

High Minnis bridleway: document analysis

Application to record a bridleway from Eastleigh Court Road to Wheelbarrow Town

I. Introduction

A. Quick reference

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

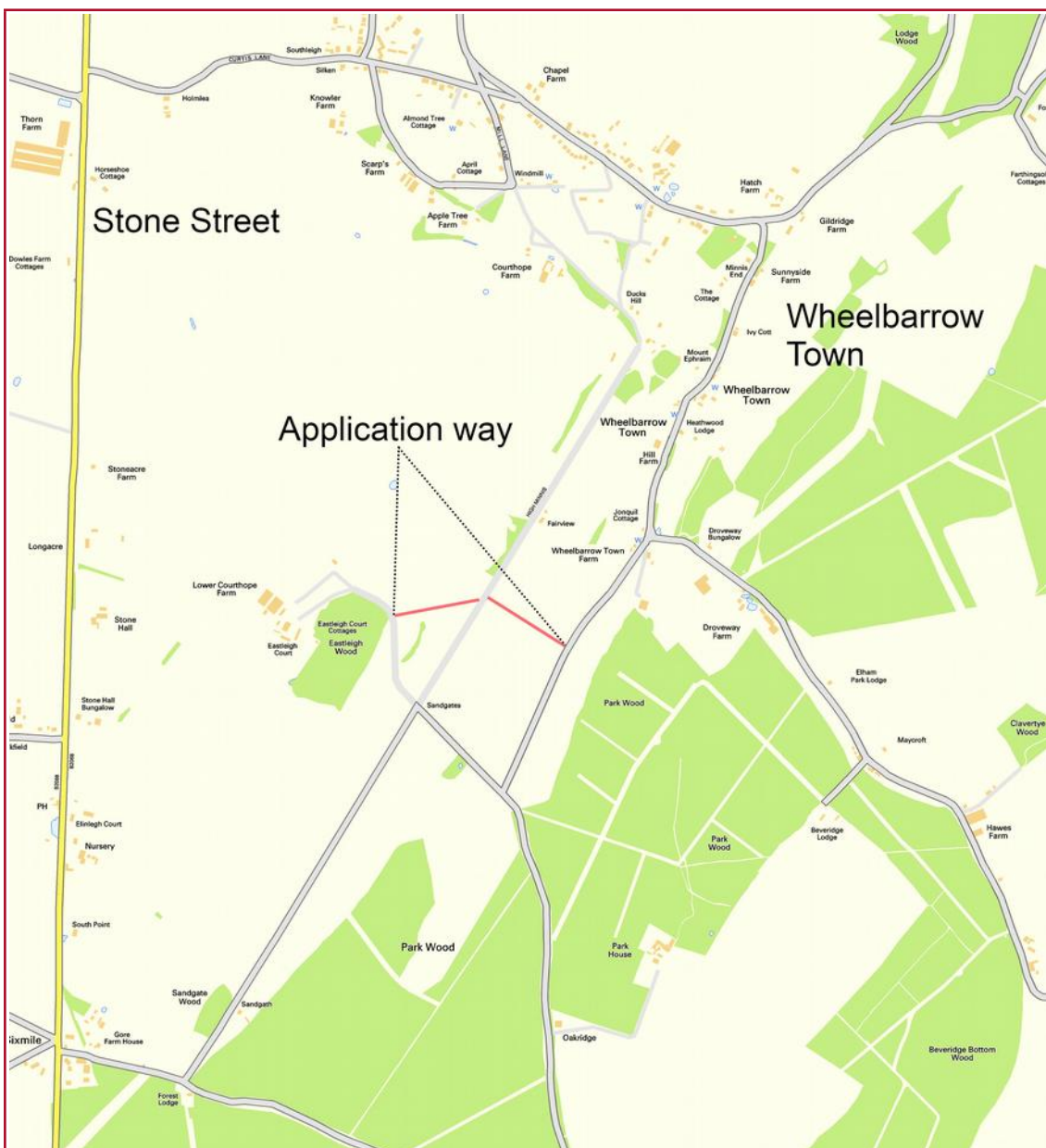


Illustration i: High Minnis bridleway location map

- A.2. Existing recorded public rights of way comprised in application way: none
- A.3. Parish of: Stelling Minnis
- A.4. Former parish of: Lyminge
- A.5. Termination points: Eastleigh Court Road near Eastleigh Wood to the road (alternatively known as High Minnis or Wheelbarrow Town Road) at Wheelbarrow Town
- A.6. Termination points Ordnance Survey grid references: TR14314539 via TR14534544 to TR14744531
- A.7. Postcode: CT4 6DS
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheets: Kent LXVI/3

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 access and bridleways officer (historical research) for South and East Kent, and am authorised to make applications on behalf of the society. I am a member of the Institute of Public Rights of Way and Access Management. 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 at High Minnis, in the parish of Stelling Minnis in East Kent. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a 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) that a way should be added to the definitive map and statement for Kent as a bridleway.

D.2. The way begins on Eastleigh Court Road at the northeast corner of Eastleigh Wood at G (Ordnance Survey grid reference TR14314539), proceeding 230m east-northeast across and ascending a pasture field to join Sandy Lane (also known as High Minnis) at X1, 310m northeast of Sandgates cross-roads (TR14524543). Then resuming 10m from X1 further northeast along Sandy Lane at X2 (TR14534544) proceeding 240m southeast, along the north side of a fence, to a minor road (alternatively known as High Minnis or Wheelbarrow Town Road) south of Wheelbarrow Town at H (TR14744531). A total distance of 480m.

D.3. The points G, X1, X2 and H are identified in the application map at part II below.

E. Background

E.1. The application way is awarded under an inclosure award.

E.2. Prior to the inclosure in 1854, High Minnis was an expanse of common land contiguous with Stelling Minnis common, but located in the manor and parish of Lyminge — the parish boundary was generally contiguous with the present southern boundary of Stelling Minnis common, continuing south and then east through Wheelbarrow Town. Accordingly, it was open to the landowners and commoners of the parish of Lyminge to seek the inclosure of High Minnis common, along with Rhodes Minnis common, independently of Stelling Minnis common. And they did so, in the Lyminge, High and Rhodes Minnis inclosure, documented at IV.A below.

F. Grounds for application

F.1. The correct test under s.53(3)(c)(i) of the Wildlife and Countryside Act 1981 is whether:

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

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

F.2. In the present application, the award of a public bridleway in an inclosure award made under the authority of the Inclosure Act 1845 is conclusive evidence of the creation of the right of way. Under s.105 of the 1845 Act, every:

‘...Direction...specified and set forth in such Award as aforesaid shall be binding and conclusive on all Persons whomsoever.’

F.3. In the absence of any evidence of a subsequent stopping up order, the right of way remains extant.

F.4. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent. It did not appear on the parish map prepared by Lyminge Parish Council under Part IV of the National Parks and Access to the Countryside Act 1949, and was therefore omitted from the draft map and statement prepared by Kent County Council. Therefore, there has been no discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is wholly new evidence.

G. Width of application way

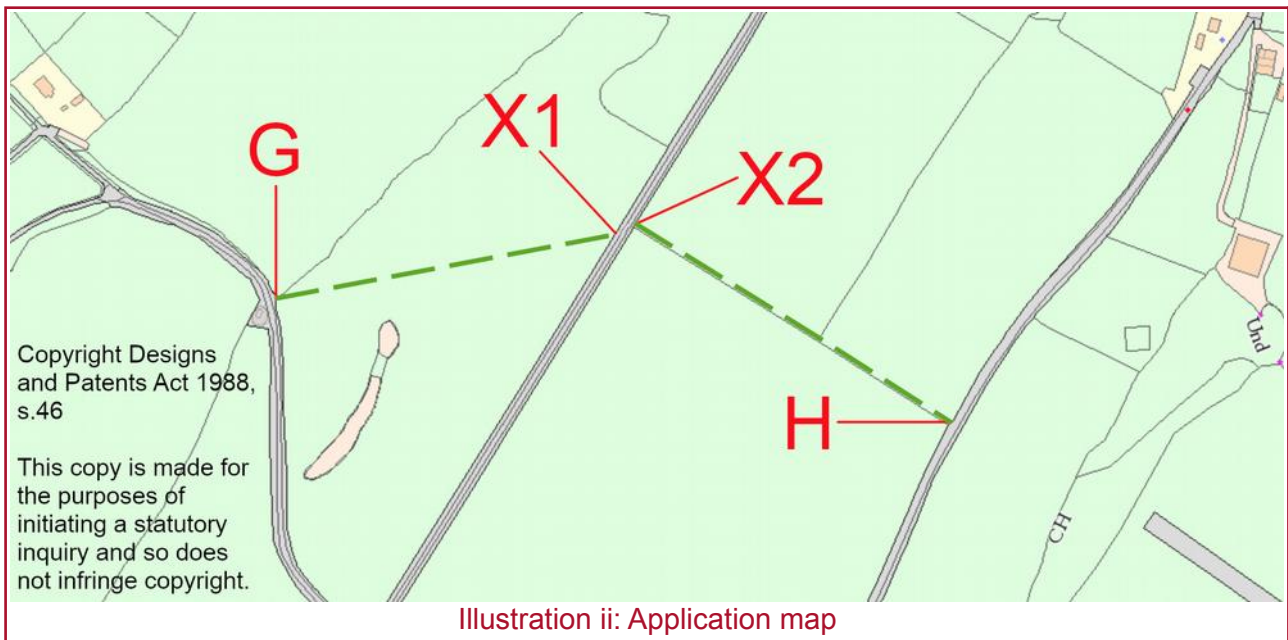
G.1. The width of the application way is specified in the award to be twelve feet, or 3.65m. The application therefore is made to record a bridleway of this width throughout.

H. Limitations on the application way

H.1. The application way cannot be subject to any limitation other than one which is authorised under the award. The terms of the award do not provide for any limitation on the way, but the award map shows the application way bounded with an unbroken line at each intersection with an (awarded) public road, viz at G, X1, X2 and H. It is therefore inferred that the intention was to allow for the application way to be gated at each of these points.

H.2. The application way being the creation of the award, and not an acquisition through long use, it is submitted that the intention of the award was that any gate erected across the way (at points G, X1, X2 and H) should have constituted the minimum necessary interference with the exercise of the public right of way, and therefore that any limitation enabling the erection of a gate should be subject to the condition that the gate should be capable of being opened and closed on horseback.

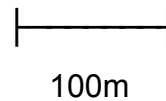
II. Application map



Map centred on X at TR14534544

Scale: approx. 1:4,900 (when printed A4)

Application way is marked — — —



III. Along the way

A.1. The site of the application way can be viewed in Google Streetview at each intersection with a public road, viz at points G, X and H:

- [Eastleigh Court Road at G.](#)
- [Sandy Lane \(also known as High Minnis\) at X1 toward G.](#)
- [Sandy Lane \(also known as High Minnis\) at X2 toward H.](#)
- [Minor road \(alternatively known as High Minnis or Wheelbarrow Town Road\) at H.](#)

IV. Evidence

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A. Lyminge, High and Rhodes Minnis inclosure

A.1. **Date:** 1854

A.2. **Source:** Kent County Archives¹

1 Q/RDc/20

Provisional order confirmation Act

11° & 12° VICTORIÆ, Cap. 27. 291

SCHEDULES to which this Act refers.

FIRST SCHEDULE.

Inclosure.	County.	Date of Provisional Order.
1846 :		
Corringham and Springthorpe	Lincoln	9th January.
Oreton Common	Salop	26th January.
Tansley Common	Derby	26th January.
Caldecot Open Fields	Cambridge	24th March.
Church Stoke and Hurdley	Montgomery	2d November.
1847 :		
Hyssington	Montgomery and Salop	8th January.
Asby Mask	Westmorland	8th January.
Dulverton	Somerset	20th January.
Burghfield	Berks	23d January.
Barrow	Suffolk	11th February.
Woolpit	Suffolk	7th May.
Hessett	Suffolk	18th May.
Egton	York	16th June.
Smardale Fell	Westmorland	16th June.
Antrobus	Chester	24th July.
Ilton Moor	Devon	24th July.
Chinnor	Oxford	24th July.
Mottram St. Andrew	Chester	4th August.
Burstow	Surrey	23d August.
Cookbury Moor	Devon	21st September.
Ison Common	Somerset	21st September.
Winsford	Somerset	21st September.
Thornton Moor	York	21st September.
Stoke Pero	Somerset	21st September.
Warborough	Oxford	11th October.
Upwood and Ramsay	Huntingdon	11th October.
St. Stephen's Down	Cornwall	17th November.
Denwick	Cambridge	10th December.
Lyminge	Kent	17th December.
Mid Lavant	Sussex	17th December.
Boxgrove	Sussex	17th December.
East Lavant	Sussex	17th December.
1848 :		

Illustration iii: First Schedule to Annual Inclosure Act 1848

Inclosure award

*And I further declare that I have set out and appointed and do hereby set out and appoint
One public Bridle Way of the width of twelve feet and numbered H on the said map commencing at
East Leigh Lane at a point marked G. and extending thence in an easterly direction across the Soil of local k
and terminating at the Whittanow Seven head at a point marked H. on the said map.*

Illustration iv: Inclosure award

Inclosure award map

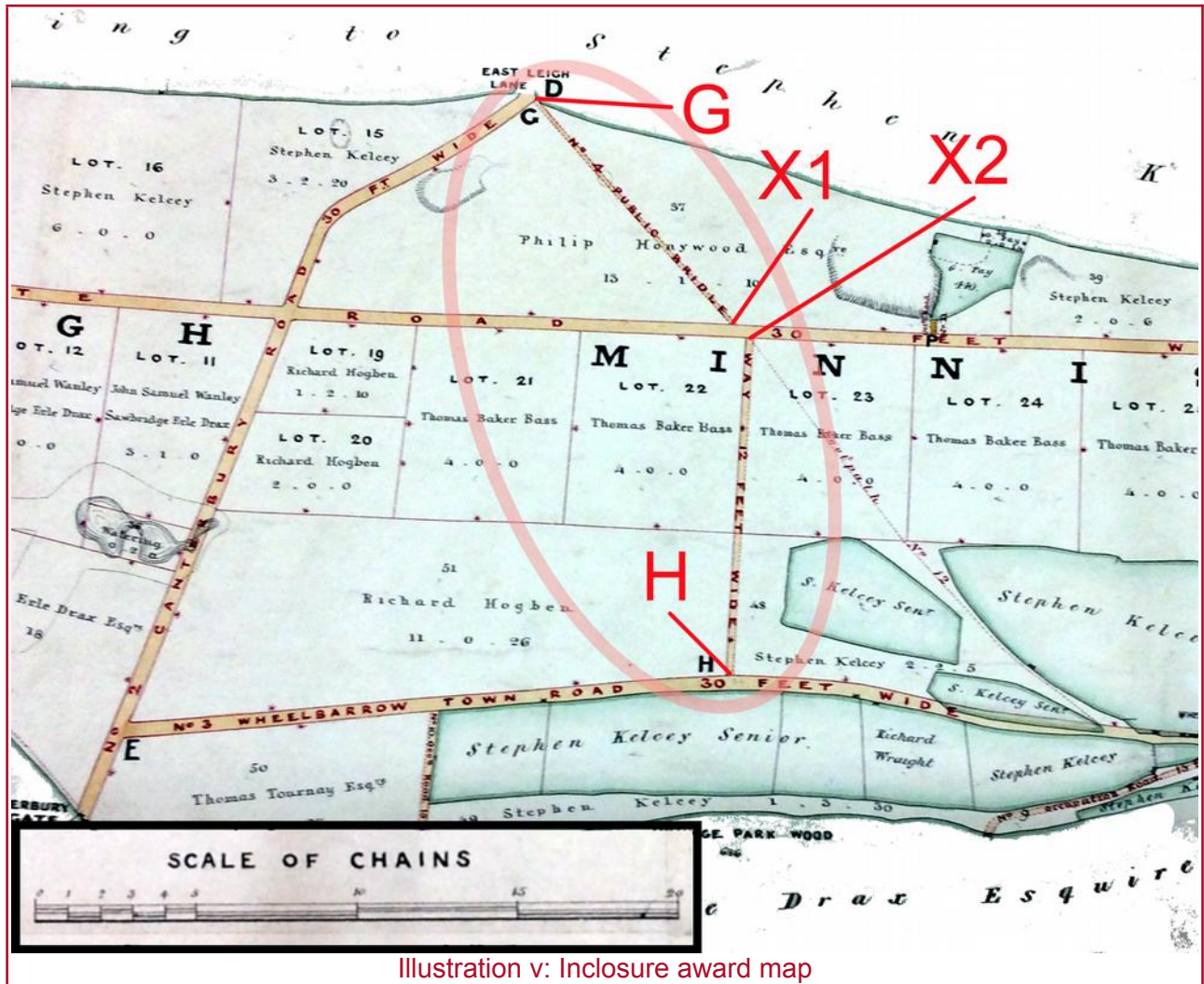


Illustration v: Inclosure award map

A.3. **Description:** scale: marked on map (but scale bar has been cut and pasted and may be affected by photographic distortion); orientation: unchanged (top is approximately west-northwest).

A.4. Common land at High Minnis was enclosed in 1854 by means of an award made under the authority of a provisional order of the Inclosure Commissioners made under the Inclosure Act 1845 and dated 17 December 1847, and confirmed in the First Schedule to the Annual Inclosure Act 1848².

A.5. Prior to the award, it was found necessary to survey the boundary of the manor of Lyminge adjoining East Leigh, the boundary not being 'sufficiently ascertained and distinguished'.³ The boundary so identified forms the northwestern boundary of the extent of the inclosure effected by the award, and determines the location of point G.

A.6. S.62 of the Inclosure Act 1845 provides that:

² Vict.11 & 12, c.27. 'An Act to authorize the Inclosure of certain Lands, in pursuance of the Third and also of a Special Report of the Inclosure Commissioners for *England and Wales*.'

³ MAF 2/138

‘That in the first place the Valuer acting in the Matter of any Inclosure shall and may, before he shall proceed to make any of the Divisions and Allotments of the Land to be inclosed in pursuance of or in any Manner not inconsistent with the Instructions given to such Valuer as aforesaid, set out and make public Roads and Ways, and widen public Roads and Ways, in or over the Land to be inclosed,...’

A.7. S.65 provides that:

‘...and the Valuer shall form and complete such Parts of the said public Roads and Ways as shall be newly made; and every such public Road and Way to be set out and made under this Act shall be of the Width required by the Act of the Sixth Year of King William the Fourth, intituled An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England, for a Road or Way of the like Description, which may be dedicated to the Use of the Public.’

A.8. The reference in s.65 is to s.80 of the Highway Act 1835, which provides:

‘That the said Surveyor shall and he is hereby required to make, support, and maintain, or cause to be made, supported, and maintained, ..., and every public Horseway Eight Feet wide at the least,...if the Ground between the Fences including the same will admit thereof’

A.9. The award recites that:

‘And I further declare that I have set out and appointed and do hereby set out and appoint
One public Bridle Way of the width of twelve feet and numbered 4 on the said Map commencing at East Leigh Lane at a point marked G and extending thence in an eastwardly direction across the Sand Gate Road to and terminating at the Wheebarrow Town Road at a point marked H on the said Map’

A.10. The award map shows the appointed bridleway lying in a straight line between G and the ‘Sand Gate Road’ (now Sandy Lane or High Minnis). A small stagger, estimated to be about 10m⁴, enables the way to continue from that road to the ‘Wheelbarrow Town Road’ along the north side of the boundary appointed in the award between lots 22 and 51 (to the south) and 23 and 48 (to the north). The map shows that the bridleway was intended to follow the north side of the boundary between the lots, and to be unfenced to the north.

A.11. **Conclusion:** The award is conclusive evidence of the creation of a public bridleway between the points identified in the award and marked on the plan.

B. Ordnance Survey County Series 1:2,500 map

B.1. **Date:** 1872

B.2. **Source:** British Library⁵, National Library of Scotland⁶

4 The stagger is consistent with the continuation of the line of the way from G to X1 towards X2, and is also consistent with the continuation of that line as a footpath awarded from X2 towards Wheelbarrow Town.

5 First edition.

6 Second, third and fourth editions.

First edition 1872

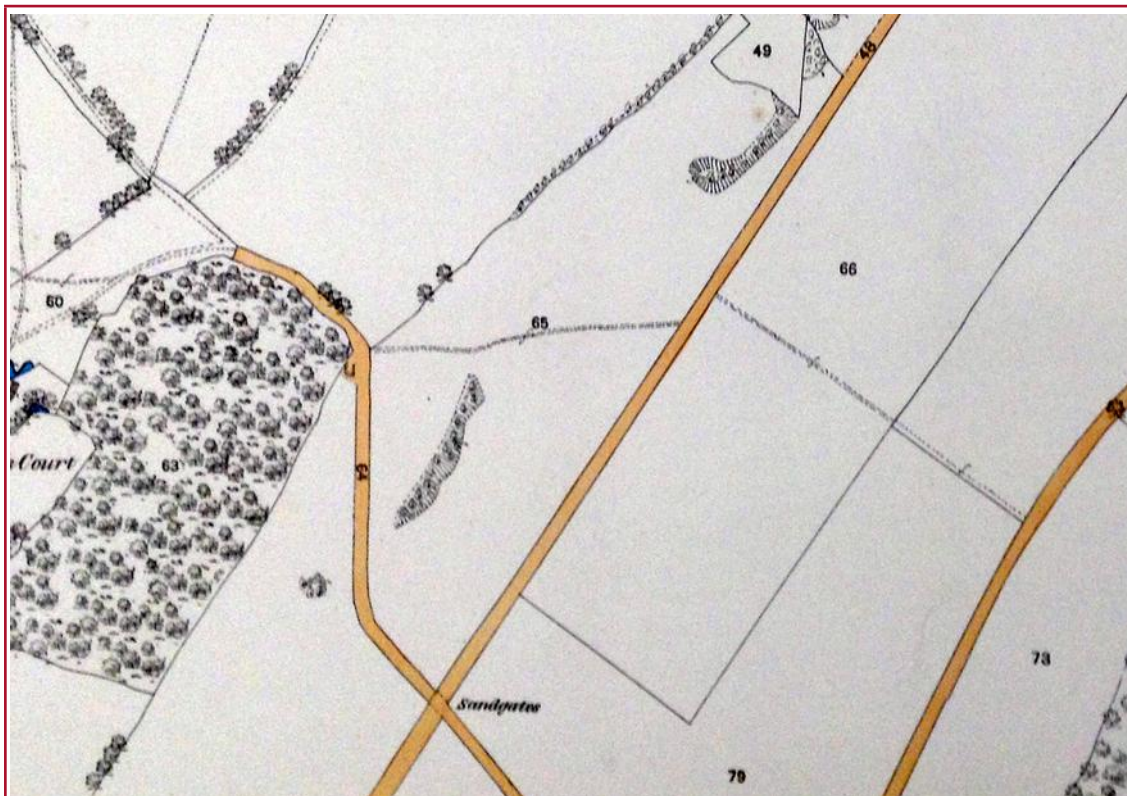


Illustration vi: OS County Series first edition

Second edition 1896–98

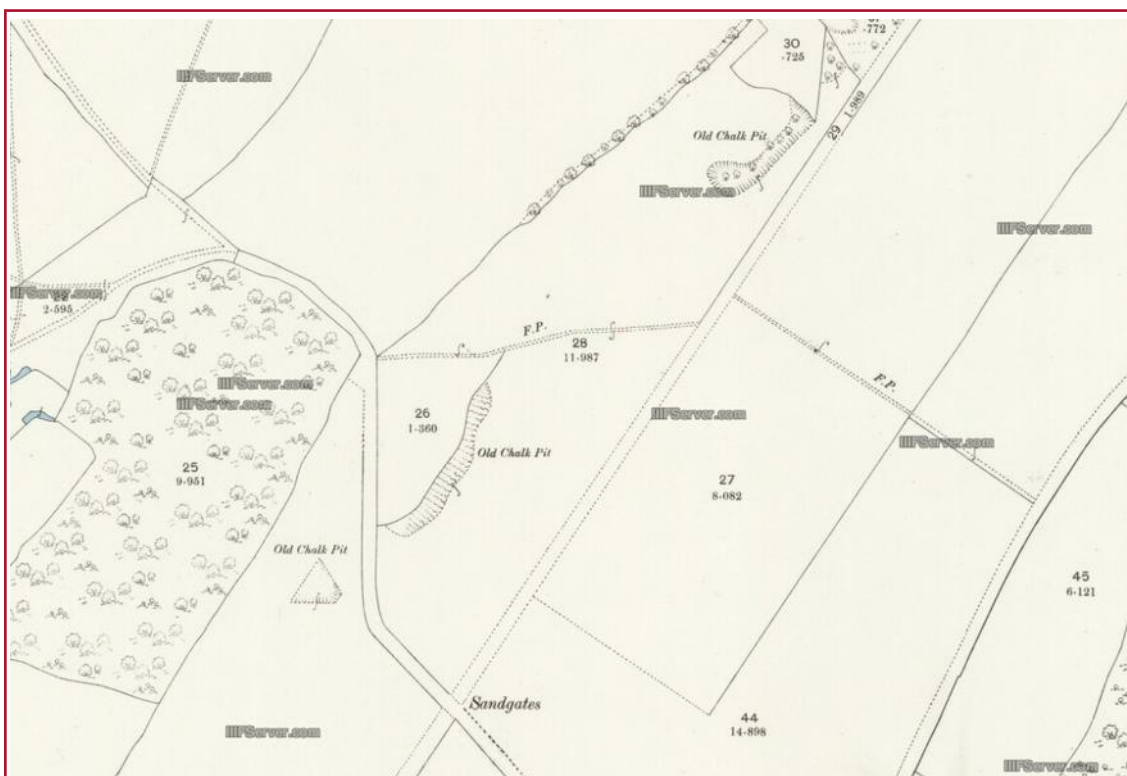


Illustration vii: OS County Series second edition

Third edition 1906–07

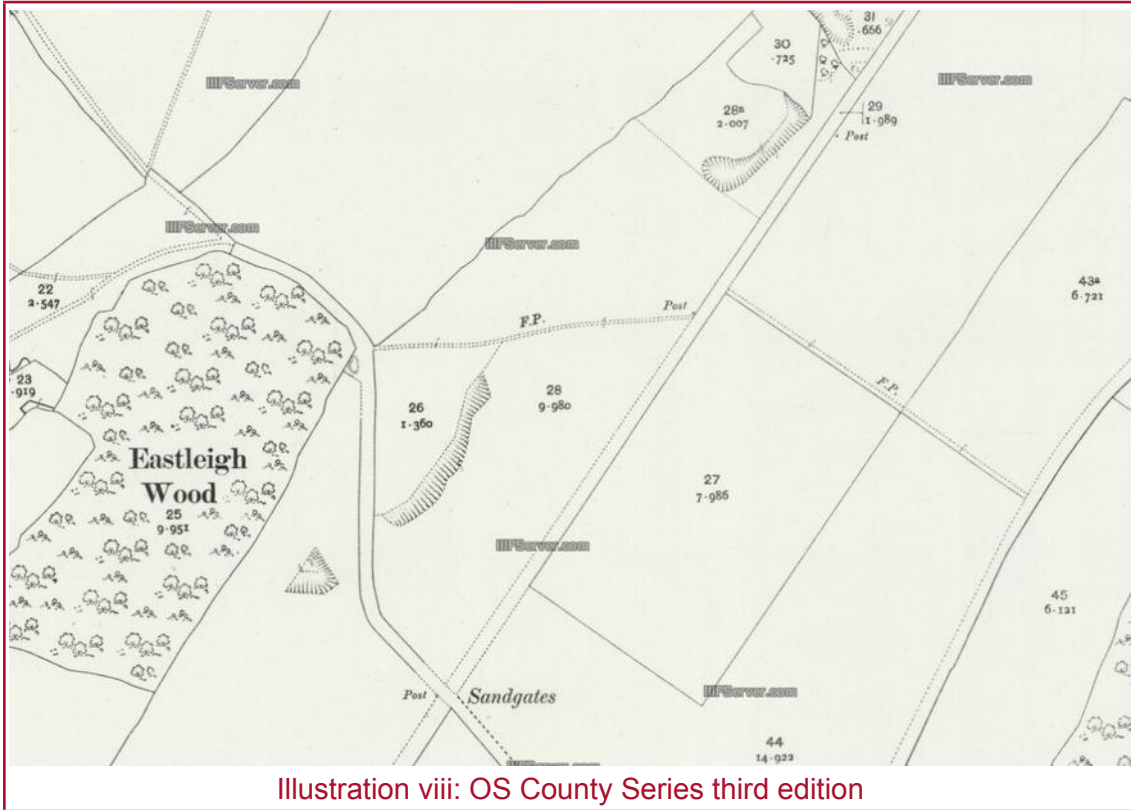


Illustration viii: OS County Series third edition

Fourth edition 1939–45

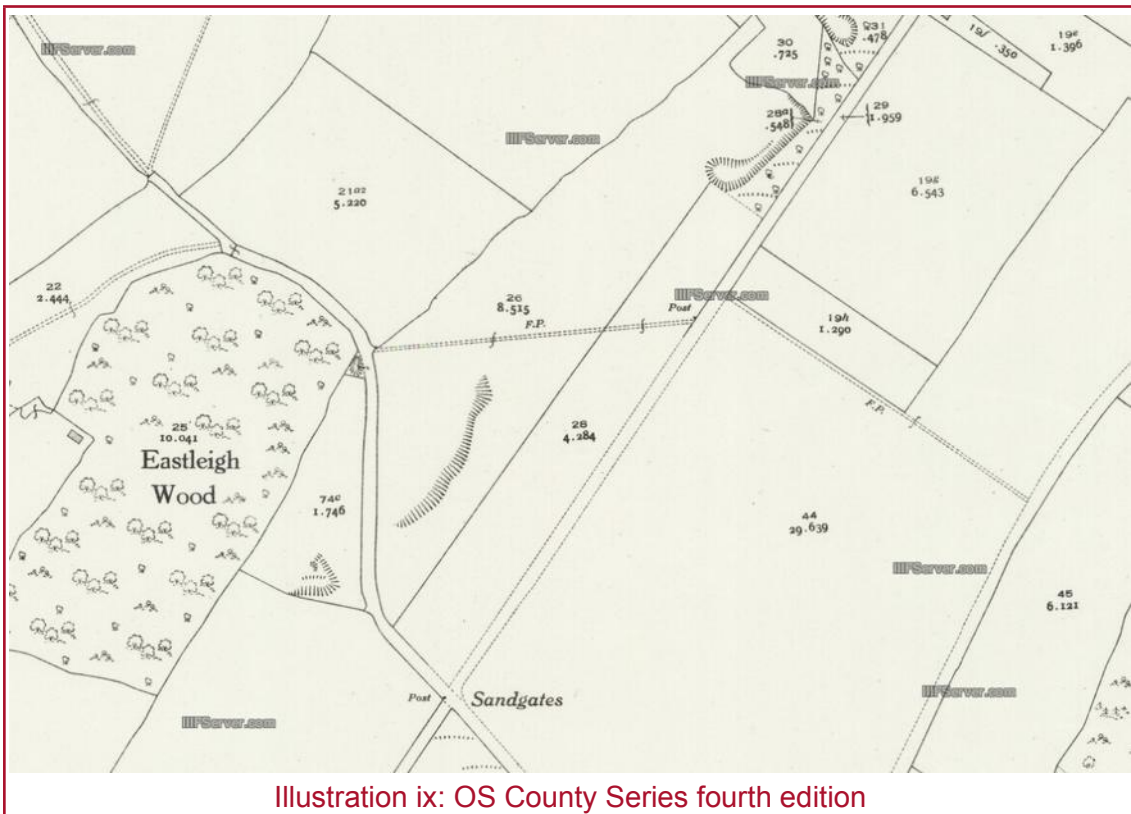


Illustration ix: OS County Series fourth edition

B.3. **Description:** scale: 1:2,500; orientation: unchanged (top is north).

B.4. The application way is consistently shown on large scale County Series Ordnance Survey map, sheet Kent LXVI/3, beginning with the first edition surveyed in 1872, and continuing through to the fourth edition surveyed and then published on either side of the Second World War. The way between G and X1 is shown, on the first, second and third edition maps, slightly deviating from a straight line, perhaps reflecting the steepness of the slope: the deviation is not apparent on the fourth edition map.

B.5. **Conclusion:** The Ordnance Survey County Series maps show that the application way was used for around a century after the date of the inclosure award, sufficient to demand that it be recorded on consecutive editions of those maps on an almost consistent alignment. There can be no question that the application way was physically made available consequent to the award — presumably, by the facilitation of gates at each intersection with a public road, viz at G, X1, X2 and H.