

Fishers Lane, Paddlesworth: historical document analysis

Application to record a restricted byway from Sole Farm to Elvington Lane

I. Introduction

A. Quick reference

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



- A.2. Existing recorded public rights of way comprised in application way: none
- A.3. Parishes of: Paddlesworth, Hawkinge, Newington
- A.4. Ancient parishes of: Paddlesworth, Folkestone Rural, Newington
- A.5. Termination points: Paddlesworth reservoir; Elvington Lane
- A.6. Termination points Ordnance Survey grid references: TR20003956; TR20233910
- A.7. Postcode: CT18 8AA
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheets: Kent LXVII/13, LXXV/1

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, known as Fishers Lane, which mainly lies in the parish of Paddlesworth next Hawkinge, Kent. The way is not currently recorded in the definitive map and statement. The application seeks to record part of 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.

D.2. Fishers Lane begins at a crossroads on Paddlesworth Lane east of Paddlesworth at P (Ordnance Survey grid reference TR20033982), and leads south to Sole Farm.

D.3. The application way begins in Fishers Lane at the turning to Paddlesworth reservoir at A (Ordnance Survey grid reference TR20003956). It leads south-southeast along an enclosed track for a distance of 510m to a junction with Elvington Lane at B (TR20233910).

D.4. The points P, A and B are identified in the application map at part II below.

E. Nomenclature

E.1. The way is known as Fishers Lane or White Hall Lane: it is referred to in this application as the 'application way'.

E.2. Paddlesworth Lane (which is at the northern end of Fishers Lane) may also be known as Aerodrome Road.

F. Background

F.1. The application way appears historically to be a country lane leading from Elvington (via Redsole Lane) north to Densole and Stone Street (and so towards Barham and Canterbury). Paralleled by the Paddlesworth Court road to the west, and the main road through Hawkinge to the east, and with the scarp of the North Downs south of Elvington acting as a barrier to travel further south, the application way seems unlikely ever to have been an important route. But the incised character of the way, particularly in the vicinity of B, and its coincidence with the parish boundary, suggest that it has been in use for at least several hundred years, and quite probably much longer.

F.2. It is not in doubt that the northern part of Fishers Lane, from A north to Paddlesworth Lane at P, is a public road: it has long been recorded as publicly-maintainable, and is today recorded in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. It is also sealed with a tarmac finish. The application way south from A to B clearly is a continuation of the same road, of the same status. There is ample evidence from other sources to support the most obvious conclusion: that the application way has always been a through road, but that for reasons of economy, the highway authority chose to dismiss from its records the southern part of Fishers Lane because of its relative unimportance and isolation (it not being essential to serve any adjacent dwellings or farms).

F.3. It is unusual for a highway authority to be liable to maintain a no-through road in rural areas. Such obligations are not unknown, but it is rare to find the obligation arising where there is no continuation of the highway in any form (whether as a footpath or bridleway). The highway authority will tend to resist the acquisition of a substantial burden of maintenance which benefits only one householder or farmer, and it is more likely that the obligation will arise (albeit infrequently) where the road services a hamlet rather than one house or farm. More often, of course, the obligation arises where the road does continue as a footpath or bridleway (and research may show that the continuation was once of bridleway or carriageway status).

F.4. By way of illustration, the author has reviewed Ordnance Survey Explorer map sheet 138 (which includes Paddlesworth) and is unable to find, in a rural area, a single example of a public no-through road without a continuation as byway or bridleway, save Mill Hill at Ottinge ([TR16844277](#)) and Cullens Farm Road at Mount, near Rhodes Minnis ([TR16214334](#)), which together present similar circumstances to those at Redsole Lane, and are now the subject of an application for a definitive map modification order.¹

F.5. It would be exceptional, therefore, if Fishers Lane were indeed a no-through road — at least in terms of public rights — with no legitimate public means of onwards communication. While some justification for such an arrangement may be found in Sole Farm lying just short of the termination of the recorded public rights along Fishers Lane, the more likely inference is that Fishers Lane is a through, public, road.

1 PROW/SH/C401

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*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.'

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. The application way is shown on the earliest available detailed maps of the locality. It is identified on the Map of Arpinge Farm (item IV.A below) dating from 1769–70, on which there are good grounds to infer highway status. It is present on a series of maps dating from the early years of the nineteenth century, which — taken together — are strongly suggestive of highway status. It is shown on three Tithe Commutation Act 1836 maps (item IV.H below) in a form consistent with other public roads and identified in one of the apportionments as a public road. The Ordnance Survey boundary records (item IV.I below) are suggestive of a public road, and the Ordnance Survey County Series 25-inch maps (item IV.J below) are consistent with such status. The way is excluded from valuation on the Finance (1909–1910) Act 1910 record map (item IV.K below), and consistently

² [2012] EWCA Civ 334

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

depicted as a road suitable for cycling on successive editions of the Bartholomew's map (item IV.L below). The way was recorded on the Highway inspector's map of 1952 (item IV.N below as a publicly-maintainable highway, and evaded capture on the National Parks and Access to the Countryside Act 1949: draft map (item IV.M below) because the surveying authority assured the parish that it was a 'non-maintained unclassified county road'.

G.5. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, that the proper inference is that the way is a carriageway, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I below), there were 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 Paddlesworth parish council was enjoined by the county council to exclude the way from its parish survey prepared under Part IV of the National Parks and Access to the Countryside Act 1949 (see item IV.M below). Therefore, there has been no previous 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. Natural Environment and Rural Communities Act 2006

I.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. The application is therefore made for a restricted byway.

J. Points awarded

J.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*⁴.

J.2. **Points:**

Item	Ref	Points
Map of Arpinge Farm	IV.A	2
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B	0
Barlow-Hasted map of Kent	IV.C	0
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.D	0
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.E	1

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

Greenwood's map of Kent	IV.F	1
Ordnance Survey, Old Series one-inch map of Kent	IV.G	0
Tithe Commutation Act 1836	IV.H	3
Ordnance Survey boundary records	IV.I	3
Ordnance Survey County Series 25-inch maps	IV.J	1
Finance (1909–1910) Act 1910	IV.K	5
Bartholomew's map	IV.L	1
National Parks and Access to the Countryside Act 1949: draft map	IV.M	2
Highway inspector's map	IV.N	3
Highway authority list of streets	IV.O	0
Total points		22

K. Width of application way

K.1. That part of the application way which lies in the parish of Hawkinge (formerly the parish of Folkestone Rural) has a length of 360m; half of the width of the way lies in that parish, the parish boundary being recorded as 'C.R.' — centre of road. On the second edition of the Ordnance Survey County Series 25-inch maps (see item IV.J below), the area of this part of the way has been calculated as 0.105 ha.⁵ This suggests a mean half width of 2.92m, and therefore a mean full width of 5.85m.

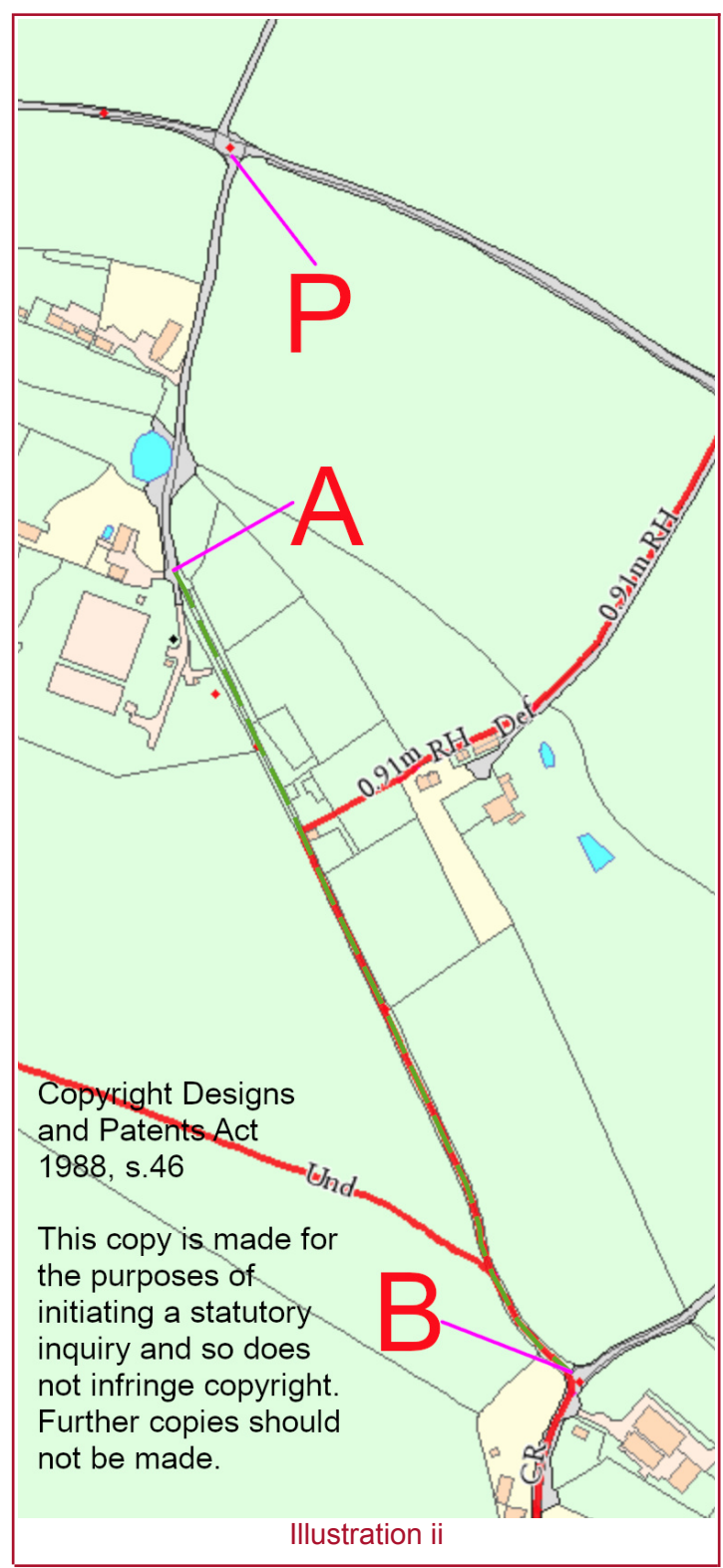
K.2. However, it is sought that the width of the way is as measured from the first or second edition County Series map. There are parts of the way, particularly in the vicinity of White Hall, where there is the possibility of an encroachment on the historical width of the way.

L. Limitations

L.1. There is no evidence of any historical limitation on the way, and it is therefore sought that any order arising from this application should expressly record in the definitive statement that there are 'no limitations'.

⁵ i.e. given as 0.260 acres.

II. Application map

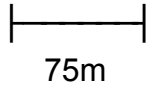


Map centred on A at TR20003956

Scale: approx. 1:4,350 (when printed A4)

Application way is marked — —

Parish boundaries are marked — (interpolated with application way where appropriate)



III. Along the way



Illustration iii: At A



Illustration iv: Near A



Illustration v: Adjacent White Hall Farm



Illustration vi: Adjacent White Hall Farm



Illustration vii: Towards B



Illustration viii: At B

IV. Evidence

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A. Map of Arpinge Farm

A.1. **Date:** 1769–70

A.2. **Source:** Kent County Archives⁶

Map

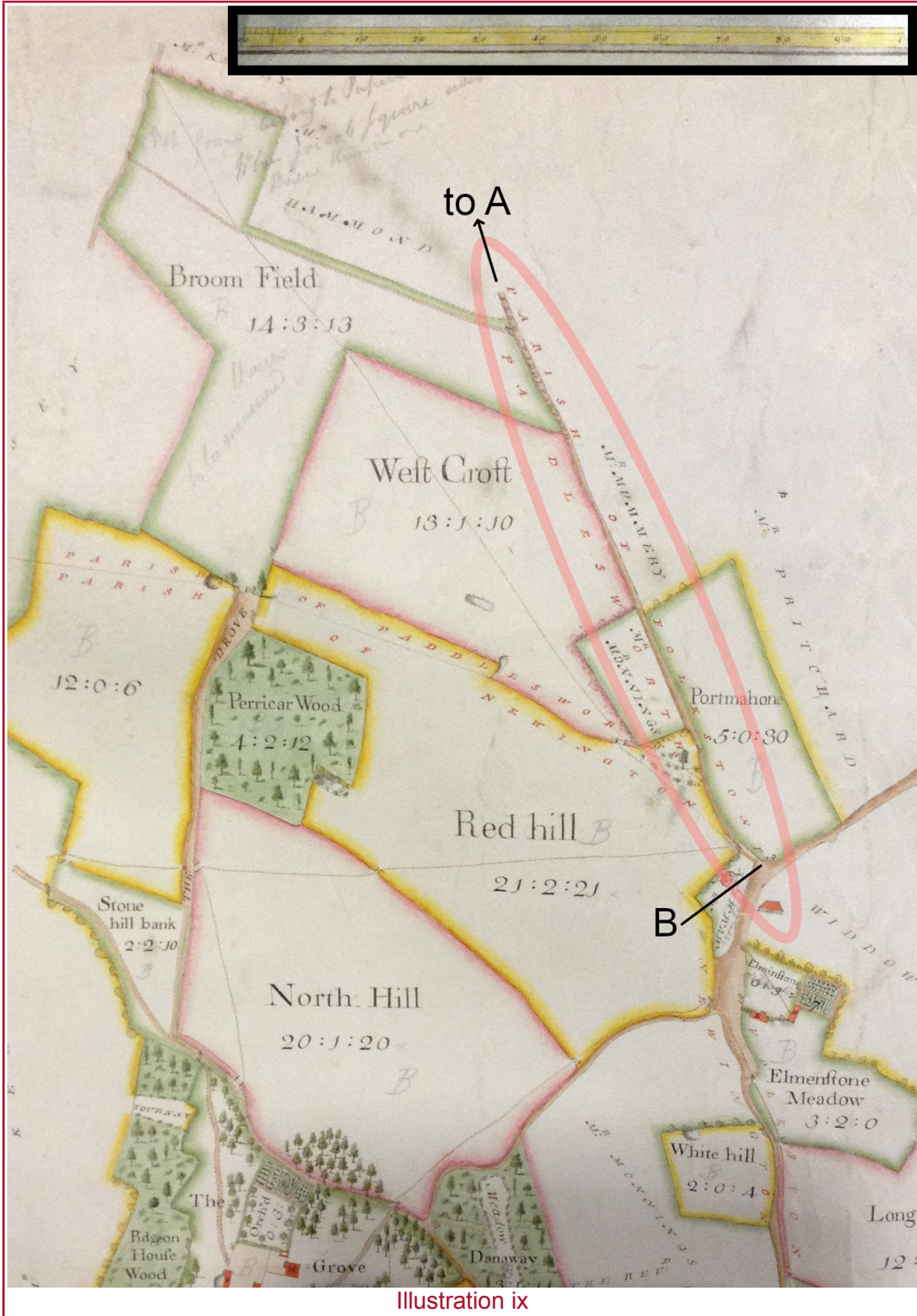
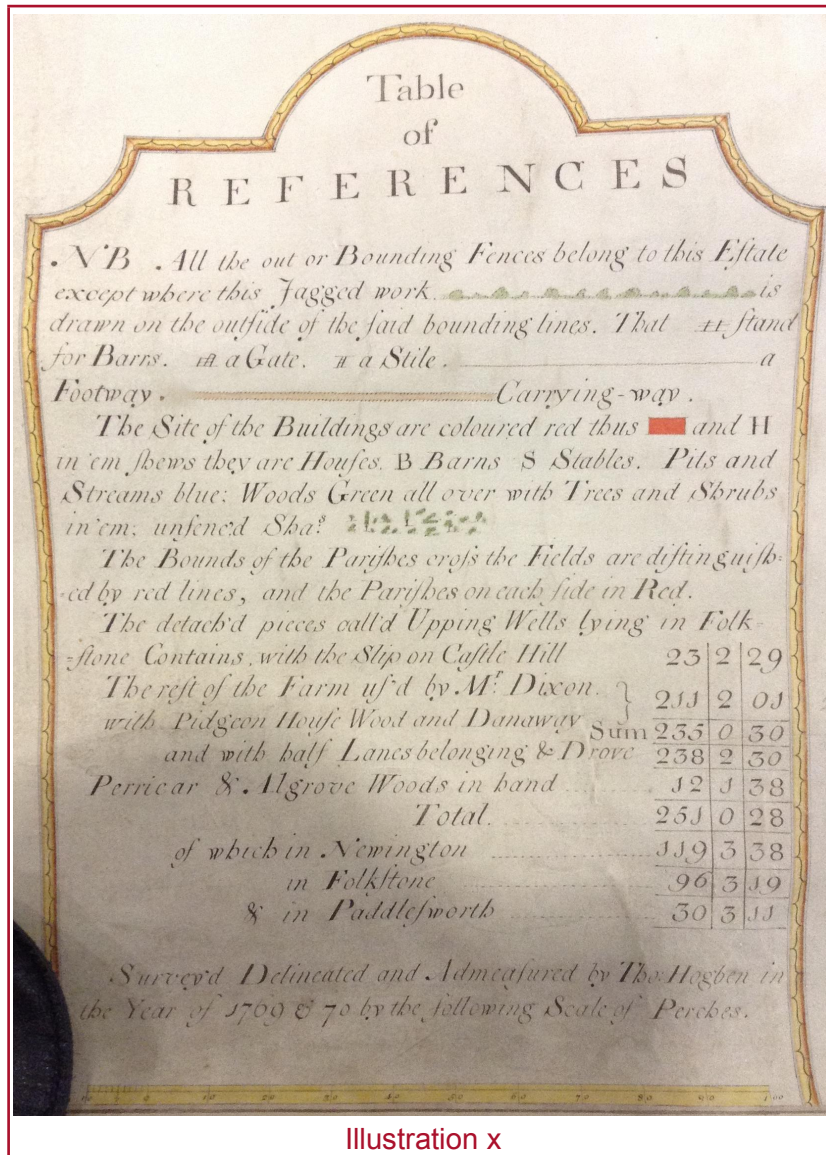


Illustration ix

Table of references

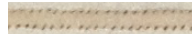


A.3. **Description:** Original scale: scale marked on map in perches; orientation: unchanged (north).

A.4. A map of Arpinge Farm and Upping Wells in Newington, Folkestone and Paddlesworth:

Survey'd Delineated and Admeasured by Tho. Hogben in the Year of 1769 and 70...

A.5. In the 'table of references', the following features are described:

- Footway.  Carrying-way.
- ...The Bounds of the Parishes cross the Fields are distinguished by red lines, and the Parishes on each side in Red.

A.6. The area of the farm is also stated, to which is added:

...and with half Lanes belonging & Drove 238a,2r,30p

A.7. The application way is shown as a 'Carrying-way'. Similarly drawn ways include various roads now recognised as public roads, as well as bridleway HE238 past Grove Farm (labelled 'The Drove'), and a way from Elvington to Grove Farm (not recorded as a highway). The application way is labelled 'From Paddlesworth'.

A.8. **Conclusion:** It is not now possible to state with assurance that all ways shown on the map as 'carrying-ways' were considered, at that time, to be public roads, but this would be consistent with the map, which shows a number of ways now regarded as public roads or bridleways. While the way from Elvington to Grove Farm is not now recorded as a highway, there is good reason to believe that it was formerly so regarded.

A.9. The map allocates to the estate the area of 'half Lanes belonging & Drove', *i.e.* the estate is allocated the area of public roads *ad medium filum*⁷. If the ways so allocated were not public roads, they would be entirely owned by the estate, or by another person with a right of way granted over them. That they are owned *ad medium filum* is strongly suggestive of public highways.

A.10. The practice on the Hogben map appears to have been to mark public roads with a sienna infill. The application way is one such way coloured sienna, and it is also labelled 'from Paddlesworth', which is a strong indication of highway status.⁸ In [*Commission for New Towns v JJ Gallagher Ltd*](#),⁹ 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.

As the way is a carriage road (whether private or public) — being marked 'carrying-way' — the label is indicative of a public road rather than a bridleway.

A.11. **Points:** 2

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

B.1. **Date:** 1797

B.2. **Source:** British Library website¹⁰

⁷ Up to the centre line of the way.

⁸ 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.'

⁹ [2002] EWHC 2668 (Ch) at [90]

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



Illustration xi

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.¹¹

B.5. The application way is clearly defined as an enclosed track or road between P and B.

B.6. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the application way.

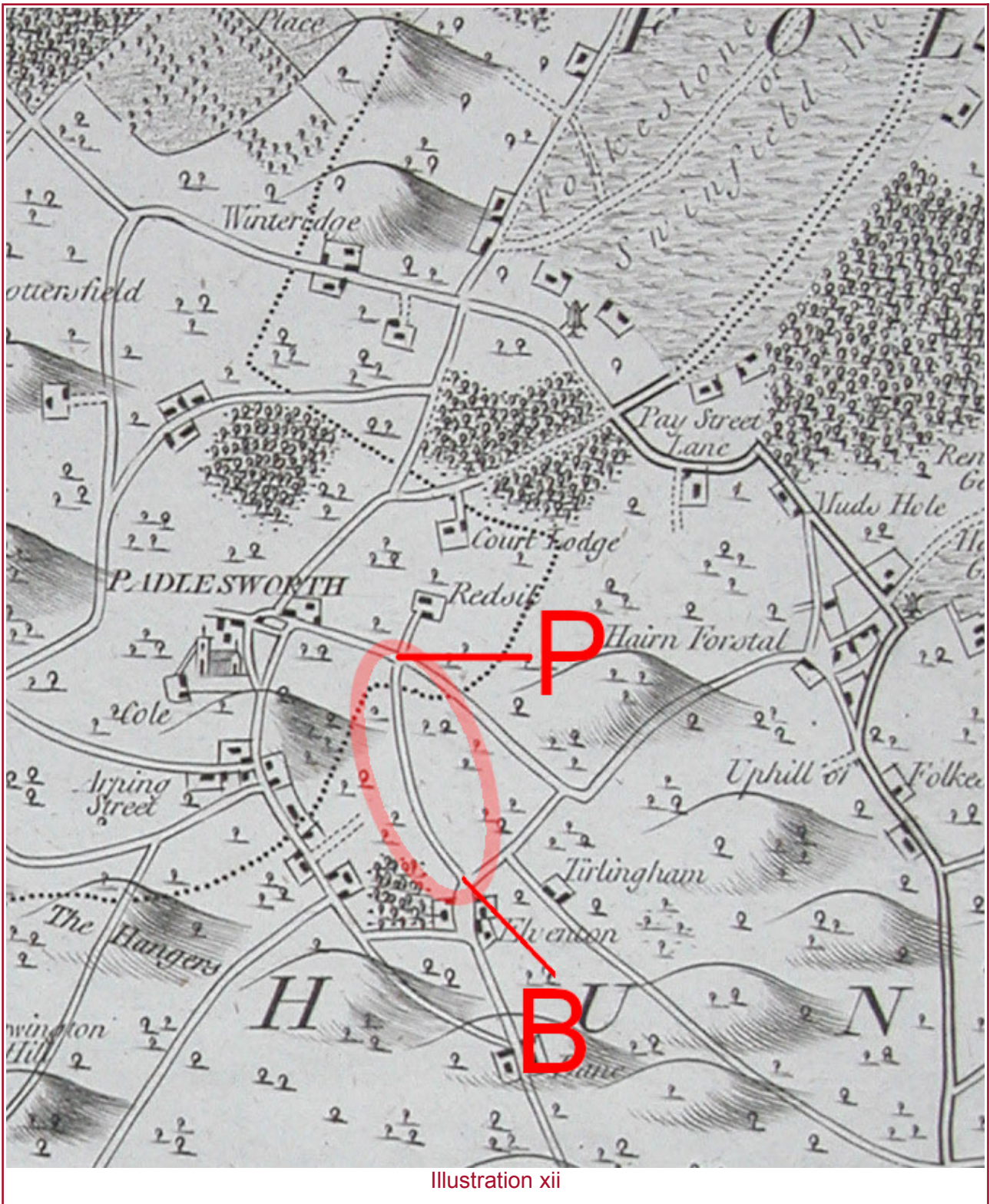
B.7. **Points:** 0

C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** Kent County Archives: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

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



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: that shown here is an extract from the hundred of Folkestone.

C.5. The application way clearly is shown as an enclosed way between P and B.

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 are shown with lines across the junction with public ways. However, it cannot be assumed that the status is any greater than bridleway.

C.7. **Points:** 0

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

D.1. **Date:** 1801

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

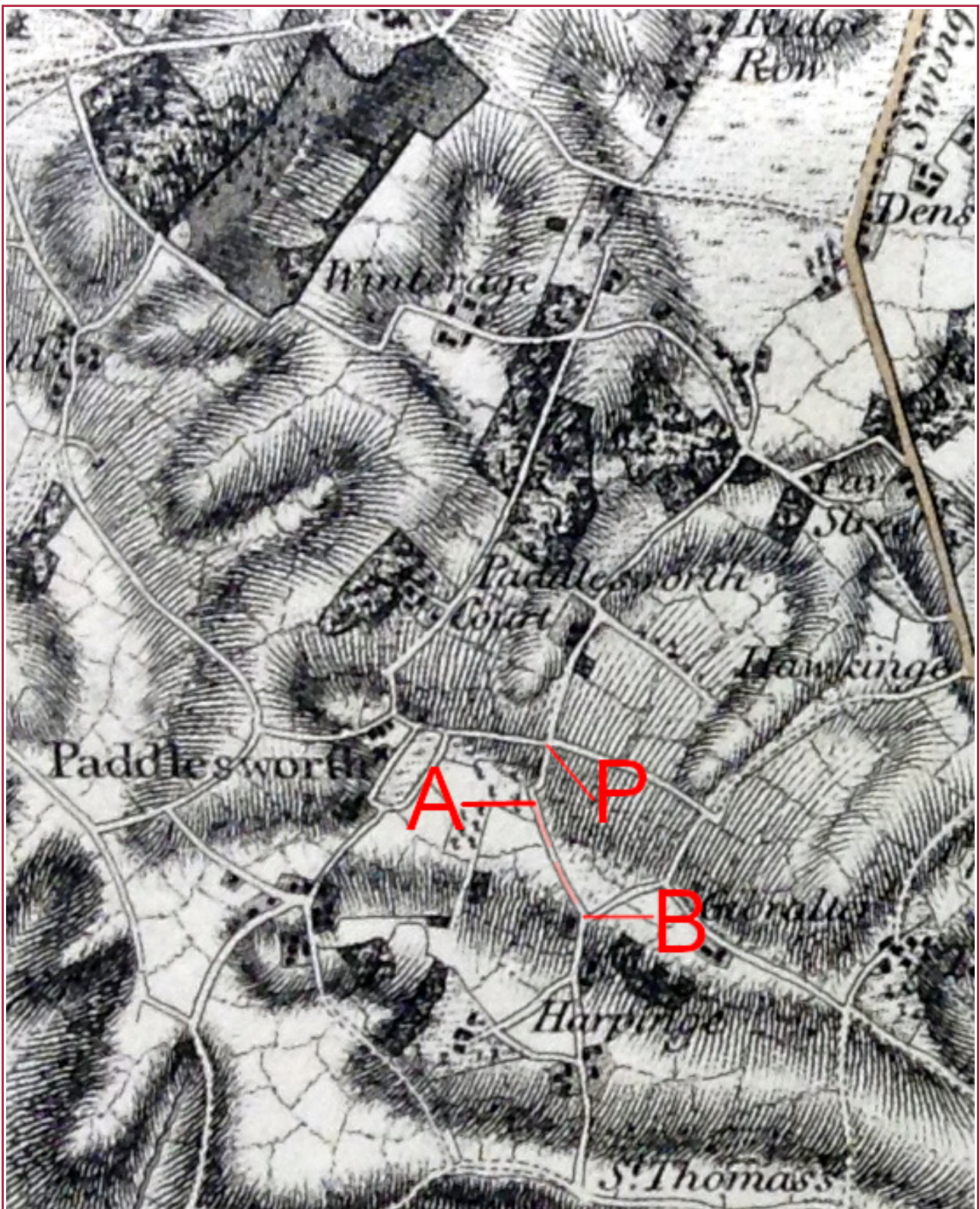


Illustration xiii

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 map to rely primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item B above). However, the Ordnance Survey did not itself publish a map of Kent 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 application way clearly is shown as an enclosed track or road between P and B.

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

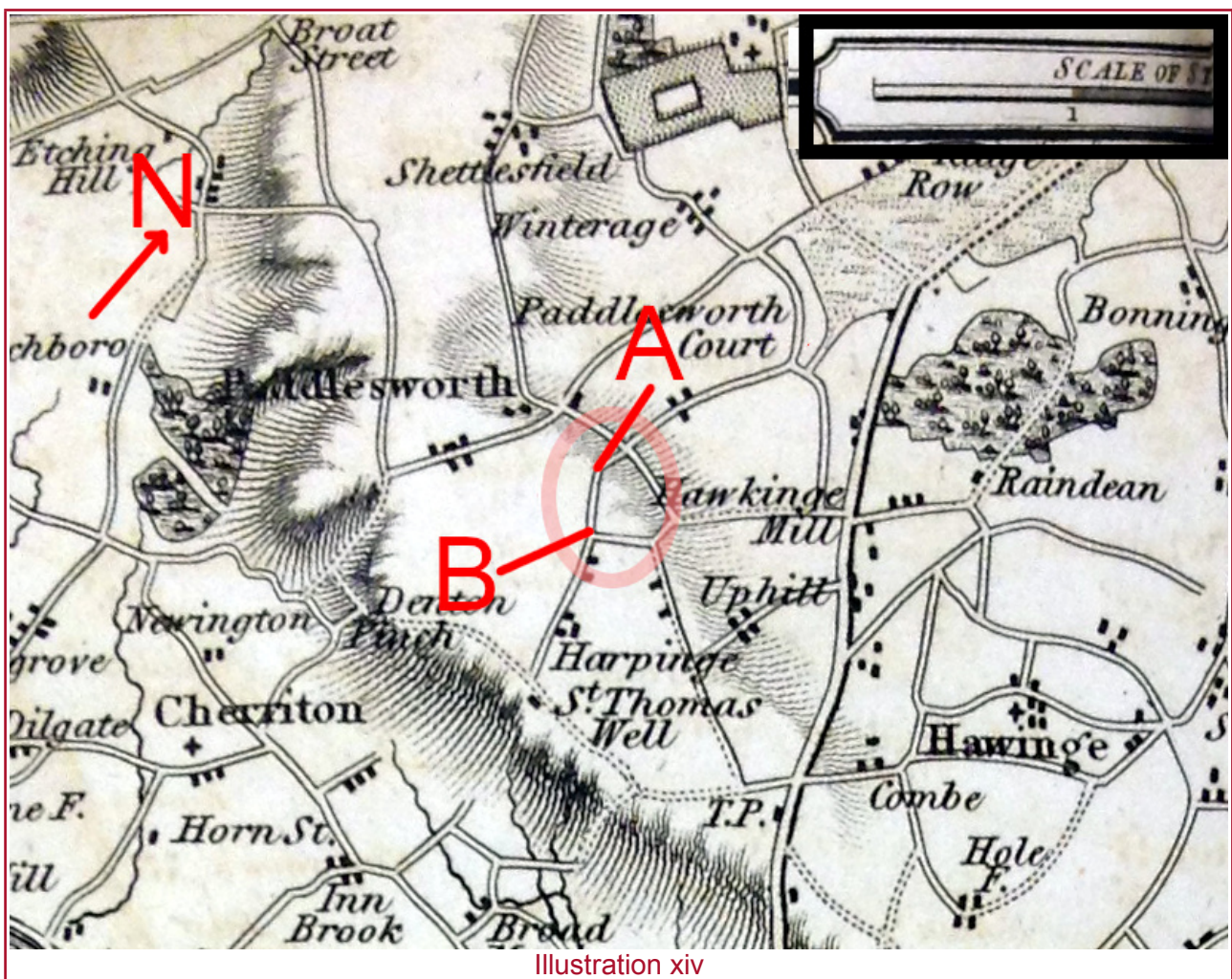
D.7. The application way is show as a track or road, probably sufficient to pass horses or carts, but its status cannot be assured.

D.8. **Points:** 0

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

E.1. **Date:** 1811

E.2. **Source:** British Library¹²



12 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg .

E.3. **Description:** scale: marked in miles on map (but scale bar may be affected by distortion owing to the effect of the binding); orientation: unchanged (top is approximately northwest).

E.4. This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads.

E.5. The map shows the application route in its entirety, as an enclosed road or track.

E.6. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.D above).

E.7. **Conclusion:** The Thomson map leaves out many minor roads. There would have been little purpose in such a map, showing a selective network of roads, including roads which were unavailable to the public. It is therefore some evidence for the existence of a defined way along the application way which is likely to have public status as a cart or carriage road.

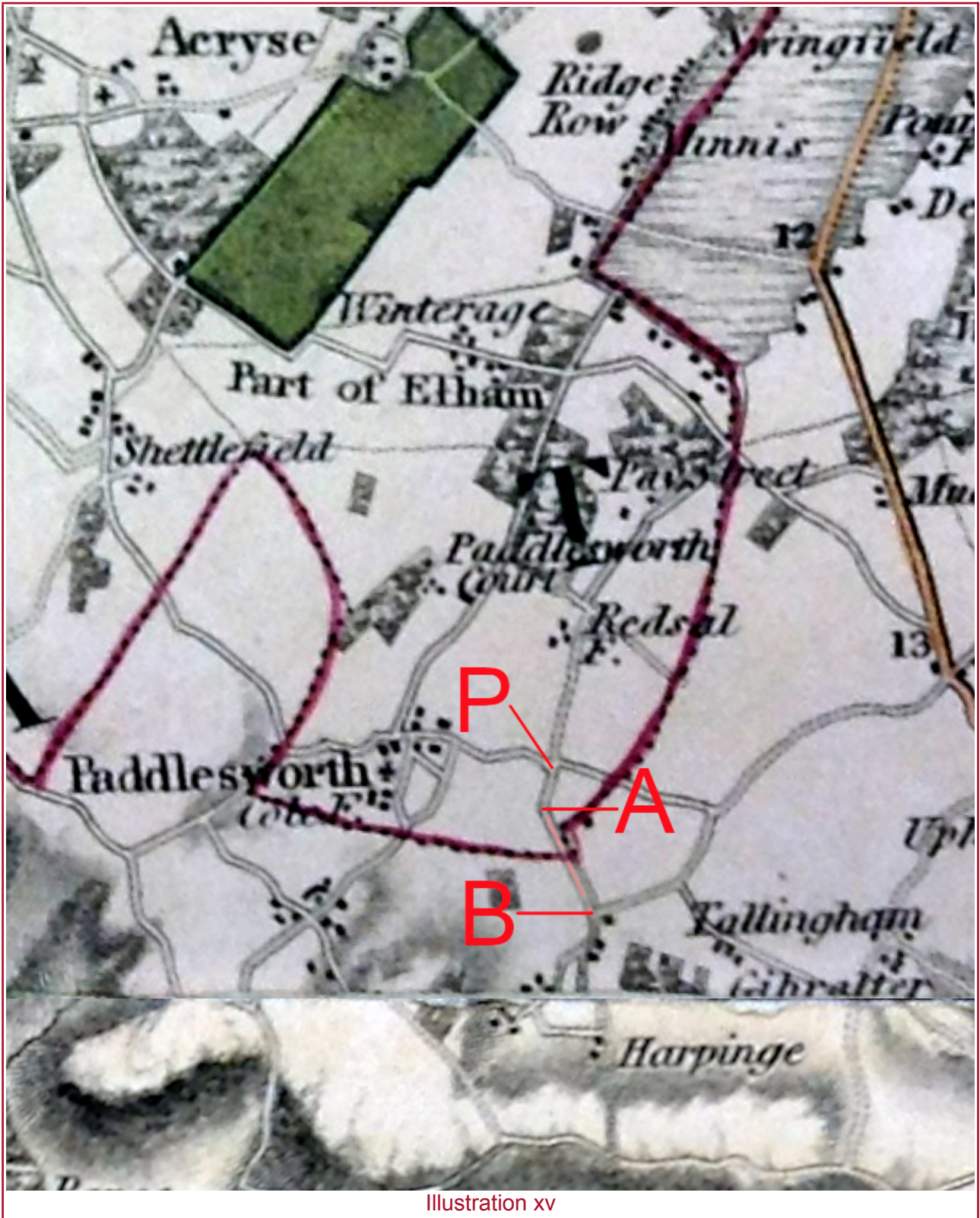
E.8. **Points:** 1

F. Greenwood's map of Kent

F.1. **Date:** 1819–20

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

Greenwood map



Greenwood map key



F.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.

F.4. The application way clearly is identified between P and B as an enclosed track or road.

F.5. **Conclusion:** The key to the Greenwood map records the application way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (separately marked).

F.6. **Points:** 1

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

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

G.2. **Source:** National Library of Australia¹³

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



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

G.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.

G.5. The Old Series map shows the application way as an enclosed track or road between P and B, in common with other local routes.

G.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. It may be said that the application way was at least sufficient for traffic on horseback.

G.7. **Points:** 0

H. Tithe Commutation Act 1836

H.1. **Date:**

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

Paddlesworth tithe map

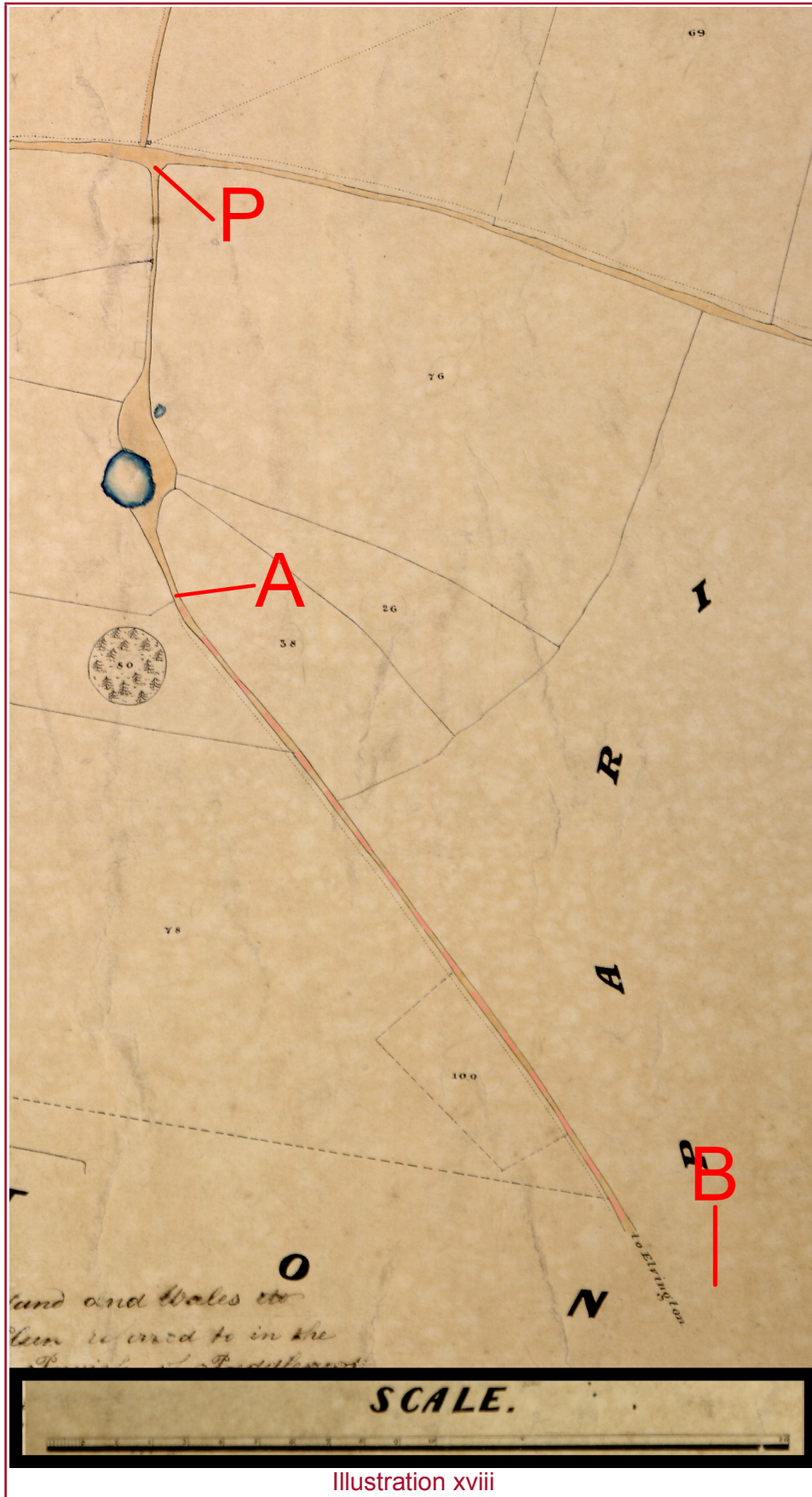
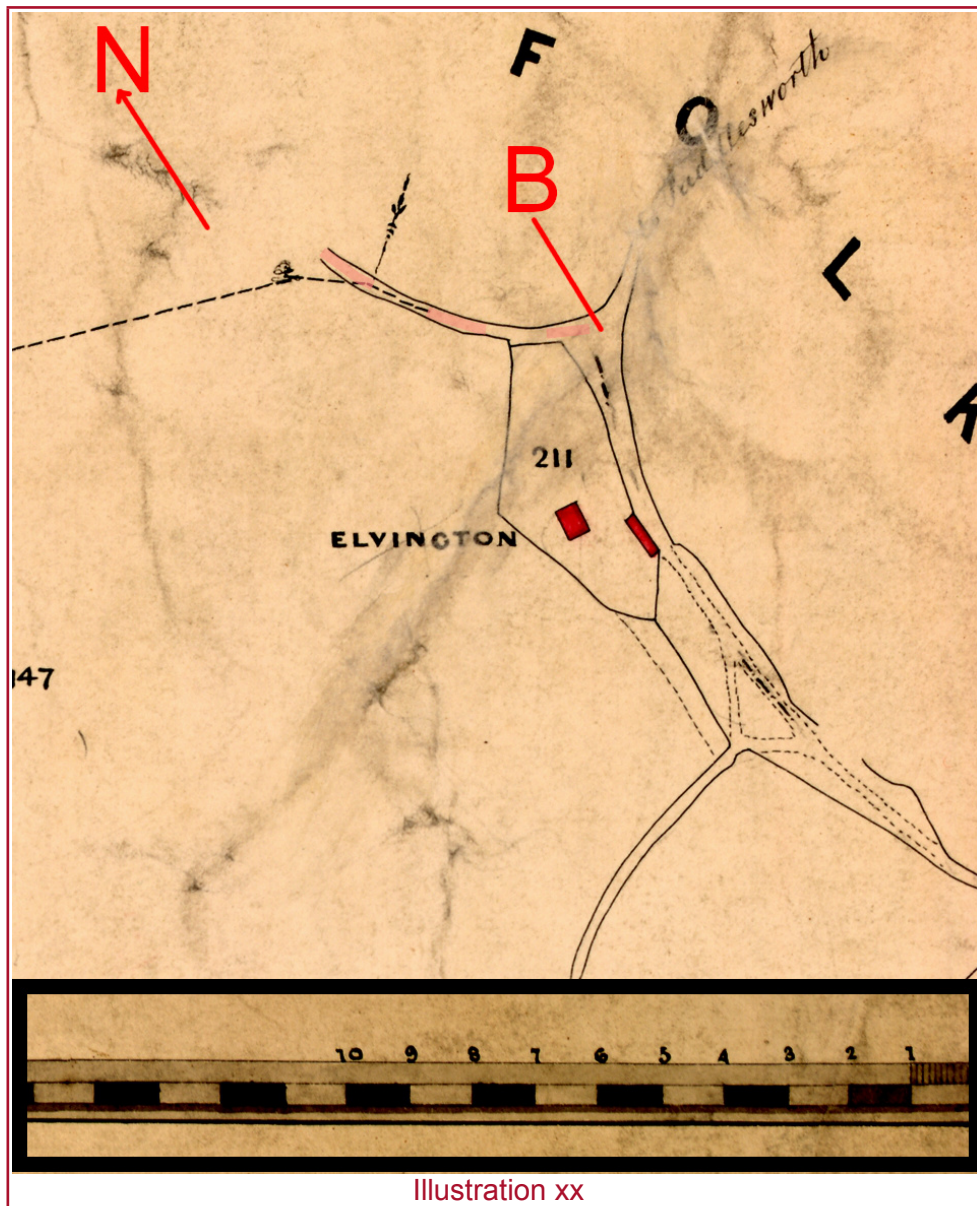


Illustration xviii

Paddlesworth tithe apportionment



Newington tithe map



Newington tithe apportionment

<i>Roads and Unenclosed Waste Lands</i>									
		<i>3/4</i>	<i>2</i>	<i>30</i>					

Illustration xxi

Folkestone Rural tith map

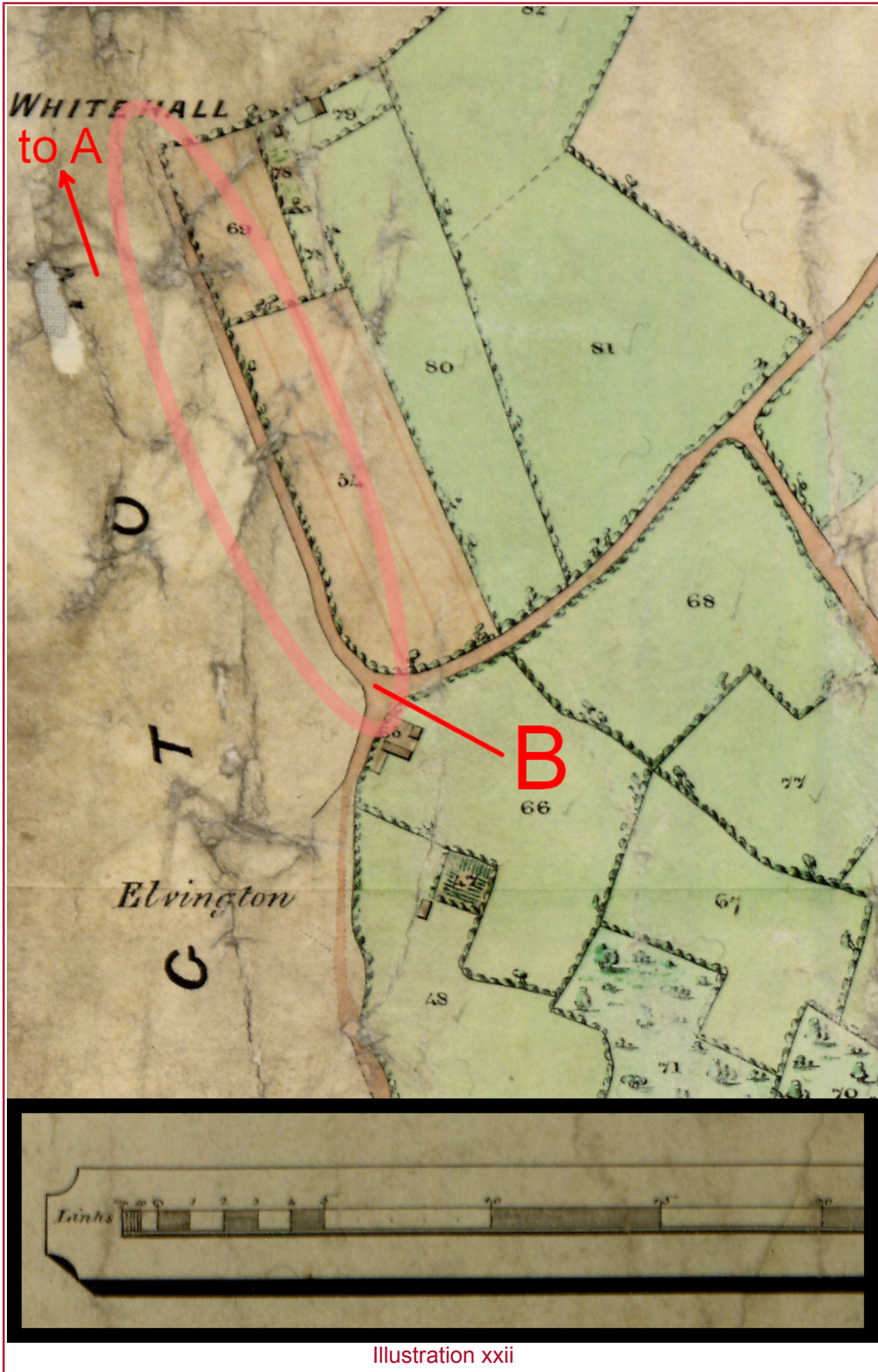


Illustration xxii

Folkestone Rural tithe apportionment

224	House and Garden	Garden	1	"	12	"	13	4
	Public Roads		16	"	11			

Illustration xxiii

Dawson's conventional symbols

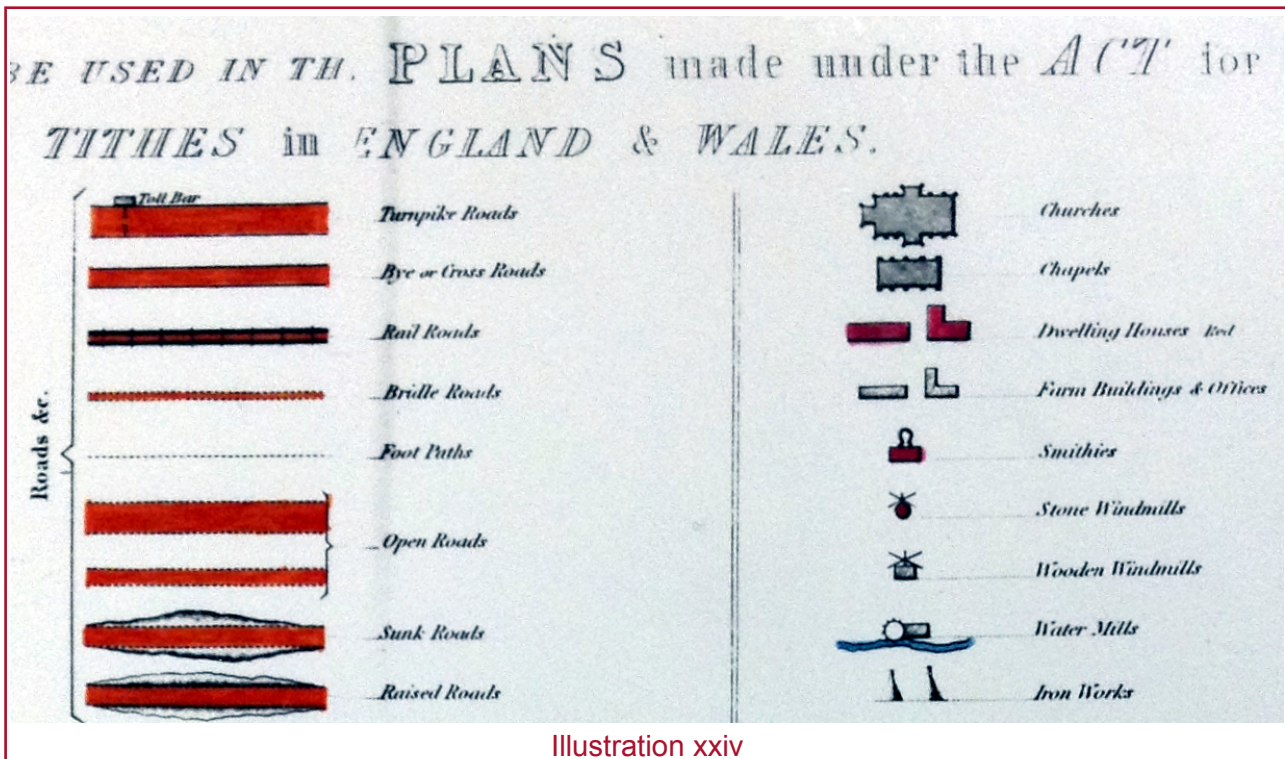


Illustration xxiv

H.3. **Description:** *Paddlesworth tithe*, original scale — 1:2,376 (one inch to three chains); orientation — unchanged (top is north). The tithe map for Paddlesworth is first class¹⁴. *Newington tithe*, original scale — scale bar marked on map in chains (3 chains to one inch 1:2,376); orientation — unchanged (top is northeast). The tithe map for Newington is first class¹⁵. *Folkestone Rural tithe*, original scale — scale bar marked on map in links and chains (6 chains to one inch); orientation — unchanged (top is north). The tithe map for Folkestone Rural is second class.

H.4. The Tithe Commutation Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

14 See the record for this tithe map held by the National Archives: [IR 30/17/286](https://www.nationalarchives.gov.uk/doc/reference/details/?uri=IR_30/17/286).

15 See the record for this tithe map held by the National Archives: [IR 30/17/11](https://www.nationalarchives.gov.uk/doc/reference/details/?uri=IR_30/17/11), and the entry, *ibid*.

H.5. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to¹⁶: an extract from the convention is shown at Illustration xxiv above.

H.6. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.¹⁷

H.7. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

H.8. The Paddlesworth tithe map shows the application way as an enclosed way, between P and slightly short of B. The way is coloured sienna. At the south end, the way is labelled 'to Elvington'. The sienna colouring is applied to all public roads on the map, but also to several ways with (today) lesser or no recorded status. It cannot be said with certainty that all ways coloured sienna are public roads, and it may be that the colouring is intended to show a metalled way (notwithstanding the Dawson guidance). In the apportionment (Illustration xix above), an entry appears for 'Public Roads' (area 5a, 0r, 2p).

H.9. The Newington tithe map shows only the most southerly part of the application way in the vicinity of B. The way is shown as an enclosed way. There is no colouring applied to roads. In the apportionment (Illustration xxi above), an entry appears for 'Roads and Unenclosed Waste Lands' (area 34a, 2r, 30p).

H.10. The Folkestone Rural tithe map shows the application way as an enclosed way, beginning at a three way road junction with Elvington Lane, and heading approximately northeast, to pass to the west of Whitehall, a farmstead which is marked on the map. The way is shown bounded by a hedge on the east side (the west side lies outside the parish) and is coloured sienna. At the north end, the way is labelled 'from Paddlesworth'. The sienna colouring is applied to all public roads on the map, but also to several ways with (today) lesser or no recorded status, including certain bridleways and footpaths. It cannot be said with certainty that all ways coloured sienna are public roads, and it may be that the

¹⁶ *Survey of lands (Tithe Act.)*, letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act, 29 November 1836 (copy held at the National Archives).

¹⁷ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

colouring is intended to show a metalled way (notwithstanding the Dawson guidance). In the apportionment,¹⁸ an entry appears for 'Public Roads' (area 16a, 0r, 11p).

H.11. In all three tithe maps, the application way is excluded from adjacent parcels of land for assessment purposes.

H.12. **Conclusion:** It is sometimes said that the exclusion of a way from being rated as titheable is not an indication that the way is or is not public. But as a public road, one would expect the surveyor to assess either that the rateable value lay with the parish vestry (which was not liable to assessment), or that no-one had any express entitlement to it. In relation to the application way, it has not been assessed as part of any holding, but excluded from assessment. It must therefore lie within the separate heading for 'Public Roads' (or in relation to Newington parish, 'Roads and Unenclosed Waste Lands'), which is evidence that the way was considered to be a public road.

H.13. In addition, the continuation of the application way is, on the Paddlesworth and Folkestone Rural tithe maps, labelled with a destination, which is suggestive of a public bridle road or public road.¹⁹

H.14. **Points:** 3

I. Ordnance Survey boundary records

I.1. **Date:** 1867–9

I.2. **Source:** National Archives²⁰

¹⁸ www.kentarchaeology.org.uk/research/tithes/folkestone-rural.

¹⁹ See para.IV.A.10 above.

²⁰ OS 28/229

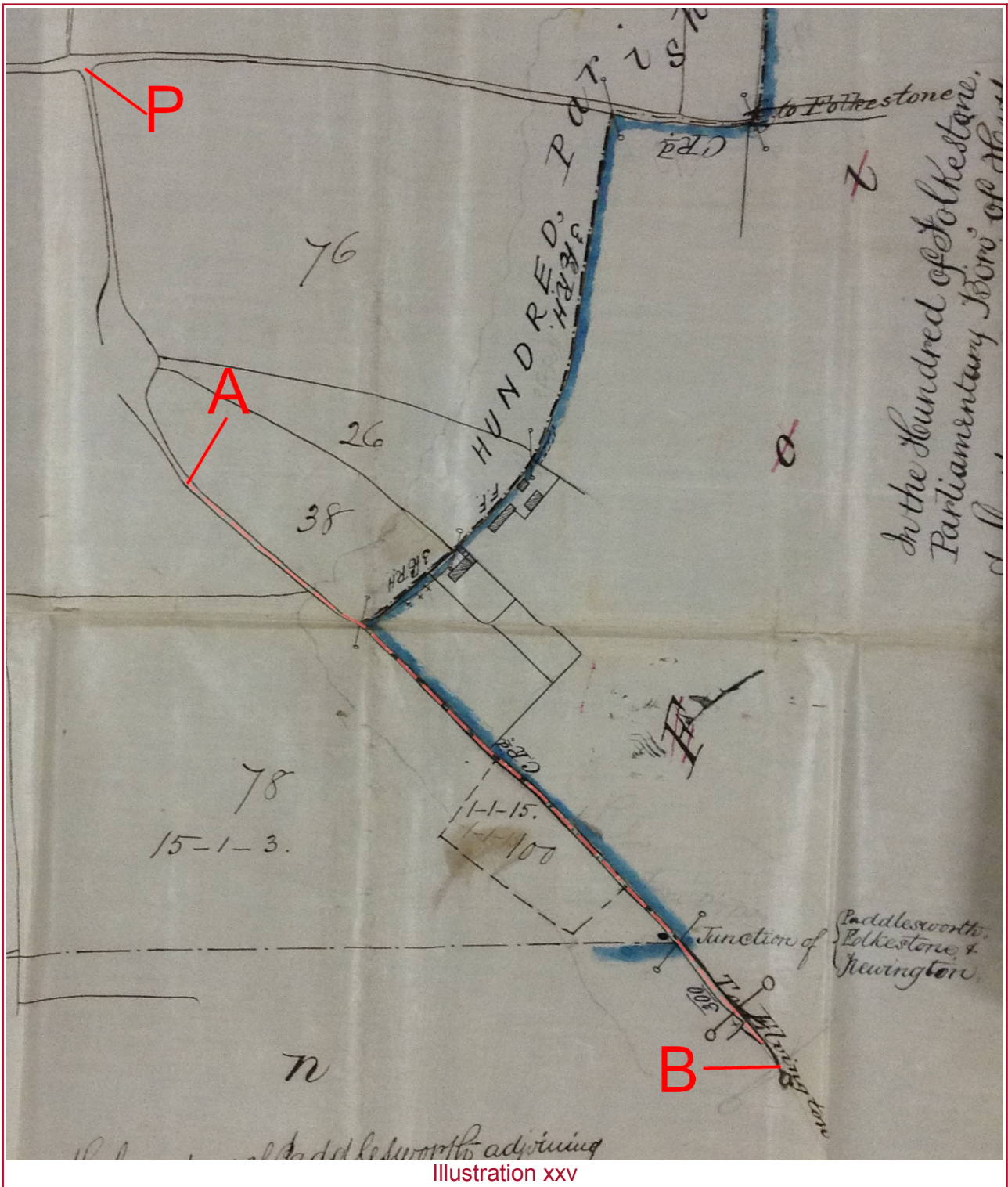


Illustration xxv

I.3. **Description:** Original scale: three chains to one inch; orientation: unchanged (north).

I.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).

I.5. This boundary sketch plan of Paddlesworth, based on the tithe map, identifies the parish boundary between Paddlesworth, Folkestone Rural and Newington. The boundary is shown as following the application way part between A and B, where it is annotated as 'C.R.' — centre of road. The boundary between Paddlesworth and Newington turns off sharply short of B, but the application way is annotated 'to Elvington'.

I.6. **Conclusion:** The sketch map records the parish boundary as following the 'centre of road'. While the 'road' need not inevitably be a public road, a long-standing parish boundary, probably founded on old manorial boundaries, is likely to follow the application way as an ancient public way. Moreover, the surveyor has annotated the way continuing towards B as 'to Elvington', which is suggestive of at least public bridle road status.²¹

I.7. **Points:** 3

J. Ordnance Survey County Series 25-inch maps

J.1. **Date:** various

J.2. **Source:** British Library, National Library of Scotland²²

²¹ See para.IV.A.10 above.

²² Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheets Kent LXVII/13, LXXV/1.

County Series first edition 25" map (surveyed: 1872)

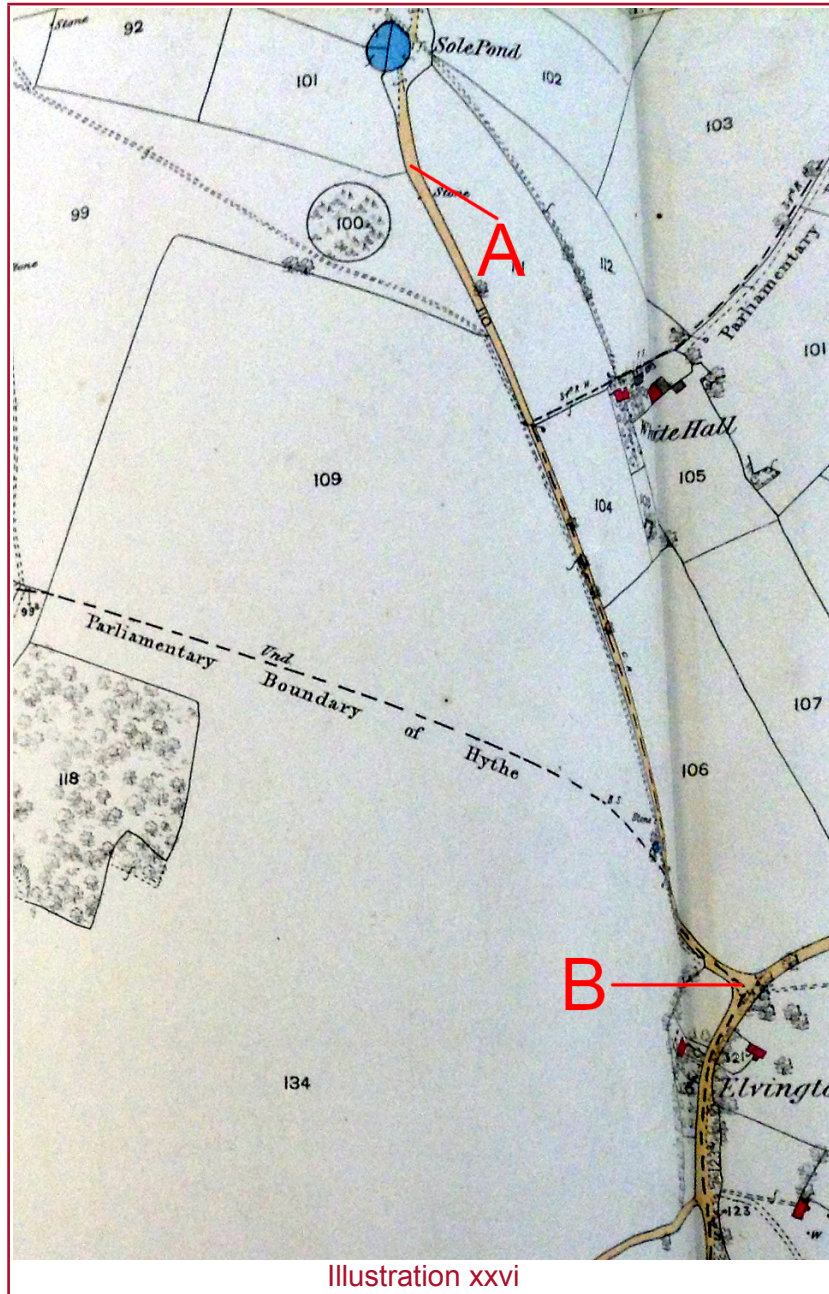


Illustration xxvi

Area book

2

PARISH OF PADDLESWORTH.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
75	.671	Garden, &c.	109	16.392	Arable, &c.
76	1.264	Pasture, &c.	110	1.028	Road.
77	.904	Pasture.	111	2.958	Pasture.
78	.347	Church and grave yard	112	2.296	Pasture, &c.

Illustration xxvii

County Series second edition (surveyed: 1896)

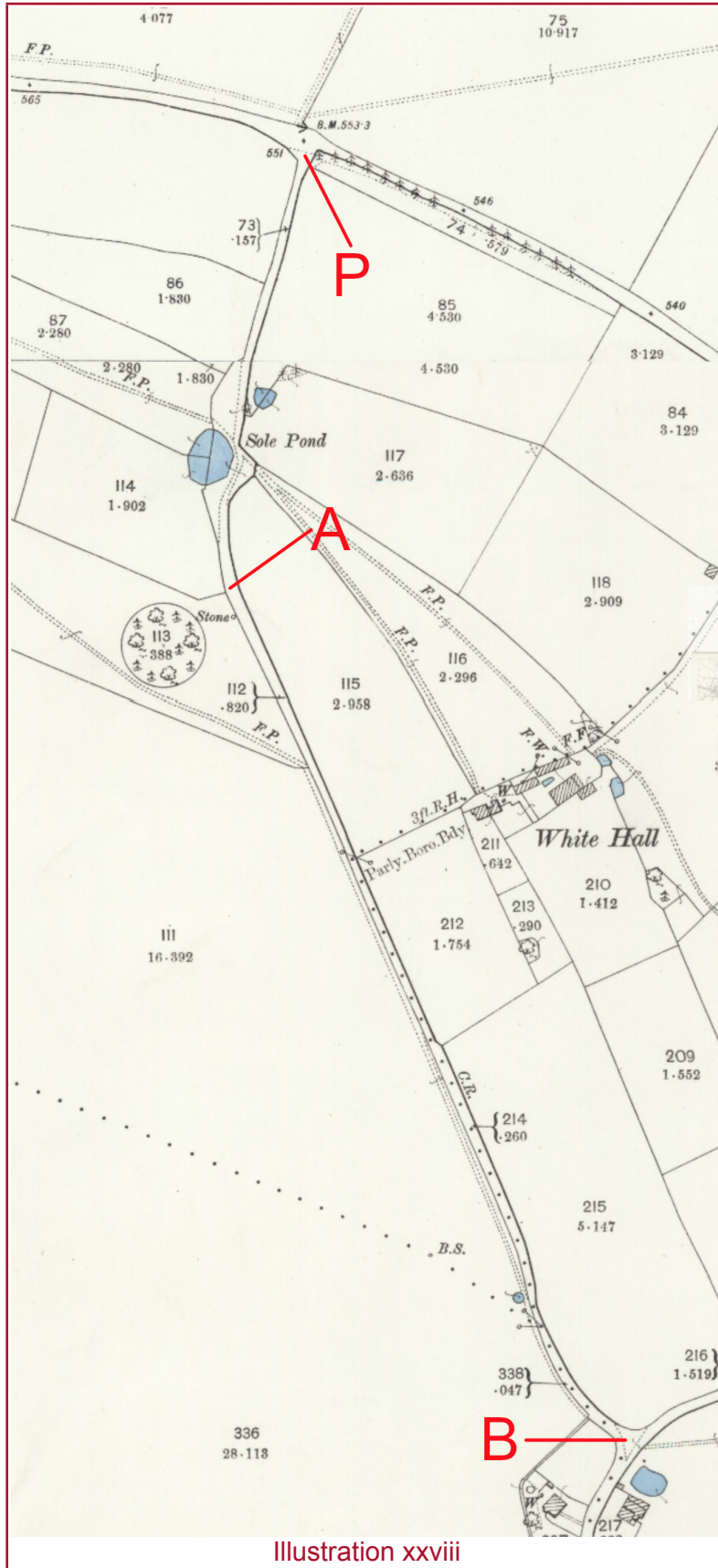
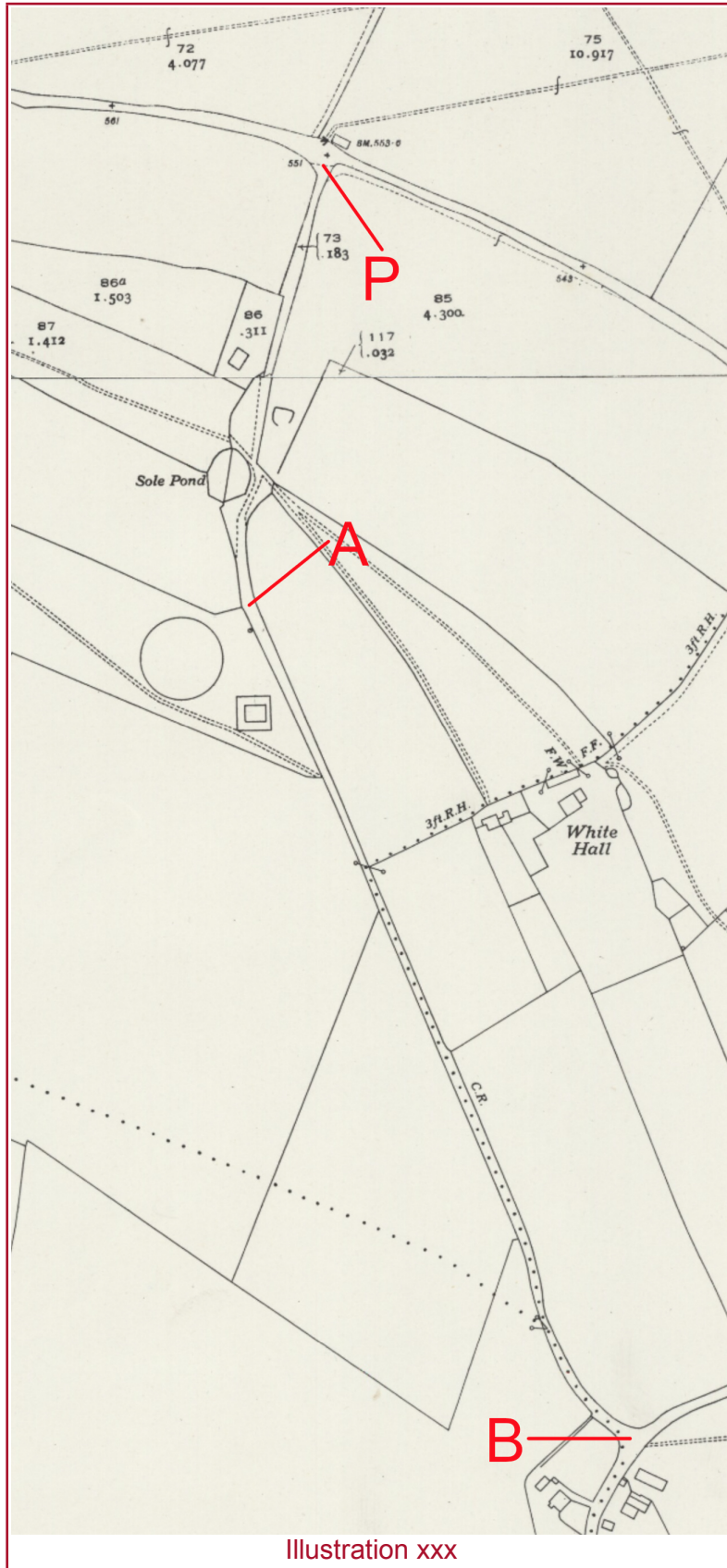


Illustration xxviii

County Series third edition (surveyed: 1906)



County Series fourth edition (surveyed: 1938)



J.3. **Description:** Original scale: 1:2,500 (twenty fives inches to one mile); orientation: unchanged (north is top).

J.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and twenty-five inches to one mile. Coverage of Kent was in four successive editions. All four editions show the application way throughout.

J.5. The area book for the parish of Paddlesworth records that the way within the parish, numbered 110 on the first edition map, was observed by the surveyor to be a 'Road'. Colouring in sienna on the first edition map indicates that the road was metalled.²³

J.6. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application way. The metalling of the way recorded on the first edition map, and its description as a 'Road', is consistent with the way being a public road.

J.7. None of the maps show any form of gate or other obstruction along the course of the road. This also is consistent with the way being a public road.

J.8. **Points:** 1

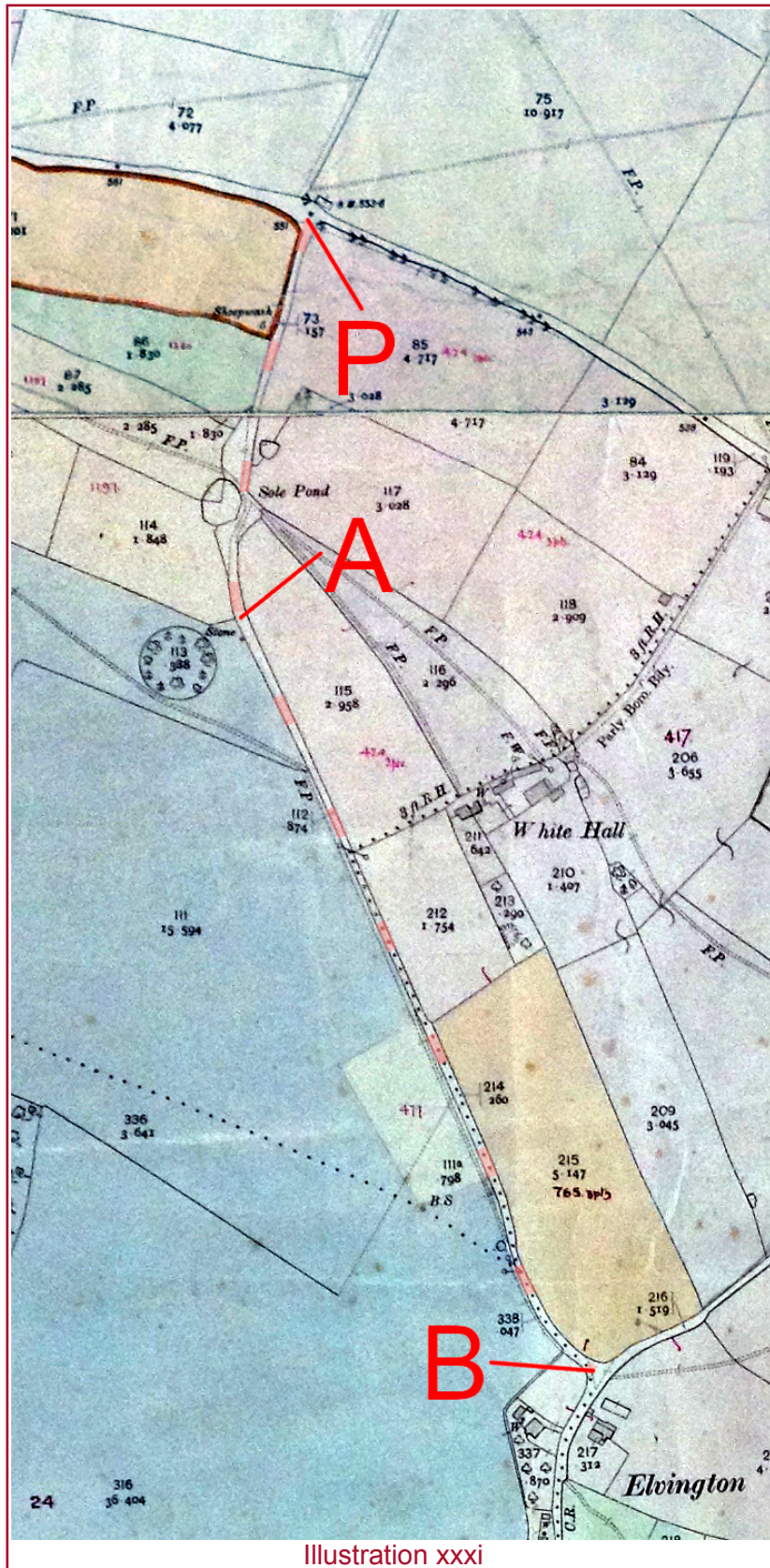
K. Finance (1909–1910) Act 1910

K.1. **Date:** 1911

K.2. **Source:** National Archives²⁴

²³ '**Carriage drives** were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3rd ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

²⁴ IR 124/5/237, IR 124/5/318



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

K.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.

K.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.

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

K.7. The application way is shown uncoloured between the neighbouring hereditaments. There is some overlap of the mauve colouring onto the application way between A and

Sole Pond, but it is not obvious that this is intentional, and no other part of the application way is coloured. Sole Pond, and waste adjacent to the road in the vicinity of Sole Pond, is also shown uncoloured.

K.8. **Conclusion:** As a 'white road', the record map is good evidence that the application way was considered to be a public road.

K.9. **Points:** 5

L. Bartholomew's map

L.1. **Date:** 1904, 1922 and 1953

L.2. **Source:** National Library of Scotland²⁵ (1904 and 1922), published map (1953)

²⁵ maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1904, 1922 and 1953

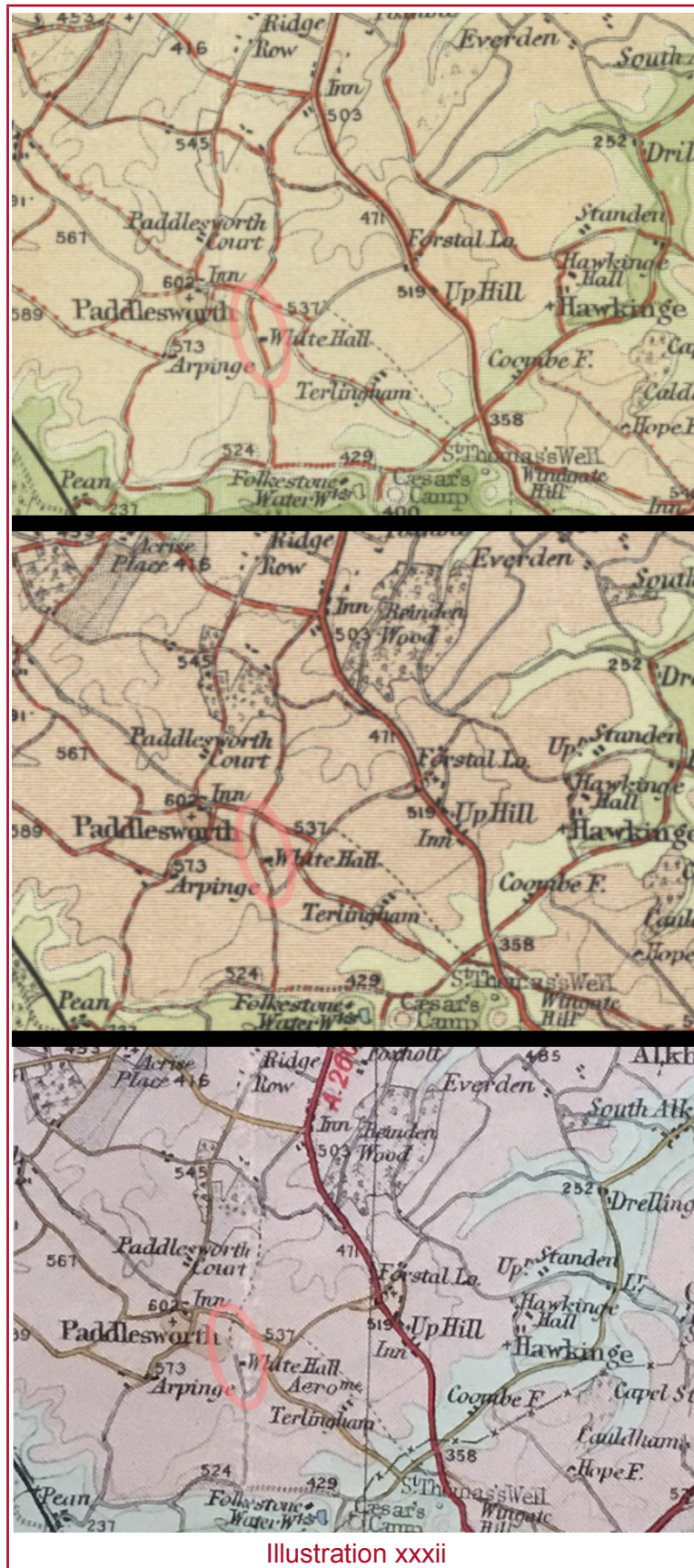
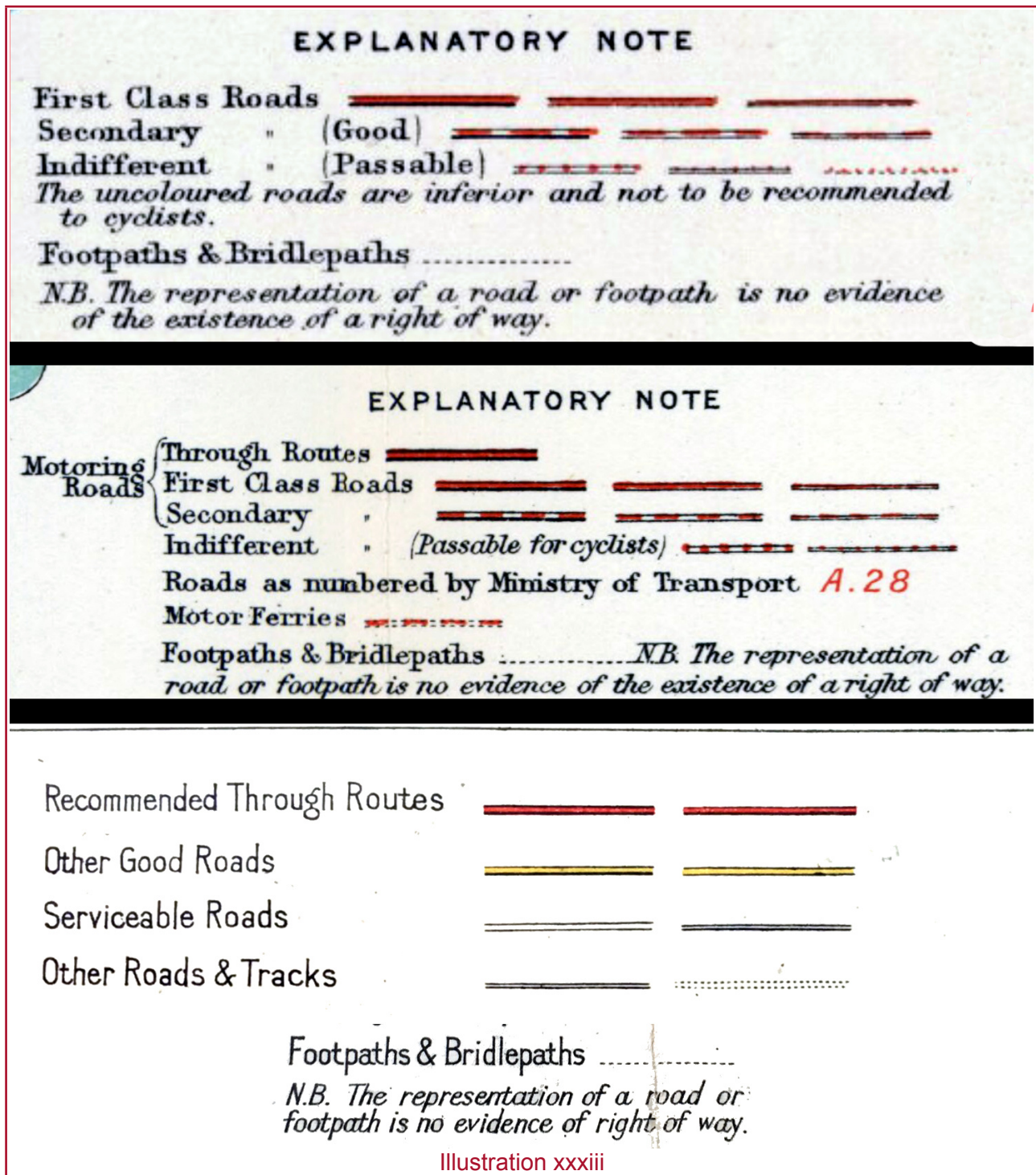


Illustration xxxii



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

L.4. Bartholomew's maps from the first half of the twentieth century show an evolving road network.

L.5. On the 1904 edition, the application way is depicted as a secondary road, good for cyclists. On the 1922 edition, as a secondary motoring road (and impliedly satisfactory for

cycling). On the 1953 edition, the way from P to A is shown as a footpath or bridleway, and from A to B as 'other roads and tracks'.

L.6. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the application way was regarded as a road sufficient for cycling, and apparently fit for motoring.

L.7. Paragraph 12.41 of the consistency guidelines²⁶ 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.8. 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. Moreover, the 1904 map was revised and published in a new edition in 1922, but there was no substantive change in the classification of the application way. It was only after the Second World War that the application way was downgraded to a road or track not necessarily suitable for cycling. It may therefore be said that the Bartholomew's maps are significant evidence of the status of the way as a public road considered fit for motoring and cycling.

L.9. **Points:** 1

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

M.1. **Date:** 1950–54

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

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

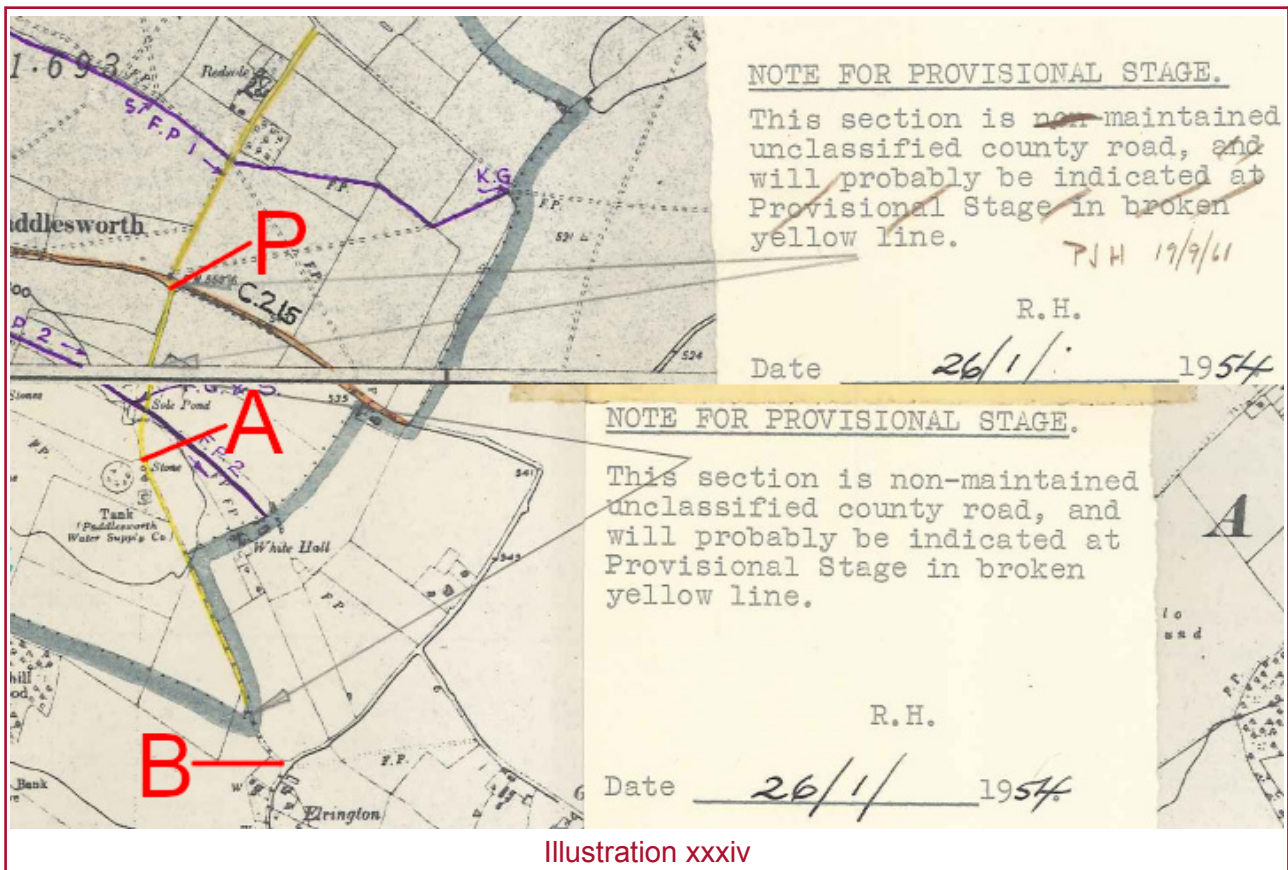


Illustration xxxiv

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

M.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.

M.5. The application way was not identified on the parish map for Paddlesworth. On the draft map, the application way between P and B is shown in yellow, indicating a main-tained road. Two stickers, widely used on draft maps, are braced with the application way. The first, braced with P to Sole Pond, states (with text struck out as indicated):

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 26/1/1954

The second, braced with Sole Pond as far as the join with the Newington parish boundary, states:

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 26/1/1954

M.6. **Conclusion:** The draft map records the surveying authority's view that the application way was a 'non-maintained unclassified county road'. The expression 'non-maintained' referred only to the absence of regular maintenance: it must nevertheless be that the road was considered publicly-maintainable, else it would not have been coloured yellow.

M.7. **Points:** 2

N. Highway inspector's map

N.1. **Date:** 1952

N.2. **Source:** Kent County Council²⁷

²⁷ Highway inspector's map supplied by the council on request.

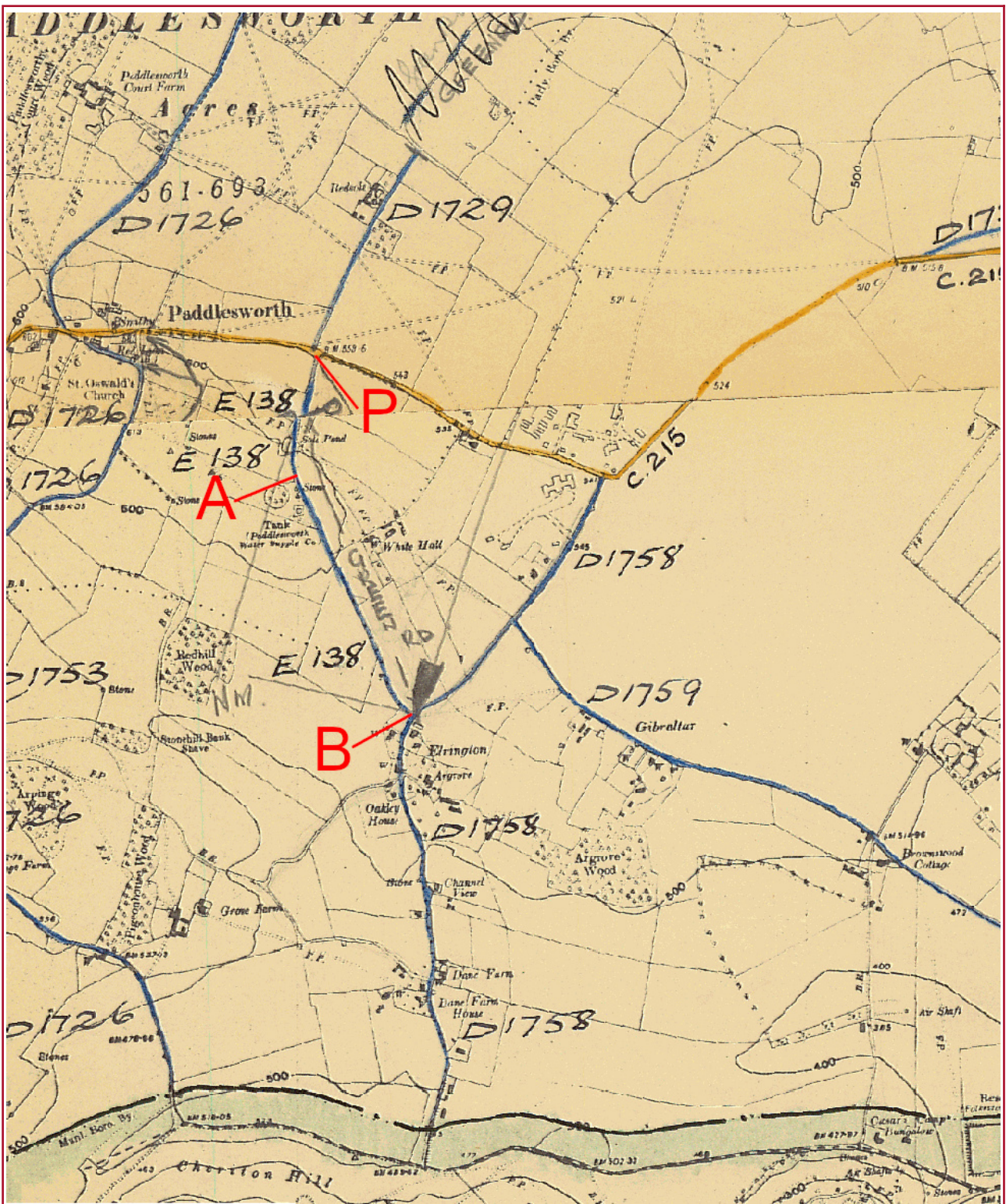


Illustration xxxv

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

N.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 distin-

guished those ways which were actively maintained, from those which were not (notwithstanding that the ways were publicly maintainable).

N.5. The highway inspector's map shows the application way as a public road, with the reference number E138. Between Sole Farm and B, the way is labelled 'GREEN RD' and 'N.M.' (*i.e.* not maintained).

N.6. **Conclusion:** The inspector's map shows that the application way was considered to be a public highway. The annotation of the way between Sole Farm and B suggests that the way was accepted as public highway, but that the highway authority did not intend to maintain it.

N.7. A way cannot cease to be a publicly-maintainable highway save by a legal order. If the way was considered in 1953 to be publicly-maintainable (albeit not in practice maintained), it must remain so today.

N.8. **Points:** 3

O. Highway authority list of streets

O.1. **Date:** 2003–2014

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

Shepway district local street gazetteer 2003

Gazetteer Detail

NFBT D1729 FISHERS LANE 254 m
MID KENT

UNCLASSIFIED SINGLE C/WAY U Created
OFF C215 PADDLESWORTH
SHEPWAY HU

Proposed No Unadopted No
NSG Ref 34500432 Map sheet TR23N

From OSGR 620039 139814
To OSGR 620002 139549

Adoption detail
Date
Ref HIC No

Declaration detail
Date
Ref

Handover detail
Date 01/03/00
Length 140 m

Gazetteer
Updated 08/06/1999 A
from PADDLESWORTH MID KENT HMU 140 OFF C215 TR23N R
to PADDLESWORTH SHEPWAY HU 140 OFF C215 TR23N R

PROW Updates:
Local Name Updates:

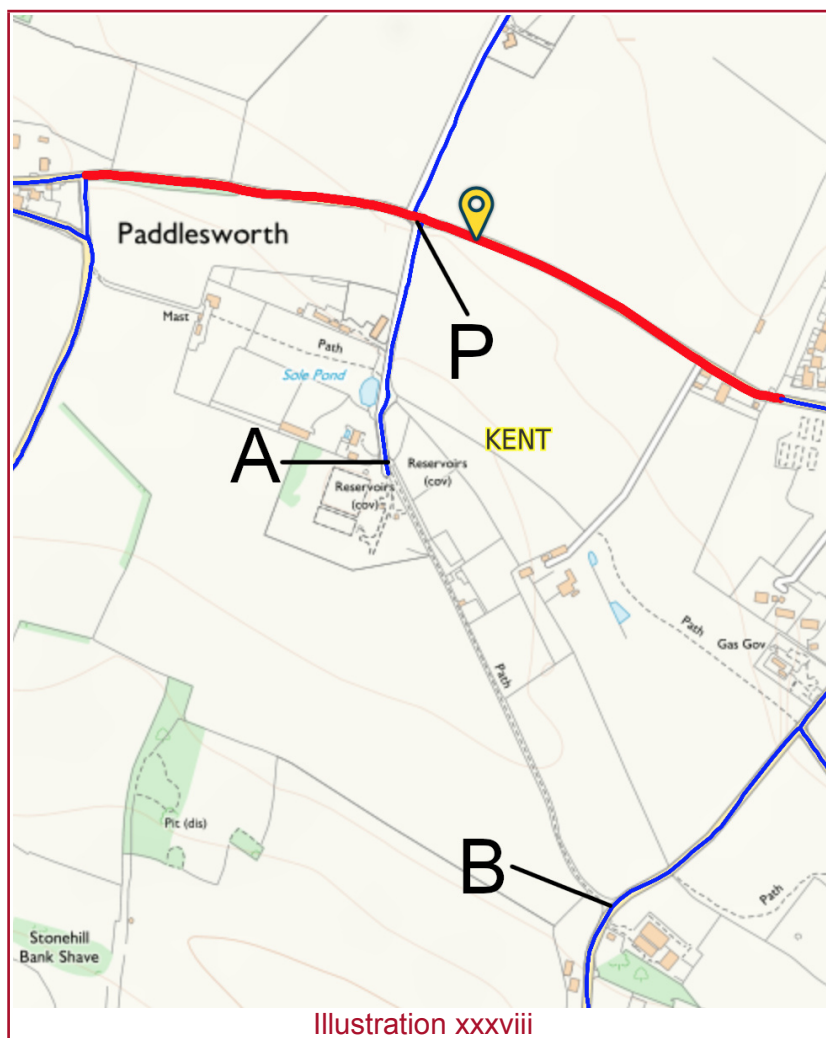
Illustration xxxvi

Kent list of streets 2019

STREET NAME	FISHERS LANE			
USRN	34500432			
TOWN	PADDLESWORTH	DISTRICT	FOLKESTONE AND HYTHE	STATUS PUBLICLY MAINTAINABLE HIGHWAY (WHOLE ROAD)

Illustration xxxvii

Kent National Street Gazetteer 2020



O.3. **Description:** Every highway authority must keep up to date a list of streets in its area which are publicly maintainable²⁸. ‘Street’ is defined to include a highway²⁹.

O.4. A street authority must keep a register of streets³⁰ to enable information to be recorded relating to street works. The register must include every street for which the street authority is the highway authority³¹. The highway authority is the street authority for a ‘maintainable highway’, being a highway maintainable at public expense³². The data from the street works register are compiled into a local street gazetteer (which in turn are made available in the national street gazetteer).

O.5. The first, Illustration xxxvi, shows an extract from the local street gazetteer for Shepway (now Folkestone and Hythe) district dating from 2003, which includes an entry

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

29 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...”.

30 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.

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

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

for the D1729 Fishers Lane. The limits of the entry are given as Ordnance Survey grid reference 620039,139814, which is at P, and 620002,139549, which is at A. The stated length of 254m corresponds to the distance between the identified points.

O.6. The second, Illustration xxxvii, shows an extract from the 2019 list of streets for Fishers Lane. The qualifying length of the entry is not stated, other than that it includes the 'whole road'.

O.7. The third, Illustration xxxviii, is an extract from FindMyStreet.co.uk, which replicates the National Street Gazetteer, a compilation from local street gazetteers. It records the application way being publicly maintainable between P and A.

O.8. **Conclusion:** The extracts demonstrate that the application way is recorded as a highway maintainable at public expense between P and A.

O.9. **Points:** 0