

Foxborough Hill bridleway: document analysis

Application to record a bridleway from Foxborough Hill, Woodnesborough to the Sandwich bypass

I. Introduction

A. Quick reference

- A.1. Existing rights of way comprised in upgrade: EE226
- A.2. Parishes of: Woodnesborough and Sandwich
- A.3. Former parishes of: Eastry and Woodnesborough
- A.4. Termination points: From Foxborough Hill, Woodnesborough to the Sandwich bypass
- A.5. Termination point grid references: TR30865609/TR32045689
- A.6. Post code: CT13 0NY
- A.7. Ordnance Survey Explorer sheet: 150
- A.8. Ordnance Survey County Series 25" sheets: Kent XLVIII/6 and XLVIII/10
- A.9. Location plan (see application map at part II below for scale representation):



B. The applicant

- B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a

volunteer district access and bridleway officer for the borough of Epsom and Ewell in Surrey, and am also authorised to make applications on behalf of the society in relation to East Kent. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Application

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

C.2. The application seeks to upgrade to public bridleway the public footpath EE226 in the parishes of Woodnesborough and Sandwich. Footpath EE226 begins at Foxborough Hill at A (TR30865609) opposite Hill Cross Farm and heads east for a distance of 190m to B (TR31055613), turning north for a distance of 80m behind a barn to C (TR31045621), then east-northeast for a distance of 350m to a junction with footpath EE225 south-east of Church Street, Woodnesborough, at D (TR31355636), continuing east-northeast for a distance of 870m via E and F to an end-on junction with bridleway ES8 west of the Sandwich bypass, at G (TR32045689). The total distance of footpath EE226 from A to G is 1,490m.

C.3. The application map is at part II below

D. Background

D.1. The application way shows every sign of being part of a long-standing and possibly ancient highway between Foxborough Hill and St Bartholomew's hospital in Sandwich. However, as the highway between the Sandwich bypass and Sandwich is already recorded as a public bridleway, this application relates only to the remaining part which is currently recorded on the definitive map and statement as public footpath EE226.

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

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

E. Grounds for application

E.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*¹, Lewison LJ said, at paragraph 22,

‘In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

“It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.”

E.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.

F. Points awarded

F.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of 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*²:

F.2. Points:

Item	Ref	Points A–C
Thomas Sackely estate map of Walton	IV.A	0
Manor of Grove (Boycot) map	IV.B	1
Barlow-Hasted map of Kent	IV.C	1
Castle estate map of Walton	IV.D	3
Tithe Commutation Act 1836	IV.E	5
Great Kent Atmospheric Railway	IV.F	5
Ordnance Survey boundary records	IV.G	0
Eastry Rural District Council highways committee report book (1904)	IV.H	2
East Kent Light Railway	IV.I	0

1 [2012] EWCA Civ 334

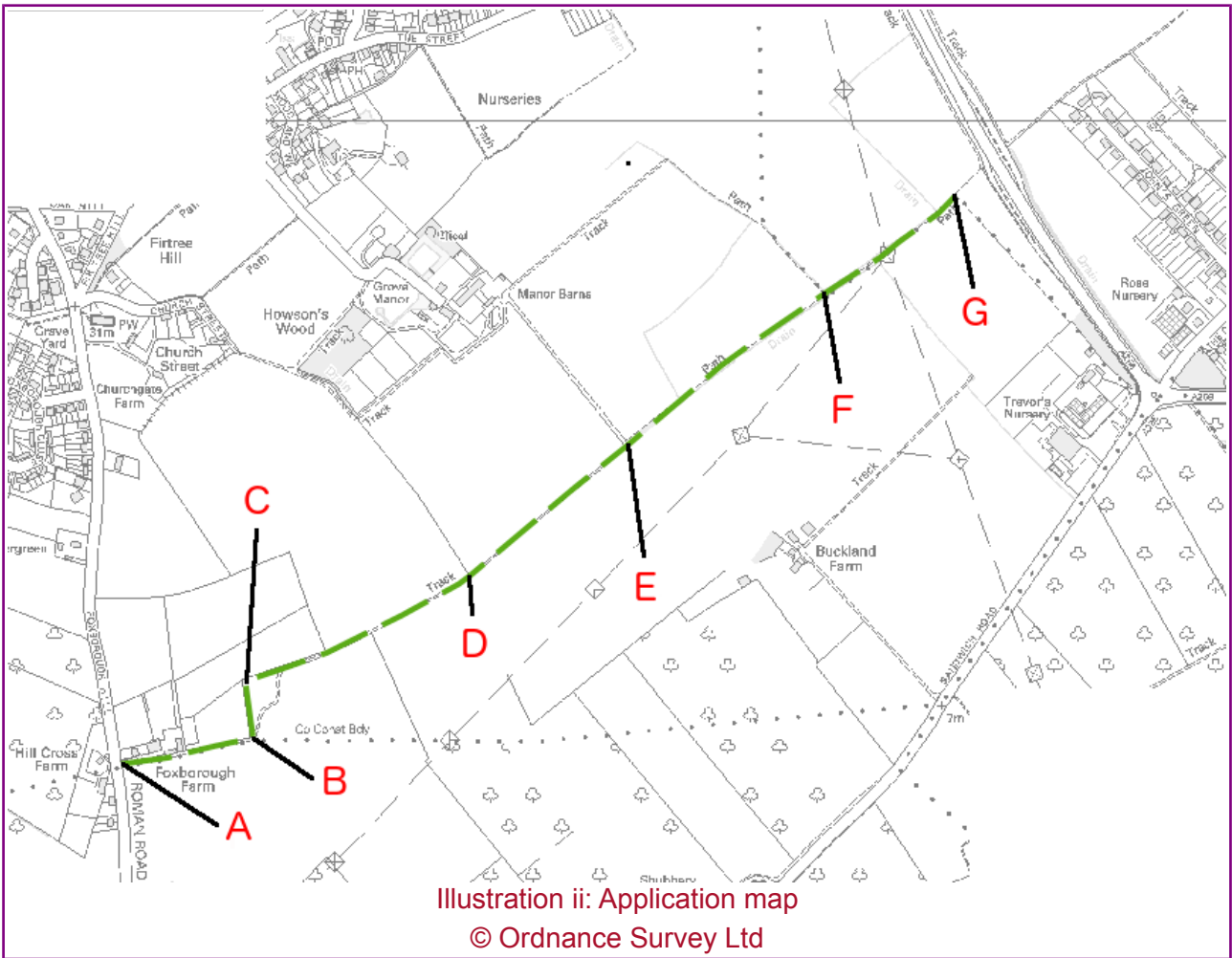
2 Sarah Bucks and Phil Wadey, 2nd ed. 2017.

Eastry Rural District Council highways committee report book (1913)	IV.J	3
Electricity Supply Acts 1882 to 1922	IV.K	2
Total points		22

G. Width of application way

G.1. No width is recorded in the definitive statement between A and F, but a width of 8 feet is recorded in the draft definitive statement from the former railway crossing east to G. Therefore a width of 3 metres is sought between A and F, being the minimum width which can accommodate two horses passing, while the width of 8 feet (approximately 2.5 metres) should be retained between F and G.

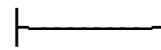
II. Application map




Notes:

Point A is at Ordnance Survey grid reference TR30865609

Scale: approx. 1:10,150 (when printed A4)



Application way is marked 

200m

III. Along the way



Illustration iii: From Foxborough Hill at A



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



Illustration v: At C towards D, EE225 to left



Illustration vi: At E, towards F



Illustration viii: EKLR railway crossing between F and G



Illustration vii: Near G towards EKLR crossing

IV. Evidence

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A. Thomas Sackely estate map of Walton

A.1. **Date:** 1622

A.2. **Source:** Kent County Archives³

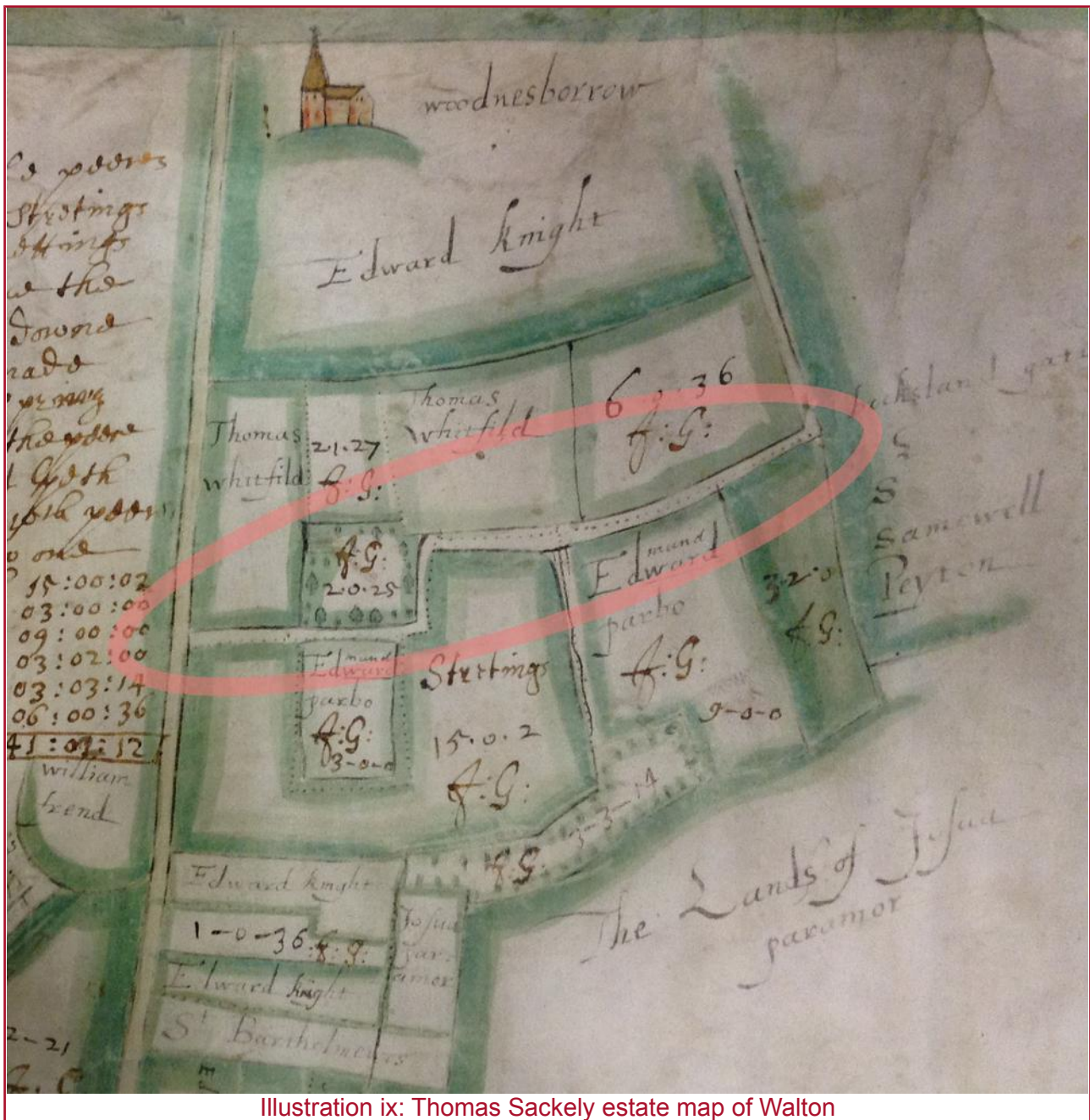


Illustration ix: Thomas Sackely estate map of Walton

A.3. **Description:** original scale: 1 inch to 24 perches [About 13 inches to 1 mile]; 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.4. The application 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 application way is uncoloured. At D, the track turns north, and the map is annotated: 'Bucksland gate'.

A.5. **Conclusion:** The estate plan is convincing evidence of the physical existence of the application way between A and D, but the status of the way is uncertain. No continuation of the way is shown beyond D (the track here turns north to Woodnesborough church), but the map is marked 'Bucksland gate', and it may be that a bridle gate provided for access east towards G.

A.6. **Points:** 0

B. **Manor of Grove (Boycot) map**

B.1. **Date:** 1635

B.2. **Source:** Kent County Archives⁴



Illustration x: Manor of Grove

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'.

B.4. The map shows a way from Sandwich coincident with the line of the present bridleway ES8, and continues coincident with the application way between G and a point slightly short of E (the manor does not include land southwest of E, and the map does not show any part of the way beyond E). The way is coloured ochre (although part of the way, east of G, falls within the field called 40 Acres, and the colouring is uncertain), and labelled, 'from Eastry Stone to Sandwich'.

B.5. **Conclusion:** The application way (and its continuation east of G 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, EE), 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, 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, but other evidence suggests that this latter record may be of a lower status than justified (see the Barlow-Hasted map of Kent at item IV.C and the Great Kent Atmospheric Railway at item IV.F below).

4 U941/P1

B.6. The application way is also labelled as a way 'from Eastry Stone to Sandwich', which is suggestive of a public road leading from one settlement to another.

B.7. 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. It was open to the lord to show private roads within the manor in whatever way he chose, but the application way is shown in the same presentation as roads which today are recognised as public, and is labelled in such a way that it strongly implies status as a road or bridle-road.

B.8. **Points:** 1

C. Barlow-Hasted map of Kent

C.1. **Date:** 1778–1801

C.2. **Source:** Reproduced from www.hereshistorykent.org.uk⁵: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.



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

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

C.5. The Barlow-Hasted map shows the application way between A and G as an enclosed way, continuing north-east to St Bartholomew's Hospital, Sandwich.

C.6. **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, whereas certain minor

⁵ www.hereshistorykent.org.uk/displayImagedata.cfm?type=Map&digref=Hasted_Woodnesborough&placename=Woodnesborough&placeID=505&categoryID=23.

routes of questionable public status (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are shown with lines across the junction with public ways. However, it cannot be assumed that the status is any greater than bridleway.

C.7. **Points:** 1

D. Castle estate map of Walton

D.1. **Date:** 1821

D.2. **Source:** Kent County Archive⁶

Estate map

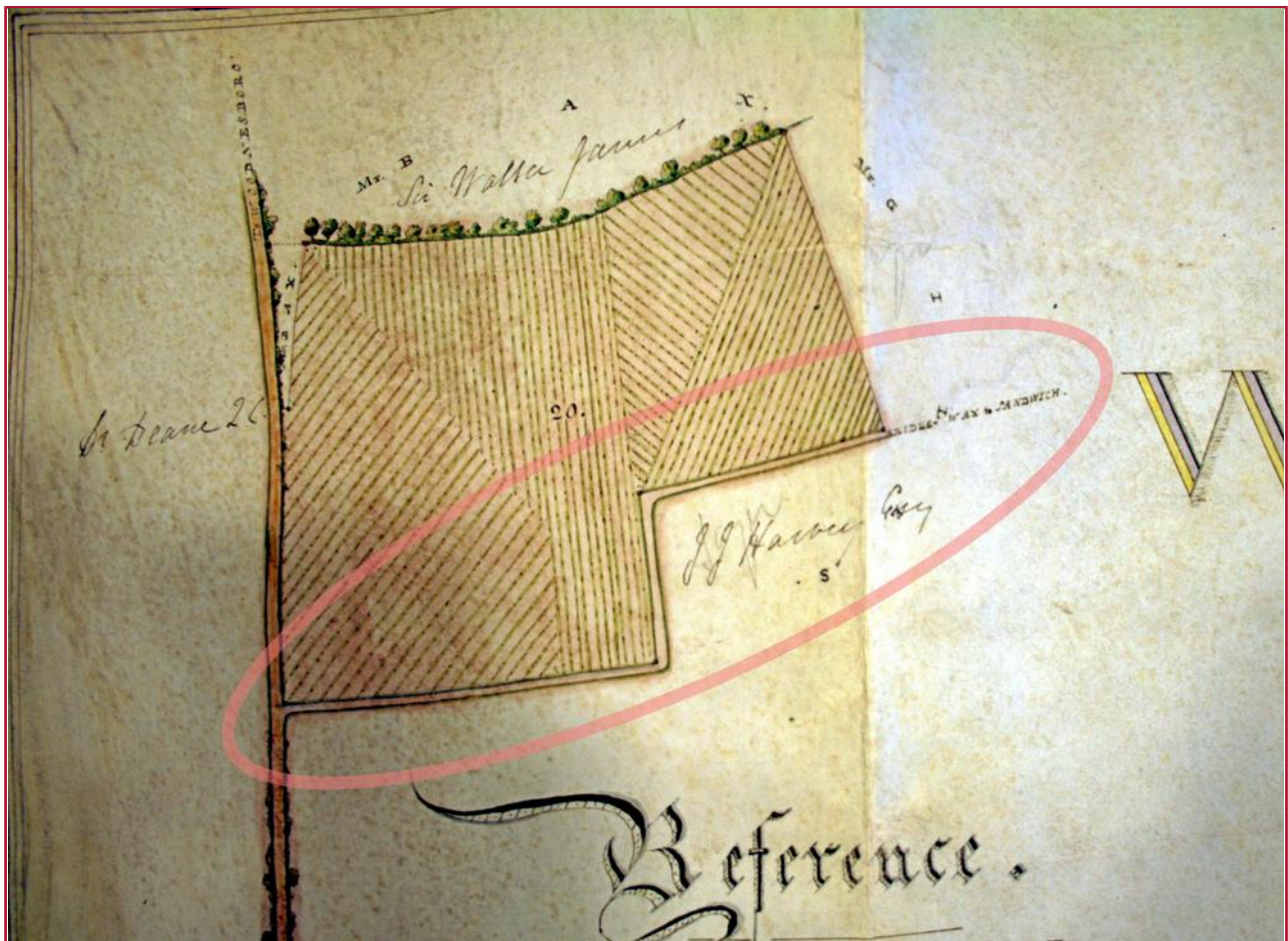
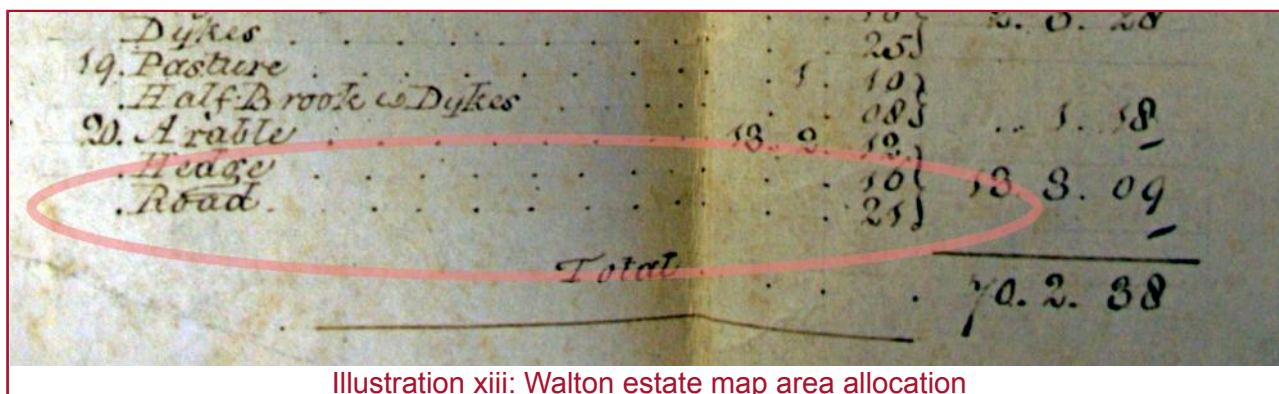


Illustration xii: Walton estate map

Estate map measured area



Dykes			
19. Pasture	10	25	25
Half Brook w Dykes	10	10	10
20. Arable	13	2	15
Hedge	16	0	16
Road	21	0	21
Total	70	2	72

Illustration xiii: Walton estate map area allocation

D.3. **Description:** The map (illustration xii above) is described as the 'Property of T Castle', and surveyed by G A Hailey of Sandwich. It shows the application 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. At the eastern boundary of parcel 20, the way is labelled: 'BRIDLE-WAY TO SANDWICH'.

D.4. In the table of parcel areas included in the map (illustration xiii above), parcel 20 is described as having three components: arable (13a,2r,12p), hedge (16p), and road (21p), with a total of 13a,3r,9p.

D.5. **Conclusion:** The map is an estate map, showing the lands of the owner, T Castle Esq. In the tithe apportionment for Eastry (see item IV.E below), parcel 20 was labelled as parcel 39 (Foxborough Hill), and assigned to T Castle⁷. It shows the application 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.6. The map is therefore good evidence of the status of the way, as acknowledged by the owner at the time on his map of the 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.7. **Points:** 3

E. Tithe Commutation Act 1836

E.1. **Date:** 1841

E.2. **Source:** Kent County Archive⁸

⁷ Available online at: www.kentarchaeology.org.uk/Research/Maps/EAY/02.htm.

⁸ Tithe maps are available on CD, tithe apportionments are transcribed (for Eastry) at: www.kentarchaeology.org.uk/Research/Maps/EAY/01.htm and (for Woodnesborough) at: www.kentarchaeology.org.uk/Research/Maps/WON/01.htm.

Eastry tithe map

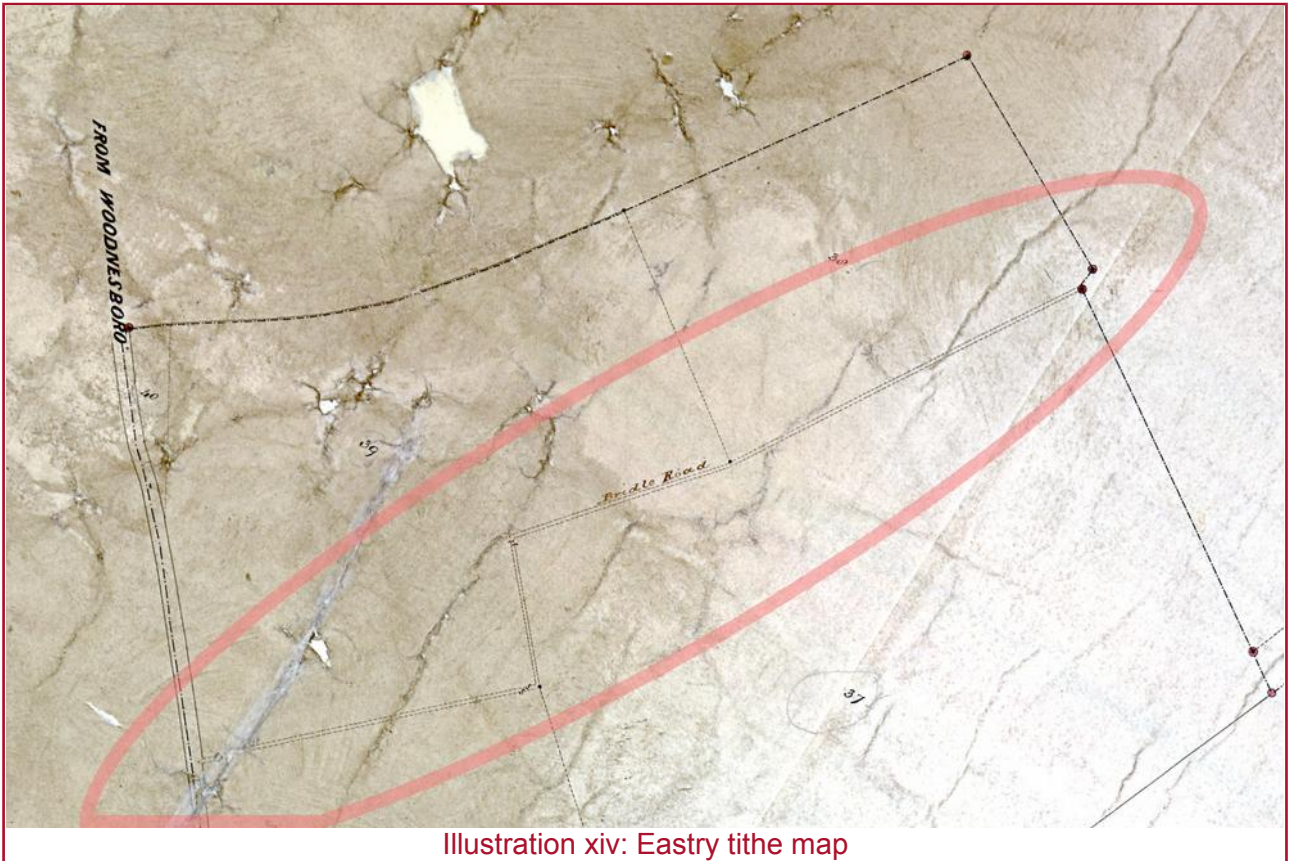


Illustration xiv: Eastry tithe map

Woodnesborough tithe map

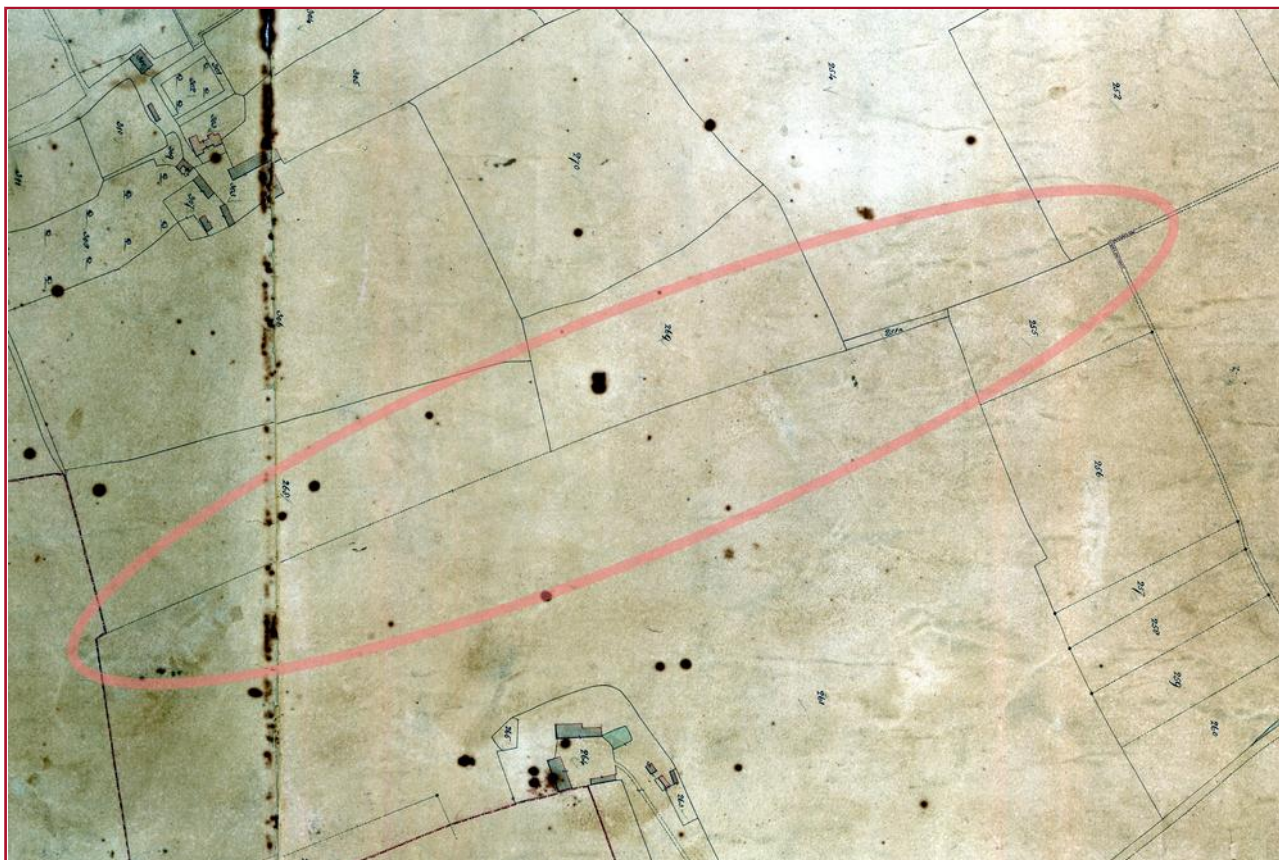


Illustration xv: Woodnesborough tithe map

E.3. **Description:** The tithe map for Eastry (illustration xiv above) shows the application way east from A east, 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. Between C and D, the application way is annotated 'Bridle Road'⁹.

E.4. The tithe map for Woodnesborough (illustration xv above) shows no defined path or track along the application way, but does record, as a track, what is now public footpath EE226 north-northwest from Biller's Bush to join the application way at G, and the continuation of the application way east from G towards St Bartholomew's Hospital along what is now public bridleway ES8A and ES8.

E.5. **Conclusion:** The application way between C and D is specifically 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 (the bridleway between Thornton Lane and Venson Bottom¹⁰). While the tithe map was not prepared with the intention of ascertaining and recording public rights of way, the specific, conspicuous annotation on the tithe map itself and contemporary notoriety of the Tithe Commutation Act documents within the Eastry community ensure that a mistaken attribution of the application way is highly unlikely, and would have been corrected at the time of publication. In *Giffard v*

⁹ The identical annotation appears on the tithe map held by the National Archives, IR 30/17/120.

¹⁰ Application has been made to record this 'bridle road' as a public bridleway, application 380.

*Williams*¹¹, referring to a tithe award and map, Stuart VC says: "But 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."

E.6. The application way between A and D is part of a single, continuous, logical route between Foxborough Hill and Sandwich, and the annotation applied to the tithe map must apply to the entire route.

E.7. No adverse conclusions can be drawn from the Woodnesborough tithe map, which appears not to show field highways.

E.8. **Points:** 5

F. Great Kent Atmospheric Railway

F.1. **Date:** 1845

F.2. **Source:** Kent County Archive¹²

¹¹ (1869) 38 L.J. (Ch.) 597, 604.

¹² Q/RUm/291

Deposited plan

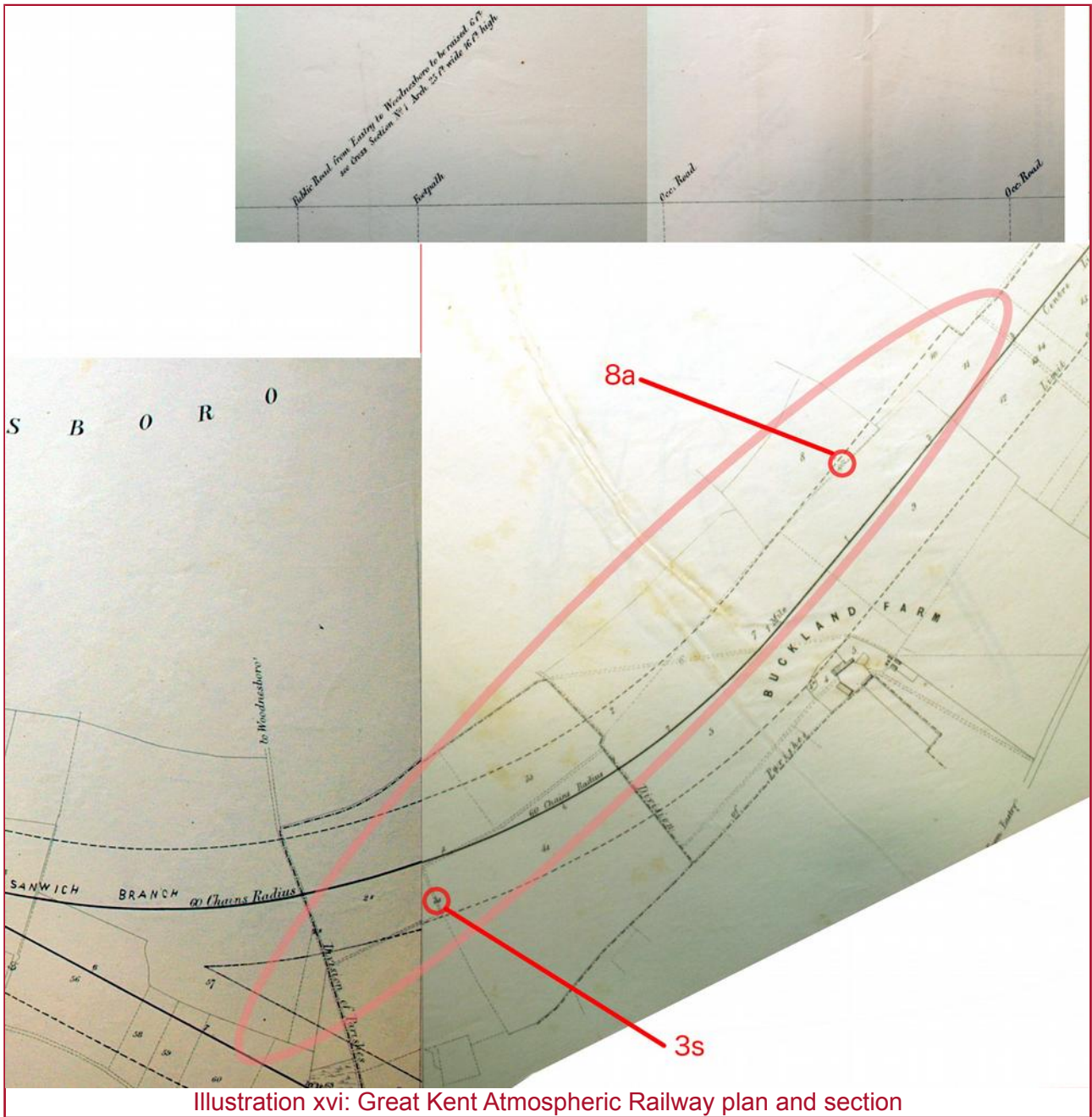
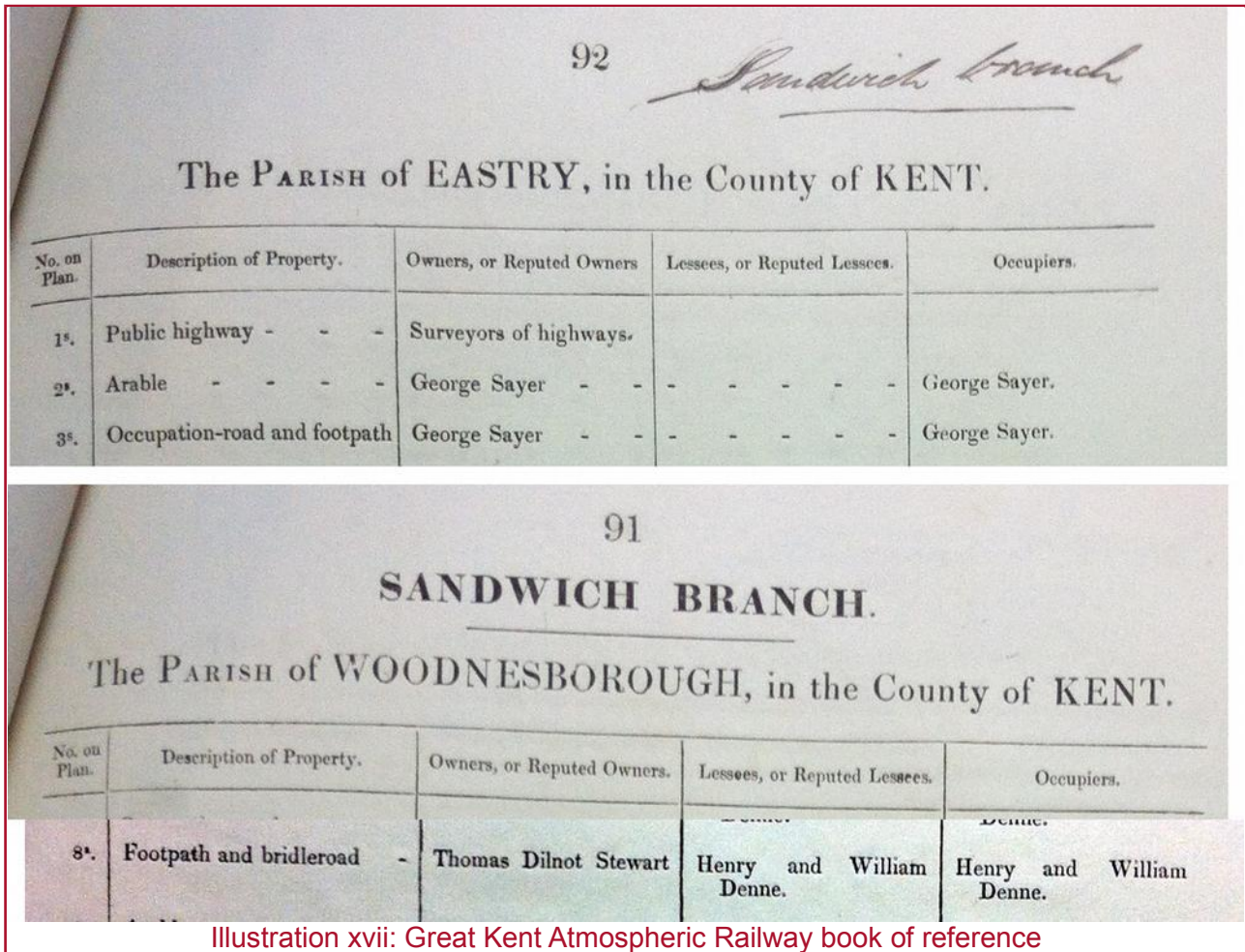


Illustration xvi: Great Kent Atmospheric Railway plan and section

Book of reference



F.3. **Description:** The plans (see illustration xvi above) for the Great Kent Atmospheric Railway show a proposed railway line to the south of Woodnesborough. The proposed line would have cut across the application way just east of C, then continuing broadly parallel to, but south of the application way west from C. The application way falls within the limits of deviation from A to slightly west of G. The application way between B and C is labelled with parcel number 3s, and between E and F is labelled 8a (east of G, the continuation of the application way east, along what is now public bridleway ES8A and ES8, is outside the limits of deviation).

F.4. The book of reference for the parish of Eastry (see illustration xvii above, *i.e.* which includes the application way west of C) 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 bridle-road', 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 application way between E and F). The section for the line shows a footpath crossing in respect of the 'occupation-road and footpath' referred to in parcel 3s.

F.5. **Conclusion:** The deposited plans and book of reference for the Great Kent Atmospheric Railway is good authority for the status of the application way between D and G as a public bridleway: private rights of way are elsewhere listed in the book of reference as

'Occupation-road' or 'Occupation-footpath' (as the case may be). The description of the status of the application way between B and C as footpath and occupation road cannot easily be reconciled with the status shown on the Walton estate map (item IV.D above) and the Eastry tithe map (item IV.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, and it may be that the new owner was not aware of the status of the application way. Moreover, if the application way between D and G was considered to be a bridleway, what was the destination of the bridleway (if not A via C)?

F.6. 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 Act¹³: however, the plans provide no indication that any such provision to the contrary was intended in relation to the application way. It did not greatly matter whether the application way was recorded between B and C as an occupation road, as a public bridleway or as a public footpath, since in any case, the railway company was likely to provide a crossing on the level with gates, with (in the case of any public footpath or bridleway) the consent of the justices under section 60.

F.7. **Points:** 5

G. Ordnance Survey boundary records

G.1. **Date:** 1869

G.2. **Source:** National Archives¹⁴

¹³ See also *Dartford Rural District Council v Bexley Heath Railway Company* [1898] AC 210.

¹⁴ OS 27/2864, OS 28/119

Woodnesborough

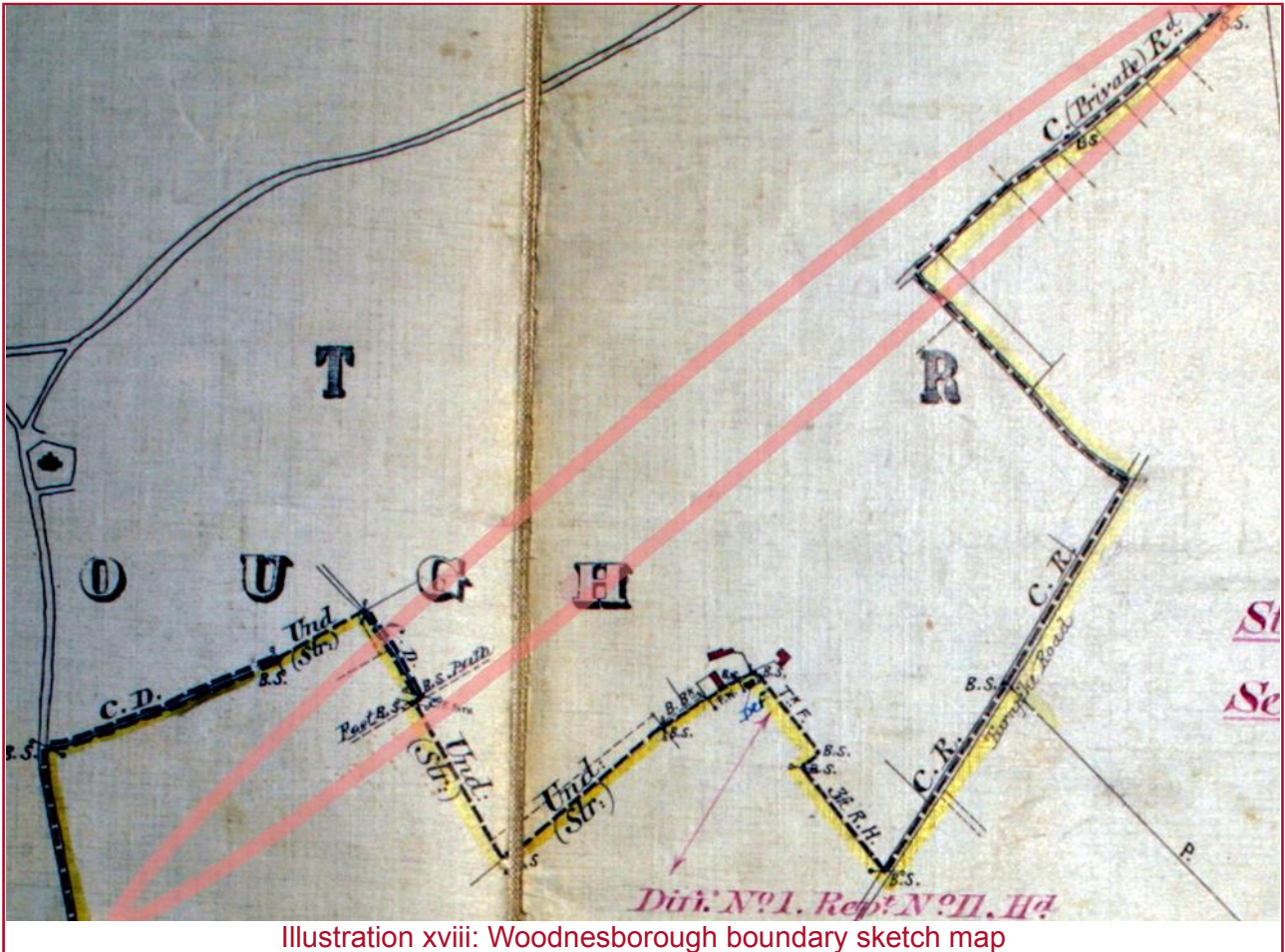


Illustration xviii: Woodnesborough boundary sketch map

Eastry

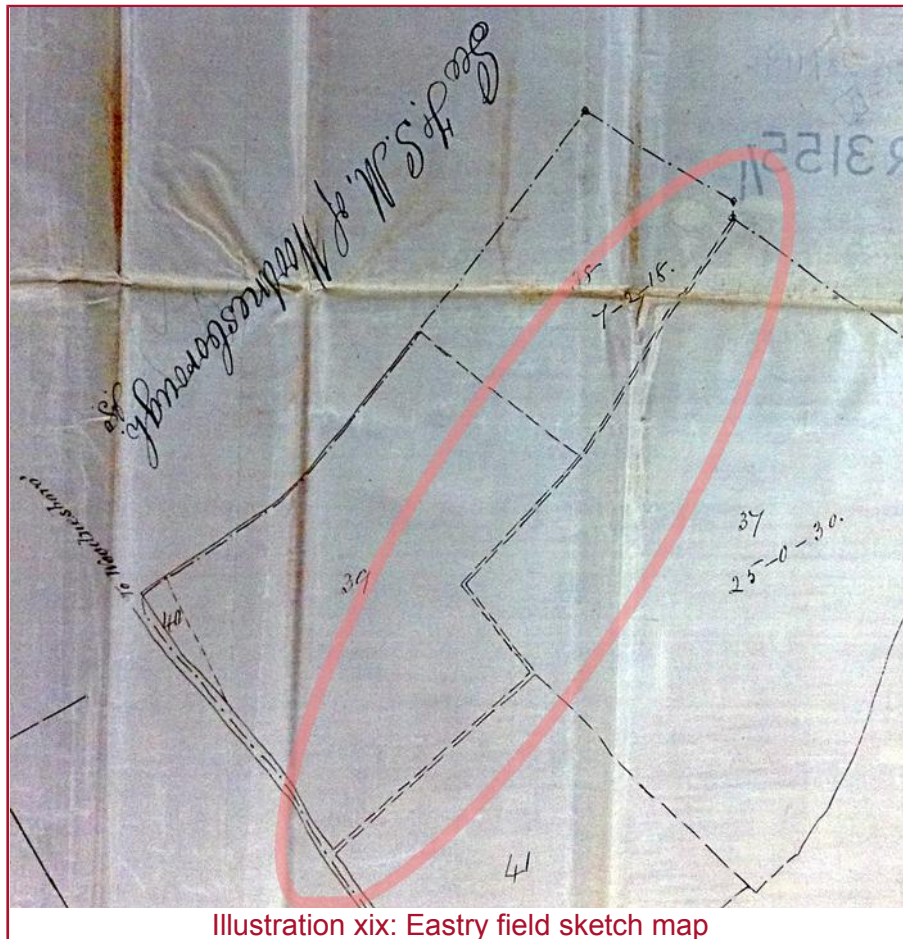


Illustration xix: Eastry field sketch map

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

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.

G.6. On the Woodnesborough boundary sketch map (illustration xviii above), the boundary of the parishes of Woodnesborough and Eastry was recorded as crossing the application way at D, and is annotated as 'Footpath'. The boundary of the parishes of Woodnesborough and Worth was recorded as crossing the end-on junction of the application way with public bridleway ES8: bridleway ES8 is annotated as a 'Private Rd', while footpath EE226 to Sandwich Road at Biller's Bush is not annotated at all.

G.7. On the Eastry field sketch map (illustration xix above), the application way is noted as a physical feature in the form of a track between A and D, but without any annotation.

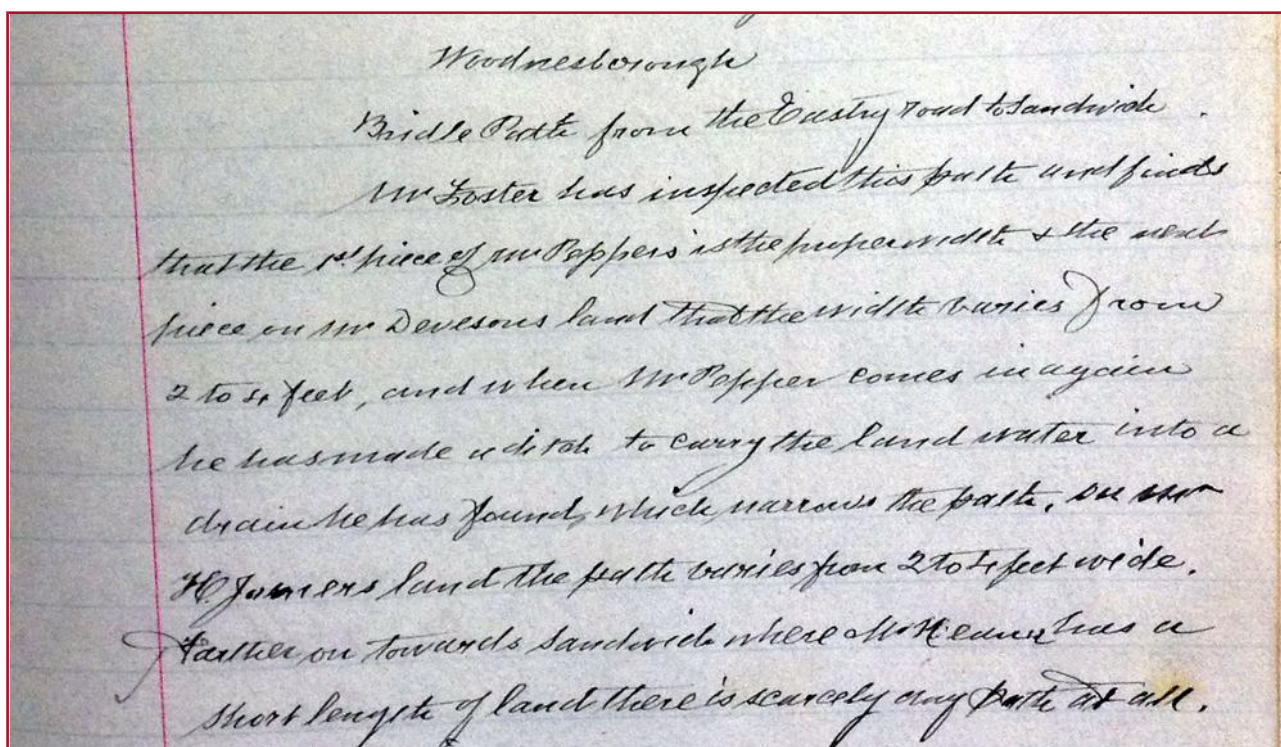
G.8. **Conclusion:** The Woodnesborough boundary sketch map records the existence of the way at D, but marks the status of the way as 'footpath'. However, the sketch map is inconsistent in other matters in this area: it marks the way from G north-east to Sandwich as a private road, but this is inconsistent with other contemporary documents and its eventual status as a definitive public bridleway. The Eastry sketch map records the presence of a track between A and D.

G.9. **Points:** 0

H. Eastry Rural District Council highways committee report book (1904)

H.1. **Date:** 1904

H.2. **Source:** Kent County Archives¹⁵



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 & 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
H. Jammers land the path varies from 2 to 4 feet wide.
Further on towards Sandwich where Mr Mead has a
short length of land there is scarcely any path at all.

Illustration xx: Eastry RDC highways committee minute, 29 Feb 1904

H.3. **Description:** The highways committee of Eastry Rural District Council met on 29 February 1904. The surveyor's report to the committee records that:

'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 Devesons¹⁶ 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.

¹⁵ RD/Ea/H5

¹⁶ Kelly's Directory, 1899, for Woodnesborough: Thomas Deveson, market gardener, Beacon Lane; also for Eastry, Deveson brothers, market gardeners, Statenborough. In the book of reference for the East Kent Light Railway, line 1, Daniel Deveson is listed as tenant of plot 32, parish of Eastry.

On Mr Joniers¹⁷ [?] 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.4. **Conclusion:** The report refers to the application way as a bridle path, and reflects the reputation of the application way known to the district surveyor and the highways committee. 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.

H.5. **Points:** 2

I. East Kent Light Railway

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

I.2. **Source:** Kent County Archive¹⁸, National Archives¹⁹

Deposited plan, line 1

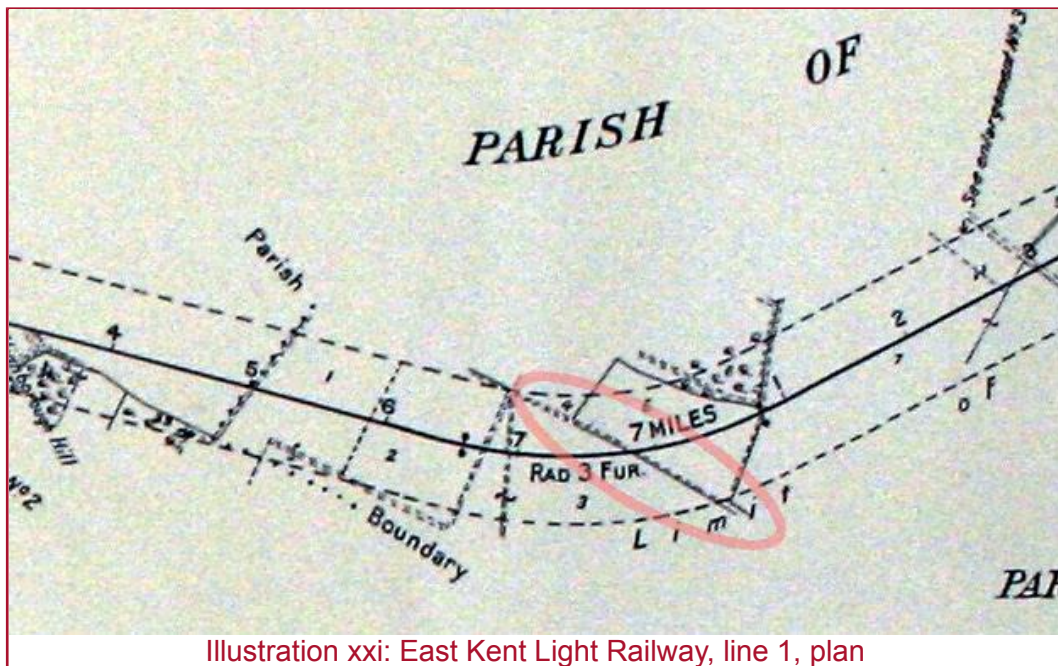


Illustration xxi: East Kent Light Railway, line 1, plan

17 Kelly's Directory, 1899, for Woodnesborough: possibly Larkin and Joiner, market gardeners, Summerfield.

18 Q/RUm/1151

19 MT 54/551

Book of reference

11

EAST KENT MINERAL (LIGHT) RAILWAYS.

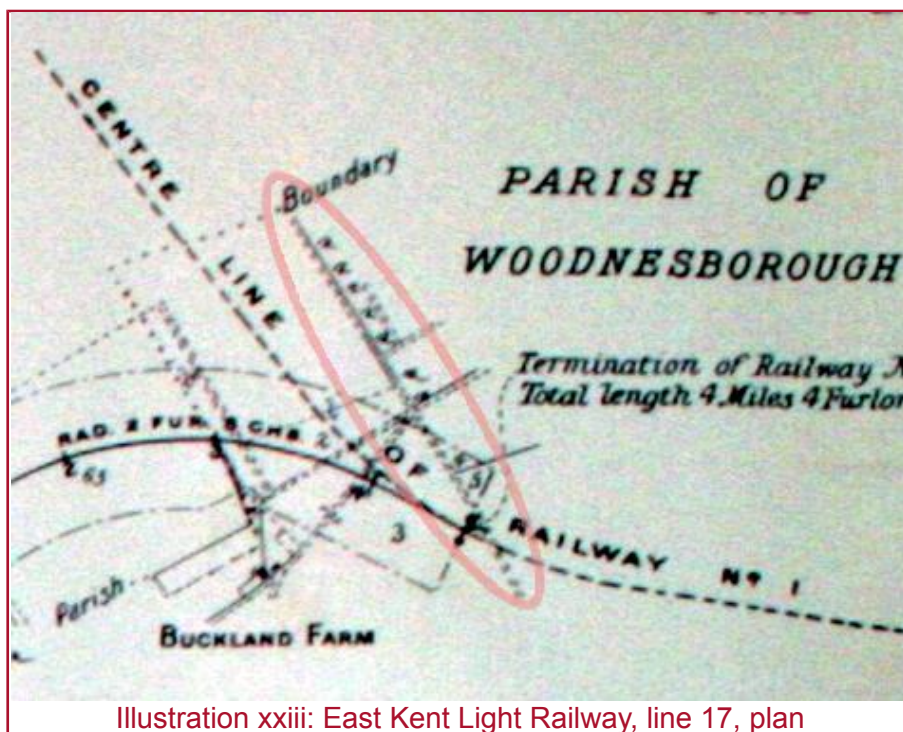
Parish of WOODNESBOROUGH, in the County of KENT.

RAILWAY No. 1—*continued.*

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
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

Illustration xxii: East Kent Light Railway, line 1, book of reference

Deposited plan, line 17



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.
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 xxiv: East Kent Light Railway, line 17, book of reference

I.3. **Description:** 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.4. The original 'main line' of the light railway, line 1, was authorised in 1911 between Shepherdswell and Richborough. The line crossed the application way between E and F, and the application way is noted as parcel number 4 on the deposited plan (illustration xxi above). In the deposited book of reference (illustration xxii 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. Line 1 was subsequently constructed and put into operation.

I.5. 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 (a proposal for a line east from Eythorne to Little Mongeham), to serve proposed coalfields in that area. The proposed line diverged from line 1 just south-west of the crossing of the application way between E and F, but the limits of deviation for the new line included part of the application way between the crossing and E. The application way is noted as part of parcel numbers 4 and 5 on the deposited plan (illustration xxiv above). In the deposited book of reference (illustration xxiii above), 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.6. Line 1 was subsequently constructed and put into operation. Line 17 was not built.

I.7. **Conclusion:** Built cheaply, the promoters at all times sought to minimise costs (for example, it is suggested that the bridge over the River Stour was built with a fixed span vice the swing bridge authorised²⁰). 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

20 http://en.wikipedia.org/wiki/East_Kent_Light_Railway

Kent Mineral (Light) Railways Order 1910²¹, and the order itself provided for the bridging of certain public roads, and for other public highways to be taken over the railway on the level (consistent with the minimal expectations of light railway construction and operation). In common with other crossings for ways which were not perceived as public roads, no specific provision is made in the elevation nor the order²² for the crossing of the application way, and a level crossing would have been provided.

I.8. The plan and book of reference documents for line 1 document the application way as a public footpath and occupation road. This is consistent with the present status of the application way on the definitive map and statement (between E and F) 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 the promoting railway company would have been indifferent to the distinction in status between an occupation road and a bridleway.

I.9. The plan and book of reference documents for line 17 document the application way as a public footpath. It seems likely that the survey for both lines 1 and 17 was done without reference to the Eastry highway committee's surveyor and without sufficient diligence, for only two years later the railway undertaker was challenged by the highway committee's surveyor as to proper provision for a bridleway (see item IV.J below). Whereas acknowledged roads and bridleways across the proposed line were recorded as in the occupation of the Eastry Rural District Council²³, footpaths were recorded in the occupation of the parish council²⁴, 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 highways committee's surveyor was not given an opportunity to comment.

I.10. **Points:** 0

J. Eastry Rural District Council highways committee report book (1913)

J.1. **Date:** 1913

J.2. **Source:** Kent County Archives²⁵

21 See art.3(1).

22 See arts.21–22.

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

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

25 RD/Ea/H7

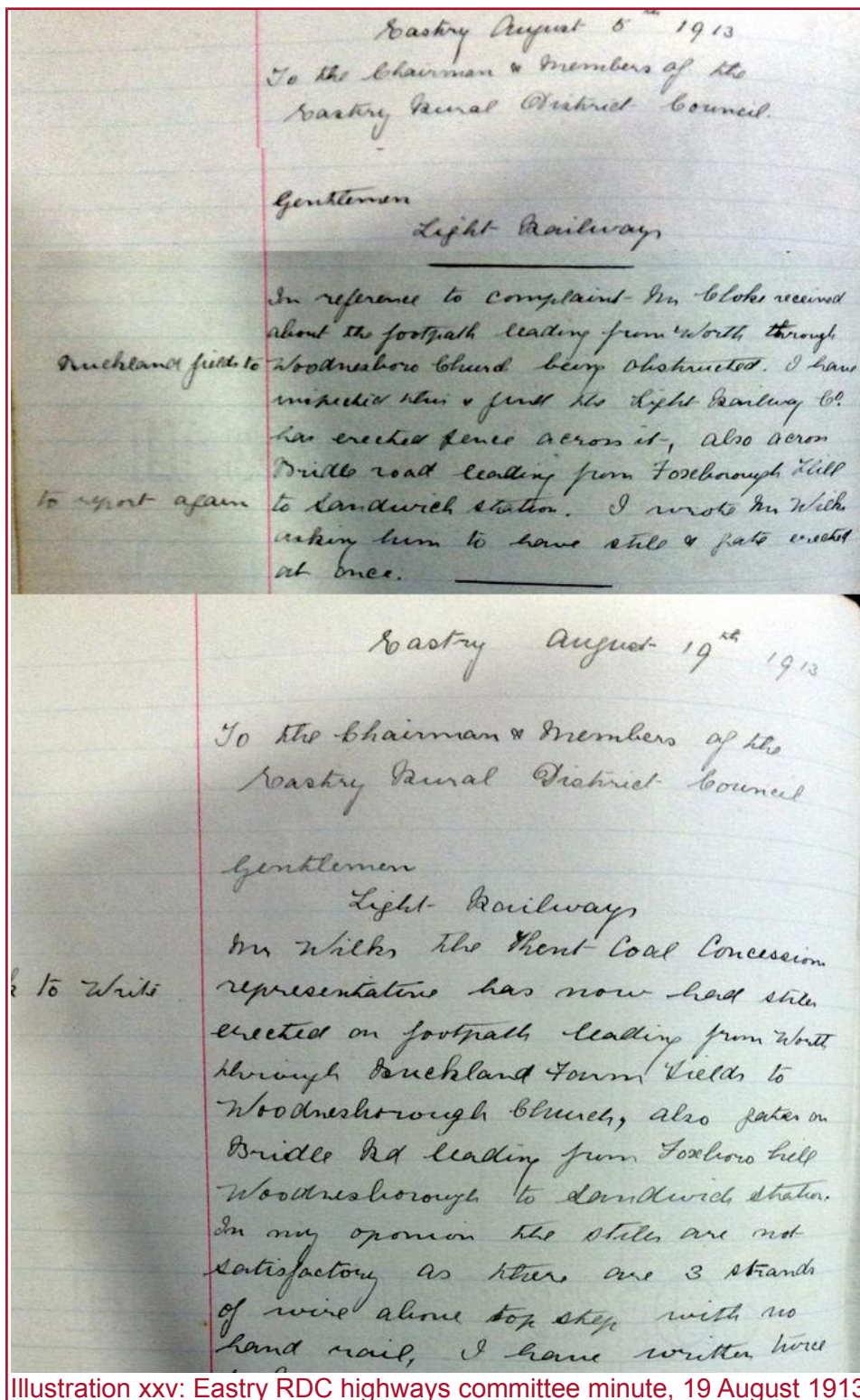


Illustration xxv: Eastry RDC highways committee minute, 19 August 1913

J.3. **Description:** The surveyor's report to the meeting of the highways committee of Eastry Rural District Council on 5 August 1913 recorded:

'Light Railways

In reference to complaint Mr Cloke 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 9 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.'²⁶

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

J.7. **Conclusion:** The records of the meetings confirm the surveyor's view that the application way is a bridleway, and that in accordance with this view, the railway company was required to erect gates across the application way, 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 the crossing.

J.8. **Points:** 3

K. Electricity Supply Acts 1882 to 1922

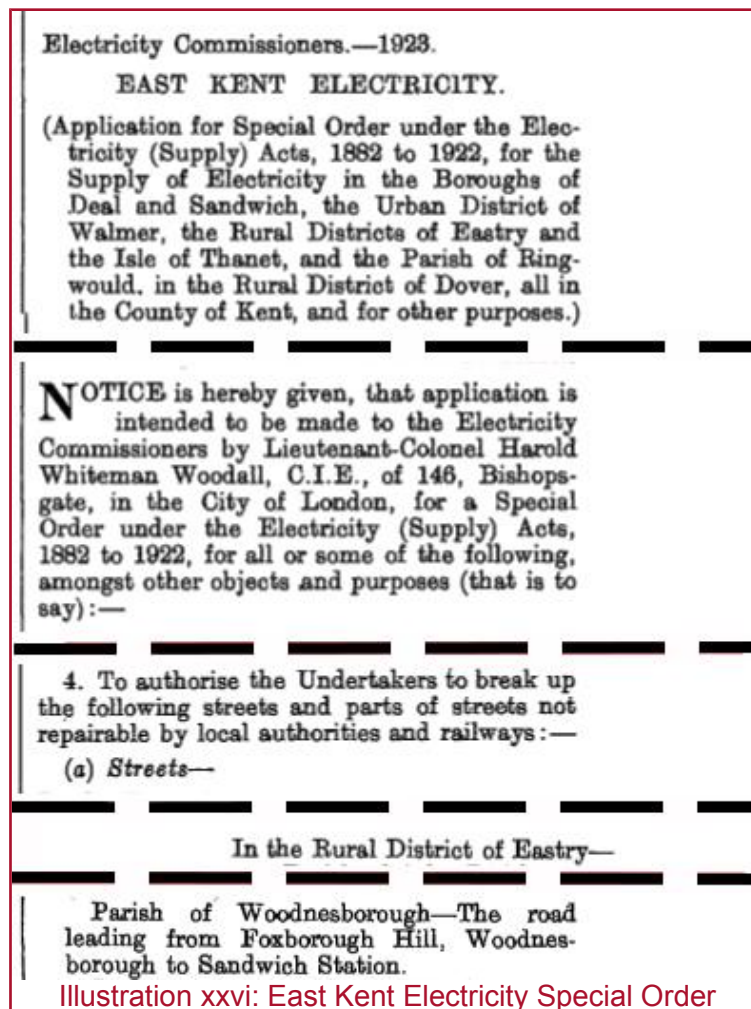
K.1. **Date:** 1923

K.2. **Source:** London Gazette²⁷

²⁶ Also reported in the Dover Express, 22 August 1913:

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

²⁷ Issue 32873, p.7140: www.thegazette.co.uk/London/issue/32873/page/7140.



K.3. **Description:** The notice published in the London Gazette 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."

K.4. **Analysis:** For the avoidance of doubt, the road referred to must be the application way: the road from Woodnesborough village east to Sandwich (Woodnesborough Street/Sandwich Road) is, and always has been, publicly maintainable; it also does not run to Sandwich Station but to the town centre.

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

K.6. 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.7. 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, and of roads over railway bridges and level crossings. It seems that none of these is considered to be maintainable by the local district council, and that therefore public notice need be given of the application.

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 is therefore 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. In addition:

- Electric lighting under the Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in section 3(3) of the 1882 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 of the 1882 Act refers to local authorities assuming the powers of the undertaker "with respect to the breaking up of any street repairable by such local authority": the Acts 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 privately maintainable vice 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.

- 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 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 so defined to include a 'road', it is not clear what the draughtsman contemplated might be achieved by this circular provision.

K.12. The definition of 'street' does not extend to embrace a wholly private track, farm drive or path in the countryside. 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 *eiusdem generis* 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 happens 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. The notice contains the following entries, set out in the first column, together with the presumed location 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>		
xii. the road leading from Northbourne Road to New Road, Betteshanger	TR313537 to TR309529	Unrecorded; subject of application 374 to record as restricted byway; 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
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; 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
<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
<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>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

K.14. Of 32 'streets' recorded in the notice:

- 11 are now recorded as public carriageways,
- 8 are recorded as public bridleways,
- 8½ are recorded as public footpaths,

- 3½ are not recorded as public ways (but without prejudice to whether they may be unrecorded public ways), and
- 1 could not be located.

K.15. At least 28 of 31 identified 'streets' notified as "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.16. The majority of the streets are now recognised as roads and public bridleways. Of those which are currently recorded as public footpaths, or not recorded as public ways, two (apart from the application way) are under application to be recorded as restricted byways (xii, xxiii), and two are the likely subject of future applications (xviii and xxvi).

K.17. **Conclusion:** This application therefore concludes that ways notified as streets not repairable by local authorities are those which were regarded at the time as of at least bridleway status, being described as 'roads'. The notice is good evidence of the status of the application way between A and G (and beyond to Sandwich) as a public way, privately maintainable, of at least the status of bridleway.

K.18. **Points:** 2