

Corner Drove: historical document analysis

Application to record a restricted byway from Cuckold's Corner on Ware Road, Ware, to Ash Level

I. Introduction

A. Quick reference

A.1. **Location plan:** (see application map at part II below for detailed representation)

Location plan



A.2. **Surveying authority reference number:** PROW/DO/C413

A.3. **Existing public rights of way comprised in application way:** none (but crosses footpaths EE67, EE66, and terminates on footpath EE65)

A.4. **Parish of:** Ash

A.5. **District of:** Dover

A.6. **Ancient parish of:** Ash

A.7. **Hundreds of:** Preston/Wingham

A.8. **Termination points:** Cuckold's Corner on Ware Road, and the south side of the bridge over the drain parallel to the River Stour on Ash Level, 800m west of Red House.

A.9. **Termination points Ordnance Survey grid references:** TR28416081 and TR28576274

A.10. **Postcode:** CT3 2DB

A.11. **Ordnance Survey Explorer sheet:** 150

A.12. **Ordnance Survey County Series 25-inch sheets:** Kent XXXVII/5, XXXVII/9, XXXVII/13

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer historical researcher in relation to South and East Kent. I am a director and member of the Institute of Public Rights of Way and Access Management. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for the Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way known as Corner Drove in the parish of Ash, between Ware Road at Cuckold's Corner, and the south side of the bridge over the drain parallel to the River Stour on Ash Level. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a restricted byway.

C.2. The application way, at B (see paragraph D.2 below), connects with Brazen Street. The applicant believes that Brazen Street is an unrecorded public carriageway, and has made a contemporaneous application for a definitive map modification order to record Brazen Street on the definitive map and statement as a restricted byway.¹

D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(i) that a way should be added to the definitive map and statement for Kent as a restricted byway.

¹ Kent County Council reference: PROW/DO/C414

D.2. The way known as Corner Drove begins on Ware Road, Ware at Cuckold's Corner adjacent to Hawthorn Farm at A (Ordnance Survey grid reference TR28416081) and proceeds 585m north along an enclosed track, crossing public footpath EE67, to the junction with public footpath EE66 at B (TR28476139), then continuing 300m north to cross the Richborough Stream at C (TR28476169), then continuing 860m generally north along a track enclosed between drains to D (TR28486249), then turning east and shortly north along the west side of a drain, for 300m to terminate at the bridge over the drain which runs parallel with but south of the River Stour, at the junction with public footpath EE65, at E (TR28576274). A total distance of 2,045m.

D.3. The points A to E are identified in the application maps at part II below.

D.4. The application has been registered by Kent County Council in the register of applications no: PROW/DO/C413.

E. Nomenclature

E.1. The application way is referred to as Corner Drove: this name appears in the records of the Easry Rural Sanitary Authority (later District Council) (item IV.N below) in the 1880s.

E.2. On the map produced under the Tithe Commutation Act 1836 (item IV.I below), the southern end of the application way at A, at the junction with Ware Road, is labelled as Cuckold's Corner, and the 'homestead' to the west of the junction is described in the apportionment also as Cuckold's Corner.² The attribution of a name to the junction of the application way with Ware Road is itself some evidence that the application way is a public way, because named road junctions are typically associated with turnings which are themselves highways.

E.3. East from B is a way leading to Lower Paramour Farm (now footpath EE66), which formerly served a hamlet know as Bearding Street or Beerling Street. There is no trace of the habitation which was formerly here, but it clearly can be seen marked on the early maps: Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C below), Greenwoods' map of Kent (item IV.E below)³ and the Ordnance Survey, Old Series one-inch map of Kent (item IV.F below). The name Beerling (vice Bearding) Street has been adopted in this document.

E.4. Two drove ways head north from either side of Lower Paramour Farm — to the west of the farm, formerly known (or also known) as Beerling (or Bearding) Street Drove, now known as Paramour Street Drove, and to the east, Beerling (or Bearding) Drove. The latter is now designated a public footpath, following the diversion in 1959 of a cross-field footpath to Red House ferry onto the drove road.

F. Background

F.1. The application way historically is a drove way onto the Ash Level from neighbouring higher ground to the south. It is one of a number of such drove ways, roughly parallel to each other, penetrating the Stour valley marshes from the south. Some of these drove ways are now recorded as public rights of way, others are not.

² Apportionment 957: www.kentarchaeology.org.uk/Research/Maps/ANS/02a.htm

³ Labelled 'Boarding Street' — this seems more likely to be a misprint or misrecordingg of the name, than a legitimate variation.

F.2. The drove ways doubtless have been used for the movement of livestock, carts and farm machinery ever since the Wantsum Channel was drained and claimed for agriculture, perhaps (at least locally) in the early mediæval period. Some of the drove ways have no destination other than the fields which they serve; others, including Corner Drove, also provide a means of access across the Ash Level (in this case, via a footpath to the former Red House ferry) to Minster and beyond. Corner Drove, between A and B, also formerly provided access for carts to the hamlet of Brazen Street, which no longer exists.

F.3. Traditionally, every highway necessarily led from one place to another, and was required to have a *terminus a quo* and a *terminus ad quem*. In practice, in urban areas, the courts came to accept that a highway might form a cul de sac, where it was nevertheless used by a significant portion of the public (e.g. leading to a square or court).

F.4. In *Moser v Ambleside Urban District Council*,⁴ Pollock MR said:

It seems to me that there may be a number of cases in which the public have a need to go to a particular point, and there may well have been a dedication to them for their use for the purpose of reaching that point, although the return journey might be precisely the same route from the terminus ad quem to which the right of access is granted.

while Atkin LJ said:

I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway.

F.5. There must be some purpose in the public seeking to reach such a place: for example, to water livestock, to swim in the river, to admire the confluence of two rivers,⁵ or to take sand from a tidal foreshore in accordance with a local right.⁶ In such cases, the status of the right of way might be expected to be consistent with the character of the *terminus ad quem*: a driftway for cattle, a footpath to reach a viewpoint, perhaps a cartway to take sand.

F.6. In relation to the application way, the way served three purposes — to service the fields on Ash Level adjacent to or near the way, to service Brazen Street, and to provide a way from Ware and Brazen Street to Red House ferry and destinations beyond the ferry. The ferry has not operated for many years, but its abandonment is irrelevant, because it is claimed that the application way became a public right of way long before the ferry ceased to operate.

F.7. It may be said that the application way is no more than an occupation road, with only those landowners having land in the vicinity of the way possessing a right of way over it. Superficially, that is the position recorded by several of the plans for railways proposed to traverse the Ash Level:

- The first such proposals were in 1836, by the Central Kentish Railway and Sandwich docks (item IV.G below) and the Kent Railway (item IV.H below), to cross the application way in the vicinity of C. The former proposal identified the application way as a 'Drove Way' owned by the 'general owners' and 'general occupiers' (but without identifying any or all of them), while the latter identified it as a 'Drove to Marshes'

⁴ (1924) 89 JP 118, 23 LGR. 533

⁵ *Campbell v Lang* (1853) 1 Eq Rep 98

⁶ *Attorney-General and Newton Abbot Rural District Council v Dyer* [1947] Ch 67

owned by the Surveyor of Highways for Ash (which indicates a belief that it was a public highway).

- In 1840, the South Eastern Canterbury Ramsgate and Sandwich Railway (item IV.J below) proposed to cross the application way just south of D, and identified the application way as an occupation road in the ownership and occupation of single individuals.
- In 1845 and in quick succession in 1846, the Kentish Coast Railway (item IV.K below) and the Herne Bay and Sandwich Railway (item IV.L below) proposed to cross the application way mid-way between C and D. The former proposal identified the application way as a 'General Drove way for adjoining lands' with no owner or occupier, while the latter described it in the same terms, but with at least six owners and ten occupiers.

F.8. However, of these five separate railway plans, spanning around ten years, all but one record the application way either as a public highway, or as a drove way owned and occupied by multiple owners and occupiers, or by none. Only one, the South Eastern Canterbury Ramsgate and Sandwich Railway, finds the application way to be in the ownership and occupation each of a single individual, and then perhaps only because the railway was planned to traverse the application way just south of D, where the application way served no more than a handful of fields bordering the River Stour. It seems likely that, where the plans identified multiple ownership and occupation, the intention was not to suggest that the application way itself had several owners and occupiers in common, but that those several persons had joint interest in using the application way as a means of access to their fields neighbouring it. Only the entry for the South Eastern Canterbury Ramsgate and Sandwich Railway is antithetical to the status of the way as a publicly maintained highway; the others recognise the special interest of the owners and occupiers in the way, but do not exclude the possibility of public highway status, while the plans for the Kent Railway expressly identify it as a public drove.

F.9. As a drove way serving a number of fields which were formerly held in diverse ownership, there are only two possibilities as regards the status of the application way. Either it was subject to multiple easements, granted to the individual owners or acquired by prescription as neighbouring fields fell into diverse ownership. Or the way became dedicated as a public right of way, so that no easements were necessary. It is submitted that, in the absence of evidence of multiple easements, the latter is the greater likelihood.

F.10. Towards the end of the nineteenth century, the records of the Eastry Rural Sanitary Authority (later District Council) (item IV.N below) shows a pattern of highway maintenance over a period of twenty-five years — and with evidence that the maintenance had been carried on prior to the first such record. Moreover, it is clear that the maintenance was done primarily to accommodate the passage of carts, so that the way was recognised as a public carriage road. This status is confirmed in the map produced under the Finance (1909–1910) Act 1910 (item IV.O below), which excludes from valuation all but the small unenclosed part of the application way from D to E. These later sources, in particular, suggest that the application way was not only publicly maintainable, but maintained as a carriage road. The Highway inspector's map (item IV.Q below) of 1952 confirms that, even at this much later date, the application way south of B was considered to be public highway, even if there was some reluctance to admit that it was actively maintained at public expense.

F.11. The application way is in the nature of a cul de sac for vehicular and equestrian traffic, but not (if its existence throughout is accepted) for pedestrians. In *Attorney-General v Antrobus*,⁷ Farwell J said, in relation to whether roads could be established through long use leading to Stonehenge circle (at the time, a privately-owned site):

Now, the cases establish that a public road is primâ facie a road that leads from one public place to another public place (see per Lord Cranworth in *Campbell v. Lang*⁸ and *Young v. Cuthbertson*⁹), or as Holmes L.J. suggests in the Giants' Causeway case,¹⁰ there cannot primâ facie be a right for the public to go to a place where the public have no right to be. But the want of a terminus ad quem is not essential to the legal existence of a public road; it is a question of evidence in each case, and it is, after all, only a question between the landowner and the public. It is competent to the landowner to execute a deed of dedication, or by similar unmistakable evidence to testify to his intention. But in no case has mere user by the public without more been held sufficient. The case of a non-thoroughfare, such as Connaught Place or Stratford Place, might be regarded (as suggested in some of the earlier cases) as not a true cul-de-sac at all. No law requires the wayfarer to take the shortest route, and there is nothing in law to prevent a man walking along Oxford Street from going round Stratford Place instead of using the crossing. But in all the cases in which a cul-de-sac has been held to be a public road there has been expenditure on it by the parish or local authority. In *Bourke v. Davis* Kay J. says : "But it is argued that a cul-de-sac may be a highway. That is so in a street in a town into which houses open and which is repaired, sewered, and lighted by the public authority at the expense of the public. ...But I am not aware that this law has ever been applied to a long tract of land in the country on which public money has never been expended." Eady J.'s decision in *Attorney-General v. Richmond Corporation*¹¹ accords with this. I venture to think that this expenditure of money is the important consideration, and that in such a case the landowner who has permitted the expenditure cannot be heard to say that a roadway on which he has allowed public money to be spent is his private road ; but the mere transit of passengers to see a view or a house at the end will create no right, as Lord Cranworth says. But the landowner may by express words, or by conduct inducing the expenditure of money on the track in question, be shewn to have dedicated even a cul-de-sac to the public. There are doubtless drives in many seaside places and elsewhere which may have become public ways by this means. This explains the Giants' Causeway Case, for in that case the road in question had been "presented" by the Grand Jury in 1814, and had been repaired by the public authority.

F.12. While the judgment of Farwell J in *Antrobus* is not, in relation to whether a cul de sac may be dedicated as a right of way through long use, the last judicial word on the matter, it is clear that the 'expenditure of money is the important consideration', and there

7 [1905] 2 Ch 188

8 (1853) SC 41

9 (1854) 1 Macq 455

10 *Giant's Causeway Co Ltd v Attorney General* (1898) 32 ILTR 95

11 (1903) 89 LT 700

is ample evidence of such expenditure on the application way over a period of many years which demonstrates that it is a public and not private road.

F.13. In a more recent case, *Connell v Porter*¹² in the Irish Supreme Court, Ó Dálaigh CJ said:

Prior to 1852 there were conflicting opinions as to whether or not a cul-de-sac could be a highway as there was no thoroughfare. Lord Kenyon CJ in *Rugby Charity Trustees v Merryweather* (1790) 11 East 375n was firmly of the view that a cul-de-sac could be a highway; so also was Lord Ellenborough in *R v Lloyd* (1808) 1 Camp 260. But Lord Mansfield in *Woodyer v Hadden* (1813) 5 Taunt 125 doubted this, and so also did Abbot CJ and Holyrold J in *Wood v Veal* (1822) 5 B1 & Ald 454, while Best J went so far as to say that *Rugby Charity Trustees v Merryweather* was a departure from the principles usually received in the law. But since the decision in *Bateman v Bluck* (1852) 18 QB 870, upholding Lord Kenyon's view, it has not been questioned that a cul-de-sac can be a highway and that the want of a terminus ad quem is not essential to the legal existence of a public road. It has, however, been said that it is difficult (per Romer LJ in *Whitehouse v Hugh* [1906] 2 Ch 283) and very difficult (per Salter LJ in *Oldham v Sheffield Corporation* (1927) 136 LT 681) to presume dedication of a cul-de-sac by mere user. But expenditure of public money in repairing, cleansing or lighting is an important consideration, and in such case the landowner who has permitted the expenditure cannot be heard to say that a roadway on which he has allowed public money to be spent is a private road: per Farwell J in *Attorney-General v Antrobus* [1905] 2 Ch 188 at p 207. Coupled with evidence of user, such expenditure is strong evidence from which dedication can be inferred: see also *Vernon v Vestry of St James, Westminster* (1880) 16 Ch D 449. Equally, the absence of repair by the public authority has been held to be admissible as a fact tending to show that it is not a public road: per Lord Denham CJ in *Davies v Stephens* (1836) 7 C & P 570. The presumption of dedication is a question of fact to be decided by the jury or judge, as the case may be; and the question on this branch of the appeal is whether the trial judge's finding was warranted by the evidence.

G. Grounds for application

G.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*,¹³ Lewison LJ said, at paragraph 22,

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

‘It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like

¹² [2005] 3 IR 601

¹³ [2012] EWCA Civ 334

the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.’

G.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.¹⁴

G.3. The correct test under s.53(3)(c)(i) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path... .

The surveying authority must therefore make an order consequent on this application where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the application way.

G.4. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I below), there were full vehicular rights.

H. Discovery of evidence

H.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent. It appears that it was excluded from the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949.

H.2. The applicant therefore submits that the evidence disclosed in this application is evidence which has not previously been examined in connection with a proposal to record the application way on the definitive map and statement. The evidence therefore satisfies the discovery of evidence test in s.53(3)(c) of the Wildlife and Countryside Act 1981.

I. Natural Environment and Rural Communities Act 2006

I.1. The application seeks to show that the application way is a public carriageway. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. The application is therefore made for a restricted byway.

¹⁴ [Consistency Guidelines](#): para.2.17.

J. Points awarded

J.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*.¹⁵

J.2. Points:

Item	Ref	Points
A Topographical Map of the County of Kent	IV.A	1
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	0
A new map of the Isle of Thanet	IV.D	0
Greenwoods' map of Kent	IV.E	1
Ordnance Survey, Old Series one-inch map of Kent	IV.F	0
Central Kentish Railway and Sandwich docks	IV.G	0
Kent Railway	IV.H	5
Tithe Commutation Act 1836	IV.I	3
South Eastern Canterbury Ramsgate and Sandwich Railway	IV.J	0
Kentish Coast Railway	IV.K	0
Herne Bay and Sandwich Railway	IV.L	0
Ordnance Survey County Series first edition 25-inch plan	IV.M	1
Eastry Rural Sanitary Authority (later District Council)	IV.N	5
Finance (1909–1910) Act 1910	IV.O	5
West Marsh auction	IV.P	2
Highway inspector's map	IV.Q	3
Total points		27

K. Width of application way

K.1. The width of the application way is defined partly by the enclosing drains on either side. Between B and D, these drains have historically defined the parameters of the way, and this application seeks to record the width of the way between these points as shown in the Ordnance Survey County Series first edition 25-inch plan, first edition, of 1872.

K.2. On the Ordnance Survey County Series 25 inch map, second edition, of 1896, the application way between A and the northern edge of sheet XXXVII/13 is assigned an area of 0.154 acres (0.062 ha), which suggests an average width (given a length of 115m) of 5.4m.

K.3. The application way between the southern edge of sheet XXXVII/13 and D is assigned an area of 2.673 acres (1.082 ha), which suggests an average width (given a length of 1,630m) of 6.6m. (Subsequent County Series editions give an ambiguous recording of area, showing a greater value, but also incorrectly bracing the drains with both the neighbouring fields and the application way.)

K.4. However, the width of the way shown on successive County Series maps varies between A and B (which is unenclosed) and B and D (which is enclosed by drains). It seems reasonable to assume that the width of 5.4m identified on sheet XXXVII/13 is shared over the section A to B, and that the average width from B to D is therefore:

¹⁵ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

$$\frac{10820 - (585 - 115) * 5.4}{1160} = 7.1 \text{ m}$$

K.5. Between D and E, the way has never been defined by physical features, and a way sufficiently wide for its character and likely to have been established by long user is sought, of 4 metres.

L. Limitations

L.1. A gate is consistently shown across the application way at D. It may be seen on the map prepared under the Tithe Commutation Act 1836 (item IV.I below, Illustration xxii), the Ordnance Survey County Series first edition 25-inch plan (item IV.M below, Illustration xxx), and the West Marsh auction map (item IV.P below). It is suggested that the gate should be recorded as a limitation on the public right of way.

L.2. There is no other evidence of any limitation, such as a gate, on the use of the application way which is consistently present in the documentary evidence contained in this application. It therefore is requested that an order arising from the application expressly states that there are no other limitations on the public right of way.

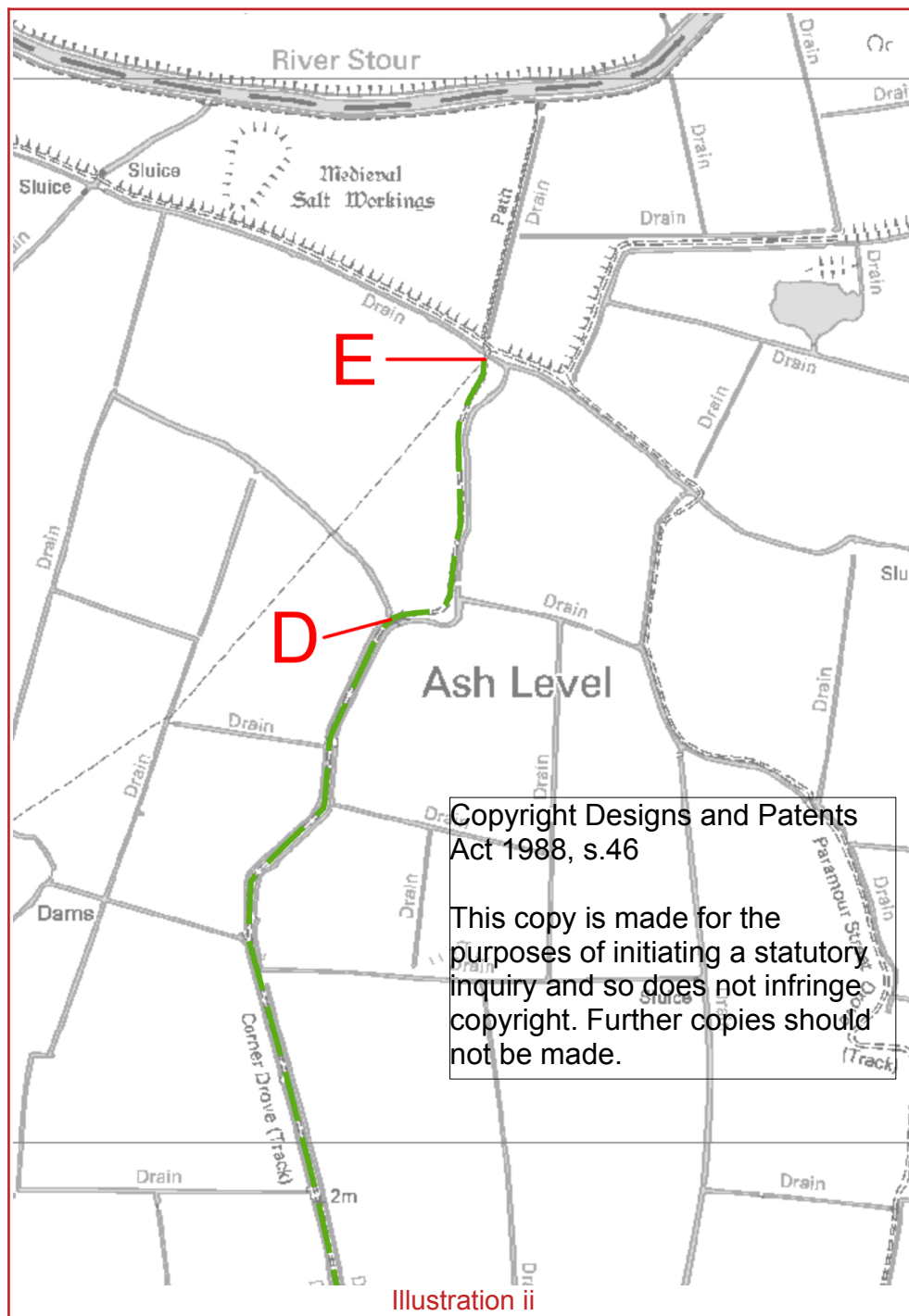
M. Law cases

M.1. The following cases directly are cited in this statement of case.

Case	Reference	Citation
<i>Moser v Ambleside Urban District Council</i>	I.F.4	(1924) 89 JP 118, 23 LGR. 533
<i>Attorney-General v Antrobus</i>	I.F.11	[1905] 2 Ch 188
<i>Connell v Porter</i>	I.F.13	[2005] 3 IR 601
<i>Fortune and Others v Wiltshire Council and Another</i>	I.G.1	[2012] EWCA Civ 334
<i>Hollins v Oldham</i>	IV.E.7	[1995] (unreported) C94/0206

II. Application map

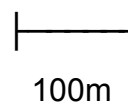
Application map, north



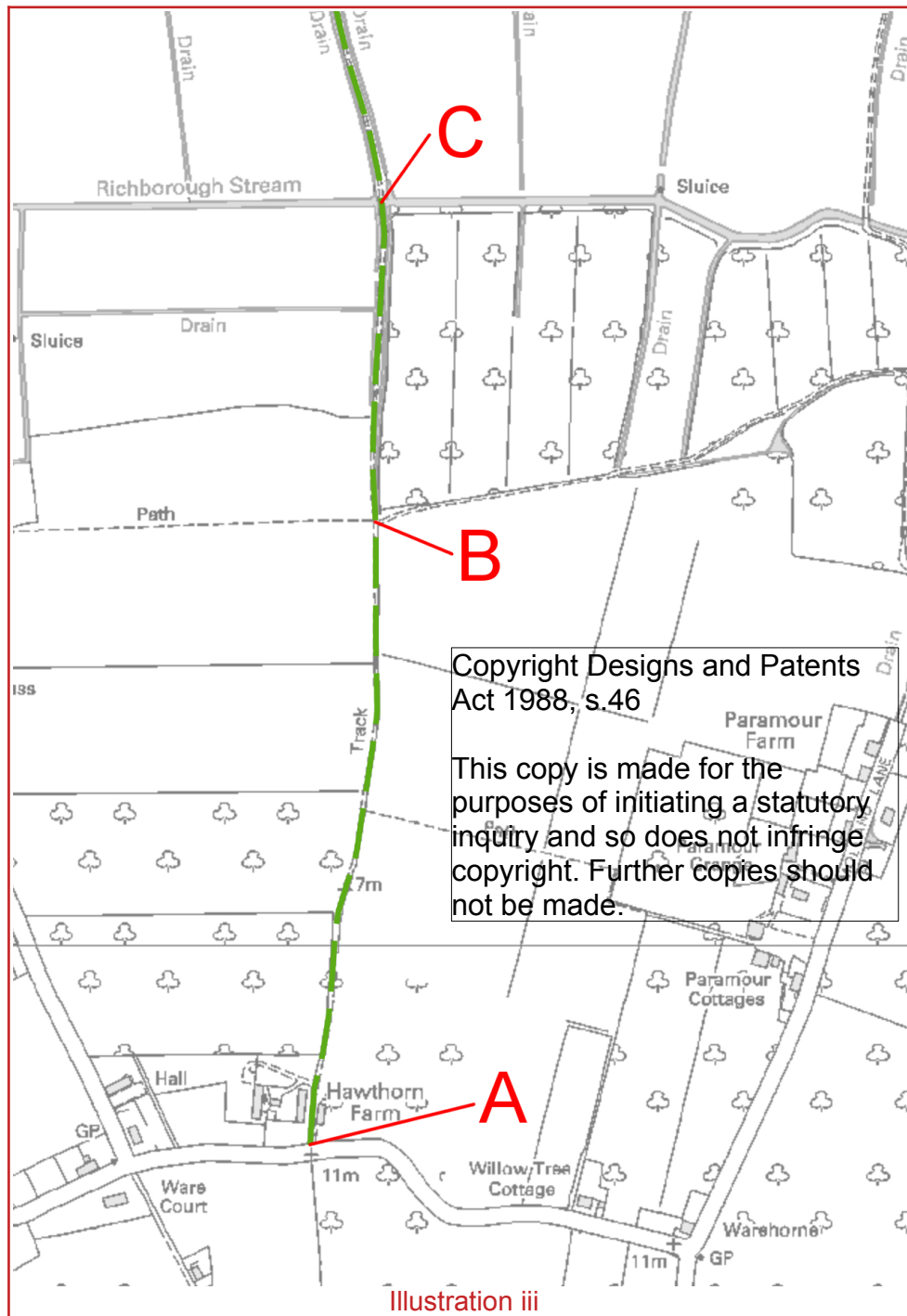
Map centred on D at TR28486249

Scale: approx. 1:6,580 (when printed A4)

Application way is marked — — —



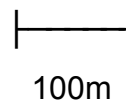
Application map, south



Map centred on B at TR28476139

Scale: approx. 1:6,580 (when printed A4)

Application way is marked — — —



III. Along the way



Illustration iv: At A: © N Chadwick (cc-by-sa/2.0)



Illustration v: South of B: © David Anstiss (cc-by-sa/2.0)



Illustration vi: North of B: © David Anstiss (cc-by-sa/2.0)



Illustration vii: Footpath west from B: © David Anstiss (cc-by-sa/2.0)



Illustration viii: Between D and E: © Nick Smith (cc-by-sa/2.0)



Illustration ix: Between D and E © Nick Smith (cc-by-sa/2.0)

IV. Evidence

Contents

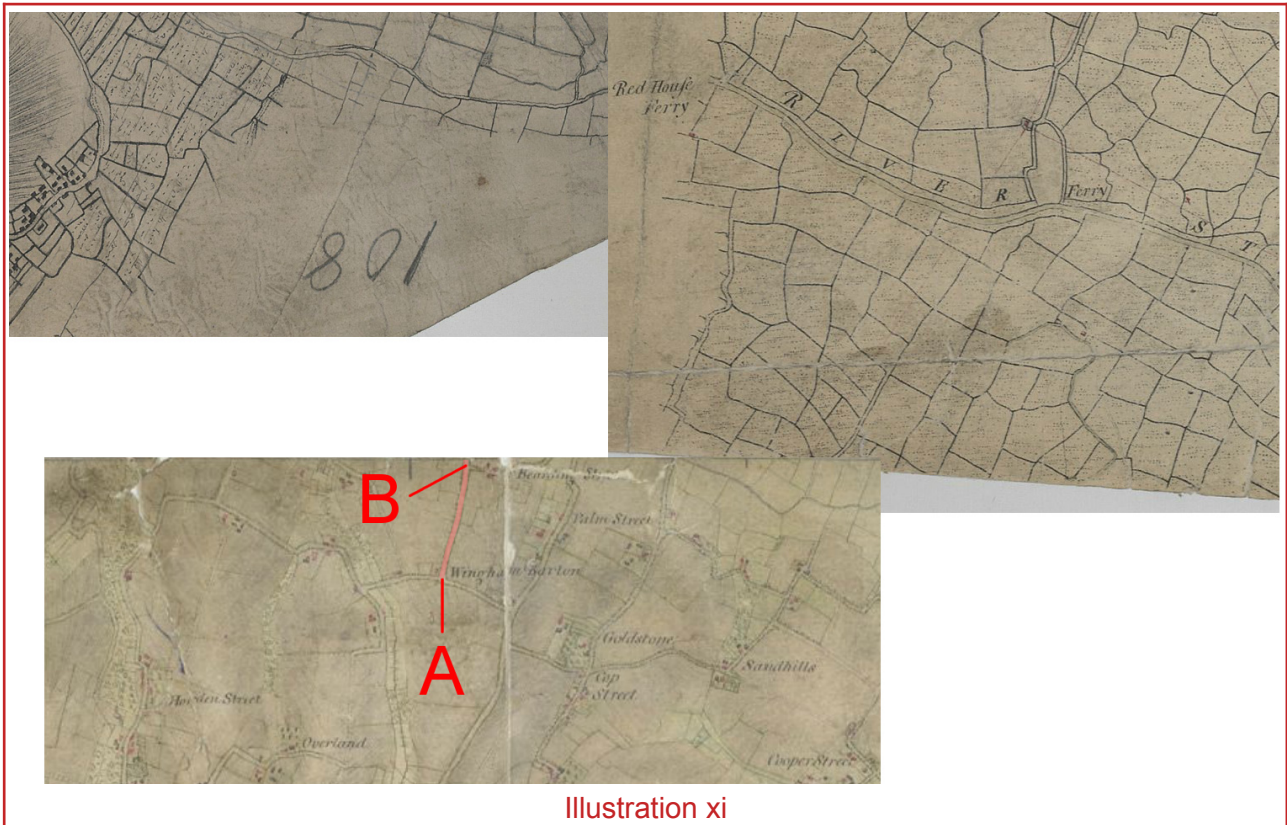
A. A Topographical Map of the County of Kent.....	15
B. Ordnance Survey surveyor's drawing, Canterbury (East).....	16
C. Ordnance Survey, Mudge-Faden one-inch map of Kent.....	19
D. A new map of the Isle of Thanet.....	21
E. Greenwoods' map of Kent.....	23
F. Ordnance Survey, Old Series one-inch map of Kent.....	26
G. Central Kentish Railway and Sandwich docks.....	27
H. Kent Railway.....	28
I. Tithe Commutation Act 1836.....	30
J. South Eastern Canterbury Ramsgate and Sandwich Railway.....	35
K. Kentish Coast Railway.....	37
L. Herne Bay and Sandwich Railway.....	38
M. Ordnance Survey County Series 25-inch plan.....	41
N. Easry Rural Sanitary Authority (later District Council).....	44
O. Finance (1909–1910) Act 1910.....	59
P. West Marsh auction.....	63
Q. Highway inspector's map.....	65

B. Ordnance Survey surveyor's drawing, Canterbury (East)

B.1. **Date:** 1797

B.2. **Source:** British Library website,¹⁷ National Archives¹⁸

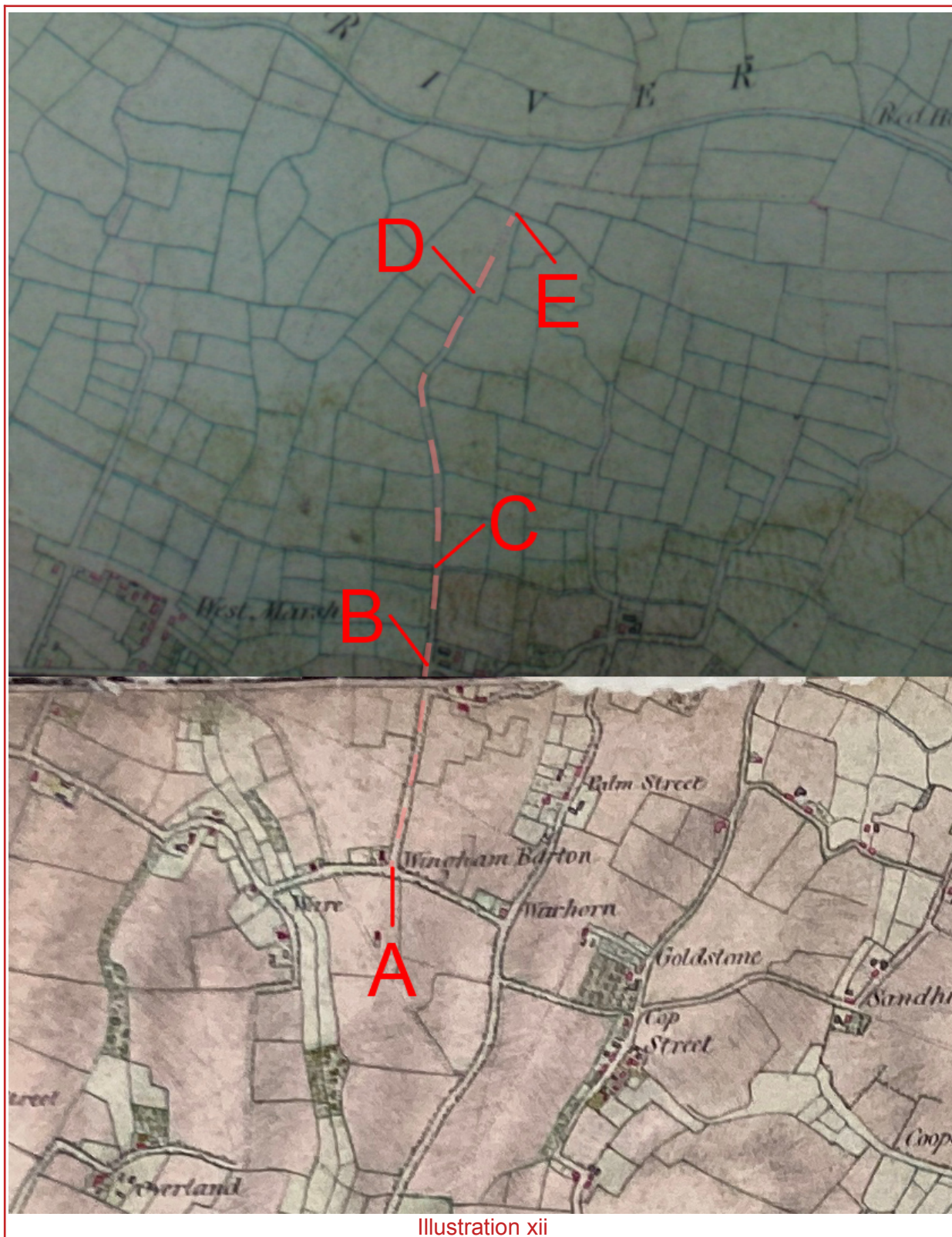
Ordnance Survey drawing, Canterbury (East)



17 Canterbury 107(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/002osd000000017u00367000.html;
Bishopsbourne 108(W): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/b/002osd000000015u00374000.html;
Margate 108(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/m/002osd000000015u00373000.html.

18 MR 1/597 and 599

Copy of Ordnance Survey surveyor's drawing



B.3. **Description:** Original scale: believed to be 1:21,120 (three inches to one mile); orientation: unchanged (north).

B.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in warfare. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.¹⁹

B.5. It seems that good copies were made of the drawings to be held by the War Office. These copies are now held in the National Archives, described as, 'Topographic Survey manuscript 'fair' copies of Kent & Sussex, surveyed by Gardner & Yeakell, at 3 inches to 1 mile'.²⁰ The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

B.6. The application way lies in a void at the join between three separate drawings held by the British Library, but is shown throughout on the copy. The southern part of the application way is shown between A and D, as an enclosed road leading from Ware Road to Beerling Street and beyond to the Levels. At D, the way adopts a direct, unenclosed route north-northeast across a field to E, compared to the field-edge route shown on some later mapping.

B.7. **Conclusion:** The Ordnance Survey drawings are good evidence of the physical existence of the way between A and E. Given that the application way between A and B serves the then-existing hamlet at Beerling Street, it seems likely to have been a public way.

B.8. **Points:** 1

19 From the Curator's introduction to the Ordnance Survey drawings, British Library:
www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

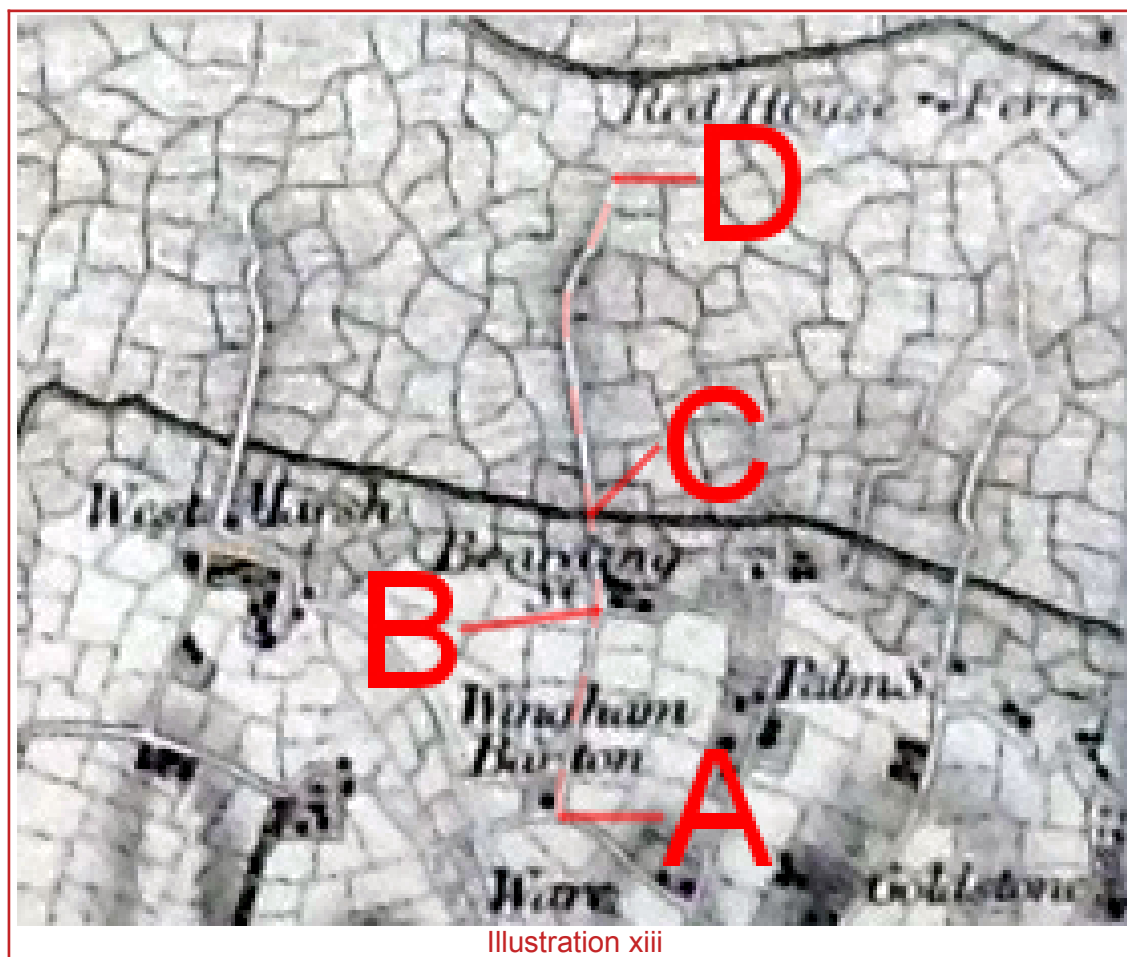
20 *Topographical survey and early Ordnance Survey maps at the National Archives: Public Record Office*, Ivan Parr, published in *Sheetlines* (Charles Close Society), no 68 (December 2003), pp.35–43 at p.38

C. Ordnance Survey, Mudge-Faden one-inch map of Kent

C.1. **Date:** 1801

C.2. **Source:** Kent County Archives, also available at Mapco.net²¹

■ *Mudge-Faden map one-inch map of Kent*



C.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

C.4. This map of Kent was the first Ordnance Survey map to be published. It relied primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The Mudge-Faden map shows the application way between A and D, generally as an enclosed way, but unenclosed at the immediate north end approaching D. A farm is shown at A, labelled Wingham Barton, and the way is also shown passing immediately to the west of a hamlet at Bearding Street.

²¹ mapco.net/kent1801/kent31_03.htm

C.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements.

C.7. The Mudge-Faden map records the application way between A and D as a clearly identifiable feature, in a form which suggests a road, bridle road or drove way. However, the way cannot convincingly be proven to be public.

C.8. **Points:** 0

D. A new map of the Isle of Thanet

D.1. **Date:** 1808

D.2. **Source:** British Library²²

■ A new map of the Isle of Thanet

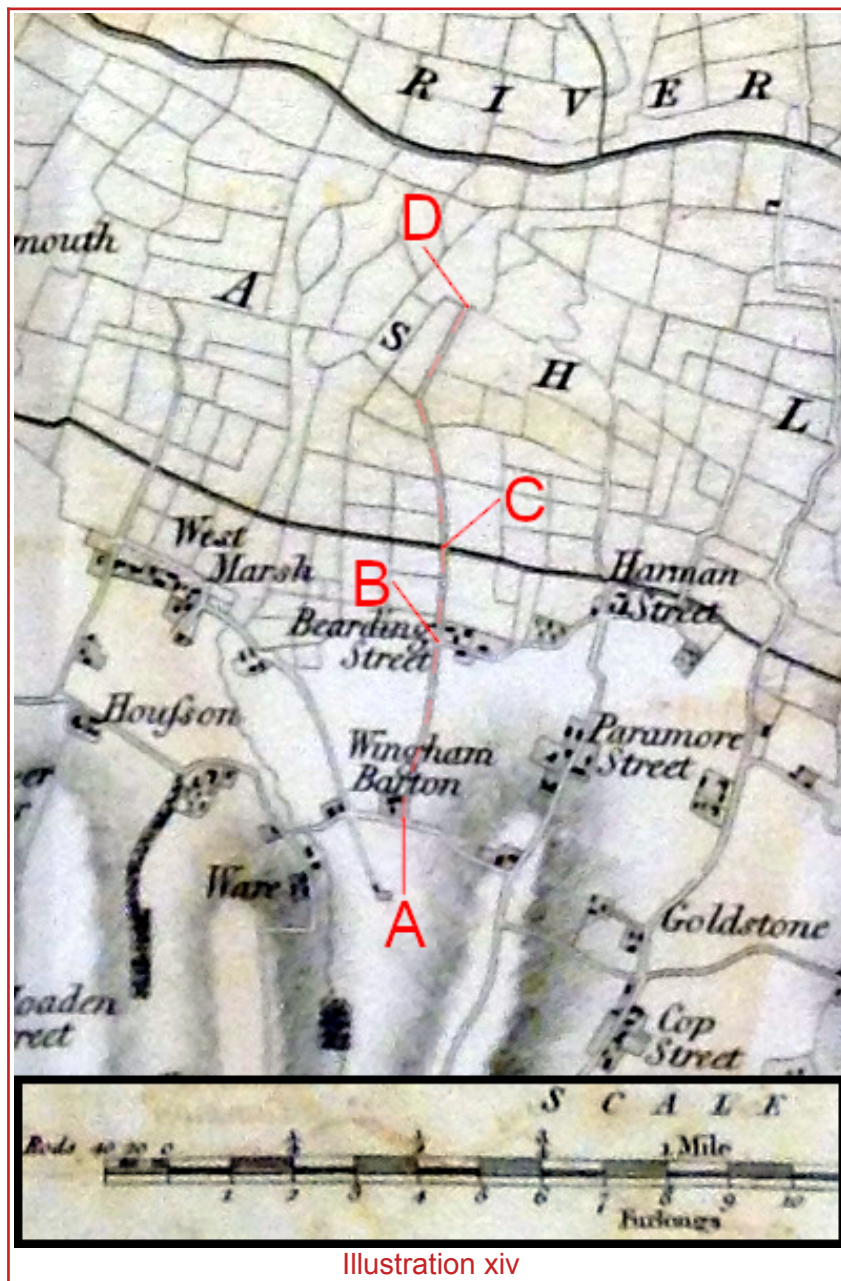


Illustration xiv

D.3. **Description:** Original scale: two inches to one mile (1:23,760) and scale bar marked on map (but scale bar has been cut and pasted and may be affected by photographic distortion); orientation: unchanged (north).

D.4. Described in the British Library catalogue as follows:

22 BLL01004943661

Title: A New Map of the Isle of Thanet; Protracted by a Scale of two Inches to One Statute Mile from the Large Topographical Survey of the County of Kent.

Author: William Mudge, 1762–1820, cartographer.

Contributor: William Faden 1749–1836, publisher; Published by W. Faden... 1808.

Map of the Isle of Thanet, showing the towns and villages, beaches, rivers, and other geographical features.

Includes a scalebar and a compass rose to the lower right.

D.5. Evidently, the map is derived from the original field work for the Ordnance Survey surveyor's drawing, Canterbury (East) (IV.B above), and therefore similar to the Ordnance Survey, Mudge-Faden one-inch map of Kent (IV.C above), which was derived from the same survey data. This map, however, was published several years later, and is at the larger scale (compared to the Ordnance Survey, Mudge-Faden one-inch map of Kent) of two inches to one mile.

D.6. The 'new map' shows the application way between A and D as an enclosed way. A farm is shown at A, labelled Wingham Barton, and the way is also shown passing immediately to the west of a hamlet at Bearding Street.

D.7. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements.

D.8. The 'new map' records the application way between A and D as a clearly identifiable feature, in a form which suggests a road, bridle road or drove way. However, the way cannot convincingly be said to be public.

D.9. **Points:** 0

E. Greenwoods' map of Kent

E.1. **Date:** 1819–20

E.2. **Source:** Kent County Archives

Greenwoods' map of Kent

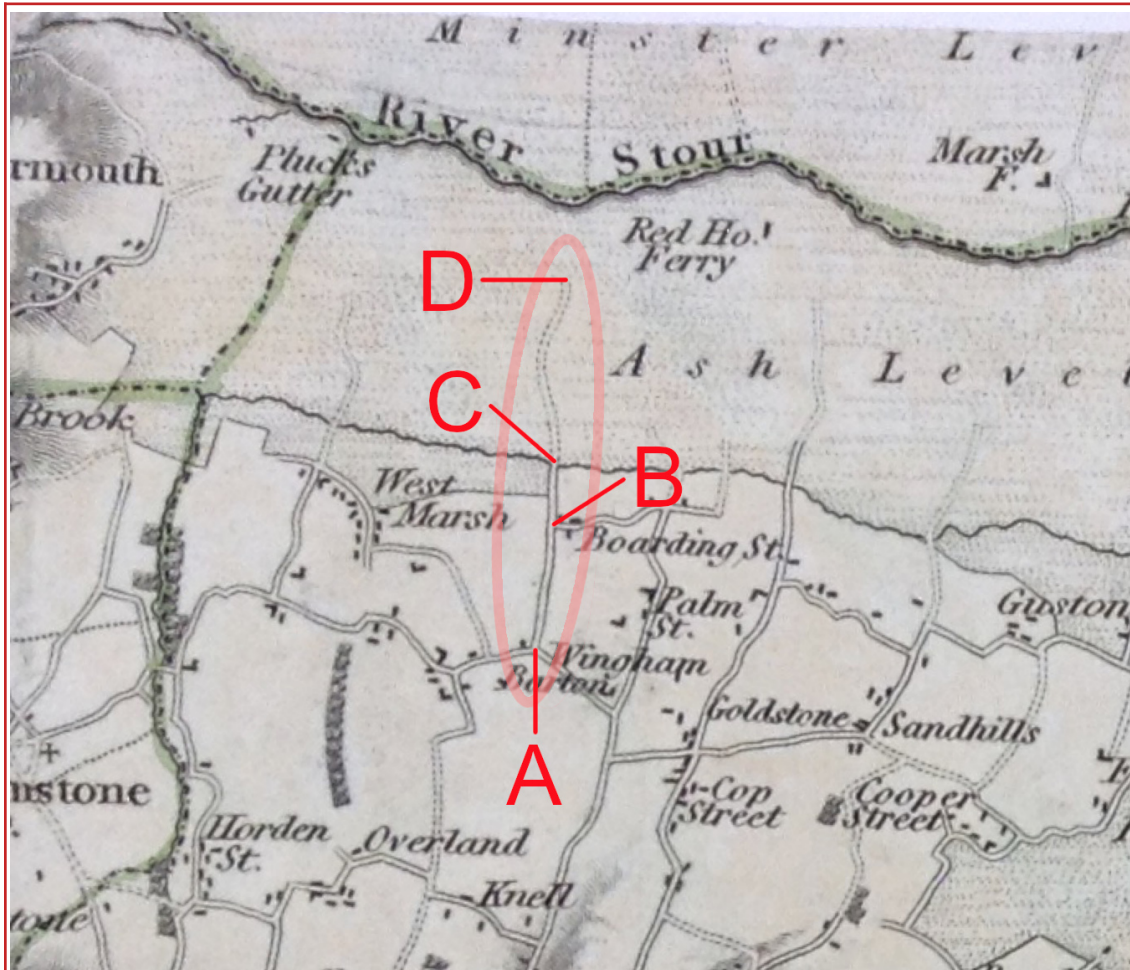


Illustration xv

Greenwoods' map key



Illustration xvi

E.3. **Description:** Original scale: one inch to one mile (1:63,360), but it is not practicable accurately to reproduce the scale bar on this extract; orientation: unchanged (north). This copy appears to be state iii, published between 1821 and 1827.

E.4. Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.²³

E.5. The application way is shown as an enclosed road between A and C, beginning at Wingham Barton and passing adjacent to the hamlet at Boarding Street. Beyond C, the way is shown as unenclosed, terminating on Ash Level at or near D.

E.6. **Analysis:** In *Fortune v Wiltshire Council*,²⁴ Lewison LJ wrote in his judgment of the court:

As the judge pointed out, in 1829 the expression 'cross road' did not have its modern meaning of a point at which two roads cross. Rather in 'old maps and documents, a "cross road" included a highway running between, and joining other, regional centres'. Indeed that is the first meaning given to the expression in the Oxford English Dictionary ('A road crossing another, or running across between two main roads; a by-road').

E.7. In *Hollins v Oldham*,²⁵ HHJ Howarth (sitting as a High Court Judge) said, in relation to *Burdett's Map of Cheshire* dated 1777, which adopted the same classification as the Greenwood's map in relation to roads:

Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does

²³ From *Antique Maps*, C Moreland and D Bannister, 1983.

²⁴ [2012] EWCA Civ 334: www.bailii.org/ew/cases/EWCA/Civ/2012/334.html.

²⁵ [1995] (unreported) C94/0206.

not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road. This latter category, it seems to me, must mean a public road in respect of which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use. Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.

E.8. It is accepted that not every road shown on the Greenwoods' map must (if it is not a turnpike) inevitably be a cross-road — undoubtedly there are exceptions, such as some (but not all) roads leading only to isolated farmsteads or country houses. But it is submitted that, where a road is connected to highways at either end, or as here, to an intermediate highway, it is more likely than not to be shown because it was recognised as a cross-road and of utility to the public who might buy the map.

E.9. **Conclusion:** The Greenwoods' map is good evidence for the existence of a defined way along the route of the application way. The key describes the route as a 'cross road', which is suggestive of a public way. The depiction of the application way between C and D may refer to the way being unenclosed by hedges, fences and walls, notwithstanding that it is enclosed by drains.

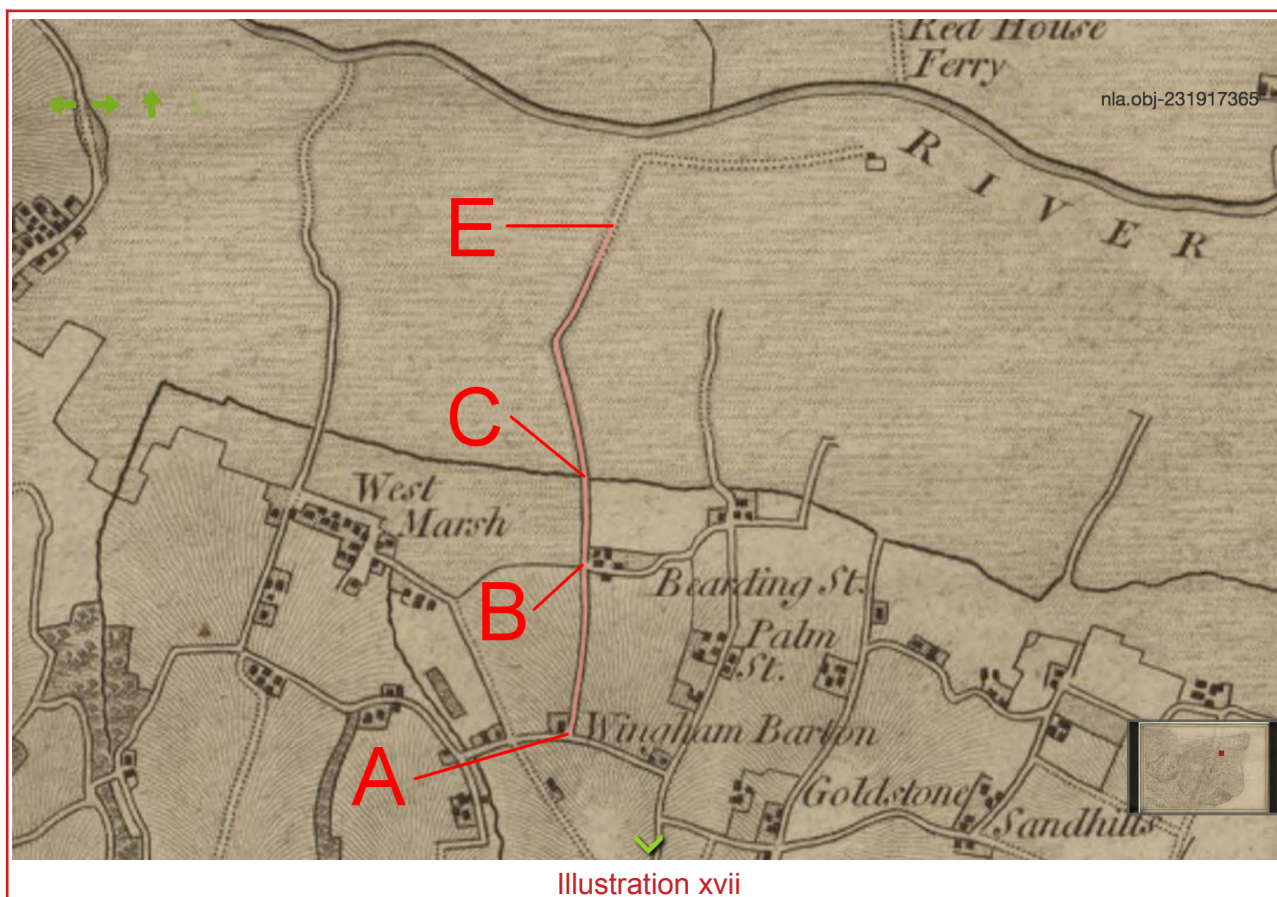
E.10. **Points:** 1

F. Ordnance Survey, Old Series one-inch map of Kent

F.1. **Date:** 1831 (but survey dating from late eighteenth century)

F.2. **Source:** National Library of Australia²⁶

Ordnance Survey Old Series map



F.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

F.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

F.5. The Old Series map shows the application way throughout, enclosed approximately as far as D (and therefore treating the way between drains as enclosed), and unenclosed beyond D, continuing northeast and then east beyond E to Red House.

F.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. The way is therefore likely to be at least of the character of a drove or carriage road.

²⁶ nla.gov.au/nla.obj-231917365

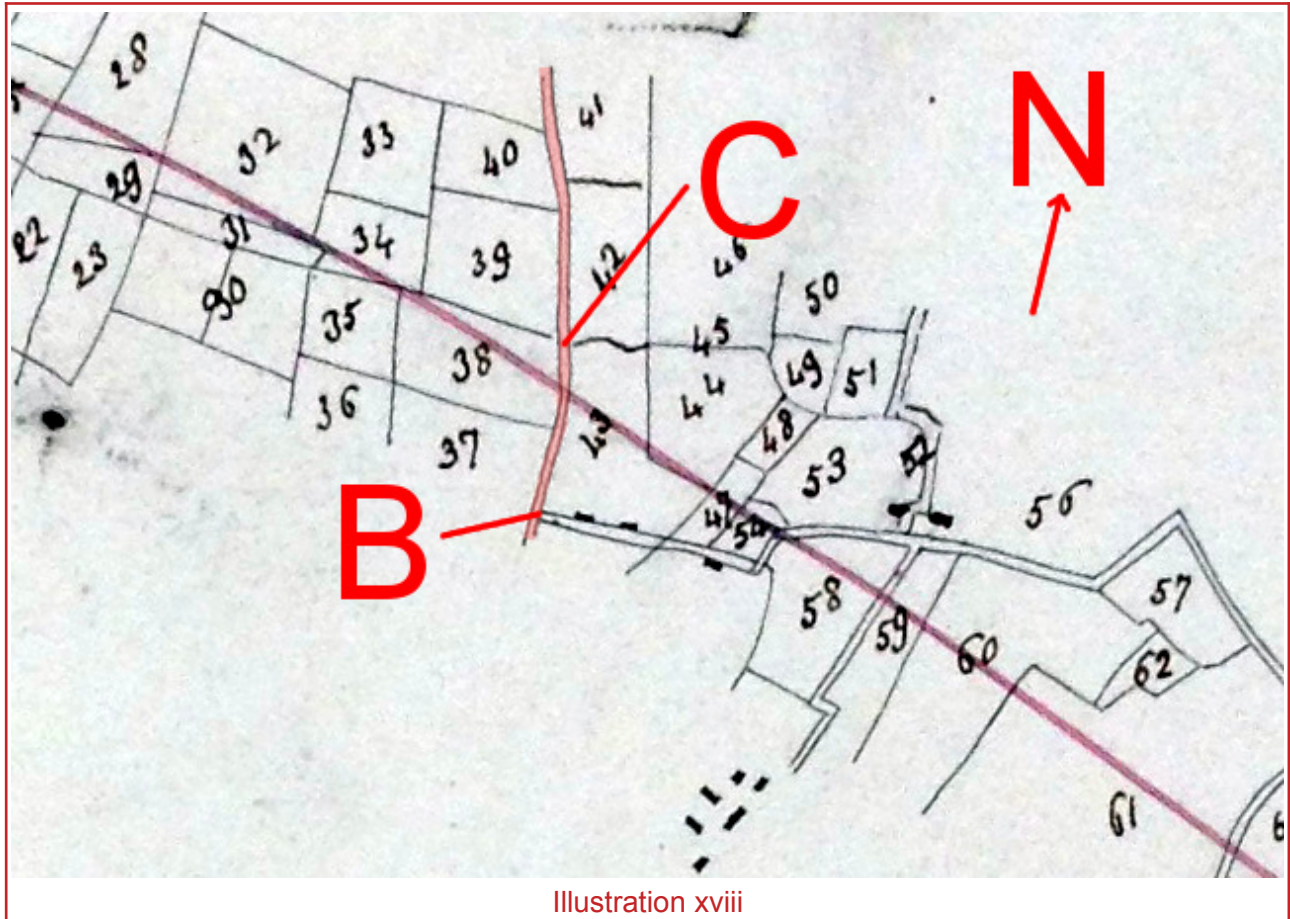
F.7. **Points:** 0

G. Central Kentish Railway and Sandwich docks

G.1. **Date:** 1836²⁷

G.2. **Source:** Kent County Archives²⁸

Central Kentish Railway and Sandwich docks plan



²⁷ Here and subsequently for railway proposals, dates refer to the year following deposit in the previous November.

²⁸ Q/RUm/142

Central Kentish Railway and Sandwich Docks book of reference

Owners.	Lessees.	Occupiers.	Description of Property.
Thomson Harvey		Wm and Thos Harvey	Marsh land
Robert Beale		Jesse Hammond	Marsh land
General owners of Barton Valley		General occupiers of Barton Valley	Drove way
M. Tector requires		William Neales	Marsh land

Illustration xix

G.3. **Description:** Original scale: not known; orientation: unchanged (north approximately at top).

G.4. The Central Kentish Railway proposed a line between Greenwich and Sandwich, traversing the Ash Level in an arc from Stodmarsh to Sandwich and crossing over the application way between B and C.

G.5. In the deposited plan, the application way is identified as an enclosed route between fields, but no specific parcel number is assigned. However, in the deposited book of reference, the application way appears to be identified as parcel 41a: this is described as a 'Drove Way' owned by 'General owners of Barton Valley', and occupied by 'General occupiers of Barton Valley'.

G.6. In the section (not reproduced here), the application way may be the 'Drove Way' identified at the eight mile marker, but as the distances along the line are not identified on the plan, it is uncertain.

G.7. In common with the other railways planned across Ash Level, the railway was not built.

G.8. **Conclusion:** The plans and book of reference for the Central Kentish Railway identify the application way as a drove way, but with no specific ownership other than communal ownership among those owning land on the marshes. If the way were a private way, no specific owners are identified, nor any person with rights of passage.

G.9. **Points:** 0

H. Kent Railway

H.1. **Date:** 1836

H.2. **Source:** Kent County Archives²⁹

Kent Railway plan

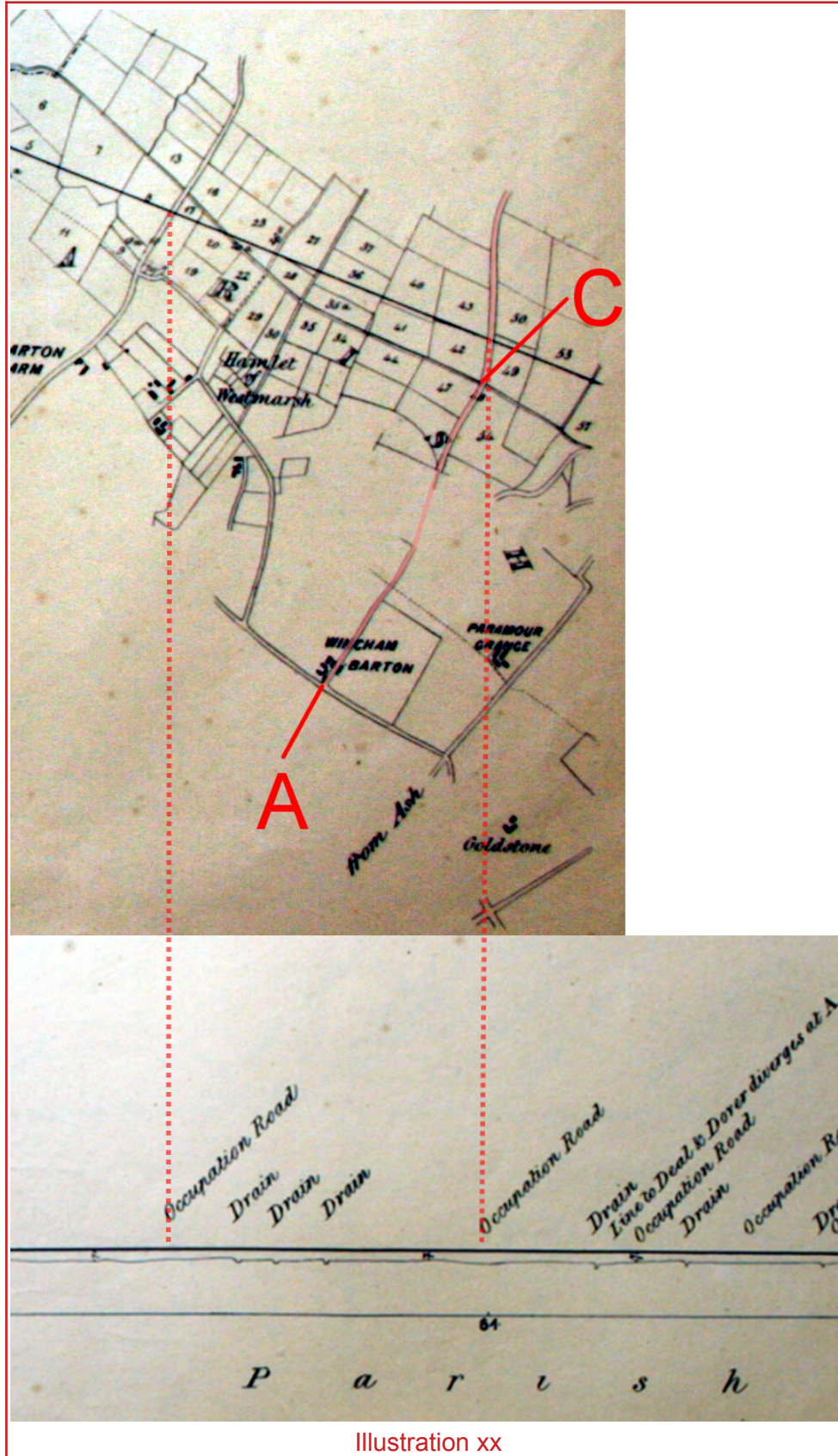


Illustration xx

Kent Railway book of reference

County of Kent		Parish of Ash next Sandwich		
No. on Plan.	Description of Property.	Owner or reputed Owner.	Lessee.	Occupiers.
47	Marsh	John Almond Tector		Alice Smith
48	Drove to Marshes	Surveyors of Highways		
49	Marsh	John Almond Tector		William Nokes

Illustration xxi

H.3. **Description:** Original scale: not known; orientation: unchanged (north approximately at top).

H.4. The Kent Railway proposed a line between Deptford and Ramsgate, with a branch to Sandwich and Deal — the junction would have been located about 300m east of C. The line would have crossed the application way just north of C. The depiction of the land to the south of C on the plan appears to contain some inaccuracies: for example, the dogleg in Ware Road east of A is not shown on the plan.

H.5. In the deposited plan, the application way is identified as an enclosed route between fields, assigned parcel number 48. In the deposited book of reference for the parish of Ash, the application way is described as a 'Drove to Marshes' owned by the 'Surveyor of Highways' for Ash. In the section, the application way is labelled as 'Occupation Road'.

H.6. In common with the other railways planned across Ash Level, the railway was not built.

H.7. **Conclusion:** The plans and book of reference for the Kent Railway record the application way as a drove way owned by the Surveyor of Highways. This is good evidence that the parish surveyor considered the drove way to be a publicly maintainable drove way at this time.

H.8. **Points:** 5

I. Tithe Commutation Act 1836

I.1. **Date:** 1843

I.2. **Source:** Kent County Archives

Tithe map north

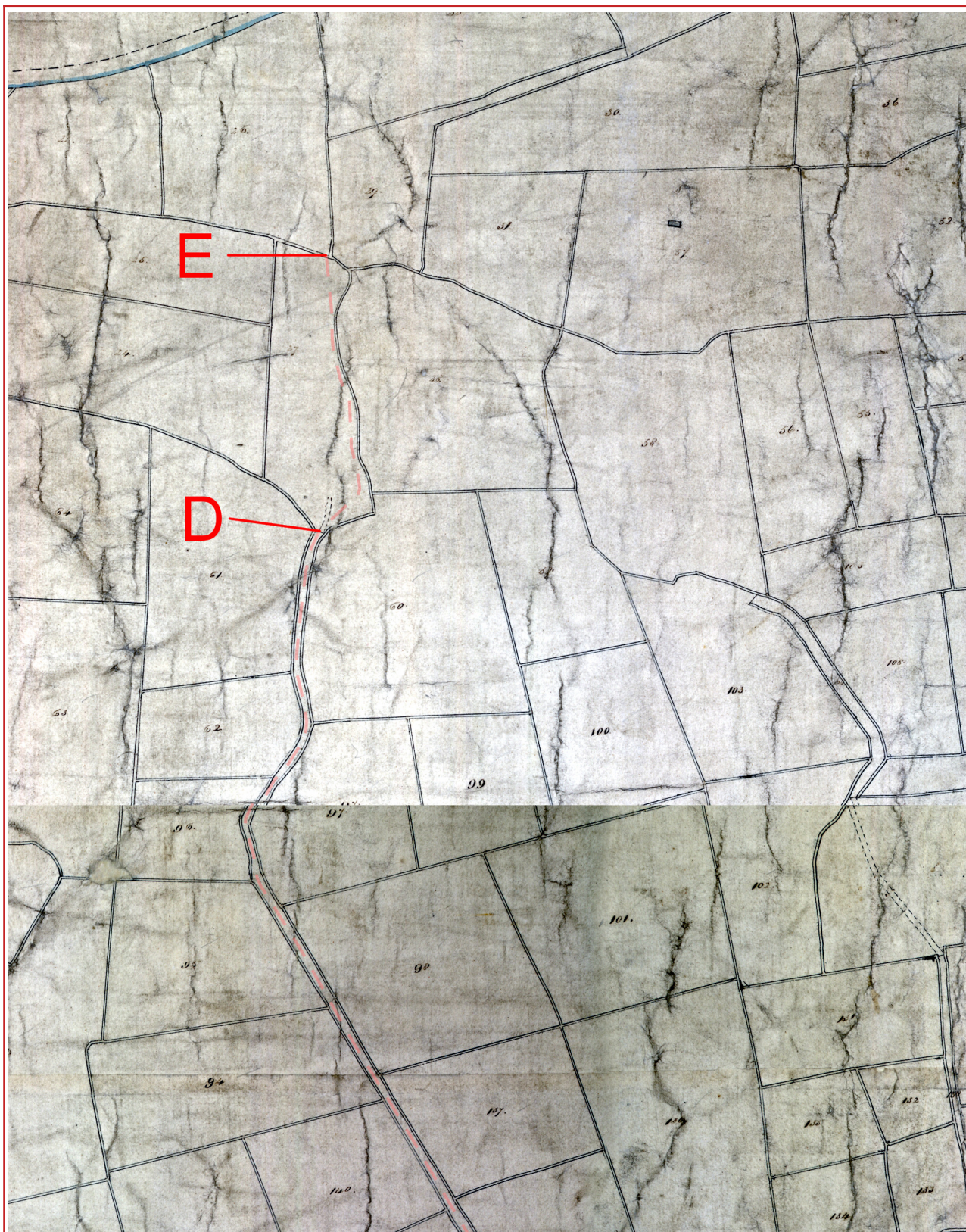


Illustration xxii

Tithe map south

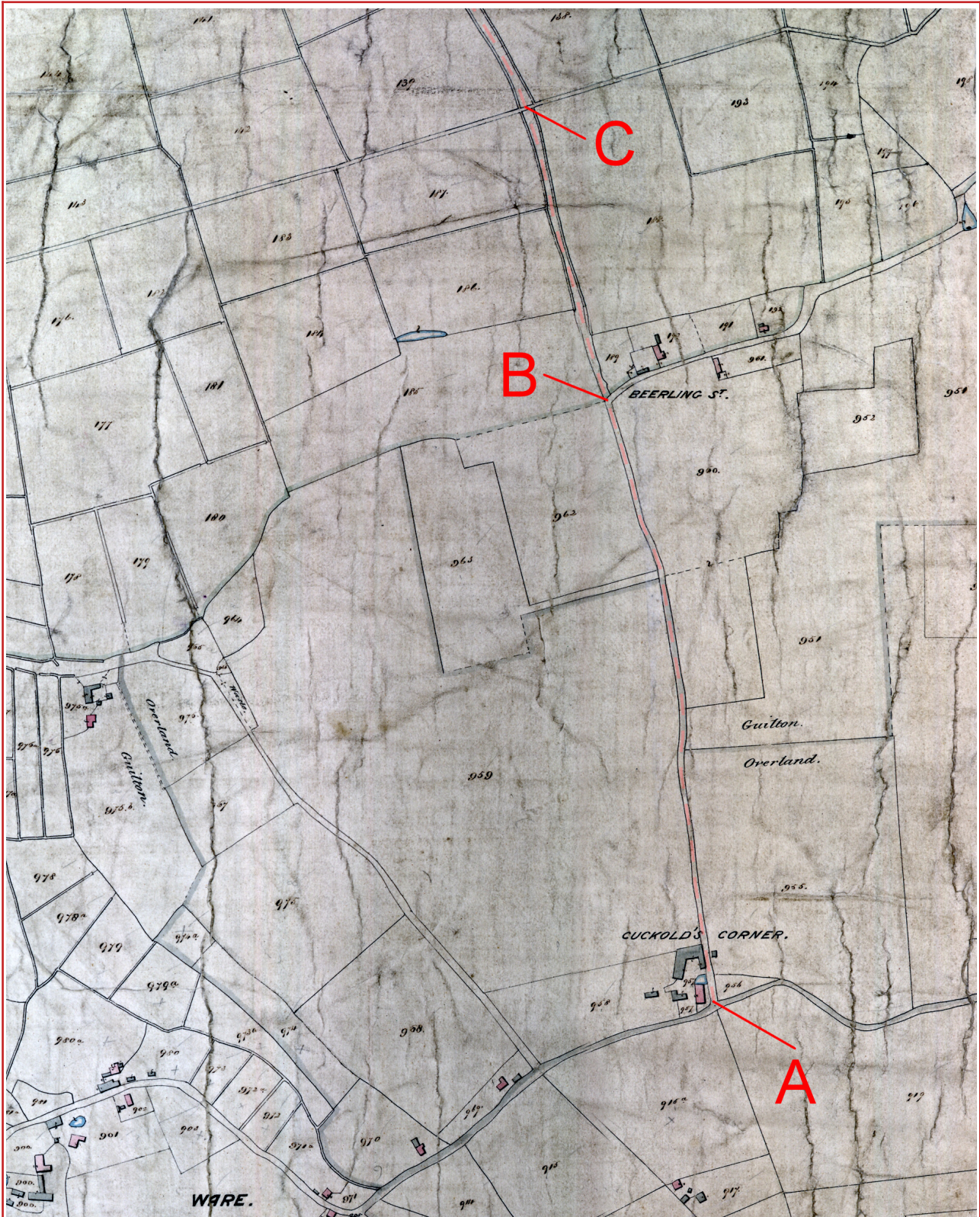


Illustration xxiii

I.3. **Description:** Original scale: three chains to one inch³⁰ (1:2,376); orientation: unchanged (top is north-northeast). The tithe map for Ash is first class.³¹

I.4. The tithe map for the parish of Ash shows the application way between A and D, depicted throughout as an enclosed road, and treated as not titheable, there being no apportionment parcel number assigned to the way. From just north of B to D, the way is shown enclosed by double lined casing on each side, which appears to denote that the way is enclosed by drains. Between D and E, the way is not separately identified within parcel 27.

I.5. **Analysis:** The following table identifies the several drove ways in the parish of Ash, distinguishing those which are numbered on the map and in the apportionment, and those which are not (all of the drove ways which subsist today are identifiable on the tithe map).

Appor- tionment number	Name on tithe apportionment	Present name, location and southerly grid reference	Comments
none	none	Westmarsh Drove (footpath EE76) TR274615	Not apportioned
none	none	Corner Drove (north from Cuckold's Corner) TR284608	Not apportioned
none	none	Brazen Street (east from Corner Drove) TR285614	Not apportioned
104	Drove	Northern section of Beerling Street Drove or Paramour Street Drove (see below) TR289621	Apportioned
130	Drove way	Beerling Street Drove or Paramour Street Drove north from Lower Paramour Farm TR289616	Apportioned
120	Marshland Drove	Beerling Drove east and then north from Lower Paramour Farm (footpath EE54) TR292616	Apportioned
449	Drove way	Goldstone Drove (footpath EE55) TR295616	Apportioned
410	Part of The Slade	Potts Farm Drove north from Sparrow Castle (footpath EE49) TR301609	Apportioned
398	Lower Wall	Drove north from north of Bride Farm TR311613	Apportioned

³⁰ As stated in *The tithe maps of England and Wales*, Kain and Oliver — entry for Ash next Wingham, Kent, p.239.

³¹ See the record for this tithe apportionment held by the National Archives: [IR 30/17/11](#), and the entry, *ibid*.

380a	Lower Drove	Rubery Drove TR315609	Apportioned — the southern part of this drove is recorded as 356, but Not Apportioned
none	none	Whitehouse Drove TR318604	Not apportioned
1124	East Street Drove	East Street north from Little East Street Farm TR307591	Apportioned

I.6. Of the eleven drove ways identified (Beerling Street drove appears in two consecutive entries), seven appear in the apportionment, and four, including the application way, contain no apportionment number and are not included in the apportionment. The southern part of Rubery Drove is identified on the map as parcel 356, but is not included in the apportionment.

I.7. **Conclusion:** Something must distinguish the classification of the drove ways, and it is submitted that those which are not numbered and which are not identified in the apportionment must be those which were considered to be public roads. There is otherwise nothing to distinguish them.

I.8. This analysis is reinforced by the absence of any apportionment parcel number associated with the many other minor and major roads in the parish of Ash, which are today recognised as public roads. No public road in the parish is so annotated: the only piece of enclosed public road (recognised as such today) identified with an apportionment parcel number is a short part of bridleway EE50 at How Town, between Lower Goldstone and Sparrow Castle, which passed through two tenements.

I.9. The absence of any titheable rating, except as regards the last part of the application way north of D, is on this tithe map good evidence for the public status of the application way between A and D.

I.10. **Points:** 3

J. South Eastern Canterbury Ramsgate and Sandwich Railway

J.1. **Date:** 1840

J.2. **Source:** Kent County Archives³²

South Eastern Canterbury Ramsgate and Sandwich Railway plan

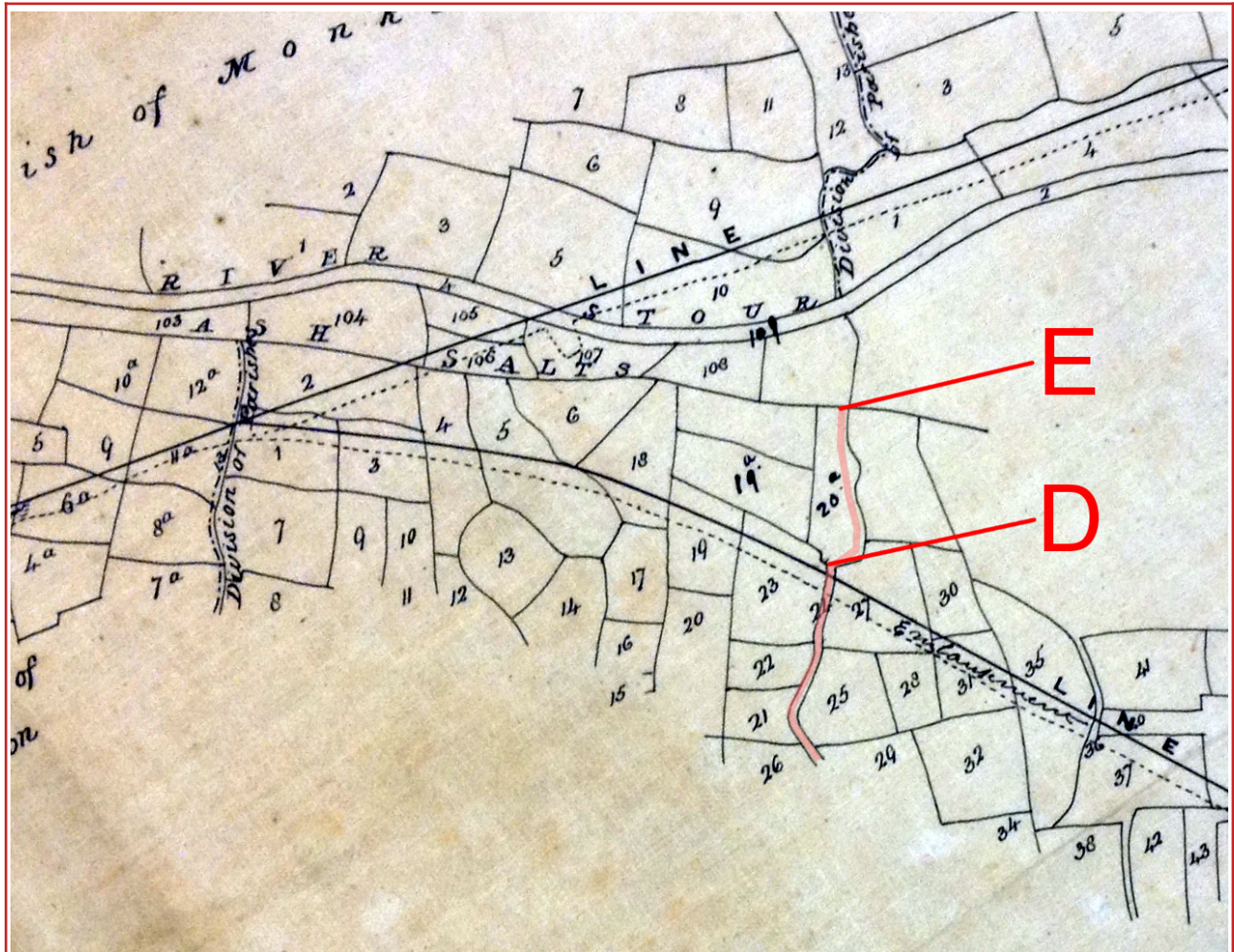


Illustration xxiv

South Eastern Canterbury Ramsgate and Sandwich Railway book of reference

No. at right	Description of Property.	Owner or reputed Owner.	Lessee.	Occupiers.
19a				
20	Marshes	William Friend		William Friend Junr.
21	Marsh	John Barrett		John Barrett
22	Marsh	John Barrett		John Barrett
23	Marsh	G. G. Weston		William Friend Junr.
24	Occupation Road	John Minet Fector		William Seales
25	Marsh	John Minet Fector		William and Thomas
26				

Illustration xxv

J.3. **Description:** Original scale: a scale is shown on the first plan in the series, but it is not possible accurately to reproduce it on the plan shown; orientation: rotated 25° (top is north).

J.4. The South Eastern Canterbury, Ramsgate and Sandwich Railway branch to Sandwich was planned to cross Ash Level close to the River Stour. The application way was recorded as plot 24 in the parish of Ash as far as D, but was not distinguished in plot 20 between D and E. The application way is not identified in the sections to the plans.

J.5. In the book of reference, plot 24 is described as an 'Occupation Road', owned by John Minet Fector, and not separately occupied.

J.6. **Conclusion:** The railway plans assign the ownership of the application way south of D to J M Fector, and describe it as an occupation road. The South Eastern Canterbury, Ramsgate and Sandwich Railway is the only railway plan to identify a single owner of the application way. This is likely to be because the railway proposed to sever the application way adjacent to D, near the most northerly end of the way, where the application way functioned primarily to serve a handful of fields.

J.7. **Points:** 0

K. Kentish Coast Railway

K.1. **Date:** 1845

K.2. **Source:** Kent County Archives³³

Kentish Coast Railway plan

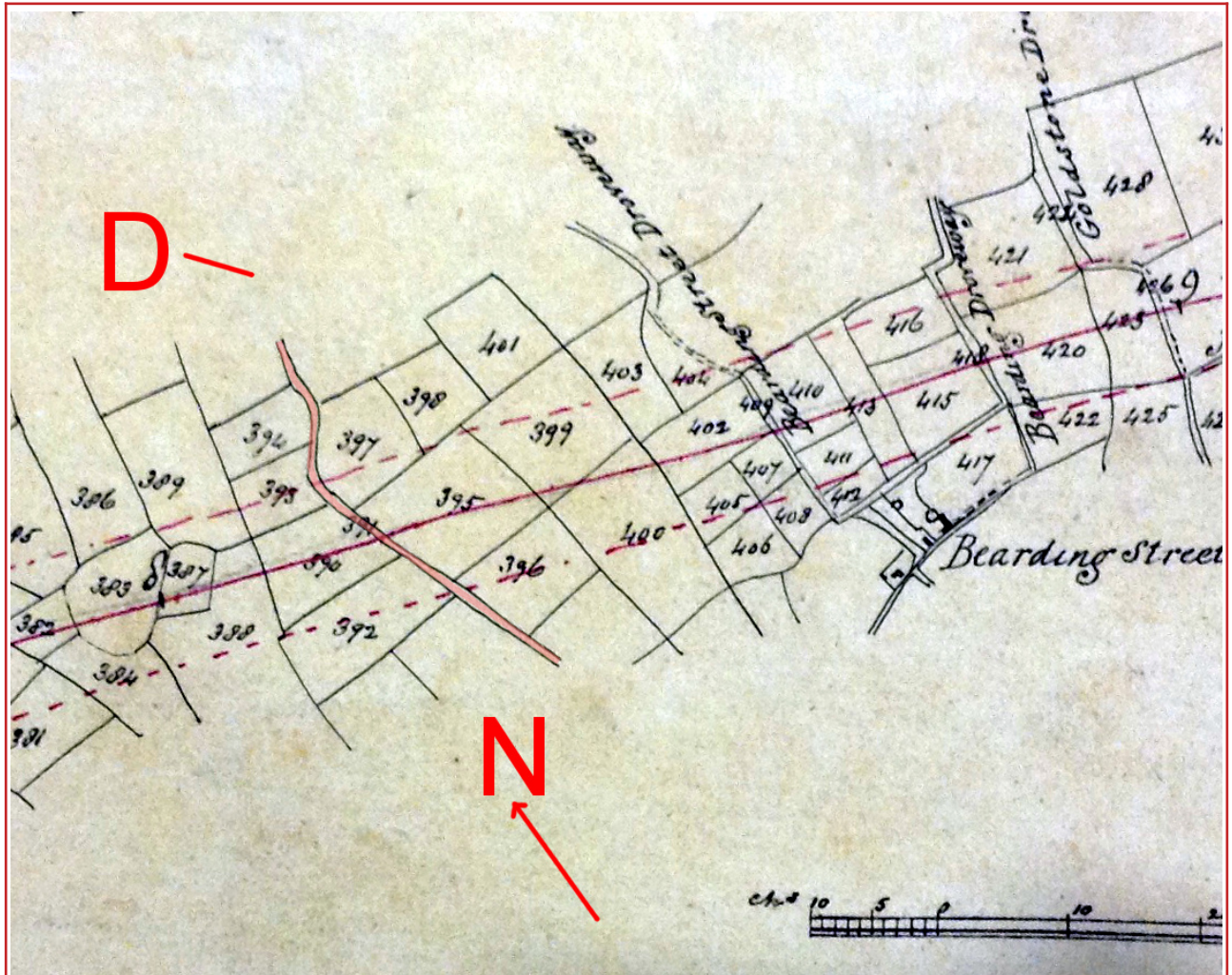


Illustration xxvi

Kentish Coast Railway book of reference

KENTISH COAST RAILWAY.				
THE PARISH OF <i>Ash</i> IN THE COUNTY OF KENT.				
NUMBER ON PLAN.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
390	Pasture	William Horn Harvey		William Horn Harvey
391	General Drove way for adjoining Lands			
392	Pasture	William Horn Harvey		William Horn Harvey

Illustration xxvii

K.3. **Description:** Original scale: a scale is marked on the plan; orientation: unchanged (north is annotated).

K.4. The Kentish Coast Railway proposed a route between Herne Bay and Sandwich which would have traversed the Wantsum Channel and Ash Level. It would have crossed the application way between C and D. The application way is represented as an enclosed way, with plot number 371. There appear to be no sections associated with the plans.

K.5. In the book of reference for the parish of Ash, plot 371 is described as a 'General Drove way for adjoining lands' with no owner or occupier.

K.6. **Conclusion:** The railway plans suggest that the application way (between C and D) has no known owner, and is recognised as a common drove way. Given that there is no known owner, it is likely that the drove is a highway.

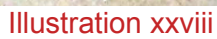
K.7. **Points:** 0

L. Herne Bay and Sandwich Railway

L.1. **Date:** 1846

L.2. **Source:** Parliamentary Archives³⁴

100



Book of reference

THE PARISH OF <i>Ash next Sandwich</i> in the County of <i>Kent</i>				
Number on Plan.	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.
<i>371</i>	<i>General Droeway for adjoining Lands</i>	<i>William Friend John Birch Henry Macnally William Horn Harvey and John Minet Fector - Sir Peter Laurie and others for Bethelam Hospital</i>		<i>William Friend William Friend Jr. John Jolly Henry Macnally William Horn Harvey - and Richard Sutton Jacob Chandler Thomas Pepper John Nethersole William Beerling</i>

Illustration xxix

L.3. **Description:** Original scale: not known; orientation: unchanged (north is annotated).

L.4. The Herne Bay and Sandwich Railway proposed a route between Herne Bay and Sandwich which would have traversed the Wantsum Channel and Ash Level; the route was generally identical to that of the Kentish Coast Railway (item IV.K above). It would have crossed the application way between C and D. The application way is represented as an enclosed way, with plot number 371.

L.5. In the book of reference for the parish of Ash, plot 371 is described as a 'General Droeway for adjoining lands' with the owners listed as: 'William Friend, John Birch, Henry Macnally, William Horn Harvey and John Minet Fector. Sir Peter Laurie and others for Bethelam Hospital'. The occupiers are given as: 'William Friend, William Friend Jr, John Jolly, Henry Macnally, William Horn Harvey — and Richard Sutton, Jacob Chandler, Thomas Pepper, John Nethersole, William Beerling'.

L.6. **Conclusion:** The railway plans suggest that the application way (between C and D) has several owners, still more occupiers, and is recognised as a common drove way.

L.7. **Points:** 0

M. Ordnance Survey County Series first edition 25-inch plan

M.1. **Date:** 1872

M.2. **Source:** British Library³⁵

■ **Ordnance Survey County Series first edition 25-inch plan, north map**

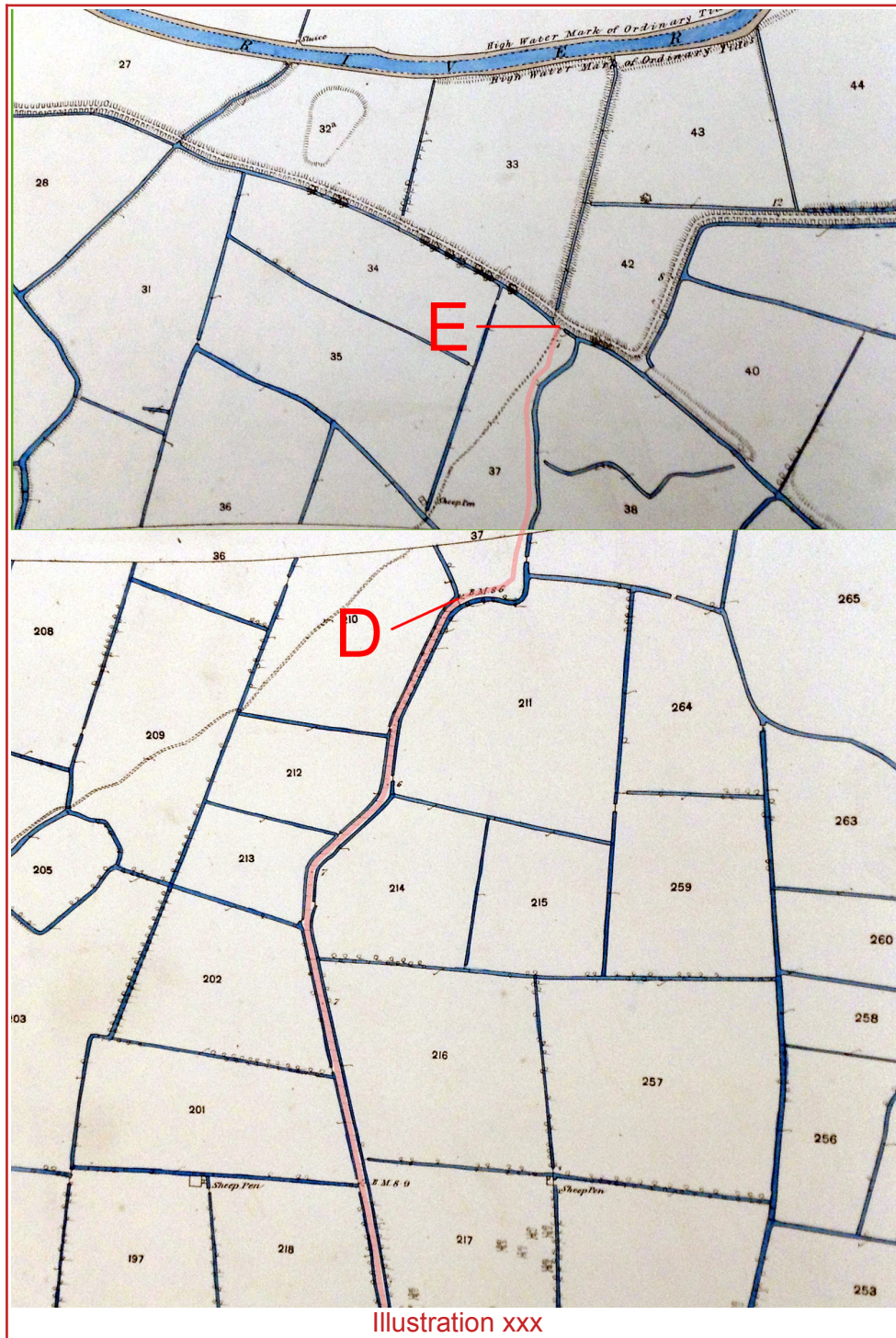
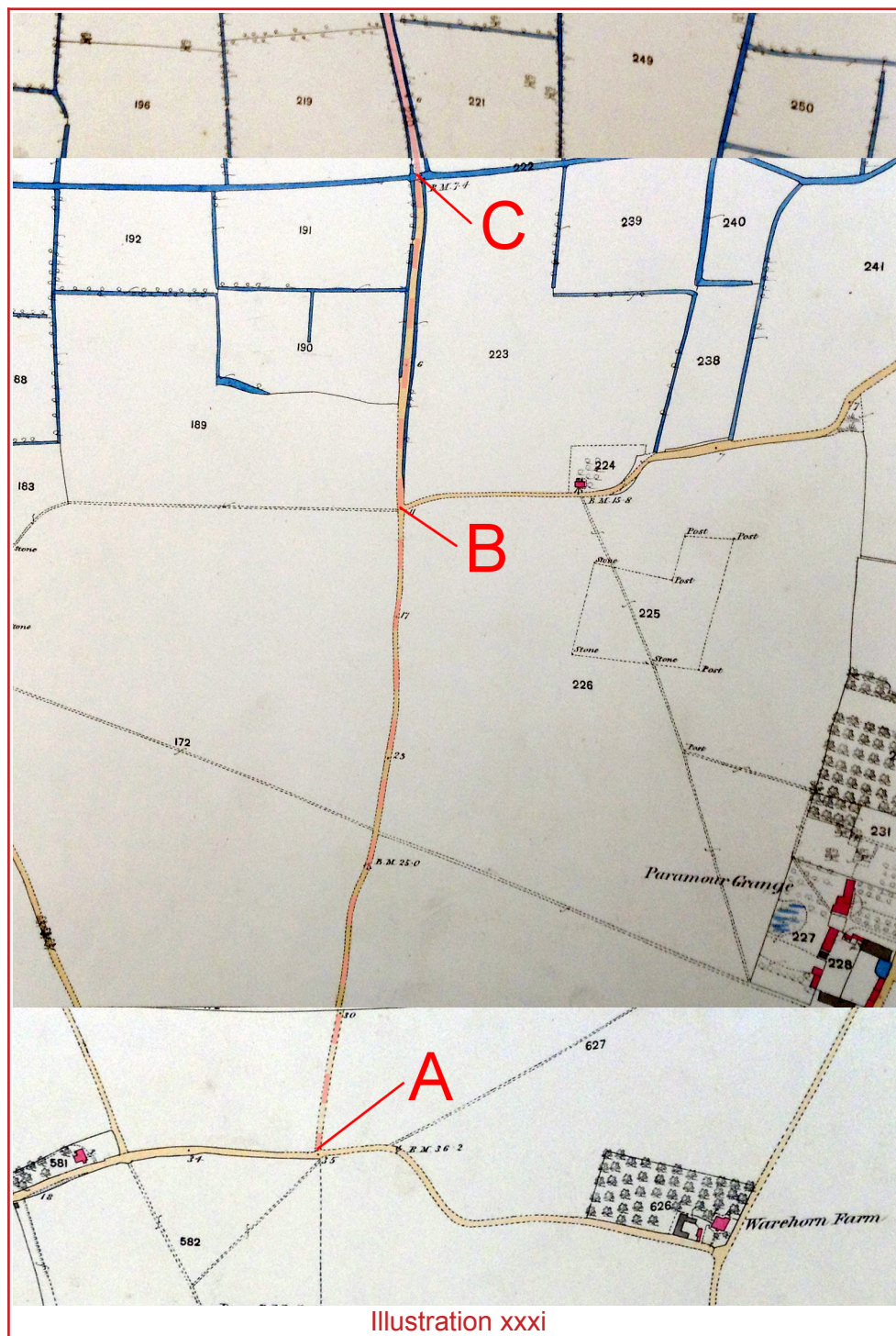


Illustration xxx

35 Photographed from bound copies, which distorts the images.

■ **Ordnance Survey County Series first edition 25-inch plan. south map**



Ordnance Survey County Series first edition area book

PARISH OF ASH. 3

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
217	5.510	Pasture, &c.	269	7.360	Pasture, &c.
218	5.098	Pasture, &c.	270	3.122	Pasture, &c.
219	5.427	Pasture, &c.	271	5.526	Pasture, &c.
220	2.827	Road.	272	8.064	Pasture, &c.
221	5.120	Pasture, &c.	273	1.993	Road.
222	3.864	Stream.	274	8.697	Pasture, &c.
223	12.477	Marsh.			

Illustration xxxii

M.3. **Description:** The Ordnance Survey County Series first edition map at a scale of 1:2,500 was surveyed in 1872 and published around the same year. It shows the application way north from A to B as an unenclosed road, coloured sienna (indicating metalling), and showing frequent spot heights. North from B towards C, the road becomes enclosed by drainage ditches. From C to D, the road is shown enclosed by drainage ditches, but unmetalled. Between D and E, the way is not marked. The way between A and D is assigned parcel number 220, in common with Brazen Street (the road east from B to Paramour Street), which is also coloured sienna. In the area book for the parish of Ash, parcel 220 is described as a 'Road'.

M.4. **Conclusion:** The County Series map shows the application way in detail as a metalled carriage road between A and C, and as an enclosed way across the marshes between C and D.

M.5. **Points:** 1 (as to the way between A and D)

N. Eastry Rural Sanitary Authority (later District Council)

N.1. **Date:** 1889–1913

N.2. **Source:** Kent County Archives

Eastry Rural Sanitary Authority report book, 7 May 1889

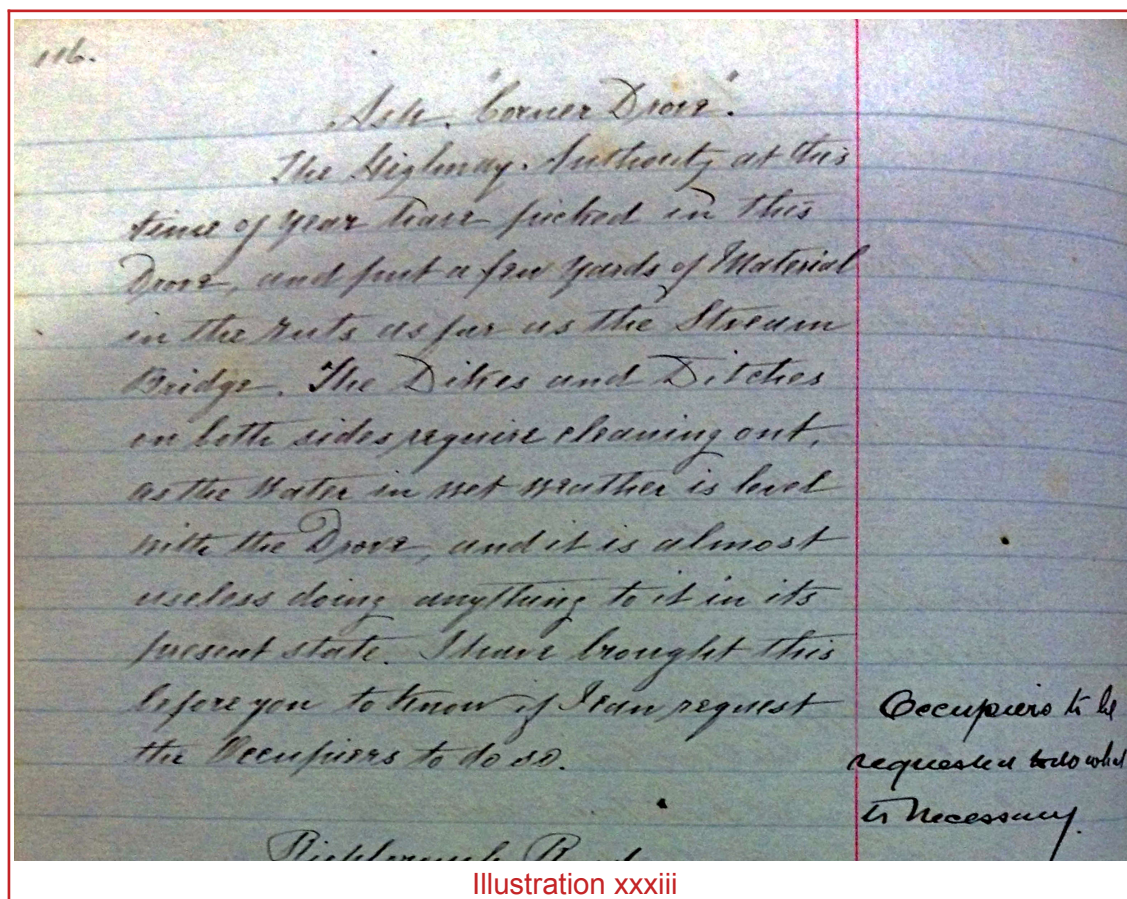


Illustration xxxiii

Illustration xxxiv

Eastry Rural Sanitary Authority minutes, 4 September 1894

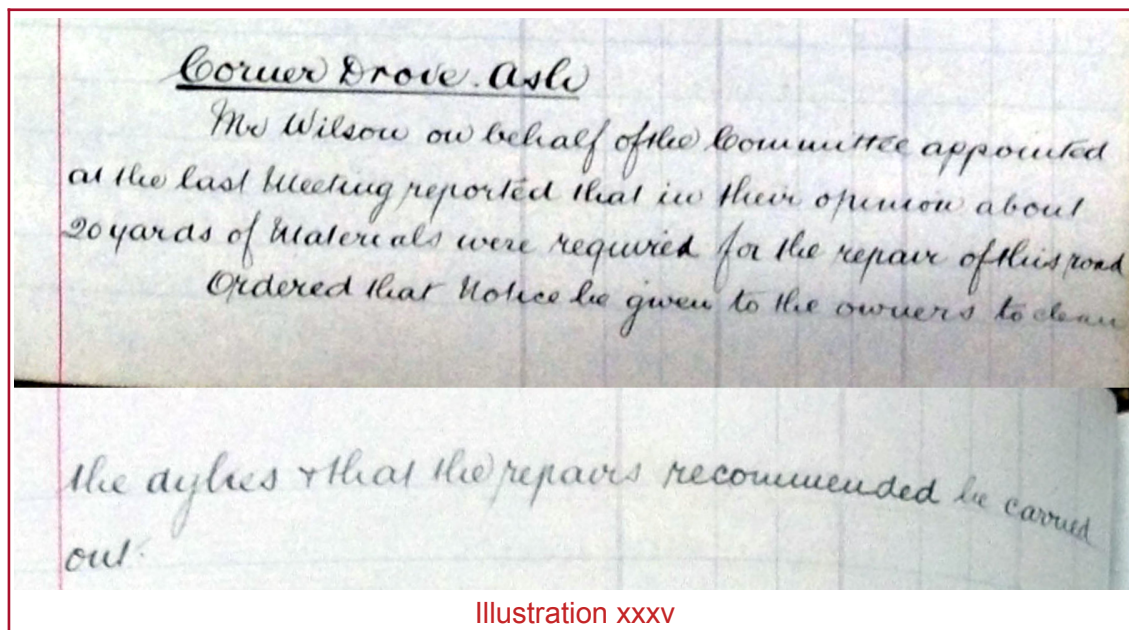


Illustration xxxv

Eastry Rural Sanitary Authority report book, 2 October 1894

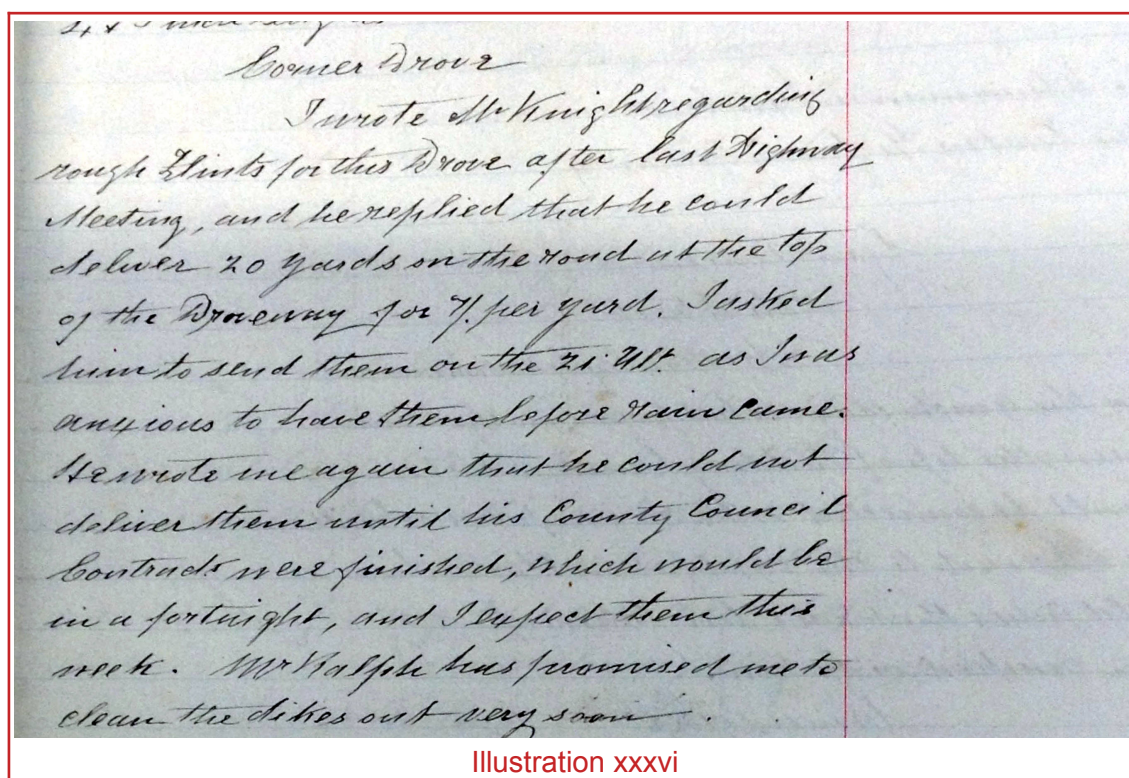


Illustration xxxvi

Corner Drove
Mr Knight has delivered
the 20 yards of rough flints for this driveway
on the road at the top, and Mr D Ralph has
commenced to clean out the ditches. It will be
impossible at present to get the flints carted
where they are wanted, the heavy rains having
made the drove so soft. For that reason I would
suggest when the weather permits, that 12 1/2
of course should be spread on the lowest fields
before the flints are put on. The chalk would
cost about 3/6 per 1/2 delivered. recommendation
to be carried out

Illustration xxxvii

Ash
The upper part of the Corner
Drove near Ware Vicarage and leading to the
Marshes has got much cut up with carting
Manure &c. The length that needs repairing
measures 118 rods, and it requires 118 loads of
bricks to fill up the wheel tracks &c. Mr House
whose land adjoins has offered to do a portion
of the carting, if the Board will pay his tolls
over Sandwich Bridge. I estimate the cost
of the carting & material & carriage exclusive of
of Roadman's time £12.15.0

Illustration xxxviii

11 Ash. Corner Drove
Messrs Knight sent in 20 yards
of rough flints for the repair of this Drove
and they have been put on, Mr House
kindly carting them out. The ruts on
the worst part of the surface being the have
been filled up and levelled, and I think
with a little attention it will now do
for the summer. There are still a good
many soft & hollow places on the lower
portion which hold water after rain.
When this part was repaired before, I had
a great many loads of Emmet casts from
Mr J. E. Elgar & filled up the lowest places.
There are some heaps of them still in the
marshes close by. I suggest their being
used again for that purpose if Mr. Elgar
would consent, and the only expense wd.
be the carting them out and spreading. approved

Illustration xxxix

Ash. Corner Drove
I have had a letter from
Mr J. E. Elgar stating as the owner of his marsh
objects to the Emmet casts being removed, he
cannot give permission for them to be taken
away for raising the Drove. At present there
is no immediate necessity for filling up
the hollows as we look for dry weather, but
if necessary I will report at once.

Illustration xl

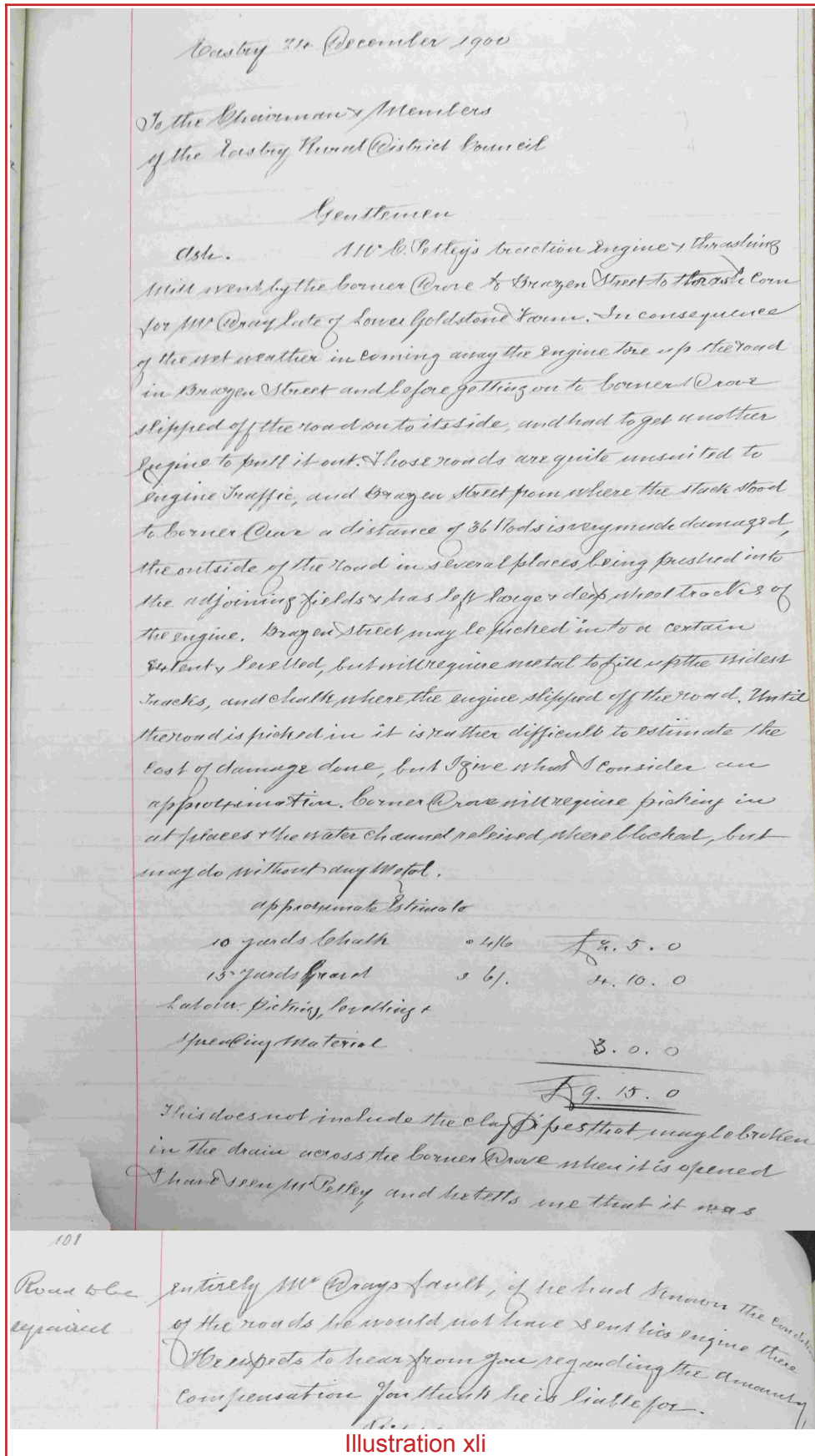


Illustration xli

Eastry Rural District Council report book, 10 June 1901

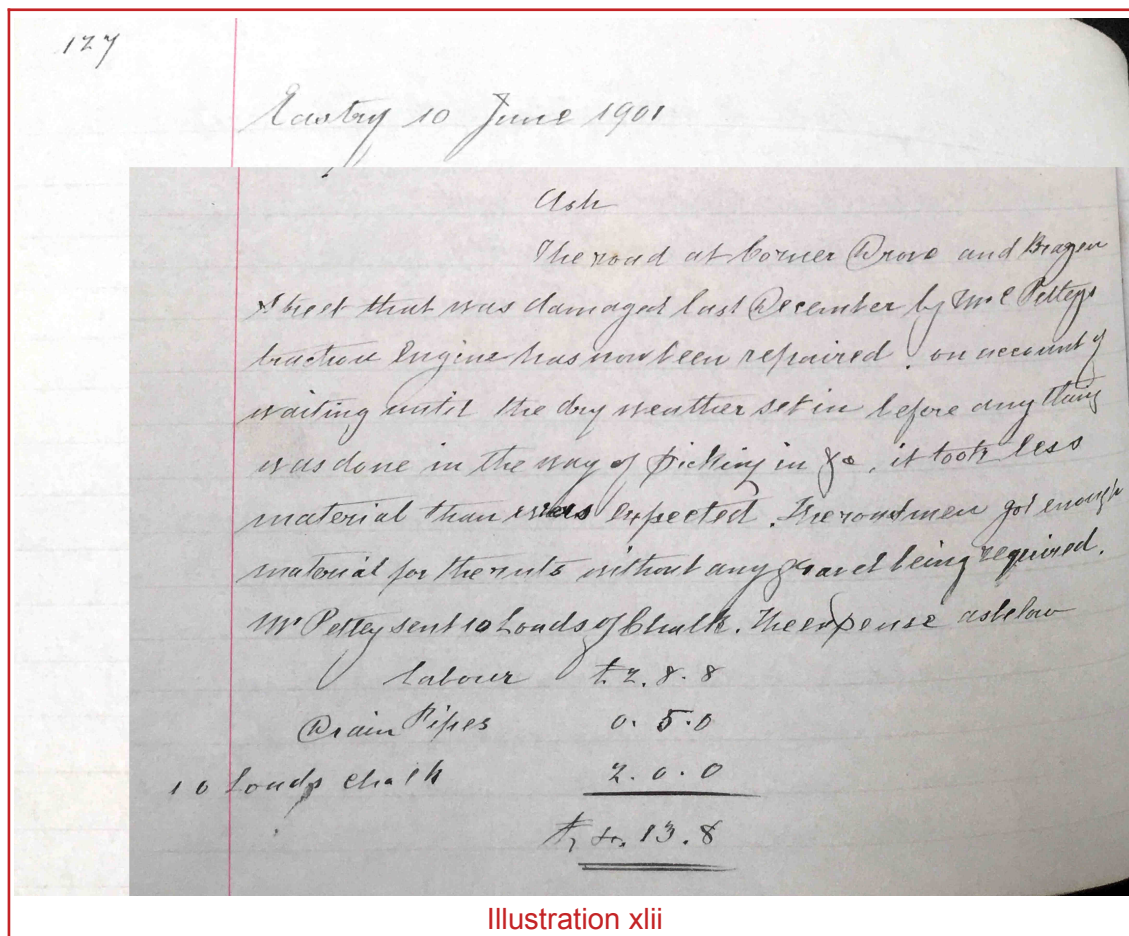


Illustration xlii

Eastry Rural District Council minutes, 10 May 1904

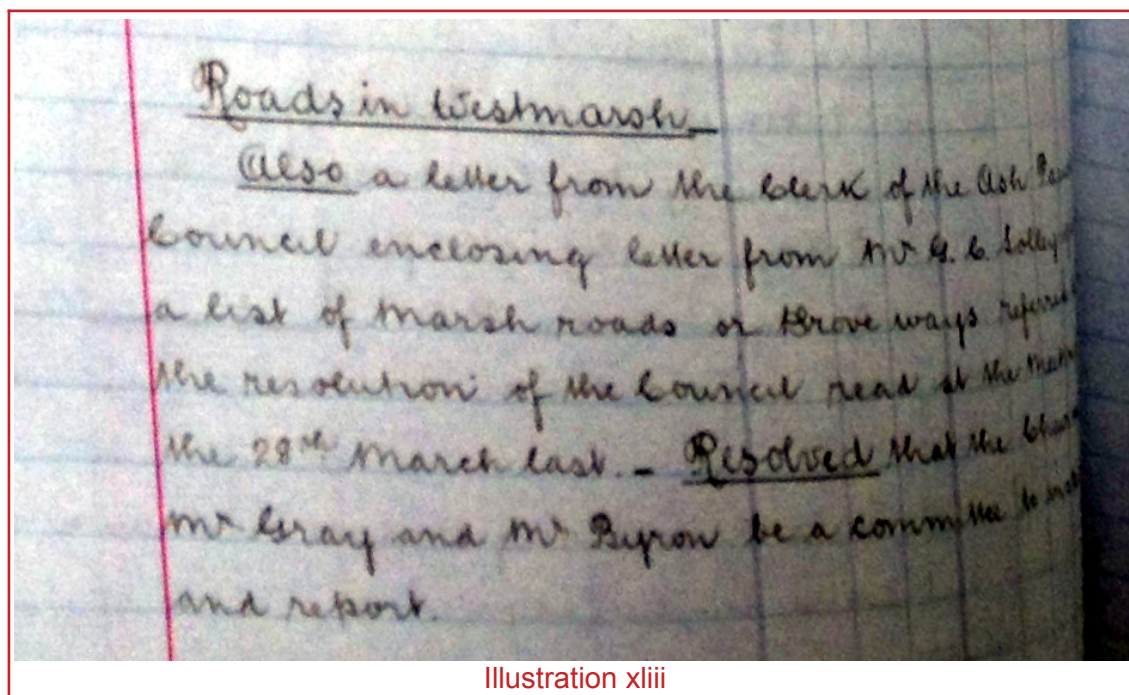


Illustration xliii

Eastry Rural District Council report book, 21 June 1904

Ush. Corner Drove & Beerling Street
 I submit a letter I have had from
 some Parishioners asking that some repairs be
 carried out. It is in the winter when people
 cart in wet weather that cuts them up & a
 few loads of stones in the soft places w^d be beneficial

*If dykes properly cemented
 no animals would put in
 a furrows*

Illustration xlv

Eastry Rural District Council minutes, 21 June 1904

Roads in Westmarsh - see minutes 10th May:-
 The Committee reported that they had inspected the
 Grove ways to which their attention had been called by the
 Parish Council of Ash and they recommended that the
 Council decide to admit any liability for the repair of the
 Grove ways mentioned in the list sent to the Council except
 as to the following, namely:- a portion of Beerling Street and
 two or three small places where previously repaired
 on the Corner Drove Lower Goldstone Road and the Road
 near Cooper Street - the owners of adjoining lands in these
 cases being required before any repairs are done to clean out
 the dykes - It was Resolved unanimously that the
 report be adopted.

Illustration xlv

Eastry Rural District Council wages book (Wingham), 19 May 1909

44

EASTRY RURAL DISTRICT COUNCIL.

HIGHWAYS.

LABOURERS' NAMES.	ON WHAT ROAD EMPLOYED.	HOW EMPLOYED.	DAYS OF THE WEEK.														Days Worked.	Yards.	Rods.	Rate.	Total Amount Paid.												Sub.	Total.						
			Th. F. S. M. Tu. W.							Th. F. S. M. Tu. W.											Manual Labour.				Materials.															
																					£	s	d.	£	s	d.	£	s	d.	£	s	d.								
William Fisher	Parham 1/2 Drives & 1/2 Drains Rd	surface repair riding col.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	12			7/6	1	10									1	10								
William H Marsh	Sandhill & 1/2 Drains	surface repair	1	1	1	1	1	1	1	1	1	1	1	1	1	1	6			7/6																				
3	1/2 Drains	riding															552			3/4	1	17																		
3	Richboro Road	breaking stone															5			2									3	4	2	0	4							
William Sheoff	Corner Drove	surface repair	1/2	1	1	1	1	1	1								5 1/2			7/6	13	9																		
3	Went, Tree Corner	breaking stone															36			7																				
3	Mullon Lane																20			5																				
3																	52			2																				

Illustration xlvi

Illustration xlvii

Eastry Rural District Council report book, 6 September 1910

Eastry September 6th 1910

To the Chairman & Members
of the Eastry Rural District Council
Gentlemen

Sir

I submit a letter from Mr W Castle of
Downfield. Esq. calling my attention
to the bad state of a road leading past his
Water Tables to be farm. The road referred to leads from the
made out &
Road levelled Ware road to Nptzen Street & the Marshes
I have from time to time had the rutts ficked in
I see by past reports of November 1894 this road
was repaired with chalk & flint. It could now
be much improved if the watertables were made
out and the surface levelled Mr Castle would
cart away all the ridings

Illustration xlvii

Eastry Rural District Council report book, 11 November 1913

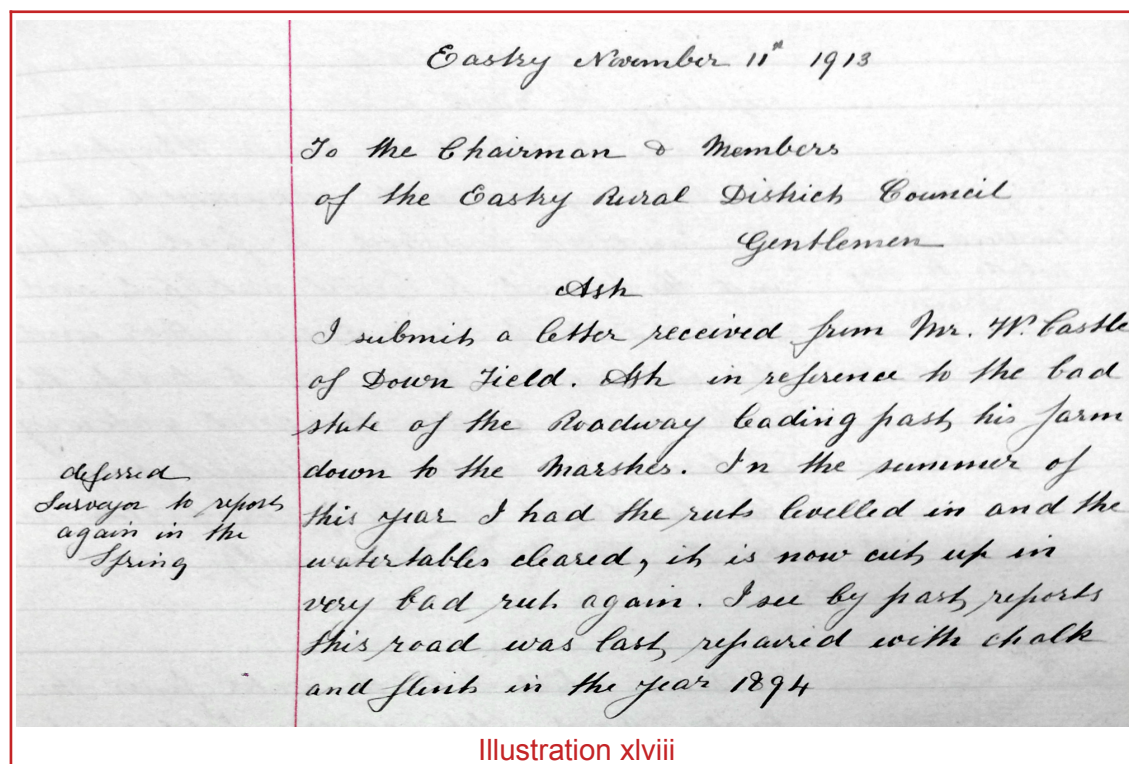


Illustration xlviii

N.3. **Description:** The report book for the Eastry Rural Sanitary Authority as highways authority 1884–1893 contains the following entry³⁶:

Guilton

7 May 1889

...

Ash, "Corner Drove"

The Highway Authority at this time of year hand picked in this Drove, and just a few yards of Material in the ruts as far as the Stream Bridge. The Dikes and Ditches on both sides require cleaning out, as the water in wet weather is level with the Drove, and it is almost useless doing anything to it in its present state. I have brought this before you to know if I can request the Occupiers to do so.

N.4. It is annotated in the margin: 'Occupiers to be requested to do what is necessary.'

N.5. The report book for Eastry Rural Sanitary Authority as highways authority 1893–99³⁷ contains the following entries.

N.6. At pages 44–45:

³⁶ RD/Ea/H2, p.116.

³⁷ RD/Ea/H3.

Guilton 7 August 1894

Ash, "Corner Drove"

This droveway as far as the Stream Bridge has been very soft & difficult for Hay Waggon to get up this Summer, partly owing to the wet weather, and also to the side dikes requiring cleaning out. Mr Clark and Mr Donn had considerable trouble in getting away with his Hay, and asked me to bring it before you. The Roadman has picked it in and attended to it more than usual this Summer. The only thing I can suggest is, that the ruts for 36 rods above the Stream Bridge which is the worst part be filled up with a slight foundation of fagots in the bottom, and with hard brick Burrs from Mr Simmons' Brickfield. I find the cost of that quality of Materials would be rather expensive, Burrs 5/. per horse load, carriage 4/. 20 loads would be wanted. It would bring the amount up to £9.5.11 including fagots without the roadmen's time. The side dikes require cleaning out every year as the Drove is very flat.

N.7. It is annotated in the margin: 'The Chairman Mr Wilson & Mr Giles to be a committee to [?] and report. Notice to owner cleanse dikes.'

N.8. The report is confirmed in the minutes of Eastry Rural Sanitary Authority on 4 September 1894, at page 7³⁸:

Corner Drove, Ash

Mr Wilson on behalf of the committee appointed at the last meeting reported that in their opinion about 20 yards of Materials were required for the repair of this road.

Ordered that Notice be given to the owners to cleanse the dykes and that the repairs recommended be carried out.

N.9. At page 49 of the report book:

Guilton 2 October 1894

Corner Drove

I wrote to Mr Knight regarding rough flints for this Drove after last Highway Meeting, and he replied that he could deliver 20 yards on the road at the top of the Droveway for 7/. per yard. I asked him to send them on the 21 ult. As I was anxious to have them before rain came. He wrote me again that he could not deliver them until his County Council Contracts were finished, which would be in a fortnight, and I expect them this week. Mr Ralph has promised me to clean the dikes out very soon.

N.10. There is no annotation in the margin.

N.11. At page 50:

Guilton 6 November 1894

Corner Drove

Mr Knight has delivered 20 yards of rough Flints for this Droveway on the road at the top, and Mr D Ralph has commenced to clean out the dikes. It will be

impossible at present to get the flints carted where they are wanted, the heavy rains having made the Drove so soft. For that reason, I would suggest when the weather permits, that 12 yds of coarse chalk be spread on the lowest places before the flints are put on. The chalk would cost about 3/6 per y^d. delivered.

N.12. It is annotated in the margin: 'recommendation to be carried out'.

N.13. At page 94 (now the report to the Eastry Rural District Council):

Guilton 4 February 1896

Ash

The upper part of the Corner Drove near Ware Vicarage and leading to the Marshes has got much cut up with carting manure etc. The length that needs repairing measures 118 rods, and w^d. require 58 lds. of Beach to fill up the wheel treads etc. Mr Howse whose land adjoins has offered to do a portion of the carting if the Board w^d. pay his Tools over Sandwich Bridge. I estimate the cost w^d. be altogether for Material and carriage inclusive of roadman's time £12.18.0.

N.14. It is annotated in the margin: 'Surveyor to [?] for 20 yds [?] at present.'

N.15. At page 99:

Guilton 31 March 1896

Ash. Corner Drove

Messrs. Knight sent in 20 yards of rough flints for the repair of this Drove and they have been put on. Mr Howse kindly carting them out. The ruts on the worst part of the upper length have been filled up and levelled, and I think with a little attention it will now do for the summer. There are still a good many soft & hollow places on the lower portion which hold water after rain. When this part was repaired before, I have a great many loads of emmet casts from Mr J E Elgar & filled up the lowest places. There are some heaps of them still in the marshes close by. I w^d. suggest their being used again for that purpose if Mr Elgar would consent, and the only expense w^d. be the carting them out and spreading.

N.16. It is annotated in the margin: 'approved'.

N.17. At page 101:

Guilton 28 April 1896

Ash. Corner Drove

I have had a letter from Mr J E Elgar stating as the Owner of his marsh objects to the emmet casts being removed, he cannot give permission for them to be taken away for raising the Drove. At present there is no immediate necessity for filling up the hollows as we look for dry weather, but if necessary I will report at once.

N.18. In the margin, a tick signifies approval of the report.

N.19. The report book for Eastry Rural District Council 1899–1903³⁹ contains the following entry at pages 100–101:

Eastry 24 December 1900

...

Ash Mr C Pettey's traction engine and threshing Mill went by the Corner Drove to Brazen Street to thresh corn for Mr Dray late of Lower Goldstone Farm. In consequence of the wet weather and in coming away the engine tore up the road in Brazen Street and before getting on to Corner Drove slipped off the road onto its side, and had to get another engine to pull it out. Those roads are quite unsuited to engine traffic, and Brazen Street from where the stack stood to Corner Drove a distance of 36 rods is very much damaged, the outside of the road in several places being pushed into the adjoining fields and has left large and deep wheel tracks of the engine. Brazen Street may be picked in to a certain extent and levelled, but will require metal to fill up the widest tracks, and chalk where the engine slipped off the road. Until the road is picked in it is rather difficult to estimate the cost of damage done, but I give what I consider an approximation. Corner Drove will require picking in at places and the water channel relieved where blocked, but may do without any metal.

[An 'Approximate estimate' follows, total cost £9,15s]

This does not include the clay pipes that may be broken in the drain across the Corner Drove where it is opened. I have seen Mr Pettey and he tells me that it was entirely Mr Dray's fault, if he had known the condition of the roads he would not have sent his engine there. He expects to hear from you regarding the amount of compensation you think he is liable for.

N.20. It is annotated in the margin: 'Road to be repaired'.

N.21. And at page 127:

Eastry 10 June 1901

Ash

The road at Corner Drove and Brazen Street that was damaged last December by Mr C Pettey's traction engine has now been repaired. On account of waiting until the dry weather set in the way of picking in etc, it took less material than was expected. The roadmen got enough material for the ruts without any gravel being required. Mr Pettey sent 10 loads of chalk. The expense as below. [The expenses total £4,13s,8p]

N.22. On 10 May 1904, the minutes of the council⁴⁰ record a discussion about drove roads in Westmarsh, following receipt of a letter from Ash parish council:

Roads in Westmarsh

Also a letter from the Clerk of the Ash Parish Council enclosing letter from Mr G C Solley with a list of Marsh roads or Drove ways referred to in the resolu-

39 RD/Ea/H4.

40 RD/Ea/Am3, p.160.

tion of the Council read at the meeting on the 28th March last. — Resolved that the Chair, Mr Gray and Mr Byron be a committee to [investigate?] and report.

N.23. The minutes of 21 June 1904⁴¹ record the conclusion of the review of maintenance of droves to the marsh in the parish of Ash, at the instigation of the parish council:

Roads in Westmarsh — See Minutes 10th May —

The Committee reported that they had inspected the Drove Ways to which their attention had been called by the Parish Council of Ash and they recommended that the Council decline to admit any liability for the repair of the Drove Ways mentioned in the list sent to the Council except as to the following, namely:— a portion of Beerling Street and two or three small places where previously repaired on the Corner Drove, Lower Goldstone Road and the Road near Cooper Street — the owners of adjoining lands in those cases being required before any repairs are done to clean out the dykes — It was Resolved unanimously that the report be adopted.

N.24. The report book for Eastry Rural District Council 1903–08 contains the following entry on the same date⁴²:

Eastry 21 June 1904

Ash. Corner Drove + Beerling Street

I submit a letter I have had from some Parishioners asking that some repairs be carried out on the above. It is in the winter when people cart in wet weather that cuts them up so. A few loads of stones in the soft places w^d. be beneficial.

N.25. It is annotated in the margin: 'If dykes properly cleaned out Council will put on a few stones'.

N.26. The highway wages book for Eastry Rural District Council, Wingham Area, 1907–12 contains the following entry for the fortnight ending 19 May 1909⁴³:

Labourers' Names: William Theoff
On What Road Employed: Corner Drowes (*sic*)
How Employed: surface repair
Days of the Week: Th. ½ F. 1 S. 1 M. 1 Tu. 1 W 1
Days Worked: 5½
Rate: 2/6
Total Amount Paid/Manual Labour: 13s/9d

N.27. In common with some other entries, no value is recorded against the column for the parish of Ash, nor any other parish.

N.28. The report book for Eastry Rural District Council, Wingham Area, 1905–12 contains the following entry⁴⁴:

41 RD/Ea/Am3, p.167.

42 RD/Ea/H5, p.47.

43 RD/Ea/H14, p.44.

44 RD/Ea/H9, p.205.

Eastry September 6th 1910

To the Chairman & Members
of the Eastry Rural District Council

Gentlemen

Ash

I submit a letter from Mr W Castle of Downfield, Ash, calling may attention to the bad state of a road leading past his farm. The road referred to leads from the Ware road to Brazen Street & the Marshes. I have from time to time had the ruts packed in. I see by past reports of November 1894 this road was repaired with chalk and flints. It could now be much improved if the water-tables were made out, and the surface levelled. Mr Castle would cart away all the sidings.

N.29. It is annotated in the margin: 'Water Tables to be made out & Road Levelled'. Reference to the reports of November 1894 appear to be to those noted at paragraph N.11 above.

N.30. The report book for Eastry Rural District Council, Wingham area, 1912–1922 contains the following entry⁴⁵:

Eastry November 11th 1913

To the Chairman & Members
of the Eastry Rural District Council

Gentlemen

Ash

I submit a letter received from Mr W Castle of Down Field, Ash in reference to the bad state of the Roadway leading past his farm down to the marshes. In the summer of this year I had the ruts levelled in and the watertables cleared, it is now cut up in very bad ruts again. I see by past reports this road was last repaired with chalk and flints in the year 1894.

N.31. In both the last two reports, 'Down Field', or Downfield, Farm appears to be the buildings clustered around 'Beaconsfield House' on contemporary maps, about 300m south of A, and now labelled Downfield Farm. The location is not entirely consistent with the description of a road leading past the farm and: 'from the Ware road to Brazen Street & the Marshes', but no other way better fits the description.⁴⁶ It is also consistent with the thorough repairs done in 1894: see para.N.6 above.

N.32. **Conclusion:** The reports by the surveyor to the Eastry Rural Sanitary Authority, later the Eastry Rural District Council, the decisions of the council informed by the surveyor's reports, and express records of manual labour carried out on the application way, demonstrate that the application way was regularly maintained by the authority over a sustained period of twenty years. Moreover, the reference in the report for 7 May 1889 states that,

45 RD/Ea/H10, p.55.

46 On 21 March 1922 (RD/Ea/H10, p.279), the surveyor reports to the council that he has 'had the corner taken off opposite Downfield Farm.' This corner relates to the junction of the main drive to Downfield Farm, the Ware Road, and West Drove. The corner is as much 'opposite' Downfield Farm as Corner Drove runs 'past' the farm.

‘The Highway Authority at this time of year hand picked in this Drove’: this suggests that it was the practice of the highway authority (probably a reference to the predecessor Wingham Highways Board) to maintain the application way prior to that date.

N.33. The record of wages paid for work on ‘Corner Drove’ in May 1909 is the only such record identified in the wages books: however, this appears to reflect a general practice of recording work done at ‘various’ locations, or a reference only to the locality. It therefore cannot be inferred that the work done to the application way in May 1909 was an isolated instance.

N.34. The reports refer to maintenance of the application way as a ‘road’ and its use for ‘carting manure’ and to ‘cart in wet weather’. It is clear that the maintenance was done to enable the use of the application way as a carriageway. The reports are therefore strong evidence that the application way was regarded as a public carriageway by the highway authority before and during this period.

N.35. On 21 June 1904, the council adopted a report of its highways committee that Corner Drove was repairable in ‘two or three small places where previously repaired’. Even on that occasion, the council approved the surveyor’s proposal to ‘put on a few stones’, and on numerous occasions before and after, the council undertook repeated repairs. A highway cannot be publicly maintainable only in ‘two or three small places’ — it either is or is not publicly maintainable. Here, there is abundant evidence that the way was publicly maintainable from 1889 to 1913 — a period of twenty-five years — and an intimation that it had been maintained long before 1889.

N.36. **Points:** 5

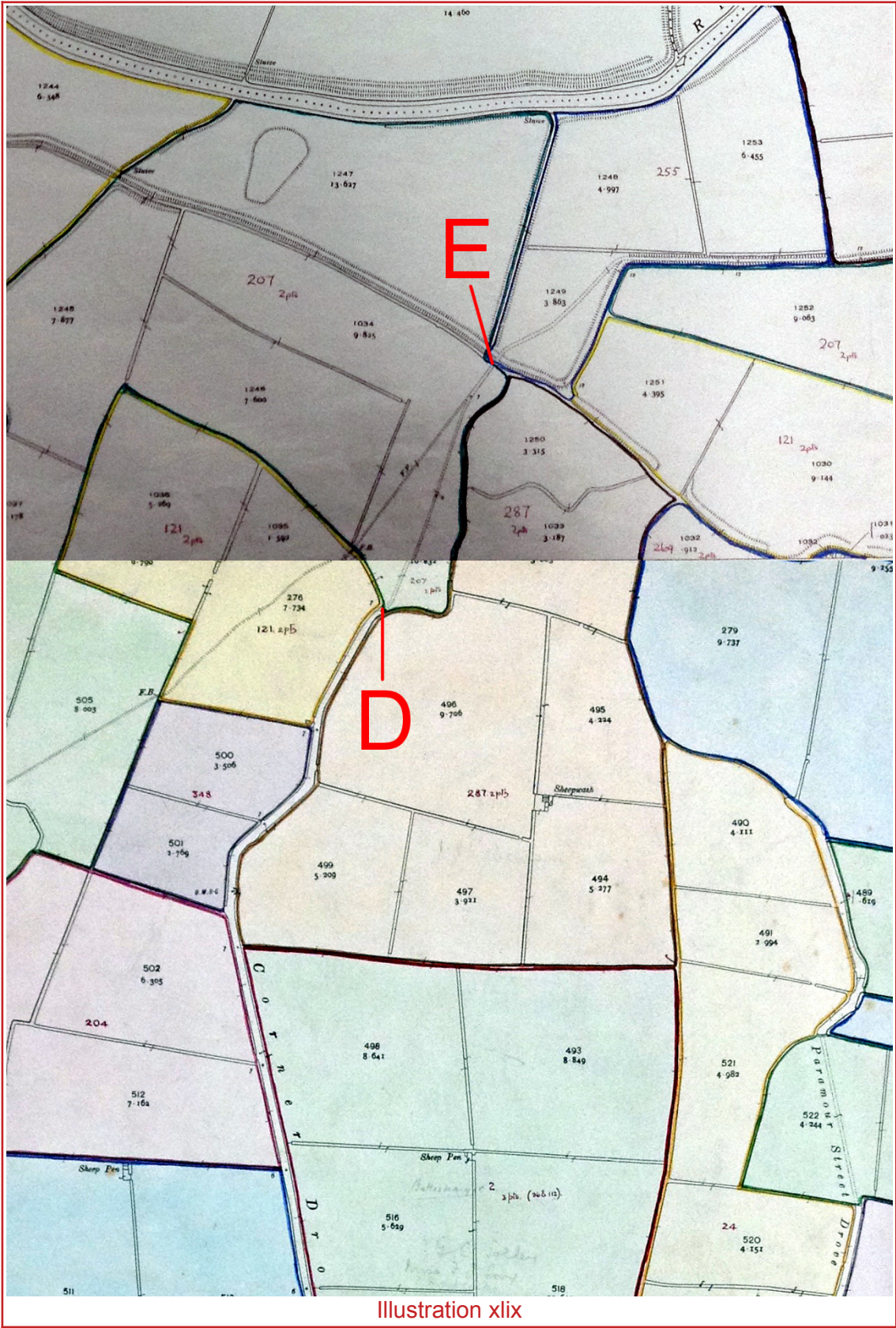
O. Finance (1909–1910) Act 1910

O.1. **Date:** 1911

O.2. **Source:** National Archives⁴⁷

⁴⁷ Kent 37/5: IR 124/2/77, 124/5/31; Kent 37/9: IR 124/5/33; Kent 37/13: IR 124/5/36

100



Finance (1909–1910) Act 1910 record plan, south extract

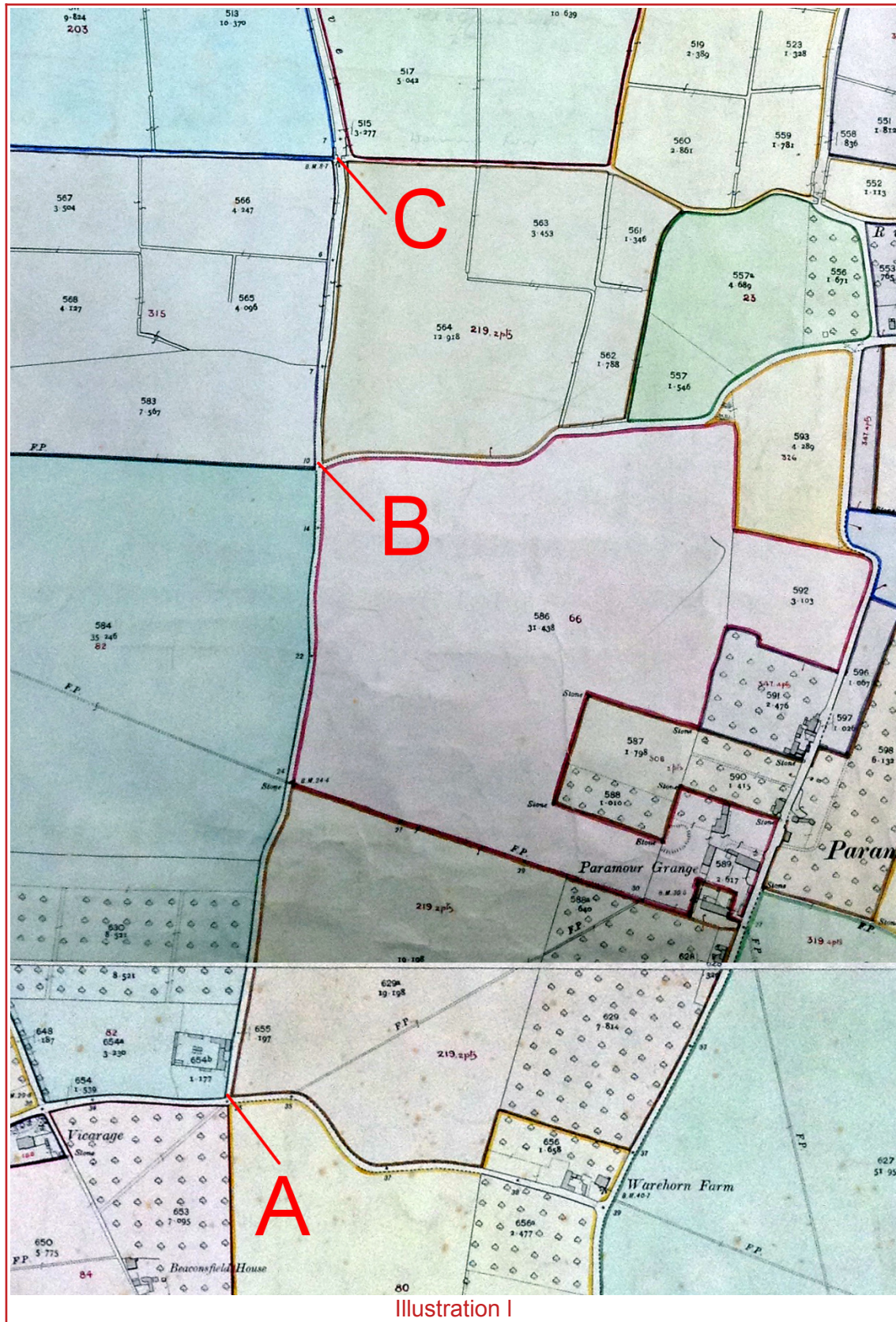


Illustration I

O.3. **Description:** original scale: 1:2,500; orientation: unchanged.

O.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’. This is because s.35 of the 1910 Act provided,

No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.

A highway authority was a rating authority.

O.5. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act:

The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...⁴⁸

Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land.

O.6. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

O.7. The application way is shown uncoloured and excluded from neighbouring hereditaments, between A and D. Other ways are also shown uncoloured, including the way east from B (now footpath EE66, but formerly an alternative means of access from the east at Paramour Street to the hamlet of Beerling Street), and Ware Road.

O.8. Between D and E, the way is shown unenclosed, and is not excluded from hereditament 207. No analysis has been made of any deduction for this hereditament, as the hereditament contains other known rights of way.

O.9. **Conclusion:** The exclusion of the application way from the hereditaments between A and D provides strong support for its status as a public highway, probably a cart road,, and the then owners’ acknowledgement of that status. Although the exclusion ceases at D, there is no evidence whether or not the right of way was acknowledged to continue beyond D to E.

O.10. **Points:** 5 (as to the way between A and D)

48 Discounts for easements affecting the land were separately requested and recorded in the valuation book.

P. West Marsh auction

P.1. **Date:** 1920

P.2. **Source:** Kent County Archives⁴⁹

■ West Marsh auction

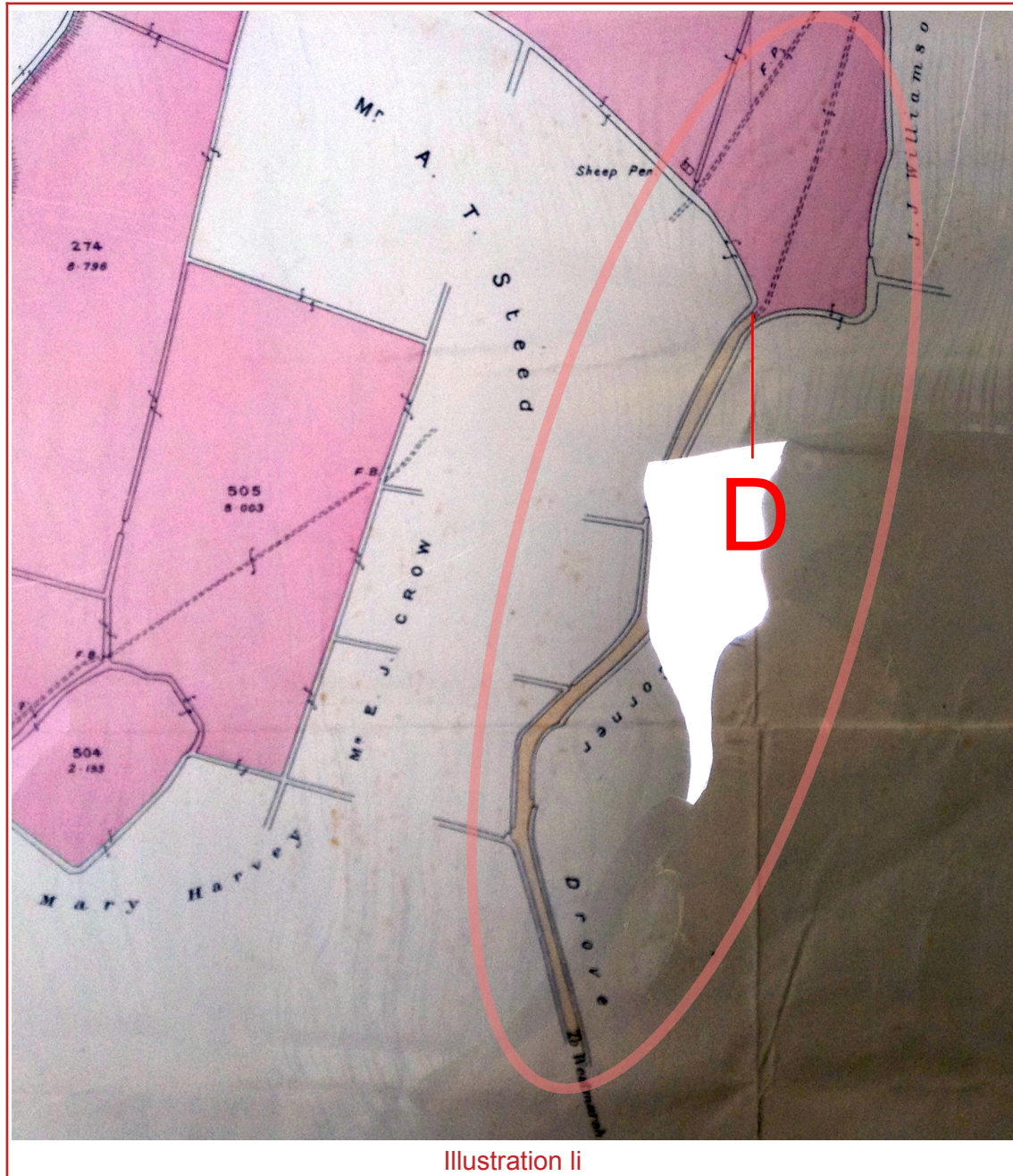


Illustration li

P.3. **Description:** original scale: not marked, but map is labelled 'This map is based upon the Ordnance Survey', and appears to be derived from the 1:2,500 map; orientation: unchanged (top is north).

P.4. Particulars prepared for an auction of around 87 acres (35.5 ha) of land at Westmarsh in the parish of Ash, including land at the north end of Corner Drove. The land is described as 'less than half-a-mile north of West Marsh, from which it is approached by a good road, and bounded on the north side by the River Stour. ... Parcel 277 [the field between D and E] is subject to the right of adjoining owners to move stock, etc. through the same from the top of the driveway, as shown on the Plan.'

P.5. The application way is coloured yellow to the south of D, and at the bottom of the map, it is marked as continuing 'To Westmarsh'. The only other way so coloured is the main road between East Stourmouth and Stour Bridge at Plucks Gutter.

P.6. **Conclusion:** The particulars give no indication of any private right of way granted over Corner Drove. The way is described only as a 'good road', coloured yellow, and labelled as leading to the nearest village. These are strong indications that the way south from D was considered to be a public carriageway.

P.7. The particulars also refer to the right of adjoining owners to move stock etc. between D and E. It is not stated whether this is a private or public right, and the auction particulars are therefore inconclusive on this aspect.

P.8. **Points:** 2 (as to the way between A and D)

Q.2. Source: Kent County Council⁵⁰

[illegible]

version 1.2 February 2023

Q.5. It is understood that Kent County Council considers that the dashed blue line and E-class reference indicates a vehicular highway which was not publicly maintained at that date. This classification is reinforced by a pencilled annotation, 'not maintained' adjacent to the way below the label 'E150'. An arrow pointing to B is annotated, 'Check with FP map'.

Q.6. **Conclusion:** The inspector's map shows that the application way between A and B was considered to be a public highway, and was allocated an unclassified road number. Although classified as not publicly maintained, it is more likely that the classification merely indicated contemporary maintenance practice. As a way which was probably laid out in the early mediæval period, and therefore a highway before 1835, it must be publicly maintainable, and indeed, this is confirmed by the records of the predecessor Eastry Rural Sanitary Authority (later District Council) (item IV.N above).

Q.7. **Points:** 3 (as to the way between A and B)