

Swingfield Street restricted byways: application to record a network of eight ways

Historical document analysis

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B. Quick reference

B.1. **Location plan:** application ways are coloured brown (see application map at Annexe A at p.130 below for detailed representation).

Location plan



- B.2. **Existing recorded public rights of way comprised in application way:** ER106, ER121, HE53, HE184, HE186, HE189
- B.3. **Parishes of:** Swingfield, Denton with Wootton, Lydden
- B.4. **Ancient parishes of:** Swingfield, Wootton, Lydden
- B.5. **District of:** Dover, Folkestone and Hythe
- B.6. **Former rural districts of:** Elham and Dover
- B.7. **Hundreds of:** Folkestone, Eastry, Kinghamford
- B.8. **Termination points and Ordnance Survey grid references:**
- Geddinge Lane at Birches Farm, Geddinge (A): TR23904633;
 - Wickham Bushes (W): TR24754561;
 - Stagger in the parish boundary between Denton with Wootton and Swingfield (B): TR23964525;
 - Junction of paths near Hassage Carvett (C): TR23334448;
 - Junction of paths near Hassage Carvett (D): TR23304444;
 - St John's Cottages (E): TR23144407;
 - Opposite junction of Swanton Lane and The Street (F) TR23574416;
 - Junction with bridleway ER113 (G) TR23034475;
 - Junction of footpath HE53 with Beards Hall (H) TR23104330;
 - Corner in Boyington Lane (I) TR22574319;
 - Hall Wood, junction with Beards Hall (J) TR23244313;
 - Junction of footpath HE184 with Holloway Lane (K) TR23854328;
 - Junction of footpath HE186 with Boyington Lane at Boyington Court Farm (L) TR22484295;
 - Divergence from historical alignment of footpath HE186 at Boyington Court (M) TR22704280;
 - Junction of bridleway HE189 with Fernfield Lane at Everden Farm (N) TR23114233;
 - Divergence from Fernfield Lane south-west of Everden Farm (O) TR22934215.
- B.9. **Postcode:** CT15 7HA
- B.10. **Ordnance Survey Explorer sheet:** 150
- B.11. **Ordnance Survey County Series 25" sheets:** Kent LVII/15, LXVII/2, LXVII/3, LXVII/6, LXVII/7, LXVII/10

C. The applicant

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

D. Locational details

D.1. This application relates to a network of ways in the parishes of Swingfield, Denton with Wootton, and Lydden. Some of the ways are not currently recorded on the definitive map and statement, others are recorded in part as public footpaths or bridleways, but not always on the same alignment. The application seeks to record all the ways as restricted byways on their correct alignment.

E. Application

E.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 sub-paragraphs (i) to (iii) of section 53(3)(c) that certain ways should be added to the definitive map and statement for Kent as restricted byways, that certain ways shown on the definitive map and statement as footpath or bridleway should be upgraded to restricted byway, and that there is no right of way over parts of ways shown on the definitive map and statement as footpath.

Way (I) West Lees Lane/Broomfield Lane restricted byway (part redesignation of footpath to restricted byway) (A–B–C–D–E)

E.2. To upgrade to restricted byway the footpath ER106 from Geddinge Lane at Birches Farm, Geddinge at A (OS grid reference TR23904633) south, then east-southeast, then south, for a distance of 810m, to a point about 210m west of Prickett's Wood (TR23964562); then to add a restricted byway generally south for a distance of 420m to a junction with another restricted byway, Old Road (way (II)), at a stagger in the parish boundary between Denton with Wootton and Swingfield at B (TR23964525), then west-southwest along the parish boundary for a distance of 260m, then generally south-west for a distance of 760m (passing through X, where West Lees Lane becomes Broomfield Lane) to a junction with another restricted byway, Park Lane (way (IV)), about 90m south-east of the corner of Hassage Carvett at C (TR23334448), then south-west for a distance of 50m to a further junction with another restricted byway, Hermitage Lane (way (III)), at D (TR23304444), then generally south-west and briefly south for 390m to Swanton Lane (formerly St John's Lane) at St John's Cottages at E (TR23144407), a total distance of 2,690m.

E.3. This is West Lees Lane and Broomfield Lane.

E.4. The way is identified as West Lees Lane between B and X in the Swingfield tithe apportionment (parcel 133), and the land in the corner formed by ways I and II is named West Lees in the Swingfield and Lydden apportionments. It therefore is inferred that West Lees Lane applies to the remainder of way I in the direction of Geddinge (*i.e.* that the whole of the way between A and X is West Lees Lane).

E.5. The way is identified as Broomfield Lane between X and E in the Swingfield tithe apportionment (parcel 128).

Way (II) Old Road restricted byway (part redesignation of bridleway to restricted byway) (W–B)

E.6. To upgrade to restricted byway the bridleway ER121 from Wickham Bushes at W (TR24754561) west-southwest for a distance of 100m (TR24674554), then to add a

restricted byway generally west-southwest for a distance of 800m to a junction with another restricted byway, West Lees Lane (way (I)), at a stagger in the parish boundary between Denton with Wootton and Swingfield at B (TR23964525), a total distance of 900m.

E.7. Parcel 67 immediately to the north of the way is named 'Part of 30 Acres & Old Road' in the Lydden apportionment. It therefore is inferred that way II between W and B is so named. Of course, this may be no more than a reference to the way being an 'old road', but in the absence of any other known name, it is adopted for the purposes of this application.

Way (III) Hermitage Lane restricted byway (F–D)

E.8. To add a restricted byway from a point 60m east of the junction of Swanton Lane and The Street at F (TR23574416) north-north-west for a distance of 390m to a junction with another restricted byway, Broomfield Lane (way (I)), south-west of Hassage Carvett at D (TR23304444).

E.9. The way is identified as Hermitage Lane between F and D in the Swingfield tithe apportionment (parcel 206).

Way (IV) Park Lane restricted byway (C–G)

E.10. To add a restricted byway from a junction with another restricted byway, Broomfield Lane (way (I)), about 90m south-east of the corner of Hassage Carvett at C (TR23334448), north-west past the east side of Hassage Carvett for a distance of 410m to a junction with bridleway ER113 at a point 120m west-southwest of the southern point of Park Wood at G (TR23034475).

E.11. The way is identified as Park Lane between C and G in the Swingfield tithe apportionment (parcel 117).

Way (V) Street Lane redesignation of footpath to restricted byway (H–I)

E.12. To upgrade to restricted byway the footpath HE53 from the junction with Beards Hall Lane at H (TR23104330), initially west and then south-west along a Holloway for a distance of 140m to the junction with footpath HE183, then again west across a field for 430m to a turning at a corner in Boyington Lane (formerly Lamper Lane) at I (TR22574319), a total distance of 570m.

E.13. The northern, enclosed, end of the way at H is identified as Street Lane in the Swingfield tithe apportionment (parcel 235).

Way (VI) North Court Bottom Road restricted byway (part redesignation of footpath to restricted byway) (J–K)

E.14. Partly to add a restricted byway, and partly to upgrade to restricted byway the footpath HE184, from Hall Wood at the junction of footpath HE184 with Beards Hall Lane at J (TR23244313) east, then north-east, then generally east-northeast for a distance of 710m to the junction of footpath HE184 with Holloway Lane at K (TR23854328). Partly a redesignation of footpath HE184 as restricted byway, but partly on a discrete alignment owing to the footpath being recorded on an incorrect alignment.

E.15. The way is identified as North Court Bottom Road between J and K in the Swingfield tithe apportionment (parcel 175).

Way (VII) Hogstock Lane (part redesignation of footpath and bridleway to restricted byway) (L–M–N)

E.16. Partly to add a restricted byway, and partly to upgrade to restricted byway part of the footpath HE186 and part of the bridleway HE189, from the junction of footpath HE186 with Boyington Lane (formerly the junction of Lamper Lane and Bonnington Lane) at Boyington Court Farm at L (TR22484295), south-east past Boyington Court for a distance of 280m to a junction with restricted byway, Five Acre Lane (way (VIII)) at M (TR22704280), then continuing generally along the line of footpath HE186 south-east then south and south-southeast for a distance of 420m to a junction of footpath HE186 with bridleway HE189, then continuing south and then south-east along the line of bridleway HE189 to a junction with Fernfield Lane at Everden Farm at N (TR23114233), a total distance of 1,015m. Partly a redesignation of footpath HE186 and bridleway HE189 as restricted byway, but partly on a discrete alignment owing to footpath HE186 being recorded on a different alignment.

E.17. Part of the way east of M to N is identified as Hogstock Lane in the Swingfield tithe apportionment (parcel 283).

Way (VIII) Five Acre Lane restricted byway (M–O)

E.18. From restricted byway (VII) east of Boyington Court Farm at M (TR22704280) south-southwest then generally south-southeast for a distance of 770m to Fernfield Lane south-west of Everden Farm at O (TR22934215).

E.19. The way is identified as Five Acre Lane between M and O in the Swingfield tithe apportionment (parcel 296).

Generally

E.20. The points W and A to O are identified in the application map at Annexe A at p.130 below.

E.21. The numbering and names of the ways are identified in the annotated plan below.

Road names



F. Nomenclature

F.1. The names given to the application ways are derived from the Swingfield tithe apportionment prepared under the *Tithe Act 1836* (item II.J below), save that application way (II), Old Road, has been named after ‘Old Road’ field, so named on the Lydden tithe assessment, which it passes alongside (see para.I.E.7 above).

G. Background to and grounds for application

G.1. The application ways appear historically to be a network of parish cart tracks and field roads.

G.2. The evidence of early county maps is that the application ways were no less significant than many other local roads which today are tarred and publicly maintained — indeed, on these maps, they are indistinguishable from other local roads.

G.3. On the earliest source, *An accurate map of the county of Kent (Downes)* (item II.A below, 1783), application ways (I), (III) and (VIII) are believed to be shown, whereas some local roads today, which very probably existed at this time, are not shown. This source is likely to map only perceived key routes. Similarly, it is suggested that application way (I) is uniquely shown on the map of Kent in *Mr Boys’ Agricultural Account of Kent* (item II.B below, 1794).

G.4. The *Ordnance Survey surveyor’s drawing* (item II.C below, 1797) is the first map attributable to a full survey under a system of triangulation. With the exception of part of application way (I), which may not be marked owing to its being unenclosed, all of the application ways are shown. As the survey was motivated by military needs, it is unlikely that the application ways would have been recorded if they were no more than footpaths.

G.5. The *Barlow-Hasted map of Kent* (item II.D below, 1797–1801) lacks the triangulated base survey of the *Ordnance Survey surveyor’s drawing*, but all of the application ways can be reliably identified save application way (VIII).

G.6. In the early nineteenth century, a series of maps were published based on the Ordnance Survey triangulation and (in the case of Greenwoods’) further survey. The *Ordnance Survey, Mudge-Faden one-inch map of Kent* (item II.E below, 1801) was derived from the *Ordnance Survey surveyor’s drawing* but privately published, and in common with its source, shows all the application ways save way (I). *Paterson’s Roads — Thanet and Kent and Sussex Coast* (item II.F below, 1811) is a smaller-scale map showing only key elements of the local road network, but still shows application ways (I, part of) to (IV) and (VI) to (VII). Greenwoods’ map of Kent (item II.G below, 1824) shows all the application ways save to omit part of application way (I) (perhaps too reliant on the *Ordnance Survey, Mudge-Faden one-inch map of Kent*), as does the *Ordnance Survey, Old Series one-inch map of Kent* (item II.H below, 1831, but derived from the *Ordnance Survey surveyor’s drawing*).

G.7. The impression generated by these late-eighteenth and early-nineteenth-century maps is that the application ways were indeed credible components in the local road network. The omission of the northern part of way (I) from several of these maps may be attributable to it being an unenclosed field road.

G.8. The evidence from plans for *Railways across Wickham Bushes Road* (item II.I below, 1836–51) is that Wickham Bushes Road, leading from Lydden Hill to Wickham Bushes at W, was then recognised as a publicly-maintained road. It is highly unlikely that

such a road was maintained at public expense if it led no further than Wickham Bushes, and these proposals are supportive of application ways (I) and particularly (II) being public roads in continuation.

G.9. The *Tithe Act 1836* evidence (item II.J below, 1840–41) is critical. The Swingfield tithe map depicts the application ways in sienna, along with roads considered today to be part of the local road network, and individually lists and describes them as under the ownership of the Surveyors of Swingfield. Each road is given its name and an apportionment number. The parish surveyor could have no responsibility for any land or road save a highway. Other roads or tracks identified in the map and in the apportionment are not coloured in sienna, and are identified elsewhere in the apportionment. The tithe assessment is rated first class, and evidence of what is portrayed. The tithe assessment was done ‘upon notice in all the most public places’¹: every landowner had a deep interest in what was done in the assessment and its implications for his or her holding. Long before an age of social media, the draft assessment would have been a matter of notoriety among landowners attending church, public houses and markets, or otherwise gathering socially. Meetings of landowners were required to be called under the 1836 Act to authorise elements of the process. The Swingfield tithe assessment therefore is a reliable guide to those ways considered at this time to be public roads.

G.10. Moreover, the Swingfield tithe assessment is corroborated, so far as application ways (I) and (II) are concerned, by the Lydden and Wootton tithe assessments, which also show these ways as public roads, and which also are first class.

G.11. The 1847 *Denton court estate maps* (item II.K below, 1847–75) shows application ways (I), (III) and (IV) (along with other local roads) in a distinctive colour. The records of *Wingham Highway Board and Elham Rural District Council* (item II.L below, 1869–98) are suggestive that application ways (I), (III) and (IV) are public roads. The *Inclosure Act 1845, orders of exchange* (item II.M below) are consistent with application ways (I) and (IV) being public roads.

G.12. The *Ordnance Survey County Series 25-inch plans* (item II.N below), first edition, show application ways (I) and (V) as metalled roads, while none of the application ways is marked as a footpath or bridle-road on the second edition, so that the ways must have been observed to be in vehicular use.

G.13. The *Finance (1909–1910) Act 1910* (item II.O below, 1910–16) maps and field books show parts of application ways (I), (IV), (V) and (VI) as ‘white roads’ excluded from assessment consistent with public roads. The *HM Land Registry index map* (item II.S below) shows parts of application ways (I), (III), (V), (VII) and (VIII) to be excluded from neighbouring titles, suggestive of title being regarded, at the time of earlier conveyances, as *ad medium filum*.

G.14. *Late C19 and early C20 Ordnance Survey and Bartholomew’s maps* (item II.P below) in the Ordnance Survey one-inch and Bartholomew’s half-inch series both show the network of application ways, save for application ways (II) and (VII), but being eclipsed by other, now tarred, roads in the first half of the twentieth century.

G.15. The preparation of the parish and draft maps under *Part V of the National Parks and Access to the Countryside Act 1949* (item II.R below, early 1950s) show how mistakes or cross-parish inconsistencies led to several of the application ways being excluded from the definitive map and statement.

1 See para.II.J.6 below

G.16. Finally, as explained in *Application ways (I) and (II) as a parish boundary* (item I.H below), the designation of parish boundaries as lying along the centre line of application ways (I) and (II) is strongly suggestive of an ancient origin to those ways which is compatible only with public status.

G.17. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*, 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.18. 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.19. The correct test under s.53(3)(c)(i), in relation to those application ways which at present are not recorded on the definitive map and statement in any form, is whether:

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

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

G.20. The correct test under s.53(3)(c)(ii), in relation to those application ways which at present are recorded on the definitive map and statement as footpath or bridleway, is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description... [.]

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

G.21. Section 32 of the Highways Act 1980 provides that:

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

G.22. While no single piece of evidence in this application is conclusive — although the tithe map and apportionment evidence is considered, collectively, to come close — the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the application ways have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I.J below), there were full vehicular rights.

H. Application ways (I) and (II) as a parish boundary

H.1. About half a kilometre of application ways (I) and (II) are shown as denoting the parish boundary between Lydden and Wootton, which runs down the centre line of the ways: the lengths comprise about 260 metres of way (I) west-southwest from B towards C; and about 300 metres of way (II) extending east-northeast from B towards W. The relevant part of way (I) is shown on the *Ordnance Survey County Series 25-inch plans* first and second-edition plans (item II.N below) as coincident with the parish boundary, marked ‘C.R’, and by implication on the tithe maps for Swingfield, Lydden and Wootton at *Tithe Act 1836* (item II.J below). However, the relevant part of way (II) can be seen to be coincident with the parish boundary only on the tithe maps for Lydden and Wootton. It is submitted that the boundaries are founded in long-standing manorial administrative systems which show that the relevant parts of the application ways are themselves ancient in origin, and public.

H.2. The English manor was an administrative unit of a landed estate, held by a lord. The manorial system was partly established in the pre-Norman period, but consolidated after the Conquest. The lord of a manor owed obligations of service to the Crown, but the lord could grant or sub-divide the manor (sub-infeudation) until prohibited in 1290.³ Thus every manor had boundaries which, since 1290, generally were well-defined and remained static.

H.3. Parishes date from the early mediæval period, but the parish emerged as an administrative unit of local government late in that period. The parish was assigned key functions of maintaining the highways under the Statute of Philip and Mary of 1555,⁴ and maintaining the destitute under the Poor Relief Act 1601. Initially, the parish operated alongside the manor, which retained jurisdiction over property rights, powers to punish misdemeanours and to regulate the use of land, exercised through the courts baron and leet. Manorial powers gradually were lost or abandoned, until finally the control of property rights was abolished under the Law of Property Act 1922.

3 Statute of *Quia emptores*

4 2 & 3 Philip and Mary, c. 8, passed as a temporary Act in 1555, and permanently re-enacted in 1563 (5 Elizabeth, c.13).

H.4. A parish might be coterminous with a manor, might comprise several manors, or a manor might include several parishes.⁵ But parish boundaries frequently were coincident with those of manors, and founded in the original manorial boundary. Accordingly, historical parish boundaries⁶ are frequently of great age, and faithful to boundaries established in the mediæval period or earlier. The alignments of the boundaries depended on a regular perambulation and ‘beating the bounds’.⁷ And frequently, they coincide with highways.⁸

H.5. Where a historical parish boundary is recorded as following the centre line of a way, there are three potential explanations for the origin:

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

H.6. These three possibilities are examined in turn below in their relevance to the application ways (I) and (II).

The ways pre-date the boundary and were adopted as the boundary

H.7. The application ways became established across the open, unenclosed downs before the first enclosures. As the land began to be taken in and managed as the exclusive property right of a single landowner, perhaps in the early mediæval period but quite possibly in the prehistoric period, the application ways were adopted as the boundaries between two adjacent manors.⁹ The boundary between the manors, and subsequently the parishes, was adopted as following the centre line of the ways, and the manors would have shared responsibility for oversight of the ways (and any maintenance responsibility which was accepted, although as an unenclosed road across downland, it unlikely that any such maintenance was called for).

H.8. Such ways, which must have been in use since the mediæval period, and probably for in excess of one or even two millennia, must be highways. It is not credible that such a way might be and remain private, the very concept of through private ways being unknown until during the eighteenth century.

5 Only one manor is known within the parish of Lydden, also known as Lydden. The relevant manors within Wootton appear to have been Geddinge and Wickham Bushes.

6 *i.e.*, those which were not established as part of local government boundary reform following the Local Government Act 1894.

7 *Public Boundaries and the Ordnance Survey 1840–1980*, J R S Booth MBE, Ordnance Survey 1982, p.354.

8 See [s.58](#) of the Highway Act 1835: ‘And whereas it frequently happens that the Boundaries of Parishes pass across or through the Middle of a common Highway, and one Side of such Highway is situated in one Parish, and the other Side in another Parish, whereby great Inconveniences often arise in repairing the same;...’

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

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

H.9. The line of an estate boundary may have been settled on the ground to follow an otherwise unobvious line, and the neighbouring owners may have set out earthworks, walls or hedges adjacent to the common boundary, enabling a path or track to become established between them.

H.10. W G Hoskins drew attention to such lanes, suggesting that the deep and narrow Scratchface Lane enclosed by a massive double hedgebank which forms the boundary between the parishes of Cadbury and Stockleigh Pomeroy probably dates back to the Anglo-Saxon period.¹⁰

H.11. Alternatively, the passageway left between the new boundary features may have been much smaller, and allowed only a path to be established, or may have offered no wider utility whatsoever, used only for farm access between fields.

H.12. However, this possibility is less likely in relation to the application ways, because the ways lack any notable boundary feature other than the ways themselves. There thus was no physically-formed way with banks on both sides within which a new track might become established, so that the centre of the track was aligned along the boundary line.

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

H.13. The third possibility is that the ways became established along an existing manorial boundary at a much later date. It is submitted that this is unlikely. Such ways, if established alongside an existing boundary feature such as a hedge or bank, would not account for a boundary which follows the centre line of the ways instead of the original hedge or bank (or a ditch associated with either). That would require the ways to have been superimposed on top of the existing boundary — the original hedge to have been grubbed out or the bank to be levelled out, to be replaced by a track centred along the line of the original hedge or bank.

H.14. While there is nothing to discourage a way from becoming established alongside a subsisting boundary feature at a much later date, the boundary itself then would remain attached to the boundary feature (*i.e.* along the hedge or bank, or along the adjacent ditch), and not along the centre line of the the later-established way.

H.15. One can speculate about circumstances where the lords of two adjacent manors shared a desire to set out a new private road serving the interests of both, found it advantageous to provide it on the common boundary of the two manors, each wishing to minimise the contribution of land, and both intending to share the maintenance costs. And perhaps the manorial boundary was undefined by physical features, so that it was practical to lay out the new road so as to straddle the boundary line. But it is suggested that such an origin is so improbable as to be discarded as a realistic possibility.

H.16. Finally, a public road divided by a parish boundary was a matter for 'great Inconveniences',¹¹ prior to highway maintenance functions becoming wholly discharged by county councils from 1929.¹² It is unlikely that such an 'inconvenience' intentionally would

¹⁰ *The Making of the English Landscape*, W G Hoskins, 1967

¹¹ See footnote 8 above.

be put in place. Formerly, maintenance would have been shared between the adjacent manors. Such arrangements therefore are likely to date from the mediæval era or earlier.

H.17. It is submitted that the first possibility is much the most likely, and consistent with what is known of the way. Where, as in relation to the the parts of the application ways (I) and (II) identified above, the parish boundary is recorded as following the centre line of the way, it is submitted that it is highly likely that both road and boundary are ancient in origin, and that the road is a highway.

I. Discovery of evidence

I.1. Some of the application ways have previously been considered for inclusion on the definitive map and statement for Kent. However, it is submitted that, in every case, this application contains new evidence not previously discovered, including that of the *Finance (1909–1910) Act 1910* (item II.O below) evidence.

I.2. Therefore, there is discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

J. Natural Environment and Rural Communities Act 2006

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

K. Points awarded

K.1. Points have been awarded to each piece of evidence in relation to the application way. But, where the application way is already a definitive public footpath or bridleway, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath or bridleway, as the case may be, attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*.¹³

K.2. **Points:**

Points: Way (I)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	1
Mr Boys' Agricultural Account of Kent	II.B	1
Ordnance Survey surveyor's drawing	II.C	0
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	0

¹² It remains a matter of inconvenience where a road straddles a county boundary or other boundary between highway authorities.

¹³ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	0
Ordnance Survey, Old Series one-inch map of Kent	II.H	0
Railways across Wickham Bushes Road	II.I	1
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	2
Wingham Highway Board and Elham Rural District Council	II.L	2
Inclosure Act 1845, orders of exchange	II.M	1
Ordnance Survey County Series 25-inch plans	II.N	2
Finance (1909–1910) Act 1910	II.O	2
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	2
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	2
HM Land Registry index map	II.S	1
Total points		24

Points: Way (II)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	0
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	2
Tithe Act 1836	II.J	4
Denton court estate maps	II.K	1
Wingham Highway Board and Elham Rural District Council	II.L	0
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	0
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	0
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the	II.R	0

Countryside Act 1949		
HM Land Registry index map	II.S	0
Total points		14

Points: Way (III)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	1
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	2
Wingham Highway Board and Elham Rural District Council	II.L	2
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	0
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	2
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	0
HM Land Registry index map	II.S	1
Total points		20

Points: Way (IV)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	0
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of	II.H	1

Kent		
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	2
Wingham Highway Board and Elham Rural District Council	II.L	2
Inclosure Act 1845, orders of exchange	II.M	1
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	3
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	2
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	0
HM Land Registry index map	II.S	0
Total points		22

Points: Way (V)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	0
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	0
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	0
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	1
Wingham Highway Board and Elham Rural District Council	II.L	0
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	2
Finance (1909–1910) Act 1910	II.O	2
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	1
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	1
HM Land Registry index map	II.S	1
Total points		17

Points: Way (VI)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	0
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	0
Wingham Highway Board and Elham Rural District Council	II.L	0
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	2
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	2
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	0
HM Land Registry index map	II.S	0
Total points		16

Points: Way (VII)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	0
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	1
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	0

Wingham Highway Board and Elham Rural District Council	II.L	0
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	0
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	0
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	3
HM Land Registry index map	II.S	1
Total points		16

Points: Way (VIII)

Item	Ref	Points
An accurate map of the county of Kent (Downes)	II.A	1
Mr Boys' Agricultural Account of Kent	II.B	0
Ordnance Survey surveyor's drawing	II.C	1
Barlow-Hasted map of Kent	II.D	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	II.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	II.F	0
Greenwoods' map of Kent	II.G	1
Ordnance Survey, Old Series one-inch map of Kent	II.H	1
Railways across Wickham Bushes Road	II.I	0
Tithe Act 1836	II.J	5
Denton court estate maps	II.K	0
Wingham Highway Board and Elham Rural District Council	II.L	0
Inclosure Act 1845, orders of exchange	II.M	0
Ordnance Survey County Series 25-inch plans	II.N	1
Finance (1909–1910) Act 1910	II.O	0
Late C19 and early C20 Ordnance Survey and Bartholomew's maps	II.P	2
Broome estate sale	II.Q	0
Part V of the National Parks and Access to the Countryside Act 1949	II.R	0
HM Land Registry index map	II.S	2
Total points		15

L. Width of application way

L.1. There are few reliable indicators of width for any of the application ways.

L.2. In relation to parts of the application ways which are shown as enclosed on the *Ordnance Survey County Series 25-inch plans* (item II.N below) first- and second-edition plans, the width may be scaled from the plans. In other cases, where the way is shown as unenclosed or enclosed only on one side, the width of the track shown on the plans is likely to be either a conventional representation of width, or a width of the defined track which does not allow for the passing of carts and other users. In such cases, in the absence of evidence, it is suggested that a width of four metres would be sufficient.

M. Limitations

M.1. The applicant has no objection to the recording of gates as limitations where these are shown to be present on the *Ordnance Survey County Series 25-inch plans* (item II.N below) first-edition plans.

N. Authorities

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

⌄ Authorities

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.G.17; II.G.7; II.O.7	CA: [2012] EWCA Civ 334 , [2012] 3 All ER 797, [2013] 1 WLR 808, [2012] 2 P & CR 215 HC: [2010] EWHC B33 (Ch)
<i>Hollins v Oldham</i>	II.G.8	[1995] (unreported) C94/0206
<i>Giffard v Williams</i>	II.J.6	(1869) 38 LJ (Ch) 597
<i>Attorney-General (ex rel Public Trustee) v Woolwich Metropolitan Borough Council</i>	II.J.14	(1929) 93 JPR 173, 27 LGR 700
<i>Robinson Webster (Holdings) Ltd v Agombar</i>	II.J.14; II.O.7	[2001] EWHC 510 (Ch) , [2002] 1 P & CR 243, [2001] Lexis Citation 1355
<i>Commission for New Towns v JJ Galla- gher Ltd</i>	II.J.14; II.O.7	[2002] EWHC 2668 (Ch) , [2003] 2 P & CR 24, [2003] 07 LS Gaz R 35, [2003] 01 EGCS 67, (2002) Times, 27 December
<i>Moser v Ambleside Urban District Council</i>	II.I.12; II.I.19	(1925) 23 LGR 533, 89 JP 118
<i>Eyre v New Forest Highways Board</i>	II.I.15	(1892) 56 JP 517
<i>R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs</i>	II.O.7	[2009] EWHC 171 (Admin) ,

N.2. Full citations are not given elsewhere.

II. Evidence

A. An accurate map of the county of Kent (Downes)

A.1. **Date:** 1783

A.2. **Source:** British Library¹⁴

An accurate map of the county of Kent (Downes)

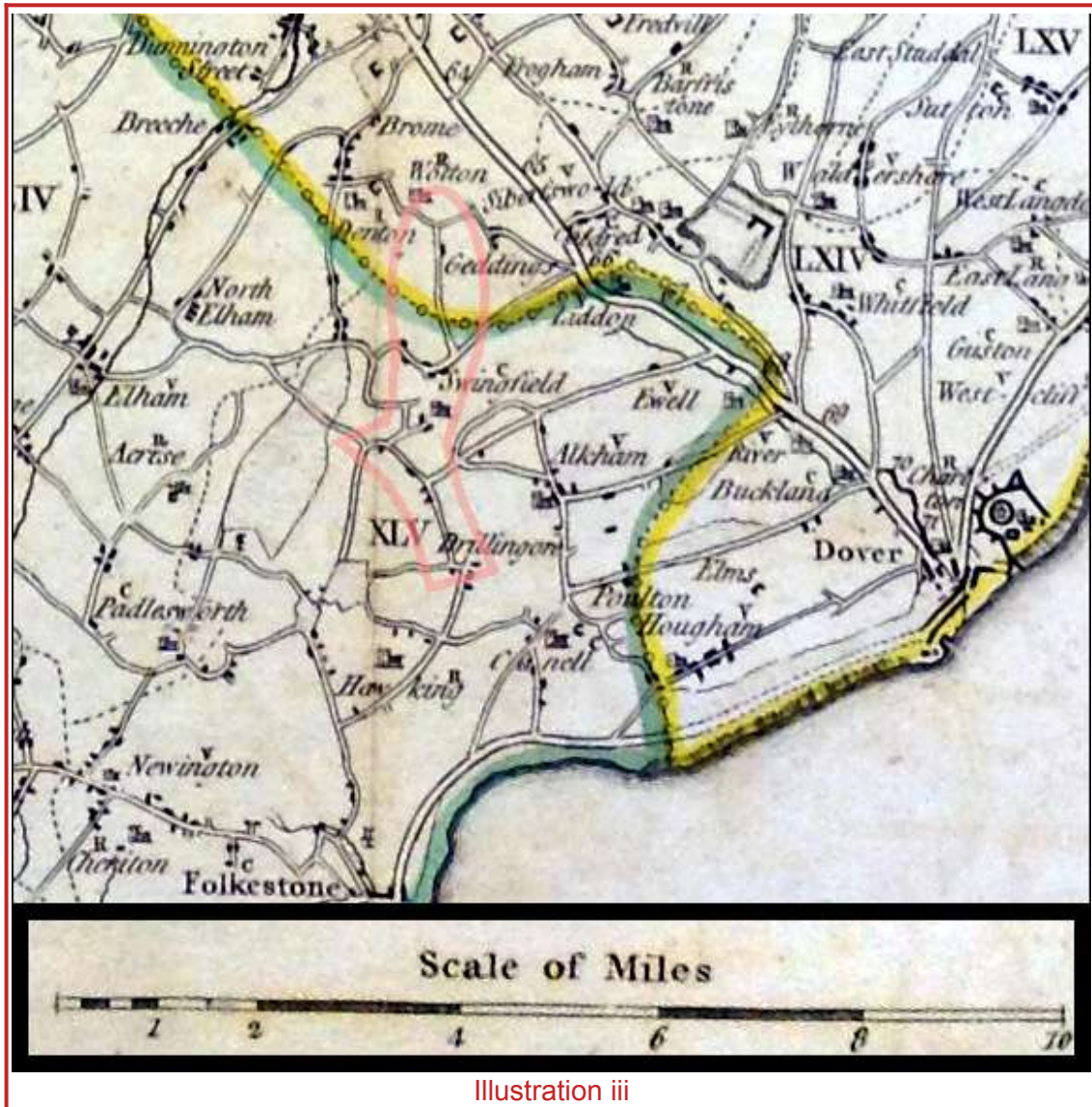
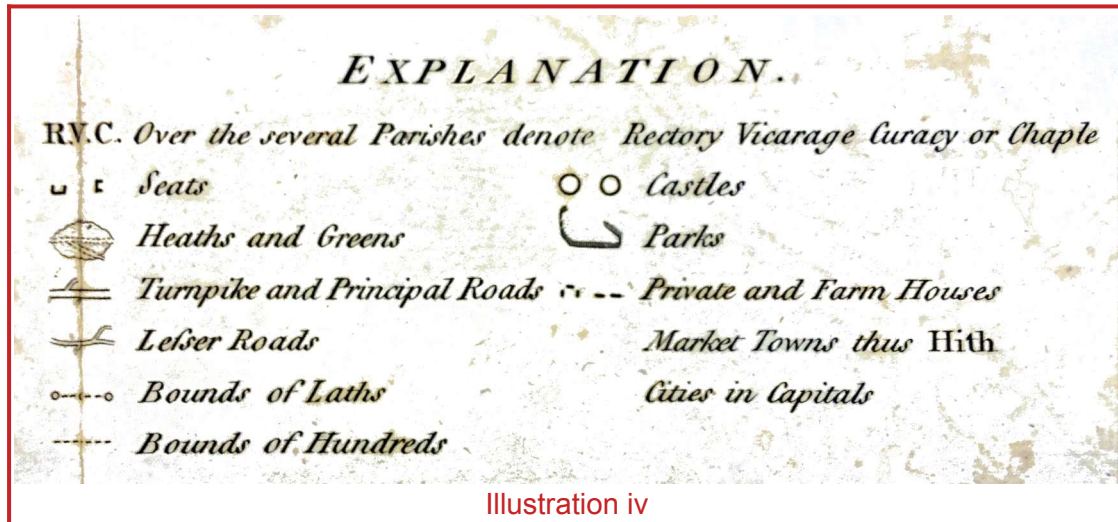


Illustration iii

Downes map key



A.3. **Description:** Original scale: possibly at 1:158,400 (two and one half miles to one inch); orientation: unchanged (north).

A.4. Inscribed as ‘Taken from a late actual survey 1783’. For its era, predating the accurately-surveyed county maps of the *Ordnance Survey*, *Mudge-Faden one-inch map of Kent* (item II.E below) and the *Greenwoods’ map of Kent* (item II.G below), Downes’ map of Kent shows the more significant roads in the county network with some considerable fidelity, particularly bearing in mind that inclosure in the nineteenth century effected extensive change to the road network around Swingfield Minnis, and the Folkestone to Barham Downs turnpike (the Canterbury Road, now the A260) was made under an Act of 1792.¹⁵

A.5. A way is shown between A and E which appears consistent with way (I), although the southern outlet is slightly east of the village suggesting that what is shown lies, at its westerly end, along way (III) to F.

A.6. It is submitted that way (VIII) also is shown, from L and terminating at O slightly west of Everden Farm.

A.7. **Conclusion:** Downes’ map provides some evidence for contemporary ways of some significance running south from Geddinge towards Swingfield Street (ways I and III), and south from Boyington Court towards Everden (way VIII) — ways which no longer appear on road maps. These ways are identified in the key as ‘lesser roads’, not being ‘Turnpike and Principal Roads’. The identification suggests that Downes nevertheless recognised these roads as some of the more significant public roads.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Believed to be shown, between A and D	1
(II)	WB	Old Road	Not shown	0
(III)	FD	Hermitage Lane	Believed to be shown in continuation of A to D	1
(IV)	CG	Park Lane	Not shown	0
(V)	HI	Street Lane	Not shown	0
(VI)	JK	North Court Bottom Road	Not shown	0
(VII)	LMN	Hogstock Lane	Not shown	0
(VIII)	MO	Five Acre Lane	Believed to be shown	1

B. Mr Boys' Agricultural Account of Kent

B.1. **Date:** 1794

B.2. **Source:** British Library¹⁶

Mr Boys' Agricultural Account of Kent



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

¹⁶ Ac.3484/3.(6).

B.4. This map by John Cary appears in the locally-prepared contribution to an officially-published agricultural survey of England. This map is identifiable as an evolution of Cary's map of Kent first published in 1787 as 'Cary's New and Correct English Atlas'. The map is not obviously related to any other mapping which precedes or follows it.

B.5. A way is shown between Geddinge and Swingfield Street which appears consistent with way (I) West Lees Lane and Broomfield Lane.

B.6. **Conclusion:** Cary's map is small scale, but appears to show way (I) as one of the key local roads in the area.

☰ Points summary

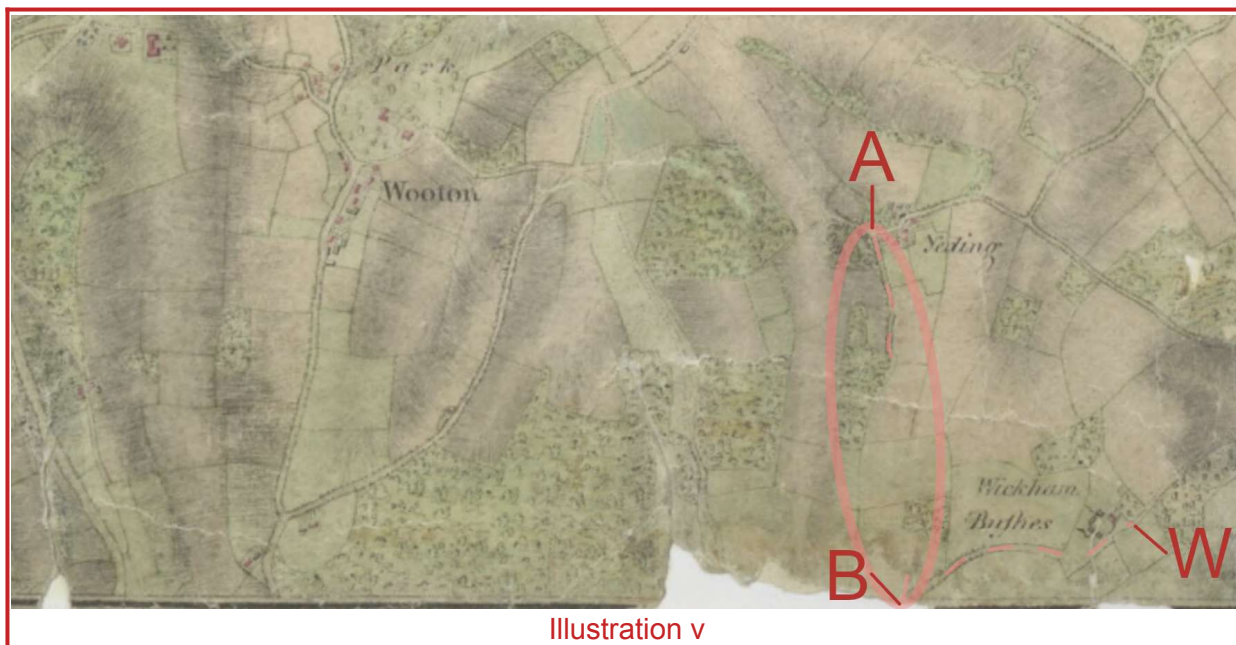
Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Believed to be shown	1
(II)	WB	Old Road	Not shown	0
(III)	FD	Hermitage Lane	Not shown	0
(IV)	CG	Park Lane	Not shown	0
(V)	HI	Street Lane	Not shown	0
(VI)	JK	North Court Bottom Road	Not shown	0
(VII)	LMN	Hogstock Lane	Not shown	0
(VIII)	MO	Five Acre Lane	Not shown	0

C. Ordnance Survey surveyor's drawing

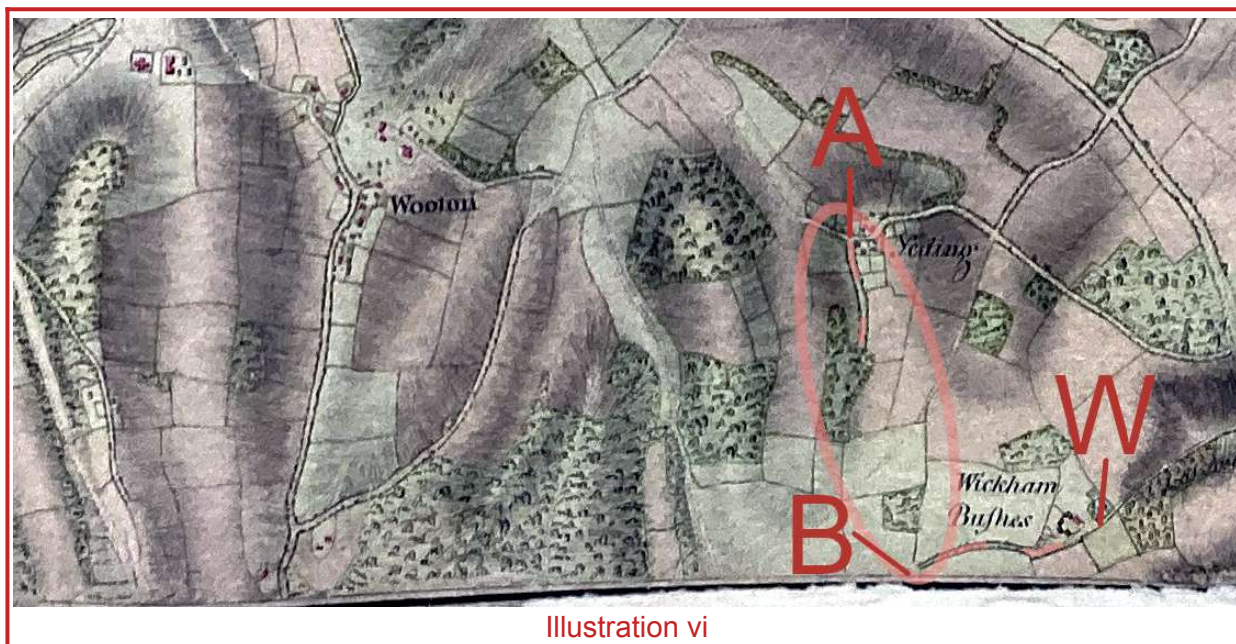
C.1. **Date:** 1797

C.2. **Source:** British Library website¹⁷, National Archives¹⁸

Ordnance Survey drawing: Canterbury sheet 107



Fair copy of topographical surveys



17 Sheet 107(E): britishlibrary.oldmapsonline.org/maps/a70167eb-6949-5984-a1a0-912a6f5d928e/

18 MR 1/599, MR 1/600

Ordnance Survey drawing: Dover sheet 106E

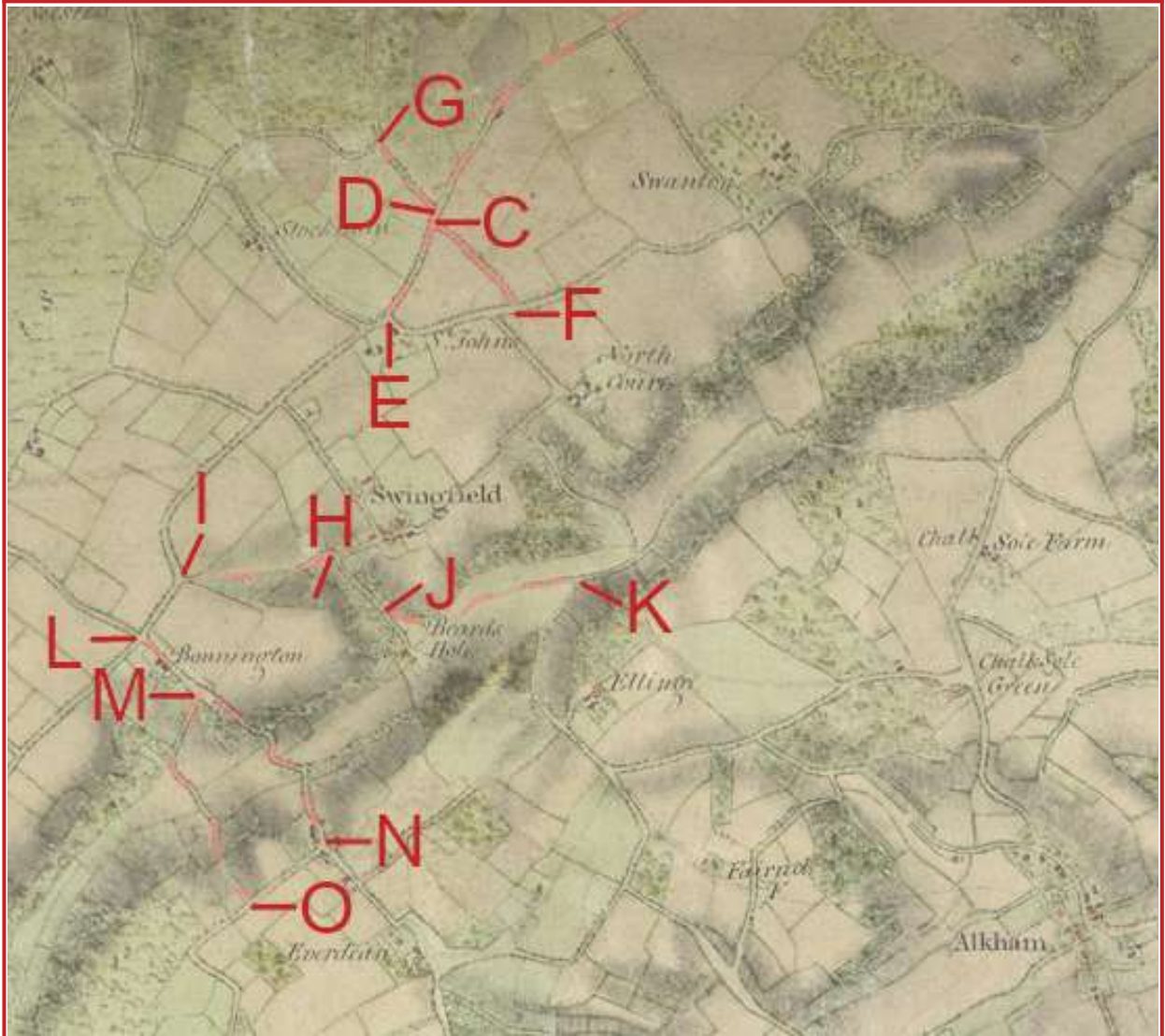


Illustration vii

Fair copy of topographical surveys

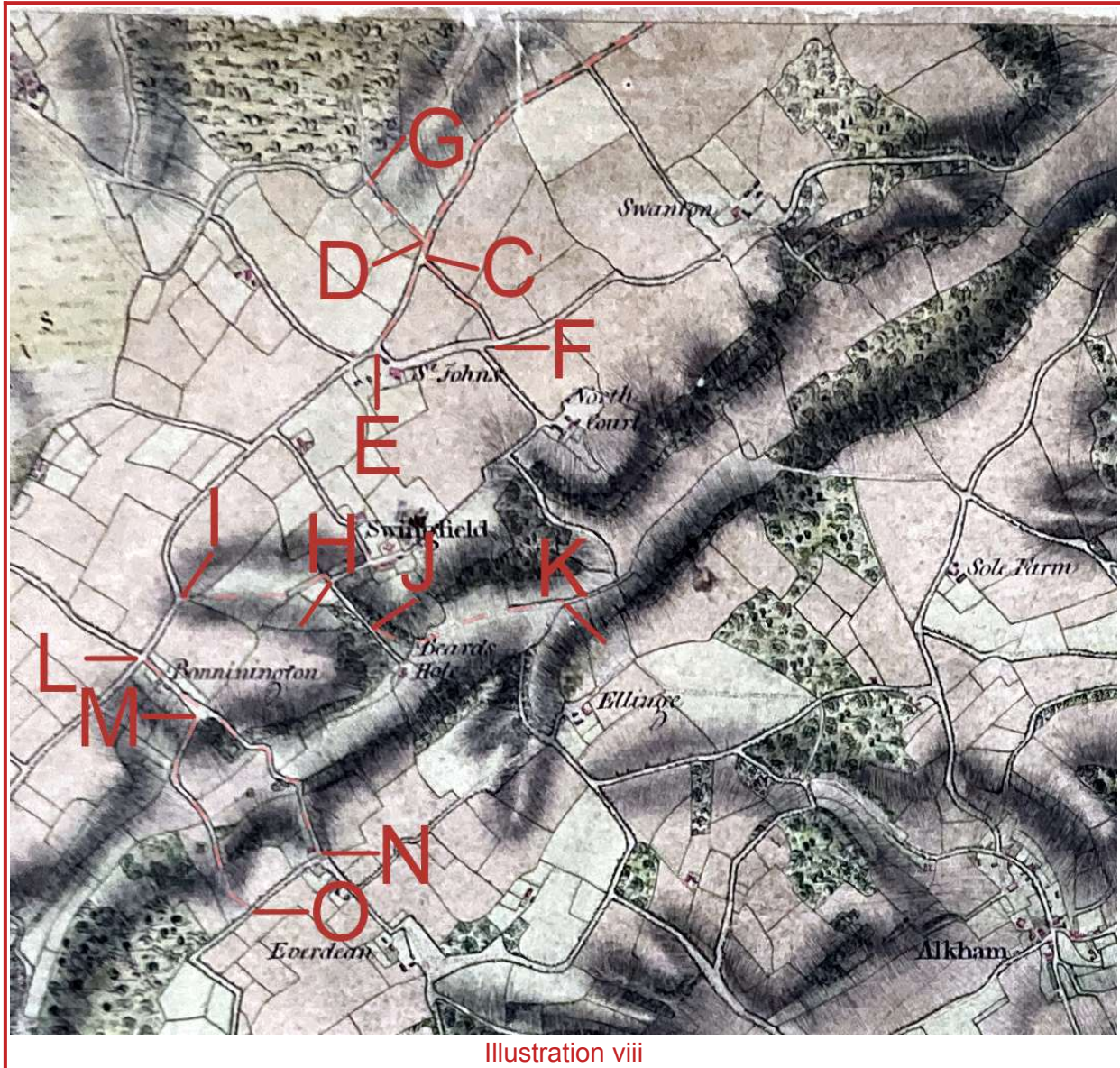


Illustration viii

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

C.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.¹⁹

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

C.6. All of the application ways are visible on the drawings as enclosed ways, with the following exceptions.

C.7. Part of way (I) between A and B is not visible on the Ordnance Survey drawing nor the 'fair copy', only the first part being shown south from A. The final short section of way (II) nearing W also is not clearly visible in the vicinity of Wickham Bushes, but its existence is not in doubt being clearly shown immediately to the east and west of the farm where the way is shown as enclosed.

C.8. Part of way (V) between H and I, and all of way (VI) between J and K, are visible on the drawings as unenclosed roads or tracks.

C.9. **Conclusion:** The Ordnance Survey drawings were prepared with a primarily military purpose, and surveyors may have sought to do no more than identify ways suitable for the movement of troops and ordnance.

C.10. Nevertheless, the Ordnance Survey drawings are good evidence for the physical existence of the ways. The majority of the ways are shown as enclosed tracks or roads, open at their junctions with other tracks or roads (including other ways in the application, or other roads now accepted as public), and this is consistent with public status.

C.11. Footpaths were of little interest to a military survey, and either are not shown, or where shown, are shown as single pecked lines. It may therefore be inferred that the ways shown were either roads or bridleways.

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

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

Points summary

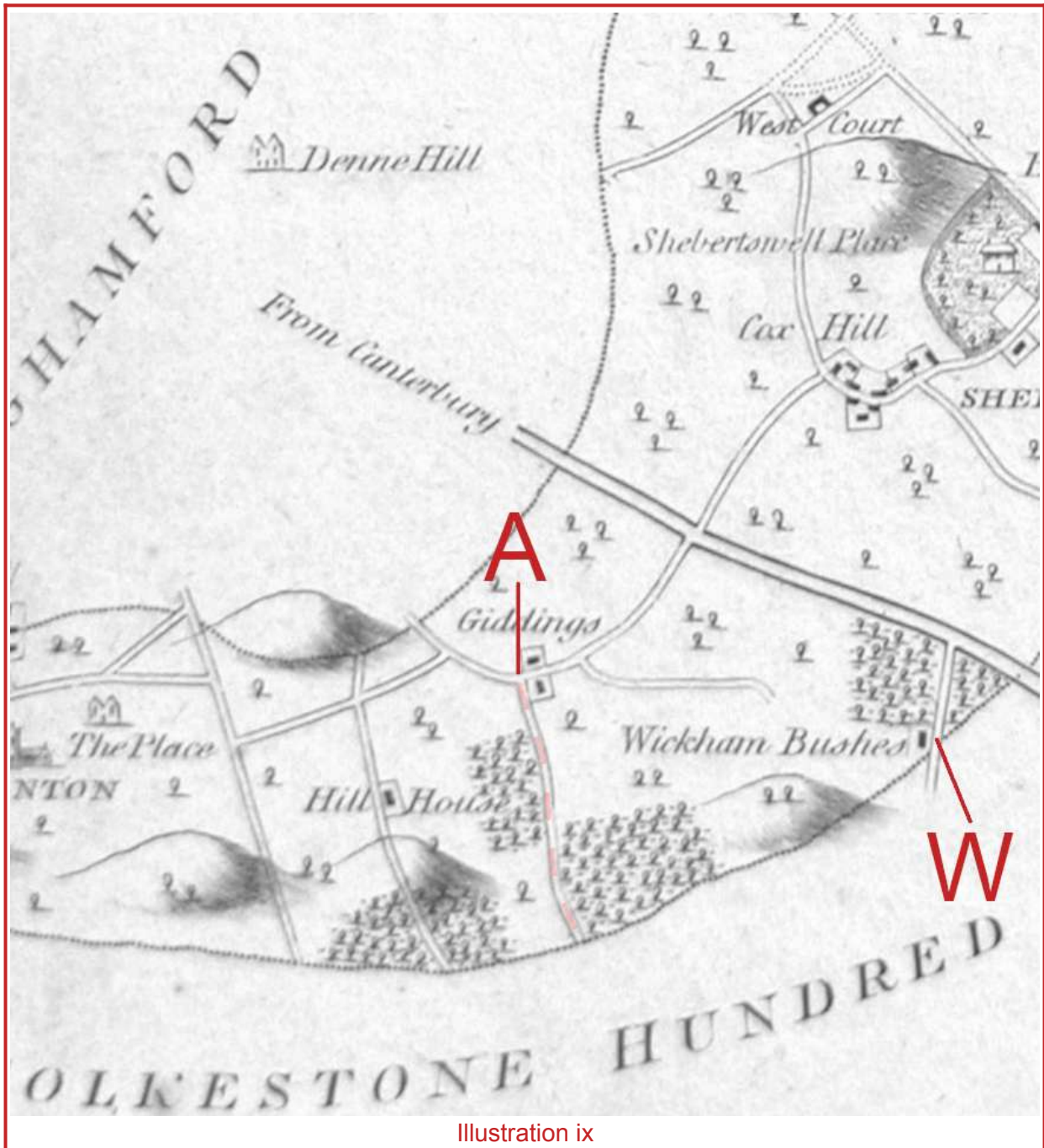
Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed at Geddinge (A: labelled Yeding) end, but not shown beyond to B	0
(II)	WB	Old Road	Way enclosed throughout, open at junctions C,D,E	1
(III)	FD	Hermitage Lane	Way enclosed throughout, open at junctions F,D	1
(IV)	CG	Park Lane	Way enclosed throughout, open at junction C	1
(V)	HI	Street Lane	Way partly enclosed, partly unenclosed across field, open at H,I	1
(VI)	JK	North Court Bottom Road	Way unenclosed throughout, closed at J and possibly K	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout, open at junctions L,M,N	1
(VIII)	MO	Five Acre Lane	Way enclosed throughout, open at junction M but closed at O	1

D. Barlow-Hasted map of Kent

D.1. **Date:** 1797–1801

D.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.

Barlow-Hasted map of Kent: Eastry hundred (north)



Barlow-Hasted map of Kent: hundred (south)



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

D.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: those shown here are extracts from the hundred of Eastry and the hundreds of Loningborough and Folkestone.²¹

D.5. The Barlow-Hasted maps are a little naïve in execution, and are based on the Andrews, Dury and Herbert map published in *A Topographical Map of the County of Kent* around 1769. They suppress the turns of roads and individual habitations in favour of a broad-brush view of the landscape. But they show a remarkable fidelity to the overall road network pattern, and it is easily possible to identify on the maps all but two of the application ways (and of these two, one partially is shown). Generally, the application ways are shown enclosed, but there are isolated exceptions, such as on way (I) east of C (towards B) and on way (VI) east of J (towards K) where the northern side of the casing is shown by a pecked line which is likely to represent an unenclosed portion of the way.

D.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined route along the application ways. The map was widely commercially published, and would tend to show through routes which were public highways.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed throughout, open at junctions A,B	1
(II)	WB	Old Road	Way shown only from midway W–B to E, not visible along hundred boundary to W, part unenclosed on north side in vicinity of C, open at junctions B,C,D,E	1
(III)	FD	Hermitage Lane	Way enclosed throughout, open at junctions F,D	1
(IV)	CG	Park Lane	Way part unenclosed, open at junction C	1
(V)	HI	Street Lane	Way enclosed throughout, open at junctions H,I	1
(VI)	JK	North Court Bottom Road	Way part unenclosed, open at junction K	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout, open at junction L	1
(VIII)	MO	Five Acre Lane	Not shown	0

21 Notwithstanding that the map of Loningborough and Folkestone at Illustration x shows Kinghamford hundred to the north, a sliver of Eastry hundred intervenes and is shown in Illustration ix.

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

E.1. **Date:** 1801

E.2. **Source:** Kent County Archives, also available at Mapco.net²²

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

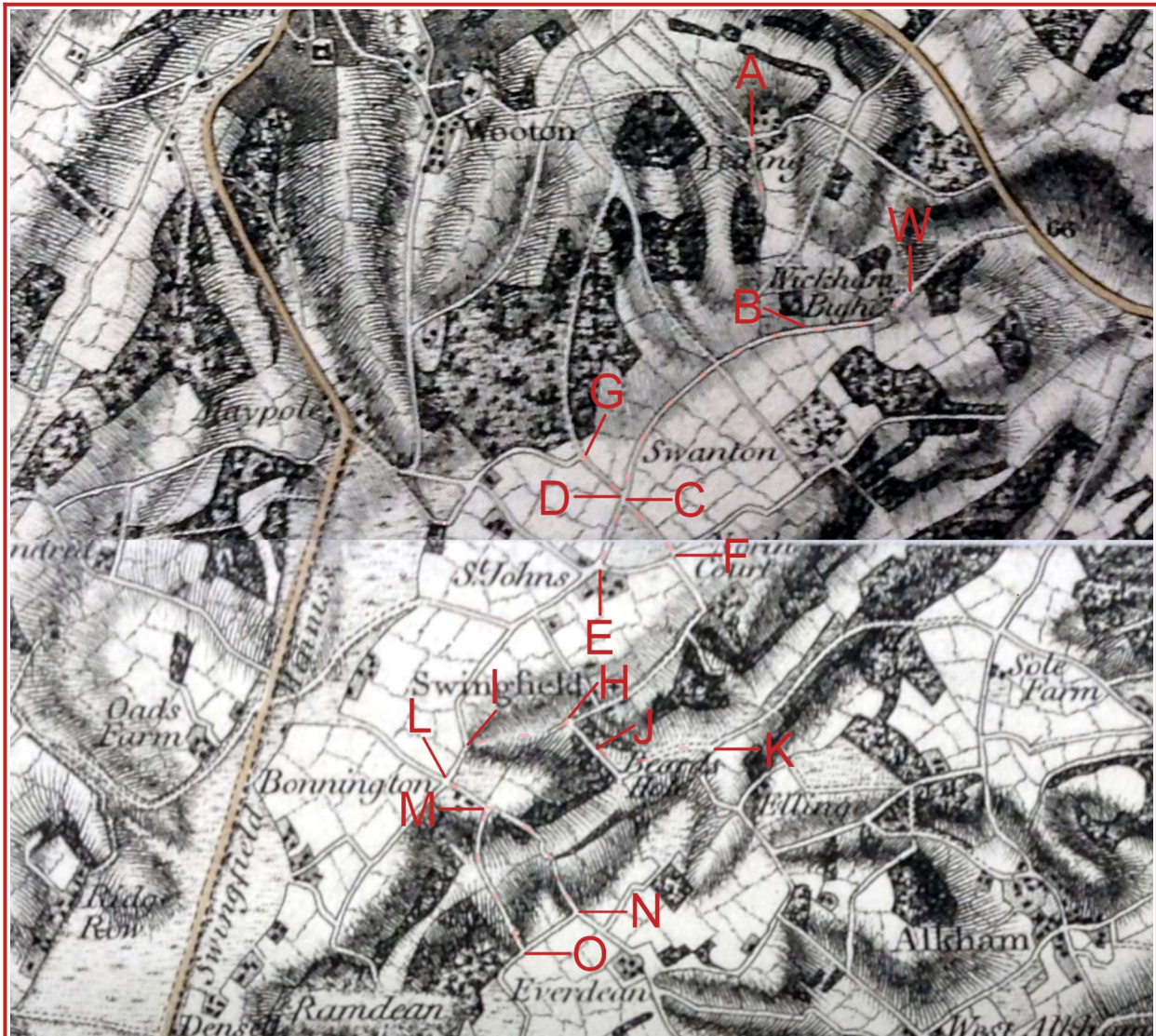


Illustration xi

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

E.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* (item II.C 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.

²² See mapco.net/kent1801/kent51_02.htm and mapco.net/kent1801/kent55_02.htm

E.5. The Mudge map shows the majority of the application ways, although two, application ways (I) and (V) are poorly defined in part (A–B and H–I).

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

E.7. All of the application ways are shown on the Mudge map, although two (I and IV) are poorly defined, or possibly not shown at all, in part. Their representation on the map, in the same manner as other local roads, is likely to signify that they were part of the local road network and available for public use, although this conclusion cannot be applied with certainty in every case.

E.8. It may be seen that way (II) leading into way (I), from W to E, is shown as the obvious route from the Canterbury to Dover turnpike at Lydden Hill, to St John's, Swingfield, whereas Swanton Lane — which now fulfils that role — is not marked at all on the approach to Lydden. Swanton Lane remained a gated field road in the vicinity of Swanton Farm until 1896,²³ suggestive that it was only later in the nineteenth century, as traffic switched to Swanton Lane, that pressure built on the landowner and highway authority to remove the gates from the road.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed at Geddinge (A: labelled Yeding) end, but not shown beyond to B, resumes at B through to E	0
(II)	WB	Old Road	Way unenclosed immediately west of W, then enclosed to B	1
(III)	FD	Hermitage Lane	Way enclosed throughout, open at junctions F,D	1
(IV)	CG	Park Lane	Way enclosed throughout, open at junctions C,G	1
(V)	HI	Street Lane	Way part unenclosed and ill-defined, open at junction H	0
(VI)	JK	North Court Bottom Road	Way unenclosed throughout, open at junction K	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout, open at junctions L,M,N	1
(VIII)	MO	Five Acre Lane	Way enclosed throughout, open at junctions M,O	1

23 Minutes of Dover Rural District Council, vol.2 1894–1902 (Kent County Archives: RD/Do/Am2).

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

F.1. **Date:** 1811

F.2. **Source:** British Library²⁴

Paterson's Roads

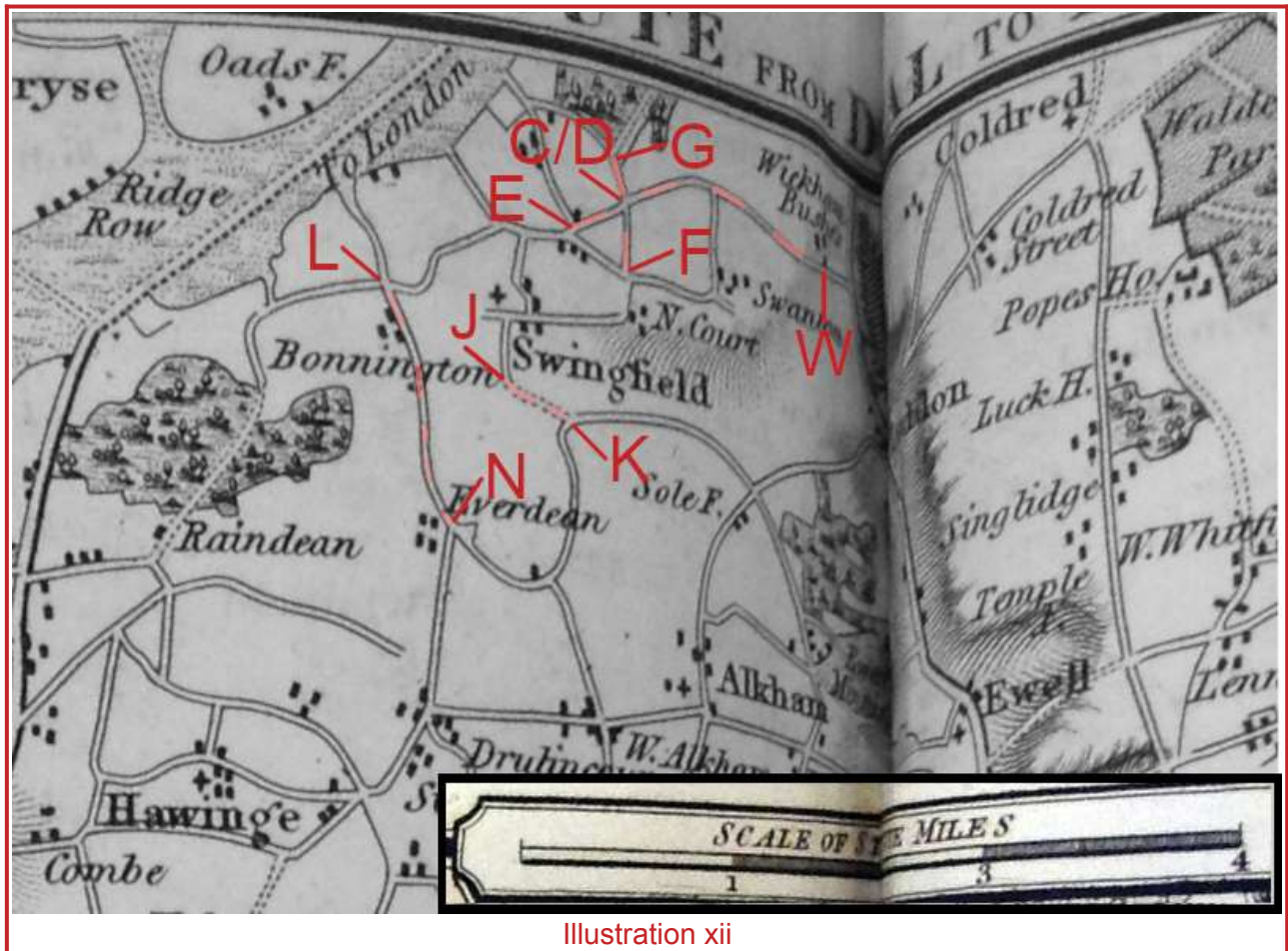


Illustration xii

F.3. **Description:** Original scale: scale bar reproduced on extract; orientation: unchanged (north).

F.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.

F.5. The Thomson map shows the majority of the application ways, although way (I) is not shown in part (A–B), and two (ways V and VIII) are not shown at all (H–I and M–O). Of those ways which are shown, all, save way (VI) J–K, are depicted as enclosed roads with solid casing.

F.6. **Conclusion:** The majority of the application ways are shown on the Thomson map. The Thomson map appears to be derived from independent survey, not bearing much similarity to previously-published maps (nor even the already-published *Ordnance Survey*,

²⁴ 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg .

Mudge-Faden one-inch map of Kent at item II.E above) and is the first independently-produced map at a sufficient scale to show a reasonably accurate but selective representation of local roads. The representation on the map of the majority of application ways, in the same manner as other local roads, is likely to signify that they were part of the local road network and available for public use, although this conclusion cannot be applied with certainty in every case.

☰ Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed B–E, but not shown A–B	1
(II)	WB	Old Road	Way enclosed throughout	1
(III)	FD	Hermitage Lane	Way enclosed throughout	1
(IV)	CG	Park Lane	Way enclosed throughout	1
(V)	HI	Street Lane		0
(VI)	JK	North Court Bottom Road	Way unenclosed throughout	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout	1
(VIII)	MO	Five Acre Lane	Not shown	0

G. Greenwoods' map of Kent

G.1. **Date:** 1819–20

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

Greenwoods' map

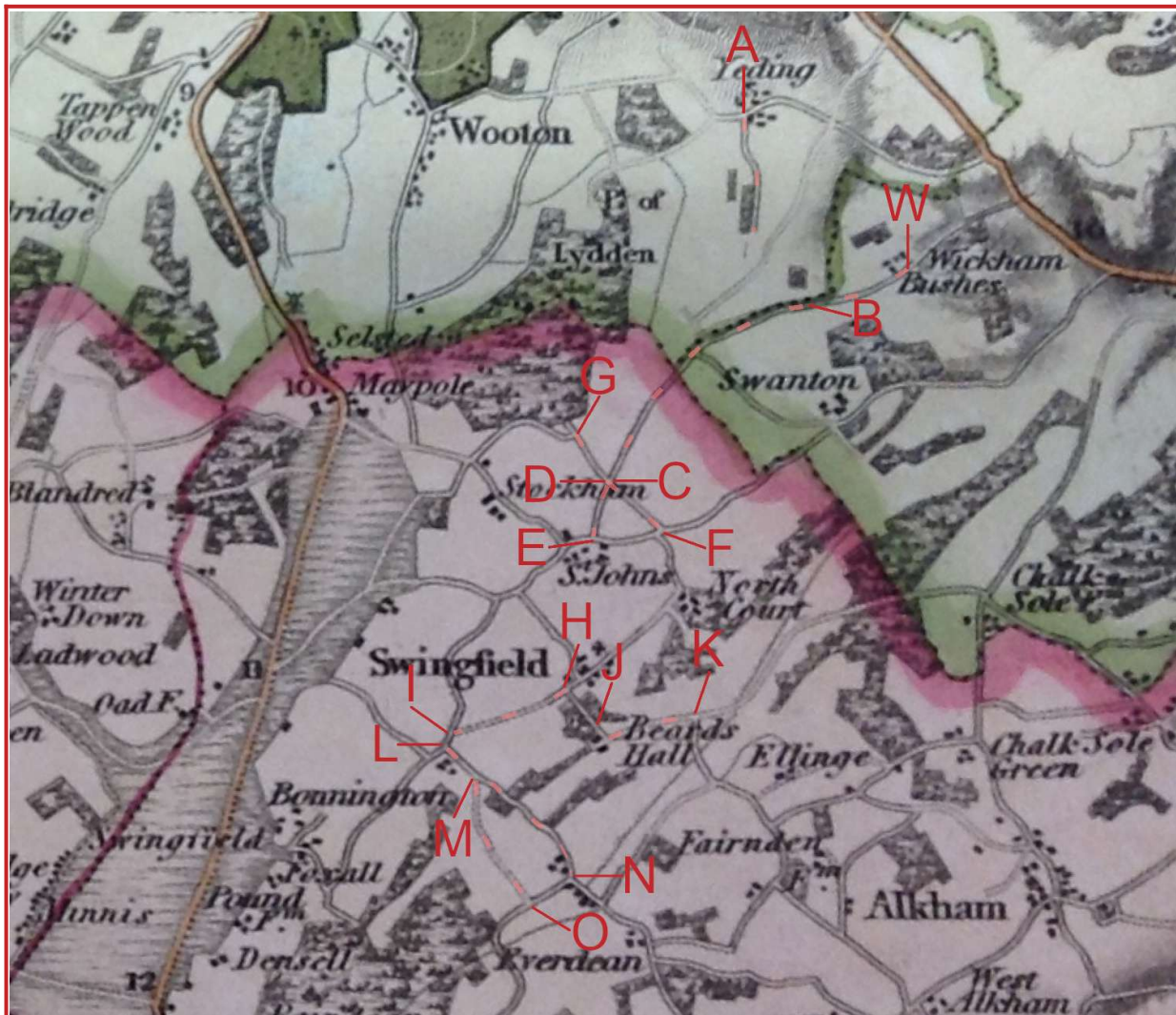


Illustration xiii

25 Available online at: nla.gov.au/nla.obj-721160546/view

Greenwoods' map key



Illustration xiv

G.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. The boundary between the lathes of Shepway and St Augustine's is shown pink/green, while the boundaries of the hundreds are shown by a pecked line coloured (within the lathe of St Augustine's) green.

G.4. All of the application ways are shown on the Greenwood's map, save part of way (I) between A and B. The majority of the application ways are shown as enclosed, save ways (V and VI) and part of way (VIII), which are shown as unenclosed (with a broken casing on both sides).

G.5. The key to the map identifies the application ways as cross roads.

G.6. **Analysis:** Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts commercially were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.²⁶

G.7. In *Fortune v Wiltshire Council*, Lewison LJ wrote in his judgment adopted by the Court of Appeal:

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

G.8. In *Hollins v Oldham*, HHJ Howarth (sitting as a High Court Judge) said, in relation to *Burdett's Map of Cheshire* dated 1777, which adopted the same classification as the Greenwood's map in relation to roads:

²⁶ From *Antique Maps*, C Moreland and D Bannister, 1983.

Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road. This latter category, it seems to me, must mean a public road in respect of which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use. Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.

G.9. It is accepted that not every road shown on the Greenwoods' map must (if it is not a turnpike) inevitably be a cross-road — undoubtedly there are exceptions, such as some (but not all) roads leading only to isolated farmsteads or country houses. But it is submitted that, where a road is connected to highways at either end, it is more likely than not to be shown because it was recognised as a cross-road and of utility to the public who might buy the map.

G.10. **Conclusion:** The Greenwoods' map presents a reasonably faithful representation of the local landscape and the road network within it. Some minor errors are apparent: for example, point E (the westerly termination of way (I)) is east of the cross-roads and almost opposite St John's chapel, while the road junction at Bonnington at L is staggered — but these errors are minor, and the overall impression is of a high quality product relative to the era.

G.11. The key to the Greenwood map records the application ways as 'cross roads', suggestive of public highways of inferior status to turnpike roads (separately identified).

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed at Geddinge (A: labelled Yeding) end, but not shown beyond to B; resumes at B and then shown enclosed throughout, open at junctions C,D,E	0
(II)	WB	Old Road	Way enclosed throughout	1
(III)	FD	Hermitage Lane	Way enclosed throughout, open at junctions F,D	1
(IV)	CG	Park Lane	Way enclosed throughout, open at junctions C,G	1
(V)	HI	Street Lane	Way part unenclosed, open at junction H but gated at I	1
(VI)	JK	North Court Bottom Road	Way unenclosed throughout, open at junction K, junction at J shown further south	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout, open at junctions L,M,N	1
(VIII)	MO	Five Acre Lane	Way unenclosed throughout, open at junction M but gated at O	1

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

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

H.2. **Source:** National Library of Australia²⁷

Ordnance Survey, Old Series one-inch map of Kent

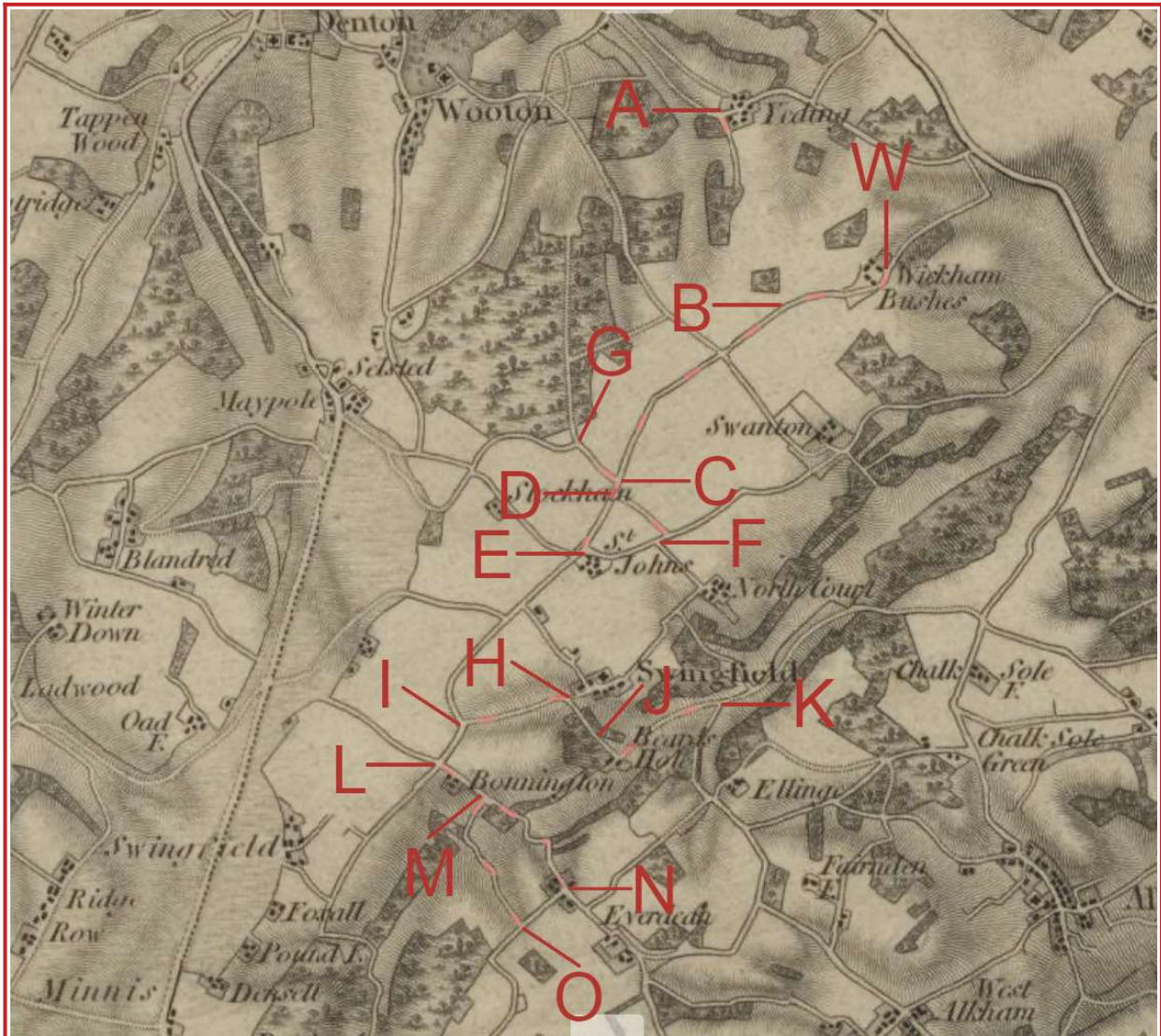


Illustration xv

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

H.4. This is the Old Series one inch map, the first one-inch map 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 II.E above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

²⁷ nla.gov.au/nla.obj-231917365

H.5. The Old Series map is cleanly printed, and, in common with the *Ordnance Survey, Mudge-Faden one-inch map of Kent* (item II.E above), shows all the application ways save part of way (I) between A and B. Application way (VI) between J and K is distinctively shown as unenclosed (the casing being notably broken into closely-spaced dots), although it is probable (but not entirely clear) that some other ways (notably way (V) between H and I) similarly are shown.

H.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the application ways, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. As with earlier maps, the impression is that the application ways (save way (I) between A and B) were part of the local road network.

Points summary

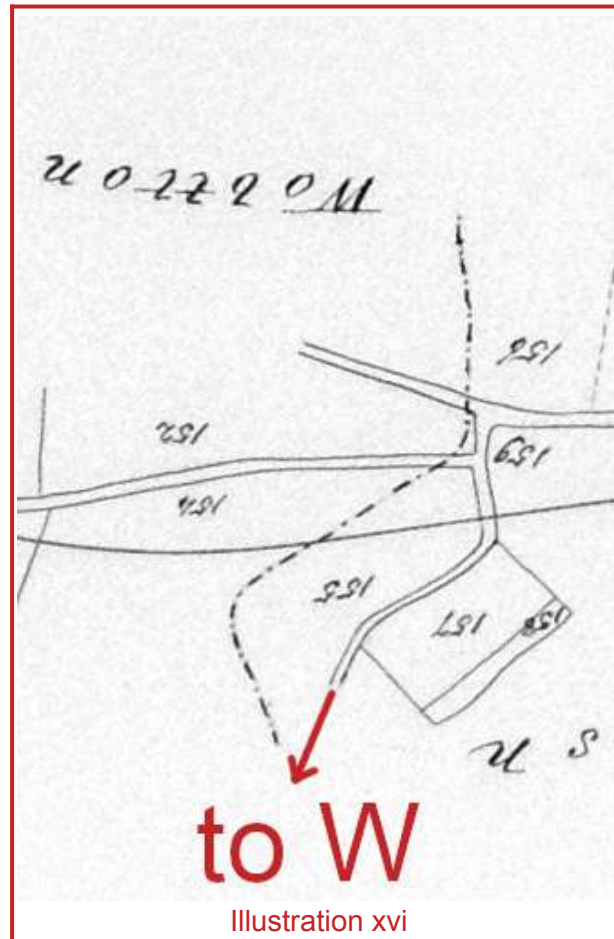
Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Way enclosed at Geddinge (A: labelled Yeding) end, but not shown beyond to B	0
(II)	WB	Old Road	Way enclosed throughout, open at junctions C,D,E	1
(III)	FD	Hermitage Lane	Way enclosed throughout, open at junctions F,D	1
(IV)	CG	Park Lane	Way enclosed throughout, open at junctions C,G	1
(V)	HI	Street Lane	Way part unenclosed, open at junctions H,I	1
(VI)	JK	North Court Bottom Road	Way unenclosed throughout, open at junction K, junction at J shown further south	1
(VII)	LMN	Hogstock Lane	Way enclosed throughout, open at junctions L,M,N	1
(VIII)	MO	Five Acre Lane	Way unenclosed throughout, open at junctions M,O	1

I. Railways across Wickham Bushes Road

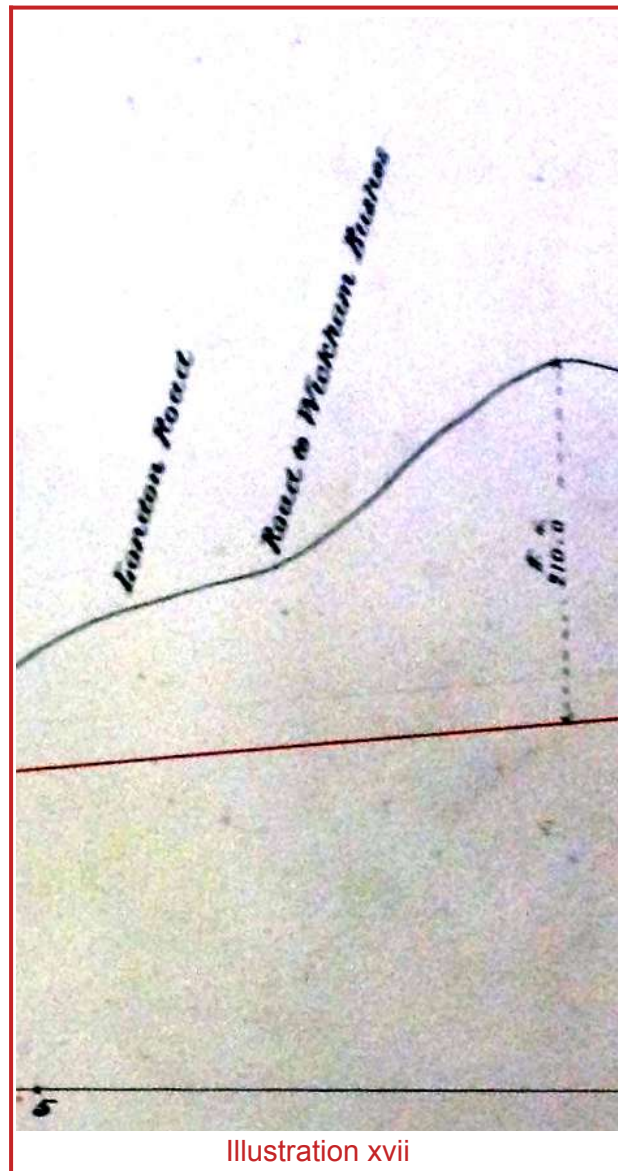
I.1. **Date:** 1836, 1846, 1851

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

■ *Herne Bay, Canterbury and Dover railway scheme 1836: plan*²⁸

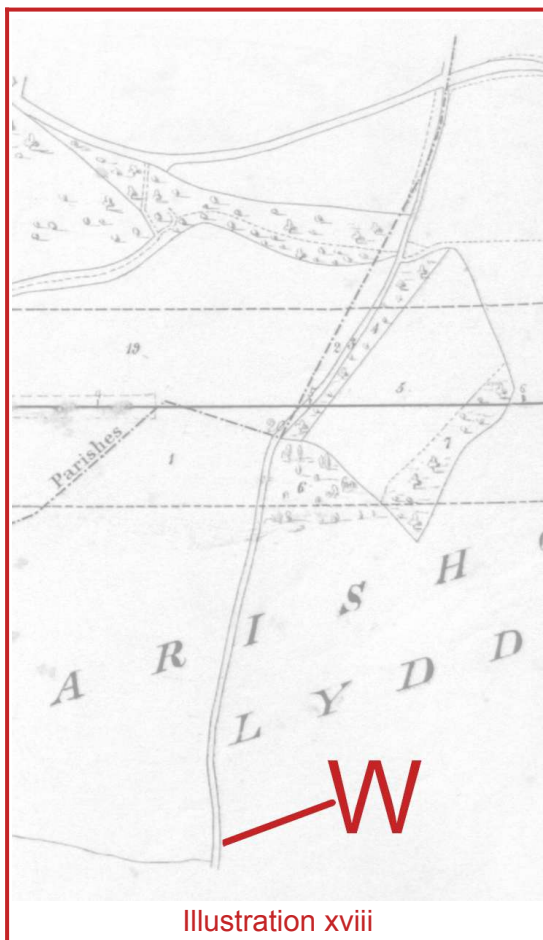


Herne Bay, Canterbury and Dover railway scheme 1836: section²⁹



29 This section has been transposed because the plan is displayed inverted.

Great Kent Atmospheric Railway 1846: plan³⁰



Great Kent Atmospheric Railway 1846: section

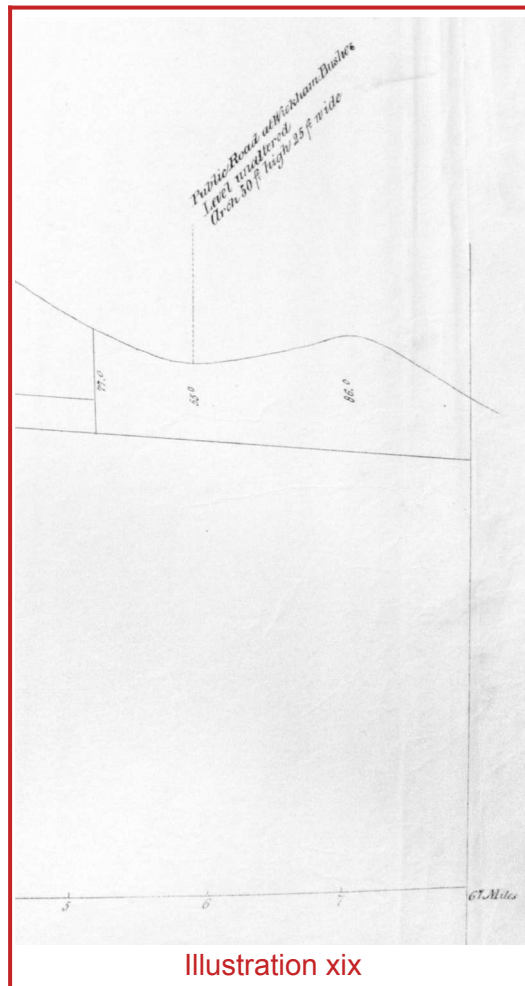


Illustration xix

Great Kent Atmospheric Railway 1846: book of reference

The PARISH of LYDDEN, in the County of KENT.

No. on Plan.	Description of Property.	Owners, or Reputed Owners.	Lessees, or Reputed Lessees.	Occupiers.
1.	Meadow land - - -	John Noakes - - -	- - - - -	In hand.
2.	Ditto - - - - -	- ditto - - - - -	- - - - -	- ditto.
3.	Public highway - - -	Surveyors of highways.		
4.	Shaw - - - - -	His Grace the Archbishop of Canterbury.	Robert Potter and George Potter.	Robert Potter.

Illustration xx

North Kent Railway 1846: plan³¹

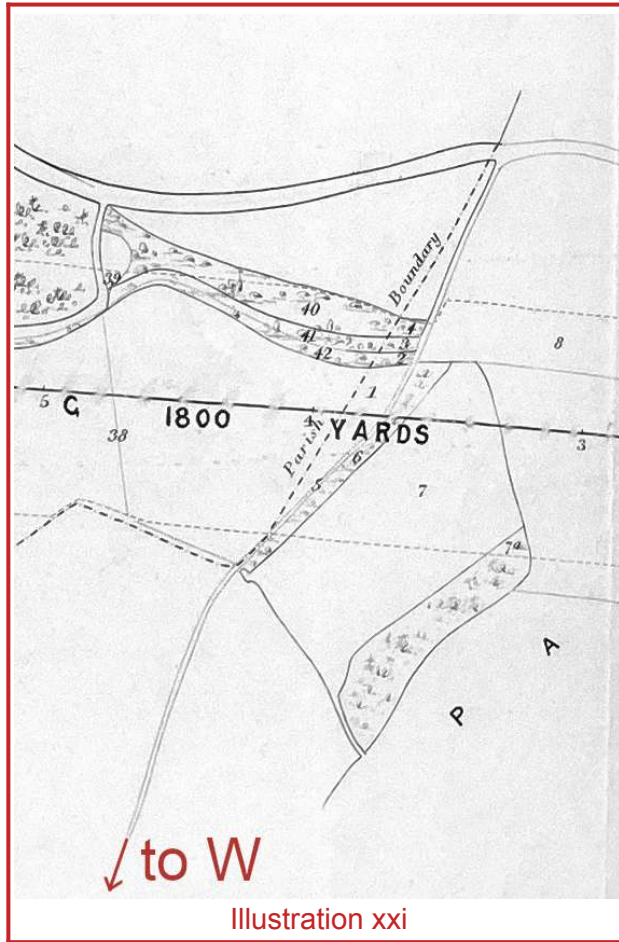
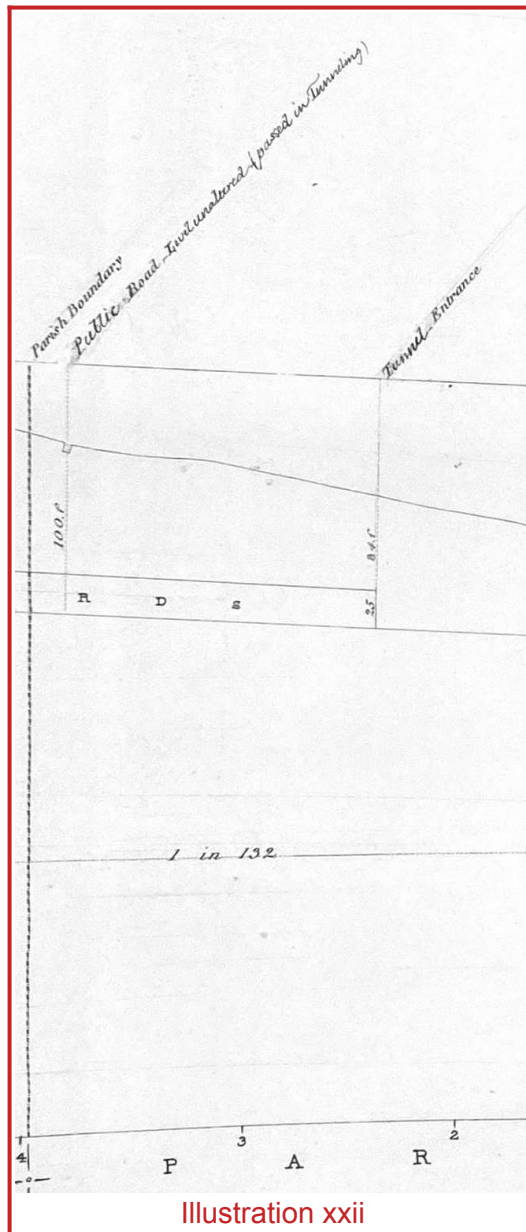


Illustration xxi

North Kent Railway 1846: section



North Kent Railway 1846: book of reference

The Parish of Syddene

Number on Plan	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
1	Pasture Land	John Soakes		John Soakes
2	Shaw	The same		The same
3	Shaw	George Ralph Payne Jarris		George Ralph Payne Jarris
4	Shaw	The same		The same
5	Public Carriage Road or Highway	Jurycos of Highways		
6	Shaw	Bishop of Canterbury	Robert Potter George Potter	Robert Potter

Illustration xxiii

South Eastern Railway Canterbury to Dover 1846: plan³²



South Eastern Railway Canterbury to Dover 1846: section



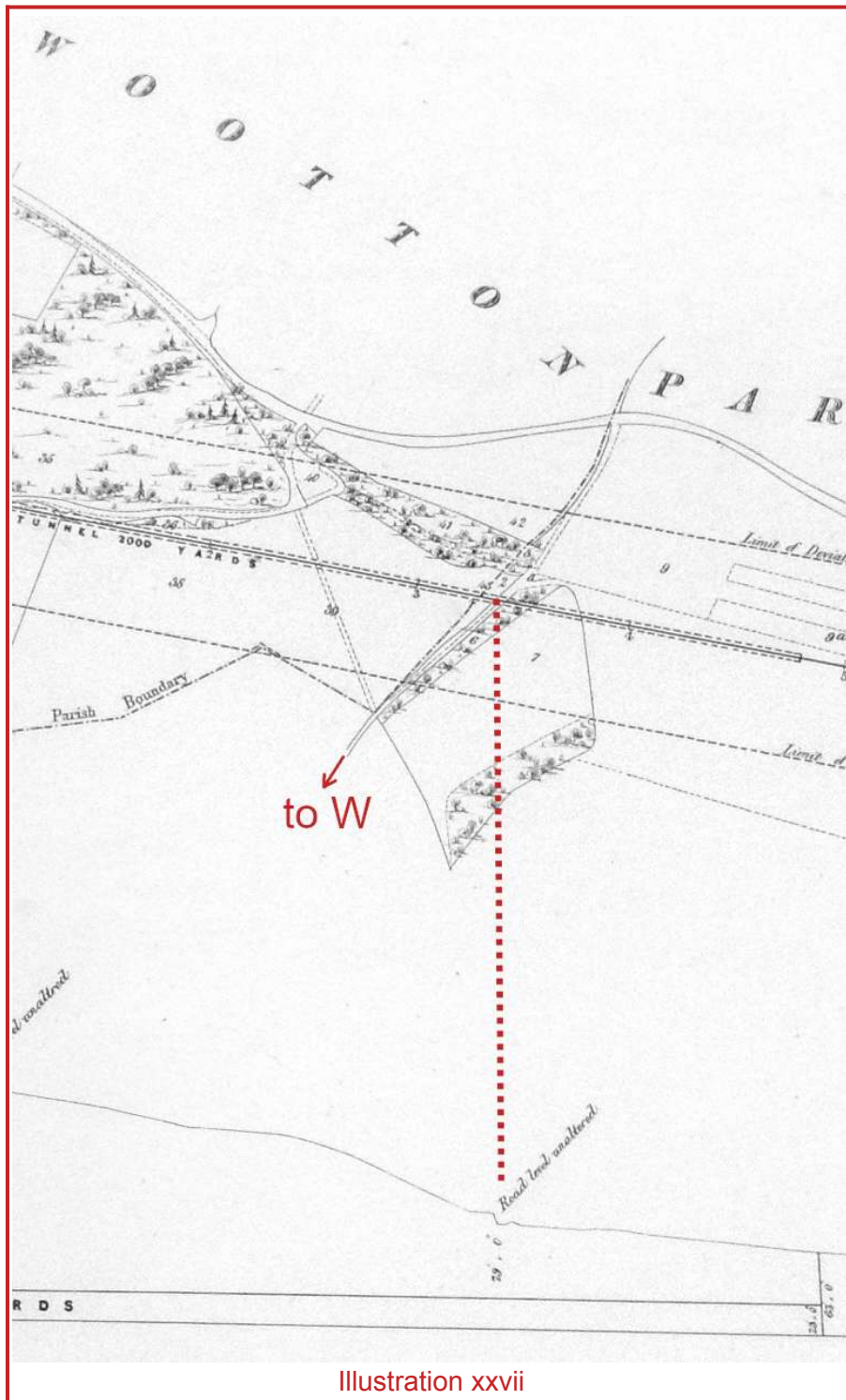
Illustration xxv

South Eastern Railway Canterbury to Dover 1846: book of reference

PARISH OF LYDDEN, COUNTY OF KENT.				
No. on Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.
1	Boundary between the parishes of Lydden and Wootton			
2	Part of pasture	John Noakes	In hand
2a	Part of wood	George Ralph Paine Jarvis	The same
2b	Part of wood	The same	The same
3	Road through Lydden wood	John Noakes George Ralph Paine Jarvis	The same

Illustration xxvi

Mid Kent and Dover railway (Landowner's Line) 1851: plan and section³³



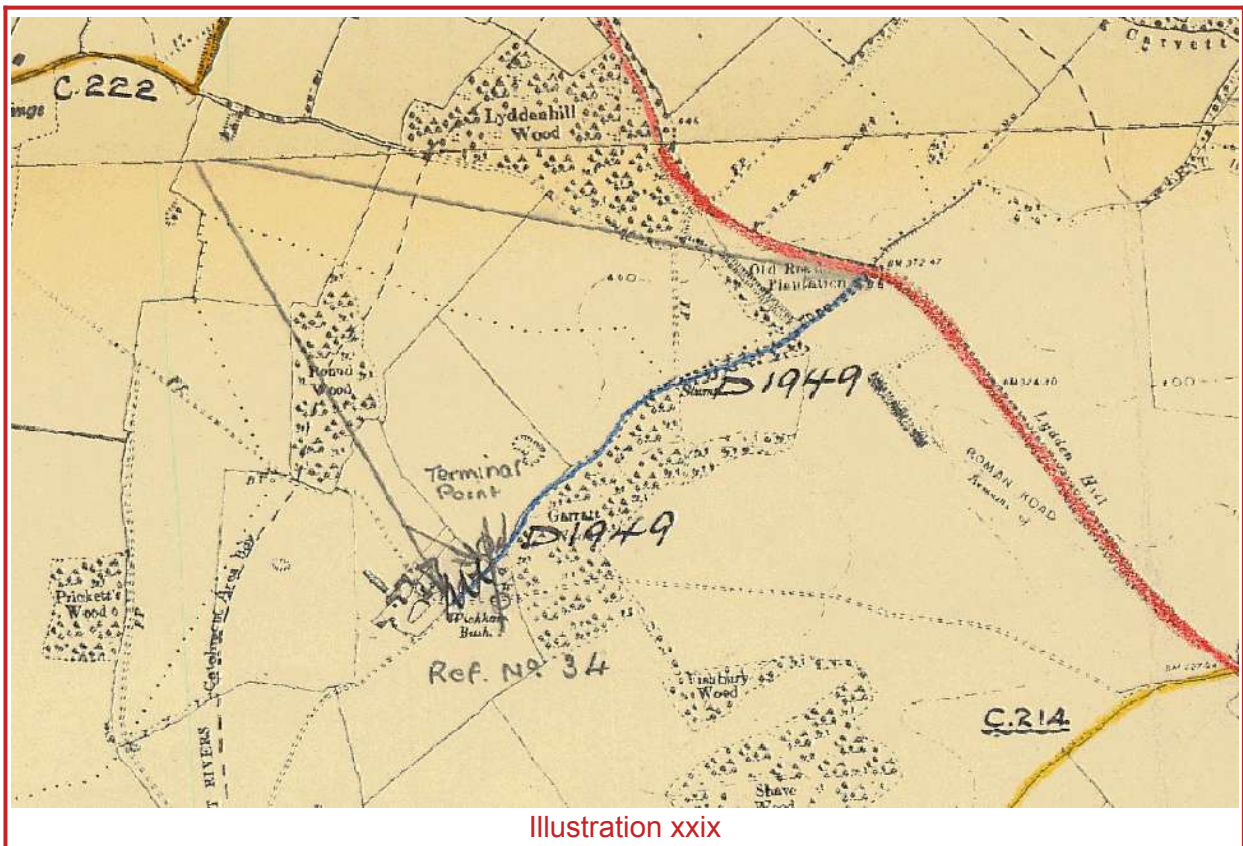
Mid Kent and Dover railway (Landowner's Line) 1851: book of reference

The Parish of Lydden, in the County of Kent.

Number on Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.
1	Parish Boundary			
2	Field	John Noakes	— —	John Noakes
3	Plantation	George Ralph Payne Jarvis	— —	George Ralph Payne Jarvis
4	Waste	John Noakes	— —	John Noakes
5	Highway	Surveyors of the Highways		
6	Shave	Archbishop of Canterbury	Robert Potter and George Potter	John Mabb

Illustration xxviii

Highway inspectors' map 1953



1.3. **Description:** A number of plans were made for a railway to join Canterbury to Dover, and many of these proposed a route which used the Nail Bourne valley to Barham,

before cutting across country to the Dour valley at Lydden. (In the event, the line which was built relied upon a tunnel under the East Kent Downs on a more northerly alignment from Shepherdswell to Lydden.) These projected lines were to cross the road leading from the Dover road (*i.e.* the former Roman road and at that time turnpike from Canterbury to Dover) to Wickham Bushes.

I.4. Each plan was deposited in Parliament, together with sections and a book of reference. The entries on the last two are summarised in the table below.

Table of entries in books of reference and sections

Railway	Parcel no.	Section label	Entry for land	Entry for owner
Herne Bay, Canterbury and Dover railway scheme 1836	none	Road to Wickham Bushes		none
Great Kent Atmospheric Railway 1846	Lydden 3	Public Road at Wickham Bushes Level unaltered Arch 50ft high 25ft wide	Public highway	Surveyor of highways
North Kent Railway 1846	Lydden 5	Public Road Level unaltered (passed in Tunneling)	Public Carriage Road or Highway	Surveyors of Highways
South Eastern Railway Canterbury to Dover 1846	Lydden 3	Public road level unaltered	Road through Lydden Wood	John Noakes George Ralph Paine Jarvis
Mid Kent and Dover railway (Landowner's Line) 1851	Lydden 5	Road level unaltered	Highway	Surveyors of the Highways

I.5. The books of reference for these railways record (where given) that the way from Lydden Hill south-west to Wickham Bushes was considered to be a public road. Exceptionally, the plans for the earliest proposal, the Herne Bay, Canterbury and Dover railway in 1836, are more primitive, and do not assign a parcel number for the road, and therefore do not contain a corresponding entry in the book of reference; however, the section refers to the 'Road to Wickham Bushes'. The book of reference for the South Eastern Railway Canterbury to Dover in 1846 refers to the road as owned and occupied by three local landowners, but the section nevertheless labels the road as a 'Public road': this may be because the road was considered not to be publicly maintained, although that possibility is not consistent with the other surveys, nor other data.

I.6. **Analysis:** The way from Lydden Hill to Wickham Bushes is recorded on early nineteenth century maps as having the only continuation from W onwards to B. No map shows a connection between Wickham Bushes and Swanton Court Farm until the 1875 plan among the *Denton court estate maps* (item II.K below). The likelihood therefore is that

there was no such connection, at least for carts, until that time — and even then, it seems the connection was not a public way other than perhaps on foot.

I.7. In rural areas, dead-end public roads remain unusual even today, and were scarce indeed in the early nineteenth century. They were least likely to be established where, as at Wickham Bushes, there was only a single farm rather than a hamlet of dwellings. Parish vestries were reluctant to take responsibility for the maintenance of a road which led only to a single farmstead, for there was no wider public benefit.

I.8. It is submitted that the explanation is that Wickham Bushes Road has always continued beyond Wickham Bushes to Swingfield along the line of application ways (II) and (I), but owing to the unwillingness of the parish vestry and later the highway board to maintain the network of minor roads and tracks on the Swanton plateau, later in that century, only that part of the road between Lydden Hill and Wickham Bushes became recognised as a publicly-maintainable highway.

I.9. This nineteenth-century perspective is apparent in East Kent more generally. We can identify only one public road in a rural area in East Kent which does not have any recorded right of way in continuation, at Beaute Lane to Beaute Farm, Shatterling ([TR260580](#)) — and even then, Ordnance Survey County Series plans show a footpath beyond.³⁴

I.10. The road to Wickham Bushes remains recorded as a public road today, being maintained in the council's list of publicly-maintainable streets³⁵ as publicly maintainable from Lydden Hill to W, and was so recorded in the *Highway Inspectors' Map* of 1953 (Illustration xxix above).³⁶ As the road is recorded as publicly maintainable in 1953, it cannot have been the recipient of grant funding under the Administration of Agriculture (Improvement of Roads) Act 1955 (which led to some cul-de-sac farm-access roads being adopted).

I.11. Classically, every highway necessarily led from one place to another, and was required to have a *terminus a quo* and a *terminus ad quem*. In practice, in urban areas, the courts came to accept that a highway might form a cul de sac, where it was nevertheless used by a significant portion of the public (e.g. leading to a square or court).

I.12. However, application way (I) is not in an urban area, but in the countryside. In *Moser v Ambleside Urban District Council*, Pollock MR said:

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

while Atkin LJ said:

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

³⁴ Near Wingham. We restrict the analysis to East Kent, which is in the knowledge of the author. Modern adopted roads (such as to service a rural housing estate) are excluded.

³⁵ Maintained under s.36(6) of the Highways Act 1980.

³⁶ The map extract shows evidence of some uncertainty about the precise termination of the perceived obligation to maintain, with the 'terminal point' being cut back somewhat. The pencil marks were likely to refer to an affixed note, which may have questioned whether the deleted part of the road was maintained.

I.13. But Wickham Bushes is not a place of popular resort. There is no legitimate purpose for the public to seek to have access to the farm and no further, still less for a carriageway to be established and maintained at public expense.

I.14. It would be particularly odd that a public way should cease at Wickham Bushes, notwithstanding that the physical way continues west-south-west towards Swingfield.

I.15. In *Eyre v New Forest Highways Board*, a striking case endorsed by the Court of Appeal in 1892 and which remains a convenient summary of the law today, Wills J at Winchester Assizes (before a jury) considered the powers of the highway board to metal a way across a common or 'green' in the New Forest, beyond the enclosed part of the way which led to a gate onto the green. The summing up at first instance of the judge, Wills J, is strongly endorsed in the report of the judgment of the Court of Appeal, and is a helpful exposition on the repair of pre-1835 highways.

I.16. In *Eyre*, it was suggested by the plaintiff that a public highway, Tinker's Lane, terminated at a gate onto the common, and that there was no defined highway beyond the gate across the common. In his summing up to the jury at first instance, Wills J said:

But supposing you think Tinker's Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a *cul de sac*, and ends at a gate on to a common? Such things exist in large towns. In Leeds, which is a place where I have done a good deal of my hardest forensic work, there were scores of streets which ended with dead walls and which were repaired by the public. ...but 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? I have known it successfully established in a beautiful walk leading to a cliff end or a place on the sea shore. ...But what do you find such a thing for in this part of the world? I cannot conceive it. It is a just observation that if you think Tinker's Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of these places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore, it seems to me, after all said and done, that the evidence with regard to this little piece across the green cannot be severed from the other; and it is comparatively of little importance, because if I were a juror, and were satisfied in my own mind that Tinker's Lane was really a public highway up to that gate, I do not know, but I think, it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green.

I.17. The Court of Appeal, Lord Esher MR presiding, decided that:

The summing up was copious and clear, and a complete exposition of the law on this subject; it was a clear and correct direction to the jury on all the points raised.

I.18. Whereas, in relation to Tinker's Lane, the lane emerged onto the common at a gate, and there might have been some doubt as to whether there was a highway beyond, and if so, as to the particular direction taken, at Wickham Bushes instead, there is (or was) a continuing track and a defined direction beyond, with no evidence that, until the later nine-

teenth century, the traffic ever took to any other course. What possible origin or purpose could justify the dedication of a public road terminating in a farm, but no further, where the road formerly had a well-defined continuation?

I.19. In *Moser v Ambleside Urban District Council*,³⁷ the Court of Appeal considered a track in Ambleside leading from Gale Lane, through a gate at point A and across two fields ([NY379044](#)) to Stock Ghyll Lane at point B. The status of the roads at either end of the track also was uncertain. Atkin LJ said:

Gale Lane terminates at this gate, and it seems to me to be extraordinarily unlikely that if Gale Lane is a public highway, and there is some very strong evidence of that, it should have ended at that gate especially as there was this formed track in existence leading still further, and that leads me to suppose the learned judge was justified in drawing the inference that the public right of way continued beyond the present Gale Lane over this particular track and that that track did not end at the point “B”, but extended still further.

I.20. In *Eyre*, Wills J said to the jury, ‘it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green.’ We say that, in similar circumstances, the determining authority is justified in drawing the inference that the public right of way continues from the farm through to E.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Implied continuation	1
(II)	WB	Old Road	Implied continuation	2
(III)	FD	Hermitage Lane		
(IV)	CG	Park Lane		
(V)	HI	Street Lane		
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane		
(VIII)	MO	Five Acre Lane		

³⁷ First referred to in para.I.12 above.

J. Tithe Act 1836

J.1. **Date:** 1840–41

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

Swingfield tithe apportionment³⁸

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.			Amount of Rent-Charge apportioned upon the several Lands and Premises to the Beneficiaries.			REMARKS.
					a.	r.	p.	£.	s.	d.	
<i>Swingfield Surveyors of</i>	<i>Numbers</i>	110	<i>Post Lane</i>	<i>Brought forward</i>	3	1					
		116	<i>Stony Lane</i>		1	8					
		117	<i>Sack Lane</i>		1	1	30				
		118	<i>Buttermilk Ash Lane</i>		2	30					
		119	<i>Stockham Lane</i>		1	1	27				
		120	<i>Green Lane</i>		2	4					
		123	<i>Swingfield Lane</i>		1	2	10				
		133	<i>West Lane Lane</i>		1	10					
		141	<i>Seaward Lane</i>		2	31					
		146	<i>Key Garden Lane</i>		3	30					
		171	<i>Clay Lane</i>		1	11					
<i>Carried forward</i>					9	1	16				
C.C.—London: Printed and Published (by Authority) by Shaw and Sons, 187 & 188, Fetter-Lane.											
<i>Swingfield Surveyors of (continued)</i>	<i>Numbers (continued)</i>	173	<i>South East Bottom Road</i>	<i>Brought forward</i>	9	1	16				
		180	<i>Beards Ash Lane</i>		1	57					
		193	<i>South pit Road</i>		1	5					
		206	<i>Hermitage Lane</i>		1	30					
		208	<i>St John's Lane</i>		3	19					
		238	<i>Post Lane</i>		1	2	27				
		259	<i>Lampy Lane</i>		1	2	20				
		266	<i>Manors Lane</i>		3	30					
		283	<i>Hopstock Lane</i>		1	23					
		296	<i>Two ash Lane</i>		2	31					
		297	<i>Everden Lane</i>		3	25					
		332	<i>Winnington Lane</i>		1	10					
		333	<i>Green Lane</i>		1	5					
		353	<i>Wood Lane</i>		2	15					
		384	<i>Post Lane</i>		1	17					
		437	<i>Half Day Post Lane</i>		2	10					
		<i>Carried forward</i>					23	1	23		

Illustration xxx

38 See the partial transcription in the table on p.63 below.

Lydden tithe map

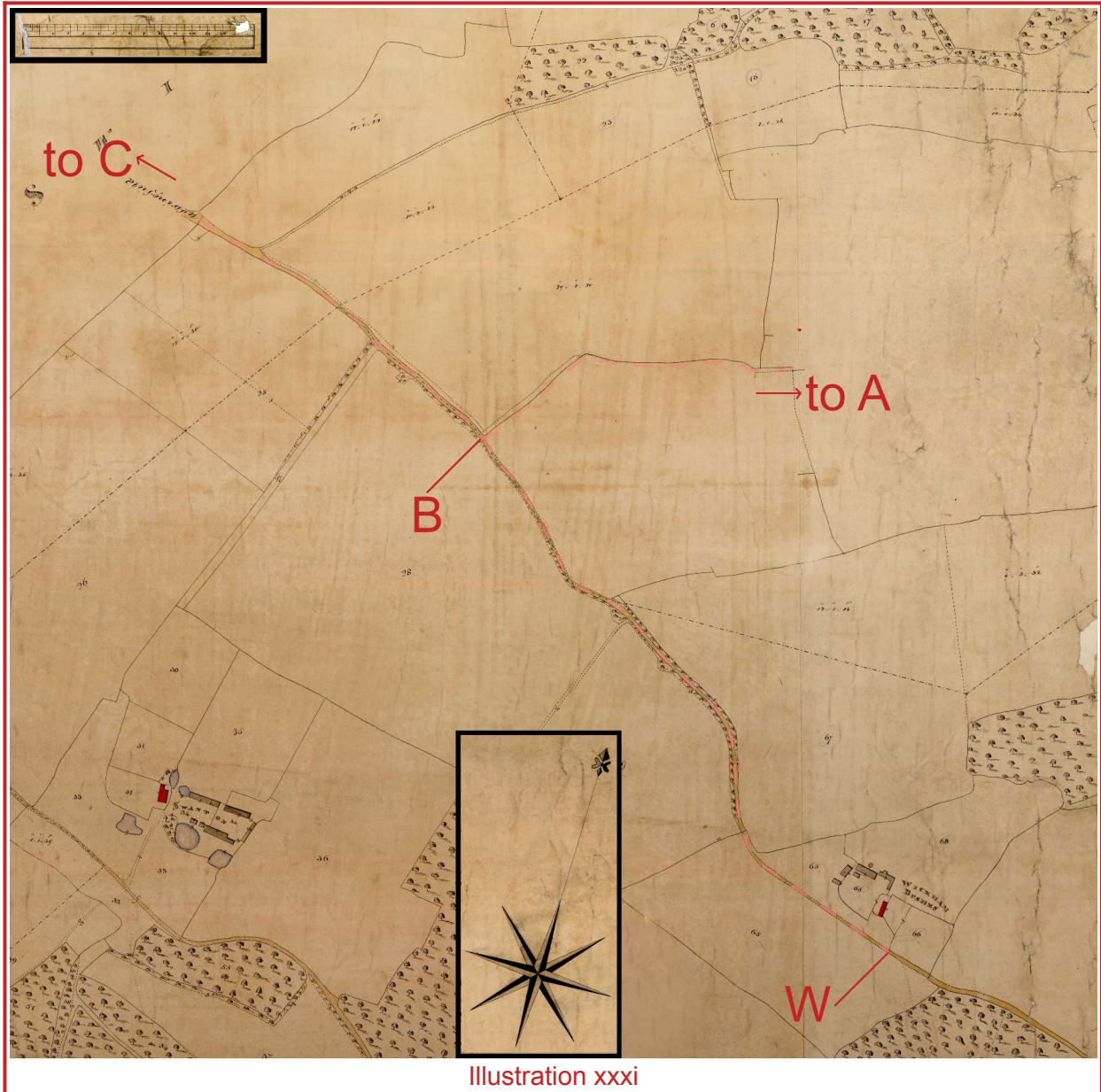


Illustration xxxi

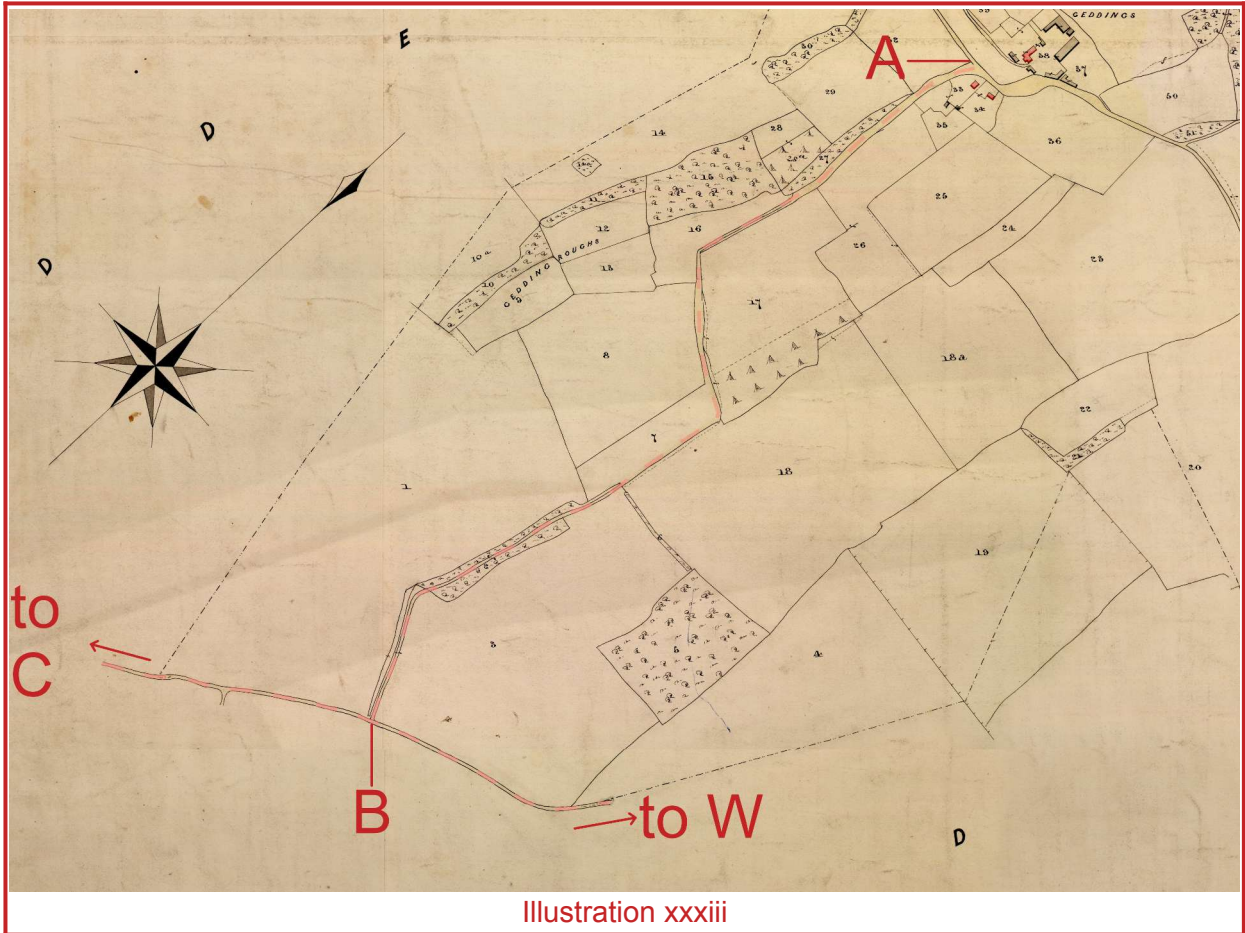
Lydden tithe apportionment

C.—London: Printed and Published (By Authority) by Shaw & Sons, 137 and 138, Peter Lane.

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION or LANDS AND PREMISES.	STATE or CULTIVATION.	QUANTITIES		Amount of Rent-charge apportioned upon the several Lands, and to whom payable.				REMARKS.	
					AS STATUTE MEASURE	PAYABLE TO						
							<i>Owner</i>	<i>Apportioned</i>				
A.	R.	P.	£	s.	d.	£	s.	d.				
Messrs. Rushin & Richard (Trustees)	Himself	16	Sawmage House & Garden	Arable	a	2	20					
		131	Beans		a	2	19					
		216	Marsh Yard		a	1	20					
					a	1	20					
			Public Roads		16	1	07					

Illustration xxxii

Wootton tithe map



Wootton tithe apportionment

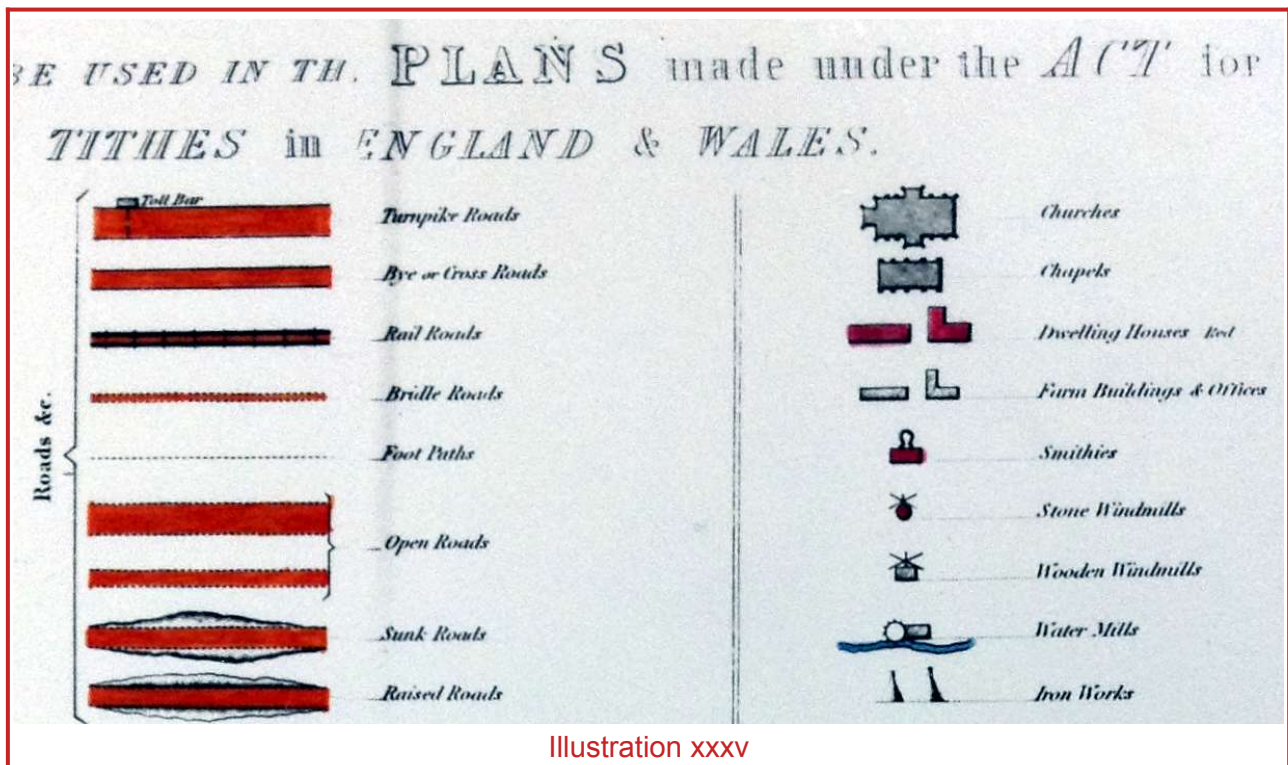
SUMMARY.
No. 6.—London: Printed and Published (by Authority) by G. ROUTLEDGE, 11, Ryder's Court, Leicester Square.

LANDOWNERS.	OCCUPIERS.	Total QUANTITIES in Statute Measure.			RENT CHARGE PAYABLE TO Keeler.		
		A.	R.	P.	£.	s.	d.
Mesham Reverend Arthur Bennet (Glebe)	Himself	16	2	37	2	5	
	Roads	997	2	38	262	5	
		21	2	16			
		1019	1	114			

(Signed)
Robert Lake.

Illustration xxxiv

Dawson's conventional symbols



General analysis

J.3. The Tithe Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be commuted to a monetary payment system. The 1836 Act treats the commutation as consisting of two separate processes:

- the determination of the total sum to be paid for the tithes of any parish;
- the apportionment of the total sum among the different lands on which it is to be charged.³⁹

J.4. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid in substitution. 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.⁴⁰

³⁹ From [The act for the commutation of tithes in England and Wales, with an analysis, explanatory notes and an index](#) by John Meadows White, at p.xvi.

⁴⁰ These terms were not used in the Acts: s.1 provided that 'the tithe commissioners...shall have power...to confirm...any instrument of voluntary apportionment...made according to the provisions of the [1836 Act], to which shall be annexed a map or plan agreed to be adopted by a parochial meeting, although [the commissioners] shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment or agreement are therein truly stated; but no recital of quantity or admeasurement of land, nor any map or plan annexed to any such confirmed apportionment or agreement, nor any copy thereof, shall be deemed evidence of the quantity of land referred to therein, or of the accuracy of such map or plan, unless the said map or plan, as well as the instrument of apportionment or agreement, shall be signed by the commissioners and sealed with their official seal: provided always, that the commissioners, in case they shall confirm such voluntary apportionment or agreement, but shall not think proper to seal such map or plan, shall certify under their hands, upon some part of such map or plan, that the same is the map or plan referred to in such voluntary apportionment or agreement, as the

J.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 to⁴¹: an extract from the convention is shown at Illustration xxxv above.

J.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. The 1836 Act required meetings of parishioner landowners to effect the required assessment process.⁴² 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.⁴³

J.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 grassy roads could carry a tithe as they were used as pasture — but only if the grazing rights were privately held. 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 with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In particular, enclosed grassy roads or droves in private ownership were likely to be assessed; those which were public were not. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

J.8. The use of dotted or pecked parallel lines in relation to unenclosed ways appears to follow the guidance of Lt. Dawson (see footnote 41 below) 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.

case may be, which certificate shall be received as evidence of that fact.'

41 *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).

42 Provision for meetings is made in the 1836 Act in ss.17 (voluntary agreement to total value of tithes and provisional agreement for commutation of tithes); 51 (for Commissioners to hear objections to intended award); 53 (to appoint valuers); 61 (for Commissioners to hear objections to intended apportionment).

43 At 604, per Stuart V-C.

Swingfield tithe

J.9. **Description:** Original scale — one inch to three chains (1:2,376), scale bar shown on map; orientation — unchanged (top is north-east). The tithe map for Swingfield is first class.⁴⁴ The Swingfield tithe map is reproduced at Annexe B at p.132 below, the apportionment in Illustration xxx above.

J.10. All of the application ways, so far as they lie within the parish of Swingfield, are shown and identified on the Swingfield tithe map — there also is a modest overlap into Wootton parish, so that application way (I) is shown to and beyond B. Application way (II) lies entirely outside the parish and the overlap, and therefore is not visible.

J.11. All of the application ways (save (II)) are coloured in sienna, and given an identifying parcel number, save that the westerly end of way (V), which lies across parcel 261, is not distinguished. The distinguishing parcel numbers are identified in the tithe apportionment as follows, with the addition of the application way number in col.3 and any name by which the way is known today in col.4. Street names in col.4 are (where applicable) hyper-linked to the corresponding entry in FindMyStreet.co.uk, which replicates information from the National Street Gazetteer.

44 See the record for this tithe apportionment held by the National Archives: [IR 30/17/363](#).

Public roads identified in Swingfield tithe apportionment

Parcel no.	Name	App. way no.	Now known as
20	Reest Lane		Reece Lane
46	Stony Lane		BOAT ⁴⁵ HE116
117	Park Lane	(IV)	BW ⁴⁶ HE176/ER113/none ⁴⁷
118	Buttermilk Hole Lane		Wootton Lane
119	Stockham Lane		Stockham Lane
120	Green Lane		BW HE176 (part) ⁴⁸
128	Broomfield Lane	(I)	
133	West Lees Lane	(I)	FP ER106 (part) ⁴⁹
148	Swanton Lane		Swanton Lane ⁵⁰
166	Hop Garden Lane		Holloway Lane
171	Ellinge Lane		Holloway Lane/Little Everden Road
175	North Court Bottom Road	(VI)	FP HE184
186	Beards Hall Lane		Beards Hall ⁵¹
193	North Field Road		The Street
206	Hermitage Lane	(III)	
208	St John's Lane		Swanton Lane
235	Street Lane	(V)	FP HE53
259	Lamper Lane		Boyington Lane (part)
260	Mansell Lane		Oak Hill
283	Hogstock Lane	(VI)	FP HE186 ⁵²
296	Five Acre Lane	(VIII)	
297	Evendean Lane		Fernfield Lane
332	Bonnington Lane		Boyington Lane (part)
333	Green Lane		BW HE187 (part)
383	Wood Lane		BW HE187 (part)
384	Shirt Lane		BW HE191
437	Half Pay Street Lane		Pay Street

45 BOAT: byway open to all traffic

46 BW: bridleway

47 That part of Park Lane comprised in the application is unrecorded.

48 Green Lane is 300m long, terminating on Swingfield Minnis (a common, then unenclosed). Bridleway HE176 continues the awarded line across the subsequently enclosed lands.

49 The part shown as footpath ER106 is wholly outside the parish of Swingfield and lies in the parish of Wootton.

J.12. All of the entries in the table, other than the application ways, are recognised today as public roads or bridleways.

J.13. It is submitted that the use of sienna colouring is not necessarily itself indicative that a road is public (notwithstanding the Dawson conventions), but may show that the road was metalled or had a hard surface. This is because several roads are shown coloured sienna, but are not recorded as public roads in the apportionment: for example, part of the approach to Swanton Farm from the north-east, various spurs off the turnpike across Swingfield Minnis (parcels 73a, 437 and 433), the road to North Court (parcel 154), waste at Everdean (part of parcel 297). Nevertheless, the status signified by sienna colouring is not free from doubt: for example, the road from J to Beards Hall, shown as metalled on the first edition of the *Ordnance Survey County Series 25-inch plans* (item II.N below), is shown uncoloured on the Swingfield tithe map, and annotated 'Right of Road' (and therefore clearly recognised as a private road).

J.14. However, in our submission, the tithe apportionment and map is conclusive of the status of the application ways as public roads because:

- The application map is first class, and legal evidence of all matters which it portrays.
- The application ways are recorded in the apportionment as owned and occupied by the 'Surveyors of Swingfield' — that is, the lay surveyor annually elected by the parish vestry to keep in repair the public roads in the parish.

In [*Maltbridge Island Management Company v Secretary of State for the Environment*](#), Sullivan J considered whether to quash a definitive map modification order which recorded a byway leading past a mill. He said [56–57]:

Because both public and private roads were not tithable, the mere fact that a road is shown on, or mentioned in, a Tithe Map or Apportionment, is no indication as to whether it is public or private.

But if detailed analysis shows that even though he was not required to do so, the cartographer, or the compiler of this particular map and apportionment, did in fact treat public and private roads differently, whether by the use of different colours, the use or non-use of plot numbers, or other symbols, or in schedules or listings, I do not see why evidence based upon such analysis should not be admissible as to the existence, or non-existence of public rights of way.

Whether the analysis does lead to such a conclusion, and if so, what weight should be attributed to the conclusion is a matter for the Inspector. Since it was not one of the purposes of the 1836 Act to distinguish between public and private roads, such information as can be derived from the Tithe Map and Apportionment cannot be conclusive, and must by its very nature be tentative... .

However, in that case, the byway was not expressly recorded in the tithe apportionment as a public road, but inferred to be included among a 'Roads in Parish' collective item in the apportionment.

50 Part of Swanton Lane is recorded on the Swingfield tithe map as parcel 208 (St John's Lane)

51 The lower (south-easterly) part of Beards Hall, below the junction with North Court Bottom Road, is shown on the Swingfield tithe map as 'Right of Road' and not part of parcel 186.

52 Part of the definitive line of HE186 is not coincident with Hogstock Lane.

Subsequently, in *Robinson Webster (Holdings) Ltd v Agombar*, Etherton J ruled on a dispute as to whether Thickwood Lane in Wiltshire was a highway (the claimant said it was not). He said [44–45]:

A linen tithe map of 1875 for Colerne shows the Blue Land coloured the same as all the other principal roads in the area, including Thickwood Lane. The Blue Land and those other roads are shown numbered 1158 on the map. In the tithe apportionment schedule accompanying the 1875 Colerne Tithe Award, the roads designated no. 1158 are shown as being in the occupation of “Parish Officers”. This is important evidence. On the face of it, this is evidence that in 1875 the Blue Land was a public highway within the responsibility of the parish officers. This could only be on the basis that the Blue Land was dedicated and adopted following the Highways Act 1835 or, alternatively, had been the responsibility of the parish officers since before the coming into force of that Act. In the latter case, the parish officers would only have assumed responsibility if there had been evidence of dedication and acceptance of the road by the public.

Tithe maps are admissible in evidence to prove the existence of a highway: *Kent County Council v Loughlin* [1975] 234 EG 681. Roads generally, whether public or private, were not titheable,⁵³ and so tithe maps are generally relevant only to proving the existence of a road at a particular time rather than its status.⁵⁴ Mr Hodge Q.C.⁵⁵ also sought to undermine the evidential value of the 1875 tithe map and schedule by pointing out that none of the properties surrounding the Blue Land were shown as titheable, so there would have been no need on the part of anyone to concentrate on the true status of the Blue Land. In my judgment, the fact that the Blue Land was not titheable and the further fact that the land surrounding the Blue Land was not titheable do not undermine the importance of the 1875 map and schedule to the issue I have to decide. The map and schedule clearly show the Blue Land was then in the occupation of the parish officers. It is that fact, rather than the issue of whether the Blue Land or the surrounding land were titheable, that is significant. In this connection, it must be borne in mind that tithe maps are public documents and that the Commissioners, under whose authority and control the tithe map was prepared, had power to examine witnesses on oath.

- The application ways individually are named, and with one exception, are known as ‘lanes’. In *Attorney-General (ex rel Public Trustee) v Woolwich Metropolitan Borough Council*,⁵⁶ Shearman J, in considering the charges imposed by the defendant for making up a new street, was required to consider whether the ‘street’ was a publicly-maintainable ancient road. The judge said:

But those who have studied history and those acquainted with the rural countryside know how many deserted or quasi-abandoned highways there are in this country. ...I look at the contour of the land from the photographs and also

⁵³ The applicant submits otherwise: see para.II.J.7 above.

⁵⁴ In *Kent County Council v Loughlin*, Lord Denning MR took the view that the omission of a road from the tithe map was ‘sufficient to show that Fairby Lane did not exist as a road in 1846’, but this finding ought no longer to be followed without consideration of the context (such as whether the land crossed by the road was subject to tithes).

⁵⁵ For the claimant.

⁵⁶ At pp.173–174

the maps, and I also consider the name "Plum Lane"—a "lane" usually means a minor road leading between one main road and another main road and the name "Shrewsbury Lane," named after the house called "Shrewsbury House" near there, and in my judgment, on all the facts of the case, this was obviously one land⁵⁷ in all. In my view it was quite obviously a highway which prima facie at the passing of the Highway Act was a highway for all purposes, for carriages, a horse track and a footway, and it was repairable by the inhabitants at large, although there is no evidence by records or witnesses of its ever having been actually repaired at the public expense.

- The application ways all are excluded from neighbouring parcels, and instead are assigned their own parcel numbers (which separately are described in the apportionment as noted above). This includes those ways which are not enclosed, such as way (V) which is part of parcel 235 (Street Lane), whereas small areas of land sequestered between the way and the adjoining fence or hedge on its north side are braced (by small arrows) to be included in the area of the field as a whole (parcel 261). Compare with, for example, the continuation of Wood Lane into Reinden Wood, which is uncoloured, not assigned a separate parcel number, and braced with the adjoining parcel comprising part of Reinden Wood (377).
- No rent charge is assigned to the application ways.
- Various other roads and tracks, not considered to be vested in the surveyors, are assigned a parcel number and identified in the apportionment as having an owner and occupier, and where asterisked, assigned a rent charge, viz: parcels 51 (Selsted, Pays Hill), 77⁵⁸ (Selsted), 154* (North Court), 200* (spur off way (III)), 13* (Hoad Farm), 16* (also Hoad Farm), 364* (Foxholt).
- Application way (I) which crosses the parish boundary, is annotated with a destination, 'from Wootton'. The use of a destination label on old maps generally is associated with public, rather than private, roads. In *Commission for New Towns & Anor v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses⁵⁹:

...that the designation 'from X' or 'to X' on a road was indicative of highway status. A specific description of a lane as leading from one village to another, particularly when one bears in mind that it was a carriageway (albeit that its status as a public carriageway is in issue) does provide some support for the notion that it was a public carriageway.

The Planning Inspectorate *Consistency Guidelines* state (in relation to tithe maps) that:

...the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights.⁶⁰

It may be noted that while the reference to 'public rights' does not in itself exclude the possibility of a footpath, the reference to a 'road' does, and implies a bridle or carriage road.

57 *Quaere* 'lane'

58 It appears that parcels 76 and 77 are transposed in the apportionment.

59 At [90]

60 [Consistency Guidelines](#): para.8.2.13

Lydden tithe

J.15. **Description:** Original scale — one inch to three chains (1:2,376), scale bar shown on map; orientation — unchanged (top is north-east). The tithe map for Lydden is first class.⁶¹

J.16. Only application ways (I) and (II) cross into the parish of Lydden. Application way (I) is shown between B and the parish boundary with Swingfield, with an overlap into the latter parish. The way is shown as enclosed and coloured sienna. For a distance of 250 metres west-southwest of B (as far as the Swingfield parish boundary), application way (I) is shown with the parish boundary between Lydden (to the south) and Wootton (to the north) along the centre line of the way. North of B, application way (I) is not marked on the tithe map, but this too is an overlap into the parish of Wootton. However, the way may briefly be marked above the added arrow pointing 'to A'.

J.17. Application way (II) is marked between B and W, and continuing from W towards Lydden, as a way which is unenclosed on the north side and enclosed on the south side, save in the vicinity of Wickham Bushes, where the way briefly is wholly unenclosed. The way is shown throughout coloured in sienna. For a distance of 270 metres east-northeast of B, application way (II) is shown with the parish boundary between Lydden (to the south) and Wootton (to the north) along the centre line of the way.

J.18. Application way (I) is annotated 'To Swingfield' at the edge of the tithe map (as to which, see the sixth bullet in para.II.J.14 above).

J.19. The apportionment records a total area of 16a,1r,37p⁶² for 'Public Roads', with no rent charge.

J.20. **Analysis:** Leaving aside the application ways, only roads which today are recognised as public roads (including BOAT ER122) are coloured in sienna. The roads coloured in sienna are annotated with parcel numbers, which appear to have been erased or rendered illegible.⁶³ There is an omnibus entry for 'Public Roads' in the apportionment, and it is suggested that the parcel numbers on these roads were erased because it was decided not individually to itemise them. No rent charge is assigned to the public roads.

J.21. The application way forms no part of the adjoining parcels, even in the vicinity of Wickham Bushes, where the way is unenclosed and divides parcel 65.

Wootton tithe

J.22. **Description:** Original scale — one inch to three chains (1:2,376), no scale bar; orientation — unchanged (top is north-west). The tithe map for Wootton is first class.⁶⁴

J.23. Only application way (I) crosses into the parish of Wootton, while application way (II) straddles the parish boundary with Lydden for a distance of about 270 metres. Application way (I) is shown between A and B, and from B west-southwest as far as the Swingfield parish boundary. The way is shown as generally enclosed (save for the middle section between A and B) and coloured sienna, although the colouring is faded.

61 See the record for this tithe apportionment held by the National Archives: [IR 30/17/234](#).

62 6.67 ha

63 One remains visible, on the line of BOAT ER122, just west of the Chalksole crossroads. It is labelled 220, but this parcel is not recorded in the apportionment, which contains no parcel numbered above 215.

64 See the record for this tithe apportionment held by the National Archives: [IR 30/17/401](#).

J.24. Application way (II) is marked between B and about 300 metres east-northeast of B, also shown as enclosed and coloured sienna.

J.25. The apportionment records a total area of 21a,2r,16p⁶⁵ for 'Roads', with no rent charge.

J.26. **Analysis:** The use of sienna as a colouring appears to indicate a metalled or hard surface, as the drives to Wootton Court similarly are coloured. However, neither application way (I), nor those roads today recognised as public roads (including BOATs ER111, ER284 and ER110) and two bridleways (ER114 and part ER112), are included in any adjoining parcel, whereas the drives to Wootton Court and part of application way (II) north of B are braced with the adjoining parcels.

J.27. The only way to be annotated on the tithe map with a destination is the Canterbury-Dover Road.

Conclusion

J.28. The Swingfield tithe map and apportionment present very strong evidence for the status of the application ways as public roads. All of the application ways in the apportionment are expressly recorded as public roads under the ownership and occupation of the parish surveyor, are excluded from rent charge, and are presented on the map excluded from any parcel subject to rent charge.

J.29. The evidence of the tithe assessment in favour of public road status often is given only limited weight or observed to be unreliable in distinguishing public and private roads. For example, the *Consistency Guidelines* state⁶⁶:

However, tithe maps were not intended to establish or record rights of way. There are a number of reasons why land might not have been subject to tithe in addition to the possibility of it being highway land. One of these was that the land was barren, but other examples include land held either by the church or some other religious community, or land which had only recently been converted to productive land from previous barren heath or waste land. It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain, or to lay down rigid rules for their interpretation.

And then⁶⁷:

Tithe documents can generally give no more than an indication as to whether any way is public or private.

J.30. But it is submitted that, as the Swingfield tithe assessment makes such a bright declaration of public road status, it must be given full respect. The declaration is supported by contextual evidence (such as the absence of any deduction for rent charge, compared with recorded private roads) and the tithe map is first class. The tithe assessment (as noted at para.II.J.6 above) was conducted 'upon notice in all the most public places', and the tithe apportionment and map were a 'public one'. Landowners would have been keen to ensure that their land had been accurately and fairly assessed. The commutation was assessed first by determining the total rent charge due in a parish

65 8.74 ha

66 [Consistency Guidelines](#): para.8.2.2

67 *Ibid*, para.8.2.5

(based on evaluation of recent tithes), and then by apportionment of that sum among the lands of the parish. Landowners would have objected if the assessment not only falsely declared land to be subject to non-existent public rights, but incorrectly diminished the rent charge attributable to neighbours as a result (so that a greater burden would be placed on other landowners). In this context, the status of the application ways is not an incidental inference to be drawn from circumstantial evidence in the tithe map, but a key element in the apportionment and map.

J.31. This submission is corroborated by the Lydden tithe assessment, which appears to include application ways (I) (part) and (II) under a description of ‘Public Roads’, and which labels application way (I) as leading ‘to Swingfield’. The Wootton tithe assessment is less compelling, but those two ways are again shown consistent with public road status.

J.32. None of the application ways (save, possibly, application way (I) for a short length north of B) is shown in any tithe assessment as subject to rent charge. 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, where the application ways are shown in that form, 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. The track, being unenclosed and unmetalled, would be capable of being grazed by the owner. It would be iniquitous for the rateable value of the track to be excluded from calculations.

J.33. 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.

J.34. 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.

J.35. Accordingly, it is submitted that the tithe evidence is compelling evidence of the status of the application ways as public roads.

📌 Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Vested in Swingfield parish surveyor, public road in Lydden	5
(II)	WB	Old Road	Public road in Lydden, road in Wootton	4
(III)	FD	Hermitage Lane	Vested in Swingfield parish surveyor	5
(IV)	CG	Park Lane	Vested in Swingfield parish surveyor	5
(V)	HI	Street Lane	Vested in Swingfield parish surveyor	5
(VI)	JK	North Court Bottom Road	Vested in Swingfield parish surveyor	5
(VII)	LMN	Hogstock Lane	Vested in Swingfield parish surveyor	5
(VIII)	MO	Five Acre Lane	Vested in Swingfield parish surveyor	5

K. Denton court estate maps

K.1. **Date:** 1847, 1867, 1875

K.2. **Source:** Kent county archives⁶⁸

Denton court estate map 1847

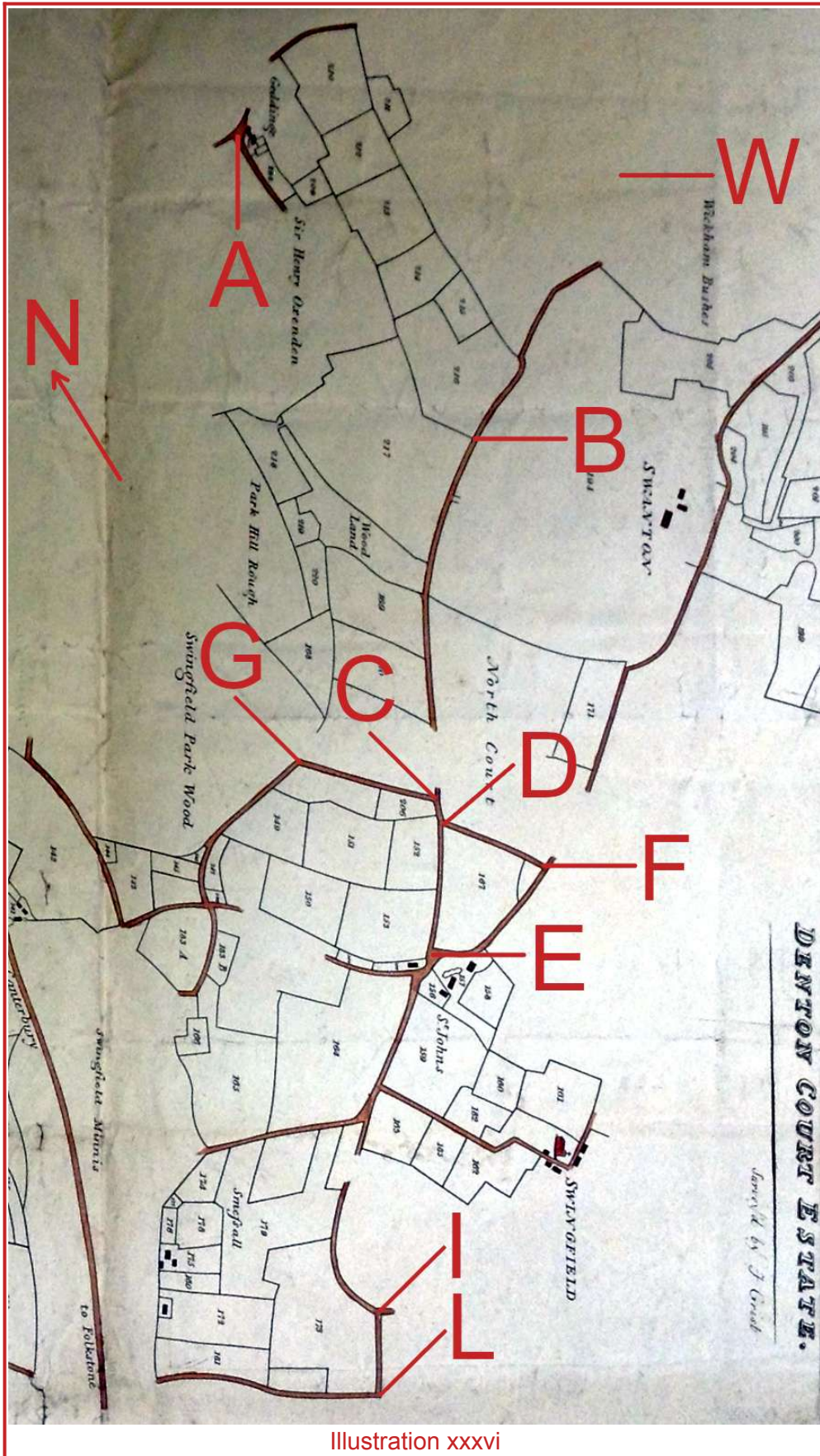


Illustration xxxvi

Denton court estate map 1867

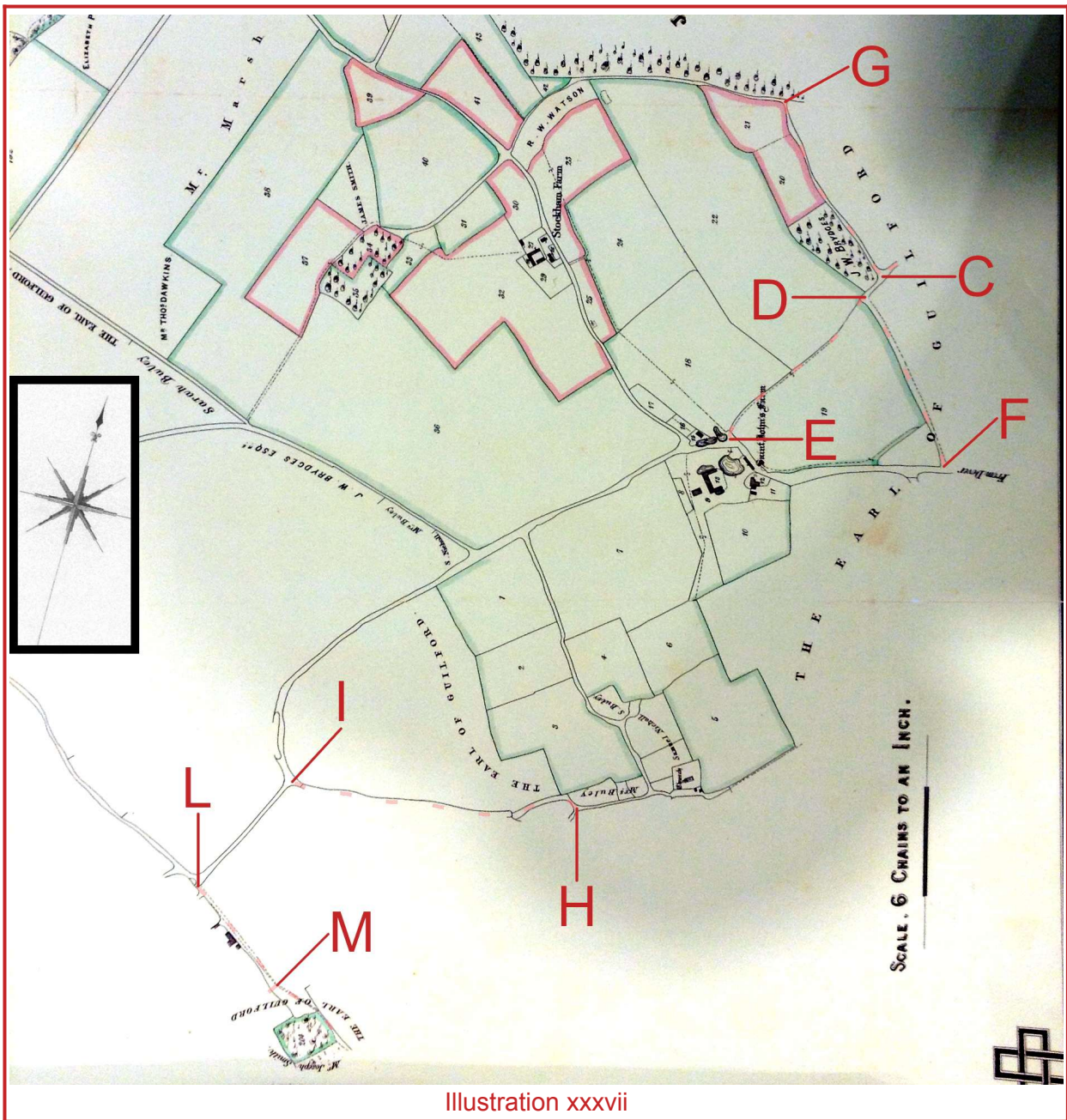
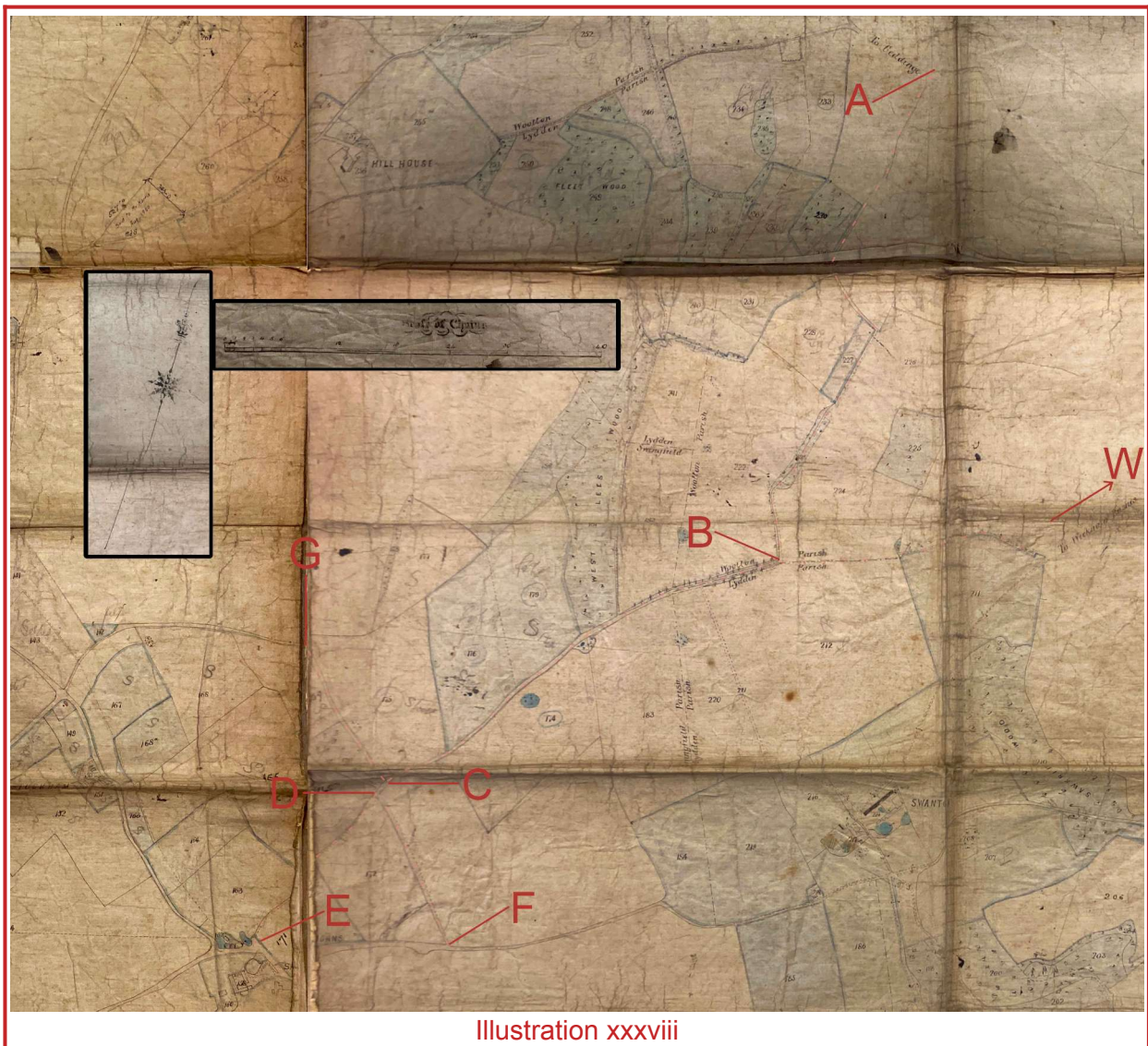


Illustration xxxvii

Denton court estate map 1875



1847 map

K.3. **Description:** Original scale: not shown; orientation: top is east-southeast, but map is presented above with top is north-northeast. The whole map is reproduced at Annexe D at p.136 below.

K.4. A map of the Denton Court Estate, surveyed by J[ames] Grist, a surveyor, builder and stonemason. The map is dated 1847, and immediately precedes the inclosure of Swingfield Minnis (the common therefore remains at this time shown as open and unenclosed).

K.5. The map shows the land owned by the estate, including numbered field parcels and locality names. Where intervening land is not owned by the estate, it is omitted, but adjoining lands are shown at the same scale and in the same orientation.

K.6. A key feature of the map is the inclusion of roads or tracks coloured brown. There is no key to the map. Part of application way (I) is thus shown (in the vicinity of A towards

B, and B–E with part omitted); part of application way (II) (B towards W); application ways (III) and (IV); and a stub of application way (V) at I. Point L is shown, but without any visible marking of application way (VII).

K.7. Apart from the application ways, all of the roads or tracks coloured brown are today recognised as public roads or bridleways, with one exception. The exception comprises, from the main road (the former turnpike) north of Selsted, a road or track leading due north to parcels 82 and 83, and a spur connecting to the turnpike. It is suggested that the estate might have considered this way to have been public at the time.

K.8. It may also be noted that the road or track between application way (I) and Swanton Farm, the opening to which may be seen slightly to the south-west of B, and for which there is no evidence of highway status, is not coloured brown.

K.9. **Conclusion:** While the map does not expressly describe those roads or tracks coloured brown as public roads or bridle roads, it is suggested that this was the intention of the surveyor. It is not obvious what other function could be attributed to the dominant colouring, particularly as some tracks, such as the spur partly shown from application way (I) to Swanton Farm, and a spur from the turnpike to parcel 97, are not so shown.

Points summary (1847 map)

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Shown coloured brown in part	1
(II)	WB	Old Road	Shown coloured brown in part	1
(III)	FD	Hermitage Lane	Shown coloured brown in part	1
(IV)	CG	Park Lane	Shown coloured brown in part	1
(V)	HI	Street Lane	A stub shown coloured brown	1
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane		
(VIII)	MO	Five Acre Lane		

1867 map

K.10. **Description:** Original scale: 6 chains to 1 inch, shown on map extract (1:4,752); orientation: top is west-southwest, but map is presented above with top is north-northwest. The whole map is reproduced at Annexe E at p.138 below.

K.11. A map of the Denton Court Estate, from sales particulars produced by Messrs. Driver & Co, with plots marked in red and green, but with no accompanying key. The map is dated 1867 and post-dates the inclosure of Swingfield Minnis.

K.12. The map shows the land owned by the estate, including numbered and colour-outlined field parcels and locality names. Some land not owned by the estate is instead labelled with the name of the owner.

K.13. Roads and tracks are not coloured, but only marked according to their characteristics, and in particular, whether they are enclosed or unenclosed. Part of application way (I) is shown, from C to E, but between D and E it is shown as a narrow field-edge track,

unenclosed on the south-east side; application way (III), of generous width but unenclosed on the north-east side; application way (IV), wholly enclosed; application way (V) as enclosed and gated at each end, but not otherwise distinguishable in between; application way (VII) from L to beyond M, also unenclosed.

K.14. **Conclusion:** Little can be inferred from the map, other than the physical existence and characteristics of the relevant application ways at this date.

Points summary (1867 map)

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Part shown C–E	0
(II)	WB	Old Road		
(III)	FD	Hermitage Lane	Shown	0
(IV)	CG	Park Lane	Shown	0
(V)	HI	Street Lane	Part shown	0
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane	Part shown L–M	0
(VIII)	MO	Five Acre Lane		

1875 map

K.15. **Description:** Original scale: probably 3 chains to 1 inch (1:2,376, scale bar shown on map extract); orientation: unchanged (top is north-northwest). The whole map is reproduced at Annexe F at p.140 below.

K.16. A map of the Denton Court Estate, drawn in considerable detail on linen, but with no accompanying key. The map is dated to circa 1875 and post-dates the inclosure of Swingfield Minnis. The map appears to have been compiled from original survey, as it shown no close relationship with any of the tithe maps, nor the first edition *Ordnance Survey County Series 25-inch plans* (item II.N below), which were published in 1873.

K.17. The map shows the land owned by the estate, including numbered and colour-washed field parcels and locality names. One or two parcels which have been disposed of by the estate are labelled with the purchaser's name.

K.18. Roads and tracks are not given a distinguishing colour, but only marked according to their characteristics, and in particular, whether they are enclosed or unenclosed. Most of application way (I) is shown, from slightly south of A to E, but between A and B part is shown as a field-edge track, unenclosed on the east side, between B and D fully enclosed, and between D and E again unenclosed now on the south side; about half of application way (II) is shown, from B towards W, poorly visible but apparently as an unenclosed track; application way (III), unenclosed on the north-east side; and application way (IV), wholly enclosed.

K.19. None of the application ways is braced with adjoining parcels (which are numbered where part of the estate), nor itself numbered.

K.20. The track south-east to Swanton Farm leading from application way (I) near B is

assigned its own parcel number (221) (unfortunately, no gazetteer of the estate land is available).

K.21. **Conclusion:** Application ways (I), (III) and (IV) are shown in the same manner as known local roads and bridle roads, without parcel numbers and not separately coloured, and in contrast with the track to Swanton Farm, not believed to be a public road, which is shown annotated with its own parcel number. The map suggests that those ways are part of the local road network.

K.22. Application way (II) is less well defined on the map, and no conclusion can be drawn.

☰ Points summary (1875 map)

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane		1
(II)	WB	Old Road		0
(III)	FD	Hermitage Lane		1
(IV)	CG	Park Lane		1
(V)	HI	Street Lane		
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane		
(VIII)	MO	Five Acre Lane		

L. Wingham Highway Board and Elham Rural District Council

L.1. **Date:** 1869, 1879

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

Wingham Highway Board, 8 July 1869

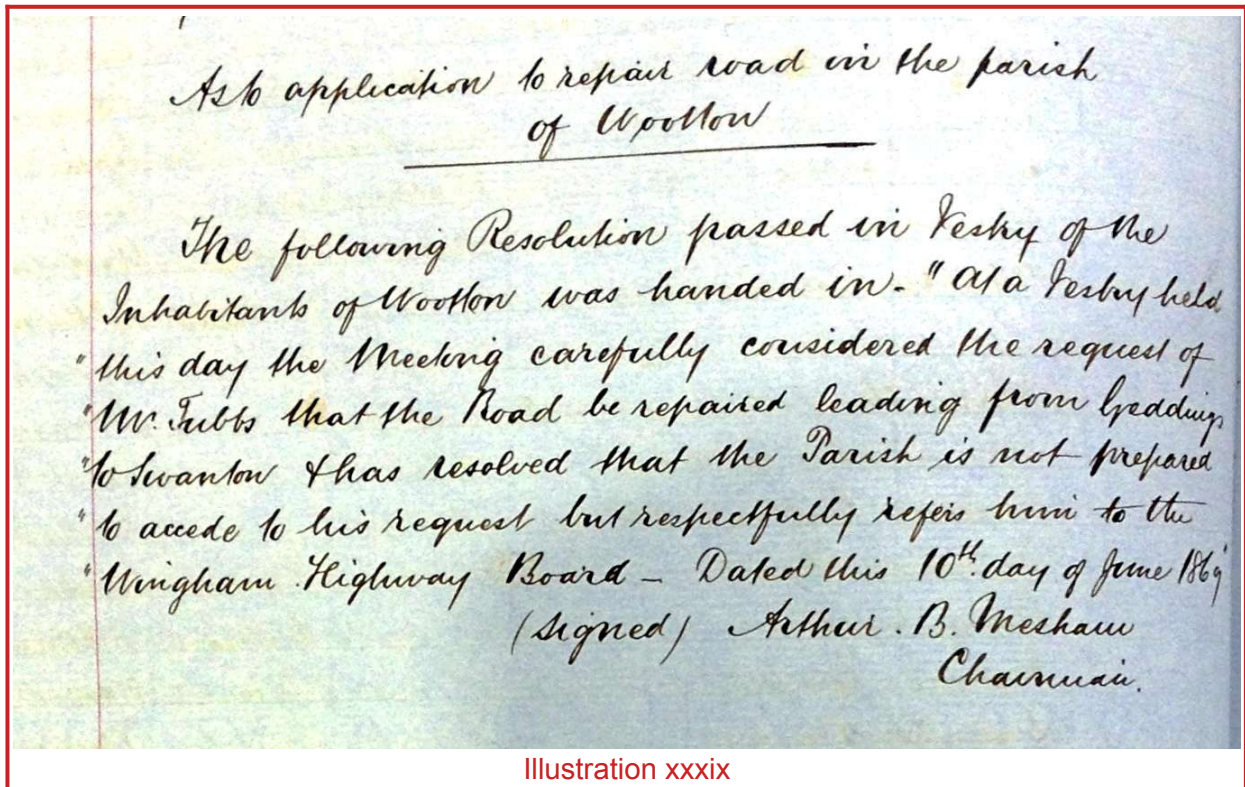


Illustration xxxix

Wingham Highway Board, 19 June 1879

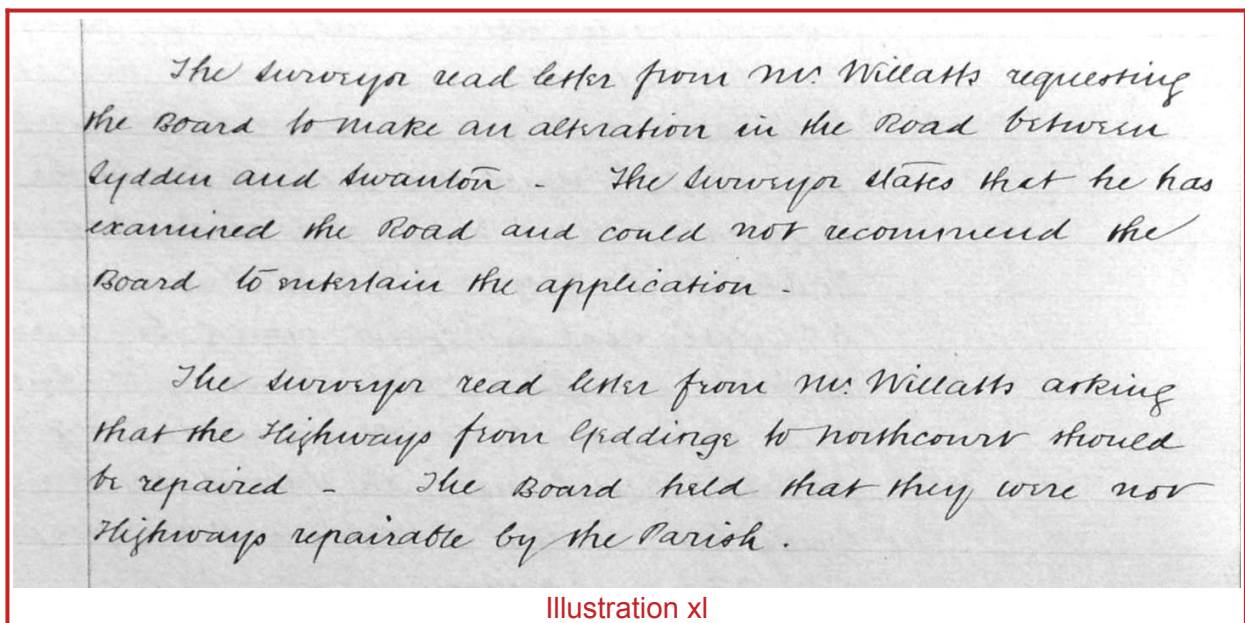


Illustration xl

Elham Rural District Council, 26 May 1898

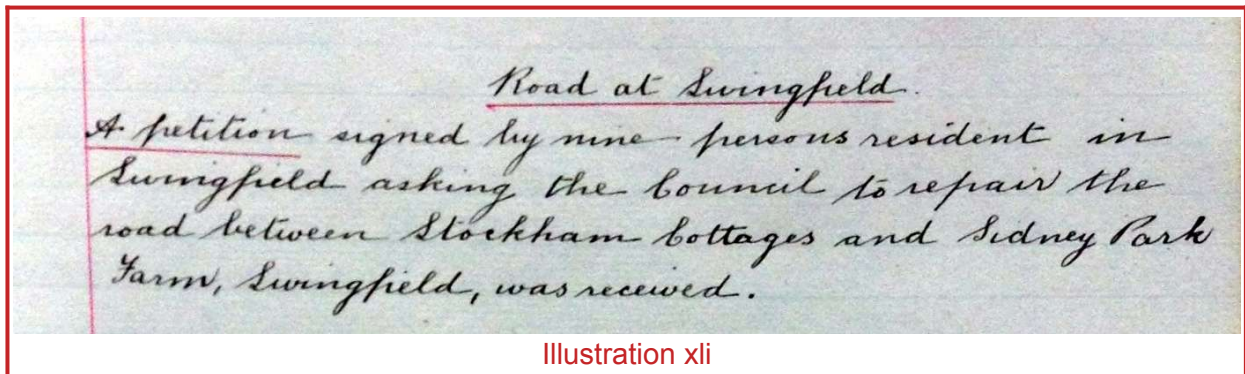


Illustration xli

Elham Rural District Council, 21 July 1898

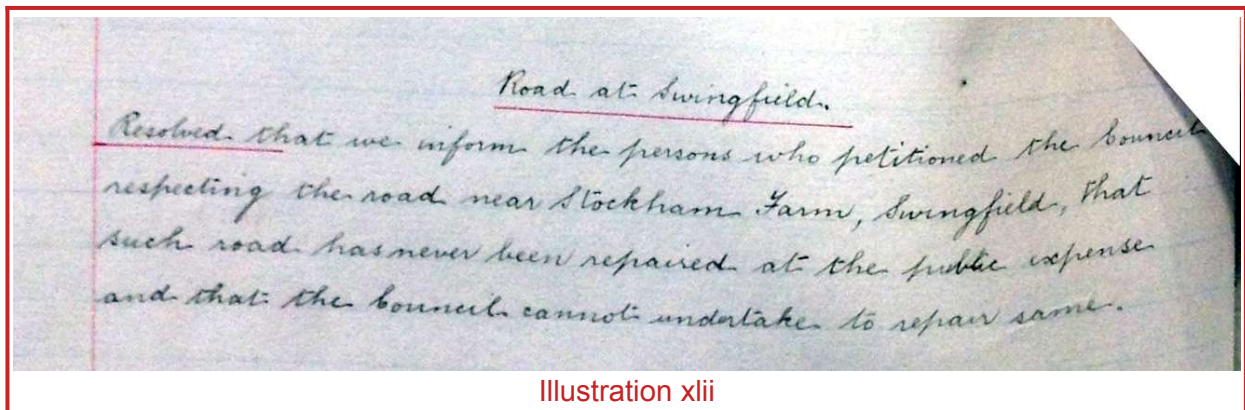


Illustration xlii

L.3. **Description:** Extracts from proceedings of the Wingham Highway Board, which was established in 1863 and endured until its dissolution in 1885, following which its responsibilities for highways were assumed by Elham Rural Sanitary Authority which then evolved into Elham Rural District Council.

L.4. At a meeting of the Wingham Highway Board on 8 July 1869, it was minuted⁶⁹:

As to application to repair road in the parish of Wootton.

The following Resolution passed in Vestry of the Inhabitants of Wootton was handed in. "At a Vestry held this day the Meeting carefully considered the request of Mr Tubbs⁷⁰ that the Road be repaired leading from Geddings to Swanton & has resolved that the Parish is not prepared to accede to his request, but respectfully refers him to the Wingham highway board — Dated this 10th day of June 1869."

(Signed) Arthur B. Mesham, Chairman.⁷¹

69 Minutes of Wingham Highway Board, vol.1, HB/W1, p.187 (unnumbered)

70 Possibly Lt.Col. Robert T N Tubbs, of St Leonards, Hastings.

71 Rev. Arthur Bennett Mesham, of Ripple and Wootton Rectory (who died in 1870): *History, Gazetteer & Directory of Kent, Vol. II, 1847, p.320.*

L.5. The 'Road...leading from Geddings to Swanton' appears to be application way (I): no other way matches the description. The parish declined to repair the road, and while the board received the resolution, it did not appear to take any action on it.

L.6. Ten years later, at a meeting of the Wingham Highway Board on 19 June 1879, it was minuted⁷²:

The Surveyor read letter from Mr Willatts⁷³ requesting the Board to make an alteration in the road between Lydden and Swanton. The surveyor states that he has examined the Road and could not recommend the Board to entertain the application.

The Surveyor read letter from Mr Willatts asking that the Highways from Geddings to Northcourt should be repaired. The Board held that they were not Highways repairable by the Parish.

L.7. The 'Highways from Geddings to Northcourt' appear to comprise application ways (I) and (III) — the road to North Court leaves Swanton Lane almost opposite the junction with application way (III) at F. The board concluded that those ways 'were not Highways repairable by the Parish', but did not decide that they were not highways. It is submitted that, if the ways were not highways, the surveyor would have so advised, and the board would have said as much.

L.8. Some 19 years later, at a meeting of Elham Rural District Council on 26 May 1898, it was minuted⁷⁴:

Road at Swingfield

A petition signed by nine persons resident in Swingfield asking the Council to repair the road between Stockham Cottages and Sidney Park Farm, Swingfield, was received.

L.9. Stockham Cottages lie on Stockham Lane at the junction with bridleway HE176/ER113 (*i.e.* Park Lane, the continuation of application way (IV) from G to Stockham Cottages). However, it has not been possible to identify 'Sidney Park Farm, Swingfield'. It is suggested that Sidney Park is an alternative name for Swingfield Park, formerly owned by the notable Algernon Sidney, a republican during the Civil War. Swingfield Park was an area of woodland, about 75 hectares in extent, occupying the land north-west of bridleway ER113 and south-east of Hill House Farm (of which several remnants survive and are named for the park). However, there is no trace of a farm within that area since the tithe assessment, and it may be a reference to the farm estate. Much of the woodland had, by the end of the nineteenth century, been felled and converted to agriculture.⁷⁵

L.10. It is suggested that the way referred to is bridleway HE176/ER113 (Park Lane), as the only other way from Stockham Cottages (apart from Stockham Lane itself) is bridleway HE176 to Smersole, which heads away from Swingfield Park.

72 Minutes of Wingham Highway Board, vol.2, HB/W2, p.20

73 Correctly, William Hale Willatts, of Denton Court, and a magistrate. Described as 'lord of the manor and principal landowner': *Kelly's Directory of Kent, Surrey & Sussex, 1891* [Part 1. Kent: County & Localities], p.205

74 Minutes of Elham Rural District Council vol.1 1895–1900, RD/EL1/AM1/1, p.310

75 See the Ordnance Survey County Series [second-edition six-inch map LXVII/NW](#) revised in 1896.

L.11. At a meeting of Elham Rural District Council on 21 July 1898, it was minuted⁷⁶:

Road at Swingfield

Resolved that we inform the persons who petitioned the Council respecting the road near Stockham Farm, Swingfield, that such road has never been repaired at the public expense and that the Council cannot undertake to repair same.

L.12. Stockham Farm is located on Stockham Lane about 200 metres south-east of Stockham Cottages.

L.13. The council resolved to respond to the petition (reported at the 26 May meeting) that the ‘road has never been repaired at the public expense and that the Council cannot undertake to repair same.’ In common with the decision of the Wingham Highways Board on 19 June 1879, the response focuses on whether the way is repairable, or at least, ‘repaired’, at public expense, and concludes that it is not. It is submitted that, if the way were not a highway, the surveyor would have so advised, and the council would have said as much.

L.14. The petition appears to relate to the continuation of application way (IV) from G to Stockham Lane, and perhaps projecting north-east from G along the line of bridleway ER113 into Swingfield Park, so that strictly it does not relate to any part of that or another application way.

L.15. **Conclusion:** It is submitted that the decisions of the highways board and then the council recognised that the relevant ways were public, but focused on the belief that they were not publicly maintainable. It may be that they were instead privately-maintainable public roads — or at least, that the relevant authority refused to acknowledge that they were publicly maintainable. As such, it is suggested that the minutes are some evidence for application ways (I), (III) and (IV) being public roads or bridle roads.

☰ **Points summary**

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane		2
(II)	WB	Old Road		
(III)	FD	Hermitage Lane		2
(IV)	CG	Park Lane		2
(V)	HI	Street Lane		
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane		
(VIII)	MO	Five Acre Lane		

⁷⁶ *Ibid*, p.321

M. Inclosure Act 1845, orders of exchange

M.1. **Date:** 1878, 1882

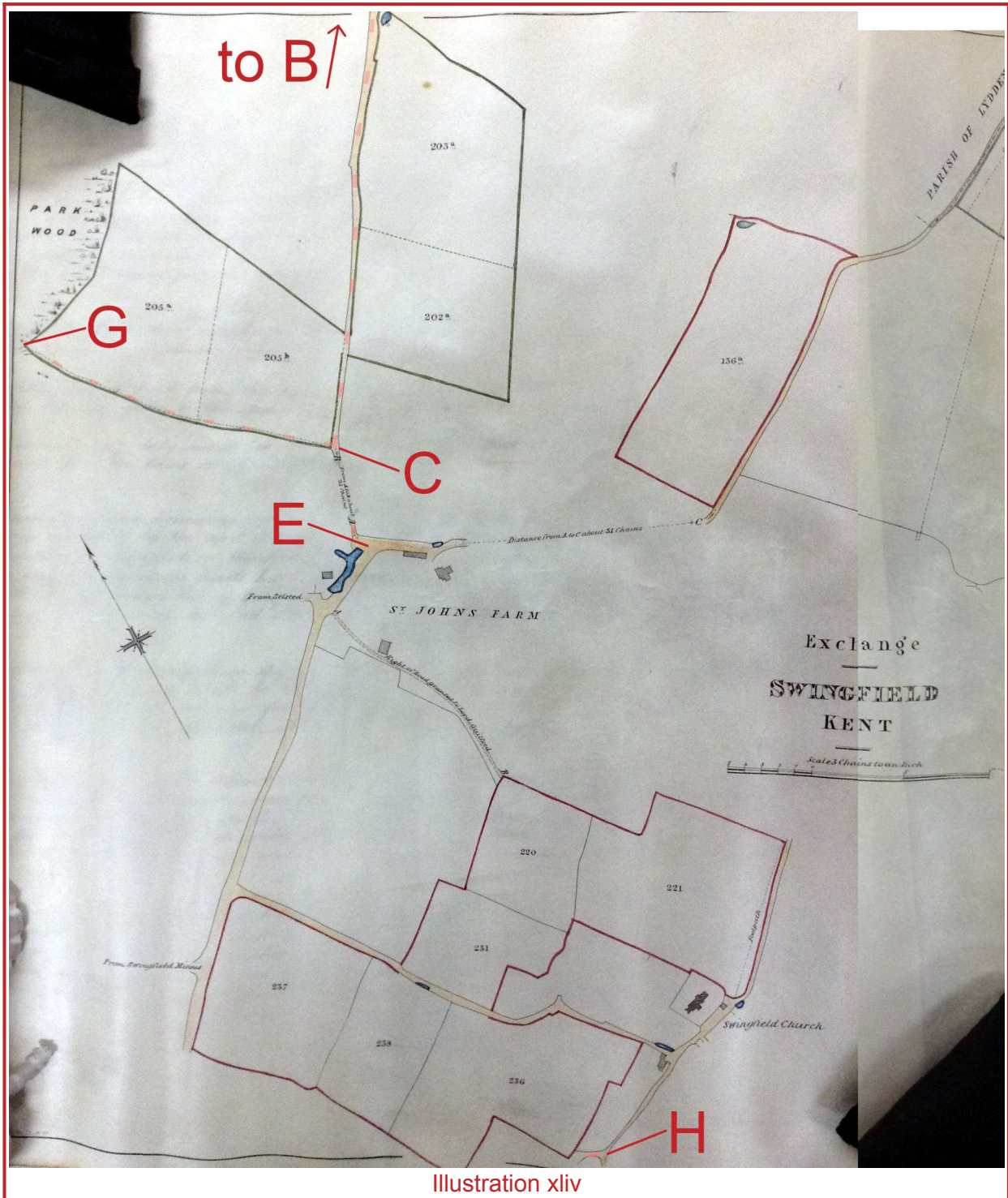
M.2. **Source:** National Archives⁷⁷

■ **Adisham order**



77 MAF 11/829, 11/564

Swingfield order



M.3. **Description:** *Adisham order*: original scale: three chains to one inch (1:2,376, scale bar not marked on map owing to distortions in photography); orientation: unchanged (top is north). *Swingfield order*: original scale: three chains to one inch (1:2,376, scale bar marked on map); orientation: unchanged (top is north-east).

M.4. Two orders of exchange were made by the Inclosure Commissioners in 1878 (as respects Adisham) and 1882 (as respects Swingfield) under section 147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

M.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.

M.6. The Adisham exchange includes a parcel of land in the parish of Wootton, labelled 17, which lies to the north of application way (I) between A and B, where the way turns from south to east and then south again. On the order plan, the application way is coloured sienna (but no colouring is apparent where the way resumes its southern course): so too are several other roads and tracks shown on the plan. It is suggested that the colouring is likely to indicate a metalled surface, and not intended to distinguish public from private ways.

M.7. The Swingfield exchange includes parcels of land in that parish, edged green and labelled 202a, 203a, 205a and 205b, which are located on either side of application way (I) immediately north-east of C. Also included is land in the vicinity of Swingfield abutting application way (V) at H.

M.8. Most or all of the tracks shown are coloured sienna (fading makes it hard to be certain which), and again, it is suggested that the colouring is likely to indicate a metalled surface, and not intended to distinguish public from private ways.

M.9. However, application way (I) is boldly shown coloured sienna, and the discontinuity in the plan marked A and B (corresponding to E and C) is annotated 'From A to B about 21 chains'.⁷⁸ Application way (IV) also is shown, unenclosed on its north-east side, but it is not clear whether it is coloured in a faded sienna.

M.10. A track leading south-southeast from St John's Farm (formerly the line of bridleway HE181) is annotated 'Right of Road granted to Lord Guilford'.

M.11. A small part of the eastern end of application way (V) is shown at H, but again, it is not clear whether it is coloured in a faded sienna.

M.12. **Conclusion:** The plans prepared for the purposes of the exchanges show the relevant application ways, or parts of them, as well-established, generally enclosed tracks or roads, presumably with metalled surfaces (and therefore coloured sienna). In the Adisham exchange, it is notable that parcel 17 was owned (at the time of the application) by the Ecclesiastical Commissioners and could be reached only by application way (I). In the Swingfield exchange, the land edged green was owned (at the time of the application) by the Rt Hon Dudley Francis, Earl of Guilford, but accessible only via application ways (I) or (II).

⁷⁸ 21 chains is 422 metres, corresponding to the distance of 440 metres between C and E stated at para.1.E.2 above.

M.13. It is submitted that the plans show the relevant application ways as established elements of the local road network, and that these ways were essential to enable landowners to access their holdings.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane		1
(II)	WB	Old Road		
(III)	FD	Hermitage Lane		
(IV)	CG	Park Lane		1
(V)	HI	Street Lane		
(VI)	JK	North Court Bottom Road		
(VII)	LMN	Hogstock Lane		
(VIII)	MO	Five Acre Lane		

N. Ordnance Survey County Series 25-inch plans

N.1. **Date:** various

N.2. **Source:** British Library, National Library of Scotland⁷⁹

■ **Way (I): West Lees Lane (first edition, sheets LVII/15, LXVII/3)**



79 Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheets LVII/15, LXVII/2, LXVII/3, LXVII/6, LXVII/7, LXVII/10

**Way (II) West Lees Lane/Broomfield Lane (first edition, LXVII/2, LXVII/3:
continued on sheet for Way (III))**

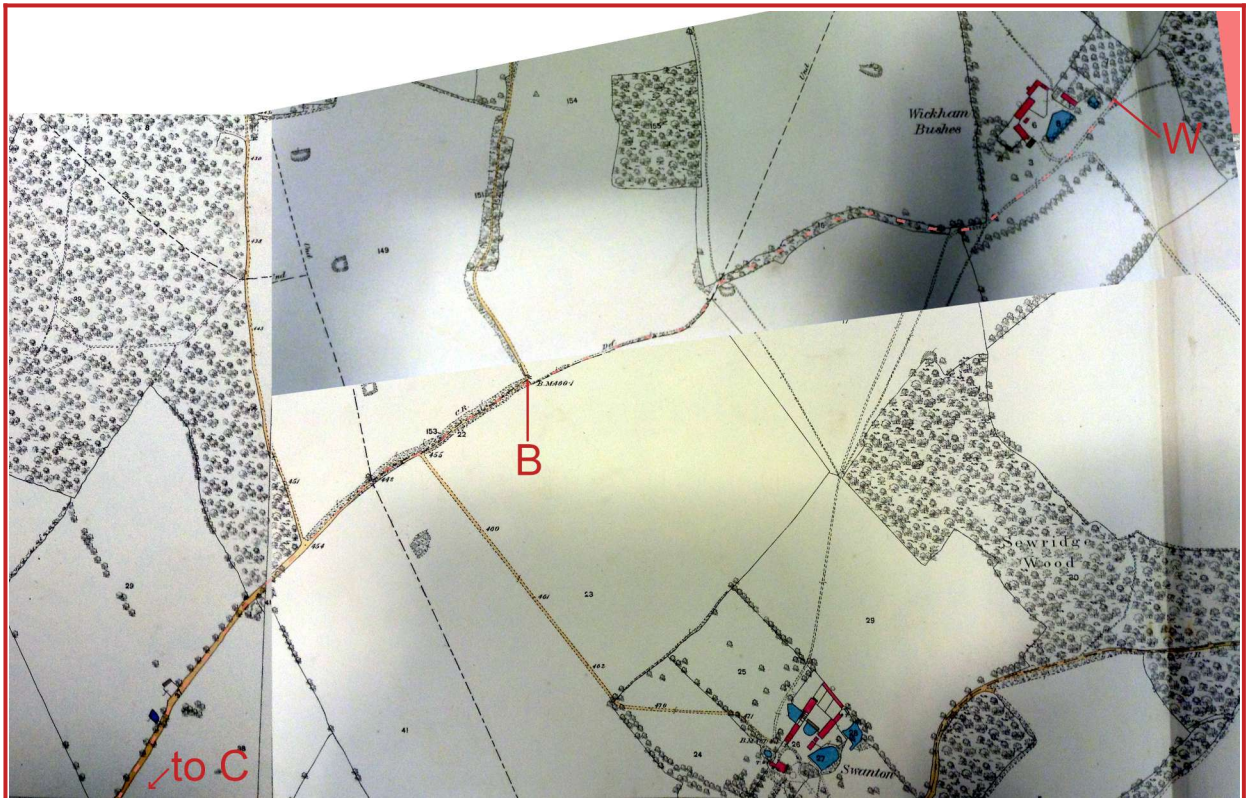
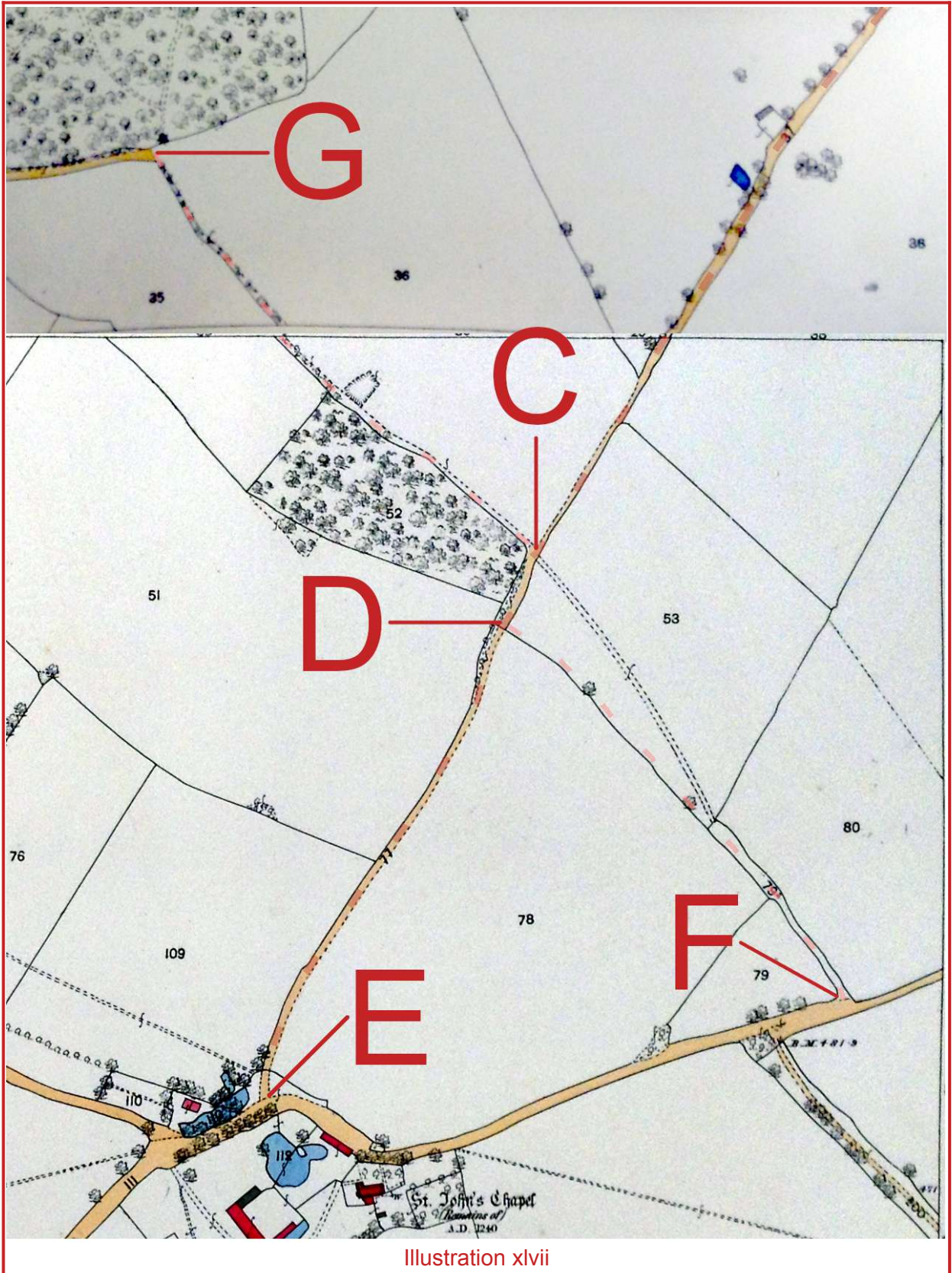


Illustration xlvi

Way (III) Hermitage Lane and Way (IV) Park Lane (first edition, LXVII/2, LXVII/6)



Way (V) Street Lane (first edition, LXVII/6)

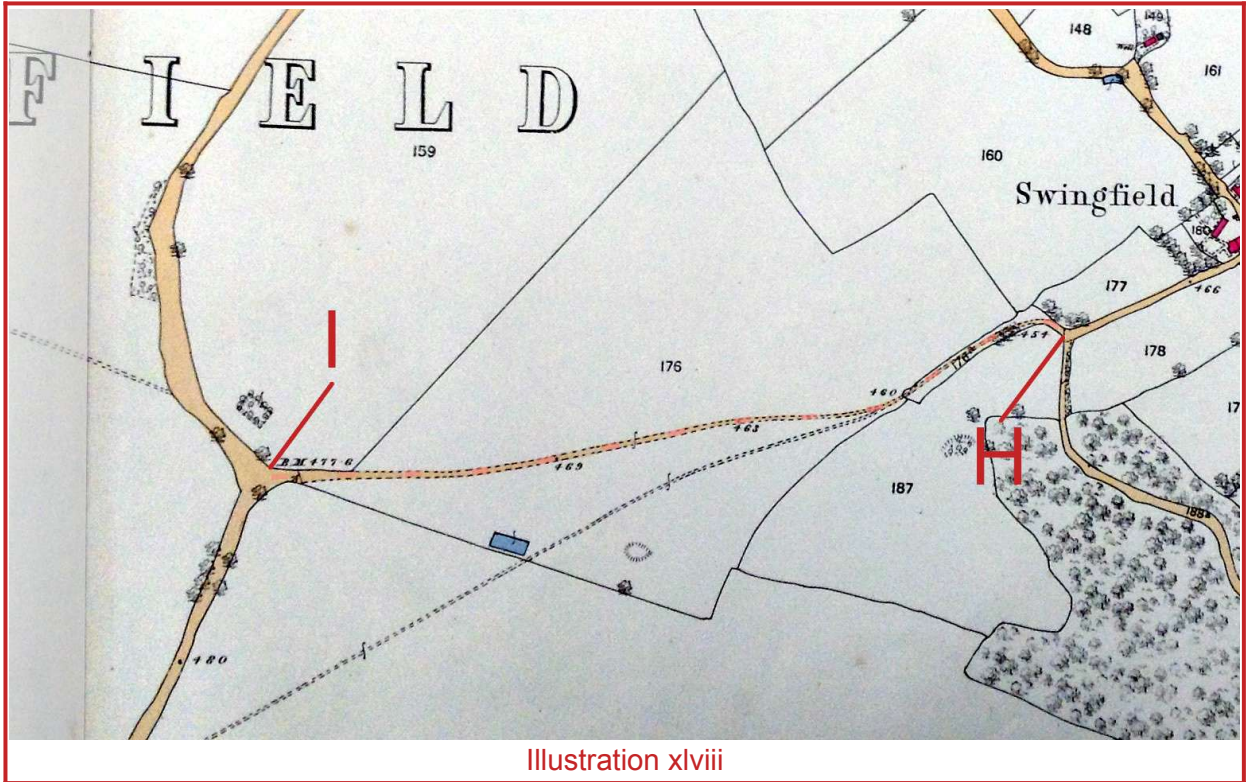


Illustration xlvi

Way (VI) North Court Bottom Road (first edition, LXVII/6, LXVII/7)

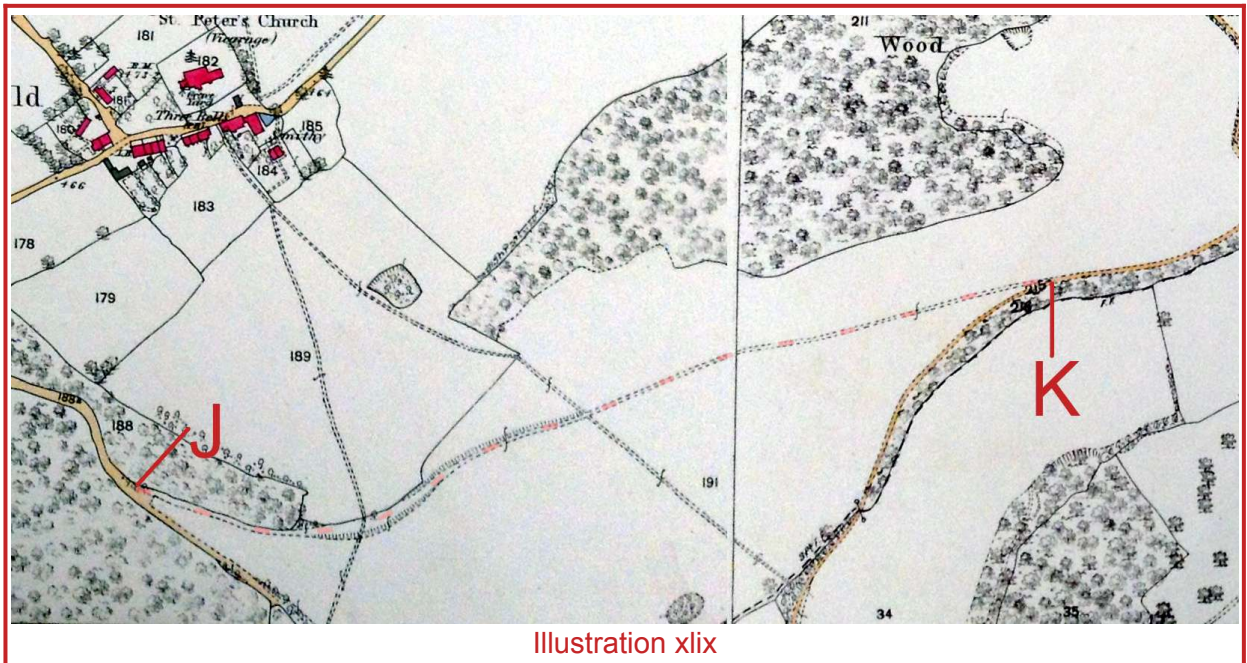


Illustration xlix

Way (VII) Hogstock Lane and Way (VIII) Five Acre Lane (first edition, LXVII/10)

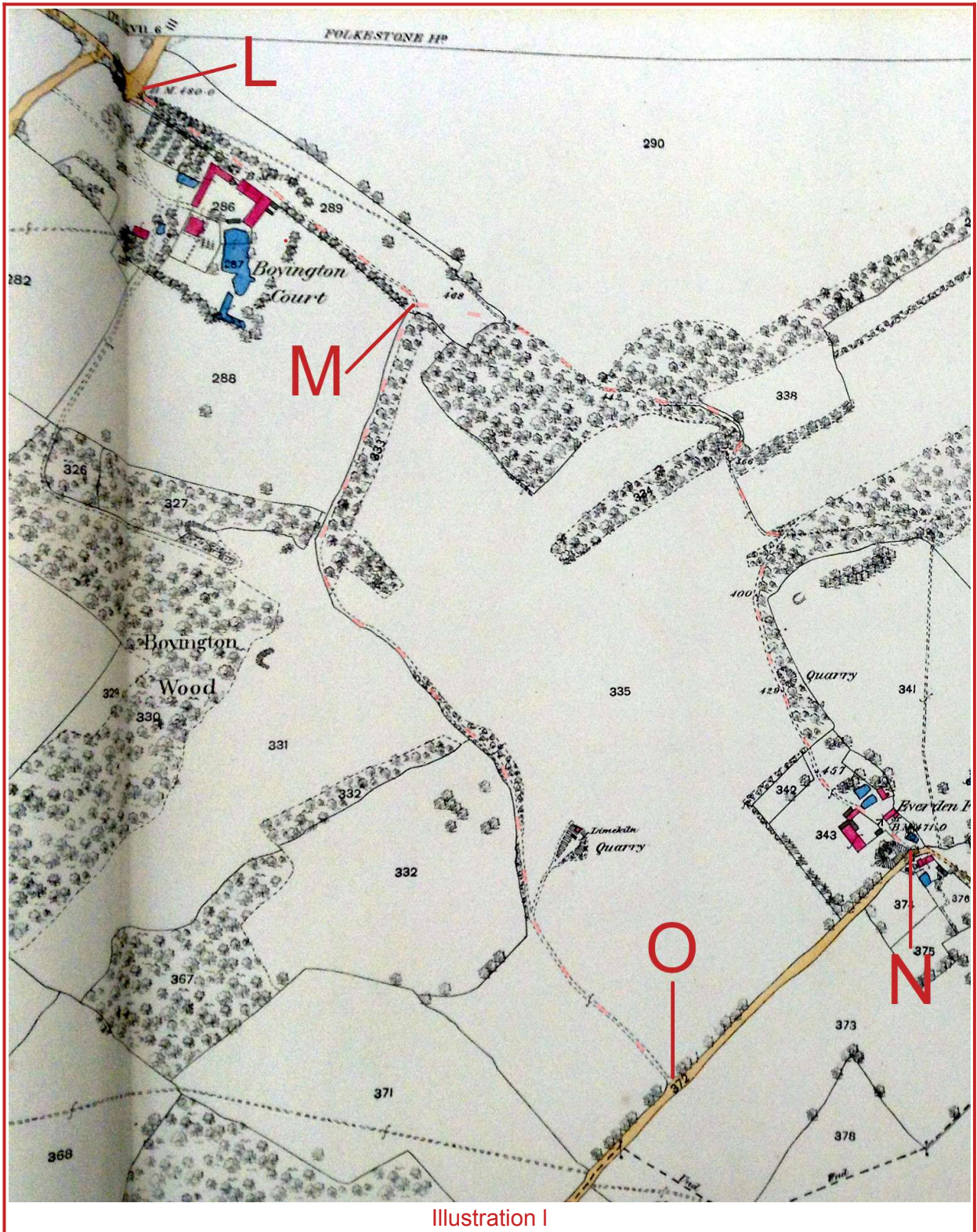


Illustration I

Area books (see marked-up plan at Annexe C at p.134 below)

Way	Route	Parish	Parcel no.	Description
(I)	AB	Wootton	62*	Road
(I)	AB	Wootton	139*	Road
(I)	AB	Wootton	146*	Road
(I)	AB	Wootton	151*	Road, &c.
(II)	WBCDE	Lydden	3	Pasture, &c.
(II)	WBCDE	Lydden	16*	Wood
(II)	WBCDE	Wootton	154	Pasture, &c.
(II)	WBCDE	Wootton	153* ^{1/2}	Road
(II)	WBCDE	Lydden	22* ^{1/2}	Road
(II)	WBCDE	Swingfield	37*	Road
(II)	WBCDE	Swingfield	77*	Road
(III)	FD	Swingfield	79a*	Road
(III)	FD	Swingfield	53	Pasture, &c.
(IV)	CG	Swingfield	36	Arable, &c.
(IV)	CG	Swingfield	34	Road
(V)	HI	Swingfield	176a*	Road, &c.
(V)	HI	Swingfield	176	Pasture, &c.
(VI)	JK	Swingfield	191	Arable, &c.
(VII)	LMN	Swingfield	289	Pasture, trees, &c.
(VII)	LMN	Swingfield	291	Wood, &c.
(VII)	LMN	Swingfield	335	Arable, &c.
(VII)	LMN	Swingfield	343	Houses, yards, garden, orchard, &c
(VIII)	MO	Swingfield	333	Wood, &c.
(VIII)	MO	Swingfield	335	Arable, &c.

Way (I): West Lees Lane (second edition, sheets LVII/15, LXVII/3)



**Way (II) West Lees Lane/Broomfield Lane (second edition, LXVII/2, LXVII/3:
continued on sheet for Way (III))**

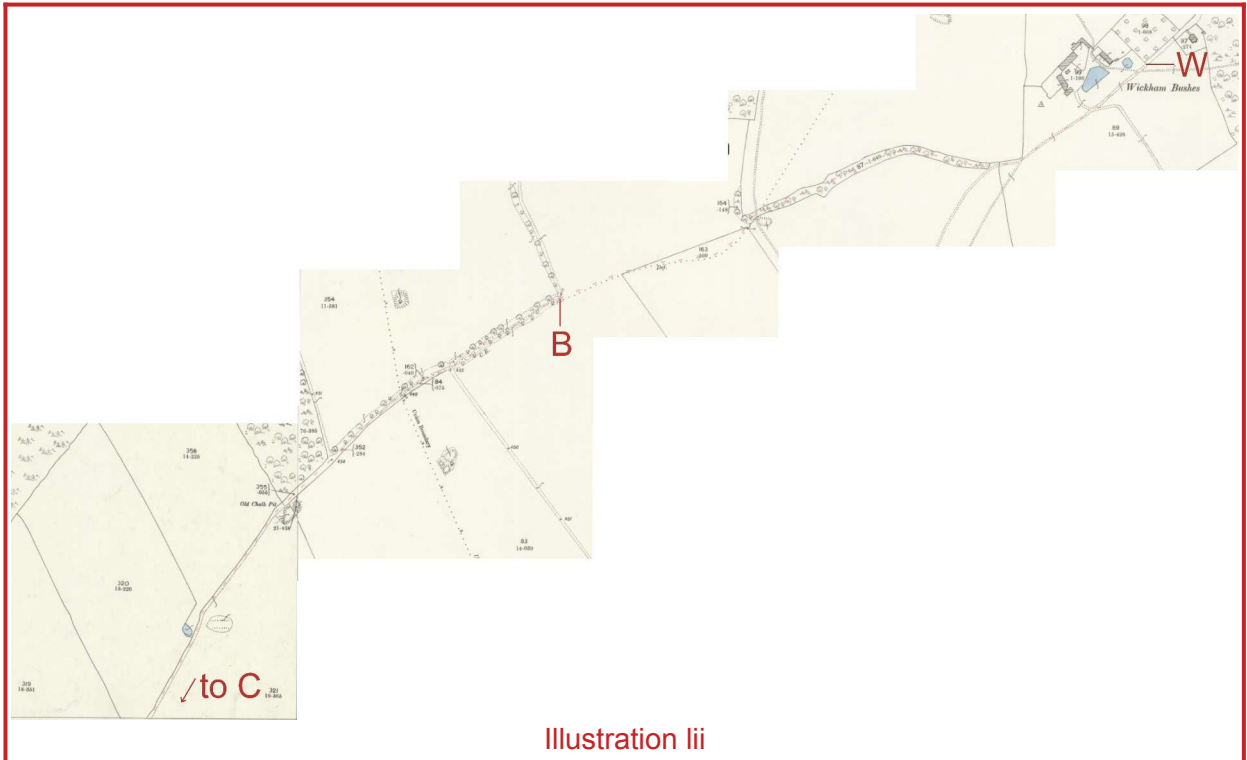
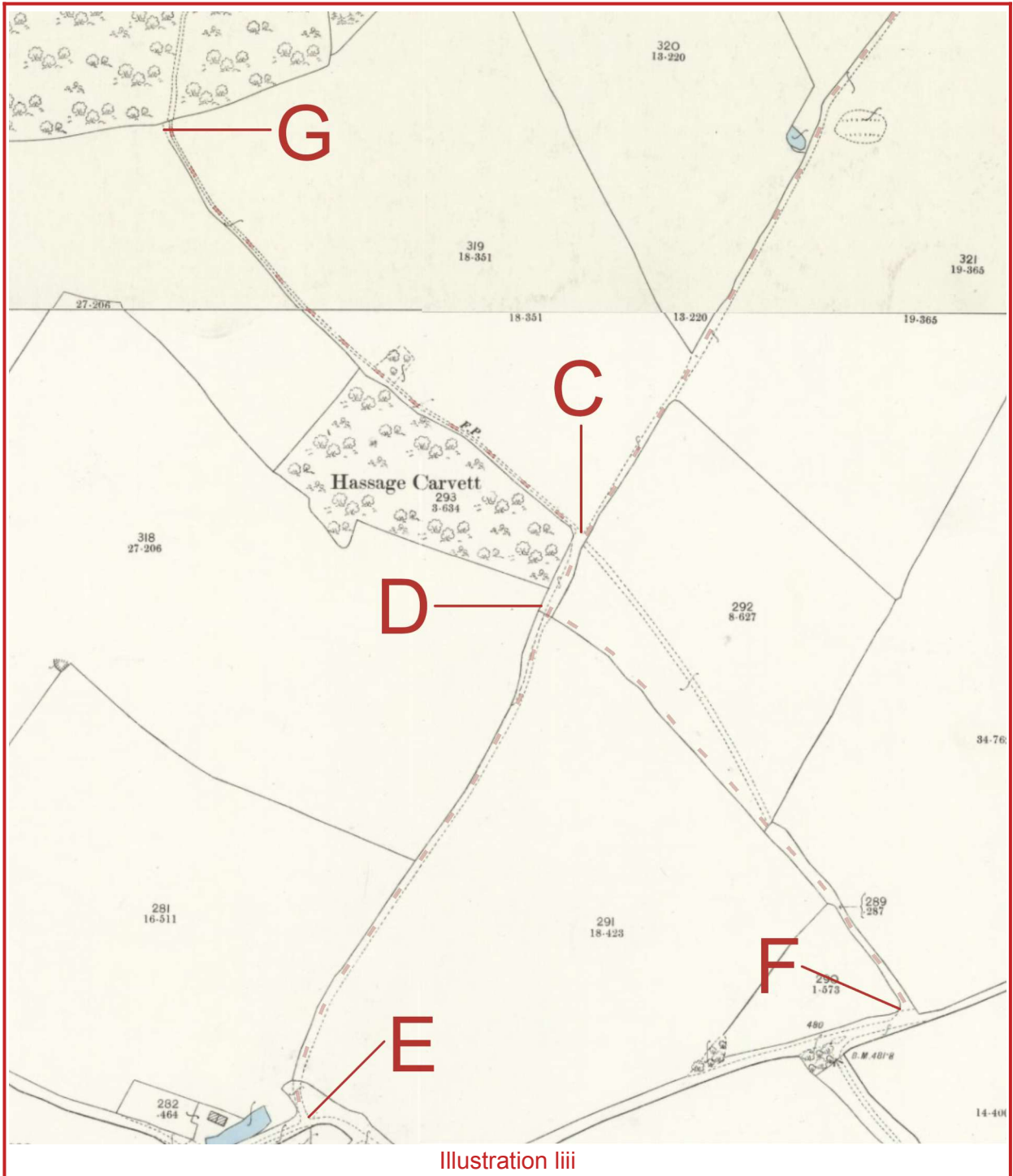


Illustration lii

Way (III) Hermitage Lane and Way (IV) Park Lane (second edition, LXVII/2, LXVII/6)



Way (V) Street Lane (second edition, LXVII/6)

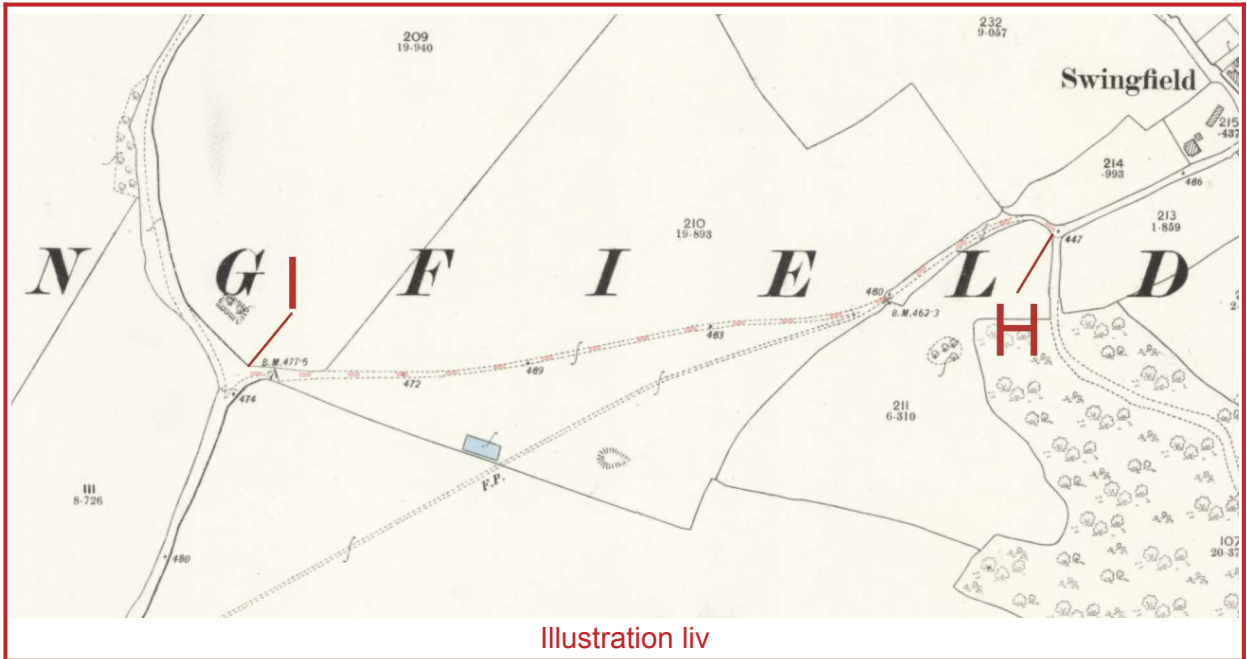


Illustration liv

Way (VI) North Court Bottom Road (second edition, LXVII/6, LXVII/7)

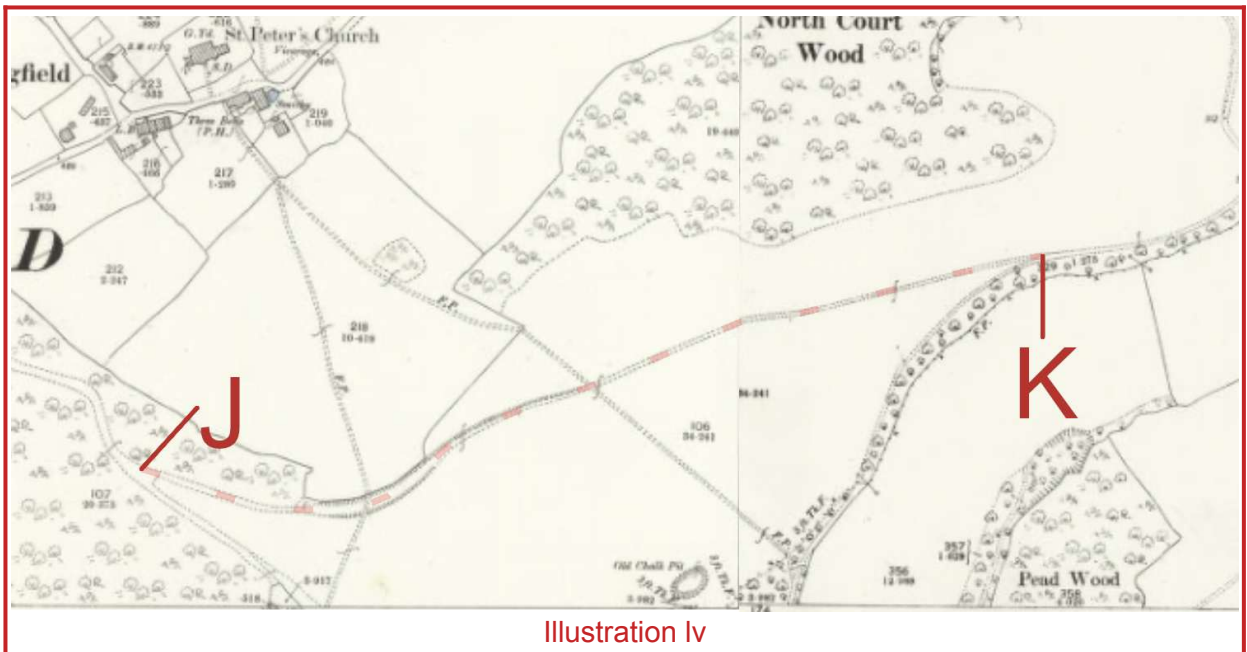
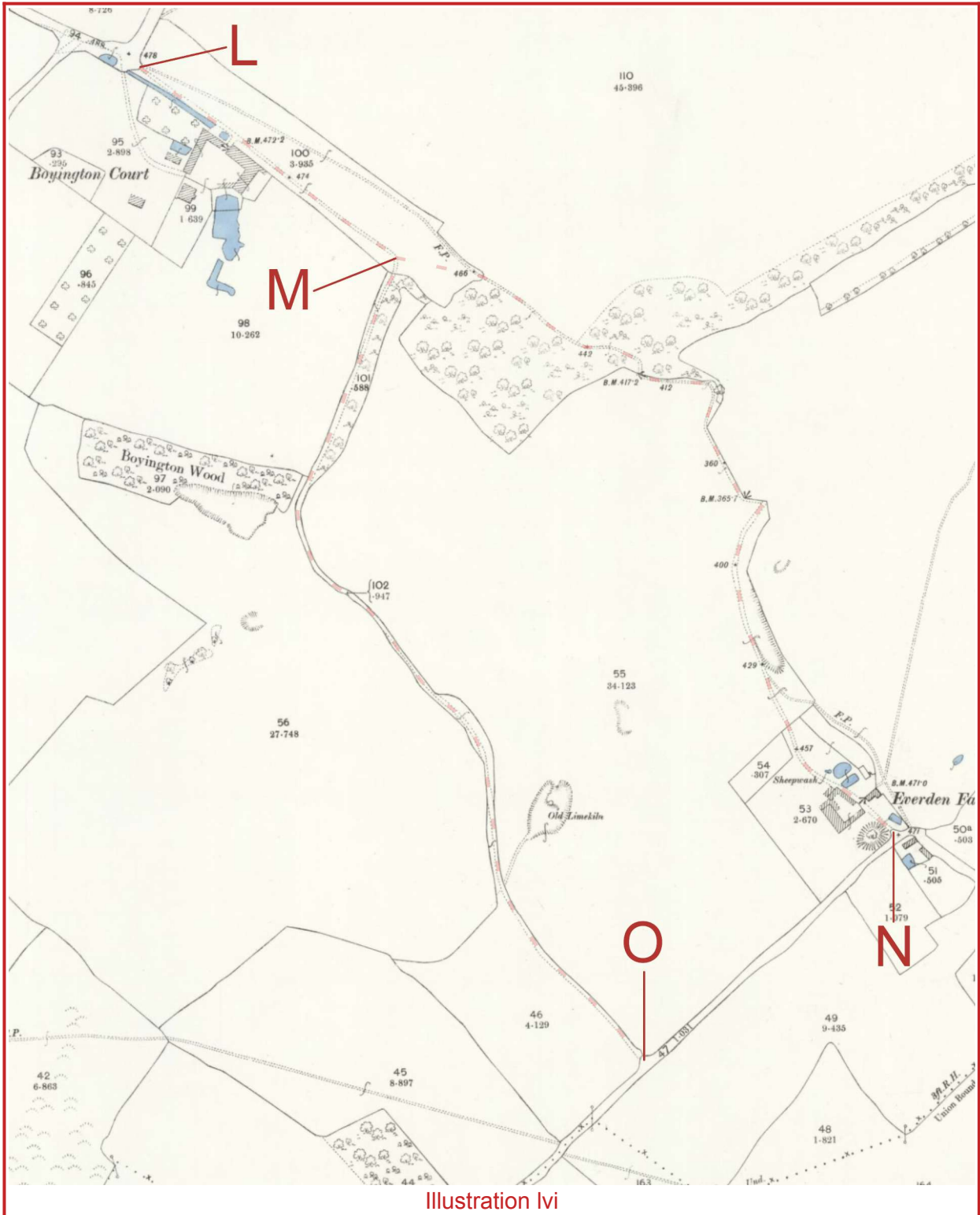


Illustration lv

Way (VII) Hogstock Lane and Way (VIII) Five Acre Lane (second edition, LXVII/10)



N.3. **Description:** Original scale: 1:2,500 (twenty five inches to one mile); orientation: unchanged (north is top). The descriptions of individual parcels in the area books to the

first-edition plans (see table on p.90 above) are marked-up on a composite first-edition plan at Annexe C at p.134 below.

N.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. Only the first two editions are reproduced here.

N.5. The first edition plans were surveyed in 1871 or 1872 and published in 1873. The second edition plans were revised in 1865 and published in 1898.

N.6. Colouring in sienna on the first edition plan indicates that the road was metalled.⁸⁰

Way (I) West Lees Lane/Broomfield Lane (ABCDE)

N.7. On the first edition plan, application way (I) is shown coloured sienna throughout. The majority of the way between A and B is shown unenclosed, but with an initial and intermediate sections which are enclosed lanes. There are at least two gates.

N.8. The first part of the application way from A to B in Wootton is part of parcel 62, then 139, 146, 152. All of these are described as 'Road' in the area book.

N.9. The second part of the application way between B and C is partly enclosed and elsewhere partly unenclosed or unenclosed on one side: from D to E it is unenclosed on the south side. There are at least two gates, one at D and one near E. The parish boundary between Wootton and Lydden follows the centre line of the road (*i.e.* labelled 'C.R.') between B and the Swingfield parish boundary.

N.10. The second part of the application way from B to E comprises parcel Wootton 153/Lydden 22, then Swingfield 37, 77. All of these are described as 'Road' in the area book.

N.11. On the second edition plan, the fully-enclosed way south of A has been opened out on the east side, as has part of the way between B and C on the south side. Three gates are shown between A and B.

Way (II) Old Road (WB)

N.12. On the first edition plan, application way (II) is shown unmetalled (as is Wickham Bushes Lane) and unenclosed. There is at least one intermediate gate.

N.13. The application way is part of parcel 3, then leads through a linear copse (known in this part of Kent as a *carvet*⁸¹) parcel 16, and then a trackway along the south side of parcel 154. As the track is braced into the fields crossed, the descriptions of those fields in the area book refer to the-then state of cultivation (e.g. 'Pasture, &c.'). Where, in parcels 3 and 154, there is reference to the description including '&c.', it may be inferred that the '&c.' refers to the road or track.

N.14. On the second edition plan, there is little change, save that no track is now shown along the parish boundary on the south side of what was shown as parcel 154 on the first-edition plan. Two gates are shown in quick succession at W, followed by a further two.

⁸⁰ '**Carriage drives** were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 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.

⁸¹ kentarchaeology.org.uk/research/dictionary#C

Way (III) Hermitage Lane (FD)

N.15. On the first edition plan, application way (III) is shown unmetalled. Part is enclosed, leading to F, the remainder is enclosed. Whereas the application way follows the headland on the south-western side of parcel 53 towards D, the plan shows a cross-field direct route terminating at C. Two gates are shown (none at F).

N.16. The application way is part of parcel 53, and then comprises parcel 79a. The track initially is braced into the field crossed, and does not follow the claimed alignment, and therefore the description in the area book refers to the-then state of cultivation (*i.e.* 'Pasture, &c.'). However, the enclosed section, parcel 79a, is described as 'Road'. Where, in parcel 53, there is reference to the description including '&c.', it may be inferred that the '&c.' refers to the road or track.

N.17. On the second edition plan, there is little change.

Way (IV) Park Lane (CG)

N.18. On the first edition plan, application way (IV) is shown unmetalled (whereas the continuation from G to Stockham Cottages is metalled). The way follows a headland, and is open on the north-eastern side. No gates are shown.

N.19. The application way is part of parcel 36. As the track is braced into the field crossed, the description in the area book refers to the-then state of cultivation (*i.e.* 'Arable, &c.'). Where, in parcel 36, there is reference to the description including '&c.', it may be inferred that the '&c.' refers to the road or track.

N.20. On the second edition plan, there is little change, but the line of the application way now is annotated 'F.P.'. The continuation of the way west from G no longer is shown.

Way (V) Street Lane (HI)

N.21. On the first edition plan, application way (V) is shown coloured metalled throughout. The first part runs through a narrow field so that it has the appearance of being enclosed with the appearance of a drove road: the remainder is unenclosed and cross-field. Three gates are shown.

N.22. The application way is part of parcel 176a, and then 176. The westerly part of the track, parcel 176, is braced into the field crossed, and therefore the description in the area book refers to the-then state of cultivation (*i.e.* 'Pasture, &c.'). However, the easterly enclosed section, parcel 176a, is described as 'Road &c.'. Where, in parcel 176, there is reference to the description including '&c.', it may be inferred that the '&c.' refers to the road or track. (The reference in parcel 176a to '&c.' may be intended to describe pasture as a feature secondary to the road.)

N.23. On the second edition plan, there is little change. Two gates are shown.

Way (VI) North Court Bottom Road (JK)

N.24. On the first edition plan, application way (VI) is shown unmetalled (whereas the connections at both ends are metalled). The western end is enclosed on the north side. Notable earthworks are visible as the way rounds the slopes of the valley south of Swingfield Street. No gates are shown.

N.25. The application way is part of parcel 191. As the track is braced into the field crossed, the description in the area book refers to the-then state of cultivation (*i.e.* 'Arable, &c.'). The reference to the description including '&c.' may enable an inference that the '&c.' refers to the road or track.

N.26. On the second edition plan, there is little change.

Way (VII) Hogstock Lane (LMN)

N.27. On the first edition plan, application way (VII) is shown unmetalled. The way largely is unenclosed, save for a short section near N where the banks of the holloway are recorded as enclosing the way. At least four gates are shown.

N.28. The application way is part of parcels 289, 291, 335 and 343. As the track is braced into the fields crossed, the descriptions of those fields in the area book refer to the-then state of cultivation (*e.g.* 'Arable, &c.'). The reference to the descriptions including '&c.' may enable an inference that the '&c.' refers to the road or track.

N.29. On the second edition plan, there is little change. A path from L east-southeast for about 350m is marked 'F.P.', but this path is not on the line of the application way, but joins it immediately to the south-east of the marking. An intersecting path from Ellinge, now bridleway HE189, is marked 'B.R'. It is suggested that, although the continuation from the point of intersection to N is now recorded as bridleway HE189, it is unlikely that this line was used by horse riders from Ellinge (restricted byway ER76 providing a more direct route), and more likely that the continuation from the point of intersection to M and L was used by horse riders.

Way (VIII) Five Acre Lane (MO)

N.30. On the first edition plan, application way (VII) is shown unmetalled. Save for the most southerly section, the way is enclosed only on the western side, and open on the eastern side. One gate is shown at M.

N.31. The application way is part of parcels 333 and 335. As the track is braced into the parcels crossed, the descriptions of those fields in the area book refer to the-then state of cultivation (*e.g.* 'Arable, &c.'). The reference to the descriptions including '&c.' may enable an inference that the '&c.' refers to the road or track.

N.32. On the second edition plan, the way is now shown largely wholly enclosed, save through the carvet near M and the most southernly part south of the quarry, which now is enclosed only on the eastern side.

N.33. **Conclusion:** The Ordnance Survey County Series plans consistently show the presence of the application ways, save that parts of application way (II) are indistinct on the first-edition plan, and absent on the second edition. Some but not all the application ways are recorded as metalled on the first edition plans. Some are expressly described as a 'Road' in the area book accompanying the first-edition plan, and (with one exception, in relation to part of application way (II)), where the way is braced into the parcel crossed by the way, the description refers to the land use plus '&c.', which allows for the existence of the track or road. All of the ways are shown with features (such as sinuous routes, significant width or uncultivated scrub) which suggest that they are long-standing and perhaps ancient historical ways, whether wholly or partly enclosed, and notably in relation to application way (VI), the earthworks as the way traverses the slope of the spur of the valley.

N.34. It will be seen that none of the application ways is marked on the plans as a footpath or bridleway ('F.P.' or 'B.R.') save as follows, which is strongly suggestive that the surveyor did not perceive them to be ways primarily used or equipped (with bridle gates or stiles) for use on foot or on horseback, but as cart or carriage roads primarily used by vehicles.

Annotation of application ways on Ordnance Survey County Series plans

Way	Route		Label
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Not marked 'F.P.' or 'B.R.' and marked 'C.R.' where coincident with parish boundary
(II)	WB	Old Road	Not marked 'F.P.' or 'B.R.'
(III)	FD	Hermitage Lane	
(IV)	CG	Park Lane	Marked 'F.P.' on second but not third edition ⁸²
(V)	HI	Street Lane	Not marked 'F.P.' or 'B.R.', but adjacent footpath HE183 is marked 'F.P.'
(VI)	JK	North Court Bottom Road	Not marked 'F.P.' or 'B.R.', but transecting footpaths HE185 ⁸³ are marked 'F.P.'
(VII)	LMN	Hogstock Lane	Not marked 'F.P.' or 'B.R.'; ⁸⁴ intersecting path marked 'B.R.'
(VIII)	MO	Five Acre Lane	Not marked 'F.P.' or 'B.R.'

Points summary

Way	Route		Points
(I)	ABCDE	West Lees Lane/Broomfield Lane	2
(II)	WB	Old Road	1
(III)	FD	Hermitage Lane	1
(IV)	CG	Park Lane	1
(V)	HI	Street Lane	2
(VI)	JK	North Court Bottom Road	1
(VII)	LMN	Hogstock Lane	1
(VIII)	MO	Five Acre Lane	1

82 Neither 'F.P.' nor 'B.R.' was marked on the fourth edition plan, which was a post-war economy edition.

83 There are two transecting footpaths, both now are numbered HE185.

84 A footpath from L to a point near M is marked 'F.P.' on the second and third-edition plans, but the marked section is not on the line of the application way.

O. Finance (1909–1910) Act 1910

O.1. Date: 1911

O.2. Source: National Archives

Way (I): West Lees Lane (sheets LVII/15, LXVII/3)

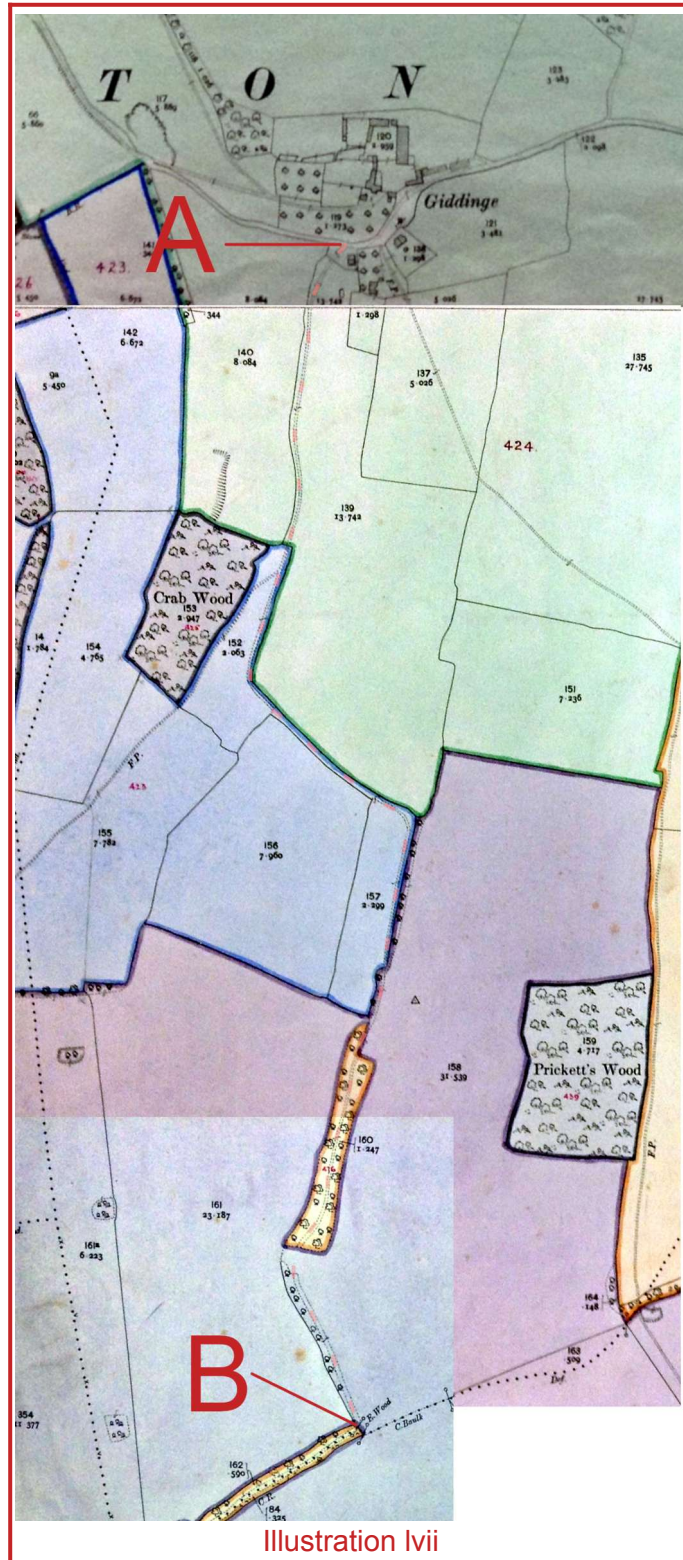


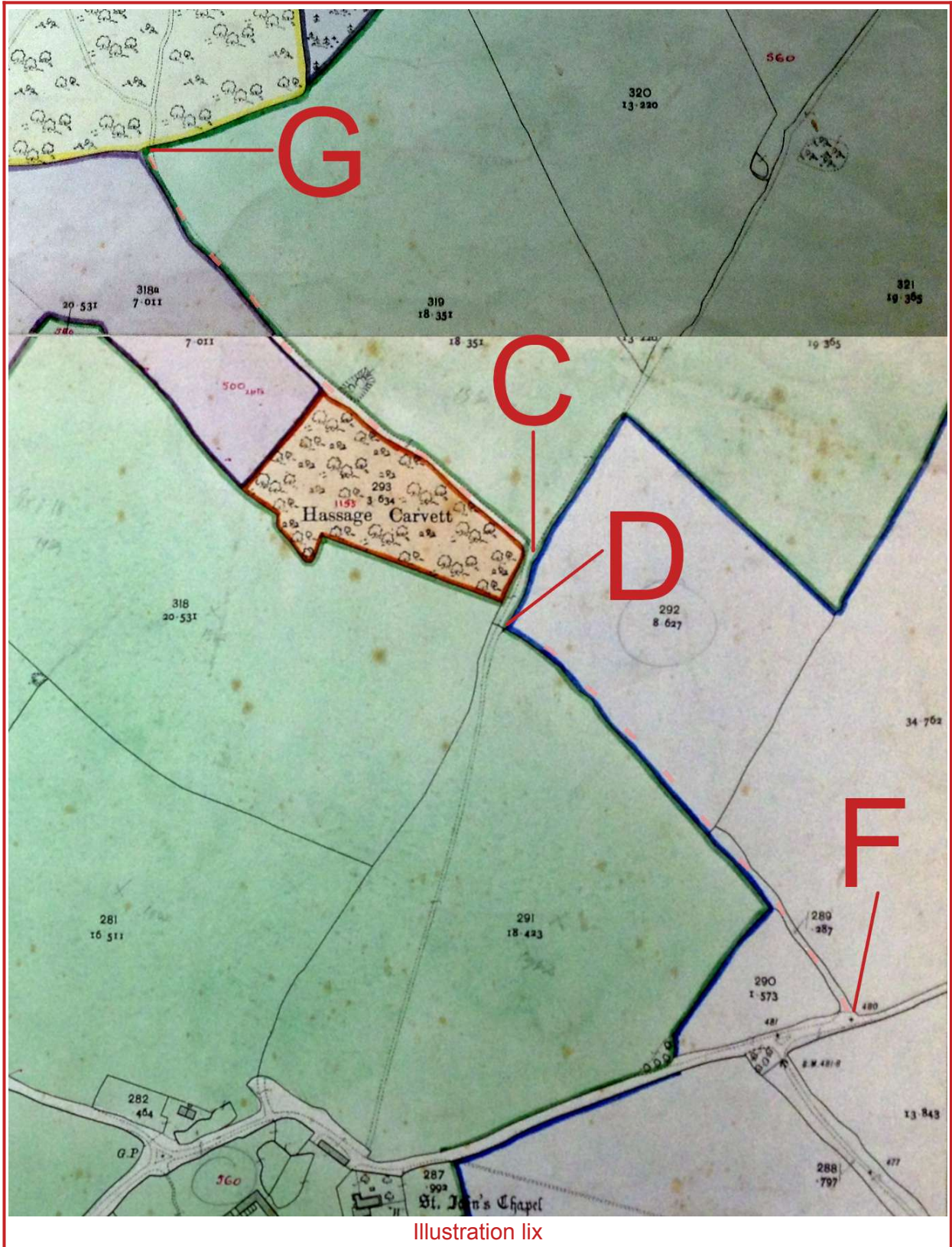
Illustration lvii

Way (II) West Lees Lane/Broomfield Lane (LXVII/2, LXVII/3, LXVII/6)



Illustration Iviii

Way (III) Hermitage Lane and Way (IV) Park Lane (LXVII/2, LXVII/6)



Way (V) Street Lane (LXVII/6)

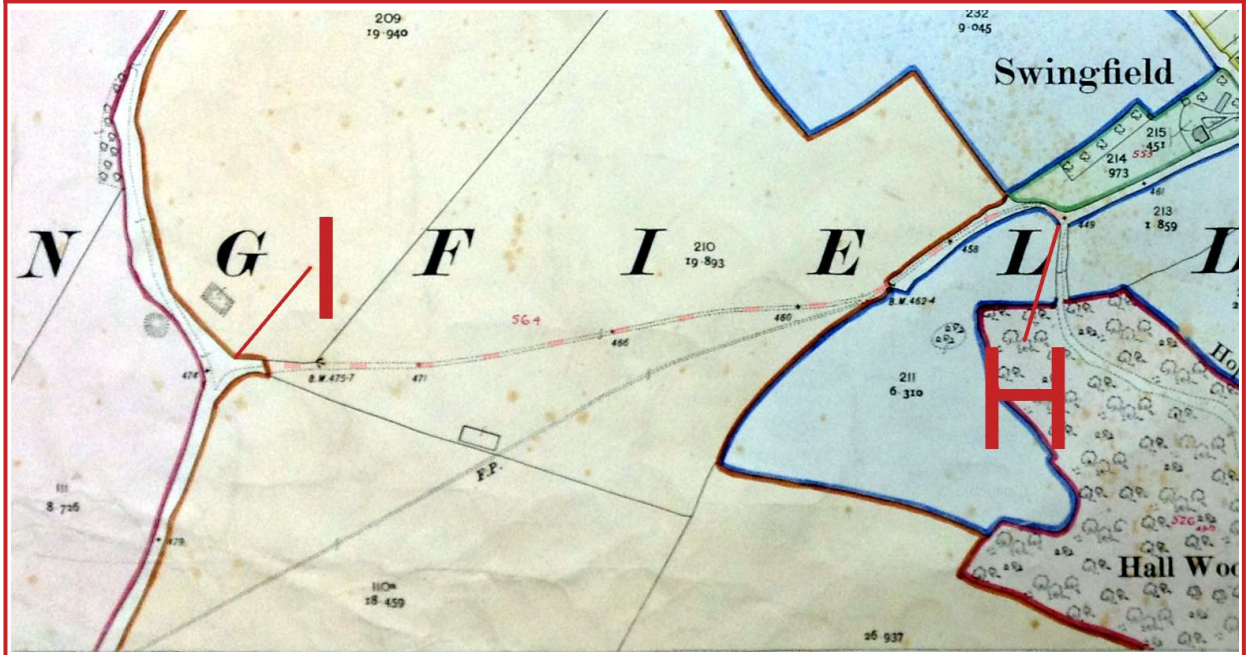
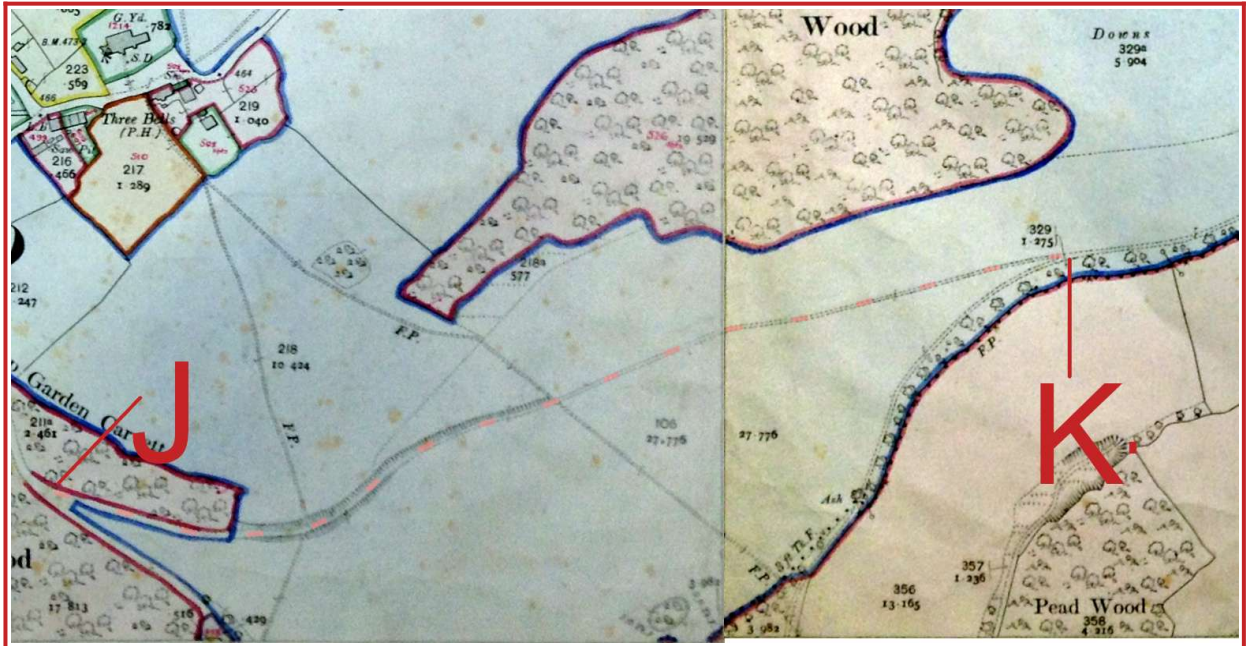


Illustration Ix

Way (VI) North Court Bottom Road (LXVII/6, LXVII/7)



Way (VII) Hogstock Lane and Way (VIII) Five Acre Lane (LXVII/10)

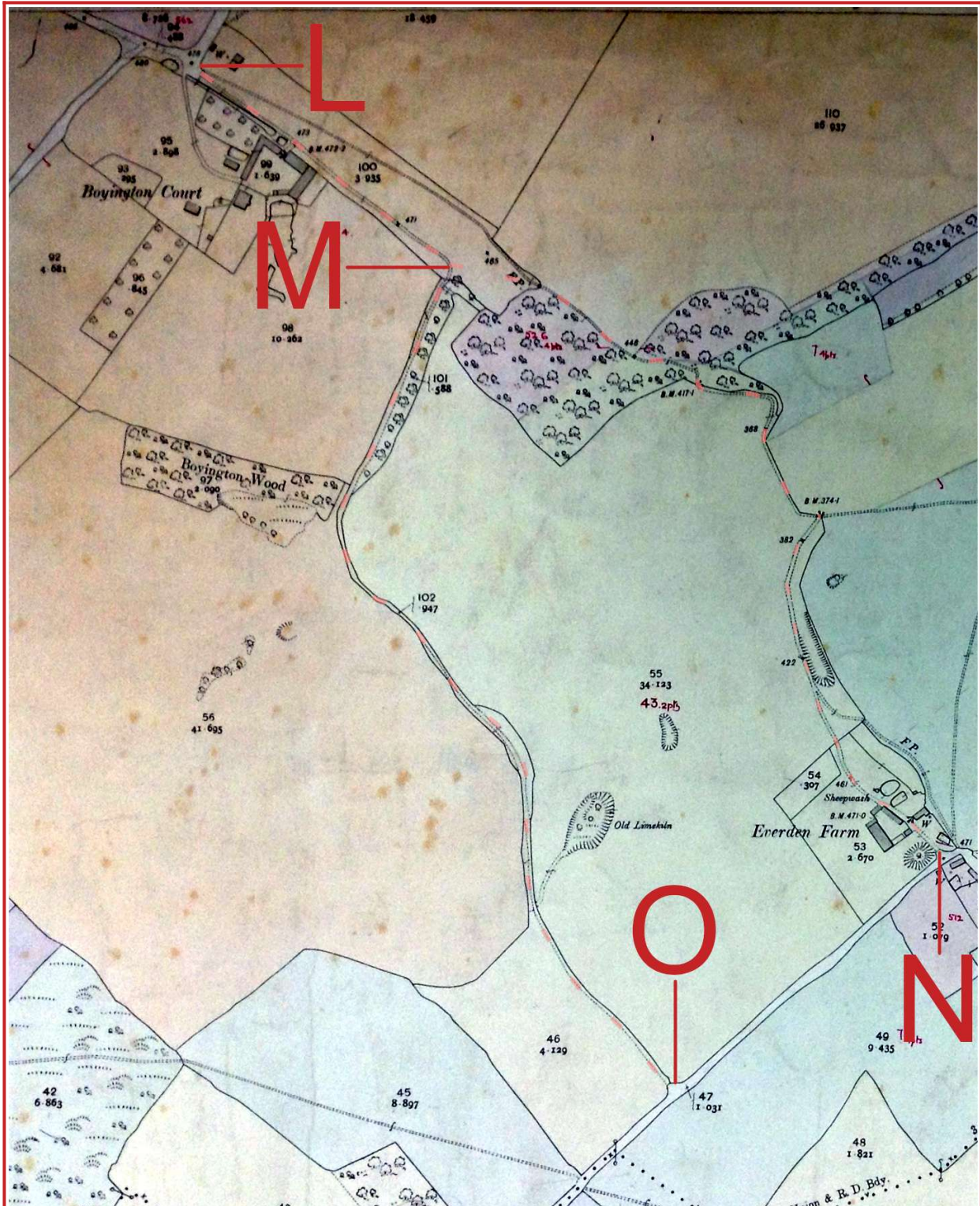


Illustration Ixi

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

O.4. Few of the application ways are excluded from hereditaments. Application way IV is shown as a white road between C and the transition from sheet LXVII/6 north-west to sheet LXVII/2, but the practice is not continued on the latter sheet. Application way V is

shown as a white road from H for a distance of around 140 metres (being the enclosed part of the way) — this part of the way nevertheless is affected by the blue colour wash used for adjacent hereditaments, but the drawing of boundaries to adjacent hereditaments appears to show that the way does not form part of any of them. Application way VI is shown as a white road from J east for a distance of around 120 metres — this part of the way is white in common with the non-colour wash used for the hereditament through which it passes, but again, the drawing of the boundary between the way and that adjacent hereditament appears to show that the way does not form part of any it.

O.5. The application ways pass through the following hereditaments.

Finance Act hereditaments traversed by application ways

Way	Route	Name	Hereditaments	Description
(I)	ABCDE	West Lees Lane/ Broomfield Lane	424, 423, 429 (2pts), 476, 560	560: £75 for 'footpaths'/ public rights of way
(II)	WB	Old Road	83, 429 (2pts)	
(III)	FD	Hermitage Lane	565 (2pts)	
(IV)	CG	Park Lane	(part uncoloured), 560	Mainly uncoloured
(V)	HI	Street Lane	(part uncoloured), 564	Part uncoloured 564: £50 for 'footpaths'/ public rights of way
(VI)	JK	North Court Bottom Road	(part uncoloured), 565 (2pts)	Part uncoloured 565: £100 for 'footpaths'/public rights of way
(VII)	LMN	Hogstock Lane	564, 526 (4pts), 43 (2pts)	See application way (V) for 564
(VIII)	MO	Five Acre Lane	564, 43 (2pts)	43: 'Public footpaths' claimed; £150 for 'foot- paths'/restrictions='footp aths etc.'/public rights of way

O.6. **Background:** The Finance (1909–10) Act 1910 ('FA') 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 land holdings and shown as 'white roads'. This is because s.35 of the 1910 Act provided,

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

A highway authority was a rating authority.

O.7. 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.

O.8. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act, 'The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...'85. Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land. Whether a discount was, in fact, given will depend on several factors:

- Whether the right of way was excluded from valuation (i.e. as a 'white road').
- Whether the landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).

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

- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase in value arising from development were minimised. However, as the 1910 Act also provided for other levies, the calculations in a particular case might be for or against a discount from the total value of the land).
- Whether the landowner declared the right of way on form 4 or form 7 (a failure to declare might be an oversight).
- Whether the valuer accepted the claim for a discount for a right of way.
- Even if the landowner did not declare the right of way, the valuer could give a discount for a right of way which was 'known to' the valuer.

O.9. The December 1910 *Instructions to Valuers* stated that:

183. Site Value Deductions not Claimed by the Owner. — In making Original Valuations under Section 26(1) of the [1910 Act], Valuers will give credit for any deductions under the provisions of Section 25, so far as they are known to them and that notwithstanding the fact that such deductions may not have previously been claimed by or on behalf of the owner.

It follows that, if a deduction for a right of way is given in a particular case, and there is no evidence (as is usually the case) that it was requested by the landowner, the deduction can have only arisen either because it was nevertheless requested, or because the existence of the right of way was known to the valuer. It is unlikely that valuers would have volunteered deductions except in cases where the right of way was obvious — perhaps because it was signposted as such, or referred to as such by the landowner or an employee of the landowner when the valuer was surveying the land.

O.10. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

O.11. The Act included provision for a duty on increment in land value (to capture some of the gain from community development, such as building new railways and public services) and a duty on the capital value of unimproved land on which building might be held back for speculative gain.⁸⁶ It was said by the Chancellor, subsequently, that the two duties expressly were designed to help ensure an honest valuation.⁸⁷ According to the landowner's disposition, the landowner might favour a higher valuation to minimise increment value duty, or a lower valuation to minimise the capital duty, but either way, there was a risk that favouring one might come at the expense of rendering the other more costly. As there was no obligation to declare rights of way to minimise the land valuation (though there was an obligation not to make false declarations), it is hardly surprising that some landowners chose to declare, and others did not. They may have made a decision after careful calculation, or they may have been ignorant that declaration of a right of way could bring possible financial benefits. They may not have wished to draw attention to a right of way, or they may have thought it would make barely any difference (and quite possibly the

⁸⁶ For completeness, the 1910 Act also included provision for a reversion duty on the term of a lease, and a mineral rights duty. Neither is relevant here.

⁸⁷ *Land and Society in Edwardian Britain*, Brian Short, 1997, p.20. Rt Hon Lloyd George, speaking in the House of Commons on the repeal of s.4 of the 1910 Act in 1923, said: 'They [the taxes] were only valuable for the purpose of justifying a valuation, and for that purpose they were admirably conceived because if the valuation was too high the half-penny caught them, and if the valuation was too low the increment tax caught them; so that between one and the other we had a perfectly honest valuation.' *Hansard*, 3 July 1923, vol 166, [col.332](#).

effect would have been adverse to their expected interests). They may have denied (rightly or wrongly) that a right of way existed, or at least not have wanted formally to acknowledge its existence. We cannot (usually) know.

O.12. Thus the absence of any indication of a right of way in a particular hereditament — even where the evidence of adjacent hereditaments (and otherwise) suggests it was crossed by a right of way — tells us nothing at all. One cannot conclude that the absence of any deductions under the FA would appear to confirm that no such public route existed, without knowing the motivation why no deductions were claimed — and invariably there is no record of such motivation.

O.13. **Analysis:** Application way (I) passes through hereditament 560 (St John's Farms), for which a restriction is recorded on the second page for 'footpaths' valued at £75 (and replicated in deductions from value on the fourth page). The only public right of way recorded on the definitive map and statement today which passes through the hereditament is HE181 (south from St John's Farm), a length of around 400 metres.⁸⁸ On the Ordnance Survey County Series twenty-five-inch third-series base plan used for the FA record plan, the only other marked footpath within hereditament 560 is a short length of about 100 metres (not recorded today) south-west of Stockham Farm. It is suggested that a deduction of the sum of £75 could be accounted for only by inclusion of the application way (I), which traverses the hereditament for a distance of about 1,200 metres.

O.14. Application way (IV) is uncoloured on FA record plan sheet LXVII/6, but not excluded on sheet LXVII/2. It is suggested that the exclusion is some evidence that the way was considered to be a road not subject to valuation.

O.15. Part of application way (V) is uncoloured on the FA record plan, at its eastern and western ends where it is enclosed. One would not expect the way to be excluded where it is unenclosed across the field, and it is not, but this is recorded as hereditament 564 (Boyington Farm), for which a restriction is recorded on the second page for 'footpaths' valued at £50 (and replicated in deductions from value on the fourth page). Only the application way and a footpath are marked within hereditament 564 on the Ordnance Survey County Series twenty-five-inch third-series base plan used for the FA record plan, now recorded as footpaths HE53 and HE183 and it is likely that the deductions relate to these two rights of way. However, the field book gives no indication of higher status for either cross-field path, whereas the exclusion of the enclosed end sections of the application way are suggestive of public roads.

O.16. Application way (VI) is uncoloured on the FA record plan at its western end, but not otherwise. One would not expect the way to be excluded where it is unenclosed across the field (nor, for example, is Holloway Lane, at the eastern end of the application way), and apart from its western end, it is not, but this is recorded as hereditament 565 (North Court Farm), for which a restriction is recorded on the second page for 'footpaths' valued at £100 (and replicated in deductions from value on the fourth page). Various footpaths and unenclosed roads are recorded within the hereditament, and the field book gives no indication of any particular status for any such ways.

O.17. Neither application way (VII) nor (VIII) is uncoloured on the FA record plan LXVII/10, although part of way (VII) lies on the Boyington Farm hereditament noted for application way (V), and for which a restriction of £50 is noted for footpaths. About half of way (VIII) lies across hereditament 43 (Everden Farm), for which 'Public footpaths' were claimed by

88 This bridleway was diverted in 2022 to an alignment west of St John's Farm.

the owner on form 4 and for which a restriction is recorded on the second page for ‘foot-paths’ valued at £150 (and replicated in deductions from value on the fourth page); however, various footpaths and unenclosed roads are recorded within the hereditament, and the field book gives no indication of any particular status for any such ways.

O.18. **Conclusion:** A few lengths of the application ways are shown as white roads: although none of the application ways is shown in its entirety, it is suggested that these lengths are relicts of what, in an earlier period, would have been regarded as public roads meriting exclusion. It otherwise is not obvious why those lengths which remain excluded can be accounted for, save as showing a small part of what once would have been the entirety of the way.

O.19. While the entries in field books provide less compelling evidence, it is suggested that the evidence of a deduction for a ‘footpath’ across St John’s Farm must relate in part to application way (I).

Points summary

Way	Route	Name	Hereditaments	Points
(I)	ABCDE	West Lees Lane/Broomfield Lane	424, 423, 429 (2pts), 476, 560	2
(II)	WB	Old Road	83, 429 (2pts)	0
(III)	FD	Hermitage Lane	565 (2pts)	0
(IV)	CG	Park Lane	(part uncoloured), 560	3
(V)	HI	Street Lane	(part uncoloured), 564	2
(VI)	JK	North Court Bottom Road	(part uncoloured), 565 (2pts)	2
(VII)	LMN	Hogstock Lane	564, 526 (4pts), 43 (2pts)	0
(VIII)	MO	Five Acre Lane	564, 43 (2pts)	0

P. Late C19 and early C20 Ordnance Survey and Bartholomew’s maps

P.1. **Source:** National Library of Scotland,⁸⁹ personal collection⁹⁰

⁸⁹ maps.nls.uk

⁹⁰ Bartholomew’s map, 1953 edition

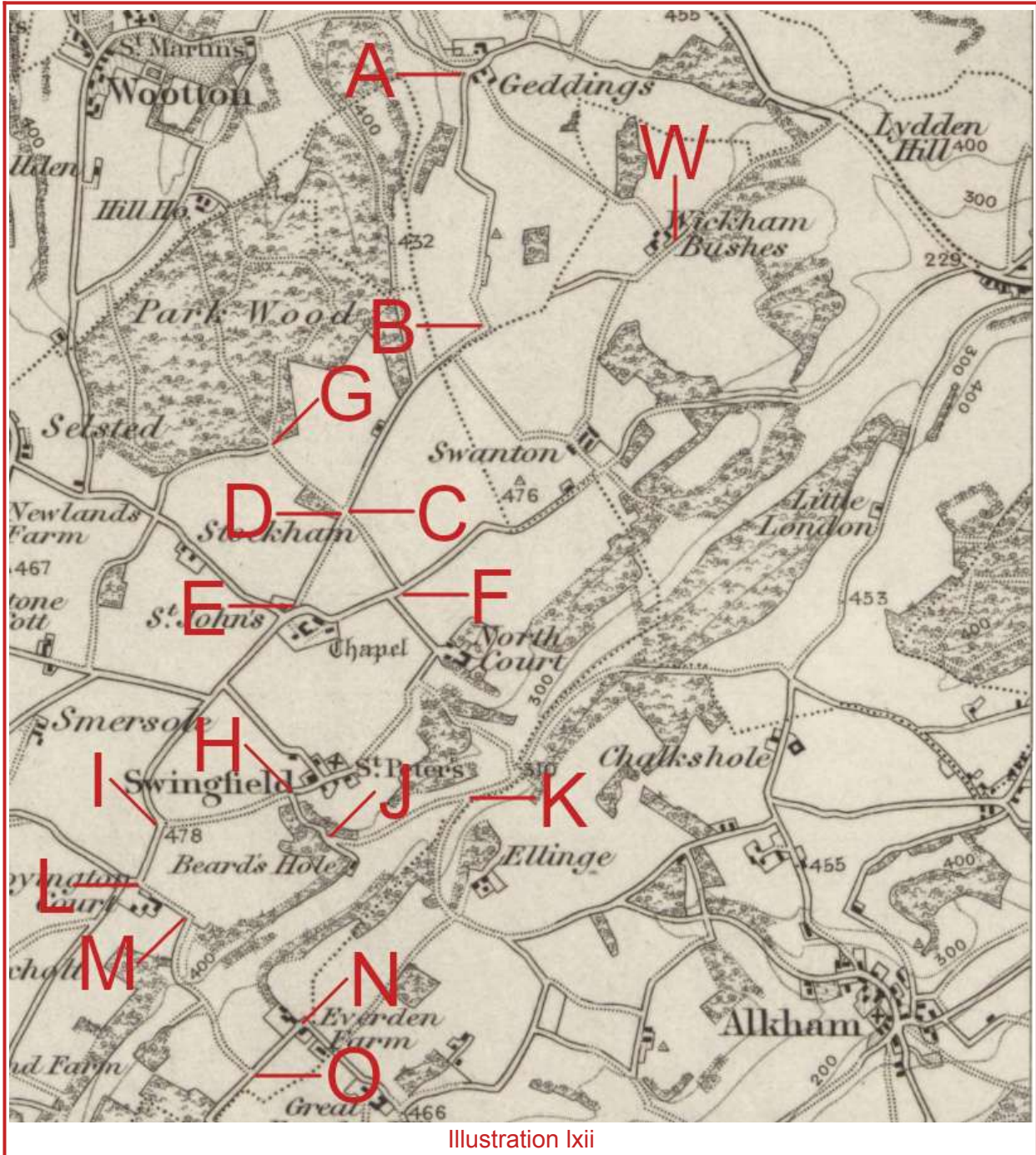


Illustration Ixii

91 Sheet 289: <https://maps.nls.uk/view/239767261#zoom=5.6&lat=1549&lon=7400&layers=BT>

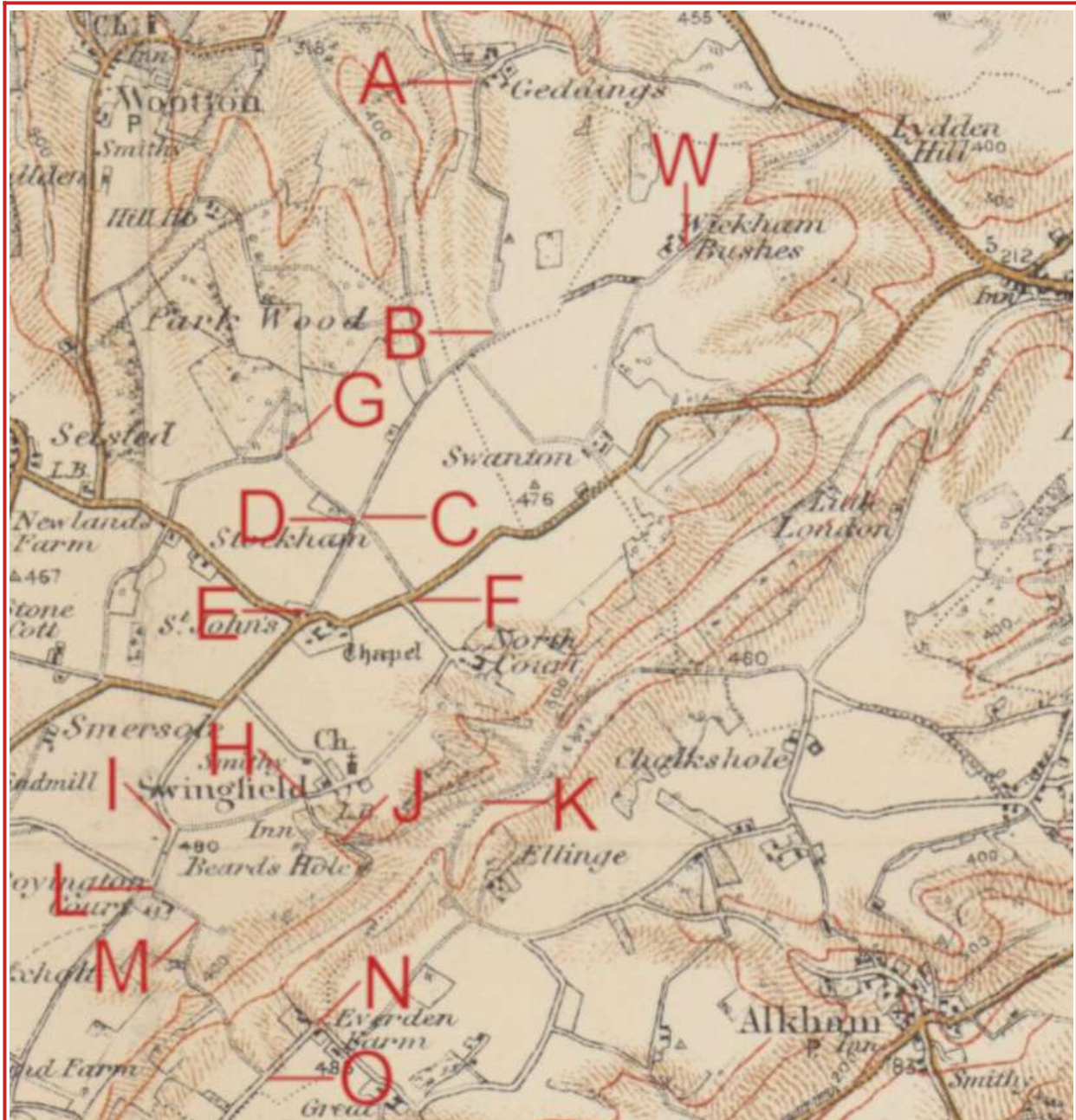


Illustration Ixiii

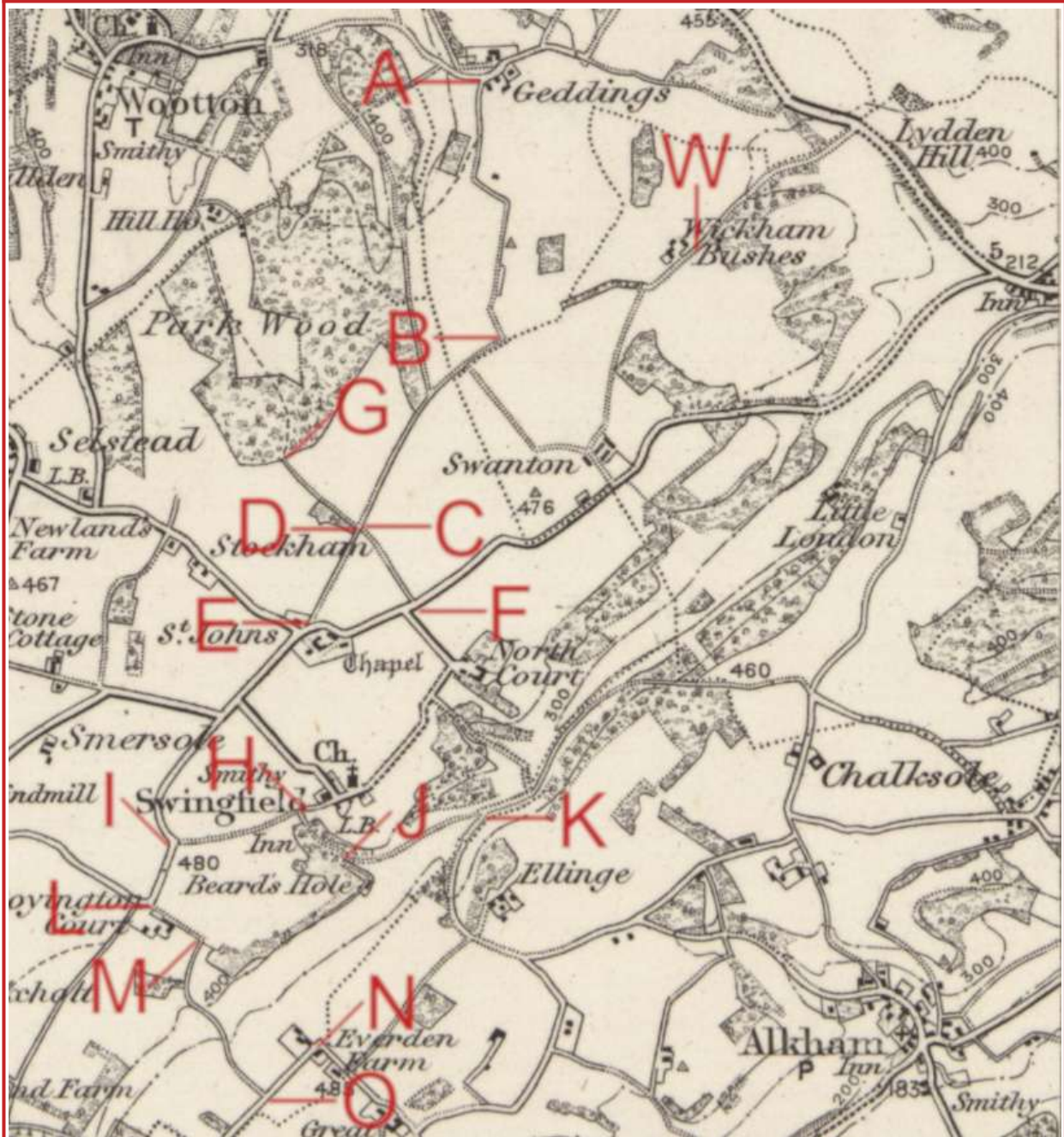


Illustration Ixiv

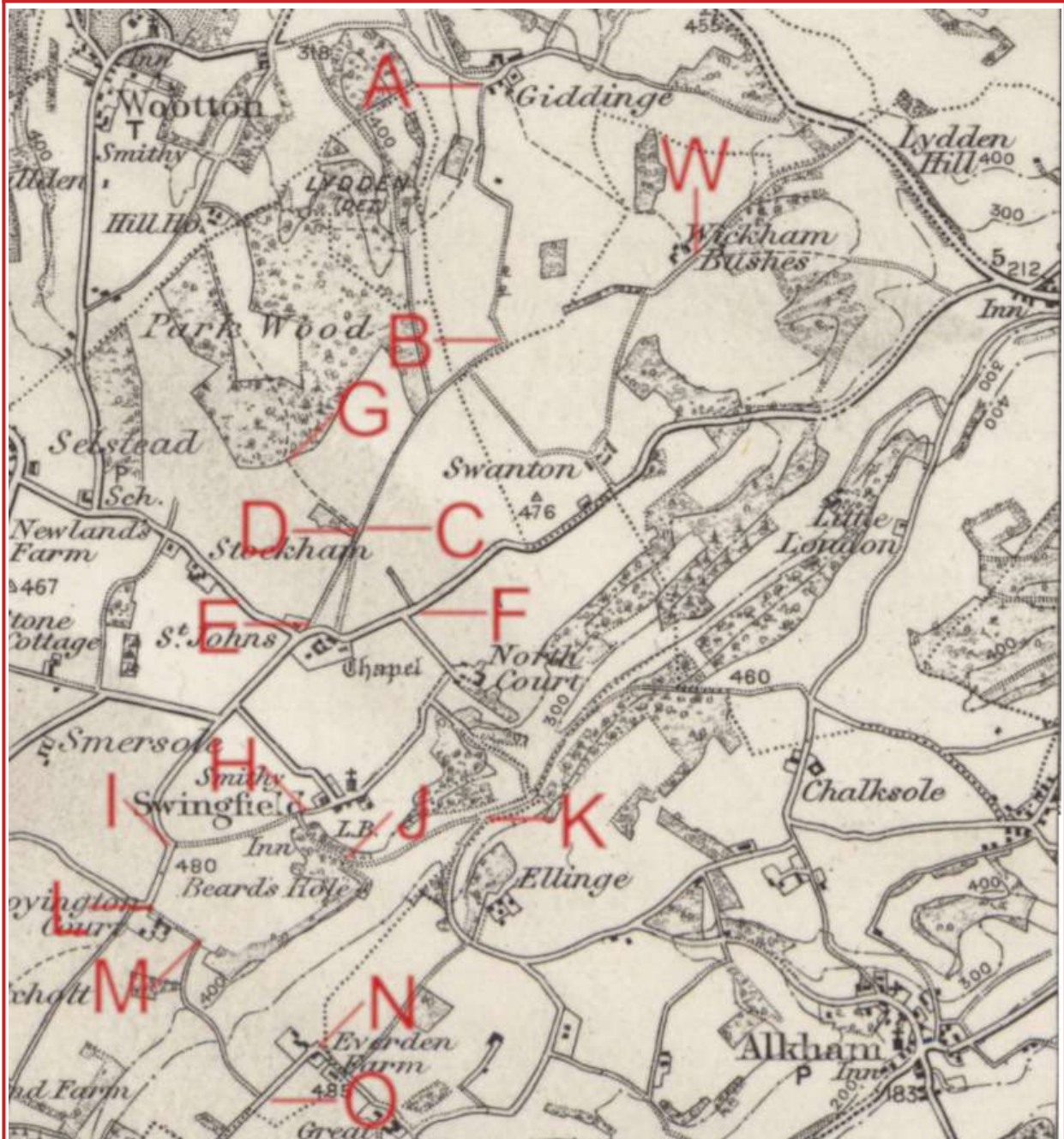


Illustration lxx

94 Sheet 290: <https://maps.nls.uk/view/239767240#zoom=5.5&lat=2285&lon=7735&layers=BT>

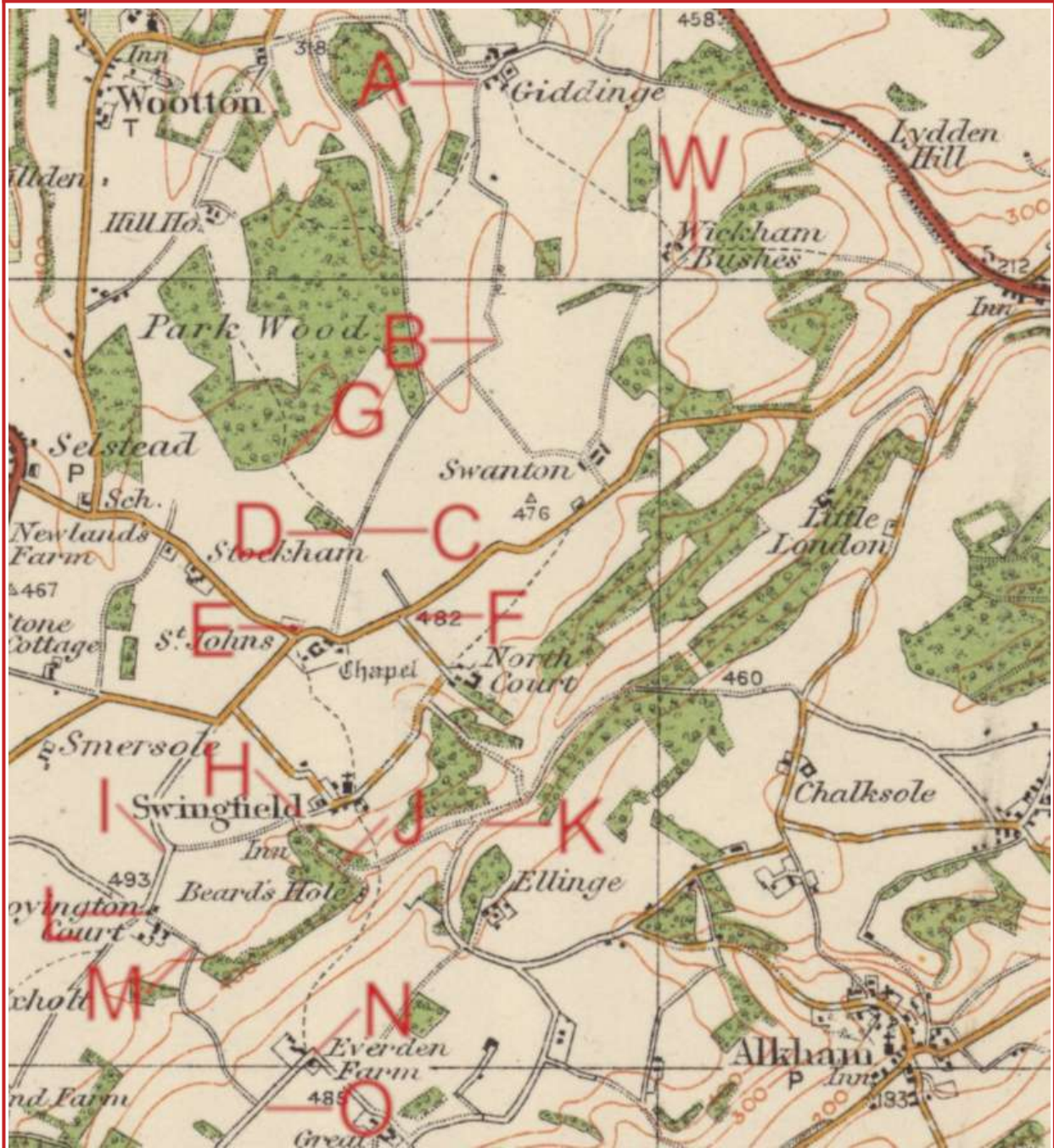


Illustration lxvi

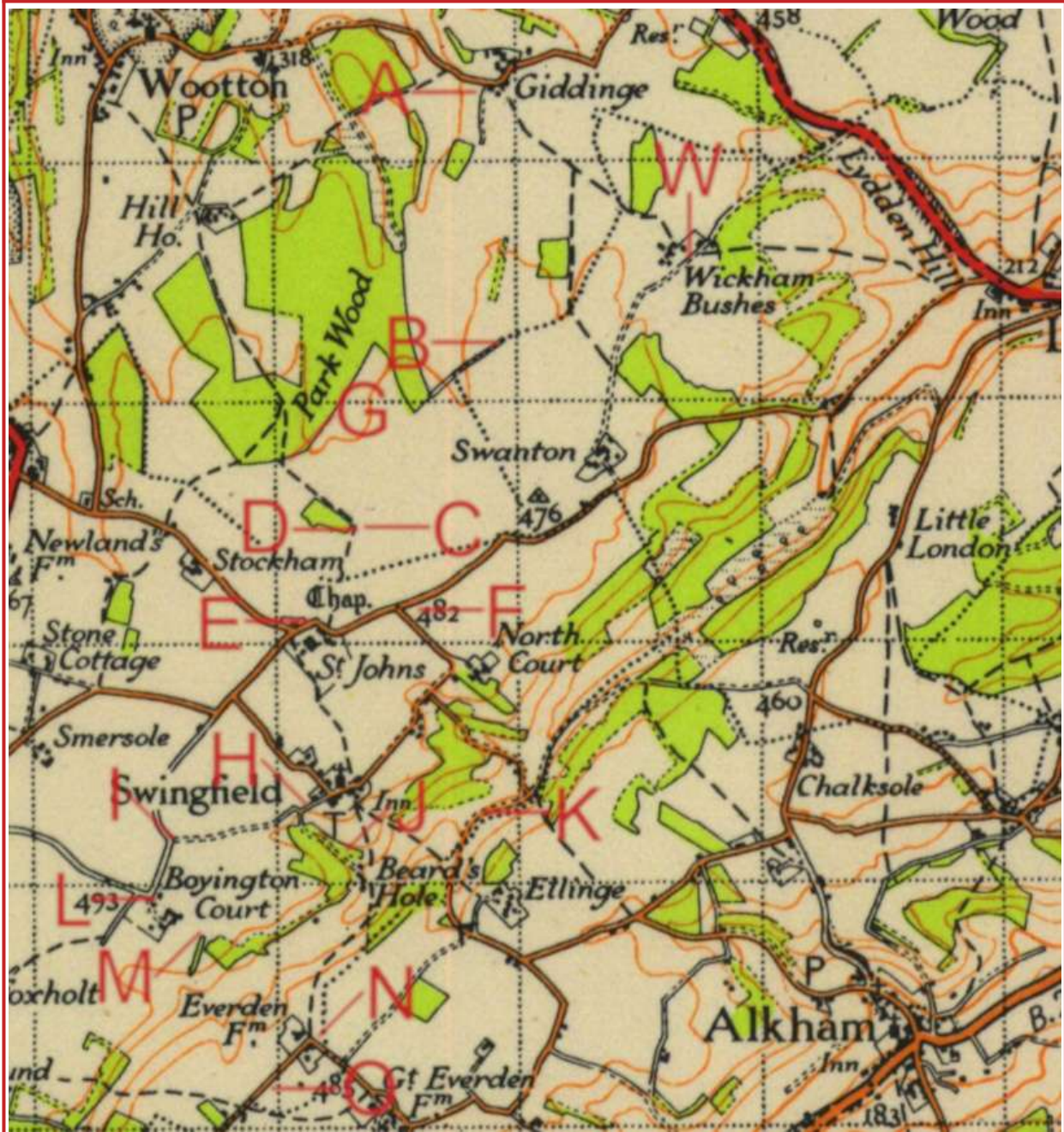


Illustration Ixvii

96 Sheet 173: <https://maps.nls.uk/view/74466972#zoom=6.5&lat=5982&lon=6723&layers=BT>

Bartholomew's maps: 1904 edition

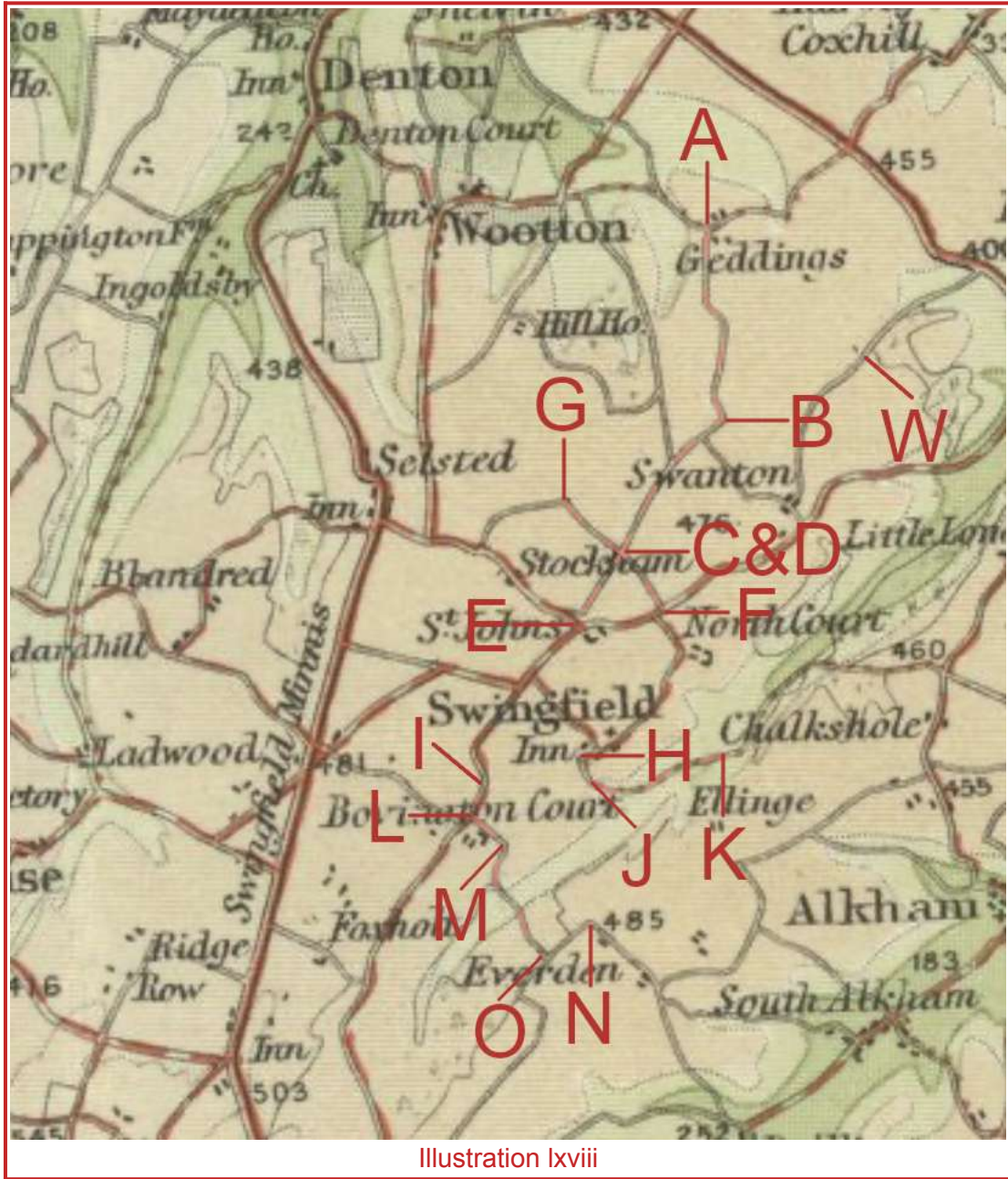


Illustration Ixviii

Bartholomew's maps: 1922 edition

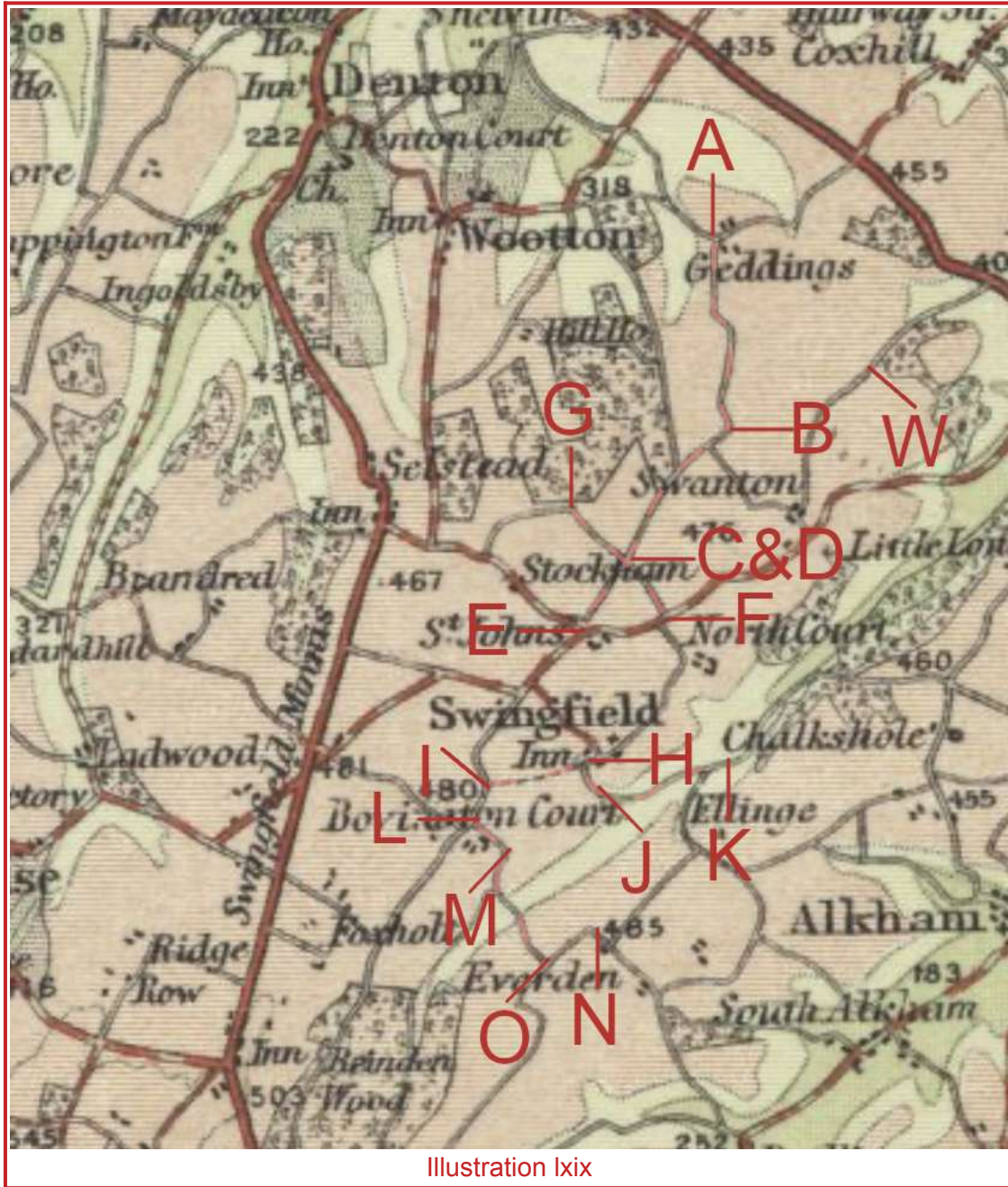
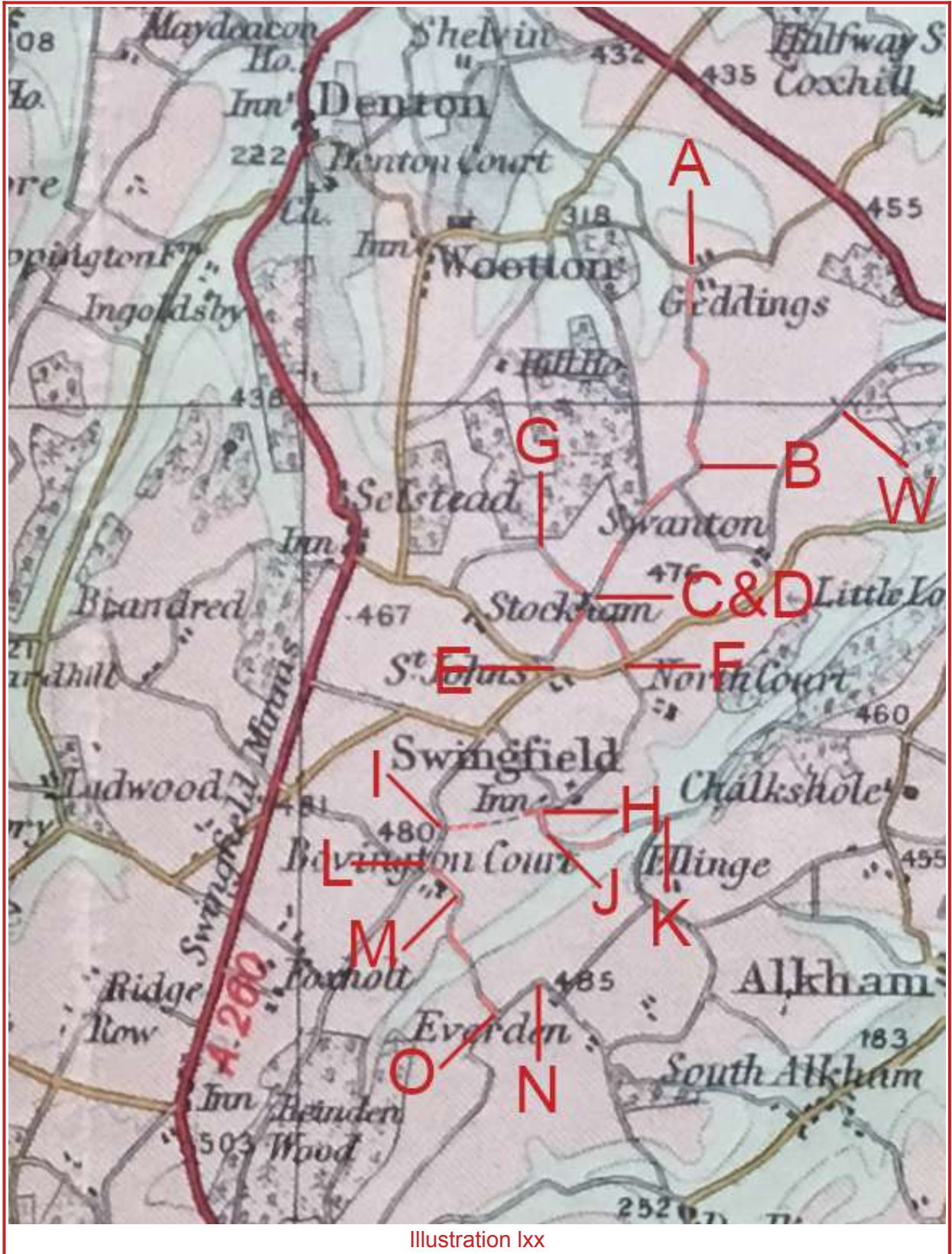
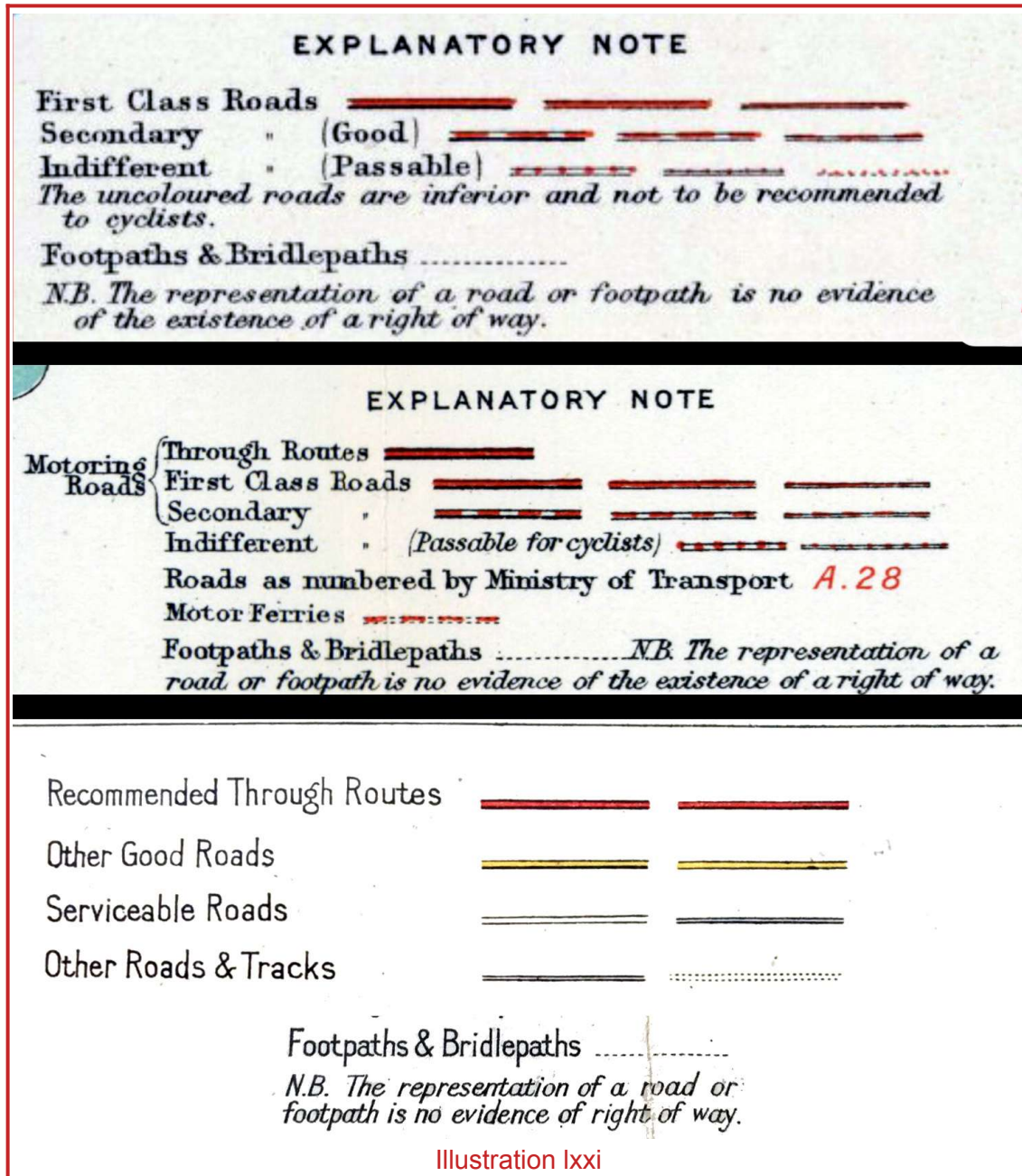


Illustration Ixix

Bartholomew's maps: 1953 edition



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



P.2. **Description:** Original scale: Ordnance Survey maps at a scale of one inch to the mile (1:63,360), and Bartholomew's maps at a half inch to the mile (1:126,720). Orientation: top is north.

P.3. These maps depict the application ways on Ordnance Survey one-inch maps (following the publication of the original *Ordnance Survey, Old Series one-inch map of Kent* at item II.H above), and on the Bartholomew's half-inch maps, between the late-nineteenth century and the mid-twentieth century.

P.4. On the New Series map (revised 1865–72), all of the application ways save two are shown in the same presentation as other minor roads, save that several are shown partly or wholly unfenced on one or both sides. Application way (II) is not shown where it would

be coincident with the Wickham and Lydden parish boundary (but is otherwise shown), nor is application way (VIII).

P.5. The position is unchanged on the revised New Series map (revised 1893), save that all of the depicted application ways now are classified as 'unmetalled roads', whereas most (but not all) other local roads (which today are tarred) are shown as 'third class'.

P.6. By the third edition (revised 1904), the position remains unchanged, save that the continuation of application way (IV) beyond G to Stockham is no longer shown.

P.7. On the fourth edition (revised 1909), part of application way (III) no longer is shown, and application way (IV) is now shown as a 'footpath'.

P.8. On the Popular edition (revised 1914), the position is unchanged, save that the depicted application ways now are classified as 'minor roads', other than application way (IV), which is now a 'footpath or bridleway'.

P.9. The New Popular edition (revised 1936), shows only a small, central portion of application way (I), and further portions at each end (classified as 'unmetalled roads'); application way (VI) as a foot or bridle path; and application way (V) as an unfenced unmetalled road. The other ways are omitted.

P.10. Bartholomew's maps from the first half of the twentieth century show the majority of the application ways through all three editions. They are shown as 'indifferent' and 'inferior', not recommended to cyclists. On the 1953 edition, they are shown as serviceable (or possibly 'other') roads.

P.11. The exceptions, which are omitted, are application ways (II), (V) and (VII), save that application way (V) is shown as a footpath or bridlepath on the 1922 and 1953 editions (but not shown at all on the 1904 edition), and application way (VII) is shown between L and M (before continuing only as application way (VIII)).

P.12. **Conclusion:** The Ordnance Survey one-inch maps continue to show the majority of the application ways well into the twentieth century, but as minor or unmetalled road inferior to some other country roads which, by the early twentieth century, probably had been tarred. They are suggestive of public cart tracks which were sidelined by the highway authority, and in worsening repair compared to neighbouring tarred roads.

P.13. The Bartholomew's maps from the first half of the twentieth century show that the majority of the application ways remained sufficiently defined to merit retention on successive editions through until 1953.

P.14. Paragraph 12.41 of the consistency guidelines⁹⁷ 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.

P.15. 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

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

its maps were to meet with a favourable reception among its target market of cyclists. In the present case, the majority of the application ways consistently are shown over three editions.

P.16. One senses that the revision of successive Bartholomew's maps was none too thorough: for example, Holloway Lane between Etlinge and North Court is not shown north of K, whereas application way (VI) and BOAT ER122 continue to be shown — it seems likely that the former was tarred by this time, and the last two in poor condition.

P.17. While the Bartholomew's maps are not convincing evidence of public rights, it seems unlikely that all of the application ways shown, were they entirely private roads, not subject to any public rights of passage, would have been depicted on successive editions, subject to widespread appraisal and feedback particularly from cycling users.

Points summary

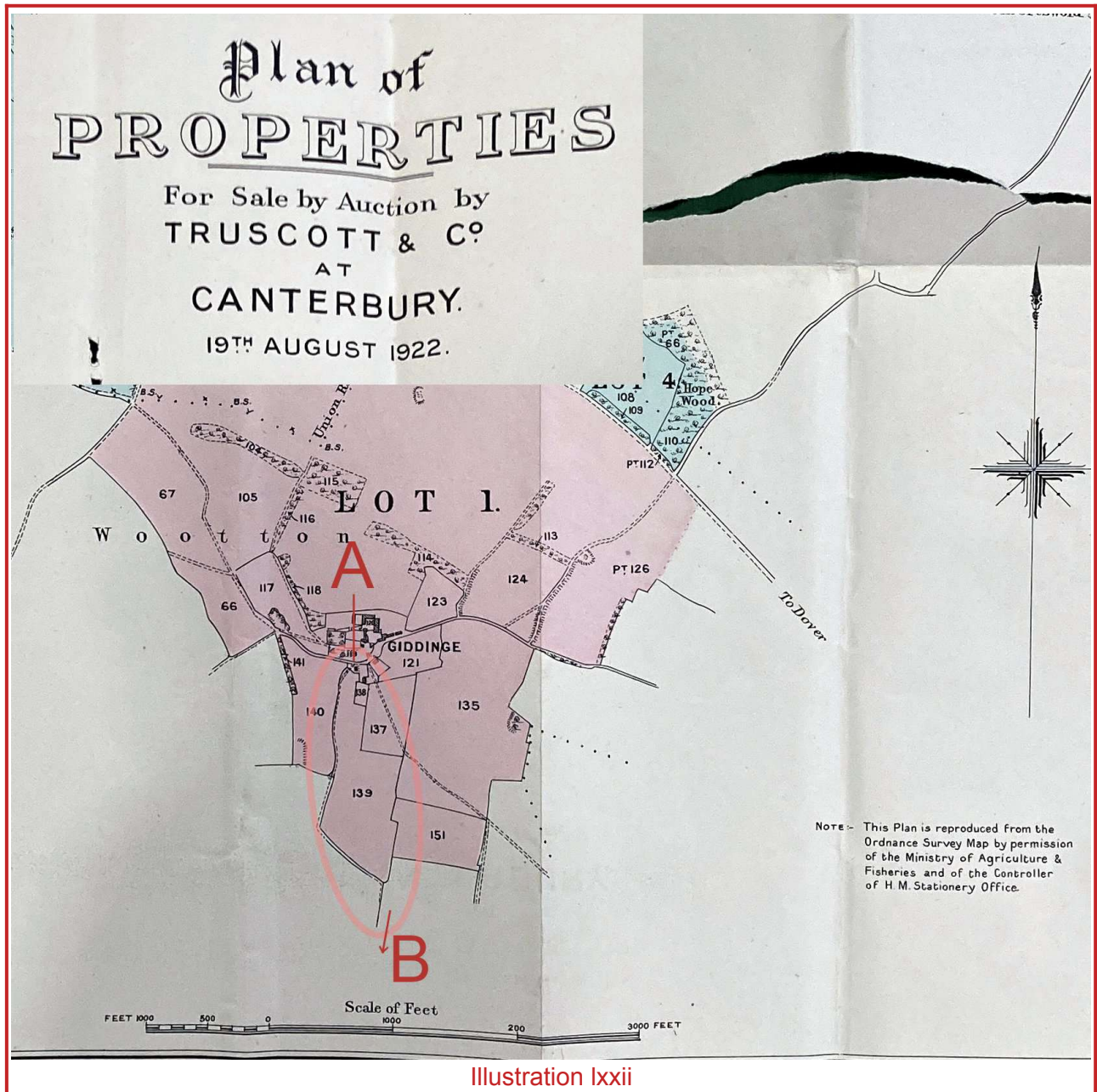
Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Shown as minor road throughout until shown only in part on New Popular edition. Shown as inferior road on all Bartholomew's half-inch maps.	2
(II)	WB	Old Road	Shown only in part as minor road until not shown at all on fourth edition. Not shown on Bartholomew's half-inch maps.	0
(III)	FD	Hermitage Lane	Shown as minor road until part not shown on fourth edition. Shown as inferior road on all Bartholomew's half-inch maps.	2
(IV)	CG	Park Lane	Shown as minor road up to third edition, then as footpath or bridleway. Shown as inferior road on all Bartholomew's half-inch maps.	2
(V)	HI	Street Lane	Shown as minor road up to New Popular edition. Not shown on Bartholomew's 1904 half-inch map, shown as path on 1922/1953 maps.	1
(VI)	JK	North Court Bottom Road	Shown as minor road until not shown on New Popular edition. Shown as inferior road on all Bartholomew's half-inch maps.	2
(VII)	LMN	Hogstock Lane	Not shown at all on both one-inch and Bartholomew's half-inch maps (save between L and M)	0
(VIII)	MO	Five Acre Lane	Shown as minor road until not shown on New Popular edition. Shown as inferior road on all Bartholomew's half-inch maps.	2

Q. Broome estate sale

Q.1. **Date:** 1922

Q.2. **Source:** Kent County Archives⁹⁸

Broome estate sale plan



Q.3. **Description:** The sale of, *inter alia*, Giddinge Farm, being part of the Broome Estate, by auction in eight lots, on Saturday, 19 August, 1922.

Q.4. Application way (I) is shown from A southwards towards B.

Q.5. **Conclusion:** The application way was of sufficient note to merit inclusion on the auction sale plan in 1922.

98 EK/U1507/E87

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Shown in part on auction plan	0
(II)	WB	Old Road		0
(III)	FD	Hermitage Lane		0
(IV)	CG	Park Lane		0
(V)	HI	Street Lane		0
(VI)	JK	North Court Bottom Road		0
(VII)	LMN	Hogstock Lane		0
(VIII)	MO	Five Acre Lane		0

R. Part V of the National Parks and Access to the Countryside Act 1949

R.1. **Date:** 1950s

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

Swingfield parish map

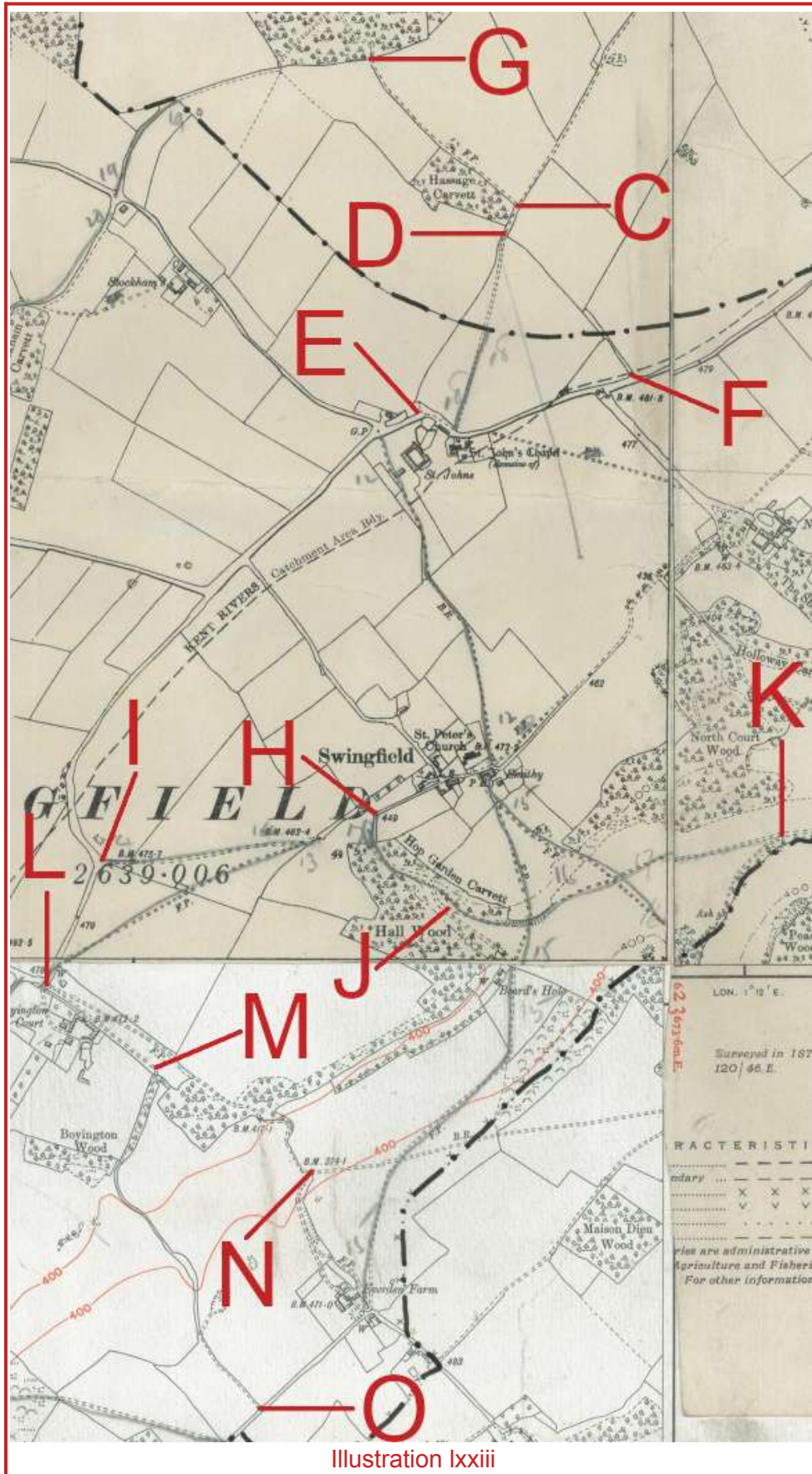


Illustration lxxiii

Swingfield draft map

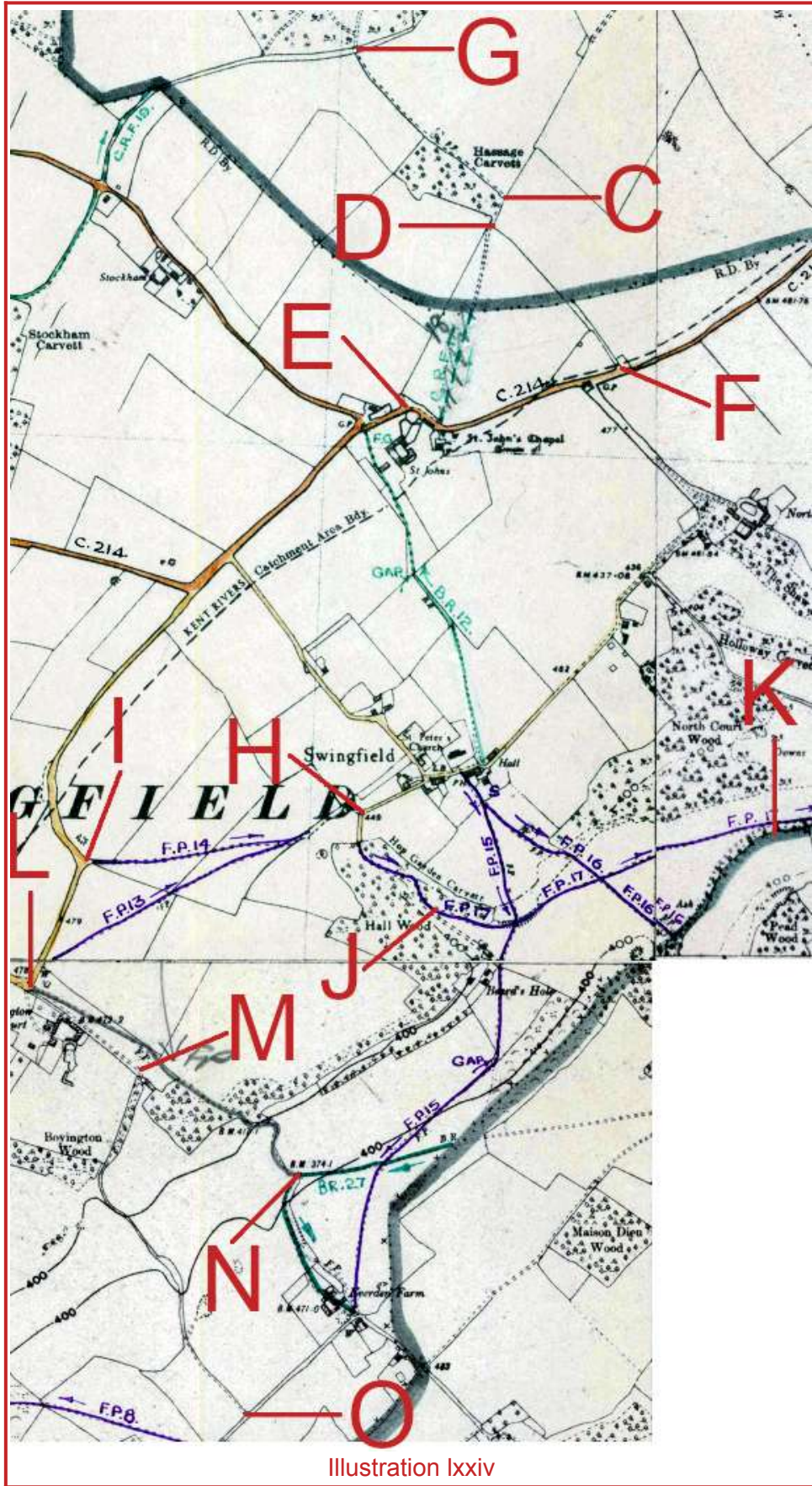


Illustration lxxiv

R.3. **Description:** The parish map for Swingfield marked the following application ways within the parish: application way (I) as CRF18 (but on a slightly different line apart from E), described as:

18. The cart road or F.P. leading N.E. from St Johns across 1 field is passabel [sic] to extent of boundary.

And also: application way (V) as FP14 (but omitting the enclosed part of the way immediately west of H); application way (VI) as FP17.

R.4. These ways were marked also on the draft map, but with CRF18 crossed out and marked 'Delete'.

R.5. In addition, application way (VII) was marked 'New FP' between L and the junction with (now) bridleway HE189, and as a bridleway between there and N. This way was not marked on the parish map, but a note on file records reference to an objection to '01 Boyington Court to Everden Farm', and the parish statement records that:

THIS BRIDLE ROAD [*i.e.* HE189] ADDED 22/3/52 BY R. HOWARTH TO CONNECT UP WITH ALKHAM BRIDLE ROAD 48 [*i.e.* ER187].

R.6. Correspondingly, bridleway 48 in Alkham (now bridleway ER187, connecting end-on with HE189), is recorded in the parish statement as:

Bridle Path from Swingfield Rd from same gate as No 42 across the Ellingham Plain in the direction of Boyington Farm... .

R.7. The parish map for Wootton marked application way (I) within the parish between A and B as FP7, described in notes as: 'Entrance is blocked from the Geddinge Road. This path is not used.'

R.8. The way also is marked on the draft map.

R.9. The parish map for Lydden marked FP1 along Wickham Bushes Lane from Lydden Hill, past W, to a point of divergence about 250 metres south-west of W.

R.10. The way is marked on the draft map as CRF1 only south-west of W, that part from Lydden Hill to W being annotated to be deleted as it is a 'maintained county road'.

R.11. **Background:** 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 [section 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.

R.12. 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'.

R.13. 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.

R.14. **Conclusion:** Several of the application ways were marked up under the 1949 Act, and remain recorded as footpaths today: application way (I) between A and B (now FP ER106); a small part of application way (II) at its eastern end near W (now BW ER121) (a further part near B (now FP ER105) was achieved by a diversion order at a later date); application way (V) (now FP HE53, and now including the enclosed part of the way immediately west of H); application way (VI) (now FP HE184); and application way (VII) (now FP HE186 and BW HE189).

R.15. The western end of application way (I) was marked on the parish map (on the line then in use) as CRF18, but determined to be omitted presumably because no continuation was shown on the draft map for Wootton. This provides an explanation for the omission of application way (I) from the definitive map and statement.

R.16. The southern end of application way (VII) was added to the draft map 'to connect up with Alkham bridle road 48' [i.e. ER187]. Thus initially, the parish recorded no right of way over the line of application way (VII), but added only the southern part to connect up with a bridleway recorded on the Alkham parish map. This may explain why the line was taken south to N at Everden Farm, and not north to M and L at Boyington Farm. On the Alkham parish map, the connecting bridleway 48 was described as leading to Boyington Farm — suggesting that the parish of Swingfield was mistaken to record only that length of application way (VII) from the junction with bridleway 48 to N as the continuation of the bridleway.

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	FP ER106 between A and B Part marked on Swingfield parish map between D and E	2
(II)	WB	Old Road	Parts BW ER121 and FP ER105	0
(III)	FD	Hermitage Lane		0
(IV)	CG	Park Lane		0
(V)	HI	Street Lane	FP HE53 (enclosed part at H originally excluded)	1
(VI)	JK	North Court Bottom Road	FP HE184	0
(VII)	LMN	Hogstock Lane	FP HE186	3
(VIII)	MO	Five Acre Lane		0

S. HM Land Registry index map

S.1. **Date:** 2024

S.2. **Source:** HM Land Registry index map

S.3. **Description:** Original scale: Land Registry titles overlaid on MasterMap; orientation: unchanged (top is north). The map is at Annexe G at p.142 below.

S.4. Parts of the application ways are not comprised in any registered title, notwithstanding that the neighbouring land is comprised in a title.

S.5. These exclusions occur:

- on application way (I), at A¹B¹
- on application way (III), at F
- on application way (V) at H and at I
- on application ways (VII) and (VIII) at M

The exclusion along the line of application way (VIII) at M is substantial, over a distance of around 600 metres.

S.6. **Analysis:** The identified parts of the application ways are excluded from any registered title to the land.

S.7. The absence of any title in the Land Registry index map as regards the land comprised in the application ways must be consequential on the conveyances of that land prior to first registration of title — such conveyances likewise must have excluded the order way.

S.8. Two possibilities arise to account for the exclusion — either that the title to the application way is unregistered and contained in a separate title; or that ownership of the application way is held *ad medium filum*⁹⁹ by the owners of the adjoining land.

S.9. The first possibility is unlikely: there is no reason why title to a narrow strip of land, coincident with the application way, should be held in a separate title yet remain unregistered — first registration of title having become compulsory in this area in January 1961.¹⁰⁰ Thus, if such an unregistered title exists and endures, it must have remained vested in the same proprietor for the past 60 years.

S.10. The second possibility arises only if the order way is indeed a highway to which the presumption of *ad medium filum* applies.

The 'ad medium filum' rule is a rebuttable presumption that an owner of land which abuts either:

- a public or private highway, or
- a non-tidal river or stream

also owns the soil of the adjoining highway, or the bed of the adjoining river or stream, up to its centre line. A transfer or lease of that land will therefore be presumed to include that part of the highway, river or stream without the necessity for any express mention of it.

In the case of a highway, the presumption is known as the 'ad medium filum viae' rule, and is based on a combination of convenience (so as to prevent disputes as to precise boundaries) and also on the supposition that each owner contributed a portion of land when the highway was formed.¹⁰¹

99 Up to the centre line.

100 www.gov.uk/government/publications/first-registrations/practice-guide-1-first-registrations.

101 *The 'ad medium filum' rule*, LexisNexis, www.lexisnexis.co.uk/legal/guidance/the-ad-medium-filum-rule.

S.11. The presumption seldom is found in connection with, or applied to rural, unenclosed footpaths, because historically, it was not found necessary or appropriate to distinguish the ownership of land covered by a footpath.

S.12. Thus, the only realistic explanation for the exclusion of the relevant parts of the application ways from the adjoining owners' title is that the identified parts of the application ways are public bridleway or carriageway.

S.13. **Conclusion:** The absence of any registered title to the identified parts of the application ways is good evidence that they are public bridleway or road in origin — indeed, it is submitted that it is the only plausible explanation.

S.14. That the exclusions are not far greater in extent is explained by the elapse of time since the application ways were in daily use as cart roads. In the period which has elapsed since then, any excluded highway land is likely to have been incorporated into adjoining titles and purportedly occupied by adverse possession, so that in subsequent conveyances of the land, the land was expressly included.¹⁰²

Points summary

Way	Route		Description	Points
(I)	ABCDE	West Lees Lane/ Broomfield Lane	Partial exclusion at A ¹ B ¹	1
(II)	WB	Old Road		0
(III)	FD	Hermitage Lane	Partial exclusion at F	1
(IV)	CG	Park Lane		0
(V)	HI	Street Lane	Partial exclusion at H and at I	1
(VI)	JK	North Court Bottom Road		0
(VII)	LMN	Hogstock Lane	Partial exclusion at M	1
(VIII)	MO	Five Acre Lane	Majority exclusion at M	2

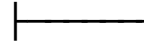
¹⁰²'Purportedly', because title to highway land cannot be acquired by adverse possession: [R \(on the application of Smith\) v Land Registry \(Peterborough Office\)](#).


Annexes

Annexe A: Application map


Map centred on F at TR23574416

Scale: approx. 1:17,850 (when printed A4)

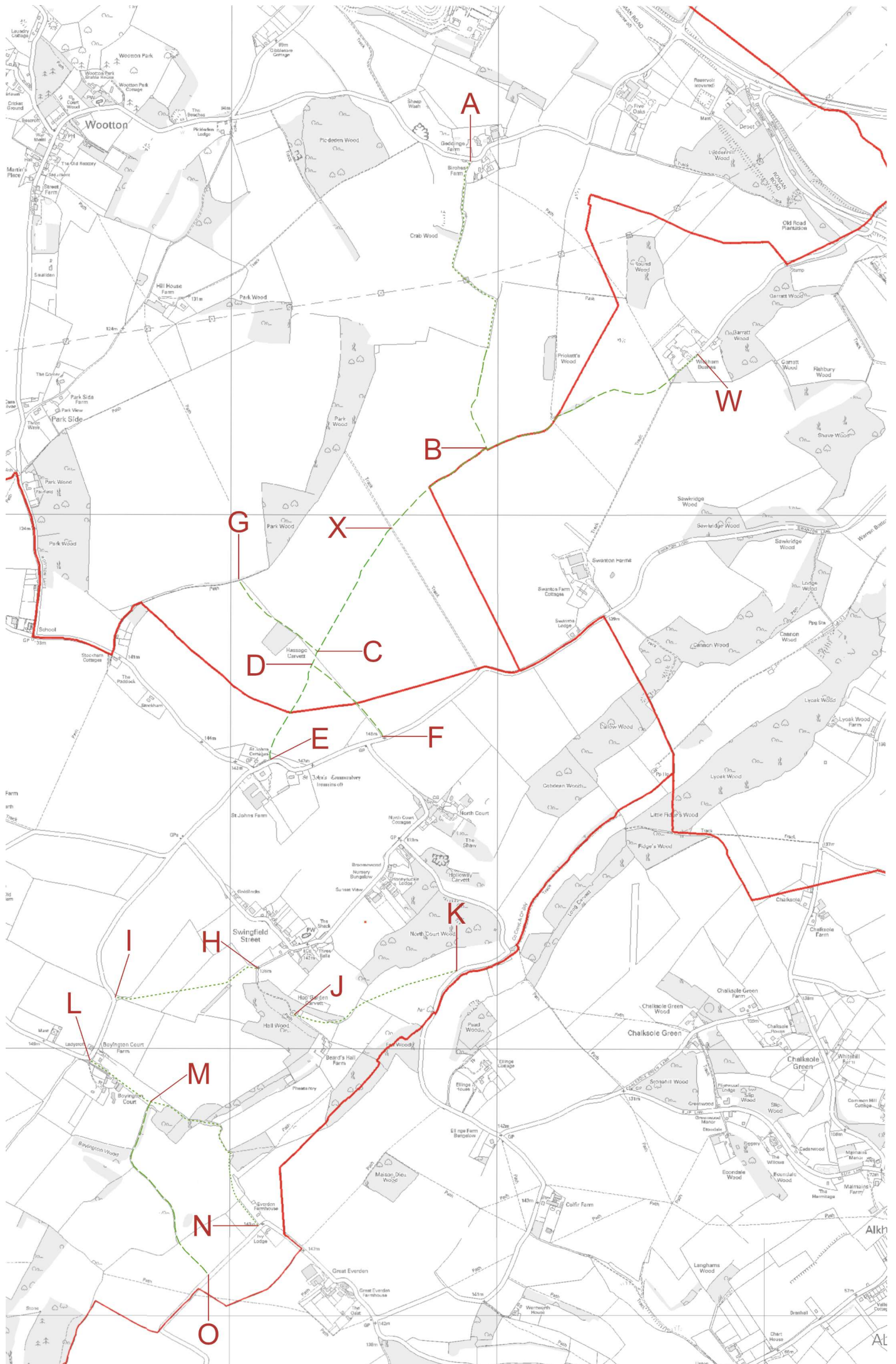


Application way is marked: 

50m

save where upgrading or replacing footpath or bridleway: 

parish boundary: 



A

B

G

X

W

D

C

E

F

I

H

K

L

M

N

O

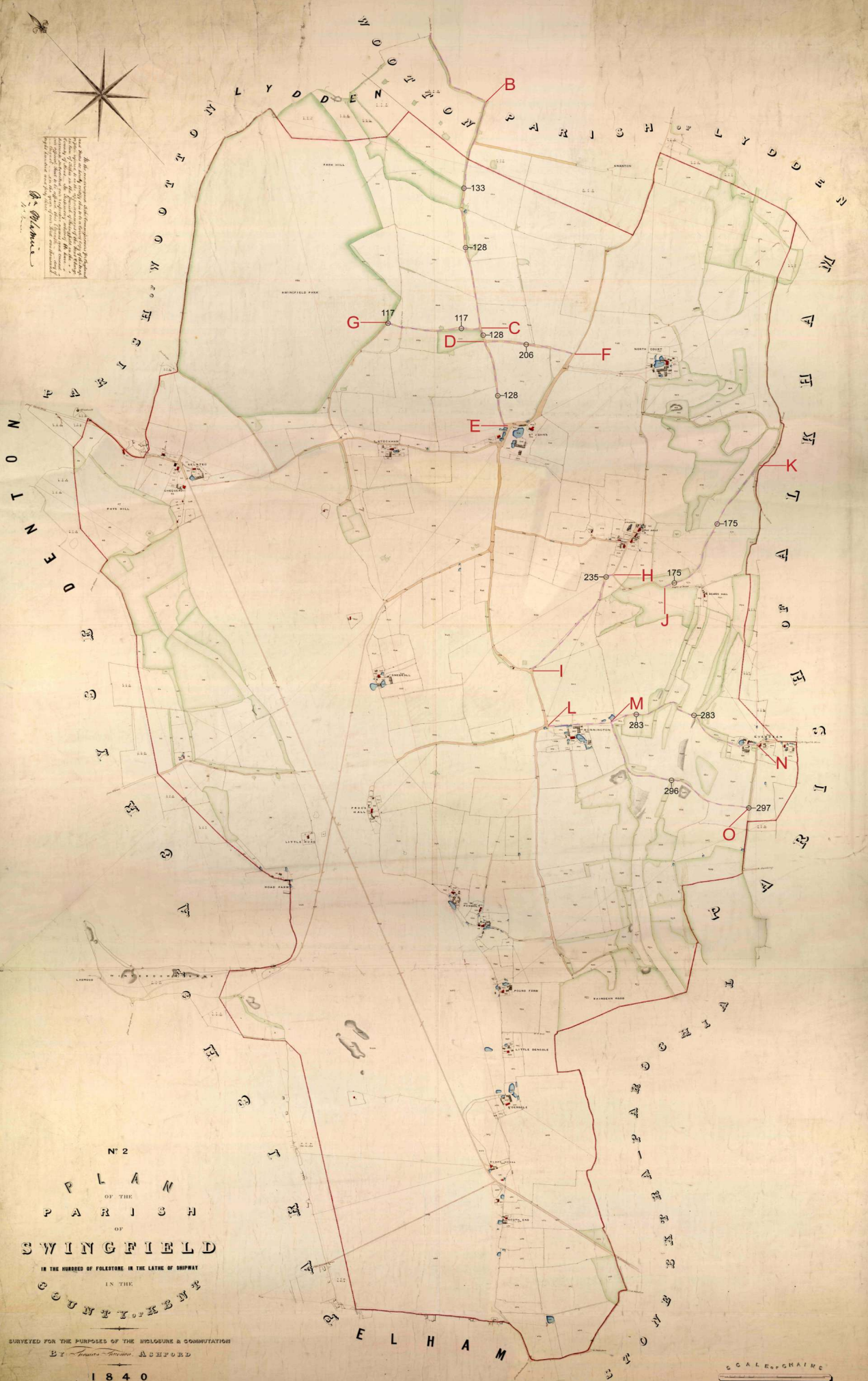
Alk

Al

Annexe B: Swingfield tithe map
(See *Tithe Act 1836* at item II.J above)



As the map is intended to be used for the purpose of enclosing & commutation of the tithes & other duties payable in the parish of Swingfield in the hundred of Folstone in the county of Hampshire the names of the several farms & tenements & the names of the several owners & tenants of the same are inserted in the map as far as they could be ascertained from the best sources of information.



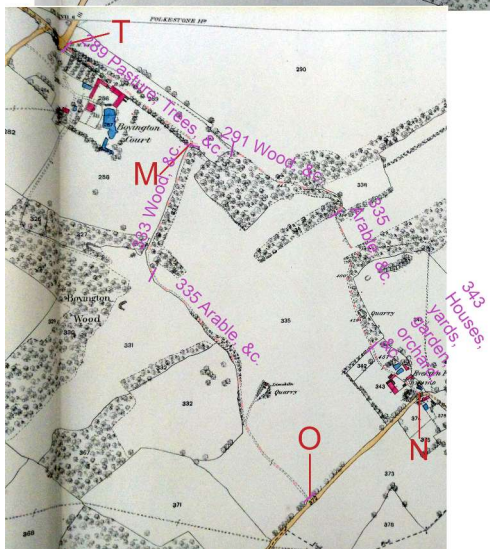
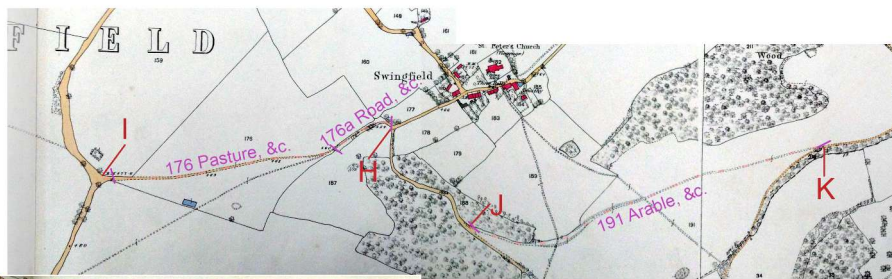
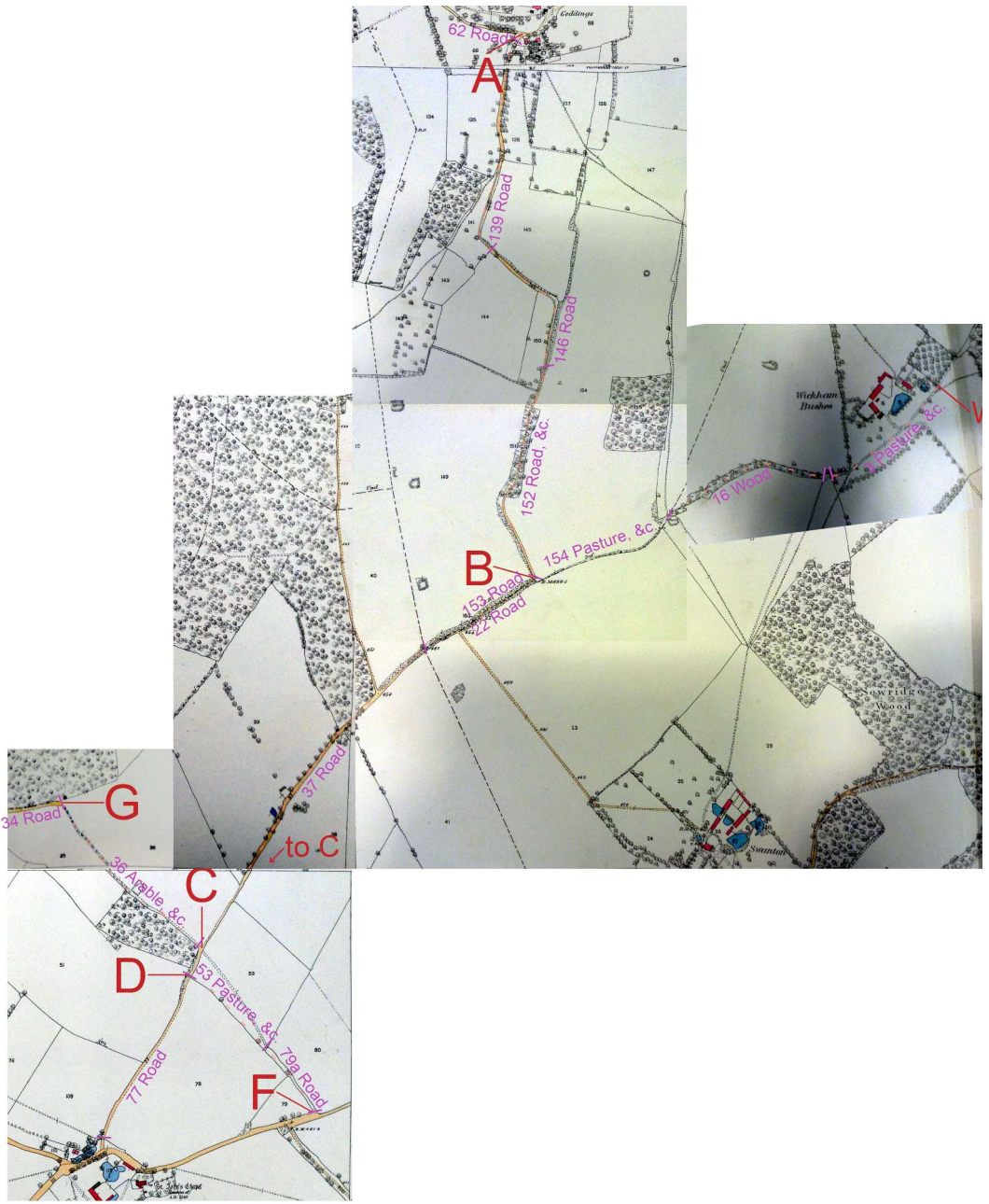
N^o 2
PLAN
OF THE
PARISH
OF
SWINGFIELD
IN THE HUNDRED OF FOLSTONE IN THE COUNTY OF HAMPSHIRE

SURVEYED FOR THE PURPOSES OF THE ENCLOSURE & COMMUTATION
By *James Smith* A.S.S.
1840

Total Contents 567 1/2

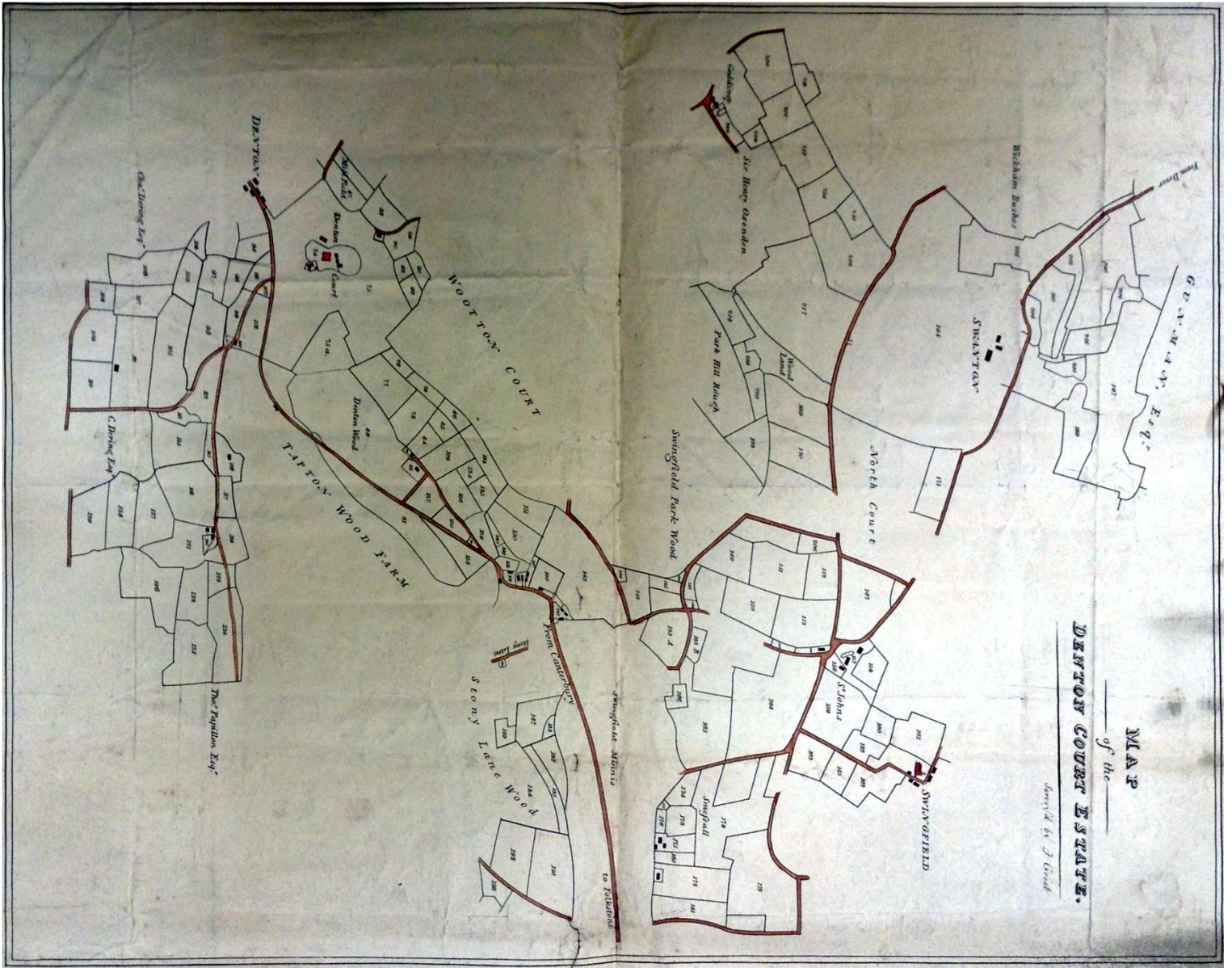
SCALE OF CHAINS

Annexe C: Area book descriptions mapped onto OS County Series plans
(See *Ordnance Survey County Series 25-inch plans* at item II.N above)



Annexe D: Denton Court estate map (1847)

(See *Denton court estate maps* at item II.K above)



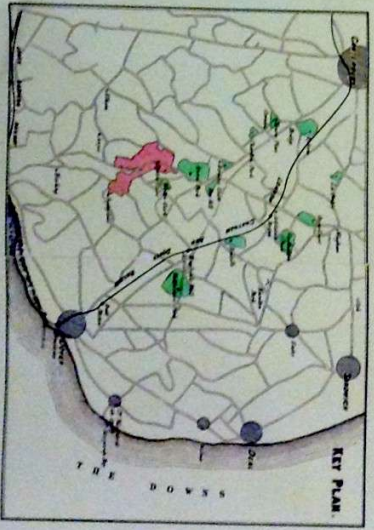
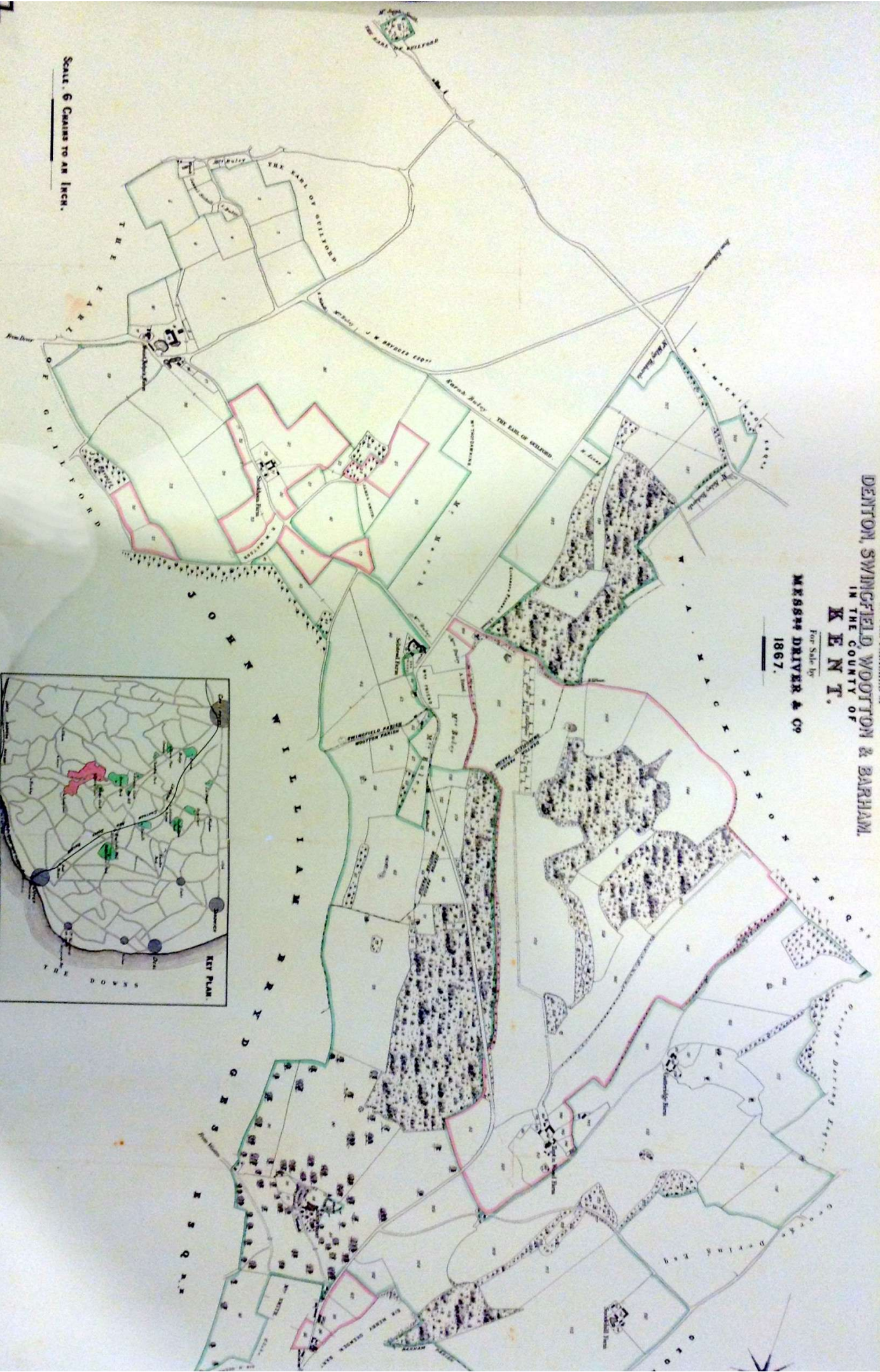
MAP
of the
DENTON COURT ESTATE.
Surveyed in 1760

Annexe E: Denton Court estate map (1867)

(See *Denton court estate maps* at item II.K above)

IN THE PARISHES OF
DENTON, SWINGFIELD, WOOTTON & BARHAM,
 IN THE COUNTY OF
KENT.

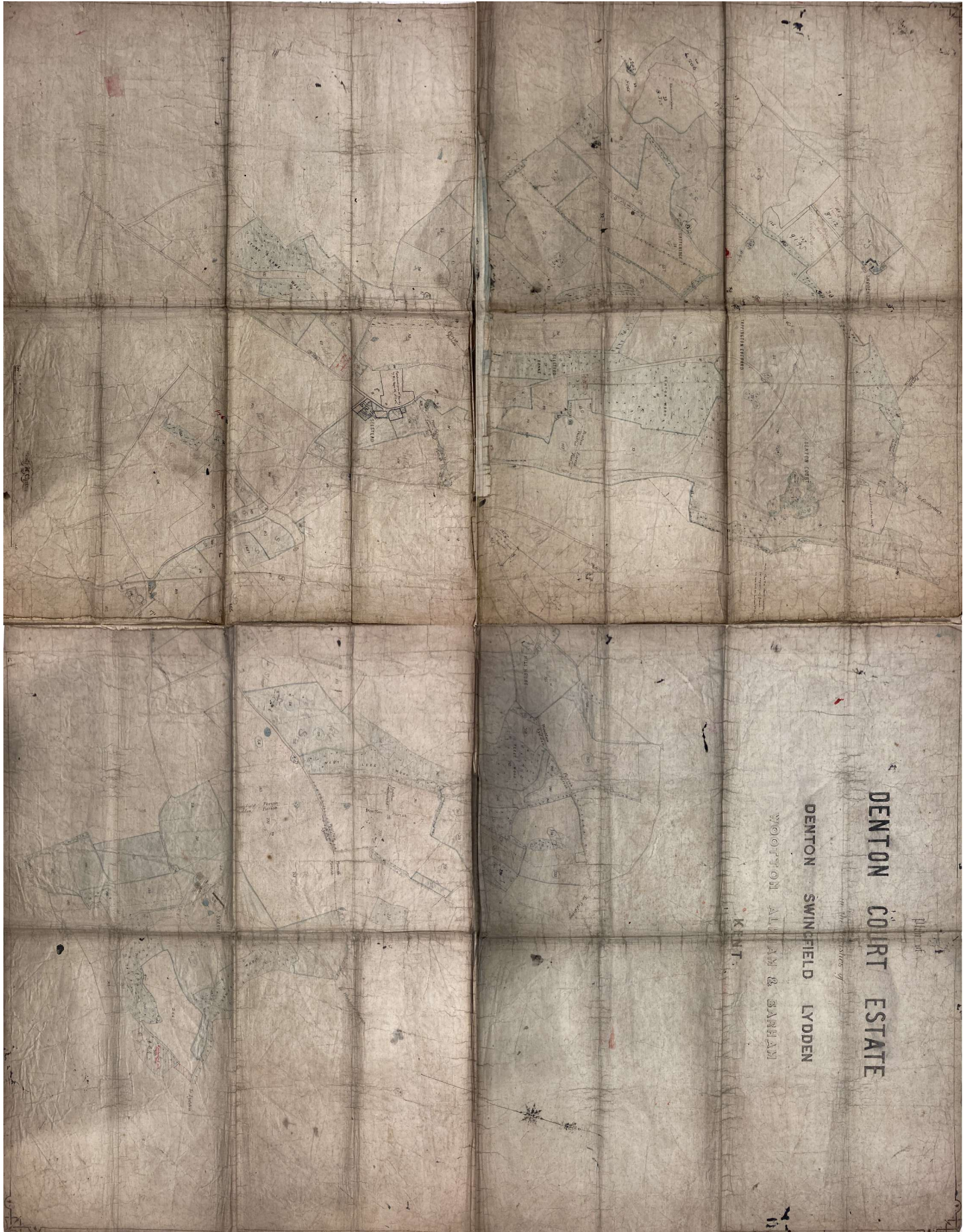
For Sale by
MESSRS DRIVER & CO
 1867.



SCALE, 6 CHAINS TO AN INCH.

Annexe F: Denton Court estate map (1875)

(See *Denton court estate maps* at item II.K above)



DENTON COURT ESTATE

DENTON SWINFIELD LYDDEN

WOLPTON ALLIAM & BARRHAM

KENT

Annexe G: HM Land Registry gaps in title

(See *HM Land Registry index map* at item II.S above)

