

# (Byway Open to All Traffic EE496 and Restricted Byway EE497 at Wingham and Goodnestone) Definitive Map Modification Order 2022

## ROW/3311269

### Statement of case for the British Horse Society as supporter of the order

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# I. General notes

## A. Quick reference

### ■ Location plan



A.1. **Planning Inspectorate reference:** ROW/3311269

A.2. **Surveying authority:** Kent County Council

A.3. **Order:** (Byway Open to All Traffic EE496 and Restricted Byway EE497 at Wingham and Goodnestone) Definitive Map Modification Order 2022

A.4. **Parishes of:** Wingham and Goodnestone

A.5. **Ancient parishes of:** Wingham and Goodnestone (including a detached part of Wingham parish)

A.6. **Hundred of:** Downhamford

A.7. **Termination points:** Staple Road, Staple at the turning into Pettocks Lane; and junction of public bridleways EE269A and EE28 on Twitham Hill

A.8. **Termination points Ordnance Survey grid references:** TR26225679 and TR26275594

A.9. **Postcode:** CT3 1LP

A.10. **Ordnance Survey Explorer sheet:** 150

A.11. **Ordnance Survey County Series 25" sheets:** Kent XLVII/8 and 12

## B. Introduction

B.1. This statement of case is made by the British Horse Society in relation to the definitive map modification order made by Kent County Council on 22 July 2022 ('the order').<sup>1</sup> It replaces all previous representations made by the society in relation to the order and the application for an order.

B.2. The society is the applicant for the order, and is referred to hereafter as 'the applicant'. The applicant supports confirmation of the order, subject to its submissions at part III below seeking modification of the order as made, to secure the removal of limitations and the deletion of part of the way from the order.

B.3. This statement of case comprises at part I (this part) general submissions in support of the order; at part II below, *Objections to the order by third parties*, the applicant's comments on objections made in connection with the order; at part III below, *Objection by the applicant to order*, the applicant's submissions seeking modification of the order prior to confirmation; at part IV below, *Photographs along the order way*, photographs of the order way; at part V below, *Documentary evidence*, the documentary evidence relating to the order way, and at part VI below, annexes containing fuller copies of certain documents shown in extract in part V.

B.4. In this statement of case:

- References are in the form 'I.A.1', where 'I' represents the part number which is shown in the footer of each page. Thus this bullet point is within para.I.B.4. Cross-references within an item (this is item I.B Introduction) may be shortened to, for example, 'para.B.2'.
- The lettering A, B, C, D, E and F refers to the lettering adopted in the application plan (see next page). The applicant regrets that the order-making authority published an order plan which uses different lettering (omitting C, so that the order way lies between A and E). It is not practicable to relabel and reletter the voluminous evidence already submitted with the application, and the same lettering has been adopted in this statement of case. However, where the letters differ from those used in the order, the order letter is stated to follow in italics in brackets — e.g. between D and E [*C and D*].
- The cross-references in the electronic pdf are hyperlinked.
- In order to enable comparison, the numbering of documents preserves the numbering in the applicant's historical document analysis.<sup>2</sup> Items Ordnance Survey surveyor's drawing, Canterbury (East) at [V.EA](#) below and Draft definitive map at item [V.VA](#) below are new, and the Early C18 St John's College terrier (I) at item V.A below no longer relied upon.

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1 The full title of the order is given at para.A.3 above.

2 Version 1.23 (version 1.23 is a revised version of the original application, and is annexed to the order-making authority's statement of reasons at KCC1).

## C. Locational details

C.1. The order way relates to a claimed public way, Twitham Lane (part of which is now known as Pettocks Lane), which connects Staple Road, west of Staple, to the junction of public bridleways EE269A and EE28 on Twitham Hill west of Crixhall Court. Part of the order way is recorded in the council's list of streets as publicly maintainable.<sup>3</sup> The way is not currently recorded on the definitive map and statement.

## D. Application

D.1. Application was made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council as surveying authority that a definitive map modification order be made under section 53(3)(c)(i) to record the order way in the parishes of Wingham and Goodnestone as a byway open to all traffic (between A and B as specified below) and a bridleway (between B and F [*B and E*]).

D.2. The order way begins on Staple Road at the turning into Pettocks Lane at A (Ordnance Survey grid reference TR26225679), and proceeds south-southwest for 205m to Little Twitham Farm cottage at B (TR26195658), then south-southwest for 95m past Twitham Oast to C [*not specified on the order*] (TR26155650), then south and south-southwest for 230m along the west side of the field headland to D [*C*] (TR26095627), then slightly south of east for 230m along the south side of the fenced headland to E [*D*] (TR26325622), then passing through the hedge and turning slightly west of south for 300m to a junction with the enclosed lane at the junction of public bridleways EE269A and EE28 adjacent to the pond in a former quarry on Twitham Hill, at F [*E*] (TR26275594). A total distance of 1,060m.<sup>4</sup>

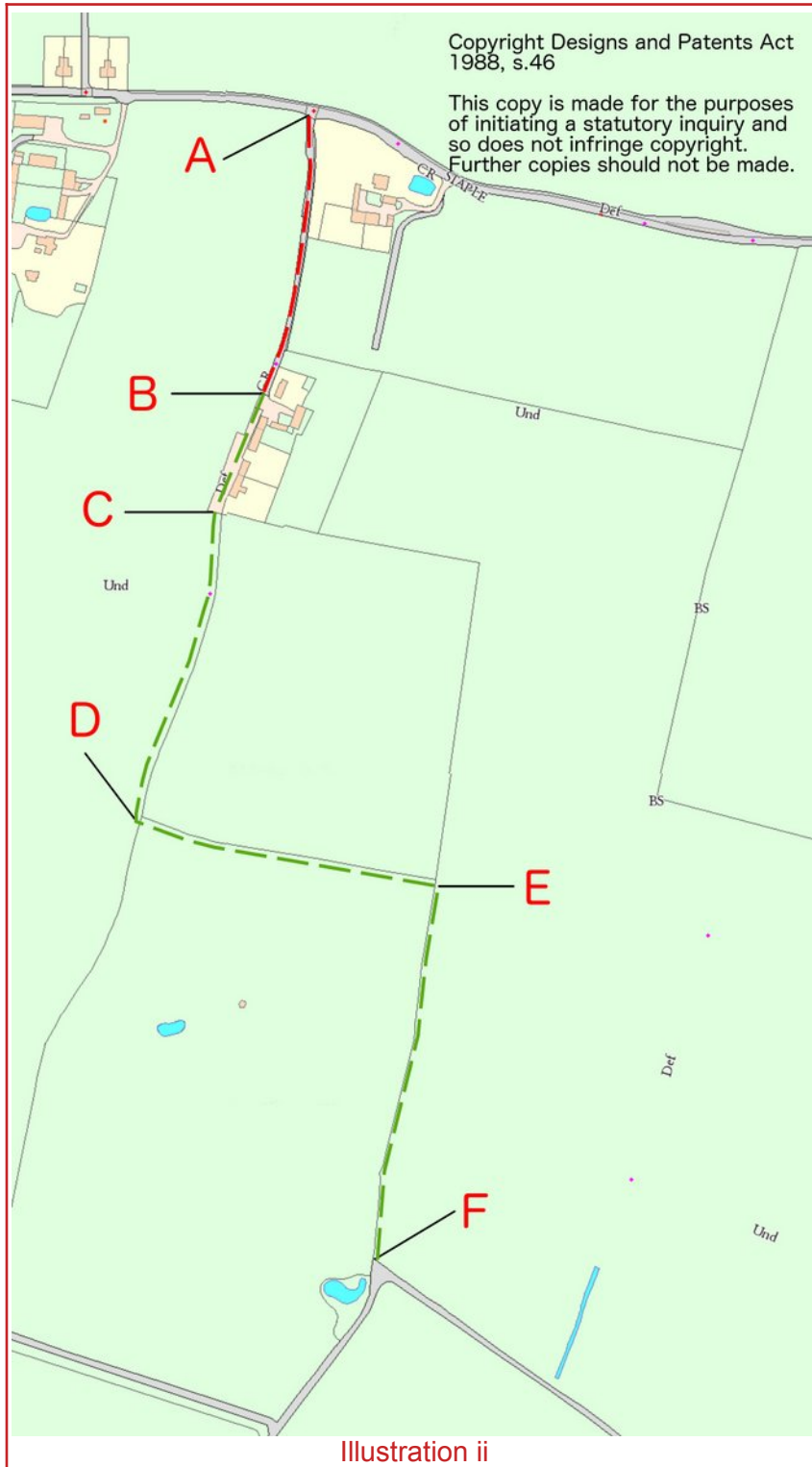
D.3. The points A to F are identified in the application map in Illustration ii below. The order-making authority's labelling of points from A to E is shown on the order plan.

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<sup>3</sup> The list is of highways maintainable at public expense held under s.36(6) of the Highways Act 1980.

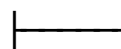
<sup>4</sup> The order-making authority records a total distance of 1,073m.

**Application plan**



Map centred on E at TR26325622

Scale: approx. 1:5,155 (when printed A4)



Application way is marked

- — (RB)
- — (BOAT)

**80m**



## E. Nomenclature

E.1. The nomenclature of places along the order way has evolved, and can be confusing. The northern-most tarred part of the order way is known as Pettocks Lane, possibly a corruption or alternative spelling of the name of a former adjoining landowning family, the Puddock or Piddock family (see para.V.Q.5 below). Neither Pettocks Lane, nor the name probably attributable to the order way in the tithe apportionment (item V.L below), Twitham Road, appears to be in widespread use, and neither appears in any of the historical sources in this document summary (save in the tithe apportionment). Moreover, the Staple Road through Twitham may formerly have been referred to as Twitham Road.

E.2. The plan of roads contained in the Survey of estate lands and roads Goodnestone (item V.D below) marks the order way merely as 'Twitham', but elsewhere refers to Twitham Lane.

E.3. The surveyor's reports of the Eastry Rural District Council (item V.Q below) refer to the order way at 'Twitham Lane'.

E.4. None of these appellations is sufficiently certain to be adopted with confidence, but it is suggested that 'Twitham Lane' has both some historical precedent and best reflects the location and character of the way.

E.5. The hamlet of Twitham, at the north end of the order way, now comprises Twitham Court (to the west of A) and Little Twitham farmhouse (to the east), while Little Twitham Farm and farm cottage are located at B. In the late nineteenth century, Twitham Court and Little Twitham farmhouse were shown on the Ordnance Survey County Series first edition twenty-five inch plan (item V.P below) as Twitham Farm and Lower Twitham Farm respectively, while the farm buildings on Twitham Hill, between E and F [*D and E*], were also shown as Twitham Farm. It seems that the latter farm buildings were razed to the ground by a fire in the summer of 1875<sup>5</sup>, and not rebuilt (the site is now indistinguishable).

E.6. Moreover, Greenwoods' map of Kent (item V.J below), dating from around 1820, refers to Twitham (in the vicinity of A) as 'Higher Twitham' and Twitham Farm (on Twitham Hill, between E and F [*D and E*]) as 'Lower Twitham': it seems unlikely that the latter, located around 15m higher than the former, would have been referred to as 'Lower Twitham', and the names are probably transposed. Accordingly, this document will refer to the former farm on Twitham Hill as 'Higher Twitham Farm'.

E.7. There is also a Twitham Court north-east of Ash, between Weddington and Goss Hall. This was known until the late nineteenth century as Twithamhills Farm.

## F. Background

F.1. It is submitted that the order way is an old, minor part-field road between Twitham and Goodnestone, which also provided access to the farm buildings set back from the Staple Road at the north end of the way (including what is now known as Twitham Farm and the oast houses), and to the former Higher Twitham Farm on Twitham Hill. It would also have been used for journeys beyond Goodnestone, to Nonington, Ratling and Aylesham, when what are now recorded as bridleways EE269A and EE269 were recognised and used as minor roads: an order to upgrade bridleway EE269A (Woodshole Lane) to

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5 Reported as a fire 'at Twitham, a farm in the occupation of Mr. Page. ...Twitham being situated some distance from the village...'. *Whitstable Times and Herne Bay Herald*, 19 June 1875 (££: [www.britishnewspaperarchive.co.uk/viewer/bl/0000338/18750619/021/0003](http://www.britishnewspaperarchive.co.uk/viewer/bl/0000338/18750619/021/0003)).

restricted byway was made on 22 July 2022 and awaits confirmation.<sup>6</sup> Once Higher Twitham Farm on Twitham Hill ceased to exist from the late nineteenth century, the significance of the road declined, and maintenance must have declined too or ceased (as to public maintainability: see Eastry Rural District Council at item V.Q below and Highway inspector's map at item V.V below).

F.2. By the early twentieth century, the way was still recognised as a public way (see East Kent mineral light railway at item V.S and subsequent documents below). But the way was not recorded on the definitive map and statement in the 1950s, probably because base maps supplied by the county council to parish councils for the purpose of identifying alleged rights of way under Part IV of the National Parks and Access to the Countryside Act 1949 showed the way as a road considered to be publicly maintainable (see Draft definitive map at item V.VA below), which therefore did not require to be recorded on the definitive map and statement. Subsequently, it appears that the way (from B to F [*B to E*]) was erased from the council's records of public ways (see Highway inspector's map at item V.V below). Neither recorded on the definitive map and statement, nor on the council's list of streets, the way beyond B fell into disuse at some time during the post-war period, although its existence nevertheless inspired the Draft Review (item V.VA below) and the Conveyance of 1982 (item V.W below).

## G. Grounds for confirmation

G.1. There is ample evidence in support of confirmation of the order, demonstrating reputation as a highway over three centuries.

G.2. The order way is documented in various St John's College plans and terriers (Early C18 St John's College terrier (II) at item V.B, C18 St John's College estate map at item V.C, Late C18 St John's College terrier at item V.E, Early C19 St John's College Downe Court map (I) at item V.H, Early C19 St John's College Downe Court map (II) at item V.I) in which the order way is described as a lane or a shireway (bridleway), or depicted on the plan as if it were a public bridleway or road.

G.3. The order way is described in the Survey of estate lands and roads Goodnestone (item V.D below), prepared for the then owner of the Goodnestone estate, as a parish-maintained road. The way is shown on several late eighteenth and early nineteenth century maps in the same way as neighbouring roads (Ordnance Survey surveyor's drawing, Canterbury (East) at item V.EA, Barlow-Hasted map of Kent at item V.F, Ordnance Survey, Mudge-Faden one-inch map of Kent at item V.G), and on the Greenwoods' map of Kent (item V.J below) as a cross-road.

G.4. The order way is shown on the Wingham tithe map (item V.L below) consistently with other public roads, and appears in a list of 'Roads' which today are almost universally highways (and mainly public roads). Part is recorded on the Ordnance Survey boundary records (item V.N below) as accommodating the parish boundary between Wingham and Goodnestone along the 'centre of the road'. The order way consistently is shown on Ordnance Survey large scale mapping (item V.P below) as a through track or road, which was observed to be metalled throughout in the second half of the nineteenth century (save perhaps crossing the yard of Higher Twitham Farm).

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<sup>6</sup> An order to upgrade in continuation bridleway EE269 (Green Lane) to restricted byway was confirmed on 26 July 2023.

G.5. The Easry Rural District Council (item V.Q below) evidence records repairs carried out to the order way in the late nineteenth century, while debate in 1907 appears to suggest that repairs to the majority of the way could not be justified owing to the paucity of through public traffic.

G.6. The order way is shown as a minor road on three successive editions of Bartholomew's map (item V.R below), and on the earliest 1904 map as suitable for cycling. The majority of the way is excluded from valuation as a 'white road' under the Finance (1909–1910) Act 1910 (item V.T below). It is recorded in plans for an extension of the East Kent mineral light railway (item V.S below) as a public bridleway, and appears to be regarded as a privately-maintainable public road in an application for an order Electricity Supply Acts 1882 to 1922 (item V.U below).

G.7. In the post-war period, the way was recorded on the 1952 Highway inspector's map (item V.V below) as a public road, not maintained (*i.e.* no steps were taken to maintain notwithstanding that the road was publicly maintainable), but then deleted save for the northern stub now comprised in Pettocks Lane. Having been excluded from the draft definitive map and statement, the way was belatedly included as a byway open to all traffic in the Draft Review map of 1970 (see Draft definitive map at item V.VA below). And a Conveyance of 1982 (item V.W below) of the land comprised in and surrounding Twitham Oast was expressed to be 'Subject to the rights of the public over the road or way known as Twitham Lane'.

G.8. The courts have given guidance on how evidence of highway status is to be considered. In [Fortune v Wiltshire Council](#),<sup>7</sup> Lewison LJ said, at paragraph 22,

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

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

G.9. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.<sup>8</sup>

G.10. Section 32 of the Highways Act 1980 provides that:

<sup>7</sup> [2012] EWCA Civ 334.

<sup>8</sup> [Consistency Guidelines](#): para.2.17.

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

G.12. Two evidential items suggest that the way was a bridleway (Early C18 St John's College terrier (II) at item V.B below, the East Kent mineral light railway at item V.S below), while other items cannot be said expressly to distinguish whether the order way is a bridleway or public road. But the majority of evidence strongly points to the order way being a public road, none of the Ordnance Survey large scale mapping (item V.P below) marks the order way as a bridle road (or as a footpath), and the applicant endorses that inference.

## H. Natural Environment and Rural Communities Act 2006

H.1. The order way between A and B is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. It is therefore considered on the basis of its entry in the list of streets to be a public carriageway. The effect of section 67 of the Natural Environment and Rural Communities Act 2006, which would otherwise extinguish public rights for mechanically propelled vehicles, is excluded by virtue of subsection (2)(b):

immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980...[.]

Accordingly, the way between A and B was claimed as a byway open to all traffic and has been recorded as such in the order (but see Objection by the applicant to order at part III below).

H.2. Insofar as rights exist for vehicles between B and F [*B and E*], the right to use mechanically propelled vehicles is likely to have been extinguished by section 67. In that event, that part of the way merits recording as a restricted byway.

## I. Points awarded

I.1. Points have been awarded to each piece of evidence in relation to the order way, calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>9</sup>.

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

## I.2. Points:

Item	Ref	Points	
		Bridleway	RB
Early C18 St John's College terrier (II)	V.B	0	0
C18 St John's College estate map	V.C	0	2
Survey of estate lands and roads Goodnestone	V.D	0	3
Late C18 St John's College terrier	V.E	0	0
Ordnance Survey surveyor's drawing, Canterbury (East)	V.EA	0	0
Barlow-Hasted map of Kent	V.F	1	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	V.G	1	0
Early C19 St John's College Downe Court map (I)	V.H	0	0
Early C19 St John's College Downe Court map (II)	V.I	0	0
Greenwoods' map of Kent	V.J	0	1
Ordnance Survey, Old Series one-inch map	V.K	0	0
Tithe Commutation Act 1836	V.L	0	3
Mid-C19 St John's College estate map	V.M	0	0
Ordnance Survey boundary records	V.N	0	1
Inclosure Act 1845: order of exchange	V.O	0	0
Ordnance Survey large scale mapping	V.P	0	1
Eastry Rural District Council	V.Q	0	3
Bartholomew's map	V.R	0	1
East Kent mineral light railway	V.S	5	0
Finance (1909–1910) Act 1910	V.T	0	5
Electricity Supply Acts 1882 to 1922	V.U	2	0
Highway inspector's map	V.V	0	3
Draft definitive map	V.VA	0	2
Conveyance of 1982	V.W	0	3
<b>Total points</b>		9	28

I.3. In the above table, it should be noted that some evidence is supportive only of bridleway status, notwithstanding that the evidence is not exclusive of carriageway status. For example, the Barlow-Hasted map of Kent (item V.F below) and the Ordnance Survey, Mudge-Faden one-inch map of Kent (item V.G below) support at least bridleway status, but this is because it cannot be inferred with certainty that a way depicted on either map is a carriageway. However, the depiction on either map is also consistent with a carriageway.

I.4. The purpose of the table is to draw the reader's attention to the applicant's assessment of the relative weights of individual evidential items.

## J. Width of order way

J.1. There are several evidential indicators to the width of the order way.

J.2. On the tithe map for Wingham (see item V.L below), Twitham Road (as it appears to have been labelled) is given an area of 0a 1r 18p (0.147 ha). This appears to relate to that part in the parish of Wingham, of which 180m is wholly in the parish, and a further 180m is partly in the parish (the parish boundary passing down the centre line of the road). This suggests an average width of 5.43m.

J.3. On the Ordnance Survey County Series first edition plan at a scale of 1:2,500 (item V.P below, Illustration xxxvi), the order way in Wingham is identified as a separate parcel, of area 0.415 acres (0.168 ha). The parcel includes half the width of the order way where the way accommodates the parish boundary. This suggests an average width of 6.22m.

J.4. Beyond the parish boundary, in the parish of Goodnestone, the way is also recorded as a separate parcel, of area 0.739 acres (0.299 ha). However, this parcel includes a small area of land between the order way and the boundary of the oast houses, estimated to be around 0.041 ha in extent. Again, the parcel includes half the width of the order way where the way accommodates the parish boundary. The length of the way wholly within the parish of Goodnestone, as far as the southern edge of sheet XLVII/8, is 610m. This suggests an average width of 3.68m. However, if the width of the order way where it accommodates the parish boundary is assumed to be 6.22m, then the remaining part would have a width of 3.31m.

J.5. The section of the order way on sheet XLVII/12 is, on the first edition plan, parcelled with what is now bridleway EE269A and it is not possible to assign an area, and therefore width, to the portion north of F [E]. On the second and subsequent editions, the way is braced with the field within which it lies, and no calculation of width is possible other than by scaling from the width shown on the plan.

J.6. On the Ordnance Survey County Series fourth edition plan, the area is given for the order way in the parish of Goodnestone as far south as the turn at D [C], being 0.322 acres (0.130 ha). Here again, the parcel includes a small area of land between the order way and the boundary of the oast houses, around 0.041 ha in extent, and half the width of the order way where the way accommodates the parish boundary. The length of the way wholly within the parish of Goodnestone, as far as D [C], is 170m. This suggests an average width of 3.43m. However, if the width of the order way where it accommodates the parish boundary is assumed to be 6.22m, then the remaining part would have a width of 1.96m.

J.7. The applicant is content with the width of the way defined in the order.

## K. Order alignment

K.1. On first blush, the field pattern traversed by the order way appears generally unchanged in terms of the relevant field boundaries. This is suggestive that the order way should adhere to the same boundaries today.

K.2. However, if the Ordnance Survey County Series 1:2,500 4th edition plan published in 1946 (from item V.P below, Illustration lii) is overlaid onto the Ordnance Survey Mastermap (see Illustration iii below), it becomes apparent that the field boundary between D and E [C and D] is not consistent over time, and the present boundary has been set

back further north. Consequently, the order way between D and E [*C and D*] now falls along the northern headland of the field to the south.

K.3. Between E and F [*D and E*], the position is more confused. There is some evidence from the overlay that the present hedge may have been set back further east (at least in part), but the cartographic evidence is inconclusive, the way was claimed along the east side of the headland, consistent with historic mapping, and this is reflected in the order.



Illustration iii



## L. Law cases

L.1. The following cases are cited in this statement of case, in order of citation, and copies are provided with the statement of case.

Case	Reference	Citation	Pages in case bundle
<i>Fortune v Wiltshire Council</i> (CoA)	I.G.8, V.J.6, V.T.5	<a href="#">[2012] EWCA Civ 334</a>	1–46
<i>Commission for New Towns v JJ Gallagher Ltd</i>	V.C.6, V.T.5	<a href="#">[2002] EWHC 2668 (Ch)</a>	47–78
<i>Hollins v Oldham</i>	V.J.7	[1995] (unreported) C94/0206	79–122
<i>Fortune v Wiltshire Council</i> (HC)	V.T.5	<a href="#">[2010] EWHC B33 (Ch)</a>	123–472
<i>Robinson Webster (Holdings) Ltd v Agombar</i>	V.T.5	<a href="#">[2001] EWHC 510 (Ch)</a>	473–493
<i>R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs</i>	V.T.5	<a href="#">[2009] EWHC 171 (Admin)</a>	494–528
<i>Scales v Pickering</i>	V.U.14	(1828) <a href="#">4 Bing 448</a>	529–531
<i>Mayor of Tunbridge Wells v Baird</i>	V.U.15	[1896] AC 434	532–541

## II. Objections to the order by third parties

A.1. The applicant has had regard to the objections submitted in response to publication of the order.

A.2. We do not respond in detail to any representation which is not material to confirmation of the order.

### B. Caspell Parsons Farming Partnership (KCC5)

B.1. The objection is not relevant to confirmation of the order.

### C. Mr N Eldridge (KCC6)

C.1. Mr Eldridge objects to the order 'on the basis that he was not properly notified of the DMMO.' However, the order-making authority states that notice was sent to him by recorded delivery post. Such notice complies with one of the alternative requirements for notice specified in section 329(1)(c) of the Town and Country Planning Act 1990, as applied by section 70A(1) of the Wildlife and Countryside Act 1981. The requirement is that the notice is sent by recorded delivery post — not that it must be received by the addressee. It is the responsibility of a householder to ensure that proper arrangements are made for the receipt or collection of public post.

C.2. The objection otherwise is not relevant to confirmation of the order. However, the applicant observes that the status of the order way as a highway through the premises at Twitham Oast was made plain in the Conveyance of 1982 (item V.W below), and this ought to have been revealed to any purchaser of the land contained in that conveyance in a subsequent transaction. It may be negligent for a legal adviser acting in the purchase of such land to fail to identify to a client a matter of that kind.

C.3. The applicant observes that the proximity of the order way to the premises at Twitham Oast could be resolved by a relatively minor diversion to the west of those premises, to which (subject to resolution of matters of detail such as width and surface) there need be no objection by the applicant. However, as the relevant provisions of the Deregulation Act 2015 have not yet been brought into force, a diversion cannot be initiated under those provisions and is unlikely to be initiated by the local authority.

### D. Lord Fitzwalter (KCC7)

D.1. Lord Fitzwalter does not appear to question the evidence of reputation of the order way as a highway. Indeed, he states that:

...he has records of this route being a BR until subject to a diversion order during the 1980's...

D.2. However, neither the applicant nor the council has found any trace of a diversion order. Moreover, whereas Lord Fitzwalter states that the diversion was along bridleway EE28 to Buckland Lane, which he believes formerly was not designated a bridleway, bridleway EE28 was recorded as bridleroad 9 on the draft and final definitive map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 (see Draft definitive map at item V.VA below).

D.3. We welcome Lord Fitzwalter's statement that he would not object to a bridleway being recorded along the line of the order way.

#### E. Lady Fitzwalter (KCC8)

E.1. The objection is not relevant to confirmation of the order.

E.2. However, the applicant suggests that Lady Fitzwalter's fears that confirmation of the order will lead to the significant loss of wildlife and excessive costs are misplaced.

#### F. Mr P Hills (KCC9)

F.1. The objection is not relevant to confirmation of the order.

#### G. Mr N Parsons (KCC10)

G.1. The objection is not relevant to confirmation of the order.

#### H. Ms G Hobson (KCC11)

H.1. Ms Hobson's objection was not duly made by the notified deadline for objections.

H.2. The author is very sorry that Ms Hobson lost her father owing to a recent road traffic accident.

#### I. Ms M Manicom (KCC12)

I.1. Ms Manicom's objection was not duly made by the notified deadline for objections.

I.2. The objection is not relevant to confirmation of the order.

### III. Objection by the applicant to order

#### A. Limitations

- A.1. The applicant objects to the order insofar as it does not provide that the order way is not subject to any limitation.
- A.2. The absence of any specification of no limitations leaves open the possibility that a limitation may be alleged along the way.
- A.3. The applicant submits that there is no evidence of any limitation on the order way.
- A.4. Neither the tithe map drawn up under the Tithe Commutation Act 1836 (item V.L below) nor the Ordnance Survey large scale mapping (item V.P below) shows any evidence of a gate across the order way. Nor does any other evidential source (albeit usually presented, where drawn, at small scales).
- A.5. Accordingly, the Secretary of State is asked to modify the order, at the end of Part II of the Schedule, to state that there are no limitations.

#### B. BOAT

- B.1. The applicant applied for the way between A and B to be recorded as a byway open to all traffic (BOAT).
- B.2. The test for recording such a way is that it satisfies the definition of BOAT in section 66(1) of the Wildlife and Countryside Act 1981, viz that it:
- ...means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used[.]
- B.3. On reflection, the applicant now believes that the road between A and B, which is tarred, and has the appearance of the ordinary road network, does not satisfy the statutory test. This is because it is suggested that the balance of user of this part, which is freely open to public use, is mainly by vehicular traffic, and therefore it is not 'used by the public mainly for the purpose for which footpaths and bridleways are so used'.
- B.4. Accordingly, it is suggested that the order should be modified to delete the way between A and B, and to make consequential amendments to the whole order.
- B.5. The modifications which would require to be made are:
- in the title to the order, delete (from the words in parenthesis) 'BYWAY OPEN TO ALL TRAFFIC EE496 AND'
  - in the first paragraph of the recital to the order, 'or, subject to section 54A, a Byway Open to All Traffic'
  - in article 3 of the order, again delete (from the words in parenthesis) 'Byway Open to All Traffic EE496 and'
  - in Part I of the Schedule, in the first paragraph, delete from 'add a new length of Byway...' to, in the second paragraph, 'The Order will also'

- in Part I of the Schedule, in the (existing) second paragraph, for ‘the southern termination of new Byway Open to All Traffic E496 (described above)’ substitute ‘Little Twitham Farm Cottage at NGR TR 2618 5658
- in Part II of the Schedule, delete the entry for EE496; in the entry for EE497, delete the connection with EE496 and again delete (from the words in parenthesis) ‘Byway Open to All Traffic EE496 and’
- at the bottom of the Schedule, amend the title to the order so as to delete (from the words in parenthesis) ‘BYWAY OPEN TO ALL TRAFFIC EE496 AND’
- in the order plan, in the title of the plan, delete (from the words in parenthesis) ‘Byway Open to All Traffic EE496 and’; and in the key, delete the entry for ‘Byway Open to All Traffic to be added’; and in the plan, delete the way shown between A and B.

## IV. Photographs along the order way



Illustration iv: South of A



Illustration v: North of B: Little Twitham Farm Cottage



Illustration vi: South of C—hedge obstruction



Illustration vii: From D towards E [C to D]



Illustration viii: North of F [E]—site of Higher Twitham Farm



Illustration ix: F [E] towards north

## V. Documentary evidence

This part presents the evidence which directly pertains to the existence and status of the order way. A list of contents may be found at p.1 above.

### A. Early C18 St John's College terrier (I)

A.1. **Date:** 1701

A.2. **Source:** St John's College archives<sup>10</sup>

A.3. [This evidence is no longer relied upon, the applicant having concluded that it does not refer to the order way]

### B. Early C18 St John's College terrier (II)

B.1. **Date:** 1704

B.2. **Source:** St John's College archives<sup>11</sup>

#### St John's College terrier 1704

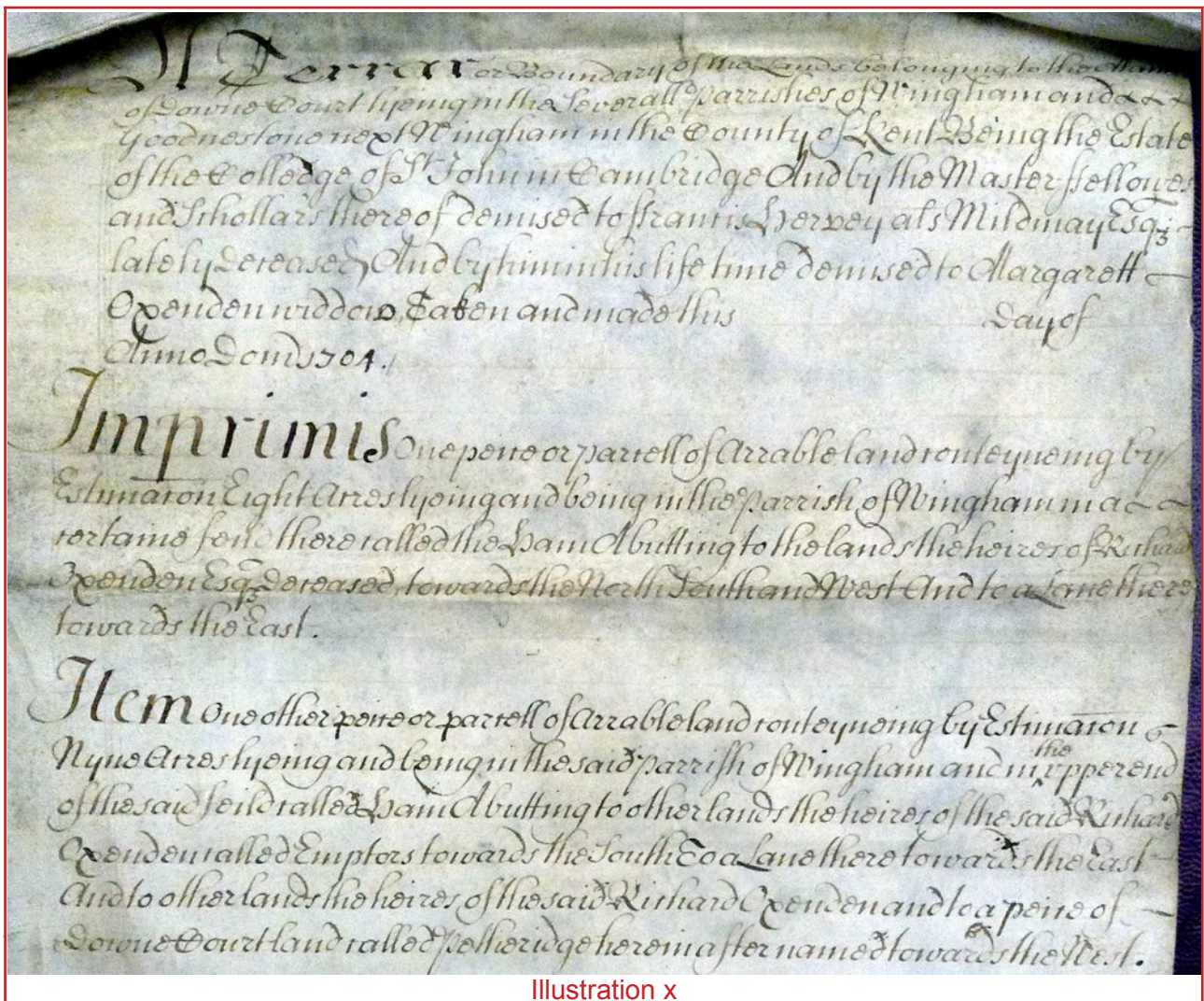


Illustration x

**B.3. Description:**

A terrier or boundary of the lands belonging to the Manor of Downe Court lying in the several parishes of Wingham and Goodnestone Next Wingham in the County of Kent being the estate of the College of St John in Cambridge and by the Master Fellowes and Scholars thereof demised to Francis Harvey alias Mildmay Esq lately deceased and by him in his life time demised to Margaratt Oxenden widow, ? And made this day of Anno Dom 1704.

*Imprimis* One piece or parcel of arable land containing by estimation eight acres lying and being in the parish of Wingham in a certain field there called the Ham abutting to the lands the heirs of Richard Oxenden Esq deceased towards the North South and West and to a Lane towards the East.

Item one other piece or parcel of arable land containing by estimation nine acres lying and being in the said parish of Wingham and in the upper end of the said field called Ham abutting to other lands the heirs of the said Richard Oxenden called Emptors towards the south, to a lane there towards the east, and to other lands the heirs of the said Richard Oxenden and to a piece of Downe Court land called Petheridge hereinafter named towards the west.

**B.4. Conclusion:** The St John's College terrier describes two parcels of land in Ham field, of combined area 17 acres, surrounded by the estate of the late Richard Oxenden. These parameters locate the fields as the land of St John's College on the west side of the order way between B and D [*B and C*], and this is confirmed by the documents described in the following items (see para.V.C.5 below).

**B.5.** It therefore is the order way which is described as a 'lane'. The description is consistent with the claimed status of the order way as a public road.

**B.6. Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	0



## C. C18 St John's College estate map

C.1. **Date:** 1736

C.2. **Source:** St John's College archives<sup>12</sup>

### St John's College estate map 1736

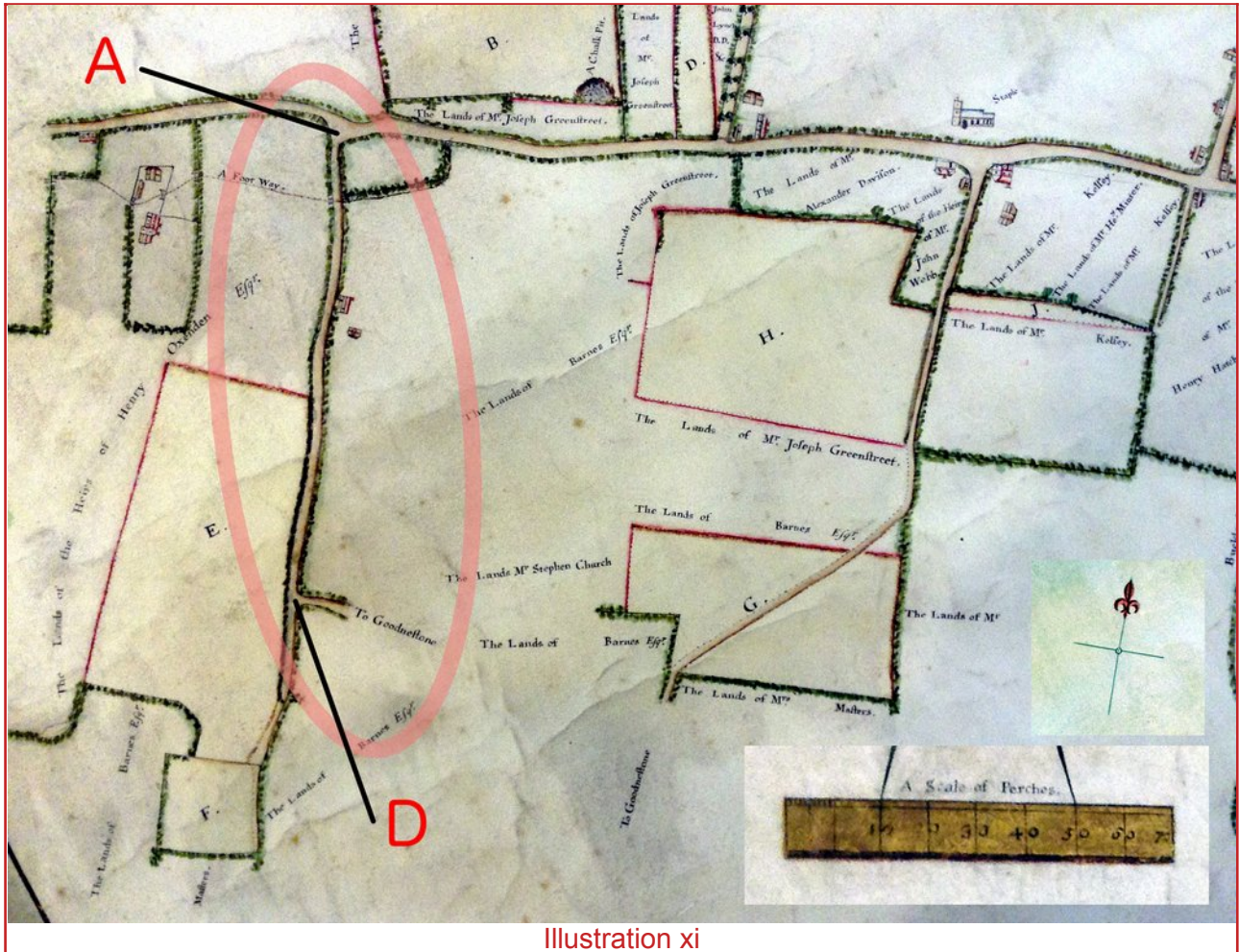
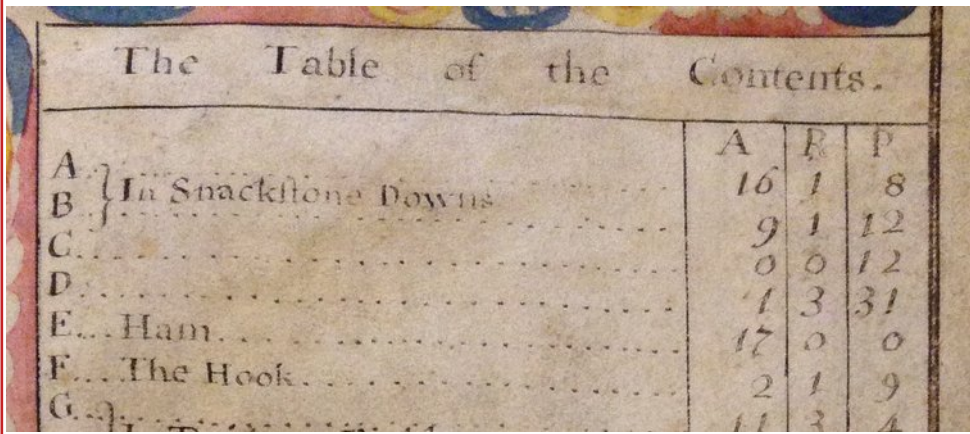


Illustration xi

## St John's College estate map 1736 embedded table



The Table of the Contents.

	A	B	P
A } In Snackstone Downs	16	1	8
B } .....	9	1	12
C } .....	0	0	12
D } .....	1	3	31
E Ham	17	0	0
F The Hook	2	1	9
G } .....	11	3	4

Illustration xii

C.3. **Description:** Original scale: as marked in perches; orientation: rotated by approximately 330° so that north is top. A full copy of the map is at Annexe A at p.100 below. The map is inscribed:

A Map and Description of several Pieces or Parcels of Arable and Pasture Land being in the several Parishes of Staple, Wingham, Ash, Woodnesborough, Goodnestone, and Word *alias* Worth, in the County of KENT. Belonging to St. John's College in Cambridge; and new in the Tenure or Occupation of the Reverend John Lynch D. D. Dean of Canterbury, or his under Tenants. 1736

Surveyed by Henry Maxted and Edward Randall of Canterbury.

C.4. The estate map shows the order way between A and D [*A and C*] as an enclosed lane (the depiction of the boundaries is suggestive of a lane enclosed by hedges). At D [C], a turning is shown to the east, which is marked, 'To Goodneftone'. The lane is coloured sienna, in common with a number of other lanes shown on the plan.

C.5. The order way bounds, between approximately B and D [*B and C*] a parcel, to the west, owned by St John's College and labelled E. The table embodied in the map records this field as 'Ham', referred to in the terrier at item V.B above, with an area of exactly 17 acres.

C.6. **Analysis:** The use of a destination label on old maps generally is associated with public, rather than private, roads. In *Commission for New Towns v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses<sup>13</sup>:

...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.

C.7. The Planning Inspectorate *Consistency Guidelines* state, in the context of tithe maps, that:

13 [2002] EWHC 2668 (Ch), at para.90: [www.bailii.org/ew/cases/EWHC/Ch/2002/2668.html](http://www.bailii.org/ew/cases/EWHC/Ch/2002/2668.html)

...the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights.<sup>14</sup>

C.8. The annotation strongly is suggestive of at least a public bridle road leading from A towards E [D].

C.9. **Conclusion:** The estate map records the existence of the order way from A to beyond D [*A to beyond C*] as a physical feature in 1736. The label attached to the way east from D [C] as leading to Goodnestone is strongly suggestive that the way was considered to be public.

C.10. Of the various roads and lanes on the plan coloured sienna, all today are recognised as public roads, with the exception of:

- the order way;
- Church Lane south from Staple church (which is the subject of an order made on 1 June 2022 to record the way as a public bridleway);
- a turning south off Barnsole Road at Summerfield (labelled on the map as Drove Lane, and now recorded as a public footpath); and
- Dix's Farm Road off Barnsole Road at Summerfield Farm (labelled on the map as East Way, recorded north of Barnsole Road as a public footpath, and as a publicly maintainable road on the highway authority's list of streets for at least 100m in the opposite direction).

The colouring of the order way therefore lends some support to its status as a public road.

C.11. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	2

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

## D. Survey of estate lands and roads Goodnestone

D.1. **Date:** 1767

D.2. **Source:** Canterbury Cathedral Archives<sup>15</sup>

### ■ Goodnestone roads map

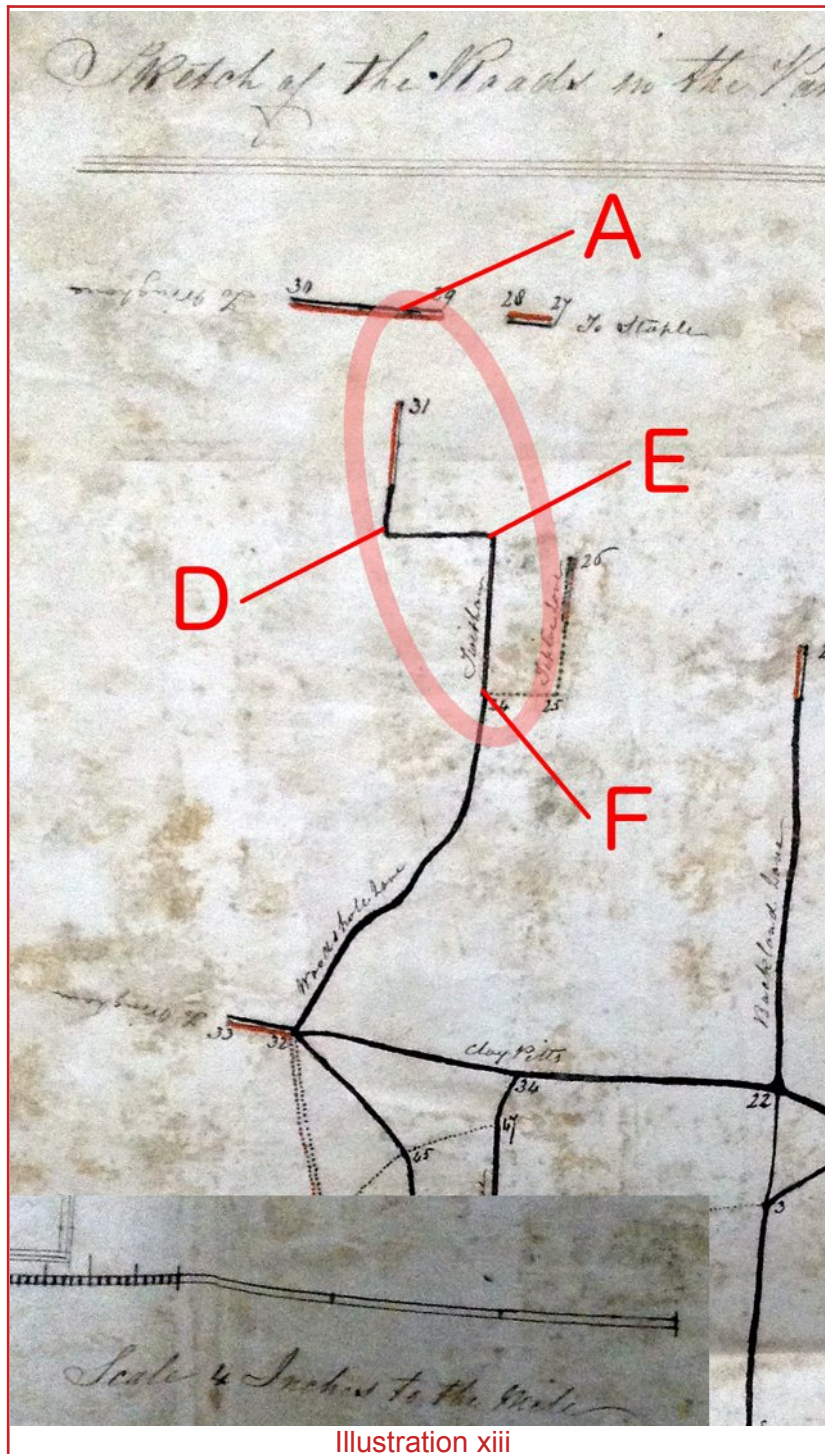


Illustration xiii

15 CCA-U6/B/1

## Goodnestone roads map key

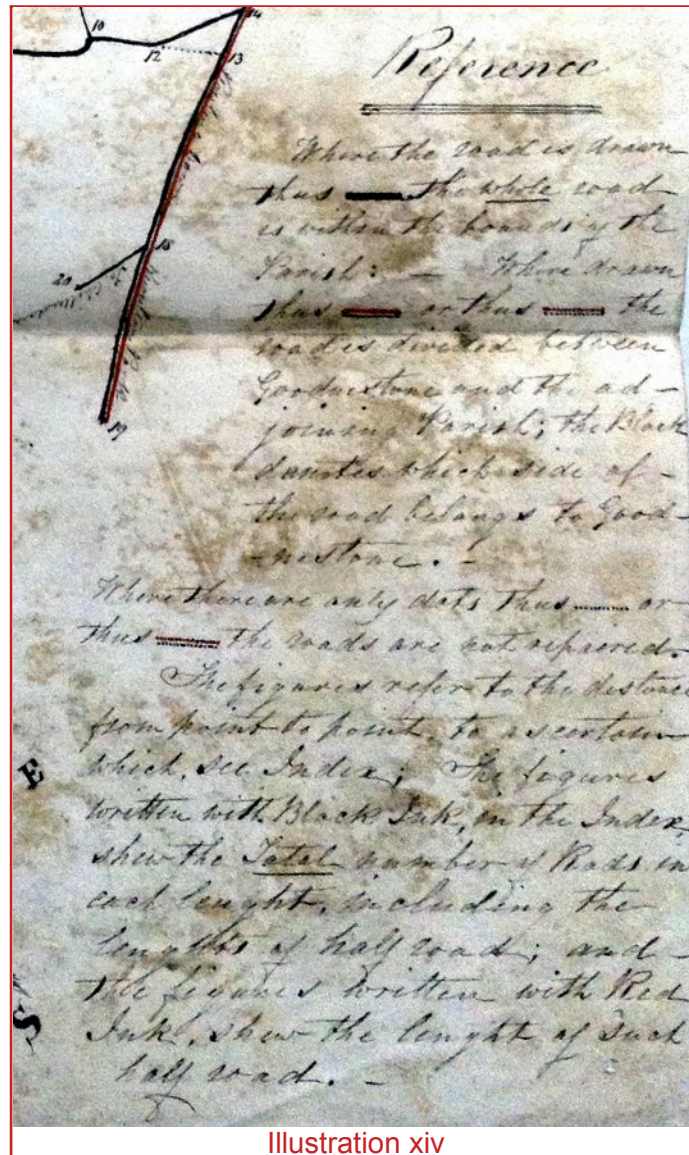


Illustration xiv

**Description of lands map**

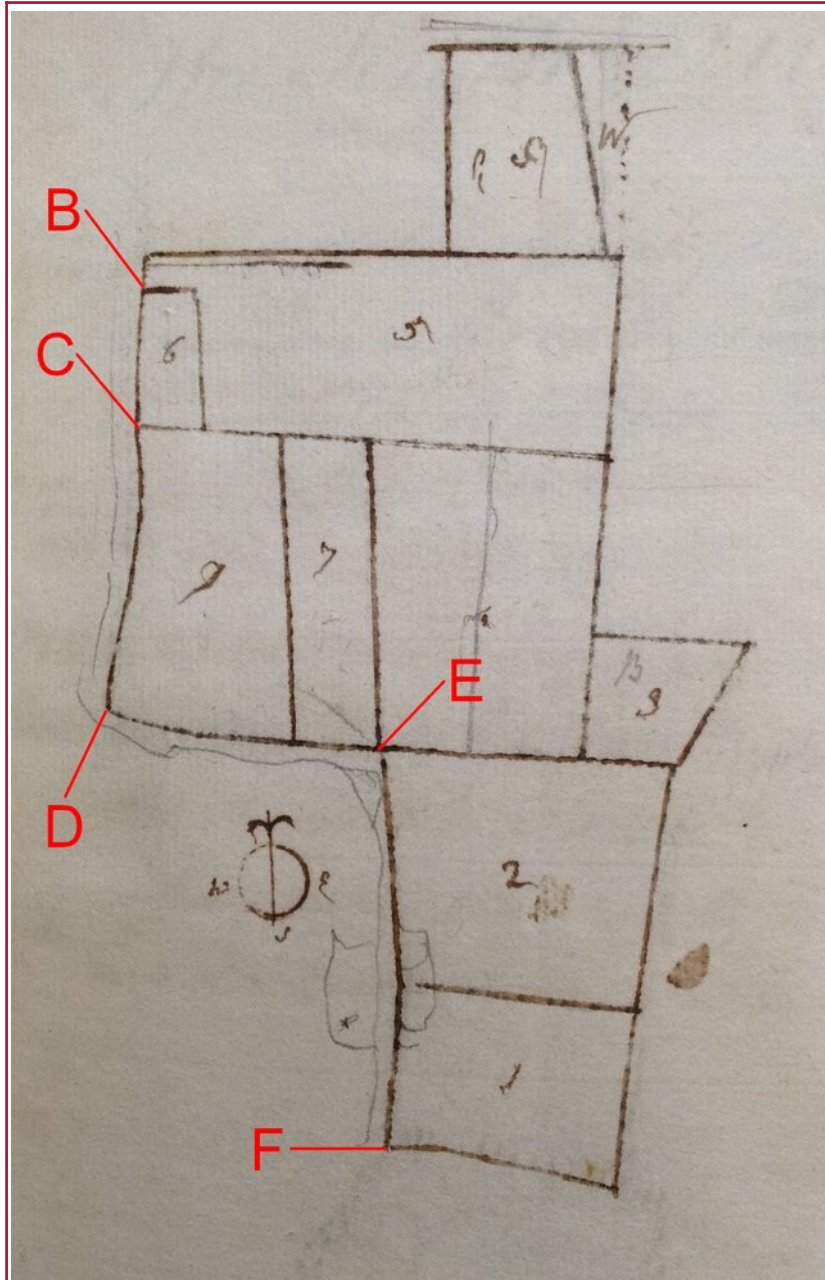


Illustration xv

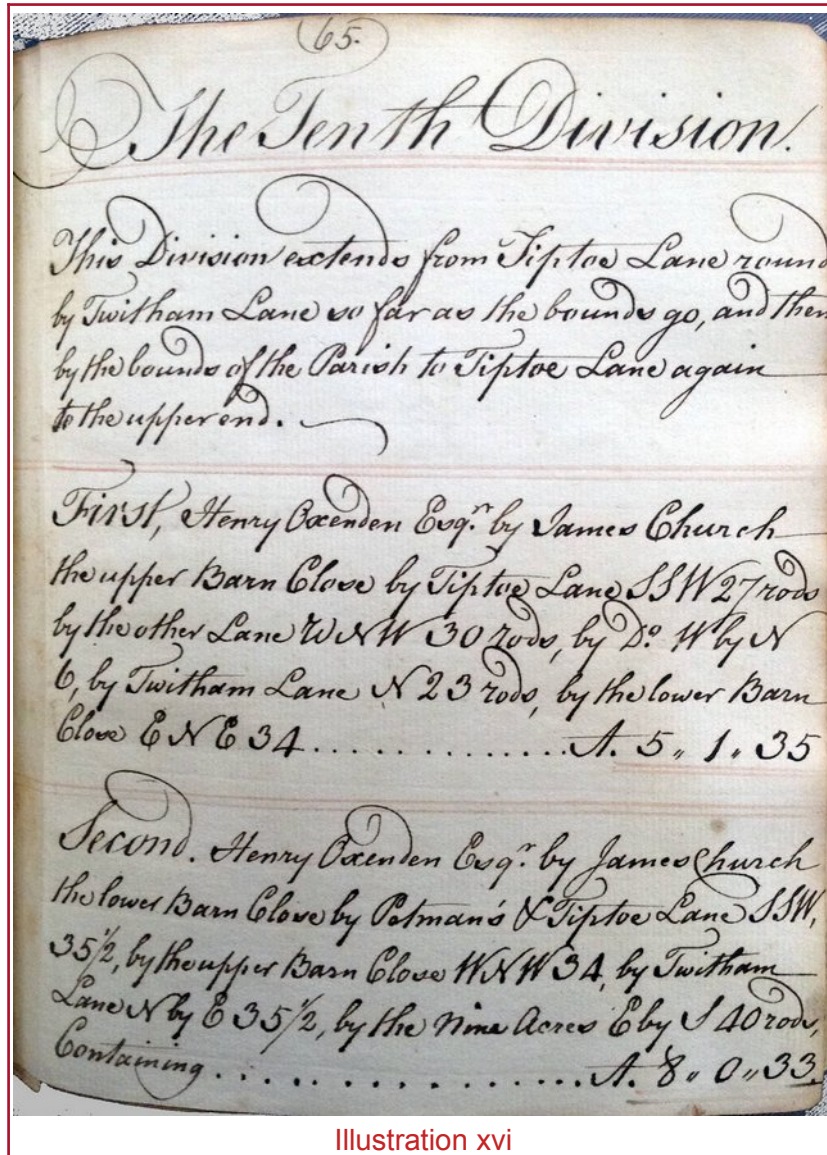


Illustration xvi

Description of lands narrative 2

(67.)  
Fifth. James Church's in part. — by himself  
the greatest part of a Piece in Twitham Field called the  
Ten Acres, by Sir W<sup>m</sup>. Lynch's Land S by W 20 Rods,  
by the Nine Acres & Ja. Pilcher's & Sayer's W 62 Rods,  
by Ja. Pilcher's Orchard N by E 19, by D<sup>r</sup>. House &  
Garden, W N W 8, by Twitham Lane N by E 2, by the  
other part of this Piece lying in Wingham near E 32  
Rods by Ditto N 2/4, then by Jos. Greenstreet's Land  
42 Rods, Containing. . . . . A. 10, 2, 12

Illustration xvii

Description of lands narrative 3

Sixth. James Pilcher by Church, Castle and  
himself the House Garden and Orchard, by Twitham  
Lane N by E 22, by Church's E S E, 8, by D<sup>r</sup>. S by W  
19 Rods, by Sayer's W by N 10, Rods.  
Containing) . . . . . A. 1, 0, 24 1/2

Ninth. Henry Oxenden Esq<sup>r</sup> by Stephen Sayer a Field  
called the Seven Acres, by Twitham Lane W 30 Rods, by D<sup>r</sup>.  
N W 4, by D<sup>r</sup>. N N E 30, by D<sup>r</sup>. N by E 12, by Pilcher's  
Orchard &c. E by S, 24 Rods, by Pilcher's Hop-ground S by W  
45 Rods. . . . . Containing) . . . . . A. 7, 2, 15.

Illustration xviii



D.3. **Description:** Original scale: scale marked on map; orientation: unchanged (north is top). A full copy of the map is at Annexe B at p.102 below. *A Survey of estate lands and roads Goodnestone*, catalogued as:

A survey of the lands belonging to Brook Bridges, with plans of the various lands, and a map of the roads in the parish,




and deposited as part of the Fitzwalter Estate records. It has been suggested that,



This Parish Survey therefore presents a very accurate and complete picture of the state of the parish in the late eighteenth century, and was perhaps commissioned by the Brook Bridges estate as a prelude to rationalising and consolidating estate land holdings. Subsequent events over the next twenty years would certainly support this view, as many pieces of land changed hands in this period.<sup>16</sup>

D.4. The survey, published in the second half of the eighteenth century, is a comprehensive gazetteer of land holdings in the parish of Goodnestone and of the boundary of the parish, preceded by a map of the roads in the parish, classified according to whether they are publicly maintainable.

D.5. The map is annotated as follows:

Reference

Where the road is drawn thus  the whole road is within the bounds of the Parish: — Where drawn thus  or thus  the road is divided between Goodnestone and the adjoining Parish; the Black denotes which side of the road belongs to Goodnestone.

Where there are only dots thus  or thus  the roads are not repaired.

The figures refer to the distance from point to point. To ascertain which, see Index; the figures written with Black Ink, in the Index, shew the Total number of Rods in each length, including the lengths of half road; and the figures written with Red Ink, show the length of such half road.

D.6. The key indicates that publicly-maintainable roads are shown in solid black, while roads which are not repairable are shown dotted black. A red edging indicates that maintenance is shared with a neighbouring parish.

D.7. The order way is included in the map insofar as it lies within the parish of Goodnestone, as a publicly-maintainable highway. The section edged in red between B and a point south of C [*B and a point towards C*] indicates that the maintenance of this section is shared with another parish (Wingham).

D.8. In the description of lands for the ninth division of Goodnestone, a map showing the division includes the order way between B and F [*B and E*] as a pencilled-in addition, together with Higher Twitham Farm. In the narrative, the order way is referred to as Twitham Lane (a conversion is given for the area of land and length of boundary):

The Tenth Division

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<sup>16</sup> *The Nash Families in Goodnestone-next-Wingham*, by David Nash Mills (printed by the Faversham Society as part of *About Faversham*, no.55).

This Division extends from Tiptoe Lane round by Twitham Lane as far as the bounds go, and then by the bounds of the Parish to Tiptoe Lane again to the upper end.

First, Henry Oxenden Esq.r by James Church the upper Barn Close by Tiptoe Lane SSW 27 rods [136m] by the other Lane WNW 30 rods [151m], by Do. W by N 6 [30m], by Twitham Lane N 23 rods [116m], by the lower Barn Close ENE 34 [171m].....A.5.1.35 [2.21 ha]

Second. Henry Oxenden Esq.r by James Church the lower Barn Close by Potman's & Tiptoe Lane SSW, 35½ [179m], by the upper Barn Close WNW 34 [171m], by Twitham Lane N by E 35½ [179m], by the Nine Acres E by S 40 rods [201m], Containing.....A.8.0.33 [3.32 ha]

...

Fifth. James Church's in part. — by himself the greatest part of a Piece in Twitham Field called the Ten Acres, by Sir Wm. Lynch's Land S by W 29 rods [146m], by the Nine Acres & Ja. Pilcher's & Sayer's W 62 rods [312m], by Ja.s Pilcher's Orchard N by E 19 [96m], by Do. House & Garden, WNW 8 [40m], by Twitham Lane N by E 2 [10m], by the other part of this Piece lying in Wingham near E 32 rods [161m], by Ditto N 2¼ [11m], then by Jos. Greenstreet's Land 42 Rods [211m], Containing.....A.10.2.12 [4.28 ha]

Sixth. James Pilcher by Church, Castle and himself the House Garden and Orchard, by Twitham Lane N by E 22 [111m], by Church's ESE, 8 [40m], by Do. S by W 19 Rods [95m], by Sayer's W by N 10, Rods [50m]. Containing.....A.1.0.24½ [0.47 ha]

...

Ninth. Henry Oxenden Esq.n by Stephen Sayer a Field called the Seven Acres, by Twitham Lane W 30 Rods [151m], by Do. NW 4 [20m], by Do. NNE 30 [151m], by Do. N by E 12 [60m], by Pilcher's Orchard &c. E by S, 24 Rods [121m], by Pilcher's Hop-Ground S by W 45 Rods [226m] Containing.....A.7.2.15 [3.07ha]

D.9. **Conclusion:** The survey is a detailed assessment of the lands and roads of Goodnestone, prepared for the Goodnestone estate and, until recently, kept among the estate records. It includes a detailed and accurate analysis of the roads on the estate, apportioning liability for maintenance between the parish of Goodnestone and neighbouring parishes. The survey was prepared for Sir Brook Bridges, the then proprietor of the Goodnestone estate, and therefore may be taken to reflect the disposition of the land owner at the time.

D.10. The survey records only those ways which were considered to be public carriage-ways: it refers to roads which are 'not repaired' (*i.e.* by the parish), but not to roads which are not public. In particular, it does not include the estate carriage drive between Bonnington Farm and Goodnestone House, while those roads which are shown are consistent with ways which are recognised today as public roads, or which are documented elsewhere as former roads which have fallen out of use.

D.11. The order way is depicted as one of the roads of the parish which is maintainable by the inhabitants of the parish. The survey refers consistently to 'roads', and excludes foot-paths and bridleways.

D.12. The survey also defines the western boundary of the 'Tenth division' of the estate by reference to Twitham Lane. The narrative for the Tenth division does not expressly specify that Twitham Lane is a public highway — but this is addressed in the aforementioned map of roads in the parish.

D.13. The survey is good evidence that the order way was regarded as a public road, publicly maintainable.

D.14. **Points:**

Bridleway	Restricted byway
0	3

## E. Late C18 St John's College terrier

E.1. **Date:** 1793

E.2. **Source:** St John's College archives<sup>17</sup>

### St John's College terrier 1793

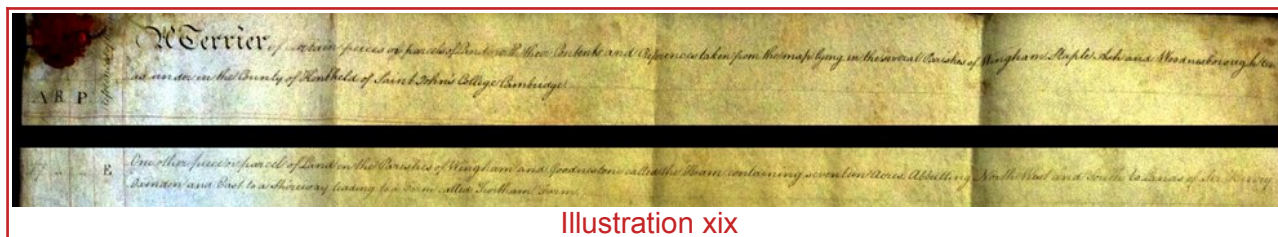


Illustration xix

E.3. **Description:**

A terrier of certain pieces or parcels of land with their contents and references taken from the map lying in the several parishes of Wingham, Staple, Ash and Woodnesborough [?] as under in the County of Kent held by St John's College Cambridge.

...

17 [acres] E One other piece or parcel of land in the parishes of Wingham and Goodnestone called the Ham containing seventeen acres abutting North West and South to Lands of Sir Henry Oxenden and East to a shireway leading to a farm called Twitham Farm.

E.4. The label E applied to the parcel described above appears to be in relation to the same field labelled E in the C18 St John's College estate map (item V.C above) and the Early C19 St John's College Downe Court map (I) (item V.H below).

E.5. **Conclusion:** The St John's College terrier refers to the order way between B and D [B and C], adjacent to the parcel identified as E, as a 'shireway leading to a farm called

<sup>17</sup> SJES/2/2/AHK/3/1/1/7

Twitham Farm'. A shireway is a public bridleway.<sup>18</sup> The terrier is therefore good evidence of the reputation of the order way (between B and D [*B and C*]) as a bridleway.

E.6. **Points:**

Bridleway	Restricted byway
0	0

(no more than two documents are scored from similar historical sources)

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

EA.1 **Date:** 1797

EA.2 **Source:** British Library website,<sup>19</sup> National Archives<sup>20</sup>

**Ordnance Survey surveyor's drawing, Canterbury (East)**



Illustration xx

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

19 [britishlibrary.oldmapsonline.org/maps/a70167eb-6949-5984-a1a0-912a6f5d928e/](http://britishlibrary.oldmapsonline.org/maps/a70167eb-6949-5984-a1a0-912a6f5d928e/)

20 MR 1/599

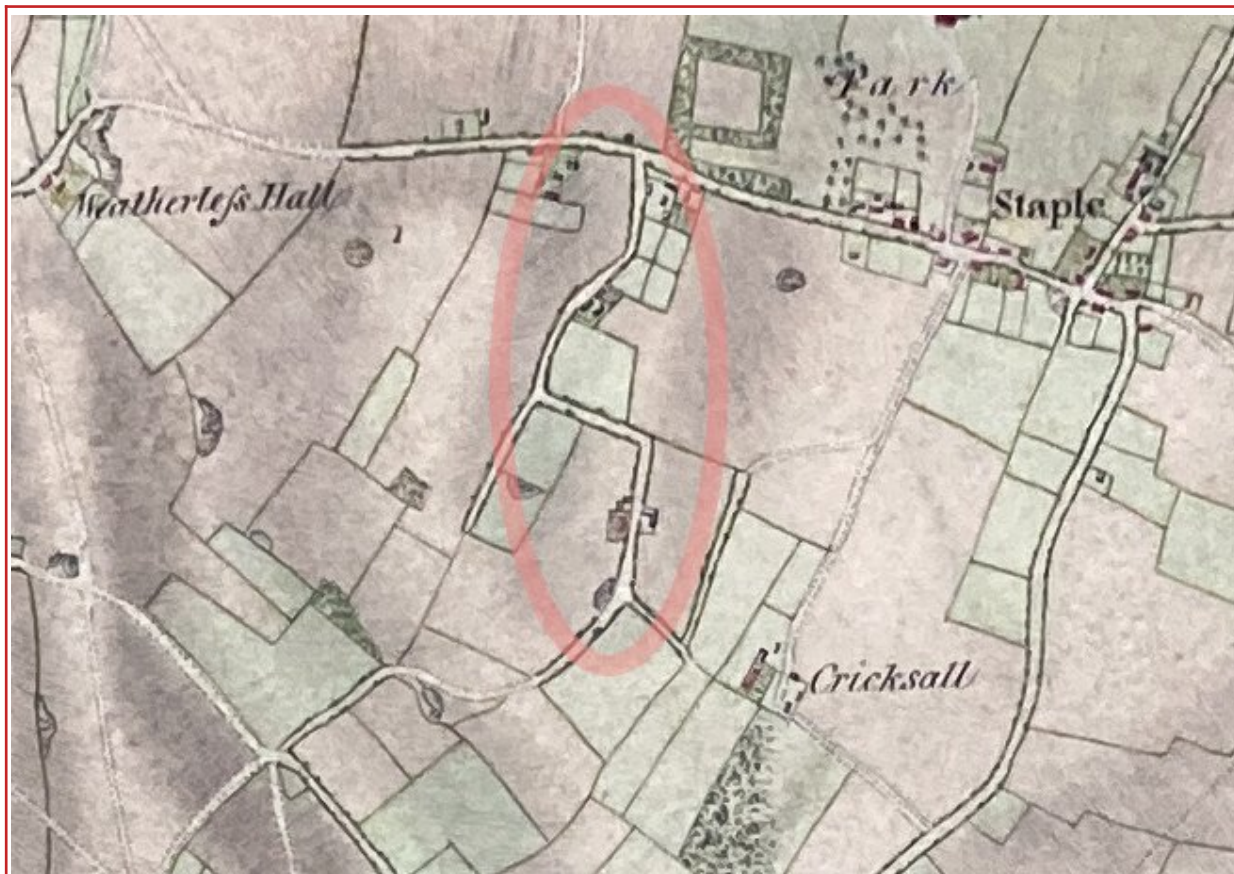


Illustration xxi

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

EA.4 Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.<sup>21</sup>

EA.5 It seems that good copies were made of the drawings 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

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

mile'.<sup>22</sup> The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

EA.6 **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. The order way is shown as an indirect, enclosed route between Twitham and Goodnestone, and is shown as open to both Staple Road at A and Cave Lane. The Ordnance Survey drawing provides some evidence for the existence of a track along the order way, although it cannot be stated with confidence that it is necessarily a highway.

EA.7 **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	0

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<sup>22</sup> *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

## F. Barlow-Hasted map of Kent

F.1. **Date:** 1797–1801

F.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



F.3. **Description:** Original scale: not known; orientation: unchanged (north is top).

F.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. The maps are derived from the county map of Andrews, Dury and Herbert and re-engraved by William Barlow. Hasted and his collaborators did try to correct errors in the maps,<sup>23</sup> but they did not have the resources to perform any serious revision of topographical surveying. Each map repres-

<sup>23</sup> Shirley Burgoyne Black, *A Scholar and a Gentleman: Edward Hasted, The Historian of Kent* (2001); John Boyle, *Discoveries about Edward Hasted and his History of Kent*, *Archaeologia Cantiana*, vol.97, pp.235–260 at p.244 (1981).

ented one or more of the Kent hundreds: that shown here is an extract from the hundred of Downhamford.

F.5. The Barlow map shows a way approximately south-southeast from the Staple to Wingham Road west of Staple, close to the boundary of the hundred of Downhamford with Wingham. The way joins another way which projects southwest from Staple Church, and continues south-southeast to a hill north of Crixhall Rough. The way then continues south-southwest over the boundary of Downhamford and Wingham.

F.6. **Conclusion:** The way shown on the Barlow map approximately coincides with the course of the order way. The three limbs of the ways centred on F [*E*] (as marked on the map) are likely to be the order way (to the north-northwest), the way from Church Lane opposite Staple Church to Higher Twitham Farm<sup>24</sup>, and what is now recorded as bridleway EE269A to Cave Lane. The way to Higher Twitham Farm joined the order way between E and F [*D and E*]: accordingly, on the extract above, the southern termination of the order way (at F [*E*]) is marked as coincident with the nominal representation of the summit of the hill to the north of Crixhall Rough.

F.7. The Barlow map provides some evidence of the existence of a public way along the course of the order way in the late eighteenth century. The map was widely commercially published, and would tend to show through routes which were public highways, whereas certain minor routes of questionable public status are shown with lines across the junction with public ways. However, as the order way is not shown as a principal road, it cannot be assumed that the status is any greater than bridleway.

F.8. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
1	0

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<sup>24</sup> See paragraph I.E.5 above for more about Higher Twitham Farm.



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

G.1. **Date:** 1801

G.2. **Source:** Mapco.net<sup>25</sup>: © Copyright David Hale and the MAPCO : Map And Plan Collection Online 2006–13

### **Mudge-Faden one-inch map 1801**



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

G.4. This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

G.5. The Mudge-Faden map shows a way consistent with the alignment of the order way between A and F [A and E], enclosed on both sides. Spurs branch off from the way to the south (at D [C]) and east (at E [D]). At F [E], the way is shown continuing southwest to

<sup>25</sup> [mapco.net/kent1801/kent31\\_02.htm](http://mapco.net/kent1801/kent31_02.htm) and [mapco.net/kent1801/kent31\\_03.htm](http://mapco.net/kent1801/kent31_03.htm)

Cave Lane (along the route of what is now recorded as bridleway EE269A) and southeast towards Crixhall Court (along the route of what is now recorded as bridleway EE28).

G.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.

G.7. The order way is shown as an indirect, enclosed route between Twitham and Goodnestone, and is shown as open to both Staple Road at A and Cave Lane. The Mudge-Faden map provides some evidence for the existence of a public highway along the order way, although it cannot be stated with confidence that it is necessarily greater than a bridleway.

G.8. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
1	0

## H. Early C19 St John's College Downe Court map (I)

H.1. **Date:** 1800–20

H.2. **Source:** St John's College archives<sup>26</sup>

### St John's College Downe Court map 1800–20

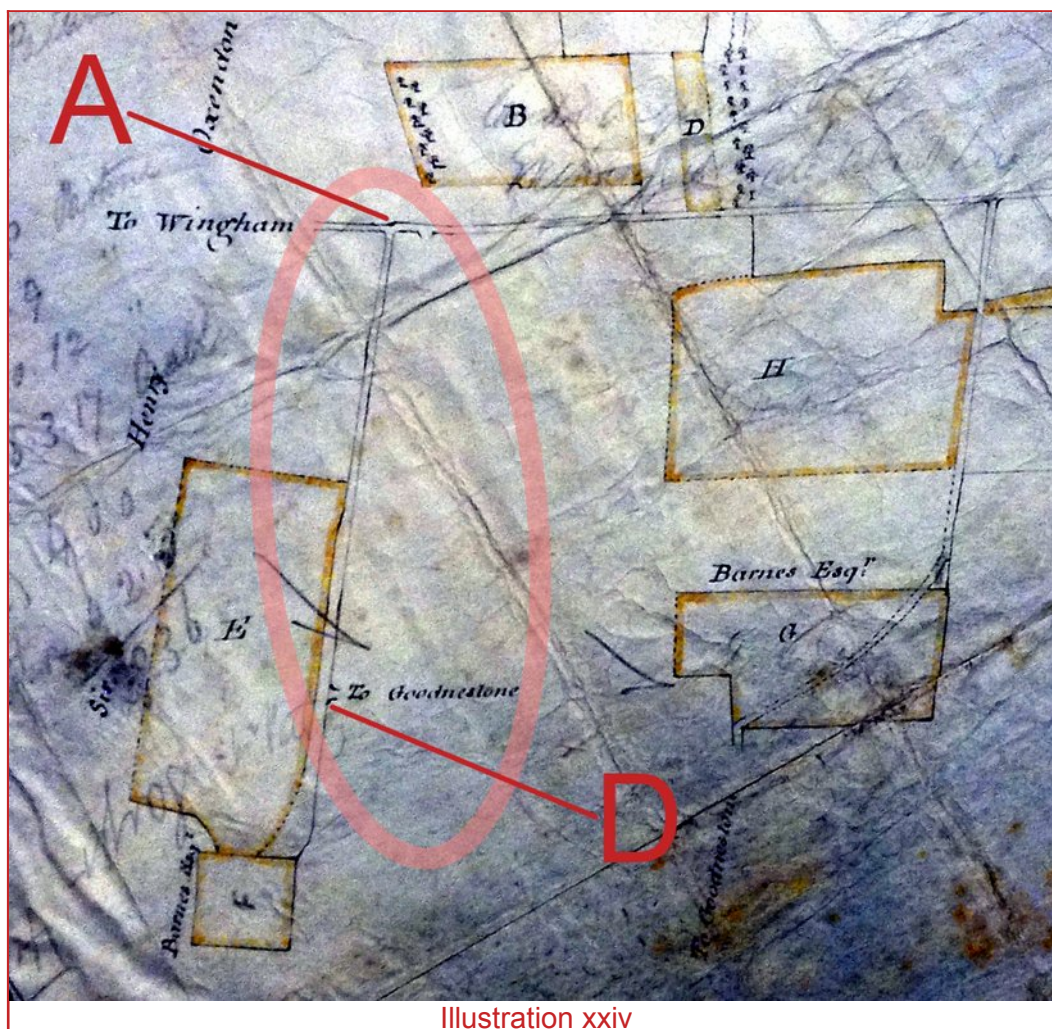


Illustration xxiv

H.3. **Description:** Original scale: not known; orientation: rotated 330° so that north is top.

H.4. The map is of the Downe Court estate of St John's College, Cambridge, showing lands held by or leased by the college. The map shows the order way between A and D [A and C] as an enclosed road which also provides access to college land on the west side of the order way (this land continues in the ownership of the college to this day), labelled E and F on the plan. At D [C], a turning is shown to the east which is labelled 'To Goodnestone'.

H.5. **Conclusion:** The college estate map shows the existence of the order way between A and D [A and C] as a physical feature. The label attached to the way east from D [C] as

26 SJES/2/2/AHK/4/14

leading to Goodnestone is strongly suggestive that the way was considered to be public (see para.V.C.6 above).

H.6. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	0

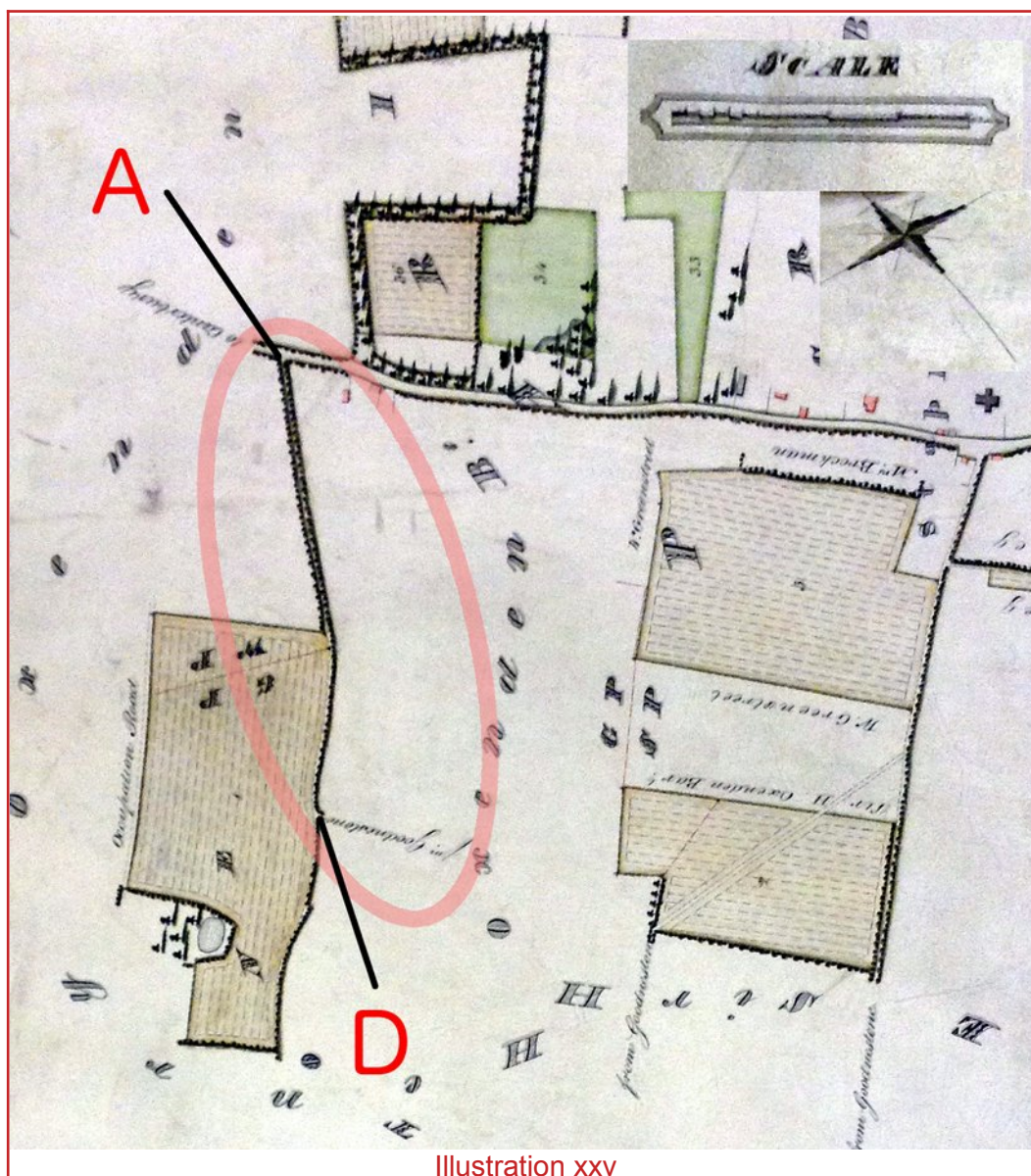
(no more than two documents are scored from similar historical sources)

## I. Early C19 St John's College Downe Court map (II)

I.1. **Date:** 1816

I.2. **Source:** St John's College archives<sup>27</sup>

### St John's College estate map 1816



I.3. **Description:** The map is of the Downe Court estate of St John's College, Cambridge, showing lands held by the college. The plan shows the order way between A and C [A and B] as an enclosed road which also provides access to college land on the west side of the order way. South of C [north of C], the order way is shown as enclosed on the east side, but open to the college land on the west side of the order way. At D [C], a turning is shown to the east which is labelled 'Fm. Goodnestone'.

<sup>27</sup> SJES/2/2/AHK/4/17

I.4. **Conclusion:** The college estate plan shows the existence of the order way between A and D [A and C] as a physical feature. The label attached to the way east from D [C] as leading from Goodnestone is strongly suggestive that the way was considered to be public (see para.V.C.6 above).

I.5. **Points:**

Bridleway	Restricted byway
0	0

(no more than two documents are scored from similar historical sources)

## J. **Greenwoods' map of Kent**

J.1. **Date:** 1819–20

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

### **Greenwoods' map**



Illustration xxvi

## Greenwoods' map key



Illustration xxvii

J.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north is top). This copy appears to be state iii, published between 1821 and 1827. A larger-area extract of the map is at Annexe C at p.104 below.

J.4. The Greenwood's map shows a way consistent with the alignment of the order way between A and F [A and E], enclosed on both sides. A spur branches off from the way to the south (at D [C]). At F [E], the way is shown continuing south-west to Cave Lane (along the route of what is now recorded as bridleway EE269A) and south-east towards Crixhall Court (along the route of what is now recorded as bridleway EE28). The way is described in the key as a 'cross road'.

J.5. **Analysis:** Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.<sup>28</sup>

J.6. In *Fortune v Wiltshire Council*,<sup>29</sup> Lewison LJ wrote in his judgment of 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').

J.7. In *Hollins v Oldham*,<sup>30</sup> HHJ Howarth (sitting as a High Court Judge) said, in relation to *Burdett's Map of Cheshire* dated 1777, which adopted the same classification as the Greenwood's map in relation to roads:

Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does

<sup>28</sup> From *Antique Maps*, C Moreland and D Bannister, 1983.

<sup>29</sup> [2012] EWCA Civ 334: [www.bailii.org/ew/cases/EWCA/Civ/2012/334.html](http://www.bailii.org/ew/cases/EWCA/Civ/2012/334.html).

<sup>30</sup> [1995] (unreported) C94/0206.

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.

J.8. It is accepted that not every road shown on the Greenwoods' map must (if it is not a turnpike) inevitably be a cross-road — undoubtedly there are exceptions, such as some (but not all) roads leading only to isolated farmsteads or country houses. But it is submitted that, where a road is connected to highways at either end, it is more likely than not to be shown because it was recognised as a cross-road and of utility to the public who might buy the map.

J.9. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way along the claimed route. The key describes the route as a 'cross road', which is suggestive of a public way, at least suitable for use on horseback.

J.10. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	1



## K. Ordnance Survey, Old Series one-inch map

K.1. **Date:** 1831

K.2. **Source:** National Library of Australia<sup>31</sup>

### Ordnance Survey Old Series one-inch map



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

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

K.5. The map shows a way consistent with the alignment of the order way between A and F [*A and E*], enclosed on both sides. Spurs branch off from the way to the south (at D [*C*]) and east (at E [*D*]). At F [*E*], the way is shown continuing south-west to Cave Lane (along the route of what is now recorded as bridleway EE269A) and south-east towards Crixhall Court (along the route of what is now recorded as bridleway EE28)

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

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

K.7. The Ordnance Survey Old Series map is good evidence for the existence of a defined way along the claimed route between A and F [*A and E*].

K.8. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	0

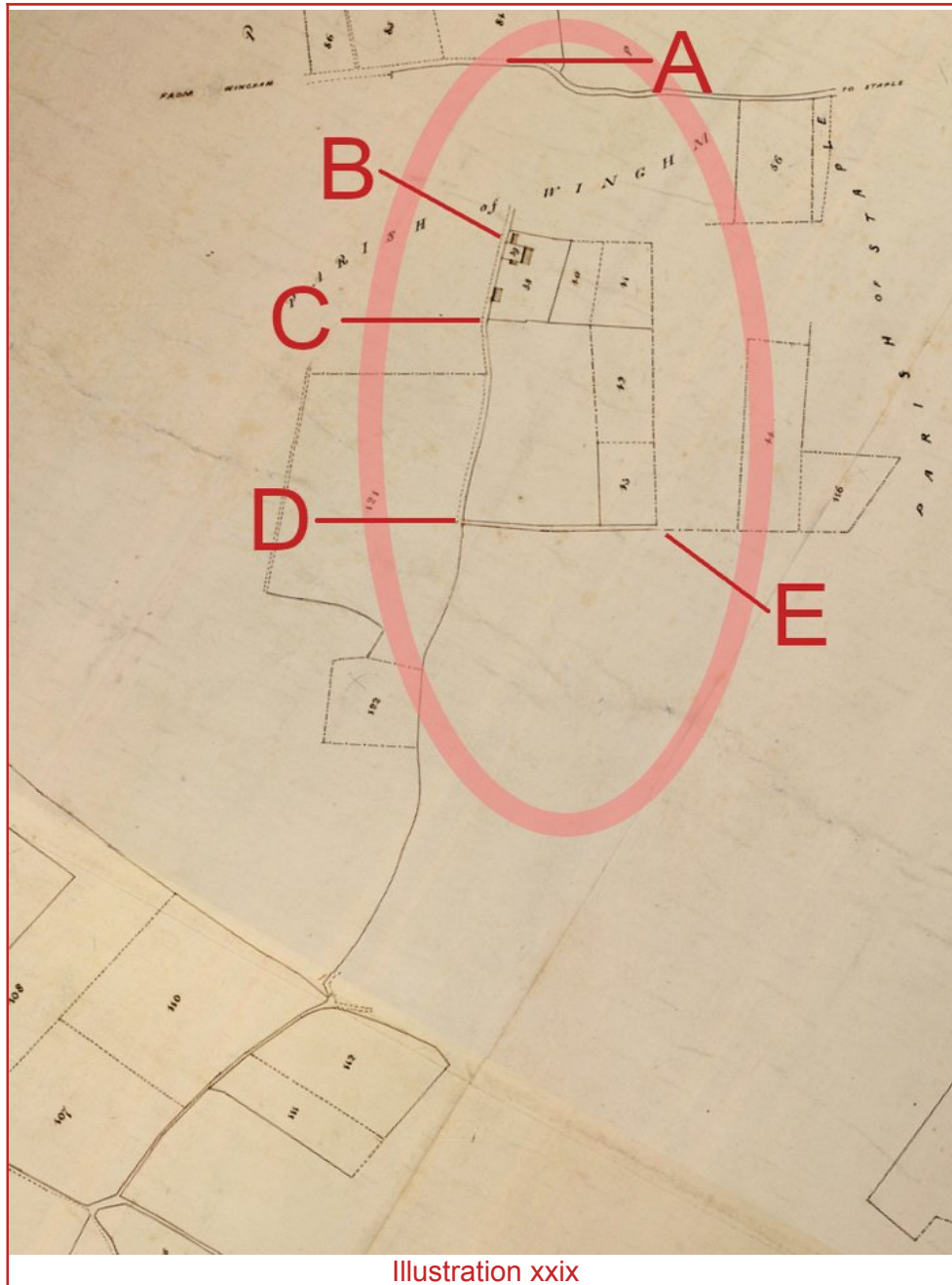
(no points are scored as this map is repetitive of the Mudge-Faden map at item V.G above)

## L. Tithe Commutation Act 1836

L.1. **Date:** 1841

L.2. **Source:** map — Kent County Archives<sup>32</sup>; tithe award — Kent Archaeological Society<sup>33</sup>

### ■ *Goodnestone tithe map*



32 Kent tithe maps are available as images on CD.

33 [web.archive.org/web/20181209015024/http://www.kentarchaeology.org.uk/Research/Maps/GOS/02.htm](http://web.archive.org/web/20181209015024/http://www.kentarchaeology.org.uk/Research/Maps/GOS/02.htm),  
[web.archive.org/web/20220818072955/https://www.kentarchaeology.org.uk/research/tithes/wingham](https://web.archive.org/web/20220818072955/https://www.kentarchaeology.org.uk/research/tithes/wingham).

## Wingham tithe map

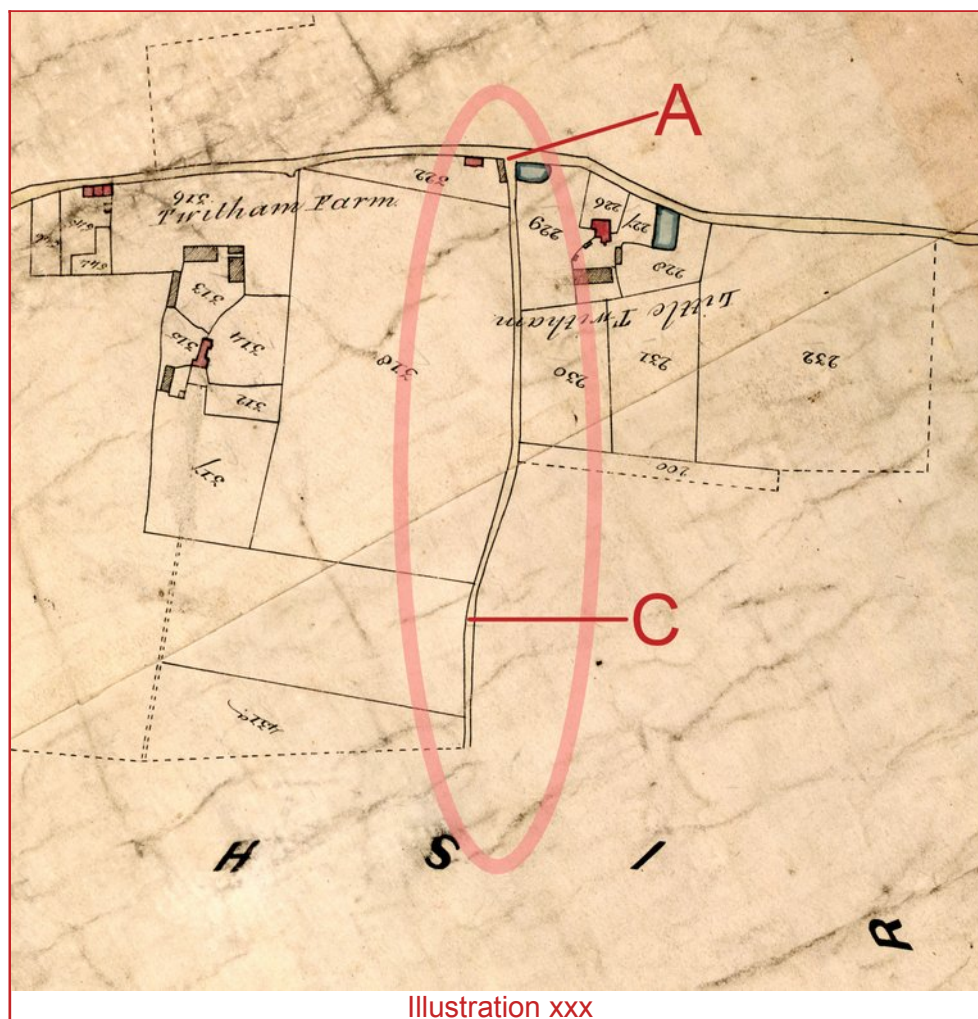


Illustration xxx

L.3. **Description:** The tithe map for Goodnestone (original scale: unknown; orientation: rotated 300° so that north is top) shows only part of the order way, between a point slightly north of B as far as E [D]. The part of the order way north of B is in the parish of Wingham, and the part south of E [D] was not assessed as subject to tithes, most probably because the land was then in ecclesiastical ownership. The map shows the order way between B and D [*B and C*] as unenclosed on the west side and enclosed on the east side, and between D and E [*C and D*] as enclosed on both sides. No tithe parcel number is assigned to the part between D and E [*C and D*]; it seems likely that the part between B and D [*B and C*] was assessed as not titheable, as there is no brace connecting it with the adjacent parcel 121.<sup>34</sup> The continuation from E [D] south to F [E] is not shown in any way as the land appears not to be assessed as subject to tithes.

L.4. The tithe map for Wingham (original scale: unknown; orientation: rotated 230° so that north is top) shows a further part of the order way between A and a point mid-way between C and D [*A and a point between B and C*]. The order way is open to Staple Road at A, and shown as an enclosed way from A south through B and C [*south through and*

<sup>34</sup> Parcel 121 is described in the Goodnestone tithe apportionment as 'arable' having an area of 15a, 0r, 2p.

beyond B] (which are not marked with any features<sup>35</sup>) towards D [C]. The way is shown coloured sienna, although the colour has faded.

L.5. In the apportionment for Wingham, roads are grouped under 'Roads, River and Waste Land' bearing parcel numbers including and above 615. However, in general, the parcel numbers for features in this group are not identified on the map itself. Two potentially relevant roads are identified in the book of apportionment:

Parcel no.	Entry	Area	
		given (imperial)	ha <sup>36</sup>
639	Road from Twitham Farm	0a 1r 37p	0.195
640	Twitham Road	0a 1r 18p	0.147

but neither parcel number is identified on the map.

L.6. **Analysis:** The adoption of colour for public ways is consistent with the nomenclature recommended by Lt Dawson to the Tithe Commissioners 'on the Nature, Scale and Construction of the Plans required for the Tithe Act'.<sup>37</sup> The order way is not expressly identified as one of the relevant roads listed in the book of apportionment (parcel numbers 639 or 640), but it seems likely that it is Twitham Road. Higher Twitham Farm subsisted on Twitham Hill until 1875, and it seems more likely that the 'Road from Twitham Farm' is the road forming the eastern boundary of the detached portion of Wingham south of Staple village, which now forms the drive to Crixhall Court, but which at that time also led to a spur to Higher Twitham Farm (Tiptoe Lane, which is depicted on the Wingham tithe map).

L.7. The Wingham tithe apportionment lists the following roads, which are marked up on a full copy of the tithe map at Annexe D at p.106 below:

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35 No features are marked on the east side of the order way because the order way between a point slightly north of B to a point slightly south of C [*a point slightly north of B to a point approximately midway between B and C*] is followed by the parish boundary between Wingham and Goodnestone, and features in Goodnestone need not be shown. See the Ordnance Survey boundary records (item V.N below) for further details.

36 The value in hectares has been converted from the value in acres shown in the apportionment.

37 Report dated 29 November 1836, and endorsed by the Commissioners on 4 January 1837. Turnpike, bye or cross, and bridle, roads were to be enclosed within two parallel lines, and coloured burnt sienna.

Parcel no.	Tithe apportionment road	Area (a.r.p)	Area (Ha)	Matched road today	Est. length of roads	Of which, length of half roads	Est. average width
620	Witherdens Hall	1.2.11	0.645	Popsal Lane (RB EE63); FP EE166	720		9.0
622	Turnpike Road to Sandwich	9.0.21	3.714	A257	3130		11.9
623	Road to Ickham	0.2.3	0.213	Wingham Road	360		5.9
624	The Drove road	2.3.36	1.236	B2046 (part High Street, Adisham Road)	2500	220	5.2
625	Farm Road to Dean Park	0.2.28	0.298	Dene Farm Lane	510		5.8
626	Road to Wingham Wells & Neavy Downs	2.0.26	0.898	Wingham Well Lane	1880		4.8
627	Old Canterbury Road	0.3.11	0.341	Mill Road	560		6.1
628	Well Head Road	0.3.0	0.304	Watercress Lane	730		4.2
629	Road to Preston	1.1.31	0.612	Preston Hill	1200	470	6.3
631	Petts Road	0.2.24	0.284	Petts Lane (EE169)	550		5.2
632	Little Wenderton (Road)	1.3.18	0.770	Wenderton Lane	1730	790	5.8
634	Hearts Delight Road (Half Park)	0.0.30	0.103	Hearts Delight Lane	520		2.0
635	Green Lane road (Half Park)	0.1.25	0.187	EE269 (DMMO application to RB)	930	410	2.6
636	Goodnestone Road	1.1.21	0.578	part Goodnestone Road, EE178	2090		2.8
637	Crockshire Farm Road	3.1.21	1.387	Crockshard Lane/Hill; part Goodnestone Road	1250	160	11.9
638	Road to Staple	4.0.8	1.646	Staple Road	2690	810	7.2
639	Road from Twitham Farm	0.1.37	0.228	(Higher Twitham Farm to Staple Church)	780	455	4.1
640	Twitham Road	0.1.18	0.163	Pettocks Lane (DMMO application)	360	180	6.0
641	Old Workhouse Road	0.0.30	0.103	School Lane	140		7.3
642	Dambridge Farm Road to Brook	1.0.15	0.456	Dambridge Farm Road	1380		3.3
643	Road to Rushams	0.2.36	0.325	Rusham Road	740	30	4.5
644	Road from Neavy Downs to Blackney Downs	0.1.24	0.183	FP EE80	530		3.5
645	Road from Hearts Delight to Guilton	0.2.32	0.312	Nash Road	885	885	7.0
646	Drove Way Farm Road	0.1.36	0.224	BW EE150	260	260	17.3
647	Wamstone Road	0.3.1	0.307	Walmestone Road	960	530	4.4
648	Rd from Elmstone to Ash	0.2.17	0.260	Part Church Hill (Elmstone)	520	40	5.2
649	Rd from Elmstone to Ash	0.0.4	0.014	Part Church Hill (Elmstone)	50	50	5.5
650	Road from Perry Farm to four turnings	0.0.15	0.051	Perry Lane (but no part identified in parish)			

Illustration xxxi: Wingham tithe apportionment: roads

L.8. One road listed in the apportionment has not been reliably identified: no.650, Road from Perry Farm to four turnings: the road appears to be Perry Lane, but no part of Perry Lane is shown as falling within the parish of Wingham on the Ordnance Survey County Series first edition map.

L.9. Of the roads listed, all of them are now public roads (including restricted byways), aside from the following:

- no.620 — one limb of Witherdens Hall (now FP EE166);
- no.639 — Road from Twitham Farm (*i.e.* Tiptoe Lane);
- no.640 — Twitham road (the order way);
- no.644 — Road from Neavy Downs to Blackney Downs (now FP EE80);
- no.646 — Drove Way Farm Road (now BW EE150).

L.10. **Conclusion:** The relevant part of the order way which lies across titheable lands in Goodnestone parish is shown on the tithe map for that parish as a road, in the same manner as other roads in the parish, which are today recognised as public roads or bridleways. The only exception is that the tithe map shows Green Lane at Rowling in the same manner as other roads: today, Green Lane is not recorded as a public road, but may well be an omission from the record of public ways. It therefore is reasonable to conclude that the tithe map recognises the order way between B and E [*B and D*] as of at least the status of a public bridleway.

L.11. The relevant part of the order way which lies in Wingham parish, from Staple Road at A south to a point between C and D [*B and C*], is shown ungated at the junction with Staple Road, and in the same faded sienna colouring. The roads listed in the Wingham tithe apportionment appear in a section headed: *Roads River & Waste Land*, and are coloured sienna. However, of the roads identified, all of them are now recognised public roads or public rights of way, with the exception of nos.639 and the order way.

L.12. Private roads are separately identified on the map, and not coloured: for example, see Poplar Walk (no.391a) at Wenderton, and the drive to Brook Farm at Staple.

L.13. Although not expressly labelled as public roads, it is suggested that only public roads were included in the relevant section of the apportionment, and that this conclusion is consistent with their being coloured sienna. Of those ways which were included in the list, but which are now not recorded as public roads or restricted byways, all of them have been recognised in other documents as public roads. The tithe map is therefore consistent with the order way having the reputation of a carriageway at the date of the survey.

L.14. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	3

## M. Mid-C19 St John's College estate map

M.1. **Date:** 1843

M.2. **Source:** St John's College archives<sup>38</sup>

### St John's College estate plan 1843

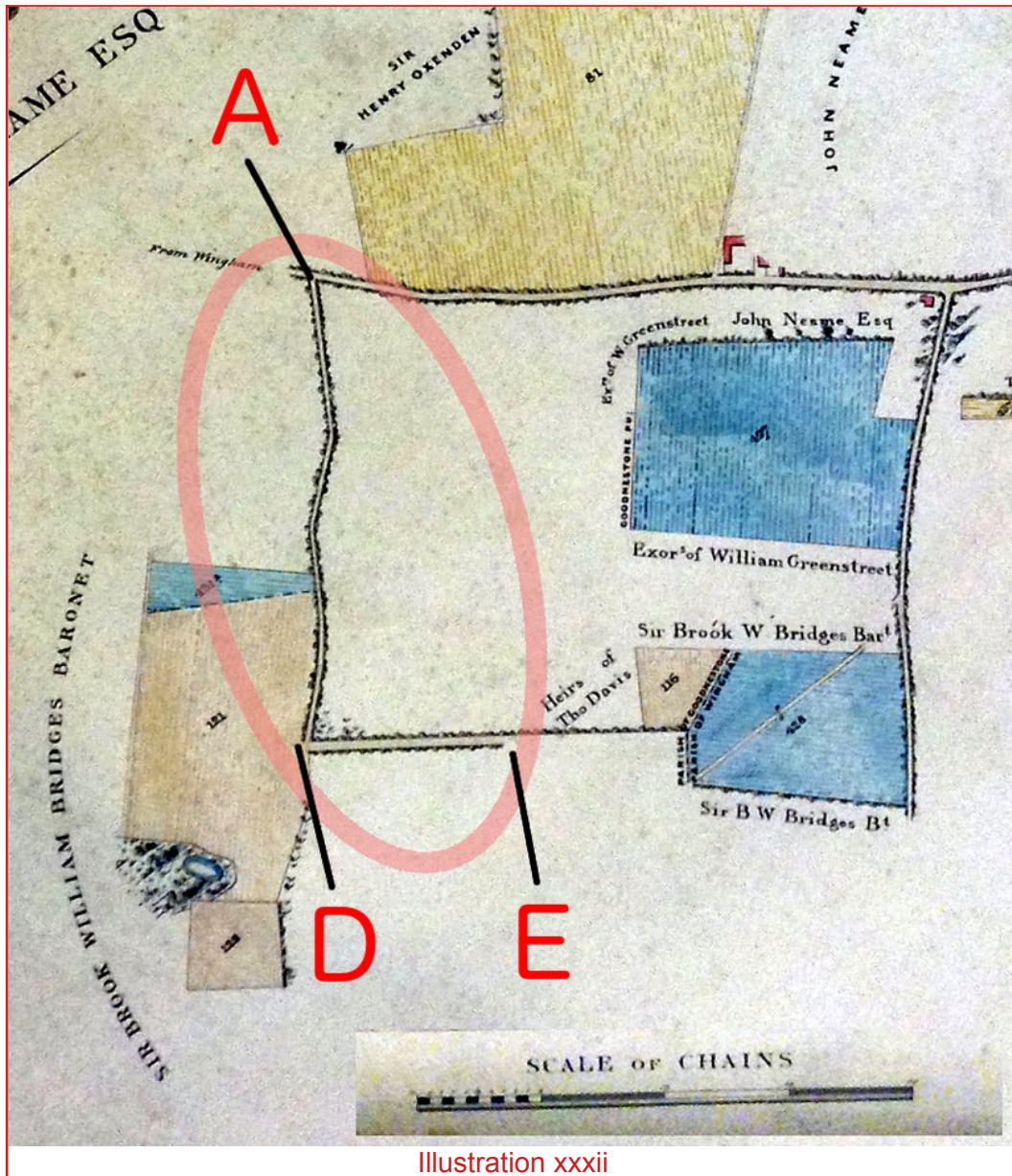


Illustration xxxii

M.3. **Description:** Original scale: as marked in chains; orientation: rotated by 320° so that north is top. A full copy of the map is at Annexe E at p.108 below. Described as a:

Plan of an Estate in the Parishes of Staple-Worth-Wingham-Goodnestone Ash and Woodnesboro in the county of Kent Held under a Beneficial Lease from St Johns College Cambridge by John Neame Esq

38 SJES/2/2/AHK/4/6/1



M.4. The estate map shows the order way between A and E [*A and D*]. The way is shown as if enclosed by hedges, with a light grey infill. At E [*D*], no turning is shown to the south, but the enclosure of the way ceases on the south side of the way, and the light grey infill extends no further east.

M.5. **Conclusion:** The college estate map shows the existence of the order way between A and E [*A and D*] as a physical feature. The light grey infill is used on the estate map to identify routes which are today recognised as public roads, with the exception of part of the order way, and Church Lane south from Staple church (which is the subject of an order to record the way as a public bridleway<sup>39</sup>). The map therefore provides some support for the status of the order way as a public road.

M.6. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	0

(no more than two documents are scored from similar historical sources)

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39 The Kent County Council (Bridleway EE190 at Staple and Goodnestone) Definitive Map Modification Order 2022

## N. Ordnance Survey boundary records

N.1. **Date:** 1869–71

N.2. **Source:** National Archives<sup>40</sup>

### ■ *Boundary sketch map Wingham*



Illustration xxxiii

<sup>40</sup> OS 27/2861, OS 28/328

## Boundary field sketch map Wingham

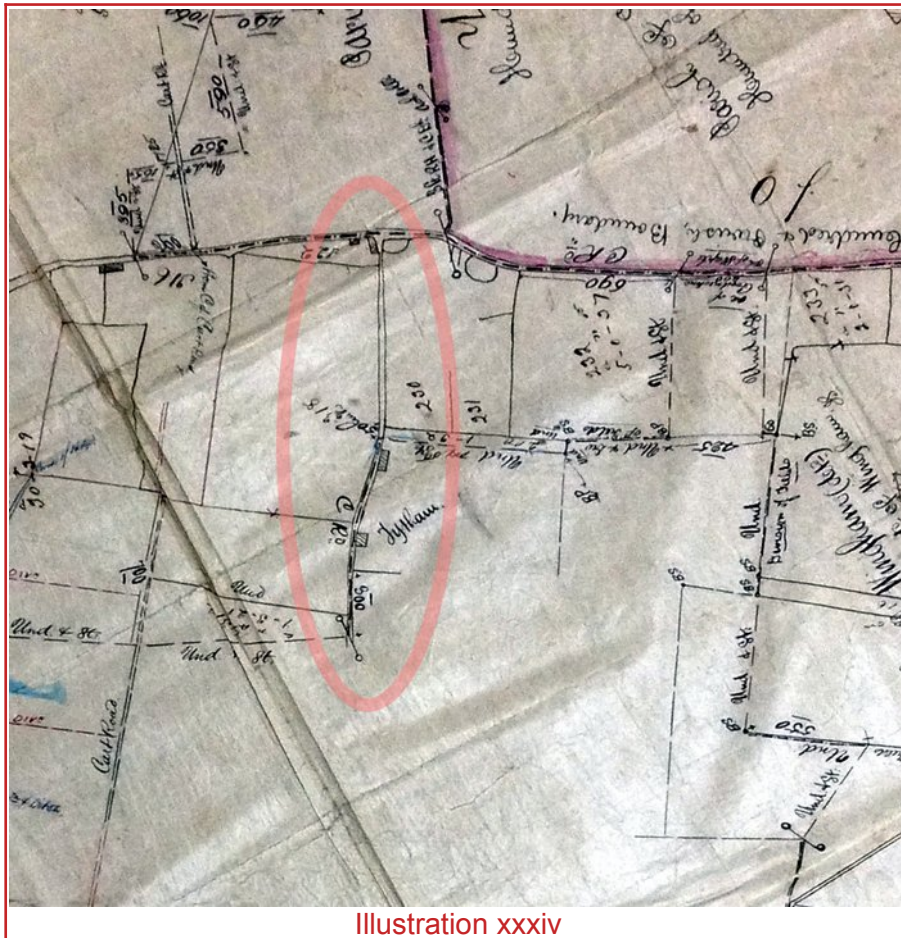


Illustration xxxiv

N.3. **Description:** The Ordnance Survey boundary maps date from the late 1860s, and record the Ordnance Survey's surveyors efforts to capture the precise location of parish boundaries from local knowledge. These maps were drawn up following perambulation of the boundaries by the surveyor accompanied by the parish meresman (that is, a senior resident of the parish who was specially tasked with knowledge of the parish's boundaries, and who very likely would have acquired such knowledge first hand from his predecessor as meresman).

N.4. The boundary sketch map for Wingham (Illustration xxxiv: original scale: unknown; orientation: rotated  $330^\circ$  so that north is top) depicts the boundary drawn along the order way from a point 25m north of B, to a point 90m<sup>41</sup> south of C [185m south of B]. The order way is shown as an enclosed road, and the parish boundary is marked as following 'C.R<sup>d</sup>!', i.e. centre of road. The boundary field sketch map for Wingham (Illustration xxxv: original scale: as per tithe map; orientation: rotated  $60^\circ$  so that north is top), which is based on the tithe map, marks the parish boundary in the same way.

N.5. **Analysis:** 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,

<sup>41</sup> Marked on the boundary field sketch map for Wingham as 300 feet.

but the lord could grant or sub-divide the manor (sub-infeudation) until prohibited in 1290.<sup>42</sup> Thus every manor had known boundaries which, since 1290, generally remained static.

N.6. Parishes date from the early mediæval period, but the parish emerged as an administrative unit of local government late in that period. The parish was assigned key functions of maintaining the highways under the Statute of Philip and Mary of 1555,<sup>43</sup> and maintaining the destitute under the Poor Relief Act 1601. Initially, the parish operated alongside the manor, which retained jurisdiction over property rights, powers to punish misdemeanours and to regulate the use of land, exercised through the courts baron and leet. Manorial powers gradually were lost or abandoned, until finally the control of property rights was abolished under the Law of Property Act 1922.

N.7. A parish might be coterminous with a manor, might comprise several manors, or a manor might include several parishes. But parish boundaries frequently were coincident with those of manors, and founded in the original manorial boundary. Accordingly, historical parish boundaries<sup>44</sup> 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'.<sup>45</sup> And frequently, they coincide with highways.<sup>46</sup>

N.8. Where, as in relation to the order way between north of B and south of C [*north of B to 185m south of B*], 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.

N.9. This is because the way is likely to predate either manorial or parish boundary. The way became established across open, unenclosed land. As the land began to be enclosed and managed as the exclusive property right of a single landowner, probably in the early mediæval period, the order way was adopted as the boundary between two adjacent manors (subsequently, the parish of Goodnestone to the east, and of Wingham to the west). The boundary between the manors, and subsequently the parishes, was adopted as following the centre line of the road, and the manors, and later the parishes, would have shared responsibility for oversight of the way (and any maintenance responsibility which was accepted).

N.10. Any such way, which must have been in use for perhaps a millennium or longer, must be a highway. It is not credible that such a way might be and remain private.

N.11. The alternative proposition is that the way became established along an existing manorial boundary at a much later date. It is submitted that this is considerably less likely. It cannot be said that the way was imposed on an existing boundary feature such as a hedge, for the boundary follows, not the side of the way (where the hedge would have

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42 Statute of *Quia emptores*

43 2 & 3 Philip and Mary, c. 8, passed as a temporary Act in 1555, and permanently re-enacted in 1563 (5 Elizabeth, c.13)

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

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

46 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;...'

been), but the centre of it. That would require the way to have been superimposed on top of the existing boundary — the original boundary feature to have been destroyed, to be replaced by a track centred along the line of it.

N.12. It is possible to conceive of 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, so that it was practical to lay out the new road so that it straddled the boundary line. But it is inherently improbable.

N.13. It is suggested that the first proposition is much more likely, and consistent with what is known of the way.

N.14. It may also be said that a public road divided by a parish boundary was a matter for 'great Inconveniences',<sup>47</sup> prior to highway maintenance functions becoming wholly discharged by county councils from 1929. It is unlikely that such an arrangement intentionally would be put in place.

N.15. **Conclusion:** The depiction of the parish boundary coincident with the order way between north of B to south of C [*185m south of B*], labelled 'centre of road', provides some support for the status of the order way as a public road of very great age.

N.16. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	1

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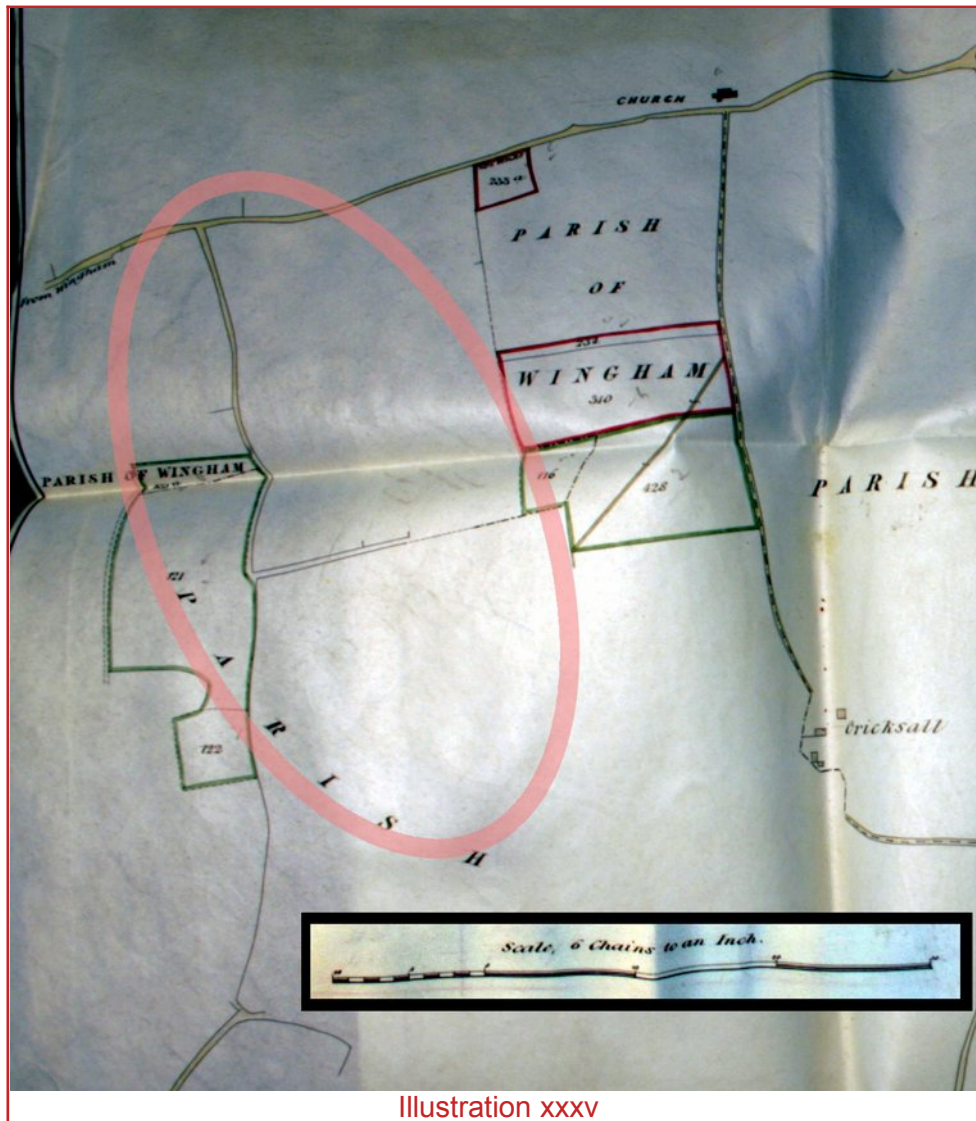
47 See footnote 46 above.

## O. Inclosure Act 1845: order of exchange

O.1. **Date:** 1872

O.2. **Source:** National Archives<sup>48</sup>

### Order of exchange 4195



O.3. **Description:** Original scale: as marked in chains; orientation: no change. A full copy of the map is at Annexe F at p.110 below.

O.4. An order of exchange was made by the Inclosure Commissioners in 1851 under section 147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

O.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

48 MAF 11/82/4195

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.

O.6. In the present case, an exchange was sought between land in the parishes of Staple and Wingham owned by the Rt Hon Brook William Lord Fitzwalter,<sup>49</sup> and land in the parishes of Woodnesborough, Goodnestone and Wingham owned by the College of St John the Evangelist, Cambridge. Among the lands owned by the College and given in exchange were parcels 120, 121 and 122, being arable land to the west of the order way between C and D [*B and C*].

O.7. The plan embodied in the order shows the order way from A to E [*A to D*]. Between A and approximately C [*A and a point south of B*], the way is depicted as an enclosed road, coloured yellow. From C to D [*a point south of B to C*], the way abuts parcels 120 and 121 and is shown unenclosed on that side: the yellow wash appears to cease in the vicinity of C [*a point south of B*]. Between D and E [*C and D*], the way is shown enclosed, but lacks a colour wash. Nothing is shown of the way south of E to F [*D to E*], this part of the order map containing no land to be exchanged, and therefore left uncompleted.

O.8. **Conclusion:** On this and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or sienna colour wash appears to denote ways which are either public roads or bridle-roads. On this plan, the status of the order way between A and D [*A and C*] as a public road or bridle-road would be consistent with the expectation of rights of access to parcels 120 to 122 following the exchange.

O.9. It is not clear whether the colour wash used on the way between A and C [*A and south of B*] is intentionally discontinued south of C [*a point south of B*], or whether the colour has faded — similar discontinuity can be seen in the continuation of Barnsole Road south of Summerfield, and in Sandwich Road south of the junction with the road from Rowling Court. If the colour wash is intentionally discontinued, this may be suggestive that the order way was regarded as a public road as far as C [*a point south of B*], but of inferior maintenance or status south of C [*a point south of B*] — it is unlikely that a highway was considered to terminate at a field boundary.

O.10. The order map is therefore of uncertain assistance in determining the status of the order way, but may denote a public road or bridle-road between A and C [*A and a point south of B*], and a highway, possibly of inferior maintenance or status, between C and E [*a point south of B and D*].

O.11. **Points:**

Bridleway	Restricted byway
0	0

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49 Sir Brook William Bridges Bt, and created Baron FitzWalter in 1868.

## P. Ordnance Survey large scale mapping

P.1. **Date:** various (see below)

P.2. **Source:** National Library of Scotland<sup>50</sup>; British Library<sup>51</sup>

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50 [maps.nls.uk](https://maps.nls.uk) (2<sup>nd</sup> and later editions).

51 As respects the 1<sup>st</sup> edition.



OS 1:2,500 County Series first edition twenty-five inch plan (published 1872)

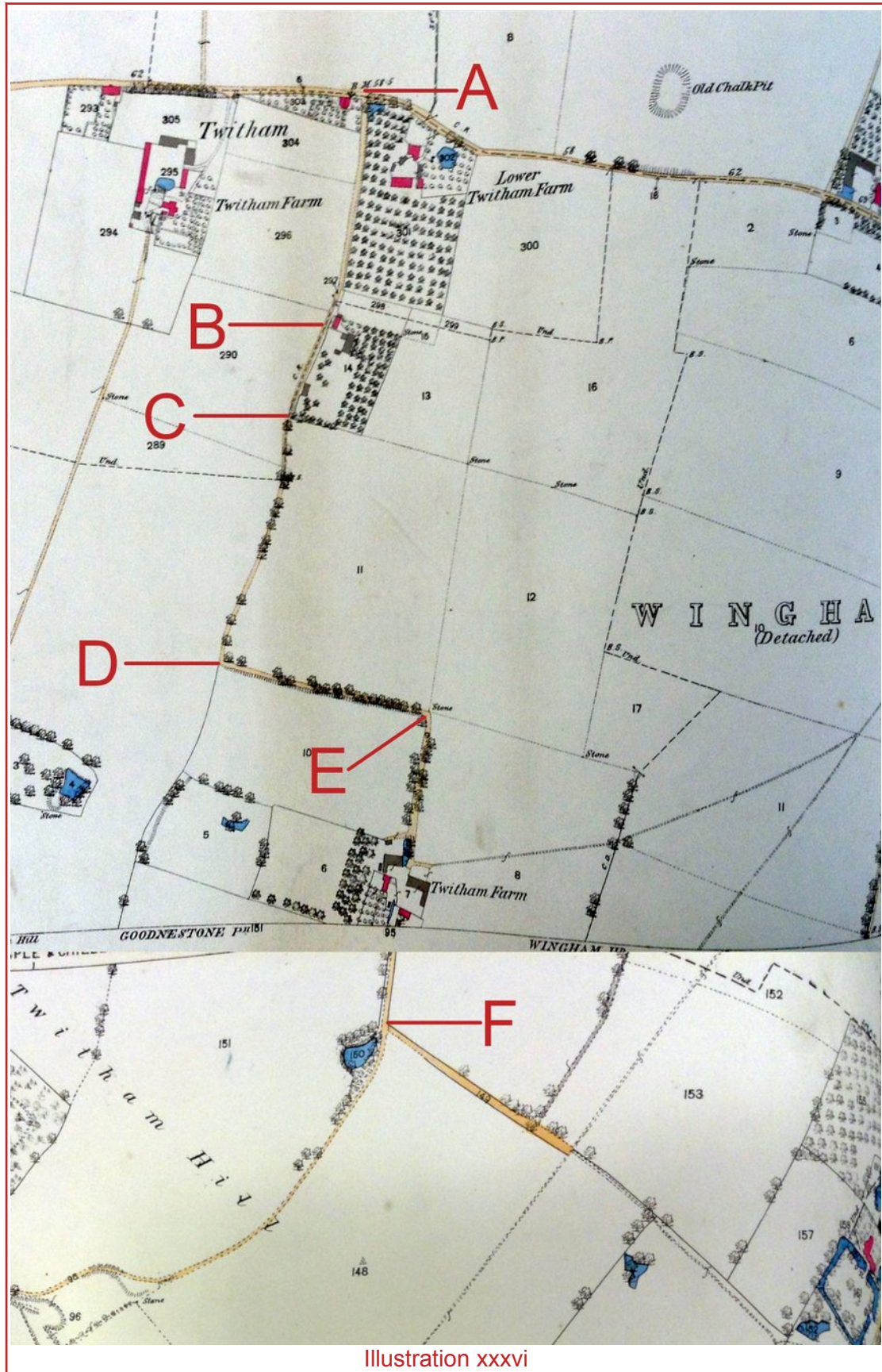


Illustration xxxvi

OS 1:2,500 County Series second edition twenty-five inch plan (published 1898)

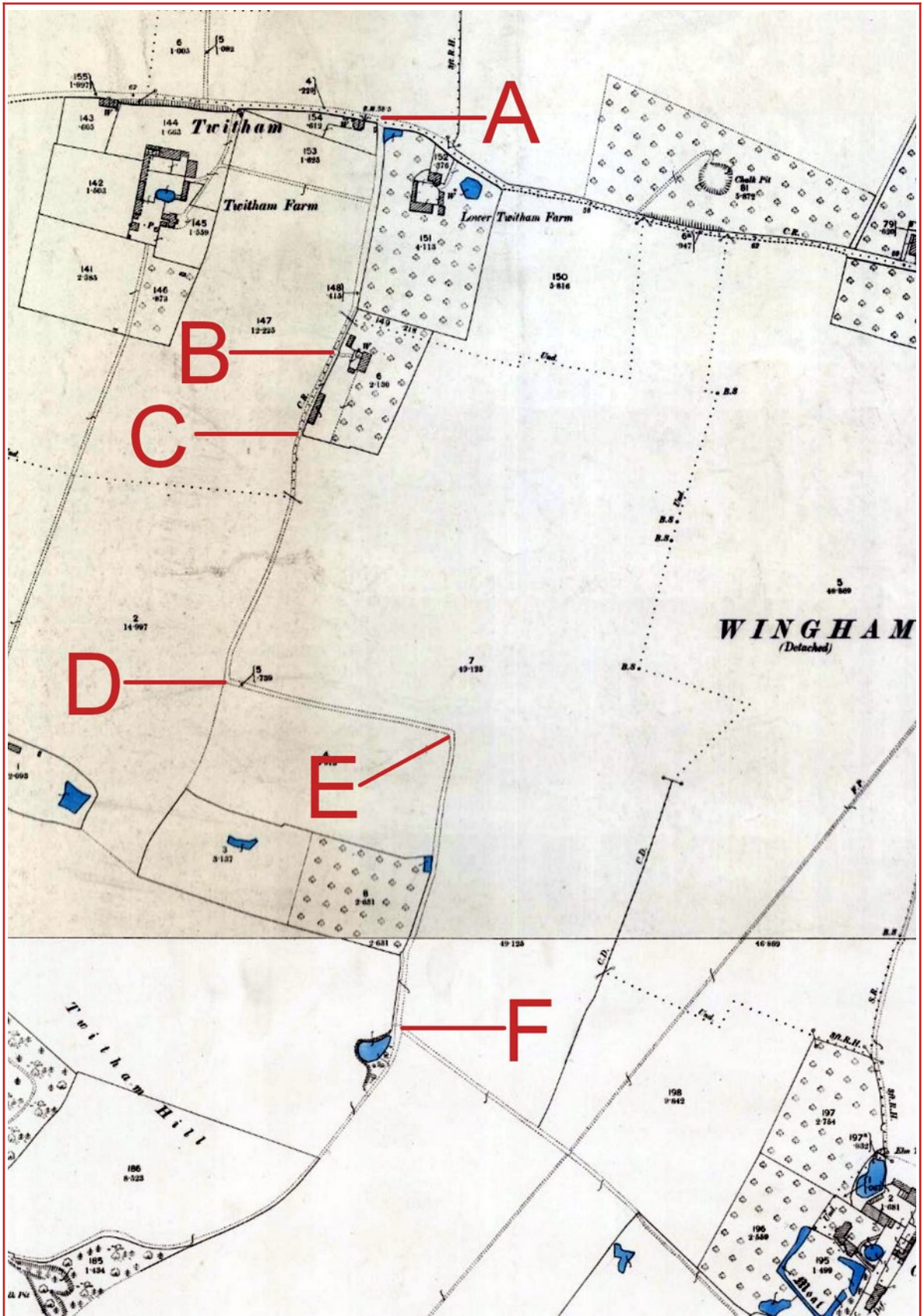


Illustration xxxvii

OS 1:2,500 County Series fourth edition twenty-five inch plan (published 1946)

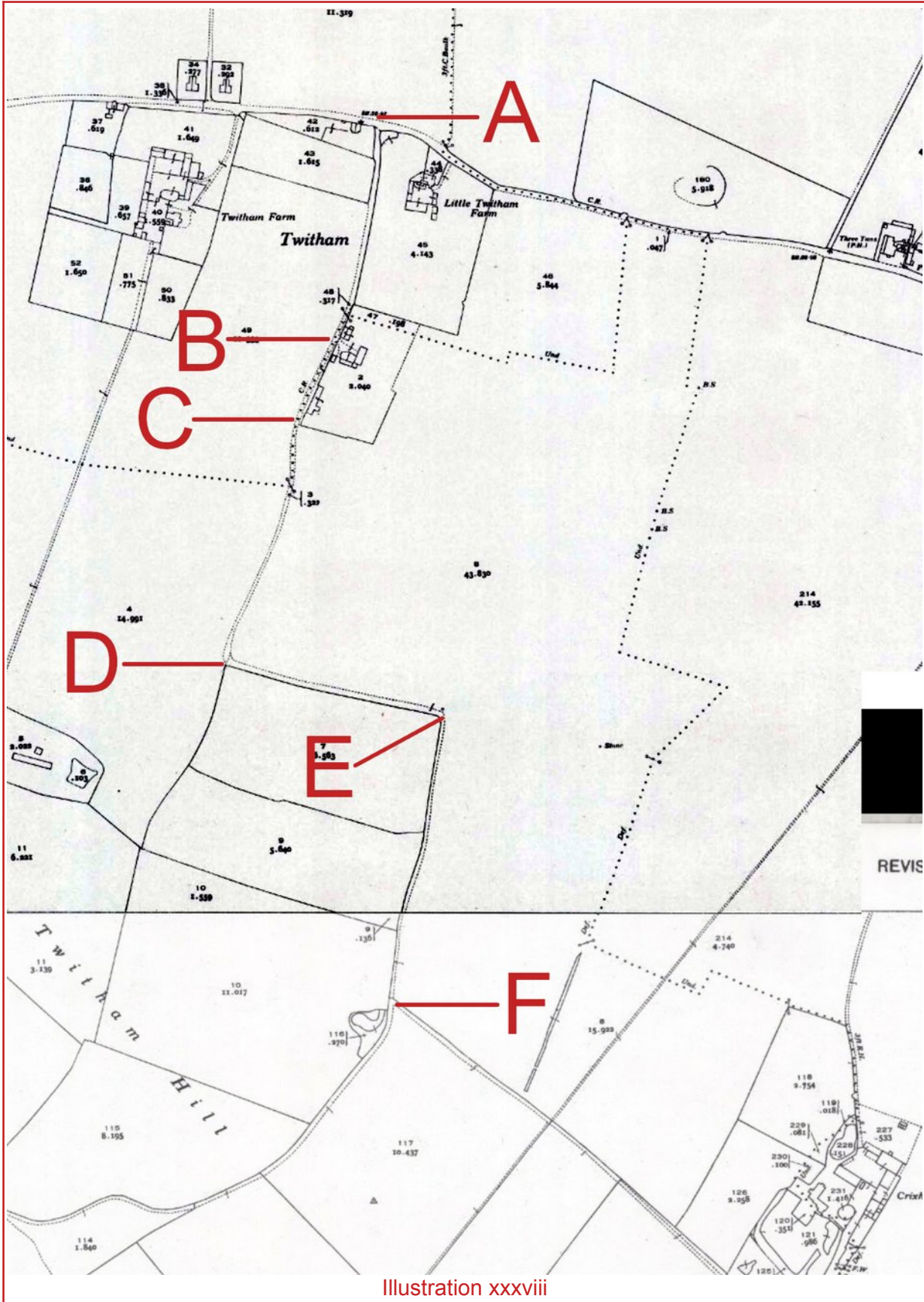


Illustration xxxviii

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

4 PARISH OF WINGHAM.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
295	1.529	Farmsteadings, &c.	332	1.781	Garden.
296	4.193	Hop garden.	334	1.238	Garden.
297	.415	Road.	335	16.909	Arable.
298	.218	Garden (part of).	336	9.503	Pasture.
299	0.000	Garden &c. (part of)	337	.514	House and garden

Illustration xxxix

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

PARISH OF GOODNESTONE,  
IN THE  
COUNTY OF KENT—(EASTERN DIVISION).  
HUNDRED OF WINGHAM.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	40.813	Arable.	92	9.741	Arable.
2	13.960	Arable.	93	7.262	Arable.
3	1.983	Pasture, &c.	94	10.669	Wood (part of).
4	.110	Pond.	95	1.092	Road (part of).
5	2.538	Pasture, pond,	96	1.461	Old chalk pit.
6	2.643	Pasture.	97	7.104	Arable.
7	.959	Sheds, yard, &c.	146	7.192	Arable.
8	14.658	Arable.	147	8.211	Arable.
9	.795	Road.	148	16.717	Arable.
10	6.539	Arable.	149	.299	Road.
11	11.695	Arable.	150	.108	Pond.
12	9.325	Arable.	151	20.925	Arable.
13	2.710	Arable.			

Illustration xl

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

P.4. All four editions of the Ordnance Survey's County Series 1:2,500 scale plans show the order way between A and F [A and E] (the third edition is not shown here).

P.5. The first edition (Illustration xxxix) shows the way passing through Higher Twitham Farm (named on the plan as Twitham Farm: see Nomenclature at item I.E above) between E and F [D and E], although the farm had been demolished and cleared by the time of the

second edition. The order way is noted with parcel number 297 between A and B, and the area book for Wingham parish (Illustration xl) records that the parcel is a 'Road' with an area of 0.415 acres (0.168ha). It appears that this parcel includes the way as far as the parish boundary, including the west side of the order way where the boundary runs along the centre of the road. The order way is also noted with parcel number 9 between the parish boundary and Higher Twitham Farm, and the area book for Goodnestone parish (Illustration xli) records that the parcel is a 'Road' with an area of 0.795 acres (0.322ha).

P.6. To the south of Higher Twitham Farm, the order way is noted as parcel number 95 (along with a longer section of what is now recorded as bridleway EE269A), and the area book for Goodnestone parish records that the parcel is a 'Road (part of)'. At F [E], the order way also intersects with an enclosed lane in the direction of Crixhall Court (now bridleway EE28), which is noted with parcel number 149, also recorded as a 'Road'.

P.7. The order way is coloured sienna throughout, save in Higher Twitham Farm yard.<sup>52</sup>

P.8. **Conclusion:** The County Series plan show the order way as a physically enduring feature through the landscape, on a consistent alignment. The first edition plan shows that the order way was noted to have a metalled surface throughout. The entry in the area books published alongside the first edition, for the order way between A and F [A and E] (and beyond) as a 'road', provides some support for its status as a public highway.

P.9. **Points:**

Bridleway	Restricted byway
0	1

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<sup>52</sup> '*Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3<sup>rd</sup> ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

Q. Eastry Rural District Council

Q.1. **Date:** 1886, 1894, 1907

Q.2. **Source:** Kent County Archives<sup>53</sup>

**Eastry Rural Sanitary Authority surveyor's report book, 2 March 1886**

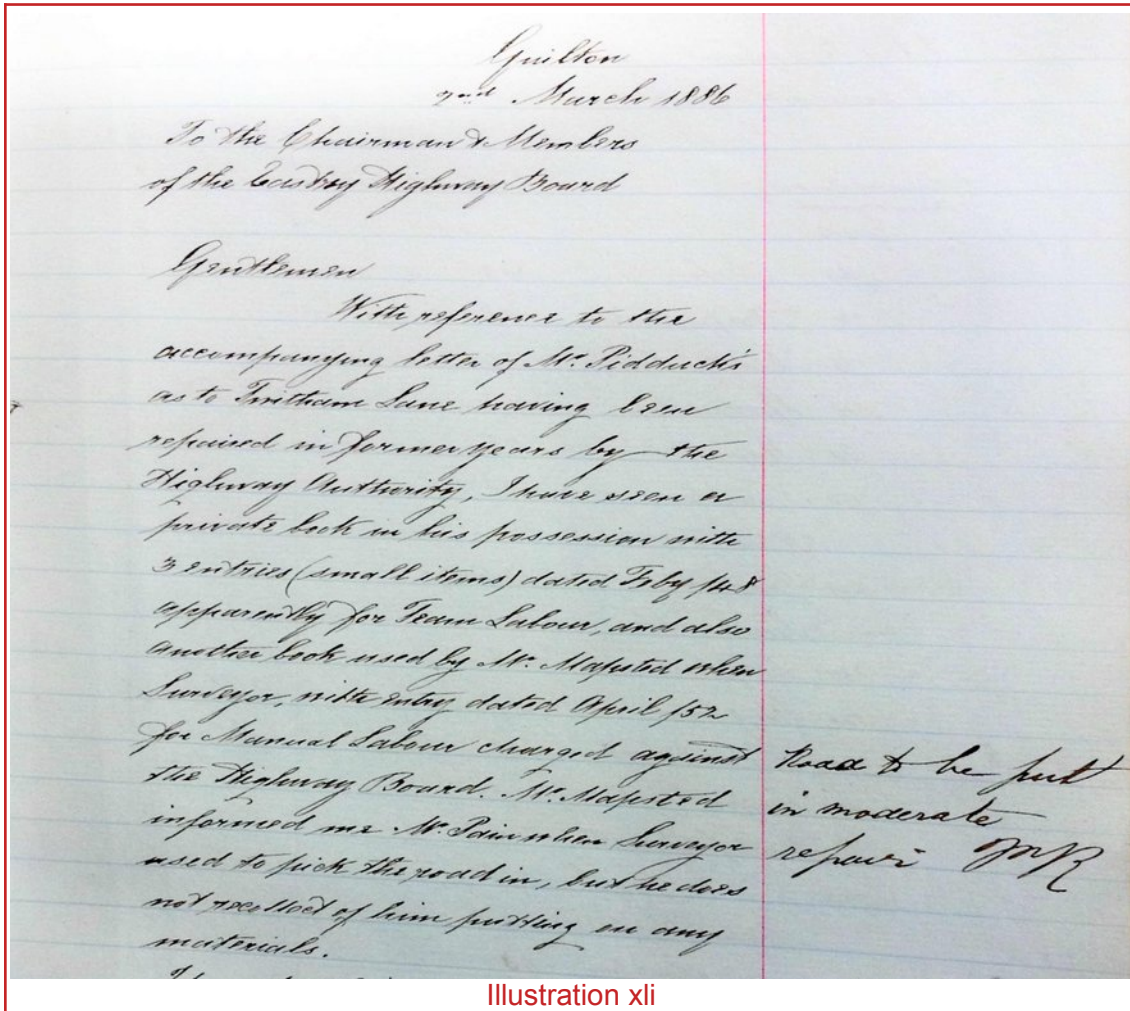


Illustration xli

53 RD/Ea/H2 1884–93, p.41; RD/Ea/H3 1893–99, p.56; RD/Ea/H9; RD/Ea/Am4, p.168

Eastry Rural District Council surveyor's report book, 4 December 1894

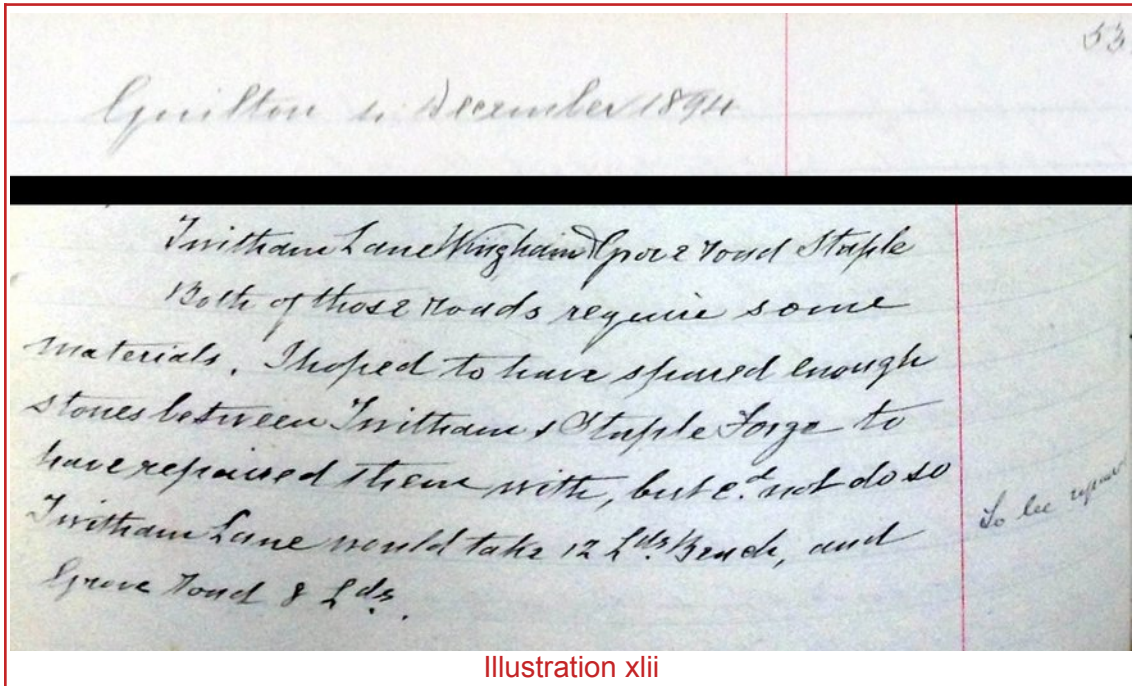


Illustration xlii

Eastry Rural District Council surveyor's report book, 16 July 1907

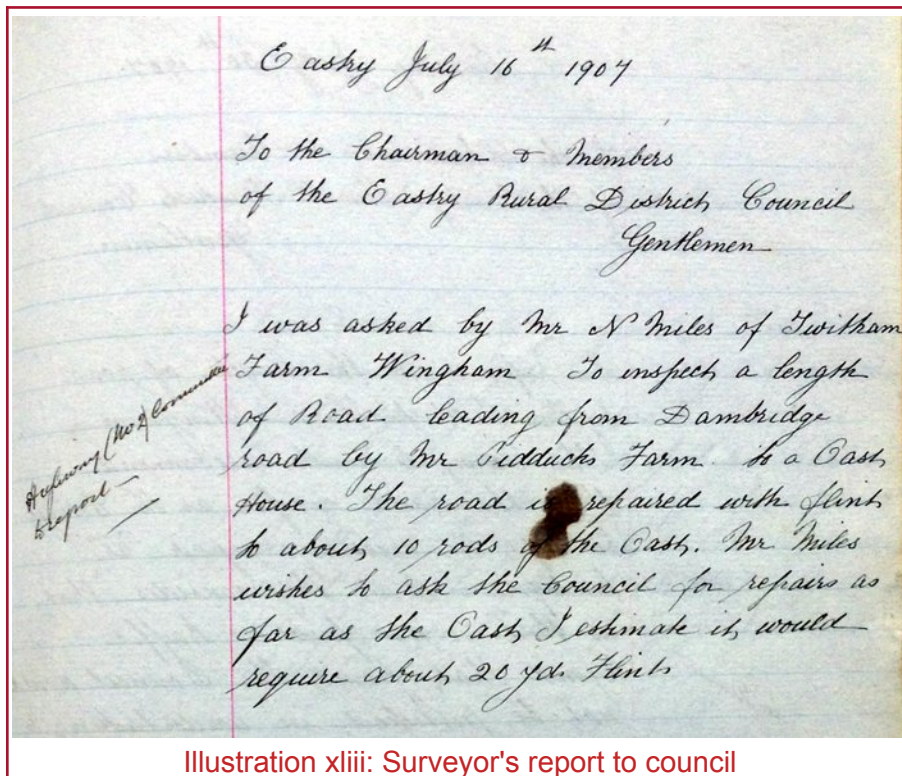


Illustration xliii: Surveyor's report to council

**Eastry Rural District Council surveyor's report book, 30 July 1907**

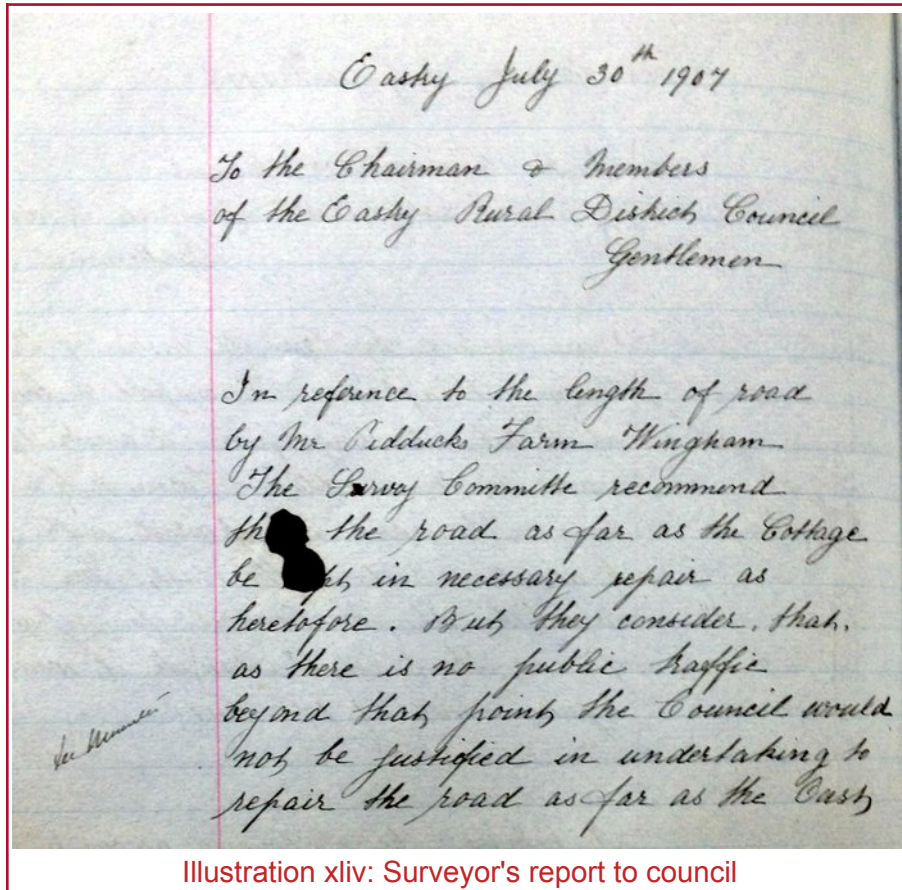


Illustration xlv: Surveyor's report to council

**Eastry Rural District Council minutes, 30 July 1907**

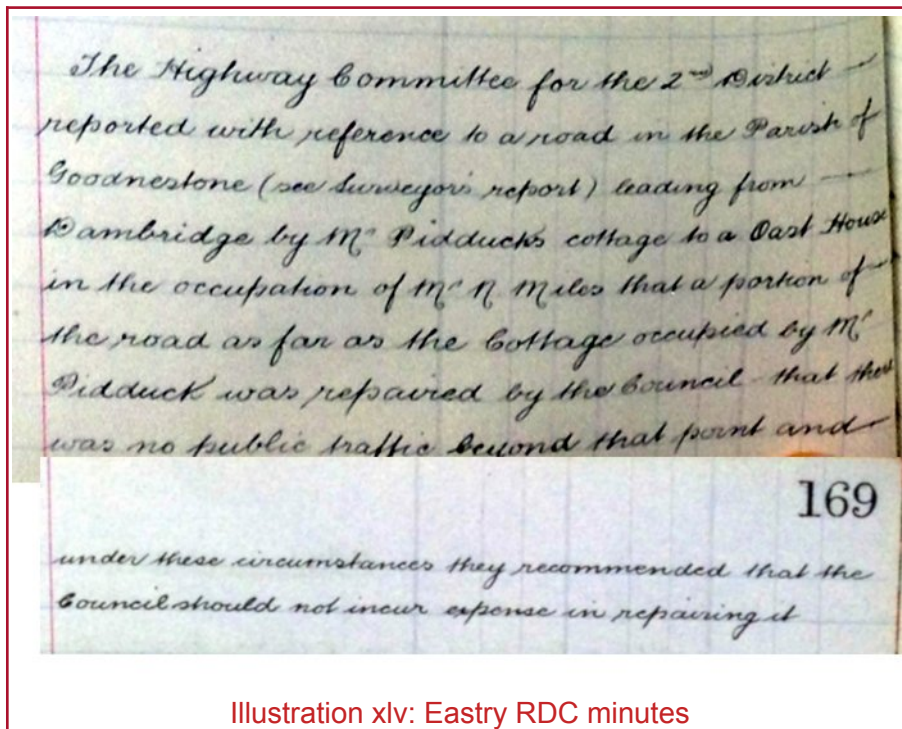


Illustration xlv: Eastry RDC minutes



Q.3. **Description:** The Eastry Rural Sanitary Authority assumed the highway functions of the Wingham Highway Board on its dissolution in 1880, and the Eastry Rural District Council succeeded to the Sanitary Authority in 1895. The report books of 1886 and 1894 contain the reports of the council's surveyor of highways. The relevant reports record as follows:

Guilton

2<sup>nd</sup> March 1886

To the Chairman & Members  
of the Eastry Highway Board

Gentlemen

With reference to the accompanying letter of Mr. Piddock's as to Twitham Lane having been repaired in former years by the Highway Authority, I have seen a private book in his possession with 3 entries (small items) dated Feby/48 apparently for Team Labour, and also another book used by Mr. Majested when Surveyor, with entry dated April/52 for Manual Labour charged against the Highway Board.<sup>54</sup> Mr. Majested informed me Mr. Pain when Surveyor used to pick the road in, but he does not recollect of him putting on any materials.

and

Guilton            4 December 1894

To the Chairman & Members  
of the Eastry Highway Authority

Gentlemen

...

Twitham Lane Wingham and Grove Road Staple

Both of those roads require some materials. I hoped to have spared enough stones between Twitham and Staple Forge to have repaired these with, but e.<sup>d</sup> not to so. Twitham Lane would take 12 rods Beach, and Grove Road 8 rods.

Q.4. The entry in the 1886 report book is annotated: 'Road to be put in moderate repair' and initialled; the entry in the 1894 report book: 'To be repaired'.

Q.5. In the tithe apportionment for Wingham and Goodnestone, William Piddock<sup>55</sup> is recorded as the occupier of the land to the east of the order way forming a rectangle approximately enclosed by B, D and E [*B, C and D*]. It is reasonable to infer that the letter received by the council from Mr Piddock related to access to that land (whether by William Piddock or a descendant).

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54 Wingham Highway Board was established in 1863, and dissolved in 1880 in favour of the Eastry Rural Sanitary Authority. It is unclear to what the numerals refer: it may be page numbers in the note books. The Wingham Highway Board did not exist in 1848 or 1852, at which date, maintenance was the responsibility of the parish vestry.

55 'Puddock' in the Goodnestone apportionment.

Q.6. A report for 6 November 1888<sup>56</sup> refers to flooding of the (main) road 'by the cottages close to Twitham Lane', and this is likely to refer to the semi-detached cottages which stood immediately to the west of the junction of the order way with Staple Road until after the Second World War. A report for 5 December 1893<sup>57</sup> refers to 'The pond in Mr Cook's meadow at the end of Twitham Lane...', which is a reference to the pond which remains east of the junction. These confirm that the references to Twitham Lane are to the order way.

Q.7. The report book for 16 and 30 July 1907 contains the following reports:

Eastry July 16<sup>th</sup> 1907

To the Chairman & Members  
of the Eastry Rural District Council  
Gentlemen

I was asked by Mr N Miles of Twitham Farm Wingham To inspect a length of Road leading from Dambridge Road<sup>58</sup> by Mr Pidducks Farm to a Oast House. The road is repaired with flint to about 10 rods [50 metres] of the Oast. Mr Miles wishes to ask the Council for repairs as far as the Oast. I estimate it would require about 20 yds Flints.

Q.8. The report is annotated in the margin: 'Highway (No2) Committee to report'.

Eastry July 30<sup>th</sup> 1907

To the Chairman & Members  
of the Eastry Rural District Council  
Gentlemen

In reference to the length of road by Mr Pidducks Farm Wingham. The Survey Committee recommend that the road as far as the Cottage be kept in necessary repair as heretofore. But they consider that, as there is no public traffic beyond that point the Council would not be justified in undertaking to repair the road as far as the Oast.

Q.9. The report is annotated in the margin: 'See minutes'.

Q.10. The minutes of the council record on 30 July 1907:

The Highway Committee for the 2<sup>nd</sup> District reported with reference to a road in the Parish of Goodnestone (see Surveyor's report) leading from Dambridge<sup>59</sup> by Mr Pidduck's cottage to a Oast House in the occupation of Mr N Miles that a portion of the road as far as the Cottage occupied by Mr Pidduck was repaired by the Council that there was no public traffic beyond that point and under these circumstances they recommend that the Council should not incur expense in repairing it.

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56 RD/Ea/H2, p.99.

57 RD/Ea/H3, p.30.

58 The reference to the 'Dambridge Road' appears to mean the road from Staple to Dambridge and Wingham (*i.e.* Staple Road).

59 The reference to 'Dambridge' appears to be a slip for the 'Dambridge Road' referred to in the surveyor's report of 16 July 1907.

Q.11. **Conclusion:** The 1886 report refers to the maintenance and repair of Twitham Lane. As the maintenance of the Wingham to Staple road was never in question, and as Mr Piddock's land abutted the application way, the complaint must relate to the application way, and confirmation is found in the 1888 and 1893 reports.

Q.12. The findings of the surveyor to the council that the application way had been maintained in the past, and the conclusion of the highways board that the 'road' should be put in moderate repair, is good evidence that the council considered the way to be a publicly-maintainable highway. This is confirmed by the subsequent decision several years later to carry out further repairs. However, it cannot be said with certainty that the reports necessarily relate to the application way south of B.

Q.13. The 1907 reports clearly refer to the application way. However, the reports discuss repair of the way north of Twitham Oast at C [*south of B*] past Little Twitham Farm Cottage (B) to the Staple Road (A). The way north of Little Twitham Farm Cottage has always been recognised as publicly maintainable, and remains so today. However, the discussion implies that the way was recognised to be public south of B, but focused on whether it should be repaired by the highway authority. The surveyor reports that, 'there is no public traffic beyond' B, which appears to be a commentary on use (as opposed to rights), and it would be surprising if the highway authority was prepared even to consider maintenance of a way leading to and aside an oast house, but no further. Yet that the request was given active consideration suggests that the status of the application way as a highway beyond C [*beyond B to C*] was implicitly recognised.

Q.14. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	3

## R. Bartholomew's map

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

R.2. **Source:** National Library of Scotland<sup>60</sup>, personal collection<sup>61</sup>

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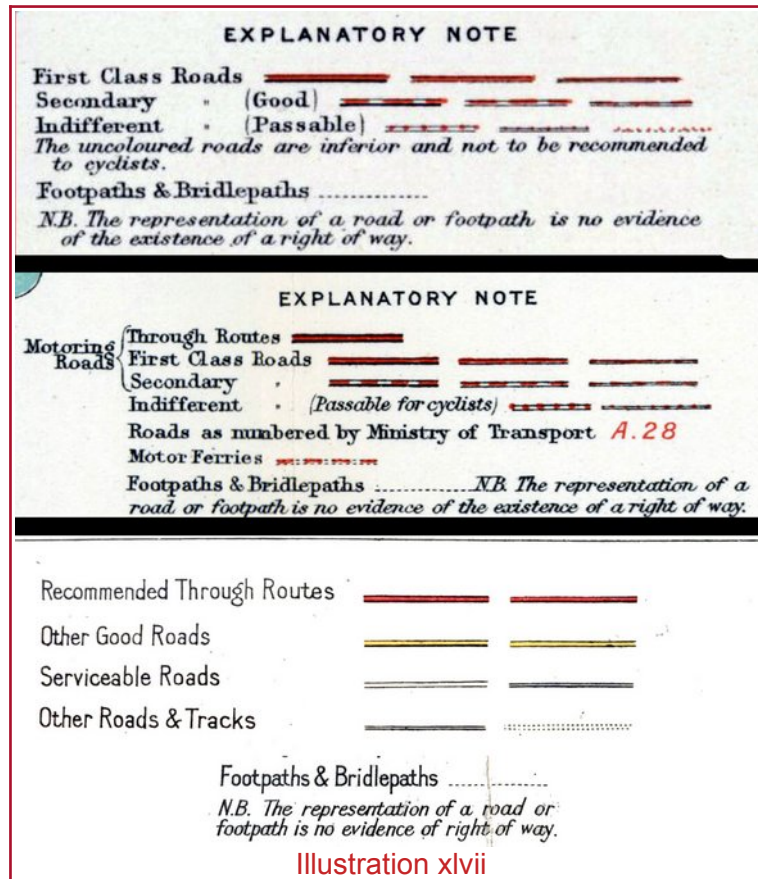
60 [maps.nls.uk/mapmakers/bartholomew.html](https://maps.nls.uk/mapmakers/bartholomew.html)

61 1953 map

**Bartholomew's maps: 1904, 1922 and 1953**



## Bartholomew's maps keys



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

R.4. The application way is shown in the 1904 edition of the Bartholomew map as a 'Secondary Class Road (Good)', but in the 1922 edition as, in effect, unsuitable for cyclists. The 1953 edition shows the application way as a 'serviceable road'.

R.5. The first two editions are marked with the logo of the Cyclists' Touring Club (CTC), below which it is stated that: 'Roads revised by the Cyclists' Touring Club'.

R.6. **Conclusion:** The 1904 edition of the Bartholomew map suggests that the application way was assessed as a road suitable for cycling, and it remained as a 'serviceable' road by the time of the 1953 edition.

R.7. Paragraph 12.41 of the consistency guidelines<sup>62</sup> 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.

62 Planning Inspectorate: September 2015: [www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines](http://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines).

R.8. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists. And both maps are marked as having been revised by the CTC, which implies detailed local knowledge.

R.9. *Bartholomew's half-inch maps*,<sup>63</sup> by W J Riley, proposes that:

From the start [the maps] were earmarked 'for Tourists and Cyclists', and the roads were classified for 'Driving and Cycling purposes'. Cyclists were confined to public carriage roads until 1968. ...Clearly, the *raison d'être* of the maps was to guide travellers along public highways most suited to their mode of travel. It was *not* to encourage trespass.

R.10. The inclusion of the application way on the 1904 edition of the Bartholomew's half-inch map is good evidence of its status as a minor public road. Its later depiction in 1922 as a way unsuitable for cyclists is likely to reflect the way having been left unimproved, at a time when many minor roads had, by the time, been tarred.

R.11. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	1

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63 *Byway and Bridleway*, 1993, 9, p.37

## S. East Kent mineral light railway

S.1. **Date:** 1910

S.2. **Source:** Kent County Archives<sup>64</sup>

### **East Kent Light Railway, line 6, deposited plan**

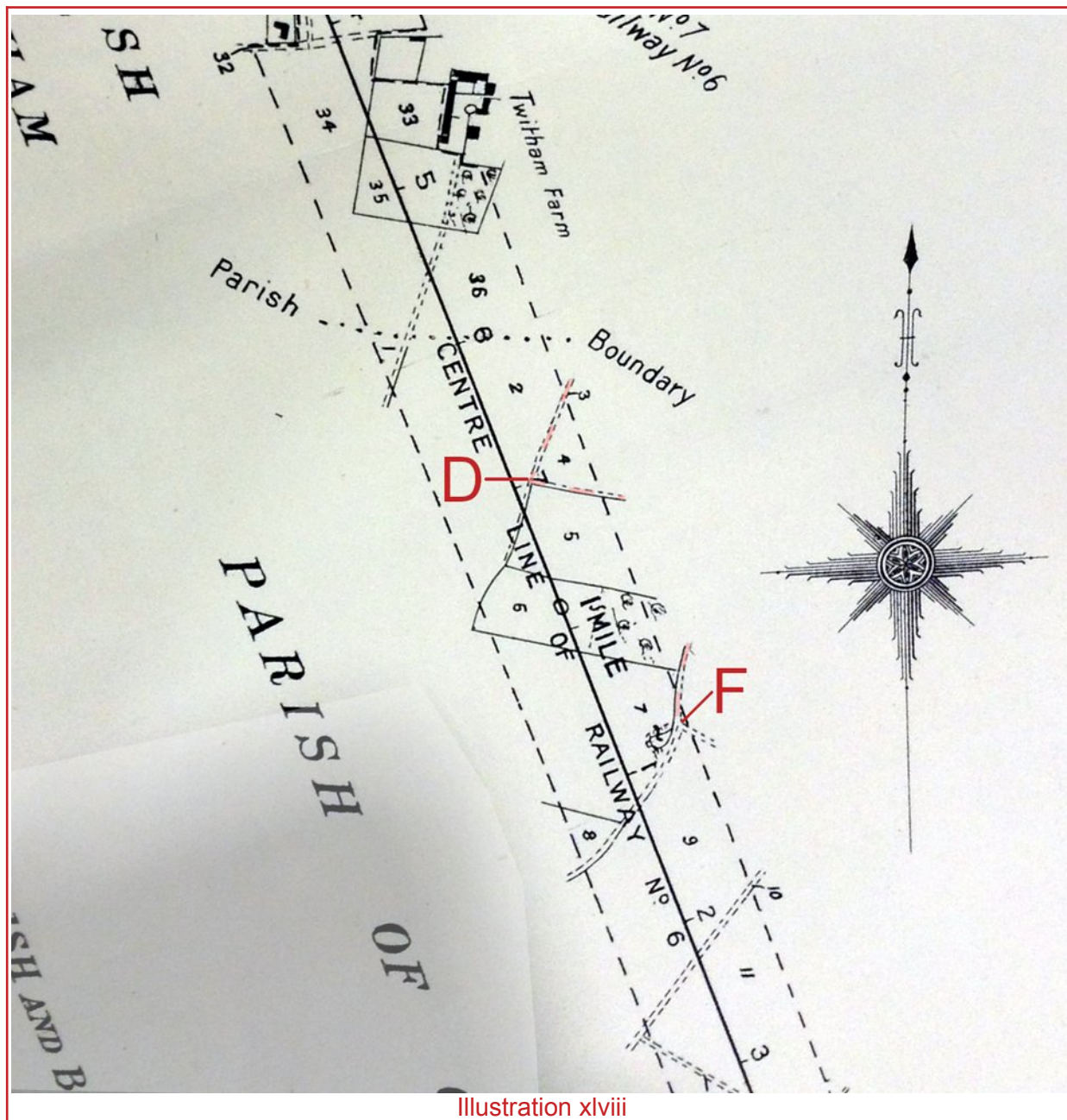


Illustration xlviii

64 Q/RUm/1151.

**East Kent Light Railway, line 6, book of reference**

55

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

Parish of GOODNESTONE, in the County of KENT.

**RAILWAY No. 6—continued.**

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
1	Arable and occupation road	Henry Fitzwalter Plumtre	.. ..	Noah Miles
2	Hopfield and arable	Henry Fitzwalter Plumtre	.. ..	Noah Miles
3	Public bridle road	The Eastry Rural District Council Frederick Spencer Cloke, clerk	.. ..	The Eastry Rural District Council
7	Arable, occupation road and pond	Henry Fitzwalter Plumtre	.. ..	George Nethersole
8	Arable and occupation road	Henry Fitzwalter Plumtre	.. ..	Henry Fitzwalter Plumtre
9	Arable	Henry Fitzwalter Plumtre	.. ..	George Nethersole
10	Bridle road	The Eastry Rural District Council	.. ..	The Eastry Rural District Council

Illustration xlix

S.3. **Description:** original scale: unknown; orientation: rotated 70° so that north is top. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. The promoters included Kent Coal Concessions Ltd, the original promoter of the Kent coalfield. The railway was promoted under the Light Railways Act 1896. The 1896 Act required the deposit of plans and books of reference in connection with a submission seeking authorisation under the Act.

S.4. Line 6 was among the initial raft of proposals for a network of lines serving prospective East Kent collieries, and anticipated the development of a colliery in Goodnestone, but (unlike several lines proposed at this time) was authorised but not built.

S.5. The deposited plan for line 6 shows the order way within the limits of deviation from around C to beyond D [*south of B to beyond C*]; it reappears in the vicinity of F [*E*] but generally outside the limits. The way is identified as parcel number 3 south of B, but is not otherwise labelled. In the book of reference for Goodnestone, parcel number 3 is identified as a 'Public bridle road', owned by Eastry Rural District Council (Frederick Spencer Cloke, clerk), and occupied by the same council. No label is attached to the order way in respect of the marginal intrusion into the limits of deviation at F [*E*]. However, bridleway EE269A, which passes along the edge of parcels numbers 7 and 8 from south of F [*E*], is referred to in the book of reference as an 'occupation road' owned by Henry Fitzwalter Plumtre [*sic*] and occupied by George Nethersole (parcel 7) and by Plumtre (parcel 8).



S.6. **Conclusion:** Sections 46 to 48 and 59 of the Railways Clauses Consolidation Act 1845 were excluded from incorporation in the East Kent Mineral (Light) Railways Order 1910.<sup>65</sup> The order itself provided for the bridging of certain public roads, and for other public highways to be taken over the railway on the level (consistent with the minimal expectations of light railway construction and operation). In common with other crossings for ways which were not perceived as public roads, no specific provision is made in the elevation nor the order<sup>66</sup> for the crossing of the order way, and a level crossing would have been provided.

S.7. The plan and book of reference provide good evidence for the status of the order way between B and D [*B and C*] as a public bridleway. The plan does not label the order way in respect of the marginal intrusion into the limits of deviation slightly short of F [*E*], but the plan also fails to label the field to the east. It does, however, label the continuation of the order way beyond F [*E*] southwest towards Cave Lane as an occupation road (now recorded as bridleway EE269A), which implies either that the bridleway was considered to continue beyond F [*E*] south-east towards Crixhall Court, or that the occupation road incorporated a public bridleway.

S.8. The East Kent Light Railway's surveyor tended to record public highways with the lowest possible status: BOAT EE335 (part of plot 1 in Eastry) is also recorded as a public bridleway, and numerous other examples exist of roads and bridleways recorded as bridleways or footpaths.

S.9. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
5	0

## T. Finance (1909–1910) Act 1910

T.1. **Date:** 1911

T.2. **Source:** National Archives<sup>67</sup>

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65 See art.3(1).

66 See arts.21–23.

67 IR 124/5/57 and 124/5/59 (Ordnance Survey map sheets XLVII/8 and 12) and IR 58/17323

**Finance Act maps Kent XLVII/8 and 12**

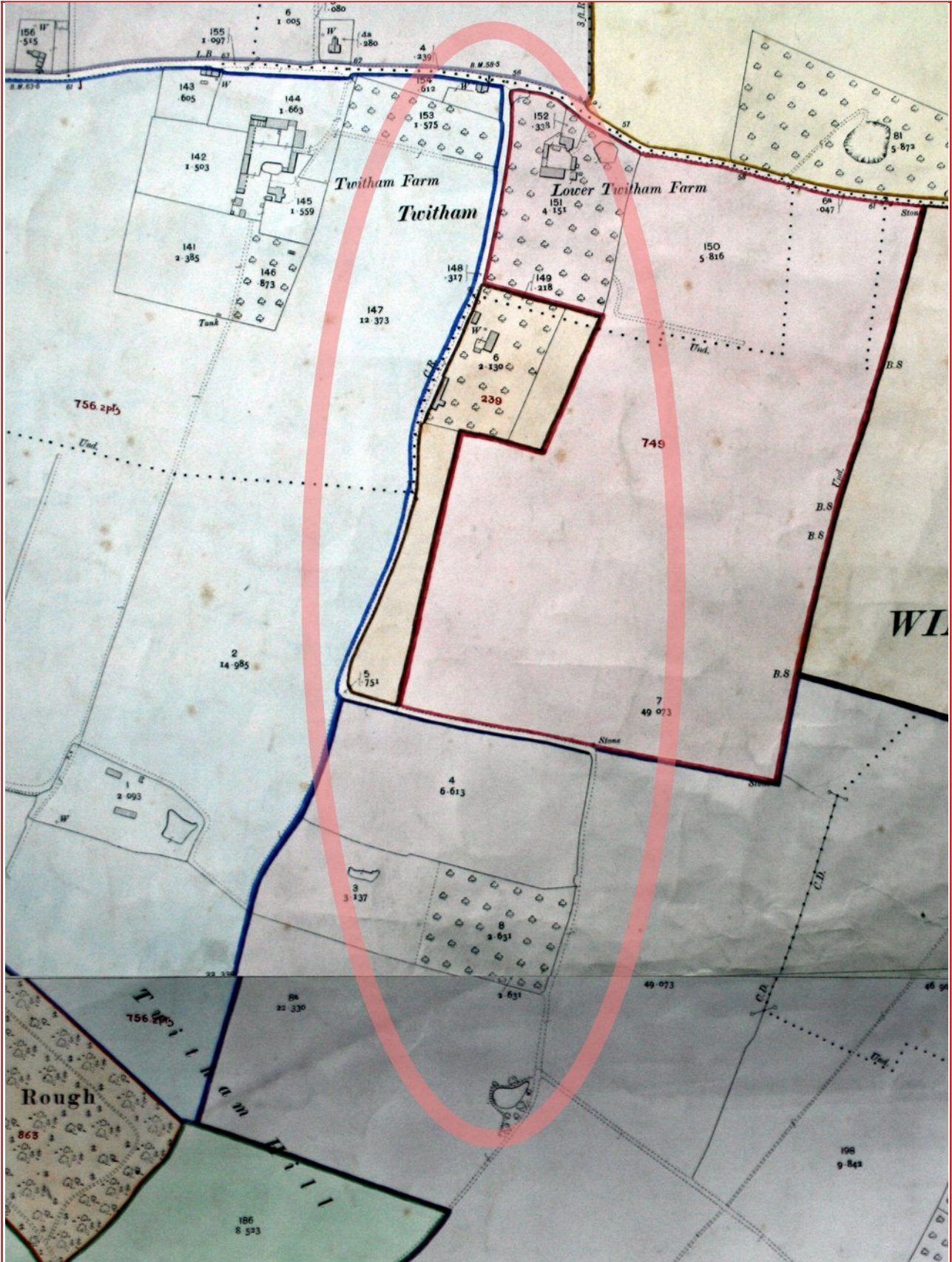


Illustration I

## Adisham field book assessment unit 351a

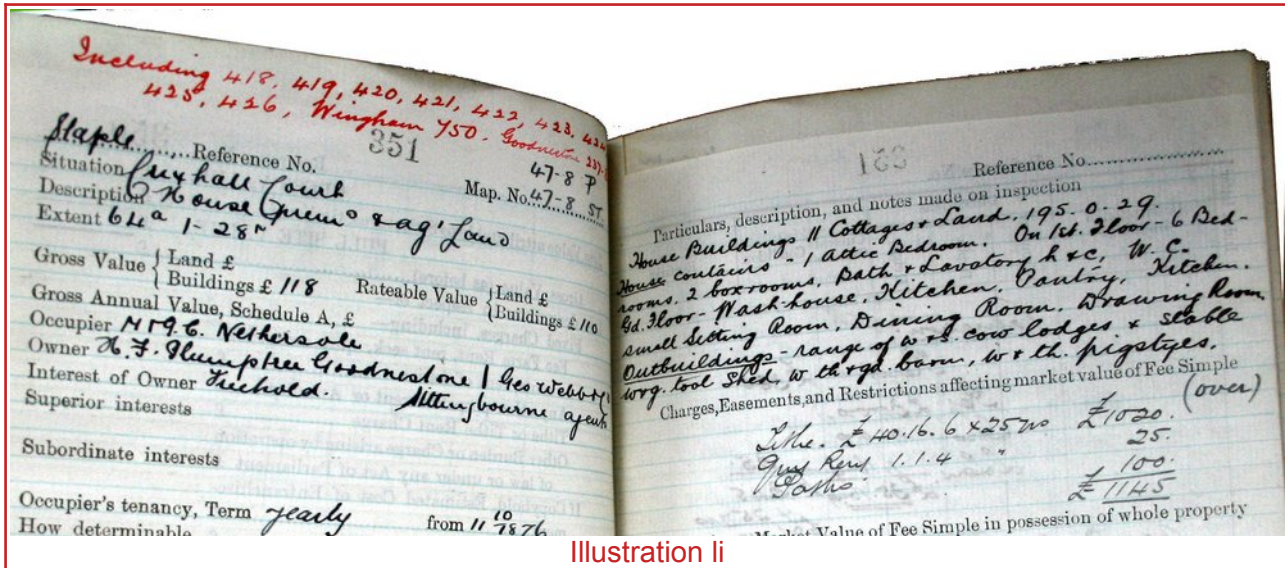


Illustration li

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

T.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads'. This is because section 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.

T.5. That 'white roads' are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In *Fortune v Wiltshire Council*, HHJ McCahill QC said (paras.753, 770), that:
 

the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. ...the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910.

On appeal, Lewison LJ upheld the judgment at first instance, observing (para.71):

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

- In *Robinson Webster (Holdings) Ltd v Agombar*, Etherton J said (para.47) said:
 

The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. ... The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and

following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.

- In *Commission for New Towns v JJ Gallagher Ltd*, Neuberger J found (para.106) that:  
The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. ... Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].
- In *R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs*, Walker J said (para.65) that:  
The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.

T.6. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under section 25 of the Act,<sup>68</sup>

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... .

T.7. Under section 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 landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).
- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase 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.

T.8. 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

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<sup>68</sup> Discounts for easements affecting the land were separately requested and recorded in the valuation book.

them and that notwithstanding the fact that such deductions may not have previously been claimed by or on behalf of the owner.

T.9. 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.

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

T.11. The order way is shown uncoloured between A and E [*A and D*]. Between E and F, the way is shown as part of the Crixhall Farm estate, hereditament 351 (which is shown in two parts and accounted for with hereditaments Adisham 418–426, Wingham 750 and Goodnestone 237). This estate is recorded with an area of 64a, 1r, 28p (26.072ha), and a deduction for 'paths' is given, amounting to £100.

T.12. **Conclusion:** The Finance Act map is good evidence that the order way between A and E [*A and D*] was regarded as a public highway not subject to assessment.

T.13. Beyond E [*D*], the application was an unenclosed field road, and therefore included within the hereditament of the Crixhall Farm estate. The Crixhall Farm estate enjoyed a substantial reduction of £100 for public rights of way across the estate. There are several rights of way today recorded on the definitive map and statement across the estate, and it is possible that others subsisted which are not today so recorded. It is therefore not possible with certainty to attribute the deduction (or any part of it) to the order way between E and F [*D and E*]. However, on the basis that it could not have been assumed that the public way terminated at E [*D*], it is highly likely that the continuation of the way between E and F [*D and E*] was recognised in the total deduction for the estate.

T.14. **Points:**

Bridleway	Restricted byway
0	5

## U. Electricity Supply Acts 1882 to 1922

U.1. **Date:** 1923

U.2. **Source:** London Gazette<sup>69</sup>

### East Kent Electricity Special Order

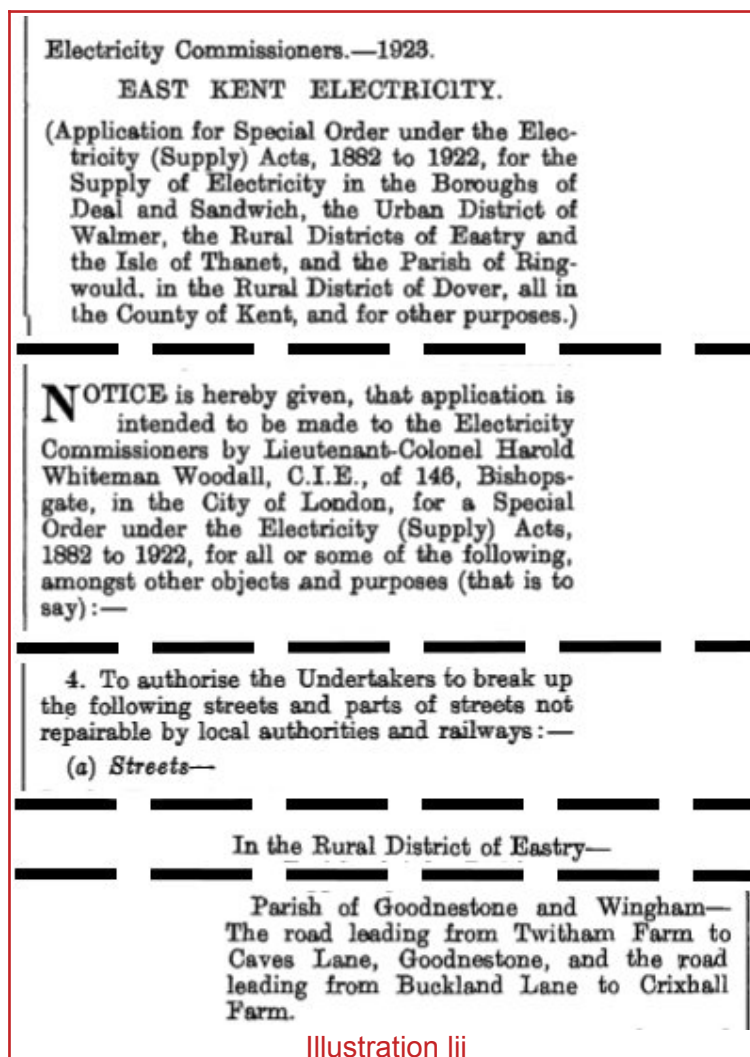


Illustration Iii

U.3. **Description:** The notice published in the London Gazette gives notice of the intention of an electricity undertaker for East Kent to lay its apparatus in certain streets not repairable by local authorities and railways: one of those specified, in the parish of Goodnestone, is:

| The road leading from Twitham Farm to Caves Lane, Goodnestone,....

The application was withdrawn in February 2024.

U.4. The road referred to in the notice must be the order way, from A to F [A to E], and then to Caves Lane along the course of bridleway EE269A. The farm now known as Twitham Court was formerly known as Twitham Farm, and is so named on every

69 Issue 32873, p.7140: [www.thegazette.co.uk/London/issue/32873/page/7140](http://www.thegazette.co.uk/London/issue/32873/page/7140).

Ordnance Survey plan up until (and including) the 1977 National Grid 1:10,000 scale. Higher Twitham Farm, sometimes referred to as Twitham Farm, was located just north of F [E], but ceased to exist in 1875.<sup>70</sup> That farm cannot be the farm referred to in the notice of the order, both because by the date of the notice, it had ceased to exist for half a century, and also because the electricity undertaker had no purpose in seeking powers to lay electricity cables to a remote field on Twitham Hill — the undertaker wished to lay cables connecting potential consumers in Staple and Goodnestone.

U.5. **Analysis:** The Electricity (Supply) Acts 1882 to 1922 provide for powers to be conferred on undertakers for the supply of electricity for public and private purposes. In the present case, notice of intention was given in the London Gazette for 23 October 1923 that application would be made to the Electricity Commissioners for a Special Order under the Electricity (Supply) Acts 1882 to 1922, to confer powers on Lt-Col. Harold Whiteman Woodall for the supply of electricity in East Kent.<sup>71</sup>

U.6. The Electricity (Supply) Acts 1882 to 1922 incorporate the following Acts:

- [Electric Lighting Act 1882](#)
- [Electric Lighting Act 1888](#)
- [Electric Lighting Act 1909](#)
- Electricity (Supply) Act 1919
- [Electricity \(Supply\) Act 1922](#)

U.7. The notice sets out, *inter alia*, details of ‘streets and parts of streets not repairable by local authorities and railways’ which the applicant wishes to ‘break up’ in order to lay its apparatus. The notice gives an opportunity for any ‘local or other public authority, company or person desirous of bringing before the Electricity Commissioners any objection respecting the application’. The notice also contains for the same purpose a list of routes which are county roads (*i.e.* roads repairable by the county council), and of roads over railway bridges and level crossings. It seems that none of those roads listed is considered to be maintainable by the district council as highway authority for roads other than designated main roads, and that therefore public notice need be given of the application as it affects those roads.

U.8. Are the ways listed in the notice, including the order way, highways, and if so, of what status?

U.9. Section 32 of the Electric Lighting Act 1882 defines street in a similar form to section 48 of the New Roads and Street Works Act 1991 (similar definitions have been used in legislation for around 150 years):

The expression “street” includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act [.]

A street is therefore likely to be a public highway, but:

- it may not be publicly maintainable (there being no words in the definition which might imply such a requirement);

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<sup>70</sup> See fn.5.

<sup>71</sup> The notice records that powers alternatively might be conferred on a company to be registered for the purpose.

- exceptionally, it may not be a public highway, if it nevertheless conforms to an element of the description such as a (wholly private) 'square' or 'road'.

U.10. There are other provisions in the 1882 Act which help illustrate the scope of 'street':

- Electric lighting under the Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in section 3(3) of the 1882 Act, 'lighting any street...belonging to or subject to the control of the local authority'. A privately maintainable public highway would be subject to the control of the local authority (but not maintained by it), and lighting such a street would be a naturally public purpose. Lighting a wholly private way would be a private purpose.
- Section 3(9) of the 1882 Act enables local authorities to be licensed to assume the powers of the undertaker: 'with respect to the breaking up of any street repairable by such local authority' (the expenses to be recoverable from the undertaker). The Acts therefore explicitly recognise the distinction between a street which is repairable by the local authority and a street which is not publicly repairable (*i.e.* maintainable).
- The marginal note to section 13 of the 1882 Act, 'Restriction on breaking up of private streets...' must be read in the context of the provision itself. Section 13 provides that the Act does not

...authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf... after notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

The presumption is that such streets may be broken up in order to lay apparatus, subject to an opportunity for the body by which the street is repairable to voice its objections. The reference to 'private street' in the marginal note to section 13 therefore appears to qualify 'street' as one which is a public highway but privately maintainable, and not one which is wholly private. If section 13 was concerned with wholly private ways, the body having responsibility for repair would be the owner, and it would not be necessary to distinguish the body by which the street is maintainable. Compare with Part XI of the Highways Act 1980, which sets out the code for *Making up of Private Streets*, in which:

"private street" means a street that is not a highway maintainable at the public expense

so that 'private street', for the purposes of Part XI, includes a highway only if it is not maintainable at public expense.

- Section 14 requires the consent of the local authority to place an electric line above ground in a street, and the authority is empowered to seek a magistrates' court order if the line is 'dangerous to the public safety'. The requirement for such consent in relation to a street which is a wholly private way would be odd, and inexplicable if the private way was not used by the public.

U.11. The draughtsman, in defining a 'street', is likely to have had in mind public highways which were privately maintainable, or wholly private ways in use by the public (such as carriage roads leading to stations built by the railway company, or unadopted new residen-



tial streets in towns), or at most, wholly private ways in towns which served significant numbers of dwellings or commercial premises (such as private squares or yards). It is not easy to reconcile the duty placed on an undertaker in section 14 of the 1882 Act (to seek consent to place electric lines in a street) with its application to a wholly private way not used by the public.

U.12. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in section 25 of the Act so as to include any street as defined in the 1882 Act. Given that 'street' is defined in the 1882 Act to include a 'road', it is not clear whether this circular provision can have been intended, and is suggestive of some confusion on the part of the draughtsman.

U.13. It is submitted that the definition of 'street' in the Electricity (Supply) Acts 1882 to 1922 does not extend to embrace a wholly private track, farm drive or path in the countryside. Such a way does not obviously fall within any of the components included in the definition of 'street' (unless, in particular circumstances, it might have the characteristics of a 'lane' or, if given a metalled surface, a 'road'). And while the definition of 'street' is not exhaustive, the *eiusdem generis* rule applied to the definition does not suggest that other, wholly private ways in the countryside were contemplated: quite the contrary. It would be inconsistent with the scheme of the Electricity (Supply) Acts 1882 to 1922 as a whole to apply the powers as regards streets to entirely rural, wholly private ways, without compensation to the owner, given that section 12(1) of the 1882 Act excludes undertakers from acquiring powers to compulsorily purchase private land. It would otherwise allow an undertaker to lay apparatus on private land without compensation, merely on the justification that the works were done along a part of that land which happened to conform (on one interpretation) to the general description of a 'lane' or 'road'. The only justification for conferring powers on an undertaker to lay apparatus in a rural way is if it is a public way — albeit it may be privately maintained.

U.14. In [Scales v Pickering](#), section 32 of a private Act of Parliament<sup>72</sup> empowered a water company to:

break up the soil and pavement of roads, highways, footways, commons, streets, lanes, alleys, passages, and public places

provided (section 34) that the company should not enter any private lands without the consent of the owner. It was held by the Court of Common Pleas that the company had no authority, without the consent of the plaintiff, to enter a field of his, over which there was a public footpath.

U.15. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird*,<sup>73</sup> in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense<sup>74</sup>:

'What is commonly done in a street' may include water-pipes and gas-pipes as well as sewers, and it could not be supposed that any such power was intended to be conveyed by such language. I think what his Lordship must have meant was such things as are usually done in a street for the purpose, as he elsewhere in his judgment describes it, of maintaining it as a street, and

<sup>72</sup> 47 Geo 3, sess.2, c.72, East London Waterworks Act 1807.

<sup>73</sup> [1896] AC 434

<sup>74</sup> In the case, the vesting occurred under s.149 of the Public Health Act 1875.

which are incident to the maintenance and repair of the street as a street. For that purpose it would be intelligible. For any other purpose it would appear to me to be inconsistent with the language of the enactments, and contrary altogether to the policy which the Legislature has certainly always pursued of not taking private rights without compensation. In circumstances in which it is essential to take private property Parliament has always provided for compensation, and in this section the language itself imports that where private property is being dealt with it can only be done 'with the consent of the owner.'

U.16. Thus, the inference should be that the Electricity (Supply) Acts 1882 to 1922 were not intended to enable undertakers to lay their apparatus in wholly private roads (such as farm access roads and private carriage drives) without compensation, but only in public roads — including those which were privately maintainable.

U.17. The notice in the *London Gazette* contains the following 32 entries as regards streets not repairable by local authorities nor railways, set out in the first column, together with the presumed location (by Ordnance Survey grid references) in the second column, and comments on the entry in the third column:

Description in notice	Presumed location	Comments
<i>Parish of Ash—</i>		
i. Richborough Castle Road	<a href="#">TR319603</a> to <a href="#">TR323602</a>	Now known as Castle Road: restricted byway EE43A; title unregistered
ii. White House Drove Road	<a href="#">TR318604</a> to <a href="#">TR319613</a>	Unrecorded ('private street' in NSG); title unregistered
iii. Rubery Drove Road	<a href="#">TR314607</a> to <a href="#">TR315613</a>	Unrecorded; registered title
iv. Potts Farm Drove Road	<a href="#">TR301609</a> to <a href="#">TR304621</a>	Public footpath EE49; registered titles
v. the road leading from Sandhill Farm to Cooper Street	<a href="#">TR298604</a> to <a href="#">TR304602</a>	Public footpath EE52; title unregistered
vi. the road leading from Lower Goldstone to Red House Ferry	<a href="#">TR294611</a> to <a href="#">TR296625</a>	Now known as Goldstone Drove; public footpath EE55; part title unregistered
vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane)	<a href="#">TR281582</a> to <a href="#">TR281577</a>	Part adopted road, part public bridleway EE193; title unregistered
viii. the road leading from Durlock Road to Ash-Canterbury Main Road	<a href="#">TR274579</a> to <a href="#">TR274583</a>	Deadman's Lane: recorded on draft map as FP85, stopped up on 11 December 1954

ix. the road leading from West Marsh Road to the Marshes	<a href="#">TR274615</a> to <a href="#">TR274624</a>	Now known as Westmarsh Drove; public footpath EE76; 'private street' in NSG; unregistered title with caution
x. the road leading from Paramour Street to Downfield Farm	Not identified	
xi. the road leading from Overland Lane, Corking to Ware Road	<a href="#">TR275598</a> to <a href="#">TR280607</a>	Part public bridleway EE86 and EE73; part adopted road (Ware Farm Road); part unrecorded; land generally unregistered
<i>Parish of Betteshanger—</i>		
xii. the road leading from Northbourne Road to New Road, Betteshanger	<a href="#">TR313537</a> to <a href="#">TR309529</a>	Restricted byway EE493; part unregistered
<i>Parish of Eastry—</i>		
xiii. the road leading from Eastry Mills to Hammill	<a href="#">TR302545</a> to <a href="#">TR285552</a>	BOAT EE109; part unregistered
<i>Parish of Eythorne—</i>		
xiv. the road leading from Upper Eythorne to Brimsdale Farm	<a href="#">TR283491</a> to <a href="#">TR280491</a>	Now known as Flax Court Lane; public bridleway EE345; 'private street' in NSG; part unregistered
<i>Parish of Goodnestone and Wingham—</i>		
xv. the road leading from Twitham Farm to Caves Lane, Goodnestone,	<a href="#">TR262568</a> to <a href="#">TR255555</a>	Part adopted, part unrecorded, part public bridleway EE269A; land unregistered; orders made consequent on applications PROW/DO/C391 and PROW/DO/C467 to record as restricted byway
xvi. the road leading from Buckland Lane to Crixhall Farm	<a href="#">TR269554</a> to <a href="#">TR267556</a>	Public bridleway EE28; land unregistered
<i>Parish of Great Mongeham—</i>		
xvii. the road leading from Cherry Lane to the road leading from Northbourne to Ripple	<a href="#">TR346512</a> to <a href="#">TR342507</a>	Now known as Pixwell Lane; BOAT ED53; part adopted; unregistered title
<i>Parish of Little Mongeham—</i>		

xviii. the road leading from Little Mongeham Farm to Ripple and Sutton Road	<a href="#">TR333509</a> to <a href="#">TR343501</a>	Public footpath EE422; subject of application PROW/DO/C456 to record as bridleway; title registered
<i>Parish of Nonington—</i>		
xix. the road leading from Holt Street to Nonington Mill	<a href="#">TR262521</a> to <a href="#">TR268517</a>	Now known as Mill Lane; adopted road; unregistered title
xx. the road leading from Gooseberry Hall to Young Wood, Goodnestone (Pilgrims Way)	<a href="#">TR266530</a> to <a href="#">TR259538</a>	Now known as Cherrygarden Lane; BOAT EE280; 'private street' in NSG; part unregistered
<i>Parish of Northbourne—</i>		
xxi. the road leading from Willow Wood to Telegraph Farm	<a href="#">TR312506</a> to <a href="#">TR311511</a>	Now known as Willow Woods Road (Roman Road); public bridleway EE377; 'private street' in NSG; part unregistered
<i>Parish of Preston—</i>		
xxii. the road leading from Preston Road to Marley Brook Farm	<a href="#">TR252616</a> to <a href="#">TR249618</a>	Unrecorded; unregistered title
<i>Parish of Ripple—</i>		
xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton	<a href="#">TR342482</a> to <a href="#">TR334488</a>	Public bridleway EE427; title registered
<i>Parish of Sholden—</i>		
xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay	<a href="#">TR371545</a> to <a href="#">TR360572</a>	Now known as Ancient Highway or the Old Coast Road; BOAT EE245; adopted; title registered
<i>Parish of Stourmouth—</i>		
xxv. the road leading from North Court Farm, Upper Stourmouth to New Road	<a href="#">TR256630</a> to <a href="#">TR266630</a>	Restricted byway EE485
<i>Parish of Sutton—</i>		
xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester)	<a href="#">TR334493</a> to <a href="#">TR314476</a>	Public footpath EE417; subject of application PROW/DO/C495 to record as bridleway (previously recorded as RUPP); part unregistered

<i>Parish of Wingham—</i>		
xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road).	<a href="#">TR249571</a> to <a href="#">TR260571</a>	Now known as Dambridge Farm Road; part adopted, part restricted byway EE165A; part unregistered
<i>Parish of Woodnesborough—</i>		
xxviii. the road leading from Foxborough Hill, Woodnesborough to Sandwich Station	<a href="#">TR308561</a> to <a href="#">TR331576</a>	Part was known as Black Lane (Sandwich), now St Barts Road; part public bridleways EE226A and ES8, part BOAT ES10, part adopted; part unregistered title, part land unregistered
<i>Parish of Worth—</i>		
xxix. the road leading from Woodnesborough and Sandwich Road to Station	<a href="#">TR323574</a> to <a href="#">TR331576</a>	Part known as Black Lane (Sandwich); part now known as St Barts Road; part BOAT ES10, part adopted; part land unregistered
xxx. the road leading from Deal and Sandwich Main Road to Worth Street Road,	<a href="#">TR329568</a> to <a href="#">TR334560</a>	Now known as Coventon Lane; public bridleway EE236; part unregistered title
xxxi. the road leading from Deal and Sandwich Main Road to Temptye Farm,	<a href="#">TR328564</a> to <a href="#">TR341565</a>	Public bridleway EE236; part unregistered title
xxxii. the road leading from Blue Pigeons Farm to Sandwich Bay	<a href="#">TR344566</a> to <a href="#">TR355575</a>	Public bridleway EE232; part unregistered title; subject of application PROW/DO/C484 to record as restricted byway

U.18. Of 32 'streets' recorded in the notice, and treating a way subject to a pending application for a definitive map modification order as if the application were successful:

- 15 are recorded as public carriageways<sup>75</sup> (of which 2 are part recorded as bridleways),
- 11 are recorded as public bridleways (of which 2 are part recorded as carriageways),
- 4 are recorded as public footpaths (of which 3 are named as droves),
- 5 are named as droves (of which 3 are recorded as footpaths),
- 1 is neither a drove nor recorded with any public rights ((xxii, Marley Brook Farm), and
- 1 could not be located ((x), at Paramour Street).

<sup>75</sup> Including adopted roads, byways open to all traffic and restricted byways.

U.19. Leaving aside the street which could not be located, at least 29 of 31 of the 'streets and parts of streets not repairable by local authorities and railways' cited in the public notice in the *London Gazette* are today public highways, or subject to applications intended to secure that outcome. This is good evidence that such streets were considered to be public highways which were privately maintainable, and were not wholly private ways. Inclusion in the list is therefore evidence of the public status of these ways at the date of the notice.

U.20. Of the 29 streets now recognised as public highways, 26 are now recognised as roads and public bridleways (or partly both), or subject to applications intended to secure that outcome. Of those four which currently are recorded as public footpaths, three are drove roads recorded as footpaths, but where the true status is uncertain and may not be correctly recorded, one is subject to an application to record as restricted byway, and one may have unrecorded higher rights.

U.21. **Conclusion:** The three scheduled streets which are not, even now, recorded as public ways or the subject of applications for recording, are:

- (ii) White House Drove Road
- (iii) Rubery Drove Road
- (xxii) the road leading from Preston Road to Marley Brook Farm

U.22. Of these, the first two are among a number of drove roads leading into the Ash marshes, the status of which is uncertain. But for comparison, the application to record Corner Drove as a restricted byway<sup>76</sup> demonstrates that evidence may be sufficient to record drove roads of similar character as a restricted byway. It seems likely that the applicant for the order proceeded on the basis that the drove roads were public, but not necessarily publicly-maintainable.

U.23. As to the third (i.e. xxii), there is supporting evidence that this road may be public: it is excluded from assessment on the tithe map, and there is a record of material being put on the road by the district council in 1893. An absence of publicly-recorded status today does not mean that the road is not a public road.

U.24. Thus of the 31 streets which can be identified, 26 are recorded either as bridleway or road (or partly both), or subject to applications to that end, 3 are drove ways on Ash Level, where the recording as footpath (if at all) is for want of investigation of higher rights for driving animals, riding horses or vehicles, 2 are footpath and 1 has no recorded status at all.

U.25. It therefore is submitted that ways in the notice identified as streets not repairable by local authorities are likely to be those which were regarded at the time as of vehicular road, drove or bridle status, being listed as 'streets' and described as 'roads'. Those two entries which today are not recorded as of one of these statuses, nor subject to applications to that end (or subject to the order, in the case of the order way), are nevertheless likely to possess unrecorded higher rights.

U.26. Ways notified as streets not repairable by local authorities are likely to be those which were regarded at the time as of at least bridleway status, being described as 'roads'. The notice is good evidence of the status of the order way between A and F [*A and E*] (and beyond to Cave Lane) as a public way, privately maintainable, of at least the status of bridleway.

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76 PROW/DO/C413

U.27. Points:

Bridleway	Restricted byway
2	0

V. Highway inspector's map

V.1. **Date:** 1952

V.2. **Source:** Kent County Council<sup>77</sup>

**Highway inspector's map 1952**



Illustration liii

V.3. **Description:** Original scale: 1:10,560; orientation: unchanged

V.4. The highway inspector's map shows the order way as an unsealed publicly maintainable highway, with the reference numbers D1842<sup>78</sup> (approximately between A and B) and E148 (between B and F [B and E]). The way recorded with reference E148 has, at a subsequent date, been crossed out in pencil.

<sup>77</sup> Highway inspector's map supplied by the council on request.

<sup>78</sup> Described in notes as 'From C218 at Twitham southward for 700 feet'.

V.5. A request was made to the highway authority in January 2017 for information about the entry of the order way in the highway inspector's map, and its deletion.

Question 1<sup>79</sup>: Any markings shown on the map not included in the scanned image — in particular, the annotations obscured by the overlay of OS sheet XLVII/12 over the margin of sheet XLVII/8, which explain or illustrate the pencilled arrows towards the E148.

We have reviewed plan reference XLVII/12 and the plan it was overlaid with (please note that this is XLVII/16 and not XLVII/8). The annotations on plan XLVII/16 by the termination of E148 state 'BR9 on delegation map' and above this in the margin of this plan there is a note that states 'please ignore this wash along Superintendent's District Boundary. This was a draughtsman's error.' There is also another note in the margin with one arrow pointing towards the E148 and one arrow towards the division boundary and this states 'for query regarding this stretch see sheet XLVII N.E.' In pencil beneath this note it states 'Not maintained' and this has been initialled. Please note that XLVII N.E is the same as XLVII/12. Please see point 2 for the notes relating to the E148.

Question 2: Any information which records or explains why the E148 was crossed out from the map

The annotations on plan XLVII/12 explaining why the E148 was crossed from the map state 'Is this a maintained road as indicated on HQ Blue line – did not make it as publically maintainable.' In pencil beneath this note it states 'Not maintained' and this has been initialled. Our interpretation of these notes is that the E148 was crossed from the plan as it was not considered to form part of the publicly maintainable highway.

Question 3: Any information which records or explains why the D1842 was redrawn to terminate (at its southern end) at 'Terminal Point Ref No 16'.

It is unclear if the termination point of the D1842 was redrawn and so we are unable to comment regarding this. It is our interpretation that any markings to this area were due to human error. We have found records relating to the length of the D1842 that states that it starts from C218 at Twitham southwards for 700 feet (approximately).

Question 4: Any information which records or explains any other substantive alterations in the entry for Pettocks Lane (whether the E148 or the D1842) in the list of streets held by the council under s.36(6) of the Highways Act 1980 since the date of the map.

We are not aware of any alterations in the entry for Pettocks Lane (whether the E148 or the D1842) in the list of streets held by Kent County Council and we can find no record of any changes being made to USRN 11300959 (Pettocks Lane, Wingham) which means that no actions have been recorded against this Street in at least the last ten years. The two road numbers you refer to (E148 and D1842) are references to Unclassified Road Numbers which were the backbone of the previous CHART based Street Referencing System used before the USRNs became the legally required method of recording all streets.

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<sup>79</sup> This and the following questions were posed by the applicant.



Question 5: Any information about a legal event (such as a stopping up order or a cessation of public liability to maintain order) which bears on the status of Pettocks Lane as publicly maintainable.

Our records indicate that there are no recorded stopping up orders or a cessation of public liability to maintain order at this location.

V.6. **Conclusion**: The inspector's map shows that the order way between B and F [*B and E*] was formerly considered to be a public highway, and was allocated an unclassified road number consistent with its being publicly maintainable. The authority for the deletion of the order way between B and F [*B and E*] is unclear, but it may be that evidence was found that the way, although a highway, was not publicly maintainable: see, for example, item V.U above.

V.7. **Points**:

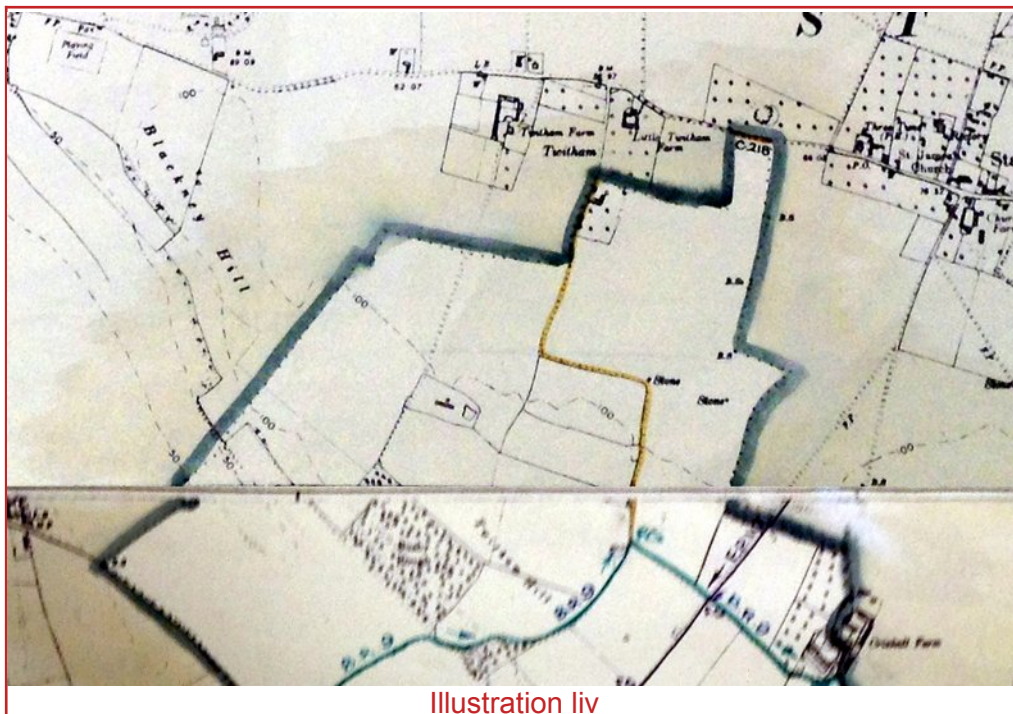
Bridleway	Restricted byway
0	3

## VA. Draft definitive map

VA.1. **Date**: 1952

VA.2. **Source**: Kent County Council<sup>80</sup>

### **Draft definitive map Goodnestone**



VA.3. **Description**: Original scale: 1:10,560; orientation: unchanged (north is top).

<sup>80</sup> Draft definitive map under council reference: FP/R70/100

VA.4. On the draft definitive map for Goodnestone, the order way is depicted in yellow on the map supplied by the council, meaning that it was recognised as a publicly-maintainable road which therefore did not need to be recorded on the definitive map and statement.

VA.5. Kent County Council records (statement of case, para.30):

It is to be noted that the Order Route was recorded on the 1970 Draft Review Map as a Byway Open to All Traffic (comprising part of EE269A) and objection was made to this depiction by [redacted] at the time. However, the Review was abandoned in Kent in February 1983 following a Direction from the Secretary of State for the Environment (before the status of the Order Route could be determined) and therefore the Order Route was effectively automatically removed from the Definitive Map as a result of that Direction.

VA.6. **Conclusion:** The order way was not recorded on the definitive map and statement because the surveying authority presented a base plan on which the order way was marked in, in yellow, suggesting that it was recognised as a public road (as indeed it had been originally recorded on the contemporary Highway inspector's map at item V.V above).

VA.7. Its omission from both the definitive map and statement and the council's own highway records presumably was subsequently noted, and it was included as a byway open to all traffic on the draft review map in 1970. However, the review subsequently was abandoned.

VA.8. These events show that awareness of the order way endured in the post-war period.

V.8. **Points:**

Bridleway	Restricted byway
0	2

## W. Conveyance of 1982

W.1. **Date:** 1982

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

W.3. **Description:** In 1982, Miss M O Kimberly bought Twitham Oast from trustees,<sup>81</sup> together with a parcel of land from the Goodnestone estate surrounding the Oast on the east side of the application way.

W.4. The conveyance of Twitham Oast from trustees comprises the Oast House building, together with a strip of land comprising the application way approximately between B and C [*B and south of B*].

W.5. A copy of the conveyance is at annexe A at p.112 below.

W.6. Paragraph 1 describes the conveyance as:

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<sup>81</sup> The trustees were John Drinkwater QC and Peter Anthony Palmer. The conveyance states that they acquired the land on a conveyance from the Goodnestone estate in 1967.

...Subject to the rights of the public over the road or way known as Twitham Lane Wingham aforesaid...

W.7. **Conclusion:** The conveyance of Twitham Oast was expressly made subject to public rights over the application way, described as a 'road or way'. As the land being conveyed related only to the land now occupied by Twitham Oast South and North, the reference in the conveyance to a 'road or way' must refer to such a road or way passing through Twitham Oast.

W.8. **Points:**

<b>Bridleway</b>	<b>Restricted byway</b>
0	3

## VI. Annexes

### Annexe A

C18 St John's College estate map (see item V.C above)



**Annexe B**

Survey of estate lands and roads Goodnestone (item V.D above)



## Annexe C

Greenwoods' map of Kent (item V.J above)





## Annexe D

Wingham tithe map marked up with roads (item V.L above)



**Annexe E**

Mid-C19 St John's College estate map (item V.M above)

STAPLE WORTH WINGHAM GOODNESTONE

ASH AND WOODNESBORO

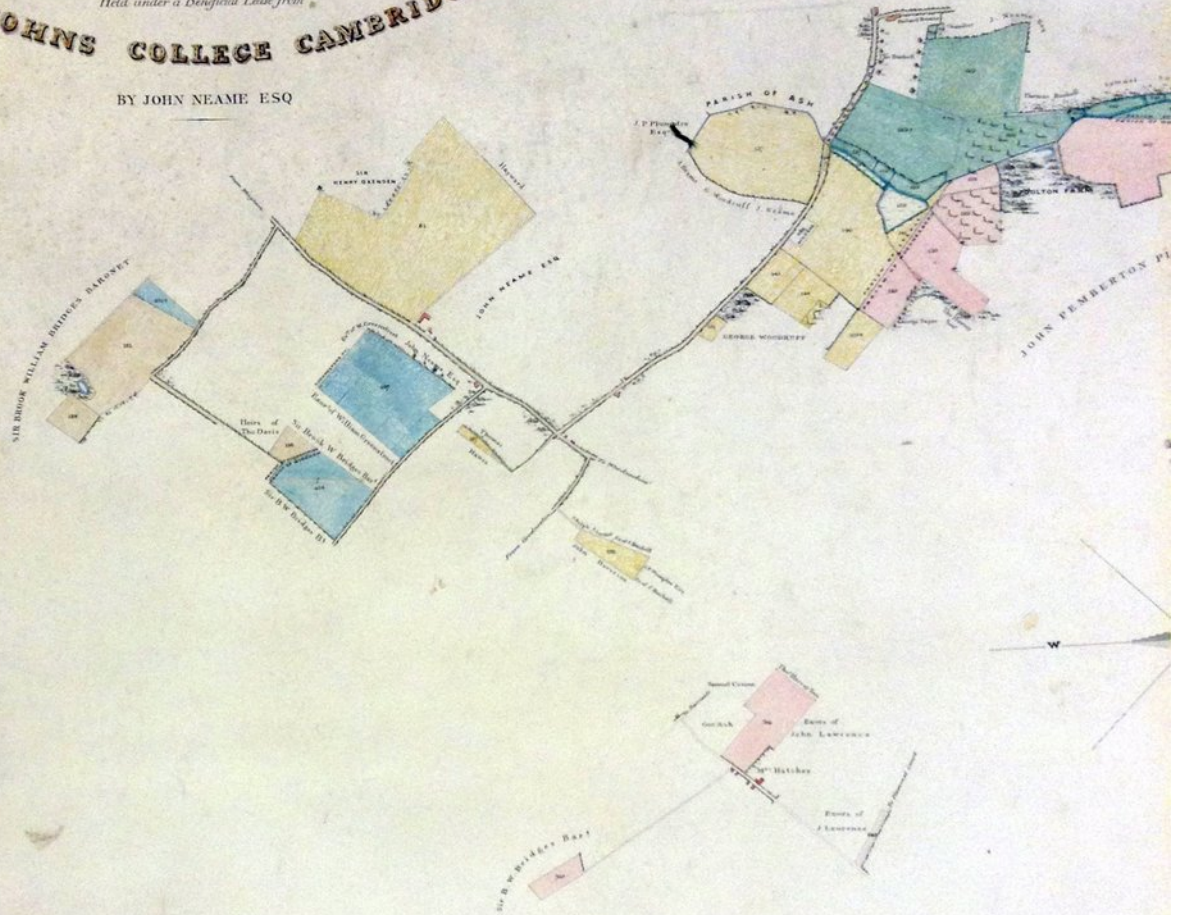
IN THE COUNTY OF

KENT

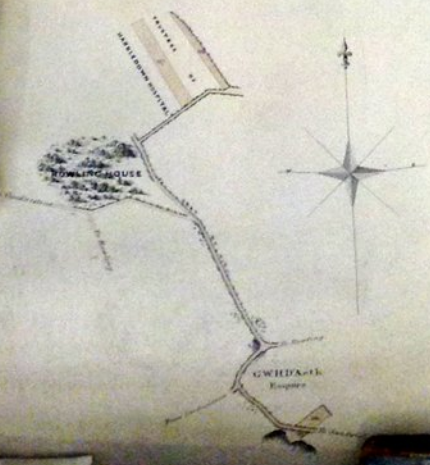
Held under a Beneficial Lease from

ST JOHN'S COLLEGE CAMBRIDGE

BY JOHN NEAME ESQ



PARISH OF GOODNESTONE

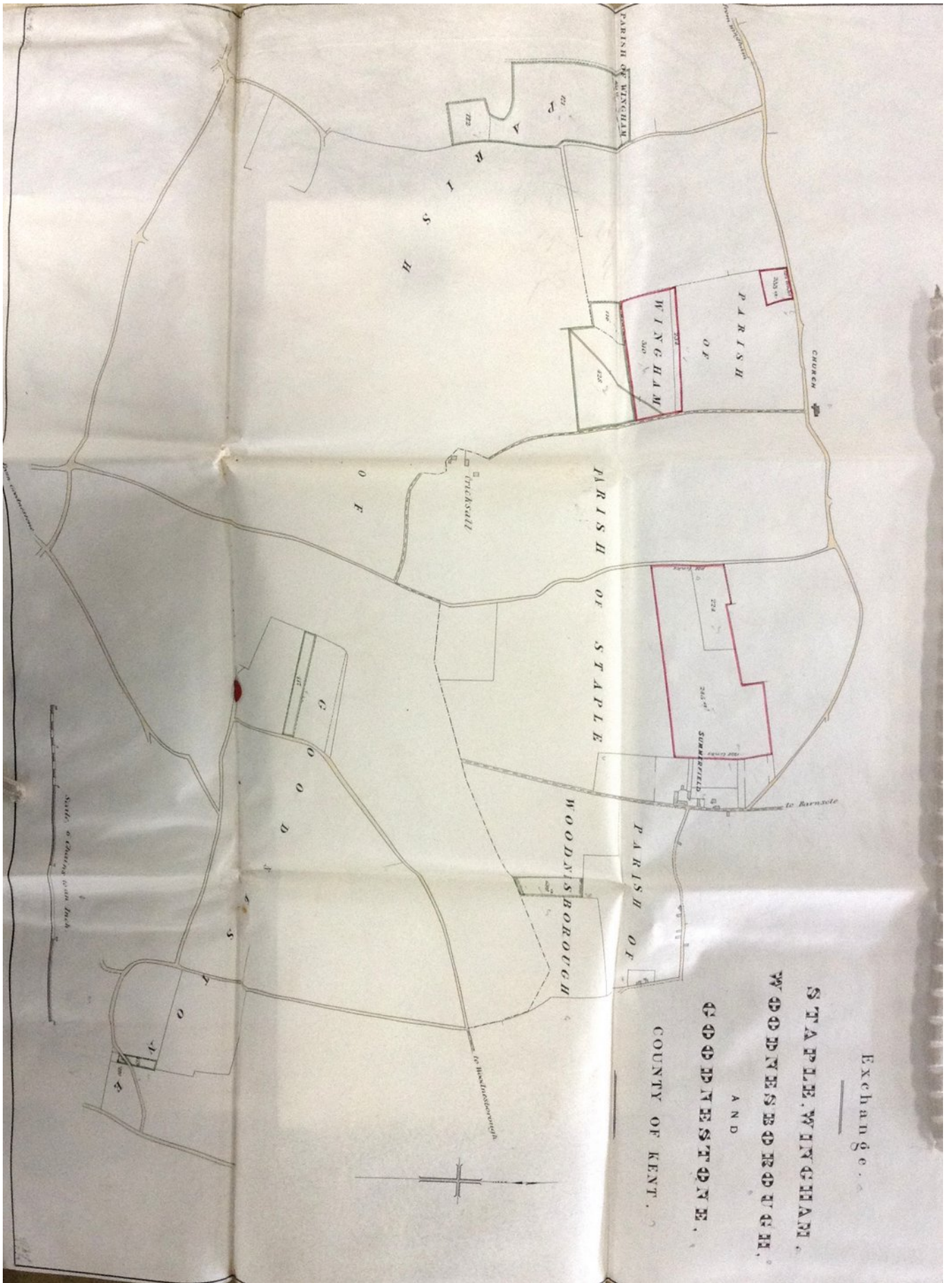


REFERENCE TO MAP

No.	DESCRIPTION	Culture	A	R	P	No.	DESCRIPTION	Culture	A	R	P
<b>PARISH OF STAPLE</b>											
81	Point Hill	Arable	2	2	0	278					
137	Mylands Hill	Arable	1	2	2	283					
238						284					
325	Brook Bridge	Arable	2	2	2	285	Stones Hill	Arable	1	2	2
1247	Brook	Arable	2	2	2	286	Brook	Arable	1	2	2
139	Brook Meadow	Arable	2	2	2	287	Do	Arable	1	2	2
140	Brook Down Court Hill	Arable	1	2	2	288	Do	Arable	1	2	2
143	Part of Do	Arable	1	2	2	289	Do	Arable	1	2	2
145	Do	Arable	1	2	2	290	Boundary Piece	Arable	1	2	2
147	Do	Arable	1	2	2	291	Do	Arable	1	2	2
151	Calc Hill	Arable	1	2	2	292	Do	Arable	1	2	2
213	Wormsland	Arable	1	2	2	293	Do	Arable	1	2	2
111	Land	Arable	1	2	2	294	Do	Arable	1	2	2
237	Do	Arable	1	2	2	295	Do	Arable	1	2	2
<b>PARISH OF WOODNESBORO</b>											
207	Do	Arable	1	2	2	110					
226	Part of Hill Field	Arable	1	2	2	111					
228	Do	Arable	1	2	2	112					
230	Do	Arable	1	2	2	113					
232	Do	Arable	1	2	2	114					
234	Do	Arable	1	2	2	115					
236	Do	Arable	1	2	2	116					
238	Do	Arable	1	2	2	117					
240	Do	Arable	1	2	2	118					
242	Do	Arable	1	2	2	119					
244	Do	Arable	1	2	2	120					
246	Do	Arable	1	2	2	121					
248	Do	Arable	1	2	2	122					
<b>PARISH OF WORTH</b>											
147	Widley Land	Arable	1	2	2	137	Widley Land	Arable	1	2	2
148	Part of Widley	Arable	1	2	2						
149	College Land	Arable	1	2	2						
151	College Land	Arable	1	2	2						
<b>SCALE OF CHAINS</b>											

**Annexe F**

Inclosure Act 1845: order of exchange (item V.O above)



## Annexe G

Conveyance of 1982 (see item V.W above).



(A)

33

31. MAR. 1982  
FINANCE ACT 1931

**This Conveyance** is made the

*Twenty fourth* day of *February* One Thousand Nine

Hundred And Eighty Two BETWEEN JOHN DRINKWATER Q.C. of Meysey Hampton Manor Near Cirencester Gloucestershire and PETER ANTHONY PALMER of 12 Bedford Row London WCLR LONDON (hereinafter called "the Vendors") of the one part and MARJORIE OLIVE KIMBERLEY of 60 Priory Gardens Hanger Lane Ealing London W.5 (hereinafter called "the Purchaser") of the other part

WHEREAS :

(1) The Vendors are seised of the property hereinafter described for an estate in fee simple in possession subject as hereinafter mentioned but otherwise free from incumbrances and hold the same as trustees upon trust to sell the same and to stand possessed of the net proceeds of sale and the net rents and profits until sale upon trust

(2) The Vendors in exercise of the said trust for sale have agreed with the Purchaser for the sale to her of the said property for a like estate at the price of FOURTEEN THOUSAND POUNDS

NOW THIS DEED WITNESSETH as follows :-

1. IN pursuance of the said agreement and in consideration of the sum of FOURTEEN THOUSAND POUNDS paid by the Purchaser to the Vendors (the receipt whereof the Vendors hereby acknowledge) the Vendors as Trustees hereby convey unto the Purchaser ALL THAT piece or parcel of freehold land situate at Wingham Near Canterbury in the County of Kent TOGETHER WITH the East House erected thereon or on some part thereof



 SEQ197
  K533030

Illustration Iv

and known as "Twitham Oast" Wingham aforesaid shown for the purposes of identification only on the plan annexed hereto and thereon edged red SUBJECT to the rights of the public over the road or way known as Twitham Lane Wingham aforesaid TOGETHER ALSO with the rights set out in the First Part of the First Schedule hereto but EXCEPT AND RESERVED the rights set out in the Second Part of the First Schedule hereto TO HOLD the same unto the Purchaser in fee simple

2. THE Purchaser so that this covenant shall be for the benefit and protection of the adjoining or neighbouring property of the Vendors or any part or parts thereof hereby covenants with the Vendors that she will at all times hereafter observe and perform the covenants contained in the Second Schedule hereto

3. IT IS HEREBY AGREED AND DECLARED that nothing herein contained or implied shall be deemed to confer on or grant to the Purchaser any easement of way drainage light air or other easement or right which would or might interfere with or restrict the free use of the Vendors' adjoining or neighbouring property for building or any other purpose whatsoever

4. THE Vendor hereby acknowledges the right of the Purchaser to the production of the documents specified in the Third Schedule hereto (the possession of which is retained by the Vendors) and to delivery of copies thereof

5. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds TWENTY THOUSAND POUNDS

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

Illustration Ivi

THE FIRST SCHEDULE hereinbefore referred to

PART I

RIGHTS TO BE CONVEYED

(a) The right for the Purchaser and her successors in title from time to time as required to enter upon the adjoining or neighbouring land of the Vendors for the purpose of inspecting repairing and maintaining the fence erected by the Purchaser between the points marked 'F' and 'H' and 'H' and 'G' on the plan annexed hereto and for the purpose of inspecting repairing and maintaining the fence erected by the Vendor between the points marked 'K' and 'L' on the said plan upon giving reasonable previous notice of the intention so to enter to the Vendors or other the owner or occupiers for the time being of the said land of the Vendors the Purchaser causing no unnecessary damage to the said land of the Vendors and making good any damage caused

PART II

RIGHTS TO BE EXCEPTED AND RESERVED

(a) an exception and reservation to the Vendors and their successors in title and all persons authorised by them of all easements quasi-easements rights or privileges now exercised or exercisable over the land hereby conveyed by the occupiers of adjoining or neighbouring land or which had the land hereby conveyed and any adjoining land of the Vendors been in separate ownership would have been easements rights or privileges

(b) the right for the Vendors and their successors in title in fee simple for the benefit of the Vendors' adjoining or neighbouring property the right for the Vendors and their successors in title to enter upon the land hereby conveyed for the purposes of making maintaining repairing

or making connections with the drainage water soil gas and electricity systems on the land hereby conveyed

(c) all subsisting rights in relation to the extraction of coal and other minerals and all subsisting rights ancillary thereto including (but without prejudice to the generality of the foregoing) those contained or referred to in a Lease dated the Thirtieth day of July One Thousand Nine Hundred And Twenty Three and made between Henry FitzWalter Plumtre of the first part The Reverend Charles Pemberton Plumtre and Henry Western Plumtre of the second part and Pearson and Dorman Long Limited of the third part as varied by an Agreement dated the Twenty Ninth day of June One Thousand Nine Hundred And Thirty Two and made between The Right Honourable Henry FitzWalter Baron FitzWalter of the first part Henry Western Plumtre Albert Leslie Wright and Edward FitzWalter Wright of the second part and Pearson and Dorman Long Limited of the third part so far as the same affect the property hereby transferred

THE SECOND SCHEDULE hereinbefore referred to

(a) The Purchaser and those deriving title under her will forever hereafter maintain the hedge between the points marked 'D' and 'A' on the plan annexed hereto

(b) The Purchaser and those deriving title under her will forever hereafter maintain and keep in good repair the fence between the points marked 'K' and 'L' on the plan annexed hereto

(c) That within one month of the Purchaser removing the hedges between the points marked 'F' and 'E' and 'E' and 'G' on the plan annexed hereto (permission for which is hereby granted by the Vendors) for the sight lines required by Kent County Council the Purchaser will at her own

L+

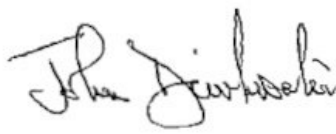
Illustration Iviii

expense level the land at the corner of Twitham Lane and Staple Road grade the bank into the field leaving the site suitable for agricultural purposes and erect a pig netting fence between the said points which said fence the Purchaser and those deriving title under her will forever thereafter maintain

THE THIRD SCHEDULE hereinbefore referred to

<u>Date</u>	<u>Document</u>	<u>Parties</u>
11th October 1967	CONVEYANCE	The Rt. Hon. FitzWalter Brook Plumptre Baron FitzWalter (1) John Drinkwater and John Marshall Barwick (2)
13th October 1969	DEED OF APPOINTMENT	The Rt. Hon FitzWalter Brook Plumptre Baron FitzWalter (1) John Drinkwater (2) George Geoffrey Milburn Stokes (3)
27th February 1979	DEED OF APPOINTMENT	The Rt. Hon. FitzWalter Brook Plumptre Baron FitzWalter (1) John Drinkwater Q.C. (2) George Geoffrey Milburn Stokes (3) Peter Anthony Palmer (4)

SIGNED SEALED AND DELIVERED by the said )  
JOHN DRINKWATER, in the presence of :- )



*Allen Collier*  
2, Harcourt Buildings,  
Temple, E.C.4.  
Barristers clerk.

Illustration lix

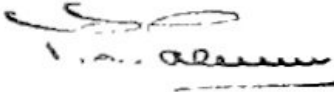
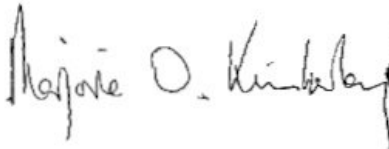

<p>SIGNED SEALED AND DELIVERED by the said )  <u>PETER ANTHONY PALMER</u> in the presence of:)</p>	
<p><i>Jan B. Lee</i>  12 Bedford Row,  London,  WC1R 4DN  Secretary</p>	
<p>SIGNED SEALED AND DELIVERED by the said )  <u>MARJORIE OLIVE KIMBERLEY</u> in the presence )  of :-</p>	
	
<p>Evy Cottage, 66 Station Rd  Barnes SW13 0LP</p>	
<p>Chartered Accountant</p>	
<p>6</p>	

Illustration Ix

