

The
British
Horse
Society

I. Introduction

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

The map illustrates the proposed 'Application way' in red, connecting the A355 to the A354. Key locations labeled on the map include Palmstead, Bladbean, and Wingmore. Other notable features include various farms (e.g., Kingwood Farm, Dane Farm, Bladbean Farm), woods (e.g., Cove Wood, Colehill Wood), and roads (e.g., A355, A354, B3142). The map also shows existing infrastructure like the railway line and the A355 bypass.

- A.2. **Surveying authority reference number:** PROW/CC/C410
- A.3. **Existing recorded public rights of way comprised in application way:** none
- A.4. **Parish of:** Barham¹
- A.5. **District of:** Canterbury
- A.6. **Ancient parish of:** Upper or Great Hardres¹
- A.7. **Hundred of:** Loningborough
- A.8. **Termination points:** Peafield Wood Road (at corner) and Dane Hill Road at Dane Farm
- A.9. **Termination points Ordnance Survey grid references:** TR17404802, TR17594787
- A.10. **Postcode:** CT4 6LY
- A.11. **Ordnance Survey Explorer sheet:** 138
- A.12. **Ordnance Survey County Series 25-inch sheets:** Kent LVI/12

B. The applicant

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

C. Locational details

C.1. This application relates to a way in the parish of Barham, Kent. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a byway open to all traffic.

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)(i) that a way should be added to the definitive map and statement for Kent as a byway open to all traffic.

D.2. The way begins on Dane Hill Road at Dane Farm, in the parish of Barham (on the parish boundary with Elham), at A, a turn in the road from northwest to northeast (Ordnance Survey grid reference TR17594787), and proceeds northwest initially along a well-defined way between the buildings of Dane Farm and partly enclosed, uphill for 250m to join the track along the eastern boundary of Peafield Wood at B (TR17424805), then turning southwest to follow that track for 30m to the junction with Peafield Wood Road at C, a turn in the road from northeast to northwest (TR17404802). A total distance of 280m.

¹ The parish boundary against Elham passes through A.

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

E. Nomenclature

E.1. The application way is described in the Highway authority list of streets (item IV.S below) as Dane Hill Path, off Dane Hill Road, and in the local street gazetteer as Dane Farm Road.

E.2. The application way joins Dane Hill Road at its foot (at A), and Peafield Wood Road at its summit (at C).

F. Background

F.1. The application way historically appears to be part of the local road network. It forms a useful and logical connection in the local road network between the Elham Valley at Wingmore, Bladbean, Palmstead, Bossingham and Stone Street. Historical maps, including the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B below), the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.D below), Greenwoods' map of Kent (item IV.E below), and the Ordnance Survey County Series first edition 25-inch plan (item IV.J below) show the application way as the continuation of approach roads either from Palmstead or Bladbean, or both. There were marked acute turns to the southwest and northeast respectively, so that it appears that traffic avoiding the application way was required to perform an awkward and less frequently used turn which suggests that the application way was the dominant route.

F.2. However, the application way was not tarred during the early years of the twentieth century, and consequently is likely to have fallen into disuse by motor vehicles in the post-war period, as it neither had the appearance of an ordinary public road, nor (so far as we know) was signposted as such. The turns in Peafield Wood Road and Dane Hill Road became the established routes. Possible encroachments at Dane Farm, and gates placed across the road, may also have discouraged use.

G. Grounds for application

G.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*,² 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.'

² [\[2012\] EWCA Civ 334](#).

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

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.³

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

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

The surveying authority must therefore make an order consequent on this application where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the application way.

G.4. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation, indicating that the route does indeed have highway status, and that there are full vehicular rights.

H. Discovery of evidence

H.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent. It appears that it was excluded from the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 because it was considered to be part of the ordinary road network — see National Parks and Access to the Countryside Act 1949: draft map (item IV.Q below).

H.2. Therefore, there has been no discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is wholly new evidence.

I. Byway status

I.1. The way has remained on the highway authority's list of streets maintainable at public expense to the present day, and its status as a highway is not in doubt. Defra circular 1/09 states⁴:

In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980

³ [Consistency Guidelines](#): para.2.17.

⁴ www.gov.uk/government/publications/rights-of-way-circular-1-09, para.4.42.

Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.

I.2. The list of streets is maintained by the highway authority under s.36(6) of the Highways Act 1980. The list should be comprehensive of every publicly maintainable highway in the authority's area. Inclusion in the list is therefore not proof that a way is a carriageway. However, the practice in Kent and elsewhere was and remains to include in the list, in rural areas, only those ways which were and are considered to be publicly maintainable carriageways. The inclusion of the application way in the list is therefore evidence of some weight that the way is a carriageway. Moreover, the available evidence shows that the way has always been regarded as a carriageway, and it must therefore remain a carriageway today. Having regard to the exceptions in s.67 of the Natural Environment and Rural Communities Act 2006 (item I.J below), rights for mechanically propelled vehicles have not been extinguished.

I.3. A byway open to all traffic is defined⁵ as:

a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used[.]

I.4. The application way is an unsealed green way which is unsuitable for intensive use by vehicles, and likely to be used by pedestrians, cyclists and walkers. In *Masters v Secretary of State for the Environment, Transport and the Regions and Somerset County Council*,⁶ the Court of Appeal decided that, where a way had fallen into disuse, a way satisfies the definition of a byway open to all traffic if its character makes it more likely to be used by walkers and horse riders than vehicular traffic because the way is more suitable for such use than by vehicles. Insofar as the way is little used and difficult to use, the appropriate classification today is as a byway open to all traffic.

J. Natural Environment and Rural Communities Act 2006

J.1. The application seeks to show that the application way is a public carriageway. The whole of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. The effect of section 67(2)(c) of the Natural Environment and Rural Communities Act 2006 is to exclude from extinguishment public rights for mechanically propelled vehicles where the way was shown in the highway authority's section 36(6) list immediately before commencement of section 67 (*i.e.* 2 May 2006). The way was so shown (Highway authority list of streets, see item IV.S below) The application is therefore made for a byway open to all traffic.

K. Points awarded

K.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*.⁷

⁵ S.66(1) of the Wildlife and Countryside Act 1981.

⁶ [2000] EWCA Civ 249.

⁷ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

K.2. Points:

Item	Ref	Points
A Topographical Map of the County of Kent	IV.A	1
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B	1
Barlow-Hasted map of Kent	IV.C	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.D	1
Greenwoods' map of Kent	IV.E	0
Ordnance Survey, Old Series one-inch map of Kent	IV.F	1
Tithe Commutation Act 1836	IV.G	3
Ordnance Survey boundary records	IV.H	0
Covert Wood sale	IV.I	2
Ordnance Survey County Series first edition 25-inch plan	IV.J	0
Bartholomew's map	IV.L	1
Finance (1909–1910) Act 1910	IV.M	0
Wye Cup (classic car) trial	IV.N	2
Ordnance Survey one inch map (New Popular edition)	IV.O	0
National Parks and Access to the Countryside Act 1949: draft map	IV.Q	3
Highway inspector's map	IV.R	3
Highway authority list of streets	IV.S	3
Total points		22

L. Width of application way

L.1. No data are available reliably to indicate the width of the application way. Notably, on the Ordnance Survey County Series first edition 25-inch plan (item IV.J below), the application way is partly braced with the adjacent Peafield Wood Road to derive an area for the combined parcel.

L.2. It is proposed that a sufficient indication of width may be made by reference to the Ordnance Survey County Series map (the second edition dated 1896 and published 1898⁸ may be more reliable than the first edition), which should be incorporated, by way of reference to width scaled off the map, in the definitive map modification order.

M. Limitations

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

⁸ maps.nls.uk/view/103681679

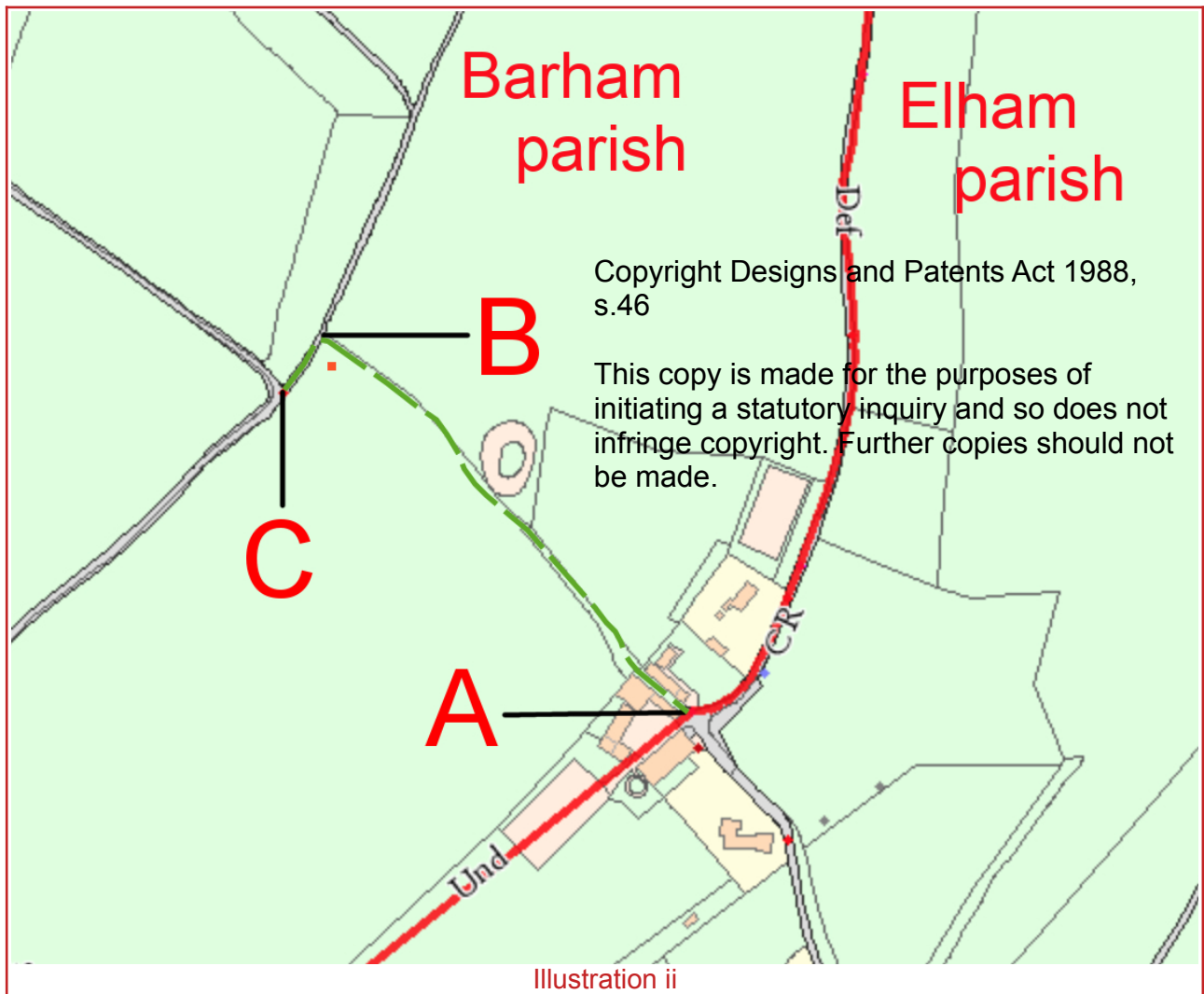
N. Law cases

N.1. The following cases directly are cited in this historical document analysis.

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.G.1; IV.E.5	[2012] EWCA Civ 334
<i>Masters v Secretary of State for the Environment, Transport and the Regions and Somerset County Council</i>	I.I.4	[2000] EWCA Civ 249
<i>Hollins v Oldham</i>	IV.E.6	[1995] (unreported) C94/0206

II. Application plan

Application plan



Map centred on B at TR174480

Scale: approx. 1:3,400 (when printed A4)

Application way is marked — — —

Parish boundary is marked — (Barham/Elham)



III. Along the way (i)



Illustration iii: At A, Dane Hill Farm



Illustration iv: East from B

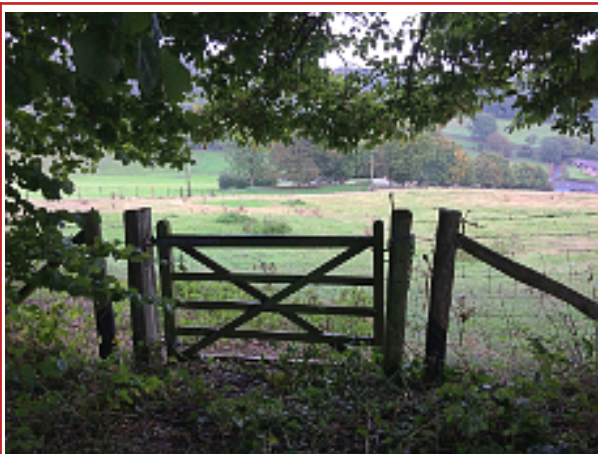


Illustration v: Hunting gate near B



Illustration vi: From B towards A

Along the way (ii)



Illustration vii: Peafield Wood Road at C

IV. Evidence

Contents

A. A Topographical Map of the County of Kent.....	12
B. Ordnance Survey surveyor's drawing, Canterbury (East).....	14
C. Barlow-Hasted map of Kent.....	18
D. Ordnance Survey, Mudge-Faden one-inch map of Kent.....	20
E. Greenwoods' map of Kent.....	22
F. Ordnance Survey, Old Series one-inch map of Kent.....	25
G. Tithe Commutation Act 1836.....	27
H. Ordnance Survey boundary records.....	29
I. Covert Wood sale.....	30
J. Ordnance Survey County Series first edition 25-inch plan.....	31
K. Elham Rural District Council minute book.....	33
L. Bartholomew's map.....	36
M. Finance (1909–1910) Act 1910.....	39
N. Wye Cup (classic car) trial.....	42
O. Ordnance Survey one inch map (New Popular edition).....	45
P. Aerial photograph.....	48
Q. National Parks and Access to the Countryside Act 1949: draft map.....	49
R. Highway inspector's map.....	50
S. Highway authority list of streets.....	51

A. A Topographical Map of the County of Kent

A.1. **Date:** 1769

A.2. **Source:** British Library⁹

■ Andrews map: A Topographical Map of the County of Kent

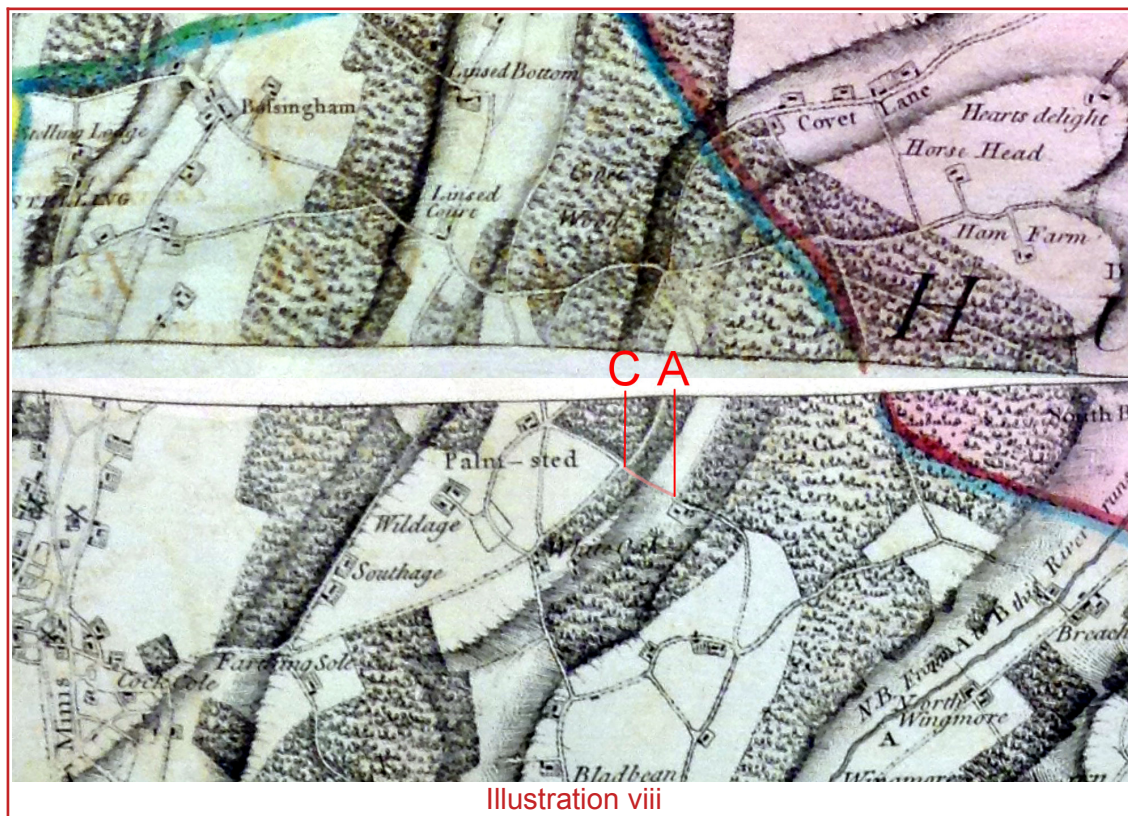


Illustration viii

⁹ k.1.tab.21: copy of index map available at www.oldkentmaps.co.uk/K-060-i.htm .

■ *Andrews map detail*



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

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

A.5. The Andrews map clearly identifies the application way from a road projecting east-southeast from 'Palmsted' to a cross-roads, continuing southeast, initially wooded and unenclosed, across a steep gradient (marked by closely spaced hachures) and terminating at a junction with a road at a corner adjacent to a farmstead or hamlet, so that the application way continues straight across the junction (with the alternative of turning left), as it does today.

A.6. **Conclusion:** The Andrews map recognisably shows the application way as a link in the local road network. The depiction of an extensive network of ways on the map confers no certainty about the status of any one way as a public route, and the surveying standards of the map do not inspire great confidence. However, the Andrews map is the first at any scale to document the application way, and suggests that the application way physically existed in the middle of the eighteenth century.

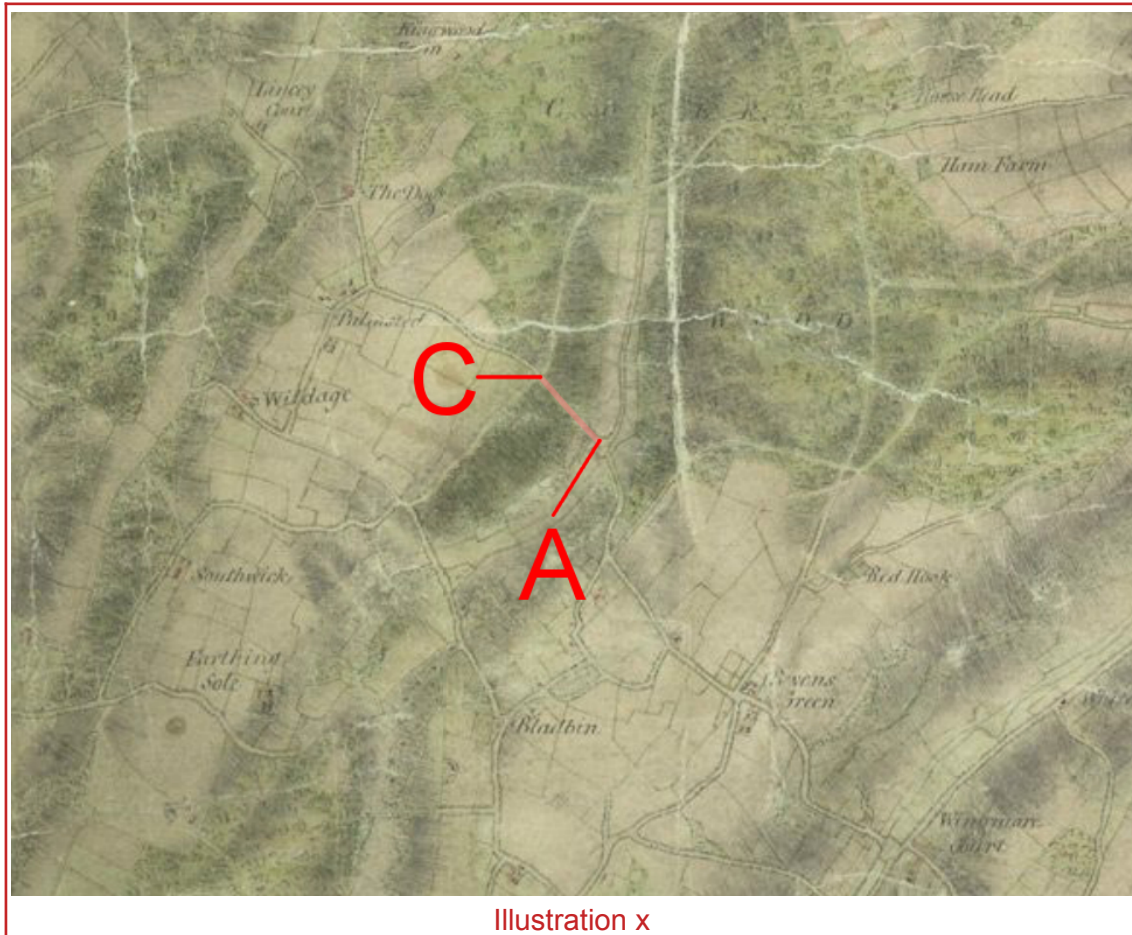
A.7. **Points:** 1 (first historical county map)

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

B.1. **Date:** 1797–99

B.2. **Source:** British Library website¹⁰; National Archives¹¹

■ Ordnance Survey Drawing (Canterbury East)



10 Sheet 107(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html

11 MR 1/599

■ *Ordnance Survey Drawing detailed*



Illustration xi



Illustration xii

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

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

depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.¹²

B.5. It seems that good copies were made of the drawings to be held by the War Office. These copies are now held in the National Archives, described as, 'Topographic Survey manuscript 'fair' copies of Kent & Sussex, surveyed by Gardner & Yeakell, at 3 inches to 1 mile'.¹³ The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

B.6. The Ordnance Survey drawing and copy clearly identify the application way from a road projecting east-southeast from 'Palmsted' to a cross-roads, continuing southeast, initially wooded and unenclosed, across a steep gradient (marked by closely spaced hachures) and terminating at a three-way junction with a road at a corner adjacent to a farmstead or hamlet, so that the application way continues straight across the junction (with the alternative of turning left), as it does today.

B.7. The southwest limb of Peafield Wood Road, and its continuation northeast along the eastern boundary of Peafield Wood to Husband Oak, is shown without casing, and the casing for the application way appears unbroken at the crossroads. This suggests that the application way was considered to be the dominant route.

B.8. **Conclusion:** The Ordnance Survey drawing is the first reliable mapping showing the known ways in the vicinity of the application way. It is good evidence for the existence of a defined way along the application route. The drawing is not conclusive of the status of the application way as a highway, but the application way is shown as part of a through route. Moreover, as the basis for a military survey, the surveyor was interested in ways capable of being used by military transport, and the application way is therefore likely to represent a road.

B.9. **Points:** 1 (first Ordnance Survey map)

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

13 *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

C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** Kent County Archives, also available at www.ancestry.com¹⁴: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in 12 Volumes.

Barlow-Hasted map



Illustration xiii

14 Indexed at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm

Barlow-Hasted map detailed

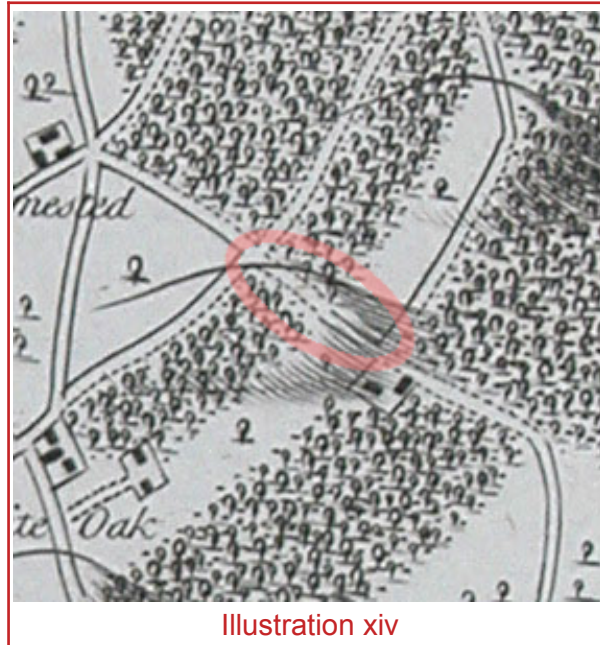


Illustration xiv

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

C.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds (a mediaeval administrative unit): that shown here is an extract from the hundred of Loningborough. The maps are derived from Andrews' A Topographical Map of the County of Kent (see item IV.A above), but with modifications.

C.5. The Barlow map clearly identifies the application way from a road projecting south-east from 'Palmedsted' to a cross-roads, continuing southeast, initially wooded and unenclosed, across a steep gradient (marked by closely spaced hachures) and terminating at a junction with a road at a right-angled corner adjacent to a farmstead or hamlet, so that the application way continues straight across the junction (with the alternative of turning left), as it does today.

C.6. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route. The map was widely commercially published, and would tend to show through routes which were public highways, whereas certain minor routes of questionable public status (such as the track into woodland southeast from North Wingmore, now Whitehall Farm) are shown with lines across the junction with public ways. The use of hachures to show the steep gradient is confined to the land either side of the application way to stress the gradient of the way itself, so that the way itself must have been surveyed. However, it cannot be assumed that the status is any greater than bridleway.

C.7. The absence of the slightly staggered turnings at B and C can be explained by the small scale of the map, and the primitive surveying techniques.

C.8. **Points:** 1 (second historical county map)

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

D.1. **Date:** 1801

D.2. **Source:** Kent County Archives, also available at Mapco.net¹⁵

Mudge-Faden map



Illustration xv

¹⁵ mapco.net/kent1801/kent51_01.htm

Mudge-Faden map detailed



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

D.4. This map of Kent was the first Ordnance Survey map to be published. It relied primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B above). 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.5. The Mudge-Faden map clearly identifies the application way from a road projecting southeast from 'Palmsted' to a cross-roads, continuing southeast, generally wooded and unenclosed, and terminating at a junction with a road at a right-angled corner, possibly showing a farmstead adjacent, so that the application way continues straight across the junction (with the alternative of turning left), as it does today.

D.6. The southwest limb of Peafield Wood Road is shown joining the application way at an acute crossroads, which implied an awkward turn to the northwest to continue to Palmsted. This suggests that the application way was considered to be the dominant route.

D.7. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements.

D.8. The application way is shown as a link in the local road network, and its inclusion in the Mudge-Faden map is likely to indicate that it was a public road, whether carriageway or bridle-road.

D.9. **Points:** 1 (third historical county map)

E. Greenwoods' map of Kent

E.1. **Date:** 1819–20

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

Greenwoods' map

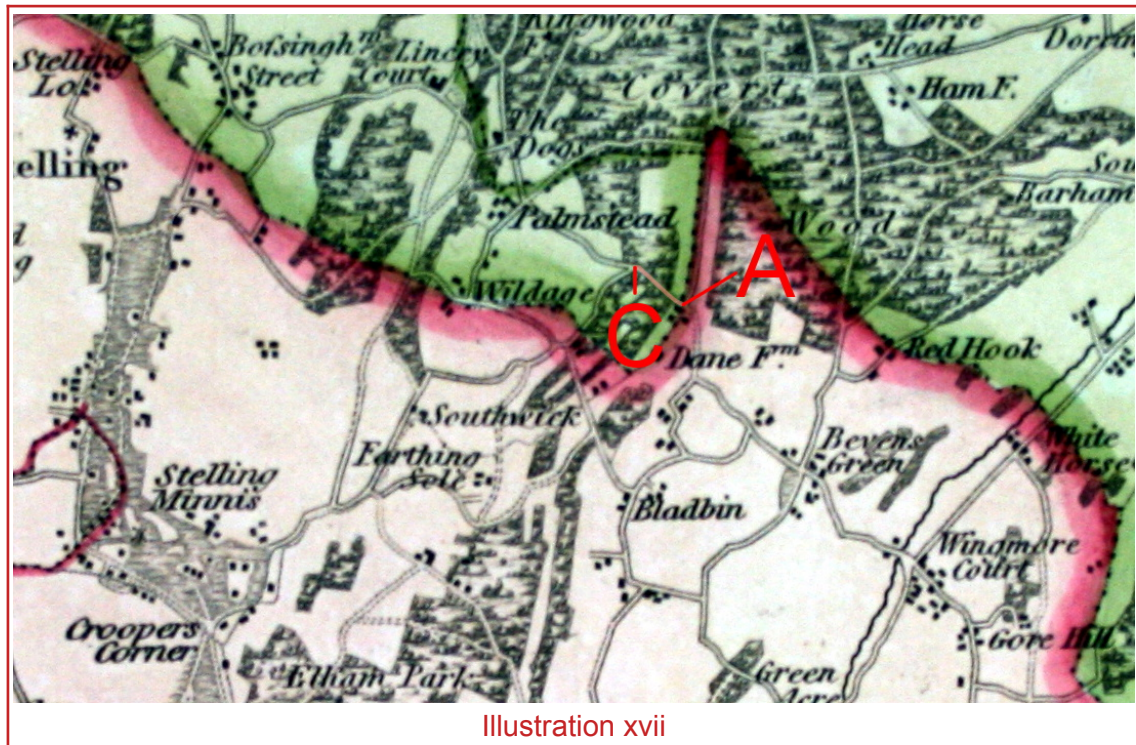


Illustration xvii

Greenwoods' map detailed



Illustration xviii

Greenwoods' map key



Illustration xix

E.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.

E.4. Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.¹⁶

E.5. **Analysis:** In *Fortune v Wiltshire Council*,¹⁷ 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').

E.6. In *Hollins v Oldham*,¹⁸ 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 Greenwood's 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

¹⁶ From *Antique Maps*, C Moreland and D Bannister, 1983.

¹⁷ [2012] EWCA Civ 334.

¹⁸ [1995] (unreported) C94/0206.

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.

E.7. It is accepted that not every road shown on the Greenwoods' map must (if it is not a turnpike) inevitably be a cross-road — undoubtedly there are exceptions, such as some (but not all) roads leading only to isolated farmsteads or country houses. But it is submitted that, where a road is connected to highways at either end, it is more likely than not to be shown because it was recognised as a cross-road and of utility to the public who might buy the map.

E.8. The Greenwoods' map clearly identifies the application way from a road projecting southeast from Palmstead to an acute turning to the southwest, continuing southeast, generally wooded and unenclosed, and terminating at a junction with a road at a right-angled corner, possibly showing a farmstead adjacent, so that the application way continues straight across the junction (with the alternative of turning left, this road following the parish boundary highlighted in pink), as it does today. The way is described in the key as a 'cross road'.

E.9. The southwest limb of Peafield Wood Road is shown joining the application way at an acute crossroads, which implied an awkward turn to the northwest to continue to Palmsted. This suggests that the application way was considered to be the dominant route.

E.10. **Conclusion:** The Greenwoods' map is good evidence for the existence of a defined route along the application way. The key describes the route as a 'cross road', which is suggestive of a public way, at least suitable for use on horseback.

E.11. **Points:** 0 (fourth historical county map — no further points scored)

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

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

F.2. **Source:** National Library of Australia¹⁹

■ **Ordnance Survey Old Series one-inch map**

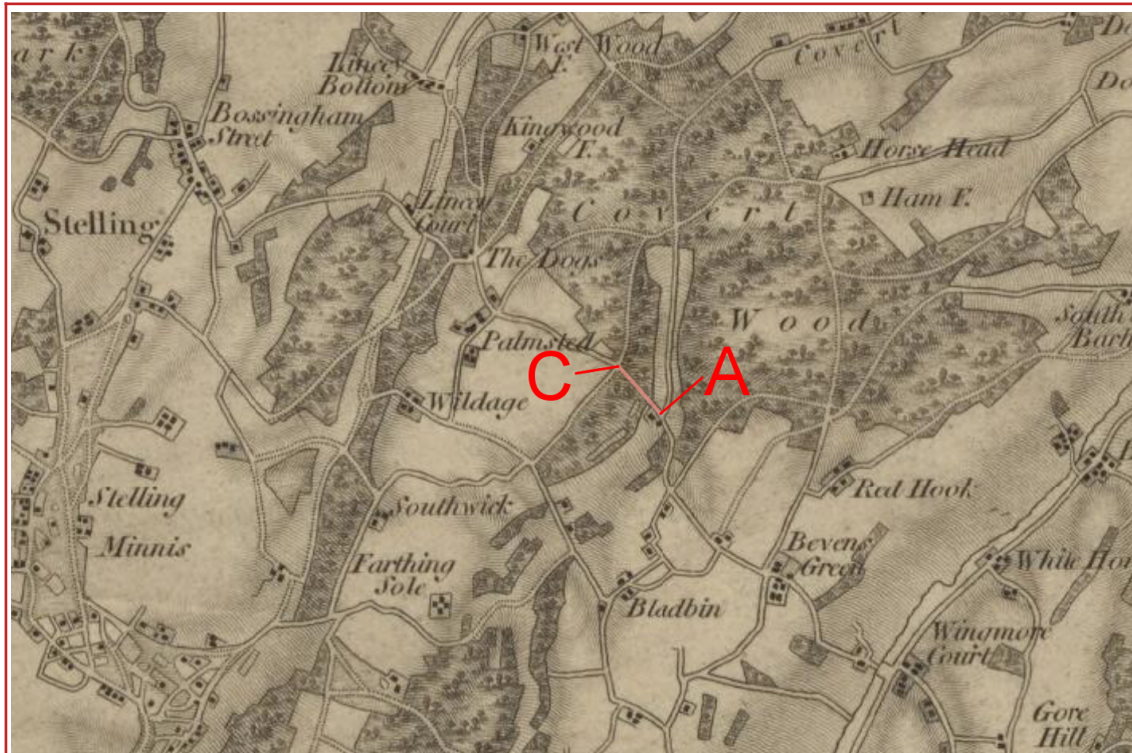


Illustration xx

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

■ Ordnance Survey Old Series one-inch map detailed



Illustration xxi

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

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

F.5. The Old Series map clearly identifies the application way from a road projecting southeast from 'Palmsted' to a cross-roads, continuing southeast, generally wooded and unenclosed, and terminating at a junction with a road at a right-angled corner, with a hamlet or farmstead adjacent, so that the application way continues straight across the junction (with the alternative of turning left), as it does today.

F.6. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. The depiction of the application way, as a link in the local road network, is therefore suggestive of a public road or bridle road.

F.7. **Points:** 1 (second Ordnance Survey map)

G. Tithe Commutation Act 1836

G.1. **Date:** 1845

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

Barham tithe map

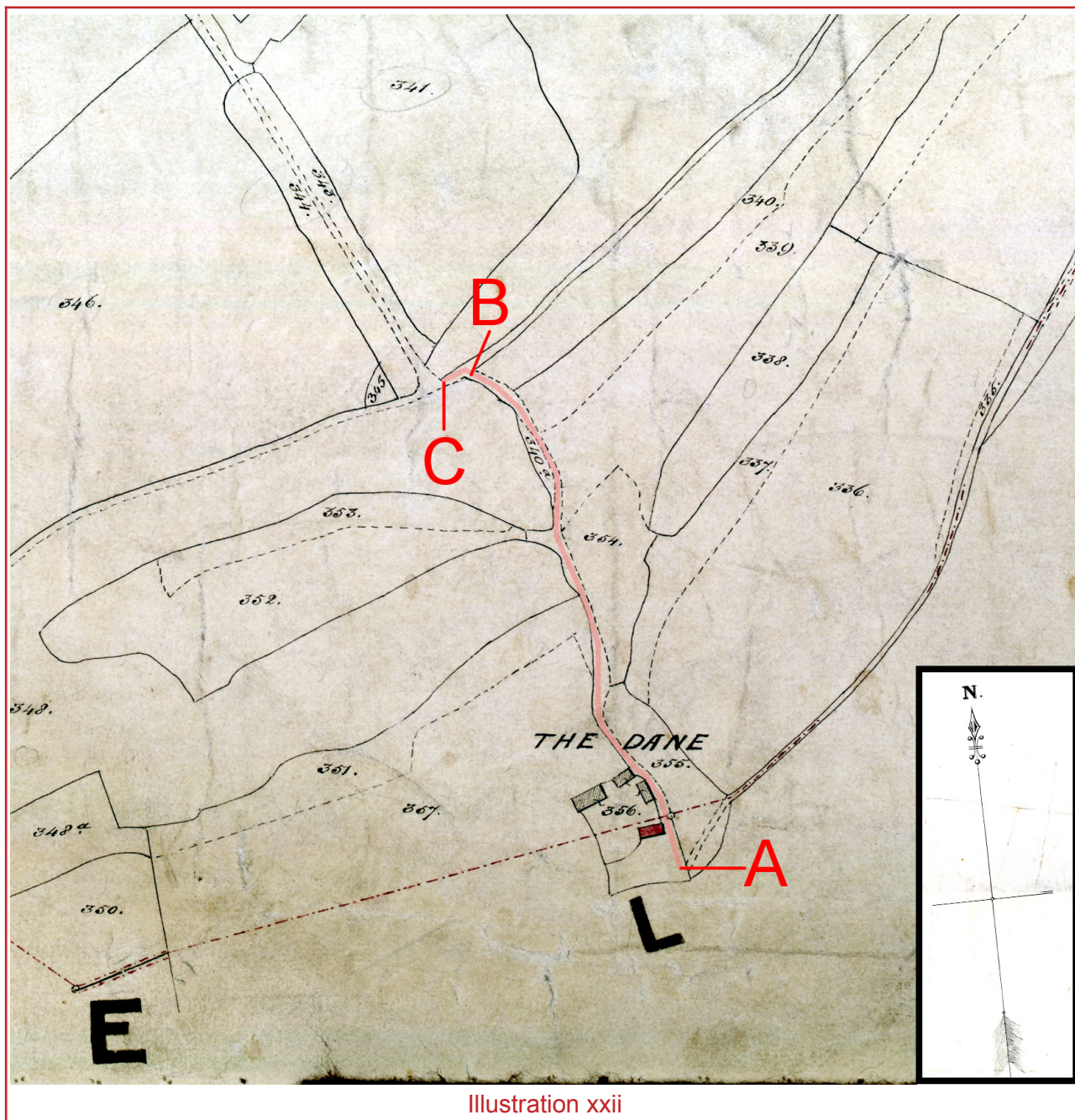


Illustration xxii

G.3. **Description:** Original scale: three chains to an inch (but no scale bar); orientation: unchanged (top is north-northeast).

G.4. The tithe map for Upper, or Great, Hardres, is a first class map.²⁰ It shows the application way from 'The Dane', where it commences in an enclosed parcel of land south of the farm yard, and passes northwest, to the east of the farm yard, and continuing along a way defined by a fence or hedge on the west side, generally with no physically defined boundary on the east side, but marked on the map with a pecked line. At B, the application way joins another, fully enclosed, way, and briefly passes southwest along that way to the junction with another road at C. The way appears to be excluded from the numbered parcels which appear in the tithe apportionment — a small parcel, no.340a, appears sandwiched between the way and the fence or hedge immediately to the west which would be incapable of definition if the application way were not excluded from assessment. The tithe map itself records a separate area for 'Roads & Waste' of 29a, 2r, 1p, and it may be inferred that the application way appears within this categorisation.

G.5. **Conclusion:** The omission of any parcel number from the application way is likely to indicate that the way is considered to be a 'road'. Ways which were not capable of productive agricultural use could be omitted from the apportionment whether they were private or public. But in this case, the way is of minor status, which crosses (for at least part of its length) open ground with productive land on either side. It is unlikely that such land would be excluded from the apportionment unless it were considered to be public, for a private road of such character would represent a significant benefit to the owner capable of generating titheable value.

G.6. **Points:** 3

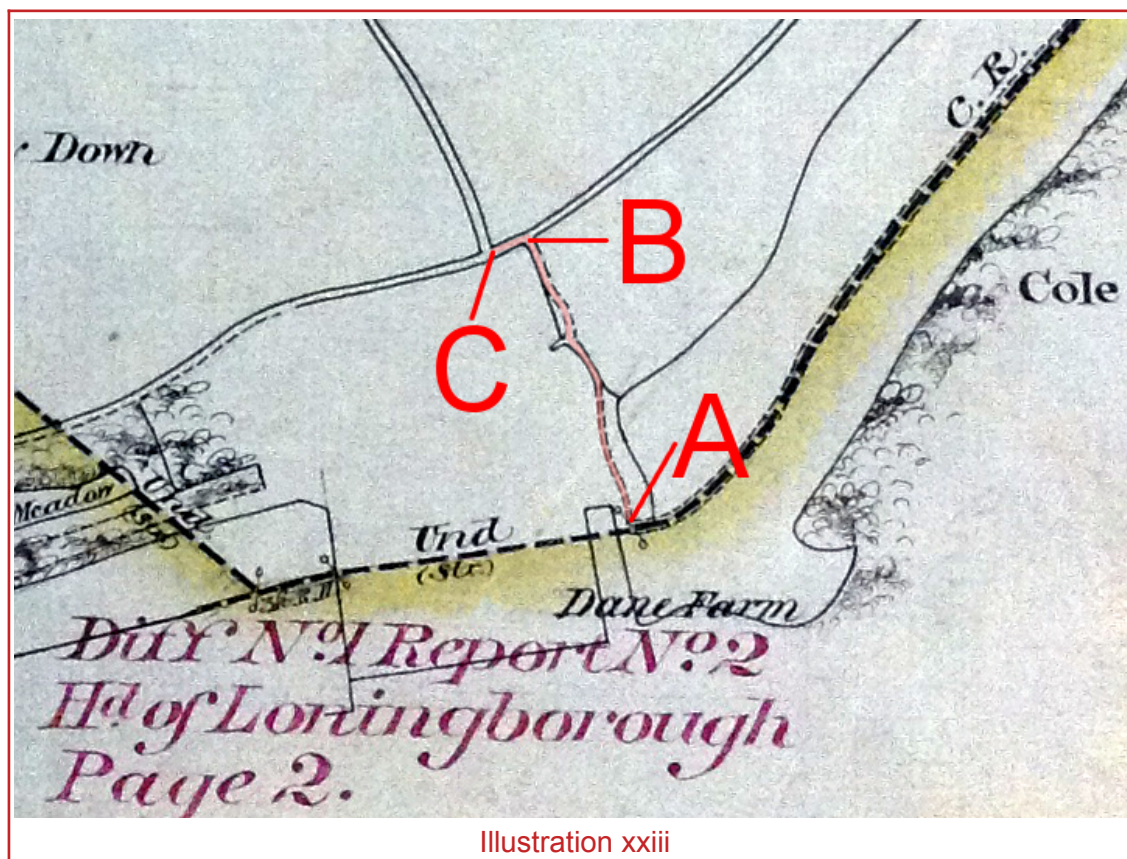
20 See the entry for the tithe map held at the National Archives, [IR 30/17/167](#).

H. Ordnance Survey boundary records

H.1. **Date:** 1867–9

H.2. **Source:** National Archives²¹

■ Ordnance Survey boundary sketch map, Upper and Lower Hardres



H.3. **Description:** Original scale: 12 chains to one inch (1:9,504); orientation: unchanged (north).

H.4. The Ordnance Survey boundary maps 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).

H.5. The sketch map shows the parish boundary between Barham and Upper Hardres (as it then was) following Dane Hill Road to the corner of the road at A, and then projecting southwest, undefined, through Dane Farm. The application way is drawn as a distinct feature, north-northwest from A, unenclosed, towards B, where it joins with the enclosed track along the bottom of Peafield Wood.

21 OS 27/2840

H.6. **Conclusion:** The sketch map confirms the physical existence of the application way, but does not provide any confirmation of status.

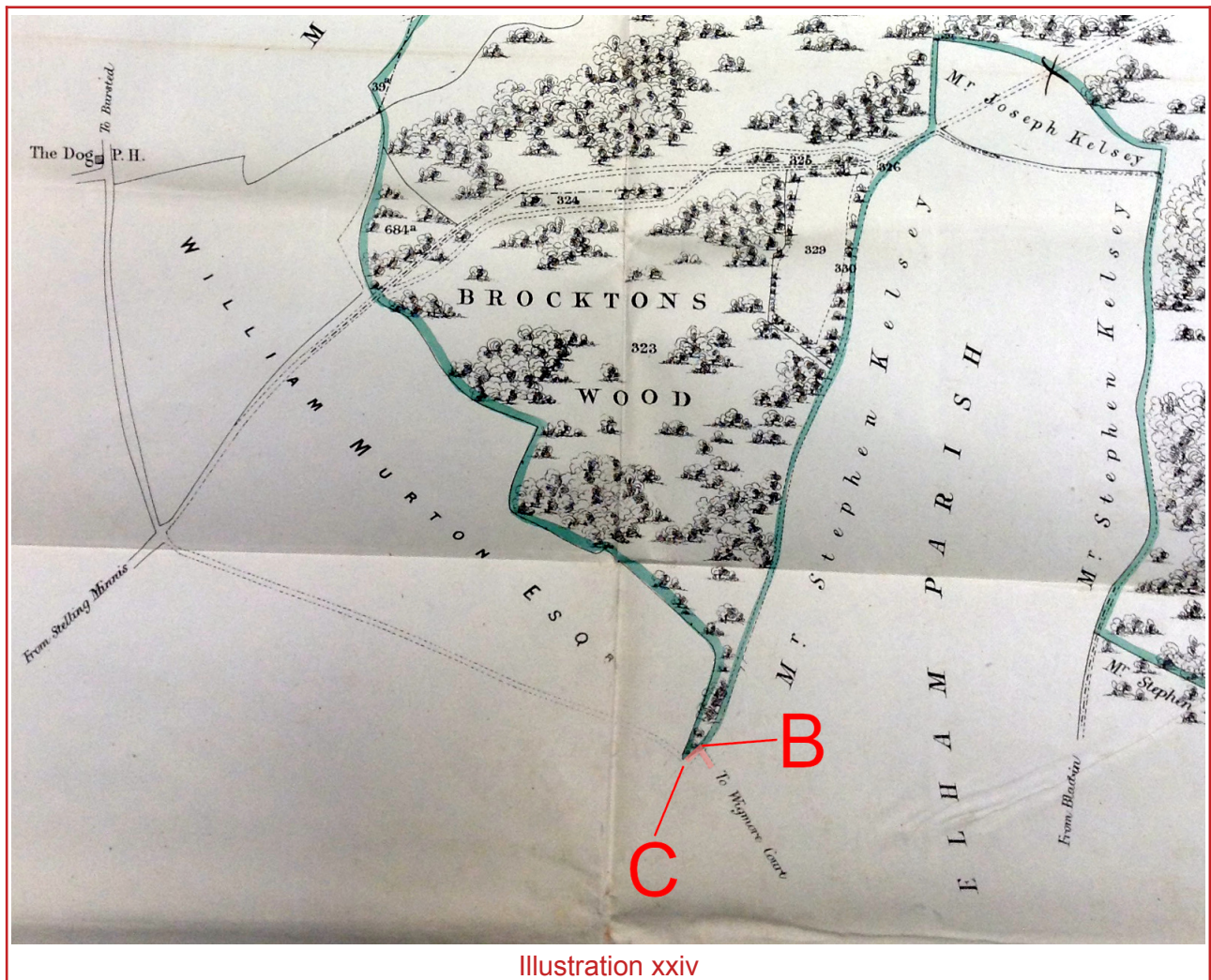
H.7. **Points:** 0

I. Covert Wood sale

I.1. **Date:** 1868

I.2. **Source:** Kent County Archives²²

Covert Wood sale plan



I.3. **Description:** Original scale: unstated; orientation: unchanged (approximately north at top).

I.4. These particulars were prepared by Messrs. Cobb, auctioneers, for the sale of Covert and Brockton's Woods, by auction, on 26 June 1968.

I.5. A small part of the application way, between B and C, lies within the toe of Covert Wood, and is shown, in common with other roads on the map, as marked by double

pecked lines. In addition, however, the continuation of the application way towards A is annotated 'To Wigmore Court'.

I.6. **Conclusion:** The annotation of the application way as leading to a nearby destination is some evidence that the way was regarded as a highway, and most likely as a public road.

I.7. **Points:** 2

J. Ordnance Survey County Series first edition 25-inch plan

J.1. **Date:** 1873

J.2. **Source:** British Library²³, Bodleian Library/Google Books Library Project

■ Ordnance Survey County Series 25-inch plan

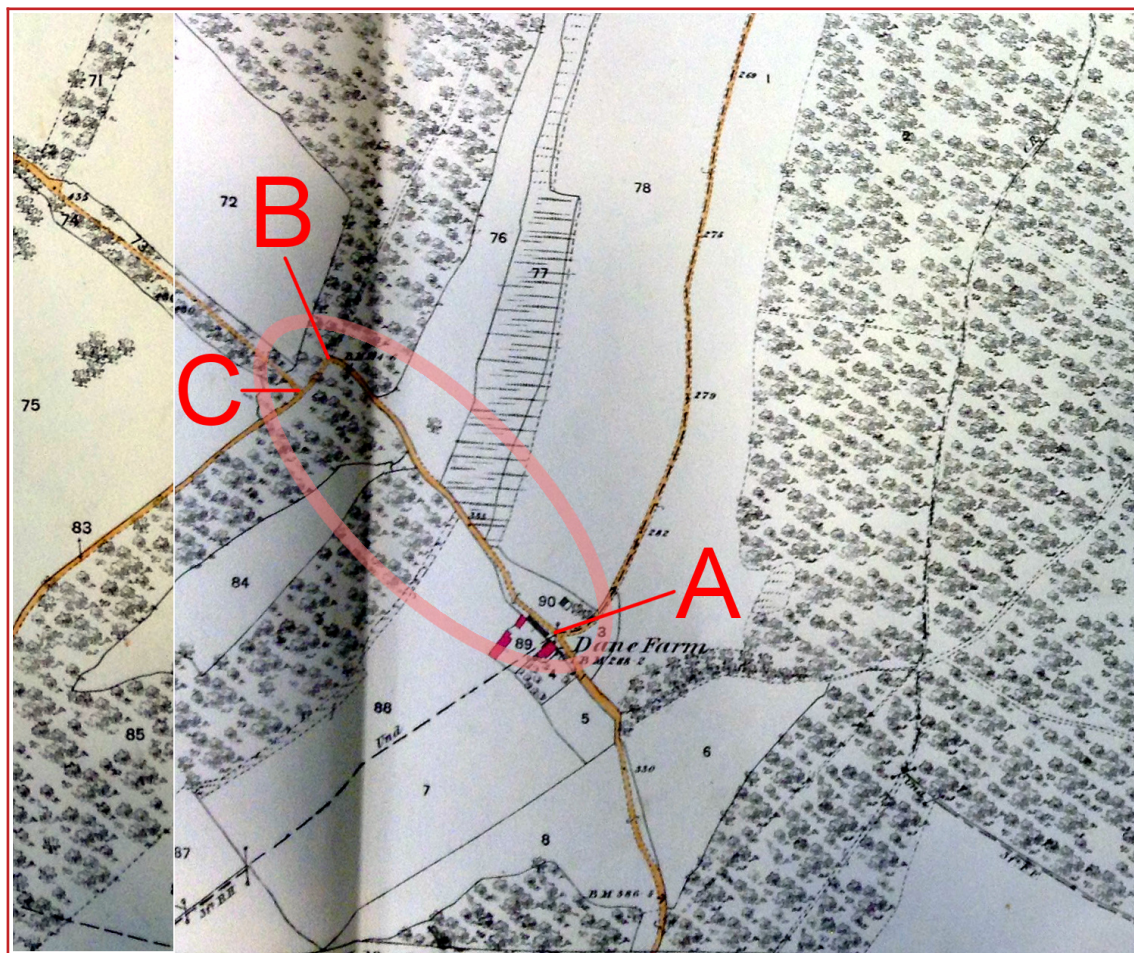


Illustration xxv

23 Sheet Kent LVI/12, surveyed 1873

4 PARISH OF UPPER HARDRES.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
48	12.501	Arable & hop garden.	76	2.870	Pasture.
49	2.084	Pasture, &c.	77	2.795	Rough pasture.
50	.705	Pasture.	78	15.831	Arable, rough pasture, &c.
51	30.080	Wood.	79	.161	Road.
52	30.350	Arable.	80	.570	House, sheds, yards, garden, &c.
53	.684	Pasture, orchard, and sheds.	81	1.636	Pasture.
54	.373	House, garden, orchard, and ornamental ground.	82	27.635	Arable.
55	.586	Pasture, sheds, and pond.	83	.645	Road.
56	.801	Pasture.	84	2.192	Pasture.
57	.055	Road.	85	12.869	Wood.
58	.648	Pasture.	86	.018	Pasture.
59	11.027	Arable.	87	1.214	Arable.
60	.703	Brushwood.	88	4.253	Arable and rough pasture.
61	63.663	Wood.	89	.170	Houses, shed, and yard.
62	5.078	Pasture.	90	.353	Pasture, shed, &c.
63	9.710	Arable. brushwood.			

Illustration xxvi

J.3. **Description:** Original scale: 25 inches to one mile (1:2,500); orientation: unchanged.

J.4. The application way is shown as a road or track, part enclosed, on the first edition of the Ordnance Survey County Series map at a scale of 1:2,500. It is coloured sienna, which shows that it was metalled for carriages and carts.²⁴ The way is divided into two for measurement purposes by a small row of dots just to the south east of the spot height labelled '333' (feet). The portion to the northwest continues to the junction with Peafield Wood Lane, and continues along the lane southwest to the parish boundary between Upper Hardres and Stelling: this portion is given parcel number 83. The portion to the southeast (towards Dane Farm) is braced with the enclosure immediately adjacent Dane Farm, and numbered 90.

J.5. In the area book of reference for the parish of Upper Hardres falling within the hundred of Loningborough,²⁵ parcel 83 is described as a 'Road', and parcel 90 as 'Pasture, Shed, &c.'

²⁴ *Ordnance Survey Maps, a concise guide for historians* (3rd ed., Richard Oliver, 2013, p.115) describes sienna as indicating a 'carriage drive'. However, *Roads on OS 1:2500 plans 1884–1912* (Rights of Way Law Review, Yolande Hodson, pp.107–118) states that 'burnt sienna...was used to indicate a metalled surface', which is ascribed to *The national plans (the Ten-foot, Twenty-five inch and Six-inch Scales)* (HMSO, HStJL Winterbotham, 1934), at p.61. Dr Hodson adds that it is not possible to use sienna to distinguish public and private roads.

²⁵ Part of the parish falls within the hundred of Bridge and Petham, which is allocated a discrete series of parcel numbers.

J.6. **Conclusion:** The treatment of the application way and Peafield Wood Road as a single parcel, numbered 83 (and given an area of 0.261 ha) is suggestive that it was considered to be of the same class as Peafield Wood Road, and therefore also a public road. The burnt sienna colouring shows that the way was metalled, and therefore maintained to carry significant wheeled traffic.

J.7. The bracing of the lower part of the road with the adjacent enclosure reflects that this part of the road was not, at that time, enclosed. Subsequent editions of the County Series map treated the whole of the application way together with the section of Peafield Wood Road previously referred to (along with small areas of land between the south side of the application way and any boundary hedges), as a discrete parcel, as late as the 1936 map published in 1946.²⁶

J.8. **Points:** 0 (third Ordnance Survey map, no further points scored)

K. Elham Rural District Council minute book

K.1. **Date:** 1898

K.2. **Source:** Kent County Archives²⁷

Elham Rural District Council minute, 5 January 1899

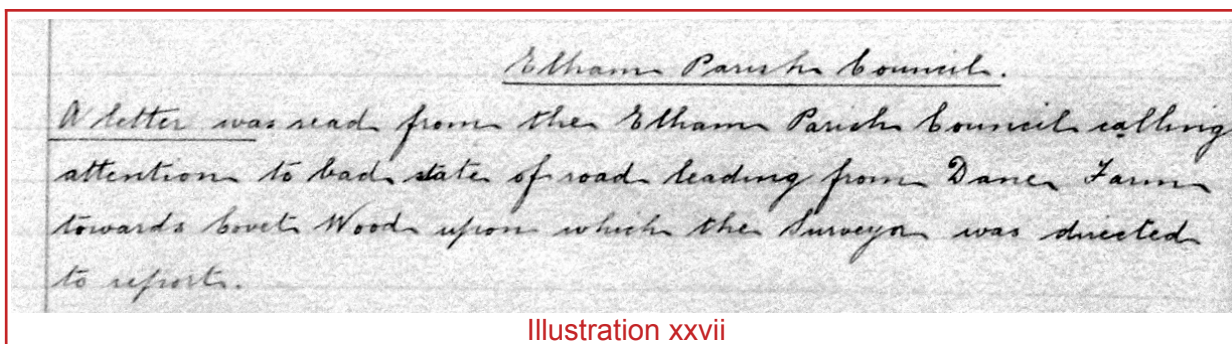


Illustration xxvii

Elham Rural District Council minute, 2 February 1899

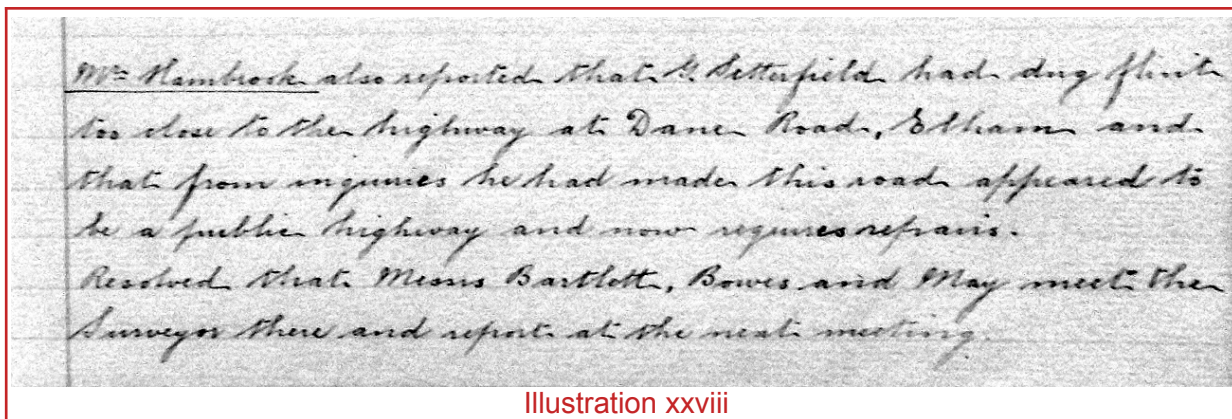


Illustration xxviii

²⁶ maps.nls.uk/view/103681673

²⁷ RD/EL/AM1/1

Elham Rural District Council minute, 2 March 1899

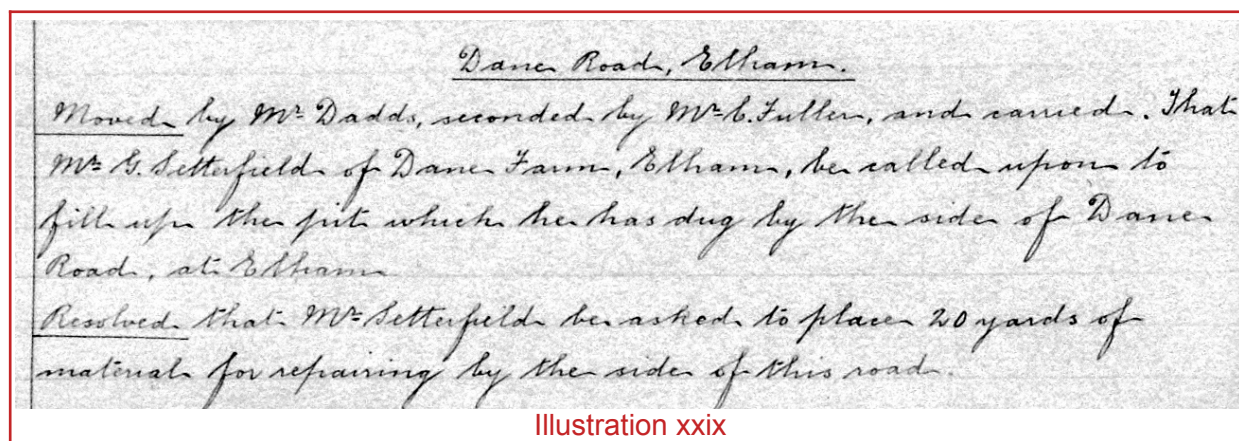


Illustration xxix

Elham Rural District Council minute, 30 March 1899

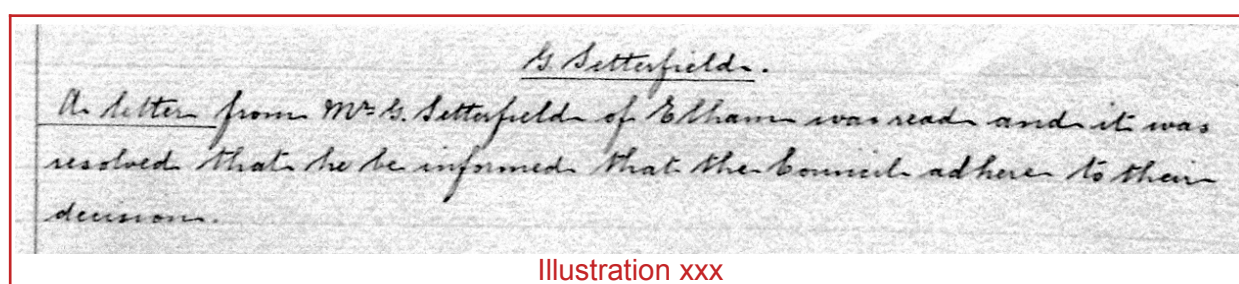


Illustration xxx

K.3. **Description:** The minute book records the proceedings of the Elham Rural District Council between 1895 and 1900. The following extracts appear to relate to the application way.

K.4. The first minute is recorded at the council meeting on 5 January 1899²⁸:

Elham Parish Council

A letter was read from the Elham Parish Council calling attention to bad state of road leading from Dane Farm towards Cove Wood upon which the surveyor was directed to report.

K.5. The second is one month later, on 2 February 1899²⁹:

Mr Hambrook also reported that Mr Setterfield³⁰ had dug flints too close to the highway at Dane Road, Elham and that from enquiries he had made this road appeared to be a public highway and now requires repair. Resolved that Messrs Bartlett, Bowes and May meet the Surveyor there and report at the next meeting.

K.6. The third is a further month later, on 2 March 1899³¹:

28 p.372

29 p.378

30 Mr G Setterfield is described as the occupier of Dane Farm, hereditament 594, in the field book prepared under the Finance (1909–1910) Act 1910: see paragraph IV.M.7 below.

31 p.384

Dane Road Elham

Moved by Mr Dodds, seconded by Mr C Fuller, and carried. That Mr G Setterfield of Dane Farm, Elham, be called upon to fill up the pits which he has dug by the side of Dane Road at Elham. Resolved that Mr Setterfield be asked to place 20 yards of material for repairing by the side of this road.

K.7. And finally, on 30 March 1899³²:

G Setterfield

A letter from Mr G Setterfield of Elham was read and it was resolved that he be informed that the Council adhere to their decision.

K.8. The location is somewhat uncertain. On the one hand, the application way, at this time, was in the Bridge rural district, with the boundary with Elham rural district running along (generally the centre) of Dane Hill Road, the road along the valley to Husband's Oak. The application way therefore falls just outside the jurisdiction of the Elham Rural District Council.

K.9. On the other hand, the minutes tend to suggest a location along the application way:

- A 'road leading from Dane Farm towards Covey Wood' can only be the application way or Dane Hill Road — but the latter leads north parallel to Covey Wood, and terminates at Husband's Oak, a more likely label of termination, whereas the application way leads into the southern end of Covey Wood.
- Dane Hill Road straddles the parish boundary between Elham and Barham (then, between Elham and Upper Hardres). It would be surprising if the surveyor had not identified that maintenance was a shared responsibility with the Bridge-Blean Rural District Council.
- Mr Setterfield, presumably the owner or tenant farmer, had 'dug flints' from 'pits which he has dug by the side of Dane Road at Elham'. Dane Hill Road follows a terrace of sand and gravel along the bottom of the Dane valley, where flints are unlikely to be found in any quantity adjacent to the road — whereas the application way ascends steeply up the chalk slopes of Dane Hill, where flints are likely to be plentiful.
- There is no evidence of pits alongside Dane Hill Road — but a pit does exist on the north side of the application way, approximately three-fifths of the distance between A and B. This pit did not appear on maps until the Ordnance Survey National Grid 1:2,500 edition of 1973 — but may have been overlooked in the earlier surveys for the County Series 1907 and 1939 editions, or may have been sufficiently filled in that it was not a feature visible at that time.
- The surveyor states that, 'from enquiries he had made this road appeared to be a public highway', which suggests a low level of familiarity with the way, and an uncertainty as to its status — factors which remain true to this day.

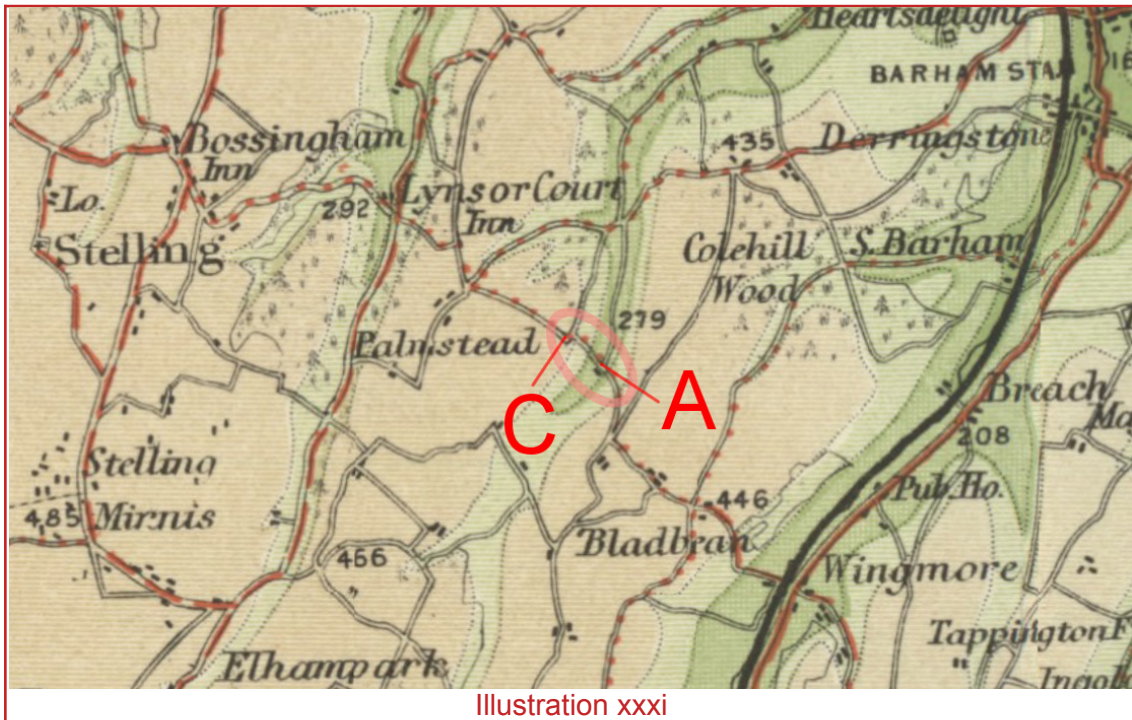
K.10. **Conclusion:** It would be surprising if the council had supervised the restoration of a road just outside its area, but it is suggested that it possibly did. The minutes must refer either to Dane Hill Road (north to Husband's Oak) or the application way, and the circumstances appear proper only to the latter.

L. Bartholomew's map

L.1. **Date:** 1904 and 1922

L.2. **Source:** National Library of Scotland³³

Bartholomew's map: 1904



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

Bartholomew's map: 1922

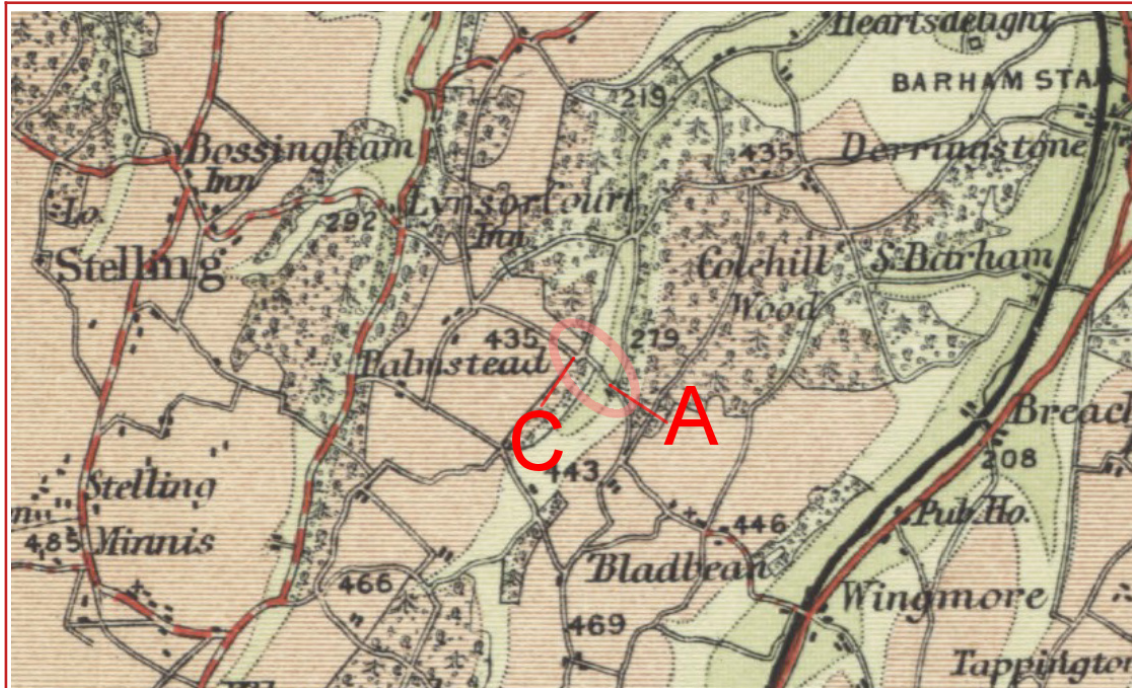


Illustration xxxii

Bartholomew's maps: keys to 1904 and 1922 editions

EXPLANATORY NOTE	
First Class Roads	
Secondary " (Good)	
Indifferent " (Passable)	
<i>The uncoloured roads are inferior and not to be recommended to cyclists.</i>	
Footpaths & Bridlepaths	
<i>N.B. The representation of a road or footpath is no evidence of the existence of a right of way.</i>	
EXPLANATORY NOTE	
Motoring Roads	
Through Routes	
First Class Roads	
Secondary	
Indifferent " (Passable for cyclists)	
Roads as numbered by Ministry of Transport A.28	
Motor Ferries	
Footpaths & Bridlepaths	
<i>N.B. The representation of a road or footpath is no evidence of the existence of a right of way.</i>	

Illustration xxxiii

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

L.4. The application way is shown in the 1904 edition of the Bartholomew map as an 'Indifferent' road, expressly annotated as 'passable for cyclists', but in the 1922 edition as, in effect, unsuitable for cyclists.

L.5. **Conclusion:** The 1904 edition of the Bartholomew map suggests that the application way was assessed as a road suitable for cycling. It is not known on what evidence such assessment was made.

L.6. Paragraph 12.41 of the *Consistency Guidelines*³⁴ notes that:

current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.

L.7. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists.

L.8. Accordingly, the classification of the application way on the 1904 edition as an 'indifferent' road, 'passable for cyclists', is suggestive of some form of survey or user feedback which found the application way to be a suitable route for cycling in the early years of the twentieth century.

L.9. **Points:** 1

34 Planning Inspectorate: September 2015: www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines.

Finance Act map (B)³⁷

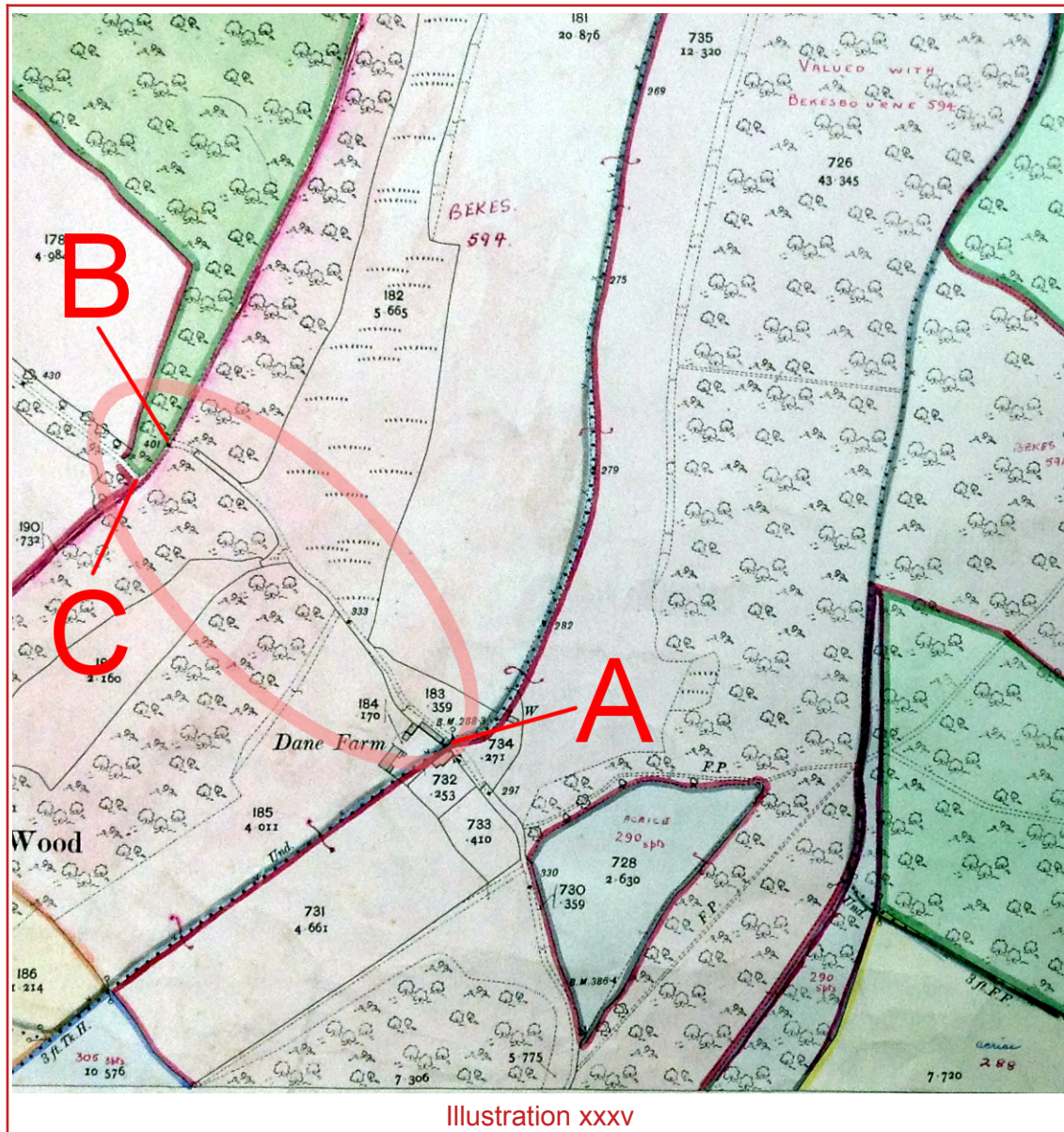


Illustration xxxv

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

M.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.

³⁷ IR 124/2/127

M.5. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways.

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

M.7. The way is recorded on two different valuation office maps. Both show the application way falling within Bekesbourne hereditament 594, Dane Farm, said (in the field book) to extend to around 20 acres.³⁸ Unusually for this area, neither the application way, nor other local roads known to be highways, are shown excluded from valuation, so that no conclusion can be drawn about the status of the application way.³⁹

M.8. The field book records, as part of an additional disparaging narrative pasted into the entry for Dane Farm, that:

The land lies on either side of ~~fa~~⁴⁰ road which is in very bad order and practicably impassable in the winter.

M.9. No deduction is given for any public right of way on this hereditament.

M.10. **Conclusion:** The Finance Act valuation does not provide any assurance as to the status of the application way. It may be that the public roads across the property were excluded from the calculated area of the farm, but it is not possible to confirm because the area assigned to the hereditament in the field book does not obviously conform to the size of the hereditament shown on the valuation office map.

M.11. It is possible to conjecture that the 'practicably impassable' road referred to in the narrative is the application way: there are two candidates, Dane Hill Road and the application way. But the hereditament is described in the field book as accounting for around 20 acres, and Dane Hill Road bisects an area of farm land considerably in excess of this area; moreover, the land east of Dane Hill Road forms part of another hereditament in another valuation district, albeit one which is 'valued with' hereditament 594.

M.12. If the narrative refers to the application way (and 'practicably impassable in the winter' is quite apposite to describe a way which was steeply inclined and remained untarred), the way was expressly not described as a 'farm road' (the author apparently having set out to do so), presumably because the valuer was aware that it was a public road.

M.13. **Points:** 0

38 The extent of Dane Farm shown marked on the valuation office maps as hereditament 594 far exceeds 20 acres. It is not clear why there is a discrepancy.

39 Some valuation offices adopted the practice, particularly in upland areas or areas of extensive common land, of not excluding roads from valuation hereditaments, but of excluding the area of such roads from the calculation of the area of the hereditament shown in the field book. That practice appears to have been adopted in respect of parts of the valuation office maps for sheet Kent LVI/12.

40 The crossed-out letters appear to be 'fa', *i.e.* the author intended to write 'farm road', but changed his mind.

N. Wye Cup (classic car) trial

N.1. **Date:** 1937

N.2. **Source:** Wheelspin⁴¹; Motoring Picture Library⁴²

41 'The Where and When of classic trials': wheelspin.info/research/classic-sections-dane/

42 motoringpicturelibrary.com/?s=danehill

■ *Wye Cup trial, 1937*⁴³

Illustration xxxvi

This photograph is not published online
owing to copyright.

⁴³ MG Musketeer team captain MacDermid climbs the application way, probably on the Wye Cup Trial, 21 February 1937. Published in *M.G. Trials Cars*, Roger Thomas, 1995, p.48, and incorrectly labelled as 'New Mill on the Lands End Trial'. Photograph by Bill Brunell. Source: Wheelspin.info

This photograph is not published online
owing to copyright.

N.3. **Description:** Photographer Bill Brunell, noted for his records of pre-war classic car trials, took a number of photographs of motor cars climbing Dane Hill during what is believed to be the Wye Cup trial in 1937. The photographs⁴⁵ show vehicles on what appears to be an unsealed but presumably still partly metalled⁴⁶ track climbing steeply from Dane Farm.

N.4. **Conclusion:** The use of the application way for a motor car trial in 1937 is suggestive that the way was recognised as a vehicular highway at that time. While it is possible that the trial had recourse to sections on private land with the permission of the owner, it is unlikely that the application way — being indisputably a public highway of some status — would have been used for the trial unless it were recognised as a public carriageway.

N.5. It further is suggested that the use of the way as part of the trial route would have been sufficiently high impact, in terms of noise and effect on the land immediately adjacent to Dane Farm and house (in late winter), an effect which is all too plain from the photographs, that it is highly unlikely that consent would have been obtained to its use for that purpose, if such consent were needed.

N.6. **Points:** 2

44 Ford V8 18 saloon climbs the application way, probably on the Wye Cup Trial, 21 February 1937. Photograph by Bill Brunell. Source: Motoring Picture Library.

45 No photographs are reproduced in the online version of this document owing to copyright, but they may be seen at the URLs given in footnotes 41 and 42.

46 The application way was recorded as metalled on the Ordnance Survey County Series first edition 1:2,500 map: see item IV.J above.

O. Ordnance Survey one inch map (New Popular edition)

O.1. **Date:** 1945

O.2. **Source:** VisionofBritain.co.uk⁴⁷

Ordnance Survey one inch map, New Popular edition, first state: full revision 1936 with corrections

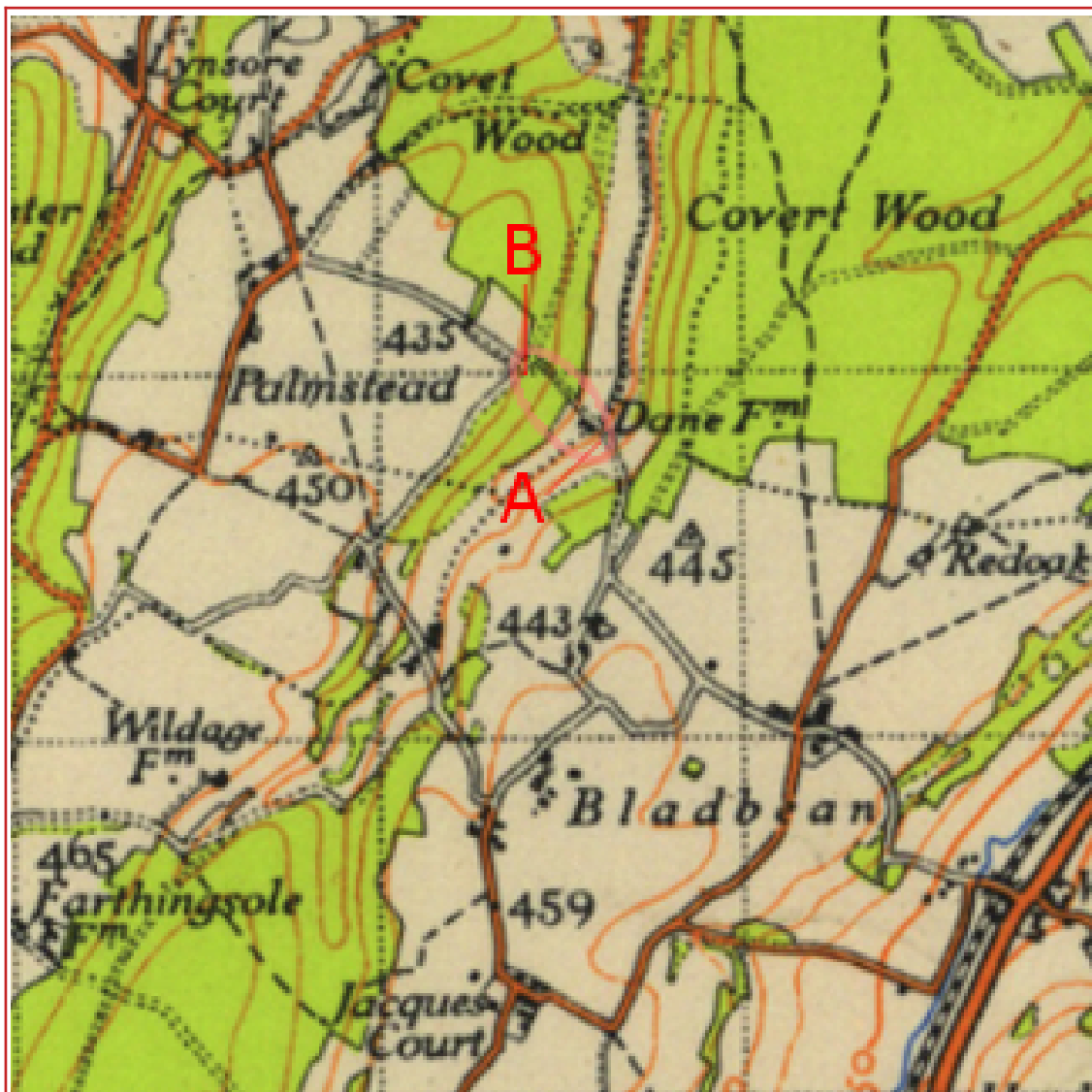
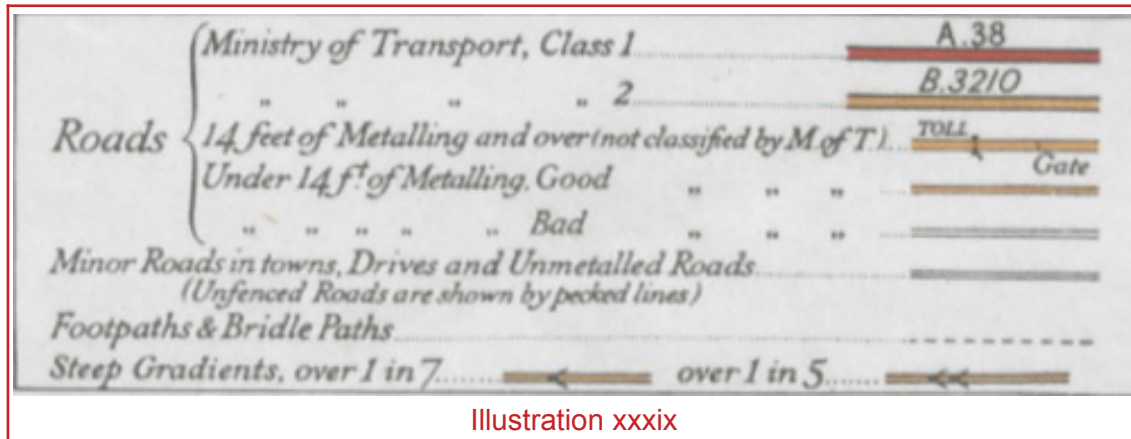


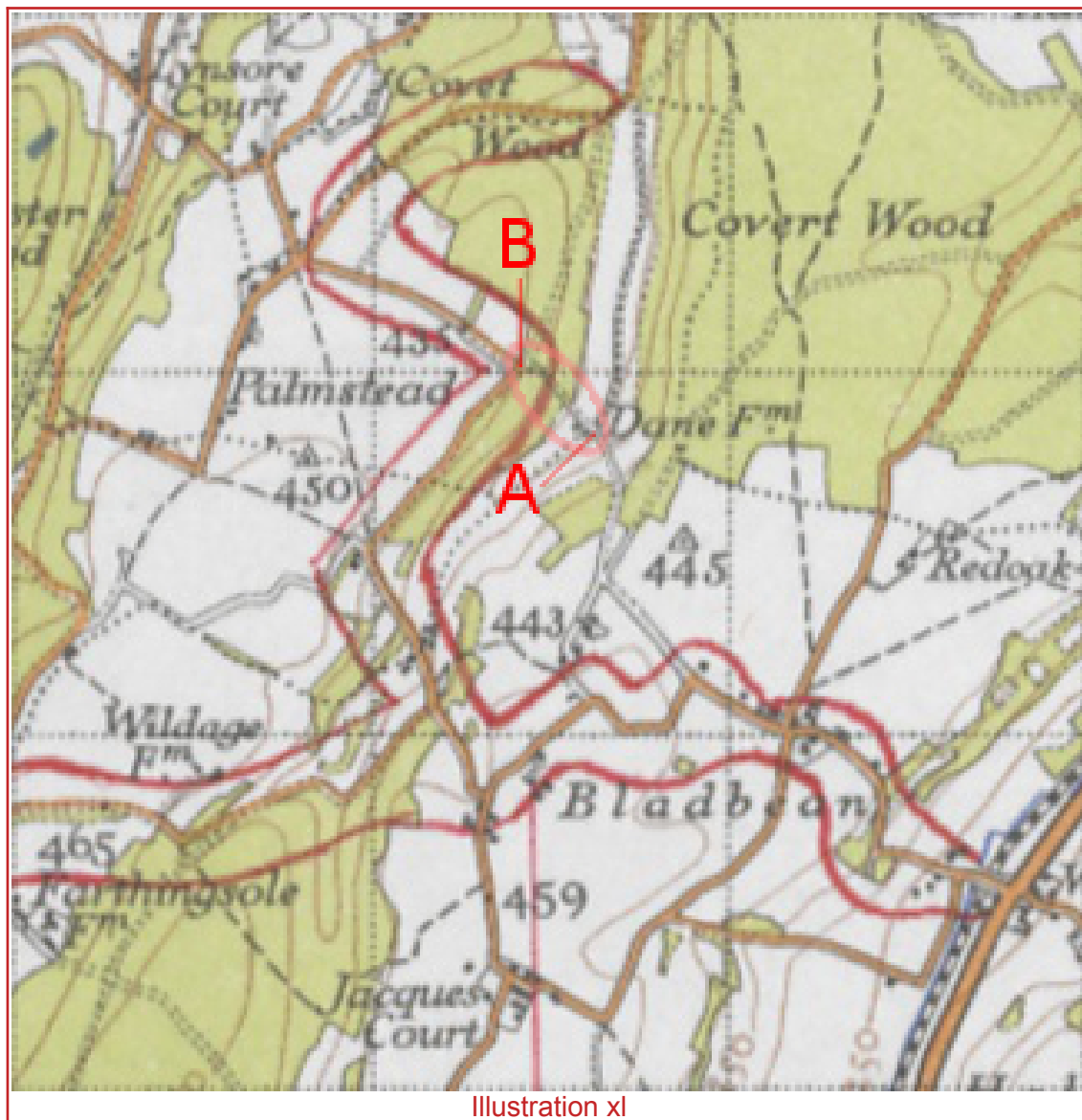
Illustration xxxviii

⁴⁷ www.visionofbritain.org.uk/maps/series?xCenter=3399799.67719&yCenter=2750767.5958&scale=63360&viewScale=181417.4208&mapLayer=europe&subLayer=new_pop&title=British%20War%20Office%20GSGS%204127%2C%20Ordnance%20Survey%20Popular%20and%20New%20Popular%20Editions&download=true

Key



Ordnance Survey one inch map, New Popular edition, second state: published 1948, full revision 1936, roads 1947 with later corrections



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

O.4. The Ordnance Survey New Popular edition one inch map shows the application way. The earlier state, published in 1945 based on pre-World War II surveys, shows neighbouring roads as 'Under 14ft of metalling, bad', while the application way appears to be classified as 'unmetalled'. In the later state, published in 1947 and based on post-war revision of roads, Peafield Wood Road is now shown as 'Under 14ft of metalling, good', but Dane Hill Road and the application way continues to be shown unchanged. The red line is identified on the margin of the map as 'Road grade rev' and identifies the copy as a 'superseded record copy' held by the Ordnance Survey.

O.5. **Conclusion:** The New Popular edition map shows the application way as a connection between two local roads, and is classified as 'unmetalled'.

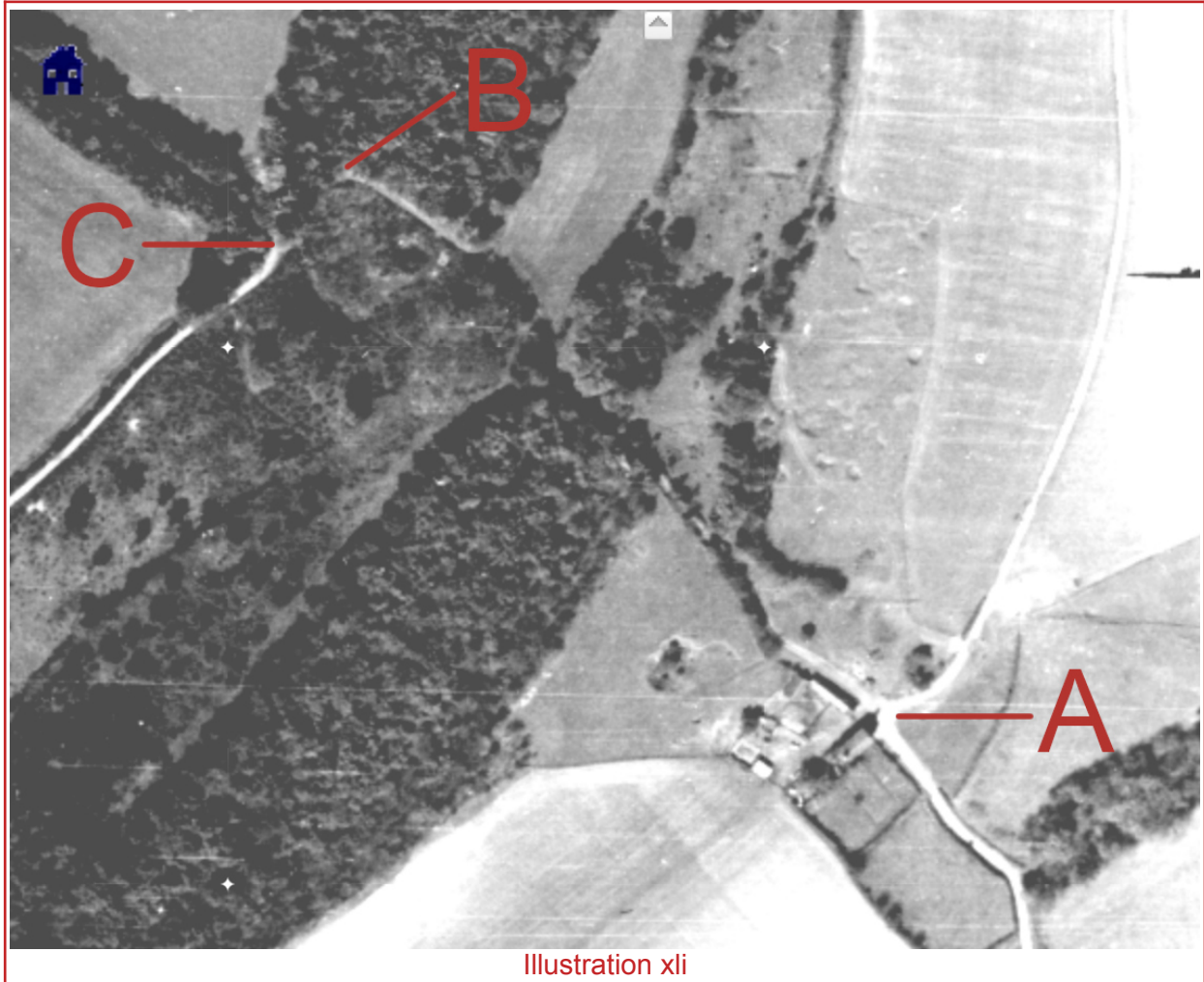
O.6. **Points:** 0

P. Aerial photograph

P.1. **Date:** 1946

P.2. **Source:** Kent County Council⁴⁸

■ 1946 aerial photograph



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

P.4. The application way is visible in the photograph as a well defined way between A and C.

P.5. **Conclusion:** The photograph is not evidence of status, but demonstrates that the application way was in regular use during the immediate post-War period.

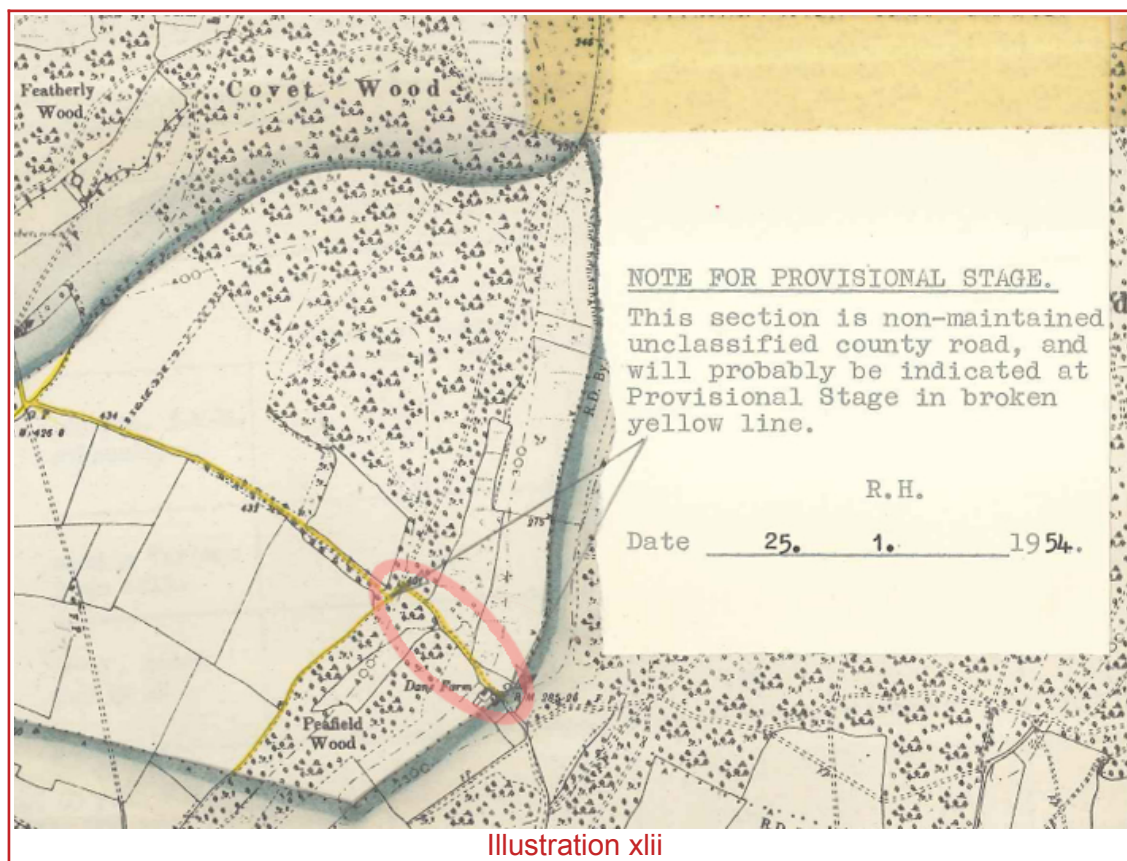
⁴⁸ Kent Landscape Information System, via: www.kent.gov.uk/environment-waste-and-planning/planning-and-land/kent-landscape-information-system

Q. National Parks and Access to the Countryside Act 1949: draft map

Q.1. **Date:** 1950–54

Q.2. **Source:** Kent County Council (definitive map records)

Draft map



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

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

Q.5. The draft map for Upper Hardres shows county-maintained roads coloured yellow. The application way is coloured yellow, but marked and annotated:

NOTE FOR PROVISIONAL STAGE

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

R.H.

Date: 25.1.1954

Q.6. **Conclusion:** The draft map is a clear indication that the application way was, at the date of the draft map, considered to be a county road, but one which was 'non-maintained'

— *i.e.* not maintained *de facto* by the highway authority (although not necessarily not maintainable).

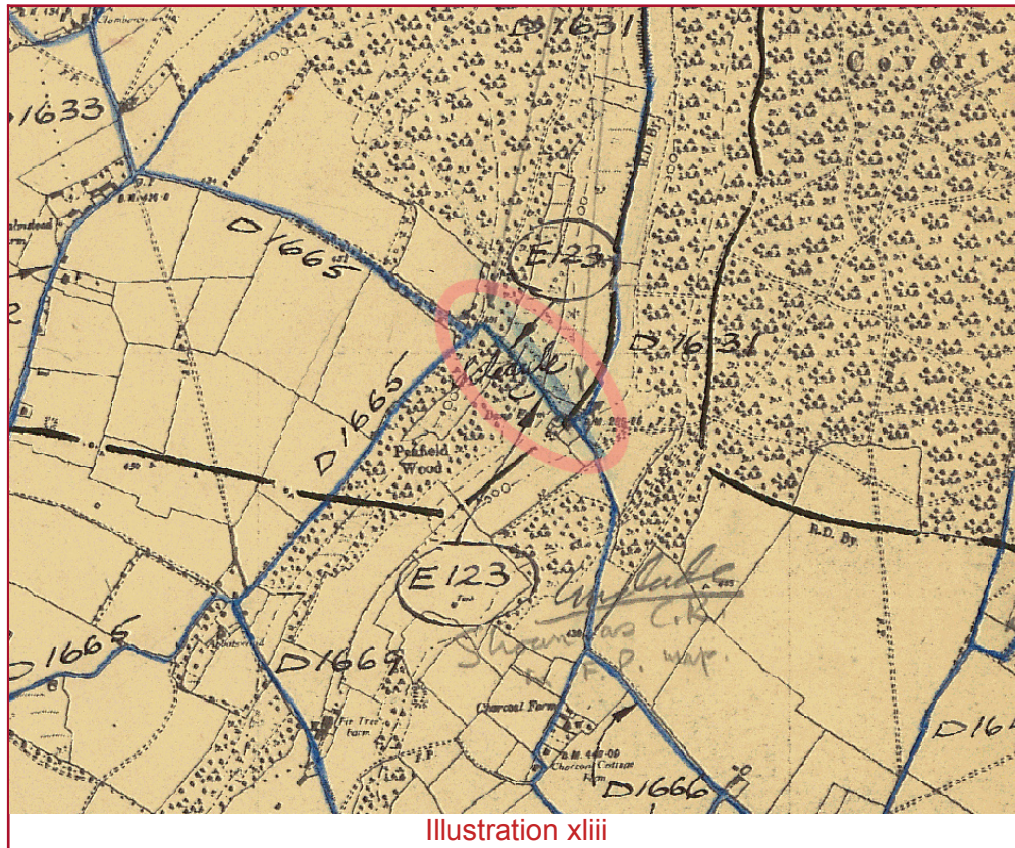
Q.7. **Points:** 3

R. Highway inspector's map

R.1. **Date:** 1952

R.2. **Source:** Kent County Council⁴⁹

Highway Inspector's map



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

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

R.5. The highway inspector's map shows the application way as a public road, with the reference number E123. Unlike many other E-classified roads on the highway inspectors' map, this one is shown by a continuous blue line, *c.f.* a dashed blue line used elsewhere.

⁴⁹ Highway inspector's map supplied by the council on request.

The way is annotated 'Schedule C'. A pencilled annotation, which apparently refers to the E123, states:

Include

Shown as C.R. on F.P. map

R.6. **Conclusion:** The inspector's map shows that the application way was considered to be a public highway, and was allocated an unclassified road number consistent with its status. The use of a solid blue line suggests that the way was regarded as maintained.

R.7. **Points:** 3

S. Highway authority list of streets

S.1. **Date:** 2003–2014

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

Kent list of streets 2014

USRN	5602400	STREET NAME	DANE HILL PATH, OFF DANE HILL RD		
TOWN	BARHAM	DISTRICT	CANTERBURY	STATUS	PUBLIC HIGHWAY
USRN	34500323	STREET NAME	DANE HILL ROAD		
TOWN	ELHAM	DISTRICT	SHEPWAY	STATUS	PUBLIC HIGHWAY

Illustration xlv

Gazetteer Detail			
FUEN	D1655	UN-NAMED	290 m
		DANE FARM ROAD	NORTH EAST KENT
ADOPTED PATH		U	Created
FROM PARISH BDY TO J/W D1665		BARHAM	
		CANTERBURY HU	
Proposed No		Unadopted No	
NSG Ref 5602400		Map sheet TR14N	
		From OSGR	617600 147865
		To OSGR	617415 148043
Adoption detail			
Date			
Ref	HIC No		
Declaration detail			
Date			
Ref			
Handover detail			
Date	01/03/00		
Length	290 m		
Gazetteer			
Updated	08/06/1999	A	
from	UPPER HARDRES	NORTH EAST KENT	290 FROM PARISH BDY TO J/W D1665 TR14N R
to	UPPER HARDRES	CANTERBURY HU	290 FROM PARISH BDY TO J/W D1665 TR14N R
PROW Updates:			
Local Name Updates:			
Updated	19/02/1996	I	
from			
to	DANE FARM ROAD		

Illustration xlv

S.3. **Description:** Every highway authority must keep up to date a list of streets in its area which are publicly maintainable.⁵⁰ ‘Street’ is defined to include a highway.⁵¹

S.4. A street authority must keep a register of streets⁵² to enable information to be recorded relating to street works. The register must include every street for which the street authority is the highway authority.⁵³ The highway authority is the street authority for a ‘maintainable highway’, being a highway maintainable at public expense.⁵⁴ The data

50 Highways Act 1980, s.36(6).

51 S.329(1) of the Highways Act 1980 provides that “‘street” has the same meaning as in Part III of the New Roads and Street Works Act 1991’; s.48(1)(a) provides that “‘street” means...any highway...’.

52 New Roads and Street Works Act 1991, s.53, and the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (SI 2007/1951), r.4.

53 Item 1 of the table in r.4(5) of the 2007 Regulations.

54 S.49(1)(a) of the 1991 Act. ‘Maintainable highway’ is defined in s.86(1) of the 1991 Act.

from the street works register are compiled into a local street gazetteer (which in turn are made available in the national street gazetteer).

S.5. The first, Illustration xlv, shows an extract from the 2014 list of streets, which includes an entry for 'Dane Hill Path, off Dane Hill Road'.

S.6. The second, Illustration xlv, shows an extract from the local street gazetteer for Canterbury district, which includes an entry for the D1655 from an 'Un-named' road, also known as 'Dane Farm Road', which is described as an 'adopted path'.

S.7. Both entries bear the National Street Gazetteer reference 5602400, and so relate to the same highway maintainable at public expense, namely the application way.

S.8. **Conclusion:** The extracts demonstrate that the application way remains a highway maintainable at public expense.

S.9. The list for the county of Kent does not contain the majority of public rights of way, notwithstanding that most public rights of way are maintainable at public expense, and should be included in the list. While the list does contain some adopted paths in urban areas, there is no reason why a public right of way in a rural area would be entered in the list, but not included on the definitive map and statement. The history of the way demonstrates that it is a carriageway, and that it was included in the list of streets for that reason.

S.10. The reference in the current entry to the status of the way as an 'adopted path' appears to be the consequence of an inappropriate amendment to the entry in the list, presumably made in recent years in an attempt to reconcile the entry (which, as explained above, implies carriageway status) with the physical characteristics of the way following many years of neglect.

S.11. **Points:** 3