

Application to record a bridleway in the parish of Lenham from Ashford Road at Old Shelve to Rose Lane at Mulberry House, Lenham Forstal

Statement of appeal against refusal of application

I. Introduction

A. Quick reference

- A.1. **Location plan** (see application map at part II below for detailed representation):
- A.2. **Existing recorded public rights of way comprised in appeal way:** none
- A.3. **Parish of:** Lenham
- A.4. **District of:** Maidstone Borough
- A.5. **Ancient parish of:** Lenham (the appeal way begins on the ancient parish boundary with Lenham Heath, while the central part of the appeal way adjoins the ancient detached portion of Wichling)
- A.6. **Hundred of:** Calehill
- A.7. **Termination points:** From Ashford Road, turning to Old Shelve; to the crossroads at Burnt House (now Mulberry House), Rose Lane at Lenham Forstal
- A.8. **Termination points Ordnance Survey grid references:** TQ92405138, TQ91995009
- A.9. **Length of way:** 1,460 metres
- A.10. **Postcode:** ME17 2JN
- A.11. **Ordnance Survey Explorer sheet:** 137 or 149
- A.12. **Ordnance Survey County Series 25" sheets:** Kent LIV/1 and 2

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C. The appellant

C.1. The appellant, Sarah Rayfield, appeals on behalf of The British Horse Society (‘the society’). My rights of way experience stems from having been the London & South East Access Field Officer for the society since 2016. I have also completed the Access training and Public Inquiry training provided for all the society’s staff and volunteers as well as the *Restoring the record* training provided on behalf of the society and the Ramblers by Phil Wadey and Sarah Bucks and the *Definitive Maps: post DMMO application processes* training provided by Sue Rumfitt on behalf of the Don’t Lose Your Way team in Sussex. I have been assisted in this appeal by Hugh Craddock, access and bridleways officer (historical research) for the society’s South & East Kent area.

D. Locational details

D.1. The application related to a way wholly in the parish of Lenham, Kent. The way is not currently recorded on the definitive map and statement. The application sought to record the way as a bridleway but the society accepts that it may instead be a restricted byway (and if so, part may be a byway open to all traffic).

E. Application

E.1. The application was made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council (KCC) that a definitive map modification order be made

under section 53(3)(c)(i) that a way should be added to the definitive map and statement for Kent as a bridleway.

E.2. The application way, now the appeal way, begins on the Ashford Road (the A20), at the turning to Old Shelve, then generally south alongside a watercourse or ditch to pass under the Maidstone to Ashford railway line, then generally south along Rose Lane past Shepherd's Farm and Bolton Farm to a minor crossroads at Mulberry House (formerly Burnt House) at Lenham Forstal.

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

F. Nomenclature

F.1. No particular name is known for the appeal way itself: it is referred to in this application as the 'appeal way'. As it partly comprises and is a continuation of Rose Lane, part of it also is referred to as Rose Lane.

F.2. The appeal way lies initially, south of the Ashford Road, through the former farm premises at Old Shelve. Further south, the way originally lay immediately to the west of Cobham Wood, which was grubbed up in the post-war period. Shortly south of the railway bridge are Shepherd's Farm and Bolton Farm. To the south of the railway bridge, the way is known as Rose Lane, which name also applies to the road continuing south from B to the Lenham Forstal Road at the Magazine.

G. Grounds of appeal

G.1. This appeal is made against the determination of KCC, as surveying authority, to refuse the appellant's application to that authority for a definitive map modification order in respect of the appeal way.

G.2. The appeal is brought on the grounds of the following errors made by KCC:

- That KCC failed correctly to apply the 'reasonably alleged to subsist test' to the evidence (see para.I.H.32 below), and instead applied a balance-of-probabilities test (we say that this test too was applied incorrectly, but that need not be resolved in this appeal).
- That KCC incorrectly assessed several key elements of the evidence, including in its conclusions that:
 - the omission of the way from several early maps is suggestive of the non-existence of the way (other maps enable a contrary conclusion);
 - the Lenham tithe map is not supportive of the application (it is);
 - the railway plans show that the way was private (they do not);
 - the Ordnance Survey County Series twenty-five inch first-edition plan suggests a private way (it does not);
 - the Finance Act evidence is not supportive (we say it is strongly supportive);
 - the early post-War evidence of the Highway inspectors' map and the parish and draft map suggest, when taken with the British Transport Commission objection, a negative conclusion, whereas we say it is strongly supportive.
- In any event, we say that these evidential elements all support a reasonable allegation that the way subsists, regardless of whether, in any individual case, there are arguments to be considered as to the weight to be attached to that element.

H. Appellant's case

The appeal way as a field or gated road

H.1. The appeal way historically is partly an unfenced field or gated road. By 'field road', we mean a public road which passes through one or more fields, which is unenclosed, which relies on gates closed against the road to prevent the movement of livestock (such gates being lawful historical limitations), and which sometimes lacked any hard surface or metalling.

H.2. Field roads used to be commonplace. That they are not today, at least generally speaking, is because they always were inconvenient. They have survived where the roads were lightly used, remained essential for local traffic, and there were insufficient pressure and resources to promote an upgrade (for example, by fencing off the road to enable the gates to be removed). Field roads remain relatively common in parts of Cumbria and other upland areas of Britain, on minor roads which service one or a handful of farms and houses. They were also relatively common in lowland England, for example in Leicestershire, until the late part of the twentieth century.

H.3. (Unfenced roads are also often encountered in arable areas, where mixed or livestock farming has ceased, and there is no need to maintain physical boundaries along roads. But these roads may not be historically unfenced and typically have always formed the boundary to the adjacent fields. Unfenced roads are also found across commons and wastes.)

H.4. The use of field roads was limited: perhaps regular use was by only a handful of individuals, and if there was anything wrong, those individuals might be expected to sort it out with their own labour. But if there was an obstruction, then the parish surveyor might step in. They were regarded in much the same way as most bridleways: there was no parish interest in repairing the surface, but often an awareness of the need to protect against obstruction or interference. Similar principles were adopted by later highway boards or district councils which succeeded to parish functions: an aversion to any maintenance commitment, but a willingness to 'assert and protect'.

H.5. By their nature, evidence in support of the public status of such roads is elusive. Although invariably pre-1835 in origin, they seldom were maintained by the parish, because their surface was part of the fields which they crossed and often indistinguishable, save for the occasional passage of traffic.

H.6. The involvement of the parish, and later the highway board and the rural district council, invariably extended only to dealing with any occasional obstruction or encroachment. Maintenance typically was neither demanded nor delivered.

H.7. Some field roads subsequently became tarred and clearly became the responsibility of the highway authority to maintain — see for example Dane Hill Road, north of Dane Farm, Bladbean, which remains a gated road.¹

¹ [USRN 34500323](#) at [TR177483](#); the fence seen on the right-hand side of Illustration i appears to date from the late 1960s. A gate can be seen left open.

Dane Hill Road, Bladbean, Kent



H.8. Others were enclosed, by agreement with the landowner, and often primarily at the landowner's expense, to remove any requirement for gates across the road, and again, the highway authority then accepted (if it did not already accept) responsibility for maintenance — see for example Swanton Lane, at Swanton Farm near Lydden, which has modern fences on either side, and formally lay across parkland.²

² [USRN 11301207 TR243445](#), which was enclosed and widened in 1896.



Illustration ii: © [Nick Smith](#) (cc-by-sa/2.0)

H.9. Others were neither tarred nor enclosed, and traffic began to fall away in consequence (or perhaps the absence of improvement was the consequence of traffic having fallen away). We suggest that the appeal way is one such field road.

Evidence for the appeal way

H.10. Unlike many often ancient highways in the countryside, the majority of the appeal way is not characterised by enclosure by hedges or walls of considerable vintage. The appeal way is instead essentially of ephemeral appearance, capable of disappearing from the landscape in a matter of years: indeed, it largely has disappeared. It is only the railway bridge which provides a permanent marker of its presence, together with the now wholly-enclosed portion of the way south of the railway bridge to B.

H.11. The appeal way is first identified on the Map of encampment on Lenham Heath (item III.A below) dating from 1781. The map shows only the southern portion of the appeal way, but with a suggestion that it projects north beyond Shepherd's and Bolton Farm.

H.12. The appeal way is inconsistently shown on early county maps. The northern portion can be seen on the Ordnance Survey surveyor's drawing (item III.B below) between A and the neatline of the drawing: unfortunately, no copy appears to survive for the remaining portion. On the Ordnance Survey Mudge-Faden one-inch map of Kent (item

III.C below), the northern and southern ends of the appeal way are shown, but omitting a central portion of about 500 metres' length. The Greenwoods' map of Kent (item III.D below) shows the appeal way in its entirety, and records it as a 'cross road' (*i.e.* a public way).³ The Ordnance Survey Old Series one-inch map of Kent (item III.E below) shows the appeal way only between the Ashford turnpike and Old Shelve, and the enclosed portion of the way south of the (yet to be built) railway bridge to B. Given that the Greenwoods' map is approximately coeval with the others, it is suggested that the appeal way is omitted from those others (at least in part) only because of the absence of any lasting feature in the landscape, and of any sufficiently robust road which was likely to be of use to military surveyors.

H.13. The Lenham tithe map prepared under the Tithe Act 1836 (Lenham)/Poor Law survey (item III.F below) shows the appeal way coloured in sienna, in common with other public roads in the parish (whereas obviously private roads and drives remain uncoloured).

H.14. The appeal way is shown on four proposed railway plans prepared in the middle of the nineteenth century. The sparse documentation for the Northfleet to Dover railway (item III.G below), dating to 1835–36 records no way at all. That for the Great Kent Atmospheric Railway (item III.H below, 1845–46) describes the appeal way as a public highway, in the care of the (parish) surveyor of highways. The Maidstone and Ashford Railway (item III.I below) proposals were brought forward in 1863–64, 1874–75 and 1879–80 (the first and last proposals were confirmed by Royal Assent, and the last put into effect). The earliest proposals describe the appeal way as a 'road from Lenham Heath to Old Shelve Farm'. While the description lacks specifically public recognition, nor is it described as an occupation or private road, and the description is consistent with a field road not maintained by the parish. The 1874–75 proposals describe the appeal way as a public road. The final proposals refer to an 'occupation road', which does suggest private status, but which is compatible with the co-existence of subsidiary public foot or bridle rights. Yet the railway was taken across the appeal way by a railway bridge which met the statutory requirements for a public road, and the dimensions of which were far in excess of what was required for a private road. We submit that the entries in the deposited plans were the product of consultation with the annually appointed, lay, surveyor of the parish vestry, and that it may be that different surveyors provided different information about the appeal way. We suggest that some weight may be placed on the position that two of the proposals were consistent with public road status, and the railway was built to accommodate a public road.

H.15. The Designation of consolidated chapelry (item III.J below) in 1874 within Charing and Lenham contains public notice of the chapelry boundary, including a boundary stone erected 'on the eastern side of the road or footpath leading from Burnt House to Old Shelve'. The description suggests that the way was considered to be public.

H.16. The appeal way is shown on the Ordnance Survey County Series 25-inch maps (item III.K below) first and subsequent edition 1:2,500 plans.

H.17. The Finance (1909–1910) Act 1910 documentation (item III.L below) shows the southern, enclosed portion of the way to be excluded from valuation, or braced out of the hereditament. A deduction from value is given for the northern portion, on account of a 'public roadway', which must relate to the appeal way.

3 KCC's determination, app.B, para.122 is incorrect to state that, 'the remainder of the claimed route...first appears in its entirety on the 1842 Tithe Map of Lenham.' It is shown on the Greenwoods' map.

H.18. Four successive editions of the Bartholomew's map (item III.M below) half-inch scale map, published during the first half of the twentieth century, show the appeal way in its entirety, characterised as an inferior or other road, not recommended to cyclists.

H.19. The KCC Highway inspectors' map (item III.N below), dating from 1952–53, shows what roads were considered to be publicly maintainable. The appeal way is shown as publicly maintainable (as it remains today) between just south of the railway bridge and B. The remaining part appears to have been amended with correction fluid, to show it as an E-class road, which was a public road purportedly 'not maintained'. In preparing the First definitive map and statement (item III.O below) under Part IV of the National Parks and Access to the Countryside Act 1949, KCC provided a base map for the draft map on which the appeal way was coloured yellow, meaning a 'non-maintained county road' which did not need to be included in the definitive map and statement. This explains why it was not included in the parish map.

H.20. Yet Lenham parish council did include in its parish map footpath 66 terminating on the appeal way just north of the railway bridge — suggesting that the council believed the appeal way's public-road status to be beyond doubt and not needing to be recorded.

H.21. It is notable that the southern end of the appeal way is indisputably a public road today. It is recorded on the KCC list of publicly-maintainable streets, and on the National Street Gazetteer. Yet the road does not appear to lead anywhere but to Shepherd's Farm and Bolton Farm. It is hard to understand how Rose Lane (by which we mean to refer to that part which is recognised as publicly maintainable) could have become publicly maintainable in isolation from its continuation. It leads only to isolated farms. It is very unusual for public highways in rural areas to become established along no-through roads without any continuation whatsoever: in a recent exercise by the society, we could find only one in East Kent which did not have any recorded right of way in continuation, Beaute Lane to Beaute Farm ([TR260580](#)), Shatterling, and even then, Ordnance Survey County Series plans show an unrecorded footpath beyond. (We leave out of the reckoning residential cul de sacs which have been expressly adopted.)

H.22. In short, if the continuation of the appeal way north of Bolton's Farm is not a public way, why is Rose Lane publicly maintainable? How did the highway authority come to accept liability, even before 1952, for maintenance of a road which led to two farms, featured no place of popular resort, and had no public continuation whatsoever, even on foot?⁴ Indeed, how did Rose Lane become a vehicular cul-de-sac highway?

H.23. The only reasonable explanation for the present position is plain from the highway inspectors' map of 1952–53 — that the whole of the appeal way is a highway, but that a decision was taken to restrict the liability to maintain the continuation of the way (if indeed liability was ever accepted for the remaining portion). The alteration made to the inspector's map is a calculated exercise to minimise liabilities.

H.24. KCC suggests that the objection made by the British Transport Commission to the inclusion of footpath 66 on the draft map (see item III.O below) was predicated on an objection to the implied continuation of the path through the railway bridge which accommodates the appeal way. But it has no evidence of the nature of that objection, nor why footpath 66 was deleted from the draft map (other than that the Commission had submitted an objection). What can be said is that, when the proposed deletion was advertised in the

4 We assume here that footpath 66, marked on the parish map prepared for the First definitive map and statement (item III.O), also is not a public way.

London Gazette in October 1958,⁵ the footpath was described as running from the ‘Unclassified road at railway...’. Thus, over a period of ten years, the appeal way was recognised by Lenham parish council as a public road which did not need to be included on the parish map (but was a suitable termination for footpath 66), by KCC as an unmaintained county road, by KCC as such a road which did not need to be included on the draft map, and by KCC as an unclassified road on which footpath 66 terminated but the latter was to be deleted from the draft map. These events do not suggest an ephemeral mistake, but a matter of fact which was the shared belief of KCC and Lenham parish council over a period of some years.

H.25. The only answer made by KCC is that it can be inferred that the Commission’s objection related to the use of the railway bridge, and that if so, the Commission’s presumed objection was soundly based. It does not explain why the Commission’s perception of the status of the railway bridge (if that was the basis of its objection to the inclusion of footpath 66) was and is to be treated as carrying greater weight than KCC’s own records. Nor does it explain why, if the Commission’s presumed perception were correct, the status of the appeal way mysteriously should begin as a public road from a point approximately 50 metres south of the railway arch — a point on the road which features no place of popular resort whatsoever.

The Lenham Forstal cluster of minor and field roads

H.26. If the appeal way were the only case of its kind, an argument might be made they were mistakes in the public record, and the appeal way should benefit from any uncertainty (in favour of deciding against public status).

H.27. But the appeal way is not an isolated example, but one of a number in the area which show a consistent pattern of minor and field roads which in later years have struggled to be recognised as public highways. These roads are clustered in the Lenham Forstal area, and can easily be identified on the Lenham tithe road map at Annex C at p.76 (for an introduction to the road map, see paras.III.F.11 to III.F.14 below), where they are marked as pecked green lines. Applications to record these ways on the definitive map and statement have been made in respect of:

- Rose Lane to Old Shelve (the appeal way);
- a way from Burnt House (now Mulberry House) at B, west to join with Lenham Forstal Road⁶;
- Mount Castle Lane from Lenham Forstal west via Baker Farm⁷;
- East Lenham Road from Chapel Farm north to East Lenham.⁸

H.28. Three of these ways (*i.e.* excluding the second way listed above) have elements in common (apart from being shown coloured sienna on the Lenham tithe map): they are shown on the Highway inspectors’ map (item III.N below) as E-class public roads, and shown in yellow as public roads on the draft map prepared as part of the First definitive map and statement (item III.O below). Moreover, Mount Castle Lane and East Lenham Road both commence as D-class public roads, the continuation of which have been visibly downgraded on the highway inspectors’ map to E-class (and East Lenham Lane then

5 See fn.72 below.

6 PROW/MA/C448, determined on 26 June 2024 to make order to record restricted byway.

7 PROW/MA/C431, as yet undetermined.

8 PROW/MA/C450, as yet undetermined.

resumes further on as a D-class road). In both cases, there is no obvious reason why the threshold of public maintenance would cease at the labelled points of transition. It is suggested that these two ways, in common with the appeal way, exhibit the same background and context: public roads throughout, which have been downgraded in the post-War period and consequently largely lost to public use.

The 'reasonably alleged' test

H.29. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*,⁹ 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.'

H.30. 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.¹⁰

H.31. The correct test under s.53(3)(c)(i) is whether:

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

The Secretary of State must therefore direct that an order be made consequent on this appeal where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the appeal way.

H.32. In *R v Secretary of State for the Environment, ex parte Bagshaw*,¹¹ Owen J held that:

9 [2012] EWCA Civ 334.

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

11 Conjoined with *R v Same, ex parte Norton*: (1994) 68 P & CR 402, [1995] JPL 1019

For the [reasonably alleged] test, it was necessary to show that a reasonable person, having considered all of the relevant evidence available, could reasonably allege that a right of way subsisted.

...the evidence necessary to establish that a right of way was reasonably alleged to subsist was less than that which was necessary to establish that a right of way did subsist.

H.33. It is suggested that the circumstances and evidence in this appeal more than satisfy the requirement that one ‘could reasonably allege that a right of way subsist[s].’

H.34. Section 32 of the Highways Act 1980 provides that:

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

H.35. While no single piece of evidence in this application is conclusive, the appellant 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, and that the status of the way as a whole must be at least that of a bridleway.

H.36. In the event that the Secretary of State disagrees with the appellant on the question of status, the Secretary of State is invited alternatively to direct KCC to make an order for footpath or restricted byway/byway open to all traffic, as the case may be.

H.37. KCC says¹²:

It is also arguable that the fact that the way was historically a public carriageway, and is recorded in the List of Streets as a highway maintainable at public expense, means that it is not a way that should be recorded on the Definitive Map in any event.

The society considers this statement itself to amount to an error of law, and is not in any way ‘arguable’. Insofar as any portion of the appeal way is found to be a carriageway open to all vehicles, the question is whether it satisfies the character test for a byway open to all traffic. That it is ‘historically a public carriageway’, and ‘is recorded in the List of Streets’ is irrelevant to this question.

H.38. If the Secretary of State is minded to grant the appeal, the Secretary of State is invited to direct the authority as to the time within which an order is to be made — an allowance of three months is suggested to be sufficient.¹³

I. Discovery of evidence

I.1. There is no evidence that the appeal way has ever formally been considered for inclusion on the definitive map and statement for Kent. It appears that it was excluded

¹² Determination, app.B, para.121

¹³ See the amendment to para.4(2) of Sch.14 to the 1981 Act, effected by para.10 of Pt.I of Sch.5 to the Countryside and Rights of Way Act 2000.

from the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') because it was considered by KCC to be part of the ordinary road network — see First definitive map and statement at item III.O below.

I.2. There is no suggestion that KCC previously had made a proper determination, in relation to any evidence, that the appeal way was not eligible to be shown on the definitive map and statement. It is submitted that the mere representation, by KCC, in connection with the preparation of the original draft map, that the way was a publicly-maintainable county road, was not such a determination but an administrative convenience.

I.3. KCC is under a duty to act on the application, because any evidence of the status of the appeal way known to the authority has not formally been acted upon and therefore remains capable of discovery; and in any case, the disclosure of new evidence in the application, and now this appeal, not previously known to the authority, triggers the duty to act.

I.4. Therefore, there is discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

J. Points awarded

J.1. Points have been awarded to each piece of evidence in relation to the appeal way, calculated according to the guidance in *Rights of Way: Restoring the Record*.¹⁴ The purpose of the allocation of points is to draw attention to the most significant evidence.

J.2. **Points:**

Item	Ref	Points
Map of encampment on Lenham Heath	III.A	0
Ordnance Survey surveyor's drawing	III.B	1
Ordnance Survey Mudge-Faden one-inch map of Kent	III.C	0
Greenwoods' map of Kent	III.D	1
Ordnance Survey Old Series one-inch map of Kent	III.E	0
Tithe Act 1836 (Lenham)/Poor Law survey	III.F	4
Northfleet to Dover railway	III.G	0
Great Kent Atmospheric Railway	III.H	5
Maidstone and Ashford Railway	III.I	3
Designation of consolidated chapelry	III.J	1
Ordnance Survey County Series 25-inch maps	III.K	0
Finance (1909–1910) Act 1910	III.L	5
Bartholomew's map	III.M	0
Highway inspectors' map	III.N	3
First definitive map and statement	III.O	3
List of streets	III.P	0
Total points		26

¹⁴ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

K. Limitations

K.1. It is accepted that the appeal way is subject to the right to gate at field boundaries identified on the map drawn up under the Tithe Act 1836 (Lenham)/Poor Law survey (item III.F below).

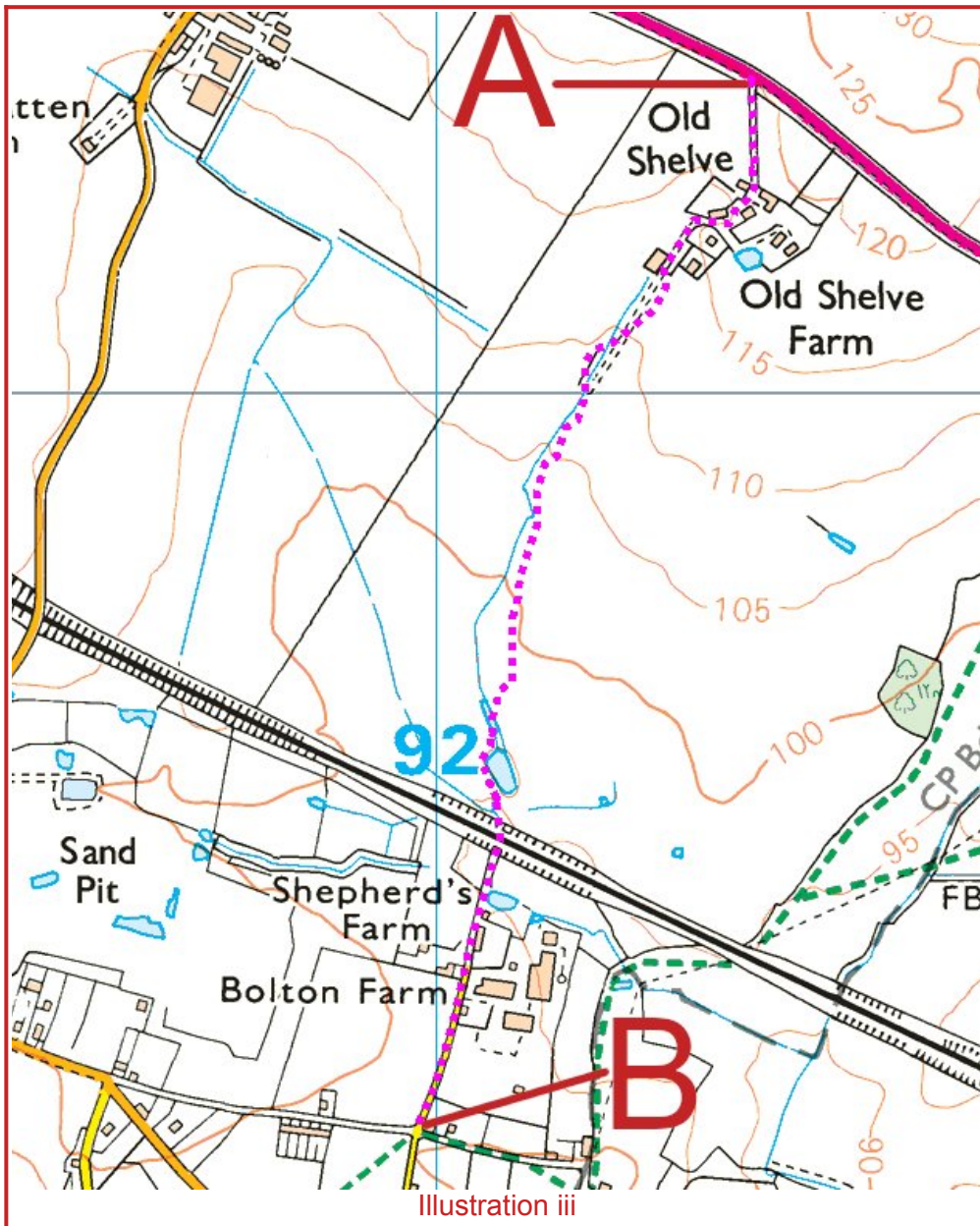
L. Legal cases

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

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.H.29 III.D.8 III.L.13	HC: [2010] EWHC B33 (Ch) CoA: [2012] EWCA Civ 334
<i>R v Secretary of State for the Environment, ex parte Bagshaw</i>	I.H.32	(1994) 68 P & CR 402, [1995] JPL 1019
<i>Hollins v Oldham</i>	III.D.9	[1995] (unreported) C94/0206
<i>Giffard v Williams</i>	III.F.8	(1869) 38 LJ (Ch) 597
<i>Robinson Webster (Holdings) Ltd v Agombar</i>	III.L.13	[2001] EWHC 510 (Ch)
<i>Commission for New Towns v JJ Gallagher Ltd</i>	III.L.13	[2002] EWHC 2668 (Ch)
<i>R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs</i>	III.L.13	[2009] EWHC 171 (Admin)

II. Application map

Application map

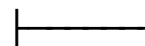


Map centred on TQ921508

Scale: approx. 1:9,250 (when printed A4)

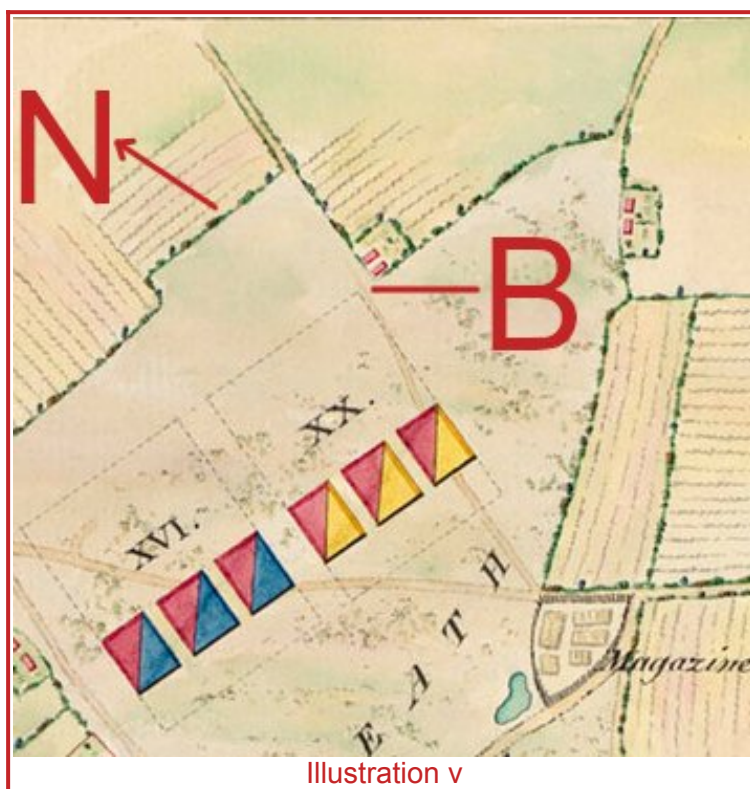
Application way is marked - - - - -

Letters 'A' and 'B' have been added for clarity



150m

Map of encampment on Lenham Heath (enlargement)



A.3. **Description:** original scale: 1:7,315; orientation: unchanged (top is north-north-east).

A.4. A map of the military encampment on Lenham Heath, 7 June–3 November 1781. This is one of 31 maps of encampments which are likely to have been drawn up as a set from original field surveys and draft maps between about 1782 (the last encampment ended on 13 November 1782) and sometime in or after 1784. The original field surveys and draft maps from which they will have been compiled would have been made between 1778 and 1782, according to the actual dates of the encampments. The execution date for the fair drawings of the maps of 1783 or later has, however, been assigned to all the encampment maps, consistent with the date of Paterson's commission as Captain in the 36th Foot, with which rank he styles himself on the title page of the volume, in: 'Plans of Encampments and Dispositions of the Army in Great Britain from 1778 to 1782. Presented to King George III by George Morrison, Quarter Master General. Drawn by Captain Dan. Paterson, 36.th Reg.t Assistant to the Quart. Mast. General.'¹⁶

A.5. The encampment on the heath was, necessarily, prior to inclosure by agreement. The plan shows a number of roads across and in the vicinity of the heath, which are coloured sienna. One is Rose Lane, which is shown leading north-northeast from Lenham Forstal Road near the Magazine (which retains the same name today), through B at Burnt House (now Mulberry House) and continuing in the same direction towards Old Shelve. Based on the relative distance from the Magazine to B (which is 300 metres), the appeal way is shown projected about 260 metres beyond B, a point about 120 metres short of the centre line of the present railway bridge. Neither Shepherd's Farm nor Bolton Farm is

¹⁶ From the description on the Royal Collections website: www.rct.uk/collection/search#/1/collection/734032-ax/map-of-encampment-on-lenham-heath-1781-lenham-kent-uk-51deg1413n-00deg4308e

shown.

A.6. **Conclusion:** The map of the encampment is a good contemporary account of the landscape of Lenham Heath prior to inclosure. The map shows the appeal way from B north-northeast towards what is now the railway bridge, and establishes both the existence of the southern end of the appeal way, and its projection north towards what is now the railway bridge, in the second half of the eighteenth century.

A.7. **Points:** 0

B. Ordnance Survey surveyor's drawing

B.1. **Date:** 1797

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

Ordnance Survey rough drawing, 110 Doddington

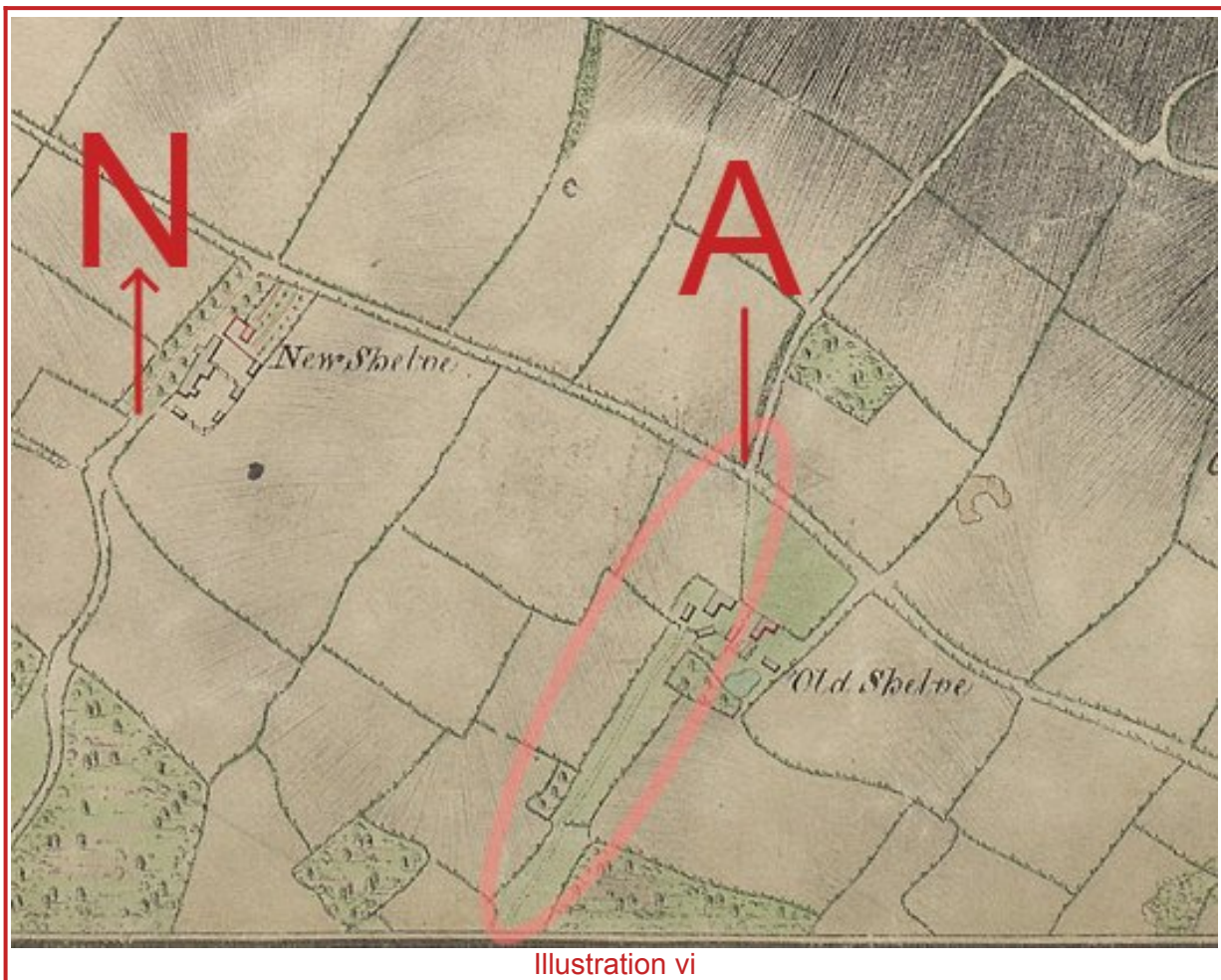


Illustration vi

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

B.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to

government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.¹⁷

B.5. There is a discontinuity between the drawing shown, sheet 110 Doddington, and sheet 109, Charing (not shown here), so that the appeal way south of the portion shown in Illustration vi above is not represented on any drawing. There appears to be no surviving record for this small gap.

B.6. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the way from A to the neatline of the sheet. This is precisely the point at which the way is shown to terminate on the subsequent Ordnance Survey Mudge-Faden one-inch map of Kent (item III.C below), whereas a continuous way is shown on the later Greenwoods' map of Kent (item III.D below). It is suggested that the omission of the intervening part may be owing to poor records, which contributed to the shorter stub-ends shown on the Ordnance Survey Old Series one-inch map of Kent (item III.E below).

B.7. **Points:** 1

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

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

C.1. **Date:** 1801

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

Ordnance Survey Mudge-Faden one-inch map of Kent



C.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). A sharper copy of the map can be seen on the mapco.net website [here](#) and [here](#).

C.4. This map of Kent was the first map to rely primarily on the survey data collected in the Ordnance Survey surveyor's drawing (item B above). However, the Ordnance Survey did not itself publish a map of Kent until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The appeal way is shown only partially on the Mudge map. The way from A to Old Shelve appears not to be shown (there is an alternative line joining the Ashford Road slightly further east). From Old Shelve, the way is shown to the south by pecked double lines, but only for about 500 metres. The line then resumes to the south of Cobham Wood as unbroken double lines as far as B. At this time, B was on the edge of Lenham Heath, later to be inclosed by agreement.

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

C.7. Only part of the appeal way was shown, with a modest gap in the middle. The gap likely was omitted because it was a field road, with little physical presence, and no assurance that it was suitable for military traffic. As noted at para.I.A.6 above, the representation of the appeal way on this map may owe something to the limitations of the original survey drawings.

C.8. **Points:** 0

D. **Greenwoods' map of Kent**

D.1. **Date:** 1819–20

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

Greenwoods' map of Kent

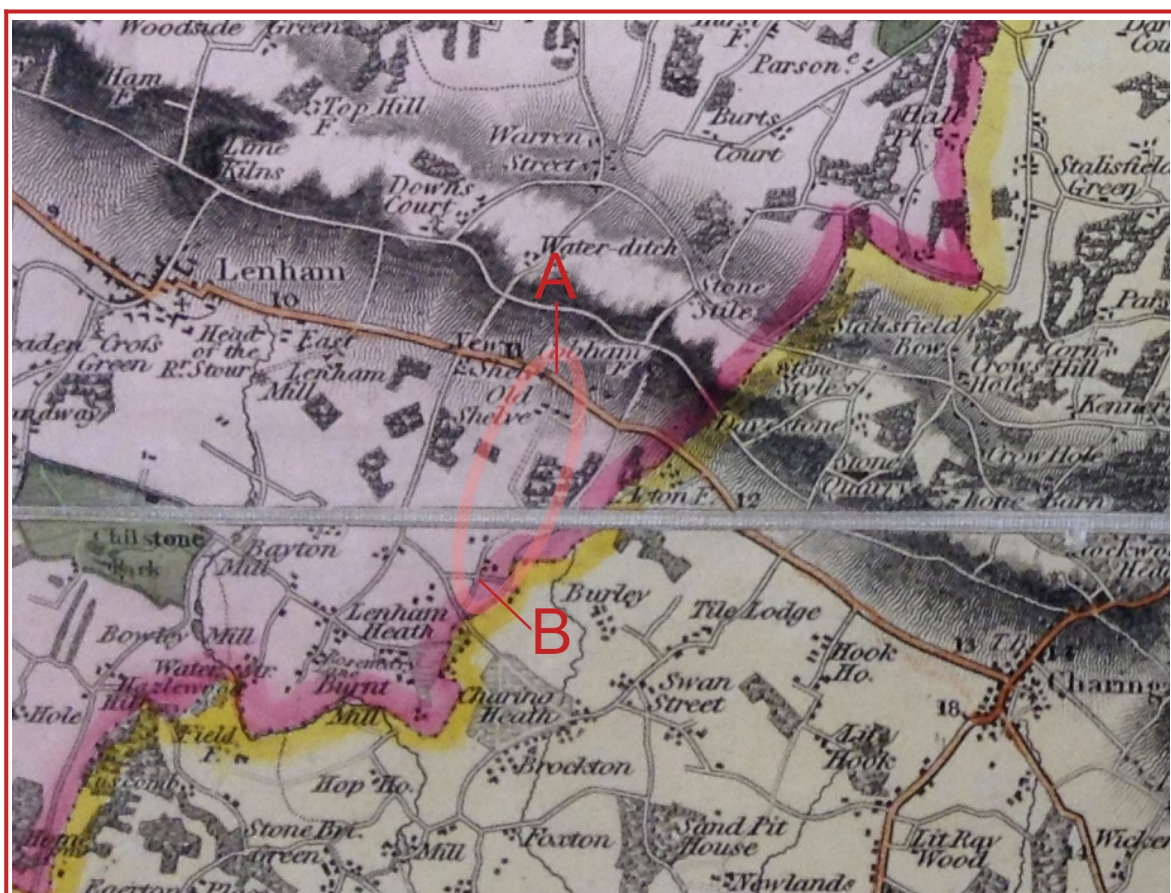


Illustration viii

Greenwoods' map key



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

D.4. The appeal way is shown on or approximately corresponding to its true line. The way is shown with double-pecked lines, save at the southern end (consistent with the part of the appeal way south of the later-constructed railway line) which is shown as unbroken double lines. A short section, on the southern of the two pieces of the map, is shown with a single-pecked line.

D.5. There is a notable tuck in the alignment under the south-east side of Cobham Wood — although this reflects a similar feature in the appeal way, it is perhaps slightly exaggerated.

D.6. A way of this kind (save the short section of single-pecked line) is described in the key as a cross road.

D.7. **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.¹⁸

D.8. In *Fortune v Wiltshire Council*,¹⁹ Lewison LJ wrote in his judgment of the court:

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').

¹⁸ From *Antique Maps*, C Moreland and D Bannister, 1983.

¹⁹ [2012] EWCA Civ 334: www.bailii.org/ew/cases/EWCA/Civ/2012/334.html.

D.9. In *Hollins v Oldham*,²⁰ 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 Greenwoods' 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 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.

D.10. 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.

D.11. If the appeal way were no more than an internal occupation road on the Old Shelve estate, why would it have been shown? Indeed, how would the Greenwoods' surveyor have known about it?

D.12. **KCC comment:** KCC says²¹:

The Applicant suggests that the way corresponds with the description 'cross roads' in the key to the map, which is suggestive of a public carriageway. However, it is noted that there are other ways (e.g. a route following the parish boundary) which are shown in the same manner as the claimed route on Greenwood's Map, but which are either recorded at a lesser status (e.g. Foot-path) or no longer in existence today.

D.13. As set out at para.D.10 above, we suggest that cross-roads are properly identifiable with roads connected to highways at each end. KCC does not specifically identify examples of: 'other ways...which are either recorded at a lesser status (e.g. Footpath) or no longer in existence today.' We accept that some are likely to be found, although fewer which connect to highways at each end. However, as with the appeal way, what is recorded today as of lower status, or not recorded at all, does not demonstrate that there was and is no highway — only that it may be a highway which is under-recorded or not recorded at all. Thus it is unsafe to draw conclusions on the basis of neighbouring examples, because not all highways which subsisted at the time of the Greenwoods' map are recorded or recognised today.

D.14. KCC further says²²:

20 [1995] (unreported) C94/0206.

21 Determination, app.B, para.27

22 Determination, app.B, para.26

There is some discontinuity between the map sheets (and possibly a strip of land between the two that has been omitted) since the double-pecked trackway does not continue on the southern map sheet. However, the depiction of the way on the southern map sheet makes it clear that the southern section terminates prior to the map sheet edge (continuing only as a single dashed line away from the claimed route)[.]

D.15. KCC describes part of the way, south of the frame (which divides the Greenwoods' map into discrete rectangles) as being shown by a single-pecked line. This appears to be correct, but as the way continues on the north side of the frame as bifurcating into not one but two tracks or roads (one of which is the appeal way), this seems more likely to represent a draughting error than a suggestion that this short part of the way was of lower status or character. Either there was a circular route from Old Shelve (described in the key as a cross road) which looped round Cobham Wood and back to the Ashford turnpike, with only a path continuing southwards — or the two ways from the Ashford turnpike united on the south side of Cobham Wood to continue south-west and then south towards Lenham Heath. As the latter explanation is much the more likely, it is suggested that the short stretch of marking as a single-pecked line is likely to be an error. As a lightly-used field road, there is little in practice to distinguish it from a bridleway, from an itinerant surveyor's perspective.

D.16. We also disagree that the single-pecked line continues 'away from the claimed route'. What we see is simply a certain amount of distortion in the mapping caused by the surveyor's desire to show the appeal way curving to the east around the southern end of Cobham Wood (as it does to an extent), which is shown in exaggerated form. There can be little doubt that what is shown is consistent with the appeal way.

D.17. **Conclusion:** The key to the Greenwoods' map records the appeal way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (separately identified).

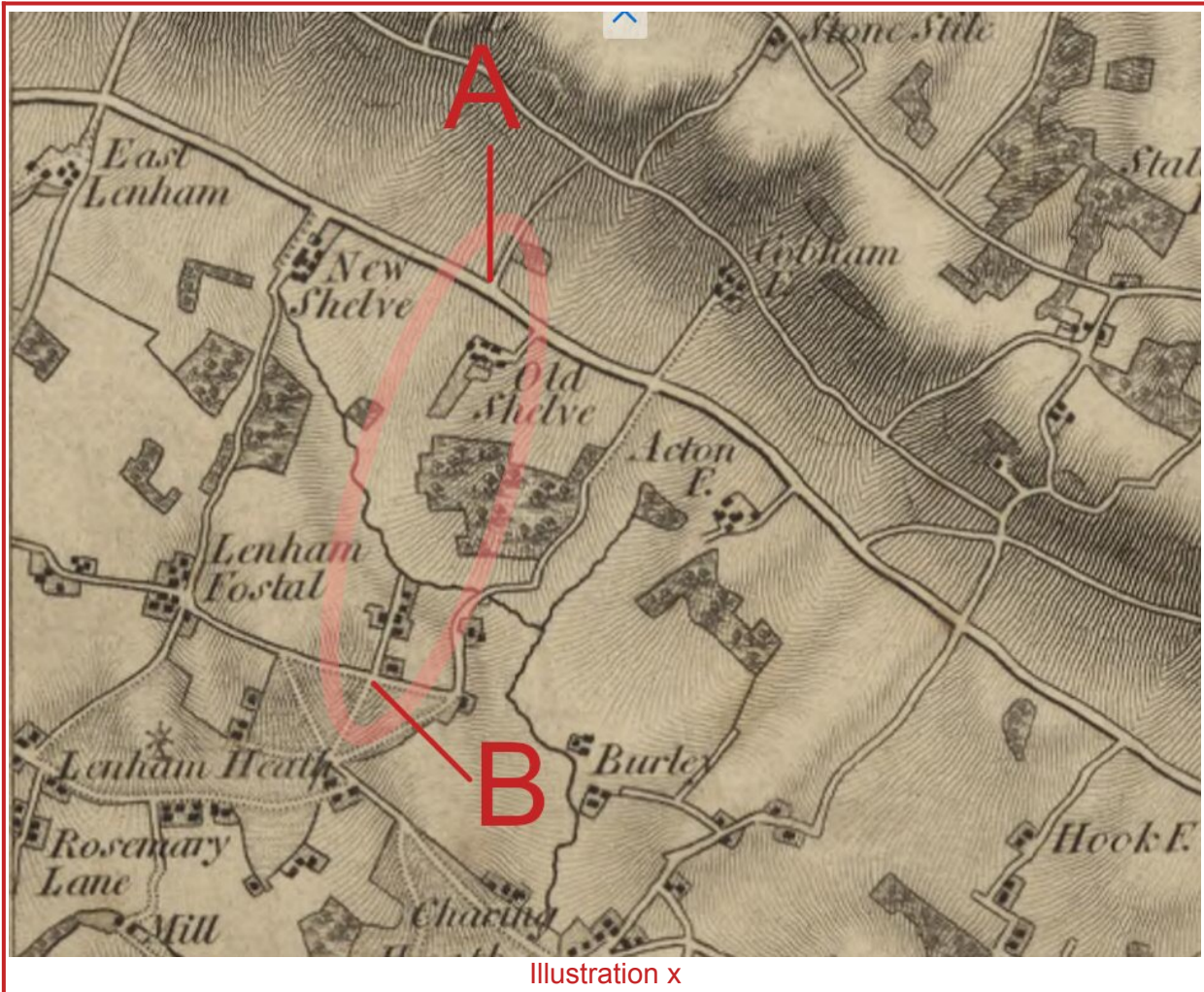
D.18. **Points:** 1

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 Australia²³

Ordnance Survey Old Series one-inch map of Kent



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

E.4. This is the Old Series one-inch map as 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 III.C above), the 'official' Ordnance Survey Old Series map was based on the same survey data.

E.5. However, the Old Series map shows the appeal way only from B north to the water-course north of Shepherd's Farm. Neither the portion from there to Old Shelve is shown, nor the continuation from Old Shelve to the Ashford Road.

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

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 routes which were of little military interest (indeed, it would be positively misleading so to do, unless they were clearly distinguished).

E.7. Nevertheless, only the southern end of the appeal way is shown. The northern part likely was omitted because it was a field road, with little physical presence nor value for military traffic.

E.8. **Points:** 0

F. Tithe Act 1836 (Lenham)/Poor Law survey

F.1. **Date:** 1838

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

Dawson's conventional symbols

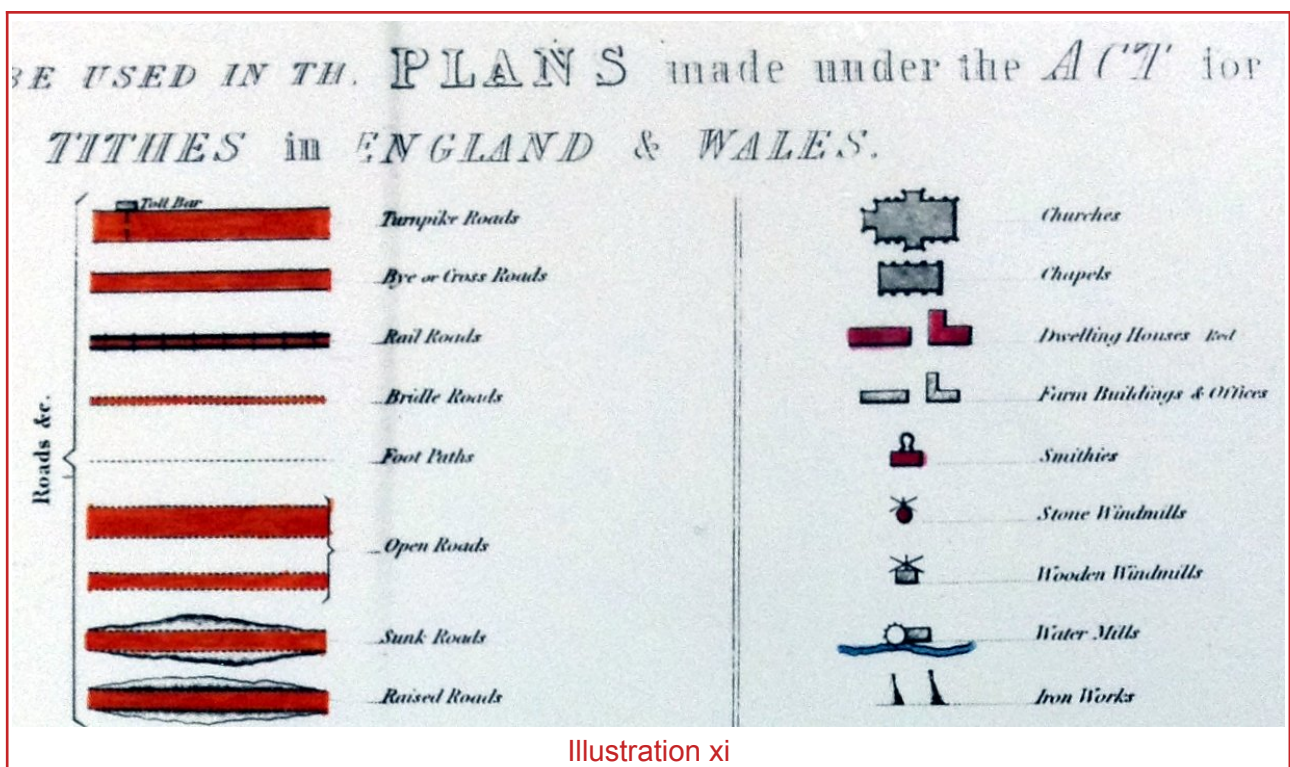


Illustration xi

F.3. **Description:** Original scale — 1 inch to 3 chains (1:2,376); orientation — rotated 270° (top is now north). An extract from the tithe map for Lenham showing the appeal way is at Annexe A at p.72; a copy of the whole tithe map is at Annexe B at p.74. The tithe map for Lenham is first class, and was made for tithe and poor law assessment purposes.²⁴

F.4. KCC correctly reports the tithe map as follows²⁵:

²⁴ See the record for this tithe apportionment held by the National Archives: [IR 30/17/220](#); this also is stated on the face of the map.

²⁵ Determination, app.B, paras.29–31

In this case, the Tithe Map for Lenham shows the southern end of the claimed route as a substantial trackway bounded by solid lines and shaded, in the same manner as the adjoining road network. It is excluded from the valuation of the adjacent landholdings by way of open brace. From a point immediately to the north of the pond, the route continues as a narrower double-pecked trackway through fields and eventually to a group of buildings labelled 'Old Shelve', before continuing to its junction with the A20 Ashford Road. The alternative entrance to the farm, some distance to the east, is also shown, but this time as a much narrower, unenclosed and unshaded trackway.

The claimed route is unnumbered throughout but it is shaded (except where it passes through the farm yard at Old Shelve), possibly indicating some sort of metalled surface. There is nothing to indicate that the claimed route did not form part of the adjacent field (such as the open brace symbol), although the Applicant's position is that it was considered unproductive land not subject to tithes.

The map shows that there were a number of gates in existence along the claimed route, namely at its northern junction with the A20, the entrance/exit on either side of the farmyard at Old Shelve, and a further five field boundaries (the last being by the pond at what is now Boltons Farm).

F.5. **Analysis:** The Tithe Act 1836²⁶ 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 land subject to tithes in order to assess the amount of money to be paid. An assessment of the tithe due and the rent charge substituted was set out in an apportionment. The 1836 Act was amended in 1837²⁷ 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, drawn up by Lt. Dawson, which included bridle roads and footpaths, but this was not strictly adhered to²⁸: an extract from the convention is shown at Illustration xi above.

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.

The apportionment and map were...put on public display in the tithe district for twenty-one days after which appeals against the apportionment would be held and the documents corrected before they were confirmed by the London Tithe Commission. ...landowners and tithe owners had a statutory right of appeal against perceived errors in the map or apportionment, and it is known from

26 Available from [*The Act for the Commutation of Tithes in England and Wales with an analysis, explanatory notes and an index*](#), by J M White, 1836.

27 Tithe Commutation Act 1837, c.69, s.1. Available from [*A collection of the Public General Statutes passed in the seventh year of the reign of William IV and the first year of Victoria*](#), 1837.

28 *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).

evidence in parish tithe files that objections to maps or apportionments were quite common.²⁹

F.8. In *Giffard v Williams*, it was said, referring to a tithe map and award:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.³⁰

F.9. 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 droves 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). Although the process was not necessarily concerned with rights of way, inferences can sometimes 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, as commended by Lt. Dawson in his guidance, but in others, the colouring may show that roads had a metalled surface. Highways expressly may be described as such in the apportionment.

F.10. The use of dotted parallel lines to denote tracks across parcels of land appears to follow the guidance of Lt. Dawson that:

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

F.11. The Lenham tithe map features extensive use of sienna colouring on roads. On many tithe maps, such use may indicate only that the roads were metalled. However, on the Lenham tithe map the use of sienna is highly consistent with known and claimed public roads.

F.12. We have mapped those ways (and only those ways) shown in sienna on the Lenham tithe map onto an extract of the current Ordnance Survey Landranger 1:50,000 map: this is at Annexe C at p.76, using one of three colours.

- roads marked in yellow are roads recognised as such today³¹;
- roads marked in blue are recorded as public footpath today;
- roads marked in green have no recorded rights today (including part of the appeal way).

Roads marked in red are tarred public roads today, which may be ancient in origin, but are not shown in sienna on the Lenham tithe map (although in some cases, they may be shown as roads or tracks). We ignore here obviously modern roads, such as the Lenham

²⁹ *Interpreting tithe map evidence*, R J P Kain, *Rights of Way Law Review* 9.3.97 at 101 and 105, June 1998,

³⁰ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

³¹ *i.e.* as roads included on the council's List of streets (item III.P), or recorded as byways open to all traffic or restricted byways.

by-pass and post-1838 residential roads in Lenham village. The ancient boundary of Lenham parish (as shown on the Lenham tithe map) is approximately represented by a purple stipple.

F.13. The map shows an excellent correlation between those roads coloured sienna on the Lenham tithe map, and those which remain public roads today. Some discrepancies can be explained, and these are numbered in pink on the road map.

- 1: roads diverted at Torry Hill in 1842³²;
- 2: Flint Lane (leading west through Stedehill Wood) is visible on early county maps (such as the Greenwoods' map of Kent (item III.D above) and the Ordnance Survey Old Series one-inch map of Kent (item III.E above), but not, so far as we can tell, coloured sienna on the Lenham tithe map, although shown as an uncoloured road or track;
- 3: Ham Lane appears to have been severed by the construction of the railway, and only part (south of the railway) is now recorded as a footpath; described as 'occupation road' in plans for the Great Kent Atmospheric Railway (item III.H below) and the 1879–80 Maidstone and Ashford Railway (item III.I below);
- 4: various ways south of Lenham Heath Road, leading towards the Great Stour river, now either under recorded or not recorded at all, but affected by side road orders consequent on the construction of the M20 and HS1³³; also Crabtree Lane between Lenham Heath Road and Lenham Forstal Road, which is shown on the Lenham tithe map as an uncoloured road or track, but not coloured sienna;
- 5: probable diversion at Waterditch Farm.

F.14. Leaving aside these discrepancies which largely are explicable, the key non-conformity is the network of minor and field roads in the vicinity of Lenham Forstal, which is discussed at paras.I.H.26 to I.H.28 above. We therefore suggest that, in accordance with the Dawson guidance, the intention of the surveyor of the Lenham tithe map was to use sienna to pick out public roads, and not metalled roads. In this area straddling the North Downs escarpment, flint was a by-product of tilling the land, and widely available as a means to reinforce roads, tracks and paths. There is no reason to infer that its use was confined to public roads.

F.15. By way of reinforcement, we also observe that in the immediate vicinity of the appeal way, for example, the easterly approach from the Ashford Road to Old Shelve is not coloured sienna on the tithe map.³⁴ Similarly, the road leading east from point B (apart from the first 50 metres) is not coloured on the tithe map. Neither of these ways has a reputation as a public road.

F.16. This analysis is consistent with the preparation of the map not only for use in tithe commutation, but also for poor law assessment purposes. The Lenham parish vestry has procured a detailed survey and map of the ownership and occupation of land in the parish of Lenham for the purposes (separate to tithe commutation) of validating the rateable value of land assessed by the Poor Law Guardians of the parish. The survey would have been procured by the parish vestry officers probably acting at the direction of the Poor Law

³² Kent County Archives Q/RH/2/303

³³ Two of these roads are described as public roads in the plans for the more southerly 1866 alignment of the Maidstone and Ashford Railway (item III.I), one as a 'roadway', and one is not potentially affected by the line.

³⁴ KCC acknowledges (determination, app.B, para.29) that this easterly approach is a: 'much narrower, unenclosed and unshaded trackway'.

Commissioners, who had powers to commission a survey under s.3 of the Parochial Assessment Act 1836.³⁵ The parish vestry understandably built upon the opportunity afforded by the preparation of a tithe map.

F.17. The rate for the relief of the poor was to be calculated ‘upon an estimate of the net annual value of the several hereditaments rated thereunto...’.³⁶ The net annual or rateable value for the purposes of levying poor rates was based on the gross rental value of the hereditament, allowing for deductions for, for example, the tithe rent charge and repairs. The gross rental would reflect, for example, the accessibility of the hereditament, taking account of private roads and their state and cost of repair. It is suggested that the question of whether a road serving or crossing a hereditament was public or private was a matter of direct concern to the assessment. Thus it is appropriate that the tithe map, also prepared for poor law assessment purposes, was keen to distinguish private and public roads.

F.18. **KCC comment:** KCC says³⁷:

The claimed route is unnumbered throughout but it is shaded (except where it passes through the farm yard at Old Shelve), possibly indicating some sort of metalled surface. There is nothing to indicate that the claimed route did not form part of the adjacent field (such as the open brace symbol), although the Applicant’s position is that it was considered unproductive land not subject to tithes.

F.19. In our view, the sienna colouring of the appeal way is consistent with the way, and other ways similarly coloured on the tithe map, being a public road.

F.20. KCC continues³⁸:

The map shows that there were a number of gates in existence along the claimed route, namely at its northern junction with the A20, the entrance/exit on either side of the farmyard at Old Shelve, and a further five field boundaries (the last being by the pond at what is now Boltons Farm).

F.21. We agree that the tithe map identifies a number of gates across the appeal way. This is what one would expect of a field or gated road (see para.I.H.1 above).

35 S.3: ‘And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the church-wardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value,’ S.4 confers a power of entry for the purposes of survey. S.6 enables appeals to quarter sessions against the valuation. Extracted from [Lumley’s Union assessment acts](#), 1895.

36 Parochial Assessment Act 1836, s.1: ‘...upon an estimate of the net annual value [*i.e.* rateable value] of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent:... .’

37 Determination, app.B, para.30

38 Determination, app.B, para.31

F.22. KCC states in conclusion³⁹:

Its depiction on that map, which shows it shaded in the same way as the surrounding road network, arguably provides some evidence that the route might have been a public thoroughfare of at least footpath or bridleway status, but the shading might equally refer to the surface of the way.

F.23. We disagree. Analysis shows that the sienna colouring on the Lenham tithe map is used consistently with known and claimed highways, but not otherwise. For example, the colouring is not used on the alternative approach from the Ashford Road to Old Shelve, or the road leading east from B to Cherry Farm. It is, however, consistently applied to known and reputed highways in the parish.

F.24. **Conclusion:** It simply cannot be said whether the appeal way (at least as regards the unenclosed portion north of Bolton Farm) was included in the fields through which it passed for the purposes of assessing rent charge. It may well have been — but as a grassy field road is capable of producing a crop or grazing animals for the benefit of the landowner, it would have been appropriate to include it, whether public or private.

F.25. What can be said is that the appeal way is coloured sienna, and that this colouring is applied consistently to public roads, and only public roads, in the parish, in line with the Dawson guidance.

F.26. Moreover, the specific identification of public roads was appropriate to the use of the map for assessing Poor Law rateable value. Poor Law rateable valuations attracted notoriety within the parish,⁴⁰ so that the exclusion of private roads from hereditaments would have been open to criticism — not least because it would have reduced the overall rateable value of the parish, and so imposed higher rates on others. There was ample opportunity for engagement in the process by landowning parishioners — especially as the map served for calculating both poor law valuation and rent charge. Moreover, the survey was commissioned by the parish vestry, which was itself responsible for determining which roads were public.

F.27. Accordingly, it is submitted that the appeal way was considered to be a public road, and that this is a valuable indication of contemporary status, being the opinion of both the surveyor and the parish vestry, and the product of intensive consultation.

F.28. **Points:** 4

G. Northfleet to Dover railway

G.1. **Date:** 1835-36

G.2. **Source:** Kent County Archives⁴¹

³⁹ Determination, app.B, para.122

⁴⁰ Ss.1 and 2 of the Poor Rate Act 1743 required the publication of poor rates in church, and for the rates to be inspected by any inhabitant and for copies to be taken. Extracted from *Lumley's* (see footnote 59 below).

⁴¹ Q/RUm/130

Northfleet to Dover railway plan

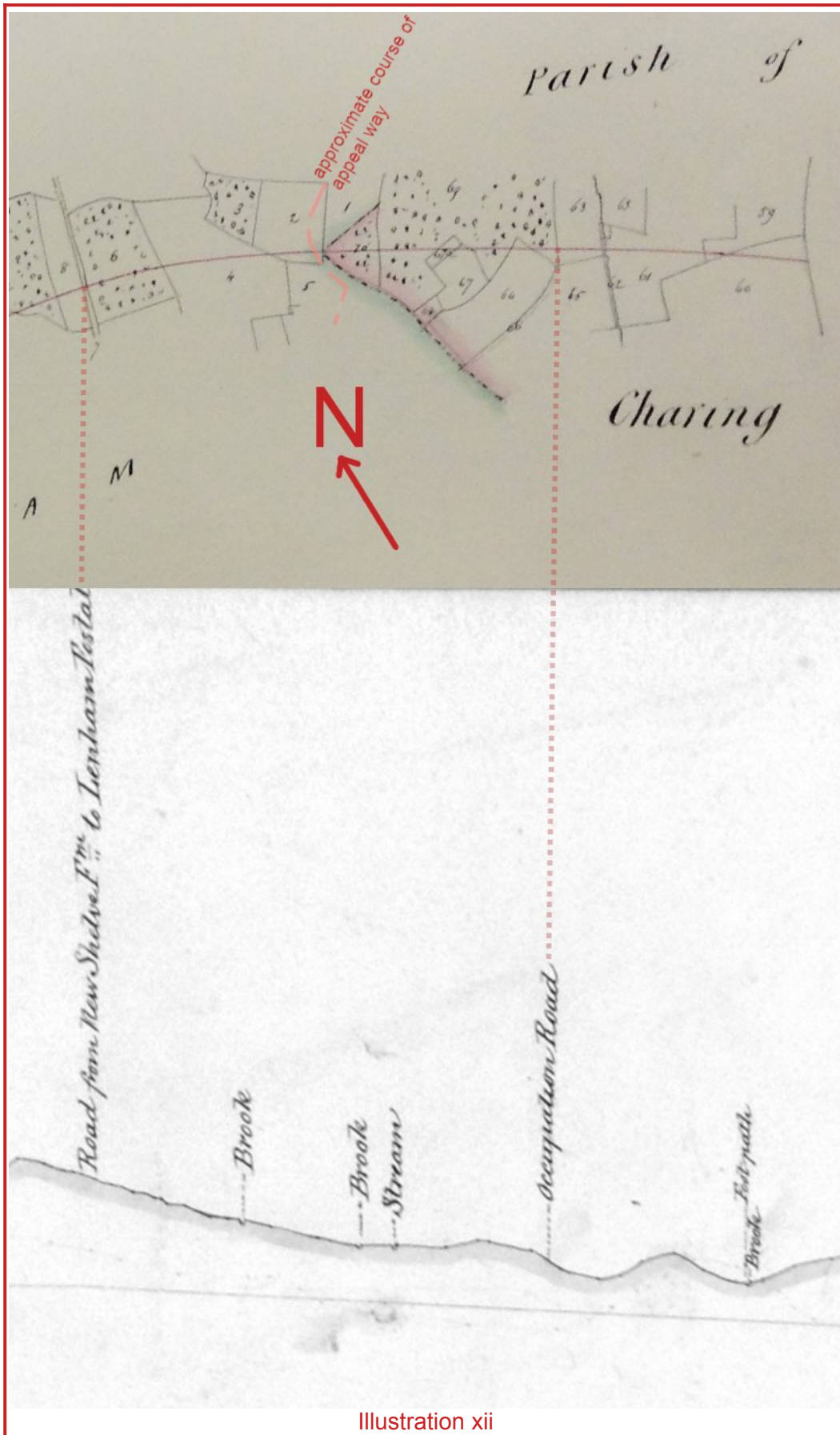


Illustration xii

Northfleet to Dover railway book of reference

No.	Owners' Names.	Lessees' Names.	Occupiers' Names.	Description of Property.
0	Shursted		Clarke Maylin	Wood Sand
5	John Minder		M ^{rs} . Howland	Pasture Sand
4	Shursted		Clarke Maylin	Do
3				Wood Sand
2	John Minder		William Howland	Pasture Sand
1				Wood Sand

Illustration xiii

G.3. **Description:** original scale: not known; orientation: unchanged (top is north-east).

G.4. Plans for the Northfleet to Dover railway via Lenham were deposited in 1835–36. The proposals were not given Royal Assent, and the line was not built through Lenham until half a century later.

G.5. The plans are fairly coarse. They show Forstal Road (the road from New Shelve to Lenham Forstal). However, no record is made of the appeal way. A recorded 'occupation road' is further south-east of the appeal way, probably corresponding to the line of what is now footpath KH402.

G.6. **Conclusion:** The plans for the Northfleet to Dover railway show no recognition of the appeal way, nor of many public footpaths known to have crossed the proposed line.

G.7. **Points:** 0

H. Great Kent Atmospheric Railway

H.1. **Date:** 1845–46

H.2. **Source:** Kent County Archives⁴²

Great Kent Atmospheric Railway plan

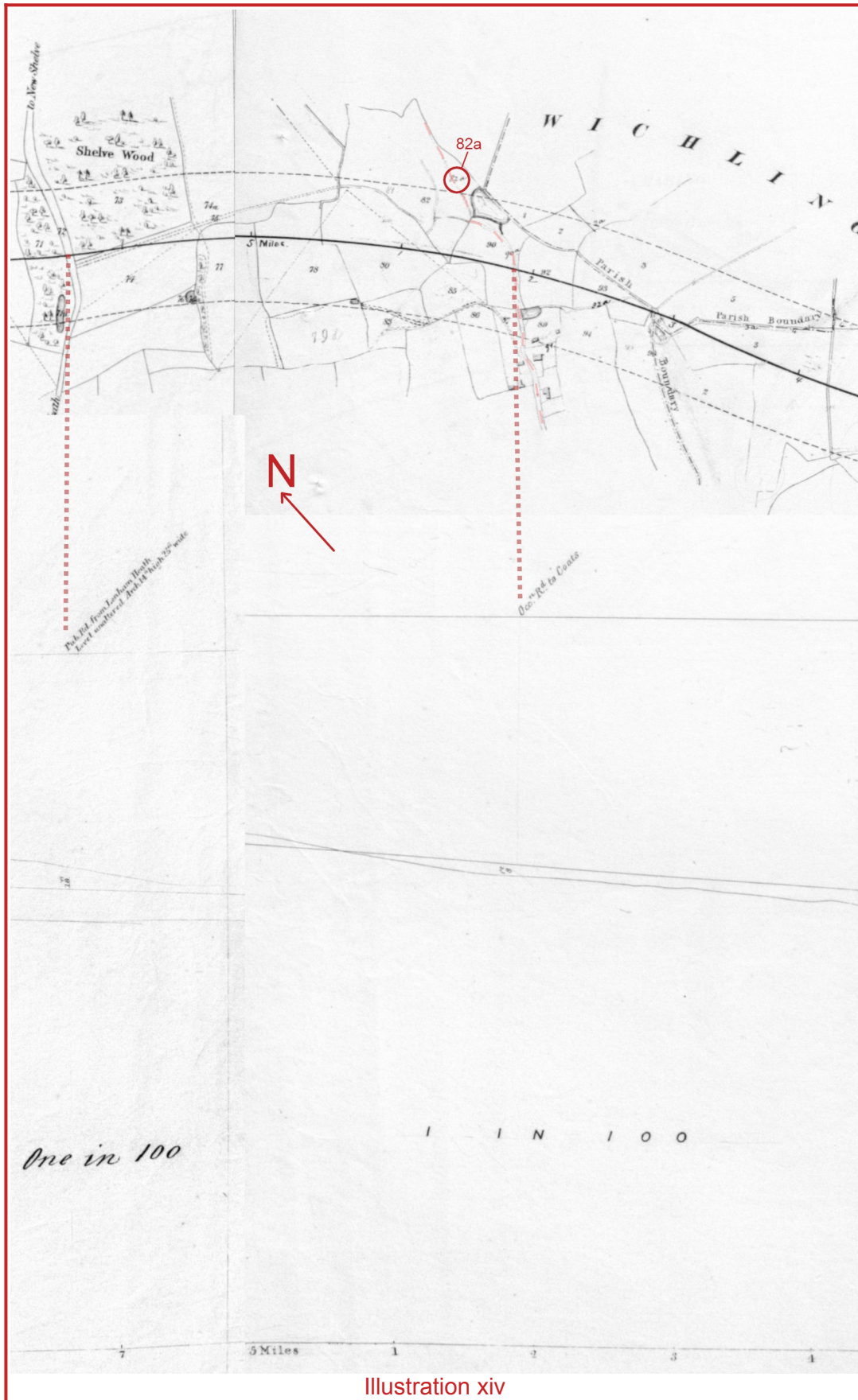


Illustration xiv

Great Kent Atmospheric Railway book of reference

The PARISH of LENHAM, in the County of KENT—continued.

No. on Plan.	Description of Property.	Owners, or Reputed Owners.	Lessees, or Reputed Lessees.	Occupiers.
76 ^a .	Pond - - - -	Mercer Chapman - - - -	- - - - -	In hand.
77.	Meadow, footpaths and shaw	George Edward Sayer - - - -	- - - - -	Stephen Millan.
78 ^a .	Pasture field, footpath and occupation road.	Mary Dering and ^{Faversham} Kenrick.	Clarke Maylam - - - -	Clarke Maylam.
79 ^a .	Meadow, two shaws and footpath.	George Edward Sayer - - - -	- - - - -	Stephen Millan.
79 ^d .	Meadow, shaw, part of small pond and occupation-road.	Mark Bolton and ——— Bolton, widow.	- - - - -	Mark Bolton.
78.	Meadow, footpath and part of small pond.	Mark Bolton and ——— Bolton, widow.	- - - - -	- ditto.
80.	Meadow and footpath - -	The Earl Cornwallis - - - -	- - - - -	William Chapman.
81.	Stream - - - -	Mary Winder, Mary Dering, ^{Faversham} Kenrick, Earl Cornwallis, and Lady and Lord of the Manor.	William Howland and Clarke Maylam.	William Howland, Clarke Maylam, and William Chapman.
82.	Meadow, part of pond and footpath.	Mary Winder - - - -	William Howland - - - -	William Howland.
82 ^a .	Public highway - - - -	Surveyor of highways:	- - - - -	- - - - -
83.	Meadow and occupation-road	Mark Bolton and ——— Bolton, widow.	- - - - -	Mark Bolton.

Illustration xv

H.3. **Description:** Original scale: not known, but distances along proposed line measured in miles and furlongs; orientation: unchanged (top is north-east).

H.4. Plans for the Great Kent Atmospheric Railway were deposited in 1845. It proposed a line from Deptford to Dover via Otford, Maidstone, Faversham and Canterbury, with branches to, among other places, Ashford. Royal Assent was not forthcoming, and the line was not built at this time.

H.5. The appeal way is annotated on the plan as parcel 82a, and described in the book of reference as 'public highway' owned by the Surveyor of highways. In the section, the way is annotated as an 'Occupation Road to Coats'. It is not known where is Coats, and the annotation appears to be wholly erroneous.

H.6. Note that parcel 90a, labelled on the plan, refers to a 'Stream' and not the appeal way.

H.7. **Conclusion:** The deposited plan and book of reference for the Great Kent Atmospheric Railway describes the appeal way as a 'public highway', presumably a road.⁴³ The

43 The book of reference refers specifically to 'footpath', 'bridle-way', private or occupation road, and so on. Public roads consistently are referred to as 'Public highway'.

label applied to the section is not in agreement with the book of reference, but the latter should take precedence, being drawn up with the specific purpose of identifying land occupation and ownership.

H.8. **Points:** 5

I. **Maidstone and Ashford Railway**

I.1. **Date:** 1863–64, 1874–75, 1879–80

I.2. **Source:** Kent County Archives, Kent County Council⁴⁴

⁴⁴ Q/RUm/488, Q/RUm/726; copies of the 1874 documents (Q/RUm/654) kindly supplied by KCC

Maidstone and Ashford Railway 1863–64 plan

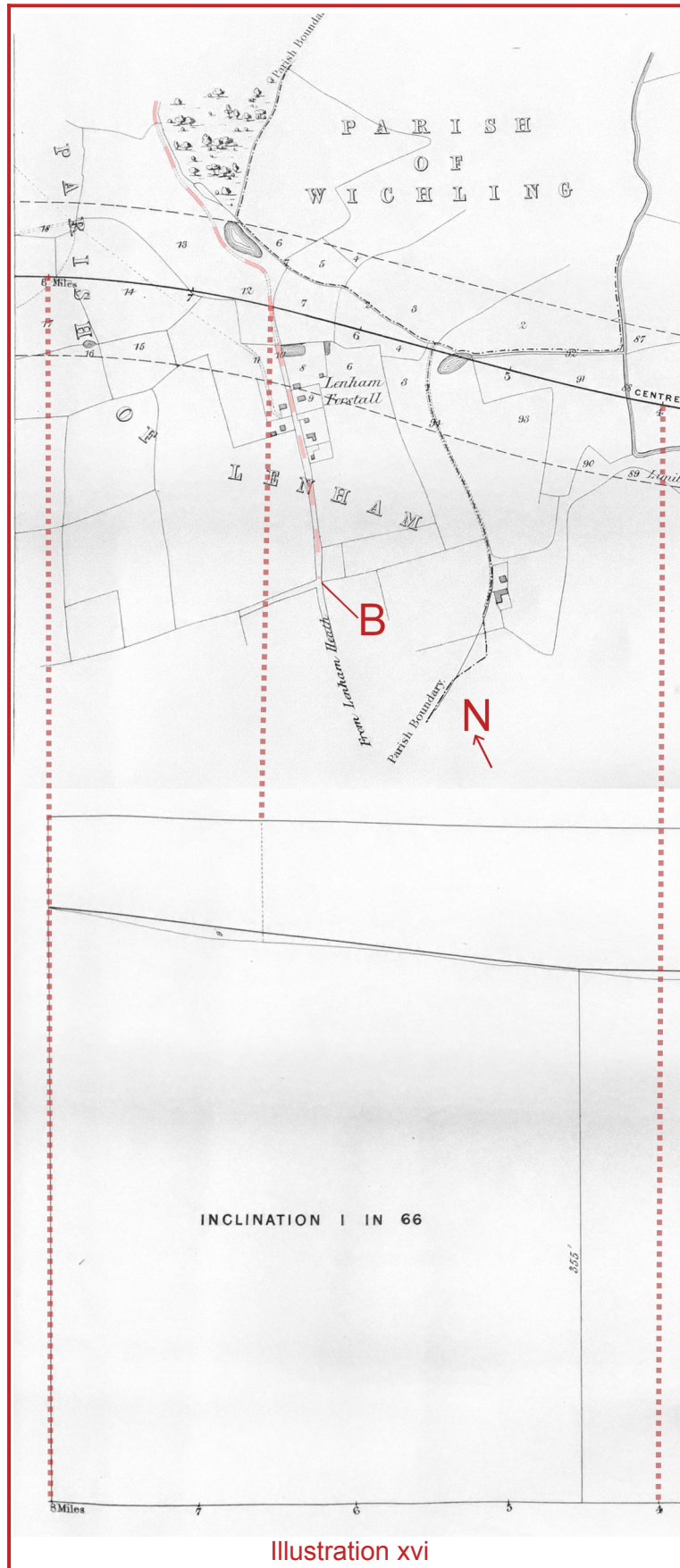


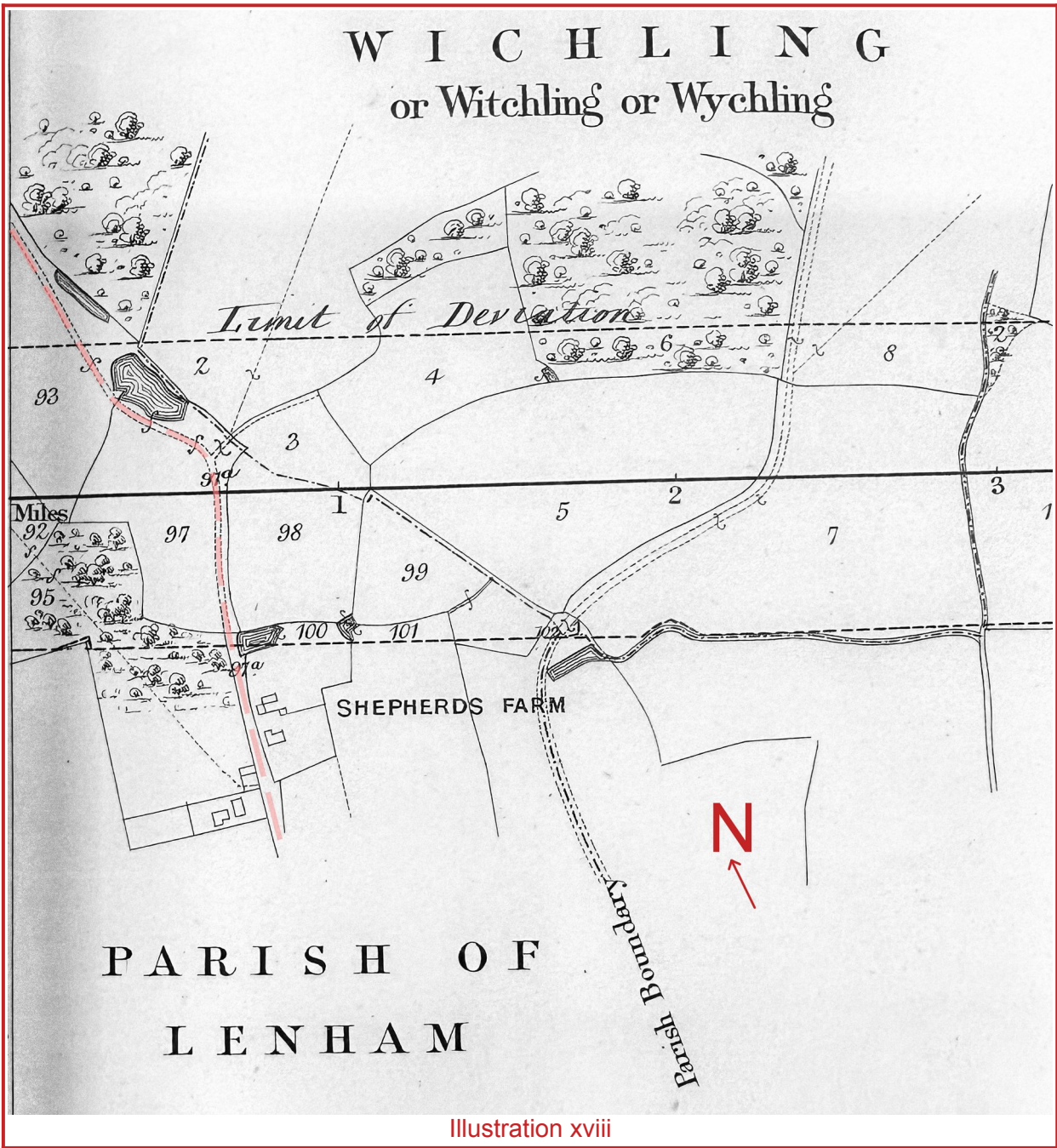
Illustration xvi

Maidstone and Ashford Railway 1863–64 book of reference

PARISH OF LENHAM. COUNTY OF KENT.				
No. on Plan	Description of Property.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.
1	Parish road, being the boundary between the parishes of Lenham and Charing	Ashford District Highway Board		
2	Boundary between the parishes of Lenham and Wichling	Bearsted District Highway Board		
3	Arable field	John Cheesman		In hand
4	Pasture field and stream	John Cheesman		In hand
5	Pasture field	John Cheesman		In hand
6	Arable field and pond	George Edward Sayer		George Edward Hills
7	Pasture field	Elizabeth Ruck		John Chapman
8	Pasture field, lodge, yards, and pond	Elizabeth Ruck		John Chapman
9	House, lodges, and garden	Elizabeth Ruck		John Chapman
10	Road from Lenham Heath to Old Shelve Farm	Elizabeth Ruck Edward White Odden		John Chapman Thomas Maylum
11	Orchard and footpath	Edward White Odden		Thomas Maylum
12	Pasture field, road, and pond	George Edward Sayer		George Edward Hills
13	Pasture field, road, and pond	Elizabeth Ruck	William Howland	William Howland
14	Pasture field and footpaths	Viscountess Holmesdale and her Trustees Charles Wykeham Martin Beaumont Baron Hotham Devises in trust under the will of the late Earl Cornwallis		Thomas Chapman
15	Pasture field, orchard, and sheep pound	Edward White Odden		Thomas Maylum
16	Pasture field and pond	Edward White Odden		Thomas Maylum
17	Pasture field, pond, and footpath	Edward White Odden		Thomas Maylum
18	Pasture field and footpaths	William Kenrick	Thomas Maylum	Thomas Maylum
19	Occupation road	William Kenrick	Thomas Maylum	Thomas Maylum

Illustration xvii

Maidstone and Ashford Railway 1874-75 plan



Maidstone and Ashford Railway 1874–75 book of reference

95	Orchard and foot-path	Trustees of the will of the late Edward White Odden, viz.: Mary Ann Odden, George Lapine	.....	Thomas Maylam
97	Pasture, watercourse pond, and footpath	John Sayer	.....	George Edward Hills
97A	Public road	Bearsted District Highway Board. Thomas Goodwin, Clerk	.....
98	Pasture, pond, and watercourse	James Troup Hatch	.....	John Chapman
99	Pasture and watercourse	John Cheeseman	.....	In hand
100	Pasture and pond	James Troup Hatch	.....	John Chapman
101	Arable and pond	John Sayer	.....	George Edward Hills
102	Pasture, watercourse and occupation road	John Cheeseman	.....	In hand

Illustration xix

Maidstone and Ashford Railway 1879–80 plan



Illustration xx

Maidstone and Ashford Railway 1879–80 book of reference

30

Maidstone and Ashford Railway.

Railway No. 1.

Parish of Lenham—*continued.*

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessors or Reputed Lessees.	Occupiers.
66	Field, ditch and foot-paths	James Troup Hatch	... ..	Robert Chapman
67	Field, occupation road, footpath and part of pond	James Troup Hatch	... ..	James Troup Hatch
68	Field and stream	James Troup Hatch	... ..	James Troup Hatch
69	Orchard and footpath	Mary Ann Odden	... ..	Thomas Maylam
70	Field, occupation road and stream	John Sayer	... ..	Robert Chapman
71	Field, occupation road, and part of pond	John Sayer	... ..	Robert Chapman
73	Wood	James Troup Hatch	... ..	James Troup Hatch
74	Field	James Troup Hatch	... ..	John Chapman
75	Field and stream	John Cheesman	... ..	John Cheesman

Illustration xxi

1883 Conveyance, Second Schedule

No on Plan	Description	Quantity		
		ac	v	p.
	Brought forward	12		20
No 40	Field and Footpath	"	"	3
" 34	Field and Footpath	"	2	5
" 63	Field and Footpath	1	1	31
" 70	Field occupation Road and Stream	"	2	27
" 71	Field occupation Road and Stream	"	"	3
	<i>H</i>	14	3	9

Illustration xxii

1883 Conveyance, plan



Illustration xxiii

Maidstone and Ashford Railway 1879–80: railway bridge



Illustration xxiv

I.3. **Description:** Original scale: not known, but distances along proposed line measures in miles and furlongs; orientation: unchanged (top is north-east).

I.4. Plans for a railway between Maidstone and Ashford were revived in 1863, with plans deposited in Parliament in that year by the London, Chatham and Dover Railway: these were not given Royal Assent. A proposal then was submitted in 1865 which adopted a more southerly route through Lenham Forstal not potentially affecting the appeal way. This revised line received Royal Assent in the Maidstone and Ashford Railway Act 1866⁴⁵: however, this line was not built. A further revised proposal was deposited in 1874 nearer to the original alignment, but was not given Royal Assent. A further proposal was deposited in 1879, this time on a slightly more northerly alignment to 1863, which again received Royal Assent in the Maidstone and Ashford Railway Act 1880.⁴⁶ The line then proceeded to construction, and opened in 1884.

45 c.cccliii

46 c.clix: www.legislation.gov.uk/ukla/Vict/43-44/159/contents/enacted

1863–64 project

I.5. The 1863-deposited railway would have crossed the appeal way consistent with the present alignment. The appeal way is numbered as parcel 10 on the deposited plan, and described in the book of reference as follows:

No. on plan	Description of Property	Owners or reputed Owners	Lessees or reputed Lessees	Occupiers
10	Road from Lenham Heath to Old Shelve Farm	Elizabeth Ruck Edward White Odden		John Chapman Thomas Maylum

I.6. No bridge is marked on the section. The description of the appeal way, as a ‘road’ leading between two local places, is in contrast to both the entries for a ‘Parish road’, owned by the district highways board (an example is shown for parcel 1, now footpath KH402); and an ‘Occupation road’ (an example is for parcel 19).

I.7. **KCC comment:** KCC says⁴⁷:

plans...show the way as a ‘road’ between Lenham Heath and Old Shelve Farm in private ownership and occupation. The fact that Old Shelve Farm is identified as the destination, as opposed to what would have been at that time a major (turnpike) road between Ashford and Maidstone (the A20 Ashford Road), might suggest that this was more probably a farm track (it being in private ownership) between the farm and the heath, possibly as access for grazing.

I.8. We submit that the appeal way is described as a road with private ownership and occupation precisely because it was recognised as a field road. The road was not owned by the parish vestry, but only subject to a right of public passage. The road was described with private owners and occupiers in the same way that footpaths are so described, even though the vast majority are public rights of way. The road was not designated an ‘occupation’ or ‘private’ road, because it was neither of these.

I.9. We suggest there is no significance to the particular destination of Old Shelve Farm: that is the locality to which the appeal way leads. In practice, it is unusual for the destination of a highway to be given by reference to another highway: the convention was to describe the road (if described at all) as a road between places.

I.10. **Conclusion:** The description of the appeal way is consistent with its character. As a field road not maintained by the parish, it would not have been correct to have given the highways board as the owner (as was done for Lenham Forstal Road, and as was done for the appeal way under the Great Kent Atmospheric Railway at item III.H above). The appeal way was owned by the owners of the land over which it passes, but subject to the public right of passage. The road is not expressly described as a public road — but then nor is it described as an occupation road (as was done for parcel 19).

1874–75 project

I.11. **Description:** Original scale: not known, but distances along proposed line measured in miles and furlongs; orientation: unchanged (top is north-west).

I.12. The 1874-deposited railway would have crossed the appeal way almost precisely at the location of the present railway bridge. The proposals did not receive Royal Assent.

⁴⁷ Determination, app.B, para.123

I.13. The appeal way is twice numbered 97a on the deposited plan. The relevant parcel is described in the book of reference as a public road owned by Bearsted District Highway Board, of which Thomas Goodwin is clerk.

I.14. The section has not been made available.

I.15. **Conclusion:** The plans are good evidence that the appeal way was considered to be a public road at this time.

1879–80 project

I.16. **Description:** Original scale: not known, but distances along proposed line measured in miles and furlongs; orientation: unchanged (top is north-east).

I.17. The 1879-deposited railway would have crossed the appeal way about 80 metres north-west of the present railway bridge. The railway was authorised by an Act arising from these deposited plans, but the line constructed closely followed (at this point) the southerly limit of deviation (marked with a broken black border on the plan), and was therefore broadly consistent with the line shown in the 1863 plan.

I.18. The appeal way is unnumbered on the deposited plan, and is braced with two of the parcels through which it passes, viz: 67 and 71. It also passes through parcel 70, but is not shown as braced with it. The relevant parcels are described in the book of reference as follows:

No. on plan	Description of Property	Owners or Reputed Owners	Lessees or Reputed Lessees	Occupiers
67	Field, occupation road, footpath and part of pond	James Troup Hatch		James Troup Hatch
70	Field, occupation road and stream	John Sayer		Robert Chapman
71	Field, occupation road, and part of pond	John Sayer		Robert Chapman

I.19. The descriptions of parcels 70 and 71 are consistent with those entered in the Second Schedule to the conveyance of the land required for the construction of the railway (save that parcel 71 now includes a ‘stream’ instead of ‘part of pond’).⁴⁸

I.20. **KCC comment:** KCC notes that the appeal way is described as an occupation road.⁴⁹

I.21. **Conclusion:** No bridge is marked on the section. The description of the appeal way, as an ‘occupation road’, suggests private status. However, occupation roads frequently co-existed with public footpaths or bridleways: provision for an occupation road would allow for public rights to be carried across the railway (whether on foot or on horse-back).

⁴⁸ Conveyance between John Sayer the Elder and the Maidstone and Ashford Railway Company dated 19 February 1883. Supplied by Network Rail.

⁴⁹ Determination, app.B, para.74–78

I.22. But the bridge, as built (see Illustration xxiv above), was constructed with a width of 20 feet (6 metres) and a tall arch, which we estimate to be around 16 feet (5 metres) at the crown.⁵⁰ Under s.49 of the Railways Clauses Consolidation Act 1845,⁵¹

The width of the arch shall be such as to leave thereunder a clear space of not less than...twenty-five feet if over a public carriage road, and of twelve feet if over a private road:

and

The clear height of the arch from the surface of the road shall not be less than...fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:[.]

I.23. Under s.51:

Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width herein-before prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a...public carriage road, than twenty feet[.]

I.24. Thus, in the case of a public carriage road, the railway company could provide an arch with a width of 20 feet, provided that the neighbouring section of road was of similar or less average width. Whereas in relation to a private carriage road, there was no necessity to provide a width of more than 12 feet. In effect, the company was to provide at least sufficient width (*i.e.* a minimum of 20 feet, usually 25 feet⁵²) for two ordinary horse-drawn carriages to pass on any public carriage road, but only sufficient width for one-way traffic on a private carriage road.

I.25. We conclude that the railway company, notwithstanding the identification of an occupation road in the deposited plans, was sensible to public rights over the appeal way, and built (at considerable additional expense) a bridge to public-carriage road dimensions, far in excess of what was required in relation to an occupation road. At the time the railway was built, the appeal way was a field road both to the north and south of the railway line, and its width was not physically defined. In that event, it was not difficult for the company to show that the field road was no greater than 20 feet in width (and perhaps considerably less).

I.26. Precisely the same width was given on East Lenham Road, which (at the point of crossing over the railway) remains a road recorded in the List of streets (item III.P below), which itself (at the time the railway was built) was also an unenclosed field road.

⁵⁰ It has not been possible to measure height on site.

⁵¹ Incorporated in the Maidstone and Ashford Railway Act 1880 by s.2.

⁵² 25 feet is sufficient for two ordinary horse-drawn carriages to pass with a reserved footway on one side of the road. It remains sufficient today for two motor vehicles to pass with a single reserved footway.

I.27. Some landowners did insist (as a condition of voluntary sale) on bridges to accommodate private carriage roads which were in excess of the minimum statutory dimensions, or which were ornamented. However, while the vendor or vendors may have sought additional height (for example, to accommodate traction engines), it is highly unlikely that this isolated location on a lightly-used private occupation road would have demanded additional width beyond the statutory minimum. An example of an occupation road bridge can be seen north of Burleigh Farm, about 1 kilometre east-southeast of the appeal way bridge.⁵³

Occupation road bridge at Burleigh Farm



Illustration xxv: © [David Anstiss \(cc-by-sa/2.0\)](#)

I.28. **Points:** 3

J. Designation of consolidated chapelry

J.1. **Date:** 1874

J.2. **Source:** London Gazette

J.3. **Description:** The Church Building Act 1845, the Church Building Commissioners (Transfer of Powers) Act 1856 (which transferred the powers of the Church Building Commissioners to the Ecclesiastical Commissioners) and the Church Building Acts

⁵³ www.geograph.org.uk/photo/1325574

Amendment Act 1871 enabled the Ecclesiastical Commissioners to designate consolidated chapelries within parishes — effectively creating a sub-parish.

J.4. This was done for part of Charing and Lenham, focused on Holy Trinity, Charing Heath. Although the designation did not affect civil parishes, it required the chapelry boundary to be appointed. Certain places along the boundary were marked with new boundary stones, marked CHHTCC (Chapel Heath Holy Trinity Consolidated Chapelry).

J.5. The notice published in the *London Gazette* on 24 February 1874⁵⁴ gives notice of the representation made by the Ecclesiastical Commissioners to Queen Victoria that she might make an order in council to designate the chapelry, and the Queen's confirmation of that order.

J.6. The Schedule to the representation describes the boundary, including as follows:

...along the fence which divides the close numbered 1060 upon the last-described maps from the close numbered 1062 upon the same maps,⁵⁵ to a boundary stone inscribed 'C. H., H. T. C. C., 1873, No. 2,' and placed at the north-western end of the last-described fence, on the eastern side of the road or footpath leading from Burnt House to Old Shelve; ...

J.7. Burnt House is at the crossroads at B: it is marked on all three Ordnance Survey County Series 1:2,500 plans (see [3rd ed](#)). The Old Shelve to Burnt House route is described as a 'road or footpath', and boundary stone no.2 is placed at the side of it, located at [TQ92065039](#).

J.8. **Conclusion:** The boundary is described as following a number of roads, all of which today are known to be public roads, save the appeal way and East Lenham Road (itself the subject of an application to record on the definitive map and statement⁵⁶), and an 'occupation road lending to the homestead called or known as Burleigh'⁵⁷, which evidently is distinguished by being expressly described as an occupation road. These descriptions, as a 'road or footpath', lend some support to the status of the appeal way as a public road (the expression 'or' tending to mean 'and', as in 'footpath or bridleway').

J.9. **Points:** 1

K. Ordnance Survey County Series 25-inch maps

K.1. **Date:** various

K.2. **Source:** British Library, National Library of Scotland⁵⁸

54 www.thegazette.co.uk/London/issue/24068/page/813

55 The maps referred to are the Ordnance Survey County Series first-edition 1:2,500-scale maps published in 1873. The parcel 1060 is that bisected by the railway line immediately east of the railway bridge, and parcel 1062 is that immediately to its south, immediately north of Shepherd's Farm.

56 See the last bullet at para.I.H.27 above.

57 Burleigh Farm is approximately 1 km east-southeast of B.

58 Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheet Kent 54/2.

County Series first edition 6" map (surveyed: 1871)

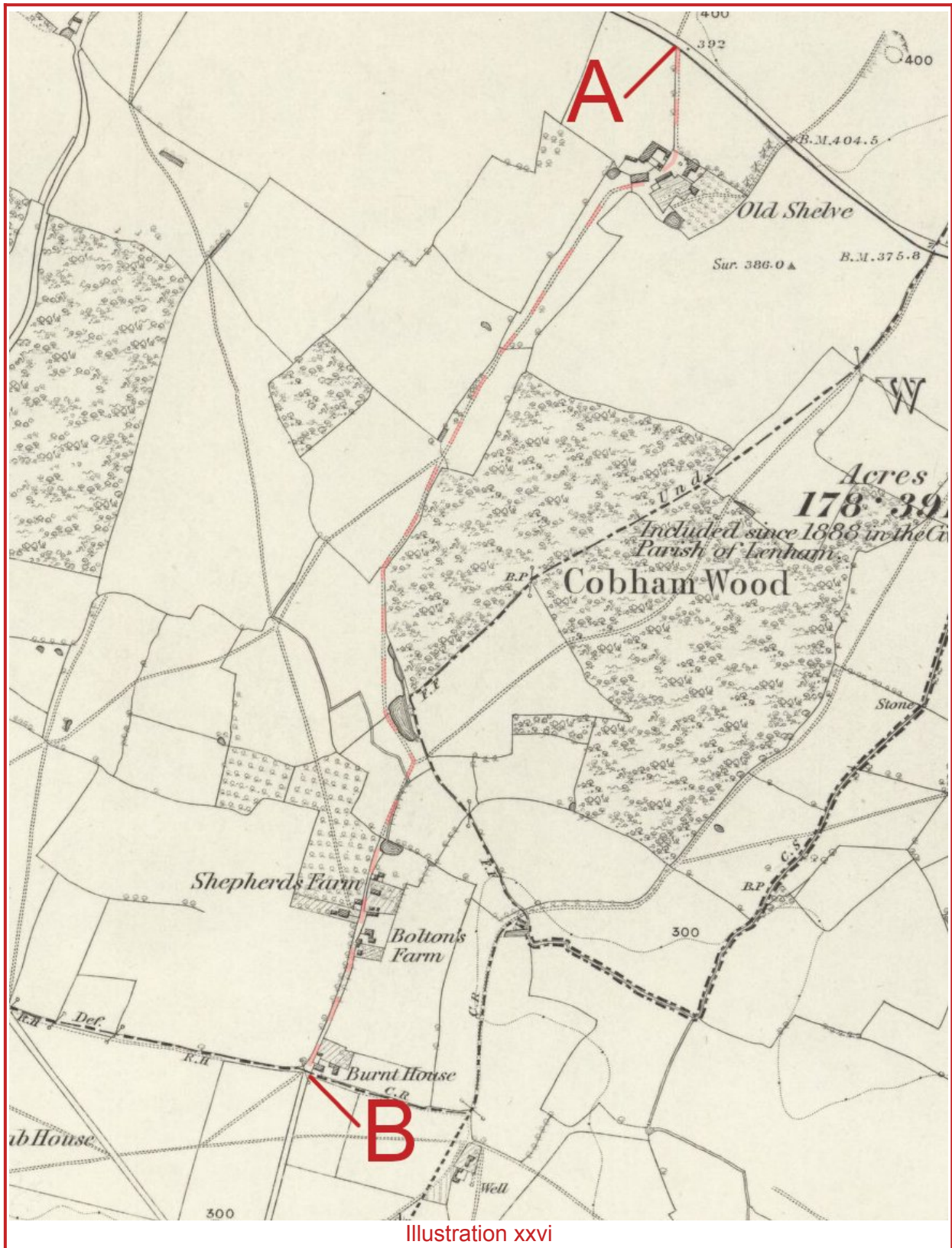


Illustration xxvi

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

K.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and twenty-five inches to one mile. Coverage of this part of Kent was in three successive editions. All three editions show the appeal way throughout. The third edition plan is used as the base plan for the Finance (1909–1910) Act 1910 (item III.L below). The first and second twenty-five inch plans are appended at Annexe D and Annexe E at pp.78 and 80 respectively.

K.5. Colouring in sienna on the first-edition 1:2,500 plan was, at this time, used to fill in all roads, tracks and paths and some farm yards, much as blue was used for water features (the sienna colouring is not uniformly apparent on the copy provided at Annexe D at p.78, but the original has been inspected for confirmation).

K.6. **KCC comment:** KCC says⁵⁹:

The depiction of the way on the First Edition Ordnance Survey Map (1872) appears to support the proposition that the claimed route was a private accommodation track, because the way is not separately numbered and the descriptions of the various land parcels through which the claimed route passes make no reference at all to the presence of a road (the land being described simply as 'pasture'). Lenham Forstal Road, for example, which connects Lenham Forstal with the A20 Ashford Road, is identified in the Book of Reference as a 'Public Road' and the southern section of the claimed route is described (albeit possibly incorrectly) as a 'Private Road' (making it unlikely that its northern continuation was anything more in status). Although it was not the primary purpose of the First Edition Ordnance Survey Map to establish the status of the routes surveyed, it is most unusual for the Books of Reference (certainly in Kent) to distinguish between public and private routes, and the overall impression given by this evidence is therefore that the claimed route was considered to be a private farm track at that time.

K.7. We entirely disagree. What the first edition plan shows is that the appeal way was, between Old Shelve and Shepherd's Farm, not considered sufficiently well defined or important to merit attracting a discrete parcel number. It is commonplace that some unenclosed minor roads, and many cart tracks and paths, are shown on the first or subsequent edition plans without a discrete parcel number and braced with surrounding land. In that case, the description of the land in the first edition area book will very likely accord with the majority land use.

K.8. Ordnance Survey internal guidance in 1907 ruled that⁶⁰:

Roads and ways: 'Roads, railways, rivers, and other similar areas are separately numbered and computed with respect to each 1/2500 plan, and to each parish on that plan... Cart roads not fenced off and short roads or lanes leading into fields, etc., are braced with the adjoining parcels, *i.e.* not separately numbered...'

We see no reason why the same guidance should not have applied at the time of publishing the first and second edition plans, which would suggest that the appeal way was perceived to fall within the class of 'Cart roads not fenced off and short roads or lanes leading into fields, etc.'

59 Determination, app.B, para.124

60 *Instructions for computation and examination of areas*, p.23, 1907: OS, unpublished, cited in *Ordnance Survey Maps: A Concise Guide for Historians*, 3rd ed., Richard Oliver.

K.9. We object that, whereas KCC states elsewhere that Ordnance Survey County Series plans⁶¹:

...were essentially topographical surveys and were not concerned with land ownership or public/private rights,...

Yet it then is stated that the first-edition plan:

support[s] the proposition that the claimed route was a private accommodation track[.]

KCC does not explain how a survey that is ‘not concerned with land ownership or public/private rights’ can support a proposition of private status. We submit that all that is shown is that the drawing clerk perceived the appeal way not to demand a discrete parcel number — nothing more. If the Ordnance Survey did not concern itself with distinguishing private from public rights, how can the drawing clerk’s decision not to allocate a discrete parcel number to the appeal way be determinative of, or even influenced by, whether public rights subsisted over that way?

K.10. KCC then observes that the southern, generally enclosed, portion of the appeal way, from Shepherd’s Farm to B, is described in the Ordnance Survey book of reference, or area book, which accompanied the first-edition 1:2,500 plan, as a ‘Private Road’, ‘making it unlikely that its northern continuation was anything more in status’. Yet this comment appears to contradict a belief, on the part of KCC, that the southern portion of the appeal way is a public road and wrongly recorded in the book of reference (there is, of course, no entry for the appeal way between A and Shepherd’s Farm, because it has no discrete parcel number).

K.11. KCC further says that,

it is most unusual for the Books of Reference (certainly in Kent) to distinguish between public and private routes[.]

K.12. In our submission, the distinction is confined to certain parishes which were surveyed at a particular (early) time, or under a particular lead surveyor. That the distinction is relatively unusual does not confer on it any particular probative status.

K.13. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the appeal way. It is not possible to draw any conclusions about its status.

K.14. **Points:** 0

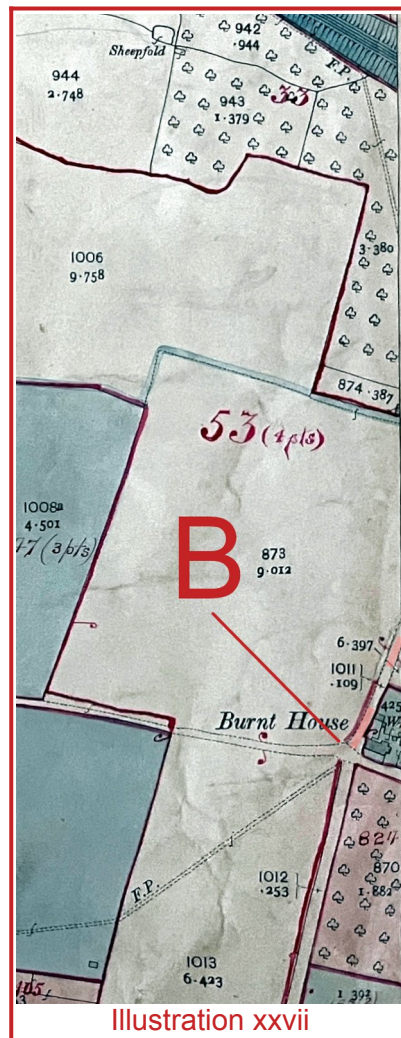
61 Determination, app.B, para.32

L. Finance (1909–1910) Act 1910

L.1. Date: c.1911

L.2. Source: National Archives⁶²

Finance Act record plan Kent LIV/1



62 IR 124/8/262, IR 124/3/121

Finance Act record plan Kent LIV/2

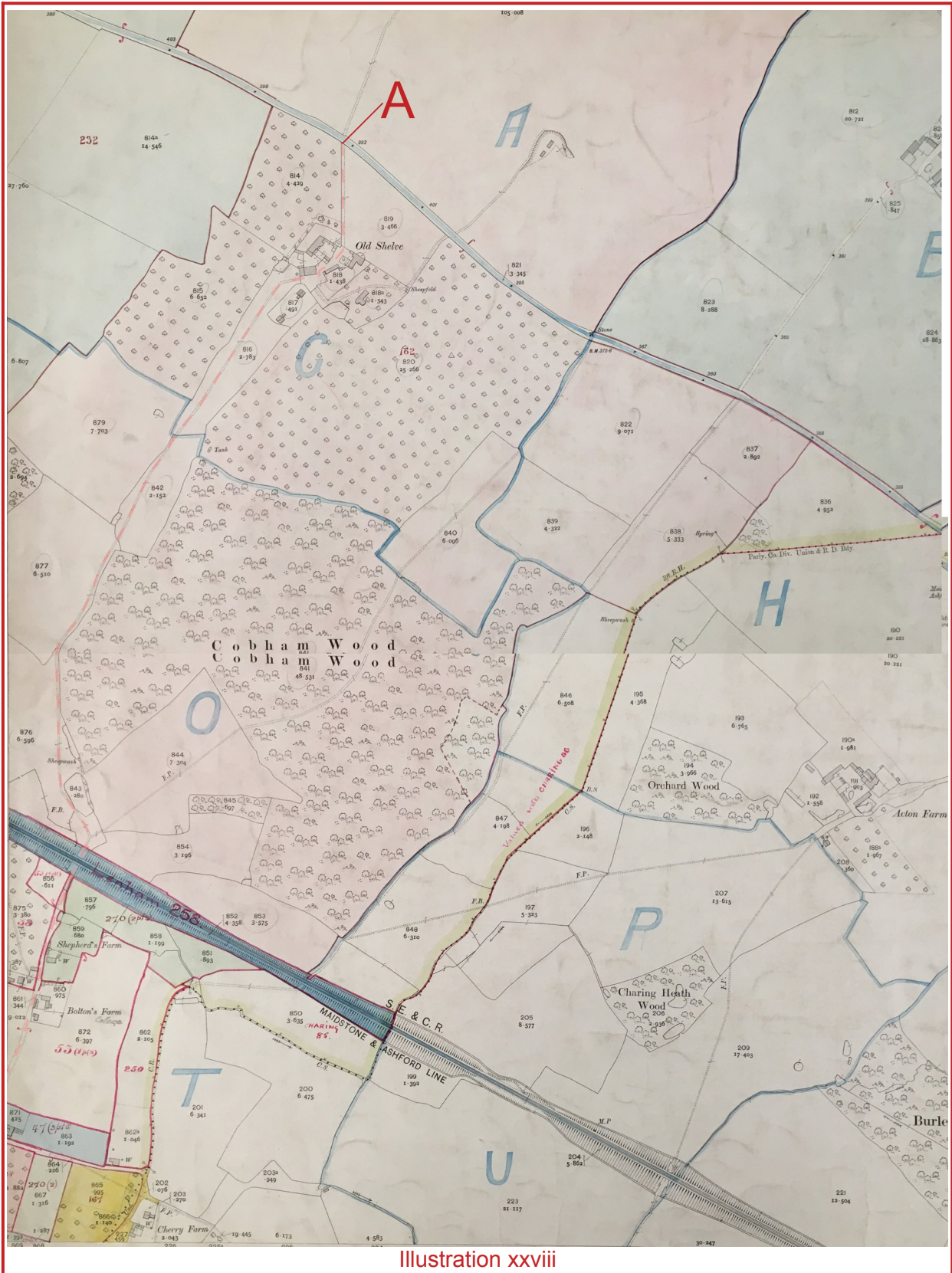


Illustration xxviii

Finance Act field book hereditament 162 pp3-4

Index Letter	Description of Buildings	Dimensions			Cubical Contents	Condition	Remarks
		Frontage	Depth	Height			
	Reference No.						
	Farm buildings (old but in good repair)						
1	Tim & gable						Cattle shed
2	do						Barrow & Store
3	Tim & tiled open cow sheds						
4	Tim & tiled Barrow						
5	Tim & tiled Stabling						(being converted for 9 but not added to)
6	Br. & tile base 2 x 12 ft open Stables						Storage shed open roof under
7	Small Tim & tile pig						
Notes (1912) Nos. 1, 5 part are being converted into Cowhouse for dairy cows on modern lines							

	Reference No. <i>162</i>
	GROSS VALUE.....£ <i>7350</i>
Less Value attributable to Structures, timber, &c. (as before).....£	<i>2700</i>
	FULL SITE VALUE.....£ <i>4650</i>
Gross Value (as before).....£	<i>7350</i>
Less deductions in respect of—	
Fixed Charges, including—	
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£
Any other perpetual rent or Annuity.....	£
Tithe or Tithe Rent Charge	£ <i>1600</i>
Other Burden or Charge arising by operation of law or under any Act of Parliament	£
If Copyhold, Estimated Cost of Enfranchisement.....	£
Public Rights of Way or User	£ <i>50</i>
Rights of Common.....	£
Easements	£
Restrictions	£
	£ <i>1650</i>
	TOTAL VALUE.....£ <i>5700</i>
Less Value attributable to Structures, timber, &c. (as before)	£ <i>2700</i>
Value directly attributable to—	
Works executed	£
Capital Expenditure	£
Appropriation of Land.....	£
Redemption of Land Tax.....	£
Redemption of Other Charges.....	£
Enfranchisement of Copyhold, if enfranchised	£
Release of Restrictions.....	£
Goodwill or personal element.....	£
Expense of Clearing Site.....	£ <i>2400</i>
	ASSESSABLE SITE VALUE
	£ <i>3000</i>
If Agricultural land, the value for Agricultural purposes	
including Sporting Rights	£ <i>5500</i>
excluding	£
Value of Sporting Rights.....	£ <i>200</i>
If Licensed Property, the annual license value.....	£
Liable to Undeveloped Land Duty as from	£
For further reference as to Apportionments &c., see	

Illustration xxx

- L.3. **Description:** original scale: 1:2,500; orientation: unchanged (top is north).
- L.4. The appeal way is shown throughout as a track or road on the Ordnance Survey County Series third-edition 1:2,500 plans used as the base for assessment records.
- L.5. Between A and the railway bridge, the way passes unenclosed through hereditament 162, Old Shelve Farm (save for the farm premises itself), given as 269 acres in extent.⁶³ The track or road is not excluded from assessment.
- L.6. The way is not excluded from assessment in its short passage underneath the railway line, which is hereditament 258.
- L.7. South of the railway line, the way is shown as enclosed, and excluded from assessment between the railway line and the approximate boundary between Shepherd's Farm and Bolton's Farm. From Bolton's Farm to approximately 60 metres short of B, the way is neither bounded nor excluded from valuation: this is part of hereditament 53; however, a broken brace across the appeal way suggests that the extent of the way itself is not included in the areal calculation for the hereditament. For the final 60 metres to B, the way resumes excluded from valuation.
- L.8. In the field book entry for hereditament 162, Old Shelve, notes on p.1, usually written up direct from form 4 completed by the landowner, refers to 'Fixed Charges, Ease-

⁶³ The function of the blue-bounded and lettered zones shown on the plan is not known.

ments, Common Rights and Restrictions, against which is written in 'None' and 'Foot-paths'. However, on p.2, usually completed from survey, notes refer to 'Charges, Easements, and Restrictions affecting market value of Fee Simple' against which has been entered: '2 public footpaths [and] 1 do [i.e. public] roadway' accounting for a combined deduction of £50. At the foot of p.2, provision is made for 'Restrictions' comprising 'foot-paths' amounting to £50.

L.9. In a sketch of the farm buildings entered into p.3, a continuous track is shown threading the Old Shelve Farm buildings from south-west along the line of the appeal way to exit north-east towards the Ashford Road. This is annotated 'Public Right Way' [*sic*] to the north-east. The appeal way is shown exiting the buildings to the north-west towards the Ashford Road, but no identified connection is shown between it and the first-identified track within the area of the farm buildings.

L.10. On p.4, a deduction is entered for 'Public Rights of Way or User' of £50.

L.11. No allowance is made for Easements, and on p.1, it appears that the landowner has expressly disavowed any such easements in his form 4 return.

L.12. **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 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.

L.13. 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.

L.14. 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...'⁶⁴. Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land. Whether a discount was, in fact, given will depend on several factors:

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

L.15. All land had to be valued unless it was exempted by the Act. S.94 provided criminal penalties for making false declarations.

L.16. **Conclusion:** One would not expect the appeal way north of the railway bridge to be excluded from valuation, because it is an unenclosed field road without any specified area. The correct mechanism for recognition (if recognition is sought) is through a deduction from the valuation, as might be (and in this case, was) done in relation to public paths.

L.17. Thus recognition is given by the valuer, on p.2, to '1 do roadway', meaning (by reference to the previous entry for '2 public footpaths'), a public roadway.

⁶⁴ Discounts for easements affecting the land were separately requested and recorded in the valuation book.

L.18. There are three candidates for the roadway:

- the appeal way;
- the Ashford Road (now the A20);
- the track north from the Ashford Road at A to the Pilgrims' Road at [TQ92675189](#).⁶⁵

L.19. The Ashford Road is not included in the area of the hereditament, and so need not be recognised in a deduction. The track north from A to Pilgrims' Road is a candidate for deduction, being shown coloured sienna on the Lenham tithe map (item III.F above). However, it is simply a continuation of the appeal way, which logically is a through road from Waterditch Farm, via BOAT KH223 and a short 200-metre dog-leg along Pilgrims' Road (KH220), to and across the Ashford Road and south to Lenham Heath via A and B. Nothing is seen of the third-described track above in the twentieth century (it does not appear in any of the following records), and if it were the subject of a deduction, it would have been described as a public path or cart track, and not as a 'public roadway'. It is suggested that the deduction is allowed either for the appeal way, or for both. But that given the continuing evidence for the subsistence of the appeal way, it is highly unlikely that a deduction was sought only for the track north of the Ashford Road, when it is the appeal way which continued to be recognised in twentieth-century documents.

L.20. The plan on p.3 is annotated to show both the entry and exit points of the appeal way as it passes through the premises of Old Shelve. A continuous route is shown exiting from the north-east corner of the premises, and this is annotated Public Right Way. However, public roads are not normally described as public rights of way. This is instead likely to refer to the track which follows this line as far as the Ashford Road, which is shown as a track on the Finance Act base map, and which may well have been recognised at the time of the valuation as a public footpath, but which was not recorded on the draft definitive map and statement.

L.21. As regards the remainder of the appeal way south of the railway bridge, this is partly shown excluded from valuation. This too is as one would expect: the appeal way, at this time, was largely enclosed between the railway bridge and Bolton's Farm. This is supportive of the appeal way being a public road.

L.22. South of Bolton's Farm to a point about 60m short of B, the way again becomes unenclosed, and it is not excluded from valuation (but the exclusion resumes for the final 60m to B). This is an expedient by the keeper of the record map: it was not seen as necessary to continue the lines of exclusion across the field on both sides of the appeal way, and instead, an open brace shows that the appeal way does not form part of hereditament 53. The same practice can be seen adopted on the Ashford Road.

L.23. In summary, the Finance Act evidence is not only consistent with public road status, but contains elements (the reference to a 'public roadway', the exclusion of certain enclosed parts from valuation) which are directly supportive of such status.

L.24. **Points:** 5

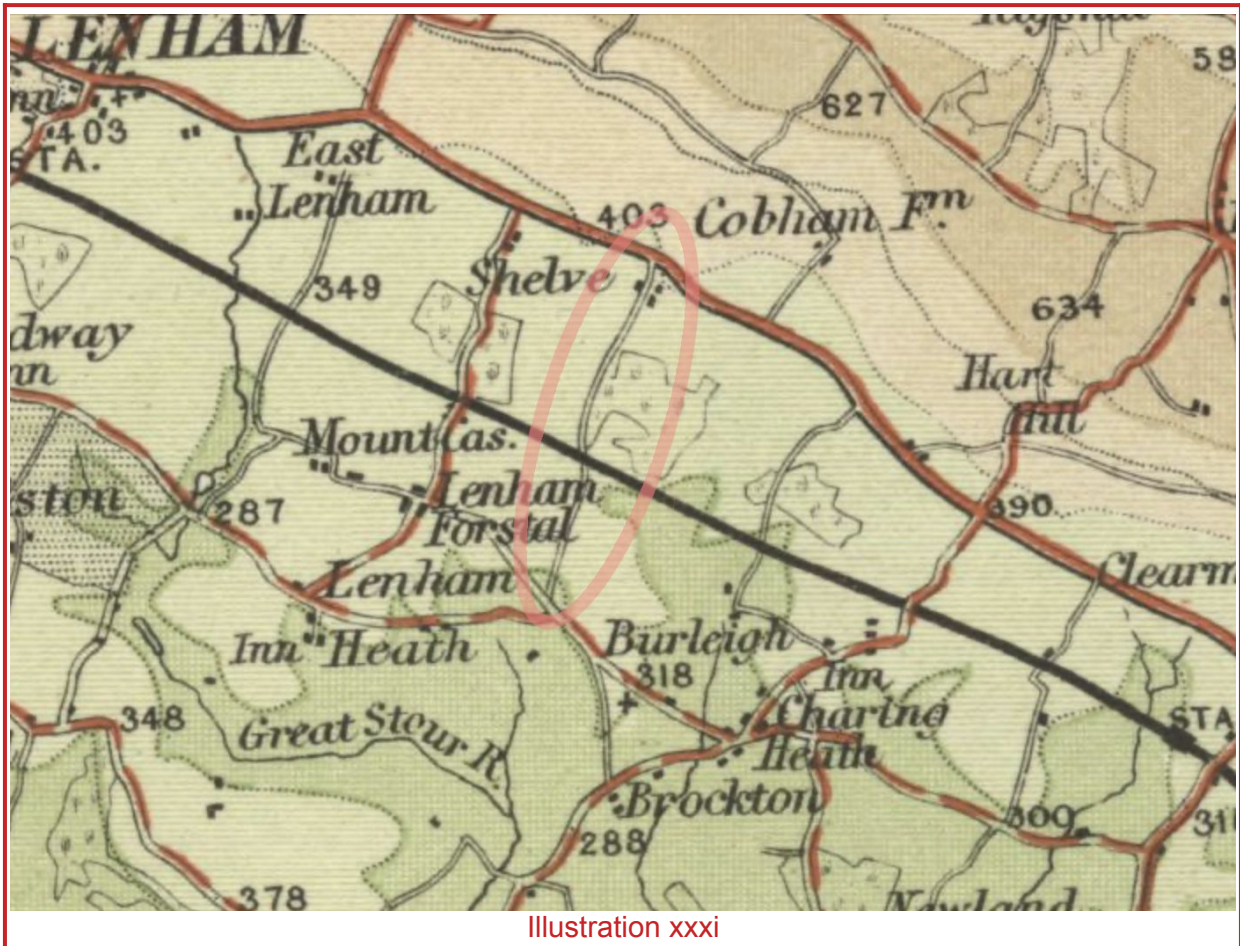
⁶⁵ Now recorded as BOAT KH220, and designated the North Downs Way.

M. Bartholomew's map

M.1. **Date:** 1904, 1922, 1941 and 1953

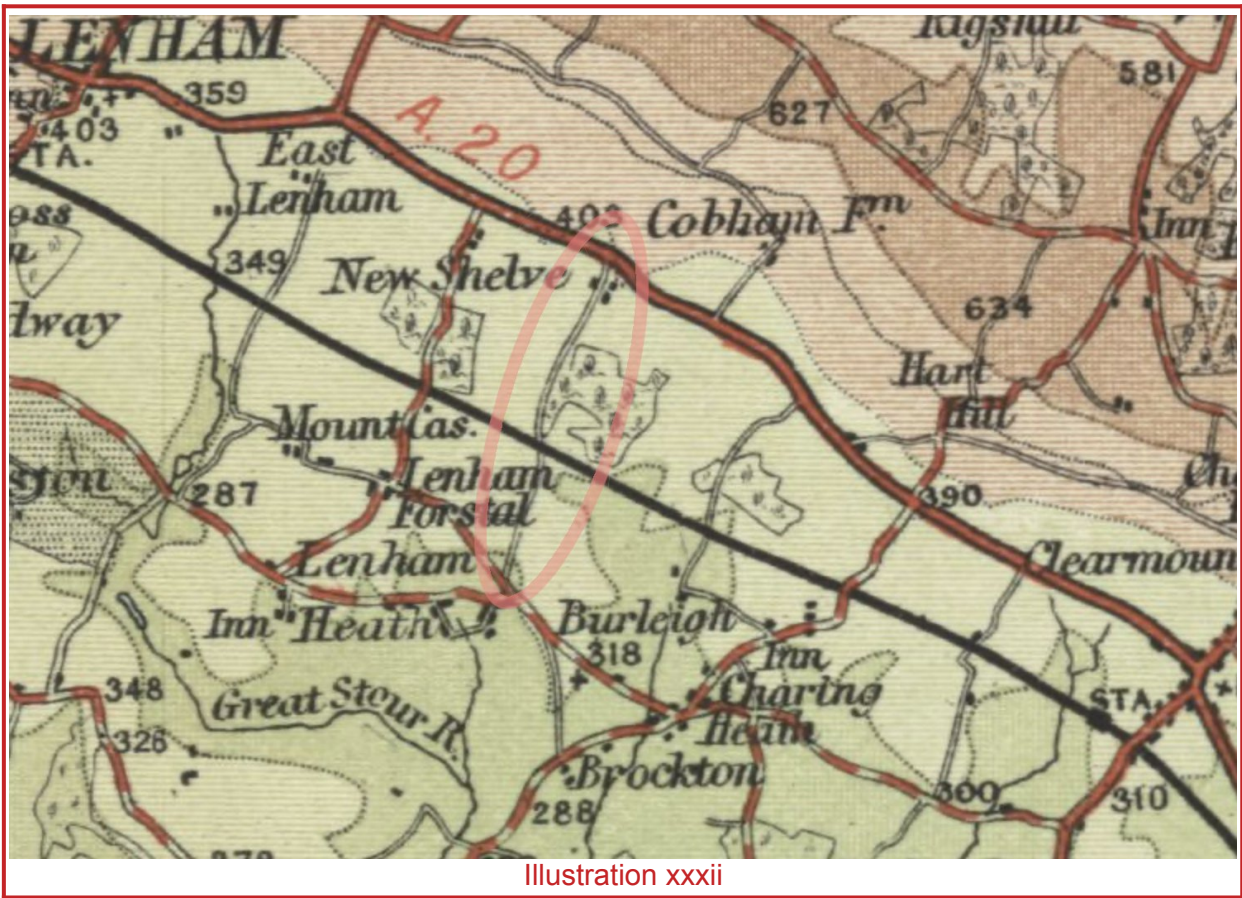
M.2. **Source:** National Library of Scotland⁶⁶ (1904, 1922 and 1941 maps); personal copy (1953 map)

Bartholomew's maps: 1904 edition

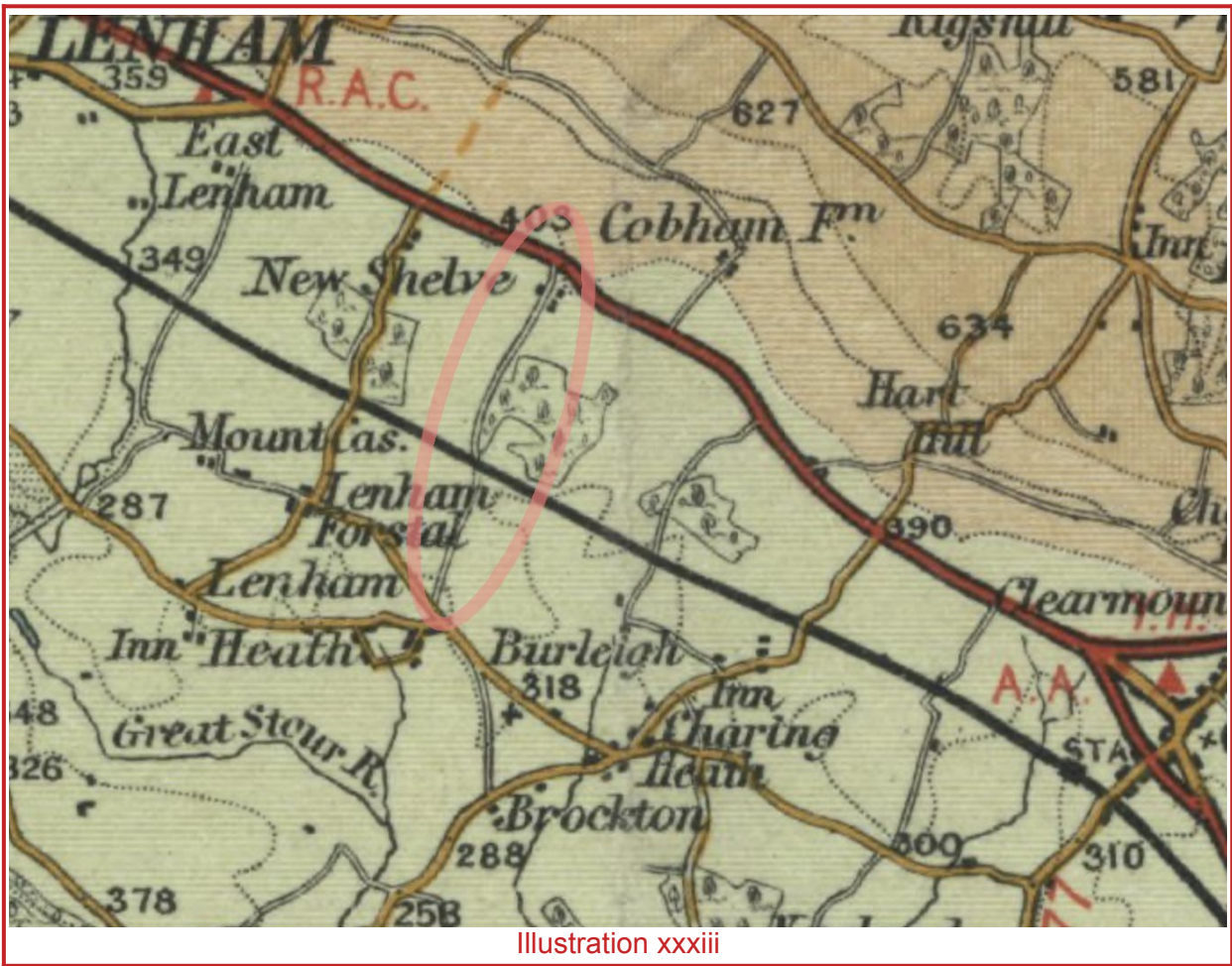


66 maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1922 edition



Bartholomew's maps: 1941 edition



Bartholomew's maps: 1953 edition

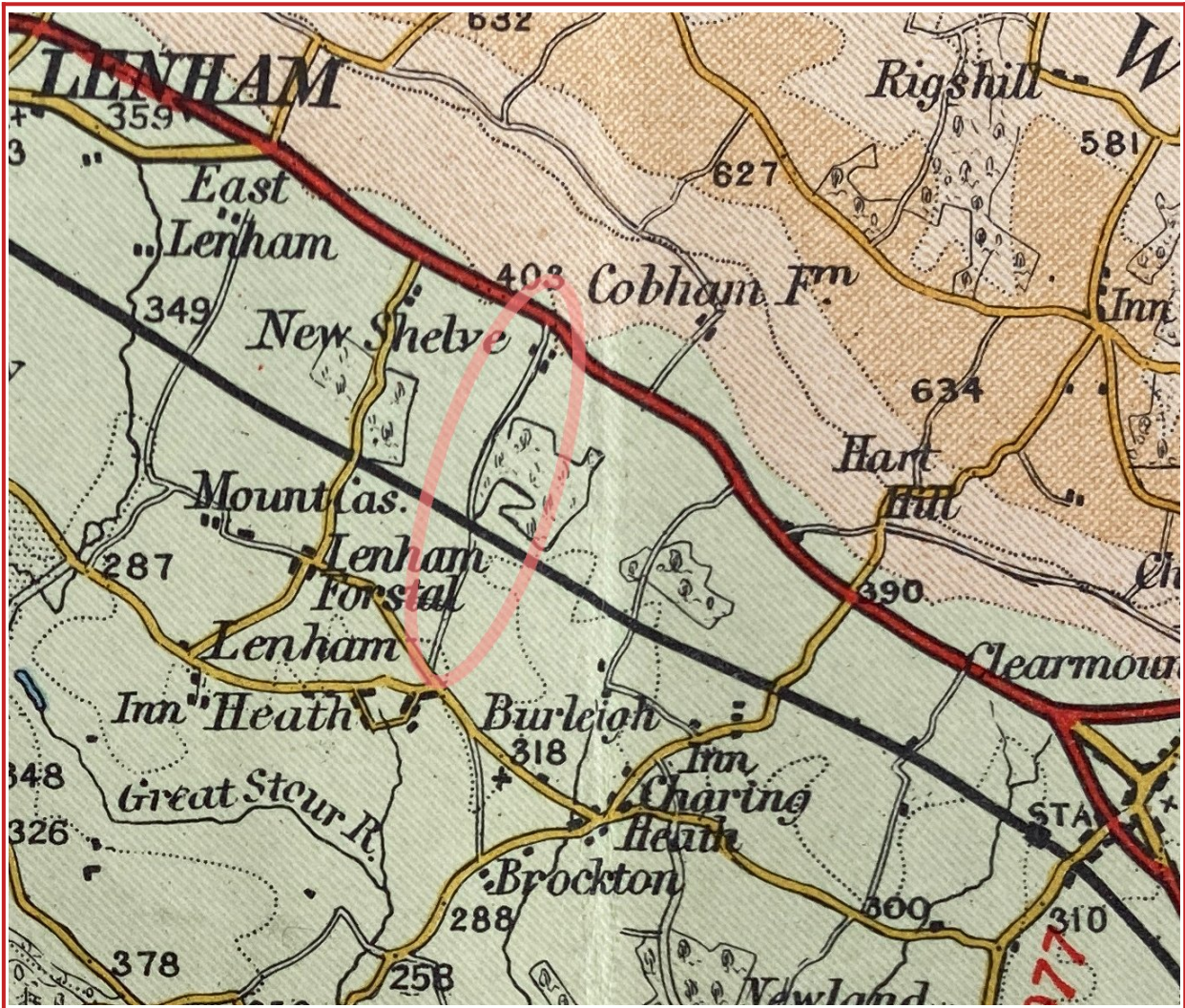
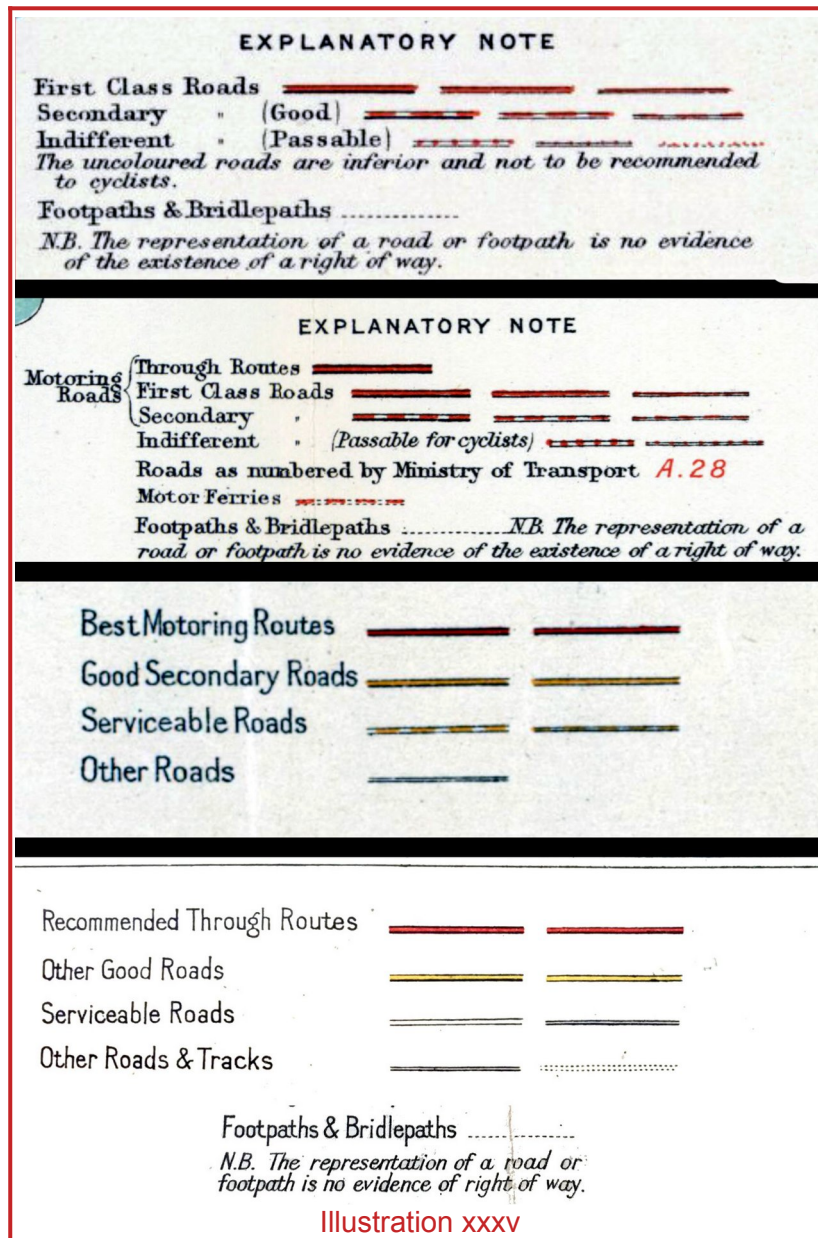


Illustration xxxiv

Bartholomew's maps keys: 1904, 1922, 1941 and 1953 editions



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

M.4. Bartholomew's maps from the first half of the twentieth century show an evolving road network in the twentieth century. The appeal way is shown on all four editions, initially as uncoloured roads which 'are inferior and not to be recommended to cyclists', then on the 1941 edition as an 'other road', and finally as either a 'serviceable' or 'other' road (it is not practical to distinguish these).

M.5. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the appeal way was a through route during this period.

M.6. The maps in this context are not convincing evidence of public rights.

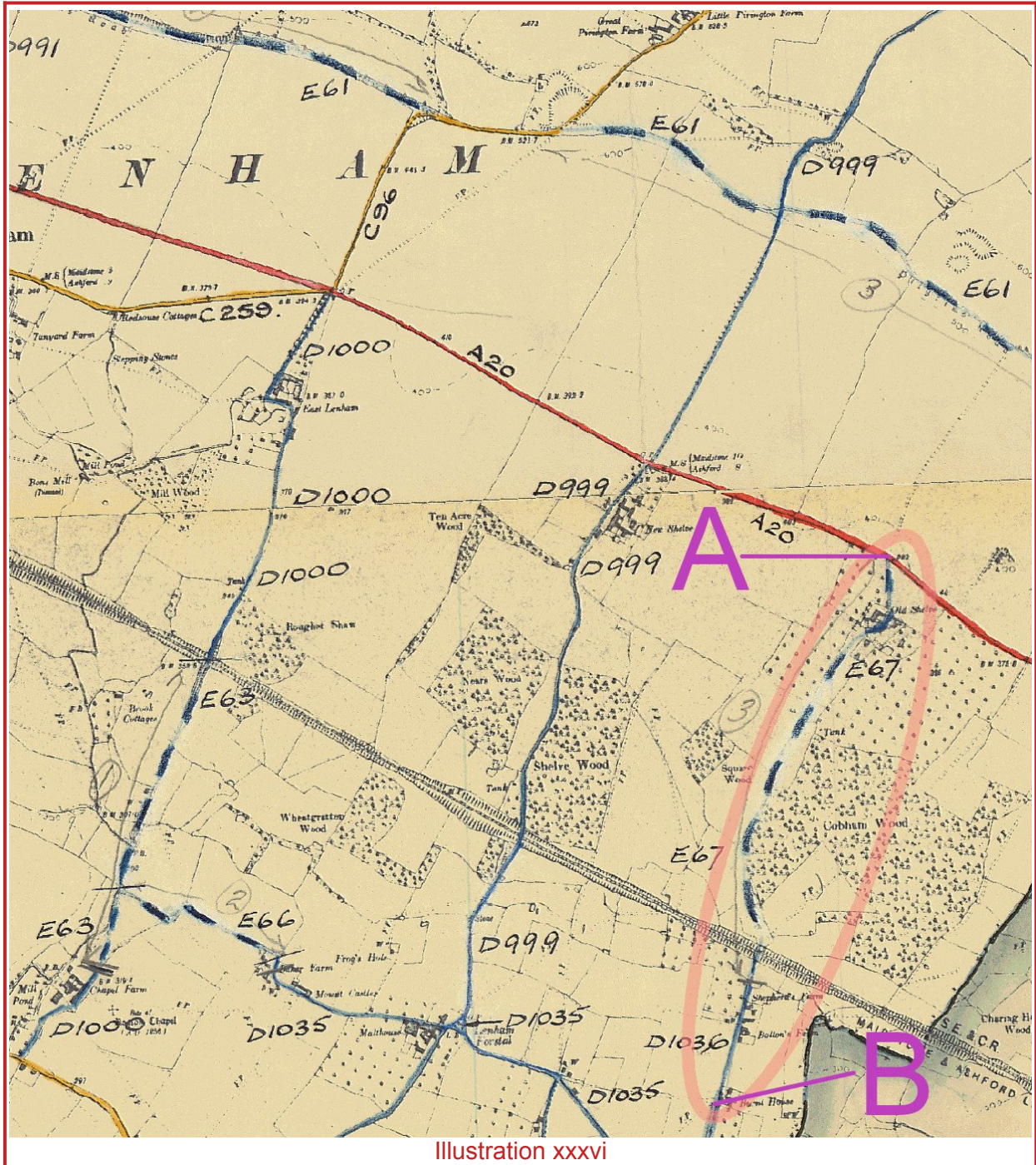
M.7. **Points:** 0

N. Highway inspectors' map

N.1. Date: 1952–53

N.2. Source: KCC⁶⁷

Highway Inspectors' map



67 Highway inspector's map supplied by KCC on request.

Highway Inspectors' notes

Sheet 164

KENT COUNTY COUNCIL - ROADS DEPARTMENT.
Schedule of MAINTAINED unclassified county roads.
COUNTY DIVISION NO.

KCC
HIST
1876

Route No.	<i>6" Sheets</i>	Description.	Mileage.
D1036 11	LIV NW	<i>From D1035 on Hollingbourne/ West Ashford R.D. Boundary northward to Shepherds Farm where non-maintained section to be known as E67 begins.</i>	705.39 0.38

Illustration xxxvii

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

N.4. KCC, as highway authority, prepared a map of all roads in the county which were under the control of KCC. It seems likely that these roads were publicly maintainable, but KCC interprets those shown with a dashed blue line as non-maintained — *i.e.* not maintained *de facto* by the highway authority. However, given that many, if not most, of such ways appear to be pre-1835 in origin, it seems that KCC distinguished those ways which were actively maintained, from those which were not (notwithstanding that the ways were publicly maintainable).

N.5. The highway inspectors' map shows the appeal way as a public road, with the reference numbers E67 and D1036.

N.6. That portion of the appeal way between A and the northern limit of acknowledged public maintainability (see List of streets at item III.P below), just south of the railway bridge, is shown as E67 and identified with a dashed blue line. However, it is apparent that a solid blue line, previously drawn in, has been interrupted with correcting fluid.

N.7. From just south of the railway bridge to B, the way is shown as D1036 and identified with a continuous blue line. In the notes to the map, D1036 is described as:

From D0135 on Hollingbourne/West Ashford R.D. boundary⁶⁸ northward to Shepherds Farm where non-maintained section to be shown as E67 begins.

The length of D1036 is given as 0.38 miles (about 610 metres — this puts the threshold of admitted public maintenance to a point opposite a small pond about 50 metres south of the railway bridge).

N.8. **Conclusion:** The inspectors' map shows that the appeal way was considered to be a public highway, of which only the southern portion was regularly maintained. The correction to the northern portion of the way suggests that there was some uncertainty about whether this portion was maintained: it appears that the original marking (that it was) has

⁶⁸ *i.e.* from A

been corrected to show that it was not. Nonetheless, the map shows that the appeal way was throughout a public road, albeit that the northern portion was not regularly maintained.

N.9. The inspectors' map is unlikely to have been a one-off exercise in collecting information. It was likely to be part of a continuing, updated set of data which originate, at least, in the handover records arising from maintenance responsibilities for minor roads being transferred from rural district councils to county councils under Part III of the Local Government Act 1929.

N.10. **Points:** 3

O. First definitive map and statement

O.1. **Date:** 1950–58

O.2. **Source:** KCC (definitive map records)

Parish map

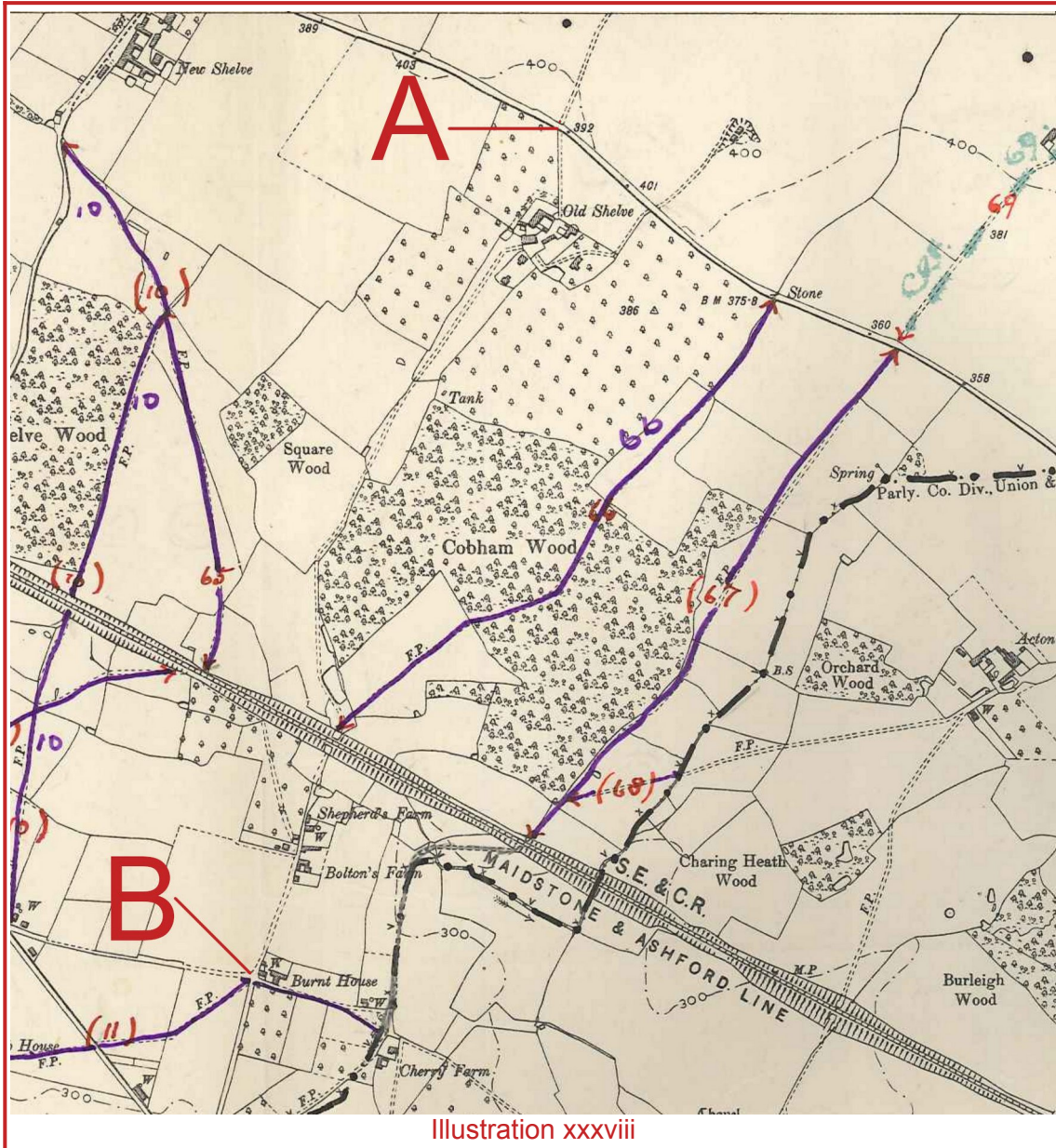


Illustration xxxviii

Draft map

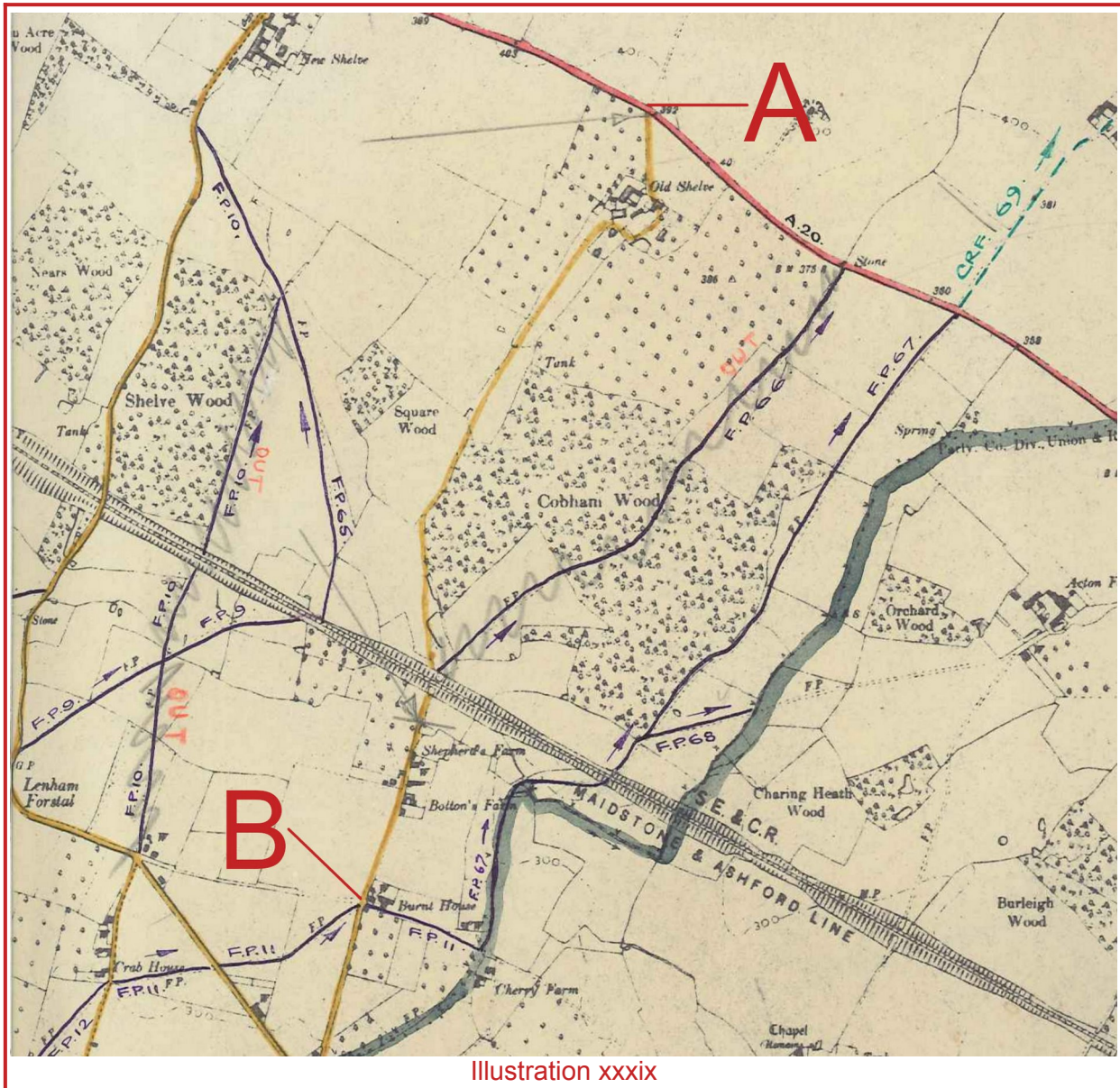


Illustration xxxix

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

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

O.5. The appeal way was not recorded on the parish map. However, the parish map did record path 66, which is described in the accompanying statement as a Public Footpath running from:

Railway North-east to and through Cobham Wood to main Ashford-Maidstone Rd

O.6. This footpath is shown on the Ordnance Survey County Series 25-inch maps (item III.K above), and joins (at its southern end) the appeal way about 15 metres to the north of the railway bridge.⁶⁹

O.7. The draft map shows the appeal way coloured yellow. The practice was for KCC to prepare base maps on which minor county-maintained roads were coloured yellow. Two arrows can be seen on the map, linked to pencil lines drawn across the appeal way at A and at Shepherd's Farm. The usual practice was for a note to be affixed, which contained text similar to that following:

NOTE FOR PROVISIONAL STAGE

This section is non-maintained [unclassified]⁷⁰ county road, and will probably be indicated at Provisional Stage in broken yellow line.

The note would be signed and dated, presumably by a highway officer.

O.8. Similar arrows can be seen on the draft map extract, in relation to other unsealed county roads west of Baker Farm and on East Lenham Road south of the railway bridge. These ways are also the subject of applications to record on the definitive map and statement.⁷¹

O.9. On the draft map for Lenham, 10 such notes remain affixed. It seems likely that those notes affixed in relation to the East Lenham roads were removed because they obscured detail of other public rights of way.

O.10. Footpath 66 is now recorded in the draft statement as:

FOOTPATH. Shepherd's Farm to Cobham Farm. Commences from u/c road at railway bridge, 170 yards N.N.E. of Shepherd's Farm and leads in a general direction N.E. through Cobham Wood, to meet Ashford Road, A.20, 333 yards E.S.E of Old Shelve.

However, the entry is annotated, in pencil, 'Out'.

O.11. **Conclusion:** It seems likely that Lenham parish council understood or was advised at parish survey stage that the appeal way did not need to be recorded on the parish map, because it was considered to be an unsealed, unclassified county road. This likelihood is reinforced by its status shown on the Highway inspectors' map (at item III.N above). Similar practice was adopted elsewhere in the parish: for example, the parish map does not record any public right of way along the line of the 'Pilgrims' Way', now BOAT KH219/KH220, notwithstanding that this was, and remains, one of the most notable unsealed roads in the county, a major physical feature along the scarp of the North Downs, and many public paths were drawn to terminate along it.

O.12. It hardly is likely that the parish council overlooked such ways. The parish council was nothing if not assiduous: it managed to record 115 public paths (excluding the appeal way and other unsealed roads). The parish survey showed path 66 as terminating on the appeal way immediately north of the railway bridge, without recording the appeal way, because it believed the latter to be a public road which did not need to be recorded.

69 Footpaths 9, 10 and 65, shown crossing the railway between the appeal way railway bridge and Lenham Forstal Road, were extinguished by order in 1969: see [London Gazette, 16 January 1962](#).

70 The word 'unclassified' does not appear on all notes.

71 PROW/MA/C431 and PROW/MA/C450

O.13. Path 66 was removed from the map at draft stage.⁷² In common with many paths included in parish surveys, it merely was annotated in the record as ‘out’, without further explanation. It is understood that the British Transport Commission had objected to its conclusion. This may or may not have reflected a concomitant objection to the implied continuation of the right of way through the railway bridge south to Rose Lane. Of course, the Commission’s objection did not resolve whether there was a right of way through the bridge. But there is no evidence for the nature of the Commission’s objection, nor that the Commission had access to any decisive information about the status of the appeal way across the railway, or that if it did, that such information necessarily was correct. It may be that path 66 was one of many which was deleted from the draft map simply because there was an objection, regardless of its merits.

O.14. The parish and draft maps are a clear indication that the appeal way was, at the date of the draft map, considered to be a county road, but one which was ‘non-maintained’ — *i.e.* not maintained *de facto* by the highway authority.

O.15. **Points:** 3

P. List of streets

P.1. **Date:** 2003

P.2. **Source:** KCC

P.3. **Description:** KCC’s list of publicly-maintainable streets⁷³ dated 2003 contains detailed entries for each listed street.

P.4. In the entry for ‘D1036 Shepherds Farm Road/Rose Lane’, an ‘Unclassified Single C/Way From J/W D1035 To Shepherds Farm’, the distance is given as 534 metres, between OS grid reference [591895,149797](#)⁷⁴ and [592046,150308](#)⁷⁵. The latter grid reference, and the distance given from the junction with Lenham Forstal Road, identifies a northern terminus slightly to the north of the present gate across the appeal way at Shepherd’s Farm.

P.5. The national street gazetteer⁷⁶ (NSG) identifies a slightly more northerly terminus for Rose Lane,⁷⁷ at [TQ92055038](#), about 80 metres further north than the identified terminus in the 2006 list of streets, although it is not clear whether the additional length purports to be publicly maintainable.

P.6. KCC refers to the terminus of the publicly-maintainable way being ‘the pond situated just north of Bolton Farm (and south of the railway line)’.⁷⁸ This corresponds to the point identified in the NSG and that shown in the entry for the D1036 in the Highway inspectors’ map (item III.N above).

⁷² See notice advertised in *London Gazette*, 17 October 1958, [p6356](#), which includes reference to: ‘No. 66. F.P. Unclassified road at railway N. of Shepherds Farm N.E. to Ashford Road, A20, S.E. of Old Shelve.’

⁷³ Required to be maintained by s.36(6) of the Highways Act 1980.

⁷⁴ TQ9189549797

⁷⁵ TQ9204650308

⁷⁶ www.findmystreet.co.uk

⁷⁷ [USRN 24208149](#)

⁷⁸ Determination, app.B, para.18

P.7. **Conclusion:** The appeal way is recorded as publicly maintainable at least as far north as TQ9204650308. Rural entries in the list generally are considered to be public roads, rather than public ways of lower status.

P.8. **Points:** 0

Annexes

Annexe A: Lenham tithe map extract

(See III.F above)



Annexe B: Lenham tithe map

(See III.F above)



PARISH OF TENHAM

IN THE COUNTY OF KENT

ORDERED FOR THE PURPOSES OF THE TOWN-LAW ACT, AND THE COMMONS ACT, 1833.

BY THE ACT OF PARLIAMENT IN THAT BEHALF PASSED IN THE SEVENTH YEAR OF HER MAJESTY'S MOST EXCELLENT Majesty Queen Victoria, Chapter 125.

BY THE ACT OF PARLIAMENT IN THAT BEHALF PASSED IN THE SEVENTH YEAR OF HER MAJESTY'S MOST EXCELLENT Majesty Queen Victoria, Chapter 125.

1833

NEW COURSE UNDER ACT.

Scale of Feet

100

PARISH OF BOUGHTON-MALHERBE ECERTON

Scale of Feet

100

PARISH OF WIGMINGTON

PARISH OF ST. MARTIN

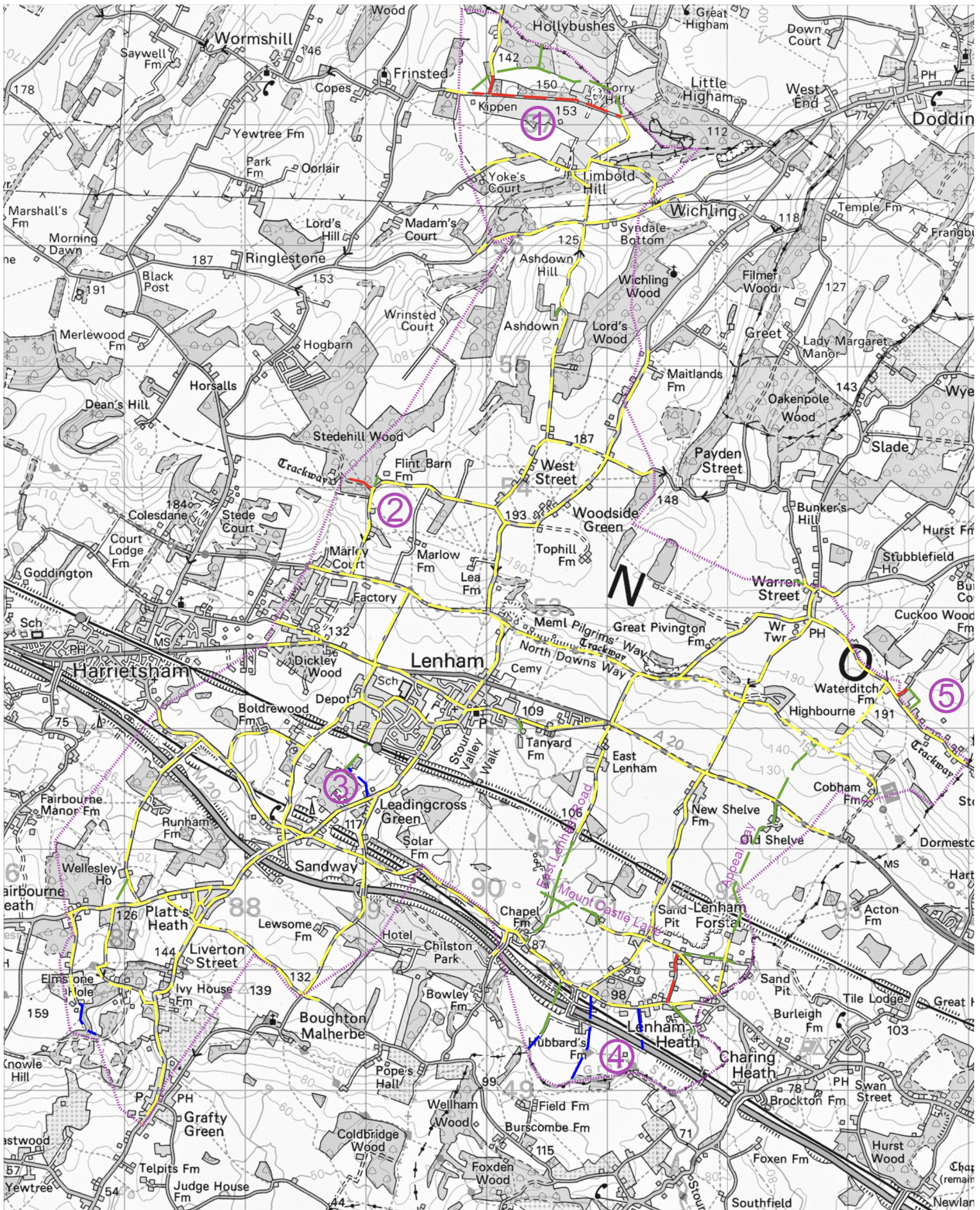


Scale of Feet

100

Annexe C: Lenham road map

(See III.F above)



Annexe D: Ordnance Survey County Series first-edition 1:2,500 plan
(See III.K above)



630

A

1068

1069

Old Shelve

1067

1073

1004

1072

1074

Cobham Wood

1076

1001

1005

1046

1050

1006

1053

1059

1060

1062

Shepherds Farm

Bollon's Farm

1064

1066

1048

Burnt Ho

1065

1057

51

B

53

48

CHARIN

Annexe E: Ordnance Survey County Series second-edition 1:2,500 plan
(See III.K above)



A

B