

BHS response to KCC statement

A. Introduction

A.1. This is the response of the British Horse Society to the comments submitted by the order-making authority, Kent County Council (KCC), on the Kelk Hill appeal.

A.2. We refer to the society's original appeal statement of case as 'BHS-SOC'. For example, BHS-SOC/item III.K. We refer to the numbered paragraphs of KCC's comments.

B. Response to KCC commentary

B.1. In its comments, KCC states that its reasons for rejecting the appeal were set out in the notice of decision, and that,¹

the Inspector is respectfully requested to read the decision in full when considering this appeal.

B.2. Regrettably, it seems that KCC has not read the society's appeal statement of case in full, as there is little in its own statement which develops its position beyond the original decision, notwithstanding the additional analysis in our appeal.

B.3. KCC summarises its reasons for rejecting the society's application in seven bullets at para.5 (the bullets are numbered below as b.1 *etc.*). As noted above, KCC does not materially develop its assessment in the light of the society's appeal statement of case, and it is not necessary to repeat what has been set out in that statement of case.

B.4. Nevertheless, we respond as follows.

- b.1: In effect, KCC accepts that the appeal way existed during the currency of the early maps, but not that those maps are evidence for a public bridleway or carriageway. Taken in isolation from the other evidence (including the much earlier *St Alban's map (Gordon Ward collection)* at BHS-SOC/item III.A), such an inference might be justified. However, KCC fails to modify its position notwithstanding that the appeal way is shown to have subsisted for four centuries. It hardly is apposite to observe that the ways shown on those early maps 'include a number of ways that are either private or no longer in existence', when the appeal way was in existence nearly two centuries before those maps, and continued to be recognised as a public carriageway throughout the remainder of the nineteenth century, and remains recognised as a public footpath today. That evidence, taken as a whole, is not compatible with an inference that the way is private.
- b.2: We agree. But the appeal way is depicted in the same manner as other local public carriageways.

¹ KCC, para.4

- b.3: We disagree, for the reasons given at BHS-SOC/item III.I. We note that, although in its determination, KCC said that the yellow infill used on the inclosure exchange map ‘could equally be a reference to the surface of the way’,² the *Ordnance Survey County Series first-edition twenty-five inch plan* (BHS-SOC/item III.O, dating from 1871) records that this part of the appeal way, between B and D, was not metalled at a date some 17 years later. It therefore is not obvious what the yellow colouring might be intended to signify, if not that the ways are public roads or bridle roads.
- b.4: As KCC acknowledges in a footnote, this caution is no longer merited (if it ever was).
- b.5: See BHS-SOC/para.III.K.12. We observe that, although in KCC’s view, the *Ramsgate Sandwich Deal and Dover Railway* plans (BHS-SOC/item III.J, dating from 1861) are said to require ‘a cautious approach to interpretation on the basis that the scheme was never completed (and therefore never underwent full scrutiny)’, the *Walmer, Deal and Adisham Railway* plans (BHS-SOC/item III.N, dating from 1871) are said to be ‘consistent with...the current status of the way’ as footpath and to ‘point to’ a conclusion that the application should be rejected, notwithstanding that the latter plans expressly were rejected by the Select Committee on Standing Orders as non-compliant with Standing Orders and subsequently certified by the Parliamentary Examiners as non-compliant. KCC does not explain why, in those circumstances, the earlier plans demand ‘a cautious approach’ because they were not put into effect, but the later plans, which were rejected as non-compliant, form one of three ill-judged justifications for refusal of the application.
- b.6: See above as to the *Walmer, Deal and Adisham Railway* plans (BHS-SOC/item III.N). As to the first-edition *Ordnance Survey County Series twenty-five inch plans* (BHS-SOC/item III.O, dating from 1871), see BHS-SOC/para.III.O.14.
- b.7: KCC fails to acknowledge that the markings adopted on sheet LVII/4 in both working and record plans (*Finance (1909–1910) Act 1910*, BHS-SOC/item III.Q) are idiosyncratic, and that other plainly-public roads (then and now) similarly are not excluded from colouring (such as the road south from D past Kittington Cottages, and the footpath west from B to and past Kittington Cottages, which is the subject of a determination by KCC to make an order to upgrade to restricted byway³). In order that the inspector has a wider view of this idiosyncratic approach to markings, a copy of the whole of record sheet LVII/4 (from which are sourced the extracts shown in the appeal statement of case) is at annexe A.⁴

Yet on adjacent sheet LVIII/1, the appeal way in the vicinity of A is excluded from colouring on the working plan, as is byway EE335 (but not bridleway EE335B). This suggests that, where a conventional notation was adopted, the appeal way was to be excluded. However, on the record plan for sheet LVIII/1, a similar practice is adopted to the record plan for LVII/4, and none of the appeal way, byway EE335 nor bridleway EE335B appears to be excluded from colouring. A copy of the whole of this record sheet LVIII/1 (from which are sourced the extracts shown in the appeal statement of case) is at annexe B.⁵ As with record sheet LVII/4, hereditaments are identified only

2 KCC report on application C399 dated 5 February 2024, appendix B, para.104 (and see BHS-SOC/item III.I.7).

3 Comprising footpaths EE264, EE307A and EE307B.

4 IR 124/5/133. The annexed copy stitches together several individual photographs of the sheet.

5 IR 124/5/146. The annexed copy stitches together several individual photographs of the sheet.

by a colour-wash, and only some roads are excluded from the colour-wash, it often being difficult to tell whether a particular road is excluded or not.

The purpose of the annexed maps is not to introduce new evidence, but to assist in placing the existing extracts in the context of the entire map sheets, in response to further KCC criticism.

B.5. At para.6, KCC's determination to refuse the application is justified by reference to three evidential items: that the appeal way is identified as a footpath on the *Walmer, Deal and Adisham Railway* plans (BHS-SOC/item III.N); the absence of a discrete parcel number on the *Ordnance Survey County Series twenty-five inch plans* (BHS-SOC/item III.O); and the absence of any exclusion from the colour-wash on the *Finance (1909–1910) Act 1910* plans (BHS-SOC/item III.Q). These findings have already been challenged in the appeal statement of case, and where appropriate, above, and no further comment is made.

B.6. At para.7, KCC suggests that the society seeks to:

apply a lesser threshold – one that is more akin to a reasonable allegation – when in reality the 'ought' test requires reasonably sound and consistent evidence to conclude that it is more probable than not that the claimed route should be shown on the Definitive Map at a higher status.

The society makes no such submission. The society's appeal contends only that the weight of the evidence lies in favour of public carriageway rights, and that any evidence said to be to the contrary (such as is recited in KCC, para.6) has been misunderstood or misinterpreted.

B.7. At para.10, the purpose of the later Ordnance Survey mapping (*Late C19 and early C20 maps*, BHS-SOC/item III.P) is not to suggest that it is proof of the appeal way's status as a public road but to demonstrate (taken with other evidence) that the appeal way has subsisted throughout at least the last five centuries (and almost certainly much longer) and continues to subsist to this day.

B.8. KCC refers to other ways shown on the Ordnance Survey New Series one-inch maps which undoubtedly were then private or occupation roads or tracks. But such comparison is a distraction. What the New Series map revised 1858–72 (BHS-SOC/illustration xxxii) shows, in common with earlier maps, is the appeal way in the context of connecting roads which strongly suggest a through public route, from New Purchase Farm and places east of there, along what is now bridleway EE335B towards A, across what is now BOAT EE335, following the line of the appeal way to D, and then continuing north-west to and beyond 'Gooseberryhall'. It is suggested that, in such a context, it is highly unlikely that this particular component of a through route is not itself (in common with other parts of the route) a public road — save that what is now bridleway EE335B is (we suggest) under-recorded, as indeed is the appeal way.

B.9. That only A–B of the appeal way appears on the later New Series edition revised in 1893 (BHS-SOC/illustration xxxiii), and on the third edition revised in 1904 (BHS-SOC/illustration xxxiv), and is omitted entirely on the fourth edition revised in 1909 (BHS-SOC/illustration xxxv), supports only what is already known — that the appeal way was, by this

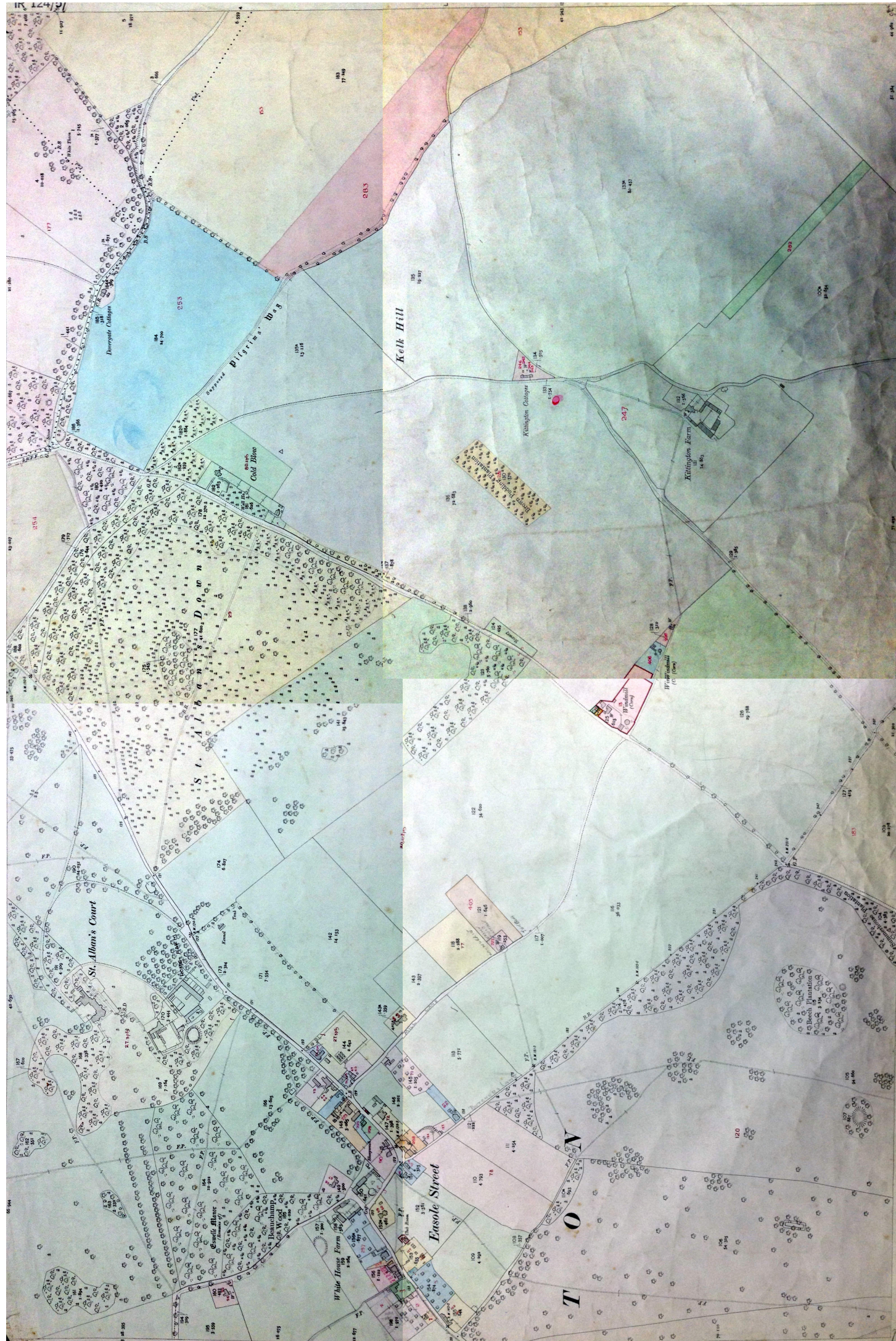
time, falling out of use by vehicles, probably because what KCC describes as 'the most direct route between Chillenden and Tilmanstone being via Thornton Road', was being maintained by the highway authority to a sufficient standard to be efficiently driven with horse-drawn vehicles, and the appeal way being neglected and inferior for such vehicles.

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for British Horse Society

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Annexes

Annexe A: Finance (1909–1910) Act 1910, record plan sheet Kent LVII/4
(see para.B.2, re bullet b.7, above)



Annexe B: Finance (1909–1910) Act 1910, record plan sheet Kent LVIII/1
(see para.B.2, re bullet b.7, above)

