

The Kent County Council (Bridleway EE226A at Woodnesborough and Sandwich) Definitive Map Modification Order 2020

British Horse Society statement of case

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I. Introduction

A. Quick reference

Location plan



- A.1. Order: The Kent County Council (Bridleway EE226A at Woodnesborough and Sandwich) Definitive Map Modification Order 2020
- A.2. Existing rights of way comprised in upgrade: EE226
- A.3. District of: Dover
- A.4. Parishes of: Woodnesborough and Sandwich
- A.5. Ancient parishes of: Eastry and Woodnesborough
- A.6. Hundred of: Eastry
- A.7. Termination points: from Foxborough Hill, Woodnesborough to the Sandwich bypass
- A.8. Termination point grid references: TR30865609 and TR32045689
- A.9. Post code: CT13 0NY
- A.10. Ordnance Survey Explorer sheet: 150
- A.11. Ordnance Survey County Series 25" sheets: Kent XLVIII/6 and XLVIII/10

B. Introduction

B.1. This statement of case is made by the British Horse Society in relation to the definitive map modification order made by Kent County Council on 1 October 2020 ('the order'). It replaces all previous representations made by the society in relation to the order and the application for an order.

B.2. In order to facilitate ease of reference, the alpha-numerical referencing of documents in this statement of case preserves that in the society's historical document analysis,¹ to which reference is made in the surveying authority's statement of case. This statement of case includes one new evidential document, at item III.L below, which is lettered in part III to follow the existing sequence from A to K.

B.3. References in this statement of case are in the form 'I.A.1', where 'I' represents the part number which is shown in the footer of each page. Thus this paragraph is para.I.B.3. Cross-references within an item (this is item I.B Introduction) may be shortened to, for example, 'para.B.3'.

B.4. The lettering A, B, C, D, X and E used in this statement of case refers to the lettering adopted in the order, and not the lettering A to G used in the application.

B.5. In this statement of case, the statement of case of the order-making authority is referred to as 'OMA SOC'. As to the objectors, see item I.J below.

B.6. In the electronic pdf of this statement of case, cross-references are hyperlinked.

C. The applicant

C.1. The application for the order was 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 the Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

D. The order

D.1. The order seeks to upgrade to public bridleway the public footpath EE226 in the parishes of Woodnesborough and Sandwich, as described in the order. The total distance of footpath EE226 from A to E is 1,490m.

D.2. The order was made in response to an application made by the British Horse Society dated 24 November 2016, registered by Kent County Council in the register of applications no: PROW/DO/C385.

E. The line of the way and place names

E.1. The order way leads from point A on Foxborough Hill, which is the road leading from Poison Cross at Eastry due north to Woodnesborough, and part of the Roman road from Dover towards Richborough Castle.² Until the inter-War period, the ancient parish boundary between Eastry and Woodnesborough followed the centre line of the road from Poison Cross to a point 240m north of A (before turning east). However, the name Foxborough Hill, as applied to the road, does not appear to have been in widespread use until well into the twentieth century.³

1 Version 1.21.

2 There is no evidence today of the line of the Roman road north of Woodnesborough, and if the line did continue to Richborough, it must have adopted a circuitous route to avoid the inundated Goshall Valley.

3 See para.III.H.13 below. An accident on 'Foxborough Hill' is widely reported in the press in 1912.

E.2. At D, the order way crosses the former ancient parish boundary between Eastry and Woodnesborough, which here (having projected east from Foxborough Hill) has turned south-southeast again to follow the line of footpath EE225. Footpath EE225 leads north-northwest from D to Church Street and Woodnesborough church. There is some evidence that footpath EE225 to Woodnesborough church itself has the historical reputation of an unrecorded bridleway — see paras.I.J.3 to I.J.4 below.

E.3. To the east of D, the order way crosses the line of the former footpath from Woodnesborough to Felderland via Buckland Farm. This was extinguished by the Eastry Rural District (Woodnesborough & Worth) Extinguishment Order (No. 2) 1951: www.thegazette.co.uk/London/issue/39521/page/2183. Buckland Farm here is to the south-east, and Grove Manor Farm to the north-west.

E.4. At X, the order way crosses the line of the former East Kent Light Railway (item III.I below). The line of the railway (which here formed a curve not quite having reached its subsequent due north alignment) no longer is visible across the adjoining fields, but a culverted crossing of the ditch adjacent to the order way at X may still be seen.

E.5. The order way ends at E, but a way continues east-northeast directly forward as bridleway ES8A, and then (on the other side of the Sandwich by-pass) bridleway ES8, to Black Lane (byway open to all traffic ES10) and St Bart's Road, Sandwich. To the south-southeast from E is a track leading to Biller's Bush, now footpath EE226. This track formerly was recorded as a bridleway: a new bridleway ES8A instead leads to Biller's Bush immediately along the west side of the Sandwich by-pass, and the track from E was downgraded to footpath.

E.6. At E, the ancient parish boundary between Woodnesborough and Worth followed the centre line both of the way ahead (ES8A and ES8), and the turning to Biller's Bush (ES8A). The present parish boundary, now between Sandwich and Woodnesborough, follows the line of the way (ES8A) from Biller's Bush to E, and then turns south-west along the side of the order way for 230m before turning off to the north-west.

F. Background

F.1. The order way shows every sign of being part of a long-standing and very likely ancient highway between Foxborough Hill and the St Bartholomew's hospital area of Sandwich, with the earliest evidence for the physical existence of the way being recorded in the Thomas Sackely estate map of Walton (item III.A below) dating from 1622. However, as the highway between the Sandwich bypass and Sandwich is already recorded as a public bridleway, the order relates only to the remaining part, west-southwest of the Sandwich bypass, which is currently recorded on the definitive map and statement as public footpath EE226.

F.2. The way is recorded on several early estate maps: the Thomas Sackely estate map of Walton, the Manor of Grove (Boycot) map (item III.B below), and the Castle estate map of Walton (item III.D). The map drawn up under the Tithe Commutation Act 1836 (item III.E,5 below) is particularly convincing evidence of status, expressly referring to the order way as a 'bridleway'. Plans and book of reference for the Great Kent Atmospheric Railway (item III.F,5 below) refer to part of the order way as a bridleroad. And it is clear that the order way was regarded as a bridleway by the highway authority, as the affairs of Eastry Rural District Council (items III.H,3 and III.J,3 below) in 1904 and 1913 confirm this status.

F.3. It seems likely that the way was identified as a footpath in the parish survey conducted in 1950 by Woodnesborough parish council for the definitive map and statement

only because, in the post-war period, riding had become less prevalent and the focus was on rights of way on foot.

G. Grounds for confirming order

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*⁴, 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. While no single piece of evidence is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates bridleway reputation over many years, and that the appropriate status to be recorded on the definitive map and statement is as a public bridleway.

G.3. The objector’s case rests on an analysis of the evidence which relies on showing that each item either is wrong in what it shows, or can be interpreted in such a way that a conclusion pointing to a different outcome can be drawn. In our view, the more logical analysis leads to the conclusion that the order way is a bridle way.

G.4. In the event that the Secretary of State agrees with the objector’s analysis that the line of footpath EE225 to Church Street has the reputation of a bridleway in substitution for any part of the order way, the Secretary of State is asked to propose to modify the order accordingly.

H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the order way. But, having regard to the existing status of the order way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*⁵:

4 [2012] EWCA Civ 334

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

H.2. Points:

| Item | Ref | Points A–C |
|--------------------------------------|-------|---------------|
| Thomas Sackely estate map of Walton | III.A | 0 |
| Manor of Grove (Boycot) map | III.B | 1 |
| Barlow-Hasted map of Kent | III.C | 1 |
| Castle estate map of Walton | III.D | 3 |
| Tithe Commutation Act 1836 | III.E | 5 |
| Great Kent Atmospheric Railway | III.F | 5 |
| Ordnance Survey boundary records | III.G | 0 |
| Eastry Rural District Council (1904) | III.H | 3 |
| East Kent Light Railway | III.I | 0 |
| Eastry Rural District Council (1913) | III.J | 3 |
| Electricity Supply Acts 1882 to 1922 | III.K | 2 |
| HM Land Registry | III.L | 2 |
| Total points | | 25 |

I. Width of order way

I.1. The applicant endorses the width of the way recorded in the order.

J. Objections

J.1. A statutory objection dated 27 November 2020 was made by Mr Alan Warner of A W Warner & Sons Ltd. As the objection does not address any matter which can be taken into account by the Secretary of State in deciding whether to confirm the order, it is not further considered here.

J.2. An objection dated 13 August 2020 was made by Mr M Allen of Elgars, Chartered Surveyors, on behalf of Mr N Caspell, during consultation by the surveying authority on the application. Mr Allen's objection is referred to below as 'the objector', and his objection is specified as E/(i), or E/(iii)/n, where *i* refers to a section of the objection (so numbered), and *n* refers to one of the numbered Ordnance Survey maps included at section (iii) of the letter of objection.

J.3. The objector suggests (E/(v)) that the order is flawed in recording a bridleway from A to E via D, and that, if there is a bridleway at all, it is from A to D, then north-northwest to Woodnesborough church via Church Street (*i.e.* there is no bridleway from D to E). Similarly, it is suggested that bridleway ES8/ES8a from Sandwich to E (prior to construction of the Sandwich bypass) then turned south-southeast (and only south-southeast) along the line of footpath EE226 to Biller's Bush (*i.e.* it is suggested that a traveller on horseback along what is now bridleway ES8/ES8a could only continue past E by turning left and south-southeast to Biller's Bush).⁶ The objector finds some support for this analysis in the Thomas Sackely estate map of Walton (item III.A below), the Barlow-Hasted map of Kent

⁶ The objector correctly notes (E/(iv)) that footpath EE226 formerly was designated a bridleway, and before that, as a road used as public path, but was downgraded in connection with the construction of the Sandwich bypass. Bridleway 8a now provides a nearly parallel connection.

(item III.C below), the Castle estate map of Walton (item III.D below), the Tithe Commutation Act 1836 (item III.E below), and the Great Kent Atmospheric Railway (item III.F below).

J.4. We agree that there is some evidence that the way between D and Church Street had the reputation of a bridleway. Church Street currently is recorded with the presumed status of a public road on the list of streets from Woodnesborough Church as far as the turning to footpath EE224,⁷ and beyond to D it is designated as public footpath EE225. A report by the surveyor to Eastry Rural District Council on 2 March 1915 described the way as a 'bridle and accommodation road about 6 feet wide'.⁸ See also the Barlow-Hasted map of Kent at item III.C. However, whatever the correct status of that way, it is not a credible continuation of the bridleway from Foxborough Hill at A, because it turns back on itself to Woodnesborough church (about 650m north of A), after covering more than double the distance by road between those two points at around 1,400m. Historically, bridleways were established to meet the needs of travellers, and such a bridleway would have had no discernable purpose. Therefore, we submit that — even leaving aside the evidence specifically in relation to the way between D and E — if the evidence shows that the way between A and D had the reputation of a bridleway, then the only plausible explanation is that the way from D to E, and connecting with the existing bridleway ES8/ES8a from E to Sandwich, must be a continuation of that bridleway, and be of the same status.

J.5. Similarly, we submit that, while the way from E to Biller's Bush formerly was a bridleway (now downgraded to footpath EE226), Biller's Bush was not a very plausible destination for users of bridleway ES8, which could more directly be reached from Sandwich along Dover Road. It is much more likely that the way from E to Biller's Bush was used by riders from Woodnesborough to Biller's Bush, Felderland and Worth, who very likely used the alleged bridleway from Church Street to D referred to above (and advocated by the objector), and then the order way from D to E, turning off southeast to Biller's Bush.⁹

J.6. In other words, the probable spurs off the order way at D to Woodnesborough church, and E to Biller's Bush, may well historically have had reputation as bridleways, but neither entirely or mainly accounts for use of any part of the order way, which primarily was between A and Sandwich. Nevertheless, it is agreed as probable that some user of the order way, including on horseback, relied on those spurs: that is, user between E and D and turning aside at D to Woodnesborough church, or between (at least) D and E and turning aside at E to Biller's Bush.

7 List of streets for Dover district dated 2003. The termination point is given as OS grid reference: [631107.156653](#).

8 Eastry RDC highways report book (Eastry) 1913-20 RD/Ea/H7, p.63.

9 There formerly was a footpath from Woodnesborough to Felderland via Buckland Farm, which would have provided a more direct alignment between those places for those on foot. See para.I.E.3 above.

II. Photographs along the way



Illustration ii: From Foxborough Hill at A



Illustration iii: Behind the barn: at B north to C



Illustration iv: At C towards D, EE225 to left



Illustration v: Between D and X



Illustration vi: EKLR railway crossing at X



Illustration vii: Near E towards EKLR crossing

III. Evidence

A. Thomas Sackely estate map of Walton

A.1. **Date:** 1622

A.2. **Source:** Kent County Archives¹⁰

Thomas Sackely estate map extract

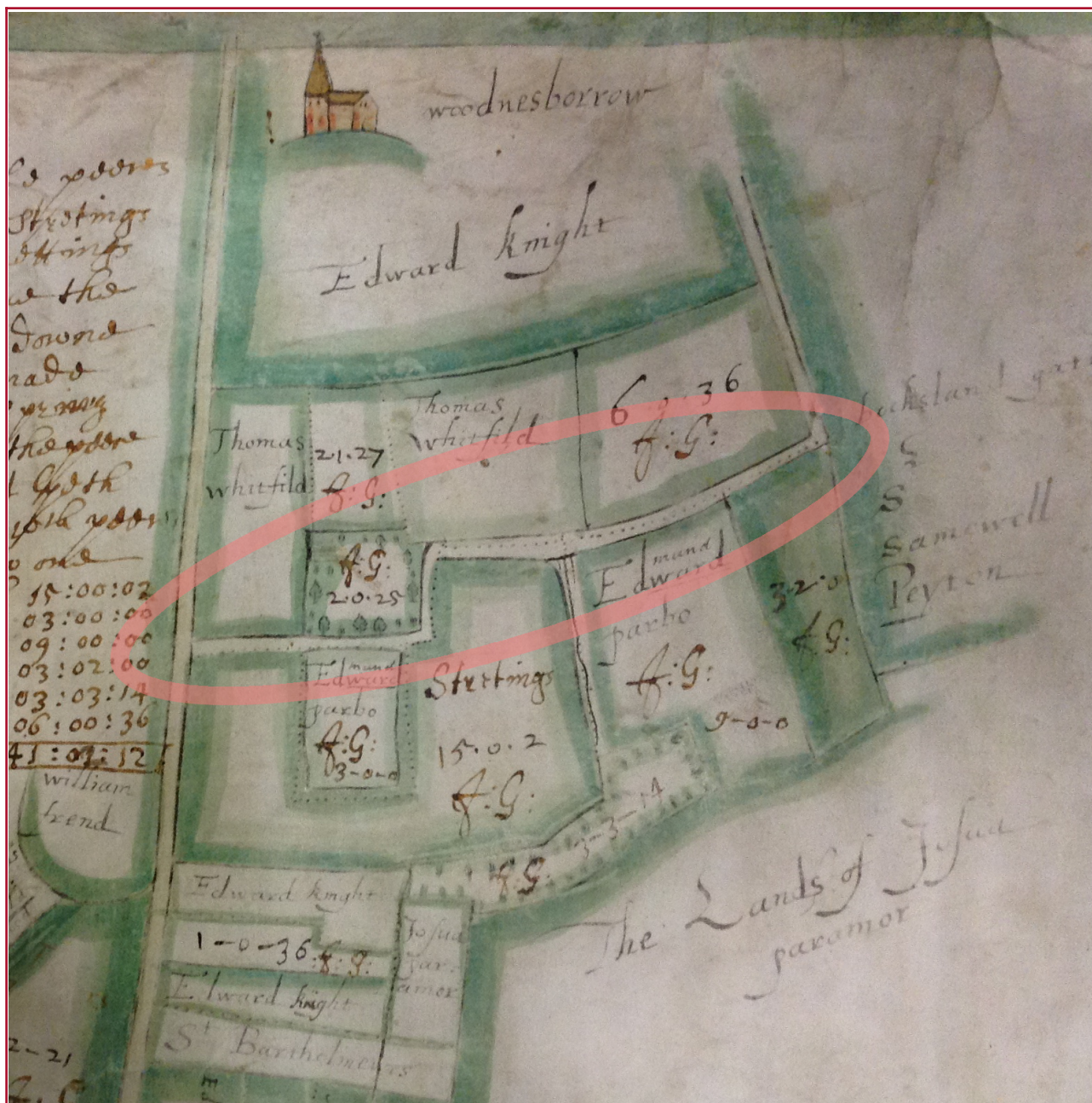


Illustration viii

A.3. **Description:** original scale: 1 inch to 24 perches (1:4,752); orientation: unchanged. An early estate map of Walton, part in the occupation of Thomas Jackely or Sackely (the name is partly obscured). The surveyor is unnamed, but the work is attributed to William Boycot. A copy of the whole map is in Annexe A at page 53 below.

A.4. The order way is shown between A and D, as an enclosed track between fields, the ownership of which is annotated. In contrast to Foxborough Hill and some other roads, which are coloured yellow, the order way is uncoloured, but the way is excluded from the tenanted lands which are edged in green. At D, the track turns north, and the map is annotated: 'Bucksland gate'. The annotation implies that a way leads from D through 'Bucksland gate' towards Bucksland (now Buckland: Buckland Farm is about 300 metres south of X further along the order way).

A.5. **Objector:** the objector states (E/(v)A) that the track depicted on the map turns north at D and appears to continue to Church Street, Woodnesborough. We agree, and indeed, this continuation north-northwest is today designated as public footpath EE225. There is some evidence that this track also had the reputation of a public bridleway: see paras.I.J.3 to I.J.6 above. However, whereas this track abutted the Walton estate, and was expressly depicted, the continuation of the order way east-northeast of D towards E was not part of the estate (or at least, not included in the map), and not depicted.

A.6. But the map does imply that a gate or bridle gate existed at D. Whereas the objector suggests that the continuation 'was access to Buckland Farm only with no other access', it is submitted that, in view of later evidence showing the existence of a continuous way between A and Sandwich, this map is evidence that the order way was in existence at the date of the map, and probably mediæval in origin. Plainly, Buckland Farm was then in different ownership to the Walton estate, and there is no evidence of any private right of way between the two estates which would justify a private gate at D, nor which would cause the gate to attract a name meriting its identification on the Thomas Sackely map.

A.7. **Conclusion:** The estate plan is convincing evidence of the physical existence of the order way between A and D, but the status of the way is uncertain. However, the way is excluded from the tenanted lands, in common with Foxborough Hill itself, and this suggests that the way was of some significance.

A.8. No continuation of the way is shown beyond D (on the map, the track here turns north-northwest to Woodnesborough church), but the map here is marked 'Bucksland gate', and it seems reasonable to posit that a gate or bridle gate provided for access east towards E, and in the absence of any recorded private right of way, that the continuation was at least of the status of a bridleway.

A.9. **Points:** 0

B. Manor of Grove (Boycot) map

B.1. **Date:** 1635

B.2. **Source:** Kent County Archives¹¹

Manor of Grove map extract

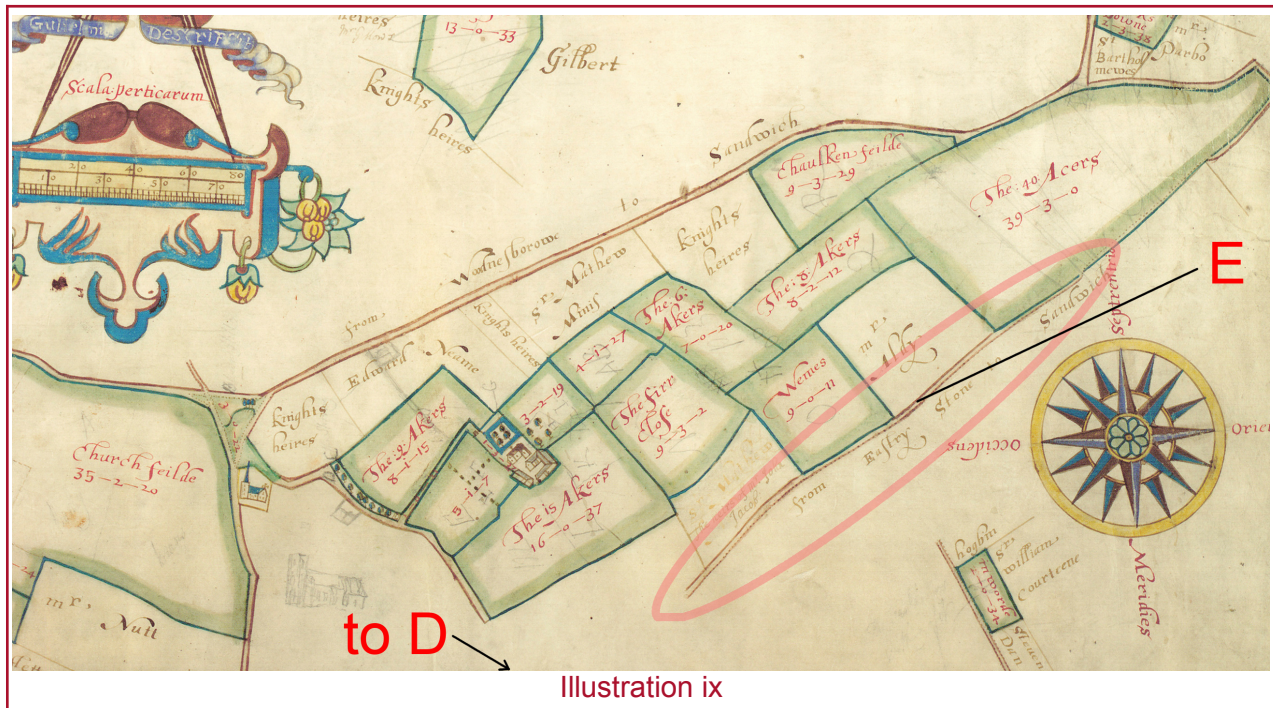


Illustration ix

B.3. **Description:** Original scale: marked on map (in chains); orientation: unchanged (north). A map of the manor of Grove drawn by William Boycot. The map is marked: 'A map and description of the manor of Grove with 22 parcels of arable thereunto belonging lying in the parishes of Woodnesborough, Worth and St Mary's in Sandwich containing 197 acres, one quarter: 5 perches'. Grove was one of several manors in the parish of Woodnesborough.

B.4. The map shows a way leading southwest from Sandwich coincident with the line of the present bridleway ES8, which continues coincident with the order way between E and a point approximately half-way between E and D (the manor does not include land southwest of E). The way is coloured ochre (although part of the way, east of E, falls within the field called '40 Acres', and the colouring is uncertain), and labelled, 'from Eastry Stone to Sandwich'.

B.5. **Analysis:** The order way (and its continuation east of E to Sandwich) is coloured ochre in common with other ways shown on the map and which are now recognised as public roads, namely: the Sandwich to Woodnesborough road, Black Lane (Sandwich byway ES10), Oak Hill/Fir Tree Hill/Foxborough Hill (forming the three sides of the triangle of roads at the heart of Woodnesborough village), Beacon Lane, Marshborough Road. The exception, Church Street, which also is coloured ochre on the map, is currently recorded as a public road on the list of streets only as far as the last house in the street, and beyond as public footpath EE225, but we suggest at paras.I.J.3 to J.4 above that this

11 U941/P1

latter record of a footpath may be of a lower status than justified and the objector appears to agree (E/(v)).

B.6. The order way also is labelled as a way 'from Eastry Stone to Sandwich', which is suggestive of a public road leading from one settlement to another. The precise location of Eastry Stone is not now known, but the parish boundary between Eastry and Woodnesborough lies along the centre line of Foxborough Hill at A, and it may be that Eastry Stone was a parish boundary marker in that vicinity — a boundary stone formerly stood about 200 metres north of A.

B.7. The use of a destination label on old maps generally is associated with public, rather than private, roads. In *Commission for New Towns & Anor v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses¹²:

...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.

While the order way is not claimed as a public carriageway, the annotation strongly is suggestive of a public bridle road leading from one place to another.

B.8. **Objector:** It is suggested (E/(v)B) that the map is less reliable in showing features such as the order way outside the extent of the manorial lands. However, the order way bounds the manorial lands, and is likely to form part of those lands *ad medium filum* (up to the centre line of the way). As such, the order way is an integral component of the manorial lands.

B.9. It also is suggested that the map does not impart any particular status to the order way — this criticism is addressed in paras.B.5 to B.7 above.

B.10. **Conclusion:** The manorial map is an unusually detailed and colourful map dating from the early seventeenth century. It was prepared by a Kent surveyor, would have been costly, and is likely to have been commissioned by the lord of the manor of Grove. It was open to the lord to show private roads within the manor in whatever way he chose, but the order way is shown in the same presentation as roads which today are recognised as public, and is annotated in such a way that it strongly implies status as a public carriage road or bridle-road.

B.11. **Points:** 1

12 [2002] EWHC 2668 (Ch), at para.90: www.bailii.org/ew/cases/EWHC/Ch/2002/2668.html

C. Barlow-Hasted map of Kent

C.1. **Date:** 1778–1801

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

Barlow-Hasted map extract

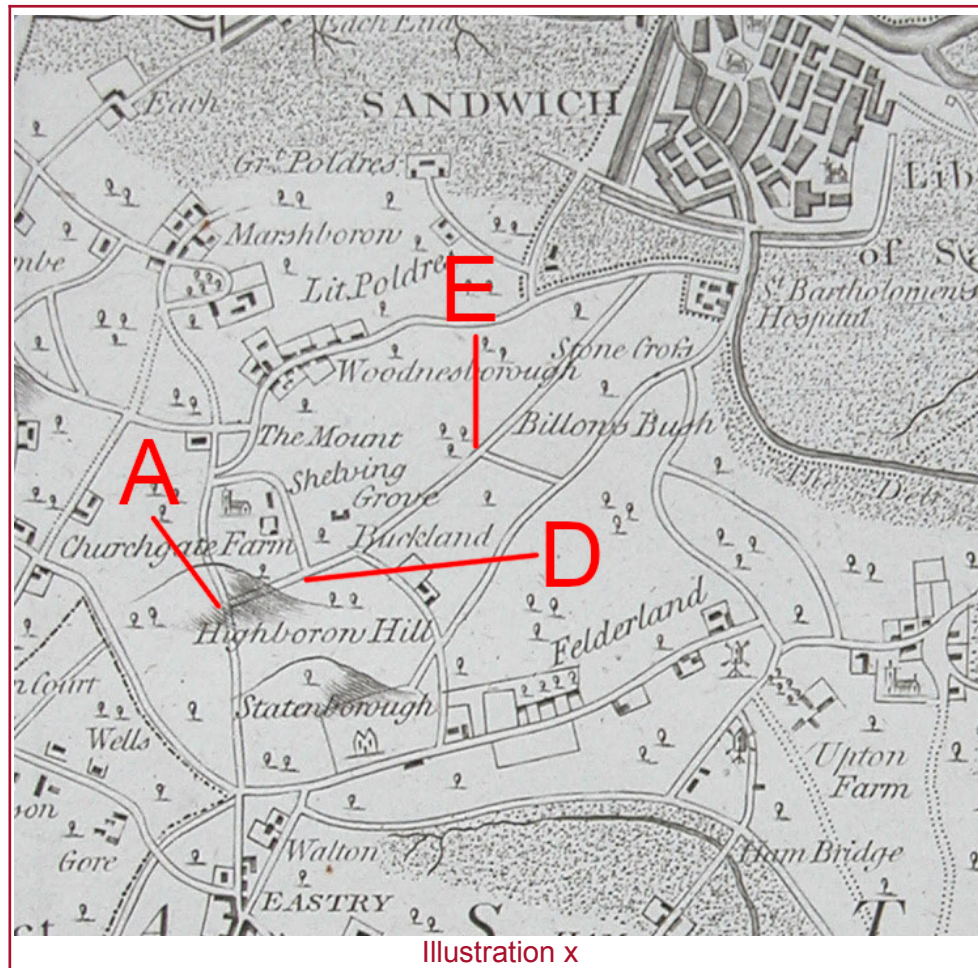


Illustration x

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

C.4. William Barlow's engraved maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*, published in 12 volumes. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundred of Eastry.

C.5. The Barlow-Hasted map shows the order way between A and E as a defined way, continuing north-east towards St Bartholomew's Hospital, Sandwich.

C.6. **Objector:** It is observed (E/(v)C) that the map merely shows 'just that a route of some description existed', and that a route from D north-northwest to Church Street is also shown. We observe at paras.I.J.3 to J.4 above that the line north-northwest from D may be an unrecorded bridleway, and if so, it is unsurprising that it is shown — indeed, it increases confidence in the accuracy of the map. We agree that not all routes shown on the map inevitably are public highways, but we suggest that, where a through way is

shown between two acknowledged highways (Foxborough Hill and Black Lane, Sandwich), it is more likely that the through way is also public.

C.7. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the claimed route. The map was widely commercially published, and would tend to show through routes which were public highways. It cannot be assumed that the status is any greater than bridleway.

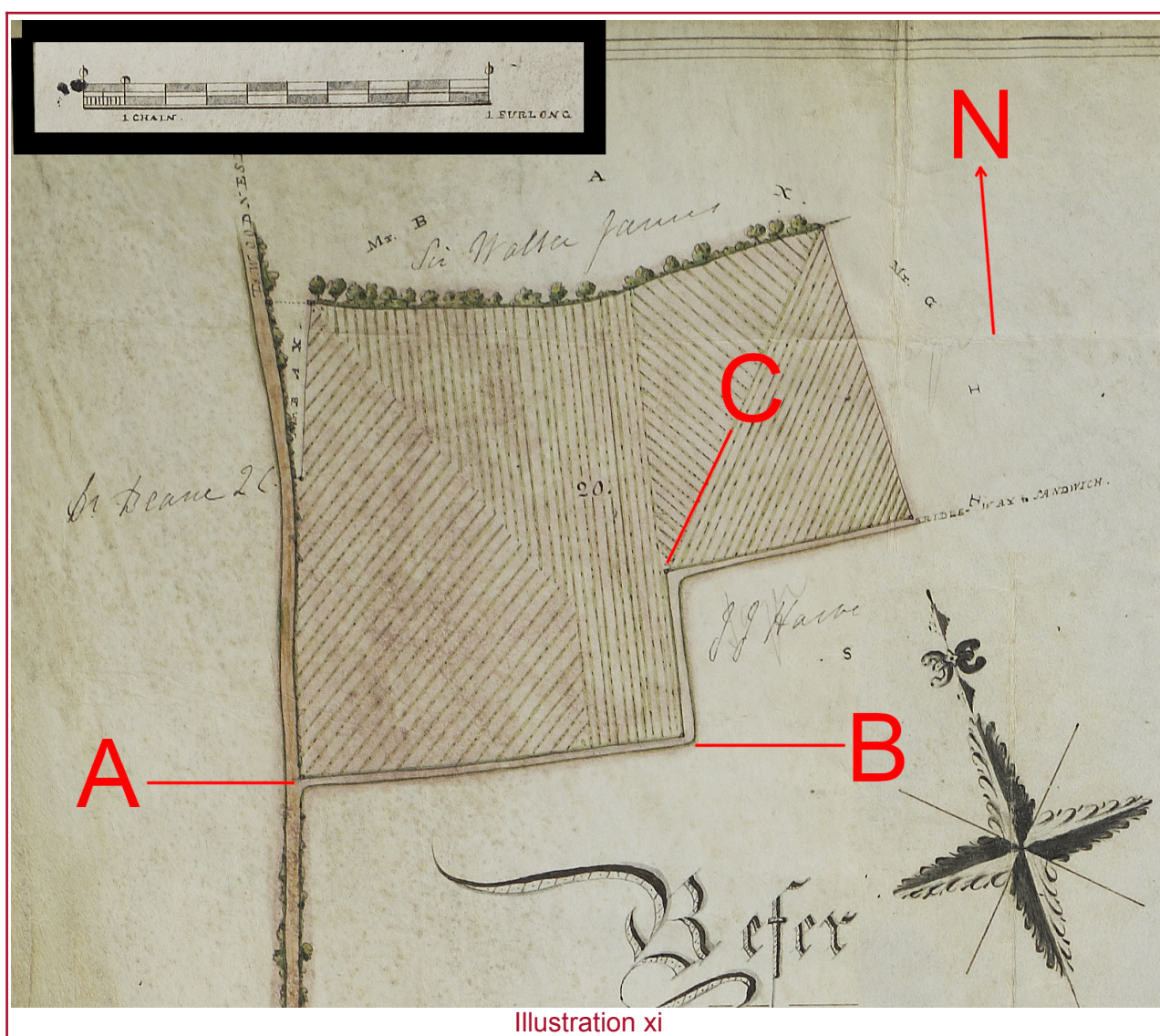
C.8. **Points:** 1

D. Castle estate map of Walton

D.1. **Date:** 1821

D.2. **Source:** Kent County Archive¹³

Castle estate map extract



13 R/U48/P1

Estate map measured area

| Description | Area | Total |
|--------------------|------|---------|
| Dykes | 25 | |
| 19. Pasture | 10 | |
| Half Brook w Dykes | 08 | |
| 20. Arable | 18 | |
| Hedge | 10 | 3.09 |
| Road | 25 | |
| Total | | 70.2.38 |

Illustration xii

D.3. **Description:** Original scale: scale bar marked on map; orientation: unchanged (top is north). A copy of the whole map is in Annexe B at page 55 below.

D.4. The map is described as the 'Property of T Castle', and surveyed by G A Hailey of Sandwich. The map is an estate map, showing the lands of the owner, T Castle. In the title apportionment for Eastry (see item III.E below), parcel 20 (shown hatched on the estate map) was labelled as parcel 39 (Foxborough Hill), and assigned to T Castle.¹⁴

D.5. The map shows the order way east from A, staggered via B and C, as far as the eastern boundary of parcel 20 between C and D. The track is shown open to the junction with the public road at Foxborough Hill at A, and is marked with continuous double lines, suggesting (possibly misleadingly) an enclosed track.

D.6. At the eastern boundary of parcel 20, the way is labelled: 'BRIDLE-WAY TO SANDWICH'. A character, having the appearance of a rotated 'H' or 'T', appears above and between 'BRIDLE-' and 'WAY':

BRIDLE-^HWAY TO SANDWICH.

D.7. In the table of parcel areas included in the map, parcel 20 is described as having three components: arable (13a,2r,12p = 5.49ha), hedge (16p = 0.04ha), and road (21p = 0.05ha), with a total of 13a,3r,9p (= 5.59ha).

D.8. **Objector:** The objector suggests (E/(v)D(a)) that a plan prepared for the owner of the land 'would only relate to that land'. The point made is not entirely clear, but we deprecate any suggestion that the presence of a bridleway across the estate was not a feature which would have been relevant to the owner or the surveyor — plainly, it was relevant, and it was marked as such.

D.9. The objector also suggests that, if the order way between A and C were a bridleway, it would have been recorded as such in the table of measured areas (Illustration xii above). However, until the post-War era, bridleways frequently were described as 'bridle-roads', and the entry for a 'road' in the table is consistent with such description. The order way also is annotated on the map as a 'bridle-way'.

D.10. The objector admits (E/(v)D(b)) that the surveyor would have had detailed knowledge of his client's land, but asserts that his knowledge would not necessarily extend beyond those lands. However, the order way abuts parcel 20, is included in the table of

¹⁴ Available online at: www.kentarchaeology.org.uk/Research/Maps/EAY/02.htm.

parcel areas, and therefore either all or half (*ad medium filum*) of the order way is comprised in the estate, of which the surveyor had 'detailed knowledge'.

D.11. It further is suggested by the objector ((E/(v)D(c)) that it is not possible to be confident that the way 'to Sandwich' annotated east from C follows the order way, but could alternatively turn to the north at D and lie via the present course of footpath EE225 and Church Street. This suggestion is rebutted at paras.I.J.3 to I.J.6 above.

D.12. **Conclusion:** The map shows the order way as part of the lands within the Walton estate, and assigns an area to it, labelled 'road'. The way is annotated on the map as a 'bridle-way to Sandwich'.

D.13. The map therefore is good evidence of the status of the way, as acknowledged by the owner at the time on the map of his own estate. The representation of the bridleway leading from Foxborough Hill, a public road, to Sandwich, makes clear that it is a public way, and not an easement for the owner's own use.

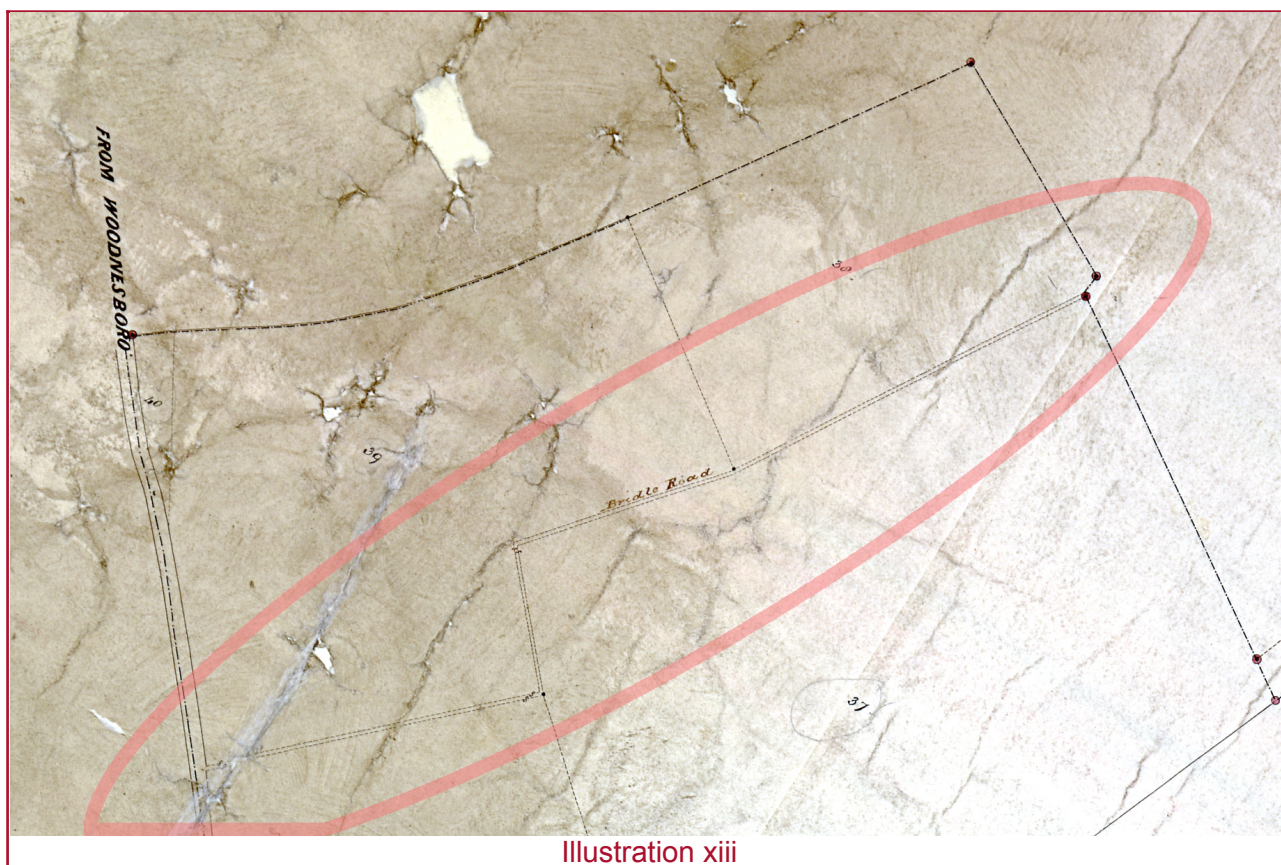
D.14. **Points:** 3

E. Tithe Commutation Act 1836

E.1. **Date:** 1841

E.2. **Source:** Kent County Archive¹⁵

Eastry tithe map



15 Tithe maps are available on CD.

Woodnesborough tithe map

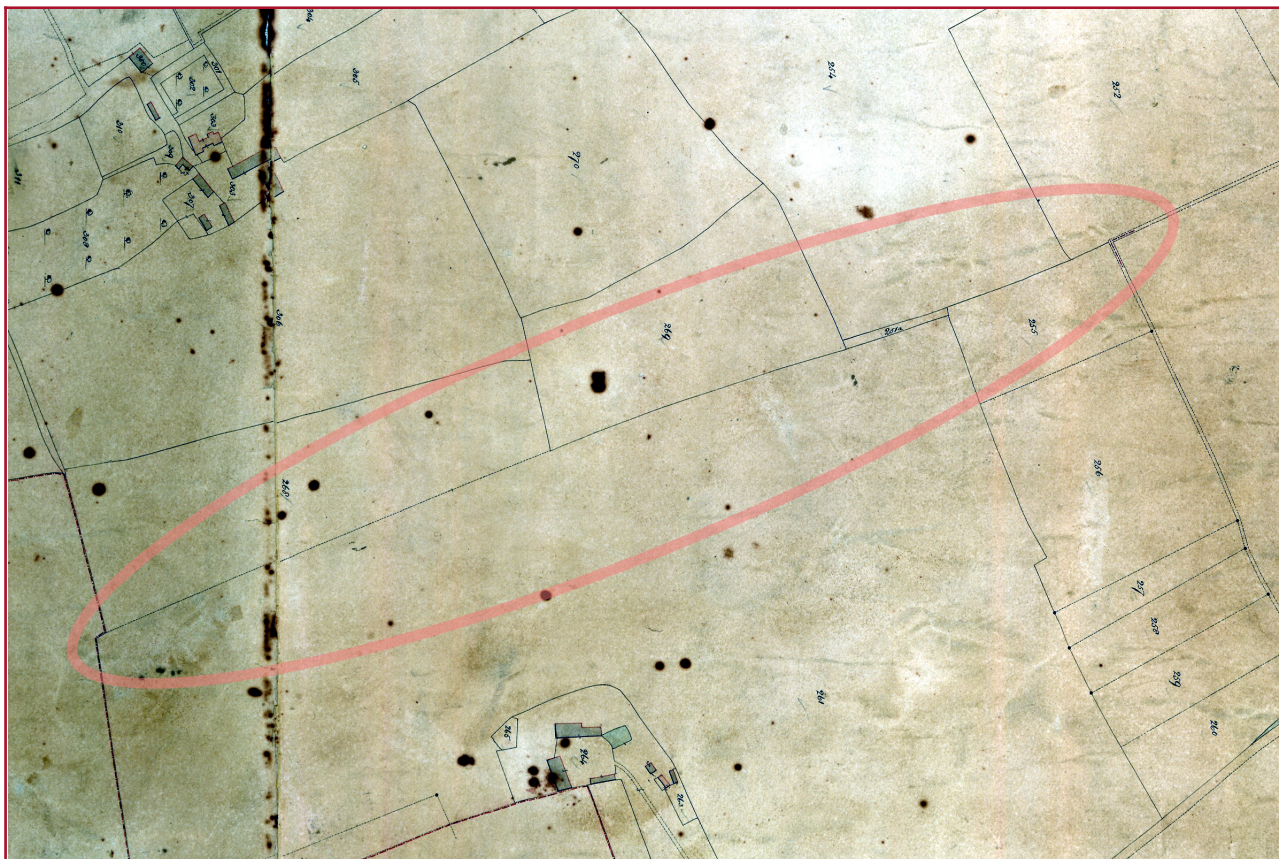


Illustration xiv

E.3. **Description:** *Eastry tithe map* — original scale: three chains to one inch (1:2,376); orientation: unchanged (top is north-east). The tithe map for Eastry is second class. *Woodnesborough tithe map* — original scale: three chains to one inch (1:2,376); orientation: unchanged (top is east-northeast). The tithe map for Woodnesborough is first class.¹⁶

E.4. The tithe map for Eastry shows the order way east from A, staggered via B and C, as far as the then parish boundary between Eastry and Woodnesborough at D. The track is shown open to the junction with the public road at Foxborough Hill at A, and is marked with double pecked lines, suggesting it is unenclosed. No specific parcel reference is allocated, but the track is braced on each side to the neighbouring parcels (suggesting that the area is allocated *ad medium filum*). Between C and D, the order way is annotated 'Bridle Road'.¹⁷

E.5. The tithe map for Woodnesborough depicts no defined path or track along the order way, save a short section of length about 85m which is enclosed by drains and labelled as parcel 251a. This parcel is recorded in the tithe apportionment as a 'Roadway' owned by Thomas Dilnot Stewart and occupied by Messrs. William and Henry Denne.¹⁸

E.6. The Woodnesborough tithe map also records, as a track, what is now public foot-path EE226 north-northwest from Biller's Bush to join the order way at E, and the continu-

¹⁶ *The tithe maps of England and Wales*, Kain and Oliver, p.255 (entry 17/399).

¹⁷ The identical annotation appears on the tithe map held by the National Archives, IR 30/17/120.

¹⁸ Transcription of Woodnesborough tithe apportionment by Kent Archaeological Society: www.kentarchaeology.org.uk/research/tithes/woodnesborough.

ation of the order way east-northeast from E towards St Bartholomew's Hospital along what is now public bridleway ES8A and ES8.

E.7. **Analysis:** The Tithe 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.

E.8. 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 to.¹⁹

E.9. 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.²⁰

E.10. It is widely said that the tithe commutation survey was not required to identify or distinguish public from private roads.²¹ The task of those involved in implementing the 1836 Act was to ensure that the existing tithes were established, if necessary, on a monetary basis; and to calculate the amount of rent charge due on tithable land.²² Land was exempt from liability if it was barren and unproductive. Both private and public roads might be classified as unproductive. Equally, both private and public roads might nevertheless yield useful grazing, and give rise to a liability to rent charge.

E.11. But the assessment was not indifferent to status. An enclosed public road, which was maintained by the parish, and on which the grazing (if taken) did not belong to any particular person but might be grazed in common as waste, ought to be excluded from assessment, whereas an unenclosed public field road, on which the grazing might be taken by the landowner while grazing the field as a whole, might well be liable to assessment in the usual way (as part of the field). On the other hand, an enclosed private or drift road, with generous grazed shoulders or verges at the side of any metalled road, ought to be liable to assessment.

E.12. The order way between C and D specifically is annotated on the Eastry tithe map as a 'Bridle Road'. Such annotations are unusual on a tithe map: only one other annotation appears on the Eastry tithe map (bridleway EE491 between Thornton Lane and Venson

19 *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).

20 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

21 See, generally, Planning Inspectorate, [Consistency Guidelines](#), para.8.2: '...tithe maps were not intended to establish or record rights of way. ... It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain...'

22 *Tithe map case studies*, J Andrews, 1994, *Rights of Way Law Review*, s.9.3.67

Bottom). The annotation is not directly relevant to the purpose of the tithe assessment, but presumably is marked as a locational aid, in the sense that land owners and occupiers would be able to orientate themselves by reference to the bridleway, and to locate their land in relation to it. As such, and given the local engagement in the tithe commutation process, it would be astonishing if the annotation would have been applied or retained if it were disputed.

E.13. The order way is not shown on the Woodnesborough tithe map because it was not necessary to show it. As a field path, it had no impact on the valuation of the land across which it lies. It was, however, necessary to identify the continuation of bridleway ES8 east-northeast of E towards Sandwich, and what is now footpath EE226 south-southeast to Biller's Bush, because this track formed the parochial boundary between Worth and Woodnesborough, and the boundary followed the centre of the bridleway.²³ Thus, in order to show the boundary, it was necessary to show the feature which defined it.

E.14. Parcel 251a is recorded in the apportionment as a 'road' in private occupation. This record is consistent with the order way as a bridle-road where the grazing in the parcel is assigned to the owner of the land. The area of the parcel is given in the tithe apportionment as 24 perches (607m²), and having regard to its length of 85m, this suggests a width of around 7m — more than sufficient to yield useful grazing notwithstanding the presence of the bridleway passing through it. This, then, explains why the parcel is assigned a rent-charge notwithstanding the presence of the bridleway.

E.15. **Objection:** The objector implies (E/(v)E) that the marking of 'bridle road' on the Eastry tithe map is evidence of a way only from A to D. But the only evidence of another bridleway is that from D to Church Street and Woodnesborough Church. This possibility is addressed at paras.I.J.3 to I.J.6 above. It therefore is unsurprising that part of the way north of D is shown as enclosed on the Woodnesborough tithe map, and indeed, it remains footpath EE225 to this day — but this is not likely to be the only continuation of the bridleway between A and D.

E.16. We address the objector's comments on the absence of any marking on the Woodnesborough tithe map at para.E.13 above. The vast majority of tithe maps do not expressly annotate bridle roads or any other highways: one cannot infer that the absence of any such annotation on the Woodnesborough tithe map undermines what is shown on the Eastry tithe map.

E.17. **Conclusion:** The order way between A and D is part of a single, continuous, logical route between Foxborough Hill and Sandwich, and the annotation of 'Bridle Road' applied to the Eastry tithe map must apply to the entire route.

E.18. No adverse conclusions can be drawn from the Woodnesborough tithe map, which does not show field highways unless they are significant to the purposes of the tithe assessment.

E.19. **Points:** 5

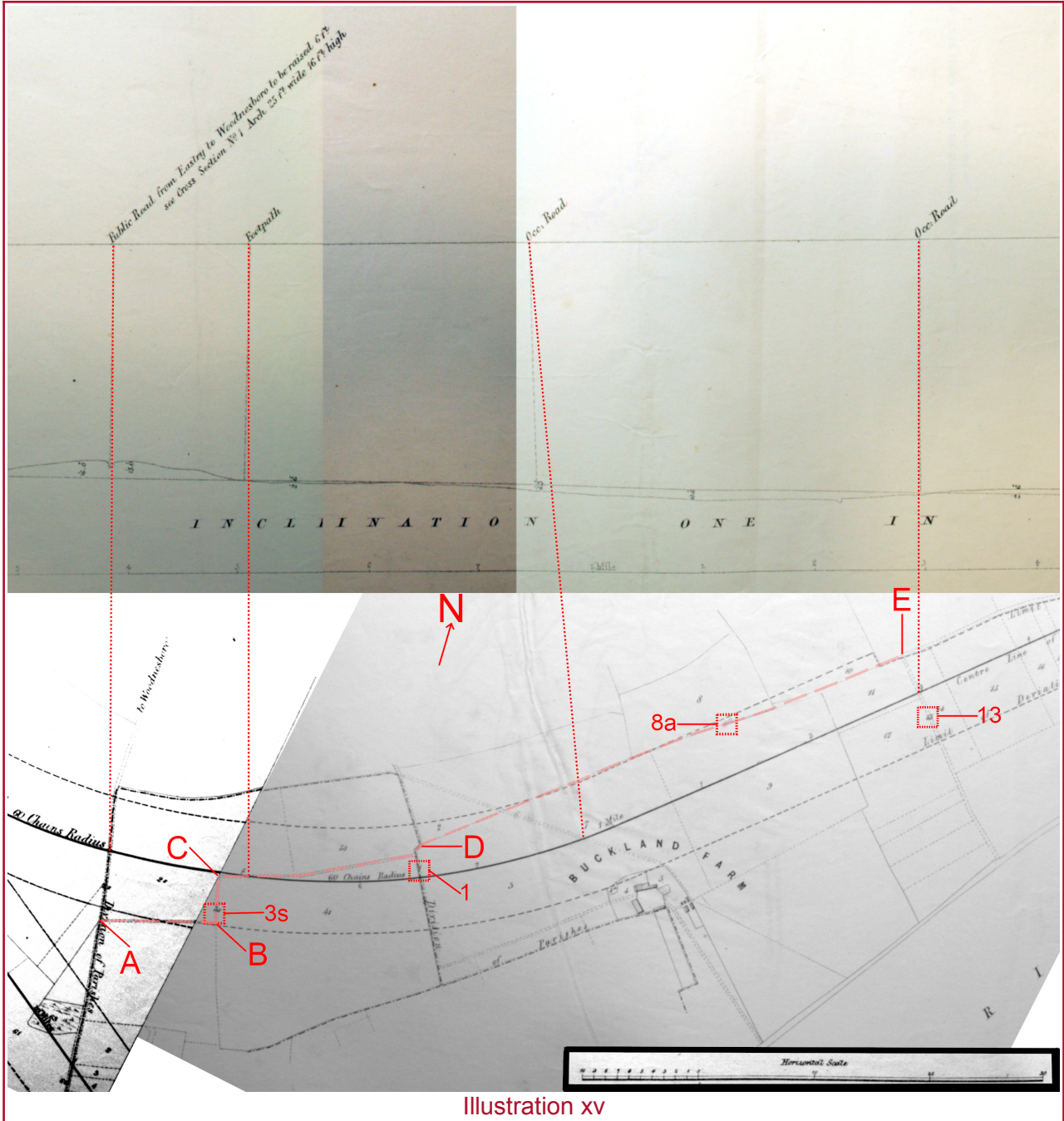
²³ See the Ordnance Survey County Series six-inch first edition sheet XLVIII, which marks the boundary as 'C.R.' i.e. centre of road: maps.nls.uk/view/102343576, also available at E/(iii)/2.

F. Great Kent Atmospheric Railway

F.1. **Date:** 1845

F.2. **Source:** Kent County Archive²⁴

Deposited plan



24 Q/RUm/291

| The PARISH of EASTRY, in the County of KENT. | | | | |
|--|------------------------------|---------------------------|------------------------------|---------------|
| No. on Plan. | Description of Property. | Owners, or Reputed Owners | Lessees, or Reputed Lessees. | Occupiers. |
| 1 ^s . | Public highway - - - | Surveyors of highways. | | |
| 2 ^s . | Arable - - - - | George Sayer - - - - | | George Sayer. |
| 3 ^s . | Occupation-road and footpath | George Sayer - - - - | | George Sayer. |
| 4 ^s . | Arable - - - - | George Sayer - - - - | | George Sayer. |
| 5 ^s . | Arable - - - - | George Sayer - - - - | | George Sayer. |

| SANDWICH BRANCH. | | | | |
|--|---------------------------------|---|------------------------------|-----------------------------------|
| The PARISH of WOODNESBOROUGH, in the County of KENT. | | | | |
| No. on Plan. | Description of Property. | Owners, or Reputed Owners. | Lessees, or Reputed Lessees. | Occupiers. |
| 1. | Occupation-road - - - | Henry Keble - - - - | | Henry Keble. |
| 2. | Arable - - - - | Henry Keble - - - - | | Henry Keble. |
| 3. | Arable - - - - | Henry Keble - - - - | | Henry Keble. |
| 4. | Orchard, meadow and stack-yard. | Henry Keble - - - - | | Henry Keble. |
| 4 ^s . | Old chalk-pit - - - | Henry Keble - - - - | | Henry Keble. |
| 5. | Orchard and meadow - - | Henry Keble - - - - | | Henry Keble. |
| 6. | Footpath - - - - | Henry Keble - - - - | | Henry Keble. |
| 7. | Arable and footpath - - | Henry Keble - - - - | | Henry Keble. |
| 8. | Arable - - - - | Thomas Dilnot Stewart | Henry and William Denne. | Henry and William Denne. |
| 8 ^s . | Footpath and bridleroad - | Thomas Dilnot Stewart | Henry and William Denne. | Henry and William Denne. |
| 9. | Arable - - - - | Henry Keble - - - - | | Henry Keble. |
| 10. | Arable - - - - | Henry and William Denne. | | Henry and William Denne. |
| 11. | Arable - - - - | Thomas Dilnot Stewart | Henry and William Denne. | Henry and William Denne. |
| 12. | Arable - - - - | <i>Charles Eaton</i> Rev. <i>Plato</i> <i>The Trustees of Queen Anne's County</i> | <i>Charles Eaton</i> | James Baker and Henry Nethersole. |
| 13. | Carrying-way - - - - | St. Bartholomew's Hospital. | Valyer Bean - - - | Valyer Bean. |

Illustration xvi

F.3. **Description:** *Plan* — Original scale: three chains to one inch (1:2,376), scale bar shown on plan²⁵; orientation: unchanged (top is north-northwest).

F.4. The Great Kent Atmospheric Railway Company proposed in 1846 a railway from Deptford to Dover via Otford, Maidstone, Faversham and Canterbury, with branches to Tonbridge, Faversham, Ashford, Deal via Eastry, Sandwich and Rochester. It would have been powered by the atmospheric system, which at that time was still under trial in Devon. The proposal did not receive Royal Assent.

F.5. These plan extracts show the proposed railway branches to Sandwich and Deal (the latter diverging to the south-east in the bottom, left-hand corner of the extract) to the south and east of Woodnesborough. The proposed line, passing to the south of Woodnesborough village and heading east, would have crossed Foxborough Hill north of A, cut across the order way just east of C, then continuing broadly parallel to, but south of the order way east from C. The order way falls within the limits of deviation from slightly east of A as far as E, although the order way largely forms the northern of those two limits between D and E. The order way between B and C is labelled with parcel number '3s', and between D and E is labelled '8a'.

F.6. The book of reference for the parish of Eastry (within which parish the order way west of D falls) refers to parcel number 3s as 'Occupation-road and footpath' in the ownership and occupation of George Sayer, and the book of reference for the parish of Woodnesborough refers to parcel number 8a as 'Footpath and bridleroad', owned by Thomas Dilnot Stewart, and leased to and in the occupation of Henry and William Denne (identical to parcel number 8, a field to the north of the order way between D and E). The sectional drawing for the line (which has been presented in Illustration xv above corresponding to the plan) shows a footpath crossing in respect of the 'Occupation-road and footpath' referred to in parcel 3s (there is no crossing shown in respect of the order way labelled 8a, as the line was not planned to traverse it).

F.7. On the plan, the track from D north-northwest to Woodnesborough church (now footpath EE225) is labelled only to the south-east of the junction with the order way (*i.e.* south-east of D), as parcel number '1'. The book of reference for the parish of Woodnesborough refers to parcel number 1 as an 'Occupation-road'.

F.8. The continuation of the way east-northeast from E towards Sandwich (now bridleway ES8/ES8a) is not further labelled until it makes a junction with Black Lane (now Sandwich byway ES10) in Sandwich. However, the track south-southeast from D to Biller's Bush (now footpath EE226) is labelled as parcel number '13'. The book of reference for the parish of Woodnesborough refers to parcel number 13 as a 'Carrying-way'.

F.9. **Analysis:** The description of the status of the order way between B and C (in practice, relating to the way between A and D) as occupation-road and footpath cannot easily be reconciled with the status shown on the Walton estate map (item III.D above) and the Eastry tithe map (item III.E above), drawn up just a few years previously. Parcel 2s corresponds to parcel 20 on the Walton estate map and parcel 39 on the Eastry tithe map: this is now shown in the ownership of George Sayer, having changed hands since the tithe map was drawn up in 1839.

F.10. Nor is that status reconcilable with the recorded status of the order way between D and E as a 'footpath and bridle-road'. If the way between D and E is a bridle-road, what was the continuation of that bridle-road on reaching D, if not to A via C? The track from D

²⁵ The scale bar is copied from another plan, and may not be entirely accurate on this plan owing to photographic distortion.

north-northwest to Woodnesborough church lies partly within the limits of deviation, but is not expressly recorded as having any status save to the south-east of D, which is recorded as an 'occupation-road', and which status must therefore apply to the whole of that way. The bridle-road between D and E must either continue as a bridle-road through C and B to A, or north-northwest to Woodnesborough church. The nearly contemporary evidence however strongly suggests that a mistake was made in recording A-B-C-D as an 'occupation-road and footpath' without reference to bridle rights.

F.11. Section 46 of the Railways Clauses Consolidation Act 1845, by convention incorporated in every special Act for the construction of railways after this date, provided for the bridging of public roads, but for other public highways to be taken over the railway on the level (with the consent of local justices under section 60) unless provision were made to the contrary in the special Act: however, the plans provide no indication that any such provision to the contrary was intended in relation to the order way. One may therefore conclude that a crossing on the level was proposed.

F.12. In practice, it did not greatly matter whether the order way between B and C was recorded as an occupation road, bridleway or footpath, since in any case, the railway company intended to provide a crossing on the level with gates, with (in the case of a footpath or bridleway) the consent of the justices under section 60. It is submitted that the surveyor of the railway company may have identified the track between B and C as an occupation road and intended to subsume bridle rights within that classification.

F.13. **Objector:** The objector asserts (E/(v)F) that the description of parcel 8a as 'Footpath and bridleroad' cannot be relied upon, because it is not consistent with that for parcel 3a. As explained above, we prefer to rely on the description of parcel 8a, which is consistent with nearly contemporary evidence.

F.14. The objector correctly also notes that the plan shows the way between A and D, and also the unlabelled track north-northwest to Woodnesborough church, as tracks depicted by two parallel pecked lines, whereas that between D and E is shown as a single pecked line. The objector suggests that this means that the bridleway (if it existed) lay from A to D and then north-northwest to Woodnesborough church. This analysis assumes that the book of reference is incorrect in its record of:

- D to E as a 'Footpath and bridleroad',
- no status (other than implied occupation road) accorded to the way north-northeast from D (which the objector suggests is a bridleway),

and that recording A-B-C-D as an 'Occupation-road and footpath' does imply the existence of an undeclared bridleway. Also, as we observe at paras.I.J.3 to J.4 above, it is not rational for the bridleway to follow a circuitous route from A to Woodnesborough church via D.

F.15. It is not clear what status was meant by the description of the track between E and Biller's Bush as a 'carrying-way'. If it meant to signify a way used by pack-carrying animals, it would have been legitimate for users of the way on foot and on horseback between Sandwich and E either to continue on to D (and, we submit, C-B-A), or to turn left to Biller's Bush. The description in the railway documents of the way between E and D as a 'footpath and bridleroad' is evidence that the order way was of the status described.

F.16. **Conclusion:** The deposited plans and book of reference for the Great Kent Atmospheric Railway are good authority for the status of the order way between D and E as a

public bridleway: private rights of way are elsewhere listed in the book of reference as 'Occupation-road' or where combined with a public footpath, 'Occupation-footpath'.

F.17. It is submitted that the description of the order way between B and C as an 'Occupation-road and footpath' focused on the use of the way as a private (vehicular) occupation road, and subsumed bridle rights. It is not otherwise straightforward to reconcile bridle rights recorded over the track between D and E and their omission from the record between B and C, notwithstanding the records of the bridleway found in near contemporary documents.

F.18. **Points:** 5

G. Ordnance Survey boundary records

G.1. **Date:** 1869

G.2. **Source:** National Archives²⁶

Woodnesborough boundary sketch map

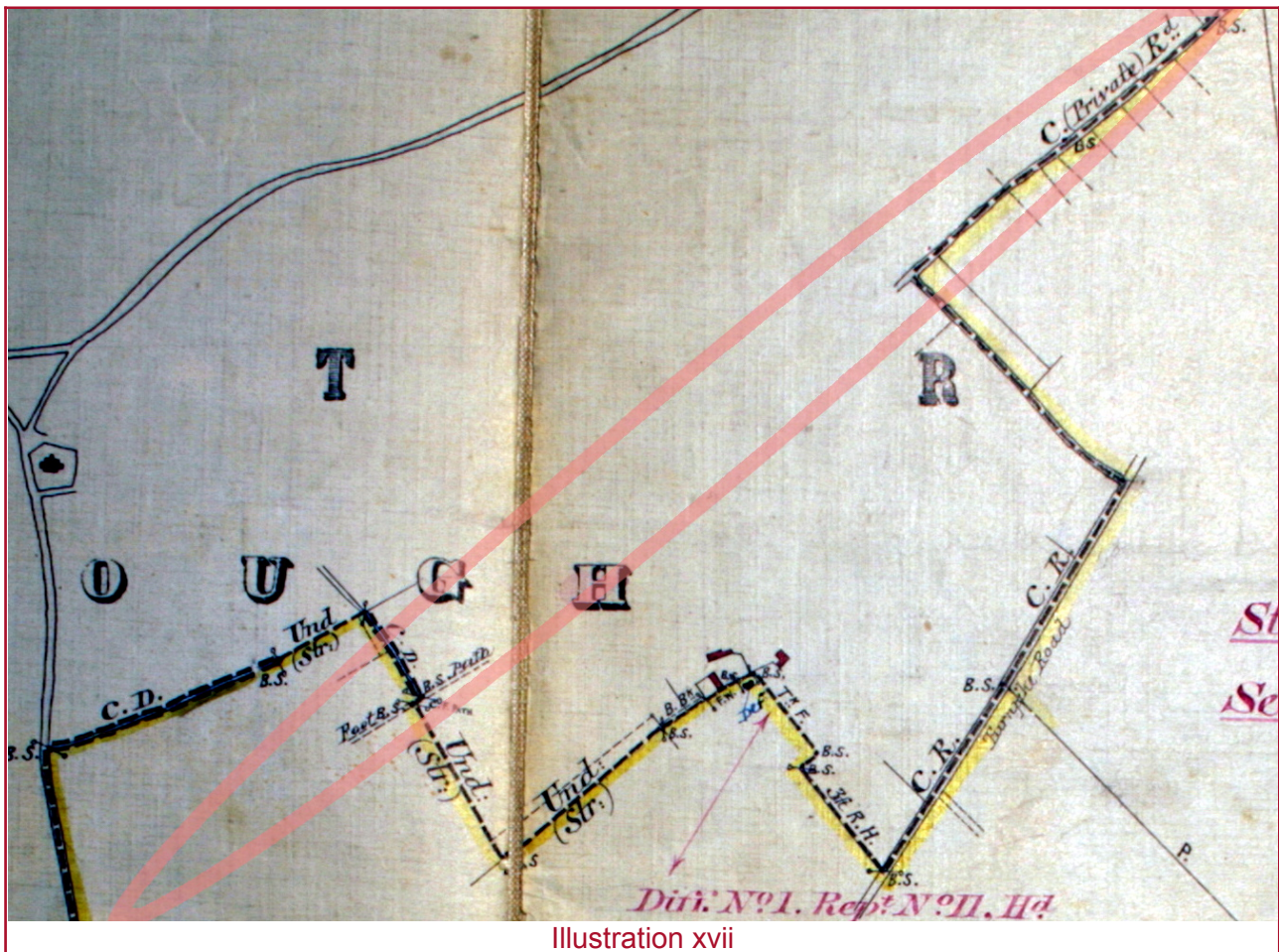


Illustration xvii

26 OS 27/2864, OS 28/332, OS 28/119

Woodnesborough field sketch map

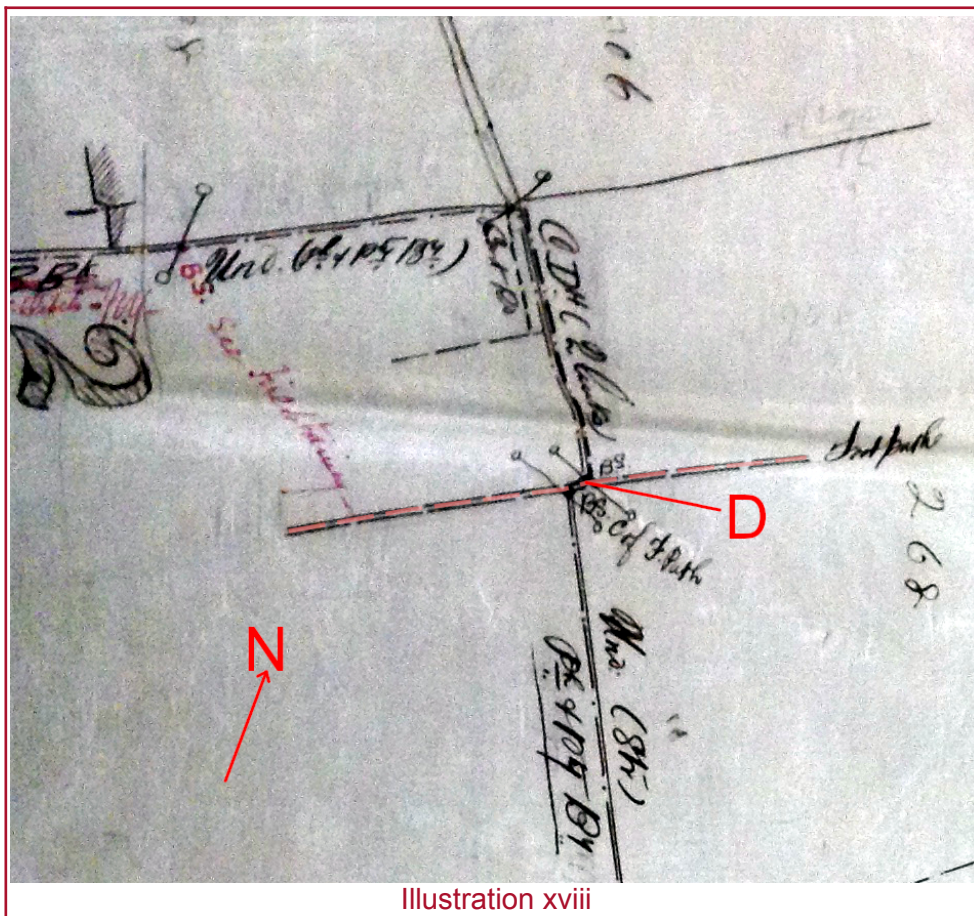
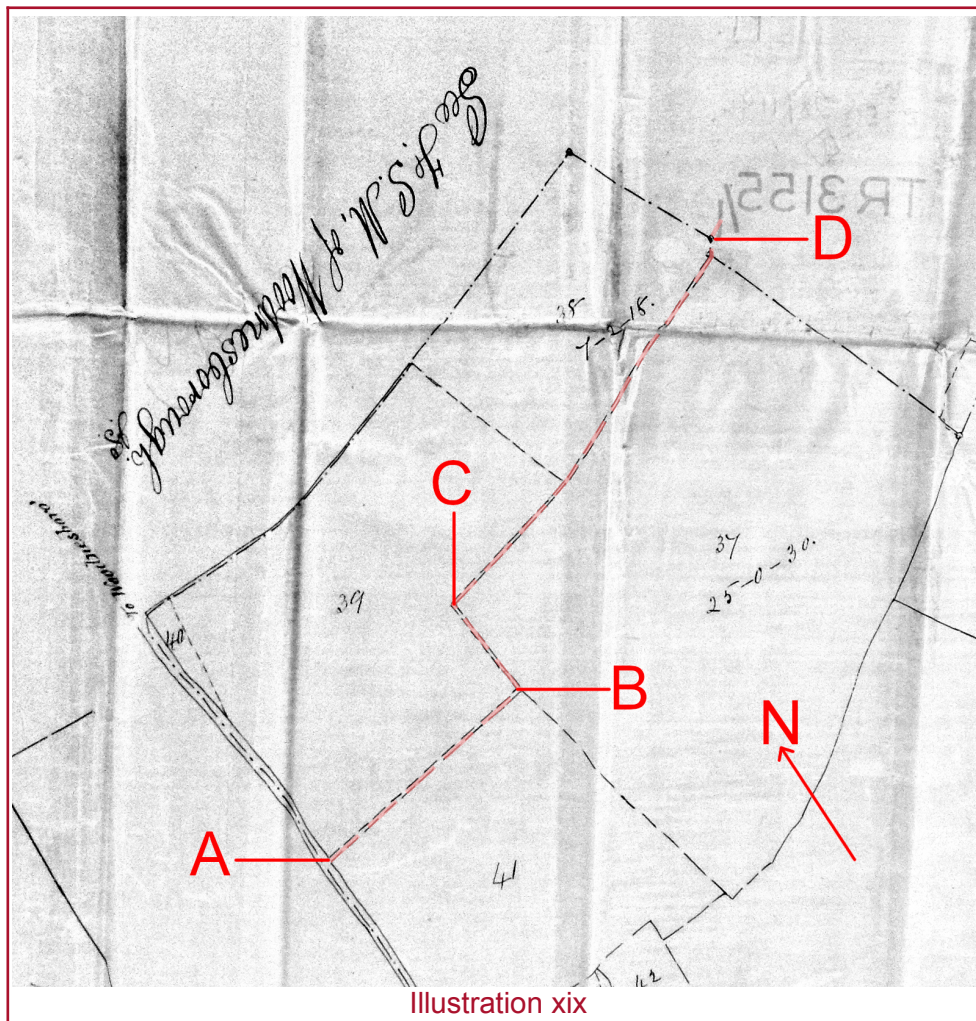


Illustration xviii

Eastry field sketch map



G.3. **Description:** Original scale: not known; orientation: Woodnesborough boundary sketch map unchanged, north on field sketch maps as marked.

G.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).

G.5. The boundary sketch maps date from 1869, and record the Ordnance Survey's surveyor's efforts to capture the precise location of parish boundaries from local knowledge. The field sketch maps were based on the tithe apportionment map, and were used as a first step towards identification of the parish boundaries.

G.6. On the Woodnesborough boundary sketch map, the boundary of the parishes of Woodnesborough and Eastry was recorded as crossing the order way at D, and the order way is annotated as 'Footpath'. The boundary of the parishes of Woodnesborough and Worth was recorded as crossing the end-on junction of the order way with public bridleway

ES8 at E: bridleway ES8 is annotated as a 'Private Rd', while footpath EE226 from E to Biller's Bush is not annotated at all.

G.7. On the Woodnesborough boundary field map, the order way is shown in the vicinity of D as a track identified by double pecked lines, annotated 'Footpath'. The parish boundary between Woodnesborough and Worth follows the track for a short distance, where the boundary is annotated to follow 'C[entre] of F.Path'.

G.8. On the Eastry field sketch map, the order way is noted as a physical feature in the form of a track between A and D identified by double pecked lines, but without any annotation.

G.9. **Conclusion:** The Woodnesborough boundary sketch map records the existence of the way at D, but marks the status of the way as 'footpath'. However, the sketch map is inconsistent in other matters in this area: it marks the way from E east-northeast to Sandwich as a private road, but this is inconsistent with other contemporary documents and its present status as a definitive public bridleway. The Eastry sketch map records the presence of a track between A and D.

G.10. It is notable that, for a short distance, the parish boundary follows the order way. The parish boundary inevitably is ancient, and is likely to follow a manorial boundary even more ancient in origin. The boundary is marked to follow the 'centre of the footpath', which suggests that the track was of some width, and itself ancient in origin. It is suggested that the annotation of the order way as a footpath was mistaken.

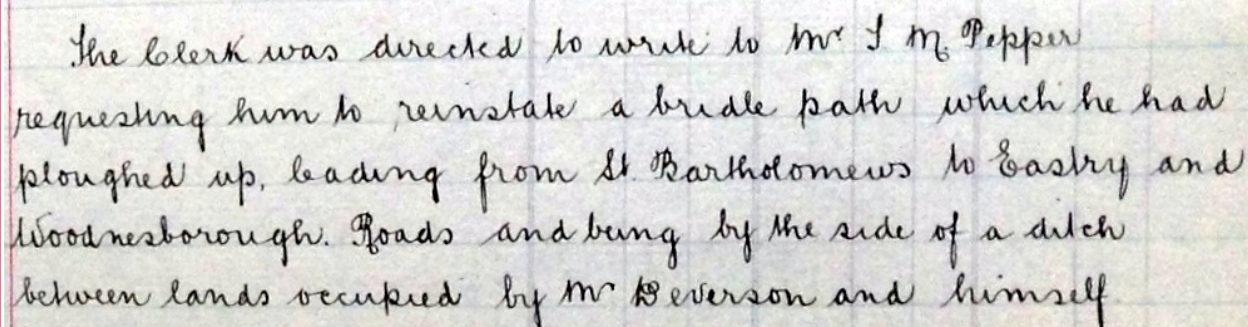
G.11. **Points:** 0

H. Eastry Rural District Council (1904)

H.1. **Date:** 1904

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

Eastry RDC minute, 18 January 1904



The clerk was directed to write to Mr J M Pepper requesting him to reinstate a bridle path which he had ploughed up, leading from St. Bartholomews to Eastry and Woodnesborough. Road and being by the side of a ditch between lands occupied by Mr Beverson and himself

Illustration xx

Eastry RDC minute, 15 February 1904

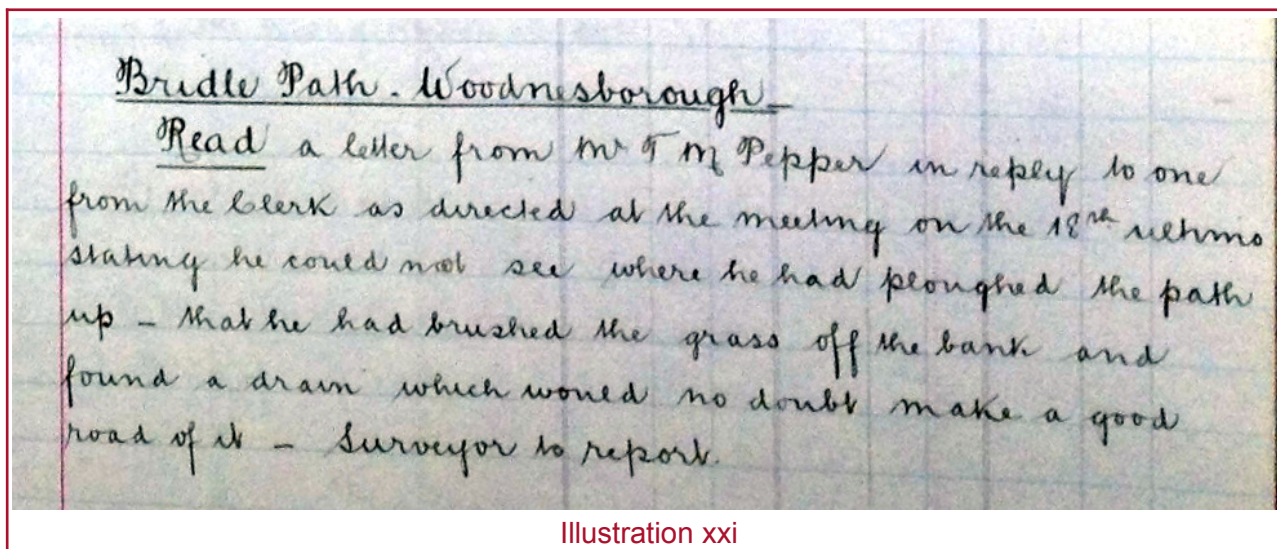


Illustration xxi

Eastry RDC surveyor's report to council, 29 February 1904

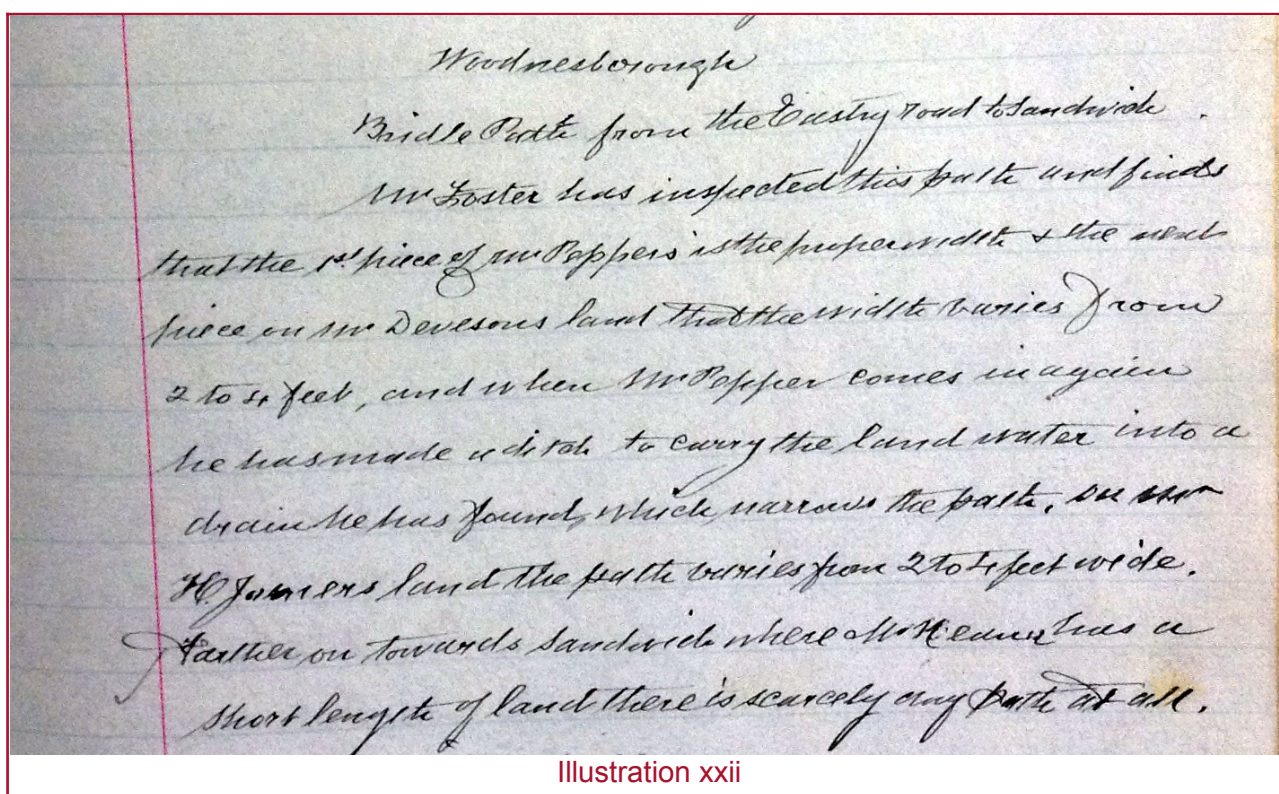


Illustration xxii

H.3. **Description:** The order way was discussed by Eastry Rural District Council in early 1904.

H.4. The minute of the council meeting on 18 January 1904 records²⁷:

The Clerk was directed to write to Mr F M Pepper requesting him to reinstate a bridle path which he had ploughed up, leading from St Bartholomews to Eastry

²⁷ RD/Ea/Am3, p.138.

and Woodnesborough Roads and being by the side of a ditch between lands occupied by Mr Deverson and himself.

H.5. Kelly's directory of Kent for 1903 records for the parish of Eastry that T M Pepper was a farmer at Statenborough Farm, which is on the Sandwich Road at [TR315555](#) just west of the junction with the A256 Dover Road. We infer that Mr F M Pepper was of the same farming household.

H.6. On the valuation maps prepared under the Finance (1909–1910) Act 1910,²⁸ reproduced in Annexe C at page 57 below, Statenborough Farm is shown as one of three parts of hereditament 149. One of the other two parts is the field extending east from Foxborough Hill immediately to the north of the order way (the third lies between bridleway EE478 and South Stream and is not relevant here). It may be that the 'bridle path' which was 'ploughed up' was the order way immediately east of A.

H.7. The minute of the council meeting on 15 February 1904 records²⁹:

Bridle Path, Woodnesborough

Read a letter from Mr F M Pepper in reply to one from the Clerk as directed at the meeting on the 18th ultimo stating he could not see where he had ploughed the path up — that he had brushed the grass off the bank and found a drain which would no doubt make a good road of it — Surveyor to report.

H.8. At a meeting on 29 February 1904, the surveyor's report to the council records that³⁰:

Woodnesborough

Bridle Path from the Eastry Road to Sandwich

Mr Foster has inspected this path and finds that the 1st piece of Mr Peppers is the proper width and the next piece on Mr Devesons land that the width varies from 2 to 4 feet, and when Mr Pepper comes in again he has made a ditch to carry the land water into a drain he has found which narrows the path. On Mr Joniers [?] land the path varies from 2 to 4 feet wide. Farther on towards Sandwich where Mr Hedick [?] has a short length of land there is scarcely any path at all.

H.9. D E Foster was the assistant surveyor to the district surveyor, J W Watson. (For Mr Foster's tenure, see para.III.J.8 below.)

H.10. Kelly's Directory of Kent for 1899 records for the parish of Woodnesborough that Thomas Deveson was a market gardener of Beacon Lane (which is the road from Woodnesborough to Ringlemere), and for the parish of Eastry, that the Deveson brothers were market gardeners of Statenborough. In the book of reference for the East Kent Light Railway, line 1, Daniel Deveson is listed as joint tenant of plot 32 ('arable': see Illustration xxiii below), Eastry, being land to the west of Foxborough Hill at Poison Cross, confined between Drainless Road and Gore Lane.

28 IR 124/5/68 & 72.

29 RD/Ea/Am3, p.142.

30 RD/Ea/H5, p.26.

H.11. Kelly's Directory of Kent for 1904 records for the parish of Worth an Edwin Joiner of Links Farm (east of the Deal Road). In the book of reference for the East Kent Light Railway, line 1, Charles Joiner is listed as tenant of plot 33 ('arable': see Illustration xxiii below), Eastry, being land east of Foxborough Hill at Poison Cross as far as the then parish boundary between Woodnesborough and Worth (the parish boundary is the one which passed through D).

H.12. Plainly, the land referred to as 'Mr Devesons' cannot be the land west of Foxborough Hill, but as market gardeners of Statenborough, it is entirely possible that the Devesons tenanted land adjacent to the order way, and it is suggested that they may have held land between B and C: this would account for 'when Mr Pepper comes in again', between C and D. The reference to 'Mr Joniers land' (*i.e.* to Mr Joiner's land) must be to land beyond C. As no record has been found of Mr Hedick, his land cannot be placed.

H.13. **Objector:** The objector questions (E/(v)H) whether the reference to a 'bridle path... leading from St Bartholomews to Eastry and Woodnesborough Roads' refers to the order way, observes that there is no 'Eastry Road', and advocates that a reference may have been intended to the Dover Road (*i.e.* between Eastry and Sandwich) — such that the path identified was ES8/ES8a from Sandwich to E and then what is now footpath EE226 terminating at Biller's Bush. However, the minute refers to a path to the 'Eastry and Woodnesborough Roads', and it is not possible to reconcile this description with Biller's Bush, which has no connection with a road leading to Woodnesborough. It seems that what was meant by the 'Eastry and Woodnesborough Roads' is the road leading between those two places. It is commonplace in highway reports from earlier times to find that roads have changed their names. It is noted that the first Ordnance Survey County Series map submitted with the objection to show the annotation 'Foxborough Hill' is the extract from sheet XLVIII NW revised 1948 (E/(iii)/7).³¹

H.14. Similarly, in the surveyor's report to the council dated 29 February 1904, the reference to the 'Bridle Path from the Eastry Road', under the heading 'Woodnesborough', must mean the road to Eastry from Woodnesborough.

H.15. **Conclusion:** The report and minutes refer to the order way as a bridle path, and reflect the reputation of the order way known to the district surveyor and the council. The report appears to relate to a complaint that the width of the path had been encroached upon, and records the surveyor's findings of width across four landowners' holdings. There is no suggestion that any of the landowners disputed the status of the path as a bridleway. There is evidence that several of the identified landowners farmed land in the vicinity of the western half of the order way. And the description of the path can refer only to the order way.

H.16. **Points:** 3

31 The annotation 'ROMAN ROAD' appears on some earlier maps.

I. East Kent Light Railway

I.1. **Date:** 1911, 1917

I.2. **Source:** Kent County Archive³², National Archives³³

Deposited plan, line 1

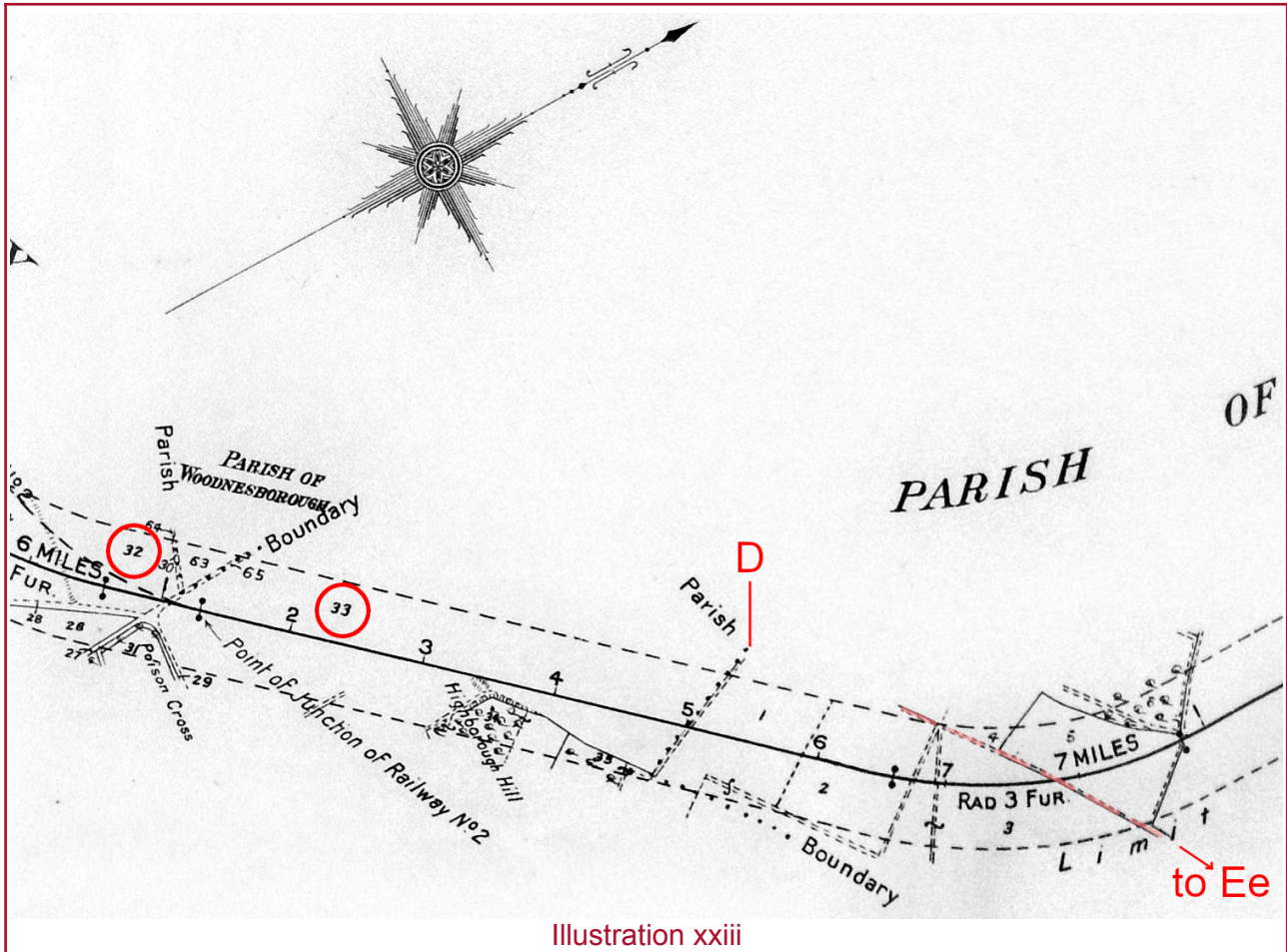


Illustration xxiii

32 Q/RUm/1151

33 MT 54/551

| 10 | | | | |
|--|---|--|---------------------------------|--|
| EAST KENT MINERAL (LIGHT) RAILWAYS. | | | | |
| Parish of EASTRY, in the County of KENT. | | | | |
| RAILWAY No. 1— <i>continued.</i> | | | | |
| No. on Plan. | Description of Property. | Owners or Reputed Owners. | Lessees or Reputed Lessees. | Occupiers. |
| 32 | Arable | Roberta Harvey | Daniel Deveson | Daniel Deveson |
| 33 | Arable | Roberta Harvey Reverend William Ernest Evill, as Vicar of St. Dunstan's, Canterbury The Trustees of St. Bartholomew's Hospital Sandwich William Robert Harrison, clerk The Official Trustee of Charity Lands The Trustees of the late Sir James Parker Deane, viz.— The Honourable Sir Henry Bargrave Deane John Norreys Russell Major General Robert Owen Jones | John Wiles Charles Joiner | John Wiles Charles Joiner |
| 34 | Meadow and wood | Roberta Harvey | John Wiles | John Wiles |
| 35 | Orchard and plantation | William Elliott Long | | In hand |
| Parish of WOODNESBOROUGH, in the County of KENT. | | | | |
| RAILWAY No. 1— <i>continued.</i> | | | | |
| No. on Plan. | Description of Property. | Owners or Reputed Owners. | Lessees or Reputed Lessees. | Occupiers. |
| 1 | Market garden ground | The Right Honourable Lord Northbourne The Right Honourable Lord Greville | Tom Blest Charles John Cooke | Tom Blest Charles John Cooke |
| 2 | Arable, occupation road and public footpath | The Right Honourable Lord Northbourne | Tom Blest | Thomas Blest The Woodnesborough Parish Council Albert Pettman, clerk |
| 3 | Arable and public footpath | The Right Honourable Lord Northbourne | Henry George Spratt | Henry George Spratt The Woodnesborough Parish Council |
| 4 | Arable, occupation road and public footpath | The Right Honourable Lord Northbourne | Tom Blest | Tom Blest The Woodnesborough Parish Council |
| 5 | Arable, ditch and public footpath | The Trustees of Mr. and Mrs. W. J. Hughes, viz.— William James Hughes William Ashburnham Hillier Hughes Charles Edward Warner | | William James Hughes The Woodnesborough Parish Council |
| 6 | Orchard | The Right Honourable Lord Northbourne | Tom Blest | Tom Blest |

Illustration xxiv

Deposited plan, line 17

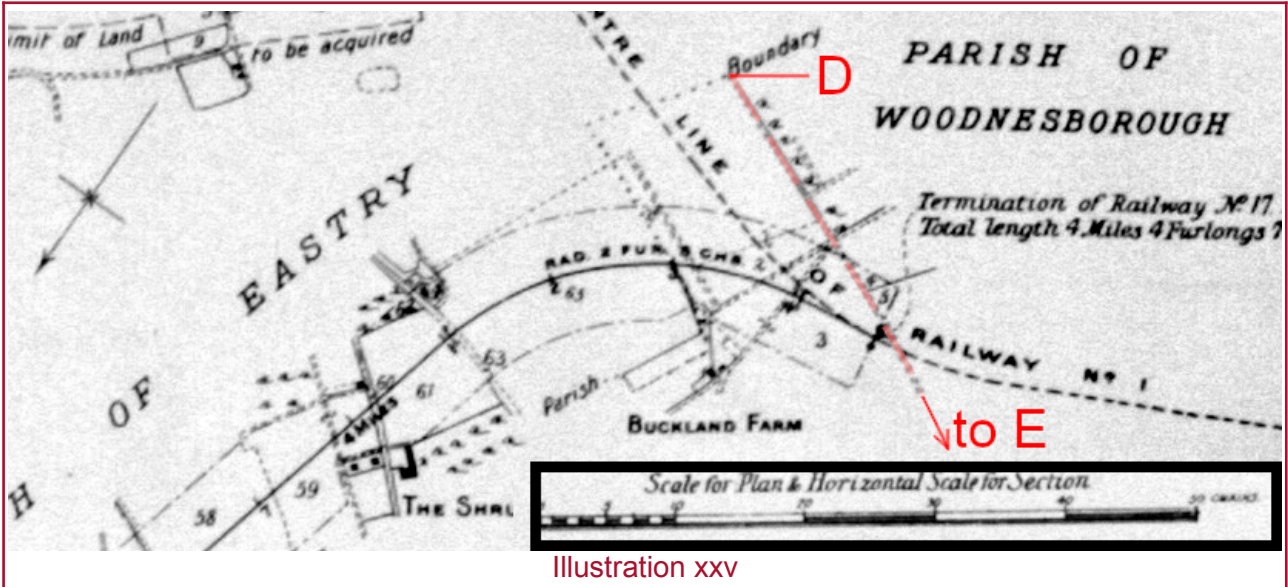


Illustration xxv

Book of reference, line 17

7

EAST KENT LIGHT RAILWAYS (EXTENSIONS AND FURTHER POWERS).

Parish of WOODNESBOROUGH, in the County of KENT.

RAILWAY No. 17—continued.

| No. on Plan. | Description of Property. | Owners or Reputed Owners. | Lessees or Reputed Lessees. | Occupiers. |
|--------------|--------------------------------------|---------------------------------------|-----------------------------|---|
| 2A | Arable and occupation road | The Right Honourable Lord Greville | | Stephen William Wood |
| 2 | Arable, occupation road and footpath | The Right Honourable Lord Northbourne | Henry George Spratt | Thomas Blest Henry George Spratt The Woodnesborough Parish Council A. Pettman, clerk |
| 3 | Arable and footpath | The Right Honourable Lord Northbourne | Henry George Spratt | Henry George Spratt The Woodnesborough Parish Council |
| 4 | Arable and footpath | The Right Honourable Lord Northbourne | | Thomas Blest The Woodnesborough Parish Council |
| 5 | Arable and footpath | The Right Honourable Lord Northbourne | | Thomas Blest The Woodnesborough Parish Council |

Illustration xxvi

I.3. **Description:** Original scale: not known but scale bar marked on Illustration xxv; orientation: unchanged, north as marked on Illustration xxiii but incorrectly marked on Illustration xxv.

I.4. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. The promoters included Kent Coal Concessions Ltd, the original promoter of the Kent coalfield. The railway was promoted under the Light Railways Act 1896. The 1896 Act required the deposit of plans and books of reference in connection with a submission seeking authorisation under the Act.

I.5. The original 'main line' of the light railway, line 1, was authorised in 1911 between Shepherdswell and Richborough via Eastry. The line crossed the order way between D and E at X, and the order way is noted as parcel number '4' on the deposited plan (illustration xxiii above). In the deposited book of reference (illustration xxiv above), parcel number 4 is described as 'Arable, occupation road and public footpath', owned by the Rt Hon Lord Northbourne, leased to Tom Blest, and in the occupation of Tom Blest and The Woodnesborough Parish Council.

I.6. Line 1 subsequently was constructed and put into operation (see Eastry Rural District Council (1913) (item III.J below).

I.7. Almost immediately after line 1 was authorised, a proposal was submitted for line 17, an extension from line 1 south to Little Mongeham, to join with line 11 (line 11 itself was a proposal for a line from line 1 at Eythorne east to Little Mongeham), to serve planned coalfields in that area. The proposed line 17 diverged from line 1 just south-west of the crossing of the order way at X, but the limits of deviation for the new line included part of the order way between X and D. The order way may be noted as part of parcel numbers '3', '4' and '5' on the deposited plan (illustration xxvi above): it may also form part of parcel '2a' (which is not marked on the plan). In the deposited book of reference (illustration xxv above), parcel number 2a is described as 'Arable and occupation road', owned by the Rt Hon Lord Greville, and in the occupation of Stephen William Wood; parcel number 2 is described as 'Arable, occupation road and footpath', owned by the Rt Hon Lord Northbourne, leased by Henry George Spratt, and in the occupation of the same, Thomas Blest, and the Woodnesborough Parish Council; parcel number 3 is described as 'Arable and footpath', owned by the Rt Hon Lord Northbourne, leased by Henry George Spratt, and in the occupation of the same and Woodnesborough Parish Council; parcel numbers 4 and 5 are described as 'Arable and footpath', owned by the Rt Hon Lord Northbourne, and in the occupation of Thomas Blest and the Woodnesborough Parish Council.

I.8. Line 17 was not built.

I.9. **Analysis:** Constructed cheaply, the promoters necessarily minimised costs. For example, the bridge over the River Stour at Richborough was built, after some delay, with a fixed span vice the swing bridge authorised³⁴; only one bridge was built to cross a road³⁵ on the entire network of lines 1 and 2. None of the collieries which the railway sought to serve was successful, save the East Kent Colliery at Tilmanstone, and the railway settled down to trade with the East Kent Colliery and to provide a sparse freight and passenger service on the lines to the north of that colliery.

I.10. In respect of line 1, sections 46 to 48 and 59 of the Railways Clauses Consolidation Act 1845 were excluded from incorporation in the East Kent Mineral (Light) Railways Order

34 en.wikipedia.org/wiki/East_Kent_Light_Railway

35 Selson Lane, Eastry: now demolished.

1910³⁶, and the order itself provided for public highways to be taken over the railway (with the one exception mentioned) on the level. In common with other crossings for ways which were not perceived as public roads, no specific provision is made in the elevation nor the order³⁷ for the crossing of the order way, and a level crossing would routinely have been provided.

I.11. The plan and book of reference for line 1 document the order way as a public footpath and occupation road. This is consistent with the present status of the order way on the definitive map and statement (between D and E) as a public footpath. As any crossing was to be provided on the level, a crossing for a footpath and occupation road would have required gates, and the promoting railway company would have been indifferent to the distinction in status between an occupation road and a bridleway.

I.12. Whereas acknowledged roads and bridleways across line 1 were recorded as in the occupation of the Eastry Rural District Council (for example, entries 1, 2, 5 and 6 in Eastry parish), footpaths were recorded in the occupation of Eastry Parish Council (for example, entries 8 and 10), although there is no legal basis for such a distinction. The following table records those ways which cross line 1 which are either shown in the plans as having the status of bridleway, or which today are recorded as bridleway or byway open to all traffic (BOAT).

| Parish | Parcel no. | Character | Recorded status in deposit | Present status | Comment |
|----------------------|------------|------------|-----------------------------|--|--|
| Shepherdswell | 22 | enclosed | public footpath | BOAT (ER93) | under-recorded (footpath vice road) |
| Eythorne | 24 | field path | public bridle road | none (possibly diverted to footpath EE337) | not known |
| Eythorne Tilmanstone | 30 1 | enclosed | Public road (Pilgrim's Way) | bridleway (EE335B) | higher status than now recorded |
| Eastry | 1 | enclosed | public bridle road | BOAT (EE335) | under-recorded (bridleway vice road) |
| Eastry | 2 | enclosed | Public bridle road | footpath (EE264) | higher status than now recorded but likely under-recorded as bridleway vice road ³⁸ |
| Eastry | 10 | unenclosed | public footpath | bridleway (EE488) | under-recorded (footpath vice bridleway) |
| Eastry | 15 | unenclosed | Public bridle road | bridleway (EE490) | correct |
| Eastry | 19 | unenclosed | Public bridle road | BOAT (EE109) | under-recorded (bridleway vice road) |

36 See art.3(1).

37 See arts.21–22.

38 Subject to application to upgrade to restricted byway, recorded in the register of applications under reference: PROW/DO/C398.

| | | | | | |
|----------------|----|-------------|-----------------|-------------------|--|
| Woodnesborough | 4 | unen-closed | public footpath | order way (EE226) | alleged under-recorded (footpath vice bridleway) |
| Woodnesborough | 15 | unen-closed | public footpath | footpath (ES12) | correct (but evidence of higher rights which are not currently recorded) |

I.13. Of those rights of way identified along the course of line 1 between Shepherdswell and Woodnesborough, five (if including the order way) were under-recorded, two were correctly recorded (on current evidence, albeit one may be subject to unrecorded higher rights), and two were recorded with a higher status than currently recorded (but such higher status may well be justified on historical evidence, and in relation to one of the ways an application has been made to upgrade to restricted byway). These data do not inspire confidence that the right status always was recorded by the railway surveyor, and in particular, that the status frequently was under-recorded.

I.14. It may be that, where the proposed line was crossed by field paths (such as the order way), they were assumed to be footpaths, consultation on the entries for those field paths took place only at parish council level, and the rural district council's surveyor was not given an opportunity to contribute. Whereas where the proposed line was crossed by roads or well-defined tracks, the rural district council's surveyor must have been consulted, and if the way was advised to be a bridleway or road, the way would have been assigned as being in the occupation of the district council. This may help explain why some public roads and bridleways were under-recorded as footpaths. The history of the East Kent Light Railway suggests that it always erred on the side of minimising costs, by under-recording public rights.

I.15. The plan and book of reference documents for line 17 document the order way as an occupation road or public footpath. The same considerations apply to line 17 as line 1.

I.16. **Conclusion:** It seems likely that the survey for both lines 1 and 17 was done without reference to the Eastry rural district council's surveyor and without sufficient diligence, for only two years later the railway undertaker was challenged by the council's surveyor as to proper provision for a bridleway — see Eastry Rural District Council (1913) (item III.J below). Whereas acknowledged roads and bridleways across the proposed line were recorded as in the occupation of the Eastry Rural District Council,³⁹ field paths were recorded as footpaths in the occupation of the parish council,⁴⁰ although there is no legal basis for such distinction. It may be that consultation on the entries for public footpaths took place only at parish council level, and that the council's surveyor was not given an opportunity to contribute.

I.17. **Points:** 0

39 See, for example, entries 1, 2, 5 and 6 in Eastry parish in the book of reference for line 1.

40 See, for example, entries 8 and 10, *ibid*.

J. Eastry Rural District Council (1913)

J.1. Date: 1913

J.2. Source: Kent County Archives

Eastry RDC surveyor's reports, 5 and 19 August 1913

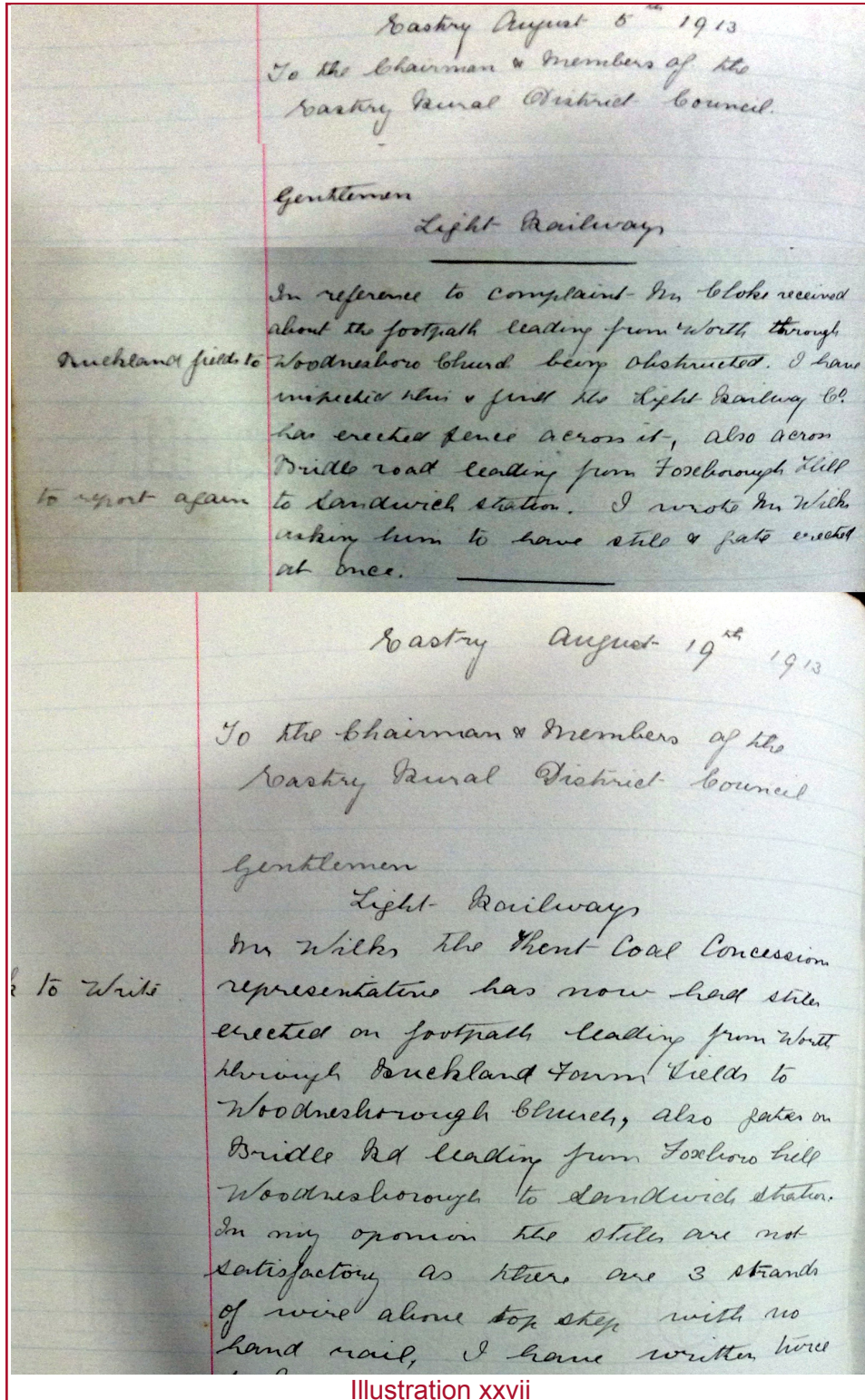
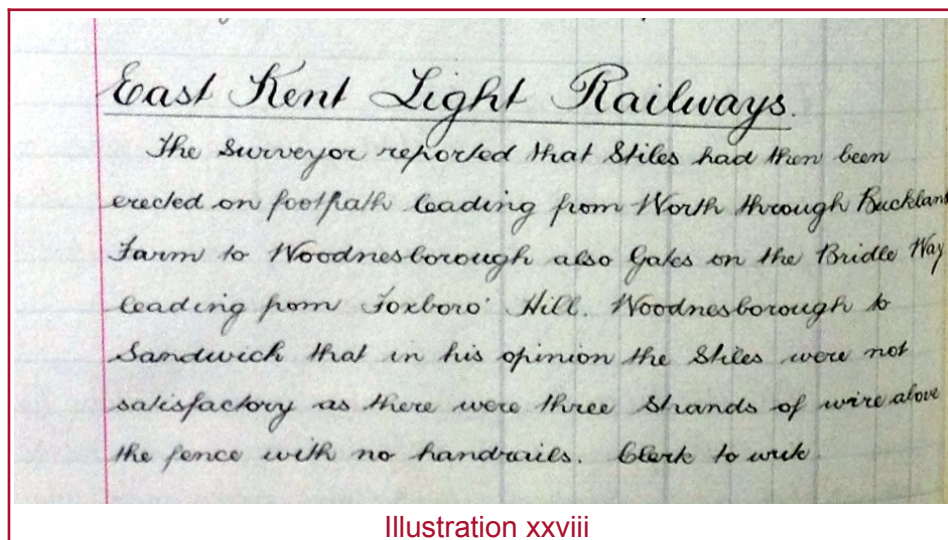


Illustration xxvii

Eastry RDC minute, 19 August 1913



J.3. **Description:** The surveyor's report to the Eastry Rural District Council on 5 August 1913 recorded⁴¹:

Light Railways

In reference to complaint Mr Cloke⁴² received about the footpath leading from Worth through Buckland fields to Woodnesboro Church being obstructed. I have inspected this & find the Light Railway Co. has erected fence across it, also across Bridle road leading from Foxborough Hill to Sandwich station. I wrote Mr Wilks asking him to have stile and gate erected at once.

J.4. The report is noted: 'to report again'.

J.5. A fortnight later, the report to the meeting on 19 August 1913 reads as follows:

Light Railways

Mr. Wilks the Kent Coal Concession representative has now had stiles erected on footpath leading from Worth through Buckland Farm fields to Woodnesborough Church, also gates on Bridle Rd leading from Foxboro hill Woodnesborough to Sandwich Station. In my opinion the stiles are not satisfactory as there are 3 strands of wire above top step with no hand rail, I have written twice.⁴³

J.6. The report is noted: 'Mr Cloke to write'.

J.7. The minute of the council on the same date notes⁴⁴:

41 RD/Ea/H7.

42 The clerk to Eastry rural district council.

43 Also reported in the Dover Express, 22 August 1913:

www.britishnewspaperarchive.co.uk/viewer/bl/0000330/19130822/075/0007 (££).

44 RD/Ea/Am6, p.219.

East Kent Light Railway

The Surveyor reported that Stiles had then been erected on footpath leading from Worth through Buckland Farm to Woodnesborough also Gates on the Bridle Way leading from Foxboro' Hill. Woodnesborough to Sandwich that in his opinion the Stiles were not satisfactory as there were three strands of wire above the fence with no handrails. Clerk to write.

J.8. The reports were submitted by Mr Foster as the assistant surveyor to the council. After 1905, Mr Foster had sole responsibility for Eastry No.1 district, including Sutton and Ripple. Thus it may be inferred that Mr Foster had an excellent knowledge of his half of the rural district, acquired over his eight years in post with responsibility for the Eastry No.1 district, and unknown period in his prior post as assistant surveyor reporting to the district surveyor, J W Watson.

J.9. **Conclusion:** The records of the meetings confirm the surveyor's view that the order way is a bridleway, and that in accordance with this view, the railway company was required to erect gates across the order way at X, notwithstanding the entries contained in the book of reference for line 1. It seems that the gates erected by the railway company in 1913 were retained in place, as the draft definitive map for Woodnesborough records two field gates at X.

J.10. **Objector:** The objector suggests (E/(v)J) that the crossing over the railway line required gates because it was a private occupation road. However, the council was not concerned with private rights over the railway line, but only with passage along the public right of way. Had there been only a public right of way on foot, the surveyor would have been satisfied with the erection of stiles.

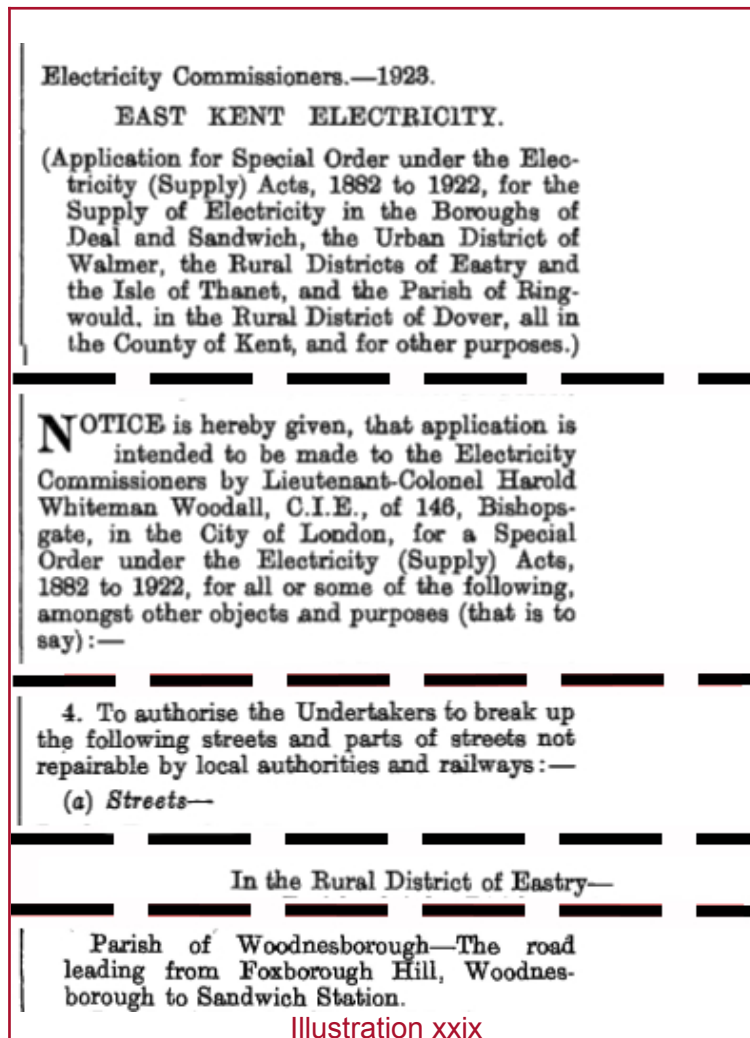
J.11. **Points:** 3

K. Electricity Supply Acts 1882 to 1922

K.1. **Date:** 1923

K.2. **Source:** *London Gazette*⁴⁵

Public notice in *London Gazette*, 23 October 1923



K.3. **Description:** The notice published in the *London Gazette* on 23 October 1923 gives notice of the intention of an electricity undertaker for East Kent to lay its apparatus in certain streets not repairable by local authorities and railways: one of those specified, in the parish of Woodnesborough, is:

The road leading from Foxborough Hill, Woodnesborough to Sandwich Station.

The application was withdrawn in February 2024.

K.4. **Analysis:** The Electricity (Supply) Acts 1882 to 1922 provided for powers to be conferred on undertakers for the supply of electricity for public and private purposes. In the present case, notice of intention was given in the *London Gazette* for 23 October 1923

⁴⁵ Issue 32873, p.7140: www.thegazette.co.uk/London/issue/32873/page/7140.

that application would be made to the Electricity Commissioners for a Special Order under the Electricity (Supply) Acts 1882 to 1922, to confer powers for the supply of electricity in East Kent on Lt-Col. Harold Whiteman Woodall.⁴⁶

K.5. The Electricity (Supply) Acts 1882 to 1922 incorporate:

- [Electric Lighting Act 1882](#)
- [Electric Lighting Act 1888](#)
- [Electric Lighting Act 1909](#)
- Electricity (Supply) Act 1919
- [Electricity \(Supply\) Act 1922](#)

K.6. The notice sets out, *inter alia*, details of 'streets and parts of streets not repairable by local authorities and railways' which the applicant wishes to 'break up' in order to lay its apparatus. The notice gives an opportunity for any 'local or other public authority, company or person desirous of bringing before the Electricity Commissioners any objection respecting the application'. The notice also contains for the same purpose a list of routes which are county roads (*i.e.* roads repairable by the county council), and of roads over railway bridges and level crossings. It seems that none of those roads listed is considered to be maintainable by the district council as highway authority for local roads, and that therefore public notice need be given of the application as it affects those roads.

K.7. Are the ways listed in the notice public highways, and if so, of what status?

K.8. Section 32 of the Electric Lighting Act 1882 defines 'street' in a similar form to section 48 of the New Roads and Street Works Act 1991 (similar definitions have been used in legislation for around 150 years):

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act

A street therefore is likely to be a public highway, but:

- it may not be publicly maintainable (there being no words in the definition which might imply such a requirement);
- exceptionally, it may not be a public highway, if it nevertheless conforms to an element of the description such as a (wholly private) 'square' or 'road'.

K.9. There are other provisions in the 1882 Act which help illustrate the scope of 'street':

- Electric lighting under the 1882 Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in section 3(3) of that Act, 'lighting any street...belonging to or subject to the control of the local authority'. A privately maintainable public highway would be subject to the control of the local authority (but not maintained by it), and lighting such a street would be a naturally public purpose. Lighting a wholly private way would be a private purpose.
- Section 3(9) of the 1882 Act enables local authorities to be licensed to assume the powers of the undertaker: 'with respect to the breaking up of any street repairable by such local authority' (the expenses to be recoverable from the undertaker). The Acts

⁴⁶ The notice records that powers alternatively might be conferred on a company to be registered for the purpose.

therefore explicitly recognise the distinction between a street which is repairable by the local authority and a street which is not publicly repairable (i.e. maintainable).

- The marginal note to section 13 of the 1882 Act, 'Restriction on breaking up of private streets...' must be read in the context of the provision itself. Section 13 provides that the Act does not:

authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf... after notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

The presumption is that such streets may be broken up in order to lay apparatus, subject to an opportunity for the body by which the street is repairable to voice its objections. The reference to 'private street' in the marginal note to section 13 therefore appears to qualify 'street' as one which is a public highway privately maintainable, and not one which is wholly private. If section 13 was concerned with wholly private ways, the body having responsibility for repair would be the owner, and it would not be necessary to distinguish the body by which the street is maintainable. Compare with Part XI of the Highways Act 1980, which sets out the code for *Making up of Private Streets*, in which:

"private street" means a street that is not a highway maintainable at the public expense

so that 'private street', for the purposes of Part XI, includes a public highway but only if it is not maintainable at public expense.

- Section 14 requires the consent of the local authority to place an electric line above ground in a street, and the authority is empowered to seek a magistrates' court order if the line is 'dangerous to the public safety'. The requirement for such consent in relation to a street which is a wholly private way would be odd, and inexplicable if the private way was not used by the public.

K.10. The draughtsman, in defining a 'street', is likely to have had in mind public highways which were privately maintainable, or wholly private ways in use by the public (such as carriage roads leading to stations built by the railway company, or unadopted new residential streets in towns), or at most, wholly private ways in towns which served significant numbers of dwellings or commercial premises (such as private squares or yards). It is not possible to reconcile the duty placed on an undertaker in section 14 of the 1882 Act (to seek consent to place electric lines in a street) with its application to a wholly private way not used by the public.

K.11. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in section 25 of the 1909 Act so as to include any street as defined in the 1882 Act. Given that 'street' is defined in the 1882 Act to include a 'road', it is not clear whether this circular provision can have been intended, and is suggestive of some absence of rigour on the part of the draughtsman.

K.12. It is submitted that the definition of 'street' in the Electricity (Supply) Acts 1882 to 1922 does not extend to embrace a wholly private track, farm drive or path in the coun-

tryside. Such a way does not obviously fall within any of the components included in the definition of 'street' (unless, in particular circumstances, it might have the characteristics of a 'lane' or, if given a metalled surface, a 'road'). And while the definition of 'street' is not exhaustive, the *ejusdem generis*⁴⁷ rule applied to the definition does not suggest that other, wholly private ways in the countryside were contemplated: quite the contrary. It would be inconsistent with the scheme of the Electricity (Supply) Acts 1882 to 1922 as a whole to apply the powers as regards streets to entirely rural, wholly private ways, without compensation for the owner, given that section 12(1) of the 1882 Act excludes undertakers from acquiring powers to compulsorily purchase private land. It would otherwise allow an undertaker to lay apparatus on private land without compensation, merely on the justification that the works were done along a part of that land which happened to conform (on one interpretation) to the general description of a 'lane' or 'road'. The only justification for conferring powers on an undertaker to lay apparatus in a rural way is if it is a public way — albeit it may be privately maintained.

K.13. In *Scales v Pickering*, section 32 of a private Act of parliament⁴⁸ empowered a water company to:

break up the soil and pavement of roads, highways, footways, commons, streets, lanes, alleys, passages, and public places

provided (section 34) that the company should not enter any private lands without the consent of the owner. It was held by the Court of Common Pleas that the company had no authority, without the consent of the plaintiff, to enter a field of his, over which there was a public footpath.

K.14. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird and Others*,⁴⁹ in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense⁵⁰:

“What is commonly done in a street” may include water-pipes and gas-pipes as well as sewers, and it could not be supposed that any such power was intended to be conveyed by such language. I think what his Lordship must have meant was such things as are usually done in a street for the purpose, as he elsewhere in his judgment describes it, of maintaining it as a street, and are incident to the maintenance and repair of the street as a street. For that purpose it would be intelligible. For any other purpose it would appear to me to be inconsistent with the language of the enactments, and *contrary altogether to the policy which the Legislature has certainly always pursued of not taking private rights without compensation. In circumstances in which it is essential to take private property Parliament has always provided for compensation*, and in this section the language itself imports that where private property is being dealt with it can only be done “with the consent of the owner.” [emphasis added]

K.15. Thus, the inference should be that the Electricity (Supply) Acts 1882 to 1922 were not intended to enable undertakers to lay their apparatus in wholly private roads (such as

47 Of the same class.

48 47 Geo 3, sess.2, c.72, East London Waterworks Act 1807.

49 [1896] AC 434

50 In the case, the vesting occurred under s.149 of the Public Health Act 1875.

farm access roads and private carriage drives) without compensation, but only in public roads — including those which were privately maintainable.

K.16. The notice in the *London Gazette* contains the following 32 entries as regards streets not repairable by local authorities nor railways, set out in the first column, together with the presumed location (by Ordnance Survey grid references) in the second column, and comments on the entry in the third column:

| Description in notice | Presumed location | Comments |
|---|--|---|
| <i>Parish of Ash—</i> | | |
| i. Richborough Castle Road | TR319603 to TR323602 | Now known as Castle Road: restricted byway EE43A; title unregistered |
| ii. White House Drove Road | TR318604 to TR319613 | Unrecorded ('private street' in NSG); title unregistered |
| iii. Rubery Drove Road | TR314607 to TR315613 | Unrecorded; registered title |
| iv. Potts Farm Drove Road | TR301609 to TR304621 | Public footpath EE49; registered titles |
| v. the road leading from Sandhill Farm to Cooper Street | TR298604 to TR304602 | Public footpath EE52; title unregistered |
| vi. the road leading from Lower Goldstone to Red House Ferry | TR294611 to TR296625 | Now known as Goldstone Drove; public footpath EE55; part title unregistered |
| vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane) | TR281582 to TR281577 | Part adopted road, part public bridleway EE193; title unregistered |
| viii. the road leading from Durlock Road to Ash-Canterbury Main Road | TR275577 to TR268582 | Now known as Pedding Lane; part adopted road, part public footpath EE124; land unregistered |
| ix. the road leading from West Marsh Road to the Marshes | TR274615 to TR274624 | Now known as Westmarsh Drove; public footpath EE76; 'private street' in NSG; unregistered title with caution |
| x. the road leading from Paramour Street to Downfield Farm | Not identified | |
| xi. the road leading from Overland Lane, Corking to Ware Road | TR275598 to TR280607 | Part public bridleway EE86 and EE73; part adopted road (Ware Farm Road); part unrecorded; land generally unregistered |
| <i>Parish of Betteshanger—</i> | | |

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| xii. the road leading from Northbourne Road to New Road, Betteshanger | TR313537 to TR309529 | Restricted byway EE493; part unregistered |
| <i>Parish of Eastry—</i> | | |
| xiii. the road leading from Eastry Mills to Hammill | TR302545 to TR285552 | BOAT EE109; part unregistered |
| <i>Parish of Eythorne—</i> | | |
| xiv. the road leading from Upper Eythorne to Brimsdale Farm | TR283491 to TR280491 | Now known as Flax Court Lane; public bridleway EE345; 'private street' in NSG; part unregistered |
| <i>Parish of Goodnestone and Wingham—</i> | | |
| xv. the road leading from Twitham Farm to Caves Lane, Goodnestone, | TR262568 to TR255555 | Part adopted, part unrecorded, part public bridleway EE269A; land unregistered; subject of applications PROW/DO/C391 and PROW/DO/C467 to record as restricted byway |
| xvi. the road leading from Buckland Lane to Crixhall Farm | TR269554 to TR267556 | Public bridleway EE28; land unregistered |
| <i>Parish of Great Mongeham—</i> | | |
| xvii. the road leading from Cherry Lane to the road leading from Northbourne to Ripple | TR346512 to TR342507 | Now known as Pixwell Lane; BOAT ED53; part adopted; unregistered title |
| <i>Parish of Little Mongeham—</i> | | |
| xviii. the road leading from Little Mongeham Farm to Ripple and Sutton Road | TR333509 to TR343501 | Public footpath EE422; subject of application PROW/DO/C456 to record as bridleway; title registered |
| <i>Parish of Nonington—</i> | | |
| xix. the road leading from Holt Street to Nonington Mill | TR262521 to TR268517 | Now known as Mill Lane; adopted road; unregistered title |
| xx. the road leading from Gooseberry Hall to Young Wood, Goodnestone (Pilgrims Way) | TR266530 to TR259538 | Now known as Cherrygarden Lane; BOAT EE280; 'private street' in NSG; part unregistered |

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| <i>Parish of Northbourne—</i> | | |
| xxi. the road leading from Willow Wood to Telegraph Farm | TR312506 to TR311511 | Now known as Willow Woods Road (Roman Road); public bridleway EE377; 'private street' in NSG; part unregistered |
| <i>Parish of Preston—</i> | | |
| xxii. the road leading from Preston Road to Marley Brook Farm | TR252616 to TR249618 | Unrecorded; unregistered title |
| <i>Parish of Ripple—</i> | | |
| xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton | TR342482 to TR334488 | Public footpath EE427; title registered; subject of application PROW/DO/C381 to record as a bridleway |
| <i>Parish of Sholden—</i> | | |
| xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay | TR371545 to TR360572 | Now known as Ancient Highway; BOAT EE245; adopted; title registered |
| <i>Parish of Stourmouth—</i> | | |
| xxv. the road leading from North Court Farm, Upper Stourmouth to New Road | TR256630 to TR266630 | Restricted byway EE485 |
| <i>Parish of Sutton—</i> | | |
| xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester) | TR334493 to TR314476 | Public footpath EE417; part unregistered |
| <i>Parish of Wingham—</i> | | |
| xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road). | TR249571 to TR260571 | Now known as Dambridge Farm Road; part adopted, part restricted byway EE165A; part unregistered |
| <i>Parish of Woodnesborough—</i> | | |
| xxviii. the road leading from Foxborough Hill, Woodnesborough to Sandwich Station | TR308561 to TR331576 | Part was known as Black Lane (Sandwich), now St Barts Road; part public footpath EE226, public bridleway ES8, part BOAT ES10, part adopted; part unregistered title, part land unregistered <i>[this includes the order way]</i> |

| <i>Parish of Worth—</i> | | |
|--|--|--|
| xxix. the road leading from Woodnesborough and Sandwich Road to Station | TR323574 to TR331576 | Part known as Black Lane (Sandwich); part now known as St Barts Road; part BOAT ES10, part adopted; part land unregistered |
| xxx. the road leading from Deal and Sandwich Main Road to Worth Street Road, | TR329568 to TR334560 | Now known as Coventon Lane; public bridleway EE236; part unregistered title |
| xxxi. the road leading from Deal and Sandwich Main Road to Temptye Farm, | TR328564 to TR341565 | Public bridleway EE236; part unregistered title |
| xxxii. the road leading from Blue Pigeons Farm to Sandwich Bay | TR344566 to TR355575 | Public bridleway EE232; part unregistered title; subject of application PROW/DO/C484 to record as restricted byway |

K.17. Of 32 'streets' recorded in the notice, and treating a way subject to an application for a definitive map modification order as if the application were successful:

- 13 are recorded as public carriageways
- 10 are recorded as public bridleways,
- 5 are recorded as public footpaths,
- 3 are not recorded as public ways, of which 2 are drove roads of uncertain status, and
- 1 could not be located.

K.18. At least 28 of 31 of the 'streets and parts of streets not repairable by local authorities and railways' cited in the public notice in the *London Gazette* are today public highways. This is strong evidence that such streets were considered to be public highways which were privately maintainable, and were not wholly private ways. Inclusion in the list is therefore evidence of the public status of these ways at the date of the notice.

K.19. The majority of these 28 streets are now recognised as roads and public bridleways, or subject to applications intended to secure that outcome. Of those five which currently are recorded as public footpaths, four are drove roads recorded as footpaths, but where the true status is uncertain, and the remaining one (xxvi) is the subject of an application to upgrade to bridleway.⁵¹

K.20. **Conclusion:** The three scheduled roads which are not, even now, recorded as public ways or the subject of applications for recording, are:

- (ii) White House Drove Road
- (iii) Rubery Drove Road
- (xxii) the road leading from Preston Road to Marley Brook Farm

⁵¹ PROW/DO/C495. The way formerly was classified as a road used as public path, subsequently downgraded to footpath by a definitive map modification order in a pre-*Trevelyan* era.

K.21. Of these, the first two are among a number of drove roads leading into the Ash marshes, the status of which is uncertain. But for comparison, the application to record Corner Drove as a restricted byway⁵² demonstrates that evidence may be sufficient to record drove roads of similar character as a restricted byway. It seems likely that the applicant for the order proceeded on the basis that the drove roads were public, but not necessarily publicly-maintainable.

K.22. As to the third (i.e. xxii), there is supporting evidence that this road may be public: it is excluded from assessment on the tithe map, and there is a record of material being put on the road by the district council in 1893. An absence of publicly-recorded status today does not mean that the road is not a public road.

K.23. Thus nearly all, and perhaps all, of the scheduled roads are public ways today. Of those 8 or 9 ways which today are recorded as public footpaths, three (including the order way) are under application for upgrading, and the remainder are drove ways on Ash Level, where the recording as footpath (if at all) is for want of investigation of higher rights for driving animals, riding horses or vehicles. And indeed, where such investigation has been carried out, in relation to Corner Drove and Brazen Street at Ware⁵³ (which were not among those cited in the notice) the correct status, with strong evidential support, is claimed to be restricted byway.⁵⁴

K.24. It therefore is submitted that ways in the notice identified as streets not repairable by local authorities are likely to be those which were regarded at the time as of either bridle or vehicular road status, being described as 'roads'.

K.25. **Objector:** The objector suggests (E/(v)K) that 'The road leading from Foxborough Hill, Woodnesborough to Sandwich Station' may refer to the road from Woodnesborough village to Sandwich.⁵⁵ It is said that Sandwich station may be reached from that road via Black Lane, Sandwich, or that the notice refers to the former Sandwich Road station.⁵⁶ These suggestions overlook that notice was required to be given of the undertaker's intention to lay its apparatus in certain streets not repairable by local authorities, of which the order way was considered to be one such street.⁵⁷ There is no suggestion that the road from Woodnesborough village to Sandwich was not publicly maintainable.

K.26. **Points:** 2

52 PROW/DO/C413

53 Applications PROW/DO/C413 and PROW/DO/C414

54 That Corner Drove and Brazen Street are not among those identified in the notice presumably is because the undertaker had no need to lay its apparatus in these two ways.

55 Comprising The Street, Sandwich Road, Woodnesborough Road.

56 Sandwich Road was on the road of that name at the level crossing with the East Kent Light Railway, just west of the present bridge over the Sandwich bypass.

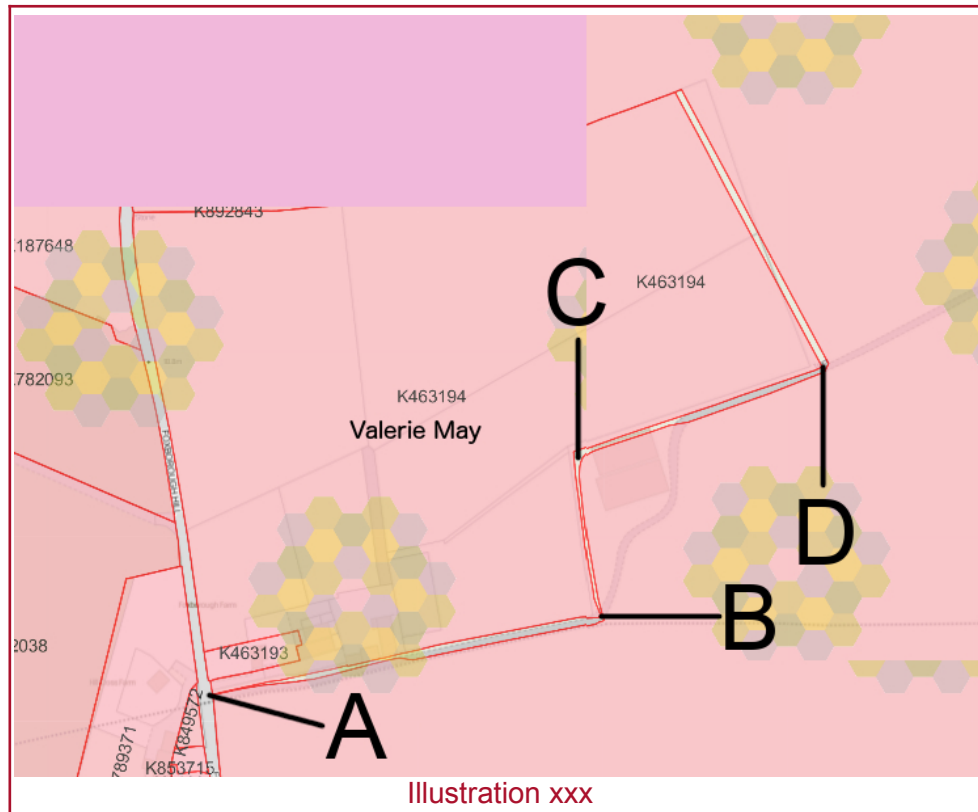
57 In the applicant's view, incorrectly. However, it was commonplace prior to the National Parks and Access to the Countryside Act 1949 for highway authorities to consider public rights of way to be privately maintainable or to be maintainable by the parish council.

L. HM Land Registry

L.1. **Date:** 2021

L.2. **Source:** HM Land Registry index map

■ **Index map extract**



Title K463194

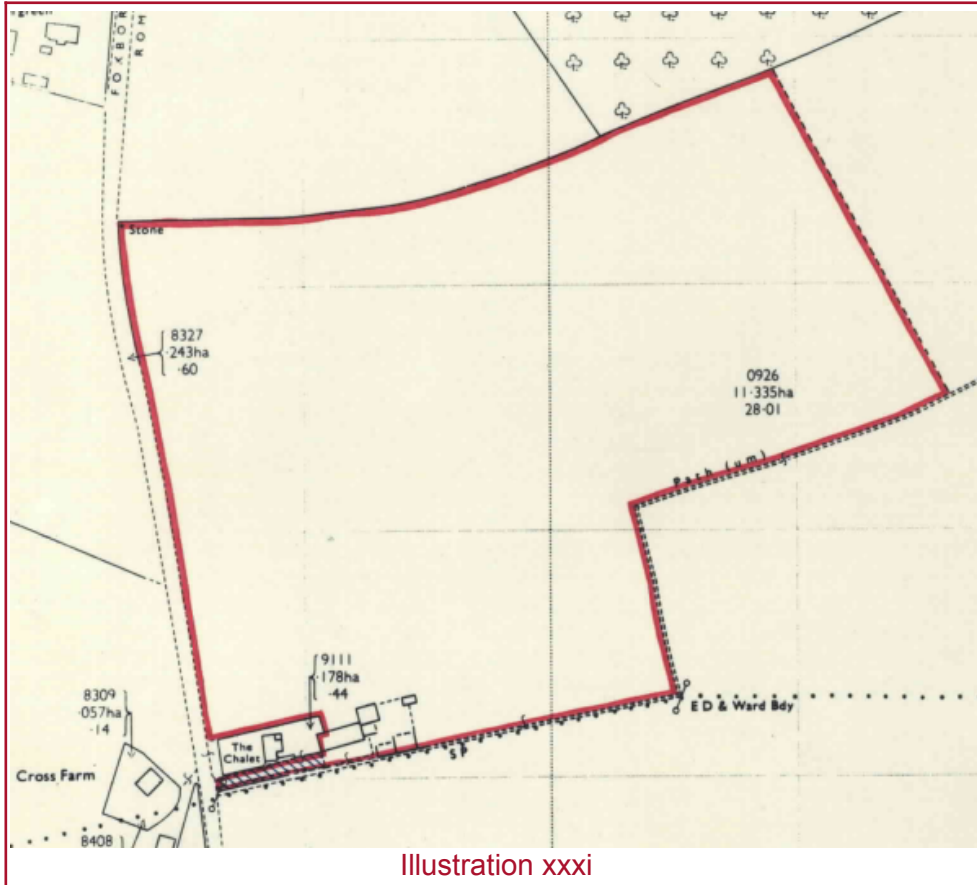


Illustration xxxi

Title K745463

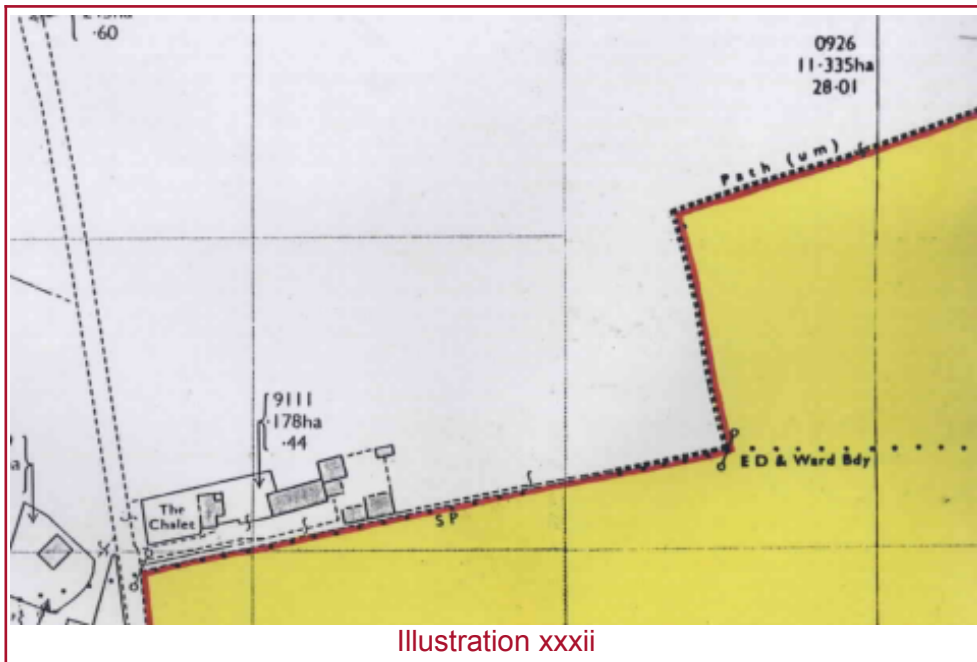


Illustration xxxii

L.3. **Description:** Original scale: based on Ordnance Survey MasterMap; orientation: unchanged (top is north).

L.4. The extract from the HM Land Registry register of title index map and the two title plans shows the boundaries to two titles which abut the order way: K463194 and K745463. The boundaries are shown on the title plans with a red edging.

L.5. Title K463194 relates to land east of Foxborough Hill and north of the order way. The boundary follows the order way from A, through B and C, towards D.

L.6. Title K745463 relates to land east of Foxborough Hill and south of the order way. The boundary follows the order way from A, through B and C, to D.

L.7. **Analysis:** The order way itself is excluded from the registered titles.

L.8. The absence of any title to the order way in the Land Registry titles to the land adjoining the order way must be consequential on the conveyances of that land prior to first registration of title — such conveyances likewise must have excluded the order way.

L.9. Two possibilities arise to account for the exclusion — either that the title to the order way is unregistered and contained in a separate title; or that ownership of the order way is held *ad medium filum*⁵⁸ by the owners of the adjoining land.

L.10. The first possibility is unlikely: there is no reason why title to a narrow strip of land, coincident with the order way, should be held in a separate title yet remain unregistered and unknown — first registration of title having become compulsory in this area in January 1961.⁵⁹ Thus, if such an unregistered title exists and endures, it must have remained vested in the same proprietor for the past 60 years, and that proprietor has not come forward in connection with the application and order.

L.11. The second possibility arises only if the order way is indeed a highway to which the presumption of *ad medium filum* applies.

The ‘ad medium filum’ rule is a rebuttable presumption that an owner of land which abuts either:

- a public or private highway, or
- a non-tidal river or stream

also owns the soil of the adjoining highway, or the bed of the adjoining river or stream, up to its centre line. A transfer or lease of that land will therefore be presumed to include that part of the highway, river or stream without the necessity for any express mention of it.

In the case of a highway, the presumption is known as the ‘ad medium filum viae’ rule, and is based on a combination of convenience (so as to prevent disputes as to precise boundaries) and also on the supposition that each owner contributed a portion of land when the highway was formed.⁶⁰

⁵⁸ *usque ad medium filum viae*: as far as the centre line of the way.

⁵⁹ www.gov.uk/government/publications/first-registrations/practice-guide-1-first-registrations.

⁶⁰ *The ‘ad medium filum’ rule*, LexisNexis, www.lexisnexis.co.uk/legal/guidance/the-ad-medium-filum-rule.

L.12. Thus, the only realistic explanation for the exclusion of the whole of the order way from the adjoining owners' title is that the order way is a highway. Moreover, in practice, such exclusion seldom occurs in relation to a rural, unenclosed footpath, and the likelihood is that the exclusion signifies a bridleway or public road.

L.13. It is not possible to draw the same inferences from the boundary of the order way between D and E. The first part of the land between D and E is owned by A W Warner & Sons, and the title extends to both sides of the order way; the second part is unregistered and owned by the objector. Only by examining historical conveyances would it be possible to identify whether the same exclusions originally affected this part of the order way.

L.14. However, the same characteristic exclusion of titles resumes from E along the line of ES8A/ES8 to Sandwich, and along the line of ES8A to Biller's Bush.⁶¹ It may also be noted that the same exclusion occurs along the way north-northwest from D to Church Street and Woodnesborough church, which may have the historical reputation of an unrecorded bridleway — see paras.I.J.3 to I.J.4 above.

L.15. **Conclusion:** The absence of any registered title to the order way from A to D is good evidence that it is a highway in origin, and likely to be of at least bridleway status.

L.16. **Points:** 2

61 There is a brief interruption of about 50m of registered title in the vicinity of Biller's Bush.

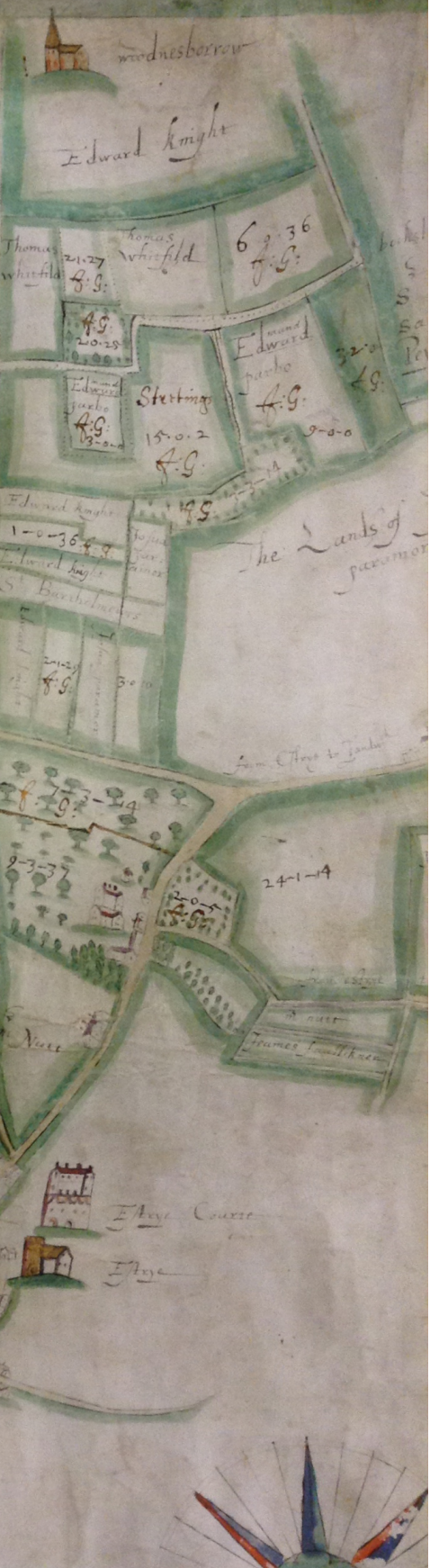
Annexe A

Thomas Sackely estate map of Walton (item III.A)

Memorandum that all these several
 parcels of land about Stretting
 that are belonging to the King
 are now with f. g. & have the
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 in them are all now made
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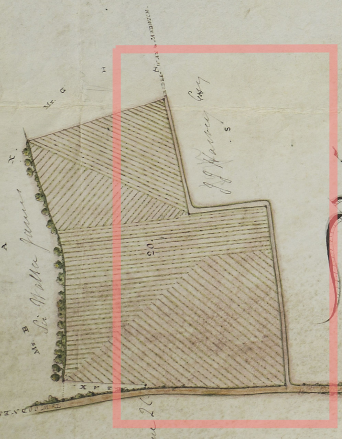
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Annexe B

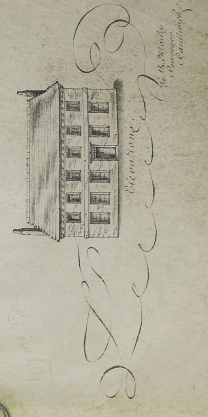
Castle estate map of Walton (item III.D)

WALTON



Reference.

| | |
|-------------------------|---------|
| 1. The Rectory | 100.0.0 |
| 2. The Vicarage | 100.0.0 |
| 3. The Church | 100.0.0 |
| 4. The Rector's House | 100.0.0 |
| 5. The Vicar's House | 100.0.0 |
| 6. The Churchyard | 100.0.0 |
| 7. The Rectory Garden | 100.0.0 |
| 8. The Vicarage Garden | 100.0.0 |
| 9. The Churchyard | 100.0.0 |
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| 97. The Rectory Garden | 100.0.0 |
| 98. The Vicarage Garden | 100.0.0 |
| 99. The Churchyard | 100.0.0 |
| 100. The Rectory Garden | 100.0.0 |



Annexe C

Finance (1909–1910) Act 1910 sheet Kent 48/6 and 48/10 extract (item III.H)

