

# Kelk Hill restricted byway: para.4(1)<sup>1</sup> appeal



## I. Introduction

### A. Quick reference

#### ■ Location map

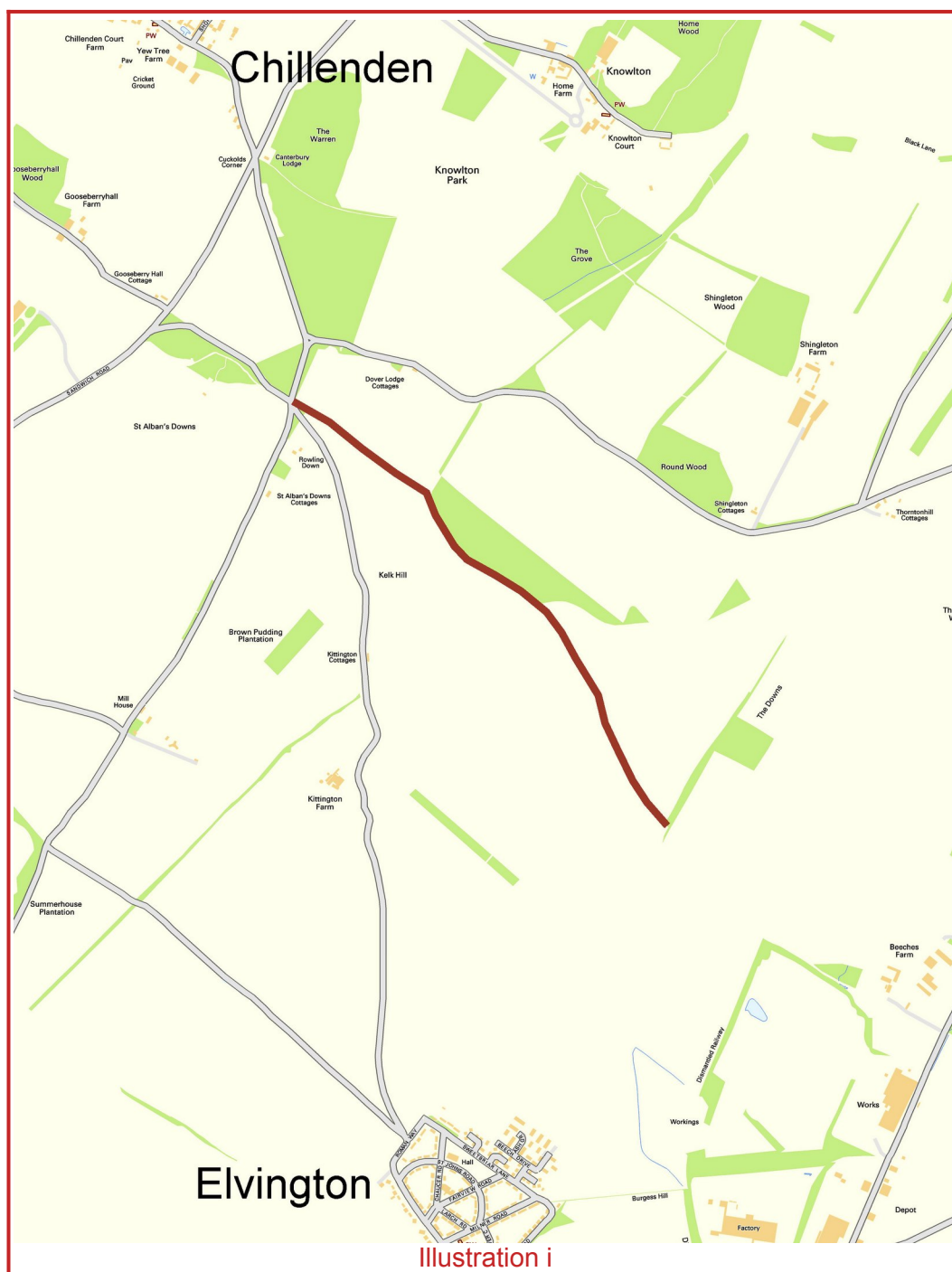


Illustration i

1 Para.4(1) of Sch.14 to the Wildlife and Countryside Act 1981

- A.1. **Date of application to surveying authority:** 22 August 2017
- A.2. **Surveying authority reference for application:** PROW/DO/C399
- A.3. **Date of service of notice of determination:** 15 September 2017
- A.4. **Existing recorded public rights of way comprised in appeal way:** footpath EE323
- A.5. **Parish of:** Nonington
- A.6. **Ancient parishes of:** Nonington, and Wingham (detached)
- A.7. **District of:** Dover
- A.8. **Former rural district of:** Eastry
- A.9. **Hundreds of:** Eastry and Wingham<sup>2</sup>
- A.10. **Termination points:** Near New Purchase Firs on BOAT EE335 (between Thorton-hill Cottages and Eythorne), and Cold Blow Corner (on Kelk Hill)
- A.11. **Ordnance Survey termination points:** TR28335145 to TR27335259 ([Streetview](#))
- A.12. **Postcode:** CT15 4HN
- A.13. **Ordnance Survey Explorer sheet:** 150
- A.14. Ordnance Survey County Series 25" sheets:** Kent LVII/4 and LVIII/1

## B. Contents

I.	Introduction.....	1
A.	Quick reference.....	1
B.	Contents.....	2
C.	The appellant.....	3
D.	Locational details.....	3
E.	Nomenclature.....	5
F.	Application and determination.....	6
G.	Grounds of appeal.....	7
H.	The appeal way as a hundredal boundary.....	7
I.	Appellant's case.....	10
J.	Natural Environment and Rural Communities Act 2006.....	13
K.	Points awarded.....	13
L.	Width of appeal way.....	14
M.	Limitations.....	15
N.	Law cases.....	15
II.	Along the way.....	16
III.	Evidence.....	17
A.	St Alban's map (Gordon Ward collection).....	17
B.	Ordnance Survey surveyor's drawing, Canterbury (East).....	19
C.	Barlow-Hasted map of Kent.....	22
D.	Ordnance Survey, Mudge-Faden one-inch map of Kent.....	24
E.	Ordnance Survey, Old Series one-inch map of Kent.....	25

2 The parish of Nonington is divided between the hundreds of Wingham and Eastry.

F.	Paterson's Roads — Thanet and Kent and Sussex Coast.....	26
G.	Greenwoods' map of Kent.....	27
H.	Tithe Act 1836.....	30
I.	Inclosure Act 1845, order of exchange.....	32
J.	Poor Law Commissioners' survey.....	34
K.	Ramsgate Sandwich Deal and Dover Railway.....	41
L.	Ordnance Survey boundary records.....	45
M.	The National Gazetteer of Great Britain and Ireland.....	49
N.	Walmer, Deal and Adisham Railway.....	51
O.	Ordnance Survey County Series twenty-five inch plans.....	56
P.	Late C19 and early C20 maps.....	61
Q.	Finance (1909–1910) Act 1910.....	66

## C. The appellant

C.1. The appeal, the evidence for which is summarised in this document, is made by Hugh Craddock acting 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.

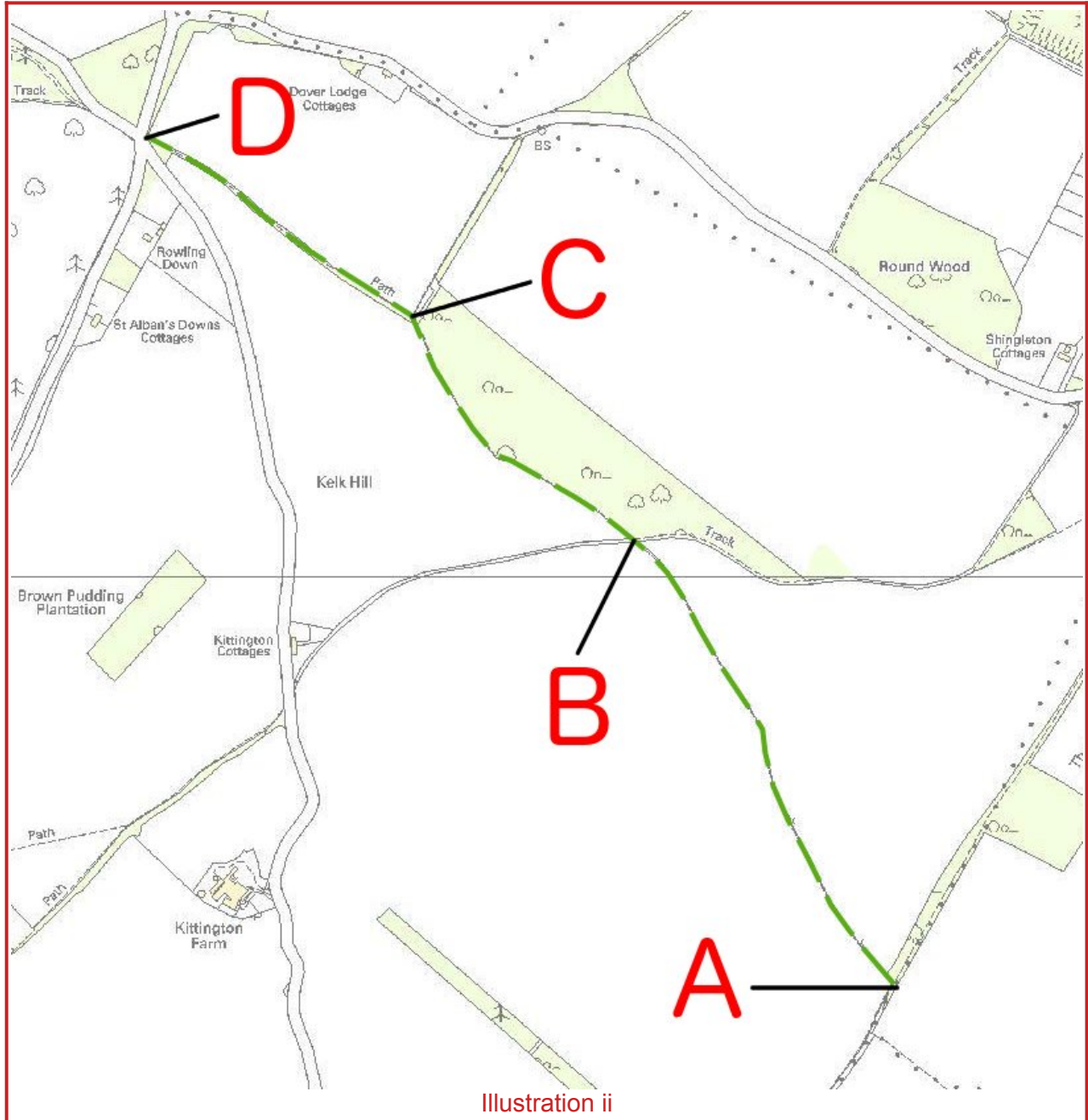
## D. Locational details

D.1. The application sought to upgrade to restricted byway the footpath EE323 in the parish of Nonington. The way commences at New Purchase Firs, on the byway open to all traffic (BOAT EE335) along Shingleton Down at A (Ordnance Survey grid reference TR28335145), approximately 1 km south-southwest of the junction of EE335 with Thornton Lane at Thorntonhill Cottages. The way proceeds generally north-west for a distance of 700m to a crossroads with a way recorded as footpath EE264<sup>3</sup> on Kelk Hill at B (TR27985205), then continuing west-northwest for a distance of 435m to a junction with footpath EE324 at C (TR27685234), then continuing west-northwest for a further distance of 435m to a road junction at Cold Blow Corner at D (TR27335259). A total distance of 1,570m. The points A to D are shown in the original application plan below.

D.2. The way lies wholly in the parish of Nonington. The majority of the way formerly accommodated (along the centre line) the boundary of the hundred of Eastry and a detached part of the hundred of Wingham and manor or borough of Kittington. However, Kittington was and remains part of the parish of Nonington.

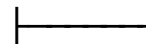
3 A definitive map modification order is due to be made by KCC to record this footpath as a restricted byway, consequent on an application made for that purpose by the appellant.


## Original application plan



Map centred on B at TR280520

Scale: approx. 1:7,600 (when printed A4)



Appeal way is marked 

140m

D.3. The appeal way is currently recorded on the definitive map and statement as foot-path EE323. The appeal seeks to show that a definitive map modification order should be made to record the way instead as a restricted byway.



## The appeal way looking north-west towards B and C



Illustration iii

### E. Nomenclature

E.1. The following names are used in this analysis:

- New Purchase Firs — a block of woodland adjoining the junction of the appeal way with byway open to all traffic (BOAT EE335) along Shingleton Down, close to a turning of bridleway EE335B towards New Purchase Farm and the Barville Road.
- Cold Blow Corner — the junction of Grannies Lane, Mill Top, Kelk Hill (to Elvington), the road to Cuckolds Corner and Knowlton, and the appeal way, at D. This name appears on the Poor Law Commissioners' survey map at item III.J below.
- Grannies Lane — the road from Cold Blow Corner to the Sandwich Road near Gooseberry Hall Corner. This road connects directly with Cherrygarden Lane byway open to all traffic (BOAT EE280) at Gooseberry Hall Corner via a short length of unrecorded way, which is the subject of a separate appeal.<sup>4</sup>

E.2. These place and road names are shown on the map on the next page.

<sup>4</sup> KCC reference PROW/DO/C400

## Place and road names



## F. Application and determination

F.1. The original application was made by the appellant<sup>5</sup> on 22 August 2017 under s.53(5) of the Wildlife & Countryside Act 1981 ('the 1981 Act') to Kent County Council (KCC) that a definitive map modification order be made under s.53(3)(c)(ii) in relation to the footpath shown in the definitive map and statement for Kent as footpath EE323, so that it should instead be shown as a restricted byway.

F.2. Notice of the application was served on owners and occupiers on 9 September 2017, and certificate of service was given to the authority on 15 September 2017.

F.3. The application was registered by the authority in the register of applications with reference: PROW/DO/C399.

F.4. The application was refused in a determination dated 30 January 2024 and communicated to the applicant on 5 February 2024.

5 *i.e.* the appellant acting on behalf of the British Horse Society.

## G. Grounds of appeal

G.1. This appeal is made against the determination of KCC, as surveying authority, to refuse the appellant's application to that authority for a definitive map modification order in respect of the appeal way.

G.2. The report of KCC into the application for an order<sup>6</sup> contains a number of analytical conclusions which are contested by the appellant. It also reports the criticisms of the objector. Where these relate to particular evidential items, these are addressed in that context.

G.3. The appeal is brought on the grounds that that KCC was incorrect to determine:

- that in considering the evidence of early county and Ordnance Survey maps, KCC acknowledged that the maps provided 'physical existence of the claimed route'<sup>7</sup>, but failed to take account of their evidence of a long-standing through route which was likely to be public;
- that KCC failed to give sufficient weight to the evidence of the Poor Law Commissioners' survey (item III.J below), which confirms what is apparent from prior, contemporary and subsequent mapping: that the appeal way is a publicly-maintained part of the local road network;
- that KCC was mistaken to conclude that the status of public road recorded in the Poor Law Commissioners' survey and plans for the Ramsgate Sandwich Deal and Dover Railway was 'consistent with the claimed route being a Public Footpath or a Bridleway',<sup>8</sup> and did not in any case consider whether the appeal way should therefore be recorded as a bridleway;
- that KCC was mistaken to conclude that the evidence of the Ordnance Survey County Series twenty-five inch plans showed a 'lesser status'<sup>9</sup>;
- that KCC was mistaken to conclude that the evidence of the 'utility of the way as a public thoroughfare is considerably less evident historically' than a neighbouring route;
- and that accordingly, KCC was wrong to conclude that there was insufficient evidence of the claimed public vehicular status.

## H. The appeal way as a hundredal boundary

H.1. The appeal way between New Purchase Firs at A and a point about 175 metres east-southeast of Cold Blow Corner at D (*i.e.*, for almost the entire length of the appeal way) formerly was the boundary of a detached portion of the manor and hundred of Wingham (the neighbouring land being in the hundred of Eastry). The boundary is identified in the Ordnance Survey boundary records (item III.L below) and shown on the first edition of the Ordnance Survey County Series twenty-five inch plans (item III.O below), annotated 'C.R.' — *i.e.* centre of road. It is submitted that the boundary is founded in long-standing manorial administrative systems.

6 KCC report on application C399 dated 5 February 2024

7 KCC report on application C399 dated 5 February 2024, appendix B, para.117

8 *Ibid*, para.117

9 *Ibid*, para.119

H.2. The English manor was an administrative unit of a landed estate, held by a lord. The manorial system was partly established in the pre-Norman period, but consolidated after the Conquest. The lord of a manor owed obligations of service to the Crown, but the lord could grant or sub-divide the manor (sub-infeudation) until prohibited in 1290.<sup>10</sup> Thus every manor had boundaries which, since 1290, generally were well-defined and remained static.

H.3. Parishes date from the early mediæval period, but the parish emerged as an administrative unit of local government late in that period. The parish was assigned key functions of maintaining the highways under the Statute of Philip and Mary of 1555,<sup>11</sup> and maintaining the destitute under the Poor Relief Act 1601. Initially, the parish operated alongside the manor, which retained jurisdiction over property rights, powers to punish misdemeanours and to regulate the use of land, exercised through the courts baron and leet. Manorial powers gradually were lost or abandoned, until finally the control of property rights was abolished under the Law of Property Act 1922.

H.4. Hundredal boundaries frequently were coincident with those of manors and of parishes, and founded in the original manorial boundary. Accordingly, historical hundredal boundaries are frequently of great age, and faithful to boundaries established in the mediæval period or earlier.

H.5. The manor of Wingham was vast, and covered much of the land in the present parishes of Ash, Goodnestone, Nonington, Wingham, and Womenswold.<sup>12</sup> Perhaps owing to its size, and its control in the mediæval period by the Church, the manor largely was coterminous with the hundred of Wingham. It included a detached borough at Kittington (to the south of the appeal way), which formerly would have been part of the manor of Wingham, and Kittington was a detached part also of the hundred of Wingham. However, the parish of Nonington, which largely lay in the hundred of Eastry, had responsibility for the administration of Kittington, notwithstanding that it lay in a different hundred.

H.6. Where a manorial and hundredal boundary is recorded as following the centre line of a way, there are three potential explanations for the origin:

- that the way pre-dates the boundary and was adopted as the boundary;
- that the boundary was settled along that line, and that line subsequently became established as a road or track which followed whatever physical features marked the boundary;
- that the way became established along the line of the boundary at a much later date.

H.7. These three possibilities are examined in turn below in their relevance to the appeal way.

### The way pre-dates the boundary and was adopted as the boundary

H.8. The appeal way became established across the open, unenclosed downs before the first enclosures. As the land began to be taken in and managed as the exclusive property right of a single landowner, perhaps in the early mediæval period but quite possibly in the prehistoric period, the appeal way was adopted as the boundary between two adjacent

10 Statute of *Quia emptores*

11 2 & 3 Philip and Mary, c. 8, passed as a temporary Act in 1555, and permanently re-enacted in 1563 (5 Elizabeth, c.13).

12 *The old parish of Nonington* (website), [Nonington and the Manor of Wingham](#)



manors,<sup>13</sup> and the land at Kittington, belonging to the manor of Wingham, remained part of the hundred of Wingham, whereas neighbouring land became part of one of the several manors within Nonington (not being part of the manor of Wingham) and within the hundred of Eastry. The boundary between the manors, and subsequently the hundreds, was adopted as following the centre line of the way, and the manors would have shared responsibility for oversight of the way (and any maintenance responsibility which was accepted, although as an unenclosed road across downland, it unlikely that any such maintenance was called for). Shared responsibility would have ceased when the Nonington parish vestry was assigned responsibility for maintenance of highways in the sixteenth century, because the borough of Kittington was considered to lie within the parish of Nonington (*i.e.* it was not considered to be a detached part of Wingham parish).

H.9. Such a way, which must have been in use since the mediæval period, and probably for in excess of one or even two millennia, must be a highway. It is not credible that such a way might be and remain private, the very concept of private ways being unknown until during the eighteenth century.

The boundary was settled along that line, and that line subsequently became established as a road or track which followed whatever physical features marked the boundary

H.10. The line of an estate boundary may have been settled on the ground to follow an otherwise unobvious line, and the neighbouring owners may have set out earthworks, walls or hedges adjacent to the common boundary, enabling a path or track to become established between them.

H.11. W G Hoskins drew attention to such lanes, suggesting that the deep and narrow Scratchface Lane enclosed by a massive double hedgebank which forms the boundary between the parishes of Cadbury and Stockleigh Pomeroy probably dates back to the Anglo-Saxon period.<sup>14</sup>

H.12. Alternatively, the passageway left between the established boundary features may have been much smaller, and allowed only a path to be established, or may have offered no wider utility whatsoever, used only for farm access between fields.

H.13. However, this possibility is less likely in relation to the appeal way, because the way between A and D lacks any notable boundary feature other than the way itself. There thus was no physically-formed way with banks on both sides within which a new track might become established, so that the centre of the track was aligned along the boundary line. Part of the true line of the appeal way north-west of B is a holloway (the footpath has adopted an adjacent course in parts), but the sunken course is the consequence of use over centuries, not the building of banks.

The way became established along the line of the boundary at a much later date.

H.14. The third possibility is that the way became established along an existing manorial boundary at a much later date. It is submitted that this is unlikely. Such a way, if established alongside an existing boundary feature such as a hedge or bank, would not account

13 'Watercourses make up about 20 per cent of the boundaries recorded in Midland charters, and roads, many of them of Roman origin, were used only a degree less frequently.' *Discovering parish boundaries*, Prof. Angus Winchester, 2000, p.65. Watercourses are almost entirely absent from the East Kent Downs.

14 *The Making of the English Landscape*, W G Hoskins, 1967



for a boundary which follows the centre line of the way instead of the original hedge or bank (or a ditch associated with either). That would require the way to have been super-imposed on top of the existing boundary — the original hedge to have been grubbed out or the bank to be levelled out, to be replaced by a track centred along the line of the original hedge or bank.

H.15. While there is nothing to discourage a way from becoming established alongside a subsisting boundary feature at a much later date, the boundary itself then would remain attached to the boundary feature (*i.e.* along the hedge or bank, or along the adjacent ditch), and not along the centre line of the the later-established way.

H.16. It is possible to speculate about circumstances where the lords of two adjacent manors shared a desire to set out a new private road serving the interests of both, found it advantageous to provide it on the common boundary of the two manors, each wishing to minimise the contribution of land, and both intending to share the maintenance costs. And perhaps the manorial boundary was undefined by physical features, so that it was practical to lay out the new road so as to straddle the boundary line. But it is suggested that such an origin is so improbable as to be discarded as a realistic possibility.

H.17. It is submitted that the first possibility is much the most likely, and consistent with what is known of the way.

H.18. Moreover, a public road divided by a parish boundary was a matter for ‘great Inconveniences’,<sup>15</sup> prior to highway maintenance functions becoming wholly discharged by county councils from 1929.<sup>16</sup> It is unlikely that such an ‘inconvenience’ intentionally would be put in place. The appeal way is not aligned with a parish boundary, but formerly, maintenance would have been shared between the adjacent manors. Such arrangements therefore are likely to date from the mediæval era or earlier.

H.19. It also is notable that the north-eastern, south-eastern and south-western boundaries of the detached portion of Wingham at Kittington are all defined entirely by the centre line of the appeal way or other ancient roads (see Illustration xxvii at p.47 below): to the south-east, the road along the ridgeway between Eastry and Shepherdswell (now, for the relevant part, BOAT EE335), and to the south-west, Tye Wood (the road between Eythorne and Nonington). Part of the north-western boundary runs along the centre line of what now is recorded as footpath EE307A, for which (along with EE307B and EE264) a definitive map modification order is due to be made by KCC to record as restricted byway. The majority of this detached portion is defined by ancient ways.

H.20. The hundredal boundary does not appear on later Ordnance Survey County Series plans, although it seems that Kittington remains an enclave of the hundred of Wingham, within the hundred of Eastry.

## I. Appellant’s case

I.1. The appeal way historically is an unenclosed road across open downland or fields between Cold Blow Corner and New Purchase Firs as part of a longer route between Wingham, Chillenden, via the appeal way, bridleway EE335B and Barville Road to Sutton, Ringwold, Kingsdown and Walmer. It is generally shown as unenclosed on early historic

<sup>15</sup> See footnote 25 below

<sup>16</sup> It remains a matter of inconvenience where a road straddles a county boundary or other boundary between highway authorities.

maps and the tithe map for Nonington, although the way is now almost entirely bounded on at least one side by fences or hedges.

I.2. The first, second and third edition Ordnance Survey County Series twenty-five inch plans (item III.O below) record the way as the '*Supposed Pilgrims Way*', as does the Ordnance Survey one-inch New Series map. The provenance of the appellation is not known, but the way is so described continuously across East Kent from Canterbury to East of New Purchase Farm (the appellation is not continued on maps from there to the coast).

I.3. The way was referred to in a 1511 quitclaim<sup>17</sup> as 'Saint Margaret Strete' — this way can be followed across country to St. Margaret's at Cliffe.

I.4. KCC states, in comparison with its decision to make an order to upgrade footpaths EE307A, EE264 and EE307B to restricted byway, that<sup>18</sup>:

...in the current case, there is no obvious...place of public resort and the utility of the way as a public thoroughfare is considerably less evident historically (the most direct route between Chillenden and Tilmanstone being via Thornton Road and Bridleway EE262A).

That assessment is mistaken. The appeal way is connected to public roads at both A and D (and if the order to upgrade footpath EE264 is confirmed, at B). We also suggest there is good evidence that bridleway EE335B, which continues east-southeast from A towards Sutton and places beyond, was also a public road. As such, the function of the appeal road was not merely to facilitate immediately local journeys, but to provide one of probably many routes across the East Kent Downs towards the coast. It may well pre-date Thornton Road in origin. We also note that there is little evidence that bridleway EE262A (which KCC suggests is part of a more direct route) is ancient in origin, and may be relatively recent.

I.5. Nor is it only a question of what was the most direct route between Chillenden and Tilmanstone, but questions (which cannot be answered) as to what ways became established first (before alternative, more direct routes might have become available), and also what ways were considered preferable in particular circumstances or for particular traffic. A cart driver might prefer the appeal way if heading east, because it were a more direct route to Sutton — but return via Thornton Road to avoid the steep climb and poor surface on Kelk Hill. A horse rider might prefer the appeal way because it was more suitable to equestrian traffic — a carriage driver might go a longer way round to avoid mud in winter.

I.6. All but a short length of the way accommodates the former manorial and hundredal boundary between Nonington and a detached part of Wingham, demonstrating an origin in the mediæval or earlier past (see The appeal way as a hundredal boundary at item I.H above).

I.7. Unenclosed downland roads were commonplace in Kent. On the Tithe Act 1836 map (item III.H below), the appeal way is shown consistent with such a road, in common with footpath EE264 (also the subject of an application to record as a restricted byway), the road from Cold Blow Corner to Kittington, the continuation of that road from Kittington to Elvington, BOAT EE335 and others. Most former unenclosed roads have now been enclosed (such as the road from Cold Blow Corner to Kittington), but others remain unhedged and unfenced today.

17 Online at: [https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonyngton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir\\_esc=y](https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonyngton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir_esc=y)

18 KCC report on application C399 dated 5 February 2024, appendix B, para.120

I.8. Early historic maps (items III.B to III.G below) and the Tithe Act 1836 map for Nonington (item III.H below) show the appeal way as a road, although there is some uncertainty in such maps whether a particular road is a bridle road or a carriage road. The later map and apportionment prepared under the Poor Law Commissioners' survey of Nonington (item III.J below) confirm the status as a road which was maintained by the parish, as do the plans for the Ramsgate Sandwich Deal and Dover Railway (item III.K below). The plans for the Walmer, Deal and Adisham Railway (item III.N below) record only a footpath, but the plans were not drawn up in accordance with the standing orders of Parliament, and for that reason may be treated with some scepticism of their accuracy.

I.9. The appeal road continued to be shown on Late C19 and early C20 maps (item III.P below) until the late nineteenth century. It ceased so to be shown perhaps because it was unmetalled in part, and the ascent of Kelk Hill was relatively steep. It may have ceased to be maintained well, or at all, by the parish vestry. It was eclipsed by other roads which continued to be maintained, and which were tarred by Eastry Rural District Council in the early years of the twentieth century. Use declined, and became consistent with a footpath or bridleway. It was recorded as a footpath on the parish survey under Part IV of the National Parks and Access to the Countryside Act 1949.

I.10. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*,<sup>19</sup> 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 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.'

I.11. 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.<sup>20</sup>

I.12. The correct test under s.53(3)(c)(ii) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—...(ii) that a highway shown

19 [\[2012\] EWCA Civ 334](#)

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

in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description... [.]

I.13. s.32 of the Highways Act 1980 provides that:

A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

I.14. While no single piece of evidence in the appeal is conclusive, the appellant submits that, taken as a whole, the evidence in this appeal demonstrates a highway with vehicular rights.

I.15. The appellant therefore submits that the Secretary of State should direct the authority to make the order requested in the application.

I.16. If the Secretary of State considers that the test for vehicular rights is not satisfied, the Secretary of State is invited to consider whether it might instead be satisfied for a bridleway.

I.17. If the Secretary of State is minded to grant the appeal, the inspector is invited to direct the authority to make the order applied for, but also to direct the authority as to the time within which an order is to be made — an allowance of three months is suggested to be sufficient.<sup>21</sup>

## J. Natural Environment and Rural Communities Act 2006

J.1. The appeal seeks to show that the appeal way is a public carriageway. None of the appeal way is recorded as publicly maintainable in the list of streets held by KCC under s.36(6) of the Highways Act 1980. The effect of s.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 s.67 apply. The appeal therefore relates to an application for a restricted byway.

## K. Points awarded

K.1. Points have been awarded to each piece of evidence in relation to the appeal way. But, having regard to the existing status of the appeal way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*.<sup>22</sup>

<sup>21</sup> See the amendment to para.4(2) of Sch.14 to the 1981 Act, made by para.10 of Pt.I of Sch.5 to the Countryside and Rights of Way Act 2000.

<sup>22</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

## K.2. Points:

Item	Ref	Points
St Alban's map (Gordon Ward collection)	III.A	1
Ordnance Survey surveyor's drawing, Canterbury (East)	III.B	1
Barlow-Hasted map of Kent	III.C	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	III.D	1
Ordnance Survey, Old Series one-inch map of Kent	III.E	0
Greenwoods' map of Kent	III.G	0
Tithe Act 1836	III.H	0
Inclosure Act 1845, order of exchange	III.I	1
Poor Law Commissioners' survey	III.J	5
Ramsgate Sandwich Deal and Dover Railway	III.K	4
Ordnance Survey boundary records	III.L	0
The National Gazetteer of Great Britain and Ireland	III.M	0
Walmer, Deal and Adisham Railway	III.N	0
Ordnance Survey County Series twenty-five inch plans	III.O	0
Late C19 and early C20 maps	III.P	1
Finance (1909–1910) Act 1910	III.Q	1
<b>Total points</b>		<b>16</b>

K.3. The purpose of the allocation of points is to provide guidance on the relative weight which the appellant considers might be accorded to each piece of evidence. No points are assigned to repetitive sources of similar character, whatever the individual merit.

## L. Width of appeal way

L.1. The appeal way is not recorded as a separate parcel on Ordnance Survey County Series twenty-five inch plans (item III.O below), nor is it recorded as a discrete tithe unit on the Tithe Act 1836 map (item III.H below).

L.2. The width of the appeal way can be measured from Ordnance Survey large scale plans, but the width of the way shown on the plan may be notational.

L.3. However, the Poor Law Commissioners' survey (item III.J below) does calculate an area occupied by the appeal way, together with its continuation east-northeast from D to Gooseberry Hall Corner. This is given as 0.77ha (see entry for 614 in table on p.37 below). The total length of the appeal way (1,570m) and the continuation beyond D (410m) is 1,980m, which suggests a mean width of 3.88m.

L.4. As a carriageway, the appeal way historically is likely to have been of sufficient width to accommodate two vehicles passing. A width of four metres would generally be sufficient for this purpose, and consistent with the calculation above.



## M. Limitations

M.1. There is no evidence of any limitation, such as a gate, on the use of the appeal way which is consistently present in the documentary evidence contained in this appeal. It therefore is requested that an order arising from the appeal expressly states that there are no limitations on the public right of way.

## N. Law cases

N.1. The following cases directly are cited in this historical document analysis, and copies of the judgment are annexed to the appeal.

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.I.10 III.G.6 III.Q.12	HC: <a href="#">[2010] EWHC B33 (Ch)</a> CA: <a href="#">[2012] EWCA Civ 334</a>
<i>Hollins v Oldham</i>	III.G.7	[1995] (unreported) C94/0206
<i>Robinson Webster (Holdings) Ltd v Agombar</i>	III.Q.12	<a href="#">[2001] EWHC 510 (Ch)</a>
<i>Commission for New Towns v JJ Gallagher Ltd</i>	III.Q.12	<a href="#">[2002] EWHC 2668 (Ch)</a>
<i>R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs</i>	III.Q.12	<a href="#">[2009] EWHC 171 (Admin)</a>

## II. Along the way<sup>23</sup>



Illustration v: At A



Illustration vi: Between A and B, towards B



Illustration viii: At B, towards A



Illustration vii: Between B and C (original way obscured)

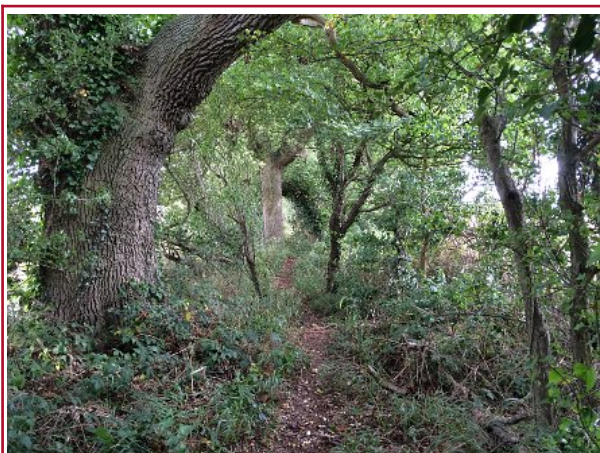


Illustration x: Between C and D



Illustration ix: At D

23 Photographs at ix & x © Julia Harman, September 2017; others December 2017



### III. Evidence

#### A. St Alban's map (Gordon Ward collection)

A.1. **Date:** 1629

A.2. **Source:** KCC Archives (Gordon Ward collection)<sup>24</sup>

#### ■ *St Alban's map (enlargement)*

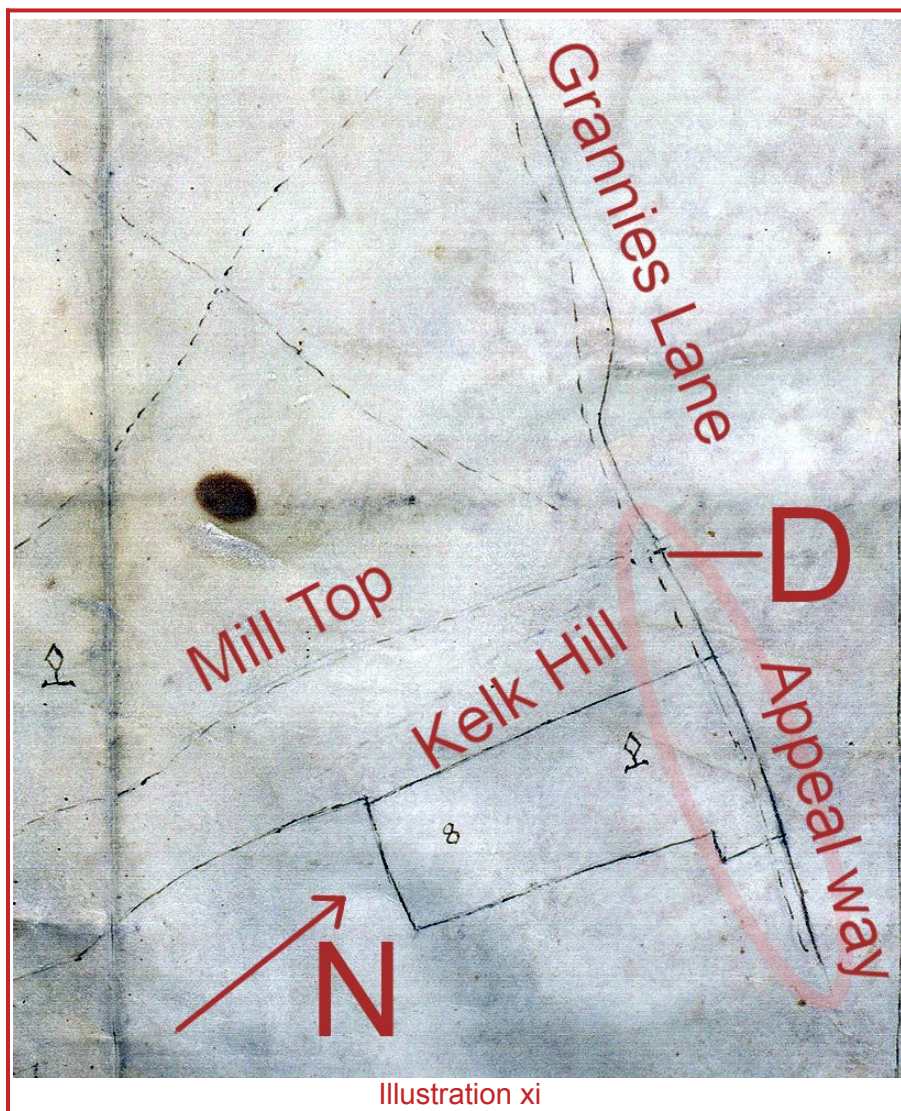


Illustration xi

A.3. **Description:** scale: none marked (so far as is visible); orientation: top is north-west. Only an enlarged extract is shown above: for fuller reproduction of map, see Annexe A at p.71 below.

A.4. The map is one of many documents in a large and miscellaneous collection accumulated by Dr Gordon Ward of Sevenoaks during many years of antiquarian study.

24 U442/P30

A.5. The map is given in the catalogue as dating from around 1650, but it has elsewhere been dated to 1629.<sup>25</sup>

A.6. The map shows the cross-roads at Cold Blow Corner (D). The appeal way is seen as a track, with one side hedged, and the opposing side unenclosed represented by a pecked line, leading from D east-southeast towards C.

A.7. The other elements of the present road network at D are visible on the map: Grannies Lane, Mill Top, Kelk Hill (to Elvington), the road to Cuckolds Corner and Knowlton (only a fraction of which is shown), and the appeal way. There is also a track across St Alban's Downs, which lies south of the line of footpath EE309 and leads to Cold Blow Corner.

A.8. The map plainly is a map of the estate of St Alban's and is remarkably detailed and clear for its age. It shows the estate, and it marks roads and tracks. It is suggested that it can be relied upon for the conclusions drawn below.

A.9. **Conclusion:** The map of the St Alban's estate shows the cross-roads at Cold Blow Corner. Although dating from the early seventeenth century, the map is remarkably faithful to present-day highway patterns. Apart from the appeal way, the following present day highways are readily identifiable, in addition to the Goodnestone Road in Chillenden village:

- Sandwich Road
- Grannies Lane
- Cherrygarden Lane
- Mill Top
- Station Road, Chillenden

A.10. As these ways are all recognised as public roads today, save the appeal way, and it is reasonable to conclude that the appeal way was one of several public roads shown on it.

A.11. **Points:** 1

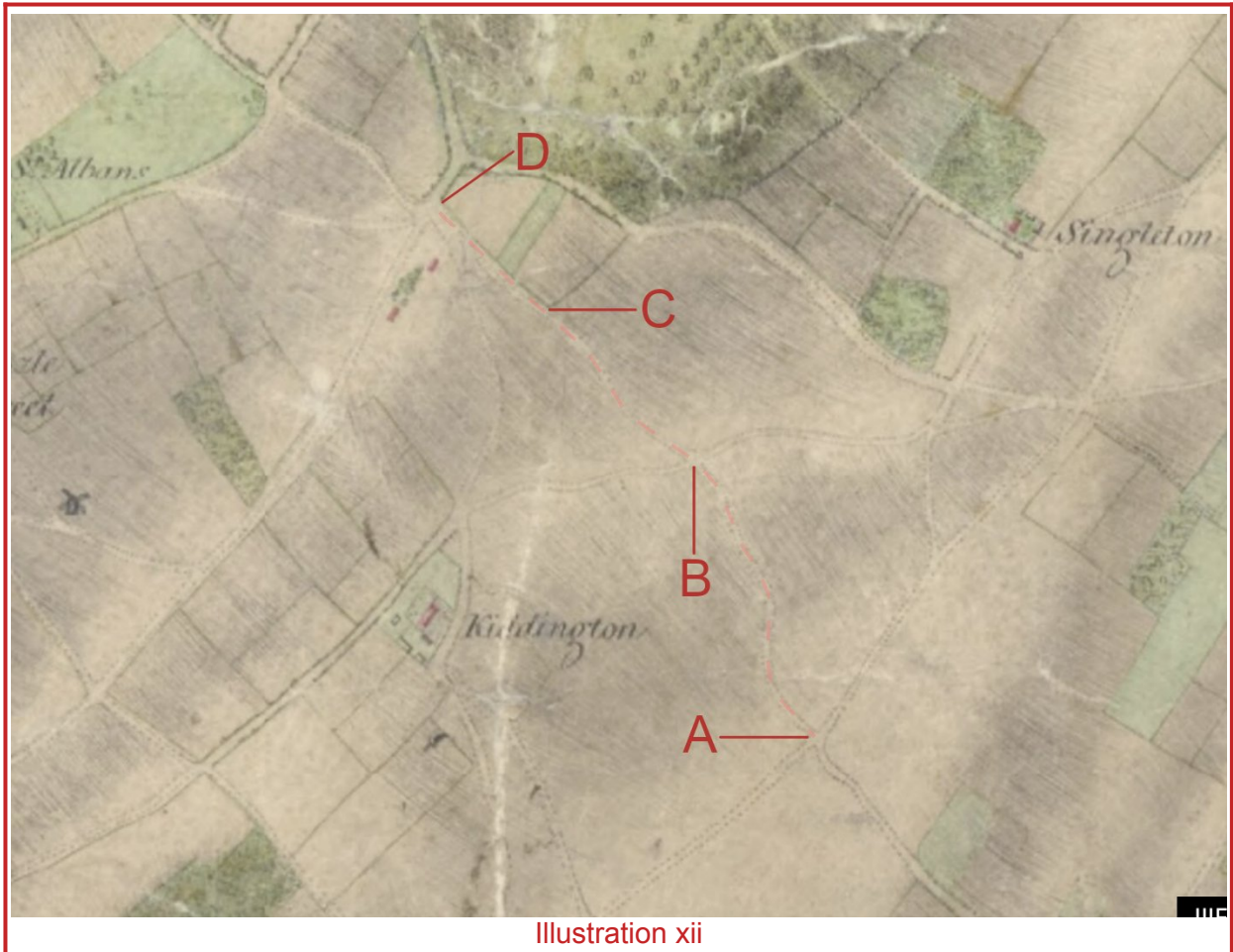
<sup>25</sup> In *History of Old St Alban's Court, Nonington*, [Archaeologia Cantiana, vol.125, pp.273–290](#) at footnote 19, reference is made to a thesis which suggests a date of 1629.

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

B.1. **Date:** 1797

B.2. **Source:** British Library website<sup>26</sup>, National Archives<sup>27</sup>

**Ordnance Survey surveyor's drawing, Canterbury sheet 107**



26 Sheet 107(E): [britishlibrary.oldmapsonline.org/maps/a70167eb-6949-5984-a1a0-912a6f5d928e/](https://britishlibrary.oldmapsonline.org/maps/a70167eb-6949-5984-a1a0-912a6f5d928e/)

27 MR 1/599



## Fair copy of topographical surveys

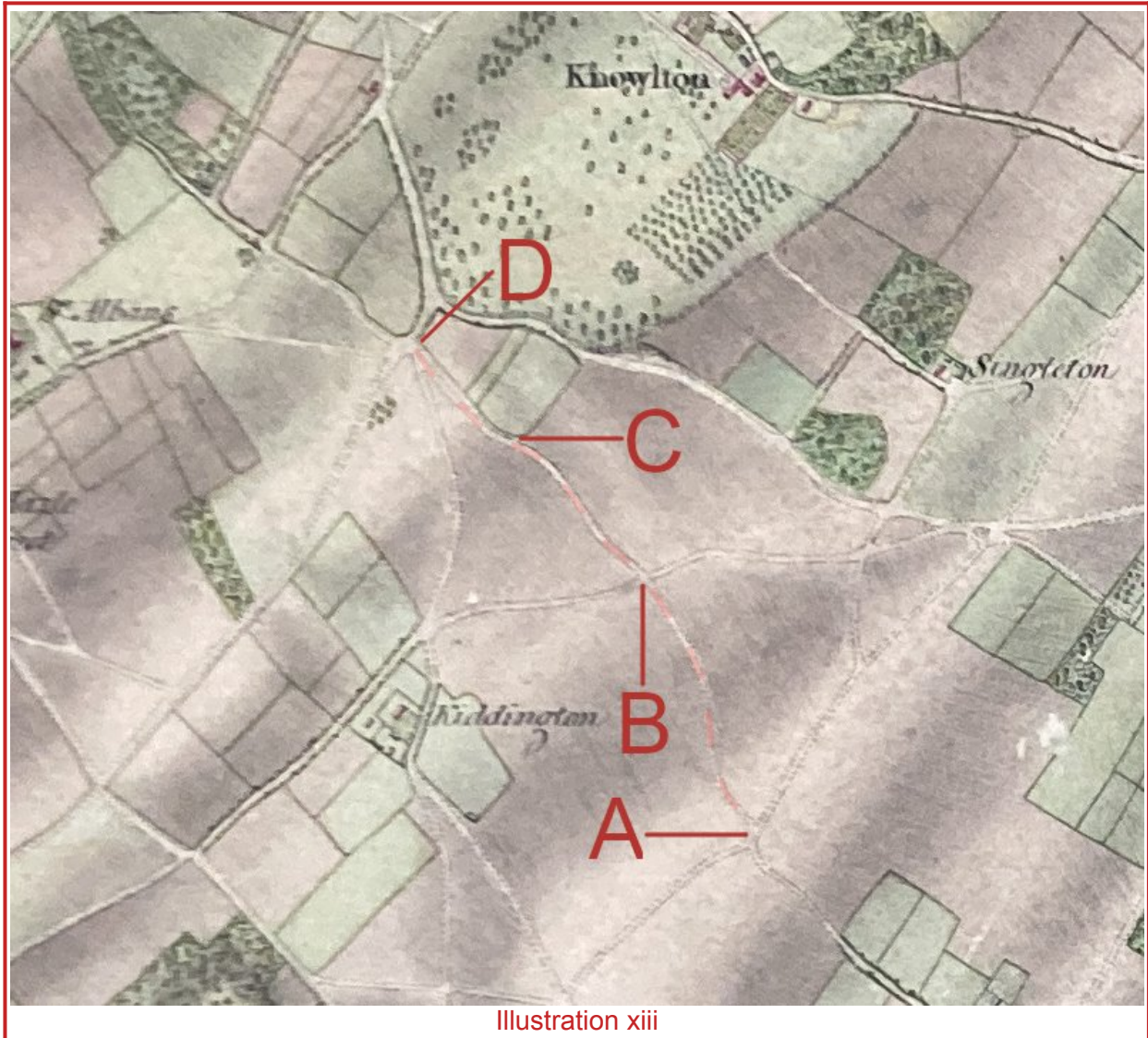


Illustration xiii

B.3. **Description:** Original scale: believed to be 1:21,120 (three inches to one mile); orientation: unchanged (top is 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 battle. 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.<sup>28</sup>

B.5. Although the drawings are now in relatively poor condition, good copies were made 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'.<sup>29</sup> The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

B.6. The entire appeal way is shown on the map, although wear to the original drawing makes the route hard to pick out.

B.7. **Criticism:** KCC states that<sup>30</sup>:

The Ordnance Survey Drawing for the area appears to show the claimed route in its entirety, although the route is difficult to pick out on the copy provided and it has not been possible to view the original.

The objector reportedly states<sup>31</sup>:

The 1797 OS Drawing shows other tracks which are not public rights of way and therefore is no evidence of highway status[.]

The presentation of the fair copy of the original Ordnance Survey Drawing resolves the visual defects in the original. We agree that the Ordnance Survey Drawing is not conclusive evidence of any right of way: however, the practice (particularly on this drawing) was not to show footpaths, which had little relevance to military needs.

B.8. **Conclusion:** The Ordnance Survey drawings provide good evidence of the existence of the appeal way in its entirety as a vehicular way at the end of the eighteenth century.

B.9. **Points:** 1

(This is the first of two Ordnance Survey maps to score points: no more than two such maps are scored.)

28 From the Curator's introduction to the Ordnance Survey drawings, British Library: [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html).

29 *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.

30 KCC report on application C399 dated 5 February 2024, appendix B, para.20

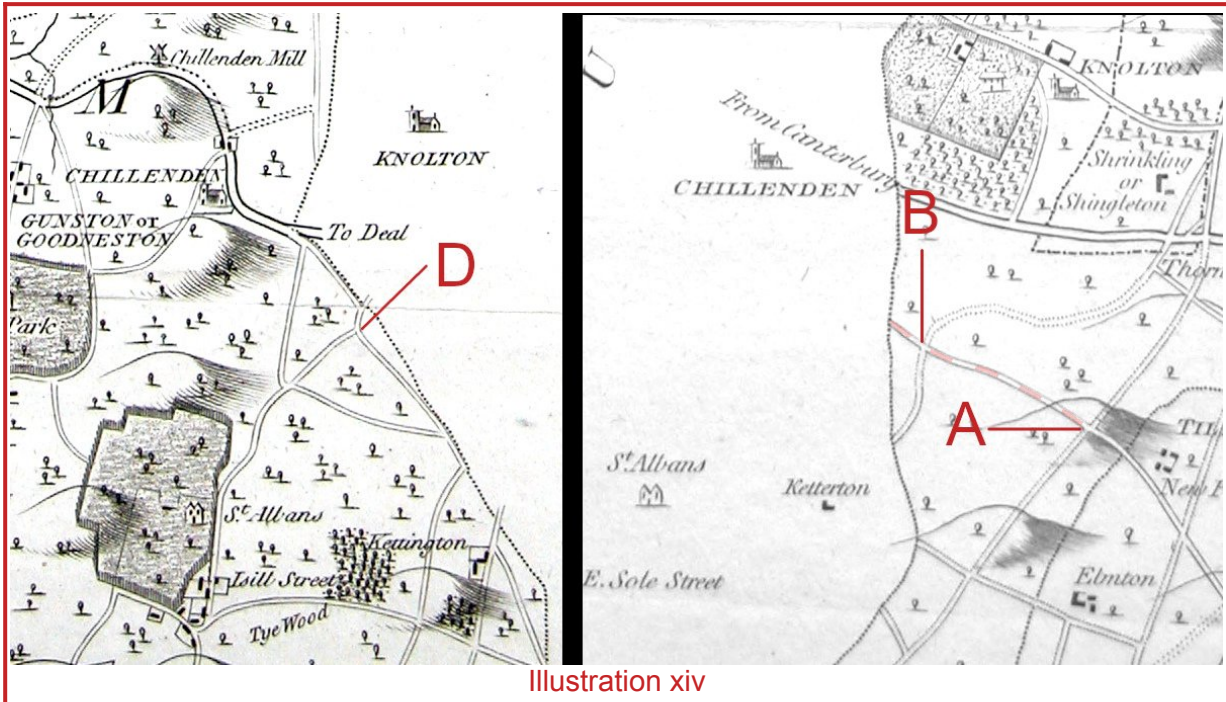
31 *Ibid*, para.94, 1<sup>st</sup> bullet

## C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** KCC Archives: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in 12 Volumes.

### Barlow-Hasted map of Kent (hundreds of Wingham and Eastry)



C.3. **Description:** Original scale: not known; orientation: unchanged (top is north); the extract is composite showing extracts (right) from the hundred of Eastry, and (left) from the hundred of Wingham.

C.4. The Barlow-Hasted map shows the appeal way between the road along the ridgeway between Eastry and Shepherdswell (BOAT EE335) at A and the purported boundary of the hundred of Eastry slightly beyond B, depicted by double continuous casing, suggesting an enclosed road. The continuation of the appeal way within the hundred of Wingham is not certain, owing to the intervening hundred boundary, and appears not to be marked, although the junction of (other) roads at D is clearly shown. It is a feature of these maps that hundredal boundaries frequently do not marry up, and many roads shown leading to a boundary do not necessarily find a corresponding continuation on the adjacent hundredal map.

C.5. **Criticism:** The objector reportedly states that<sup>32</sup>:

The small extract from Hasted's Map (1799) shows some tracks but there is nothing to indicate these may be highways[.]

We do not agree. The Barlow-Hasted maps are a fairly primitive attempt to represent the key highway network. Carriage drives and other roads of questionable public status (such as the track from Knowlton to Tickenhurst, just visible in the top of Illustration xiv above,

32 *Ibid*, para.94, 2<sup>nd</sup> bullet

and the drive through Updown park) are shown with lines across the junction with public ways.

C.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route between A and beyond B towards C, but with some uncertainty about the continuation of the way beyond C to D. The map was widely commercially published, and would tend to show through routes which were public highways. The representation on the Barlow-Hasted map is consistent with a status of bridleway or carriageway.

C.7. The most likely explanation for the omission of part of the way between B and D is the distortion to the map caused by the arbitrary insertion of the boundary of the hundred between Eastry and Wingham. As the appeal way is shown projecting west from B, any omission of the way on the map of the hundred of Wingham appears to be a mistake, or a consequence of the stylistic representation of boundaries, than an intentional exclusion.

C.8. **Points:** 1 (between A and C)

(This is the first of two early county or area maps to score points: no more than two such maps are scored.)



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

D.1. **Date:** 1801

D.2. **Source:** KCC Archives<sup>33</sup>

**Ordnance Survey, Mudge-Faden one-inch map of Kent**



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

D.4. This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French (see item III.B above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century:

33 Also available at: [mapco.net/kent1801/kent51\\_03.htm](http://mapco.net/kent1801/kent51_03.htm)



instead, this map initially was published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

D.5. The Mudge-Faden map shows the entire appeal way, depicted by double pecked casing, suggestive of a way which is unenclosed.

D.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. The Mudge-Faden map is good evidence for the existence of a defined way along the claimed route. It cannot be demonstrated with confidence that the appeal way is a public highway, but its depiction is consistent with a bridleway or road.

D.7. **Points:** 1

(This is the second of two Ordnance Survey maps to score points: no more than two such maps are scored.)

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

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

E.2. **Source:** National Library of Australia<sup>34</sup>

### Ordnance Survey, Old Series one-inch map of Kent

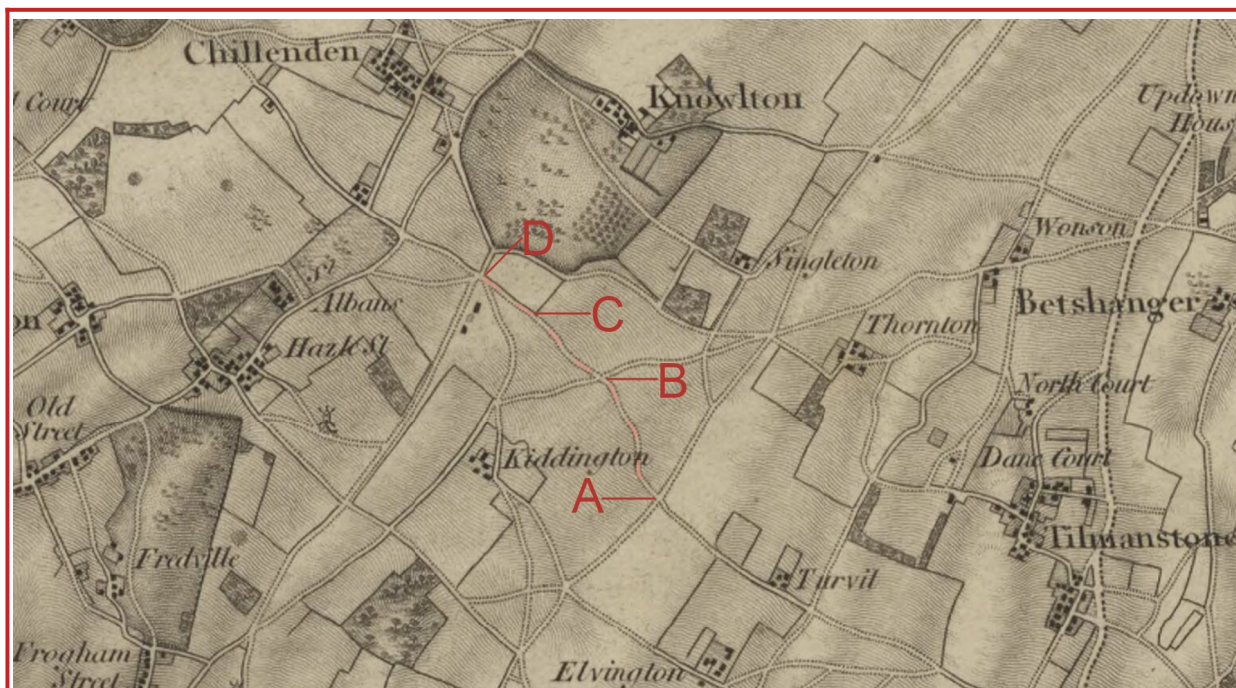


Illustration xvi

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

34 <http://nla.gov.au/nla.obj-231917365>

E.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 Mudge-Faden map, the 'official' Ordnance Survey Old Series map was based on the same survey data, and is generally consistent with the Mudge-Faden map.

E.5. The Ordnance Survey Old Series map shows the entire appeal way between A and D depicted by double pecked casing suggestive of a way which is an unenclosed field road.

E.6. **Criticism:** The objector reportedly states that<sup>35</sup>:

Both Mudge's Map (1801) and the Old Series OS Map (1831) only noted features usable by military traffic and include numerous other tracks which are clearly private means of access[.]

This is addressed below.

E.7. **Conclusion:** The Ordnance Survey Old Series map is good evidence of the existence of the appeal way as a well-defined road or bridleway in the early nineteenth century. 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. It can therefore be concluded with some confidence that the way was a defined feature in the landscape, capable at least of accommodating ridden horses, and probably a carriageway.

E.8. **Points:** 0

(No more than two points are scored for Ordnance Survey maps.)

## F. Paterson's Roads — Thanet and Kent and Sussex Coast

F.1. [This evidence is no longer relied upon.]

35 KCC report on application C399 dated 5 February 2024, appendix B, para.94, 3<sup>rd</sup> bullet



## G. Greenwoods' map of Kent

G.1. **Date:** 1819–20

G.2. **Source:** KCC Archives

### Greenwoods' map

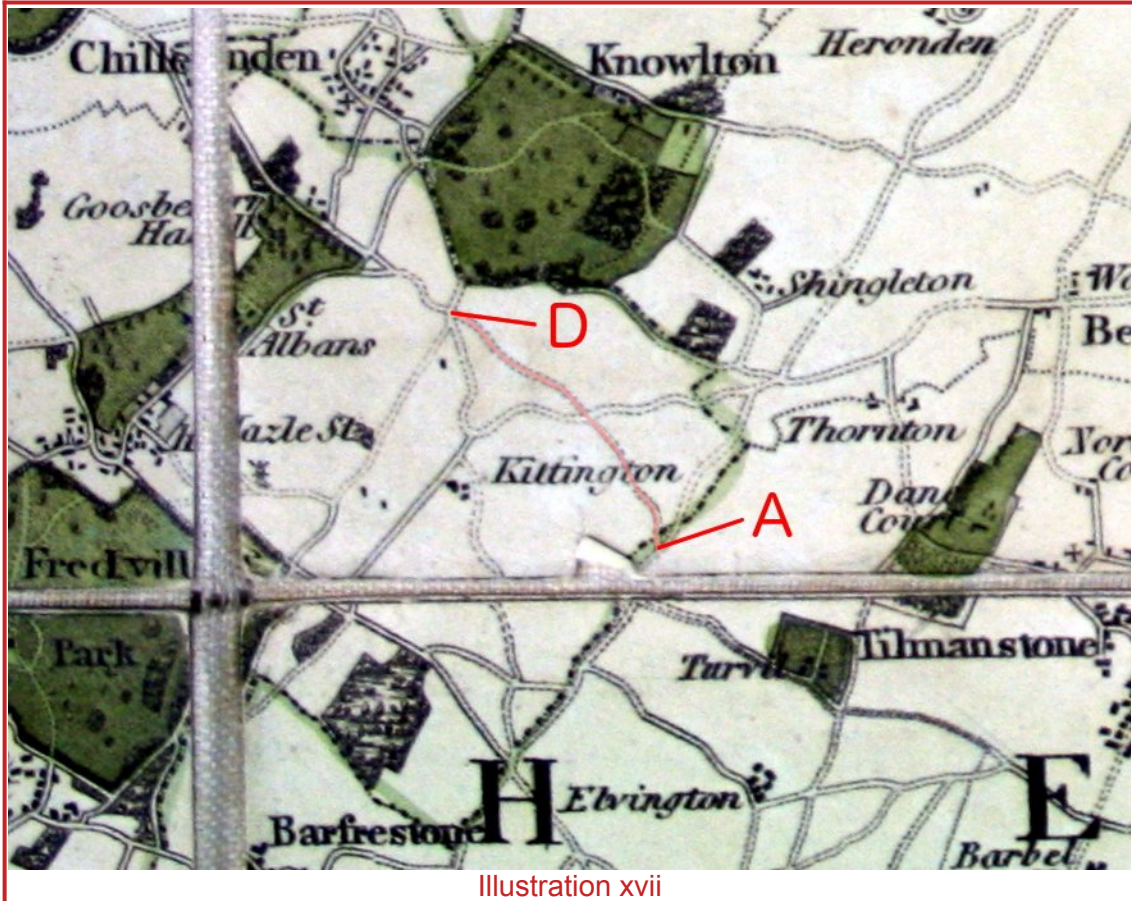


Illustration xvii

### Greenwoods' map key



Illustration xviii

G.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (top is north). This copy appears to be state iii, published between 1821 and 1827.

G.4. The Greenwoods' map shows the entire appeal way, depicted by double pecked casing, suggestive of a way which is unenclosed. The way is described in the key as a 'Cross Road'. In this context, a cross road means a public road linking more major, and typically turnpike, roads.

G.5. **Analysis:** 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.<sup>36</sup>

G.6. In *Fortune v Wiltshire Council*,<sup>37</sup> 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').

G.7. In *Hollins v Oldham*,<sup>38</sup> 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 Greenwoods' 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 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.

G.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, it is more likely than

36 From *Antique Maps*, C Moreland and D Bannister, 1983

37 [2012] EWCA Civ 334: [www.bailii.org/ew/cases/EWCA/Civ/2012/334.html](http://www.bailii.org/ew/cases/EWCA/Civ/2012/334.html)

38 [1995] (unreported) C94/0206



not to be shown because it was recognised as a cross-road and of utility to the public who might buy the map.

G.9. **Criticism:** The objector reportedly states that<sup>39</sup>:

Greenwood's Map (1819) shows numerous tracks that are not public rights of way

This is addressed above. We agree that the Greenwoods' maps show spurs, cul de sacs and roads across parkland (as at Knowlton park, shown at the top of Illustration xvii above) which are unlikely to be public bridleways or roads — though the possibility in many cases should not be ruled out. However, it is suggested that, in relation to ways which are connected to the known road network, which are set across open country (and not obviously private parkland or woodland), which provide an obvious and useful through route, , then the likelihood is that what was shown was selected for inclusion because it was, or had the reputation of being, a public road or at least a bridleway. These tests all are satisfied by the appeal way.

G.10. **Conclusion:** The Greenwoods' map is good evidence for the existence of a defined way between A and D. The key describes the route as a 'cross road', which indicates a highway which is probably a carriageway.

G.11. **Points:** 0

(This is the third of several early county or area maps: no more than two such maps are scored.)

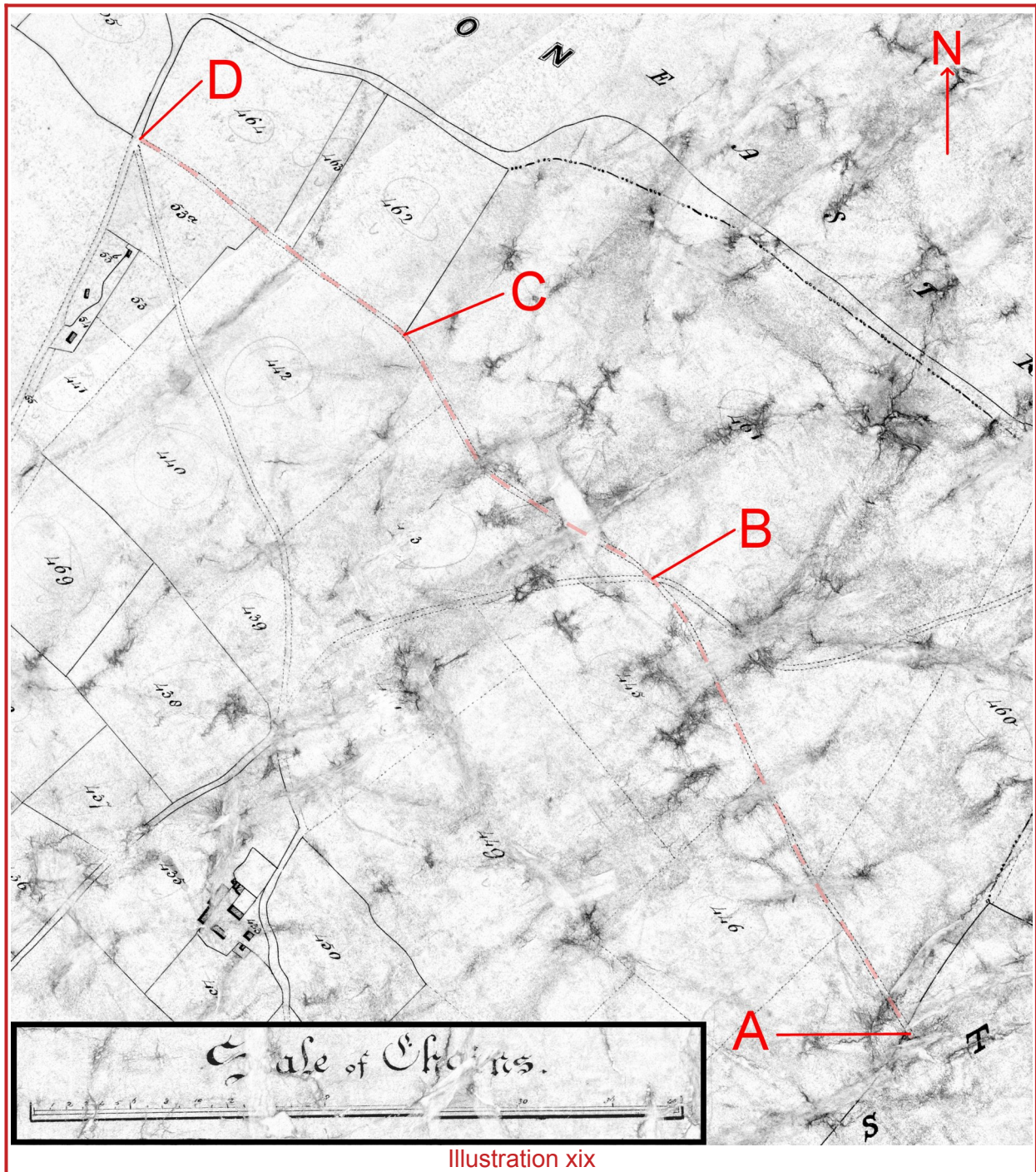
39 KCC report on application C399 dated 5 February 2024, appendix B, para.94, 5<sup>th</sup> bullet

## H. Tithe Act 1836

H.1. **Date:** 1841

H.2. **Source:** map — KCC Archives<sup>40</sup>; tithe award — Kent Archaeological Society<sup>41</sup>

### Nonington tithe map



40 Kent tithe maps are available as images on CD.

41 [www.kentarchaeology.org.uk/Research/Maps/NON/01.htm](http://www.kentarchaeology.org.uk/Research/Maps/NON/01.htm)

H.3. **Description:** Original scale: 6 chains to one inch (1:4,752, scale bar marked on map in chains); orientation: rotated 55° so that top is north. The tithe map is second class, dated 1839 and 'constructed from several plans belonging to the Landowners' by George Quested of Ash.

H.4. The tithe map for Nonington and Womenswold (which includes the detached Kittington part of the hundred of Wingham which lies as an enclave in the parish of Nonington) shows the appeal way as double pecked lines between A and D. Two connecting local roads: Mill Top from Cold Blow Corner (at D) south to Kittington and Barfrestone, and the way (now footpath EE324) which intersects with the appeal way at B,<sup>42</sup> are similarly shown. The way marks the boundary between adjacent parcels distinguished on the tithe map with separate parcel numbers: it is possible that the ways are excluded from the assessable area, there being no braces to tie the way with the adjacent parcels (but braces are not used elsewhere on the map).

H.5. **Conclusion:** The Nonington tithe map does not distinguish the form in which roads and tracks are shown, whether presumed to be public or private. Roads and tracks are not assigned a parcel number, and do not appear in the apportionment. There is no entry in the apportionment for roads. No conclusions therefore can be drawn from the tithe survey about whether the appeal way was considered to be public.

H.6. The tithe map shows that the appeal way existed and was mapped as an unenclosed road or track across the downs. It is depicted in the same way as other local roads, such as footpath EE264 (also the subject of an application to record as a restricted byway), the road from Cold Blow Corner to Kittington, the continuation of that road from Kittington to Elvington, BOAT EE335 and others.

H.7. **Points:** 0

42 For which an order has been made to upgrade to restricted byway.

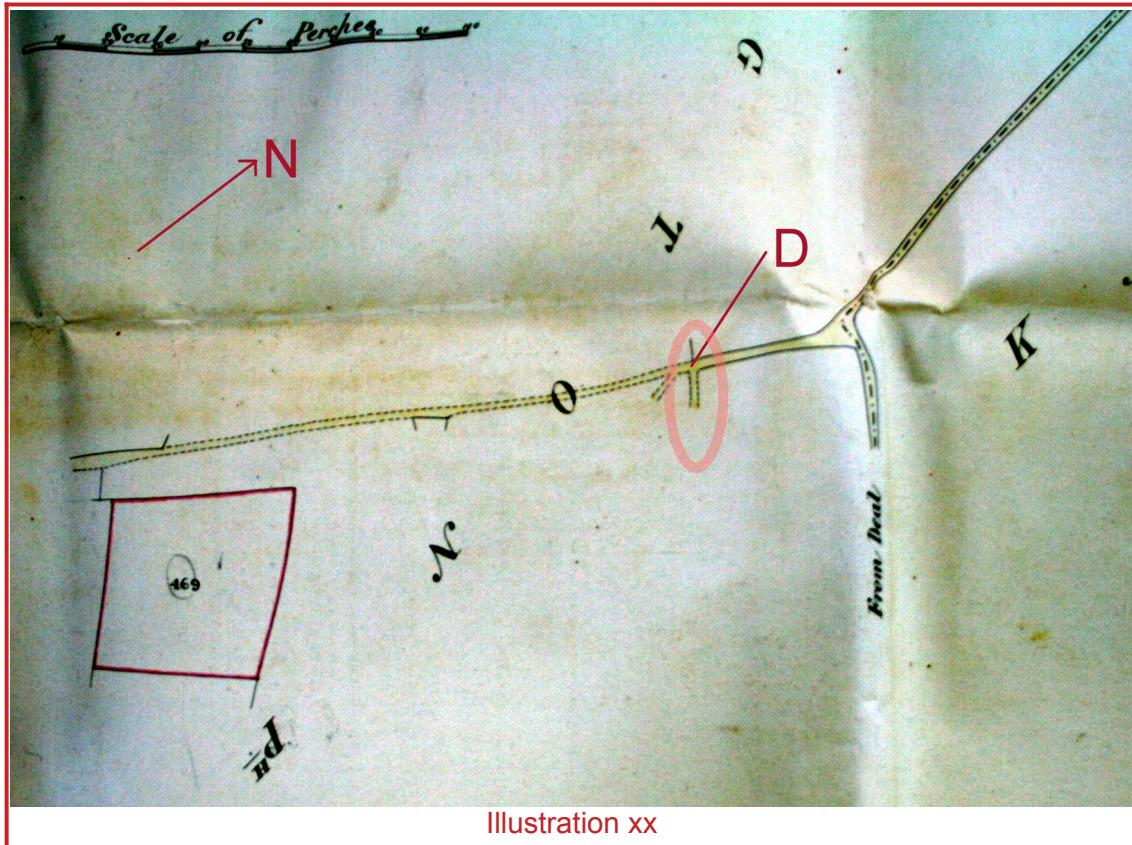


## I. Inclosure Act 1845, order of exchange

I.1. **Date:** 1854

I.2. **Source:** National Archives<sup>43</sup>

### Goodnestone and Chillenden order of exchange



I.3. **Description:** original scale: not stated, but scale marked on plan in perches; orientation: orientation unchanged (top is north-west).

I.4. An order of exchange was made by the Inclosure Commissioners in 1854 under s.147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

I.5. Under s.147, the Inclosure Commissioners were empowered to grant an exchange of lands between two different owners, where such lands were not subject to inclosure (*i.e.* were not, for example, common land). The Commissioners were required to be satisfied, following public notice of the proposed exchange, that the exchange would be beneficial to the respective owners, and that the terms of the exchange were just and reasonable. s.147 was used to overcome difficulties in conveyancing or defects in title at a time before such matters were generally addressed by legislation: it provided that the exchange was to be binding notwithstanding any incapacity or defect in title.

I.6. This order records an exchange of lands between Sir Brook William Bridges, of Goodnestone Park, and George William Hughes D'Aeth, of Knowlton Park. The plan

43 MAF 11/80/404



drawn up under the exchange shows the appeal way at D. The plan shows various ways shaded yellow, including the appeal way. Grannies Lane from Cold Blow Corner (D) west-northwest to the Sandwich Road at Gooseberry Hall Corner is not marked. It seems likely, therefore, that the plan is based on the tithe map.

1.7. **Criticism:** KCC states that<sup>44</sup>:

The 1854 Order of Exchange is, at best neutral, in that although it appears to confirm the physical existence of the claimed route, once again, this evidence provides no indication as to its status. The colouring of the way in the same manner as nearby modern highways could (as proposed by the Applicant) be suggestive of carriageway rights, but it could equally be a reference to the surface of the way. Furthermore, it is also entirely consistent with the claimed route being recorded as a Public Footpath, and indeed other Orders of Exchange nearby have shown routes with lesser public rights in the same manner.

The report refers in a footnote to public footpath EE319 at Fredville Park on an 1851 exchange.<sup>45</sup> However, footpath EE319 is annotated, in the Poor Law Commissioners' survey (item III.J below), as a 'Bridle way', and the parish surveyor-maintained roads 607 and 608 are both described as beginning at 'Shireway Gate' — a shireway being an historical term for a bridleway, and the gate giving access into Fredville Park to maintain the historic line of the bridleway.<sup>46</sup> Accordingly, we maintain that the colouring is likely to indicate a public road or bridle road, and that it is unlikely that a footpath would be distinguished in the same way.

1.8. The objector reportedly states that<sup>47</sup>:

The Order of Exchange (1854) only relates to a tiny part of the claimed route and cannot be evidence for any other part of it[.]

We note the objector's acknowledgement that the order of exchange is evidence for the 'tiny part' of the appeal way in the vicinity of D. As such, it is not obvious how it can fail to be evidence for the way beyond D at least as far as B (there being no suggestion that there is any other alignment to which it might relate).

1.9. **Conclusion:** The ways coloured yellow on the order map are today recognised as public roads, with the exception of the appeal way.

1.10. On the plan prepared under s.147 of the Inclosure Act 1845, a yellow colour wash appears to denote ways which are either public roads or bridle-roads. The exchange plan is therefore some evidence of the public status of the appeal way from D, at least of the status of a bridle-road.

1.11. The map appears to be based on the Nonington tithe map, as this map too does not show the way between Cold Blow Corner (D) and Gooseberry Hall Corner (see Illustration xix above).

44 KCC report on application C399 dated 5 February 2024, appendix B, para.104.

45 MAF 11/78/164

46 See, for example, *The Old Roads of England*, Sir William Wilkinson Addison, 1980, p.162: "Shireway: bridleway"; *A General Dictionary of Provincialisms*, William Holloway, 1840, p.151: "A bridle-way. S Sussex"; *A Dictionary of Archaic and Provincial Words*, James Orchard Halliwell, 1855, vol.II, p.733: "Shire-way: a bridle-way South".

47 KCC report on application C399 dated 5 February 2024, appendix B, para.94, 7<sup>th</sup> bullet.

I.12. **Points:** 1

**J. Poor Law Commissioners' survey**

J.1. **Date:** 1859

J.2. **Source:** Canterbury Cathedral Archives<sup>48</sup>

48 CCA-U3/118/19/1 (map) and CCA-U3/118/27/C/11 (apportionment). A copy (in poor condition) is held by KCC Archives: RD/Ea/P15.

Poor Law Commissioners' map

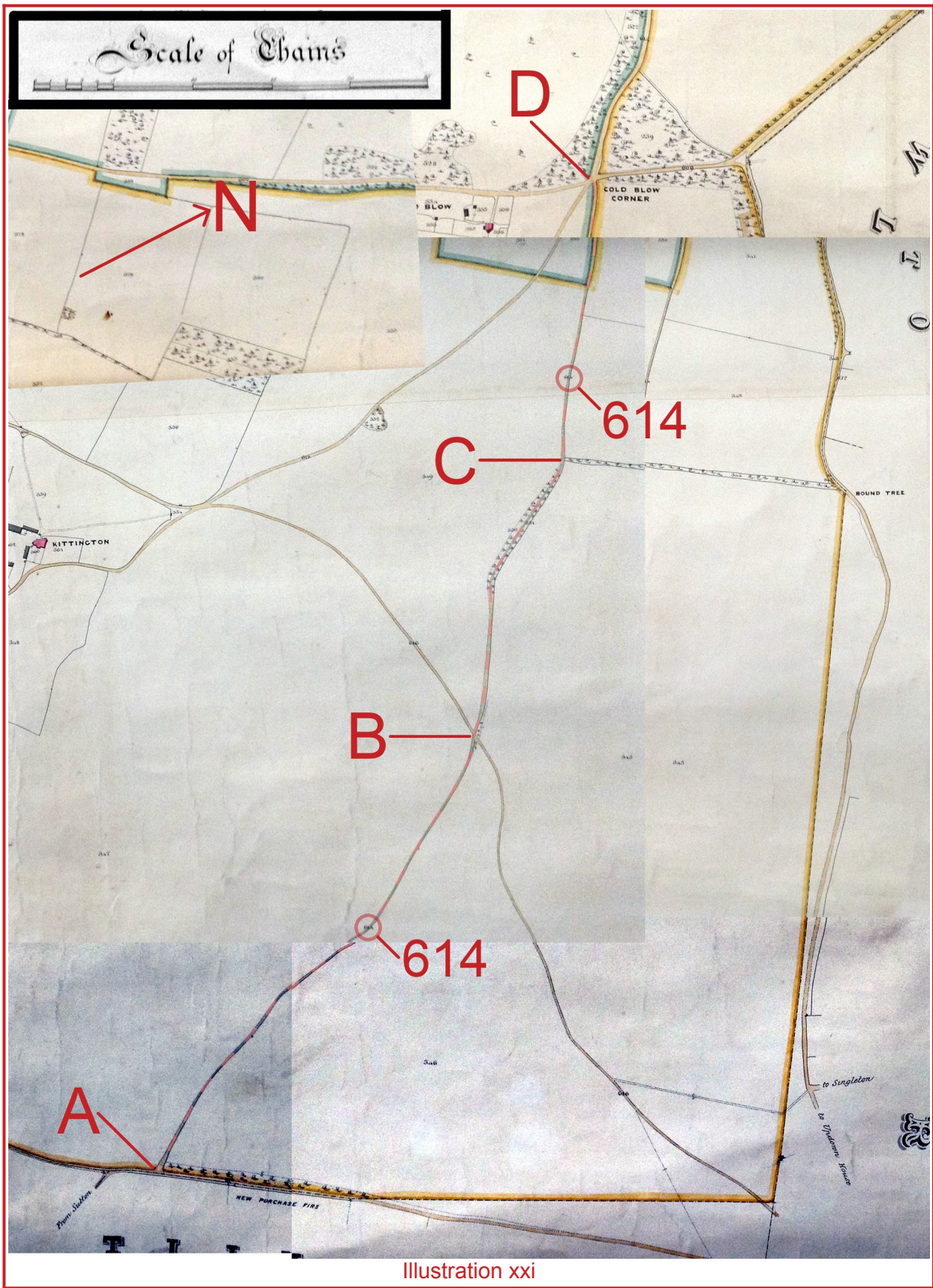


Illustration xxi



J.3. **Description:** Original scale: three chains to one inch (1:2,376, scale bar marked on map in chains, but scale may vary owing to differences between component photographs); orientation: rotated 270° so that top is west-northwest.

J.4. The ownership and occupation of land is identified in an apportionment prepared alongside the map. At the time of the application, the apportionment was missing, and recourse was had to manuscript notes made of the apportionment by a local history researcher. The apportionment was rediscovered on 23 February 2024, and a copy of the relevant pages is in Annexe B at p.73 below. These pages have been transcribed into the table beginning on p.37 below.

J.5. The appeal way is assigned parcel number 614 throughout between A and D. In the apportionment, parcel 614 is one of a number of roads which are given under the heading 'LANDOWNERS' : 'Nonington Highways, Surveyors of', and is described as 'Road from Gooseberry Hall Corner to New Purchase Firs'. Gooseberry Hall Corner is the junction of the Sandwich Road, Cherry Garden Lane and the road from Cold Blow Corner (at D) with the Sandwich Road: this road also is included within parcel 614. New Purchase Firs adjoins BOAT EE335 north of A.

J.6. **Analysis:** Under s.3 of the Parochial Assessment Act 1836, the Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish.<sup>49</sup> The map may have been based on the Tithe Act 1836 map (item III.H above) but with very substantial modification and revision to reflect change during the subsequent two decades, and with details commensurate with a scale of survey twice that of the tithe map. It seems likely that the need for a fresh survey was accentuated by the tithe map being out-of-date, itself derived from previous estate plans, and lacking content in relation to tithe-free lands. Although referred to here as the Commissioners' survey, the survey would have been procured by the parish vestry officers at the direction of the Commissioners.

J.7. The rate for the relief of the poor was to be calculated 'upon an estimate of the net annual value of the several hereditaments rated thereunto...'.<sup>50</sup> The net annual or rateable value for the purposes of levying poor rates was based on the gross rental value of the hereditament, allowing for deductions for, for example, the tithe rent charge and repairs. The gross rental would reflect, for example, the accessibility of the hereditament, taking

49 S.3: 'And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the church-wardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, ...'. S.4 confers a power of entry for the purposes of survey. S.6 enables appeals to quarter sessions against the valuation. Extracted from [Lumley's Union assessment acts](#), 1895.

50 Parochial Assessment Act 1836, s.1: '...upon an estimate of the net annual value [*i.e.* rateable value] of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent:...



account of private roads and their state of repair. Public roads maintained by the parish vestry were not liable to assessment.

J.8. The survey is therefore directly concerned with whether roads were publicly maintained. Consequently, the survey expressly identifies, by means of colouring and hereditament numbers, those roads which were in the upkeep of the parish surveyor.

J.9. The apportionment includes the following entries under the heading of 'Nonington Highways, Surveyors of'. (The area is given in the apportionment in acres, roods and perches: it has been supplemented in hectares for ease of reference.)

No	Description	A.	R.	P.	[ha]
246	Gooseberry Hall Lane		3	14	0.34
289	Bridleroad			29	0.07
592	Half Road from Uffington Corner to South Park Corner		3	31	0.38
593	Road at Aylesham Corner			9	0.02
594	Road from Aylsham Wood to Goodnestone Park Corner	2	3	9	1.14
595	Road from South Peak Corner, thro' Ratling Street, to Upper Goodnestone Corner	2	1	26	0.98
596	From Ratling to Wingham Road		3	6	0.32
597	Road from Ratling Street thro' Old Street and Frogham to Broadsole Corner	3	3	29	1.59
598	Road from Ackholt Down to Snow Down Road	1		14	0.44
599	Road from Snow Down thro Old Street and Easole to Knowlton Corner	6	1	6	2.54
600	Road from the Oak thro' Church Street to the Old Court Hill	1	2	5	0.62
601	Road from Butter Street to Church Street		2	17	0.25
602	Road from Church Street to Beauchamps Lane	1	1	3	0.51
603	From Beachamps Lane to Pinners Wood Corner	1		3	0.41
604	Road from Rueberries thro' Froghams Lane to Soles Down Corner	1	1	37	0.6
605	Road from Rueberry Butts to Long Lane Farm		2	32	0.28
606	Road from West Court Downs to Barfrestone Cross	1	1	13	0.54
607	Road from Barfrestone Cross to Shireway Gate		1	22	0.16
608	Road from Frogham to Shireway Gate		2	39	0.3
609	Road from Shepherd's Park Gate, past Cold Blow-Knowlton Corner Roads Hill	2	3	13	1.15
610	Road from Easole to Nonington Mill		3	29	0.38
	Carried forward	32		26	
	Brought forward	32		26	
611	Road from Fredville Park Corner to Round Tree	1	1	6	0.52
612	Road from Barfrestone Corner to New Purchase Firs		3	17	0.35
613	Road from Round Tree past Kittington to Cold Blow Corner	2		3	0.82

614	Road from Gooseberry Hall Corner to New Purchase Firs	1	3	23	0.77
615	Junction near Gooseberry Hall Corner			19	0.05
616	Road from Half way Plantation, past Kittington to Shingleton Mount	2	1		0.91
617	Road from Roads Hill along Knowlton Park to Bound Tree		1	19	0.15
618	Road from Uffington Corner to Goodnestone Park Upper Corner		2	25	0.27
		41	2	18	16.84

J.10. These roads, maintained by the parish, are marked on the Ordnance Survey Landranger map base on the following page.

Key to map (on next page)

Parish boundary: ■ ■ ■ ■

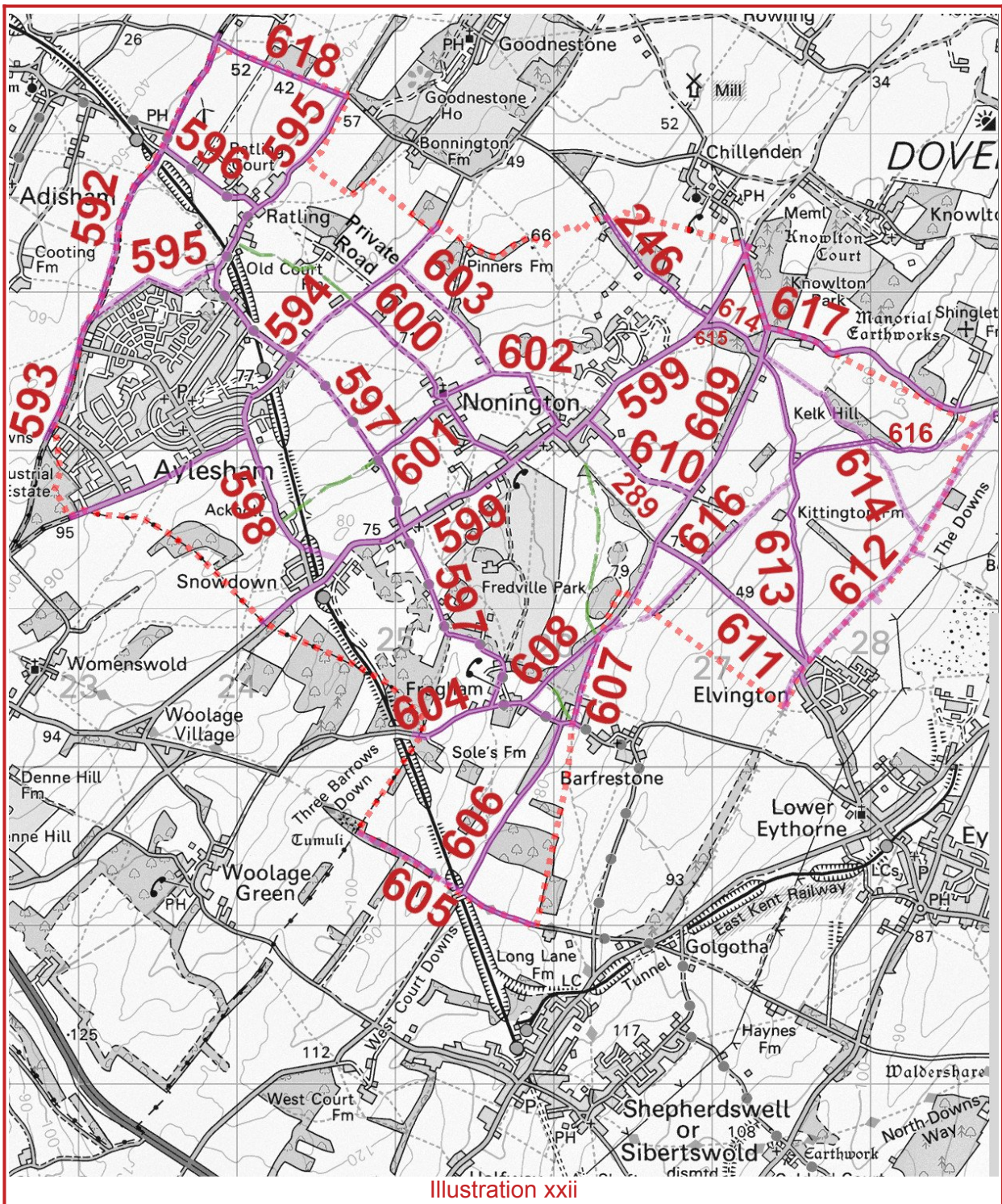
Roads coloured sienna on the Commissioners' map: —————

Bridleways or bridle roads annotated as such on Commissioner's map: - - - - -

Parcel number assigned to road as shown in table: **605**



## Nonington parish-maintained roads



J.11. Bridleways are not recorded in the apportionment as roads, save in relation to Butcher's Alley (EE317, no.289) which is expressly described in the apportionment as a 'Bridleroad', but they are annotated as such on the map. The following ways are annotated as bridleways or bridle roads:

- footpath EE286

- footpath EE319
- footpath EE330
- bridleway EE285
- bridleway EE299

A road or track from Palm Tree Lane to Old Court Farm is annotated 'Private Road'. Bridleway EE279 (Gooseberryhall Farm to Chillenden) is not labelled on the map as a bridleway, nor included in the list of roads in the apportionment, from which it may be concluded that it is a road which is not maintained by the parish surveyor.

J.12. Of the roads listed in the apportionment, all are today recognised public roads (including byways open to all traffic), save:

- 289: Butcher's Alley (see above);
- 595: between Ratling Old Court and South Peak Corner, designated as footpath EE286A, and the subject of an application to upgrade to restricted byway<sup>51</sup>;
- 598: a diversion of Aylesham Road at Snowdown to accommodate the building of the railway<sup>52</sup>;
- 616: from Half way Plantation (near Shireway Gate), via Kittington to Shingleton Mount, designated as footpaths EE307B, EE307A and EE264, for which a definitive map modification order is due to be made by KCC to record as restricted byway;
- 614: from Gooseberry Hall Corner (A), Cold Blow Corner via the appeal way to New Purchase Firs, designated between Cold Blow Corner and New Purchase Firs as footpath EE323, the subject of an application to upgrade to restricted byway between A and a point 70m south-southeast of A<sup>53</sup>; and as respects which this appeal, and a contemporaneous appeal, are in play.

J.13. It follows that, of the 28 roads listed, 25 remain public roads today. Three are designated as footpaths, all of which are the subject of processes to be upgraded to restricted byway.

J.14. **Criticism:** KCC states that the status of public road recorded was 'consistent with the claimed route being a Public Footpath or a Bridleway'<sup>54</sup>. As explained above, a clear distinction was made between bridleways and roads, and footpaths were not recorded at all (save as pecked lines on the survey map).

J.15. The objector reportedly states that<sup>55</sup>:

The Poor Law Commissioner's Survey (1859) is missing the accompanying apportionment and it is not clear whether the process was subject to any consultation[.]

The apportionment has been located (see para.III.J.4 above). The provision for consultation is addressed below.

J.16. **Conclusion:** The Commissioners' survey was carried out by a professional surveyor on the instructions of the parish vestry officers. It identified those parish roads

51 Reference: PROW/CC-DO/C400

52 The line of the London, Chatham and Dover railway was shown on the Commissioner's map, but not the diversion of Aylesham Road. The railway to Dover was not opened until July 1861.

53 Reference: PROW/DO/C399

54 KCC report on application C399 dated 5 February 2024, appendix B, para.117

55 *Ibid*, para.94, 8<sup>th</sup> bullet.



which were maintained by the vestry, and so not liable to rating; conversely, it identified other land, including private roads, which was liable to rating. In the apportionment, the list of roads includes only one bridleway, no.289 (Butcher's Alley, EE317), which is identified as a 'Bridleroad': all others entries are described as roads, from which it may be inferred that they are vehicular roads. Other bridleways are annotated as such on the map, but not included in the apportionment. The map also annotates a 'private road' as such. Parish-maintained roads also are coloured on the map in sienna, save Butcher's Alley (EE317, no.289), which is described as a 'Bridleroad': it is suggested that sienna colouring therefore is reserved for publicly-maintained public (vehicular) roads.

J.17. Of those roads listed in the survey, 25 of the 28 remain public roads, and the remaining three are the target of applications or orders to upgrade to restricted byway. This suggests that the survey was accurate in identifying such roads, because with few exceptions which are due to be corrected, they remained recognised as public roads up to the present day.

J.18. Poor law rateable valuations attracted notoriety within the parish,<sup>56</sup> so that the exclusion of private roads from hereditaments would have been open to criticism — not least because it would have reduced the overall rateable value of the parish, and so imposed higher rates on others. There was ample opportunity for engagement in the process by landowning parishioners. Moreover, the survey was commissioned by the vestry, which was itself responsible for determining which roads were maintainable by it.

J.19. The Poor Law Commissioners' survey is very good evidence of the status of the appeal way at the date it was undertaken. The description of the appeal way as one of a number of roads in the parish which was maintained by the vestry demonstrates that the way was regarded as a public road: as such, the land occupied by this and other public roads would not have been rateable under the Poor Law Act 1601.<sup>57</sup> The survey records the opinion of the parish vestry at the time, endorsed through a process of professional survey and parochial consultation.

J.20. **Points:** 5

## K. Ramsgate Sandwich Deal and Dover Railway

K.1. **Date:** 1861

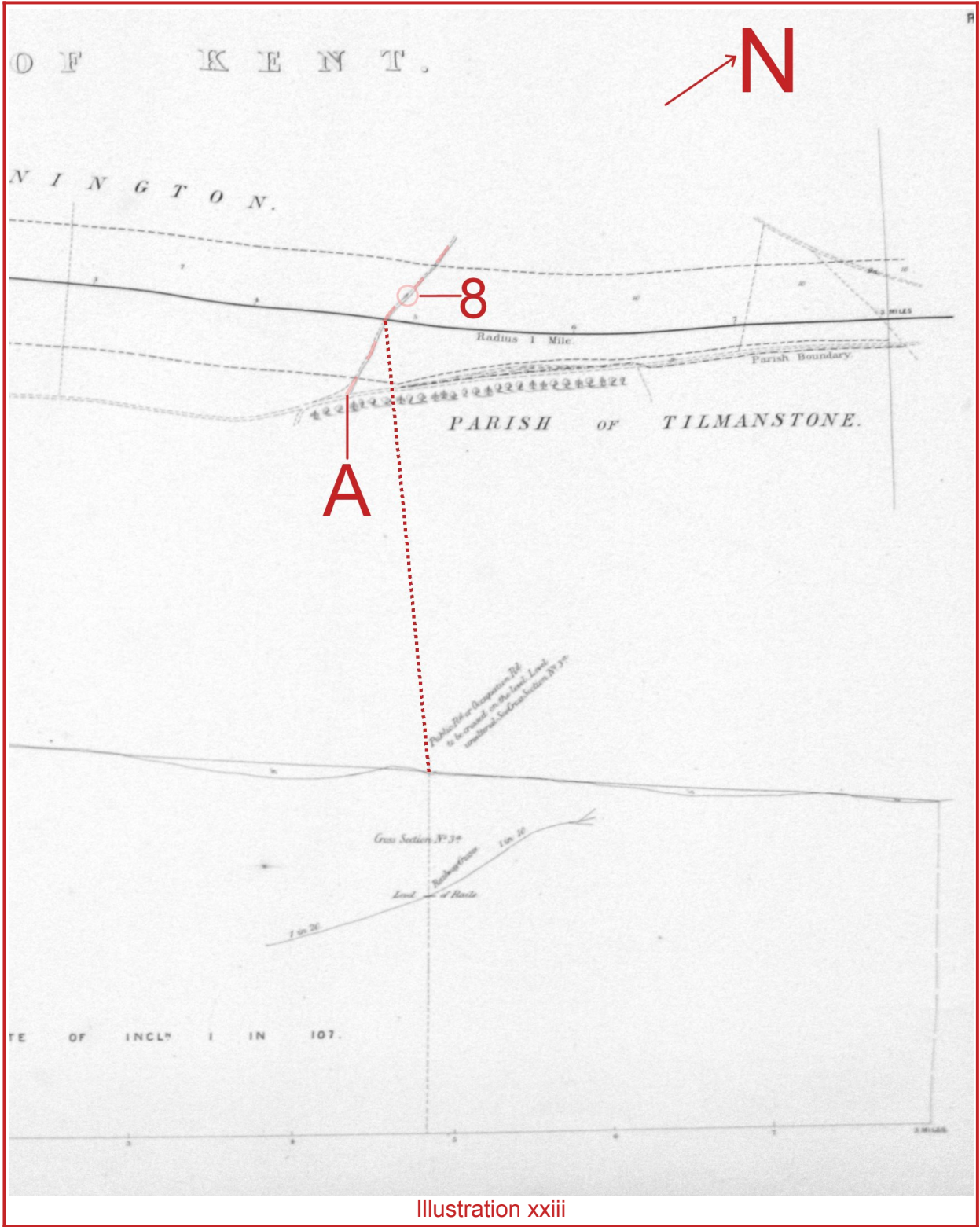
K.2. **Source:** KCC Archives<sup>58</sup>

56 Ss.1 and 2 of the Poor Rate Act 1743 required the publication of poor rates in church, and for the rates to be inspected by any inhabitant and for copies to be taken. Extracted from *Lumley's* (see footnote 48 above).

57 S.1 provides for, 'Taxation of every Inhabitant, Parson, Vicar and other, and of every Occupier of Lands, Houses, Tithes impropriate, Propriations of Tithes, Coal-Mines, or saleable Underwoods in the said Parish'. Extracted from [The Workhouse: the story of an institution](#).

58 Q/RUm/463B

**Ramsgate Sandwich Deal and Dover Railway deposited plan**



**Ramsgate Sandwich Deal and Dover Railway, section enlargement**

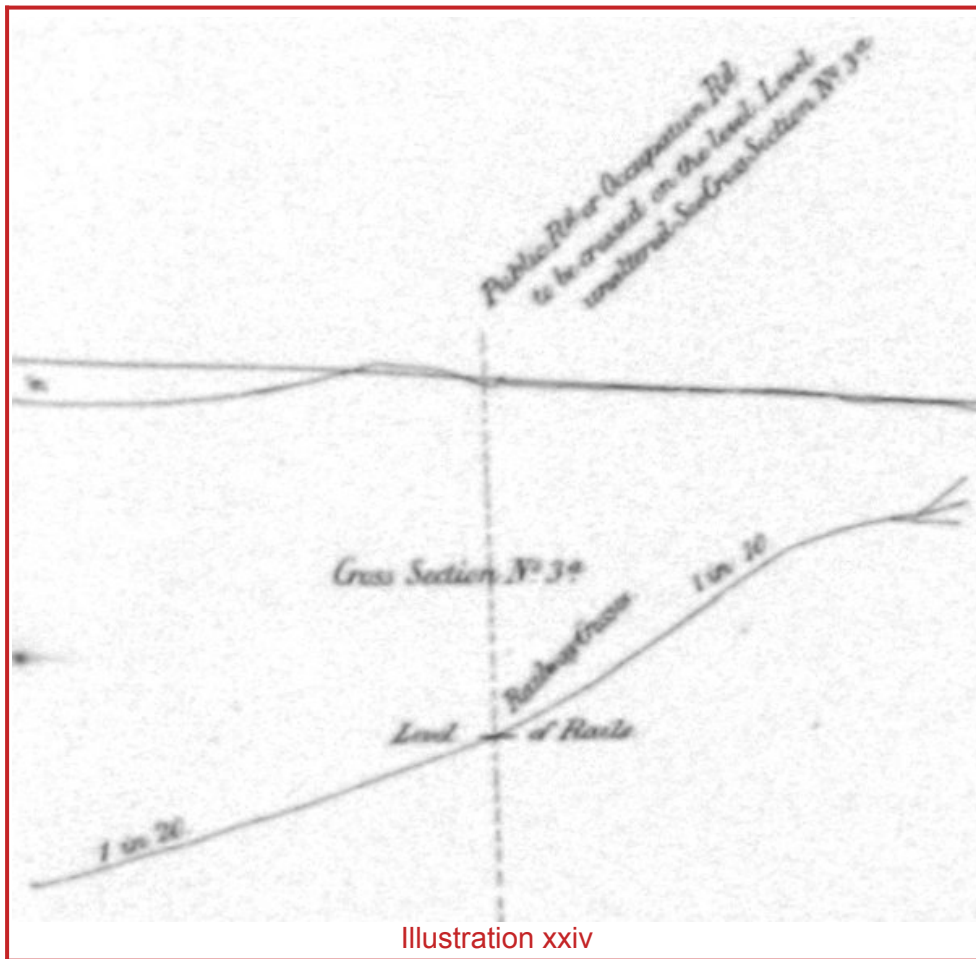


Illustration xxiv

**Ramsgate Sandwich Deal and Dover Railway deposited book of reference**

Parish of <i>Nonington</i>		County of <i>Hert</i>		
Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES OF OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIER'S NAMES.
7	Fields	<i>Admiral George Hughes William G. Ash</i>	<i>William Wilson and William Wilson Junior</i>	<i>William Wilson and William Wilson Junior</i>
8	Public road	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>
9	Public road	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>
9 <sup>a</sup>	Public road	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>

Illustration xxv

K.3. **Description:** Original scale: unknown (but distance marked off along line on plans); orientation: unchanged (north as marked so that top is west-northwest).

K.4. The Ramsgate, Sandwich, Deal and Dover Railway Company proposed to construct a line from Shepherdswell (on the London, Chatham and Dover Railway) to



Deal, with a branch joining that line at Ham to Sandwich.<sup>59</sup> It was one of a succession of proposals to bridge the gap between, respectively, the railways to Dover and Deal, which in the event was not achieved until 1881. Plans and books of reference for the lines were deposited in 1861.

K.5. The Shepherdswell to Deal line was proposed to run broadly parallel to the road along the ridgeway between Eastry and Shepherdswell (now, for the relevant part, BOAT EE335), and would have cut across the appeal way between A and B. The plans show that it was proposed to construct a level crossing and details of levels are shown in the cross section no.3a (see enlargement at Illustration xxiv above).<sup>60</sup>

K.6. The section refers to the traverse of the appeal way as:

Public Road or Occupation Road to be crossed on the level. Level unaltered.  
See Cross Section No. 3a.

K.7. The plan labels the appeal way as plot 8 in the parish of Nonington (plot 9 is BOAT EE335, and plot 9a is the way recorded as footpath EE264).

K.8. The book of reference refers to plot 8 as a 'Public Road', owned in Nonington by the then surveyor of the parish, John Spanton, and occupied by the same.

K.9. **Criticism:** The objector reportedly states that<sup>61</sup>:

...the Landowner notes that proposed Ramsgate, Sandwich, Deal and Dover Railway (1861) records the claimed route as a public road or occupation road such that it was plainly not identified as a public highway on one of the key documents comprising this source. Moreover, the railway was never constructed and the accuracy of the content of the deposited plans has therefore not been verified by the Parliamentary process. This is confirmed in the Planning Inspectorate's Consistency Guidelines which note that, where schemes were not completed, the plans may not be as reliable as those that have passed through the whole parliamentary process. Despite the discrepancy between the plan and the book of reference, the Applicant contends that this evidence is convincing but, at best, and only if the railway had actually been built, this evidence could only ever be persuasive.

K.10. We do not agree. The objector refers to the *Consistency Guidelines*<sup>62</sup>, which state:

Where schemes were not completed, the plans...are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process.

However, this is to misunderstanding how the Parliamentary process of scrutiny functioned: see below.

K.11. **Conclusion:** The deposited plans for the Ramsgate, Sandwich, Deal and Dover Railway are convincing evidence of the status of the appeal way between A and B as a public carriage road. The reference to the status of the road in the cross section as 'Public

59 It was also intended to seek running powers over the lines of the South Eastern Railway Company between Sandwich and Ramsgate — hence the title of the company.

60 Cross Section No. 3a is shown on the section itself — see Illustration xxiii.

61 KCC report on application C399 dated 5 February 2024, appendix B, para.95

62 [Consistency Guidelines](#): para.10.2.4

Road or Occupation Road' is clarified in the book of reference by reference unequivocally to a 'Public Road'.

K.12. The railway plans were not enacted into law<sup>63</sup> and the railway was not constructed. However, Parliamentary Standing Orders<sup>64</sup> imposed the same requirements for prior survey, consultation and documentation on all railway companies proposing legislative authority. If a Bill incorporating proposals were deposited with Parliament which did not satisfy standing orders, the Examiners of Petitions for Private Bills would certify it as non-compliant, and the proposals would be rejected. This is precisely what happened with the ill-prepared proposals for the Walmer, Deal and Adisham Railway (item III.N below), and why, in such a case, less weight should be attributed to the plans. Assuming that the proposals were certified as compliant, the Bill would begin its progress through both Houses of Parliament. Once it had embarked on that progress, it was no time for the proposers of the Bill to seek to amend the plans, other than to respond to concessions offered in Bill Committee. Bill Committee did not function as an opportunity to make petty amendments to the plans.

K.13. The proposers of the Bill had to ensure that its proposals were sound, not least to escape censure by the Examiners. Accordingly, there is no reason to diminish the evidence presented by a railway company only because the proposals were not given Parliamentary approval, because prior to deposit, the requirements were enforced by the Examiners and identical regardless of the unpredictable outcome.

K.14. **Points:** 4

## L. Ordnance Survey boundary records

L.1. **Date:** 1867–9

L.2. **Source:** National Archives<sup>65</sup>

63 House of Commons, *Official Report*, 29 April 1862, [vol.117](#), p.163, records that the Bill was withdrawn.

64 Excerpt from Standing Orders of the House of Commons: 'That a plan, and also a duplicate of such plan, on a scale of not less than four inches to mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division, in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through with the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, unless such day shall happen on a Sunday, and if the same shall happen on a Sunday, then on or before the 29th day of November, immediately preceding the session of parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers, of such lands respectively; and in the case of bills relating to Turnpike Roads, Cuts, Canals, Reservoirs, Aqueducts, and Railways, a section and duplicated thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate.'

65 OS 28/218, OS 27/2732

**OS boundary field sketch map Nonington**

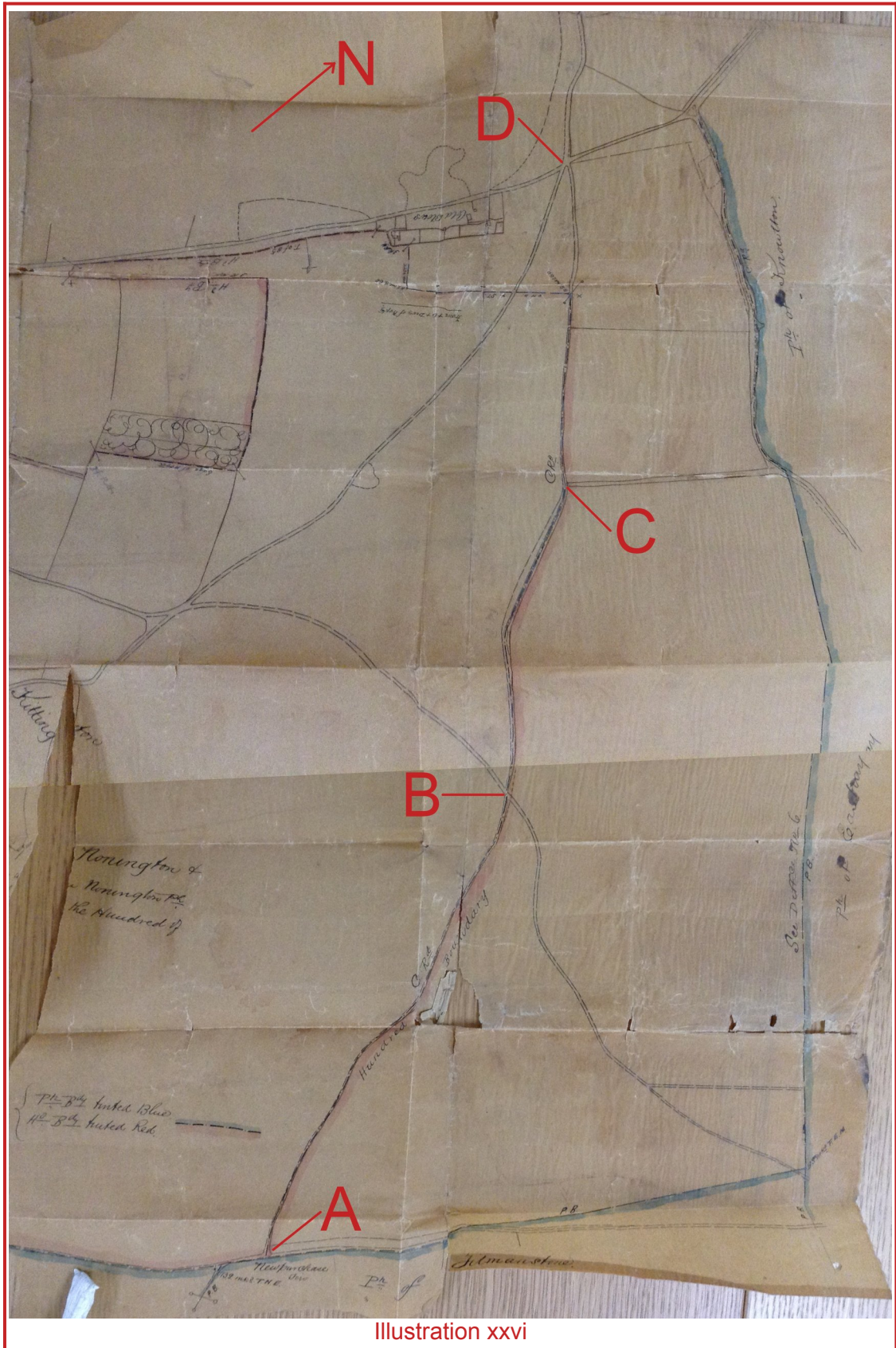


Illustration xxvi



**OS boundary sketch map Nonington, Womenswold, Kingston and Barfrestone**

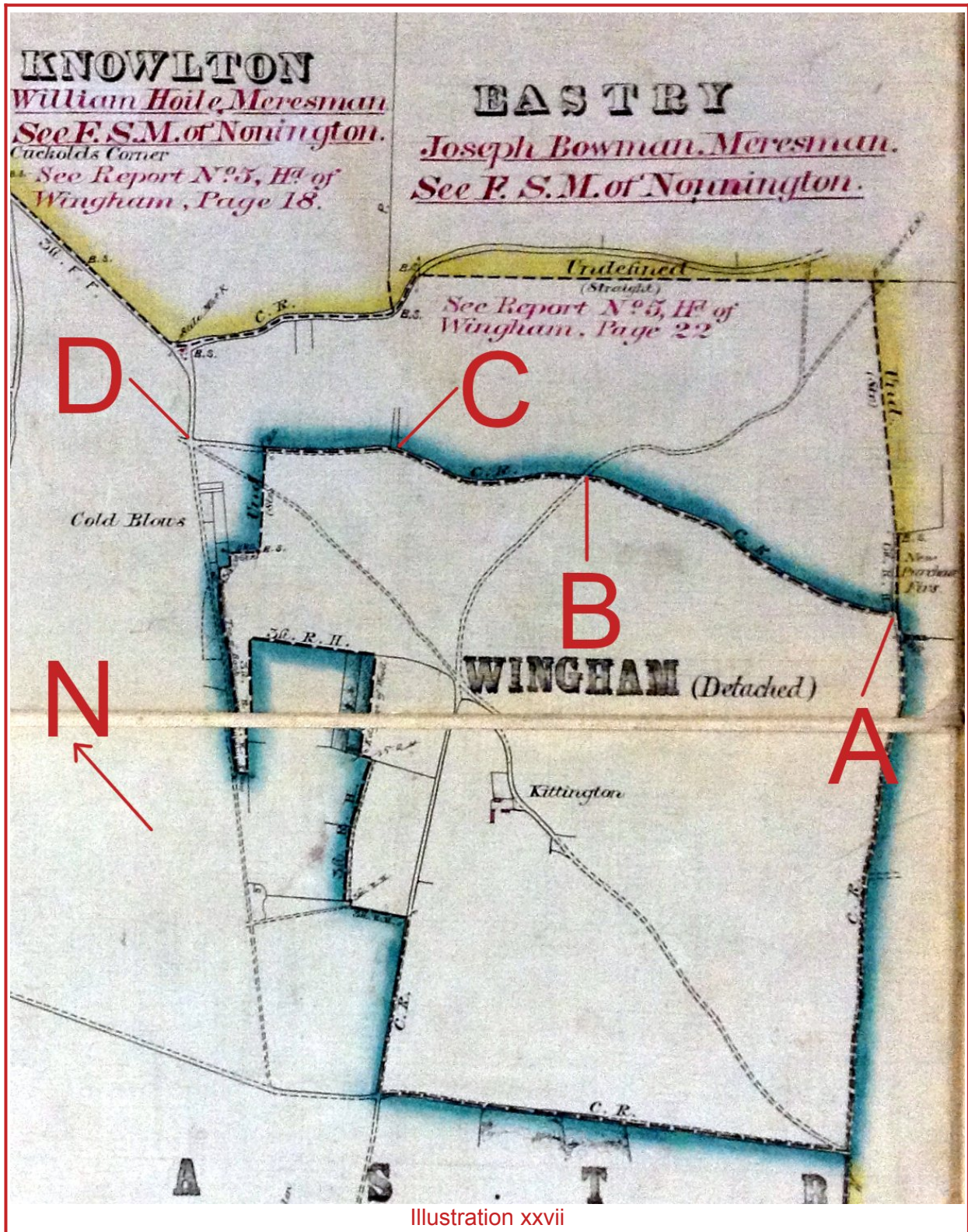


Illustration xxvii

L.3. **Description:** The Ordnance Survey boundary maps date from the late 1860s, and record the Ordnance Survey's efforts to capture the precise location of parish and other

administrative boundaries from local knowledge. These maps were drawn up following perambulation of the boundaries by the surveyor accompanied by the parish meresman (that is, a senior resident of the parish who was specially tasked with knowledge of the parish's boundaries, and who very likely would have acquired such knowledge first hand from his predecessor as meresman).

L.4. The field boundary sketch map for Nonington and Womenswold (original scale: tracing taken from the Nonington tithe map; orientation: not marked on map, but top is west-northwest) was drawn up directly from information gathered in the field, onto a tracing of the parish taken from the tithe map.

L.5. The field boundary sketch map for Nonington, Womenswold, Kingston and Barfrestone shows the boundary of the borough of Kittington, a detached part of the hundred of Wingham within the parish of Nonington, otherwise part of the hundred of Eastry. The map shows the appeal way, between A and a point between C and D, as forming the boundary between the two hundreds (which is 'tinted red'). The appeal way is annotated 'C.R.', denoting that the hundred boundary is located down the centre of the road.

L.6. The boundary sketch map (original scale: not marked nor known; orientation: not marked on map, but top is north-east) is a more formal record of the boundary data originally gleaned and recorded in the field boundary sketch map. The boundary sketch map also shows the appeal way as forming the boundary of the detached part of Wingham hundred, annotated 'C.R.'

L.7. **Criticism:** The objector reportedly states that<sup>66</sup>:

The OS Boundary Records (1867–9) do no more than show in sketch form the tracks that appear on OS mapping and provide no evidence of the claimed route being a public road[.]

We disagree, because the identification of the appeal road as the boundary of the hundreds of Wingham and Eastry is relevant to its provenance: see below.

L.8. **Conclusion:** The annotation of the appeal way as a road, which for nearly the whole of its length forms the boundary between the hundreds of Eastry and a detached portion of Wingham, is suggestive of an ancient way which is likely to be a public road. For further explanation, see The appeal way as a hundredal boundary at item I.H above.

L.9. **Points:** 0

66 KCC report on application C399 dated 5 February 2024, appendix B, para.94, 9<sup>th</sup> bullet



## M. The National Gazetteer of Great Britain and Ireland

M.1. **Date:** 1868

M.2. **Source:** British Library<sup>67</sup>

### **Hughes: The National Gazetteer of Great Britain and Ireland**

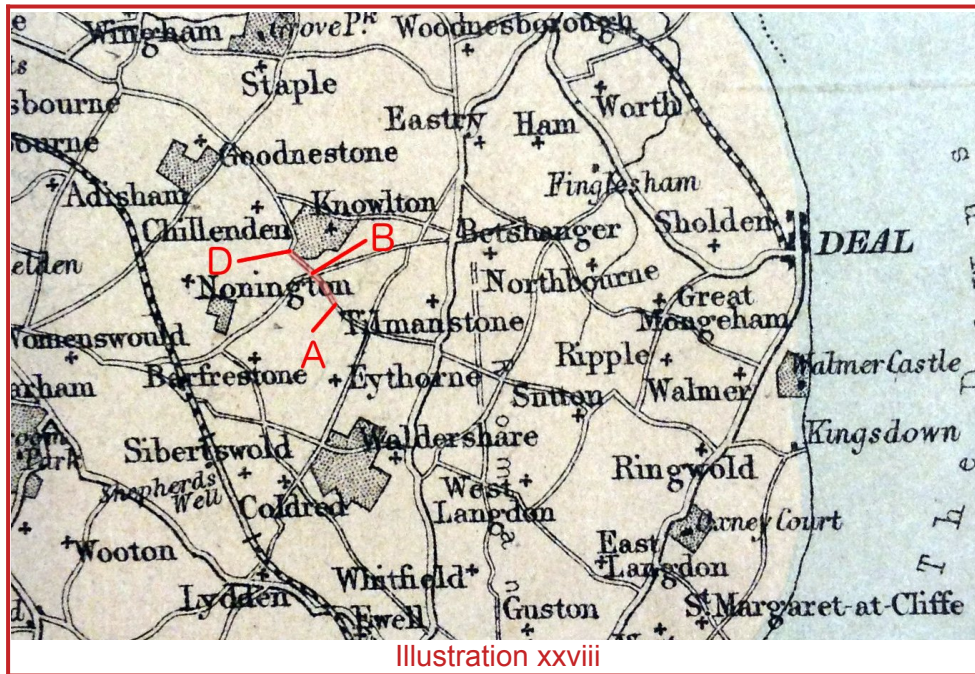


Illustration xxviii

M.3. **Description:** The map by William Hughes is not obviously derived from any previously published map. The map is selective in the routes shown: it does not, for example, show the Sandwich Road (between Nonington and Eastry), Thornton Road, or Thornton Lane. But it does show a way passing south of Knowlton Park south-east towards Tilmanstone, and a way from the vicinity of Barfrestone north-east towards Betteshanger: these two ways cross south of Knowlton Park.

M.4. **Criticism:** The objector reportedly states that<sup>68</sup>:

The National Gazetteer (1868) omits several other routes in the locality so its accuracy cannot be relied upon[.]

We disagree. In our submission, the omission of ‘several other routes’ is hardly surprising — it is a relatively small-scale map, and every map-maker must decide what to leave out and what to put in. What is significant is that those roads which are marked on the map include the appeal way, which suggests that they were of greater significance than now.

M.5. **Conclusion:** The alignments of the ways which cross south of Knowlton Park are consistent with those of the appeal way and footpath EE264 (for which an order is to be made to record as a restricted byway). That these ways have been recorded in preference

67 10348.i.7: copy available at [web.archive.org/web/20140830140958/http://freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU\\_files/ENG/KEN/hughes\\_kent\\_1870.htm](http://web.archive.org/web/20140830140958/http://freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/hughes_kent_1870.htm)

68 KCC report on application C399 dated 5 February 2024, appendix B, para.94, 10<sup>th</sup> bullet



to Thornton Road, the Chillenden to Barfrestone road and BOAT EE335, suggests that the appeal way was at the time of publication regarded as a significant local road.

M.6. The map is therefore good evidence for the existence of a public road along the application route. It is unlikely that such a small-scale map would show entirely private roads.

M.7. **Points: 0**

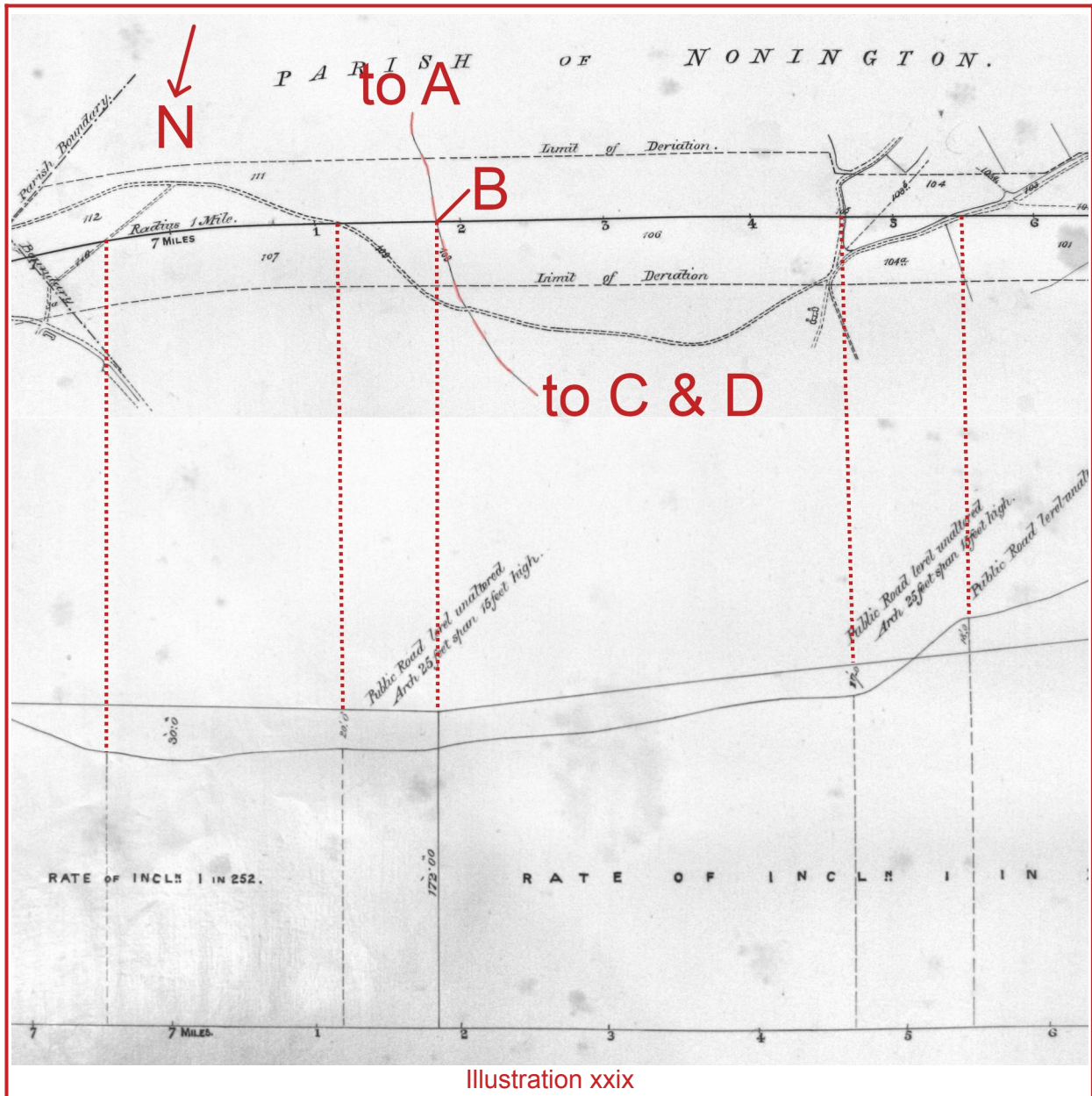
(This is the fourth of several early county or area maps: no more than two such maps are scored.)

## N. Walmer, Deal and Adisham Railway

N.1. **Date:** 1871

N.2. **Source:** KCC Archives<sup>69</sup>

### Walmer Deal and Adisham deposited plan



## Walmer Deal and Adisham deposited book of reference

*Parish of Nonington. County of Kent.*

<i>No on Plan</i>	<i>Description of Property</i>	<i>Owners or reputed Owners</i>	<i>Lessees or reputed Lessees</i>	<i>Occupiers</i>
107	Field	George William Hughes D'Aeth	William Wilson	William Wilson
108	Footpath	George William Hughes D'Aeth	William Wilson	William Wilson
109	Occupation Road	George William Hughes D'Aeth	William Wilson	William Wilson

Illustration xxx

N.3. **Description:** The Walmer, Deal and Adisham Railway was proposed to connect the London, Chatham and Dover Railway at Adisham with the South Eastern Railway at Deal, via a line sweeping through Nonington and Kittington, passing south of Eastry and Ham, north of Finglesham, then through Sholden to Deal. In common with the proposals for the Ramsgate Sandwich Deal and Dover Railway (item III.K above), this was yet another ill-fated proposition for connecting Deal and Walmer to the main line to Dover. In the event, a rail link was not approved until the Dover and Deal Railway Act 1874, and not opened until 1881.

N.4. The alignment for the proposed Walmer Deal and Adisham Railway would have crossed the appeal way slightly to the south of B. No provision is shown for a bridge in the section of the line, although the line at this point is recorded as being intended to follow a level approximately 15–20 feet (4½–6m) above the line of the appeal way.

N.5. The plan labels the appeal way as plot 108 in the parish of Nonington. The book of reference refers to plot 108 as a 'Footpath' owned by George William Hughes D'Aeth, and leased to and occupied by William Wilson.

N.6. The Bill was reported by one of the Examiners of Petitions for Private Bills to the Select Committee on Standing Orders as non-compliant with Standing Orders<sup>70</sup> and subsequently certified by the Examiners as such.<sup>71</sup> The Bill was not proceeded with.

N.7. **Analysis:** The recording of highways in the deposited plans and book of reference for the proposed Walmer Deal and Adisham Railway is notably far from satisfactory.

N.8. The following table analyses every public right of way (other than carriageways which are today metalled and tarred) which is shown on the definitive map, or any path shown on near contemporary 1:2,500 Ordnance Survey mapping,<sup>72</sup> as intersecting the proposed alignment of the railway between Adisham and West Street (near Ham). The table identifies the location of each right of way or path, and the representation of it in the deposited plan and book of reference. All of them are shown as ways on Ordnance Survey plans revised in the late 1890s, and it seems reasonable to assume that a way recorded as a right of way today was at least of that status at the time of the proposals.

70 House of Commons, *Official Report*, 12 February 1872, [vol.127](#), p.24

71 House of Commons, *Official Report*, 7–8 March 1872, [vol.127](#), pp.81–82

72 Ordnance Survey County Series twenty-five inch plans, second edition: see item III.O below.



Description of right of way	Grid ref of proposed crossing	Right of way no. <sup>73</sup>	Entry in book of reference Parcel	Owner	Comment
public bridleway from Ratling to Listways Cottages (close but not crossed by railway)	<a href="#">TR241532</a>	BW EE285	Nonington 31 Footpath	William Hammond	Ancient bridleway identified on Poor Law Commissioners' survey
public footpath from Ratling to Old Court Farm	<a href="#">TR244531</a>	FP EE283 A	Nonington 24a Footpath	John Laurence	
public footpath from Pinner's Hill to Bonnington	<a href="#">TR253528</a>	FP EE281	Nonington 40a <i>Occupation Road</i>	William Hammond	Footpath identified as occupation road
public footpath behind Easole Street	<a href="#">TR260521</a>	FP EE311	Nonington 56 Footpath	William Hammond	
public footpath from Nonington to Mill Lane	<a href="#">TR264518</a>	FP EE318	Nonington 76 Footpath	William Hammond	
public footpath from Mill Lane to Kittington Cottages	<a href="#">TR270516</a>	FP EE321	Nonington 102 Footpath	George William Hughes D'Aeth	
public footpath/ [restricted byway] from near Limekiln Plantation to Kittington Cottages <sup>74</sup>	<a href="#">TR273517</a>	FP EE307 A	Nonington 103 <i>Occupation Road</i>	George William Hughes D'Aeth	Ancient road identified on Poor Law Commissioners' survey
footpath from Kittington Cottages to Kittington Farm	<a href="#">TR274517</a>	—	Nonington 103b Footpath	George William Hughes D'Aeth	Probably private as leads only to farm
public footpath south-east down Kelk Hill (the appeal way)	<a href="#">TR280518</a>	FP EE323	Nonington 108 <i>Footpath</i>	George William Hughes D'Aeth	Appeal way

73 Recorded in the definitive map and statement for Kent.

74 A definitive map modification order is due to be made by KCC to record this footpath as a restricted byway, consequent on an application made for that purpose by the appellant.

Description of right of way	Grid ref of proposed crossing	Right of way no.	Entry in book of reference Parcel	Owner	Comment
public footpath/ [restricted byway] from Kittington Cottages to Thorntonhill Cottages <sup>75</sup>	<a href="#">TR282519</a>	FP EE264	Nonington 109 <i>Occupation Road</i>	George William Hughes D'Aeth	Ancient road identified on Poor Law Commissioners' survey
public footpath to Shingleton Cottages	<a href="#">TR285521</a>	FP EE263	Nonington 110 <i>Occupation Road/</i> Eastry 3a <i>Public Road</i>	George William Hughes D'Aeth/ Surveyors of Highways	Identified as occupation road in Nonington, and public road in Eastry
footpath from Thorntonhill Cottages to Shingleton Farm	<a href="#">TR288523</a>	FP EE262	—	Not separately identified (but marked on plan)	
public bridleway from Knowlton to Venson Bottom (Black Lane)	<a href="#">TR298532</a>	EE488	Eastry 25 <i>Occupation Road</i>	Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	Ancient bridleway
public bridleway from Venson Bottom to Heronden	<a href="#">TR302534</a>	EE491	Eastry 34 <i>Occupation Road</i>	Aldbrough Henniker and Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	Bridleway identified on Eastry tithe map
public footpath from Northbourne Road to Lower Street	<a href="#">TR310540</a>	EE259	Eastry 43 <i>Footpath</i>	Dean and Chapter of Canterbury	

75 See fn.74 above.

Description of right of way	Grid ref of proposed crossing	Right of way no.	Entry in book of reference Parcel	Owner	Comment
public bridleway from Northbourne Road to Hay Hill	<a href="#">TR317540</a>	EE382	<i>Eastry 52 Footpath</i>	<i>Sir Walter Charles James et al</i>	Not known if bridleway in 1871
public footpath from Eastry to Updown Farm	<a href="#">TR319541</a>	EE257	—	<i>Not separately identified</i>	

N.9. The railway survey consistently failed to record the correct status of rights of way where the status was bridleway or minor carriageway. In the table above, none of the intersecting routes now recorded as public rights of way on the definitive map and statement for Kent (and recorded as paths on the second edition Ordnance Survey 1:2,500 map) is presented in the book of reference as a specifically public path. Relevant entries refer to the right of way either as a 'footpath' or as an 'occupation road', and the owner, lessee where relevant, and occupier, are given as the private interests in the land in which the parish surveyor has no interest.

N.10. Several ancient bridleways were recorded as footpaths or occupation roads (EE285, EE488, EE491), while bridleway EE382 was recorded as a footpath (we cannot be sure of its reputation as a bridleway in 1871). Footpaths EE307A and EE264, for which a definitive map modification order is due to be made by KCC to record these 'footpaths' (along with footpath EE307B) as restricted byways, are recorded in the book of reference as occupation roads. But in the section, footpath EE307A (identified in the plan as parcel 103), is shown as a 'public road level unaltered' (presumably to be crossed on the level), and footpath EE264 (identified in the plan as parcel 109), is shown as a 'public road level unaltered' to be crossed by a bridge.

N.11. **Criticism:** The objector reportedly states that<sup>76</sup>:

In respect of the Walmer, Deal and Adisham Railway (1871), this is another scheme that was never constructed. The book of reference records the application route as a footpath. As this does not fit the Applicant's arguments the Applicant challenges the manner in which this evidence was prepared.

We draw attention to the objector's criticism of the evidence contained in plans for the Ramsgate Sandwich Deal and Dover Railway (item III.K above, at para.III.K.9), which the objector seeks to depreciate because the proposals were not put into effect and the railway not built. But in relation to the 1871 proposals, which were withdrawn following censure by the Examiner (see below), the objector appears to place confidence in the identification of the appeal way as a footpath. We do not, for the reasons given below, and we note that KCC appears to concur.<sup>77</sup>

N.12. **Conclusion:** The references to the appeal way in the deposited plans for the Walmer, Deal and Adisham Railway as a footpath are not reliable.

<sup>76</sup> KCC report on application C399 dated 5 February 2024, appendix B, para.96

<sup>77</sup> *Ibid*, para.106



N.13. The analysis shows that various other public rights of way, of varying status, were recorded as of a status which is not consistent with how they were regarded at the time or subsequently. It may well be that the Bill was thrown out by the Examiners precisely because the proposals were poorly researched.

N.14. **Points:** 0

## O. Ordnance Survey County Series twenty-five inch plans

O.1. **Date:** 1871 and later

O.2. **Source:** British Library<sup>78</sup>, National Library of Scotland<sup>79</sup>

O.3. First edition (sheet LVII/4 revised 1872, published 1873; sheet LVIII/1 revised 1871, published 1872) — see Illustration xxxi below

O.4. Second edition ([sheet LVII/4](#) and [LVIII/1](#) revised 1896, published 1898)

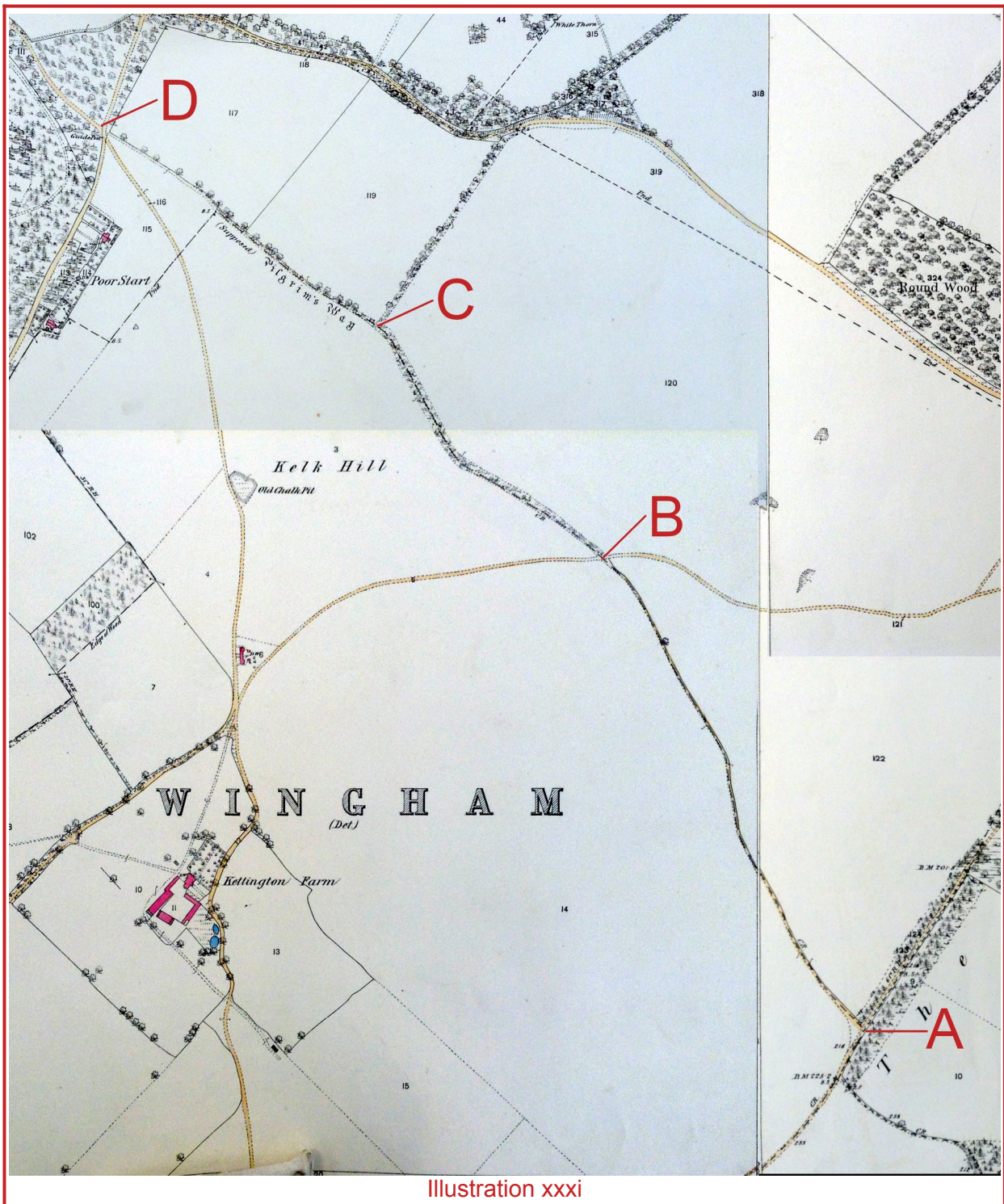
O.5. Third edition ([sheet LVII/4](#) revised 1906, published 1907; [sheet LVIII/1](#) revised 1905, published 1907)

O.6. Fourth edition ([sheet LVII/4](#) revised 1938, published 1946; [sheet LVIII/1](#) revised 1937, published 1945)

78 OS County Series 1<sup>st</sup> edition in colour, sheets LVII/4 and LVIII/1 surveyed 1872; area book for Nonington

79 Available via [maps.nls.uk/geo/find/#zoom=14.0&lat=51.22389&lon=1.28362&layers=101&b=10&z=1&point=51.22544,1.28006&i=103681859](https://maps.nls.uk/geo/find/#zoom=14.0&lat=51.22389&lon=1.28362&layers=101&b=10&z=1&point=51.22544,1.28006&i=103681859)

**OS County Series 1:2,500 first edition**



O.7. **Description:** Original scale: 1:2,500; orientation: unchanged (top is north). The Ordnance Survey County Series first-edition plans are the first large scale maps to be produced of Kent, with the survey dating from 1872. Second, third and fourth-edition plans are not reproduced here, but are easily available online using the hyperlinks given above.

O.8. The first-edition plans show the appeal way throughout. Between New Purchase Firs at A, and B, the way is hand-coloured in sienna. Colouring in sienna on the first edition plan indicates that the way was metalled.<sup>80</sup>

O.9. The first, second and third-edition plans record the way as the '*Supposed Pilgrims Way*'.

O.10. The way between A and a point about 175 metres east-southeast of D (i.e., for almost the entire length of the appeal way) formerly was the boundary of a detached portion of the manor and hundred of Wingham. The boundary was identified by Ordnance Survey surveyors in the late 1860s and recorded in Ordnance Survey boundary records (item III.L above). It is shown on the first edition plan as a boundary annotated 'C.R.', denoting that the hundredal boundary is aligned along the centre of the road.

O.11. The appeal way is braced into the neighbouring field parcels, and is not separately identified in the book of reference for Nonington. The relevant parcels are identified in the area book for Nonington as follows:

Section	Hundred	Parcel	Description
A–B	{ Eastry Wingham (det.)†	122	Arable
		14	Arable, &c.
B	{ Eastry Wingham (det.)†	121	Road
		5	Road
B–C	{ Eastry Wingham (det.)†	120	Arable, &c.
		3	Arable, &c.
C–D	{ Eastry Wingham (det.)†	119	Arable, &c.
		3	Arable, &c.
C–D	Eastry	115	Arable

† This part of the appeal way accommodated the hundredal boundary between Eastry and a detached portion of Wingham: the appeal way therefore is recorded as part of two adjacent parcels, hence the double entries.

O.12. On the subsequent second, third and fourth-edition plans, the way continues to be shown as a track or road across the downs. None of these editions annotates the way as footpath ('F.P.') or bridle road ('B.R.') (although these annotations were not in any case used on the fourth-edition plans, owing to war-time economies).

O.13. **Criticism:** KCC states that<sup>81</sup>:

Unlike other roads nearby, the claimed route is not separately numbered or identified as a 'Road' in the Book of Reference. Instead, the claimed route is shown as a double-pecked trackway braced to adjoining fields which very much points towards it having been a lesser highway (if at all) or a private trackway serving as access to fields. Whilst it was, of course, not the primary

80 '*Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3<sup>rd</sup> ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

81 KCC report on application C399 dated 5 February 2024, appendix B, para.107



purpose of the Ordnance Survey maps to identify public rights, the fact that the section north of Public Footpath EE264 is uncoloured (indicating it was not metalled) adds further weight to the proposition was not considered to be a public carriage road at that time.

O.14. We entirely disagree. What the first edition plan shows is that the appeal way was not considered sufficiently well defined or important to merit attracting a discrete parcel number. It is commonplace that some unenclosed minor roads, and many cart tracks and paths, are shown on the first or subsequent addition plans without a discrete parcel number and braced with surrounding land. In that case, the description of the land in the first edition area book will very likely accord with the majority land use. For example, the southern half of Lonely Lane (now restricted byway EE493), between its junction with Straight Mile and Cater Road in neighbouring Eastry parish,<sup>82</sup> is shown braced with Eastry parcel 313 ('Arable'), notwithstanding that the road was appointed in a diversion order in 1789.

O.15. Ordnance Survey internal guidance in 1907 ruled that<sup>83</sup>:

**Roads and ways:** 'Roads, railways, rivers, and other similar areas are separately numbered and computed with respect to each 1/2500 plan, and to each parish on that plan... Cart roads not fenced off and short roads or lanes leading into fields, etc., are braced with the adjoining parcels, *i.e.* not separately numbered...'

O.16. We see no reason why the same guidance should not have applied at the time of publishing the first and second edition plans, which would suggest that the appeal road was perceived to fall within the class of 'Cart roads not fenced off and short roads or lanes leading into fields, etc.'

O.17. It also is unarguable that evidence that a way which is not recorded as being metalled at the time of the survey — but only in part — is supportive that the way is not public. Many minor country cart tracks are unsurfaced, and always have been.

O.18. We object that, whereas KCC states elsewhere that Ordnance Survey County Series plans:<sup>84</sup>

...were essentially topographical surveys and were not concerned with land ownership or public/private rights,...

Yet it then is stated that the first-edition plan: 'adds further weight to the proposition [that the appeal road] was not considered to be a public carriage road at that time.' KCC does not explain how a survey that is 'not concerned with land ownership or public/private rights' can add weight to a proposition of private status. We submit that all that is shown is that the drawing clerk perceived the appeal way not to require a discrete parcel number — nothing more.

O.19. The objector reportedly states that<sup>85</sup>:

82 Grid reference [TR309529](#)

83 *Instructions for computation and examination of areas*, p.23, 1907: OS, unpublished, cited in *Ordnance Survey Maps: A Concise Guide for Historians*, 3<sup>rd</sup> ed., Richard Oliver

84 KCC report on application C399 dated 5 February 2024, appendix B, para.43

85 *Ibid*, para.94, 9<sup>th</sup> bullet

The Applicant has not produced the Book of Reference for the First Edition OS Map (1872) so presumably this does not support his case.

Relevant entries from the book of reference are presented above.

O.20. **Conclusion:** The Ordnance Survey County Series first-edition plans show that the appeal way was a made road between A and B, intended to sustain wheeled traffic. The first-edition plan is annotated to show that the hundredal boundary aligned to the centre of the road, indicating the surveyor's perception that the way was a 'road'. See The appeal way as a hundredal boundary (item I.H above) for discussion of the significance of the boundary. The absence of any discrete parcel number assigned to the appeal way suggests that it was perceived by the surveyor to be a 'short road' or a 'cart road...not fenced off' — a way probably in deteriorating condition for wheeled traffic.

O.21. On the subsequent editions of the plans, surveyed up until the eve of the Second World War, the way continues to be shown as a track or road used by vehicular traffic and as neither a footpath nor a bridleway.

O.22. **Points:** 0

P. Late C19 and early C20 maps

P.1. **Date:** 1858–1909

P.2. **Source:** National Library of Scotland<sup>86</sup>

**OS one-inch New Series Dover sheet 290, revised 1858–72**

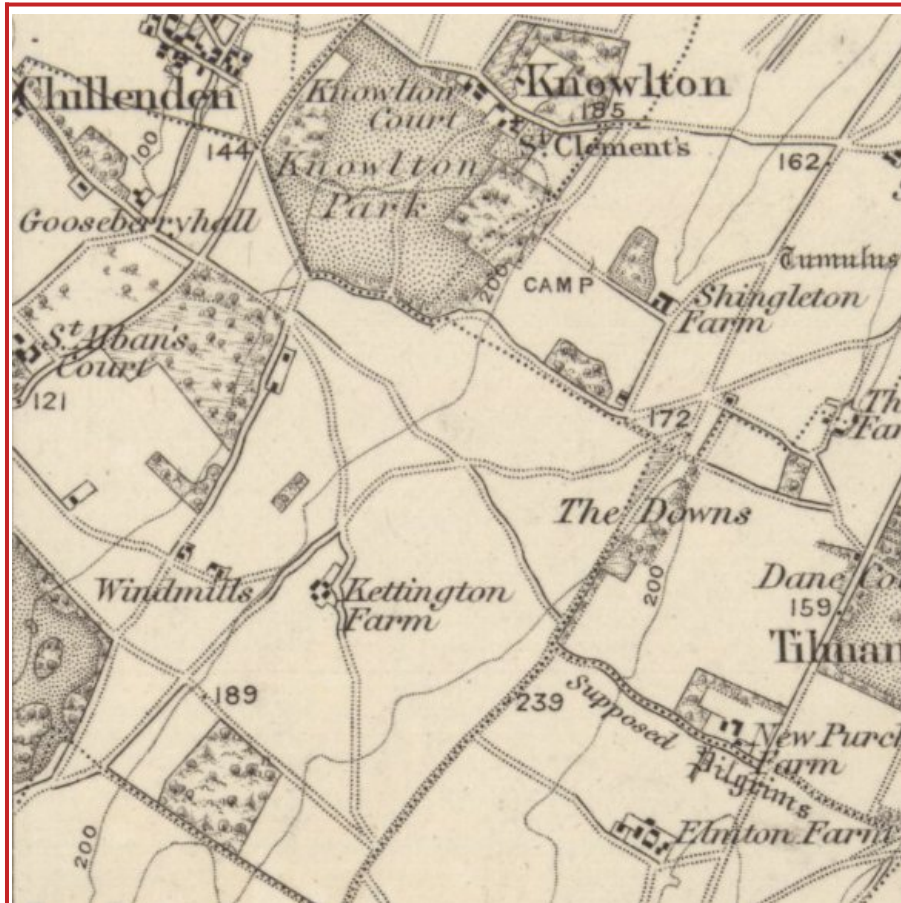


Illustration xxxii

86 [maps.nls.uk](https://maps.nls.uk)



**OS one-inch New Series Dover sheet 290, revised 1893**

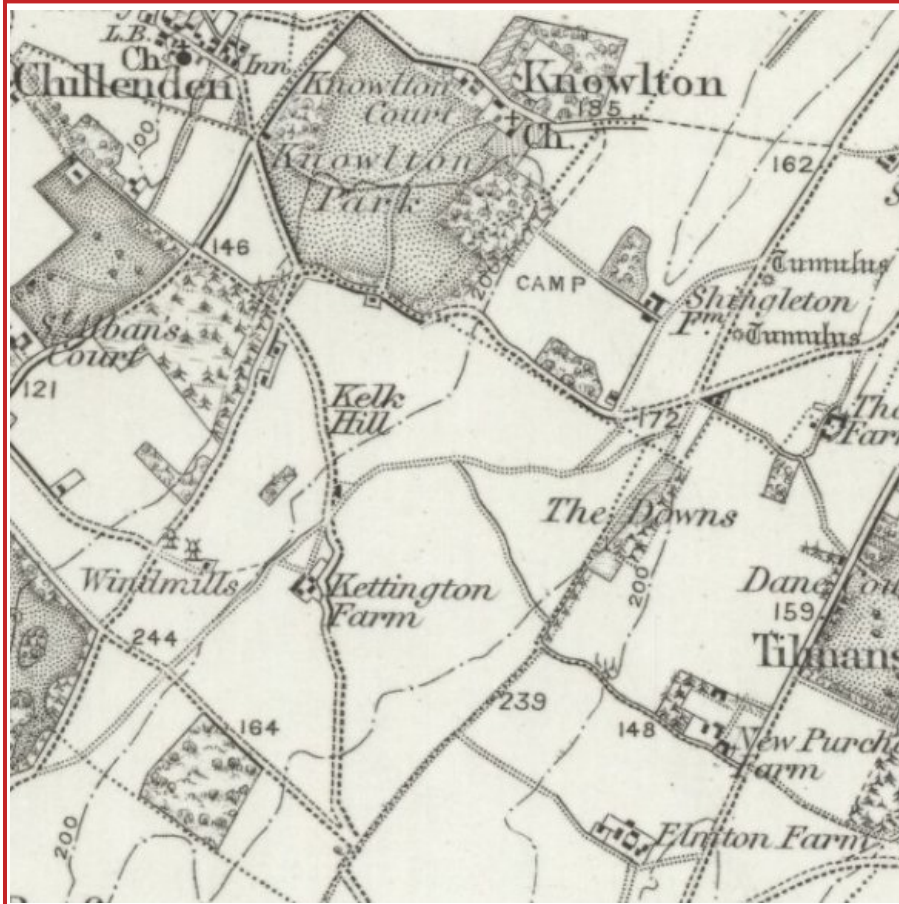


Illustration xxxiii

**OS one-inch third edition Dover sheet 290, revised 1904**

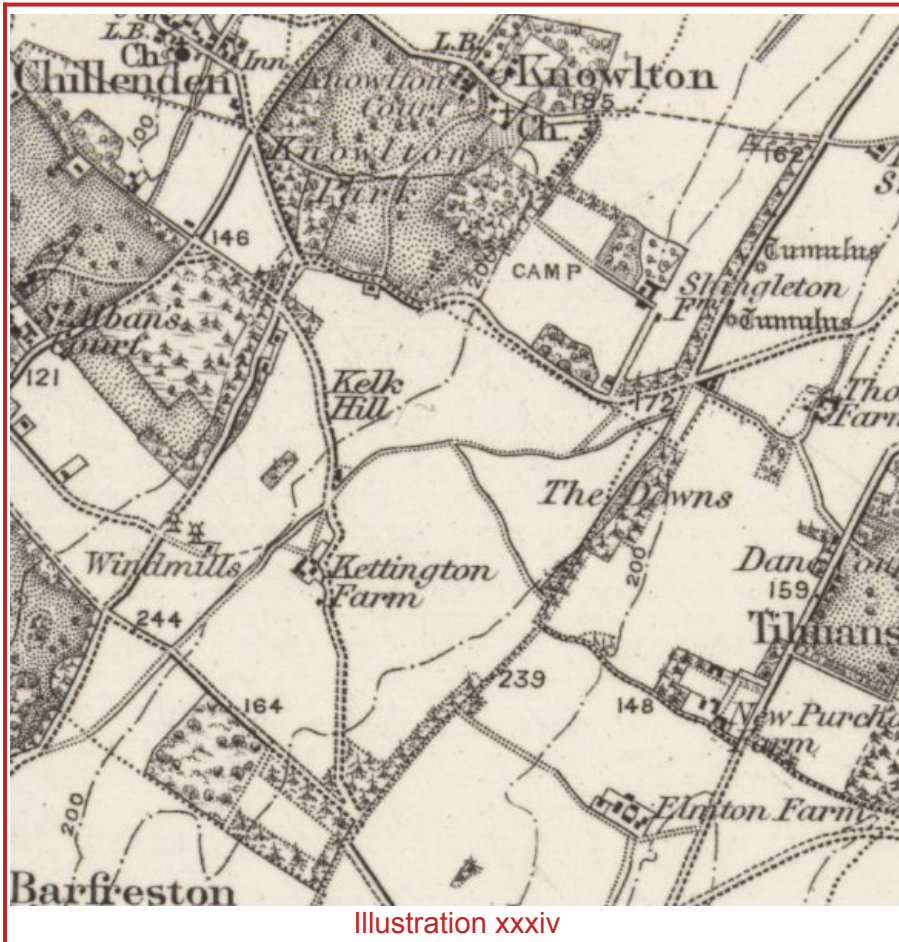
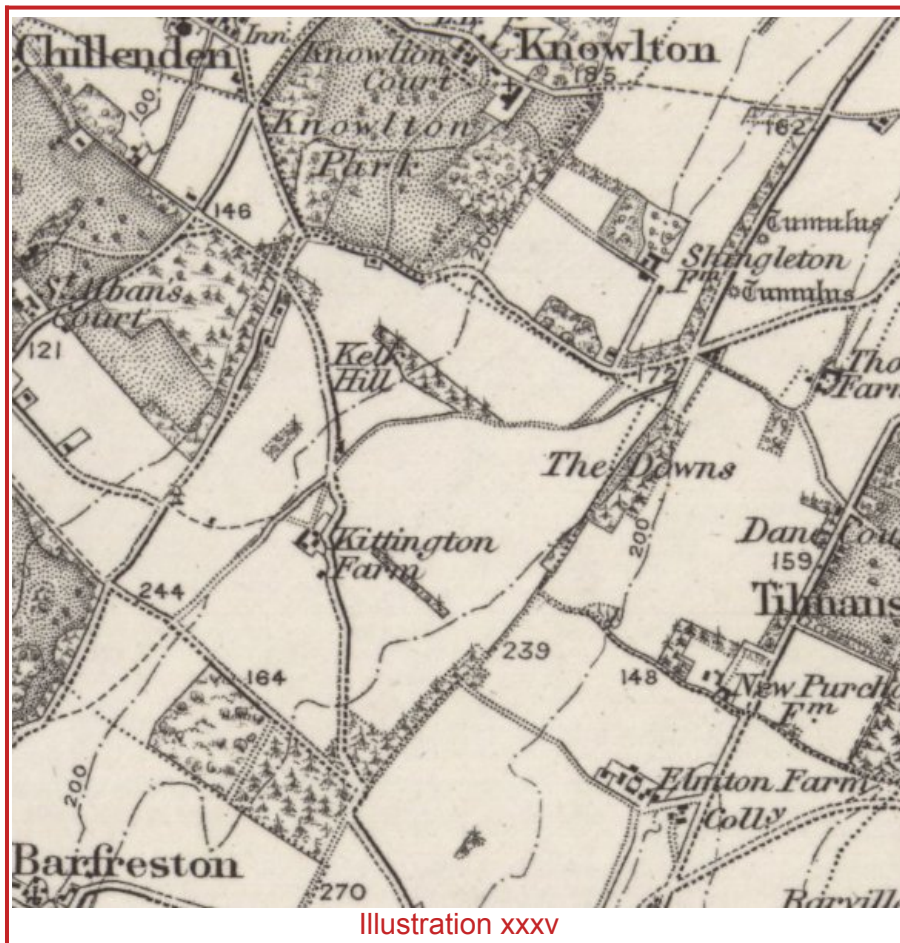


Illustration xxxiv

**OS one-inch fourth edition Dover sheet 290, revised 1909**



P.3. **Description:** Original scale: 1:63,360; orientation: unchanged (top is north).

P.4. These Ordnance Survey one-inch maps are the successor series to the Ordnance Survey, Old Series one-inch map of Kent (item III.E above).

P.5. The New Series map revised in the early second half of the 19th century, shows the appeal away with the same presentation as other elements of the local road network. Parts of the way are shown as enclosed on its north side at the western and eastern ends. In common with the first edition of the Ordnance Survey County Series twenty-five inch plans (item III.O above), the continuation of the way past New Purchase Farm east-southeast of A is labelled 'Supposed Pilgrims Way'.

P.6. A revision of the New Series map in 1893 omits that part of the appeal way between B and D. The appeal way can now be distinguished from roads such as Kelk Hill, Mill Top and Thornton Road, which are shown with a shaded casing to one side, showing that they are good driving roads.

P.7. The third edition map revised in 1904 shows the position as substantially unchanged.

P.8. The fourth edition map revised in 1909 is the first to omit the appeal way in its entirety (but the line of what is now recorded as footpath EE264, formerly intersecting with the appeal way at B, continues to be shown).



P.9. **Conclusion:** The Ordnance Survey New Series one-inch map first edition, surveyed in the second half of the nineteenth century, showed the way as indistinguishable from other local roads. The appeal way continued to be shown on the Ordnance Survey one-inch maps until the end of the nineteenth century — and even then, the south-eastern end of the way, between A and B, remained until the 1904 edition. This is suggestive of a way which was part of the ordinary road network, but in declining use owing to the improving condition of other local roads which offered a more attractive proposition to wheeled traffic (not least because the appeal road served no farms or dwellings throughout its length and was partially unmetalled).

P.10. **Points:** 1

Q. Finance (1909–1910) Act 1910

Q.1. **Date:** 1911

Q.2. **Source:** record plans: National Archives<sup>87</sup>; working plans: KCC Archives

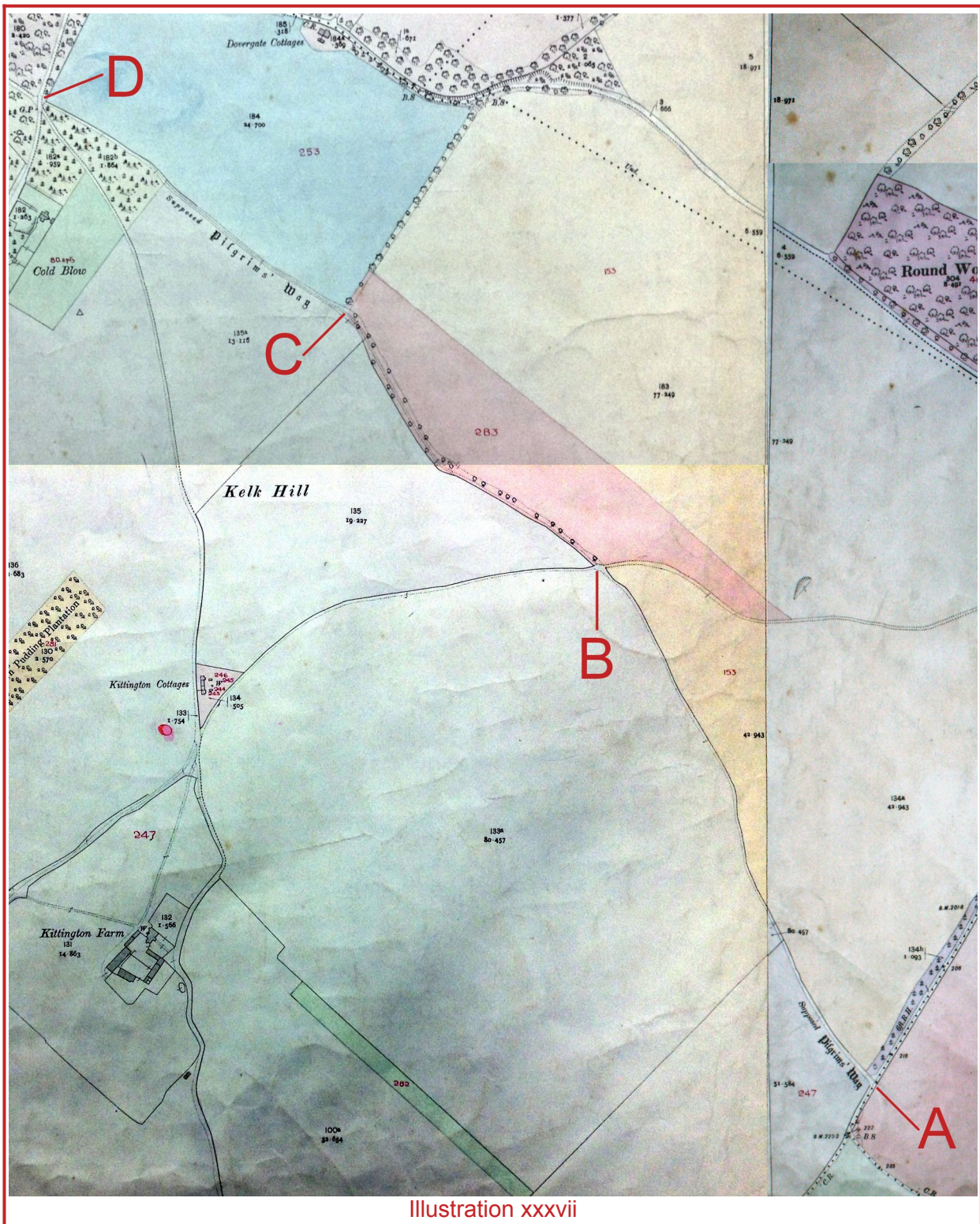
**Finance Act working plan sheet LVII/4 and LVIII/1**



87 IR 124/5/57 and IR 124/5/59 (Ordnance Survey map sheets LVII/4 and LVIII/1) and IR 58/17323



**Finance Act record plan sheets LVII/4 and LVIII/1**



Q.3. **Description:** original scale: 1:2,500; orientation: unchanged (top is north).

Q.4. The appeal way falls across two Ordnance Survey County Series plans for Kent, sheets LVII/4 and LVIII/1. Copies of both record and working plans are available.



Q.5. Working plan: Working plans LVII/4 and LVIII/1 have been provided courtesy of KCC. In contrast to what is shown on the record plan (see below), the working plan shows some lengths of road to be excluded from hereditaments, although the practice is inconsistent. For example, Kelk Hill (the road from Cold Blow Corner at D, south-southeast to Kittington Farm and Elvington) is not excluded at all, whereas Mill Top (the road from Cold Blow Corner south-southwest to Barfreestone) is excluded.

Q.6. In relation to the appeal way, only that part of it on plan LVIII/1 is unambiguously excluded.

Q.7. Record plans: On record plan LVII/4, individual hereditaments are distinguished only by the use of different colour washes, and boundaries are not otherwise marked. Colour and paper fade, and possibly careless completion of the map, makes it difficult to distinguish colour wash from uncoloured roads. For example, Thornton Road (shown at the top of Illustration xxxvii) is plainly shown excluded, but Kelk Hill is coloured in the same green wash as the hereditament through which it passes.

Q.8. The appeal way is entirely coloured in the same wash as the hereditament through which it passes.

Q.9. Deductions: No deductions are made for rights of way in relation to hereditaments 247 and 283.<sup>88</sup>

Q.10. Hereditament 29, comprising around 25 hectares of mainly open St Alban's Downs through which the appeal way passes immediately east-southeast of D, attracted a deduction of £50 from total value on account of public rights of way. The deduction was likely to be attributable at least in part to paths and tracks across the downs, including what are today recorded as footpaths EE309 and EE310.

Q.11. **Analysis**: 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.

Q.12. That 'white roads' are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In *Fortune v Wiltshire Council*, HHJ McCahill QC said that<sup>89</sup>:  
the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. ...the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910.

On appeal, Lewison LJ upheld the judgment at first instance, observing<sup>90</sup>:

88 Valuation book for Nonington, Womenswold IR 4/114

89 At [753] and [770]

90 At [71]

The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway.

- In [\*Robinson Webster \(Holdings\) Ltd v Agombar\*](#), Etherton J said<sup>91</sup>:  
The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. ... The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.
- In [\*Commission for New Towns v JJ Gallagher Ltd\*](#), Neuberger J found that<sup>92</sup>:  
The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. ... Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].
- In [\*R \(on the application of Ridley\) v Secretary of State for the Environment, Food and Rural Affairs\*](#), Walker J said that<sup>93</sup>:  
The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.

Q.13. 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...'.<sup>94</sup>

Q.14. 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. Whether a discount was, in fact, given will depend on several factors:

- Whether the right of way was excluded from valuation (i.e. as a 'white road').
- Whether the landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).
- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase

91 At [47]

92 At [106]

93 At [65]

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

in value arising from development were minimised. However, as the 1910 Act also provided for other levies, the calculations in a particular case might be for or against a discount from the total value of the land).

- Whether the landowner declared the right of way on form 4 or form 7 (a failure to declare might be an oversight).
- Whether the valuer accepted the claim for a discount for a right of way.
- Even if the landowner did not declare the right of way, the valuer could give a discount for a right of way which was 'known to' the valuer.

Q.15. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

Q.16. **Criticism:** KCC states that<sup>95</sup>:

| The most that can be said of this source, therefore, is that it is neutral... .

Q.17. In our view, the evidence is modestly supportive owing to the excluded section of road shown on the sheet LVIII/1 working plan or, at worst, simply neutral. That the evidence has little to support the claimed status is regrettable, but that is not because of any inherent doubt on the part of the Inland Revenue valuer, but because the valuer adopted (from this particular perspective) an inconsistent practice of dealing with public roads.

Q.18. The objector reportedly states that<sup>96</sup>:

| ...the Applicant has not adduced...copies of the Finance Act 1910 maps (which is not supportive of the application).

The Finance Act evidence was not included in the application because it was considered to be neutral and therefore of no assistance. However, a review of the evidence, and inclusion of the working plans, suggests that this source provides some support for the appeal.

Q.19. **Conclusion:** The appeal way is shown inconclusively on record and working plans. While these sources provides little evidence to support the appeal way's status, neither does it provide evidence to the contrary. The practice in this area appears to be variable, and roads of impeccable public status (then and now) are show variably as excluded, not excluded but uncoloured, or coloured.

Q.20. However, the appearance of the south-eastern end of the appeal way, on working plan LVIII/1, as excluded, suggests that the absence of exclusion on neighbouring plan LVII/4 is a matter of the valuer or office staff local practice than any intention to distinguish public from private roads. It may be that different office staff were responsible for completing different plans, and the two plans are not directly comparable.

Q.21. That said, the exclusion of the appeal way on working plan LVIII/1 does provide some support for its status as a public road, which it is suggested its appearance on working plan LVII/4 does nothing to rebut, because the practice on these sheet was inconsistent, as it was on the record plans.

Q.22. **Points:** 1

95 KCC report on application C399 dated 5 February 2024, appendix B, para.111

96 *Ibid*, para.97

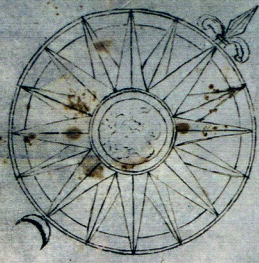


## Annexes

Annexe A: St Alban's map (Gordon Ward collection)

(see item III.A above)





Station Road

Cherrygarden Lane

Chillenden

EE279

Sandwich Road

Grannies Lane

Mill Top

Kelk Hill

D Appeal way

A Table of Allotments

The Mayor and Town of Allotment

1	The two B... ..
2	The M... ..
3	The P... ..
4	The B... ..
5	The B... ..
6	And... ..

Three new B... ..

1	The Lib... ..
2	The Great... ..
3	The New... ..
4	The great... ..
6	The... ..
7	The... ..
8	The... ..

Assigning to... ..

1	The clay... ..
2	The church
3	
4	All the... ..
5	eye in... ..
6	fields
7	

The... ..

A	Finners wood
B	
C	
D	
E	
F	
G	
H	
J	



## Annexe B: Poor Law Commissioners' survey

(extract from apportionment, pp.12–13: see item III.J above)



LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.				
					A.	R.	P.		
Kington Highways Surveyors of	Themselves	246	Gooseberry Hall Lane	..		3	14		
		289	Bridle road	..			29		
		592	Half Road from Uffington Corner to South Park Corner	..		3	31		
		593	Road at Aylsham Corner	..			9		
		594	Road from Aylsham Wood to Goodnestone Park Corner	..	2	3	9		
		595	Road from South Park Corner, thro' Kelling Street, to upper Goodnestone Corner	..	2	1	26		
		596	From Kelling to Wingham road	..		3	6		
		597	Road from Kelling Street thro' Old Street and Frogham to Broadsole Corner	..	3	3	29		
		598	Road from Ackholt Down to Snow Down Road	..	1		14		
		599	Road from Snow Down thro' Old Street and Casole to Knowlton Corner	..	6	1	6		
		600	Road from the Oak thro' Church Street to the Old Court Hill	..	1	2	5		
		601	Road from Butter Street to Church Street	..		2	17		
		602	Road from Church Street to Beauchamps Lane	..	1	1	3		
		603	From Beauchamps Lane to Tenner's Wood Corner	..	1		3		
		604	Road from Ruckeries thro' Frogham Lane to Sales Down Corner	..	1	1	37		
		605	Road from Ruckery Butts to Long Lane Farm	..		2	32		
		606	Road from West Court to Barpostone Cross	..	1	1	13		
		607	Road from Barpostone Cross to Shurway Gate	..		1	22		
		608	Road from Frogham to Shurway Gate	..		2	39		
		609	Road from Shepherd's Park Gate, past Old Blue Knowlton Corner Roads Hill	..	2	3	13		
		610	Road from Casole to Kington Mill	..		3	29		
		Carried forward					32		26

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.		
					A.	R.	P.
Kington Highways Surveyors of (Contd.)	Themselves (Continued)	Brought forward				32	26
		611	Road from Fildes Park Corner to Round Tree	..	1	1	6
		612	Road from Barpostone Corner to New Purchase Firs	..		3	17
		613	Road from Round Tree past Kington to Old Blue Corner	..	2		3
		614	Road from Gooseberry Hall Corner to New Purchase Firs	..	1	3	23
		615	Juncker near Gooseberry Hall Corner	..			19
		616	Road from Half way Plantation past Kington to Shingleton Mount	..	2	1	
		617	Road from Roads Hill along Knowlton Park to Bound Tree	..		1	19
		618	Road from Uffington Corner to Goodnestone Park Upper Corner	..		2	25
		Total					41