

REPORT

ON

The historic issues and management of

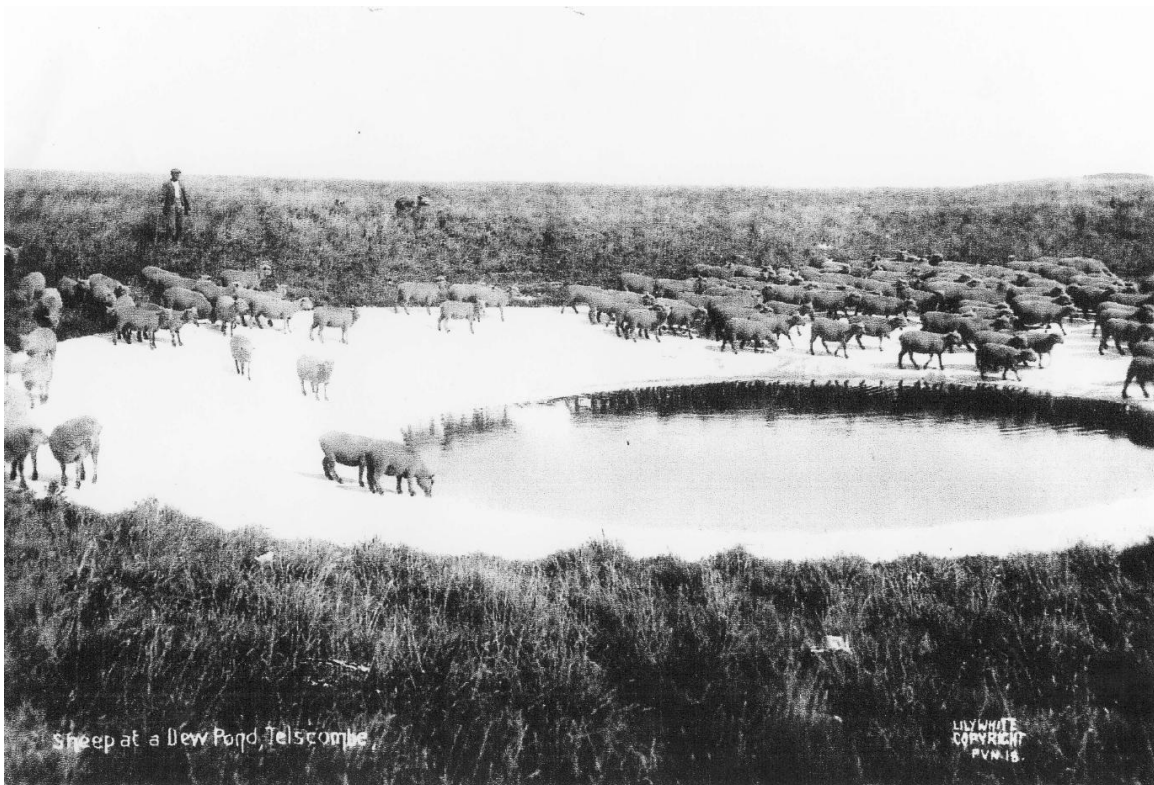
TELSCOMBE TYE

For

TELSCOMBE TOWN COUNCIL

By

ABBEYLANDS



Sheep at a Dew Pond, Telscombe

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April 2009



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for
Public Authorities and Private Landowners
~
Specialist Research and Boundary Surveys

Report on the history and management of Telscombe Tye

April 2009

Executive Summary and Recommendations

Introduction:

The report sets out in detail the history of the Tye as common land over the last two centuries. It can be seen that the Tye was at the centre on a number of legal issues from the earliest times. Some of these despite the machinations of local and other interested parties have not gone away or been resolved. In fact there have been new ones added since Telscombe Town Council bought the land in 1989 for the benefit of the neighbourhood and to maintain the land in its current form.

Summary:

The management of the Tye was contracted out but over the last ten years this has proved problematical and unworkable. There seemed to be an inbuilt confusion as to the direction of the management and its legal duties.

Despite a management plan being produced at quite an expense and legal opinions being sought most of the recommendation made were never carried out or if they were not properly. This has resulted in legal disputes with East Sussex County Council and the South Downs Joint Committee, local users and residents and the agricultural tenant. It has also led to the Council to ignore some of its legal duties which have compounded the failings of the management.

It was to this end and to correct the past failings that the report was commissioned. This has proved to be a bigger task than was envisaged due to delays in receiving information and the ongoing issues such as the bunding, cattle, vehicular access and users, incorrect and incomplete records at the Rural Land Registry and illegal encampments, in addition to the complex question of the best management regime for nature conservation.

It is hoped that the recommendations will be accepted and form part of a new management plan which will take the Tye into the future in safe hands for the benefit of all residents and those with a legal interest.

Summary of Recommendation

1. That the illegal bunding is removed as soon as possible and the Council's position is protected by the appointment of an independent expert to oversee the removal and ensure that all legal duties are carried out at the appropriate time. The works need to be done sympathetically and does not interfere with the sky lark nesting or school summer holidays but with due haste so that the grass seed and wildflower downland mix can be sown by the first week in September so as to achieve maximum establishment. Consideration for the use of the restricted byway as the haul road should be made so that restoration can be amalgamated with the construction of the new Kent Carriage gap and gate layout at the junction with the coast road.
2. Ascertain the grass seed needs for agri-environmental stewardship as sheep down for the completion of the restoration once the waste has been remove.
3. Make use of any available funding and support any partnership working to limit the coastal erosion and the loss of the Council's property namely the sections of the Tye south of the coast road.
4. Make best use any available funding to protect and enhance the Tye as public open space, an area of natural beauty, a site of nature conservation importance, of archaeological importance, in the south partially a site of special scientific importance and the north part of the setting for the conservation area of Telscombe village.
5. Ensure that all the ancient earthworks and features are precisely and correctly recorded on English Heritage records and the same are urgently protected from damage by any flora or fauna.
6. Make every effort to restore to the Council all of the property that has been encroached upon and unlawfully enclosed.
7. Restore the management of the common as Tenantry Sheep Down in partnership with the commoners.
8. Maximise any available funding and income for the management of the Tye and to incorporate the conservation aims whilst maintaining public access rights and expectations.
9. Make sure that all the land is registered in the Rural Land Register.
10. Apply for any available Single Farm Payment or other agri-environment funding to support the management of the Tye and increase the education value of the historic monuments and the nature conservation practices.
11. Complete the present ELS and HLS application and incorporate the proscribed practices as recommended for sheep down common land
12. Clarify the legal position of public or private vehicular rights and take all legal means to stop illegal or unlawful use and any further rights being acquired by prescription.
13. Continue negotiations with EDF to have the power cables undergrounded. To date this has thrown up a discrepancy in the payment of wayleaves for other power cables so that it is essential to regularise all wayleaves.
14. Enter into dialogue with the Trustees of the Gorham's Gift to recover Council land and to establish the legal boundaries that have disappeared on the ground. It would be beneficial to all if the

implications and implementation of the charitable aims in terms of public recreation were clarified and publicised.

15. Ensure that all the Inclosure common land is registered in the Commons Register when they open in 2010 under Pt 1 Commons Act 2006.

16. Make sure that the Rights of Way definitive map and statement is correct. Then apply for any map modification or other orders as seem needed. This needs to be done in partnership with the Highway Authority and includes the issues and remedies surrounding the cattle grids as set out in the report and public and private vehicular access.

17. Continue with the Councils present course of action in regard to the Agricultural Tenancy.

18. Have recourse to bringing in hand the unused commoners rights.

19. As part of the management plan incorporate the need for all access and works to be DDA compliant.

20. Make a statutory declaration under s30(6)HA1980 in respect to the rights of way over its land.

21. Assess the need for public vehicular access from Telscombe Village to and from Telscombe Cliffs. This is specific to residents, their visitors and the emergency services as this may impinge on the remedy to deal with illegal and unlawful use of the track and illegal parking or encampments on the Tye.

22. Continue liaison with Sussex police to establish an action plan for dealing with illegal activities and encampments on or over the Tye.

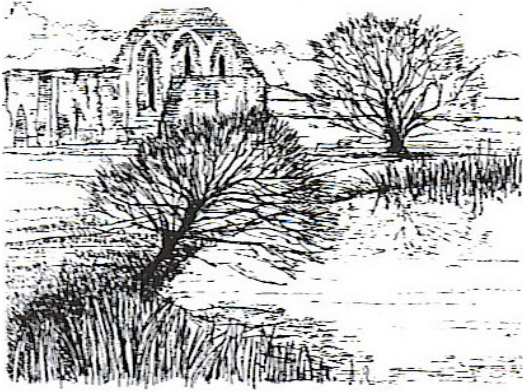
23. Assess the need for public parking especially for the disabled at the approaches to the Tye to accommodate visitors and dog walkers in the likelihood of the track being closed to public vehicular access.

24. Enter into a planned scheme of works for the replacement of gates and fencing so as to achieve the return of any of the Council lands that have been encroached on and to meet the requirements of the DDA and to mitigate for any liabilities under the Animals Act 1971.

25. Make a s193 Deed of Declaration and an Order of Limitations for the management and regulation of the common.

26. Formulate and publish a management plan encompassing the recommendations and the legal duties of the Town Council.

Abbeylands April 2009



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Telscombe Tye

A report on the historic issues and management

by **Abbeylands**

for

Telscombe Town Council

1 Introduction

1.1 This report sets out to place the Tye as common land in the context of its location and the history of the area, the historic issues, some of which are still unresolved and affecting the management today, and sets out a series of recommendations for the future.

2 Location and present position

2.1 The main part of Telscombe Tye, an ancient Sussex name for a common, is downland situated on the coast between East Saltdean and Telscombe cliffs. It provides a highly valued downland backdrop to these communities, and preserves their distinct identities. The views from the Tye sweep over the Weald of Sussex to the north, and over the channel to the south, with the towns nestling into the folds of the Downs, their history, shape and outlines defined by the curves of downland. This is one of very few places where a Downs reach to the sea, and the only one on this stretch of coast. It is swept by bracing salt laden sea winds which on occasion burn the foliage of trees overnight, giving the name to Saltdean. This characteristic is relevant to any planting or trees on this exposed area, which must be able to tolerate salt sea winds to thrive.

2.2 It lies within the administrative boundaries of Telscombe Town Council, Lewes District Council and East Sussex County Council, and on the border of the boundary with Brighton and Hove City Council. The Tye is designated AONB, and is within the area designated for National Park Status.

2.3 Towns within the Sussex coastal strip have a very diverse socio-economic population and this is no different to the areas abutting Telscombe Tye. There is a higher proportion of the retired than national average. There is also a higher than average population of pet dogs.

2.4 The population of Telscombe was 7133 Peacehaven 13217, (2001 census). Rottingdean and Saltdean had an estimated population of 21380 in 2005 (*Mongabay.com*). Total population of these towns, all within walking distance of the Tye via by safe off road routes, is 41,730. Newhaven has a population of 11,171. There is no similar public open space between Newhaven and Rottingdean/Brighton. There is a recognised shortage of open spaces for informal outdoor recreation within this area. There is also a shortage of outdoor play area, and outdoor recreational facilities (*South East Plan; Lewes Local Plan*).

2.5 The population is planned to increase steadily to meet Government targets for new housing within Lewes District. Areas available for housing development in the District are limited, because of the very high proportion of the district with AONB status. Lewes and Seaford are almost fully developed and their expansion is restricted by their location within the AONB. The coastal strip is an area where more development is possible, although there are serious concerns about the lack of infrastructure, particularly the problems of the A259 South Coast Road, which is at or close to capacity. Alternative routes are limited by the location of the South Downs AONB, proposed National Park. There are concerns about coastal erosion which, if no action were taken, could threaten the road and the parts of the Tye south of the road in the longer term. The Coastal Strategy is to defend this stretch of coast between Newhaven and Brighton for 50 years and funding has been allocated to improvement of coastal protection at Peacehaven in 2010.

2.6 The relative high density of housing in these coastal towns, and relatively lower income and higher levels of deprivation increase the importance of retaining and protecting the limited open space within the area.

2.7 The importance of Telscombe Tye is recognised within the Lewes Local Plan. It has the highest degree of planning protection¹ as an open space, an area of natural beauty, a site of nature conservation importance, of archaeological importance, with a site of special scientific interest at the southern end, and in the north as the setting for the Conservation Area of Telscombe Village.

3 History

3.1 There is evidence of occupation of Telscombe and the Tye since prehistoric times. During excavation of the tumulus on the ancient Cross Dyke for the construction of the underground reservoir, possibly in 1909, three internments were discovered, including a crouched skeleton. In 1922 23 urns and flints, pieces of burnt bone and shells were discovered, and pottery and cremated bones were unearthed in a wartime trench.

¹Extract from Lewes Local Plan; Telscombe Conservation Area statement

3.2 There is the suggestion that there was a Roman Fort on the Tye, and reports of a sunken road used by the Romans to reach their camps. This is likely to refer to the Village road and Cross Dyke; it was typical that these ancient processional burial routes were used as highways.

3.3 A tumulus in the Cross Dyke close to the village end was destroyed by the works for the reservoir. A further part of the Cross Dyke, south of the track from Telscombe village county road to Telscombe Road in Telscombe Cliffs, was filled in during the 1970/80s, reputedly by the tenants of the Gorham Trust Property. The archaeology remains however, as the land is not ploughed and the earth works are preserved beneath the topsoil. The line of this section of the Cross Dyke is still clearly visible by the remaining scrub and vegetation.

3.4 The Tye is designated in the Lewes Local Plan as a site of local Archaeological interest. There are three Scheduled Ancient Monuments on the Main Tye²:

- A dew pond
- A tumulus marked on the first edition OS map as Pedlersbery SM 25476
- A tumulus SM 25477
- The Cross Dyke, believed to be Bronze Age, possibly three to four thousand years old: SM 25478/01 and SM 25478/02. The cross dyke was more extensive than it appears now. A small section was de-scheduled when the reservoir was installed there.
 - It is likely that the village road and Cross Dyke formed all or part of the 'great covered way' or sunken pathway through the village to the sea, whereby Roman soldiers could march from their camps through Telscombe village, to the cliffs, referred to by local historian Tony Payne in his publication of February 2002 'Telscombe a Sussex Village'. The Tye is registered in the Lewes local plan as of local archaeological interest. The Cross Dyke is shown on the 2500 scale Ordnance Survey Map of 1875³ terminating at the perimeter of the Tye. It is possible that it continued and was ploughed out at some time before the first edition OS map in 1863.
 - The section south of the bridleway, bridleway 8, was filled in. The line of the ditch is however still clearly visible from the line of scrub and distinctive vegetation. The archaeology of this section is preserved beneath the new soil. It is t that during the Bronze Age, this was a processional route. Such routes were frequently also highways, some of which persist, as in this case. It is not clear what the continuation of the route would have been beyond the southern boundary of this section of Tye.

The 1989 sale particulars refer to there being 4 tumuli in the North West area of the Main Tye. There may be confusion resulting from:

- The existence of 2 chalk pits in that area, the larger now filled but the site still visible, both recorded on early Ordnance Survey maps.
- A further feature in the Earth Works, a ditch or hollow just south of the track where it turns sharply in a right angled bend towards Telscombe Road⁴, was also filled in, but is preserved beneath the surface.
- The tumulus shown in the Cross Dyke on early maps was destroyed when the reservoir was built.

² Scheduled Ancient Monuments English Heritage copy held by Telscombe Town Council

³ First Edition Ordnance Survey map 1875 ESCC Archives

⁴ First edition Ordnance Survey 1874 ESCC Archives

- The Pedlerybury Tumulus is well documented on early Ordnance Survey maps.⁵

3.5 There needs to be some effort to ensure that all ancient earth works and features are precisely and correctly sited and recorded on the English Heritage records.

3.6 The Earth Works have suffered damage from scrub roots and burrowing animals. Badgers foxes and rabbits are encouraged by the cover of scrub. Fly tipping, from vehicles using the track along bridleway 8 to Telscombe Road has been a problem, and caused heavy littering. The action of cattle on the earth works, where they seek shelter from the sea winds, has caused damage. The removal of roots or any other interference with the Earth Works is not lawful without particular consent from English Heritage. It is a criminal offence to damage a Scheduled Ancient Monument. **The Earth Works require urgent protection in consultation with English Heritage and the County Archaeologist.** The history of the Manor, the field systems and common, and in particular the Scheduled Monuments could provide a valuable educational resource.

3.7 The Lord of the Telscombe Manor

The first written reference to the lordship of Telscombe is found in the *Liber de Hyda* in 996. The history of the Lords of the Manor is included in the Sale Details dated 1989⁶.

Lords of the Manor from the date of the Enclosure Act in 1810:

1805 Henry Shelley

1811 appears to be divided between sisters Elizabeth and Cordelia Shelley and Eleanor Dalbiac

1824 George and Eleanor Dalbiac conveyed their third to the other 2 sisters

1853 Cordelia Shelley sole owner, bequeathed the property to 3 nephews, sons of Eleanor Dalbiac

1900 Mrs Mary Dalbiac, widow, conveyed the Manor to James Harman

1924 Mr Harman sold it to Charles Neville

1989 It was sold at auction in 2 lots, the Tye, and separately the Lordship, by the heirs of Charles Neville. Telscombe Town Council purchased lot 1, the Tye.

3.8 Details of the terms of the sale are included in the particulars from the auction⁷ and the Transfer of the Land Registration⁸. The land was purchased subject to the existing rights, easements, and rights of way.

3.9 It is interesting to note that part of the track from Telscombe Village to Telscombe Road, where it runs east of the Cross Dyke, was not included in the sales details in 1989⁹, although it was marked as part of the sheep down and included in the common with the rest of the Tye in the Enclosure Award.

3.10 The sale particulars refer to the commons registration document, which details rights of common, and existing agreements which were supplied to the purchaser's solicitors. These include:

- An easement for Southern Water across the track of the north-western area of land, the D Piece.

⁵ First Edition Ordnance Survey map 1873 ESCC Archives

⁶ Sale Details Clifford Dann & Partners Chartered Surveyors 1989: Telscombe Town Council

⁷ Auction details Clifford Dann 1989 Telscombe Town Council

⁸ Transfer of the whole, signed by Neville, dated and stamped: Telscombe Town Council

⁹ Appendix 1 Land Registry Plan 1989

- An agricultural tenancy with Carr
- Tenancy agreements with William Carr and Gordon Northcote
- Several Indentures
- **A covenant regarding any planning permission from the local planning authority in respect of the property within 21 years for any purpose other than agriculture**
- 4 tumuli in the north west area of the Main Tye

3.11 Inclosure

This area of the Downs was open fields and pastures in 1810. This was the period of the Agricultural Revolution when there was a drive to increase the productivity of the land to feed a growing population.

In the early C 18th Telscombe was enclosed, by Act of Parliament, a Local and Personal Statute under George 111¹⁰. Land that was too poor and unsuitable for cultivation, the ‘waste of the manor’, was left open and unenclosed, to be used in common for grazing with the rights of each commoner detailed, in proportion to the area of land they held, with in this case some extra allocated to the Henry Smith Charity.

The Act was accompanied by a Survey map and Award, dated 1811, detailing of the allocation of lands¹¹, (both land and rights over land) in Telscombe.

The survey and map for the Award was carried out by William Figg, a local cartographer who produced many such maps and plans, which appear to have been to a high standard. Later cartographers, such as William Leach for the Tithe map, continued to use Figg’s survey, which is consistent with modern maps. The award map is drawn to scale. The award is sworn. The Award Map is described as: “The Survey Map and Plan of the Open and Common Fields, Common Pastures, Sheep Downs and Common Droveaways within the Parish of Telscombe in the County of Sussex Referred to in and by the Award thereunto Annexed” by Wm Figg 1811

The Tye, with a total area of 236 acres 2 roods 35 perches, (approximately 95.18 ha), is described as Tenantry Sheep Down, coloured green, over the whole of which certain grazing rights were allocated for sheep to the various landholders. The detail of the markings on the Main Tye is consistent with those for rough pasture given on the early OS maps. The details of the allocation are given in the Award.

Some highways are shown on the award map. None are shown passing over the open common but this is not unusual for this time.

The Tye was shown as Sheep Downs, over the whole of which certain grazing rights were allocated for sheep.

The common was in three parts, which together made up the Tye:

- The North Western section: known locally as the D-Piece, situated close by the Longridge Reservoir, abutting the Brighton Boundary. This area is at the moment inaccessible and fenced into the Gorham trust estate

¹⁰ A copy of the Act is stored at East Sussex Archives, ref: Local and Personal Acts Statutes 50 GEO 111 1810

¹¹ Appendix 2 Enclosure award map ESCC Archives

- The North Eastern Section: known locally as the E-Piece, situated east and north of the village. Parts are accessible on foot only and is only partly fenced. There is no fencing on the Gorham Trust boundaries
- The largest section extended to the coast from north of the village. The coast road runs through this section, which is now viewed as being segmented by this.
 - The area between the village and the coast road is now known locally as the Main Tye. It is the largest area of the common. It is not regular in its shape and there are some narrow strips:
 - On the seaward end it extends along the northern side of the coast road approximately 347 yards
 - On the north east side it extends along the Drove way to Hoathdown to the east, in a narrow strip from the Cross Dyke to where it now joins the Telscombe Road where Combelands is now situated
 - At the village end to the north it extends along both sides of the road to the village.
 - South of the Coast Road, it stretches down to the sea, and extends towards Newhaven approximately 347 yards beyond the main boundary. This area, south of the Coast Road has been reduced by coastal erosion over the years.

3.12 Roads and Drove ways shown on the Enclosure Award map are:

The road from Rottingdean to Newhaven, between the coastal section of the Tye and the Main Tye The road to the village, from the northwest corner of the Main Tye to the village, labelled 'from Rottingdean'

The road from the village south east which forks at the westernmost point of the E Piece, one route continuing along the western boundary of the E Piece, labelled 'To Rodmell' the other passes through the E Piece, 'To Southease.'

The continuations of these ways over the open common of the main Tye are not shown on the award they although the do appear on early maps. It was common practice only to show new enclosure roads and rights of way and turnpikes on common land and manorial waste.

Other lands in Telscombe were allocated to the copyholders and to the Trustees of Henry Smith, 181 Acres 8 $\frac{3}{4}$ Perches¹², (approx 73.3 ha), which land is now largely incorporated into the Gorham's Gift Telscombe Property, and to the Glebe, or church, 3 acres. To these were allocated grazing rights over the Tye detailed in the Inclosure Award. The only building on the Tye is shown in compartment 4, south of the coast road, the small area near Portobello Gap, allocated to W Langridge & C Kell. The land to the east, including the continuation of the Drove way to Hoathdown is shown as belonging to the Duchess of Dorset.

In some cases new roads were created by the Enclosure Act. However in this instance it would appear that the roads shown pre-exist the Award. These follow the routes of BW4, 5 & 8 as well as Restricted Byway 9. This is supported by the Margary Maps¹³ that predate the Act of Inclosure, which also show continuations of roads across the open common not shown in the award (N.B. 'road' is used here in the legal sense as highway, not to imply modern carriageway):

¹² Appendix 3 a&b Smith's Charity Map 1910

¹³ Margary Maps ESCC Archives

- Richard Budgen Map, 1724¹⁴, the road from Rottingdean to Southease is depicted.
- Overton & Bowles Map 1740, shows the road from Rottingdean to Southease
- Yeakell & Gardner, 1779, depicts the road from Rottingdean to Southease in more detail, shows the 'Old Funeral Road', a road following approximately the line of the Droeway to Hoathdown shown on the Enclosure Award Map, the road from Rottingdean to Newhaven; a road linking the Old Funeral Road through the road from Rottingdean toward Kingston, approximately the route of the current bridleway 4 north of the main Tye, in the direction of, but not to, Balsdean and forking to Northease; a road that appears to follow the route of Church Path, continuing to Dean's .
- Ordnance Survey 1813, early state, shows the Rottingdean to Newhaven road; a road on the line of the Droeway to Hoathdown; the road that follows approximately the current bridleway Telscombe 4; the old Funeral Road; the road from Rottingdean through Telscombe to Southease and Rodmell; the road, Church Path, to Dean's. The junction between the roads over the Tye at the northern end of the Main Tye at the head of the Village Road accords much more closely with the modern maps.
- Christopher and John Greenwood, 1825, Sussex 1" to 1m, shows roads through Telscombe very close to those in the 1813 OS map above
- 1799 William Figg Telscombe Warren Farm, photo of plan kept at CKS: Book of Plans and Surveys of the Dorset Estates in Sussex by William Figg of Lewes: shows the continuation of the Droeway to Hoathdown through Warren Farm, abutting the Tenantry lands of the Tye to the west and north, and the ownership of this section beyond the Tye, by the Dorset Estate.

3.13 Changes since Enclosure

Changes have taken place since the Enclosure Award, affecting the shape of the Tye, and rights over it:

- There were two compulsory purchase orders to take land from the common by the new turnpike road on its present course and for road widening the coast road¹⁵. Land from the Gorham Trust Estate was incorporated into the Tye as exchange land.
- A reservoir was constructed in the Cross Dyke, and a part of this Scheduled Monument was destroyed and de-scheduled as a result, hence it is in two sections. The management plan of 2002 refers to this and to the improvement of the old Funeral Road, the track running from Telscombe Village to the South Coast Road, to bring materials for this construction. In a history of the area on the Saltdean website it refers to this construction being dated 1909, but this is unconfirmed, and not supported by other documentary evidence.¹⁶
- Overhead electricity lines were installed
- Underground services were installed

¹⁴ Margary Maps: Date 1724, Cartographer Richard Budgen, Sussex (1" to 1 mile) ESCC Archives

¹⁵ Appendix 4 1948 CPO Coast road and exchange land: Telscombe Town Council

¹⁶ Management Plan 2002: Telscombe Town Council

- Easements were granted for public services, such as water.¹⁷ New easements have been created for existing electricity and the undergrounding of the power cables.
- A pumping station was constructed on the section of the coast road cutting into two compartments the common south of the coast road. There is no record found of the necessary provision of exchange land for this, or compulsory purchase but the position of the common changes south of the new (present) coast road with most of the original common in the sea now.
- Between the Enclosure award and the Tithe award the turnpike road was moved north to its present position and some exchange land was acquired from the enclosed lands. The remnant of which is the small area registered as common and owned by Telscombe Town Council on the east side of the pumping station south of the A259 coast road. The cliff top footpath follows the line of the original road and the rest of the common which was south of the original road is now in the sea.

Thus the original shape of the Tye was slightly altered from that given in the Enclosure Award.

3.14 Condition of the land on the Tye in the C 19th:

The 1873 first edition ordnance survey of the area, first printed in 1885, scale 1:2500, shows:

- The Tye south of the coast road, numbered 45, as rough pasture and furze (gorse), 41.737 acres
- The main Tye, numbered, 14 as rough pasture and furze, 168.248 acres.
- The E Piece, numbered 22, as rough pasture and furze, 29.643 acres. This appears to be of a similar shape to the common registration map.
- The D Piece, numbered 19, as pasture, 6.963 acres. It is the same shape on this map as on the Common Register, with the bridleway now known as bridleway Telscombe 4 running within the D piece, which abuts the county boundary, which runs along the top of the bank.

3.15 Finance Act 1910

The Finance (1909-1910) Act 1910 provided for the taxation of the incremental value of all land within the United Kingdom. The main object was to levy a tax on the capital appreciation of land excluding that arising from crops, buildings or other improvements by the owners. The baseline value was the value for the incremental value duty and in some cases for inheritance tax. The original valuation exercise resulted in a series of records including surveyor's field books and maps¹⁸. These records were not to determine public rights or the status of highways. The practice was to record the areas of hereditament excluding roads but every case needs to be dealt with separately and be matched with adjacent parishes if necessary. **The notation of Telscombe & Lewes Road¹⁹ is never the less important for the area it covers but needs to be put into the context of the adjacent parish roads before any informed opinion can be offered.**

3.16 Gorham Trust 1933

Ambrose Gorham lived in Telscombe and purchased land in the parish, including Telscombe Farm. He had training stables at Stud Farm, where he trained many winners over the years, including a winner of the Grand National, using Telscombe Tye as a gallop. With the farm he also had the commoner's rights attached to the land for sheep to graze the Tye.

¹⁷ Easement Maps and plans: 1989 Saltdean reservoir and 1989 Land Registry for water: Telscombe TC

¹⁸ Appendix 5 a&b 1910 Finance Act map

¹⁹ Appendix 5b Extract from 1910 Finance Act map

He was a philanthropist passionately fond of Telscombe, and on his death he left the property in Trust to Brighton Corporation. In his will Gorham states that he ‘cannot emphasise too strongly’ the main object of the Trust set out as follows in the Deed²⁰:

“18. The object and purpose of the Charity with respect to the Telscombe property is that the said property may continue to be preserved with its present rural characteristics in order that the *public and especially the inhabitants of Telscombe Piddinghoe and Brighton may have recourse thereto for quiet and peaceful recreation and meditation* and the management of the Telscombe property shall be so conducted as best to further this object but so that the leasing of the land for agricultural or pastoral purposes on the terms hereinafter authorised shall not be precluded...”

There was a dispute between Neville and Gorham over the use of the Tye as a gallop. Reputedly this went to court, but the record of this has not been found to date. Whatever the outcome of the dispute, Gorham continued to train on the Tye, as did Thornton Smith, the first tenant of the Gorham’s Gift Trust following Gorham’s death, up until the war.

Neville had aspirations to develop the Tye, offering to set aside some 15 acres for public recreation. This did not take place, and the Tye continued to be open common downland, rough pasture and gorse, until WW2.

An aerial photograph²¹ circa 1933 and a postcard showing a shepherd with sheep at the Dew Pond, illustrate the condition of the main Tye at that time, when Telscombe Cliffs, Peacehaven and Saltdean were just being constructed, with some of the road layouts marked out, and just a few dwellings constructed. It can be seen from the photograph that the Tye is rough pasture and gorse. Also it is clear that users do not confine themselves to the track of the Old Funeral road, but deviate over quite a wide track. This would have been quite typical of old unmade roads, when users would need to use a wide track to avoid mud and ruts; hence these early roads were frequently very wide.

3.17 World War II

During the war the main Tye was requisitioned for farming and for military use. Part was cultivated, and the southernmost section north of the coast road, some 15 acres, was used for a radar station and possibly anti- aircraft.

Tracks over the Tye were made up by the military. There is a suggestion in the Gorham Trust minutes and the MAFF records in National Archives at Kew that the track was set onto a different line, but was reinstated on the correct line, with one small deviation, when the land was restored on derequisitioning. A second short track was built to the radar station. The Telscombe Road was made up to within a short distance of the Tye, and this concrete track remains up to the boundary of the common as set out in the enclosure award (by Combelands). There is reference to another track to Bannings Vale, which no longer exists. Heavy military vehicles were prohibited from using the village to avoid damage to the houses²²

The portion of the Tye requisitioned by the military was derequisitioned on 29th May 1941. There was some difficulty in persuading the East Sussex Agricultural Executive Committee to derequisition the remaining approximately 72 acres and this was finally achieved in 1958.

²⁰ Appendix 6 Gorham Trust Deed

²¹ Aerial photograph circa 1933 and postcard of shepherd with sheep at Dew Pond ESCC archives

²² Source: Gorham Trust Minutes, MAFF records at Kew

3.18 Condition of the Land in 1958

The land was restored to pasture for derequisitioning and a schedule of condition of this part of the main Tye was recorded.²³ MAF had taken the grazing for 100 sheep for the duration of the war, and the Gorham Trust had been unable to exercise their rights of common during requisition.

3.19 Post War

Grazing should then have been possible again. However it took some time to get fencing removed and the land restored. The Lord of the Manor argued strongly that it should remain in farming, disputed that it was a common, and claimed that the grazing rights had lapsed through lack of use. The Tye was fenced by Neville and his tenants, and cattle grids installed, and as reported in the minutes of the Gorham's Gift Trust²⁴ some rights of way were obstructed or made difficult to use.

The Gorham's Gift Trust together with the Brighton Town Council, East Sussex County Council, Telscombe Parish Council, the Council for the Protection of Rural England, Chailey Rural District Council, the Open Spaces Society, the Parochial Church Council, the Ramblers, the Society of Sussex Downsmen, Peacehaven and District Residents Society and other interested parties opposed an application made in 1959 under s194 of the Law of Property Act 1925 [consent to fence the Tye] from the Lord of the Manor, Neville, who claimed the freehold to the land, and his tenants, W Carr of Coombe Farm and Northcote of Kirby Farm.

The applicants were informed on 2nd March 1960 that consent was denied on the grounds that it was not to the benefit of the neighbourhood²⁵.

The fencing and cattle grids were not removed however, and East Sussex County Council prepared to take action in the courts under s194/2 of the Law of Property Act to secure the removal of the fencing and cattle grids.²⁶ The fencing was finally removed.

However problems of fencing continued, taking out small areas to cultivate, and fencing with electric fencing and movable fencing, sometimes across rights of way.²⁷

3.20 Commons Registration

The process to register the common and rights over the common under the 1965 Commons Registration Act commenced in 1973. The Town Council applied to register the common and the Gorham Trust applied to register its grazing rights. The registration was disputed and the arguments were considered by the Chief Commons Commissioner who decided in favour of the registration and rights of common. The registration of the Tye was confirmed on 2nd January 1979, approximately 235 acres called Telscombe Tye in the Parish of Telscombe, as marked with green lines inside the boundaries ... of the register map.²⁸

²³ Appendix 7 1958 Schedule of Condition of part of Main Tye 1958 East Sussex Archives

²⁴ Fencing and cattle grids history summary

²⁵ Appendix 8 Decision Letter from Ministry regarding s194 fencing application date 2 March 1960

²⁶ Appendix 9 Letter from ESCC regarding court action under s194 of the Law of Property Act

²⁷ Appendix 12 Gorham's Gift Trust minutes p22 plus Fencing and Cattle grids history summary

²⁸ Appendix 10 Commons registration and map

The rights over the common registered were for open and common pastures or sheep down for 252 sheep over the whole of the Tye appurtenant to Telscombe (otherwise Charity farm, now Stud Farm, Telscombe), and grazing for 100 sheep attached to Kirby Farm.

Mrs Dorothy Neville was registered as the owner of the whole of the land except one small area coloured in red on the register map. The original map has not been found and is required to identify this small area.

The Common Registration map accords well with the original Enclosure Award Map [Fig 1811] except for the coastal section where the Tithe map shows the main Newhaven road moved north and the pumping station being taken out of the common and part of the Portobello furlong enclosed land being given in exchange and for the small areas taken under compulsory purchase for the widening of the coast road in 1948²⁹ with the additions of exchange land from the Gorham Trust property, but not for the Portobello waste water outlet which was sold. The coastal footpath is the last vestige of the original enclosure turnpike road.

There are a number of other important discrepancies. One is the area of common sheep down shown on the Enclosure award stretching down to the boundary of what was then Warren Farm, part of the Dorset Estates, and which is now Combeldans and the Telscombe Road. This was omitted from the registration of common land, rights and ownership. The present owner is unknown; it appears to have been omitted from the sales details in 1989. This ancient drove way runs into Bridleway Peacehaven 5 which runs into the unadopted Telscombe Road at Combeldans and on into Ambleside Avenue, now a County road.

The Common Register needs to be amended to include this. This will be able to be done in 2010 with the implementation of Part 1 sch 2 .4 Commons Act 2006.

3.21 Highways

.1 There are also discrepancies between the definitive map and statement³⁰ regarding Telscombe Bridleway 8 and Telscombe Bridleway 5. It also appears that the map has been amended to remove the section of byway 9 from its position on the Tye and is now shown as adopted County Highway (carriageway), but the statement does not appear to have been amended.

.2 It appears from Highways Authority information that all of the section from Combeldans to the adopted County road at the junction to Ambleside Avenue/Telscombe Road is unadopted public carriageway that is a private road with public vehicular rights that persist since the NERC act, but which is not maintainable at public expense. However this requires further clarification in light of the 1910 Finance Act map. **The precise status of the road to Combeldans and the position of the end of the adopted highway where it meets the Tye from Telscombe village is the subject of a Freedom of Information Act and Environmental Information Regulations 2004 application to East Sussex County Council as Highway authority and Surveyor of Highways which is still outstanding.**

.3 During the war Telscombe Road to Combeldans was made up by the military with a concrete roadway. The military did not extend the improvements to Telscombe Village. They did not take military vehicles through the village to avoid damage to the old buildings there. The concrete track from

²⁹ Appendix 4 1948 Compulsory Purchase Order and Exchange maps a,b &c

³⁰ "Telscombe 8 BR 403030 County Road (UC1051) Telscombe Village 408026 Parish Boundary 0.66 Peacehaven 5 BR 408026 Parish Boundary 419028 Parish Boundary 0.8" (extract Definitive statement)

Ambleside Avenue to Combelands was subsequently laid; the section from Telscombe Cliffs Road to Combelands was possibly laid by the residents of Combelands.

.4 Public vehicular rights over this ancient way are unclear and it stands as a bridleway at the moment. We are awaiting highway authority archive material to support the claimed status of the Track between Ambleside Avenue and Combelands as public carriageway privately maintained. There may also be private prescriptive vehicular rights³¹ pertaining to any of the land adjoining the Tye. Evidence is awaited of private easements from the adjacent development to the south as well.

.5 The separation of this from ownership of the rest of the Tye may have taken place in 1989, and so ownership may reside with the Neville family, or it may have taken place at an earlier date. It was not part of the Smith's Charity, and does not constitute part of the Gorham Gift's Telscombe property. It has been grazed by the Gorham tenant since 2006 since the installation by him of the cattle grid at Combelands and the removal of the field fencing. The issue of cattle grids is dealt with later

.6 Another anomaly and discrepancy is caused by the fencing within the curtilage of the registered common. This has occurred as a result of the previous management agreeing to fencing not on the line of the s194 consent or on the boundary of the common land in the area adjacent to St Michaels Mount. The Inclosure and Commons Register maps indicate that parts of the common have been enclosed unlawfully. The plans indicate that a section of the garden on the south side of St Michaels' Mount is not only common but also encompasses the definitive line of BW5. At the northern end the garden includes part of the land purchased by Telscombe Town Council as well as being part of the common. The common also extends over the cattle grid area and encompasses the track that leads to the definitive line of BW4a. **It is proposed that the fence line be re erected to bring the area on the north east corner back into the Tye at the earliest opportunity.** This will have the effect of removing the illegal obstruction to Bridleway 4a and regularise the vehicular access point onto the Tye. **The unlawful enclosure of part of the Tye into the garden of St Michael by the gate to BW 5 also needs to be regularised.**

.7 **Other fencing anomalies exist at the southern section of the Cross Dyke and the western fence line as well as the eastern boundary.**

The Tye was purchased by Telscombe Town Council in 1989

4 The Tye today

4.1 Agriculture

.1 Carr of Coombe Farm retained a tenancy on the Tye granted by Neville in 1959 until 1989 when it was first of all converted into a grazing licence and then into a Farm Business Tenancy commencing 25th March 2005 ostensibly according to the advisors of all three parties – Strutt and Parker- to enable the tenant to claim the Single Farm Payment by virtue of the possession of the land for the required time which would not have been available under the grazing licence. Unfortunately the normal Single Farm Payment rules do not apply to common land because it is deemed that the common rights are a legal interest in the land. The only available claim available to the landowner or tenant is for statutory excess. This allows for a small claim to be made and not as was thought and actioned at the time for the whole Tye less 10ha of excluded ground for the commoners.

³¹ Prescription Act 1832 and HoL judgement Bakewell Management 2004 UKHL14

.2 The tenancy of Stud (Telscombe) Farm, Telscombe, the **Gorham's Gift Telscombe Property**, was leased to the Mr Armour in 1981. The Trustees had decided,³² not to let the farm as a racing stables or stud, as this would not be consistent with the main object of the trust that the public have recourse to the Telscombe Property, and because of the difficulty in providing gallops. The Tye had been used for many years as a gallop, by Gorham, who had trained a Grand National winner, there. Thornton Smith had also trained on the Tye. However rights to train there were disputed by the Lord of the Manor, Neville. The use of the farm for a riding stable was also rejected by the Trust for access reasons, and because such establishments frequently failed to prosper. The decision was to rent it for farming, and a detailed business plan was provided by the applicants for tenancy.

.3 It was decided not to rent the grazing rights with the farm³³, to rationalise the property, but it was rented to the farm on a short term lease. There was no suggestion in the lease of any decision that the rights be restricted to a certain area of the Tye. This severance of the rights was questionable in law as the rights were according to the Commons Commissioner³⁴ appurtenant to Stud Farm, previously Telscombe Farm, and not to in gross to the trustees. Such action was made illegal under the Commons Act 2006[s9 & sch1] from 28th June 2005.

.4 Mr T Armour had complained that he was unable to exercise his rights to graze on the area tenanted by Carr, but the Trustees did not take any action over this.³⁵ They were being advised by Strutt and Parker who were it seems also acting for the Carrs.

.5 Fencing continued to be used on the Tye each year by Carr to manage his grazing, and Mr Armour was restricted to the northern section of the main Tye when this was erected and only then. The main Tye continued to be fertilised and managed commercially, with a cut of hay taken, and chemical weed control used even when it was not allowed under the ESA agreement.

.6 The Tye was purchased by the Telscombe Town Council in 1989 to maintain it as public open space the money being raised by an addition to the precept.

.7 The management of the Tye was delegated to the South Downs Conservation Board, with Strutt and Parker as agricultural managing agents. Strutt and Parker were also acting separately at the same time as land agents and advisers to the Gorham's Gift Trust and Mr Carr, which culminated after many years of grazing licences in the present Agricultural Business Tenancy which was subject to the requirements of the Environmental Stewardship Agreements signed in 1999 and 2003,. This contract completely disregards the commoner's legal interest in the land.

.8 The tenancy continues to cause concern where the implementation of the ESA agreement and management plan has not been adhered to. The cattle on the Tye sometimes impinge heavily on the public access. Supplementary feeding is still practiced despite not being allowed under the ESA agreement. Likewise the time frame for grazing is not adhered to. Hay has been made since 2005 again despite consent not being granted by Natural England under the ESA agreement except for 2005. The positioning of the supplementary feeding rings near to houses and in a hollow has destroyed a large section of the downland grass and has invoked much public protest. Fencing is not being maintained so that there is a real chance of animals getting out onto the highway.

³² Appendix 12 Gorham Trust minutes 16 June 1972, 3November 1981

³³ Appendix 12 Gorham Trust minutes 27th August 1982

³⁴ Commons Registration Act 1965 Decision 17th May 1979 ref nos. 37/D/59-60
<http://www.acraew.org.uk/index.php?page=commissioners-decisions>

³⁵ Appendix12 Notes from the minutes of the Gorham Trust 10th October 1984

It must be remembered that the grass belongs to the commoners ie a legal interest.
The present course of the Council in dealing with the issues is recommended to be continued.

4.2 FENCING

.1 The E Piece

In the period between 1989 and 2004 the E Piece was partially fenced, and divided. A small portion on the North West corner beyond Church Lane was fenced into the Gorham Trust land, and used for a manure heap. The portion to the west of the Telscombe village road was also fenced along the road, into the Gorham Trust Land. Fencing was erected to keep motorbikes out but it also removed lawful access. Other parts of the Tye land [D and E piece] were also fenced into the Gorham Trust land to meet the cattle grazing requirement from the then Rural Development Service, as part of the Environmentally Sensitive Area grant agreement [1999], who likewise guided the cattle grazing scenario [ESA 2003] on the main Tye to the detriment of the commoners' legal interest.

There is no record at DEFRA of any application for fencing under s194 of the Law of Property Act for any of this fencing or lawful consent from the Secretary of State.³⁶

.2 The D Piece

In the same period the D Piece was fenced the bridleway, BW 4Telscombe, which should be within the fields, was fenced out of the D Piece. The rest of the D Piece was fenced into the Gorham Trust land, and divided between 2 fields, with a separate section where the bridleway runs. No provision was made for public access to part of the D Piece except across the Gorham Trust land up BW 4 and no provision seems to exist for vehicular or otherwise access for the land owner, TTC, over the Gorham's Gift Trust land.

There is no record of any application being made for consent under s194 of the Law of Property Act 1925 for the division of the D piece into two. The records and maps of the Gorham's Gift Trust minutes show an intention by the Trust to dedicate the track connecting the Telscombe road [Gorham's Lane] to bridleway BW4 as part of the easement for the reservoir and the new lease but it was not completed.

.3 Management

.1 In 2002, Telscombe Town Council commissioned a management plan from the agents, the South Downs Joint Committee, to identify the best way to manage the Tye in the future. A number of problems were identified with regards to the Tye and solutions were outlined but many were not dealt with whilst others such as motor vehicles ended up in 2004 with the illegal dumping of somewhere near 9,000 tonnes of waste as bunding. At the time of this report the unlawful waste is still on the Tye and it is estimated by East Sussex County Council that it will be dealt with in June 2009

.2 A referendum was conducted of the local population regarding fencing proposed by the management plan as part of the ESA agreement.³⁷

.3 The case for fencing, as outlined in the Town Crier was:

³⁶ DEFRA pink slips <http://www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/protect-consent.htm>

³⁷ Appendix 13 Special Referendum edition of Telscombe Town Crier

- To end the use of fertilizers, so improving the number of wild flowers and prevent skylarks being killed by the hay cut in May, allowing the main Tye to be entered into the ESA Scheme, and attract grants.
- To improve the Tye for walkers and other legitimate users
- To deter joy riders, travellers, anyone wishing to dump rubbish, motorcyclists, race horse trainers and rave parties.

.4 The alternative options for Management of the Tye were described as limited, being bollards or bunding (mounds of earth), which would be less effective than fencing in protecting the Tye from vehicles.

.5 The majority of respondents voted for the option of fencing.

.6 An application under s194 of the Law of Property Act (reference CLI 1/3/62) for perimeter fencing of the main Tye, with gates and cattle grids, was submitted on 2nd September 2002, and consent was granted on the 30th April 2003

.7 The fencing was erected in 2004. The new fencing was for the most part placed not where it had consent, on the perimeter, but within the boundary of the Tye. The fencing severed the definitive line of Telscombe bridleways 4 and 8, and footpath 10. In sections such as in the area of the Cross Dyke and St Michaels Mount the Council has lost substantial amounts of land. Public access has been compromised by in some places inadequate gating and access provisions specifically the DDA [Disability Discrimination Act] requirements³⁸ but also others.

.8 The issue of the Restricted Byway access to the coast road has already been addressed via a s38 Common Act 2006 and an exempt notification has been made to the Secretary of State for the works which will enable lawful access to be maintained to the highway³⁹. At the same time it was always assumed that the locked field gate provision to the side would enable access by vehicles with the landowner's permission for works being carried out on the Tye and the Emergency Services such as the Fire Brigade.

.9 We would also recommend that one or two dedicated disabled parking bays be constructed off the access line for the vehicles and carriages between the new gates and the A259 to comply with the requirements of the Disability Discrimination Act. This should be done in conjunction with the Highway Authority as it is unclear on the ground as to where the Tye ends and the highway verge begins

4.3 ESA Agreement and the future management of the Tye for public access and conservation.

.1 The first ESA agreement came into effect for the northern end of the Tye in 1992 being an area of grassland lying on drift clay

.2 On the 1st May 1999 an ESA agreement was entered into by TTC for the E piece as a remnant of unimproved chalk down land. This runs out at the end of April 2009.

³⁸ Disability Discrimination Acts 1995 and 2005

³⁹ Appendix 14 Map of exempt works to Restricted Byway 9

.3 The main Tye was added in 2003⁴⁰. The aim of the scheme was and is to enhance the environmental interest. This was done in conjunction with a five year management plan. This was due for review in 2008.

.4 It is not possible for the renewal of the E piece ESA agreement [£60/ha] to be made in isolation of the rest of the Tye in 2009 and it will be necessary either to lose the income, apply for ELS [Entry Level Stewardship at £30/ha] or to enter into a new whole holding HLS [Higher Level Stewardship up to £200/ha] agreement. A pre application appraisal has been carried out by Natural England so that an application can be made in time for an agreement to come into force by the end of April in this year's HLS Natural England budget. This has been done in collaboration with the Farming and Wildlife Advisory Group [FWAG]. The application is in process of being prepared and submitted at the moment⁴¹. This process has thrown up a number of anomalies as to land registration in the Rural Land Registry which likewise have to be dealt with before any application can be made. These include parts of the Tye not being registered or being registered to someone else and the lands south of the coast road not being registered at all despite the western section being part of an SSSI [Site of Special Scientific Interest] and requiring an approved management plan by statutory duty

.5 The requirements of the HLS are more stringent than the outgoing ESA and where before the agreement was left to the managing agents [South Downs Conservation Board] to implement in future there will be a greater emphasis on the liability of the land owner to make sure the work is carried out in accordance with the agreement. A lot of the agreed works under the existing ESA agreements and the required management were not been carried out by either the managing agents [SDJB] or the lease holder [Mr Carr].

.6 The issues of the Single Farm Payment and ELS need to be resolved with the agreement of the commoners. This is because the commoner's rights are a legal interest in the land and these are attached to Stud Farm 252 sheep [Mr T Armour is the tenant] and Warren Farm 100 sheep [Mr Northcote is the land owner].

.7 Mr Northcote no longer seems to use his rights and it may be considered that he has therefore abandoned them. The Town Council enquire as a precursor to reclaiming those rights should enquire if he intends to exercise those rights in any appropriate period and seek to lease them back or take temporary possession of them [Commons Act 2006]. These options are important as the rights bring with them the right to agricultural payments such as Single Farm Payment and Entry Level Stewardship.

*'The owner of a common is entitled to the residue of the soil which remains after any rights of common have been satisfied. Arguably, where the commoner is unable or unwilling to directly profit from the exercise of that right, then the owner is entitled to the surplus grazing and the commoner should not be free to sell the exercise of the right to a third party for profit.'*⁴²

.8 This approach is reinforced in the **Animals Act 1971 s8 which gives derogation for liabilities in the case with accidents on a highway for commoners where the accident is between a vehicle and a**

⁴⁰ South downs ESA 2003 agreement holding no 41/123/0009 3rd September 2003

⁴¹ Appendix 15 Proscribed works for ELS and HLS on Telscombe Tye sheep down common land.

⁴² Defra The commons Act 2006 : Guidance note on Severance revised August 2006
<http://www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/manage.htm#severance>

commoner's animal. The second part applies to the land owner's animals which are there by right as a result of surplus grazing being available and being used by the landowner.

.9 It is also important to remember that the calculations of the Single Farm Payment by the Rural Payment Agency for the holding has a statutory excess based on the area of the Tye. This could be as much as 36 ha units which could be claimable by the Town Council at the present rate of £30/ha. This argument as to landowner's rights has not, I believe, been put to the Rural Payment Agency yet.

.10 There is also the option for some HLS /ESA capital works such as the restoration of the dew pond, disabled access, fencing and scrub removal. We would rely on NE to advise as to what was acceptable and available within the next management plan or the present budget period.

.11 It should not be forgotten that there are other liabilities and duties such as ragwort⁴³ and rabbit control and public access which have to be included in any future Stewardship agreement.

.12 Another consideration is the restoration of the Tye after the removal of the illegally dumped waste along the whole length of the Restricted Byway 9 and some of BW 8. Whilst the grass seed specified in the ESCC tender document is NE approved and contains some appropriate wild flower seeds it has a high proportion of Italian rye grass which is not suitable for downland sheep grazing. It may need mechanical topping to restrict the growth. This will be difficult during the sky lark nesting season. **The cleared areas will also need to be soil sampled prior to seeding to ascertain that the phosphate and nitrogen levels are low enough to produce the sheep down required for environmental stewardship or if any contamination has occurred as a result of the waste.**

.13 It is important to protect the Council's position during the clearing of contaminated waste illegally dumped on the Tye whenever ESCC decide to do the much delayed work. The requirements of the Town Council as landowner must be adhered to vigorously so as to pre-empt any possible blame for wrong doing. **It would be our recommendation that the Council appoints an independent waste and pollution control agent to act on its behalf as soon as the ESCC tender is available to protect its interests and oversee the works and paper trail.**

4.4 Ancient monuments management:

.1 The record sheets for the ancient monuments are now in the possession of Telscombe Town Council but appear from the historical research to be incomplete. No agreement has been proposed by English Heritage for the protection of the Cross Dyke and the other scheduled monuments. The dew pond is not included as an ancient monument and its restoration is therefore left to agreement with Natural England and the proposed environmental stewardship agreements. The fencing and previous relining work, which has failed, does not have lawful consent.

.2 There is considerable damage to the Cross Dyke by burrowing animals namely rabbits and badgers as well as surface damage and erosion by cattle sheltering from the weather. It is recommended that both English Heritage and Natural England be approached to find a mutually beneficial management plan to protect this important archaeological area

⁴³ Ragwort Act 2007 <http://www.defra.gov.uk/farm/wildlife/weeds/index.htm>

.3 The southern end of the Cross Dyke was filled in and subsequently de-registered as a scheduled monument as a result of fencing by the Gorham trust which at the same time fenced part of the TTC Tye lands into the Trust lands

4.5 Public rights of way:

Bridleway 8

.1 Bridleway 8 runs on a line mostly adjacent to the track used by vehicles across the Tye. The track drops down off the main body of the Tye onto what is shown on the Enclosure Map as both common and Drove way. The width is set at 1chain or 22yds. By the time the 1910 Finance Act maps⁴⁴ were made this section is shown as part of field 18/127-211 over which a track runs to its junction with what is called the Telscombe & Lewes Road. This section to the parish boundary is shown open and free with a number of private roads joining it. It also indicates that it connected not with Telscombe Village but with those in the adjacent parish going east and then north.

.2 This ancient drove way becomes Telscombe Road on the Highway Authority information maps but no adoption is recorded. During the war a concrete roadway was laid on Telscombe Road but this did not continue over the section of track between Comblands and the Village. There is no suggestion in records from that time that this route was used by vehicles except that The Gorham's Gift Trust minutes (1944) mention the making up of the Telscombe Road by the military stopped short of the Village, and there is no evidence of the continuation of the military road over the Tye. There is no evidence from the Parish Council at that time that there were byway or carriageway rights on this track in the correspondence regarding bridleway 8 between local residents and the Parish Council. There were references to the Old Funeral Road being a carriageway in this correspondence.

.3 A minute from Chailey Rural Council⁴⁵ states:

"The Draft Map shows an alleged public bridleway following the line of a ditch from the end of the County Road at Telscombe Village southwards for 150 yards. This was the route marked on the Parish Map but the Parish Council have now represented that the correct route is along the existing carriageway a few yards to the west, and it is recommended that the draft map be amended accordingly."

.4 The distinction is clearly drawn between the bridleway and the Old Funeral Road, which was recognised as carriageway in this correspondence.

.5 The Gorham's Gift Trust minutes record no objection to the designation of Telscombe 8 as bridleway, or any suggestion of higher rights. (1949).

.6 There is frequent reference in the Gorham's Gift Trust minutes⁴⁶ to the problems created by driving on the Tye. The route referred to is the central track [approximately on the line of RB 9]. There is

⁴⁴ Appendix 5a&b 1910 Finance Act

⁴⁵ **FILE - 21.** Route shown for path - **ref. C/C/44/112 - date:** Dec 1953 - Feb 1955 [from *Scope and Content*] Telscombe 8 running south from the village by Telscombe Parish Council. (ENV 5560)

FILE - 49. Omission of a path - **ref. C/C/44/139 - date:** Sept 1953 - Oct 1956 [from *Scope and Content*] Running south - south-east from the southern end of Telscombe village. (ENV 5562)

⁴⁶ Mar '36; July 37; Feb 37; July 37; Dec 38; nov 44; June 62; Oct 62;Feb 63; Oct 66; April 75; July 76; Aug 82; Oct 83;

evidence in the Gorham's Gift Trust minutes that the owner at that time, Mr Neville, did not intend to dedicate rights to drive on the Tye. In the minutes of the 16th December 1938 the Gorham's Gift Trust Clerk reported on suggestions from the chairman of Telscombe Parish Council that it would prevent further damage to the Tye lands by motor traffic if a notice board in similar terms to that appearing at the junction of the footpath from the village with the South Coast Road were to be erected at the Village end of the footpath and that he had arranged for such a notice board to be erected 'by order of Gorham's Gift Trust.'. Subsequently they found that the board had been erected but with 'order of Saltdean Estates Company' was on the sign. Saltdean Estates Company was Neville's Company, the landowner. In June 1962 the GT minutes record a letter from the Society of Sussex Downsmen, dated 1 May 62, which complained that the bridleway 9 entrance to the South Coast Road had been blocked and diverted, (by Neville and tenant Carr) and the diversion was unusable. The minutes in April 1975 refers again to signs on the Tye, and the police recommendation that more and better signs would help to prevent driving, and that the one at the Southern end of the South Coast Road was misleading. The Lord of the Manor would not agree to more signs being erected by the Parish Council and the Gorham's Gift Trust. In 1976 the Trustees agree to put another traffic sign up on Stud Farm.

.7 The Gorham's Gift Trust owns common rights over the common land and [claimed] the dedication of the route as a carriageway would deny them the exercise of these rights. There is also evidence in the minutes [10 December 1942] to their lack of ability to dedicate rights over their lands. In 1942 the Church had requested of the Trust a single carriageway to the Church from Telscombe Cliffs. The route is described as $\frac{3}{4}$ mile long and through Thornton Smith's land, terminating at the Church. It appears that this would have been along Church Path. The Charity Commission denied consent, as it was not of benefit to the charity. This also implies that there was not a vehicular route at this time across bridleway 8, as if it had been in existence the new carriageway would not have been required for church goers from Telscombe Cliffs to get to the Church.

.8 There are signs⁴⁷ erected on the side of the bridleway and at the southern end by the Telscombe Town Council circa October 1989, indicating that driving on the Tye is illegal. This may be sufficient evidence of intention not to dedicate in itself. The sign erected as to the application of s193 [LPA 1925] which went up in 1994 also would reinforce this lack of intention because s193 makes it illegal for the public to drive on common land even though the signs do not specifically refer to it but major on the training of racehorses. There may be further evidence in recorded minutes of the Council of intention not to dedicate.

.9 It seems that the Town Council has not availed itself of s30(6) Highways Act 1980 and made a statutory declaration as to the rights of way on its land. This is an important legal event and should be a priority in order to mark to legal boundary in time for a public claim by user

.10 The track is driven, and has been for some years. For this use to result in vehicular rights certain conditions must be met. If there is evidence of intention not to dedicate it will not result in the creation of public rights.

.11 Byway rights were not recorded on the Definitive Map when the relevant section of NERC Act was enacted in 2005. The onus is now on drivers to prove that carriageway rights existed, and persist under one of the exceptions of the Act. The most likely exception would be that in the years 2000 to 2005 more vehicles in total than all other users together used the track. In March 2007 the rights of way officer reported in correspondence that the Tye agents the South Downs Joint Committee were surveying the use by vehicles. This was not carried out and would not now be evidence of use during the relevant period but may be used to define the present usage in terms of a 'road' when looking at the option of whether ESCC as Highway Authority can make a Permanent Traffic Regulation Order under the

⁴⁷ Appendix 16 Photos of signs

Road Traffic Regulations Act 1984. It is not our opinion that pre-emptive traffic regulations orders can be made under part 1 as described in Defra's 2005 guidance 'Regulating the use of motor vehicles on public rights of way and off road' in this case as there is no outstanding dmmo or other claim for public vehicular rights outstanding. To do so may be taken as a presumption that full public motorised vehicular rights exist but are not recorded.

.12 Consideration as to the use by and required by the village residents must be met in any plan to physically curtailing public vehicular access. There seems to be a lot of use as a parking area for those walking their dogs and this also should be taken into account in any such plans.

.13 The route and width of bridleway is in question. There is evidence in the Enclosure Award that the width of the Drove, east of the Cross Dyke, was 22 yards. This would be fairly typical of an old Drove. The Drove is shown as straight through on the line of the current track, where there is now a cattle grid south of the Scheduled Cross Dyke. This section was omitted from the Definitive Map.

.14 The section south of the Cross Dyke is not shown on the Award map, but this was through open pasture, and roads across the open pasture are not shown, although there is evidence that these continuations did exist.

.15 The Drove is also shown on the Tithe Map of 1842, plot number 182. Here it is shown in an identical way to that of the Enclosure Award, except that the section of bridleway looping south of the track, on the current definitive line, is also shown. The straight Drove is shown as 22 yards wide. The ownership is shown on the award as Countess of Amherst. It is described as 'Warren Farm Drove, cultivated as pasture. The Countess of Amherst is believed to be married to the Duke of Dorset, and Warren Farm was part of the Dorset Estates at this time. (Figg' Survey of Dorset Estates at County of Kent Archives)

.16 No tithes were charged on the Drove. Tithes were not charged on Highways or common land. The main Tye, plot number 127, is described as Tenantry Sheep Down, pasture, and no Tithe is charged.

.17 A track is shown on the first edition Ordnance Survey map. This is shown running on the bottom of the bank. It is not shown as a chain in width. It shows the route as it is now, a bridleway, on the definitive map

.18 The Ordnance Survey mapped visible features. This track has no reference number, although the centre track is shown as number 16 and is shown in the reference book as road.

.19 It would not be unusual to have a route that runs on two tracks in East Sussex. With its heavy clay soils, Sussex roads were notorious for being appallingly poached and rutted. The width of old drove roads was frequently very wide to allow for people to avoid the worst parts in winter and spread the wear. It was not unusual for ways to be on two tracks, one higher up the bank, for summer and winter use. These tracks are still referred to locally as the summer and winter routes.

.20 The lower route was used until 1980. In the early 80s the track was reportedly obstructed and the earthwork that was in the loop of the bridleway was filled in.

.21 The Sussex Definitive Map is deficient in two ways. It does not record widths in the statements for the most part. Furthermore the base map chosen for the Definitive Map was of a very small scale,

and the line marking the bridleway to some extent obliterates important features that would locate the centre of the way.

.22 However the Rights of Way office produced a small plan using a computer programme to clarify the line of the bridleway from the Telscombe Village adopted highway, South South West roughly parallel to the Cross Dyke. This shows the bridleway running east of the track for a short distance, and then running west of the track. The definitive line of the bridleway does not follow the track, which contradicts the route recommended in the correspondence regarding the draft Definitive Map. It may be that this is because of the true width of the bridleway being rather greater than that of the track, or possibly the track has 'drifted' and is no longer on the line that existed at the time when the Definitive Map was drawn up. It is necessary to view the first copy of the Definitive Map to confirm that the route was shown as being on the track to confirm whether the recommendation referenced in the correspondence was accepted, or a different line adopted.

.23 There are 2 cattle grids on this bridleway. Neither have bypass gates. Only the Highway Authority is empowered to put cattle grids into a highway which comprises a carriageway⁴⁸, and is responsible for the maintenance. There is a requirement for a carriage bypass gate, and others regarding the construction⁴⁹. There is no carriage gate on these cattle grids. If this is any sort a public carriageway or highway, and this includes public rights of way, **the cattle grids are illegal obstructions. Correspondence between the Land Agent for the Trust tenant who constructed the cattle grid shows that the Highway Authority agreed that s147 cannot be used to give licence to cattle grids on a highway [ie a bridleway]. This was challenged by the land agent [Clifford Dann] but as ESCC highways refused to go to court this illegal obstruction has been allowed to stand. It is also understood that the application has to be by the landowner or tenant. This is not the case as the land is not registered or owned by the Gorham's Trust.**

.24 The County as Highway Authority claimed that as this is a bridleway they could not grant s147 HA 1980 licence but the land agent relied on a somewhat perverse interpretation of the legislation which empowers the Highway Authority to allow structures on, but not in, a bridleway⁵⁰. Counsel's opinion taken by the British Horse Society and proposed by the Byway and Bridleways Trust [see appendix 17 and 'Cattle Grids' below] is that the Land Agents interpretation of this legislation is incorrect. However this point of law has not yet been tested in the courts.

.25 It is also important to understand that the Highway Authority has a duty 'to assert and protect the rights of the public' [s130 (1) HA1980] as well as a more specific duty under s130(3) 'to prevent as far as possible, the ...obstruction of the highways for which they are the highway authority'. The present acquiescence by the HA should be challenged. It is also put that s82 -90 HA 1980 refers only to a highway 'which comprises a carriageway'. Carriageway is defined in s329(1) for the purposes of the Act as 'a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles'.

.26 That being so the HA can not construct a cattle grid unless it is in a vehicular highway or a right of way that is a byway open to all traffic. This is not the case here therefore the cattle grid can be

⁴⁸ S82-90 Highways Act 1980

⁴⁹ British Standard 4008 2006

⁵⁰ s147 Highways Act 1980

considered an illegal obstruction. Though the land is not registered in the Commons Register the Enclosure Award indicates that it is common land so that it is likewise and unlawful construction under s194 of the Law of Property Act at the time it was constructed. The Commons Register will be capable of rectification in 2010.

.27 The granting of any licence under s147 for gates or stiles on a right of way or the construction of a cattle grid in a carriageway [s82-90 HA1980] must also have regard to the needs of persons with mobility problems [s147(2A) HA1980] which does not seem to have been considered.

.28 There is evidence of intention to dedicate at common law the section of track to Telscombe Cliffs by the Cross Dyke as bridleway in 2004, when the definitive line was obstructed, and a bridleway gate installed beside the cattle grid by the SDCB on behalf of Telscombe Town Council, the landowner,.

The one member of the Gorham's Gift trustees who is very positive about being able to drive over the Tye is Reverend Harries, who moved to Telscombe in 1931. He complains in 1942 that Military Vehicles have damaged the tracks over the Tye, and wants them to make one of them usable for motor. In 1955 he again complains, this time about damage to the surface of the track to Telscombe Cliffs, which he wants ESCC to make up. They declined. In 1958 the Trustees discussed a letter of from a local ratepayer protesting against barbed wire fence erected across the road to Telscombe Village 30 yards from the Coast Road, in lieu of which a new track has been cut across a field. Reverend Harries Rev Harries stated that for 50 years the main access to the Telscombe Village had been over the Tye, originally used by horse drawn vehicles and for the last 40 years by motor cars, and at no time had there been any hindrance. This seems to refer to the Restricted Byway 9 rather than the track of Bridleway 8. He also claimed that for 40 years prior to 39 there had been a gallop from the coast to the village. He does not give any evidence of the source of his claim, which covers a period prior to his moving to the area. He does seem to contradict himself as well, as this would include the period during the war, when he had claimed the tracks were all damaged by the military, and unusable. (GT 1942)

.29 There may be private prescriptive vehicular rights⁵¹ pertaining to any of the land adjoining the Tye. The history of the whole of Telscombe Road may be relevant to the rights on this section of Droveaway. It is interesting to note that the description of the way changes between 1810 and 1842, from the Droveaway to Hoathdown to the Droveaway to Warren Farm. When houses were built in Telscombe Cliffs Way, some residents reportedly paid a fee for the use of Telscombe Cliffs Way to the development company. This could indicate intention not to dedicate this as a public carriageway at that time. This seems to be supported by the 1910 Finance Act map. However the details of the agreement and the extent of the Telscombe Road included in any agreement would be pertinent. Subsequently a short part of the Telscombe Road was made up by the County Highways Authority, and the residents fronting the road were charged for the works. The newly made up part of the road was then adopted. In the Gorham Trust minutes there is reference to their being charged for the making up of 10m by their land, which it was proposed to charge them. They objected as there was no benefit to them. Further examination of records regarding the making up of the road, and the extent of ownership of the Development Company may be useful.

Bridleway 4

.30 The definitive line of the bridleway is obstructed by the perimeter fencing.

⁵¹ Prescription Act 1832 and House of Lords judgement HoL Bakewell Management 2004 UKHL14

.31 Users were constrained to use the track and land south of the track to Landour and St Michaels during the period from 1983 to 2004 when fencing was put to the south of the track, severing bridleway 4 to the south as well as north. Users had to use the track in its entirety, turning right just past where the cattle grid is now placed on the Tye with a bridleway gate to follow the track to the gate into the Gorham's Gift Trust Land. It is likely that public bridleway rights now exist on the whole length of track by use over 20 years, and show an intention to dedicate by the owners of the common as well as the owner of the track and the section of the common fenced out of the main Tye by way of diverting users along the track as well as the original line as shown on the definitive map.

Gate to Bevendean Avenue

.32 This route was used by riders until the fencing in 2004 to access the Tye from East Saltdean. It was also used by less mobile walkers, being a gentle slope. The steps cut into the bank have proved difficult for these users who are denied access from East Saltdean as a result. It is a strong desire line. The construction of the steps and kiss gate at this point was for the exclusion of racehorses. The race stable in Woodingdean that used to access the Tye here constructed its own gallop some years ago, and so there is no training yard on this side of the Tye with any interest in using the Tye. There seems then no barrier to restoring this access to meet the needs of local riders, and to restore the legal access for the less mobile.

.33 There may be public rights on this route from long use as of right to go from Saltdean to Telscombe Village and Telscombe Cliffs.

4.6 Cattle Grids

.1 It can be seen from the references above that cattle grids can be legal or illegal depending on whether they are constructed in a highway and by whom⁵². The cattle grid on restricted byway 9 has already been dealt with and will be removed when works are commenced to construct a carriage friendly anti motorised vehicle Kent Carriage gap.

.2 The position of the one at St Michaels is to be reviewed in line with the revised fencing and access requirement for contractor's machinery when the power lines on the Tye are put under ground. It will also be important to deal with any private vehicular right over this area of common as well as those of TTC for access along BW 4 to the D piece.

.3 The position of the cattle grid and the status of the width of the BW8 on the Definitive Map and Statement and the associated status of the track and adjacent land on to the Droveaway from Telscombe Road is an important issue especially in regard to any action that might be proposed for the closure of the track to public motor vehicles.

.4 The exact position and width of BW8 at the entrance to the main Tye is required to be ascertained with the status and ownership of the Droveaway so as to decide if the grid is needed at all.

.5 The position and placing of the cattle grid on the common at the entrance from Telscombe village is subject to a review being carried out and is subject to liaison with ESCC Highways as to the end of the adopted highway which at the moment does not equate with TTC ownership of the common or

⁵² Appendix 17 Byway and Bridleway trust paper rwcstock control paper 1 2007

the Enclosure and Tithe Awards or the assessment under the Finance Act 1910. This also ties in with the duty of the Highway Authority to maintain cattle grids constructed in a highway⁵³.

.6 There has been an ongoing issue of the gate/s to the side of the coast road /RB9 and the Telscombe village access grids being forcibly left open by one or more users of the ways. This has resulted in grazing animals being able to wonder freely on to the public highway. Case law in support of the Animals Act 1971 makes it evident that even though there is derogation in favour of the commoners or landowner [s8] where the animals are on common land over which a highway runs; this does not apply when the animals move off the common. **It is therefore the duty of the landowner to do all in its power to mitigate this problem even to the extent of applying for an injunction. If the landowner does not take appropriate action and there is an accident then the liability may be found to be with the landowner**⁵⁴.

.7 A revised scheme at the junction with the highway to Telscombe Village would be beneficial but this will depend on the cooperation of the Highway Authority and the acceptance of the duty in s82-90 of the Highways Act 1980 to construct and maintain the cattle grids. The 1994 s194 consent for fencing was very explicit in only allowing the gates not only those in the new fencing [as cross hatched on the plan⁵⁵] but also that all the others to be only in or on the boundary. This does not seem to be the case at the entrance from Telscombe village, at St Michaels, the Cross Dyke or in some other places where the positioning of the fencing is not on the boundary nor is it de minimis.

4.7 Disability Discrimination Act 1995 & 2005

.1 These regulations have been in place ever since the fencing was being erected. It seems that the requirements have been ignored during the whole time up until recently. The detailed recommendations for the Tye are included in a separate appendices report and recommendation document⁵⁶. Suffice it to say here that the requirements of the DDAs have been openly disregarded by the previous administration and management. It will be important for the present management to consciously involve those who require representation.

4.8 Gates and Access Ways.

.1 In line with the general policy of all access providers a policy of the least restrictive option should be applied so that all unnecessary gates and all obstructions should be removed.

.2 All gates and other furniture should be constructed to comply with the latest British Standards and be DDA compliant.

.3 Where bridle gates do not open onto public carriageways, they should be two way opening with a suitable handle for riders and disabled users. One way, self closing gates that conform to the latest British Standard and are stock proof should be installed when openings from grazed land are by or onto

⁵³ s82-90 HA 1980

⁵⁴ *Mirvahedy v Henley* [2003] UKHL 16, 2 All ER 401, HL

⁵⁵ Appendix 18 s194 consent plan 1994

⁵⁶ Appendix 19 Gates and access ways report

public carriageways. The direction of the prevailing winds should be taken into account when installing gates. Good installation standards and regular maintenance is particularly important in these locations.

.4 Gateway surfaces should be reinforced to prevent poaching, and gulleys forming. The standard of surface should take into account the urban nature of users. Care should be taken to reduce the levels of erosion around gateways and on the approaches. Sufficient numbers of good gates will spread wear, but those gateways that are most used may require more surface work to achieve this. The full width of level surface is required for accessibility. A post to steady themselves on can be helpful to less mobile users when there is a sloping approach. The access adviser and users will advise.

.5 At all entrances the choice of furniture should be to provide the least restrictive option to comply with current legislation. Local users with disabilities should be involved in the decision making, to comply with the Council's Disability Equality Duty. The local authority disability access officer or a registered disabled access adviser should also be consulted.

.6 The choice of materials for all furniture should take into account the sensitive nature of the environment. It is usual in AONBs to install wooden structures where possible, and cattle grids are black to reduce their impact, with wooden guardrails. Kiss gates have an urban feel, add to the clutter, and lead to more erosion. The surface area to be maintained is greater if they are to remain accessible. These factors should be weighed against other considerations when deciding on the best gate in any location.

.7 Most of the entrances could be improved at low cost to meet a good general standard. Key access points should be identified with users for a higher standard of installation to give the best possible access for users from both Gorham Way, East Saltdean, and along bridle way Telscombe 8, which is an important link for local residents going about their lawful business..

.8 The public use of bridleway 8 by motor is presumed to be illegal, since the enactment in 2006 of the Natural Environment and Rural Communities Act (2000). There may be some private easements across the Tye that must be considered. The provision of permissive or licensed access for the residents on the Tye and of Telscombe Village may be considered, and the means of providing this whilst preventing access to the general public for motorised vehicles will require discussion and agreement with them, and the commoners.

4.8 Gate and access recommendations for discussion with users:

.1 Gates from Gorham Way should all be made fully accessible. A sufficient width of kerbs should be dropped and a wide concrete ramp provided to line up with the gate, and allow for users of mobility buggies to turn to open the gates. This is particularly important as the gates will need to be one way self closing in this location. Care should be taken that they do not close too quickly.

.2 As there is a slight gradient at the edge of the Tye from the road, at all, or at least 2 of these gates, it would be advantageous to provide a short section of path in a suitable material onto the Tye. This would reduce erosion and make it easier for elderly people with a lower level of mobility to get over this easily overcome impediment to access to the Tye.

.3 The gate at the southern end of RB9 is the subject of a s38 application and the gate should be one way, self closing with a suitable handle for equestrians and be DDA compliant. The surface is already

reinforced, and could be made more level. The path just beyond should be improved, with level access to the grass on both sides provided when the bund is removed.

.4 On the East Saltdean side, the gate at Tye Close should be a bridle gate with a good latch and the gateway surfaced/. This gate has a good approach for wheelchairs and pushchairs and opens onto good level ground.

.5 The gate at Bevendean Avenue should be a bridle gate with an accessible latch. The approach should be reinstated to the full width, the steps removed, and the slope reinstated. The rail should be installed the full length at the edge of the path. As the surface has been disturbed it is likely to require some reinforcement. A footpath width could be made up by the rail to give a good non slip surface for less mobile users. Within the Tye, the land should be reinstated to the former slope and steep steps removed or improved. The detail should be in consultation with users and the access officer.

.6 On Bridleway 8 the cattle grids should be removed with the introduction of Kent carriage gap and self closing gate coupled with a lockable bypass gate for authorised users only. The bridle gate into the field by Combelands should be retained to ensure users have access to the full width of the bridleway as shown on the enclosure award. It is likely that riders would use this, whilst some walkers and mobility buggies might opt for the drier harder track. The track requires repair, but the choice of surface is dependent on the level of motorised vehicular use. It is the duty of the Highways Authority to repair the path to meet the needs of the normal traffic of the neighbourhood. However permissive use by motor would have liability implications and this should be considered on the area owned by the Council. It may be that those benefitting from permissive use should contribute to repair.

.7 The fencing south of bridleway 8 should be moved to the perimeter. This would allow users to walk the ancient route alongside the cross dyke. There should be a good two way opening bridle gate onto the definitive line of the bridleway on the loop south of the track where it turns east by the cattle grid.

.8 A width of good level track sufficient for buggies and walkers to use with ease would be of benefit to Telscombe Village residents and Church goers from Telscombe Cliffs. There is evidence that there exists a track at the bottom of the bank, obstructed since the early 1980s. This is the line of the track as shown in the first edition OS map, and the definitive map. It is likely to be the best route for reinforcement, and should be considered. It is likely to have several hundred years' worth of foundation already, and be on the best ground.

.9 The gate from the village requires particular attention to ensure that it provides good access whilst preventing illegal use by motor and stock escaping.

Fencing at Landour should be removed and replaced on the other side of the track on the boundary of the common as shown on the enclosure Award map, so that users do not have to pass through 2 gates in close succession for no good reason [see EDF power below]

4.10 S193 Law of Property Act 1925

.1 This legislation grants the rights to 'air and exercise' to the neighbourhood for both pedestrians and equestrians subject to any limitations consented to by the Secretary of State. This coupled with the charitable aim of the Gorham's Gift Trust for 'quiet and peaceful recreation' gives a substantial area for

public recreation. This right does not override the duty of care the public have to the needs of others especially the rights of the commoners and the agricultural needs of the Gorham's Gift Trust tenant.

.2 As a result of legal advice dated 7th May 1994 Telscombe Town Council erected signs⁵⁷ confirming that s193 applies to Telscombe Tye. The signs which were erected on the main approaches to the Tye, exist to today albeit a little worse for wear. The signs were in addition to those already erected on the Tye informing the public that unauthorised vehicles were not allowed on the Tye itself and with others applying to the public rights of way.

.3 It seems that none of the other recommendations of the opinion were carried out and this lack of urgency would not bode well in any application for injunctive relief.

.4 Section 193 applies to all urban, borough and metropolitan commons and manorial waste and where a Deed of Declaration is made. It is unclear as to the application of the former and no deed has it seemed been made in the appropriate manner neither have any Orders of Limitation [byelaws] under the powers set out in the section⁵⁸. It also makes driving on the common⁵⁹ illegal as against it being a trespass. This approach to illegal driving on common land by the public at large was further strengthened by the enactment of the s34 Road Traffic Act 1988 and the powers of the police in the Police Reform Act 2004.

.5 Two issues arrive out of the above. The first is that it is unclear if proof pertaining to the qualification under s193(1) could be furnished with any degree of certainty and the second is the police policy⁶⁰ on unauthorised camping does not deal with the illegal and criminal activity of driving and/or parking on common land and public rights of way⁶¹ seeking only to deal with trespass⁶². This has led to confusion, frustration and inaction in dealing with what is presumed to be illegal and unlawful uses of the Tye.

.6 It would seem to be paramount to put in place the legal framework and subsequent stakeholder partnership for a workable and accepted management plan that includes bylaws. This should include a Deed of Declaration with its attendant map⁶³, an associated Order of Limitations, a concordat with the police dealing with both policy and operational procedure, the implementation of a workable system of licensing of specific permissions applying to private vehicular use of the access' over the common, and a way enforcing against unlawful use [e.g. motorbikes and other motor vehicles⁶⁴, dogs chasing livestock,].

⁵⁷ Appendix 20 s193 Signs

⁵⁸ s193(1)b

⁵⁹ s193(4)

⁶⁰ Appendix 21 Sussex Police policy 611/2008

⁶¹ s34 road Traffic Act 1988, s193 LPA1925

⁶² s61/62 Criminal Justice and Public Order Act 1994

⁶³ Appendix 22a & b Proposed Deed and Map193(2) LPA 1925

⁶⁴ Road Traffic Act 1988 s34 and Police Reform Act 2004

.7 It was also the legal opinion that racehorse training is an unlawful use of the common⁶⁵ and that no specific rights are appurtenant to the Gorham's Gift Trust properties either by right of common, as an easement by prescription or in pursuance of a deed of lost grant⁶⁶. Given the incidents in 2008 and in 1993/94 it is recommended that negotiations be commenced with the landowners and tenants of the Gorham Trust lands to find some acceptable legal agreement which protects the Councils liability to the public and their use by right for 'air and exercise'.

.8 The present situation of use by two private households – Landour and St Michaels and non agricultural vehicle use by the agricultural tenant, for private vehicular access across the common needs urgent action to regularise the vehicular use as permissive/licensed and not prescription⁶⁷. Any granting of new easements would be considered a disposal of assets⁶⁸ and the value and any loss or reduction of public rights would need to be considered.

.9 The continuing public use of the cross common track linking Telscombe Road and Telscombe Village [Gorham lane] is dealt with elsewhere as is the illegal dumping of waste. Suffice it so point out that fly tipping on the common is a problem directly related to vehicular access and even if the liability is the District Council's and the Highway Authority's⁶⁹ and is covered by a Code of Practice⁷⁰ every effort should be made to dissuade such activity.

4.11 Bunding and illegal waste

.1 This has been one of the most contentious of the recent activities of the previous management and has taken over four years to resolve. It has so far concluded in an agreement for East Sussex Council to remove the illegal waste⁷¹. This was originally timetabled for last year but has continuously slipped. **No firm date for its removal has been received to date or how it is to be done.** There is a consideration being promulgated by ESCC that some of the clean chalk could be used to help restore and maintain Restricted Byway 9. At the moment the way is unusable in some places by those with a legal right ie carriage drivers. This would benefit both the lawful users and help reduce the cost. Great care must be taken if this approach is approved so that only suitable material is used and that the construction is carried out so as not to make matters worst.

.2 Telscombe Town Council have agreed to contribute £5000 to the cost which has been estimated to reach in excess of £200,000. **No proceedings have been taken against any of those involved.**

.3 Works have been hampered by the weather and wildlife considerations as well as contractual and tendering procedures at ESCC.

⁶⁵ Commons Act 1876

⁶⁶ Legal opinion 6th May 1994 TTC

⁶⁷ Prescription Act 1832

⁶⁸ Local Government Act 1990 s123

⁶⁹ Pt IV Environmental Protection Act s89

⁷⁰ Code of Practice on Litter and Refuse – EPA 90 (DETR 1999).

⁷¹ Appendix 34 Planning Enforcement notice

4.12 Power Cable works

Much negotiation has been carried out since the agreement to allow the undergrounding of the power lines on the Tye. This is part of a scheme for the whole of the AONB being carried out by EDF Energy. Agreement has been reached and works⁷² should be taking place on the Tye in June. Access for the machinery will be from the Coast road through the RB9 access gate. It is planned that the works will be timed to enable the s38 exempt Kent Carriage Gap works to be actioned at the same time so as to reduce disruption to the minimum. A full Health and Safety Audit will be carried out so as to maintain maximum public access with minimum work disruption. The result of this work will enable the landscape value of the Tye to be enhanced as well as contributing to the fencing costs required as part of the report both at the RB9 entrance and the common land boundary works at St Michaels. All costs, fees, charges, disbursements and land agent expenses will be covered.

This work has also enabled an increase and six years back payment of easement payments to be agreed and the future payments to be regularised.

4.13 Other research documents which have had or have an affect on the report and future management of the Tye

Appendices A24 List of Dog legislation.

A25 SSSI Coastal Boundary

A26 Fly tipping duties and liabilities

A27 OS 1930 Tye North End Tracks

A28 Tithe Map 1842 x4- a, b, c, d

A29 1989 Saltdean Reservoir water company easement

A30 ESA agreement Map 2003

A31 Archive notes: 1955 BW8a, legal status of Tithe surveys and Telscombe Enclosure

A32 Additional notes Gorham's Trust minutes ESCC archives

A33 Structures on rights of Way – Defra guidance for LA including DDA1995 compliance

A34 Planning enforcement notice

ABBEYLANDS 29th April 2009

⁷² Appendix 23 EDF schedule of works

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2. Copy of the Enclosure award map Ref 50GEO111 1810.
3. Smith's Charity map. 1910
4. 1948 Coast road widening Compulsory Purchase Order and Exchange maps 1&2.
5. a Finance Act 1910 map 5b Extract from 1910 Finance Map
6. Gorham's Gift trust deed
7. 1958 Schedule of Condition of main Tye East Sussex Archives
8. Decision letter regarding s194 application 2nd march 1960.
9. Letter from ESCC regarding court action under s194 law of Property Act?
10. Commons registration map. 1966 original provisional
11. Definitive Map a. map of the whole b. north end c. statement
12. Gorham's Gift Trust minutes 10th October 1984
13. Telscombe town Crier special referendum edition.
14. Exempt works restricted byway 9 s38 Commons Act 2006.
15. Proscribed agricultural works on common land for ELS/HLS application
16. . Signs compilation
17. BBT paper 1 Stock control 2007 Rights of Way review committee.
18. LPA 1925 s194 consent map for fencing
19. Gates and access ways report
20. LPA 1925 s193 signs
21. Sussex police policy statement 611/2008
22. Proposed Deed and map s193 (a & b) LPA 1925
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24. Dog Legislation
25. SSSI coastal boundary Natural England
26. Fly tipping powers and duties
27. OS map 1930 showing tracks and a ways north end of Tye
28. Tithe map and extracts a, b, c & d
29. Saltdean reservoir easement 1989
30. ESA Agreement map 2003
31. Chailey RDC Archive note 1953/5 BW 8
32. further Archive references Gorham's Trust and Telscombe Tye ESCC
33. Structures on rights of Way Defra Guidance for Local Authorities including Disability Discrimination Act 1995 [as amended]
34. Planning Enforcement notice

The appendices are not available on the website at the present time due to the size of the file. They are available for viewing in the Telscombe Town Council office.