

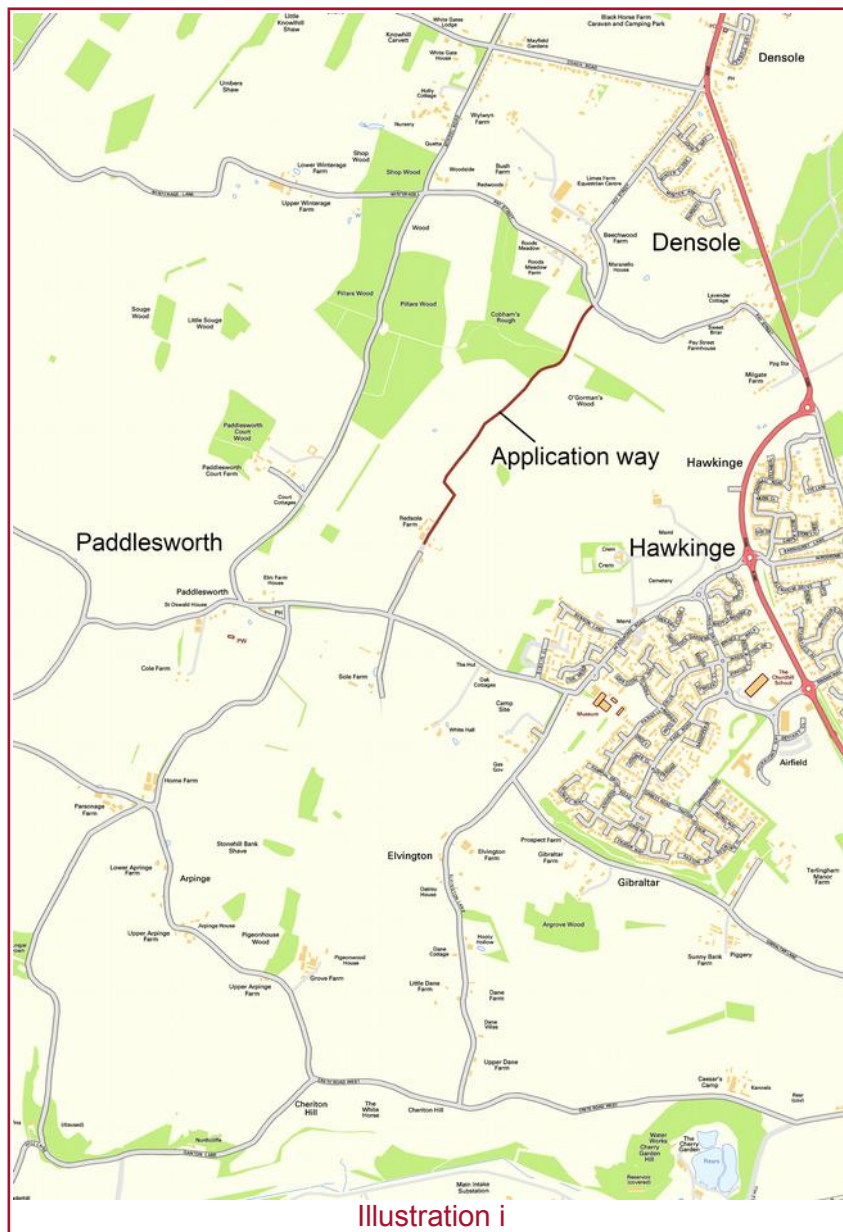
Redsole Lane: historical document analysis

Application to record a byway from Redsole Farm to Pay Street

I. Introduction

A. Quick reference

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



A.2. Existing recorded public rights of way comprised in application way: none

- A.3. Parish of: Paddlesworth
- A.4. Ancient parish of: Paddlesworth
- A.5. Termination points: Redsole Farm, off Paddlesworth Lane, east of Paddlesworth; and Pay Street, near Densole
- A.6. Termination points Ordnance Survey grid references: TR20154007; TR20694084
- A.7. Postcode: CT18 8AB
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheets: Kent LXVII/13

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer historical researcher in relation to South and East Kent. I am a member of the Institute of Public Rights of Way and Access Management. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for 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 in the parish of Paddlesworth next Folkestone. The way is not currently recorded on the definitive map and statement. The application seeks to record the way partly as a byway open to all traffic, but predominantly as a restricted byway.

D. Application

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

D.2. Redsole Lane begins at a crossroads on Paddlesworth Lane east of Paddlesworth at P (Ordnance Survey grid reference TR20033982), and leads north-northeasterly direction to Redsole Farm.

D.3. The application way begins at the end of the tarmacadam section of road, opposite a barn located on the south side of Redsole Farm and on the west side of the way, at A (TR20154007). It continues north-northeasterly for 165m to a turning at B (TR20244021, with an overgrown and fenced off sunken green lane joining from the southeast), where the way turns to the west-northwest for 50m to a turning at C (TR20214025, with a green lane joining from the west-northwest), where the way turns to the north-northeast again for 450m to the southern corner of Cobham's Rough (a wood) at D (TR20494059), continuing along the eastern boundary of Cobham's Rough in a successively north-northeasterly, northeasterly and then north-northeasterly direction for 340m to a crossroads with Pay Street south of Densole at E (TR20694084). A total distance of 1,005m.

D.4. The application seeks that the first 65m of the application way between A and R (TR20184012) should be recorded as a byway open to all traffic, and the part between R and E as a restricted byway (see Natural Environment and Rural Communities Act 2006, item I below).

D.5. The points P, A to E and R are identified in the application map at part II below.

E. Nomenclature

E.1. The application way is known as Redsole Lane. The northern part of the way currently is classified in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980 as Cobham's Rough Lane (see Highway authority list of streets, item IV.O below), but it is not known whether this name is historically correct. In the Radnor Estate map (item IV.A below), the application way (from E to the south) is described as Paddlesworth Road.

E.2. Paddlesworth Lane (which passes across the crossroads at P) may also be known as Aerodrome Road.

F. Background

F.1. The application way appears historically to be an incised country lane leading from the east side of Paddlesworth and Elvington (via Fishers Lane) north to Densole and Stone Street (and so towards Barham and Canterbury). Paralleled by the Paddlesworth Court road to the west, and the main road through Hawkinge to the east, and with the scarp of the North Downs south of Elvington acting as a barrier to travel further south, the application way seems unlikely ever to have been an important route. But the incised character of the way, particularly in the vicinity of B and C, suggest that it has been in use for at least several hundred years, and quite probably much longer.

G. Grounds for application

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

1 [2012] EWCA Civ 334

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

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.²

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

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;³...

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

G.4. The application way is shown on the earliest available detailed maps of the locality. It is identified on the Radnor Estate map (item IV.A below) from the end of the seventeenth century, apparently as a named public road. It is shown on the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B below), the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.D below), and the Ordnance Survey, Old Series one-inch map of Kent (item IV.G below), all from survey data around the turn of the eighteenth century. The Barlow-Hasted map of Kent (item IV.C below) shows only the spurs at the southern and northern end of the application way, but is inconsistent with other contemporary maps and plainly incorrect. The more selective map in Paterson's Roads — Thanet and Kent and Sussex Coast (item IV.E below) also includes the application way, as does the Greenwood's map of Kent (item IV.F below), both dating from the early years of the nineteenth century, the latter describing the application way as a 'cross road'. The map prepared under the Tithe Act 1836 (item IV.H below) shows the way coloured sienna and excluded from apportionment, and apparently classified as a public road.

G.5. In the late nineteenth century, the Elham Highway Board (item IV.J below) appears to have approved repairs to the way. The way is largely excluded from valuation under the Finance (1909–1910) Act 1910 (item IV.K below). The 1904 and 1922 Bartholomew's maps present the way as a recommended cycling route. The way may have been excluded from the National Parks and Access to the Countryside Act 1949: draft map (item IV.M below) because it was considered to be a public road; it was shown as such on the 1952 Highway inspector's map (item IV.N below) but then crossed out in part. Much of the way remains included in the Highway authority list of streets (item IV.O below), though the records have not remained consistent over time.

G.6. It is not in doubt that Redsole Lane between P and A, and the part of the application way between D and E, are public roads: they are recorded as such on the Highway authority list of streets (item IV.O below), and have been so recorded since (at least) the

² [Consistency Guidelines](#): para.2.17.

³ S.54A has not been brought into force at the date of application.

Second World War.⁴ The status of the intervening section, between Redsole Farm and D, is slightly less clear, because it is not recorded on the list of streets. There is ample evidence to support the most obvious conclusion: that the application way has always been a through road, but that for reasons of economy, the highway authority chose to downgrade the central section because of its relative unimportance and isolation (it not being essential to serve any adjacent dwellings or farms).

G.7. It is unusual for a highway authority to be liable to maintain a no-through road in rural areas. Such obligations are not unknown, but it is rare to find the obligation arising where there is no continuation of the highway in any form (whether as a footpath or bridleway). The highway authority will tend to resist the acquisition of a substantial burden of maintenance which benefits only one householder or farmer, and it is more likely that the obligation will arise (albeit infrequently) where the road services a hamlet rather than one house or farm. More often, of course, the obligation arises where the road does continue as a footpath or bridleway (and research may show that the continuation was once of bridleway or carriageway status).

G.8. By way of illustration, the author has reviewed Ordnance Survey Explorer map sheet 138 (which includes Paddlesworth) and is unable to find, in a rural area, a single example of a public no-through road without a continuation as byway or bridleway, save Mill Hill at Ottinge ([TR16844277](#)) and Cullens Farm Road at Mount, near Rhodes Minnis ([TR16214334](#)), which together present similar circumstances to those at Redsole Lane, and are now the subject of an application for a definitive map modification order.⁵

G.9. It would be exceptional, therefore, if Redsole Lane, and at the northern end, Cobham's Rough Lane, were indeed no-through roads — at least in terms of public rights — with no legitimate public means of connection between the two. While some justification for such an arrangement may be found in Redsole Farm lying at the termination of the recorded public rights along Redsole Lane (at R), none can be found for the termination of such rights at the southern boundary of Cobham's Rough (at D).

G.10. In *Eyre v New Forest Highway Board*,⁶ Wills J addressed the jury, in terms endorsed by the Court of Appeal as a 'copious and clear and a complete exposition of the law on the subject', that:

...it is a necessary element in the legal definition of a highway that it must lead from one definite place to some other definite place,

continuing

what would be the meaning in a country place...of a highway which ends in a *cul de sac*, and ends at a gate on to a common?...who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again?

G.11. The only, and obvious, conclusion which can be drawn is that Redsole Lane is a single, through, public road.

4 There appears to have been an interruption to the recording of D–E in the list of streets: see item I.I below.

5 PROW/SH/C401

6 (1892) 56 JP 517

G.12. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, that the proper inference is that the way is a carriageway, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I.I below), there were full vehicular rights throughout.

H. Discovery of evidence

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

H.2. Insofar as the way may have been considered for inclusion in the parish map prepared by Paddlesworth parish meeting under section 28 of the 1949 Act (see National Parks and Access to the Countryside Act 1949: draft map at item IV.M below), such consideration does not amount to a formal consideration by the surveying authority for the purposes of discovery,⁷ nor is there any evidence that the parish meeting, at that stage, considered any or all of the evidence referred to in this application.

H.3. Therefore, the evidence contained in this application is discovery of new evidence for the purposes of section 53(2) of the 1981 Act.

I. Natural Environment and Rural Communities Act 2006

I.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. The principal exception is for a way which is recorded as publicly maintainable in the list of streets held by a highway authority under section 36(6) of the Highways Act 1980 at the date of coming into force of section 67 — *i.e.* 2 May 2006.

I.2. The part of the application way between A and R was recorded on the list of streets on 2 May 2006: see Highway authority list of streets at item IV.O below. Therefore, public rights for mechanically propelled vehicles were preserved in respect of that part by the operation of section 67(2)(b).

I.3. While the part of the application way between D and E appears formerly to have been recorded on the list of streets,⁸ it was omitted from the list of streets on 2 May 2006 (item IV.O below). Therefore, between R and E, none of the exceptions in section 67 is believed to apply.

I.4. Accordingly, the application is made for the status of byway open to all traffic between A and R, and for restricted byway for the length from R to E.

⁷ See *Roxlena Ltd, R (On the Application Of) v Cumbria County Council*, per Lindblom LJ at paras.60–64.

⁸ It is shown on current Ordnance Survey maps as 'other routes with public access', and this classification relies on list of streets data gathered in the late 1990s: *Other routes with public access*, 'PannageMan' (the applicant's blog moniker), 7 June 2015.

J. Points awarded

J.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*.⁹

J.2. **Points:**

Item	Ref	Points	Comments
Radnor Estate map	IV.A	2	
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B	0	
Barlow-Hasted map of Kent	IV.C	0	
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.D	0	
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.E	1	
Greenwood's map of Kent	IV.F	1	
Ordnance Survey, Old Series one-inch map of Kent	IV.G	0	
Tithe Act 1836	IV.H	4	
Ordnance Survey County Series 25-inch maps	IV.I	1	
Elham Highway Board	IV.J	3	
Finance (1909–1910) Act 1910	IV.K	5	Between C and E
Bartholomew's map	IV.L	2	
National Parks and Access to the Countryside Act 1949: draft map	IV.M	2	
Highway inspector's map	IV.N	3	
Highway authority list of streets	IV.O	0	
Total points		24	

K. Width of application way

K.1. On the first edition Ordnance Survey County Series 25-inch maps (item IV.I below), the application way between Redsole Farm and E is allocated parcel number 26, and in the area book, described as a 'road' with an area of 0.671 ha.¹⁰ Allowing for an overall length of the enclosed section of 1,015m, this suggests an average width of 6.6m. However, this length includes generous space allocated to the turns at B and C, and is an average width which does not account for the variation in width.

K.2. It is therefore sought that the width of the way is as measured from the first or second edition County Series map, including any waste adjacent to the way between D and E.

⁹ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

¹⁰ The area is recorded as 1.658 acres. The area for the same parcel on the second edition is given as 1.950 acres (0.789 ha), and on the third edition as 1.845 acres (0.747 ha), but these also allow for the width of the way between P and B, including waste between the defined track and the headland on the east side of the way. The area shown on the third edition generates an average width of 5.8m throughout.

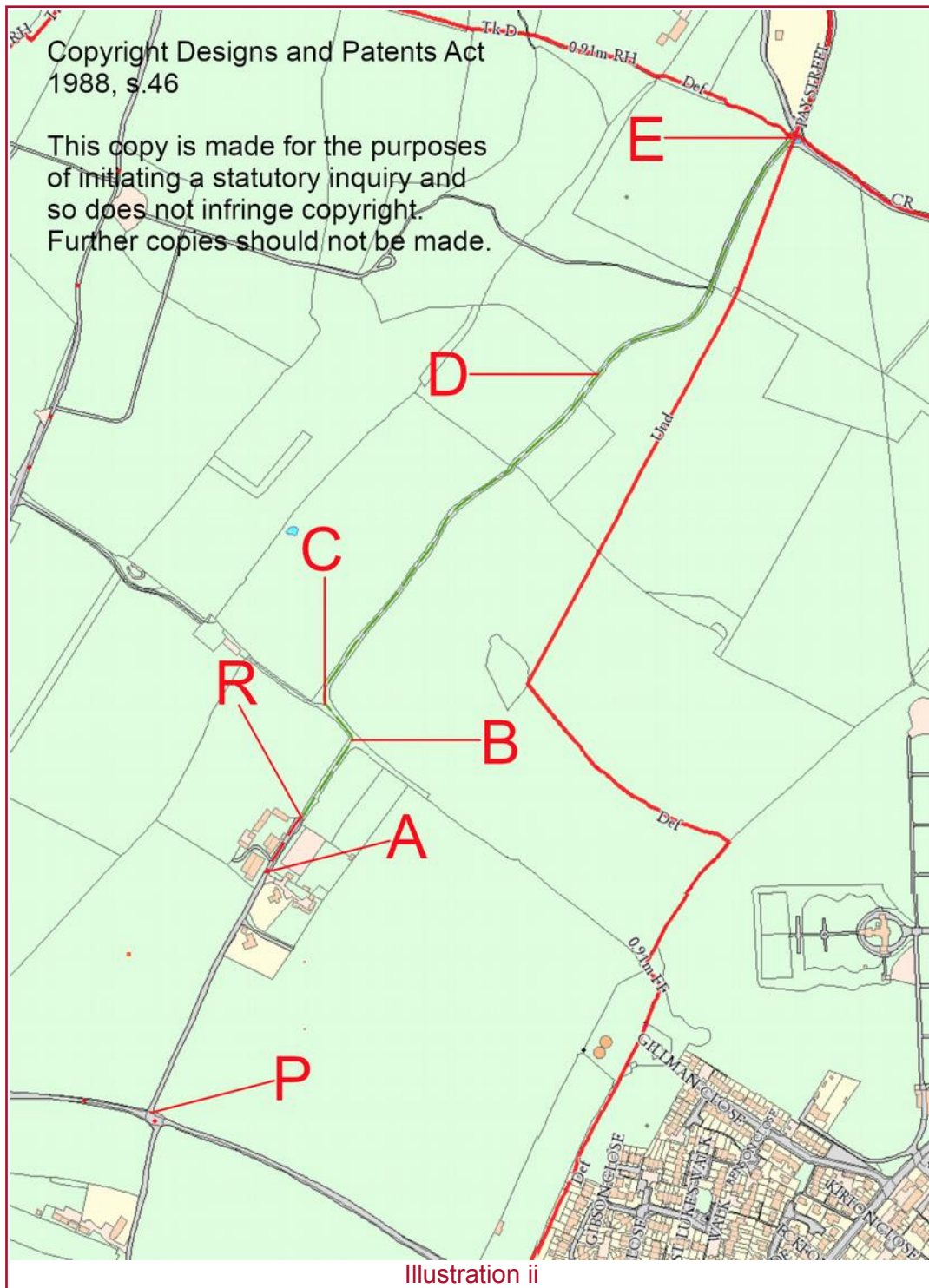
L. Limitations

L.1. The Ordnance Survey County Series 25-inch maps, first edition surveyed 1871–72 (item IV.I below, Illustration xxv), depicts field gates at P and A, consistent with what, at that time, was a field road between those points. No gate at A is shown on subsequent editions of the map, and the road between P and A was subsequently enclosed from the fields through which it passed. However, it is conceded that the right to erect a field gate across the way at A may remain a valid limitation on the way.¹¹

L.2. There is no evidence of any other historical limitation on the way between A and E, and it is therefore sought that any order arising from this application should expressly record in the definitive statement that there are ‘no other limitations’.

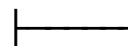
¹¹ The question of the right to erect a field gate across Redsole Lane at P is not within the scope of this application.

II. Application map



Map centred on B at TR20244021

Scale: approx. 1:6,800 (when printed A4)



Application way is marked — (restricted byway) 100m

Application way is marked — (byway open to all traffic)

Parish boundaries are marked —

III. Along the way



Illustration iii: at P



Illustration iv: between P and A



Illustration v: A



Illustration vi: between A and R

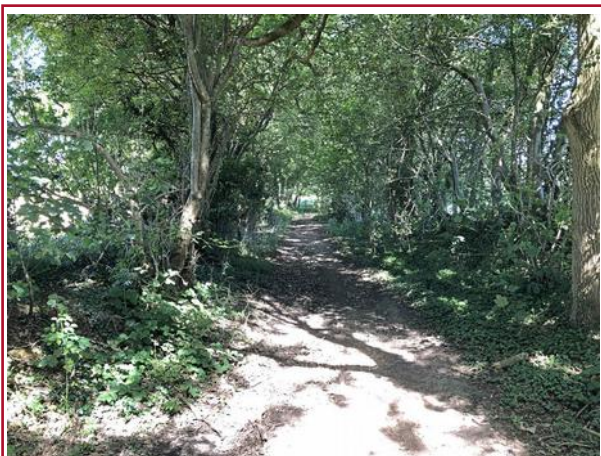


Illustration viii: towards B

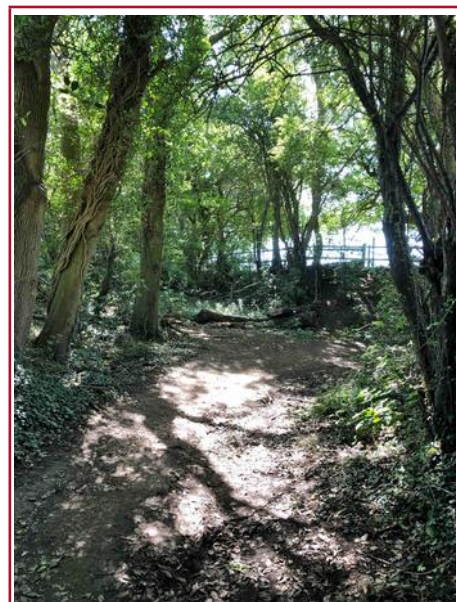


Illustration vii: at C



Illustration ix: north of C

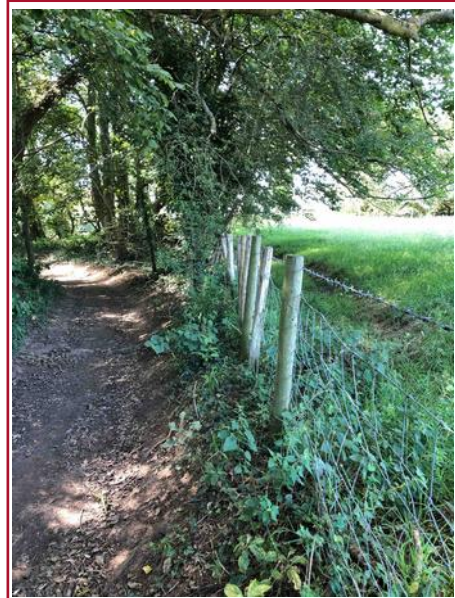


Illustration x: fence north of C



Illustration xi: between C and D



Illustration xii: between D and E



Illustration xiii: north of Cobham's
Rough

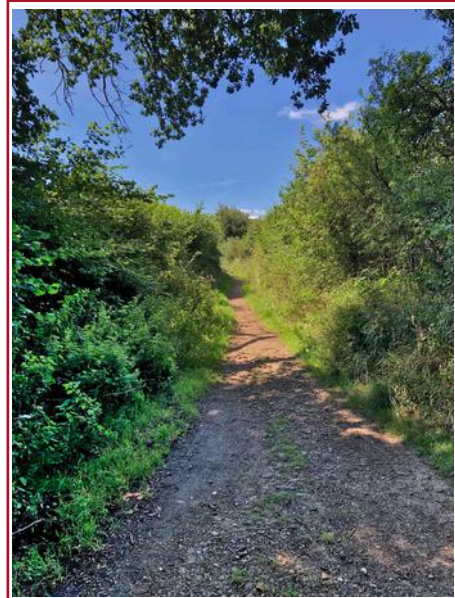


Illustration xiv: south of E

IV. Evidence

Contents

A. Radnor Estate map.....	13
B. Ordnance Survey surveyor's drawing, Canterbury (East).....	15
C. Barlow-Hasted map of Kent.....	17
D. Ordnance Survey, Mudge-Faden one-inch map of Kent.....	19
E. Paterson's Roads — Thanet and Kent and Sussex Coast.....	21
F. Greenwood's map of Kent.....	22
G. Ordnance Survey, Old Series one-inch map of Kent.....	24
H. Tithe Act 1836.....	26
I. Ordnance Survey County Series 25-inch maps.....	29
J. Elham Highway Board.....	35
K. Finance (1909–1910) Act 1910.....	36
L. Bartholomew's map.....	39
M. National Parks and Access to the Countryside Act 1949: draft map.....	42
N. Highway inspector's map.....	45
O. Highway authority list of streets.....	47

A. Radnor Estate map

A.1. **Date:** 1698

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



Illustration xv

A.3. **Description:** Described (on the map) as:

A true and exact mapp of Standing Farm, Barn Farm, South Hawking Farm, Coomb Farm, Ash hill Farm and Lady Wood: being the estate Of Jacob Deshovery Esq lying in the parishes of Folkstone, Capell, Hawking, Alkham and Paddlesworth in the County of Kent. ...Actually surveyed and delineated in the Year 1698: by Abraham Walter of Larkfield in East Malling in Kent.

A.4. The purpose of the map is to show the estate of the person for whom the map was prepared, Jacob Deshovery, who owned several farms in the vicinity of Hawkinge. The fields are annotated as belonging to one of the several farms, in addition to certain other land which is annotated as belonging to a neighbouring landowner.

A.5. The map is based on the road network of Hawkinge at the end of the seventeenth century, shown with a grey infill. The application way is shown on the map as 'Paddlesworth Road', leading from the road junction at E, and all four limbs of the junction are depicted consistently, with a grey infill.

A.6. **Conclusion:** There is a good correspondence between roads shown on the plan and the road network shown on the Ordnance Survey, Old Series one-inch map of Kent (item IV.G below), but with some variations. It cannot now be said with certainty that the intention of the draughtsman was to show only public roads. But it can be said that the majority of roads shown with a grey infill today remain public roads.

A.7. The application way, from E as far as D, is shown consistently with other public roads, and is described as 'Paddlesworth Road'. Such a name is unlikely to be applied to a private road, and also makes clear that the way, although shown only in part, was recognised as a through way to Paddlesworth.

A.8. It therefore is suggested that this estate map, prepared by the owner of much of the land represented in the map, is significant evidence that, even at the end of the seventeenth century, the application way is likely to have been considered a public road.

A.9. **Points:** 2

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

B.1. **Date:** 1797

B.2. **Source:** British Library website¹³

13 Sheet 107(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html

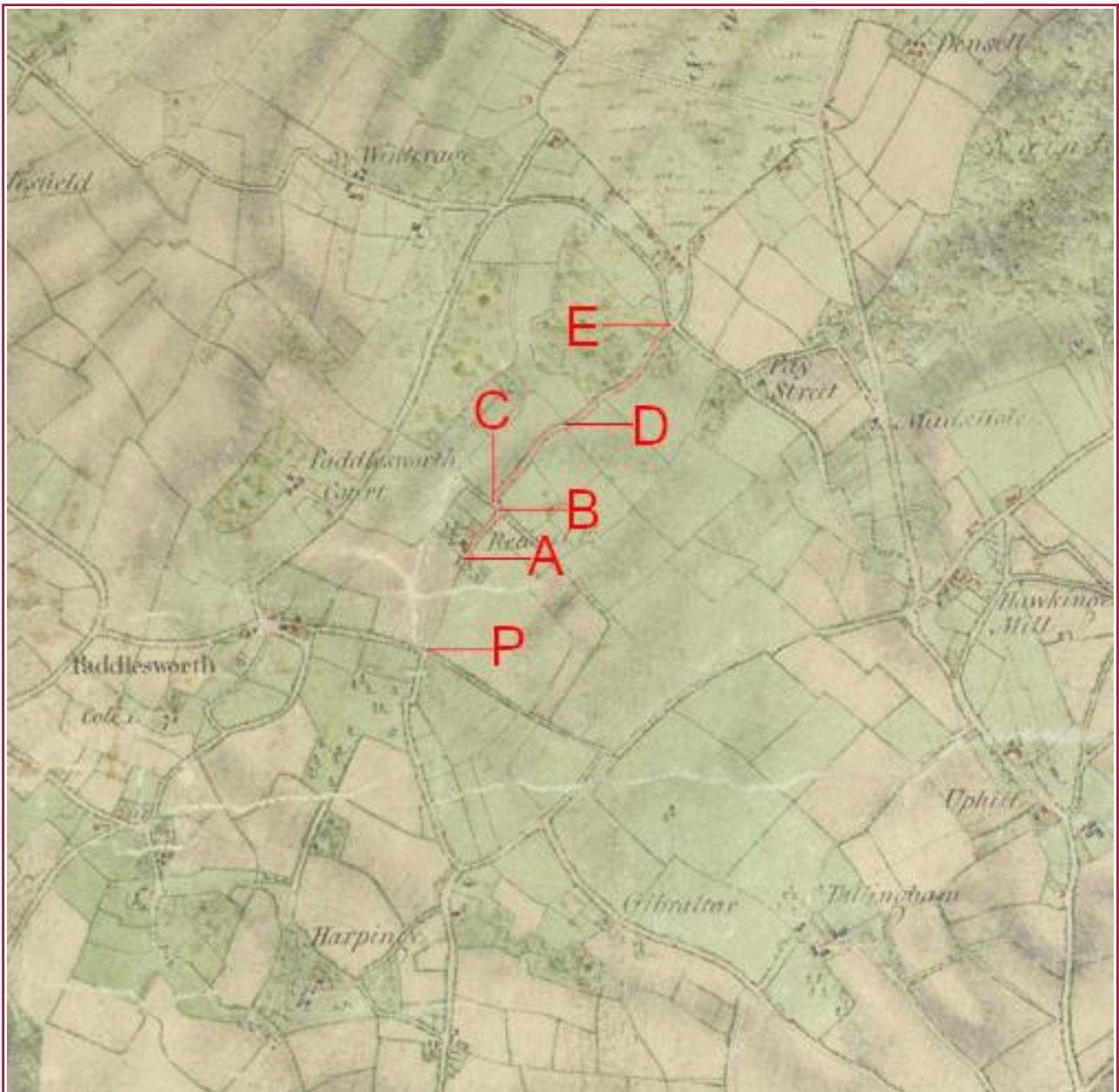


Illustration xvi

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

B.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in 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.¹⁴

B.5. The application way is ill-defined, or not defined at all, between P and A, but is clearly defined as an enclosed route from A to E.

B.6. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the way between A and E. The absence of any well-defined way between P and A may be accounted by its being a field road (*i.e.* an unenclosed public road across fields, gated at field boundaries).

B.7. **Points:** 0

C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

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

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

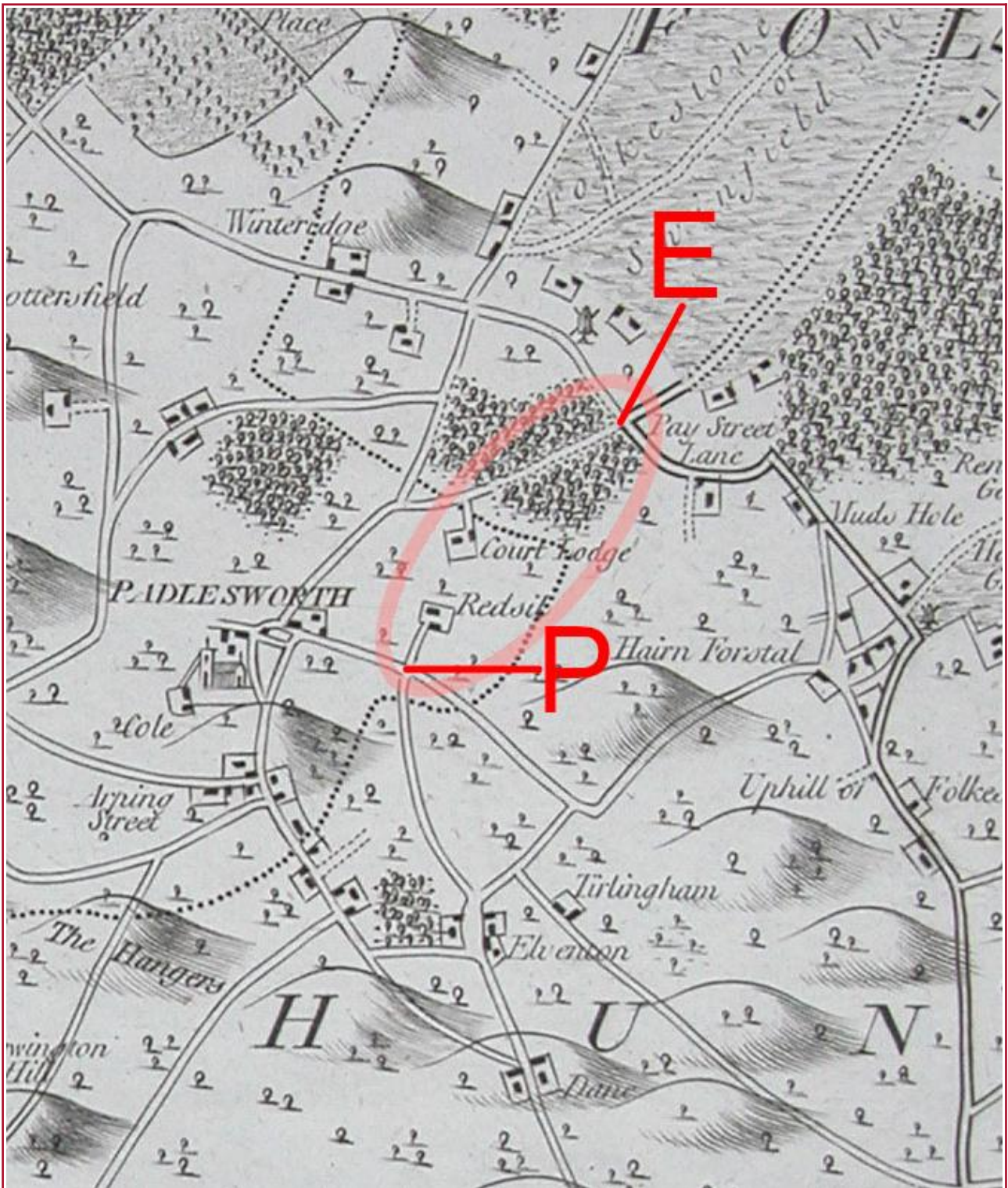


Illustration xvii

C.3. **Description:** Original scale: not known; orientation: unchanged (north).

C.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundred of Folkestone.

C.5. The application way is not shown as a through route. A spur is shown from P to 'Resil' *i.e.* Redsole Farm, and a way is also shown from E past Court Lodge towards Paddlesworth. The two ways are shown unconnected.

C.6. **Conclusion:** It appears that the application way is of insufficient importance to be identified on the Barlow map, although it may be comprised in part in the ways leading to Redsole Farm and Court Lodge. The absence of any direct connection between P and E, and the inclusion of a line from E to Court Lodge and continuing on to Paddlesworth, appears to be a mistake — nothing similar is shown on contemporary maps.

C.7. **Points:** 0

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

D.1. **Date:** 1801

D.2. **Source:** Kent County Archives, also available at Mapco.net

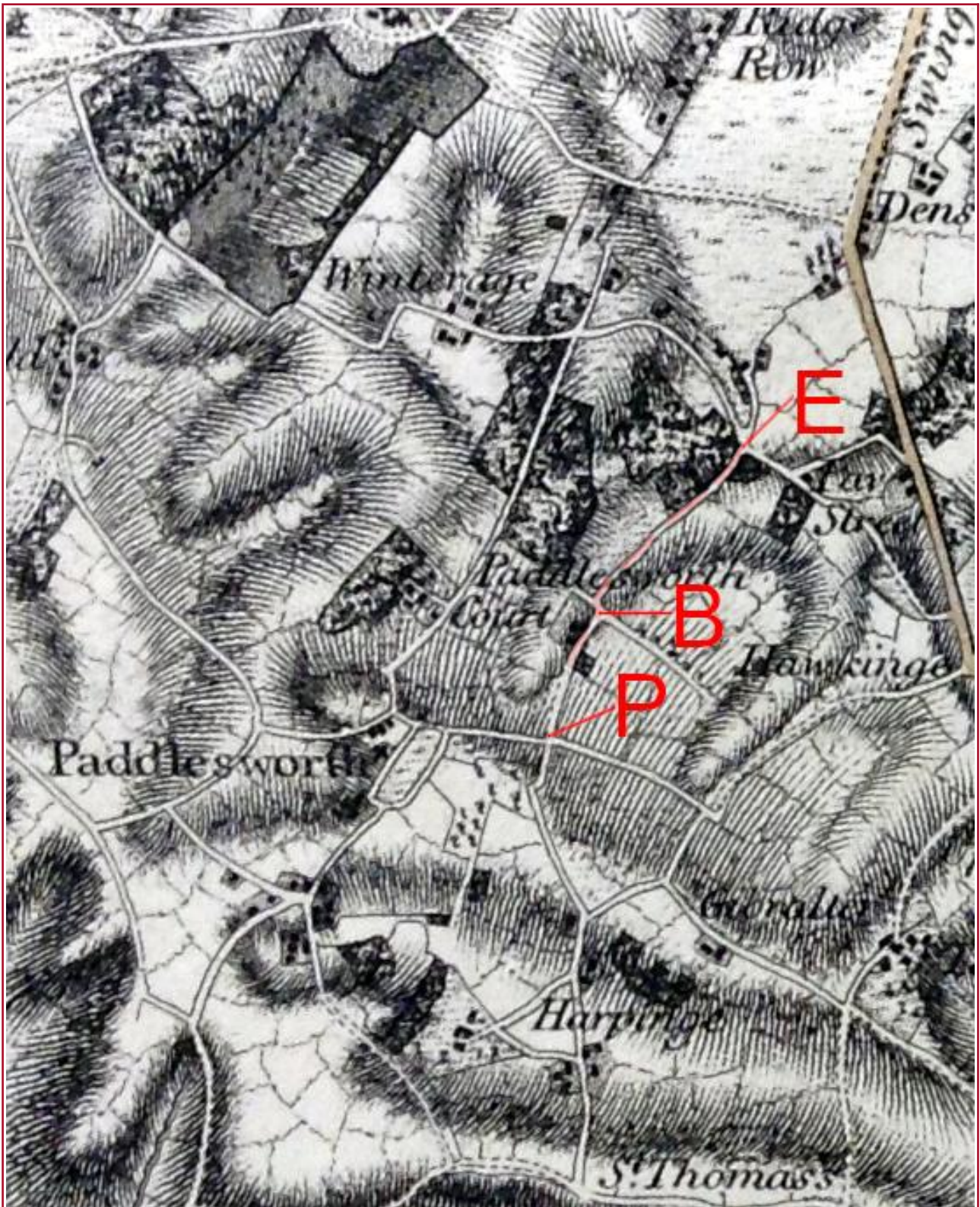


Illustration xviii

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

D.4. This map of Kent was the first map to be to rely primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B above).

However, the Ordnance Survey did not itself publish a map of Kent 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.

D.5. The application way is clearly identified between P and E as a track or road. It is depicted as unenclosed between P and Redsole Farm, and as enclosed thereafter.

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.

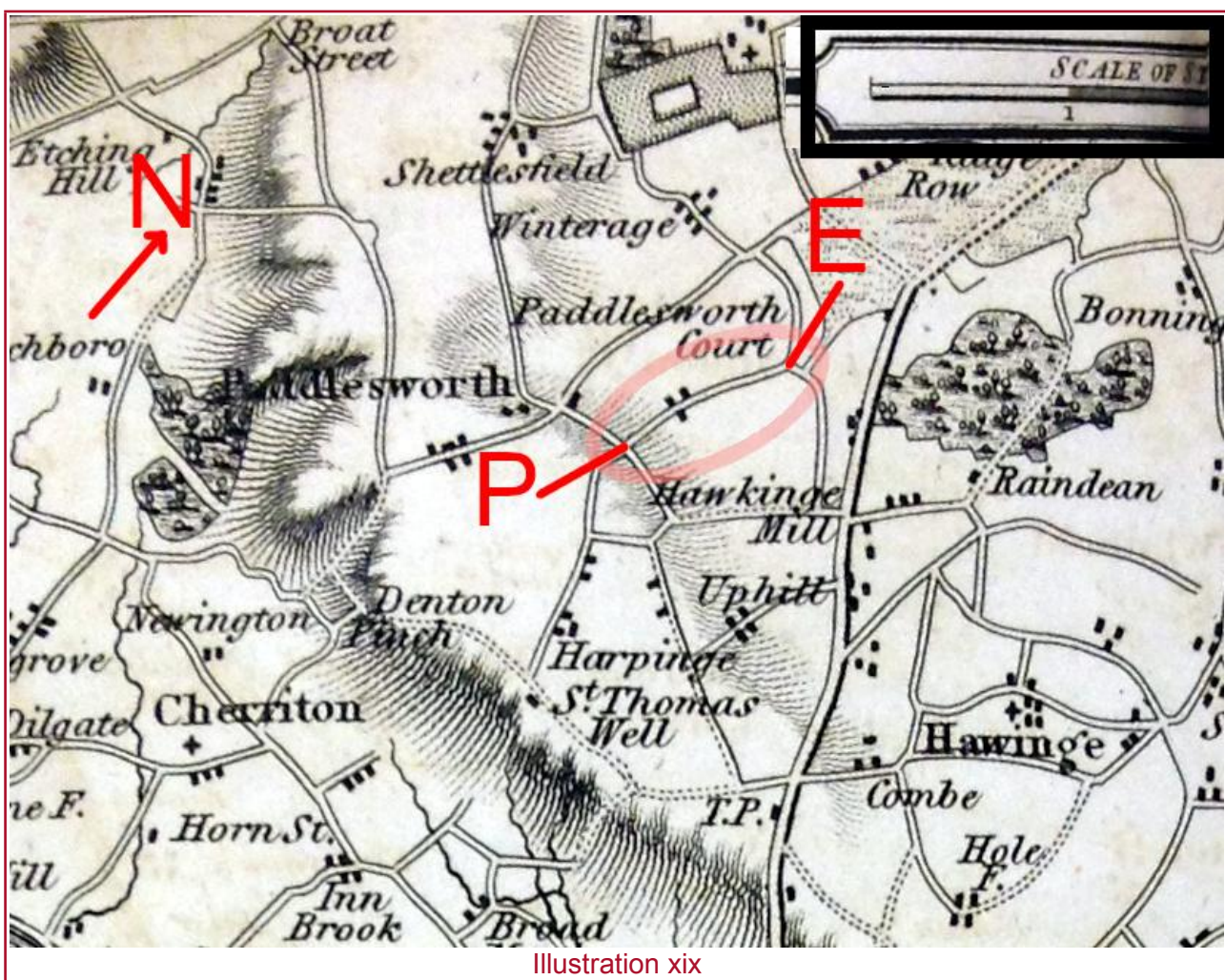
D.7. The application way is shown as a track or road, probably sufficient to pass horses or carts, but its status cannot be assured.

D.8. **Points:** 0

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

E.1. **Date:** 1811

E.2. **Source:** British Library¹⁵



E.3. **Description:** scale: marked in miles on map (but scale bar may be affected by distortion owing to the effect of the binding); orientation: unchanged (top is approximately northwest).

E.4. 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.

E.5. The map shows the application route in its entirety, as an enclosed road or track.

E.6. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.D above).

E.7. **Conclusion:** The Thomson map leaves out many minor roads. There would have been little purpose in such a map, showing a selective network of roads, including roads which were unavailable to the public. It is therefore some evidence for the existence of a defined way along the application way which is likely to have public status as a cart or carriage road.

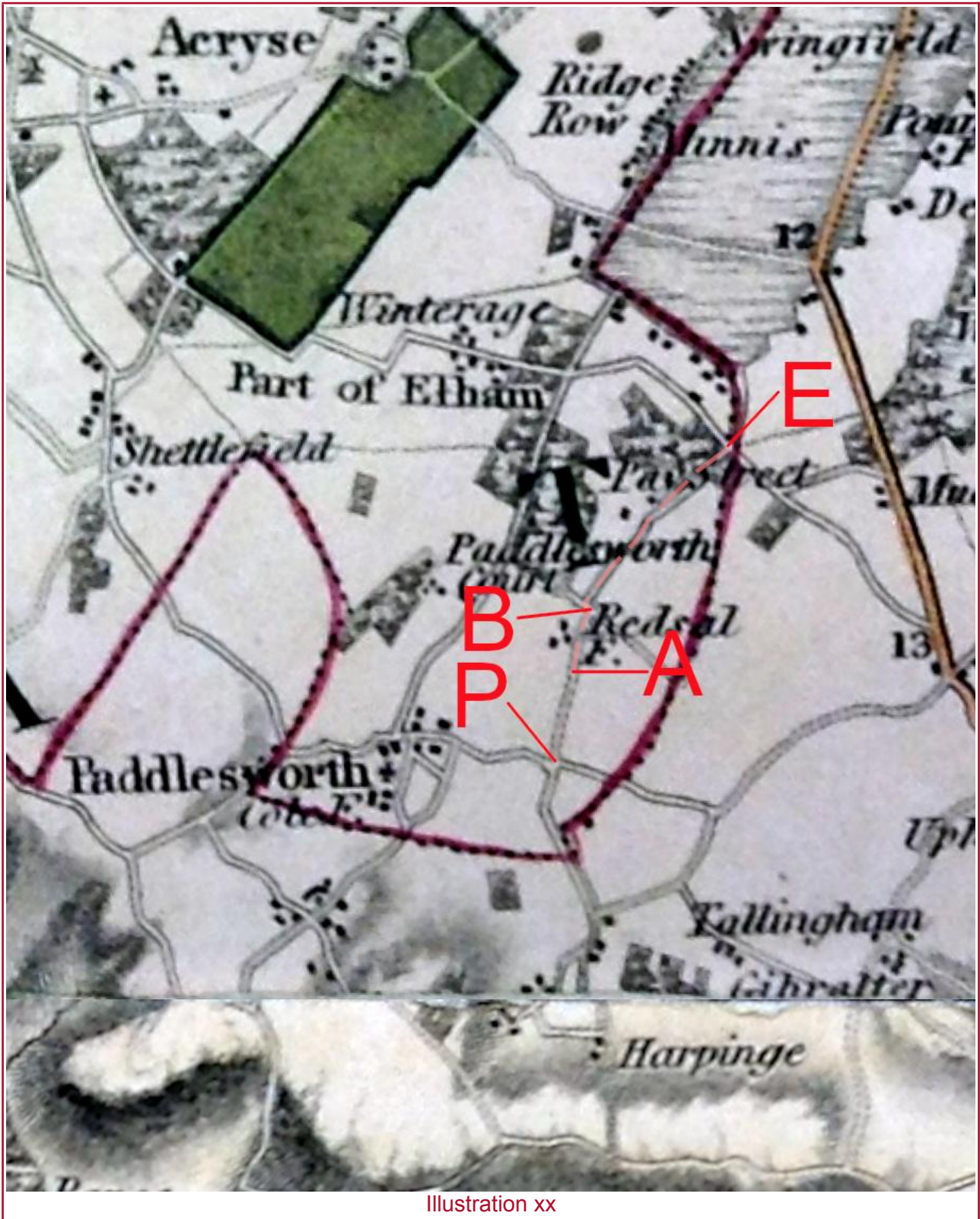
E.8. **Points:** 1

F. Greenwood's map of Kent

F.1. **Date:** 1819–20

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

Greenwood map



Greenwood map key



F.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.

F.4. The application way is clearly identified between P and E as a track or road. It is depicted as unenclosed between P and A, and as enclosed thereafter.

F.5. **Conclusion:** The key to the Greenwood map records the application way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (separately marked).

F.6. **Points:** 1

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

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

G.2. **Source:** National Library of Australia¹⁶

16 nla.gov.au/nla.obj-231917365

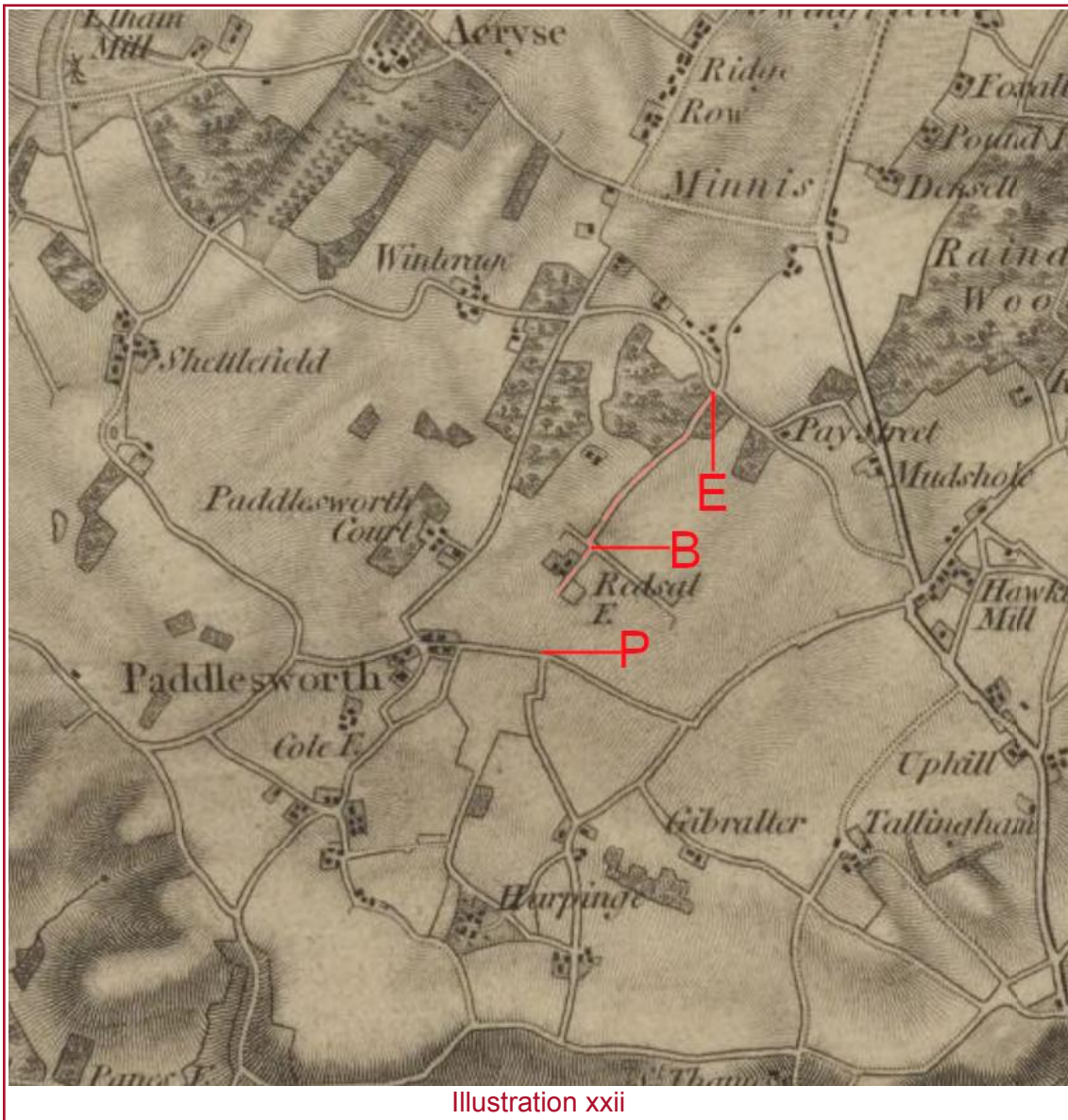


Illustration xxii

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

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

G.5. The Old Series map shows the application way as an enclosed lane between Redsole Farm (at A) and E, in common with other local routes, but no connection is shown between P and Redsole Farm. The omission is somewhat surprising, because the connection is visible on the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B above) and the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.D above) — both this map and the latter derived from the former. It is unlikely that Redsole Farm was at any time isolated from the village in which parish it lay. Its exclusion may be explained by this part of the way being a gated field road.

G.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. It may be said that the application way was at least sufficient for traffic on horseback. The omission of a way between P and Redsole Farm appears to be attributable to this part of the way being a field road, and the exclusion is not replicated in other contemporary sources.

G.7. **Points:** 0

H. Tithe Act 1836

H.1. **Date:** 1838

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

Tithe map

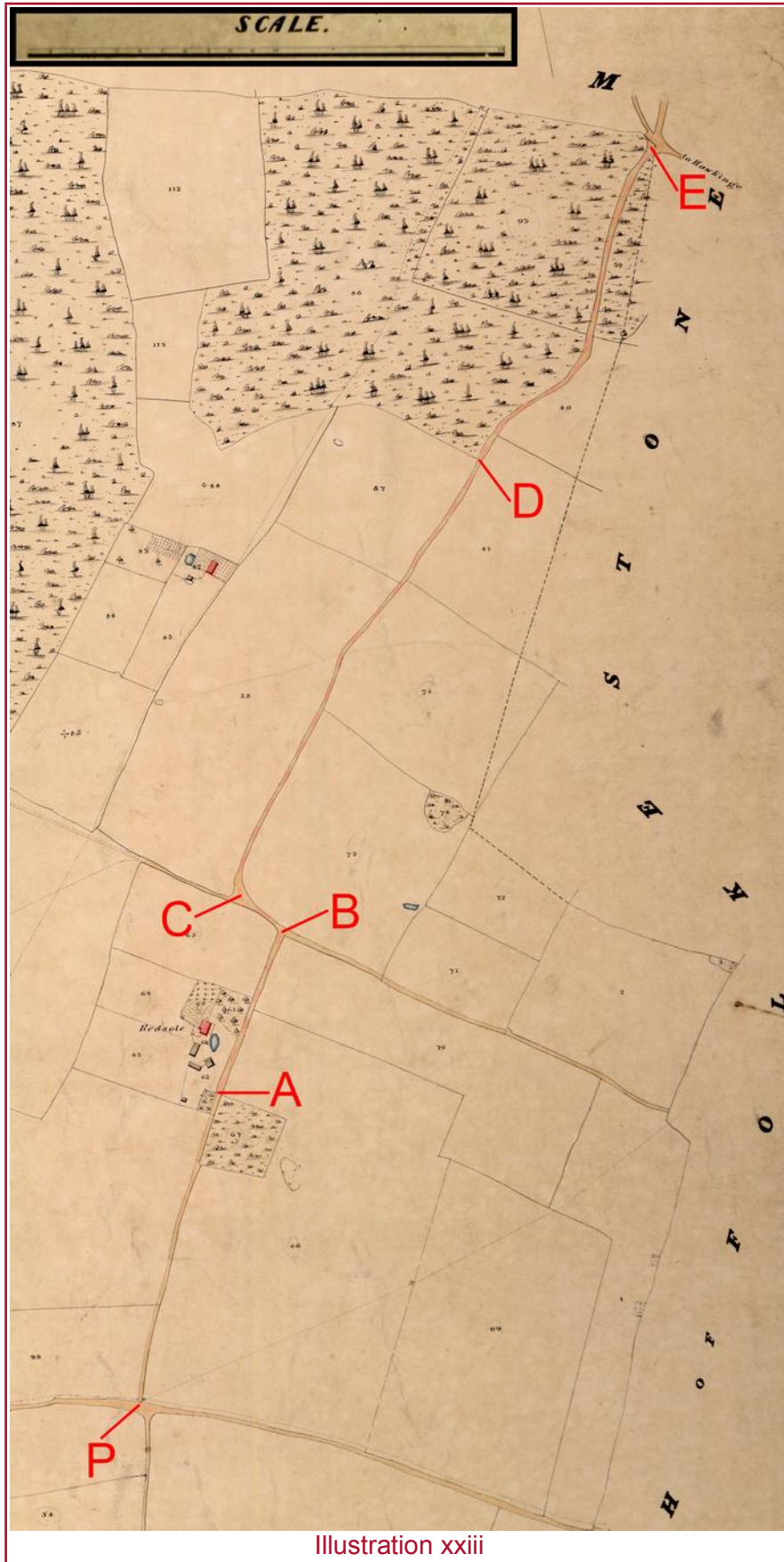


Illustration xxiii

Dawson's conventional symbols

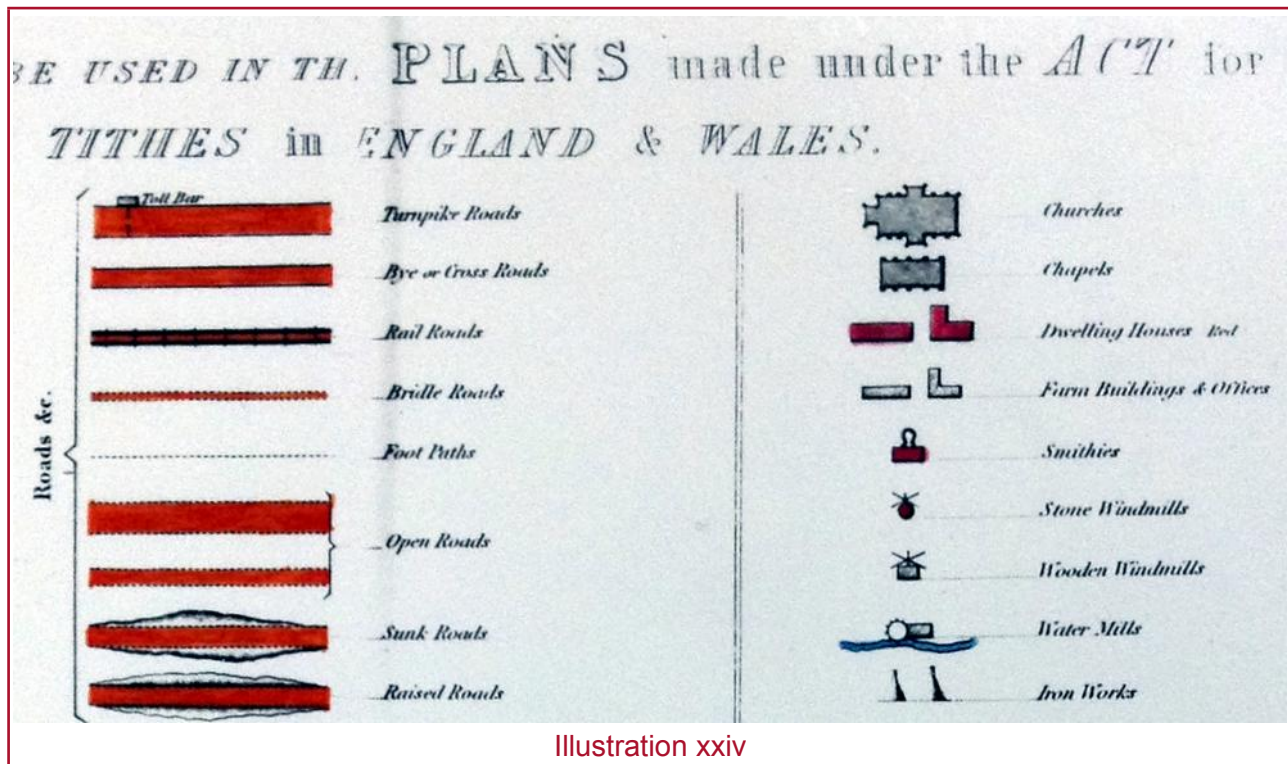


Illustration xxiv

H.3. **Description:** Original scale — 1:2,376 (one inch to three chains); orientation — unchanged (top is north). The tithe map for Paddlesworth is first class¹⁷.

H.4. The Tithe Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

H.5. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to¹⁸: an extract from the convention is shown at Illustration xxiv above.

H.6. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this

¹⁷ See the record for this tithe apportionment held by the National Archives: [IR 30/17/286](#).

¹⁸ *Survey of lands (Tithe Act.)*, letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act, 29 November 1836 (copy held at the National Archives).

document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.¹⁹

H.7. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

H.8. The application way is clearly identified between P and E as a track or road: it is coloured sienna. It is depicted as unenclosed on the west side of the way between P and A, and as enclosed thereafter. The use of a dotted line between P and A appears to follow the guidance of Lt. Dawson (see footnote 15) that:

The boundaries and limits of all lands and parcels of land which are to be treated separately under the provisions of the Tithe Act, should be marked on the Plans, whether they be defined by fences or not. This will be more particularly requisite in cases which claim exemption from rent-charges under the Act; and where no boundary fences appear, the limits should be shown by a dotted line.

H.9. **Conclusion:** The use of sienna on the tithe map does not inevitably appear to signify a public road — there are several spurs shown coloured sienna which are not obviously public roads then or now²⁰: it may instead signify metalled roads, or roads excluded from liability to tithes (or both). However, it does appear that the application way, uniformly coloured sienna, was considered to be a public road, because it includes the field road between P and A (which in similar circumstances, such as west of C, is not so coloured), and because it appears to be excluded from the apportionment. The tithe apportionment includes a value for 'Public Roads' of 5a,0r,2p²¹ and this is very likely to account for the application way.

H.10. **Points:** 4

I. Ordnance Survey County Series 25-inch maps

I.1. **Date:** various

I.2. **Source:** British Library, National Library of Scotland,²² Old-maps.co.uk

19 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

20 See, for example, to the northwest of Paddlesworth Court.

21 Described in the summary as 'Public Roads, Waste etc.'

22 Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheet LXVII/13.

County Series first edition 25" map (surveyed: 1871–72)

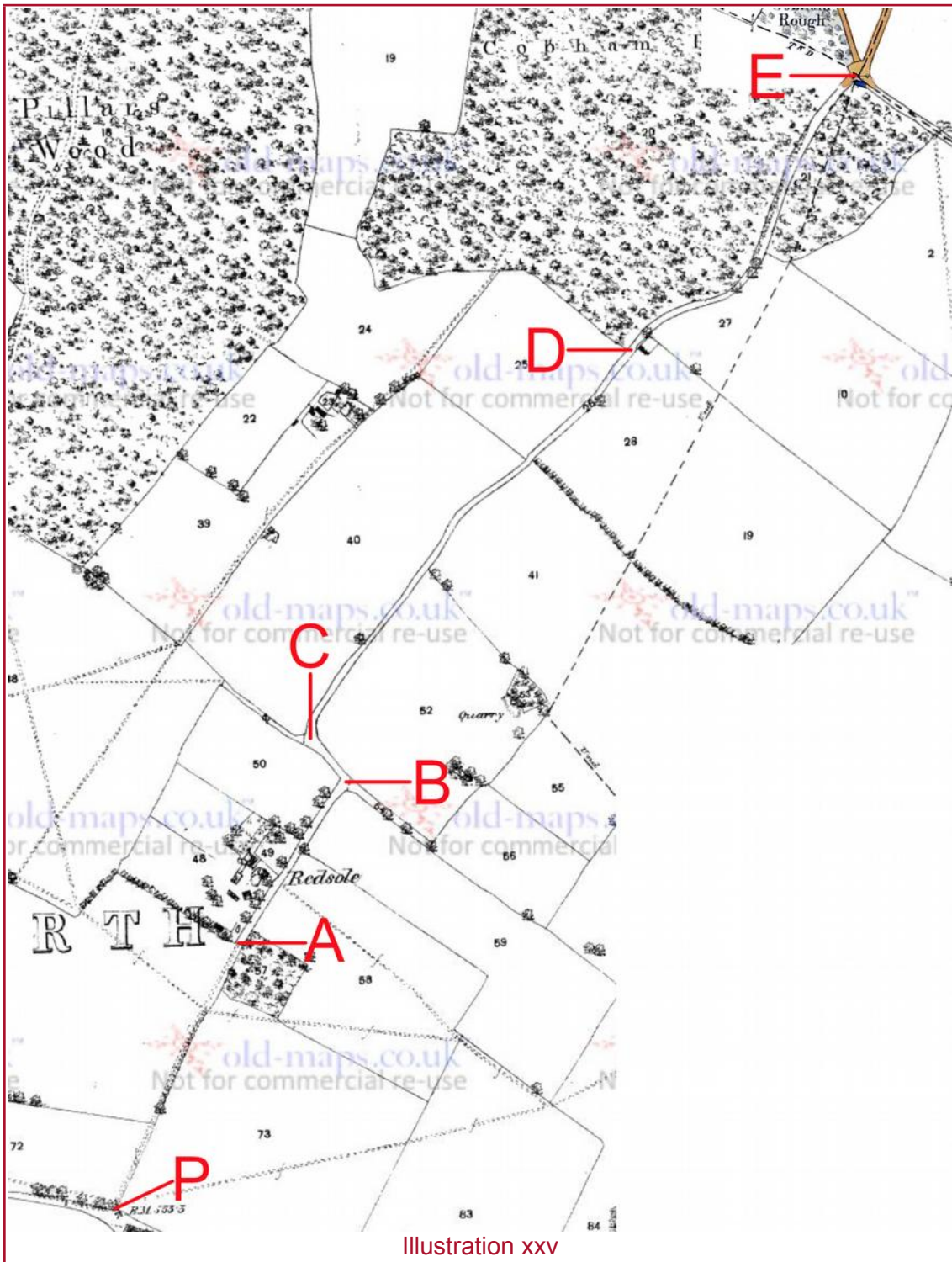


Illustration xxv

PARISH OF PADDLESWORTH,

IN THE

COUNTY OF KENT—(EASTERN DIVISION).

HUNDRED OF LONINGBOROUGH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
24	4·075	Pasture, &c.	39	4·668	Pasture, &c.
25	4·235	Arable.	40	10·039	Pasture, &c.
26	1·658	Road.	41	5·127	Arable.
27	1·430	Pasture.	42	7·279	Pasture, &c.
28	3·884	Pasture, &c.	43	10·195	Pasture, &c.

Illustration xxvi

County Series second edition (surveyed: 1896)

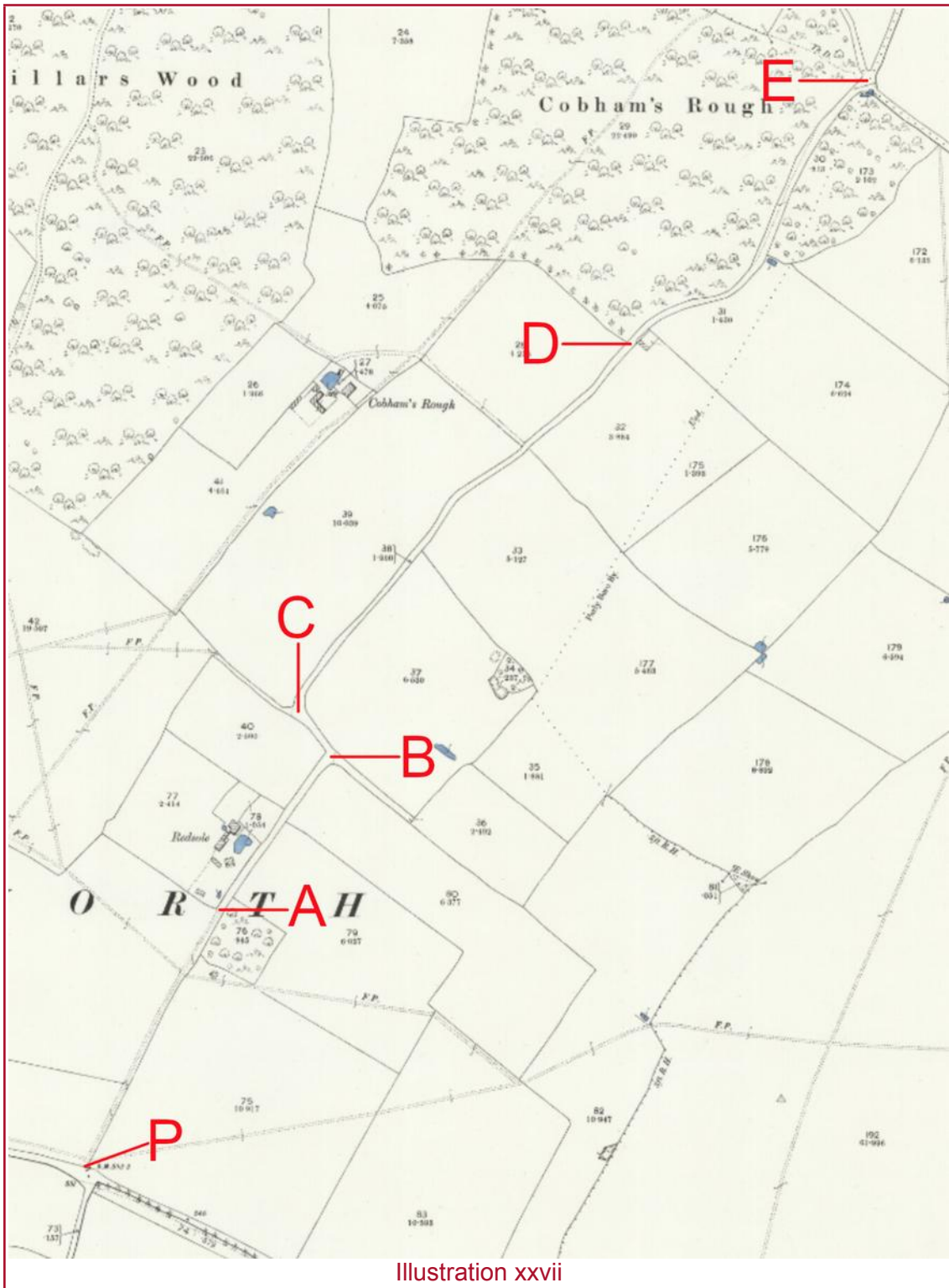


Illustration xxvii

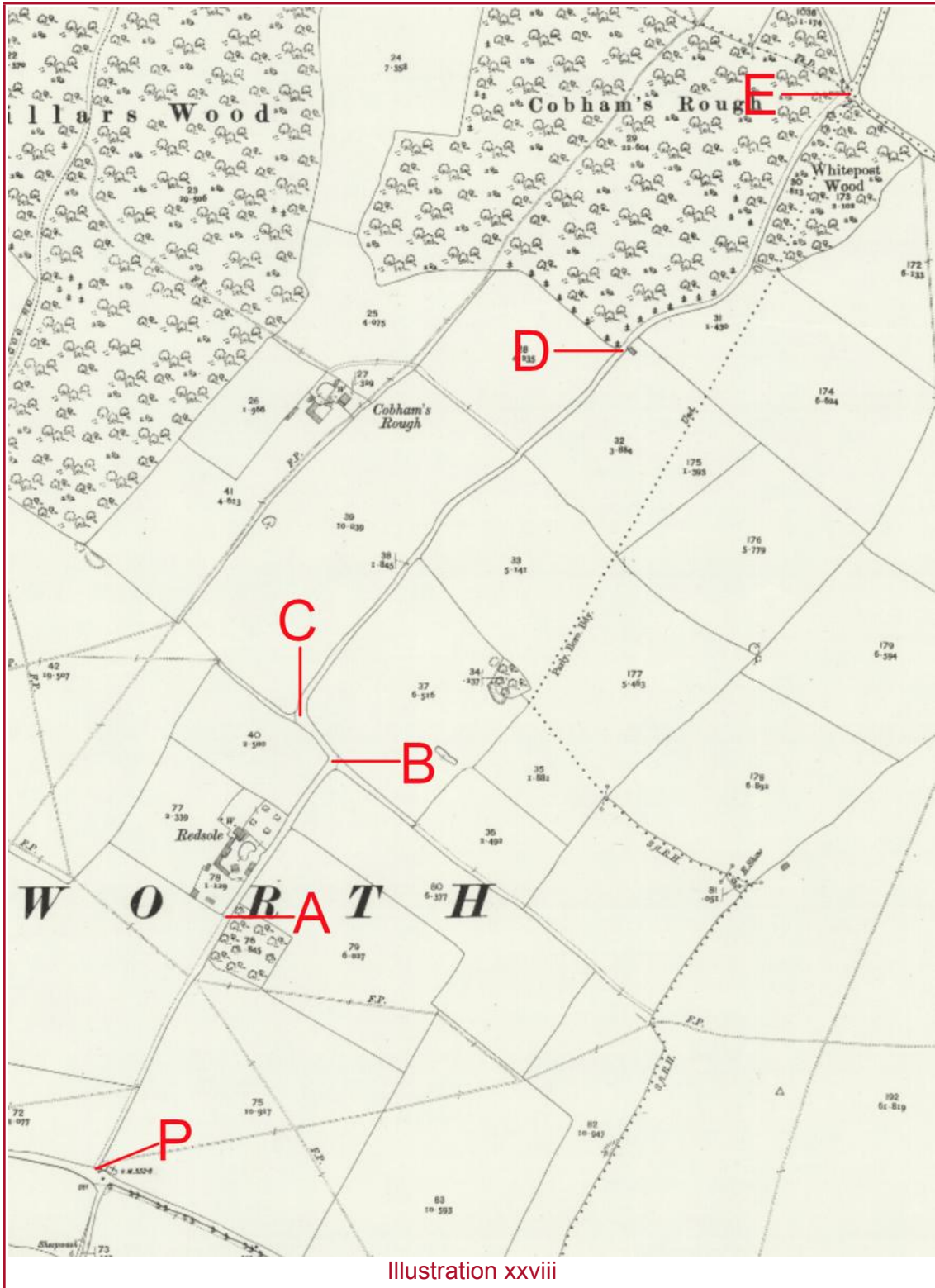
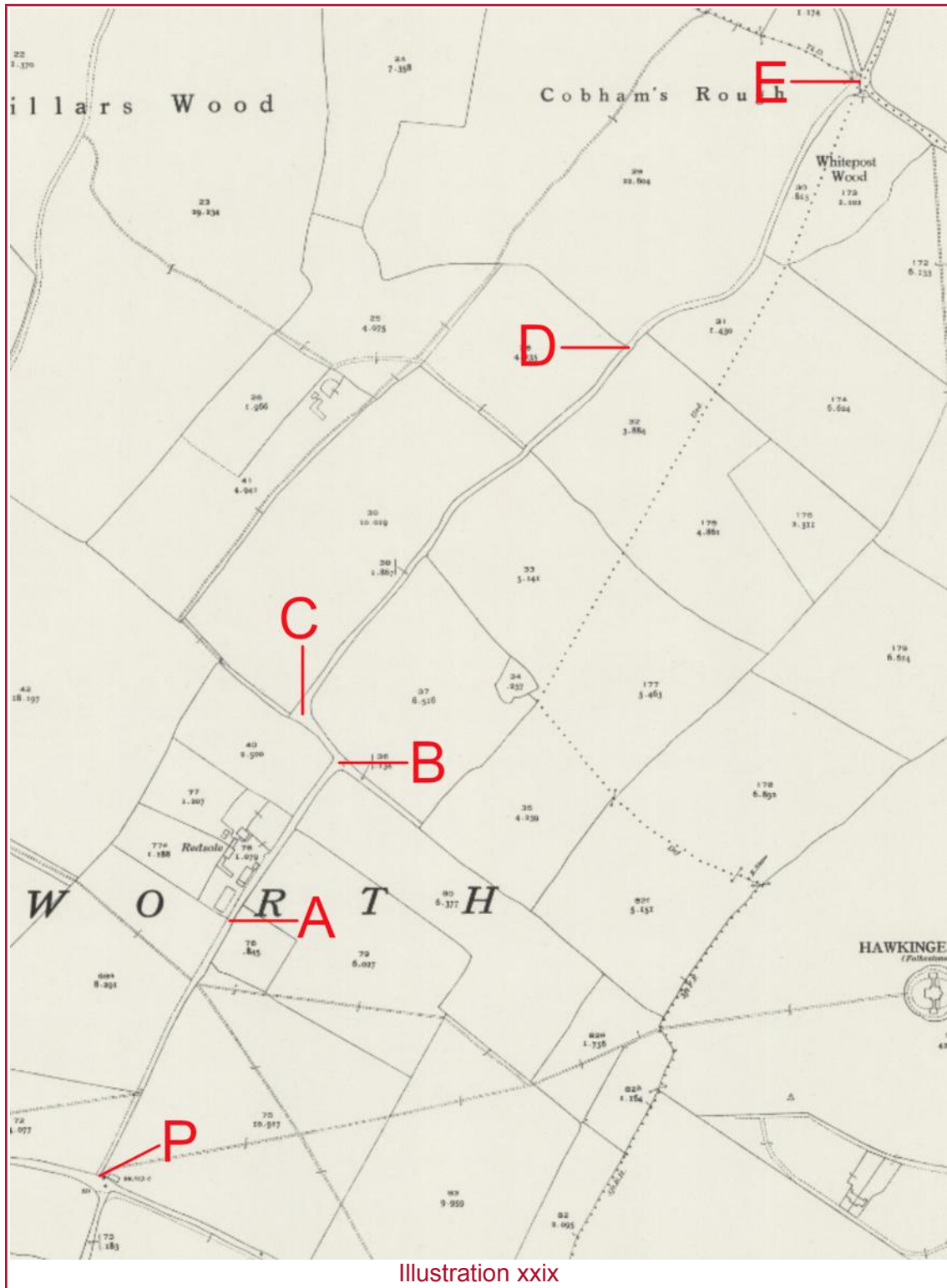


Illustration xxviii

County Series fourth edition (surveyed: 1938)



I.3. **Description:** Original scale: 1:2,500 (twenty fives inches to one mile); orientation: unchanged (north is top).

I.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and twenty-five inches to one mile. Coverage of Kent was in four successive editions.²³ All four editions show the application way throughout.

I.5. The first edition map shows Redsole Lane as a field road, with gates, between P and A; from A to E, the way is shown as enclosed. A copy of the original, coloured map is available only for the adjacent parish of Acrise, but this shows that at least the northern end of the way is coloured sienna: this indicates that the road was metalled.²⁴ The enclosed part of the way is allocated parcel number 26, and in the area book, this is described as a 'road' with an area of 0.671 ha.

I.6. The position is unchanged on the second edition map, but the third and fourth editions show that Redsole Lane between P and A is now shown without interruption by field gates.

I.7. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application way. The metalling of the most northerly part of the way recorded on the first edition map is consistent with the way being a public road. The way is described in the area book as a 'road'.

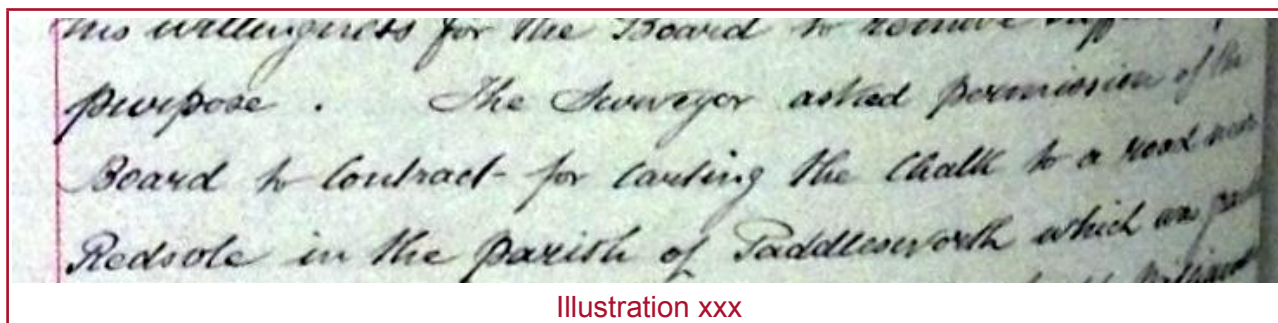
I.8. **Points:** 1

J. Elham Highway Board

J.1. **Date:** 1883

J.2. **Source:** Kent County Archives²⁵

Minute: 8 June 1883²⁶



23 In certain areas, the first edition was published in a revised state.

24 '**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*, 3rd 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.

25 HB/EL3

26 P.103

Minute: 3 August 1993²⁷

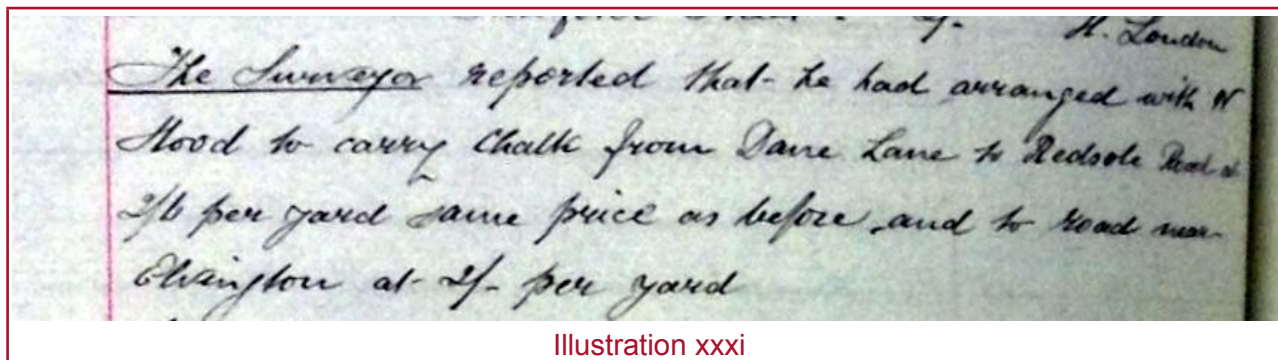


Illustration xxxi

J.3. **Description:** The Elham Highway Board was created by the Highways Act 1862 to take over the responsibility of maintaining the highways from individual parish vestries. It subsequently ceded its functions to Elham Rural District Council.

J.4. At a meeting of the Elham Highway Board on 8 June 1883, the minutes record that:

The Surveyor asked permission of the Board to contract for carting the chalk to a road near Redsole in the parish of Paddlesworth which was [?granted].

J.5. At a meeting on 3 August, the minutes record that:

The Surveyor reported that he had arranged with Mr Hood to carry chalk from Dane Lane to Redsole Road at 2/6 per yard same price as before and to road near Elvington at 2/- per yard.

J.6. **Conclusion:** The minutes appear to refer to the application way, and demonstrate that the highway board was maintaining the application way during the late nineteenth century. The minutes do not identify the part of Redsole Lane (referred to in the second minute as 'Redsole Road') which was being maintained, and it is not specified that the work related expressly to the application way (as apart from P to A), but there is nothing in the minute to suggest that the burden of maintenance was believed to apply to only one short part of the road.

J.7. **Points:** 3

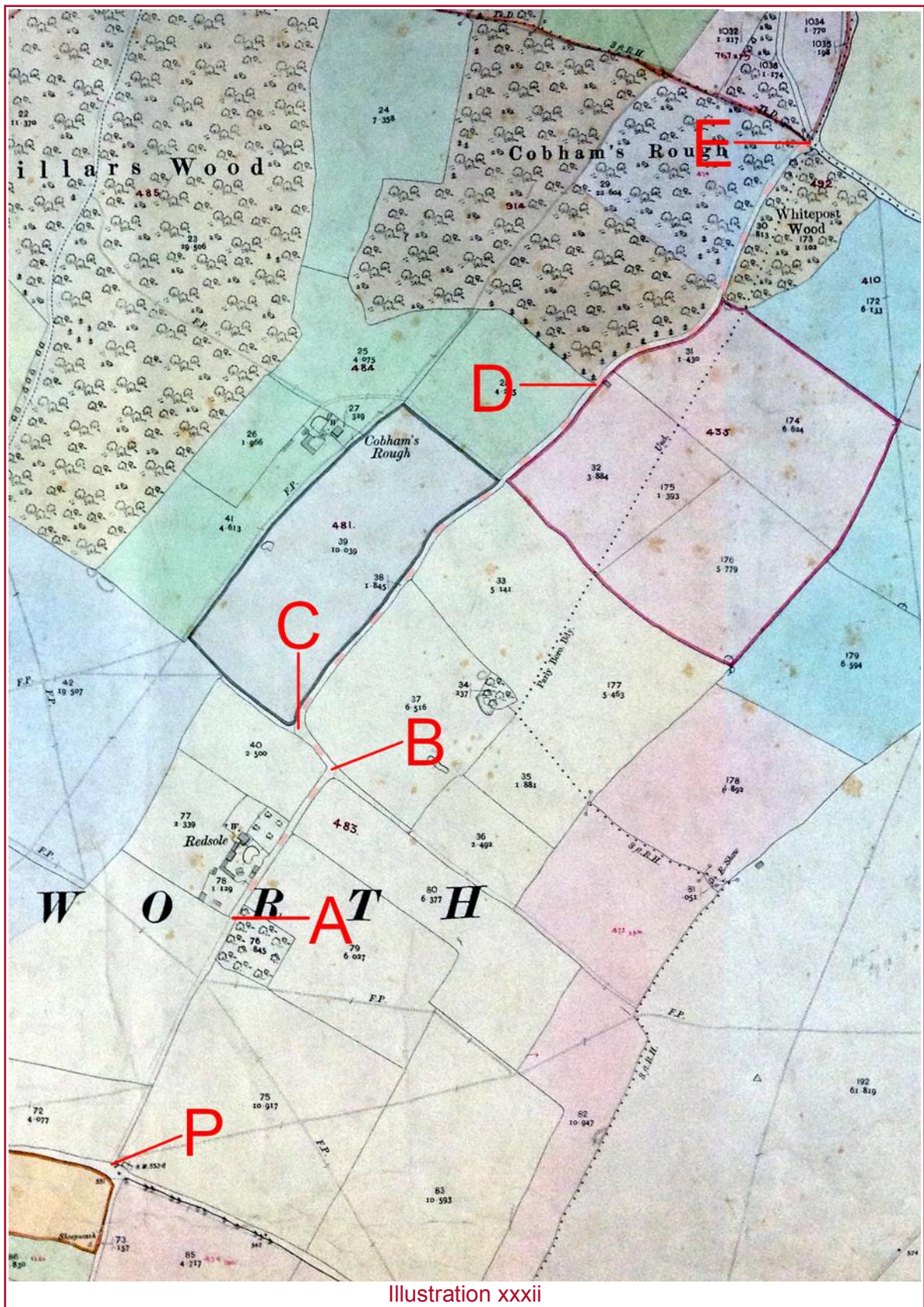
K. Finance (1909–1910) Act 1910

K.1. **Date:** 1911

K.2. **Source:** National Archives²⁸

²⁷ P.109

²⁸ IR 124/5/237



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

K.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in

value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads'. This is because s.35 of the 1910 Act provided,

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

A highway authority was a rating authority.

K.5. 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 (paras.753, 770), that:
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 (para.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 (para.47) said:
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 (para.106) that:
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 (para.65) that:
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.

K.6. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways.

K.7. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

K.8. In relation to the application way, the record map is ambiguous. The way between A and C (and likewise Redsole Lane from P to A) appears to be coloured off-white in common with hereditament 483 (Redsole Farm). However, the same colour is used for the way between C and E, notwithstanding that part of the way is bounded by a separate hereditament, 481, on the west side, which clearly excludes the application way, while neighbouring hereditaments 484, 455, 914, 474 and 492 (between C and E) do not include the application way. It seems unlikely that this part of the application way was believed also to form part of hereditament 483, and more probable that it was excluded from valuation. It may be that the position in relation to hereditament 483 is simply uncertain.

K.9. In the valuation book for Alkham, Hawkinge, Paddlesworth and Swingfield²⁹ (not shown here), a deduction of £50 is recorded against Redsole Farm in respect of 'Public Rights of Way or User'. However, as the record map shows several paths crossing the holding, it cannot be said that the deduction may include provision for the application way, or for Redsole Lane between P and A.

K.10. **Conclusion:** The application way between C and E is (in effect) a 'white road' and excluded from valuation, providing good corroborative evidence that the application way was believed, at the time, to be a public road. The position between A and C is more uncertain.

K.11. **Points:** 5 (between C and E)

L. Bartholomew's map

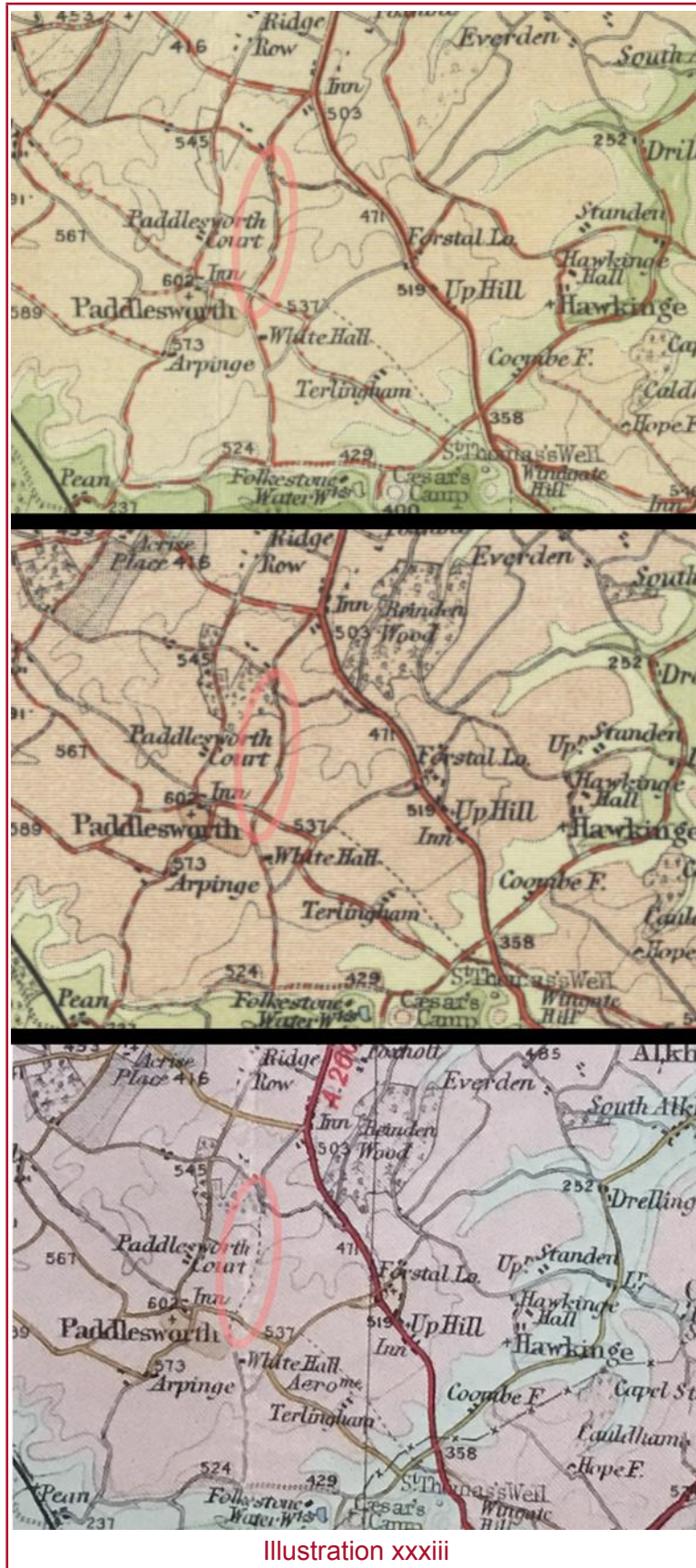
L.1. **Date:** 1904, 1922 and 1953

L.2. **Source:** National Library of Scotland³⁰

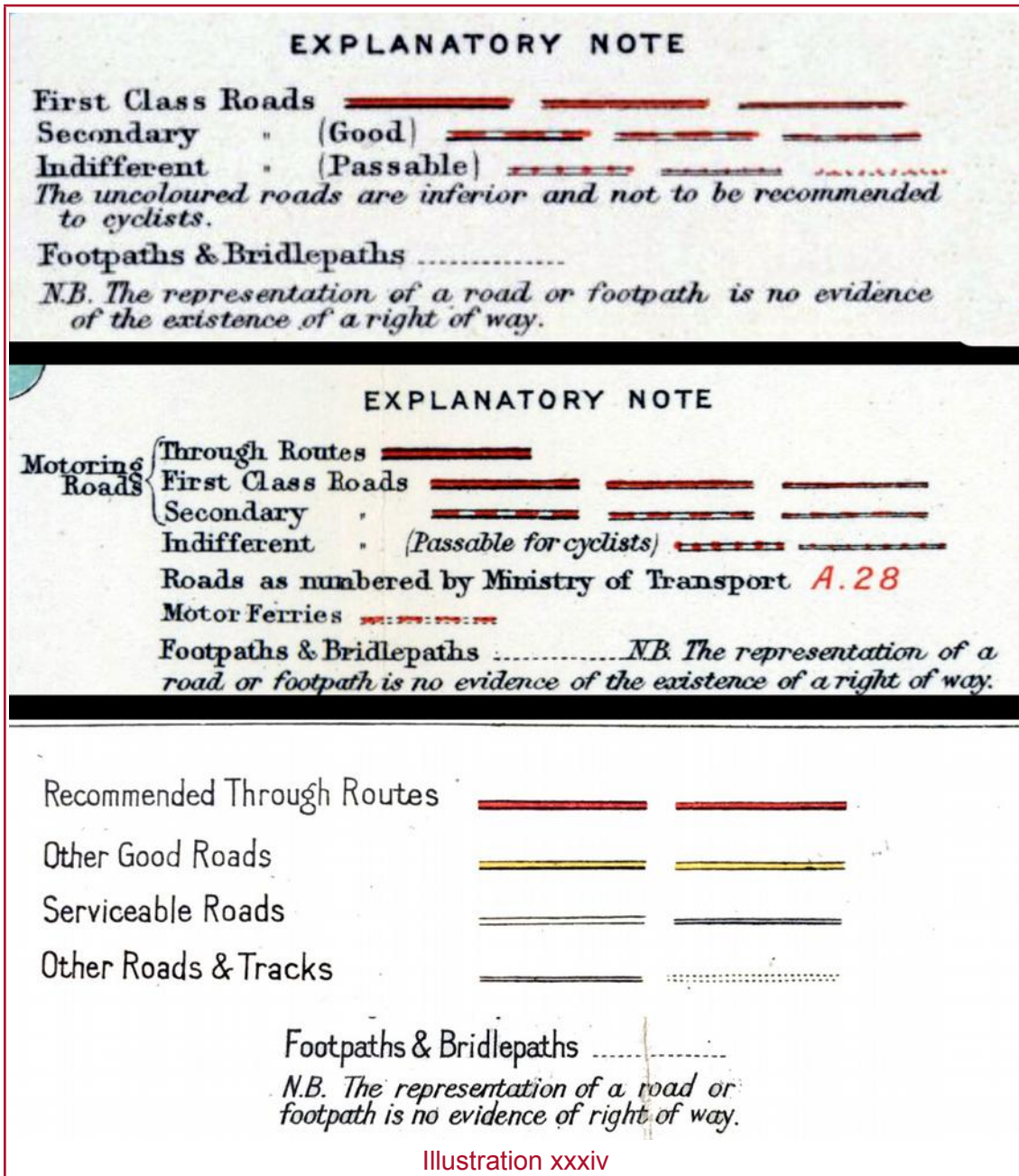
²⁹ Kent County Archives, IR4/6/1

³⁰ maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1904, 1922 and 1953 editions



Bartholomew's maps keys: 1904, 1922 and 1953 editions



L.3. **Description:** Original scale: half inch to one mile (1:126,720); orientation: unchanged (north).

L.4. Bartholomew's maps from the first half of the twentieth century show an evolving road network. On the 1904 edition, the application way is depicted as a secondary road, good for cyclists. On the 1922 edition, as a secondary motoring road (and impliedly satisfactory for cycling). On the 1953 edition, the way is shown as a footpath or bridleway.

L.5. Curiously, the alignment of the application way is incorrectly plotted, adopting an alignment which, particularly north of C, veers too far to the west. However, the junction at E is unmistakable, and there can be no doubt that what is shown is the application way.

L.6. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the application way was regarded as a road sufficient for cycling, and apparently fit for motoring.

L.7. Paragraph 12.41 of the consistency guidelines³¹ notes that:

...current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.

L.8. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists. Moreover, the 1904 map was revised and published in a new edition in 1922, but there was no substantive change in the classification of the application way. It was only after the Second World War that the application way was downgraded to a footpath or bridleway not necessarily suitable for cycling. It may therefore be said that the Bartholomew's maps are significant evidence of the status of the way as a public road considered fit for motoring and cycling.

L.9. **Points:** 2

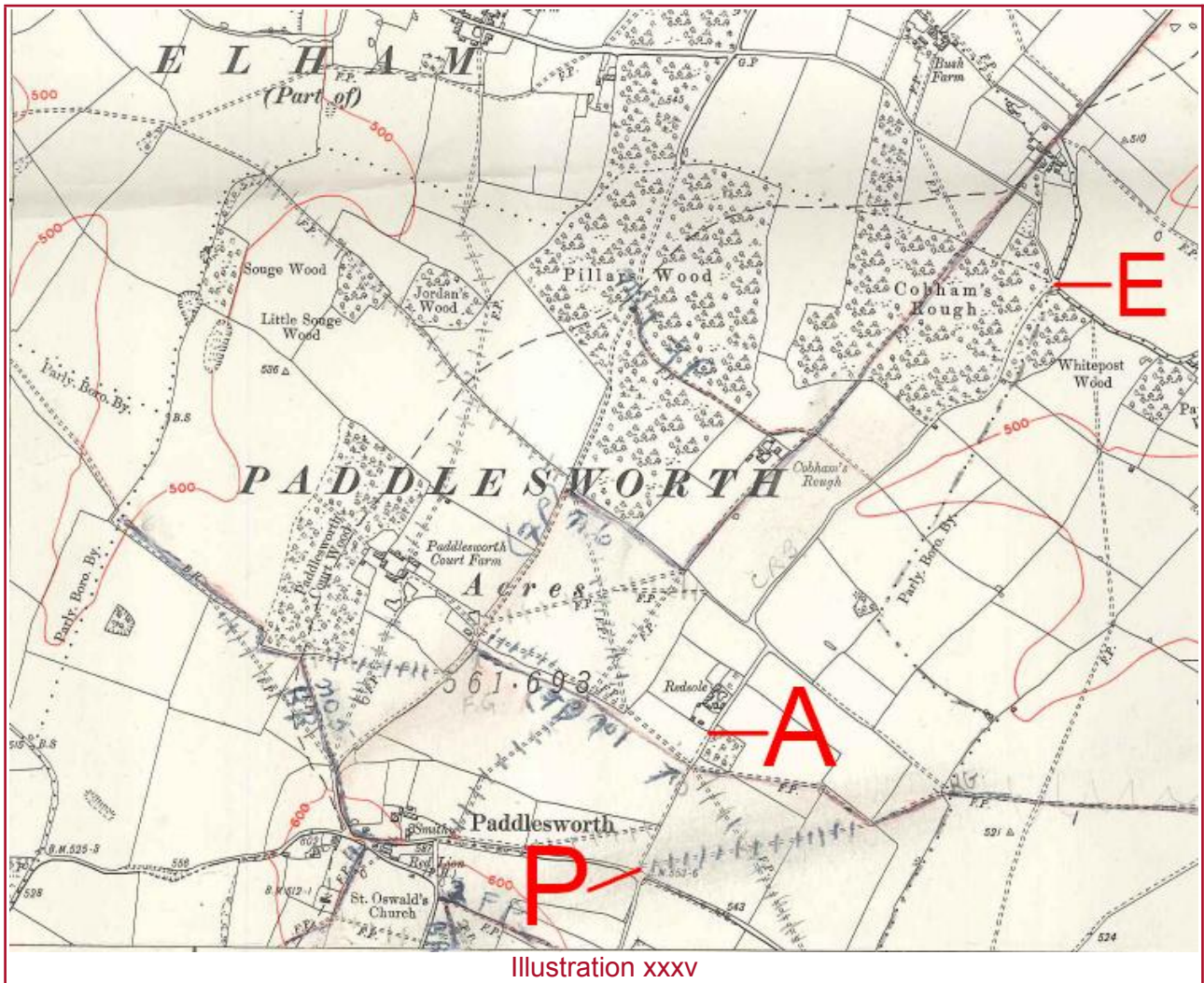
M. National Parks and Access to the Countryside Act 1949: draft map

M.1. **Date:** 1950–54

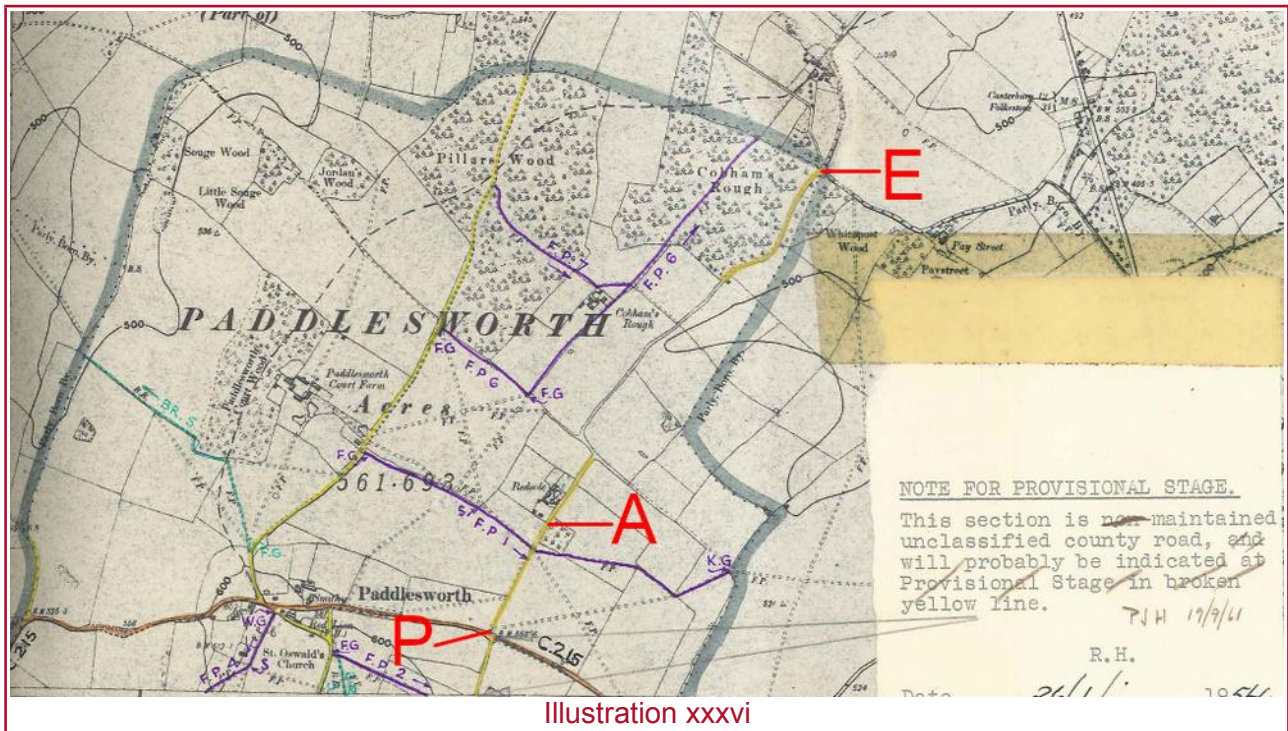
M.2. **Source:** Kent County Council (definitive map records)

31 Planning Inspectorate: September 2015: www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines.

Parish map



Draft map



M.3. **Description:** original scale: 1:10,560; orientation: unchanged.

M.4. Part IV of the National Parks and Access to the Countryside Act 1949 required surveying authorities to prepare definitive maps and statements of public rights of way in their areas. The initial stage was to prepare a draft map, primarily based on information supplied by parish councils and meetings.

M.5. The parish map for Paddlesworth, prepared by the parish meeting, shows the application way marked 'CRB' — i.e. carriage road bridleway. The parish map is notable for the many footpaths marked on the Ordnance Survey base map as crossed out — it seems that the parish meeting regarded barely any footpaths within the parish as appropriate to be recorded on the draft map. Only seven rights of way were identified to be recorded in the parish as a whole.

M.6. But the application way was not crossed out, and was marked as a candidate for a carriage road bridleway.³² It is not known why the way was not included in the list of candidate rights of way put forward by the parish meeting, but the most likely cause is that the parish meeting was advised by the county council that it was an unclassified county road, and did not need recording. On the draft map, the application way between P and B, and between D and E, is shown in yellow, indicating a maintained road — but the way between B and D is unmarked. A sticker, widely used on draft maps, identifies ways which were considered to be 'non-maintained unclassified county road', but this is braced with Fishers Lane to the south, and not the application way.

M.7. **Conclusion:** The parish map suggests the application way was considered for inclusion on the parish map, but excluded for unknown reasons (including the possibility that the council was advised that it did not need to be included).

M.8. **Points:** 2

³² More correctly, a road used as public path.

N. Highway inspector's map

N.1. **Date:** 1952

N.2. **Source:** Kent County Council³³

³³ Highway inspector's map supplied by the council on request.

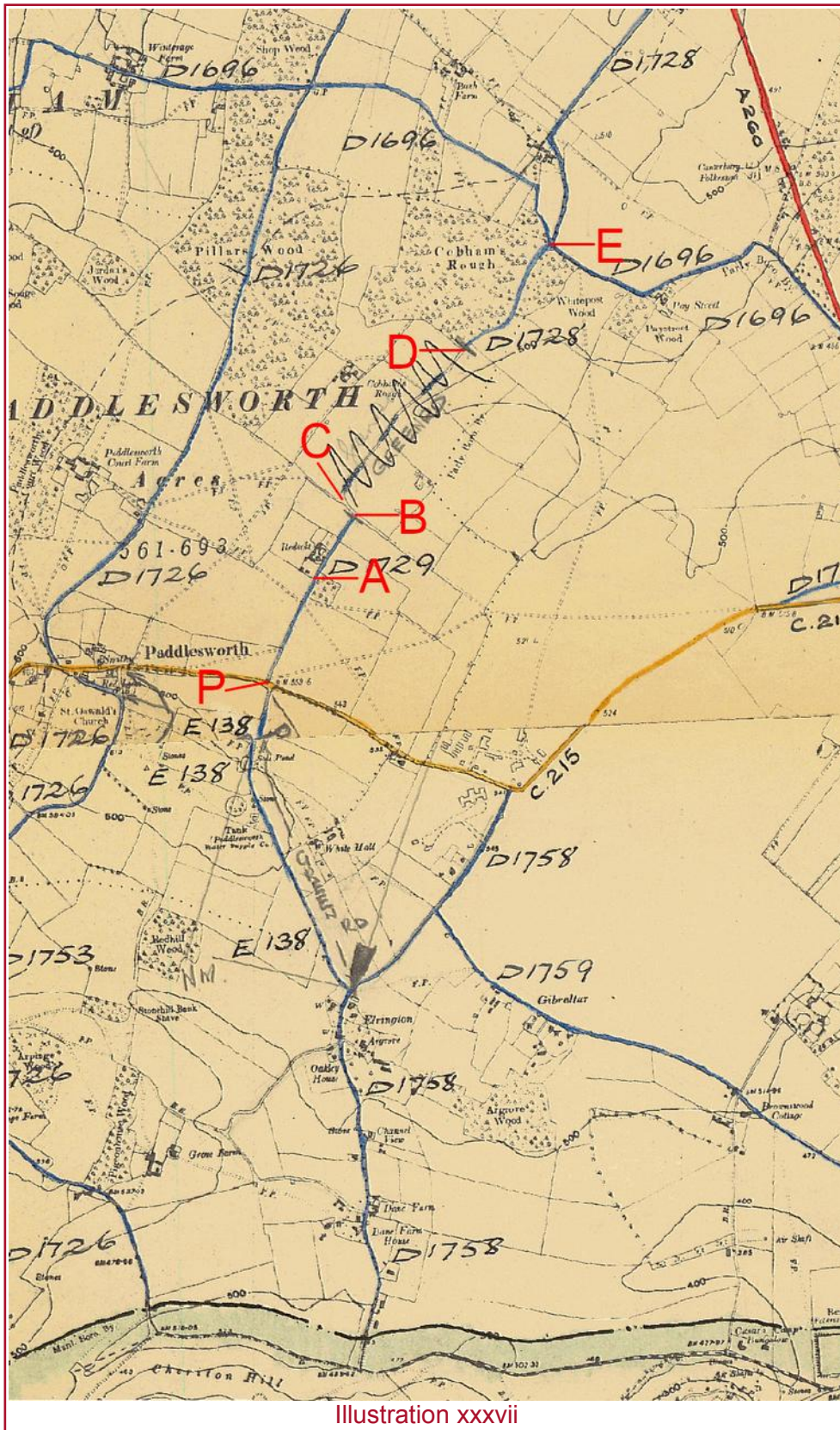


Illustration xxxvii

N.3. **Description:** original scale: 1:10,560; orientation: unchanged.

N.4. The county council, as highway authority, prepared a map of all roads in the county which were under the control of the council. It seems likely that these roads were publicly maintainable, but the council interprets those shown with a dashed blue line as non-main-

tained — *i.e.* not maintained *de facto* by the highway authority. However, given that many, if not most, of such ways appear to be pre-1835 in origin, it is more likely that the council intended the map to distinguish those ways which were actively maintained, from those which were not (notwithstanding that the ways were publicly maintainable).

N.5. The highway inspector's map shows the application way as a public road, with the reference numbers between A and B (and also between P and A) of D1729, and between D and E of D1728. Between B and D, the way is labelled 'GREEN RD'. It is understood that the broken blue infill applied between B and D indicates a publicly-maintainable road which is 'not maintained'. This section is also crossed out.

N.6. **Conclusion:** The inspector's map shows that the application way was considered to be a public highway. The striking out of the way between B and D suggests that the way was accepted as public highway, but that the highway authority did not intend to maintain it.

N.7. **Points:** 3

O. Highway authority list of streets

O.1. **Date:** 2003–2014

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

Shepway district local street gazetteer 2003

Gazetteer Detail

NRBX D1729 REDSOLE LANE 265 m
MID KENT

UNCLASSIFIED SINGLE C/WAY U Created
OFF C215 PADDLESWORTH
SHEPWAY HU

Proposed No Unadopted No
NSG Ref 34500933 Map sheet TR23N

Adoption detail From OSGR 620028 139817
Date To OSGR 620185 140127
Ref HIC No

Declaration detail
Date
Ref

Handover detail
Date 01/03/00
Length 273 m

Gazetteer
Updated 08/06/1999 A
from PADDLESWORTH MID KENT HMU 273 OFF C215 TR23N R
to PADDLESWORTH SHEPWAY HU 273 OFF C215 TR23N R

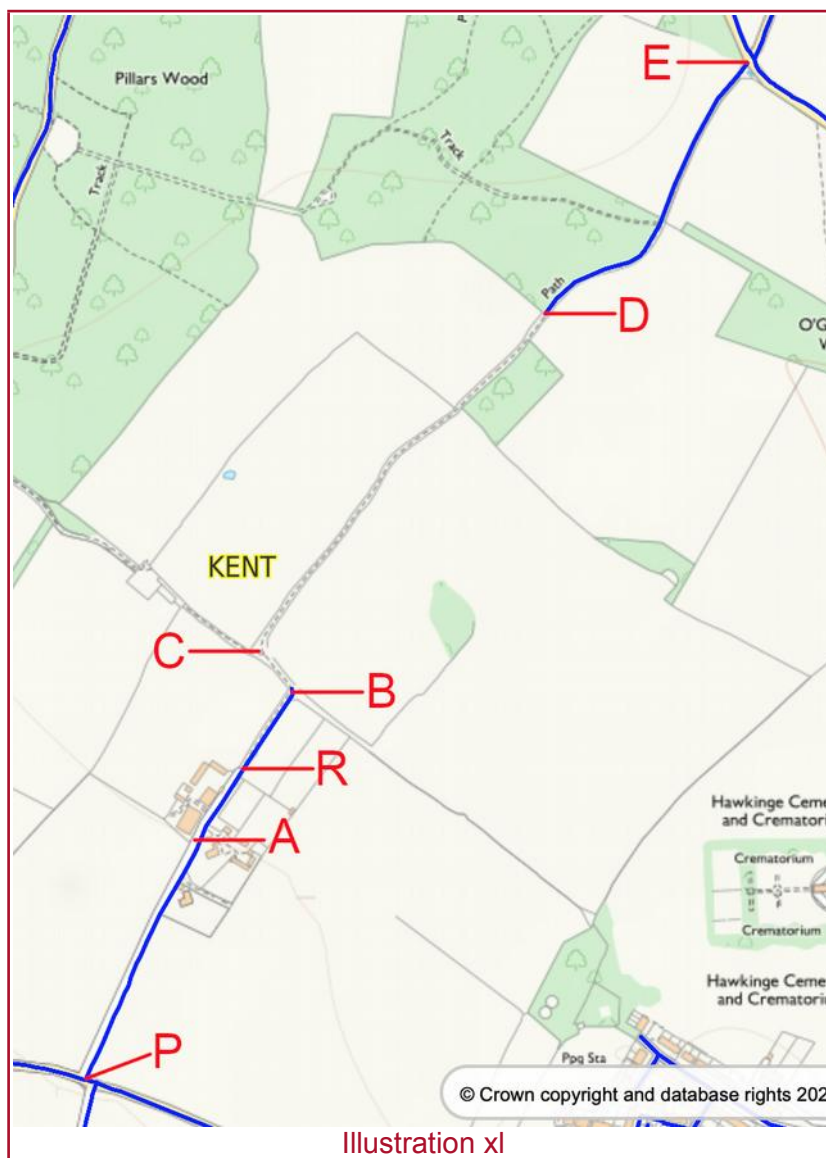
PROW Updates:
Local Name Updates:

Illustration xxxviii

Kent list of streets 2019

KENT LIST OF STREETS			
STREET NAME	COBHAMBURY ROAD (C3) , COBHAM		
USRN	15700169		
TOWN	GRAVESEND	DISTRICT	GRAVESHAM
			STATUS PUBLICLY MAINTAINABLE HIGHWAY (WHOLE ROAD)
STREET NAME	COBHAMS ROUGH LANE		
USRN	34503308		
TOWN	PADDLESWORTH	DISTRICT	FOLKESTONE AND HYTHE
			STATUS PUBLICLY MAINTAINABLE HIGHWAY (WHOLE ROAD)
STREET NAME	REDSOLE LANE		
USRN	34500933		
TOWN	PADDLESWORTH	DISTRICT	FOLKESTONE AND HYTHE
			STATUS PUBLICLY MAINTAINABLE HIGHWAY (WHOLE ROAD)

Illustration xxxix



O.3. **Description:** Every highway authority must keep up to date a list of streets in its area which are publicly maintainable³⁴. ‘Street’ is defined to include a highway³⁵.

O.4. A street authority must keep a register of streets³⁶ to enable information to be recorded relating to street works. The register must include every street for which the street authority is the highway authority³⁷. The highway authority is the street authority for a ‘maintainable highway’, being a highway maintainable at public expense³⁸. The data

34 Highways Act 1980, s.36(6).

35 S.329(1) of the Highways Act 1980 provides that “‘street’ has the same meaning as in Part III of the New Roads and Street Works Act 1991’; s.48(1)(a) provides that “‘street’ means...any highway...’.

36 New Roads and Street Works Act 1991, s.53, and the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (SI 2007/1951), r.4.

37 Item 1 of the table in r.4(5) of the 2007 Regulations.

38 S.49(1)(a) of the 1991 Act. ‘Maintainable highway’ is defined in s.86(1) of the 1991 Act.

from the street works register are compiled into a local street gazetteer (which in turn are made available in the national street gazetteer).

O.5. The first, Illustration xxxviii, shows an extract from the local street gazetteer for Shepway (now Folkestone and Hythe) district dating from 2003, which includes an entry for the D1729 Redsole Lane. The limits of the entry are given as Ordnance Survey grid reference 620028,139817, which is at P, and 620185,140127, which is at R. However, the stated length of 273m does not correspond to the distance between the identified points, which is around 340m (a length of 273m would correspond to a termination about half way through the curtilage of Redsole Farm).

O.6. The second, Illustration xxxix, shows an extract from the 2019 list of streets, which includes entries for Redsole Lane and Cobham's Rough Lane. The qualifying length of the entries is not stated, other than that it includes the 'whole road'.

O.7. The third, Illustration xl, is an extract from FindMyStreet.co.uk, which replicates the National Street Gazetteer, a compilation from local street gazetteers. It records the application way being publicly maintainable between P and B, and D and E.

O.8. Finally, a document stated to be the 2006 list of streets³⁹ includes an entry only for Redsole Lane, with a length of 348.34m (*i.e.* broadly corresponding to the entry in the local street gazetteer for 2003, being between P and R).

O.9. All entries bear the National Street Gazetteer reference 34500933 in relation to Redsole Lane; the 2019 and 2020 entries bear the reference 34503308 in relation to Cobham's Rough Lane.

O.10. **Conclusion:** The extracts demonstrate that the application way is recorded as a highway maintainable at public expense between P and B, and between D and E. (But see Natural Environment and Rural Communities Act 2006, at item I.I above, for the position in 2006.)

O.11. **Points:** 0

39 Dated 2 May 2006: this is the date of the coming into force in England of s.67 of the Natural Environment and Rural Communities Act 2006. The list is provided in a spreadsheet form, and not reproduced here.