

# Winkland Oaks bridleway: para.4(1)<sup>1</sup> appeal

## I. Introduction

### A. Quick reference

- A.1. Date of application to surveying authority: 1 August 2016
- A.2. Surveying authority reference for application: PROW/DO/C381
- A.3. Date of service of notice of determination: 3 September 2020
- A.4. Location plan (see application map at part II below for detailed map):



- A.5. Existing recorded public right of way comprised in appeal way: EE427
- A.6. Parishes of: Ripple and Sutton
- A.7. Historical parishes of: Ripple, Sutton
- A.8. Termination points: Winkland Oaks Lane to Dover Hill on Forge Lane, Sutton next Ripple
- A.9. Termination points Ordnance Survey grid references: TR34204817 to TR33384883
- A.10. Postcode: CT15 5HW

<sup>1</sup> of Sch.14 to the Wildlife and Countryside Act 1981

A.11. Ordnance Survey Explorer sheet: 138

A.12. Ordnance Survey County Series 25" sheet: Kent LVIII/11, LVIII/15

## B. The appellant

B.1. The appeal, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer historical researcher in relation to South and East Kent.

## C. Locational details

C.1. This appeal relates to a way which lies in the parishes of Ripple and Sutton, in the district of Dover, Kent. The way is currently recorded in the definitive map and statement for Kent as footpath EE427. The application to which the appeal relates sought to record the way as a bridleway.

## D. Application and determination

D.1. The application was made by the appellant<sup>2</sup> on 1 August 2016 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) that a way shown in the definitive map and statement for Kent as public footpaths EE451 and EE427 should instead be shown as a public bridleway.

D.2. The application was registered by Kent County Council in the register of applications no: PROW/DO/C381.

D.3. That application was refused in a determination dated 27 August 2020 and communicated to the appellant on 3 September 2020. However, the surveying authority decided on its own initiative to make a definitive map modification order in relation to upgrading footpath EE451 acting under the duty imposed by s.53(2)(b) of the 1981 Act.

D.4. It follows therefore that an appeal lies<sup>3</sup> against the determination of the surveying authority to refuse to make the order applied for, in relation to upgrading footpath EE427.

D.5. Footpath EE427 begins on Winkland Oaks Lane (the road from Martin to Ripple) at C (Ordnance Survey grid reference TR34204817) northwest along the drive to Winkland Oaks Farm, continuing along the southwest side of the farm buildings to a gate on the parish boundary at D (TR33924843), a distance of 375m, then continuing initially west-northwest and resuming northwest along a track to join Dover Hill on Forge Lane at E (TR33384883), a distance of 690m. The total distance of footpath EE427 from C to E is 1,065m.

D.6. The points C to E are identified in the application map at section II below.

## E. Grounds of appeal

E.1. This appeal is made against the determination of Kent County Council, as surveying authority, to refuse the appellant's application to that council for a definitive map modification order, as described in Application and determination at item D above.

<sup>2</sup> *i.e.* the appellant acting on behalf of the British Horse Society.

<sup>3</sup> Under para.4(1) of Sch.14 to the 1981 Act.

E.2. The authority determined that there is ‘insufficient evidence’ to conclude that footpath EE427 (to which this appeal relates) should be upgraded to bridleway (decision report, para.8).

E.3. The appeal is brought on the grounds that:

- The authority was mistaken to conclude (decision report, annexe B, para.143) that: ‘footpath EE427 does not appear to have existed as a physical entity in its entirety until some time later.’ There is evidence of existence in the Sutton and Ripple tithe maps prepared under the Tithe Act 1836 (item IV.D below). Prior to this date, no documents exist to prove the question either way.
- The authority was mistaken to conclude (annexe B, para.145) that the classification of the appeal way between C and D as ‘Public Roads and Waste Lands’ on the Ripple tithe map and apportionment was ‘good evidence of the existence of some form of public rights on this part of the claimed route at that time (which could be anything from a through route at Public Footpath status...)’. The classification is good evidence that the way between C and D was considered to be a public road and no less.
- The authority was mistaken to conclude (annexe B, para.146) that the representation of the appeal way on the Ordnance Survey, County Series twenty-five inch first edition map (item IV.E below) is ‘neutral’: the colouring of the way as a metalled road throughout, and the description of the majority of the way in the area book as a ‘Road’, provide evidence which is at least consistent with bridleway status.
- The authority was mistaken to conclude (annexe B, para.147) that the absence of any claimed deduction for the appeal way in the Finance (1909–1910) Act 1910 documentation (item IV.H below) is ‘puzzling’ (annexe B, para.147) and ‘troubling’ (annexe B, para.158), and that ‘the lack of any deduction is ultimately surprising if the claimed route was widely regarded as a Bridleway’. Further explanation of this ground is given in item IV.H.
- The authority was mistaken to conclude (annexe B, para.148) that the evidence of the notice given under the Electricity (Supply) Acts 1882 to 1922 (item IV.K below) ‘is entirely consistent with the route being a Public Footpath’. Further explanation of this ground is given in item IV.K.
- The authority was mistaken to conclude (annexe B, para.162) that the appeal way should not be considered as a single entity with Hangman’s Lane, to which the application also related, and that they are: ‘two separate routes with differing historical backgrounds’. Further explanation of this ground is given in Background and summary case (item G below).

## F. Determination of appeal

F.1. In the event that the Secretary of State concludes that the appeal should be dismissed in relation to the application for an order recording a bridleway between C and E, the Secretary of State alternatively is asked to consider whether the appeal should be granted in relation to the way between C and D, so that an order should be made recording that part of the way as a bridleway or restricted byway.

F.2. In the event that the Secretary of State grants the appeal (in whatever form), he is asked to employ his power<sup>4</sup> to direct the surveying authority to make the order arising from

4 Conferred by para.4(2) of Sch.14 to the Wildlife and Countryside Act 1981, as amended by para.10 of Pt.I of Sch.5 to the Countryside and Rights of Way Act 2000.

the appeal within a reasonable interval of time following the date of the direction. It is suggested that a period of three months would be sufficient time.

## G. Background and summary case

G.1. The appeal way between C and E, in common with the majority of public paths in Kent, may well be of ancient origin. The southeasterly termination at C is opposite the westerly termination of Hangman's Lane, an ancient and partly enclosed lane between Ringwoud and Winkland Oaks, and currently recorded in the definitive map and statement as footpath EE451. The surveying authority has resolved to make an order to upgrade footpath EE451 to bridleway. It is very probable that the appeal way is a continuation of Hangman's Lane, which provides a way on foot and on horseback between Ringwoud and Sutton.

G.2. Where a historical way terminates on a public road, but continues in the same purposeful direction immediately on the opposite side of the road, and the road itself does not provide an obvious continuation of the way (because it branches off in a contrary direction not serving any useful purpose to travellers on the way), it is a reasonable proposition that the continuation of the way is likely to be of the same status. Here, Hangman's Lane provides a means of travel from Ringwoud, and particularly the western side of the village, northwest towards Sutton, and particularly the Dover Hill end of the village. It is entirely logical that travellers along it would have wished to continue in the same direction along the appeal way to reach Sutton, and therefore entirely logical that the appeal way too should be a bridleway.

G.3. It is not clear when the appeal way began to be used as a bridleway. It may perhaps have been a bridleway for as long as the path has existed — or it may have become established as a bridleway later, as additional rights established over an existing footpath.

G.4. All that can be said is that the evidence of bridleway status dates from the first half of the nineteenth century onwards. That is hardly surprising — as an unenclosed, cross-field bridleway, it would be unusual if there were records of its existence prior to that date, not least because there appear to be no eighteenth century or earlier estate plans of land crossed by the appeal way.

G.5. The evidence of bridleway status is sufficient and cogent. The evidence of the Tithe Act 1836 maps and apportionments (item IV.D below) show that the appeal way was considered to be a public road between C and D (a finding supported by contemporary mapping at items IV.A to IV.C below), and that it was a public right of way from D to E (though not inevitably that it was a bridleway). The Ordnance Survey, County Series twenty-five inch first edition map (item IV.E below) shows the appeal way to have been metalled throughout by the later part of the nineteenth century. The proceedings of the Eastry Rural District Council in the first part of the twentieth century, in 1911 (item IV.I) 1913 (item IV.J) and 1924 (item IV.L), demonstrate the appeal way's clear, uncontested reputation as a bridleway throughout this period, both with the council and neighbouring land managers. The notice issued under the Electricity (Supply) Acts 1882 to 1922 (item IV.K below) convincingly is founded in the appeal way's status as at least a bridle road (privately maintained). The National Farm Survey (item IV.N below) unusually excludes the appeal way from the colouring associated with the Winkland Oaks Farm holding.

G.6. The proceedings of the Eastry Rural District Council, and the notice issued under the Electricity (Supply) Acts 1882 to 1922, record that the appeal way was considered to

be privately-maintainable. This position adopted by the council (and apparently communicated to the undertaker under the Electricity (Supply) Acts) is that the appeal way was a bridleway, but privately maintainable. While most footpaths and bridleways at this time were, under the Highway Act 1835, publicly maintainable, it is commonplace that highway authorities in the nineteenth and first half of the twentieth centuries declined to acknowledge maintenance responsibilities for such ways, and purported to consider them maintainable by the landowners, by the parish council, or by no-one. That is not to say that the authority would not engage to resolve questions of obstruction (see, for example, Eastry Rural District Council surveyor's report (1906) at item IV.G below), or neglect by the landowner (such as a failure to cut overhanging vegetation) — but that the authority was markedly reluctant to spend its own resources on maintenance of non-vehicular highways. Thus, although the Eastry Rural District Council makes repeated reference to the appeal way being privately-maintainable, this reference might better be taken to mean that the way was not maintained by it, and should not be taken to mean that the way was not, in fact, publicly-maintainable.

G.7. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*<sup>5</sup>, Lewison LJ said, at paragraph 22,

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

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

G.8. 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.<sup>6</sup>

G.9. While no single piece of evidence in this appeal is conclusive, the appellant believes that, taken as a whole, the evidence in this appeal demonstrates highway reputation over many years, and that, taking into account all the evidence, the proper status is a bridleway.

5 [2012] EWCA Civ 334

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

## H. Special review

H.1. Part of footpath EE427 between C and D was formerly shown on the definitive map and statement as a Road used as Public Path (RUPP). It was downgraded to footpath status as part of the Special Review, apparently on the basis that it had previously been shown as CRF (Carriage Road Footpath) rather than on the basis of any evidence, and the absence of any objection (confirmed by the objection schedule) led to it remaining on the map as a footpath rather than reverting back to RUPP status when the review was abandoned in 1983.<sup>7</sup>

H.2. The decision to downgrade the way to footpath was unlawful, in the light of the decision of the Court of Appeal in *R v Secretary of State for the Environment, ex parte Hood* that designation as a RUPP conferred conclusive presumption of bridleway rights under s.32(4)(b) of the National Parks and Access to the Countryside Act 1949, and a RUPP could not be reclassified as a footpath unless new and cogent evidence could be adduced that bridleway rights did not exist. However, it appears that, in the absence of an objection to the reclassification, the original determination to reclassify as a footpath was permitted to endure.

H.3. The original classification of the appeal way as RUPP between C and D is some evidence that, in the opinion of the surveying authority, higher rights were believed to subsist than merited by designation as a footpath.

## I. Points awarded

I.1. Points have been awarded to each piece of evidence in relation to the appeal way. But, having regard to the existing status of the appeal 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*<sup>8</sup>.

### I.2. Points:

Item	Ref	Points
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.A	0
Greenwood's map of Kent	IV.B	0
Ordnance Survey, one-inch Old Series map of Kent	IV.C	0
Tithe Act 1836	IV.D	5 (C–D)
Ordnance Survey, County Series twenty-five inch first edition	IV.E	1
Ordnance Survey, County Series twenty-five inch second edition	IV.F	0
Eastry Rural District Council surveyor's report (1906)	IV.G	0
Finance (1909–1910) Act 1910	IV.H	0
Eastry Rural District Council	IV.I	4

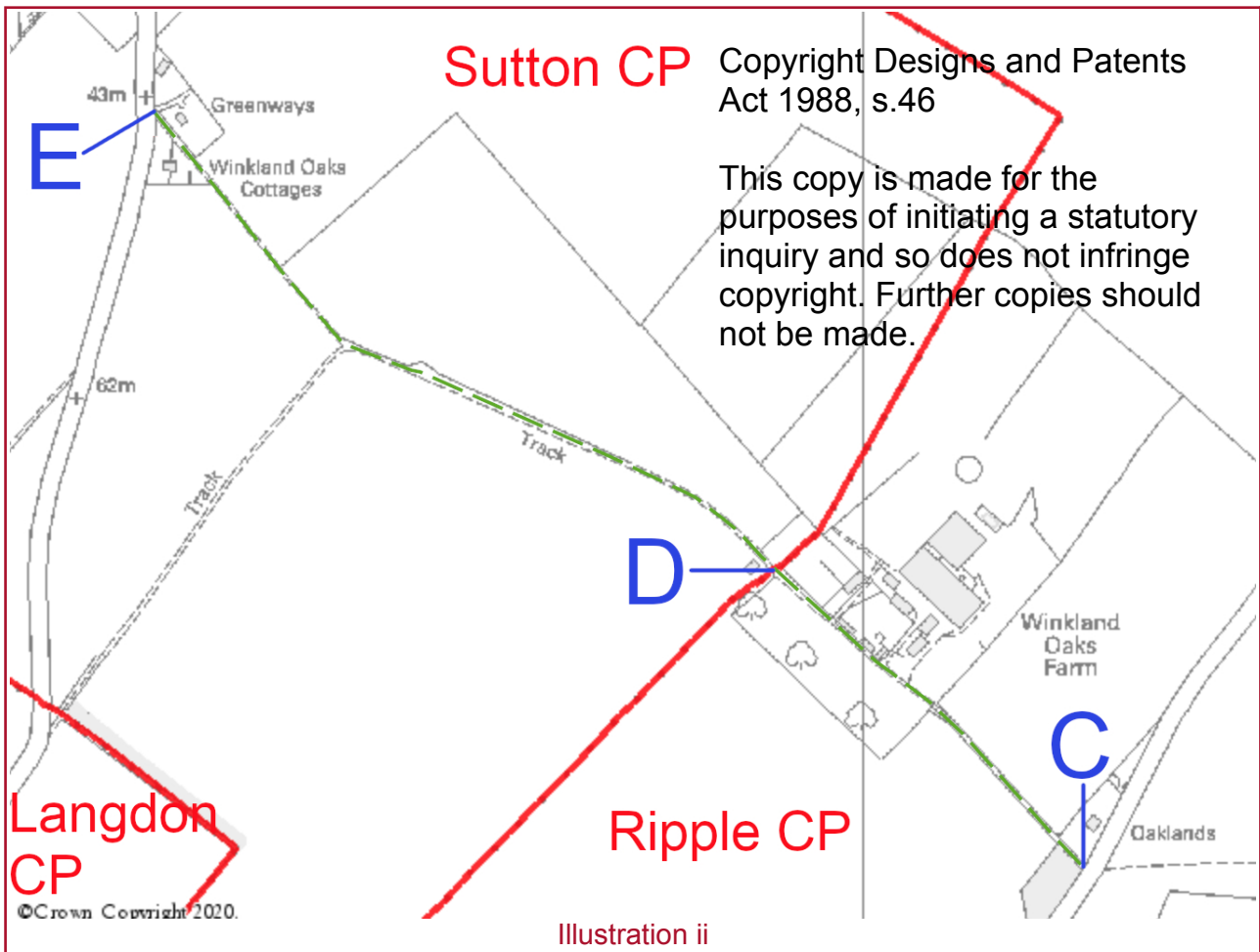
<sup>7</sup> Email communication from Rights of Way team, Melanie McNeir, dated 12 July 2016.

<sup>8</sup> Sarah Bucks and Phil Wadey, 2nd ed. 2017.

surveyor's report (1911)		
Eastry Rural District Council surveyor's report (1913)	IV.J	1
The Electricity (Supply) Acts 1882 to 1922 incorporate:	IV.K	2
Eastry Rural District Council report (1924)	IV.L	1
Sale particulars (1936)	IV.M	1
National Farm Survey	IV.N	2
Parish survey	IV.O	0
<b>Total points</b>		18†

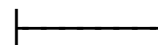
† 13 points in relation to D–E

## II. Application map





Map centred on D at TR339484

Scale: approx. 1:6,500 (when printed A4)



125m

Appeal way is marked 

Parish boundary is marked  and parish is labelled thus **Sutton CP**



### III. Along the way



Illustration iii: Drive C to Winkland Oaks Farm



Illustration iv: C towards D



Illustration v: Nearing D



Illustration vi: Between D and E



Illustration vii: Towards E

## IV. Evidence

### Contents

IV. Evidence.....	10
A. Ordnance Survey, Mudge-Faden one-inch map of Kent.....	10
B. Greenwood's map of Kent.....	12
C. Ordnance Survey, one-inch Old Series map of Kent.....	13
D. Tithe Act 1836.....	14
E. Ordnance Survey, County Series twenty-five inch first edition.....	22
F. Ordnance Survey, County Series twenty-five inch second edition.....	24
G. Eastry Rural District Council surveyor's report (1906).....	25
H. Finance (1909–1910) Act 1910.....	27
I. Eastry Rural District Council surveyor's report (1911).....	30
J. Eastry Rural District Council surveyor's report (1913).....	32
K. Electricity (Supply) Acts 1882 to 1922.....	34
L. Eastry Rural District Council report (1924).....	41
M. Sale particulars (1936).....	43
N. National Farm Survey.....	44
O. Parish survey.....	46

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

A.1. **Date:** c.1801

A.2. **Source:** Kent County Archives<sup>9</sup>

9 Also available at: [mapco.net/kent1801/kent1801.htm](http://mapco.net/kent1801/kent1801.htm)



Illustration viii

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

A.4. This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

A.5. The map shows the appeal way from C to Wingleton Oak (now Winkland Oaks Farm) at D as a minor drive, but no way is shown connecting D to E, although the line of the way appears to coincide with the notional line of field boundaries.

A.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published

privately by Faden for public and not military use. Nevertheless, it focused on vehicular and enclosed roads, and few cross-field bridledways — or for that matter, footpaths — are shown. The appeal route is no exception — one would not expect it to show the appeal way, and it does not.

A.7. **Points:** 0

## B. Greenwood's map of Kent

B.1. **Date:** 1819–20

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

Greenwood map



Illustration ix

## Greenwood map key



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

B.4. Christopher and John Greenwood were brother cartographers who produced large-scale maps of England and Wales in the 1820s.<sup>10</sup>

B.5. The Greenwoods' map shows the appeal way from C to Wingleton Oak (now Winkland Oaks Farm) at D, and a short stub at E, but no connection is shown between D and E.

B.6. **Conclusion:** Greenwood's maps focused on vehicular and enclosed roads, and few cross-field bridledways — or for that matter, footpaths — are shown. The appeal route is no exception — one would not expect it to show the appeal way in its entirety, and it does not.

B.7. Nevertheless, the map does show the appeal way between C and Winkland Oaks Farm, and the last part of the way towards E. The key to the Greenwood map records the depicted parts of the appeal way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (which separately are identified).

B.8. **Points:** 0

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

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

C.2. **Source:** National Library of Australia<sup>11</sup>.

<sup>10</sup> Wikipedia, [Christopher Greenwood](#), September 2020.

<sup>11</sup> [nla.gov.au/nla.obj-231917365](http://nla.gov.au/nla.obj-231917365).

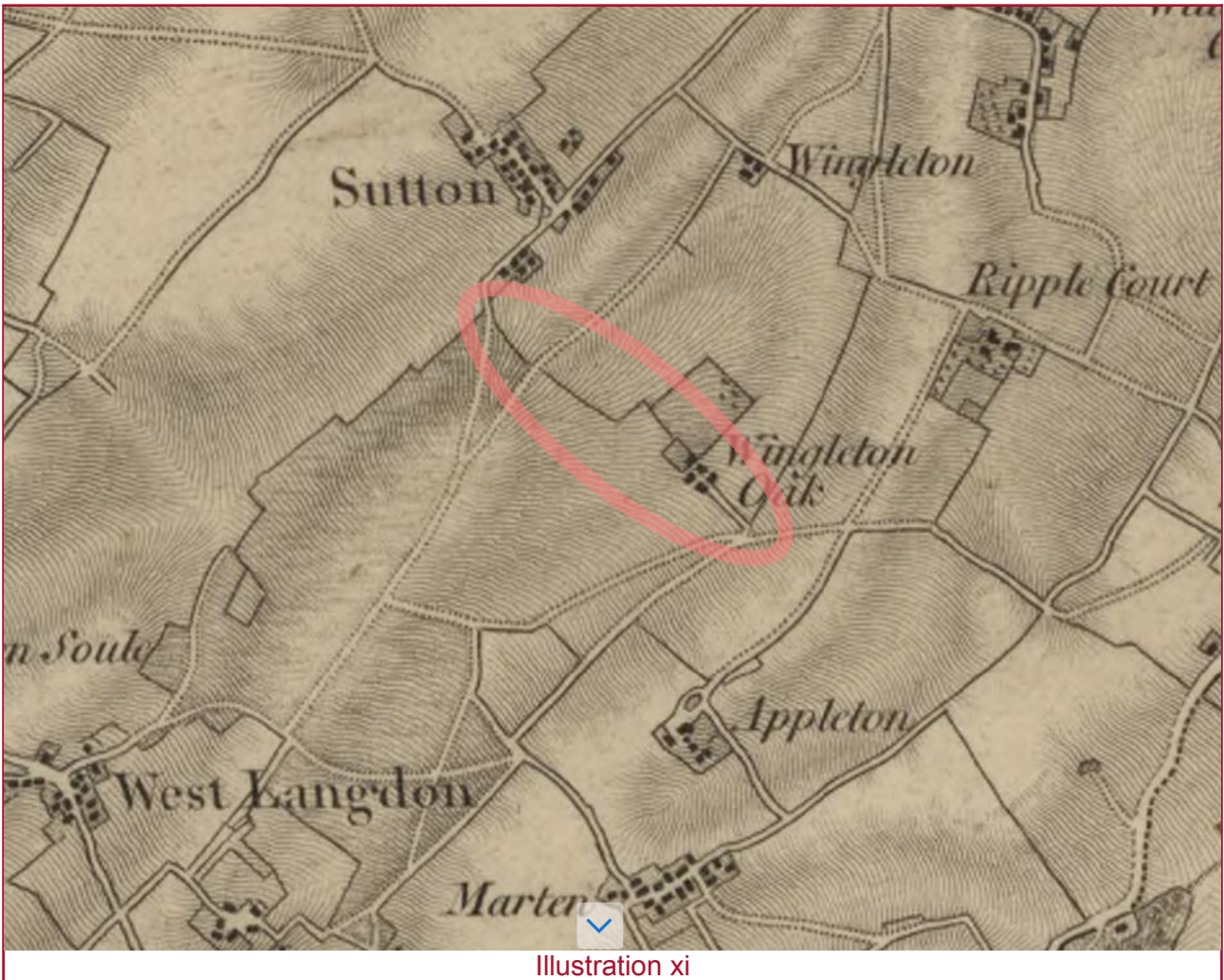


Illustration xi

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

C.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.A above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

C.5. The map shows the appeal way from C to Wingleton Oak (now Winkland Oaks Farm) at D, but no way is shown connecting D to E.

C.6. **Conclusion:** The Old Series map focused on vehicular and enclosed roads, and few cross-field bridledways — or for that matter, footpaths — are shown. The appeal route is no exception — one would not expect it to show the appeal way in its entirety, and it does not.

C.7. **Points:** 0

## D. Tithe Act 1836

D.1. **Date:** 1841

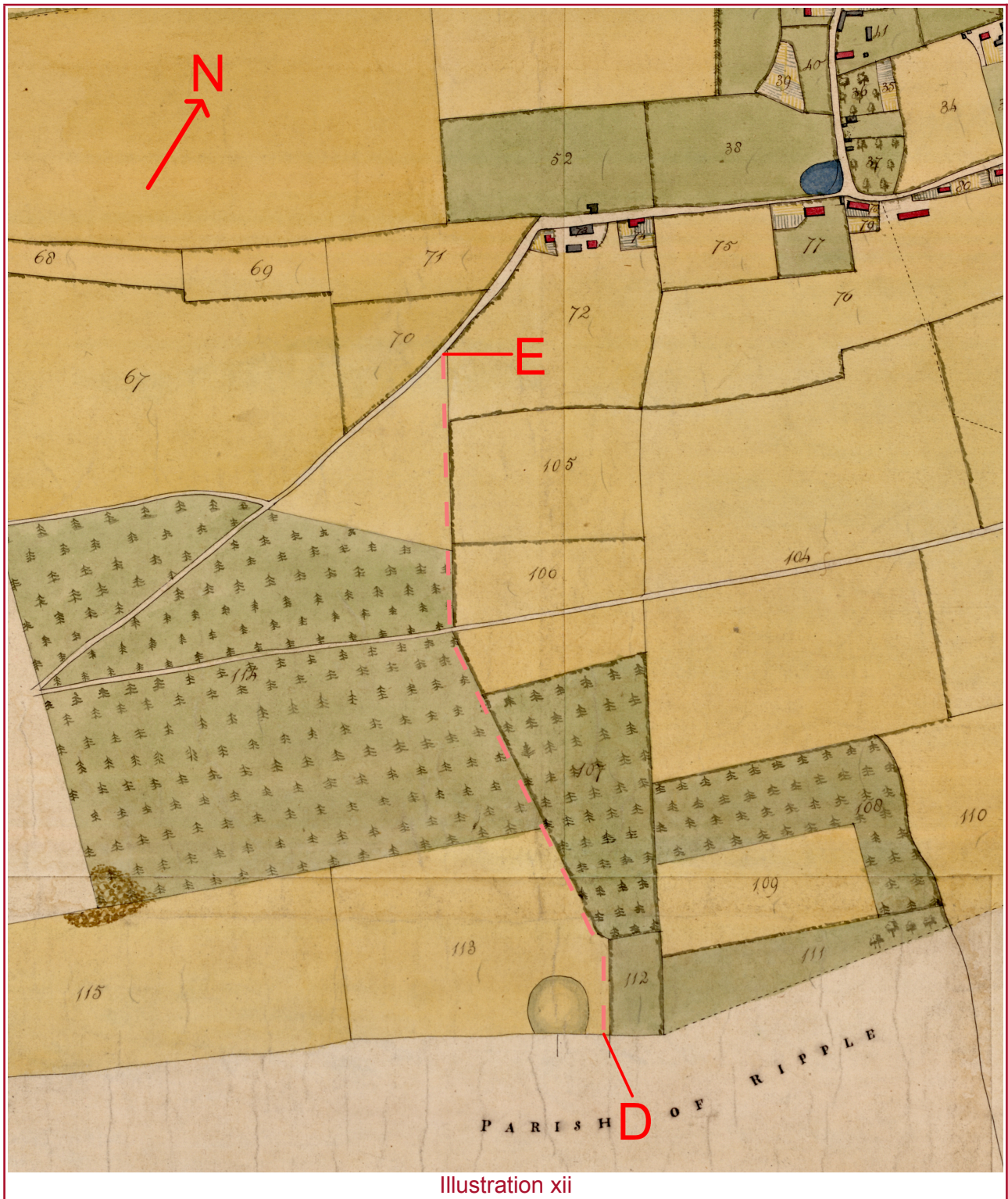
D.2. **Source:** map: Kent County Archives<sup>12</sup>; National Archives<sup>13</sup>; tithe award: Kent Archaeological Society<sup>14</sup>

12 Kent tithe maps are available as images on CD.

13 IR 18/3824

14 [www.kentarchaeology.org.uk/Research/Maps/SUT/01.htm](http://www.kentarchaeology.org.uk/Research/Maps/SUT/01.htm) and  
[www.kentarchaeology.org.uk/Research/Maps/RIP/01.htm](http://www.kentarchaeology.org.uk/Research/Maps/RIP/01.htm).

Sutton tith map (Kent County Archives copy):





Sutton tith map (National Archives copy):

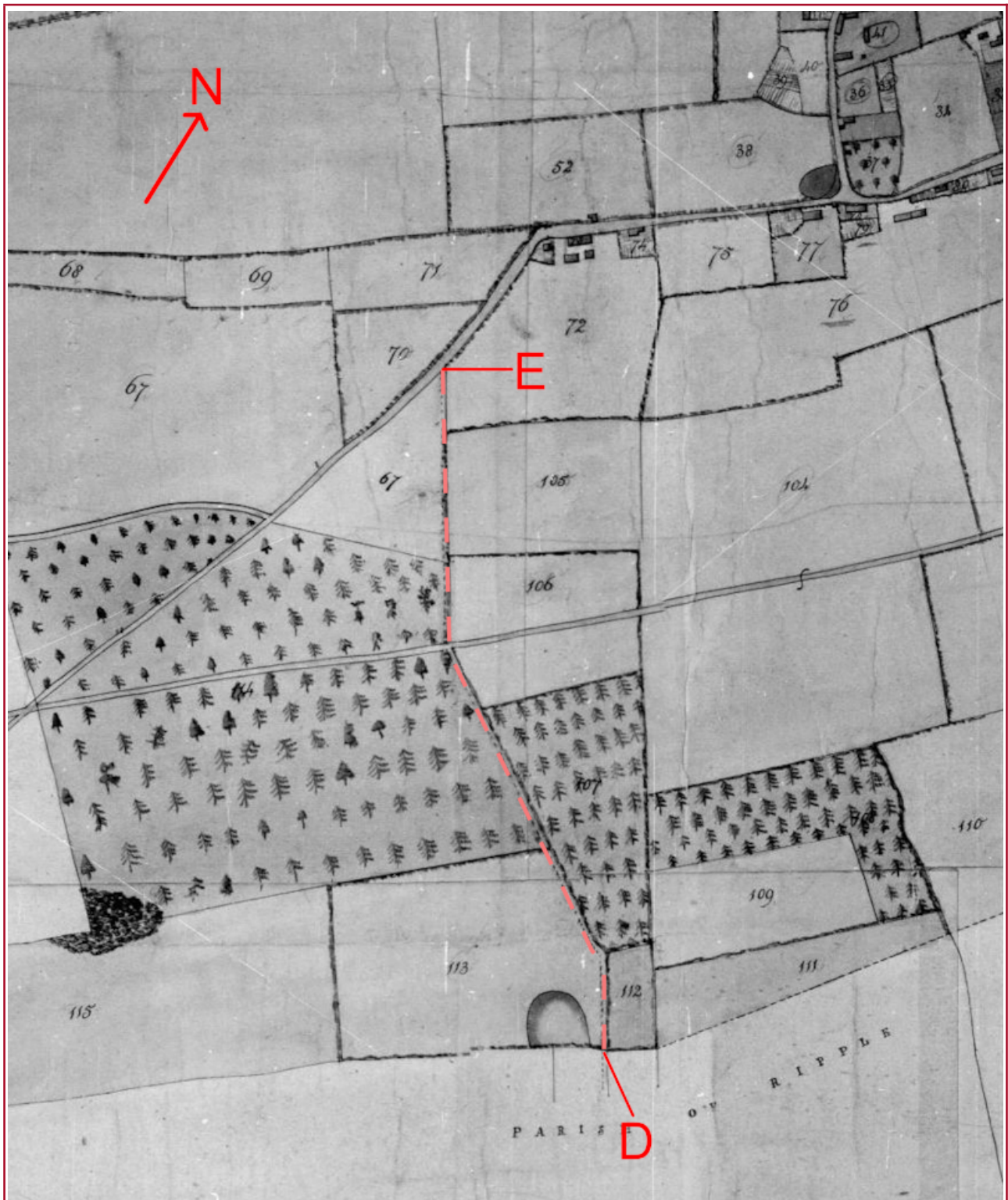
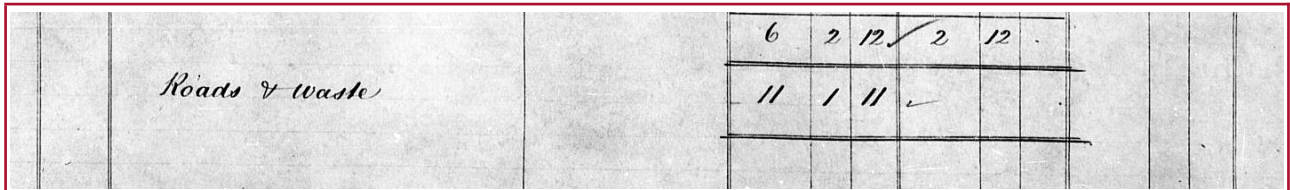


Illustration xiii

Sutton tithes apportionment:



A handwritten table on aged paper. The text "Roads & waste" is written in cursive on the left side. To the right is a table with two rows and five columns. The first row contains the numbers 6, 2, 12, 2, and 12, with a checkmark above the second '2'. The second row contains the numbers 11, 1, 11, and a checkmark. The table is enclosed in a red border.

	6	2	12	2	12
<i>Roads &amp; waste</i>	11	1	11	✓	

Illustration xiv

Ripple tithe map:

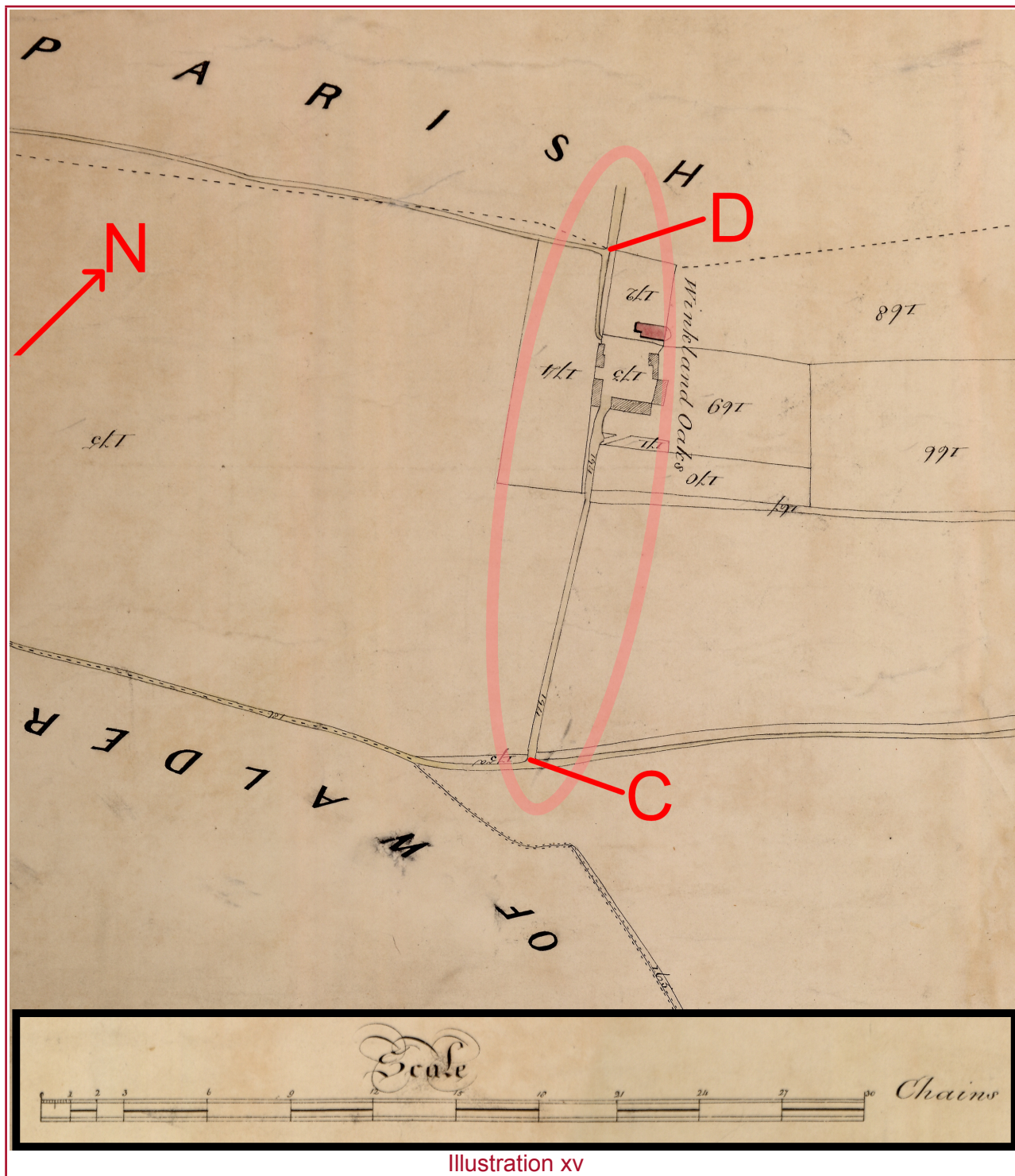
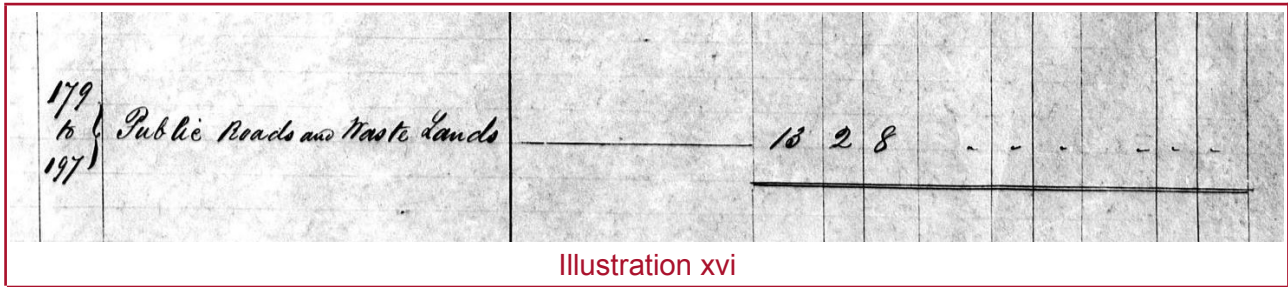


Illustration xv

## Ripple tithe apportionment:



D.3. **Description:** Sutton tithe map: original scale: four chains to one inch (1:3,168), no scale bar; orientation: unchanged (top is northwest). Ripple tithe map: original scale: three chains to one inch (1:2,376); orientation: unchanged (top is northwest). Both maps are second class.

D.4. On the Ripple tithe map, from C to D, the way is shown as an enclosed road leading to Winkland Oaks Farm and is identified as parcel 194, which is allocated in the apportionment to 'Public Roads & Waste Lands' (the apportionment assigns this description to parcels 179–197 without individual specification). The enclosed road is shown as debouching into the farm yard (tithe parcel number 173: 'Barn Stables Shed & Yards'). The way continues from the west corner of the farmyard as a further enclosed track, coloured similarly to road 194, but without a tithe parcel number, a short distance to the parish boundary at D, and is shown continuing northwest a short distance beyond.

D.5. On the Sutton tithe map, from D to E, the way is identified by a pecked line adjacent to the continuous line of the field boundary, suggesting a track which is unenclosed on at least one side. This marking is apparent only on the National Archives copy of the tithe map (Illustration xiii), and does not appear on the parish copy held by the Kent County Archives (Illustration xii). The Sutton tithe map and award does not allocated specific parcel numbers to roads and wastes, but collectively in the apportionment refers to 'Roads & Waste'. The survey is stated to be 'Corrected from a former Survey, Oct 1839.'

D.6. **Analysis:** The Tithe Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

D.7. 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 (the Sutton and Ripple maps are however at a larger scale).

D.8. 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.<sup>15</sup>

15 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

D.9. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

D.10. **Conclusion:** The identification on the Ripple tithe map of the way between C and the farmyard of Winkland Oaks Farm as 'public road [or] waste lands' is good evidence for the status of the way as a public road (as, being an enclosed road, it is clearly not manorial waste). It may be said that tithe awards were not compiled in order to identify public roads, but this would be to misunderstand the purpose of the project. Where a way was a public road and did not contain productive land in the gift of a landowner or tenant liable to tithe, such as a right of grazing the roadside vegetation, classification as such was essential to the award, and not a matter of incidental annotation. Moreover, the tithe award was prepared in a blaze of publicity and engagement aptly described in *Giffard*. If a way was incorrectly described in the apportionment as a public road, it was open to any person to seek to have it corrected, and such a challenge might come not only from the landowner affected by the designation, but any other person in the parish who might feel that the landowner was unfairly advantaged by the exclusion of liability to tithe on land which was not a highway.

D.11. Thus, where the tithe award expressly describes ways as public roads, it may be taken that this description was given with the general consent of the owners and occupiers of the parish — including the then owners and occupiers of the land affected.

D.12. The position is less clear in relation to the way northwest of the farm yard to D and beyond. The way is coloured sienna, in common with other public roads in the parish, but it is not labelled with a parcel number in the range 179–197 or any number at all.

D.13. It is clear that this part of the appeal way is excluded from assessment, but it cannot be said with certainty that it is included within the apportionment as 'Public Roads & Waste Lands'. This may be because the length of way is short — about 50m — and of little consequence. It may be because the way was taken to be a continuation of the public road annotated from C to D and did not require express annotation. Or it may be because the way was not considered to be a public road, but was coloured sienna because it was metalled (and without prejudice as to whether it was nevertheless considered to be a public bridleway).

D.14. The presentation of the way on the Sutton tithe map (*i.e.* the National Archives copy) is not conclusive as to its status. However, the map was prepared from a survey previously undertaken, and it is entirely likely that the previous survey did identify public paths in the parish. Other paths are shown on the map consistent with those paths now recorded on the definitive map and statement as:

- EE419, ER50
- EE428, ER52A, ER52
- EE417
- EE423A

- EE424

D.15. With the exception of a short footpath cutting off the corner of Church Hill at Upper Farm, every way shown on the Sutton tithe map by a single pecked line (or single pecked line against a field boundary) is now recorded as a public right of way. It therefore is reasonable to conclude these ways were intended to represent public paths. However, it is not inevitable that such a way was a bridleway (as opposed to a footpath), and no inference can be drawn save that the way was a public path at the time of the tithe survey.

D.16. **Points:** 5 (in respect of C–D)

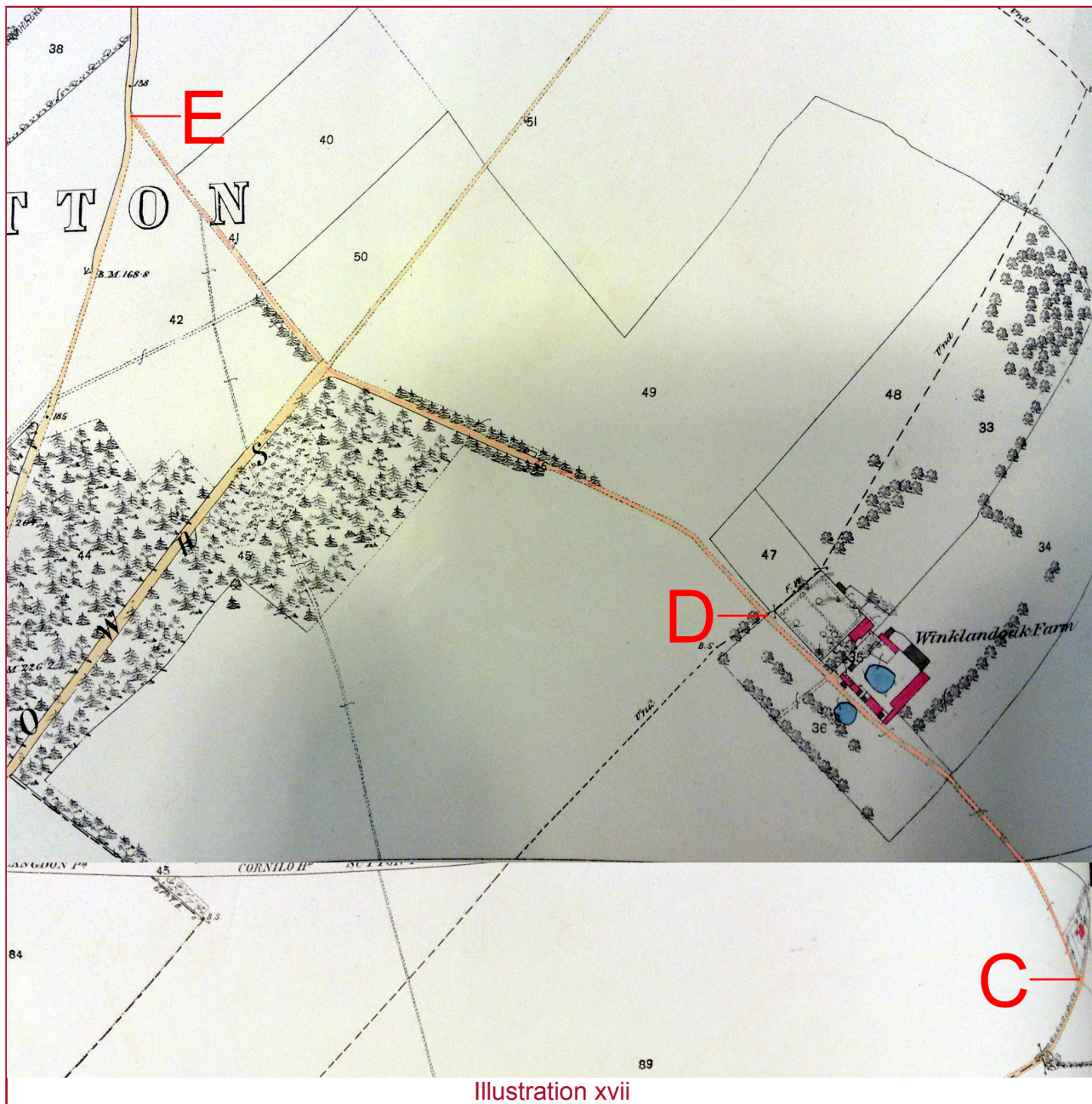
## E. Ordnance Survey, County Series twenty-five inch first edition

E.1. **Date:** 1872

E.2. **Source:** Ordnance Survey County Series map: British Library; Ordnance Survey book of reference: Bodleian Library<sup>16</sup>

<sup>16</sup> Available [online](#).

County Series first edition twenty-five inch map:



Book of reference — Sutton:

PARISH OF SUTTON, IN THE COUNTY OF KENT—(EASTERN DIVISION). HUNDRED OF CORNILO.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	30·718	Arable, &c.	39	7·151	Arable.
2	53·055	Arable, &c.	40	6·059	Arable.
3	21·730	Arable, &c.	41	·302	Road.
4	9·733	Arable.	42	4·117	Arable, &c.
5	·501	Road.	43	8·400	Wood.
6	4·071	Arable.	44	6·194	Wood.
7	5·485	Arable.	45	9·177	Wood, &c.
8	4·000	Wood, &c.	46	·483	Road.
9	128·829	Arable.	47	·956	Pasture.
10	27·698	Arable.	48	3·500	Pasture.

Illustration xviii

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

E.4. The appeal way is shown on the Ordnance Survey County Series first edition 1:2,500 map. The appeal way between C and E is shown as a continuous, unenclosed track, identified between D and E as parcels 41 and 46 which are classified in the book of reference for the parish of Sutton as 'Road'. The appeal way between C and D is braced with neighbouring parcels and is not separately identified.

E.5. The first edition map shows, by the use of a sienna colour-wash, that the appeal way was noted to have a metalled surface throughout.<sup>17</sup>

E.6. **Conclusion:** The description of the appeal way between D and E as a 'Road', and the metalling of the way throughout, is consistent with the status of the way as a public bridleway.

E.7. **Points:** 1

## F. Ordnance Survey, County Series twenty-five inch second edition

F.1. **Date:** 1896

F.2. **Source:** National Library of Scotland<sup>18</sup>

<sup>17</sup> '*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*, 3<sup>rd</sup> 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.

<sup>18</sup> [maps.nls.uk/os/25inch-england-and-wales/kent.html](https://maps.nls.uk/os/25inch-england-and-wales/kent.html) .



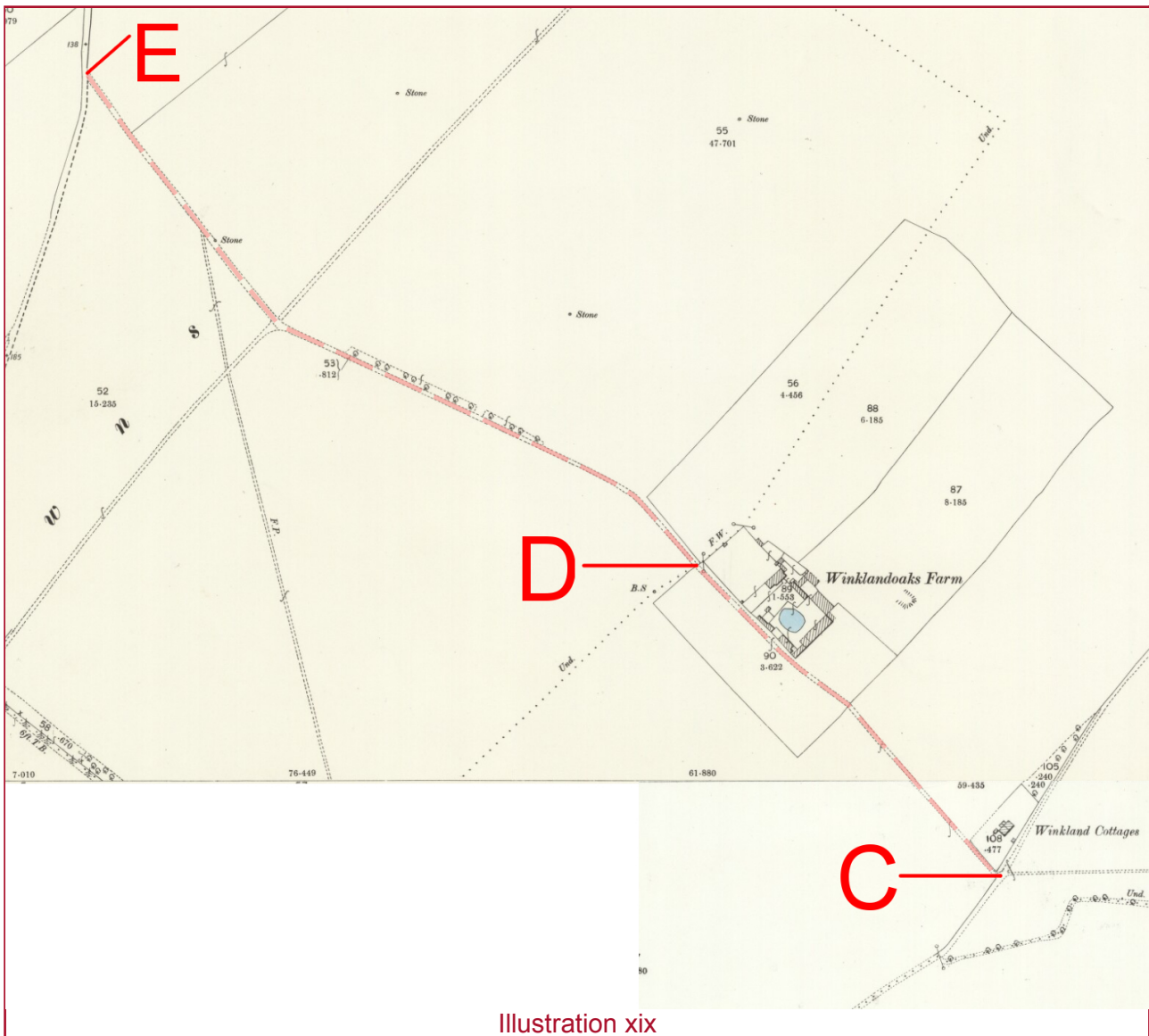


Illustration xix

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

F.4. The appeal way is shown from C to E as an unenclosed track across fields.

F.5. **Conclusion:** At this time, some ways were annotated 'B.R.' or 'F.P.' to indicate a bridle road or a footpath respectively. The absence of any such marking merely indicates that the way probably was also in use by vehicular traffic (whether private or public), and therefore was inappropriate for such annotation. The presentation of the way is therefore consistent with the status of the way as a public bridleway, but one which may also have been used by vehicular traffic (whether private or public).

F.6. **Points:** 0

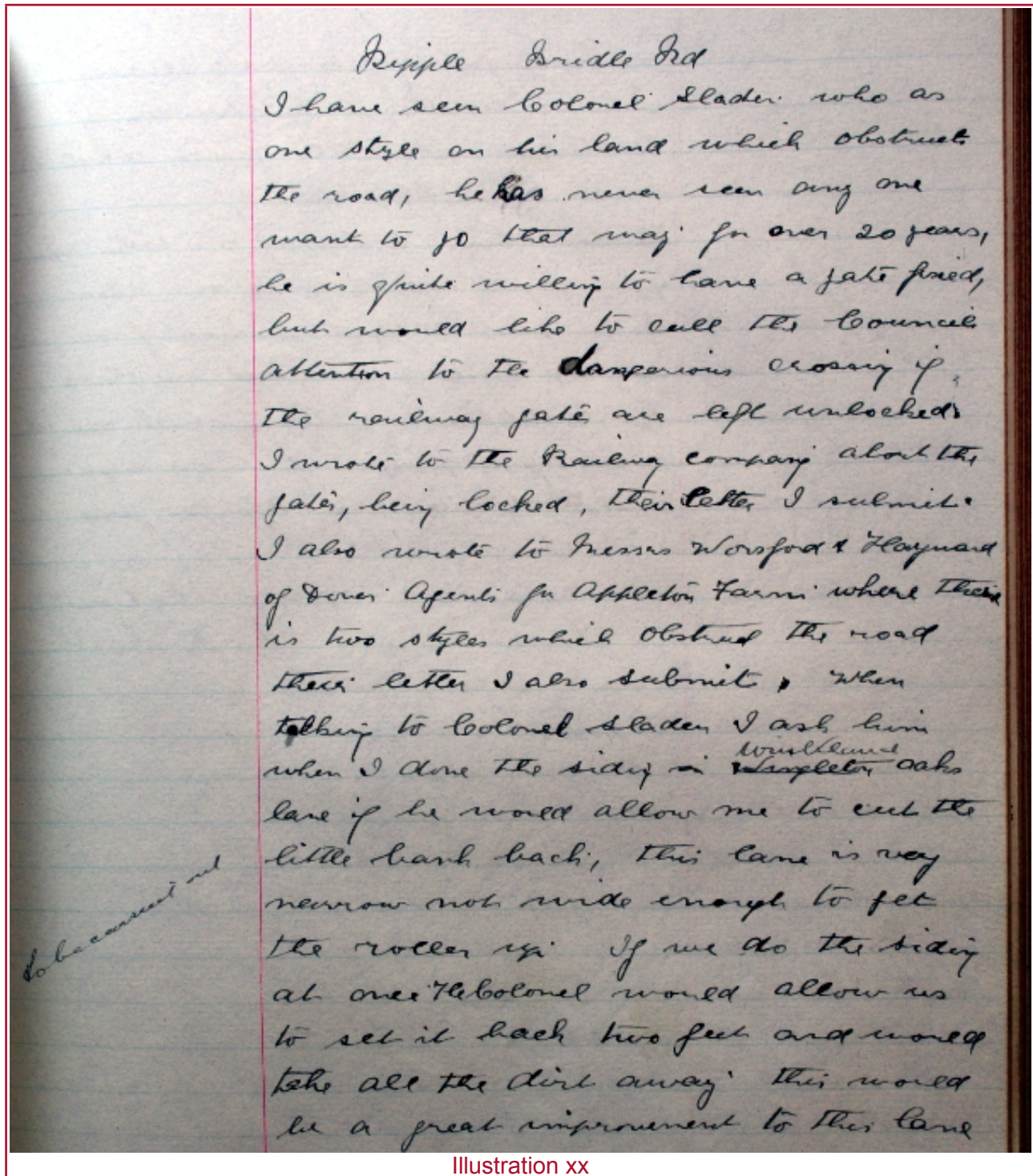
## G. Eastry Rural District Council surveyor's report (1906)

G.1. **Date:** 1906

G.2. **Source:** Kent County Archives<sup>19</sup>

19 RD/Ea/H5

Eastry RDC surveyor's report, 13 February 1906



G.3. **Description:** The report of the surveyor to the Eastry Rural District Council records:

'Eastry February 13<sup>th</sup> 1906 ... Ripple bridle road. I have seen Colonel Sladen who has one style on his land which obstructs the road, he has never seen anyone want to go that way for over 20 years, he is quite willing to have a gate fixed but would like to call the council's attention to the dangerous crossing if the railway gates are left unlocked. I wrote to the Railway Company about the gates being locked, their letter I submit. I also wrote to Messrs Worsfold and

Hayward of Dover, Agents for Appleton Farm where there is [sic] two styles which obstruct the road their letter I will also submit. When talking to Colonel Sladen I ask him when I done the siding in Winkland Oaks Lane if he would allow me to cut the little bank back, this lane is very narrow not wide enough to get the roller up. If we do the siding at once the Colonel would allow us to set it back two feet and would take all the dirt away. This would be a great improvement to this lane.'

The report is marginally annotated: 'To be carried out'.

G.4. **Conclusion:** The report refers to the 'Ripple bridle road'. Lieutenant Colonel Joseph Sladen was resident at Ripple Court until his death in 1930. The reference to the Ripple bridle road on Col. Sladen's land is likely to be a reference to footpath EE451 between Ringwoud and C (for which an order has been made to upgrade to bridleway), as the Colonel is reported as having concerns about the level crossing gates, which would be less relevant to the context if the stile on Col. Sladen's land were between C and E.

G.5. The report concludes with a reference to Col. Sladen approving works to Winkland Oaks Lane. That lane may be the appeal way and road leading from C to Winkland Oaks Farm (short of D), as the Martin to Ripple road is referred to in a subsequent report<sup>20</sup> as 'the road leading from Ripple school to Martin', and the requirement for the landowner's approval to and assistance with the works is more consistent with the character of the road leading to the farm itself, as a 'very narrow [road] not wide enough to get the roller up'. However, it cannot be said that the identification is certain.

G.6. **Points:** 0

## H. Finance (1909–1910) Act 1910

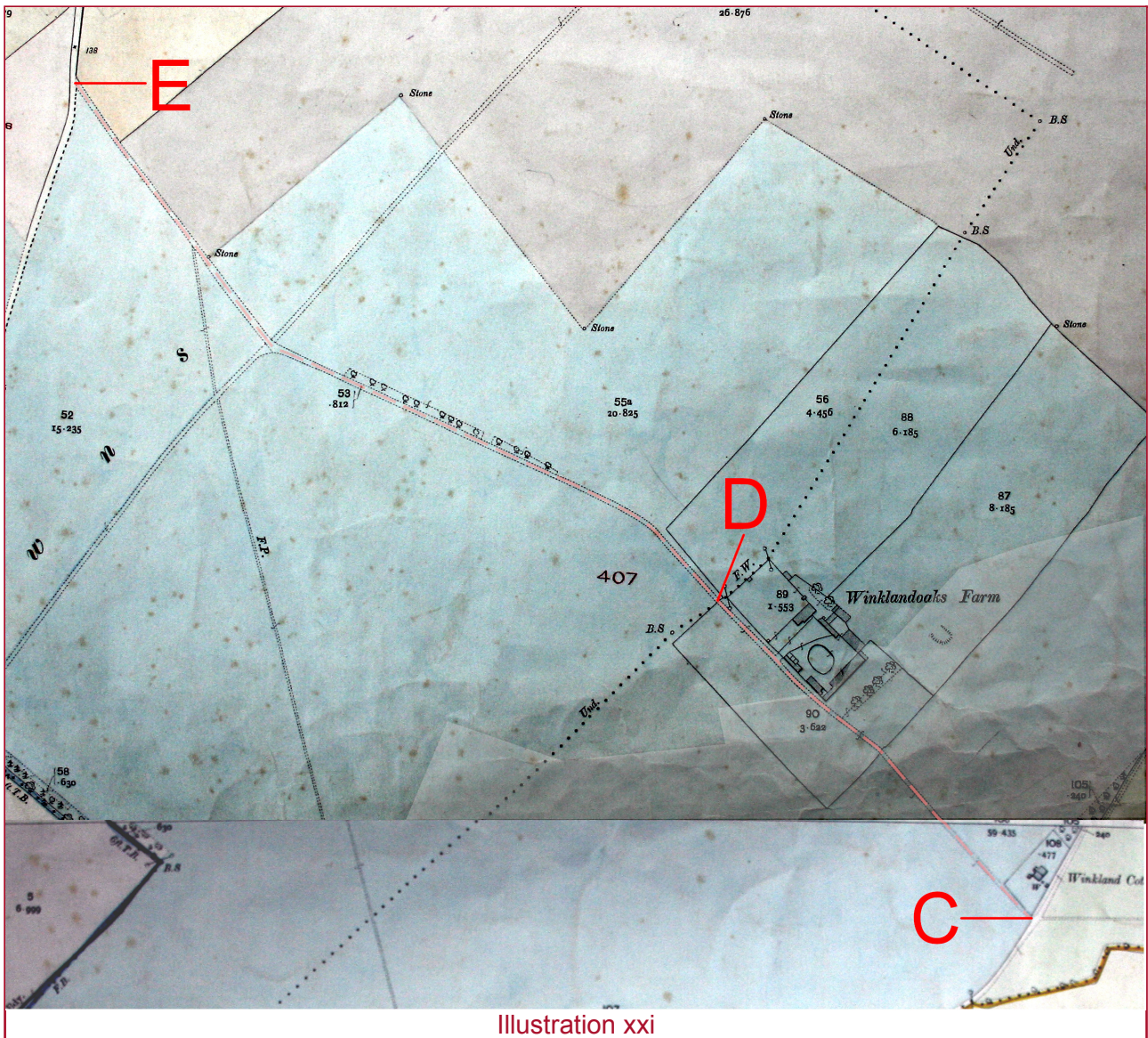
H.1. **Date:** 1911

H.2. **Source:** National Archives<sup>21</sup>; Kent County Archives<sup>22</sup>

<sup>20</sup> See item IV.I.

<sup>21</sup> IR 124/5/160

<sup>22</sup> IR4/25/1



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

H.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’. This is because s.35 of the 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.

H.5. 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...<sup>23</sup>. 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 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.

H.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 sign-posted as such, or referred to as such by the landowner or an employee of the landowner when the valuer was surveying the land.

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

H.8. The record map prepared by the Inland Revenue shows the appeal way to be coloured within the hereditament between C and E:

- hereditament 407: Winkland Oaks Farm
- abutting hereditament 491
- abutting hereditament 497

H.9. Hereditament 407 is recorded in the field books for East Langdon, which the National Archives reports as 'missing at transfer'. However, the duties on land values book contains an entry for unit 407: no deduction is shown for rights of way.

H.10. **Analysis:** 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.<sup>24</sup> It was said by the Chancellor, subsequently, that

<sup>23</sup> Discounts for easements affecting the land were separately requested and recorded in the valuation book.

<sup>24</sup> 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.

the two duties expressly were designed to help ensure an honest valuation. 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 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.

H.11. 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 (as does the surveying authority's report on the application, at annexe B, para.123) 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.

H.12. **Conclusion:** No conclusion can be drawn from the absence of any deduction for Winkland Oaks Farm (unit 407), as no landowner was obliged to claim deductions, and a landowner may have been incentivised not to claim a deduction.

H.13. Moreover, the appeal way was recorded as a public footpath in the draft map prepared under Part IV of the National Parks and Access to the Countryside Act 1949 — a right of way which was very likely to have subsisted at the time of the 1910 Act survey — see, in particular, the evidence from the Sutton tithe map at Tithe Act 1836 (item IV.D above). Thus we confidently can conclude that the landowner chose not to seek a deduction for the right of way on the land, notwithstanding its existence. There is no evidence available from this source to show whether that way was a bridleway or footpath.

H.14. **Points:** 0

## I. Eastry Rural District Council surveyor's report (1911)

I.1. **Date:** 1911

I.2. **Source:** Kent County Archives<sup>25</sup>

Eastry May 16<sup>th</sup> 1911

Ripple

Clerk: to write

I received a letter from Mr J.E. Quested of Folkestone, asking me if I could meet him at Winkland Oaks Farm Ripple in reference to the bad state of the road leading from Dover Hill Sutton past Winkland Farm to the road leading

from Ripple school to Martin.

I met Mr Quested there last Thursday and pointed out to him that the road was only a bridle Rd

Mr Quested would like to know who is liable for the repairs to the road, as it is dangerous.

Illustration xxii

I.3. **Description:** The surveyor's report to the Eastry Rural District Council records:

Eastry May 16<sup>th</sup> 1911. ... Ripple. I received a letter from Mr J.E. Quested of Folkestone, asking me if I could meet him at Winkland Oaks Farm Ripple in reference to the bad state of the road leading from Dover Hill Sutton past Winkland Farm to the road leading from Ripple school to Martin. I met Mr Quested there last Thursday and pointed out to him that the road was only a bridle Rd. Mr Quested would like to know who is liable for the repairs to the road, as it is dangerous.

The report is annotated: 'Clerk to write'.

I.4. The surveyor is the assistant surveyor, D E Foster, appointed by Eastry Rural District Council: 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, including Sutton and Ripple, while an assistant surveyor, Mr Goodsell (also appointed in 1905), was responsible for Ash No.2 district comprising the north of the rural

district. Thus it may be inferred that Mr Foster had an excellent knowledge of his half of the rural district, acquired over his six years in post with responsibility for the Eastry No.1 district, and unknown period in his prior post.

I.5. The request was to meet 'at Winkland Oaks Farm', and no doubt the surveyor and Mr Qusted did just that. It is very likely that the intention was to walk (or ride) the bridle road to view the parts out of repair (otherwise why would they propose to meet on site?), and also to confer with the farmer or proprietor. Even if they did not confer, it is highly likely that the surveyor asserted the status of the road as a bridle road on the basis of long experience of his district. A meeting at the farm in 1911 (a time of far more intensive agricultural labouring) would scarcely have escaped the notice of the farmer or the farmer's employees — particularly if the farm road were considered to be private.

I.6. Curiously, Mr Qusted was later reported in 1918 as the lessee of Winkland Oaks Farm (but not necessarily the tenant).<sup>26</sup> It is possible that he was the lessee at the time of this correspondence, in 1911 (this would also account for the meeting at Winkland Oaks Farm). If so, it may be that the correspondence is also evidence that, as lessee, Mr Qusted acknowledged that the appeal way was a bridleway, but hoped that the council could be persuaded to pay for its maintenance.

I.7. **Conclusion:** The report clearly refers to the appeal way between C and E, and identifies the way as 'only a bridle Rd'. The report is therefore good evidence for the status of the way between C and E as understood by a highly experienced surveyor to the council, and (as the report was accepted by the council with a record that the clerk was to write), by the council also. It is likely that the site meeting indicates that the surveyor's understanding of the status of the way was also shared by the farmer or landowner, else any dispute would have been recorded in the surveyor's report.

I.8. **Points:** 4

## J. Eastry Rural District Council surveyor's report (1913)

J.1. **Date:** 1913

J.2. **Source:** Kent County Archives<sup>27</sup>

<sup>26</sup> *East Kent Gazette*, 29 June 1918, p.3: [www.britishnewspaperarchive.co.uk/viewer/bl/0002521/19180629/065/0003](http://www.britishnewspaperarchive.co.uk/viewer/bl/0002521/19180629/065/0003)

<sup>27</sup> RD/Ea/H7



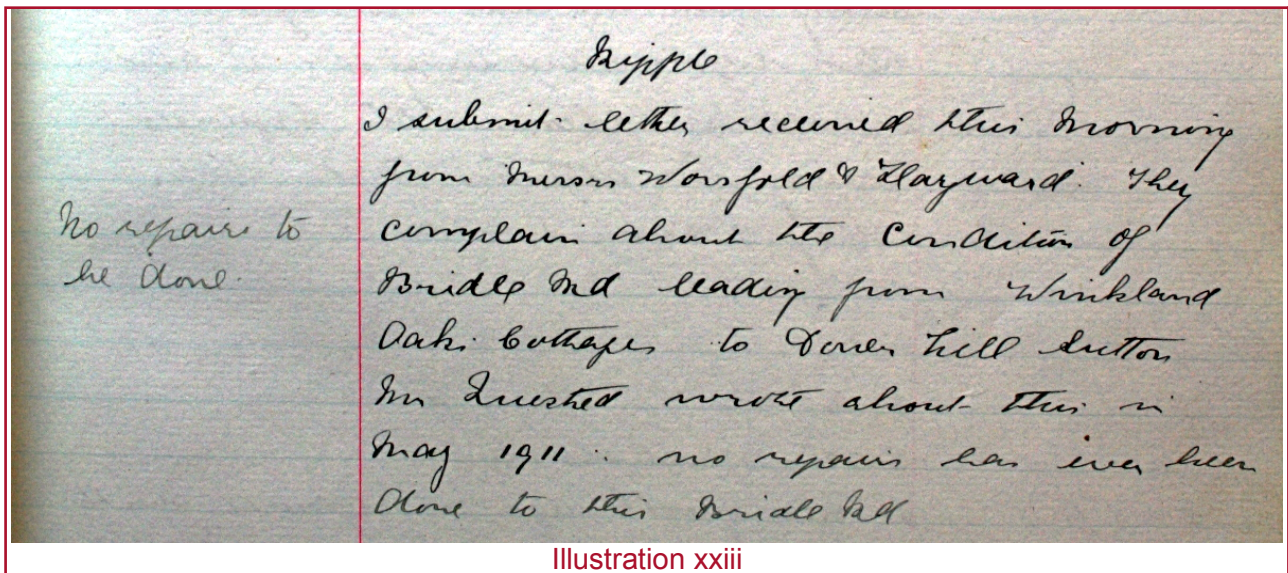


Illustration xxiii

J.3. **Description:** The surveyor's report to the Eastry Rural District Council meeting of 19 August 1913 records:

Ripple. I submit letter received this morning from Messrs Worsfold & Hayward. They complain about the condition of Bridle Rd leading from Winkland Oaks Cottages to Dover Hill Sutton. Mr Quested wrote about this in May 1911: no repairs has ever been done to this Bridle Rd.

The report is marginally annotated: 'No repairs to be done'. Note that the cottages at C were formerly known as Winkland Cottages,<sup>28</sup> and then Winklandoaks Cottages,<sup>29</sup> but the latter name is now used by a new pair of dwellings erected at E. The cottages at C are now known as Oaklands.

J.4. Worsfold & Hayward was a firm of land agents *etc.* established in 1821 (now Kreston Reeves).<sup>30</sup> They were likely to have been land agents for a neighbouring holding. At this time, they were dominant in the land agency business in this area, and represented some key clients, including the Dean and Chapter of Canterbury Cathedral.

J.5. **Conclusion:** It is clear from the context that the 'Bridle Rd leading from Winkland Oaks Cottages to Dover Hill Sutton' must refer to the appeal way. The report confirms that the appeal way continued to be recognised as a public bridle road, but that it was not publicly maintainable.

J.6. In the report in item IV.G above, maintenance of 'Winkland Oaks Lane' is contemplated. If that report refers to the appeal way, it is suggested that the position is that the road from C to Winkland Oaks Farm south of D was considered publicly maintainable, but not the bridle road from the farm through D to E.

J.7. **Points:** 1†

† confirms data in earlier entry in item IV.I above.

28 Ordnance Survey County Series twenty-five inch, second edition: [maps.nls.uk/view/103681985](https://maps.nls.uk/view/103681985)

29 Ordnance Survey County Series twenty-five inch, fourth edition: [maps.nls.uk/view/103681979](https://maps.nls.uk/view/103681979)

30 [www.krestonreeves.com/about/history/](http://www.krestonreeves.com/about/history/)

## K. Electricity (Supply) Acts 1882 to 1922

K.1. **Date:** 1923

K.2. **Source:** London Gazette<sup>31</sup>

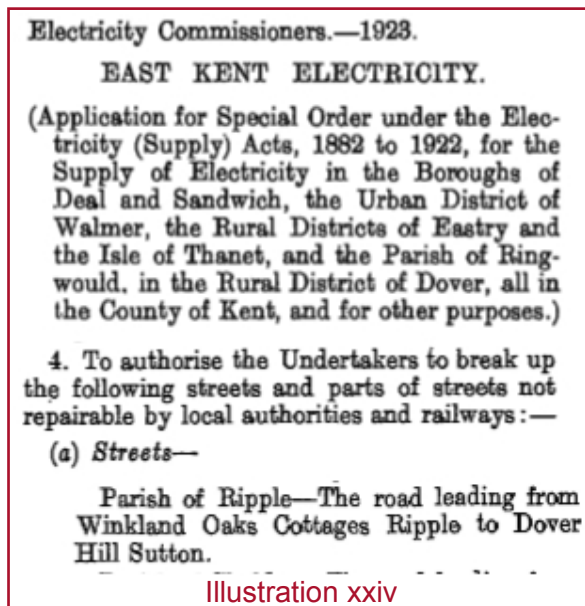


Illustration xxiv

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 Ripple, is:

| The road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton.

K.4. **Analysis:** The Electricity (Supply) Acts 1882 to 1922 provided for powers to be conferred on undertakers for the supply of electricity for public and private purposes. In the present case, notice of intention was given in the London Gazette for 23 October 1923 that application would be made to the Electricity Commissioners for a Special Order under the Electricity (Supply) Acts 1882 to 1922, to confer powers for the supply of electricity in East Kent on one Lt-Col. Harold Whiteman Woodall.<sup>32</sup>

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

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

K.6. The notice sets out, *inter alia*, details of 'streets and parts of streets not repairable by local authorities and railways' which the applicant wishes to 'break up' in order to lay its apparatus. The notice gives an opportunity for any 'local or other public authority, company or person desirous of bringing before the Electricity Commissioners any objection respecting the application'. The notice also contains for the same purpose a list of

<sup>31</sup> Issue 32873, p.7140: [www.thegazette.co.uk/London/issue/32873/page/7140](http://www.thegazette.co.uk/London/issue/32873/page/7140).

<sup>32</sup> The notice records that powers alternatively might be conferred on a company to be registered for the purpose.

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.7. 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.8. 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. Compare with Part XI of the

Highways Act 1980, which sets out the code for *Making up of Private Streets*, in which:

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

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

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

K.9. 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.10. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in section 25 of the Act so as to include any street as defined in the 1882 Act. Given that 'street' is defined in the 1882 Act to include a 'road', it is not clear whether this circular provision can have been intended, and is suggestive of some confusion on the part of the draughtsman.

K.11. 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.12. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird and Others*<sup>33</sup>, in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense<sup>34</sup>, and the observation of the court in *Coverdale v Charlton*<sup>35</sup> that vesting enabled the authority 'to do such things as are commonly done in or under a street':

33 [1896] AC 434

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

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

K.13. Thus, the inference should be that the Electricity (Supply) Acts 1882 to 1922 were not intended to enable undertakers to lay their apparatus in wholly private roads (such as farm access roads and private carriage drives) without compensation, but only in public roads — including those which were privately maintainable.

K.14. 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:

<b>Description in notice</b>	<b>Presumed location</b>	<b>Comments</b>
<i>Parish of Ash—</i>		
i. Richborough Castle Road	<a href="#">TR319603</a> to <a href="#">TR323602</a>	Now known as Castle Road: restricted byway EE43A; title unregistered
ii. White House Drove Road	<a href="#">TR318604</a> to <a href="#">TR319613</a>	Unrecorded ('private street' in NSG); title unregistered
iii. Rubery Drove Road	<a href="#">TR314607</a> to <a href="#">TR315613</a>	Unrecorded; registered title
iv. Potts Farm Drove Road	<a href="#">TR301609</a> to <a href="#">TR304621</a>	Public footpath EE49; registered titles
v. the road leading from Sandhill Farm to Cooper Street	<a href="#">TR298604</a> to <a href="#">TR304602</a>	Public footpath EE52; title unregistered
vi. the road leading from Lower Goldstone to Red House Ferry	<a href="#">TR294611</a> to <a href="#">TR296625</a>	Now known as Goldstone Drove; public footpath EE55; part title unregistered
vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane)	<a href="#">TR281582</a> to <a href="#">TR281577</a>	Part adopted road, part public bridleway EE193; title unregistered

viii. the road leading from Durlock Road to Ash-Canterbury Main Road	<a href="#">TR275577</a> to <a href="#">TR268582</a>	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	<a href="#">TR274615</a> to <a href="#">TR274624</a>	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	<a href="#">TR275598</a> to <a href="#">TR280607</a>	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	<a href="#">TR313537</a> to <a href="#">TR309529</a>	Unrecorded; subject of application PROW/DO/C374 to record as restricted byway; part unregistered
<i>Parish of Eastry—</i>		
xiii. the road leading from Eastry Mills to Hammill	<a href="#">TR302545</a> to <a href="#">TR285552</a>	BOAT EE109; part unregistered
<i>Parish of Eythorne—</i>		
xiv. the road leading from Upper Eythorne to Brimsdale Farm	<a href="#">TR283491</a> to <a href="#">TR280491</a>	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,	<a href="#">TR262568</a> to <a href="#">TR255555</a>	Part adopted, part unrecorded, part public bridleway EE269A; land unregistered
xvi. the road leading from Buckland Lane to Crixhall Farm	<a href="#">TR269554</a> to <a href="#">TR267556</a>	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	<a href="#">TR346512</a> to <a href="#">TR342507</a>	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	<a href="#">TR333509</a> to <a href="#">TR343501</a>	Public footpath EE422; subject of application PROW/DO/C456 to record as bridleway; title registered
<i>Parish of Nonington—</i>		
xix. the road leading from Holt Street to Nonington Mill	<a href="#">TR262521</a> to <a href="#">TR268517</a>	Now known as Mill Lane; adopted road; unregistered title
xx. the road leading from Gooseberry Hall to Young Wood, Goodnestone (Pilgrims Way)	<a href="#">TR266530</a> to <a href="#">TR259538</a>	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	<a href="#">TR312506</a> to <a href="#">TR311511</a>	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	<a href="#">TR252616</a> to <a href="#">TR249618</a>	Unrecorded; unregistered title
<i>Parish of Ripple—</i>		
xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton	<a href="#">TR342482</a> to <a href="#">TR334488</a>	Public footpath EE427; subject of this application; title registered
<i>Parish of Sholden—</i>		
xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay	<a href="#">TR371545</a> to <a href="#">TR360572</a>	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	<a href="#">TR256630</a> to <a href="#">TR266630</a>	Restricted byway EE485
<i>Parish of Sutton—</i>		
xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester)	<a href="#">TR334493</a> to <a href="#">TR314476</a>	Public footpath EE417; candidate for a future application; part unregistered
<i>Parish of Wingham—</i>		

xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road).	<a href="#">TR249571</a> to <a href="#">TR260571</a>	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	<a href="#">TR308561</a> to <a href="#">TR331576</a>	Part was known as Black Lane (Sandwich), now St Barts Road; part public footpath EE226, public bridleway ES8, part BOAT ES10, part adopted; subject of application PROW/DO/C385 to record as a bridleway; part unregistered title, part land unregistered
<i>Parish of Worth</i> —		
xxix. the road leading from Woodnesborough and Sandwich Road to Station	<a href="#">TR323574</a> to <a href="#">TR331576</a>	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,	<a href="#">TR329568</a> to <a href="#">TR334560</a>	Now known as Coventon Lane; public bridleway EE236; part unregistered title
xxxi. the road leading from Deal and Sandwich Main Road to Temptye Farm,	<a href="#">TR328564</a> to <a href="#">TR341565</a>	Public bridleway EE236; part unregistered title
xxxii. the road leading from Blue Pigeons Farm to Sandwich Bay	<a href="#">TR344566</a> to <a href="#">TR355575</a>	Public bridleway EE232; part unregistered title

K.15. 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.16. 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.17. 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, three (apart from the appeal way, xv) are under application to be recorded as restricted byways (xii, xxiii, xxviii), and two are the likely subject of future applications (xviii and xxvi).

K.18. **Conclusion:** The three scheduled roads which are not, even now, recorded as public ways or the subject of applications for recording, are:

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

K.19. Of these, the first two are among a number of drove roads leading into the Ash marshes, the status of which is uncertain. But for comparison, see the application to record Corner Drove as a restricted byway (PROW/DO/C413), which demonstrates that evidence may be sufficient to record as a restricted byway. It seems likely that the applicants for the order proceeded on the basis that the ways were public, but potentially not publicly-maintainable.

K.20. As to the third (i.e. xxii), there is supporting evidence that this road may be public: it is excluded from assessment on the tithe map, and there is a record of material being put on the road in 1893. An absence of publicly-recorded status today does not mean that the road is not a public road.

K.21. Thus nearly all, and perhaps all, of the scheduled roads are public ways today. Of those 8½ ways which are today recorded as public footpaths, three (including the appeal way) are under application for upgrading, and the remainder are drove ways on Ash Level, where the recording as footpath is for want of investigation of higher rights for driving animals, riding horses or vehicles. And indeed, where such investigation has been carried out, in relation to Corner Drove and Brazen Street at Ware<sup>36</sup>, which were not among those cited in the notice, the correct status, with strong evidential support, is claimed to be restricted byway.<sup>37</sup>

K.22. It is therefore concluded that ways in the notice identified as streets not repairable by local authorities are likely to be those which were regarded at the time as of either bridle or vehicular road status, being described as 'roads'.

K.23. The notice therefore is good evidence of the status of the appeal way between C and E as a public way, privately maintainable, of at least the status of bridleway.

K.24. **Points:** 2

## L. Eastry Rural District Council report (1924)

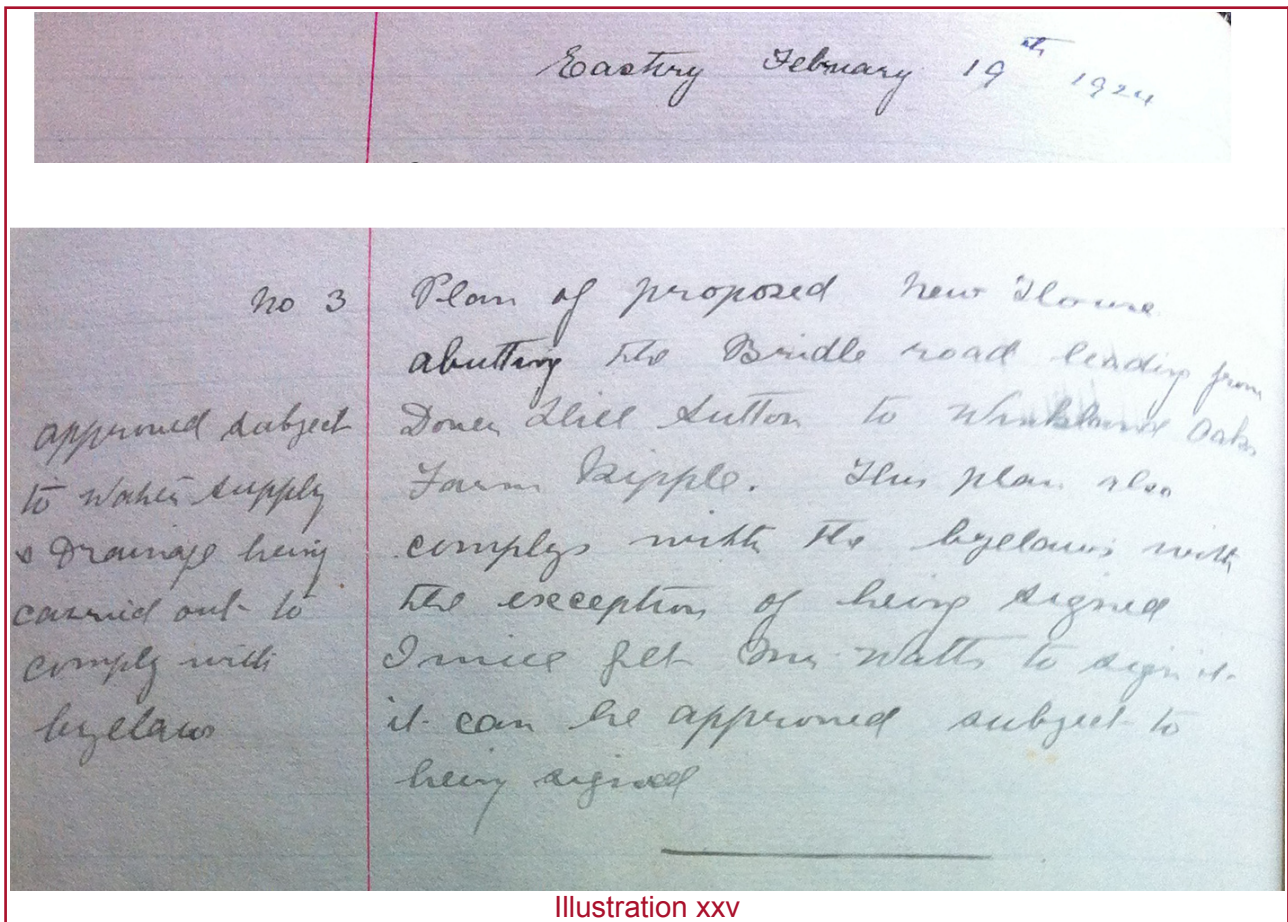
L.1. **Date:** 1924

L.2. **Source:** Kent County Archives<sup>38</sup>

36 Applications PROW/DO/C413 and PROW/DO/C414

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

38 RD/Ea/H8, Eastry Rural District Council minutes.



L.3. **Description:** The surveyor's report to the Eastry Rural District Council records:

Eastry February 19 1924 ... No 3 Plan of proposed New House abutting the Bridle road leading from Dover Hill Sutton to Winkland Oaks Farm Ripple. This plan also complys [sic] with the byelaws with the exception of being signed[.] I will get Mr Watts to sign if it can be approved subject to being signed.

A marginal note to the report states:

Approved subject to water supply & drainage being carried out to comply with byelaws

L.4. **Conclusion:** The report refers to the appeal way between D and E. The report confirms that the appeal way continued to be recognised as a public bridle road by the surveyor to the council, and (as the report was accepted by the council with a record of approval), by the council also.

L.5. By this date, the surveyor, D E Foster, had been in post with the council for at least 19 years. At a time when there were no published records of what were public rights of way, the surveyor's knowledge of the highway network within the rural district no doubt was second to none, and the surveyor was quite clear what ways in the district were acknowledged bridleways.

L.6. **Points:** 1†

† confirms data in earlier entries for reports to the Eastry Rural District Council in items IV.G, IV.I and IV.J above.

## M. Sale particulars (1936)

M.1. **Date:** 1936

M.2. **Source:** Kent County Archives<sup>39</sup>

### Map, lot 6

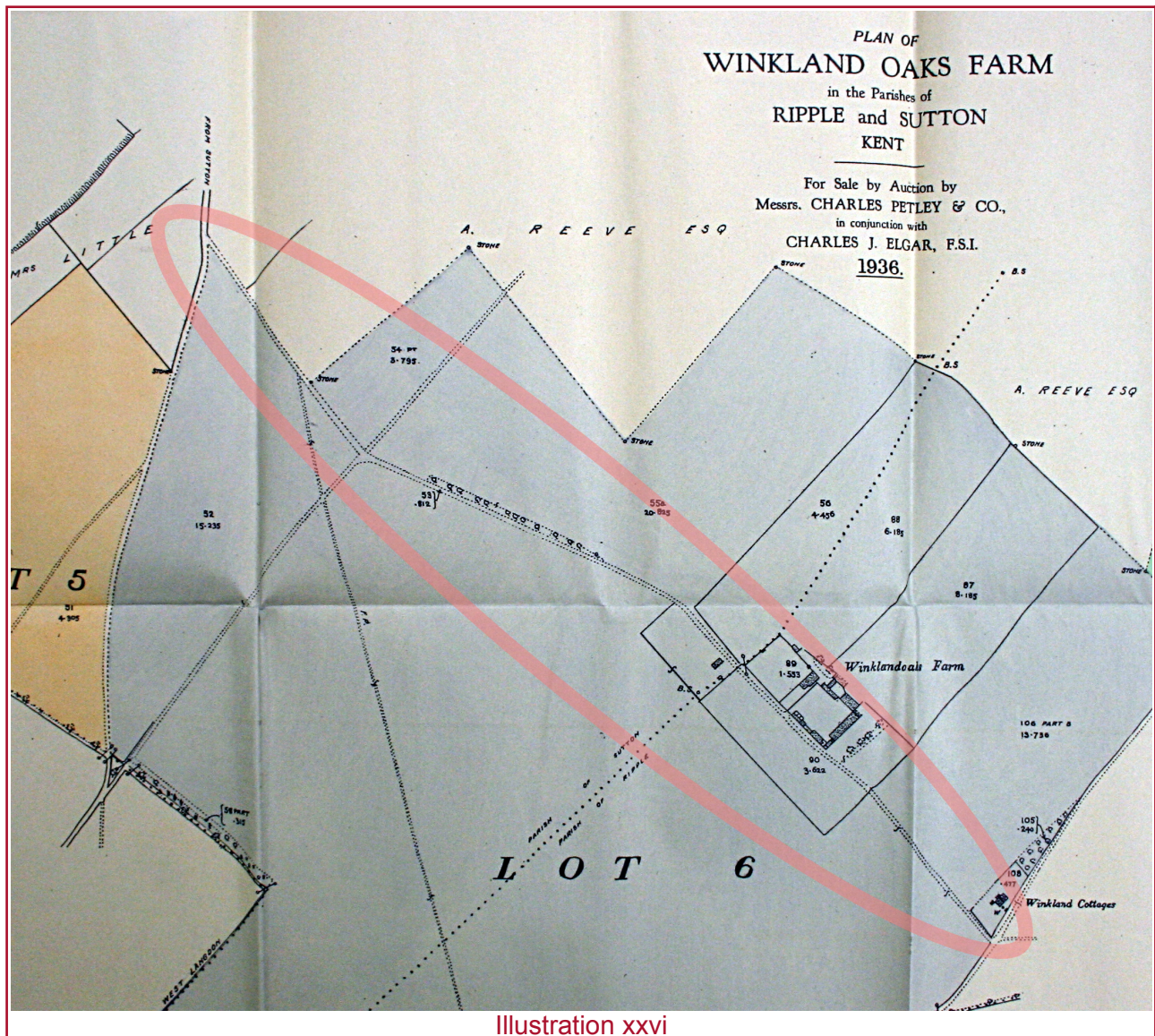


Illustration xxvi

## Particulars of sale, lot 6

LOT 6 (Coloured Grey)

**The Useful Upland Holding**

known as

**WINKLAND OAKS FARM**

Situated in the Parishes of Ripple and Sutton, comprising :—

**Farmhouse Premises, Two Cottages, One Bungalow, Arable and Pasture Land**

SCHEDULE TO LOT 6.

No. on Plan.	Parish.	Description.	Acreage.	Total.
87	Ripple	Pasture	8.185	
88	Do.	Do.	6.185	
89	Do.	Homestead	1.553	
90	Do.	Pasture	3.622	
105	Do.	Shaw	.240	
106	Part B. Do.	Arable	13.736	
107	Part A. Do.	Do.	59.120	
107	Part B. Do.	Pasture	2.760	
108	Do.	Cottages and Gardens	.477	
				95.878
52	Sutton	Arable	15.235	
53	Do.	Road	.812	
54	Do.	Arable	3.795	
55	Do.	Do.		

Illustration xxvii

M.3. **Description:** Particulars of sale for the auction of Winkland Oaks Farm and Appleton Farm on 26 September 1936.

M.4. The whole of the appeal way between C and E lies within lot 6, Winkland Oaks Farm. Between C and D, the appeal way is marked on the map (which is derived from the Ordnance Survey County Series plan), and part of parcel numbers 107 and 90 but not separately identified; between D and E, it is allocated parcel number 53, and this is identified in the particulars as 'road'.

M.5. **Conclusion:** The description of the appeal way between D and E as 'road' is consistent with a bridle road.

M.6. **Points:** 1

## N. National Farm Survey

N.1. **Date:** 1941–43

N.2. **Source:** National Archives<sup>40</sup>

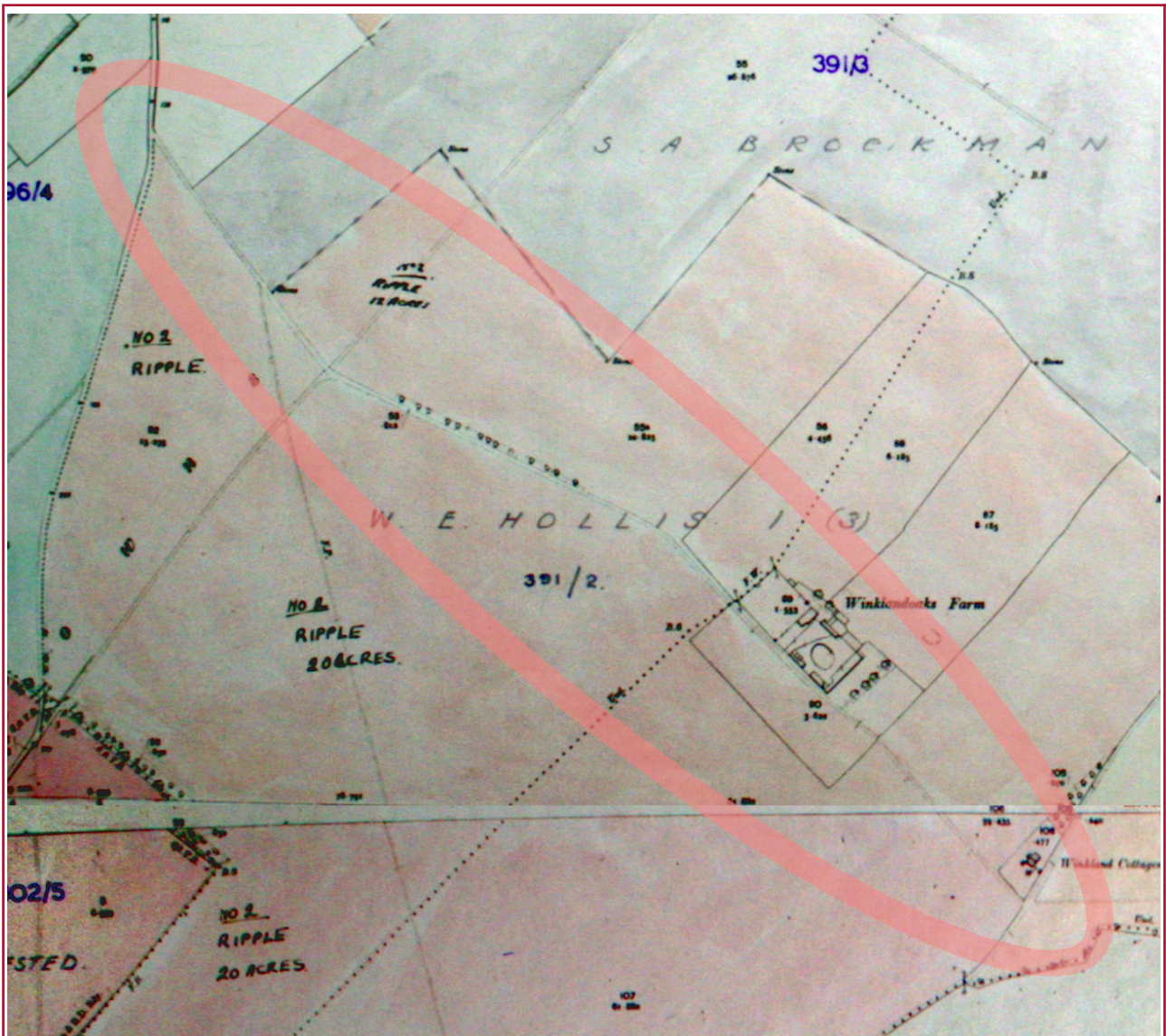


Illustration xxviii

N.3. **Description:** These maps are prepared in conjunction with the individual farm records of the National Farm Survey conducted by the (then) Ministry of Food. The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a colour wash, and its code number is added in black ink. Where unproductive land runs between holdings, it is excluded from the holdings.

N.4. In this case, the holding is coloured pink, but unusually, the appeal way is coloured blue (at least between D and E), notwithstanding that it generally lies across the holding.

N.5. **Conclusion:** The use of a blue colour wash along the appeal way (notably between D and E) suggests that the appeal way was regarded as unproductive land which was not within the control of the farmer. This must be because it was considered to be a bridle road (there being no suggestion that it is a public road between D and E). It is most unlikely that a footpath would have been presented in the same way.

N.6. **Points:** 2

## O. Parish survey

O.1. **Date:** 1952–53

O.2. **Source:** Kent County Council archives<sup>41</sup>

### Sutton parish map

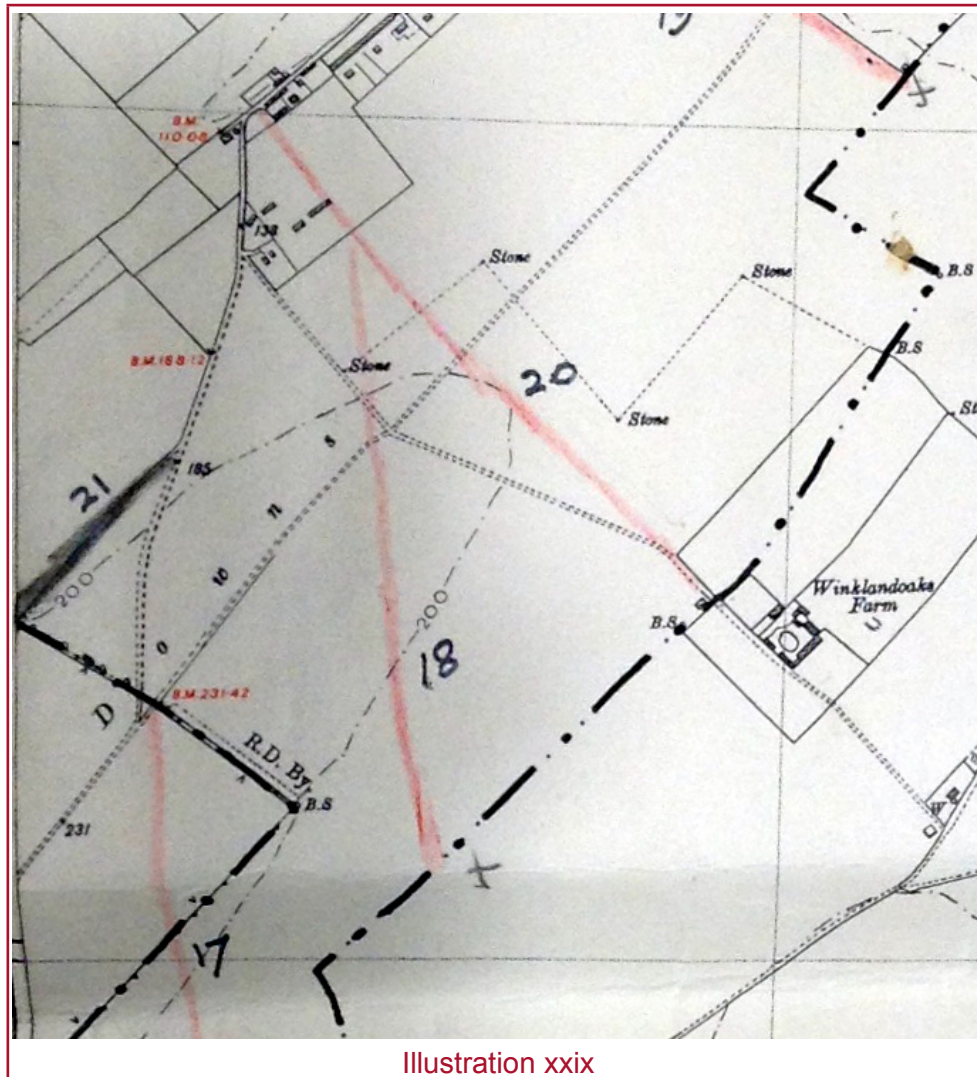
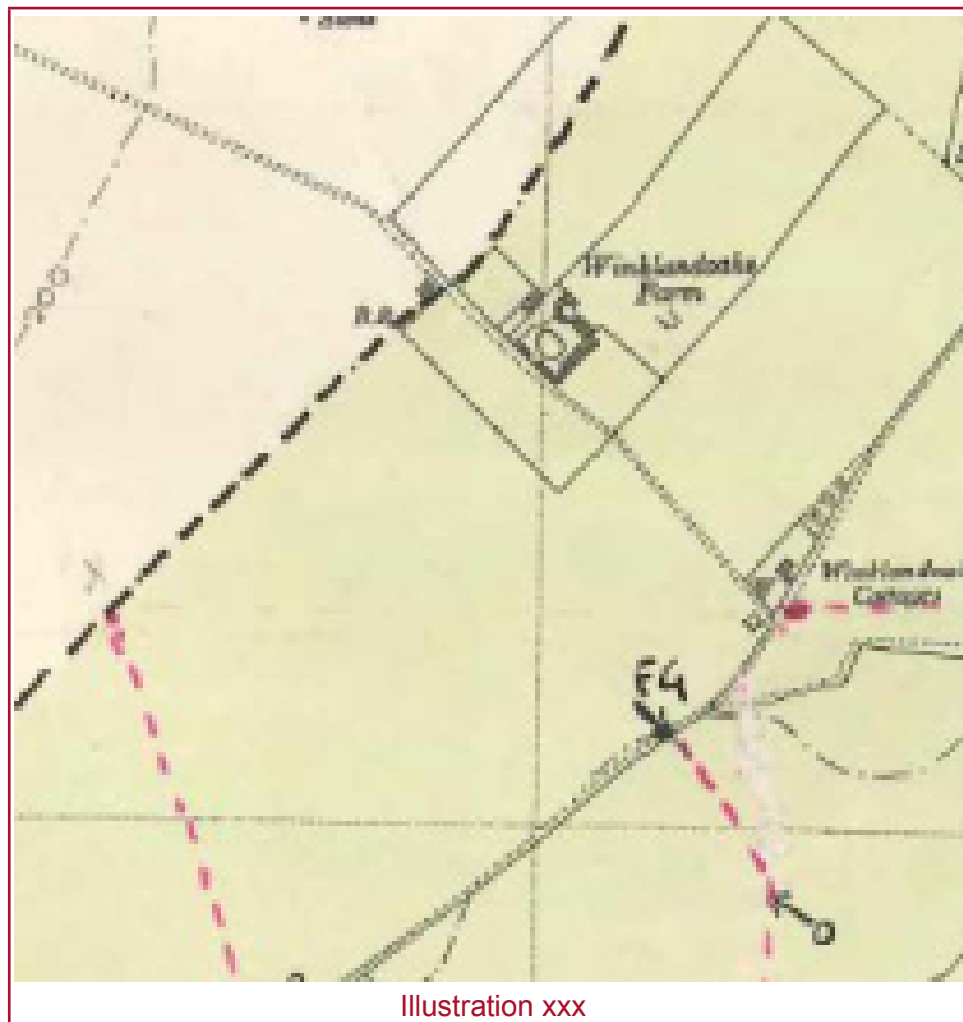


Illustration xxix

## Ripple parish map



O.3. **Description:** Sutton and Ripple parish councils contributed parish surveys to the compilation of a draft definitive map under Part IV of the National Parks and Access to the Countryside Act 1949.

O.4. The Sutton parish map showed a footpath lying in a direct line between the bottom of Dover Hill and the parish boundary at D. This alignment subsequently attracted objections, and the route was amended to the line of footpath EE427 now shown on the definitive map and statement. In a schedule of rights of way drawn up to accompany the parish map, the council identified all 25 rights of way in the parish as 'footpaths'.

O.5. The Ripple parish map showed no entry along the line of the appeal way. The way was subsequently included on the draft map as a carriage road footpath.

O.6. **Conclusion:** The Sutton parish map was poorly executed, and identified a fictional footpath between Winkland Oaks Farm and Dover Hill, subsequently corrected following objection. The council's presentation of all of the rights of way in its parish as 'footpaths' does not demand confidence in its work. This may account for the appeal way having been recorded between D and E as a footpath vice bridleway.

O.7. The Ripple parish map may have omitted the appeal way between C and D because it was believed to be a county road which did not need to be recorded on the definitive map and statement.

O.8. **Points:** 0