

Claypits bridleway: document analysis

Application to record a path from The Street, Staple, to Claypits at Cave Lane, Goodnestone

I. Introduction

A. Quick reference

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



A.2. Existing public rights of way comprised in application way: Footpath EE190

- A.3. Parishes of: Staple and Goodnestone
- A.4. Former parishes of: Staple, Wingham (detached) and Goodnestone
- A.5. Termination points: The Street opposite Staple church, and Claypits at Cave Lane, Goodnestone
- A.6. Termination points Ordnance Survey grid references: TR26935660 and TR25915520
- A.7. Postcode: CT3 1LP
- A.8. Ordnance Survey Explorer sheet: 150
- A.9. Ordnance Survey County Series 25" sheets: Kent XLVII/8 and 12

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to the public right of way recorded as footpath EE190 between The Street opposite Staple church, and Claypits at Cave Lane, Goodnestone. The way lies in the parishes of Staple and Goodnestone, in the district of Dover, Kent. The application seeks to record the way as a public bridleway.

D. Application

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

D.2. The application seeks to upgrade to public bridleway the public footpath EE190 in the parishes of Staple and Goodnestone. Footpath EE190 begins on The Street, Staple opposite the church of St James the Great, at A (see the application map at part II below, Ordnance Survey grid reference TR26935660). It passes south-southwest along a track, initially metalled and known as Church Lane, for a distance of 325m to the junction with footpath EE191 to Buckland Lane and Summerfield, at B (TR26805631). It then continues southwest across two arable fields towards Twitham Hill for a distance of 610m to a junction with public bridleway EE28 at C (TR26435583). It then continues in the same south-westerly direction over further arable fields for a distance of 715m to Claypits Farm, then following an enclosed path between hedges for a distance of 95m to emerge on Cave Lane opposite the junction with Boyes Lane, Goodnestone at D (TR25915520). The total length of the way between A and D is 1,745m.

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

E. Background

E.1. The application relates to a path which represents the shortest route between the western part of the village of Staple and Goodnestone: indeed, it is between B and D an almost straight line. It is unsurprising that a public right of way should exist along that alignment and between those places: the only question is as to the status of the path. When the draft definitive map was drawn up in the early 1950s, the application way was claimed and recorded as a public footpath. But the historic evidence suggests that it was, well before that date, recognised and used as a public bridleway.

E.2. Historic maps and documents¹ suggest that, until the late 1800s, an enclosed or at least well-defined way existed from A (for the location of letters A–D and X, see the application map at part II below) passing through B south to Crixhall Court, and another enclosed or well-defined way branched off that way near B, passing southwest towards the former Higher Twitham Farm, before turning more nearly south to follow the field margin or ditch towards the road between Twitham Hill and Crixhall Court now recorded as bridleway EE28 (the 'EE28 road'). This way seems to have joined the EE28 road a little to the west of C, at X. The historical maps are clear that the user of that way could have continued west along the EE28 road, and continued southwest towards Cave Lane at its junction with Goodnestone Road (although they are not conclusive as to whether a public right of way existed for that purpose). However, they do not indicate whether it was also possible to continue south towards Claypits and Goodnestone along a cross-field path, either directly onwards from X, or from C. Nor do the historical maps indicate whether a more direct cross-field path existed along the line of the application way from B to C, or B to C and D. This is simply because, as a cross-field path for walkers and horse riders, such features were generally not shown on small scale historical maps.

E.3. It is therefore not possible to conclude whether the application way existed prior to the late nineteenth century, either as a public footpath or as a public bridleway, or whether traffic between Staple and Goodnestone followed a slightly longer route shown on historic maps via X, which was also likely to be suitable for carts. But it is clear from the Ordnance Survey County Series first edition six-inch map that the cross-field way between B and D was in use by the date of survey of that map (surveyed 1872–73, published 1877), while the longer route to X is partially shown as late as 1872 in a map drawn up by the Inclosure Commissioners (Illustration xvii at item IV.F below.)

E.4. Higher Twitham Farm buildings were razed to the ground by a fire in the summer of 1875², and not rebuilt (the site is now indistinguishable). Following the fire, traffic from Staple via A and B to the site of Higher Twitham Farm would have ceased, and the requirement for a less direct route for carts to X may have diminished too. It seems that the entirety of the route from B to X fell into disuse by the late nineteenth century.

E.5. The evidence of the co-existence of both routes ABX and ABCD from mapping drawn up in the early 1870s is strongly suggestive that the latter was not established as a substitute for the former (at least for those on foot or horseback), but had existed as a parallel but shorter route for some years, if not indefinitely. Given that historic mapping is incapable of corroborating or denying the existence of BCD prior to the late nineteenth

1 See in particular those historical maps at items IV.A to IV.E.

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

century, it may be that it is much older in origin than is apparent from known documents, but the point cannot be settled from available sources.

E.6. Accordingly, the evidence of historic mapping that a way existed along the route ABX, and the further evidence in the tithe and inclosure maps that such route was, at least in part, a public road, is of some interest, but neither assists nor diminishes the case for a bridleway along the route BCD — but does directly support the case for at least bridleway rights between A and B.

F. Grounds for application

F.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*³, 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."

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

'If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.'⁴

F.3. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates that the way has long been recognised as a public bridleway, and that the definitive map and statement should be modified accordingly.

G. Points awarded

G.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of

³ [2012] EWCA Civ 334

⁴ [Consistency Guidelines](#): para.2.17.

way on horseback — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*⁵.

G.2. Points:

Item	Ref	Points A–B	Points C–D
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.A	1	0
Greenwood's map of Kent	IV.B	1	0
Ordnance Survey, one-inch Old Series map of Kent	IV.C	0	0
Tithe Commutation Act 1836	IV.D	2	2
Ordnance Survey boundary records	IV.E	0	0
Inclosure Acts 1845–82, order of exchange	IV.F	2	2
Ordnance Survey maps	IV.G	1	3
East Kent mineral light railway	IV.H	0	5
Finance (1909–1910) Act 1910	IV.I	5	0
Draft definitive map	IV.J	0	0
Total points		12	12

H. Width of application way

H.1. The width of the cross-field path between B and the farm buildings at Claypits short of D is unknown, and a width of 3 metres is sought, being the width capable of passing two horse riders.

H.2. Between A and a point slightly north of B, the parish boundary between Staple and Wingham (detached) is marked on the Ordnance Survey County Series first edition map as following the centre of the road. The distance between A and that point (marked with a boundary stone on the first edition map) is approximately 310m. The area of that section of road, stated in the book of reference to the first edition map, is divided into the parishes of Wingham (detached) and Staple, but only that portion in Wingham is specifically measured, with an area of 0.0639ha (the area of the road in Staple includes the continuation of the road south to Crixhall Court). Assuming this area to be one half of the area of the road, the total area may be taken to be 0.1279ha, and the width is therefore calculated to be 4.1m. That width is therefore sought between A and B.

H.3. At Claypits, the way is bounded between the buildings at Claypits, for a distance of 125m north of D. In the book of reference to the first edition map, the area of this section is stated to be 0.04128ha, and the width is therefore calculated to be 3.3m. That width is therefore sought between D and a point 125m north of D.

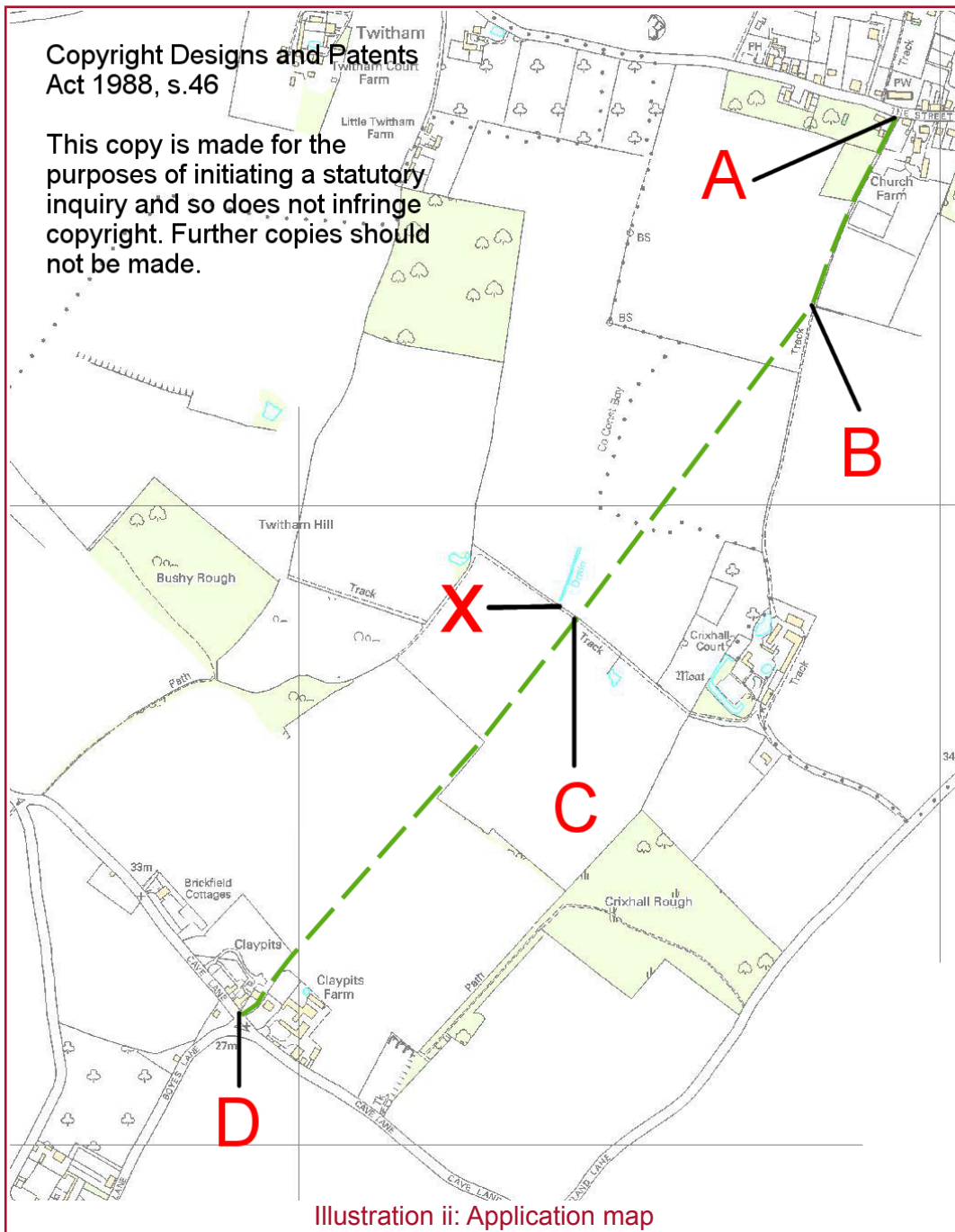
H.4. Widths applied for:

Length	Width
A–B	4.1m

⁵ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

B-125m north of D	3m
125m north of D-D	3.3m

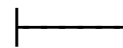
II. Application map



Map centred on C at TR26435583

Scale: approx. 1:7,725 (when printed A4)

Application way is marked ---



150m

III. Along the way

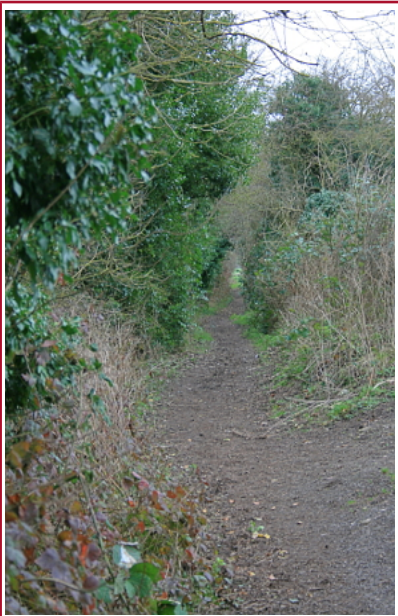


Illustration iii: South of A



Illustration iv: At B towards C



Illustration v: Between C and D



Illustration vi: At C towards B



Illustration vii: At D

IV. Evidence

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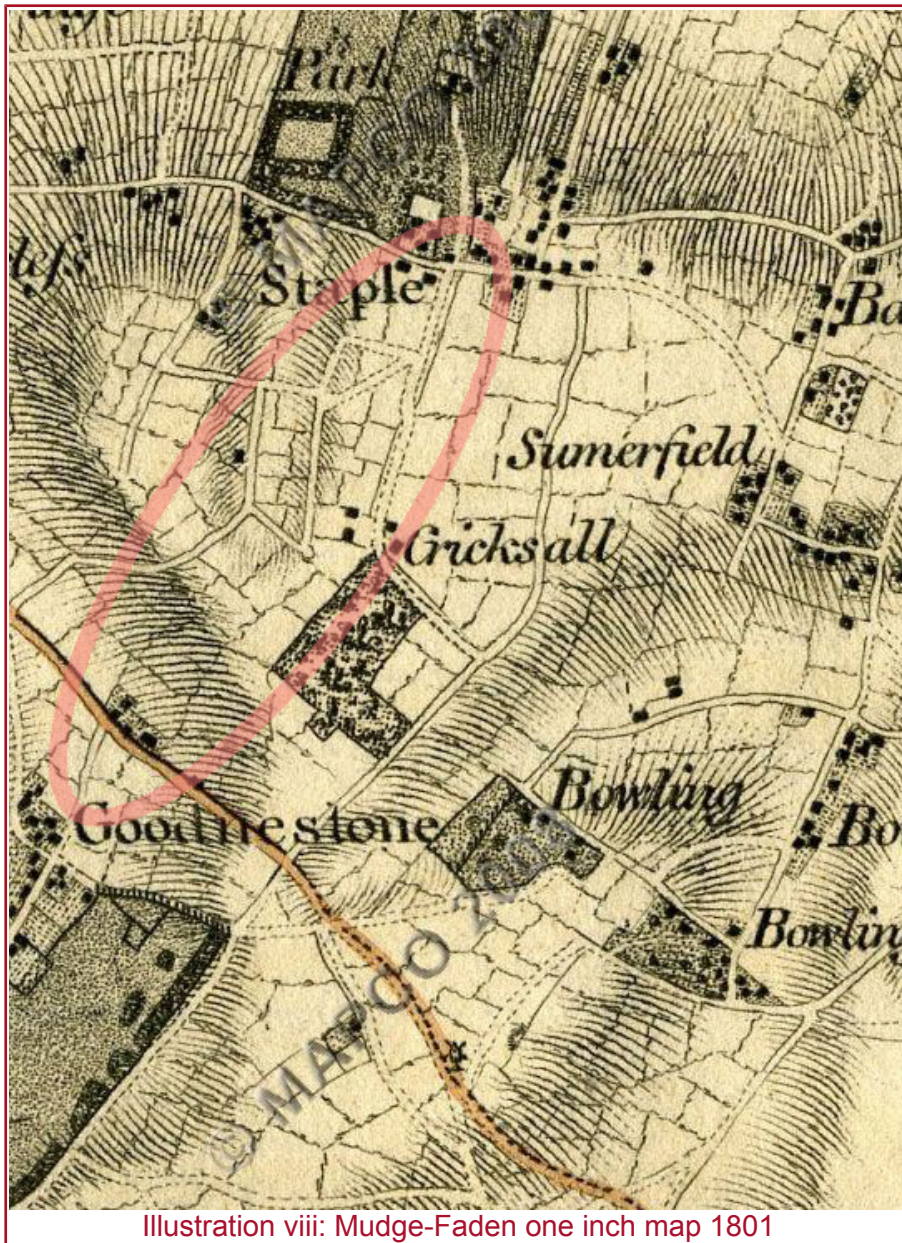
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A. Ordnance Survey, Mudge-Faden one-inch map of Kent

A.1. **Date:** 1801

A.2. **Source:** Mapco.net⁶: © Copyright David Hale and the MAPCO : Map And Plan Collection Online 2006–13

6 mapco.net/kent1801/kent31_03.htm



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

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

A.5. The Mudge-Faden map shows a way consistent with the application way between A and B, continuing south along an alignment further east than the application way, and consistent with the present drive to Crixhall Court. In the vicinity of B, two further ways branch off the line to Crixhall Court, both terminating at X on the EE28 road. No way is shown south of C towards Claypits at D.

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

A.7. The application way is shown between A and B, coincident with the drive to Crixhall Court (spelled Cricksall on the map). Between B and C, the map shows a way following a more indirect route to the application way. No way is shown between C and D.

A.8. The Mudge-Faden map provides some evidence for the existence of a public highway along the application way between A and B, although it cannot be stated with confidence that it is necessarily greater than a bridleway.

A.9. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	1	0

B. Greenwood's map of Kent

B.1. **Date:** 1819–20

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

Greenwood map



Illustration ix: Greenwood's map

Greenwood map key

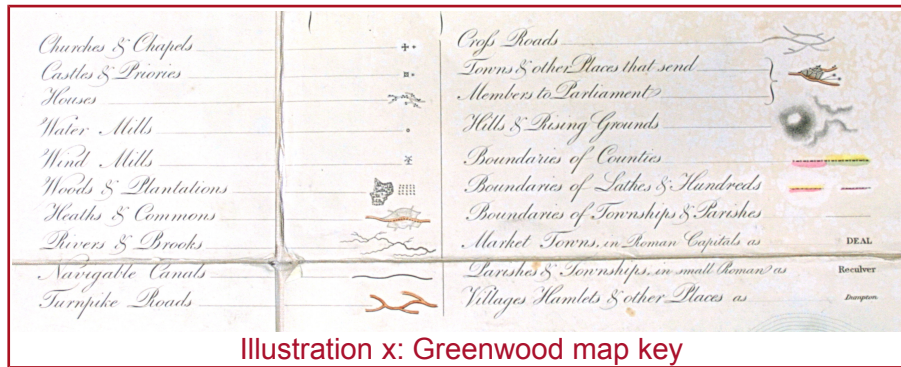


Illustration x: Greenwood map key

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

B.4. Greenwood's map shows a way consistent with the application way between A and B, continuing south along an alignment further east than the application way, and consistent with the present drive to Crixhall Court. In the vicinity of B, a further way branches off the line to Crixhall Court, west towards 'Lower Twitham Farm'⁷ and then south terminating at X on the EE28 road. No way is shown south of C towards Claypits at D. The way is described in the key as a 'cross road'.

B.5. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way along the claimed route between A and B, coincident with the drive to Crixhall Court (spelled Cricksall on the map). Between B and C, the map shows a way following a more indirect route to the application way. No way is shown between C and D.

B.6. The Greenwood map provides some evidence for the existence of a public highway along the application way between A and B. The key describes the route as a 'cross road', which is suggestive of a public way, at least suitable for use on horseback.

B.7. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	1	0

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

C.1. **Date:** 1831

C.2. **Source:** National Library of Australia⁸.

⁷ Greenwood's map identifies the farm south of Twitham, on Twitham Hill, as 'Lower Twitham Farm', and that at Twitham as 'Higher Twitham Farm': it is considered that the names are mistakenly transposed.

⁸ <http://nla.gov.au/nla.obj-231917365>.



Illustration xi: OS 1st ed 1" map

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

C.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831.

C.5. The Ordnance Survey Old Series one inch map shows a way consistent with the application way between A and B, continuing south along an alignment further east than the application way, and consistent with the present drive to Cricksall Court. In the vicinity of B, a further way branches off the line to Cricksall Court, terminating at X on the EE28 road. No way is shown south of C towards Claypits at D.

C.6. **Conclusion:** The Ordnance Survey Old Series one inch map is good evidence for the existence of a defined way along the claimed route between A and B, coincident with the drive to Cricksall Court (spelled Cricksall on the map). Between B and C, the map shows a way following a more indirect route to the application way. No way is shown between C and D.

C.7. The Ordnance Survey Old Series one inch map provides some evidence for the existence of a public highway along the application way between A and B.

C.8. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	0 ⁹	0

D. Tithe Commutation Act 1836

D.1. **Date:** 1841

D.2. **Source:** Kent County Archive¹⁰

9 No points are scored as this map is repetitive of the Ordnance Survey, Mudge-Faden one-inch map of Kent at item IV.A above

10 Kent tithe maps are available as images on CD. Transcripts of the tithe apportionments are available at: www.kentarchaeology.org.uk/Research/Maps/WIN/01.htm (Wingham) and www.kentarchaeology.org.uk/Research/Maps/GOS/01.htm (Goodnestone).

Goodnestone tithe map



Illustration xii: Goodnestone tithe map

Wingham tithe map

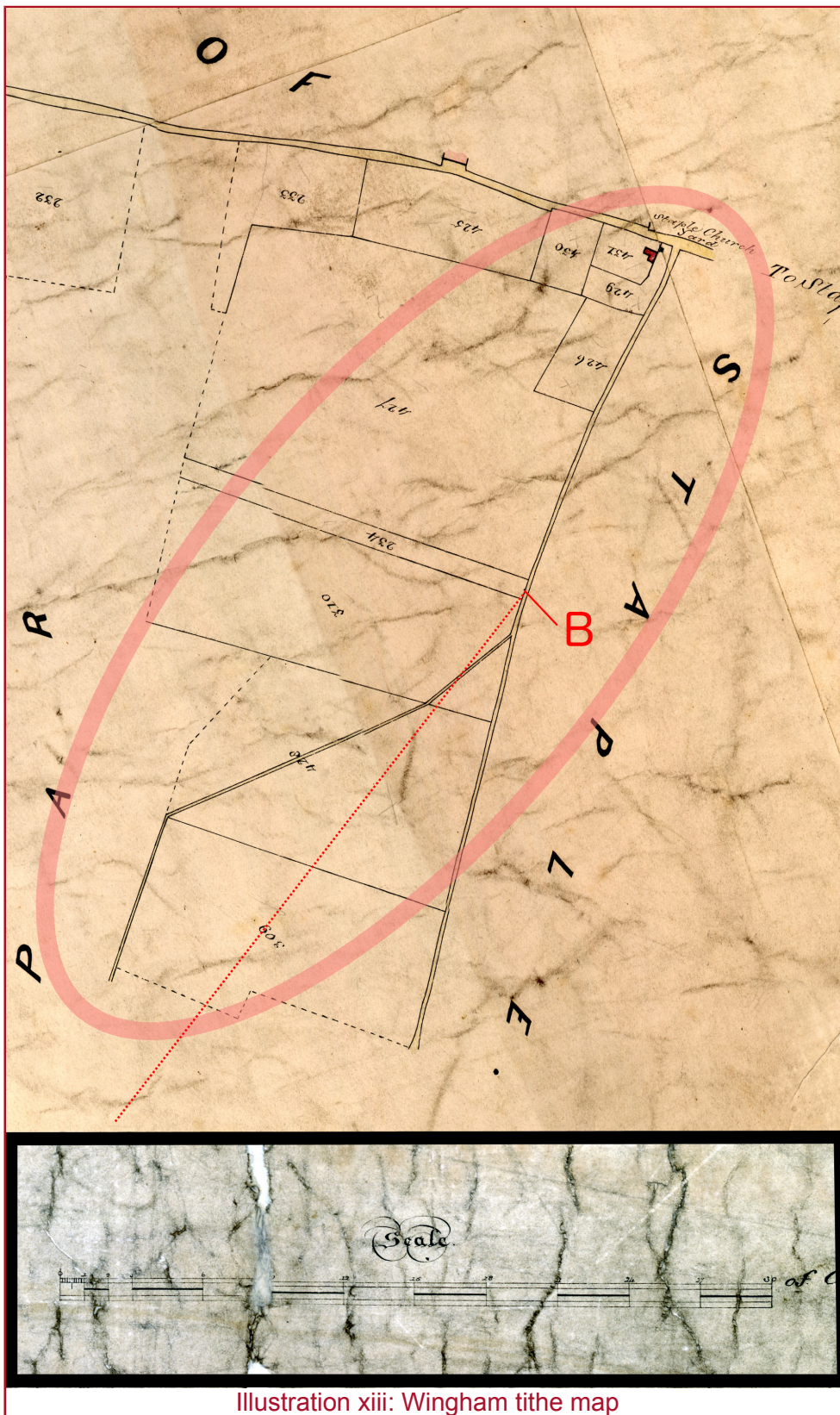


Illustration xiii: Wingham tithe map

D.3. **Description:** original scale: the Goodnestone tithe map contains a scale marked in chains (30 chains, marked at intervals of 5 chains); as does the Wingham tithe map (30

chains, marked at intervals of 3 chains); orientation: rotated (Goodnestone) 315°, (Wingham) 350°.

D.4. The tithe map for Goodnestone does not include any data for the land covered by the part of the application way in the parish of Goodnestone: this may be because the relevant land in the parish was held by the church (as was much land in East Kent). However, at Cave Lane, the junction of the application way with Cave Lane and Boyes Lane is shown in the form of a crossroads.

D.5. The Wingham tithe map shows the application way between A and B as an enclosed road. The road is coloured ochre, and continues south to Crixhall Court, also colour-washed ochre, as far as the parish boundary between Staple and Goodnestone. At (or near) B, the map shows a road branching off the road between Staple and Crixhall Court, also enclosed and coloured ochre. The way follows a more westerly alignment than the application way, and seems likely to join the EE28 road at X.

D.6. **Analysis:** The Wingham tithe apportionment records the following entries relating to roads under the heading 'Roads River & Waste Land':

Parcel	Roads	Area (ha)	Comments	Status now
620	Witherdens Hall	0.63	Network of lanes including Popsal Lane	Road, RB EE63 and FP EE166
622	Turnpike Road to Sandwich	3.7	A257	Road
623	Road to Ickham	0.21	Wingham Road	Road
624	The Drove road	1.2	Adisham Road?	Road
625	Farm Road to Dean Park	0.27	Dene Farm Lane	Road
626	Road to Wingham Wells & Neavy Downs	0.88	Wingham Well Lane (and Snakes Hill?)	Road
627	Old Canterbury Road	0.33	Mill Road?	Road
628	Well head Road	0.3	Watercress Lane?	Road
629	Road to Preston	0.58	Preston Hill	Road
630	(waste)	0.15	BW EE150 Elmstone to Perry?	BW EE150
631	Petts Road	0.26	Petts Lane	RB EE169
632	Little Wenderton	0.75	Wenderton Lane	Road
634	Hearts Delight Road (half part) ¹¹	0.08	Hearts Delight Lane	Road
635	Green Lane road (half part)	0.16	BOAT EE269, Goodnestone	BOAT EE269
636	Goodnestone Road	0.56	Goodnestone Road	Road

11 Hearts Delight Lane/Road lies on the parish boundary, so half of the lane is within the parish of Wingham.

637	Crockshire farm Road	1.37	Crockshard Lane (but possibly including part of Goodnestone Road)	Road
638	Road to Staple	1.64	Staple Road	Road
639	Road from Twitham Farm	0.19	(Part of application way)	
640	Twitham Road	0.15	Pettocks Lane	Part Road; part application for BW
641	Old Workhouse Road	0.08	School Lane?	Road
642	Dambridge Farm Road to Brook	0.44	Dambridge Farm Road	Road
643	Road to Rushams	0.29	Rusham Road	Road
644	Road from Neavy Downs to Blackney Downs	0.16	Footpath EE80 (opp. Snakes Hill to opp. Popsal Road)	FP EE80
645	Road from Hearts Delight to Guilton	0.28	Nash Road	Road
646	Drove Way Farm Road	0.19	Crockshard Lane/Hill?	Road
647	Wamstone Road	0.31	Walmestone Road	Road
648	Rd from Elmstone to Ash	0.25	Church Hill	Road
649	Rd from Elmstone to Ash	0.01	Church Hill, Elmstone	Road
650	Road from Perry Farm to four turning	0.04	Perry Lane	Road

D.7. It may be seen that, of 29 roads identified in the Wingham tithe apportionment, so far as it is possible to identify them today, 22 are now public roads, three are public bridleways or restricted byways, a further one is part public road and restricted byway and footpath, two are public footpaths, and one is believed to be (at least in part) the application way. Of the two public footpaths, footpath EE80 is believed to be eligible for a future application to upgrade its status to bridleway or restricted byway.

D.8. Unfortunately, the parcel numbers shown in the tithe apportionment against these roads are not included on the map. However, it appears that all of these ways are shown on the tithe map as coloured ochre. The adoption of colour for public ways is consistent with the nomenclature recommended by Lt Dawson to the Tithe Commissioners "on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act"¹².

D.9. Therefore, of those 27 roads which could be identified, apart from the application way, 26 are today recognised as public carriage roads or public bridleways. It is submitted that the listing of a way in the apportionment under the heading 'Roads River & Waste

¹² Report dated 29 November 1836, and endorsed by the Commissioners on 4 January 1837. Turnpike, Bye or Cross, and Bridle, Roads were to be enclosed within two parallel lines, and coloured burnt sienna.

Land', and coloured ochre on the map, is good evidence that the way was considered to be a public way, of at least bridle-road status.

D.10. **Conclusion:** The inclusion of the southwest end of the application way (at D) on the Goodnestone tithe map as one arm of the crossroads on Cave Lane is suggestive of the status of the application way as a bridle-road: the tithe map does not depict any footpaths, and the application way must have been considered to be either an occupation road or a public way of at least the status of bridleway. However, there is no evidence that the application way at its junction with Cave Lane was ever other than a public way.

Moreover, the application way is shown in the same manner as other roads in the parish, which are today recognised as public roads or bridleways. The only exception is that the tithe map shows Green Lane at Rowling in the same manner as other roads: today, Green Lane is not recorded as a public road, but may well be an omission from the record of public ways. It therefore is reasonable to conclude that the tithe map recognises the application way at D as of at least the status of a public bridleway. Nothing can be inferred from the absence of the continuation of the application way north of Claypits, because this area was excluded from the tithe map and apportionment, presumably because the land was not at that time subject to tithes.

D.11. The presentation of the application way between A and B on the Wingham tithe map as an enclosed road, coloured ochre, is strongly suggestive of a public road (see previous analysis). The application way is not annotated with the parcel number for one of the relevant roads listed in the book of apportionment (parcel numbers 639 or 640), but it seems more likely that it is the 'Road from Twitham Farm' vice 'Twitham Road'. Twitham Farm (also known as Higher Twitham Farm) subsisted on Twitham Hill until 1875, and the road shown in the extract would have served Twitham Farm, the Cave Lane to Crixhall Court track and Crixhall Court itself. However, for the purposes of this application, nothing turns on whether it is one or the other: both are listed under the heading, 'Roads River & Waste Land', and those roads listed under this heading appear to be public roads or bridleways today.

D.12. Beyond B, the way shown on the tithe map diverges from the present application way. The alignment of the application way south of B has been marked on the Wingham tithe map extract by a stippled red line.

D.13. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	2	2

E. Ordnance Survey boundary records

E.1. **Date:** 1867–9

E.2. **Source:** National Archives¹³

13 OS 27/2813, OS 27/2861, OS 28/328

Boundary sketch map Goodnestone

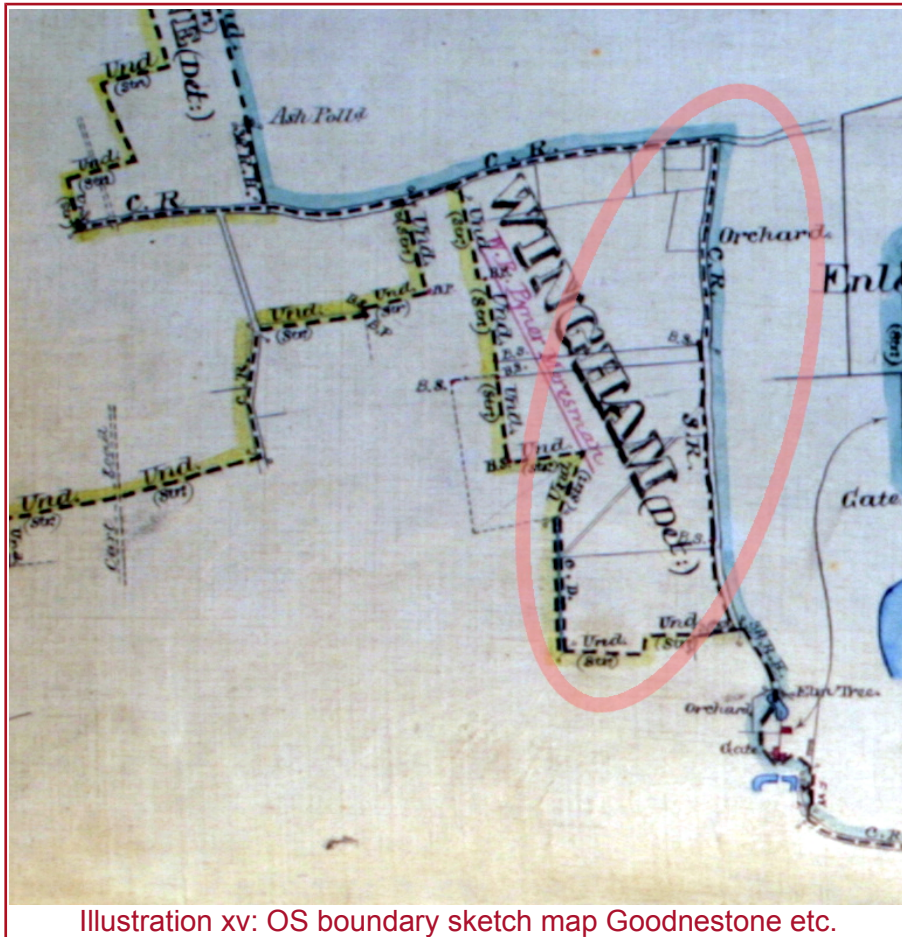


Illustration xv: OS boundary sketch map Goodnestone etc.

Boundary sketch map Wingham

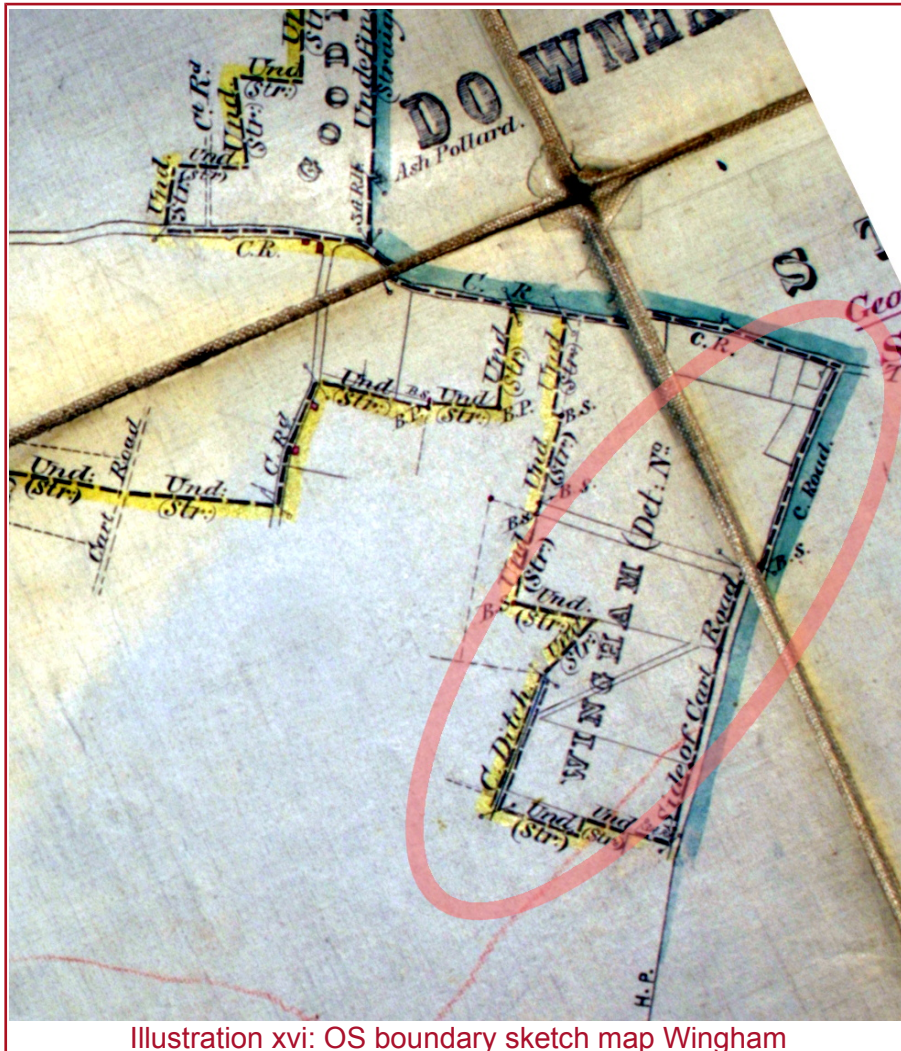


Illustration xvi: OS boundary sketch map Wingham

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

E.4. The field boundary sketch map for Wingham (Illustration xiv above: original scale: unknown; orientation: rotated 245°) was drawn up directly from information gathered in the field, onto a tracing of the parish taken from the tithe map (*c.f.* item IV.D above). The map shows a way consistent with the application way between A and B, but continuing south along an alignment further east than the application way, and consistent with the present drive to Crixhall Court. In the vicinity of B, a further way branches southwest off the line to Crixhall Court, continuing south but on an alignment slightly west of the application way: this further way is consistent with those shown on early historical maps (see items IV.A to IV.C above). The hundred and parish boundary between Staple and Wingham (detached) is shown between A and slightly north of B along the application way, marked 'C[entre] of Road (Private Road)'. To the south of B, the parish boundary is marked 'Side of Cart Road'.

E.5. The boundary sketch map for Staple (Illustration xv above: original scale: unknown; orientation: orientation unchanged) shows the information gathered on the field boundary sketch map translated into a more formal record. The parish boundary along the application way between A and slightly north of B is now marked 'C.R.' (Centre of Road), while the parish boundary to the south of B is now marked 'S.R' (Side of Road).

E.6. The boundary sketch map for Wingham (Illustration xvi above: original scale: unknown; orientation: rotated 335°) conveys similar information as the neighbouring map for Staple, but between A and slightly north of B, the parish boundary is now marked 'C. Road' (Centre of Road), and to the south of B, 'Side of Cart Road'.

E.7. **Conclusion:** The Ordnance Survey boundary sketch maps show the application way between A and the vicinity of B in the form of a road, although the field sketch map for Wingham records the surveyor's annotation that the road is a 'Private Road': however, it is not known whether this comment suggests that the road is private, that it is privately maintained, or that it is private but subject to public rights. The road is also labelled, further south of B, as a cart road.

E.8. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	0	0

F. Inclosure Acts 1845–82, order of exchange

F.1. **Date:** 1872, 1878

F.2. **Source:** National Archives¹⁴

Goodnestone exchange 4195

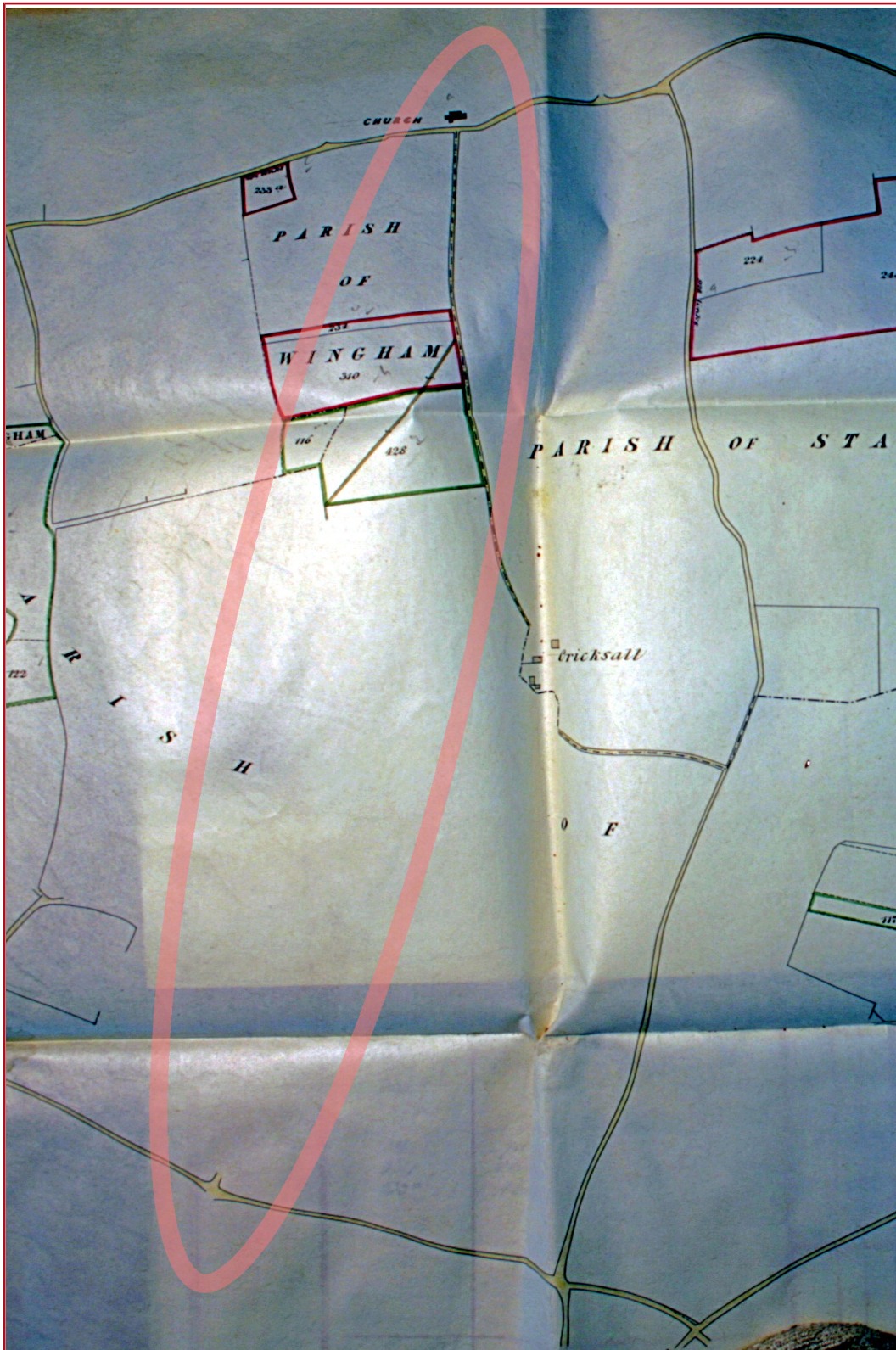


Illustration xvii: Order of exchange: Goodnestone 4195

Goodnestone exchange 5195

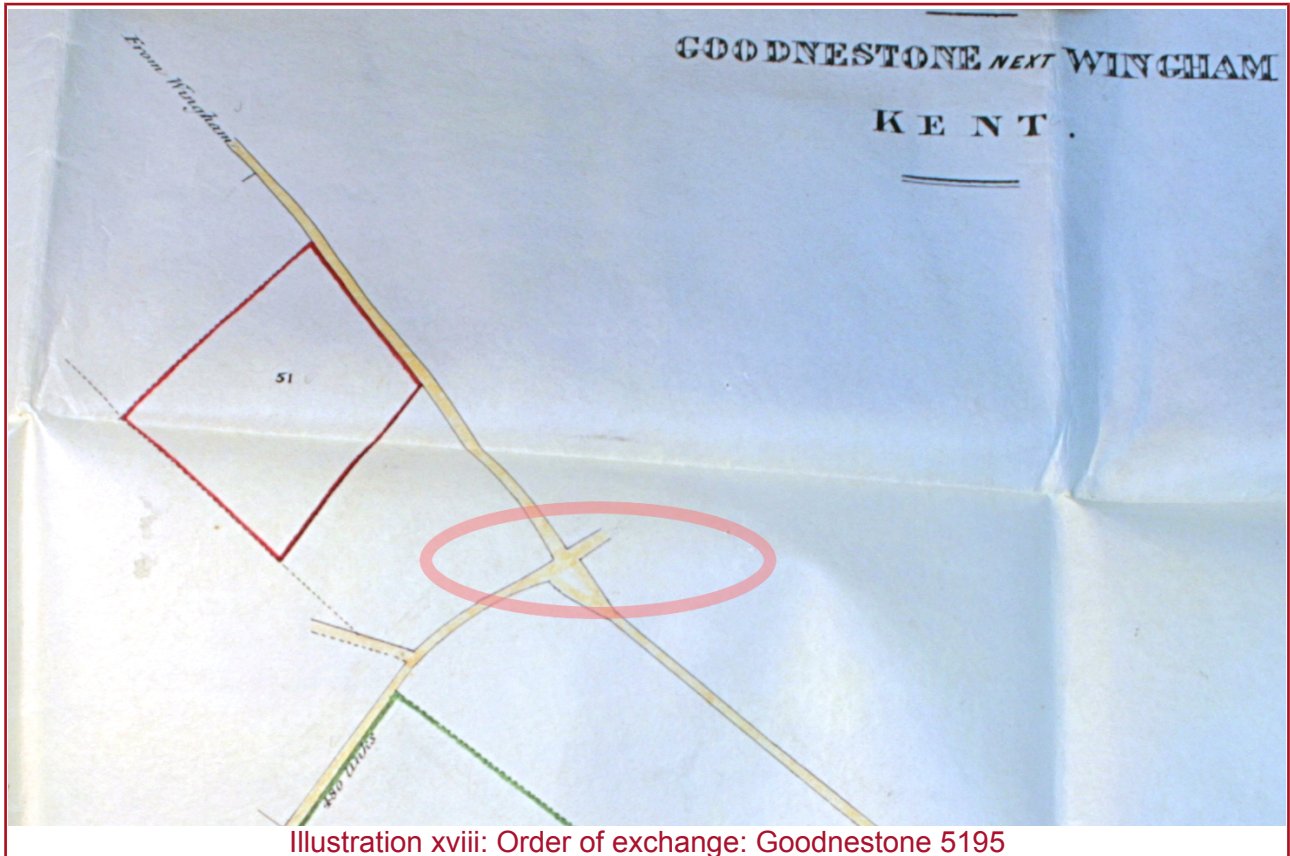


Illustration xviii: Order of exchange: Goodnestone 5195

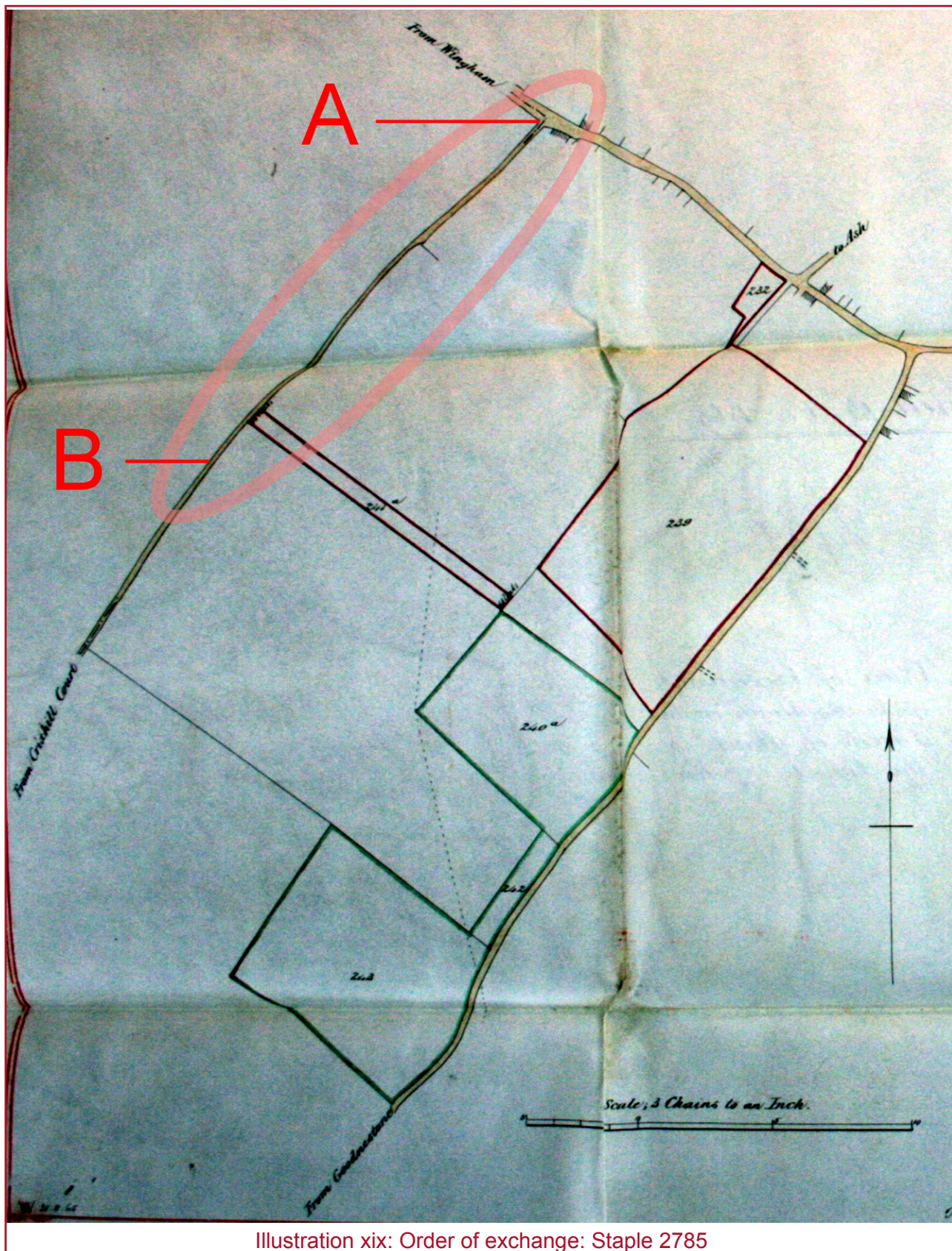


Illustration xix: Order of exchange: Staple 2785

F.3. **Description:** original scale: unknown; orientation: orientation unchanged.

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

F.5. Under section 147, the Inclosure Commissioners were empowered to grant an exchange of lands between two different owners, where such lands were not subject to inclosure (*i.e.* were not, for example, common land). The Commissioners were required to be satisfied, following public notice of the proposed exchange, that the exchange would be beneficial to the respective owners, and that the terms of the exchange were just and reasonable. Section 147 was used to overcome difficulties in conveyancing or defects in title at a time before such matters were generally addressed by legislation: it provided that the exchange was to be binding notwithstanding any incapacity or defect in title.

F.6. Two orders of exchange were made by the Inclosure Commissioners in 1872 and 1878. The plans drawn up under the exchanges show the intersection of the application way with Cave Lane at D. Both plans show various ways shaded ochre, including the first part of the claimed way north from D towards C.

F.7. On the first exchange plan (Illustration xvii above), the plan shows the application way between A and B as an enclosed road. The road is coloured ochre, and continues south to Crixhall Court, also colour-washed ochre, as far as the grounds of Crixhall Court itself. At (or near) B, the map shows a road branching off the road between Staple and Crixhall Court, also enclosed and coloured ochre. The way follows a more westerly alignment than the application way but is discontinued after crossing two parcels which are included in the order of exchange.

F.8. **Conclusion:** In relation to the first exchange plan (Illustration xvii above), all those ways coloured ochre are today recognised as public roads or public bridleways today, except in respect of:

- Green Lane, Rowling, which is presumed to have been diverted to a new alignment subsequent to the order.
- Pettocks Lane, Twitham, which is the subject of a separate application to Kent County Council for a definitive map modification order to show the lane as a public bridleway.
- The continuation of Barnsole Road south from Summerfield, which may be shaded ochre for a very short part of its extent beyond the point where Barnsole Road turns east (the whole of this extent is now recorded as a public footpath EE228).

F.9. In relation to the second exchange plan (Illustration xviii above), all those ways coloured ochre are recognised as public roads today, except for the way between Boyes Lane and Goodnestone Hill, which is considered to be a candidate for an application to record an unrecorded way.

F.10. On these and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or ochre colour wash appears to denote ways which are either public roads or bridle-roads. On the first exchange plan, the status of the application way between A and B as a public road or bridle-road would be consistent with the expectation of rights of access to parcels 116, 234, 310 and 428 following the exchange. The exchange plans are good evidence of the public status of the application way between A and B, and north from D towards C. Moreover, the breadth given to the way on both plans indicates that the way was believed to be at least of the status of a bridle-road.

F.11. **Points:**

Part	Points A-B	Points B-D
<i>bridleway</i>	2	2

G. Ordnance Survey maps

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

G.2. **Source:** National Library of Scotland¹⁵; British Library¹⁶

OS 1:2,500 County Series 1st edition (published 1872)

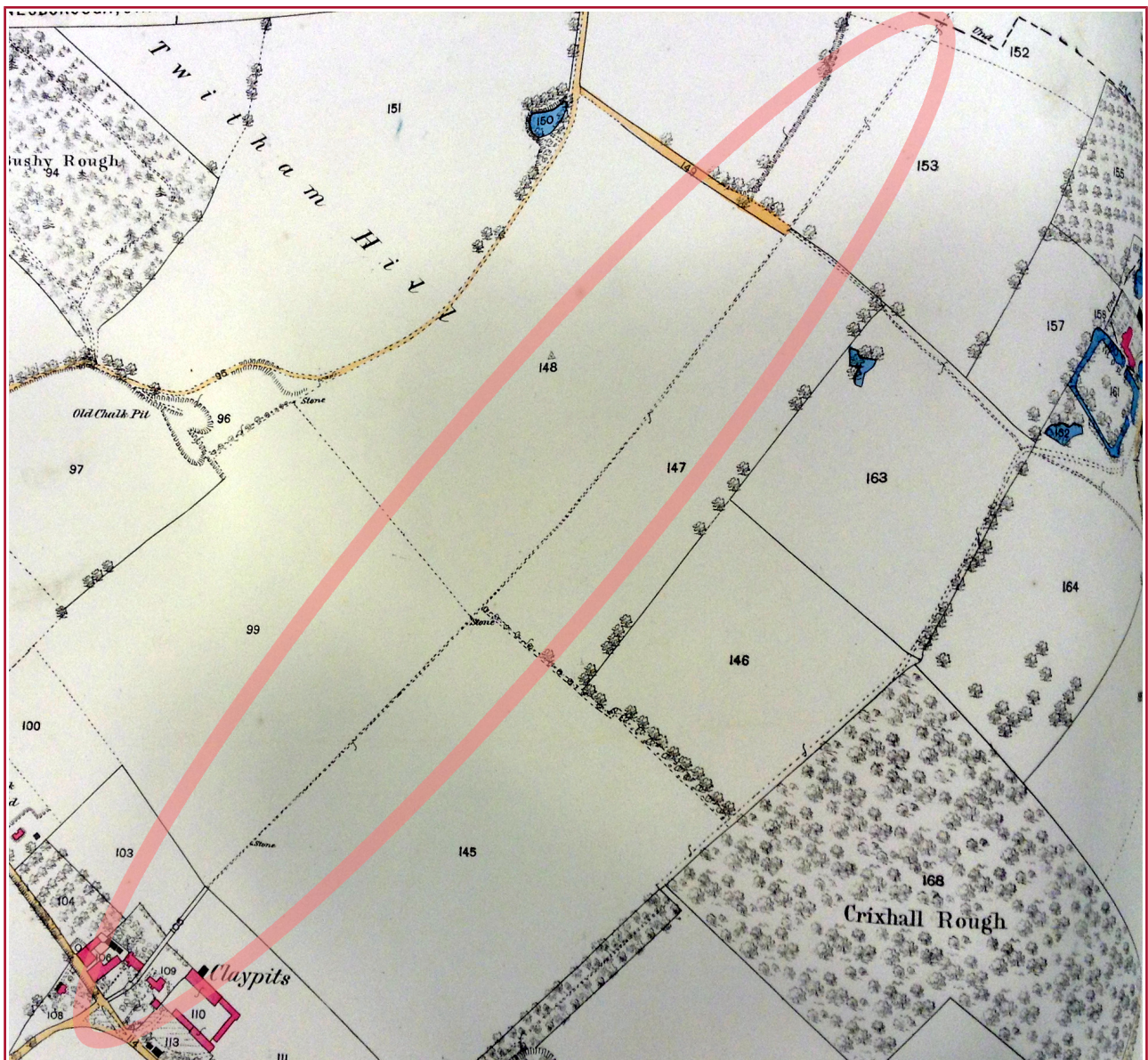


Illustration xx: OS County Series 1:2,500 first edition

¹⁵ <http://maps.nls.uk/view/103680557>

¹⁶ 1st edition in colour.

PARISH OF STAPLE,
IN THE
COUNTY OF KENT—(EASTERN DIVISION).

HUNDRED OF DOWNHAMFORD (DETACHED).

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
17	1.321	House, garden, &c.	56	.443	Houses and garden.
18	1.969	Orchard, &c.	57	1.543	Orchard.
19	.583	Road, &c.	58	.786	Houses, yards, &c.
20	74.785	Arable.	59	1.033	Garden, &c.
21	1.352	Road (part of).	60	2.846	Pasture.

Illustration xxi: OS 1:2,500 first edition area book Wingham

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

HUNDRED OF WINGHAM.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
PARISH OF WINGHAM (DETACHED).			6	5.937	Arable.
			7	1.206	Garden.
			8	.158	Road.
Locally situated between the Parishes of Goodnestone and Staple.			9	11.544	Arable.
			10	10.172	Arable.

Illustration xxii: OS 1:2,500 first edition area book Wingham

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

2

PARISH OF GOODNESTONE.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
102	1.118	House, brickfield, &c.	152	1.187	
103	2.247	Pasture.	153	8.125	Arable.
104	.960	Orchard.	154	.039	Road (part of).
105	.102	Road.	155	2.620	Orchard.
106	.723	Houses, garden, &c.	156	.166	Pasture.
107	8.691	Arable.	157	8.818	Pasture.

Illustration xxiii: OS 1:2,500 first edition area book Goodnestone

OS 1:2,500 County Series 3rd (1907) and 4th (1946) editions

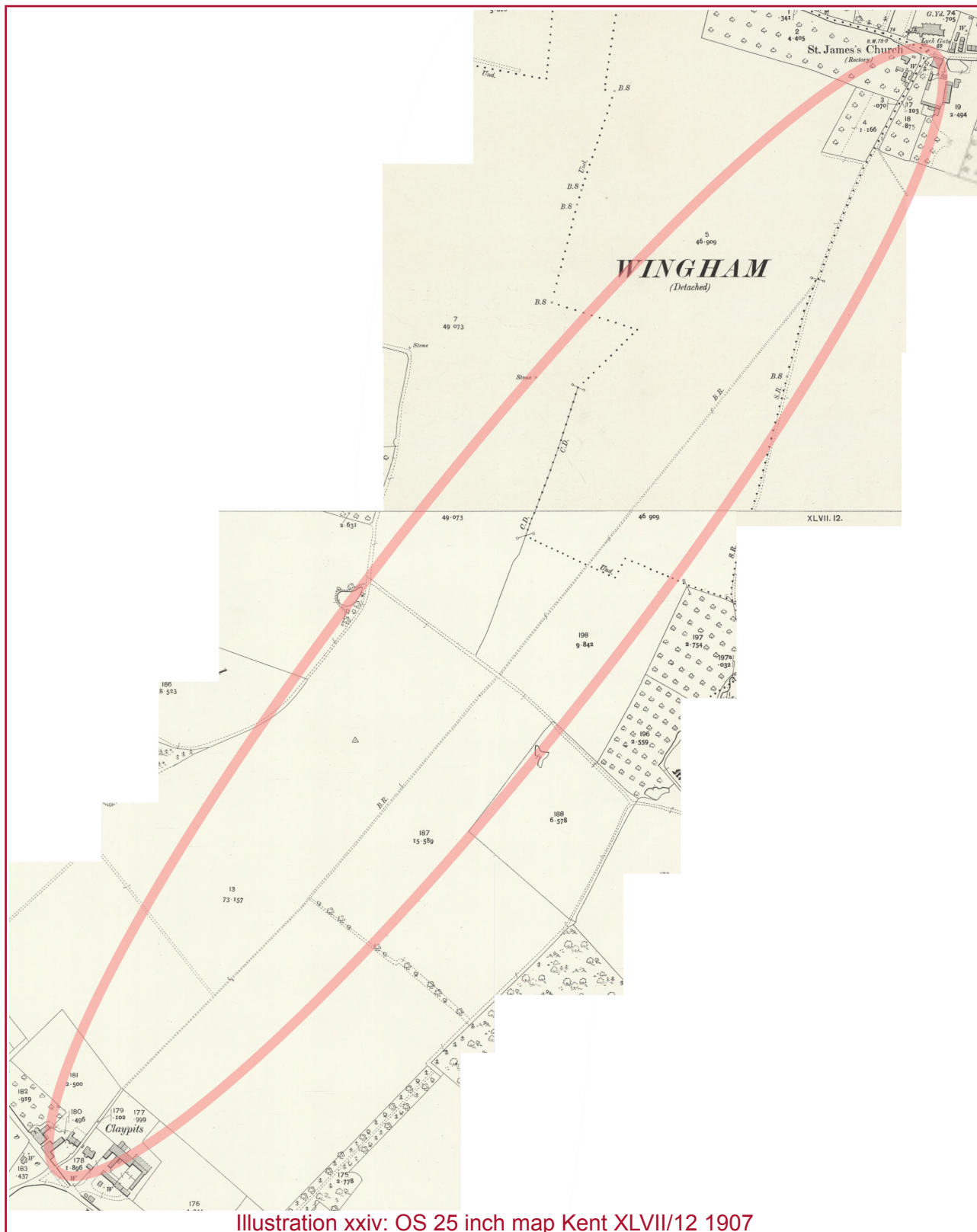


Illustration xxiv: OS 25 inch map Kent XLVII/12 1907

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

G.4. The application way is depicted as a physical feature on the first edition of the Ordnance Survey County Series 1:2,500 map (Illustration xx above), published in 1872,

and on all subsequent editions of the County Series and National Grid maps at this scale. On the first edition map, the application way between A and B forms the parish boundary between Staple and Wingham (detached), and is shown as an enclosed way allocated parcel number 19. In the book of reference for the parish of Staple (Illustration xxi above), parcel 19 is described as a 'Road &c' with an area of 0.236ha. The same part of the way within the parish of Wingham (detached) is allocated parcel number 8. In the book of reference for the parish of Wingham (detached) (Illustration xxii above), which is incorporated in the book of reference for the parish of Staple, parcel 8 is described as a 'Road' with an area of 0.064ha.

G.5. That part of the application way adjoining Cave Lane at D is shown as an enclosed route between buildings, and the enclosed way is allocated parcel number 105. In the book of reference for the parish of Goodnestone (Illustration xxiii above), parcel 105 is described as a 'Road' with an area of 0.041ha.

G.6. The Ordnance Survey County Series third edition map (Illustration xxiv above) shows the application route between B and slightly north of D as a path marked 'BR' (bridle-road). The marking is also found on the second edition map, and on the derived six-inch maps.

G.7. **Conclusion:** The entry in the area books published alongside the first edition, for the application way between A and B as a 'road', provides some support for its status as a public highway, the entry being consistent with the way's depiction as a road on earlier historical mapping.

G.8. The annotation of the application way as 'BR' (bridle road) is good evidence for its status as a bridle path and not a footpath. While the Ordnance Survey map does not necessarily distinguish public from private paths, the surveyor will have recorded the way as a bridleway because of observations made in the field, or because of information received from reliable local sources, or both. As the application way is acknowledged to be a public path (albeit recorded at present as a public footpath), the Ordnance Survey's annotation of the way as a bridle road cannot refer to anything other than a public bridleway which was noted by a field surveyor on his perambulation of the area on the occasion of the revision for both the second and third editions. It should be noted that the attribution of a bridle road was not done in relation to the first edition, and discontinued before the fourth edition¹⁷. Moreover, the annotation of the path as a bridle-road on both the second and third editions of the twenty-five and six-inch maps is suggestive that the status was a settled matter: if the annotation had given any cause for objection, it might have been addressed and altered before the publication of the third edition.

G.9. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	1	3 ¹⁸

¹⁷ There are some temporal exceptions in both cases, but none material to Kent.

¹⁸ In *Restoring the Record*, the authors propose a score of one point for a bridle road attribution on a second or third edition map. However, it is submitted that such a score is appropriate where the key question is whether the way shown is or is not a public bridleway as opposed to a private path. In the present circumstances, where the public status of the way is undisputed, it is submitted that the attribution is of increased value, as it lends evidential value to the status and use of the way at the time of the revision of both the second and third edition maps.

H. East Kent mineral light railway

H.1. **Date:** 1910

H.2. **Source:** Kent County Archives¹⁹

East Kent Light Railway line 6 plan:

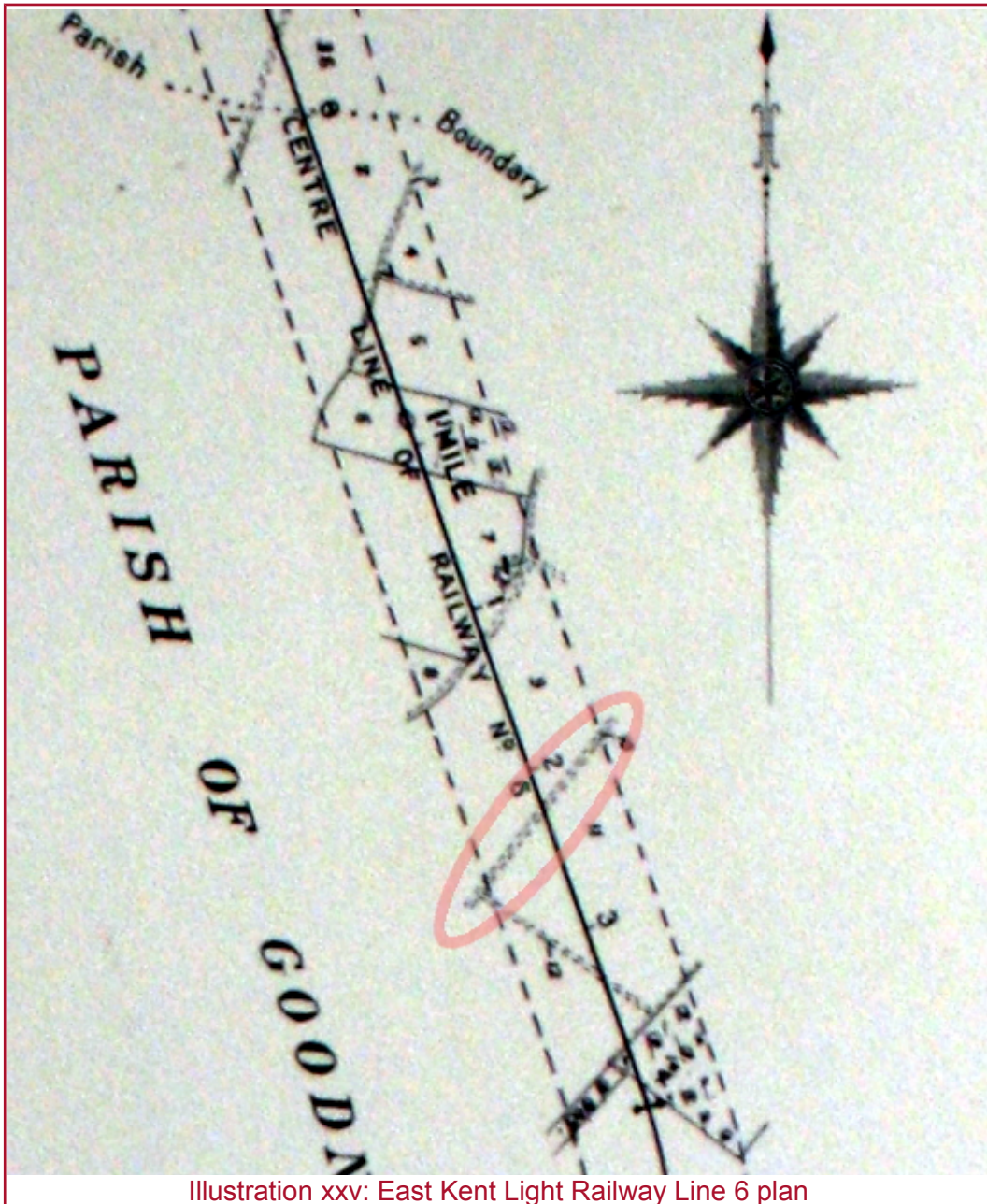


Illustration xxv: East Kent Light Railway Line 6 plan

19 Q/RUm/1151.

East Kent Light Railway line 6 book of reference:

55

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of GOODNESTONE, in the County of KENT.

RAILWAY No. 6—*continued.*

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
10	Bridle road	The Eastry Rural District Council	The Eastry Rural District Council

Illustration xxvi: East Kent Light Railway line 6 book of reference

H.3. **Description:** original scale: unknown; orientation: rotated 290°.

H.4. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. Line 6 was among the initial raft of proposals for a network of lines serving prospective East Kent collieries, and anticipated the development of a colliery in Goodnestone, but (unlike several lines proposed at this time) was authorised but not built.

H.5. Illustration xxv above shows the application way as a track marked by double pecked lines which crosses the proposed line between C and D just over 1 mile and 2 furlongs from the junction with lines east and west to join line 2 near Wingham. The track is assigned plot number 10.

H.6. Illustration xxvi above records in the book of reference for Goodnestone parish that plot 10 was a 'Bridle road' in the ownership and occupation of The Eastry Rural District Council.

H.7. **Conclusion:** Sections 46 to 48 and 59 of the Railways Clauses Consolidation Act 1845 were excluded from incorporation in the East Kent Mineral (Light) Railways Order 1910²⁰. The order itself provided for the bridging of certain public roads, and for other public highways to be taken over the railway on the level (consistent with the minimal expectations of light railway construction and operation). In common with most roads and all paths, no specific provision is made in the elevation nor the order²¹ for the crossing of the application way, and a level crossing would have been provided.

H.8. The attribution of the application way between C and D in the plan and book of reference for line 6 provide good evidence for the status of the application way between C and D as a public bridleway. The omission of attribution of the bridle road to public status appears to be an oversight (*c.f.* the entry for plot 3): however, the attribution of ownership and occupation to the Eastry Rural District Council confirms that the way was recognised as a public and not a private path.

H.9. **Points:**

20 See art.3(1).

21 See arts.21–22.

Part	Points A–B	Points B–D
<i>bridleway</i>	0	5

I. Finance (1909–1910) Act 1910

I.1. **Date:** 1911

I.2. **Source:** National Archives²²

²² IR 124/5/59, IR 124/5/57, IR 58/17323 and IR 58/17321

Finance Act sheet XLVII/8 & 12

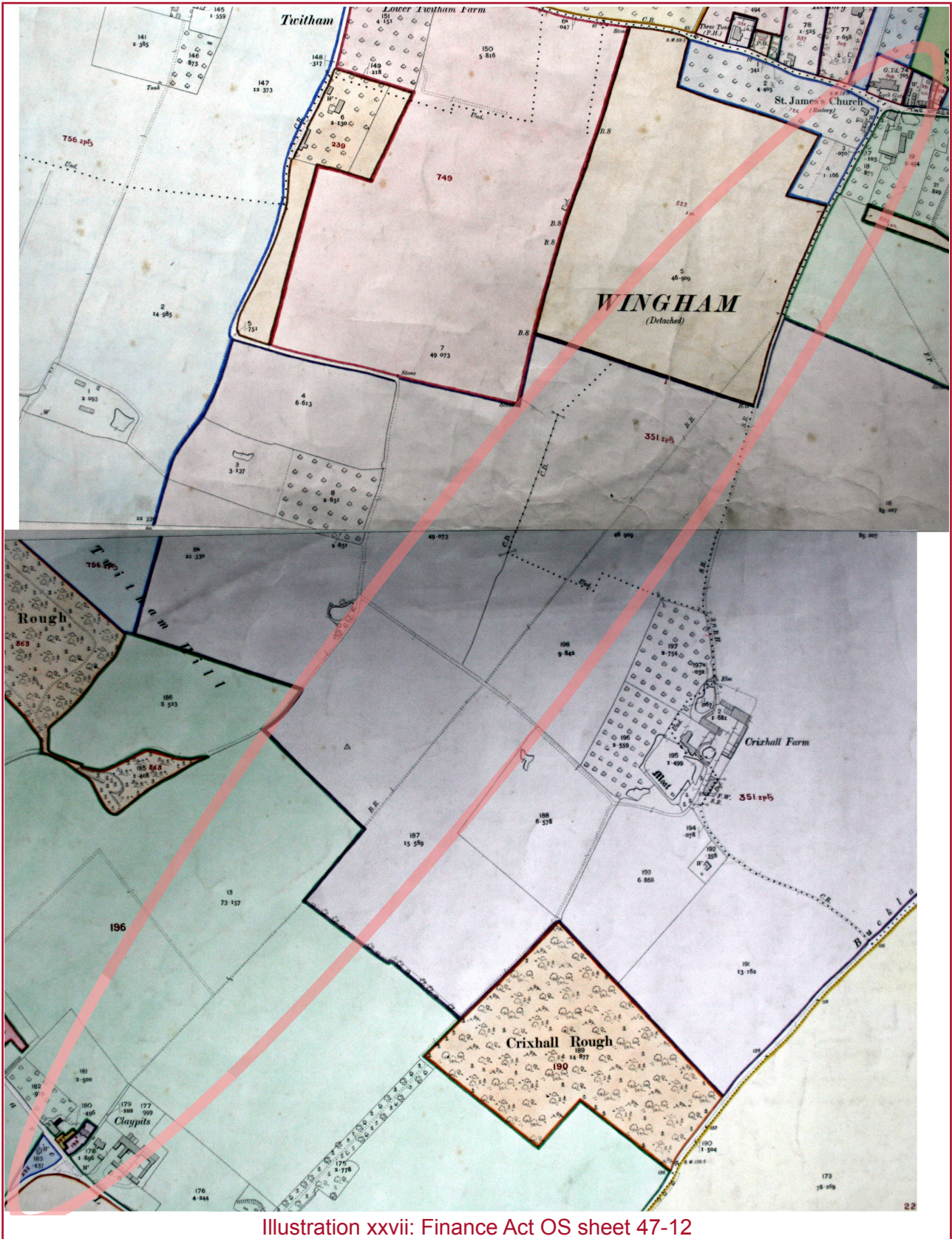


Illustration xxvii: Finance Act OS sheet 47-12

Field Book Adisham/Staple hereditament 351

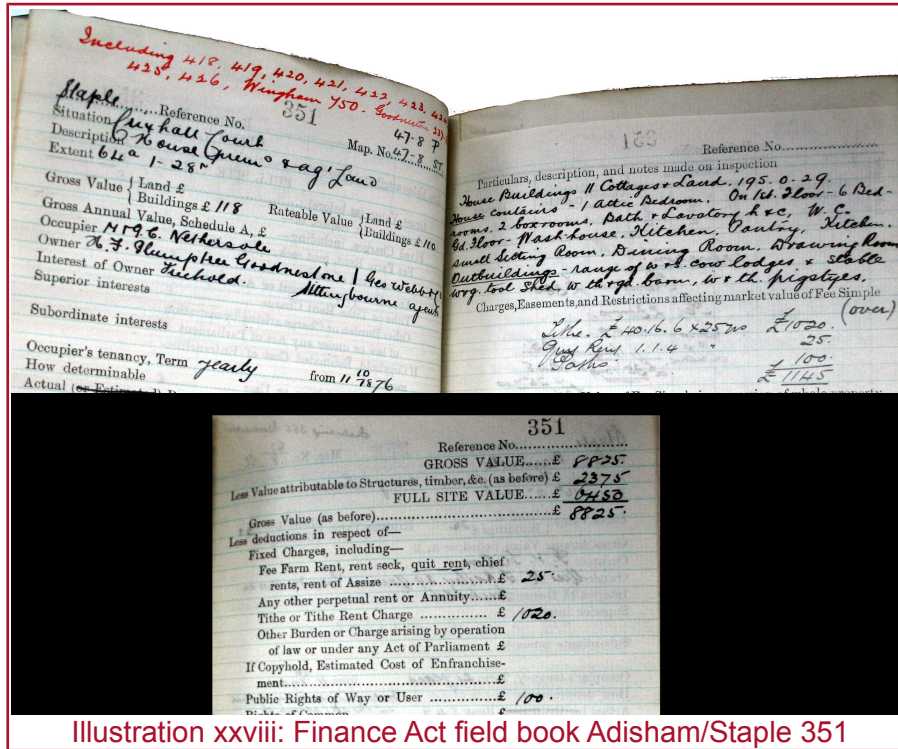


Illustration xxviii: Finance Act field book Adisham/Staple 351

Field Book Adisham/Goodnestone hereditament 196

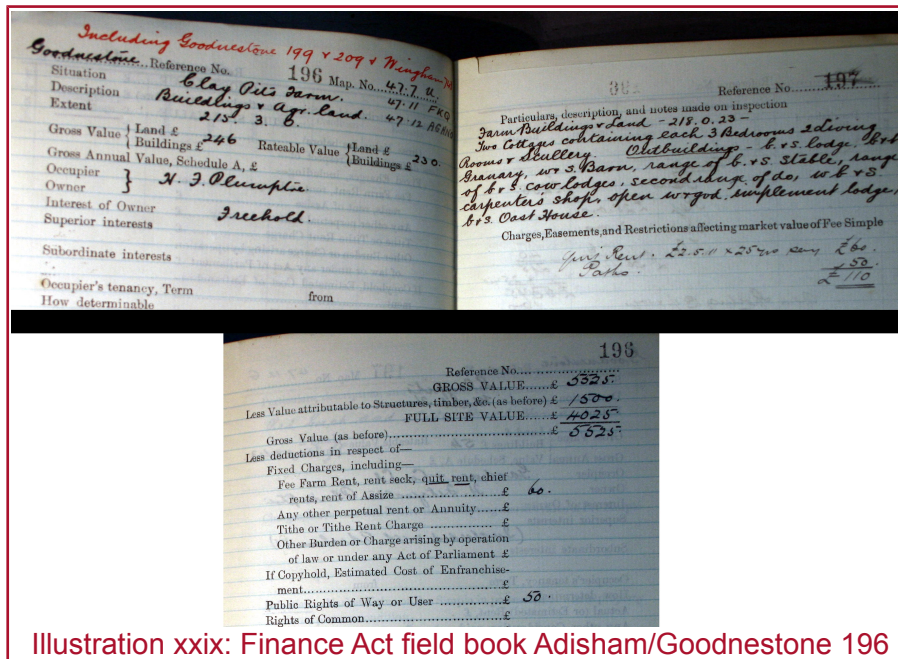


Illustration xxix: Finance Act field book Adisham/Goodnestone 196

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

1.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect

highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads. This is because 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.

I.5. 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...'²³. 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 landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).
- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase in value arising from development were minimised. However, as the 1910 Act also provided for other levies, the calculations in a particular case might be for or against a discount from the total value of the land).
- Whether the landowner declared the right of way on form 4 or form 7 (a failure to declare might be an oversight).
- Whether the valuer accepted the claim for a discount for a right of way.
- Even if the landowner did not declare the right of way, the valuer could give a discount for a right of way which was 'known to' the valuer.

I.6. The December 1910 *Instructions to Valuers* stated that: '183. Site Value Deductions not Claimed by the Owner. — In making Original Valuations under Section 26(1) of the [1910 Act], Valuers will give credit for any deductions under the provisions of Section 25, so far as they are known to them and that notwithstanding the fact that such deductions may not have previously been claimed by or on behalf of the owner.' It follows that, if a deduction for a right of way is given in a particular case, and there is no evidence (as is usually the case) that it was requested by the landowner, the deduction can have only arisen either because it was nevertheless requested, or because the existence of the right of way was known to the valuer. It is unlikely that valuers would have volunteered deductions except in cases where the right of way was obvious — perhaps because it was sign-posted as such, or referred to as such by the landowner or an employee of the landowner when the valuer was surveying the land.

I.7. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

I.8. The application way is shown uncoloured between A and south of B. Between B and D, the application way lies across several hereditaments:

- Hereditament 522 Staple: not verified.

²³ Discounts for easements affecting the land were separately requested and recorded in the valuation book.

- Hereditament 351 Staple: Crixhall Court, 26 ha. Bundled with units Staple 418–426, Wingham 750 and Goodnestone 237–238(?). Deduction of £100 for 'Paths'.
- Hereditament 196 Goodnestone: Clay Pits Farm, 87 ha. Bundled with Goodnestone units 199 and 209, and Wingham 743. Deduction of £50 for 'Paths'.

I.9. **Conclusion:** The uncoloured road shown on the Finance Act map between A and south of B is good evidence that the application way between A and B was regarded as a public highway not subject to assessment, at least of bridleway status. An uncoloured road is occasionally accounted for in other circumstances, notably where the road is awarded as a private carriage drive for the use of several owners of adjoining land (so that there is no owner but shared user), or in other circumstances where the use of the road is shared between several owners of adjoining land, or where there is uncertainty about the ownership of the road. However, none of these circumstances appears relevant here: the land is not the subject of an inclosure award, and the ownership and use of the way rests with the Goodnestone estate: indeed, the estate has explicitly 'permitted' the use by horse riders of the road from A to Crixhall Court and bridleway EE28 by means of a sign exhibited at A. It follows that the uncoloured road must be illustrative of its highway status and, as roads are seldom uncoloured on the Finance Act maps where the way is only a public footpath, it must be illustrative of at least a bridleway.

I.10. No conclusions can be drawn from the deductions for the hereditaments crossed by the application way between B and D, as of the two significant hereditaments, both contain other rights of way, and the field books do not distinguish public footpaths from public bridleways.

I.11. **Points:**

Part	Points A–B	Points B–D
<i>bridleway</i>	5	0

J. Draft definitive map

J.1. **Date:** 1952

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

Parish survey map Staple



Illustration xxx: Parish survey map Staple

Parish survey listing Staple

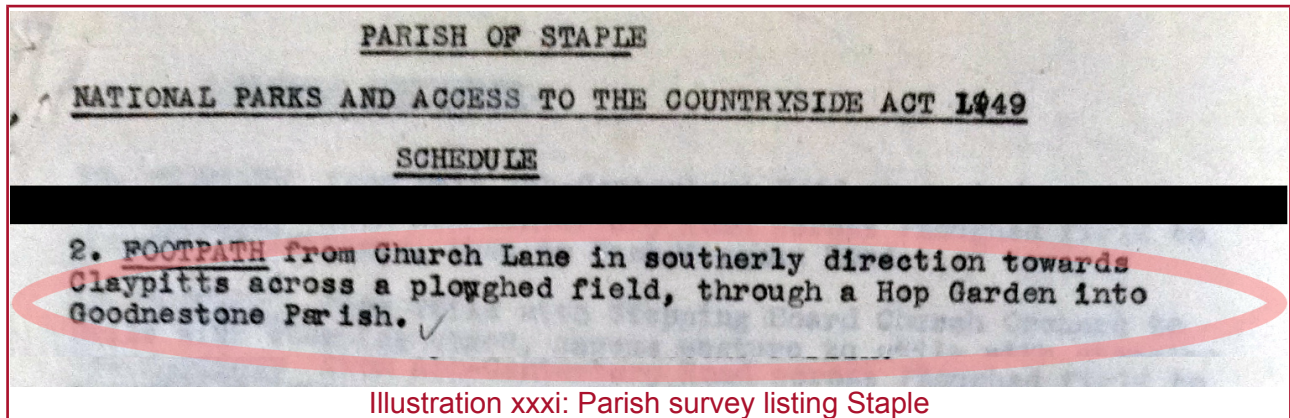


Illustration xxxi: Parish survey listing Staple

Draft definitive map Staple



Illustration xxxii: Draft definitive map Staple

Draft definitive statement Staple

13
1st DECEMBER 1952

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949.
PART IV - SURVEY OF PUBLIC RIGHTS OF WAY.

.....STAPLE..... Parish Council
Office Ref.No. ...81/8/3.....

Path Reference No.	6" Ordnance Survey Map Reference.	Description of Route.	Nature of Surface.	Approximate Length (miles)	Approximate Width (feet)	General.
2	XVII. S.S. XVII. S.S.	CART ROAD BRIDLEWAY & FOOTPATH. Staple to Goodstone. Commences Staple Street OMB at Junction with Church Lane and leads N.W. as C.R.L. along Church Lane for 150 yds. Turns E.W. as F.P. to Goodstone Parish Boundary 250 yds. S.W. of Orishall Farm.	Footpath section aside	.17		

Illustration xxxiii: Draft definitive statement Staple

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

J.4. The parish survey of rights of way in Staple, commissioned from the parish council²⁴ in 1950 prior to the preparation of the draft definitive map, excluded the application way between A and B, which was referred to as Church Lane, and presumably considered to be an unclassified road. The remainder of the application way in the parish of Staple, between B and a point slightly north of C, was recorded as a footpath. When the product of the parish survey was incorporated into the draft definitive map, the application way was recorded as a 'Cart Road Bridleway' (*i.e.* a Road used as Public Path or RUPP) between A and B, and as a footpath beyond B.

J.5. **Conclusion:** Staple parish council's survey omitted to record the application way between A and B, and it seems likely that it believed it to be a public road (known as Church Lane) which did not need to be recorded on the definitive map and statement. Although the council recorded the continuation of the application way from B towards C as a footpath, the council recorded all 16 public rights of way in the parish as footpaths — without, it seems, much regard for the status of each way.

J.6. **Points:**

Part	Points A-B	Points B-D
<i>bridleway</i>	0	0

²⁴ See s.28 of the National Parks and Access to the Countryside Act 1949.