

The River Ouse: Towpaths, Wharves and Herbage.

Introduction

The River Ouse in East Sussex is a key line of communication within South Downs National Park (SDNP). It is an unnatural and engineered line of communication that has been subject of several Acts of Parliament since 1791. This paper explores some of those Acts and their relevance to present day access.

The locality examined runs from the outskirts of Lewes to the outskirts of Newhaven.

The Navigation Acts 1791 and 1800

In 1791 an Act entitled “An Act for Improving the Navigation of the River Ouse between Newhaven Bridge and Lewes Bridge in the County of Sussex and for the Better Draining of the Low Lands, lying in Lewes and Laughton Levels, in the said County” was passed.

This provided for the pre-existing public right of navigation to be *improved*. The Act did not create a right of navigation. The preamble of the Act states that the Ouse was already in use by small barges. The purpose of the Act was to facilitate improvements to the navigation so that vessels with a draft of up to four feet could use the river at “common neap tides”.

The Act provides trustees with a wide range of powers to construct banks and towpaths on both sides of the river. On completion of the works the trustees are authorised to levy tolls on *some* vessels using the navigation.

Express terms are used to facilitate the creation of a towpath on both sides of the river:

...or avenue to a house); and also to make, set out, appoint, maintain, and keep towing-paths, banks, and ways convenient for the

towing, haling, or drawing with men, horses, or otherwise, of rafts, boats, barges, lighters, and other vessels passing upon the said river and cuts between Newhaven-bridge and Lewes-bridge aforesaid; and to do and perform all

A further Navigation Act was passed in 1800 which infers that a section of towing path had not been completed between Southerham Corner and Stock – Ferry. The Act directed the Trustees to complete this work:

and also within the space of three years from and after the passing of this Act, to make a good, convenient, and effectual Horse Towing Path, from Southerham Corner to Stock Ferry for the towing or drawing with horses, of rafts, boats, barges, lighters, and other vessels, passing upon the said river between Southerham Corner and Stock Ferry aforesaid.

Trustees to make a Horse Towing Path from Southerham Corner to Stock Ferry, in three years.

Southease Inclosure Award 1844

This award affected a stretch of towpath on the West bank of the river running Southwards from the swing bridge at Southease. The Award sets out a “Private Carriage Road and Drift Way” as road number 2. This is specified as being 30ft wide and is for the use as a wharf by all the inhabitants of Southease and Rodmell. The same are also awarded a right of “Road, Driftway and Wharfeage” to access the wharf by means of roads numbers 1 and 2 on the plan. The herbage of the wharf (i.e. the grass) is vested in the Parish Clerk of Southease. This was a valuable commodity at the time. Road number 2 can be identified on the plan:



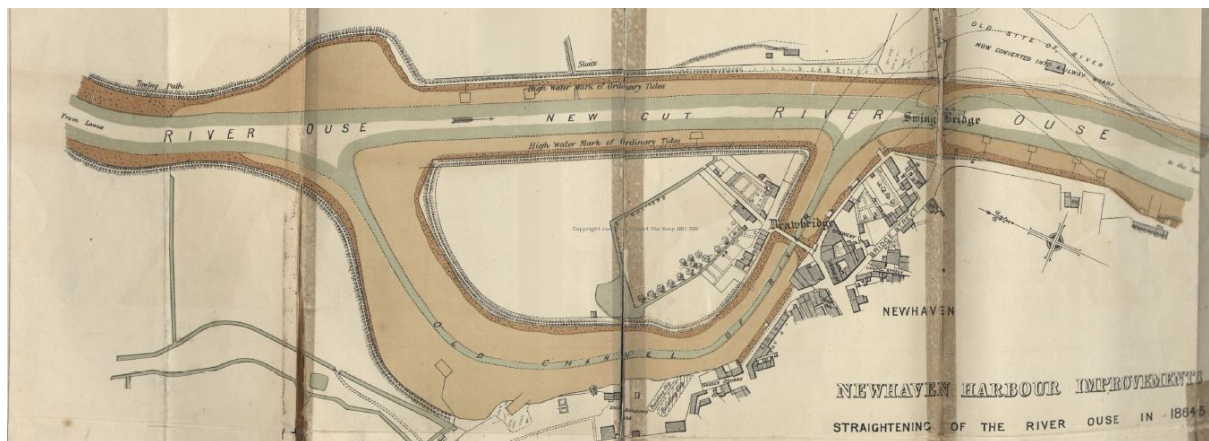
Turnpike Toll

The A27 running from Lewes to Polegate used to be a Turnpike Road. A Turnpike Act of 1819 provides that horses and “other cattle” used for towing on the River Ouse were to be exempted from tolls:

from Water or Pailure, or going to or returning from being shod ; nor for any Horses or other Cattle towing any Boat, Barge, or Vessel, or any Raft up or down the River Ouse, or going in order to tow or returning after having towed the same ; nor for any Horses or Carriages of whatever Description

Denton Island

In the 1860's a new cut was formed which created Denton Island. The plans for this depict the “Towing Path” on the East bank of the river:



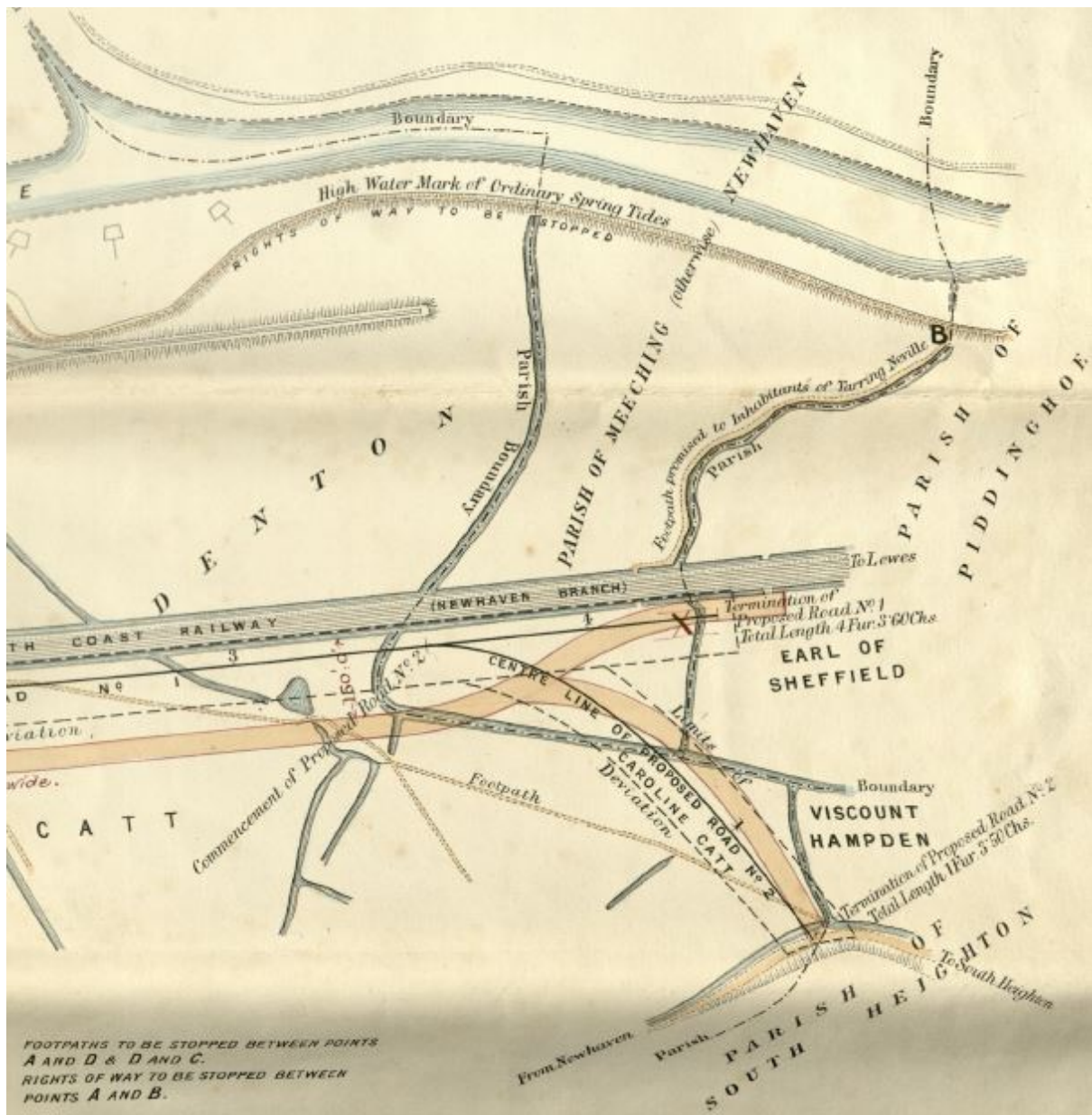
The Harbour in 1878



Railway Plans: North Quay

In the late 1890's the London, Brighton and South Coast Railway (LBSCR) developed North Quay as part of a programme of improvements. As part of the development a section of towpath on the East bank of the river was stopped up. This statutory process required application to Quarter Sessions and the associated deposition of plans which followed thorough surveys. As part of this development the LBSCR created Newhaven FP 24, together with its rail crossing.

The reference to the towing paths as "rights of way" suggests a higher status than that of "footpath" which is used to identify other routes to be stopped up or created.

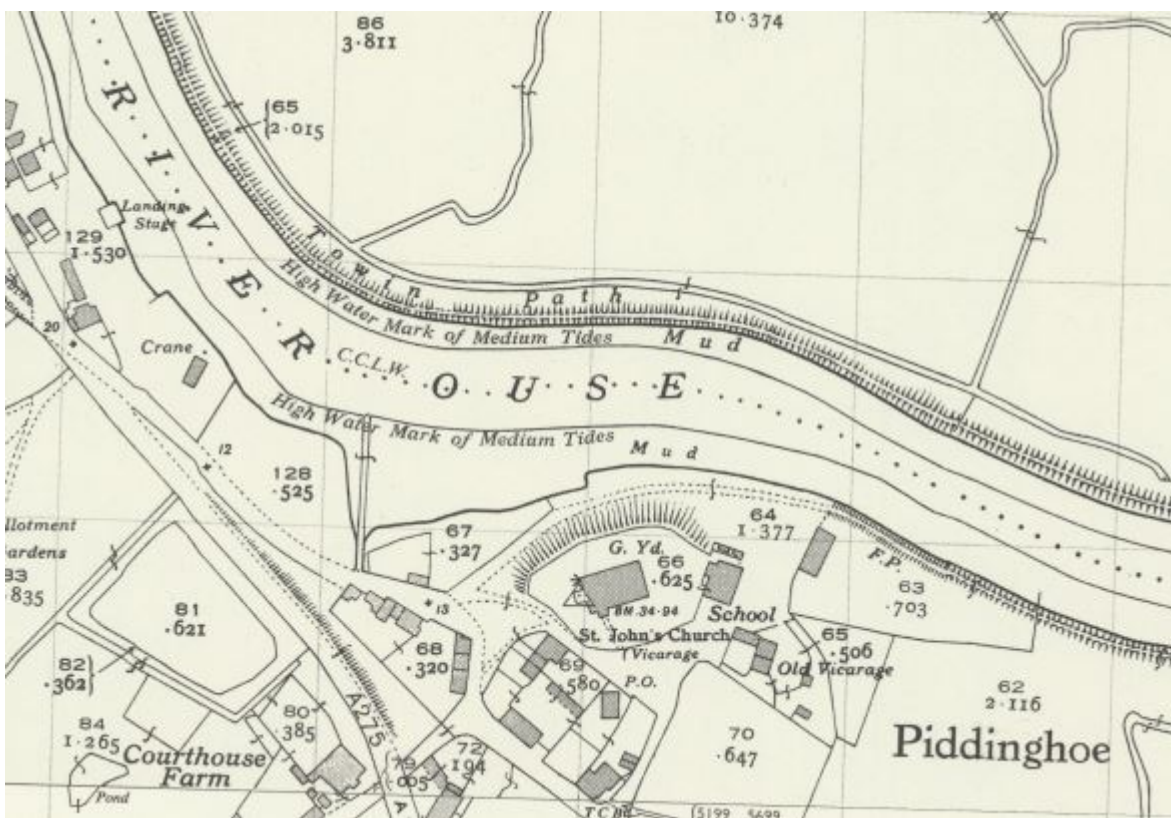
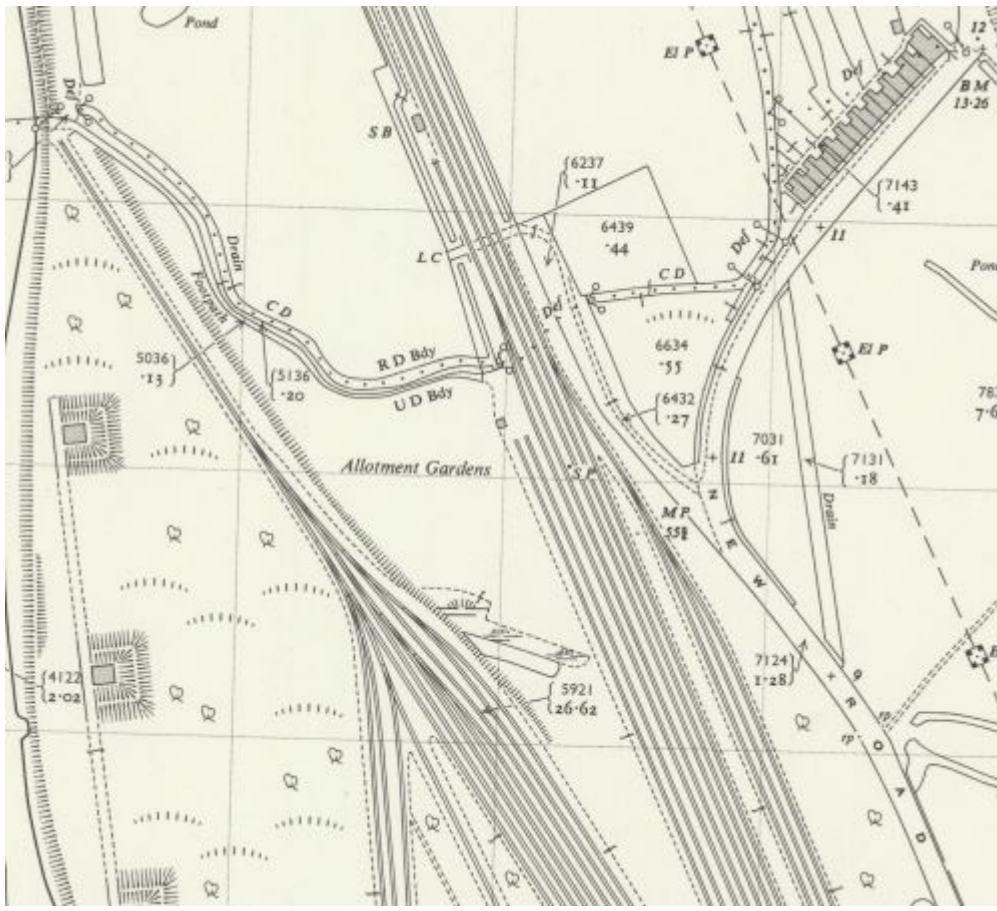


Ordnance Survey

OS 6" 1890



OS 1:2500 1947



Defintive Map Survey

When Newhaven FP 24 was surveyed for Defintive Map purposes in the 1950's, the County Surveyor found that the East bank of the Ouse was a towing path which was furnished with swing gates:

F.2001/East Ouse. AH/LB.
E.

The Clerk of the County Council. 30th August, 1956.

National Parks etc. Act, 1949.
Objections Nos. Chailley R.D.20 and 20.

With reference to the original objections made by the Glynde Estate Company and the Glyndebourne Estate Trust to the path on the east bank of the River Ouse, I am now able to forward further details which may assist you.

Under a Public Act "for Improving the Navigation of the Ouse" of 1791, the Trustees were "to make, set out, appoint, maintain and keep towing paths, banks and ways convenient for the towing, hauling or drawing with men, horses or otherwise of rafts, boats, barges, lighters or other vessels passing upon the said river and cuts between Newhaven Bridge and Leves Bridge." It is apparent that all the new cuts had not been made by 1800 as an Act of that year states that great progress had been made but to complete the work more money was needed. It altered, amended and enlarged the earlier act, the tolls were increased and it provided that the remaining cuts through various shallows were to be made within three years and that a good, convenient and effectual Horse Towing Path was to be completed from Southerham Corner to Stock Ferry. It appears from this that it should have been possible to use a path along the east bank of the river from shortly after 1800.

The Newhaven Harbour and Ouse Lower Navigation Act of 1847 repealed the earlier Acts but certain sections of the 1847 Act and a further Act of 1863 are still in force under Statutory Instrument 1952, No. 1393 "East Sussex River Board (Transfer of Navigation Functions) Order 1952". The relevant current byelaws (which are binding on all parties), which have been examined at the River Board's offices, provide that "No persons other than the occupier of land adjoining the towing path shall allow any horse or cattle to pasture on the towing path and no person shall ride or drive any horse thereon except when towing a vessel or drive any cart, wagon, vehicle or machine over on or upon any part of the towing path, unless there be a public right of way for such cart, wagon or machine." It is significant that persons are not prohibited from walking along the towing path which I understand was formerly equipped with swing gates and was probably passable until the removal of the bridge at Glynde Reach in or about 1946. The words "towing path" appear against the east bank on the Ordnance Surveys large scale maps.

The exception which has been taken by the objectors to persons engaged in fishing and shooting along the river banks is interesting in view of Section 125 of the 1847 Act which provides that "nothing herein contained shall extend or be construed to prejudice, affect, defect or diminish the rights or privileges of any land of any manor, or his lessees of, in or to any royalty, fishing or fowling, or any other Manorial right whatsoever anything herein contained to the contrary notwithstanding."

The existence of a right of way along the east bank of the river between the Piddinghoe boundary and Newhaven Bridge was recognised in the London, Brighton and South Coast Railway (Various Powers) Act 1892 when this section of the towpath was extinguished. New Road was constructed and a new footpath provided from New Road to the Piddinghoe boundary. This path (Newhaven 24) has a notice at its junction with New Road bearing the words "right of Way to Towing Path and River Bank." British Railways

have a notice at their line: "Warning. Stop, look and listen before crossing the line", while an old "River Board" notice near Southeast Swing Bridge warns persons not to remove material from the banks. The landowners north of Beddington Parish were aware of the Draft Map but did not object to it.

The maps which are held by Chailley Rural District Council and are understood to have been submitted by the late Mr. Pickard do not show the path in question. The deposit does not, however, comply with the Rights of Way Act 1932. There is no accompanying statement as required by the Act, nor is there any corresponding deposit with the County Council. No subsequent statutory declaration was submitted to either Council. There may well be insufficient evidence of interruption available to rebut the claim to a public path on the east bank.

Despite the statements made by the objectors regarding the "non use" of the east bank, several people were seen along the bank during a recent inspection of the path.

I would draw your attention to the annotation on Section 27 (7) of the National Parks etc. Act 1949 by Mr. E. N. Hutchins on the question of towpaths:-

"Sub-a. (7): A highway at the side of a river, canal. This subsection was added to the Bill with the object of ensuring that towpaths and the like were not excluded from the survey provisions of the Act. The subsection was considered necessary owing to the limiting words in the earlier definitions, namely 'footpath' is confined to 'rights of way on foot only'; 'bridleway' is confined to 'the following but no other rights of way' and the succeeding words do not include towpaths; see 467 H. of C. Official Report 1179-1185.

It is clearly desirable that towpaths and other paths along canals and rivers should be included in the survey provisions. The report on Footpaths and Access to the Countryside, 1947 (Cmd. 7207), was emphatic on this point (paras. 134 to 136)."

Two extra copies of this memorandum are enclosed for your use in dealing with the different objections.

(Signed) M. G. LEECH
County Surveyor.

Discussion

The starting point for considering access along the River Ouse, towing paths and routes contiguous with those, must be the maxim of once a highway always a highway.

A navigable river is a highway and a public path or road leading to it is not a cul-de-sac. The path in question (i.e. Newhaven FP 24) must be considered in the context of its continuation along the river.

A brief assessment of Newhaven FP 24 reveals that it was contiguous with a gated towpath and that it was the only convenient path serving allotments. This begs the question of why stiles would be used when they would obstruct access to the allotments (wheelbarrows) and how did horses access the towpath?

The towpath gates have been replaced with stiles and fencing which extends onto the foreshore of the tidal river. The circumstances in which this can be lawfully authorised are narrow. Expiration of time cannot correct the unlawful use of stiles.

The ownership of the riverbanks is given some clarity by examining the history of the navigation. The foreshore/riverbed is owned by the Crown, the riverbanks/towpath rest on subsoil which is presumably owned by the adjacent landowner. The riverbank above that is owned by the Environment Agency (having taken it over from the River Board) to the extent of the definitive footpath. The definitive footpath is vested in the Highway Authority.

SDLAF has had cause to consider access along and contiguous with the River Ouse on several occasions and it is likely to revisit this in the future. The findings of this paper suggest that access along the Ouse is worse now than it was a century ago. The value of historical records is that they offer a powerful tool to aid the re-establishment of public access. The potential for this can be realised for less financial cost than creating “new” access that simply overlays that which already exists but which is misrepresented by the Definitive Record.

John Vannuffel