

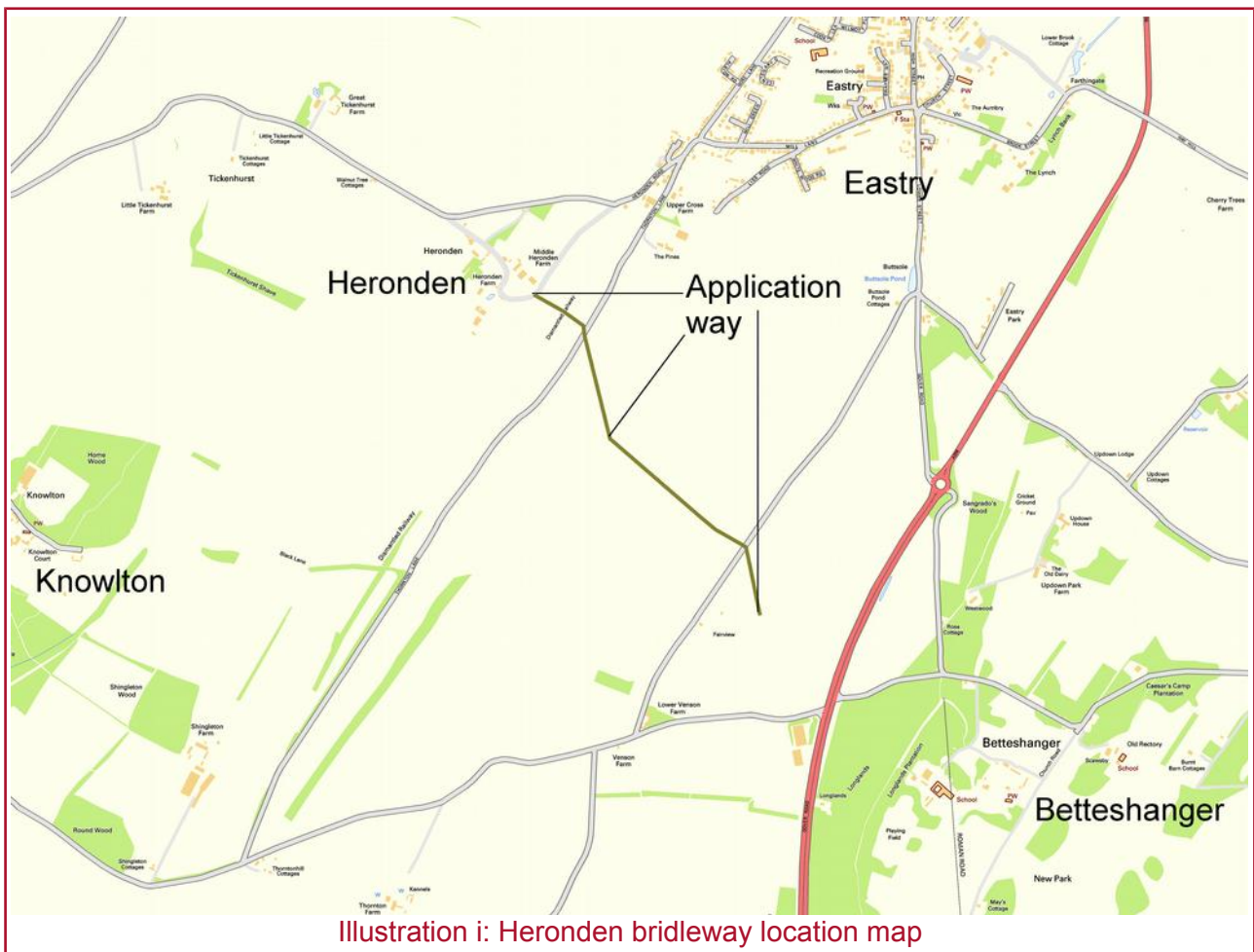
Heronden bridleway: document analysis

Application to record a bridleway between Heronden and Venson Bottom

I. Introduction

A. Quick reference

A.1. Location plan (see application map at part II below for scale representation):



A.2. Parish of: Eastry

A.3. Former parish of: Eastry

A.4. Termination points: Heronden Road, Heronden, to Black Lane near Venson Bottom

A.5. Termination points Ordnance Survey grid references: TR29775410, TR30485308

A.6. Postcode: CT14 0JY

A.7. Ordnance Survey Explorer sheet: 150

A.8. Ordnance Survey County Series 25" sheets: Kent XLVIII/13

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer district access and bridleway officer for the borough of Epsom and Ewell in Surrey, and am also authorised to make applications on behalf of the society in relation to East Kent. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way which lies in the parish of Eastry, in the district of Dover, Kent. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a public bridleway.

D. Application

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

D.2. The application for the bridleway relates to the way from point A (TR29775410) on Heronden Road near Heronden, passing east-southeast along the north side of a hedge to pass through the hedge marking the west side of the course of the former East Kent Mineral Light Railway, crossing the site of the permanent way at B (TR29855405), continuing southeast to Thornton Lane at C (TR29915397), then continuing south-southeast across arable land to the southwestern end of a baulk at D (TR30005364), then southwest (passing briefly along the southwest side of a short baulk) to the minor road in Venson Bottom at E (TR30415329), then continuing south-southeast across arable land to a junction with an unrecorded restricted byway¹, Black Lane, at F (TR30485308), at the point at which the restricted byway turns from north-northeast to east-southeast — a total distance of 1,280 metres.

D.3. The points A to F are identified in the application map at section II below.

E. Background

E.1. The way is the subject of the application because historical evidence shows clearly that the way was widely recognised as a public bridleway in the nineteenth century, and subsequent Ordnance Survey mapping continues to record the way as a physical feature in the landscape until the 1957 edition of the twenty-five inch map, as well as on the one-inch New Popular Edition published in 1947 (neither of these shows the way between A

¹ An application to record Black Lane as a restricted byway is recorded in the Kent County Council register of applications for definitive map modification orders as application 367. For further details of the application for Black Lane, see: www.craddocks.co.uk/apps/blacklane/index.htm.

and C, nor between E and F), and between A and E on the one-inch Popular Edition published in 1938.

E.2. The application way is one of several east-west links across the parish of Eastry south of the village itself (along with Thornton Road and Black Lane), but one which appears always to have had the status of a bridleway. It is not marked on historical maps which focus on the depiction of roads, but it appears on large scale nineteenth century mapping, and it is notably annotated as a bridleroad on the tithe map. It may be that the part of the way between A and C was formerly of a greater status than bridleway, being depicted as an inclosed road on some early maps, but the evidence is insufficient for an application for this part as a restricted byway.

E.3. The extent of evidence in support of the application varies between sections A to C, C to E, and E to F. However, the course of the bridleway is a reasonably direct and continuous way between A and F, and via Black Lane, beyond to Betteshanger and Deal. The evidence for the status of the way between A and E is good, and it is inevitable that if this part of the way is a public way of whatever status, then the whole of the route must be of the same status. It is inconceivable that all users of the bridleway, heading southeast from Heronden, would have turned off south or north along Venson Bottom, with none continuing east towards Betteshanger and Deal, for earlier maps show that the bridleway was a direct route to these places, and that there is little habitation in Venson Bottom itself to account for travel to here and no further.

F. Private rights

F.1. It may be suggested that the application way is no more than an easement, and that references in various documents (and especially the tithe map) to a road, bridleway or footpath are to a private road or way.

F.2. A private road or path must be attributable to either:

- private ownership, such that the road is owned by a specific landowner who has exclusive control of the road, and who uses the road either for the private purposes of the landowner, or for the landowners' tenants, employees or others — an example is a carriage drive across a park, where both the drive and park are owned by the landowner, and the carriage drive provides a means of access to the principle house of the landowner; or
- a private right of way (or easement), such that the road is owned by A (A is the owner of the 'servient tenement', in this case the road and typically the neighbouring land), but B has a private right of way along the road to provide a means of access to B's own land (B is the owner of the 'dominant tenement') — an example is a track from a public road across a field to a cottage, where A owns the field and the track across it, but B has a right of way along the track as a necessary means of access to the cottage.

F.3. Neither context is remotely likely in relation to the application way. The lane traverses land in several separate ownerships, and it appears that it has done so for many centuries, when much of this land was church land. There are no plausible circumstances which could give rise to the application way having been established as a private right of way: the way is a through route, with terminations on other public roads (and crossing public roads), and there is no evidence of any significant habitation along or near its align-

ment which could give rise to a private right of way: the way is too long, and the land traversed lacking in patterns of land use likely to give rise to such private rights.

G. Grounds for application

G.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*², Lewison LJ said, at paragraph 22,

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

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

G.2. The correct test under s.53(3)(c)(i) is whether: 'the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path...'. The surveying authority must therefore make an order consequent on this application where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the bridleway.

G.3. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates bridleway reputation over many years, indicating that the route does indeed have bridleway status.

H. Points awarded

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

² [2012] EWCA Civ 334

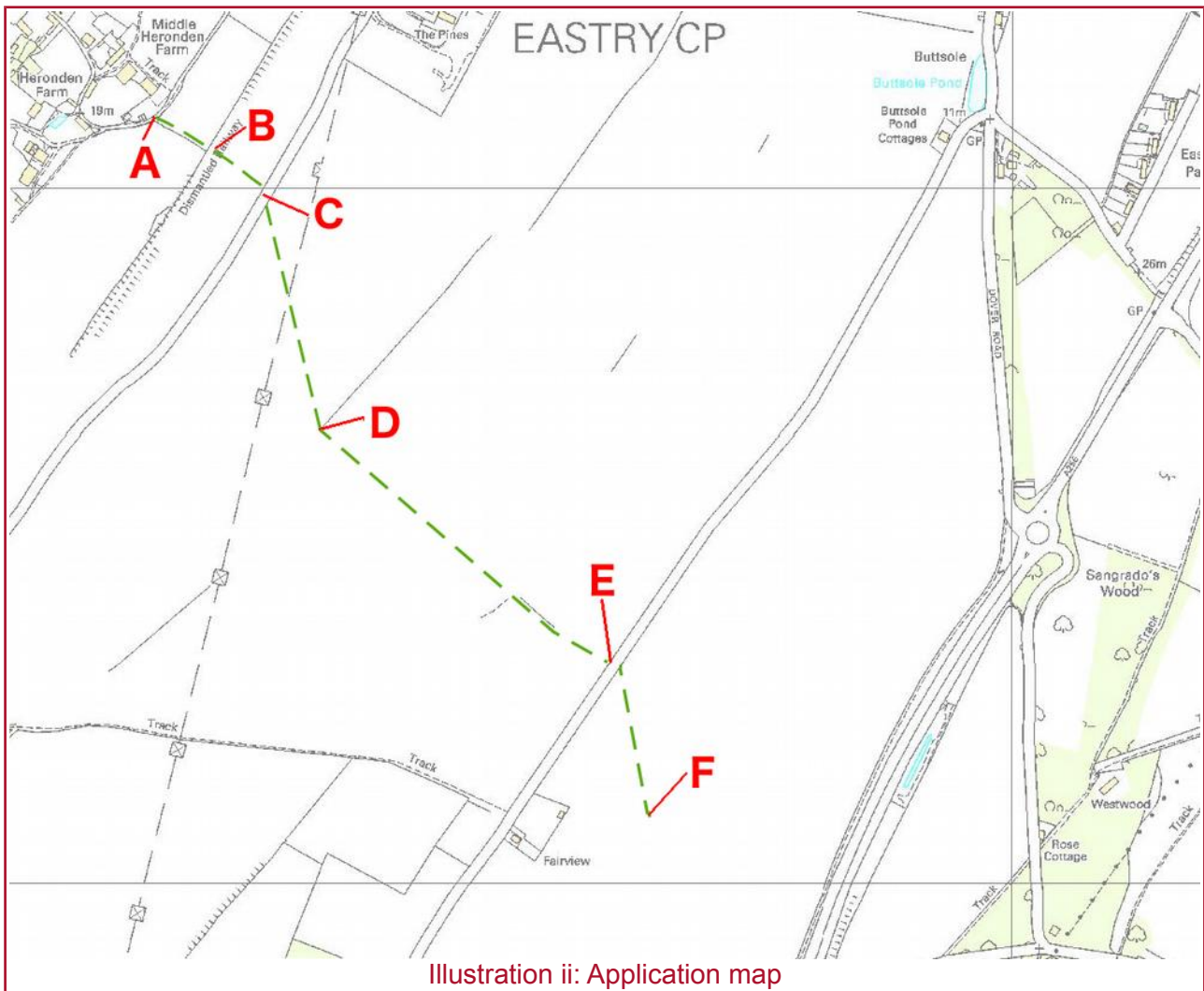
³ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

Item	Ref	Points A–C		Points C–E		Points E–F	
		FP	BW	FP	BW	FP	BW
Andrews Topographical Map of the County of Kent	IV.A		1		1		1
Boteler sketch map	IV.B		1				
Barlow-Hasted map of Kent	IV.C		2				
Tithe Act 1836	IV.D		5		5		5
Plan of estate in Eastry and Worth	IV.E						
Ramsgate, Sandwich, Deal and Dover Railway	IV.F			4			
Dover, Deal and Sandwich Railway	IV.G				5		
Walmer, Deal and Adisham Railway	IV.H				3		
Field sketch map	IV.I			1			
Ordnance Survey 25" map, second edition	IV.J						
East Kent mineral light railway	IV.K		5				
Finance Act maps	IV.L						
Ordnance Survey 25" map, fourth edition	IV.M						
Total points		0	14	5	14	0	6
Total points (FP and BW)		14		19		6	

I. Width of application way

I.1. The width of the application way from A to F is unknown, and a width of three metres is proposed as the minimum practicable width for two horse riders to pass, and therefore the minimum that might have been established through long use.

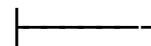
II. Application map



Map centred on D at TR300536

Scale: approx. 1:10,280 (when printed A4)

Application way is marked — — —



200m

III. Along the way

[Blank]

IV. Evidence

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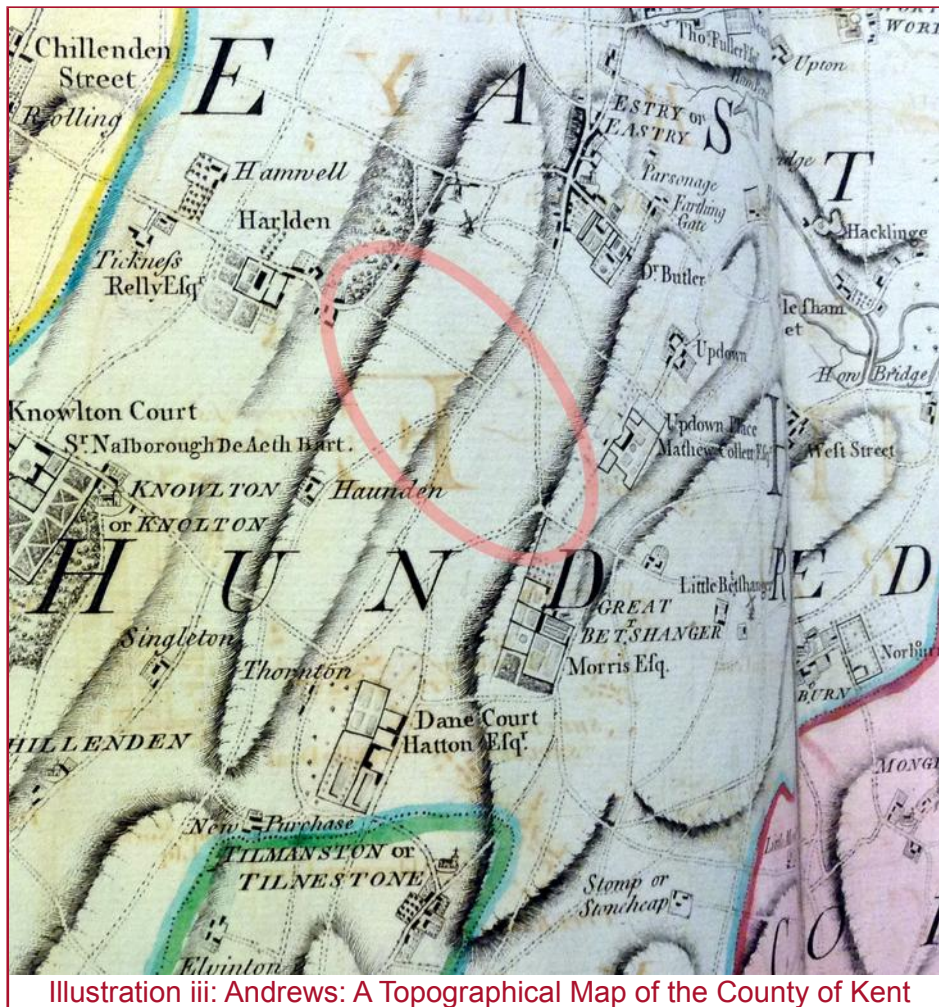
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A. Andrews Topographical Map of the County of Kent

A.1. **Date:** 1769

A.2. **Source:** British Library⁴

4 k.1.tab.21: copy of index map available at www.oldkentmaps.co.uk/K-060-i.htm .



A.3. **Description:** Original scale: two inches to one mile; orientation: unchanged (north).

A.4. This remarkable map comprises 25 sheets covering the county of Kent, surveyed and published by Thomas Kitchin, John Andrews, Andrew Dury and William Herbert. The maps are published at a scale of two inches to one mile, although the purpose of the individual sheets appears to owe more to the desire to show potential clients' country estates than to give an accurate representation of the county at that scale.

A.5. A number of ways are shown on the map in the vicinity of Heronden, which is named on the map as Harlden. These include a way projecting east-southeast from Harlden (Harlden) to join a way which heads roughly south from Eastry to Thornton, and another way, from the Eastry to Thornton way, slightly north-northeast of that junction, which projects south towards Great Betshanger, joining a further way.

A.6. **Conclusion:** The way which heads roughly south from Eastry to Thornton is likely to be Thornton Lane.

A.7. The way projecting east-southeast from Harlden is fully consistent with the application way from A, joining Thornton Lane at a point roughly corresponding to C. The second way, from Thornton Lane slightly north-northeast of that junction, shown south towards Great Betshanger, joins a way which is believed to be Black Lane at a point roughly corresponding to F. These two ways appear to be the application bridleway.

A.8. Points:

Part:	A to C	C to E	E to F
footpath	–	–	–
bridleway	1	1	1

B. Boteler sketch map

B.1. **Date:** 1790–92

B.2. **Source:** Canterbury Cathedral Archives⁵



Illustration iv: Boteler sketch map

B.3. **Description:** Original scale: not known (sketch map marked 'This plan is not from actual admeasurement'); orientation: unchanged (the map is marked with legends which suggest that west is top, but some labels are arranged as if north were top).

B.4. A sketch map contained within Boteler's *Collections for the Hundreds of Bewsborough, Cornilo and Eastry and part of Ringslow*. The sketch map shows the application way between A and C, but does not show the way beyond C to F.

B.5. **Conclusion:** the Boteler sketch map is good evidence for the existence of a highway between A and C. The sketch map recognisably shows ways around Eastry which are metalled and tarred highways today, with some annotated exceptions:

5 CCA-U11/6/6/3

- Black Lane between Knowlton and Thornton Lane, which is annotated 'Bridleway to Knowlton', and which is currently awaiting determination of an application as restricted byway⁶;
- A track parallel to Thornton Lane from the junction with Black Lane to Eastry, which is annotated 'Tenant's Way' and therefore recognised by Boteler as not being a public highway;
- A footpath between Heronden and Eastry Mills, which is marked by a dashed line, and which is shown on subsequent Ordnance Survey mapping as a footpath.

B.6. It may be concluded that the way between A and C is therefore likely to be a public highway, of at least bridleway status, in the absence of any annotation to the contrary.

B.7. Points:

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	1	–	–

C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** reproduced from www.ancestry.com⁷ and The Old Map Shop⁸: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

6 See footnote 2.

7 Indexed at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm; map at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/barlow-Hasted_eastry_1800.html .

8 www.theoldmapshop.com .

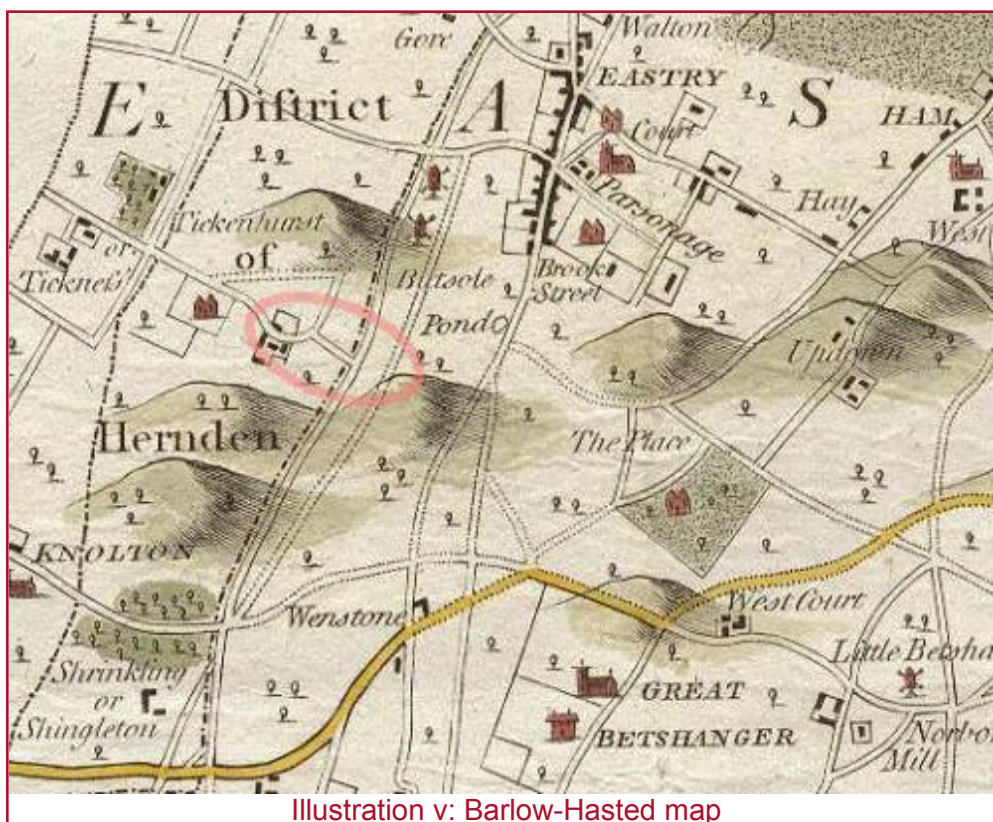


Illustration v: Barlow-Hasted map

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

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

C.5. The Barlow-Hasted map shows the application way between A and C, but does not show the way beyond C to F.

C.6. **Conclusion:** The Barlow-Hasted map is good evidence for the physical existence of the application way between A and C. The map was widely commercially published, and would tend to show through routes which were public highways, whereas minor routes of questionable public status (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are shown with lines across the junction with public ways. The way beyond C to F is likely to have been omitted because it was only a bridleway, whereas the map may be evidence that the part between A and C was historically of higher status.

C.7. **Points:**

Part:	A to C	C to E	E to F
footpath	–	–	–
bridleway	2	–	–

D. Tithe Act 1836

D.1. **Date:** 1841

D.2. **Source:** map: Kent County Archives⁹; tithe award: Kent Archaeological Society¹⁰

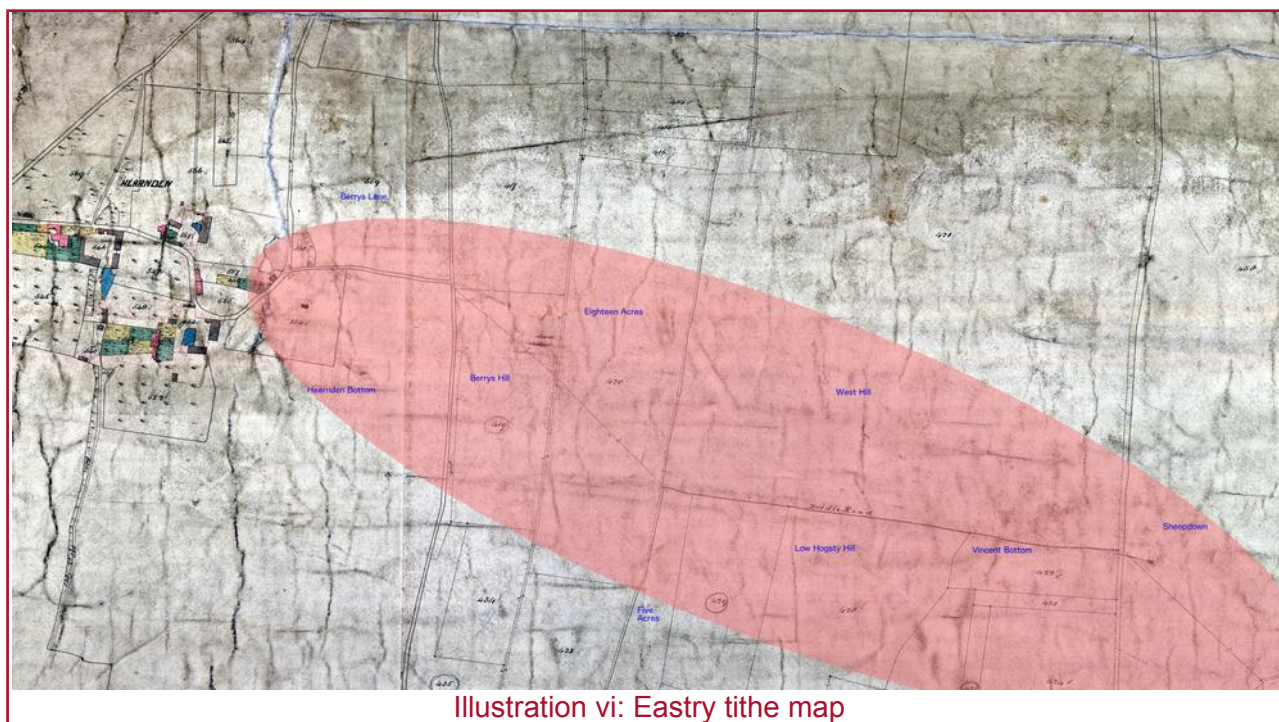


Illustration vi: Eastry tithe map

D.3. **Description:** Original scale: three chains to one inch (1:2,376); orientation: unchanged (north).

D.4. The tithe map for Eastry shows the application way as an enclosed track or road east from A to C: the track or road is shown open to the junctions with the known public roads at both ends. No specific parcel reference is allocated. From C, the application way is shown as a single pecked line across parcel 419 ('Berrys Hill') and then 420 ('Eighteen Acres') to D, continuing along the southern boundary of parcel 421 ('West Hill') to the junction with the minor road in Venson Bottom at E. Between D and E, the application way is annotated 'Bridle Road'¹¹. From E, the application way is shown as a single pecked line across parcel 458 to the junction with Black Lane at F.

D.5. **Conclusion:** The absence of any titheable rating as regards the application way between A and C is good evidence of public status. Compare with other public roads of known status, which are also shown as untithed: Thornton Lane, Thornton Road, Venson Bottom, public bridleway EE266 (Venson Farm to Tilmanstone), Dover Road, Cater Road: some of these are specifically annotated with parcel reference 571, which does not appear in the tithe award, but is presumed to be accounted for by 'roads and waste'. Whereas compare with driveways of presumed private status which are not: driveway to Shingleton Farm, tracks parallel to but east of Thornton Lane, driveway to Updown House.

D.6. Moreover, the application way between D and E is specifically annotated as a 'Bridle Road'. Such annotations are unusual on a tithe map: only one other annotation appears on the Eastry tithe map (public footpath EE226 from Foxborough Hill to Sandwich¹²).

9 Kent tithe maps are available as images on CD.

10 www.kentarchaeology.org.uk/Research/Maps/EAY/02.htm

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

12 This 'bridle road' has been recorded on the definitive map as a public footpath as far as the Sandwich bypass, and is now the subject of an application for a definitive map modification order to upgrade to

While the tithe map was not prepared with the intention of ascertaining and recording public rights of way, the specific, conspicuous annotation on the tithe map itself and contemporary notoriety of the Tithe Act documents within the Eastry community ensure that a mistaken attribution of the application way is highly unlikely, and if identified at the time of publication, would have been corrected. In *Giffard v Williams*¹³, referring to a tithe award and map, Stuart VC said:

‘But the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.’

D.7. The application way between A and F is a single, continuous, logical route between Heronden and Betteshanger (via Black Lane), and the annotation applied to the tithe map must apply to the entire route.

D.8. **Points:**

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	5	5	5

E. Plan of estate in Eastry and Worth

E.1. **Date:** Middle of C19 (see Description)

E.2. **Source:** Canterbury Cathedral Archives¹⁴

bridleway (no.385).

13 (1869) 38 L.J. (Ch.) 597, 604.

14 CCA-U63/19309

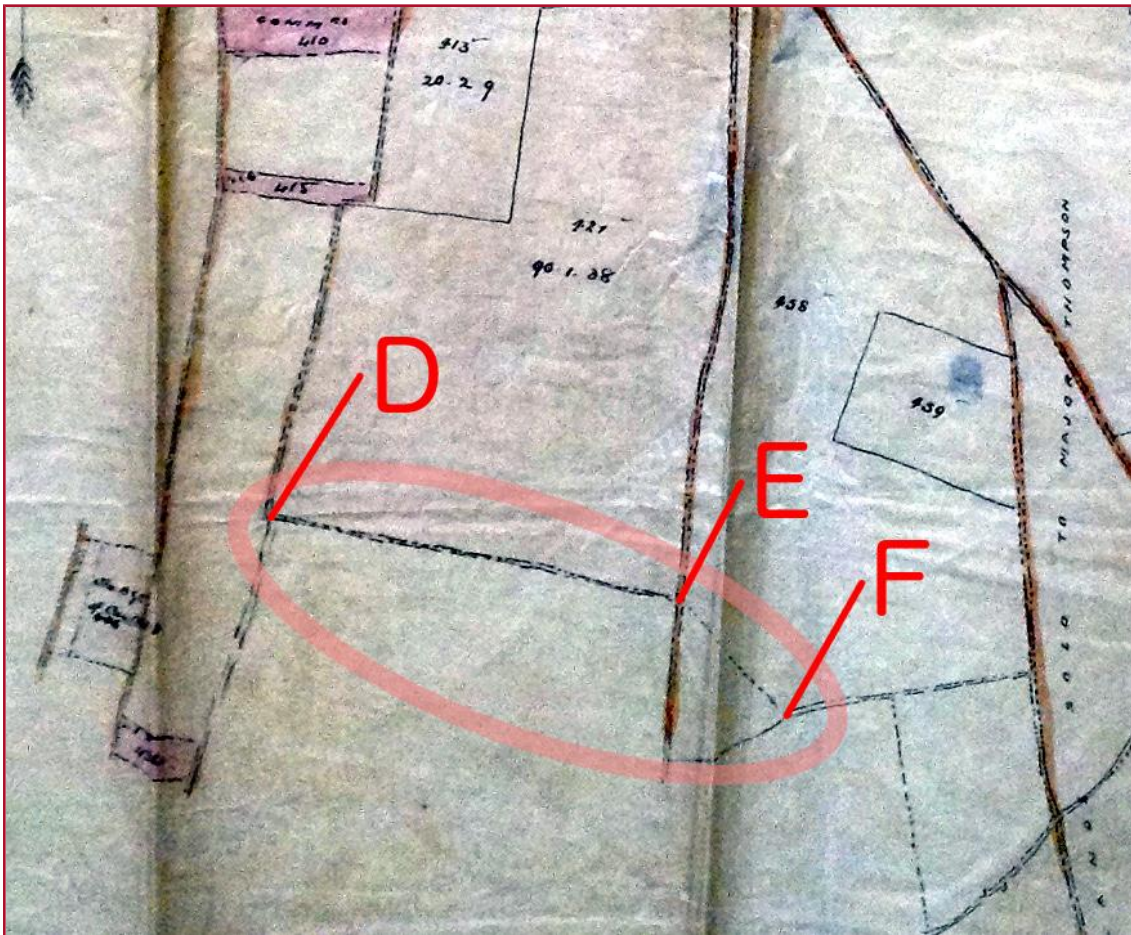


Illustration vii: Plan of estate in Eastry and Worth

E.3. **Description:** Original scale: marked as nine chains to one inch (1:7,128); orientation: unchanged (north).

E.4. An undated map acquired from the Church Commissioners in a 1966 deposit, attributed to the eighteenth century, but which refers to parcel numbers used on the Eastry tithe map, and so likely to date from the middle of the nineteenth century.

E.5. The map shows the application way between D and F, but nothing is shown of the way between A and D. The way is shown as a track, marked by double pecked lines, from D to E, leading off the field track (described as a 'tenants way' on the Boteler sketch map at item IV.B above) which runs parallel to Thornton Lane, and as a single pecked line from E to F.

E.6. **Conclusion:** The estate map provides good evidence of the physical existence of the application way between D and F, but does not indicate whether any public rights exist. The absence of the way between A and D is accounted for by the exclusion of any estate interest in this part of the land.

E.7. **Points:**

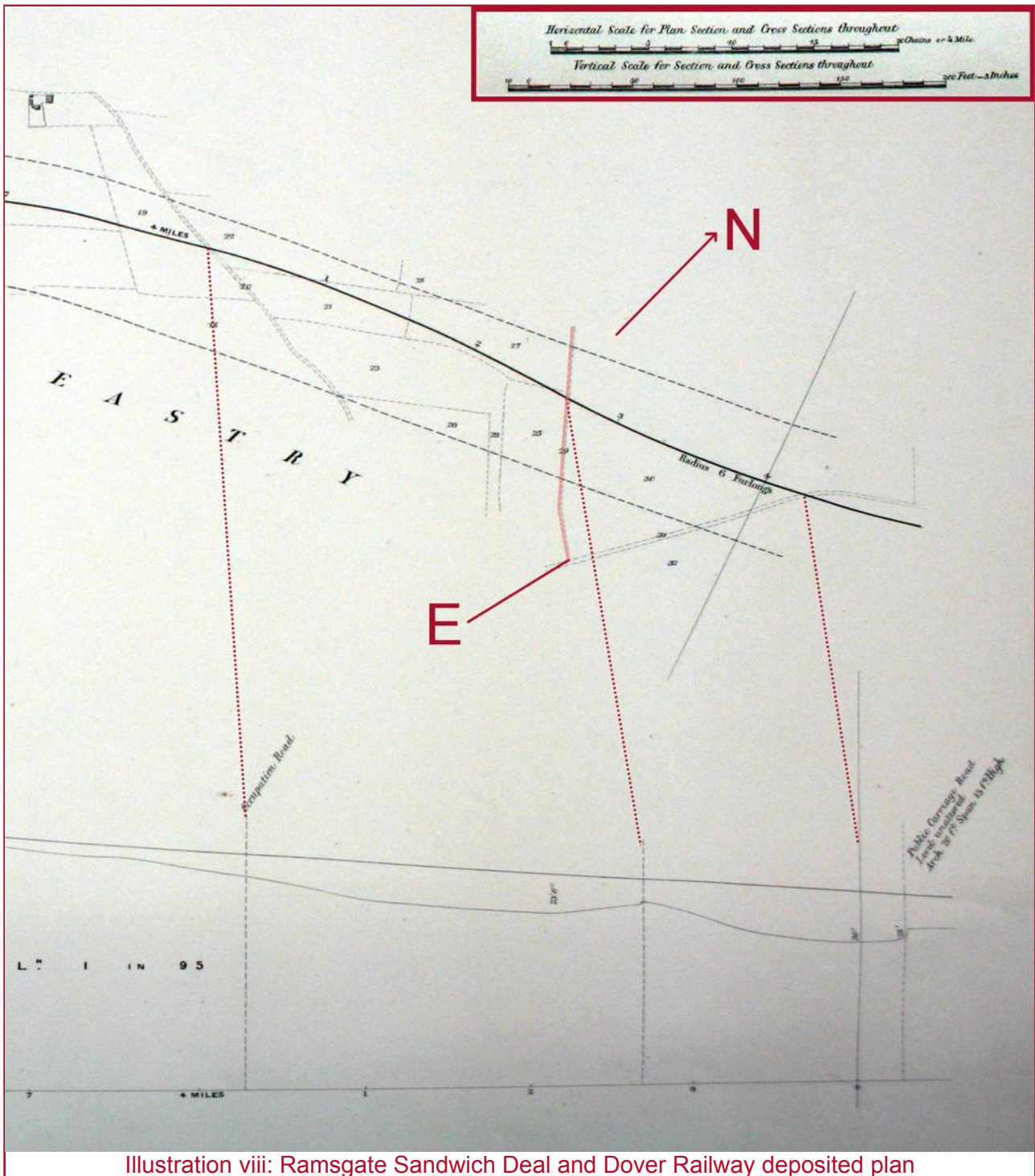
<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	–	–	–

F. Ramsgate, Sandwich, Deal and Dover Railway

F.1. **Date:** 1861

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

Ramsgate, Sandwich, Deal and Dover Railway deposited plan:



15 Q/RUm/463

Ramsgate, Sandwich, Deal and Dover Railway book of reference:

Parish of <i>Eastry</i>		County of <i>Hert</i>		
Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIER'S NAMES.
48 29	<i>Field</i> <i>Occupation Road or Footpath</i>	<i>William Boteler and Aldborough Henniker</i>		<i>George Wood and Thomas Medgetts</i>

Illustration ix: Ramsgate Sandwich Deal and Dover Railway book of reference

F.3. **Description:** Original scale: marked on extract but subject to error owing to variation between photographic copies; orientation: unchanged (top is northwest).

F.4. The alignment for the proposed Ramsgate Sandwich Deal and Dover Railway is shown in the deposited plan so as to cross the application way midway between D and E. The application way is depicted as plot 29, and in the book of reference for the parish of Eastry, the plot is recorded as an 'Occupation Road or Footpath' in the ownership of William Boteler and Aldborough Henniker and in the occupation of George Wood and Thomas Medgetts.

F.5. The proposals were not put into effect.

F.6. **Analysis:** The recording of probable public rights of way (other than public roads) in the deposited plans and book of reference for this proposed railway is unreliable. The following table analyses every public right of way (other than carriageways which are today metalled and tarred) which is shown on the definitive map, or any path shown on near-contemporary 1:2,500 Ordnance Survey mapping¹⁶, as intersecting the proposed alignment of the railway between Shepherdsweil and West Street (near Ham) (where the proposed lines to Deal and Sandwich diverge). The table records the location of each right of way or path, and the representation of it in the deposited plan and book of reference.

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
Eythorne Road to Long Lane	TR261489	FP ER78	Siberts-would 17 Path	Edward Royds Rice	(Lessee: Robert Potter) Robert Potter and William Higgins
Sheperdswell-Barfrestone road to Shepherswell Road	TR265495	BW EE342	Barfreston 6 Public Road	The Surveyors of the Parish John Harvey Thomas Wilmott	The Surveyors of the Parish John Harvey Thomas Wilmott

16 Ordnance Survey OS 1:2,500 second edition c. 1896–98, available from: maps.nls.uk/os/25inch-england-and-wales/index.html .

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
Roman Way to Kelk Hill	TR282515	FP EE323	Nonington 8 Public Road	The Surveyor of the Parish John Spanton	The Surveyor of the Parish John Spanton
footpath from Kittington Cottages to Thorntonhill Cottages	TR286521	FP EE264	Eastry 4 Public Road	The Surveyors of the Parish Stephen Clark William Pittock	The Surveyors of the Parish Stephen Clark William Pittock
Thorntonhill Cottages to Venson Bottom	TR288522	BW EE262A	Eastry 7 Private Occupation Road	Admiral George Hugh William D'Aeth and Edward Royds Rice	(Lessee William Wilson and William Wilson junior) William Wilson and William Wilson junior
Black Lane	TR299532	—	Eastry 20 Occupation Road	William Boteler	George Wood, Joseph Patten Baker and Thomas Medgetts
bridleway from Venson Bottom to Heronden	TR302534	—	Eastry 29 Occupation Road or Footpath	William Boteler and Aldborough Henniker	George Wood and Thomas Medgetts
footpath from Northbourne Road to Lower Street	TR310540	FP EE259	Eastry 37 Field and Footpath	William Boteler	(Lessee: John Oldfield) John Oldfield
bridleway from Northbourne Road to Hay Hill	TR317540	BW EE382	Eastry —	Not separately identified	Not separately identified
footpath from Eastry to Updown Farm	TR319541	FP EE257	Eastry —	Not separately identified	Not separately identified ¹⁷

F.7. The deposited plans and book of reference failed to record the correct status of rights of way which were perceived (at the time the plans were prepared) not to be carriageways. In the table above, none of the intersecting routes now recorded as public rights of way on the definitive map and statement for Kent (and recorded as paths on the second edition Ordnance Survey 1:2,500 map) is presented in the book of reference as a specifically public path. Relevant entries refer to the right of way in some cases as a public road, but otherwise as a 'path', 'footpath' or 'occupation road', and the owner, lessee where relevant, and occupier, appear to be the private interests in the land. In some cases, such as the bridleway from Northbourne Road to Hay Hill, the way is not separately

¹⁷ The path is expressly identified as a public footpath in notice of the application to Parliament for an Act: see [London Gazette, 29 November 1861, p.5136](#), para.3.

identified in the book of reference. In the case of the footpath from Eastry to Updown Farm¹⁸, the existence of a public footpath is noted neither in the plan nor the book of reference, but specifically cited in public notice of the deposit of the plans and book of reference¹⁹. Whereas in relation to public roads, the ownership of land is vested in the surveyor of highways, none of the entries identified in the table, apart from acknowledged public roads, refers to the interest of the highway authority.

F.8. Section 46 of the Railways Clauses Consolidation Act 1845, by convention incorporated in every special Act for the construction of railways after this date, provided for the bridging of public roads, but for other public highways to be taken over the railway on the level (with the consent of local justices) unless provision were made to the contrary in the special Act²⁰: however, the plans provide no indication that any such provision to the contrary was intended in relation to the application way.

F.9. Once an occupation road had been identified, it did not greatly matter whether there was a public path, or indeed whether the public path was a bridleway or footpath, since in any such case, the railway company was empowered only to provide a crossing on the level, and the crossing must be suitable for (private use) carriages and carts. However, in the case of the application way, it is described as an 'occupation road' or a footpath. This description suggests that the status as footpath must be additional to that of occupation road, and that it must be a public footpath, because if it were private, it would be subsumed in the description of occupation road (which is an easement for access to land on foot, on horseback and in vehicles). Nor is it credible that the status was perceived to be either an occupation road or footpath: the intention must be to describe a route which was both, for to record the status as alternatives would suggest that the surveyor had failed to carry out the necessary research to establish status (and would leave the railway company uncertain whether it had to provide a level crossing for vehicles, or only for pedestrians).

F.10. **Conclusion:** The deposited documents for the Ramsgate Sandwich Deal and Dover Railway therefore suggest the conclusion that the company's surveyor recognised the existence of a public footpath and occupation road between D and E. However, the incomplete approach taken by the company to recording the existence and status of non-carriageway public rights of way suggests that the surveyor may have been indifferent to the precise extent of public rights over the application way, particularly because the requirement to make provision for an occupation road would have made the distinction between footpath or bridleway of little substance.

F.11. **Points:**

Part	A to C	C to E	E to F
<i>footpath</i>	–	4	–
<i>bridleway</i>	–	–	–

G. Dover, Deal and Sandwich Railway

G.1. **Date:** 1862–85

18 Now public footpath EE257.

19 [London Gazette, issue 22570, p.5136](#), para.3.

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

G.2. **Source:** Kent County Archives²¹

Deposited plan 1862

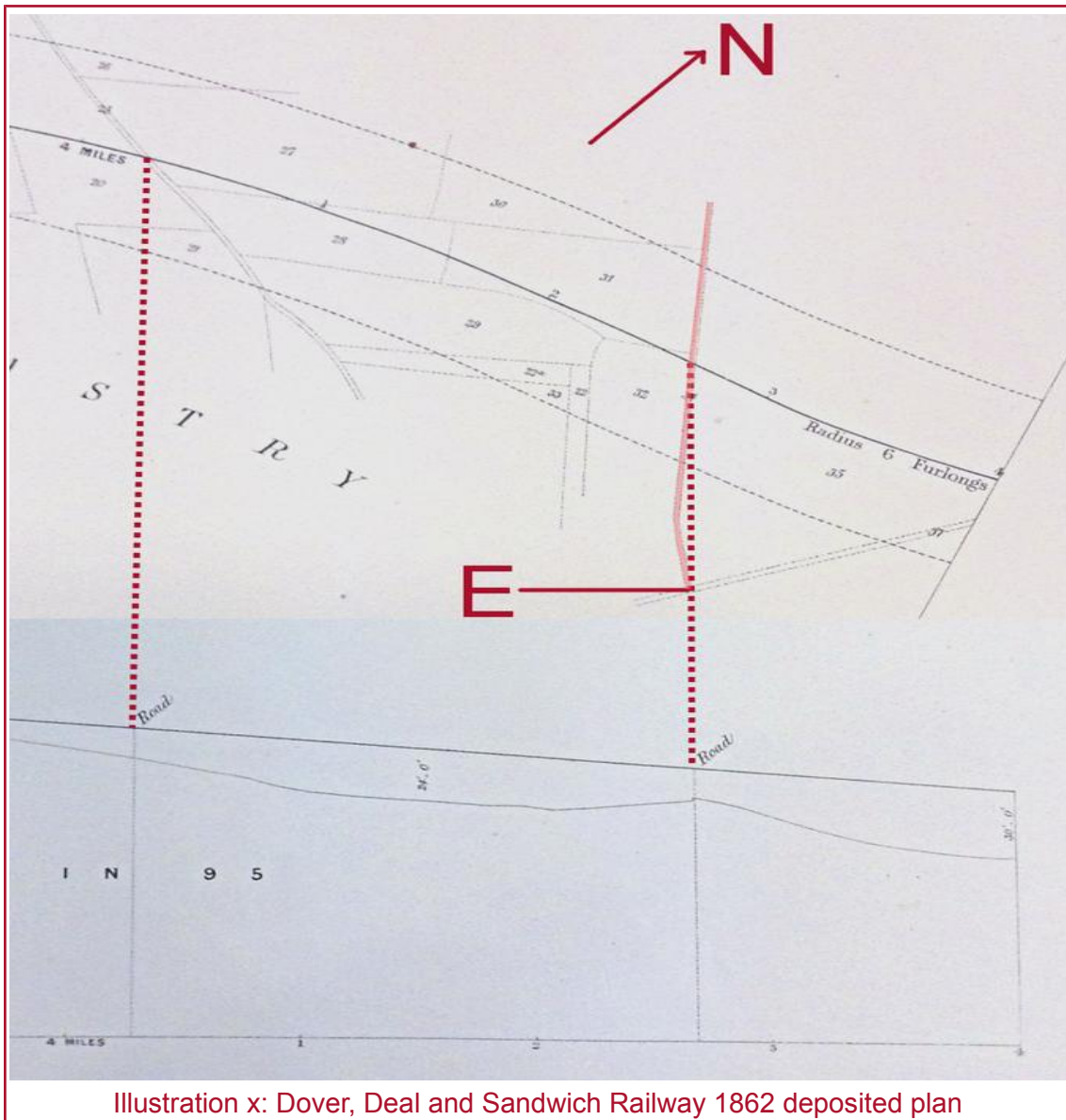


Illustration x: Dover, Deal and Sandwich Railway 1862 deposited plan

21 Q/RUm/466, 483, 505

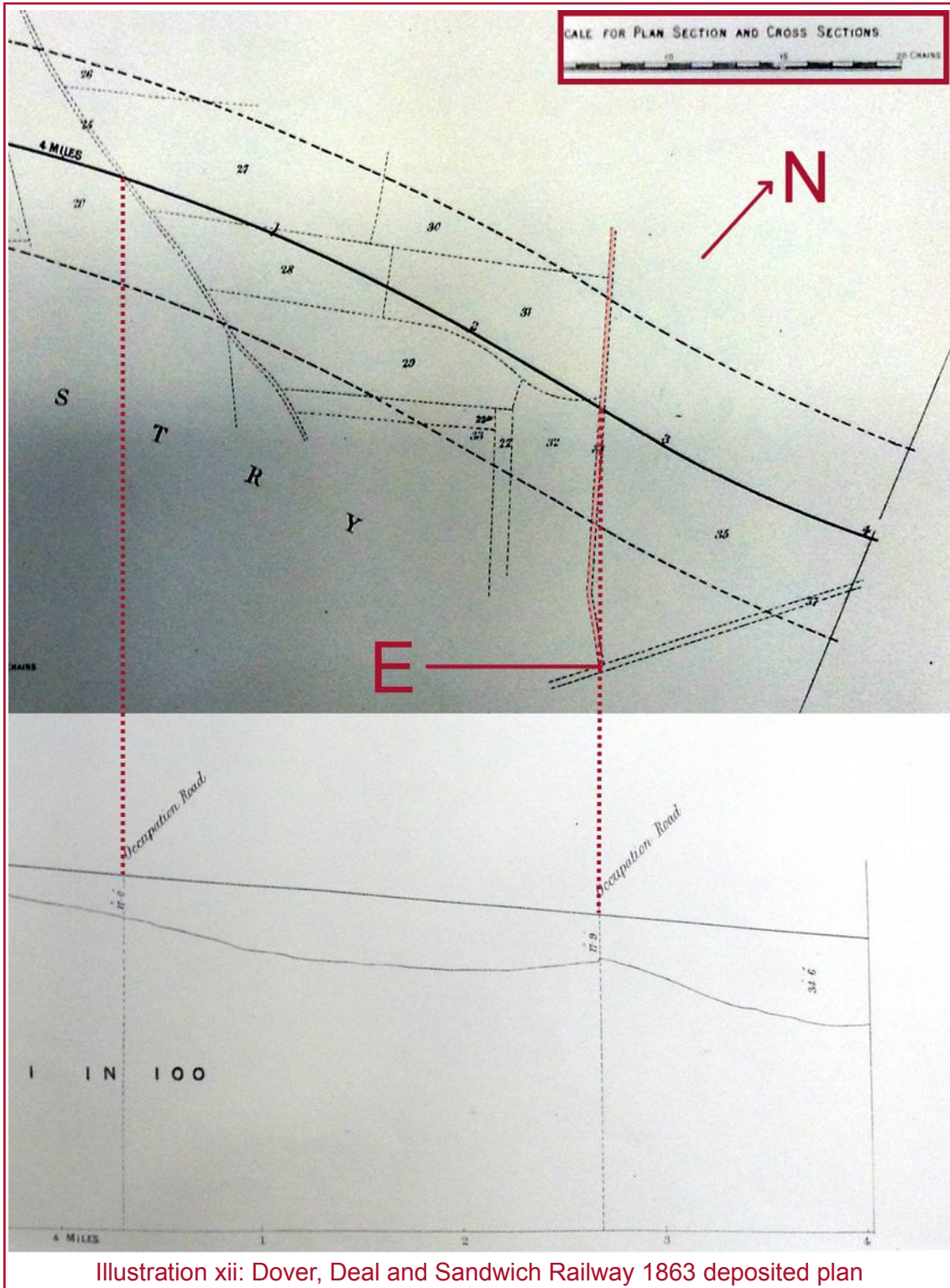
Book of reference 1862

PARISH of *Deal* COUNTY of *Hert*

Numbers referring to the Plan.	DESCRIPTION of PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIERS' NAMES.
22 ^a	Field	Emily Bethman		William Clarke and Joseph Patten Baker
33	Field	Aldborough Hemiker		Thomas Medgett
34	Bridle Road	Aldborough Hemiker and William Boteler		Thomas Medgett and George Wood

Illustration xi: Dover, Deal and Sandwich Railway 1862 book of reference

Deposited plan 1863



Book of reference 1863

PARISH of <i>Dover</i>		COUNTY of <i>Hert</i>		
Numbers referring to the Plan.	DESCRIPTION of PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIERS NAMES.
22 ^a	<i>Field</i>	<i>Emily Bethman</i>		<i>William Clarke and Joseph Potter Baker</i>
33	<i>Field</i>	<i>Walterborough Hemmick</i>		<i>Thomas Medgett</i>
34	<i>Bridle Road</i>	<i>Walterborough Hemmick and William Boteler and Surveyors of Highways</i>		<i>Thomas Medgett and George Wood</i>

Illustration xiii: Dover, Deal and Sandwich Railway 1863 book of reference

Deposited plan 1864

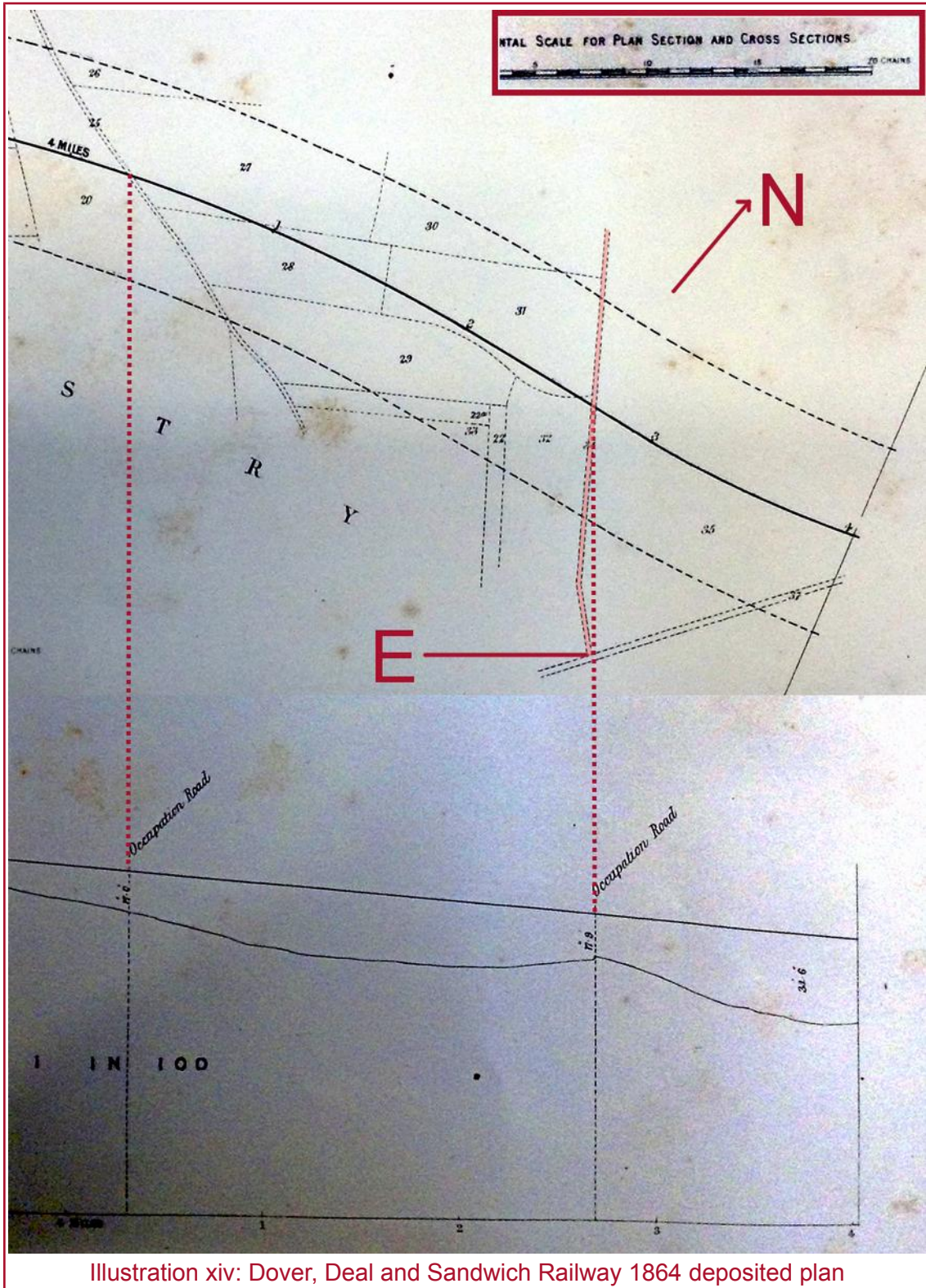


Illustration xiv: Dover, Deal and Sandwich Railway 1864 deposited plan

Book of reference 1864

Parish of <i>Eastry</i>		County of <i>Kent</i>			
No. or Plot	DESCRIPTION OF PROPERTY.	OWNERS OR REPUTED OWNERS.	LESSEES OR REPUTED LESSEES.	OCCUPIERS.	OBSERVATIONS.
29	<i>Field</i>	<i>William Boteler</i>		<i>Joseph Sutton Baker</i>	
33	<i>Field</i>	<i>Ditto</i>		<i>Ditto</i>	
34	<i>Private Road</i>	<i>Aldbrough Henniker and William Boteler and Surveyor of Highways and Wapwarden</i>		<i>Thomas Medgetts and George Wood</i>	

Illustration xv: Dover, Deal and Sandwich Railway 1864 book of reference

G.3. **Description:** Original scale: not marked on 1862 plan (but planned line marked off in furlongs), marked on 1863 and 1864 plans; orientation: unchanged (top is northwest).

G.4. A Bill for the Dover, Deal and Sandwich Railway was presented to Parliament in each of the 1862–83, 1863–64 and 1864–65 Sessions. The course of the line through Eastry parish is identical to that of the Ramsgate, Sandwich, Deal and Dover Railway (item IV.F above), which was presented to Parliament in 1861.

G.5. The course of the application way is shown between D and E in the deposited plan for each year by double pecked lines, and assigned plot number 34.

G.6. In the 1862 section, the application way is labelled 'Road'. In the 1863 and 1864 section, it is labelled 'Occupation Road'.

G.7. In the 1862 book of reference for Eastry parish, plot 34 is attributed to a 'Bridle Road', and the owner is given as Aldborough Henniker and William Boteler and in the occupation of Thomas Medgetts and George Wood. In the 1863 book of reference, it is again attributed to a 'Bridle Road', but in addition, the owner is also given as 'Surveyor of Highways' (the alteration made in manuscript). In the 1864 book of reference, it is now attributed to a 'Private Road', but with the same owners and occupiers, including the Surveyor of Highways.

G.8. None of these Bills received Royal Assent, the proposals were not put into effect, and instead, the Deal and Dover Railway Act 1865²² was granted Royal Assent on approximately the present alignment of the Deal and Dover railway.

G.9. **Conclusion:** the deposited documents for the Dover, Deal and Sandwich Railway disclose that the company's surveyor identified the existence of a bridleway along the line of the application way between D and E, and this was recorded in the book of reference for the 1862 and 1863 deposits. The books of reference for 1863 and 1864 record the interest of the surveyor of highways as owner, demonstrating the way to be a public bridleway. The way is recorded in the section as either a 'Road' (1862) or an 'Occupation Road' (1863 and 1864), which may disclose the existence of private occupation rights. The entry for a 'Private Road' in the book of reference for 1864 is not supported by the retention of the interest of the surveyor of highways as owner, nor consistent with the entries for the previous two years.

22 28 & 29 Vict., c.cxcvi

G.10. The sections show that no provision was made for a bridge in accordance with ss.46 and 49 of the Railways Clauses Consolidation Act 1845, which required the railway to be carried over or under a private carriage road by means of a bridge.

G.11. Section 46 provided for other public highways (not being carriageways) to be taken over the railway on the level (with the consent of local justices) unless provision were made to the contrary in the special Act²³. It may therefore be assumed that a level crossing were intended to be provided.

G.12. The plans are therefore good evidence for the existence of the application way between C and E. With one exception, none of the footpaths and bridle roads identified in the 1862 book of reference for the railway were assigned in the book of reference to the surveyor of the highways, but only to the owner and occupier of the land crossed by the path. This does not signify that the paths were private, but that they were not considered, being less than carriage roads, to be vested in the highway authority. The one exception relates to a 'Public Path' identified in Deal, and a further 'Private Path'²⁴, which reflects the vesting of streets in the Board of Health of a municipal borough (such as Deal) by the Public Health Act 1848²⁵. It seems likely that this classification was revised in the approach to the books of reference for 1863 and 1864.

G.13. **Points:**

Part	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	–	5	–

H. Walmer, Deal and Adisham Railway

H.1. **Date:** 1872

H.2. **Source:** Kent County Archives²⁶

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

24 Plots nos.32 and 54, Deal.

25 S.68: '...all present and future Streets, being or which at any Time become Highways within any District, and the Pavements, Stones, and other Materials thereof, ...shall vest in and be under the Management and Control of the said Local Board of Health'. 'Street' is defined in s.2 to: 'include any Highway (not being a Turnpike Road), and any Road, public Bridge (not being a County Bridge), Lane, Footway, Square, Court, Alley, Passage, whether a Thoroughfare or not,...within the limits of any District.

26 Q/RUm/601

Walmer, Deal and Adisham Railway deposited plan:

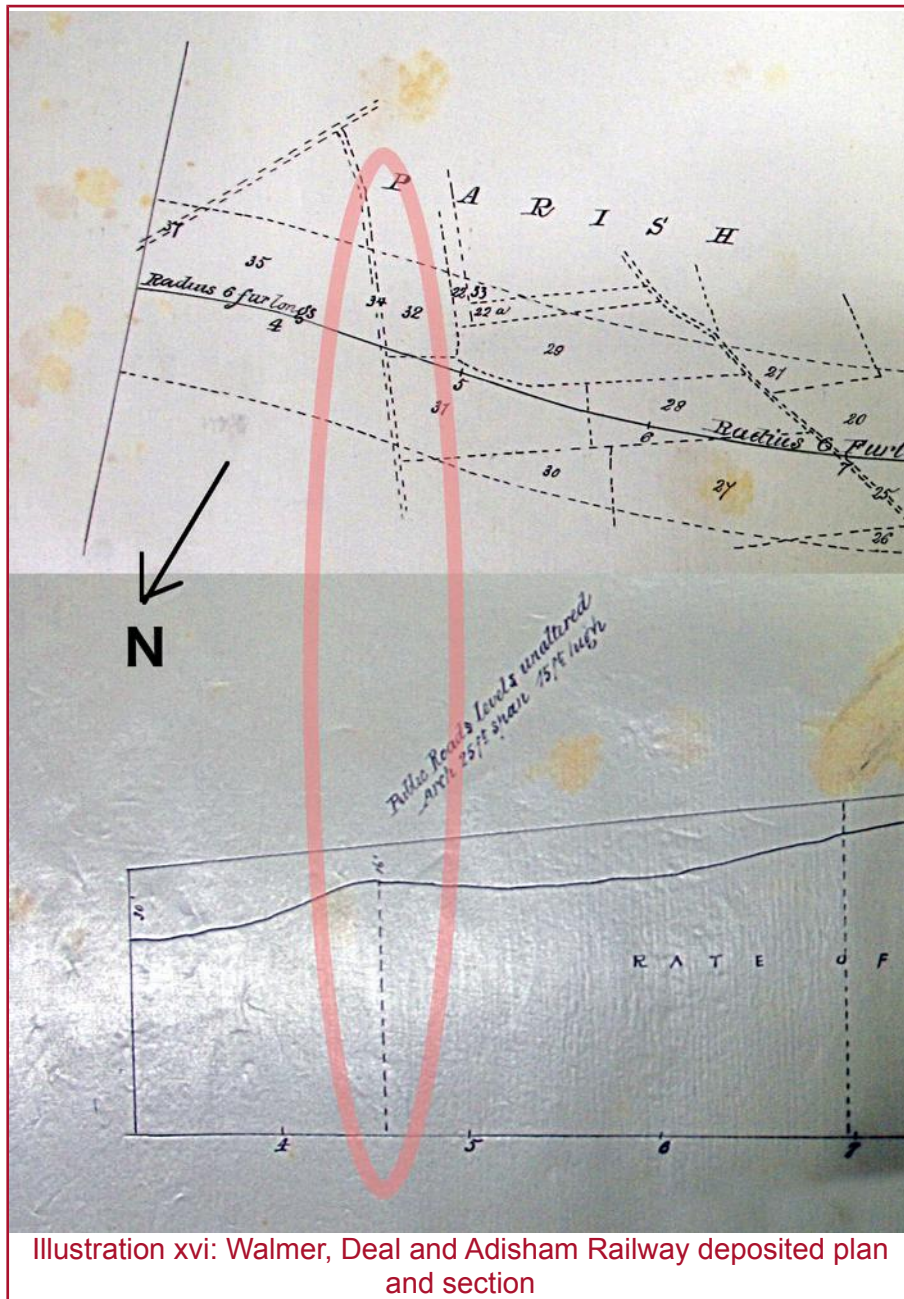


Illustration xvi: Walmer, Deal and Adisham Railway deposited plan and section

Walmer, Deal and Adisham Railway book of reference:

<i>Township of Eastry County of Kent</i>				
<i>Plot No.</i>	<i>Description of property</i>	<i>Owners or reputed owners</i>	<i>Success or reputed success</i>	<i>Occupiers</i>
34.	Occupation Road	Aldborough Henniker and Richard Boteler Charlotte Boteler, Elizabeth Boteler, Mary Boteler and Catherine Boteler		Thomas Medgetts and George Wood

Illustration xvii: Walmer, Deal and Adisham Railway book of reference

H.3. **Description:** Original scale: not marked (but planned line marked off in furlongs); orientation: unchanged (top is southeast). The alignment for the proposed Walmer Deal and Adisham Railway is shown in the deposited plan and section in the orientation in which it is presented in the book of reference, so that north is approximately at the bottom.

H.4. The course of the application way is shown between D and E in the deposited plan by double pecked lines, and assigned plot number 34. The section is labelled 'Public Roads levels unaltered Arch 25ft span 15ft high'. In the book of reference for Eastry parish, the plot is attributed to an 'Occupation Road', and the owner is given as Aldborough Henniker and Richard, Charlotte, Elizabeth, Mary and Catherine Boteler and in the occupation of Thomas Medgetts and George Wood.

H.5. The proposals for the railway were not granted Royal Assent (see paragraph H.7 below).

H.6. **Analysis:** The proposal for the railway records the application way between D and E as an occupation road in the book of reference, but in the section, it is referred to as a public road and provision is made for a bridge over the way with a width under the arch of 25 feet and clearance of 15 feet.

H.7. The Bill for the proposed railway was reported by one of the Examiners of Petitions for Private Bills to the Select Committee on Standing Orders as non-compliant with Standing Orders²⁷ and subsequently certified by the Examiners as such²⁸. The Bill was not proceeded with, and the railway was not built.

H.8. The recording of probable public rights of way (other than public roads) in the deposited plans and book of reference for this proposed Walmer Deal and Adisham Railway is non-standard. The following table analyses every public right of way (other than carriageways which are today metalled and tarred) which is shown on the definitive map, or any path shown on near contemporary 1:2,500 Ordnance Survey mapping²⁹, as intersecting the proposed alignment of the railway between Adisham and West Street (near Ham). The table records the location of each right of way or path, and the representation of it in the deposited plan and book of reference.

27 House of Commons, *Official Report*, 12 February 1872, [vol.127](#), p.24.

28 House of Commons, *Official Report*, 7–8 March 1872, [vol.127](#), pp.81–82.

29 Ordnance Survey OS 1:2,500 second edition c. 1896–98, available from: maps.nls.uk/os/25inch-england-and-wales/index.html.

Description of right of way	Grid ref.	Right of way no. ³⁰	Description in book of reference		
			Parcel	Owner	Occupier
public bridleway from Ratling to Listways Cottages	TR241532	BW EE285	—	Not separately identified	Not separately identified
public footpath from Ratling to Old Court Farm	TR244531	FP EE283A	Nonington 24a Footpath	John Laurence	Henry Pledge
public footpath from Pinner Hill to Bonnington	TR253528	FP EE281	Nonington 40a Occupation Road	William Hammond	William Hammond, William Spanton
public footpath behind Easole Street	TR260521	FP EE311	Nonington 56 Footpath	William Hammond	William Hammond
public footpath from Nonington to Mill Lane	TR264518	FP EE318	Nonington 76 Footpath	William Hammond	William Hammond
public footpath from Mill Lane to Kittington Cottages	TR270516	FP EE321	Nonington 102 Footpath	George William Hughes D'Aeth	John Hammell
public footpath from near Limekiln Plantation to Kittington Cottages	TR273517	FP EE307A	Nonington 103 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Kittington Farm	TR274517	—	Nonington 103b Footpath	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Thorntonhill Cottages	TR280518	FP EE323	Nonington 108 Footpath	George William Hughes D'Aeth	(Lessee, William Wilson) John Hammell
footpath south-east down Kelk Hill	TR282519	FP EE264	Nonington 109 Occupation Road	George William Hughes D'Aeth	(Lessee, William Wilson) John Hammell

30 Recorded in the definitive map and statement for Kent.

footpath to Shingleton Cottages	TR285521	FP EE263	Nonington 110 Occupation Road	George William Hughes D'Aeth	(Lessee, William Wilson) John Hammell
footpath from Thorn-tonhill Cottages to Shingleton Farm	TR288523	FP EE262	—	Not separately identified	Not separately identified
Black Lane	TR298532	—	Eastry 25 Occupation Road	Richard, Char- lotte, Elizabeth, Mary and Catherine Boteler	George Wood, Thomas Medgetts and William Pittock
bridleway from lane at Venson Bottom to Heronden	TR302534	—	Eastry 34 Occupation Road	Aldborough Henniker and Richard, Char- lotte, Elizabeth, Mary and Catherine Boteler	Thomas Medgetts and George Wood
footpath from North-bourne Road to Lower Street	TR310540	FP EE259	Eastry 43 Footpath	Dean and Chapter of Canterbury	(Lessee, George Terry) Ruth Oldfield
bridleway from Northbourne Road to Hay Hill	TR317540	BW EE382	—	Not separately identified	Not separately identified
footpath from Eastry to Updown Farm	TR319541	FP EE257	—	Not separately identified	Not separately identified

H.9. The deposited plans and book of reference consistently failed to record the correct status of rights of way which were perceived (at the time the plans were prepared) not to be carriageways. In the table above, none of the intersecting routes now recorded as public rights of way on the definitive map and statement for Kent (and recorded as paths on the second edition Ordnance Survey 1:2,500 map) is presented in the book of reference as a specifically public path. Relevant entries refer to the right of way either as a 'footpath' or as an 'occupation road', and the owner, lessee where relevant, and occupier, appear to be the private interests in the land. In some cases, such as the bridleway from Northbourne Road to Hay Hill, the way is not separately identified in the book of reference. Whereas in relation to public roads, the ownership of land is vested in the surveyor of highways, none of the entries identified in the table refers to the interest of the highway authority.

H.10. Section 46 of the Railways Clauses Consolidation Act 1845, by convention incorporated in every special Act for the construction of railways after this date, provided for the

bridging of public roads, but for other public highways to be taken over the railway on the level (with the consent of local justices) unless provision were made to the contrary in the special Act³¹ In relation to the application way, two aspects of the deposited documents suggest that the railway company recognised it as a public way of some significance: the designation as a 'public road' in the section, and the provision for a bridge over the railway with a span of 25 feet. Under section 49 of the 1845 Act, the railway company was obliged to provide a 'clear space' of 25 feet if a bridge was constructed over a public carriage road, but of 12 feet over a private road.

H.11. **Conclusion:** While the deposited documents are known to have been found in breach of Parliamentary standing orders, it is unlikely that the surveyor charged with drawing up the documents would have erred at the expense of the instructing railway company: unnecessary provision for a 25 feet wide bridge over a public road instead of a 12 feet bridge over a private road or a level crossing would add substantially to construction costs. The provision for a bridge with a width sufficient for a public road is therefore evidence that the surveyor did believe the application way was a public carriageway, and such a finding must have been established by local research and consultation.

H.12. **Points:**

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	–	3	–

I. Field sketch map

I.1. **Date:** c.1900 (but see below)

I.2. **Source:** Kent County Archives³²

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

32 U2735/P/1

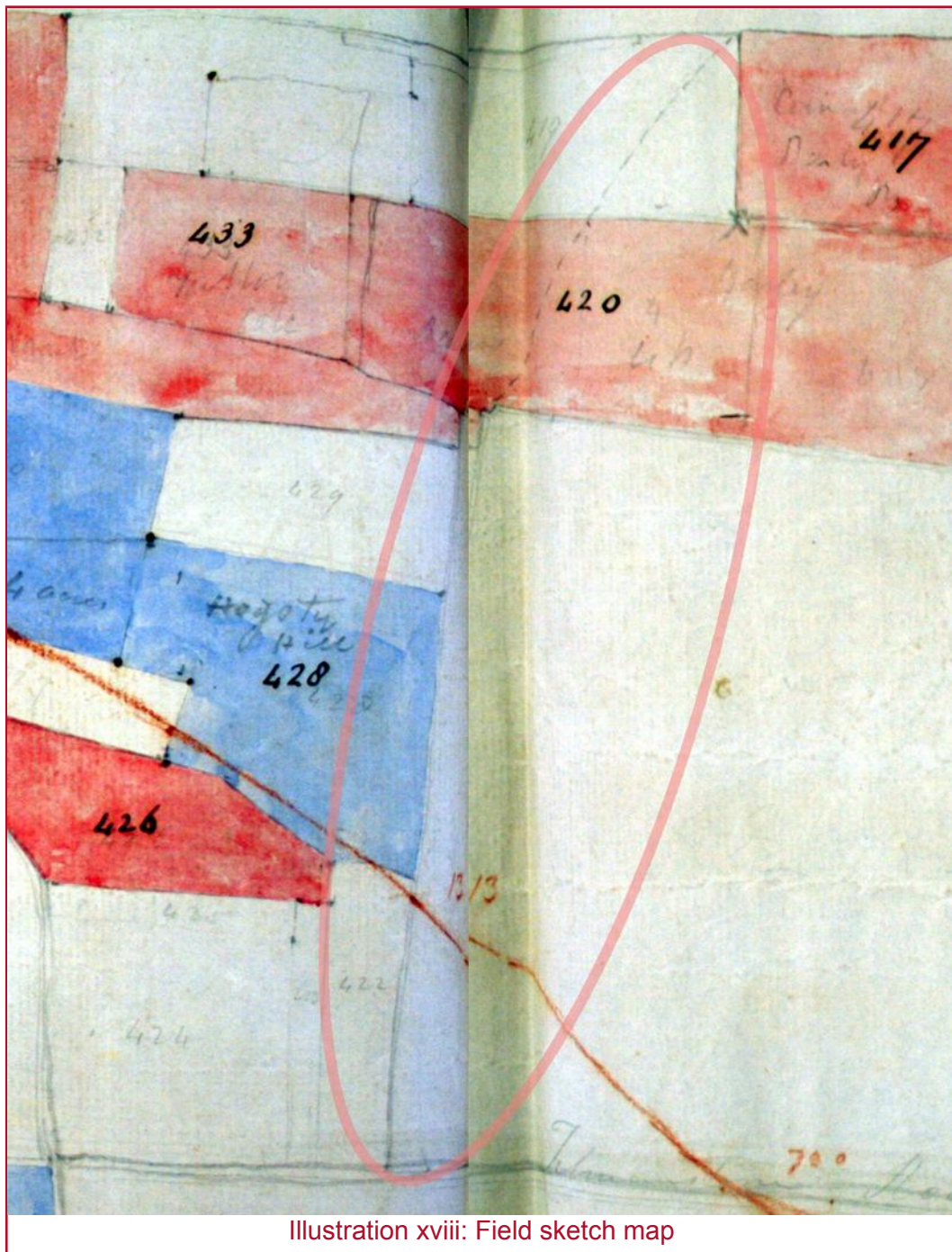


Illustration xviii: Field sketch map

I.3. **Description:** The sketch map of fields south of Eastry has been dated to *circa* 1900. It shows fields between Venson Bottom and Thornton Lane, some of which are colour washed. A key (not shown) describes the numbers and names of colour washed fields, and their area.

I.4. The application way is shown between C and D as a pecked line, and between D and E as a track confined within two continuous lines.

I.5. **Conclusion:** The map is dated to *circa* 1900, but faithfully reproduces (in brown) the planned alignment of the Ramsgate, Sandwich, Deal and Dover Railway (item IV.F above), which was presented to Parliament in 1861, and the Dover, Deal and Sandwich Railway (item IV.G above), in 1862–64. As neither line was built, it seems unlikely that the alignment would have been marked on the map at a substantially later date. It is possible that

the marking reproduces the planned alignment of the later Walmer, Deal and Adisham Railway (item IV.H above), which was presented to Parliament in 1872, but the alignment and field patterns are slightly different in the deposited plan of the railway, and it too precedes the catalogue date by around thirty years.

I.6. It seems reasonable to conclude that the detail on the map was completed to reflect the interests of one or more owners of the land. The inclusion of the application way is therefore significant, and is evidence that the way existed and was recognised by the owner or owners of at least some of the land crossed between C and E, in around the year 1861. The map does not identify the way as having the status of a bridleway.

I.7. **Points:**

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	1	–
<i>bridleway</i>	–	–	–

J. Ordnance Survey 25" map, second edition

J.1. **Date:** 1898

J.2. **Source:** National Library of Scotland³³

33 maps.nls.uk/view/103680710

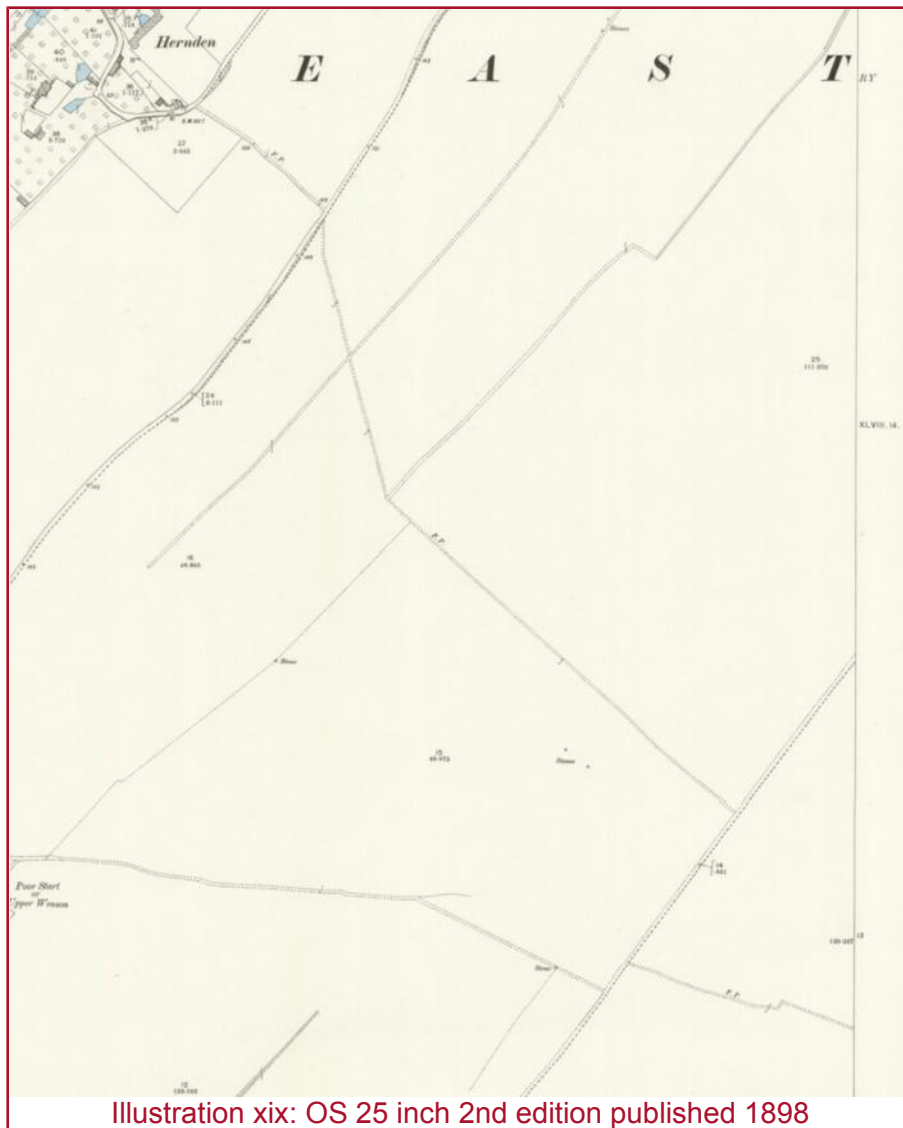


Illustration xix: OS 25 inch 2nd edition published 1898

J.3. **Description:** Extract from the Ordnance Survey second edition of the twenty-five inch (1:2,500) map, sheet XLVIII/13. The application way is shown and annotated as a footpath between A and E. No continuation is shown beyond E to F.

J.4. **Conclusion:** The depiction of the way on the Ordnance Survey map as a 'footpath' confirms its physical existence between A and E.

J.5. **Points:** (none)

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	—	—	—
<i>bridleway</i>	—	—	—

K. East Kent mineral light railway

K.1. **Date:** 1910

K.2. **Source:** Kent County Archives³⁴

34 Q/RUm/1151.

East Kent Mineral Light Railway deposited plan:

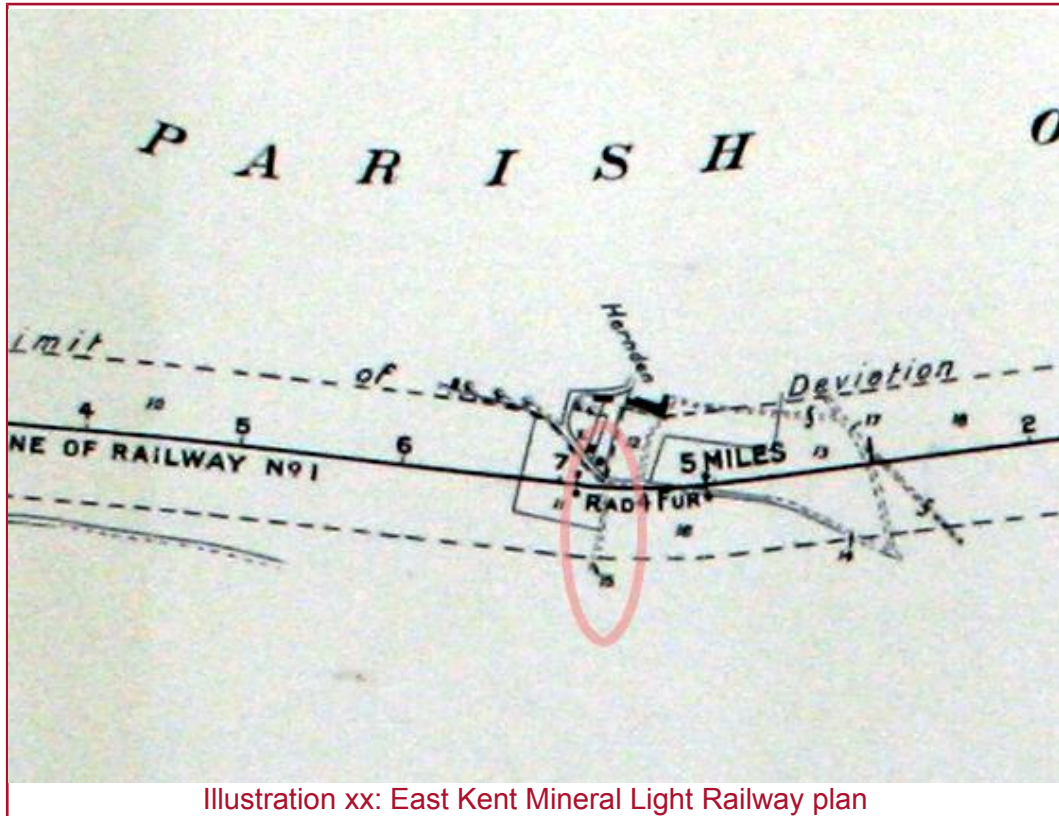


Illustration xx: East Kent Mineral Light Railway plan

East Kent Mineral Light Railway book of reference:

8

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of EASTRY, in the County of KENT.

RAILWAY No. 1—continued.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
15	Public bridge road	The Eastry Rural District Council	The Eastry Rural District Council

Illustration xxi: East Kent Mineral Light Railway book of reference

K.3. **Description:** Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. The railway was subsequently constructed.

K.4. *Illustration xx: East Kent Mineral Light Railway plan* shows the application way as a track marked by double pecked lines which crosses the proposed line just south of the

bridleway junction with Heronden Road, at a distance of just over 4 miles and 7 furlongs from the point of origination in Eythorne. The track is assigned plot number 15.

K.5. *Illustration xxi: East Kent Mineral Light Railway book of reference* records for Eastry parish that plot 15 was a 'Public bridle road' in the ownership and occupation of The Eastry Rural District Council.

K.6. **Conclusion:** Sections 46 to 48 and 59 of the Railways Clauses Consolidation Act 1845 were excluded from incorporation in the East Kent Mineral (Light) Railways Order 1910³⁵, and the order itself provided for the bridging of certain public roads, and for other public highways to be taken over the railway on the level (consistent with the minimal expectations of light railway construction and operation). In common with other crossings for ways which were not perceived as public roads, no specific provision is made in the elevation nor the order³⁶ for the crossing of the application way, and a level crossing would have been provided. Note that the line was constructed along the eastern boundary of the limits of deviation (and the line further north of the crossing appears to have been built east of the limits of deviation).

K.7. The plan and book of reference provide good evidence for the status of the application way between A and C as a public bridleway.

K.8. **Points:**

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	5	–	–

L. Finance Act maps

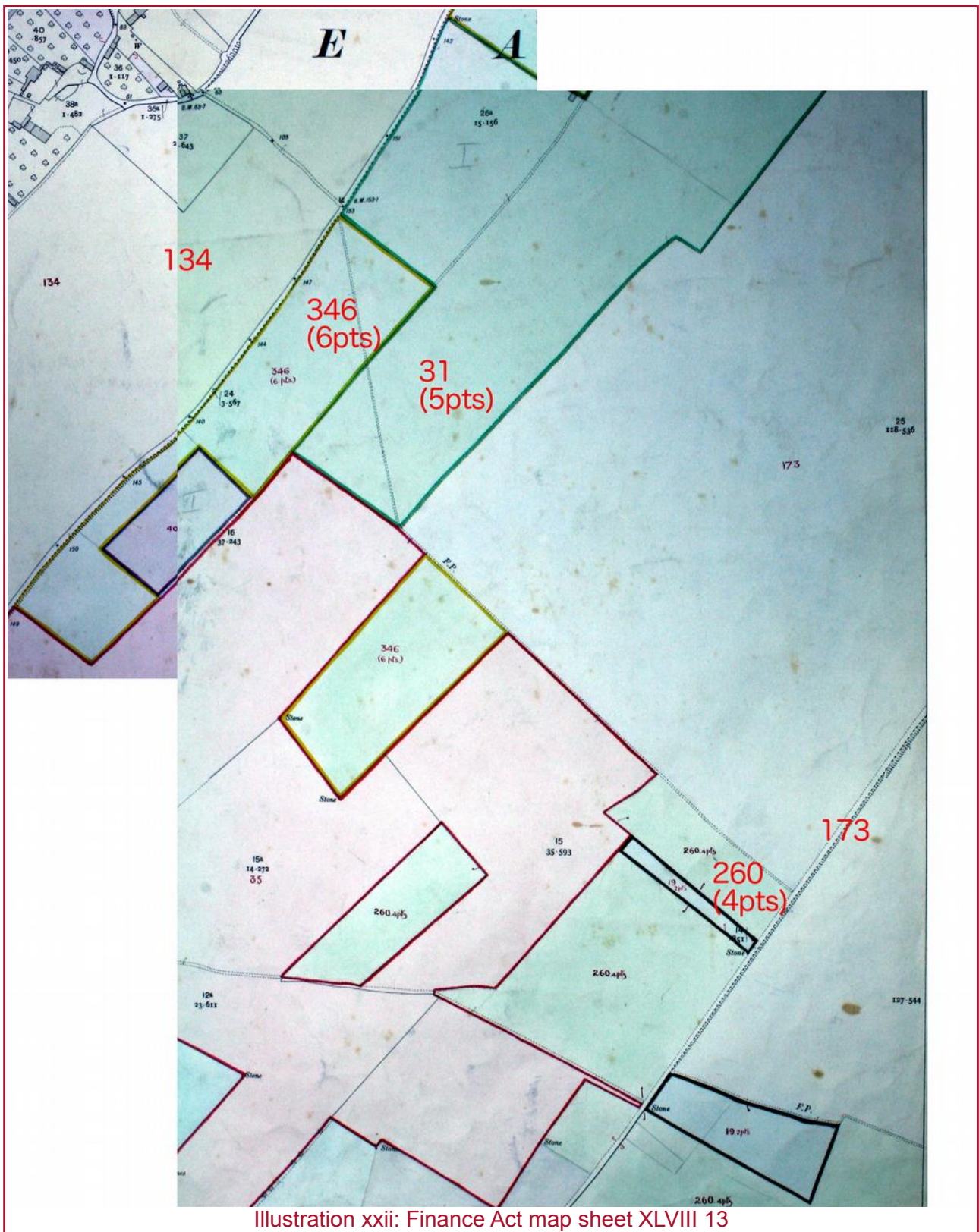
L.1. **Date:** 1911

L.2. **Source:** National Archives³⁷

35 See art.3(1).

36 See arts.21–22.

37 Ordnance Survey 1:2,500 sheet LXVII/13: IR 124/5/75.



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

L.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect

highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads. This is because s.35 of the 1910 Act provided,

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

A highway authority was a rating authority.

L.5. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act, 'The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...'³⁸. 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.

L.6. The December 1910 *Instructions to Valuers* stated that: '183. Site Value Deductions not Claimed by the Owner. — In making Original Valuations under Section 26(1) of the [1910 Act], Valuers will give credit for any deductions under the provisions of Section 25, so far as they are known to them and that notwithstanding the fact that such deductions may not have previously been claimed by or on behalf of the owner.' It follows that, if a deduction for a right of way is given in a particular case, and there is no evidence (as is usually the case) that it was requested by the landowner, the deduction can have only arisen either because it was nevertheless requested, or because the existence of the right of way was known to the valuer. It is unlikely that valuers would have volunteered deductions except in cases where the right of way was obvious — perhaps because it was sign-posted as such, or referred to as such by the landowner or an employee of the landowner when the valuer was surveying the land.

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

L.8. Holding 134 (A–C)³⁹: Middle and Lower Heronden Farm, no deductions for rights of way (but nor is a deduction claimed in relation to holding 134 for the footpath shown to cut off the corner of Heronden Lane).

³⁸ Discounts for easements affecting the land were separately requested and recorded in the valuation book.

³⁹ IR 58/17470.

L.9. Holding 346⁴⁰ (part way C–D, first field): no details under this holding number.

L.10. Holding 31⁴¹ (part way C–D, second field): relates to Cross Farm, 23 ha, in five parts. A note is made for 'Two Footpaths' under the heading 'Fixed Charges, Easements, Commons Rights and Restrictions', but no deduction is made under any relevant heading. Three of the other parts comprise parcels at Buttsole (enclosed public footpath, now recorded as EE259, follows outside perimeter); a parcel in the north-east quarter of the junction of Mill Lane and Gore Lane (two footpaths shown on map); buildings and yard west of Eastry cross. The fifth parcel could not be found.

L.11. Holding 173/Holding 260 (D–E)⁴²: a deduction is made for holding 173 (Eastry Court) of £150 for footpaths. However, as the entire estate of 153 ha is included in this holding record, no conclusion may be drawn. No deduction is made for holding 260 (Venson Farm).

L.12. Holding 173 (E–F): see above.

L.13. **Conclusion:** The Finance Act data are inconclusive. Deductions for the application way may be among those recorded for Eastry Court. No landowner was compelled to claim deductions for rights of way, and the motivation to claim for rights of way would have varied according to the circumstances.

L.14. **Points:** (none)

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	–	–	–
<i>bridleway</i>	–	–	–

M. Ordnance Survey 25" map, fourth edition

M.1. **Date:** revised 1938, published 1945

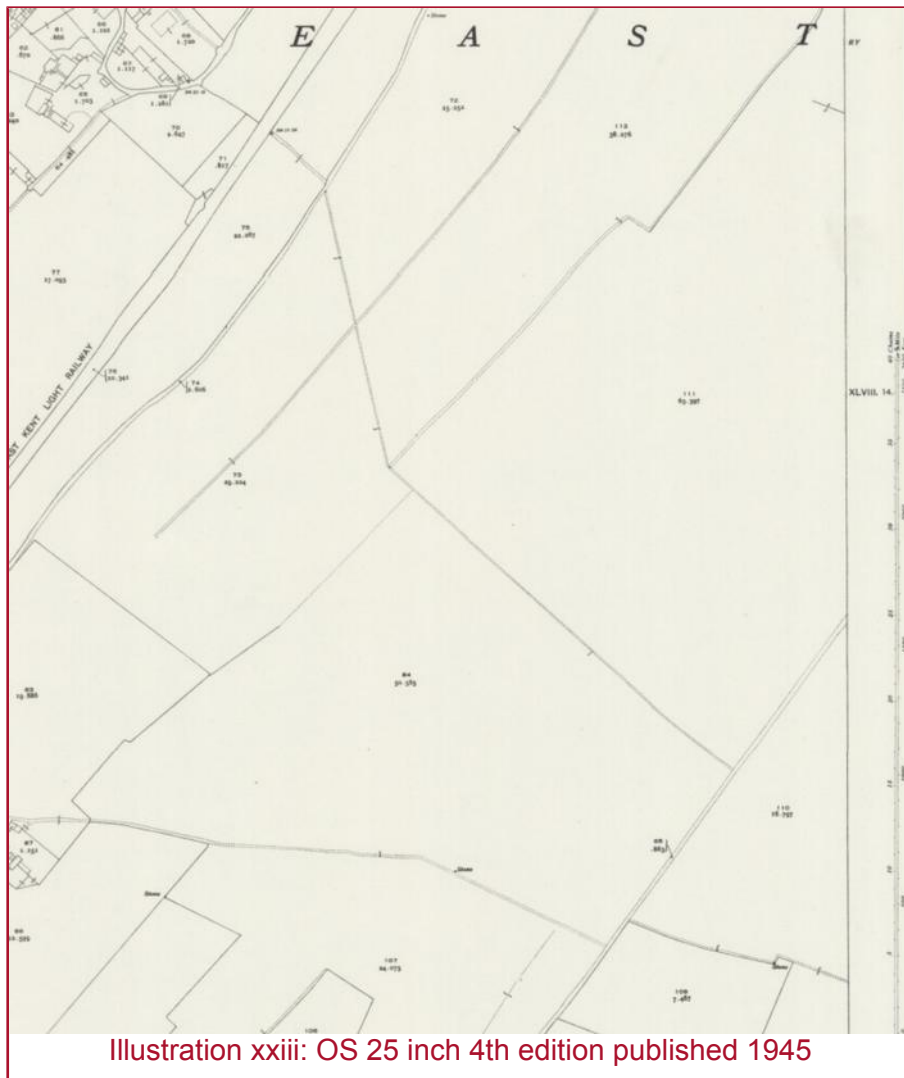
M.2. **Source:** National Library of Scotland⁴³

40 IR 58/17472.

41 IR 58/17469.

42 IR 58/17470; IR 58/17471.

43 maps.nls.uk/view/103680704.



M.3. **Description:** Extract from the Ordnance Survey fourth edition of the twenty-five inch (1:2,500) map, sheet XLVIII/13. The application way is shown as a path between A and E, but without any annotation (*c.f.* second edition). No continuation is shown beyond E to F.

M.4. **Conclusion:** The depiction of the way on the Ordnance Survey map as a landscape feature confirms its physical existence between A and E at this time.

M.5. **Points:** (none)

<i>Part:</i>	A to C	C to E	E to F
<i>footpath</i>	—	—	—
<i>bridleway</i>	—	—	—