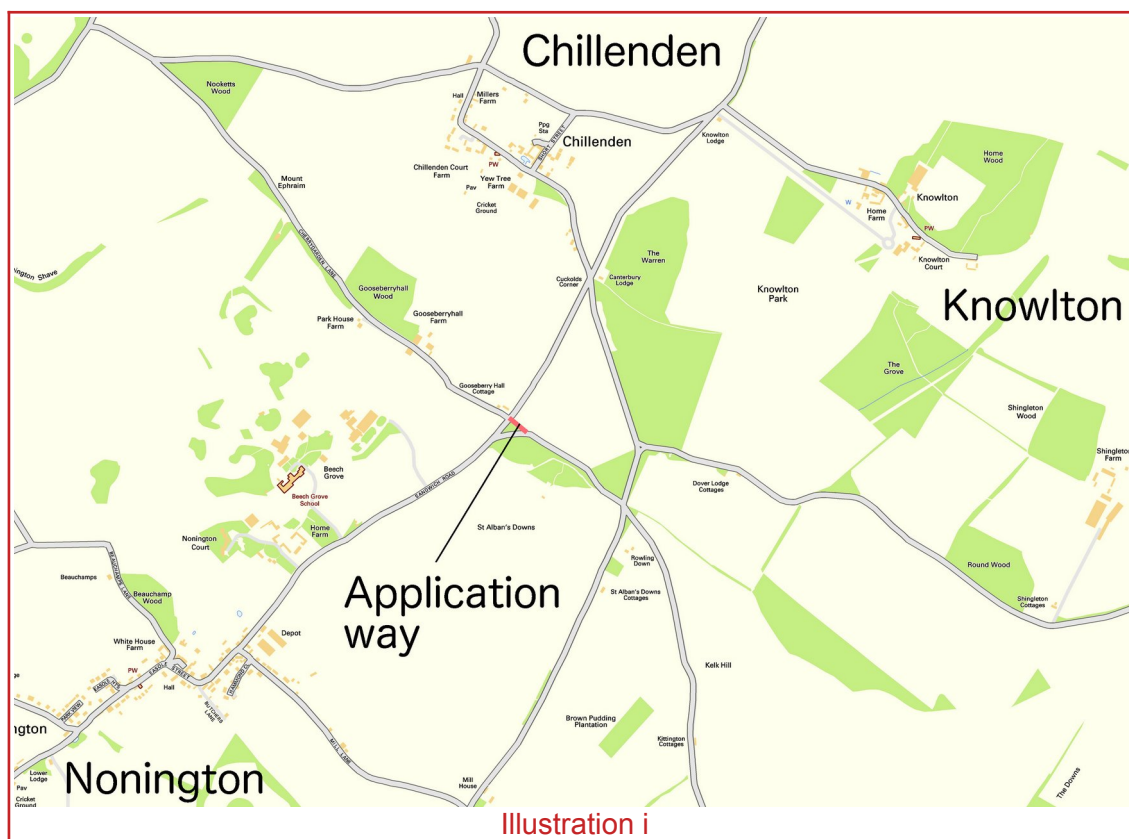


Cherrygarden Lane link: para.4(1)¹ appeal

I. Introduction

A. Quick reference

■ Location map



- A.1. **Date of application to surveying authority:** 26 September 2017
- A.2. **Surveying authority reference for application:** PROW/DO/C400
- A.3. **Date of service of notice of determination:** 5 February 2024
- A.4. **Existing recorded public rights of way comprised in appeal way:** none
- A.5. **Parish of:** Nonington
- A.6. **Ancient parish of:** Nonington
- A.7. **District of:** Dover
- A.8. **Former rural district of:** Eastry
- A.9. **Hundred of:** Eastry²

¹ Paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981

A.10. **Termination points:** Gooseberry Hall Corner (on the Sandwich Road opposite Cherrygarden Lane), and Grannies Lane (the road from the Sandwich Road to Cold Blow Corner)

A.11. **Ordnance Survey termination points:** TR26995283 ([Streetview](#)) to TR27055279 ([Streetview](#))

A.12. **Postcode:** CT15 4HJ

A.13. **Ordnance Survey Explorer sheet:** 150

A.14. **Ordnance Survey County Series 25" sheets:** Kent XLVII/16 and LVII/4

B. Contents

I.	Introduction.....	1
A.	Quick reference.....	1
B.	Contents.....	2
C.	The appellant.....	3
D.	Locational details.....	3
E.	Nomenclature.....	4
F.	Application and determination.....	6
G.	Grounds of appeal.....	7
H.	Appellant's case.....	7
I.	Natural Environment and Rural Communities Act 2006.....	12
J.	Points awarded.....	12
K.	Width of appeal way.....	12
L.	Limitations.....	13
M.	Law cases.....	13
II.	Along the way.....	14
III.	Evidence.....	15
A.	Mediæval evidence for Cherrygarden Lane.....	15
B.	St Alban's map (Gordon Ward collection).....	16
C.	Ordnance Survey surveyor's drawing, Canterbury (East).....	18
D.	Ordnance Survey, Mudge-Faden one-inch map of Kent.....	21
E.	Ordnance Survey, one-inch Old Series map of Kent.....	22
F.	Paterson's Roads — Thanet and Kent and Sussex Coast.....	24
G.	Greenwoods' map of Kent.....	26
H.	Tithe Act 1836.....	29
I.	Poor Law Commissioners' survey.....	30
J.	Public footpath diversion orders, St Alban's Court.....	38
K.	Ordnance Survey County Series first edition twenty-five inch plans.....	42
L.	Late C19 and early C20 maps.....	46
M.	Finance (1909–1910) Act 1910.....	59
N.	Parish map.....	66

- 2 The parish of Nonington is divided between the hundreds of Wingham and Eastry. It appears from the relevant entries in the area book to the Ordnance Survey County Series first edition twenty-five inch plans (item III.K below) that the appeal way is in the hundred of Eastry, although Greenwoods' map of Kent (item III.G below) shows it to be in Wingham hundred. Nothing appears to turn on it.

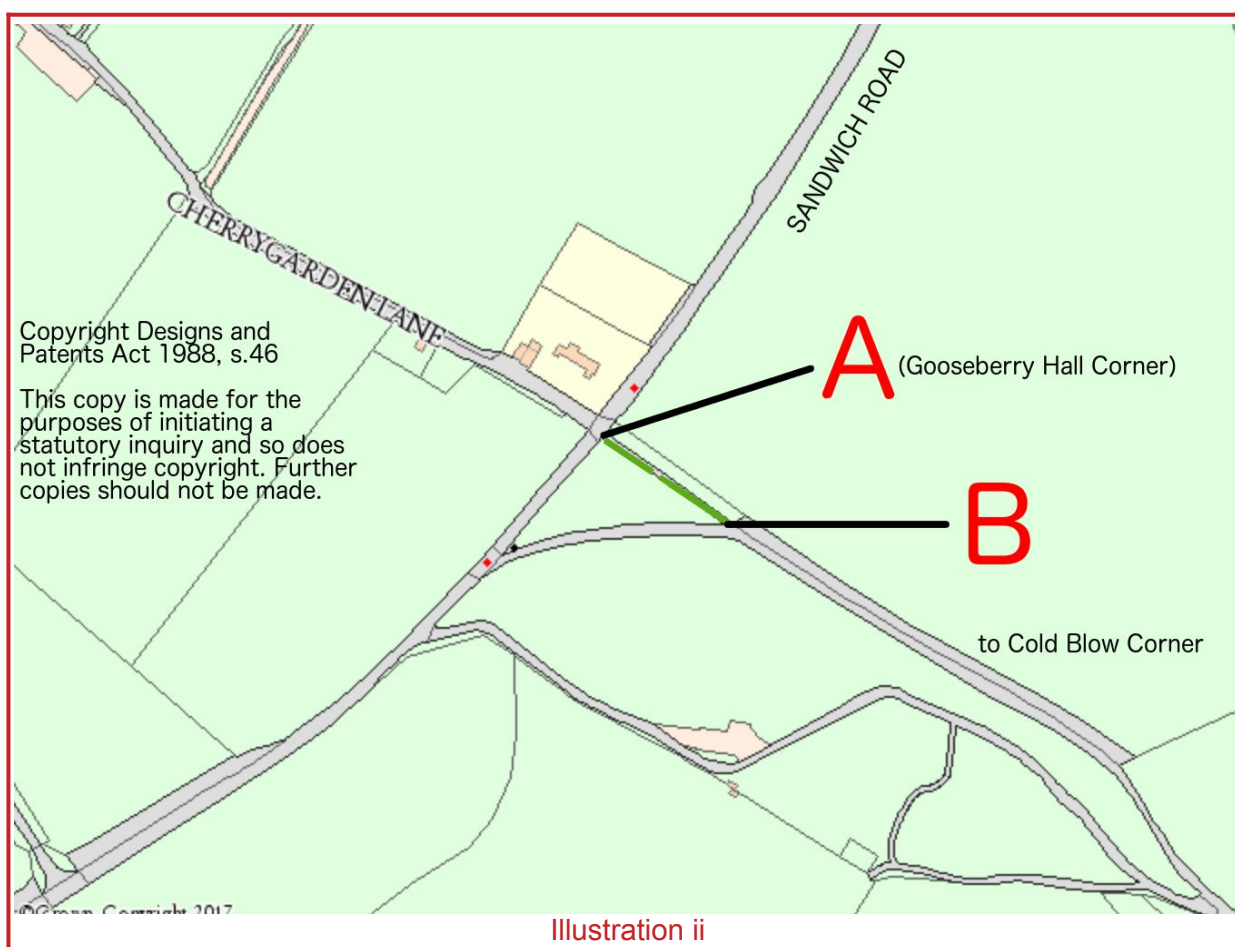
C. The appellant

C.1. The appeal, the evidence for which is summarised in this document, is made by Hugh Craddock acting 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.

D. Locational details

D.1. This appeal relates to a way, wholly in the parish of Nonington, Kent, between Sandwich Road at Gooseberry Hall Corner (point A on the original application plan below), a cross-roads at Cherrygarden Lane (a byway open to all traffic, EE280); south-southeast to Grannies Lane (the road from the Sandwich Road south-southeast to Cold Blow Corner) at point B. The appeal way is approximately 70 metres long.

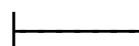
Original application plan



Map centred on A at TR270528

Scale: approx. 1:3,200 (when printed A4)

Appeal way is marked — — —



50m

D.2. Grannies Lane is the continuation of the appeal way south-southeast from B. In the other direction, approaching B from the south-southeast towards the junction with the appeal way, Grannies Lane veers in an arc to the west and then west-southwest to a junc-

tion with the Sandwich Road approximately 70 metres south-southwest of A and approximately 110 metres west of B (measured along the road). This chord, joining the appeal way to the Sandwich Road in the southern quadrant of the cross-roads at A, is, it is submitted, of nineteenth century origin, constructed by the owner of the land. It may be seen that it forms a near-perfect chord across the base of an isosceles triangle of side 70 metres, the apex of which is at A. This is suggestive of construction to a specification, as opposed to dedication by long user.

D.3. The appeal way is not currently recorded on the definitive map and statement. The appeal seeks to show that a definitive map modification order should be made to record the way as a restricted byway.

The appeal way, looking towards B



Illustration iii

E. Nomenclature

E.1. The following names are used in this analysis:

- Gooseberry Hall Corner — the junction at A of Sandwich Road, Cherrygarden Lane and the appeal way, approximately 300m east-southeast of Gooseberryhall Farm.
- Sandwich Road — the road from Woolage Village through Nonington and Woodnesborough to Sandwich.

- Cherrygarden Lane — the byway open to all traffic (EE280) from Goodnestone Park to Gooseberry Hall Corner at A.
- The southern-quadrant chord — the chord in the southern quadrant of Gooseberry Hall Corner, connecting the Sandwich Road to B.
- Grannies Lane — the present alignment of the road from Sandwich Road (70m south-southwest of Gooseberry Hall Corner), via the southern-quadrant chord and B, to Cold Blow Corner.
- Cold Blow Corner — the junction of Grannies Lane, Mill Top, Kelk Hill (the road to Elvington), the road to Cuckolds Corner and Knowlton, and footpath EE323 to New Purchase Firs,³ approximately 410 metres south-southeast of A and 340 metres south-southeast of B. This name appears on the Poor Law Commissioners' survey map at item III.I below.

E.2. These place and road names are shown on the map on the next page.

3 For which application (reference: PROW/DO/C399) has been made to upgrade to restricted byway, commensurate with its status as an old public carriage road. This application also is the subject of an appeal.

Place and road names

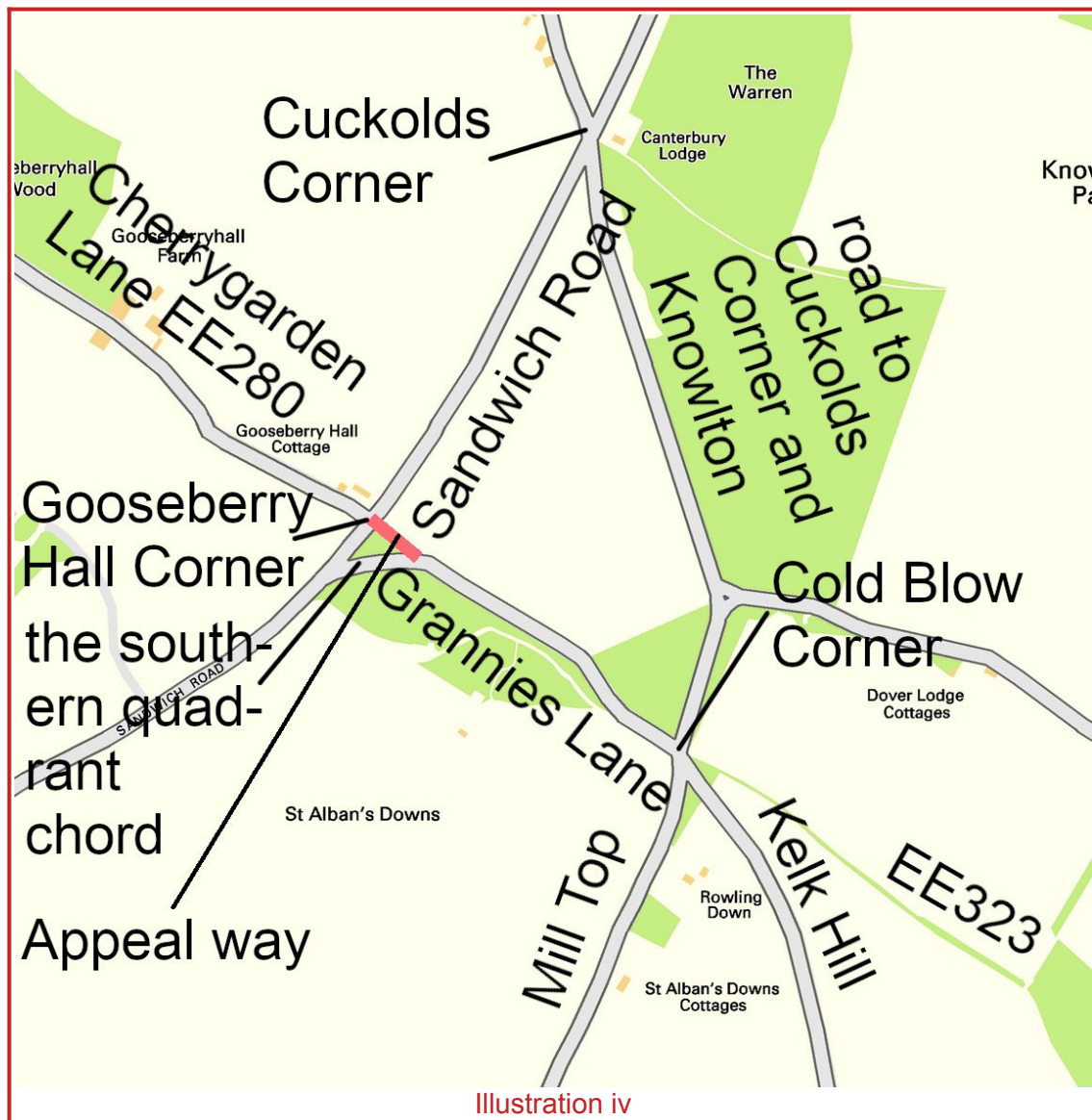


Illustration iv

F. Application and determination

F.1. The application was made by the appellant⁴ on 26 September 2017 under s.53(5) of the Wildlife & Countryside Act 1981 ('the 1981 Act') to Kent County Council (KCC) that a definitive map modification order be made under s.53(3)(c)(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 restricted byway[.]

F.2. Notice of the application was served on owners and occupiers on 3 October 2017, and certificate of service was given to the authority on 6 October 2017.

⁴ i.e. the appellant acting on behalf of the British Horse Society.

F.3. The application was registered by the authority in the register of applications with reference: PROW/DO/C400.

F.4. The application was refused in a determination dated 30 January 2024 and communicated to the applicant on 5 February 2024.

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.14 below), and instead, weighed in the balance the three unclear documents (summarised at para.I.H.17 below) to arrive at a negative determination on the balance of probabilities;
- that in any event, the three unclear documents were neutral in their effect, and ought not to have been interpreted as speaking against highway status;
- that KCC failed to give sufficient weight to the ancient origins of the appeal way (dating back at least to the early seventeenth century) and its documented subsistence as an essential connecting link in the local road network until the early nineteenth century (when the southern-quadrant chord was built); and
- that KCC failed to give sufficient weight to the evidence of the Poor Law Commissioners' survey (item III.I below), which confirms what is apparent from prior, contemporary and subsequent mapping: that the appeal way is a publicly-maintained part of the local road network.

H. Appellant's case

H.1. The appeal way is the continuation of Cherrygarden Lane, which (as a named road) terminates opposite the appeal way at Gooseberry Hall Corner (A). The Mediæval evidence for Cherrygarden Lane (item III.A below) suggests an ancient origin for the lane: it is more probably prehistoric in origin, one of many tracks which led primarily from Canterbury east to coastal destinations across the East Kent Downs and which were established long before agricultural enclosure of the landscape. In the photograph of the way at Illustration iii above, a distinct if shallow holloway can be identified suggesting long use.

H.2. Cherrygarden Lane and the appeal way were part of a way continuing along Gran-nies Lane, the vehicular highway along the line of footpath EE323 (see footnote 3 above) crossing the Kittington valley, bridleway EE335B, then Barville Road to Sutton, Ringwould, Kingsdown or Walmer and Deal. Together, they also would have provided a conveniently short route to Cold Blow Corner and then into Mill Top (to Barfreestone) or Kelk Hill (to Elvington). As the continuation of the lane, the appeal way must have the same origin and history.

H.3. The St Alban's map (Gordon Ward collection) (item III.B below), and late eighteenth century and early nineteenth century maps, from Ordnance Survey surveyor's drawing, Canterbury (East) (item III.C below) to Greenwoods' map of Kent (item III.G below), show that the appeal way has long formed a cross-roads at Gooseberry Hall Corner, with traffic using Cherrygarden Lane and the appeal way crossing with traffic using Sandwich Road.

Greenwoods' map of Kent describes the appeal way as a 'cross road' — a public road subsidiary to the turnpikes and other main roads.

H.4. These older maps do not show the present southern-quadrant chord, part of Grannies Lane, connecting the Sandwich road with Grannies Lane, and accordingly, prior to the chord's construction, there can be little doubt that the appeal way was part of the ordinary road network. The St Alban's map (Gordon Ward collection), Ordnance Survey surveyor's drawing, Canterbury (East) and Ordnance Survey, one-inch Old Series map of Kent (item III.E below) all show a track or road which cuts across St Alban's Downs linking the Sandwich Road to Cold Blow Corner, but which is no longer shown on the Poor Law Commissioners' survey map (item III.I below) nor on the Ordnance Survey County Series first edition twenty-five inch plans (item III.K below). Indeed, it seems probable that this track or road fell out of regular use after the southern-quadrant chord was constructed. Indeed, it may be that the southern-quadrant chord was constructed so as to remove traffic from the more direct alignment over the downs.

H.5. KCC suggests the older maps are not consistent in representation of the cross-roads, with some showing slight displacement of the appeal way to the north-east or south-west of the opposing entry of Cherrygarden Lane,⁵ but we submit that such small errors are trivial in the context of the scale and accuracy of the mapping of this era. It is not until embarkation on the Ordnance Survey County Series mapping in the second half of the nineteenth century that one can expect the highest standards of cartography to be practised uniformly.

H.6. In confirmation of status, the Poor Law Commissioners' survey shows the appeal way as one of a number of roads maintained by the Nonington parish surveyor,⁶ and the appeal way is described as a 'Road from Gooseberry Hall Corner to New Purchase Firs' (the latter was reached along what is now footpath EE323: see footnote 3 above).

H.7. The Nonington tithe map prepared under the Tithe Act 1836 (item III.H below) shows nothing of the appeal way, nor of Grannies Lane. Yet both are shown to have subsisted at this time, and the appeal way (and its continuation south-southeast from B) can be traced back to at least 1620. It is suggested they are omitted because the land was tithe-free, and the content of the map immaterial in relation to that land.

H.8. In the late eighteenth or early nineteenth century, the importance of Cherrygarden Lane and the vehicular highway along the line of footpath EE323 declined as a through route, and it seems probably that, increasingly, traffic turning into Grannies Lane originated from or via Nonington. Early in the nineteenth century, the southern-quadrant chord appears to have been constructed, presumably by the estate owning St Alban's Downs, although its provenance and precise date of origin remain uncertain. The chord first is shown on Greenwoods' map of Kent, dating from 1819–20.

H.9. For at least a century after the construction of the chord, the appeal way and the chord competed for traffic and status. Plainly, the chord was built to a high standard (it fulfils a gentle near-perfect geometric arc between B and the junction with the Sandwich Road), and is shown to have been metalled. The Poor Law Commissioners' survey suggests that, by 1859, the chord already had been adopted and become publicly maintainable by the vestry (presumably because it was brought into use before the Highway Act 1835). Yet many Late C19 and early C20 maps (item III.L below) continue to show the

5 KCC report on application C400 dated 30 January 2024, appendix B, para.86

6 The parish surveyor was an annual lay appointment.

appeal way as of a higher standard than the chord, and the appeal way is not firmly relegated to minor status, as a cart track, until on maps revised from surveys done after the Second World War. The maps prepared under the Finance (1909–1910) Act 1910 (item III.M below), which date from the early years of the twentieth century, are inconclusive, and add nothing to understanding of the evolution of either the appeal way or the southern-quadrant chord.

H.10. Finally, the Parish map (item III.N below) prepared by Nonington parish council under Part IV of the National Parks and Access to the Countryside Act 1949 did not identify the appeal way. But evidence suggests that this may have been owing to oversight, or because the way was still considered to be a public road which did not need to be recorded. This analysis is borne out by an anecdotal report, as follows:

I can remember when it was open and accessible for motor vehicles, and recently a villager, a decade or so older than me, who was born at Gooseberry Hall remarked about the section being blocked off as it had always been open and accessible and passable to vehicles.⁷

H.11. It sometimes is said that the indication of a road on historic maps is not evidence that the road was of public status.⁸ However, there is little room for doubt that the roads which converge on Gooseberry Hall Corner are all public roads, and have been since time immemorial. The short section of appeal way evidently was part of that local network of public roads, and therefore must also be of public status. Until the southern-quadrant chord was constructed in the early nineteenth century, there can have been no means to turn from Gooseberry Hall Corner to the south-southeast save along the appeal way.

H.12. 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.’

⁷ Personal communication from local resident, 17 February 2024.

⁸ ‘If it is accepted that a road depicted on an old map did in fact exist on the ground on the line shown on the map, its depiction is no indication as to whether there was any form of public right of way over it.’ *Rights of Way: a guide to Law and Practice*, Riddall and Trevelyan, fourth edition, citing *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* (1936). However, in that case, the judge said: ‘There is nothing in the maps to show whether or not the topographer-author was intending to represent the roads on his map as public highways.’ The position may be different where the map uses a key to identify certain ways as public ways (such as ‘turnpike’ or ‘cross road’), or where it can be shown that the map maker adopted a practice of distinguishing public and private roads, or of showing only public roads.

⁹ [\[2012\] EWCA Civ 334](#)

H.13. 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.14. 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...subject to section 54A, a byway open to all traffic[.]

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

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.16. The circumstances and evidence in this appeal strongly point to highway status. The appeal way is a small component in a wider road network which is proven to have subsisted since the early seventeenth century, and almost certainly has been present since early mediæval times if not before. It has continued to be documented in that context ever since, and it is only in the second half of the twentieth century that it has declined in both user and substance. The southern-quadrant chord is simply a distraction: unequivocally the consequence of road-building, it seems to have been constructed in the early nineteenth century. Prior to the construction of the chord, the appeal way served a vital if small part in the local road network. The status of the appeal way in the mid-nineteenth century is confirmed (if confirmation were needed) by its classification as a publicly-maintainable public road in the Poor Law Commissioners' survey (III.I below).

H.17. Against that, KCC has given weight to three documents which ought to be given no weight whatsoever. First, the Nonington tithe map (item III.H below) does not show the appeal way, nor indeed the southern-quadrant chord or any part of Grannies Lane — but they plainly existed (having been recorded on earlier maps), and all were recorded as public roads some 20 years later in the Poor Law Commissioners' survey. The omissions are likely attributable to the tithe-free status of the land. But as tithe maps (in isolation

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

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

from the accompanying assessment) are seldom considered to be of much weight in determining highway status, they hardly can be of much weight in excluding it. Second, the Ordnance Survey County Series first edition twenty-five inch plans (item III.K below) simply show the appeal way generally as of fairly minor importance, and it is not identified as a discrete parcel. It is trite that such maps are not evidence of highway status, and again, they cannot be evidence of the absence of such status. Third, the Finance (1909–1910) Act 1910 (item III.M below) plans are uncertain in whether the appeal way is entirely excluded from any hereditament (*i.e.* as a ‘white road’) — but again, if it is not excluded, neither is the southern-quadrant chord nor, arguably, the whole of Grannies Lane. None of the three documents is of any significant weight in counting against highway status: they are simply neutral and unhelpful.

H.18. Moreover, the appellant submits that, in determining the application, KCC erred in balancing the three supposedly adverse documents against the remaining evidence. Even if (which the appellant does not accept), the supposedly three adverse documents were to have the potency and weight attributed to them by KCC, the appellant submits that what KCC has done is to weight the evidence as a whole in the balance and, as a matter of opinion, decide that it does not support the application being granted on the balance of probabilities. But the correct test is whether the appellant has made a reasonable allegation that the appeal way subsists. And on this test, the appellant submits that the test is fully satisfied. The remaining evidence amply demonstrates a case for highway status, and the reasonable allegation test must be satisfied on that basis. Again, even if the supposedly adverse documents were to have the potency and weight attributed to them by KCC, they are not capable of undermining the substance of the reasonable allegation. (It might be that, were there to be a powerful document, for example, a record of the highway authority in the late nineteenth century, which denied that the appeal way were a highway, such evidence might be capable of displacing the evidence giving rise to a reasonable allegation. Of course, no such document has been found, nor is likely to be.¹²)

H.19. While no single piece of evidence in the appeal is conclusive, the appellant believes that, taken as a whole, the evidence in this appeal demonstrates highway reputation, indicating that the route does indeed have highway status, and that there are vehicular rights. The appellant does not accept that the three documents referred to in para.I.H.17 above can be weighed in the other scale of the balance — but even if they can, it is plain: ‘that a reasonable person, having considered all of the relevant evidence available, could reasonably allege that a right of way subsisted.’

H.20. If the Secretary of State considers that the test for vehicular rights is not satisfied, the Secretary of State is invited to consider whether it might instead be satisfied for a bridleway.

H.21. If the Secretary of State is minded to grant the appeal, the inspector is invited to direct the authority to make the order applied for, but also 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

12 The appellant has reviewed the minutes of Wingham Highway Board from 1863 to 1880, the highways report book of Eastry Rural Sanitary Authority from 1880 to 1894, and the minutes of Eastry Rural District Council from 1894 to 1929, and found no reference to the appeal way or to Grannies Lane (however named).

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

I. Natural Environment and Rural Communities Act 2006

I.1. The appeal seeks to show that the appeal way is a public carriageway. None of the appeal way is recorded as publicly maintainable in the list of streets held by KCC under s.36(6) of the Highways Act 1980. The effect of s.67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in s.67 apply. The appeal therefore relates to an application for a restricted byway.

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

J.2. Points:

Item	Ref	Points
Mediæval evidence for Cherrygarden Lane	III.A	0
St Alban's map (Gordon Ward collection)	III.B	2
Ordnance Survey surveyor's drawing, Canterbury (East)	III.C	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	III.D	1
Ordnance Survey, one-inch Old Series map of Kent	III.E	0
Paterson's Roads — Thanet and Kent and Sussex Coast	III.F	1
Greenwoods' map of Kent	III.G	1
Tithe Act 1836	III.H	0
Poor Law Commissioners' survey	III.I	5
Public footpath diversion orders, St Alban's Court	III.J	3
Ordnance Survey County Series first edition twenty-five inch plans	III.K	0
Late C19 and early C20 maps	III.L	2
Finance (1909–1910) Act 1910	III.M	1
Parish map	III.N	1
Total points		18

J.3. The purpose of the allocation of points is to provide guidance on the relative weight which the appellant considers might be accorded to each piece of evidence. No points are assigned to repetitive sources of similar character, whatever the individual merit.

K. Width of appeal way

K.1. The appeal way is not recorded as a separate parcel on the Ordnance Survey County Series first edition twenty-five inch plans (item III.K below), nor is it recorded as a discrete tithe unit on the Tithe Act 1836 mapping (item III.H below).

K.2. The width of the appeal way can be measured from Ordnance Survey large scale plans, but the width of the way shown on the plan may be notational.

K.3. However, the Poor Law Commissioners' survey (item III.I below) does calculate an area occupied by the appeal way, together with its continuation east-southeast from B along Grannies Lane to Cold Blow Corner and then to New Purchase Firs. This is given

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

as 0.77ha (see entry for 614 in table on p.34 below). The total length of the appeal way (70m) and the continuation beyond B (1,910m) is 1,980m, which suggests a mean width of 3.88m.

K.4. As a carriageway, the appeal way historically is likely to have been of sufficient width to accommodate two vehicles passing. A width of four metres would generally be sufficient for this purpose, and consistent with the calculation above.

L. Limitations

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

M. Law cases

M.1. The following cases directly are cited in this historical document analysis, and copies of the judgment are annexed to the appeal.

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.H.12 III.G.7 III.M.13	HC: [2010] EWHC B33 (Ch) CA: [2012] EWCA Civ 334
<i>R v Secretary of State for the Environment, ex parte Bagshaw</i>	I.H.15	(1994) 68 P & CR 402, [1995] JPL 1019
<i>Hollins v Oldham</i>	III.G.8	[1995] (unreported) C94/0206
<i>Robinson Webster (Holdings) Ltd v Agombar</i>	III.M.13	[2001] EWHC 510 (Ch)
<i>Commission for New Towns v JJ Gallagher Ltd</i>	III.M.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.M.13	[2009] EWHC 171 (Admin)

II. Along the way¹⁵



Illustration v: From Gooseberry Hall Corner (A), looking east



Illustration vi: From Gooseberry Hall Corner (A), looking east



Illustration vii: Near Gooseberry Hall Corner (A), looking west to Cherrygarden Lane



Illustration viii: Between A and B, looking west



Illustration ix: Between A and B, looking east



Illustration x: At B, looking east

¹⁵ Taken in September 2017.

III. Evidence

A. Mediæval evidence for Cherrygarden Lane

A.1. **Date:** various

A.2. **Source:** Canterbury Cathedral Archives

A.3. **Description:** Moneketon or Mounton was the area around Gooseberry Hall (east-northeast of Gooseberry Hall Corner at A) on Cherrygarden Lane. and appears at one time to have been a hamlet of at least some four or five properties. Mounton was an outlying part of the Christ Church manor of Adisham.¹⁶

A.4. In the late thirteenth century¹⁷:

John son of Roger atte Wode; Margery, wife of John son of Roger atte Wode make a grant to the prior and convent of Canterbury Cathedral Priory of a piece of land 6½ perches long and 5 feet wide at 'Moneketon' in Nonington parish, lying with the priory's land to east, John and Margery's land to west and south and the king's highway to north.

A.5. Also in the late thirteenth century¹⁸:

Alwyn ('Elwinus') son of William of Monkton grants to the prior and convent of Canterbury Cathedral Priory 1 acre of land with the house upon it, and a moiety of 1 hen and 5 eggs, the land lying with the land of Simon, Alwyn's brother, to east, the land of Jocelyn ('Gocelinus') to west, the king's highway to north and the land of the monks of St Albans Abbey ('monachi sancti alban') to south.

A.6. **Conclusion:** Two grants of land at Mounton refer to the 'king's highway' bounding that land to the north. The highway must inevitably be Cherrygarden Lane: it is the only highway passing through the hamlet from (approximately) east to west so that it may lie to the north of the granted land.

A.7. Early Ordnance Survey maps (see the Ordnance Survey County Series first-edition 1:2,500 plan at Illustration xxviii: the appellation also appears on the second and third editions, and on the Ordnance Survey New Series sheet seen in Illustration xxxiii below, but not in the extract) record this way as the '*Supposed Pilgrims Way*',¹⁹ while the way was referred to in a 1511 quitclaim²⁰ as 'Saint Margaret Strete' — this way can be followed across country to St. Margaret's at Cliffe (a coastal village between Dover and Deal).

A.8. Cherrygarden Lane is at least mediæval, and probably much older, in origin. It must have had, and continue to have, a continuation beyond Gooseberry Hall Corner at A — that continuation is along the appeal way from A to B and so to Cold Blow Corner, and thence south-east via what is now footpath EE323 crossing the Kittington valley, bridleway

16 Website: *The old parish of Nonington*, [Monkton, now Gooseberry Hall Farm](#), 2019

17 CCA-DCc/ChAnt/N/46

18 CCA-DCc/ChAnt/M/147

19 The '*Supposed Pilgrims Way*' is also marked across Goodnestone Park along the same line.

20 A transcription is online at: https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonyngton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir_esc=y.

EE335B, continuing east along Barville Road to Sutton and coastal destinations. The Sandwich Road does not make for a plausible onward line from Cherrygarden Lane (still less for a 'Pilgrims' Way'), and its relatively straight, broad and purposeful line suggests a later origin.

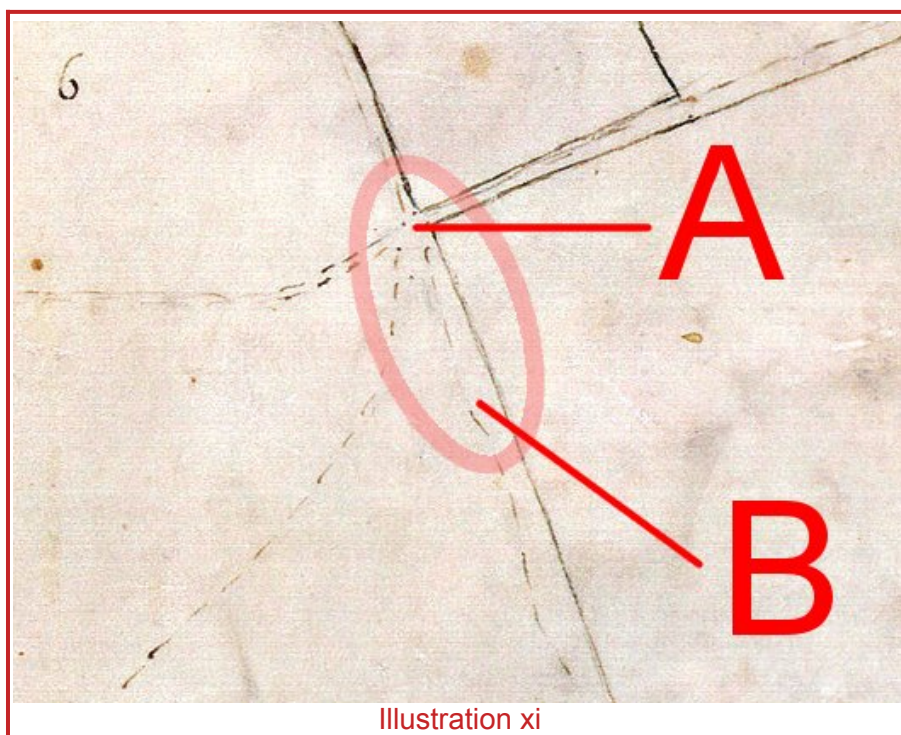
A.9. **Points:** 0

B. St Alban's map (Gordon Ward collection)

B.1. **Date:** 1629

B.2. **Source:** KCC Archives (Gordon Ward collection)²¹

■ St Alban's map (enlargement)



B.3. **Description:** scale: none marked (so far as is visible); orientation: a compass is marked on the map (top is north-west). Only an enlarged extract is shown above: for fuller reproduction of map, see Annexe A at p.69 below.

B.4. The map is one of many documents in a large and miscellaneous collection accumulated by Dr Gordon Ward of Sevenoaks during many years of antiquarian study.

B.5. The map is given in the catalogue as dating from around 1650, but it has elsewhere been dated to 1629.²²

B.6. The map shows the intersection between Cherrygarden Lane and the Sandwich Road, placed on the north-east side of St Alban's Downs (parcels labelled 6 to 8 on the map). A continuation of Cherrygarden Lane in the same direction is shown south-south-

²¹ U442/P30

²² In *History of Old St Alban's Court, Nonington*, [Archaeologia Cantiana](#), vol.125, pp.273–290 at footnote 19, reference is made to a thesis which suggests a date of 1629.

east of the intersection, open to the down on its south-west side, but enclosed on the north-east side.

B.7. No chord is shown in the southern quadrant of the cross-roads at A, but a track represented by a single or possibly double pecked line connects the two roads somewhat to the south of the line of footpath EE309 today: this track is shown on early nineteenth-century mapping. Another track, shown by a single pecked line, projects south from the intersection, but no trace exists today.

B.8. **Criticism:** KCC states that²³:

...the purpose, provenance and exact date of the St. Alban's Estate map are all unknown, which makes it difficult to know how much weight (if any) to attach to this map... .

B.9. The map speaks for itself. It dates from the first half of the seventeenth century. It plainly is a map of the estate of St Alban's and is remarkably detailed and clear for its age. It shows the estate, and it marks roads and tracks. It is suggested that it can be relied upon for the conclusions drawn below.

B.10. **Conclusion:** The map of the St Alban's estate shows that, at the date of the map, the intersection between the Sandwich Road and Cherrygarden Lane formed a cross-roads at Gooseberry Hall Corner (A), and that the appeal way continued south-southeast from A to B and continuing towards Cold Blow Corner. There is no indication of the southern-quadrant chord.

B.11. Although dating from the early seventeenth century, the map is remarkably faithful to present-day highway patterns. Apart from the appeal way, the following present-day highways are readily identifiable, in addition to the Goodnestone Road in Chillenden village:

- Sandwich Road
- Grannies Lane (in continuation from B to Cold Blow Corner)
- Cherrygarden Lane
- Mill Top
- Station Road
- Footpath EE323

B.12. As these ways are all recognised as public roads today, save footpath EE323 which is the subject of an application to record as restricted byway (see footnote 3 above), it is reasonable to conclude that Gooseberry Hall Corner was a cross-roads formed of public roads.

B.13. it follows that the appeal way was, formerly, the only means of proceeding south-southeast from Cherrygarden Lane into the road to Cold Blow Corner. It must therefore be a public road, and remain so today.

B.14. **Points:** 2

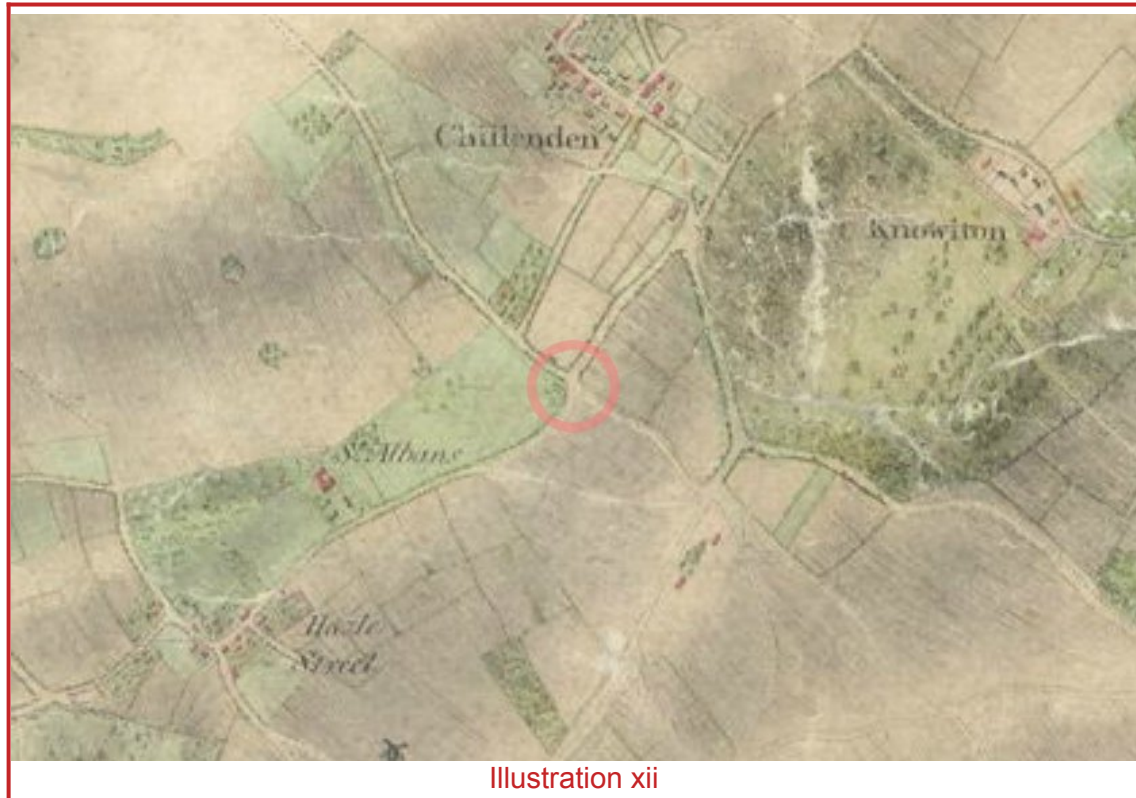
23 KCC report on application C400 dated 30 January 2024, appendix B, para.93

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

C.1. **Date:** 1797

C.2. **Source:** British Library website²⁴, National Archives²⁵

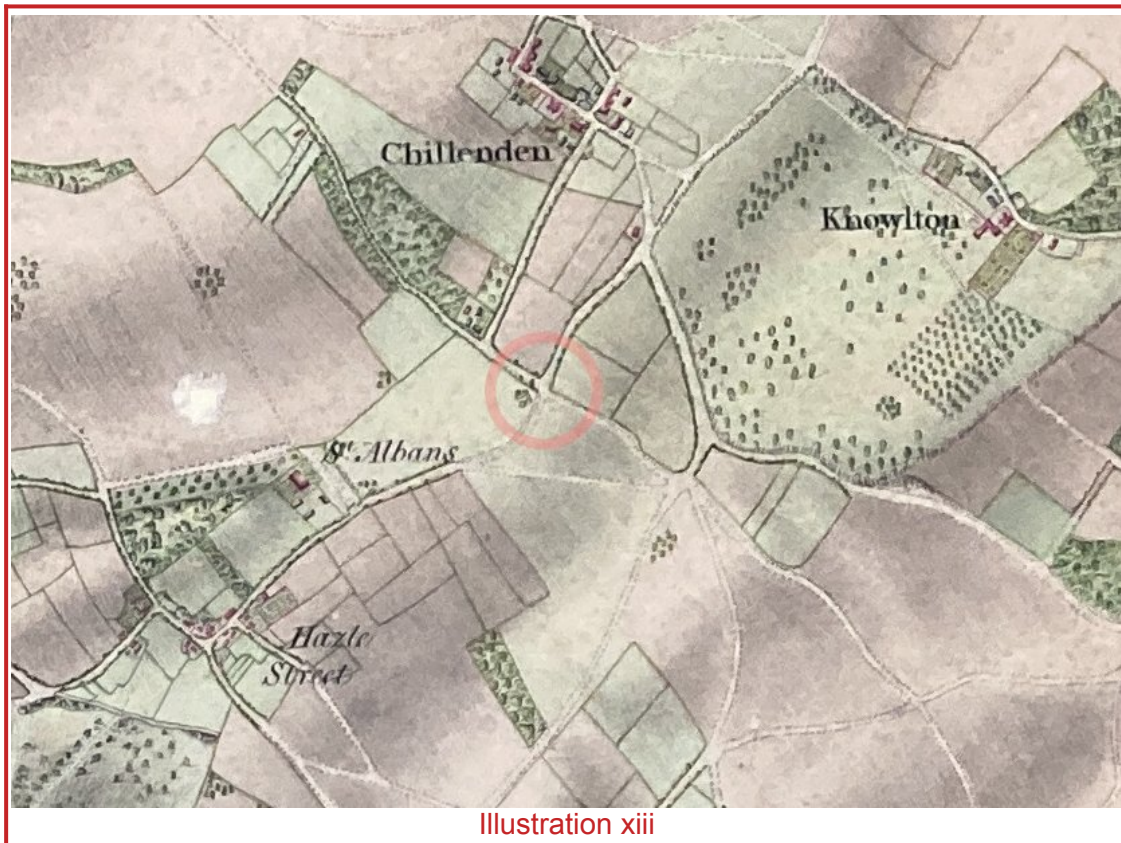
■ **Ordnance Survey surveyor's drawing, Canterbury (East)**



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

25 MR 1/599

Fair copy of topographical surveys



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

C.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.²⁶

C.5. Although the drawings are now in relatively poor condition, good copies were made to be held by the War Office. These copies are now held in the National Archives, described as, 'Topographic Survey manuscript 'fair' copies of Kent & Sussex, surveyed by Gardner & Yeakell, at 3 inches to 1 mile'.²⁷ The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

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

C.6. The map clearly marks Cherrygarden Lane, Sandwich Road and the appeal way extending south-southeast to Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A).

C.7. Both the appeal way and its continuation south-southeast towards Cold Blow Corner, and the Sandwich Road south-west of Gooseberry Hall Corner, are depicted as unenclosed on the south-west and south-east sides respectively, where they form the northern boundary to St Alban's Downs. The Downs appear to be contiguous with an extensive area of unenclosed downland extending to the east, across which a number of roads are depicted as unenclosed.

C.8. There is no indication of the southern-quadrant chord, but further south, a road or track across St Alban's Downs is shown connecting the Sandwich Road to Cold Blow Corner on an alignment slightly to the south of footpath EE309 and which was first seen on the St Alban's map (Gordon Ward collection) (item III.B above).

C.9. **Conclusion:** The Ordnance Survey drawing provide good evidence of the existence of the appeal way at the end of the eighteenth century. The drawing shows a direct continuation of Cherrygarden Lane south-southeast towards Cold Blow Corner along the line of the appeal way.

C.10. **Points:** 1

(This is the first of two Ordnance Survey maps to score points: no more than two such maps are scored.)

27 *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.

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

D.1. **Date:** 1801

D.2. **Source:** KCC Archives²⁸

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



Illustration xiv

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

D.4. The map clearly marks Cherrygarden Lane, Sandwich Road, and the appeal way and its continuation south-southeast towards Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A).

D.5. There is no indication of the southern-quadrant chord, nor of the road or track across St Alban's Downs connecting the Sandwich Road to Cold Blow Corner which was first seen on the St Alban's map (Gordon Ward collection) (item III.B above).

D.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

28 Available online at: mapco.net/kent1801/kent51_03.htm.

of the purchasing public, rather than purely military requirements. The Mudge-Faden map is good evidence of the existence of the appeal way at the end of the eighteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner.

D.7. **Points:** 1

(This is the second of two Ordnance Survey maps to score points: no more than two such maps are scored.)

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

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

E.2. **Source:** National Library of Australia²⁹

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



Illustration xv

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

E.4. This is the Old Series one-inch map officially first published 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.D above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map (save as noted below).

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

E.5. The Ordnance Survey Old Series map clearly marks Cherrygarden Lane, Sandwich Road, and the appeal way and its continuation south-southeast towards Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A).

E.6. There is no indication of the southern-quadrant chord, but further south, the same road or track across St Alban's Downs is shown connecting the Sandwich Road to Cold Blow Corner on an alignment slightly to the south of footpath EE309 and which was first seen on the St Alban's map (Gordon Ward collection) (item III.B above), but omitted from the Ordnance Survey, Mudge-Faden one-inch map of Kent.

E.7. **Conclusion:** The Ordnance Survey Old Series map is good evidence of the existence of the appeal way as a well-defined road or bridleway in the early nineteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner.

E.8. The Old Series map is not conclusive as to the public status of the way. It was primarily intended for military use, and on this sheet, the surveyor seldom showed foot-paths being of little military interest. It therefore can be concluded with some confidence that the appeal way was a defined feature in the landscape, capable at least of accommodating ridden horses, and probably a carriageway.

E.9. **Points:** 0

(No more than two points are scored for Ordnance Survey maps.)

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

F.1. **Date:** 1811

F.2. **Source:** British Library³⁰

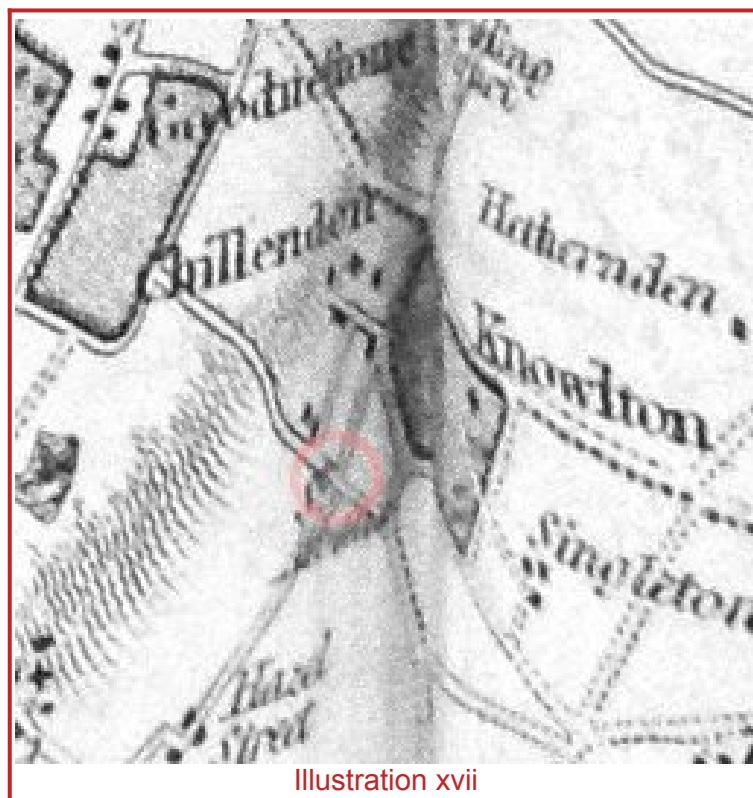
■ *Paterson's Roads, Thomson's map*



Illustration xvi

30 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg

Paterson's Roads, Thomson's map enlargement



F.3. **Description:** Original scale: not known, but scale marked in miles (however, the map has been graphically stretched to diminish the effect of the bookbinding); orientation: unchanged (top is north).

F.4. This map by J Thomson is one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item III.D above): however, the map has been revised to show the Dover to Sandwich via Deal turnpike, which was authorised in 1797.³¹

F.5. The Thomson map marks Cherrygarden Lane, Sandwich Road, and the appeal way and its continuation south-southeast towards Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A). Although the cross-roads appears close to the binding, the cross-roads may be seen with greater clarity on the Past-pages.co.uk website referred to in footnote 30 above. The label immediately below the cross-roads refers to 'St Albans'.

F.6. There is no indication of the southern-quadrant chord, nor of the road or track across St Alban's Downs connecting the Sandwich Road to Cold Blow Corner on an alignment slightly to the south of footpath EE309 which was first seen on the St Alban's map (Gordon Ward collection) (item III.B above).

F.7. **Conclusion:** Revision of the map, which appears to be derived from the Mudge-Faden map, so as to include the Dover to Sandwich turnpike, suggests that the representation of at least principal roads was researched and updated. The Thomson map appears

31 *I.e.* via Hacklinge, not shown in the extract above, but visible in the copy available online via fn.30 above.

to focus on key roads available to the public — it does not show the track on an alignment slightly to the south of footpath EE309, which is present on all but one of the previously-listed maps. Although probably based on the Ordnance Survey, Mudge-Faden one-inch map of Kent (item III.D above), which omits the aforementioned track and would explain its omission here, it has been simplified and revised on a selective basis, and the Thomson map is therefore good evidence for the existence of a defined way, at least of bridleway status, along the appeal way.

F.8. **Points:** 1

G. Greenwood's map of Kent

G.1. **Date:** 1819–20

G.2. **Source:** KCC Archives

Greenwood's map



Illustration xviii: Greenwood's map

Greenwoods' map key

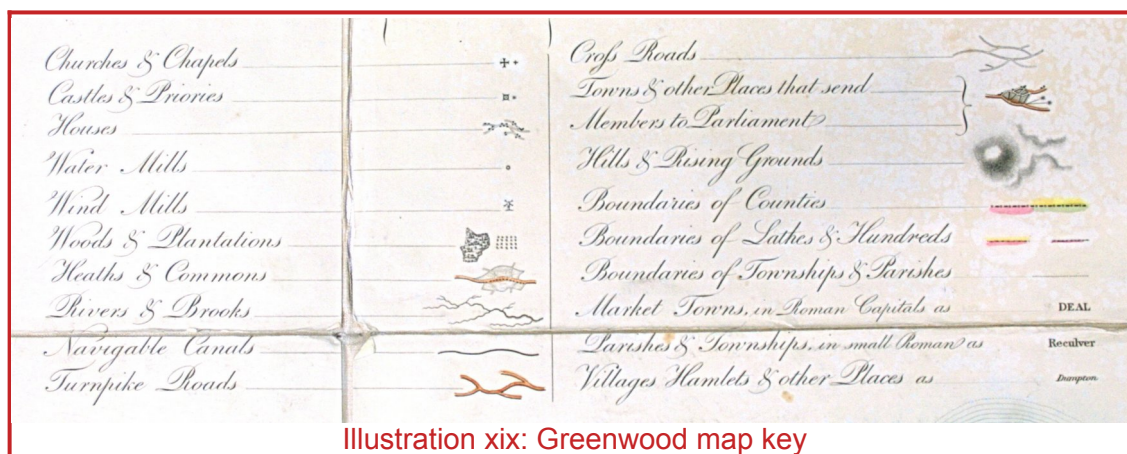


Illustration xix: Greenwood map key

G.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (top is north). This copy appears to be state iii, published between 1821 and 1827. The boundary between the hundreds is shown by a pecked line coloured green (however, the detached part of the manor and hundred of Kittington is not identified).

G.4. Greenwood's map marks Cherrygarden Lane, Sandwich Road, and the appeal way and its continuation south-southeast towards Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A). However, the map is the first published source to depict the chord cutting off the corner between the Sandwich Road and Grannies Lane (at B).

G.5. In the key, the roads converging on Gooseberry Hall Corner (A) are described as 'Cross Roads'. In this context, a cross road means a public road linking more major, and typically turnpike, roads.

G.6. **Analysis:** Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts 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.³²

G.7. In *Fortune v Wiltshire Council*,³³ 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').

³² From *Antique Maps*, C Moreland and D Bannister, 1983

³³ [2012] EWCA Civ 334: www.bailii.org/ew/cases/EWCA/Civ/2012/334.html

G.8. In *Hollins v Oldham*,³⁴ 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.

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

G.10. **Conclusion:** Greenwood's map is good evidence for the existence of the appeal way in the early years of the nineteenth century. The map shows a direct continuation of Cherrygarden Lane towards Cold Blow Corner, as well as, for the first time, a chord cutting off the corner between the Sandwich Road and Grannies Lane. The key describes the appeal way, in common with other roads, as a 'cross road', which is suggestive of a public carriageway. Moreover, the map shown here is state iii, which suggests that there has been an opportunity for revision if what was shown in an earlier state was incorrect.

G.11. **Points:** 1

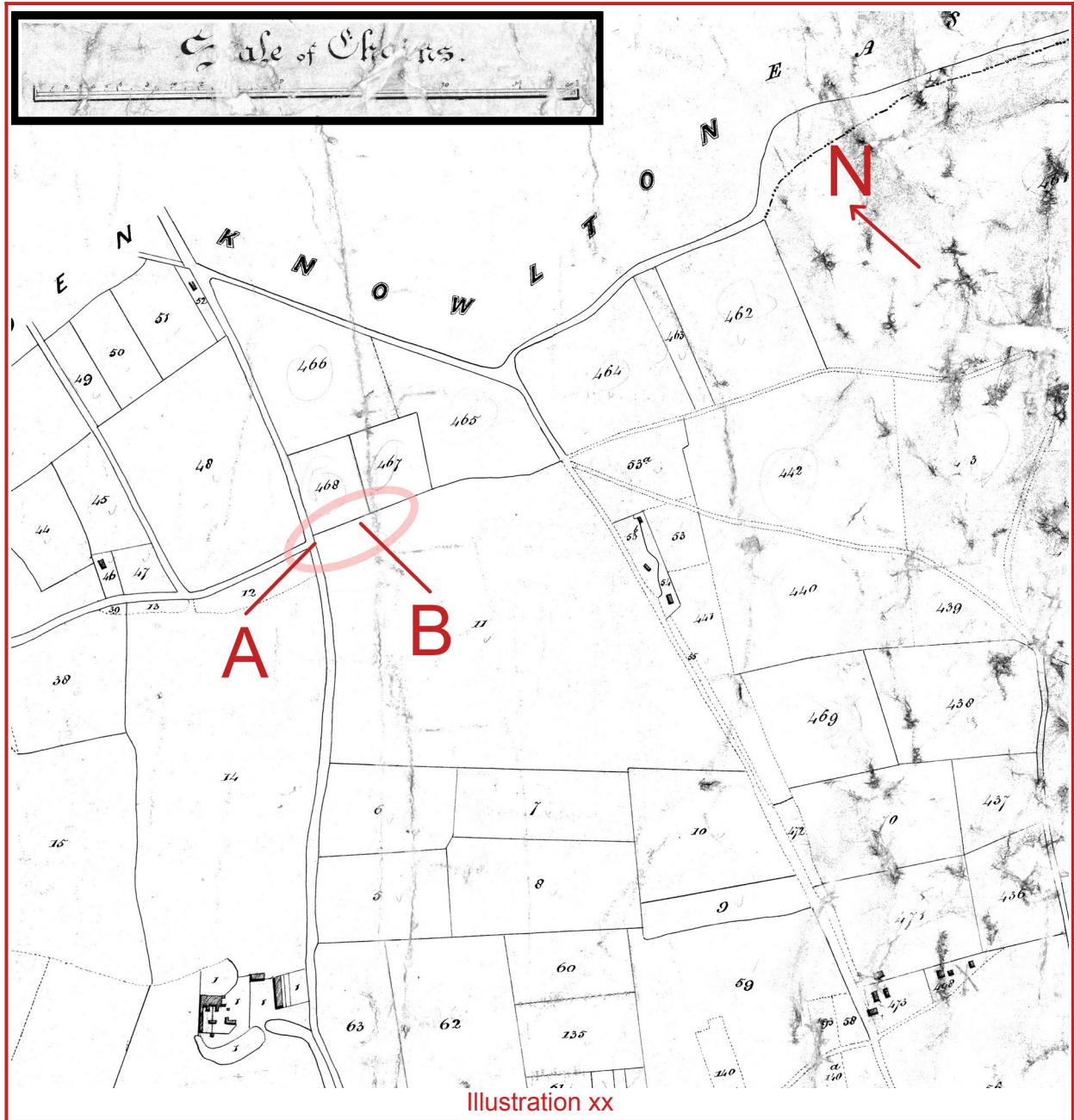
34 [1995] (unreported) C94/0206

H. Tithe Act 1836

H.1. **Date:** 1839–41

H.2. **Source:** map — KCC Archives³⁵; transcript of tithe award — Kent Archaeological Society³⁶

Nonington tithe map



H.3. **Description:** Original scale: 6 chains to one inch (1:4,752, scale bar marked on map in chains); orientation: unchanged (top is north-east). The tithe map is second class,

35 Kent tithe maps are available as images on CD.

36 www.kentarchaeology.org.uk/Research/Maps/NON/01.htm

dated 1839 and 'constructed from several plans belonging to the Landowners' by George Quested of Ash.

H.4. The tithe map for Nonington does not distinguish the appeal way, nor any part of Grannies Lane. Neighbouring roads are shown, including the Sandwich Road and Cherrygarden Lane (which is shown as forming a T-junction at Gooseberry Hall Corner (A)), and all other roads forming an intersection at Cold Blow Corner.

H.5. **Analysis:** It is evident from maps surveyed and published at earlier dates that both the appeal way and Grannies Lane subsisted at this time, and from the Greenwoods' map of Kent (item III.G above) that the southern-quadrant chord had already been constructed. All these ways are shown on the subsequent Ordnance Survey County Series first edition twenty-five inch plans (item III.K below) as having a metalled surface, and were drawn on the Poor Law Commissioners' survey map (item III.I below) notwithstanding the omission from the tithe map which was used as a source. Whether the ways were private roads or public highways, it would be usual for the ways to be visible on the tithe map (although the treatment of the way might vary according to status).

H.6. The ways pass through parcel 11, which in the tithe apportionment is recorded as St Alban's Downs and described as 'down'.³⁷ The St Alban's estate appears to have been free from any liability to tithes, because it formerly was owned by the Abbot of St Alban's until the dissolution of the monasteries.³⁸ No entries appear for rent charge in relation to this land. As tithe-free land,

...only the external boundaries of tithe free land had to be plotted accurately; what tithe free land contained (including roads etc) was irrelevant and so need not be portrayed or, if mapped, there was not need for it to be checked.³⁹

H.7. Some tithe maps do not show unenclosed field roads, but other roads in the vicinity which are entirely unenclosed are not so distinguished, and the omission cannot easily be explained on this basis.

H.8. **Conclusion:** The omission of the appeal way from the tithe map is attributable to the land not being subject to tithe, and therefore not assessed for rent charge. The detail of what was shown within that land, including unfenced roads, was immaterial to the survey.

H.9. Tithe maps, in isolation of the tithe assessment, seldom carry great weight. The tithe map not having been prepared for the purposes of recording highways, it is suggested that the omission is curious but explicable and of no significance.

H.10. **Points:** 0

I. Poor Law Commissioners' survey

I.1. **Date:** 1859

I.2. **Source:** Canterbury Cathedral Archives⁴⁰

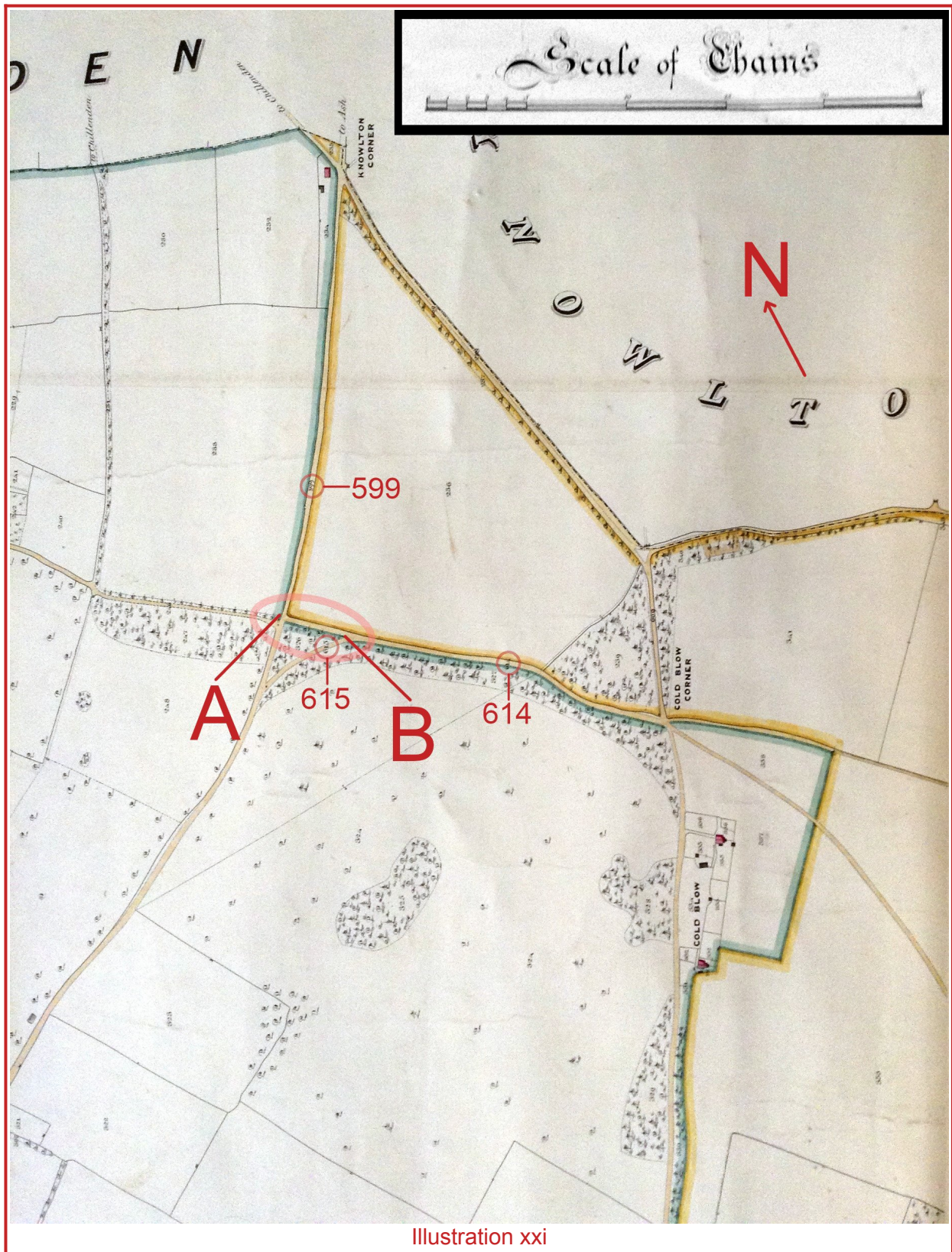
37 www.kentarchaeology.org.uk/research/tithes/nonington-and-womenswold

38 *The History and Topographical Survey of the County of Kent*, 2nd ed, E Hasted, vol.9, [Nonington](#)

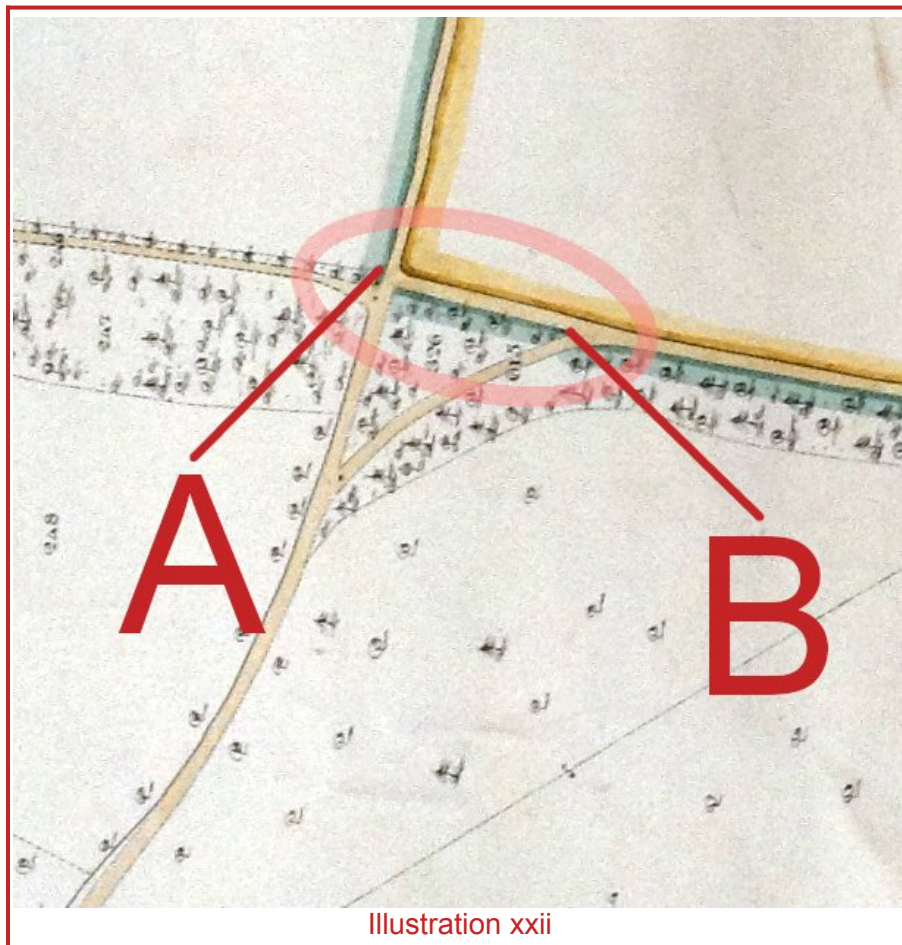
39 *Interpreting tithe map evidence*, R J P Kain, *Rights of Way Law Review* 9.3.97 at 101, June 1998,

40 CCA-U3/118/19/1 (map) and CCA-U3/118/27/C/11 (apportionment). A copy (in poor condition) is held by KCC Archives: RD/Ea/P15.

Poor Law Commissioners' survey map



Poor Law Commissioners' survey map enlargement



I.3. **Description:** Original scale: three chains to one inch (1:2,376, scale bar marked on map in chains, but scale may vary owing to differences between component photographs); orientation: rotated 270°, top is north-northeast.

I.4. The ownership and occupation of land is identified in an apportionment prepared alongside the map. At the time of the application, the apportionment was missing, and recourse was had to manuscript notes made of the apportionment by a local history researcher. The apportionment was rediscovered on 23 February 2024, and a copy of the relevant pages is in Annexe B at p.71 below. These pages have been transcribed into the table beginning on p.34 below.

I.5. The appeal way from A to B, and the remainder of Grannies Lane from B to Cold Blow Corner, is labelled as parcel 614, as is the entire road continuing south-east from Cold Blow Corner to New Purchase Firs.⁴¹ The southern-quadrant chord of the cross-roads at Gooseberry Hall Corner (A) is separately labelled 615. In the apportionment, parcels 614 and 615 are two of a number of roads which are given under the heading 'LANDOWNERS' : 'Nonington Highways, Surveyors of'. Parcel 614 is described as 'Road

41 This road is currently footpath EE323, but an application has been made to upgrade the footpath to restricted byway which is the subject of an appeal.

from Gooseberry Hall Corner to New Purchase Firs⁴²; parcel 615 is described as 'Junction near Gooseberry Hall Corner'.

I.6. The road or track across St Alban's Downs connecting the Sandwich Road to Cold Blow Corner on an alignment slightly to the south of footpath EE309 does not appear on this map, but a track now is shown along the line of footpath EE309.

I.7. The Commissioners' map may draw on the Tithe Act 1836 map (item III.H above), but it is clear that the land in the vicinity of Gooseberry Hall Corner has been resurveyed. However, some small inaccuracy is apparent in the cross-roads, which shows a slight stagger between Cherrygarden Lane and the appeal way.

I.8. **Analysis:** Under s.3 of the Parochial Assessment Act 1836, the Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish.⁴³ The map may have been based on the Tithe Act 1836 map (item III.H above) but with very substantial modification and revision to reflect change during the subsequent two decades, and with details commensurate with a scale of survey twice that of the tithe map. It seems likely that the need for a fresh survey was accentuated by the tithe map being out-of-date, itself derived from previous estate plans, and lacking content in relation to tithe-free lands. Although referred to here as the Commissioners' survey, the survey would have been procured by the parish vestry officers at the direction of the Commissioners.

I.9. 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...'.⁴⁴ 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 of repair. Public roads maintained by the parish vestry were not liable to assessment.

I.10. The survey is therefore directly concerned with whether roads were publicly maintained. Consequently, the survey expressly identifies, by means of colouring and parcel numbers, those roads which were in the upkeep of the parish surveyor.

42 New Purchase Firs are located on BOAT EE335 close to the junction with footpath EE323.

43 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.

44 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:...

I.11. The apportionment includes the following entries under the heading of 'Nonington Highways, Surveyors of'. (The area is given in the apportionment in acres, roods and perches: it has been supplemented in hectares for ease of reference.)

No	Description	A.	R.	P.	[ha]
246	Gooseberry Hall Lane		3	14	0.34
289	Bridleroad			29	0.07
592	Half Road from Uffington Corner to South Park Corner		3	31	0.38
593	Road at Aylesham Corner			9	0.02
594	Road from Aylsham Wood to Goodnestone Park Corner	2	3	9	1.14
595	Road from South Peak Corner, thro' Ratling Street, to Upper Goodnestone Corner	2	1	26	0.98
596	From Ratling to Wingham Road		3	6	0.32
597	Road from Ratling Street thro' Old Street and Frogham to Broadsole Corner	3	3	29	1.59
598	Road from Ackholt Down to Snow Down Road	1		14	0.44
599	Road from Snow Down thro Old Street and Easole to Knowlton Corner	6	1	6	2.54
600	Road from the Oak thro' Church Street to the Old Court Hill	1	2	5	0.62
601	Road from Butter Street to Church Street		2	17	0.25
602	Road from Church Street to Beauchamps Lane	1	1	3	0.51
603	From Beachamps Lane to Pinners Wood Corner	1		3	0.41
604	Road from Rueberries thro' Froghams Lane to Soles Down Corner	1	1	37	0.6
605	Road from Rueberry Butts to Long Lane Farm		2	32	0.28
606	Road from West Court Downs to Barfreestone Cross	1	1	13	0.54
607	Road from Barfreestone Cross to Shireway Gate		1	22	0.16
608	Road from Frogham to Shireway Gate		2	39	0.3
609	Road from Shepherd's Park Gate, past Cold Blow-Knowlton Corner Roads Hill	2	3	13	1.15
610	Road from Easole to Nonington Mill		3	29	0.38
	Carried forward	32		26	
	Brought forward	32		26	
611	Road from Fredville Park Corner to Round Tree	1	1	6	0.52
612	Road from Barfreestone Corner to New Purchase Firs		3	17	0.35
613	Road from Round Tree past Kittington to Cold Blow Corner	2		3	0.82
614	Road from Gooseberry Hall Corner to New Purchase Firs	1	3	23	0.77
615	Junction near Gooseberry Hall Corner			19	0.05
616	Road from Half way Plantation, past Kittington to Shingleton Mount	2	1		0.91
617	Road from Roads Hill along Knowlton Park to Bound Tree		1	19	0.15

618	Road from Uffington Corner to Goodnestone Park Upper Corner		2	25	0.27
		41	2	18	16.84

I.12. These roads, maintained by the parish, are marked on the Ordnance Survey Landranger map base on the following page.

Key to map (on next page)

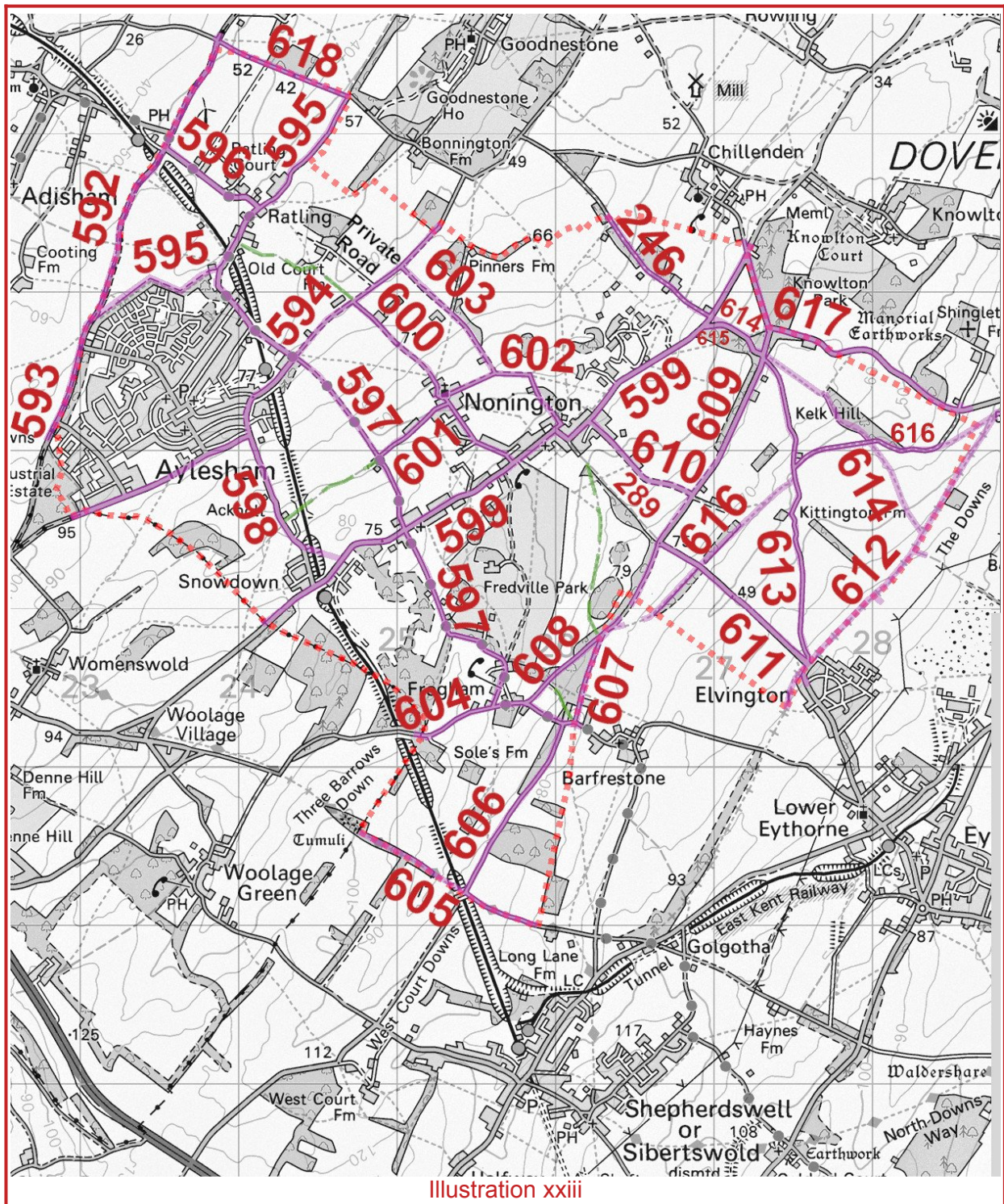
Parish boundary: ■ ■ ■ ■

Roads coloured sienna on the Commissioners' map: ———

Bridleways or bridle roads annotated as such on Commissioner's map: — — —

Parcel number assigned to road as shown in table: **605**

Nonington parish-maintained roads



I.13. Bridleways are not recorded in the apportionment as roads, save in relation to Butcher's Alley (EE317, no.289) which is expressly described in the apportionment as a 'Bridleroad', but they are annotated as such on the map. The following ways are annotated on the map as bridleways or bridle roads:

- footpath EE286

- footpath EE319
- footpath EE330
- bridleway EE285
- bridleway EE299

A road or track from Palm Tree Lane to Old Court Farm is annotated 'Private Road'. Bridleway EE279 (Gooseberryhall Farm to Chillenden) is not labelled on the map as a bridleway, nor included in the list of roads in the apportionment, from which it may be concluded that it is a road which is not maintained by the parish surveyor.

I.14. Of the roads listed in the apportionment, all are today recognised public roads (including byways open to all traffic), save:

- 289: Butcher's Alley (see above);
- 595: between Ratling Old Court and South Peak Corner, designated as footpath EE286A, and the subject of an application to upgrade to restricted byway⁴⁵;
- 598: a diversion of Aylesham Road at Snowdown to accommodate the building of the railway⁴⁶;
- 616: from Half way Plantation (near Shireway Gate), via Kittington to Shingleton Mount, designated as footpaths EE307B, EE307A and EE264, for which a definitive map modification order is due to be made by KCC to record as restricted byway;
- 614: from Gooseberry Hall Corner (A), via the appeal way and Cold Blow Corner to New Purchase Firs, designated between Cold Blow Corner and New Purchase Firs as footpath EE323 and the subject of an application to upgrade to restricted byway⁴⁷; and as respects which this appeal, and a contemporaneous appeal, are in play.

I.15. It follows that, of the 28 roads listed, 25 remain public roads today. Three are designated as footpaths, all of which are the subject of processes to be upgraded to restricted byway.

I.16. **Criticism:** KCC states⁴⁸ that the way identified on the Commissioners' map is on a more northerly line than shown on contemporary maps, and:

it is not clear whether this relates to the claimed route, or to a trackway marked on modern mapping as 'track' which lies contiguous with, but to the north of, the claimed route.

I.17. We agree that the alignment is slightly displaced from what is expected. However, the disparity is minimal, and the alignment clearly refers to that line which has been shown on mapping for around four centuries: the continuation of Cherrygarden Lane from A towards Cold Blow Corner. We do not know of any 'track' claimed to be shown on modern mapping, but if any does exist, it is a modern farming facility of no relevance to the appeal.

I.18. KCC also states that⁴⁹:

One of the difficulties with the Poor Law Commissioners Survey is of course that the accompanying apportionment is missing from the Archives and the

45 Reference: PROW/CC-DO/C469

46 The line of the London, Chatham and Dover railway was shown on the Commissioner's map, but not the diversion of Aylesham Road. The railway to Dover was not opened until July 1861.

47 Reference: PROW/DO/C399

48 KCC report on application C400 dated 30 January 2024, appendix B, para.31

49 *ibid*, para.87

Applicant's case in this regard is made on handwritten notes, which carry less evidential weight than the original document.

This criticism no longer applies, as the apportionment has been retrieved.

I.19. **Conclusion:** The Commissioners' survey was carried out by a professional surveyor on the instructions of the parish vestry officers. It identified those parish roads which were maintained by the vestry, and so not liable to rating; conversely, it identified other land, including private roads, which was liable to rating. In the apportionment, the list of roads includes only one bridleway, no.289 (Butcher's Alley, EE317), which is identified as a 'Bridleroad': all other entries are described as roads, from which it may be inferred that they are vehicular roads. Other bridleways are annotated as such on the map, but not included in the apportionment. The map also annotates a 'private road' as such. Parish-maintained roads also are coloured on the map in sienna, save Butcher's Alley (EE317, no.289), which is described as a 'Bridleroad': it is suggested that sienna colouring therefore is reserved for publicly-maintained public (vehicular) roads.

I.20. Of those roads listed in the survey, 25 of the 28 remain public roads, and the remaining three are the target of applications or orders to upgrade to restricted byway. This suggests that the survey was accurate in identifying such roads, because with few exceptions which are due to be corrected, they remained recognised as public roads up to the present day.

I.21. Poor law rateable valuations attracted notoriety within the parish,⁵⁰ 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. Moreover, the survey was commissioned by the vestry, which was itself responsible for determining which roads were maintainable by it.

I.22. The Poor Law Commissioners' survey is very good evidence of the status of the appeal way at the date it was undertaken. The description of the appeal way as one of a number of roads in the parish which was maintained by the vestry demonstrates that the way was regarded as a public road: as such, the land occupied by this and other public roads would not have been rateable under the Poor Law Act 1601.⁵¹ The survey records the opinion of the parish vestry at the time, endorsed through a process of professional survey and parochial consultation.

I.23. **Points:** 5

J. Public footpath diversion orders, St Alban's Court

J.1. **Date:** 1863, 1873

J.2. **Source:** KCC Archives⁵²

50 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 40 above).

51 S.1 provides for, 'Taxation of every Inhabitant, Parson, Vicar and other, and of every Occupier of Lands, Houses, Tithes impropriate, Propriations of Tithes, Coal-Mines, or saleable Underwoods in the said Parish'. Extracted from [The Workhouse: the story of an institution](#).

52 Q/RH/2/407 (1863), 474 and 475 (both 1873)

Footpath diversion 1 (St Alban's Court path) 1863

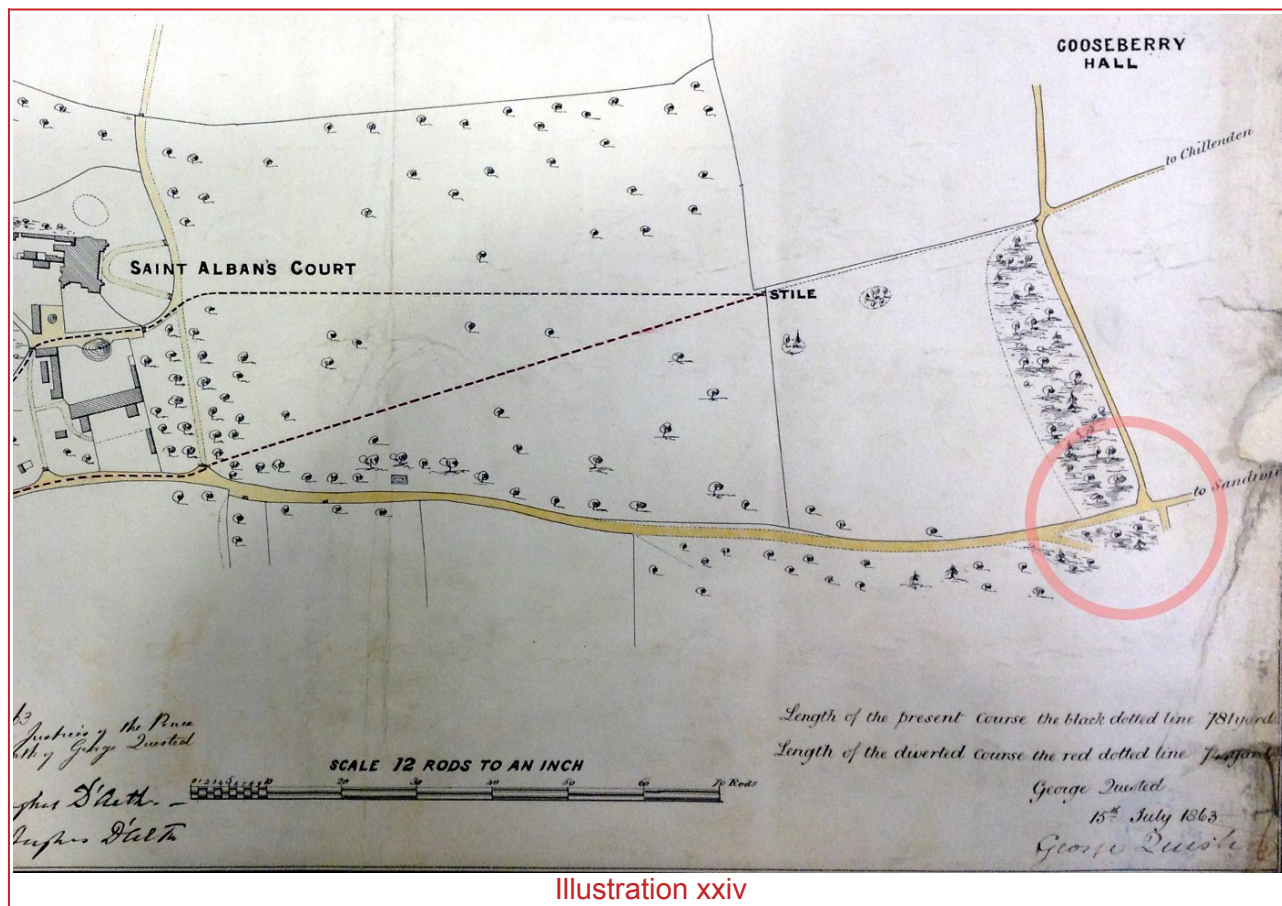


Illustration xxiv

Footpath diversion 2 (to Bonnington Stile) 1873

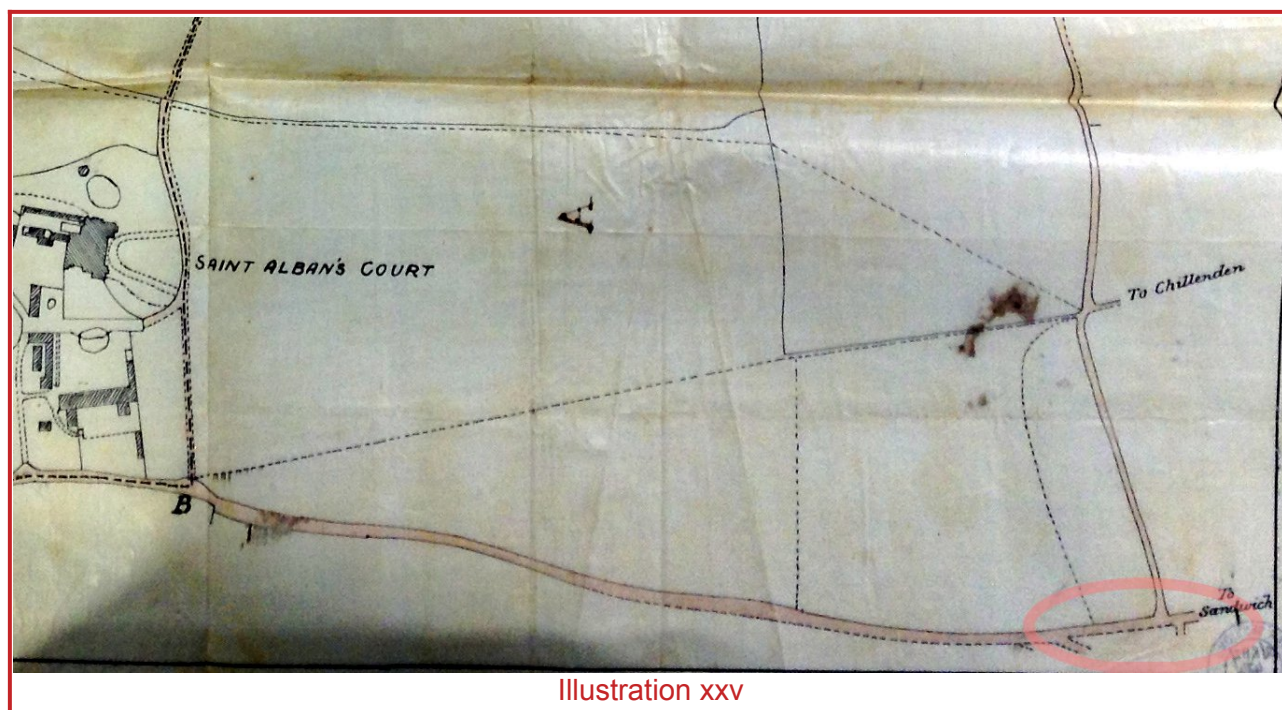


Illustration xxv

Footpath diversion 3 (from bottom of Beauchamp Lane) 1873

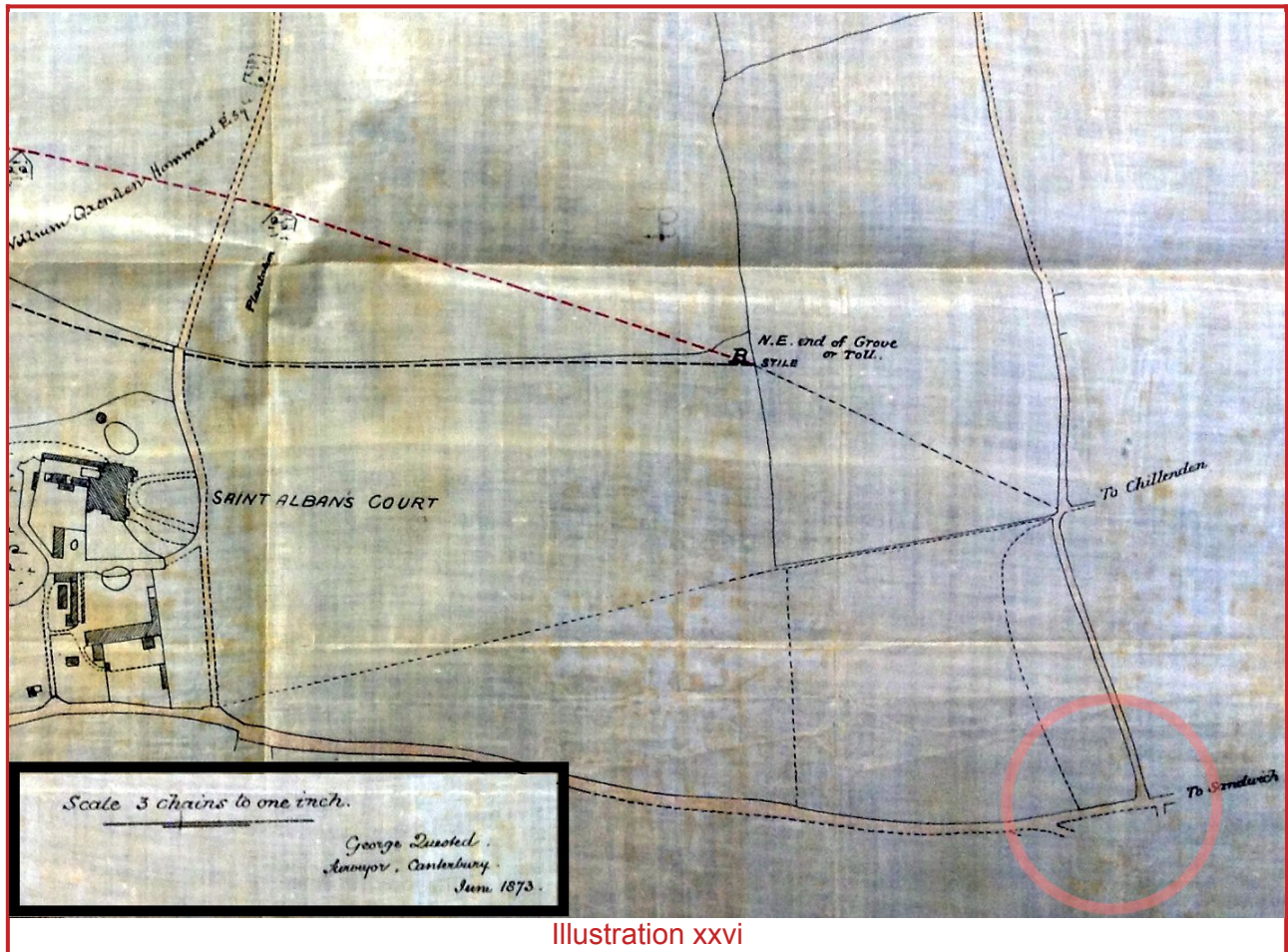


Illustration xxvi

J.3. **Description:** Original scale: three chains to one inch (1:2,376, scale bar marked on map in chains; orientation: top is north-west. The plans are probably derived from the Poor Law Commissioners' survey map (item III.H above), noting that the slightly offset cross-roads at Gooseberry Hall Corner (A) seen on that map is reproduced on these plans.

J.4. Three footpaths across the St Alban's Court estate were diverted by order of the magistrates, the first in 1863, and the other two in 1873. The plans which accompanied the orders, and which depict the routes of the paths to be diverted, include Gooseberry Hall Corner (A). They show Cherrygarden Lane and Sandwich Road, and the appeal way for a short distance from A south-southeast towards B. In addition, the plans include part of the southern-quadrant chord of the cross-roads at A.

J.5. On the 1863 map (illustration xxiv), ways now recognised as public roads or bridleways are shown shaded ochre, including the appeal way. Certain drives within St Alban's Court are shaded in a paler rendering, possibly to represent metalled surfaces, although it should be noted that the road running from Sandwich Road north to Bonnington stile (outside the north margin of extract) was, at this date, a public footpath, to be diverted only in 1873. On the 1873 maps (illustrations xxv and xxvi), the distinction between public roads and internal drives is less certain, but it is suggested that all those ways coloured pink on both the 1873 maps are intended to represent public highways (noting that the

aforementioned road running from Sandwich Road north to Bonnington stile was only to be stopped up and diverted by virtue of the 1873 orders).

J.6. **Conclusion:** The plans prepared for the purposes of the diversion orders show the appeal way as part of the ordinary road network during the second half of the nineteenth century. The colouring of the appeal way is consistent with the local road network, and suggestive that the appeal way is also a public road.

J.7. Even if the use of colouring, or any particular shade of colouring, is not a reliable indicator of status, its use on the line of the appeal way shows that, consistent with the past 250 years, it continued to be used as a public road.

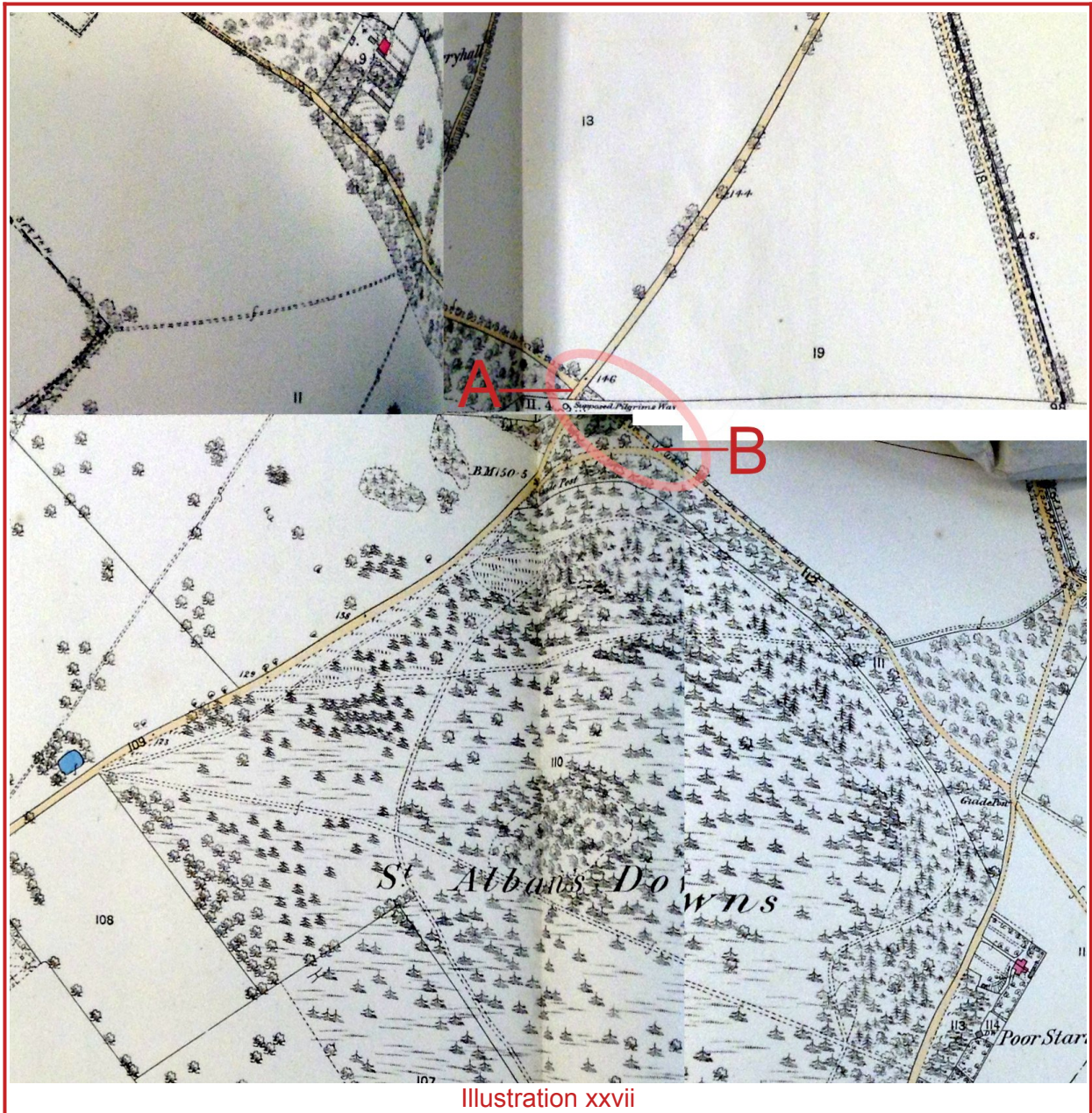
J.8. **Points:** 3

K. Ordnance Survey County Series first edition twenty-five inch plans

K.1. **Date:** 1872

K.2. **Source:** British Library

OS County Series first edition 25-inch plans XLVII/16, LVII/4



OS County Series first edition 25-inch plans enlargement

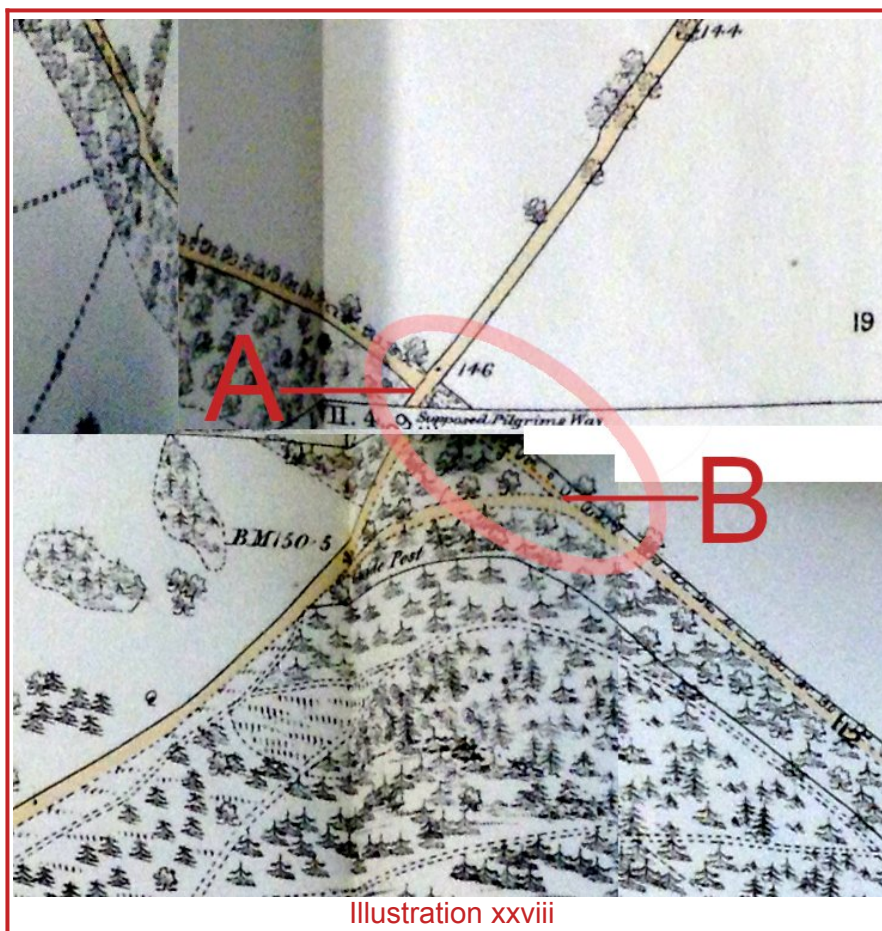


Illustration xxviii

OS County Series first edition book of reference, Nonington

PARISH OF NONINGTON.						5
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.	
109	2.361	Road.	160	4.275	Wood.	
110	56.856	Wood, rough pasture, &c.	161	1.079	Arable.	
111	7.324	Wood.	162	.397	Houses and garden.	
112	.505	Road.	163	2.311	Houses and gardens.	
113	.626	Rough pasture, &c.	164	1.134	Stackyard.	
			165	.647	House, garden, &c.	

Illustration xxix

K.3. **Description:** Original scale: 1:2,500; orientation: unchanged (top is north). The Ordnance Survey County Series first edition plans are the first large scale maps to be produced of Kent, with the survey dating from 1872. The appeal way straddles both the sheet boundary and the binding of the copies held in the British Library, and the copy presented here is therefore distorted by this provenance.

K.4. The plans show Cherrygarden Lane, Sandwich Road, and the appeal way and its continuation south-southeast towards Cold Blow Corner, so that the four limbs of these roads form a cross-roads at Gooseberry Hall Corner (A). In common with the other roads, the appeal way is hand-painted sienna (although the colouring is not present on the short portion appearing on sheet XLVII/16),⁵³ signifying that the way was made up or metalled, and therefore of similar character to the other limbs of the cross-roads.

K.5. Below the neatline of plan XLVII/16, the line of the appeal way is annotated 'Supposed Pilgrims Way' (see Mediæval evidence for Cherrygarden Lane at item III.A above). This annotation appears elsewhere along the line of the Pilgrims Way (not within the extracts).

K.6. In the book of reference for Nonington, the appeal way between A and B is braced into the neighbouring parcel numbered 111, and is not separately identified. Parcel 111 is described as: 'Wood.' The southern-quadrant chord is distinguished as a continuation of Grannies Lane (as it is now known) and throughout numbered 112. Parcel 112 is described as: 'Road.'

K.7. The road or track across St Alban's Downs connecting the Sandwich Road to Cold Blow Corner on an alignment slightly to the south of footpath EE309, last seen on the Greenwoods' map of Kent (item III.G above), does not appear on this map, but in common with the Poor Law Commissioners' survey (item III.I above), a track now is shown along the line of footpath EE309.

K.8. **Criticism:** KCC states that⁵⁴:

...the 1872 First Edition Ordnance Survey (of the same era) is very clear in demonstrating that the way was considered to form part of the adjoining woodland and is not separately numbered (as are, for example, Grannies Lane or Sandwich Road, which are both described as 'Road' in the accompanying book of reference). In positively differentiating between the public roads of Grannies Lane and Sandwich Road, and including the claimed route within a parcel described only as 'Woodland', the First Edition Ordnance Survey Map arguably provides the strongest (if not only) assertion of the status of the way – i.e. that it was considered private.

And that:

the First Edition Ordnance Survey map shows the way in a manner that suggests that it was private (braced to the adjacent woodland)...

Also that:⁵⁵

the First Edition Ordnance Survey Map tends towards the way being private...

and

the 1872 First Edition Ordnance Survey map appears to show the opposite

viz, that it 'may [not] have been considered a public highway'.

53 This may be accounted for by omission on the part of the team of women employed to colour individual sheets.

54 KCC report on application C400 dated 30 January 2024, appendix B, para.88

55 *Ibid*, paras.93–94

K.9. We entirely disagree. What the first edition plan shows is that the appeal way was 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. For example, the southern half of Lonely Lane (now restricted byway EE493), between its junction with Straight Mile and Cater Road in neighbouring Eastry parish,⁵⁶ is shown braced with Eastry parcel 313 ('Arable'), notwithstanding that the road was appointed in a diversion order in 1789.

K.10. Ordnance Survey internal guidance in 1907 ruled that⁵⁷:

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.'

K.11. We object that, whereas KCC states elsewhere that Ordnance Survey County Series plans⁵⁸:

...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: 'provides the strongest (if not only) assertion of the status of the way – *i.e.* that it was considered private.' KCC does not explain how a survey that is 'not concerned with land ownership or public/private rights' can make a 'strong...assertion' 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.

K.12. **Conclusion:** The Ordnance Survey County Series first-edition plans show that the appeal way was a made road between A and B, intended to sustain wheeled traffic. However, the appeal way is shown more narrowly than the neighbouring roads and braced into the parcel comprising surrounding woodland. This suggests that the construction of the southern-quadrant chord attracted the majority of the traffic using Grannies Lane, which would have turned into or from the Sandwich road in the direction of Nonington. The relatively-recently constructed chord would have appeared the more important of the pair of roads. But the plans tell us nothing about the status of the appeal way, save that it probably looked the inferior of the pair of roads.

K.13. **Points:** 0

⁵⁶ Grid reference [TR309529](#)

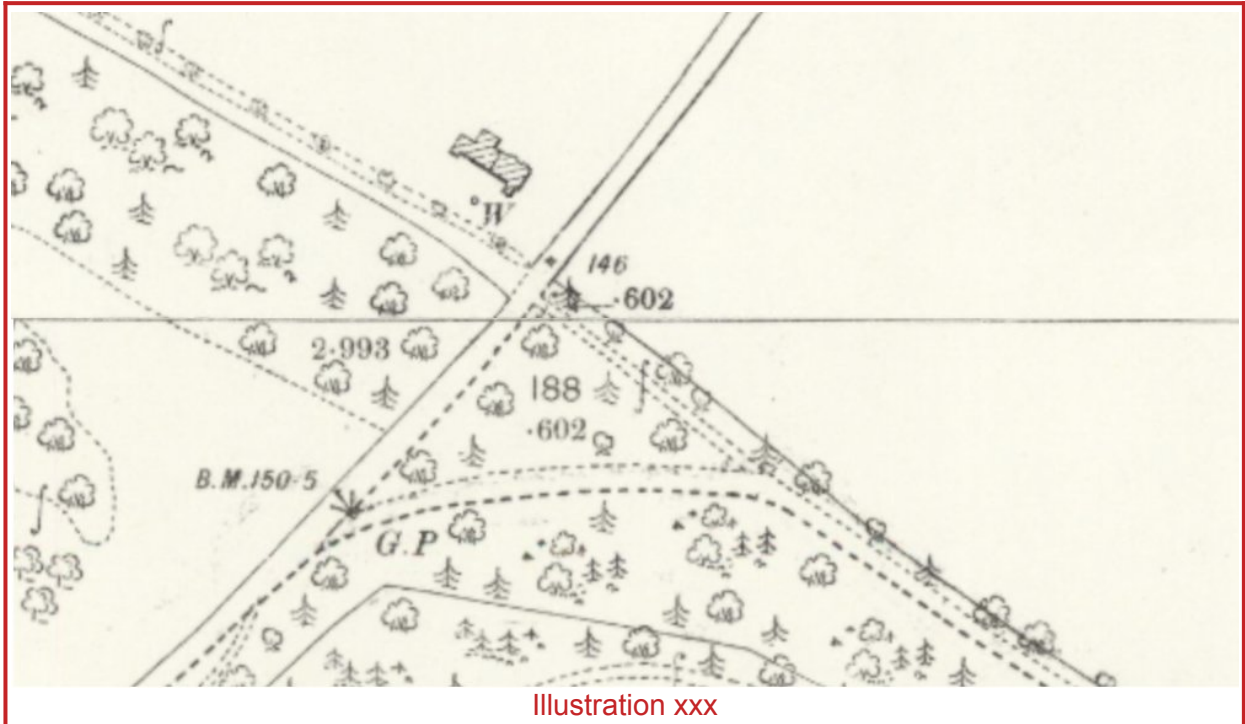
⁵⁷ *Instructions for computation and examination of areas*, p.23, 1907: OS, unpublished, cited in *Ordnance Survey Maps: A Concise Guide for Historians*, 3rd ed., Richard Oliver.

⁵⁸ *Ibid*, para.44

L. Late C19 and early C20 maps

L.1. **Source:** National Library of Scotland,⁵⁹ personal collection⁶⁰

OS County Series second edition 25-inch plans XLVII/16, LVII/4, rev.1896⁶¹



⁵⁹ maps.nls.uk

⁶⁰ Bartholomew's map, 1953 edition

⁶¹ [Sheet XLVII/16; LVII/4](#)

OS County Series third edition 25-inch plans XLVII/16, LVII/4, rev.1906⁶²

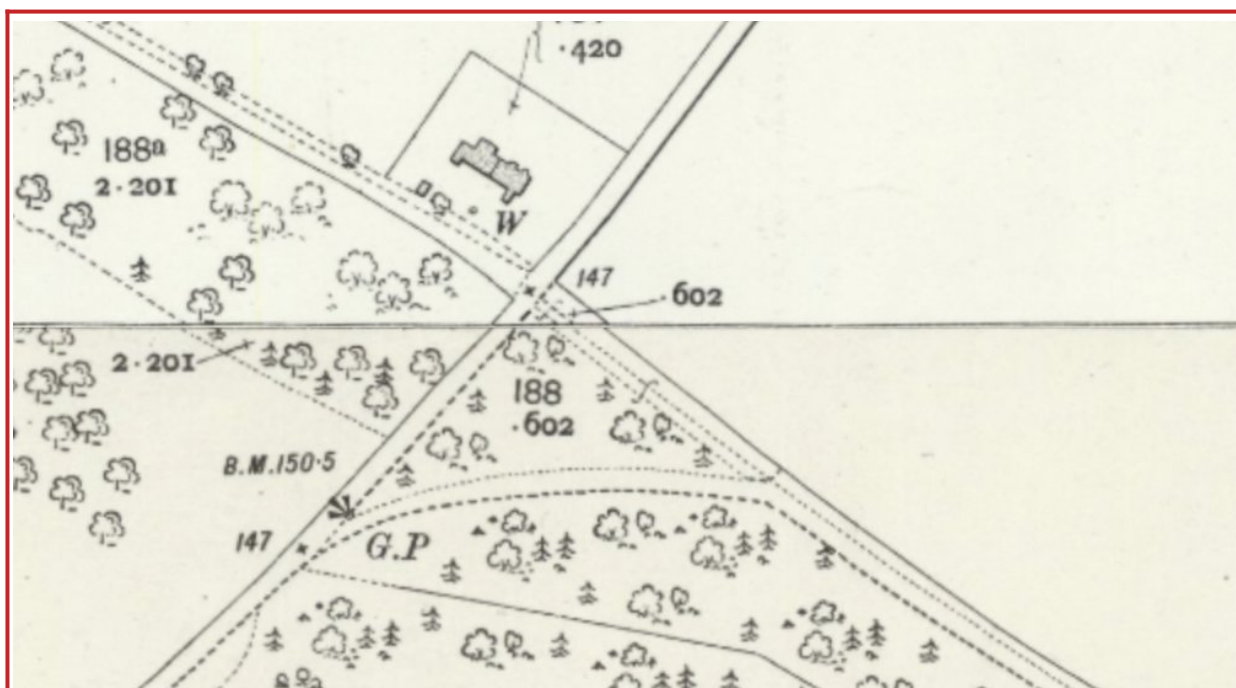


Illustration xxxi

OS County Series fourth edition 25-inch plans XLVII/16, LVII/4, rev.1938⁶³

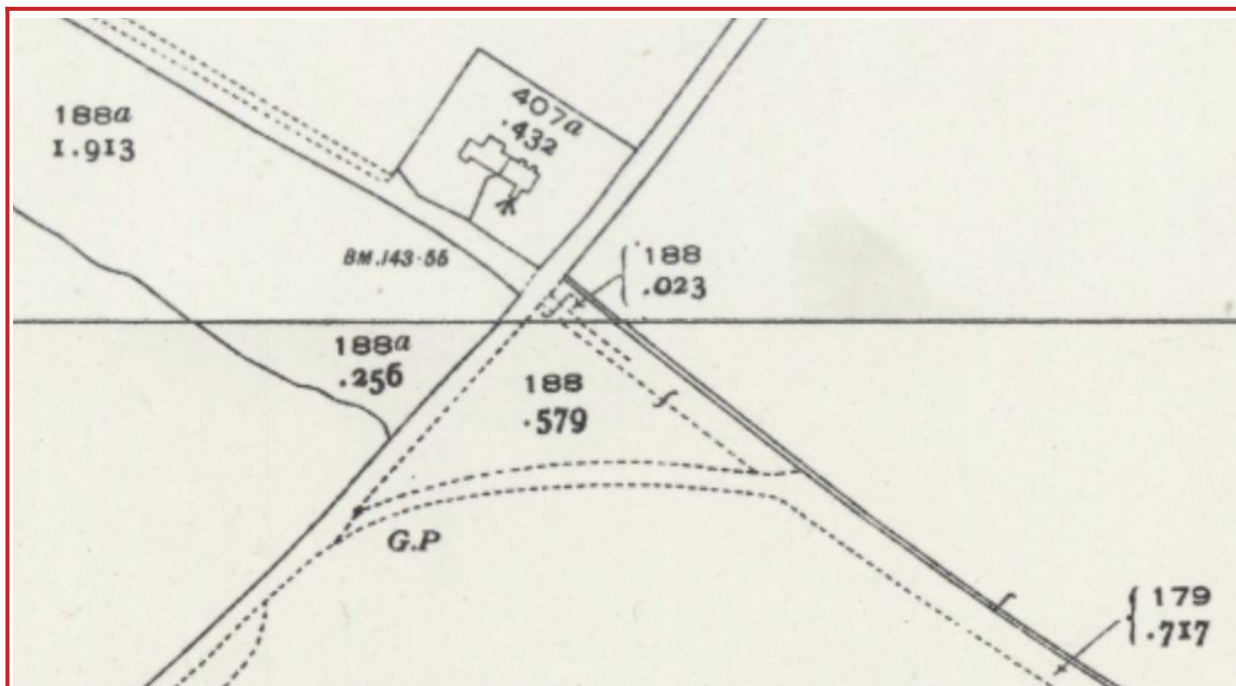


Illustration xxxii

62 [Sheet XLVII/16; LVII/4](#)

63 [Sheet XLVII/16; LVII/4](#)

OS New Series one-inch, revised 1858–72⁶⁴

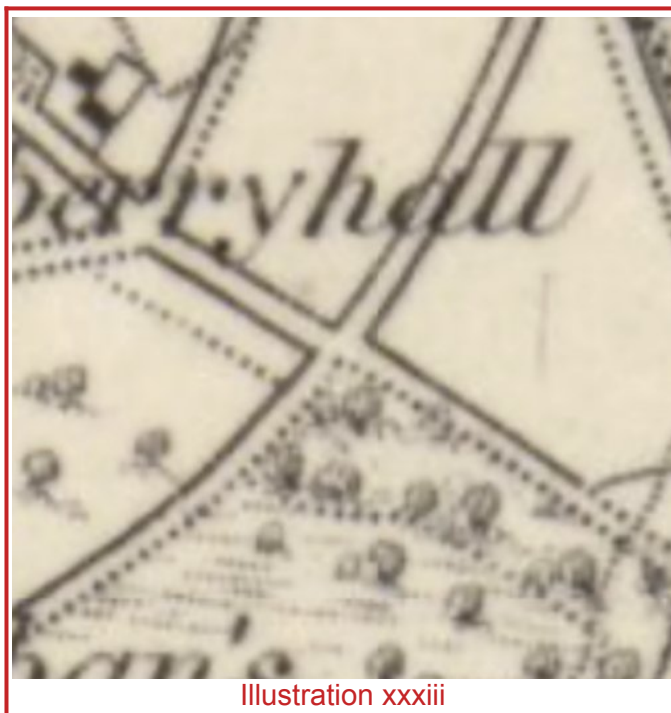


Illustration xxxiii

OS New Series one-inch, revised 1893⁶⁵



Illustration xxxiv

64 Sheet 290: <https://maps.nls.uk/view/239767285#zoom=7&lat=4134&lon=1813&layers=BT>

65 Sheet 290: <https://maps.nls.uk/view/101168834#zoom=7&lat=6395&lon=2576&layers=BT>

OS third edition one-inch, revised 1904⁶⁶



Illustration xxxv

OS fourth edition one-inch, revised 1909⁶⁷



Illustration xxxvi

66 Sheet 290: <https://maps.nls.uk/view/239767273#zoom=7&lat=4222&lon=1679&layers=BT>

67 Sheet 290: <https://maps.nls.uk/view/239767267#zoom=7&lat=4316&lon=1715&layers=BT>

OS Popular edition one-inch, revised 1914⁶⁸



Illustration xxxvii

OS New Popular edition one-inch, revised 1936⁶⁹



Illustration xxxviii

68 Sheet 117: <https://maps.nls.uk/view/239259781#zoom=8&lat=6458&lon=4803&layers=BT>

69 Sheet 173: <https://maps.nls.uk/view/74466972#zoom=8&lat=7891&lon=7452&layers=BT>

OS Seventh Series edition one-inch, revised 1954–57⁷⁰



Illustration xxxix

OS Seventh Series edition one-inch, revised 1954–68⁷¹



70 Sheet 173, A edition: <https://maps.nls.uk/view/91577490#zoom=8&lat=8101&lon=7076&layers=BT>

71 Sheet 173, B edition: <https://maps.nls.uk/view/197237111#zoom=8&lat=7909&lon=7155&layers=BT>

OS 1:25,000, revised 1905–38⁷²

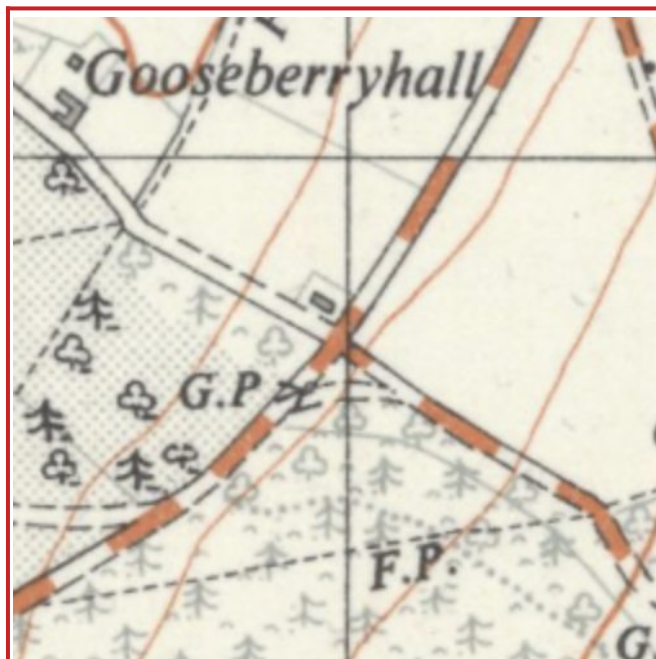


Illustration xl

OS 1:25,000, revised 1905–57⁷³



Illustration xli

72 Sheet TR25, B edition: <https://maps.nls.uk/view/196193952#zoom=6&lat=2912&lon=5042&layers=BT>

73 Sheet TR25, C edition: <https://maps.nls.uk/view/95750448#zoom=6&lat=3017&lon=5126&layers=BT>

OS six-inch, revised 1956⁷⁴

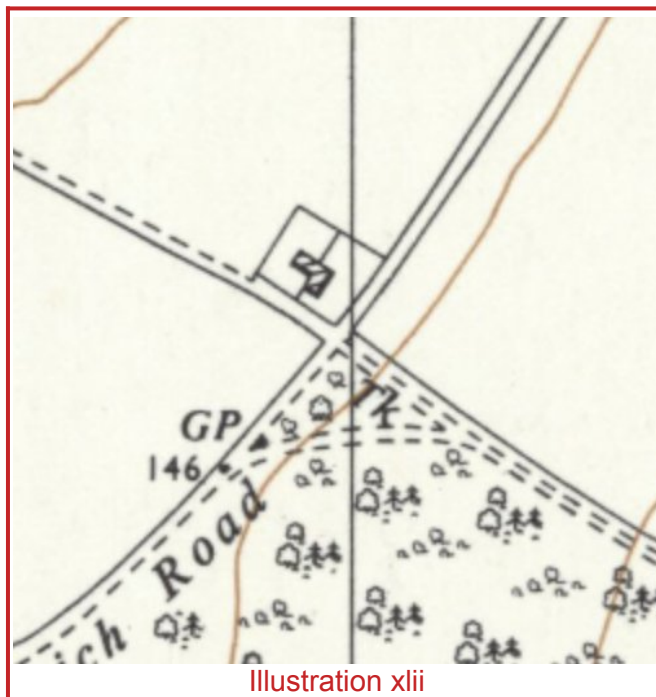


Illustration xlii

Bartholomew's half-inch map 1904⁷⁵



Illustration xliii

74 Sheet TR25SE, A edition:
<https://maps.nls.uk/view/189262394#zoom=7&lat=6388&lon=3657&layers=BT>

75 <https://maps.nls.uk/view/97131104#zoom=8&lat=6607&lon=9301&layers=BT>

Bartholomew's half-inch map 1922⁷⁶



Illustration xlv

Bartholomew's half-inch map 1941⁷⁷



Illustration xlv

76 <https://maps.nls.uk/view/75202935#zoom=8&lat=6593&lon=9162&layers=BT>

77 <https://maps.nls.uk/view/128076447#zoom=8&lat=6449&lon=11258&layers=BT>

Bartholomew's half-inch map 1953

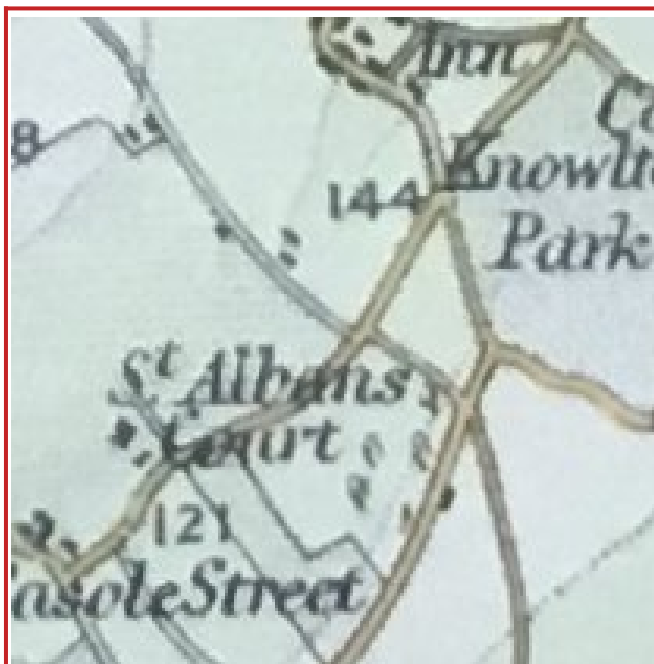
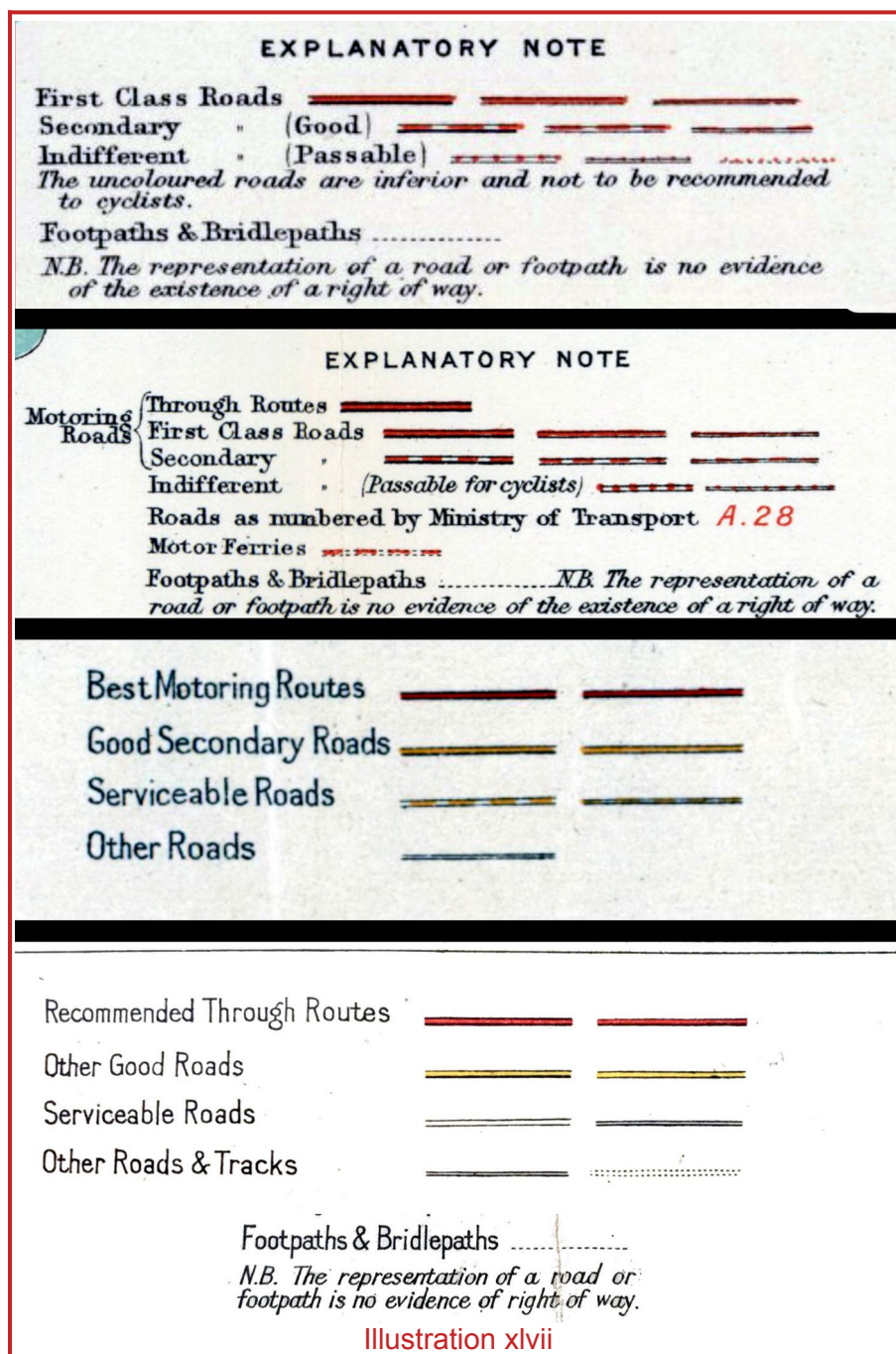


Illustration xlvi

Bartholomew's half-inch map key to 1904, 1922, 1941 and 1953 maps



L.2. **Description:** Scale: Ordnance Survey maps at a range of scales between one inch to the mile (1:63,360) and twenty five inches to the mile (1:2,500), and Bartholomew's maps at a half inch to the mile (1:126,720). Orientation: top is north.

L.3. These maps depict the appeal way on maps at a range of scales between the late nineteenth century and the mid twentieth century. All show the situation of the appeal way after the southern-quadrant chord was constructed in the early years of the nineteenth century (first shown on Greenwoods' map of Kent at item III.G above) — but not all show the chord itself. As the function of these extracts is to show the particular situation of the appeal way, little surrounding context is included (however, all of the maps are available for reference online, and URLs are given in footnotes to facilitate such reference).

L.4. The twenty-five inch plans in successive editions to the Ordnance Survey County Series first edition twenty-five inch plans (item III.K above) show the appeal way as a now-subsidiary route to the southern-quadrant chord. On both the second and third edition plans, the chord (in common with the Sandwich Road) is marked with a shaded pecked casing on the south side of the road, indicating that the road is a district road or good second-class road, but unfenced. Whereas the appeal way is shown distinctly narrower, again with pecked casing showing it to be unfenced. On the fourth edition plan, the casing is discontinuous on the north-east side. On all three plans, the chord is given a separate calculation of area (along with Grannies Lane), whereas the appeal way is braced with the area of the adjacent woodland (see para.III.K.10 above as to Ordnance Survey internal guidance on bracing).

L.5. The Ordnance Survey one-inch maps, in succession to the Ordnance Survey, one-inch Old Series map of Kent (item III.E above), show a gradual transition of status and importance from the appeal way to the chord. The New Series map initially either does not show the chord at all, or shows it indistinctly, whereas the matter is corrected on the 1893 revision. The appeal way (in common with the Sandwich Road and Grannies Lane) is shown as a second-class, metalled and unfenced road, whereas the chord is shown with inferior status as third-class.

L.6. By the New Series third and fourth editions, the chord is shown as a second-class, metalled and unfenced road, but the appeal way appears to have the same status.

L.7. On the Popular edition, the appeal way is shown as an indifferent metalled and unfenced road, but in a temporary reversal of status migration, the chord is shown as having a bad surface, there being no visible colouring to it.

L.8. The reversal endures into the New Popular edition, on which the appeal way is shown as now having under 14 feet of metalling, unfenced but in good condition, whereas the chord is in bad condition.

L.9. Finally, on the Seventh Series edition, the chord is now shown as a road having under 14 feet of metalling, unfenced but tarred, whereas the appeal way is an unmetalled road.

L.10. On the Ordnance Survey 1:25,000 map, B edition, the appeal way (in common with the Sandwich Road) is shown as a 'good, metalled' road, the chord being 'poor, or unmetalled'. These ratings have been reversed by the time of the C edition.

L.11. On the Ordnance Survey six-inch map, the appeal way is distinguished from the chord by being labelled 'Tk' — a track.

L.12. Finally, over four editions in the first half of the twentieth century, the Bartholomew's half-inch maps consistently show the appeal way and its continuation south-southeast towards Cold Blow Corner, with no chord.

L.13. **Criticism:** KCC states that⁷⁸:

It is also unclear, due to the small scale of some of the earliest mapping, as to whether the depiction of the crossroads at Sandwich Road is intended to refer to the claimed route itself or is a representation of the southern spur of Grannies Lane.

78 KCC report on application C400 dated 30 January 2024, appendix B, para.86

L.14. This comment posits, by implication, an alternative scenario: that the appeal way is not ancient in origin, and that the southern-quadrant chord is. This is highly unlikely, because:

- none of the maps prior to Greenwoods' map of Kent (item III.G above), dating from 1819–20, shows the chord, nor shows a deviation in Grannies Lane which would suggest the depiction of the chord;
- the appeal way follows a straight-through line across the Sandwich Road which is the logical line to be taken by traffic, and which is shown on maps throughout a period of four centuries;
- use of the southern-quadrant chord, for traffic reaching Gooseberry Hall Corner via Cherrygarden Lane, would require an awkward and time-consuming dog-leg, and there is no plausible explanation why this would be initiated, tolerated or imposed in preference to the straight-through line;
- the southern-quadrant chord plainly is constructed on a planned geometrically-drawn line, which is suggestive of a relatively recent origin intended to supplement the appeal way.

L.15. Accordingly, it is suggested that the comment is mistaken, and the early maps show, of the two candidates, only the appeal way.

L.16. **Conclusion:** The Ordnance Survey County Series plans show only that the chord was constructed or maintained to a greater width than the appeal way, as one might expect of what appears to be a purpose-built road.

L.17. The Ordnance Survey one-inch maps show a progressive transition of status and importance from the appeal way to the southern-quadrant chord — but one which is not without interruption and reversal, as is evident from the Popular and New Popular Editions. However, by the Seventh Series one-inch map, revised after the Second World War, the transition is complete, and the southern-quadrant chord is shown as part of the ordinary road network, whereas the appeal way now is shown as an unmetalled, subsidiary road.

L.18. This post-war transition is confirmed by the 1:25,000 series mapping, on the B edition of which (with the benefit only of pre-War revision) the appeal way is the dominant element, whereas on the C edition (very likely with post-War revision), the appeal way is now subsidiary. On the 1:10,560 map, with post-war revision, the appeal way now is marked as a 'Track'.

L.19. The Bartholomew's maps are singularly unhelpful, in that none shows the southern-quadrant chord, and all show the original cross-roads at Gooseberry Hall Corner. This suggests that the arrangements here were not the subject of site-specific survey or user feedback, and relied on pre-War (probably Ordnance Survey) source mapping which showed the appeal way as the dominant element.

L.20. This wide range of mapping, revised throughout the second half of the nineteenth century and the first half of the twentieth century, demonstrates that the appeal way continued in use as the more important connection between the Sandwich Road and B until the early part of the twentieth century or, given the position shown in the Popular and New Popular editions of the one-inch map and the 1:25,000 B edition, until the Second World War.

L.21. **Points:** 2

M. Finance (1909–1910) Act 1910

M.1. **Date:** 1911

M.2. **Source:** record plans: National Archives⁷⁹; working plans: KCC Archives

Finance Act working plan sheet LVII/4

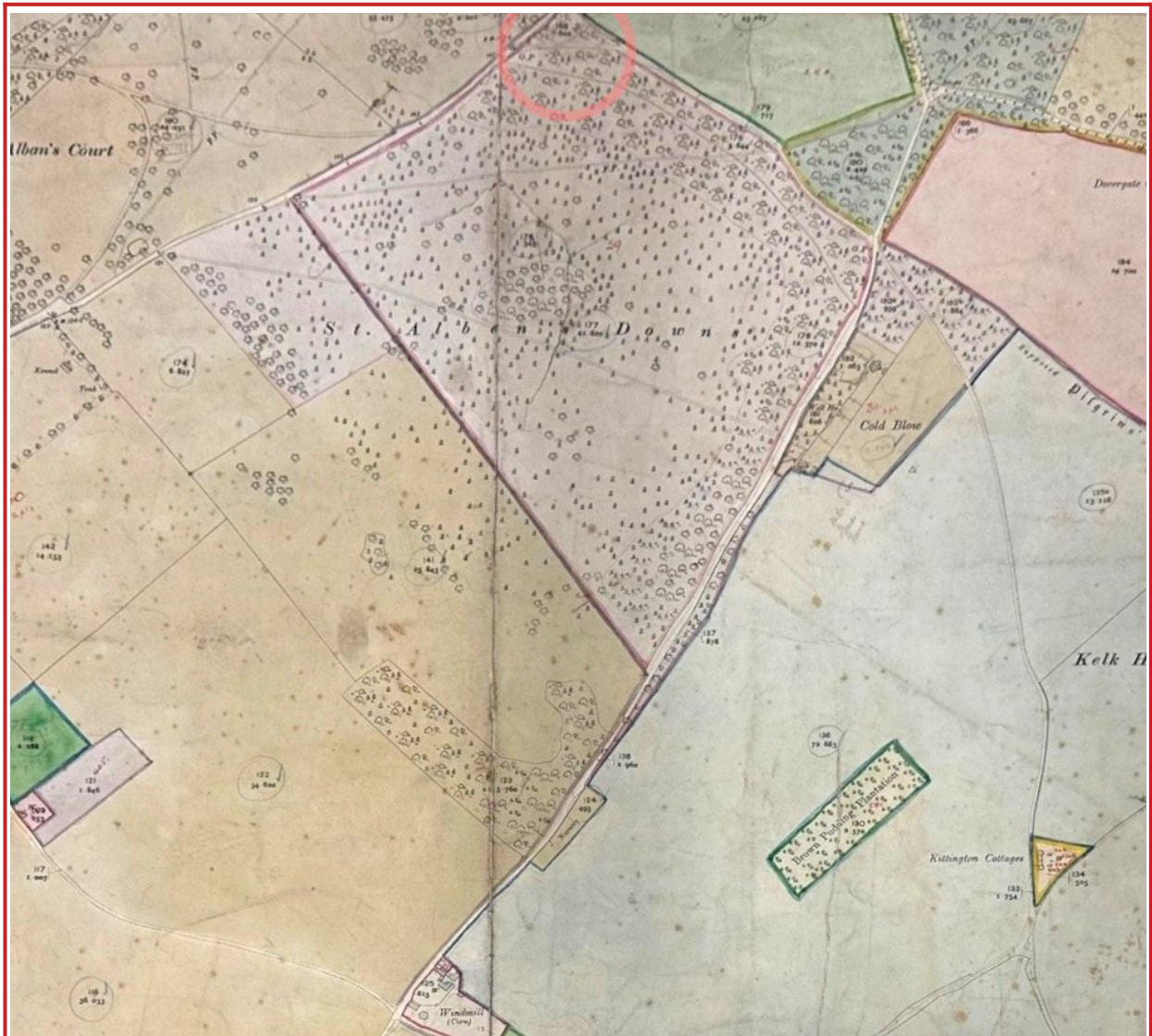


Illustration xlviii

79 IR 124/5/57 and IR 124/5/59 (Ordnance Survey map sheets XLVII/16 and LVII/4) and IR 58/17323

Finance Act working plan sheet LVII/4 enlargement



Illustration xlix

Finance Act record plan sheets XLVII/16 and LVII/4



Illustration I

Finance Act record plan sheets XLVII/16 and LVII/4 enlargement

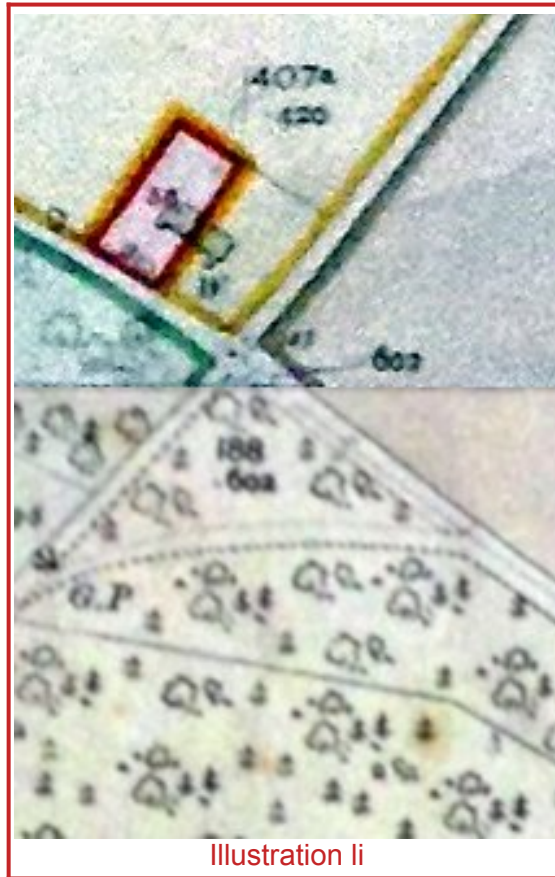


Illustration li

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

M.4. The appeal way falls across two Ordnance Survey County Series plans for Kent, sheets XLVII/16 and LVII/4. Copies of both record and working plans are available.⁸⁰

M.5. Working plan: Only working plan LVII/4 has been provided by KCC. In contrast to what is shown on the record plan (see below), the working plan shows some lengths of road to be excluded from hereditaments, although the practice is inconsistent.

M.6. In relation to the appeal way, both it and the southern-quadrant chord are shown without exclusion, notwithstanding that both the Sandwich Road and the remaining part of Grannies Lane are both excluded.

M.7. Record plans: On record plan XLVII/16 (the upper, more northerly sheet), the appeal way is briefly shown to the south-southeast of Gooseberry Hall Corner, and is uncoloured (in common with Sandwich Road and Cherrygarden Lane). The boundary of hereditament 254 on the north side of the appeal way (and to the east of Sandwich Road) is clearly identified in grey, and that bounding colour is taken around Gooseberry Hall Corner and into the appeal way as far as the neat line.

M.8. The practice elsewhere on record plan XLVII/16 is inconsistent. Cherrygarden Lane is partly shown excluded, and partly not. Bridleway EE279 (north-northeast from Cherrygarden Lane) also is partly shown excluded, and partly not, as is Knowlton Lane. The

⁸⁰ Extracts of the working plans have kindly been provided by KCC.

road from Cold Blow Corner to Cuckolds Corner and Knowlton is not excluded, nor is Station Road Chillenden.

M.9. On record plan LVII/4, individual hereditaments are distinguished only by the use of different colour washes, and boundaries are not otherwise marked. Colour and paper fade, and possibly careless completion of the map, makes it difficult to distinguish colour wash from uncoloured roads where yellow was used for the colour wash. This is a particular problem in the vicinity of Gooseberry Hall Corner, where the Sandwich Road, the appeal way and Grannies Lane are not clearly distinguished from the colour wash used for hereditament 29 comprising the woodland and parkland of St Alban's Downs to the south.

M.10. However, if the relevant part of the plans is enlarged (see Illustration li above), it appears that the Sandwich Road, the appeal way, and its continuation as Grannies Lane towards Cold Blow corner, are not colour washed, but the wash may include (whether by intention or error) the southern-quadrant chord.

M.11. **Deductions:** Hereditament 29, comprising around 25 hectares of mainly open St Alban's Downs bounded by Sandwich Road, Grannies Land and Mill Top, attracted a deduction of £50 from total value on account of public rights of way. The deduction was likely to be attributable at least in part to paths and tracks across the downs, including what are today recorded as footpaths EE309 and EE310.

M.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.

M.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 that⁸¹:
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, observing⁸²:

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 said⁸³:

81 At [753] and [770]

82 At [71]

83 At [47]

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 that⁸⁴:
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 that⁸⁵:
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.

M.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...'.⁸⁶

M.15. 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.

84 At [106]

85 At [65]

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

- 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.

M.16. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

M.17. **Criticism:** KCC states that⁸⁷:

Whilst the section of the claimed route on the northern map sheet is clearly excluded from the land to the north-east of it and the route itself (on this sheet) appears uncoloured, it is unclear as to whether this is simply due to the tiny area of land shown on that particular sheet... .

M.18. We disagree: the boundary of the hereditament shown to the north-east of the appeal way is (on sheet XLVII/16) clearly taken around the corner of Gooseberry Hall Corner, so that it continues south-southeast along the north-eastern boundary of the appeal way for a short distance to the neat line. There may also be a trace of blue colour-wash shown in the corner of land between the appeal way and the Sandwich Road leading south from the cross-roads.

M.19. **Conclusion:** The appeal way is uncoloured and excluded from the adjacent hereditament on record plan XLVII/16, as are the neighbouring Sandwich Road and Cherrygarden Lane.

M.20. The position on record plan LVII/4 is less clear in the absence of clearly-marked boundaries to hereditaments. It may be that the appeal way continues uncoloured on that sheet. However, the position is the same as the neighbouring Sandwich Road, the continuation of the appeal way as Grannies Lane, and the southern-quadrant chord. It may be that the valuer was careless as to applying the colour wash to the record map, but if so, no conclusions can be drawn from it — plainly, the Sandwich Road was at this time a public road, and so was Grannies Lane, but they and the appeal way are in practice indistinguishable in their colouring (or exclusion from colouring).

M.21. The working plan is somewhat clearer in presentation, but no more illuminating. Both the appeal way and the southern-quadrant chord are not excluded from hereditament 29 — yet both the Sandwich Road and the remaining part of Grannies Lane are. As the practice on this working plan is inconsistent — some roads are excepted, others are not — it is suggested that the data are inconclusive and no conclusions can be drawn.

M.22. In short, the appeal way is shown, very briefly, as a 'white road' on record plan XLVII/16 but shown inconclusively on record and working plans LVII/4. While this source provides little evidence to support the appeal way's status, neither does it provide evidence to the contrary. The practice in this area appears to be variable, and roads of impeccable public status (then and now) are shown variably as excluded, not excluded but uncoloured, or coloured.

M.23. We deprecate the conclusion drawn by KCC, that the Finance Act evidence is 'at best, neutral'⁸⁸. It is, simply, neutral. That the evidence has little to support the claimed status is regrettable, but that is not because of any inherent doubt on the part of the valuer, but because the valuer adopted (from this particular perspective) an inconsistent practice of dealing with public roads.

⁸⁷ KCC report on application C400 dated 30 January 2024, appendix B, para.50

⁸⁸ *Ibid*, para.89, and see also para.53.

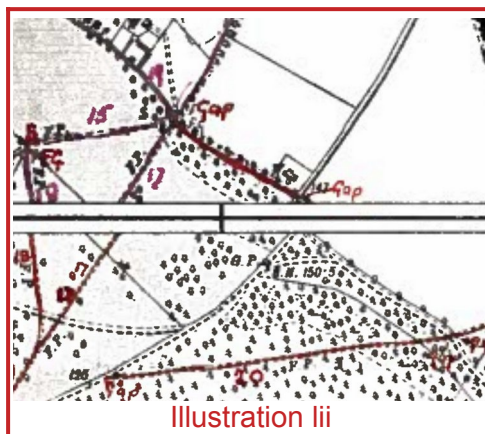
M.24. **Points:** 1

N. Parish map

N.1. **Date:** 1950

N.2. **Source:** KCC records

■ *Nonington parish map*



Nonington parish statement

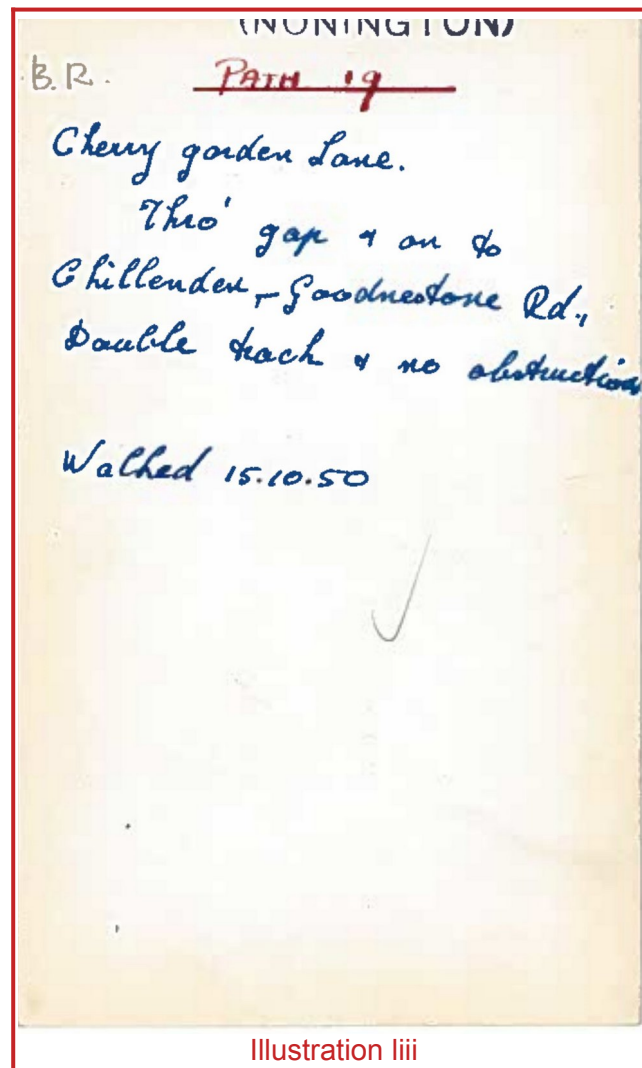


Illustration liii

N.3. **Description:** KCC, as surveying authority, led the process of preparing the draft definitive map and statement under the National Park and Access to the Countryside Act 1949. Under [s.28](#)(1) of the 1949 Act, it was required to consult with its district and parish councils on the arrangements for the provision of information to contribute to the draft map.

N.4. Under s.28(3), those arrangements were required to include provision for each parish council to hold parish meetings, and for parish meetings to be held where there was no council for a parish. And under s.28(4), every parish council had a duty:

to collect and furnish to the surveying authority such information, in such manner and at such time, as may be provided for by [the] arrangements agreed or determined.

N.5. In practice, those arrangements typically called upon the parish council to conduct a parish survey, which was written up on a base Ordnance Survey map (provided by the surveying authority), and schedule of paths. The survey might have been done by parish council members, volunteers, or representatives of user groups. The survey was then considered by the parish council and by the parish meeting, so that the parish council

would put forward a revised version of the survey for adoption by the surveying authority. In rural districts, the rural district council might co-ordinate the survey process among its parish councils.

N.6. The Nonington parish survey does not mark the appeal way, and it does not appear on the subsequent draft, provisional or ‘final’ definitive map and statement. The survey does mark Cherrygarden Lane, as path 19 (now byway EE280), which is described thus:

Path 19

Cherry garden Lane

Thro’ gap and on to Chillenden & Goodnestone Rd.

Double track and no obstructions.

Walked 15.10.50

N.7. On the parish map, a ‘GAP’ is marked at Gooseberry Hall Corner. However, the line linking the annotation to the position appears to terminate at the north-eastern end of the appeal way at A. A further ‘GAP’ is then marked along path 19 at the intersection with path 17 (now footpath EE308) and other paths.

N.8. **Criticism:** KCC observes that the appeal way was not included in the parish map prepared by Nonington parish council, nor on any subsequent draft or definitive map and statement.⁸⁹ This observation is addressed below.

N.9. **Conclusion:** It is suggested that the annotation may have been intended to refer to a gap in the woodland boundary along the Sandwich Road at A enabling access to the appeal way. It is odd to describe the turning into Cherrygarden Lane at Gooseberry Hall Corner as a ‘gap’ — it is simply a turning, and the reference to a gap in the statement must relate to the gap identified at the junction with path 17. It further is suggested that the draughtsperson may have intended to continue the way onto the adjoining sheet, but overlooked the intention, owing to the way straddling two sheets.

N.10. It also is notable that, unlike other areas in Kent, the supplied base mapping was not marked up with roads maintainable at public expense. An alternative explanation for the omission of the appeal way is that, at this time, and as demonstrated in the contemporary elements of the Late C19 and early C20 maps (item III.L above), the appeal way was still in use as a vehicular highway, and was not thought to require to be identified on the 1949 Act survey.

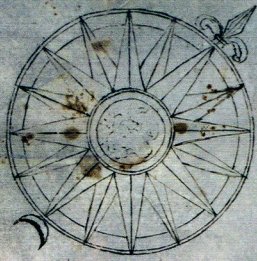
N.11. **Points:** 1

89 KCC report on application C400 dated 30 January 2024, appendix B, para.54–63

Annexes

Annexe A: St Alban's map (Gordon Ward collection)

(see item III.B above)



Station Road

Cherrygarden Lane

Chillenden

EE279

Sandwich Road

Grannies Lane

Mill Top

Kelk Hill

EE323

A Table of the names of the places in the parish of Chillenden

1	The two Bells
2	The Mill
3	The Pigeon-house
4	The Bible Measure
5	Andrew's house

1	The Little Chapel
2	The Great Downings
3	The New Chapel
4	The great sheep cote
5	The New Downings
6	The New Downings
7	The New Downings
8	The New Downings

Assigning to the names of the places in the parish of Chillenden

1	The clay clays nigh the church
2	All the parcels in the parish
3	All the parcels in the parish
4	All the parcels in the parish
5	All the parcels in the parish
6	All the parcels in the parish
7	All the parcels in the parish

The names of the places in the parish of Chillenden

A	Pinners Wood
B	
C	
D	
E	
F	
G	
H	
I	

Annexe B: Poor Law Commissioners' survey

(extract from apportionment, pp.12–13: see item III.I above)

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.		
					A.	R.	P.
Kington Highways Surveyors of	Themselves	246	Gooseberry Hall Lane	..	..	3	14
		289	Bruder road	..	..	..	29
		592	Half Road from Uffington Corner to South Park Corner	..	..	3	31
		593	Road at Aylsham Corner	..	..	..	9
		594	Road from Aylsham Wood to Goodnestone Park Corner	..	2	3	9
		595	Road from South Park Corner, thro' Kelling Street, to upper Goodnestone Corner	..	2	1	26
		596	From Kelling to Wingham road	..	..	3	6
		597	Road from Kelling Street thro' Old Street and Wingham to Broadsole Corner	..	3	3	29
		598	Road from Ackholt Down to Snow Down Road	..	1	..	14
		599	Road from Snow Down thro' Old Street and Casole to Annewellon Corner	..	6	1	6
		600	Road from the Oak thro' Church Street to the Old Court Hill	..	1	2	5
		601	Road from Butter Street to Church Street	..	..	2	17
		602	Road from Church Street to Beauchamps Lane	..	1	1	3
		603	From Beauchamps Lane to Tanners Wood Corner	..	1	..	3
		604	Road from Rueberies thro' Wingham Lane to Sales Down Corner	..	1	1	37
		605	Road from Ruebery Butte to Long Lane Farm	..	..	2	32
		606	Road from West Court Down to Barpostone Cops	..	1	1	13
		607	Road from Barpostone Cops to Shurway Gate	..	..	1	22
		608	Road from Wingham to Shurway Gate	..	..	2	39
		609	Road from Shepherd's Park Gate, past Old Blue Annewellon Corner Roads Hill	..	2	3	13
		610	Road from Casole to Kington Mill brought forward	..	..	3	29
					32	..	26

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.		
					A.	R.	P.
Kington Highways Surveyors of (Contd.)	Themselves (Continued)		Brought forward		32	..	26
		611	Road from Fildes Park Corner to Round Tree	..	1	1	6
		612	Road from Barpostone Corner to New Purchase Firs	..	..	3	17
		613	Road from Round Tree Kington to Old Blue Corner	..	2	..	3
		614	Road from Gooseberry Hall Corner to New Purchase Firs	..	1	3	23
		615	Juncker near Gooseberry Hall Corner	..	..	..	19
		616	Road from Half way Plantation past Kington to Shingolen Mount	..	2	1	..
		617	Road from Roads Hill along Annewellon Park to Round Tree	..	..	1	19
		618	Road from Uffington Corner to Goodnestone Park (upper Corner)	..	..	2	25
					41	2	18