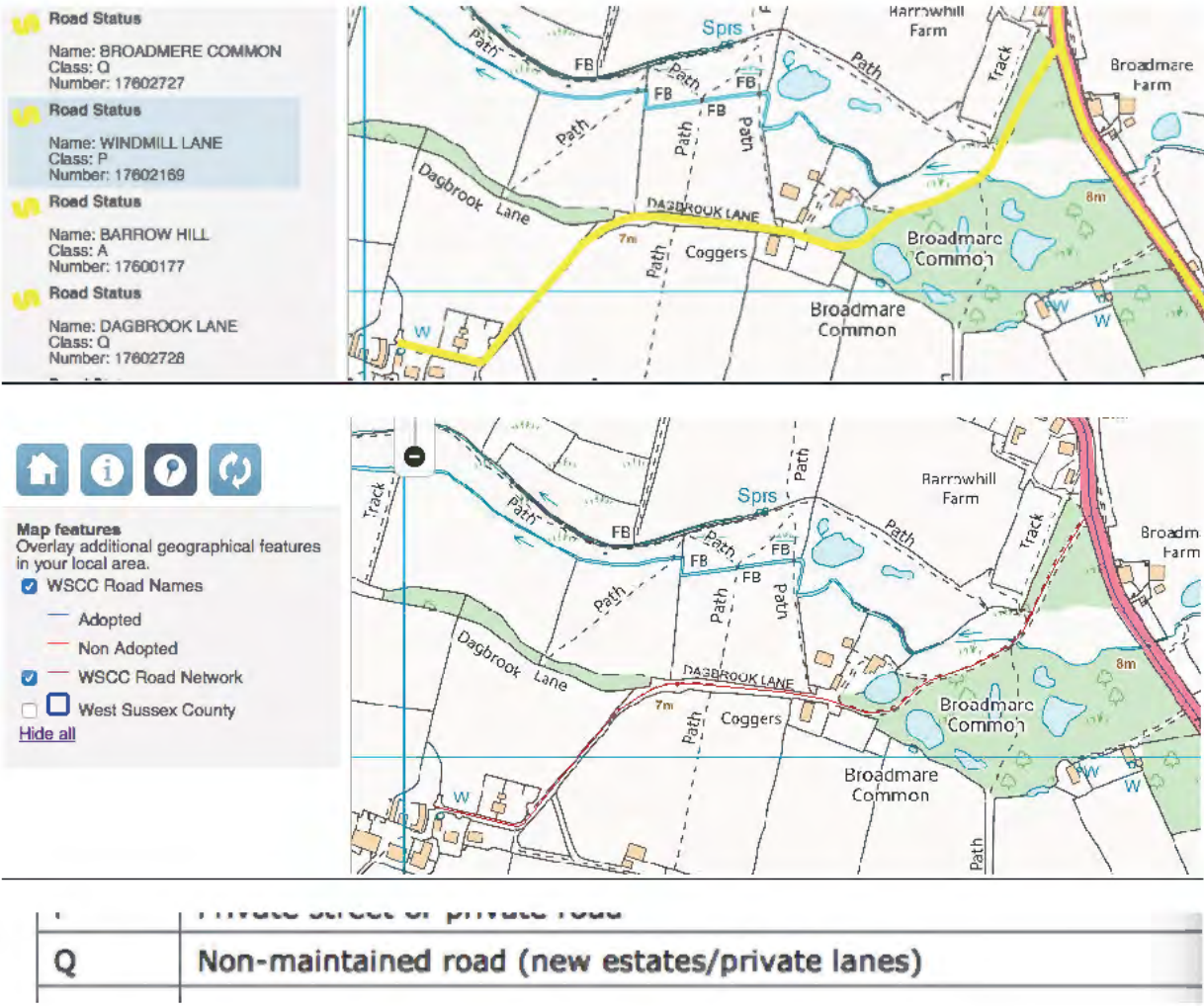
12.3.4 Meaning. The mileage along the rail line is shown. Application route Henfield C intersects with the rail line approximately half way between where '7 miles' and '8 miles' are marked on the map. The bridge plan gives the bridge position as 603.5 chains along the rail line. While the public road is not named on the plan, the position along the rail line along with the Records Office assessment (catalogue description) indicates that the bridge is over application route Henfield C. The bridge is large (22ft wide; 16ft to apex) and corresponds with what is in place today.

12.3.5 Assessment. Application route 100-Henfield C is a public road at this time. The dimensions of the bridge suggest that it was intended to carry more than foot traffic.

12.4 Highway Authority minutes

12.4.1 Highway Authority minutes have not been consulted except for the period during which the Definitive map was being made. No reference to the application routes were noted.

12.5 WSCC current highways information



100-Henfield B/C



P	Private street or private road
---	--------------------------------

12.5.1 Date. Aug 2021-08-02

12.5.2 Relevance. On-line records illustrate the County Council's published view of the status of the eastern end of application route Henfield B.

12.5.3 Archive. WSCC website Local Land Charges Map at <https://www.westsussex.gov.uk/planning/local-land-charges/local-land-charges-map/> . West

Sussex County Council table of road classes at
https://www.westsussex.gov.uk/media/6451/llc_mapbrowser.pdf

12.5.4 Meaning. The eastern end of application route Henfield B, between A and C is recorded by WSCC as a non-adopted road of class 'Q', a road not maintained by them. Application route Henfield C between point G and the railway is recorded as a non-adopted road of class 'P' a private street or road.

12.5.5 Assessment. Neither road is maintained by WSCC. Broadmare common is owned by Horsham District Council (HDC). Henfield Commons Joint Committee, a sub-committee of HDC, carry out maintenance works. It would appear then that HDC are responsible for maintaining the road as well as owning the land over which it passes. Communications with HDC and the Henfield Commons sub-committee have drawn a blank as to whether higher public access than pedestrian is allowed on the A-B stretch. However, as a public body it is the applicant's view that, for clarification, at least bridleway rights should be accepted (dedicated) by HDC. See also section 21.

13. PARISH AND ESTATE MAPS

These maps are of use because they show how the parish or the landowner viewed routes within the parish at the time the maps were compiled. However, no relevant maps have been found.

14. QUARTER SESSIONS RECORDS

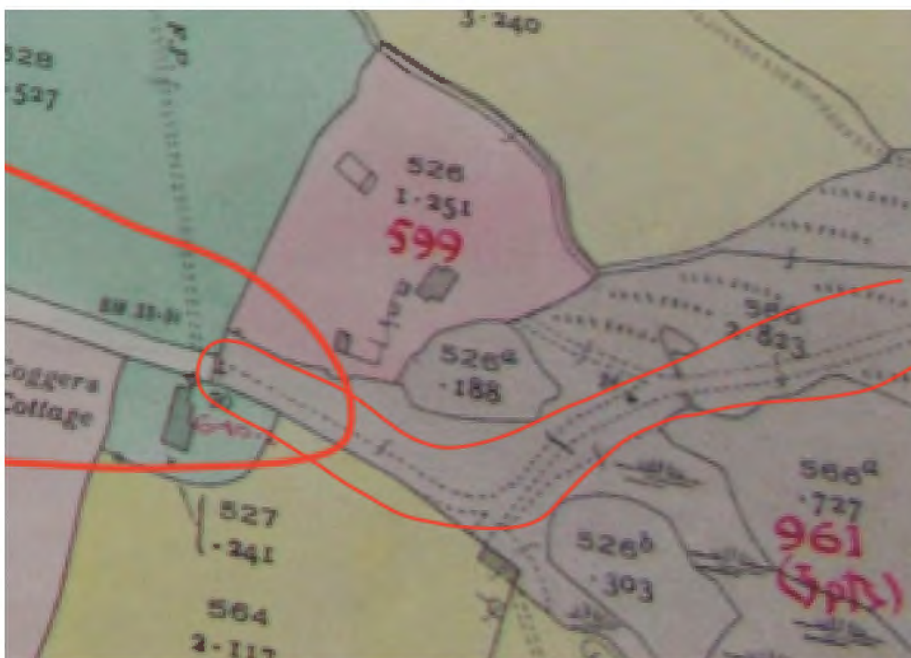
Highway functions were discharged by Justices of the Peace in Quarter Sessions before powers were handed over to what are now the highway authorities. Court records provide conclusive proof of the matters on which decisions were made. However, no relevant quarter session records have been found that are relevant to this application.

15. INLAND REVENUE VALUATION

15.1 Inland Revenue Maps



The Dagbrook Lane part of the application route is uncoloured – it continues across public common Broadmare, hereditament 961 ...



... to the A3027 ...





Application route 100-Henfield C section is uncoloured

15.1.1 Date. 1910

15.1.2 Relevance. Under the Finance (1909-10) Act 1910 all land in England and Wales was valued so that the increase in its value when ownership changed could be taxed. Under statutory powers, surveys were carried out by the Board of Inland Revenue. It was a criminal offence for any false statement to be made in order to reduce tax liability. Land was divided up into numbered hereditaments and information for each was recorded. Deductions from the assessable value of hereditaments could be claimed if they were crossed by public footpaths or bridleways. Where a vehicular highway crossed a hereditament, it was generally omitted from the valuation, and shown on the Inland Revenue's plans as a "white road". The Finance Act information was annotated on copies of County Series OS maps and field books were produced from the 'Form 4' documents filled out by the landowners. These field books that listed information on numbered hereditament on the map including the tax due. There are no entries in the field books for un-numbered hereditaments as there was no tax value placed on them. The maps were not available at the time that the first definitive maps were drawn up.

15.1.3 Archive. The relevant maps are at The National Archive. The Dagbrook Lane part of Henfield B plus most of its eastern end over Broadmare common is on OS 25inch map Sussex 38 13 with NTA reference IR 124/9/343. Application route Henfield C (Windmill

Lane) is also on this map. The most eastern end of application route Henfield B crossing Broadmare Common is on OS map Sussex 38 14 and is NTA reference 124/9/344. Relevant map excerpts are shown above. Copies of larger portions of the maps are at Appendix 23 of this statement. The whereabouts of the Form 4s have not been traced and probably was not kept once the field book had been completed.

15.1.4 Meaning. The County Series OS map used was produced predominantly in black and white (ponds and rivers were sometimes blue and buildings sometimes brown). The colouration on the map relates to the Inland Revenue survey with the large red numbers each being a single, coloured hereditament. Application route Henfield C is uncoloured for the whole of its length. Application route Henfield B is uncoloured for its length over Dagbrook Lane but is shown coloured where it is part of Broadmare Common.

15.1.5 Assessment. The depiction of the application routes as white road is highly indicative of public rights. These are most likely vehicular rights as footpaths and bridleways were normally subject to tax deductions rather than exclusion from the hereditaments. The depiction is unlikely to show a way that is for private use only, as such a way could be developed, increase in value and so be taxable. Accordingly, private tracks are unlikely to have been excluded from the assessable hereditaments. There are a few other possibilities (for example the land was 'waste' and of no value) but this is unlikely for a plot of land that looks so much like a road. Unless proof of some other reason can be shown by any party wishing to put forward an alternative explanation, the map should be taken to demonstrate that those parts of the application routes that are uncoloured are being shown as public roads at this time.

15.2 Inland Revenue Field Book

15.2.1 Date. 1910

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

15.2.3 Archive. The Inland Revenue Field Books are at the National Archives. The relevant field book is reference IR 58/93884. The entry for hereditament 961, Broadmare Common is included in Appendix 23.

15.2.4 Meaning. There is nothing entered where tax deduction for rights of way could be claimed.

15.2.5 Assessment. No tax deduction for public rights of way were claimed. The A to B length of application route Henfield B would thus carry the general access rights of the common. These are likely to have been more than footpath rights as this section connects a main through road, now the A2037 and the uncoloured road, Dagbrook Lane.

16. OTHER MAPS

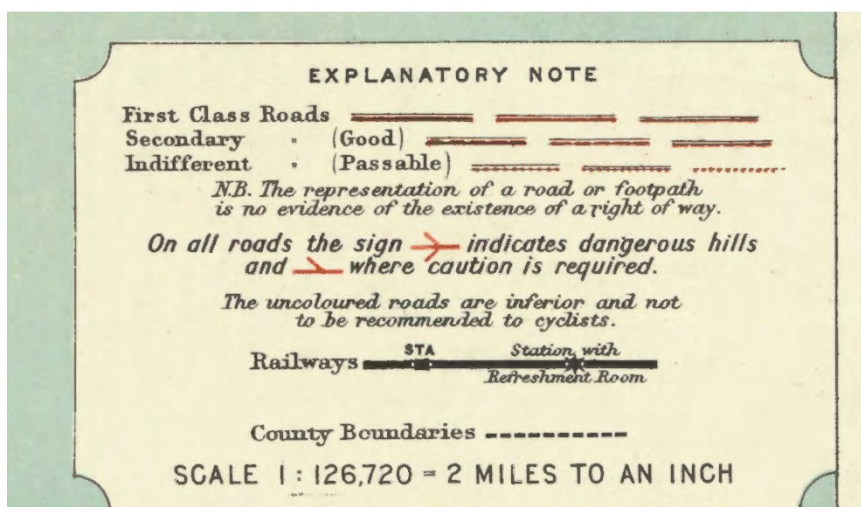
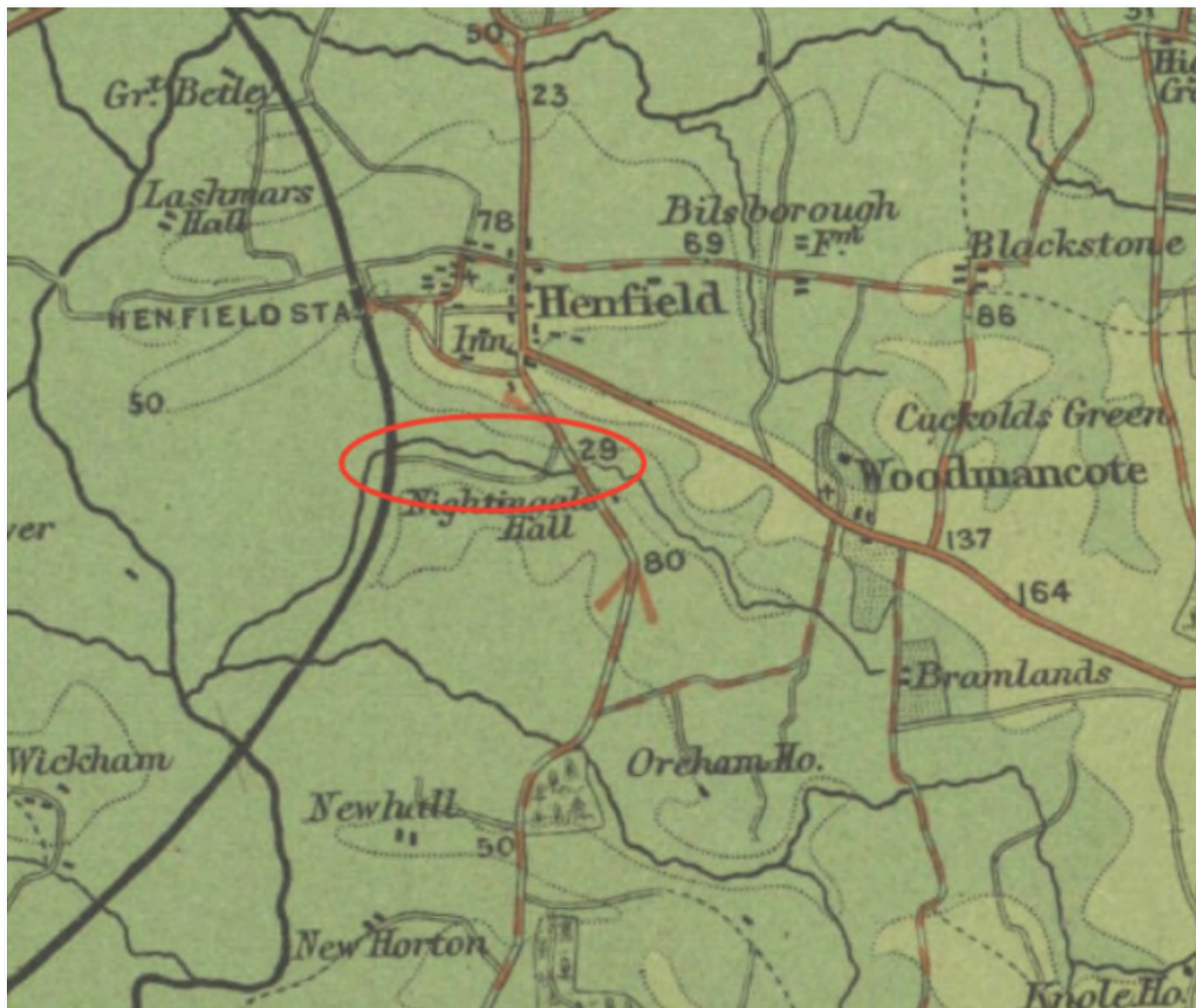
16.1 Bartholomew

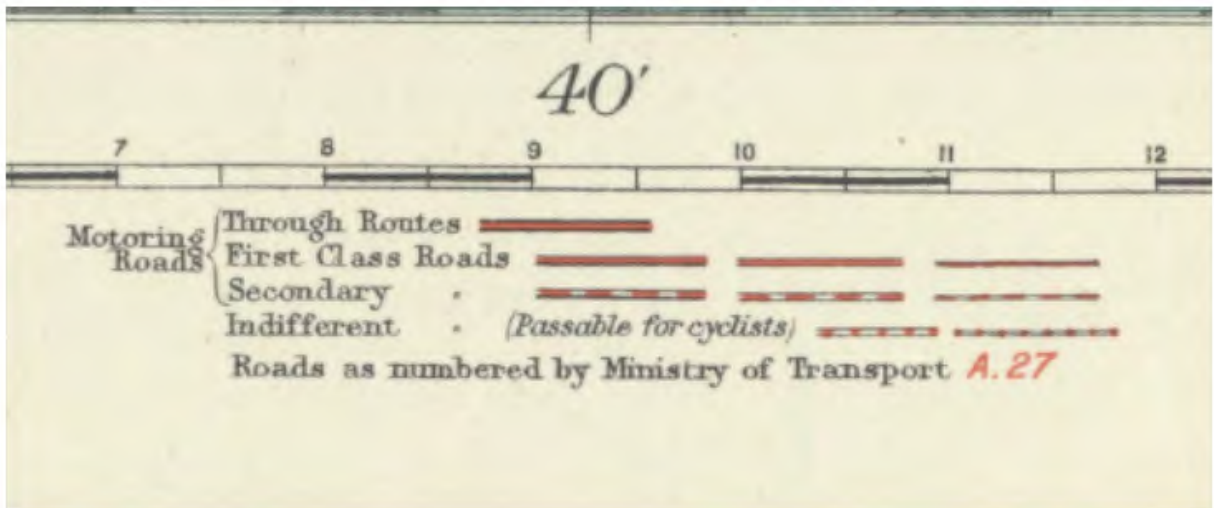
Bartholomew's half inch to the mile maps were marketed to tourist and cyclists in the early years of the 20th century. Later editions ask specifically for input from cyclists and The

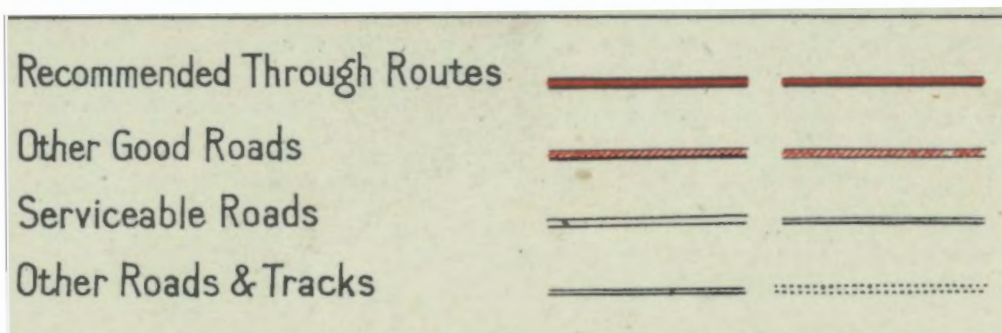
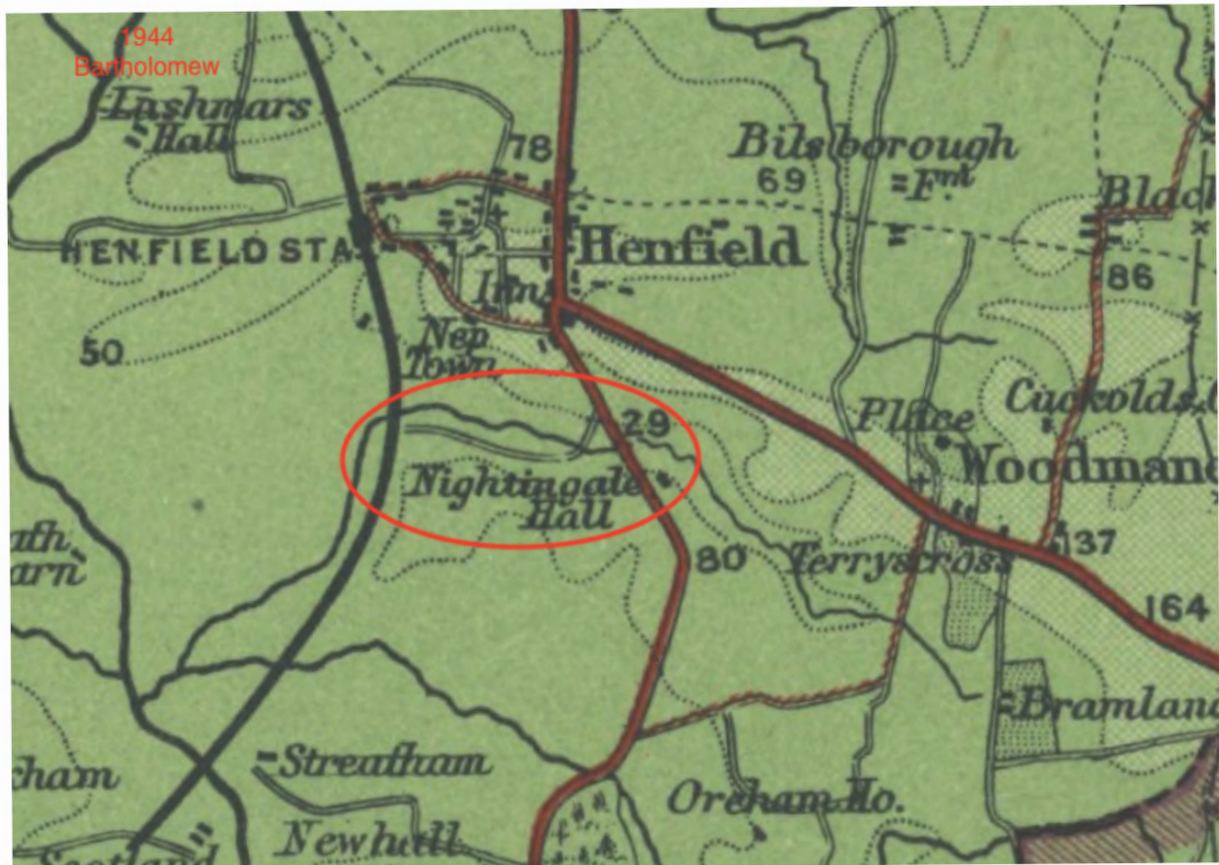
100-Henfield B/C

Cyclists Touring Club were involved in providing feedback on the condition and availability of the routes.

1902 Bartholomew map:







16.1.1 Date. 1902,1922 and 1944

16.1.2 Relevance. All three maps show application route Henfield B. The maps have a key. The Bartholomew maps were based on OS mapping but were popularly on sale to the travelling public. They used feedback from users to keep their maps in tune with the situation on the ground, particularly the Cycle Touring Club. Their logo is included on some editions of the maps.

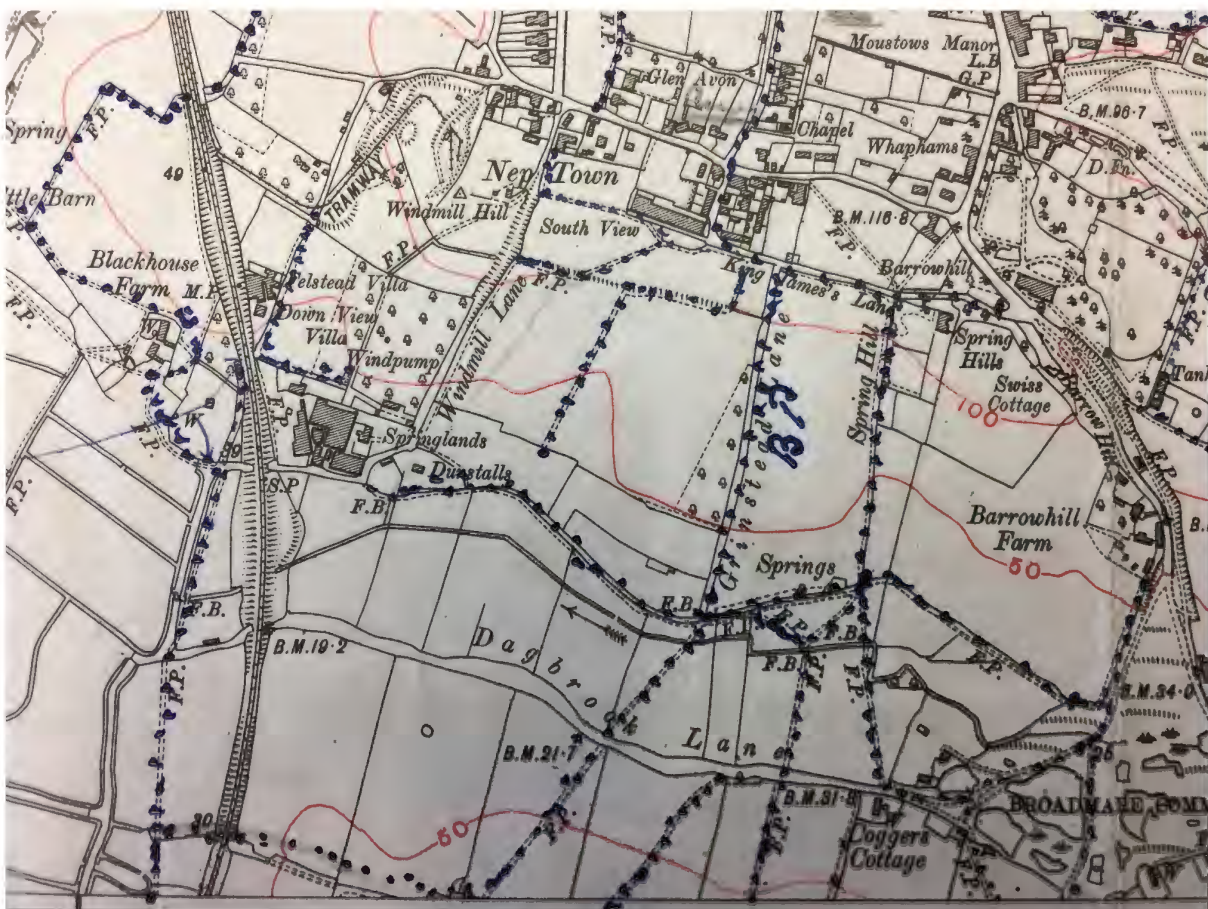
16.1.3 Archive. National Library of Scotland on-line at
<https://maps.nls.uk/geo/find/index.cfm#zoom=5&lat=56.00000&lon=-4.00000&layers=34&b=1&z=1&point=0,0>

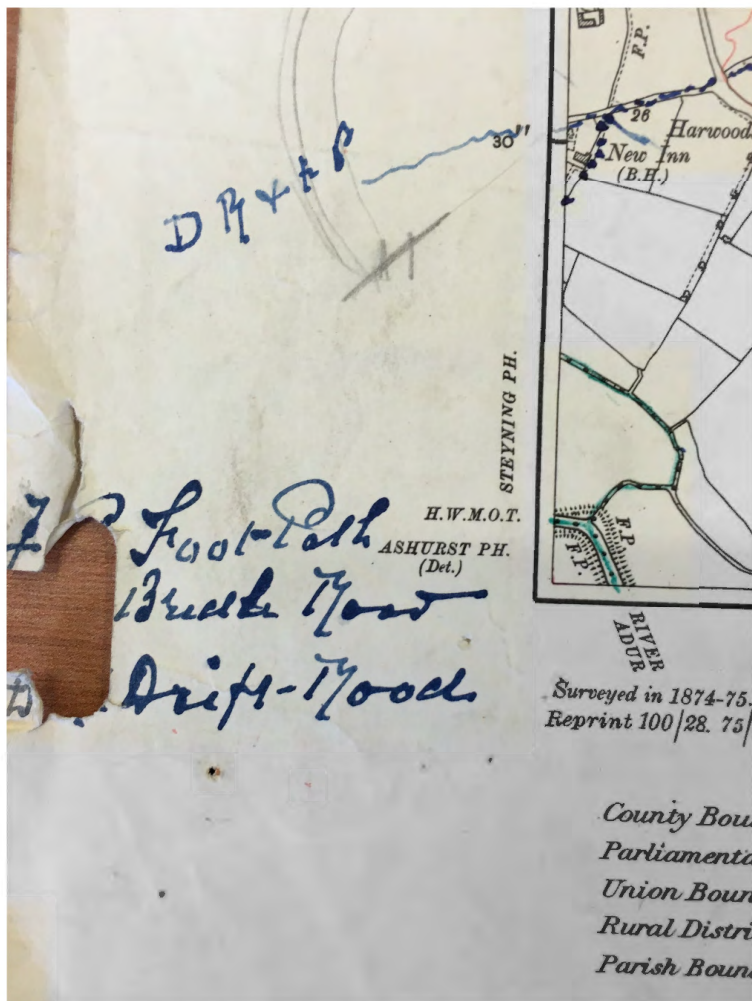
16.1.4 Meaning. Application route Henfield B is shown on the 1902 and 1922 maps as two parallel lines with no colouration. The keys, which are printed on the maps do not enlighten as to what this represents in 1902 and 1922. Footpaths and bridleways do not appear to be shown. The application route is shown in the same manner on the 1944 map but this time the key tells us that this represents a 'Serviceable Road'. It is not shown as being a bridleway or footpath at this time as the key indicates that these are shown with a broken, single line.

16.1.5 Assessment. As the maps were sold to the public that the ways depicted must be promoting use by the public. If the application route had been a private road then during the 40 years of publication of the maps one would have expected there to be a change; perhaps the way being removed from the map. Despite the disclaimer printed on the map that representation of a way on the map was no evidence of a right of way it is most likely that route Henfield B was in use by the public during this period. The 1944 key/depiction indicates that the application route was of higher status than bridleway or footpath at this time.

17. FIRST RIGHTS OF WAY SURVEY AND MAP

17.1 Parish Survey after 1932 Act





17.1.1 Date. c 1932

17.1.2 Relevance. The 1932 Rights of Way Act resulted in District and County Councils to be instructed to mark-up maps of their parish to show rights of way. The maps used were the 3rd Edition 6" Ordnance sheets (Editions 1913-1915).

17.1.3 Archive. The map can be found at WSRO at reference AM796/13/5 Bundle 3. The catalogue note indicates that the maps represent 'First Stage Maps annotated by Parish Councils'. It is located within the broader catalogue heading relating to 'Definitive Rights of Way Maps'. A copy of the whole map is at Appendix 25.

17.1.4 Meaning. Rights of way have been drawn on the map as dotted lines in blue ink. There is no marking on application route Henfield C although alongside the route at its southern end (D-E) and for a short stretch alongside the route near the northern end at G there is a dotted line notation. Application route Henfield B carries no notation except for section A-B across Broadmore Common. Written on the bottom left corner of the map is a legend showing that the parish surveyor has used three abbreviations to distinguish the path type as Footpaths, Bridle Road or Drift Road. Although the map is damaged at this corner these can be seen from the map itself to be FP, BR (or BP) and DR.

17.1.5 Assessment. Both application routes are depicted in the same manner as other roads in the area that carry vehicular rights today. The routes appear not to have been considered to carry lesser rights in 1932 or the notations BR/BP or DR would have been used. However there is no separate distinction for a route that carries bridle plus non-motorised wheeled traffic (today's 'Restricted Byway') so it is possible that the routes may not have carried full

motorised vehicular traffic at this time. The marked section of route Henfield B across Broadmare Common has no path type noted. Whatever rights there were on the common at this time are presumed to pertain also to this roadway.

17.2 Map prepared under the 1932 Rights of Way Act



17.2.1 Date. 1932

17.2.2 Relevance. It is not made clear from the catalogue entry or the map itself but it is likely that this map was produced from the parish surveys described in the previous section. The maps are mounted on card 'tiles' to form a large folding map of West Sussex parishes. The map shows rights of way and the paths appear to be mostly numbered.

17.2.3 Archive. The map is at WSRO, reference number AM 796/13. A larger area of the map is at Appendix 26. The London Gazette is on-line at <https://www.thegazette.co.uk>

17.2.4 Meaning. Rights of Way are shown coloured brown. There is no indication of path status so the type of public access rights cannot be determined for any particular path. The application routes are shown for the most part uncoloured with just section A-B, Broadmare Common, of Henfield B and the east-west section E-F, across the railway, of Henfield C

shown coloured. Four paths shown through Brookside Farm on this map do not appear on the Definitive map today. No information has been found in the London Gazette to advertise any change.

Assessment. Because there is no key we cannot be sure what information is being conveyed. There is no distinction between different types of right of way. Routes that are bridleways and byways today are coloured brown in the same manner as those that are footpaths today. However, both application routes are for the most part depicted uncoloured in the same manner as other roads in the area that carry full vehicular access. It is possible that the map was simply to show the assigned path numbers at that time. There are many rights of way that join Dagbrook Lane. This implies that the lane itself must have public rights at least as great as those paths at this time. That it is not itself coloured implies that it must have been, at this time, part of the road system

18. RAMBLERS SURVEY Early 1950s

18.1.1 Date. Early 1950s

18.1.2 Relevance. Prior to the official survey of the parish's rights of way the Sussex Pathfinders Rambling Club appear to have walked the rights of way in East Sussex parishes. No such surveys have been found for West Sussex.

18.1.3 Archive. WSRO records have been searched.

19. DEFINITIVE MAP

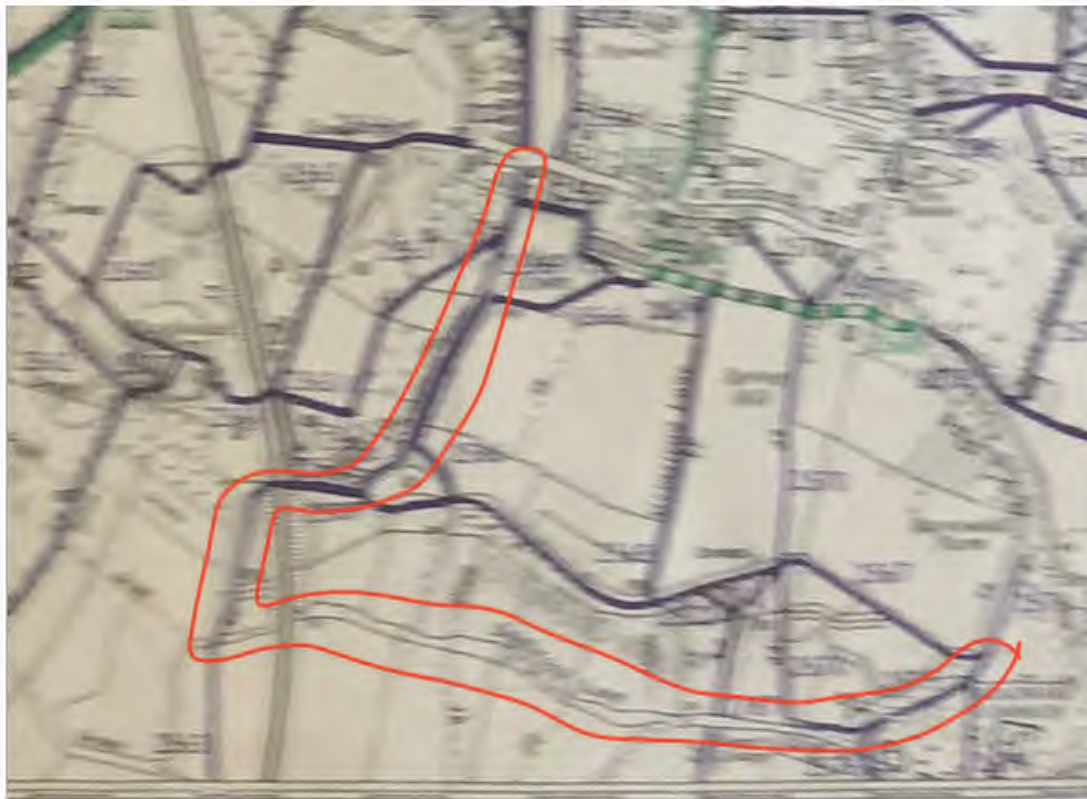
19.1 Definitive Map Survey (after the 1949 Act)

19.2 No parish survey information has been found.

19.3 Draft Definitive Map

The 1948 Act required District Councils to provide County Councils with detail of the paths within their parishes that they claimed were public paths. Draft Definitive maps were then drawn up by WSCC based on this District Council input which in turn had been collated the input from the Parish Councils within the district. No record has been found detailing what other documentation, if any, was consulted. No Draft Definitive map covering the application routes area has been found at WSRO. Objections were to be dealt with before drawing up the final map. Henfield Parish Council kindly provided their minutes for the period. The parish meeting of 19th Jan 1951 indicates that objections from the public were considered (See Appendix 27) but there is no detail. The Parochial Committee Minutes for 1948-Jan 1980 were also consulted but there was no relevant information.

19.4 First Definitive Map



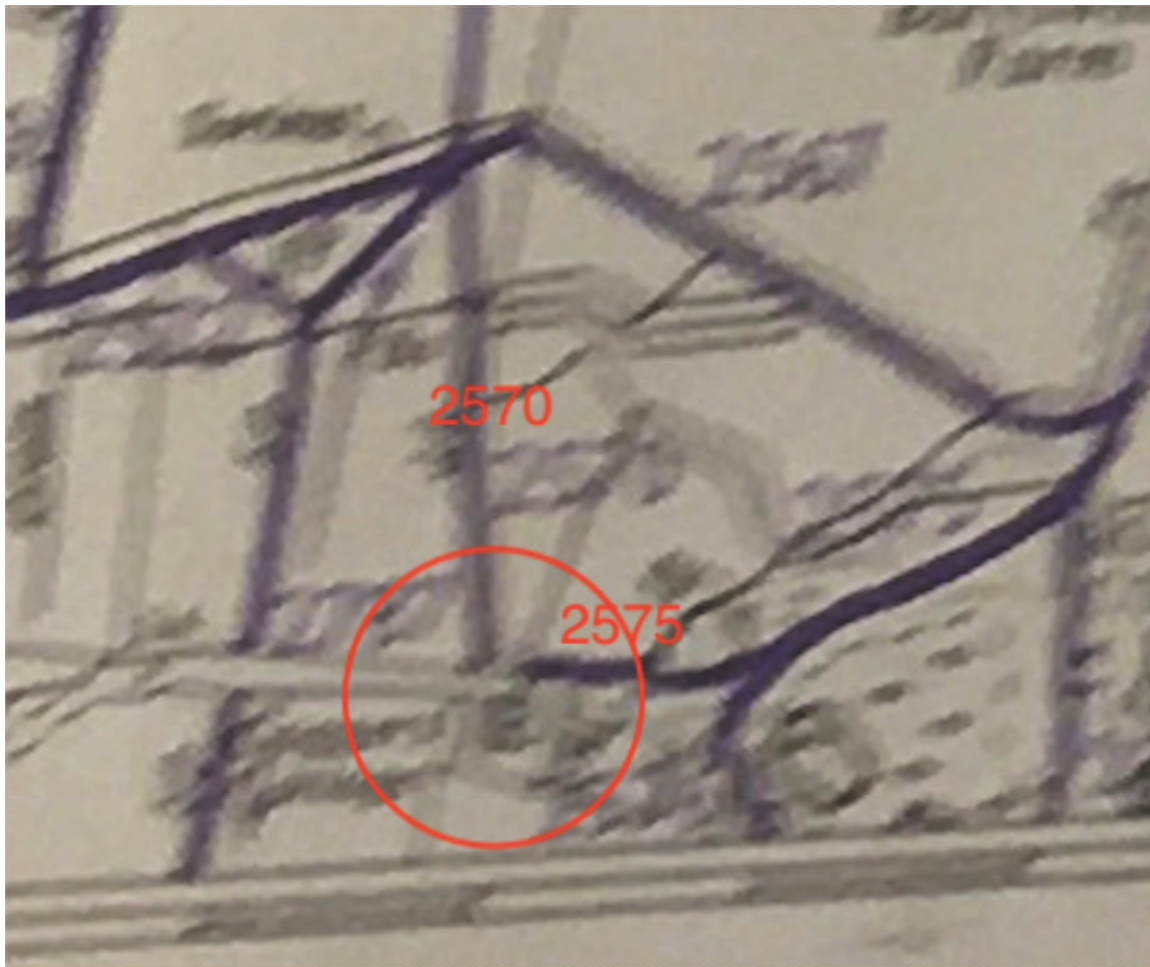
1952

First Definitive map 1952



1970

Revision of first Definitive map 1970



Footpaths at Broadmare Common boundary, point B, do not meet

19.4.1 Date. 1952

19.4.2 Relevance. The 1952 map above shows rights of way that have been drafted as per 19.4 above and accepted by the parish. The 1970 map shows amendments that were made as a result of formal Orders between 5th September 1952 and 1970.

19.4.3 Archive. The first Definitive map, Chanctonbury District 1952, is at WSRO at reference AM 796/2/1. The 1970 revision map is at WSRO reference AM 796/2/2. Excerpts of both showing the application routes are shown above along with a close-up of the path/road junction at point B. Larger sections of the maps showing the application routes in context is at Appendix 27. No information referring to the application routes was found in the Parish or RDC minutes of the time.

19.4.4 Meaning. The application route Henfield B is mostly uncoloured except for section A-B which is coloured purple indicating 'footpath' (see Appendix 27). The application route Henfield C is mostly coloured purple (footpath) except for its southern end between D and E. This is uncoloured on both the first map and the revision but a footpath alongside D-E has been added by 1970.

19.4.5 Assessment. The parish, the district council and the county council agree that application route Henfield C has footpath rights except for section D-E where, by 1970, a footpath runs alongside the application route. Between B and D application route Henfield B is depicted as a road while between A and B explicit footpath rights are assigned. This

footpath joins only with Dagbrook Lane which users would have to traverse in order to reach any other public way. The same is true on today's definitive map – see Appendix 27. The implication is that Dagbrook Lane has public access rights at least as great as the joining public ways. Today, the prevailing rights for horseriders on the public common, by virtue of section 193 of the Law of Property Act 1925, already gives rights for 'air and exercise' over the whole of the common. The judgement by the High Court in 1998 in the "Billson Case" confirmed that right to use on horseback. This includes the track A-B that was awarded FP rights on the definitive map.

20. OWNERSHIP

20.1 Current Ownership

20.1.1 Date. Land registry records were consulted in April 2021

20.1.2 Relevance. The current ownership of the land over which the application route runs can potentially give useful indication of public access rights.

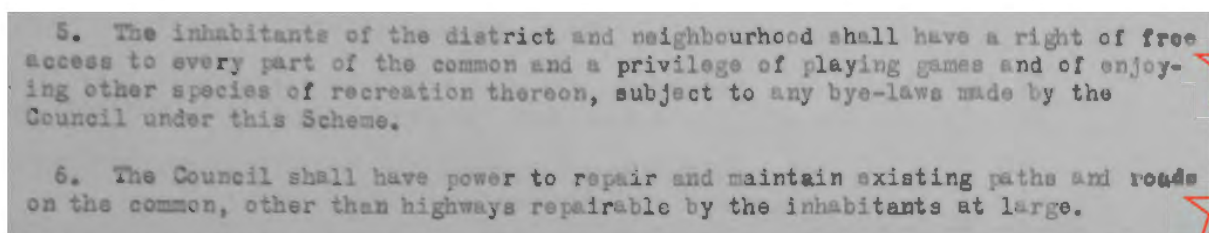
20.1.3 Archive. HM Land Registry - from the map of titles at <https://eservices.landregistry.gov.uk/mapsearch/addressSearch>. The relevant maps are shown in appendices 28 (maps), 29 and 30 (registers). Possessory title definition is on-line at <https://www.gov.uk/government/publications/upgrading-the-class-of-title/practice-guide-42-upgrading-the-class-of-title>.

20.1.4 Meaning. The Broadmare Common end of route Henfield B, between points A and B, is owned by Horsham District Council. Part of Dagbrook Lane from B to a point approximately half way between points C and D is registered as privately owned. The title is said to be 'Possessory'. The .gov.uk website defines this as *"Typically, possessory titles may be granted where the owner claims to have acquired the land by adverse possession. Alternatively, it may be where the owner cannot produce documentary evidence of title to an estate for some reason. These titles are rare"*. The western end of Henfield B and all of Henfield C are unregistered.

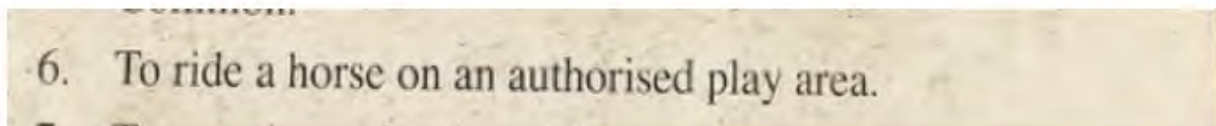
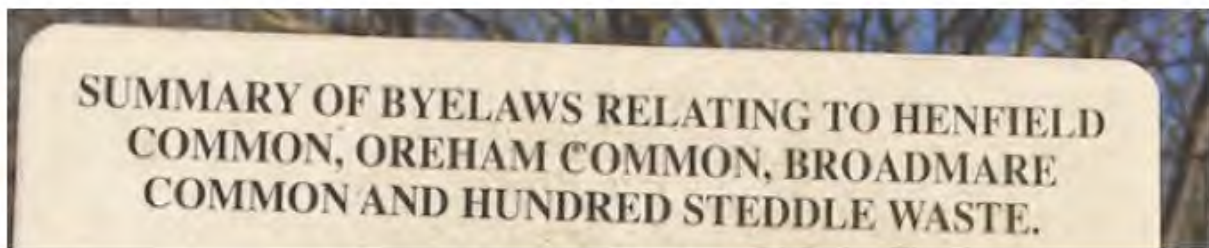
20.1.5 Assessment. That the land that constitutes Henfield C is unregistered contributes to the notion that it is a public way. Likewise that section of Henfield B that is unregistered. It is unclear how/when use of part of the old roadway ceased in order for 12 years of possession to occur. In April 2019 there was an old fence across the lane approximately half way between C and D. Further east, where the Brookside Farm track branches from the lane it was overgrown but not blocked as far as could be seen. On balance it seems likely that the whole of the roadway was unregistered until the possessory title was registered. It is unlikely that there is a person with greater legitimacy of ownership of the lane.

21. BROADMARE COMMON

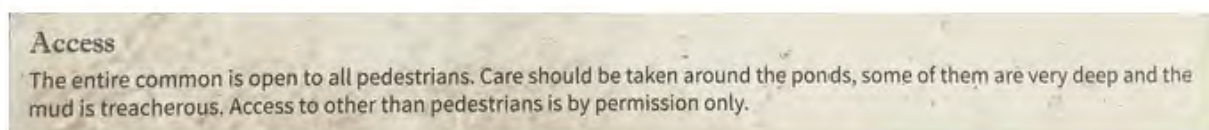
21.1 Scheme and Map of Regulation and current Byelaws



Byelaw:



Information board:



21.1.1 Date. 1947 (Scheme of Regulation); 2019 (Byelaws notice)

21.1.2 Relevance. Broadmare Common was registered in 1967 under the Commons Registration Act 1965. The common is managed by Henfield Commons Joint Committee, a sub-committee of Horsham District Council. The regulations document, drawn up in 1947, details how the common was to be used and maintained including any restrictions and conditions that were to apply. The current bylaws notice indicates to users of the common how the common may be enjoyed today.

21.1.3 Archive. National Archive catalogue number MAF 30/137 details the regulations. The full document is reproduced in Appendix 31. Photographs of the notices on the common are also in this appendix. Also find an extract from WSCC showing the current area of the common hatched red.

21.1.4 Meaning. Item 5 of the regulations indicates that there is "Free access to every part of the common" and that the "The Council" has the power to maintain existing paths and roads on the common, other than highways repairable by the inhabitants at large". Item 9 allows for 'The Council' to make and alter bylaws including those affecting access on the common. Item 10 indicates that the bylaws must be "published on notice boards". The information board says that riding a horse on an authorised play area is not allowed and that access other than on foot is by permission only. The map provided by WSCC shows the whole common hatched red but there is an underlying grey road marked which is the same as other roads in the area, including the A3027. On this map the A2037 is not depicted as being part of the common.

21.1.5 Assessment. The Scheme of Regulation map shows a road across the common between the A 2037 and the eastern end of Dagbrook Lane. Braces and colouration indicate that it is an integral part of the common. The current A2037 road appears integral to the common at this time and is depicted the same as the A-B section of the application route. Section 193 of the Law of Property Act 1925 gave the public right of access for "air and exercise" on urban commons. This was later upheld to include such "air and exercise" on horseback in the judgement *R v Secretary of State for the Environment ex p Billson* (1998). The rights of s193 are preserved by s 15(1) of the Countryside and Rights of Way Act 2000. The current bylaws include a restriction of horse riding 'on an authorised play area'. The

inference is that horse-riding is allowed on other areas of the common which is consistent with the sec 193 provision. In particular, for the purposes of this application, this includes the A-B part of application route Henfield B which is the road. However, somewhat confusingly, the information board suggests that access on the common by other than pedestrians requires permission. It is not clear whether this includes the road. Horsham District Council (owner) and Henfield Commons Joint Committee (manager) were at the time of the applicant's research, unable to shed light on this.

21.2 Common-Land website and DEFRA Magic Map

21.2.1 Date. 1985 (Common-Land); Aug 2021 (Magic Map)

21.2.2 Relevance. The highway across the common is said to be separate from the rest of the common as registered.

21.2.3 Archive. On-line at <https://common-land.com/lands/view/232> and <https://magic.defra.gov.uk/MagicMap.aspx> . Extracts and maps are in Appendix 31.

21.2.4 Meaning. The common-land website says, in its 'About' page, that it is a searchable database of all parcels of common land in England. The data was sourced from Land registry and other records and was originally compiled by DEFRA. The entry for Broadmare Common says that after dispute (no date) the highway was excluded from the registration. However the current representation on the DEFRA magic map on-line system is of the road being an integral part of the common – it has green dots over it as has the rest of the common.

21.2.5 Assessment. The noted dispute indicates an uncertainty as to the nature of the road across the common. This is consistent with the indication of other evidence in this application that the road was part of a continuous east-west public way that would have rights other than those imposed under the Scheme of Regulation for the common. No further information has been found about the dispute. No explanation has been found for the mismatch between the Common-land and DEFRA Magic Map data.

22. CONCLUSION

22.1 The evidence presented in this document suggests that both application routes carry public rights and that those rights are of greater status than that of 'footpath' with which parts of their lengths are assigned.

22.2 The application routes are depicted consistently as through roads on many old maps (Yeakell and Gardner, Gardner and Gream, Greenwood and Greenwood, Mudge. Ordnance Survey). On some maps depiction of lengths of both routes suggests wide, grassed drove roads.

22.3 Ordnance Survey Area Book for the 25inch Ordnance Survey map and Tithe Map/Appportionment evidence supports that both routes were un-owned roads that were more likely than not used by the public.

22.4 A **public** road bridge was built over Windmill Lane (route 100-Henfield C to carry the new rail track in 1859.

22.5 The Finance Act 1910 map evidence supports that both application routes were public roads though Henfield B could be considered limited to that of Drove Road because the route is not a white road across the common.

22.6 A droveway or driftway (ie a route for driving animals) must be a carriageway or bridleway (Mason v Suffolk (1979)).

22.7 The descriptor 'Occupation Road' is sometimes argued as meaning that a road was for private use only. Analysis of the tithe map and apportionments show that this cannot be the case for Henfield. All occupation roads listed in the Tithe records are un-owned and most carry public rights today.

22.8 Planning Inspectorate consistency guidelines Section 12.43 "Other post 1800 maps" (page 11) says "*Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status*".

22.9 Planning Inspectorate Consistency Guidelines Section 12.35 "Evidential Weight" considers the Courts determination that OS maps do not provide evidence of rights of access. It concludes that '*Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence*".

22.10 The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and another* (2012) EWCA Civ 334 Levinson LJ said, at paragraph 22

"In the nature of things where an enquiry goes back over many year (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in R v Exall (1866) 4 F & F 922:

'It has been said that circumstantial evidence is to be considered as a chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.'

22.11 There may be possible, but unlikely, explanations which might be used to reason away individual pieces of evidence for these routes. But there is no explanation that can dispute what the **sum** of the evidence in this statement shows other than that the application route carries higher rights than currently recorded

22.12 The evidence detailed in this application suggests many independent 'strands' that show that the application route has at least bridleway rights

23. REQUEST

The applicant considers that the evidence strongly supports that the two application routes have at least bridleway status.

The applicant requests the surveying authority to add the route to the definitive map as a bridleway. It is arguable that the evidence suggests that carriageway rights exist over the route, however due to the current construction of the law and the proposed extinguishment of unrecorded rights in 2026, the application is made for bridleway status. The applicant requests that the surveying authority should make an order for Restricted Byway status if they consider that the evidence merits this.

Recorded width should be pro rata that depicted on the 25inch OS maps.

APPENDICES

-  Appendix 1 Budgen map
-  Appendix 2 Excerpt from Kingsley's book Printed Maps of Sussex for Yeakell and Gardner map
-  Appendix 3 Yeakell and Gardner map
-  Appendix 4 Excerpt from Kingsley's book Printed Maps of Sussex for Gardner and Gream map
-  Appendix 5 Gardner and Gream map
-  Appendix 6 Greenwood and Greenwood map and key
-  Appendix 7 Mudge map of Hampshire and Sussex
-  Appendix 8 1st Edition OS 1inch map 1813
-  Appendix 9 Letter from Colby stating convention for OS map private road depiction
-  Appendix 10 OS 1 inch maps from 1895
-  Appendix 11 OS 6 inch maps
-  Appendix 12 1st Edition OS 25inch map 1874-76
-  Appendix 13 Tithe Records
-  Appendix 13a Analysis of Apportionments mentioning roads and lanes
-  Appendix 14 Object Names Book - Henfield B&C
-  Appendix 15 Tithe records - occupation road parcels as they are today
-  Appendix 16 (date corrected) Highway Surveyor, Adcock, Road Classification Report 1890
-  Appendix 17 (date corrected) W H Bowen (surveyor) map of road Classifications 1915
-  Appendix 18 Road Bridge at Windmill Lane
-  Appendix 19 Railway Records - Dorking Brighton and Arundel
-  Appendix 20 London Brighton and South Coast Railway 1857
-  Appendix 21 – intentionally blank.docx
-  Appendix 22 Parham railway proposal
-  Appendix 23 Inland Revenue records for Finance Act 1910
-  Appendix 24 Bartholomew maps
-  Appendix 25 1932 Act Parish Rights of way annotated maps
-  Appendix 26 WSRO 'wall' map of Rights of Way 1932
-  Appendix 27 Definitive map
-  Appendix 28 Ownership
-  Appendix 29 RegisterWSX262751.pdf
-  Appendix 30 RegisterWSX299396.pdf
-  Appendix 31 Broadmare Common