

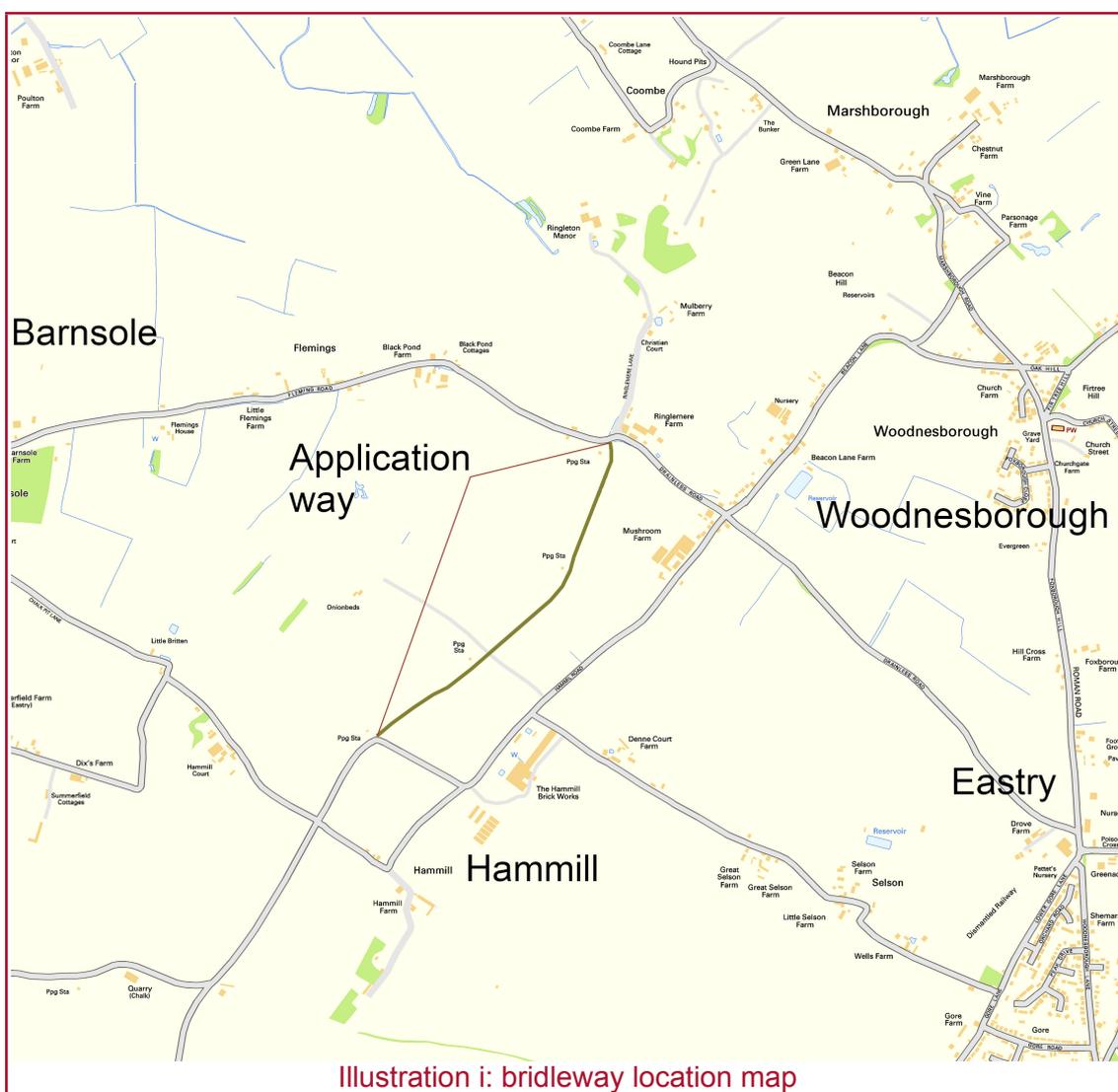
# Ringlemere bridleway, Woodnesborough: document analysis

## Application to record a bridleway from Ringlemere Farm to Sandwich Road, Hammill

### I. Introduction

#### A. Quick reference

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



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

- A.3. Parish of: Woodnesborough
- A.4. Former parish of: Woodnesborough
- A.5. Termination points: Junction of Drainless Road, Fleming Road and Ringlemere Lane at Ringlemere Farm; and the corner of Sandwich Road near Hammill.
- A.6. Termination points Ordnance Survey grid references: TR29635669; TR29015588
- A.7. Postcode: CT13 0FG
- A.8. Ordnance Survey Explorer sheet: 150
- A.9. Ordnance Survey County Series 25" sheets: Kent XLVIII/5, 9

## B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Julia Harman on behalf of the British Horse Society. Julia is appointed by the society as a volunteer district access and bridleway officer for the city of Canterbury (south).

## C. Locational details

C.1. This application relates to a way between Ringlemere and Hammill in the parish of Woodnesborough in the district of Canterbury. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a bridleway.

## 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)(b) and (c)(i) that a way should be added to the definitive map and statement for Kent as a bridleway.

D.2. The way commences on Fleming Road opposite the junction with Ringlemere Lane at A (Ordnance Survey grid reference TR29635669), initially south along the eastern boundary of a pumping station, then turning south-southwest and then (shortly after passing a second pumping station) southwest for a distance of 690 metres to a junction with bridleway EE201 adjacent to the southeast corner of a third pumping station at B (TR29025631); then continuing southwest, initially along the southern boundary of the third pumping station and then along the northern side of a headland, for a distance of 380 metres to join Sandwich Road at the corner adjacent to the southern entrance to a fourth pumping station at C (TR29015588). A total distance of 1,070 metres.

D.3. The points A,B and C are identified in the application map at part II below.

D.4. The application is founded in both historical and user evidence. The historical evidence relates to the way as a whole, between A and C. The user evidence relates solely to the way between A and B.

D.5. In the event that the application should fail to satisfy the relevant test in relation to the historical evidence of the way between A and C, the decision-maker is asked to consider, in the alternative, the user evidence in relation to the way between A and B only.

## E. Nomenclature

E.1. No particular name is known for the application way itself: it is referred to in this application as the ‘application way’ or the ‘Ringlemere bridleway’.

E.2. The application way at A joins Drainless Road at its end-on junction with Fleming Road, with Ringlemere Lane (formerly Jenny’s Lane) continuing to the north. Although Ringlemere Lane, as a tarred public road, now terminates at Ringlemere Manor south lodge, it continues north to a junction with Marshborough Road as byway open to all traffic EE471. A connection between Ringlemere Lane and Coombe Lane, leading to Ash, formerly existed across the site of the former signals station at Coombe: this road was stopped up on 15 July 1952<sup>1</sup>.

E.3. The application way runs roughly parallel to Hammill Road, approximately 300m northwest of it. Hammill Road becomes Sandwich Road at the first corner (heading south-west) adjacent to Hammill brick works, so that the application way terminates on Sandwich Road, at B, at the second corner in the road.

## F. Background

F.1. The application way appears historically to be a minor public road or bridleway, which escaped tarring in the early years of the twentieth century. The way consistently appears on maps published in the early nineteenth century, including the reputable Ordnance Survey. While inclusion on such maps is not necessarily, in isolation, probative that the way depicted is a highway, an exception must be made for Greenwood’s map of Kent (item IV.E below) on which the key describes it as a ‘cross road’. Moreover, the alignment of the way at A and C, being a direct continuation, in a straight line, of ancient highways — Sandwich Road and Ringlemere Lane/Jenny’s Lane (where today, one must turn either left or right when approaching A and C respectively from those ancient highways to avoid using the application way) — is strongly suggestive that the way is historically itself part of those highways.

F.2. Subsequently, through the nineteenth century and early twentieth century, further evidence shows that the way continued to be recognised as a highway — it appears generally to be excluded from assessment under the Tithe Commutation Act 1836 (item IV.G below), it is impliedly coloured as a highway on a map drawn up under the Inclosure Act 1845, order of exchange (item IV.H below), it is wholly uncoloured on assessment under the Finance (1909–1910) Act 1910 (item IV.J below).

F.3. The designation of the way as an occupation road in plans drawn up for the East Kent mineral light railway (item IV.K below) in 1910 is contradicted (as in similar cases in the area) by correspondence between the surveyor to the Eastry Rural District Council highways committee (IV.L below) and Woodnesborough parish council, in which it is recognised as a bridle road.

F.4. The way between A and B narrowly escaped recording as a public right of way on the draft definitive map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 consequent on the Parish survey under that Act (item IV.M below).

<sup>1</sup> National Archives MT 78/69. Made by the Minister of Transport, under s.49 of the Town and Country Planning Act 1947, in the Stopping up of Highways (Kent) (No.3) Order 1952 (SI 1952/1341).

F.5. While the historical evidence tends to suggest status as a highway, it cannot be said to be conclusive as to carriageway status, and there are some indications — such as in the correspondence with Eastry Rural District Council highways committee (IV.L below) — that it was considered only to be a bridleway. As bridleway status is consistent with post-War use (at least between A and B), that is the status sought by this application. Historical evidence of the status of the way is adduced in part IV below.

F.6. If the decision-maker is unable to conclude that the existence of a way as a whole has been established on historical evidence, use of the way between A and B has taken place on horseback, cycle, as well as on foot, and evidence of such use is considered sufficient to demonstrate that a right of way on horseback has been acquired over that part under s.31 of the Highways Act 1980. User evidence for the way between A and B is adduced in part V below.

## 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*<sup>2</sup>, Lewison LJ said, at paragraph 22,

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

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

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.'<sup>3</sup>

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...'

<sup>2</sup> [2012] EWCA Civ 334

<sup>3</sup> [Consistency Guidelines](#): para.2.17.

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

G.4. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the historical evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have at least the status of a bridleway.

G.5. Furthermore, evidence is given that, if the existence of the way is not proven on the basis of historical reputation, it has been established by modern user, and satisfies the test in s.53(3)(b):

‘whereby—

the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway’.

## H. Discovery of evidence

H.1. There is evidence in the Parish survey (item IV.M below) that the application way between A and B was considered for inclusion on the draft definitive map and statement for Kent prepared under Part IV of the National Parks and Access to the Countryside Act 1949, but subsequently omitted. It is not known what sources of historical evidence were taken into account as part of that process.

H.2. The historical evidence included in this application includes evidence from the Finance (1909–1910) Act 1910, which was not in the public domain until 1968 (and in practice, not until much later than that date). Moreover, the user evidence is entirely novel. Therefore, there is discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

## I. Points awarded

I.1. Points have been awarded to each piece of historical evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>4</sup>.

I.2. **Points:**

Item	Ref	Points A–C
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	1
Barlow-Hasted map of Kent	IV.B	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	1
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.D	1
Greenwood's map of Kent	IV.E	2

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

Ordnance Survey, Old Series one-inch map of Kent	IV.F	0
Tithe Commutation Act 1836	IV.G	3
Inclosure Act 1845, order of exchange	IV.H	3
Ordnance Survey County Series 25-inch maps	IV.I	0
Finance (1909–1910) Act 1910	IV.J	5
East Kent mineral light railway	IV.K	0
Eastry Rural District Council highways committee	IV.L	3
Parish survey	IV.M	0
Ownership	IV.N	0
<b>Total points</b>		<b>17</b>

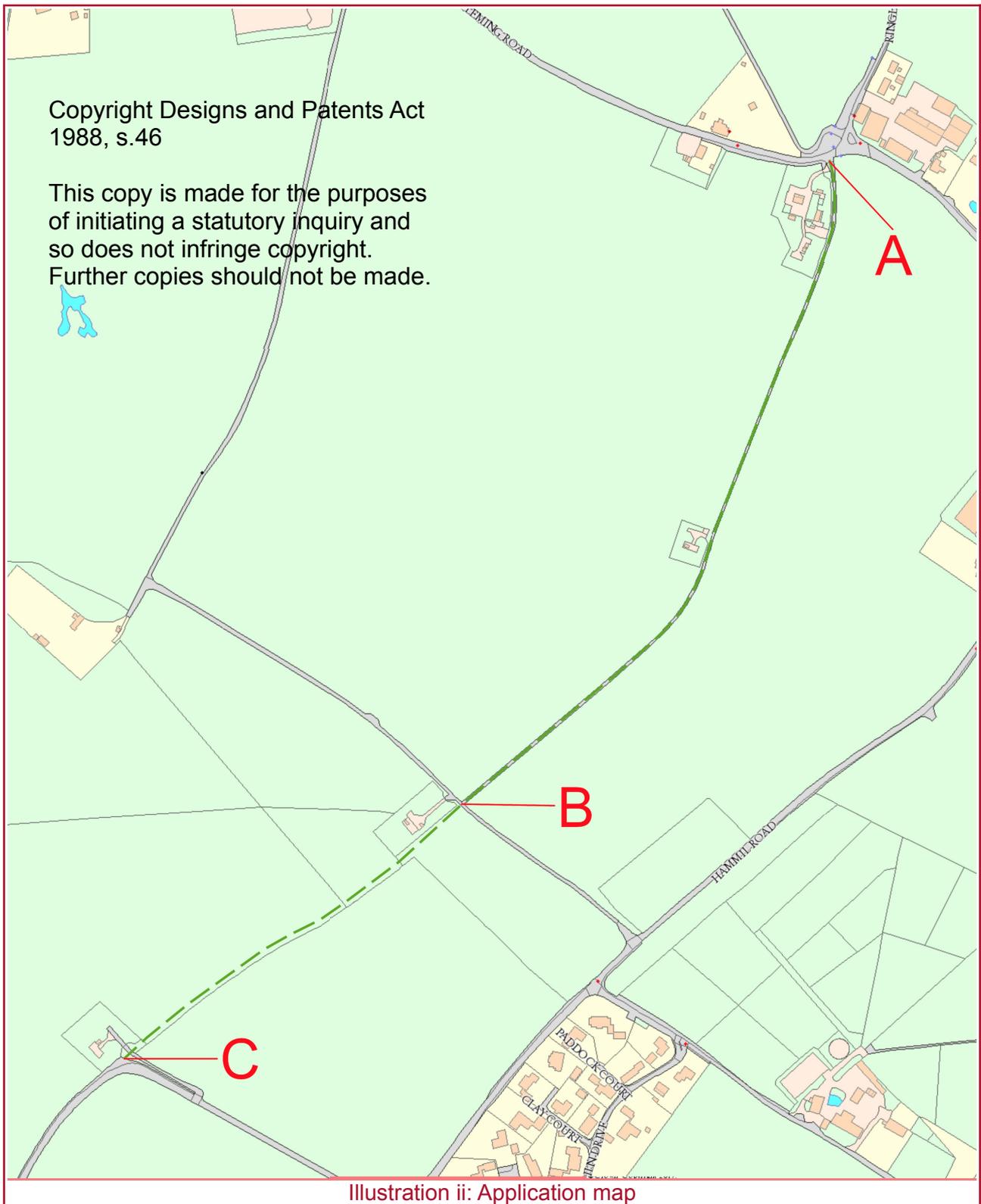
## J. Width of application way

J.1. There are minimal indicators of width in historical documents.

J.2. On the Ordnance Survey National Grid plan of 1956, the area of the way between B and C is given as 0.37 acres (0.15 ha), which for a length of 380 metres suggests a width of 3.95 metres.

J.3. As to the way between A and B, whether relying on historical or use evidence, it is submitted that the width of the way is commensurate with the practice and necessity of enabling two mounted users to pass, and that a width of 3.5 metres is sufficient.

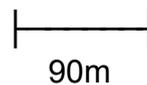
## II. Application map



Map centred on B at TR29025631

Scale: approx. 1:5,150 (when printed A4)

Application way is marked — — —



### III. Along the way (i)



Illustration iii: At A



Illustration iv: Second pumping station towards A



Illustration v: Second pumping station towards B

## Along the way (ii)



Illustration vi: From B towards second pumping station



Illustration vii: At B towards C



Illustration viii: Towards B (view northwest along EE201)

### Along the way (iii)



Illustration ix: Between B and C



Illustration x: At C

## IV. Evidence

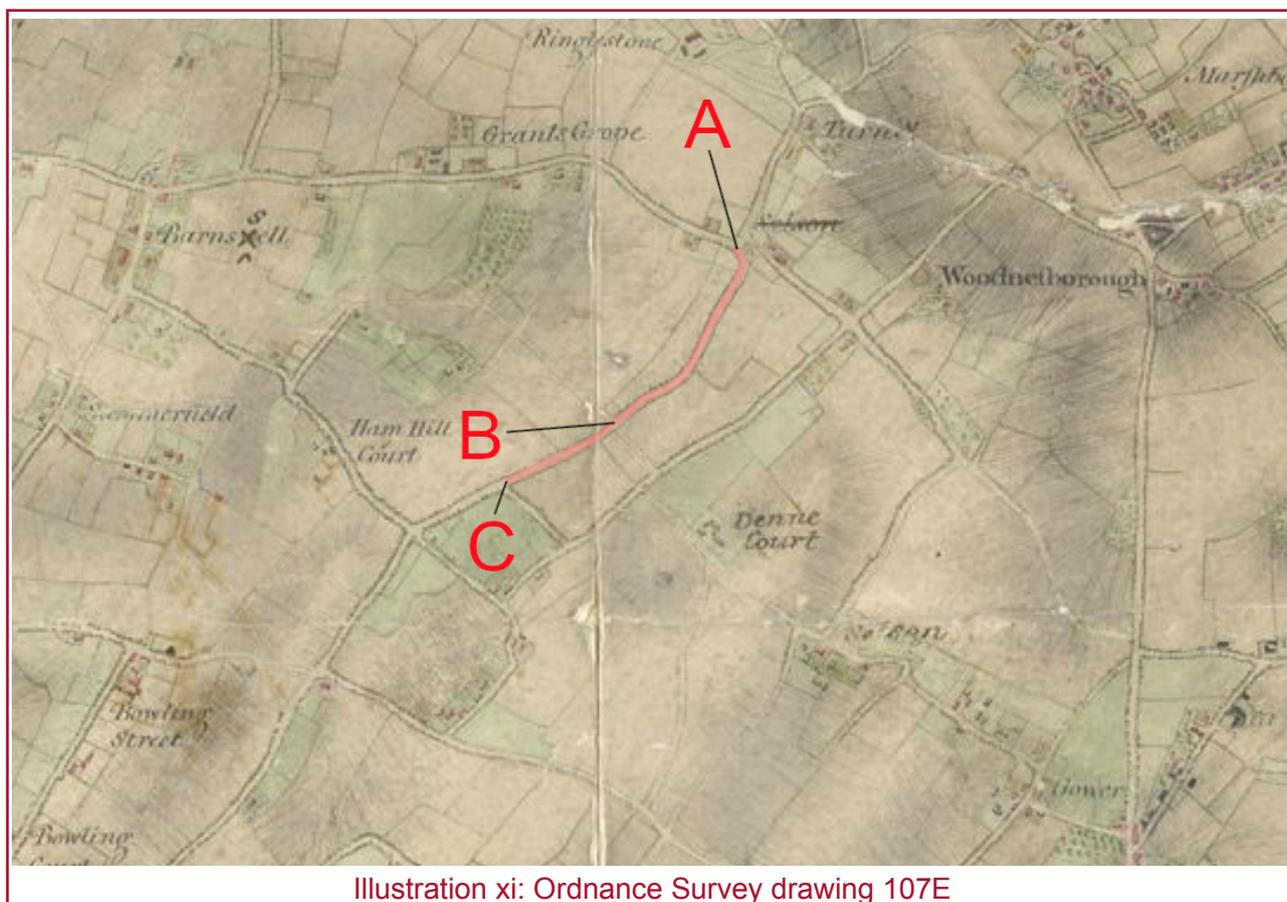
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### A. Ordnance Survey surveyor's drawing, Canterbury (East)

A.1. **Date:** 1797

A.2. **Source:** British Library website<sup>5</sup>



5 Sheet 107(E): [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html)

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

A.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.<sup>6</sup>

A.5. The Ordnance Survey drawing 107(E) shows the application way as the continuation northeast of the Sandwich Road, avoiding the dogleg to the southeast which exists today to make the connection with the Hammill Road. The application way is shown as of comparable prominence to the Hammill Road, and would have provided a more direct way towards Ringlemere, Marshborough and Staple, via what is today known as Ringlemere Lane and byway open to all traffic EE471, as well as what was then a connection via Coombe Lane towards Ash (see I.E.2 above).

A.6. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the way between A and C. Given that the application way was shown as comparable to Sandwich Road in appearance, and represented a direct continuation of the Sandwich Road, it seems likely to have been a public way.

A.7. **Points:** 1

## B. Barlow-Hasted map of Kent

B.1. **Date:** 1797–1801

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

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

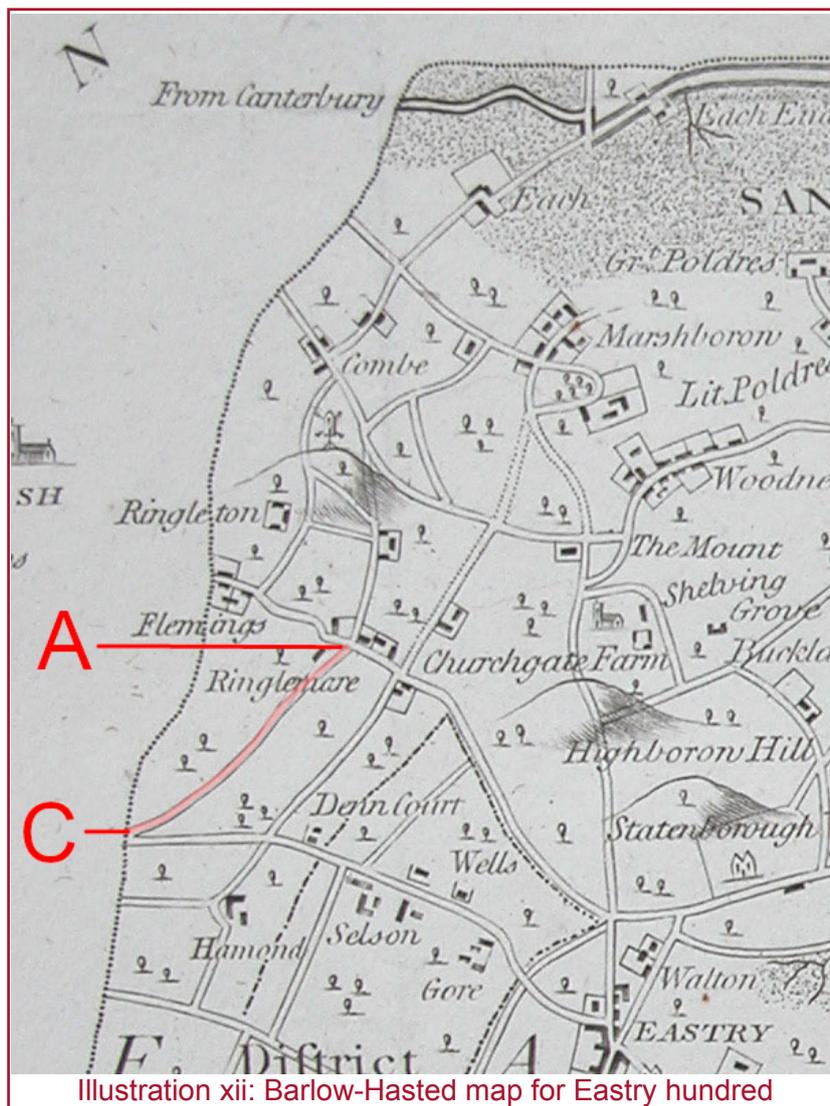


Illustration xii: Barlow-Hasted map for Eastry hundred

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

B.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 Eastry.

B.5. The map shows the application way as a way parallel to the present Hammill Road.

B.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route. The map was widely commercially published, and would tend to show through routes which were public highways. However, some minor routes of questionable public status (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are shown with lines across the junction with public ways, and this similarly appears to be the case at A (but not at C). The status of the way therefore is uncertain.

B.7. **Points:** 0

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

C.1. **Date:** 1801

C.2. **Source:** Kent County Archives<sup>7</sup>



Illustration xiii: Mudge-Faden map

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

7 Copy available at: [mapco.net/kent1801/kent31\\_03.htm](http://mapco.net/kent1801/kent31_03.htm), [mapco.net/kent1801/kent32\\_01.htm](http://mapco.net/kent1801/kent32_01.htm)

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

C.5. The map shows the application way as the continuation northeast of the Sandwich Road, avoiding the dogleg to the southeast which exists today to make the connection with the Hammill Road. The application way is shown as of least equal prominence to the Hammill Road (indeed, the latter route, today the main road, is shown with narrower width), and would have provided a more direct way towards Ringlemere, Marshborough and Staple, via what is today known as Ringlemere Lane and byway open to all traffic EE471, as well as what was then a connection via Coombe Lane towards Ash (see I.E.2 above).

C.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. The map provides some evidence for the way being of at least bridleway status, as one would expect through routes depicted on the map to be capable of public use.

C.7. **Points:** 1

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

D.1. **Date:** 1811

D.2. **Source:** British Library<sup>8</sup>

8 10348.d.15: copy available at [www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg](http://www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg) .

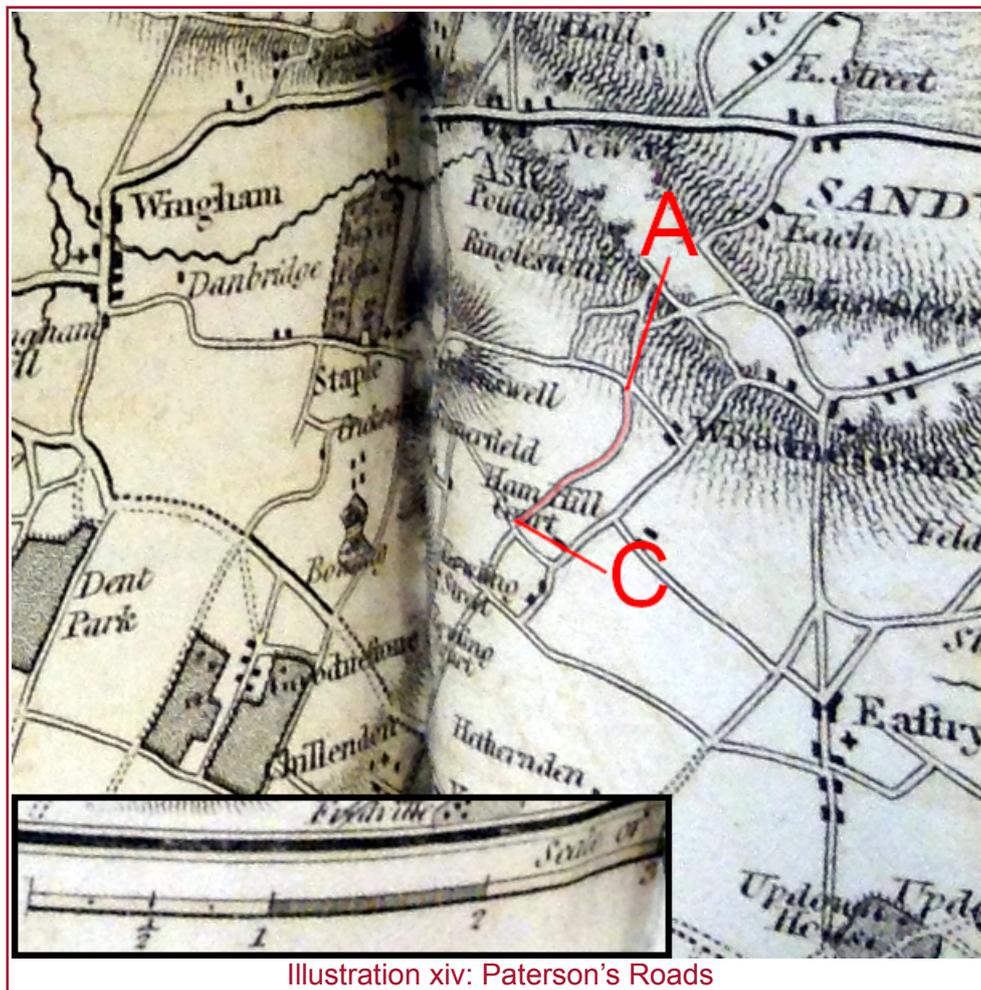


Illustration xiv: Paterson's Roads

D.3. **Description:** scale: marked on map (but as scale bar has been cut and pasted, it may be affected by distortion owing to photography and the effect of the binding); orientation: unchanged (top is approximately north).

D.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.

D.5. The map shows the application way as the continuation northeast of the Sandwich Road, avoiding the dogleg to the southeast which exists today to make the connection with the Hammill Road. The application way is shown as of least equal prominence to the Hammill Road, and would have provided a more direct way towards Ringlemere and Marshborough, via what is today known as Ringlemere Lane and byway open to all traffic EE471, as well as what was then a connection via Coombe Lane towards Ash (see I.E.2 above).

D.6. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above): however, whereas the map has been revised now to show the Dover to Sandwich turnpike (*i.e.* the coastal turnpike via Cottington) omitted from the Mudge-Faden map, the map does not show the Dover, Waldershare and Sandwich turnpike (which was authorised in 1801).

D.7. **Conclusion:** Revision of the data contained in the map, which appear to be derived from the Mudge-Faden map, suggests that the representation of principal roads was at

least partially researched and updated. The Thomson map leaves out many minor roads. It is therefore some evidence for the existence of a defined way along the application route which is likely to have public status as at least bridleway.

D.8. **Points:** 1

## E. Greenwood's map of Kent

E.1. **Date:** 1819–20

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

### Greenwood map



Illustration xv: Greenwood map

## Greenwood map key

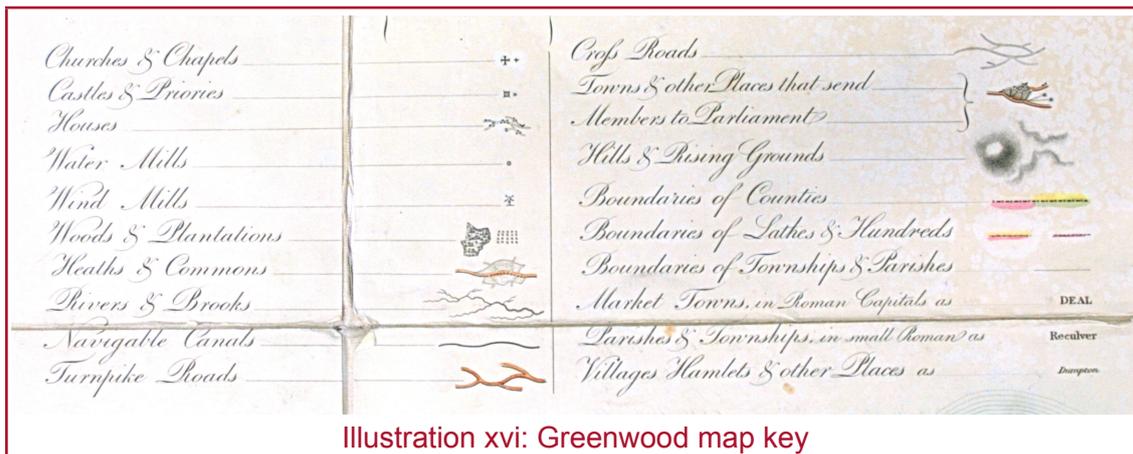


Illustration xvi: Greenwood map key

E.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.

E.4. The map shows the application way as the continuation northeast of the Sandwich Road, avoiding the dogleg to the southeast which exists today to make the connection with the Hammill Road. The application way is shown as of least equal prominence to the Hammill Road, and would have provided a more direct way towards Ringlemere and Marshborough, via what is today known as Ringlemere Lane and byway open to all traffic EE471, as well as what was then a connection via Coombe Lane towards Ash (see I.E.2 above).

E.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).

E.6. **Points:** 2

## 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 Australia<sup>9</sup>

9 [nla.gov.au/nla.obj-231917365](http://nla.gov.au/nla.obj-231917365)

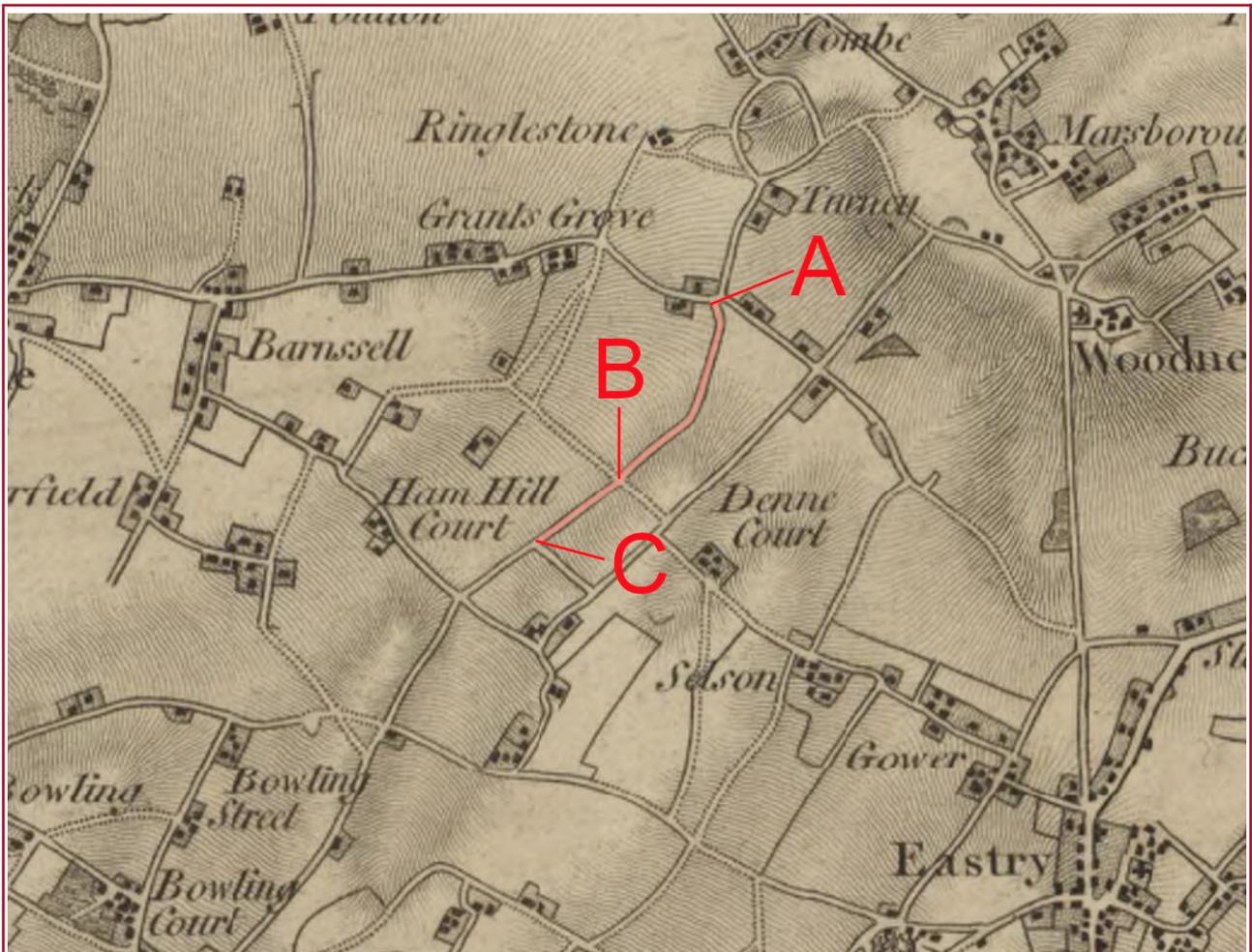


Illustration xvii: Ordnance Survey Old Series map

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

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

F.5. The map shows the application way as the continuation northeast of the Sandwich Road, avoiding the dogleg to the southeast which exists today to make the connection with the Hammill Road. The application way is shown as of least equal prominence to the Hammill Road, and would have provided a more direct way towards Ringlemere and Marshborough, via what is today known as Ringlemere Lane and byway open to all traffic EE471, as well as what was then a connection via Coombe Lane towards Ash (see I.E.2 above).

F.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths, which were of little military interest.

F.7. **Points:** 0

## G. Tithe Commutation Act 1836

G.1. **Date:** 1840

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

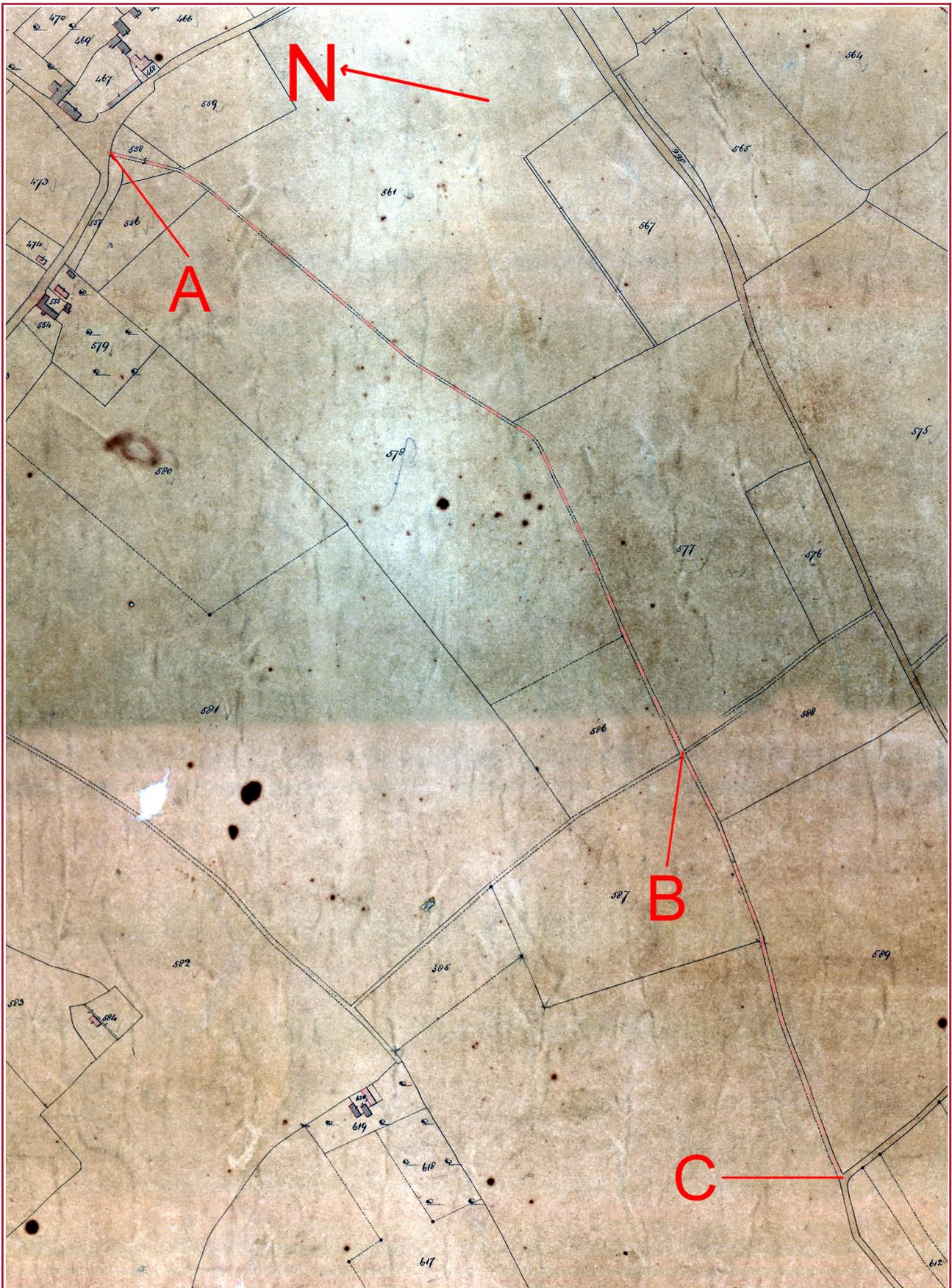


Illustration xviii: Tithe map for Woodnesborough

G.3. **Description:** Original scale: three chains to one inch (1:2,376); orientation: unchanged (top is east-northeast). The tithe map for Woodnesborough is first class.<sup>10</sup>

G.4. The Tithe Commutation 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.

G.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 to.<sup>11</sup>

G.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 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.’<sup>12</sup>

G.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 might be used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths, 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 to identify 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.

G.8. The application way is shown throughout on the Woodnesborough tithe map, enclosed by dotted parallel lines. In general, the way forms the boundary of parcels to the west and east. Thus the use of dotted parallel lines appears to follow the guidance of Lt. Dawson (see footnote 11) 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.

10 *The tithe maps of England and Wales*, Kain and Oliver, p.255 (entry 17/399).

11 *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).

12 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

G.9. With one exception, the application way is not braced with the adjoining parcels (the exception is at A, where parcel 558 — ‘Stack yard etc.’ — is braced across the track). Thus it may be inferred that the track is not (with one short exception) assessed as included with the adjacent parcels, and therefore excluded from valuation.

G.10. **Conclusion:** It is sometimes said that the exclusion of a way from being rated as titheable is not an indication that the way is or is not public. However, in the circumstances of an unenclosed track across open farmland, it is submitted that the absence of any rating is likely to indicate that the way was public. If it were a private track, then the track undoubtedly would have had productive value, and ought to have been assessed as rateable assigned to the track’s owner. First, because the track, being unenclosed and unmetalled<sup>13</sup>, would be capable of being grazed by the owner. And secondly, because a private track could be abandoned at any time and the land farmed as productively as the neighbouring land (which was rateable) — it would be iniquitous for the rateable value of the track to be excluded from calculations.

G.11. But as a public road, one would expect the surveyor to assess either that the rateable value lay with the parish vestry (which was not liable to assessment), or that no-one had any express entitlement to it.

G.12. While other explanations for exclusion may be apparent, they are clearly not relevant here: for example, the owner of the track might have been exempt from tithes (glebe land for example) — but that should be obvious, and there is no reason here to infer that the ownership of the track was vested in some third party who was coincidentally exempt from tithes.

G.13. Accordingly, it is submitted that the track is among those features on the map which are assessed as part of the ‘Roads & Waste lands, part of River Stour etc’<sup>14</sup>, and was considered to be a public road.

G.14. **Points:** 3

## H. Inclosure Act 1845, order of exchange

H.1. **Date:** 1874

H.2. **Source:** National Archives<sup>15</sup>

13 The way between B and C was shown coloured sienna on the first edition of the Ordnance Survey County Series 25-inch maps (item IV.I below), indicating that this part was metalled in the second half of the nineteenth century; however, the remainder of the route, between A and B, was not so coloured, and there is no evidence that this part was metalled.

14 See transcription of tithe apportionment for Woodnesborough:  
[www.kentarchaeology.org.uk/research/tithes/woodnesborough](http://www.kentarchaeology.org.uk/research/tithes/woodnesborough).

15 MAF 11/88/4522

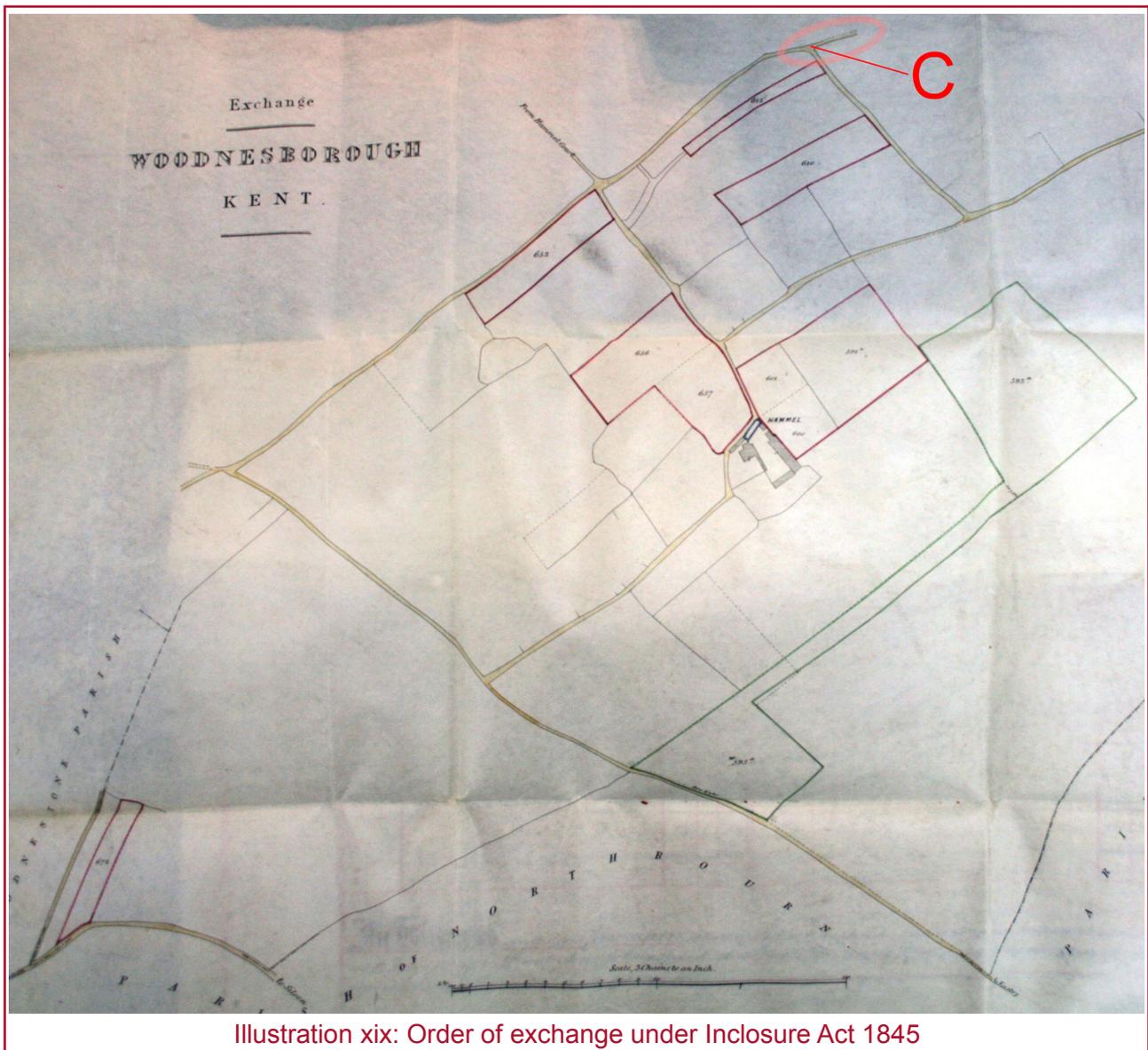


Illustration xix: Order of exchange under Inclosure Act 1845

H.3. **Description:** Original scale: three chains to one inch (scale bar marked on plan); orientation: unchanged (north is top).

H.4. An order of exchange was made by the Inclosure Commissioners in 1874 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.

H.5. 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.

H.6. The application way is shown at the corner of Sandwich Road and Hammill Road, at point C. It is colour-washed in yellow, in common with a number of other roads in the area, all of which today are recognised as public roads, with the exception of a spur from the

Heronden road (in the southwest corner) north-northeast along the parish boundary between Woodnesborough and Goodnestone parishes.

H.7. **Conclusion:** On these and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or ochre colour wash typically is used to denote ways which are either public roads or bridle-roads.

H.8. **Points:** 3

## I. Ordnance Survey County Series 25-inch maps

I.1. **Date:** various

I.2. **Source:** British Library, National Library of Scotland<sup>16</sup>

<sup>16</sup> Via [maps.nls.uk/os/25inch-england-and-wales/kent.html](https://maps.nls.uk/os/25inch-england-and-wales/kent.html), sheets XLVIII/5 and 9.

County Series first edition 25" map (surveyed: 1872)

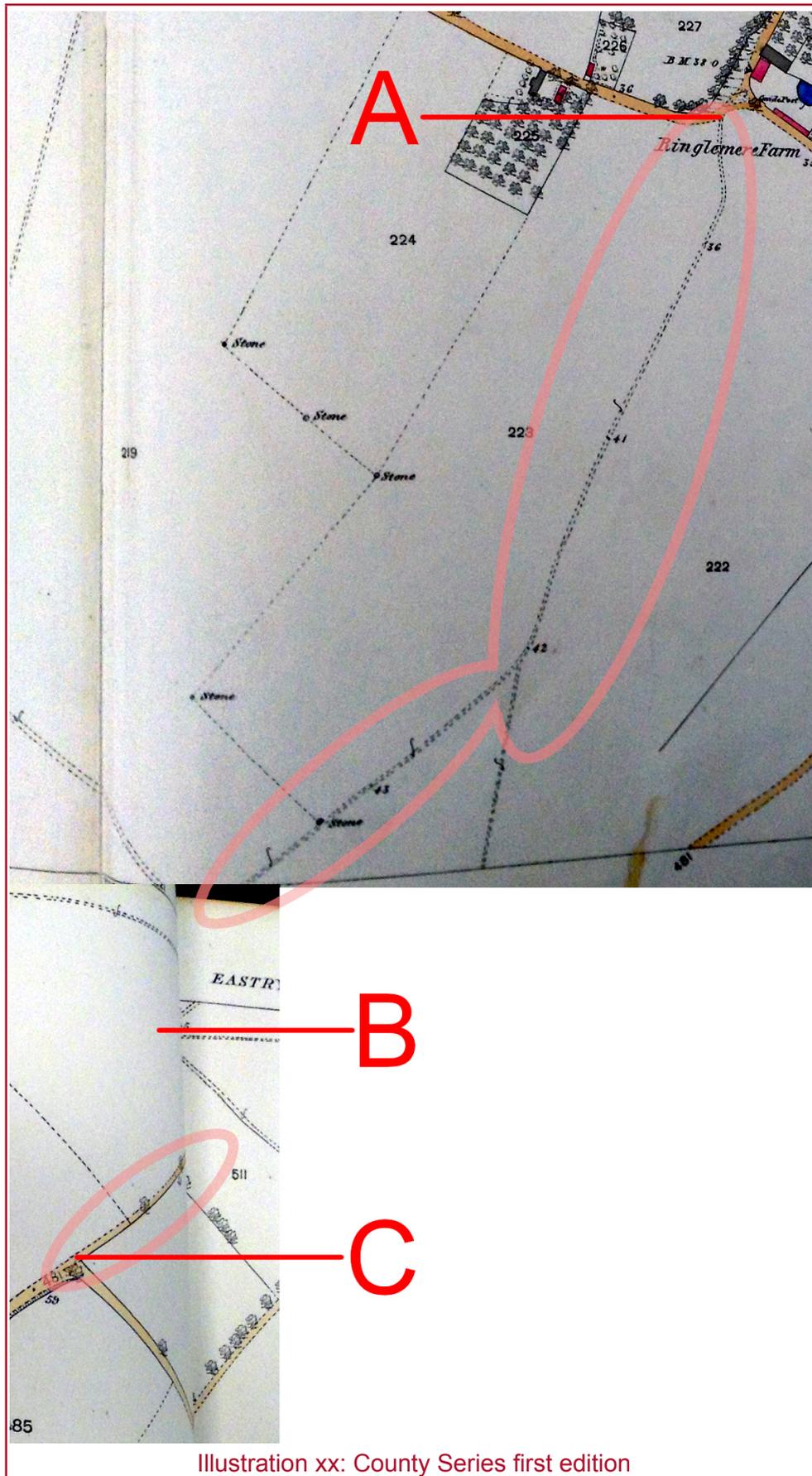


Illustration xx: County Series first edition

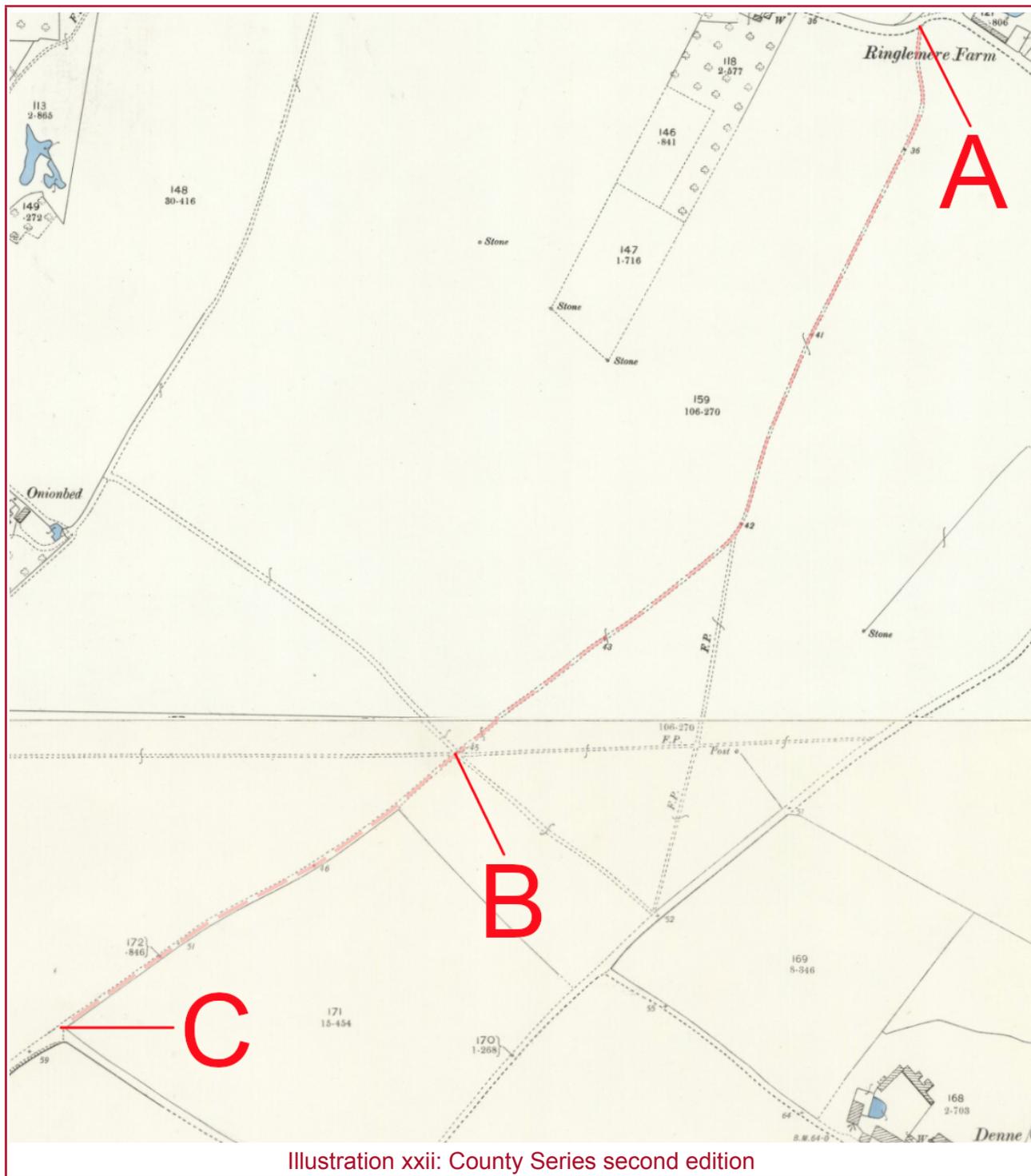
Area book

**6**                      **PARISH OF WOODNESBOROUGH**

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
479	.465	Garden.	501a	1.106	Road.
480	23.092	Arable.	502	14.159	Arable.
481	8.300	Road.	503	22.216	Arable.
482	9.075	Arable.	504	.824	Old chalk pit.
483	5.615	Arable.	505	15.626	Arable.

Illustration xxi: Area Book for Woodnesborough

County Series second edition (surveyed: 1896)



County Series third edition (surveyed: 1905)

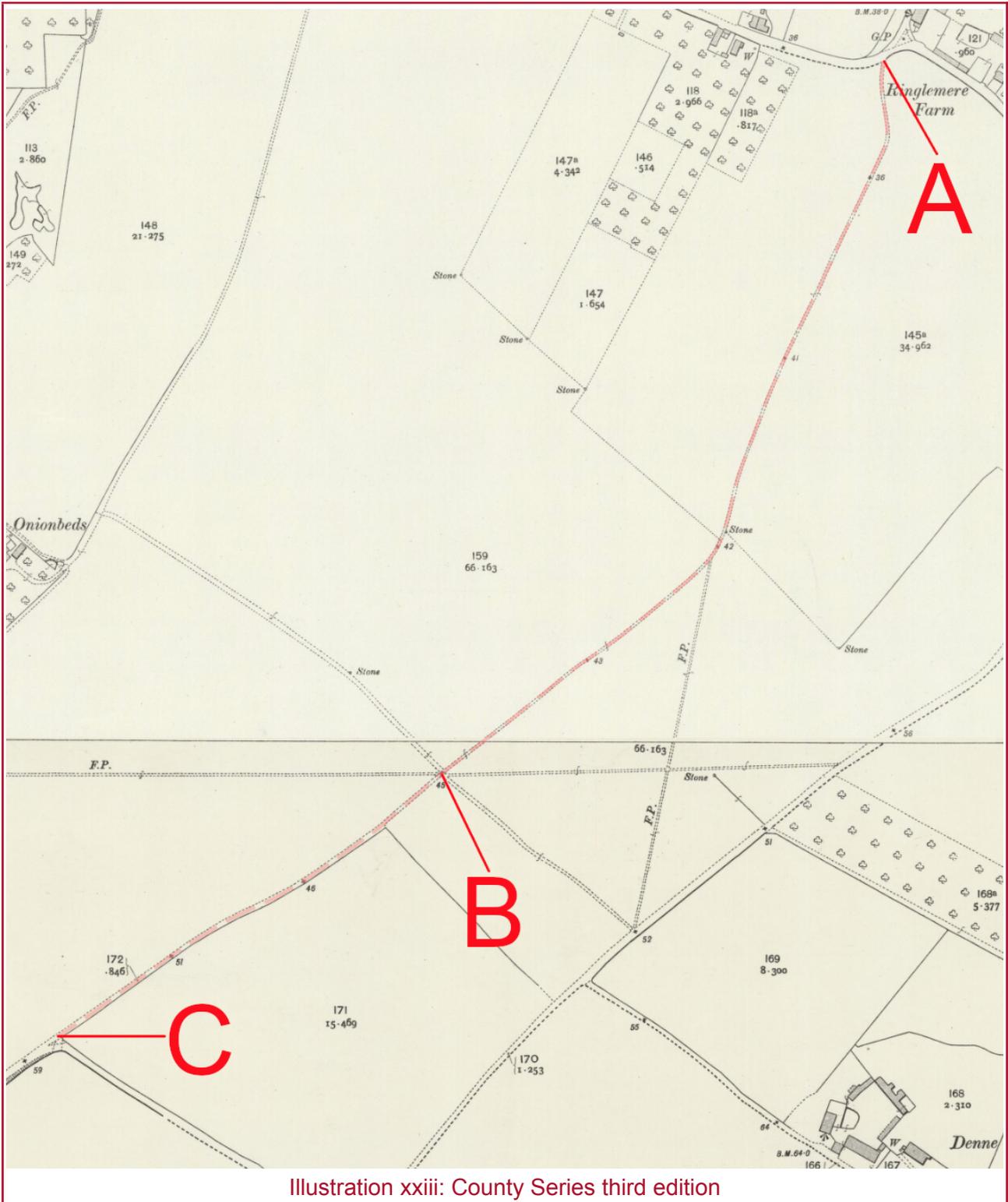


Illustration xxiii: County Series third edition

County Series fourth edition (surveyed: 1938)

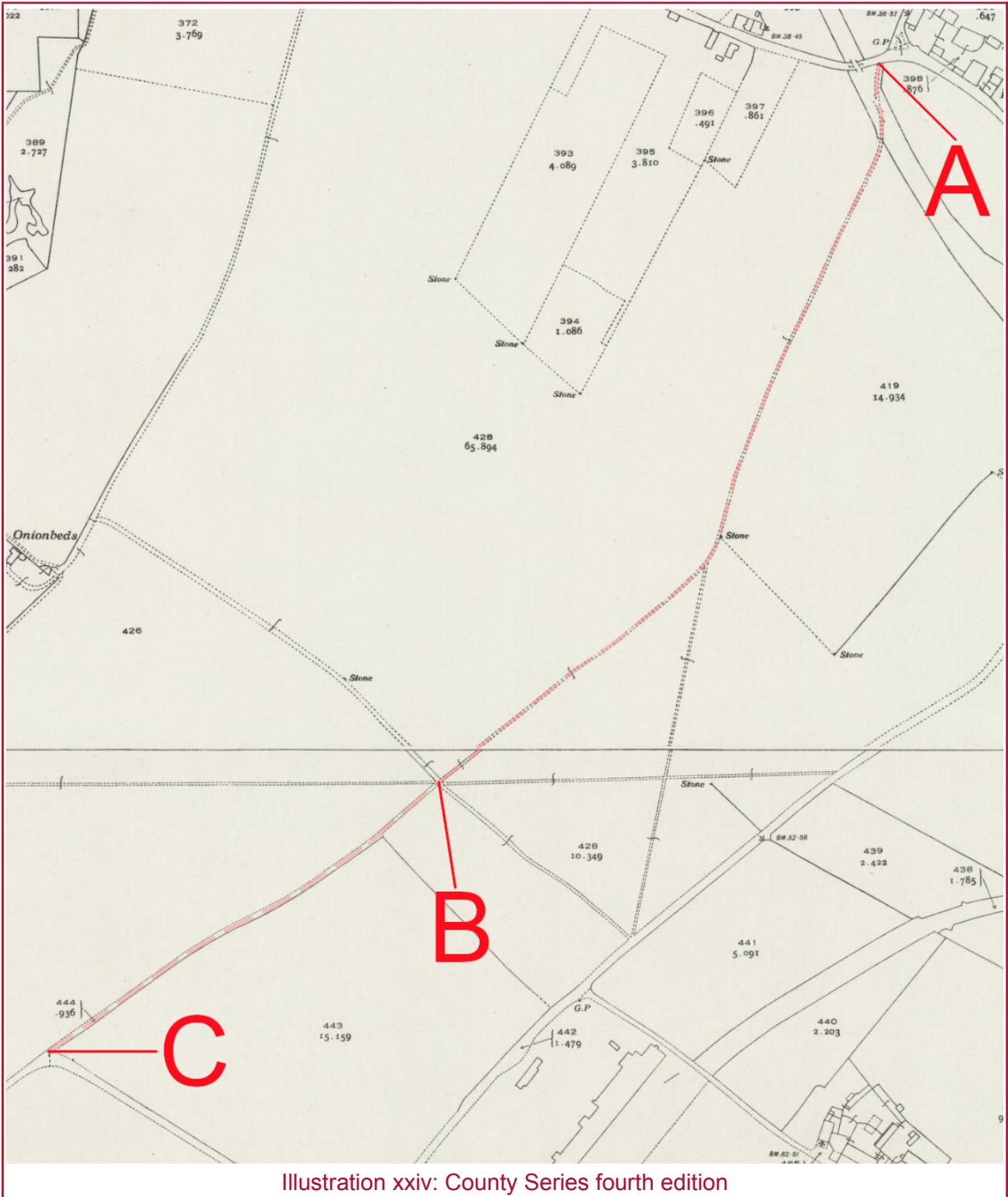


Illustration xxiv: County Series fourth edition

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. All four editions show the application way throughout.

I.5. The first edition was based on a survey of 1872, and shows the application way between A and B as a field track. Between B and C the way is shown as a road, enclosed on the south side (save for a short portion adjacent to B), and coloured yellow, which indicates that the road was metalled<sup>17</sup>. The parcel 481 comprising the way at C is treated as continuous with the Sandwich Road, so that parcel accounts for a considerable portion of Sandwich Road southwest of C and a short portion of the application way northeast of C, whereas Sandwich Road southeast of C, and Hammill Road beyond, is treated as part of another parcel. Parcel 481 is recorded in the area book for Woodnesborough as a 'Road'.

I.6. The second edition presents the application way similarly, save that the whole of the way between B and C is treated as part of the same parcel as Sandwich Road between C and the crossroads with Chalkpit Lane further southwest.

I.7. The third edition is nearly identical with the second.

I.8. The fourth edition shows the application way passing over the East Kent Light Railway, but its course is barely deflected.

I.9. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application way. The treatment of the way between B and C as part of the same parcel as Sandwich Road, and the metalling of the same part of the way recorded on the first edition map, is consistent with that part of the way being a continuation of a public road.

I.10. **Points:** 0

## J. Finance (1909–1910) Act 1910

J.1. **Date:** 1911

J.2. **Source:** National Archives<sup>18</sup>

<sup>17</sup> '*Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3<sup>rd</sup> ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

<sup>18</sup> IR 124/5/67 and 71

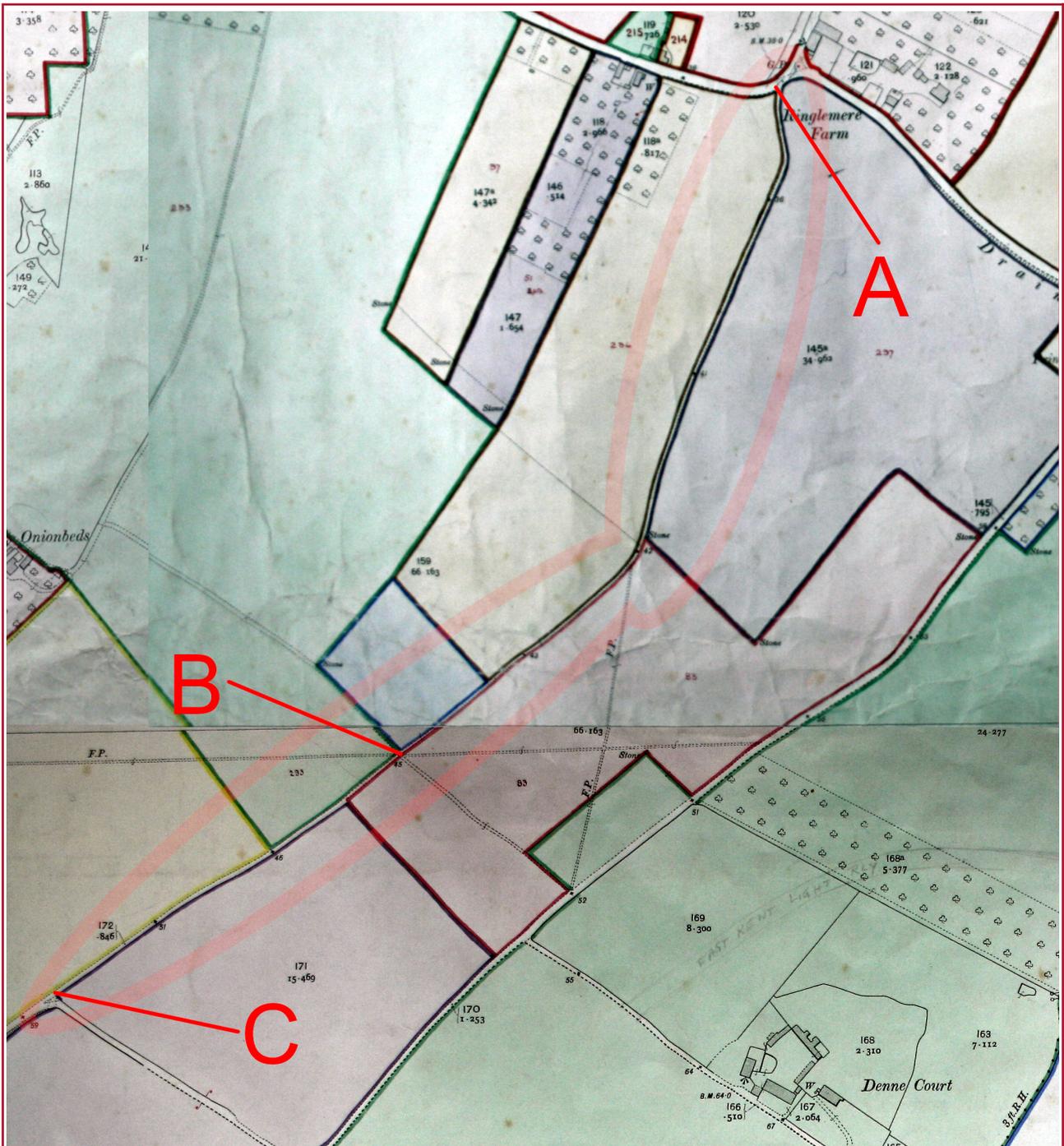


Illustration xxv: Finance Act map Kent XLVIII/5 & 9

J.3. **Description:** Original scale: 1:2,500; orientation: unchanged<sup>19</sup>.

J.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,

<sup>19</sup> The plans adopted by the Inland Revenue in Kent for the purposes of the survey are the Ordnance Survey County Series 25-inch maps (item IV.I above), third edition, also shown at Illustration xxiii.

'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.

J.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.'

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

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

J.8. The application way is wholly excluded from valuation, being depicted as a 'white road'.

J.9. **Conclusion:** the exclusion of the application way is good evidence of highway status, most likely of vehicular rights.

J.10. **Points:** 5

### K. East Kent mineral light railway

K.1. **Date:** 1910

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

#### East Kent light railway deposited plan

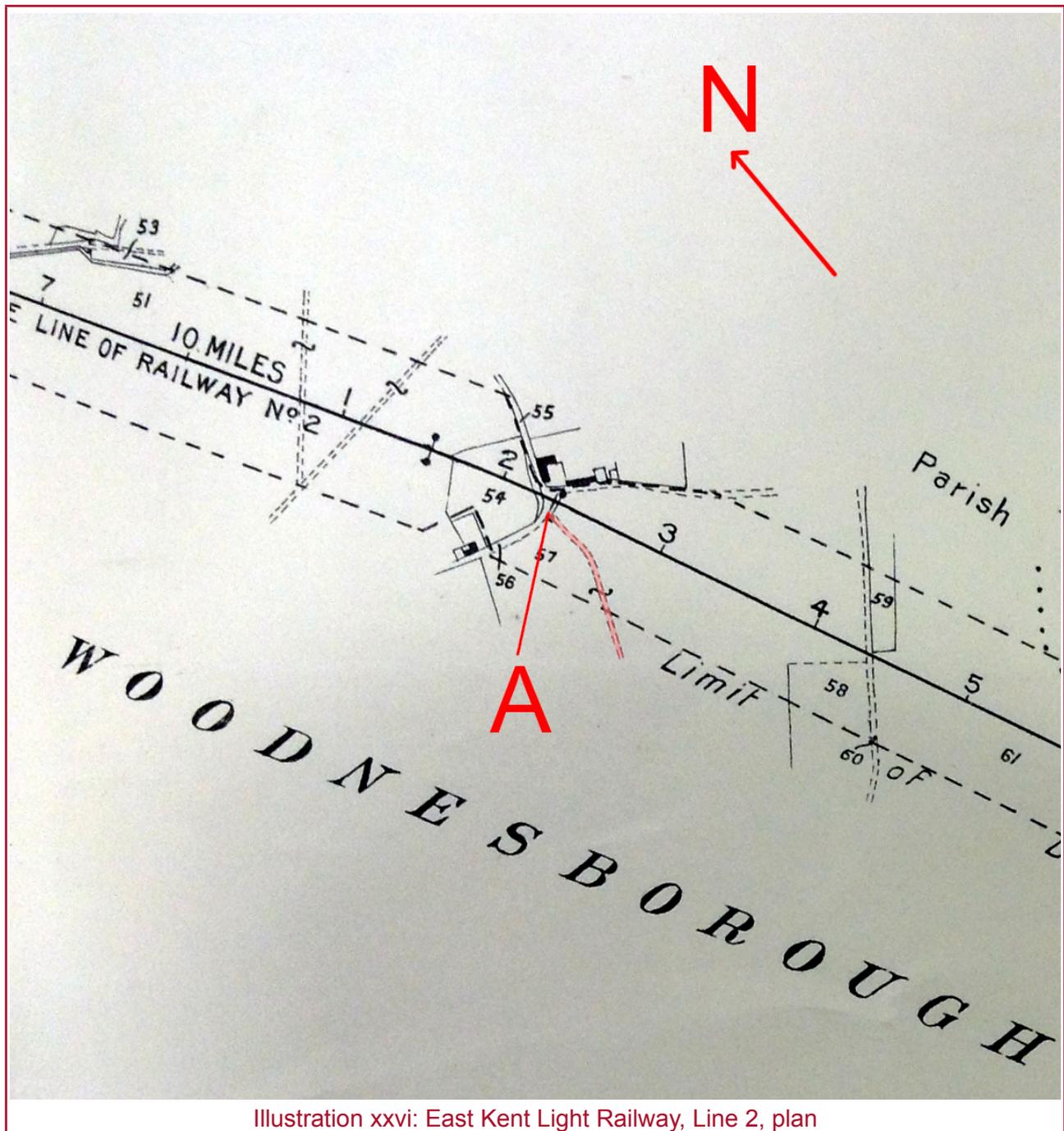


Illustration xxvi: East Kent Light Railway, Line 2, plan

East Kent Light Railway book of reference

45

**EAST KENT MINERAL (LIGHT) RAILWAYS.**

Parish of **WOODNESBOROUGH**, in the County of **KENT.**

**RAILWAY No. 2—continued.**

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
54	Meadow	William George Collett The Reverend Thomas Collett Katharine Collett	.. ..	George Laslett
55	Public road	The Eastry Rural District Council	.. ..	The Eastry Rural District Council
56	Public road, telegraph and telephone posts and wires	The Eastry Rural District Council	.. ..	The Eastry Rural District Council His Majesty's Postmaster General
57	Arable, orchard and occupation road	Thomas Solly Coleman	.. ..	George Laslett Thomas Devison
58	Arable	The Right Honourable Lord Northbourne	.. ..	Mrs. S. Spratt

Illustration xxvii: East Kent Light Railway, Line 2, book of reference

K.3. **Description:** original scale: scale marked on plan in chains; orientation: unchanged. 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. The promoters included Kent Coal Concessions Ltd, the original promoter of the Kent coalfield. The railway was promoted under the Light Railways Act 1896. The 1896 Act required the deposit of plans and books of reference in connection with a submission seeking authorisation under the Act.

K.4. Line 2 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 between Eastry and Wingham.

K.5. The application way was recorded in the deposited plan as within parcel 57, and the deposited book of reference refers to the way as an 'occupation road' in the ownership of Thomas Solly Coleman, and in the occupation of George Laslett Thomas Devison.

K.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 excluded<sup>20</sup>, and most highways, including public roads, were to be taken over the railway on the level.

K.7. The status of the application way (in common with many other crossing ways) did not greatly matter to the railway company: it was not obliged by its enabling order to build bridges at intersections with public roads (save in relation to a handful of roads<sup>21</sup>), and thus, whether the application way were a public road, a public path, or an occupation road, was of little moment.

K.8. Moreover, the recorded status of occupation road does not exclude the possibility that the way was considered to be both occupation road and public bridleway — if so, then the railway company was concerned with the obligation to provide a passage for vehicles, which would be sufficient for users of the bridleway.

K.9. The East Kent Light Railway's surveyor tended to record public highways with the lowest possible status: BOAT EE335 (part of plot 1 in Eastry) is recorded as a public bridleway, and other examples exist of roads and bridleways recorded as bridleways or footpaths.

K.10. **Points:** 0

## L. Eastry Rural District Council highways committee

L.1. **Date:** 1913

L.2. **Source:** Kent County Archives<sup>22</sup>

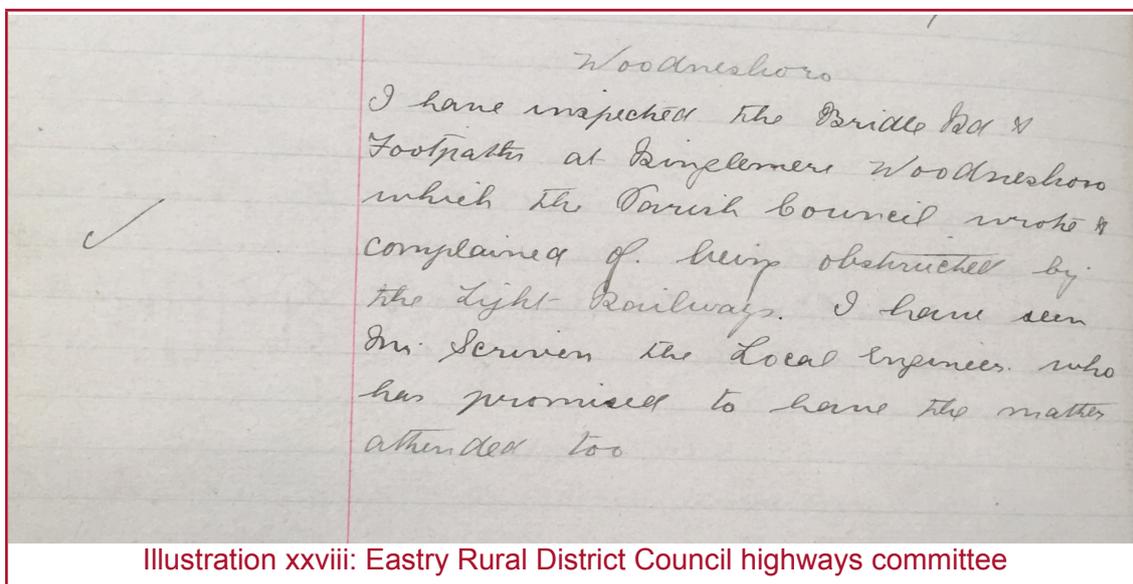


Illustration xxviii: Eastry Rural District Council highways committee

L.3. **Description:** The report of the surveyor to the Eastry Rural District Council highways committee records:

| 13 May 1913...Woodnesborough

<sup>20</sup> See art.3(1).

<sup>21</sup> Bridges under railway at Ash (road 41 Richborough Road) and Northbourne (road 10 Northbourne Lane), and bridges over railway at Littlebourne (roads 2 Stodmarsh Road and 10 Court Hill), Eythorne (bridle road 33 EE347) and Coldred (road 7 Church Road).

<sup>22</sup> RD/Ea/H6

I have inspected the Bridle Rd and Footpaths at Ringlemere Woodnesboro which the Parish Council wrote and complained of being obstructed by the Light Railways. I have seen Mr Scriven the Local Engineer who has promised to have the matter attended too.

L.4. The report states that the surveyor has inspected the 'bridle road' at Ringlemere, which had been brought to his attention by the parish council. The only plausible candidate is the application way.

L.5. **Conclusion:** The report is good evidence that the application way was considered by the parish and district council, at that time, as a public bridleway, notwithstanding the status recorded in the book of reference for the line deposited just three years earlier.

L.6. **Points:** 3

## M. Parish survey

M.1. **Date:** 1950

M.2. **Source:** Kent County Council<sup>23</sup>

<sup>23</sup> Archives: file FB/R290; R6/21.

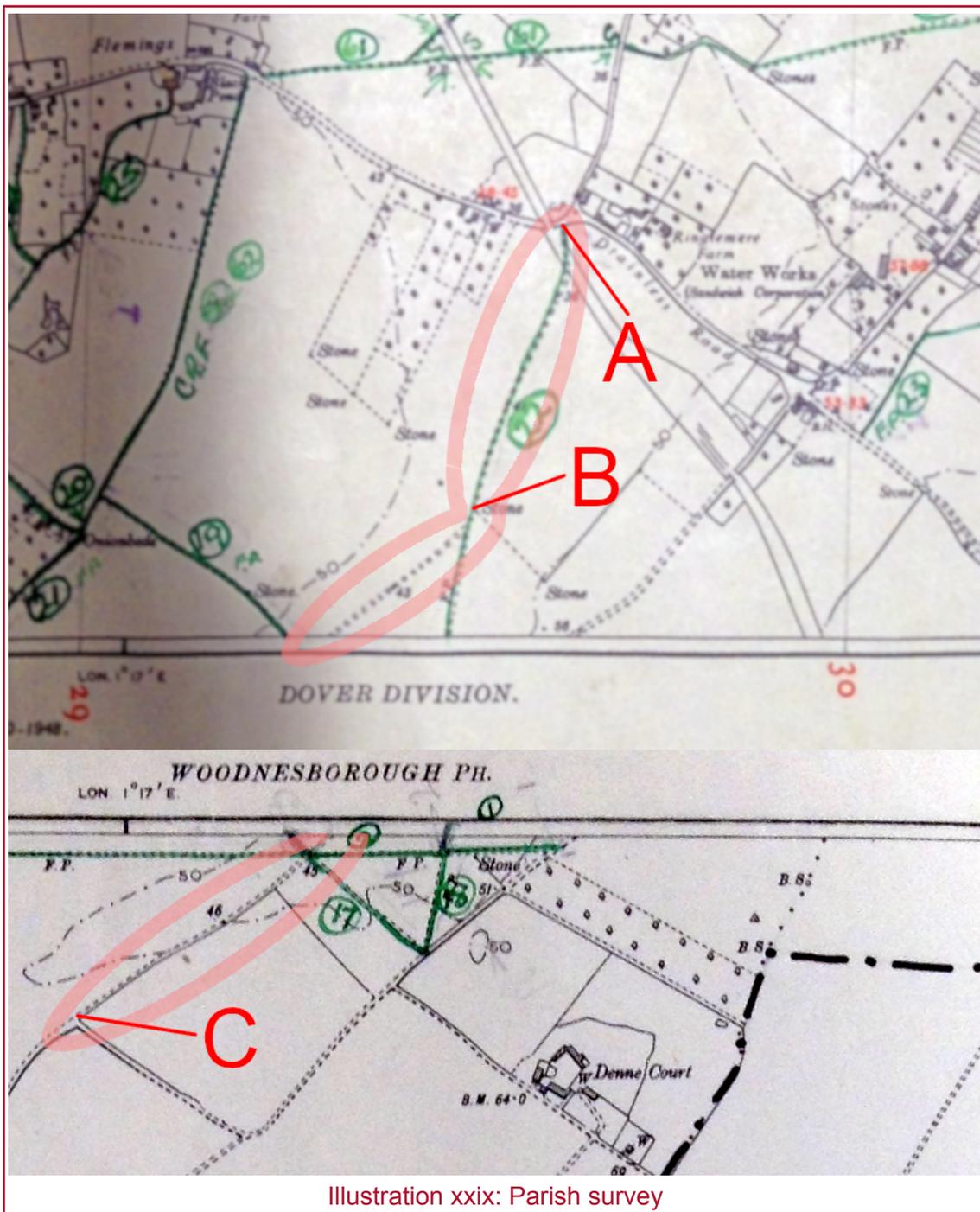


Illustration xxix: Parish survey

M.3. **Description:** The surveying authority (the county council) led the process of preparing the draft definitive map and statement under the National Park and Access to the Countryside Act 1949. Under [s.28\(1\)](#) of the 1949 Act, it was required to consult with its district and parish councils on the arrangements for the provision of information to contribute to the draft map.

M.4. Under [s.28\(3\)](#), those arrangements were required to include provision for each parish council to hold parish meetings, and for parish meetings to be held where there was no council for a parish. And under [s.28\(4\)](#), every parish council had a duty 'to collect and furnish to the surveying authority such information, in such manner and at such time, as may be provided for by [the] arrangements agreed or determined'.

M.5. In practice, those arrangements typically called upon the parish council to conduct a parish survey, which was written up on a base Ordnance Survey map (provided by the surveying authority) and schedule of paths. The survey might have been done by parish council members, volunteers, or representatives of user groups. The survey was then considered by the parish council and by the parish meeting, so that the parish council would put forward a revised version of the survey for adoption by the surveying authority. In rural districts, the rural district council might co-ordinate the survey process among its parish councils.

M.6. The Woodnesborough parish survey was carried out by various parish residents in the second half of 1950. Part of the application way, between A and B, was recorded on the parish survey as CRB 22 (*i.e.* carriage road—bridleway): 'From Ringlemere Farm towards Hammill; used; 8' wide'. The continuation from B departed from the track towards C, and continued in the same direction across a field to the junction of bridleway EE201 with Hammill Road: however, this part was recorded as FP 18 (*i.e.* footpath): 'Sandwich Lane to (1): cultivate land—no trace'.

M.7. Although both paths were surveyed by Mr A E Newman, the paths straddle two six inch map sheets, and the records are not consistent: strictly, CRB 22 had no continuation on the map sheet to the south, while FP 18 was of an inferior status and projected no further north than its junction with FP 1 (another cross-field footpath).

M.8. In the event, CRB 22 was drawn onto the draft definitive map but shown crossed out, while FP 18 was included — notwithstanding that, without any continuation north from its junction with FP 1, it served (and continues to serve) no functional purpose. Today, FP 18 is recorded as footpath EE208, and FP 1 as EE203A. The draft definitive statement entry for FP 18 records it as 'Footpath. Denne Court to Ringlemere Farm. Commences at junction of F.P. 17 on Sandwich Lane C195, 100 yds. N. of Brick Works and leads N. for 150 yds. to junction with F.P's 1 & 2 and C.R.B. 22.' The entry for CRB 22 states 'deleted'.

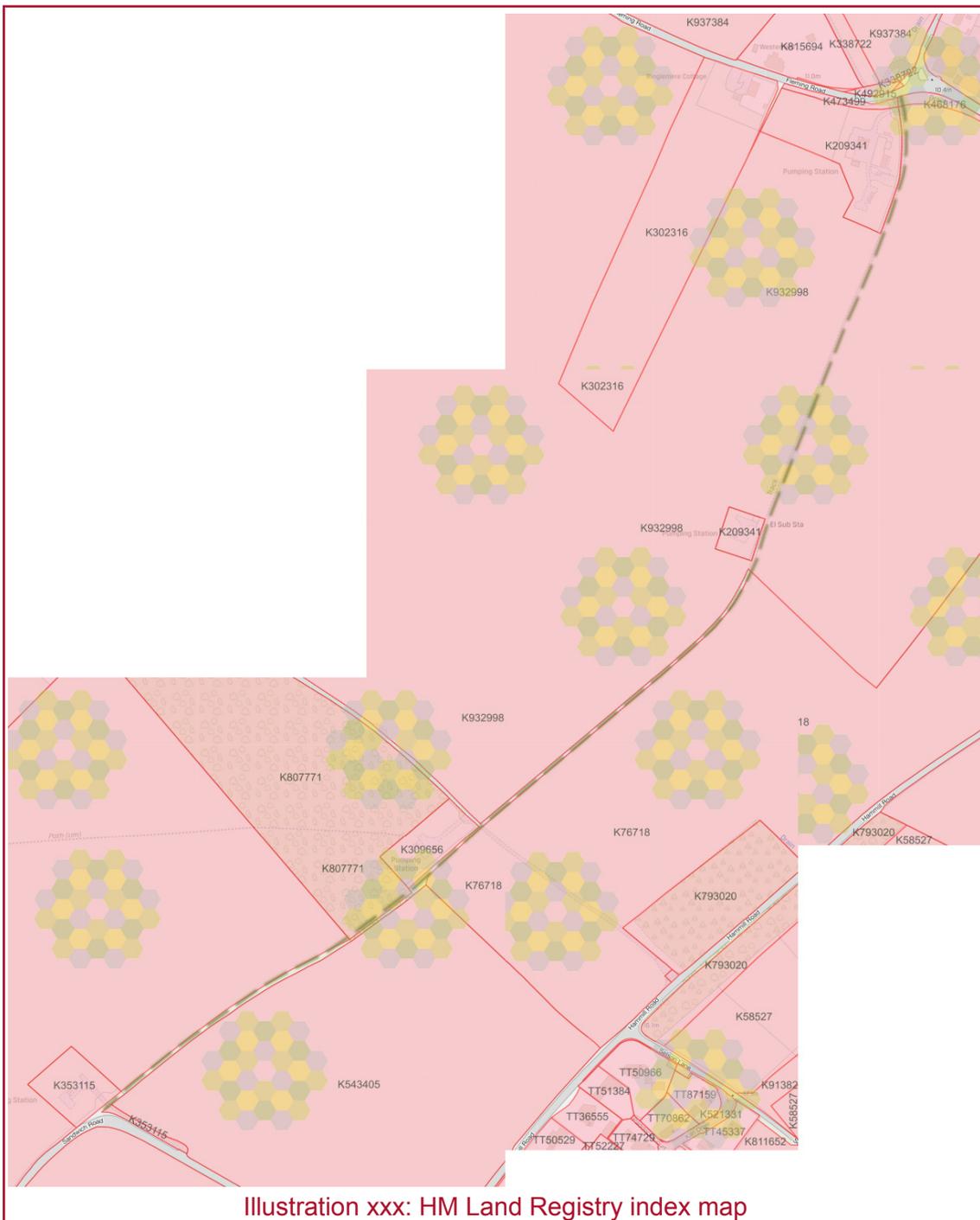
M.9. **Conclusion:** The parish survey recorded the application way between A and B as a road used as public path, but it was omitted from the draft map. The explanation for its exclusion is not known.

M.10. **Points:** 0

## N. Ownership

N.1. **Date:** current

N.2. **Source:** HM Land Registry



N.3. **Description:** The HM Land Registry index map shows land to which title has been registered.

N.4. Title to the way has been registered between Fleming Road (at A) and the second pumping station. Between there and Sandwich Road (at C), the title is wholly unregistered.

N.5. There are only two plausible explanations for the unregistered title.

N.6. The first is that the title to the way between the second pumping station and C is held separately to title to the neighbouring land, but that title has not been registered by the owner. That is wholly unlikely: registration of title has been compulsory in this area

since 1 October 1958, and there is no suggestion that title to part of the way is separately held.

N.7. The second, and more probable, explanation is that the title is held *usque ad medium filum viae* — that is, as far as the centre line of the road:

‘The owners of land adjoining a highway are presumed in law to own the subsoil of the highway up to the middle point of the road—*usque ad medium filum viae*. This is a rebuttable presumption of law, which may be displaced by actual evidence of ownership of the soil. The adjoining landowners are each presumed to have contributed a portion of their land to the formation of the highway but in a number of cases the presumption has been applied also to situations where the assumption could not really apply—for example, where a stream or a lake separated the adjoining land from the highway. The presumption may perhaps be said to be a rule of convenience arising from the difficulties in establishing the ownership of the subsoil. Many highways will have been created so far in the past that actual knowledge of the ownership of the subsoil will no longer exist. Where highways have arisen more recently, however, the presumption is nonetheless quite difficult to displace. The presumption of ownership applies whether the land adjoining an existing highway is enclosed or unenclosed.

...

There seems to be a similar presumption in relation to private occupation roads. In *Holmes v Bellingham*, it was pointed out that the same principles that led to the reliance on the presumption in the case of public roads applied also in the case of private roads. The presumption is rebuttable by acts of ownership and, therefore, evidence of user in the exercise of a claim of ownership may displace the presumption.<sup>24</sup>

N.8. **Conclusion:** It might be said that the absence of any registered title to the way is indifferent in showing whether the way is a highway or a private occupation road. However, what is striking about the way is the absence of any recorded private easements over any part of it which would be consistent with ownership by the frontagers *ad medium filum*. In the absence of any easement, the frontagers would have no means to use the way to access their land, other than to use the part of the way presumed to lie within their titles.

N.9. Accordingly, it is submitted that the explanation for the absence of any registered title to the application way between the second pumping station and C is that it is a highway in origin, and that the frontagers need no easement to access their land, because they have the same rights to use the highway as the public generally.

N.10. **Points:** 0

<sup>24</sup> *Highway Law*, 5<sup>th</sup> ed, Stephen Sauvain QC, paras.3–23, 3–24

## V. User evidence

A.1. The 20 year period of use for this application can be assumed to date back from the date of the application. This is because the application itself constitutes 'the matter bringing the right of the public to use a way into question': s.31(7A) and (7B) of the Highways Act 1980.

A.2. Included with this application are witness statements from 20 people relating to this period and, in some cases, before this period. Nine of these cover usage for the full twenty year period. All of this use has been on horseback and bicycle (note that cycling use in these circumstances is supportive of dedication as a bridleway). Some users indicated they have also walked the path. None of the users was related in any way to the owners or occupiers of the land, they did not have permission to use the route, and there were no signs prohibiting use. It is therefore concluded that the use has been 'as of right' and of a sufficient level on its own to presume a dedication of the route as a bridleway.

A.3. A summary of this usage is shown in the usergram over the page.

Application Number	Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
1																							
2																							
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Illustration xxxi: usergram