

# AGENDA

## Kent County Council

### REGULATION COMMITTEE MEMBER PANEL

**Tuesday, 10th June, 2008, at 2.00 pm**  
**Waterton Lee - Invicta House, County Hall,**  
**Maidstone**

Ask for: **Andrew Tait**

Telephone **(01622) 694342**

*Tea/Coffee will be available 15 minutes before the meeting*

#### **UNRESTRICTED ITEMS**

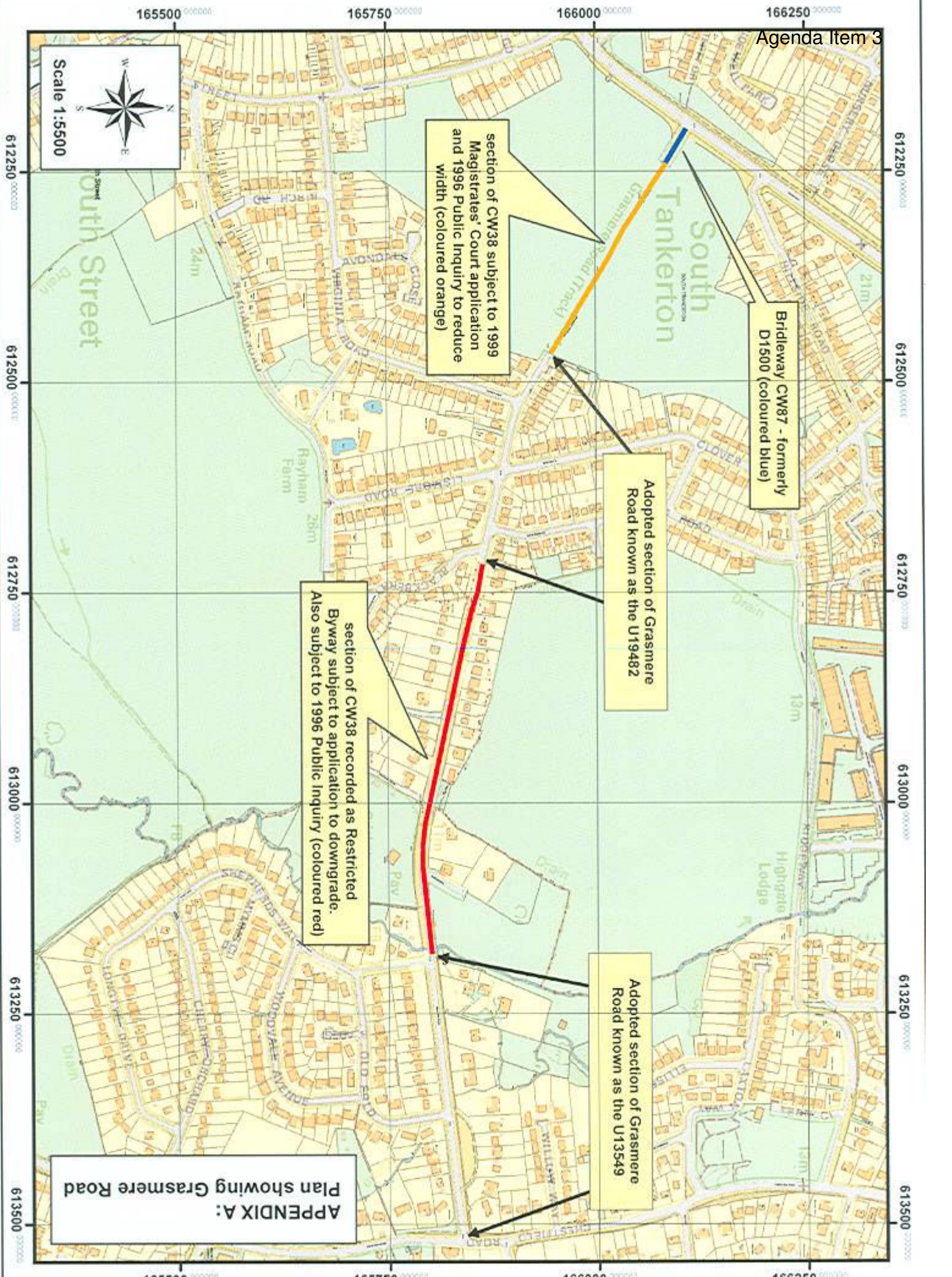
*(During these items the meeting is likely to be open to the public)*

1. Membership - Mr A D Crowther (Chairman), Mr I S Chittenden, Mr I T N Jones, Mr R A Pascoe and Mrs P A V Stockell.
2. Declarations of Interest by Members for items on the agenda for this meeting.
3. Application to downgrade part of Restricted Byway CW38 (known as Grasmere Road) at Chestfield to public footpath status. (Pages 1 - 18)
4. Other Items which the Chairman decides are Urgent

Peter Sass  
Head of Democratic Services and Local Leadership  
(01622) 694002

**Monday, 2 June 2008**

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- 1891 In a conveyance dated 3<sup>rd</sup> December 1891, the land over which CW38 runs was sold to John Frederick Hodgson. The conveyance shows Grasmere Road as a track of about 10ft and the deed of mortgage in the same year also shows it in this way
- 1891 A proposal to develop the area for residential purposes was put forward and an estate layout plan shows the track as 'Sea View Road'
- 1910 The development proposal was not successful and on 14<sup>th</sup> January 1910 the mortgagees sold the residue of the estate to the Bartlett Family of Manor Farm. This included Grasmere Road which had not been made up and remained undeveloped private land
- 1921 Land in the area (which formed part of Chestfield Farm) not including Grasmere Road was acquired by Mr. G. Reeves who planned to develop it as a residential estate.
- 1924 Mr. Reeves decided that it would be beneficial to him to create a private bus route from Chestfield to South Street and leased from the Bartlett family a strip of land 35ft wide along the line of Grasmere Road
- 1937 Part of the land forming Grasmere Road was purchased by KCC in connection with the construction of the Thanet Way. The bus service came to an end and use of the land ceased, with control reverting back to the Bartlett Family
- 1953 Whitstable Urban District Council survey shows the route as a 'Cart Road Footpath' and it is recorded on the subsequent Definitive Map with this status
- 1955 Road name changed from 'Sea View Road' and 'New Chestfield Road' to Grasmere Road
- 1970 Objections made (five in total) at the special review to the depiction of the route as a footpath.
- 1986 Complaint made by Mrs. Wilks (local rights of way activist) regarding the alleged encroachment of properties onto Grasmere Road. At the Highways and Public Transport sub-committee on 8<sup>th</sup> December 1986, the County Council resolved not to take any action.
- 1987 Application made by Mrs. Wilks to modify the Definitive Statement by recording a width of 36ft for the section of Grasmere Road between the Thanet Way and Virginia Avenue. Application is rejected by KCC on 13<sup>th</sup> July 1990 on the grounds that although a width of 35ft was set aside to form the route now known as Grasmere Road, the proposed development never took place as planned and the relevant conveyances only reserved a right of way on foot over a strip of land approx. 10ft wide
- 1995 Definitive Map Modification Order dated 13<sup>th</sup> March 1995 is made by KCC to reduce the width of the greater part of CW38 from 50ft to 10ft
- 1996 Public Inquiry held into 1995 DMMO. Inspector refuses to confirm the Order on the grounds that there is no cogent evidence to justify a reduction in the width of the path
- 1999 Application made to the Magistrates' Court to reduce the width of Grasmere Road (the south Tankerton section) to 5 metres, downgrade the D1500 to Bridleway status and request the removal of any public vehicular rights which may exist (RUPP status meant this was uncertain). Mrs. Wilks objects on the grounds that route should be a Byway Open to All Traffic. Court agrees to the downgrading and reduction in width but declines the request for the removal of vehicular rights.
- 2003 Application made by Mrs. A. Johnson (resident of Grasmere Road) for downgrading to Public Footpath status
- 2006 Classification of 'Road Used as a Public Path' is changed to 'Restricted Byway' by the Countryside and Rights of Way Act 2000



The Wildlife and Countryside Act 1981 requires that the County Council must, in reaching its conclusion, take account of all available evidence. I have therefore interrogated the following historical maps:

**Ordnance survey drawings (circa 1800)**

These original large-scale drawings were produced by the then Board of Ordnance which was commissioned to produce a military survey of the vulnerable south coast in response to the threat of invasion from Napoleonic Armies. The survey of Kent was first to go ahead and began in 1795. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. These maps do not provide any indication of status, but indicate the physical existence of the routes shown on the ground at that time.

In this case, the section of CW38 subject to this application is not shown on the map covering Boughton Street, Whitstable and Herne Bay (survey date 1797).

**Mudge's Map (circa 1801)**

This map was based upon the Ordnance Survey drawings and produced by Colonel Mudge in the early 19<sup>th</sup> century in an attempt to map all routes capable of use by the military and their equipment in the event of invasion. The purpose of the map was to record all routes which were available for use but no differentiation was made between public and private routes.

In this case, the section of CW38 in question is not shown.

**Tithe Map (circa 1840)**

Tithe Maps were produced by the Tithe Commissioners, under the 1836 Tithe Commutation Act, to record all parcels of land that generated titheable produce. The Tithe Maps were concerned solely with identifying titheable land but nonetheless can sometimes provide useful supporting evidence about Public Rights of Way.

The Tithe Map of Whitstable (dated 1842) does not show the route in question.

**First Edition Ordnance Survey 1:2500 Map and Book of Reference (circa 1860)**

The First Edition 25" Ordnance Survey Maps and accompanying Area Reference Books were produced by Ordnance Survey in an effort to map the entire country at 1:2500 scale. They were essentially topographical surveys and were not concerned with landownership and rights, but do provide useful information as to the existence of the routes on the ground at that time. The value of the First Edition maps is that they were the only maps produced by the Ordnance Survey not to have included a disclaimer as to the accuracy of the information shown.



The First Edition OS Map for Whitstable does not show the area in question as fields and does not depict any discernable trackway along the section of CW38 in question. There is, however, a footpath shown running to the rear of properties in Grasmere Road in a generally westerly direction along a section of what is now a formally adopted section of Grasmere Road.

### **Third Edition Ordnance Survey Maps (County Series)**

The County Series Maps were produced as a second revision to the original First Edition maps.

The County Series Map for Kent (surveyed 1868, revised 1907) shows the area in a similar way to the First Edition OS map but instead of showing the western section as a footpath, shows it as Sea View Road (presumably to reflect the proposed development). However, it is of no assistance as the section of CW38 subject to this application is not shown.

### **Bartholomew's Revised 'Half-inch' Contoured Map - Sheet 10: Kent (dated 1945)**

Bartholomew Maps were produced privately as leisure maps. Once again, these maps do not distinguish between public and private routes and carry a disclaimer stating 'the representation of a road or footpath is no evidence of right of way', but can provide useful information regarding the existence, and in some cases the condition, of the route on the ground. Routes are shown as one of five categories; recommended through routes; other good roads; serviceable roads; other roads and tracks; and footpaths and bridleways.

Bartholomew's Map does not show the section of CW38 in question

### **Whitstable Urban District Council Map (1951)**

In consequence of the National Parks and Access to the Countryside Act 1949, County Councils were required to undertake a survey of '*all lands in their area over which a right of way... [was] alleged to subsist*' and then to prepare a draft map showing on it those footpaths, bridleways and roads used as public paths which the County Council as Surveying Authority considered to be Public Rights of Way. In practice, the initial surveys were undertaken by the local Parish (or, where applicable, Urban District) Councils who were required to call a Meeting to consider the information to be provided and who then submitted maps and statements showing the alleged rights of way within their administrative area.

The Whitstable Urban District Council Map was produced by Councillor W. Harvey and Mr. E. Uden (Deputy Surveyor) who walked and surveyed all the routes shown in 1951, and produced the map and accompanying statement (a copy is attached at **Appendix D**). The map shows all of the paths recorded colour-coded according to their perceived status:

- '*Paths believed to be public*' shown as a purple solid line
- '*Paths where there is reasonable doubt*' shown as a purple dashed line
- '*Cart (or carriage) roads or bridle roads*' shown as a turquoise solid line
- '*Road used as a public path*' shown as a turquoise dashed line



The map shows the whole length of Grasmere Road between the Thanet Way and Chestfield Road marked with a turquoise dashed line which refers to the route being a Road Used as a Public Path (RUPP). A small section of Grasmere Road to the west of the Thanet Way (not subject to the application) is shown with a solid turquoise line and therefore classified under the heading of 'cart (or carriage) roads or bridle roads'.

The accompanying statement classifies all the routes shown on the map as one of three types of status:

- FP – 'Footpath'
- CR – 'Cart (or carriage) road or bridle road'
- CRF – 'Cart (or carriage) road or bridle road, mainly footpath'

The whole length of Grasmere Road is shown in the statement with the status of 'CR' and named as 'New Road Chestfield' with a width of '16ft defined by fencing of adjoining properties'. The description provided states '*...after crossing to the east side of Thanet Way, the road continues in a south-easterly direction crossing in turn Virginia Road, Lismore Road and Richmond Road until it reaches the entrance gate to a cricket ground, after which it continues in an easterly direction, passing over Swalecliffe Brook by means of a roughly constructed bridge near the northern end of Shepherds Walk. From this point the road continues in an easterly direction... The greater part of this path is incorporated in an unadopted and unmade estate road, the overall average width being approximately 50ft.*

#### **Definitive Map (Relevant date 1<sup>st</sup> December 1952)**

The National Parks and Access to the Countryside Act (1949) required County Councils to survey all land over which a Public Right of Way was alleged to subsist and prepare a map showing these routes. The first Definitive Map and Statement of Public Rights of Way for the County of Kent was published with a relevant date of 1<sup>st</sup> December 1952.

CW38 appears on the original Definitive Map as a Cart Road Footpath.

#### **Review of survey (1970)**

Following the publication of the Definitive Map in 1952, the County Council, under the National Parks and Access to the Countryside Act 1949, had a duty to produce a revision of the original map. Consequently, and following broad consultation, the County Council published a Draft Revised Map with a relevant date of 1<sup>st</sup> October 1970.

The Draft Revised Map of 1970 shows CW38 as a Footpath.

Objections were received to this depiction from the following:

- The British Horse Society (Mrs. H. Inderwick) on the grounds that '*the society consider that this route is a bridleway*';
- The Meopham and District Footpaths Society (Mrs. P. Wilson) who claimed that '*this route should be retained as a byway open to all traffic*'
- The West Kent District Association Cyclists Touring Club (Mr. P. Scott) on the grounds that '*this route should be retained as a byway open to all traffic but if*



*evidence of vehicular rights is found to be insufficient then it should be reclassified as a bridleway'*

- Mrs. P. Kirk (a member of the British Horse Society) on the grounds that the path '*should have been reclassified as a byway or a bridleway*'
- Mrs. A. Wilks (local Rights of Way activist) on the grounds that the path '*should be a bridleway. This has always been heavily and regularly used by horse riders and still is. It is known as Grasmere Road and is a broad track*'.

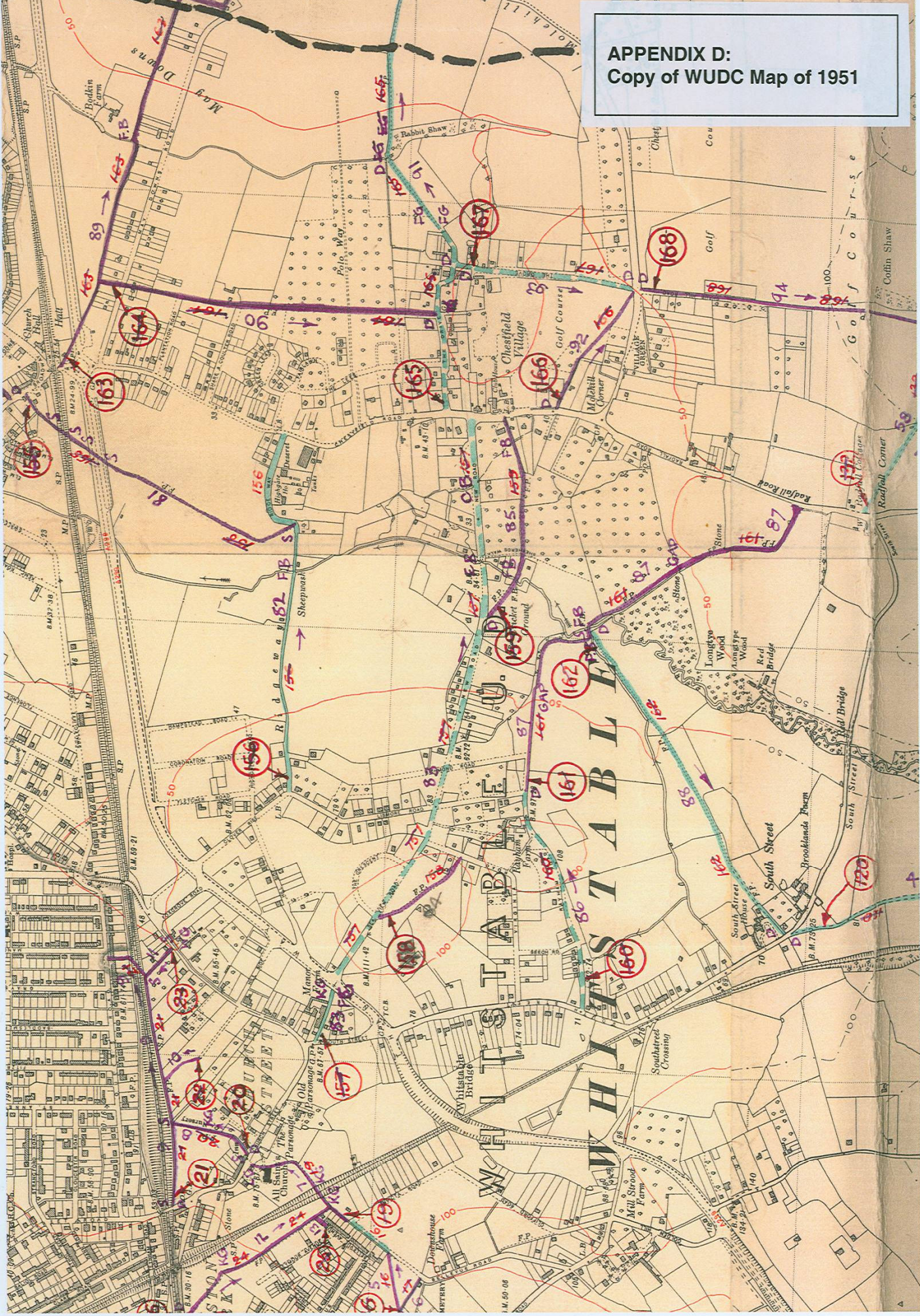
In cases such as this one, where objections were received to the showing of a route in a particular way, the intention was that public local Inquiries would be held in order to ascertain the true status. However, in Kent the review was abandoned in February 1983 before the status of a large number of paths could be established (including this one) and, therefore the claimed route simply reverted back to a RUPP (now Restricted Byway) on the Definitive Map.

### **Definitive Map (Relevant date 1<sup>st</sup> April 1987)**

The current Definitive Map of Public Rights of Way shows CW38 as a Restricted Byway.



APPENDIX D:  
Copy of WUDC Map of 1951









Ref. No. (1)	Status (2)	Name of destination (3)	Width & circumstances verifying such width (4)	Starting Point (5)	Description of Path and Main Features (6)	Reasons for assuming that path is public (7)	Condition and means of passage (8)
157	C.R.	New Road Chestfield	16'0" defined by fences of adjoining properties.	South Street from south-west corner of Manor Farm.	Road proceeds in an easterly direction following the southern boundary of Manor Farm until it reaches the western side of Thanet Way where there is a five-bar gate and a kissing gate. After crossing to the east side of Thanet Way, the road continues in a south-easterly direction crossing in turn Virginia Road, Lismore Road and Richmond Road until it reaches the entrance gate to a cricket ground, after which it continues in an easterly direction, passing over Swalecliffe Brook by means of a roughly constructed bridge near the northern end of Shepherds Walk. From this point the road continues in an easterly direction, passing over a stream by means of a second roughly constructed bridge near the south-eastern corner of land O.S. (1938 Ed.) Ref. No. 863 and terminates at Chestfield Road opposite the property known as "East Houses".  The greater part of this path is incorporated in an unadopted and unmade estate road, the overall average width being approximately 50'0".	This road has been used from time immemorial. The road and bridges are maintained by the Estate Developers.	Roughly metalled. Gates in fair condition, but bridges in a very poor state of repair.
158	F.P.	To Virginia Road	Undefined	New Road Chestfield approx. 200 yards east of Thanet Way.	Path proceeds in a south-easterly direction across cultivated land and terminates at Virginia Road at a point approx. 100 yards south of New Road, Chestfield, where there is a clubbing bar.	This path has been in use since about 1890.	Grass track.
159	F.P.	To Chestfield Road	4'0". Well defined for majority of its length by fences of adjoining properties.	New Road Chestfield from gate of Cricket Field.	At the commencement of this path there is a finger post worded "Public Footpath to Chestfield Village and Shrub Hill Golf Course". Path proceeds in a south-easterly direction across the cricket field to Swalecliffe Brook where there is a footbridge and continues in an easterly direction to the south-western corner of the property known as "The Gables", Chestfield Road, where it follows the southern boundary of this property, crossing a shallow stream by means of a second footbridge, and terminating at the south-eastern corner of "The Gables" at Chestfield Road opposite the Golf Club House.	This footpath is referred to in an agreement dated 28/3/1931 between Geo. Reeves, Esq. and the Parish Councils for the remainder of its length. Finger post and bridges in fair condition.	Grass track across cricket ground and roughly metalled for the remainder of its length. Finger post and bridges in fair condition.
160	C.R.	Rayham Road	10'0". Well defined by fences of adjoining properties.	South Street between the properties known as "Rayham Cottages" and "Rayham Villa".	Road proceeds in a slightly north-easterly direction as far as the southern boundary of Rayham Farm after which it continues in an easterly direction, terminating at the southern end of Lismore Road where there is a finger post pointing east and worded "Public Footpath to Radfall Corner and Blean Woods".	This is an ancient road which has been in use from time immemorial.	Roughly metalled.
161	F.P.	To Radfall Corner and Blean Woods	4'0" to 5'0" well worn track.	Lismore Road, southern end.	From the finger post referred to in road No. 160, this path proceeds in an easterly direction following the northern side of the hedge which forms the northern boundary of field O.S. (1938 Ed.) Ref. No. 1024 to a point approx. 200 yards from its north-western corner where there is a gap in the hedge. The path passes through this gap follows the hedge and its south side to the north-eastern corner of the field and then proceeds in a southerly direction to a shallow stream which is crossed by means of a footbridge. At this point there is a step-stile and a finger post with three arms pointing north, south-west and south-east, and worded "Public Footpath to Highgate and Glover Rise", "Public Footpath to South Street" and "Public Footpath to Radfall Corner" respectively. From the south side of this footbridge the path proceeds in an easterly direction to the Swalecliffe Brook which is crossed by means	This footpath has been used from time immemorial by the public. That section from the junction with path No. 162, and the south-eastern corner of Longbye Wood (which is situated on the Chestfield Estate), is referred to in an Agreement dated 28.3.1931 between Geo. Reeves, Esq. and the Parish Councils of Whitstable-own - Seasalter and Swalecliffe.	Grass track. Overgrown with bushes in many places. Finger posts in good condition. Footbridge in poor state of repair.



## Parish Council Minutes

Extracts from the Whitstable cum Seasalter Parish Council minute book for the period 1911 to 1932 were provided by the applicant and a sample has been verified with the original records to ensure accuracy. The pertinent extracts are as follows:

- **12/08/1915:** *'The Chairman also stated that he had received a complaint about the footpath leading from Church Street to Chestfield. Mr. Bartlett, the occupier of the land, had ploughed up the path close to the ditch running alongside the Tankerton Golf Links which made it very unsafe for pedestrians...'*
- **14/09/1928:** *'The Chairman reported that he had inspected the following paths at Chestfield with a view to placing direction boards... the footpath opposite the pond leading to New Chestfield Road was open and it was better not to put a notice there at present...'*
- **20/02/1929** under the heading 'New Chestfield Road': *'Councillor Bartlett said that since the making of the New Chestfield Road, it had absorbed the Public Footpath leading from Church Street to Chestfield and as the road was marked Private Road, it had been observed that the public appeared to have doubts as to there being a public right of way. Councillor Bartlett said that if the Council would supply a similar direction post as at Chestfield, he and his brother would bear the cost of fixing and painting. Councillor Mitchell proposed and Councillor Goodwin seconded that a direction post be supplied, marked on both sides in 2" letters 'Public Footpath to Chestfield and Herne' and that Messers Bartlett be thanked for their offer of fixing it. Motion Carried'*

An extract from the Minutes of the Public Works Committee of Whitstable Urban District Council recording a meeting held on 25<sup>th</sup> January 1955 states, under the heading 'Alteration of names of streets – Chestfield', *"The surveyor submitted letters from residents requesting consideration be given to the renaming of roads in Chestfield. Resolved – (a) that the Council be recommended to make an Order under section 18 of the Public Health Act 1925 altering the name of that part of the road known as New Road, Chestfield, extending from Chestfield Road to its junction with Clover Rise and that part of the road known as Sea View Road, extending from its junction with Clover Rise to Thanet Way, to 'Grasmere Road'; (b) that the Council be recommended to include in the above Order the alteration of the name of that part of the road known as The Drove, extending from its present junction with The Drive to Molehill Road, to 'The Drive'; and (c) that the necessary notices under the said section be posted on each end of the parts of the roads affected"*. At a subsequent meeting it was recorded that two objections had been received to the renaming and it was resolved that no further action be taken regarding the renaming of The Drove. However, we now know that the proposed re-naming in relation to Sea View Road and New Chestfield Road did take place.

## Various Conveyances made during the 1920s

A conveyance dated 23<sup>rd</sup> October 1925 made between Mr. G. Reeves and Ms. A. Garner concerning a property known as 'The Briars' refers to *'all that piece or parcel of land... abutting to the New Chestfield Road... together with the right at all times thereafter in common with all or persons who had or might thereafter have the like right on foot or with private motor cars only to use said New Chestfield Road...'*



A conveyance dated **5<sup>th</sup> March 1927** made between Mr. George Reeves and Mr. J. Wood concerning freehold land forming part of the Chestfield Manor Estate and '*abutting on the south side of the New Chestfield Road in the parish of Whitstable-cum-Seasalter...*'. The conveyance states that the land in question shall '*not for a period of at least seven years be used for any purpose other than a Sports Ground. Provided always that should the Local Authority at any time during the said term of seven years serve upon the Frontagers of the said New Chestfield Road Notices of the intention of the said Authority to take over the said Road then and in such case the Purchaser shall be at liberty to sell such portion of the said land as abuts on the said Road for a depth of One Hundred and Thirty feet provided nevertheless that sufficient land extending from the said Road through the centre of the piece of land hereby assured be retained for the purpose of making a road of the uniform width of thirty feet*'. The plan attached to the conveyance shows New Chestfield Road (now Restricted Byway CW38) as a fairly substantial road (as opposed to a simple track) with a width of between 30 and 50ft and a directional marker stating 'to Whitstable'.

A conveyance dated **2<sup>nd</sup> November 1928** made between Mr. G. Reeves and Mrs. C. Milliner concerning a property known as 'Cavendish' refers to '*all those two plots or pieces of land... abutting on a new road called or intended to be called New Chestfield Road... with the right at all times thereafter for the purchaser and persons deriving title under him in common with all other persons who had or might thereafter have the like right at all times thereafter by day or by night and for all purposes connected with the use or occupation of the premises thereby agreed to be sold to go pass and return along and over the private road known as New Chestfield Road... the purchaser and persons deriving title under him paying his or their due proportion with such other users as aforesaid of expense of maintaining said road until same should be taken over by local authority*'.

A conveyance dated **November 1930** made between Mr. G. Reeves and Ms. M. Witherden concerning a property known as 'Seaward View' refers to '*all that piece or parcel of land... abutting on a new road called or intended to be called the New Chestfield Road...with the right at all times thereafter for the purchaser and her successors in title and assigns in common with all other persons who have or may thereafter have the like right by day or by night and for all purposes connected with the use or occupation of the property thereby conveyed to go pass and return along and over the private road known as New Chestfield Road... the purchaser, her successors in title and associations from time to time paying her or their due proportion with such other users as aforesaid of the expense of maintaining the said road until same should be taken over by the District Council or other local authority*'.

### **1926 Agreement regarding proposed new drainage scheme**

In 1926, the landowner (Mr. G. Reeves) requested that the Whitstable Urban District Council provide water mains and house connections by virtue of the Whitstable Water and Improvement Act 1906 and other Acts.

The applicant has submitted this document in support of her application on the basis that the agreement shows that the route was never a public highway and an agreement with the landowner was required for the provision of utility services.



## 1931 Dispute resolution agreement

In 1931 it appears that an issue arose with regard to the obstruction by the landowner (Mr. G. Reeves) of a route in the centre of Chestfield which the Whitstable cum Seasalter Parish Council claimed was a public right of way. It was eventually agreed by both parties that, in the absence of an authoritative map showing the public rights of way over the large area of land owned by Mr. Reeves, it would be *'desirable in public interest that all differences of opinion respecting the rights of way on the said Estate of the Owner should be amicably adjusted and that a map should be prepared to show all the public rights of way upon the said Estate'*.

The matter was referred to a national organisation, then known as the Commons, Open Spaces and Footpaths Preservation Society (now the Open Spaces Society), for arbitration and following investigation the Society identified nine paths which it considered to be Public Footpaths. The decision of the Society was to be final and the agreement was signed by the landowner and the Parish Councils of Whitstable cum Seasalter and Swalecliffe. The agreement is considered as strong evidence of status at that time and was used as the basis for the reclassification of RUPPs CW29C and CW70A nearby as Public Footpaths.

Mention is made in the agreement of a path in the vicinity of Grasmere Road; it is described as *'Public Footpath extending between G and H in the parish of Whitstable cum Seasalter and leading from a point immediately opposite Balsler Street Farm in a westerly direction or towards Church Street Whitstable'*. However, on closer inspection of the map, it is evident that this path does not refer to Grasmere Road itself. This is illustrated by the maps provided at **Appendix F**: the first map shows an Ordnance Survey produced in around 1907 and appears to be the base for the map accompanying the 1931 agreement; the second map is a copy of that included in the agreement which shows the depiction of the path between G and H described above; the final map is a copy of the original Definitive Map (1952) from which it is clear that the footpath referred to in the agreement is in fact Footpath FP39 and not Grasmere Road (shown as CRF38). This agreement is therefore of no value in determining the status of Grasmere Road.

## Aerial photography (1949)

The earliest available aerial photography dates back to 1949, which is just two years prior to the route being surveyed as part of the Whitstable Urban District Council map. An enlarged copy of the relevant aerial photograph from this date (copied at +400% of the original) is attached for reference at **Appendix G**. The photograph shows Grasmere Road as clearly defined route of a generally broad (albeit varying) width. Although it provides clear evidence of the existence of the route on the ground at that time and indicates that the route was wide enough, at that time, to accommodate vehicles, the aerial photograph does not assist in determining the status.

## Highways Inspectors Map (1953)

These maps were prepared by the County Council's Highways Inspectors during the early 1950s showing routes which fell within their jurisdiction. These routes are colour-coded on the map depending upon their classification: for example, 'trunk roads and



first class county roads' were shown with a solid red line. Uncoloured routes on these plans would not have come under the responsibility of the County Council's Inspectors.

In this case, the Chestfield section of CW38 is shown uncoloured indicating that it was not maintained by the County Council. However, the map also shows all but the main roads in the centre of Whitstable in the same manner suggesting that these would have been the responsibility of the Whitstable Urban District Council rather than the County Council.

A handwritten annotation on the map reads '*approach roads to A299 [Thanet Way] marked in blue. These are repairable by KCC*'. A short section of Grasmere Road leading to the Thanet Way is shown coloured blue and marked as the D1500. Several other roads which are today adopted highways maintainable at the public expense (e.g. South Street and Hillside Road) are shown in the same manner.

### **Chestfield Informal District Plan (adopted March 1975)**

The Chestfield Informal District Plan was prepared by the County Council for the purposes of planning and development control. It was a non-statutory document and had no legal effect.

The map accompanying the District Plan shows Grasmere Road depicted with a symbol which indicated that it was considered to be a Public Footpath. I do not find this surprising since the District Plan was prepared at the same time as the 1970 Review of the Definitive Map which, for reasons already explained above, showed Grasmere Road as a Footpath. The District Plan was therefore only reflecting the public rights of way information available at the time, and indeed we know that there were objections to the depiction of Grasmere Road as a Footpath on the Review Map.

The District Plan also includes other inaccuracies; for example, mention is made of a field to the north of Grasmere Road having been declared as Common Land. In fact, whilst an application was made and the area provisionally registered, the application was withdrawn and the land never finally registered as Common Land. Therefore, the District Plan must be treated with some caution when referring to it outside of the context for which it was prepared and intended; its purpose was to assist with planning and development control matters, not to provide a definitive legal record of all features within Chestfield parish.

### **Definitive Map Modification Order (1995) and subsequent Public Inquiry (1996)**

In 1986, local rights of way enthusiast Mrs. Wilks complained to the County Council that neighbouring properties had encroached onto the width of Grasmere Road. The matter was reported to the County Council's Highways and Public Transport sub-Committee on 8<sup>th</sup> December 1986 who decided that no action should be taken in respect of Mrs. Wilks' complaint.

In 1988, Mrs. Wilks made a formal application under section 53 of the Wildlife and Countryside Act 1981 to record in the Statement accompanying the Definitive Map a width of 36ft for CW38. The application was investigated and subsequently refused.



Following further investigation, the County Council discovered evidence that the route should in fact have a recorded width of 10ft. A Definitive Map Modification Order was made in 1995 and, since objections were received to the Order, the matter was heard at a Public Inquiry before an Inspector appointed by the Planning Inspectorate in February 1996.

The formal decision of the Inspector was issued on 29<sup>th</sup> March 1996. He declined to confirm the Order on the grounds that the evidence before him was not cogent enough to justify a reduction in the recorded width of CW38 to which the Order related. On the status of the route, he concluded: *'clearly at that time [the time of the conveyance of 1894] only a private right of way was granted on roads shown on the plan as were formed or made up. The evidence was that only some of these roads were formed and that not all of them that were formed had been made up. However, this does not preclude rights of way having been subsequently acquired by the public and it is relevant that nearly 60 years have passed between the date of that conveyance and the compilation of the Parish Statement by two apparently well qualified and knowledgeable gentlemen'*.

### **Application to the Magistrates Court (1999)**

On 21<sup>st</sup> June 1999, an application was made by the County Council to the Canterbury Magistrates' Court under section 116 of the Highways Act 1980 in relation to the South Tankerton section of CW38 (i.e. the section which does not concern the current application). The application included a request to reduce the width of the South Tankerton section of CW38 to five metres, to downgrade the public road D1500 to Bridleway status and to remove any public vehicular rights from the South Tankerton section of CW38.

The Court Order shows that the applications in respect of the removal of public vehicular rights and the downgrading of the public road D1500 to Bridleway status were granted, but the minute of adjudication records that the Court declined to reduce the width of the route. However, the Magistrates' Court application related only to the South Tankerton section of CW38 and does not assist with the determination of the status of the Chestfield section of CW38.

### **Section 31(6) Deposits**

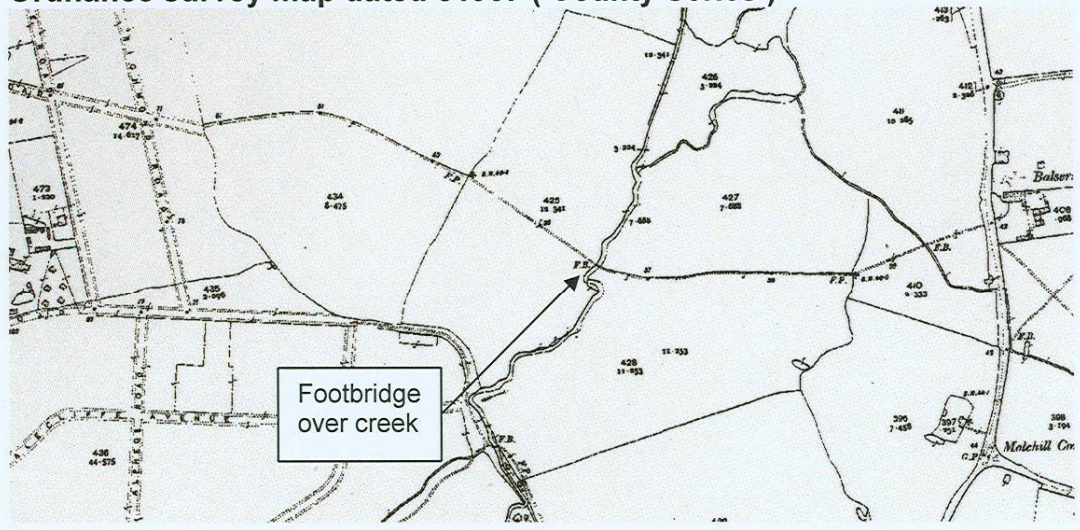
Section 31(6) of the Highways Act 1980 allows a landowner to deposit with the County Council a plan and statement indicating what ways (if any) over his land have been dedicated as highways. This plan and statement is *'in the absence of proof of contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional ways as highways'*. In order to remain effective, the Act requires that any deposit be renewed every 10 years.

In this case, there is no record of a deposit having been lodged.

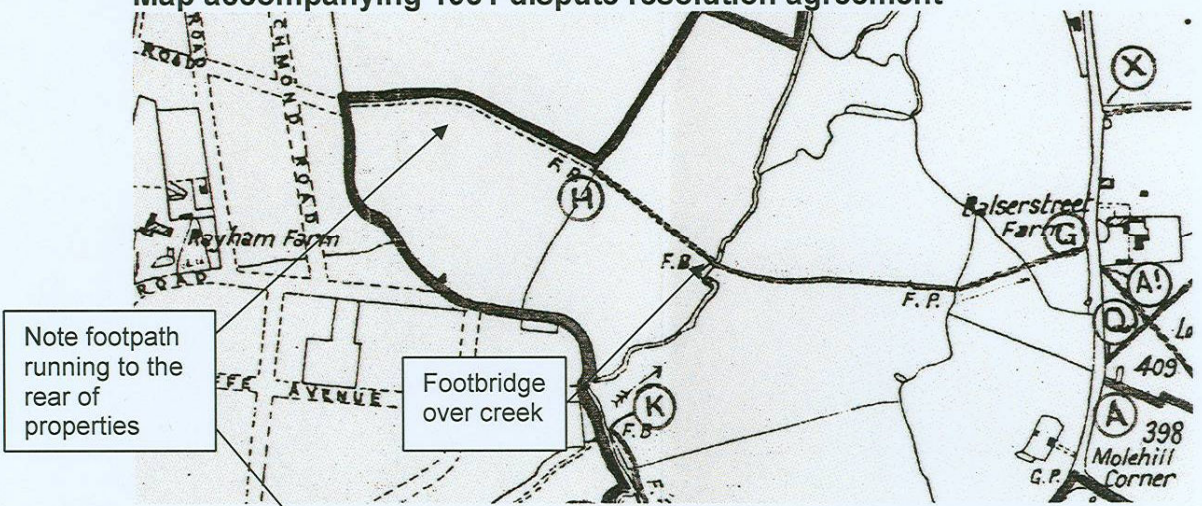


APPENDIX F: 1931 Agreement

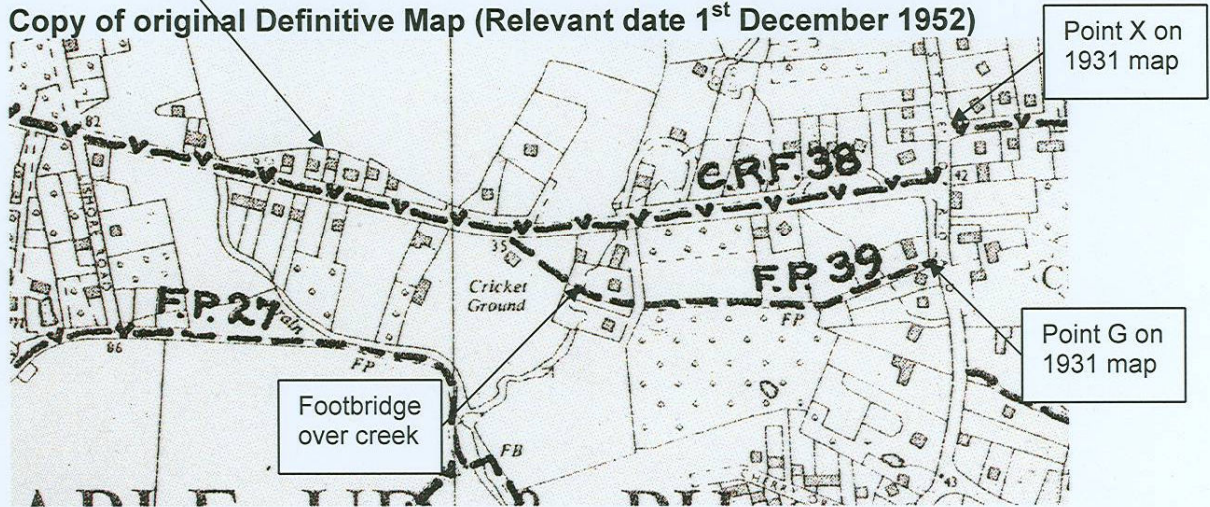
Ordnance survey map dated c1907 ('County Series')



Map accompanying 1931 dispute resolution agreement



Copy of original Definitive Map (Relevant date 1<sup>st</sup> December 1952)



Please note that these plans have been enlarged for illustrative purposes and are not to scale



**APPENDIX G:  
Aerial photograph taken in 1949**

