

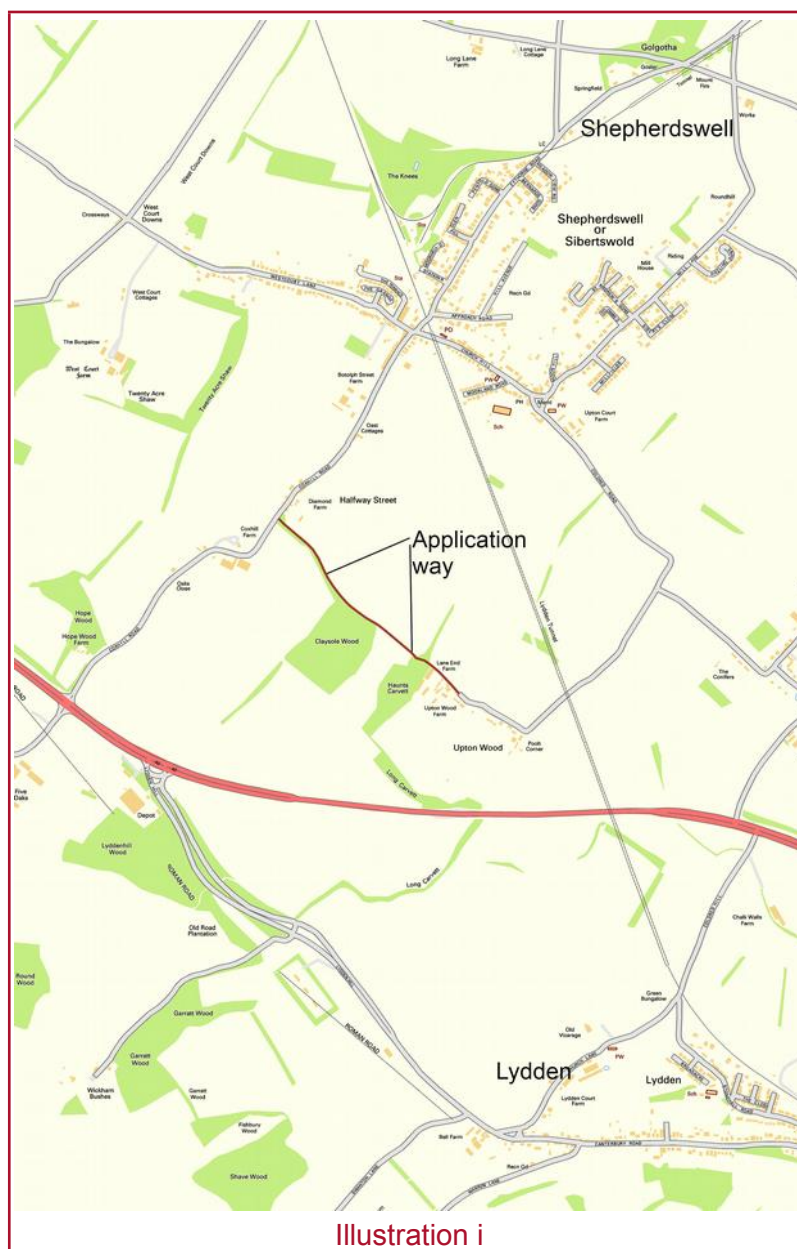
# Upton Wood Road bridleyway: application to record a bridleyway from Upton Wood to Cox Hill, Shepherdswell

## Historical document analysis

### I. Introduction

#### A. Quick reference

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



- A.2. Existing recorded public right of way comprised in application way: part ER85
- A.3. Parish of: Shepherdsweil with Coldred
- A.4. Ancient parish of: Shepherdsweil or Sibertswold
- A.5. Hundreds of: Eastry and Bewsborough
- A.6. Termination points: Upton Wood to Coxhill Road
- A.7. Termination points Ordnance Survey grid references: TR25944684, TR25354741
- A.8. Postcode: CT15 7LE
- A.9. Ordnance Survey Explorer sheet: 138
- A.10. Ordnance Survey County Series 25" sheets: Kent LVII/15, 16

## B. The applicant

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

## C. Locational details

C.1. This application relates to a way in the parish of Shepherdsweil with Coldred, in the district of Dover, Kent. The way currently is recorded on the definitive map and statement as part of footpath ER85. The application seeks to record the way as a bridleway.

## D. Application

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

D.2. The application way begins at a former gate on Upton Wood Road at the property known as Upton Wood at A (Ordnance Survey grid reference TR25944684) and proceeds for 820 metres in a north-westerly direction, partly enclosed, to reach Cox Hill Road at B (TR25354741) just south of Diamond Farm.

D.3. The points A and B, and intermediate points X, Y and Z, are identified in the application map at part II below.

## E. Nomenclature

E.1. The application way is referred to in this application as the 'application way', and is assumed to be a continuation of Upton Wood Road, which is a publicly-maintainable road providing vehicular access to Upton Wood from Shepherdsweil and Coldred. It is the intention of the application that the south-eastern terminus of the application way at A is

contiguous with the north-western terminus of Upton Wood Road as recorded on the list of streets held by Kent County Council under s.36(6) of the Highways Act 1980.

E.2. Shepherdswell formerly was known as Sibertswold.

E.3. Upton Wood is a hamlet within Shepherdswell parish, primarily served by Upton Wood Road, which itself leads from the Coldred Road linking Shepherdswell and Coldred.

E.4. Coxhill, or Coxhill Road, is a road from Shepherdswell to the Dover Road (A2) and Wootton. Coxhill Farm is part of the hamlet of Halfway Street (*i.e.* halfway between Shepherdswell and the Dover Road).

## F. Background

F.1. The application way appears historically to be a bridleway between Coxhill and Upton Wood, being described as a ‘shireway’, or bridleway, on the late seventeenth century map of Shepherdswell House, farm and parsonage house in Sibertswold, Wootton and Lydden parishes (item IV.A). The way is not consistently represented on late eighteenth century and early nineteenth century mapping, presumably because, as a partly unenclosed bridleway, it did not necessarily merit inclusion. It is, however, clearly identified on Andrews’ A Topographical Map of the County of Kent (item IV.B) and the Barlow-Hasted map of Kent (item IV.C), largely shown on Greenwood’s map of Kent (item IV.D) — though the continuation of Upton Wood Road is not — but only partly shown on the Ordnance Survey, Old Series one-inch map of Kent (item IV.E).

The map prepared under the Tithe Act 1836 (item IV.F) shows the majority of the application way as a defined route which appears to be excluded from assessment. The plans for the 1849–50 North Kent Railway (continuation from Strood to Deal and Dover) (item IV.G) unambiguously identify the application way as partly a bridleway and partly a public road. The Ordnance Survey County Series first edition 25-inch map (item IV.H) shows the application way as a continuous track. The eastern-most part of the application way is excluded from valuation under the Finance (1909–1910) Act 1910 (item IV.I). The way is shown on Bartholomew’s map — but as a road or track and not as a footpath or bridleway — through the first half of the twentieth century (item IV.J).

## G. Grounds for application

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

<sup>1</sup> [2012] EWCA Civ 334

might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.’

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

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

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

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

G.4. 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 reputation as a bridleway over many years.

## H. Discovery of evidence

H.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent as a bridleway. It was recorded on the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 as a footpath. Therefore, there is no suggestion that there has been prior discovery of the evidence contained in this analysis for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application accordingly is new evidence.

## I. Points awarded

I.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*.<sup>3</sup>

I.2. **Points:**

Item	Ref	Points
Shepherdswell House, farm and parsonage house in Sibertswold, Wootton and Lydden parishes	IV.A	4
A Topographical Map of the County of	IV.B	0

<sup>2</sup> *Consistency Guidelines*: para.2.17.

<sup>3</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

Kent		
Barlow-Hasted map of Kent	IV.C	1
Greenwood's map of Kent	IV.D	1
Ordnance Survey, Old Series one-inch map of Kent	IV.E	0
Tithe Act 1836	IV.F	3
North Kent Railway (continuation from Strood to Deal and Dover)	IV.G	5
Ordnance Survey County Series first edition 25-inch map	IV.H	0
Finance (1909–1910) Act 1910	IV.I	3
Bartholomew's map	IV.J	0
<b>Total points</b>		<b>17</b>

## J. Width of application way

J.1. The application way is understood to have no width recorded in the definitive statement.

J.2. As a unenclosed or partly unenclosed way, there is no track within hedges from which a specific width can be inferred from mapping. However, as a probably ancient way, it is notable that much of the way is defined by strips of woodland which are likely to populate the historical extent of the way.

J.3. Between A and X, the way is now an enclosed track, and a width commensurate with measurement is commended. Between X and Y, the way has long been enclosed on the south side by Haunts Carvett, a wood. Whereas between Y and Z, the way has long been unenclosed across farm land, and a width of 3 metres, being sufficient comfortably to pass two horse riders, is sought for both lengths.

J.4. Between Z and B, the way has long been enclosed within broader strips of woodland which may define the true limits of the highway, or the highway may be of lesser width within those strips.

J.5. Towards B, for about 120 metres, the way is a hollow way, and the width should be that measured between the top of the banks on either side.

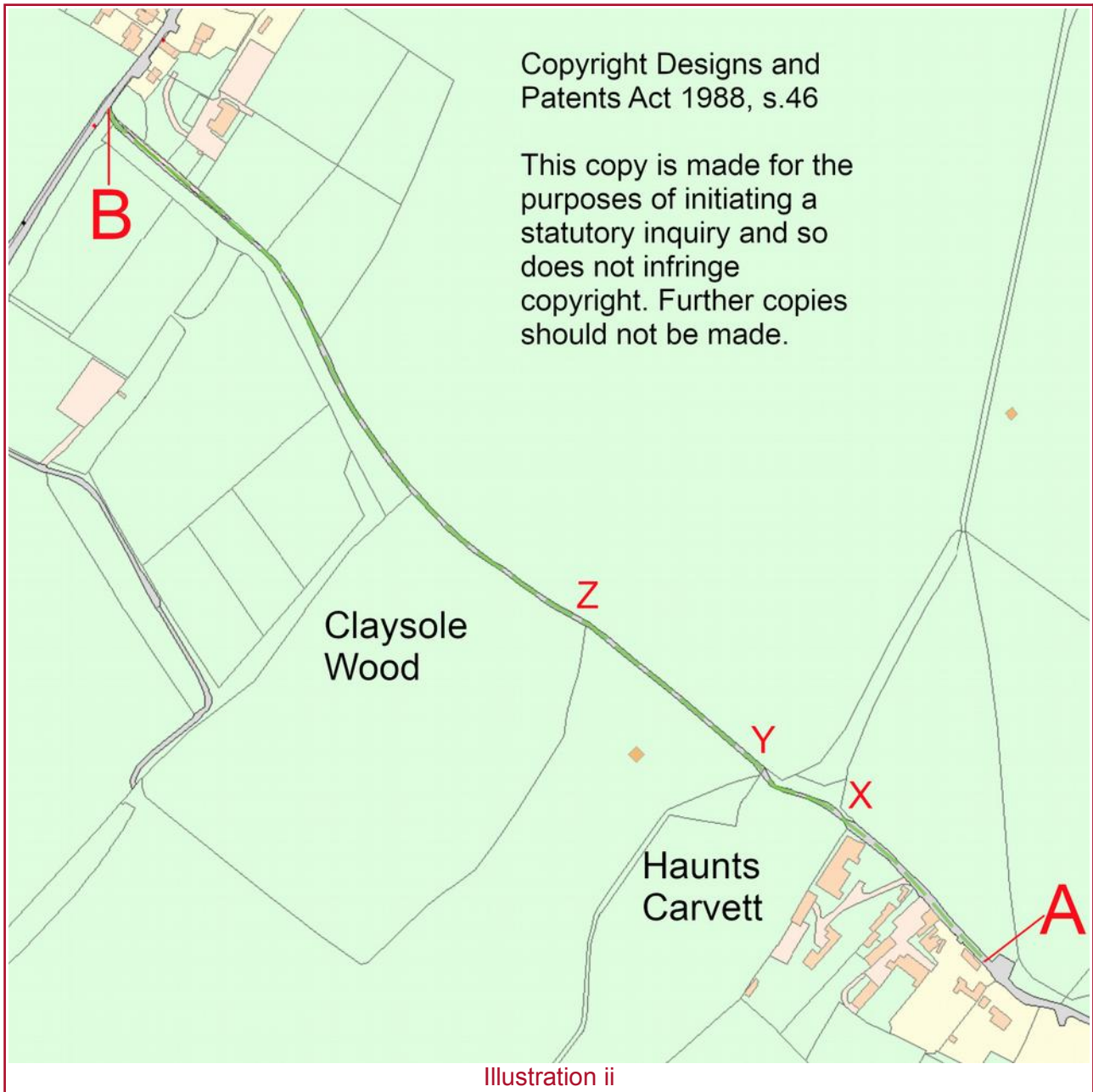
## K. Limitations

K.1. The application way is understood to have no limitations recorded in the definitive statement.

K.2. No gate is recorded across the way on the Ordnance Survey County Series first edition 25-inch map (item IV.H below), and therefore it is sought that it is expressly recorded in any order arising from this application, and consequently in the definitive statement in the event of the order being confirmed, that the way is not subject to any limitation.



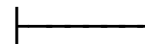
## II. Application map



Map centred on Z at TR256470

Scale: approx. 1:4,300 (when printed A4)

Application way is marked — —



80m

### III. Along the way



Illustration iii: At A



Illustration iv: X to Y



Illustration v: Y: junction with ER82



Illustration vi: Y to Z



Illustration vii: Approaching Z



Illustration viii: From Z toward Y





Illustration ix: Z towards B



Illustration x: Z towards B

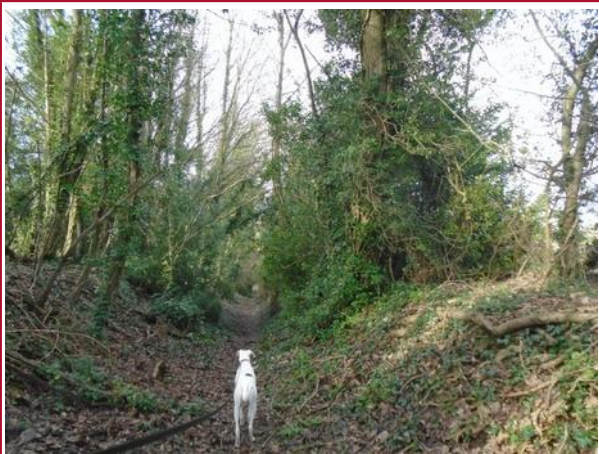


Illustration xi: Between Z and B



Illustration xii: Between Z and B

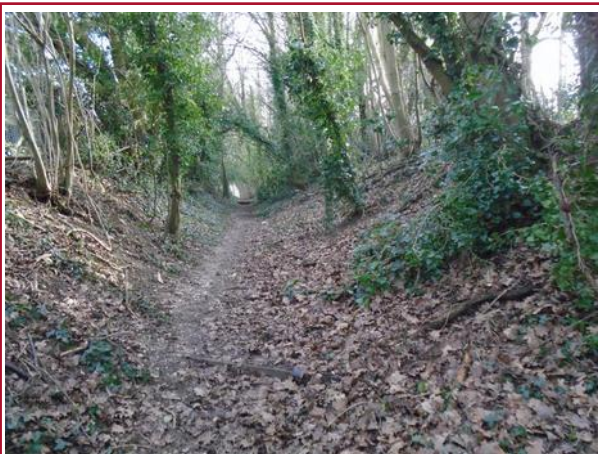


Illustration xiii: Holloway towards B



Illustration xiv: At B



## IV. Evidence

### Contents

A. Shepherdswell House, farm and parsonage house in Sibertswold, Wootton and Lydden parishes.....	9
B. A Topographical Map of the County of Kent.....	11
C. Barlow-Hasted map of Kent.....	12
D. Greenwood's map of Kent.....	14
E. Ordnance Survey, Old Series one-inch map of Kent.....	16
F. Tithe Act 1836.....	17
G. North Kent Railway (continuation from Strood to Deal and Dover).....	20
H. Ordnance Survey County Series first edition 25-inch map.....	22
I. Finance (1909–1910) Act 1910.....	24
J. Bartholomew's map.....	26
Annexe A.....	30

### A. Shepherdswell House, farm and parsonage house in Sibertswold, Wootton and Lydden parishes

A.1. **Date:** c.1670/C18<sup>4</sup>

A.2. **Source:** Canterbury Cathedral Archives<sup>5</sup>

4 See para.A.3 below.

5 TD315

Shepherdswell House etc. map

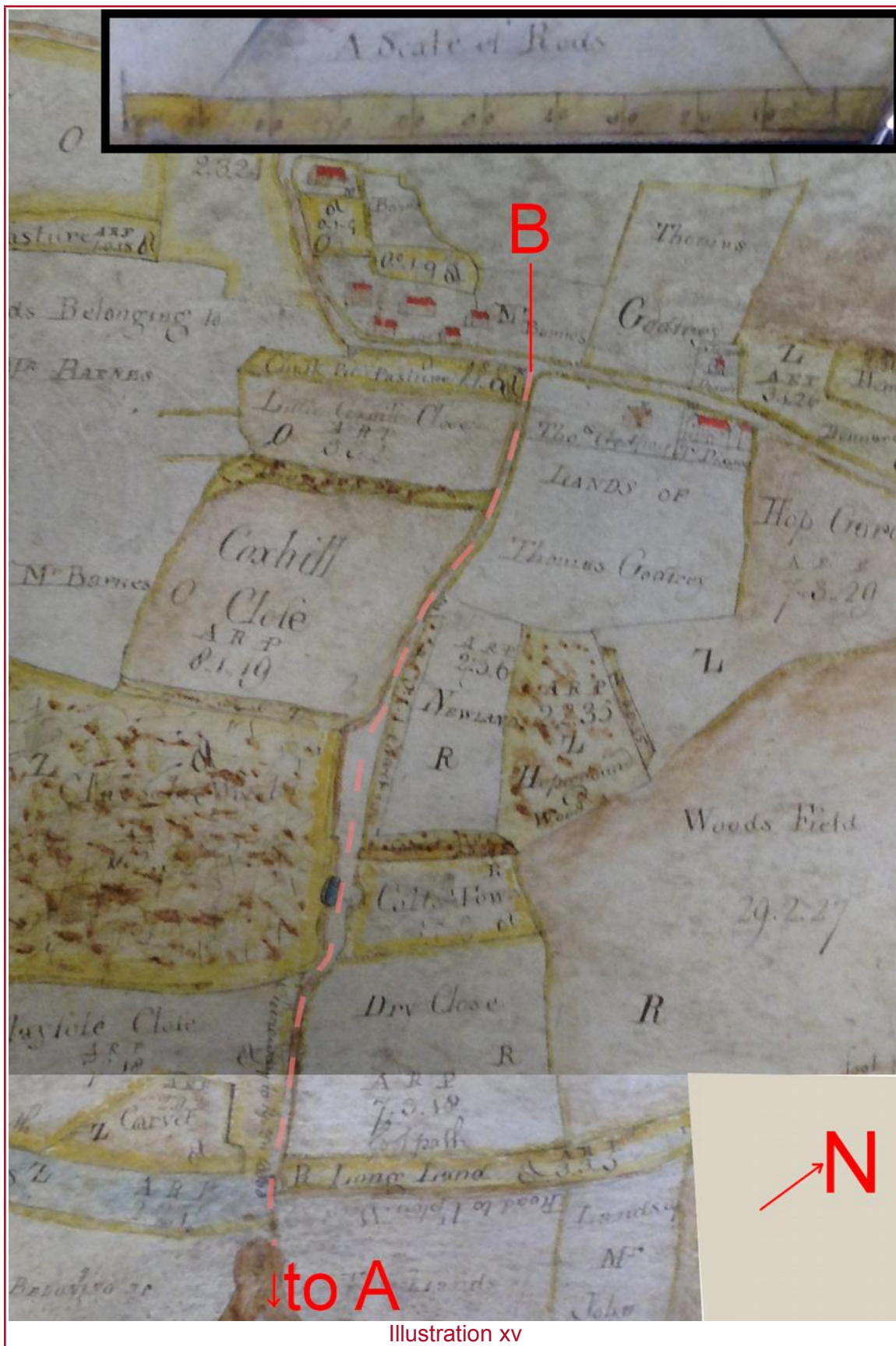


Illustration xv

## Enlargement

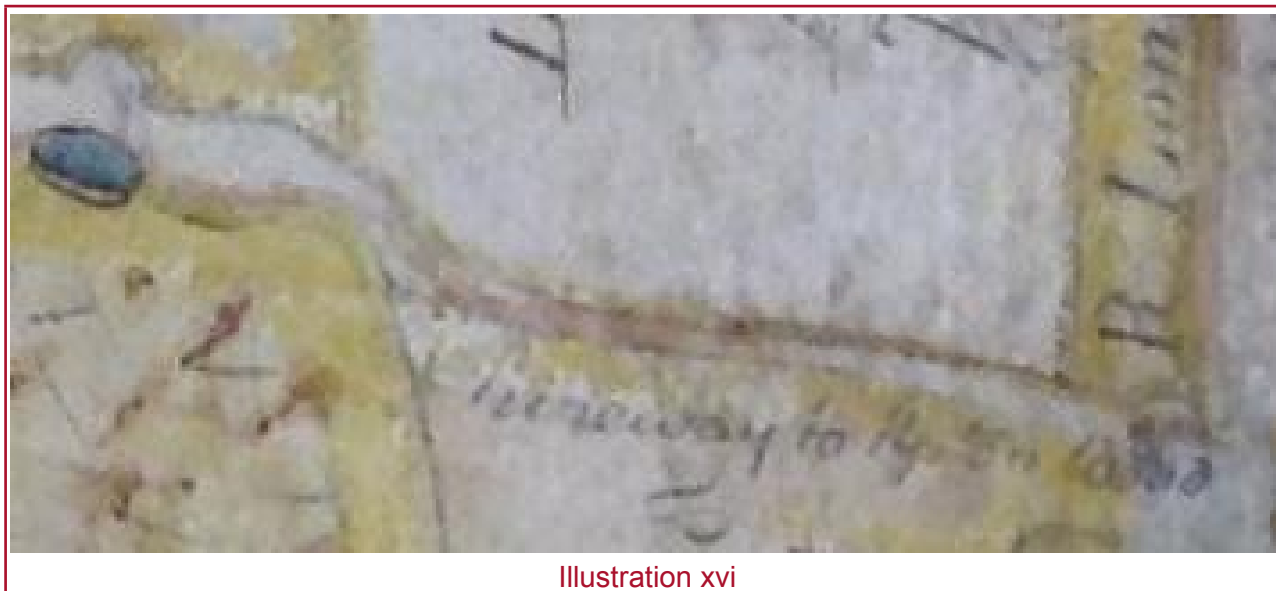


Illustration xvi

A.3. **Description:** Original scale: marked on map in rods; orientation: unchanged (top is west-northwest). Described in the catalogue as:

A map and description of lands belonging to Shepherdsweil House, farm and parsonage house, lying in Sibertswold, Wootton and Lydden parishes, belonging to Mrs. Sarah Meriwether.

A.4. The map is of uncertain date. It is given as eighteenth century in the catalogue, but is elsewhere described as c.1670.<sup>6</sup> The style of the map strongly suggests a late seventeenth or early eighteenth century provenance. A photograph of the entire map is at Annexe A at p.30 below.

A.5. The map shows the disposition and ownership of land in the area of Shepherdsweil. The application way is depicted between a point slightly to the west of A, and B. The way is shown as apparently enclosed. Towards A, the way is labelled (see Illustration xvi): 'Shireway to Upton Wood'. A shireway is a bridleway.<sup>7</sup>

A.6. **Conclusion:** The map is good evidence for the status of the application way as a shireway, or bridleway. The map being prepared for a substantial local landowner, it is reasonable to assume that it was well-researched and accurate, and that it did not unnecessarily concede public rights of way.

A.7. **Points:** 4

## B. A Topographical Map of the County of Kent

B.1. **Date:** 1769

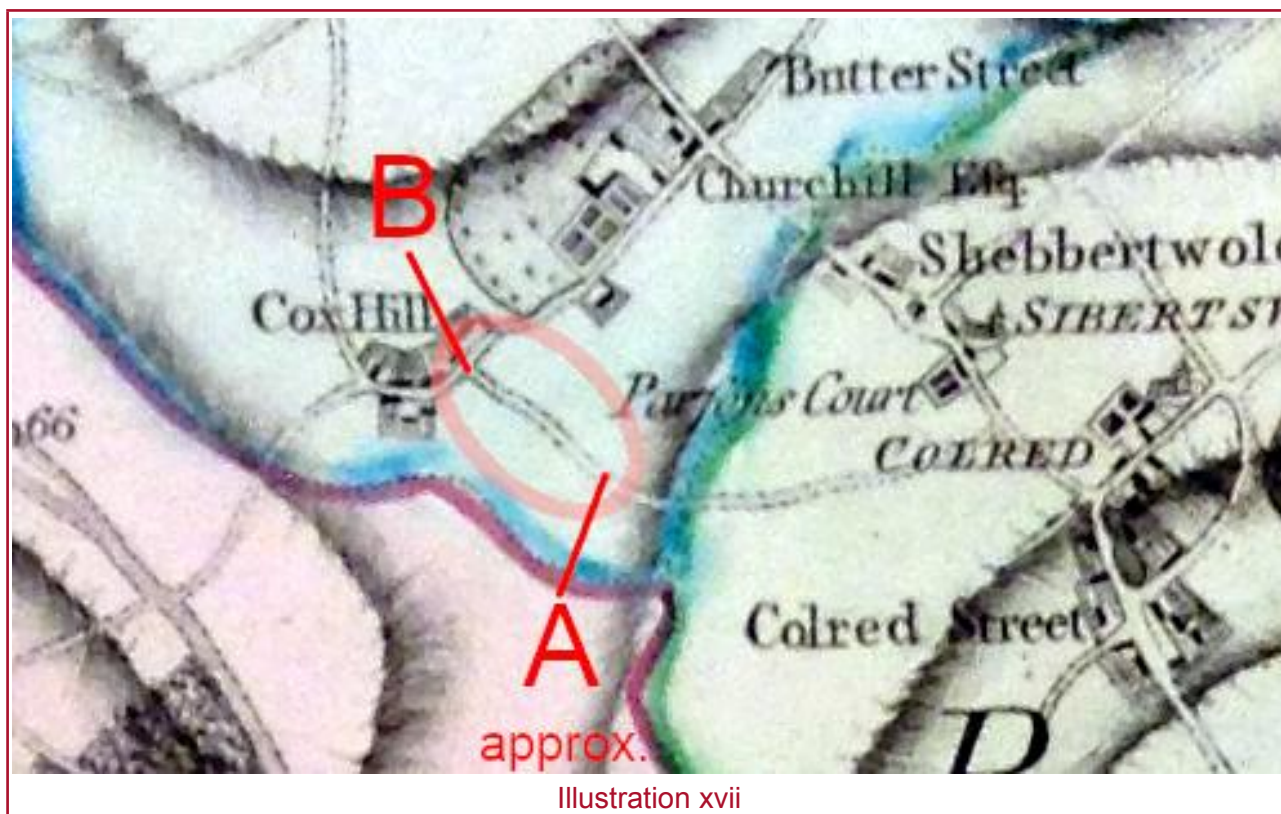
<sup>6</sup> Some Early Kentish Estate Maps and a Note on their Portrayal of Field Boundaries, Alan B H Baker, published in *Archaeologia Cantiana*, the journal of the Kent Archaeological Society, [77:177–184](#) at p.178.

<sup>7</sup> 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".



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

Andrews, Dury and Herbert map



B.3. **Description:** Original scale: two inches to one mile; orientation: unchanged (top is north).

B.4. This remarkable map comprises 25 sheets covering the county of Kent, surveyed and published by Thomas Kitchin, John Andrews, Andrew Dury and William Herbert. The maps are published at a scale of two inches to one mile, although the intention appears to owe more to the desire to show subscribers' and potential clients' country estates than to give an entirely accurate representation of the county at that scale.

B.5. A way is shown projecting south-east from Cox Hill and then east towards the road between Sibertswold and Colred (now Coldred).

B.6. **Conclusion:** Although this map contains many inaccuracies, and the overall structure is often defective (in terms of scale, orientation etc.), the map reproduces the application way with remarkable felicity.

B.7. The depiction of an extensive network of ways on the map confers no certainty about the status of any one way as a public route.

B.8. **Points:** 0

## C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

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

### Barlow-Hasted map of Eastry hundred



Illustration xviii

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

C.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundred of Eastry. The Barlow maps were closely based on Andrews' A Topographical Map of the County of Kent (item IV.B above).

C.5. Barlow's map shows the application way as a turning off Coxhill Road a little to the north-east of the distinctive S-bend through Coxhill hamlet. The eastern end of the application way is in Bewsborough hundred and not identified.

C.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route. The map was widely commercially published, and would tend to show through routes which were public highways, whereas certain minor routes of questionable public status are shown with lines across the junction with public ways. However, it cannot be assumed that the status is any greater than bridleway.

C.7. **Points:** 1

## D. Greenwood's map of Kent

D.1. **Date:** 1819–20

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



Greenwood map

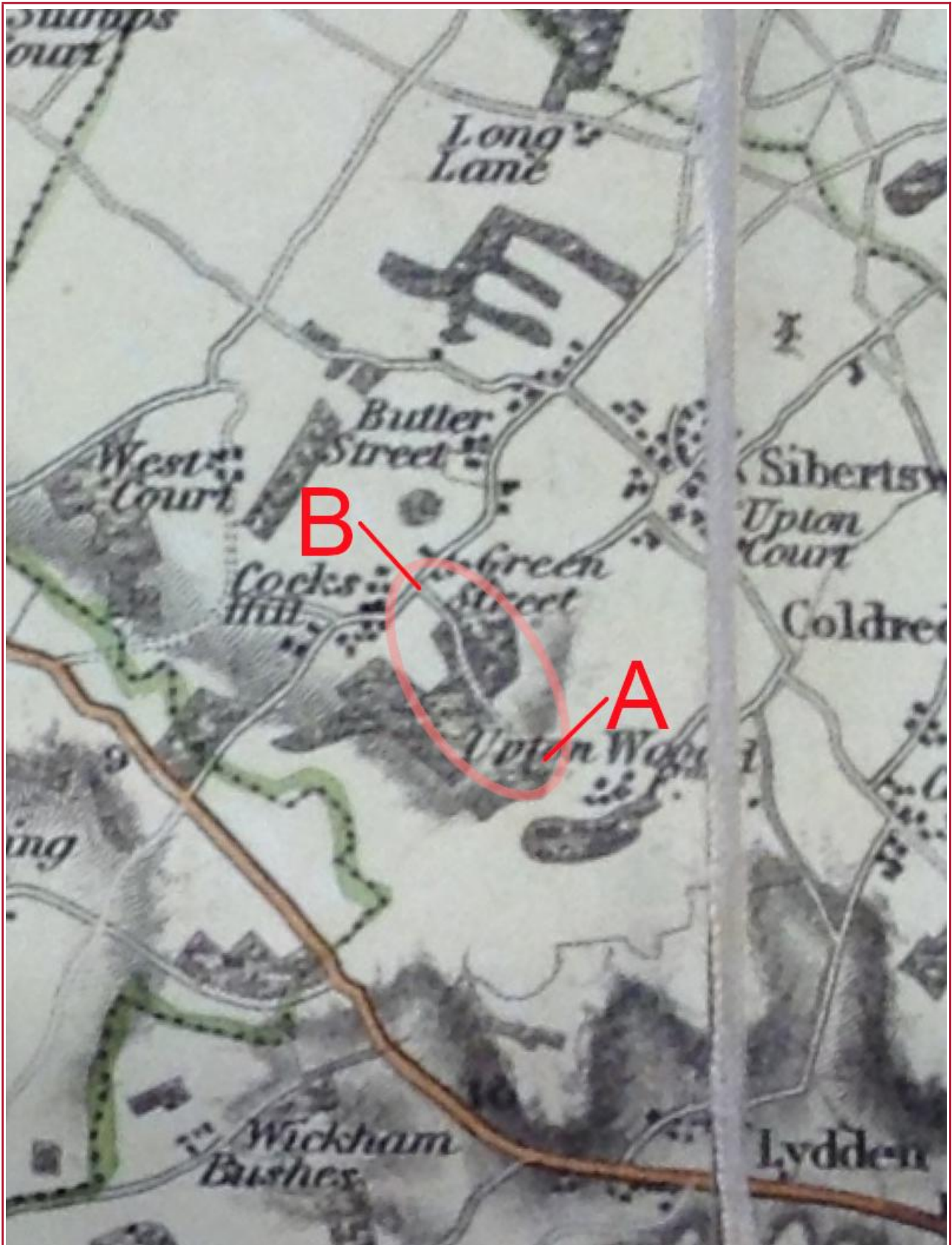
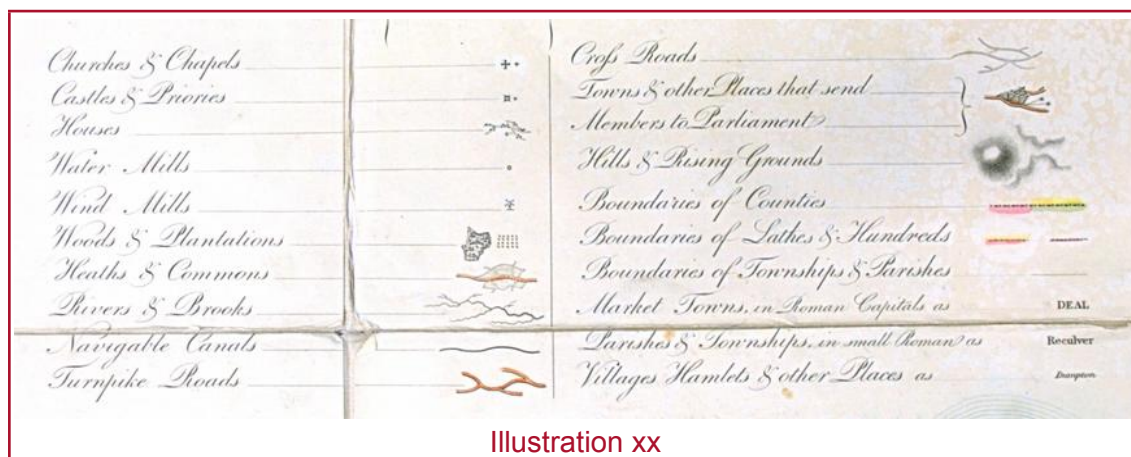


Illustration xix

## Greenwood map key



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

D.4. 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>9</sup>

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

D.6. **Points:** 1

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

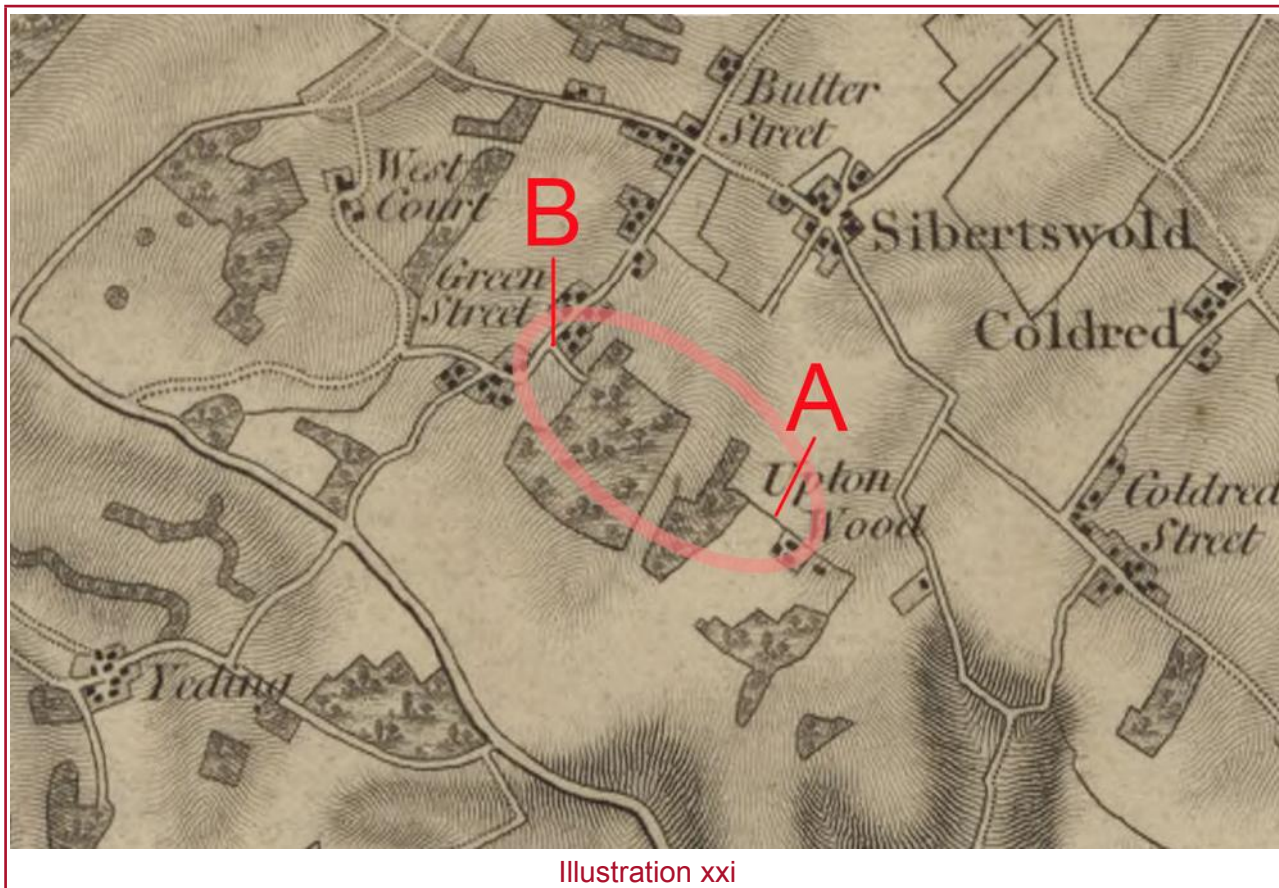
E.1. **Date:** 1831 (but survey dating from late eighteenth century)

E.2. **Source:** National Library of Australia<sup>10</sup>

<sup>9</sup> From *Antique Maps*, C Moreland and D Bannister, 1983.

<sup>10</sup> [nla.gov.au/nla.obj-231917365](http://nla.gov.au/nla.obj-231917365)

## Ordnance Survey Old Series one-inch map



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

E.4. This is the Old Series one inch map first officially published by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1.

E.5. The map shows only the western end of the application way, at B. Neither the remainder of the way, nor Upton Wood Road leading to Shepherdswell and Coldred, is identified.

E.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. In this case, the surveyor appeared to overlook the application way, save its western extremity, along with any means of access to Upton Wood. This may be because the application way was only a bridleway, mainly through woodland, whereas the western end of the application way is a well-defined holloway.

E.7. **Points:** 0

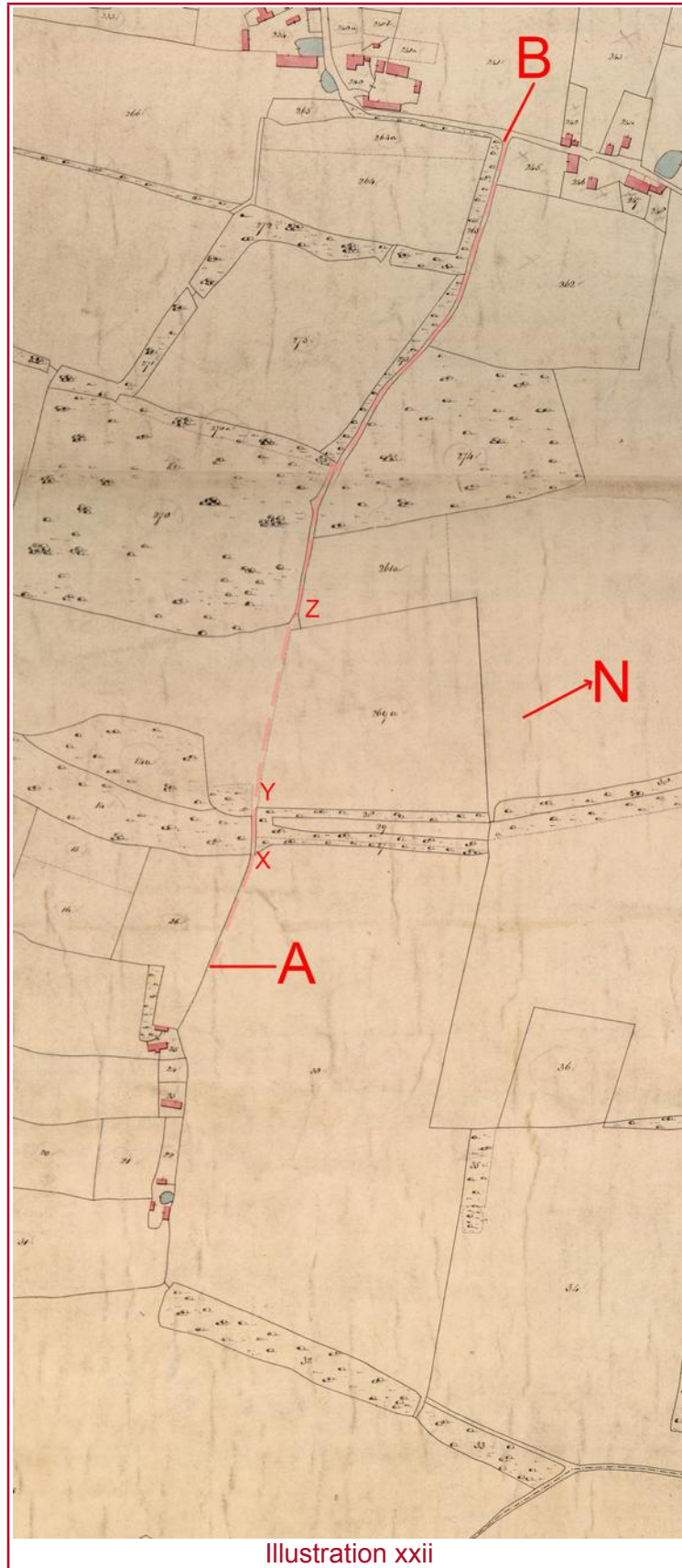
## F. Tithe Act 1836

F.1. **Date:**

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



Sibertswold tithe map extract



## Sibertswold tithe apportionment extract

Parcel	Tithe	Tithe	Tithe	Tithe	Tithe	Tithe	Tithe	Tithe	Tithe
Pasture	2	2	3						
Parish Roads &c.	7	2	3/4	1	10	10		7	8
	20	1	2/7						

Illustration xxiii

F.3. **Description:** Original scale — three chains to one inch (1:2,376); orientation — unchanged (top is west-northwest). The tithe map for Sibertswold is first class.<sup>11</sup>

F.4. The tithe map shows the western part of the application way as an enclosed track from the junction with Cox Hill Road at B for about 475m south-east to Z (the north-eastern corner of Claysole Wood: parcel 270 on the tithe map). Beyond that point, the way is shown as dividing an arable field (parcels 269 Great Brooms and 269a Dry Close) by means of a single pecked line. It is then briefly shown as an enclosed track between Y and X, sandwiched between Upton Wood (parcel 27) and Haunts Carvett (parcel 14), before finally becoming undefined but passing along the northern boundary of parcel 26 (also, at that time, Upton Wood) to A. The continuation beyond A, now known as Upton Wood Road, south-east and then north-east towards Coldred, is also undefined until shortly before a junction with the former road to Beauxfield.

F.5. **Analysis:** The Tithe Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

F.6. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to<sup>12</sup>.

F.7. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award<sup>13</sup>:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.

11 See the record for this tithe apportionment held by the National Archives: [IR 30/17/302](https://www.nationalarchives.gov.uk/doc/record-locator/details/?catalogue_number=IR_30/17/302).

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

13 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

F.8. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

F.9. In the circumstances of an unenclosed track across open farmland, it is submitted that the absence of any rating of the northwestern part of the application way between B and Z is likely to indicate that the way was public. If it were a private track, then the track undoubtedly would have had productive value, and ought to have been assessed as rateable assigned to the track's owner. First, because the track, being unenclosed and unmetalled, would be capable of being grazed by the owner. And secondly, because a private track could be abandoned at any time and the land farmed as productively as the neighbouring land (which was rateable) — it would be iniquitous for the rateable value of the track to be excluded from calculations.

F.10. But as a public bridle road, one would expect the surveyor to assess either that the rateable value lay with the parish vestry (which was not liable to assessment), or that no-one had any express entitlement to it.

F.11. While other explanations for exclusion may be apparent, they are not obviously relevant here: for example, the owner of the track might have been exempt from tithes (glebe land for example) — but that should be obvious, and there is no reason here to infer that the ownership of the track was vested in some third party who was coincidentally exempt from tithes.

F.12. **Conclusion:** Accordingly, it is submitted that the track between B and Z is among those features on the map which are assessed as part of the entry in the apportionment for 'Parish Roads' (see Illustration xxiii), and was considered to be a public road.

F.13. Between Z and A, no defined track is shown, and it is not possible to conclude whether the surveyor gave any recognition of the existence of a right of way across the land. But equally, none was given for the continuation of the way along the line of Upton Wood Road, presumably because the way was unenclosed.

F.14. **Points:** 3

## G. North Kent Railway (continuation from Strood to Deal and Dover)

G.1. **Date:** 1849–50

G.2. **Source:** Kent County Archives<sup>14</sup>



North Kent Railway deposited plan

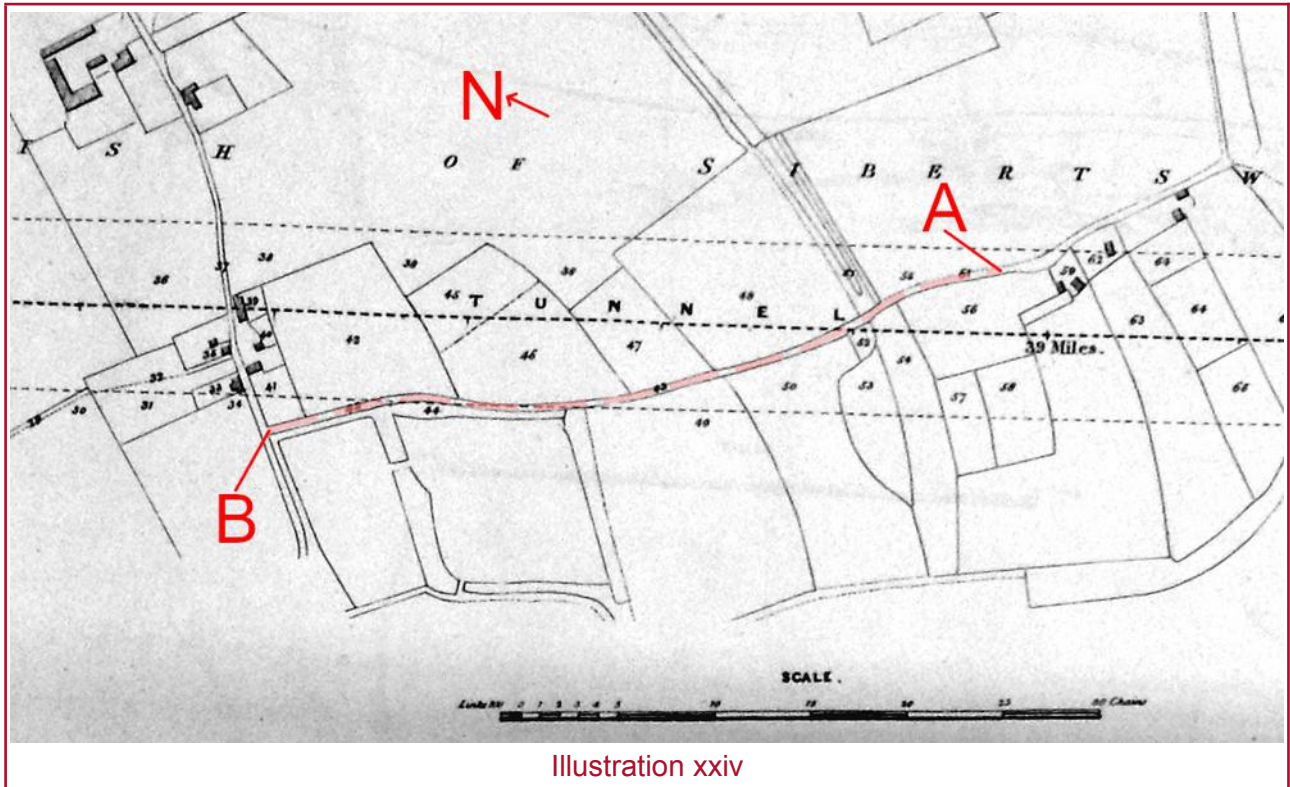


Illustration xxiv

## North Kent Railway deposited book of reference

The Parish of SIBERTSWOULD, in the County of KENT—*continued.*

Number on Plan.	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.
42	Arable Land	John Miles and Sarah Reeves	.	William Fox
43	Bridle Road	Surveyors of the Highways		
44	Shaw	George Ralph Payne Jarvis	James Iggulden and Thomas Iggulden	James Iggulden and Thomas Iggulden
60	Arable Land	Andrew Wighton	Robert Friend and Thomas Friend	Robert Friend and Thomas Friend
61	Highway	Surveyors of the Highways		
62	Cottage, Barn, and Garden	Andrew Wighton	Robert Friend and Thomas Friend	Robert Friend and Thomas Friend

Illustration xxv

G.3. **Description:** scale: marked on plan; orientation: unchanged (top is north-east).

G.4. The North Kent Railway was a proposal for a continuation of the South Eastern Railway from Strood to Dover and Downs (Deal) via Canterbury. In the event, a railway direct between Canterbury and Dover was not authorised until 1860.

G.5. The North Kent Railway plan shows the line passing to the south of Shepherdswell in a tunnel. It shows the application route as an enclosed track, labelled 43 to the west, and 61 to the east, of the tunnel passing under it. In the entry in the book of reference for the parish of Shepherdswell, parcel 43 is given as a 'Bridle Road' in the ownership of the Surveyors of the Highways, and parcel 61 as a 'Highway' in identical ownership.

G.6. **Conclusion:** The deposited plans for the North Kent Railway are good evidence of the status of the application way at the date of the survey in 1849. The way is described as a bridle road, perhaps to the northwest of X, but as a highway further south-east towards A. In this context, 'highway' is likely to mean a vehicular road.

G.7. **Points:** 5

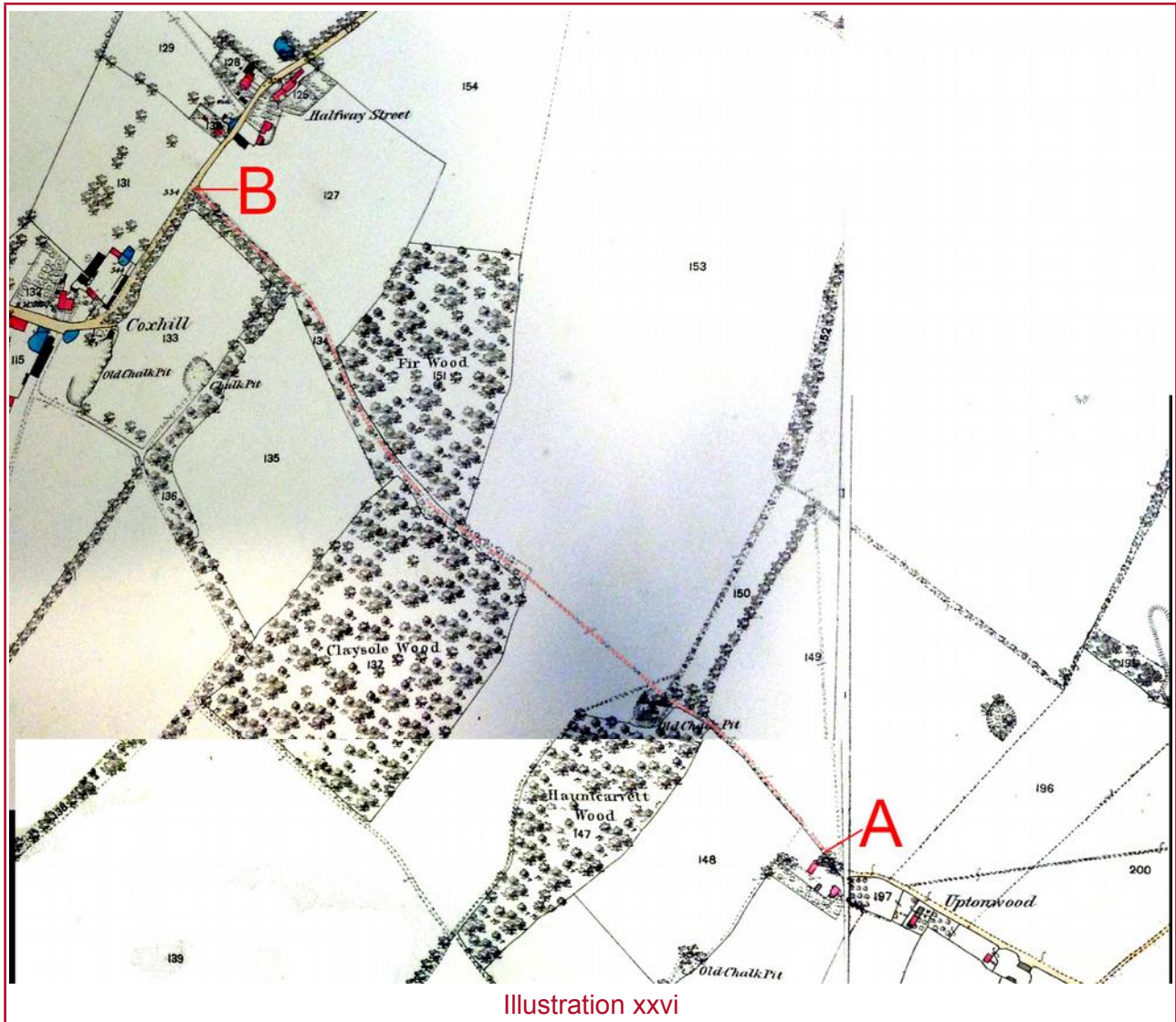
## H. Ordnance Survey County Series first edition 25-inch map

H.1. **Date:** surveyed 1871–72, published 1873

H.2. **Source:** British Library, National Library of Scotland<sup>15</sup>

15 Via [maps.nls.uk/os/25inch-england-and-wales/kent.html](https://maps.nls.uk/os/25inch-england-and-wales/kent.html), sheet #.

## County Series first edition 25" map



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

H.4. The Ordnance Survey County Series was the first national mapping of England at a large scale of six and twenty-five inches to one mile.

H.5. Colouring in sienna indicates that the road was metalled.<sup>16</sup> Upton Wood Road is shown as metalled approximately as far northwest as A.

H.6. **Conclusion:** The Ordnance Survey County Series first edition map shows the presence of the application way, as a track which is generally itself unfenced but often within a narrow belt of land defined by a fence on one side or the other.

H.7. **Points:** 0

<sup>16</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.



## I. Finance (1909–1910) Act 1910

I.1. **Date:** 1911

I.2. **Source:** National Archives<sup>17</sup>

### Finance Act map sheets Kent LVII/15 and LVII/16

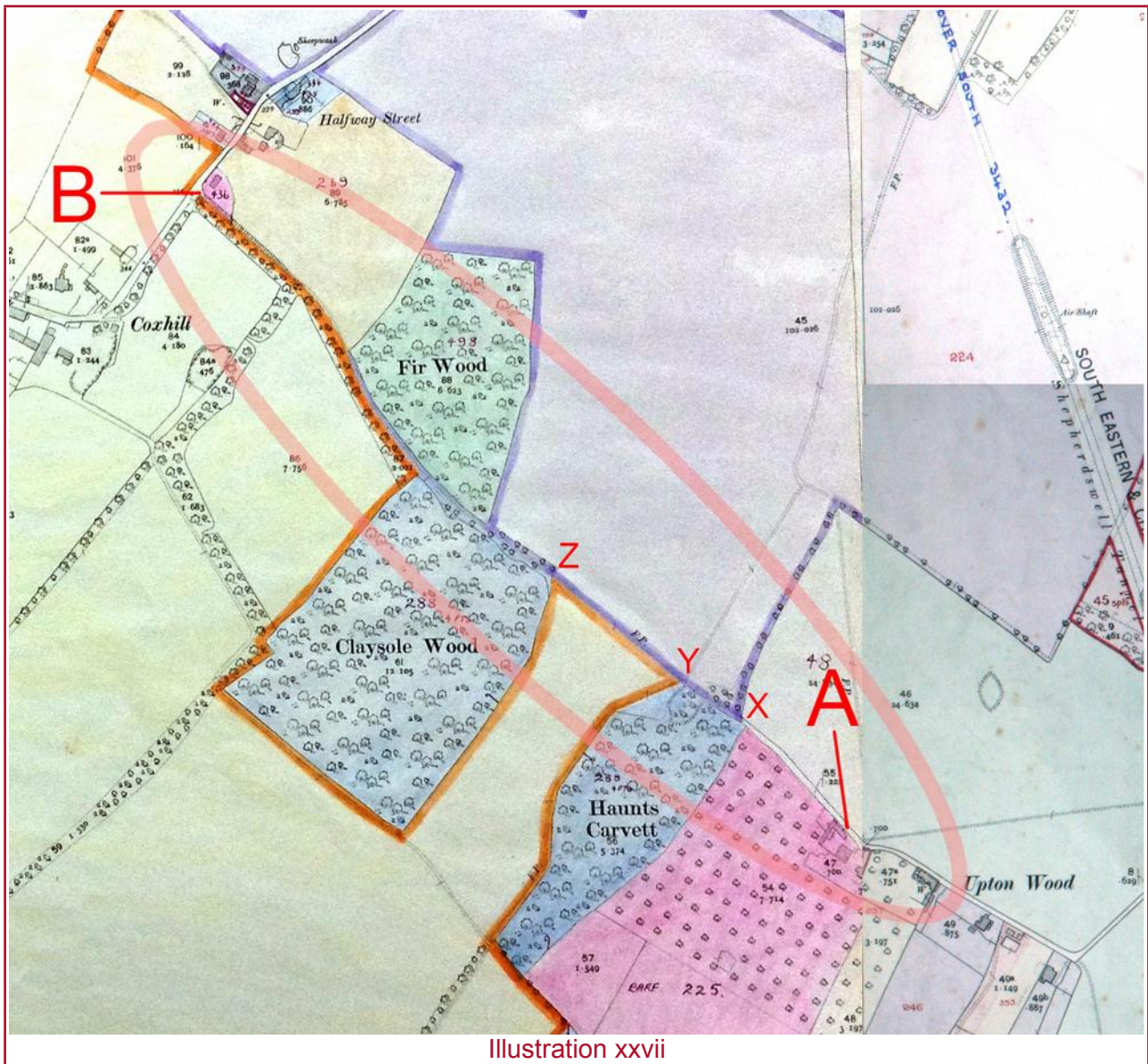


Illustration xxvii

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

I.4. The application way is shown on the Ordnance Survey County Series third edition base map as an enclosed way between A and X, and the way is excluded from valuation as a 'white road'. Between X and A, the application way forms the boundary between adjacent hereditaments, but appears to be included within the valuation of either of the bounding hereditaments.

I.5. **Analysis:** 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

17 IR 124/5/144 and IR 124/5/145

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

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

A highway authority was a rating authority.

1.6. 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.

1.7. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act, 'The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were

sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...<sup>18</sup>. Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land.

I.8. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

I.9. **Conclusion:** The exclusion of the application way from valuation between A and X is consistent with highway status.

I.10. No research has been conducted into the valuation of the adjacent hereditaments, as it is unlikely to distinguish footpath from bridleway.

I.11. **Points:** 3

## J. Bartholomew's map

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

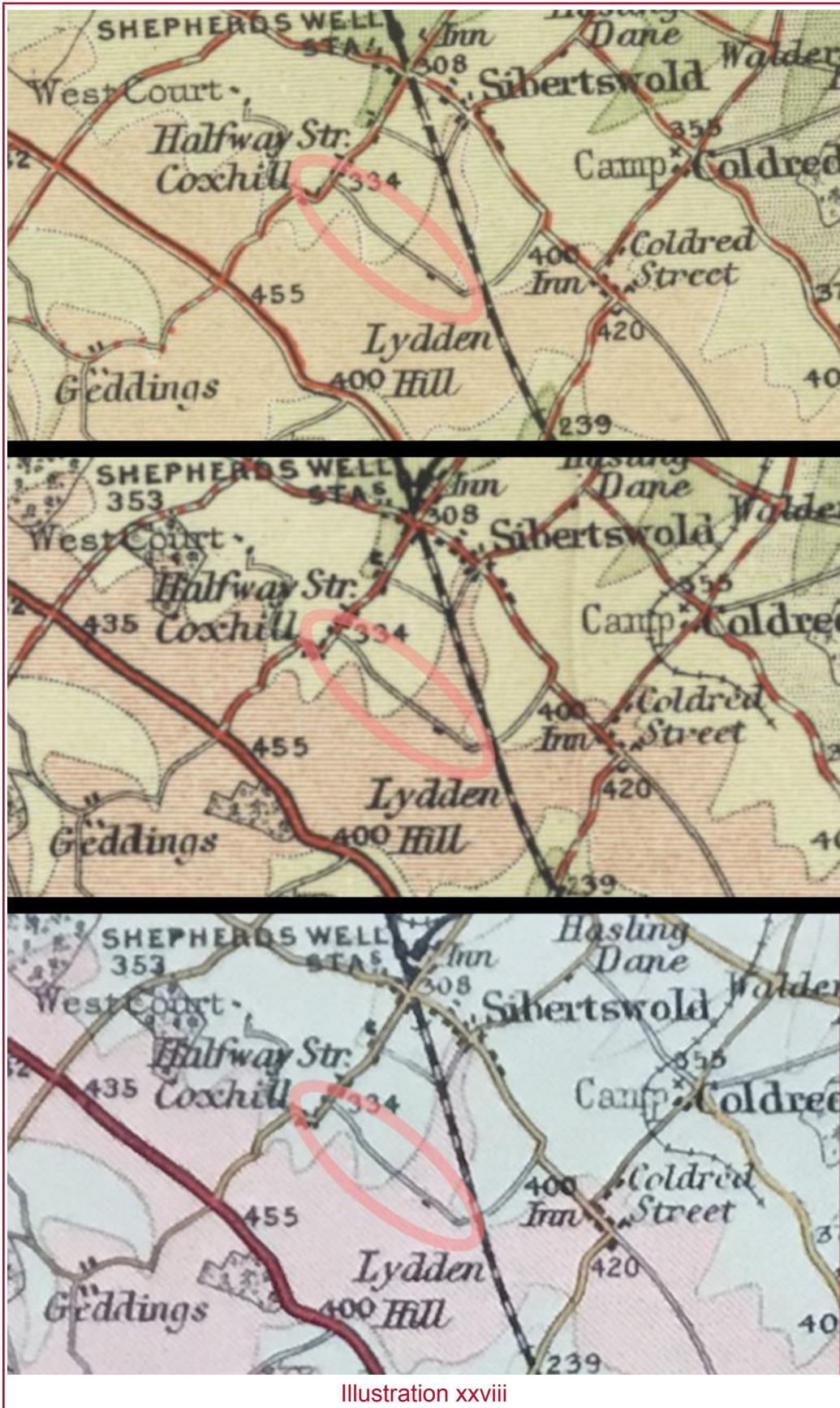
J.2. **Source:** National Library of Scotland<sup>19</sup> (1904 and 1922); personal copy (1953 map)

<sup>18</sup> Discounts for easements affecting the land were separately requested and recorded in the valuation book.

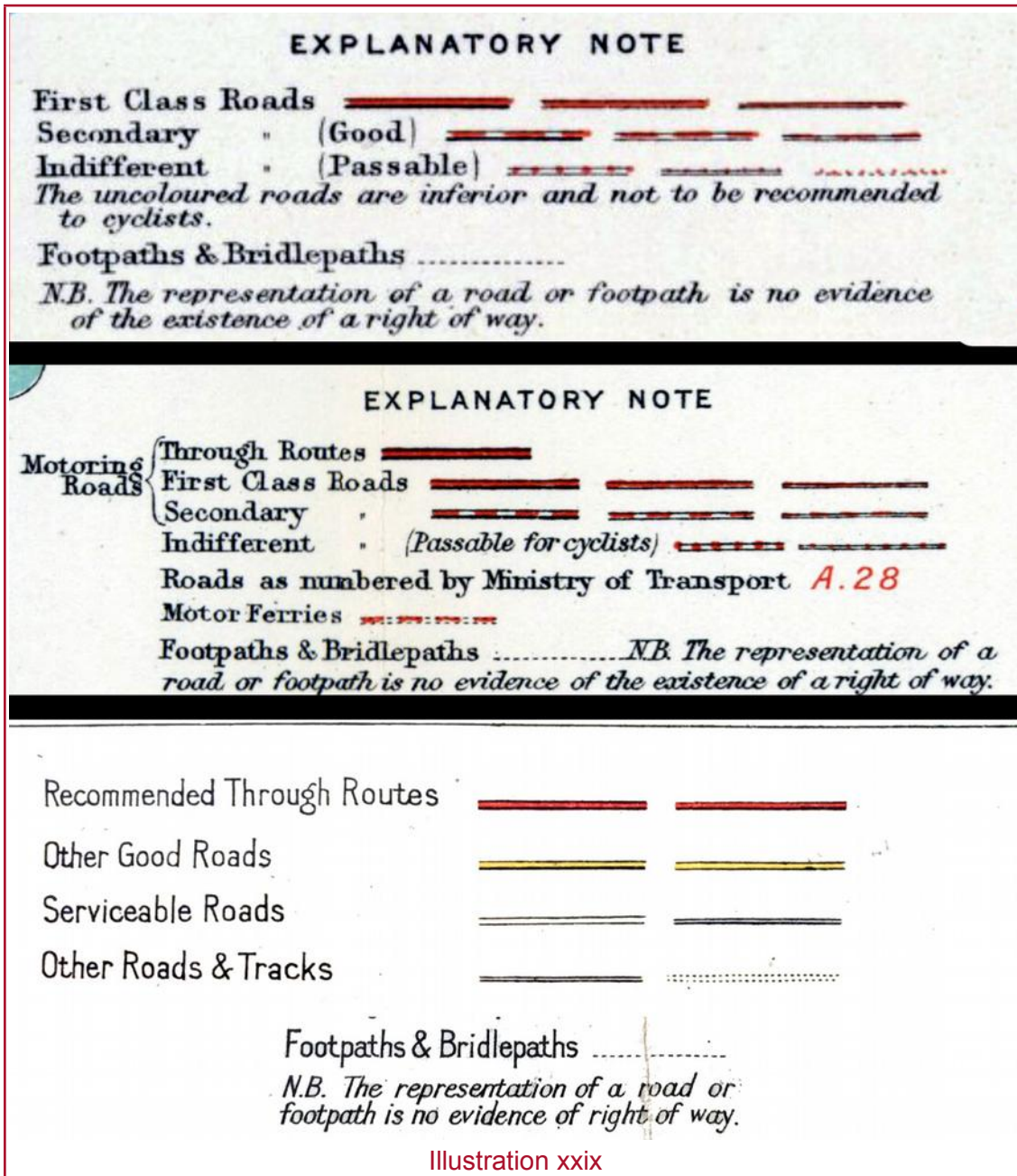
<sup>19</sup> [maps.nls.uk/mapmakers/bartholomew.html](https://maps.nls.uk/mapmakers/bartholomew.html)



Bartholomew's maps: 1904, 1922 and 1953 editions



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



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

J.4. Bartholomew's maps from the first half of the twentieth century show the application way as the most inferior of vehicular roads — as an indifferent road, uncoloured and therefore not recommended for or impassable to cyclists on the first two editions; as an 'other road or track' on the third edition.

J.5. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the application way was recorded as a road or track, albeit unsuited to cycling, but not as a footpath or bridleway, which was distinctively shown as a single pecked line

J.6. While the maps are not convincing evidence of public rights, they provide some support for the status of the application way as more than a footpath.

J.7. **Points:** 0



# Annexes

## Annexe A

Map of Shepherds Well House, farm and parsonage house in Sibertswold, Wootton and Lydden parishes: see item IV.A above

