

# Brazen Street: historical document analysis

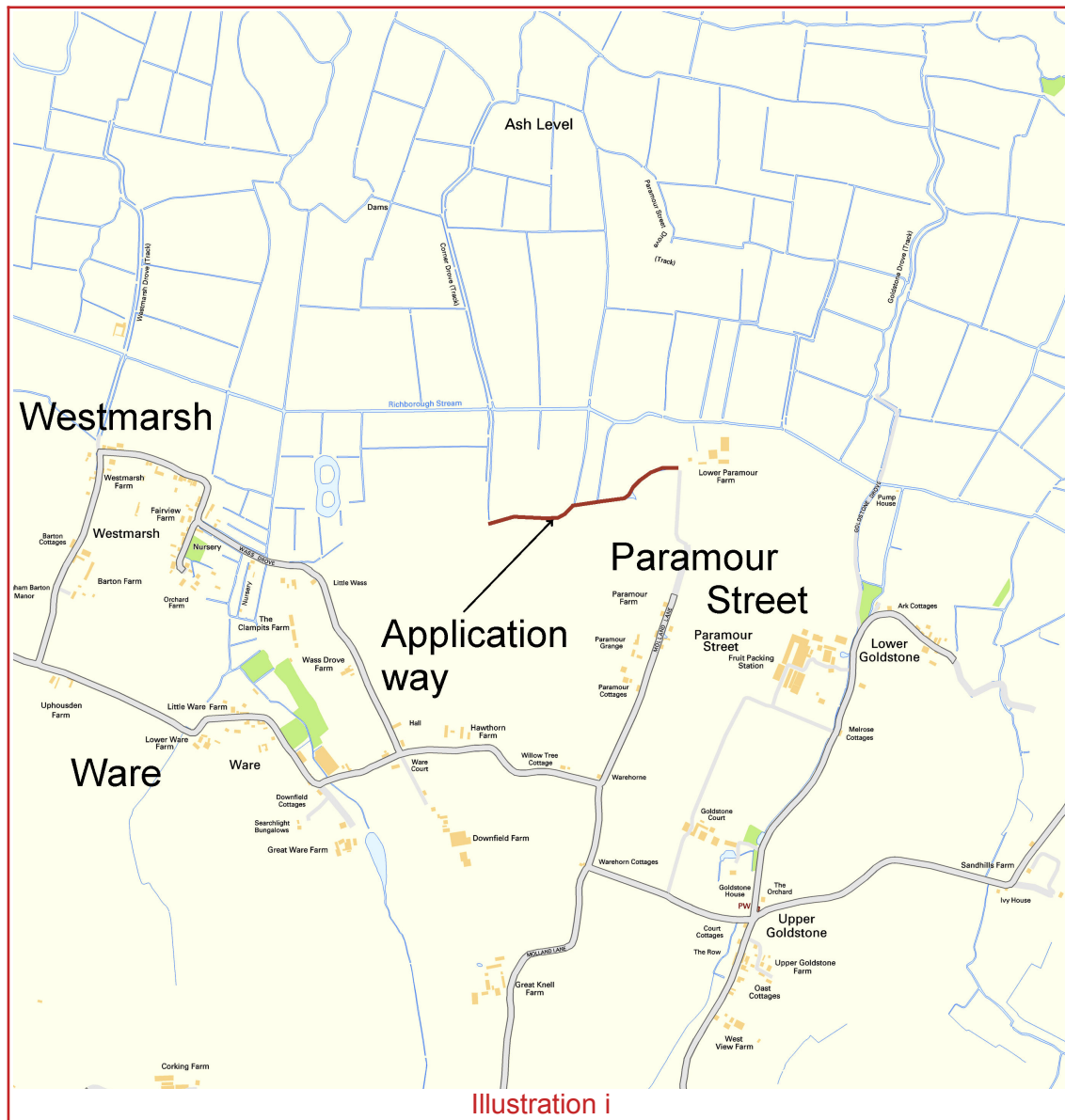
## Application to record a restricted byway from Corner Drove to Paramour Street, Ash

### I. Introduction

#### A. Quick reference

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

#### **Location plan**



- A.2. **Surveying authority reference number:** PROW/DO/C414
- A.3. **Existing public rights of way comprised in application way:** EE66
- A.4. **Parish of:** Ash
- A.5. **District of:** Dover
- A.6. **Ancient parish of:** Ash
- A.7. **Hundreds of:** Preston/Wingham
- A.8. **Termination points:** Corner Drove and Paramour Street.
- A.9. **Termination points Ordnance Survey grid references:** TR28476139 and TR28976154
- A.10. **Postcode:** CT3 2EB
- A.11. **Ordnance Survey Explorer sheet:** 150
- A.12. **Ordnance Survey County Series 25-inch sheet:** Kent XXXVII/9

## B. The applicant

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

## C. Locational details

C.1. This application relates to a way known as Brazen Street in the parish of Ash, between Corner Drove and Paramour Street. Much of the way is currently recorded in the definitive map and statement as public footpath EE66, but the historical alignment of the way significantly varies from the present alignment of the footpath, as recorded on the definitive map and statement, in certain places. The application seeks to record the way as a restricted byway.

C.2. The application way, at its western end, connects with Corner Drove. The applicant believes that Corner Drove is an unrecorded public carriageway, and has made a contemporaneous application for a definitive map modification order to record Corner Drove on the definitive map and statement as a restricted byway.<sup>1</sup>

## D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(ii) that a way which is shown in the definitive map and statement for Kent as a footpath, should instead be shown as a restricted byway, and to the extent necessary, under section 53(3)(c)(i), that a restricted byway is reasonably alleged to subsist over land,

<sup>1</sup> Kent County Council reference: PROW/DO/C413

and section 53(3)(c)(iii), that other particulars contained in the map and statement require modification.

D.2. The way begins at the junction of public footpath EE66 with Corner Drove at A (Ordnance Survey grid reference TR28476139). It proceeds east-northeast along a track along the south side of a hedge for approximately 115m, before veering east and then looping northeast to rejoin the track after a further 125m, to pass through a gap in the hedge and continue along the track, now on the north side of the hedge. The way continues east for 80m, and where the track turns northeast, the way continues east adjacent to the hedge (to the south of the track), through a copse, before again looping northeast to rejoin the track after a further 125m. The way continues northeast along the track for 105m to join Paramour Street at the corner near Lower Paramour Farm at B (TR28976154). A total distance of 550m.

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

## **E. Definitive map and statement**

E.1. The application way was recorded on the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 as footpath 33, identical with the way identified in the Application map at part II below, and similarly recorded on the first definitive map and statement published in 1952.

## Ash draft map

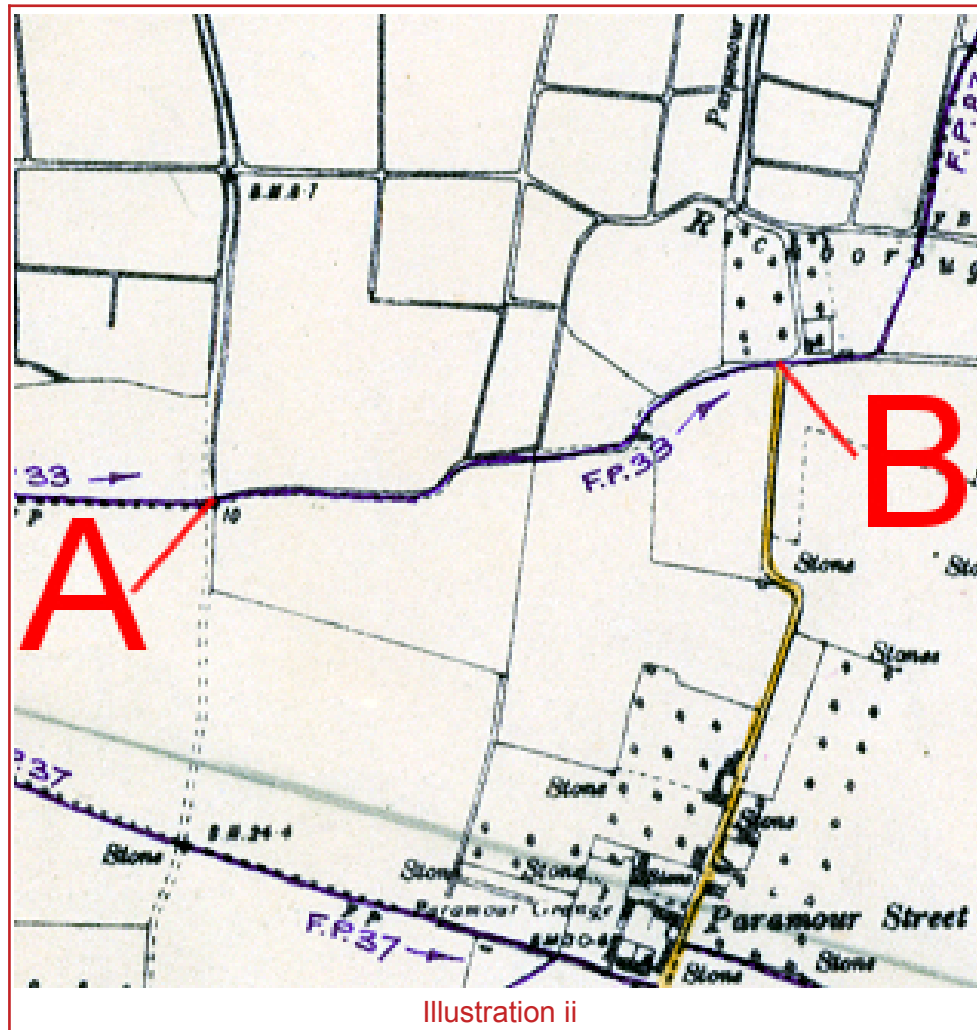


Illustration ii

E.2. According to advice received from the surveying authority, the 1987 and 2013 definitive maps show the footpath as following the track which today follows a slightly more direct and northerly alignment.<sup>2</sup>

E.3. No explanation (such as a public path order) has yet been found for the variation in the alignment of the right of way between the 1952 and 1987 definitive maps, and it may be that the variation is a matter of human error. If so, the error is theoretically susceptible to correction by means of a definitive map modification order.

E.4. The applicant accepts that the present alignment of the track, and of the footpath as now shown on the current definitive map and statement (as EE66), is likely to be satisfactory for both agricultural and recreational purposes. However, the application must relate to the alignment historically used, and there is (as yet) no evidence that the historical route has been formally diverted. The applicant has no objection to a diversion onto the line currently used and recorded.

<sup>2</sup> Email from Definitive Map Team Leader, 6 November 2018.



## F. Nomenclature

F.1. The application way formerly served a hamlet know as Bearding Street or Beerling Street. There is no trace of the habitation which was formerly here, but it clearly can be seen marked on historical maps.

F.2. The following nomenclature has been identified:

Item	Ref	Name employed	
		hamlet	track
Ordnance Survey surveyor's drawing, Canterbury (East) (Illustration v)	IV.A	Bearding Street	
Copy of above (Illustration vi)	IV.A	—	
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.B	Bearding Street	
Greenwoods' map of Kent	IV.D	Boarding Street	
Ordnance Survey, Old Series one-inch map of Kent	IV.E	Bearding Street	
Central Kentish Railway and Sandwich docks	IV.F		Brazen Street
Tithe Commutation Act 1836	IV.G	Beerling Street	[Brazen Street <sup>3</sup> ]
Kentish Coast Railway <sup>4</sup>		Bearding Street	
Herne Bay and Sandwich Railway <sup>5</sup>		Bearding Street	
Ordnance Survey County Series 25-inch map	IV.H	[None]	
Eastry Rural District Council	IV.I		Brazen Street
Finance (1909–1910) Act 1910	IV.J	[None]	

F.3. On the map produced under the Tithe Commutation Act 1836 (item IV.G below), the hamlet is identified as Beerling Street, but two barns, dwellings or smallholdings at the western end of the application way are described in the apportionment as Brazen Street.

F.4. Two drove ways head north on to Ash Level from either side of Lower Paramour Farm — to the west of the farm, Beerling (or Bearding) Street Drove, and to the east, Beerling (or Bearding) Drove.

F.5. The various appellations are confusing, but it is suggested that the hamlet was generally known as Beerling (or Bearding) Street, and the way as Brazen Street. The latter name appears in the record book of the Eastry Rural District Council (item IV.I below) in 1900–01 (see paragraphs IV.I.3 and IV.I.5). The name Brazen Street has been adopted in this document.

3 The tithe map labels the hamlet 'Beerling Street', but several dwellings or smallholdings abutting the application way are named 'Brazen Street': see parcels 189 ('Brazen Street'), 190 ('Brazen Street House Yard & Buildings'), 960 ('Beerling Street Field')

4 Kent County Archives: Q/Rum/269. Not included in the analysis, as the application way is not referred to in the book of reference, but the hamlet is labelled as shown in the plan.

5 House of Lords: HL/PO/PB/3/plan1846/H14. Not included in the analysis, as the application way is not referred to in the book of reference, but the hamlet is labelled as shown in the plan.

## G. Background

G.1. There are many drove ways onto the Ash Level from neighbouring higher ground to the south. Corner Drove is one of a number of such drove ways, roughly parallel to each other, penetrating the Wantsum Channel marshes from the south. Some of these drove ways are now recorded as public rights of way, others are not.

G.2. One would expect these drove ways to have been used for the movement of live-stock, carts and farm machinery ever since the Wantsum Channel was drained and claimed for agriculture, perhaps (at least locally) in the early mediaeval period. Some of the drove ways have no destination other than the fields which they serve; others, including Corner Drove, also provide a means of access across the Ash Level (in this case, via a footpath to the former Red House ferry) to Minster and beyond.

G.3. Brazen Street, however, connects two such drove ways: Corner Drove, and Paramour Street (Paramour Street continues into Beerling Street Drove and Beerling Drove north of Lower Paramour Farm). Older maps show that a hamlet formerly clustered along Brazen Street — four barns, dwellings or smallholdings appear in the vicinity of A on the map prepared under the Tithe Commutation Act 1836 (item IV.G below) and are labelled ‘Beerling Street’, and a further dwelling or smallholding appears just west of B. Only two appear on the first edition of the Ordnance Survey County Series 25-inch map (item IV.H below) surveyed in 1872 (one in the hamlet at Beerling Street near A, and the other just west of B); none survives to the 1907 survey.

G.4. It seems likely that Brazen Street had two purposes historically: as a means of access between Corner Drove and the cluster of farms and smallholdings in the vicinity of Paramour Street and Lower Goldstone, and to provide access to the hamlet of Beerling Street. In both cases, access would have been required for carts.

G.5. At the end of the nineteenth century, the records of the Eastry Rural District Council (item IV.I below) show a liability to maintenance. Moreover, it is clear that the maintenance was done primarily to accommodate the passage of carts, so that the way was recognised as a public carriage road. This status is confirmed in the map produced under the Finance (1909–1910) Act 1910 (item IV.J below), which excludes the way from valuation. These later sources, in particular, suggest that the application way was not only publicly maintainable, but maintained as a carriage road.

## H. Grounds for application

H.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*,<sup>6</sup> Lewison LJ said, at paragraph 22,

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

‘It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not

6 [2012] EWCA Civ 334

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

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.<sup>7</sup>

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

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

H.4. 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... .

H.5. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I.J below), there were full vehicular rights.

## I. Discovery of evidence

I.1. The application way was included on the parish map for Ash, and on the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949, as a footpath. There is no evidence that any of the documents addressed in this analysis were relied upon in preparing these maps, there has been no prior discovery of that evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application appears to be wholly new evidence.

## J. Natural Environment and Rural Communities Act 2006

J.1. The application seeks to show that the application way is a public carriageway. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish

<sup>7</sup> [\*Consistency Guidelines\*](#): para.2.17.

public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. The application is therefore made for a restricted byway.

## K. Points awarded

K.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*.<sup>8</sup>

K.2. **Points:**

Item	Ref	Points
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.B	0
A new map of the Isle of Thanet	IV.C	0
Greenwoods' map of Kent	IV.D	1
Ordnance Survey, Old Series one-inch map of Kent	IV.E	0
Central Kentish Railway and Sandwich docks	IV.F	0
Tithe Commutation Act 1836	IV.G	3
Ordnance Survey County Series 25-inch map	IV.H	1
Eastry Rural District Council	IV.I	5
Finance (1909–1910) Act 1910	IV.J	5
<b>Total points</b>		<b>16</b>

## L. Width of application way

L.1. No document expressly records the width of the application way in isolation. Every edition of the Ordnance Survey County Series 25-inch map braces the area of the application way with neighbouring roads.

L.2. Accordingly, it is proposed that the width of the application way be scaled from the second edition of the County Series map.

## M. Limitations

M.1. There is no evidence of any limitation, such as a gate, on the use of the application way which is consistently present in the documentary evidence contained in this application. It therefore is requested that an order arising from the application expressly states that there are no limitations on the public right of way.

## N. Law cases

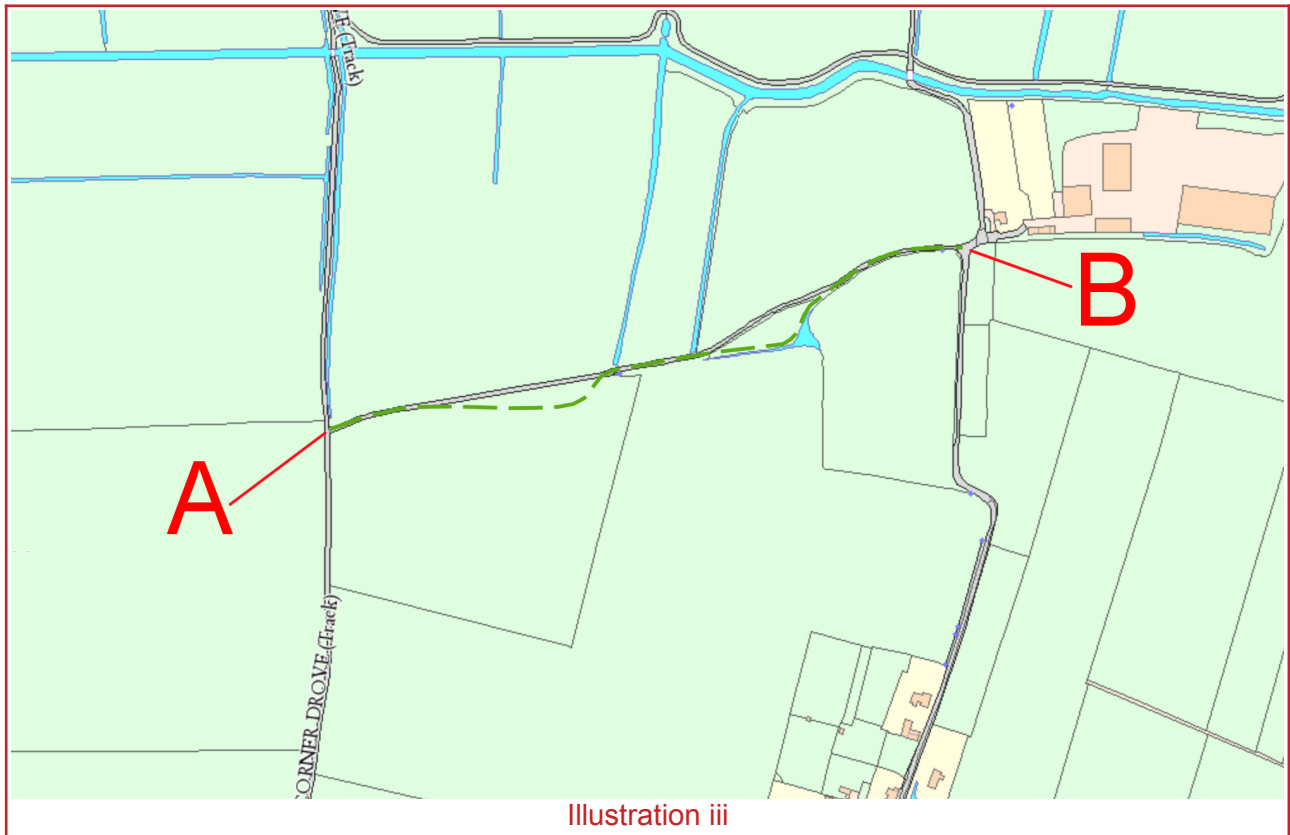
N.1. The following cases are cited in this statement of case.

Case	Reference	Citation
<i>Fortune and Others v Wiltshire Council and Another</i>	IV.H.1	[2012] EWCA Civ 334
<i>Hollins v Oldham</i>	IV.D.7	[1995] (unreported) C94/0206

<sup>8</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

## II. Application map

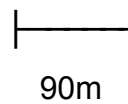
### Application map



Grid reference at A: TR285614

Scale: approx. 1:5,900 (when printed A4)

Application way is marked — — —



### III. Along the way



Illustration iv: West from B: © David Anstiss (cc-by-sa/2.0)

## IV. Evidence

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

A.1. **Date:** 1797

A.2. **Source:** British Library website<sup>9</sup>

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

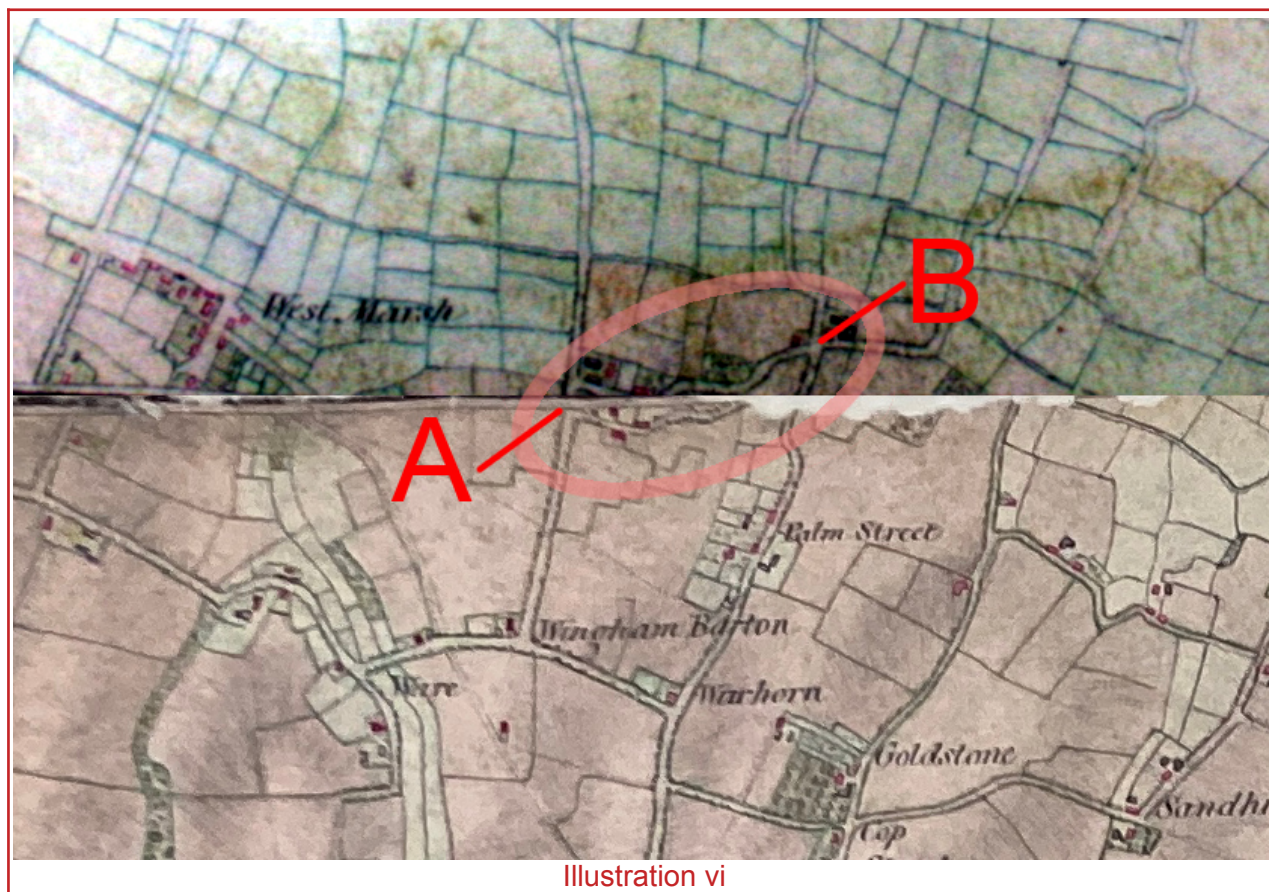


Illustration v

9 Canterbury 107(E): [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/002osd000000017u00367000.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/002osd000000017u00367000.html)



## Copy of Ordnance Survey surveyor's drawing



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

A.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in warfare. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.<sup>10</sup>

A.5. It seems that good copies were made of the drawings to be held by the War Office. These copies are now held in the National Archives, described as, 'Topographic Survey manuscript 'fair' copies of Kent & Sussex, surveyed by Gardner & Yeakell, at 3 inches to 1

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

mile'.<sup>11</sup> The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

A.6. The application way partly lies in a void at the join between three separate drawings held by the British Library, but is fully shown on the copy. The application way is shown from A, as an enclosed road leading from Corner Drove. There are several buildings in the vicinity of B. The hamlet is labelled as 'Bearding Street'.

A.7. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the way between A and B. Given that the application way between A and B serves the then-existing hamlet at Bearding Street, it seems likely to have been a public way.

A.8. **Points:** 1

<sup>11</sup> *Topographical survey and early Ordnance Survey maps at the National Archives: Public Record Office*, Ivan Parr, published in *Sheetlines* (Charles Close Society), no 68 (December 2003), pp.35–43 at p.38



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

B.1. **Date:** 1801

B.2. **Source:** © Mapco.net<sup>12</sup>

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



Illustration vii

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

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

<sup>12</sup> [mapco.net/kent1801/kent31\\_03.htm](http://mapco.net/kent1801/kent31_03.htm)

B.5. The Mudge-Faden map shows the application way between A and B, passing between Corner Drove and Paramour Street. The way is shown as enclosed — in common with, at each end, Corner Drove and Paramour Street. Several buildings are shown in the vicinity of A, and a further building adjacent to B. The hamlet is labelled as 'Bearding Street'.

B.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.

B.7. The Mudge-Faden map records the application way between A and B as a clearly identifiable feature, in a form which suggests a road, bridle road or drove way. However, the way cannot convincingly be said, on this evidence alone, to be public.

B.8. **Points:** 0

## C. A new map of the Isle of Thanet

C.1. **Date:** 1808

C.2. **Source:** British Library<sup>13</sup>

### ■ A new map of the Isle of Thanet



Illustration viii

C.3. **Description:** Original scale: two inches to one mile (1:23,760) and scale bar marked on map (but scale bar has been cut and pasted and may be affected by photographic distortion); orientation: unchanged (north).

C.4. Described in the British Library catalogue as follows:

13 BLL01004943661



Title: A New Map of the Isle of Thanet; Protracted by a Scale of two Inches to One Statute Mile from the Large Topographical Survey of the County of Kent.

Author: William Mudge, 1762–1820, cartographer.

Contributor: William Faden 1749–1836, publisher; Published by W. Faden... 1808.

Map of the Isle of Thanet, showing the towns and villages, beaches, rivers, and other geographical features.

Includes a scalebar and a compass rose to the lower right.

C.5. Evidently, the map is derived from the original field work for the Ordnance Survey surveyor's drawing, Canterbury (East) (IV.A above), and therefore similar to the Ordnance Survey, Mudge-Faden one-inch map of Kent (IV.B above), which was derived from the same survey data. This map, however, was published several years later, and is at the larger scale (compared to the Ordnance Survey, Mudge-Faden one-inch map of Kent) of two inches to one mile.

C.6. The 'new map' shows the application way between A and B, passing between Corner Drove and Paramour Street. The way is shown as enclosed — in common with, at each end, Corner Drove and Paramour Street. Several buildings are shown in the vicinity of A, midway between A and B, and adjacent to B. The hamlet is labelled as 'Bearding Street'.

C.7. **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.8. The 'new map' records the application way between A and B as a clearly identifiable feature, in a form which suggests a road, bridle road or drove way. However, the way cannot convincingly be said, on this evidence alone, to be public.

C.9. **Points:** 0

## D. Greenwood's map of Kent

D.1. **Date:** 1819–20

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

### Greenwood's map of Kent

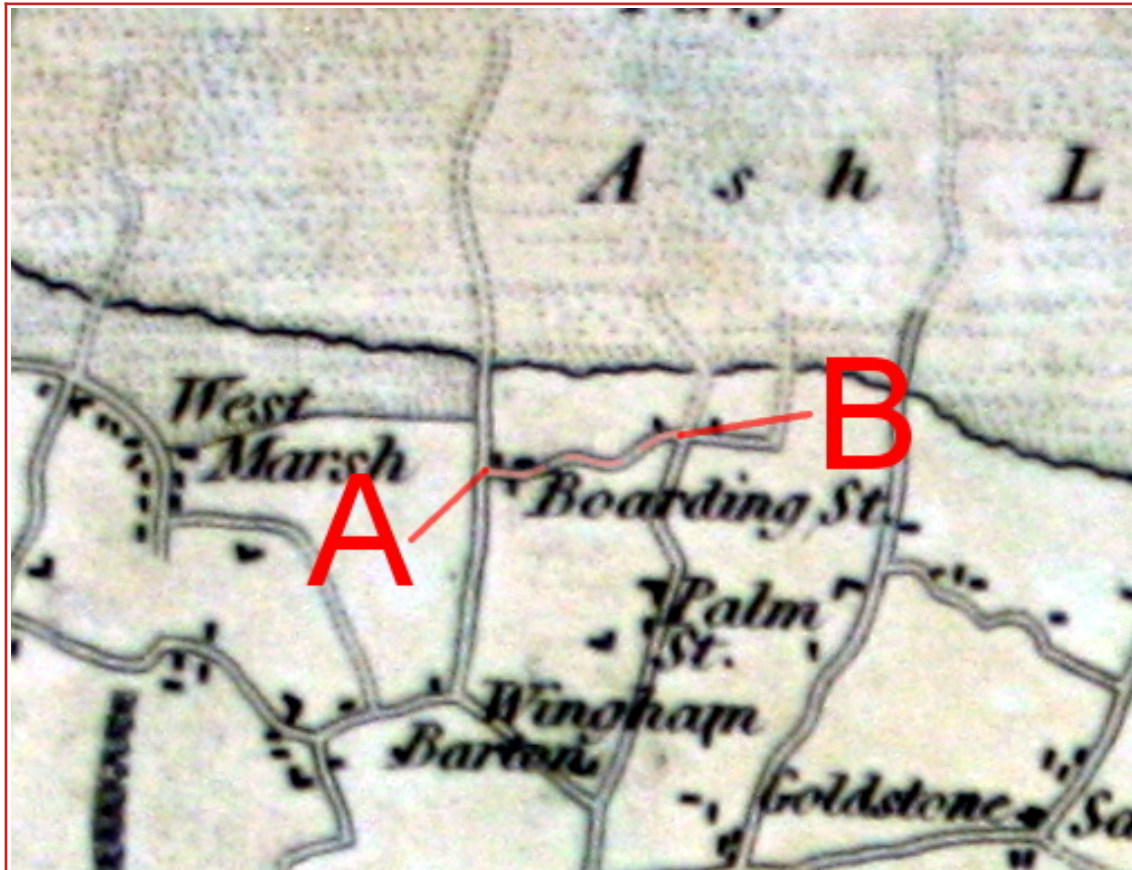


Illustration ix

### Greenwood's map key

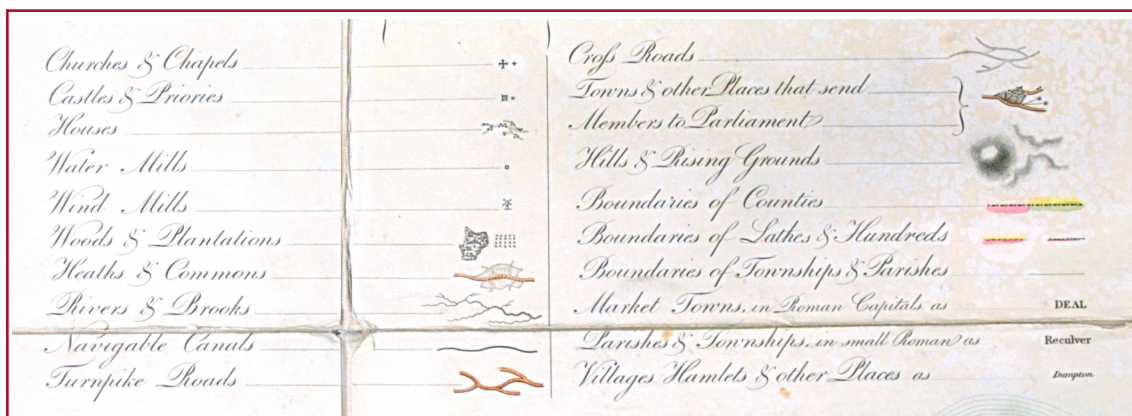


Illustration x



D.3. **Description:** Original scale: one inch to one mile (1:63,360), but it is not practicable accurately to reproduce the scale bar on this extract; orientation: unchanged (north). This copy appears to be state iii, published between 1821 and 1827.

D.4. Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.<sup>14</sup>

D.5. The application way is shown as an enclosed road between A and B, passing between Corner Drove and Paramour Street. The way is shown as enclosed — in common with, at each end, Corner Drove and Paramour Street. Several buildings are shown in the vicinity of A, and a further building adjacent to B. The hamlet is labelled as 'Boarding Street'.

D.6. **Analysis:** In *Fortune v Wiltshire Council*,<sup>15</sup> Lewison LJ wrote in his judgment of the court:

As the judge 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').

D.7. In *Hollins v Oldham*,<sup>16</sup> HHJ Howarth (sitting as a High Court Judge) said, in relation to *Burdett's Map of Cheshire* dated 1777, which adopted the same classification as the 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.8. It is accepted that not every road shown on the Greenwoods' map must (if it is not a turnpike) inevitably be a cross-road — undoubtedly there are exceptions, such as some (but not all) roads leading only to isolated farmsteads or country houses. But it is

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

15 [2012] EWCA Civ 334: [www.bailii.org/ew/cases/EWCA/Civ/2012/334.html](http://www.bailii.org/ew/cases/EWCA/Civ/2012/334.html).

16 [1995] (unreported) C94/0206.

submitted that, as here, 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.9. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way along the route of the application way. The key describes the route as a 'cross road', which is suggestive of a public way.

D.10. **Points:** 1

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

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

E.2. **Source:** National Library of Australia<sup>17</sup>

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

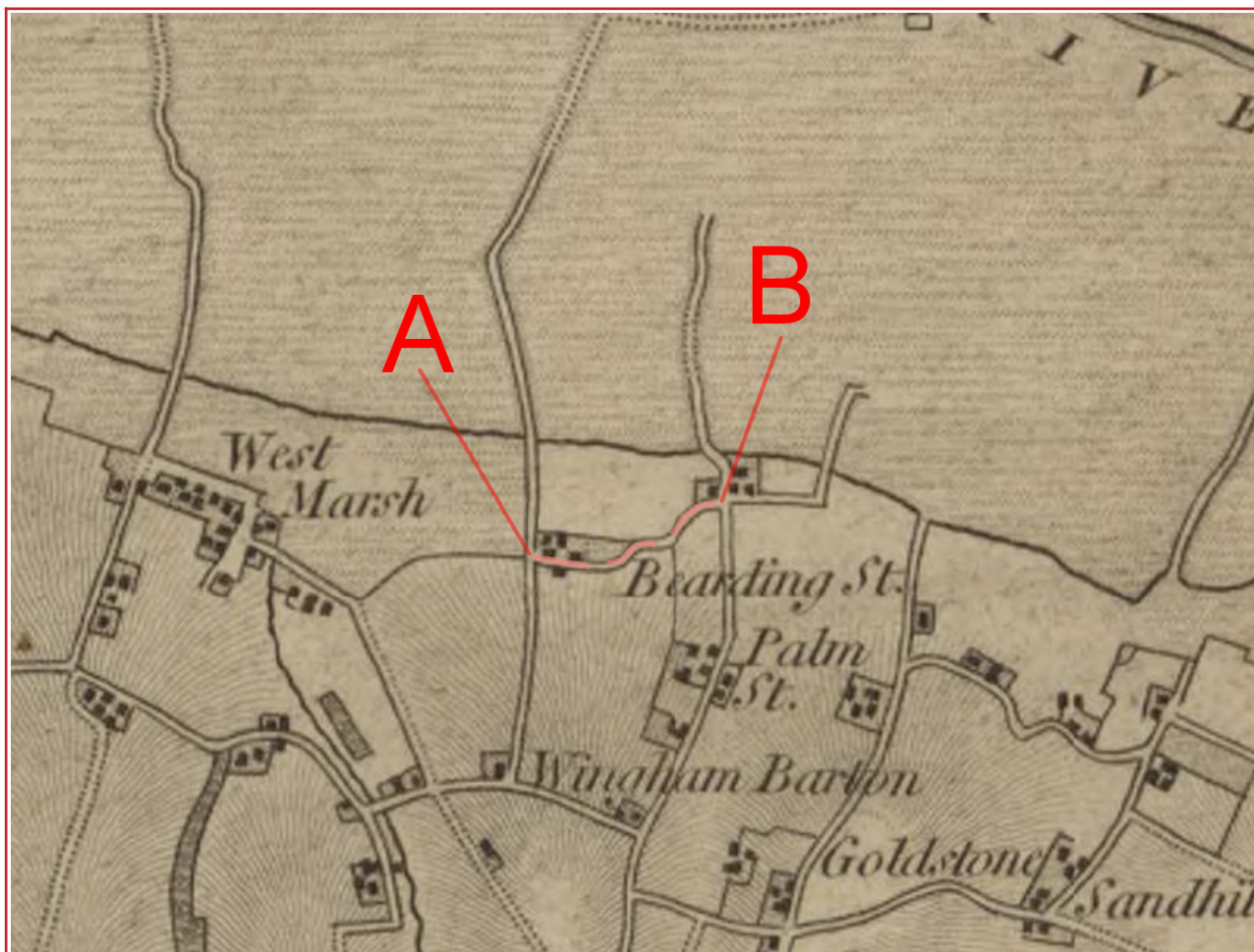


Illustration xi

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

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

E.5. The Old Series map shows the application way throughout, enclosed except on the north side of the way adjacent to A. Several buildings are shown in the vicinity of A, and a further building at B. The hamlet is labelled as 'Bearding St.'

<sup>17</sup> [nla.gov.au/nla.obj-231917365](https://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 footpaths being of little military interest. The way is therefore likely to be at least of the character of a bridleway, drove or carriage road.

E.7. **Points:** 0

## F. Central Kentish Railway and Sandwich docks

F.1. **Date:** 1836<sup>18</sup>

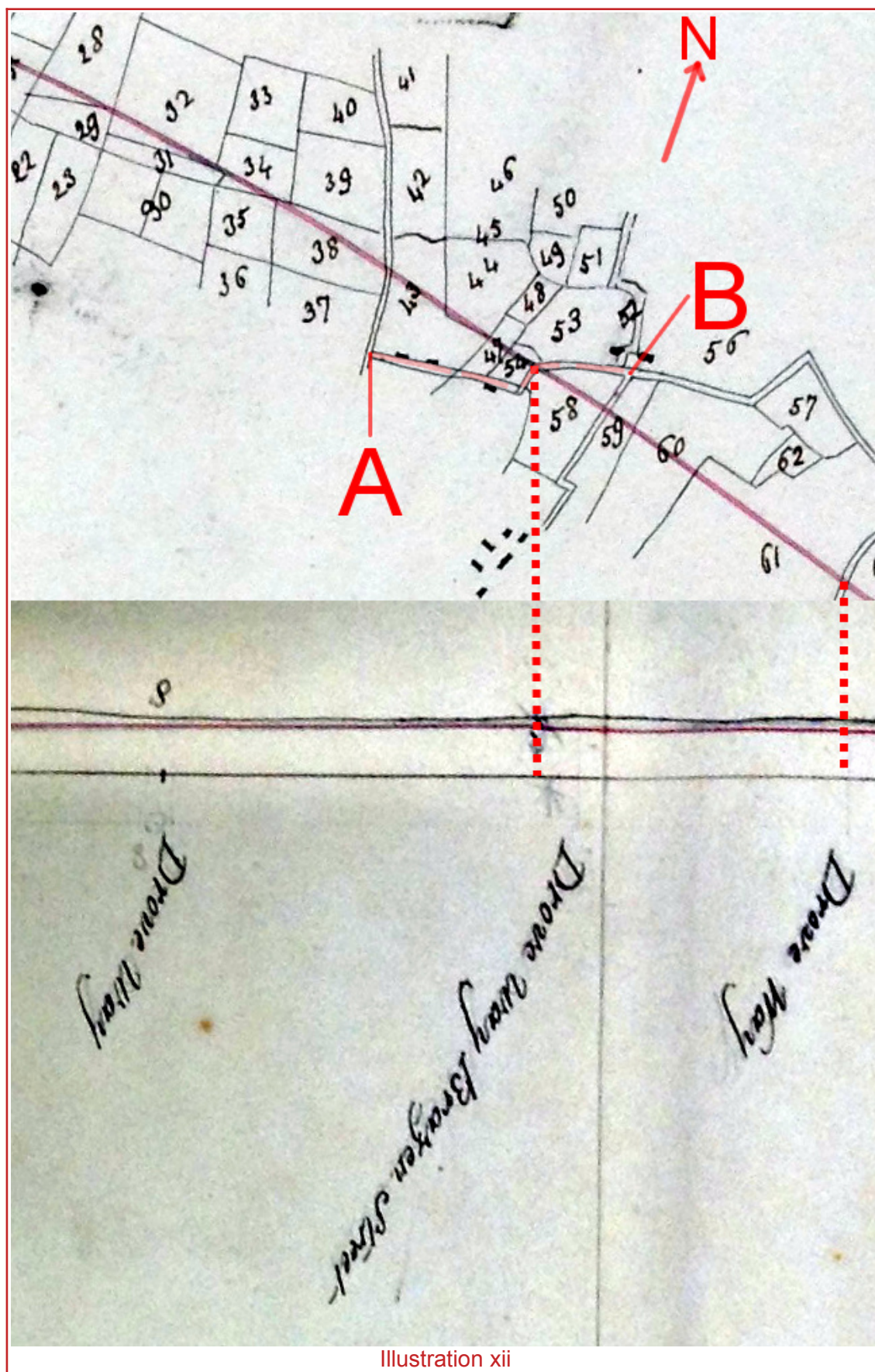
F.2. **Source:** Kent County Archives<sup>19</sup>

<sup>18</sup> Here and subsequently for railway proposals, dates refer to the year following deposit in the previous November.

<sup>19</sup> Q/RUm/142



## Central Kentish Railway and Sandwich docks plan



## Central Kentish Railway and Sandwich docks book of reference

Owners.	Lessees.	Occupiers.	Description of Property.
The same	The same	The same	Marsh land
General Owners of the Valley		General occupiers of the valley	Drove way
J. M. Fotherby		Alice Smith	Marsh land
The same		The same	Marsh land
John Burch		John Solly	Farm house barns built up
The same		The same	Hallway out of premises
William Friend Junr		William Friend Junr	Marsh land
J. M. Fotherby			

Illustration xiii

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

F.4. The Central Kentish Railway proposed a line between Greenwich and Sandwich, crossing the Ash Level in an arc from Stodmarsh to Sandwich crossing the application way between A and B.

F.5. In the deposited plan, the application way is identified as an enclosed route between fields. At two places, field boundaries are continued across the way, suggesting gates across it. Several buildings abut the way. Parcel number 52 is assigned to the drove leading north from B, and stated to be a 'Drove Way', owned and occupied by the 'General owners of the valley'. But no parcel number is assigned to the way, nor to Paramour Street leading south from B, notwithstanding that only these two are to be crossed by the proposed line.

F.6. In the section (which is here reproduced inverted, to conform to the plans), the application way appears to be marked 'Drove Way Brazen Street' identified at approximately seven and a half miles,<sup>20</sup> but as the distances along the line are not identified on the plan, it is uncertain. A locational difficulty arises in that, while Goldstone Drove appears to fit with the 'Drove Way' shown at seven miles and one furlong, Paramour Street (the road south from B) is not marked on the section, and the 'Drove Way' at eight miles is incorrectly placed to represent Corner Drove.

F.7. In common with the other railways planned across Ash Level, the railway was not built.

F.8. **Conclusion:** The plans and book of reference for the Central Kentish Railway appear to identify the application way as a drove way. It may be that parcel 52 is intended to identify all four ways intersecting at B (i.e. the application way, Paramour Street, Paramour Street Drove and the way east through Lower Paramour Farm), given that the way

<sup>20</sup> From Sandown Castle ditch, near Deal.



specifically marked 52 was not intended to be affected by the proposals, and if so, the application way had no specific ownership other than communal ownership among those owning land on the marshes. If the way were a private way, no specific owners are identified, nor any person with rights of passage.

F.9. **Points:** 0

## G. Tithe Commutation Act 1836

G.1. **Date:** 1840 (map), 1843 (apportionment)

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

### Tithe map for Ash

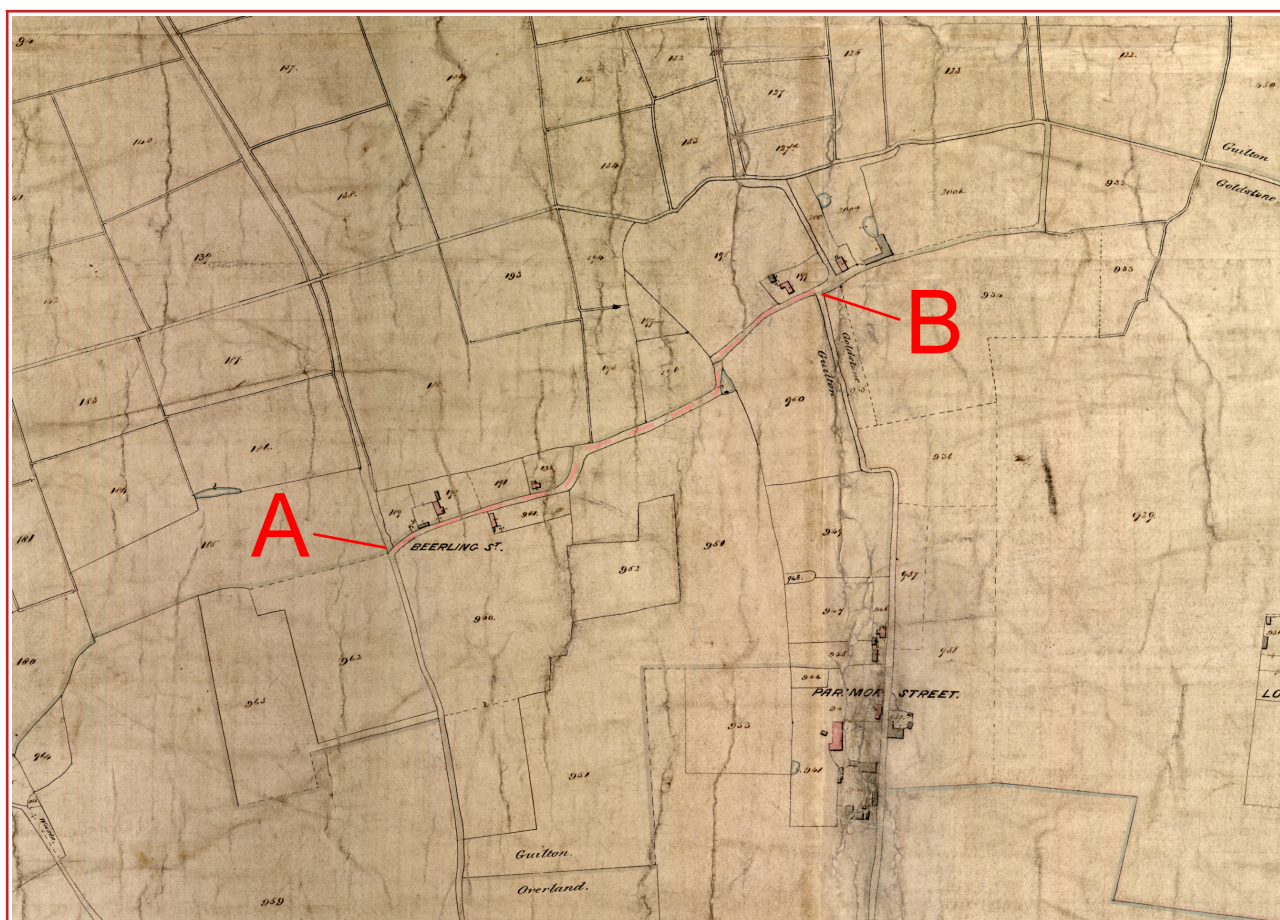


Illustration xiv

G.3. **Description:** Original scale: three chains to one inch<sup>21</sup> (1:2,376); orientation: unchanged (top is north-northeast). The tithe map for Ash is first class.<sup>22</sup>

G.4. The tithe map for the parish of Ash shows the application way between A and B, depicted throughout as an enclosed road, and treated as not titheable, there being no apportionment parcel number assigned to the way. A number of barns, dwellings or small-

<sup>21</sup> As stated in *The tithe maps of England and Wales*, Kain and Oliver — entry for Ash next Wingham, Kent, p.239.

<sup>22</sup> See the record for this tithe apportionment held by the National Archives: [IR 30/17/11](#), and the entry, *ibid*.



holdings are shown on either side of the way in the vicinity of A, and another adjacent to B. They are recorded as follows:

Parcel no.	Description
189	Brazen Street (garden)
190	Brazen Street House Yard & Buildings
191	Brazen Street (garden)
192	Cottage and garden
961	Cottage and garden
199	House and garden

G.5. **Analysis:** The following table identifies the several drove ways in the parish of Ash, distinguishing those which are numbered on the map and in the apportionment, and those which are not (all of the drove ways which subsist today are identifiable on the tithe map).

Appor- tionment number	Name on tithe apportionment	Present name, location and southerly grid reference	Comments
none	none	Westmarsh Drove (footpath EE76) TR274615	Not Apportioned
none	none	Corner Drove (north from Cuckold's Corner) TR284608	Not Apportioned
none	none	Brazen Street (east from Corner Drove) TR285614	Not apportioned
104	Drove	Northern section of Beerling Street Drove or Paramour Street Drove (see below) TR289621	Apportioned
130	Drove way	Beerling Street Drove or Paramour Street Drove north from Lower Paramour Farm TR289616	Apportioned
120	Marshland Drove	Beerling Drove east and then north from Lower Paramour Farm (footpath EE54) TR292616	Apportioned
449	Drove way	Goldstone Drove (footpath EE55) TR295616	Apportioned
410	Part of The Slade	Potts Farm Drove north from Sparrow Castle (footpath EE49) TR301609	Apportioned
398	Lower Wall	Drove north from north of	Apportioned

		Bride Farm TR311613	
380a	Lower Drove	Rubery Drove TR315609	Apportioned — the southern part of this drove is recorded as 356, but Not Apportioned
none	none	Whitehouse Drove TR318604	Not Apportioned
1124	East Street Drove	East Street north from Little East Street Farm TR307591	Apportioned

G.6. Of the eleven drove ways identified (Beerling Street drove appears in two consecutive entries), seven appear in the apportionment, and four, including the application way, contain no apportionment number and are not included in the apportionment. The southern part of Rubery Drove is identified on the map as parcel 356, but is not included in the apportionment.

G.7. **Conclusion:** Something must distinguish the classification of the drove ways, and it is submitted that those which are not numbered and which are not identified in the apportionment must be those which were considered to be public roads. There is otherwise nothing to distinguish them.

G.8. This analysis is reinforced by the absence of any apportionment parcel number associated with the many other minor and major roads in the parish of Ash, which are today recognised as public roads. No public road in the parish is so annotated: the only piece of enclosed public road (recognised as such today) identified with an apportionment parcel number is a short part of bridleway EE50 at How Town, between Lower Goldstone and Sparrow Castle, which passed through two tenements.

G.9. The absence of any titheable rating is on this tithe map good evidence for the public status of the application way between A and B.

G.10. **Points:** 3

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

H.1. **Date:** 1872

H.2. **Source:** British Library<sup>23</sup>

### Ordnance Survey County Series 25-inch map, Kent XXXVII/9



## Area book, Ash next Wingham

PARISH OF ASH.					
3					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
217	5.010	Pasture, &c.	269	7.360	Pasture, &c.
218	5.098	Pasture, &c.	270	3.122	Pasture, &c.
219	5.427	Pasture, &c.	271	5.526	Pasture, &c.
220	2.827	Road.	272	8.064	Pasture, &c.
221	5.120	Pasture, &c.	273	1.993	Road.
222	3.864	Stream.	274	8.697	Pasture, &c.
223	12.477	Ashe.			

Illustration xvi)

H.3. **Description:** The Ordnance Survey County Series first edition map at a scale of 1:2,500 was surveyed in 1872 and published around the same year. It shows the application way north from A to B as an enclosed way, coloured sienna (indicating metalling), and showing two spot heights. The whole of the way is assigned parcel number 220, in common with the southern portion of Corner Drove (the road connecting with the application way at A), which is also coloured sienna. In the area book for the parish of Ash, parcel 220 is described as a 'Road'.

H.4. **Conclusion:** The County Series map shows the application way in detail as a metalled carriage road between A and B.

H.5. **Points:** 1

## I. Eastry Rural District Council

I.1. **Date:** 1900–1901, 1904, 1910

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



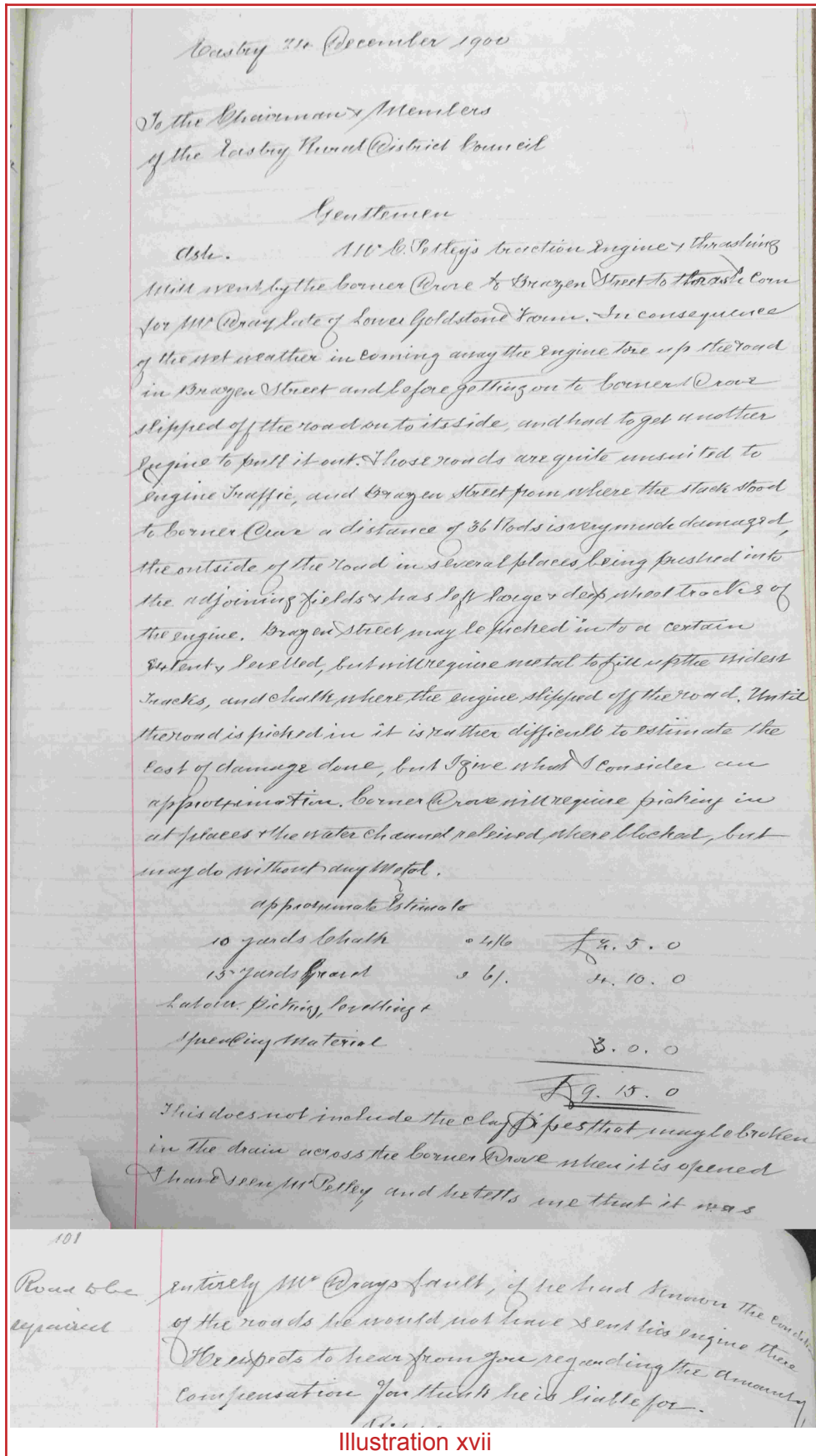
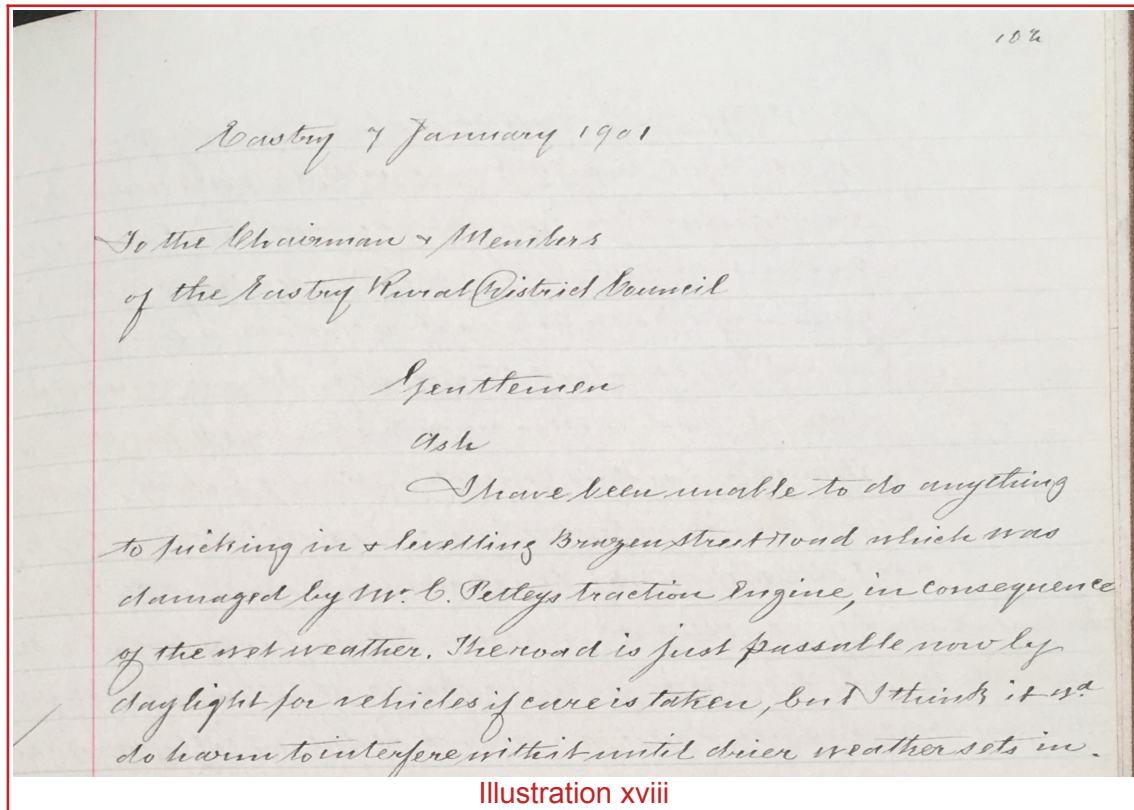


Illustration xvii



## Eastry Rural District Council report book, 10 June 1901

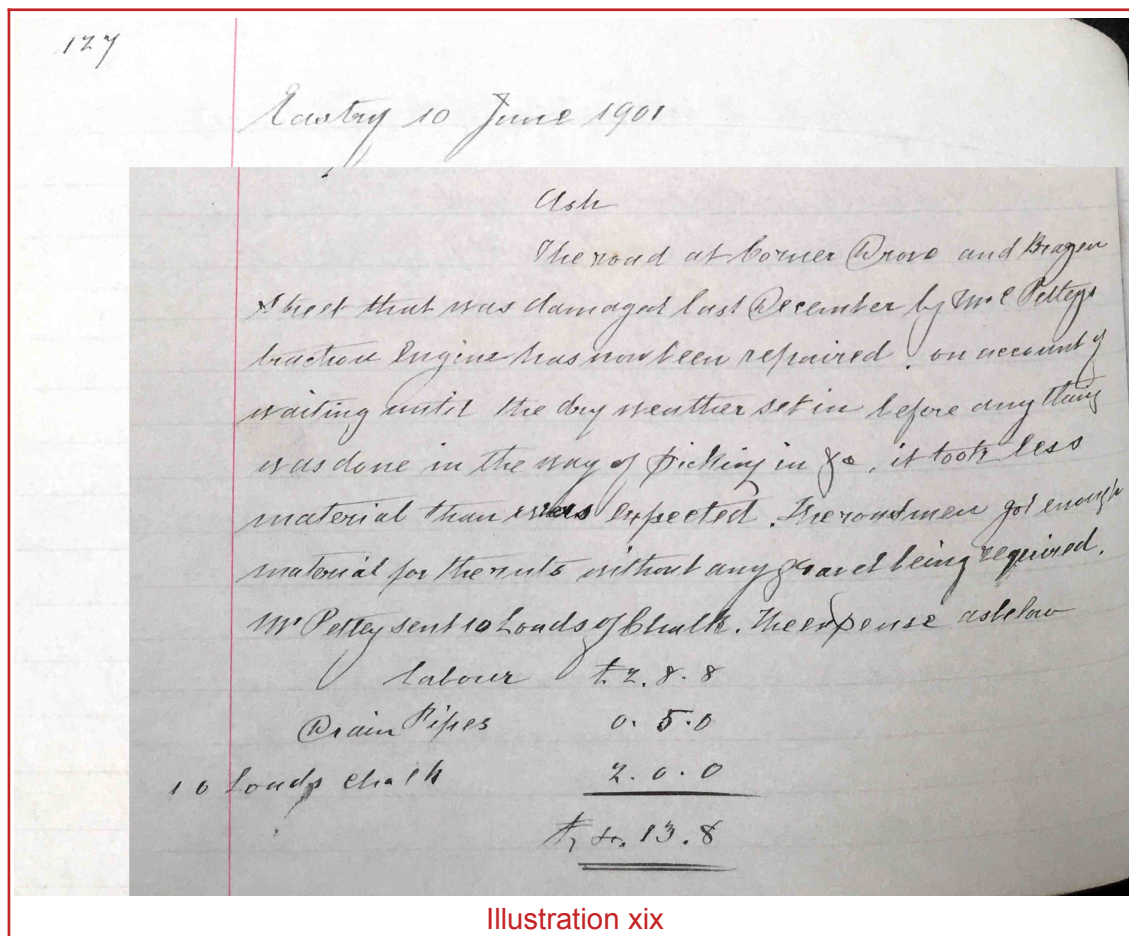


Illustration xix

## Eastry Rural District Council minutes, 10 May 1904

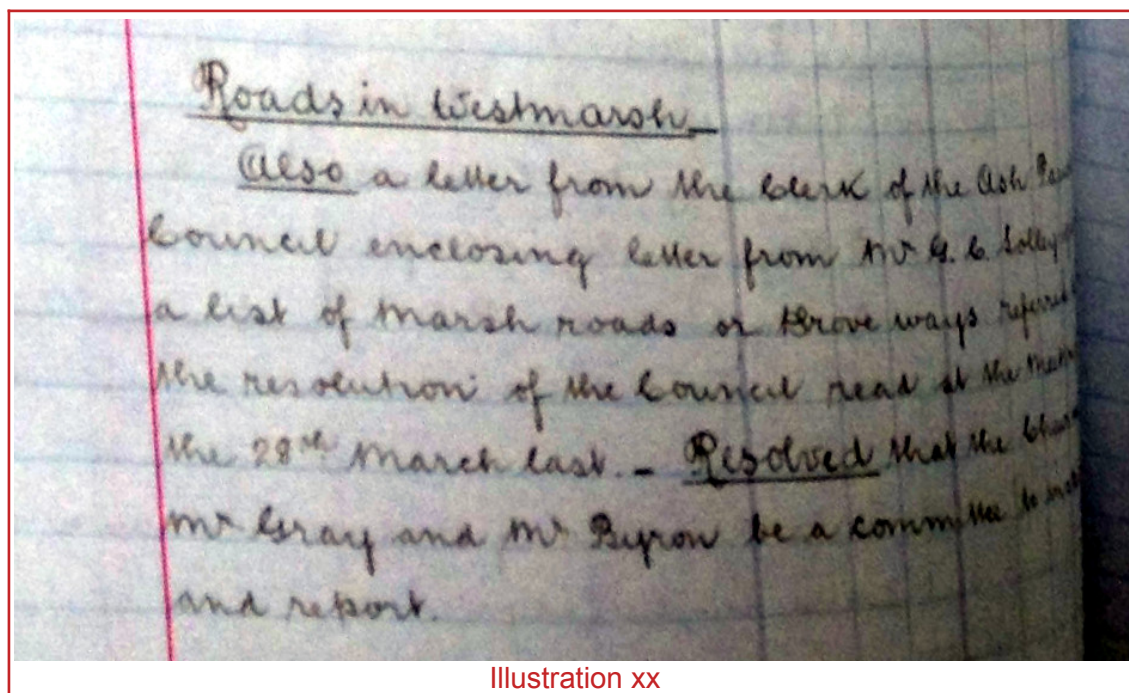


Illustration xx



## Easby Rural District Council report book, 21 June 1904

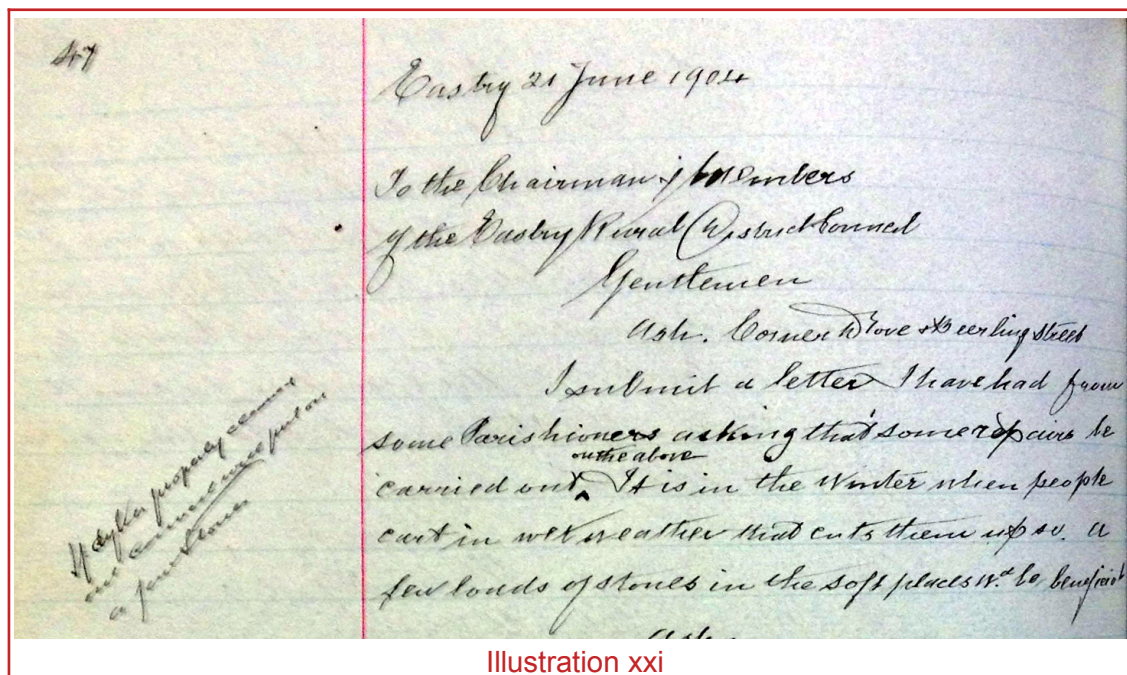


Illustration xxi

## Easby Rural District Council minutes, 21 June 1904

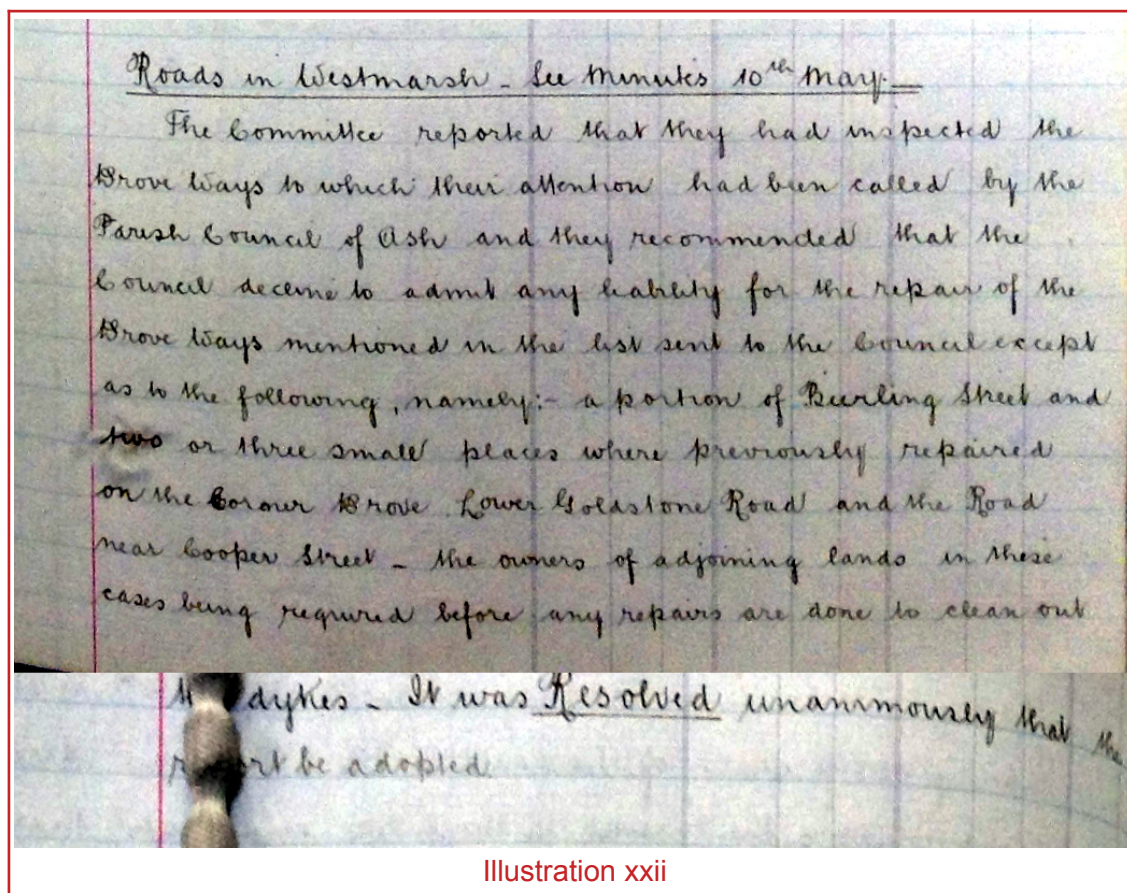


Illustration xxii



## Eastry Rural District Council wages book, 6 May 1908 and 5 May 1909

16

EASTRY RURAL DISTRICT COUNCIL.

HIGHWAYS.

LABOURERS' NAMES.	ON WHAT ROAD EMPLOYED.	HOW EMPLOYED.	DAYS OF THE WEEK.														Days Worked.	Yards.	Rate.	Total Amount Paid.												
			Th. F. S. M. Tu. W.							Th. F. S. M. Tu. W.										Manual Labour.					Materials.							
			Th.	F.	S.	M.	Tu.	W.	Th.	F.	S.	M.	Tu.	W.	Th.	F.				£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
William H. Marsh	Richlers & Cooper St. Drives	Surface repairs etc.								1	1	1	1	1	5			352	2/6													
	Goldstone Road to left of Thel	siding																		1	14	6								1 14 6		
William Bricker	Sounder Lane & various rd.	sweeping & siding	1	1	1	1	1	1	1	1	1	1	1	1	12				2/6	1	10									1 10		
William Schoff	Brayen Hall Drive & three roads	surface repairs & siding etc.	1	1	1	1	1	1	1	1	1	1	1	1	12				2/6	1	10									1 10		
James Thunger	Various	siding surface repairs etc.	1	1	1	1	1	1							9				2/6	1	2	6								1 2 6		

EASTRY RURAL DISTRICT COUNCIL.

HIGHWAYS.

LABOURERS' NAMES.	ON WHAT ROAD EMPLOYED.	HOW EMPLOYED.	DAYS OF THE WEEK.														Days Worked.	Yards.	Rate.	Total Amount Paid.												
			Th. F. S. M. Tu. W.							Th. F. S. M. Tu. W.										Manual Labour.					Materials.							
			Th.	F.	S.	M.	Tu.	W.	Th.	F.	S.	M.	Tu.	W.	Th.	F.				£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
William Bricker	Goldstone Drives & various Rd.	surface repair sweeping & siding	1	1	1	1	1	1	1	1	1	1	1	1	12				2/6	1	10									1 10		
William Schoff	Thoff Lane & Brayen Hall	surface repair siding etc.	1	1	1	1									7				2/6	1	14	6								1 14 6		
	Burnt Tree Corner	breaking stone																24	2/					14						1 14 6		
William H. Marsh	Ruby Drive & various Rd.	surface repair & picking up gut.	1/2	1	1	1	1	1	1	1	1	1	1	1	10 1/2				2/6	1	6	3								1 6 3		
Henry Marsh	Houlters & Sarnamoor Rd.																	24	2/											1 6 3		

Illustration xxiii

Illustration xxiii

## Eastry Rural District Council report book, 25 January 1910

Eastry January 25<sup>th</sup> 1910

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

With

A Colverh which takes the water across  
Brayen Hall Drive is broken in and it  
requires a new one fixed as the water lays  
back in the Drive making it almost impassable.

X  
W. Oak Pinstock  
To be fixed

Illustration xxiv

I.3. **Description:** The report book for Eastry Rural District Council 1899–1903<sup>24</sup> contains the following entry at pages 100–101:

Eastry 24 December 1900

...

Ash                      Mr C Pettey's traction engine and threshing Mill went by the Corner Drove to Brazen Street to thresh corn for Mr Dray late of Lower Goldstone Farm. In consequence of the wet weather and in coming away the engine tore up the road in Brazen Street and before getting on to Corner Drove slipped off the road onto its side, and had to get another engine to pul it out. Those roads are quite unsuited to engine traffic, and Brazen Street from where the stack stood to Corner Drove a distance of 36 rods<sup>25</sup> is very much damaged, the outside of the road in several places being pushed into the adjoining fields and has left large and deep wheel tracks of the engine. Brazen Street may be picked in to a certain extent and levelled, but will require metal to fill up the widest tracks, and chalk where the engine slipped off the road. Until the road is picked in it is rather difficult to estimate the cost of damage done, but I give what I consider an approximation. Corner Drove will require picking in at places and the water channel relieved where blocked, but may do without any metal.

[An 'Approximate estimate' follows, total cost £9,15s]

This does not include the clay pipes that may be broken in the drain across the Corner Drove where it is opened. I have seen Mr Pettey and he tells me that it was entirely Mr Dray's fault, if he had known the condition of the roads he would not have sent his engine there. He expects to hear from you regarding the amount of compensation you think he is liable for.

I.4. It is annotated in the margin: 'Road to be repaired'.

I.5. At page 102:

Eastry 7 January 1901

To the Chairman & Members  
of the Eastry Rural District Council

Gentlemen

Ash

I have been unable to do anything to picking in & levelling Brazen Street Road which was damaged by Mr C Pettey's traction engine, in consequence of the wet weather. The road is just passable now by daylight for vehicles if care is taken, but I think it wd. do harm to interfere with it until drier weather sets in.

I.6. At page 127:

24 RD/Ea/H4.

25 Approximately 180m

Eastry 10 June 1901

Ash

The road at Corner Drove and Brazen Street that was damaged last December by Mr C Pettey's traction engine has now been repaired. On account of waiting until the dry weather set in the way of picking in etc, it took less material than was expected. The roadmen got enough material for the ruts without any gravel being required. Mr Pettey sent 10 loads of chalk. The expense as below. [The expenses total £4,13s,8p]

I.7. On 10 May 1904, the minutes of the council<sup>26</sup> record a discussion about drove roads in Westmarsh, following receipt of a letter from Ash parish council:

Roads in Westmarsh

Also a letter from the Clerk of the Ash Parish Council enclosing letter from Mr G C Solley with a list of Marsh roads or Drove ways referred to in the resolution of the Council read at the meeting on the 28<sup>th</sup> March last. — Resolved that the Chair, Mr Gray and Mr Byron be a committee to [investigate?] and report.

I.8. The minutes of 21 June 1904<sup>27</sup> record the conclusion of the review of maintenance of droves to the marsh in the parish of Ash, at the instigation of the parish council:

Roads in Westmarsh — See Minutes 10<sup>th</sup> May —

The Committee reported that they had inspected the Drove Ways to which their attention had been called by the Parish Council of Ash and they recommended that the Council decline to admit any liability for the repair of the Drove Ways mentioned in the list sent to the Council except as to the following, namely:— a portion of Beerling Street and two or three small places where previously repaired on the Corner Drove, Lower Goldstone Road and the Road near Cooper Street — the owners of adjoining lands in those cases being required before any repairs are done to clean out the dykes — It was Resolved unanimously that the report be adopted.

I.9. The report book for Eastry Rural District Council 1903–1908 contains the following entry<sup>28</sup>:

Eastry 21 June 1904

To the Chairman & Members  
of the Eastry Rural District Council

Gentlemen

Ash, Corner Drove and Beerling Street

I submit a letter I have had from some Parishioners asking that some repairs be carried out on the above. It is in the Winter when people cart in wet weather that cuts them up so. A few loads of stones in the soft places w<sup>d</sup>. be beneficial.

26 RD/Ea/Am3, p.160.

27 RD/Ea/Am3, p.167.

28 RD/Ea/H5, p.47.



I.10. It is annotated in the margin: 'If dykes properly cleaned out Council will put on a few stones'.

I.11. The highway wages book for Eastry Rural District Council, Wingham Area, 1907–12<sup>29</sup> contains the following entry at page 16 for the fortnight ending 6 May 1908:

Labourers' Names: William Theoff  
On What Road Employed: Brazen Street Drove & Ware roads  
How Employed: surface repair and siding etc  
Days of the Week: Th. 1 F. 1 S. 1 M. 1 Tu. 1 W 1 (recorded for each of two successive weeks)  
Days Worked: 12  
Rate: 2/6  
Total Amount Paid/Manual Labour: £1/10s  
Ash: £1/10s

I.12. And the following entry at page 43 for the fortnight ending 5 May 1909:

Labourers' Names: William Theoff  
On What Road Employed: Shiff Lane & Brazen Street  
How Employed: surface repair siding etc  
Days of the Week: Th. 1 F. 1 S. 1 M. 1 Tu. 1 and in the following week, Tu. 1 W. 1  
Days Worked: 7  
Rate: 2/6  
Total Amount Paid/Manual Labour: 17s/6d  
Ash: £1/10s

I.13. In common with some other entries, no value for the entry on page 43 is recorded against the column for the parish of Ash, nor for any other parish.

I.14. The report book for Eastry Rural District Council, Wingham area, 1905–1912 contains the following entry<sup>30</sup>:

Eastry January 25<sup>th</sup> 1910

To the Chairman & Members  
of the Eastry Rural District Council

Gentlemen

Ash

A Culvert, which takes the water across Brazen Street Drove is broken in and it requires a new one fixed as the water lays back in the Drove making it almost impassable.

I.15. It is annotated in the margin: 'To: Oak Penstock to be fixed'.

I.16. **Conclusion:** The reports by the highways surveyor to the Eastry Rural District Council, the decisions of the council and express records of manual labour carried out on the application way, demonstrate that the application way was maintained by the authority around the turn of the twentieth century.

29 RD/Ea/H14.

30 RD/Ea/H9, p.180.

I.17. The records of wages paid for work on the application way in May 1908 and again in May 1909 are the only such records identified in the wages books: however, this appears to reflect a general practice of recording work done at ‘various’ locations, or a reference only to the locality. It therefore cannot be inferred that the work done to the application way in 1908 and 1909 were isolated instances.

I.18. The surveyor’s report and the minutes respectively of 21 June 1904, refer to ‘Beerling Street’. There are two droves onto the marshes north from Paramour Street which are known as Beerling Street Drove and Beerling Drove (see para.I.F.4 above). However, Brazen Street has alternatively been known as Beerling Street, and the hamlet formerly located there was known as Bearding or Beerling Street (see item I.F above). The Parishioners’ letter referred to by the surveyor calls for repairs to both Corner Drove and Beerling Street, and the minute likewise addresses both consecutively, and it is more likely that such repairs were sought in relation to two drove roads connected together, than in relation to two quite distinct drove roads with no direct connections between them — all the more so given that neither of the drove roads north from Paramour Streets appears to be publicly maintainable. The minute states that a ‘portion’ of Beerling Street is maintainable: it is not clear what portion, or how it might be viable to maintain only a portion.

I.19. The reports refer to maintenance of the application way as a ‘road’, that the ‘roads are quite unsuited to engine traffic’, but that ‘The road is just passable now by daylight for vehicles’. It is clear that the maintenance was done to enable the use of the application way as a carriageway. The reports are therefore strong evidence that the application way was regarded as a public carriageway by the highway authority at this time.

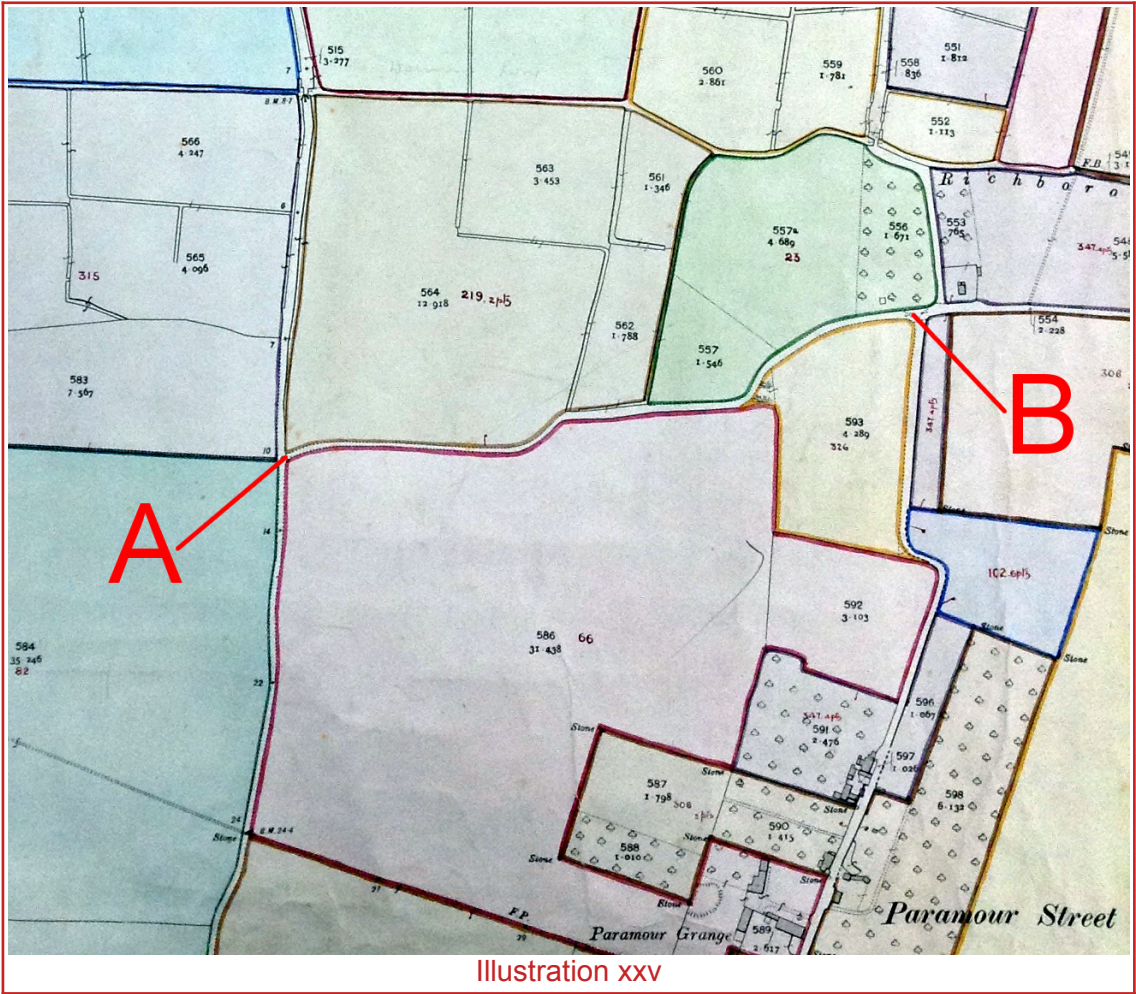
I.20. **Points:** 5

## **J. Finance (1909–1910) Act 1910**

J.1. **Date:** 1911

J.2. **Source:** National Archives<sup>31</sup>

31 Kent 37/9: IR 124-5-33



### J.3.

J.4.

# I

## A hi

**J.5.**

1111

32 D

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.

J.6. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

J.7. The application way is shown wholly uncoloured and excluded from neighbouring hereditaments between A and B. Other ways are also shown uncoloured, including Corner Drove and Paramour Street.

J.8. **Conclusion:** The exclusion of the application way from the hereditaments between A and B provides strong support for its status as a public highway, probably a cart road,, and the then owners' acknowledgement of that status.

J.9. **Points:** 5