

Hammill footpath: application to record a footpath from Gore Lane, Eastry to Hammill

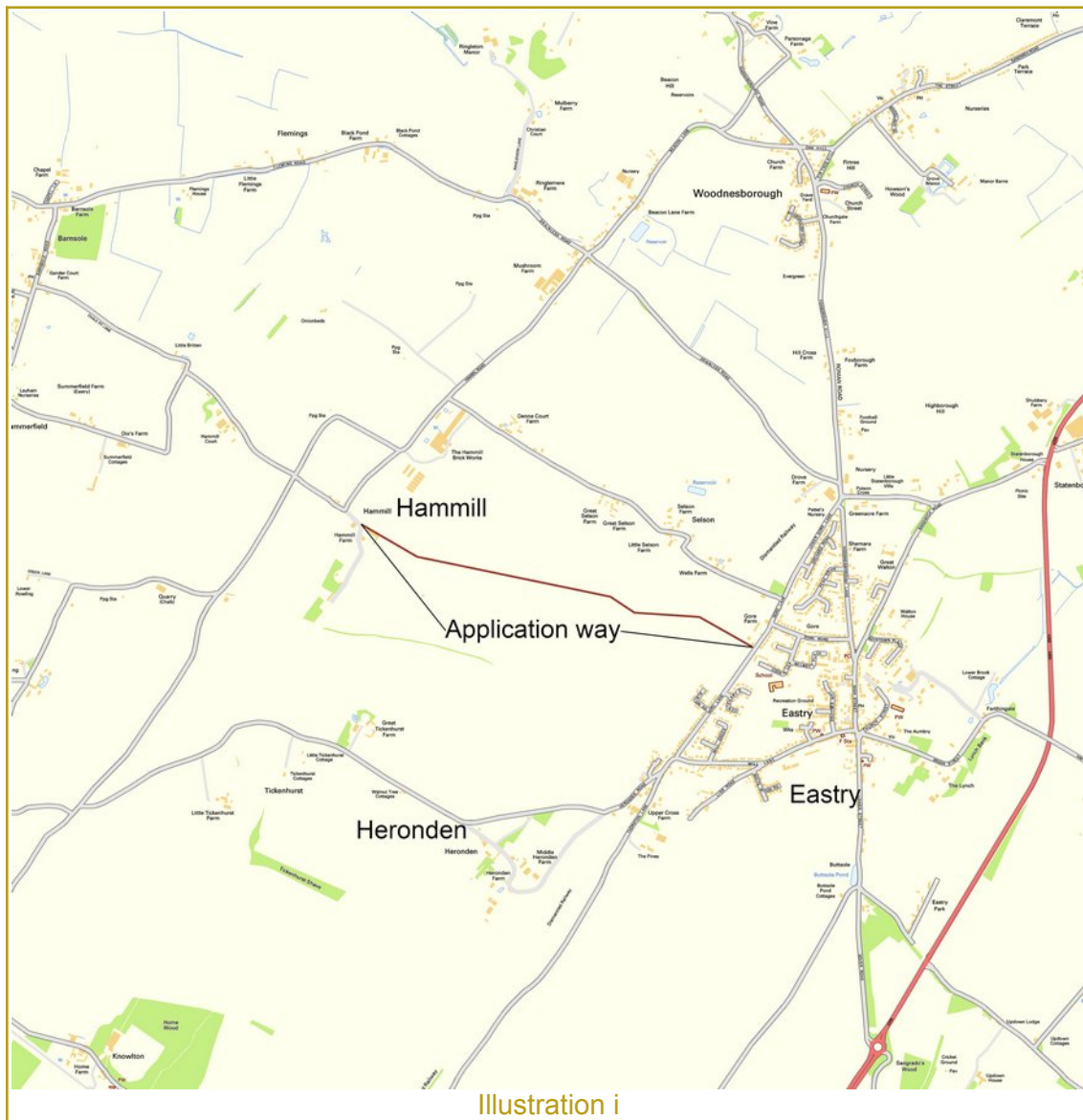
Historical document analysis

I. Introduction

A. Quick reference

A.1. **Location plan:** see below (the application map is at part II below)—

■ *Location plan*



- A.2. **Existing recorded public rights of way comprised in application way:** none
- A.3. **Parishes of:** Eastry and Woodnesborough
- A.4. **District of:** Dover
- A.5. **Ancient parishes of:** Eastry and Woodnesborough
- A.6. **Hundred of:** Eastry
- A.7. **Termination points:** Gore Lane, Eastry, next Gore Cottage, and Hammill Farm, Woodnesborough
- A.8. **Termination points Ordnance Survey grid references:** TR30575500, TR29095546
- A.9. **Postcode:** CT13 0LW
- A.10. **Ordnance Survey Explorer sheet:** 150
- A.11. **Ordnance Survey County Series 25" sheets:** Kent XLVIII/9 and 10

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 Open Spaces Society. I am employed as a casework officer for the Open Spaces Society. I am also appointed by the British Horse Society as a volunteer historical researcher in relation to South and East Kent. I am a director and member of the Institute of Public Rights of Way and Access Management. I was formerly a civil servant in the Department for the Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way between Eastry and Hamill in the parishes of Eastry and Woodnesborough in the district of Dover. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a public footpath.

D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(i) that a way should be added to the definitive map and statement for Kent as a footpath.

D.2. The way begins at A (OS grid reference TR30575500) at Gore Lane, Eastry, opposite the junction with footpath EE252A and on the south side of the boundary of Gore Cottage. It leads in a west-northwesterly direction for 235 metres, initially along the headland of an arable field, and continuing across the field in the same direction, to the boundary of the former East Kent Light Railway, and crossing half of the same to B (TR30385512). Continuing across the same to the far side, the way then turns west, crossing a track and continuing in the same westerly direction across an arable field for 260 metres to cross a further track at C (TR30125513). The way then turns west-north-

westerly again across an arable field for a distance of 180 metres to D (TR29985523), before resuming west again for a distance of 185 metres to E (TR29785524), then slightly north of west for a further 490 metres to F (TR29315535), then turning west-northwesterly for a distance of 125 metres to the boundary of Hammill Farm at G (TR29205541), then continuing across the grounds on the north side of the farm range for a distance of 125 metres to a junction with Chalkpit Lane, Hammill at H (TR29095546).

D.3. The way extends to a total distance of 1,600 metres.

D.4. The points A to H are identified in the application map at part II below.

E. Nomenclature

E.1. No particular name is known for the application way itself: it is referred to in this application as the 'application way'.

E.2. The way begins on Gore Lane, which is to the west of the village centre. Gore Farm occupies the land on Gore Lane immediately to the north of the application way. The application way crosses arable fields to the south of Selson, which is a hamlet along Selson Lane generally parallel to the application way. It terminates on Chalkpit Lane at Hammill Farm, which is east-southeast of Hammill Court.

F. Grounds for application

F.1. The land traversed by the application way has been open and unenclosed since time immemorial. Fields in separate ownership traditionally were marked out by baulks and stones. The only obstacle to the use of a footpath across these lands was the annual cultivation of the land.

F.2. It is submitted that the application way is an ancient footpath between Eastry village and Hammill, providing the shortest route on foot, not only between those two communities, but from Eastry through Hammill and along Chalk Pit Lane to Barnsole and Staple. The Danecourt Farm plan (item III.A below) shows that the footpath subsisted in the early eighteenth century, but it is suggested that it is much older than that, and very likely has been in existence since mediæval times (if not before).

F.3. Subsequently, the application way is marked on the Eastry tithe map prepared under the Tithe Act 1836 (item III.B below), and on all four editions of the Ordnance Survey County Series 25-inch plans (item III.C below) with surveys dating from 1871 to 1938.

F.4. In record plans and field books prepared under the Finance (1909–1910) Act 1910 (item III.D below), a deduction for footpaths is given in respect of three hereditaments crossed by the application way, and analysis of the context suggests that the application way almost certainly was one of those for which deduction was allowed.

F.5. The plans for the East Kent mineral light railway (item III.E below), approved by the Board of Trade in 1910, refer to a public footpath across the planned line which must be the application way. Subsequently, the experienced surveyor to Eastry Rural District Council (item III.F below) reported concerns about 'The deep cutting at the back of Gore Farm Eastry where the footpath from Eastry Street to Hammill crosses' the line, and was instructed to seek a resolution with the light railway company.

F.6. The Wells and Little Selson farms conveyance (item III.G below) identifies, in a 1921 plan of the farms for sale, the footpath

F.7. In preparation of the Draft map of public rights of way (under Part IV of the National Parks and Access to the Countryside Act 1949: item III.H below), Woodnesborough parish council proposed to record the application way, within its area, on its parish map. Eastry parish council appears to have excluded the application way from its own parish map, but alludes to it in the entry in the statement for FP16 (now footpath EE252A, from Eastry Street to Gore Lane, terminating opposite the commencement of the application way) as leading from 'Hammill to Eastry'.

F.8. It is submitted that each item of evidence (with the possible exception of the 1921 farm sale plan) documents the existence of the application way necessarily as a public footpath.

F.9. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*,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.'

F.10. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.²

F.11. The correct test under s.53(3)(c)(i) is whether:

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

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

1 [2012] EWCA Civ 334.

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

F.12. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates reputation as a footpath over many years, indicating that the route does indeed have highway status.

G. Discovery of evidence

G.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent. It appears that it was excluded from the Eastry draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949. Therefore, there has been no previous discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is wholly new evidence.

G.2. In the event that inclusion of part of the way on the Woodnesborough parish map amounts to previous consideration and determination, then this application contains new evidence not previously discovered in connection with the way, including the Finance (1909–1910) Act 1910 (item III.D below) which was not released into archival use until the late 1960s.

H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*.³

H.2. **Points:**

Item	Ref	Points
Danecourt Farm	III.A	3
Tithe Act 1836	III.B	3
Ordnance Survey County Series 25-inch plans	III.C	1
Finance (1909–1910) Act 1910	III.D	4
East Kent mineral light railway	III.E	5
Eastry Rural District Council	III.F	3
Wells and Little Selson farms conveyance	III.G	0
Draft map	III.H	2
Total points		21

I. Width of application way

I.1. No width for the application way is documented. It is submitted that a reasonable width for a cross-field footpath is 1.5 metres, enabling two persons easily to pass.

J. Limitations

J.1. It is suggested that the application way historically was a footpath across arable fields not physically bounded, but marked out by stones and other boundary markers. As such, there were no limitations.

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

J.2. However, the effect of the construction of the East Kent mineral light railway (item III.E below) was to authorise the railway company to erect stiles in the boundary fence on either side of the railway line, and that these are statutory limitations which endure.

J.3. It is suggested that, apart from these limitations, an order arising from this application should state that the way is subject to no other limitations.

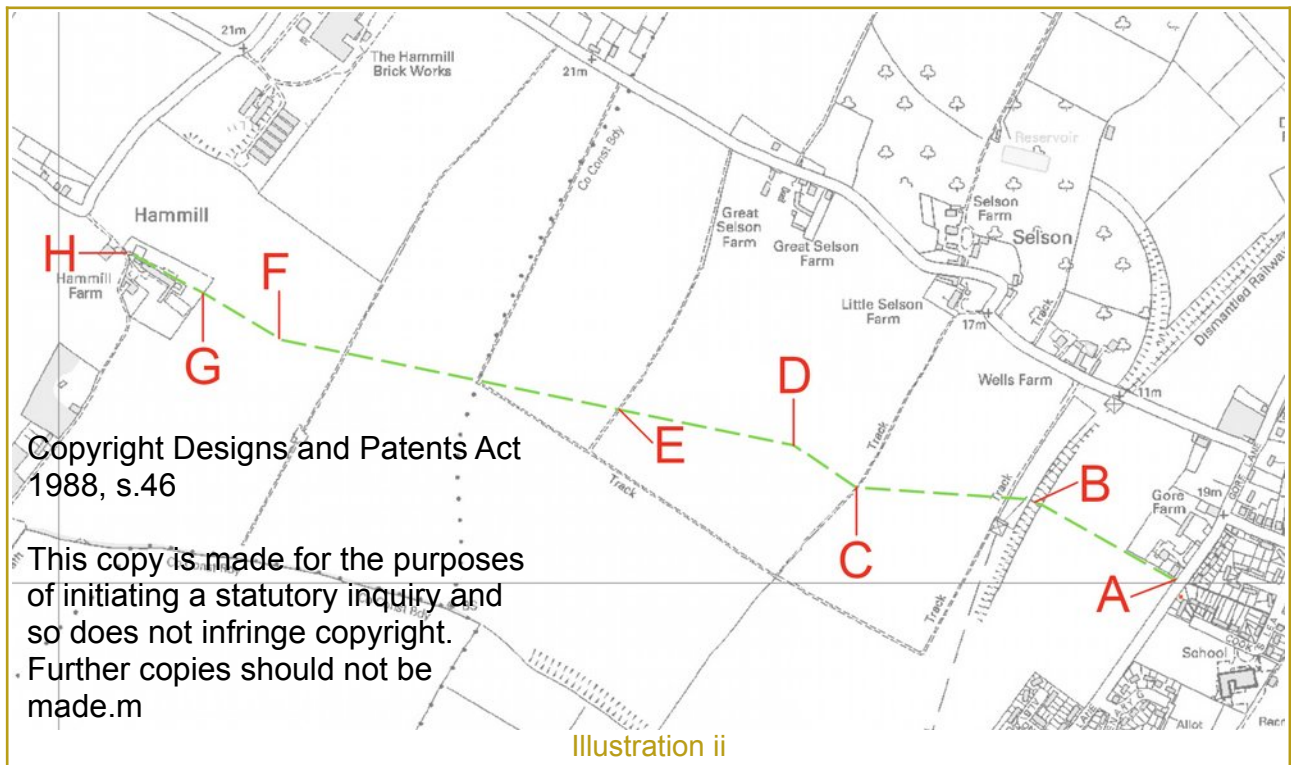
K. Law cases

K.1. The following cases are cited in this statement of case.

Case	Reference	Citation
<i>Fortune v Wiltshire Council</i>	I.F.9	[2012] EWCA Civ 334
<i>Giffard v Williams</i>	III.B.3	(1869) 38 LJ (Ch) 597


II. Application plan

Application map



Map centred on E at TR29785524

Scale: approx. 1:10,750 (when printed A4)

Application way is marked 



III. Evidence

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A. Danecourt Farm

A.1. **Date:** Not stated, but implied to be in the period 1720–25.⁴

A.2. **Source:** *Collections for an History of Sandwich in Kent*, by William Boys, published in 1792.⁵

Danecourt Farm

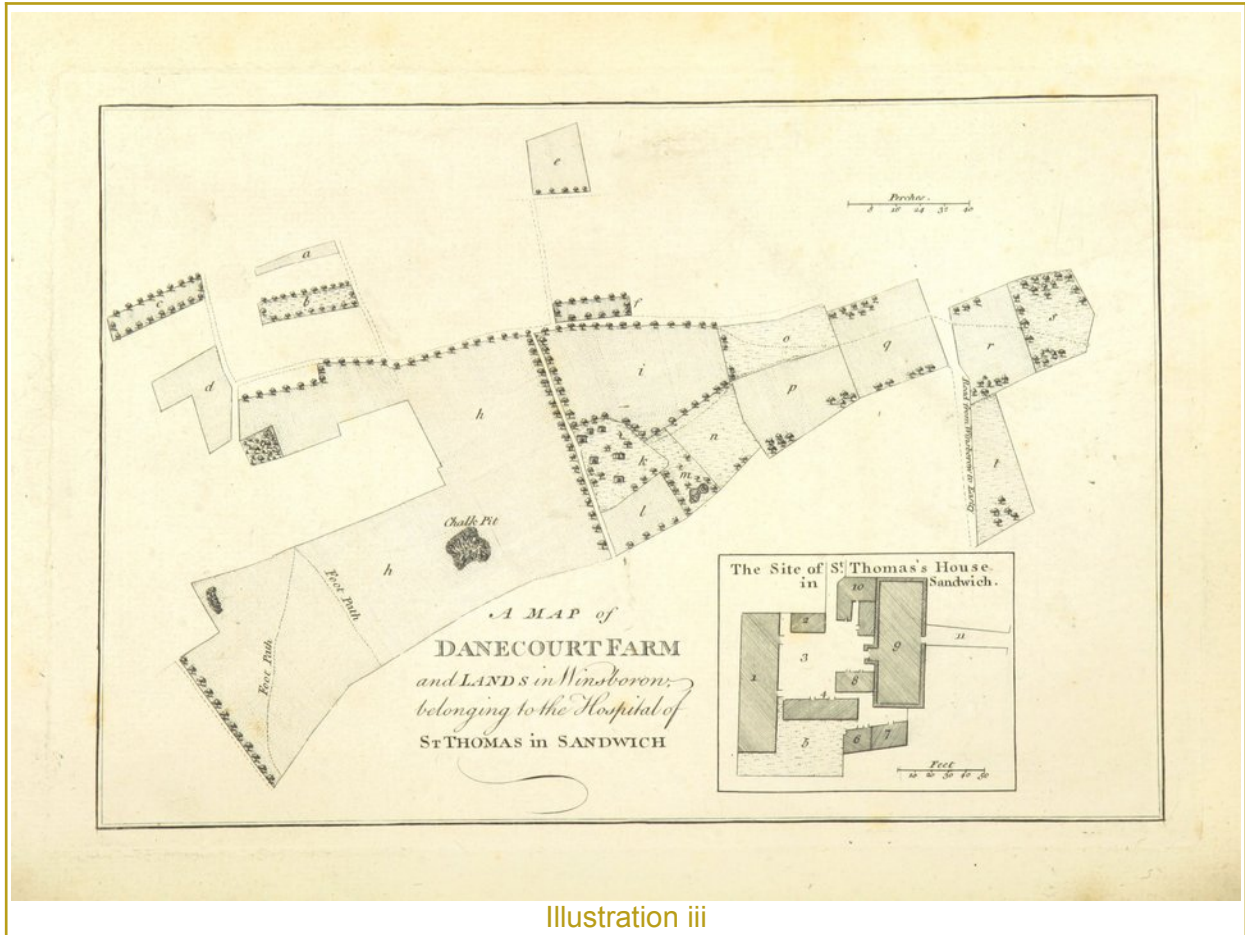


Illustration iii

4 See the text at p.170.

5 access.bl.uk/item/viewer/ark:/81055/vdc_000000007314#?c=0&m=0&s=0&cv=213&xywh=-272%2C0%2C4729%2C2874

Danecourt Farm, extract with application map overlay



Illustration iv

A.3. **Description:** Described as a map of Danescourt Farm and Lands in Winsborow [now Woodnesborough] belonging to the Hospital of St Thomas in Sandwich. It is said that the map is given by John Michel of Richmond, a member of Parliament and trustee of the hospital's funds in the eighteenth century.

A.4. Original scale: scale bar in perches marked on plan; orientation: unchanged — top is north-west (rotated in extract so that top is north).

A.5. St Thomas' hospital in Sandwich was built in 1392. The lands at Danescourt Farm were endowed with the hospital at its foundation. The map of the lands shows the application way from F towards E.

A.6. There can be little doubt that what was shown was a part of the order way, and was a public footpath. Several footpaths are shown and annotated, crossing the trust lands, but leading elsewhere. In relation to the order way, the footpath both originates and leads elsewhere than the trust lands, so that there is no suggestion that the footpath were a private right of way for the trustees or their servants. Equally, if the footpath were a private right of way for a third party, so that the impact on the estate would be circumscribed, one would expect this to be stated.

A.7. **Conclusion:** The map of the endowed estate was prepared by a trustee of the foundation. It records this and other footpaths across the lands. The map is highly accurate. A record of a footpath is likely to be a true record of the position at the time the map was prepared. And it plainly is a public footpath. The map therefore is evidence that the footpath was in existence by the early eighteenth century.

A.8. **Points:** 3

B. Tithe Act 1836

Date: 1841

Source: map: Kent County Archives⁶

⁶ Kent tithe maps are available as images on CD.

Eastry tithe map extract

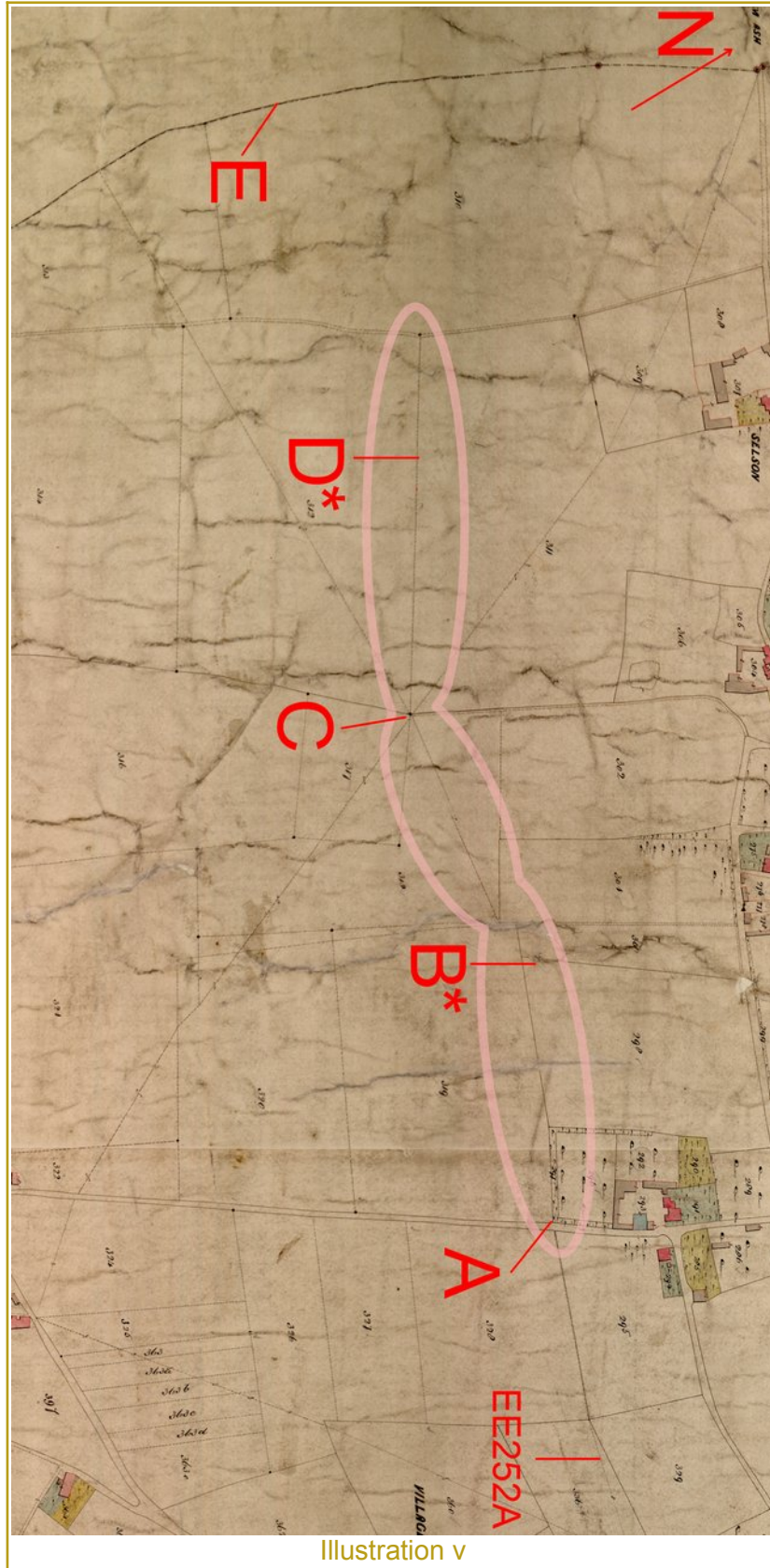
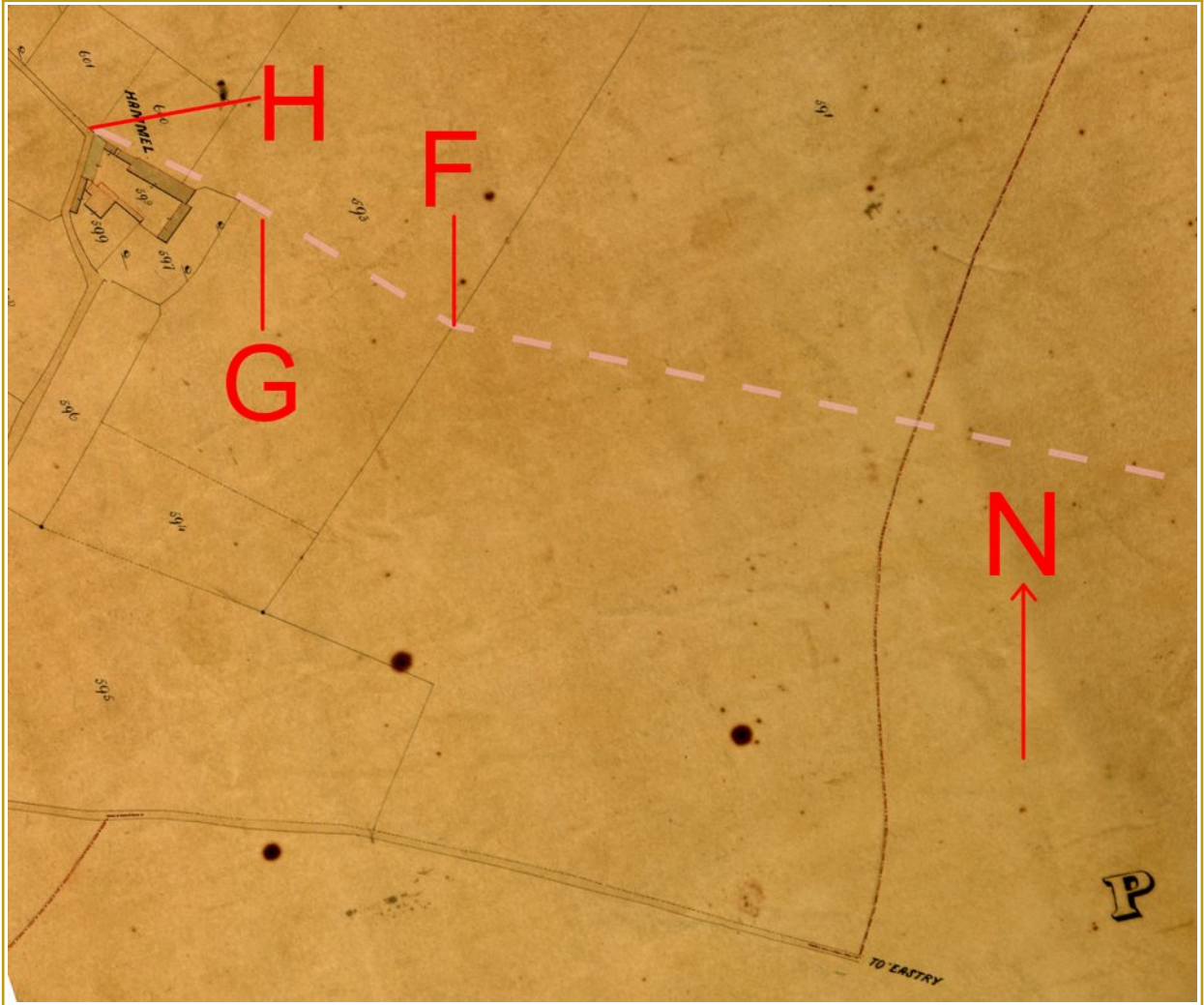


Illustration v

Woodnesborough tithe map extract



Dawson's conventional symbols

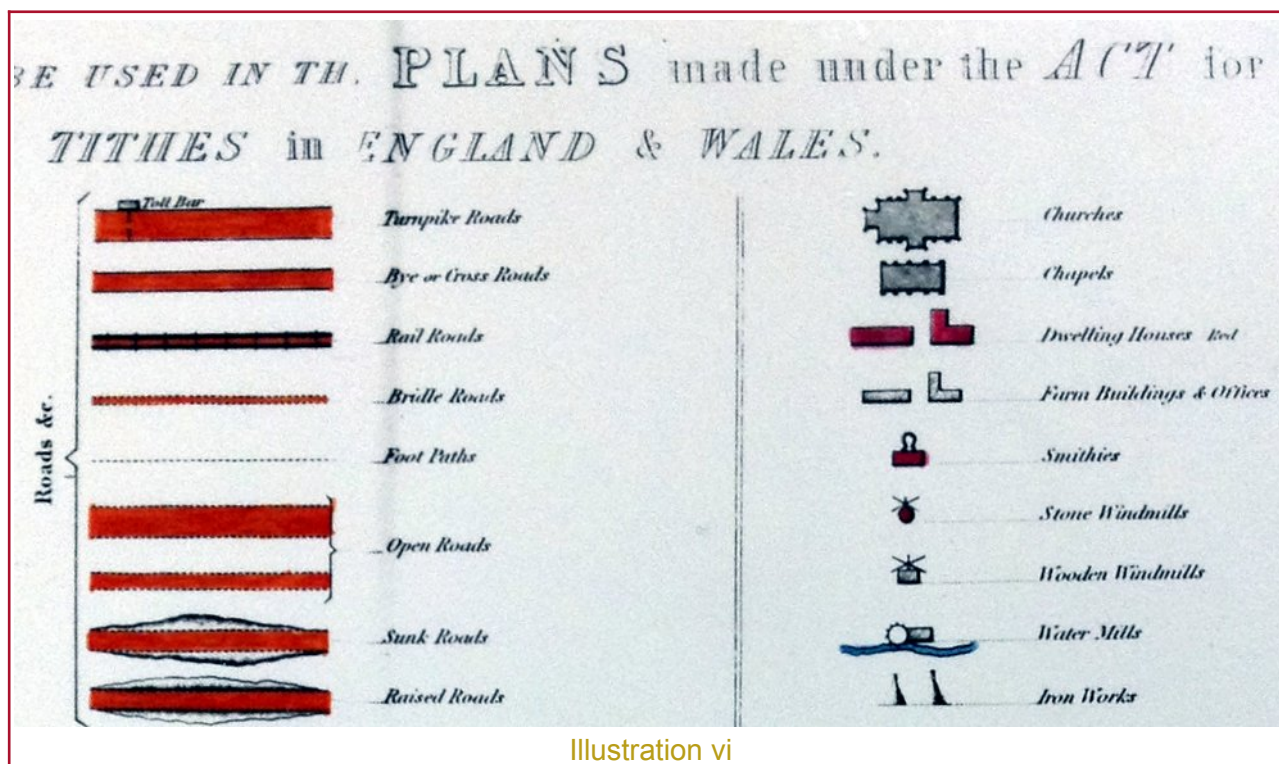


Illustration vi

B.1. **Background:** 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.

B.2. 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 to⁷: an extract from the convention is shown at Illustration vi above.

B.3. 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.⁸

⁷ *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).

⁸ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

B.4. **Description:** Eastry tithe map — original scale: three chains to one inch (1:2,376); orientation: unchanged (north). Woodnesborough tithe map — original scale: three chains to one inch (1:2,376); orientation: rotated by 285° (top is north). The tithe map for Eastry is second class.⁹ The tithe map for Woodnesborough is first class.¹⁰ Points B and D are marked with asterisks to signify that their location has been interpolated (neither point being apparent from the tithe map itself).

B.5. The tithe map for Eastry shows a significant part of the application way. Footpaths are shown on the map by a single closely-pecked line (several bridleways are distinguished on the map by double pecked lines, annotated bridleway). This appears to follow the guidance of Lt Col Dawson referred to at para.B.2 above. That guidance also commended that::

The boundaries and limits of all lands and parcels of land which are to be treated separately under the provisions of the Tithe Act, should be marked on the Plans, whether they be defined by fences or not. This will be more particularly requisite in cases which claim exemption from rent-charges under the Act; and where no boundary fences appear, the limits should be shown by a dotted line.

B.6. On the Eastry tithe map, the same single closely-pecked line appears to be used to show both a footpath, or the limits of a parcel not defined by a physical boundary.

B.7. It will be noted that point A is shown on the tithe map as opposite the junction with Gore Lane of what is now recorded as footpath EE252A from Eastry High Street.

B.8. The order way is not distinguishable in the first field west of Gore Lane (parcel 319, Eleven Acres), but it is identifiable in the second field beyond B (318), having turned approximately west towards C. At C, footpaths converge also from Eastry Mill, Selson, Selson Lane at the Eastry parish boundary, and what is now BOAT 109. The application way continues west-northwest (312, Sixteen Acres) to a point slightly beyond D, but is not marked further (across 310, Bull Road).

B.9. The Woodnesborough tithe map does not identify the application way: it does not identify any unenclosed public path in the parish.

B.10. **Conclusion:** The Eastry tithe map marks part of the application way, generally between B and D. Comparison with the Ordnance Survey County Series plans shows those footpaths marked on the tithe map to be reasonably consistent with those annotated on the Ordnance Survey plans. Moreover, footpath EE252A, connecting with the eastern end of the application way, is identifiably shown.

B.11. No conclusions can be drawn from the Woodnesborough tithe map, as it does not mark unenclosed public paths.

B.12. **Points:** 3

⁹ See the record for this tithe apportionment held by the National Archives: IR 30/17/120.

¹⁰ *The tithe maps of England and Wales*, Kain and Oliver, p.255 (entry 17/399).

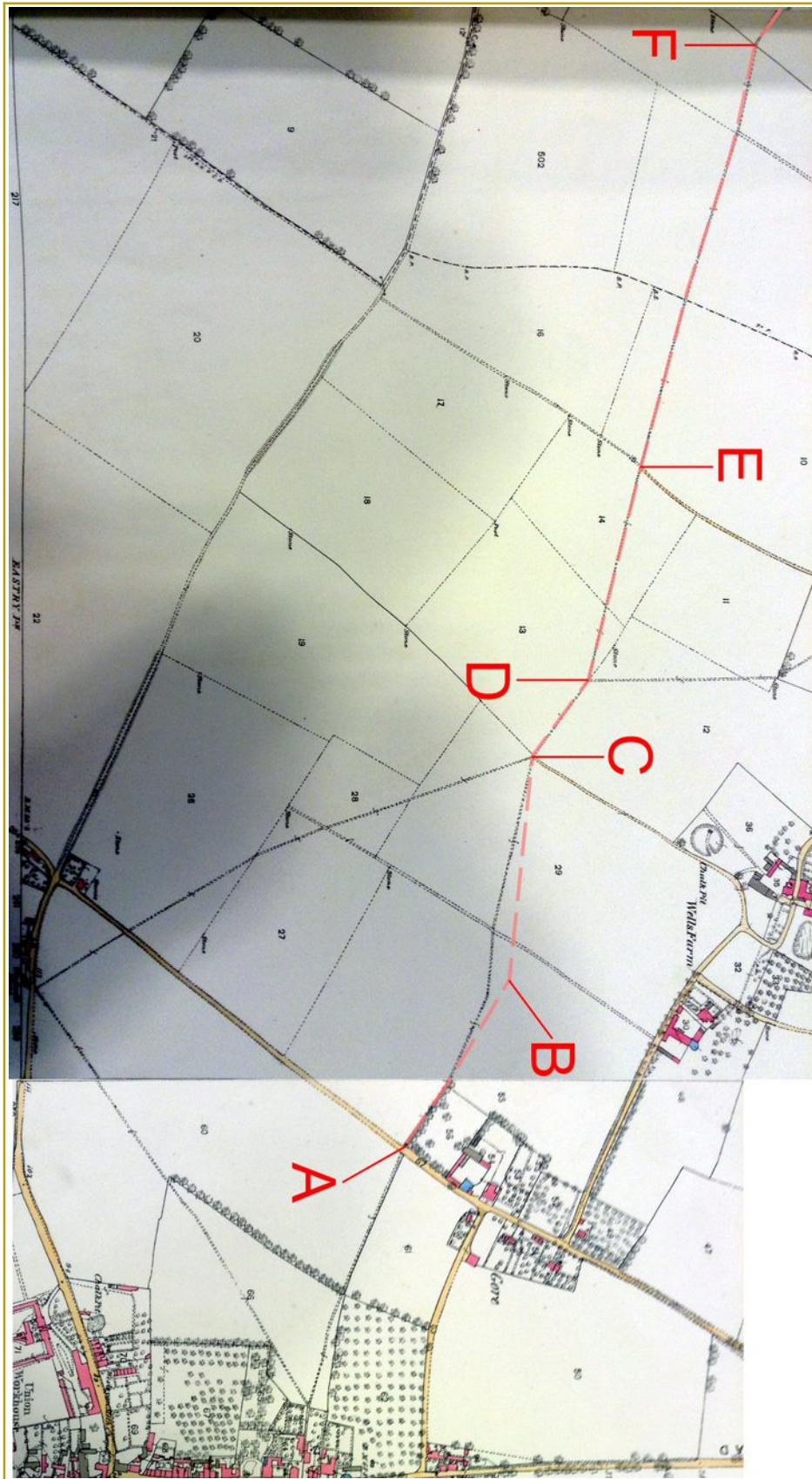
C. Ordnance Survey County Series 25-inch plans

C.1. **Date:** various

C.2. **Source:** British Library, National Library of Scotland¹¹

¹¹ Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheet #.

County Series first edition 25" map 1873 (surveyed: 1871-72)



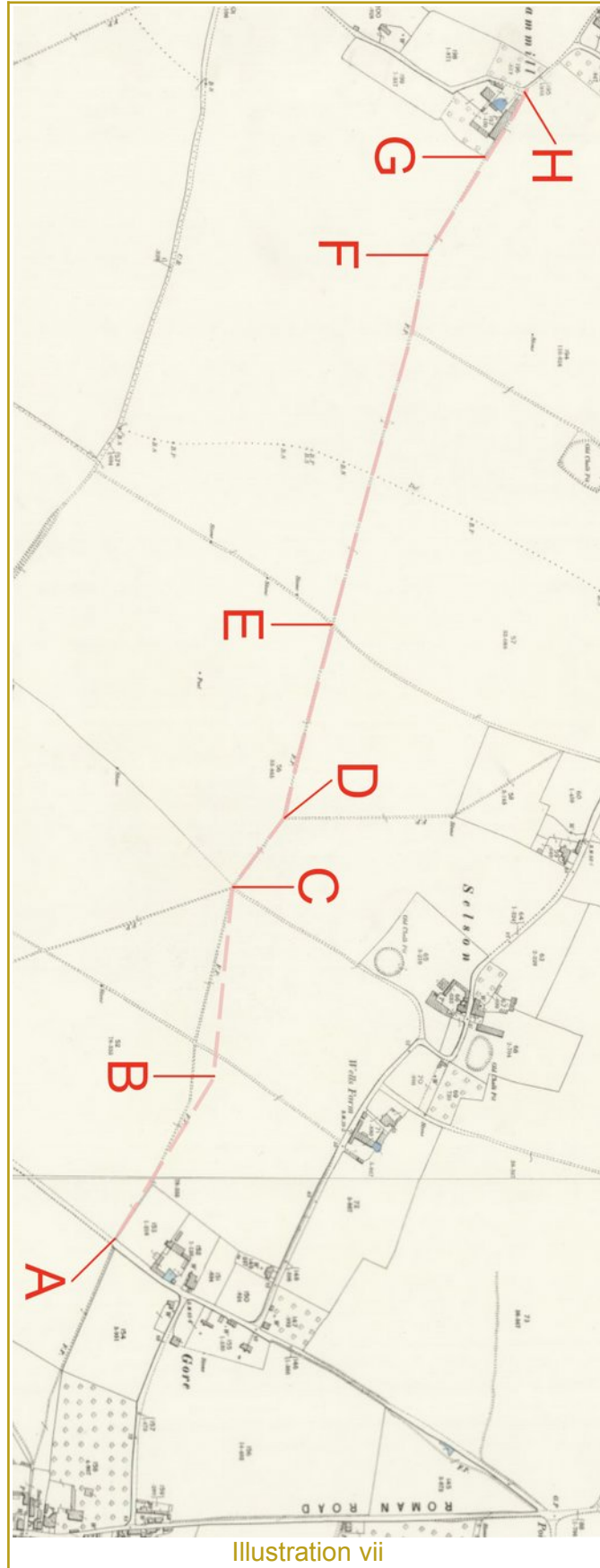


Illustration vii

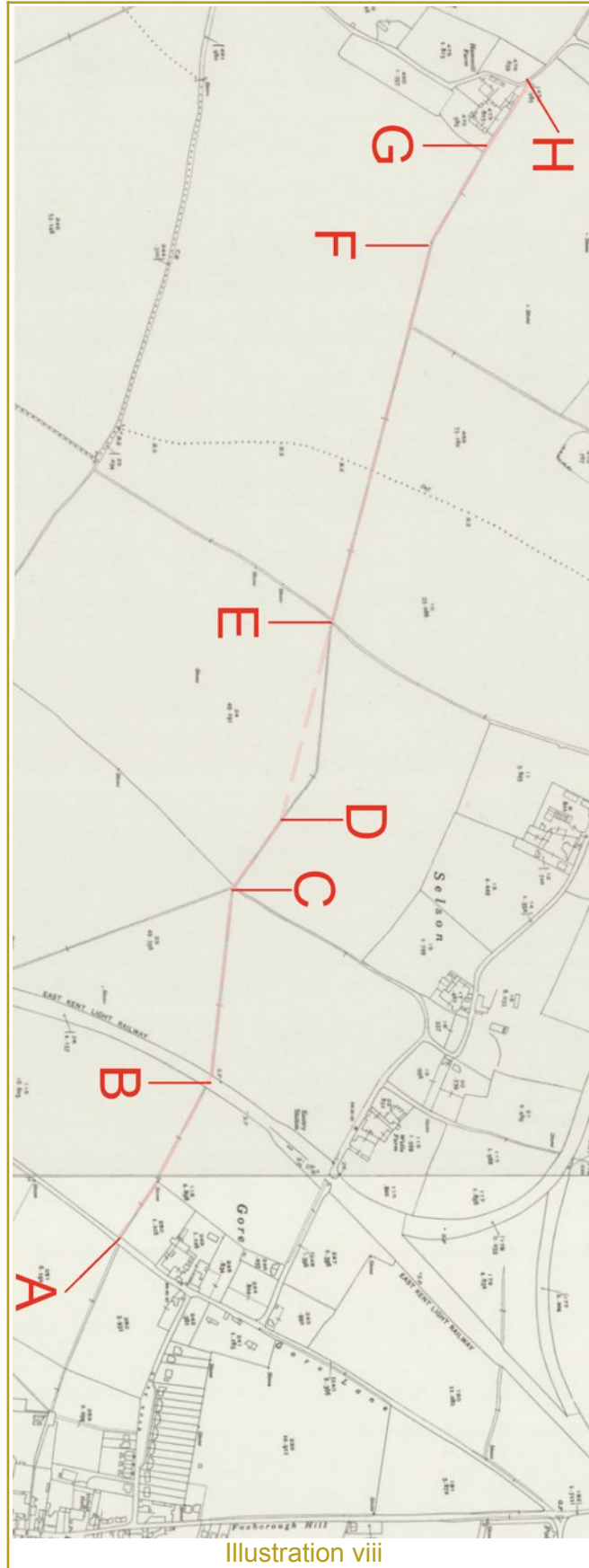


Illustration viii

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

C.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and of twenty-five inches to one mile. Coverage of Kent was in four successive editions. All four editions show the application way throughout. Only the first, second and fourth editions are shown in this item, because the third edition was used as the base map for the record plans prepared under the Finance (1909–1910) Act 1910 (item III.D below) and can be seen in Illustration ix below.

C.5. The first edition plan depicts the order way by narrowly-drawn double-pecked lines.

C.6. Colouring in sienna, applied to some connecting field tracks and local roads, indicates that the track or road was metalled.¹²

C.7. The order way is shown reasonable consistently through four editions over a period lasting around 70 years. The fourth edition shows a slight variation in the route then used between D and E. It also shows the slight detour to the north to accommodate a crossing of the East Kent mineral light railway — this is addressed in item III.E below.

C.8. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application way over a period of survey lasting 70 years.

C.9. **Points:** 1

¹² '**Carriage drives** were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3rd ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

D. Finance (1909–1910) Act 1910

D.1. **Date:** 1911

D.2. **Source:** National Archives

Record plan, Kent XLVIII/9 and 10

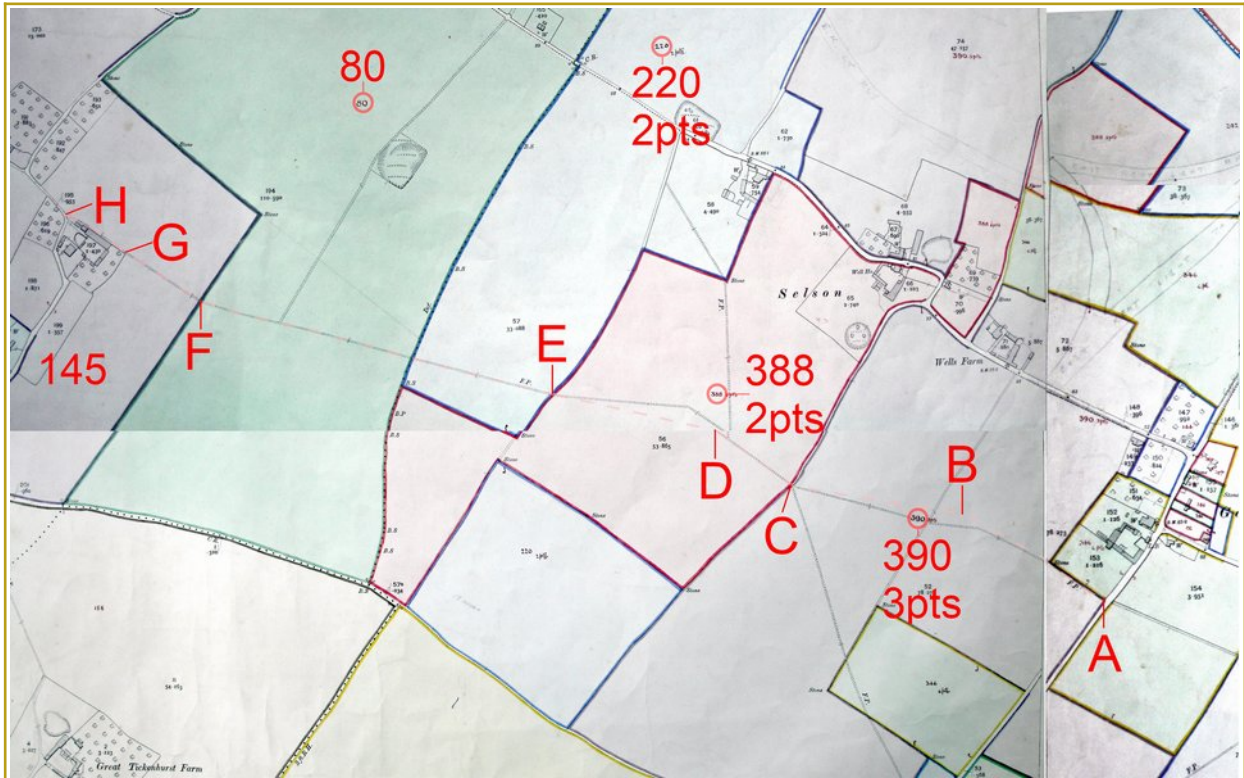
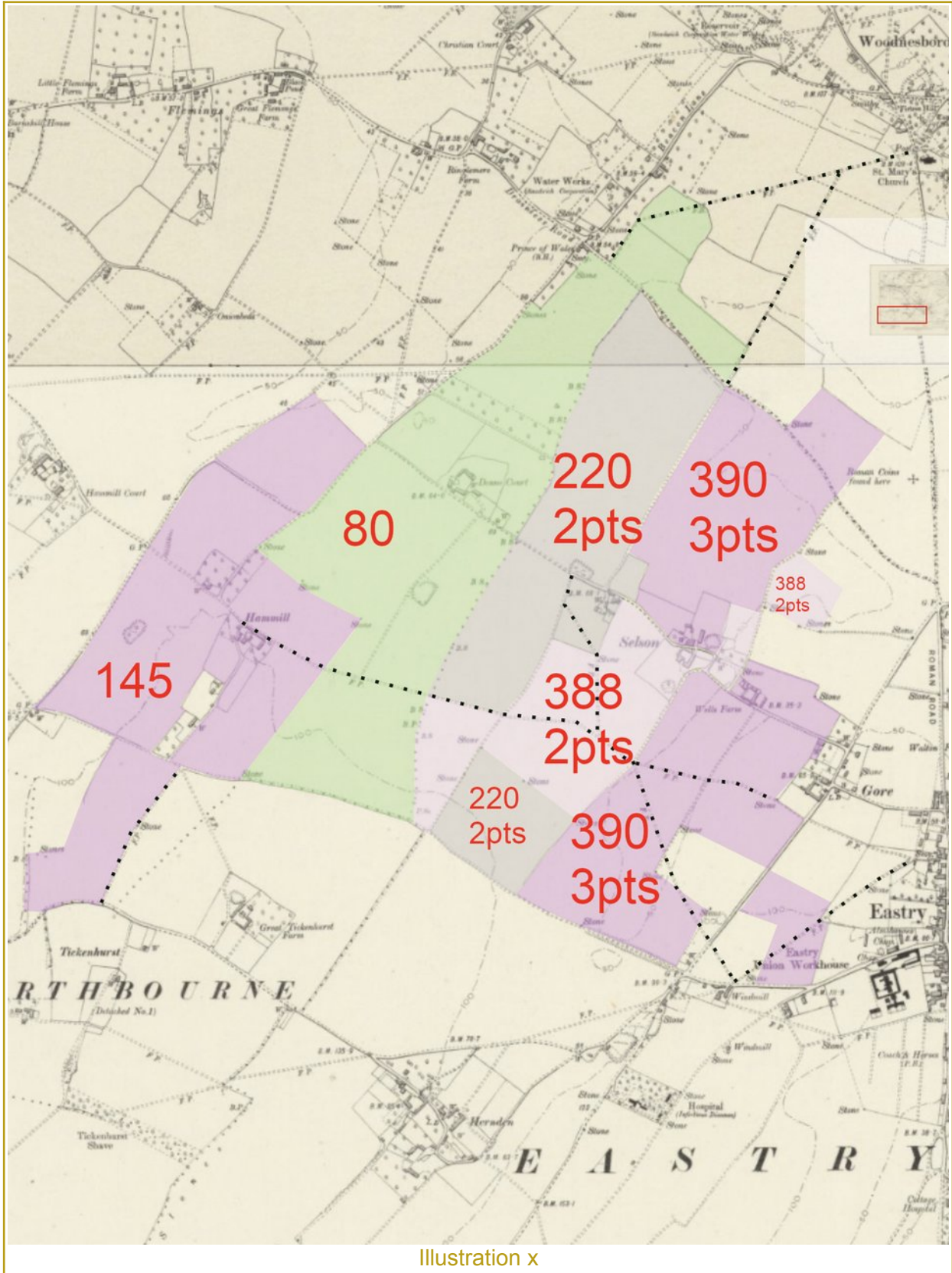


Illustration ix

Hereditaments and annotated paths



Hereditament 390 (Wells Farm) field book, first two pages

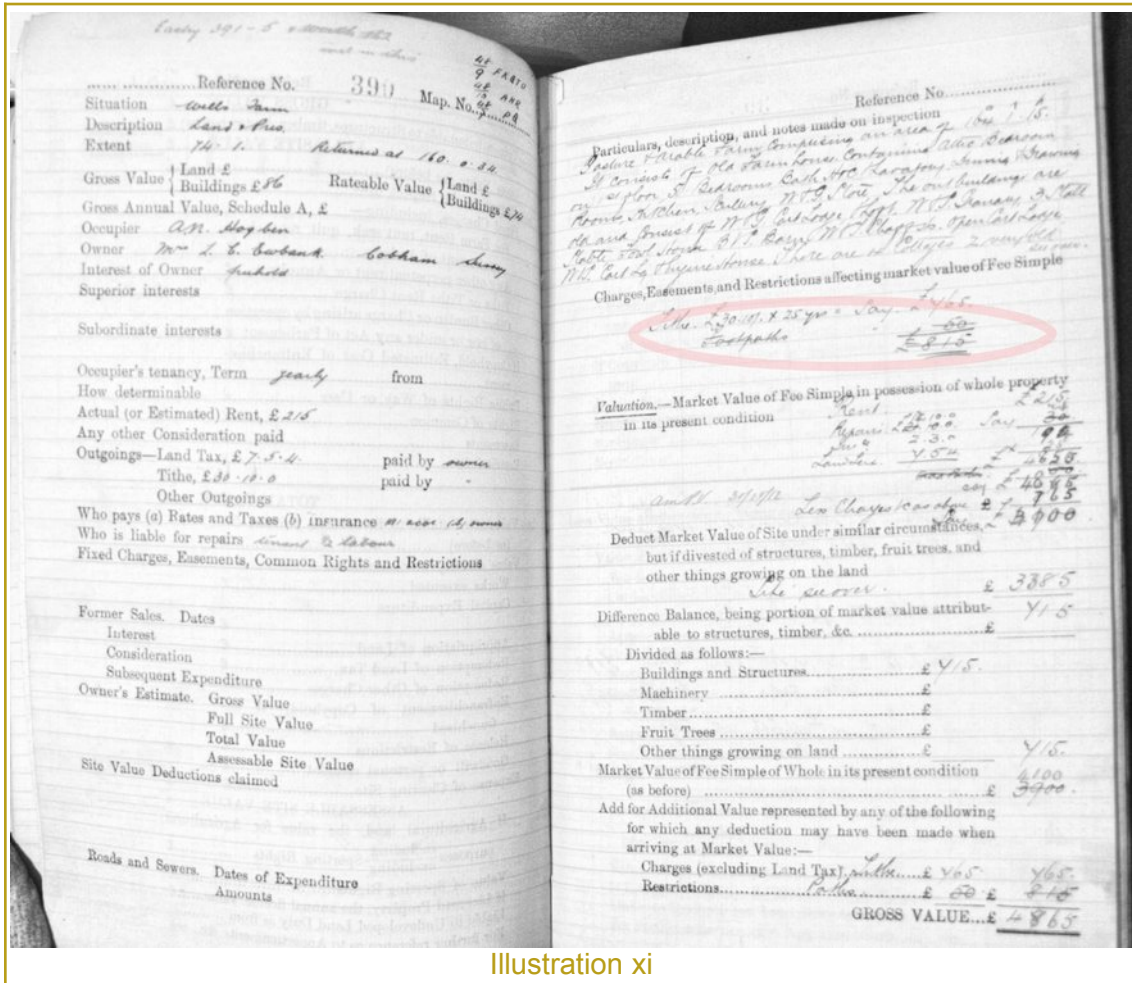


Illustration xi

Hereditament 390 (Wells Farm) field book, second two pages

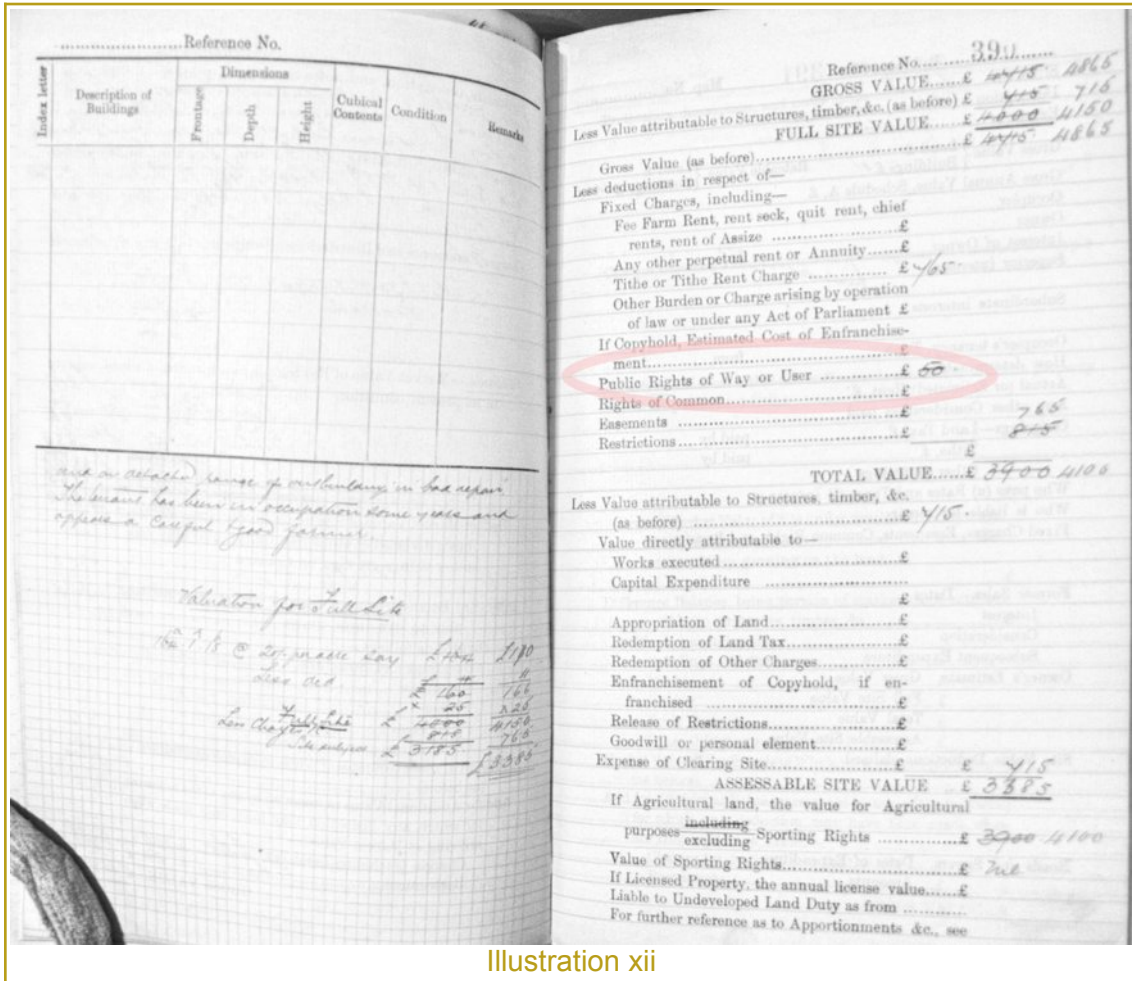


Illustration xii

Hereditament 388 (Selson Farm) field book, second two pages

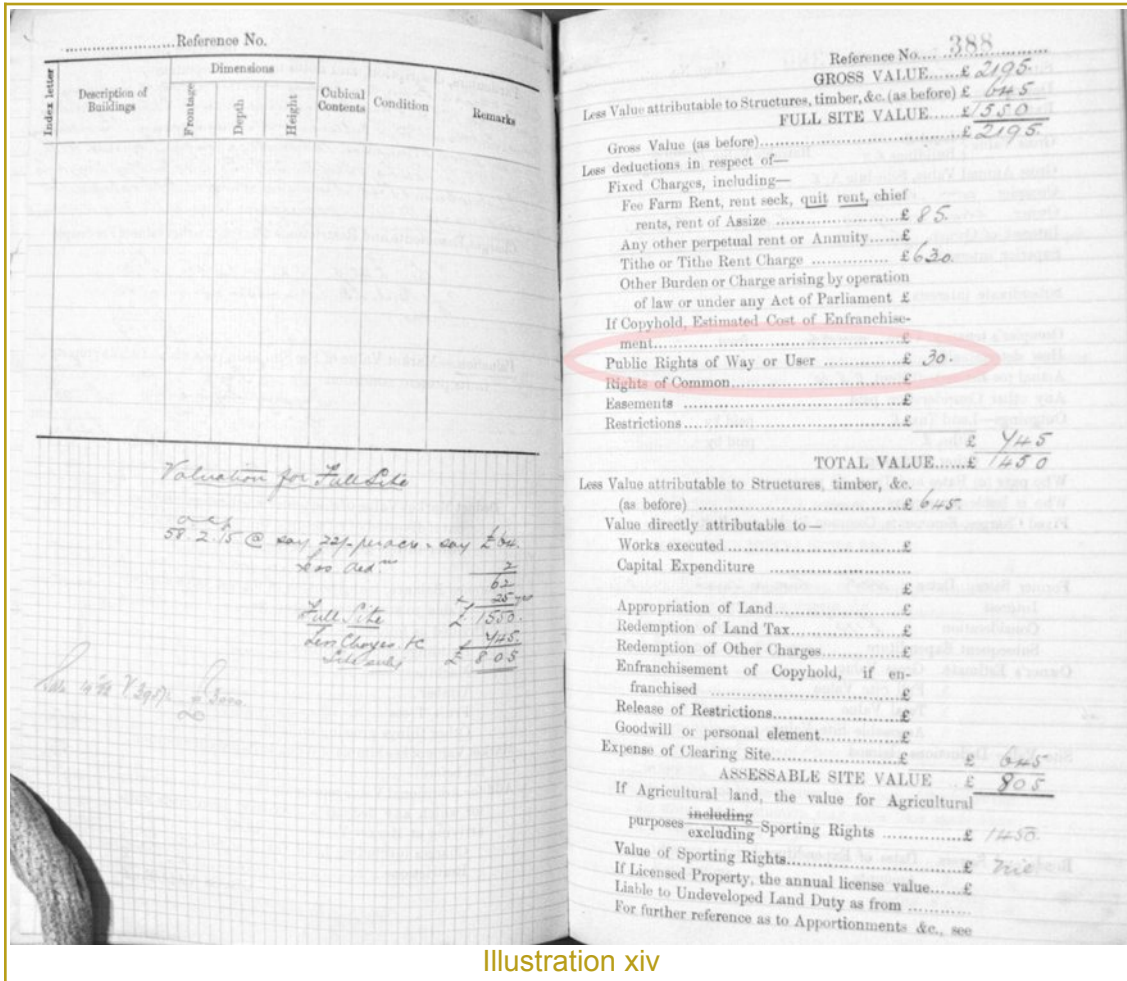


Illustration xiv

Hereditament 220 (Selson Farm) field book, first two pages

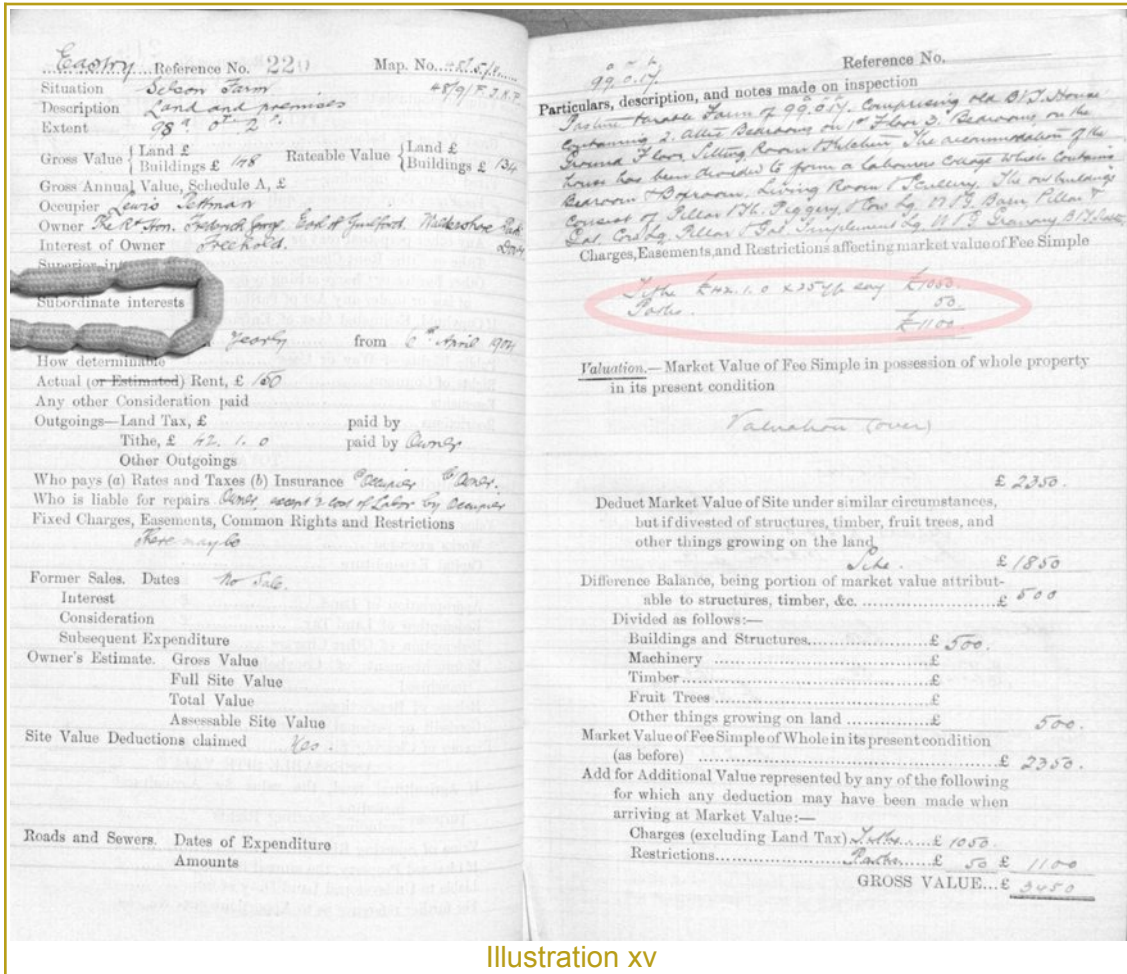


Illustration xv

Hereditament 220 (Selson Farm) field book, second two pages

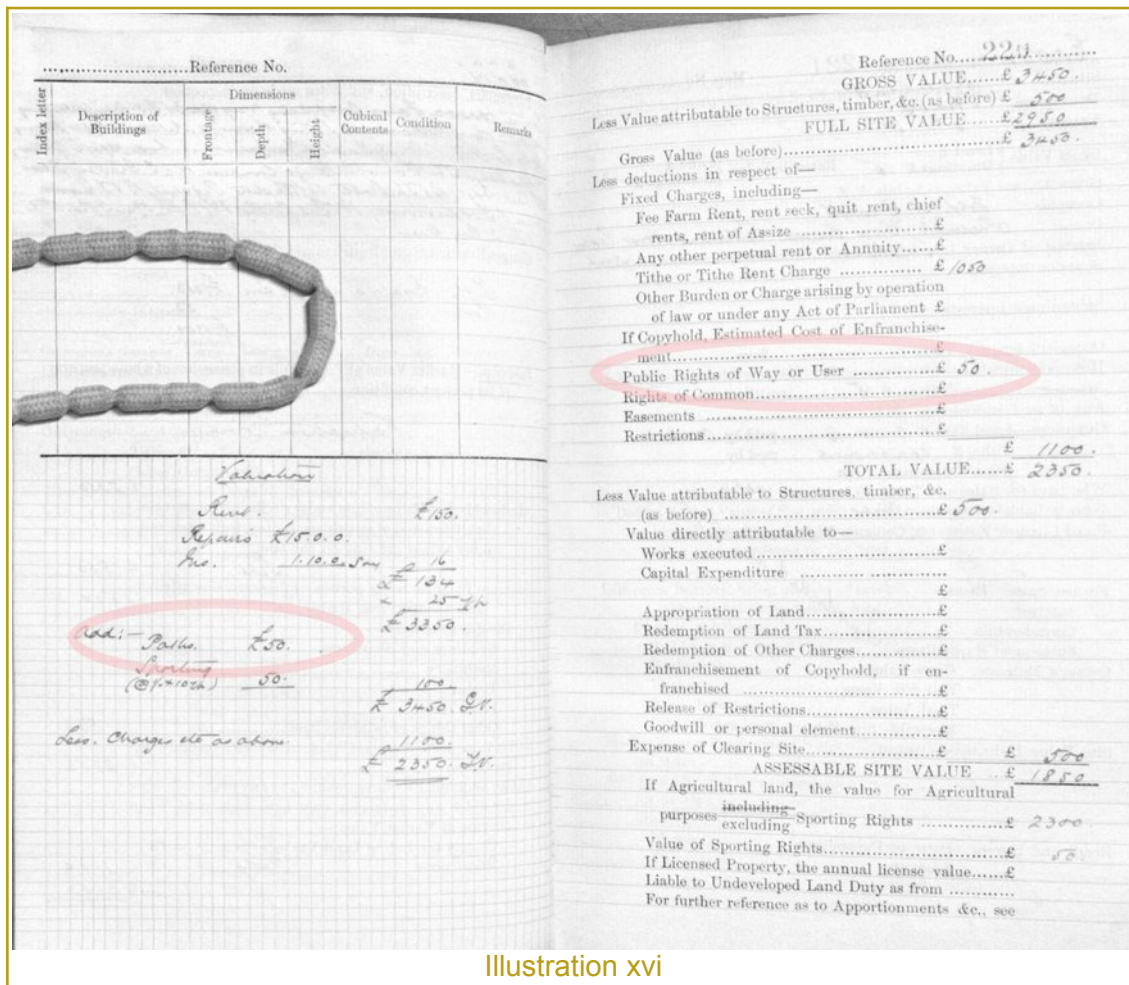


Illustration xvi

D.3. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’. This is because s.35 of the 1910 Act provided,

No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.

A highway authority was a rating authority.

D.4. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act,

The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...¹³

13 Discounts for easements affecting the land were separately requested and recorded in the valuation book.

D.5. Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land. Whether a discount was, in fact, given will depend on several factors:

- Whether the right of way was excluded from valuation (i.e. as a 'white road').
- Whether the landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).
- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase in value arising from development were minimised. However, as the 1910 Act also provided for other levies, the calculations in a particular case might be for or against a discount from the total value of the land).
- Whether the landowner declared the right of way on form 4 or form 7 (a failure to declare might be an oversight).
- Whether the valuer accepted the claim for a discount for a right of way.
- Even if the landowner did not declare the right of way, the valuer could give a discount for a right of way which was 'known to' the valuer.

D.6. The December 1910 *Instructions to Valuers* stated that:

183. Site Value Deductions not Claimed by the Owner. — In making Original Valuations under Section 26(1) of the [1910 Act], Valuers will give credit for any deductions under the provisions of Section 25, so far as they are known to them and that notwithstanding the fact that such deductions may not have previously been claimed by or on behalf of the owner.

It follows that, if a deduction for a right of way is given in a particular case, and there is no evidence (as is usually the case) that it was requested by the landowner, the deduction can have only arisen either because it was nevertheless requested, or because the existence of the right of way was known to the valuer. It is unlikely that valuers would have volunteered deductions except in cases where the right of way was obvious — perhaps because it was signposted as such, or referred to as such by the landowner or an employee of the landowner when the valuer was surveying the land.

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

D.8. The Act included provision for a duty on increment in land value (to capture some of the gain from community development, such as building new railways and public services) and a duty on the capital value of unimproved land on which building might be held back for speculative gain.¹⁴ It was said by the Chancellor, subsequently, that the two duties expressly were designed to help ensure an honest valuation.¹⁵ According to the landowner's disposition, the landowner might favour a higher valuation to minimise increment value duty, or a lower valuation to minimise the capital duty, but either way, there was

14 For completeness, the 1910 Act also included provision for a reversion duty on the term of a lease, and a mineral rights duty. Neither is relevant here.

15 *Land and Society in Edwardian Britain*, Brian Short, 1997, p.20. Rt Hon Lloyd George, speaking in the House of Commons on the repeal of s.4 of the 1910 Act in 1923, said: 'They [the taxes] were only valuable for the purpose of justifying a valuation, and for that purpose they were admirably conceived because if the valuation was too high the half-penny caught them, and if the valuation was too low the increment tax caught them; so that between one and the other we had a perfectly honest valuation.' *Hansard*, 3 July 1923, vol 166, [col.332](#).

a risk that favouring one might come at the expense of rendering the other more costly. As there was no obligation to declare rights of way to minimise the land valuation (though there was an obligation not to make false declarations), it is hardly surprising that some landowners chose to declare, and others did not. They may have made a decision after careful calculation, or they may have been ignorant that declaration of a right of way could bring possible financial benefits. They may not have wished to draw attention to a right of way, or they may have thought it would make barely any difference (and quite possibly the effect would have been adverse to their expected interests). They may have denied (rightly or wrongly) that a right of way existed, or at least not have wanted formally to acknowledge its existence. We cannot (usually) know.

D.9. Thus the absence of any indication of a right of way in a particular hereditament — even where the evidence of adjacent hereditaments (and otherwise) suggests it was crossed by a right of way — tells us nothing at all. One cannot conclude that the absence of any deductions under the Finance Act 1910 would appear to confirm that no such public route existed, without knowing the motivation why no deductions were claimed — and invariably there is no record of such motivation.

D.10. **Description:** Illustration ix, *record plan*: original scale: 1:2,500; orientation: unchanged. Illustration x, *hereditaments and annotated paths*: original scale: 1:10,560; orientation: unchanged. The *record plan* is an extract of the record plan prepared by the Inland Revenue identifying hereditaments. The *hereditaments and annotated paths* is a copy of the Ordnance Survey County Series 1:10,560 third edition map marked up to identify the relevant hereditaments, and also to identify those footpaths across the marked-up hereditaments shown on the map itself (these are shown by black dots). (The third edition 1:10,560 map replicates at a smaller scale the information shown on the 1:2,500 base map used for the record map.)

D.11. The application way is comprised in five hereditaments:

Hereditament no.	Holding	Deduction	Application way	Other paths
390	Wells Farm	B Footpaths £50 D Public Rights of Way £50	A–C	1. C to Eastry Mill 2. Eastry to Eastry Mill
388	Selson Farm	B Paths £30 D Public Rights of Way £30	C–E and half of part E–F	1. part of near D north to Selson Lane
220	Selson Farm	B Paths £50 C Paths £50 D Public Rights of Way £50	half of part E–F	1. part of near D north to Selson Lane
80		No entry	part E–F	1. Drainless Road to Woodnesborough (two paths)
145		No entry	F–H	1. Tickenhurst to Hammill

D.12. Three of the hereditaments — those for Wells Farm and two parts of Selson Farm — record deductions given for paths, varying between £30 and £50. In each case, there is one or two other footpaths recorded on the Ordnance Survey County Series base map for each hereditament.

D.13. In relation to the two other hereditaments, no deduction is recorded for footpaths.

D.14. **Conclusion:** In relation to Wells Farm (hereditament 390), a deduction is given of £50, later rescinded. There are three candidate footpaths on this hereditament¹⁶: the application way, that from Selson Lane via D and C then to Eastry Mill, and that from Eastry to Eastry Mill. It is suggested that the rescission is likely to be because the owner decided that it was not in his interests to claim a deduction for the reasons discussed in para.D.8 above, than because it was concluded there were no public rights of way, given that the hereditament is crossed by three separate footpaths — it is unlikely that all subsequently were determined not to be public, particularly as two of the footpaths (the application way and the Selson to Eastry Mill) affect other hereditaments which did persist in claims for deductions, and indeed, those two ways are the only candidates for a deduction for those other hereditaments.

D.15. The Selson to Eastry Mill footpath connects with the application way and is coincidental with it for a distance of around 250 metres between C and D. It is suggested that this footpath is likely to be subsidiary to the application way, leading not to Eastry village, but to Eastry Mill on the periphery of the village. Moreover, the connecting path is likely to feed into use of the application way: for example, those approaching from Selson Lane may continue to Eastry Mill — or may alternatively turn along the application way to Eastry. It is suggested that this footpath, if it was recognised in the discount of £50, realistically only could have been recognised in addition to the application way.

D.16. The footpath from Eastry to Eastry Mill, which also crosses hereditament 390, does not connect with the application way. It has an extent of only around 300 metres within the hereditament, and is unlikely to account for a deduction of £50 in isolation.

D.17. In relation to both entries for Selson Farm (hereditaments 220 and 388), the only other candidate footpath to account for the deduction of £50 and £30 is the Selson to Eastry Mill footpath. For the reasons given above, it is suggested that the deduction was allowed for both.

D.18. As explained in para.D.8 above, no inference can be drawn from the absence of a deduction claimed for hereditaments 80 and 145.

D.19. **Points:** 4

¹⁶ All candidate footpaths are identified by a row of black dots on Illustration x.

E. East Kent mineral light railway

E.1. **Date:** 1910

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

East Kent light railway deposited plan: line 1

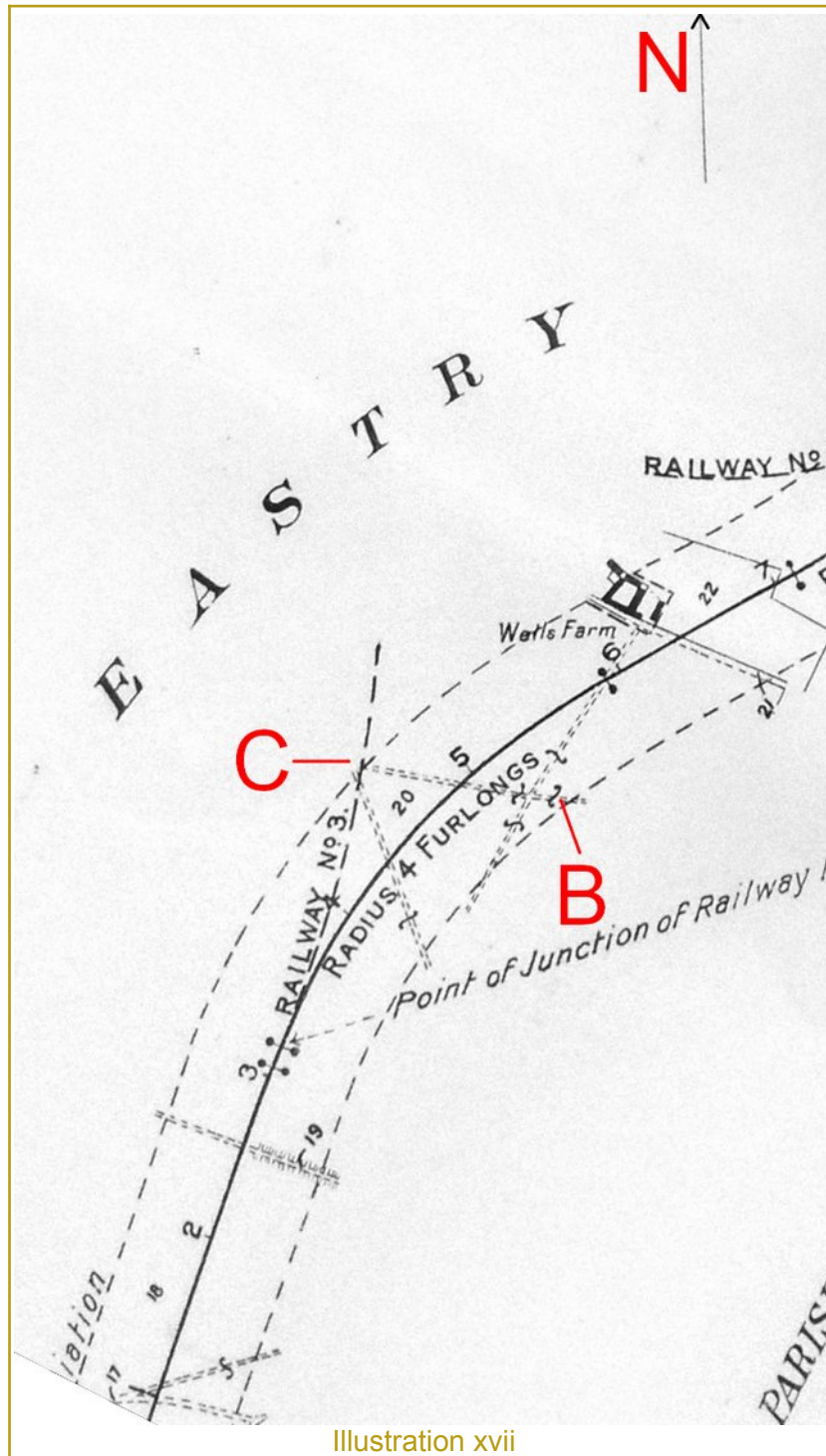
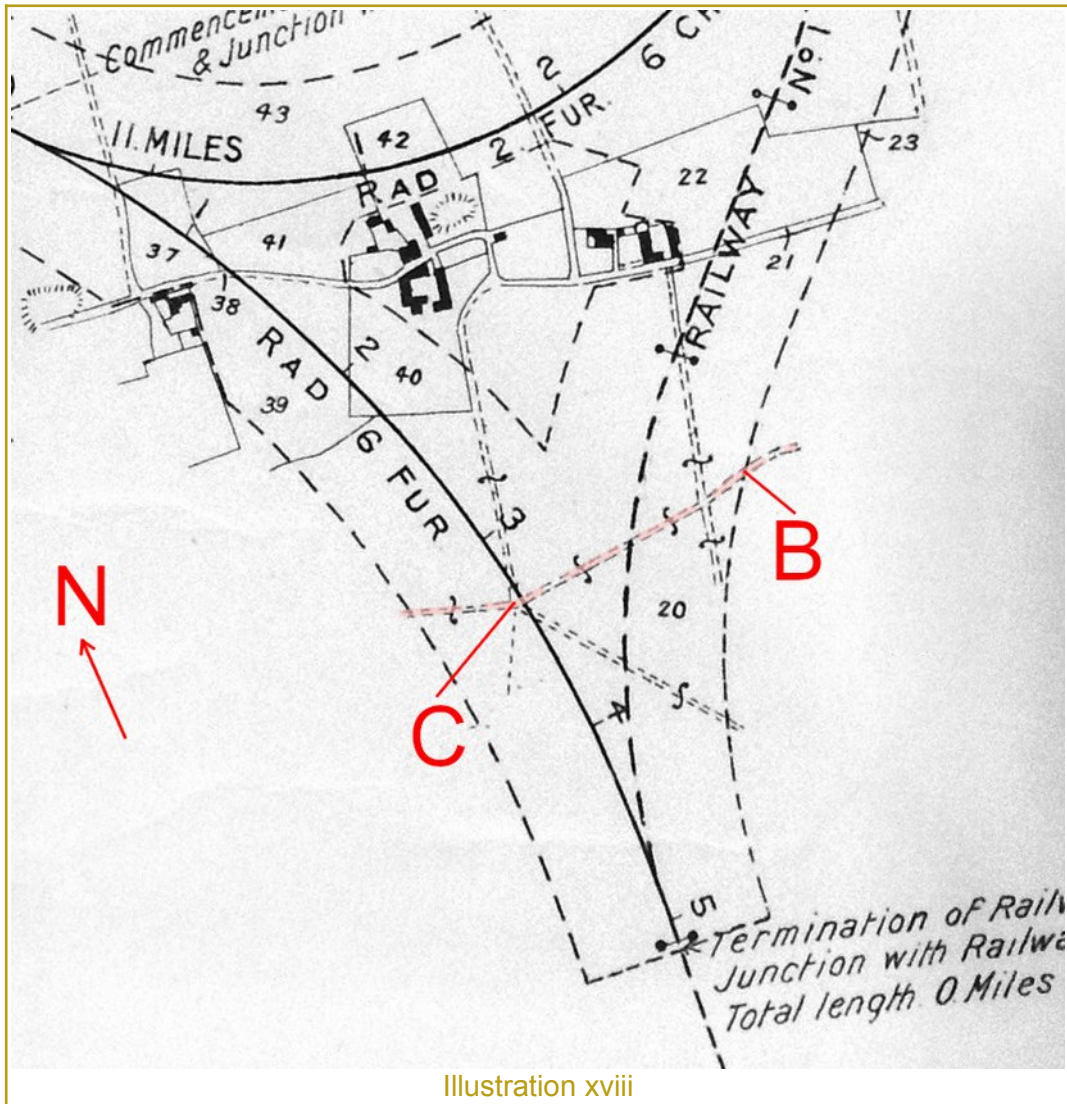


Illustration xvii

East Kent light railway deposited plan: line 3



9

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of EASTRY, in the County of KENT.

RAILWAY No. 1—*continued.*

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
17	Public road, telegraph and telephone posts and wires	The Eastry Rural District Council	The Eastry Rural District Council His Majesty's Postmaster General
18	Arable and public footpath	William Samuel Perry Kelly Patterson	Frederick Courtney Hogben	Frederick Courtney Hogben The Eastry Parish Council
19	Public bridle road	The Eastry Rural District Council	The Eastry Rural District Council
20	Arable, occupation road and public footpath	Mrs. H Ewbank Walter Henry Clark George Drayson Walter William Woodruff	Alexander Norwood Hogben	Alexander Norwood Hogben Walter Henry Clark The Eastry Parish Council

Illustration xix

E.3. 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.

E.4. **Description:** original scale: not reproduced¹⁷; orientation: rotated so that top is north (or nearly so).

E.5. Lines 1 (Shepherdswell to Richborough via Eastry), 2 (from line 1 north of Eastry to Canterbury) and line 3 (a southwest-facing curve joining line 1 in Eastry to line 2) were among the initial raft of proposals for a network of lines serving prospective East Kent collieries. The lines were authorised by the Board of Trade under the Light Railways Act 1896 (although line 2 was authorised short of Canterbury to run only as far as Wingham) and built. Line 3 was intended to connect line 1 to line 2 via a curve west of Eastry, but

¹⁷ A scale bar is shown on the first of the deposited plans, but not on the subsequent plans. Owing to the limitations of hand-held photography, it is not practicable accurately to reproduce the scale bar.

was not built (doubtless because it would have omitted Eastry station): instead, a tighter-radius curve was built north of the station, within the limits of deviation of lines 1 and 2.

E.6. The deposited plans show the application way across the large arable field west of Gore Lane numbered 20, which would have been crossed by line 1 midway between B and C, and line 3 at C. In the single entry in the book of reference for parcel 20 (in relation to line 1), it is described as 'Arable, occupation road and public footpath', which is in the occupation (among others) of Eastry Parish Council.

E.7. In the event, line 1 was constructed close to the eastern limit of deviation (perhaps better to enable the curve to be constructed to join with line 2 north of Eastry station within the limits of deviation of both lines), and crossed the then-subsisting line of the application way slightly to the south of B.¹⁸ Line 3 was not built.

E.8. Illustration xviii above marks four separate ways within parcel 20. They are:

- the order way from Gore Lane west through C to Hammill;
- a way from C north-northeast to Selson Lane;
- a way intersecting the order way slight west of B and continuing north-northeast to Selson Lane at Wells Farm;
- a way from C south-east to Eastry Mill.

It might be suggested that the 'public footpath' described in the book of reference is singular, and it is not obvious that it is the order way.

E.9. Both 'public footpath' and 'occupation road' are described in the singular, but there are (depending on the method of itemisation) four ways included on the plan — thus, unless some of those ways are not referred to at all, it can be inferred that there is more than one public footpath, or more than one occupation road, or both.

E.10. On the Ordnance Survey County Series twenty-five inch second and third edition plans (the latter dated 1907 — near enough to the date of the railway survey), the way south-southwest from Wells Farm, passing slightly west of B, continues further south-southwest, but the way terminates in a field at a boundary stone. This way is unlikely to be a public footpath, nor is it annotated as such on the County Series plans, but it may be an occupation road providing access to particular parts of the field. The way from C north-northeast to Selson is plainly an occupation road because it is not annotated as a footpath on the County Series plans, but it may also be a public footpath, being a continuation of the way from Eastry Mill north-west to C. And that latter way may well be a public footpath, being annotated as a footpath on the County Series plans, and continuing across Gore Lane in a direct line to Eastry Mill, also annotated as a footpath.

E.11. However, the application way is both annotated as a footpath on the County Series plans (signifying that the surveyor saw no evidence of use by vehicles), and forms a direct and clear alignment from Eastry to Hammill. It therefore is unlikely to have been described as the 'occupation way' identified in the book of reference, and is very likely to be one of what may be several public footpaths so identified.

¹⁸ Point B has been placed by reference to the mid-point of the railway crossing (see para.I.D.2 above): it can be seen in Illustration xix that point B is very close to the limit of deviation shown on the deposited plan.

Diversion of the application way

E.12. Under art.3(1) of the 1911 Order, certain provisions of the Railways Clauses Consolidation Act 1845 were incorporated in the order, but, *inter alia*, ss.46 to 48 and 59 were excluded.

E.13. Article 23(1) empowered the railway company to carry the railway across any public highway (other than those expressly addressed in arts.21 and 22) on the level.

E.14. Section 16 of the Railways Clauses Consolidation Act 1845, incorporated by art.3(1) of the 1911 Order, empowered the railway company, 'for the purpose of constructing the railway, or the accommodation works connected therewith', to:

'...divert or alter, as well temporarily as permanently, the course of...roads, streets, or ways, or raise or sink the level or any...roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper'.

E.15. Section 53 of the 1845 Act provides that:

'If...it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expence maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.'

E.16. It may be seen from the Ordnance Survey County Series 25-inch plans fourth edition plan at Illustration viii above that the application way, following the construction of the railway, adopted a new alignment A–B–C which was slightly to the north of the original line.

E.17. Accordingly, it appears that the railway company employed its powers under ss.16 and 53 of the 1845 Act (as incorporated) to make a small diversion of the application way in order to enable it to cross the railway cutting. It may be that the diverted route remains maintainable by the successor railway authority as provided for in s.3.

E.18. The relocation of the crossing being carried out in accordance with the powers conferred by ss.16 and 53 of the 1845 Act, it is submitted that the revised alignment has legal force.

E.19. **Conclusion:** The Board of Trade made the East Kent Mineral (Light) Railways Order 1911. Certain provisions of the Railways Clauses Consolidation Act 1845 were incorporated in the order, but sections 46 to 48 and 59 were excluded,¹⁹ and most highways, including public roads, were to be taken over the railway on the level. The application footpath would have been no exception (although there was subsequent suggestion from the highway authority that the railway company ought to bridge the cutting which was excavated²⁰).

19 See art.3(1).

20 See para.III.F.4 below.

E.20. The order way is shown not to be the occupation way referred to in the book of reference, and therefore must be a public footpath.

E.21. The alignment of the application way was diverted further north through B under powers conferred by the 1911 Order, and it is submitted that this is now the legal route.

E.22. **Points:** 5

F. Eastry Rural District Council

F.1. Date: 1913

F.2. Source: Kent County Archives²¹

Eastry RDC surveyor's report 22 July 1913

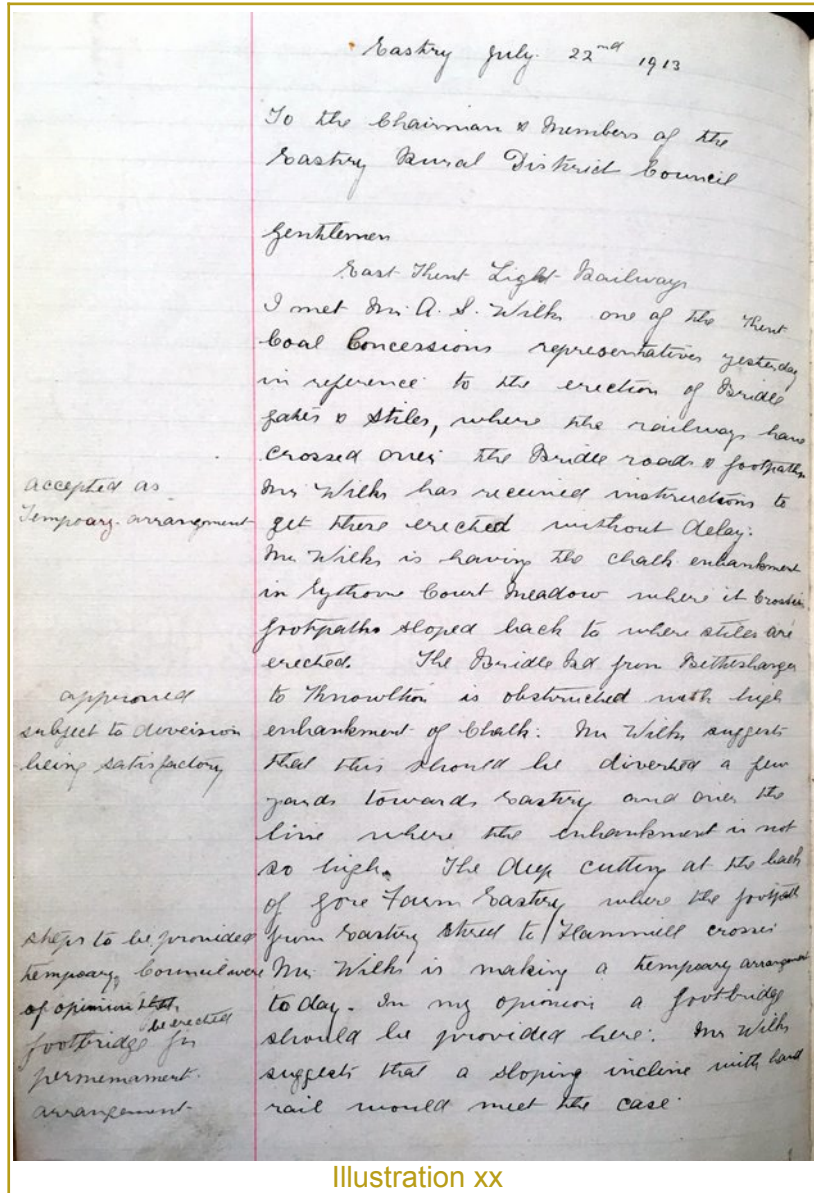
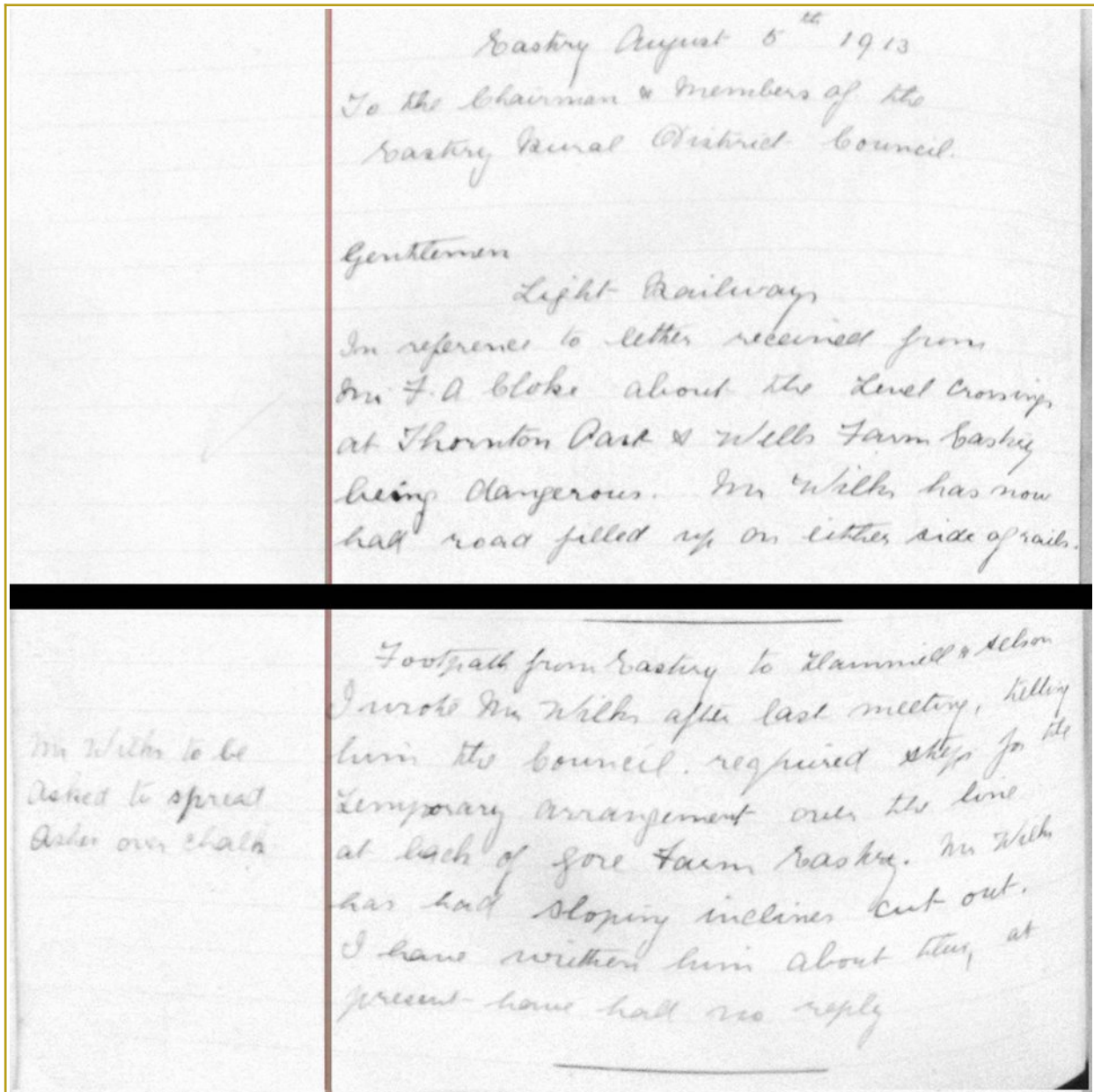


Illustration xx

21 RD/Ea/H6, p.271, RD/Ea/H7, p.1.

Eastry RDC surveyor's report 1 August 2013



F.3. **Background:** Eastry Rural District Council was established in 1895 under the Local Government Act 1894, as the successor to the Eastry Rural Sanitary Authority (and before that, the Wingham Highway Board). It acquired highway authority powers from its predecessors, and the council managed the highway network within the relatively small district of East Kent with the advice of the district surveyor. The district surrendered its highway powers in 1929 to Kent County Council.

F.4. **Description:** The surveyor's report to the Eastry Rural District Council records:

Eastry July 22nd 1913

To the Chairman & Members of the Eastry Rural District Council

Gentlemen

East Kent Light Railway

I met Mr A S Wilks one of the Kent Coal Concessions representatives yesterday in reference to the erection of Bridle gates & stiles, where the railways have crossed over the Bridle roads & footpaths. Mr Wilks has received instructions to get these erected without delay: Mr Wilks is having the chalk embankment in Lythorne Court Meadow where it crosses footpaths sloped back to where stiles are erected. The Bridle Rd from Betteshanger to Knowlton is obstructed with high embankment of Chalk: Mr Wilks suggests that this should be diverted a few yards towards Eastry and over the line where the embankment is not so high. The deep cutting at the back of Gore Farm Eastry where the footpath from Eastry Street to Hammill crosses Mr Wilks is making a temporary arrangement today. In my opinion a footbridge should be provided here: Mr Wilks suggests that a sloping incline with hand rail would meet the case.

The comment appears in the margin:

Steps to be provided temporary. Council were of opinion that footbridge be erected for permanent arrangement.

This report (which is the last entry in the report book for 1908–13) is not signed, but previous reports are signed 'D E Foster', and this report is in the same hand.

F.5. A further report is made on 5 August 1913.

Gentlemen

Light Railways

In reference to letter received from Mr F D Cloke about the Level Crossings at Thornton Oast and Wells Farm Eastry being dangerous. Mr Wilks has now had road filled up on either side of rails.

...

Footpath from Eastry to Hammill and Selson.

I wrote Mr Wilks after last meeting, telling him the Council required steps for the temporary arrangement over the line at back of Gore Farm Eastry: Mr Wilks has had sloping inclines cut out. I have written him about this at present have had no reply.

The comment appears in the margin:

Mr Wilks to be asked to spread ashes over chalk.

F.6. The surveyor is D E Foster, appointed by Eastry Rural District Council. Mr Foster was one of a handful of permanent, directly-employed officers appointed by the council at that time, and in post since April 1905, prior to which he was an assistant surveyor to the district surveyor. After 1905, Mr Foster had sole responsibility for Eastry No.1 district,²² while an assistant surveyor, Mr Goodsell (also appointed in 1905), was responsible for Ash No.2 district comprising the north of the district. Thus it may be inferred that Mr Foster had

²² The No.1 district comprises the parishes of: Betteshanger, Eastry, Eythorne, Ham, Great Mongeham, Little Mongeham, Northbourne, Ripple, Sholden, Staple, Sutton, Tilmanstone, Waldershare, Woodnesborough, Worth.

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 a further period of unknown duration in his prior post. Moreover, the No.1 district was, by today's standards, a small area, containing 15 parishes with (by the council's estimation) 111 miles of road — Mr Foster had every opportunity intimately to get to know his district.

F.7. **Conclusion:** The report clearly refers to the application way: 'the deep cutting at the back of Gore Farm Eastry where the footpath from Eastry Street to Hammill crosses'. A fortnight later, it is described as, 'Footpath from Eastry to Hammill and Selson', with further reference to 'the line at back of Gore Farm Eastry'. The report is therefore good evidence for the status of the application way as understood by a highly experienced surveyor to the council, and (as the report was accepted by the council with a record of further action to be taken), by the council also. The surveyor's understanding of the status of the way was not noted as disputed by Mr Wilks, the representative for the East Kent Light Railway.

F.8. It is submitted that the commonality of opinion, shared by the surveyor, the council, and the railway company that the order way was a footpath confers significant weight on the evidence.

F.9. It is suggested that the council's ambition of a footbridge to bridge the cutting was not achievable, not being required under the enabling order. Accordingly, it appears that the 'temporary' arrangements, of slopes on either side of the cutting, became permanent.

F.10. **Points:** 3

G. Wells and Little Selson farms conveyance

G.1. **Date:** 1921

G.2. **Source:** Kent County Archives²³

Conveyance map extract

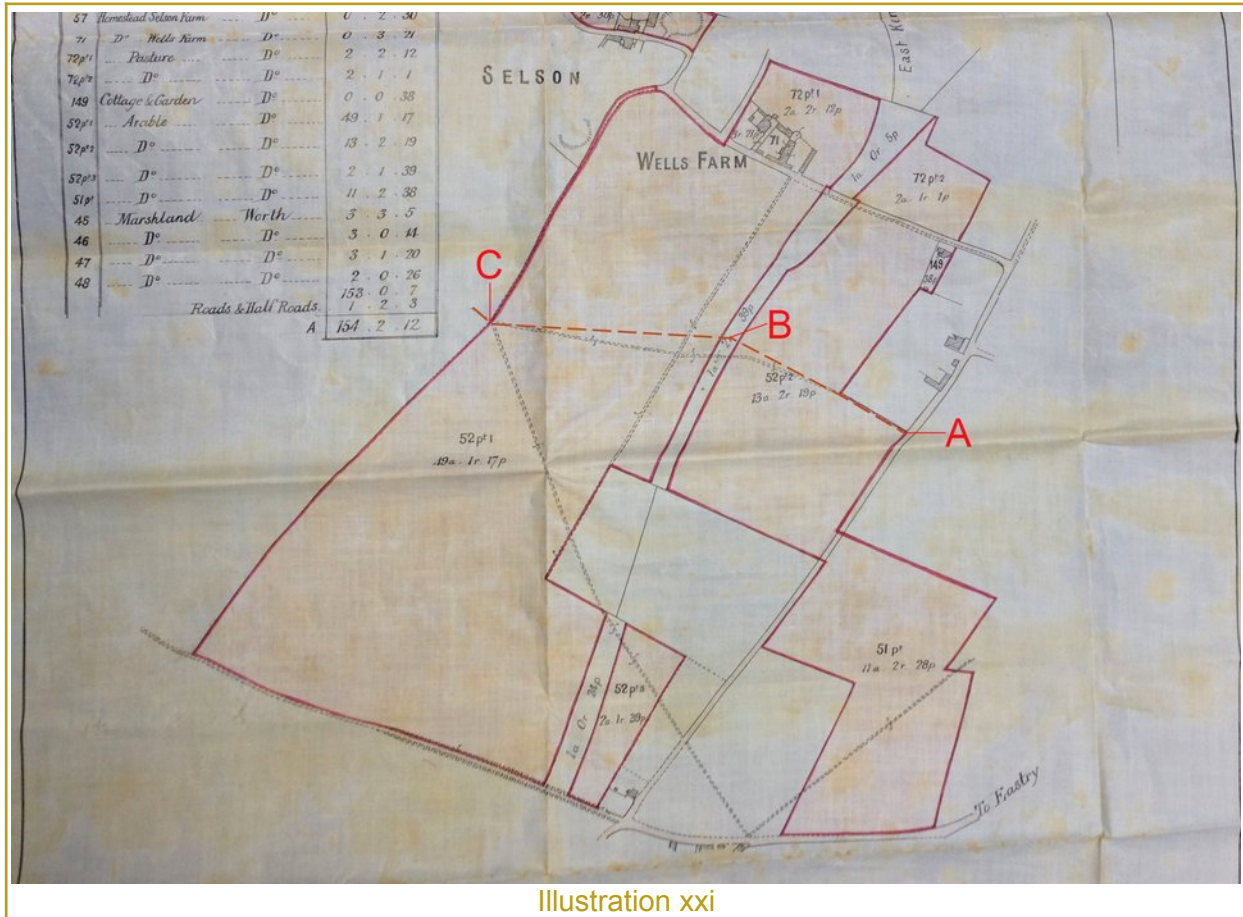


Illustration xxi

G.3. **Description:** A plan showing the conveyance of Wells and Little Selson Farms. Original scale: 1:2,500; orientation: unchanged (top is north).

G.4. The plan shows the application way between A and C (prior to diversion to cross the East Kent Light Railway) marked by twin parallel pecked lines.

G.5. **Conclusion:** The existence of a physical feature along the line of the application way is noted on the plan (along with various other footpaths), but neither plan nor conveyance identifies the way as a public footpath.

G.6. **Points:** 0

H. Draft map

H.1. **Date:** 1952

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

Eastry draft statement

EASTRY		Rural District Urban District Borough District	NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV - SURVEY OF PUBLIC RIGHTS OF WAY.
Path Reference No.	6" Ordnance Survey Map Reference	Description of Route	Nature of Sur
9	XLV111. SW.	FOOTPATH. Knowlton to Eastry. Commences from junc. of F.P.8 and uncl. road at the Windmill and proceeds E.S.E. to a point approx. 300yds. W.S.W. of Eastry Institution. Continues S.E. for 7yds. to a point approx. 300yds. W. of Eastry Institution. Continues E.N.E. for 425 yds. to meet A.256, 275 yds. S. of its junction with uncl. roads, Brook Street, Church Street and Mill Lane.	
10	XLV111. SW.	FOOTPATH. Knowlton to Eastry. Commences on uncl. road, Mill Lane, 300yds. W. of Eastry Institution and proceeds N. for 100yds. to a point approx. 300yds. W.N.W. of Eastry Institution and continues N.E. for 400yds. to join F.P.12, 225yds. N. of the junction of F.P.12 with A.256.	
11	XLV111. SW.	FOOTPATH. Eastry to West Street. Commences at A.256 70yds. S. from the junction of A256 and C.220 and proceeds S.E. for approx. 100 yds. to make a junc. with F.P.13 and 14 at a point some 100yds. N.W. from St. Marys Church.	
12	XLV111. SW.	FOOTPATH. Hammill to Eastry. Commences at Gore Lane (uncl. road) at a point 100yds. S.W. from Gore Lane and proceeds E.S.E. for 400yds., making a junction with F.P.10 and terminating at A256 opposite the commencement of F.P.11	

Illustration xxii

Woodnesborough parish map

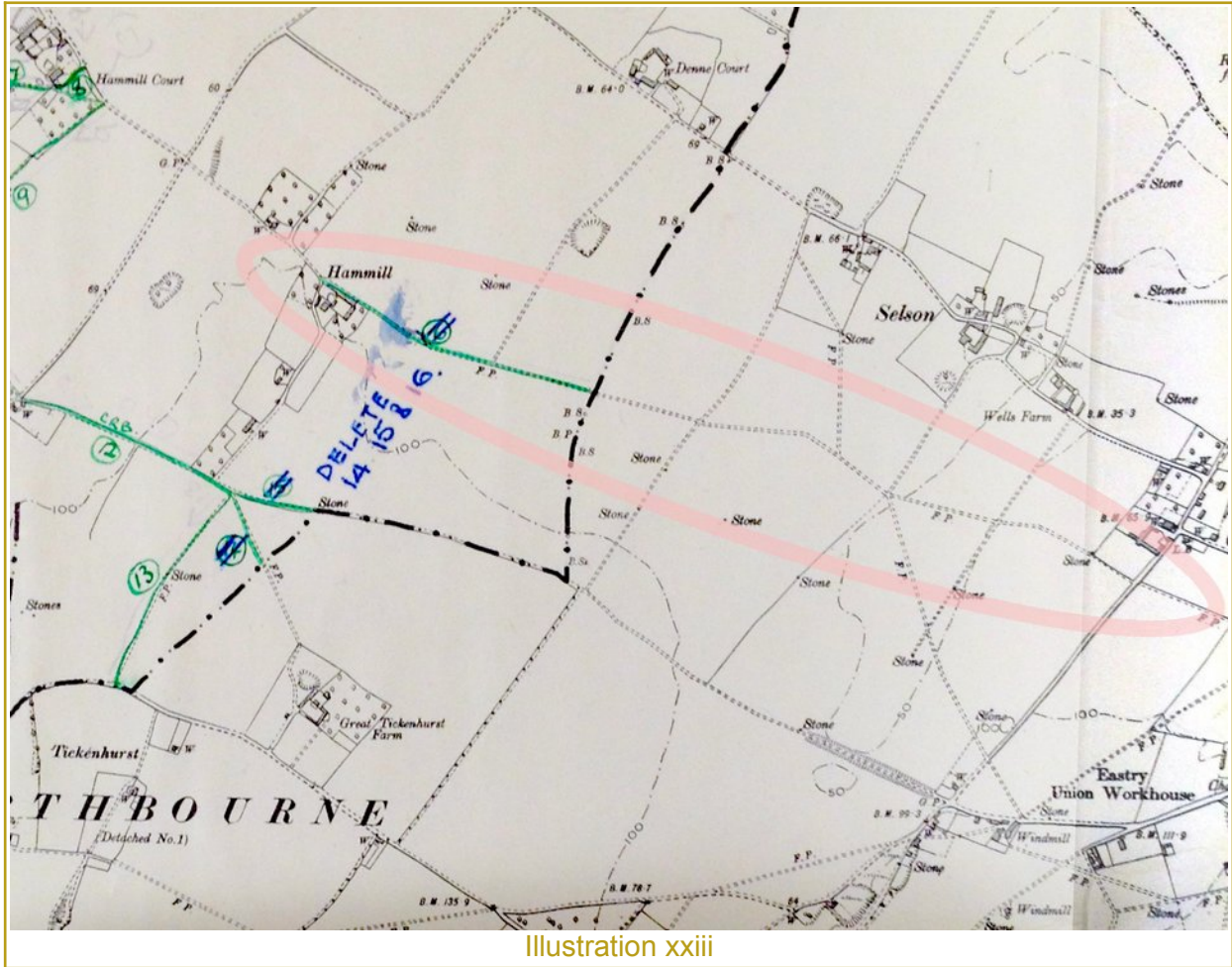


Illustration xxiii

Woodnesborough parish statement

SCHEDULE OF FOOTPATHS.		MAP XLVIII SW.
1-F.P.	SANDWICH LANE toward LITTLE BRITAIN.	Ploughed-no trace.
2-F.P.	continuation of above-	ploughed-no trace.
3-F.P.	continuation of above to LITTLE BRITAIN CROSS ROADS.	Ploughed-no trace.
4-F.P.	From CROSS ROADS LITTLE BRITAIN toward SUMMERFIELD ROAD.	Ploughed-no trace.
5-C.R.F.	Adjoining (4) to SUMMERFIELD ROAD.	Approx 7' wide; 130 yds. long; used, in fair condition.
6-F.P.	From SUMMERFIELD CORNER toward HAMMILL COURT.	Gap in hedge 70 yds. to stile ploughed over; not in use.
7-F.P.	continuation of (6) to HAMMILL COURT;	meadow land; no path visible.
8-F.P.	Rear of HAMMILL COURT;	no trace; fenced in.
9-F.P.	HAMMILL COURT toward LWR. ROWLING;	cultivated-no trace of F.P.
10-F.P.	continuation to LWR ROWLING CHALK PIT;	no trace.
11-F.P.	Adjoining (9) & (10) to WALNUT TREE COTTAGE SANDWICH LANE;	boundary of two fields-no trace.
12-C.R.B.	From WALNUT TREE COTTAGE SANDWICH LANE toward boundary.	7' wide in fair condition; used. <i>Unclassified road.</i>
13-F.P.	Adjoining (12) to TICKENHURST boundary;	traceable; infrequently used.
14-F.P.	Adjoining (12) to TICKENHURST FARM;	ploughed and cultivated; not used.
15-F.P.	Adjoining (12) to boundary;	follows hedgerow; not used.
16-F.P.	HAMMILL FARM TO boundary.	No trace of path.

Illustration xxiv

H.3. **Background:** Part V of the National Parks and Access to the Countryside Act 1949 required surveying authorities to prepare a draft map of public paths, drawing on a survey prepared by the parish council.

H.4. **Description:** The parish map for Eastry omitted virtually every public path in the west of the parish. In '*Parish Council of Eastry 1894-1984*, a local history,²⁴ it is stated:

As a result of the Countryside Act of 1949, the Kent County Council consulted all parish councils over the public footpaths in the parishes. A list of fifteen paths within Eastry Parish was drawn up and approved at a public meeting held in December. For some reason some paths which ran from Eastry towards Selson were not included, although they appear on earlier Ordnance Maps, possibly because they were little used.

24 Held in the Eastry Collection at Sandwich Guildhall Archive.

H.5. Those paths which were omitted but later added to the definitive map and statement comprise:

- EE493 (Lonely Lane), a restricted byway between Northbourne Road and Betteshanger;
- EE488 (Black Lane), a bridleway between Knowlton and Betteshanger²⁵;
- EE491, a bridleway between Thornton Lane and EE488 (Black Lane);
- EE490 (Berry's Lane), a bridleway between Heronden and Thornton Lane;
- EE109, a BOAT between Eastry and Hammill (recorded on the Woodnesborough parish map as CRB15).

H.6. In addition, a restricted byway is the subject of an application PROW/DO/C415, between Selson Lane and Drainless Road, Selson.

H.7. It is suggested that further paths were omitted, these paths long being recorded on the Ordnance Survey County Series plans:

- a footpath between Hammill and Tickenhurst Farm (recorded on the Woodnesborough parish map as FP14);
- a footpath between Eastry Mill and Heronden (cutting off the bend in the road);
- the application way (recorded on the Woodnesborough parish map as FP16);
- a footpath between D and Eastry Mill;
- a footpath between E and Selson;
- a bridleway between Drainless Road and Woodnesborough.

H.8. Woodnesborough parish council expressly recorded in the parish survey the application way between Hammill Farm and the Woodnesborough/Eastry parish boundary as footpath FP16, with the following entry in the parish statement:

| 16 F.P. HAMMILL FARM TO boundary. No trace of path.

H.9. It appears that the path was deleted from the Woodnesborough parish statement because its continuation within Eastry was not recorded in the Eastry parish survey. However, the Eastry parish statement does allude to the path: the entry for FP12 (now footpath EE252A) between Eastry High Street and Gore Lane, which terminates on Gore Lane at A, reads:

| FOOTPATH. Hammill to Eastry. Commences at Gore Lane... .

The entry is suggestive of a footpath which was recognised to begin at Hammill, but part of which (from Gore Lane to Hammill) was excluded for unknown reasons from the parish map.

H.10. **Conclusion:** It is suggested that the application way was excluded from the Eastry parish survey on inappropriate grounds — for example, as suggested in the parish history, that it was little used — but that its existence is acknowledged in the entry in the parish statement for its continuation, FP16, from 'Hammill to Eastry'. Moreover, Woodnesborough parish council appeared ready to record its part of the application way in its parish survey, but it is suggested later deleted the way on the ground that it had been omitted from the Eastry parish survey and served no purpose in apparent isolation.

25 Part of Black Lane was recorded as a footpath between the parish boundary and Thornton Lane (now upgraded to bridleway and extended to Knowlton).

H.11. The parish survey records provide some evidence that the application way was recognised by Eastry parish council as subsisting in the early 1950s, but was excluded from the parish survey for reasons which are not known, but may well be inappropriate. This evidence is reinforced by the Woodnesborough parish survey, which initially proposed to include the application way (within Woodnesborough parish) — along with several other footpaths connecting into Eastry parish not included in the Eastry parish survey.

H.12. **Points:** 2