

The Hampshire (Hart District No. 27) (Parish of Bramshill) and the Wokingham Borough Council, Parish of Swallowfield (Swallowfield Byway Open To All Traffic 38 and Swallowfield Restricted Byway 39) Definitive Map Modification Order 2019



ROW/3271783

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

Contents

I. General notes.....	5
A. Quick reference.....	5
B. Introduction.....	6
C. Locational details.....	7
D. Nomenclature.....	8
E. Summary.....	9
F. <i>Terminus ad quem</i>	10
G. <i>Eyre v New Forest Highways Board</i>	12
H. Well House Lane ford.....	13
I. Historical context.....	15
J. The order way as a parish boundary.....	15
K. The order way as a publicly- or privately-maintainable highway.....	17
L. Bramshill estate (settlement).....	19
M. Grounds for confirmation of order.....	21
N. Natural Environment and Rural Communities Act 2006.....	25
O. Points awarded.....	26
P. Width of order way.....	27
Q. Limitations.....	27
II. User evidence.....	28
A. Introduction.....	28
B. Legal principles.....	29
C. User evidence forms.....	30
D. Other evidence of user.....	33
III. Objections to the order by third parties.....	36
B. Taylor Wessing LLP.....	36
C. London Newbury and Bath Direct Farnboro' Extensions railway scheme.....	36

D. Witness statements.....	37
IV. Objection by the applicant to order.....	39
A. Introduction and summary.....	39
B. Jouldings Ford modification.....	39
C. Limitations modification.....	45
V. Photographs along the order way.....	47
VI. Documentary evidence.....	58
ZA. Map of Forests around Windsor.....	58
A. Taylor's map of Hampshire.....	62
AA. Rocque's map of Berkshire.....	65
AB. Cary New and Correct English Atlas.....	66
AC. A Topographical Map, of the Town of Reading & the Country.....	69
AD. Stockdale map.....	71
B. Ordnance Survey, one-inch first edition drawing.....	73
C. Ordnance Survey, Old Series one-inch map.....	75
D. Swallowfield Inclosure award, 1814–17.....	77
DA. Cary's Improved Map of England and Wales.....	80
E. Map of Windsor Forest and vicinity.....	82
F. Greenwoods' map.....	86
G. Eversley tithe award.....	91
GA. Swallowfield (Wiltshire) tithe award.....	98
H. Bristol and Dover Direct Junction Railway.....	100
HA. Snare's Map of the Country ten miles around Reading.....	106
I. Swallowfield Inclosure award, 1865.....	108
J. Ordnance Survey original boundary mapping.....	111
K. Ordnance Survey County Series six inch first edition map.....	115
KA. Farley Court diversion order.....	117
L. Ordnance Survey County Series twenty-five inch second edition.....	119
LA. Bartholomew's map.....	121
M. Finance (1909–10) Act 1910.....	123
N. Ordnance Survey County Series twenty-five inch third edition.....	130
O. Ordnance Survey object name book.....	131
P. Ordnance Survey one-inch New Popular Edition.....	135
PA. Swallowfield parish council.....	136
Q. Bramshill Estate Sale.....	138
R. List of streets.....	150

Table of illustrations

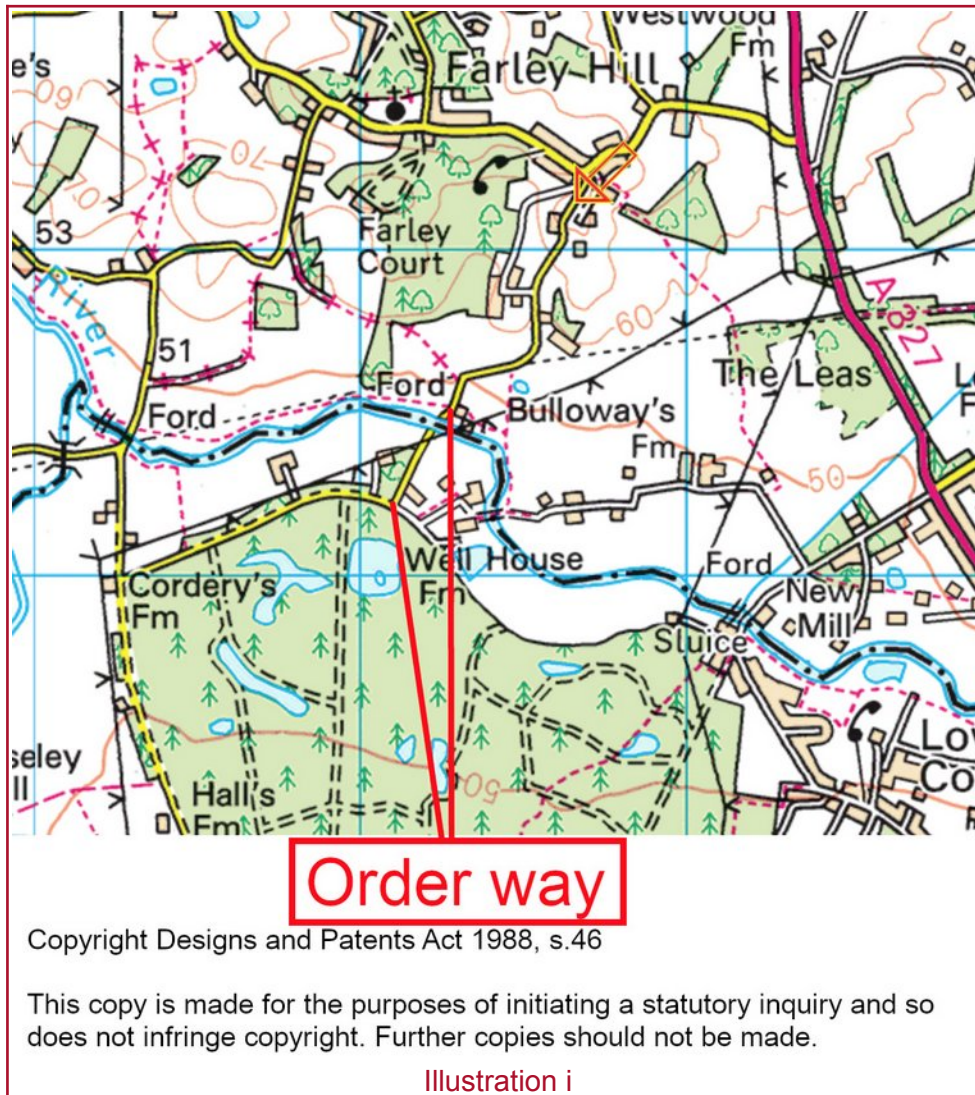
Location plan.....	5
Map showing key names.....	8
National Street Gazetteer extract.....	14
User bar chart.....	32
Bramshill endurance event 2008: website photos (first page).....	34
Bramshill endurance event 2011: website photos (first page).....	35
Plan of Jouldings Ford showing waste.....	39
Plan of Jouldings Ford showing waste and inclosure.....	41
Title plans for Jouldings Ford.....	42
Eversley tithe map extract (National Archives copy).....	43
Plan of Jouldings Ford with tithe map overlay/tithe map only.....	44
Plan of Jouldings ford with Swallowfield inclosure map extract, 1865.....	44
Proposed modified order map.....	45
Photo at A (view North): 21 June 2014.....	47
Photo at C (view North): 19 April 2014.....	48
Photo towards C (view North): 19 April 2014.....	49
Photo between C and D (view North): 19 April 2014.....	50
Photo between C and D (view South): 19 April 2014.....	51
Photo from D (view North): September 2018.....	52
Photo at D (view North): 19 April 2014.....	53
Aerial photo: 1972.....	54
Aerial photo: 1999.....	55
Aerial photo: 2010.....	56
Aerial photo: 2022.....	57
Map of Forests around Windsor.....	59
Taylor's map.....	62
Taylor's map: key.....	63
Rocque's map of Berkshire.....	65
Cary New and Correct English Atlas.....	67
A Topographical Map of Reading.....	69
Stockdale map.....	71
OS one-inch drawing, Odiham.....	73
OS one-inch Old Series map, sheet 12.....	75
Swallowfield inclosure map.....	77
Swallowfield inclosure map: location of extract	78
Cary half-inch map.....	80
Cary half-inch map: key.....	81
Map Of Windsor Forest And Its Vicinity: local extract.....	82
Map Of Windsor Forest And Its Vicinity: Blackwater valley extract.....	83
Map Of Windsor Forest And Its Vicinity: key.....	84
Greenwoods' map, Berkshire extract.....	86
Greenwoods' map, Hampshire extract.....	87
Greenwoods' map: key (Hampshire).....	88
Eversley tithe map.....	92
Eversley tithe map enlargement.....	93
Eversley tithe apportionment	93

Eversley tithe apportionment (transcription): 'Roads and Waste in the Parish of Bramshill'	94
Swallowfield tithe map.....	98
Swallowfield tithe appointment.....	99
Bristol and Dover Direct Junction Railway: deposited plan.....	101
Bristol and Dover Direct Junction Railway: deposited book of reference.....	102
Snare's Map of the Country ten miles around Reading.....	106
Swallowfield inclosure map.....	108
Swallowfield inclosure award.....	109
Selected road 'endings' on the Swallowfield inclosure map	110
OS boundary remark book: Bramshill parish.....	111
OS boundary sketch map: Bramshill and Eversley parishes.....	112
OS boundary sketch map: key.....	113
Ordnance Survey County Series six inch first edition map.....	115
Farley Court justices' plan.....	117
Farley Court justices' plan: enlargement.....	118
Ordnance Survey County Series 25 inch second edition map.....	119
Bartholomew's maps: 1904 and 1920.....	121
Bartholomew's maps: keys.....	122
Finance Act map (order way) (annotated).....	123
Finance Act map (Ford Lane) (annotated).....	124
Finance Act field book: Bramshill hereditament 34.....	125
Finance Act map (Minions, Cornwall 28/6) (annotated).....	128
Finance Act map (Goonhilly Downs, Cornwall, 81/9) (annotated).....	129
Ordnance Survey County Series 25 inch third edition map.....	130
OS name book Finchampstead and Swallowfield Parishes: Jouldings Lane.....	131
OS name book Finchampstead and Swallowfield Parishes: Jouldings Ford.....	131
OS name book Bramshill Parish: Jouldings Ford.....	132
Ordnance Survey one-inch New Popular edition map.....	135
Ordnance Survey one-inch New Popular edition map: key.....	135
Swallowfield parish council minutes, 28 August 1931.....	136
Swallowfield parish council minutes, 2 February 1948.....	137
Bramshill estate sale plan.....	139
Bramshill estate sale plan (enlargement).....	140
Bramshill estate sale: description of lot 7.....	141
Bramshill estate sale: description of lot 10.....	142
Bramshill estate sale: stipulations as to [private] rights of way.....	143
HM Land Registry: register of title index map.....	145
Hampshire list of streets entry.....	150
Wokingham adopted highways plan.....	151

I. General notes

A. Quick reference

Location plan¹



A.1. **Planning Inspectorate reference:** ROW/3271783

A.2. **Date of inquiry:** commencing 20 July 2022 at 10.00

A.3. **Order:** The Hampshire (Hart District No. 27) (Parish of Bramshill) and the Wokingham Borough Council, Parish of Swallowfield (Swallowfield Byway Open To All Traffic 38 and Swallowfield Restricted Byway 39) Definitive Map Modification Order 2019

¹ It is notable that, on this edition of the Ordnance Survey Landranger 1:50,000 map, currently still available on the [Streetmap.co.uk website](https://www.streetmap.co.uk), the order way is shown with yellow infill, signifying a 'road generally less than 4m wide', but not an 'other road, drive or track'. In practice, the yellow infill invariably is used to signify a tarred road, and the appearance here is thought to be a mistake. It has been corrected on the [Bing mapping website](https://www.bing.com/maps).

- A.4. **Parishes of:** Swallowfield (in Wokingham) and Bramshill (in Hampshire)
- A.5. **Ancient parishes of:** Swallowfield, Bramshill, Odiham (detached)
- A.6. **Termination points:** to the north, Jouldings Farm (in Jouldings Lane); to the south, Well House Lane
- A.7. **Termination points Ordnance Survey grid references:** SU75296352, SU75126322
- A.8. **Postcode:** RG27 0RJ
- A.9. **Ordnance Survey Explorer sheet:** 159
- A.10. **Ordnance Survey County Series 25" sheets:** Berkshire XLV/12 and XLVI/9; Hampshire VI/9 and V/12

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 Hampshire County Council on 9 April 2019 ('the order').² It replaces all previous representations made by the society in relation to the order and the application for an 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, subject to its submissions at part IV below seeking modification of the order as made, to show a greater width to part of the order way, and to secure the removal of limitations.

B.3. This statement of case comprises at part I (this part) general submissions in support of the order; in part II *User evidence* below, the applicant's introduction to the user evidence; at part III *Objections to the order by third parties* below, the applicant's general comments on objections made prior to the decision by Hampshire County Council to make the order; at part IV *Objection by the applicant to order* below, the applicant's submissions seeking modification of the order prior to confirmation; at part V *Photographs along the order way below*, photographs of the order way; and at part VI *Documentary evidence* below, the documentary evidence relating to the order way.

B.4. In this statement of case:

- References are in the form '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 lettering A, B, C, D, X and Y refers to the lettering adopted in the order.
- The cross-references in the electronic pdf are hyperlinked.
- In order to enable comparison, the numbering of documents preserves the numbering in the applicant's historical document analysis,³ to which reference is made in the surveying authority's statement of case. It includes 11 new evidential documents, at items VI.ZA *Map of Forests around Windsor*, VI.AA *Rocque's map of Berkshire*, VI.AB *Cary New and Correct English Atlas*, VI.AC *A Topographical Map, of the Town of Reading & the Country*, VI.AD *Stockdale map*, VI.DA *Cary's Improved*

² The full title of the order is given at para.I.A.3 above.

³ Version 1.2.

Map of England and Wales, VI.HA *Snare's Map of the Country ten miles around Reading*, VI.LA *Bartholomew's map*, VI.GA *Swallowfield (Wiltshire) tithe award*, VI.KA *Farley Court diversion order*, VI.PA *Swallowfield parish council*, which have been numbered outside the existing sequence but located chronologically within part VI.

- The statement of case of the order-making authority is referred to as 'OMA SOC', and the documentary evidence accompanying the statement of case as 'OMA SOC/DOC'.
- The objectors' comments on the applicant's application are considered at part III below, as well as in the analysis of *Documentary evidence* in part VI below, and are referred to as 'TW/...' (for further explanation, please see part III).

C. Locational details

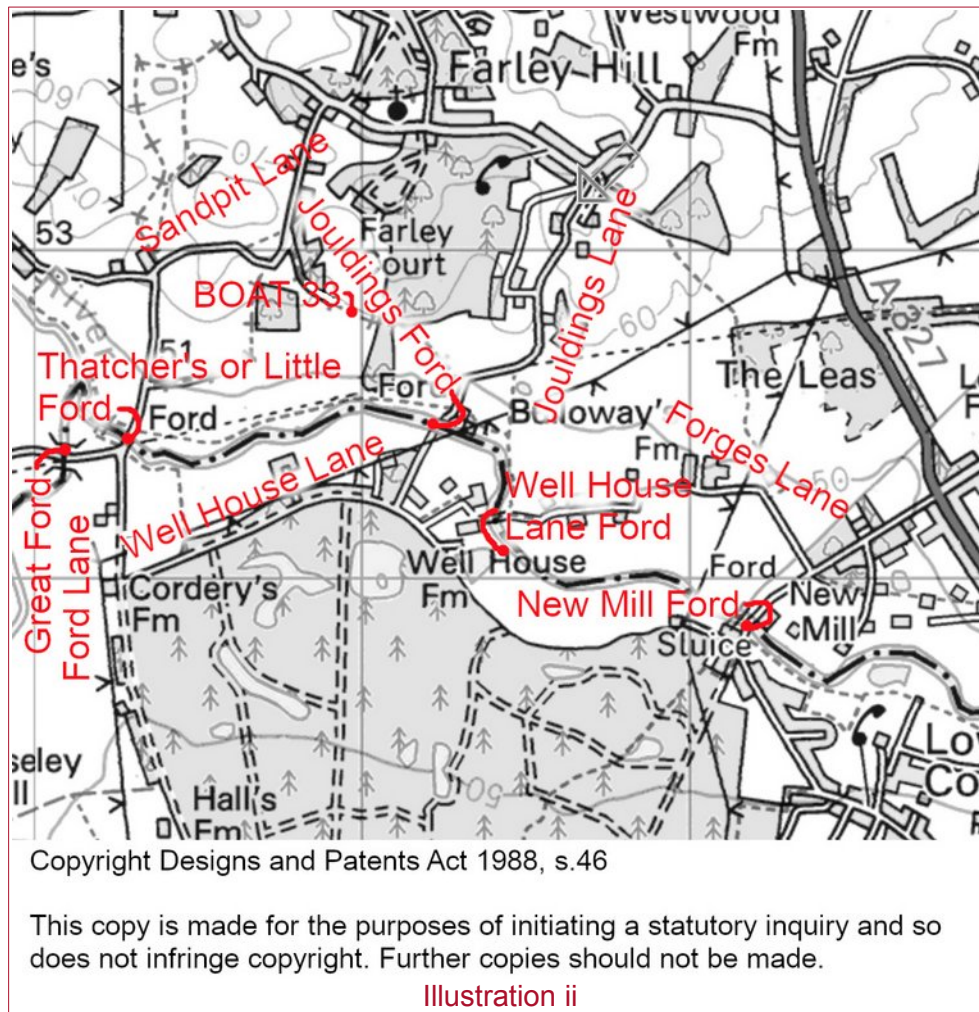
C.1. The order relates to a continuation of Jouldings Lane in the parish of Swallowfield in Berkshire, from Jouldings Farm leading south over Jouldings Ford through the Blackwater River (which also forms the county boundary) and then south along a generally enclosed track to Well House Lane in the parish of Bramshill, Hampshire.

C.2. The points A to D are identified in the order map.

C.3. The way is not currently recorded on the definitive map and statement. The order seeks to record the way partly as a byway open to all traffic and partly as a restricted byway.

D. Nomenclature

Map showing key names



D.1. The order way is a continuation of Jouldings Lane, and the ford is known as Jouldings Ford. It is disputed whether the continuation of the order way south of Jouldings Ford is also known as Jouldings Lane. In this statement of case, it will be referred to as the 'order way'.

D.2. Jouldings Ford lies across the Blackwater River, which forms the county boundary between the ceremonial county of Berkshire and the county of Hampshire.⁴ The order way north of the river historically was in a detached part of Wiltshire until 1844. The order way south of the river formerly was the parish boundary between the parishes of Bramshill and a detached part of Odiham. The name Jouldings Ford appears in earlier forms (or at least, is recorded on various maps in such forms) as Jouldens, Joulding, Jouldins, Jwiuoldes — see the table at para.I.M.3 below. It is described in the *Eversley tithe award* (item VI.G below) as Swallowfield Ford.

⁴ The north side of the river falls in the borough of Wokingham (a unitary district council), and the south side in the district of Hart.

D.3. The applicant accepts that the part of the order way between B and D may not have been known as Jouldings Lane: the position is now unknowable. The purpose of the name given to the order way in the application is to render it immediately and memorably identifiable (as opposed to, say, ‘the way between Jouldings Farm and Well House Lane via Jouldings Ford’). In the applicant’s view, whether that part of the way was ever known as Jouldings Lane is immaterial to the confirmation of the order.

D.4. The county boundary formerly lay along the north bank of the Blackwater River (see *Ordnance Survey original boundary mapping* at item VI.J below), but now lies approximately along the centre line of the river.

D.5. About one kilometre next to the west downstream of Jouldings Ford is Thatcher’s or Little Ford, which conveys Ford Lane (a public road) across the Blackwater River.⁵ A little further to the west, but across the River Whitewater (shortly before its confluence with the Blackwater), is the site of Great Ford, now a bridge.

D.6. About 300m south-east upstream of Jouldings Ford is *Well House Lane ford*, which is discussed at item I.H below. About 800m further upstream is New Mill ford (crossed by New Mill Lane/Road, also a public road).

D.7. At the southern end of the order way, at D, is Well House Lane. Well House Lane leads from Ford Lane (a road running south from Thatcher’s or Little Ford along the western edge of Bramshill Forest) approximately east, past D, to Well House Farm and Well House Lane ford.⁶ It is a public road, at least as far as Well House Farm, which runs close to the northern boundary of Bramshill Forest.

D.8. Bramshill Forest formerly was Bramshill Common: it is not clear when the rights of common ceased to be exercised, but the provisional registration of the land as common land under the Commons Registration Act 1965 was voided on the decision of a Commons Commissioner, for want of proof of any subsisting rights.⁷

E. Summary

E.1. There very likely has been a ford across the Blackwater River at this place since time immemorial. Fords arise where there is a meeting of demand and physical capacity — where there is sufficient need for a crossing, together with the capability to make a reasonably safe crossing (at least in favourable conditions). Once established, fords tend to endure, although they may be abandoned owing to deteriorating hydrological conditions, improved crossings elsewhere (such as a new bridge) or evolving patterns of movement.

E.2. As a long-established ford, it is likely that the lines of communication leading to it on both sides of the Blackwater River also are long-established — perhaps as old as the ford itself. The ‘Devil’s Highway’, a Roman Road between London and Silchester (the latter former Roman town about 11km further west) crossed the Blackwater River in the vicinity of Jouldings Ford, and it is credible that, although the site of the Roman ford is assumed to be Thatcher’s Ford, Jouldings Ford is an alternative crossing point, or the site of a subsidiary route leading south from the Roman Road, initially along the course of the order way.

5 This ford is metalled, but has been in poor repair for some years.

6 We say more about the status of the route through the ford, and the continuation along Forges Lane in the borough of Wokingham, at item I.H below.

7 Decision dated 10 March 1980: www.acraew.org.uk/sites/default/files/uploads/Hampshire/BRAMSHILL%20COMMON%20-%20BRAMSHILL%20NO.CL.165.pdf

E.3. The applicant's case is that the order way has the character of a minor public cart road, and the evidence overwhelmingly points to the same conclusion. First, the order way is a continuation of two acknowledged public roads south from Farley Hill to a ford across the Blackwater River — Jouldings Lane, and BOAT 33, which converge about 150m north of the ford. Each road has the river as its objective: the two roads taken together do not make for a plausible route, simply returning the user back to Farley Hill.⁸ There is no reason why the two roads, combining as Jouldings Lane, should cease to be public at the ford, and no explanation has been offered. Instead, the road continues south to and across Bramshill Common, and historical maps show that it has done so for at least 400 years — in all probability, for far longer

E.4. Secondly, the evidence consistently demonstrates public status. The evidence, ranging from an early seventeenth century privately-surveyed map, to the *Bramshill Estate Sale* in 1952, shows, taken together, that the order way was recognised as a public way.

E.5. Thirdly, the evidence is one of a public vehicular or cart road. None of the evidence suggests rights only on foot, and indeed, it is impossible to conceive how a relatively deep ford could be used by pedestrians, save by the separate footbridge which was provided during part of the nineteenth century (and possibly earlier — see *Ordnance Survey County Series six inch first edition map* at item VI.K below).

E.6. It is suggested that there is a simple explanation for the exclusion of the order way (between B and D) from highway records. It is one common to many such ways. Up until the beginning of the twentieth century, the way was a minor highway, and it may have been privately maintainable, or the highway authorities may not have recognised any obligation to maintain. Early in the twentieth century, Jouldings Lane was tarred as far as A, in recognition of residential or agricultural use to Jouldings Farm. Beyond, there was little use other than as a rough cart track and bridleway, and neither highway authority saw any need to improve the surface by tarring it. Accordingly, as an untarred road, the way was not recorded as publicly maintainable on contemporary documents held by Hampshire county council, and that remains the position which endures today. It is one which the order seeks to address.

F. *Terminus ad quem*

F.1. It has been suggested by the objectors that the order way is a public way from the north but terminating at Jouldings Ford.⁹ There is no 'attraction' in relation to the order way which might cause the public to wish to use it as far as, and no further than, the ford. There is no evidence that the highway terminated at the ford — only a series of documents which had no interest in showing a highway beyond the county boundary, and one (the object name book) which referred to Jouldings Lane, as a named feature, terminating at Jouldings Farm, later corrected to Jouldings Ford.

F.2. The objectors have failed to explain how the order way might have become established as a highway terminating at a ford across the Blackwater River.

F.3. Classically, every highway necessarily led from one place to another, and was required to have a *terminus a quo* and a *terminus ad quem*. In practice, in urban areas,

⁸ Although BOAT 33 now terminates on Sandpit Lane, formerly it passed through the grounds of Farley Court to terminate on Church Road. It was diverted in the late C19. See *Farley Court diversion order* at item V.KA below.

⁹ See, for example, TW/1, SO, para.5.

the courts came to accept that a highway might form a cul de sac, where it was nevertheless used by a significant portion of the public (e.g. leading to a square or court).

F.4. However, the order way is not in an urban area, but in the countryside. In *Moser v Ambleside Urban District Council*,¹⁰ Pollock MR said:

It seems to me that there may be a number of cases in which the public have a need to go to a particular point, and there may well have been a dedication to them for their use for the purpose of reaching that point, although the return journey might be precisely the same route from the terminus ad quem to which the right of access is granted.

while Atkin LJ said:

I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway.

F.5. The applicant accepts that a river may be a legitimate *terminus ad quem* for a public right of way. But there must be some purpose in the public seeking to reach such a place — for example, to water livestock, to swim in the river, to admire the confluence of two rivers,¹¹ or to take sand from a tidal foreshore in accordance with a local right.¹² In such cases, the status of the right of way might be expected to be consistent with the character of the *terminus ad quem*: a driftway for cattle, a footpath to reach a viewpoint, a cart road to take sand.

F.6. But the objectors have proposed no legitimate purpose for the public to seek to have access to the ford, still less for a carriageway to be established and maintained at public expense. No purpose is apparent: it cannot be a watering place (the river is easily accessible elsewhere, there is no nearby drove road, and a carriageway would not be required for such a purpose). Yet the evidence suggests that the order way between A and B has long been recognised as public, has never been distinguished from the rest of Jouldings Lane (to the north), and is likely to be an ancient highway.¹³ What then was the lawful origin of this part of the order way, and how legitimately did it become publicly maintainable highway, if not as part of a public road continuing through the ford to Bramshill Common? These questions remain unanswered by the objectors.

F.7. It would be particularly odd that a public way should cease at the ford, notwithstanding that the physical way continues south, through the ford, and on to Bramshill Common, where commoners' rights were exercised, and places beyond. It is not probable that such a set of circumstances might exist, but no public rights should be established south of the ford over a period of time which amounts to at least 400 years, and perhaps a millennium or longer. Taken with the evidence presented in this statement of case, such an outcome is, we submit, not credible.

F.8. Alternatively, the objectors suggest (TW/2, SAC, para.11) that the status of the order way even between A and B is 'not clear', and that, 'although there is some evidence that the A-B section of [the order way] had some reputation as a road maintainable by the

¹⁰ (1925) 23 LGR 533, 89 JP 118.

¹¹ *Campbell v Lang* (1853) 1 Eq Rep 98,

¹² *Attorney-General and Newton Abbot Rural District Council v Dyer* [1947] Ch 67

¹³ The objectors have implied that the order way between A and B (or C) did not become a public road until some time between 1898 and 1930 — see VI.O.7 to O.9 for the applicant's analysis.

parish, its status is unclear.’. The same rationale applies to point A, at the turning to Jouldings Farm, as a *terminus ad quem*, as Jouldings Ford itself. Neither is a legitimate or likely point of termination for public rights over a carriage road which continues through the ford to point D, and places beyond. But it is very understandable that the tarred surface of Jouldings Lane ceases at point A, because the lack of recognition in the twentieth century of the order way between C and D as publicly-maintainable (if indeed it was ever publicly-maintainable) caused the highway authority for Wokingham to see no purpose in continuing the tarring up to point B (the limit of its recorded liability to maintain).

G. *Eyre v New Forest Highways Board*

G.1. The applicant refers to *Eyre v New Forest Highways Board*,¹⁴ a striking case decided by the Court of Appeal in 1892 and which remains a convenient summary of the law today. The case considered the powers of the highway board to metal a way across a common or ‘green’ in the New Forest, beyond the enclosed part of the way which led to a gate onto the green. The summing up at first instance of the judge, Wills J, to the jury is quoted with approval in the report of the judgment of the Court of Appeal, and is a helpful exposition on the repair of pre-1835 highways, and on the question of dedication where land was, from a certain date, in the occupation of a life tenant.

G.2. In *Eyre*, it was suggested by the plaintiff that a public highway, Tinker’s Lane, terminated at a gate onto the common, and that there was no defined highway beyond the gate across the common. In his summing up to the jury at first instance, Wills J said:

But supposing you think Tinker’s Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a *cul de sac*, and ends at a gate on to a common? Such things exist in large towns. In Leeds, which is a place where I have done a good deal of my hardest forensic work, there were scores of streets which ended with dead walls and which were repaired by the public. ...but who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again? I have known it successfully established in a beautiful walk leading to a cliff end or a place on the sea shore. ...But what do you find such a thing for in this part of the world? I cannot conceive it. It is a just observation that if you think Tinker’s Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of these places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore, it seems to me, after all said and done, that the evidence with regard to this little piece across the green cannot be severed from the other; and it is comparatively of little importance, because if I were a juror, and were satisfied in my own mind that Tinker’s Lane was really a public highway up to that gate, I do not know, but I think, it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green.

G.3. The Court of Appeal decided that:

14 (1892) LVI JP 517

The summing up was copious and clear, and a complete exposition of the law on this subject; it was a clear and correct direction to the jury on all the points raised.

G.4. The circumstances in relation to the order way are all the more egregious. Whereas, in relation to Tinker’s Lane, the lane emerged onto the common at a gate, and there might have been some doubt as to whether there was a highway beyond, and if so, as to the particular direction taken, here, instead, there is a ford, and a defined direction beyond, with no evidence that traffic beyond the ford ever took to any other course. What possible origin or purpose could justify the dedication of a public road terminating in a ford, but no further, where the ford was negotiable by all traffic (save perhaps on foot in the absence of a footbridge); where (at least at certain times in the past), a footbridge was available to pedestrians; where beyond the ford, the way led onto a common over which farmers would have exercised rights of grazing; and where journeys could continue across the common to other places?

G.5. In *Moser v Ambleside Urban District Council*,¹⁵ the Court of Appeal considered a track in Ambleside leading from Gale Lane, through a gate at point A and across two fields to Stock Ghyll Lane at point B. The status of the roads at either end of the track also was uncertain. Atkin LJ said:

Gale Lane terminates at this gate, and it seems to me to be extraordinarily unlikely that if Gale Lane is a public highway, and there is some very strong evidence of that, it should have ended at that gate especially as there was this formed track in existence leading still further, and that leads me to suppose the learned judge was justified in drawing the inference that the public right of way continued beyond the present Gale Lane over this particular track and that that track did not end at the point “B”, but extended still further.

G.6. No explanation has been given by the objectors as to how Jouldings Lane might terminate at a (negotiable) ford across the Blackwater River, other than that it might be a watering place (which we address in para.F.6 above). In *Eyre*, Wills J said to the jury, ‘it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green.’ We say that, in similar circumstances, the Secretary of State is justified in drawing the inference that the public right of way continues from the ford through to D.

H. Well House Lane ford

H.1. Slightly upstream of Jouldings Ford is Well House Lane ford, at the head of Well House Lane. Well House Lane ford connects Well House Lane to Forges Lane (on the north side of the Blackwater River). There is also a public footpath¹⁶ which connects the two roads on a detour via a footbridge across the river to the north of the ford. The ford was annotated on the Ordnance Survey County Series twenty-five inch first edition map, which can be seen at OMA SOC/DOC p.10.

H.2. The order does not relate to the route between Well House Lane and Forges Lane. But we submit that there is ample evidence of the public status of the route, that such status is relevant to this order, and we refer to it elsewhere. This is because, in assessing

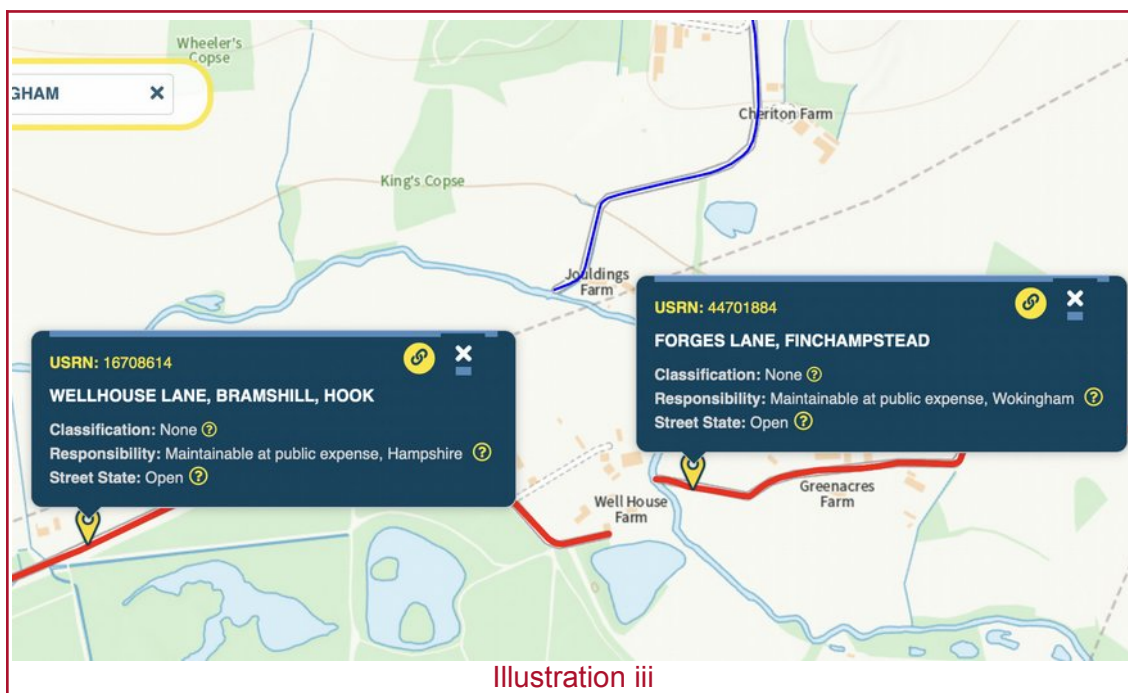
¹⁵ (1925) 23 LGR 533, 89 JP 118, first referred to in para.F.4 above.

¹⁶ Bramshill 033/3/1 and Finchampstead 2.

evidence relevant to the order, we submit that the objectors are incorrect to suggest that, because Well House Ford and its approaches may be shown on certain documents in a consistent form to Jouldings Ford and its approaches, one may conclude that because Well House Ford is inferred to be 'private', so too must be Jouldings Ford. We set out here why we consider it legitimate to treat the way through Well House Lane ford as a public highway throughout, and we then apply the analysis where necessary.

H.3. Both Well House Lane and Forges Lane are now recorded as publicly-maintainable streets, as shown in the National Street Gazetteer.¹⁷

National Street Gazetteer extract



H.4. Both lists show the publicly maintainable highway ceasing short of the ford: in relation to Well House Lane, the cessation occurs at the gates to Well House Farm; in relation to Forges Lane, the cessation occurs at the junction with the footpath.¹⁸ In neither case is there any explanation why a public road should cease at such places, with no recorded continuation for horses or vehicles (and in relation to Well House Lane, no recorded continuation at all).

H.5. Old maps (see *Taylor's map of Hampshire*, item VI.A below, *Ordnance Survey, one-inch first edition drawing* at item VI.B below, *Ordnance Survey, Old Series one-inch map* at item VI.C below, *Map of Windsor Forest and vicinity* at item VI.E below, *Eversley tithe award* at item VI.G below, *Bristol and Dover Direct Junction Railway* at item VI.H below, *Ordnance Survey County Series six inch first edition map* at item VI.K below, *Bartholomew's map* at item V.LA below, along with the *Bramshill Estate Sale* at item VI.Q below) show Well House Lane connected with Forges Lane via a ford across the Blackwater River in the vicinity of Well House Farm.

¹⁷ As represented on Findmystreet.co.uk.

¹⁸ On the map, the continuation along the footpath as far as the footbridge is also shown as publicly-maintainable, but listed incorrectly as 'Forges Lane'.

H.6. The entire way is also excluded from the the land offered for sale by the Bramshill Estate in 1952: see *Bramshill Estate Sale* (item VI.Q below).

H.7. The minutes of Wokingham Rural District Council Highway Committee 1923–1925¹⁹ show that the committee accepted responsibility for maintaining ‘Well House Farm Road’ (now Forges Lane) in Eversley, ‘as far as the entrance to the meadow leading to the Farm.’ The length as to which the responsibility was accepted implies that the continuation of the road nevertheless was recognised as a public road that connected Well House Lane with Forges Lane.

I. Historical context

I.1. The applicant submits that the historical origin of the order way, and any uncertainty over its status, can be explained in the following hypothesis.

I.2. The way provided a means of access from the villages north of the Blackwater River, and the enclosed farm holdings on that side of the river, south across the river to Bramshill Common, and across the common to Hartley Wintney, and places beyond via the road to Southampton. It is possible that the common also provided rights of grazing attached to farm holdings north of the Blackwater river, and livestock would have been driven to and from the common across the river and along the order way.

I.3. The Blackwater River has formed a county boundary since time immemorial.²⁰ It continues to mark the administrative division between the Berkshire unitary borough of Wokingham and Hampshire. Consequently, the administrative highway records for the two parts of the order way which lie north and south of the river have always been maintained separately. It is far from unusual that a way which in one administrative area is regarded as a highway, in another is not, and discontinuities of some kind are commonplace. See, for example, the designation of Forges Lane as a public road in the list of streets held by Wokingham Borough Council, terminating close by the Blackwater River, but continuing only as a footpath across the river to Well House Farm (further discussed in item I.H above).

I.4. In the present case, it is clear that, for whatever reason, the continuation of the order way in Hampshire has for many years been excluded from records held by the county council. S.53 of the Wildlife and Countryside Act 1981 provides for the modification of the definitive map and statement on the discovery of evidence which shows that a right of way, not shown on the map and statement, subsists. S.53 recognises that such disparities may exist, and enables application to correct the record.

J. The order way as a parish boundary

J.1. The order way between B and a point 40m north of D formerly defined the parish boundary between Bramshill and a detached part of Odiham. The boundary is shown on the Ordnance Survey County Series first edition 1:2,500 scale map,²¹ annotated ‘C.R.’ — *i.e.* centre of road. It is submitted that the boundary is founded in long-standing manorial and parish administrative systems.

¹⁹ OMA, SOC/DOC, p.12, Wokingham Rural District Council Highway Committee — 1923–1925..

²⁰ Formerly, the north side of the river in the immediate vicinity of Jouldings Ford formed a detached part of the county of Wiltshire.

²¹ OMA SOC/DOC p.10.

J.2. The English manor was an administrative unit of a landed estate, held by a lord. The manorial system was partly established in the pre-Norman period, but consolidated after the Conquest. The lord of a manor owed obligations of service to the Crown, but the lord could grant or sub-divide the manor (sub-infeudation) until prohibited in 1290.²² Thus every manor had known boundaries which, since 1290, generally remained static.

J.3. Parishes date from the early mediæval period, but the parish emerged as an administrative unit of local government late in that period. The parish was assigned key functions of maintaining the highways under the Statute of Philip and Mary of 1555,²³ and maintaining the destitute under the Poor Relief Act 1601. Initially, the parish operated alongside the manor, which retained jurisdiction over property rights, powers to punish misdemeanours and to regulate the use of land, exercised through the courts baron and leet. Manorial powers gradually were lost or abandoned, until finally the control of property rights was abolished under the Law of Property Act 1922.

J.4. A parish might be coterminous with a manor, might comprise several manors, or a manor might include several parishes. But parish boundaries frequently were coincident with those of manors, and founded in the original manorial boundary. Accordingly, historical parish boundaries²⁴ are frequently of great age, and faithful to boundaries established in the mediæval period or earlier. The alignments of the boundaries depended on a regular perambulation and 'beating the bounds'.²⁵ And frequently, they coincide with highways.²⁶

J.5. Where, as in relation to the order way between B and near D, the parish boundary is recorded as following the centre line of the way, it is submitted that it is highly likely that both road and boundary are ancient in origin, and that the road is a public highway.

J.6. This is because the way is likely to predate either manorial or parish boundary. The way became established across open, unenclosed land before the first enclosures, as a means of fording the Blackwater River (see paras.I.E.1–E.2 above). As the land began to be enclosed and managed as the exclusive property right of a single landowner, probably in the early mediæval period, the order way was adopted as the boundary between two adjacent manors (subsequently, the parish of Bramshill to the east, and the exclave of Odiham to the west). The boundary between the manors, and subsequently the parishes, was adopted as following the centre line of the road, and the manors, and later the parishes, would have shared responsibility for oversight of the way (and any maintenance responsibility which was accepted).

J.7. Any such way, which must have been in use for well in excess of a millennium, must be a highway. It is not credible that such a way might be and remain private.

22 Statute of *Quia emptores*

23 2 & 3 Philip and Mary, c. 8, passed as a temporary Act in 1555, and permanently re-enacted in 1563 (5 Elizabeth, c.13)

24 *i.e.*, those which were not established as part of local government boundary reform following the Local Government Act 1894.

25 *Public Boundaries and the Ordnance Survey 1840–1980*, J R S Booth MBE, Ordnance Survey 1982, p.354.

26 See [s.58](#) of the Highway Act 1835: 'And whereas it frequently happens that the Boundaries of Parishes pass across or through the Middle of a common Highway, and one Side of such Highway is situated in one Parish, and the other Side in another Parish, whereby great Inconveniences often arise in repairing the same;...'

J.8. The alternative proposition is that the way became established along an existing manorial boundary at a much later date. It is submitted that this is considerably less likely. It cannot be said that the way was imposed on an existing boundary feature such as a hedge, for the boundary follows, not the side of the way (where the hedge would have been), but the centre of it. That would require the way to have been superimposed on top of the existing boundary — the original hedge to have been grubbed out, to be replaced by a track centred along the line of the original hedge, and then planted with new hedges either side.

J.9. It is possible to conceive of circumstances where the lords of two adjacent manors shared a desire to set out a new private road serving the interests of both, found it advantageous to provide it on the common boundary of the two manors, each wishing to minimise the contribution of land, and both intending to share the maintenance costs. And perhaps the manorial boundary was undefined, so that it was practical to lay out the new road so that it straddled the boundary line. Apart from being inherently improbable, such circumstances hardly are likely to coincide with a convenient fording place.

J.10. It is suggested that the first proposition is much more likely, and consistent with what is known of the way.

J.11. It may also be said that a public road divided by a parish boundary was a matter for ‘great Inconveniences’,²⁷ prior to highway maintenance functions becoming wholly discharged by county councils from 1929. It is unlikely that such an arrangement intentionally would be put in place.

J.12. TW/1, SO, paras.102–103: The objector refers to the boundary nearby to D which follows a fence. But it does not follow any fence, but the very probably ancient boundary between Bramshill Common and the inclosures of Smith’s Farm to the north, comprising a bank formerly topped by a hedge. This boundary too has probably remained unchanged since it was established in early mediæval times. Indeed, the whole of the boundary of this detached part of the parish of Odiham²⁸ follows in turn the boundary of the common, the order way, and the river. Each component therefore is a boundary ancient in origin.

K. The order way as a publicly- or privately-maintainable highway

K.1. There is some uncertainty whether the order way between B and D was and remains publicly-maintainable, or was and is privately-maintainable. These alternatives are examined below.

The order way as a publicly-maintainable highway

K.2. TW/1, SO, paras.41–57: The applicant does not dispute that the order way between B and D is not recorded in more recent documents, beginning with the Hartley Wintney Rural District Council 1929 handover map²⁹. It is almost inevitable that, where application is made to record a way on the definitive map and statement, that way will not, at the time of application, be shown on such records. Similarly, it is unsurprising if such a way, omitted from near contemporary documents, such as the 1929 handover map and the

²⁷ See footnote 26 above.

²⁸ Detached portions of parishes, such as this one, at some distance from the ‘parent’ parish of Odiham, also reflect the manorial origins of parishes: it is likely that, for some reason, the land at Smith’s Farm, north of the common, was formerly held as part of a manor within the parish of Odiham.

²⁹ TW/1, SO, App.6.

parish records, also were omitted from the definitive map and statement at the time of the initial survey under Part IV of the National Parks and Access to the Countryside Act 1949.

K.3. No conclusions can be drawn from these omissions, other than that the order way either was overlooked, or was not considered, at the relevant dates in the twentieth century, to be a publicly maintainable highway (as regards the handover map) or a way eligible to be recorded on the definitive map and statement.

K.4. It is hardly surprising that the order way was not identified in the handover map. Many unsealed roads, which had not been tarred during the early part of the twentieth century, were discarded, improperly, from the recorded maintenance responsibilities of highway authorities in later years. Such authorities either overlooked the extent of their former highway network, or concentrated their resources on those roads which had been tarred. The omission of unsealed roads, such as the order way, from handover maps, is commonplace.

K.5. No records have been discovered to explain why the order way was not recorded on the definitive map and statement, and no conclusions can be drawn about the omission. It is possible, for example, that the parish council believed the order way to be a public road which was not eligible to be recorded on the definitive map as a road used as a public path, because it was not then used 'mainly for the purposes for which footpaths or bridleways are so used'.³⁰ We do not know.

K.6. TW/1, SO, para.58: If, as reported, the relevant Highways and Sanitation Boards Minutes 1880–1930 contain no mention of the order way, this too is hardly surprising. The relevant boards may have denied any responsibility for maintenance. Alternatively, some highways needed little repair or maintenance. The order way from B to D appears to have been a spur out of the waste of Bramshill, and may have needed little attention. In *Eyre*,³¹ the judge at first instance said in his summing up:

A great many old highways in country places are highways, which from the time they were first used, have never had a spadeful of gravel thrown upon them, or a shilling's worth of repairs done to them at any spot.

K.7. That is likely to have been the case at Bramshill too: the order way has survived, in continuing use, for hundreds of years — yet, with perhaps minimal maintenance by some neighbouring landowners, it remains passable to this day, and is still used.

The order way as a privately-maintainable highway

K.8. It alternatively is possible that the order way south of Jouldings Ford was never considered to be publicly maintainable. It was one of a number of ways which crossed Bramshill common. Very likely there will have been a common here since time immemorial. No one now can say which came first — the highways or the common. Many paths and tracks become established across common land because it is open and unenclosed and there is little save the geography of the land (streams, slopes and so on) to discourage desire lines. The owner of the common lacks incentive to discourage such use, because the common is subject to third party rights of grazing, and is of slight value to the owner. Thus one frequently finds, particularly in former times, that commons were

³⁰ 'Road used as a public path' is defined in s.27(6) of the National Parks and Access to the Countryside Act 1949 as meaning: 'a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.'

³¹ First referred to at item I.G above.

criss-crossed by paths and tracks, many of which will have become highways through long use. This is the position partly reflected in the first highly reliable nineteenth century surveys at a scale of one inch to the mile: the *Ordnance Survey, Old Series one-inch map* (item VI.C below), and *Greenwoods' map* (item VI.F below), both of which show a number of probably vehicular tracks across the common and neither of which records footpaths.

K.9. However, few of these tracks across the common, whether footpaths, bridle roads or carriage roads, will have been regarded as publicly-maintainable highways, because there were so many, the resources of the parish were modest, and if the surface deteriorated, the public were in any case entitled to deviate onto the surrounding common to get by.³² Few if any records will have been made or kept about any such way, and it is most unlikely that the parish will have maintained the way.

K.10. We submit that the order way between C and D may long have been regarded as public, but not publicly-maintainable. This analysis may help explain why, although Jouldings Lane north of the Blackwater River was tarred in the twentieth century, the order way between C and D was not. It may also explain why the order way, between C and D, was excluded from the Hartley Wintney Rural District Handover Map prepared in 1929 (TW/1, SO, paras.41–43) and the maintenance map prepared by the County of Southampton Highways and Rights of Way — Hartley Wintney Division in 1946 (TW/1, SO, para.47).

L. Bramshill estate (settlement)

L.1. The objectors suggest (TW/1, SO, paras.7–9) — although no evidence has been submitted — that the Bramshill estate was in strict settlement for many years (possibly between 1699 and 1935, though the duration of the settlement is not specified) and the order way could not have been dedicated during that period.

L.2. The applicant asserts that the order way is of ancient character: it is the continuation of a country lane, it crosses a named ford across a river which, owing to its size and capacity, has only limited crossing points, and it continues south across formerly unenclosed common land. Fords have much in common with other features of ancient ways, such as hollow ways, causeways and embanked ways — they tend to identify ways which have not changed their course over many years, constrained by the features of their surroundings, and the effect of the passage of traffic over a long period of time. The likelihood is that Jouldings Ford, and the approaches to it, have existed since time immemorial, and that it was dedicated (insofar as the legal fiction of dedication is relevant in such cases) long before the alleged settlement of the Bramshill estate may have been in issue. The very fact that the ford is named is suggestive that it is a place of some considerable antiquity. There is evidence of the existence of the order way as early as 1607 in the V.ZA. *Map of Forests around Windsor*, long before the earliest alleged date of settlement.

L.3. Insofar as the objectors assert that the order way could not have been dedicated during a period when the Bramshill estate was in strict settlement, we submit that it is for the objectors — and not for the order-making authority or the applicant — to define that period by reference to relevant evidence, to show that dedication could have occurred only during that period, and to demonstrate that the terms of the settlement then were sufficient to prevent dedication. In *Williams-Ellis v Cobb*,³³ the headnote to the case correctly records:

³² See *Eyre* first referred to at item I.G above, col.5.

³³ [1935] 1 KB 310.

(2) that where there is evidence of public user of a way throughout the period of living memory, but there has been no owner of the land capable of dedication during that period, the tribunal of fact which has to decide the issue of dedication or no dedication may infer a dedication at some date anterior to the earliest proved user by an owner capable of dedication. But (3.) there is no *praesumptio juris*³⁴ to compel the tribunal to draw such an inference even from unrebutted evidence of long-continued and uninterrupted user.

L.4. In that case, there was evidence of dedication prior to the case (on appeal, in 1935) arising from use within living memory, but the land was in strict settlement from 1856 to 1908, although 'between 1820 and 1856 there was some period in which there was an owner capable of dedication'. Lord Wright said:

If user is established over the period within living memory that raises a prima facie presumption of dedication, the date of which may be in a period beyond living memory. Such a date is not limited necessarily to the scope of living memory. On this matter I am relieved from the need of discussing it further by the reasoning contained in the judgment of Romer J. in *Stoney v. Eastbourne Rural District Council*,³⁵ which was approved by the Court of Appeal. I desire to quote a short passage from that judgment:

'As pointed out by Buckley J. in *Attorney-General v. Esher Linoleum Co.*,³⁶ it is dedication and not user that constitutes a highway. User is merely the evidence that proves the dedication. Where the only user shown is user over a period less than that covered by living memory, there may be good ground for coming to the conclusion that the dedication took place only just before the time at which the user began. But where, as here, the user took place over the whole period covered by living memory, such user is just as good evidence of a dedication made a hundred years before the first proved act of user as of one made contemporaneously with that act.'

L.5. Slesser LJ agreed:

If the learned judge, on uncontradicted user within living memory, were to assume dedication I see no reason why that dedication should be assumed necessarily to be after 1856. In such a case it is not necessary to inquire who the individual was from whom the dedication first proceeded: per Coleridge J. in *Reg. v. Petrie*,³⁷ and as Crompton J. said:

'When such user is proved, the onus lies on the person who seeks to deny the inference from such user to show negatively that the state of the title was such that that dedication was impossible, and that no one capable of dedicating existed.'

L.6. In relation to the order way, evidence of reputation as a highway is founded in dedication at some point in the ancient past. If objectors wish to show that dedication was incompatible with the state of the title to the land, it is incumbent on the objectors not only to produce evidence of settlement, but also evidence that dedication could not have occurred prior to the settlement. No such evidence has been submitted.

³⁴ A (rebuttable) presumption of law.

³⁵ [1927] 1 Ch 367, 378.

³⁶ [1901] 2 Ch 647.

³⁷ (1855) 4 E & B 737, 745, 749, [119 ER 272](#).

M. Grounds for confirmation of order

M.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*,³⁸ 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*³⁹:

'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.'

M.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic 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.⁴⁰

M.3. The order way is first recorded (in those records seen by the applicant) in the *Map of Forests around Windsor* (item V.ZA below) dating from 1607. It appears in a succession of privately-published county, other and early Ordnance Survey maps in the eighteenth and early nineteenth centuries: *Taylor's map of Hampshire* (item VI.A below dating from 1759), then *Rocque's map of Berkshire* (item V.AA below, 1762–64), *Cary New and Correct English Atlas* (item V.AB below, 1787), *A Topographical Map, of the Town of Reading & the Country* (item V.AC below, 1790), the *Stockdale map* (V.AD below, 1805), *Ordnance Survey, one-inch first edition drawing* (item VI.B below, 1806), *Ordnance Survey, Old Series one-inch map* (item VI.C below, 1817), *Cary's Improved Map of England and Wales* (item V.DA below), *Map of Windsor Forest and vicinity* (item VI.E below, 1823), *Greenwoods' map* (item VI.F below, 1826), and *Snare's Map of the Country ten miles around Reading* (item V.HA below). All these maps show the ford and a road connecting it to the local road network:

Map	Name of ford	Extent of road	Notes
Map of Forests around Windsor	[J]wiuoldes	North and possibly stub to south	Shows only Berkshire side of Blackwater River

38 [2012] EWCA Civ 334

39 (1866) 4 F & F 922

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

Map	Name of ford	Extent of road	Notes
Taylor's map of Hampshire	Jouldins Ford	South and stub to north	Shows only Hampshire side of Blackwater River
Rocque's map of Berkshire	Jouldins Ford	North only	Shows only Berkshire side of Blackwater River
Cary New and Correct English Atlas	Jouldins Ford/ Joulding Ford	Both sides (separate maps)	Shows both sides of Blackwater River
A Topographical Map, of the Town of Reading & the Country	Jouldins Ford	Both sides	Shows both sides of Blackwater River
Stockdale map	Joulding Ford	South and stub to North	Shows only Hampshire side of Blackwater River
Ordnance Survey, one-inch first edition drawing	Jouldens Ford	Both sides	Shows both sides of Blackwater River
Ordnance Survey, Old Series one-inch map	Jouldens Ford	Both sides	Shows both sides of Blackwater River
Cary's Improved Map of England and Wales	Jouldens Ford	Both sides	Shows both sides of Blackwater River
Map of Windsor Forest and vicinity	Jouldins Ford	North only	Shows only Berkshire side of Blackwater River
Greenwoods' map	(no name given)	South and stub to north	Shows only Hampshire side of Blackwater River
Snare's Map of the Country ten miles around Reading	Joulders Ford	Both sides	Shows both sides of Blackwater River

The pattern established by these maps is easily understood: the ford is both depicted and named (suggesting a place of some repute), and the order way is shown connecting to other local roads. Where the purpose of the map is to show the lands either south or north of the Blackwater River, then little or nothing is shown of the continuation of the way on the other side of the river — but where the map shows in detail both sides of the river, then the order way is shown connecting to other roads in both directions. The objectors suggest that the absence of a continuation on the opposite side of the river on some of these maps is significant, but the applicant submits any omission merely recognises that the maps are county maps which confine what is shown to the county in question. The *Cary New and Correct English Atlas* (item V.AB below) illustrates this perfectly — Cary published maps of both Hampshire and Berkshire, labelled Jouldings or Jouldins Ford on each map, and evidently recognised the order way as a through route. But only one map (of Hampshire) shows anything of the way on the other side of the county boundary, and then only minimally.

M.4. We agree with the objectors (TW, SOO/2, para.15) that the appearance of any road on early Ordnance Survey and commercial maps does not, in itself, demonstrate public status. However, it is fair and reasonable to draw such inferences as are justified by the context. For example, where a way is shown leading only to a farm or isolated house, it may be reasonable to assume that it could have been a private road (with or without a right of way on foot or on horseback, with which the map maker may not have been concerned). However, where a way is shown consistently on commercial maps as fulfilling more than a means of access to an individual premises, but as a link in the road network, and there is no reasonable alternative explanation for its inclusion (such as to provide a means of access to an individual premises shown part way along it), it is reasonable to infer that the map maker, wishing to produce and market a map which would be of use to clients and customers in navigating the landscape, would have tended to show ways which were open to the public, and not ways which were private (or over which existed only a public right of way on foot).

M.5. None of these maps is in isolation proof of public status. But taken together, the maps show that the order way, via the ford, formed a significant component of the local road network, sufficiently notable to appear on a succession of maps over more than two centuries. It is inconceivable that, if the order way were private and denied to public traffic, it would continue to be shown, throughout this time, on a succession of maps produced for and sold to the general public. Contrary to the objectors' position (TW, SOO/2, para.17), the representation of the order way on commercial historical maps does attract some evidential weight — such maps are a legitimate strand or cord of a rope referred to by Pollock CB (see para.M.1 above).

M.6. However, these maps are not the only evidential source. Jouldings Ford is labelled on the first *Swallowfield Inclosure award, 1814–17* (item VI.D below) impliedly as the means by which pedestrians, riders and cart-drivers might reach Bramshill Common, which is the destination label marked against BOAT 33 descending towards the junction with Jouldings Lane. This implies a public carriageway. Jouldings Ford expressly also is the destination of a footpath leading along the north bank of the Blackwater River (west of the ford).

M.7. The *Eversley tithe award* (item VI.G below) records the order way (between B and D) as a '[road] through Swallowfield Ford' under 'Roads & Waste' consistently with other known public roads, and inconsistent with the treatment of known private roads. The *Swallowfield (Wiltshire) tithe award* (item V.GA below) provides a similar and balancing picture on the north bank of the Blackwater River.

M.8. The plans for the *Bristol and Dover Direct Junction Railway* (item VI.H below) describe the way between C and D as a parish road. The second *Swallowfield Inclosure award, 1865* (item VI.I below) provides for the inclosure of waste either side of the order way between A and B, such land inevitably being waste adjoining a public highway.

M.9. The *Ordnance Survey original boundary mapping* (item VI.J below) notes the existence of Jouldings Ford, and provides some evidence of the status of the route between C and D as a 'road' which was sufficiently significant to mark the mediæval line of the parish boundary between Bramshill and a detached part of Odiham. Early Ordnance Survey County Series mapping records the order way, and the first edition records also a foot-bridge slightly downstream of the centre line of the ford. The *Ordnance Survey object name book* (item VI.O below) records the order way between A and B as a parish road, but contains no record of the name of the way between C and D.

M.10. Successive editions of Ordnance Survey County Series maps between the first edition in 1871 (item VI.K below) and the third edition in 1911 (VI.N below) depict the order way as a through route, as does the *Farley Court diversion order* (item V.KA below).

M.11. The *Finance (1909–10) Act 1910* (item VI.M below) evidence shows the order way between A and B as excluded from adjacent hereditaments and is supportive of public status. Between C and D, the order way is included within hereditaments, as are other public roads on Bramshill Common, and the evidence is neutral on public status.

M.12. Two minutes of *Swallowfield parish council* (item V.PA below) refer to the order way in terms which suggest that public rights were acknowledged.

M.13. As late as 1945, the *Ordnance Survey one-inch New Popular Edition* (item VI.P below) records the order way as being a road with under 14ft of metalling in ‘bad’ condition. The *Bartholomew’s map* (item V.LA below), published in 1904 and 1920, showed the order way as one of the ‘inferior roads not recommended for cyclists’.⁴¹

M.14. In 1952, the details prepared for the *Bramshill Estate Sale* (item VI.Q below) strongly suggest that the order way was considered to be a public road, and to be dealt with in the same manner as other known public roads on the estate.

M.15. Finally, the *List of streets* for Wokingham Borough Council (item VI.R below) demonstrates that the order way between A and B is considered to be publicly maintainable, consistent with a public road.

M.16. It is submitted that the evidence is indicative of a public cart road. None of the evidence expressly refers to bridleway (or footpath) status; the county maps collectively are strongly suggestive of a road for vehicles, the railway evidence refers to a public road, and other documentary sources describe a road with an implication that it is a vehicular road.

Objectors’ case

M.17. The objectors state (TW, SOO/2, para.9) that it is not for them to prove that the way is private. The applicant agrees.

M.18. What is singular about the objectors’ case is that, while there are many individual pieces of evidence which confirm the status of the order way as a public highway, and others which fairly might be said to be neutral, the objectors are unable to identify a single piece of evidence which shows that the order way is — as they claim — a private way.

M.19. The objectors suggest that the absence of a continuation shown south of the Blackwater River on various documents demonstrates that the order way was not a through way. But the objectors also suggest (TW, SOO/2, para.79) that the absence of any continuation of the way shown on the tithe map north of the Blackwater River suggests that it was not a through way. The evidence clearly shows the existence of the way leading to Jouldings Ford from both directions. Any claim that it was not a through way does not correspond with the evidence. If the objectors’ case is taken at face value, it is alleged that roads lead to Jouldings Ford from both directions, the river itself is capable of being forded (as it is at neighbouring locations, and as it is today), the ford has been named as Jouldings Ford since at least the eighteenth century — but for reasons unexplained, it has never been used as a public ford. It is suggested that the analysis plainly is mistaken.

41 A recommendation which hardly can be disputed, in the absence of any footbridge.

M.20. The objectors refer (TW, SOO/2, para.9) to the applicant ‘postulat[ing] potential scenarios’, and refer also to ‘supposition’ (para.25). As the objectors will be well aware, in addressing an order relating to historical evidence, the available evidence may be limited in extent and sometimes unclear as to its meaning in relation to whether a right of way exists. It is often possible reasonably to draw sound conclusions from a particular piece of evidence: for example, a tithe award may mark a way on the map with a parcel number, and expressly refer to it in the award as a ‘public road’.

M.21. In other cases, the position can be less certain, and different parties may contest that different interpretations should be drawn from the evidence. It may be helpful to offer an explanation of how the facts can be reconciled with the evidence. The explanation is not itself evidence, and cannot be proven — but it may provide a legitimate, and sometimes compelling, explanation of the circumstances. It is, of course, open to any party to put forward such an explanation, or to criticise an explanation put forward by another, and this is part of the usual process of determining an order.

M.22. As the objectors state, ‘It is not sufficient to postulate potential scenarios.’ But it may assist in the confirmation of the order.

M.23. While no single piece of evidence in this statement of case is conclusive, the applicant believes that, taken as a whole, the evidence in it demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item N below), there were full vehicular rights.

N. Natural Environment and Rural Communities Act 2006

N.1. It is submitted that the evidence shows that the order way is a public carriageway. At the operative date of 2 May 2006,⁴² only that part of the order way between A and B was recorded as publicly maintainable in the list of streets held by Wokingham Borough Council under section 36(6) of the Highways Act 1980 (see *List of streets* at item VI.R below), and none of the way was so recorded by Hampshire County Council.

N.2. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. *Prima facie*, the exception in subsection (2)(b)⁴³ applies to the way between A and B, but not to that between B and D unless an alternative exception applies. None appears relevant.

N.3. The order way between A and D is not now used by vehicles (save perhaps occasional use by tractors). There is abundant evidence of use by horse riders. The order way between A and B therefore fulfils the statutory definition of a byway open to all traffic,⁴⁴ viz:

...a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used;

42 The date of coming into force of s.67 of the Natural Environment and Rural Communities Act 2006.

43 ‘immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c 66) (list of highways maintainable at public expense)’.

44 Wildlife and Countryside Act 1981, s.66(1)

N.4. The applicant submits that the order correctly provides for the order way to be recorded as a byway open to all traffic between A and B, and as a restricted byway between B and D.

O. Points awarded

O.1. Points have been awarded to each piece of evidence in relation to the order way, calculated consistent with the guidance in *Rights of Way: Restoring the Record*.⁴⁵ 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. The assessment treats separately the two parts of the order way, north and south of the ford: for example, a county map of Berkshire which shows nothing of the order way in Hampshire will attract no points in relation to C–D.

O.2. Points:

Item	Ref	Points A–C	Points C–D
Map of Forests around Windsor	V.ZA	1	1
Taylor's map of Hampshire	VI.A	1	1
Rocque's map of Berkshire	V.AA	1	0
Cary New and Correct English Atlas	V.AB	1	1
A Topographical Map, of the Town of Reading & the Country	V.AC		
Stockdale map	V.AD		
Ordnance Survey, one-inch first edition drawing	VI.B		
Ordnance Survey, Old Series one-inch map	VI.C		
Swallowfield Inclosure award, 1814–17	VI.D	1	1
Cary's Improved Map of England and Wales	V.DA		
Map of Windsor Forest and vicinity	VI.E		
Greenwoods' map	VI.F		
Eversley tithe award	VI.G	0	4
Swallowfield (Wiltshire) tithe award	V.GA	1	0
Bristol and Dover Direct Junction Railway	VI.H	0	5
Snare's Map of the Country ten miles around Reading	V.HA		
Swallowfield Inclosure award, 1865	VI.I	2	0
Ordnance Survey original boundary mapping	VI.J	0	2
Ordnance Survey County Series six inch first edition map	VI.K		
Farley Court diversion order	V.KA		

⁴⁵ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

Item	Ref	Points A–C	Points C–D
Ordnance Survey County Series twenty-five inch second edition	VI.L		
Bartholomew's map	V.LA	1	1
Finance (1909–10) Act 1910	VI.M	5	0
Ordnance Survey County Series twenty-five inch third edition	VI.N		
Ordnance Survey object name book	VI.O	4	0
Ordnance Survey one-inch New Popular Edition	VI.P	1	1
Swallowfield parish council	V.PA	1	1
Bramshill Estate Sale	VI.Q	0	4
List of streets	VI.R	5	0
Total points		25	22

P. Width of order way

P.1. The width of the way is adequately depicted by visual means on the order plan, save in the vicinity of Jouldings Ford — as to which, please see the *Objection by the applicant to order* at item IV.B below.

Q. Limitations

Q.1. The order provides for limitations to be recorded in the form of field gates at X (slightly south of the ford) and Y (slightly short of D) — as to which, please see the *Objection by the applicant to order* at item IV.C below.

II. User evidence

A. Introduction

A.1. The applicant relies on historical evidence of status demonstrating a proper inference of dedication as a public carriageway at common law.

A.2. In addition to the historical evidence of status, the applicant also refers to evidence of recent user. Such user may have, in principle, two alternative impacts.

A.3. The first applies if the decision-maker is satisfied that the historical evidence of the reputation of the order way as a highway is sufficient to infer a past dedication as such. In that event, the user evidence is itself evidence of reputation of the way as a highway, and the user is by right and not 'as of right'.

A.4. The second applies if the decision-maker is not so satisfied as to the historical evidence. In that event, the decision-maker may instead alight on the user evidence as showing sufficient use of the order way, as of right, from which an inference of deemed dedication may be drawn in accordance with section 31 of the Highways Act 1980 (see item II.B below) or at common law.

A.5. However, it is submitted that, if the decision-maker is not satisfied as to the historical evidence, taken in isolation, being sufficient evidence of reputation to infer dedication, the decision-maker may nevertheless weigh together both the historical evidence and the user evidence (itself as evidence of reputation), to determine whether they collectively are sufficient evidence to infer a past dedication of the order way as a highway. In other words, the contemporary user evidence may be sufficient evidence of reputation of the order way as a public road up to the present day to 'tip the balance' towards an inference of historical dedication.

A.6. If the determination as to reputation even then remains in the negative, the decision-maker may go on to consider whether the user evidence is evidence of dedication under section 31 of the 1980 Act or at common law.

A.7. It will be noted that the user evidence of the order way relates almost entirely to user on horseback — *i.e.* as a bridleway. The nature of Jouldings Ford is such that passage on foot and on cycle (in the absence of a footbridge: see *Ordnance Survey County Series six inch first edition map* at item VI.K below) is unlikely, while the absence of contemporary maintenance by the highway authorities militates against vehicular use. Indeed, we observe that, further downstream, even Thatcher's or Little Ford is now seldom used by motor vehicles owing to poor maintenance, notwithstanding that it is part of the tarred road network and recognised as publicly maintainable.⁴⁶ There therefore has been little use of the order way by vehicles, save occasional use by high-axle vehicles such as tractors.

A.8. In the event that the order is confirmed on the basis of the user evidence, the applicant accepts that dedication can be inferred only as a bridleway throughout, and the order would require modification accordingly.

⁴⁶ See TW/2, Statement of John Saunders, p.2, which shows a photograph of Thatcher's Ford, marked 'unsuitable for motor vehicles'.

B. Legal principles

B.1. In relation to the user evidence, the applicant relies on dedication under section 31 of the Highways Act 1980, of which the key subsections (1) and (2) are reproduced as follows:

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

B.2. For dedication to be presumed under section 31 a number of requirements have to be satisfied. These are:

- (i) that there has been a bringing into question for the purposes of section 31(1);
- (ii) that the way is not a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication;
- (iii) that the way has been enjoyed by the public 'as of right' and without interruption for the full period of twenty years running back from the date at which the right of the public to use the way was brought into question.

B.3. If all of these matters are satisfied then the initial presumption is that the way is a highway unless it can be shown that there is sufficient evidence that there was no intention (during the twenty year period) on the part of the owner to dedicate it. In this case, once the matters outlined in para.B.2 above are satisfied then the burden of proof to show that the highway does not subsist falls on the objectors.

B.4. It is submitted that the date of bringing into question is the date of the application made by the society: 8 May 2013. This is the effect of subsections (7A) and (7B) of section 31.

B.5. It is submitted that the 'character' of the way is not such 'that use of it by the public could not give rise at common law to any presumption of dedication'. The intention of the 'character' qualification in subsection (1) is to exclude ways which could never form a legitimate public path, such as:

Paths leading only to a private house; ways in a park occasionally thrown open by the goodwill of the owner; woodland rides; wandering tracks of a vague nature passing over open land with no definite termini[.]⁴⁷

There is no question of that here.

B.6. Use 'as of right' in section 31 has the same meaning as it does at common law, namely that use by the public must be *nec vi, nec clam, nec precario*. That is; not by force (or contentiously), not by stealth and not by the licence or permission of the owner. In the

⁴⁷ *The Rights of Way Act 1932: its history and meaning*, Sir Lawrence Chubb (Commons, Open Spaces and Footpaths Preservation Society), 1938. Reproduced [here](#).

applicant's submission, the evidence of user was 'as of right'. There is no evidence, and no suggestion, that the user was contentious, and there is no evidence that any users were challenged — nor is it obvious, in the absence of any known owner of the order way, who would have been entitled to challenge users.⁴⁸

B.7. There is no suggestion that use was by stealth: on the contrary, the crossing of Jouldings Ford with horses can hardly be done surreptitiously.

B.8. There is no suggestion that any use was by permission or licence: on the contrary, there is no known person who owns the order way other than as a number of frontagers *ad medium filum*, and who is capable of granting a permission or a licence.

C. User evidence forms

C.1. The applicant relies on all the evidence of use by the public contained in the user evidence forms. The applicant intends to call witnesses to give oral evidence of their use of the order way.

C.2. The user evidence is summarised below.

1. **W B** (OMA SOC p.163) Walked weekly 2004 to 2018. Also ridden on a horse, dates not confirmed.
2. **K B** (OMA SOC p.165) (statement dated 19th April 2018) Ridden on a horse 4–5 times a week between 1971–72 to 2008. Carriage driven once a week between mid–80s and mid–2000s. On foot to check condition of the ford 1971–72 to 2016
3. **M B** (OMA SOC p.168) (statement dated 6th June 2018) Ridden on a horse weekly between 1965 and 2000, more often in the summer, less often during the winter months. Ridden once every couple of months 2000 to 2017
4. **S B** (OMA SOC p.170) (statement dated 16th April 2018) Ridden on a horse twice a week 2000 to 2013
5. **H C** (OMA SOC p.173) Ridden on a horse 2–8 times a year during the summer months 1998 to 2018
6. **B C** (OMA SOC p.178) Ridden on a horse weekly 1990 to 1997.
7. **R C** (OMA SOC p.179) Ridden on a horse four times weekly 1990 to 1997.
8. **R J C** (OMA SOC p.190) Ridden on a horse once each week between 1990 and 1997.
9. **V C** (OMA SOC p.196) (statement dated 21st April 2018) Ridden twice weekly on a horse between 1990 and 1997.
10. **C C** (OMA SOC p.199) Ridden on a horse from 2010 to 2017 daily in the summer months.
11. **L D** (OMA SOC p.200) Ridden on a horse monthly 2013 to 2018.

⁴⁸ No part of the order way is subject to any title registered at HM Land Registry, save a claimed possessory title recently established in relation to part of the east side of the order way. If the order way is not a highway, no frontager of the order way can (with the exception of the possessory title) claim title to the order way itself. Therefore, no frontager (save, since the establishment of a possessory title to part of the width of part of the order way, the owner of that part) would be entitled to challenge users.

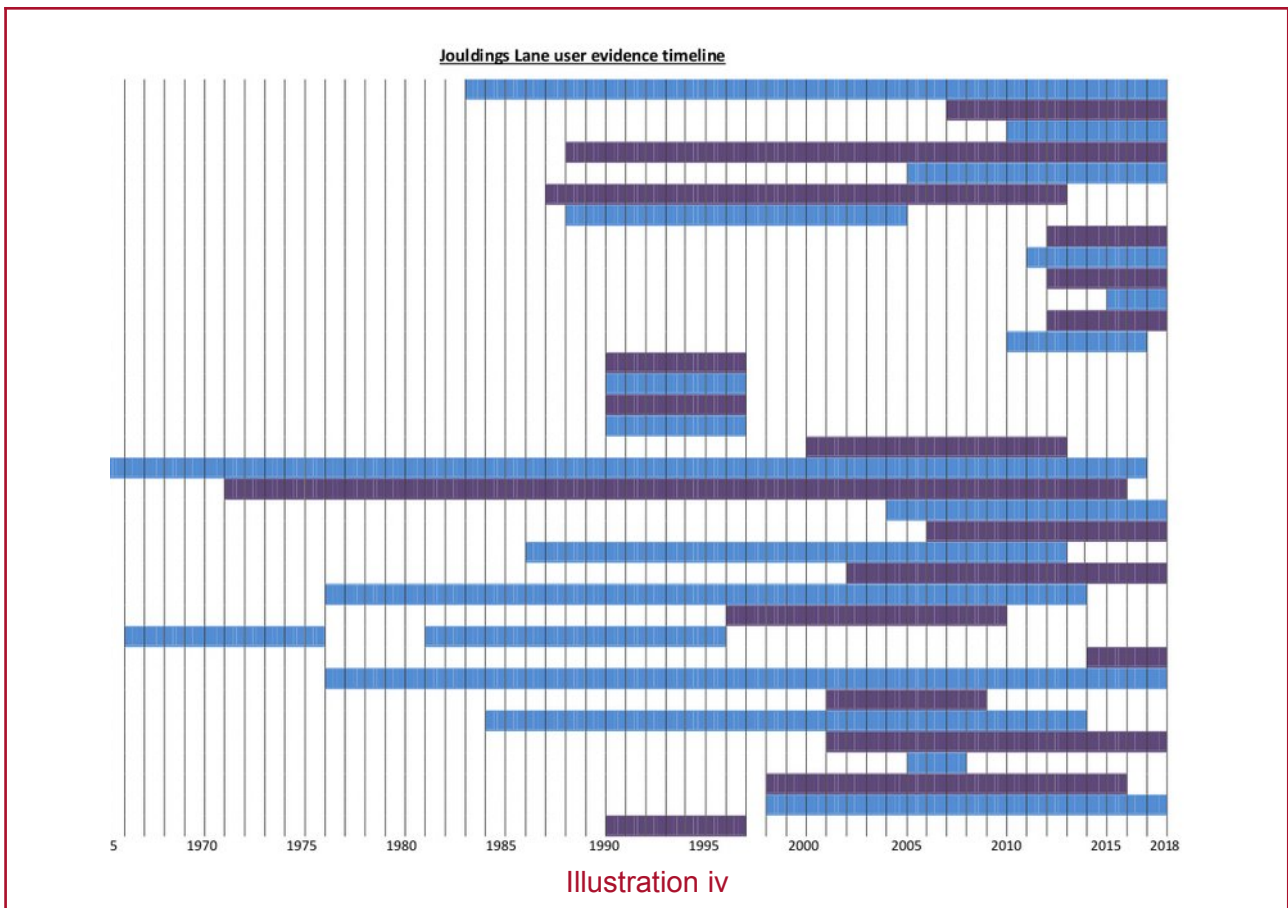
12. **B D** (OMA SOC p.201) Ridden daily on a horse 2015 to 2018 during the summer months.
13. **L E** (OMA SOC p.202) Ridden monthly on a horse between 2012 and 2018.
14. **D E** (OMA SOC p.203) Ridden 2011 to 2018, daily on a horse, during the spring and summer months.
15. **R E** (OMA SOC p.204) Ridden weekly on a horse 2012 to 2018.
16. **K F** (OMA SOC p.205) Ridden weekly on a horse 1998 to 2005.
17. **N G** (OMA SOC p.206) (statement dated 15th May 2018) Ridden on a horse 1987 to 1991 3 to 12 times a year. Between 1994 and 2002 ridden once a week. 2002 to 2013 ridden handful of times a year.
18. **M H** (OMA SOC p.210) Ridden on a horse weekly 2005 to 2018.
19. **J H** (OMA SOC p.211) Ridden weekly on a horse 1988 to 2018.
20. **M J** (OMA SOC p.212) Ridden monthly on a horse 2010 to 2018.
21. **S J** (OMA SOC p.213) Walked and ridden on a horse weekly 2007 to 2018.
22. **K K** (OMA SOC p.214) Ridden on a horse weekly between 1983 and 2012.
23. **C M** (OMA SOC p.216) Walked on foot yearly between 2006 and 2018. In parts, to the ford, not walked through the ford.
24. **S M** (OMA SOC p.218) (statement dated 18th April 2018) Carriage driven twice weekly 1986 to 2000 Ridden on a horse once or twice a week from 2000 to 2013
25. **S M** (OMA SOC p.221) On foot and ridden on a horse weekly between 2002 and 2018.
26. **L N** (OMA SOC p.222) (statement dates 13th May 2018) Ridden 2–3 times a month on a horse between 1976 and 2014
27. **L O** (OMA SOC p.230) (statement dated 12th April 2018) Ridden on a horse 3–4 times a week 1996 to 1998. 1998 to 2010 ridden once every 4–6 weeks.
28. **A P** (OMA SOC p.233) (statement dated 20th April 2018) Ridden on a horse once a week 1967 to 1971 1971 to 1976 ridden on a horse twice a month. 1982 to 1996 ridden once a month on a horse.
29. **C R** (OMA SOC p.237) Ridden on a horse monthly 2014 to 2018.
30. **D R** (OMA SOC p.238) Ridden on a horse between 1976 and 2018, weekly/ monthly, variable depending on the ford.
31. **S R** (OMA SOC p.240) (statement dated 15th May 2018) Ridden monthly on a horse 2002 to 2009.
32. **A S** (OMA SOC p.243) (statement dated 30th April 2018) Ridden on a horse 2–3 times a week between 1984 and 2014
33. **R** (OMA SOC p.244) (statement dated 16th May 2018) Observed use 1994 to 2018.
34. **S S** (OMA SOC p.245) Ridden on a horse, daily during 2001 and reducing to monthly in 2018.
35. **S T** (OMA SOC p.246) Ridden on a horse weekly 2005 to 2008.

36. **E T** (OMA SOC p.247) Ridden yearly on a horse between 1998 and 2016.

37. **L W** (OMA SOC p.248) Ridden 4 times a week on a horse 1990 to 1997

C.3. The user evidence spans a period of around 50 years, and the period is represented in graphical form in the bar chart below.

User bar chart



C.4. For one witness, recollection of use stretches back to 1965, while several others recall use in the 1970s. Use is recorded by many witnesses as continuing up to and after the date of application.

C.5. The user evidence is largely on horseback, although there is some limited evidence of carriage driving from the mid-1980s to the early 2000s, and some evidence of use on foot (without passing through the ford).

C.6. The applicant submits that the evidence of user shows regular use of the order way on horseback over a period of more than 20 years, prior to 8 May 2013, as of right. In the absence of any evidence to show an intention not to dedicate the order way, it is submitted that, if the question arises, the evidence is sufficient to infer statutory dedication arising under section 31 of the 1980 Act.

D. Other evidence of user

D.1. The website wetroads.co.uk, which records fords on public or potentially public roads in the UK, contains an entry for Jouldings Ford.⁴⁹ It contains a submission said to have been 'Sent in by Keith Cross (14/08/2006)':

Looks like a gravel/mud bottom. Its used regularly by horses, but right of way is unknown and probably doubtful. A woman came out of house on the south end and told me horses use it regularly and seemed friendly enough. Approach from the north is down a narrow dirt track in good condition. I would say it was approachable by most vehicles, but I am not sure about the ford though.

and a further, undated, submission from Richard Thompson:

It is right on the border and the legal status is unknown as neither Hants or Berks want to claim it so as not to maintain it. My local motorcycle club and myself have used it for over 30 years without being challenged. However, it is for experienced off roaders only as it is always deep with a muddy bottom. The exits cannot be seen from either side and it has been known for some to follow the river by mistake! After heavy rain it can get VERY deep and FAST flowing. Even 4x4s can get into trouble.

D.2. We draw attention to the statements that, 'A woman came out of house on the south end⁵⁰ and told me horses use it regularly', and: 'My local motorcycle club and myself have used it for over 30 years without being challenged.'

D.3. An endurance event took place using the order way in 2005, 2006, 2008, 2009, and lastly on 4 September 2011. Data are as follows:

- 18 September 2005: 22 riders (40km class)
- 17 September 2006: 25 riders (40km+ classes)
- 21 September 2008: 61 riders (some completed the circuit twice)
- 27 September 2009: 39 riders (40km+ classes)
- 4 September 2011: 41 riders (two riders completed the circuit twice)
- 23 and 24 June 2012: 33 riders over two days

Photographs were taken of the competitors passing through Jouldings Ford in 2008 and 2011 for commercial sale to the competitors and these remain available to view on the internet.⁵¹

49 www.wetroads.co.uk/berkshire.htm#jouldingsfarmford


50 Presumably Wellcroft House, then and now occupied by Mr John Saunders, the entrance to which from Well House Lane is just beyond D.

51 2008: radfoto.co.uk/html/egb_bramshill.html; and 2011: rad-foto.co.uk/20110904BramshillFord/index.html

Bramshill endurance event 2008: website photos (first page)

For size and price information, click > [here](#) <
21-Sep-2008 EGB Bramshill; Jouldings Ford



Index 1  Index page 1 of 17



[RP1_100518 \(09:52\)](#)



[RP1_100519 \(09:52\)](#)



[RP1_100520 \(09:52\)](#)



[RP1_100521 \(09:52\)](#)



[RP1_100522 \(09:52\)](#)



[RP1_100523 \(09:52\)](#)



[RP1_100524 \(09:52\)](#)



[RP1_100525 \(09:52\)](#)



[RP1_100526 \(09:52\)](#)



[RP1_100527 \(09:52\)](#)



[RP1_100528 \(09:52\)](#)



[RP1_100529 \(09:52\)](#)



[RP1_100530 \(09:52\)](#)



[RP1_100531 \(09:52\)](#)



[RP1_100532 \(09:52\)](#)



[RP1_100533 \(09:52\)](#)



[RP1_100534 \(09:52\)](#)



[RP1_100535 \(09:52\)](#)



[RP1_100536 \(09:52\)](#)



[RP1_100537 \(09:52\)](#)



[RP1_100538 \(09:52\)](#)



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[RP1_100541 \(09:52\)](#)

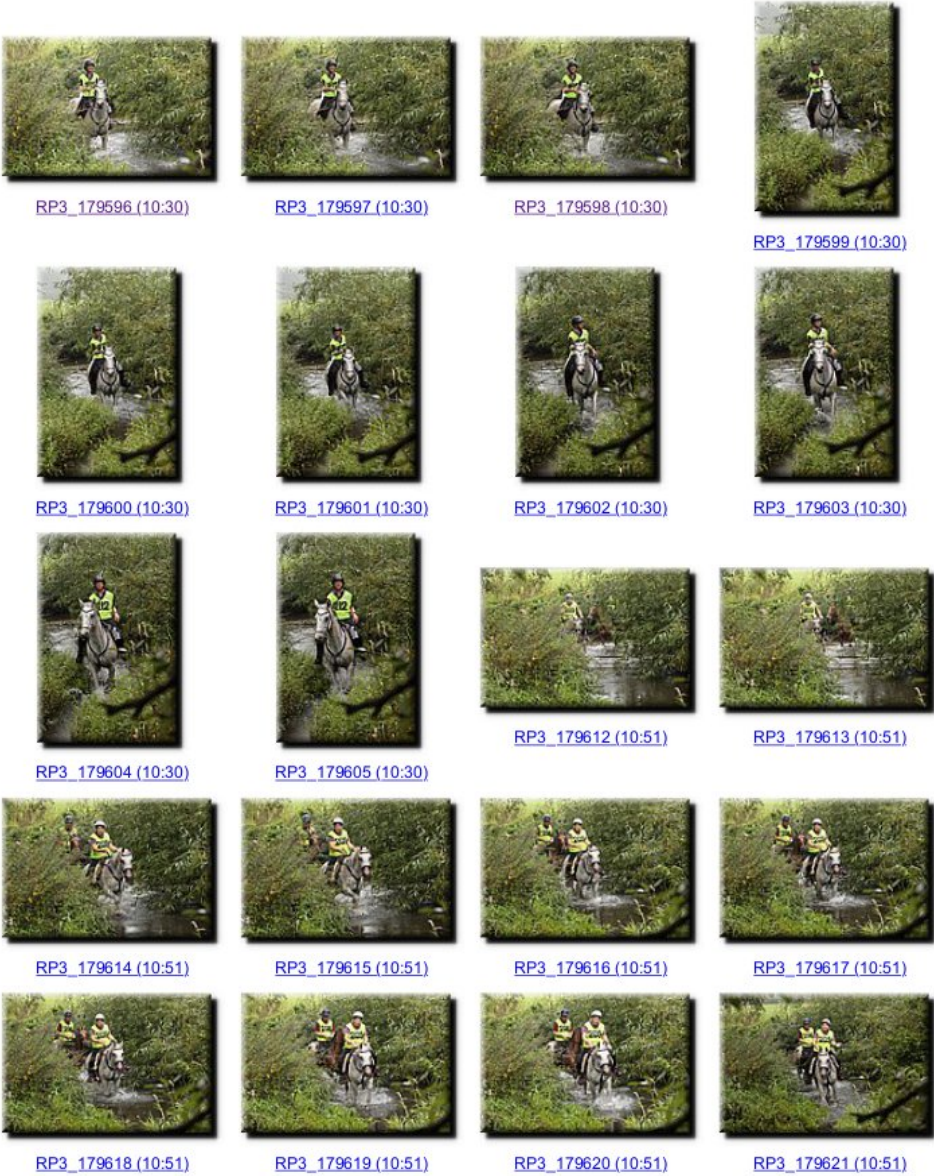
Illustration v

Bramshill endurance event 2011: website photos (first page)

For size and price information, click > [here](#) <
4-Sep-2011 Bramsheill Jouldings Ford

Index 1  Index page 1 of 18



RP3_179596 (10:30) RP3_179597 (10:30) RP3_179598 (10:30) RP3_179599 (10:30)

RP3_179600 (10:30) RP3_179601 (10:30) RP3_179602 (10:30) RP3_179603 (10:30)

RP3_179604 (10:30) RP3_179605 (10:30) RP3_179612 (10:51) RP3_179613 (10:51)

RP3_179614 (10:51) RP3_179615 (10:51) RP3_179616 (10:51) RP3_179617 (10:51)

RP3_179618 (10:51) RP3_179619 (10:51) RP3_179620 (10:51) RP3_179621 (10:51)

Illustration vi

D.4. It is submitted that these events, taking place over a number of years, demonstrated that the order way was in regular use by horse riders, was in a fit state to be used by large numbers of riders of all levels of competence, and that, on event days, the use of the order way by such large numbers of horse riders would have been known to all those living near the order way — and that the evidence of such use would have remained visible for many weeks afterwards, comprising disturbed ground and horses' droppings.

III. Objections to the order by third parties

A.1. We do not respond to any representation which is not material to confirmation of the order.

B. Taylor Wessing LLP

B.1. A statement of objections was prepared by Taylor Wessing LLP and dated 3 April 2018, including an executive summary prepared by Karen Jones, of counsel. It is understood that the statement was prepared on behalf of frontagers on the south side of Jouldings Ford, although we do not know whether Taylor Wessing represents all such frontagers. This is referred to as 'TW/1', dated 3 April 2018, and comprises:

- the executive summary (ES), and
- the statement of objections (SO),

thus references here and subsequently are to TW/1, ES, para.*n*, or to TW/1, SO, para.*n*.

B.2. A further statement of objections from Karen Jones was dated 24 September 2018. This is referred to as 'TW/2', and comprises:

- the executive summary (ES),
- the summary of additional comments (SAC),
- the specific comments on applicant's second submission in appendix 14 (App.14), and
- the witness statements of the objectors and others,

thus references here and subsequently are to TW/2, ES, para.*n*, TW/2, SAC, para.*n*, or to TW/2, App.14, para.*n*.

B.3. The objections in relation to particular items of evidence adduced by the applicant are addressed in the context of the presentation of that evidence in this statement of case. General points of objection are addressed in part I above.

B.4. Other elements to the objection relying on evidence not adduced by the applicant are addressed below.

C. London Newbury and Bath Direct Farnboro' Extensions railway scheme

C.1. The objectors refer to the plans for the London Newbury and Bath Direct Farnboro' Extensions scheme (this originally mistakenly was referred to as the Wokingham and Basingstoke Railway: TW/1, SO, paras.93–95).

C.2. The objectors note that the order way lay outside the limits of deviation for the projected railway, and the railway surveyor was not required or expected to index those parcels of land which would not be affected by the railway scheme. The neighbouring parcels of enclosed fields adjacent to the order way, south of the Blackwater River, are also unlabelled. No conclusions therefore can be drawn on the status of the order way.

C.3. It is no argument to assert that, because the order way was identified in the plan and book of reference for the *Bristol and Dover Direct Junction Railway* (item VI.H below), notwithstanding that it lay outside the limits of deviation, so it would have been identified in these plans, had the way been public. Being outside the limits of deviation, it was a matter

for the surveyor and engineer whether to include such information, and discretion was exercised not to do so. There is no reason why such exercise of discretion might be influenced by consideration of whether the order way were public.

C.4. The position as regards the common itself is exactly as described in relation to the *Bristol and Dover Direct Junction Railway*. As the objectors state, this scheme too is likely to have been the product of ‘railway mania’.

D. Witness statements

D.1. The objectors’ witness statements are given in the second objection. They comprise statements by John Saunders, Michael Thumbwood, Nigel Stoate and Thomas Stoate.⁵²

D.2. The applicant expects to address in cross-examination evidence given by the objectors at the inquiry. We do not therefore here undertake a full analysis of the objectors’ witness statements. But we do wish to address questions raised in the statements about the practicability of crossing Jouldings Ford, and the effect of flooding.

D.3. The objectors’ witnesses question whether Jouldings Ford remained open to accommodate equestrian traffic.

D.4. Mr Saunders states that:

...the track is generally impassable due to deep mud, overgrown hedges and fallen trees.

He refers to the photograph in his statement after para.5, showing the entrance to the ford between A and B blocked by a fallen tree. He adds:

7. If someone did try to ride the route they would not be able to. Fallen trees regularly block the route, like the one above which blocked the route for the best part of a year.

...

8. Silt makes the ford extremely dangerous and explains why people don't use it. I attach a photograph taken in January 2018 showing the silt in the ford on the south bank. The complete absence of footprints shows that no one uses the route.

Mr Saunders then refers to the photograph in his statement after para.8, showing the entrance to the ford on the south side of C.

D.5. We observe that both these photographs were taken in the winter of 2017–18, when some users had ceased to use the order way owing to problems with the ford and blockages.

D.6. Mr Nigel Stoate refers (at para.5) to:

... flooding for significant parts of the year

which rendered the order way ‘unusable’. He cites rainfall data which give rise to persistent spells of flooding.

D.7. It is not accepted that fallen trees blocked the order way ‘for the best part of a year.’ Indeed, that they were cleared away at all demonstrates that the order way has remained

⁵² TW/2, Statements dated 24 September 2018.

in use at all times.⁵³ The absence of ‘footprints’ in the photograph taken in January 2018 is unsurprising: the entrance to the ford on both sides is continually washed by the ebb and flow of the river, and hoof prints seldom are likely to remain visible for long.

D.8. It is accepted that flooding does prevent use of the ford from time to time. The same is true of any ford — including Thatcher’s and New Mill fords referred to at para.4 of Mr Saunders’ statement. Such flooding is an ‘Act of God’, and not an act of interference with use of the way on the part of the owner. If a highway could not be dedicated owing to periodic flooding, no ford in the country could ever become a highway.

53 It hardly is surprising that the tree photographed in April 2018 remained in place for some weeks: it was during the spell of flooding identified in Mr Nigel Stoate’s statement at para.8.

IV. Objection by the applicant to order

A. Introduction and summary

A.1. Objection is made by the applicant to the order in respect of the width of the order way at Jouldings Ford. The applicant seeks that the order should be modified to record the full historical width of the ford.

A.2. It also seeks that the order should be modified to remove reference to limitations in the form of field gates at X and Y.

B. Jouldings Ford modification

B.1. Jouldings Ford formerly was a broad crossing of the Blackwater, allowing carts and livestock to find the best alignment through the river, and leaving room for a footbridge to cross the river west of the shortest point of traverse. This land was highway waste. Save for a small part on the north side of the ford, it remained unenclosed until the post-War period.

Plan of Jouldings Ford showing waste



B.2. Illustration vii above shows the ford today as depicted on Ordnance Survey MasterMap (the same product used for the order map, but of later revision date).

B.3. The red stipple (.....) shows the boundaries of the waste as shown on the Ordnance Survey County Series second or third edition 1:2,500 mapping dating from

around the turn of the nineteenth century⁵⁴ — a straight line is used to connect the boundaries of the waste on either side of the river, where they intersect with the river bank.

B.4. The green closely-spaced stipple (|||||) shows the approximate boundaries of titles enclosing the waste (approximate, because HM Land Registry titles observe the general boundaries rule).⁵⁵ The titles enclosing the waste are marked as follows:

- Ti: HP476207 (possessory title)
- Tii: HP830941 (possessory title)
- Tiii: unregistered title

It will be noted that the majority of the waste north of the river, on both sides of and including the order way, is unregistered, although much of the land on the west side of the ford has been enclosed into land farmed with Hill Farm (title BK366481).

B.5. As we explain in respect of the *Bramshill Estate Sale* (item VI.Q below), the formerly unclaimed status of the waste land identified within the red stipple line is characteristic of highway land, the ownership of which is presumed to lie with adjoining owners, but which is not recorded in title documents because it is regarded as highway.

B.6. Moreover, the area identified as Ti was clearly excluded from the title to lot 10 (Smith's Farm) offered in the *Bramshill Estate Sale* (this explains why title to this area subsequently was claimed on the basis of adverse possession).

B.7. It is also necessary to take account of the land which was inclosed by the *Swallowfield Inclosure award, 1865* (item VI.I below) on the north side of the ford. That part of the inclosure to the west of the order way (immediately to the north of B) was not put into effect at the time — but the applicant recognises that the effect of the award was to extinguish the rights of common exercisable over the waste, and to cause it to cease to be manorial waste.

54 Second edition mapping is used for sheet XLVI/9 (to the east), and third edition mapping for sheet XLV/12 (to the west), corresponding with availability from the National Library of Scotland online archive.

55 See s.60 of the Land Registration Act 2002.

Plan of Jouldings Ford showing waste and inclosure



B.8. Illustration viii above shows the ford in the same form as Illustration vii above, but delimiting the additional area excluded by the Swallowfield inclosure marked out by a red closely-spaced stipple line (|||||).

B.9. The applicant therefore submits that the width of the order way should be defined by the extent of the waste marked on the second and third editions of the Ordnance Survey County Series maps, as shown by the red stipple line in Illustration viii above, but also excluding the area inclosed under the 1865 award as shown by the red closely-spaced stipple line, and that the order should be modified accordingly. This area is approximately consistent with the extent of unregistered title, excluding titles registered since 1996 on the basis of possessory titles.

B.10. (It should be noted that, if the applicant is correct to assert the extent of highway waste as delimited by the red stipple line, the possessory titles encroaching on the waste have incorrectly been registered on the basis of adverse possession, as no title to highway land can be acquired on that basis.⁵⁶ However, it may be that title may be demonstrated on the basis of *ad medium filum*.)

B.11. Extracts from the relevant titles are shown below.

⁵⁶ [Smith, R \(on the application of\) v The Land Registry \(Peterborough Office\)](#) [2010] EWCA Civ 200

Title plans for Jouldings Ford

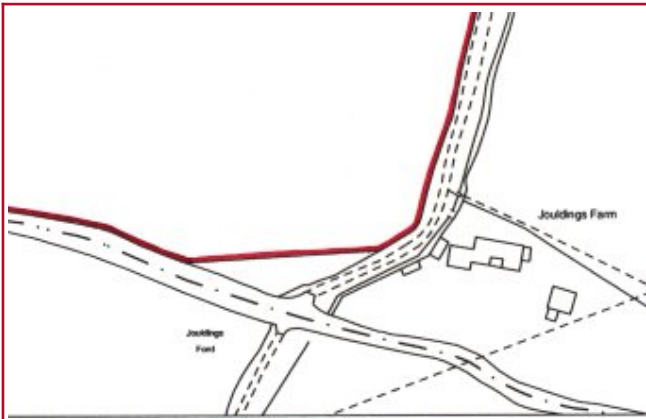


Illustration ix: BK366481 Hill Farm

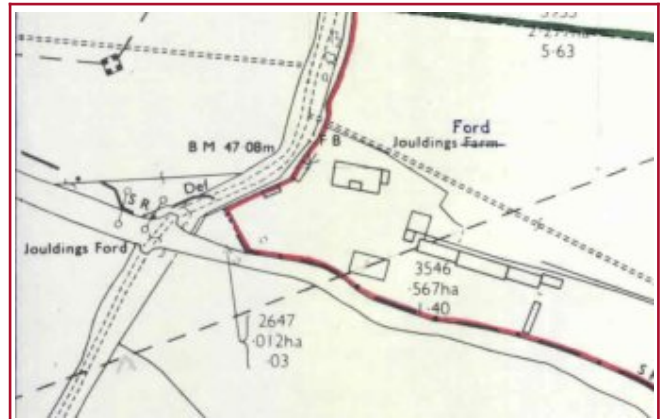


Illustration x: BK171331 Jouldings Farm

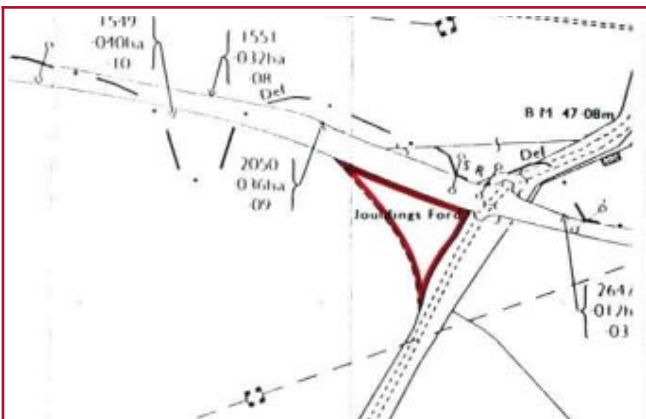


Illustration xi: HP476207 Jouldings Ford splay

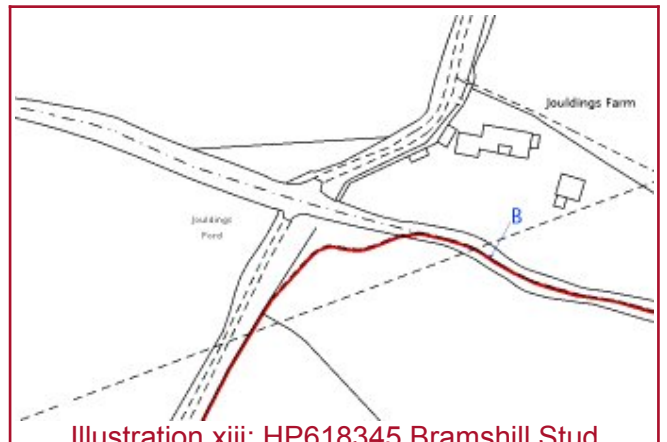


Illustration xiii: HP618345 Bramshill Stud

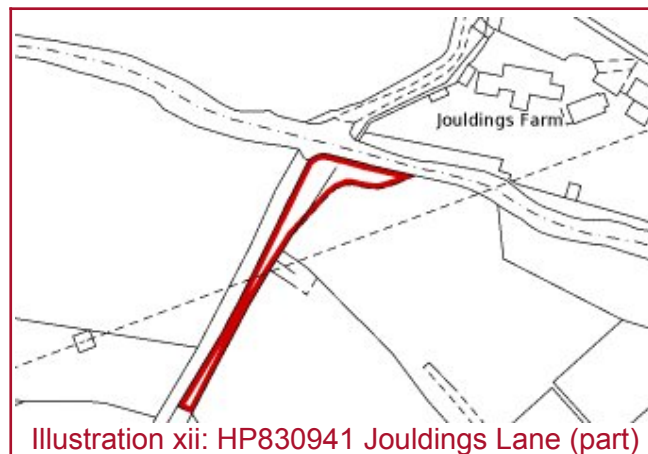


Illustration xii: HP830941 Jouldings Lane (part)

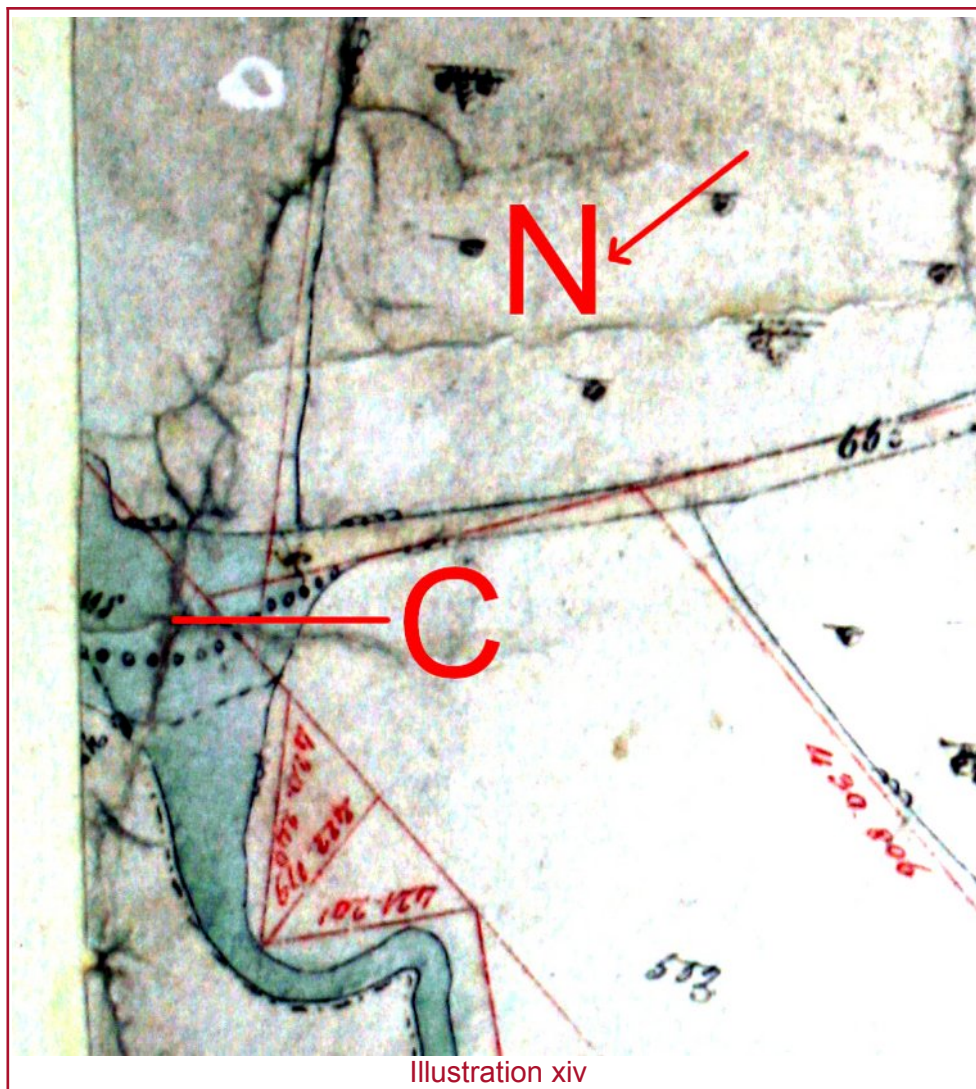
Corroborating sources

B.12. The title map corroborates the position shown on the Ordnance Survey County Series maps.

B.13. The order way shown on the map prepared under the *Eversley tithe award* (item VI.G below) held by Hampshire County Archives is truncated at the county boundary, perhaps because the draughtsman left insufficient space at the edge of the canvas.

B.14. That held by the National Archives⁵⁷ is more revealing, and shows greater detail of the ford.

Eversley tithe map extract (National Archives copy)

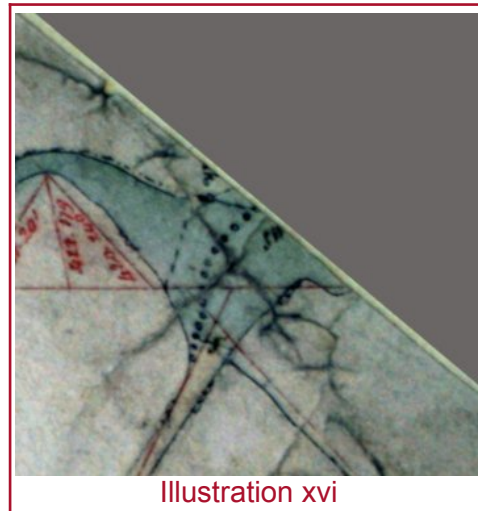
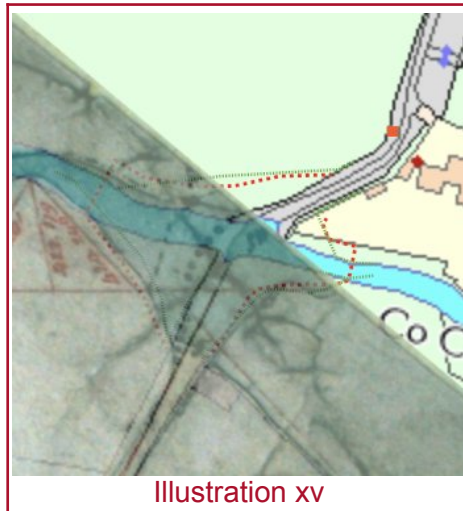


B.15. It is suggested that the tithe map shows the site of the footbridge marked by a pecked line, with the most direct route through the ford marked by a line of black dots.

B.16. The tithe map shows remarkable fidelity to the later nineteenth century Ordnance Survey County Series maps, as revealed by the following overlay to the plan of Jouldings Ford at Illustration vii above.

57 IR 30/31/91

Plan of Jouldings Ford with tithe map overlay/tithe map only



B.17. It is suggested that the tithe map corroborates the extent of the ford shown on the later Ordnance Survey County Series maps.

B.18. The map prepared under the *Swallowfield Inclosure award, 1865* (item VI.I below) shows only part of the north side of the ford. It records part of the waste forming the north side of the ford, and shows that it was intended to inclose the waste and allot it.

Plan of Jouldings ford with Swallowfield inclosure map extract, 1865

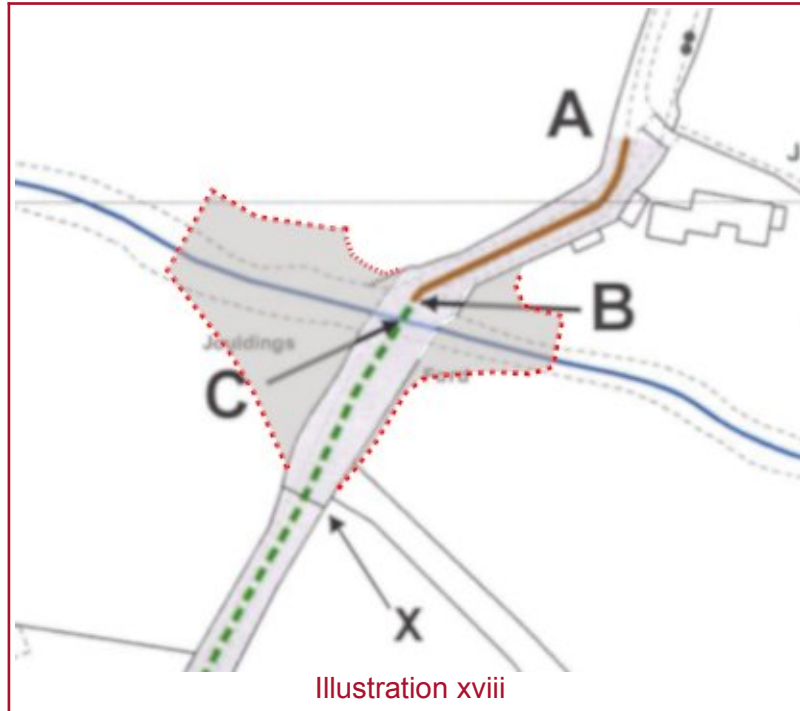


B.19. It appears that, while the inclosure of waste on the north-east side of the ford was implemented at the time, and that land is now part of the curtilage of Jouldings Farm (and excluded from the highway waste sought here to be included in the order), that on the north-west side of the ford was not implemented until much later, and remains to this day not part of any registered title.

Modification sought to order

B.20. Accordingly, the applicant seeks that the order be modified to show the true width of the order way at Jouldings Ford, in accordance with the modified order map extract shown in Illustration xviii below.

Proposed modified order map



C. Limitations modification

C.1. The order provides for gates to be recorded as limitations at X and Y.

C.2. The applicant agrees that there is evidence from early Ordnance Survey large scale maps that there may have been, contemporary with the map surveys, gates across the order way, either at X, or at Y. The need for a gate may arise in consequence of the unenclosed waste at Jouldings Ford in close proximity to Bramshill Common: a gate may have been erected to prevent grazing livestock passing between the two.

C.3. The applicant now considers that there is insufficient evidence that such gates have been present continuously since dedication (which the applicant submits must have occurred in the sixteenth century or earlier: see *Grounds for confirmation of order* at item I.M above). The earliest evidence of a gate appears in the *Eversley tithe award* (item VI.G below), dating from 1837, which appears to record a gate at Y, but not at X.

C.4. Few evidential sources are at a sufficiently large scale and sufficient detailed to show, or be likely to show, gates across a road. In common with the *Eversley tithe award*, the *Ordnance Survey original boundary mapping* (item VI.J below) dating from 1871 appears to record a gate at Y, but not at X.

C.5. On the Ordnance Survey County Series twenty-five inch first edition map,⁵⁸ a gate appears to be shown at X, but not at Y. A fine pecked line closes off the enclosed part of the order way from Bramshill Common, to signify the extent of the separate parcel comprising the order way between X and Y. The applicant considers the surveying authority's contention that this map shows a gate at Y to be incorrect, as the line can be seen not to be continuous. Nor is it apparent that a gate is shown at Y on the contemporary *Ordnance Survey County Series six inch first edition map* (item VI.K below), which was produced by photo-reduction of the twenty-five inch map.

C.6. The *Ordnance Survey County Series twenty-five inch second edition* (item VI.L below) also appears to show a gate at X, but again, none is present at Y (again, a pecked line closes off the way at Y, to identify the extent of what is now parcel 7 and 26; the nature of the line is obscured by the presence of a bench mark).

C.7. It is accepted that the change of mereing of the former parish boundary at Y (to turn along the centre of the order way towards X), and the presence of a bench mark, may well indicate — consistent with the *Eversley tithe award* map — that there once was a gate here, and perhaps the width of the way at this point remained constrained by old fencing either side of a former gateway. But as the first and second series Ordnance Survey County Series maps do not show the way closed off at Y, it can be concluded that no gate was present at the time of the surveys (whether open or closed).

C.8. The *Ordnance Survey County Series twenty-five inch third edition* (item VI.N below),⁵⁹ on the contrary, no longer shows a gate at X, but one is now recorded at Y. Parcel 7 now includes the enclosed part of the way together with the unenclosed area of Jouldings Ford south of the county boundary along the Blackwater River. (There is no gate part-way between X and Y: the line across the way identifies the sliver of the wood, to the west of the order way, which appears on the right-hand sheet, as having an area of 3.733 acres.)

C.9. It is submitted that no gate has been continuously present at X nor Y during the nineteenth and twentieth centuries. Even if the tithe map is suggestive of a gate which may have been present in the first part of the nineteenth century, there is no evidence that the gate was coæval with dedication. Moreover, the absence of the continuous presence of gates on later maps is evidence of rededication not subject to limitations, as is the absence of any gate whatsoever during the period of user evidence.

C.10. The applicant therefore seeks modification of the order to remove reference to the gates at X and Y as limitations, and to substitute reference to 'No limitations'.

58 OMA SOC/DOC p.10.

59 This edition is used for the record maps prepared under the *Finance (1909–10) Act 1910* survey (item VI.M below).

V. Photographs along the order way

A.1. The following photographs show the order way recorded by photography in June 2014 (and one later photograph from September 2018).

A.2. The witnesses speaking in support of confirmation of the order may wish to refer to these photographs in the course of their oral evidence.

Photo at A (view North): 21 June 2014⁶⁰



Illustration xix

⁶⁰ Photographer: Hugh Craddock. The rider is the sister of the photographer (who had first ridden through the ford).

Photo at C (view North): 19 April 2014⁶¹



Illustration xx

61 Photographer: Hugh Craddock.

Photo towards C (view North): 19 April 2014⁶²



Illustration xxi

62 Photographer: Hugh Craddock.

Photo between C and D (view North): 19 April 2014⁶³



Illustration xxii

63 Photographer: Hugh Craddock.

Photo between C and D (view South): 19 April 2014⁶⁴



Illustration xxiii

64 Photographer: Hugh Craddock.

■ *Photo from D (view North): September 2018*⁶⁵



Illustration xxiv

65 Photographer: Nicola Greenwood.

Photo at D (view North): 19 April 2014⁶⁶



Illustration xxv

66 Photographer: Hugh Craddock.

Aerial photo: 1972⁶⁷



Illustration xxvi

67 Photographer: Ordnance Survey. Source: Hampshire County Archives, 134M87/114/1.

Aerial photo: 1999⁶⁸



68 Photographer: Infoterra Ltd and Bluesky

Aerial photo: 2010⁶⁹



Illustration xxviii

69 Photographer: Getmapping plc

Aerial photo: 2022⁷⁰



70 Photographer: Google Earth

VI. Documentary evidence

This part presents the evidence which directly pertains to the existence and status of the order way. A list of contents may be found at p.1 above.

ZA. Map of Forests around Windsor

ZA.1. **Date:** 1607

ZA.2. **Source:** British Library⁷¹

71 Harley MS 3749 ff.4v-4*, available online at:
www.bl.uk/onlinegallery/onlineex/unvbrit/m/001hrl000003749u00004vrb.html

Map of Forests around Windsor



Illustration xxx

ZA.3. **Background:** Catalogued as a map of the forests around Windsor from 'A Description of the Honour of Windsor', Creator: John Norden; Medium: Ink and tempera on parchment.

ZA.4. The British Library offers the following narrative⁷²:

The title page states that the survey was ‘taken and performed by the perambulation view and delineation of John Norden In Anno 1607’. The plans are the result of a survey conducted on foot by Norden. The maps in this volume show communication routes, individual buildings, field boundaries and parkland along with details of wildlife and human activity, such as stags in Windsor Park and people boating on the Thames. The scale at which the maps are presented varies throughout the volume, with feet, perches and miles being the units of measurement recorded by a scale bar.

John Norden is best known for his work *Speculum Britanniae*, literally a ‘Mirror of Britain’, which in its attempt to include the road names and town plans, lacking on many county maps of the period, was a direct ancestor of the modern A-Z. As well as producing several county maps in the 1590s, Norden worked as a land surveyor producing surveys for landowners and was the author of a work which outlines principles of surveying, known as the ‘Surveyor’s Dialogue’.

ZA.5. **Description:** Original scale: scale bar marked on map; orientation: unchanged (north is top).

ZA.6. The map shows principal roads, coloured pink. At a junction of roads at ‘Farelyhill’, roads are shown west to ‘Swallowfeild’, north-east and then north to Barkham, east and then north-east to ‘Finchamsted Heyths’ (Finchampstead Heights), and southwest to the (unlabelled) Blackwater River (*i.e.* the order way). There may be a slight pink pigmentation on the south side of the river. West of the crossing of the Blackwater River is a name the first character of which is partially defaced: it appears to read [J]wiuoldes.

ZA.7. **Conclusion:** The map corresponds with the present-day Bungler’s Hill (later Swallowfield Road) west to Swallowfield, but corresponding routes to Barkham and Finchampstead today follow less direct lines: it is likely that the way to Barkham is that route which follows Wokingham Lane (BOAT Arborfield 15, continuing to Barfield as the B3349).

ZA.8. The route south-west to the Blackwater River fits with the order way: it is south of Farley Hill, the distance between crossroads and river is short, it runs southwest, and it crosses the river just west of the distinctive section of its course which passes south to north at Well House Farm. The label on the map appears to read ‘Jwiuoldes’, which it is suggested is an early or corrupted form of ‘Jouldings’.

ZA.9. It is not clear whether a continuation is shown south of the river — there is some pink pigmentation to suggest that it is. Some other crossings of the river likewise are not projected beyond (*e.g.* at Swallowfield and Arborfield), and there is no reason to suppose an absence of any continuation. On a map which selectively represents only key roads, there is no reason for the map-maker to show a road projecting south from Farley Hill the short distance to the river, which had no obvious purpose and no continuation beyond.

ZA.10. The Norden map, dating from the early seventeenth century, shows that the order way was in existence as early as 1607. It is depicted on a highly selective map of roads, and therefore is very likely to have been regarded not only as public, but as a significant route south into Hampshire.

72 www.bl.uk/onlinegallery/onlineex/unvbrit/m/001hrl000003749u00004vrb.html

ZA.11. Points:

Part	Points
<i>A to B</i>	1
<i>B to D</i>	1

A. Taylor's map of Hampshire

A.1. **Date:** 1759

A.2. **Source:** Hampshire Record Office HMCMS:FA2004.3⁷³

Taylor's map⁷⁴

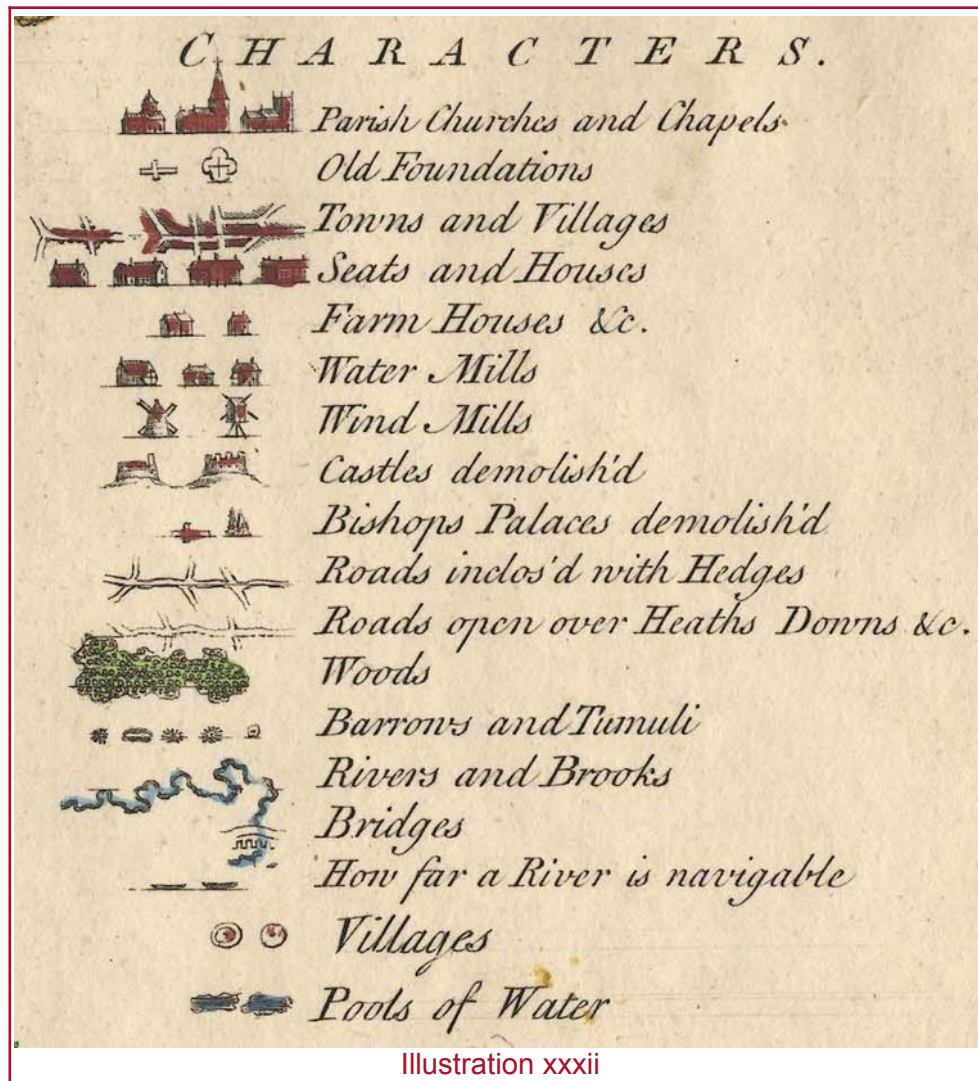


Illustration xxxi

73 www.oldhampshireremapped.org.uk/hantsmap/taylor4/taylor4.htm. Reproduced with thanks to Jean and the late Martin Norgate. The item is in the Map Collection of Hampshire County Council Museums Service, item HMCMS:FA2004.3.

74 See OMA SOC/DOC p.1.

Taylor's map: key



A.3. **Background:** A one inch to one mile map of Hampshire surveyed by Isaac Taylor, engraved by R Benning, published 1759. The map was published in 6 sheets.

A.4. **Description:** Original scale: scale bar marked on map, but around 1:65,000 or one mile to one inch; orientation: unchanged (north is top).

A.5. The order way is shown approximately corresponding to the alignment from A to D, and Jouldings Ford is labelled as 'Jouldins Ford'. The order way connects at its southern end with a road approximately corresponding to the alignment of Well House Lane. At least north of C, the way is defined in the key as a 'Roads inclos'd with Hedges' (it is less clear whether the way is defined south of C as with hedges or across open land).

A.6. **Objectors:** The objectors state (TW/1, SO, paras.60–61) that no legend nor provenance accompanies the map, and that 'OS maps [sic]...are only evidence of physical existence not status'

A.7. The provenance for Taylor's Map is clear: it is held by the Hampshire Record Office, and a copy of the map has been placed in the public domain (see footnote 73 above). The published key to the map is reproduced above.

A.8. The objectors also state (TW/1, SO, paras.60–62) that ‘the maps show a multitude of routes not just public ways — see for example the numerous routes shown across Bramshill Common.’ This is correct in that several different routes are shown crossing the common. We explain the position in the section on *The order way as a publicly- or privately-maintainable highway* (item I.K above). In our submission, these ways across the common are likely to have been public ways, but they are not necessarily recorded as such today.

A.9. **Conclusion:** The crossing of the Blackwater River is clearly labelled, and the approach to it from the south is consistent with the road pattern today. It is good evidence that the order way has been in use since the middle of the eighteenth century.

A.10. **Points:**

Part	Points
<i>A to B</i>	1
<i>B to D</i>	1

AA. Rocque's map of Berkshire

AA.1. **Date:** 1762–64

AA.2. **Source:** Royal Collection Trust⁷⁵

Rocque's map of Berkshire

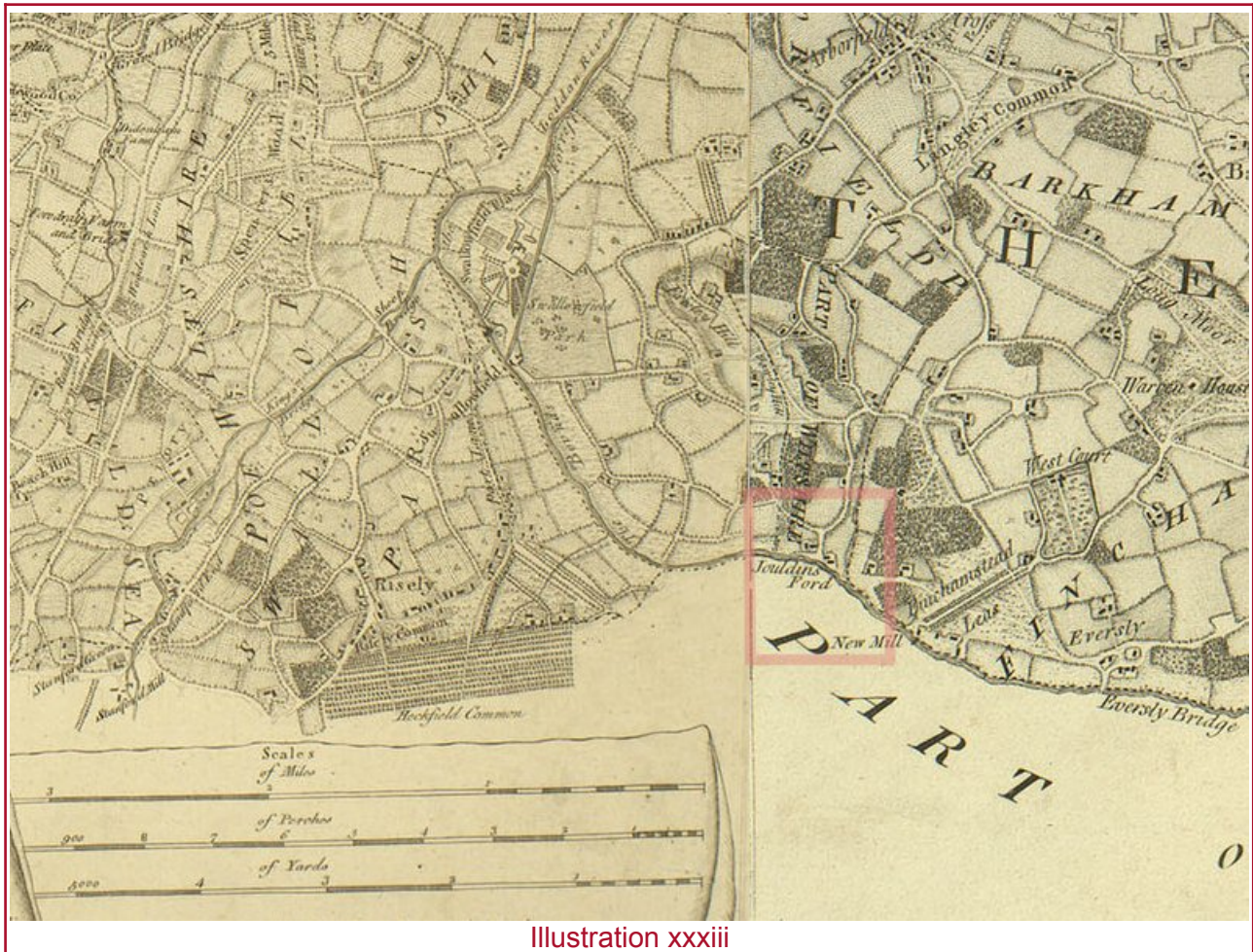


Illustration xxxiii

AA.3. **Background:** This map, surveyed by the well-known cartographer, John Rocque, is the original 1761 edition. The title page describes it as a:

Topographical Survey of the County of Berks in Eighteen Sheets.

In which is expressed,

His Majesty's Royal Palace of Windsor, its Parks and Forrest; the Seats of the Nobility and Gentry; Towns, Villages, Hamlets, Farms, Cottages, &c.

with

The Main and Crofs Roads, Bridle Ways, Pales, Hedges, ... appertaining to each parish, &c.

⁷⁵ www.rct.uk/collection/700042/rocques-map-of-berkshire

AA.4. **Description:** Original scale: scale bar marked on map; orientation: unchanged (north is top).

AA.5. A road is shown approaching the Blackwater River (not labelled) from the north, and the crossing is marked 'Jouldins Ford'.

AA.6. **Conclusion:** Rocque's map shows the approach to Jouldings Ford from the north. The ford is labelled, and although no route is shown to the south, this is in common with all other crossings of the Blackwater River to the east, where the river forms the county boundary. The map therefore implies a continuation to the south. Moreover, the map is published as showing 'The Main and Crofs Roads, Bridle Ways' within the county, which is suggestive that, where a through road is shown of some significance, crossing the county boundary, it is likely to be a cross road or, at the very least, a bridle way.⁷⁶

AA.7. **Points:**

Part	Points
<i>A to B</i>	1
<i>B to D</i>	0

AB. Cary New and Correct English Atlas

AB.1 **Date:** 1787

AB.2 **Source:** British Library⁷⁷

⁷⁶ See paras.VI.F.6–F.8 below for the interpretation of 'cross road' evidence.

⁷⁷ C.24.f.1

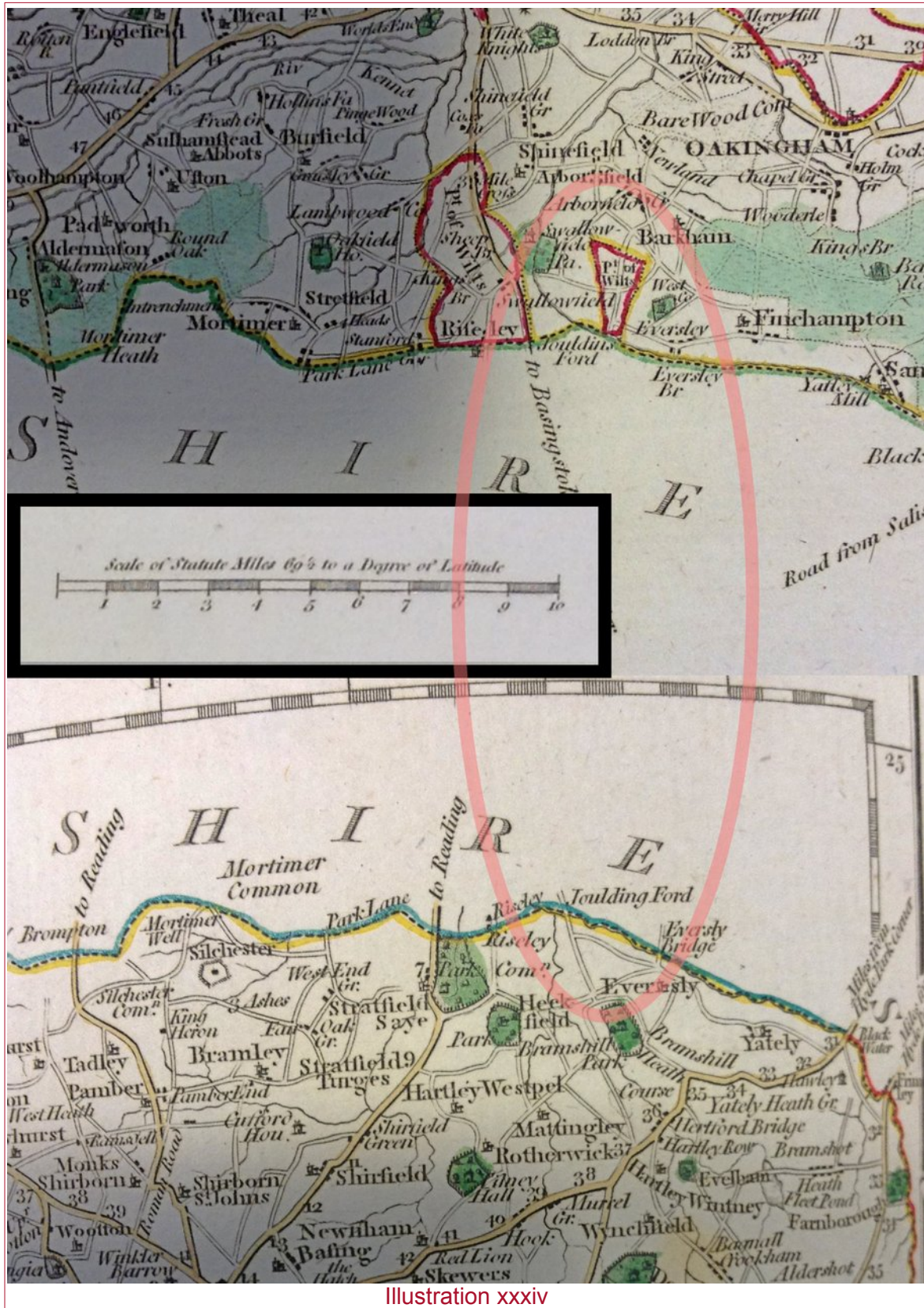


Illustration xxxiv

AB.3. **Background:** Cary's map of Berkshire is said to be based on Rocque's map of Berkshire (item AA above), and that of Hampshire on Taylor's map of Hampshire (item VI.A

above). However, both these alleged source maps are considerably more accurate than Cary's, at least in the vicinity of the order way. We are not aware of any key.

AB.4. **Description:** Original scale: scale bar marked on map; orientation: unchanged (north is top).

AB.5. The maps show Jouldings Ford, labelled on both maps, as one of a small number of crossings of the Blackwater River, with a road leading to the ford from both south and north.

AB.6. **Conclusion:** Cary's map shows that Jouldings Ford was a named feature on a road giving access between Hampshire and Berkshire.⁷⁸

AB.3. **Points:**

Part	Points
<i>A to B</i>	1
<i>B to D</i>	1

⁷⁸ Note that at the time, the land immediately north of the ford was an enclosure of Wiltshire.

AC. A Topographical Map, of the Town of Reading & the Country

AC.1. **Date:** 1790

AC.2. **Source:** British Library⁷⁹

A Topographical Map of Reading



AC.3. **Background:** Described as:

A Topographical Map, of the Town of Reading & the Country, Adjacent to an Extent of Ten Miles, prepared by Thomas Pride. Describing the Main and Cross Roads also the SEATS and PARKS of the Nobility and Gentry; The Towns, Parishes, Hamlets, Tithings, Villages, Farms, Rivers, Brooks, Woods, Hills, Valleys, Heaths, Commons, and every remarkable Place within the Survey. / Taken by Tho.s Pride, Land-Surveyor.

AC.4. **Original scale:** scale bar marked on map, but about 1:40,000; **orientation:** unchanged (north is top). The map contains no key.

AC.5. **Description:** The order way is shown as an enclosed way leading south through the Blackwater River (not labelled as such) and county boundary, before curving round to

⁷⁹ Maps K.Top.7.36.3. Available from britishlibrary.georeferencer.com/maps/c7649058-6221-4ae4-a4c3-7270a51cd189/

the south-east on Bramshill common towards New Mill. The ford is labelled as ‘Jouldins — Ford’.

AC.6. **Conclusion:** A map at this scale can show only selected roads. It is reasonable to infer that those roads which were shown, particularly where they marked as through routes (in this case, continuing north of the Blackwater River into Berkshire and south onto Bramshill Common), were considered to be public roads and available for the use of those who bought the publication. This assumption is reinforced by the map legend, which claims that the map described ‘the Main and Cross Roads’. It therefore is submitted that the order way is portrayed as a cross road.⁸⁰

AC.7. **Points:** No further points scored for early county maps

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

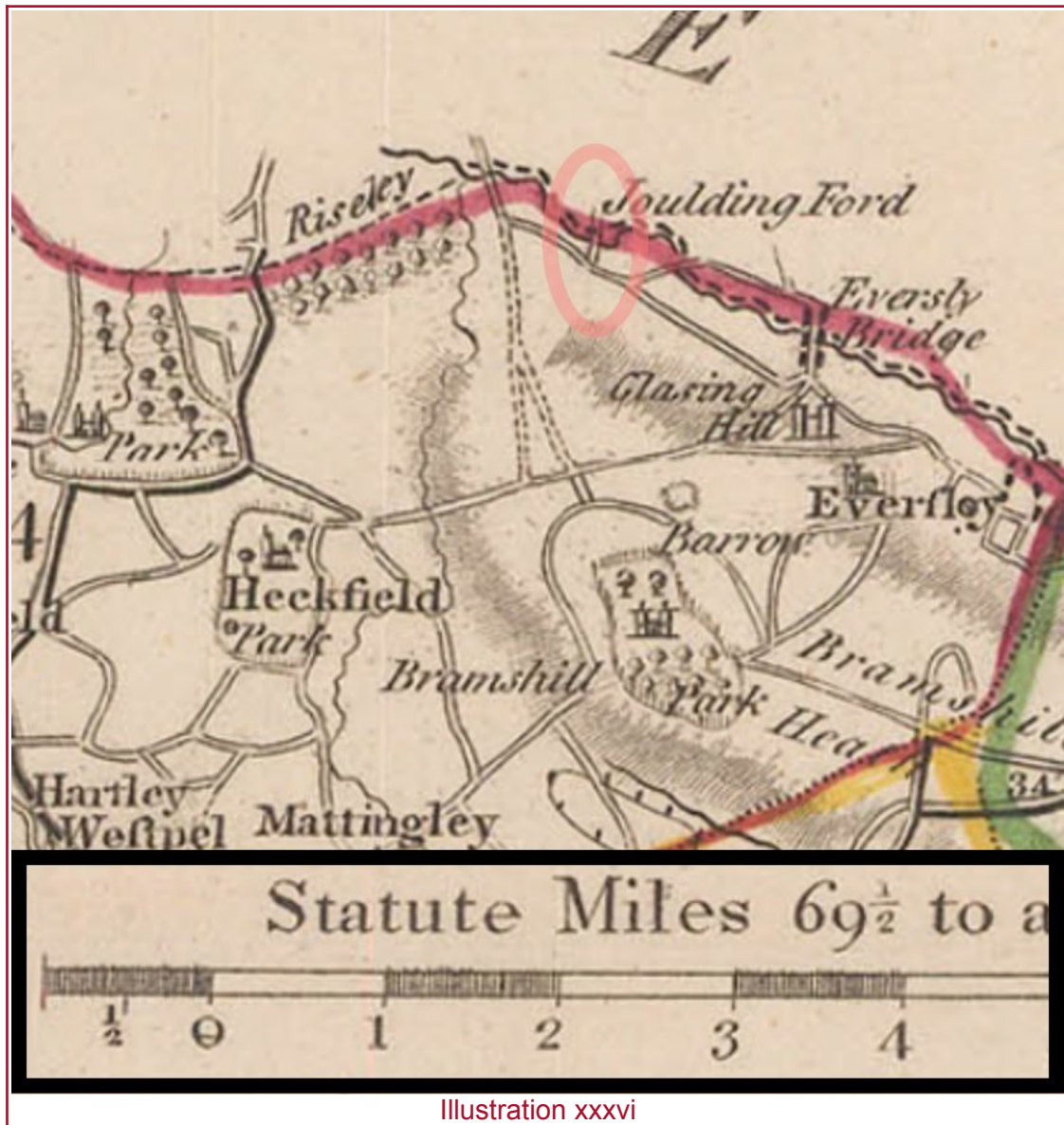
⁸⁰ See paras.VI.F.6–F.8 below for the interpretation of ‘cross road’ evidence.

AD. Stockdale map

AD.1. **Date:** 1805

AD.2. **Source:** The Map House of London⁸¹

Stockdale map



AD.3. **Background:** An attractive and detailed map of Hampshire, engraved by the renowned John Cary, which appeared in Richard Gough's new translation of *Camden's Britannia* published by John Stockdale.

AD.4. **Description:** Original scale: scale bar marked on map, but about 1:225,000; orientation: unchanged (north is top). The map contains no key.

81 www.themaphouse.com; this map downloaded from www.themaphouse.com/search_getamap.aspx?id=139874&ref=HANTS678.

AD.5. The order way is shown as a spur, approximately northward, off Well House Lane, for a short distance to the Hampshire and Berkshire county boundary along the Blackwater River.⁸² The crossing is labelled as 'Joulding Ford'. A very short section of road is shown in continuation on the north bank of the river.

AD.6. **Conclusion:** A map at this scale can show only selected roads. It is reasonable to infer that those roads which were shown, particularly where they marked as through routes (in this case, continuing north of the Blackwater River into Berkshire), were considered to be public roads and available for the use of those who bought the publication.

AD.7. **Points:** No further points scored for early county maps

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

82 The river is so named, but not shown as such in the extract.

B. Ordnance Survey, one-inch first edition drawing

B.1. **Date:** 1806

B.2. **Source:** British Library website⁸³

OS one-inch drawing, Odiham⁸⁴



Illustration xxxvii

B.3. **Background:** Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.⁸⁵

83 OSD 125 (Odiham): britishlibrary.georeferencer.com/maps/c612d589-9f2e-5d84-ba95-bd51b817464e/

84 See OMA SOC/DOC p.2.

85 From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

B.4. **Description:** Original scale: believed to be 1:31,680 (two inches to one mile); orientation: unchanged (north) is top.

B.5. The order way is shown from Farley Hill south-west via A to the ford, labelled as 'Jouldens Ford', at B–C across the Blackwater River and continuing south-west to the edge of Bramshill Common (north-west of Well House Farm: Well House Lane is not clearly identified) at D, and continuing south-west as an unenclosed track across the common towards Ford Lane.

B.6. **Conclusion:** Other routes shown as enclosed roads on this extract are now public roads or byways open to all traffic (roads in the vicinity of Farley Court were diverted in the late C19: see *Farley Court diversion order* at item V.KA below). The Ordnance Survey one-inch drawing is good evidence of the existence of a road between A and D at the date of survey: 1806, but not definitive as to public status.

B.7. **Points:**

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

C. Ordnance Survey, Old Series one-inch map

C.1. **Date:** c.1817

C.2. **Source:** Hampshire Record Office HMCMS:FA2003.1.8⁸⁶

OS one-inch Old Series map, sheet 12



Illustration xxxviii: OS one-inch map

C.3. **Background:** This is the first published edition of the one inch to one mile map series. The first sheet, the so-called Mudge map of Kent, after the then Director General, was privately published in 1801. The first numbered sheets of the official series appeared in 1805. Sheets 1–90 as far north as a line from Preston to Hull, were mainly surveyed at two inches to one mile.⁸⁷

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

C.5. In common with the *Ordnance Survey, one-inch first edition drawing* (item VI.B above), from which the Old Series map is drawn, the order way is shown from Farley Hill south-west via A to the ford, labelled as 'Jouldens Ford', at B–C across the Blackwater River and continuing south-west to the edge of Bramshill Common (north-west of Well House Farm: Well House Lane is not fully shown) at D, and continuing south-west as an unenclosed track across the common towards Ford Lane.

86 www.oldhampshireremapped.org.uk/hantscat/html/colmakerf.htm. Reproduced with thanks to Jean and the late Martin Norgate.

87 *Ordnance Survey: small scale maps*, British Library:
www.webarchive.org.uk/wayback/archive/20131031140822/http://www.bl.uk/reshelp/findhelpprestyle/maps/guideordsurv/smallmaps.html

C.6. **Conclusion:** The Ordnance Survey drawing and Old Series one-inch map show a remarkable resemblance between the enclosed road network in the vicinity of the order way, and the public road network today, and some weight may be given to that correlation.

C.7. A number of unenclosed ways are shown across Bramshill Common, as may be expected of any extensive area of unenclosed land. We do not know today which of those may have become established as highways, but the question is now immaterial.

C.8. This map shows with particularly clarity the nature of the order way in linking the road network at Farley Hill, whether approaching the ford via Jouldings Lane or BOAT 33 (see para.I.E.3 above), crossing the river at the ford, and continuing south on several possible tracks across Bramshill Common.

C.9. Other routes shown as enclosed roads on this extract are now public roads or byways open to all traffic (roads in the vicinity of Farley Court were diverted in the late C19: see *Farley Court diversion order* at item V.KA below). The Ordnance Survey one-inch drawing is good evidence of the existence of a road between A and D at the date of the source survey in the Ordnance Survey drawing: 1806, but not definitive as to public status.

C.10. **Points:**

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

D. Swallowfield Inclosure award, 1814–17

D.1. **Date:** (of award) 9 July 1817

D.2. **Source:** Berkshire Record Office website⁸⁸

Swallowfield inclosure map⁸⁹

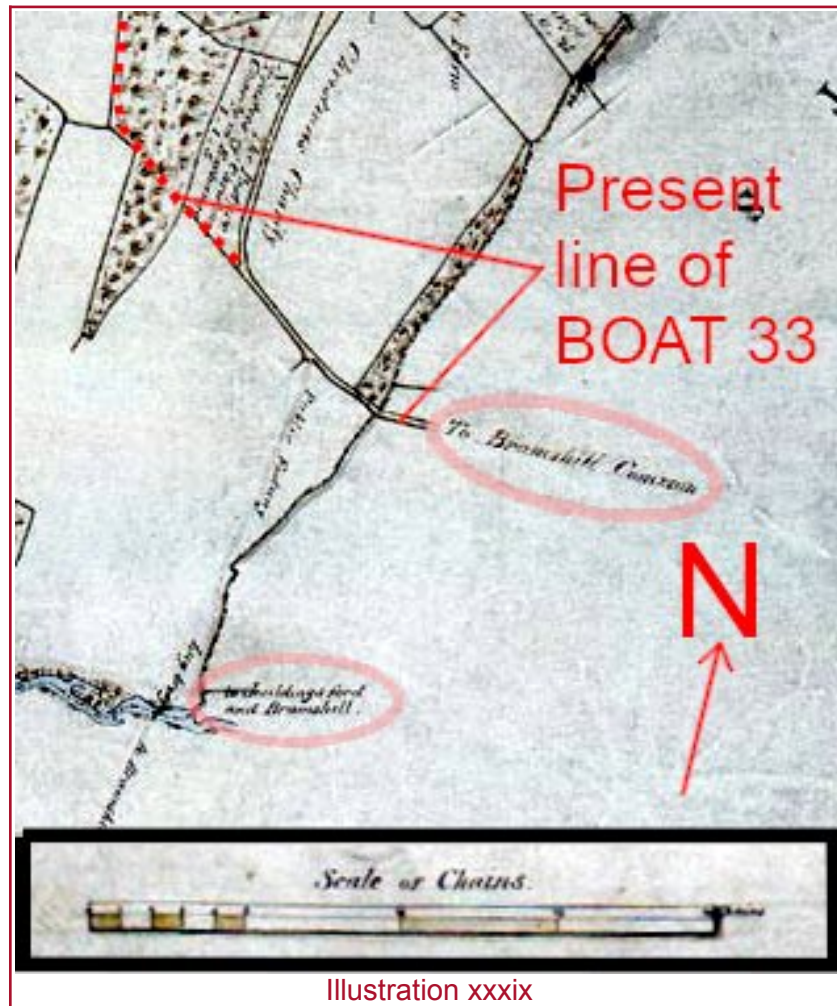
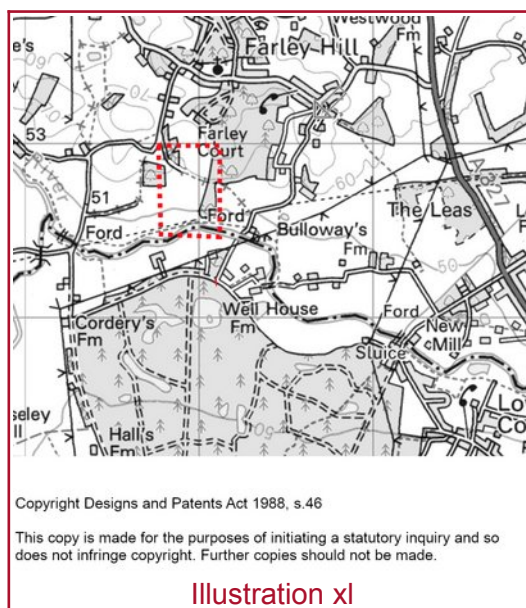


Illustration xxxix

88 www.berkshireenclosure.org.uk/find_via_parish_details.asp?parish=Swallowfield. © Reading Borough Council and Designation.com Ltd 2004

89 See OMA SOC/DOC p.3.

Swallowfield inclosure map: location of extract



D.3. **Authority:** 53 Geo III c.158 An Act for vesting in His Majesty certain parts of Windsor Forest in the County of Berks and for inclosing the open commonable lands within the said Forest.

D.4. **Description:** Original scale: scale bar marked on map; orientation: rotated 90° (top is now north).

D.5. The order way and Jouldings Ford is not within the lands inclosed under the award, and they do not appear on the award map.

D.6. Part of BOAT 33 is shown (its course was diverted in the late nineteenth century, and its present course is annotated: see *Farley Court diversion order* at item V.KA below). The continuation of BOAT 33 to the east, towards the junction with Jouldings Lane north of Jouldings Ford, is annotated 'to Bramshill Common'. A boundary or hedge is shown projecting south from BOAT 33 to the Blackwater River. A footpath is shown following the west side of that boundary, with a bridge over the river marked 'Long bridge'⁹⁰; south of the bridge, the alignment (apparently of the footpath) is marked 'To Bramshill'. North of the bridge, a footpath east along the north bank of the Blackwater River is annotated as leading 'to Jouldings Ford and Bramshill'.

D.7. **Objectors:** The objectors' comments (TW/1, SO, paras.64–66) relate to an earlier incorrect interpretation of the evidence not now pursued by the applicant.

D.8. **Conclusion:** The Swallowfield inclosure award does not set out any part of the claimed route, as it is outside the lands in Swallowfield parish inclosed under the authorising Act.

D.9. The award map annotates the footpath from 'Long bridge' east along the north bank of the Blackwater River as leading 'to Jouldings Ford and Bramshill'. The map also marks BOAT 33 as leading 'to Bramshill'. These labels must refer to reaching Bramshill via the order way.

⁹⁰ Or similar words: the map is unclear as to the word 'Long'. The footbridge is at grid reference [SU75016354](#).

D.10. The use of a destination label on maps of this period is generally associated with public, rather than private, roads. In *Commission for New Towns v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses⁹¹:

...that the designation 'from X' or 'to X' on a road was indicative of highway status. A specific description of a lane as leading from one village to another, particularly when one bears in mind that it was a carriageway (albeit that its status as a public carriageway is in issue) does provide some support for the notion that it was a public carriageway.

D.11. We submit therefore that the annotation of public ways leading to Jouldings Ford and Bramshill strongly are suggestive that such ways were public throughout, and that the way to Bramshill led through the ford and was likely to have been a carriage road.

D.12. **Points:**

Part	Points
<i>A to B</i>	1
<i>B to D</i>	1

91 At para.90: www.bailii.org/ew/cases/EWHC/Ch/2002/2668.html

DA. Cary's Improved Map of England and Wales

DA.1. **Date:** 1832

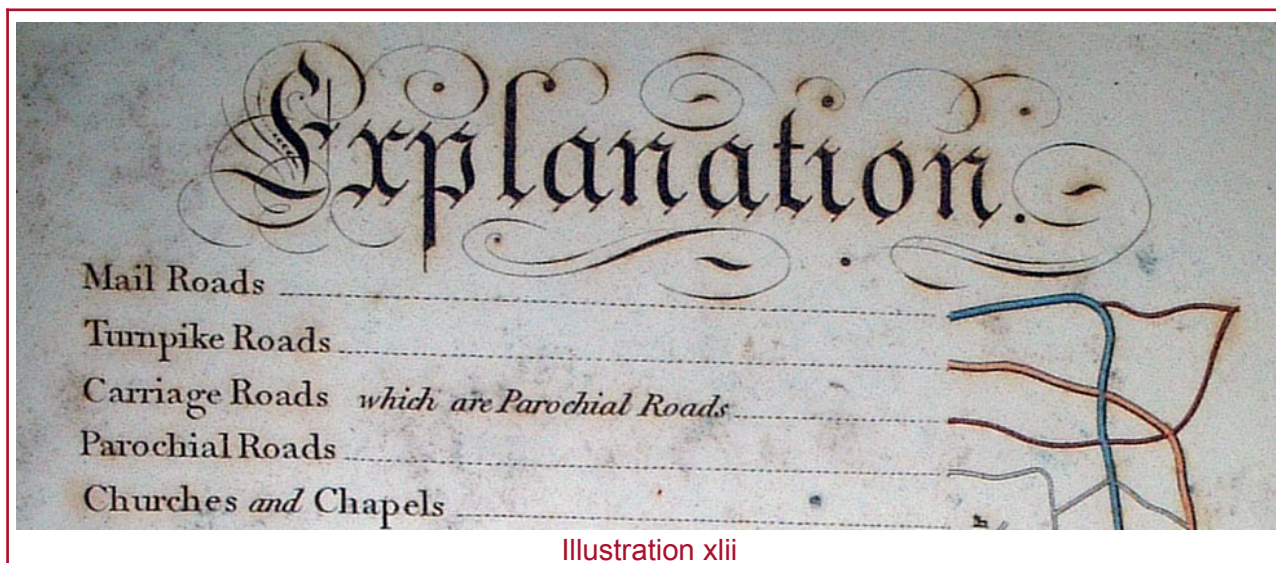
DA.2. **Source:** Leeds University (Whitaker Collection)/British Library

Cary half-inch map



Illustration xli

Cary half-inch map: key



DA.3. **Background:** Described as: 'Cary's improved map of England and Wales : with a considerable portion of Scotland, planned upon a scale of two statute miles to one inch. Drawn from the most authentic surveys and parliamentary documents'.

DA.4. **Description:** Original scale: 1:126,720 (half inch to one mile); orientation: unchanged (north is top).

DA.5. The order way is shown from Farley Hill south-west via A to the ford, labelled as 'Jouldens Ford', at B–C across the Blackwater River and continuing south-west to the edge of Bramshill Common (Well House Lane is not shown) at D, and continuing south-west as an unenclosed track across the common towards Ford Lane.

DA.6. A number of unenclosed ways are shown across Bramshill Common, as may be expected of any extensive area of unenclosed land. We do not know today which of those may have become established as highways, but the question is now immaterial.

DA.7. This map shows with particularly clarity the nature of the order way in linking the road network at Farley Hill, crossing the river at the ford, and continuing south on several possible tracks across Bramshill Common. The way is identified in the key to the map as a 'parochial road'.

DA.8. There is considerable similarity between Cary's map and the *Ordnance Survey, Old Series one-inch map* (item VI.C above). It is very likely that Cary did borrow from existing maps. But he also chose expressly to identify 'parochial roads', which suggest sources of information from local survey to improve on the data available from previously published sources.

DA.9. **Conclusion:** The depiction of the order way as a 'parochial road' is suggestive that it was considered at the time to be a public road.

DA.10. **Points:** Not scored, as third in series of historical privately-surveyed maps.

Part	Points
A to B	0
B to D	0

Map Of Windsor Forest And Its Vicinity: Blackwater valley extract

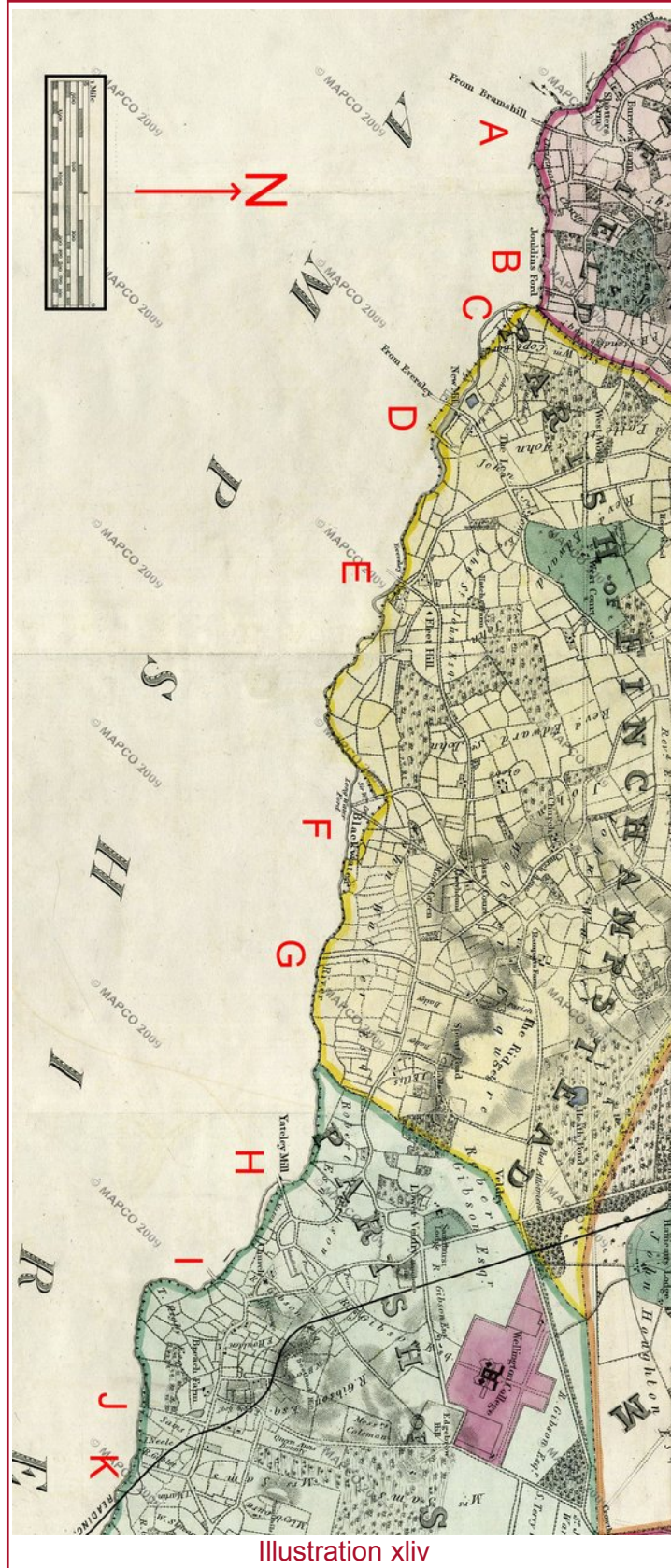


Illustration xliiv

Map Of Windsor Forest And Its Vicinity: key

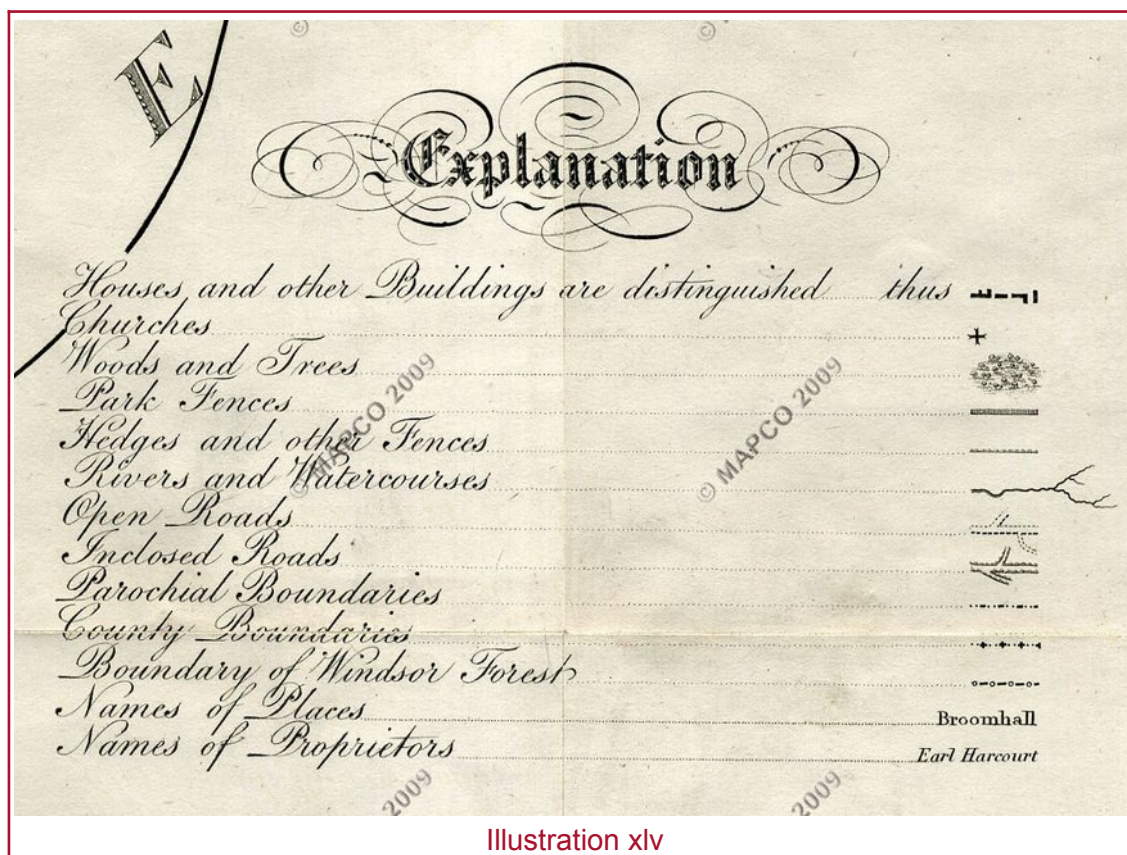


Illustration xlv

E.3. **Background:** A Map Of Windsor Forest And Its Vicinity 1823, by Henry Walter. New Edition revised and corrected by Alfred E. Harrison. A more extensive extract from this map is at Illustration xlv, showing the several fords and bridges across the Blackwater River.

E.4. A partial provenance for this map is given on the source website⁹³:

A Map Of Windsor Forest And Its Vicinity 1823, by Henry Walter.
New Edition revised and corrected by Alfred E. Harrison.
Published by J. B. Brown, Windsor, and James Wyld.
Engraved By J. Dower
Date: 1856
Size: 129.5cm x 96.7cm (51" x 38")
Scale: 2½" : 1 statute mile

E.5. **Description:** Original scale: 2½ inches to one mile (scale bar marked on map at Illustration xlv); orientation: unchanged (north is top).

E.6. The order way (north of the Blackwater River) is shown as an enclosed road, in common with other local roads, leading south from Farley Hill to the county boundary at C marked as 'Jouldins Ford'.

E.7. **Objectors:** The objectors question (TW/1, SO, para.70) the legend and provenance of the map, which now has been addressed above.

93 mapco.net/windsor1856/windsor1856.htm

E.8. The objectors also contrast the absence of any road shown continuing south from Jouldings Ford with other crossings shown continuing south and with destinations given (TW/1, SO, paras.71–73). No significance can be attached to the absence of a continuation of the order way south of point B: the map depicts the land north of the river which here forms the county boundary. Various ways are shown with or without a continuation across the county boundary, with or without a name, and with or without a destination, viz:

Location	Label on map	Attribution	Whether shown in continuation?
Thatcher's Ford	A	From Bramshill	Yes
Jouldings Ford	B	Jouldins Ford	No
Well House Lane ford	C	(nil)	No
New Mill ford	D	New Mill/From Eversley	Yes
Eversley Bridge	E	Eversley Bridge	Yes
Finchampstead Bridge	F	Long Water Ford	No
Colebrook Lane ford	G	(nil)	No
Mill Lane	H	Yateley Mill	Yes
Yateley Road	I	(nil)	Yes
Swan Lane	J	(nil)	No
(Frogmore)	K	(nil)	No

E.9. In the present case, it seems reasonable to assume that Jouldings Ford was itself a place name of some repute, and that it was unnecessary to give any indication of a further destination.

E.10. **Conclusion:** Walter's map is evidence for the existence of the order way and ford as a road which was in use in the mid nineteenth century. Walter's map shows the order way as a 'closed [i.e. hedged] road' leading to a named ford on the county boundary: he had no need to show its continuation in Hampshire, because it was no part of the purpose of the map.

E.11. **Points:** Not scored, as fourth in series of historical privately-surveyed maps.

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

F. Greenwoods' map

F.1. **Date:** 1826

F.2. **Source:** Picture Oxon⁹⁴, Hampshire Record Office⁹⁵

Greenwoods' map, Berkshire extract

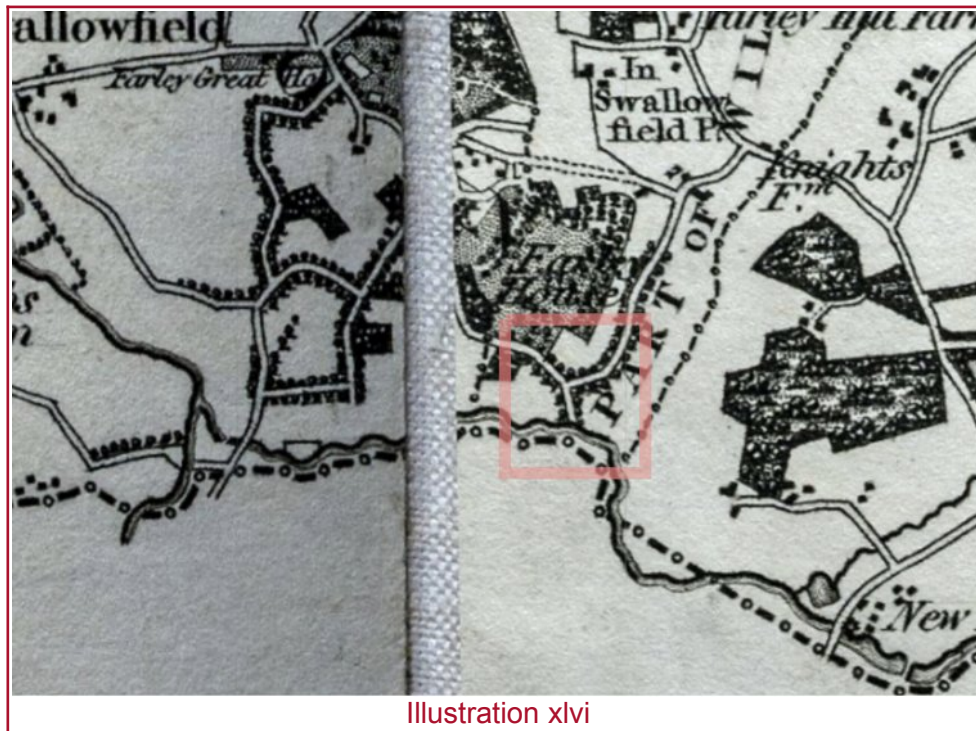
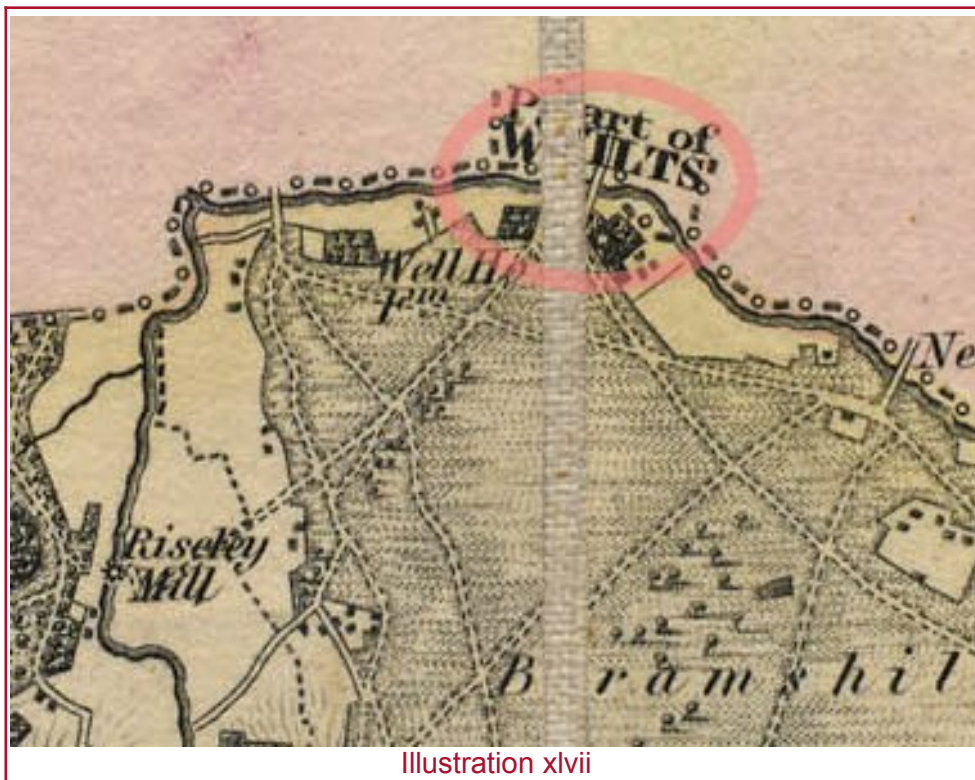


Illustration xlvi

94 A website maintained by Oxfordshire County Council: pictureoxon.com/frontend.php?action=printdetails&zoomify=1&keywords=Ref_No_increment;EQUALS;POX0081855

95 HMCMS:FA1965.589; www.oldhampshiremapped.org.uk/hantscat/large/grw96.jpg. Reproduced with thanks to Jean and the late Martin Norgate.

Greenwoods' map, Hampshire extract⁹⁶



⁹⁶ See OMA SOC/DOC p.4.

Greenwoods' map: key (Hampshire)

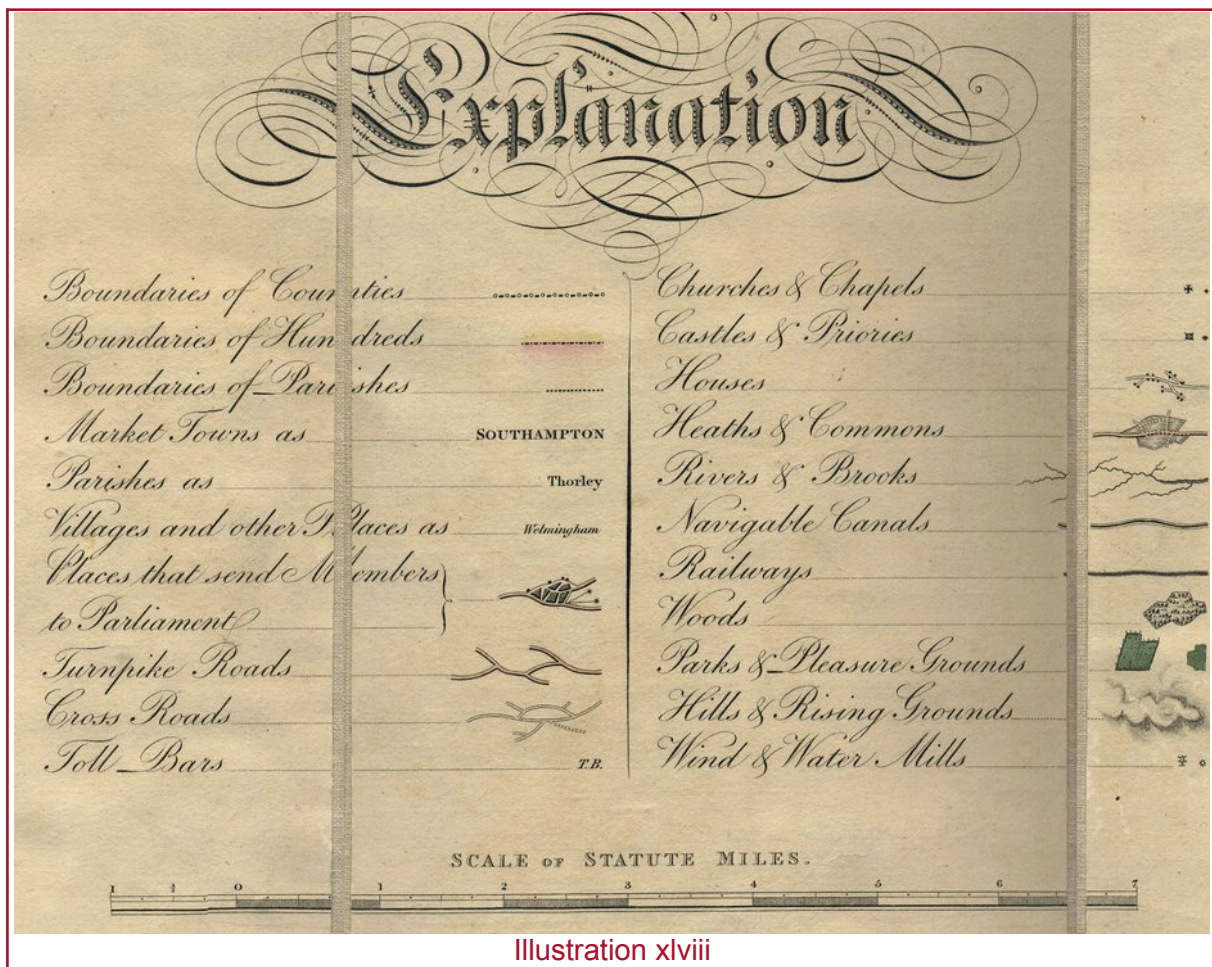


Illustration xlviii

F.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 in England except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.⁹⁷

F.4. **Description:** Both maps — original scale: one inch to one mile (1:63,360); orientation: unchanged (north is top).

F.5. The order way is shown (on the fold of the Hampshire map) corresponding to the alignment from A to D. The maps are of sufficient scale to confer clarity that it is the order way which is depicted: the ford is shown on the Hampshire map across the Blackwater River, and is correctly shown approximately equidistant between Thatcher's Ford and New Mill Ford. The way is described in the key as a 'cross road'.⁹⁸

⁹⁷ From *Antique Maps*, C Moreland and D Bannister, 1983.

⁹⁸ The key to the Berkshire map is materially the same.

F.6. **Analysis:** The Greenwoods' maps show ways which may not be public roads, such as those leading to named country houses. However, the order way is shown at the apex of two roads across common land, continuing across the Blackwater River into (what was until 1844) a detached portion of Wiltshire. Greenwoods' maps were sold commercially to customers who might have wished to use them for navigation — there is no reason to expect them to show as apparently public roads, routes which were in fact private and unavailable to the public, whereas ways leading to country houses would obviously have been of use only to those visiting them. In this case, the order way must have been considered by the Greenwoods, or a surveyor employed by them, to be a 'cross road' — a public road meriting inclusion on the map.

F.7. In *Fortune and others v Wiltshire Council and another*,⁹⁹ the Court of Appeal reviewed the High Court consideration of a Greenwood map in determining the status of Rowden Lane. Lewison LJ said:

54. ...Greenwood was a well-known commercial map-maker who produced maps of many English counties. The judge¹⁰⁰ considered that this map also showed a thoroughfare which included Rowden Lane. Prof Williamson agreed. It was not coloured in the same way as the Bath road; but nor were a multitude of other roads linking disparate settlements. The legend of the map showed that the colouring of the Bath Road meant that it was a turnpike or toll road, whereas that of Rowden Lane meant that it was a "cross road". As the judge pointed out, in 1829 the expression "cross road" did not have its modern meaning of a point at which two roads cross. Rather in "old maps and documents, a "cross road" included a highway running between, and joining other, regional centres". Indeed that is the first meaning given to the expression in the Oxford English Dictionary ("A road crossing another, or running across between two main roads; a by-road"). Prof Williamson agreed in cross-examination that a "cross road" was a reference to a road forming part of a thoroughfare. The judge gave a further explanation of the significance of the expression later in his judgment (§ 733) by reference to guidance given to the Planning Inspectorate:

'In modern usage, the term "cross road" and "crossroads" are generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term "cross road". These include a highway running between, and joining, other regional centres. Inspectors will, therefore, need to take account that the meaning of the term may vary depending on a road pattern/markings in each map.'

55. The guidance went on to urge caution as the judge recognised:

In considering evidence it should be borne in mind that the recording of a way as a cross road on a map or other document may not be proof that the way was a public highway, or enjoyed a particular status at the time. It may only be an indication of what the author believed (or, where the contents had been copied from elsewhere – as sometimes happened – that he accepted what the previous author believed). In considering such a document due regard will not only need to be given to what is recorded, but also

99 www.bailii.org/ew/cases/EWCA/Civ/2012/334.html

100 *I.e.* at first instance: www.bailii.org/ew/cases/EWHC/Ch/2010/B33.html

the reliability of the document, taking full account of the totality of the evidence in reaching a decision.

56. The judge concluded that Greenwood's map supported “the emerging picture” of an established thoroughfare. In our judgment the label “cross road” added further support.

F.8. The Court of Appeal’s decision suggests that the depiction of the order way as a ‘cross road’ merits some weight, when considered in the wider context. In *Trafford v St Faith's Rural District Council*,¹⁰¹ the Chancery Division of the High Court held that a Greenwood map, produced from the British Museum by the proper official, was admissible as some evidence of reputation as a public road. The finding was followed in *Ridley v Secretary of State Environment, Food & Rural Affairs*,¹⁰² in the High Court, in which the judge:

...agree[d] to some extent that the routes would be unlikely to be shown on small-scale maps unless they were available for public use. ...I consider that the overall weight of evidence I can give to these maps is small, but I find them suggestive of a route with a higher status than footpath.

F.9. **Objectors:** The objectors’ comments relate to the prior disclosure only of the Greenwoods’ map for Hampshire: the map for Berkshire is now submitted in addition.

F.10. The objectors say (TW/1, SO, paras.67–69) that, ‘The map is small scale and it is difficult to resolve the application route with any accuracy.’ And that, ‘appearance on Greenwood’s map is not determinative of any public status – private routes were shown as well’. But the the order way plainly is shown correctly, even if the ways shown to the south of point D are not consistent with present day recorded highways — as to which, please see the section on *The order way as a publicly- or privately-maintainable highway* (item I.K above).

F.11. We disagree with the objectors’ assessment (TW/2, SAC, para.16) that the courts’ view of the Greenwoods’ maps in *Fortune* cannot be applied here. In *Fortune*, there was a considerable body of evidence both for and against status of the disputed way as a carriage road (the status of the way as a public path was not in doubt). The evidence derived from the Greenwoods’ map was modest but nonetheless significant. The order way likewise is shown as a ‘cross road’, and likewise the evidence from the Greenwoods’ map supports other available evidence of a public carriage road.

F.12. **Conclusion:** The key to the Greenwood map records the order way as a ‘cross road’. Moreover, the order way is shown as part of a continuous route from Berkshire across the Blackwater River and Bramshill common. This is suggestive of a public highway of inferior status to turnpike roads (separately marked), and therefore likely to show a bridleway or public road.

F.13. **Points:** Not scored, as fifth in series of historical privately-surveyed maps.

Part	Points
A to B	0
B to D	0

101 (1910) 74 JP 297

102 www.bailii.org/ew/cases/EWHC/Admin/2009/171.html

G. Eversley tithe award

G.1. **Date:** 1837

G.2. **Source:** Hampshire Record Office¹⁰³

103 21M65/F7/81

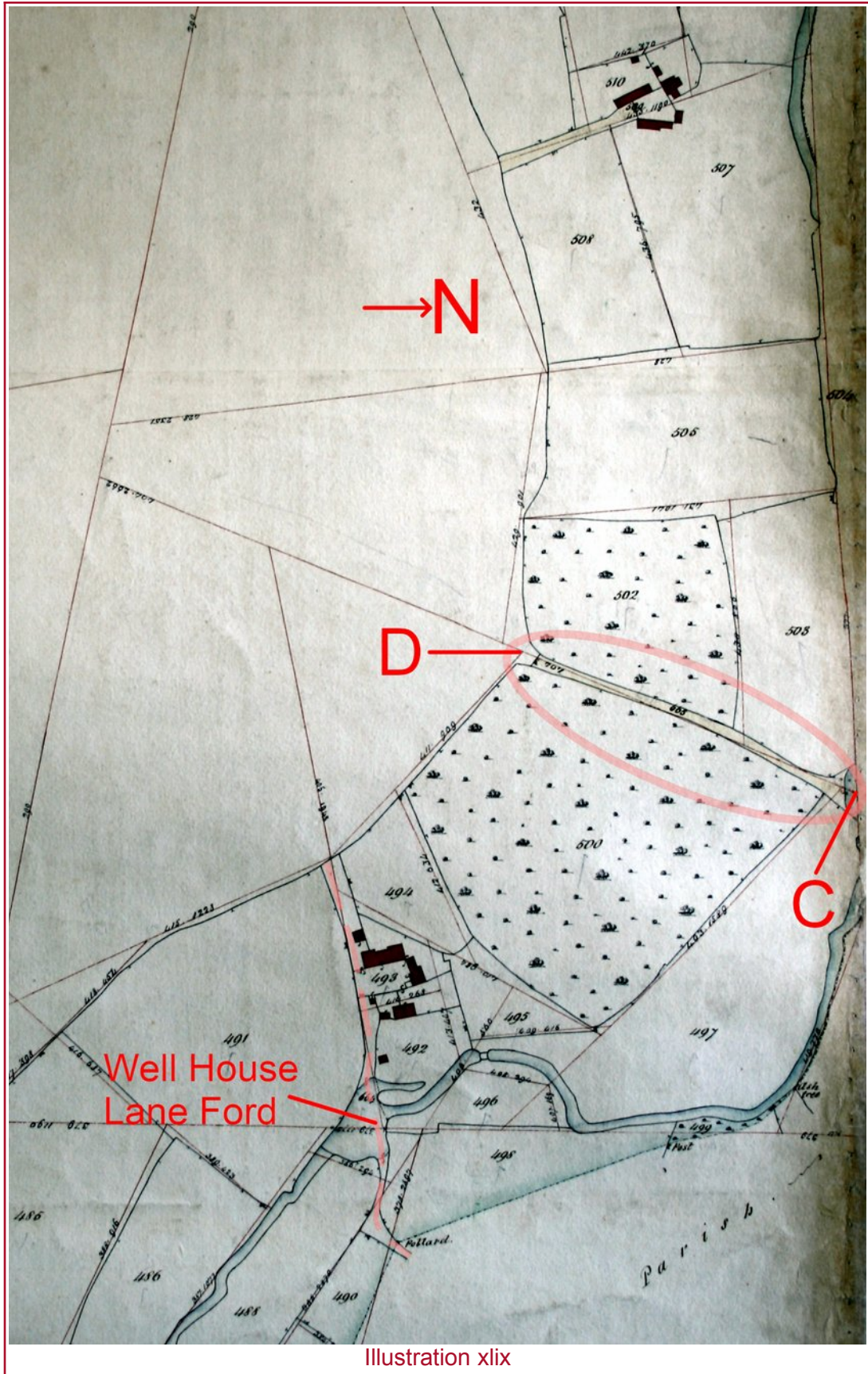


Illustration xlix

104 See OMA SOC/DOC p.5.

Eversley tithe map enlargement

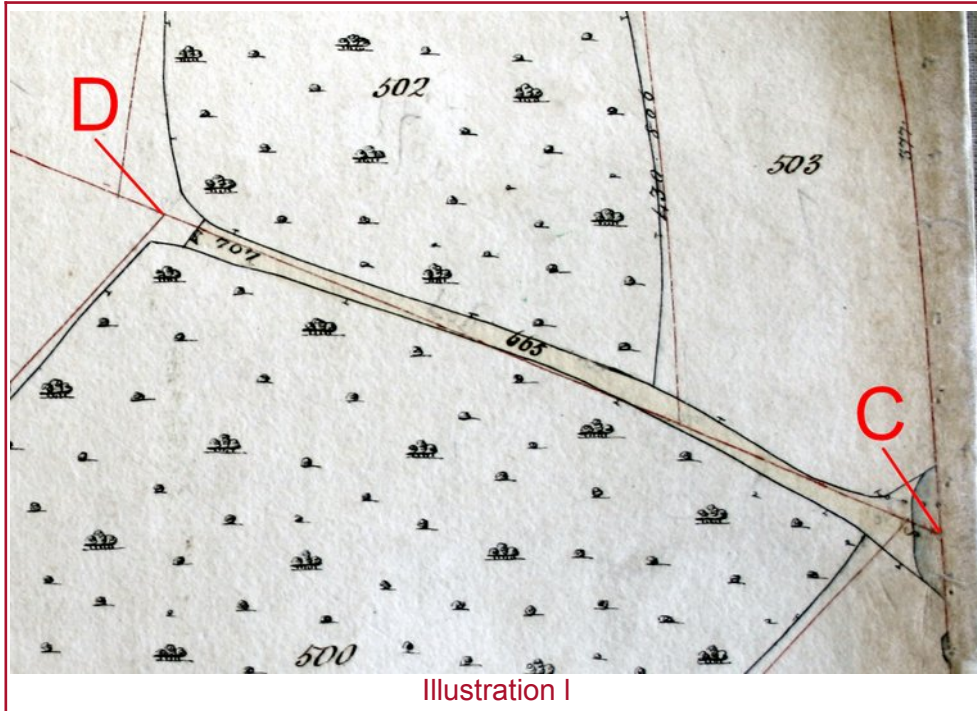


Illustration I

Eversley tithe apportionment¹⁰⁵

Roads and Waste in the Parish of Bramshill

624	The Pound											
662	Upper Common					212		33				
663	Lower do					709		29				
664	Road through Will House Farm Yard							3	26			
665	Do through Swallowfield Ford							2	9			
666	Do towards Lusty Hill							2	3			
667	Do from last towards Hickfield							2	3			
667a	Do from Plough Public House to Sea Common					2		1				
									936	1	33	
									2167	3	19	

Illustration li

¹⁰⁵ See OMA SOC/DOC p.5.

Eversley tithe apportionment (transcription): 'Roads and Waste in the Parish of Bramshill'¹⁰⁶

Parcel No.	Route	Area			Comment (not part of Award)
		A	R	P	
624	The Pound			3	Village pound
662	Upper Common	212		33	Common land
663	Lower Do ¹⁰⁷	709	2	29	Common land
664	Road through Well House Farm Yard		3	26	Former continuation of Well House Lane to Forges Lane and New Mill Road, marked on earlier maps
665	Do through Swallowfield Ford		2	9	[order way: see Description below]
666	Do towards Farley Hill		2	3	Ford Lane between Cordery's Farm (road enters onto Bramshill Common) and Thatcher's or Little Ford
667	Do from last, towards Heckfield		2	3	Minor road between Great Ford (now bridge over R. Whitewater) and Thatcher's or Little Ford
667a	Do from Plough Public House to Lea Common	2		7	Plough Lane
		926	1	33	

G.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 titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

G.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. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to.¹⁰⁸

G.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 award¹⁰⁹:

¹⁰⁶ See Illustration li.

¹⁰⁷ *i.e.* Do=ditto (repeated from line above)

¹⁰⁸ *Survey of lands (Tithe Act.), letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act*, 29 November 1836 (copy held at the National Archives).

¹⁰⁹ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C. Cited to the court in *Attorney-General v Antrobus* [1905] 2 Ch 188, and quoted with approval by Farwell J at p.194.

...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.

G.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, and highways expressly may be described as such in the apportionment.

G.7. **Description:** Original scale — one inch to three chains (1:2,376); orientation — unchanged (top is west). The tithe map is second class. An extract from the tithe map held by the National Archives is at Illustration xiv at p.43 above.

G.8. The route south of Jouldings Ford from C to D is shown on the tithe map as an enclosed route as far as Bramshill Common (which, being commonable, was not subject to tithes, and not represented in detail on the tithe map); the route is coloured ochre and numbered as parcel 665. In the accompanying tithe award, parcel 665 is included in the apportionment entry for 'Roads and Waste in the Parish of Bramshill', reproduced in Illustration li above, and transcribed in the table at p.94 above, as

| D^o through Swallowfield Ford

of area 2 roods and 9 perches (0.22 ha), where D^o (ditto) refers to 'Road' in the previous entry.

G.9. **Analysis:** It was not the purpose of tithe records to show public or private ways but lands subject to tithe. On some tithe awards, non-titheable private as well as public routes were excluded. However, it remains possible to draw useful conclusions in this case.

G.10. First, the order way is recorded in the apportionment entry for 'Roads and Waste in the Parish of Bramshill'. Five other ways are included in the same table, of which four are now acknowledged public roads, and the fifth is the continuation of Well House Lane connecting with Forges Lane via another ford across the River Blackwater in the vicinity of Well House Farm (shown on the tithe map extract at Illustration xlix above). Well House Lane ford is not recorded on the definitive map nor list of streets, but believed to be a public road: see item I.H above.

G.11. The drive to Smith's Farm, west of the order way (and also shown on the tithe map extract at Illustration xlix above), is coloured ochre on the map, similarly to the order way, but likely to be private. However, the drive is assigned parcel number 509, which does not appear in the table of 'Roads and Waste', but is recorded elsewhere in the apportionment

It appears that the tithe map or apportionment may have transposed parcels 508 and 509. But the correct attribution is clear.

as assessable land comprising 'homestead and drift'.¹¹⁰ This distinction suggests that the entries in the table of 'Roads and Waste' are exclusively public roads.

G.12. It therefore is reasonable to assume that only roads of the same class — *i.e.* public roads — were included in the table, along with entries for waste.

G.13. Secondly, the purpose of tithe apportionment was to assess the area and rent charge assigned to each parcel of land. None of the entries in the table of roads and waste contains a rent charge, and none was assigned. In some tithe assessments, some private roads were excluded from assessment, and indeed, some public roads were included for assessment. Decisions whether to include or exclude are likely to have been predicated on whether the road in question gave rise to any productive use capable of attracting a rent charge, or if not in productive use (being 'barren'), whether it was capable of being brought into productive use.

G.14. Some private roads, particularly those subject to multiple private rights (such as those conferred under an inclosure award), being confined between hedges or walls, no wider than necessary for the passage of carts, and metalled with no significant grazing capacity, may have been excluded on the basis that they were both barren and incapable of ever giving rise to productive use.

G.15. Equally, some public roads, across productive land, where the road was privately maintained, or the right of grazing was held by the landowner, were acknowledged as having productive use and capable of attracting a rent charge, notwithstanding the public status of the way. Public field roads are often examples: being unenclosed and having a grass surface available to the field owner for grazing, they typically might have been thrown in with the rest of the field in contributing towards a rent charge.

G.16. However, the order way, as recorded on the tithe map, is of generous width, having a splay at the ford which is as wide as 37m, and which throughout is of width 8.5–10.5m. Such a way, being of generous proportions, would have given rise to significant grazing potential (just as most country lanes today, even those which are tarred, have significant verges or shoulders which are capable of being grazed). If the order way truly were a private way, so that use of the way was limited to a small number of persons with private rights, the grazing potential would have been enhanced by the low level of user. A right to graze the land, presumably exercisable by the owner of the road, would have been a right of some value to the owner — all the more so because most of the order way south of the ford was capable of being enclosed by gates. Why would such a valuable piece of land not have been assigned to its owner in the apportionment, and a rent charge imputed — just as was the drive to Smith's Farm?

G.17. But it was not assigned. Instead, the apportionment does not assign the land to any owner, but in common with other roads in the table, treats it as not subject to assessment. The logical conclusion in the circumstances is that, again in common with other roads in the table, the order way was considered to be a public road, and any grazing on the road was not vested in the landowner.

G.18. While other explanations for exclusion of land from assessment may arise elsewhere, they are not relevant here. For example, the owner of the order way might have

¹¹⁰ (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C. Cited to the court in *Attorney-General v Antrobus* [1905] 2 Ch 188, and quoted with approval by Farwell J at p.194.

It appears that the tithe map or apportionment may have transposed parcels 508 and 509. But the correct attribution is clear.

been exempt from tithes because it was glebe land or otherwise owned by the ecclesiastical authorities — but that should be obvious (where, for example, neighbouring land similarly is exempt), and there is no reason here to infer that the ownership of the order way was vested in some third party who coincidentally was exempt from tithes.

G.19. **Objectors:** The objectors' comments at TW/SOO/1, paras.74–78 and 80 have been addressed above.

G.20. The objectors also state (TW/SOO/1, para.79) that, 'Elsewhere on the tithe map, roads that cross the river are clearly depicted as continuing through the river.' It seems that the truncation of the order way at C on the copy of the tithe map held by Hampshire County Council is a consequence of defective copying. Reference to the copy held by the National Archives at Illustration xiv above reveals almost the entirety of the ford present on the tithe map, and with several features which may show the course of the order way through the ford.

G.21. The objectors draw the inference that: 'This is not suggestive of the application route being a through route or public carriageway.' As we explain at para.I.G.4 above, the tithe map shows an enclosed way, from the common and described in the apportionment as '[Road] through Swallowfield Ford', leading to a clearly depicted ford, and to the north of which it is not disputed that there is a public road. It is not obvious how one might infer that such a way emphatically is not a through route.

G.22. The objectors state (TW/2, app.14, Summary, re bullet 6) that: 'It would be a fundamental mistake at odds with the evidence and case law (as highlighted in the Consistency Guidelines), to import any weight to the 1837 tithe documents in determining whether or not the AR was a public way.' However, this is not the position adopted in the *Consistency Guidelines*, which comment at para.8.2.14:

[Tithe maps] may not necessarily be good evidence either of public rights or the nature of any public right that may exist. The full value of a particular map can only be determined by careful consideration of all the available tithe documents, including any relevant contemporaneous instructions or keys, and by comparing it with other reputable maps of the time to establish the relevance of the way to the overall road network. However, as statutory documents, where they do provide evidence it should be given the appropriate weight bearing in mind the original purpose of the documents concerned and the issues identified above.

G.23. **Conclusion:** Accordingly, it is submitted that the order way is among those features on the map which are assessed as part of the 'Roads & Waste', and was considered to be a public road.

G.24. **Points:**

Part	Points
A to B	0
B to D	4

GA. Swallowfield (Wiltshire) tithe award

GA.1. **Date:** 1841

GA.2. **Source:** Berkshire Record Office¹¹¹

Swallowfield tithe map¹¹²

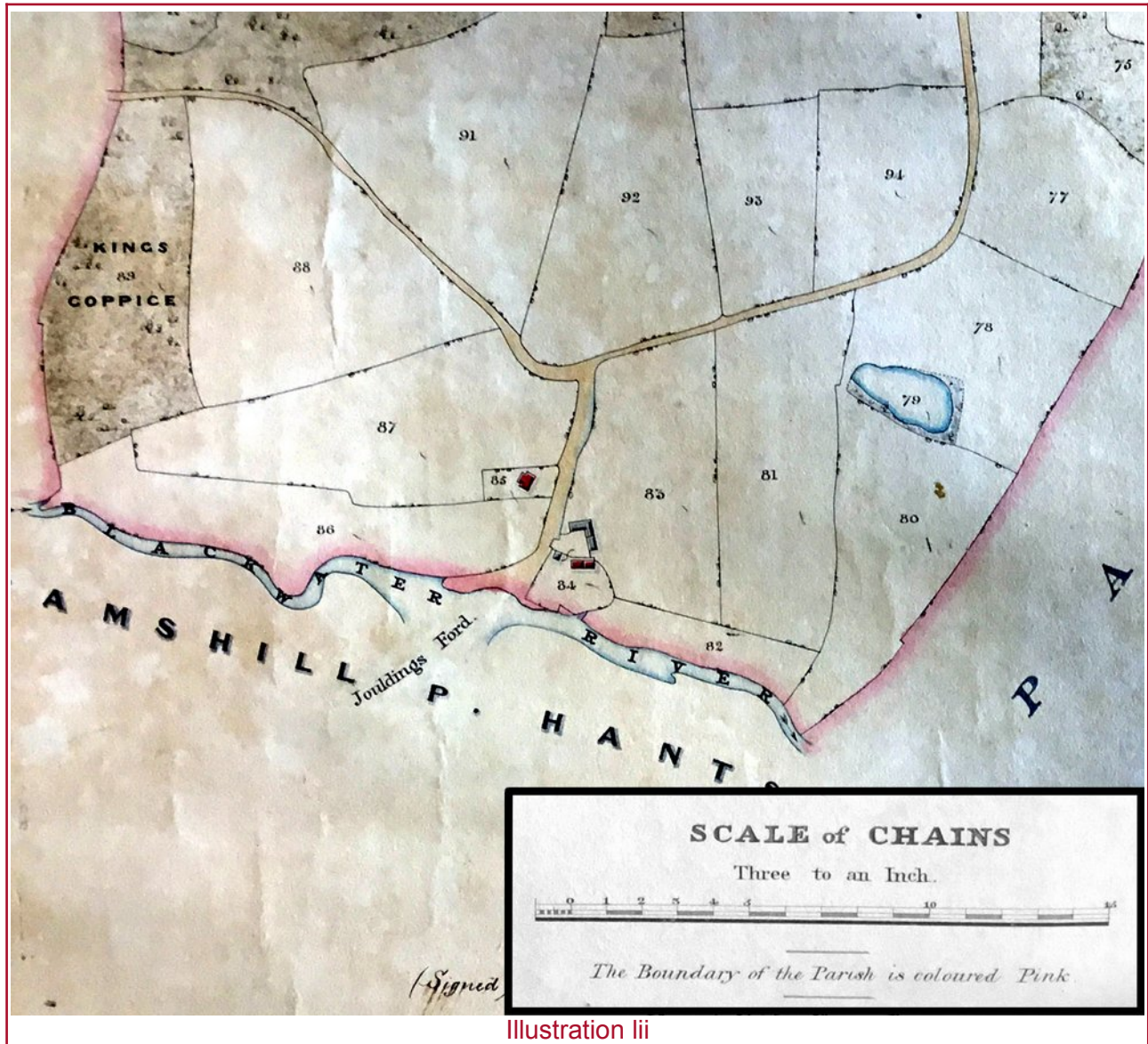


Illustration lii

111 D/D1/129

112 See OMA SOC/DOC p.6.

Swallowfield tithe appointment

SUMMARY. contd

D—London: Printed and Published (By Authority) by Shaw and Sons, 137 and 138, Fetter Lane

LANDOWNERS.	OCCUPIERS.	QUANTITIES IN STATUTE MEASURE.			RENT CHARGE PAYABLE TO			RENT CHARGE PAYABLE TO		
		A.	R.	P.	Year					
	<i>Brought Forward</i>	1953	..	16	99	15	..	..	..	..
<i>Wilson John</i>	<i>Himself</i>	..	..	1	70	..	1	..	..	..
	<i>Hannah Bismead</i>	..	..	10	..	..	..	..	..	..
<i>Willak John Gard and</i>	<i>Sarah Marshall</i>	..	..	1	2	..	1	..	..	..
<i>William Blandy</i>		<i>Sarah Collins</i>	..	..	16	..	..	..	..	..
<i>Watts Robert</i>	<i>Mary Leak</i>	..	..	1	12	..	1	..	..	..
<i>Geo James</i>	<i>Sarah Birdler</i>	..	..	18	..	2	..	..	..	..
<i>Field Rev & Matthew</i> <i>(Vicarial Glebe)</i>			1954	1	14	100	..	..	..	..
	<i>Commons Waste Lands</i>	243	2	29						
	<i>Roads and Rivers</i>	2147	3	33						

Illustration liii

GA.3. **Description:** Original scale — one inch to three chains (1:2,376); orientation — unchanged (top is north). The tithe map is second class.

GA.4. For further commentary in relation to tithe maps, see *Eversley tithe award* (item VI.G above).

GA.5. The Swallowfield tithe map shows the order way to the north of Jouldings Ford (which is annotated as such). The order way is coloured sienna, and is shown across the full width of the waste on the north side of the ford, also coloured sienna. The limits of the crossing of the ford are not marked, nor is any part of the way south of the ford (which is not relevant to the survey for the parish).

GA.6. Neither Jouldings Lane, nor BOAT 33, is marked with a parcel number. In the apportionment, a parish-wide datum is given for 'Roads & River', and it is reasonable to infer that this item relates to public roads shown on the tithe map and not marked with a parcel number.

GA.7. **Conclusion:** The order way is presented consistent with a public road as far south as B. There is no reason for the map to show the continuation of the way south beyond B (as indeed there is no reason for the *Eversley tithe award* map to show the continuation of the way north beyond B).

GA.8. **Points:**

Part	Points
A to B	1
B to D	0

H. Bristol and Dover Direct Junction Railway

H.1. **Date:** 1845

H.2. **Source:** Hampshire Record Office¹¹³

113 DP/B12/1

Bristol and Dover Direct Junction Railway: deposited plan¹¹⁴

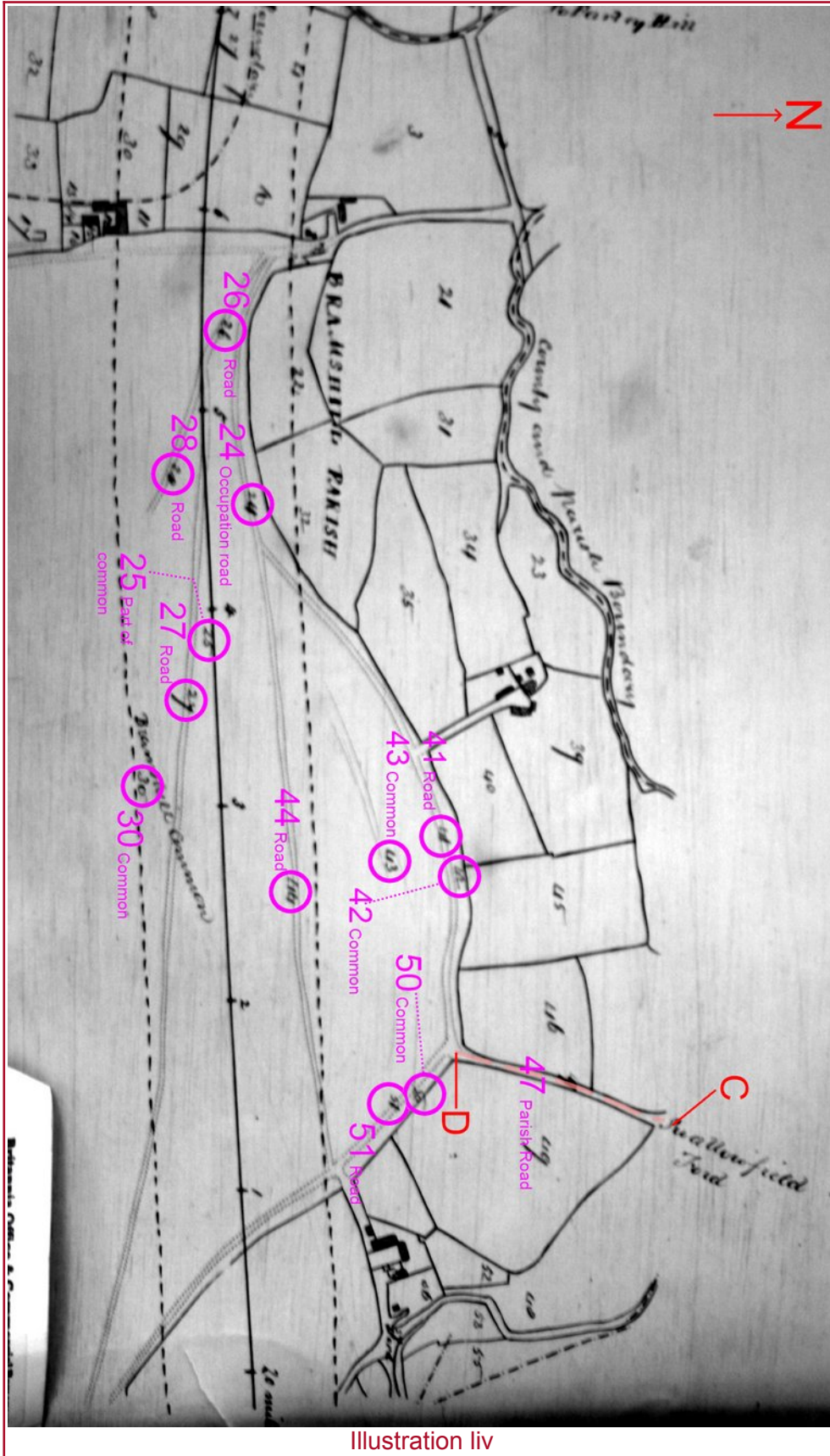
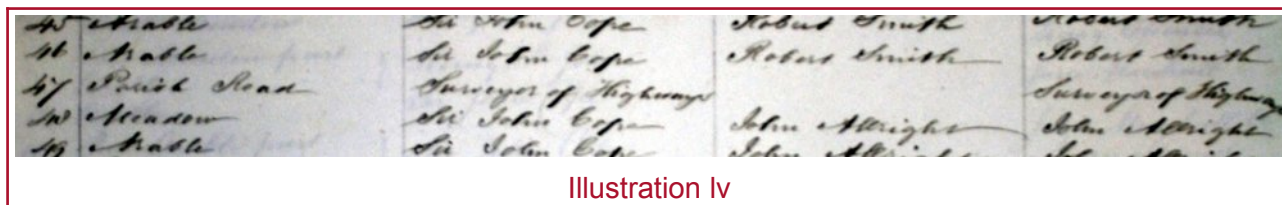


Illustration liv

114 See OMA SOC/DOC p.7.



H.3. **Description:** Original scale: not known; orientation: rotated 90° (top is west). The plan has been marked in purple with selected plot numbers and descriptions given against those plots in the book of reference.

H.4. The order way south of Jouldings Ford from C to D is shown on the plan for construction of the Bristol and Dover Direct Junction Railway as parcel no. 47, but lying outside the limits of deviation. Parcel no. 47 is recorded in the book of reference as a 'Parish Road', in the ownership or reputed ownership and in the occupation of the Surveyor of Highways.

H.5. **Analysis:** Every railway proposal brought to Parliament in a Bill was required by Parliamentary Standing Orders to be documented in plans and books of reference established by prior survey, deposited in Parliament and in the localities affected, and with extracts sent to the landowners affected. The prior survey by necessity required local engagement — with landowners, parish surveyors and local gentry (whose support might be required). Whether the railway was 'approved' by Royal Assent granted to the Bill (and whether it was built), or whether it failed to obtain Royal Assent, the Standing Orders were applied in the same way, and the deposited documents were crafted according to the same requirements.

H.6. The survey was likely to involve consultation with the lay parish surveyor, who would advise of the status of highways in the parish on the basis of what was known at the time. There were few contemporary documentary records of the status of ways. Railway companies were obliged by the Railways Clauses Consolidation Act 1845¹¹⁶ to build bridges over, or under, public roads to a higher standard than those over private roads, and it was not in the interests of the company, and therefore of its surveyor, to misallocate resources to construct an unnecessarily costly bridge where something cheaper would do. Therefore, it was essential that there was local liaison — even if, sometimes, the parish surveyor might not hold the same view of the status of a way in the parish as, for example, the landowner.

H.7. We do not know how far this Bill for the Bristol and Dover Direct Junction Railway progressed in Parliament, and whether a Bill committee held hearings into the Bill. But it is unlikely that the status of the order way as a parish road would have been challenged, given that its status would have been derived from local inquiry.

H.8. The deposited plan contains errors. The Bristol and Dover Railway Direct Junction Railway was one of a number of schemes developed during the years of 'railway mania' in the mid-1840s, and the surveys were often prepared to a demanding schedule to enable deposit in Parliament by the annual deadline imposed in standing orders. But the status of

¹¹⁵ See OMA SOC/DOC §.

¹¹⁶ See ss.49 and 50 as to the specification of road bridges.

ordinary, enclosed, public roads was one of the tasks to be addressed by the railway surveyor, by means of local enquiry.

H.9. Parcel 19, identified as a parish road in the book of reference, is not identified on the plan — but confidently we identify it as Ford Lane (leading south from Thatcher's Ford), taking account of the numbering sequence, and its identification on the deposited section as 'Road edge of Common level unaltered' at 20 miles 5³/₄f.

H.10. No continuation of the order way beyond D across the common is identified in the book of reference as having the express status of public road. As one might expect of almost any common at that time, it is clear from the plan and contemporary maps that Bramshill Common, being open and unenclosed, was crossed by numerous tracks — see *The order way as a publicly- or privately-maintainable highway* (item I.K above). The status of these tracks, and particularly whether each track was public and publicly maintainable, would have been uncertain, and of little moment to the parish surveyor, who would have no cause to undertake maintenance of any of them, as the public could deviate or establish a new line where the ground deteriorated. Indeed, being open and unenclosed, and grazed by commoners' animals, and of little value to the lord of the manor of Bramshill, the public would not have encountered any restrictions on crossing the common. The railway company would doubtless have wished to minimise its expenditure on bridges; the lord of the manor and owner of the common would have cared little for the preservation of public rights, the parish surveyor may not have known which tracks were public and which carried vehicular rights (which, would have demanded that bridges be built under the 1845 Act, and that the parish then maintain the tracks leading to it as publicly-maintainable roads).

H.11. In the event, the railway surveyor appears to have resorted to ambiguous descriptions of the roads across the common. These descriptions are shown on the plan: Well House Lane is described both west and southeast of D as a 'Road', as are three further roads (plots 26 and 28, plot 27, and plot 44), which takes up alignments respectively southeast, east-southeast and east across the common from the northwest corner of the common. Contrastingly, however, the first part of Well House Lane, from the northeast corner of the common to the bifurcation with the road shown as plot 44, is recorded as plot 24, and given as 'Occupation Road'. This suggests that the railway surveyor was confident in the status of the order way, but uncertain about the status of the tracks across the common — doubtless because he could not verify their status.

H.12. It is often the case that highways give access onto a common but for the precise nature of public rights across the common to remain uncertain, even to the present day. This was the challenge before the court in *Eyre* (see item I.G above). The applicant submits that the railway surveyor simply did not know (perhaps because no-one else knew) precisely which tracks and paths across Bramshill Common were highways, and 'hedged his bets' by describing them merely as 'Roads' — neither expressly parish roads nor (with one exception) occupation roads. The applicant also observes that the status of Well House Lane, near the northern perimeter of the common, as a public road, was abundantly clear by the early twentieth century. By 1929 the Hartley Wintney Rural District Council 1929 handover map¹¹⁷ (para.41) recognises the existence of a public road along Well House Lane. Both Smith's Farm and Well House Farm, as well as the egress of the order way at D, required access along the north perimeter of Bramshill Common, as well as access across the common to the south. Whether or not Well House Lane was a public

117 TW/1, SO, App.6.

road at the time of the 1845 proposal, no recognition is given in the plans to the existence of any requirement for access across the common, and no expressly public rights of way across the common of any kind are recorded.

H.13. The position is typical of a railway line constructed across a common. Like Bramshill common, a lowland common would (at this time) have been criss-crossed by desire lines, some or all of which may have been highways. No railway company wished to commit to constructing numerous bridges to accommodate possible carriage roads across the common, and in practice, something less onerous would be provided — in this case, perhaps one or more level crossings as if the roads were private roads.

H.14. The majority of errors identified in the plans are errors of survey of the landscape, and of preparation of the plans. An error is far less likely to have arisen in respect of the categorisation of the order way as a 'parish road' because the status of the way must have been a matter on which the railway company surveyor would wish to confer with the parish surveyor of the parishes through which the railway was planned to pass. There is no other conceivable means by which the status of roads could reliably have been discerned — it was hardly a matter on which the railway company surveyor could have made an informed guess, given the additional liability, or exposure to criticism and possible censure in Parliament, that incorrect attributions could generate. Notice of application to Parliament, and extracts of the plans and book of reference, were required to be sent to the overseers of each parish and local landowners, who might be expected to identify any manifest error, with the possibility of embarrassing the railway company in Parliament. Therefore, the status must be commensurate with the opinion of the parish surveyor at that time.

H.15. Might the railway company surveyor have made a mistake which could have incurred significant further cost to the railway scheme? It can be suggested that the information gleaned from the parish surveyor by the railway company surveyor may have been incorrect — that the parish surveyor was wrong to regard the order way as a parish road. But the status as a parish road is consistent with the contemporary evidence.

H.16. **Objectors:** The objectors' general comments (TW/1, SO, paras.82–84) are addressed above. The objectors' notes on mistakes are addressed as follows.

H.17. Mistake 1 (TW/1, SO, para.85): agreed.

H.18. Mistake 2 (TW/1, SO, para.86): parcel 19 plainly refers to Ford Lane — it is a simple omission from the plan, see para.H.9 above.

H.19. Mistake 3 (TW/1, SO, para.87–91): we seek to explain the classification of tracks and roads on the common at H.10 to H.13 above. It is not accepted that the classification in the book of reference of parcels 26, 27, 28, 41, 44 and 51 as 'roads' owned and occupied by Sir John Cope, indicates that these roads were private, but they were likely to be considered to be privately-maintainable public roads — see *The order way as a publicly- or privately-maintainable highway* (item I.K above). It is noted that these roads are not described as 'occupation roads', per parcel 24.

H.20. **Conclusion:** The deposited plans and book of reference for the railway describe the order way as a parish road, and this is good evidence of its then perceived status. There is some uncertainty about the status of roads across Bramshill Common beyond the egress of the order way at D, but none of the evidence denies that there were public roads or other highways leading across the common from D. It may be that ways across the common described in the book of reference as 'Road' are public highways which were

considered to be privately maintainable, or roads as to which there was uncertainty as to status. It is possible that the Bill deposited in Parliament made specific provision for roads and paths across the common to be traversed by level crossings, but as the Bill has not been archived, we cannot know.

H.21. Thus we conclude that the Bristol and Dover Direct Junction Railway deposited plans provide good evidence of the status of the route between C and D as a public carriage road.

H.22. **Points:**

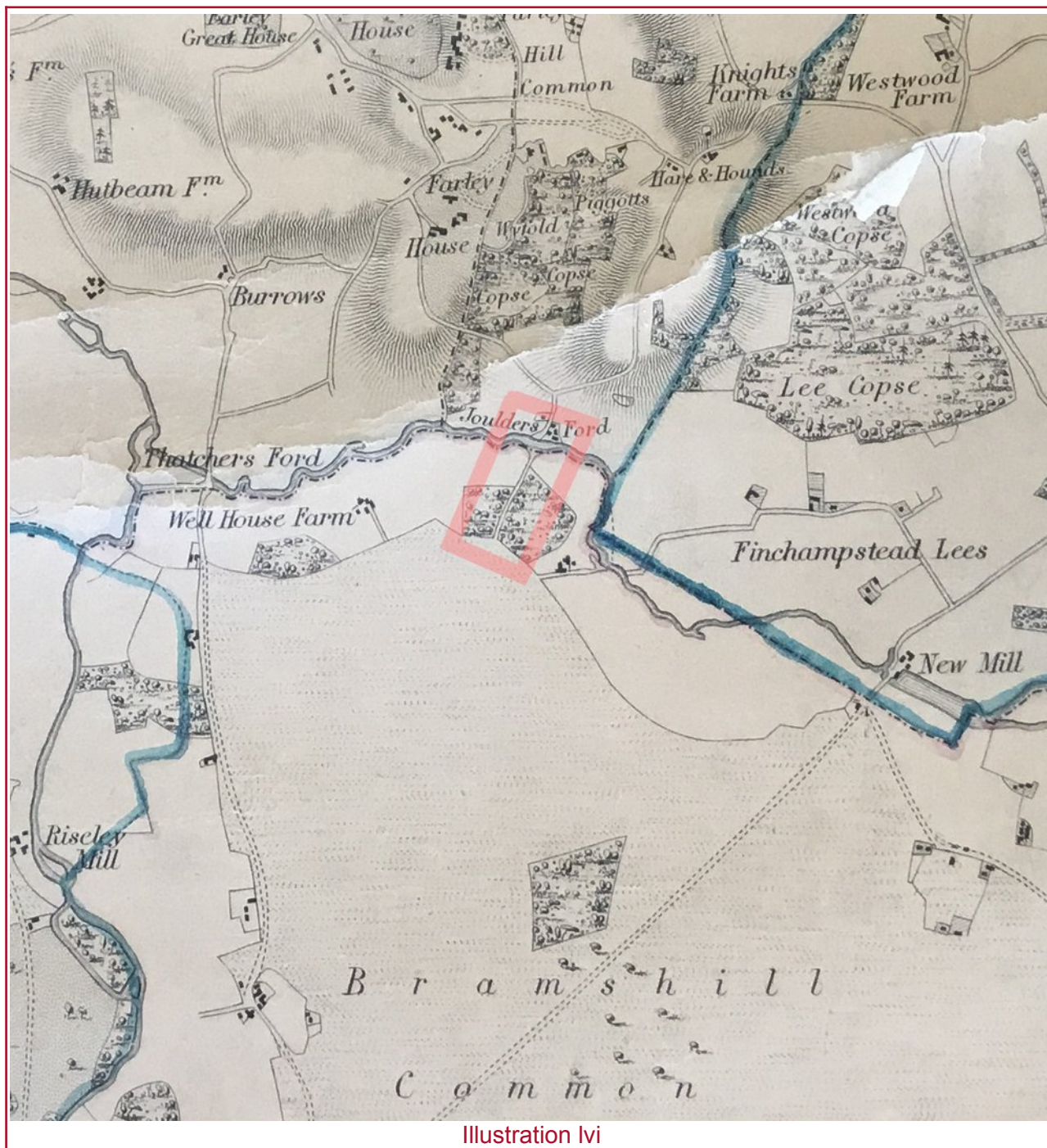
Part	Points
<i>A to B</i>	0
<i>B to D</i>	5

HA. Snare's Map of the Country ten miles around Reading

HA.1. **Date:** 1846

HA.2. **Source:** Berkshire Record Office¹¹⁸

Snare's Map of the Country ten miles around Reading



HA.3. **Description:** Both maps — Original scale: not known, but appears to be two inches to one mile; orientation: unchanged (north is top).

118 D/ERU/P6

HA.4. Virtually nothing is known about the map published by John Snare — but the map is a remarkably detailed map for the era. Moreover, comparison with the *Ordnance Survey, Old Series one-inch map* (item VI.C above) suggests that it is based on a more detailed survey.

HA.5. Jouldings (named as Joulders) Ford is annotated, and the order way is shown on both sides of the Blackwater River. As the order way reaches the edge of Bramshill Common, near D, the way ceases to be marked, and in common with Well House Lane, one is left to infer that there are minor but unmarked roads and tracks across the common which are not identified on the map.

HA.6. **Conclusion:** Snare's map is good evidence, complementing earlier maps of this era, that the order way is a minor but useable road across the Blackwater River, leading to Bramshill Common.

HA.7. **Points:** Not scored, as sixth in series of historical privately-surveyed maps.

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

I. Swallowfield Inclosure award, 1865

I.1. **Date:** (of award) 7 April 1865

I.2. **Source:** Berkshire Record Office website¹¹⁹

Swallowfield inclosure map¹²⁰

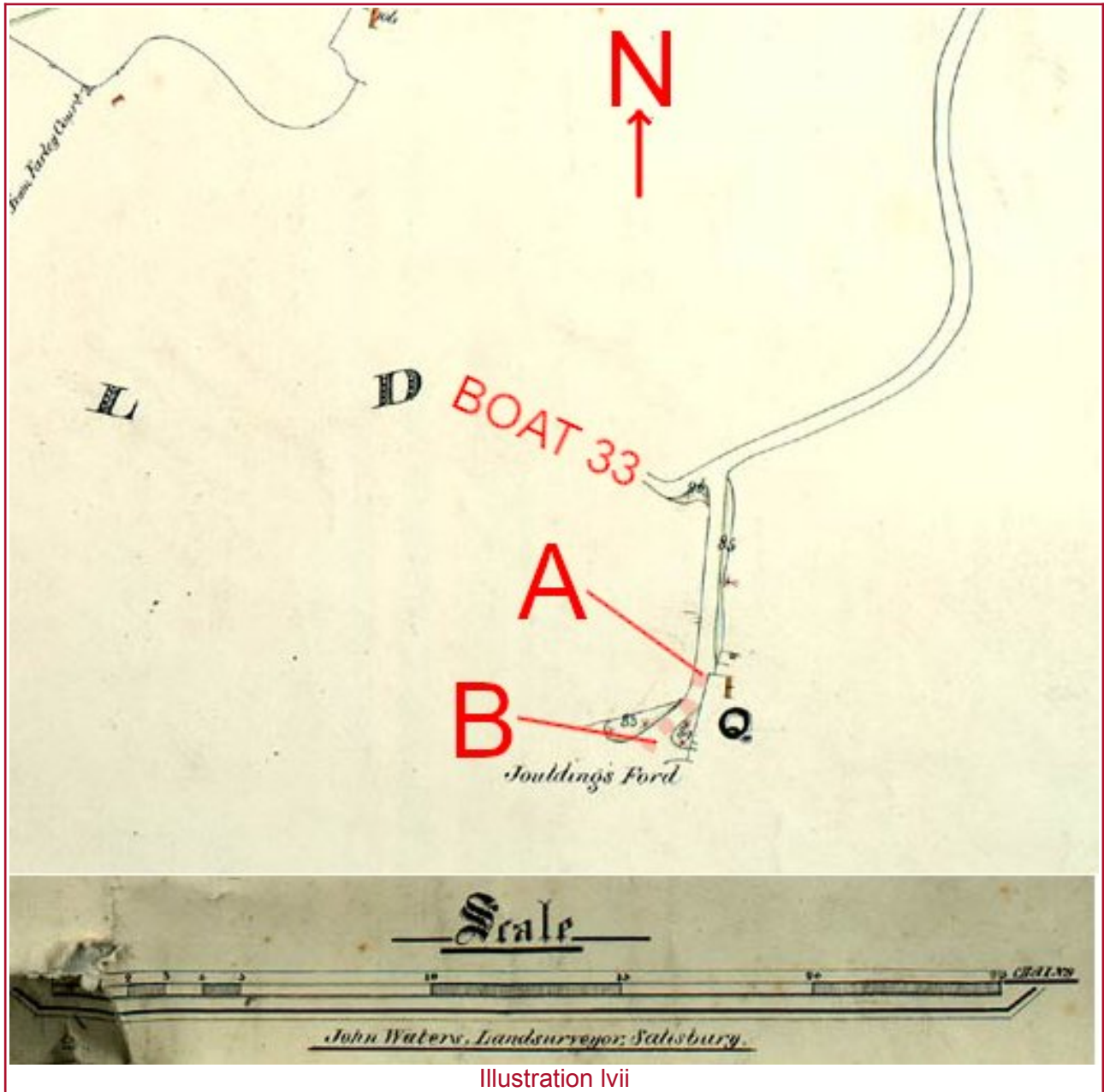


Illustration lvii

119 www.berkshireenclosure.org.uk/find_via_parish_details.asp?parish=Swallowfield. © Reading Borough Council and Designation.com Ltd 2004.

120 See OMA SOC/DOC p.8.

Swallowfield inclosure award¹²¹

Standish Newland Edmond Walter Pery Esq ^r	83	"	"	12	Against the Road.	Common of pasture and other commonable rights in respect of Numbers 76. 77. 78.
	86	"	"	3	Against the Roads.	
	93	"	"	27	With and against the Road	
Walt Thomas	84	"	"	6	Against the Roads.	Common of Pasture and other commonable rights in respect of Numbers 81. 82. 83.
	85	"	"	10	Against the Road.	
	111	"	2	36	With and against the Road.	

Illustration Iviii

I.3. **Authority:** Inclosure Acts 1845 to 1862. Section 62 of the 1845 Act provides that the valuer appointed may set out, widen, stop up or divert public roads by following the procedure contained in that section, but the Act does not provide that any existing road across land to be inclosed is stopped up unless that procedure is followed.

I.4. **Description:** This inclosure award, which was made some 40 years after the first *Swallowfield Inclosure award, 1814–17* (item VI.D above), inclosed the remaining unenclosed wastes and common lands in Swallowfield parish. The award map depicts Jouldings Lane north of the River Blackwater between A and B, and part of Jouldings Ford, being those parts of the order way in the parish of Swallowfield.

I.5. Jouldings Lane is depicted on the award map south from Farley Hill to the junction with BOAT 33, and then south to a ford marked as 'Jouldings Ford' at B. Areas of roadside waste north of Jouldings Ford, identified as parcels nos.83 to 86, were to be inclosed and allotted to neighbouring landowners. The allotments in the award contain a requirement to fence the allotments against the 'Road' (*i.e.* Jouldings Lane).

I.6. **Analysis:** The award incloses waste which lay either side of Jouldings Lane, including waste in the vicinity of the ford itself. As waste, these lands must have formed part of the highway, else they could not have been waste. Waste, in this context, means highway waste which also is manorial waste. Such waste by definition is found along old highways. It is not credible that waste land, subject to rights of common, could have lain either side of a private road, but without physical separation. Accordingly, it is submitted — as seems overwhelmingly probable — the road between A and B was treated by the award as an existing public road which endured the inclosure award.

I.7. **Objectors:** TW/1, SO, paras.96–97: The objectors have identified one example of a private carriage road, awarded under the 1865 inclosure, of very brief length, against which the award also contains an obligation to fence against. But neither the order way between A and B, nor Jouldings Lane to the north, is awarded as a private carriage road.

I.8. TW/1, SO, para.99: It is observed by the objectors that the continuation of the order way, to Bramshill Common or otherwise, is not annotated on the inclosure map. The objector states that: 'This is to be contrasted with every point on the award map where a route continues to a destination, when the map uses a direction marker combined with an

¹²¹ See OMA SOC/DOC pp.8–9.

extension for the lines delineating the road.’ This is a subjective assessment, which appears to rely on interpreting whether a particular route ‘continues to a destination’. There are many routes which are not marked with a destination: whether, in the objector’s analysis, these routes lack a ‘destination’ is immaterial, though the applicant notes that the order way itself does not lead directly to any significant settlement. Moreover, the ford, which is on the parish boundary, is itself identified and labelled, and this obviates any requirement for a destination, because the place can be identified by name.

I.9. As for ‘an extension for the lines delineating the road’, this is not borne out by analysis: the lines are discontinued where they cease to have any purpose: see examples below.

Selected road ‘endings’ on the Swallowfield inclosure map

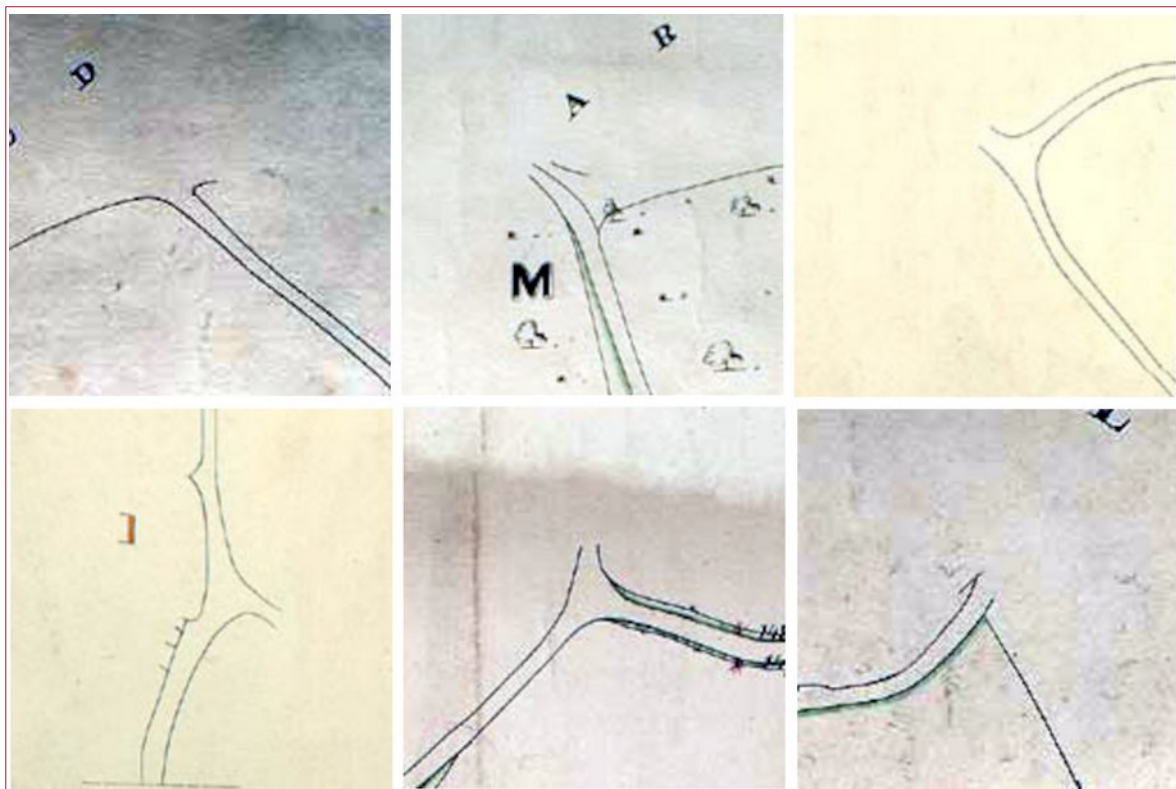


Illustration lix

I.10. **Conclusion:** The Swallowfield inclosure award does not set out any part of the claimed route, as it was an existing highway which, in accordance with s.62 of the 1845 Act, remained unaffected. However, the existence of a carriageway between A and B is confirmed by its relationship to the waste on either side inclosed by the award, and by the instructions to the allottees to fence against the road. The map is good evidence for the existence of a public road between A and B, and for its undefined continuation south of B.

I.11. **Points:**

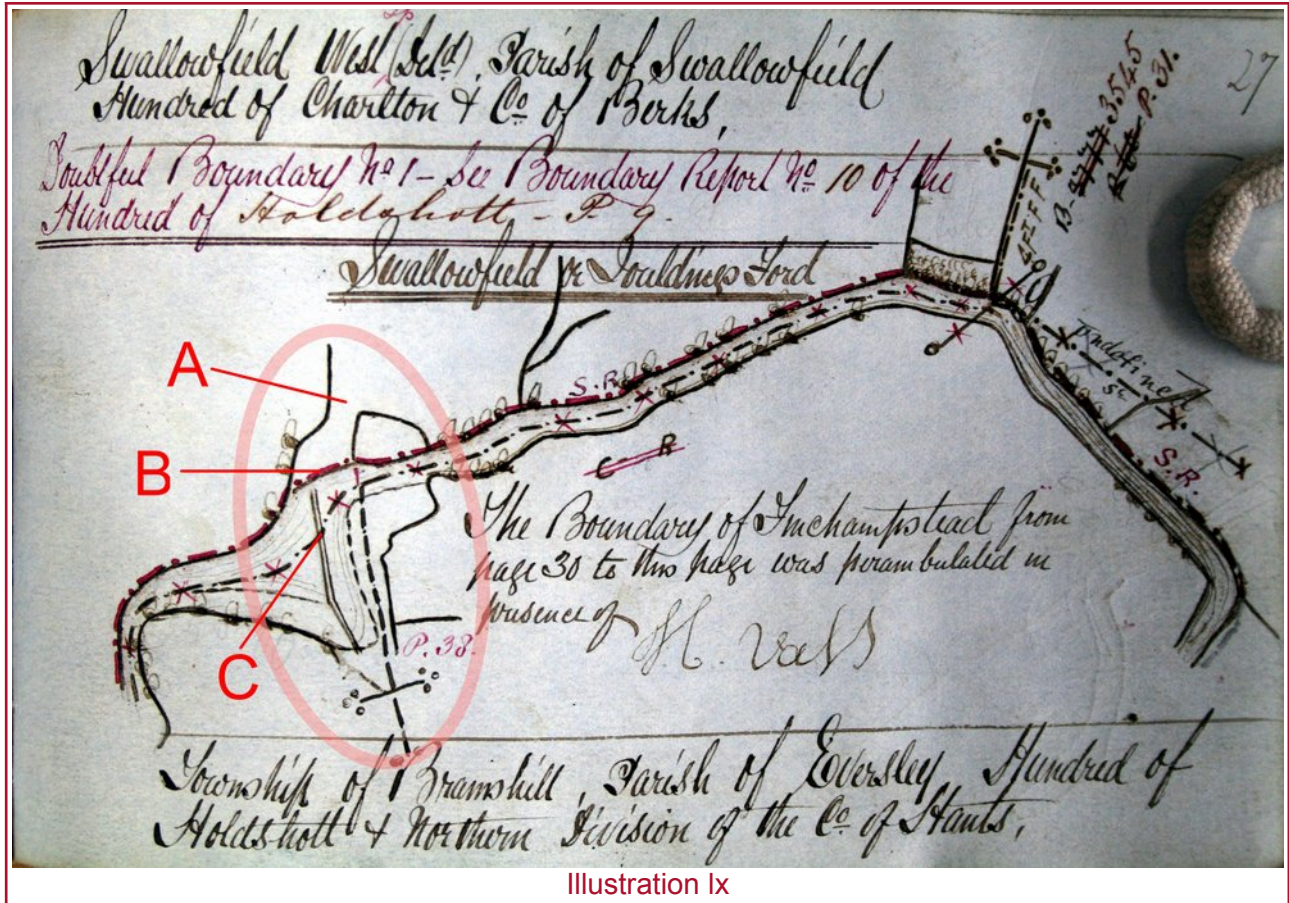
Part	Points
A to B	2
B to D	0

J. Ordnance Survey original boundary mapping

Date: 1871

Source: National Archives

OS boundary remark book: Bramshill parish¹²²



122 OS 26/4687

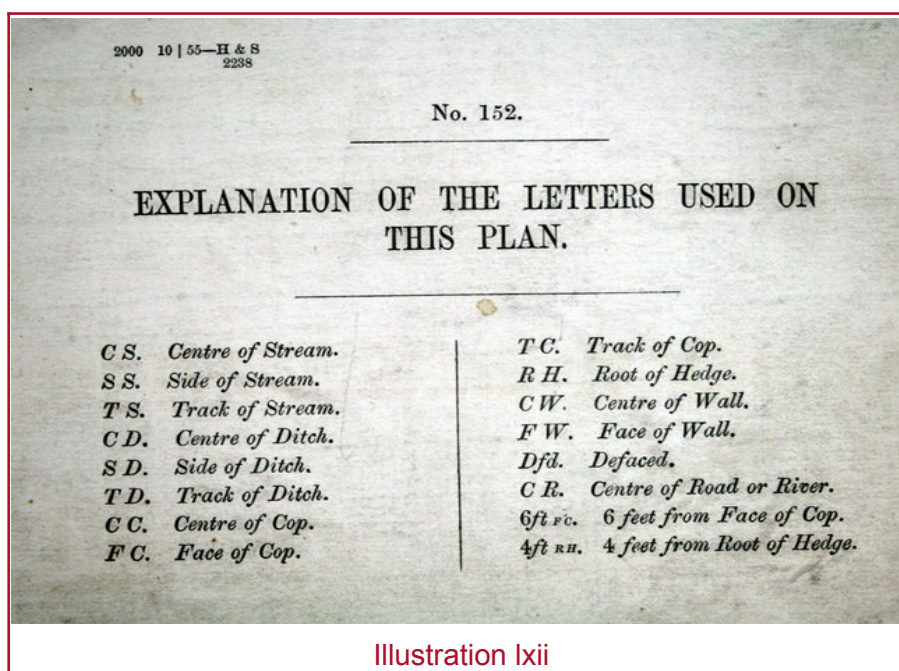
OS boundary sketch map: Bramshill and Eversley parishes¹²³



Illustration lxi

123 OS 27/2205

OS boundary sketch map: key



J.1. **Description:** scale: not known; orientation: unchanged (top is north).

J.2. The OS boundary remark book for Bramshill parish records the perambulation of the county and parish boundary between Bramshill and *inter alia* Swallowfield. Jouldings Ford is otherwise unidentified except by reference to 'Swallowfield or Jouldings Ford' in the title of the plan and a drawing showing the location and arrangements of the ford on the plan itself. The plan shows the county and parish boundary between Bramshill and Swallowfield which generally follows the north bank of the Blackwater River (a marked alignment which follows the centre line of the river is crossed out). It also shows the parish boundary between Bramshill and a detached portion of Odiham (the latter lying south of the river and west of the order way) which follows the order way south from the ford. It appears (although uncertain) that a narrow double pair of lines crossing the river on the west side of the ford may be the footbridge which was here in the nineteenth century, but removed or lost before the end of the century and not replaced (see *Ordnance Survey County Series six inch first edition map* (item VI.K below).

J.3. The OS boundary sketch map for Bramshill and Eversley parishes records the parish boundaries (including those of the detached parish of Odiham), in the light of the observations made in the boundary remark book. The ford is labelled as 'Swallowfield or Jouldings Ford'. The route south from Jouldings Ford at C to D is shown as a parish boundary (between Bramshill parish and a detached part of Odiham parish), marked 'C.R.' (centre of road) — *i.e.* the parish boundary follows the centre of the road.

J.4. **Analysis:** The Ordnance Survey boundary maps date from the late 1860s and early 1870s, and record the Ordnance Survey's surveyor's efforts to capture the precise location of parish boundaries from local knowledge. These maps were drawn up following perambulation of the boundaries by the surveyor accompanied by the parish meresman (that is, a senior resident of the parish who was specially tasked with knowledge of the parish's boundaries, and who very likely would have acquired such knowledge first hand from his predecessor as meresman).

J.5. For the significance of the boundary along the centre line of the way, see *The order way as a parish boundary* (item I.J above).

J.6. **Objectors:** TW/1, SO, para.33: The applicant agrees that there is no annotation of a road in the enlargement of Jouldings Ford on the extract of the boundary remark book for Bramshill parish (Illustration Ix) — although a road clearly can be discerned. But in the boundary sketch map for Bramshill and Eversley parishes (Illustration Ixi), showing the order way between B and D, the parish boundary is marked along the centre of the order way, and marked 'C.R.', *i.e.* 'centre of road'. Accordingly, the enlargement of Jouldings Ford must be intended to show the detail of a road through the ford, because the surveyor has recorded as a road the order way south from the ford. It was not necessary to the enlargement in the boundary remark book to label the features — only the details of the boundary.

J.7. TW/1, SO, para.34 (and app.4): The objectors suggest that the boundary remark book shows a solid fence at Y. The analysis is incorrect. The meaning of the oblique lines shown in nearby contexts is to show a change in the mereing of the parish boundary. In the particular case cited (para.35 and illustration O3 following), the boundary to the east of the gate is mered to 3 feet from the root of hedge ('3ft.R.H. '), but in crossing the gap at the gate further west, it is mered to the face of the gate ('F-Gate').¹²⁴ As the parish boundary at Y turns down the centre of the order way, only one symbol showing a change of mereing is required, and this is shown in the boundary remark book. A symbol, or the absence of a symbol, showing a change of mereing tells us nothing about whether a gate was, or was not, present (unless, of course, as in the example, the boundary expressly is mered to a gate) — only whether the boundary was noted to change its relationship with physical features of the landscape.

J.8. TW/1, SO, para.35: Accordingly, the boundary remark books tell us nothing about the nature of the opening at Y, other than that, at this time, it appears to have been gated (because the opening is closed by a solid line). It is unsurprising that a minor road leading onto a common (and at the date of the boundary survey, it seems likely that the land was still being grazed in common) was gated: many public roads were gated in similar circumstances, and in upland areas, many still are. Indeed, the Ordnance Survey County Series first edition 1:2,500 map shows a gate on Ford Lane at [SU74286325](#) (it was still present on the third edition sheet in 1911).

J.9. **Conclusion:** The OS boundary sketch and remark books note the existence of Jouldings Ford, and provides some evidence of the status of the route between C and D as a 'road' which was sufficiently significant to mark the mediæval line of the parish boundary between Bramshill and Odiham (detached).

J.10. **Points:**

Part	Points
A to B	0
B to D	2

124 See Ordnance Survey list of abbreviations: maps.nls.uk/os/abbrev/.

K. Ordnance Survey County Series six inch first edition map

K.1. **Date:** 1871

K.2. **Source:** Hampshire Record Office

Ordnance Survey County Series six inch first edition map¹²⁵



Illustration Ixiii

K.3. **Background:** The Ordnance Survey County Series mapping was surveyed and published in the later second half of the nineteenth century. In lowland England, mapping was surveyed at the scale of 1:2,500, and smaller scale mapping at 1:10,560 was prepared from that survey.

K.4. **Description:** original scale: 1:10,560; orientation: unchanged (top is north). This is a composite presentation of extracts of adjacent sheets Hampshire & Isle of Wight sheet V and Berkshire sheet XLVI. The 1:2,500 scale map, from which this map is derived, can be seen at OMA SOC/DOC p.10.

¹²⁵ Hampshire & Isle of Wight sheet V and Berkshire sheet XLVI

K.5. The order way is shown between A and D. A footbridge is marked on the west side of Jouldings Ford.

K.6. **Analysis:** It is apparent that the footbridge at the ford necessarily was lengthy (it measures around 50m on the Ordnance Survey County Series first edition 1:2,500 map) and lay across a county boundary. Footbridges are commonplace at fords, provided to enable pedestrians to cross dry-shod where equestrians and horse-drawn vehicles might use the ford. On the first edition 1:2,500 map, footbridges can be found (downstream of Jouldings Ford) at Thatcher's Ford (still present today), and at Great Ford (now replaced by a road bridge).

K.7. The applicant understands that the footbridges at Thatcher's and Great Ford were provided by the Cope family of Bramshill, presumably as a concession to, particularly, the poor, who would be more likely to make journeys across the fords on foot. The applicant further understands that the highway authority did not accept liability for repair until well into the twentieth century.

K.8. It may well be that the footbridge at Jouldings Ford was provided on a similar concession. The most likely explanation for its disappearance, apparently by the end of the nineteenth century (it does not appear on the *Ordnance Survey County Series twenty-five inch second edition* at item VI.L below published around the turn of the century), is that the Cope family declined to pay for its repair or replacement, and the highway authorities refused to take over responsibility. But no records have been found relating to the foot-bridge.

K.9. **Objectors:** TW/1, SO, para.106: The placing of the road name label simply reflects the availability of a straight stretch of road with space for the label. There is no reason why the road name would not apply to the whole road, at least as far as the ford, and there is ample evidence, not least from the *Ordnance Survey object name book* (item VI.O below), that it does.

K.10. **Conclusion:** The Ordnance Survey County Series first edition six-inch map records the existence of the road as a physical feature between A and D, and the existence of a footbridge at Jouldings Ford, at the date of the survey in 1871–2.

K.11. **Points:**

Part	Points
A to B	0
B to D	0

KA. Farley Court diversion order

KA.1. **Date:** 1881

KA.2. **Source:** Berkshire Record Office¹²⁶

Farley Court justices' plan

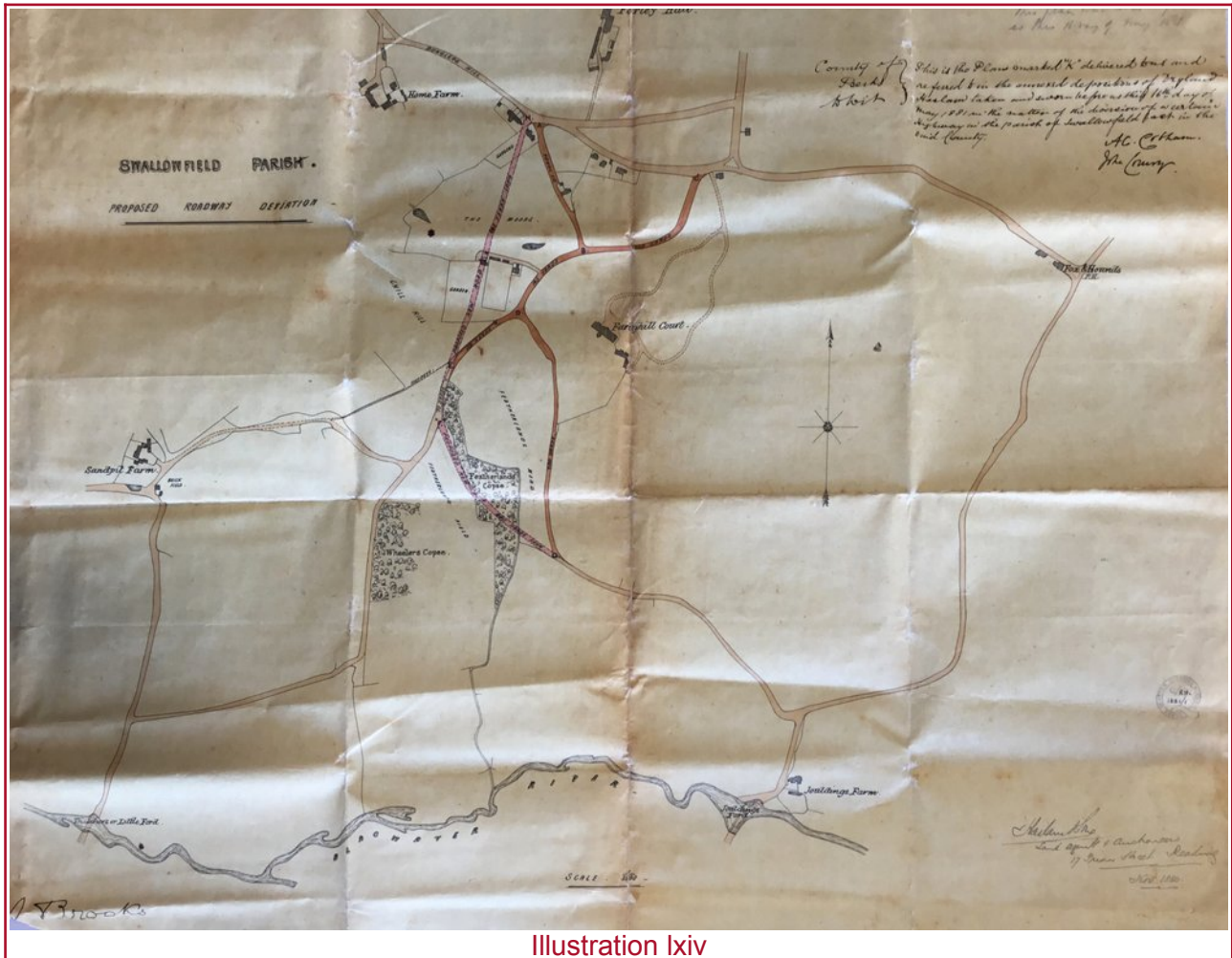
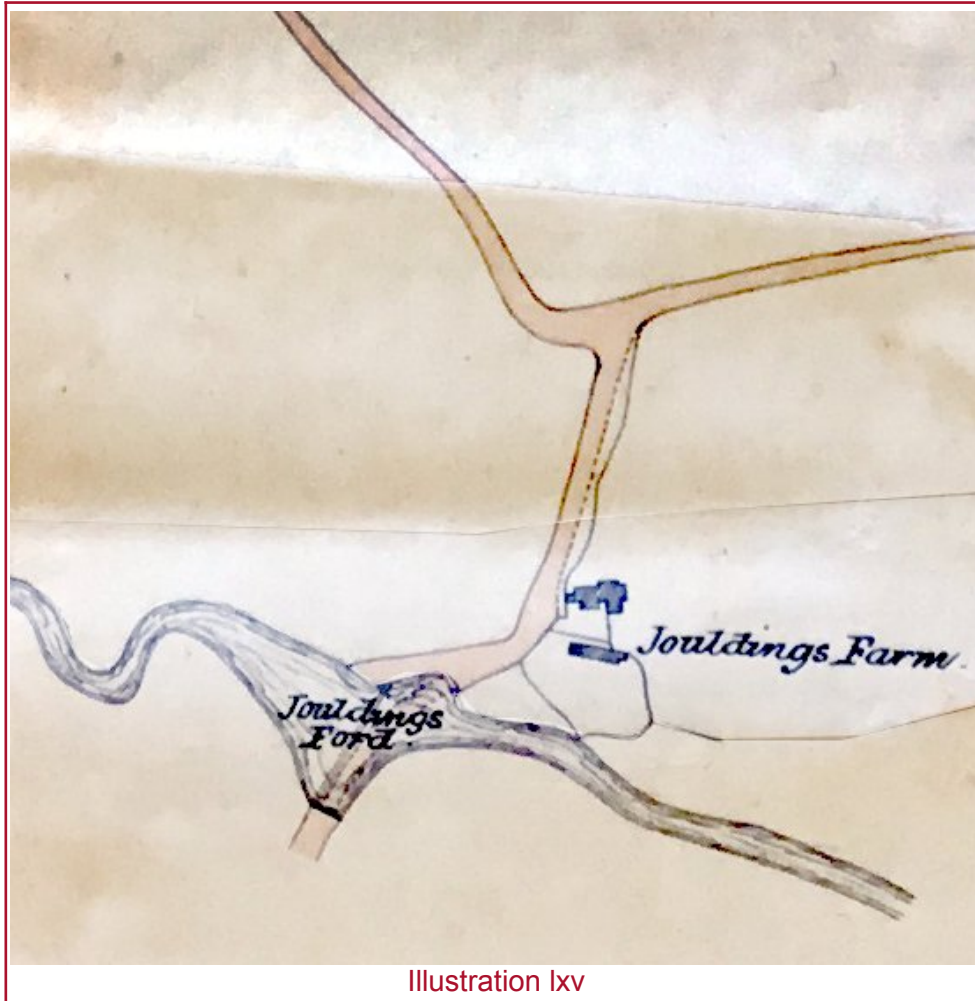


Illustration Ixiv

Farley Court justices' plan: enlargement



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

KA.4. The owner of Farley Court applied to the magistrates for the diversion of Sandpit Lane and BOAT 33 out of the vicinity of Farley Court. The order was granted in 1881, and reproduced here are the magistrates' plan of the completion of the new works to accompany the certificate of completion. The effect was to relocate both roads to a more westerly alignment.

KA.5. The plan includes Jouldings Lane leading to Jouldings Ford, which is coloured sienna, and shown on a marked alignment through the ford and emerging briefly on the south side.

KA.6. **Conclusion:** The plan is consistent with the status of the order way as a public road in continuation of BOAT 33, and continuing south through Jouldings Ford south towards D.

Part	Points
A to B	0
B to D	0

L. Ordnance Survey County Series twenty-five inch second edition

L.1. **Date:** 1896 (sheet Hampshire, VI/9) and 1899 (sheet Hampshire, V/12)

L.2. **Source:** Hampshire Record Office

■ Ordnance Survey County Series 25 inch second edition map¹²⁷



L.3. **Description:** original scale: 1:2,500; orientation: unchanged (top is north). This is a composite presentation of extracts of adjacent sheets Hampshire VI/9 and V/12.

L.4. The order way is shown between A and D. The footbridge, identified on the *Ordnance Survey County Series six inch first edition map* (item VI.K above), is no longer present. There is evidence for a gate slightly south of the ford at X, but none is present at Y or elsewhere.

L.5. **Objectors:** TW/1, SO, para.111: The applicant acknowledges that the first two editions of the Ordnance Survey County Series large scale maps show the presence of a gate across the order way at X, but not at Y. No third gate is shown on the 1896–99 map: the line across the order way about one-third of the distance between X and Y is used to

¹²⁷ Hampshire VI/9 and V/12. See OMA SOC/DOC p.11.

identify the label for the area of the small part of the wood (parcel no.23) on the west side of the order way which appears on sheet Berkshire XLVI/9.

L.6. **Conclusion:** The Ordnance Survey twenty-five inch second edition map records the existence of the road as a physical feature between A and D, at the date of the survey.

L.7. **Points:**

Part	Points
<i>A to B</i>	0
<i>B to D</i>	0

LA. Bartholomew's map

LA.1. **Date:** 1904 and 1920

LA.2. **Source:** National Library of Scotland¹²⁸

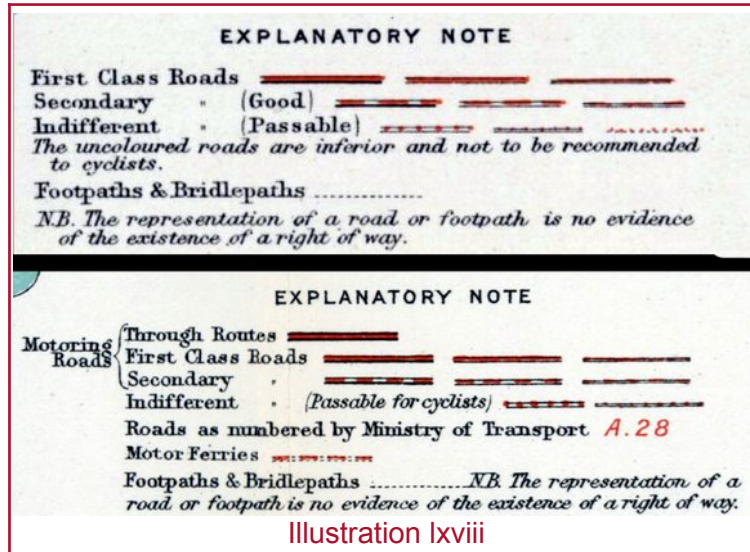
Bartholomew's maps: 1904 and 1920



Illustration Ixvii

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

Bartholomew's maps: keys



LA.3. **Description:** Original scale: half inch to one mile (1:126,720); orientation: unchanged (north is top).

LA.4. Both editions of Bartholomew's half-inch maps dating from the early twentieth century show the order way as inferior roads not recommended for cyclists.

LA.5. **Conclusion:** The order way continued to be depicted as roads, apparently available to motor vehicles, albeit not recommended for cycling.

LA.6. Paragraph 12.41 of the consistency guidelines¹²⁹ 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.

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.

LA.7. **Points:**

Part	Points
A to B	1
B to D	1

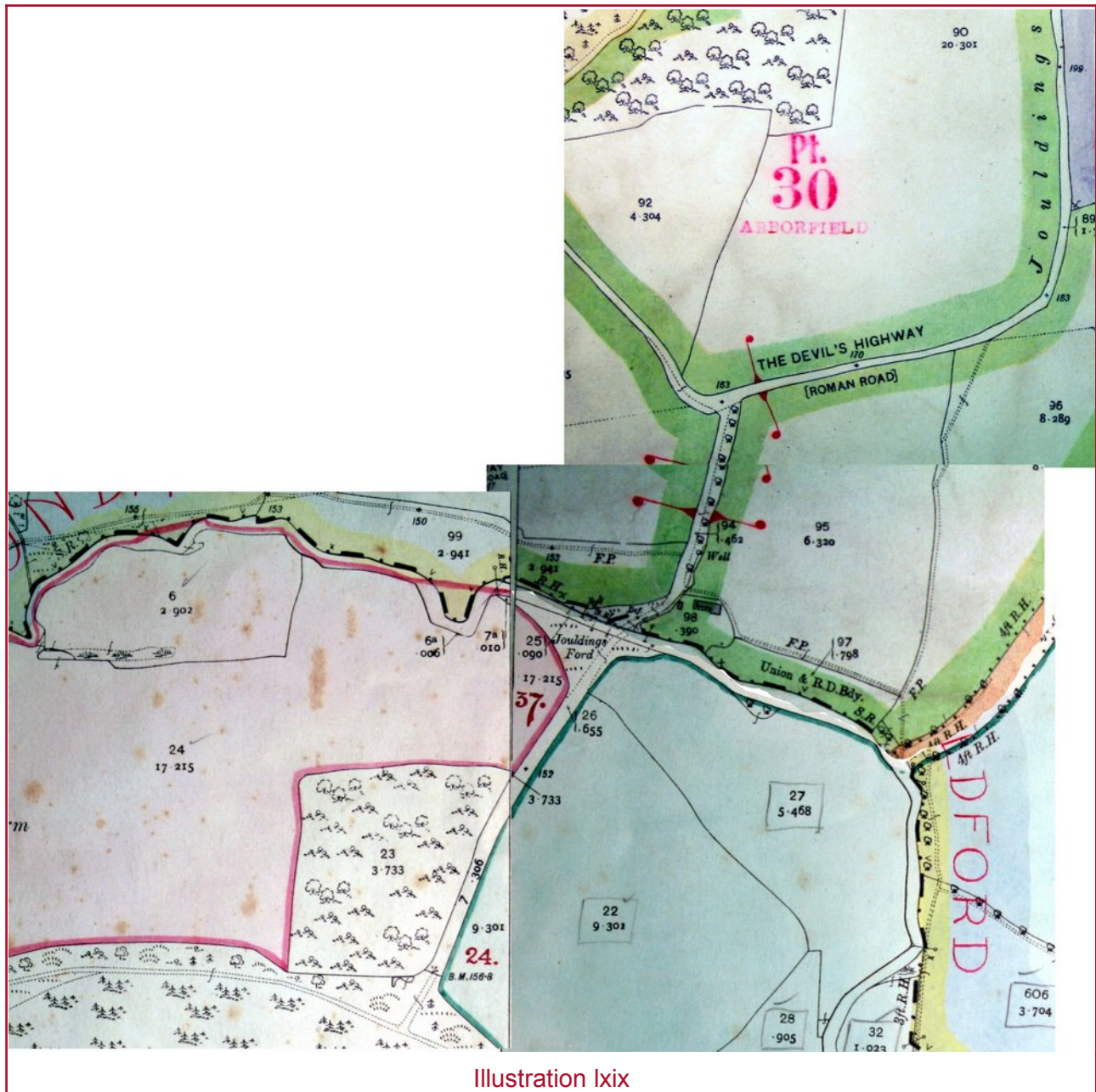
129 Planning Inspectorate: September 2015: www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines.

M. Finance (1909–10) Act 1910

M.1. **Date:** c.1910

M.2. **Source:** National Archives¹³⁰

Finance Act map (order way) (annotated)



130 IR 126/7/304+315, IR 125/4/23+28, IR 58/5143

Finance Act map (Ford Lane) (annotated)

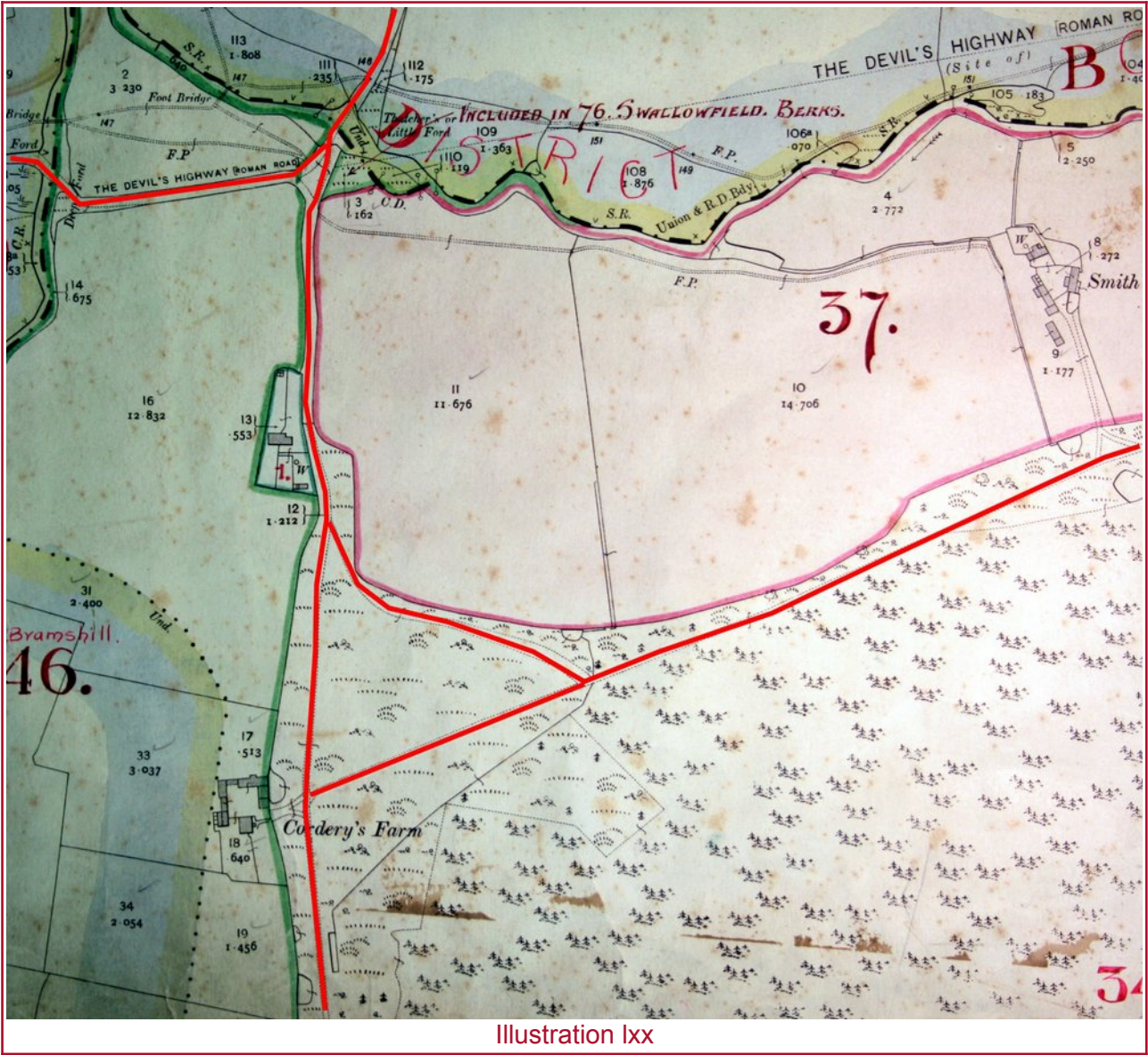


Illustration Ixx

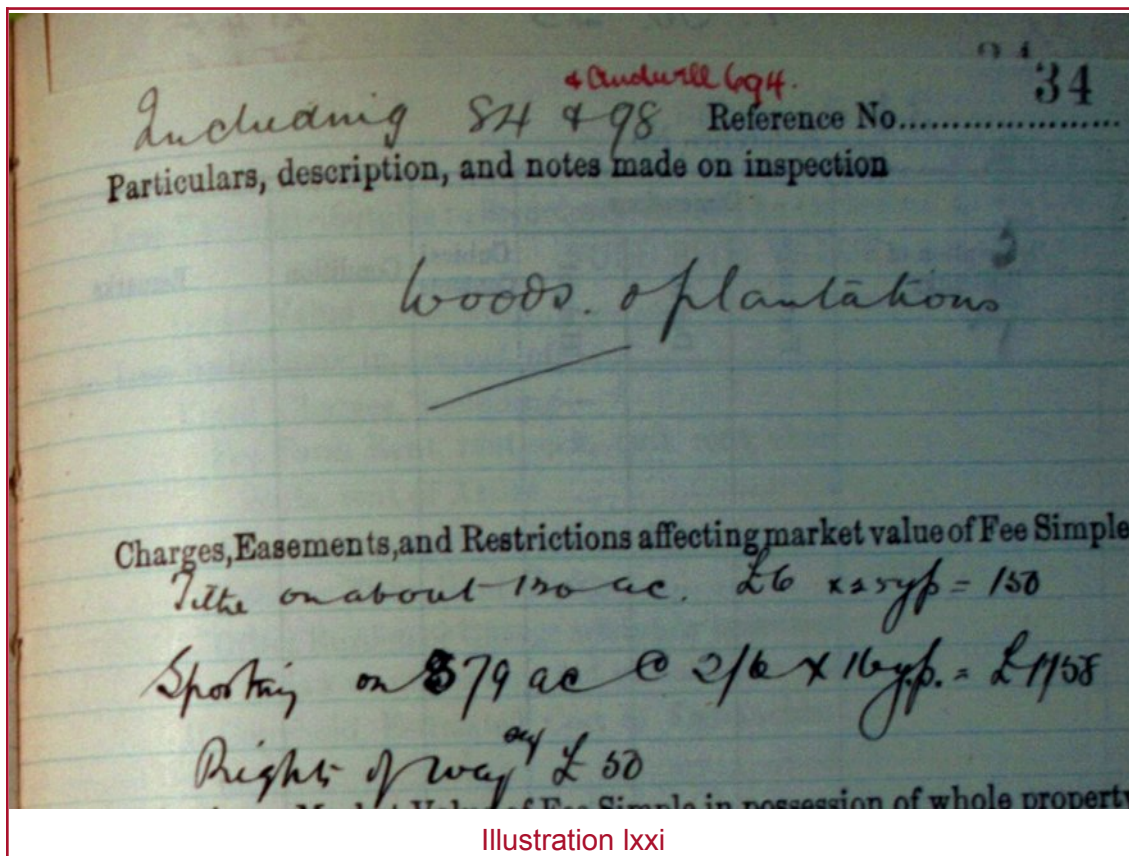


Illustration Ixxi

M.3. **Description:** original scale: 1:2,500; orientation: unchanged (top is north). The extract shown in Illustration Ixxi above is a composite of three map sheets for the valuation districts north and south of the county boundary.

M.4. The order way north of Jouldings Ford between A and B is excluded from assessment. Jouldings Ford between B and C, and the order way south of Jouldings Ford to D, are shown as part of hereditament 34, as are Ford Lane and Well House Lane (both nearby public roads). Hereditament 34 is assessed bundled with hereditaments 84 and 98, extending to '1,000 acres', including Bramshill Common and other woodland part of the Bramshill estate.¹³¹ The valuation book for hereditament 34 shows a deduction of £50 for rights of way (for which no further detail is given).

M.5. **Analysis:** The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to enable taxation of land. 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 hereditaments 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.

¹³¹ A list of Ordnance Survey parcel numbers included in these hereditaments is given on the second page of the field book entry for hereditament 34, including, for example, Alder Wood and Nethercliffs Copse (sheet Hampshire XI/4). These total to 880 acres.

M.6. 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...¹³²

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

M.8. **Objectors:** TW/1, SO, paras.36–40: Little is known about the local instructions under which valuers worked, and the practices adopted, in valuing land under the 1910 Act. There is much apparent inconsistency between the practices of different valuers and different valuation districts. Perhaps, given the scale of the task — a valuation of every property in the United Kingdom — this should not be surprising.

M.9. Jouldings Lane, extending north from B, is described by the objectors (TW/1, SO, para.38) as:

...demarcated out by broken brace marks. These do not appear on the application route south of the River, even where the application route is enclosed.

The purpose of the brace marks is to brace together the parcels of the same hereditament on either side of Jouldings Lane. The brace itself tells us nothing about the status of the intervening excluded land. No brace marks are applied south of B, because the order way is not excluded.

M.10. The objectors state (TW, SOO/2, para.12) that:

...it was not the main purpose of the [Finance (1909–1910) Act 1910] legislation to record public ways.

We agree. 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.¹³³ However, as shown in para.M.5 above, public vehicular highways usually were excluded from hereditaments, and that is the case with the order way between A and B.

M.11. The question is what other circumstances might explain the exclusion of A–B? Those usually cited are:

- the way is a private road in multiple ownership (typically, because the road gives access to several different parcels of land in separate ownerships);
- the way is a private carriage road awarded under an inclosure award (in practice, these first two are similar in character).

M.12. Neither is likely or even suggested here. The way A–B is a continuation of an acknowledged public road, Jouldings Lane. Not only is no private right registered in the Land Registry over A–B, nor any asserted, but none is claimed over the remainder of the

¹³² Discounts for easements affecting the land were separately requested and recorded in the valuation book.

¹³³ 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.

order way. We know that A–B was not set out in an inclosure award as a private carriage road.

M.13. The only remaining explanation is that A–B was excluded by the valuer because it was identified as part of the public highway, Jouldings Lane.

M.14. Hereditament 34 (bundled with hereditaments 84 and 98) includes Bramshill Common, but also Ordnance Survey parcel 23 (as identified in Illustration Ixix above immediately west of the order way at D), together with the order way itself extending as far as Jouldings Ford, including the splay on the south side of the ford.

M.15. No firm conclusions can be drawn from the bundling of these separate elements into a single hereditament. Bramshill Common, being used for forestry and rough grazing, was of low value: the extent is recorded in the valuation book as a very round 1,000 acres, with a gross value of £14,440, or £14.40/acre. Almost all of this value is attributable to timber and sporting rights.

M.16. It appears that the valuer, cognisant of the extensive but low value nature of the hereditament, did not distinguish the woodland from the public roads across the common, nor from Ordnance Survey parcel 23 (which is enclosed from the common). There was no need, and the exclusion of the public roads would have made little or no difference to the overall calculation.

M.17. A number of ways, known to be highways, are all shown in the extract at Illustration Ixx as falling within hereditaments. (In Illustration Ixx to Illustration Ixxiii, a red colouring has been added to the public roads for ease of identification.) The order way, together with Ford Lane, Well House Lane, and the spur road connecting these last two (to the northeast of Cordery's Farm), are all included in hereditament 34. Ford Lane is included within hereditament 34 as far north as Thatcher's Ford on the county boundary. The Devil's Highway, a public road projecting west from Thatcher's Ford, appears to be included in the adjacent hereditament. The road to Well House Farm is included in hereditament 34. All of these roads, with the exception of the order way, are shown in the Hartley Wintney Rural District Council 1929 handover map¹³⁴ as publicly maintainable roads — but they are not excluded from the hereditaments.

M.18. The practice of not excluding public roads across common land is idiosyncratic, but it is a practice which was adopted by some other valuers, particularly in relation to areas of low-value common land. The applicant researched two commons drawn at random in Cornwall (for which the relevant maps are available to the applicant), at Minions and Goonhilly Downs, and found the same practice adopted: see the extracts below (again, with red added to identify public roads).

134 TW/1, SO, App.6.

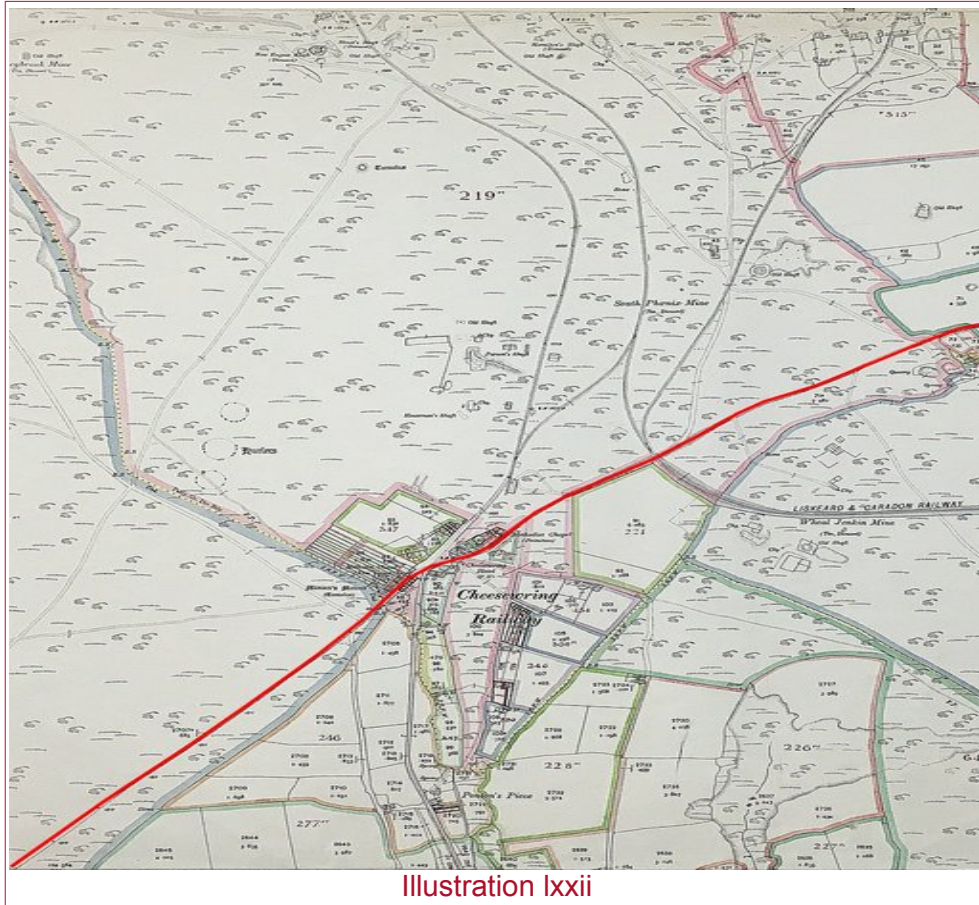
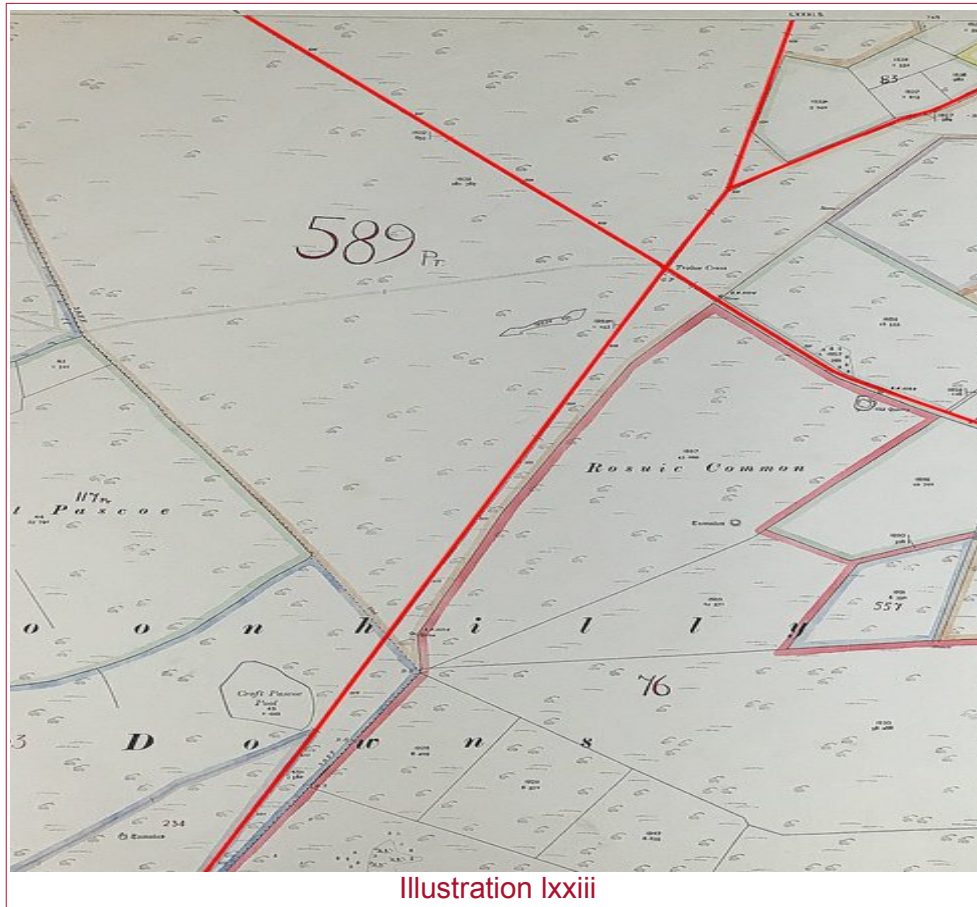


Illustration lxxii

Finance Act map (Goonhilly Downs, Cornwall, 81/9) (annotated)¹³⁶



M.19. It therefore is submitted that no inferences can be drawn about the status of the order way based on the 1910 Act records.

M.20. **Conclusion:** The Finance Act maps show Jouldings Lane as excluded from hereditaments between A and B, and are good evidence for carriageway status of the route north of the Blackwater River.

M.21. The inclusion of the route between B and D as part of a single large hereditament reflects the open and unenclosed nature of Bramshill Common, across which public roads are unfenced, and therefore nothing can be inferred about the order way's status: Ford Lane and Well House Lane are included within the same hereditament. The deduction in respect of hereditament 34 for rights of way is inconclusive: there were likely to be many rights of way across Bramshill Common.

M.22. **Points:**

Part	Points
A to B	5
B to D	0

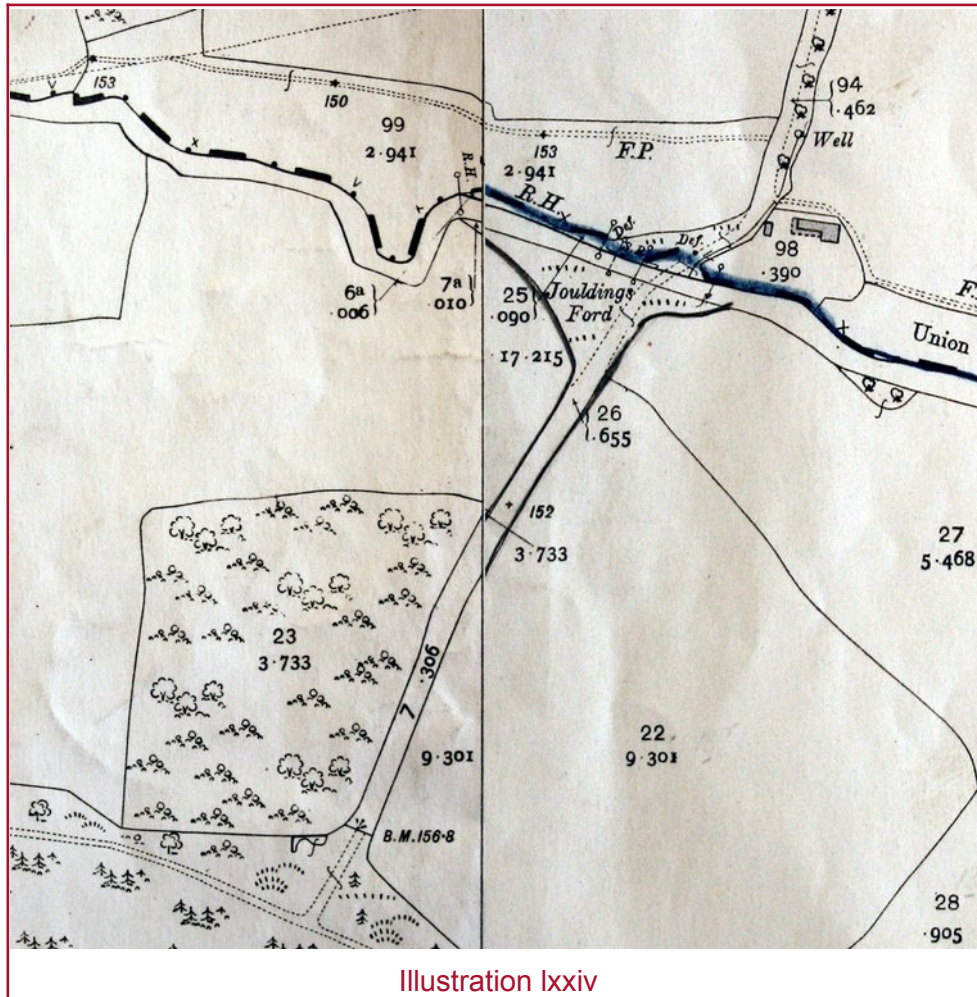
¹³⁶ IR 128/5/977

N. Ordnance Survey County Series twenty-five inch third edition

N.1. **Date:** 1911

N.2. **Source:** Hampshire Record Office

■ Ordnance Survey County Series 25 inch third edition map¹³⁷



N.3. **Description:** original scale: 1:2,500; orientation: unchanged (top is north). This is a composite presentation of extracts of adjacent sheets Hampshire VI/9 and V/12.

N.4. The order way is shown between A and D. A possible gate is shown at Y (but not otherwise).

N.5. **Conclusion:** The Ordnance Survey County Series twenty-five inch third edition map records the existence of the road as a physical feature between A and D, at the date of the survey.

137 Sheets Hampshire VI/9 and V/12

N.6. Points:

Part	Points
A to B	0
B to D	0

O. Ordnance Survey object name book

O.1. **Date:** Revised 1930

O.2. **Source:** National Archives¹³⁸

OS name book Finchampstead and Swallowfield Parishes: Jouldings Lane

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Jouldings Lane	Jouldings Lane	As above See Form 230 attached See O.S. 1/2500 of XLVI-9	XVI	9	1/4	the Fox & Hounds "P.H." (New Name) Applies to a parish road leading southward from the Fox & Hounds "P.H." to Jouldings Lane See old N.P. of Swallowfield Parish, p. 111.

Illustration lxxv

OS name book Finchampstead and Swallowfield Parishes: Jouldings Ford

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Jouldings Ford	Jouldings Ford	As above See Form 230 attached See O.S. 1/2500 of XLVI-9	XVI	9	1/4	Applies to a ford on the Blackwater River, close to Jouldings Lane. See old N.P. of Swallowfield Parish, p. 111.

Illustration lxxvi

138 OS 35/311, OS 35/2786. Contextual copies can be seen at TW/1, SO, app.1.

OS name book Bramshill Parish: Jouldings Ford

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
(Previously described) See Page 3	Jouldings Ford	Sir Antony Cope Bramshill v. House. See Statement affd. p. 21 22 23 24	9	4		A Ford in Blackwater River situate 17 chains N.W. of Well House Farm

Illustration Ixxvii

O.3. **Description:** The Ordnance Survey name books are a record of the names assigned to features appearing on contemporary Ordnance Survey County Series large scale maps. The book gives the authority for the name — typically, the lord of the manor, local professional, priest or teacher. These books date from the end of the nineteenth century or beginning of the twentieth, but were updated as late as 1930.

O.4. The OS name books for Finchampstead and Swallowfield Parishes include an entry for Jouldings Lane recorded as:

Applies to a parish road leading southward from the Fox & Hounds P.H. to Jouldings Farm^{Ford¹³⁹}

See old N.B. of Swallowfield Parish P. 41[?]

O.5. An entry is also present for Jouldings Ford recorded as:

Applies to a ford on the Blackwater River, close to Jouldings Farm

See old N.B. of Swallowfield Parish P. 41[?]

O.6. The OS name books for Bramshill Parish include an entry for Jouldings Ford recorded as:

A ford in Blackwater River situate 17 chains N.W. of Well House Farm.

O.7. **Analysis:** The entry for Jouldings Lane as a 'parish road' in the object name book for Swallowfield parish has been altered to show the lane leading to Jouldings Ford vice Jouldings Farm. It is not clear when the alteration was made: the alteration is made in a blue pen, whereas the alterations of 1930 were made in a green pen.¹⁴⁰

O.8. **Objectors:** It is alleged (TW/1, SO, paras.15–16) that the alteration is evidence that the parish road formerly led only to Jouldings Farm. This is unlikely, because such an allegation posits the extension and adoption, through some formal process, of Jouldings Lane (an acknowledged 'parish road'), to project beyond Jouldings Farm to Jouldings Ford. Either the ford, and the order way beyond, is a public road, or there would be no explanation for the adoption of the order way between A and B in isolation as a public road.

¹³⁹ 'Farm' is crossed out and 'Ford' substituted.

¹⁴⁰ The Objectors state (TW/1, SO, para.15) that the amendment is made in green ink, and therefore in 1930. It is submitted that the identification of colour is wrong. It also may be noted that the top of the page (see TW/1, SO, app.1, p.3) is marked in green, 'No changes on this page 24.9.30'.

O.9. It is submitted that the alteration in the entry (whenever made) is merely the correction of an obvious mistake in the original entry, noting that Jouldings Farm and Jouldings Ford are adjacent. It is suggested that it was noted (whether at the time of the original survey, or later) that the original entry in the object name book referred to the lane leading to a private farm, and not to the ford slightly beyond Jouldings Farm, and it was corrected to make explicit that the lane led to the ford. There was no change ‘on the ground’.

O.10. It is acknowledged (TW/1, SO, para.17) that there is no evidence from the object name book that the order way south of Jouldings Ford is named Jouldings Lane. However, it is incorrect to suggest that, ‘the OS Name Book does not describe [the order way] at any point as continuing south of the River.’ The position is that the OS name book does not attribute a name to that part of the order way. If, as the objectors assert, ‘Jouldings Lane is the public road to the north of the application route in Berkshire’,¹⁴¹ and the name does not apply to that part of the order way south of C, then one would not expect the OS name book for Bramshill parish to refer to that part of the order way at all, because there would be no name to be recorded or attested.

O.11. The object name book does not identify the status of Jouldings Ford, only its location. It does not describe the ford as private, or as public: there is no reason why it should, as the primary purpose of the object name book is to authenticate the name of the feature, not its purpose. But the ford is named, and a named ford is more likely than not to be a public place: all those fords named on the Ordnance Survey County Series first edition map along the Blackwater River upstream between Farnborough and Jouldings Ford (only nearby Thatcher’s Ford lies downstream) are today navigated by public roads. However, the applicant acknowledges that the entry for Jouldings Ford is neutral — it tells us nothing about the status of the ford, other than that it was named.

O.12. The entries in the Swallowfield object name book confirm that Jouldings Lane, a public road, led to the ford, which was also the county boundary. They do not confirm that the road continued south of the ford — but the continuation was irrelevant to the entry in the object name book for the parish north of the county boundary. The entries do not provide any evidence that the road did not continue south of the ford.

O.13. The objectors refer to entries for Bramshill Common in the Heckfield and Bramshill object name books (TW/1, SO, paras.22–32). The applicant submits that these are of no relevance to determining the existence of public rights over the order way.

O.14. The inquiry made by the Ordnance Survey in 1910 was to establish whether rights of common were exercisable over Bramshill common, in order to clarify whether the land was common, woodland or forest, and should be correctly described.¹⁴² The valuer who initiated the correspondence presumably was not well informed about agricultural commoning, and a slightly unfocused question sparked a wider-ranging response than was anticipated. The correspondence reveals some uncertainty about what rights exist, with assertions of previous inclosure (although no records exist of inclosure by Act of Parliament). The purpose of the inquiry was not to establish what public rights of way existed across Bramshill Common, which was of no interest to the Ordnance Survey (the objectors note at TW/1, SO, para.103 that Ordnance Survey maps disclaim any existence of a public right of way). Nevertheless, as some information as to such rights was given in the correspondence, it was noted in the relevant entry in the object name book.

141 TW/1, SO, para.4.

142 *i.e.* as ‘Bramshill Common’ or ‘Bramshill Forest’.

O.15. The evidence suggests that public roads have long existed along, but inside, the perimeters of the common, including Well House Lane, Ford Lane and Bramshill Road — see the Ordnance Survey One-Inch Revised New Series 1896/1895 map where these roads are shown as unfenced to the common.¹⁴³ The reference to ‘rights only on the public paths’ and ‘the right of way on footpaths’ ignores these public roads. It is not credible that this statement, made in the context of superficial correspondence about the existence of rights of common, was intended to deny the existence of public roads across the common — and even if it was, dated 1910, a denial could have had no impact whatsoever.

O.16. The objectors suggest that the description of a ‘parish road’ in the Finchampstead and Swallowfield Parishes name book could refer to a bridle road (TW, SOO/2, para.13). We cannot exclude the possibility. But it is not a usage which we have encountered, and we note that the objectors also cite no precedent. We think that the possibility is therefore unlikely.

O.17. **Conclusion:** References in the OS name books to a ‘parish road’ are good evidence for a public road from A to and including Jouldings Ford at C.

O.18. Nothing can be inferred from the OS name books about the status of the order way south of Jouldings Ford, because this part of the order way had no name.

O.19. Nothing relevant can be inferred from correspondence about the entries for Bramshill Common in the Heckfield and Bramshill object name books.

O.20. **Points:**

Part	Points
<i>A to B</i>	4
<i>B to D</i>	0

¹⁴³ maps.nls.uk/view/101168684

P. Ordnance Survey one-inch New Popular Edition

P.1. Date: 1945

P.2. Source: www.visionofbritain.org.uk¹⁴⁴

Ordnance Survey one-inch New Popular edition map¹⁴⁵

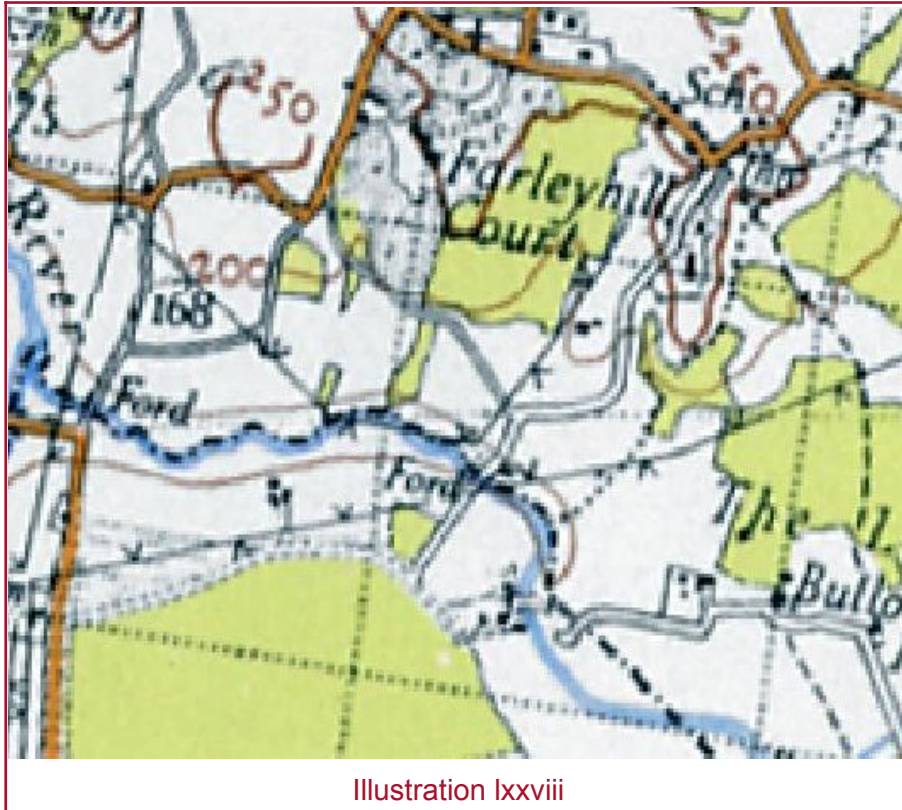


Illustration lxxviii

Ordnance Survey one-inch New Popular edition map: key

Roads	Ministry of Transport, Class 1	A.38
	" " " " 2	B.3210
	14 feet of Metalling and over (not classified by M. of T.)	TOLL
	Under 14 f ^t of Metalling, Good	Gate
	" " " " Bad	" " "
Minor Roads in towns, Drives and Unmetalled Roads.		
(Unfenced Roads are shown by pecked lines)		
Footpaths & Bridle Paths		
Steep Gradients, over 1 in 7	over 1 in 5	

Illustration lxxix

144 © Great Britain Historical GIS Project (2004) 'Great Britain Historical GIS'. University of Portsmouth.

145 See OMA SOC/DOC p.14.

P.3. **Description:** The order way is shown as a road from A to D, consistent with depiction of the road as a whole, with under 14ft of metalling, but in 'bad' condition.

P.4. **Conclusion:** The Ordnance Survey one-inch New Popular edition map is evidence for the existence of the order way as a road at the date of the map. The map makes no distinction between the road north of A, and the order way itself.

P.5. **Points:**

Part	Points
A to B	1
B to D	1

PA. Swallowfield parish council

PA.1. **Date:** 1931 and 1948

PA.2. **Source:** Berkshire Record Office¹⁴⁶

Swallowfield parish council minutes, 28 August 1931

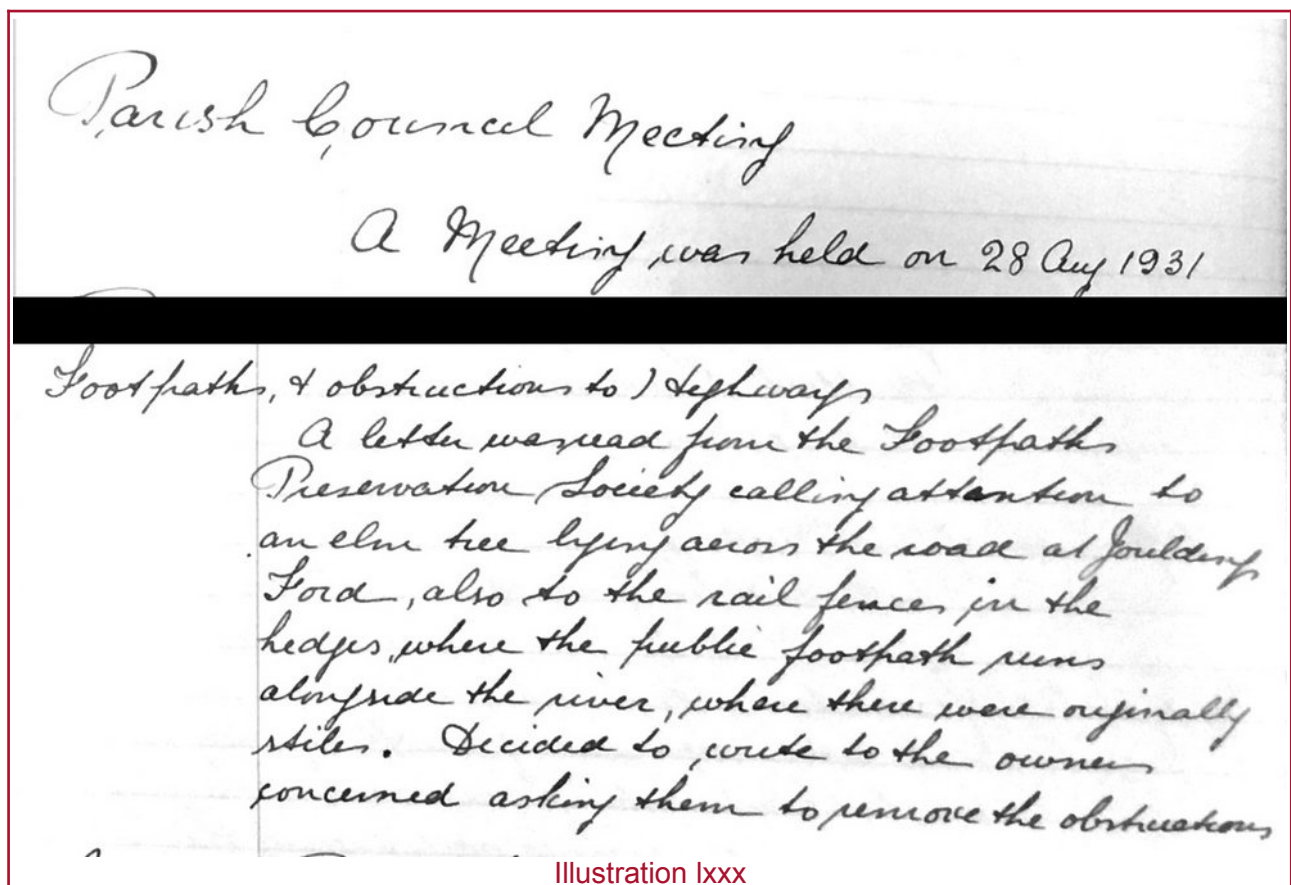


Illustration lxxx

146 CPC129/1/2

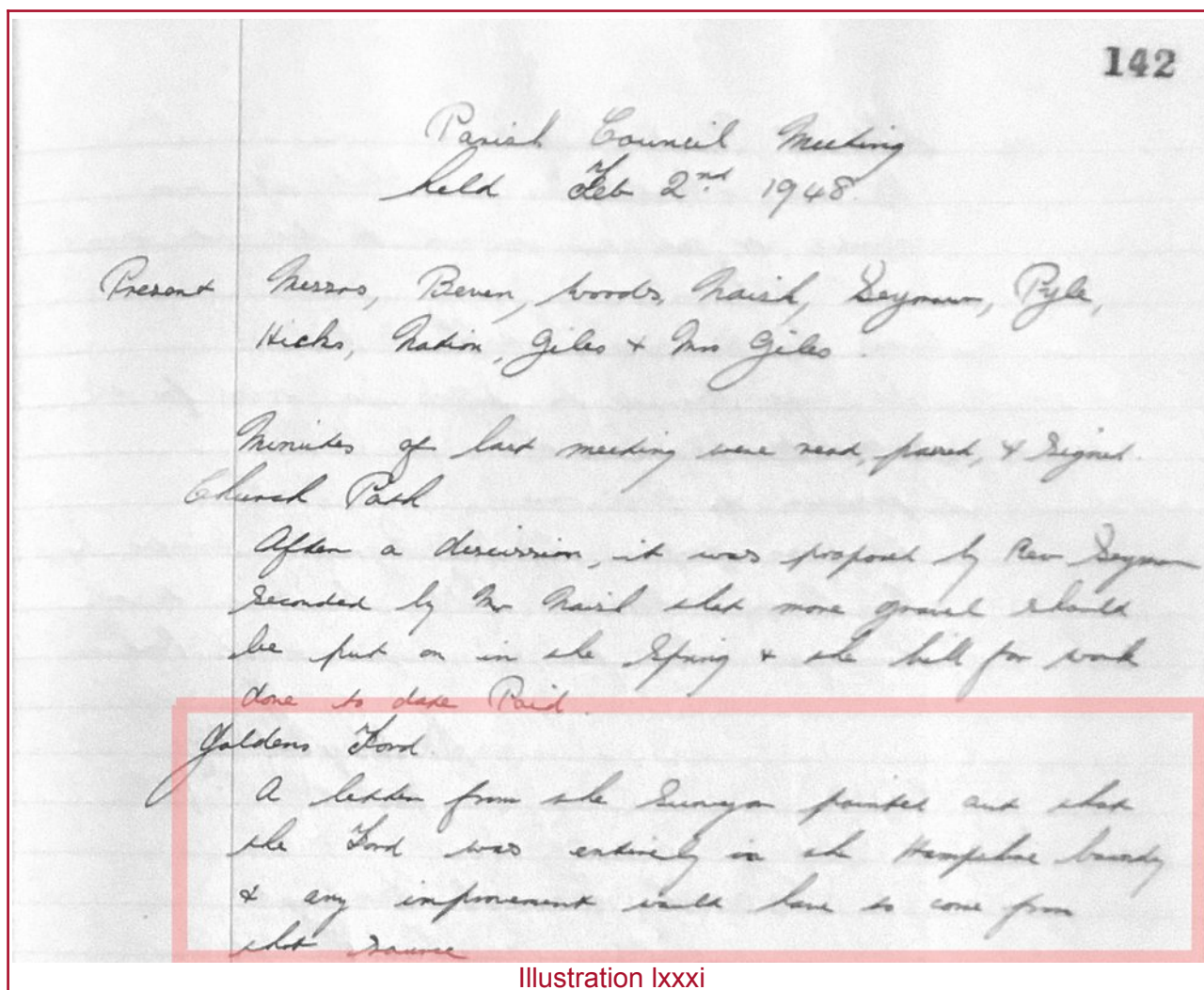


Illustration lxxxii

PA.3. **Description:** Minutes of Swallowfield parish council.

PA.4. At a meeting on 28 August 1931, the minutes of the parish council record:

Footpaths, & obstructions to Highways

A letter was read from the Footpaths Preservation Society calling attention to an elm tree lying across the road at Jouldings Ford, also to the rail fences in the hedges, where the public footpath runs alongside the river, where there were originally stiles. Decided to write to the owners concerned asking them to remove the obstructions.

PA.5. At a meeting on 2 February 1948, the minutes record:

Jouldings Ford

A letter from the Surveyor pointed out that the ford was entirely in the Hampshire boundary and any improvement would have to come from that source.

PA.6. The first meeting minutes, from 1931, suggest that the Footpaths Preservation Society, and the parish council, considered the ford to be a public way — else there was no reason to seek to remove the fallen tree from the vicinity of the ford. If the tree was (originally) rooted in neighbouring land, it was correctly the responsibility of the occupier of that land to remove it.

PA.7. The second meeting minutes, from 1948, suggest that the parish council had sought the surveyor to Berkshire county council to make improvements to Jouldings Ford, presumably to render it negotiable by vehicles. There is no further mention of the correspondence in minutes, and presumably the parish council considered it was outside its own responsibilities to pursue improvements to a ford which lay entirely in the area of a neighbouring parish. Nonetheless, the correspondence does suggest that the parish council considered the ford to be part of a public way, but one which could benefit from ‘improvements’.

PA.8. **Conclusion:** These brief references in parish minutes confirm the contemporary understanding of the parish council that Jouldings Ford was part of a public way.

PA.9. **Points:**

Part	Points
<i>A to B</i>	1
<i>B to D</i>	1

Q. Bramshill Estate Sale

Q.1. **Date:** 1952

Q.2. **Source:** Hampshire Record Office¹⁴⁷

147 32M71/E14

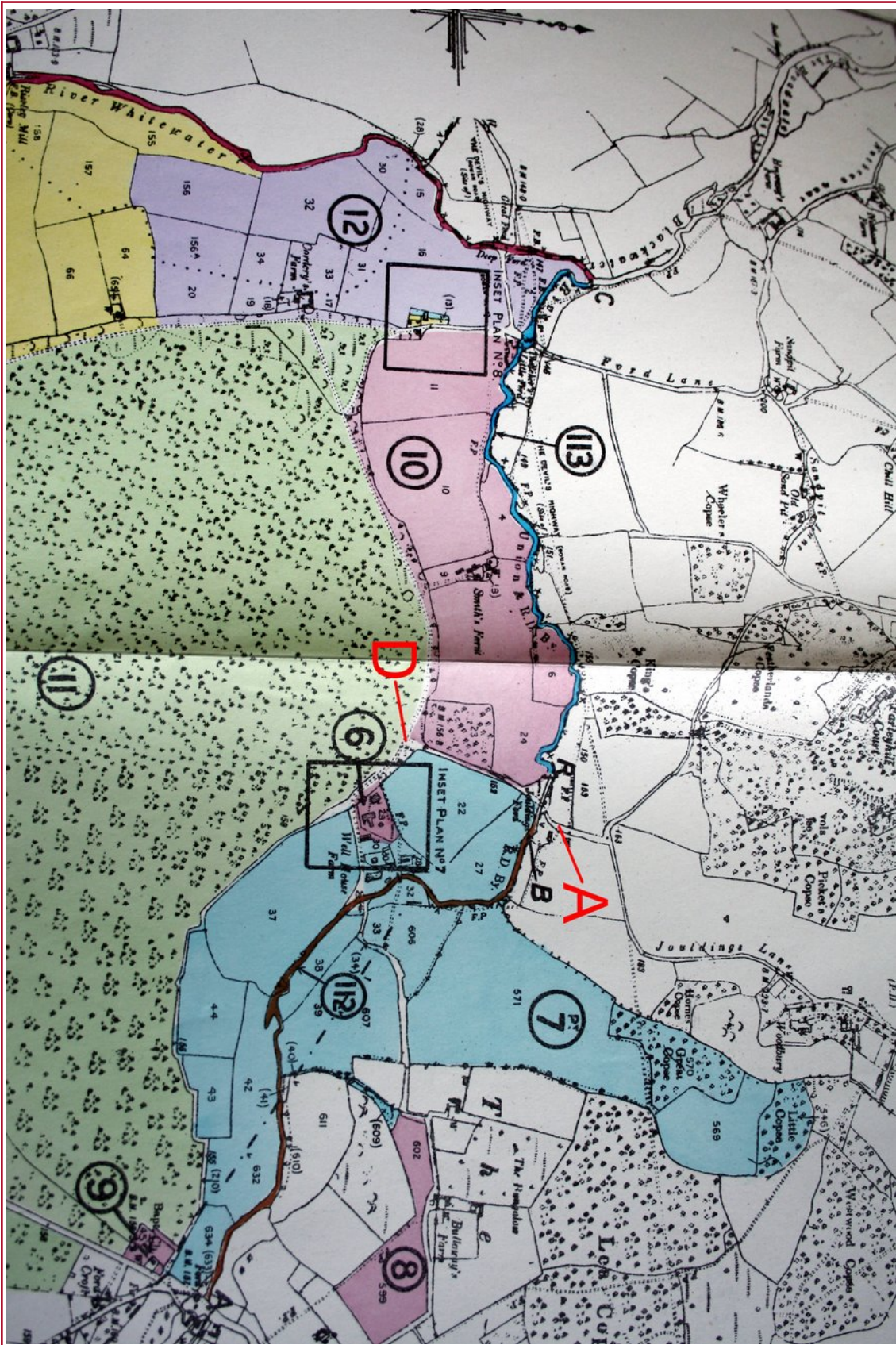


Illustration lxxxii

148 See OMA SOC/DOC p.15.

Bramshill estate sale plan (enlargement)

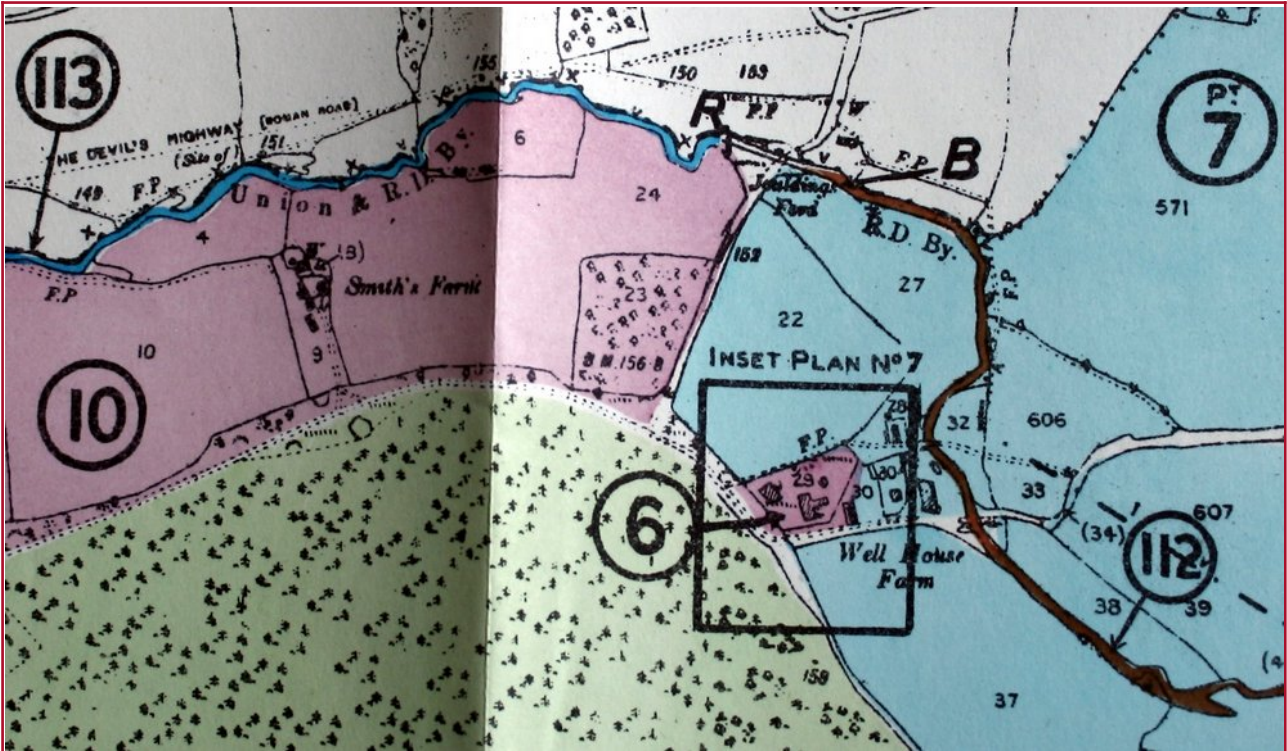


Illustration lxxxiii

Bramshill estate sale: description of lot 7

<p style="text-align: center;">LOT 7 (Coloured Blue on Plan No. 1 and partly on Inset Plan No. 8)</p> <p style="text-align: center;">The Valuable Dairy and Mixed Farm</p> <p>Situated on the North of the Estate adjoining Bramshill Common, known as</p> <p style="text-align: center;">WELL HOUSE FARM</p> <p style="text-align: center;">Extending with Good Cottage to about 124 Acres 2 Roods 13 Poles</p> <p>The Farm is intersected by the River Blackwater and has a modern brick and tiled Farmhouse, containing:—Three Bedrooms; Bathroom, W.C.; Sitting Room, with brick fireplace; Dining Room, with brick fireplace; Kitchen, with sink (h. & c.); Larder; Office; Outside W.C. Small Garden.</p> <p><i>Water</i> is pumped from the well on Lot 6 (See Stipulation No. 10). <i>Electric Light</i> from the Tenant's 100 volt plant. <i>Telephone. Drainage</i> to Septic Tank.</p> <p>Nearby on Bramshill Common is a useful semi-detached Cottage known as</p> <p style="text-align: center;">FORD COTTAGE</p> <p>built of brick, half timbered, with a tiled roof, the Cottage contains:—Three Bedrooms; Sitting Room; Kitchen and Scullery. Outside Coal Shed and E.C. There is a large Garden.</p> <p><i>Water</i> from a well shared with the adjoining Cottage (Lot 13).</p> <p style="text-align: center;">THE FARM BUILDINGS</p> <p>lie mainly to the East and North of the House, and comprise:—Workshop and Electric Light Plant House, large timber and corrugated iron Enclosed Implement Shed; Eight-bay Lean-to Implement Shed; brick and asbestos roofed Garage; brick and tiled Dairy; Meal House; Model Cow House for 14, with tubular fittings and water bowls (Tenant's electric light and milking machine).</p> <p>Round a fully enclosed concreted Yard are:—Three Calving Boxes (Tenant's); Granary; Open Yard with timber and asbestos Shelter Shed, Range of Five Piggeries with Lean-to Farrowing Boxes, Three Farrowing Boxes and Two Store Pens.</p> <p style="text-align: center;">THE FARM CARRIES AN ATTESTED MILK LICENCE</p> <p>The Land is well watered by the river and easily accessible from Parish roads.</p> <p>Included in the Farm are Great and Little Copse, containing some valuable young oak timber (at valuation) and underwood. The land is divided as to 72½ acres pasture and 35 acres arable in accordance with the following Schedule.</p>	<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th colspan="3" style="text-align: center;">SCHEDULE</th> </tr> <tr> <th style="text-align: left;">Ord. No.</th> <th style="text-align: left;">Description</th> <th style="text-align: right;">Area</th> </tr> </thead> <tbody> <tr> <td colspan="3" style="text-align: center;">Swallowfield Parish</td> </tr> <tr> <td>87b</td> <td>Trees</td> <td style="text-align: right;">.018</td> </tr> <tr> <td>87c</td> <td>Arable</td> <td style="text-align: right;">.020</td> </tr> <tr> <td>87d</td> <td>Trees</td> <td style="text-align: right;">.084</td> </tr> <tr> <td colspan="3" style="text-align: center;">Finchampsstead Parish</td> </tr> <tr> <td>546</td> <td>Little Copse</td> <td style="text-align: right;">3.768</td> </tr> <tr> <td>569</td> <td>Arable</td> <td style="text-align: right;">7.461</td> </tr> <tr> <td>570</td> <td>Great Copse</td> <td style="text-align: right;">6.080</td> </tr> <tr> <td>571</td> <td>Arable and Pasture</td> <td style="text-align: right;">25.898</td> </tr> <tr> <td>606</td> <td>Pasture</td> <td style="text-align: right;">3.704</td> </tr> <tr> <td>607</td> <td>Pasture</td> <td style="text-align: right;">6.059</td> </tr> <tr> <td>609</td> <td>Rough</td> <td style="text-align: right;">.571</td> </tr> <tr> <td>610</td> <td>Trees</td> <td style="text-align: right;">.040</td> </tr> <tr> <td>611</td> <td>Arable</td> <td style="text-align: right;">6.989</td> </tr> <tr> <td>632</td> <td>Pasture</td> <td style="text-align: right;">3.111</td> </tr> <tr> <td>633</td> <td>Pasture</td> <td style="text-align: right;">.127</td> </tr> <tr> <td>634</td> <td>Pasture</td> <td style="text-align: right;">2.464</td> </tr> <tr> <td>Pt. 631</td> <td>River</td> <td style="text-align: right;">.810</td> </tr> <tr> <td colspan="3" style="text-align: center;">Bramshill Parish</td> </tr> <tr> <td>Pt. 21</td> <td>Roadside Waste</td> <td style="text-align: right;">.460</td> </tr> <tr> <td>22</td> <td>Pasture</td> <td style="text-align: right;">9.301</td> </tr> <tr> <td>27</td> <td>Pasture</td> <td style="text-align: right;">5.462</td> </tr> <tr> <td>28</td> <td>Buildings</td> <td style="text-align: right;">.911</td> </tr> <tr> <td>Pt. 30</td> <td>Buildings, etc.</td> <td style="text-align: right;">1.354</td> </tr> <tr> <td>30a</td> <td>House and Buildings</td> <td style="text-align: right;">.363</td> </tr> <tr> <td>32</td> <td>Pasture</td> <td style="text-align: right;">1.023</td> </tr> <tr> <td>33</td> <td>Pasture</td> <td style="text-align: right;">.966</td> </tr> <tr> <td>Pt. 35</td> <td>Pasture</td> <td style="text-align: right;">.140</td> </tr> <tr> <td>37</td> <td>Pasture</td> <td style="text-align: right;">14.369</td> </tr> <tr> <td>38</td> <td>Pasture</td> <td style="text-align: right;">2.445</td> </tr> <tr> <td>39</td> <td>Pasture</td> <td style="text-align: right;">4.034</td> </tr> <tr> <td>40</td> <td>Pasture</td> <td style="text-align: right;">.619</td> </tr> <tr> <td>41</td> <td>Arable</td> <td style="text-align: right;">.115</td> </tr> <tr> <td>42</td> <td>Pasture</td> <td style="text-align: right;">6.139</td> </tr> <tr> <td>43</td> <td>Arable</td> <td style="text-align: right;">2.741</td> </tr> <tr> <td>44</td> <td>Arable</td> <td style="text-align: right;">5.319</td> </tr> <tr> <td>Pt. 13</td> <td>Cottage and Garden</td> <td style="text-align: right;">.245</td> </tr> <tr> <td>Pt. 36</td> <td>Pt. River</td> <td style="text-align: right;">1.980</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right; border-top: 1px solid black;">124.585</td> </tr> </tbody> </table> <p>The Woodland, O.S. Nos. 546 and 570, and O.S. Nos. Pt. 36 and Pt. 631, are in hand, and the remainder of this lot is let with other lands to Mr. A. D. Stoate on a yearly Michaelmas tenancy, apportioned rent £225 per annum, Landlord being responsible for the exterior of the house and buildings.</p> <p><i>NOTE.</i>—The County boundary between Hampshire and Berkshire intersects the Farm.</p> <p>The owner of this lot will, from the date of completion of the sale, be required to contribute 8s. per week, plus the cost of two gallons of petrol per week and oil to the owner of Lot 6 for a supply of water to the Farm as at present enjoyed from the well on Lot 6. (See Stipulation No. 10.)</p> <p>Apportioned Tithe Redemption Annuity, £26 15s. per annum. (See Stipulation No. 12 as to Optional Timber.) (See Stipulation No. 10 as to Reserved Fishing Rights.)</p>	SCHEDULE			Ord. No.	Description	Area	Swallowfield Parish			87b	Trees	.018	87c	Arable	.020	87d	Trees	.084	Finchampsstead Parish			546	Little Copse	3.768	569	Arable	7.461	570	Great Copse	6.080	571	Arable and Pasture	25.898	606	Pasture	3.704	607	Pasture	6.059	609	Rough	.571	610	Trees	.040	611	Arable	6.989	632	Pasture	3.111	633	Pasture	.127	634	Pasture	2.464	Pt. 631	River	.810	Bramshill Parish			Pt. 21	Roadside Waste	.460	22	Pasture	9.301	27	Pasture	5.462	28	Buildings	.911	Pt. 30	Buildings, etc.	1.354	30a	House and Buildings	.363	32	Pasture	1.023	33	Pasture	.966	Pt. 35	Pasture	.140	37	Pasture	14.369	38	Pasture	2.445	39	Pasture	4.034	40	Pasture	.619	41	Arable	.115	42	Pasture	6.139	43	Arable	2.741	44	Arable	5.319	Pt. 13	Cottage and Garden	.245	Pt. 36	Pt. River	1.980			124.585
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Illustration lxxxiv

Bramshill estate sale: description of lot 10

LOT 10
(Coloured Pink on Plan No. 1)

A Useful Small Dairy and Mixed Farm

Situated on the North of the Estate adjoining Bramshill Common, and known as

BOTTOM FARM

(Smith's Farm on Plan)
extending in all to about

59 Acres 2 Roods 35 Poles

THE FARMHOUSE is built of brick, partly timbered, with a tiled roof, and contains:—**Four Bedrooms**, one with fireplace; **Sitting Room**; **Kitchen** with Swallow range; **Small Bathroom** and Separate **W.C.** on the ground floor. **Dairy**; **Back Kitchen** with sink and copper.

Water pumped from a well. Telephone.

THE FARM BUILDINGS

comprise:—**Timber and asbestos roofed Barn**; **Tyings for 4 Cows**; **Loose Box**; **Timber, brick and thatched Barn**; **Timber and tiled Calf Box**; **Timber and corrugated iron Three-bay Implement Shed**; **Timber and tiled Cow Shed for 10** with Tenant's milking machine; **Cake House**; and a **timber and corrugated iron Granary**.

The Tenant has a retail Milk Round in Farley Hill.

The Homestead is nicely situated in the middle of the land, which is bounded on the North by the River Blackwater and lies between the River and the Parish road on the South. It is divided as to 47½ acres pasture and 3 acres arable in accordance with the following Schedule.

SCHEDULE

Ord. No.	Description	Area
Bramshill Parish		
Pt. 1	River	.010
3	Rough	.162
4	Pasture	2.772
Pt. 5	Pt. River	1.185
6	Arable	2.902
8	House and Buildings	.272
9	Buildings and Pasture	1.177
10	Pasture	14.706
11	Pasture	11.676
Pt. 21	Rough	3.700
23	Woodland	3.733
24	Pasture	17.215
Swallowfield Parish		
110	Rough	.119
Pt. 111	River	.090
		59.719

23

Included in the Farm is a small Wood containing a quantity of young oak trees (at valuation) and useful underwood, and there is also some good oak timber (at valuation) on the roadside included with this lot.

The Woodland (O.S. No. 23 and Pt. O.S. No. 21) is in hand. The remainder of this lot is let under the terms of a letter dated the 23rd August, 1946, on a yearly Michaelmas tenancy, to Mr. G. R. Butler, at £80 per annum, Tenant paying rates. The Tenant has agreed to pay an increase of rent of £20 per annum when certain repairs and improvements have been carried out.

Apportioned Tithe Redemption Annuity, £14 5s. 10d. per annum.

(See Stipulation No. 12 as to Optional Timber.)

(See Stipulation No. 10 as to Reserved Fishing Rights.)

NOTE.—Purchaser's attention is drawn to the Fishing Rights comprised in Lot 113, which would form a valuable asset to this lot.

Illustration lxxxv

Bramshill estate sale: stipulations as to [private] rights of way

EASEMENTS

10.

(a) Rights of Way

Lots 1 and 2: A Right of Way as at present enjoyed over the North drive on Lot 2 leading from Plough Lane to Bramshill House is reserved in favour of Lot 1.

Lots 1, 2, 11c and 69: A Right of Way as at present enjoyed over "Sir Richard's Ride" on Lots 11c, 69 and 2 from the Eversley road to Bramshill House is reserved in favour of Lot 1.

Lots 1, 2 and 69: A Right of Way as at present enjoyed by the drive crossing Lots 69 and 2 from Rectory Lane to Bramshill House is reserved in favour of Lot 1.

Lots 1 and 24: A Right of Way as at present enjoyed for agricultural purposes only across the entrance drive on Lot 1 for access from the North of Lot 24 to the South is reserved in favour of Lot 24.

Lots 2, 41 and 42: A Right of Way as at present enjoyed for access to Lot 42 over the drive on Lot 41 and Lot 2 Northwards over the North drive on Lot 2 to the Public Road is reserved in favour of Lot 42.

Lots 5 and 17: A Right of Way as at present enjoyed for access to Lot 5 over the track on Lot 17 is reserved in favour of Lot 5.

Lots 7 and 13: A Right of Way as at present enjoyed in favour of the Cottage in part O.S. No. 553 on Lot 7 is reserved over Lot 13. The drying ground on Lot 13 is used jointly by the Cottage on Lot 7 and by Lot 13 but has for convenience been coloured with Lot 13 on the Plan.

Lots 11b and 72: A Right of Way as at present enjoyed over the track along the Eastern and North-Eastern boundaries of Lot 11b is reserved in favour of Lot 72 for access.

Lots 14 and 17: A Right of Way as at present enjoyed for access to Lot 14 is reserved over Lot 17.

Lots 15 and 17: A Right of Way as at present enjoyed for access to Lot 15 is reserved over Lot 17.

Lots 16 and 17: A Right of Way as at present enjoyed for access to Lot 16 is reserved over Lot 17.

Lots 19 and 22: A Right of Way as at present enjoyed for access to the well in O.S. 359 on Lot 19 used by Lot 22 is reserved in favour of that lot.

Lots 30 and 31: A Right of Way as at present enjoyed for access to Lot 30 is reserved over the track Pt. O.S. No. 305 included with Lot 31.

Lots 32, 33 and 34: These lots are sold with the benefit of a common Right of Way as at present enjoyed for access to the rear along the passageway adjoining Lot 34 on the South. The path at the back of these Cottages is used in common. The path on Lot 34 between the gardens and giving access to the detached garden Part Lot 33 is used in common.

Lot 35: This Lot is sold with the benefit of a Right of Access as at present enjoyed to the well on adjoining property on the East.

Lot 36: This lot is sold with the benefit of a Right of Way for access from the Hazeley to Heckfield road over the existing track 30 feet wide over adjoining property on the East; and also with the benefit of a Right of Way to the West over the existing track on adjoining property to the lane leading to Hound Green.

Lots 39 and 40: A Right of Way for access to Lot 40 as at present enjoyed is reserved over the path on Lot 39. A Right of Way over the path on Lot 40 giving access to the detached garden included with Lot 39 is reserved in favour of that lot.

Lots 41 and 42: A Right of Way as at present enjoyed by the track over Lot 41 leading past the Pheasantry and out to the Public Road at Hulford's Lodge is reserved in favour of Lot 42.

Lots 41 and 69: A Right of Way over the drive on Lot 69 leading to Rectory Lane, Eversley, is reserved in favour of Lot 41.

Lots 60 and 61: A Right of Way as at present enjoyed over the entrance path to the Cottage Pt. O.S. No. 242 on Lot 60 is reserved in favour of the adjoining Cottage on the West (Lot 61).

Lots 68, 73 and 74: Lots 73 and 74 are sold with the benefit of a joint Right of Way as at present enjoyed by the joint path over Field O.S. No. 315a on Lot 68.

Lots 68 and 84: A Right of Way as at present enjoyed for access to Lot 84 over the path on the Cottage garden Pt. O.S. No. 104a (Part Lot 68) is reserved in favour of Lot 84.

Lots 73 and 74: A Right of Way as at present enjoyed over the entrance path on Lot 74 is reserved in favour of Lot 73 for access.

Lots 75 and 77: A Right of Way for access to Lot 77 is reserved over the track Pt. O.S. No. 237 and over the South-West corner of O.S. No. 163 on Lot 75 in favour of Lot 77.

Lot 105: This lot is sold subject to a Right of Way as at present enjoyed in favour of adjoining premises on the South over the 8 feet wide access way included with this lot.

Lots 106-111: The pathway on the North-Eastern boundary of Lot 111 and along the North-Western boundary of Lots 106-111 inclusive is used in common by each of these lots, and these lots are sold subject to a Right of Way as at present enjoyed over the aforesaid pathways in favour of premises adjoining on the South-West which do not belong to the Estate.

(b) Water Supply

Illustration lxxxvi

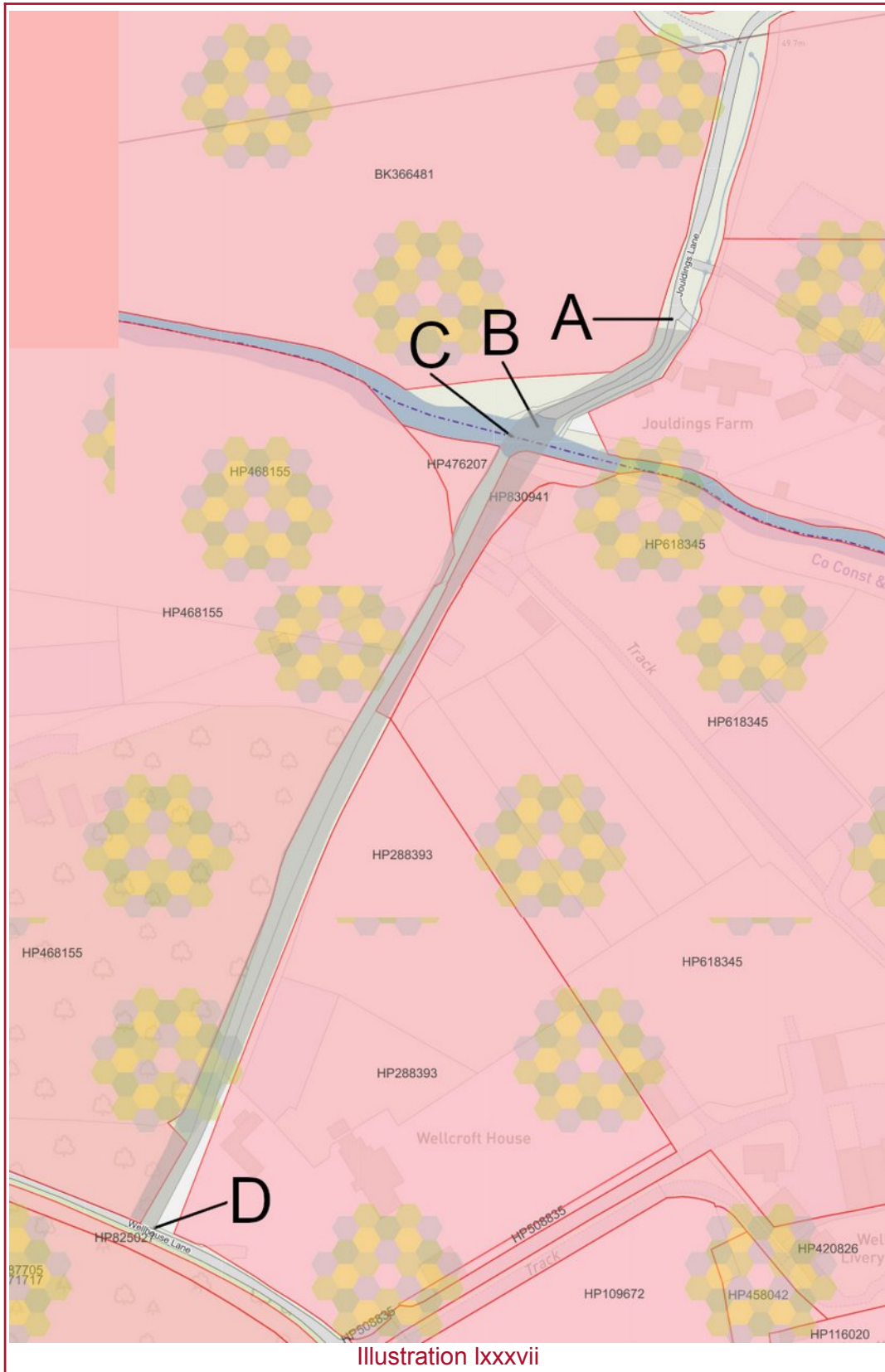
Q.3. **Description:** The document comprises published particulars of sale of the Bramshill estate, including a map of the estate identifying the lots for sale.

Q.4. The order way south of Jouldings Ford (including the splay to the ford south of the river) from C to D is shown uncoloured (save for what is clearly some bleed from the adjacent lot 10 coloured pink) and excluded from the coloured lots advertised for sale, but numbered as parcel 152. None of the lots advertised for sale (notably adjacent land comprised in lots 7, coloured blue, and 10, coloured pink, and Bramshill Forest lot 11, coloured green) includes parcel 152.

Q.5. The present status of the order way in relation to registration of title is shown in Illustration lxxxvii below. This comprises an extract of the index map for the register of title held by HM Land Registry. First registration of title has been compulsory in Wokingham since 1 April 1963, and in the district of Hart, Hampshire, since 1 March 1988.¹⁴⁹ No title acquired since the relevant date takes effect in law unless registered.

¹⁴⁹ www.gov.uk/government/publications/first-registrations/practice-guide-1-first-registrations#when-land-became-subject-to-compulsory-registration.

HM Land Registry: register of title index map



The width of the order way, as shown in the order plan, is represented on the index map by grey shading.

Q.6. The index map shows that no title has been registered to any part of the order way save the title to the east side of the order way for a distance of about 90 metres south from Jouldings Ford, title HP830941, which is a possessory title granted in 2019 on the basis of adverse possession. (A small part of the west side of the order way in the vicinity of D appears to be comprised in the title for Bramshill Common HP468155, but it is submitted that this may be an incorrect encroachment on the order way arising from the General Boundaries rule.¹⁵⁰)

Q.7. **Analysis:** It is submitted that public roads are uncoloured and not offered for sale in accordance with the convention that public roads are not expressly conveyed as part of a holding. Several of the public roads excepted from the sale are uncontroversial: Ford Lane, Well House Lane, the road through Great Ford (now bridged), the road connecting Ford Lane and Well House Lane (shown on the Hartley Wintney Rural District Council 1929 handover map¹⁵¹ but no longer maintained as a public road), the road through Well House Farm (continuing through the ford and along Forges Lane to New Mill Road: see item I.H above), and the order way.

Q.8. It is clear that the Bramshill estate did not consider that the order way between B and D was a private road which it was at liberty to sell. The whole of the Bramshill estate was being disposed of. The estate could have had no purpose in retaining title to the order way, yet disposing of all other land which was contiguous to or served by it. And if title was retained, that title to the order way remains unregistered to this day (save for the possessory titles subsequently registered to part of the waste at the ford and to part of the order way itself).

Q.9. The order way was not offered for sale as part of lot 7, nor lot 10, the two lots adjacent to the order way, and the order way remains outside the registered title of these lands (again, save for the registration of possessory title). Nor was it offered for sale as part of lot 11, which directly was served by the order way. Nor was any assurance offered as to private rights in the 1952 sale documentation. Clause 10 of the stipulations as to sale sets out a considered recital of private rights of way which are to be granted with the sale of lots, but no reference is made to any private right granted over the order way (see Illustration lxxxvi). Moreover, whereas the estate offered for sale the waste alongside Well House Lane as part of lots 7 and 10, it did not offer for sale any part of the order way, or the waste adjacent to the ford.

Q.10. The absence of any reference to the order way in the sale documentation implies that the estate did not consider the order way to be a disposable element of the estate, and did consider it to be a highway, in common with the other ways similarly uncoloured in the sale documentation (all but one of which are demonstrably public roads). If the estate's solicitors had been questioned on title to the order way, they might well have offered the estate's opinion that the estate had title to the soil of the order way *ad medium filum*¹⁵² (and as the estate owned the land on both sides, it therefore owned the soil of the whole way), and that the title would accordingly pass to the purchasers of lots 7 and 10, *ad medium filum*: this is broadly the intention of clause 2 of the stipulations. But, as conveyancing convention expected, no express provision would have been made in the

¹⁵⁰ *I.e.*, that the precise line of a boundary is undetermined by the Land Registry unless an application is made for it to be fixed.

¹⁵¹ TW/1, SO, App.6.

¹⁵² *Usque ad medium filum viae*: as far as the centre line of the road — a presumption that the frontager's title extends to the centre line of the highway.

conveyances on completion of the sales, it being sufficient to rely on the presumption *ad medium filum*.

Q.11. If the estate considered the order way to be private, it would have offered the purchasers of lots 7 and 10 an express right of way over it (possibly together with a conveyance of the soil of the way, either in severalty, or to one or the other purchaser). If the estate owned the road in its entirety (as it surely did¹⁵³), it would have wished to dispose of it expressly, together with the creation of such private rights as were necessary. So far as we know, the estate did no such thing: no title to the order way was ever registered (save on the basis of purported adverse possession), and no evidence has been produced of any grant of a private right of way over the order way.¹⁵⁴ Nor is any such right recorded in the title to Bramshill Common, lot 11, which is directly served by the order way.

Q.12. If, at the time of the 1952 sale, the title to the order way fell to the purchasers of lots 7 and 10 *ad medium filum*, neither would have acquired any private right to use it (*i.e.* apart from as a public road) save by carefully navigating the way keeping to one side or the other, as the case may be — an absurd proposition. The purchaser of Bramshill Common would have had no right of use whatsoever (again, apart from as a public road).

Q.13. Subsequent to the sale, lot 7 has been subdivided into a number of separate parcels, which include two separate titles abutting the order way. Again, in the absence of any private right, the proprietor of neither title has any right to the use of order way unless the proprietor has acquired a right to half of the width of the order way, *ad medium filum*, abutting the respective title. It follows that neither proprietor has any right to use the order way in its entirety — except as a member of the public. Moreover, it is submitted that, insofar as title to part of the order way has been registered by a frontager, that title has been claimed on the basis not *ad medium filum*, but as a purported possessory title. This claim is itself an admission that there are no private rights enabling use of the way, as the assertion of adverse possession is inconsistent with the exercise of private rights.

Q.14. **Objectors:** The objectors suggest (TW/1, SO, para.118) that, ‘A private route running between plots would be unlikely to be demarcated, with the normal presumption being that adjacent owners owned to the middle of the road.’ On the contrary, one would expect a private road, or a private right of way over the road, comprised in the Bramshill estate, to be sold to those who needed to use it. This is apparent from the Bramshill estate sale plan: the drives to Smith’s Farm and Cordery’s Farm are offered for sale along with the waste which lies between the nearest public road and the boundary of the respective farm.

Q.15. The objectors state (TW/2, SAC, para.26) that, ‘On sale of an Estate, there would have been no need for the allotment of a private road to one plot of another as ownership and associated access rights would be shared between the lots by presumption or inference of law.’ This is merely a repetition, in different words, of the position adopted in the objectors’ initial analysis, addressed above.

153 The soil of the land comprised in the order way between C and D has long been part of the Bramshill estate, and the applicant accepts that it is now likely to be comprised in the estates of the various frontagers *ad medium filum*. The surface of the way, however, being a pre-1835 highway, and therefore publicly maintainable, must be vested in the highway authorities, under s.263 of the Highways Act 1980.

154 A statutory grant of private rights for mechanically propelled vehicles may have been acquired under s.67(5) of the Natural Environment and Rural Communities Act 2006, but only if the order way is indeed a public road.

Q.16. There is some authority for the proposition that ownership of a private occupation road may pass *ad medium filum* (*Holmes v Bellingham*¹⁵⁵), although the principle is by no means as firmly and generally established as in relation to public highways, and still less so where, on the offer for sale in 1952, the Bramshill estate expressly left the way uncoloured, but coloured-in known private occupation roads. However, there is no basis for inferring access rights for the objectors or any other person by ‘presumption or inference of law’, first because the 1952 conditions of sale made comprehensive, detailed and express provision for the grant of private rights where necessary, and secondly, because no such private right are necessary: none of the premises frontaging the order way relies on access along the order way, and indeed, none of them appears to use it. Indeed, Mr John Saunders states of Jouldings Ford,

| ...that no one uses it [;]¹⁵⁶

Mr Michael Thumbwood that,

| I have never seen any member of the public using the application route [;]¹⁵⁷

Mr Nigel Stoate that there were ‘numerous’ occasions:

| ...when the application route was impassable for many weeks and months [;]¹⁵⁸

and Mr Thomas Stoate that,

| Occasionally we would cross the ford with a tractor to access the land on the other side, but with difficulty as the ford was deep.¹⁵⁹

This is hardly a promising basis on which to claim a right of way of necessity — even were it not obvious that no necessity exists.

Q.17. The objectors state (TW/2, SAC, para.27) that, ‘routes that are private or public non-vehicular were excluded between different hereditaments (for example, the uncoloured track between lots 11 and 7, from the end of Well House Lane and continuing south-east from Well House Farm).’ However, as explained at *Well House Lane ford* (item I.H above) that track appears to be an unrecorded public road. The objectors appear to rely on this ‘example’ as the sole exception to the practice adopted in the Bramshill estate sale documentation that public roads were shown uncoloured, and not included in the lots (except so far as the presumption *ad medium filum* applies), that private roads were coloured to a particular lot, and that private rights were conferred where necessary. But on the contrary, it is not an exception at all, but merely confirmation that the uncoloured track in continuation from Well House Farm also was regarded by the Bramshill estate as a public road.

Q.18. The evidence of Mr Thomas Stoate is of little weight set against the plain intention of the Bramshill estate. It is abundantly clear that the estate recognised the order way as a public road, did not include the way as part of the estate sale (except so far as the presumption *ad medium filum* applies), and did not confer any private right over the way for the benefit of any purchasers of adjacent lots because none was necessary (it being considered public). It is also apparent that none of the adjacent landowners has claimed

155 (1859) 7 CB (NS) 329.

156 TW/2, Statement of John Saunders, para.4.

157 TW/2, Statement of Michael Thumbwood, para.2.

158 TW/2, Statement of Nigel Stoate, para.8.

159 TW/2, Statement of Thomas Stoate, para.3.

or now claims a private right of way over the order way, and that none of them has acquired a right to use it by virtue of ownership. This is not a question of ‘supposition’ (TW, SOO/2, Detailed comments, s.I/B), it is a matter of fact, as to which the objectors have been unable to adduce any contrary evidence.

Q.19. Instead, the objectors imply that the Bramshill estate intended to sterilise the order way, so that following the 1953 sale, no-one had a right to pass along it — and no-one had a right to use it as an adjunct to neighbouring land. The evidence is to the contrary.

Q.20. **Conclusion:** The evidence overwhelmingly suggests that, at the time of the 1952 offer for sale, the Bramshill estate (the successor to the Cope family) considered the order way between C and D to be a public road, and dealt with the order way in the same manner as other public roads across the estate.

Q.21. The only realistic explanation for the exclusion of the whole of the order way from the adjoining owners’ title (save the recently-granted possessory title) is that the order way is a highway.

Q.22. **Points:**

Part	Points
<i>A to B</i>	0
<i>B to D</i>	4

R. List of streets

R.1. **Date:** 2011–13

R.2. **Source:** Hampshire Asset Management Group (Hampshire County Council); Neighbourhood Services, Wokingham Borough Council

Hampshire list of streets entry

From: "Street Gazetteer Team" <1770.streetgazetteer@hants.gov.uk>
Subject: **RE: List of streets: Hart district**
Date: 25 January 2011 09:49:03 GMT
To: "Hugh Craddock" <hugh@craddocks.co.uk>
Cc: "Pellatt, Johanna" <jo.pellatt@hants.gov.uk>

Dear Hugh,

Thank you for your enquiry. I have outlined our response below.

1) Unmetalled lane from Riseley Mill Road (U241) at SU735630 to county boundary at junction with The Devil's Highway at SU736632

I can confirm that the above is NOT in our list of streets.

2) Jouldings Lane from Well House Lane (U241) at SU751632 to county boundary at River Blackwater (Jouldings Ford) at SU752634

I can confirm that the above is NOT in our list of streets.

Please let me know if I can help any further.

Kind Regards,

Phil Marlow

Technical Officer,

Asset Management Group, Hampshire County Council.

* HPSN: (8) 315-2181

* Tel: (01962) 872181

P Please consider the environment before printing this e-mail.

Illustration lxxxviii

Wokingham adopted highways plan



R.3. **Description:** An email from Hampshire Asset Management Group confirming status of the order way across and south of Jouldings Ford between B and D as not on the Hampshire highway authority list of streets prepared by the council under section 36 of the Highways Act 1980. Also an extract from Wokingham adopted highway map showing extent of adopted status of Jouldings Lane as between A and B.

R.4. **Conclusion:** Jouldings Lane is included between A and B in the list of streets for the borough of Wokingham, which conclusively demonstrates public highway rights.

R.5. The order way south from B to D is not included in the list of streets for the borough of Wokingham, nor the county of Hampshire.

R.6. For the effect on rights for mechanically-propelled vehicles under s.67 of the Natural Environment and Rural Communities Act 2006, see item I.N above.

R.7. **Points:**

Part	Points
<i>A to B</i>	5
<i>B to D</i>	0