

The Kent County Council (Bridleway EE427 at Ripple and Sutton) Definitive Map Modification Order 2021



ROW/3283869

Statement of case for the British Horse Society as supporter of the order

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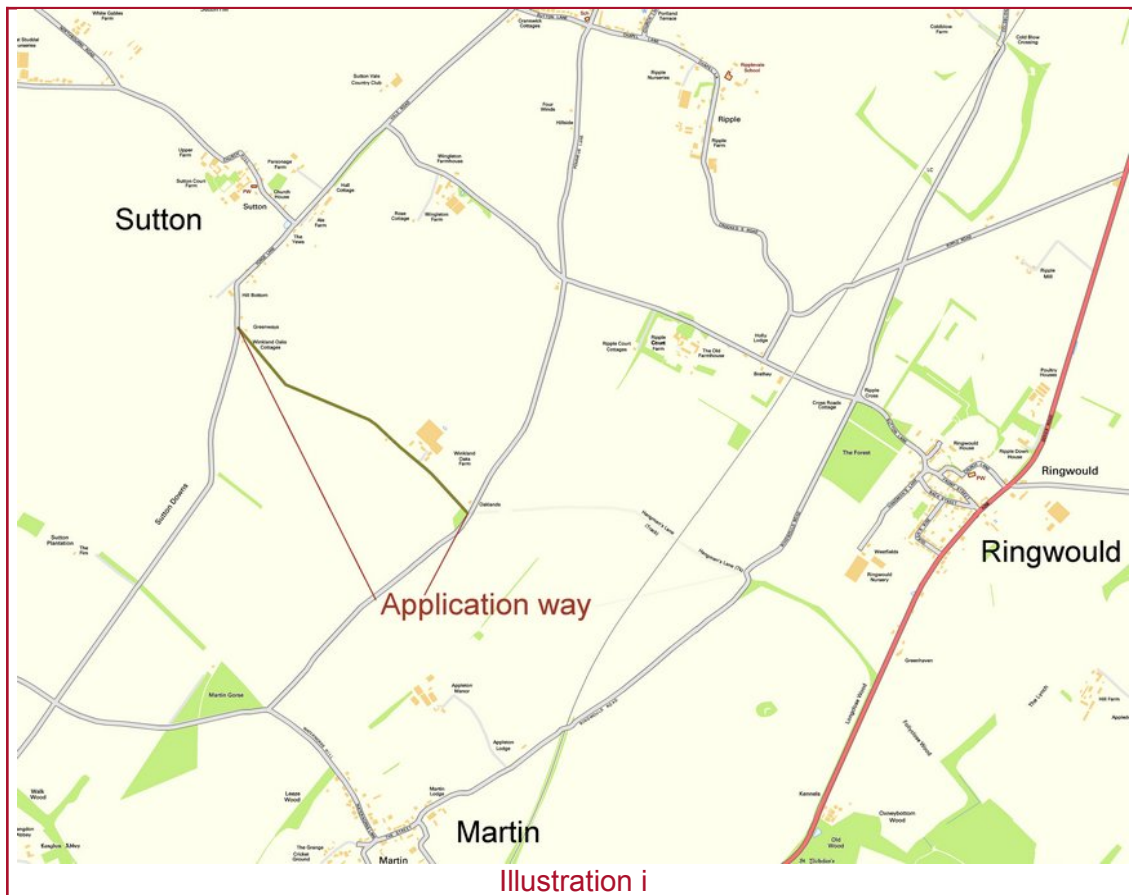
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I. General remarks

A. Quick reference

■ Location plan



A.1. **Planning Inspectorate reference:** ROW/3271783 (previous appeal reference: FPS-W2275-14A-23)

A.2. **Order:** The Kent County Council (Bridleway EE427 at Ripple and Sutton) Definitive Map Modification Order 2021

A.3. **Surveying authority reference for application:** PROW/DO/C381

A.4. **Existing recorded public right of way comprised in order way:** EE427

A.5. **Parishes of:** Sutton, Ripple

A.6. **Ancient parishes of:** Sutton, Ripple

A.7. **Hundred of:** Cornilo

A.8. **Termination points:** Dover Hill on Forge Lane in the parish of Sutton (point A on the order plan), to Winkland Oaks Lane in the parish of Ripple (B)

A.9. **Termination points Ordnance Survey grid references:** TR33384883 (A) to TR34204817 (B)

A.10. **Postcode:** CT15 5HW

A.11. **Ordnance Survey Explorer sheet:** 138

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

B. Introduction

B.1. This statement of case is made by the British Horse Society in relation to the definitive map modification order made by Kent County Council on 1 July 2021 ('the order').¹ It replaces all previous representations made by the society in relation to the application for an order and the appeal against the council's refusal to make the order.

B.2. The society is the applicant for the order, and is referred to hereafter as 'the applicant'. The applicant supports confirmation of the order.

B.3. This statement of case comprises at part I (this part), general submissions in support of the order; at part II, *Objections to the order by third parties*; at part III, *Photographs along the order way*; and at part IV, *Documentary evidence* relating to the order way.

B.4. In this statement of case:

- References are in the form 'item I.A' or 'para.'I.A.1', where 'I' represents the part number which is shown in the footer of each page. Thus this bullet point is within para.I.B.4. Cross-references within an item (this is item I.B *Introduction*) may be shortened to, for example, 'para.B.2'.
- The cross-references in the electronic pdf are hyperlinked.
- References to the objector are to the objection addressed in part II below and in the corresponding parts of the analysis of *Documentary evidence* in part IV below,
- The lettering A, X and B refers to the lettering adopted in the order. Points A and B were referred to in the application as points E and C respectively, while point D was where the order way crossed the parish boundary — thus the way originally was described as E–D–C, and now is described as A–X–B (but D and X are differently located either side of Winkland Oaks Farm). Points A and B were located on Hangman's Lane, footpath EE451, which is subject to a separate definitive map modification order to upgrade to bridleway, which has been passed to the Secretary of State for confirmation 'on the papers'.² The location of path EE451 and the original location points A–E, are shown below.

¹ The full title of the order is given at para.I.A.2 above.

² Under reference ROW/3270493.

Location plan showing path EE451 and original location points



C. Locational details

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

C.2. Recorded footpath EE427 begins on Dover Hill on Forge Lane at A (Ordnance Survey grid reference TR33384883) and lies south-east along a slightly sunken track and then east-southeast along a well-defined track to a gate on the parish boundary between Sutton and Ripple. The footpath then continues south-east, and along the south-west side of the farm buildings at Winkland Oaks Farm, continuing via a gate and cattle grid at X, south-east along the farm drive, to Winkland Oaks Lane (the road from Martin to Ripple) at B (TR34204817).

D. Nomenclature

D.1. Sutton is sometimes referred to as Sutton next Ripple, or Sutton next Dover, to distinguish it from other parishes in Kent whose name begins with Sutton.

D.2. The cottages at B were formerly known in the nineteenth century as Winkland Cottages,³ and then in the first half of the twentieth century as Winklandoaks Cottages,⁴ but the latter name is now used by a new pair of dwellings erected at A. The cottages at B are now known as Oaklands.

E. Background

E.1. An application was made by the applicant on 1 August 2016 under s.53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under s.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.⁵

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

E.3. An appeal lay⁶ against the determination of the surveying authority to refuse to make the order applied for, in relation to upgrading footpath EE427.

E.4. The appeal was determined by an inspector appointed by the Secretary of State in a letter dated 15 June 2021. The appeal was allowed, and the surveying authority was directed to make the order applied for within three months of the date of the direction. The order was duly made on 1 July 2021. The order relates only to footpath EE427 (a separate order being before the Secretary of State for footpath EE451).

F. Special review

F.1. Part of footpath EE427 between the parish boundary and B was formerly shown on the definitive map and statement as a road used as a public path (RUPP) (see Parish survey at item IV.O below). 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 analysis of any evidence, and the absence of any objection to the downgrade (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 1983.⁷

F.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*

3 Ordnance Survey County Series twenty-five inch, second edition: maps.nls.uk/view/103681985

4 Ordnance Survey County Series twenty-five inch, fourth edition: maps.nls.uk/view/103681979

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

6 Under para.4(1) of Sch.14 to the 1981 Act, PINS reference: FPS/W2275/14A/23.

7 Email communication from Rights of Way team dated 12 July 2016.

*Hood*⁸ 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.⁹

F.3. The original classification of the order way as RUPP between the parish boundary and B is some evidence that, in the original opinion of the parish council at the time of the survey under Part V of the 1949, higher rights were believed to subsist than merited by designation as a footpath.

G. Summary

G.1. The order way between A and B, in common with the majority of public paths in Kent, may well be of ancient origin. It is recorded on the Sutton map and assessment under the Tithe Act 1836 (item IV.D below), although inconclusive as to whether a footpath or bridleway. But we suggest that the way may well have originated long before the nineteenth century, and perhaps was already in use in the mediæval period.

G.2. It is not clear when the order 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.3. The south-easterly termination of the order way at B 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 (see Illustration ii above). The surveying authority has made an order to upgrade footpath EE451 to bridleway, which has been referred to the Secretary of State for confirmation on the papers.¹⁰ It is suggested that it is very probable that the order way is a continuation of Hangman's Lane, so as to complete a way on foot and on horseback between Ringwoud and Sutton. The order way does not have the enclosed character of the eastern half of Hangman's Lane — the order way is partly a cross-field bridleway. There is seldom significant trace of cross-field bridleways in the historical record, because there is little physical presence. For the same reason, it is rare to find such ways marked on early small-scale county maps.

G.4. The applicant does not rule out the possibility that the whole of the order way has the status of a public road. As a field road between A and the parish boundary, it would seldom have signified in the historical record, on the same basis as noted above for cross-field bridleways. But there is some support for carriage- or cart-road status in the Ripple map and assessment under the Tithe Act 1836 (item IV.D below), which records the way between Winkland Oaks Farm buildings and B as public road, the implicit belief of the farm tenant, Mr Qusted, that the way was a public road (Eastry Rural District Council surveyor's report (1911) at item IV.I below), its depiction in successive editions of Bartholomew's map (item IV.G below) and the recording of the order way between the parish boundary and B as a road used as a public path on the draft map prepared under Part IV

8 [1975] QB 891.

9 It is suggested that no objection was made because the higher rights implicit in the designation as RUPP were isolated to the extent of the way between the parish boundary and B.

10 Under reference ROW/3270493.

of the National Parks and Access to the Countryside Act 1949 (see Parish survey at item IV.O below). However, the possibility of carriage-road status is not pursued in this statement of case, and is not reflected in the order.

G.5. Where a historical way (in this case, Hangman's Lane) terminates on a public road, but continues in the same purposeful direction immediately on the opposite side of the road, and the intersecting 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 Ringwould, and particularly the western side of the village, northwest towards Sutton, and particularly the Dover Hill end of the village. It is logical that travellers along it would have wished to continue in the same direction along the order way to reach Sutton, and therefore logical that the order way too should be a bridleway. It is submitted that the availability today of an alternative route between Ringwould and Sutton, via Sutton Lane (*i.e.* past Ripple Court) and Vale Road, does not signify that such route was preferable in historical times — it may, for example, have been notoriously difficult in winter, or simply less convenient for horse riders.

G.6. The earliest known evidence of higher rights dates from the first half of the nineteenth century onwards, in relation to the order way between Winkland Oaks Farm buildings and B. It would be unusual if there were records of the existence of the remainder of the order way, as a bridleway, at that date, not least because there appear to be no eighteenth century or earlier estate plans of land crossed by the order way, and the Sutton tithe map does not distinguish footpaths and bridleways.

G.7. Yet 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 order way was considered to be a public road from at least Winkland Oaks Farm buildings to B, and starting perhaps as far back as the parish boundary (a finding supported by contemporary mapping at items IV.A to IV.C below), and that it was a public right of way from A to the parish boundary (though not inevitably that it was a bridleway).

G.8. The earliest detailed maps, at items IV.A to IV.C below at a scale of around one inch to the mile, dating from the late eighteenth or early nineteenth century, show only the order way between Winkland Oaks Farm and B, and in one case, another part from A for a short distance. As (according to the Tithe Act 1836 evidence) a public road, it is hardly surprising that this element should be recorded as such on these maps. It is equally unsurprising that the continuation, from A to Winkland Oaks Farm — being an unenclosed, cross-field bridleway — is not shown. It is rare for cross-field bridleways (and footpaths) to be shown on maps of this era, because they were not necessarily physical features of the landscape, not being enclosed by hedges. It is not easy to identify comparative examples, because most bridleways in East Kent originate in enclosed bridle roads, but one can be found south of Eastry. Bridleway EE491 (between Thornton Lane and Black Lane) is a long-standing cross-field bridleway, expressly marked as a bridleway on the Eastry tithe map, which is not shown on any of the maps of which extracts appear in items IV.A to IV.C below.

G.9. The Ordnance Survey, County Series twenty-five inch first edition map (item IV.E below) shows the order way to have been metalled throughout by the later part of the nineteenth century.

G.10. 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 order way's clear, uncontested reputation as a bridleway throughout this period, accepted by the council, and persons who are shown to be the tenant farmer and the freeholder. It is submitted that, even if the order way were not already established at this time as a bridleway, the documentary evidence of these parties show an intention to dedicate at common law.

G.11. The notice issued under the Electricity (Supply) Acts 1882 to 1922 (item IV.K below) is founded in the order way's status as at least a bridle road (privately maintained). The National Farm Survey (item IV.N below) unusually excludes the order way from the colouring associated with the Winkland Oaks Farm holding.

The order way as a privately-maintainable highway

G.12. The proceedings of the Eastry Rural District Council, and the notice issued under the Electricity (Supply) Acts 1882 to 1922, record that the order way was considered to be privately-maintainable, or at least, not maintained by the public. This position adopted by the council (and apparently communicated to the statutory undertaker for the purposes of the Electricity (Supply) Acts) is that the order 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 cross-field paths and roads, 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, 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 cross-field paths and roads. This doubtless was because the surface of the highway was open and unenclosed, and there was little to maintain. Thus, although the Eastry Rural District Council makes repeated reference to the order way being privately-maintainable, this reference might better be taken to mean that the way was not in practice maintained by it, and should not be taken to mean that the way was not, in law, publicly-maintainable. Yet, as a way which plainly was in existence prior to 1835 (having regard to the showing of the path on the Sutton Tithe Act 1836 map at item IV.D below), it inevitably must be publicly maintainable.

The draft map

G.13. The surviving records of the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 shows that the parish of Sutton lacked either competence or draughtsmanship skills in preparing the parish map. It is suggested that the parish of Ripple may have omitted the order way from its parish map because it was perceived to be a public road not appropriate to be recorded on the parish map. The order way between the parish boundary and B subsequently was recorded on the draft map as a road used as a public path (see Special review at item I.F above and Parish survey at item IV.O below), and this confers some evidence that this part of the order way was, at that time, considered to be a public road. This is because, under s.27(6) of the 1949 Act:

“road used as a public path” means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

A ‘highway, other than a public path’, means either a drove road (for which there is no evidence here) or a public carriage road. Thus the recording of the way as a road used as a public path signifies that the parish council considered the way to be a public carriage road, but ‘used by the public mainly for the purposes for which footpaths or bridleways are so used.’

Weighing the evidence

G.14. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune v Wiltshire Council*,¹¹ 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*:¹²

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.15. 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.¹³

G.16. While no single piece of evidence in this statement is conclusive (although the evidence of public road between Winkland Oaks Farm buildings and B in the Ripple Tithe Act 1836 map and apportionment at item IV.D below comes close), the applicant believes that, taken as a whole, the evidence in this statement demonstrates highway reputation over many years, and that, taking into account all the evidence, the proper status is a bridleway and not a footpath.

H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the order way. But, having regard to the existing status of the order way as a definitive public footpath,

¹¹ [2012] EWCA Civ 334

¹² (1866) 4 F & F 922

¹³ [Consistency Guidelines](#): para.2.17.

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*.¹⁴

H.2. The purpose of the points assessment is to draw the decision-maker's attention to those pieces of evidence which are considered to be of most significance when assessed in isolation.

H.3. Points:

Item	Ref	Points
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.A	0
Greenwoods' map of Kent	IV.B	0
Ordnance Survey, one-inch Old Series map of Kent	IV.C	0
Tithe Act 1836	IV.D	5 (X–B)
Ordnance Survey, County Series twenty-five inch first edition	IV.E	1
Ordnance Survey, County Series twenty-five inch second edition	IV.F	0
Bartholomew's map	IV.G	1
Finance (1909–1910) Act 1910	IV.H	0
Eastry Rural District Council surveyor's report (1911)	IV.I	4
Eastry Rural District Council surveyor's report (1913)	IV.J	1
Electricity (Supply) Acts 1882 to 1922	IV.K	2
Eastry Rural District Council, surveyor's report (1924)	IV.L	1
Winkland Oaks Farm Sale (1936)	IV.M	1
National Farm Survey	IV.N	1
Parish survey	IV.O	0
Total points		17†
† 12 points in relation to A–X		

I. Width of order way

I.1. The width of the way is recorded in the order as 3 metres, save between X and B, where it is 4 metres.

I.2. The applicant endorses the widths specified in the order.

J. Limitations

J.1. No limitation is recorded in the order.

¹⁴ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

J.2. The applicant has no objection to gates being recorded as limitations at X and at the parish boundary, as such gates are shown on the Ordnance Survey, County Series twenty-five inch first edition (item IV.E below) and Ordnance Survey, County Series twenty-five inch second edition (item IV.F below), and a gate at the parish boundary also appears to be recorded on the Ripple tithe map (see Tithe Act 1836 at item IV.D below).

K. Legal cases

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

Case	Reference	Citation
<i>R v Secretary of State for the Environment, ex parte Hood</i>	I.F.2	[1975] QB 891
<i>Fortune v Wiltshire Council</i>	I.G.14	[2012] EWCA Civ 334
<i>Giffard v Williams</i>	IV.D.5	(1869) 38 LJ (Ch) 597
<i>Maltbridge Island Management Company v Secretary of State for the Environment</i>	IV.D.18	[1998] EWHC Admin 820
<i>Scales v Pickering</i>	IV.K.13	130 ER 840
<i>Mayor of Tunbridge Wells v Baird</i>	IV.K.14	[1896] AC 434

II. Objections to the order by third parties

A. Representations from Mr W Hickson

A.1. Representations on the applicant's application were made by BTF Partnership on behalf of Mr W Hickson, of Winkland Oaks Farm, on 5 March 2020. Those representations are considered below in general terms, as well as in the relevant parts of the analysis of *Documentary evidence* in part IV below, and are referred to as 'BTF1/p.n', where the page number is a reference to the relevant page of the Kent County Council statement of case bundle (incorporating the objection). Thus BTF1/p.161 is a reference to the first page of the letter sent by BTF Partnership on 5 March 2020.

A.2. Subsequently, an objection to the order was made by BTF Partnership on behalf of the objector, Mr W Hickson (the letter of objection is undated, but assumed to be made in time). That objection also is considered below in general terms, as well as in the relevant parts of the analysis of *Documentary evidence* in part IV below, and is referred to as 'BTF2/p.n': thus BTF2/p.100 is a reference to the first page of the letter of objection sent by BTF Partnership.

A.3. We refer to Mr Hickson as the 'objector', and his representations at both stages as 'objections'.

B. Objection by Mr W Hickson at application stage

B.1. We do not generally respond to aspects of the objections which do not relate to whether the order should be confirmed. However, the objector states (BTF1/p.161) that:

...the route is blocked by a cattle grid which serves to keep the dairy cows within the holding, which will prove to be impassable by the proposed bridleway.

As can be seen in Illustration vi below (p.17), the cattle grid at the entrance to the farm buildings at X has a gate immediately on its west side. It is not known whether the gate or cattle grid is on the definitive line of the existing footpath. The gate provides passage to all users of a bridleway.

B.2. Representations relating to specific evidence are addressed in the relevant parts of the analysis of *Documentary evidence* in part IV below. Turning to the objector's conclusions, it is stated (BTF1/p.165) that:

It is apparent through the evidence submitted that prior to the 20th Century, there is little to no evidence of the possibility of a public bridleway. Indeed most of the evidence submitted appears to directly contradict the existence of a public bridleway. Evidence to the contrary is blindly overlooked whilst interpretation of the aged and vague plans jump to conclusions about the type and use of any path in existence, preferring to overlook the far more credible use as a farm track serving the holding, and at some stage an improved road serving the high status house of Winkland Oaks Farm House.

We disagree. None of the nineteenth century evidence is inconsistent with bridleway status: one would not expect to see a cross-field bridleway marked on early nineteenth century county maps, and it is not. Moreover, the Ripple tithe award under the Tithe Act

1836 (item IV.D below) is powerful evidence that the order way between B and X was recognised at that time as a public road. As such, the question is — where did that road lead? In this era of carefully-husbanded parish resources, it was most unlikely that a public road would serve only Winkland Oaks Farm, a destination of wholly private benefit. A bridle road continuing from X to A is the most probable explanation.

B.3. The objector continues (BTF1/p.165) :

Post 20th century the absence of any deductions from the assessment under the Finance Act 1911 would appear to confirm that no such public route existed, yet this is opined to be of little consequence. Instead a handwritten note, which states that the route is not publicly maintainable and therefore unlikely to be used as of public right, is instead evidence of the existence of such a right. However, this is reliant on the route having not existed pre-1835 despite part of the application seeking that this is the case. Collectively, the evidence raises more contradictions and doubt as to the status of the route than can be said of the opposite.

As we explain at item IV.H below, the Finance (1909–1910) Act 1910 evidence is neutral on status: it is entirely rational and commonplace that the land value book does not record a deduction for any right of way across the Winkland Oaks Farm hereditament (notwithstanding that the Sutton tithe map identified probable rights of way on the farm as early as the 1840s).

B.4. The evidence of status in the reports of the surveyor to Eastry rural district council, in 1911, 1913 and 1924, is credible. It also is corroborated by the council, the landowner and the tenant farmer. That the records are handwritten is merely indicative of the era. The minutes of the council at this time were also handwritten: typewritten records were not commonplace among local authorities until the 1920s or 1930s.

B.5. We no longer suggest that the order way was post-1835 in origin (not least because it is shown on the Sutton tithe map). We explain why the council may have considered the way nevertheless not to be publicly maintainable at para.I.G.12 above.

B.6. The objector further continues (BTF1/p.165) :

All OS plans presented as evidence fail to identify the route C–E [*i.e.* B–A] as a bridleway, with even particulars plans as late as 1936 failing to do so. It would appear to be extremely coincidental that throughout a period spanning in excess of 100 years, not a single plan identifies the route as anything other than a private track or road.

We explain why the order way is not annotated as a bridleway on the Ordnance Survey County Series plans at paras.IV.F.5–F.6 below. It is incorrect to describe the order way as shown on such plans as ‘a private track or road’: the Ordnance Survey classically purports not to distinguish private ways from public ways (and we note the disclaimer printed on maps from 1888 at para.IV.F.6). All that can be said with confidence is that, from the surveyor’s perspective, the way was used by vehicles. Nothing in that conclusion denies or diminishes the likelihood of public bridle rights over a road which was used (apparently privately) by vehicles.

B.7. And finally (BTF1/p.165):

As such, we believe that the evidence submitted fails to outline beyond the balance of probability that any such bridle way or road exists through Winkland Oaks Farm.

We disagree, for the reasons set out in the Summary at item I.G above.

C. Objection by Mr W Hickson at order stage

C.1. The objector states (BTF2/p.100) that:

...the evidence used to support the order, following a direction from the Planning Inspectorate, is imprecise, circumstantial and fails to objectively identify any public use of the route as a bridleway. Instead it is contended that clear evidence to the contrary, including: the omission from the Finance Act 1910, failing to be identified throughout over 200 years of tithe and OS maps as a Public Bridleway and such route clearly terminating in status at Winkland Oaks Farm and not being a connecting route, has been given insufficient regard. Indeed it is contended below that the route is far more consistent as a private driveway and farm track to a high status house, along with a designation as a public footpath in more recent history.

We disagree that there is 'clear evidence to the contrary' of status as bridleway: the evidence referred to by the objector is merely neutral as to status.

C.2. In relation to the evidence from early maps, the objector writes (BTF2/p.100):

We consider that the evidence submitted in the form of OS maps, firstly, demonstrate that the route is physically separate from Hangman's Lane (now subsequently upgraded to a Bridlepath) as route C-E fails to physically appear in OS Maps dating from 1801 or 1819/20. As such it is apparent that the route is physically separate from Hangman's Lane and was not a thoroughfare connecting Ripple and Sutton. Secondly, as the route terminates at Winkland Oaks Farm, it provides clear evidence that the route was an access track or road specifically for gaining access to the property and no further. As a high-status house and agricultural holding, it would likely be served by an improved track or metalled driveway. The early OS plans support this conclusion and are evident of the route having no public bridle use as the route did not serve as a connecting route between two destinations.

We do not agree. As explained in relation to the individual maps (Ordnance Survey, Mudge-Faden one-inch map of Kent at item IV.A, Greenwoods' map of Kent at item IV.B; Ordnance Survey, one-inch Old Series map of Kent at item IV.C), the order way as a cross-field bridleway should not expect to be shown on maps of this era, nor is it shown — but that part of the order way between X and B is shown, being recognised as a public road in the Tithe Act 1836 (item IV.D below) Ripple tithe map and apportionment. It therefore cannot be concluded that the order way was not a continuation of Hangman's Lane, connecting Ringwould (not 'Ripple') and Sutton.

C.3. The objector criticises (BTF2/p.103) the evidence in relation to the Eastry Rural District Council as follows:

At best the evidence is anecdotal, being an observation by a single surveyor visiting on a single day. Whilst the route does appear to be recorded in this single incident as a bridle road, it directly contradicts the formal findings of the

Finance Act at approximately the same time, which followed strict procedures for the identification of public rights and had significant consequences for landowners not to declare public rights of way.

C.4. The objector continues, in conclusion, as follows (BTF2/p.104):

In summary, the positive reference to 'Bridle Road' in the Eastry RDC minutes is the sole positive identification of the route as anything beyond a private metalled track over which a footpath exists. As such, it cannot be deemed sufficient, to demonstrate that the route ought to be upgraded to Bridleway status. Furthermore, this single reference by a local surveyor directly contradicts the evidence from the Finance Act 1910 undertaken at the same time and following strict procedures subject to legal recrimination for omission of public rights of way.

C.5. Far from a single reference to bridleway status, there is a consistent pattern of documented references to bridleway status over a period of 13 years, from 1911 to 1924 (items IV.I, IV.J and IV.L below). Moreover, the status recorded by the council and its surveyor is plainly endorsed by persons who are shown to be the tenant farmer and the freeholder.

III. Photographs along the order way

A.1. The following photographs show the order way recorded by photography on 3 September 2016.



Illustration iii: towards A



Illustration iv: between A and X



Illustration v: north of X



Illustration vi: at X

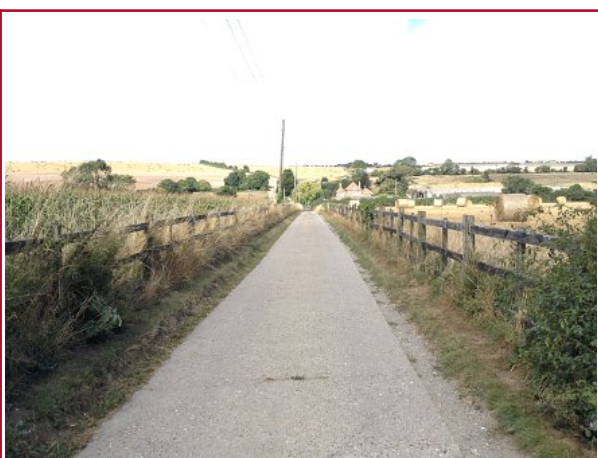


Illustration vii: between X and B



Illustration viii: at B

IV. Documentary evidence

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

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

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

Mudge-Faden one-inch map of Kent



Illustration ix

¹⁵ Also available at: mapco.net/kent1801/kent1801.htm

A.3. **Background:** 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. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published privately on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

A.4. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

A.5. The map shows the order way from B to ‘Wingleton Oak’ (now Winkland Oaks Farm) as a minor road or drive, but no onward way is shown connecting to A, although the line of the way appears to coincide with the 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 bridleways — or for that matter, footpaths — are shown. The order way is no exception — one would not expect it to show the order way apart from the road to the farm, and it does not. It may be noted that, 40 years later, a path was shown on the Sutton tithe map (see Tithe Act 1836 at item IV.D below).

A.7. **Objector:** The objector states (BTF1/p.162):

This evidence is submitted in support of route A – C [*i.e.* Hangman’s Lane, currently recorded as footpath EE451], and identified as providing no support in respect of route C – E [*i.e.* the order way]. However, this has been selectively identified as the evidence as it in fact supports that no highway is acknowledged along route C – E [*i.e.* A–B on the order plan].

We do not agree that the Mudge-Faden map is evidence that no highway was acknowledged between A and B. First, the map shows the order way between X and B (without direct evidence as to whether it has public status); secondly, the omission of the remainder of the order way between A and X is unremarkable, as it is an unenclosed field bridleway, few if any of which are marked on the Mudge-Faden map (see para.I.G.8 above).

A.8. **Points:** 0

B. Greenwoods' map of Kent

B.1. **Date:** 1819–20

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

Greenwoods' map of Kent



Illustration x

Greenwoods' map key



Illustration xi

B.3. **Background:** Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. They were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.¹⁶

B.4. **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.5. The Greenwood's map shows the order way from B to 'Wingleton Oak' (now Winkland Oaks Farm), and a short part of the order way from A, but no connection is shown between the two.

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

B.7. Nevertheless, the map does show the order way between B and what is now Winkland Oaks Farm, and the first part of the order way from A to the intersection with another road. The key to the Greenwood's map records the depicted parts of the order way as a 'cross road', suggestive of a public highway of inferior status to turnpike roads (which separately are identified). It is submitted that the connecting part of the order way is not shown because it is a cross-field bridleway, and such ways seldom are shown on county maps of this era. It may be noted that, around 20 years later, a path was shown on the Sutton tithe map (see Tithe Act 1836 at item IV.D below).

B.8. **Objector:** The objector states (BTF1/p.163):

...the Greenwood's Map of Kent again only shows a private driveway serving Winkland Oaks Farm and no further.

¹⁶ From *Antique Maps*, C Moreland and D Bannister, 1983.

We do not agree. There is no basis for inferring that the order way between X and B is shown on the Greenwoods' map as 'a private driveway': the key to the Greenwoods' map records the depicted parts of the order way as a 'cross road', suggestive of public status.

B.9. **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 Australia¹⁷

Ordnance Survey, one-inch Old Series map of Kent

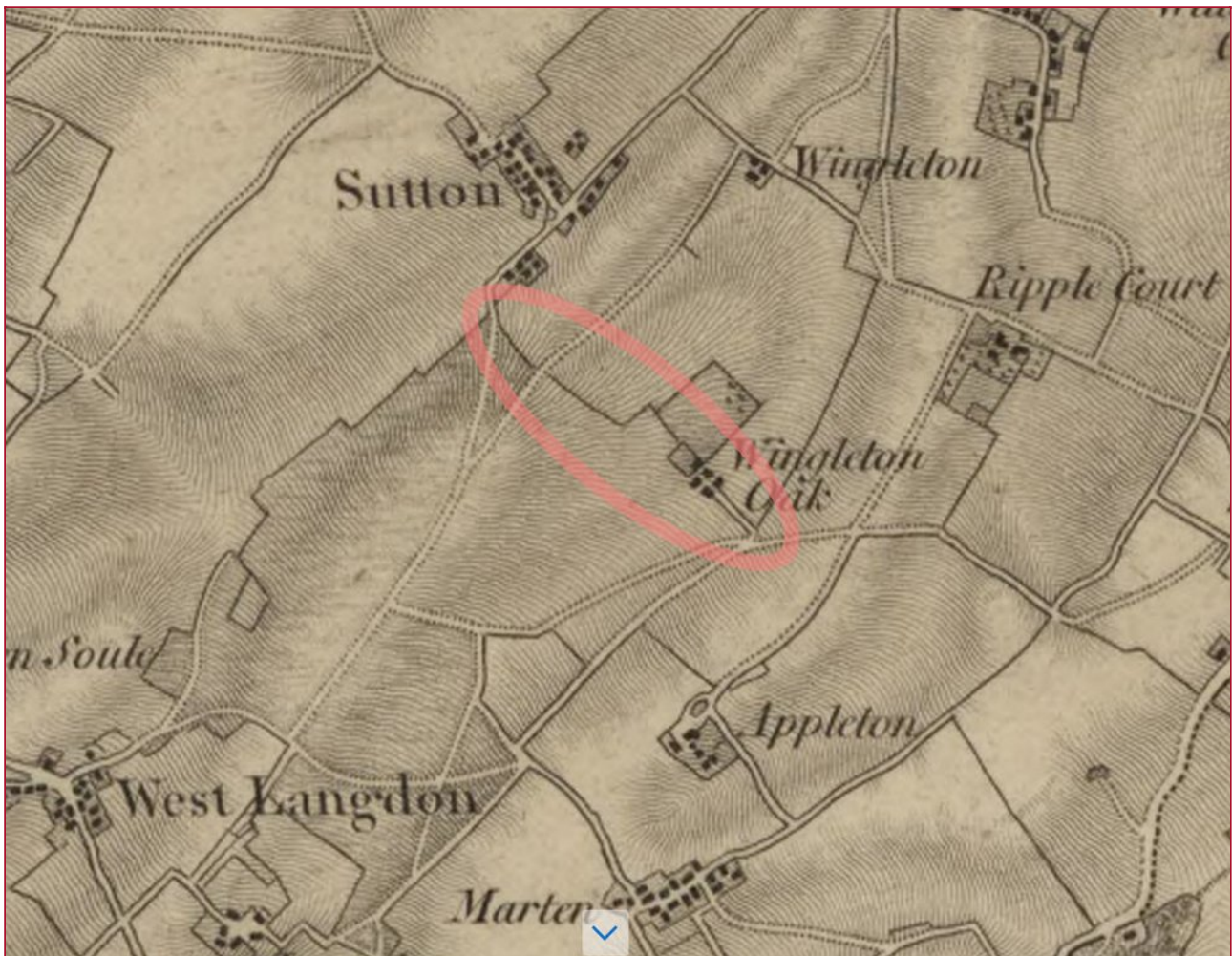


Illustration xii

C.3. **Background:** The Old Series one-inch map was 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.

¹⁷ nla.gov.au/nla.obj-231917365.

C.4. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

C.5. The map shows the order way from B to 'Wingleton Oak' (now Winkland Oaks Farm), but no onward connection is shown to A.

C.6. **Conclusion:** The Old Series map focused on vehicular and enclosed roads, and few cross-field bridleways — or for that matter, footpaths — are shown. The order way is no exception — one would not expect it to show the order way in its entirety, and it does not. It may be noted that, less than ten years later, a path was shown on the Sutton tithe map (see Tithe Act 1836 at item IV.D below).

C.7. **Objector:** The objector states (BTF1/p.163):

...only a private drive is shown serving Winkland Oaks Farm and does not extend beyond the House and Farmyard. Collectively, evidence IV.B – IV.D [in this statement of case, IV.A–IV.C] covers a minimum period of 1801 – 1831 where no such route is shown as a public route traversable by horseback. Whilst the evidence is presented in support of the points A – C [*i.e.* Hangman's Lane, currently recorded as footpath EE451], it has been conveniently overlooked that it also provides evidence that no such route exists between points C – E [*i.e.* A–B].

We do not agree. The mapping of this period is some evidence (taking particular account of the Greenwoods' map of Kent (item IV.B above) that the order way between X and B was a public way. The omission of the order way between A and X reflects that the way was a cross-field bridleway, seldom shown on maps of this era

C.8. **Points:** 0

D. Tithe Act 1836

D.1. **Date:** 1841

D.2. **Source:** map: Kent County Archives¹⁸; National Archives¹⁹; tithe award: Kent Archaeological Society²⁰

¹⁸ Kent tithe maps are available as images on CD.

¹⁹ IR 18/3824

²⁰ www.kentarchaeology.org.uk/research/tithes/sutton-next-ripple and www.kentarchaeology.org.uk/research/tithes/ripple.



Illustration xiii

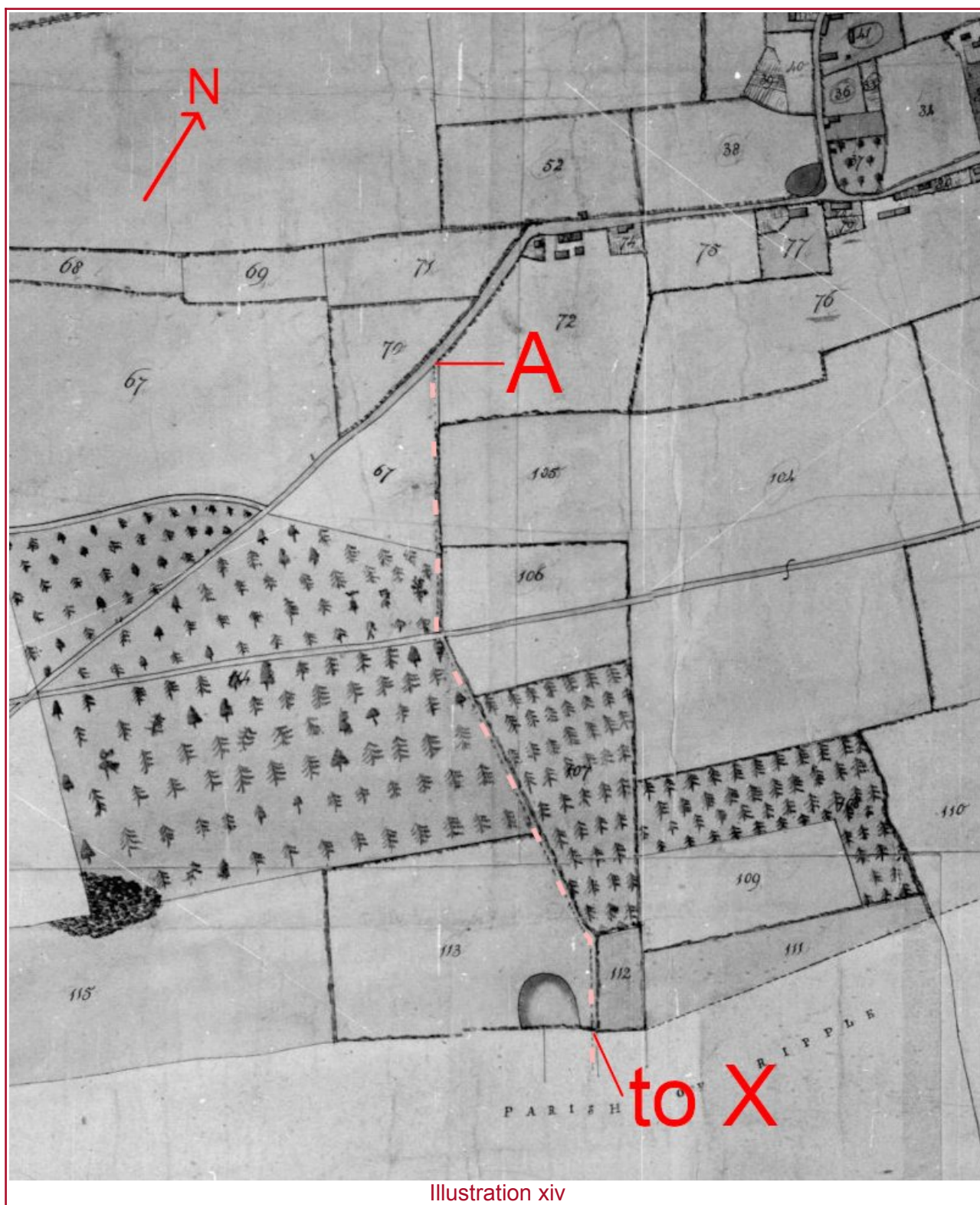


Illustration xiv

Sutton tithe apportionment

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

Illustration xv

Ripple tithe map

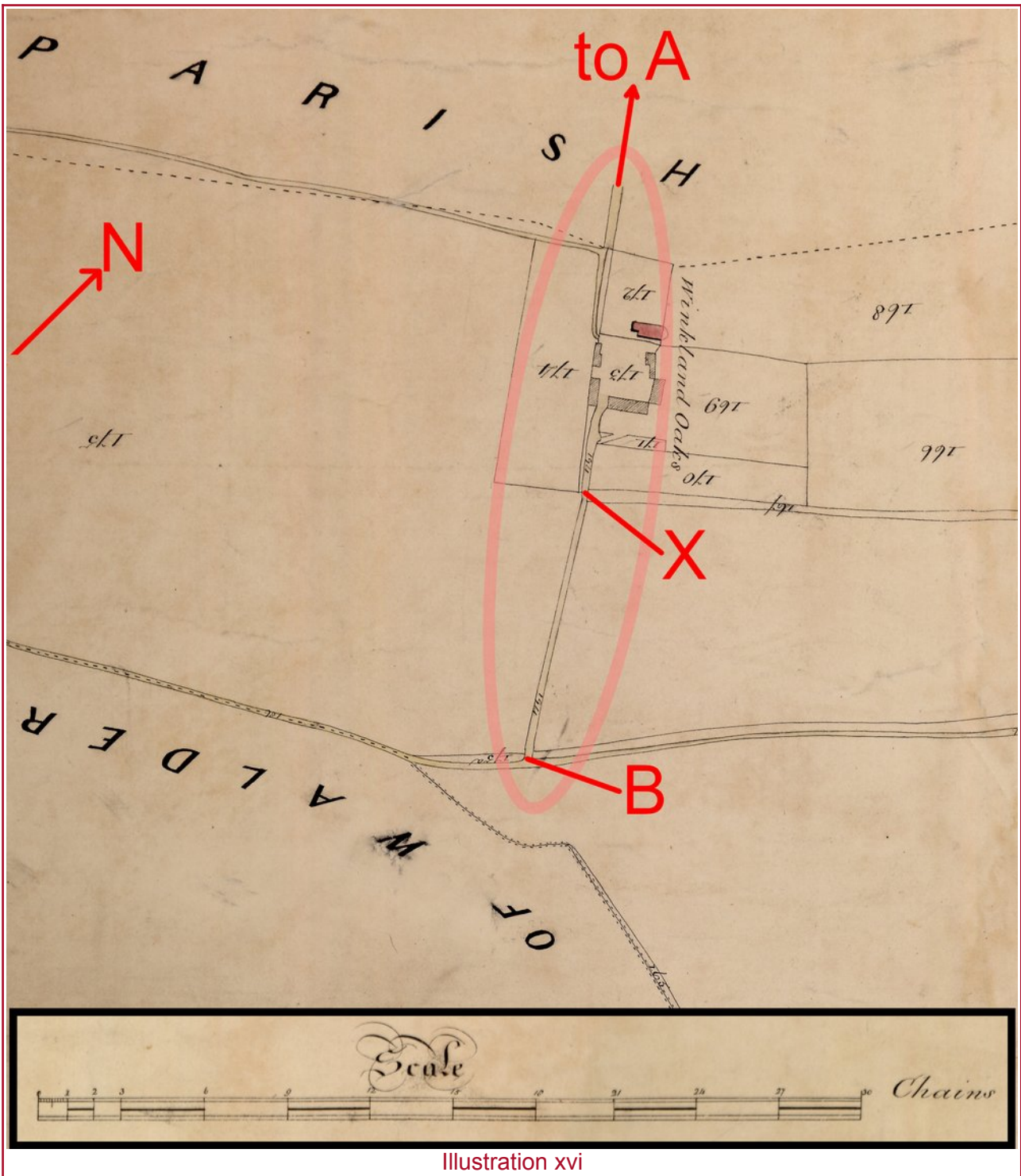


Illustration xvi

Ripple tithe apportionment

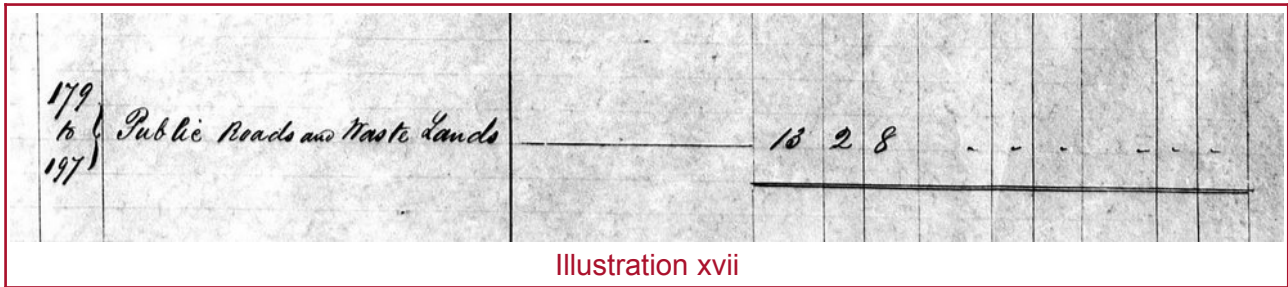


Illustration xvii

D.3. **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 land on which tithes were due in order to assess the amount of money (rentcharges) to be paid instead. An assessment of the tithe due and the rentcharge 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.4. 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, although second class, are however at a larger scale).

D.5. 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.²¹

D.6. 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 (but practice varies), and highways expressly may be described as such in the apportionment.

D.7. **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.8. On the Ripple tithe map, between Winkland Farm buildings north of X and B, the way is shown as an enclosed road leading to Winkland Oaks Farm and is identified as

²¹ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

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'), but without separation between parcel 194 and 173. 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, and is shown continuing north-west into Sutton parish a short distance beyond.

D.9. On the Sutton tithe map, from A to the parish boundary, 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 xiv), and does not appear on the parish copy held by the Kent County Archives (Illustration xiii). The survey is stated to be 'Corrected from a former Survey, Oct 1839.'

D.10. **Conclusion:** The identification on the Ripple tithe map of the way between Winkland Oaks Farm buildings north of X and B 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 clearly is not manorial waste). It may be said that tithe awards were not compiled in order to identify or distinguish public roads, but this would be to misunderstand the purpose of the survey. 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 assent 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 shown on the Ripple tithe map north-west of the farm yard to the parish boundary and continuing 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. Moreover, a small number of drives leading to farms or houses in the parish also are coloured in the same way (but not numbered in the range for 'Public Roads & Waste Lands'), such as at Ripple Court and Church Farm.

D.13. It is apparent that this part of the order way is excluded from assessment, but it cannot be said with certainty that it is included within the apportionment as 'Public Roads & Waste Lands' because it is unnumbered. This may be because the length of way is short — about 50m — and of little consequence. It may be that the way was taken to be a continuation of the public road between Winkland Oaks Farm buildings north of X and B and did not require express annotation (there is no separation between parcel 194, the farm yard, and the continuation of the way). Or it may be because the way was not considered to be a public road, but was coloured sienna because it was metalled (and leaving aside 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

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.15. In summary, we submit that the tithe documents are strong evidence that the order way from A to the parish boundary was a public right of way (but not inevitably a bridleway); that the order way from the parish boundary to Winkland Oaks Farm buildings may have been considered to be a public way (but is not clear), and the order way from Winkland Oaks Farm buildings to B was considered to be a public road. Given the nature of the tithe redemption process, we suggest that these conclusions attract some considerable weight.

D.16. **Objector:** The objector states (BTF1/p.163) that the tithe evidence:

provides circumstantial evidence purporting that due to the various tracks within the site being of the same colour that they must by default all be considered highways with public access.

The comment misconstrues the evidence. The applicant submits that the record of the order way between B and Winkland Oaks Farm buildings in the Ripple tithe documents as a public road is beyond doubt and does not rely in any way on colouring. We say only that the intended status of the continuation of that way, between the parish boundary and Winkland Oaks farm buildings, is less certain, because it is not numbered (whether as 'Public Roads & Waste Lands' or as a privately-occupied parcel) — but it is coloured similarly to X–B. The colouring is not relevant at all to the Sutton tithe map.

D.17. The objector continues:

Furthermore, the identification of the drive at Winkland Oaks Farm being a highway on the presented Tithe plan, does not appear to link to the remainder of the claimed Hangmans Lane route A –C [*i.e.* Hangman's Lane, currently recorded as footpath EE451]. Instead there is a very evident gap between the end of the Farm Drive and the proposed continuation of the bridleway, indicating that it is not part of a wider public highway and serves no purpose as a means of reaching a wider destination.

The comment (which is repeated in the objector's formal objection at BTF2/p.101) is not fully understood. Footpath EE451 (Hangman's Lane, which is subject to an order to upgrade to bridleway: see para.I.G.1 above) terminates opposite the order way at B. It is

not shown on the tithe map for Ripple, which shows only the ancient field boundary slightly to the south of the line of the path. Nevertheless, footpath EE451 and the order way, then as now, are a continuous route connecting with one and the other directly across the minor road at B.

D.18. In its formal objection (BTF2/p.100), the objector adds that:

It is well established that Tithe maps cannot be relied upon to distinguish between public and private roads, following the principles of *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council* [1998] EWHC Admin 820. Therefore, it would be imprudent to conclude any deductions as to the use of a route from plans where their purpose was not to identify such uses.

D.19. The objector's analysis is incomplete. In *Maltbridge*, Sullivan J (as he then was) said²²:

But if detailed analysis shows that even though he was not required to do so, the cartographer, or the compiler of this particular map and apportionment, did in fact treat public and private roads differently, whether by the use of different colours, the use or non-use of plot numbers, or other symbols, or in schedules or listings, I do not see why evidence based upon such analysis should not be admissible as to the existence, or non-existence of public rights of way. Whether the analysis does lead to such a conclusion, and if so, what weight should be attributed to the conclusion is a matter for the Inspector. Since it was not one of the purposes of the 1836 Act to distinguish between public and private roads, such information as can be derived from the Tithe Map and Apportionment cannot be conclusive, and must by its very nature be tentative... .

D.20. In *Maltbridge*, the way in respect of which the challenge was brought was identified by an ochre colouring on the tithe map, was not braced with any other parcel, and appeared to be among the 'Roads in Parish' listed in the apportionment. It was admitted that the ochre colouring was not confined to public roads, and it could not be said that the 'Roads' listed were inevitably public roads (only that they were not assessed for rent charge).

D.21. Whereas in relation to the order way between B and Winkland Oaks farm buildings, the order way expressly is listed in the apportionment among 'Public Roads & Waste Lands'. Plainly, the compiler of the assessment 'did in fact treat public and private roads differently'. In those circumstances, where the assessment discriminated between public and private roads, we submit that substantial weight may be placed on the evidence.

D.22. In its formal objection, the objector continues with an analysis arising from the tithe evidence of a public road between B and Winkland Oaks Farm buildings (BTF2/p.101). The objector notes that the way continues north from the farm yard north of X as unnumbered, of narrower width, and with an apparent gate across the way. The objector suggests this would be consistent with a private farm drive and public footpath (as now recorded). However, this part of the way is (as the objector observes) also not assigned a

22 At para.57: www.bailii.org/ew/cases/EWHC/Admin/1998/820.html. At paras.83–86, the judge considered whether the weight afforded to the tithe and Finance Act documents ought to outweigh the contrary evidence of conveyancing documents, and concluded that taken together, the evidence: 'was neutral, with indications pointing both ways.'

parcel number and is coloured (in common with, but not exclusively confined to, other public roads locally). The presence of a gate, leading to an unenclosed field road, is unsurprising, and entirely consistent with public status. The objector notes the conclusion of the inspector determining the appeal against refusal of the applicant's application,²³ that:

If the route from C [now B] to the farmyard was a public road, it would have been unlikely to have terminated as a cul de sac at the farmyard or at the parish boundary.

We agree with the appeal inspector's conclusion.

D.23. **Points:** 5 (in respect of Winkland Oaks farm buildings to B only)

²³ See Background at item I.E above.

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

E.1. **Date:** surveyed 1871; published 1872

E.2. **Source:** Ordnance Survey County Series map: British Library; Ordnance Survey book of reference: Bodleian Library²⁴

Ordnance Survey, County Series twenty-five inch first edition

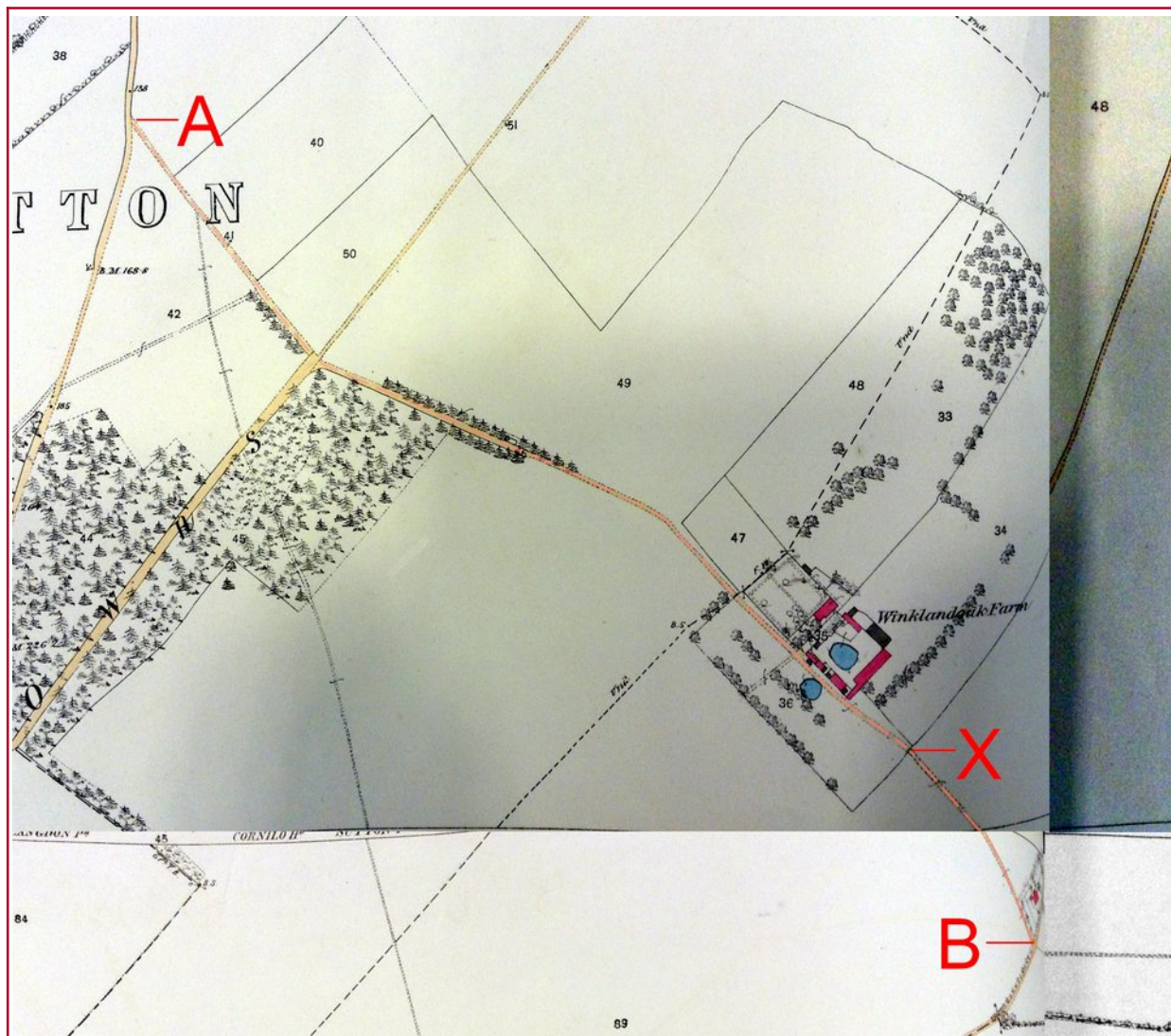


Illustration xviii

²⁴ Available [online](#).

<p>PARISH OF SUTTON, IN THE COUNTY OF KENT—(EASTERN DIVISION). HUNDRED OF CORNILO.</p>					
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 xix

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

E.4. The order way is shown on the Ordnance Survey County Series first edition 1:2,500 map. The order way between A and B is shown as a continuous, unenclosed track, separately identified between A and the parish boundary as parcels 41 and 46 which are classified in the book of reference for the parish of Sutton as 'Road'. The order way between the parish boundary and B is braced with neighbouring parcels and is not separately identified. No gate is shown across the way at A nor B, but gates are present at X and at the parish boundary.

E.5. The first edition map shows, by the use of a sienna colour-wash, that the order way was noted to have a metalled surface throughout.²⁵

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

E.7. **Objector:** The objector states (BTF1/p.163–4) that:

...there is no evidence of the 'metalled road' continuing on from points D–C [i.e. from the parish boundary to B]. Therefore it would appear that the 'identified' public road does not appear link to any other public road, nor serve any function as a connecting route to any other destination. It merely appears to

²⁵ '*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.

serve the farm holding and leads only to Winkland Oaks Farm. Thus it would appear more likely to be an improved farm access than a public highway.

Similar comments are made in the objector's formal objection (BTF2/p.102).

E.8. We disagree. The order way is shown as metalled throughout, and connects directly to the east at B with footpath EE451 (Hangman's Lane, which is subject to an order to upgrade to bridleway: see para.I.G.1 above), which leads east to Ringwould, while the order way itself leads north-west to Sutton. As we state in para.I.G.5 above, the order way, with Hangman's Lane, provides a means of travel from Ringwould to Sutton. As such, we suggest that the way probably has been a bridleway since time immemorial. The higher status of the order way between Winkland Oaks farm buildings and B, as a public road, perhaps originated in that part of the bridleway being used by carts to access Winkland Oaks Farm, and becoming recognised as a vehicular highway in addition to the prior existing bridle rights over the whole of the order way. It is immaterial that Hangman's Lane is not metalled: as a bridleway, it need not be. We say only that the metalled condition of the order way (as shown on the first edition map) is *consistent* with a bridleway.

E.9. Insofar as the objector appears to suggest that there is no direct continuation from the order way at B east along Hangman's Lane, we have (at Illustration xviii above) included a greater area east of B in the extract.²⁶ Although some of the detail is lost in the fold of the map, it shows that there is a direct continuation east from B, then east across the open field. As on the tithe map (see para.IV.D.17 above), what is shown slightly to the south of Hangman's Lane is a hedge boundary. The position here can be seen more clearly — and essentially unchanged — on the Ordnance Survey, County Series twenty-five inch second edition at item IV.F below.

E.10. **Points:** 1

²⁶ As compared with the extract included in the application historical document analysis.

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

F.1. **Date:** survey: 1871, revised 1896; publication 1898

F.2. **Source:** National Library of Scotland²⁷

■ Ordnance Survey, County Series twenty-five inch second edition

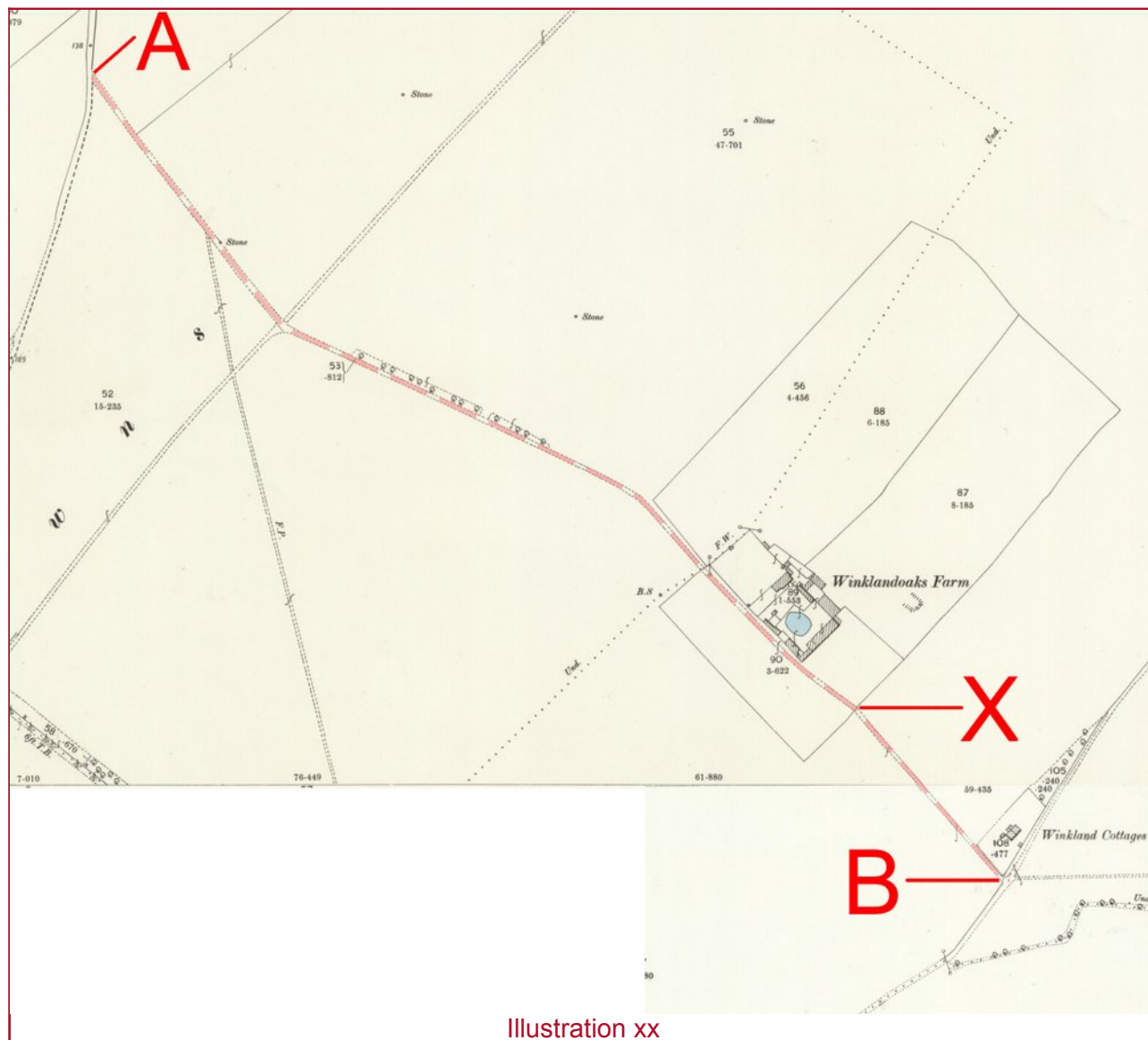


Illustration xx

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

F.4. The order way is shown from A to B as an unenclosed track across fields. No gate is shown across the way at A nor B, but gates are present at X and at the parish boundary.²⁸

²⁷ maps.nls.uk/os/25inch-england-and-wales/kent.html .

²⁸ No area book was published for the second or subsequent editions of the County Series maps, as the parcel areas were printed on the map itself.

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 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. **Objector:** The objector notes (BTF1/p.164) that, whereas connecting footpath EE451 (Hangman's Lane), which is subject to an order to upgrade to bridleway (see para.I.F.1 above), is annotated 'B.R.', the order way is not, and suggests that it may be deduced that the order way therefore is merely a farm track. However, where — as appears to be the case here²⁹ — a bridleway is also used by vehicular traffic (whether public or private), it is left unannotated, and it may therefore be inferred, in terms of actual use, to be a carriage or cart road. A way marked 'B.R.' is one which is used by equestrians (and pedestrians) but not vehicles; a way marked 'F.P.' is one which is used by pedestrians: the annotation therefore is an indication of actual use within the hierarchy of possible uses, and not of legal rights. That approach is consistent with the disclaimer on all Ordnance Survey maps printed after 1888 (including these two):

The representation on this map of a road, track or footpath is no evidence of the existence of a right of way.

F.7. **Points:** 0

G. Bartholomew's map

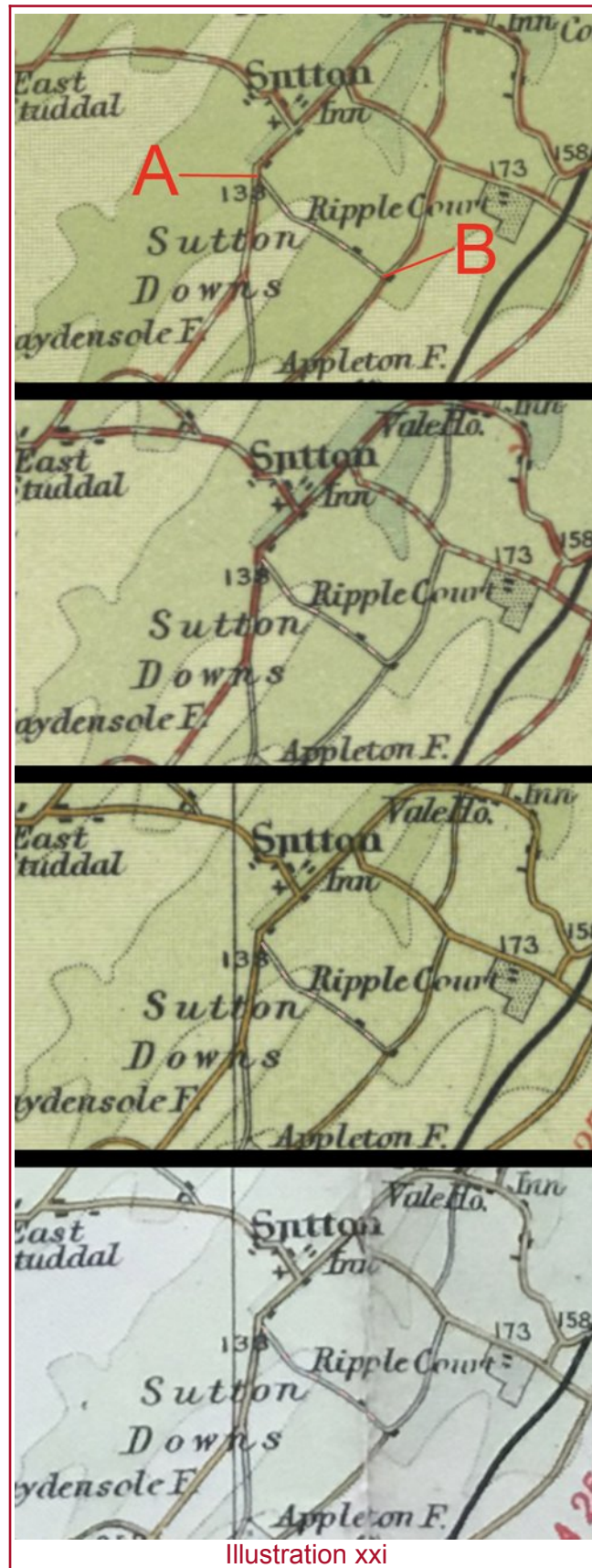
G.1. **Date:** 1904, 1922, 1941 and 1953

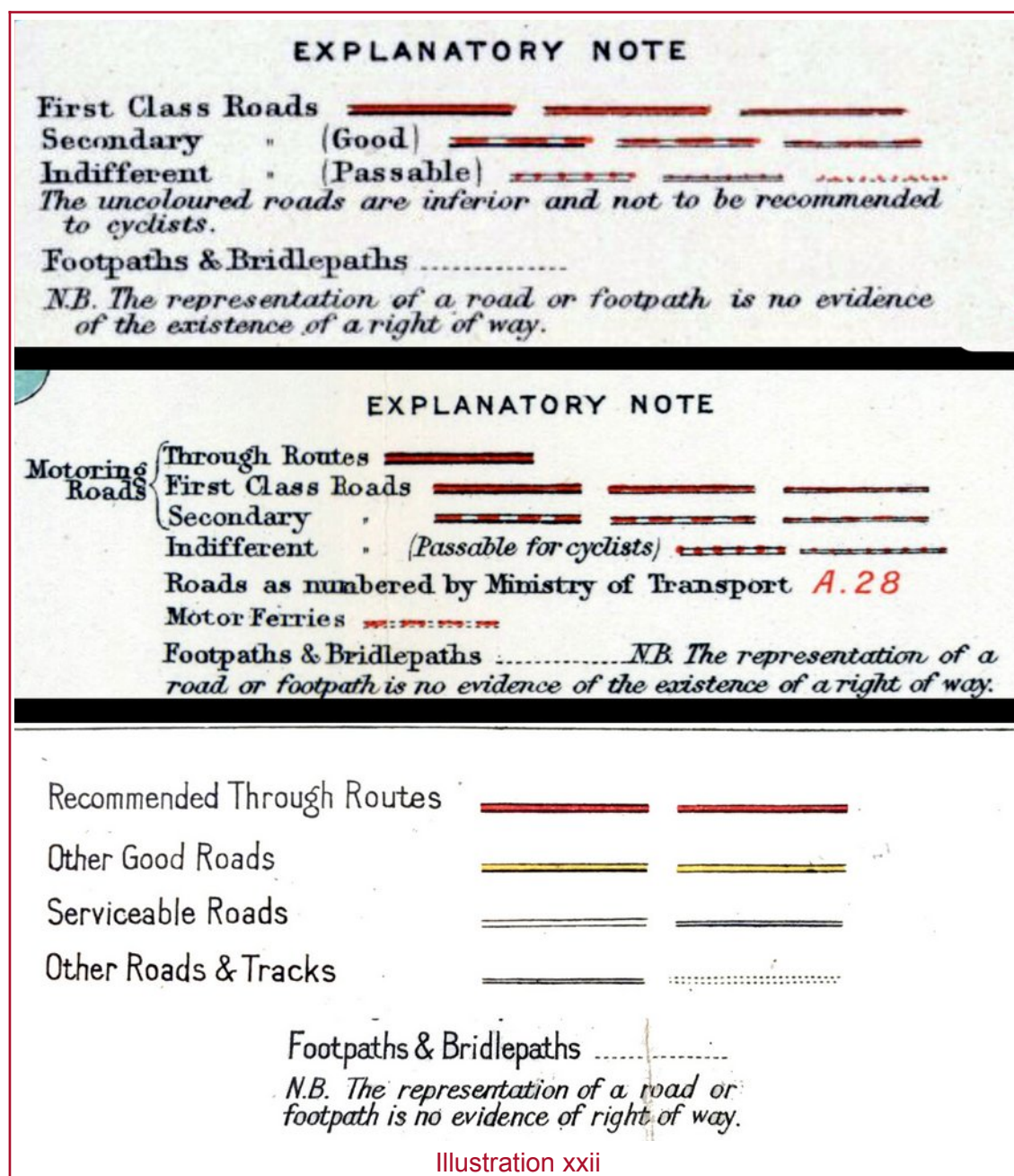
G.2. **Source:** National Library of Scotland³⁰ (1904, 1922 and 1941); personal copy (1953 map)

²⁹ The order way is shown as metalled on the first edition map (see para.IV.E.5 above), which is suggestive of use as a cart road.

³⁰ maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1904, 1922, 1941 and 1953 editions





G.3. **Background:** Bartholomew was the only survivor of a number of important map publishers in Scotland, and was known for a prolific output and variety of maps and atlases for academic, commercial and travel purposes, including the popular 62-sheet half-inch to one mile map series of Great Britain.³¹

G.4. The half-inch series has always been marketed to 'Tourists & Cyclists'. The Cyclists Touring Club (CTC) were involved for many years, giving credence to the maps and the usage of routes marked on them. In 1898, John George Bartholomew, son of the founder of the map company, wrote to the CTC's secretary proposing that club members supply the firm with up-to-date information.³² The collaboration seemed to continue for around 40

³¹ [Wikipedia: Collins Bartholomew](https://en.wikipedia.org/wiki/Collins_Bartholomew).

years, although the regular updating reflecting changes and current states/status appears to have been at its peak between 1900 and the late 1920s.

G.5. In a letter from W Burke, the CTC's secretary, sent to Bartholomew in 1915. reference is made to roads through Eaton Park as to which the Duke of Westminster, 'it has been his practice for a long time past to allow cyclists to use the roads...so that I think the roads should still be shewn, although uncoloured.'

G.6. Paragraph 12.41 of the consistency guidelines³³ notes that:

...current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.

G.7. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data if its maps were to meet with a favourable reception among its target market of cyclists. The correspondence about roads through Eaton Park suggests that Bartholomew's was less inclined to mark roads which were unavailable to the public.

G.8. **Description:** Original scale: half inch to one mile (1:126,720); orientation: unchanged (top is north).

G.9. Bartholomew's maps from the first half of the twentieth century show the order way as the most inferior of vehicular roads — as an indifferent road, uncoloured and therefore not recommended for or impassable to cyclists on the first two editions (and thought to be the same on the third edition, key not available); and as a 'serviceable' road on the fourth edition.

G.10. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the order way was recorded as a road or track, albeit unsuited to cycling, but not as a footpath or bridleway, which was distinctively shown as a single pecked line

G.11. While the maps are not convincing evidence of public rights, they provide some support for the status of the order way as more than a footpath. It would be surprising if four consecutive editions published over half a century continued to show the order way as a motorable road, notwithstanding that it were a private farm road passable only on foot — one would expect representations to have been made, during that time, either by the CTC or the land owner or occupier, that it should be shown only as a footpath (if at all).

G.12. **Points:** 1

32 digital.nls.uk/bartholomew/duncan-street-explorer/cyclists-touring-club.html this and subsequent references.

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

H. Finance (1909–1910) Act 1910

H.1. **Date:** 1911

H.2. **Source:** National Archives³⁴; Kent County Archives³⁵

Finance Act map sheets Kent LVIII/11, LVIII/15

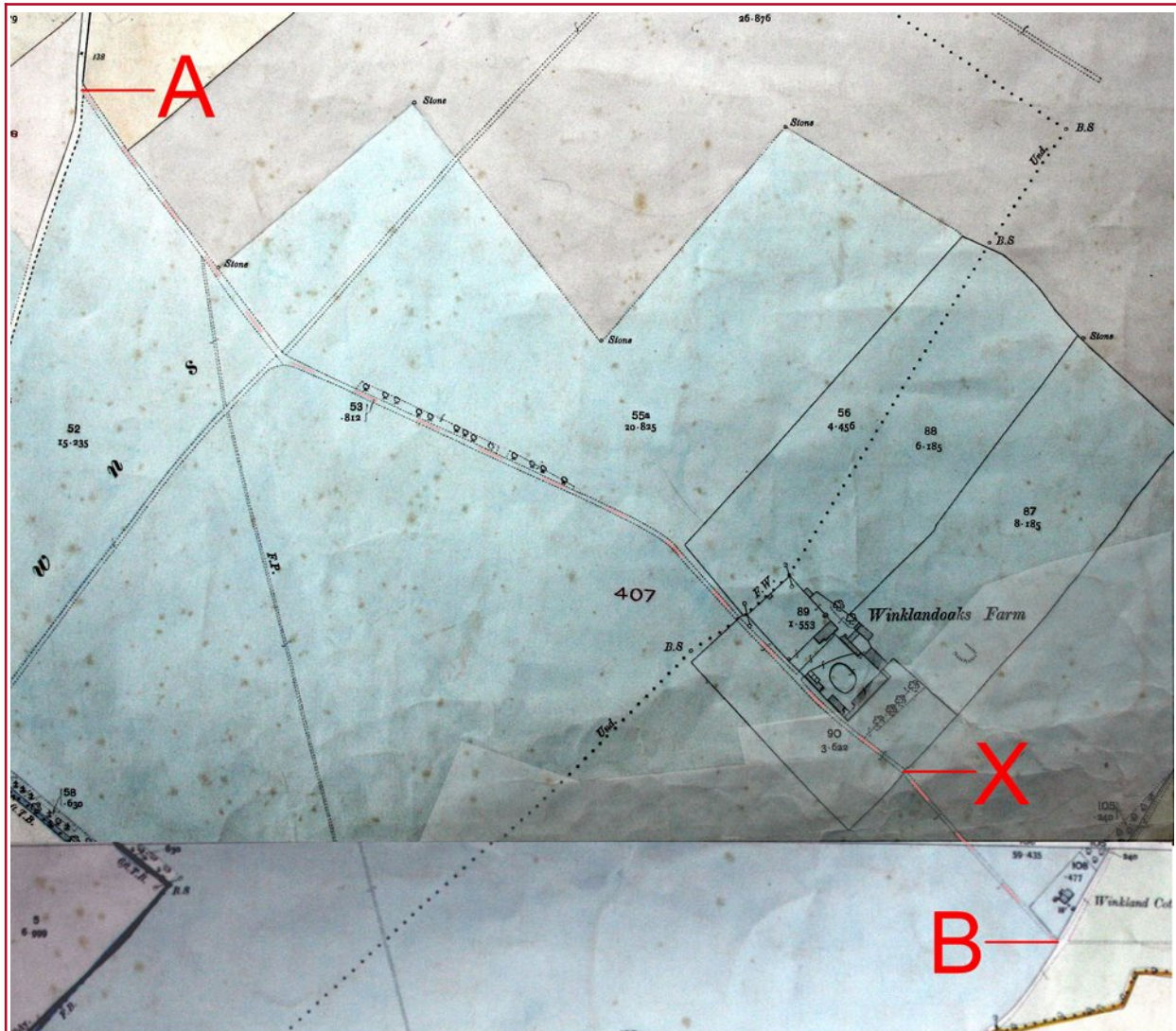


Illustration xxiii

H.3. **Background:** 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 that,

³⁴ IR 124/5/160

³⁵ IR4/25/1

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.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...³⁶

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

H.9. The record map prepared by the Inland Revenue shows the order way to be coloured within the hereditament between A and B:

³⁶ Discounts for easements affecting the land were separately requested and recorded in the valuation book.

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

H.10. 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.11. **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.³⁷ It was said by the Chancellor, subsequently, that the two duties expressly were designed to help ensure an honest valuation.³⁸ 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.12. 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.13. **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.14. Moreover, the order 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 (see Parish survey at item IV.O below) — a right of way which can be seen to have subsisted at the time of the Sutton tithe map (Tithe Act 1836 item IV.D above) and therefore endured at the time of the 1910 Act survey. Thus we confidently can conclude that the landowner did not to seek a deduction for the right of way on the land, notwithstanding that such a right of

³⁷ 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.

³⁸ *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](#).

way (whether footpath or bridleway) subsisted at that time. There is no evidence available from this source to show whether that way was a bridleway or footpath.

H.15. **Objector:** The objector suggests (BTF1/p.164) that the Finance Act evidence suggests that the order way was not a public highway. We have addressed this criticism above.

H.16. The objector in the formal objection suggests (BTF2/p.102) that there was little incentive on the landowner to conclude a higher valuation. It is submitted that it cannot be known what was in the mind of the landowner at the time — noting that this was a period of huge development and projected development, unconstricted by any post-war planning régime, nearby at Walmer, Kingsdown and St Margaret's at Cliffe,³⁹ and that in a complex system of four countervailing duties, the incentives on a landowner to pursue a particular valuation cannot now be identified.

H.17. It also is submitted that the failure of a landowner to volunteer and declare a right of way on land did not attract criminal sanctions. Section 94 of the 1910 Act provided that:

If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

It is suggested that the non-disclosure of a right of way (leading to a higher valuation for certain purposes) is not a matter of a 'false statement or false representation', whereas a declaration by the landowner that a right of way subsists (leading to a lower valuation for certain purposes) might well be, given 'for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty' under the 1910 Act. No doubt this is why the valuer was himself able to record on a hereditament a right of way known to him, which might have been apt if the landowner failed to make the disclosure. Whether, however, the right of way along the line of the order way was known to the valuer concerned cannot be known — it appears not to be disputed that there was at least a footpath between A and X at this time, yet the valuer record no right of way at all.

H.18. **Points:** 0

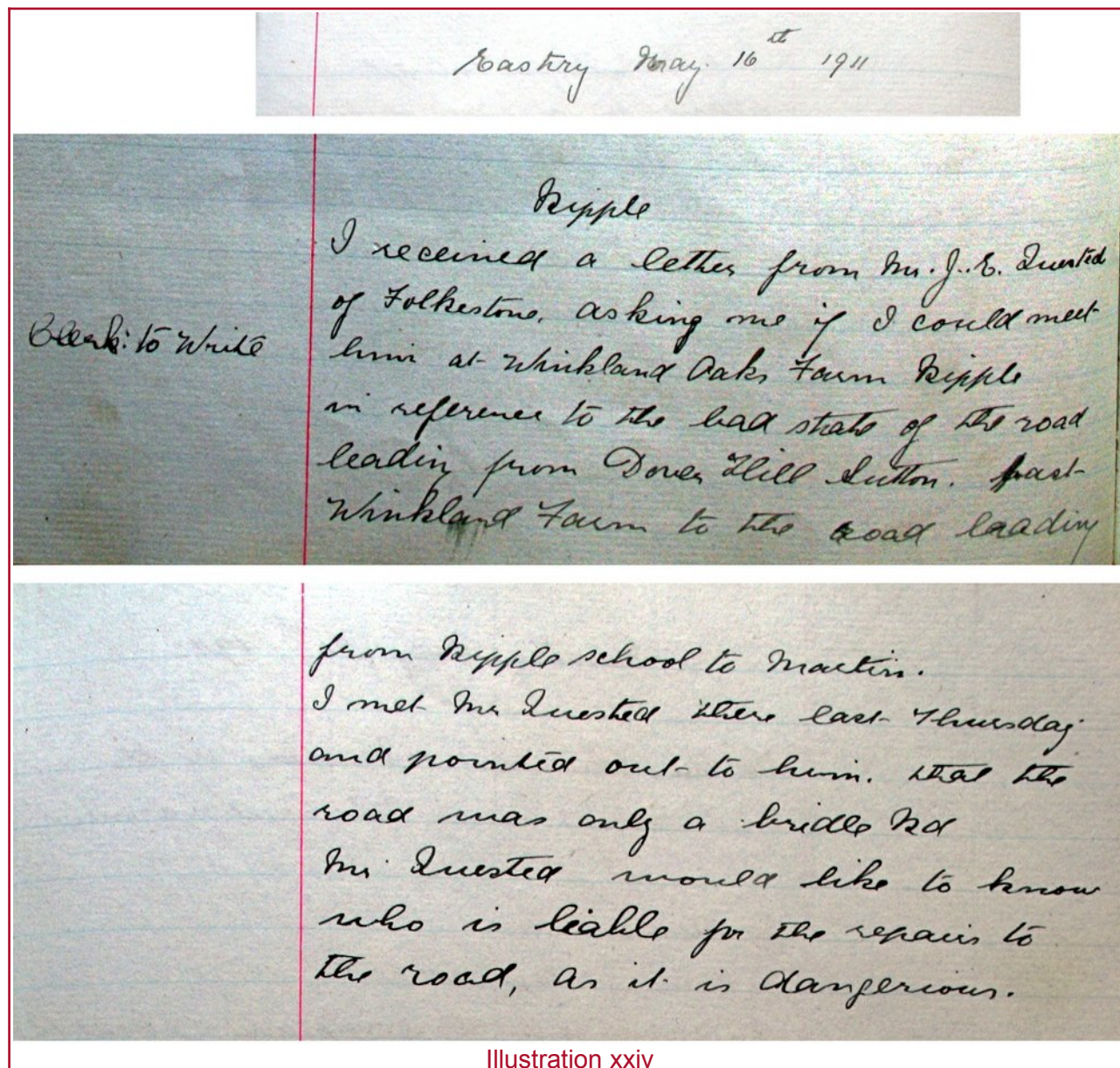
39 The Finance Act plans for St Margaret at Cliffe (sheet Kent LXVIII/3, IR 124/5/243) identified around 1,000 individual plots at what is now Nelson Park, stretching north-east up the East Valley towards Free Down, although not all were developed. Similar numbers are identified on the south side of Kingsdown (sheet Kent LVIII/16 IR 124/5/161) — again, not all were developed.

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

I.1. **Date:** 1911

I.2. **Source:** Kent County Archives⁴⁰

Eastry RDC surveyor's report 16 May 1911



40 RD/Ea/H6

FREEHOLD FARMS,
Extending to an area of
611a. 2r. 33p.

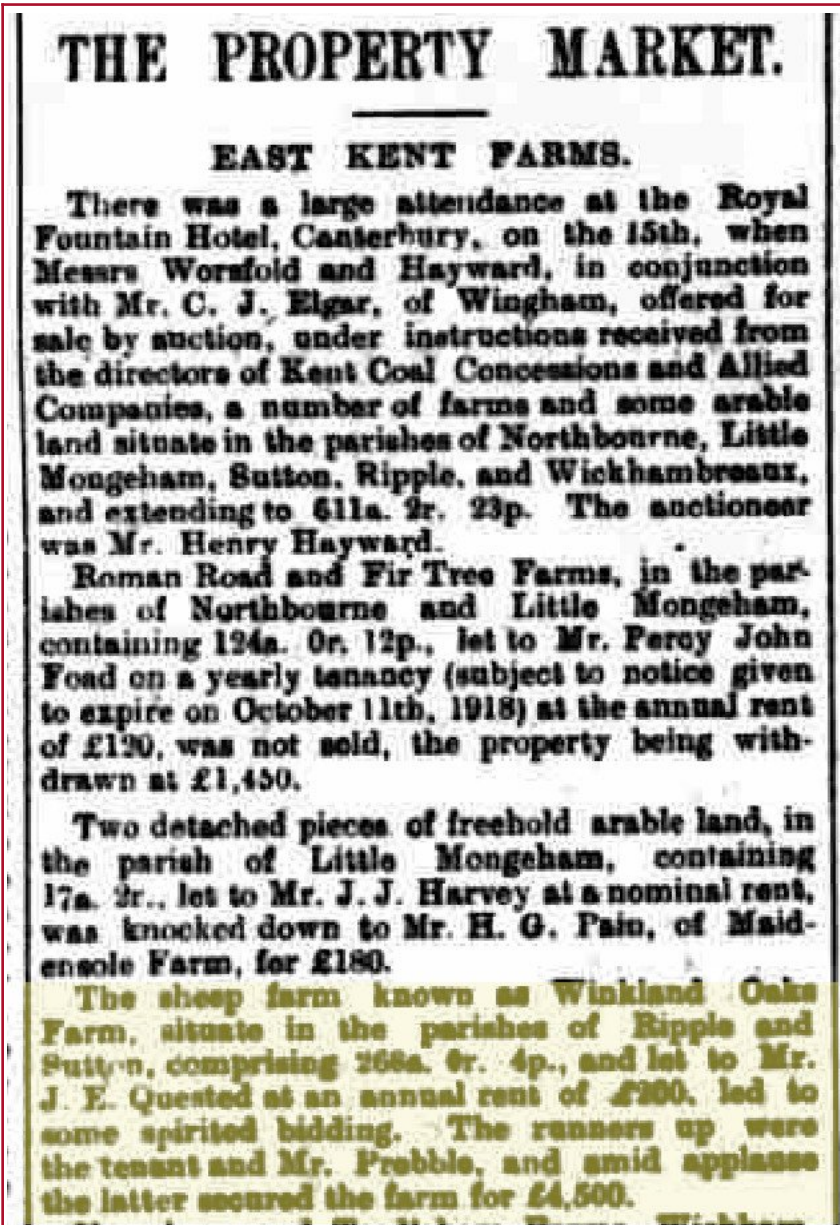
Lot 1.—ROMAN ROAD and FIR TREE FARMS, in the Parishes of Northbourne, and Little Mongeham, containing 124a. 0r. 12p., in the occupation of Mr. P. J. Foad on a yearly tenancy, subject to notice given to expire on the 11th October, 1918.

Lot 2.—17a. 2r. 0p. in the Parish of Little Mongeham, let to Mr. J. J. Harvey, subject to notice given to expire on the 11th October, 1918.

Lot 3.—WINKLAND OAKS FARM, in the Parishes of Ripple and Sutton, containing 268a. 0r. 4p., in the occupation of J. E. Quasted, Esq., on a yearly tenancy subject to notice to expire on the 11th October, 1918.

Illustration xxv

41 www.britishnewspaperarchive.co.uk/viewer/bl/0002521/19180608/027/0002 (££)



THE PROPERTY MARKET.

EAST KENT FARMS.

There was a large attendance at the Royal Fountain Hotel, Canterbury, on the 15th, when Messrs Worsfold and Hayward, in conjunction with Mr. C. J. Elgar, of Wingham, offered for sale by auction, under instructions received from the directors of Kent Coal Concessions and Allied Companies, a number of farms and some arable land situate in the parishes of Northbourne, Little Mongeham, Sutton, Ripple, and Wickhambsour, and extending to 611a. 2r. 23p. The auctioneer was Mr. Henry Hayward.

Roman Road and Fir Tree Farms, in the parishes of Northbourne and Little Mongeham, containing 124a. 0r. 12p., let to Mr. Percy John Foad on a yearly tenancy (subject to notice given to expire on October 11th, 1918) at the annual rent of £120, was not sold, the property being withdrawn at £1,450.

Two detached pieces of freehold arable land, in the parish of Little Mongeham, containing 17a. 3r., let to Mr. J. J. Harvey at a nominal rent, was knocked down to Mr. H. G. Pain, of Maidensole Farm, for £180.

The sheep farm known as Winkland Oaks Farm, situate in the parishes of Ripple and Sutton, comprising 266a. 6r. 4p., and let to Mr. J. E. Quested at an annual rent of £200, led to some spirited bidding. The runners up were the tenant and Mr. Prebble, and amid applause the latter secured the farm for £4,500.

Illustration xxvi

I.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.

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

Eastry May 16th 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

42 www.britishnewspaperarchive.co.uk/viewer/bl/0002521/19180629/065/0003 (££)

Winkland Farm to the road leading from Ripple school to Martin. I met Mr Qusted there last Thursday and pointed out to him that the road was only a bridle Rd. Mr Qusted would like to know who is liable for the repairs to the road, as it is dangerous.

The report is annotated in the margin: 'Clerk to write'.

The report is signed 'D E Foster'.

I.5. The surveyor is D E Foster, appointed by Easry 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 Easry No.1 district,⁴³ 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 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 Easry 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.

I.6. 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?). 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.7. Mr Qusted was later reported at an auction in 1918 as the tenant of Winkland Oaks Farm at the time of the auction (and an unsuccessful bidder for the freehold). Mr Qusted is described in the surveyor's report as 'of Folkestone'. In *Kelly's Directory of Kent*, 1913,⁴⁴ John Egerton Qusted is described as a justice of the peace and Alderman of Kent County Council, resident at The Firs, Cheriton, Folkestone. In an entry for Ripple in the same volume,⁴⁵ Thomas Smith is given as the farm bailiff to Mr Qusted at Winkland Oaks. It therefore is submitted that Mr Qusted was the tenant of Winkland Oaks Farm at the time of the 1911 correspondence. This accounts for the meeting being held at the farm. The correspondence is evidence that, as tenant, Mr Qusted acknowledged that the order way was a public road or bridleway, but hoped that the council could be persuaded to undertake its maintenance — presumably for the benefit of his own farm traffic.

I.8. **Conclusion:** The report clearly refers to the order way between A and B, and identifies the way as 'only a bridle Rd'. The report is therefore good evidence for the status of the way between A and B 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. The surveyor's understanding of the status of the way was also shared by Mr Qusted, the tenant farmer, who initiated the inspection — although Mr

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

44 specialcollections.le.ac.uk/digital/collection/p16445coll4/id/61758/rec/3.

45 specialcollections.le.ac.uk/digital/collection/p16445coll4/id/62319/rec/3.

Quested's letter to Mr Foster suggests that Mr Quested may have been of the original opinion that the way were a public road.

I.9. It is submitted that the commonality of opinion, shared by the surveyor, the council, and the tenant farmer (himself a justice of the peace and alderman of the county council), that the order way were (at least) a bridleway confers significant weight on the evidence.

I.10. **Objector:** The objector states (BTF1/p.164):

The evidence is circumstantial and relies upon the observation of a single unspecified 'surveyor' who merely anecdotally suggests that as a bridle road it is not a public highway and therefore repairable at public expense. This would instead suggest that as the path was not repairable at public expense, it is therefore unlikely to be a route used by the public as of right.

As we explain above, the assistant surveyor is identified by name, and had been in that post for six years, and before that in a similar role for an unknown further period.

I.11. We explain at para.I.G.12 above why the council might have regarded the order way as not repairable at public expense, but it is plain from the surveyor's report that the order way nevertheless was considered to be a public bridleway.

I.12. The objector in the formal objection (BTF2/p.103) further states that:

...the Mr Quested who makes the request to the Rural District Council is also listed as being 'Of Folkestone' and therefore unlikely to be the landowner or Farmer of Winkland Oaks Farm. At such time, most farming operations were undertaken by hand or by horse, so it can be deduced that if Mr Quested was from Folkestone, as stated, he could not likely be a farmer based in Folkestone and Winkland Oaks Farm, owing to the separation of the two.

We have addressed this point above. Mr Quested had appointed a bailiff to run the farm.

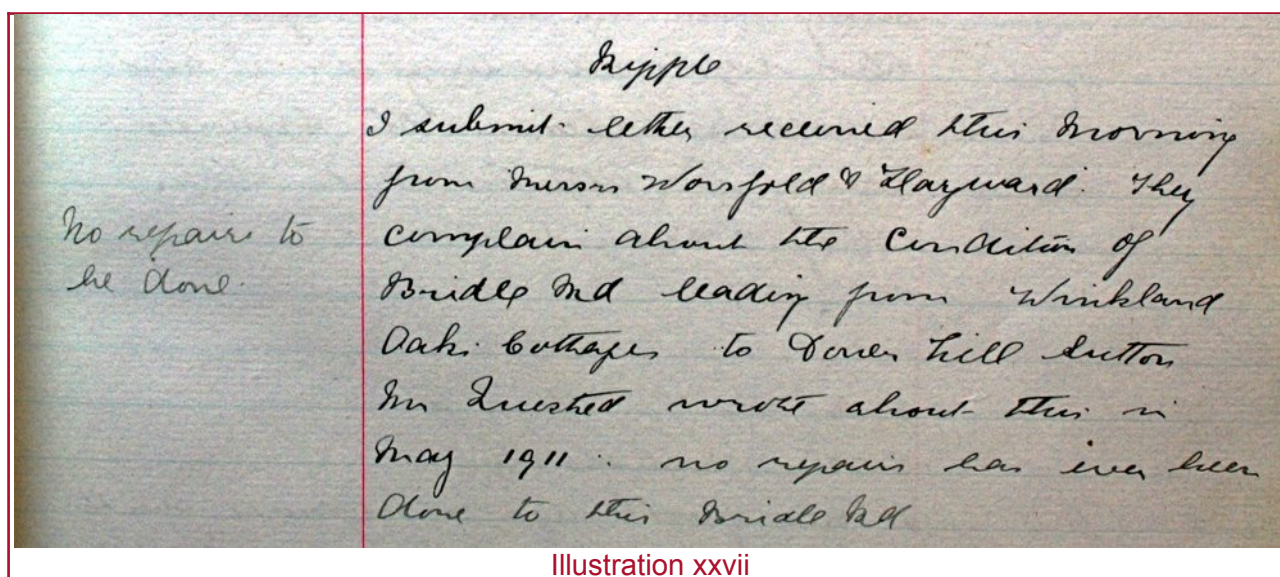
I.13. **Points:** 4

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

J.1. **Date:** 1913

J.2. **Source:** Kent County Archives⁴⁶

46 RD/Ea/H7



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'. The report is signed 'D E Foster'.

J.4. Note that the cottages at B were formerly known as Winkland Cottages, and then Winklandoaks Cottages, but the latter name is now used by a new pair of dwellings erected at A. The cottages at B are now known as Oaklands. (See para.I.D.2 above.) Thus the reference is to a way leading from B to A.

J.5. Worsfold & Hayward was a firm of land agents *etc.* established in 1821 (now Kreston Reeves).⁴⁷ They were very likely at this time land agents for Winkland Oaks Farm, retained by Kent Coal Concessions and Allied Companies, because the firm in 1918 disposed of the freehold of Winkland Oaks Farm on behalf of the client company (see Illustration xxvi above). They were dominant in the land agency business in this area, and acted for some key clients, including the Dean and Chapter of Canterbury Cathedral.

J.6. **Conclusion:** It is clear from the context that the 'Bridle Rd leading from Winkland Oaks Cottages to Dover Hill Sutton' must refer to the order way. The correspondence with the council originated from the firm of land agents which, five years later, would be responsible for the disposal by sale of Winkland Oaks Farm. The report confirms that the order way continued to be recognised as a public bridle road — both by the land agents and the council — but that it was not considered to be publicly maintainable.

J.7. Taken with the previous consideration of the matter by the council in 1911 (item IV.1 above), we find a common understanding of the status of the order way as bridleway by

⁴⁷ www.krestonreeves.com/about/history/

the surveyor, the council, the tenant and the land agent on behalf of the freeholder. Again, it is suggested that such evidence must attract significant weight.

J.8. **Objector:** In response to the objector's statement at (BTF1/p.164), we explain at para.J.4 above the changes in the naming of the cottages at B. We explain at para.I.G.12 above why the council might have regarded the order way as not repairable at public expense, but it is plain from the surveyor's report that the order way nevertheless was considered to be a public bridleway.

J.9. **Points:** 1†

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

K. Electricity (Supply) Acts 1882 to 1922

K.1. **Date:** 1923

K.2. **Source:** London Gazette⁴⁸

Notice of application for special order under Electricity (Supply) Acts 1882 to 1922

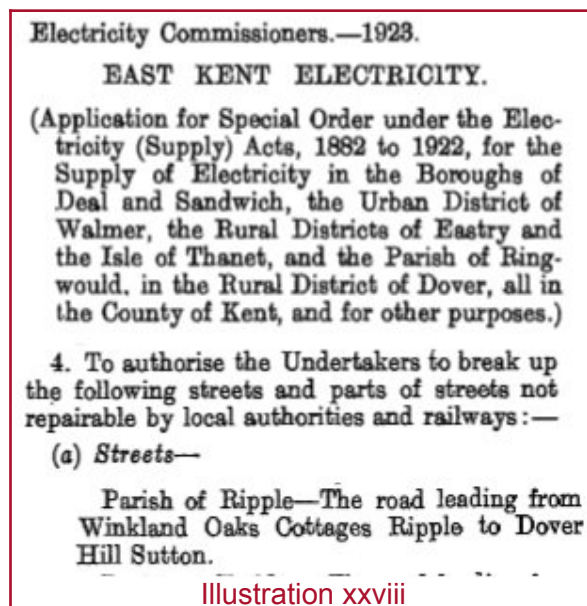


Illustration xxviii

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

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

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.⁴⁹

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

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

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

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

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

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

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

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

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

- Electric lighting under the Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in s.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(9) of the 1882 Act enables local authorities to be licensed to assume the powers of the undertaker: 'with respect to the breaking up of any street repairable by such local authority' (the expenses to be recoverable from the undertaker). The Acts 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).

⁴⁹ The notice records that powers alternatively might be conferred on a company to be registered for the purpose.

- The marginal note to s.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 s.13 therefore appears to qualify 'street' as one which is a public highway but privately maintainable, and not one which is wholly private. If s.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.10. The draughtsman, in defining a 'street', is likely to have had in mind public highways which were privately maintainable, or wholly private ways in use by the public (such as carriage roads leading to stations built by the railway company, or unadopted new residential streets in towns), or at most, wholly private ways in towns which served significant numbers of dwellings or commercial premises (such as private squares or yards). It is not possible to reconcile the duty placed on an undertaker in s.14 of the 1882 Act (to seek consent to place electric lines in a street) with its application to a wholly private way not used by the public.

K.11. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in s.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.12. It is submitted that the definition of 'street' in the Electricity (Supply) Acts 1882 to 1922 does not extend to embrace a wholly private track, farm drive or path in the 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 *ejusdem 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 to the owner, given that s.12(1) of the 1882 Act excludes undertakers from acquiring powers to compulsorily purchase private land. It would otherwise allow an undertaker to lay apparatus on private land without compensation, merely on the justification that the works were done along a part of that land which happened to conform (on one interpretation) to the general description of a 'lane' or 'road'. The only justification for conferring powers on an undertaker to lay apparatus in a rural way is if it is a public way — albeit it may be privately maintained.

K.13. In *Scales v Pickering*, s.32 of a private Act of Parliament⁵⁰ empowered a water company to:

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

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

K.14. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird*,⁵¹ in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense⁵²:

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

K.16. The notice in the *London Gazette* contains the following 32 entries as regards streets not repairable by local authorities nor railways, set out in the first column, together

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

⁵¹ [1896] AC 434

⁵² In the case, the vesting occurred under s.149 of the Public Health Act 1875.

with the presumed location (by Ordnance Survey grid references) in the second column, and comments on the entry in the third column:

Description in notice	Presumed location	Comments
<i>Parish of Ash—</i>		
i. Richborough Castle Road	TR319603 to TR323602	Now known as Castle Road: restricted byway EE43A; title unregistered
ii. White House Drove Road	TR318604 to TR319613	Unrecorded ('private street' in NSG); title unregistered
iii. Rubery Drove Road	TR314607 to TR315613	Unrecorded; registered title
iv. Potts Farm Drove Road	TR301609 to TR304621	Public footpath EE49; registered titles
v. the road leading from Sandhill Farm to Cooper Street	TR298604 to TR304602	Public footpath EE52; title unregistered
vi. the road leading from Lower Goldstone to Red House Ferry	TR294611 to TR296625	Now known as Goldstone Drove; public footpath EE55; part title unregistered
vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane)	TR281582 to TR281577	Part adopted road, part public bridleway EE193; title unregistered
viii. the road leading from Durlock Road to Ash-Canterbury Main Road	TR274579 to TR274583	Deadman's Lane: recorded on draft map as FP85, stopped up on 11 December 1954
ix. the road leading from West Marsh Road to the Marshes	TR274615 to TR274624	Now known as Westmarsh Drove; public footpath EE76; 'private street' in NSG; unregistered title with caution
x. the road leading from Paramour Street to Downfield Farm	Not identified	
xi. the road leading from Overland Lane, Corking to Ware Road	TR275598 to TR280607	Part public bridleway EE86 and EE73; part adopted road (Ware Farm Road); part unrecorded; land generally unregistered
<i>Parish of Betteshanger—</i>		
xii. the road leading from Northbourne Road to New Road, Betteshanger	TR313537 to TR309529	Restricted byway EE493; part unregistered
<i>Parish of Eastry—</i>		

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

xxi. the road leading from Willow Wood to Telegraph Farm	TR312506 to TR311511	Now known as Willow Woods Road (Roman Road); public bridleway EE377; 'private street' in NSG; part unregistered
<i>Parish of Preston—</i>		
xxii. the road leading from Preston Road to Marley Brook Farm	TR252616 to TR249618	Unrecorded; unregistered title
<i>Parish of Ripple—</i>		
xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton	TR342482 to TR334488	Public footpath EE427; title registered [this is the order way]
<i>Parish of Sholden—</i>		
xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay	TR371545 to TR360572	Now known as Ancient Highway or the Old Coast Road; BOAT EE245; adopted; title registered
<i>Parish of Stourmouth—</i>		
xxv. the road leading from North Court Farm, Upper Stourmouth to New Road	TR256630 to TR266630	Restricted byway EE485
<i>Parish of Sutton—</i>		
xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester)	TR334493 to TR314476	Public footpath EE417; subject of application PROW/DO/C495 to record as bridleway (previously recorded as RUPP); part unregistered
<i>Parish of Wingham—</i>		
xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road).	TR249571 to TR260571	Now known as Dambridge Farm Road; part adopted, part restricted byway EE165A; part unregistered
<i>Parish of Woodnesborough—</i>		
xxviii. the road leading from Foxborough Hill, Woodnesborough to Sandwich Station	TR308561 to TR331576	Part was known as Black Lane (Sandwich), now St Barts Road; part public bridleways EE226A and ES8, part BOAT ES10, part adopted; part unregistered title, part land unregistered

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

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

- 15 are recorded as public carriageways⁵³ (of which 2 are part recorded as bridleways),
- 10 are recorded as public bridleways (of which 2 are part recorded as carriageways),
- 5 are recorded as public footpaths (of which 3 are named as droves),
- 5 are named as droves (of which 3 are recorded as footpaths),
- 1 is neither a drove nor recorded with any public rights ((xxii, Marley Brook Farm), and
- 1 could not be located ((x), at Paramour Street).

K.18. Leaving aside the street which could not be located, at least 28 of 31 of the 'streets and parts of streets not repairable by local authorities and railways' cited in the public notice in the *London Gazette* are today public highways, or subject to applications intended to secure that outcome. This is good evidence that such streets were considered to be public highways which were privately maintainable, and were not wholly private ways. Inclusion in the list is therefore evidence of the public status of these ways at the date of the notice.

K.19. Of the 28 streets now recognised as public highways, 25 are now recognised as roads and public bridleways (or partly both), or subject to applications intended to secure that outcome. Of those five which currently are recorded as public footpaths, three are drove roads recorded as footpaths, but where the true status is uncertain and may not be correctly recorded, one is the order way, and one may have unrecorded higher rights.

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

- (ii) White House Drove Road

⁵³ Including adopted roads, byways open to all traffic and restricted byways.

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

K.21. Of these, the first two are among a number of drove roads leading into the Ash marshes, the status of which is uncertain. But for comparison, the application to record Corner Drove as a restricted byway⁵⁴ demonstrates that evidence may be sufficient to record drove roads of similar character as a restricted byway. It seems likely that the applicant for the order proceeded on the basis that the drove roads were public, but not necessarily publicly-maintainable.

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

K.23. Thus of the 31 streets which can be identified, 23 are recorded either as bridleway or road (or partly both), or subject to applications to that end, 5 are drove ways on Ash Level, where the recording as footpath (if at all) is for want of investigation of higher rights for driving animals, riding horses or vehicles, 2 are footpath (including the order way) and 1 has no recorded status at all.

K.24. It therefore is submitted that ways in the notice identified as streets not repairable by local authorities are likely to be those which were regarded at the time as of vehicular road, drove or bridle status, being listed as 'streets' and described as 'roads'. Those 2 entries which today are not recorded as of one of these statuses, nor subject to applications to that end (or subject to the order, in the case of the order way), are nevertheless likely to possess unrecorded higher rights.

K.25. **Objection:** in response to the objector's statement at BTF1/p.165, and the objector's formal objection at BTF2/p.103, we explain above that the vast majority of streets advertised in the notice are today recognised as either bridleways or public roads, and that the few which are not, are drove roads which lack documented rights (but which are most unlikely to be only footpaths) or footpaths which possess unrecorded higher rights.

K.26. **Points:** 2

54 PROW/DO/C413

L. Eastry Rural District Council, surveyor's report (1924)

L.1. **Date:** 1924

L.2. **Source:** Kent County Archives⁵⁵

Eastry RDC surveyor's report 19 February 1924

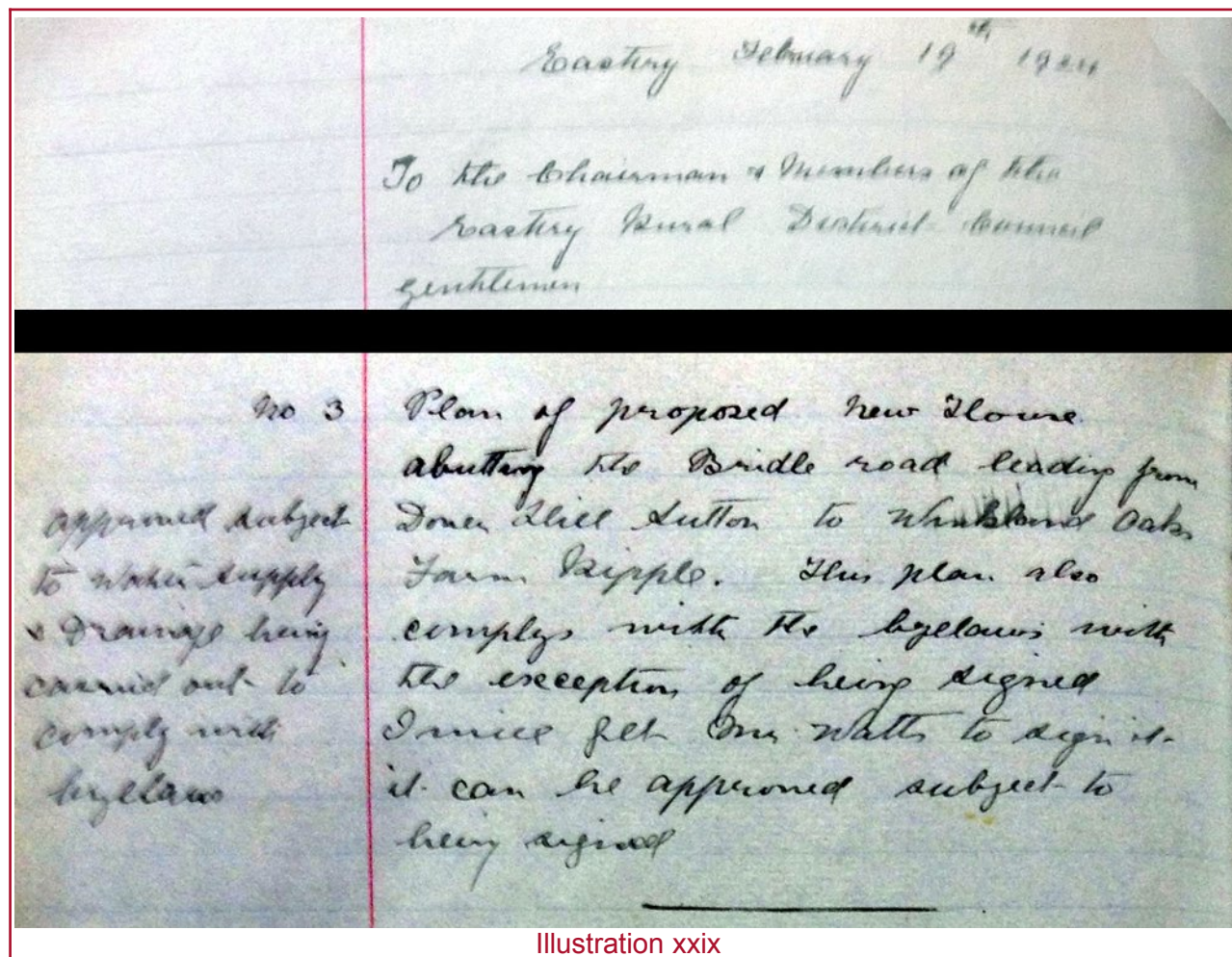


Illustration xxix

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

The report is signed 'D E Foster'.

⁵⁵ RD/Ea/H8, Eastry Rural District Council minutes.

L.4. **Conclusion:** The report refers to the order way between A and B. The report confirms that the order 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, Mr Foster, the surveyor to the council, had been in post with the council for more than 19 years. At a time when there were no permanent 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 would have been and was quite clear what ways in the district were acknowledged bridleways.

L.6. **Objector:** The objector states (BTF1/p.165):

...that the adjoining farm track was a bridle road is based upon a visual assessment...would a surveyor looking at the proposed residential development in this instance identify a farm track from a bridle road?

These comments overlook that the same surveyor, employed by the council for more than 19 years, had described the order way as a bridleway in 1911 (item IV.I above) and 1913 (item IV.J above), and continued so to describe it in 1924.

L.7. **Points:** 1†

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

M.2. **Source:** Kent County Archives⁵⁶

PLAN OF
WINKLAND OAKS FARM
in the Parishes of
RIPPLE and SUTTON
KENT

For Sale by Auction by
Messrs. CHARLES PETLEY & CO.,
in conjunction with
CHARLES J. ELGAR, F.S.I.
1936.

A. REEVE ESQ

Winkland Farm

Winkland Cottages

LOT 6

version 3.0 August 2022

Winkland Oaks Farm Sale: particulars lot 6

LOT 6 (Coloured Grey)				
The Useful Upland Holding				
known as				
WINKLAND OAKS FARM				
Situating 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 xxxi

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 order way between A and B lies within lot 6, Winkland Oaks Farm. Between the parish boundary and B, the order way is marked on the map (which is derived from the Ordnance Survey County Series plan), and the way forms part of parcel numbers 107 and 90 which are identified as 'Arable' and 'Pasture' respectively. Between A and the parish boundary, it is allocated parcel number 53, and this is identified in the particulars as 'road'.

M.5. **Conclusion:** The description of the order way between A and the parish boundary as 'road' is consistent with a bridle road.

M.6. **Objector:** The objector (BTF1/p.165) suggests that:

The application claims that the shown farm track within the sales particulars dating from 1936 must be a bridle road because of its identification as a 'road'.

That is not a correct interpretation of the applicant's position. We say only that the sale particulars record the order way as a road, and that this is consistent with its use as a bridleway.

M.7. The objector in the formal objection (BTF2/p.103) suggests that:

...it would be negligent of the selling agent to have failed to identify any public rights over the land when offering the Property for sale.

We disagree: it is unusual to find public rights of way expressly identified in sales particulars of this era, and indeed, none of the public rights of way recorded in the Parish survey (item IV.O below) is identified in the sales particulars, other than as may be shown in the Ordnance Survey base map.

M.8. **Points:** 1

N. National Farm Survey

N.1. **Date:** 1941–43

N.2. **Source:** National Archives⁵⁷

National Farm Survey map sheets Kent LVIII/11, LVIII/15

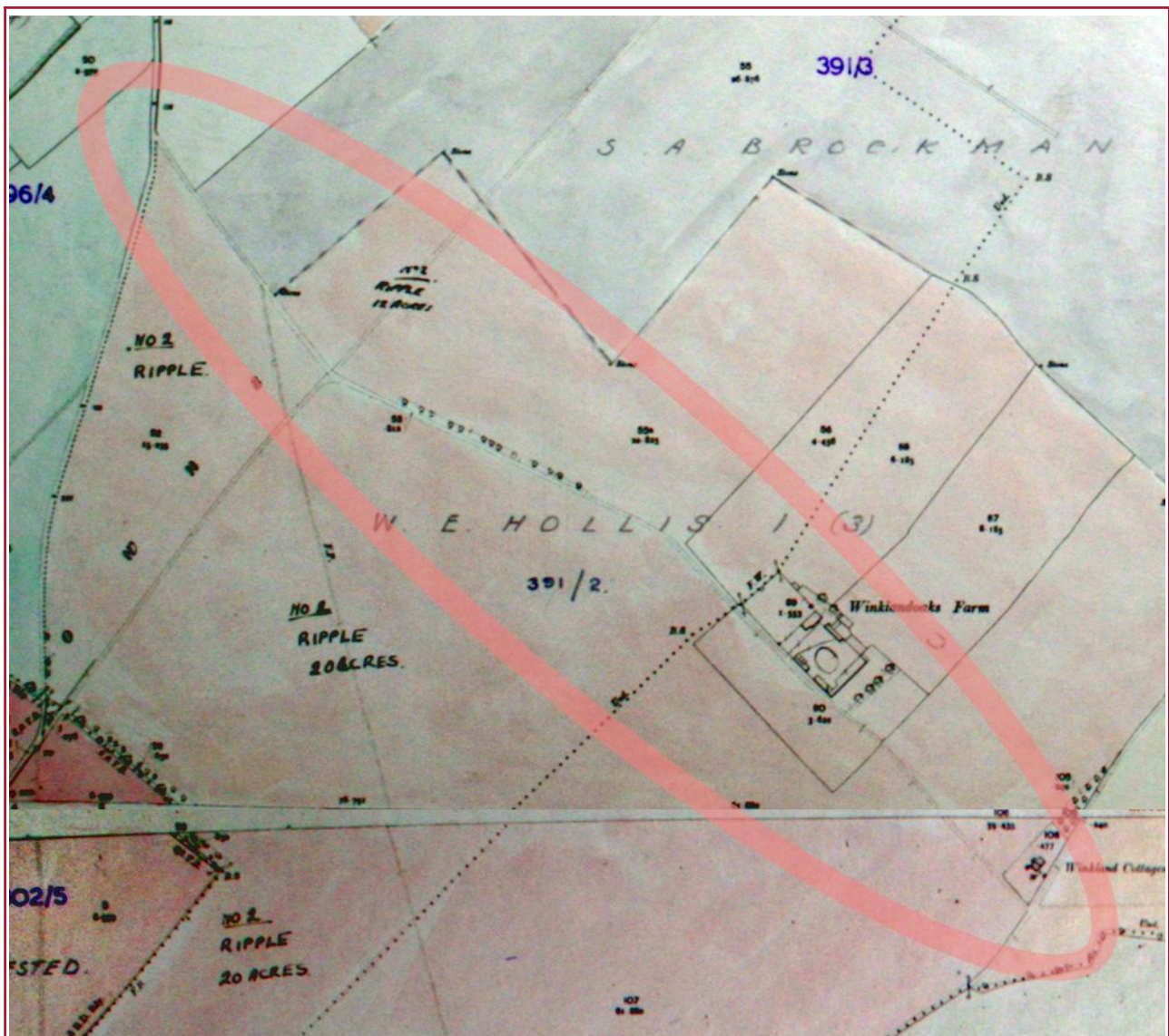


Illustration xxxii

⁵⁷ MAF 73/20/58

N.3. **Background:** 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. **Description:** original scale: 1:2,500 photo-reduced; orientation: unchanged.

N.5. The holding is coloured pink, but unusually, the order way is coloured blue (at least between A and X), notwithstanding that it generally lies across the holding.

N.6. **Conclusion:** The use of a blue colour wash along the order way (notably between A and X) suggests that the order 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 A and the parish boundary). It is most unlikely that a footpath would have been presented in the same way.

N.7. **Objector:** The objector in the formal objection (BTF2/p.103) states that:

The National Farm Survey shows route [A–parish boundary] uncoloured and therefore identified as ‘unproductive land’. This provides no evidence of any public use of the land beyond clearly identifying that the route is not productive farmland. Conversely, however, route [parish boundary–B] is strangely not identified as unproductive land. However as claimed by the British Horse Society, being identified as unproductive land is proffered as reasoning for the route being a public right of way. Nonetheless, this argument does not carry through to explain why part of the route (if being argued as a connecting public right of way) is identified as productive land.

We agree: the treatment is inconsistent. Nevertheless, we suggest some modest weight may be attached to the particular treatment of the order way between A and X.

N.8. **Points:** 1

O. Parish survey

O.1. **Date:** 1952–53

O.2. **Source:** Kent County Council archives⁵⁸

■ Sutton parish map

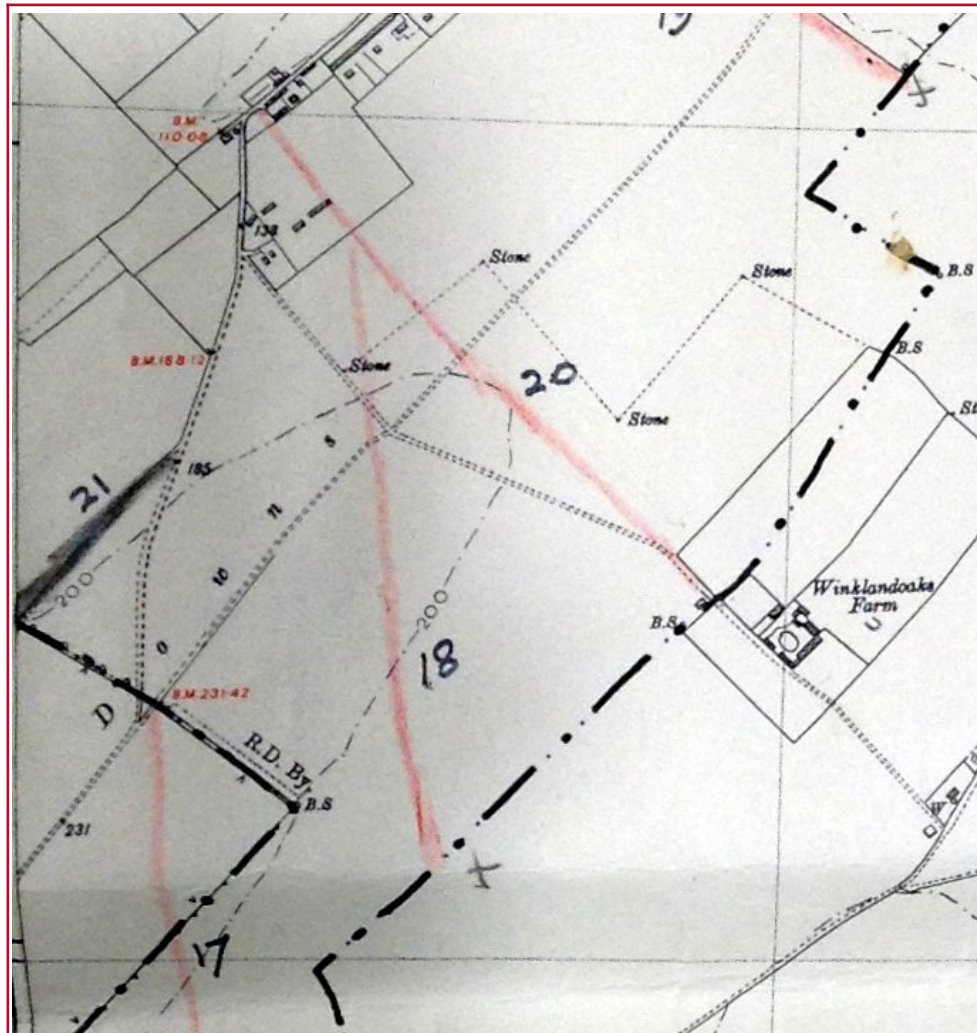


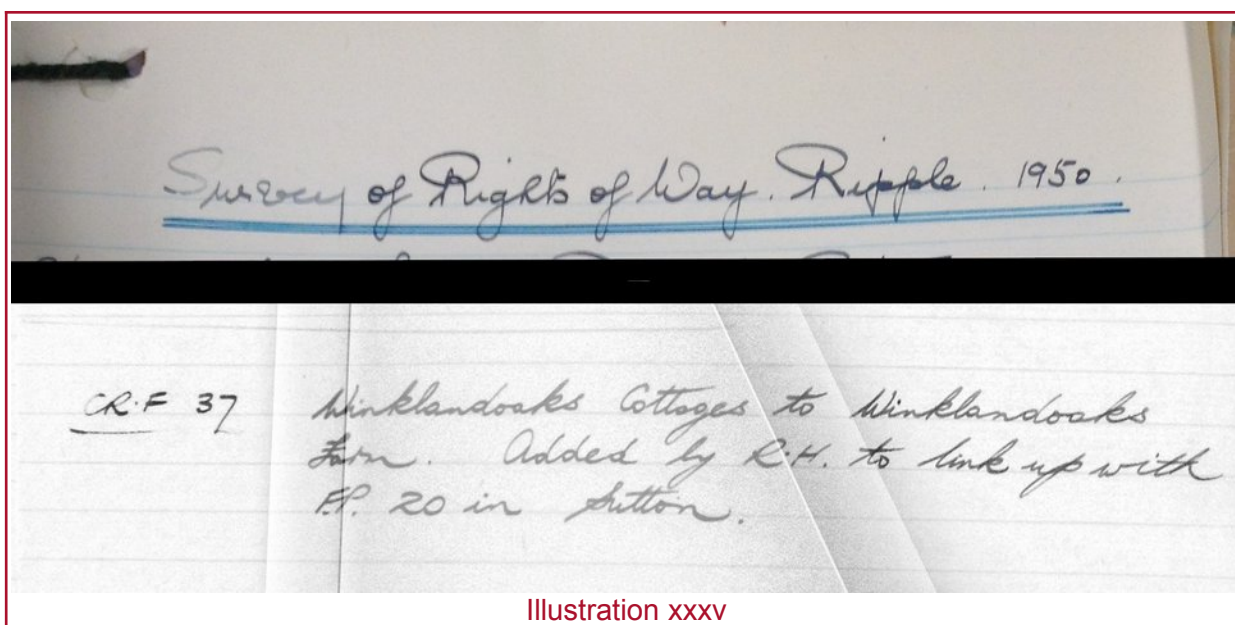
Illustration xxxiii

58 FP/R253

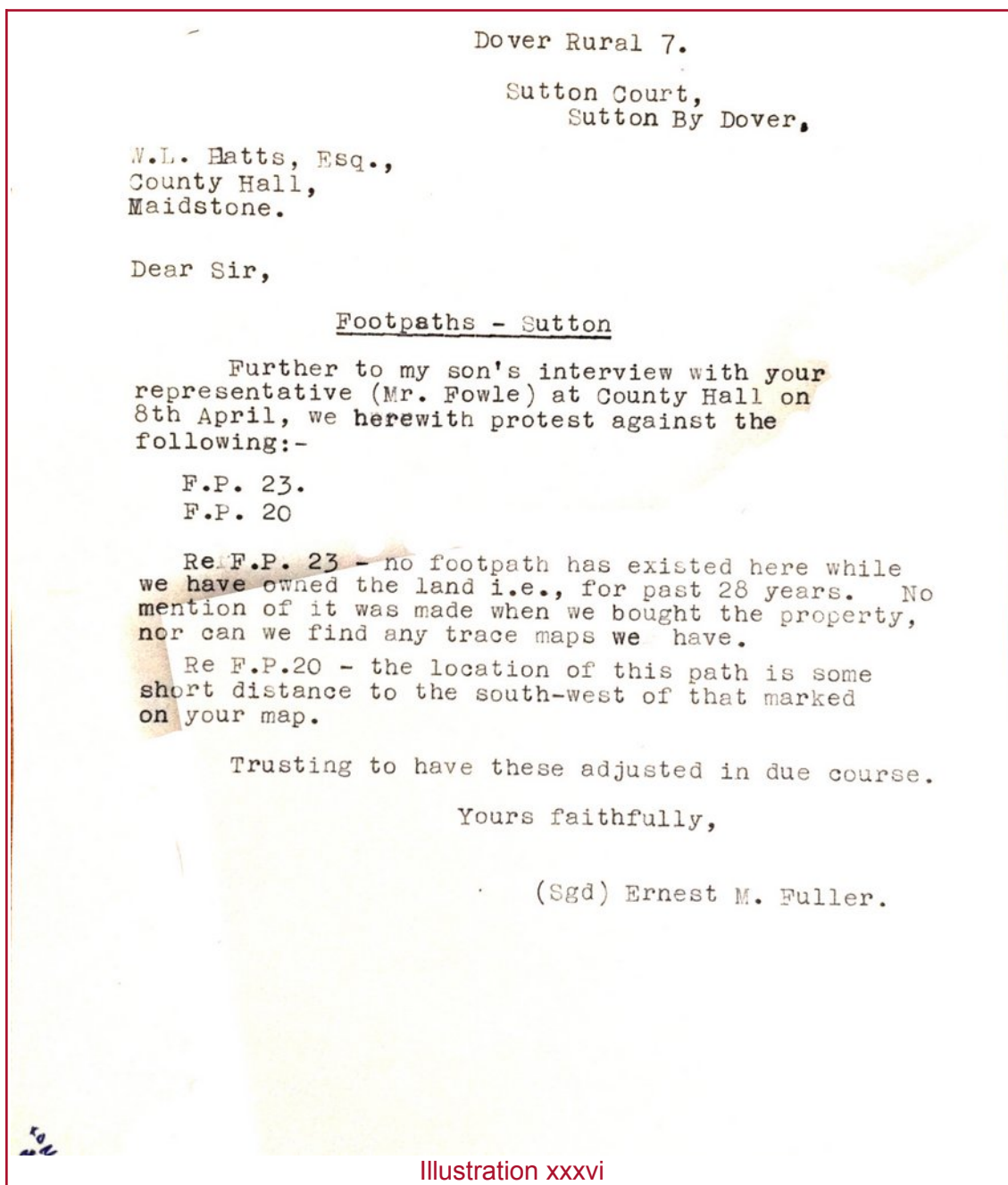
Ripple parish map



Ripple parish statement



Letter from Sutton Court Farm



O.3. **Description:** Sutton and Ripple parish councils each 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 20, lying in a direct line between the bottom of Dover Hill and the parish boundary next Winkland Oaks Farm. This alignment subsequently attracted objections, including from Sutton Court Farm, and the route was amended to the line of footpath EE427 now shown on the definitive map and statement.

O.5. The objection from E M Fuller of Sutton Court Farm is headed 'Footpaths — Sutton', and states, in respect of footpath 23, that 'no footpath has existed here'. However, in relation to footpath 20, it is stated only that: 'the location of this path is some short distance to

the south-west of that marked on your map.’ The author does not refer to footpath 20 as a ‘footpath’ (but does so refer to footpath 23).

O.6. 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’ (some were described in addition as ‘farm road’, but without any apparent intention that the ways were other than public footpaths).

O.7. The Ripple parish map showed no entry along the line of the order way. However, an additional entry was made in the parish schedule, for

CR.F 37 Winklandoaks Cottages to Winklandoaks Farm. Added by R.H. to link up with FP. 20 in Sutton.

The way was subsequently included on the draft map as a carriage road footpath.

O.8. **Conclusion:** The Sutton parish map was poorly executed, and identified a fictional footpath between Winkland Oaks Farm and Dover Hill, subsequently corrected following objection.

O.9. 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 order way having been recorded between A and the parish boundary as a footpath vice bridleway. Notwithstanding the council’s initial identification only of alleged footpaths, the following parish paths are now recorded as bridleways or restricted byways:

Foot-path on parish map	Present right of way number	Present recorded status	
omitted	EE244 (Roman Road)	BOAT	
6	EE415A	footpath	candidate future application to upgrade to bridleway founded in historical evidence
21	EE428/ER52A/ER52	bridleway/RB	
16	EE419B	RB	
15	EE417	footpath ⁵⁹	pending application to restore status to bridleway ⁶⁰
12	EE422	footpath	pending application to upgrade to bridleway founded in historical evidence ⁶¹

⁵⁹ Formerly recorded as road used as a public path, downgraded in 1987 to footpath.

⁶⁰ Under reference PROW/DO/C495.

⁶¹ Under reference PROW/DO/C456.

O.10. It is notable that the landowner objector to the alignment of footpath 20 on the parish map did not refer to it as such, but only to a 'path' (but referred to neighbouring footpath 23 as such).

O.11. The Ripple parish map may originally have omitted the order way between B and Winkland Oaks Farm because it was believed to be a county road which did not need to be recorded on the definitive map and statement.

O.12. See also the Special review at item I.F above.

O.13. **Objector:** The objector in the formal objection states (BTF2/p.104) that:

It is also notable that the Ripple Parish Council, during the initial parish survey undertaken in 1950, did not consider the section of the claimed route within its parish to have any form of public status; that survey would necessarily have been the subject of a parish meeting, such that local people would have had the opportunity to report its omission from the survey.

As stated above, we suggest that it is more likely that the way was considered not to need recording on the parish map, being perceived as a recognised public road (or alternatively, its inclusion was not even considered for the same reason).

O.14. **Points:** 0