

# Kelk Hill restricted byway: document analysis

## Application to upgrade to restricted byway a footpath from New Purchase Firs on BOAT EE335 to Cold Blow Corner

### I. Introduction

#### A. Quick reference

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



- A.2. Existing rights of way comprised in upgrade: footpath EE323
- A.3. Parish of: Nonington
- A.4. Former parishes of: Nonington, and borough of Kittington in Wingham hundred (detached)
- A.5. Termination points: Near New Purchase Firs on BOAT EE335 between Thorntonhill Cottages and Eythorne, and Cold Blow Corner on Kelk Hill.
- A.6. Ordnance Survey termination points: TR28335145 to TR27335259
- A.7. Ordnance Survey Explorer sheet: 150
- A.8. Ordnance Survey County Series 25" sheets: Kent LVIII/1 and LVII/4

## B. The applicant

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

## C. Locational details

C.1. This application relates to a way between the byway open to all traffic (BOAT EE335 between Thorntonhill Cottages and Elvington along Shingleton Down) near New Purchase Firs, in the parish of Nonington, to the Chillenden to Barfrestone road, at a place formerly known as Cold Blow Corner, also in the parish of Nonington. The way is currently recorded as public footpath EE323. The application seeks to record the way as a restricted byway.

C.2. The way lies wholly in the parish of Nonington. The way formerly lay in the parish of Nonington — but part of the way, enclosed within that parish, lay within a detached part of the hundred of Wingham, being the former borough of Kittington.

## D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(ii) that a way shown in the definitive map and statement for Kent as a footpath should instead be shown as a restricted byway.

D.2. The application seeks to upgrade to restricted byway the footpath EE323 in the parish of Nonington. The way commences at New Purchase Firs, on the byway open to all traffic (BOAT EE335) along Shingleton Down at A (Ordnance Survey grid reference TR28335145), approximately 1 km south-southwest of the junction of EE335 with Thornton Lane at Thorntonhill Cottages. The way proceeds generally northwest for a distance of 700m to a crossroads with a footpath (footpath EE264)<sup>1</sup> on Kelk Hill at B (TR27985205),

<sup>1</sup> An application has also been made to record this footpath as a restricted byway.

then continuing northwest for a distance of 435m to a junction with footpath EE324 at C (TR27685234), then continuing northwest for a further distance of 435m to a road junction at Cold Blow Corner at D (TR27335259). A total distance of 1,570m.

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

## E. Background

E.1. The application way historically appears to be a field road (*i.e.* an unenclosed road across fields) between Chillenden, Sandwich Road, Barville Road, and Sutton as part of a longer route between Wingham, Chillenden, Sutton, Ringwould, Kingsdown and Walmer. It is generally shown as unenclosed on early historic maps and the tithe map for Nonington, although the way is now almost entirely enclosed within fences. Early Ordnance Survey maps record the way as the 'Supposed Pilgrims Way', although this appellation does not appear on later editions, while the way was referred to in a 1511 quitclaim<sup>2</sup> as 'Saint Margaret Strete' — this way can be followed across country to St. Margaret's at Cliffe.

E.2. Field roads were commonplace in Kent. On the Tithe Commutation Act 1836 map (item IV.G below), the application way is shown as a field road, in common with footpath EE264 (also the subject of an application to record as a restricted byway), the road from Cold Blow Corner to Kittington, the continuation of that road from Kittington to Elvington, BOAT EE335 and others. Most former field roads have now been enclosed (such as the road from Cold Blow Corner to Kittington), but others remain unhedged and unfenced today.

## F. Grounds for application

F.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*<sup>3</sup>, Lewison LJ said, at paragraph 22,

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

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

2 Online at: [https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonynnton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir\\_esc=y](https://books.google.co.uk/books?id=IK-JQwAACAAJ&dq=Nonynnton&hl=en&sa=X&ei=jcr0Tr6xIYf28gO-g4jNAQ&redir_esc=y).

3 [2012] EWCA Civ 334

F.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

'If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.'<sup>4</sup>

F.3. Early historic maps (items IV.A to IV.F below) and the Tithe Commutation Act 1836 map for Nonington (item IV.G below) show the application way as a road, although there is some uncertainty in such maps whether a particular road is a bridle road or a carriage road. The later map and apportionment for Nonington prepared by the Poor Law Commissioners (item IV.I below) confirm the status as a road, as do the plans for the Ramsgate Sandwich Deal and Dover Railway (item IV.J below). The plans for the Walmer, Deal and Adisham Railway (item IV.M below) record only a footpath, but the plans were not drawn up in accordance with the standing orders of Parliament, and may be discounted.

F.4. While no single piece of evidence is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis 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 below), there were full carriageway rights.

## G. Natural Environment and Rural Communities Act 2006

G.1. The application seeks to show that the application way is a public carriageway. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. 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. The application is therefore made for a restricted byway.

## H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>5</sup>:

### H.2. Points:

Item	Ref	Points
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	1

<sup>4</sup> [Consistency Guidelines](#): para.2.17.

<sup>5</sup> Sarah Bucks and Phil Wadey, 2012.

Barlow-Hasted map of Kent	IV.B	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	1
Ordnance Survey, Old Series one-inch map of Kent	IV.D	0
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.E	1
Greenwood's map of Kent	IV.F	0
Tithe Commutation Act 1836	IV.G	2
Inclosure Act 1845, order of exchange	IV.H	1
Poor Law Commissioners' survey	IV.I	5
Ramsgate Sandwich Deal and Dover Railway	IV.J	5
Ordnance Survey boundary records	IV.K	0
The National Gazetteer of Great Britain and Ireland	IV.L	0
Walmer, Deal and Adisham Railway	IV.M	0
Ordnance Survey County Series first edition twenty-five inch maps	IV.N	0
<b>Total points</b>		<b>17</b>

(of which, 1 point relates to A–C only)

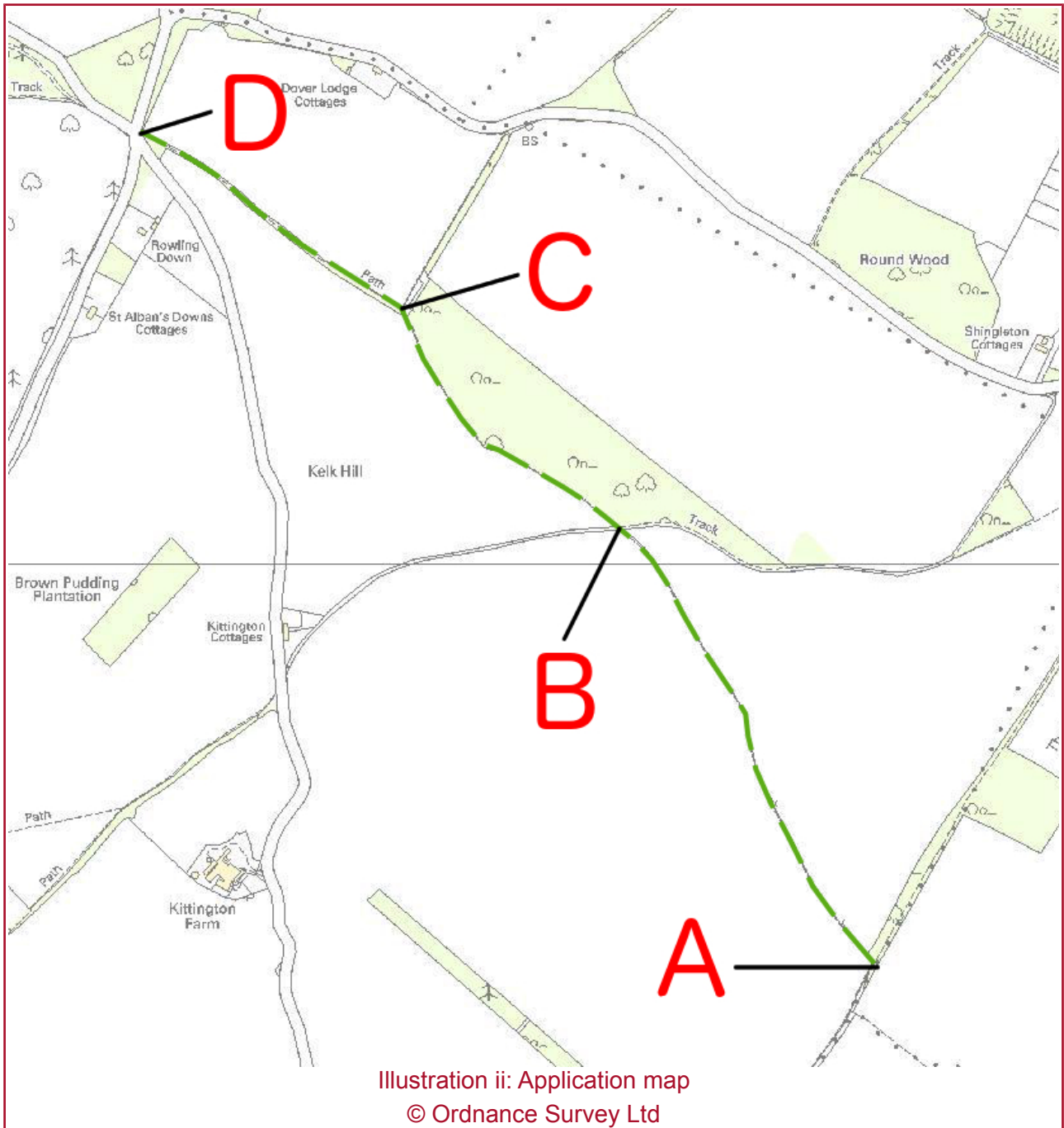
## I. Width of application way

I.1. There is no available evidence of the width of the application way among the historic evidence. The application way is not recorded as a separate parcel on Ordnance Survey large scale maps (see item IV.N below), nor is it recorded as a discrete tithe unit on the Tithe Commutation Act 1836 map mapping (item IV.G below).

I.2. The width of the application way can be measured from Ordnance Survey large scale maps, but the width of the way shown on the map may be notational.

I.3. As a carriageway, the application way historically is likely to have been of sufficient width to accommodate two vehicles passing. A width of four metres would generally be sufficient for this purpose, and is therefore sought.

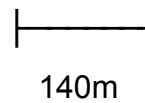
## II. Application map



Map centred on B at TR280520

Scale: approx. 1:7,600 (when printed A4)

Application way is marked ---



### III. Along the way<sup>6</sup>



Illustration iii: At A



Illustration iv: Between A and B, towards B



Illustration vi: At B, towards A



Illustration v: Between B and C (original way obscured)

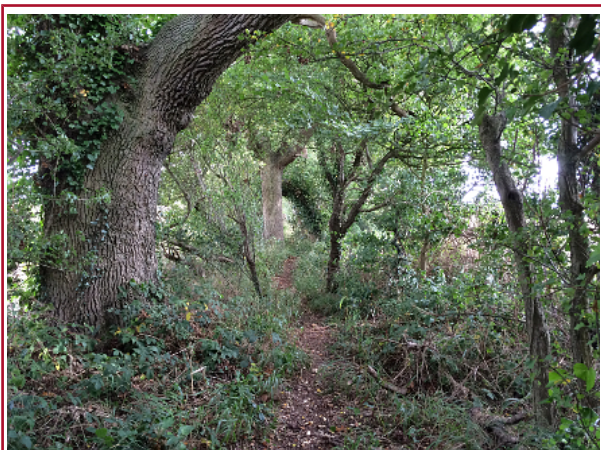


Illustration viii: Between C and D



Illustration vii: At D

6 Photographs at vii & viii © Julia Harman

## IV. Evidence

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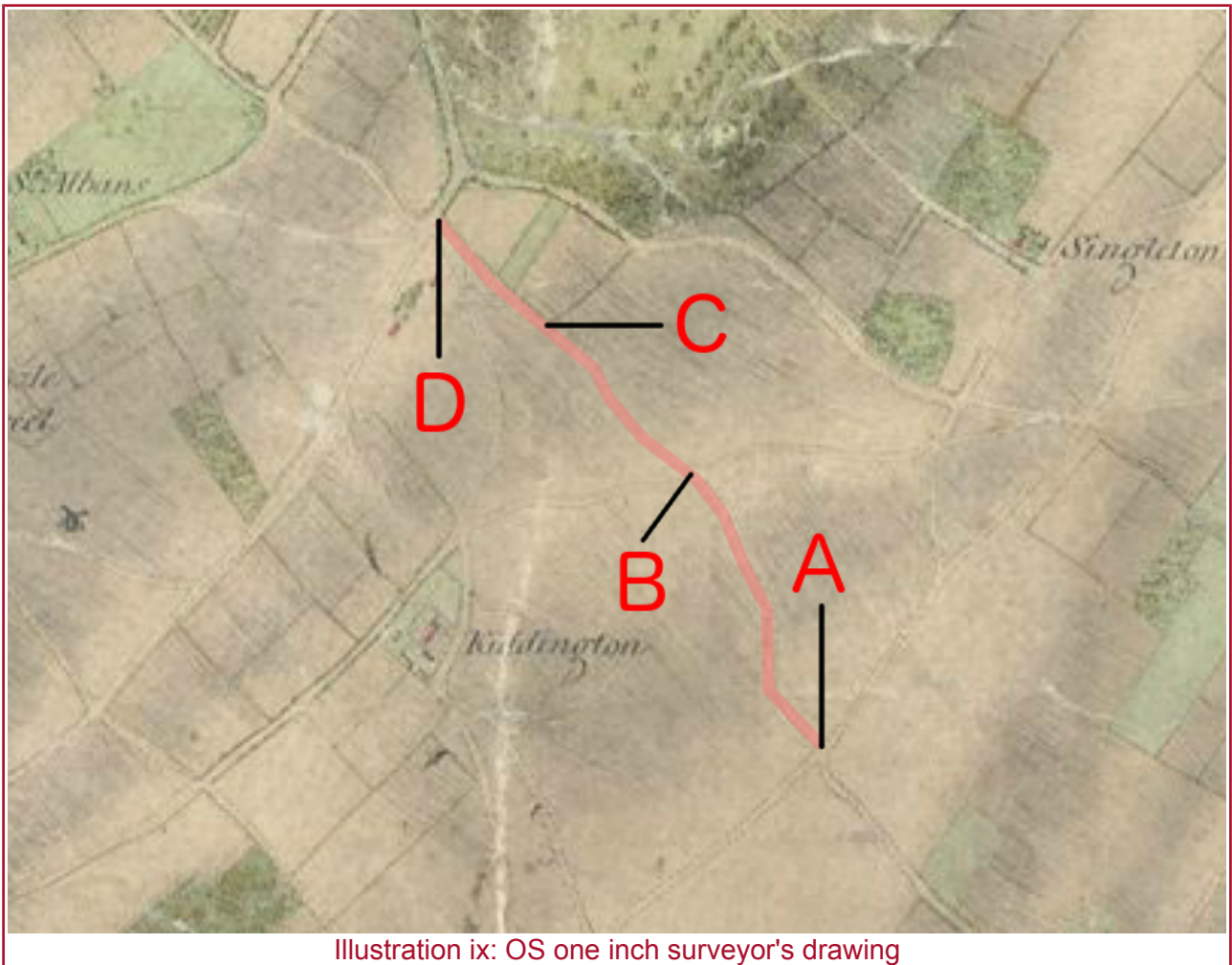
#### A. Ordnance Survey surveyor's drawing, Canterbury (East)

A.1. **Date:** 1797

A.2. **Source:** British Library website<sup>7</sup>

7 [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html)





A.3. **Description:** Original scale: believed to be 1:31,680 (two inches to one mile); orientation: unchanged (north).

A.4. 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 and 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.<sup>8</sup>

A.5. The entire application way is shown on the map, although wear to the map makes the route hard to pick out.

<sup>8</sup> From the Curator's introduction to the Ordnance Survey drawings, British Library: [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html).

A.6. **Conclusion:** The Ordnance Survey drawings provide good evidence of the existence of the application way in its entirety at the end of the eighteenth century.

A.7. **Points:** 1

(This is the first of two Ordnance Survey maps to score points: no more than two such maps are scored.)

## B. Barlow-Hasted map of Kent

B.1. **Date:** 1797–1801

B.2. **Source:** Kent County Archives: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in 12 Volumes.

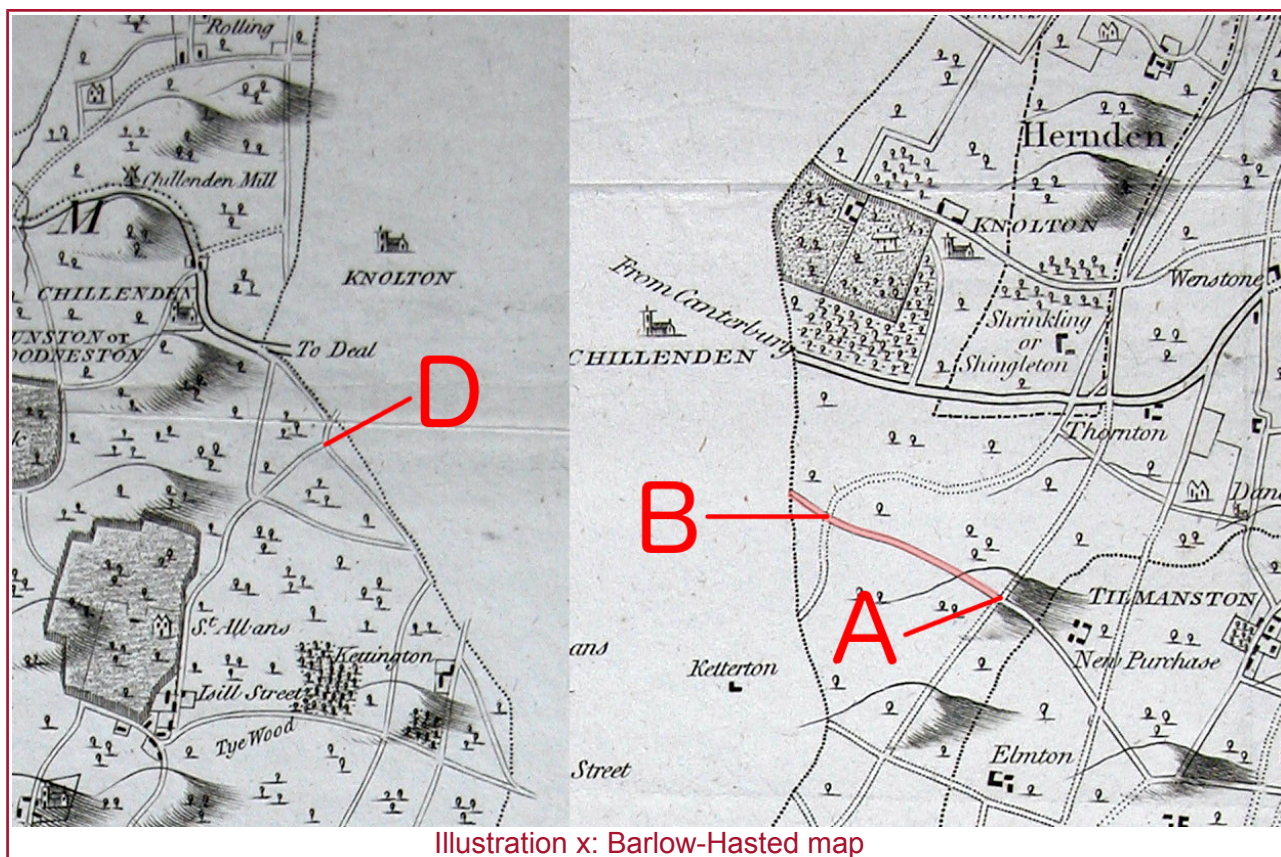


Illustration x: Barlow-Hasted map

B.3. **Description:** Original scale: not known; orientation: unchanged (north); the extract is composite showing extracts (right) from the hundred of Eastry, and (left) from the hundred of Wingham.

B.4. The Barlow-Hasted map shows the application way between BOAT EE335 at A and the purported boundary of the hundred of Eastry slightly beyond B, depicted by double continuous lines, suggesting an enclosed road. The continuation of the application way within the hundred of Wingham is not certain, owing to the intervening hundred boundary, and appears not to be marked, although the junction of (other) roads at D is clearly shown.

B.5. **Conclusion:** The Barlow-Hasted map is good evidence for the existence of a defined way along the application route between A and beyond B towards C, but with some uncertainty about the continuation of the way beyond C to D. The map was widely commercially published, and would tend to show through routes which were public high-

ways, whereas certain minor routes of questionable public status (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are shown with lines across the junction with public ways. The representation on the Barlow-Hasted map is consistent with a status of bridleway or carriageway.

B.6. The most likely explanation for the omission of part of the way between B and D is the distortion to the map caused by the arbitrary insertion of the boundary of the hundred between Eastry and Wingham. As the application way is shown projecting west from B, any omission of the way on the map of the hundred of Wingham appears to be a mistake, or a consequence of the stylistic representation of boundaries, than an intentional exclusion.

B.7. **Points:** 1 (between A and C)

(This is the first of two early county or area maps to score points: no more than two such maps are scored.)

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

C.1. **Date:** 1801

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

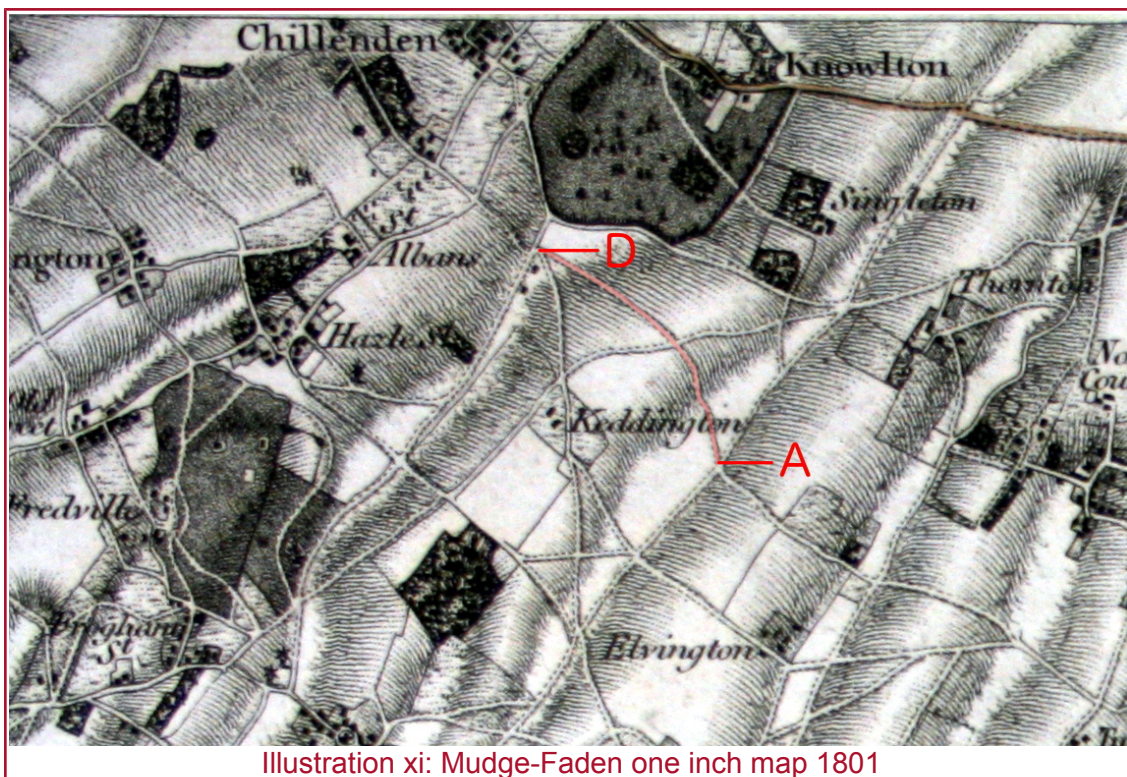


Illustration xi: Mudge-Faden one inch map 1801

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

C.4. This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French (see item IV.A above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century:

<sup>9</sup> Also available at: [mapco.net/kent1801/kent51\\_03.htm](http://mapco.net/kent1801/kent51_03.htm).

instead, this map initially was published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The Mudge-Faden map shows the entire application way, depicted by double pecked lines, suggestive of a way which is unenclosed.

C.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. The Mudge-Faden map is good evidence for the existence of a defined way along the claimed route. It cannot be demonstrated with confidence that the application way is a public highway, but its depiction is consistent with a public highway.

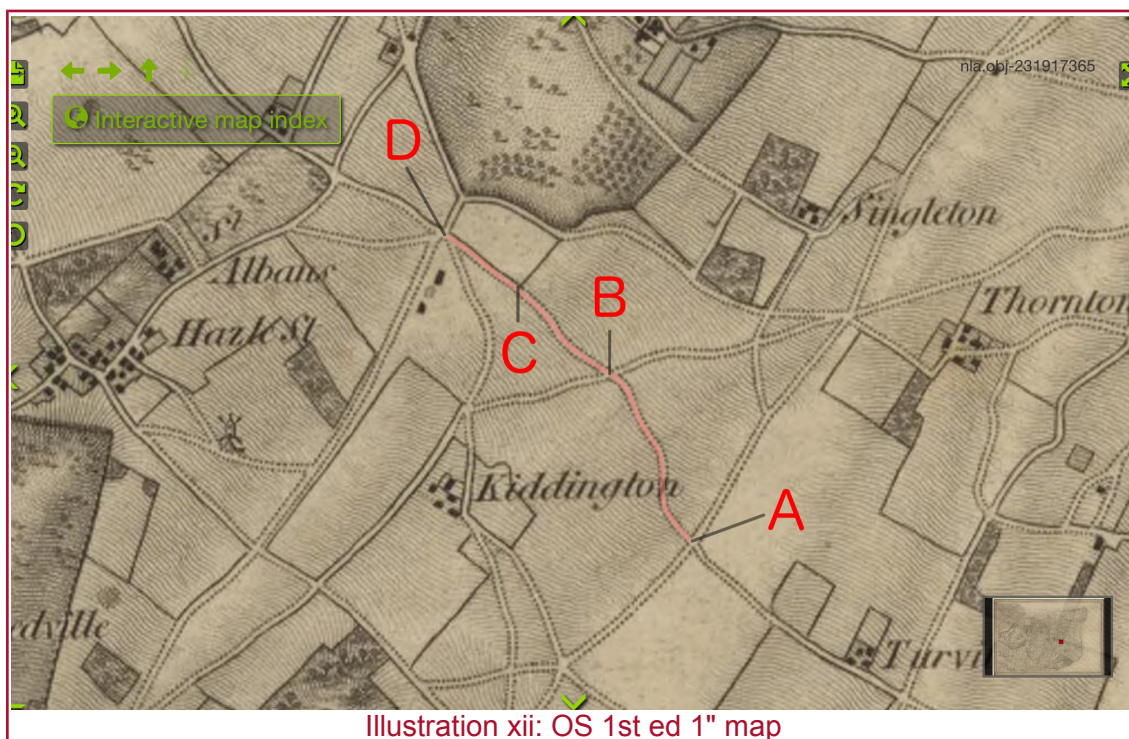
C.7. **Points:** 1

(This is the second of two Ordnance Survey maps to score points: no more than two such maps are scored.)

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

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

D.2. **Source:** National Library of Australia<sup>10</sup>



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

D.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Mudge-Faden map, the 'official'

<sup>10</sup> <http://nla.gov.au/nla.obj-231917365>

Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

D.5. The Ordnance Survey Old Series map shows the entire application way between A and D depicted by double pecked lines suggestive of a way which is an unenclosed field road.

D.6. **Conclusion:** The Ordnance Survey Old Series map is good evidence of the existence of the application way as a well-defined road or bridleway in the early nineteenth century. While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. It can therefore be concluded with some confidence that the way was a defined feature in the landscape, capable at least of accommodating ridden horses, and probably a carriageway.

D.7. **Points:** 0

No more than two points are scored for Ordnance Survey maps.

## E. Paterson's Roads — Thanet and Kent and Sussex Coast

E.1. **Date:** 1811

E.2. **Source:** British Library<sup>11</sup>

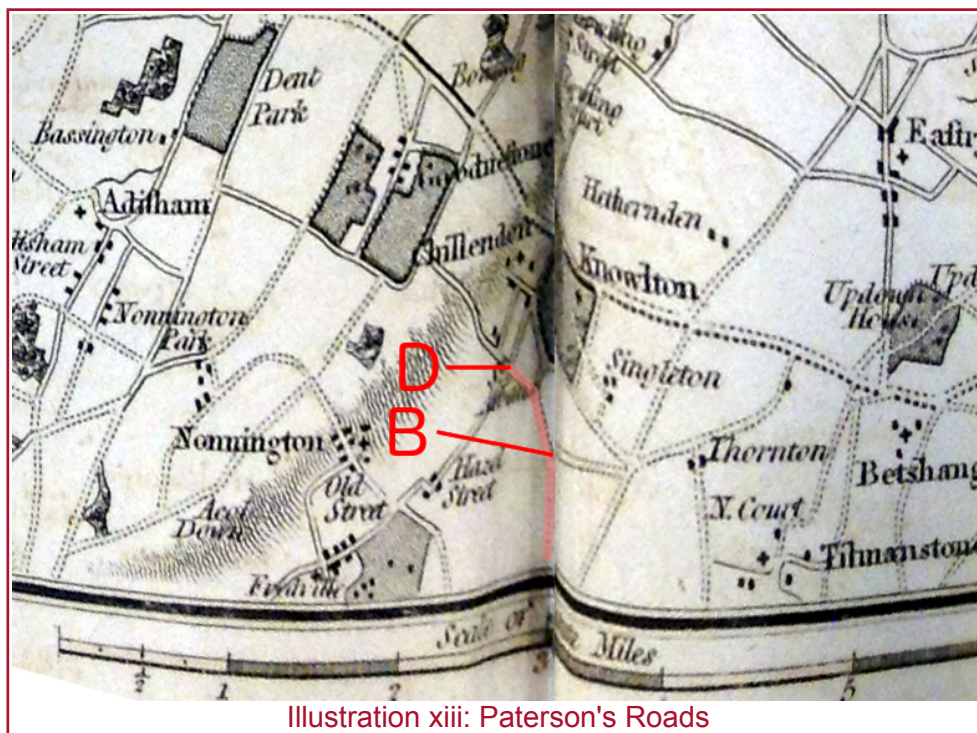


Illustration xiii: Paterson's Roads

E.3. **Description:** Original scale: not known, but scale marked in miles; orientation: unchanged (north).

E.4. This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Mudge-Faden map (item IV.C

11 10348.d.15: copy available at [www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg](http://www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg) .

above): however, the map has been revised to show the Dover, Deal and Sandwich turnpike (*i.e.* via Hacklinge), which was authorised in 1797.

E.5. The Thomson map shows the application way between a point northwest of A and D, depicted by double pecked lines, suggestive of an unenclosed field road. The detail appears close to the binding of the map, which distorts the directional appearance of the application way, partly conceals its course southeast (in the reproduction, apparently south) of B, and conceals any continuation of the way towards A on the map on the following page of the book. However, the entire route is visible on the reproduction of the same map on the PastPages.co.uk website (see footnote 11 above).

E.6. **Conclusion:** Revision of the map, which appears to be derived from the Mudge-Faden map, so as to include the Dover to Sandwich turnpike, suggests that the representation of at least principal roads was researched and updated. The Thomson map appears to focus on key roads available to the public, and although probably based on the Mudge-Faden map, to have been revised, and the Thomson map is therefore good evidence for the existence of a defined way, at least of bridleway status, along the application way.

E.7. **Points:** 1

(This is the second of two early county or area maps to score points: no more than two such maps are scored.)

## F. Greenwood's map of Kent

F.1. **Date:** 1819–20

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

Greenwood map

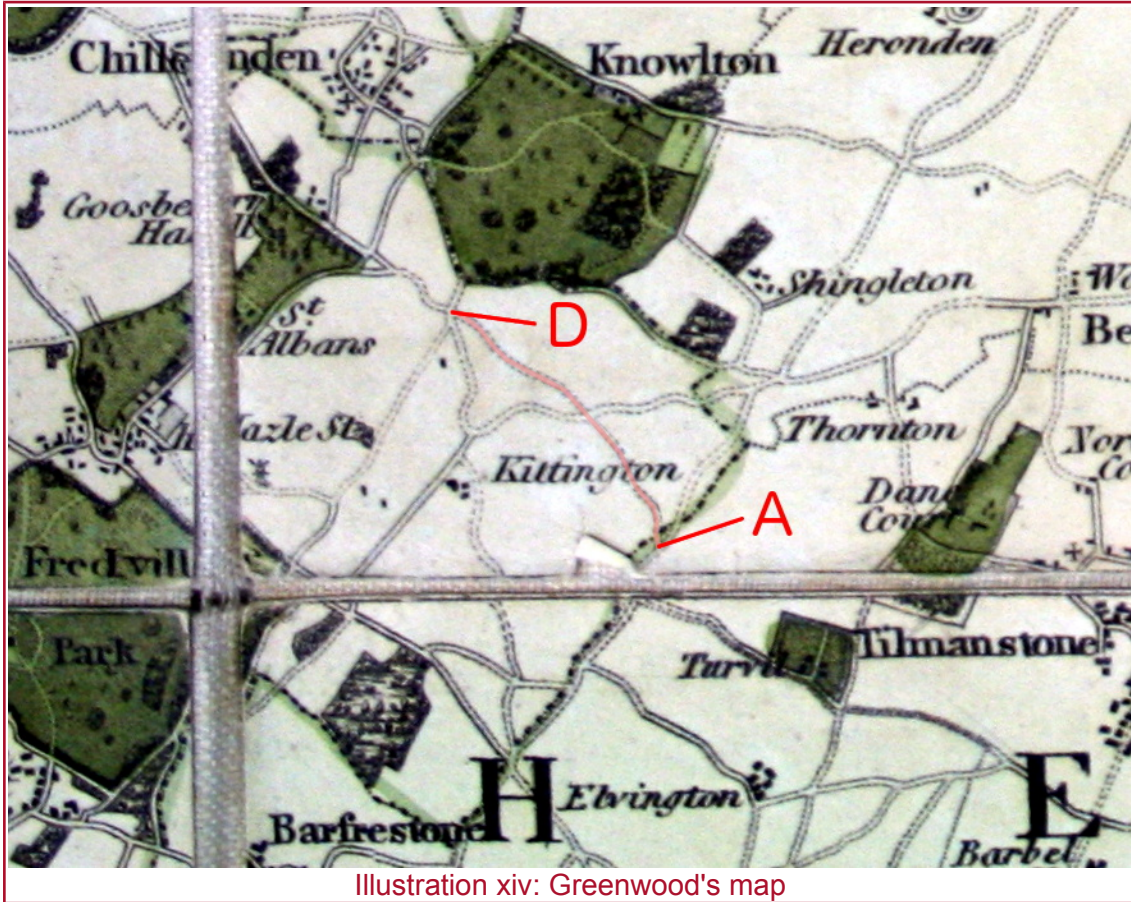


Illustration xiv: Greenwood's map

Greenwood map key

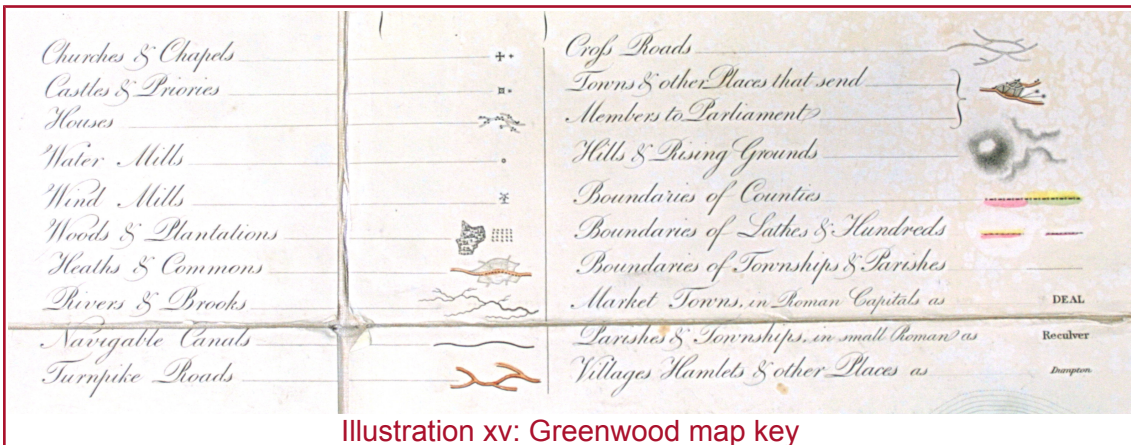


Illustration xv: Greenwood map key

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

F.4. Greenwood's map shows the entire application way, depicted by double pecked lines, suggestive of a way which is unenclosed. The way is described in the key as a 'cross road'.

F.5. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way between A and D. The key describes the route as a 'cross road', which indicates a highway which is probably a carriageway.

F.6. **Points:** 0

(This is the third of several early county or area maps: no more than two such maps are scored.)

## G. Tithe Commutation Act 1836

G.1. **Date:** 1841

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

<sup>12</sup> Kent tithe maps are available as images on CD.

<sup>13</sup> [www.kentarchaeology.org.uk/Research/Maps/NON/01.htm](http://www.kentarchaeology.org.uk/Research/Maps/NON/01.htm)



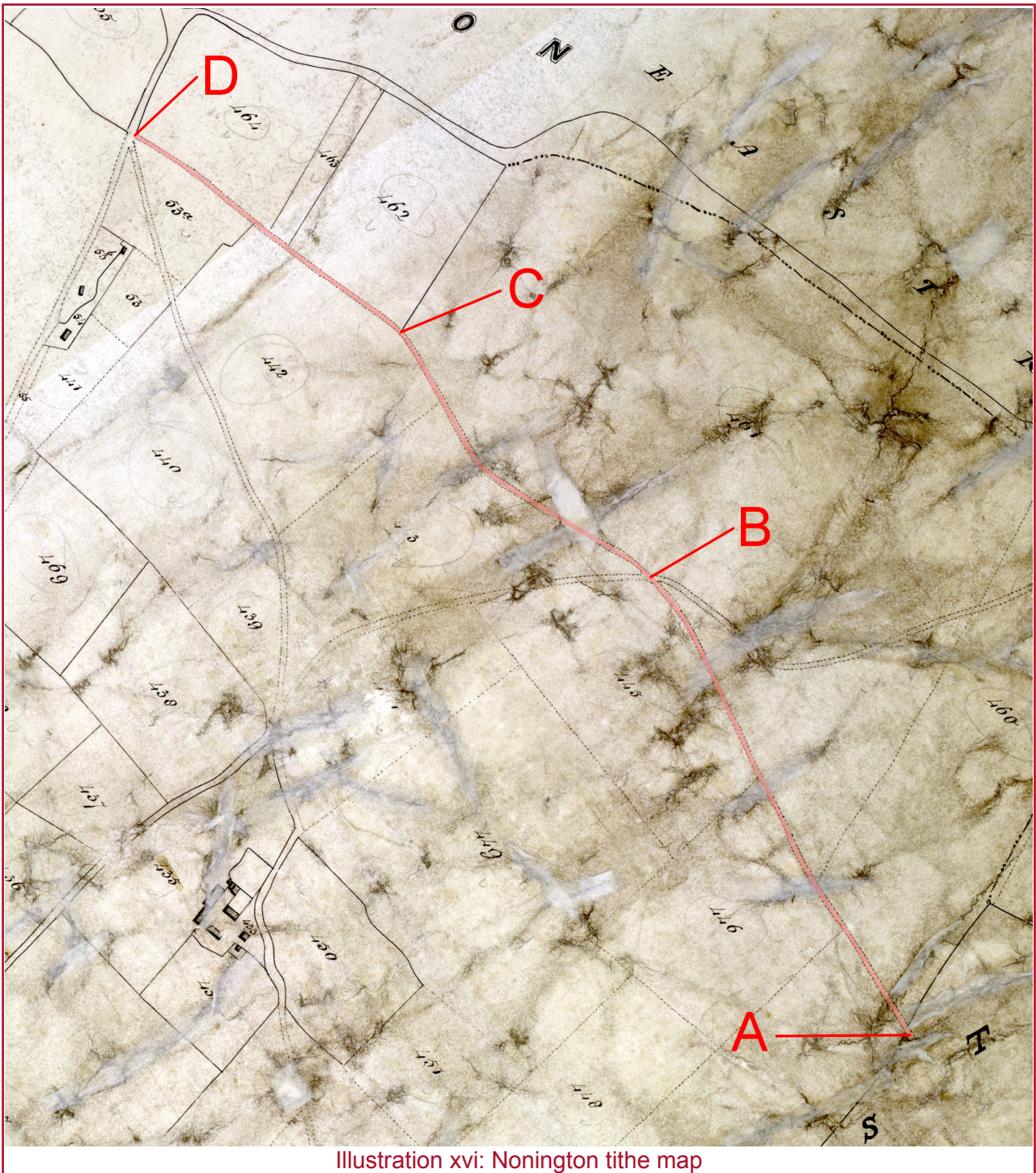


Illustration xvi: Nonington tithe map

G.3. **Description:** Original scale: scale marked on map in chains; orientation: rotated 55°.

G.4. The tithe map for Nonington and Womenswold (which includes the detached part of the hundred of Wingham which lies as an enclave in the parish of Nonington) shows the application way as double pecked lines between A and D. Two connecting local roads: the road from Cold Blow Corner (at D) south to Kittington and Barfrestone, and the way (now footpath EE324) which intersects with the application way at B<sup>14</sup>, are similarly shown. The way marks the boundary between adjacent parcels distinguished on the tithe map with

14 For which an application has been made to upgrade to restricted byway.

separate parcel numbers: it may therefore be assumed that the ways are excluded from the titheable area.

G.5. **Conclusion:** The tithe map provide evidence for the status of the application way as a road, as the way appears to be excluded from the titheable area of the parcels. The several parcels clustered around C are known as 'Roads Hill', which also is suggestive that the application way, in common with the road from Cold Blow Corner to Kittington and the way now recorded as footpath EE234, were regarded as roads. However, the public status of the ways cannot be concluded from the tithe maps in isolation, although the application way is depicted in the same way as the road from Cold Blow Corner to Kittington and Barfreestone, which is today recognised as a public road.

G.6. **Points:** 2

## H. Inclosure Act 1845, order of exchange

H.1. **Date:** 1854

H.2. **Source:** National Archives<sup>15</sup>

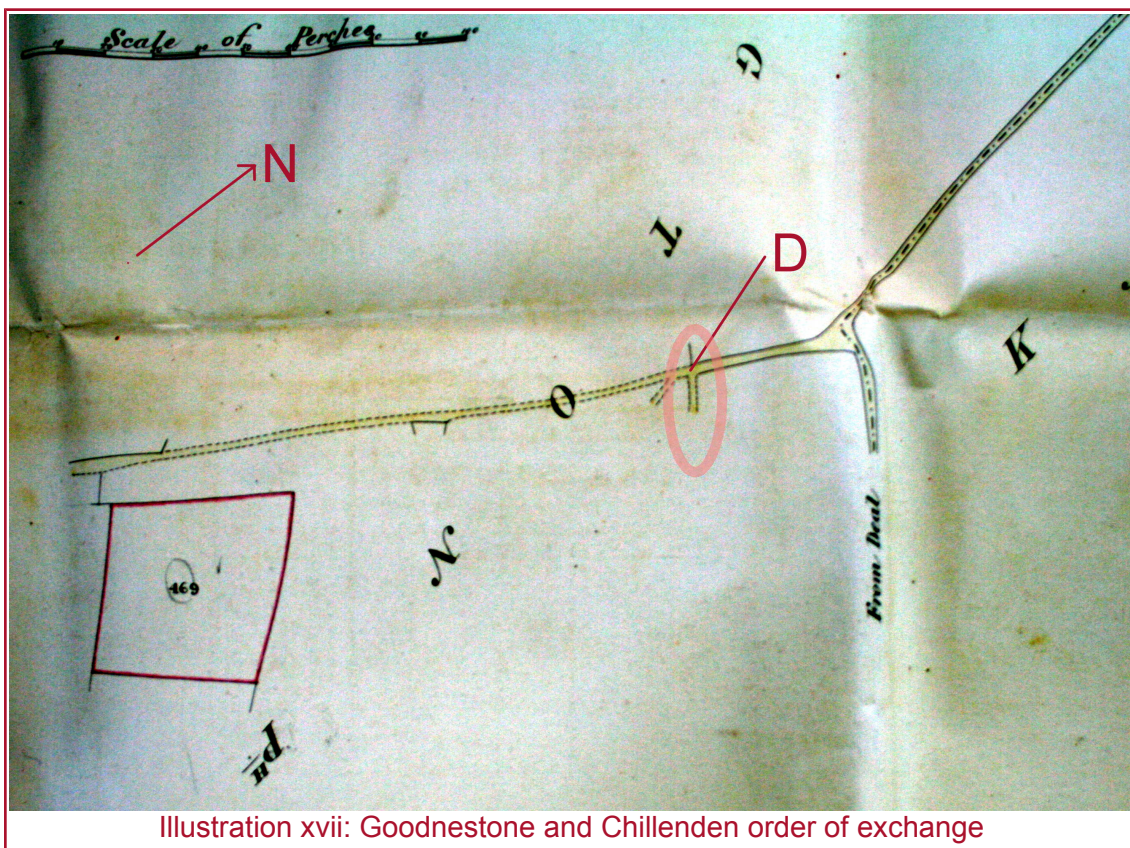


Illustration xvii: Goodnestone and Chillenden order of exchange

H.3. **Description:** original scale: not stated, but scale marked on plan in perches; orientation: orientation unchanged (top is northwest).

H.4. An order of exchange was made by the Inclosure Commissioners in 1854 under section 147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

15 MAF 11-80-404

H.5. Under section 147, the Inclosure Commissioners were empowered to grant an exchange of lands between two different owners, where such lands were not subject to inclosure (*i.e.* were not, for example, common land). The Commissioners were required to be satisfied, following public notice of the proposed exchange, that the exchange would be beneficial to the respective owners, and that the terms of the exchange were just and reasonable. Section 147 was used to overcome difficulties in conveyancing or defects in title at a time before such matters were generally addressed by legislation: it provided that the exchange was to be binding notwithstanding any incapacity or defect in title.

H.6. This order records an exchange of lands between Sir Brook William Bridges, of Goodnestone Park, and George William Hughes D'Aeth, of Knowlton Park. The plan drawn up under the exchange shows the application way at D. The plan shows various ways shaded ochre, including the application way. The road from D northwest to the Sandwich Road at Gooseberry Hall Corner is not marked.

H.7. **Conclusion:** The ways coloured ochre on the order map are today recognised as public roads, with the exception of the application way.

H.8. On these and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or ochre colour wash appears to denote ways which are either public roads or bridle-roads. The exchange plan is therefore some evidence of the public status of the application way from D, at least of the status of a bridle-road.

H.9. The map appears to be based on the Nonington tithe map, as this map too does not show the way between D and Gooseberry Hall Corner (see Illustration xvi above).

H.10. **Points:** 1

## I. Poor Law Commissioners' survey

I.1. **Date:** 1859

I.2. **Source:** Canterbury Cathedral Archives<sup>16</sup>

16 CCA-U3/118/19/1. A copy (in poor condition) is held by Kent County Archives: RD/Ea/P15.

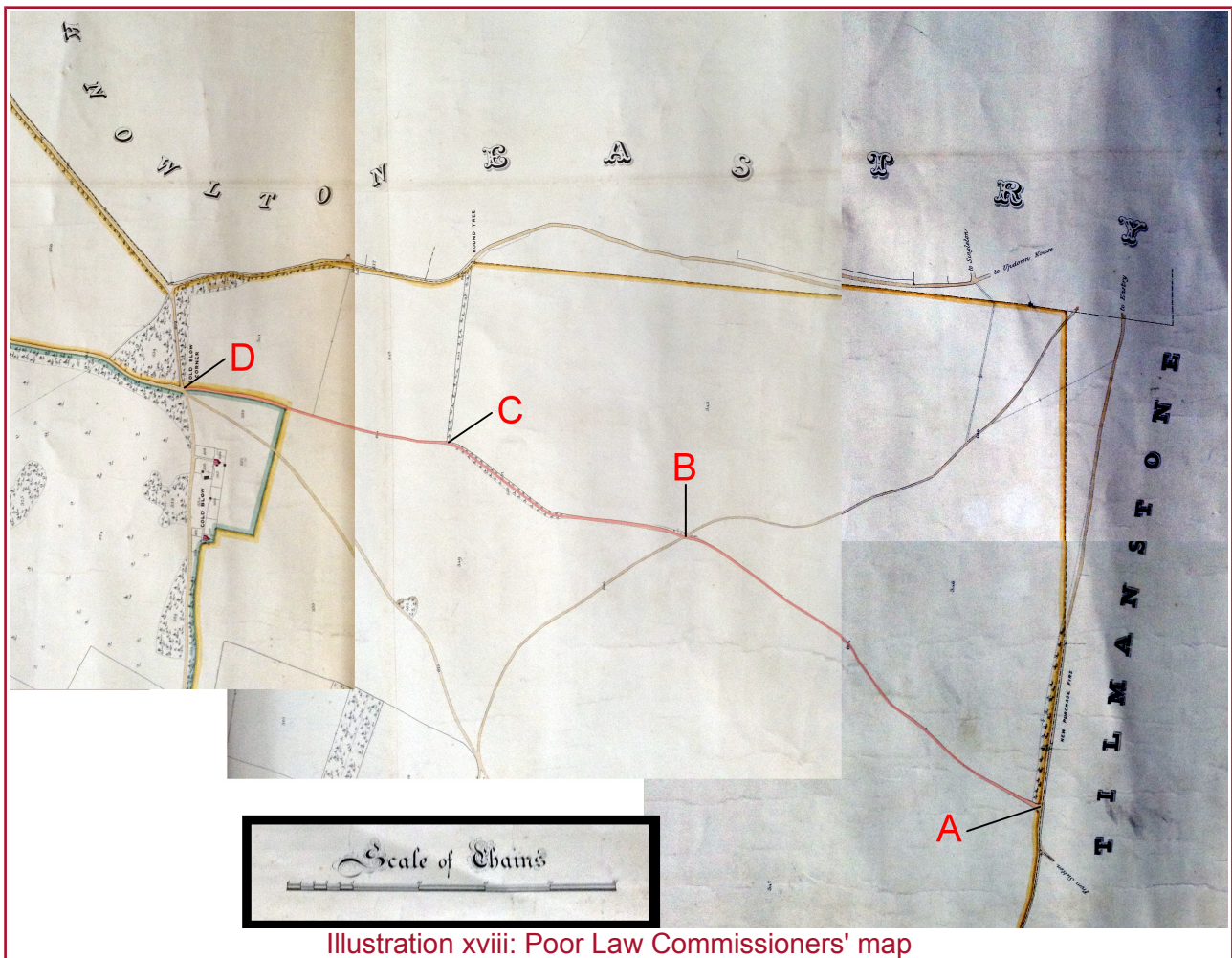


Illustration xviii: Poor Law Commissioners' map

1.3. **Description:** Original scale: scale marked on map in chains (but scale may vary across map owing to differences between component photographs); orientation: rotated 270°.

1.4. The Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington, presumably for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish under section 3 of the Parochial Assessment Act 1836<sup>17</sup>. The map seems to have been based on the tithe map (see item G above) but with substantial modification to reflect change during the subsequent two decades. The ownership and occupation of land was identified in an apportionment.

1.5. Unfortunately, the apportionment is now missing, despite enquiries made of both the archives which hold a copy of the map (see footnote 16 above). Recourse has therefore

<sup>17</sup> S.3: 'And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the church-wardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, ...'. S.4 confers a power of entry for the purposes of survey. S.6 enables appeals to quarter sessions against the valuation. Extracted from [Lumley's Union assessment acts](#), 1895.

been made to manuscript notes made of the apportionment by a local history researcher<sup>18</sup> in connection with a view of the map and apportionment around the year 2000.

I.6. The application way is assigned parcel number 614 throughout between A and D. In the apportionment (as recorded by the researcher), parcel 614 appears under the heading 'Roads — upkeep by Nonington Highway Surveyors', and is described as 'Road from Gooseberry Hall Corner to New Purchase Firs'. Gooseberry Hall Corner is the junction of the Sandwich Road, Cherry Garden Lane and the road from Cold Blow Corner (at D) to the Sandwich Road: this road is also included within parcel 614. New Purchase Firs adjoins BOAT EE335 north of A.

I.7. **Conclusion:** The Poor Law Commissioners' survey is good evidence of the status of the application way at the date it was undertaken. The citation of the application way as one of a number of roads in the parish whose 'upkeep' was the responsibility of the parish surveyors demonstrates that the way was regarded as a public road: as such, the land occupied by these public roads would not have been rateable under the Poor Law Act 1601<sup>19</sup>. Poor law rateable valuations attracted notoriety within the parish<sup>20</sup>, so that the exclusion of private roads (with their value for grazing) would have been open to criticism. The inclusion of the road west-northwest of A towards the Sandwich Road in parcel 614, which is recognised today as a public road, also lends some support.

I.8. **Points:** 5

## J. Ramsgate Sandwich Deal and Dover Railway

J.1. **Date:** 1861

J.2. **Source:** Kent County Archives<sup>21</sup>

18 The identity of the researcher is available on request.

19 S.1 provides for, 'Taxation of every Inhabitant, Parson, Vicar and other, and of every Occupier of Lands, Houses, Tithes impropriate, Propriations of Tithes, Coal-Mines, or saleable Underwoods in the said Parish'. Extracted from [The Workhouse: the story of an institution](#).

20 SS.1 and 2 of the Poor Rate Act 1743 required the publication of poor rates in church, and for the rates to be inspected by any inhabitant and for copies to be taken. Extracted from *Lumley's* (see footnote 20).

21 Q/RUm/463B.

Deposited plan extract:

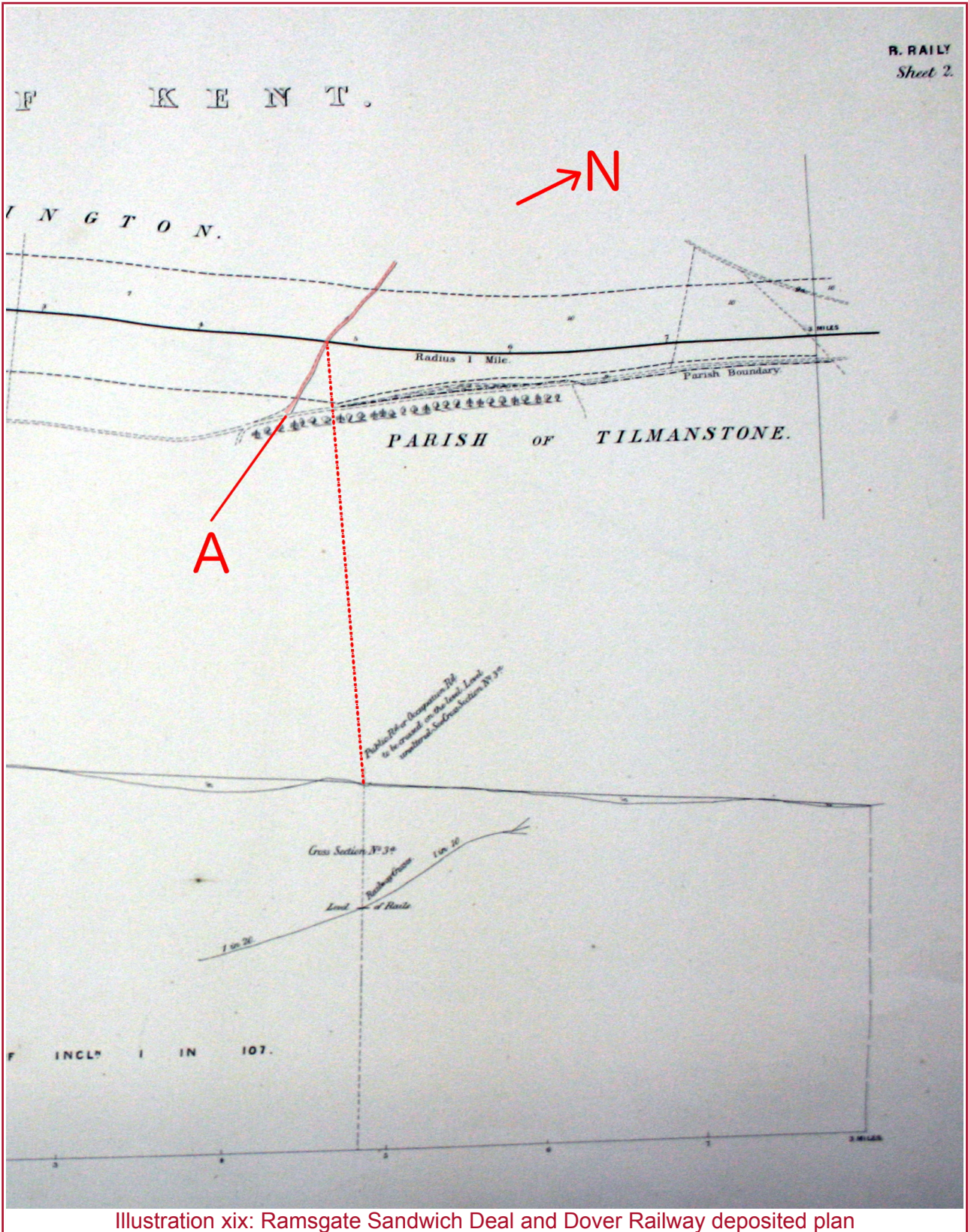


Illustration xix: Ramsgate Sandwich Deal and Dover Railway deposited plan

Deposited book of reference extract for Nonington and Eastry:

Parish of <i>Nonington</i>		County of <i>Hert</i>		
Numbers referring to Plan.	DESCRIPTION OF PROPERTY.	NAMES of OWNERS or REPUTED OWNERS.	NAMES of LESSEES or REPUTED LESSEES.	OCCUPIER'S NAMES.
7	<i>Field</i>	<i>Admiral George Hughes William E. Ash</i>	<i>William Wilson and William Wilson Junior</i>	<i>William Wilson and William Wilson Junior</i>
8	<i>Public road</i>	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>
9	<i>Public road</i>	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>
9 <sup>a</sup>	<i>Public road</i>	<i>The Surveyor of the Parish John Spanton</i>		<i>The Surveyor of the Parish John Spanton</i>

Illustration xx: Ramsgate Sandwich Deal and Dover Railway deposited book of reference

J.3. **Description:** Original scale: unknown (but distance marked off along line on plans); orientation: unchanged (north as superimposed in red).

J.4. The Ramsgate, Sandwich, Deal and Dover Railway Company proposed to construct a line from Shepherdsweil (on the London, Chatham and Dover Railway) to Deal, with a branch joining that line at Ham to Sandwich<sup>22</sup>. Plans and books of reference for the lines were deposited in 1861.

J.5. The Shepherdsweil to Deal line was proposed to run broadly parallel but west of the road now known as BOAT EE335, and would have cut across the application way between A and B. The plans show that it was proposed to construct a level crossing and details of levels are shown in the cross section no. 3a.

J.6. The section refers to the traverse of the application way as 'Public Road or Occupation Road to be crossed on the level. Level unaltered. See Cross Section No. 3a.' The plan labels the application way as plot 8 in the parish of Nonington (plot 9 is BOAT EE335, and plot 9a is the way recorded as footpath EE264).

J.7. The book of reference refers to plot 8 as a 'Public Road', owned in Nonington by the surveyor of the parish, John Spanton, and occupied by the same.

J.8. **Conclusion:** The deposited plans for the Ramsgate, Sandwich, Deal and Dover Railway are convincing evidence of the status of the application way between A and B as a public carriage road. The alternative reference to the status of the road in the cross section as 'Occupation Road' is corrected in the book of reference to a 'Public Road'.

J.9. The railway plans were not enacted into law<sup>23</sup> and the railway was not constructed. However, Parliamentary Standing Orders<sup>24</sup> imposed the same requirements for prior

22 It was also intended to seek running powers over the lines of the South Eastern Railway Company between Sandwich and Ramsgate — hence the title of the company.

23 House of Commons, *Official Report*, 29 April 1862, [vol.117](#), p.163, records that the Bill was withdrawn.

24 Excerpt from Standing Orders of the House of Commons: 'That a plan, and also a duplicate of such plan, on a scale of not less than four inches to mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division, in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through with the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, unless such day shall happen on a Sunday, and if the same shall happen on a Sunday, then on or before the 29th day of November, immediately preceding the session of parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners,

survey, consultation and documentation on all railway companies seeking legislative authority, and there is no reason to diminish the evidence presented by a railway company which was not given Parliamentary approval, because prior to deposit, the requirements were identical regardless of the unpredictable outcome.

J.10. **Points:** 5

## K. Ordnance Survey boundary records

K.1. **Date:** 1867–9

K.2. **Source:** National Archives<sup>25</sup>

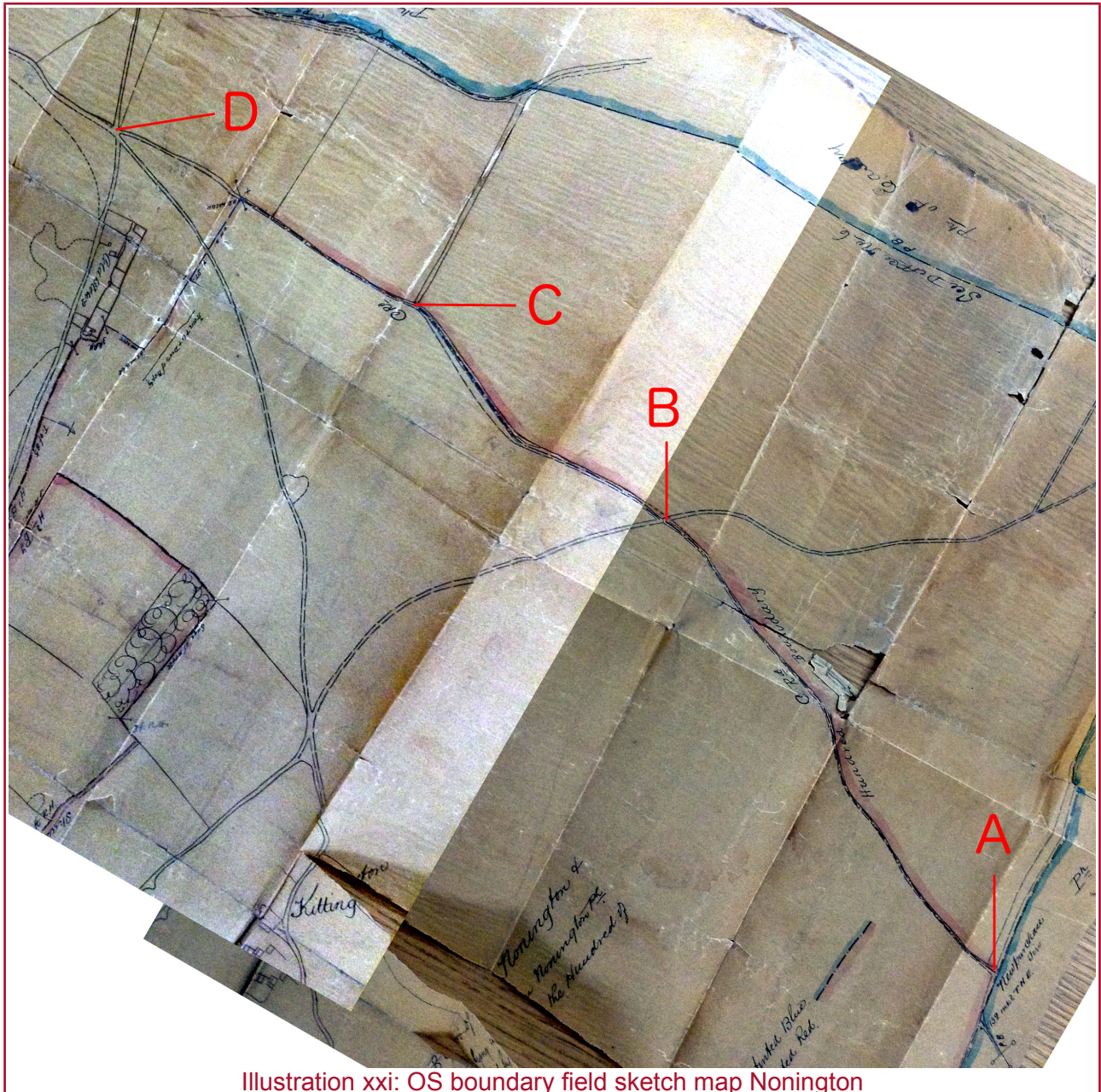


Illustration xxi: OS boundary field sketch map Nonington

lessees or reputed lessees, and occupiers, of such lands respectively; and in the case of bills relating to Turnpike Roads, Cuts, Canals, Reservoirs, Aqueducts, and Railways, a section and duplicated thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate.'

25 OS 28/218



K.3. **Description:** The Ordnance Survey boundary maps date from the late 1860s, and record the Ordnance Survey's surveyors 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).

K.4. The field boundary sketch map for Nonington (original scale: unknown; orientation: not marked, but rotated so that North is at top) were drawn up directly from information gathered in the field, onto a tracing of the parish taken from the tithe map.

K.5. The field boundary sketch map for Nonington and Womenswold was drawn up to show the boundary of the borough of Kittington, a detached part of the hundred of Wingham within the parish of Nonington, otherwise part of the hundred of Eastry. It shows the application way, between A and a point between C and D, as forming the boundary of the hundreds. The application way is marked 'C.R.', denoting that the hundred boundary runs down the centre of the road.

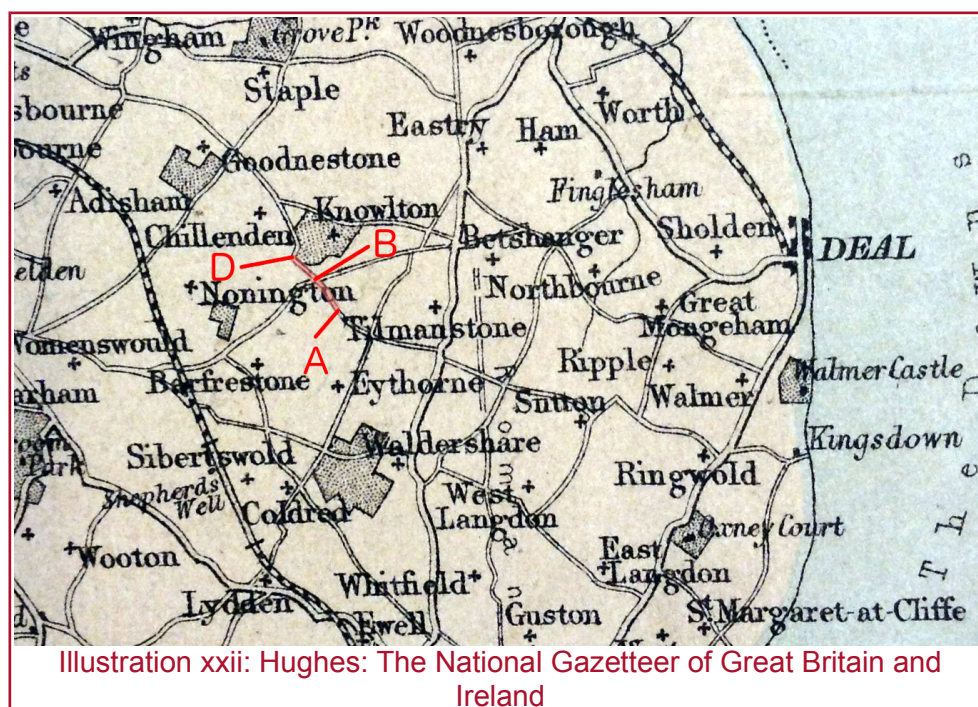
K.6. **Conclusion:** The annotation of the application way as a road, which for nearly the whole of its length forms the boundary between the hundreds of Eastry and a detached portion of Wingham, is suggestive of an ancient way which is likely to be a public road.

K.7. **Points:** 0

## L. The National Gazetteer of Great Britain and Ireland

L.1. **Date:** 1868

L.2. **Source:** British Library<sup>26</sup>



26 10348.i.7: copies available at [www.oldkentmaps.co.uk/K-166-A.htm](http://www.oldkentmaps.co.uk/K-166-A.htm) and [freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU\\_files/ENG/KEN/hughes\\_kent\\_1870.htm](http://freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/hughes_kent_1870.htm).

L.3. **Description:** The map by William Hughes is not obviously derived from any previously published map. The map is selective in the routes shown: it does not, for example, show the Sandwich Road (between Nonington and Eastry), Thornton Road, or Thornton Lane. But it does show a way passing south of Knowlton Park southeast towards Tilmanstone, and a way from the vicinity of Barfrestone northeast towards Betteshanger: these two ways cross south of Knowlton Park.

L.4. **Conclusion:** The alignments of the ways which cross south of Knowlton Park are consistent with those of the application way and the footpath EE264 (for which application has been made to record as a restricted byway). That these ways have been recorded in preference to Thornton Road, the Chillenden to Barfrestone road and BOAT EE335, suggests that the application way was at the time of publication regarded as a significant local road.

L.5. The map is therefore good evidence for the existence of a defined way along the application route.

L.6. **Points:** 0

(This is the fourth of several early county or area maps: no more than two such maps are scored.)

## M. Walmer, Deal and Adisham Railway

M.1. **Date:** 1871

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

Deposited plan extract:

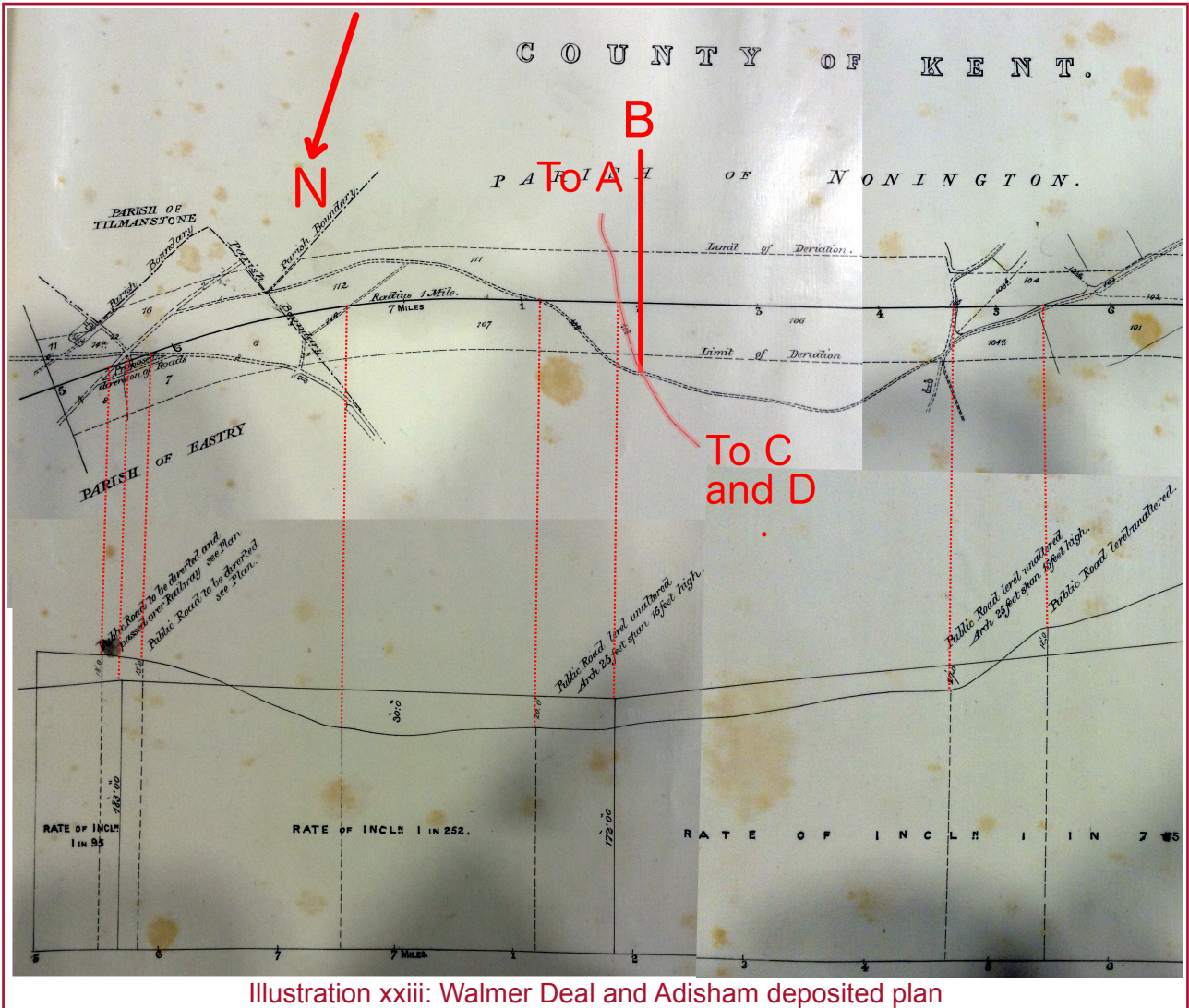


Illustration xxiii: Walmer Deal and Adisham deposited plan

Deposited book of reference extract for Eastry and Nonington:

*Parish of Nonington - County of Kent*

<i>No on Plan</i>	<i>Description of Property</i>	<i>Owners or reputed Owners</i>	<i>Lessors or reputed Lessors</i>	<i>Occupiers</i>
107	Field	George William Hughes D'Asch	William Wilson	William Wilson
108	Footpath	George William Hughes D'Asch	William Wilson	William Wilson
109	Occupation Road	George William Hughes D'Asch	William Wilson	William Wilson

Illustration xxiv: Walmer Deal and Adisham deposited book of reference

**M.3. Description:** The Walmer, Deal and Adisham Railway was proposed to connect the London, Chatham and Dover Railway at Adisham with the South Eastern Railway at Deal, via a line sweeping through Nonington and Kittington, passing south of Eastry and Ham,

north of Finglesham, then through Sholden to Deal. At this time, there was no railway between Deal and Dover (the line from Ramsgate and Sandwich terminating at Deal), and this proposal would have connected Deal and Walmer to the main line to Dover.

M.4. The alignment for the proposed Walmer Deal and Adisham Railway would have crossed the application way slightly to the south of B. No provision is shown for a bridge in the section of the line, although the line at this point is recorded as being intended to follow a level approximately 15–20 feet (4½–6m) above the line of the application way.

M.5. The plan labels the application way as plot 108 in the parish of Nonington. The book of reference refers to plot 108 as a 'Footpath' owned by George William Hughes D'Aeth, and leased to and occupied by William Wilson.

M.6. **Analysis:** The recording of probable public rights of way in the deposited plans and book of reference for this proposed Walmer Deal and Adisham Railway is non-standard. The following table analyses every public right of way (other than carriageways which are today metalled and tarred) which is shown on the definitive map, or any path shown on near contemporary 1:2,500 Ordnance Survey mapping<sup>28</sup>, as intersecting the proposed alignment of the railway between Adisham and West Street (near Ham). The table records the location of each right of way or path, and the representation of it in the deposited plan and book of reference.

Description of right of way	Grid ref.	Right of way no. <sup>29</sup>	Description in book of reference		
			Parcel	Owner	Occupier
public bridleway from Ratling to Listways Cottages	TR241532	BW EE285	—	Not separately identified	Not separately identified
public footpath from Ratling to Old Court Farm	TR244531	FP EE283A	Nonington 24a Footpath	John Laurence	Henry Pledge
public footpath from Pinner's Hill to Bonnington	TR253528	FP EE281	Nonington 40a Occupation Road	William Hammond	William Hammond, William Spanton
public footpath behind Easole Street	TR260521	FP EE311	Nonington 56 Footpath	William Hammond	William Hammond
public footpath from Nonington to Mill Lane	TR264518	FP EE318	Nonington 76 Footpath	William Hammond	William Hammond
public footpath from Mill Lane to Kittington Cottages	TR270516	FP EE321	Nonington 102 Footpath	George William Hughes D'Aeth	John Hammell

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

29 Recorded in the definitive map and statement for Kent.

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
public footpath from near Limekiln Plantation to Kittington Cottages	TR273517	FP EE307A	Nonington 103 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Kittington Farm	TR274517	—	Nonington 103b Footpath	George William Hughes D'Aeth	John Hammell
footpath south-east down Kelk Hill	TR280518	FP EE323	Nonington 108 Footpath	George William Hughes D'Aeth	John Hammell
footpath from Kittington Cottages to Thorntonhill Cottages (the application way)	TR282519	FP EE264	Nonington 109 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath to Shingleton Cottages	TR285521	FP EE263	Nonington 110 Occupation Road	George William Hughes D'Aeth	John Hammell
footpath from Thorntonhill Cottages to Shingleton Farm	TR288523	FP EE262	—	Not separately identified	Not separately identified
Black Lane	TR298532	—	Eastry 25 Occupation Road	Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	George Wood, Thomas Medgetts and William Pittock
bridleway from Venson Bottom to Heronden	TR302534	—	Eastry 34 Occupation Road	Aldborough Henniker and Richard, Charlotte, Elizabeth, Mary and Catherine Boteler	Thomas Medgetts and George Wood
footpath from Northbourne Road to Lower Street	TR310540	EE259	Eastry 43 Footpath	Dean and Chapter of Canterbury	(Lessee, George Terry) Ruth Oldfield

Description of right of way	Grid ref.	Right of way no.	Description in book of reference		
			Parcel	Owner	Occupier
bridleway from Northbourne Road to Hay Hill	TR317540	EE382	—	Not separately identified	Not separately identified
footpath from Eastry to Updown Farm	TR319541	EE257	—	Not separately identified	Not separately identified

M.7. It appears that the book of reference consistently failed to record the correct status of rights of way, particularly where the status may have been less than a carriageway. In the table above, none of the intersecting routes now recorded as public rights of way on the definitive map and statement for Kent (and recorded as paths on the second edition Ordnance Survey 1:2,500 map) is presented in the book of reference as a specifically public path. Relevant entries refer to the right of way either as a 'footpath' or as an 'occupation road', and the owner, lessee where relevant, and occupier, appear to be the private interests in the land. In some cases, such as the bridleway from Northbourne Road to Hay Hill, the way is not separately identified in the book of reference. None of the entries identified in the table refers to the interest of the highway authority.

M.8. **Conclusion:** The references to the application way in the deposited plans for the Walmer, Deal and Adisham Railway as a footpath in the parish of Nonington is not reliable. The analysis shows that various other public rights of way, of varying status, were recorded as of a status which is not consistent with how they were regarded at the time or subsequently. The Bill was reported by one of the Examiners of Petitions for Private Bills to the Select Committee on Standing Orders as non-compliant with Standing Orders<sup>30</sup> and subsequently certified by the Examiners as such<sup>31</sup>. The Bill was not proceeded with.

M.9. **Points:** 0

## N. Ordnance Survey County Series first edition twenty-five inch maps

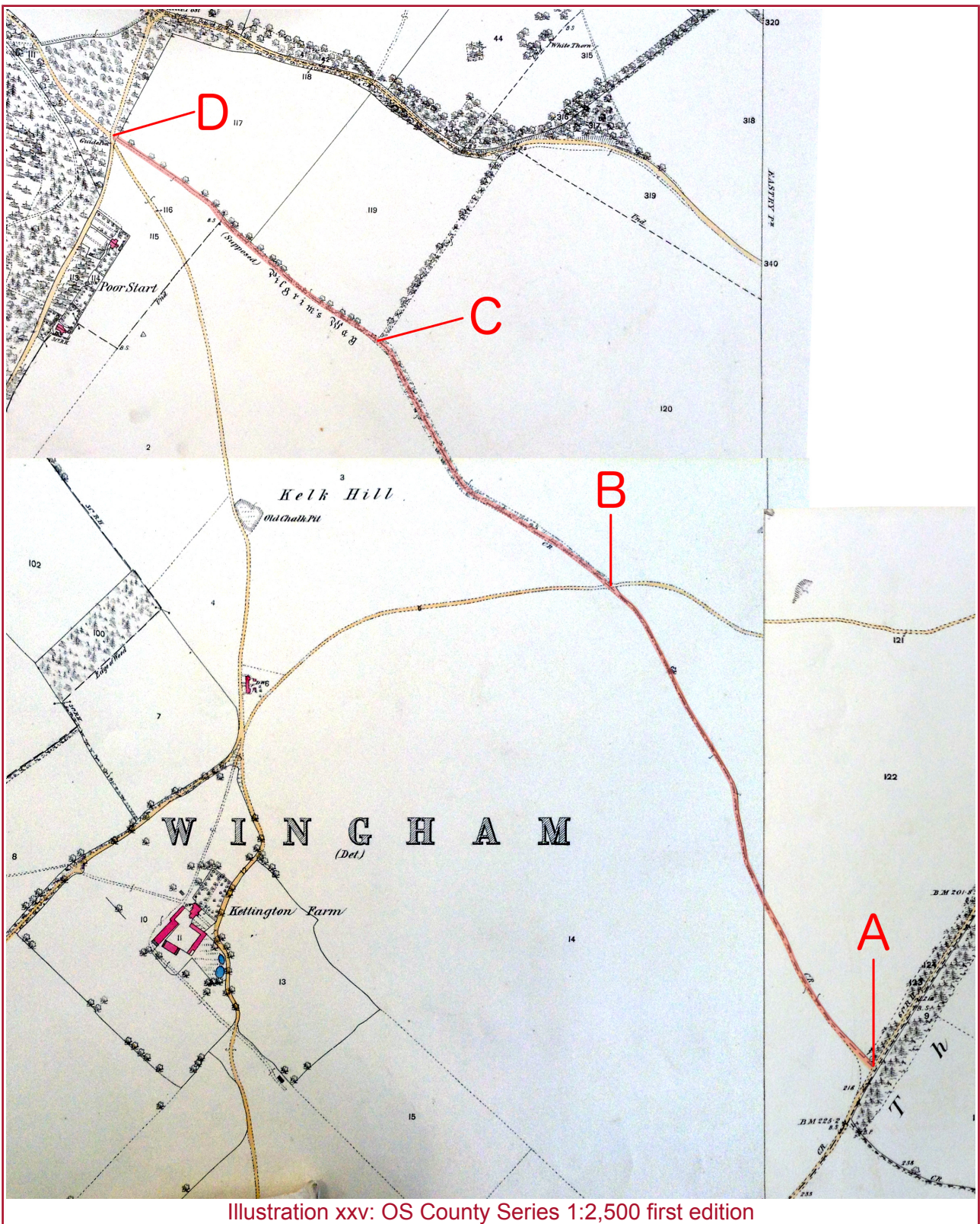
N.1. **Date:** 1872

N.2. **Source:** British Library<sup>32</sup>

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

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

32 OS County Series 1<sup>st</sup> edition in colour, sheets LVII/4 and LVIII/1 surveyed 1872.



N.3. **Description:** Original scale: 1:2,500; orientation: unchanged (north). The Ordnance Survey County Series first edition plans are the first large scale maps to be produced of Kent, with the survey dating from 1872.

N.4. The plans show the application way throughout. Between A and B, the way is hand-painted in the colour of ochre, signifying that the way was made up or metalled.

N.5. The application way is braced into the neighbouring field parcels, and is not separately identified in the book of reference for Nonington.

N.6. **Conclusion:** The Ordnance Survey County Series first edition maps show that the application way was a made road between A and B, capable of sustaining wheeled traffic.

N.7. **Points:** 0