Finglesham Drove: application to record a restricted byway from How Bridge to Ring Wall sluices

The British Horse Society

Historical document analysis

I. Introduction

A. Quick reference

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

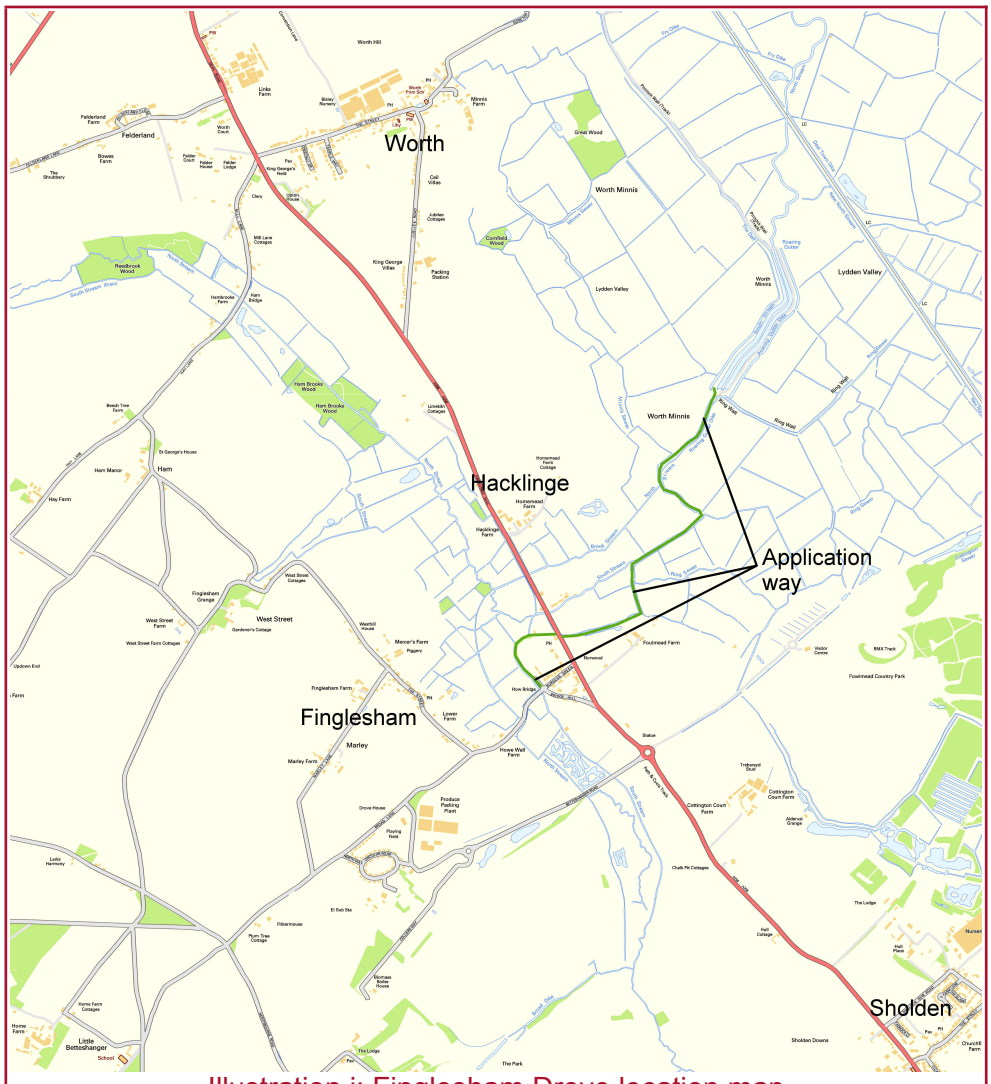

Illustration i: Finglesham Drove location map

A.2. Existing public rights of way comprised in application way: public footpath EE365 (part only)

A.3. Parish of: Northbourne, Sholden, a small part may lie in Worth

A.4. Ancient parish of: Sholden

A.5. Termination points: How Bridge, at junction of Broad Lane with Burgess Green and Bridge Hill, then via the Coach & Horses public house, to Ring Wall sluices

A.6. Termination points Ordnance Survey grid references: TR34215383, via TR34275405, to TR34905502

A.7. Postcode: CT14 0AS

A.8. Ordnance Survey Explorer sheet: 138

A.9. Ordnance Survey County Series 25" sheets: Kent XLVIII/15 & 11

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 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 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 from the junction of Broad Lane, Burgess Green and Bridge Hill at How Bridge near Finglesham, to and across the Sandwich Road adjacent to the Coach & Horses public house, continuing to the junction with public bridleway EE233 at Ring Wall sluices. The way lies in the parishes of Northbourne and Sholden, in the district of Dover, Kent. The way is not currently recorded on the definitive map and statement, save that a small part of the way is recorded as public footpath EE365. The application seeks to record the way as a restricted byway.

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 restricted byway, and so far as relevant, between C and D, under section 53(3)(c)(ii) to upgrade a way shown as footpath to a restricted byway.

D.2. The application way begins on Broad Lane at the junction with Burgess Green and with Bridge Hill, at A (at Ordnance Survey grid reference TR34215383), and proceeds northwest, initially along a service road for 50m to the end of that road at B (TR34185387), but then between the South Stream and a fence (the way now being overgrown) turning gradually north and then northeast, for a distance of 160m, to a junction with public footpath EE365 at a footbridge over South Stream at C (TR34115401), then turning gradually east-northeast and then east, straddling the course of public footpath EE365, for 170m to emerge in the car park of the Coach & Horses public house, terminating on Sandwich Road at D(1) (TR34275405). A distance between A and D of 380m.

D.3. Then resuming on the opposite side of Sandwich Road at D(2) (TR34295404), along a metalled road between dykes east-northeast for 330m to the junction with an occupation road at Foulmead Farm at E (TR34605413), then north, shortly turning northeast alongside successively South Stream and North Stream, for 560m to the junction with an occupation road and a right-angled turn to the northwest at F (TR34855453), continuing northwest, then turning north and then northeast for 680m, to a junction with public bridleway EE233 at Ring Wall sluice at G (TR34905502). A distance between D and G of 1,570m.

D.4. The total distance between A and G is 1,950m.

D.5. The points A to G are identified in the application map at part II below.

D.6. The application has been registered by Kent County Council in the register of applications no: PROW/DO/C389.

E. Nomenclature

E.1. The application way is known as Finglesham Drove; east of the Sandwich Road, all or part of the way may be known as Pinnock Wall.

F. Background

F.1. The causeway over How Bridge on Broad Lane is likely to be a road of some antiquity. There is some evidence that the causeway was realigned in the eighteenth century, but How Bridge formed the key inland route between Deal and Sandwich until the end of the eighteenth century. How Bridge is coloured as a main road on the first Ordnance Survey map of Kent, the privately published Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C below), dated 1801. Historically, the traveller crossing How Bridge from Finglesham or further west would have been presented with two options — turning south, along Bridge Hill, to reach Sholden and Deal, or north along Finglesham Drove, rounding to the east, and continuing over the marshes along Pinnock Wall to Worth or the sea.

F.2. On the Mudge-Faden map, drawing on surveys by the Ordnance Survey in the late eighteenth century, the main road between Deal and Sandwich is shown via Bridge Hill, How Bridge and Finglesham: no road is shown north to Hacklinge. This reflects the survey work shown in the Ordnance Survey surveyors' drawing (item IV.B below, Illustration x: Ordnance Survey drawing: St Margarets Bay), which similarly shows no road between Bridge Hill and Hacklinge.

F.3. However, the Ordnance Survey surveyor's drawing for Canterbury East (item IV.B below, Illustration xi: Ordnance Survey drawing: Canterbury) has been modified, possibly after its initial preparation, to insert the alignment of the Dover, Deal and Sandwich turnpike (item IV.D below). This opened in 1797, with an entirely new road made between Bridge Hill and Hacklinge, to shorten the journey and to provide a wider and more satisfactory passage.

F.4. Finglesham Drove is therefore an old drove road leading from How Bridge to the marshes. It was only after the construction of the Dover, Deal and Sandwich turnpike that it became possible to turn north from Finglesham Drove at what is now the Coach & Horses public house (which opened to serve traffic on the turnpike) and so pick up the turnpike towards Hacklinge, Worth and Sandwich.

F.5. Even after the construction of the turnpike, the application way remained as an acknowledged highway throughout the nineteenth and the first half of the twentieth century: it is recorded as a public road in plans for several railways planned over a period of 37 years, and consistently recognised as an old highway in the Eastry Rural District Council highways report book (item IV.N below) over a period of 36 years. And part of the application way was 'diverted' at D (item IV.P below) in order to allow the neighbouring Coach & Horses inn to be expanded.

F.6. Burgess Green (originally named Broad Lane, as a continuation of the road from How Wall over How Bridge), which today provides an option to continue straight on from How Bridge up to a junction with the main road between Deal and Sandwich, was not built until the 1920s (first appearing in the map connected with the diversion of part of the application way in 1929, see IV.P below), possibly to facilitate a council housing development by Eastry Rural District Council. Once Burgess Green opened, it seems that any remaining traffic over How Bridge for Worth and Deal preferred to use the tarred Burgess Green in preference to Finglesham Drove. Since then, traffic over Finglesham Drove has dwindled, and it is now impassable and obstructed. Anecdotal evidence suggests that a path continued to exist along Finglesham Drove (similar to footpath EE365) until the beginning of the present century, but that use ceased around that time, perhaps because it was not maintained, and vegetative growth finally made the way impassable.

G. Grounds for application

G.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*[1], 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.

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.[2]

1 [2012] EWCA Civ 334

2 *Consistency Guidelines*: para.2.17.

G.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 highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see below), there were full vehicular rights.

H. Natural Environment and Rural Communities Act 2006

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

H.2. However, it is possible that the exception in section 67(2)(a) may apply in respect of all or part of the application way, the exception being where the right of way

> …is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles… .

H.3. The exception may apply in relation to:

- the service road between A and B, where the main use is arguably in relation to the parking of residents' vehicles;
- the car park of the Coach & Horses public house at D, where the main use is arguably in relation to the parking of customers' vehicles;
- the road between D and G, where the main use is arguably in relation to use by vehicles of the owner, the Environment Agency, and other vehicles for the purposes of gaining access to land served by the road.

Given that there was no use whatsoever of the application way between B and C in the five years before commencement (2001–06), and that arguably the main use of the application way between A and B, at D, and between D and G, was with vehicles, it may be that all of the way has been excluded from the extinguishment of public rights for mechanically propelled vehicles.

H.4. The application is made for a restricted byway, but is without prejudice to the possibility that all or part of the way may more properly be recorded as a byway open to all traffic if evidence can be shown that the exception in section 67(2)(a) applies.

I. Points awarded

I.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*[3].

I.2. Evidence has not been assigned arbitrarily between the application way east and west of the Sandwich Road at D, because the evidence shows that, prior to the construction of the Dover, Deal and Sandwich turnpike (item IV.D below) around 1797, the application way was a single, continuous and unbroken highway. Therefore, any evidence which

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

tends to show that one part of the way is an historic highway, must also lend support to the status of the other part.

I.3. **Points**:

Item	Ref	Points
Survey of Lydden Valley	IV.A	2
Ordnance Survey surveyors' drawing	IV.B	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	0
Dover, Deal and Sandwich turnpike	IV.D	3
Greenwood's map of Kent	IV.E	1
Ordnance Survey, one-inch Old Series map of Kent	IV.F	0
Kent Railway	IV.G	5
Tithe Act 1836	IV.H	4
Great Kent Atmospheric Railway	IV.I	5
Ramsgate Sandwich Deal and Dover Railway	IV.J	5
Dover Deal and Sandwich Railway	IV.K	1
Walmer, Deal and Adisham Railway	IV.L	1
Ordnance Survey County Series first edition 1:2,500	IV.M	1
Eastry Rural District Council highways report book	IV.N	5
Finance (1909–1910) Act 1910	IV.O	5
Diversion order	IV.P	10
Sholden parish survey	IV.Q	0
Total points		48

J. Width of application way

J.1. There are several sources of data in relation to the width of the application way, particularly in relation to the part between A and D. In item IV.N below, the surveyor for the Eastry Rural District Council reported that, 'This is an old droveway measuring from the stream to the old ditch under the bank about 20 to 25 feet, at places it is much narrower.'

J.2. In the diversion order for the application way adjacent to the Coach & Horses (item IV.P below), the way, following diversion, is given as 28' at a distance of 67'6" from the carriageway of the main road, widening to 66'6" at the mouth of the way. The overall effect of the diversion is described so as to: 'form a new highway of a minimum width of 28 feet for a distance of 72 feet 6 inches'. The public notice of the same order (see Appendix, page 54) refers to the application way 'having a minimum width of 16 feet'.

J.3. The tithe apportionment for Sholden (item IV.H below) gives the area of the application way between A and D, together with Bridge Hill, as 0.3996ha. Bridge Hill is shown on the tithe map with a distinctly narrower width. Given the length of the application way as 380m, and of Bridge Hill as 220m, if both are assumed to have an identical width, this suggests a mean width of around 6.7m or 22ft. On the Ordnance Survey County Series third edition map at a scale of 1:2,500, Bridge Hill is given an area of 0.123 ha (which

suggests a width of 5.6m). If this area is deducted from the area shown on the tithe apportionment for both the application way between A and D and Bridge Hill, it allows a calculation of the average width of that part of the application way as 7.3m.

J.4. The Ordnance Survey County Series first edition map at a scale of 1:2,500 (see item IV.M below) records the area of the application way between A and D as 0.439 ha, which translates to a width of 11.5m. However, the way is braced with that part of the area of South Stream on the east side of the parish boundary which runs down the centre of the water course, so that the area, and therefore the width, extends to those of both the way and part of the watercourse.

J.5. This application proposes that the way between A and D should be defined as having a width of 6m (20 feet), except in relation to the dimensions given in the diversion order, but that a narrow width should be adopted in relation to any specific section owing to demonstrated physical constraints.

J.6. In relation to the way between D and G, the Ordnance Survey County Series maps are of little assistance, as the way is braced with the adjoining watercourses. However, on the tithe map for Sholden, the way east of D is numbered 15 and given an area of 1.6794 ha. Part of the tithe map in the vicinity of the parish boundary with Worth at Roaring Gutter has been lost, but the length of the way between D and G is measured as 1,570m, and the length of the way between G and the parish boundary at Roaring Gutter may be estimated at 670m. The mean width of the way between these two points would therefore be 7.5m.

K. Limitations

K.1. Neither the tithe map drawn up under the Tithe Act 1836 (item IV.H below) nor the Ordnance Survey County Series first edition 1:2,500 map (item IV.M) shows any evidence of a gate across the application way — which is consistent with what might be expected of a drove road.

K.2. Therefore it is sought that any order arising from this application should expressly provide to record in the definitive statement that no limitation is present on the way.

II. Application map

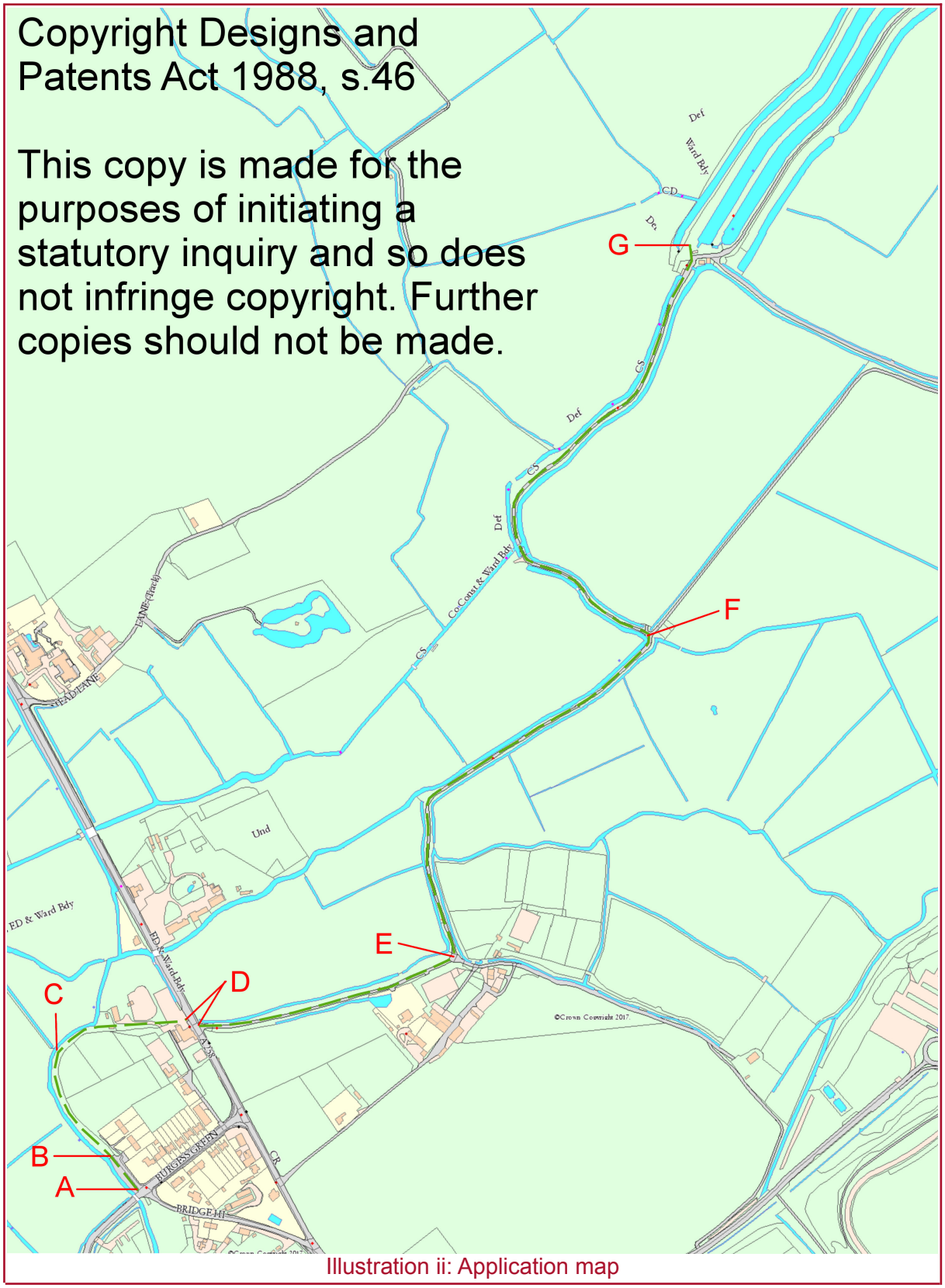

Illustration ii: Application map

Scale: approx. 1:7,345 (when printed A4)

Application way is marked — —

160m

III. Along the way

Illustration iii: Near B: gardens abutting way

Illustration iv: Between C and D

Illustration v: At D towards C

Illustration vi: Between E and F

Illustration vii: Between E and F

Illustration viii: At F

IV. Evidence

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A. Survey of Lydden Valley

A.1. **Date**: 1738

A.2. **Source**: Kent County Archives[4]

4 S/EK/AZ/4/15

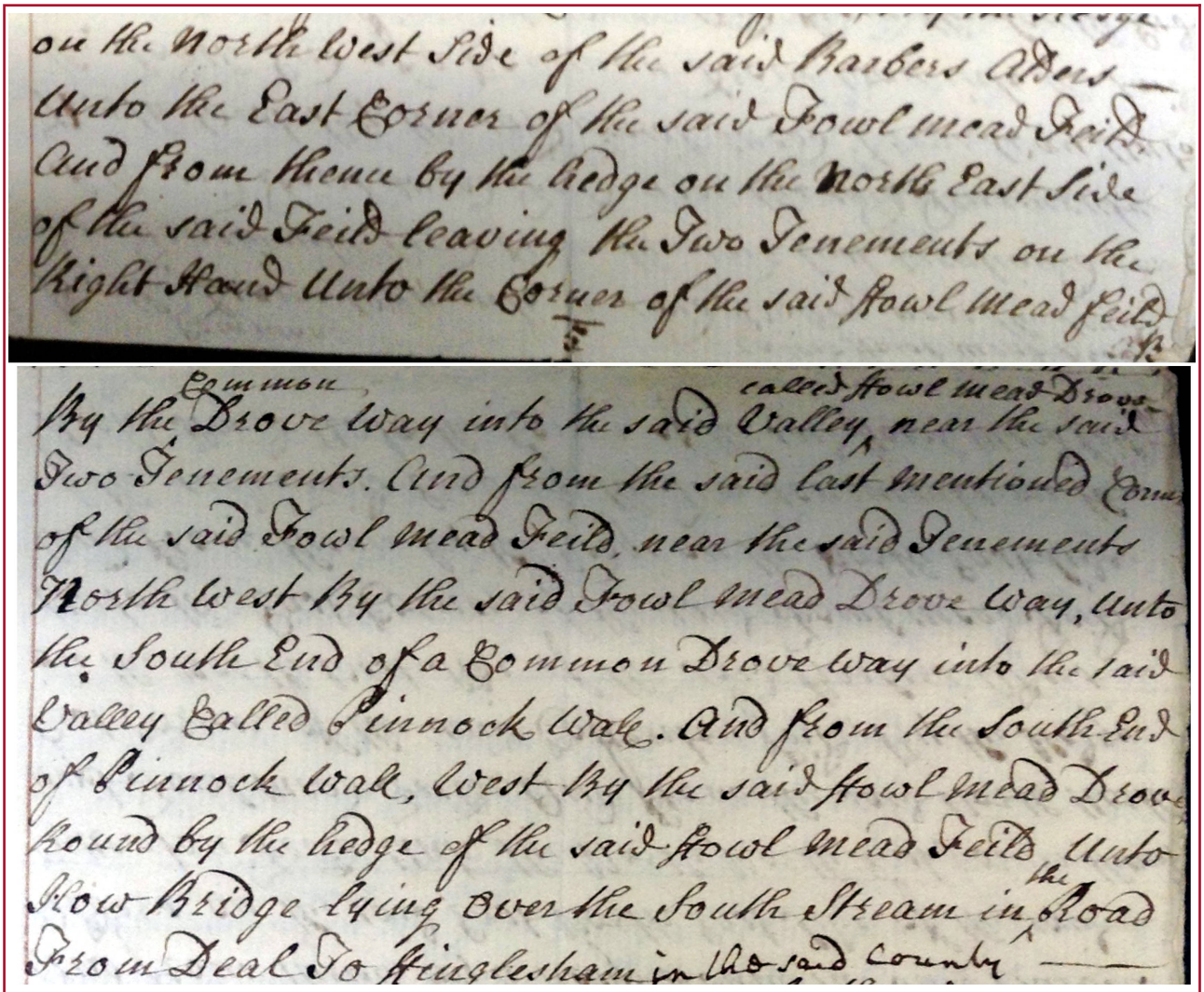

on the North West Side of the said Barbers Adms
Unto the East Corner of the said Fowl mead Feild
And from thence by the Hedge on the North East Side
of the said Feild leaving the Two Tenements on the
Right Hand Unto the Corner of the said Fowl Mead feild
By the Common Drove Way into the said Valley called Fowl mead Drove
Two Tenements. And from the said last mentioned Corn
of the said Fowl mead Feilds, near the said Tenements
North West by the said Fowl mead Drove Way, Unto
the South End of a Common Drove Way into the said
Valley Called Pinnock Wall. And from the South End
of Pinnock Wall, West by the said Fowl mead Drove
Round by the Hedge of the said Fowl mead Feilds Unto
How Bridge Lying Over the South Stream in the Road
From Deal To Finglesham in the said County

Illustration ix: Survey of Lydden Valley

A.3. **Description**: The survey is derived from the records of the East Kent Commissioners of Sewers, and is described as a:

> 'True Survey of the Bounds and Boundaries of Lydden Valley…Taken First Day of March in the Year 1738. By the Order of the Honourable the Commissioners of the Sewers for the Eastern Parts of the County of Kent.'

A.4. The survey describes the detailed boundaries of the Lydden Valley, so far as the Commissioners are responsible for the maintenance of the drainage system. The boundary between Fowlmead Farm and How Bridge is described thus:

> …unto the East Corner of the said Fowl Mead Feilds. And from thence by the hedge on the North East Side of the said Feilds leaving the Two Tenements on the Right Hand unto the Corner of the said Fowl Mead Feilds. By the Common Drove Way into the said Valley called Fowl Mead Drove near the said Two Tenements. And from the said last mentioned Corner of the said Fowl Mead Feild near the said Tenements North West By the said Fowl Mead Drove Way, unto the South End of a Common Drove Way into the said Velley called Pinnock Wall. And from the South End of Pinnock Wall, West by the said Fowl Mead Drove Round by the hedge of the said Fowl Mead Feild Unto How Bridge lying over the South Stream in the Road from Deal to Finglesham in the said County.

A.5. The survey refers to the boundary of the Lydden Valley as following Fowl Mead Drove Way (now passing through Foulmead Farm) 'unto the South End of a Common Drove Way into the said Velley called Pinnock Wall'. This refers to the turn at E (so that the application way north to Ring Wall sluices is named Pinnock Wall).

A.6. To the west of E, towards D, C and A, the application way is coincident with the boundary of the Lydden Valley, and referred to as Fowl Mead Drove. The drove passes: 'Round by the hedge of the said Fowl Mead Feild Unto How Bridge lying over the South Stream in the Road from Deal to Finglesham'. The 'Road from Deal to Finglesham' is Bridge Hill turning over How Bridge to Broad Lane. As explained in Background (item I.F above), the turnpike road connecting the top of Bridge Hill to Sandwich was not constructed until the end of the eighteenth century: until then, Fowl Mead Field was a single open arable field.

A.7. **Conclusion**: The application way between A and E is described as part of a 'Common Drove Way', as is the application way north from E towards G. A common drove way is a highway over which rights subsist on foot and on horseback, and for driving animals, with or without a right for vehicles.

A.8. **Points**: 2 (without proof of vehicular rights)

B. Ordnance Survey surveyors' drawing

B.1. **Date**: 1797–98

B.2. **Source**: British Library[5]

OS Drawing: St Margaret's Bay

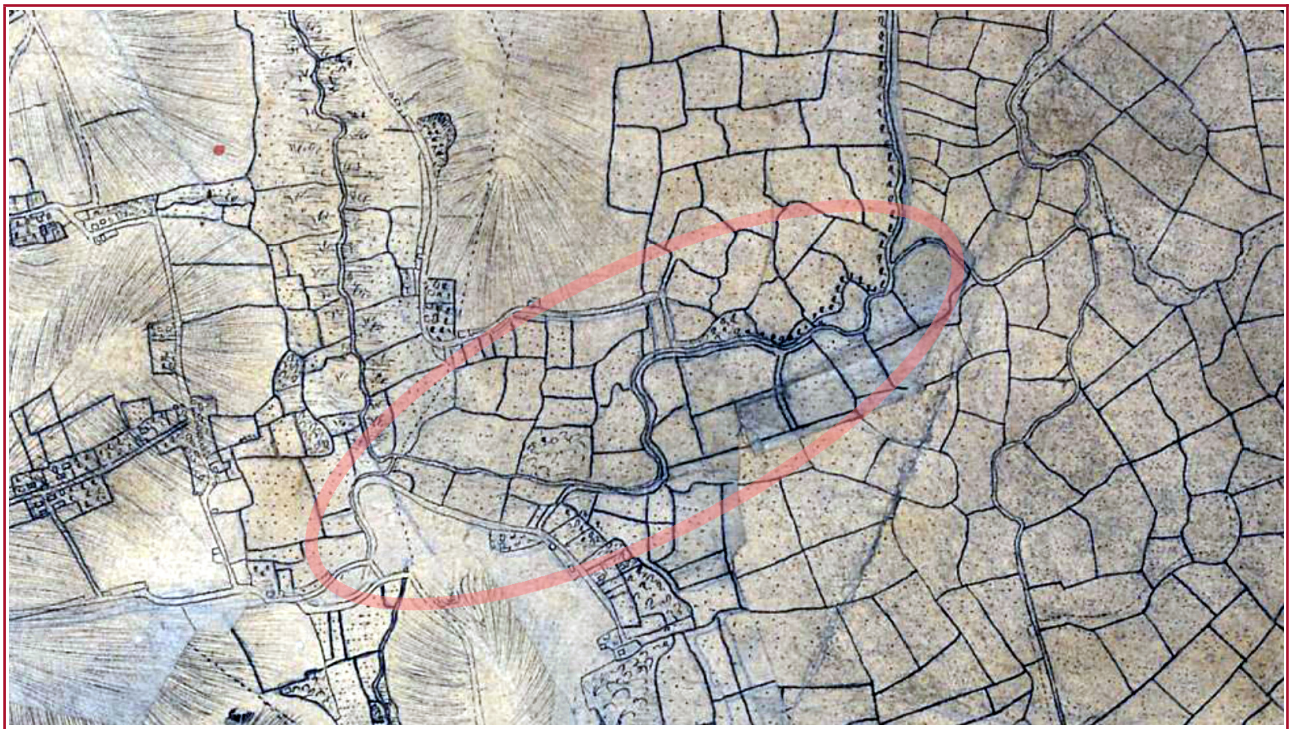


Illustration x: Ordnance Survey drawing: St Margarets Bay

5 St Margaret's Bay: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/s/002osd000000006u00368000.html; Canterbury East: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/002osd000000017u00367000.html.

OS Drawing: Canterbury

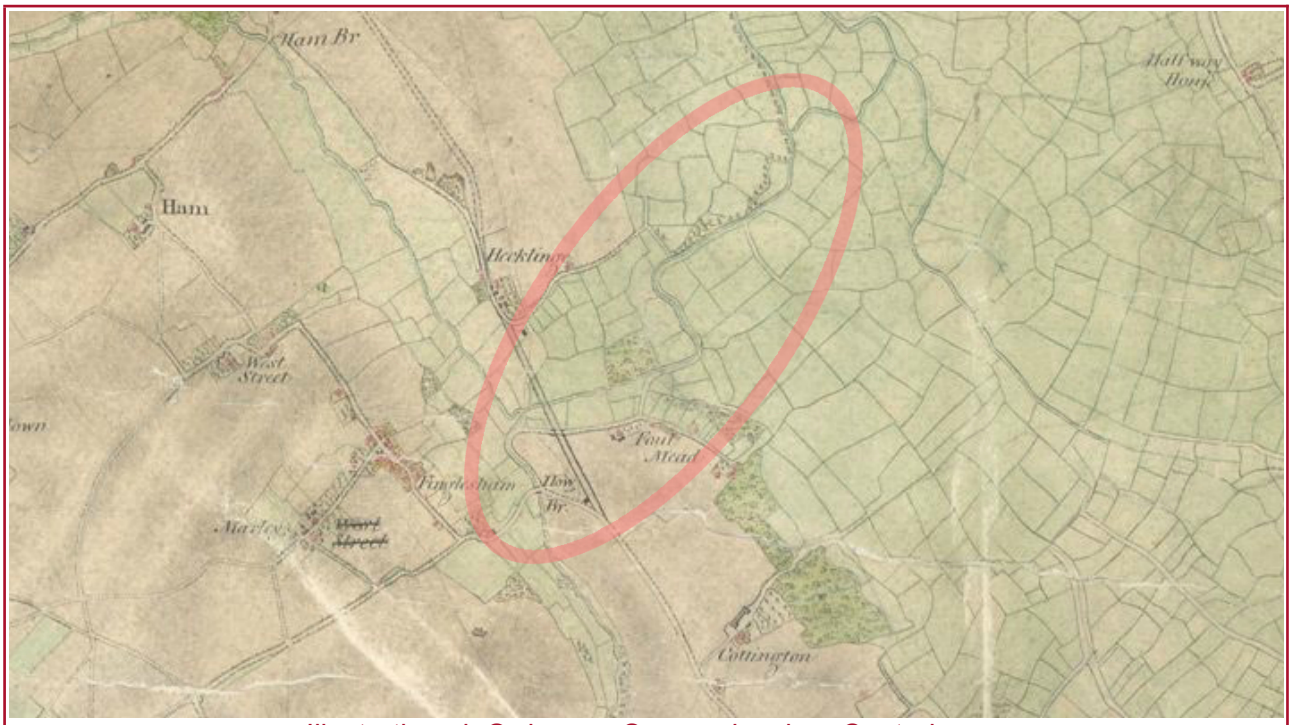


Illustration xi: Ordnance Survey drawing: Canterbury

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.[6]

B.5. Two drawings show the application way. The drawing for St Margaret's Bay (dated 1798, in practice a number of drawings pasted onto a card) is recorded as post-dating the drawing 107E for Canterbury (dated 1797). However, whereas the latter depicts the course of the Dover, Deal and Sandwich turnpike (see item IV.D below), authorised in 1797, this is not shown on the former.

B.6. The application way is shown on both maps from A to G. There is some uncertainty on the drawing for St Margaret's Bay as to the course of Broad Lane and Bridge Hill, and it

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

is possible that this earlier map reflects a realignment of the road contemporary with the establishment of the turnpike. However, the course is more emphatically shown on the Canterbury map. On both maps, the application way between A and G is shown partly coincident with the South Stream, which accentuates the width of the way.

B.7. **Conclusion**: The Ordnance Survey drawings provide good evidence of the existence of the application way in its entirety at the end of the eighteenth century, but not of public rights.

B.8. **Points**: 0

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

C.1. **Date**: c.1801

C.2. **Source**: Mapco.net[7]: © Copyright David Hale and the MAPCO : Map And Plan Collection Online 2006–13

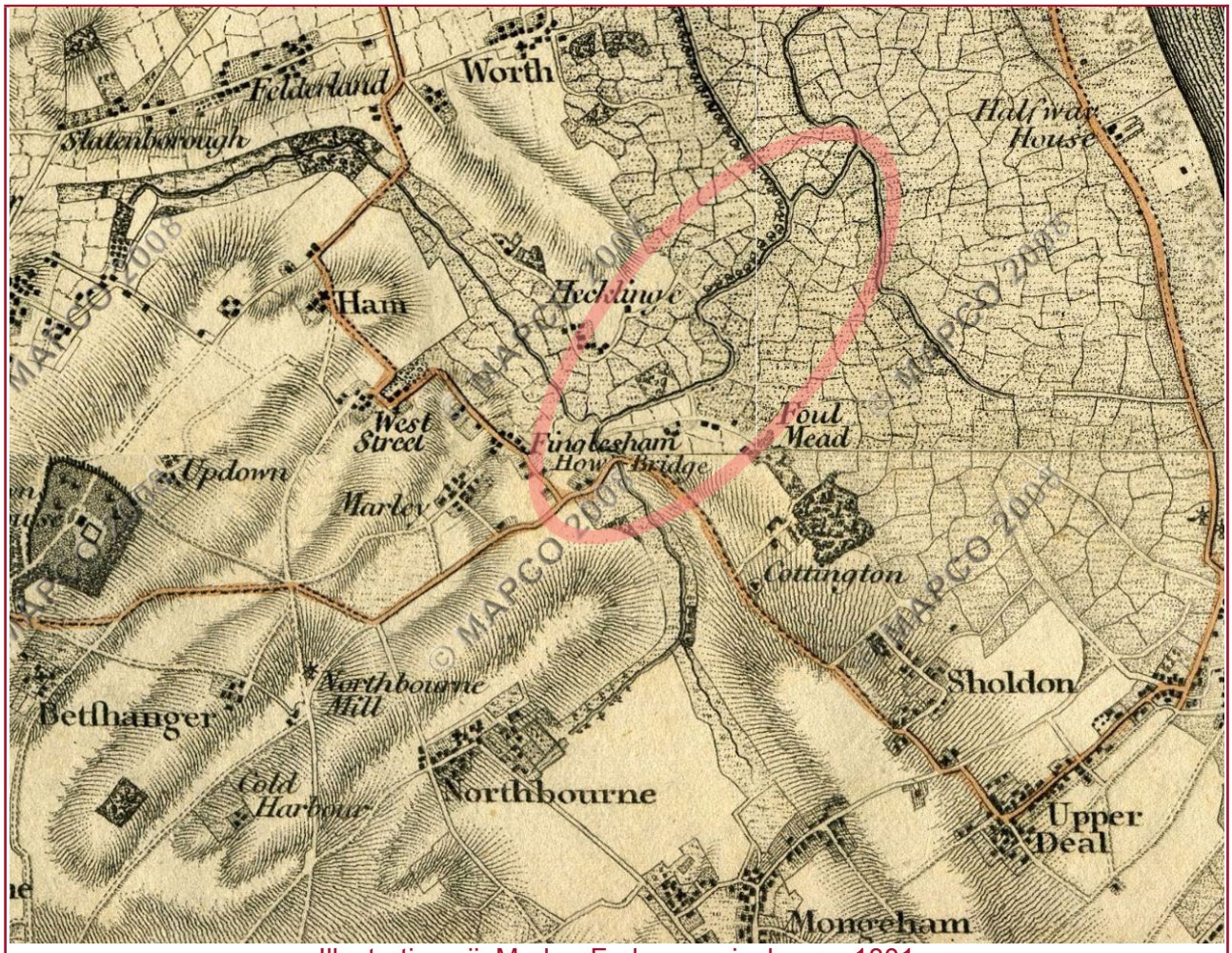


Illustration xii: Mudge-Faden one inch map 1801

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

C.4. This map of Kent was the first Ordnance Survey map to be published, based on the surveyors' drawings prepared by the Ordnance Survey in the previous years (see item IV.B

7 http://mapco.net/kent1801/kent1801.htm

above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, the map of Kent was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The Mudge map does not show the course of the Dover, Deal and Sandwich turnpike. The application way is shown clearly as an enclosed way from C to F, but is indistinct between A and C and between F and G. The depiction of the application way is confused by the label for Finglesham applied over part of the way and the fold of the map. There appears to be an unenclosed road visible on the lower fold of the map north from just east of How Bridge at A, which may which may continue onto the upper fold of the map as immediately adjacent to South Stream.

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

C.7. The Mudge-Faden map is good evidence for the physical existence of the way from C to G, but is inconclusive as to the way between A and C.

C.8. **Points**: 0

D. Dover, Deal and Sandwich turnpike

D.1. **Date**: 1818

D.2. **Source**: Parliamentary Archives[8]

8 HL/PO/PB/3/plan22

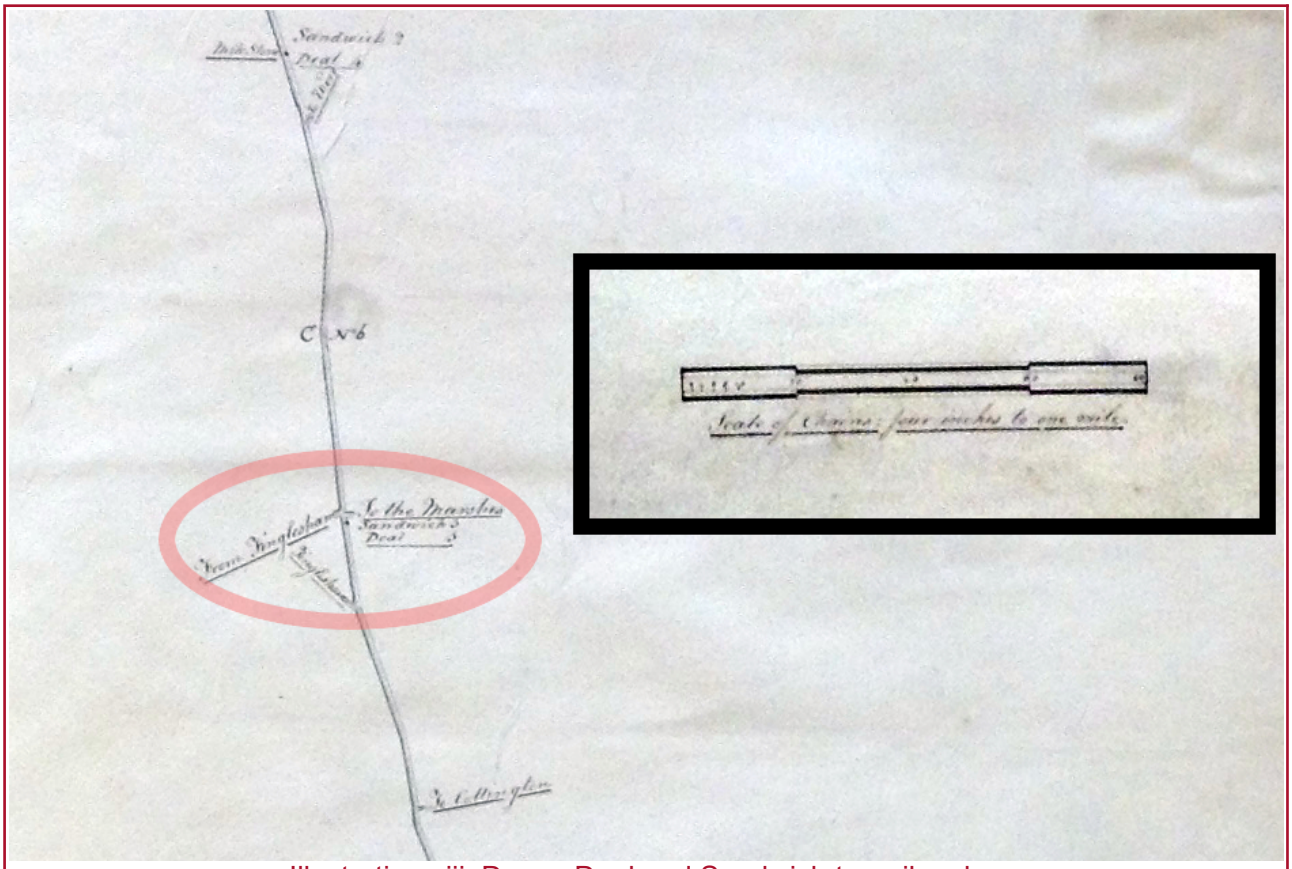


Illustration xiii: Dover, Deal and Sandwich turnpike plan

D.3. **Description**: Original scale: 1:15,840 (four inches to one mile); orientation: unchanged (north).

D.4. The Dover, Deal and Sandwich turnpike was authorised by an Act of Parliament in 1797[9]. Part of the authorised route comprised the construction of a new highway from north of Sholden to Hacklinge, to replace the existing route via How Bridge and Finglesham (see the Ordnance Survey, Mudge-Faden one-inch map of Kent at item IV.C above), which was no more than a series of country lanes. The way was built between Bridge Lane and Hacklinge via D. In 1818, a further Act[10] provided for improvements to the turnpike. The deposited plan for the 1818 Act shows the turnpike through D, and the application way is annotated west from D as 'From Finglesham', and east from D as 'To the Marshes'. Further south, Bridge Hill is also depicted, annotated 'Finglesham'.

D.5. **Conclusion**: The plan shows only those connections from the turnpike which are likely to have been regarded as public roads, annotated with the destination of those roads.[11] The annotation of the application way as leading, respectively, to Finglesham and the Marshes is good evidence for the status of the application way as a public road.

9 37 Geo. III, c.156

10 58 Geo. III, c.xxvi

11 See the *Consistency Guidelines* (2016), para.8.12, in relation to tithe maps: 'However, the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights.' In *Commission for New Towns v JJ Gallagher Ltd* [2002] EWHC 2668 (Ch) at [90], Neuberger J (as he then was) said: 'It was agreed between both experts that the designation "from X" or "to X" on a road was indicative of highway status. A specific description of a lane as leading from one village to another, particularly when one bears in mind that it was a carriageway (albeit that its status as a public carriageway is in issue) does provide some support for the notion that it was a public carriageway.' There seems no reason not to apply the same principles to other historical documents of approximately contemporary vintage.

D.6. **Points**: 3

E. Greenwood's map of Kent

E.1. **Date**: 1819–20

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

Illustration xiv: Greenwood's map

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

E.4. Greenwood's map depicts the application way as an unenclosed way north from A to C along the edge of the South Stream, as an enclosed way from C to D, and from D to mid-way between E and F. A short gap exists from there to F, and the way resumes from F, along the South Stream and the parish boundary, as an enclosed way as far as G.

E.5. **Conclusion**: Greenwood's map is good evidence for the existence of a defined way along much of the claimed route. The key describes the route as a 'cross road', which is suggestive of a public way.

E.6. **Points**: 1

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

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

F.2. **Source**: National Library of Australia[12].

Illustration xv: OS first edition Old Series one inch map

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.C 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. This is the first one inch map published officially by the Ordnance Survey. The map shows the application way as an enclosed way north from How Bridge, adjacent to the South Stream, to a minor junction in the vicinity of C. The application way continues east from that junction, also enclosed, to the Dover, Deal and Sandwich turnpike at D, before continuing as an enclosed way to G, where the enclosed track turns south along Ring Wall.

12 nla.gov.au/nla.obj-231917365/view.

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.

F.7. The Ordnance Survey Old Series map is good evidence for the existence of a defined route along the application way between A and G.

F.8. **Points**: 0

G. Kent Railway

G.1. **Date**: 1836

G.2. **Source**: Kent County Archive[13]

13 Q/RUm/138

Kent Railway plan

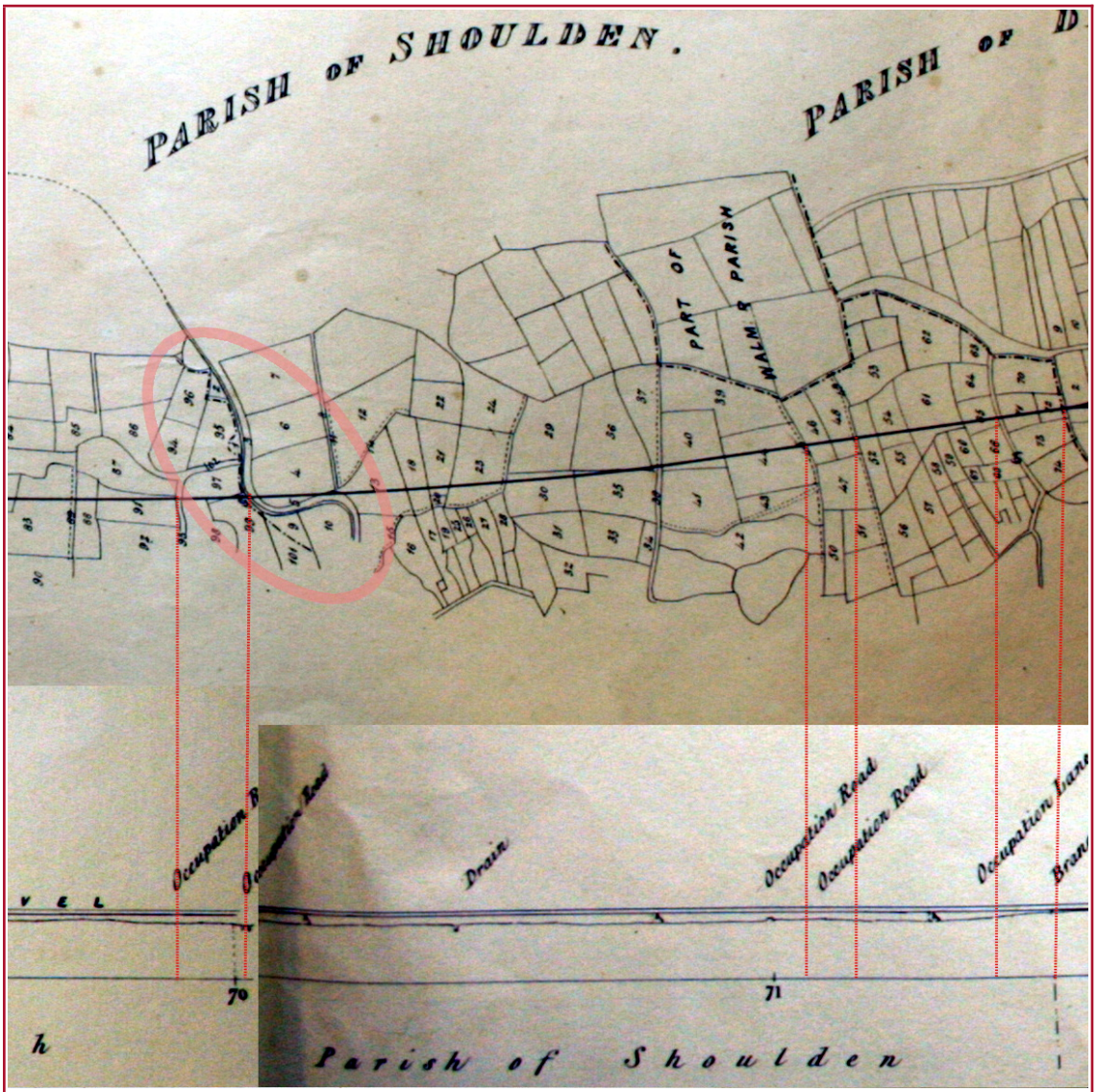
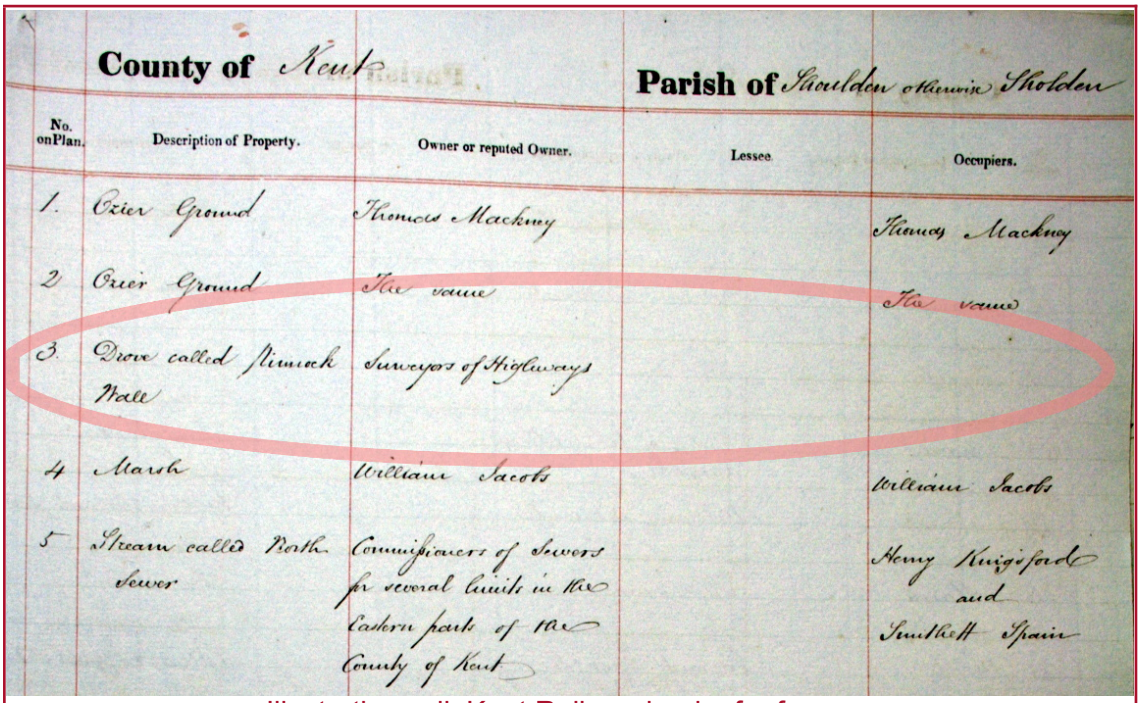


Illustration xvi: Kent railway plan

Kent Railway book of reference



County of Kent

Parish of Sandwich otherwise Sholden

No. on Plan.	Description of Property.	Owner or reputed Owner.	Lessee.	Occupiers.
1.	Osier Ground	Thomas Mackney		Thomas Mackney
2.	Osier Ground	The same		The same
3.	Drove called Pinnock Wall	Surveyor of Highways		
4	Marsh	William Jacobs		William Jacobs
5	Stream called North Sewer	Commissioners of Sewers for several Limits in the Eastern part of the County of Kent		Henry Knight ford and Smithett Spain

Illustration xvii: Kent Railway book of reference

G.3. **Description**: Original scale: not known; orientation: unchanged (east at top).

G.4. The deposited plan for the Kent Railway charts a line across the Lydden Valley between Sandwich and Deal, generally to the east of the turnpike (now the Sandwich Road). The plan shows a crossing of the application way between F and G. The section (which in Illustration xvi has been abutted to the plan) records the application way as an 'Occupation Road'. The plan assigns parcel number 3 to the application way, and 5 to the South Stream alongside it. The book of reference for the parish of Sholden records that parcel 3 is a 'Drove called Pinnock Wall', and that the owner or reputed owner is the 'Surveyor of Highways'.

G.5. **Conclusion**: The proposed railway precedes the enactment of the Railways Clauses Consolidation Act 1845, and the plans make no specific provision for the crossing of the railway, but it may be assumed that the crossing would have been made on the level, as the sections show no indication of a bridge.

G.6. The description of the application way in the book of reference as a Drove Road owned by the Surveyor of Highways is good evidence that the way was, at this time, regarded as a public highway. The use of the label, 'Occupation Road', on the section does not diminish the conclusion afforded by the book of reference, as under the Standing Orders of Parliament, the details of land ownership set out in the book of reference were required to be consulted upon in advance of deposit, and it is these details which would have been seen and approved by the surveyor of highways for the parish of Sholden, and by local landowners and tenants. The sections label as 'Occupation Road' certain other highways which are recorded in the book of reference as vested in the surveyor of highways[14], suggesting that, for the purposes of the sections, the distinction was regarded as

14 In the parish of Worth, parcel 64 (Jubilee Road: recorded as a road) and 93 (bridleway EE233, recorded as a drove) are owned by the Surveyor of Highways, but both are shown in the section as Occupation Road. In the parish of Sholden, parcel 69 (Marsh Lane, bridleway EE385) is recorded as an occupation

immaterial, as the intention in this flat, paludal environment would have been to provide level crossings in all cases.

G.7. The reference to the status of the application way as a 'Drove' does not provide certainty as to status, but it must be at least a bridleway also with the right to drive animals, and in view of the status as road recorded elsewhere, it is suggested that the status was more likely to have been a road.

G.8. **Points**: 5

H. Tithe Act 1836

H.1. **Date**: 1841

H.2. **Source**: Kent County Archive[15]

road owned by the Surveyor of Highways, but is shown in the section as Occupation Lane.

15 A transcript of the tithe apportionment for Sholden is available at: www.kentarchaeology.org.uk/research/tithes/sholden .

Sholden tithe map, west

Illustration xviii: Sholden tithe map, west

Sholden tithe map, east

Illustration xix: Sholden tithe map, east

H.3. **Description**: Original scale: not known (scale defaced); orientation: unchanged (north). The map prepared in connection with the tithe apportionment for Sholden shows the application way from A to G.

H.4. From A to D, the way is adjacent to South Stream. At A, the application way is shown open to Bridge Hill. How Bridge is not shown, as this lies on the parish boundary, and Broad Lane lies outside the parish. At D, the application way is separated from the turnpike by a broken red line (as is the continuation of the way on the opposite side of the turnpike). The application way is labelled '12' in red. In the tithe apportionment, this is collected under the title, 'Roads Walls Sewers & Beach', and is given as 'Road, Fingle-sham', with an area of 3 rods and 38 perches (0.3996 ha).

H.5. From D to G, the way is shown as an enclosed road, and is marked '15' in red. In the tithe apportionment, this also is collected under the title, 'Roads Walls Sewers & Beach', and is given as 'Pinnock Wall', with an area of 4 acres and 24 perches (1.6794 ha).

H.6. **Conclusion**: The tithe map is good evidence for the perceived public status of Finglesham Drove. It is distinctively annotated in red ink, and classified among 'Roads Walls Sewers & Beach', all of which are likely to have a public or quasi-public status. The application way between A and D is allotted the same parcel number as Bridge Hill, and may therefore be assumed to be of the same status as Bridge Hill — *i.e.* a public road.

Where appropriate, private ways were classified within the titheable section of the apportionment: e.g. there are two references to 'Driftway'.

H.7. **Points**: 4

I. Great Kent Atmospheric Railway

I.1. **Date**: 1845

I.2. **Source**: Kent County Archives[16]

16 Q/RUm/291

Great Kent Atmospheric Railway plan

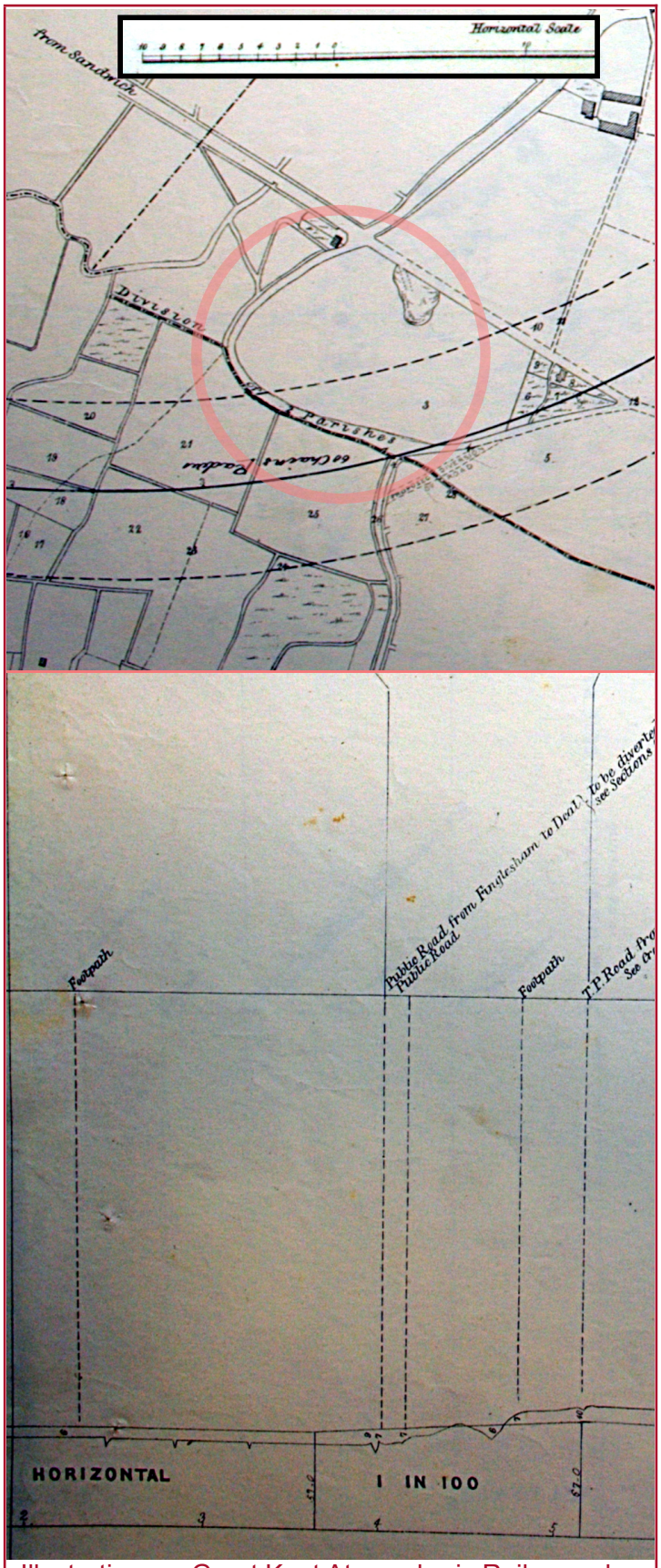
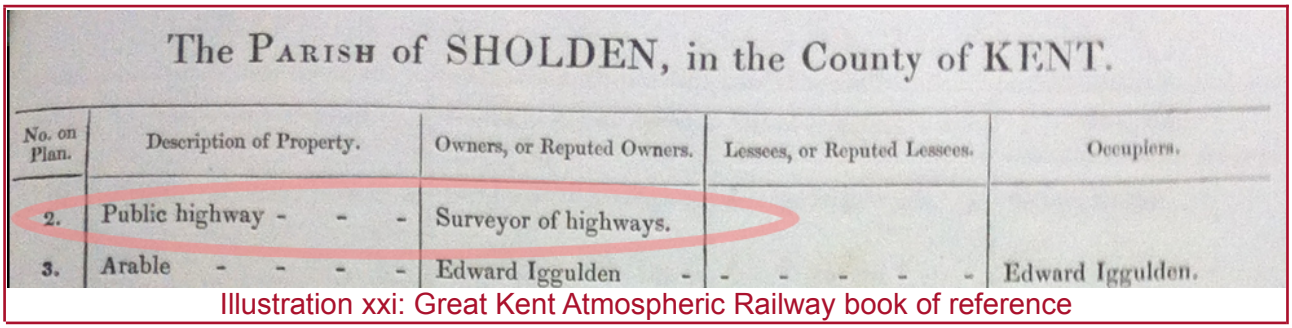


Illustration xx: Great Kent Atmospheric Railway: plan and section

Great Kent Atmospheric Railway book of reference



The PARISH of SHOLDEN, in the County of KENT.

No. on Plan.	Description of Property.	Owners, or Reputed Owners.	Lessees, or Reputed Lessees.	Occupiers.
2.	Public highway - - -	Surveyor of highways.		
3.	Arable - - - -	Edward Iggulden -	- - - - -	Edward Iggulden.

Illustration xxi: Great Kent Atmospheric Railway book of reference

I.3. **Description**: Original scale: scale marked off in chains and multiples of 10 chains; orientation: unchanged (east at top).

I.4. The alignment for the proposed Great Kent Atmospheric Railway is shown so as to cross the application way at A. The application way is assigned parcel number 2, and in the book of reference, this is described as a 'Public highway', owned by the 'Surveyor of highways'. In the section for this part of the line, the application way is given as a 'Public Road', which, along with Bridge Hill, is to be diverted to accommodate the railway (it appears that, whereas Bridge Hill would be diverted to run south of the new railway, the application way would cross it on the level).

I.5. **Conclusion**: The deposited documents for the railway are good evidence of the reputation of the application way as a public road, being described as such in the sections, and as a highway in the book of reference.

I.6. **Points**: 5

J. Ramsgate Sandwich Deal and Dover Railway

J.1. **Date**: 1861

J.2. **Source**: Kent County Archives[17]

17 Q/RUm/463

Ramsgate, Sandwich, Deal and Dover railway plan

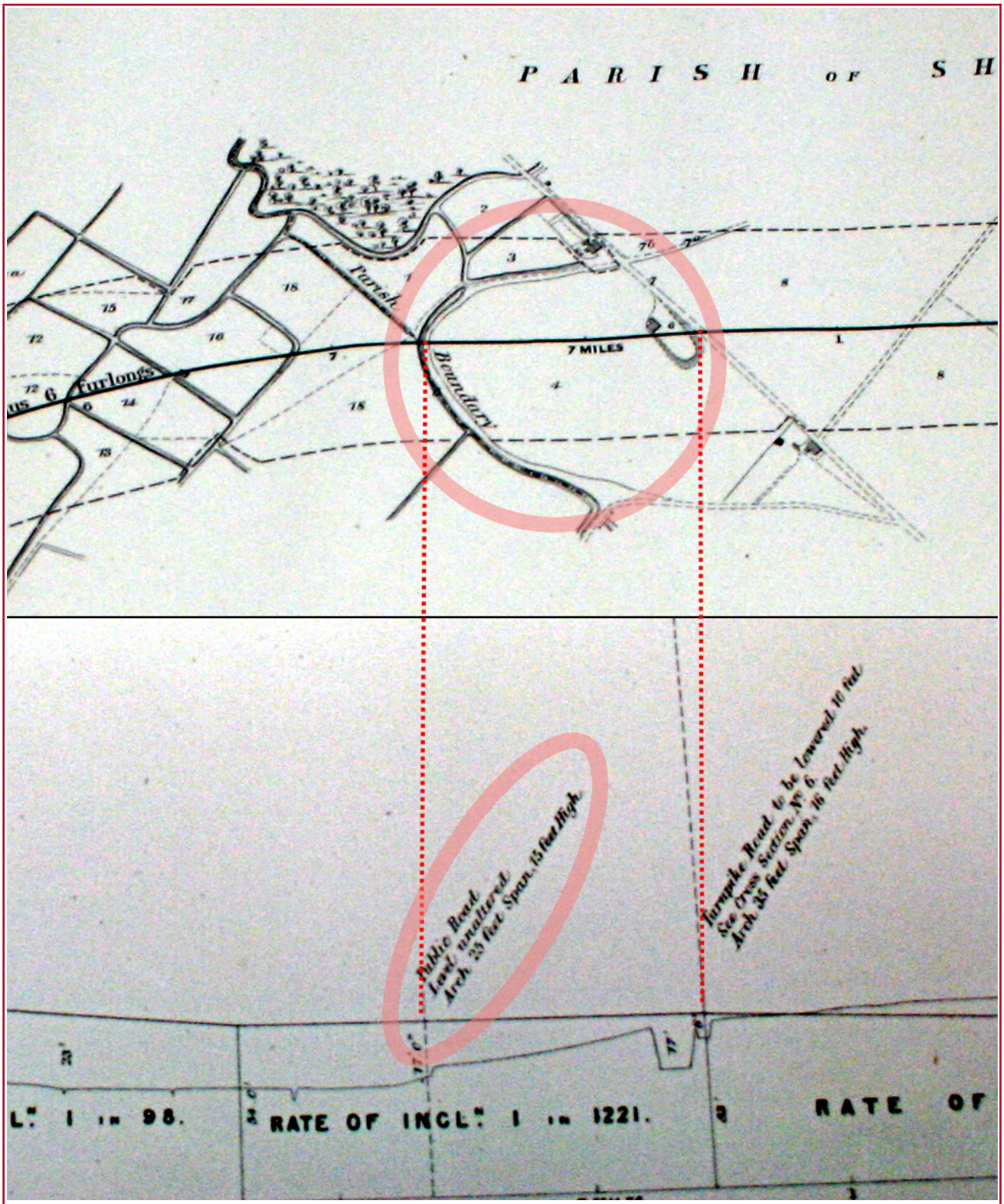
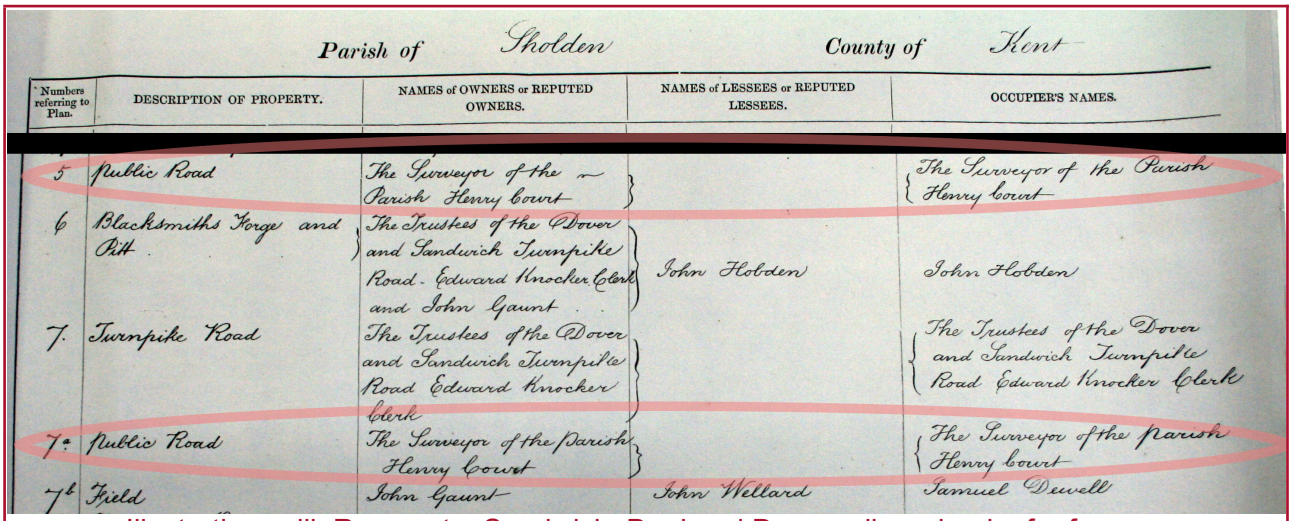


Illustration xxii: Ramsgate Sandwich Deal and Dover Railway 1861 deposited plan

Ramsgate, Sandwich, Deal and Dover railway book of reference



Parish of Sholden County of Kent

Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIER'S NAMES.
5	Public Road	The Surveyor of the Parish Henry Court		The Surveyor of the Parish Henry Court
6	Blacksmiths Forge and Pit	The Trustees of the Dover and Sandwich Turnpike Road. Edward Knocker Clerk and John Gaunt	John Hobden	John Hobden
7.	Turnpike Road	The Trustees of the Dover and Sandwich Turnpike Road Edward Knocker Clerk		The Trustees of the Dover and Sandwich Turnpike Road Edward Knocker Clerk
7a	Public Road	The Surveyor of the Parish Henry Court		The Surveyor of the Parish Henry Court
7b	Field	John Gaunt	John Wellard	Samuel Dewell

Illustration xxiii: Ramsgate, Sandwich, Deal and Dover railway book of reference

J.3. **Description**: Original scale: unknown; orientation: unchanged (north at top). The alignment for the proposed Ramsgate, Sandwich, Deal and Dover Railway is shown so as to cross the application way at C.

J.4. The application way is assigned parcel number 5 (this parcel number is barely visible on the copy), while the application way east of D is assigned 7a and in the book of reference, these are both described as 'Public Road', owned and occupied by the 'Surveyor of the Parish Henry Court'. In the section for this part of the line, the application way is given as a 'Public Road level unaltered, Arch 25 feet Span 15 feet High'.

J.5. **Conclusion**: The deposited documents for the railway are good evidence of the reputation of the application way as a public road both east and west of the main road, being described as such in the plan and (in the former case) section.

J.6. **Points**: 5

K. Dover Deal and Sandwich Railway

K.1. **Date**: 1863–65

K.2. **Source**: Kent County Archives[18]

18 Q/RUm/601

Dover Deal and Sandwich Railway 1863 plan

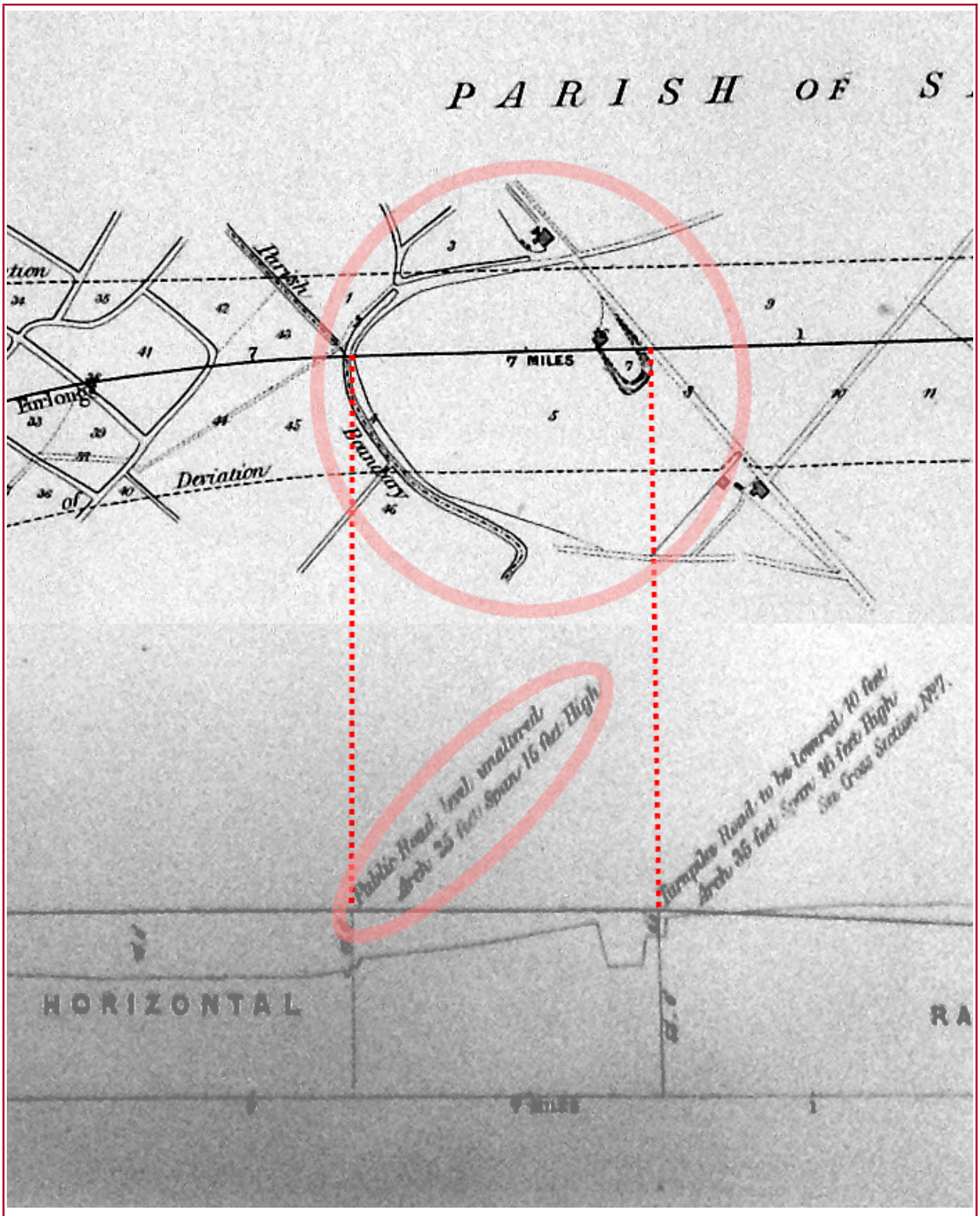
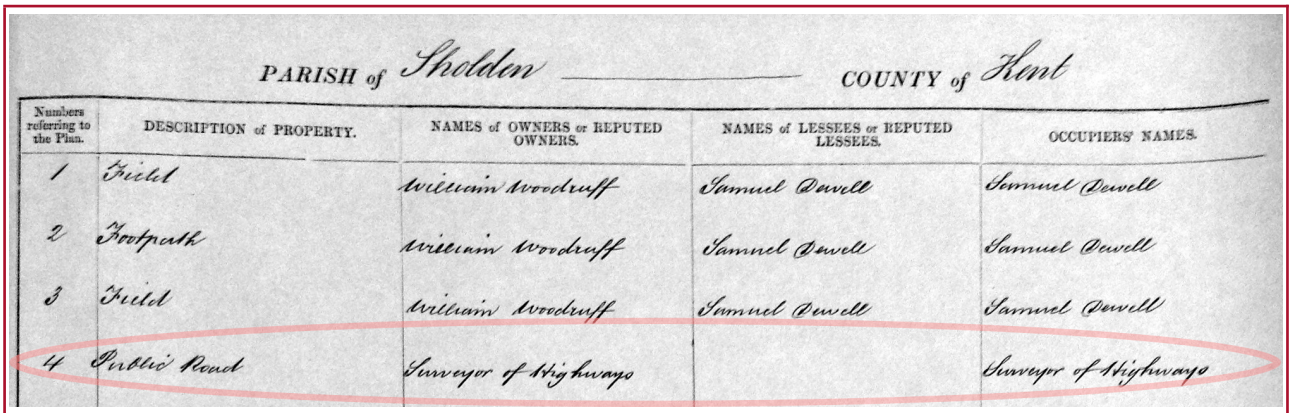


Illustration xxiv: Dover Deal and Sandwich Railway 1863 plan

Dover Deal and Sandwich Railway 1863 book of reference



PARISH of Sholden COUNTY of Kent

Numbers referring to the Plan.	DESCRIPTION of PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIERS' NAMES.
1	Field	William Woodruff	Samuel Dewell	Samuel Dewell
2	Footpath	William Woodruff	Samuel Dewell	Samuel Dewell
3	Field	William Woodruff	Samuel Dewell	Samuel Dewell
4	Public Road	Surveyor of Highways		Surveyor of Highways

Illustration xxv: Dover Deal and Sandwich Railway 1863 book of reference

K.3. **Description**: Original scale: unknown; orientation: unchanged (north at top). The Dover Deal and Sandwich Railway planned a railway on a similar alignment to the Ramsgate, Sandwich, Deal and Dover Railway, and was proposed to cross the application way at C.

K.4. In the deposit for the 1863–64 session, the application way is assigned parcel number 4. In the book of reference, this is described as 'Public Road', owned and occupied by the 'Surveyor of Highways'. In the section for this part of the line, the application way is given as a 'Public Road level unaltered, Arch 25 feet Span 15 feet High'.

K.5. Identical deposits were made for 1864–65 and 1865–66, save that in the last year, the road is given in the ownership and occupation of the ‘Surveyor of Highways and Waywarden’.

K.6. **Conclusion**: The deposited documents for the railway are good evidence of the reputation of the application way as a public road west of the main road, being described as such in the plan and section.

K.7. **Points**: 1 (being contemporary with the Ramsgate Sandwich Deal and Dover Railway at item IV.J above, which is separately scored)

L. Walmer, Deal and Adisham Railway

L.1. **Date**: 1872

L.2. **Source**: Kent County Archives[19]

19 Q/RUm/466, 483, 505

Walmer, Deal and Adisham Railway plan and section

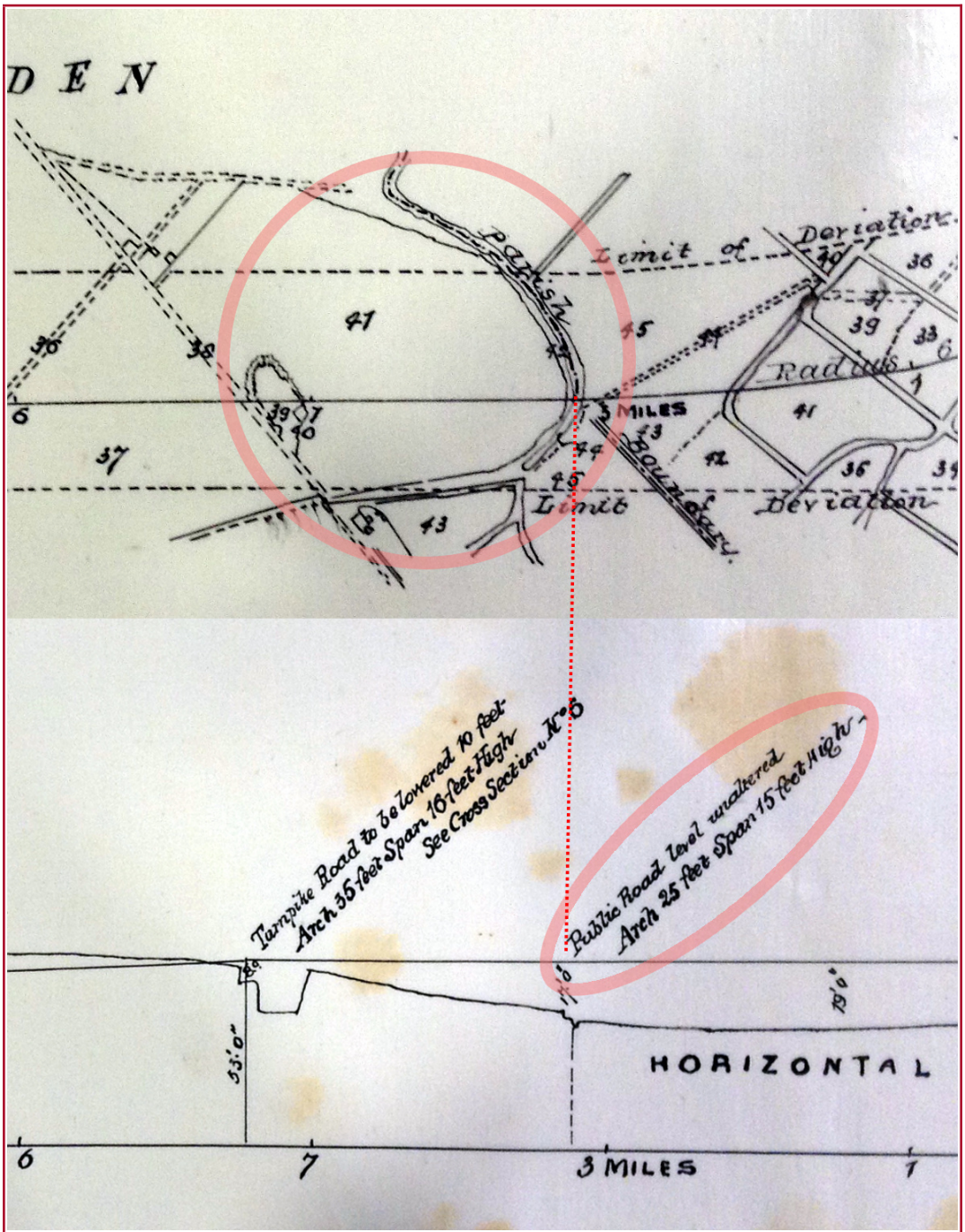
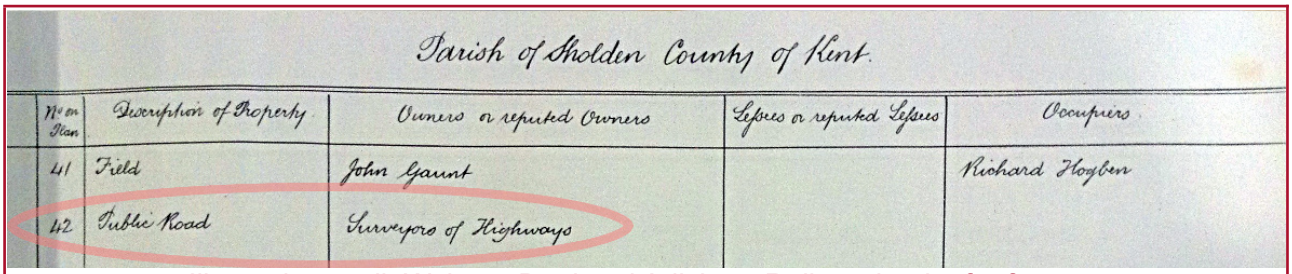


Illustration xxvi: Walmer, Deal and Adisham Railway: plan and section

Walmer, Deal and Adisham Railway book of reference



Parish of Sholden County of Kent.

No on Plan	Description of Property	Owners or reputed Owners	Lessees or reputed Lessees	Occupiers
41	Field	John Gaunt		Richard Hogben
42	Public Road	Surveyors of Highways		

Illustration xxvii: Walmer, Deal and Adisham Railway book of reference

L.3. **Description**: Original scale: unknown; orientation: unchanged (south at top). The alignment for the proposed Walmer Deal and Adisham Railway is shown so as to cross the application way at C.

L.4. The application way is assigned parcel number 42, and in the book of reference, this is described as a 'Public Road', owned by the 'Surveyor of Highways'. In the section for this part of the line, the application way is given as a 'Public Road level unaltered, Arch 25 feet Span 15 feet High'.

L.5. **Conclusion**: The deposited documents for the railway are good evidence of the reputation of the application way as a public road, being described as such in the plan and sections.

L.6. The Bill was reported by one of the Examiners of Petitions for Private Bills to the Select Committee on Standing Orders as non-compliant with Standing Orders[20] and subsequently certified by the Examiners as such[21]. The Bill was not proceeded with.

L.7. **Points**: 1 (being approximately contemporary with the Ramsgate Sandwich Deal and Dover Railway at item IV.J above, which is separately scored)

M. Ordnance Survey County Series first edition 1:2,500

M.1. **Date**: 1872

M.2. **Source**: British Library

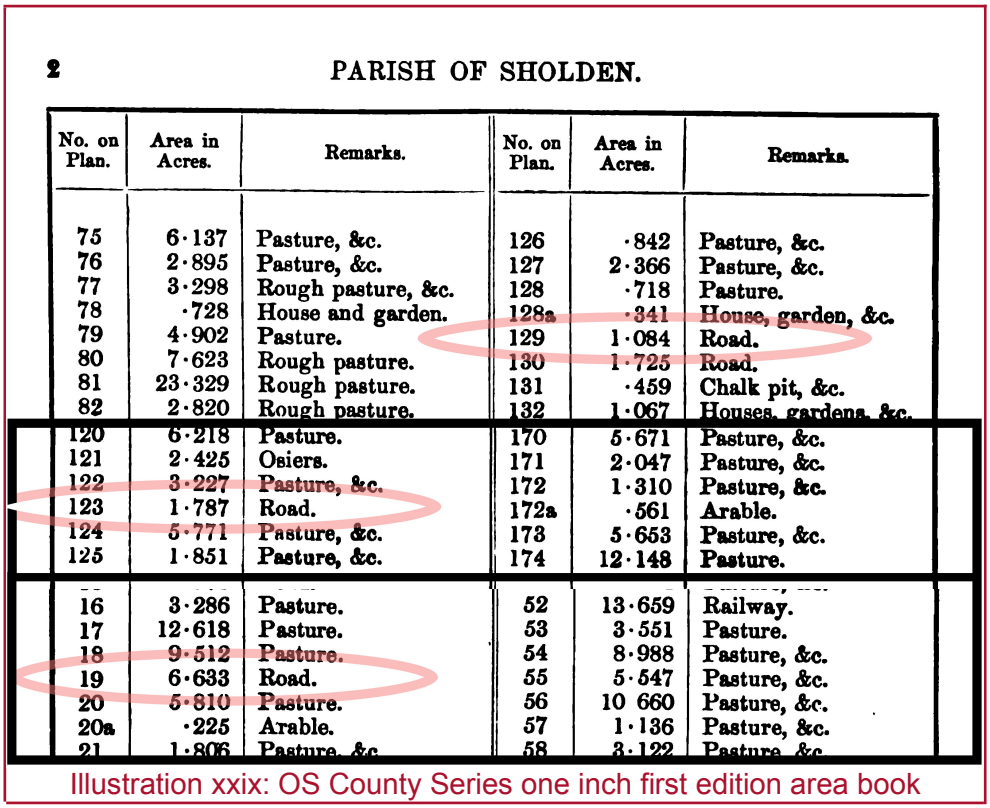
20 House of Commons, *Official Report*, 12 February 1872, vol.127, p.24.

21 House of Commons, *Official Report*, 7–8 March 1872, vol.127, pp.81–82.

OS County Series first edition

Illustration xxviii: OS 1:2,500 County Series 1st edition

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



2 PARISH OF SHOLDEN.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
75	6·137	Pasture, &c.	126	·842	Pasture, &c.
76	2·895	Pasture, &c.	127	2·366	Pasture, &c.
77	3·298	Rough pasture, &c.	128	·718	Pasture.
78	·728	House and garden.	128a	·341	House, garden, &c.
79	4·902	Pasture.	129	1·084	Road.
80	7·623	Rough pasture.	130	1·725	Road.
81	23·329	Rough pasture.	131	·459	Chalk pit, &c.
82	2·820	Rough pasture.	132	1·067	Houses, gardens, &c.
120	6·218	Pasture.	170	5·671	Pasture, &c.
121	2·425	Osiers.	171	2·047	Pasture, &c.
122	3·227	Pasture, &c.	172	1·310	Pasture, &c.
123	1·787	Road.	172a	·561	Arable.
124	5·771	Pasture, &c.	173	5·653	Pasture, &c.
125	1·851	Pasture, &c.	174	12·148	Pasture.
16	3·286	Pasture.	52	13·659	Railway.
17	12·618	Pasture.	53	3·551	Pasture.
18	9·512	Pasture.	54	8·988	Pasture, &c.
19	6·633	Road.	55	5·547	Pasture, &c.
20	5·810	Pasture.	56	10 660	Pasture, &c.
20a	·225	Arable.	57	1·136	Pasture, &c.
21	1·806	Pasture, &c.	58	3·122	Pasture, &c.

Illustration xxix: OS County Series one inch first edition area book

M.3. **Description**: Original scale: 1:2,500; orientation: unchanged (north) — composite photographic image of quadrant photographs of sheets XLVIII/15 & 11.

M.4. The Ordnance Survey County Series first edition 1:2,500 map shows the application way as an enclosed way, manually coloured sienna between A and , and allocated distinct parcel numbers, given in illustration xxix. In the area book of reference for the first edition map, each of these parcel numbers is listed as having the description of 'Road'.

Section	Parcel no.	Area (ha)	Area book
A–D	129	0.439	Road
D–between F and G	123	0.723	Road
Between F and G–Blue Pigeons (Worth)	19	2.684	Road

M.5. **Conclusion**: The application of colour to the application way between A and D indicates that this part of the way was metalled. The entries in the area book (published alongside the first edition map) show the application way between A and beyond G as a 'Road', provides some support for its status as a public highway.

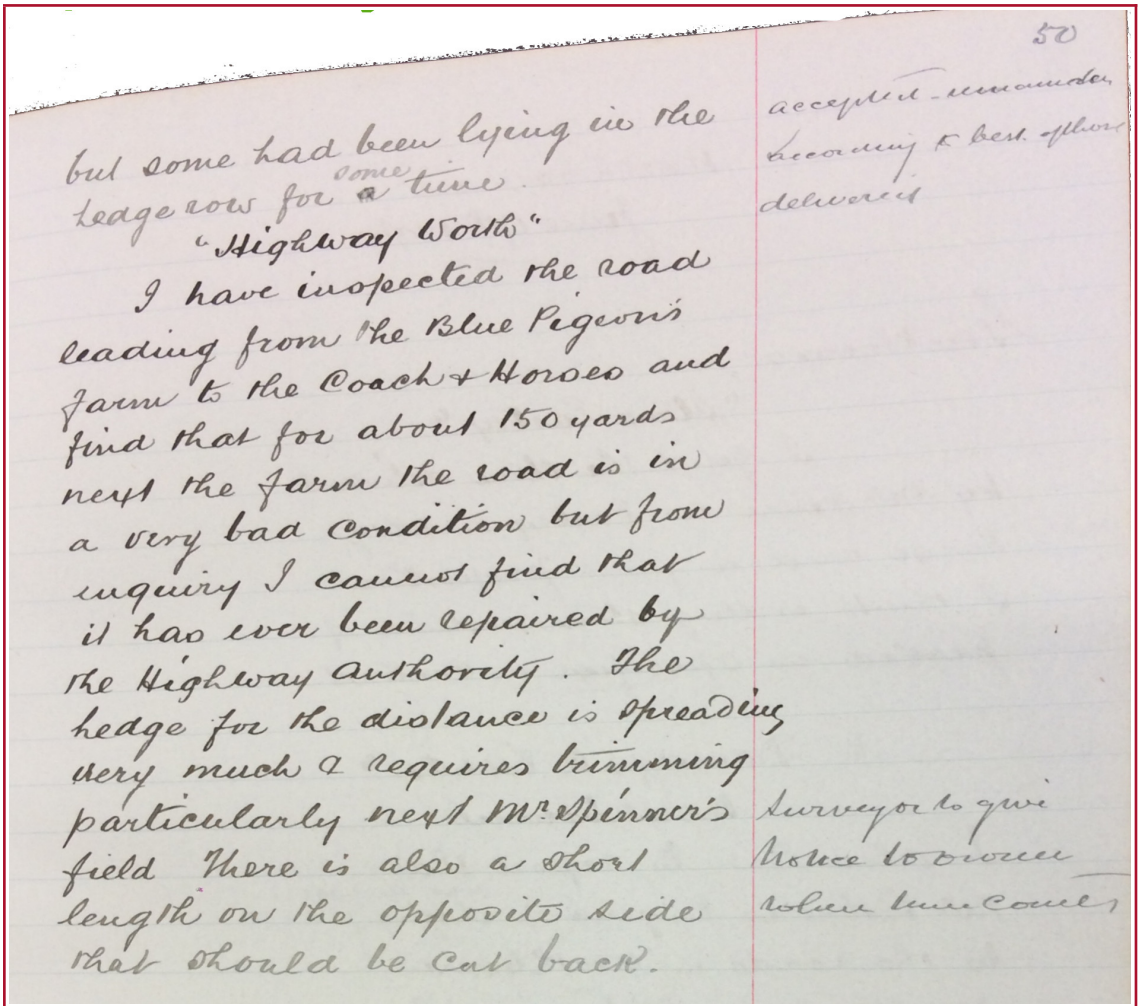
M.6. **Points**: 1

N. Eastry Rural District Council highways report book

N.1. **Date**: 1896–1932

N.2. **Source**: Kent County Archives[22], British Newspaper Archive

Eastry RDC report book, 26 May 1896



but some had been lying in the hedge row for some time.

"Highway Works"

I have inspected the road leading from the Blue Pigeons farm to the Coach + Horses and find that for about 150 yards next the farm the road is in a very bad condition but from enquiry I cannot find that it has ever been repaired by the Highway authority. The hedge for the distance is spreading very much & requires trimming particularly next Mr Spinner's field There is also a short length on the opposite side that should be cut back.

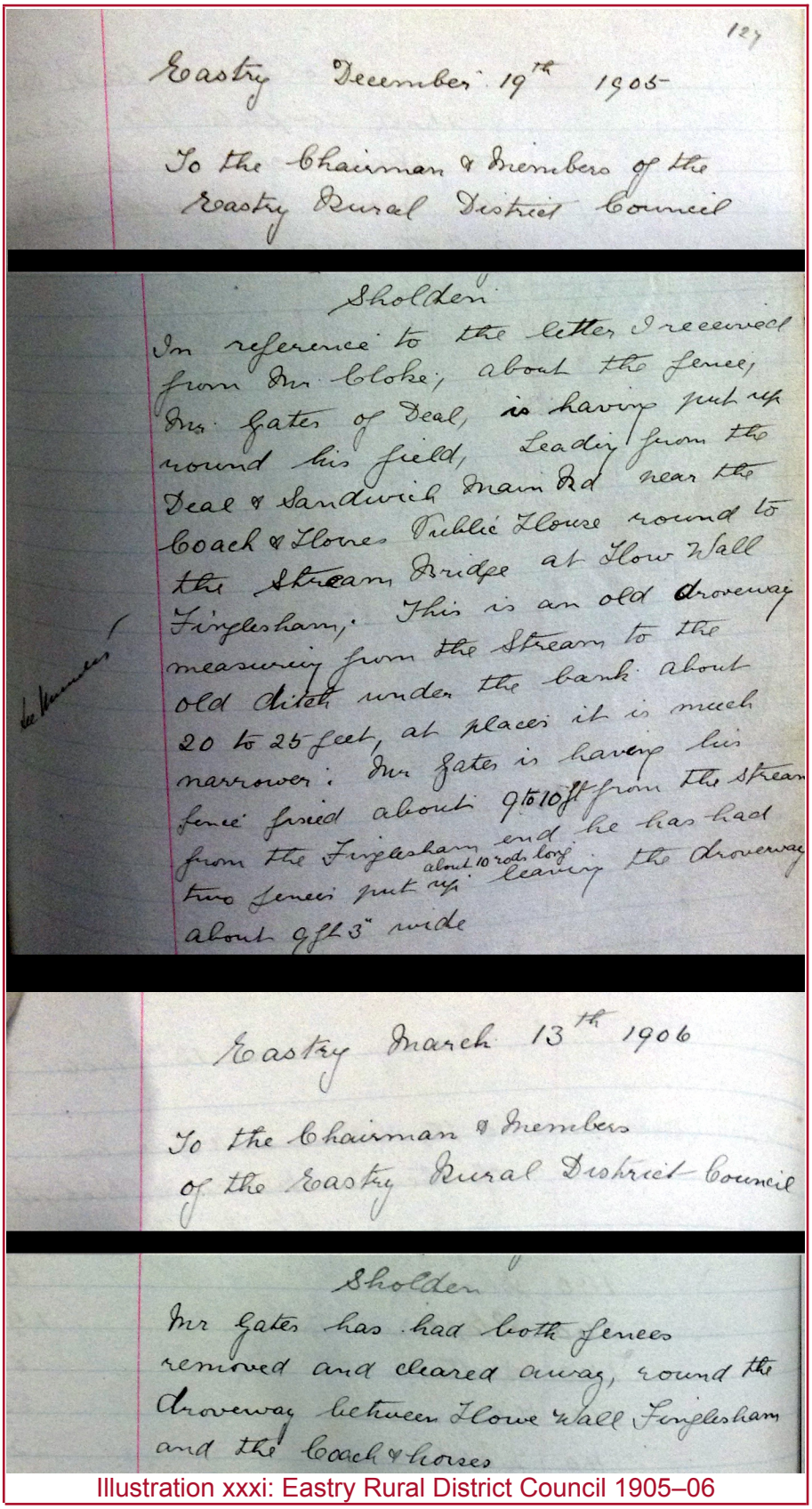
50

accepted - recommended
trimming & best efforts
delivered

Surveyor to give
notice to owner
when time comes

Illustration xxx: Eastry Rural District Council 1896

22 RD/Ea/H*n*



127

Eastry December 19th 1905

To the Chairman & Members of the Eastry Rural District Council

Sholden

In reference to the letter I received from Mr Cloke, about the fence, Mrs Gates of Deal, is having put up round his field, Leading from the Deal & Sandwich Main Rd near the Coach & Horses Public House round to the Stream Bridge at Flow Wall Finglesham. This is an old droveway measuring from the Stream to the old ditch under the bank about 20 to 25 feet, at places it is much narrower: Mr Gates is having his fence fixed about 9 to 10 ft from the Stream from the Finglesham end he has had two fences put up about 10 rods long leaving the droveway about 9ft 3" wide

Eastry March 13th 1906

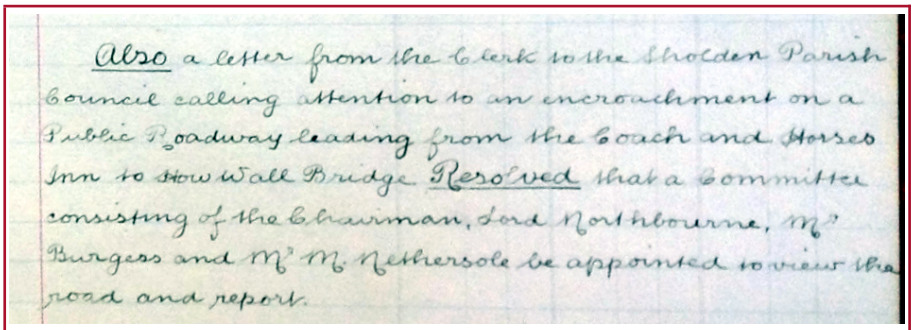
To the Chairman & Members of the Eastry Rural District Council

Sholden

Mr Gates has had both fences removed and cleared away, round the droveway between Flowe Wall Finglesham and the Coach & Horses

Illustration xxxi: Eastry Rural District Council 1905–06

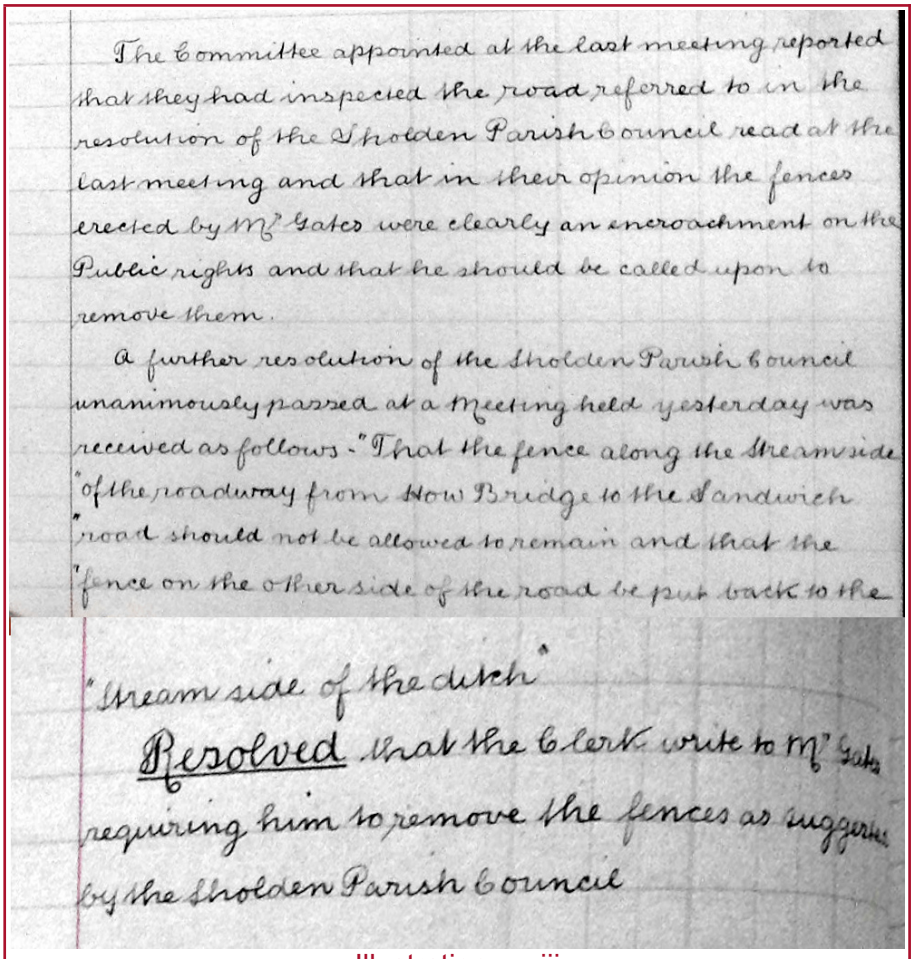
Eastry RDC minute, 19 December 1905



Also a letter from the Clerk to the Sholden Parish Council calling attention to an encroachment on a Public Roadway leading from the Coach and Horses Inn to Stow Wall Bridge Resolved that a Committee consisting of the Chairman, Lord Northbourne, Mr Burgess and Mr M Nethersole be appointed to view the road and report.

Illustration xxxii

Eastry RDC minute, 2 January 1906



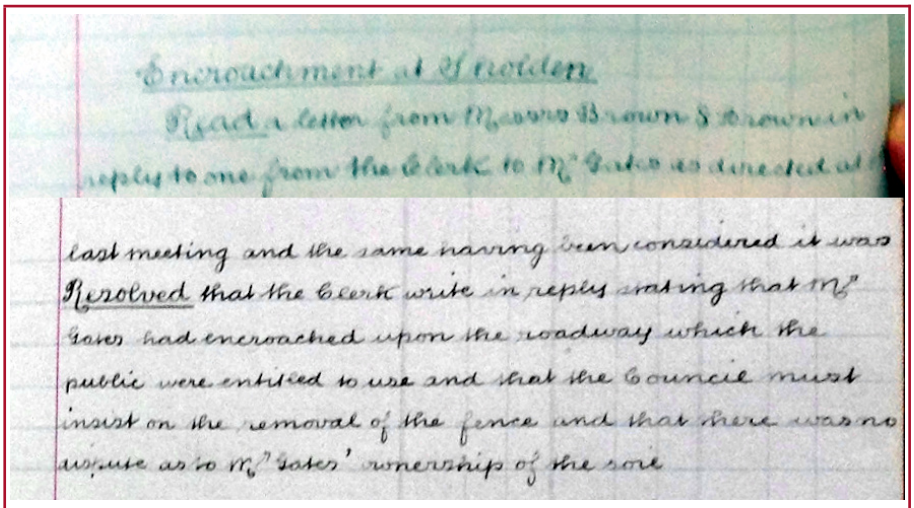
The Committee appointed at the last meeting reported that they had inspected the road referred to in the resolution of the Sholden Parish Council read at the last meeting and that in their opinion the fences erected by Mr Gates were clearly an encroachment on the Public rights and that he should be called upon to remove them.

A further resolution of the Sholden Parish Council unanimously passed at a Meeting held yesterday was received as follows - "That the fence along the Streamside "of the roadway from Stow Bridge to the Sandwich "road should not be allowed to remain and that the "fence on the other side of the road be put back to the "Stream side of the ditch"

Resolved that the Clerk write to Mr Gates requiring him to remove the fences as suggested by the Sholden Parish Council

Illustration xxxiii

Eastry RDC minute, 16 January 1906



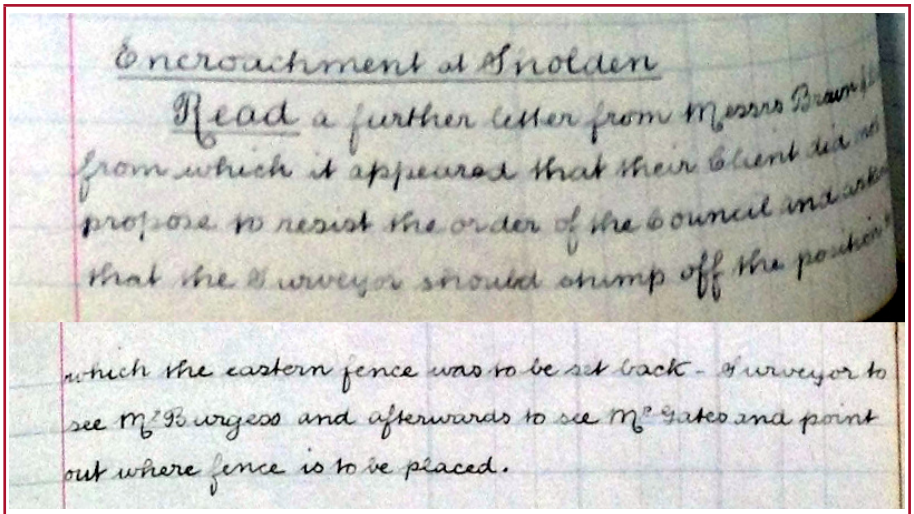
Encroachment at Wolden

Read a letter from Messrs Brown & Brown in reply to one from the Clerk to Mr Gates as directed at

last meeting and the same having been considered it was Resolved that the Clerk write in reply stating that Mr Gates had encroached upon the roadway which the public were entitled to use and that the Council must insist on the removal of the fence and that there was no dispute as to Mr Gates' ownership of the soil

Illustration xxxiv

Eastry RDC minute, 30 January 1906



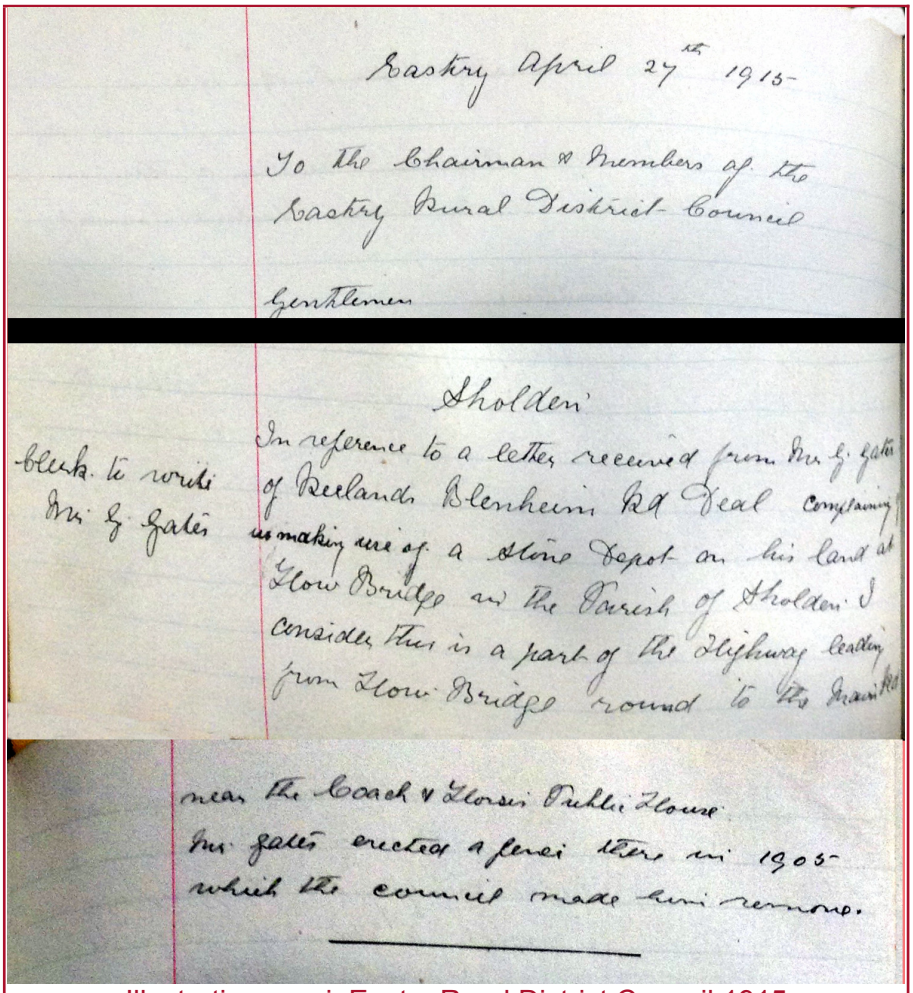
Encroachment at Wolden

Read a further letter from Messrs Brown from which it appeared that their Client did not propose to resist the order of the Council and asked that the Surveyor should stump off the position

which the eastern fence was to be set back - Surveyor to see Mr Burgess and afterwards to see Mr Gates and point out where fence is to be placed.

Illustration xxxv

Eastry RDC report book, 27 April 1915



Eastry April 27th 1915.

To the Chairman & Members of the Eastry Rural District Council

Gentlemen

Sholden

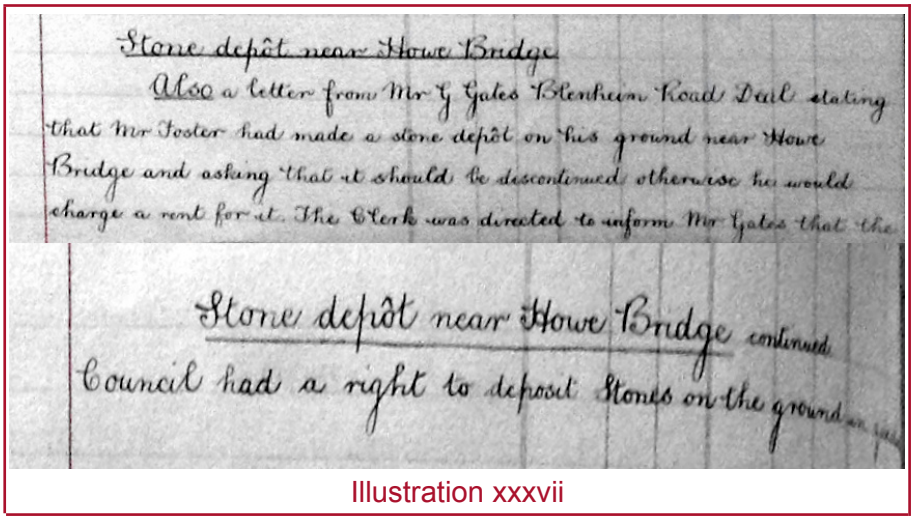
Clerk to write Mr. G. Gates

In reference to a letter received from Mr. G. Gates of Beelands Blenheim Rd Deal complaining as making use of a stone depot on his land at Howe Bridge in the Parish of Sholden I consider this is a part of the Highway leading from Howe Bridge round to the main Rd near the Coach & Horses Public House

Mr. Gates erected a fence there in 1905 which the council made him remove.

Illustration xxxvi: Eastry Rural District Council 1915

Eastry RDC minute book, 27 April 1915



Stone depôt near Howe Bridge

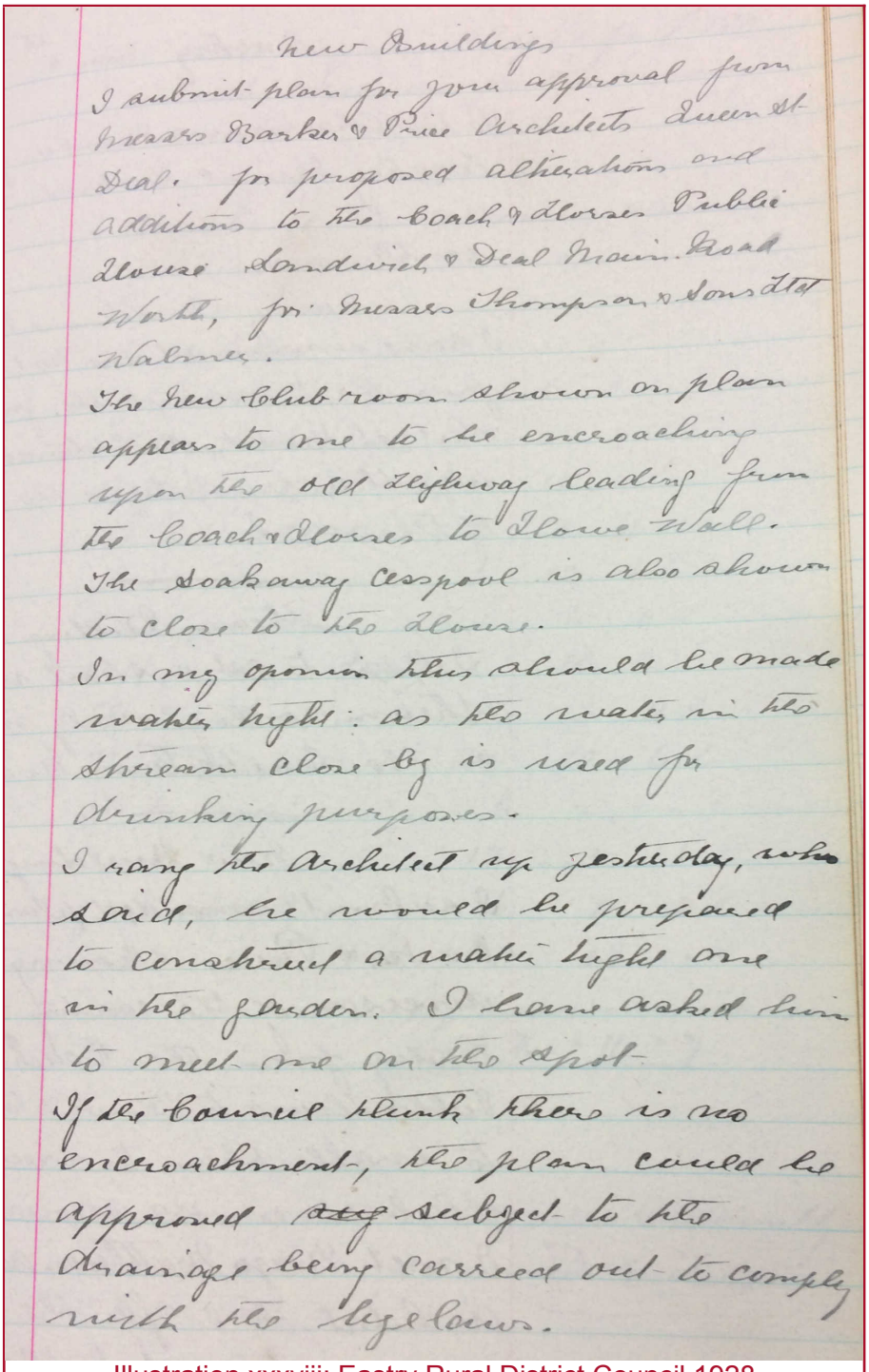
Also a letter from Mr G Gates Blenheim Road Deal stating that Mr Foster had made a stone depôt on his ground near Howe Bridge and asking that it should be discontinued otherwise he would charge a rent for it. The Clerk was directed to inform Mr Gates that the

Stone depôt near Howe Bridge continued

Council had a right to deposit Stones on the ground as

Illustration xxxvii

Eastry RDC report book, 23 October 1928



New Buildings

I submit plans for your approval from Messrs Barker & Price Architects Queen St Deal. for proposed alterations and additions to the Coach & Horses Public House Sandwich & Deal Main Road Worth, for Messrs Thompson & Sons Ltd Walmer.

The new Club room shown on plan appears to me to be encroaching upon the old highway leading from the Coach & Horses to Howe Wall.

The soakaway cesspool is also shown to close to the House.

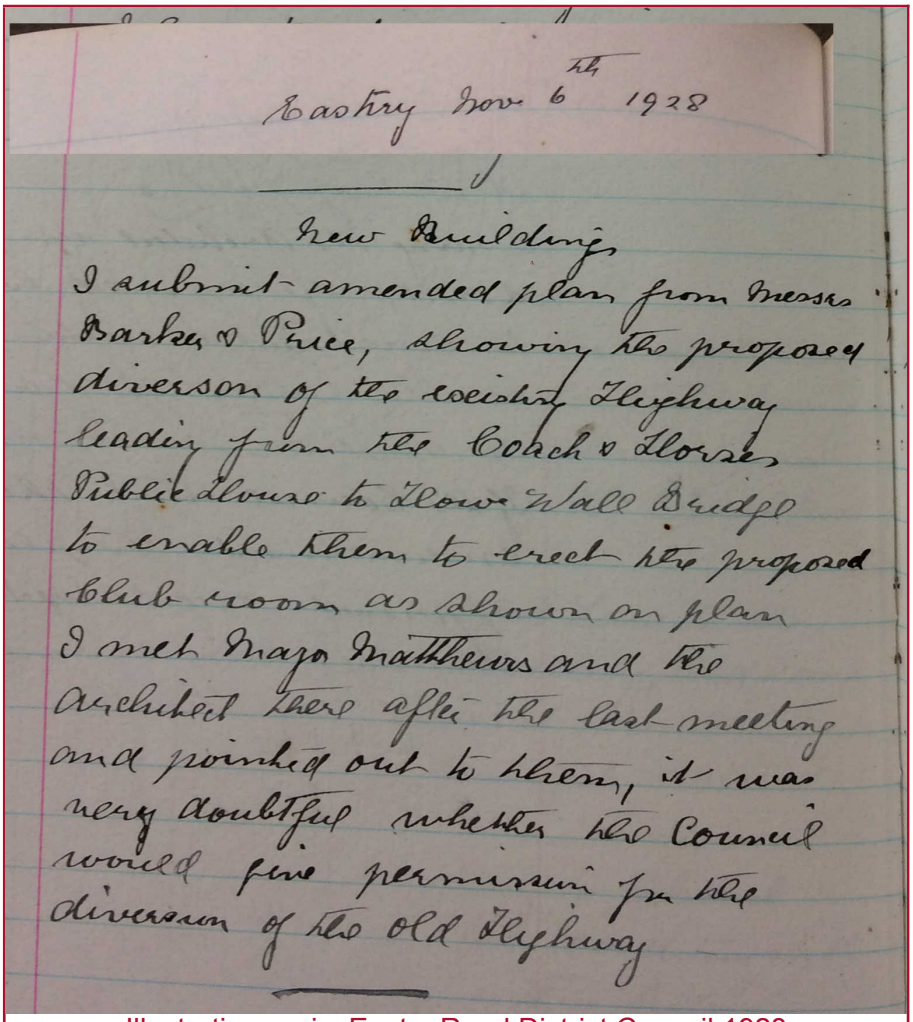
In my opinion this should be made water tight: as the water in the Stream close by is used for drinking purposes.

I rang the Architect up yesterday, who said, he would be prepared to construct a water tight one in the garden. I have asked him to meet me on the spot.

If the Council think there is no encroachment, the plan could be approved ~~etc~~ subject to the drainage being carried out to comply with the bye laws.

Illustration xxxviii: Eastry Rural District Council 1928

Report, 6 November 1928



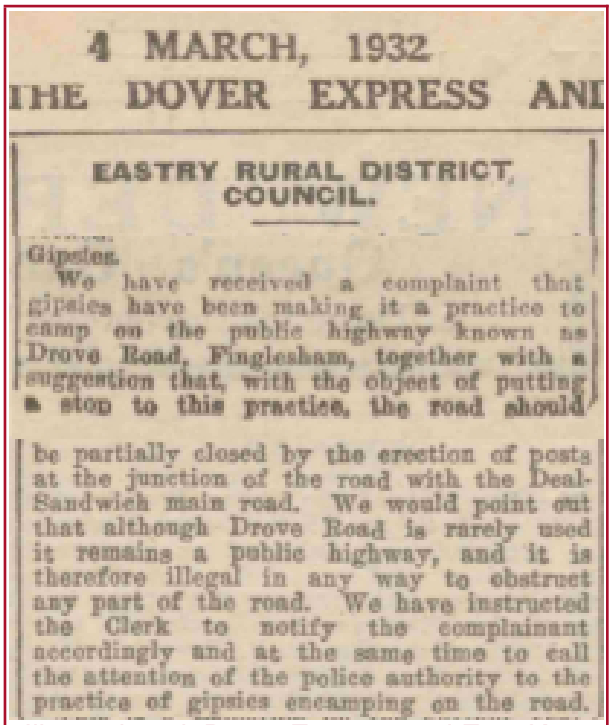
Eastry Nov 6th 1928

New Buildings

I submit amended plan from Messrs Barker & Price, showing the proposed diversion of the existing Highway leading from the Coach & Horses Public House to Flower Wall Bridge to enable them to erect the proposed Club room as shown on plan I met Major Matthews and the Architect there after the last meeting and pointed out to them, it was very doubtful whether the Council would give permission for the diversion of the old Highway

Illustration xxxix: Eastry Rural District Council 1928

Eastry RDC report, 1 March 1932



4 MARCH, 1932
THE DOVER EXPRESS AND

EASTRY RURAL DISTRICT COUNCIL.

Gipsies.

We have received a complaint that gipsies have been making it a practice to camp on the public highway known as Drove Road, Finglesham, together with a suggestion that, with the object of putting a stop to this practice, the road should be partially closed by the erection of posts at the junction of the road with the Deal-Sandwich main road. We would point out that although Drove Road is rarely used it remains a public highway, and it is therefore illegal in any way to obstruct any part of the road. We have instructed the Clerk to notify the complainant accordingly and at the same time to call the attention of the police authority to the practice of gipsies encamping on the road.

Illustration xl: Dover Express and East Kent News, 4 March 1932

N.3. **Description**: The Eastry Rural District Council was the highway authority for all but county roads until 1929. The reports of the surveyor to the Eastry Rural District Council, contained in a series of report books, include a number of references to the application way, often also recorded in the minutes of the council.

N.4. Report of the assistant surveyor dated 26 May 1896[23]:

> Highway Worth
>
> I have inspected the road leading from the Blue Pigeons Farm to the Coach & Horses and find that for about 150 yards next the farm the road is in a very bad condition but from inquiry I cannot find that it has ever been repaired by the highway authority. The hedge for the distance is spreading very much and requires trimming particularly next Mr Spinner's field. There is also a short length on the opposite side that should be cut back.

The report is annotated: 'Surveyor to give notice to owner when time comes'.

N.5. Report dated 19 December 1905[24]:

> Sholden
>
> In reference to the letter I received from Mr Cloke, about the fence, Mr Gates of Deal, is having put up around his field, leading from the Deal & Sandwich Main Road near the Coach & Horses Public House round to the Stream Bridge at How Wall Finglesham. This is an old droveway measuring from the stream to the old ditch under the bank about 20 to 25 feet, at places it is much narrower. Mr Gates is having his fence fixed about 9 to 10 feet from the stream

23 RD/Ea/H12, p.50.

24 RD/Ea/H5, p.127.

> from the Finglesham end and he has had two fences put up about 10 rods long leaving the drove way about 9ft 3" wide.

N.6. The minute of the meeting records[25]:

> Also a letter from the Clerk to the Sholden Parish Council calling attention to an encroachment on a Public Roadway leading from the Coach and Horses Inn to How Wall Bridge. Resolved that a committee consisting of the Chairman, Lord Northbourne, Mr Burgess and Mr M. Nethersole be appointed to view the road and report.

N.7. Further minutes record as follows[26]:

N.8. On 2 January 1906:

> The Committee appointed at the last meeting reported that they had inspected the road referred to in the resolution of the Sholden Parish Council read at the last meeting and that in their opinion the fences erected by Mr Gates were clearly an encroachment on the Public rights and that he should be called upon to remove them.
>
> A further resolution of the Sholden Parish Council unanimously passed at a meeting held yesterday was received as follows:
>
> > That the fence along the streamside of the roadway from How Bridge to the Sandwich Road should not be allowed to remain and that the fence on the other side of the road be put back to the stream side of the ditch.
>
> Resolved that the Clerk write to Mr Gates requiring him to remove the fences as suggested by the Sholden Parish Council.

N.9. On 16 January 1906:

> Encroachment at Sholden
>
> Read a letter from Messrs Brown & Brown in reply to one from the Clerk to Mr Gates as directed at the last meeting and the same having been considered it was Resolved that the Clerk write in reply stating that Mr Gates had encroached upon the roadway which the public was entitled to use and that the Council must insist on the removal of the fence and that there was no dispute as to Mr Gates' ownership of the soil.

N.10. On 30 January 1906:

> Encroachment at Sholden
>
> Read a further letter from Messrs Brown and Brown from which it appeared that their Client did not propose to resist the order of the Council and asked that the Surveyor should stump off the position to which the eastern fence was to be set back — Surveyor to see Mr Burgess and afterwards to see Mr Gates and point out where fence is to be placed.

N.11. A further entry appears in the Surveyor's report dated 13 March 1906[27]:

> Sholden

25 RD/Ea/Am4, p.39.

26 RD/Ea/Am4, pp.41, 43 and 45.

27 RD/Ea/H5, p.140.

> Mr Gates has had both fences removed and cleared away, round the droveway between Howe Wall Finglesham and the Coach & Horses.

N.12. Report dated 27 April 1915[28]:

> Sholden
>
> In reference to a letter received from Mr G Gates of Redlands Blenheim Rd Deal complaining of us making use of a stone depot on his land at How Bridge in the Parish of Sholden. I consider this is a part of the Highway leading from How Bridge round to the Main Rd near the Coach & Horses Public House. Mr Gates erected a fence there in 1905 which the council made him remove.

The report is annotated: 'Clerk to write Mr G Gates'.

N.13. The minute of the meeting records[29]:

> Stone depot near Howe Bridge
>
> Also a letter from Mr G Gates Blenheim Road Deal stating that Mr Foster had made a stone depot on his ground near Howe Bridge and asking that it should be discontinued otherwise he would charge a rent for it. The Clerk was directed to inform Mr Gates that the Council had a right to deposit Stones on the ground [in question?]

N.14. Report dated 23 October 1928[30]:

> New Buildings
>
> I submit plan for your approval from Messrs Barker & Price Architects Queen St Deal for proposed alterations and additions to the Coach & Horses Public House Sandwich & Deal Main Road Worth, for Messrs Thompson and Sons Ltd Walmer.
>
> The new Club room shown on plan appears to me to be encroaching upon the old Highway leading from the Coach & Horses to Howe Wall.
>
> …
>
> I have asked him to meet me on the spot. If the Council think there is no encroachment, the plan could be approved subject to the drainage being carried out to comply with the byelaws.

N.15. A further entry appears in the report dated 6 November 1928:

> New Building
>
> I submit amended plan from Messrs Barker & Price, shwoing the proposed diversion of the existing Highway leading from the Coach & Horses Public House to How Wall Bridge to enable them to erect the proposed Club room as shown on plan. I met Major Matthews and the architect there after the last meeting and pointed out to them, it was very doubtful whether the Council would give permission for the diversion of the old Highway.

N.16. Notwithstanding the surveyor's comments, the council subsequently agreed to a diversion order for the purpose sought — see Diversion order (item IV.P below).

28 RD/Ea/H7

29 RD/Ea/Am7, p.135.

30 RD/Ea/H27

N.17. A report of a meeting of the Council held on 1 March 1932 appears in the *Dover Express and East Kent News* of 4 March[31]. It states:

> **Gipsies**
>
> We have received a complaint that gipsies have been making it a practice to camp on the public highway known as Drove Road, Finglesham, together with a suggestion that, with the object of putting a stop to this practice, the road should be partially closed by the erection of posts at the junction of the road with the Deal-Sandwich main road. We would point out that although Drove Road is rarely used it remains a public highway, and it is therefore illegal in any way to obstruct any part of the road. We have instructed the Clerk to notify the complainant accordingly and at the same time to call the attention of the police authority to the practice of gipsies encamping on the road.

N.18. **Conclusion**: The report of 26 May 1896 refers to a way from 'Blue Pigeons Farm to the Coach & Horses' as one which had not, in the past, been repaired by the highway authority. But the decision to serve notices on the adjoining owners of land to cut back their hedges demonstrates that the way was recognised to be a public way. The way identified in the report is the continuation of the application way north-northwest from G to Pigeon House Farm in Worth.

N.19. The report of 19 December 1905 unambiguously identifies the application way, and refers to an encroachment perpetrated by a neighbouring landowner, a Mr Gates. The surveyor was authorised to deal with the encroachment, and a report to a subsequent meeting confirms that the offending fences had been removed. The report describes the application way as an 'old droveway', and the reports confirm the status of the way as at least a bridleway subject also to rights to drive animals.

N.20. The report of 27 April 1915 does not precisely identify the location of the 'stone depot', but the correspondent, Mr G Gates, is presumably the same local landowner who tried to restrict the width of the application way in 1905, and was required to remove his fences. It seems likely that the stone depot was maintained on the application way (being lightly used), and inspired the correspondence. The surveyor refers to a highway 'leading from How Bridge round to the Main Rd near the Coach & Horses Public House', and this description fits only the application way, in preference to Bridge Hill. It seems that the clerk to the council wrote to Mr Gates on the strength of the 'misunderstanding', and the report therefore provides confirmation that the council at this date regarded the application way as a public highway.

N.21. The reports of 23 October and 6 November 1928 confirm the status of the application way, between A and D, as the 'old Highway leading from the Coach & Horses to Howe Wall' — sufficient to precipitate the proprietor of the Coach & Horses into seeking a minor diversion of the application way to enable an extension to the premises (see item IV.P below).

N.22. The 4 March 1932 report of the council's action in response to a complaint of gypsies camped in the application way confirms that the council regarded it as a public highway for all purposes, but that it was now 'rarely used'.

N.23. **Points**: 5

31 www.britishnewspaperarchive.co.uk/viewer/bl/0000330/19320304/044/0011 (££).

O. Finance (1909–1910) Act 1910

O.1. **Date**: 1911

O.2. **Source**: National Archives[32]

32 IR 124/5/77 (Ordnance Survey map sheet LVIII/15), IR 124/5/73 (Ordnance Survey map sheet LVIII/11)

Finance Act Kent sheet LXVIII/15 (est)

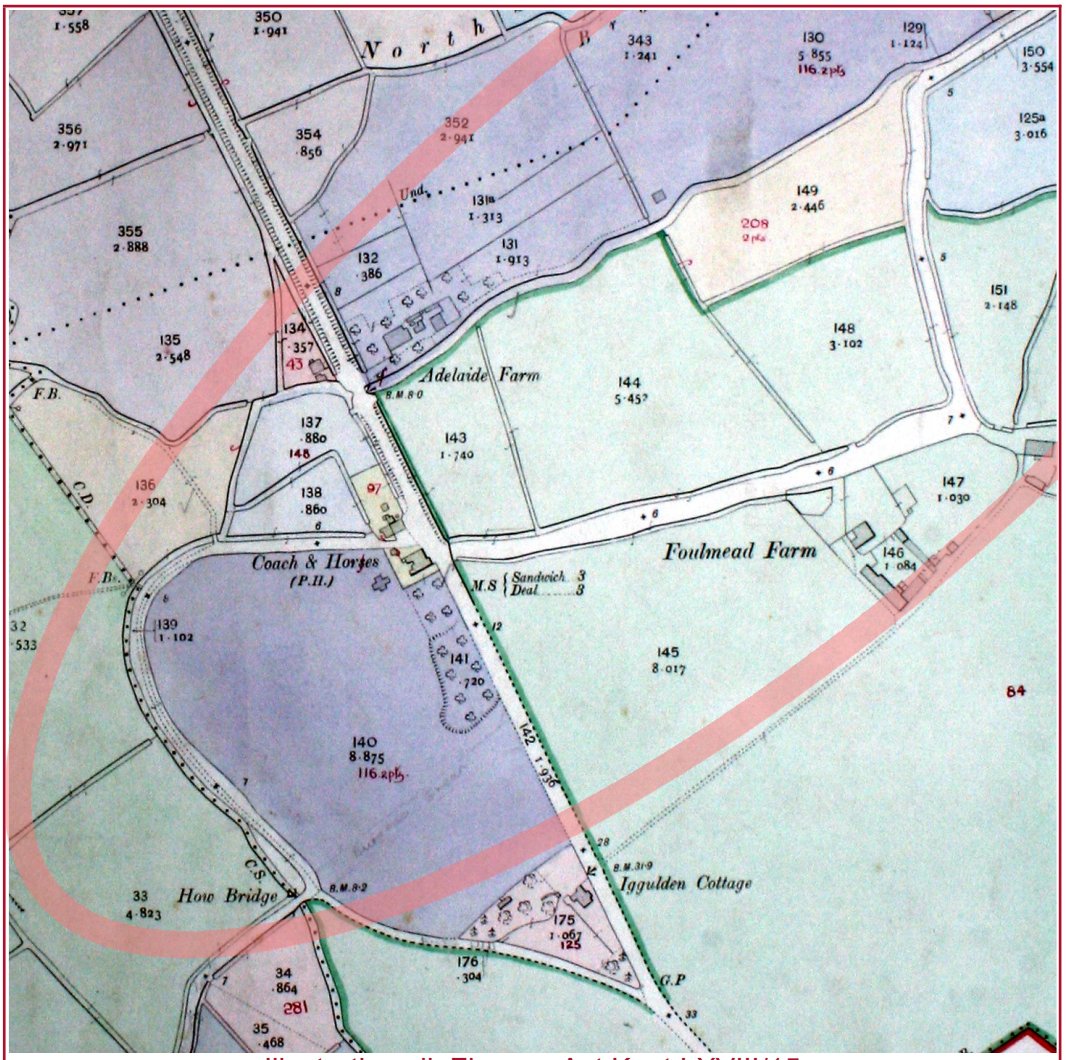


Illustration xli: Finance Act Kent LXVIII/15

Finance Act Kent sheet LXVIII/11 & 15 (east)

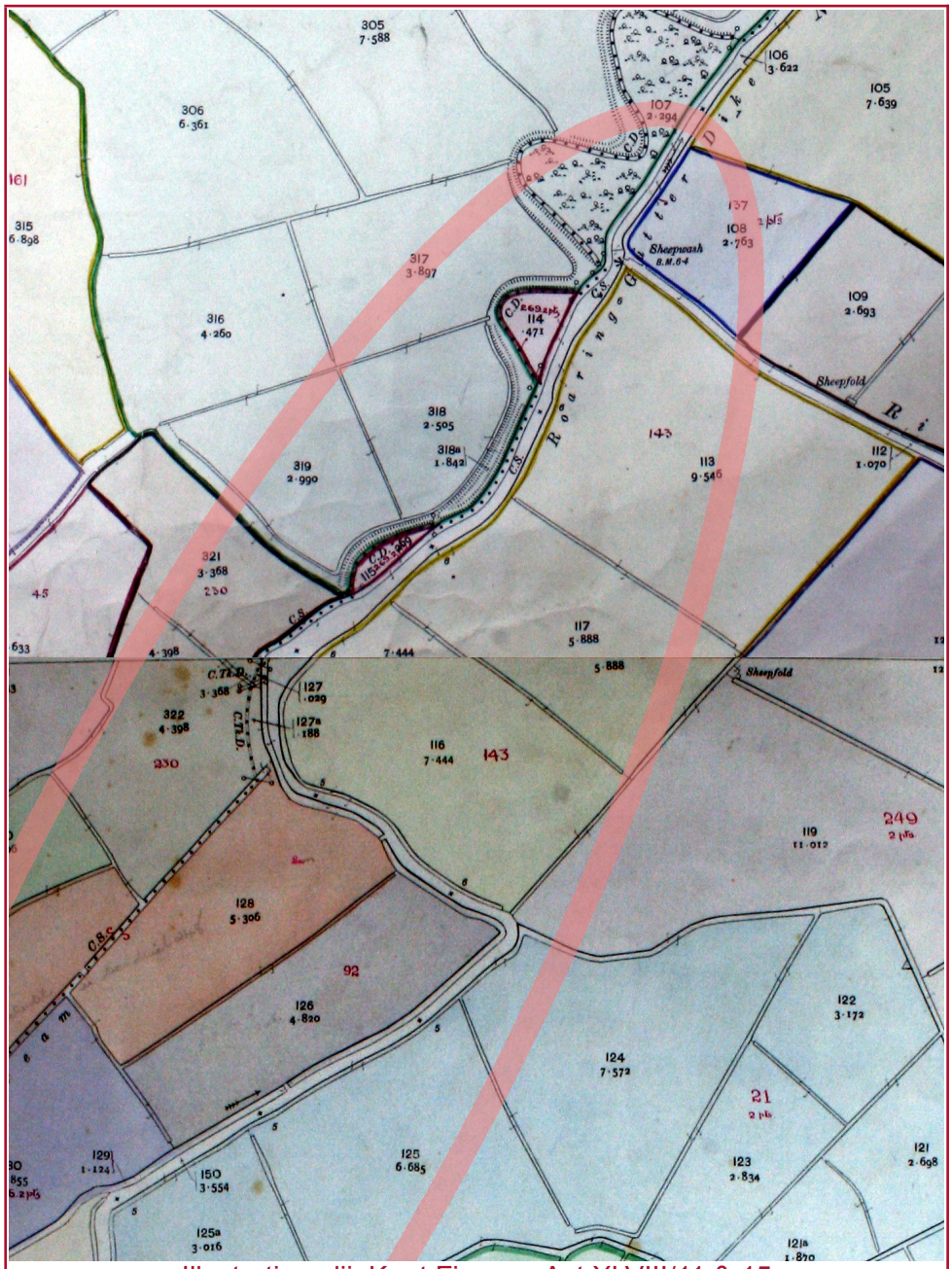


Illustration xlii: Kent Finance Act XLVIII/11 & 15

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

O.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.

O.5. That ‘white roads’ are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In *Fortune v Wiltshire Council*, HHJ McCahill QC said (paras.753, 770), that:

  > the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. …the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910.

  On appeal, Lewison LJ upheld the judgment at first instance, observing (para.71):

  > The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway.

- In *Robinson Webster (Holdings) Ltd v Agombar*, Etherton J said (para.47) said:

  > The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. … The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.

- In *Commission for New Towns v JJ Gallagher Ltd*, Neuberger J found (para.106) that:

  > The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. … Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].

- In *R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs*, Walker J said (para.65) that:

  > The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.

O.6. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways.

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

O.8. The application way is shown uncoloured in its entirety, in common with other roads in the vicinity of known public status. At E, the spur to Foulmead is coloured as part of the adjacent hereditament. However, at G, Ring Wall is also uncoloured, consistent with its inclusion in the list of 'Roads Walls Sewers & Beach' in the Sholden tithe apportionment.[33]

O.9. **Conclusion**: The Finance Act map is good evidence that the application way was regarded as a public highway not subject to assessment. There is no evidence that the way is uncoloured because it was a jointly owned occupation road, and the present owner-ship of the application way between D and G (and beyond G, to Roaring Gutter) by the

33 Labelled in red as no. 14.

Environment Agency, which acquired the way from the National Coal Board, is suggestive that the way was formerly solely owned by the Commissioners of Sewers for the Several Limits in the Eastern Parts of the County of Kent, and not by the neighbouring owners of land.

O.10. **Points**: 5

P. Diversion order

P.1. **Date**: 1929

P.2. **Source**: Kent County Archives[34]

34 Q/RH/2/856

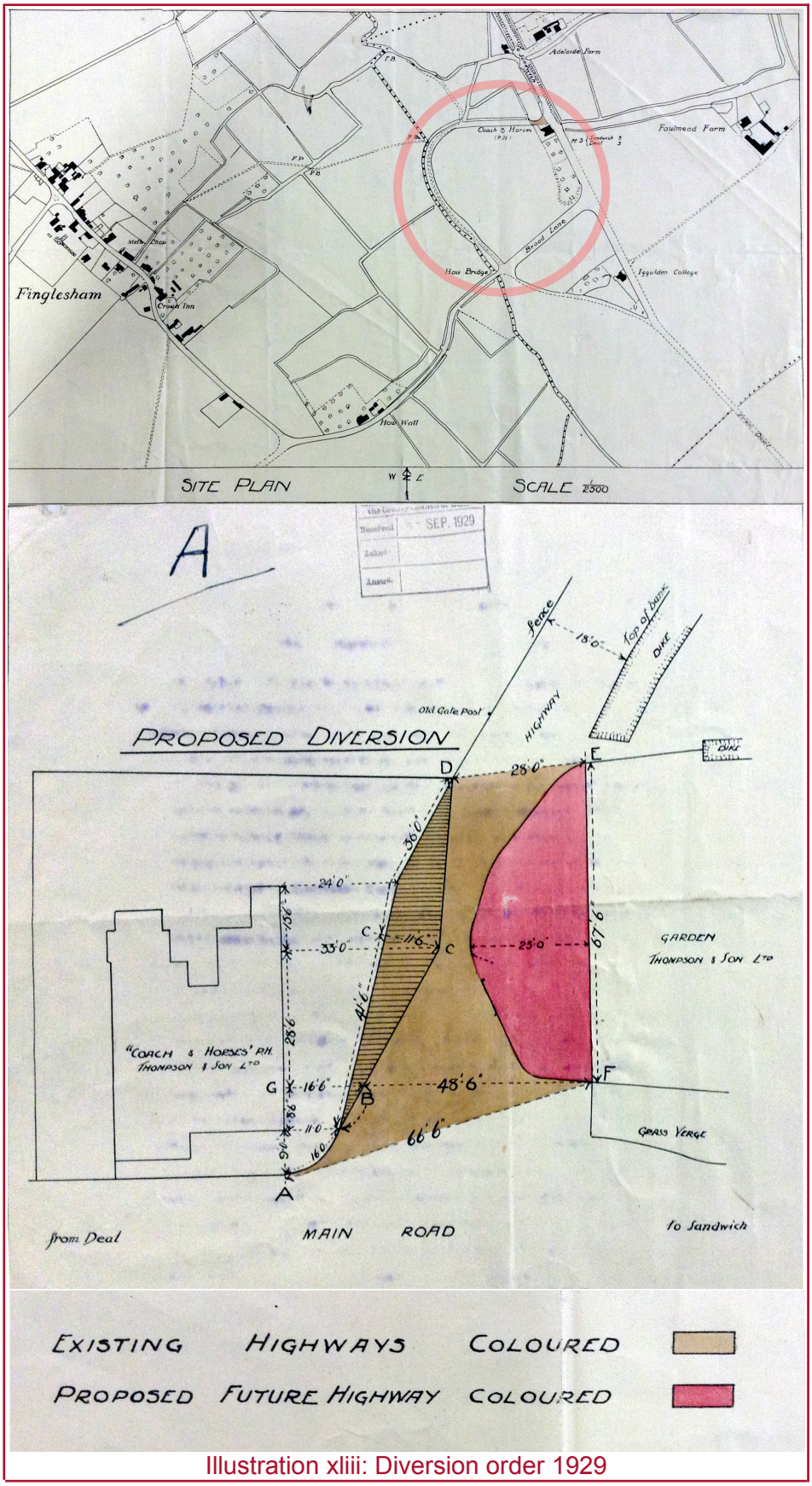


Illustration xliii: Diversion order 1929

P.3. **Description**: Original scale: location plan 1:2,500; orientation: unchanged (north at top).

P.4. A diversion order was made by the justices, in relation to part of the application way adjacent to the Coach & Horses public house: a transcript of the public notice of the diversion application is given in the appendix at page 54. The order stopped up part of the width of the application way on the south side (nearer the public house), and compensated with additional land on the north side.

P.5. **Conclusion**: The diversion order is very strong evidence that the application way was a public road at the date of the order.

P.6. **Points**: 10

Q. Sholden parish survey

Q.1. **Date**: 1950

Q.2. **Source**: Kent County Council[35]

Q.3. **Description**: In recording what was to become public footpath EE365, Sholden parish council described the path as:

> 'Disused Drove Way starting from just past Coach & Horses Inn on Sandwich Rd leading to Northbourne P.B. Walked 11 Nov. 1950 by J.E. Doubleday V R Hogben H.M. Romney'

Q.4. **Conclusion**: The parish council recorded part of the application way as a public footpath, subsequently recorded on the definitive map and statement as public footpath EE365. The description refers to this part of the footpath as a 'disused drove way'. The parish survey reflects the understanding of the parish council that the application way is a drove road.

Q.5. **Points**: 0

35 FP/R228

Appendix

This is the text of the public notice of the diversion order referred to at item IV.P above.

NOTICE IS HEREBY GIVEN

That on the 15th day of October next application will be made to His Majesty's Justlces of the Peace assembled at Quarter Sessions in and for the County of Kent at St. Augustine's Sessions House, Canterbury, for an Order that the following Public Highway in the Parish of Sholden in the County of Kent leading from the "Coach and Horses" Public House on the main road from Sandwich to Deal,

> in a general Westerly direction for a distance of 400 feet or thereabouts and there-after curving in a Southerly direction until it joins the public highroad known as Broad Lane and having a minimum width of 16 feet,

the situation of which public highway is indicated on the plan which will be lodged with the Clerk of the Peace of the said County as here-after mentioned shall be diverted and turned and in part stopped up in manner following (that is to say):

1. By stopping up a portion of the said highway on the South side thereof (which portion is coloured brown and hatched with black lines on the said plan)

> for a distance of 77 feet 6 inches or thereabouts measured along the South boundary of the said highway commencing from a point (marked B on the said plan) situate at a distance of 16 feet or thereabouts measured along the said South boundary from a point (marked A on the said plan) to be determined by prolonging the line of the North-West wall of the said "Coach and Horses" Public House to the West boundary of the said main road at or near to the junction of the said highway with the said main road and increasing regularly in width to a maximum width of 11 feet 6 inches at a line (marked C…C on the said plan) drawn at right angles to the said South boundary and situate at a distance of 41 feet 6 inches or thereabouts from the said point B measured along the said South boundary and from thence decreasing in width to a point (marked D) on the said plan) situate at a distance of 36 feet or thereabouts from the said line marked C…C measured along the said South boundary

2. By substituting therefor a plot of land (coloured red on the said plan) belonging to Messrs. Thompson & Son, Limited, bounded

> (a) on the North-west by a direct line of 67 feet 6 inches or thereabouts in length and parallel with the North-west wall of the said "Coach and Horses" Public House from a point (marked E on the said plan) situate on the North side of the said highway at a distance of 28 feet or thereabouts to the North North-west side of the said point D and a point (marked F on the said plan) to be determined by drawing a line 65 feet or thereabouts in length at right angles with the North-west wall of the said "Coach and Horses" Public House from a point (marked G on the said plan) situate at a distance of 8 feet 6 inches or thereabouts from the end of the said wall nearest to the said main road and
>
> (b) on the South and East by the North boundary of the said highway from the said point E to the said point F which plot of land together with the part of the said highway (coloured plain brown on the said plan) which it is not intended to be stopped up will form a new highway of a minimum width of 28 feet for a distance of 72 feet 6 inches or thereabouts to be made up by Messrs. Thompson & Son Limited to the satisfaction of the Justices and the Surveyor to the Local Authority

AND NOTICE IS HEREBY ALSO GIVEN that the certificate of two Justices that they have viewed the said highway and that it appeared to them that the same might be stopped up diverted and turned in the manner proposed so as to make the same more commodious to the public with the plan of the old and proposed new highway will be lodged with the Clerk of the Peace of the said County on or before the 6th day of September next.

The Plan above referred to may be inspected at Walnut Tree Farm, Sandhills, Deal, on any week-day up to and including the 14th day of August next, between the hours of 9 a.m. and 7 p.m.

DATED THE 11th DAY OF JULY 1929.

FRED A. CLOKE

CLERK TO THE RURAL DISTRICT COUNCIL OF EASTRY.