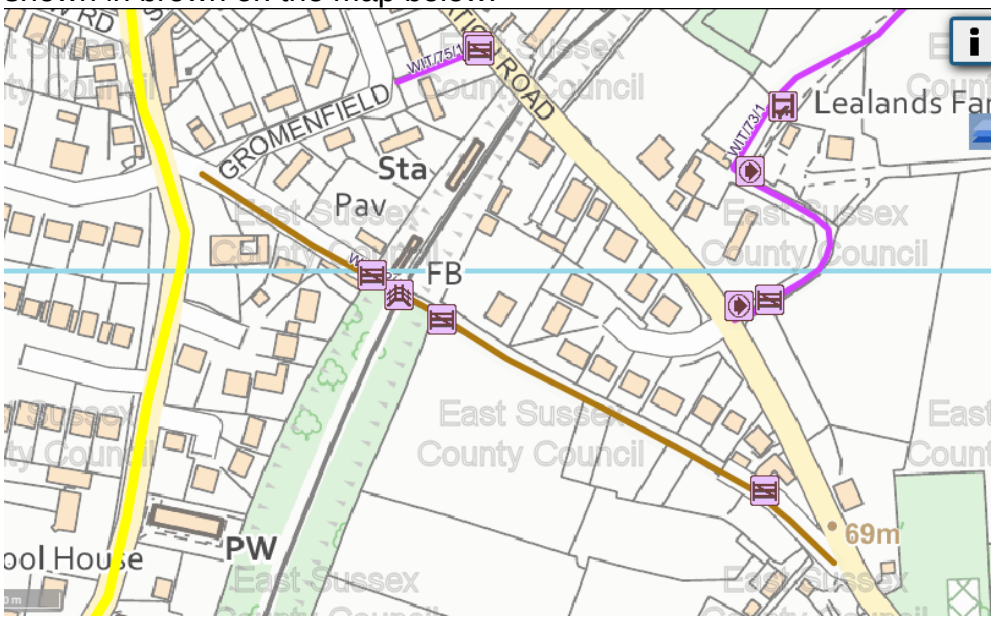
Council July 2022
Item 10 - BACK LANE - to consider adoption request

A resident recently contacted the Clerk regarding Back Lane, Groombridge, which is shown in brown on the map below.



Back Lane is classified as a 'BOAT', '*a highway over which the public is entitled to travel on foot, horseback or pedal cycle and by motorised vehicle of all kinds, including horse-drawn vehicles. Although legally open to all vehicles, a BOAT is used mainly by the public for walking or riding'.*

The resident asked whether WPC would adopt Back Lane and also raised issues about vegetation along Back Lane (their email is appendix 1).

The Clerk emailed ESCC Rights of Way team for their comments (their response Appendix 2). They confirm that "Back Lane isn't an adopted lane, but it is ancient highway and so all of the surface is vested in ESCC, regardless of title or common law ownership of the sub-soil".

The Clerk observes that Back Lane has protections and ESCC already has responsibilities for it. The Clerk therefore queries the public interest for WPC to adopt it. Council is asked to consider its response.

In terms of vegetation, the Rights of Way team acknowledges responsibilities for some of the verge, and also believes the landowner to be responsible for some.

The Clerk recommends that the resident notifies ESCC Rights of Way team of the vegetation that they feel is an issue. ESCC can then identify whether it is an obstruction or impediment to the enjoyment of the right of way, ascertain ownership and contact the landowner to have it attended to.

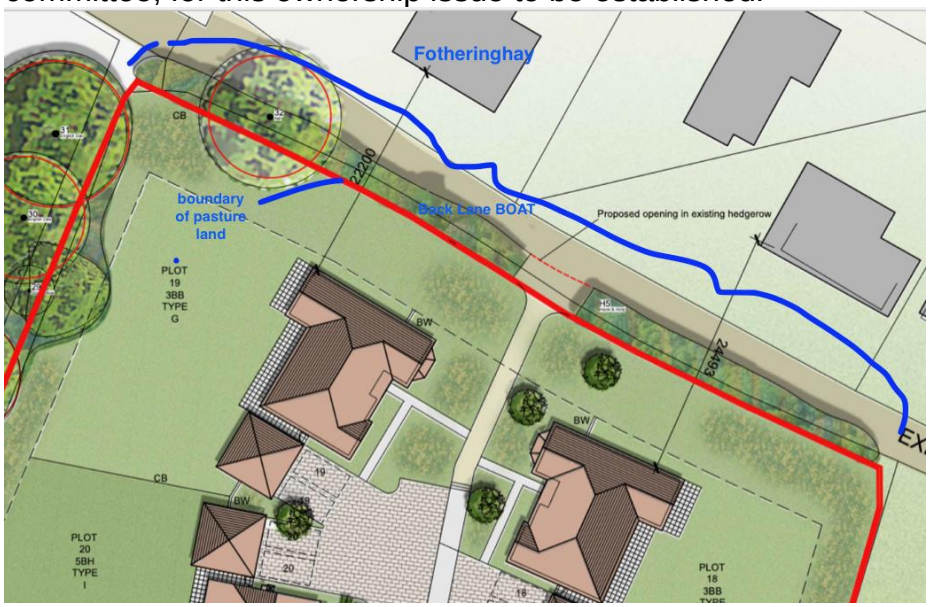
Appendix 1 – Email from resident to the Clerk re Back Lane

"Some time ago, I enquired about the ownership of the bank that borders the BOAT of Back Lane on the RHS coming from the footbridge over the Spa Valley Railway.

You were unable to establish ownership, but I have since found out that the land is unregistered, and I wondered if the Parish Council could or even should have the section from the footbridge to the Lealands Close garden extensions registered under their name.

I understand from the E Sussex Rights of Way Officer Jeremy James that it 'can be assumed' that the bank belongs to the owner of the adjoining pasture land' – who does indeed claim ownership – but "*The byway along Back Lane (also referenced as Withyham 32) is on unregistered land (i.e. the ownership is not recorded on the UK Government Land Registry),* and referenced Land Title ref number ESX238735).

The vegetation has grown to such a height and breadth that it impinges on and arches over the byway, making it narrow and dark, and diminishes southern light and outlook from the Lealands Close houses and Fotheringhay. In Storm Eunice, one fairly substantial tree fell over the path, blocking it completely; fortunately no-one was beneath it! Proper maintenance, such as coppicing to reduce the height of the spindly hazels and other trees that lean over the path, would, as the RSPB Broadwater Warren wardens explain, make it better for wildlife nesting and foraging; it would be a safer, lighter and more attractive for walkers, riders and cyclists, and benefit the outlook of the residences opposite, while maintaining protection of the landowner's boundary fence that runs along the pasture side of the hedge. If the Parish Council could be registered owners, they could enable such improvement work to be done, and enlist volunteers. Alternatively could the PC perhaps ask the ESCC to register and take responsibility for maintenance? I think it is important also, before the proposed development goes to planning committee, for this ownership issue to be established."



Appendix 2 – Email from ESCC Rights of Way team to the Clerk

Back Lane isn't an adopted lane, but it is ancient highway and so all of the surface is vested in ESCC, regardless of title or common law ownership of the sub-soil.

The adjoining title ownership will include the boundary vegetation growing from the banks, although the banks on the lane side would probably be deemed technically to be part of the ancient highway. The landowners each side will almost certainly also be the common law owners of the subsoil up to the middle of the lane on their respective sides. But that is irrelevant really, since the surface is vested in ESCC.

The difficulty with a lane like this is obviously in defining exactly where the highway starts and stops. I suspect it was pretty clear at one point in its history, but with the inevitable thickening of hedges it isn't so clear today. The attached photos showing the part of the lane adjacent to title ESX238735 recently cleared are probably the most useful reference we have.

I would be inclined to take the view that anything between the yellow arrows is part of the highway. Even then, any growth emerging from the back could be regarded as encroachment of the adjoining hedges. So its still debatable as to where our duty to clear the surface and the landowner's duty to maintain the hedges start and finish. But I would say that it probably falls to us to clear the width as shown as cleared in the photos. Does that help ? Can you clarify for me what growth is causing a problem currently ?