

Kittington restricted byway: document analysis

Application to upgrade to restricted byway a footpath from Shingleton Down to Fredville Park via Kittington

I. Introduction

A. Quick reference

- A.1. Existing rights of way comprised in upgrade: footpaths EE264, EE307A and EE307B
- A.2. Parishes of: Eastry, Tilmanstone, Nonington and Eythorne
- A.3. Former parishes of: Eastry, Tilmanstone, Nonington and Barfrestone
- A.4. Ordnance Survey termination points: TR28785220 to TR26405087
- A.5. Ordnance Survey Explorer sheet: 138 and 150
- A.6. Ordnance Survey County Series 25" sheets: Kent LVIII/1, LVII/4 and LVII/8
- A.7. Location plan (see application map at section II. below for scale representation):

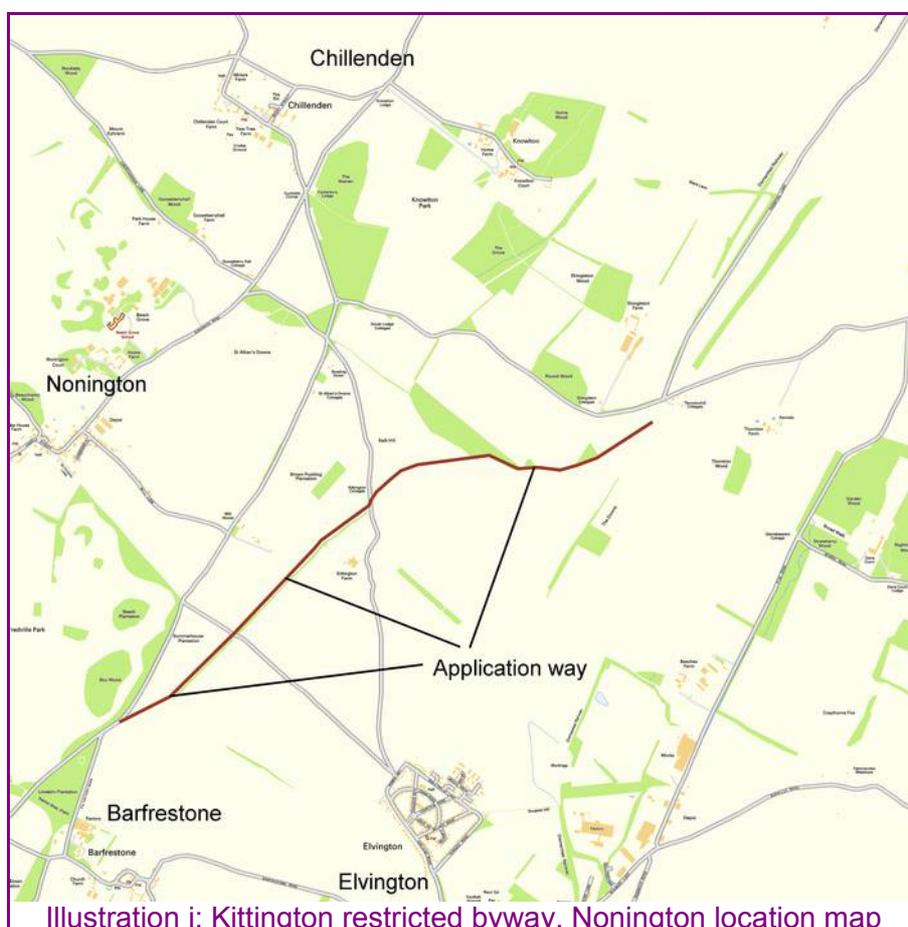


Illustration i: Kittington restricted byway, Nonington location map

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer district access and bridleway officer for the borough of Epsom and Ewell in Surrey, and am also authorised to make applications on behalf of the society in relation to East Kent. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way between the byway open to all traffic (BOAT EE335) along Shingleton Down near Thorntonhill Cottages in the parish of Eastry, via Kittington Cottages in the parish of Nonington, to a road on the east side of Fredville Park near Shereway Gate in the parish of Eythorne. The way is currently recorded as public footpaths EE264, EE307A and EE307B. The application seeks to record the way as a restricted byway.

C.2. The way lies in the parishes of Eastry, Nonington and Eythorne, and very briefly in the parish of Tilmanstone. The way formerly lay in the parishes of Eastry, Tilmanstone, Nonington and Barfrestone — part of the way, enclosed by the parish of Nonington, lay within a detached part of the hundred of Wingham, being the former borough of Kittington.

D. Application

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

D.2. The application seeks to upgrade to restricted byway the footpaths EE264, EE307A and EE307B in the parishes of Eastry, Tilmanstone, Nonington and Eythorne. The way commences on the byway open to all traffic (BOAT EE335) along Shingleton Down at A (Ordnance Survey grid reference TR28785220), approximately 120m south of the road junction with Thornton Lane at Thorntonhill Cottages, proceeding southwest across an arable field and along the south side of a copse for 400m to a junction with an enclosed track (footpath EE263) at B (TR28435201). The way continues sinuously but generally west along an enclosed track for 480m to a crossroads with a footpath (footpath EE323)¹ below Kelk Hill at C (TR27985205). The way then continues west-southwest, turning southwest, for 520m to pass behind Kittington cottages and join the road known as Kelk Hill, immediately south of the cottages, at D1 (TR27525185). Then resuming almost directly opposite at D2 (TR27525183), continuing southwest along an enclosed track for 830m to a junction with the minor road near the former Tye Wood at E (TR26915125), then resuming almost directly opposite and in the same direction, continuing for 410m to the parish boundary between Nonington and Eythorne at F (TR26625096), then turning west-southwest across an arable field for 245m to terminate on the road from Chillenden to Barfrestone opposite Fredville Park at G (TR26405087), approximately 110m northeast of the junction of that road with Pie Factory Road at Shereway Gate. A total distance of 2,885m.

¹ An application has also been made to record this footpath as a restricted byway.

D.3. The points A to G are identified in the application map at section II. below.

E. Background

E.1. Historically, the application way is a field road (*i.e.* an unenclosed road across fields) between Thorntonhill and the villages of Frogham and Barfrestone, as part of a longer route between Eastry and those villages. It is shown as unenclosed on early historic maps and the tithe map for Nonington. The way between Thorntonhill and Kittington (B to D) was partially enclosed, on one side or the other, in the early twentieth century, and fully enclosed during the post-war period.. However, the way between A and B (now a cross-field path) was a well-defined physical feature lined with substantial trees until well into the post-war period. The way between Kittington and Fredville (D to G) is shown as enclosed immediately south of D on the earliest Ordnance Survey County Series 1:2,500 map (item IV.S. below). The way beyond as far as the parish boundary at F has been enclosed either on the west or east side at various times, but is now fully enclosed. Beyond F to G, the way has always been a cross field route, and remains so.

E.2. Field roads were commonplace in Kent. On the Tithe Act 1836 map (item IV.L. below), the application way is shown as a field 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 field roads have now been enclosed (such as the road from Cold Blow Corner to Kittington), but others remain unhedged and unfenced today.

F. Grounds for application

F.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*², 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."

F.2. Early historic maps (items IV.C. to IV.G. below, and item IV.I.) and the tithe map for Nonington (item IV.L. below) show the application way as a road, although there is some uncertainty in such maps whether a particular road is a bridle road or a carriage road. However, the plans for the Ramsgate Sandwich Deal and Dover Railway (item IV.O. below) and the Walmer, Deal and Adisham Railway (item IV.R. below) make clear that the application way was regarded as a public carriage road, under the control of the parochial surveyor of highways. It is only, finally, in the early twentieth century, in the plans for the

2 [2012] EWCA Civ 334: www.bailii.org/ew/cases/EWCA/Civ/2012/334.html.

East Kent mineral light railway (item IV.T. below), that the application way is recorded as having no greater status than public bridleway, and of course, the way was recorded on the definitive map and statement as a footpath. However, it is submitted that, taking account of the evidence as a whole, the plans for the East Kent mineral light railway were prepared at a time when use of the way by vehicles had declined, and historic evidence of the status of the application way had ceased to be topical.

F.3. While no single piece of evidence is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see below), there were full carriageway rights.

G. Natural Environment and Rural Communities Act 2006

G.1. The application seeks to show that the application way is a public carriageway. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980, and the applicant does not suggest that any other exception in section 67 applies. The application is therefore made for a restricted byway.

H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application 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, where relevant, 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*³:

H.2. Total points:

	Points
A to D	35
D to G	18

H.3. Some early historical maps show a slightly different route at either end of the application way, for which no allowance has been made in the total above, and are inconclusive as to whether the way shown is a carriage road or bridleway. And item IV.T. below provides evidence (scoring five points) only of the existence of a bridleway between A and D.

I. Width of application way

I.1. The only evidence of the width of the application way is found in the first edition of the Ordnance Survey County Series 1:2,500 map⁴, which identifies the application way as several distinct parcels.

³ Sarah Bucks and Phil Wadey, 2012.

⁴ Kent LVII/4 and LVIII/1, published 1873.

Parish	Parcel	Area (acres)	Length (m)	Calculated width (m)	Applied-for width (m)
Eastry (in common with part of BOAT EE335) (A–short of B)	328	0.373	125	n/a†	3.5
Tilmanstone (within A–B)	1a	0.011	25	1.8‡	3.5
Nonington (short of B to C)	121	0.637	725	3.6	3.6
Borough of Kittington, part of Wingham (detached) as far as Kelk Hill (C–D1)	5	0.445	525	3.4	3.4
Borough of Kittington, part of Wingham (detached) from Kelk Hill (D2–short of E)	9	1.147	455m 380 (½)	8.6¶ 3.8¶	8.6 3.8
Nonington (beyond D2–E)	92	0.180	380 (½)	3.8	3.8
Nonington (E–F)	199	0.843	405	8.4	8.4
Barfrestone (F–G)	4	0.171	255	2.7	2.7

† the width cannot be calculated for this section as the parcel includes part of BOAT EE335

‡ unreliable owing to short length of way

¶ this value is derived from the value calculated for the next section of the way: an area of $380 \times 3.8 \times \frac{1}{2} = 722\text{sqm}$ is deducted from the area of this section of the way to derive the area for the section of the way of length 455m wholly within the borough of Kittington.

I.2. On sheet LVIII/1, in the parish of Eastry, the application way between A and the parish boundary with Tilmanstone is shown as part of a single parcel with BOAT EE335. It is not therefore possible to identify the width of the application way in isolation. The width applied for is therefore consistent with the subsequent width of the way.

I.3. Also on sheet LVIII/1, in the parish of Tilmanstone, the application way is of such brief length that the distance attributable to it in that parish cannot be accurately determined, and the width derived. The width applied for is therefore consistent with the subsequent width of the way.

I.4. Also on sheet LVIII/1 and LVII/4, in the parish of Nonington, from the parish boundary with Tilmanstone to C, the width of the way is derived to be 3.6m.

I.5. On sheet LVII/4, in the borough of Kittington, part of the parish of Wingham (detached), between C and D1, the width of the way is derived to be 3.4m.

I.6. Also on sheet LVII/4, in the vicinity of D2, the whole of the opening of the application way into Kelk Hill appears to be part of the highway.

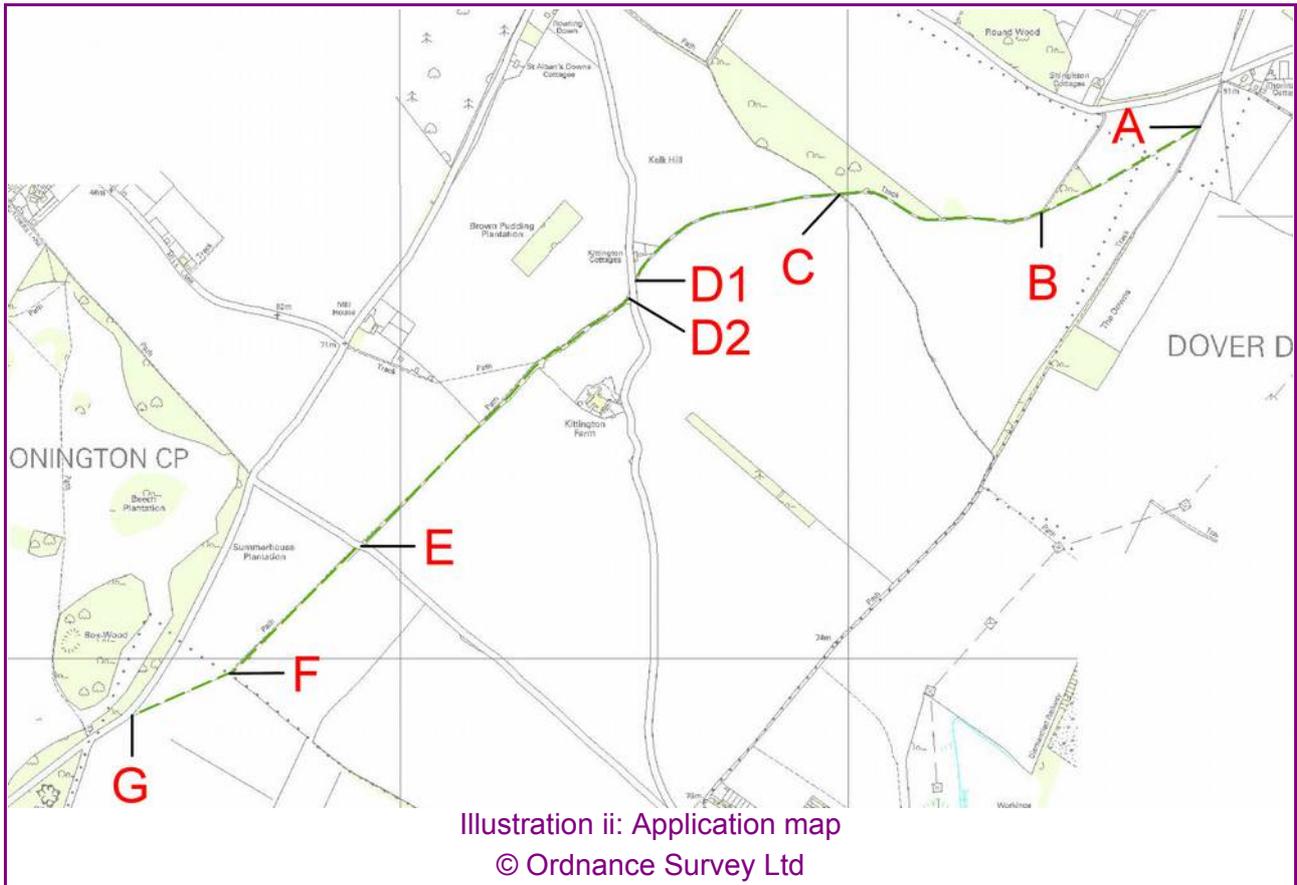
I.7. Also on sheet LVII/4, in the borough of Kittington, between D2 and E, the way is recorded in two separate parcels: between D2 and the boundary of the borough of Kittington, and also half of the way from the boundary of the borough to E (the boundary following the centre of the road). If the width of the second section of the way, which lies

half in the borough of Kittington, and half in the parish of Nonington, is taken to be twice the width derived from the area of this section in the parish of Nonington (3.8m), the area of the half of the way in the borough of Kittington may be derived (722sqm) and deducted from the given area of the parcel as a whole, to calculate the width of the first section of the way wholly within the borough of Kittington, viz, 8.6m. The greater width of this section may be explained by the enclosed character of the way, which may have been enclosed at some time in the past to allow sufficient space to compensate for the former right of users to divert onto surrounding land when the way became impassable.

I.8. Partly on sheet LVII/4 but mainly on sheet LVII/8, in the parish of Nonington, between E and F, the width of the way is derived to be 8.4m. This parcel includes brushwood outside the extent of the defined carriageway: it is not clear from the map whether this part of the parcel is roadside waste, but as the whole of the parcel is excluded from the parcels identified in the tithe map, it appears proper to include the whole width.

I.9. On sheet LVII/8, in the (then) parish of Barfrestone, the width of the way is derived to be 2.7m, being a cross-field road.

II. Application map



Map centred on D1/D2 at TR275518

Scale: approx. 1:16,000 (when printed A4)

Application way is marked 



275m

III. Along the way (1)



Illustration iii: From Shereway Gate (G), view NE



Illustration iv: From the parish boundary (F), view NE



Illustration vii: Between E and F, view NE



Illustration v: The Tye Wood road at E, view NE



Illustration viii: Between D and E, looking NE



Illustration vi: Between D and E; view NE

Along the way (2)



Illustration ix: North of Kittington Cottages (D), view NE



Illustration x: Near C, view W



Illustration xi: East of C, view W



Illustration xii: Near B, view W

IV. Evidence

Contents

A.1454 Lease.....	10
B.Boys settlement.....	11
C.Ordnance Survey surveyor's drawing, Canterbury (East).....	13
D.Barlow-Hasted map of Kent.....	15
E.Ordnance Survey, Mudge-Faden one-inch map of Kent.....	17
F.Ordnance Survey, Old Series one-inch map of Kent.....	19
G.Paterson's Roads — Thanet and Kent and Sussex Coast.....	20
H.Beating the bounds: Eastry.....	22
I.Greenwood's map of Kent.....	23
J.Upper Venson estate plan.....	24
K.Contractd map of principal roads in Eastry.....	27
L.Tithe Act 1836.....	28
M.Inclosure Act 1845, order of exchange.....	32
N.Poor Law Commissioners' survey.....	33
O.Ramsgate Sandwich Deal and Dover Railway.....	35
P.Ordnance Survey boundary records.....	38
Q.The National Gazetteer of Great Britain and Ireland.....	41
R.Walmer, Deal and Adisham Railway.....	42
S.Ordnance Survey County Series first edition twenty-five inch maps.....	48
T.East Kent mineral light railway.....	53

A. 1454 Lease

A.1. **Date:** 1454

A.2. **Source:** *Topographer and Genealogist*⁵

A.3. **Description:** The book includes the following text:

"Mem. I fownd in an owld written booke of Mr. John Parker, the Archb. Sonne, yet the Archb. Did recovr dyvrs lands in Kettington wch wear after conveyed to Tho. Aldwyn, the noat whereof doth follow verbatim [Fol.31.]

Verbatim text	Translation
Terre quondam Johannis de Kettington	Land formerly of John de Kettington.
Terr que nup fuere Johannis Kethampton ibidem p dn'm Thomam Cardin Cantuaf Archiep* e p breve de cessavit recuperat anno, &c. et post modum concess fuerunt Thome Aldweyn.	Land recovered from Johannis Kethampton by Thomas, Cardinal Arch. Of Cant +., before the end of the year and given to Thomas Aldweyn++.
...	...
Item ibidem lxvij acr. xvi ptic terr jacen in longitudine inter terr Barham V east et comunem viam a Kettington ad le Ty V	In the same place 68 acres 16 perches lying between the land of Barham to the east and the common way from Kettington to Le Tye

5 Edited by John Gough Nichols, vol. II, 1853, p.178: [online](#).

west.	[Wood] to the west.
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+ Cardinal Bouchier, Archbishop 1454–86.

++ Mr. Holywood here makes a mark of reference to the abstract of the deed of lease which next follows."

A.4. **Conclusion:** Although the lands described in the lease are now difficult to place, it seems likely that land lying to the east of the 'common way from Kittington to Le Tye to the west' is likely to refer to land bounded, on the west, by the application way, the way being the most direct route between Kittington and Tye Wood.

A.5. **Points:**

	Points
A to D	0
D to G	1

B. Boys settlement

B.1. **Date:** 1626

B.2. **Source:** Kent County Archives⁶

6 EK/U373/T61

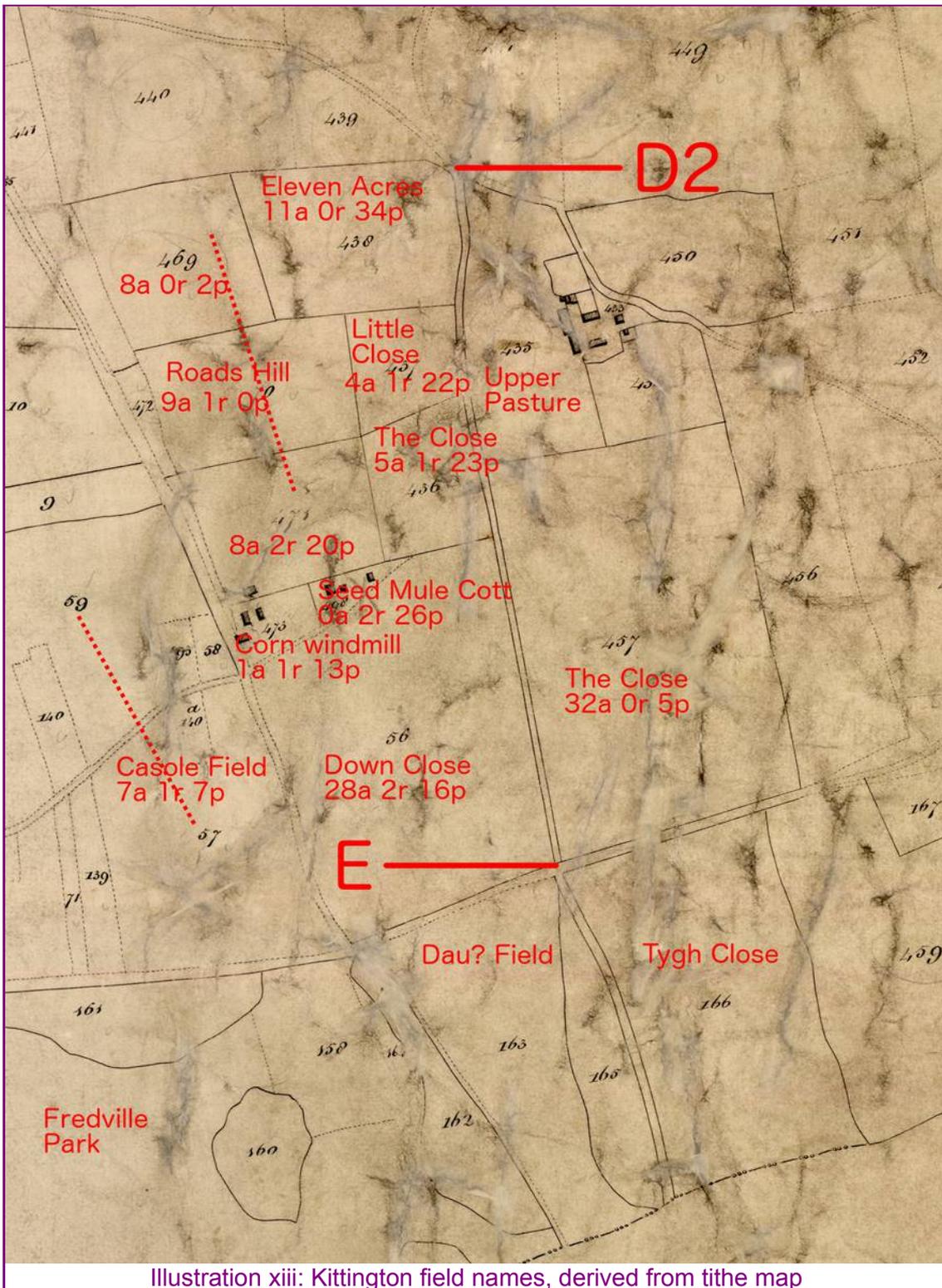


Illustration xiii: Kittington field names, derived from tithe map

B.3. **Description:** A 1667 copy of a marriage settlement of 3 April in the second year of Charles I. (1626) between: Sir Edward Boys the Elder of ffredvile, Sir Edward Boys the Younger of ffredvile, son and heir apparent to the above, Nicholas Miller of Wrotham (the third party), and John Boys, Esq., eldest son and heir of Sir Ed. Boys the Younger of ffredvile (the fourth party). The marriage was between John Boys and Margaret, daughter of John Miller and is regarding the settlement of property on John Boys.

B.4. The settlement refers, *inter alia*, to the following land:

"The messuage or tenement called Kettington also Kethampton the fferme house barnes orchards gardens curtilages two acres and two roods occ. Ralphe Adams.

...

All of the arable land called Roodes Hill abuttg upon the lands of Ladie Hamond to the West and Knowlton Fld to the North. Twentie five acres.

All that little close of arable land called Creakes Close abuttg the Kings Highway to the East to the lands of Nicholas Creake to the West and other lands of Sir Ed. Boys the Elder to the North and South. Three and a half acres and one rood.

All that close of arable land abuttg upon the King hwy to the East to a certain close of Sir Ed. Boys the Elder commonly called Thirtie Acres or Kettington Bushes occ John Jordan to the South lands of Nich Creake to the West and Creakes Close to the North. Six acres three roods.

All that close of arable land called the Thirtie Acres or Kettington Bushes occ. John Jordan abuttg the Kings hwy to the East to a certaine parc of land of the sd Sir Ed Boys the Eld called the Millner Downe towards the South to the lands of the sd Sir Ed Boys lieng or being in a certain fld called Yeresole fld towards the West and to the land in the tenure of Nich Creake and Ralph Adams towards the North. Thirtie acres.

All that pce of land there called the Millner Downe with a wind mill thereupon late in the tenure or occ of John Jordan and his assigns contg by est nyne and twentie acres and twoe roods more or less."

B.5. **Conclusion:** The land described as Millner Downe appears to correspond with the land shown on the tithe map as Down Close, being parcel 56 and containing the 'Corn wind mill' in the north-west corner, having an area on the tithe apportionment of 28 acres, 2 roods and 16 perches (but not including the land separately identified as the mill and as Seed Mule Cottages). If so, the 'close of arable land' known as Thirty Acres or Kettington Bushes occupies a position immediately north of Millner Downe, and is recorded as 'abutting the King's Highway' to the east. The application way forms the eastern boundary of both the land known as Millner Downe and the land to its north. The settlement therefore provides some historical support for the status of the application way as a historic public road.

B.6. **Points:**

	Points
A to D	0
D to G	1

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

C.1. **Date:** 1797

C.2. **Source:** British Library website⁷

⁷ www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html

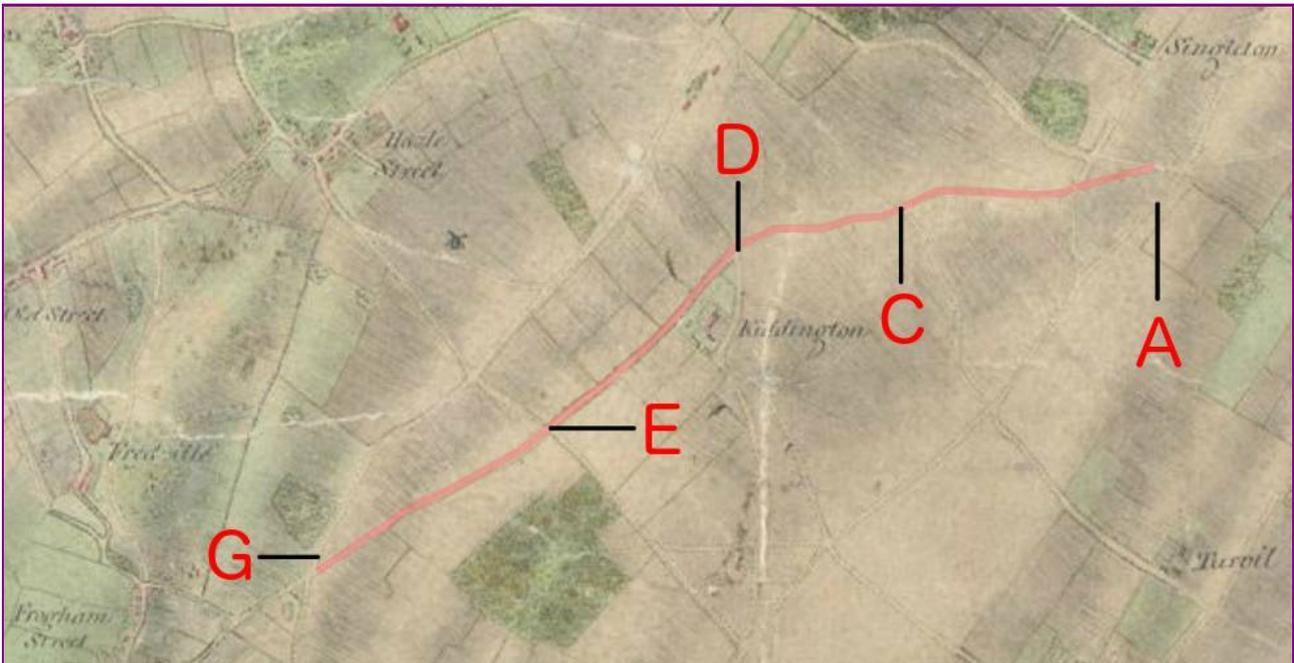


Illustration xiv: OS surveyor's drawing

C.3. **Description:** Original scale: believed to be 1:31,680 (two inches to one mile); orientation: unchanged (north). 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.⁸

C.4. The entire application way is shown on the map, although wear to the map makes the route between A and D harder to identify. The map shows the application way to commence from Thorntonhill Cottages, at the junction of Thornton Road with BOAT EE335 and Thornton Lane, and to establish an immediately separate course descending Shingleton down. The map may also show a slight disparity in the termination point at G, although this may not be significant.

C.5. **Conclusion:** The Ordnance Survey drawings provide good evidence of the existence of the application way in its entirety at the end of the eighteenth century. In common with the later Ordnance Survey, Mudge-Faden one-inch map of Kent at item IV.E. below and the Ordnance Survey, Old Series one-inch map of Kent at item IV.F. below, both of which are derived from the drawing, the map shows a different origin of the application way on Thornton Road, some distance north of A, establishing a more direct descent of Shingleton

⁸ From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

down towards B, and avoiding any common use of BOAT EE335 between Thornton Road and A.

C.6. Points:

	Points
A to D	1†
D to G	1†

† subject to uncertainty about the alignment near A and near G

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

D. Barlow-Hasted map of Kent

D.1. **Date:** 1797–1801

D.2. **Source:** reproduced from www.ancestry.com⁹ and The Old Map Shop¹⁰: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

9 Indexed at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm; map at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/barlow-Hasted_eastry_1800.html and freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/barlow-hasted_wingham_1800.html .

10 www.theoldmapshop.com .

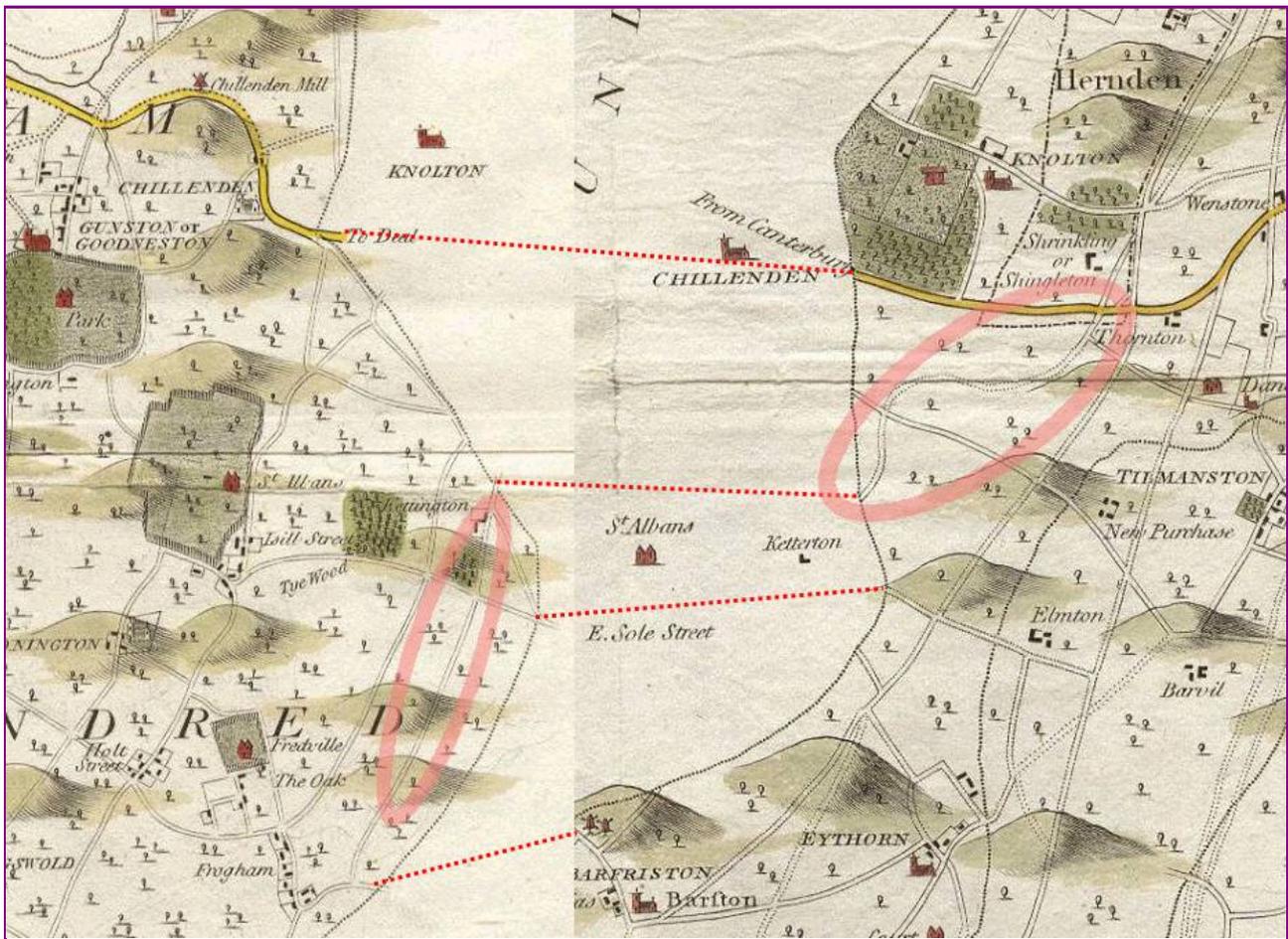


Illustration xv: Barlow-Hasted map

D.3. **Description:** Original scale: not known; orientation: unchanged (north); the map is composite showing extracts (right) from the hundred of Eastry, and (left) from the hundred of Wingham. The Barlow-Hasted map shows the application way between Thornton Road northwest of A and the boundary of the hundred of Eastry short of D, depicted by double close-dotted lines, suggesting an unenclosed field road. The continuation of the application way within the hundred of Wingham is not entirely certain, owing to the intervening hundred boundary, but seems likely to be represented by the double close-dotted lines from north of the settlement labelled 'Kettington'¹¹, continuing south-southwest parallel to the hundred boundary towards the southern end of Frogham. The map shows the way continuing in the same direction south of F, and does not show a turn to the southwest towards Fredville Park and the terminus of the application way at G.

D.4. The Barlow-Hasted map shows the application way to commence from a point on Thornton Road west of the junction of BOAT EE335 with that road, and to have a separate course parallel to, but below, the BOAT: the map also shows a continuation of the application way north of Thornton Road, through the grounds of Shingleton Farm, joining Thornton Lane some distance north of Thornton Road.

D.5. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route, but with some uncertainty about the way at either end. The map was widely commercially published, and would tend to show through routes which were public highways, whereas certain minor routes of questionable public status (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are

¹¹ On the map of the hundred of Eastry, the settlement is labelled 'Ketterton'.

shown with bars across the junction with public ways. The representation on the Barlow-Hasted map is consistent with a status of bridleway or carriageway.

D.6. The Barlow-Hasted map shows a different origin of the application way on Thornton Road, some distance northwest of A, and to occupy an initial course which may be similar to or coincidental with the alignment of footpath EE263 today. However, the precise alignment is uncertain, not being consistent with other nearly contemporary historic maps. It is possible that, as now, those heading northeast along the application way were able opt for a lower, more westerly alignment in order to reach Shingleton Farm without unnecessarily ascending Shingleton down — much as footpath EE263 allows today.

D.7. The Barlow-Hasted also shows a different termination of the application way near Frogham, suggesting a route which continues more nearly south to the village, instead of turning more to the southwest to join the minor road near Shereway Gate at G.

D.8. **Points:**

	Points
A to D	1†
D to G	1†

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

† subject to uncertainty about the alignment near A and G

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

E.1. **Date:** 1801

E.2. **Source:** Kent County Archives¹²

12 Available online at: mapco.net/kent1801/kent31_02.htm and mapco.net/kent1801/kent31_03.htm.

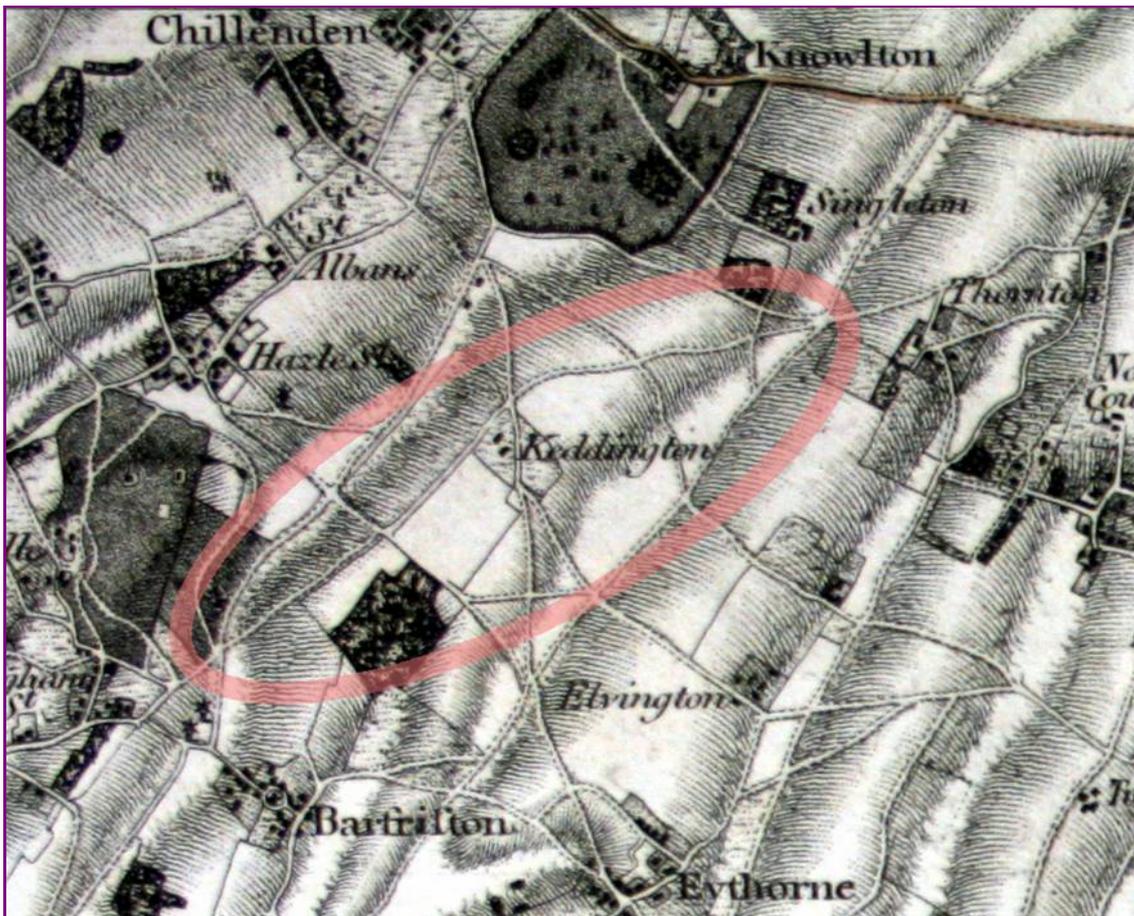


Illustration xvi: Mudge-Faden one inch map

E.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). 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. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

E.4. The Mudge-Faden map shows the entire application way. It shows the application way between Thornton Road north of A and Kittington (marked 'Keddington') at D, depicted by double pecked lines (but possibly continuous at least in part on the north side), suggestive of a way which is unenclosed or enclosed on the south side only. The Mudge-Faden map shows the application way to commence from Thorntonhill Cottages, at the junction of Thornton Road with BOAT EE335 and Thornton Lane, and to establish an immediately separate course descending Shingleton down.

E.5. The application way is shown between D and E as an enclosed way (although the southeastern boundary is marked close to the boundary of an adjacent enclosure), and between E and G as an unenclosed way.

E.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 application way is a public highway, but its depiction is consistent with a public highway.

E.7. The Mudge-Faden map shows a different origin of the application way on Thornton Road, some distance north of A, establishing a more direct descent of Shingleton down towards B, and avoiding any common use of BOAT EE335 between Thornton Road and A. In contrast to the Barlow-Hasted map, a separate cross-track is shown between Thornton Road opposite the drive to Shingleton Farm, across the application way, joining BOAT EE335 on Shingleton down: this would have provided a lower level route to reach Shingleton Farm.

E.8. **Points:**

	Points
A to D	1†
D to G	1

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

† subject to uncertainty about the alignment near A

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

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

F.2. **Source:** National Library of Australia¹³



Illustration xvii: OS 1st ed 1" map

F.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This is the Old Series one inch map first published officially by the Ordnance

¹³ <http://nla.gov.au/nla.obj-231917365>

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 consistent with the Mudge-Faden map.

F.4. The Ordnance Survey Old Series map shows the entire application way. Between Thornton Road north of A and Kittington (marked 'Kiddington') at D, the way is depicted by double pecked lines suggestive of a way which is an unenclosed field road. Between Kittington at D and E, the way is generally shown as enclosed on both sides. Between E and a point southwest of F, the way is shown as enclosed only on the southeast side (this represents a distinct modification in the engraving compared with the Mudge-Faden map at item E. above). And between that point southwest of F, and G, the way is shown by double pecked lines, again suggestive of a way which is an unenclosed field road.

F.5. The map shows the application way to commence from Thorntonhill Cottages, at the junction of Thornton Road with BOAT EE335 and Thornton Lane, and to establish an immediately separate course descending Shingleton down.

F.6. **Conclusion:** The Ordnance Survey Old Series map shows a different origin of the application way on Thornton Road, some distance north of A, establishing a more direct descent of Shingleton down towards B, and avoiding any common use of BOAT EE335 between Thornton Road and A. In contrast to the Barlow-Hasted map, a separate cross-track is shown between Thornton Road opposite the drive to Shingleton Farm, across the application way, joining BOAT EE335 on Shingleton down: this would have provided a lower level route to reach Shingleton Farm. It is not clear whether the detail in the vicinity of the application way between A and B is suggestive of a former slightly different route, or whether it is no more than mapping error.

F.7. Leaving aside the uncertainty between A and B, the Ordnance Survey Old Series map is good evidence of the existence of the application 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.

F.8. **Points:**

	Points
A to D	0
D to G	0

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

G. Paterson's Roads — Thanet and Kent and Sussex Coast

G.1. **Date:** 1811

G.2. **Source:** British Library¹⁴

14 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg .

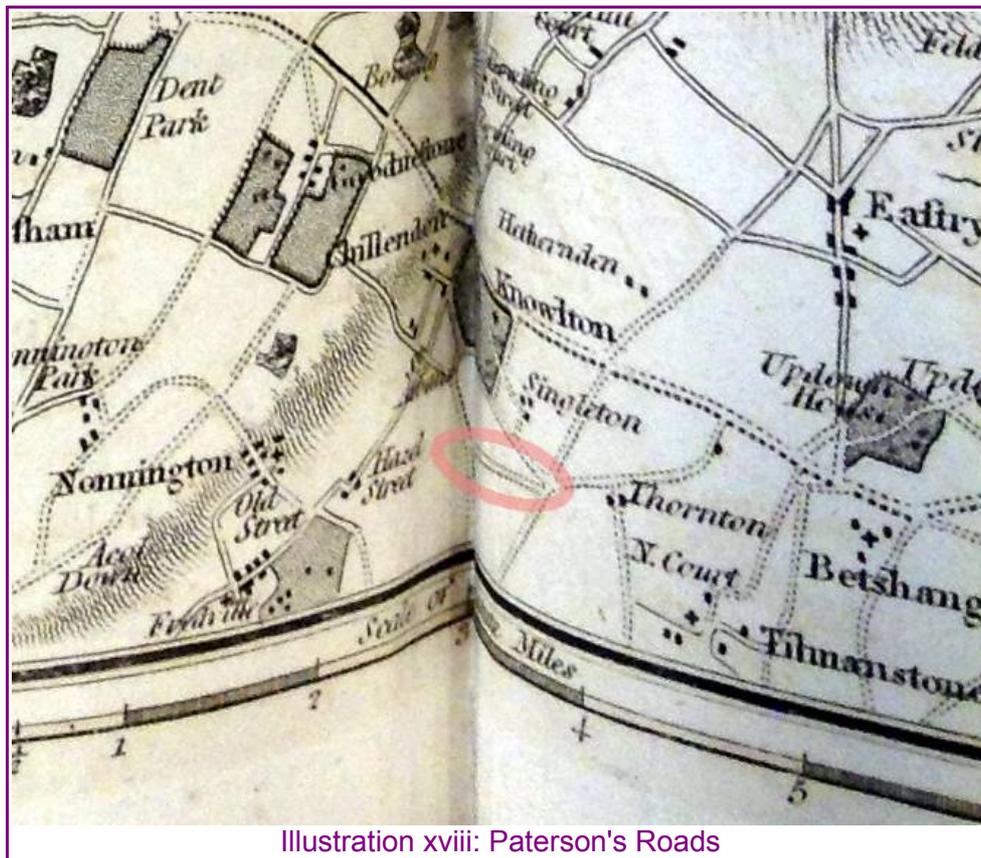


Illustration xviii: Paterson's Roads

G.3. **Description:** Original scale: not known, but scale marked in miles; orientation: unchanged (north). This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent map (item IV.E. above): however, the map has been revised to show the Dover to Sandwich turnpike (*i.e.* via Hacklinge), which was authorised in 1797.

G.4. The Thomson map shows the application way between Thornton Road north of A and D, depicted by double pecked lines, suggestive of an unenclosed field road. The way is not shown beyond D. The Thomson map shows the application way to commence from Thorntonhill Cottages, at the junction of Thornton Road with BOAT EE335 and Thornton Lane, and to establish an immediately separate course descending Singleton down. The detail appears close to the binding of the map, which distorts the directional appearance of the application way.

G.5. **Conclusion:** The Thomson map appears to be derived from the Mudge-Faden map, but has been revised so as to include the Dover to Sandwich turnpike, suggestive that the representation of at least principal roads was researched and updated. The Thomson map appears to focus on key roads available to the public, and although probably based on the Mudge-Faden map, to have been revised, and the Thomson map is therefore good evidence for the existence of a defined way, at least of bridleway status, along the application way.

G.6. **Points:**

	Points
A to D	1
D to G	0

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

H. Beating the bounds: Eastry

H.1. **Date:** 1814 and 1897

H.2. **Source:** Eastry parish council website¹⁵

H.3. **Description:** The parish council website publishes accounts of beating the bounds in 1814 and 1897. The latter is taken from the minute books of the Eastry parish council. The former is "Marked on the back 'Draft of Perambulation of Eastry Parish Boundary for perusal of William Boteler Esq. one of the oldest inhabitants. 1st. June 1814.' The original was among the papers of Wm. Boteler (1745–1818) kindly loaned to me by Mrs. Ethel Irby, née Boteler, formerly of Brook House, Eastry. J.B."

H.4. The record of the perambulation of 1814 notes the attendance of 14 inhabitants of Eastry, including William Boteler, the historian (and the key researcher behind Edward Hasted's *The History and Topographical Survey of the County of Kent* as regards East Kent). Conducting the perambulation in a clockwise rotation, the report refers to a:

"yew tree in a hedge separating Thornton Farm from New Purchase Farm.¹⁶

Turning in westwardly direction, following the line of path but little used, over some down land belonging to the said G.H.De Ath, being part of Shingleton Farm. Crossing a by-road that leads from Eastry to Shepherdsweil [*BOAT EE335*], proceed over a shotte head crossing another by-road leading from Eastry to Fredville. Leaving the road leading from Deal to Canterbury on the right, to a stump by the side of the said road leading from Deal to Canterbury, about 6 rods from the corner fence of the said field."

H.5. The later record describes a clockwise perambulation of the parish boundary led by the chairman of the council, members of the council, 'and six boys' in 1897:

"Turning from the Cottages to the left to the Yew Tree which has marked the boundary through many generations, and apparently will do so for generations yet to come, some thought it was desirable to place a stone at this spot, but others were of opinion that the old tree would not die yet and there would be some difficult, in deciding the exact spot the stone should occupy. In accordance with Ancient Custom the Old Hundredth Psalm was sung here. The 13th. stone (no 12th. is mentioned) is by the road leading to Kittington Farm and the 14th. at the top of Shingleton land in a shave on the left of the road and marked E.& N. The 15th. stone is across the road a little further ahead."

H.6. The 14th and 15th stones are adjacent to Thornton Road.

H.7. **Conclusion:** The 1814 perambulation refers to the application way as 'another by-road leading from Eastry to Fredville', distinguished from the nearby road from Eastry to Shepherdsweil (now *BOAT EE335*). The 1897 perambulation refers to the 'road leading to Kittington Farm'. The reference to the application way as a 'by-road' which leads between

¹⁵ www.eastrypc.co.uk/beatingthebounds.asp

¹⁶ The yew tree is believed to at the southernmost point in Eastry, approximately 100m south of A.

two villages is a strong indication of the perceived status of the way as a public carriageway at the time of the perambulation. The 1897 reference to the application way as a road leading to a farm is less persuasive of public status, but consistent with such status.

H.8. The 1814 perambulation has been retrieved from among the records of William Boteler. Boteler attended the perambulation, and is a noted local historian. It is likely to reflect local received wisdom about the status of the application way.

H.9. **Points:**

	Points
A to D	2
D to G	0

I. Greenwood's map of Kent

I.1. **Date:** 1819–20

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

Greenwood map



Illustration xix: Greenwood's map

Greenwood map key

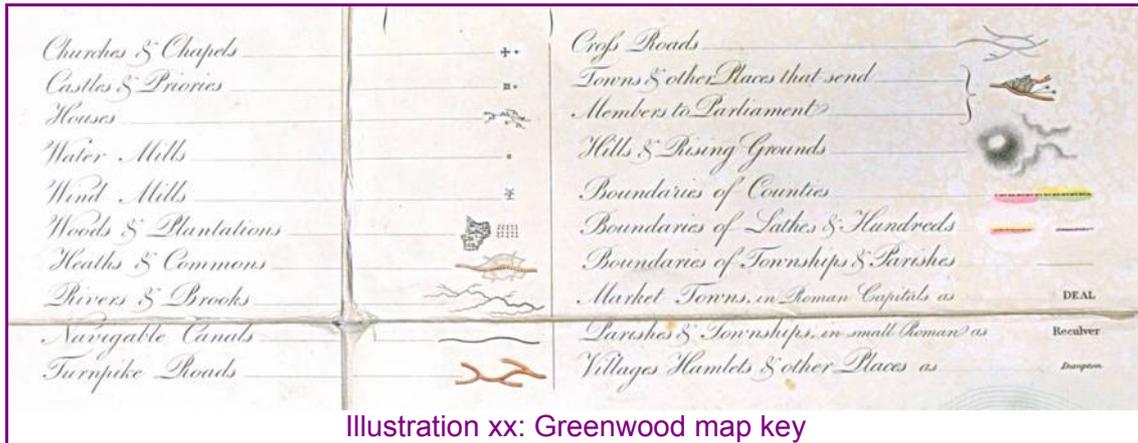


Illustration xx: Greenwood map key

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

I.4. Greenwood's map shows the entire application way. Between Thornton Road north of A and Kittington at D, the way is depicted by double pecked lines suggestive of a way which is an unenclosed field road. Between Kittington at D and E, the way is shown as enclosed on both sides. Between E and G, the way is again shown by double pecked lines, suggestive of a way which is an unenclosed field road. The way is described in the key as a 'cross road'.

I.5. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way between A and G. The key describes the route as a 'cross road', which is suggestive of a public carriageway.

I.6. In contrast to the earlier historic maps, the Greenwood map is the first to show the application way beginning on BOAT EE335 some distance south of Thortonhill Cottages on Thornton Road, as a point consistent with A. However, the precise alignments of the application way and BOAT EE335 in the vicinity of A are not fully consistent with present-day mapping.

I.7. **Points:**

	Points
A to D	0
D to G	0

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

J. Upper Venson estate plan

J.1. **Date:** 1821

J.2. **Source:** Kent County Archives¹⁷

17 U229/P6

Location plan

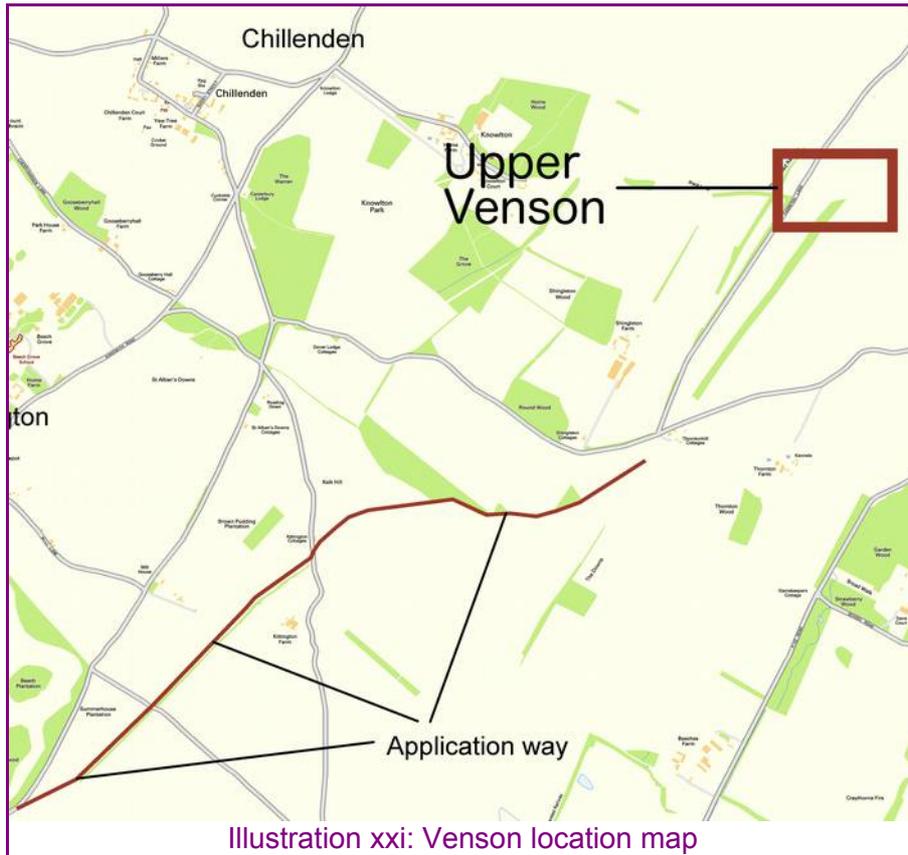


Illustration xxi: Venson location map

Estate plan

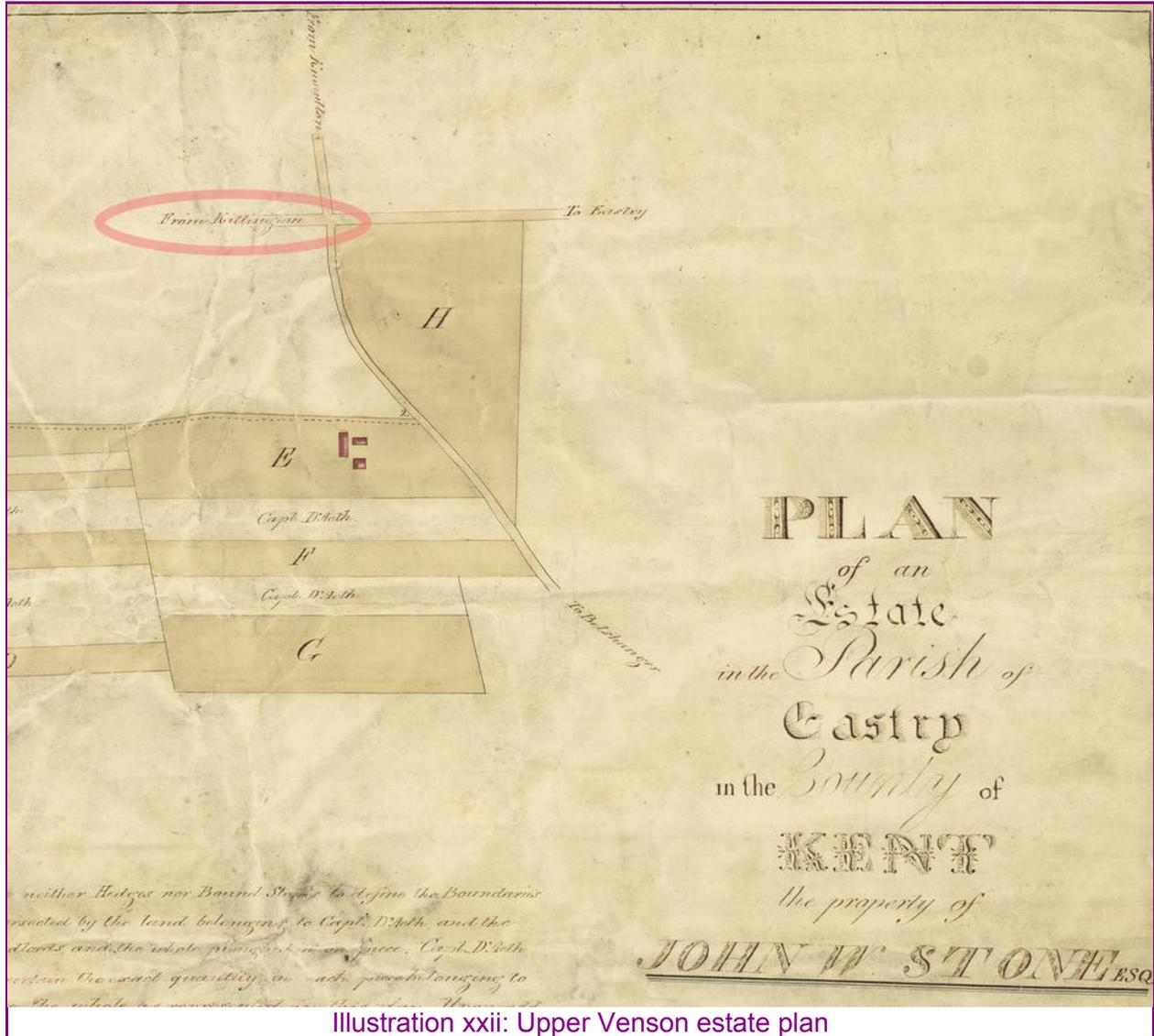


Illustration xxii: Upper Venson estate plan

J.3. **Description:** This item relates to an estate plan, Illustration xxii, which is located on the map in Illustration xxi. The estate plan depicts fields, tenanted as Upper Venson Farm, where the ownership of various blocks within the fields was divided between two landlords. Upper Venson Farm was demolished after the Second World War, but formerly lay in the parcel on the plan marked E. The plan shows Thornton Lane marked as 'From Kittington' and 'To Eastry'.

J.4. **Conclusion:** The estate plan annotates Thornton Lane as 'From Kittington', so that traffic travelling south-southwest down Thornton Lane was most likely to continue south-west at Thorntonhill Cottages along the application way towards Kittington. The plan is therefore suggestive that the application way was regarded as a continuation of Thornton Lane, both being public roads.

J.5. **Points:**

	Points
A to D	1
D to G	0

K. Contracted map of principal roads in Eastry

K.1. **Date:** 1836

K.2. **Source:** Canterbury Cathedral Archives¹⁸

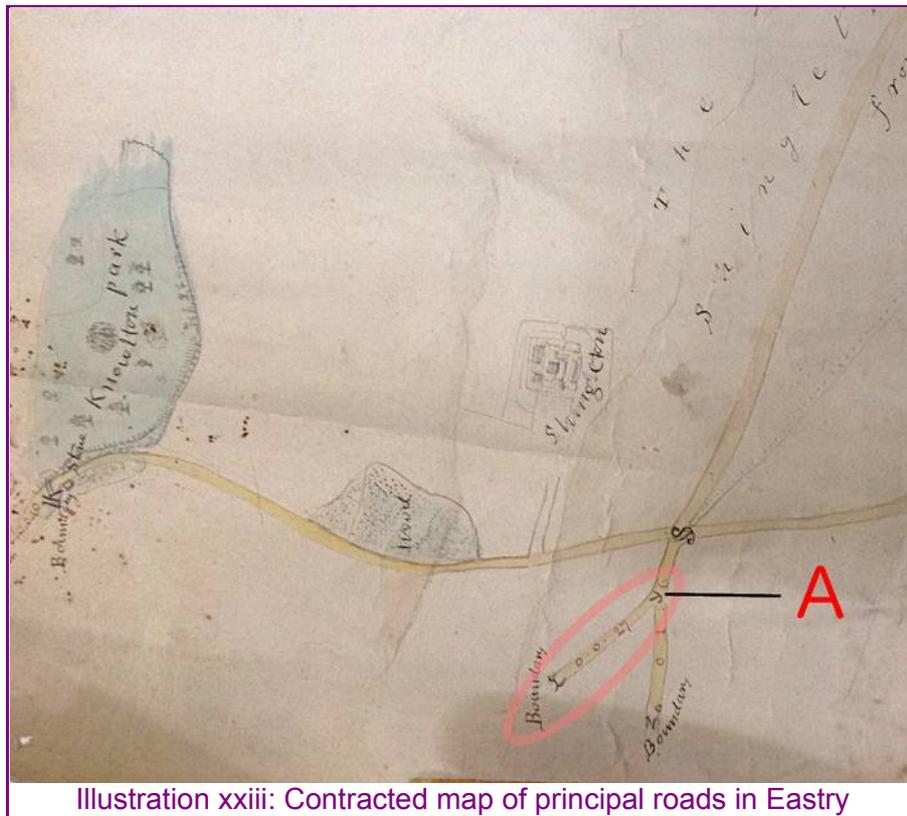


Illustration xxiii: Contracted map of principal roads in Eastry

K.3. **Description:** Original scale: none recorded; orientation: unchanged (north). The map is derived from the records of the parish records of St Mary the Virgin, Eastry, and was drawn in 1836 by surveyor J Foord of Sandwich. It is entitled, 'The contracted map of the principal roads in the parish of Eastry County of Kent 1836'.

K.4. The map is most likely to be a record of those roads in the parish which are maintained by the inhabitants of the parish of Eastry, and which are the responsibility of the surveyor appointed by the parish. By 'principal roads', the map appears not to record foot-paths and bridle-roads.

K.5. The map shows a road within the parish of Eastry between a point marked 'Y' on the map and the parish boundary with Tilmanstone, marked 'X' on the map.

K.6. **Conclusion:** The map shows the application way as a road between A (i.e. the point marked 'Y' on the map) and the parish boundary between Eastry and Tilmanstone (marked 'X' on the map). The map shows only 'principal roads', and the map is therefore good evidence that the application way southwest from A was regarded as a public carriage road maintainable by the inhabitants of Eastry.

K.7. **Points:**

	Points
A to D	3
D to G	0

¹⁸ CCA-U3-275/22/2

L. Tithe Act 1836

L.1. **Date:** 1841

L.2. **Source:** map — Kent County Archives¹⁹; tithe award — Kent Archaeological Society²⁰

¹⁹ Kent tithe maps are available as images on CD.

²⁰ www.kentarchaeology.org.uk/Research/Maps/NON/01.htm;
www.kentarchaeology.org.uk/Research/Maps/BAF/01.htm

Nonington tithe map (north)

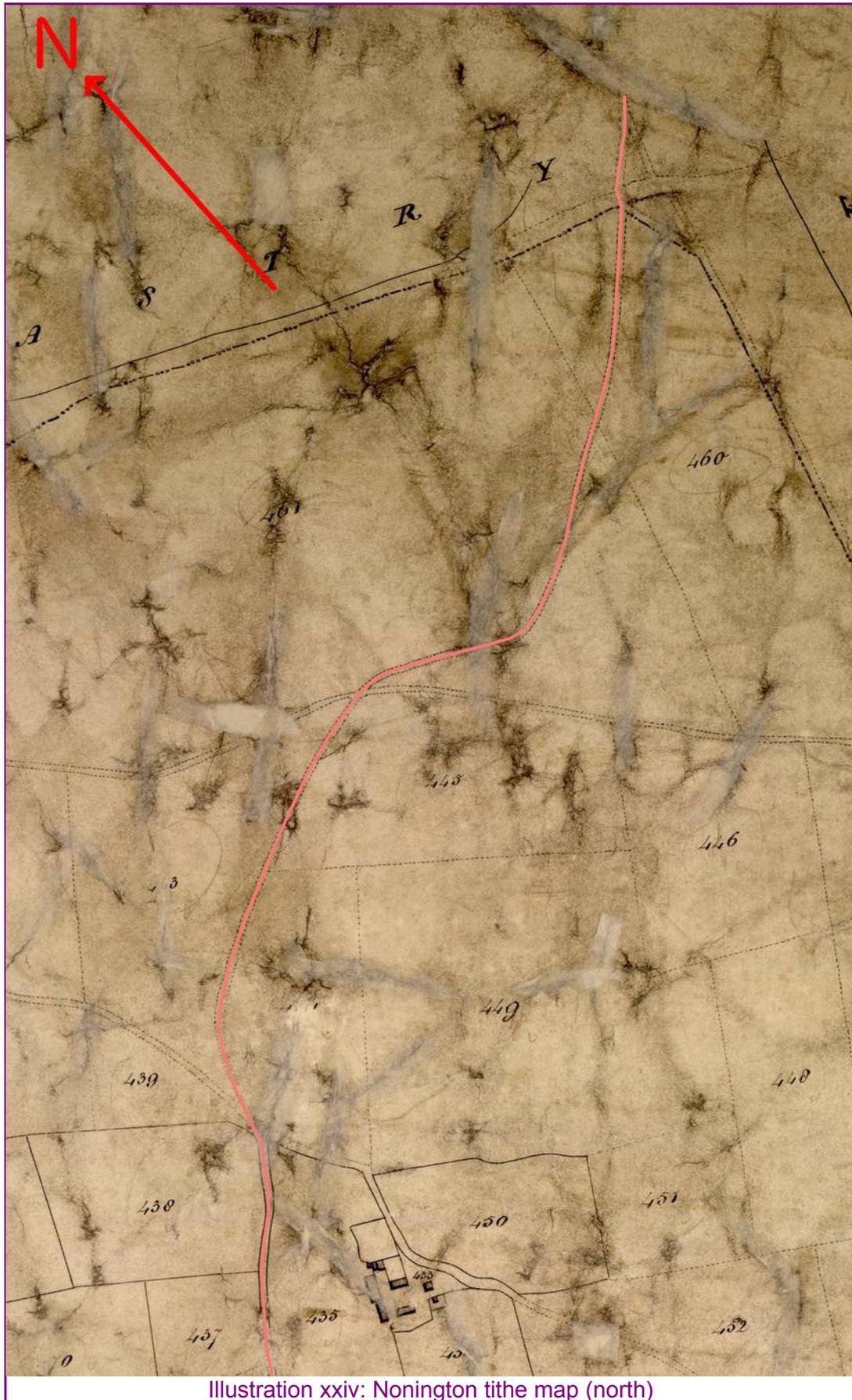


Illustration xxiv: Nonington tithe map (north)

Nonington tithe map (south)



Illustration xxv: Nonington tithe map (south)

Barfrestone tithe map

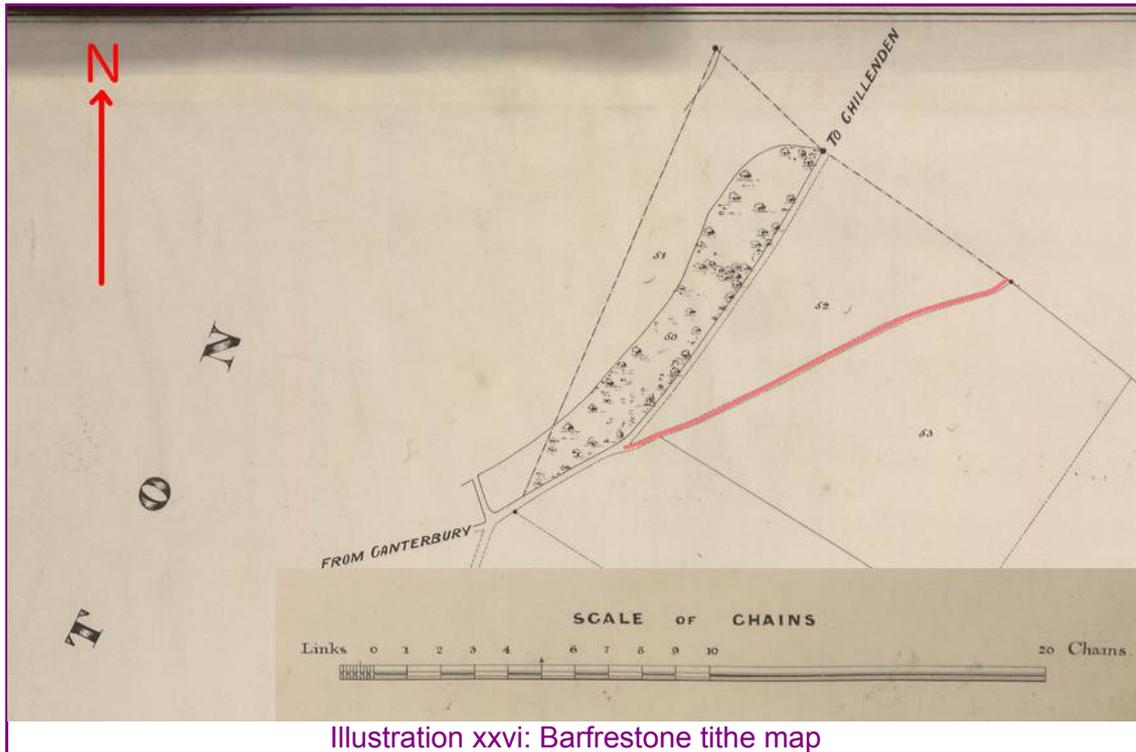


Illustration xxvi: Barfrestone tithe map

L.3. **Description:** Nonington tithe map: Original scale: scale marked on map in chains; orientation: unchanged (north is 45° west of top); Barfrestone tithe map: Original scale: scale marked on map in chains; orientation: unchanged (north at top).

L.4. The tithe map for Nonington and Womenswold (which includes the detached part of the hundred of Wingham within Nonington) shows the application way as double pecked lines between A (which is immediately north of the parish boundary with Eastry) and D. Two connecting local roads: Kelk Hill north from Kittington to Knowlton, and the way (now footpath EE233) which intersets with the application way at C, are similarly shown. The application way marks the boundary between adjacent parcels distinguished on the tithe map with separate parcel numbers: it may therefore be assumed that the ways are excluded from the titheable area.

L.5. The tithe map shows the application way as wholly enclosed south from D to the parish boundary with Barfrestone at F.

L.6. The tithe map for Barfrestone shows the application way between F and G as double pecked lines. The way separates parcels 52 and 53: again, it may be assumed that the ways are excluded from the titheable area.

L.7. **Conclusion:** The tithe maps provide evidence for the status of the application way as a road, as the way appears to be excluded from the titheable area of the parcels. The several parcels clustered around D are known as 'Roads Hill', which also is suggestive that the application way, in common with Kelk Hill and the way now recorded as footpath EE233 were regarded as roads. However, the public status of the ways cannot be concluded from the tithe maps in isolation, although on the Nonington tithe map, the application way is depicted in the same way as Kelk Hill, which is today recognised as a public road.

L.8. **Points:**

	Points
A to D	2
D to G	2

M. Inclosure Act 1845, order of exchange

M.1. Date: 1851

M.2. Source: National Archives²¹

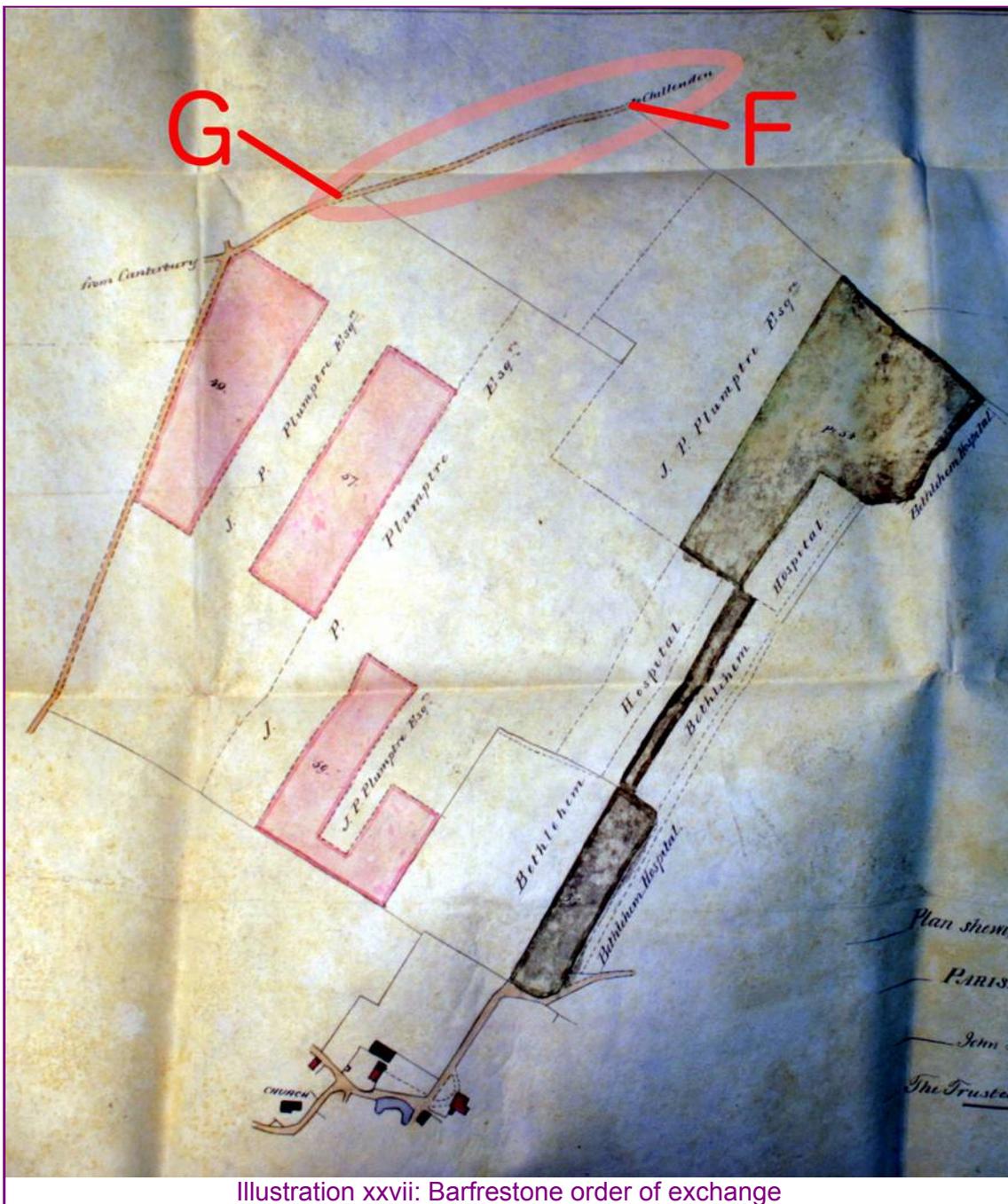


Illustration xxvii: Barfrestone order of exchange

²¹ MAF 11/78/164

M.3. **Description:** original scale: three chains to an inch; orientation: orientation unchanged. An order of exchange was made by the Inclosure Commissioners in 1851 under section 147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

M.4. Under section 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. Section 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.

M.5. This order records an exchange of lands between the Governors of Bethlem Hospital and John Pemberton Plumtre Esq. The plan drawn up under the exchange shows the application way between F and G. The plan shows various ways shaded ochre, including the application way. At F, the application way is labelled 'To Chillenden'.

M.6. **Conclusion:** The ways coloured ochre on the order map are today recognised as public roads, with the exception of the application way and the spur into Fredville Park at Shereway Gate (slightly southwest of G). As to the latter spur, this way is now recorded as a public footpath but may previously have been a bridle-road.

M.7. On these and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or ochre colour wash appears to denote ways which are either public roads or bridle-roads. Moreover, the application way north from F is labelled as leading to Chillenden: directions to places are seldom shown on maps of this era where the way is of a lesser status than bridle-road or a private road. The exchange plan is therefore good evidence of the public status of the application way between F and G, at least of the status of a bridle-road.

M.8. **Points:**

	Points
A to D	0
D to G	2

N. Poor Law Commissioners' survey

N.1. **Date:** 1859

N.2. **Source:** Canterbury Cathedral Archives²²

22 CCA-U3/118/19/1. A copy (in poor condition) is held by Kent County Archives: RD/Ea/P15.



Illustration xxviii: Poor Law Commissioners' map

N.3. **Description:** Original scale: scale marked on map in chains (but scale may vary across map owing to differences between component photographs); orientation: rotated 270°.

N.4. The Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington, presumably for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish under section 3 of the Parochial Assessment Act 1836²³. The map seems to have been based

²³ 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

on the Tithe Act 1836 map (see item IV.L. above) but with substantial modification and resurvey to reflect change during the subsequent two decades. The ownership and occupation of land was identified in an apportionment.

N.5. Unfortunately, the apportionment is now missing, despite enquiries made of both the archives which hold a copy of the map (see footnote 22 above). Recourse has therefore been made to manuscript notes made of the apportionment by a local history researcher²⁴ in connection with a view of the map and apportionment around the year 2000.

N.6. The application way is assigned parcel number 616 throughout between A and F — the part of the way between F and G is in the parish of Barfrestone and therefore not identified on the Nonington map. In the apportionment (as recorded by the researcher), parcel 613 appears under the heading 'Roads — upkeep by Nonington Highway Surveyors', and is described as 'Road from Half Way Plantation past Kittington to Shingleton Mount'.

N.7. **Conclusion:** The Poor Law Commissioners' survey is good evidence of the status of the application way at the date it was undertaken. The citation of the application way as one of a number of roads in the parish whose 'upkeep' was the responsibility of the parish surveyors demonstrates that the way was regarded as a public road: as such, the land occupied by these public roads would not have been rateable under the Poor Law Act 1601²⁵. Poor law rateable valuations attracted notoriety within the parish²⁶, so that the exclusion of private roads (with their value for grazing) would have been open to criticism.

N.8. **Points:**

	Points
A to D	5
D to G	5†

† only between D and the parish boundary at F

O. Ramsgate Sandwich Deal and Dover Railway

O.1. **Date:** 1861

O.2. **Source:** Kent County Archives²⁷

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.

24 The identity of the researcher is available on request.

25 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](#).

26 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 22).

27 Q/RUm/463B

Deposited plan extract:

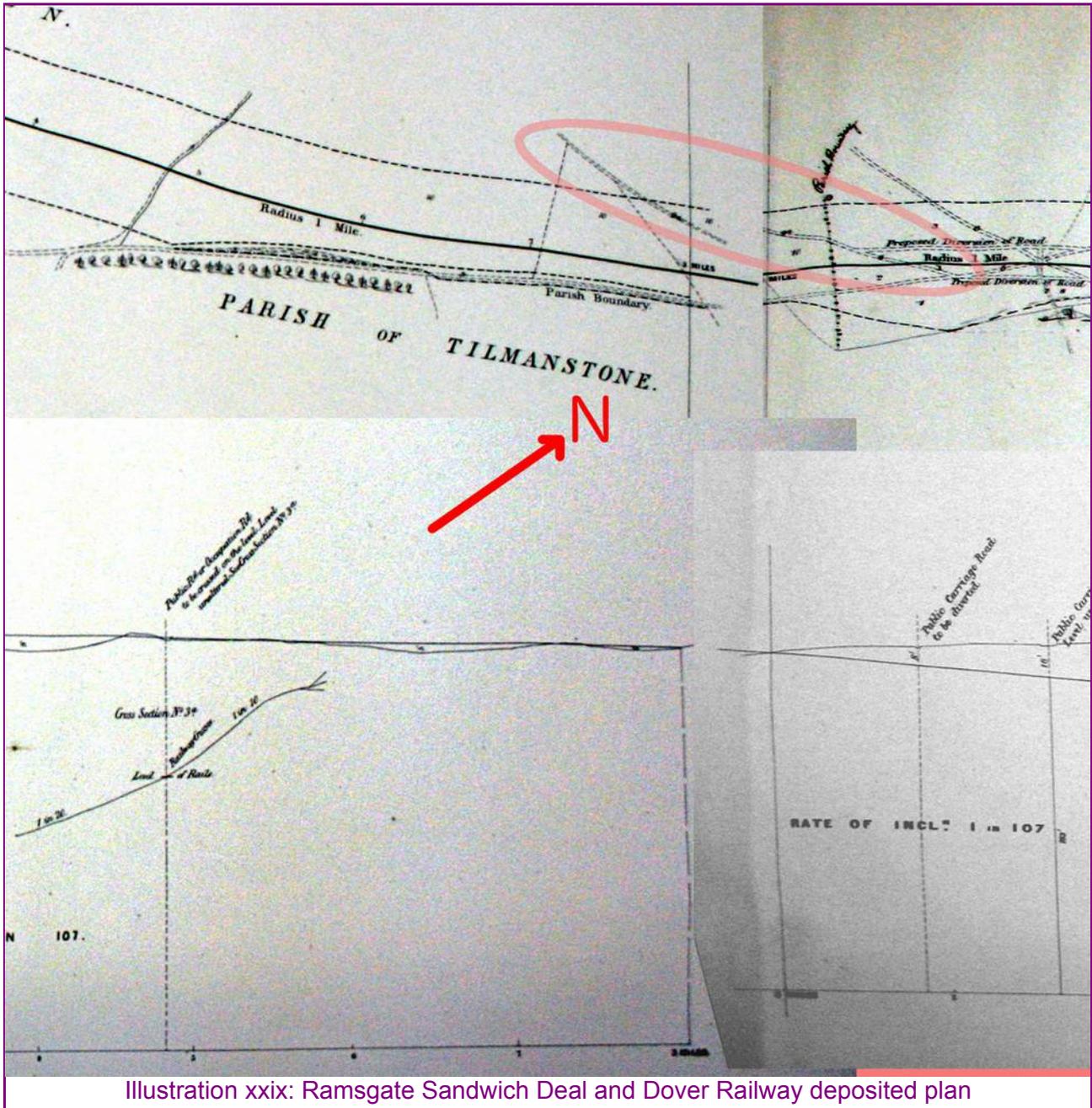


Illustration xxix: Ramsgate Sandwich Deal and Dover Railway deposited plan

Deposited book of reference extract for Nonington and Eastry:

Parish of <i>Eastry</i>		County of <i>Kent</i>		
Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES OF OWNERS or REPUTED OWNERS.	NAMES OF LESSEES or REPUTED LESSEES.	OCCUPIERS NAMES.
3	Field	William Wilson Admiral George Hughs William D'Alth	William Wilson junior William Wilson senior William Wilson junior	Wilson junior William Wilson and William Wilson junior
4	Public Road	The surveyors of the Parish Stephen Clark and William Pittock		The surveyors of the Parish Stephen Clark and William Pittock
5	Public Road	The surveyors of the Parish Stephen Clark and William Pittock		The surveyors of the Parish Stephen Clark and William Pittock
5	Public Road	The surveyors of the Parish		The surveyors of the Parish
Parish of <i>Nonington</i>		County of <i>Kent</i>		
Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES OF OWNERS or REPUTED OWNERS.	NAMES OF LESSEES or REPUTED LESSEES.	OCCUPIERS NAMES.
8	Public road	The surveyor of the Parish John Spanton		The surveyor of the Parish John Spanton
9	Public road	The surveyor of the Parish John Spanton		The surveyor of the Parish John Spanton
9 ^a	Public road	The surveyor of the Parish John Spanton		The surveyor of the Parish John Spanton
10	Field and footpath	Admiral George Hughs William D'Alth	William Wilson and William Wilson junior	William Wilson and William Wilson junior

Illustration xxx: Ramsgate Sandwich Deal and Dover Railway deposited book of reference

O.3. **Description:** Original scale: unknown (but distance marked off along line on plans); orientation: unchanged (north as marked in red). 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 Sandwich²⁸. Plans and books of reference for the lines were deposited in 1861.

O.4. The Shepherdswell to Deal line was proposed to run broadly parallel but west of the road now known as BOAT EE335, and would have cut across the application way between A and B. The plans show that, in preference to bridging the application way and Thornton Road, it was proposed to construct a single carriage road bridge in the vicinity of Thornton Road, and divert traffic along new roads constructed on either side of the new line, so that traffic wishing to pass east to west (or *vice versa*) would necessarily pass through the new carriage road bridge.

O.5. The section refers to the traverse of the application way as 'Public Carriage Road to be diverted'. The plan labels the application way as plot 4 in the parish of Eastry, and plot 9a in the parish of Nonington (the label 9a appears on two consecutive plans).

O.6. The book of reference refers to both plot 4 and plot 9a as a 'Public Road', owned in Eastry by the surveyors of the parish, Stephen Clark and William Pittock, and occupied by the same, and owned in Nonington by the surveyor of the parish, John Spanton, and occupied by the same.

O.7. **Conclusion:** The deposited plans for the Ramsgate, Sandwich, Deal and Dover Railway are convincing evidence of the status of the application way between A and D as a

²⁸ 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.

public carriage road. The railway plans were not enacted into law²⁹ and the railway was not constructed. However, Parliamentary Standing Orders³⁰ imposed the same requirements for prior survey, consultation and documentation on all railway companies seeking legislative authority, and there is no reason to diminish the evidence presented by a railway company which was not given Parliamentary approval, because prior to deposit, the requirements were identical regardless of the unpredictable outcome.

O.8. Points:

	Points
A to D	5
D to G	0

P. Ordnance Survey boundary records

P.1. **Date:** 1867–9

P.2. **Source:** National Archives³¹

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

30 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."

31 OS 28/119; OS 28/218

OS boundary field sketch map Eastry

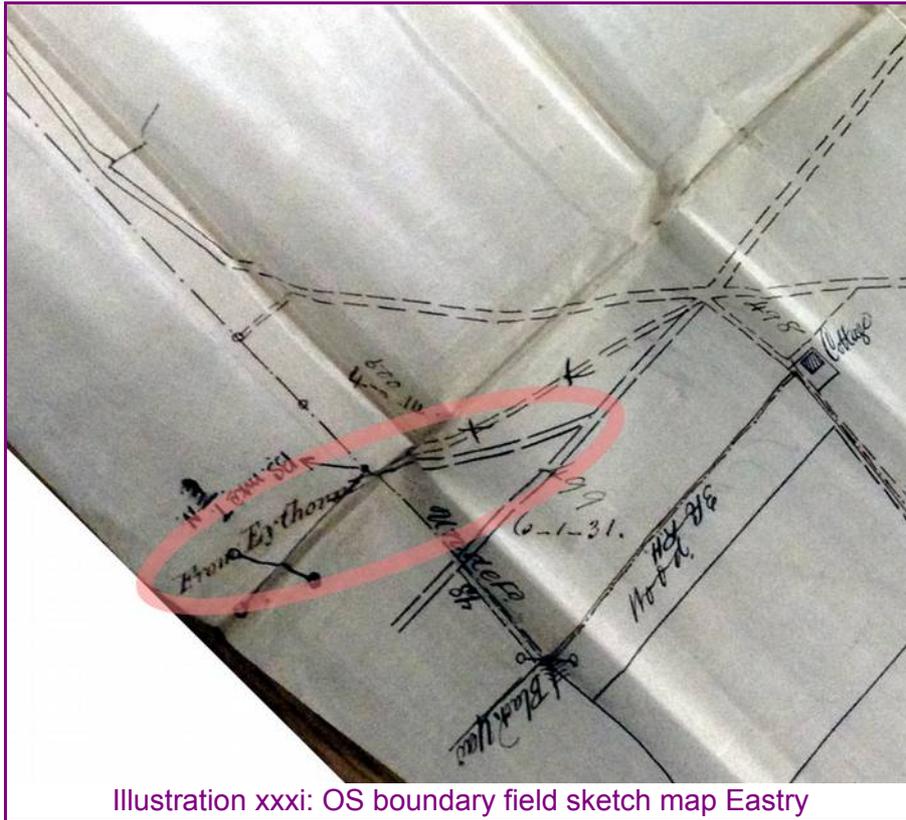


Illustration xxxi: OS boundary field sketch map Eastry

OS boundary field sketch map Nonington

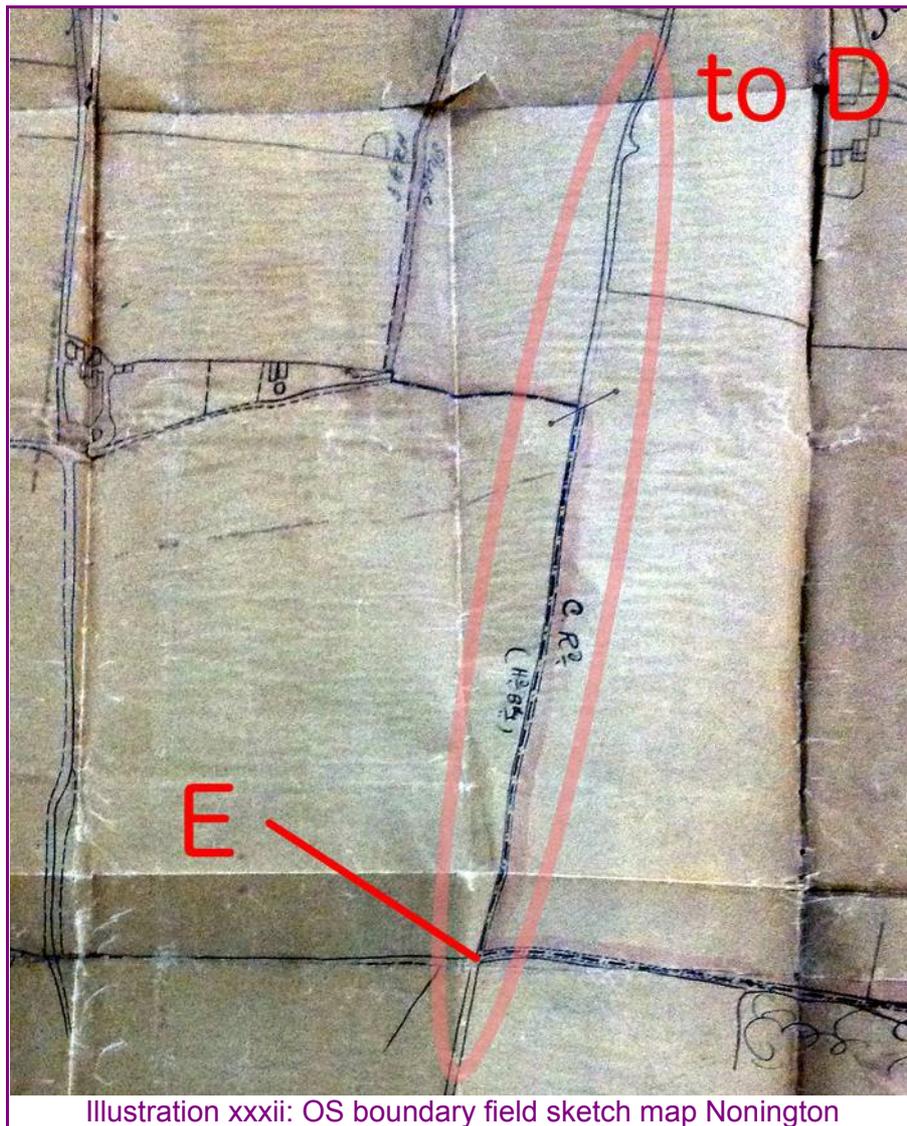


Illustration xxxii: OS boundary field sketch map Nonington

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

P.4. The field boundary sketch map for Eastry (original scale: unknown; orientation: rotated 45° so that north is at top) and Nonington (original scale: unknown; orientation: unknown) were drawn up directly from information gathered in the field, onto a tracing of the parish taken from the tithe map.

P.5. The field boundary sketch map for Eastry shows the application way from A in the direction of B as far as the boundary stone which marks the boundaries of Eastry, Tilmanstone and Nonington. Beyond this point, the sketch map is marked, 'From Eythorne'. The sketch map also shows a track direct from the boundary stone to Thornton Road at

Thorntonhill Cottages, but the track is marked with two crosses, suggesting that it was marked in error.

P.6. The field boundary sketch map for Nonington and Womenswold was drawn up to show the boundary of the borough of Kittington, a detached part of the parish of Wingham within the parish of Nonington. It shows the application way, between D and E, as forming the boundary of the parishes. The application way is marked 'C.R.', denoting that the parish boundary runs down the centre of the road.

P.7. **Conclusion:** The annotation of the application way 'From Eythorne' is suggestive of a way which is a public road: directions to places are seldom shown on maps of this era where the way is of a lesser status than bridle-road or a private road³².

P.8. **Points:**

	Points
A to D	2
D to G	0

Q. The National Gazetteer of Great Britain and Ireland

Q.1. **Date:** 1868

Q.2. **Source:** British Library³³

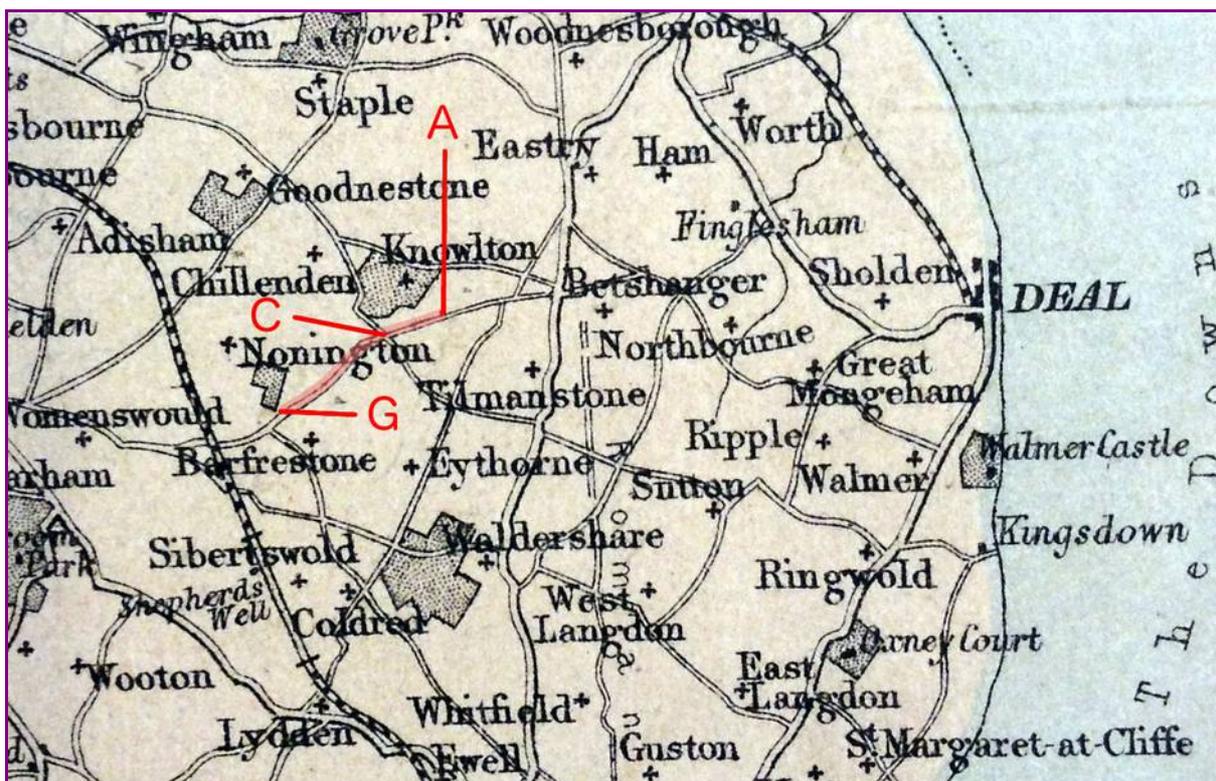


Illustration xxxiii: Hughes: The National Gazetteer of Great Britain and Ireland

³² It is BOAT EE335 which more nearly leads to Eythorne. However, even if the label directs to the wrong destination, it is suggestive that the field surveyor perceived the way to be public.

³³ 10348.i.7: copies available at www.oldkentmaps.co.uk/K-166-A.htm and freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/hughes_kent_1870.htm.

Q.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 southeast towards Tilmanstone, and a way from the vicinity of Barfrestone northeast towards Betteshanger: these two ways cross south of Knowlton Park.

Q.4. **Conclusion:** The alignments of the ways which cross south of Knowlton Park are consistent with those of the application way and footpath EE323 (for which application has been made to record as a restricted byway). That these ways have been recorded in preference to Thornton Road, the Chillenden to Barfrestone road and BOAT EE335, suggests that the application way was at the time of publication regarded as a significant local road. The map is therefore good evidence for the existence of a defined way along the application route.

Q.5. **Points:**

	Points
A to D	0
D to G	0

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

R. Walmer, Deal and Adisham Railway

R.1. **Date:** 1871

R.2. **Source:** Kent County Archives³⁴

Deposited book of reference extract for Eastry and Nonington:

<i>Parish of Eastry, County of Kent</i>				
<i>No on Plan</i>	<i>Description of property</i>	<i>Landes or reputed Owners</i>	<i>Lessees or reputed Lessees</i>	<i>Occupiers</i>
1	Public Road	Surveyors of Highways		
2	Public Road	Surveyors of Highways		
3	Public Road	Surveyors of Highways		
3 rd	Public Road	Surveyors of Highways		
4	Public Road	Surveyors of Highways		
5	Public Road	Surveyors of Highways		

<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>
103	Occupation Road	George William Hughes D'Arth		John Rammell
103 rd	Footpath	George William Hughes D'Arth		John Rammell
108	Footpath	George William Hughes D'Arth	William Wilson	William Wilson
109	Occupation Road	George William Hughes D'Arth	William Wilson	William Wilson
110	Occupation Road	George William Hughes D'Arth	William Wilson	William Wilson

Illustration xxxv: Walmer Deal and Adisham deposited book of reference

R.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. At this time, there was no railway between Deal and Dover (the line from Ramsgate and Sandwich terminating at Deal), and this proposal would have connected Deal and Walmer to the main line to Dover.

R.4. The alignment for the proposed Walmer Deal and Adisham Railway would have been close to much of the application way from north of E as far as A. The plan shows the application way between these points, of which more than half, between A and nearly C, and between D and part-way to E, would have fallen within the limits of deviation. The line was proposed to traverse the application way a little over mid-way between B and C, and a little south of D.

R.5. As regards the crossing between B and C, the section for the line records: 'Public Road level unaltered. Arch 25 feet span 15 feet high.' (The section also records the line to be constructed at a height of 20 feet above the application way at the point of traverse.)

R.6. As regards the crossing between D and E, the section for the line records: 'Public Road level unaltered.' (The section also records the line to be constructed at a height of 18 feet below the application way at the point of traverse.)

R.7. The plan labels the application way as plot 4 in the parish of Eastry (between A and B), plot 109 in the parish of Nonington (between B and D), and plot 103 in the parish of

Nonington (between D and E). The book of reference refers to plot 4 in Eastry as a 'Public Road' in the ownership of the Surveyors of Highways, plot 109 as an 'Occupation Road' owned by George William Hughes D'Aeth, and leased to and occupied by William Wilson, and plot 103 as an 'Occupation Road' also owned by George William Hughes D'Aeth, and leased to and occupied by John Hammell.

R.8. **Analysis:** The recording of probable public rights of way in the deposited plans and book of reference for this proposed Walmer Deal and Adisham Railway is non-standard. 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 mapping³⁵, as intersecting the proposed alignment of the railway between Adisham and West Street (near Ham). The table records the location of each right of way or path, and the representation of it in the deposited plan and book of reference.

Description of right of way	Grid ref.	Right of way no. ³⁶	Description in book of reference		
			Parcel	Owner	Occupier
public bridleway from Ratling to Listways Cottages	TR241532	BW EE285	—	Not separately identified	Not separately identified
public footpath from Ratling to Old Court Farm	TR244531	FP EE283A	Nonington 24a Footpath	John Laurence	Henry Pledge
public footpath from Pinnars Hill to Bonnington	TR253528	FP EE281	Nonington 40a Occupation Road	William Hammond	William Hammond, William Spanton
public footpath behind Easole Street	TR260521	FP EE311	Nonington 56 Footpath	William Hammond	William Hammond
public footpath from Nonington to Mill Lane	TR264518	FP EE318	Nonington 76 Footpath	William Hammond	William Hammond
public footpath from Mill Lane to Kittington Cottages	TR270516	FP EE321	Nonington 102 Footpath	George William Hughes D'Aeth	John Hammell

³⁵ Ordnance Survey OS 1:2,500 second edition c. 1896–98, available from: maps.nls.uk/os/25inch-england-and-wales/index.html .

³⁶ Recorded in the definitive map and statement for Kent.

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
public footpath from near Limekiln Plantation to Kittington Cottages	TR273517	FP EE307A	Nonington 103 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Kittington Farm	TR274517	—	Nonington 103b Footpath	George William Hughes D'Aeth	John Hammell
footpath south-east down Kelk Hill	TR280518	FP EE323	Nonington 108 Footpath	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Thorntonhill Cottages (the application way)	TR282519	FP EE264	Nonington 109 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath to Shingleton Cottages	TR285521	FP EE263	Nonington 110 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath from Thorntonhill Cottages to Shingleton Farm	TR288523	FP EE262	—	Not separately identified	Not separately identified
Black Lane	TR298532	—	Eastry 25 Occupation Road	Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	George Wood, Thomas Medgetts and William Pittock
bridleway from Venson Bottom to Heronden	TR302534	—	Eastry 34 Occupation Road	Aldbrough Henniker and Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	Thomas Medgetts and George Wood

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
footpath from Northbourne Road to Lower Street	TR310540	EE259	Eastry 43 Foot-path	Dean and Chapter of Canterbury	(Lessee, George Terry) Ruth Oldfield
bridleway from Northbourne Road to Hay Hill	TR317540	EE382	—	Not separately identified	Not separately identified
footpath from Eastry to Updown Farm	TR319541	EE257	—	Not separately identified	Not separately identified

R.9. It appears that the book of reference consistently failed to record the correct status of rights of way, particularly where the status may have been less than a 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, appear to be the private interests in the land. In some cases, such as the bridleway from Northbourne Road to Hay Hill, the way is not separately identified in the book of reference. None of the entries identified in the table refers to the interest of the highway authority.

R.10. **Conclusion:** The deposited plans for the Walmer, Deal and Adisham Railway are convincing evidence of the status of the application way as a public carriage road, referring to it as such in the book of reference for Eastry and in the sectional provision for a bridge under the railway between B and C and over the railway between D and E.

R.11. The references to the application way as an occupation road in the parish of Nonington is misleading. Discrete entries for the same way describe it differently. However, the section makes clear that the railway company's surveyor regarded the way as a public road: it was a matter of considerable expense to provide a bridge over the railway, and to do so with dimensions for the structure which were mandated for public carriage roads: had the surveyor regarded the application way to be no more than a private occupation road, he would have provided for a level crossing, or a bridge with more economical dimensions, in the interests of the company³⁷.

R.12. 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 Orders³⁸ and subsequently certified by the Examiners as such³⁹. The Bill was not proceeded with.

³⁷ Section 49 of the Railways Clauses Consolidation Act 1845, which would have been incorporated in the special Act sought to enable construction of the Walmer, Deal and Adisham Railway, required that a bridge over a public carriage road should have a span of 25 feet and an arch of 15 feet, but that a bridge over a private carriage road should have a span of 12 feet and an arch of fourteen feet.

³⁸ House of Commons, *Official Report*, 12 February 1872, [vol.127](#), p.24.

R.13. Points:

	Points
A to D	5
D to G	3

S. Ordnance Survey County Series first edition twenty-five inch maps

S.1. Date: 1872

S.2. Source: British Library⁴⁰

OS 1:2,500 County Series 1st edition (East)⁴¹

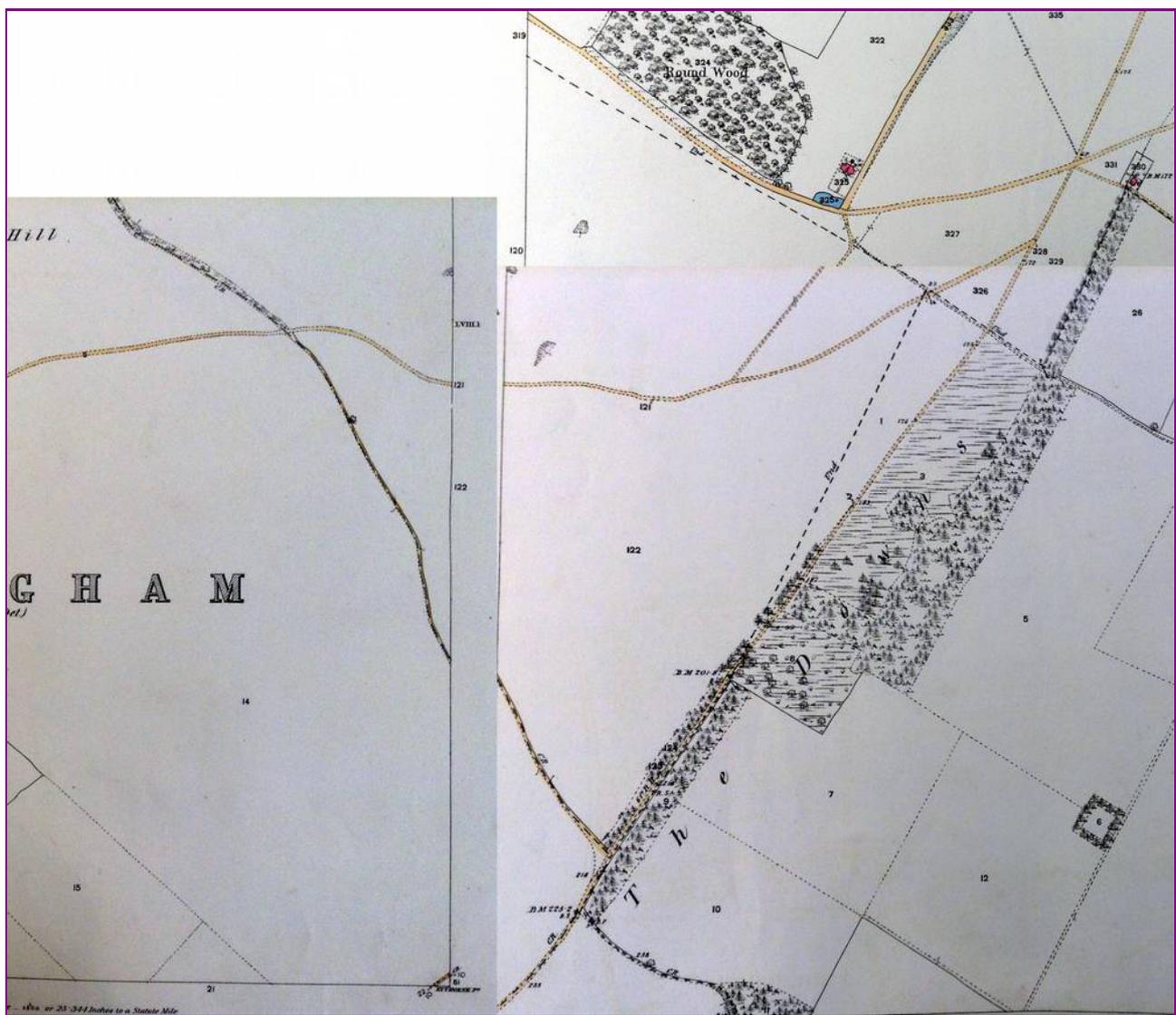


Illustration xxxvi: OS County Series 1:2,500 first edition (East)

³⁹ House of Commons, *Official Report*, 7–8 March 1872, [vol.127](#), pp.81–82.

⁴⁰ 1st edition in colour.

⁴¹ Sheets LVIII/1, LVII/4 surveyed 1872.

OS 1:2,500 County Series 1st edition (West)⁴²

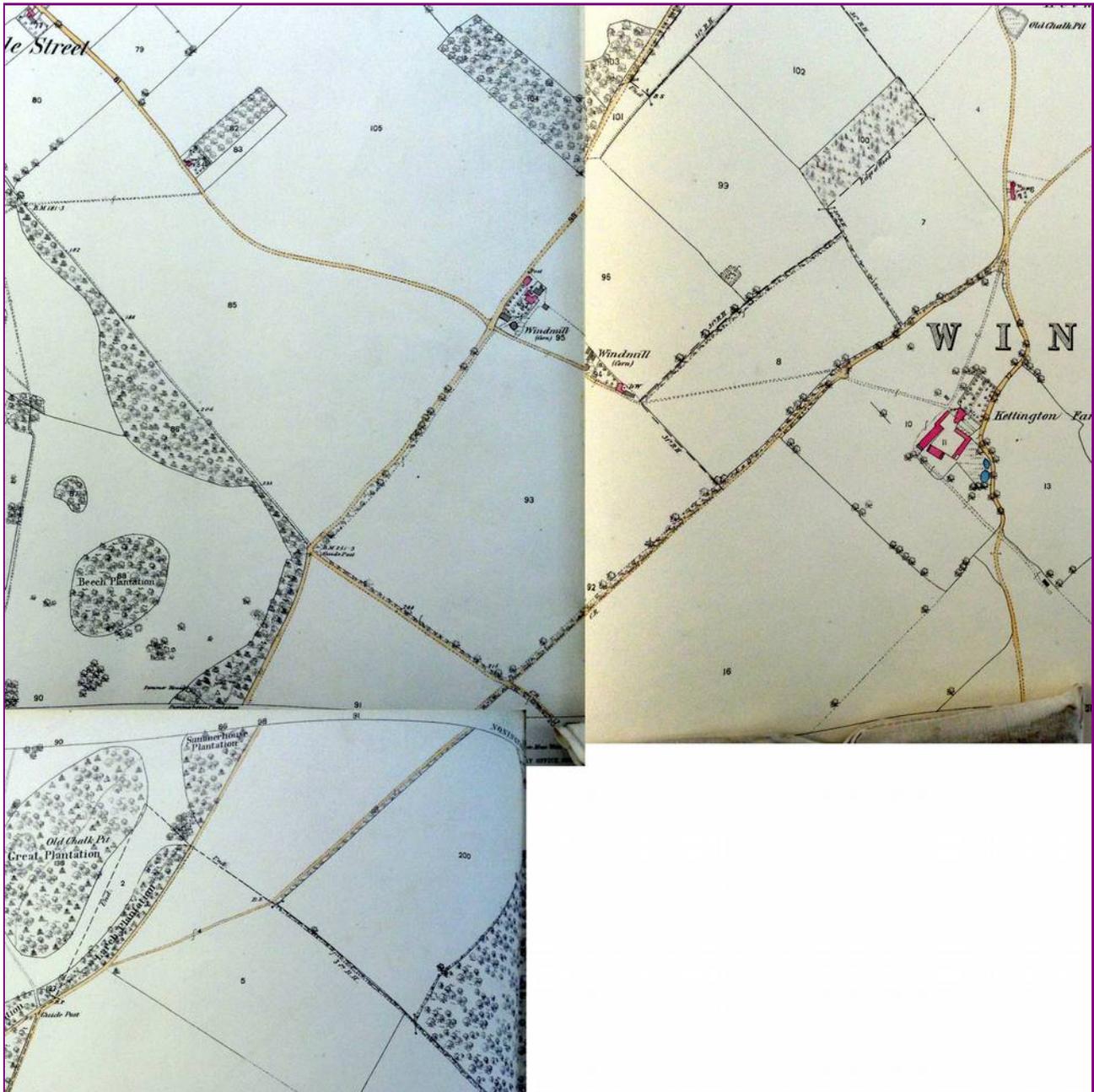


Illustration xxxvii: OS County Series 1:2,500 first edition (West)

⁴² 42 Sheets LVII/4, LVII/8 surveyed 1872.

OS 1:2,500 1st edition area book, Eastry

PARISH OF EASTRY.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
277	1.045	Shed and arable.	327	5.152	Arable.
278	.745	House, garden, &c.	328	.373	Arable.
279	4.736	Pasture and trees.	329	4.352	Road.
280	7.178	Pasture and trees.	330		Arable.

Illustration xxxviii: OS 1:2,500 first edition area book Eastry

OS 1:2,500 1st edition area book, Tilmanstone

PARISH OF TILMANSTONE,
IN THE
COUNTY OF KENT—(EASTERN DIVISION).
HUNDRED OF EASTRY.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	4.617	Arable.	37	1.555	Pasture.
1a	.011	Road (part of).	38	12.885	Wood.
2	.646	Road.	39	1.513	Garden, &c.
3	7.895	Rough pasture and	40	1.117	Pasture.

Illustration xxxix: OS 1:2,500 first edition area book Tilmanstone

OS 1:2,500 1st edition area book, Nonington

PARISH OF NONINGTON. 5

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
91	19.435	Arable.			
92	.180	Road.			
93	29.574	Arable, &c.			
120	77.026	Arable, &c.			
121	.637	Road.			
122	42.638	Arable.			
123	.337	Road.			
198	9.951	Wood.			
199	.843	Road.			
200	21.302	Arable, &c.			
201	1.278	Road.			

Illustration xl: OS 1:2,500 first edition area book Nonington

OS 1:2,500 1st edition area book, Nonington (hundred of Wingham (detached))

PARISH OF NONINGTON. 3

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
HUNDRED OF WINGHAM (DETACHED).					
1	5.440	Arable.			
2	14.092	Arable.			
3	32.493	Arable, &c.			
4	4.503	Arable.			
5	.445	Road.			
6	.505	House and garden.			
7	8.530	Arable.			
8	9.625	Arable, &c.			
9	1.147	Road.			
10	14.538	Pasture, &c.			
11	1.891	Farmstead, &c.			
12	2.127	Road.			

Illustration xli: OS 1:2,500 first edition area book Nonington

OS 1:2,500 1st edition area book, Barfrestone

PARISH OF BARFRESTONE,					
IN THE					
COUNTY OF KENT—(EASTERN DIVISION).					
HUNDRED OF EASTRY.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	·027	Wood.	26	17·671	Arable, &c.
2	2·039	Pasture.	27	13·882	Arable, &c.
3	1·938	Wood.	28	2·114	Road.
4	·171	Road.	29	8·377	Arable.
5	16·354	Arable.	30	25·512	Arable.
6	44·730	Arable.	31	53·928	Arable, &c.

Illustration xlii: OS 1:2,500 first edition area book Barfrestone

S.3. **Description:** Original scale: 1:2,500; orientation: unchanged (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. The plans show the application way throughout and hand-coloured in ochre, signifying that the way was made up.

S.4. The application way is identified into several distinct parcels:

Parish	Parcel
Eastry (in common with part of BOAT EE335)	328
Tilmanstone	1a
Nonington	121
Borough of Kittington, part of Wingham (detached) as far as Kelk Hill	5
Borough of Kittington, part of Wingham (detached) from Kelk Hill	9
Nonington	92
Nonington	199
Barfrestone	4

S.5. In the books of reference published with the first edition maps, all of these entries refer to the parcels comprised in the application way as a 'road'.

S.6. **Conclusion:** original scale: twenty-five inches to one mile; orientation: unchanged. The Ordnance Survey County Series first edition maps show that the application way was a made road throughout, capable of sustaining wheeled traffic.

S.7. The entries in the area books published alongside the first edition, for the application way between A and G as a 'road', provides some support for its status as a public highway, the entries being consistent with the way's depiction as a road on earlier historical mapping.

S.8. **Points:**

	Points
A to D	1
D to G	1

T. East Kent mineral light railway

T.1. **Date:** 1910

T.2. **Source:** Kent County Archives⁴³

43 Q/RUm/1151.

East Kent light railway deposited plan

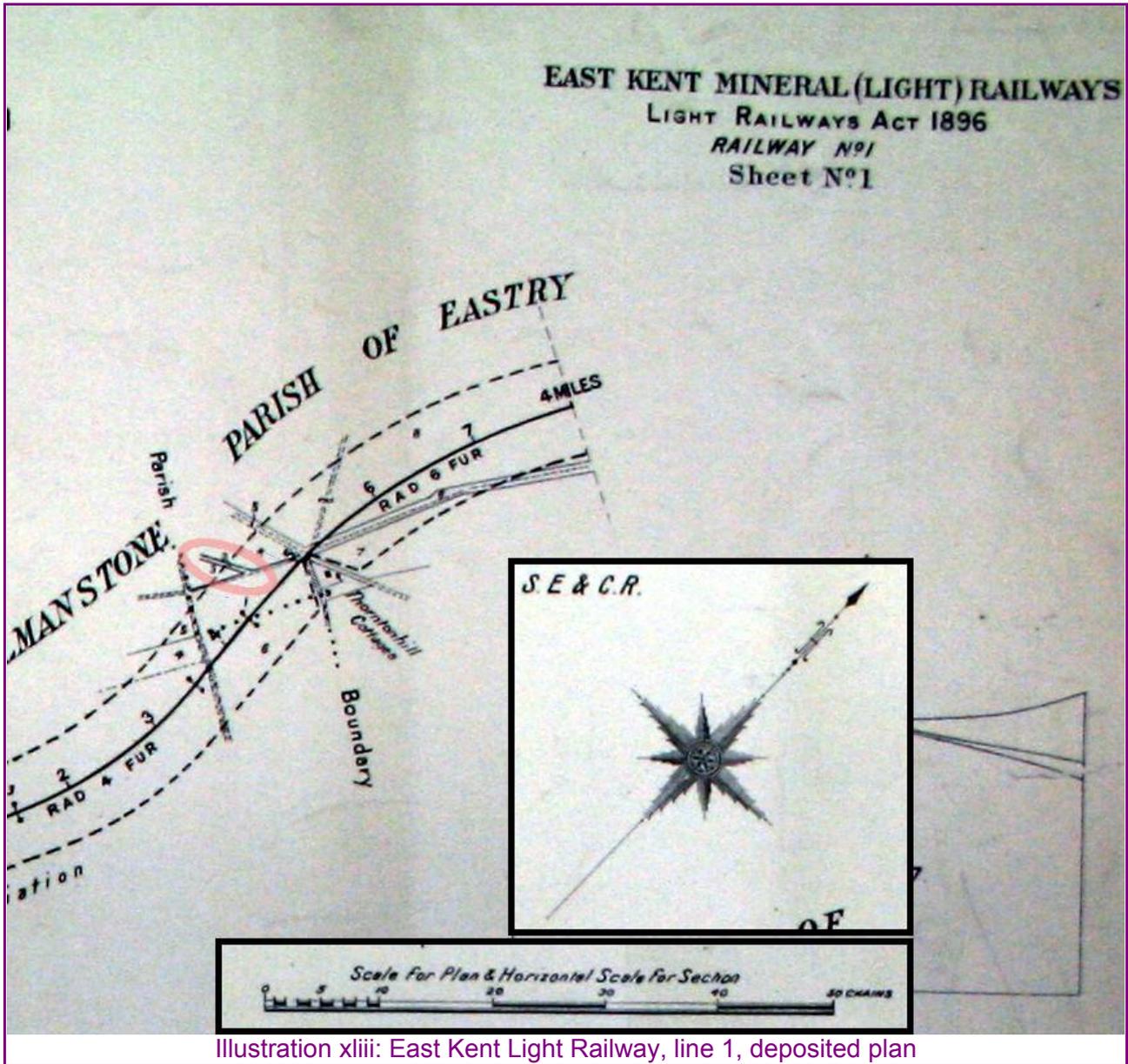


Illustration xliii: East Kent Light Railway, line 1, deposited plan

East Kent Light Railway book of reference

8

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of EASTRY, in the County of KENT.

RAILWAY No. 1—continued.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
1	Arable and public bridle road	Francis Elmer Speed The Eastry Rural District Council Frederick Spencer Cloke, clerk	Henry Fagg	Henry Fagg The Eastry Rural District Council
2	Public bridle road	The Eastry Rural District Council	The Eastry Rural District Council
3	Pasture	Francis Elmer Speed	In hand
4	Pasture	Francis Elmer Speed	In hand
5	Public road and plantation	The Eastry Rural District Council	The Eastry Rural District Council

Illustration xlv: East Kent Light Railway, line 1, book of reference

T.3. **Description:** original scale: scale marked on plan in chains; orientation: rotated 70°. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. Line 1 was among the initial raft of proposals for a network of lines serving prospective East Kent collieries. The line was authorised by the Board of Trade under the Light Railways Act 1896 and built.

T.4. Line 1 was to contour north along Shingleton down from Tilmanstone colliery, crossing Thornton Road at Thorntonhill Cottages and continuing north-northeast to Eastry along the west side of Thornton Lane. BOAT EE335 and the commencement of the application way at A lay within the limits of deviation

T.5. The plan labels the application way as plot 2 in the parish of Eastry. The book of reference refers to plot 2 in Eastry as a 'Public Bridle Road' in the ownership and occupation of the Eastry Rural District Council.

T.6. **Conclusion:** The Board of Trade made the East Kent Mineral (Light) Railways Order 1911. Certain provisions of the Railways Clauses Consolidation Act 1845 were incorporated in the order, but sections 46 to 48 and 59 were excluded⁴⁴, and most highways, including public roads, were to be taken over the railway on the level. However, as the application way lay on the periphery of the limits of deviation, it was not proposed that the railway should cross the application way, and no provision for a crossing was required.

T.7. The plan and book of reference provide good evidence for the status of the application way between A and B as a public bridleway. The East Kent Light Railway's surveyor

44 See art.3(1).

tended to record public highways with the lowest possible status: BOAT EE335 (part of plot 1 in Eastry) is also recorded as a public bridleway, and numerous other examples exist of roads and bridleways recorded as bridleways or footpaths.

T.8. Points:

	Points
A to D	5†
D to G	0

† as bridleway