

Maydensole bridleway: historical document analysis

Application to upgrade to bridleway a footpath from Sutton to Maydensole

I. Introduction

A. Quick reference

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



A.2. Existing public rights of way comprised in application way: EE417

A.3. Length of way: 2,710m

A.4. Parish of: Sutton (next Dover)

A.5. District of: Dover

A.6. Hundred of: Cornilo

A.7. Former parishes of: Sutton; Little Mongeham

- A.8. Termination points: Sutton Court; Roman Road near Maydensole Farm
- A.9. Termination points Ordnance Survey grid references: TR33444938; TR31434766
- A.10. Postcode: CT15 5HE
- A.11. Ordnance Survey Explorer sheet: 138
- A.12. Ordnance Survey County Series 25" sheets: Kent LVIII/10, LVIII/11 and LVIII/14

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 historical researcher in relation to South and East Kent. I am a member of the Institute of Public Rights of Way and Access Management. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for the 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 Sutton (next Dover) and Maydensole near West Langdon, which lies in the parish of Sutton, in the district of Dover, Kent.. The way is currently recorded in the definitive map and statement as public footpath. The application seeks to record the way as a public bridleway.

D. Nomenclature

- D.1. No particular name is known for the application way itself: it is referred to in this application as the 'application way'.
- D.2. The way lies wholly in the parish of Sutton (next Dover). At the south-western end lies Maydensole Farm, in Napchester.

E. Application

E.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 bridleway.

E.2. To any extent necessary, the application also seeks that the order be made under section 53(3)(c)(i) and (iii), so that a bridleway which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, and there is no public right of way over land shown in the map and statement as a highway of any description, and any other particulars contained in the map and statement require modification.

E.3. The application seeks to upgrade to public bridleway a public footpath in the parish of Sutton. Footpath EE417, part of the White Cliffs Country Trail, begins at Sutton Court on Church Hill, Sutton, at A (TR33444938). It passes south-west through Sutton Court, and continues generally south-west for a distance of 1,485m to a junction with public foot-

path EE419 at B (TR32374837), continuing south-west for a distance of 470m to C and a dogleg to the north-west at D of about 25m, continuing south-west and then west-south-west for a distance of 730m to pass just north of Maydensole Farm to join the Roman Road at E (TR31434766) immediately north of the junction with Napchester Road. The total distance of footpath EE417 from A to E is 2,710m.

E.4. The points A to E are identified in the application map at part II below.

E.5. For the line of the application way at Maydensole Farm in the vicinity of E, please see item I.F immediately below.

F. Application way at Maydensole Farm

F.1. There is some uncertainty about the correct line of the right of way at Maydensole Farm.

F.2. Most historical sources show a track leading from D to Maydensole Farm. One might infer that those who used the track as a right of way passed through the farm yard and out through the main gate to Maydensole road junction, a little to the south of E.

F.3. However, the line of the right of way was recorded by Sutton parish council on its parish map prepared under Part IV of the National Parks and Access to the Countryside Act 1949 (Definitive map and statement at item V.K below), as lying to the north of the Maydensole farm buildings and emerging onto Roman Road at E. The precise alignment of this route may be disputed, and it is unclear whether the line recorded on the definitive map and statement is useable. This alignment is reasonably consistent with the line shown on the Ordnance Survey surveyor's drawings, Illustration xvii, St Margaret's Bay extract (item V.A below). On the other hand, no such alignment, to the north of the farm yard, is evident in the plan prepared for the Maydensole Farm estate auction (item V.G below).

F.4. The society is content that the line in the vicinity of Maydensole Farm should remain, as now, to terminate at E, but has no objection, if the evidential burden can be discharged, that the line be altered to one passing through Maydensole farm yard and terminating at Maydensole road junction. In our view, the application way very likely has subsisted since time immemorial, and any evidence that a portion of it in the vicinity of Maydensole Farm was not in use at a particular time may be evidence of no more than a temporary state of affairs, when users took to an alternative route. In the absence of evidence that a route through the farm yard is the true line, it is submitted that the present recorded line should endure.

G. Background and commentary

Background

G.1. The society submits that the application way is a field road between Sutton village and Maydensole (a field road is a road which is unenclosed across fields, and often gated at each field boundary).

G.2. Under the survey carried out under Part IV of the National Parks and Access to the Countryside Act 1949, the application way was recorded on the parish map for Sutton as a

'farm road', no.15.¹ It appeared on the draft map published in 1952 as a 'cart road footpath' C.R.F. 15, to which there was no relevant objection, on the provisional map now renumbered CRF417 to which there was no relevant objection, and then the final map as a road used as public path CRF417. The final, 'definitive' map and statement was published in 1966.

G.3. The application way was reclassified as a byway open to all traffic on a draft revised map published in 1970, but there was a relevant objection to the reclassification, and the council was directed by the Secretary of State in 1983 to abandon the reclassification. On the revised definitive map and statement published in 1987, the application way reverted to being shown as a road used as public path, no. EE417.

G.4. The application way was obstructed by a stile at B, and Dover District Council, then exercising on an agency the functions of highway authority for public rights of way, in 1985 took steps to require the removal of the stile. However, members of the council's technical services committee decided in 1986 (in the teeth of contrary advice from officers) to take no further steps to make the application way available to horse riders, but to encourage the landowners to apply to downgrade the way to footpath. Horse riders using the application way were challenged.

G.5. Two of the owners of the land comprised in the order way subsequently applied to Kent County Council on 4 September 1987, as surveying authority, for a definitive map modification order to downgrade the application way to a footpath, on the grounds that it had never been a bridleway or road. The application adduced evidence, *inter alia*:

- that the application way long had comprised a farm track from A to B and a farm track from E to C, but with no connecting route other than a footpath and stile at B;
- that a stile had been erected at B in 1938;
- that various Ordnance Survey County Series 25-inch plans annotate part of the application way as 'F.P.';
- that the Ordnance Survey Old Series one-inch map did not show the application way;

G.6. The county council undertook some limited research which found no convincing evidence that the application way had bridle or vehicular rights, and made a definitive map modification order on 1 September 1992 under s.53(3)(c)(ii) of the Wildlife and Countryside Act 1981 in response to the application, to downgrade the road used as public path to footpath. There were objections to the order, and an inquiry was held before an inspector. In the event, few objectors appeared before the inquiry, and those who did appear were unable to produce evidence, as sought, that the application way was used by horse riders prior to the way appearing on the draft map. It appears that, owing to a falling-out between those representing horse riders' interests, nine objectors to the order failed to attend the inquiry.² The inspector, in a decision letter dated 30 September 1993, confirmed the order.

1 The parish survey distinguished farm roads (black), footpaths (red), overgrown (green) and 'Not shown on recent Maps but on old Maps' (yellow). There was no specific category for bridleways or roads used as public path. In the column for widths, no.15 is described as 'Farm Road', and it may be that this description was intended to describe width rather than status.

2 See the decision letter, para.3, and the minute of Kent county council dated 18 August 1993 between Mr Richardson and Mrs Ross, paras.1-2.

Commentary

G.7. The evidence supporting the 1992 order was of limited relevance. The applicant provided negligible evidence of status antecedent to the 1951 parish map, comprising witness evidence of the stile allegedly erected at B in 1938, and the annotation of part of the way as a footpath on some Ordnance Survey County Series plans.

G.8. The county council conducted

...a comprehensive search of the Tithe Map and Award, First Edition Ordnance Survey Map and Book of Reference and Finance Act 1910 has been undertaken. None of these documents have shown that RUPP EE417 was ever of any greater status than that of Public Footpath. The path was not considered to be a road at the time of the Tithe Map or First Edition Ordnance Survey Map.³

G.9. In *R v Secretary of State for the Environment ex parte Hood*, Lord Denning MR said that⁴:

The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975.

G.10. At the time of the order, the Secretary of State for the Environment had published Circular 18/90, which advised local authorities that:

...in making an application for an order to delete or downgrade a right of way, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded.

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative map and statement of the highest attainable accuracy. The evidence needed to remove a public right from such an authoritative record, will need to be cogent. The procedures for identifying and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years, without being questioned earlier.

G.11. Eight years after the decision in relation to the order, in *Trevelyan v Secretary of State for the Environment, Transport and the Regions*, Lord Phillip MR (with whom the other two judges of the Court of Appeal agreed) said⁵:

Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence

³ Kent County Council proof of evidence for public inquiry.

⁴ [1975] 1 QB 891 at 899

⁵ [2001] EWCA Civ 266, at para.38

which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.

G.12. It is submitted that the decisions to make and confirm the order fell into error on three grounds:

- The surveying authority did not sufficiently research the status of the order way, but relied on a cursory inspection of a handful of commonly-available evidential sources (one of which, the Finance (1909–1910) Act 1910, was unlikely to be of any relevance whatsoever in the context of whether the order way correctly was classified as having bridle or footpath rights). Moreover, even among those sources inspected, it failed to observe that the Little Mongeham tithe map contained evidence that the order way was a public bridle or carriage road (see Tithe Commutation Act 1836 at item V.D below), while there was little likelihood that any cross-field bridleway would be depicted on the Ordnance Survey, Old Series one-inch map of Kent (item V.C below).
- There was no ‘cogent’ evidence, of ‘some substance’, sufficient ‘to outweigh the initial presumption that the right of way exists’, but merely evidence which was neutral as to the existence of bridleway rights.
- The inspector was wrong to look for evidence of use by horse riders prior to the publication of the draft map in 1952, that in its absence he was wrong to infer that there was no such use, and that he ought to have adopted as his starting point the words of Lord Denning — that the draft map ‘was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living.’ And that if, ‘Such evidence might well have been lost or forgotten by 1975’,⁶ it was all the less likely to have been available in 1993.

G.13. We comment on the evidential items referred to in the 1993 decision in part III below.

H. Grounds for application

H.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*⁷, 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

⁶ *Hood*, see para.I.G.9 above.

⁷ [2012] EWCA Civ 334

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.'

H.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.⁸

H.3. The correct test under s.53(3)(c)(ii) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description... .

H.4. Moreover, in the particular circumstances of the application way, which was downgraded from road used as public path (RUPP) to footpath, it is submitted that:

- some weight must be accorded to the decision of the parish council to record the application way as a cart road footpath (*i.e.* a RUPP) on its parish map;
- that the surveying authority was wrong to make an order in 1987 to reclassify the RUPP to footpath, and
- that the inspector applied the wrong test in deciding to confirm the order in the absence of evidence of equestrian use prior to the date of the draft map.

H.5. Turning to the evidence submitted with this application, it is suggested that the application way's depiction on two early nineteenth century maps, comprising the Ordnance Survey surveyor's drawings (item V.A below) and the Ordnance Survey, Mudge-Faden one-inch map of Kent (item V.B below), was unusual and exceptional, and tends to suggest that the application way was at least of bridleway status. The Little Mongeham map prepared under the Tithe Commutation Act 1836 (item V.D below) annotates the continuation of the application way into the parish of Sutton consistent with expectation of a bridle or carriage road, and the Ordnance Survey boundary records (item V.E below) do likewise. The boundary records also refer to the application way as a road, and show the former parish boundary briefly following the centre line of the road, which suggests that the road has an ancient and inevitably public origin.

H.6. The Deal, Walmer and Adisham Junction Railway (item V.F below) unequivocally records the application way as a bridleway. The plan prepared for the Maydensole Farm estate auction (item V.G below) has informally been annotated to show the application way

⁸ [Consistency Guidelines](#): para.2.17.

as a bridleway. In 1902, Eastry Rural District Council (item V.H below) agreed between the highly-experienced surveyor, a council *ad hoc* highways committee and the owner of the land that the way was a bridleway which required to be gated, and corroborated the view of the Commons and Footpaths Preservation Society, Kent & Surrey Committee (item V.I below): ‘that the Path had always been used as a public Bridle Path.’ It is submitted that a proposed order under the Electricity Supply Acts 1882 to 1922 (item V.J below) inevitably contemplated that the application way was of at least the status of bridleway.

H.7. Finally, it is noted that the Sutton parish council recorded the application way in its parish survey in 1950 in preparation for the Definitive map and statement (item V.K below) as a cart road footpath subject (at least) to bridle rights. And, so far as the application way between a point near A and B is concerned, the title to the way is excluded from any HM Land Registry (item V.L below) registered title, and that this is strongly indicative of at least bridleway status.

H.8. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates bridleway status.

I. Discovery of evidence

I.1. Much of the evidence contained in this application, including that of the Eastry Rural District Council (item V.H below), was not considered in the context of the 1987 application, and there is no suggestion that it was considered in the context of the survey under Part IV of the National Parks and Access to the Countryside Act 1949. Therefore, there is discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

J. Points awarded

J.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*⁹.

J.2. Points:

Item	Ref	Points
Ordnance Survey surveyor's drawings	V.A	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	V.B	1
Ordnance Survey, Old Series one-inch map of Kent	V.C	0
Tithe Commutation Act 1836	V.D	3
Ordnance Survey boundary records	V.E	2
Deal, Walmer and Adisham Junction Railway	V.F	5
Maydensole Farm estate auction	V.G	2
Eastry Rural District Council	V.H	3

⁹ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

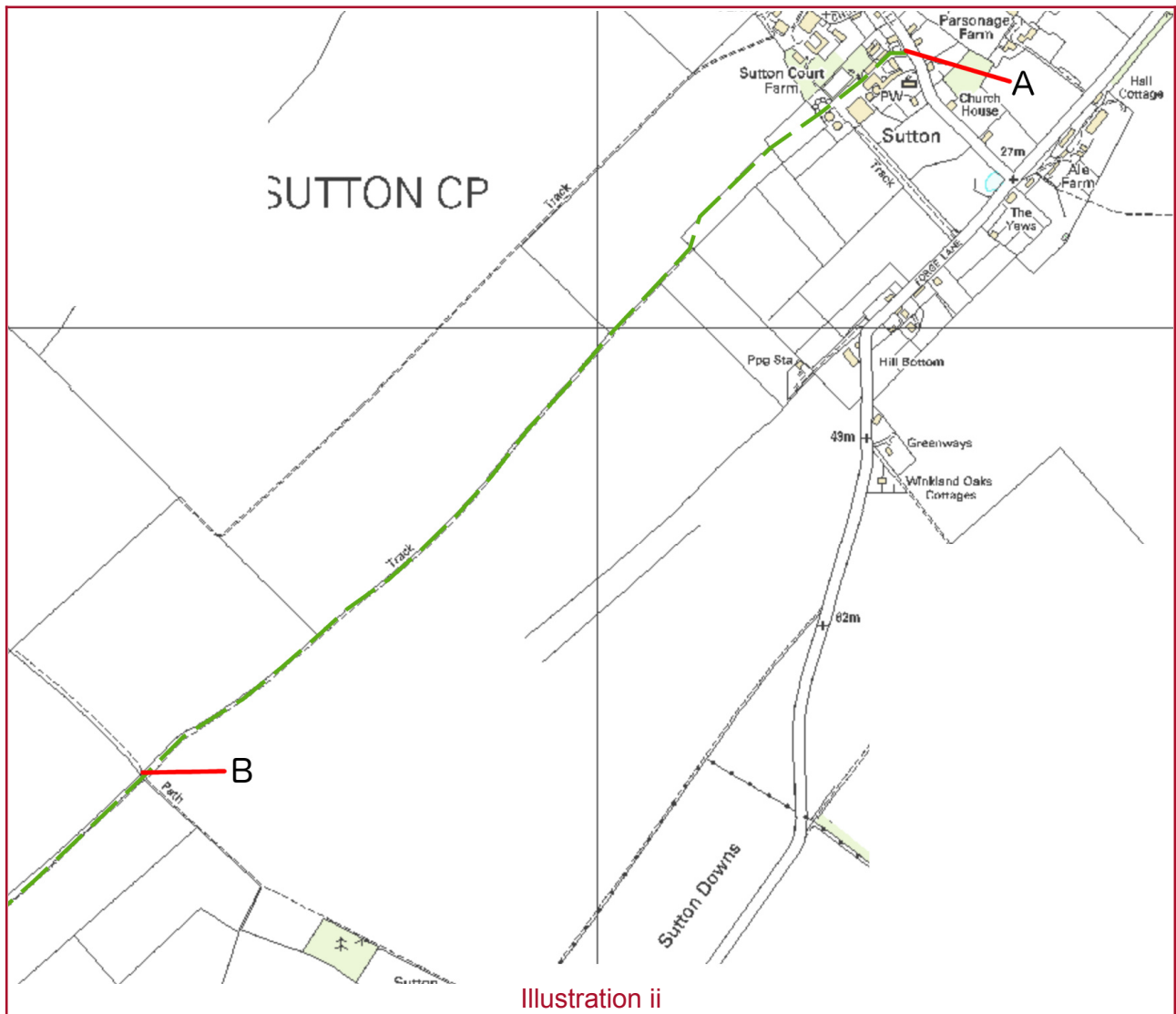
Commons and Footpaths Preservation Society, Kent & Surrey Committee	V.I	2
Electricity Supply Acts 1882 to 1922	V.J	2
Definitive map and statement	V.K	0
HM Land Registry	V.L	2
Total points		23

K. Width of application way

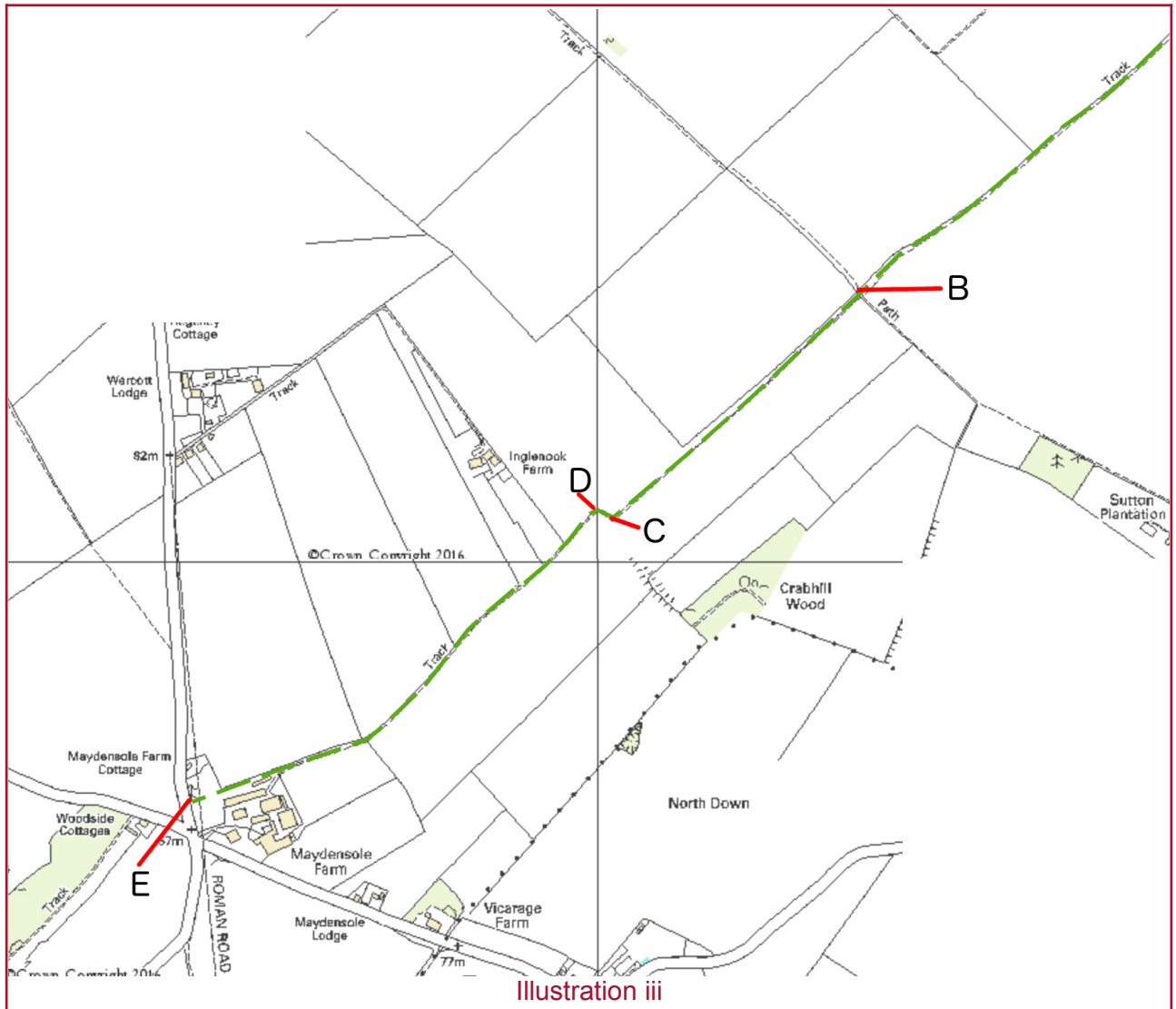
K.1. No width is recorded for the application way, and, typical of a field road, there is no evidential record of its width. It is suggested that a width of 3.5 metres, being sufficient for two riders to pass, is recorded.

II. Application maps

Application map (east)



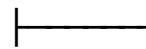
Application map (west)



Map ii centred on TR329489

Map iii centred on D at TR320480

Scale: approx. 1:9,650 (when printed A4)



170 m

Application way is marked ---

III. Other evidence for the 1993 order

A. Introduction

A.1. In their application of 4 September 1987 to downgrade the application way from road used as public path to footpath, the 1987 applicants (John Charles Plommer and Richard Mackney Fuller) adduced a number of documents in support. These (so far as they are not included in the evidence in support of this application in part V below) are considered in this part.

A.2. The items of evidence were numbered from 1 to 32, and these identifying numbers are given below. We do not have copies of all the documents referred to, and inferences have been drawn where necessary from the applicants' commentary. In particular, maps have provisionally been identified from the description and date given.

B. 1) Sutton parish council, letter of 2 July 1973

B.1. The letter record the view of the council that the application way 'has not been used for any purpose other than a footpath for at least 50 years'.

B.2. We agree in relation to the post-war period: it is well known that the application way during the post-war period was obstructed to horse riders, and attempts to ride it were challenged by the 1987 applicants. The author of the letter, the clerk to the council, does not state the authority of or the provenance for the quoted assertion, and as such, it cannot be validated, other than as an uninformed view of the council relating to events and matters in the distant past.

C. 2) Sutton parish council, minutes of meeting of 6 June 1978

C.1. The 1987 applicants contend that this meeting casts some light on whether the parish council made some mistake in interpreting the description of the path (as a 'cart track used as a footpath') when it prepared the parish map in 1950. It is submitted that, 38 years after that event, it does not and cannot.

D. 3) Statement of R J Hares, 1986

D.1. Mr Hares made a statement in June 1986, claiming knowledge of the application way for 60 years, to the effect that the farm tracks at the Maydensole and Sutton Court ends of the application way had never been connected other than by a footpath with a stile. It is submitted that, on the contrary, his recollection is contradicted by the evidence of a stile being erected at B in 1938, which implies that, prior to that date, the ends were connected by a way negotiable by horses (and perhaps vehicles), and it was the erection of the stile which prevented such use.

E. 4) Statement of W S J Styles, 1986

E.1. Mr Styles made a similar statement to Mr Hares, at a similar time, claiming knowledge of the application way for 49 years, and that the farm tracks had not been connected other than by a stile. It appears that the earliest time of Mr Styles' recollection is coeval

with the erection of the stile at B. We make the same comment as in relation to Mr Hares' statement.

F. 5) Ordnance Survey map extract, 1949

F.1. The application way is marked in part, 'F.P.', which the key refers to mean 'footpath'. It is not clear to what Ordnance Survey map of 1949 reference is made. We do not agree that the Ordnance Survey County Series 1:2,500 plan published in 1946 is so marked, but we agree that the 1:10,560 map published in 1951 is so marked between B and C.

F.2. *Ordnance Survey Maps: a concise guide for historians*¹⁰ describes the use of the annotation 'F.P.' as from 1883, and 'B.R.' from 1884. The Ordnance Survey abandoned use of the term 'B.R.' in the late 1940s (and thereafter, paths might be marked 'F.P.' regardless).

F.3. The disclaimer — that the representation on the Ordnance Survey map of a path was no evidence of the existence of a right of way — was first used in 1888¹¹. Plainly, it applies here. The annotation of the application way by the Ordnance Survey as a 'foot-path' does not demonstrate the absence of public bridle rights, any more than it records the existence of public footpath rights. It does, however, tend to show that the surveyor, on revision of the map, observed use of the way mainly on foot (whether by observation of passengers, marks on the ground, signposts or otherwise is not now known).

G. 6) David & Charles edition 1

G.1. The David & Charles edition reproduces the Ordnance Survey, Old Series one-inch map of Kent (item V.C below), although the David & Charles reproduction is believed to be of a later state of that map.

G.2. Reference is made to the track which runs from Poison Down to Guston which is marked as a bridle road on the map referred to at III.F above and as a track on the David & Charles edition of the one-inch map, and that bridleways are therefore shown on the one-inch map as 'old roads'. We agree: many bridleways are so shown, but primarily where they are enclosed bridleways, or bridleways across unenclosed land (such as common land or moorland). Most field bridleways are not shown on the Old Series one-inch map.

H. 7) Ordnance Survey County Series 1:2,500 sheet, Kent LVIII/14, first edition 1871

H.1. The 1987 applicants suggest that the track from Maydensole narrows towards D, and that this indicates that there was no more than a footpath towards B.

H.2. We do not accept that the status of a track shown on the first edition map can be established from its width.

¹⁰ Richard Oliver, 2013

¹¹ *Ordnance Survey Maps, a concise guide for historians*: ibid.

I. 8) Ordnance Survey County Series 1:2,500 sheet, Kent LVIII/10, first edition 1871

I.1. Again, the 1987 applicants suggest that the track between D and B is narrow, and that this indicates that there was no more than a footpath. It also is suggested that the narrowing of an intersecting track, now footpath EE430 and restricted byway EE419B, similarly shows how a vehicular track narrows to become a footpath.

I.2. We do not accept that the status of a track shown on the first edition map can be established from its width. Nor do we accept that the illustration of footpath EE430 and restricted byway EE419B establishes a rule or presumption.

I.3. The 1987 applicants assert that there never has been a vehicular way along the application way between B and C. If so, it hardly is surprising that the application way, between these points, is shown as of lesser width than the vehicular tracks on either side, irrespective of whether it were used as a footpath or bridleway.

J. 9) Definitive map and statement

J.1. We cannot trace BW265, nor do we understand its relevance.

K. 10) Ordnance Survey map of 1979

K.1. No comment.

L. 11) Ordnance Survey County Series 1:2,500 sheet, Kent LVIII/14, third edition 1907

L.1. Please see paras.III.F.2–F.3 above as regards the annotation 'F.P.'.

M. 12) Ordnance Survey County Series 1:2,500 sheet, Kent LVIII/10, third edition 1906

M.1. Please see paras.III.F.2–F.3 above as regards the annotation 'F.P.'.

M.2. It is not accepted that any stagger is recorded on the definitive map and statement at B, or that passage along the application way includes any part of footpath EE419. If it does, then application is made also to upgrade that short part of EE419.

M.3. Nothing can be deduced from the stagger, which is not shown on the 1871 map.

N. 13) Ordnance Survey County Series 1:10,560 sheet, Kent LVIII/14, second edition 1898

N.1. Please see paras.III.F.2–F.3 above as regards the annotation 'F.P.'.

O. 14) Ordnance Survey County Series 1:10,560 sheet, Kent LVIII/10, second edition 1898

O.1. Please see paras.III.F.2–F.3 above as regards the annotation 'F.P.'.

P. 15) Aerial photograph 1946

P.1. We agree that the photographs show that most vehicular use was from Maydensole Farm to C, and from Sutton Court to just short of B. However, it is also clear that a well-worn path continues between B and C adjacent to the headland, between these points, and vehicular use cannot be ruled out.

P.2. Irrespective of whether there is such vehicular use, it is immaterial to whether the application way is a bridleway.

Q. 16) Ordnance Survey 1:25,000 sheet TR34, 1960

Q.1. Post-war maps at this scale have never distinguished between footpaths and bridleways: all field paths are annotated 'F.P.' (if they are considered to be paths).

R. 17) The *Giles* case

R.1. It is submitted that the case, which was reported in the *Dover Express and East Kent News* edition of 29 August 1941 (see below), tells us nothing about the application way, and little about the way in question (now footpath EE419).

THE DOVER EXPRESS AND EAST KENT NEWS, FRIDAY, 29 AUGUST, 1941.

**FOOTPATH DISPUTE AT
COUNTY COURT.**

At the Deal County Court, on Friday last week, before his Honour Judge Clements, Ernest M. Fuller, of Sutton Court Farm, applied for an injunction to restrain Percy J. Giles from trespassing on his property.

Defendant said that he did not think he was trespassing. He thought that he had been using a main road.

Mr. A. K. Mowll, for plaintiff, said that a footpath ran beside and across the property, and he objected to defendant taking a horse and cart across it and over some barley. Damage to the extent of £2 had been done.

Plaintiff said that he was informed that someone had driven a horse and cart over the barley at his farm. He had never seen defendant do so. Defendant called on him on July 24th and said that he was only going in the tracks of other people.

Defendant said that he understood he was using a public highway 6ft. wide, and was not aware he had done any damage.

Plaintiff said that the path was only 2ft. wide.

William Church, The Yews, Sutton, gave evidence that he saw defendant drive a horse and cart into a field at the entrance to a Mr. Styles' property, which adjoined that of Mr. Fuller. He then went on to Mr. Fuller's property and into the firs. The horse and cart went over Mr. Fuller's barley. Witness had known the path for nine years and had always understood there was just a footpath there, not more than 2ft. wide.

Defendant said that he had lived at Sutton for eight years, and he had always understood that there was a 6ft. road there, and that part of it passed through Sutton Court Farm.

Hawtrej James May (88), living at Shepherdswell, said that his father owned Sutton Court Farm in 1870, and witness farmed it for 17 or 18 years from 1871. The footpath was now exactly the same as it was in 1870. There had only been a footpath there during all the years since, and nothing else.

Isaac James Harvey said that there was a "cart road" at each end, but he could not say whether that part which ran across Sutton Court was a "cart road" or not. He had not taken a horse and cart there.

His Honour said that he was satisfied that it was simply a footpath and that defendant had no right to do what he did, and he must not do it. He awarded £2 damages.

Defendant: I do not think I should pay damages. I did not know I had no right to use it.

Illustration iv

R.2. The case was a civil suit between the parties. The highway authority was not a party to the action, and the decision of the court does not bind the authority nor the public. The report suggests that the defendant, Percy Giles, was out of his depth. He was not represented, and he does not appear to have called witnesses in his defence (if Isaac James Harvey was a witness for the defence, he was not a very useful one).

R.3. The 1987 applicants assert that, 'if RUPP 417 was accepted at that stage as being anything other than a footpath there would have been some reference thereto in these documents.' However, Giles was not sued for driving on the application way (still less for riding on it), but for driving on what is now footpath EE419. The application way was of little relevance to the suit. However, it is notable that Giles was reported as claiming that: 'he had always understood that there was a 6ft. road there, and that part of it passed through Sutton Court Farm.' This report suggests that Giles considered that the route

used by him connected with the application way to Sutton Court Farm, but the suit did not allege that he trespassed (with a horse and cart) on the application way. That may be because Giles did not, on the occasion alleged, drive on the application way — or it may be because the plaintiff, E M Fuller, was not confident to prove trespass with a vehicle on the application way.

S. 19) Photograph of stile at B 1977 or 1978

S.1. The photograph of a stile, taken in 1977 or 1978, tells us nothing about the history of the application way.

T. 20) Letter from Dover District Council to National Farmers' Union

T.1. The 1987 applicants comment that the termination of what is now the application way on the minor road at E, shortly north of Maydensole Farm, 'did not and could not then have formed the site of a [cart road footpath]'. We disagree, and the basis for this assertion is not explained.

U. 21A) Parish statement

U.1. The parish described the application way in its parish statement, prepared under Part IV of the National Parks and Access to the Countryside Act 1949, as a 'farm road'. Doubtless this was a general description, intended to underpin its categorisation as a 'road used as a public path' (RUPP), which means:

a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.¹²

U.2. A highway which is not a public path (*i.e.* not a footpath nor a bridleway)¹³ must be (at least at the time of the 1949 Act) a public carriageway.¹⁴ It seems that Sutton parish council considered the application way to be a farm road, and that therefore it qualified to be recorded as a RUPP.¹⁵ It is not clear whether the parish council considered there to be public vehicular rights along the 'farm road' (it must be presumed that it did), but it certainly considered the way to be passable in vehicles even at the time in 1950. If part of the application way (it is claimed between B and C) was not regularly used by vehicles, that does not mean that it was unavailable to such vehicles.

U.3. It is stated by the 1987 applicants that the parish council had available to it no evidence which showed that the application way were an old road. This overlooks the role of the parish council in synthesising its parish map from all available sources:

The definitive map...was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living.¹⁶

12 National Parks and Access to the Countryside Act 1949, s.27(6).

13 See the definition of 'public path' in s.27(6).

14 Note that 'bridleway' is defined in s.27(6) so as to be with or without a right to drive animals, and therefore a RUPP cannot be a bridleway with drove rights.

15 The way was recorded by the parish as a 'cart road footpath', a term widely used at this time as a class of RUPP.

16 Per Lord Denning MR, *R v Secretary of State for the Environment, ex parte Hood*, [1975] 3 All ER 243 at 248.

U.4. It also ignores the evidence of status contained in documents referred to in this statement of case which were available to the parish council, notably the tithe maps available under the Tithe Commutation Act 1836 (item V.D below) which do show evidence of higher status.

V. 21B) Kent county council explanatory note October 1970

V.1. It is not part of the society's case that the application way should be reclassified as a restricted byway (but the society does not concede that restricted byway rights have been shown not to exist).

W. 22–26) Correspondence between 1987 applicants and Department of the Environment

W.1. Not relevant to the present application.

X. 27) Meeting of Planning and Technical Services committee of Dover district council 27 May 1986

X.1. Not relevant to the present application.

Y. 28) Letter from British Horse Society (Anne Lee)

Y.1. Not relevant to the present application.

IV. Along the way



Illustration v: A



Illustration vi: Field after Sutton Court



Illustration vii: Between A and B



Illustration viii: Between A and B



Illustration ix: Between A and B



Illustration x: B



Illustration xi: Between B and C



Illustration xii: C



Illustration xiii: D



Illustration xiv: Between D and E



Illustration xv: Maydensole Farm



Illustration xvi: E

V. Evidence

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A. Ordnance Survey surveyor's drawings

A.1. **Date:** 1797–98

A.2. **Source:** British Library website¹⁷

Ordnance Survey surveyor's drawing, St Margaret's Bay extract



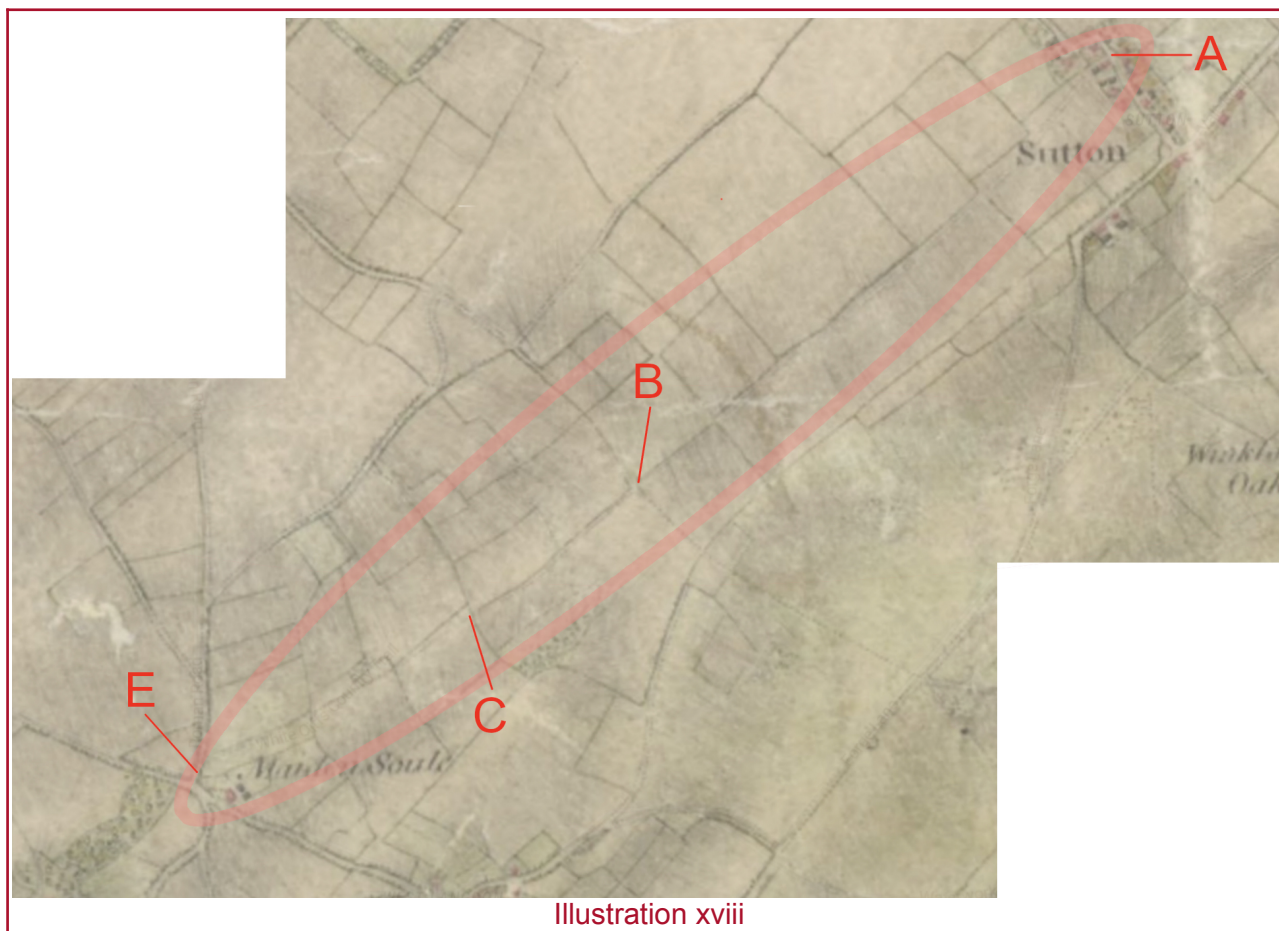
17 Sheet 107, Part 1, St Margaret's Bay:

<http://www.bl.uk/onlinegallery/onlineex/ordsurdraw/s/002osd00000006u00368000.html>;

Sheet 107, Canterbury:

<http://www.bl.uk/onlinegallery/onlineex/ordsurdraw/c/002osd000000017u00367000.html>.

Ordnance Survey surveyor's drawing, Canterbury extract



A.3. **Description:** Original scale: three inches to one mile (1:21,120); orientation: unchanged (top is 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. 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.¹⁸

A.5. Two Ordnance Survey drawings show the application way: the St Margaret's Bay drawing, and the Canterbury drawing. On the St Margaret's Bay drawing, between A and

¹⁸ From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

B, the way is shown as a track or road with parallel but narrowly drawn pecked lines, just south of an adjacent boundary feature. Between B and E, the way is shown comprising (unusually) a single pecked line. The Canterbury drawing appears to be substantially the same, but the detail has faded.

A.6. **Conclusion:** The Ordnance Survey drawings are the first reliable mapping showing the application way. They are good evidence for the existence of a defined way along the claimed route. The St Margaret's Bay drawing shows a number of routes which are marked with a single pecked line, and it is suggested that these are likely to be field ways, whether footpaths, bridleways or field roads, which are distinguished from better defined vehicular tracks shown by double pecked lines (if unenclosed) or double parallel lines (if enclosed). However, the Canterbury drawing is much more selective in what is shown, and appears to show few field ways apart from the application way. Insofar as the application way is shown on the Canterbury drawing in the same form as on the St Margaret's Bay drawing, it might be inferred that it was considered to be a way of some significance, likely to be of relevance to planning military movements, and therefore more than a mere footpath.

A.7. It is submitted that, in the context of what is shown, the application way between A and B is more likely to have been a field track or road, but a bridleway or road between B and E.

A.8. **Points:** 1

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

B.1. **Date:** 1801

B.2. **Source:** Kent County Archives, also available at Mapco.net¹⁹

Ordnance Survey, Mudge-Faden one-inch map of Kent extract

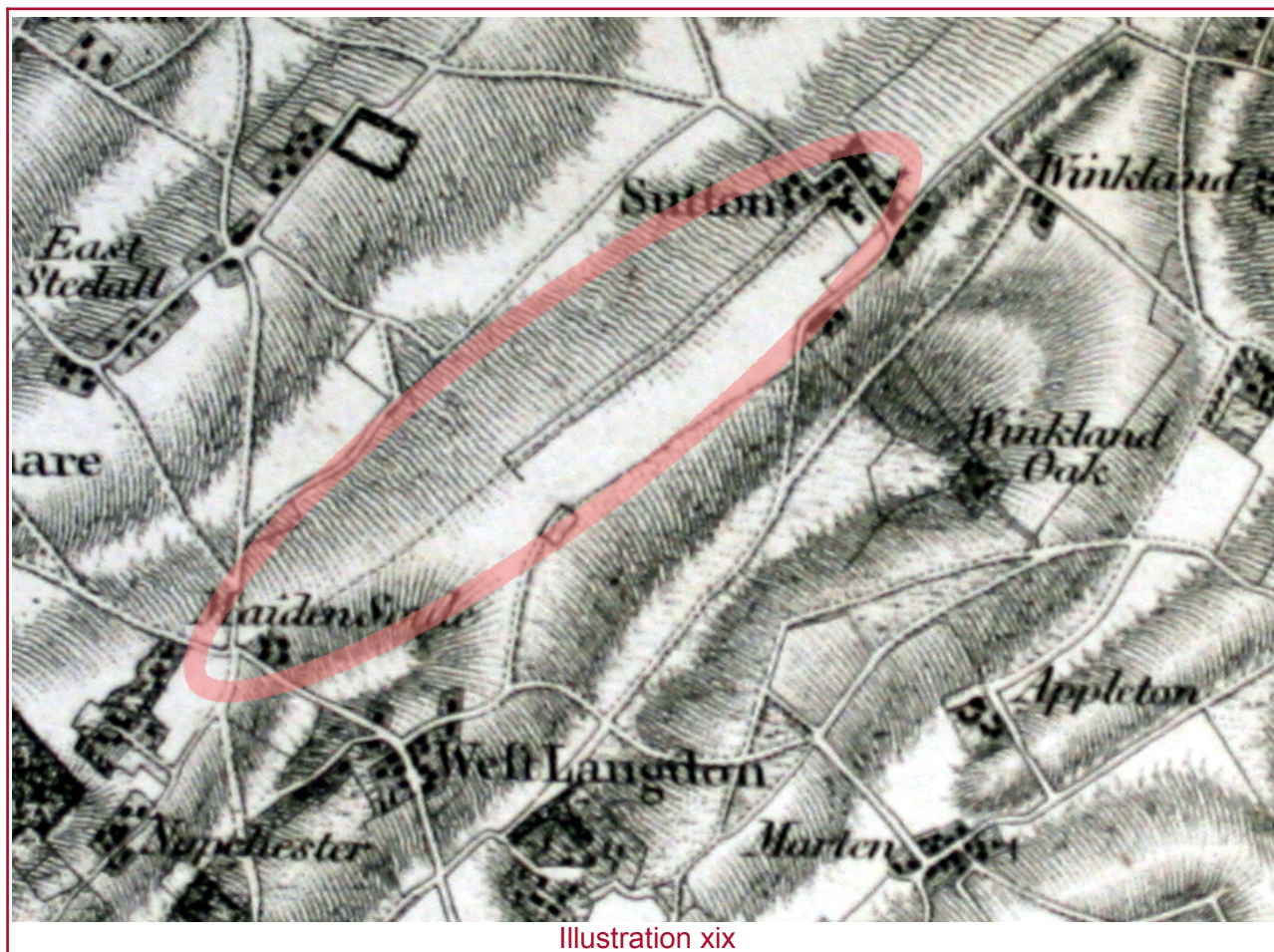


Illustration xix

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

B.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, and recorded in the Ordnance Survey surveyor's drawings (item V.A above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public — derived from the same material, but published semi-privately.

B.5. The map shows the application way in an unusual form. The whole way is shown as a single pecked line. But that part of the way between A and C is shown enclosed within parallel lines, possibly signifying a long, narrow enclosure or a drove road.

¹⁹ mapco.net/kent1801/kent52_01.htm

B.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 also to reflect the needs of the purchasing public, rather than purely military requirements.

B.7. The use of a pecked line is not standard in this map: indeed, it appears to be almost unique (no similar use has been found in this part of East Kent). Whereas the Ordnance Survey surveyor's drawings of Canterbury (item V.A above, at Illustration xviii) shows a number of what are likely to be paths, whether footpath or bridleway, only the application way is represented on the Mudge-Faden map in this area. It is suggested that it is likely to denote a field road, whether used by horses (*i.e.* a bridle road) or carts. However, neither the Ordnance Survey at this time, nor the public market for Faden's private publication of the map, was concerned with the mapping of footpaths, which were of little interest to the military customers for the Survey, nor Faden's wealthy clients. It is submitted that the dotted line therefore represents at least a public bridleway, and in any case a field track, which was considered to be of relevance for travel (whether military or private).

B.8. **Points:** 1

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

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

C.2. **Source:** National Library of Australia²⁰

OS Old Series one-inch map extract

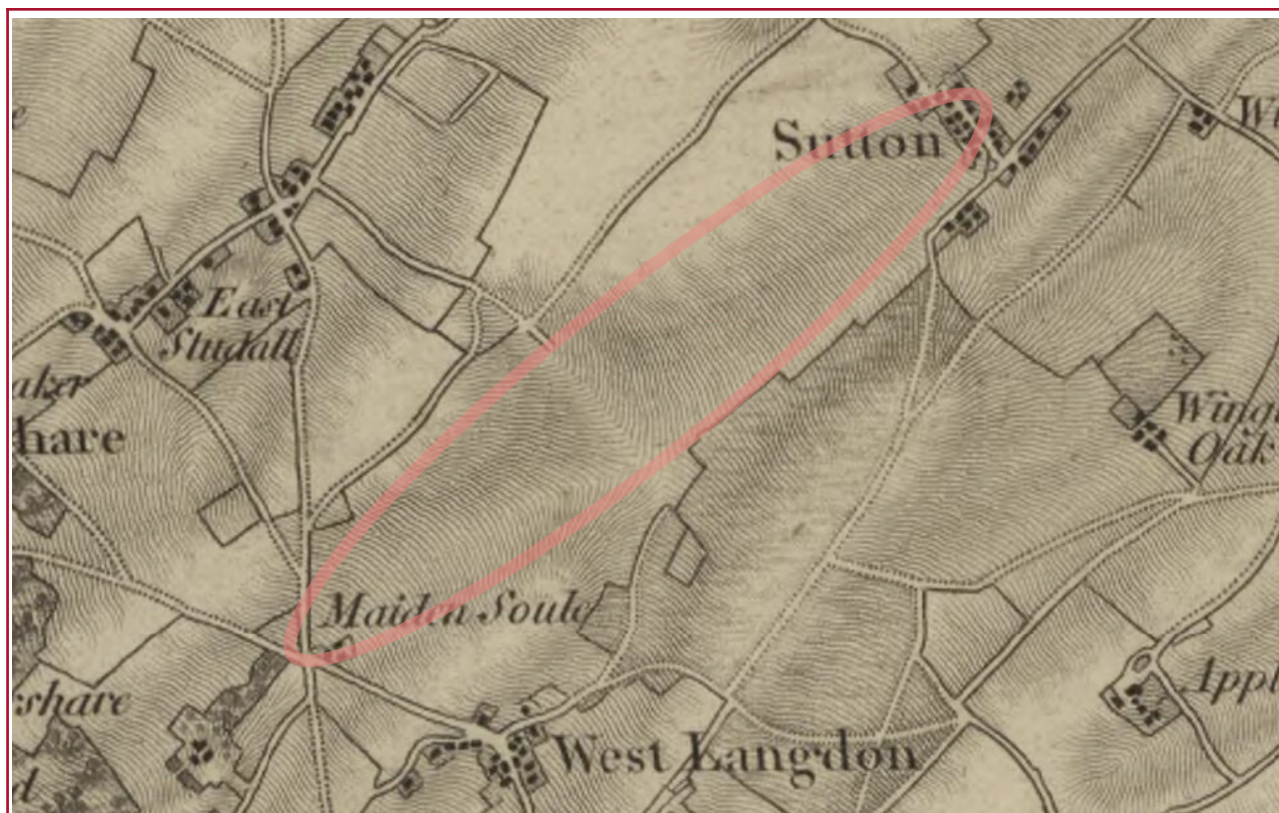


Illustration xx

²⁰ State 4: nla.gov.au/nla.obj-231917365

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

C.4. This is the Old Series one inch map of Kent first published officially by the Ordnance Survey in 1819. 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 Ordnance Survey, Mudge-Faden one-inch map of Kent (item V.B above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

C.5. The application way is omitted from this map.

C.6. **Conclusion:** The Old Series map was derived from the same survey data — the Ordnance Survey surveyor's drawings (item V.A above) — as the Ordnance Survey, Mudge-Faden one-inch map of Kent (item V.B above), but revised to some extent. It was not the practice to show unenclosed (*i.e.* cross-field) bridleways on the Old Series map, and the application way is not shown consistent with this practice. However, the omission is more consistent with the way, at this date, being considered to be a bridleway than a field road for carts, on the basis that the latter might have been expected to be depicted.

C.7. **Points:** 0

D. Tithe Commutation Act 1836

D.1. **Date:** 1841/1840

D.2. **Source:** Kent County Archive²¹

²¹ Tithe map data are available on CD or on application to certain libraries.

Sutton tith map extract



Little Mongeham tithe map extract

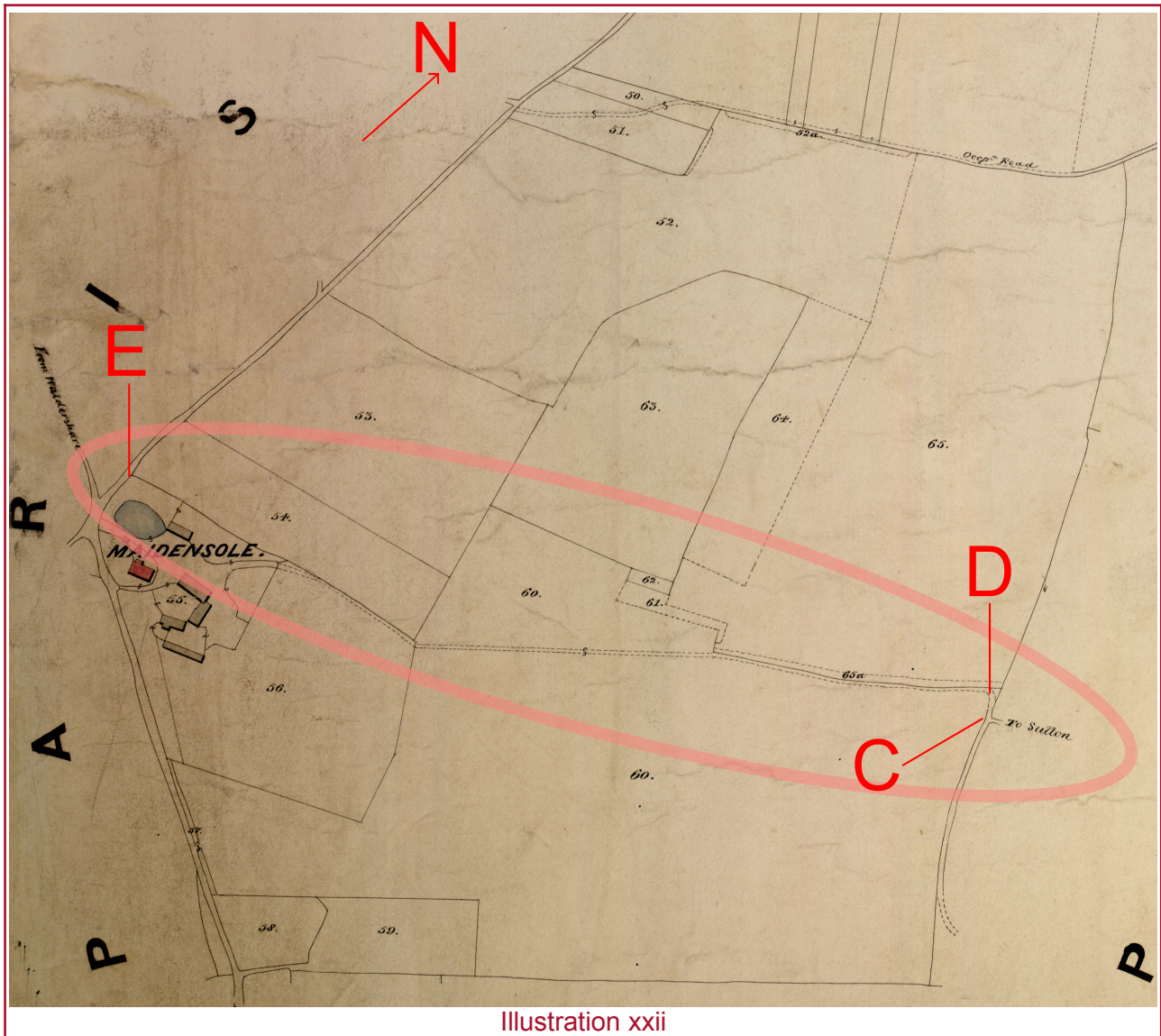


Illustration xxii

D.3. **Description:** *Sutton tithe map* — original scale: four chains to one inch (1:3,168); orientation: rotated 270° (top is north-east); *Little Mongeham tithe map* — original scale: three chains to one inch (1:2,376); orientation: unchanged (top is north-west). A copy of the entire tithe map for Sutton is in annexe A at p.61 below, and for Little Mongeham in annexe B at p.63 below.

D.4. 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.

D.5. 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. The Little Mongeham tithe map is first class, the Sutton tithe map is second class.

D.6. 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 award:

...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.²²

D.7. The application route is represented on the tithe map for Sutton by a pecked single line between A and C, passing generally along the northern headland of several fields.

D.8. The application route is marked on the tithe map for Little Mongeham by double pecked lines between C and Maydensole Farm (annotated 'Maidensole'), apparently entering into the farmyard to reach Roman Road slightly south of E at the road junction with the Napchester road. The way east from the former parish boundary (between Little Mongeham and Sutton) at C towards Sutton is annotated, 'To Sutton'.

D.9. The Little Mongeham tithe map includes 16 annotations to place names. Beginning clockwise from the north-west corner of the map at Willow Wood, annotations are shown to:

Road	Destination
(Waldershare road)	From Dover
Boys Hill	From Canterbury
Whites Hill	From Tilmanstone
Willow Woods Road (BW EE377)	To Eastry
(Stoneheap road)	To Northbourn
(Stoneheap road)	From Stoneheap
(Northbourne Road)	To Northbourn
Deal Road	To Canterbury
Willow Road	To Deal
Pixwell Lane (BOAT ED53)	To Mongeham ²³
Sutton Lane	From Ripple
(Jack's Bush) Church Hill	From Sutton
Footpath EE417	To Sutton
(West Langdon road)	To Langdon
Maidensole (Waldershare Road)	From Waldershare ²⁴

22 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C, cited in *Attorney-General v Antrobus* [1905] 2 Ch 188 at 194.

23 Between Pixwell Lane and Sutton Lane is marked another track with no annotation: this is footpath EE430 to Mongeham Road, which some sources record as a bridleway.

24 To the south of the Waldershare road is marked another road with no annotation, the Napchester Road. This may be owing to shortage of space.

Road	Destination
(Studdle) Chapel Lane	From Ashley

D.10. Every road annotated with a destination is today a public road save, in relation to Telegraph Road, recorded as a bridleway, and in relation to the application way, recorded as a footpath. It is notable that footpath EE430 and restricted byway EE419B (at the point of transition to EE419) are both drawn on the map but not annotated. A track which leads from Roman Road to restricted byway EE419 is marked 'Occupation road'.

D.11. The use of a destination label on old maps generally is associated with public, rather than private, roads. In *Commission for New Towns & Anor v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses²⁵:

...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.12. The Planning Inspectorate *Consistency Guidelines* state that:

...the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights.²⁶

It may be noted that while the reference to 'public rights' does not in itself exclude the possibility of a footpath, the reference to a 'road' does, and implies a bridle or carriage road.

D.13. While the order way is not now claimed as a public carriageway, the annotation strongly is suggestive of at least a public bridle road leading from Maydensole to Sutton.

D.14. As an unmade, unenclosed field road, the application way was capable of profitable agricultural grazing, and therefore not excluded from assessment.

D.15. **Conclusion:** The application way is marked on both tithe maps as a path or unenclosed track. The directional annotation, 'To Sutton' on the Little Mongeham tithe map is indicative that the way is public, of at least bridleway status, because such labels were generally applied only to public carriageways and bridleways, and not to footpaths or private ways. The Little Mongeham tithe map expressly annotated a nearby track as 'occupation road' without any destination label, whereas the application way is not so annotated but is annotated with a destination.

D.16. **Points:** 3

²⁵ [2002] EWHC 2668 (Ch), at para.90: www.bailii.org/ew/cases/EWHC/Ch/2002/2668.html

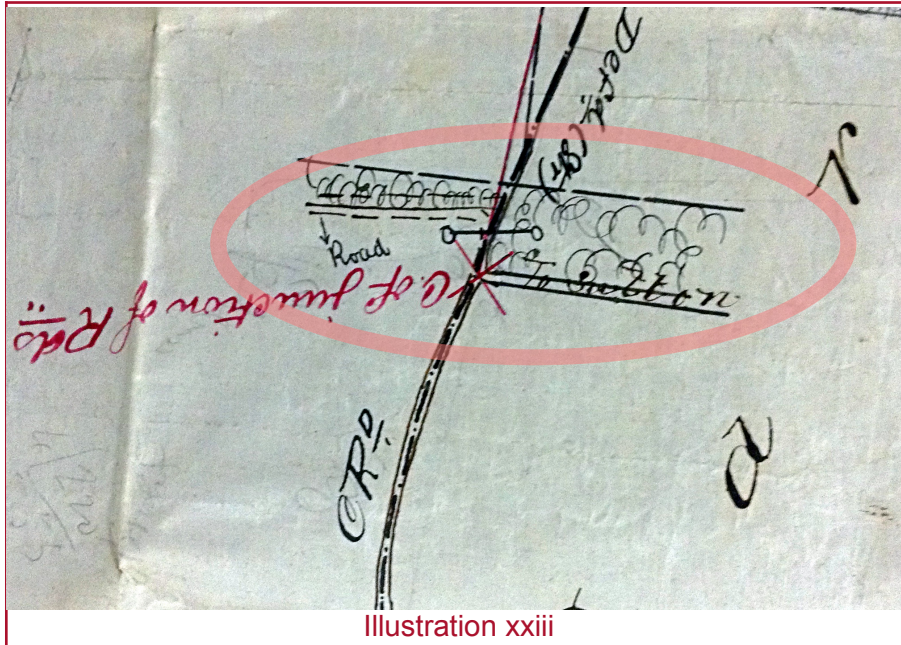
²⁶ *Consistency Guidelines*: para.8.2.13.

E. Ordnance Survey boundary records

Date: 1867–69

Source: National Archives²⁷

Little Mongeham field sketch map extract



²⁷ OS 28/191, OS 27/2689

Little Mongeham boundary sketch map extract



Illustration xxiv

E.1. **Description:** *Little Mongeham field sketch map* — original scale: 3 chains to one inch (1:2,376); orientation: not defined. Based on the tithe map (see item V.D above). *Little Mongeham boundary sketch map* — original scale: 12 chains to one inch (1:9,504); orientation: unchanged (top is north).

E.2. 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).

E.3. The common boundary of the parishes of Sutton and Little Mongeham was recorded as crossing the application way along the line of C to D, and on the field sketch map the application way is marked as 'Road' (to the west of the parish boundary), and 'To Sutton' (to the east). The junction at D is marked 'C[entre] of junction of R[oad]s'.

E.4. On the boundary sketch map, the application way to west and east again is marked 'Road' and 'To Sutton'. The part of the application way between C and D, common with the parish boundary, is annotated 'C.R^D', *i.e.* centre of road — that the parish boundary follows the centre line of the road.

E.5. **Analysis:** For discussion of the use of annotations to nearby places (as here, to Sutton), see Tithe Commutation Act 1836 (item V.D above), at para.V.D.11.

E.6. The administrative parish supplanted the manorial estate during the mediæval period: parish boundaries frequently were coterminous with those of manors. Accordingly, historical parish boundaries (*i.e.*, those which were not established as part of local government reform, typically after the Local Government Act 1894) are frequently of great age, and derived from boundaries established in the mediæval period or earlier. Where, as here, they are documented to follow a road, it is submitted that both road and boundary are ancient in origin, and that the road is a public road. This is because it is likely that the boundary was established along an existing road, whereas the alternative proposition, that the road became established along an existing boundary, is considerably less likely. Moreover, as the boundary follows the centre line of the road (and not either side of the road), it cannot be said the road became established alongside an existing boundary feature such as a hedge — for that would require the original hedge to have been grubbed out, to be replaced by a road centred along the line of the original hedge.

E.7. The annotation, 'C.R.', or centre of road, does not prove that the order way is a public road — but it does demonstrate that the order way was, at the date of the survey, considered to be a road, and in the context of a parish boundary which follows the centre of the road, it is highly likely to have been a public road.

E.8. **Conclusion:** The boundary sketch map and field sketch map record the existence of the way. The annotation of the way as a 'road', and as leading 'To Sutton' are strongly suggestive of a public way, at least of bridleway status, particularly as a directional annotation invariably is associated with public bridleways or roads.

E.9. **Points:** 2

F. Deal, Walmer and Adisham Junction Railway

F.1. **Date:** 1872

F.2. **Source:** Kent County Archives²⁸

Deal Walmer and Adisham Junction Railway plan extract

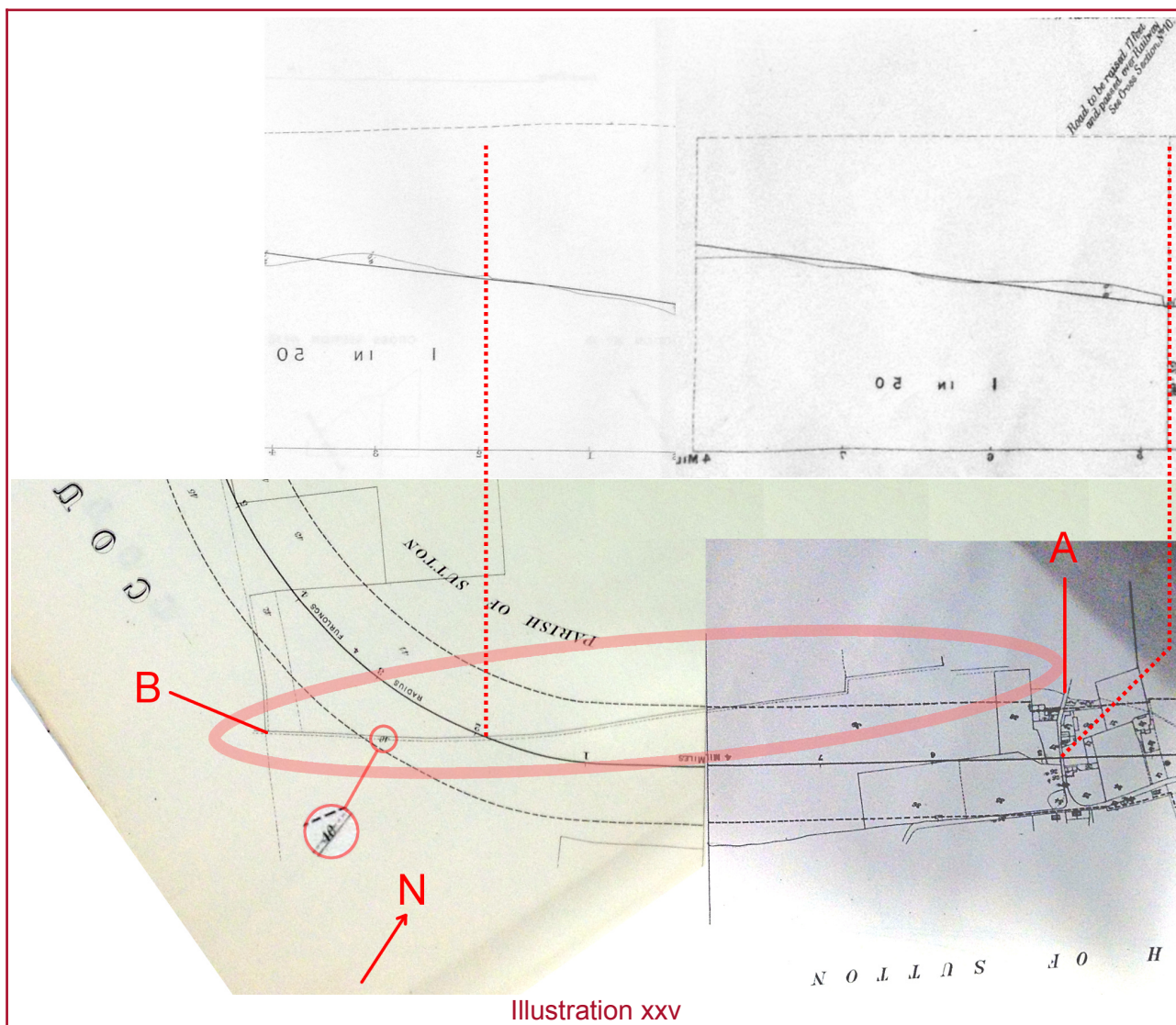


Illustration xxv

28 Q/RUm/619

Deal Walmer and Adisham Junction Railway book of reference extract

DEAL, WALMER, AND ADISHAM JUNCTION.				
Railway No. 1.				
Parish of Sutton, in the County of Kent— <i>continued.</i>				
Number on Plan.	Description of Property.	Owners, or reputed Owners.	Lessees, or reputed Lessees.	Occupiers.
39	Field	Stephen May	Stephen May
40	Bridle road and footpath	Stephen May	Stephen May
41	Field	James Holmden	Frank Holmden	Frank Holmden

Illustration xxvi

F.3. **Description:** original scale: not known (scale bar printed on separate sheet); orientation: plans rotated by 180° and 90° (top is north-west). In order to reproduce the sections above the rotated plan extracts, the sections are transposed.

F.4. Plans for the Deal, Walmer and Adisham Junction Railway were deposited in the 1872–73 session of Parliament, promoted by the London, Chatham & Dover Railway Company. The company proposed a line from Deal generally west via Walmer, Sutton, Studdal and Eythorne, to join the London to Dover main line north-west of Shepherdswell. The plans did not achieve Royal Assent, being supplanted by approved plans for a railway between Deal and Dover, but proceeded to evidence being taken by the Select Committee on Railway Bills.²⁹

F.5. The proposed railway would have passed south-southwest through Sutton village, before sweeping north-northwest up the dry valley occupied by footpath EE419/restricted byway EE419B towards Studdal.

F.6. The proposed railway would have crossed the application way between A and B, slightly before B. The application way is annotated as parcel 40 in the parish of Sutton. In the book of reference for that parish, parcel 40 is described as a 'Bridle road and footpath' in the ownership and occupation of Stephen May.

F.7. **Conclusion:** The deposited plans and book of reference for the Deal, Walmer and Adisham Junction Railway are good evidence for the status of the application way as a bridleway.

F.8. **Points:** 5

29 12 March 1873

G. Maydensole Farm estate auction

G.1. **Date:** 1875

G.2. **Source:** Kent County Archives³⁰

Maydensole Farm estate auction plan extract

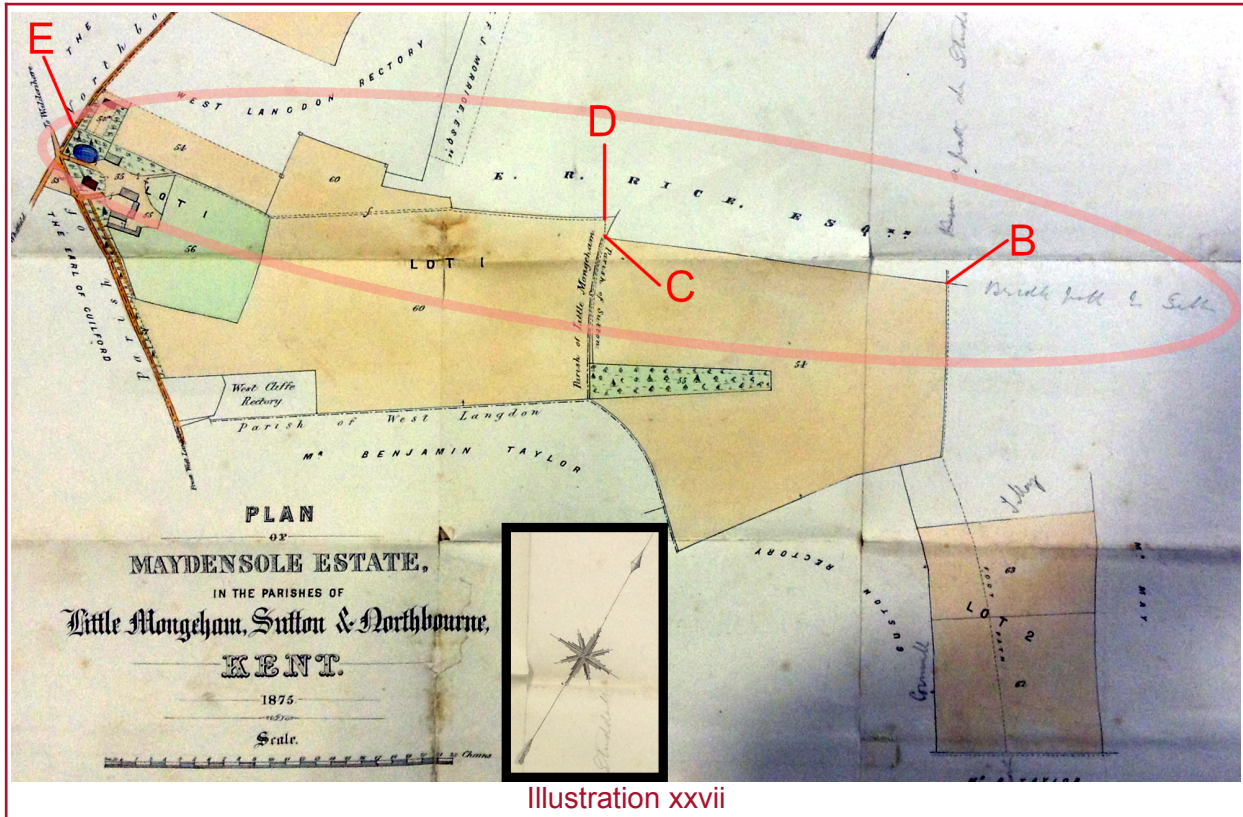


Illustration xxvii

G.3. **Description:** Original scale: scale bar shown on map; orientation: unchanged (top is north-northwest), compass is shown on map. A copy of the entire estate map is in annexe C at p.65 below.

G.4. On 1 July 1875, the Maydensole estate was put up for sale by auction at the Royal Oak, Dover, the auctioneer being Mr John Elwin. Lot 1 comprised Maydensole Farm. These printed particulars of the auction, and a plan of the estate, were deposited in the Kent County Council archives by Solley & Co, estate agents of Sandwich. The printed particulars do not refer to the application way, but it is marked on the plan as a track between Maydensole Farm and C, where the track turns to the south-southeast along the headland.

G.5. However, two annotations have been made on the map in pencil in the vicinity of B: one along the line of footpath EE419 to the north of B, 'Bri a path to Studdal', and another along the line of the application way to the east of B, 'Bridle path to Sutton'. Some further annotations in pencil appear elsewhere: to the south, what may be the names of farmers of adjoining land (J May; Cornwall).

30 EK/U1507/E446

G.6. **Conclusion:** It is suggested that Solley & Co were successors in business to Mr John Elwin, and acquired Mr Elwin's business papers; alternatively, Solley & Co acquired the business papers of a land agent who in turn may have acquired the sales particulars on behalf of a client.³¹ The annotations are likely to be contemporary, and to amplify what is shown on the estate plan (it being unusual for rights of way to be demarcated on such plans). The annotation of the bridle path to Sutton is likely to reflect the local understanding at the time of the auction.

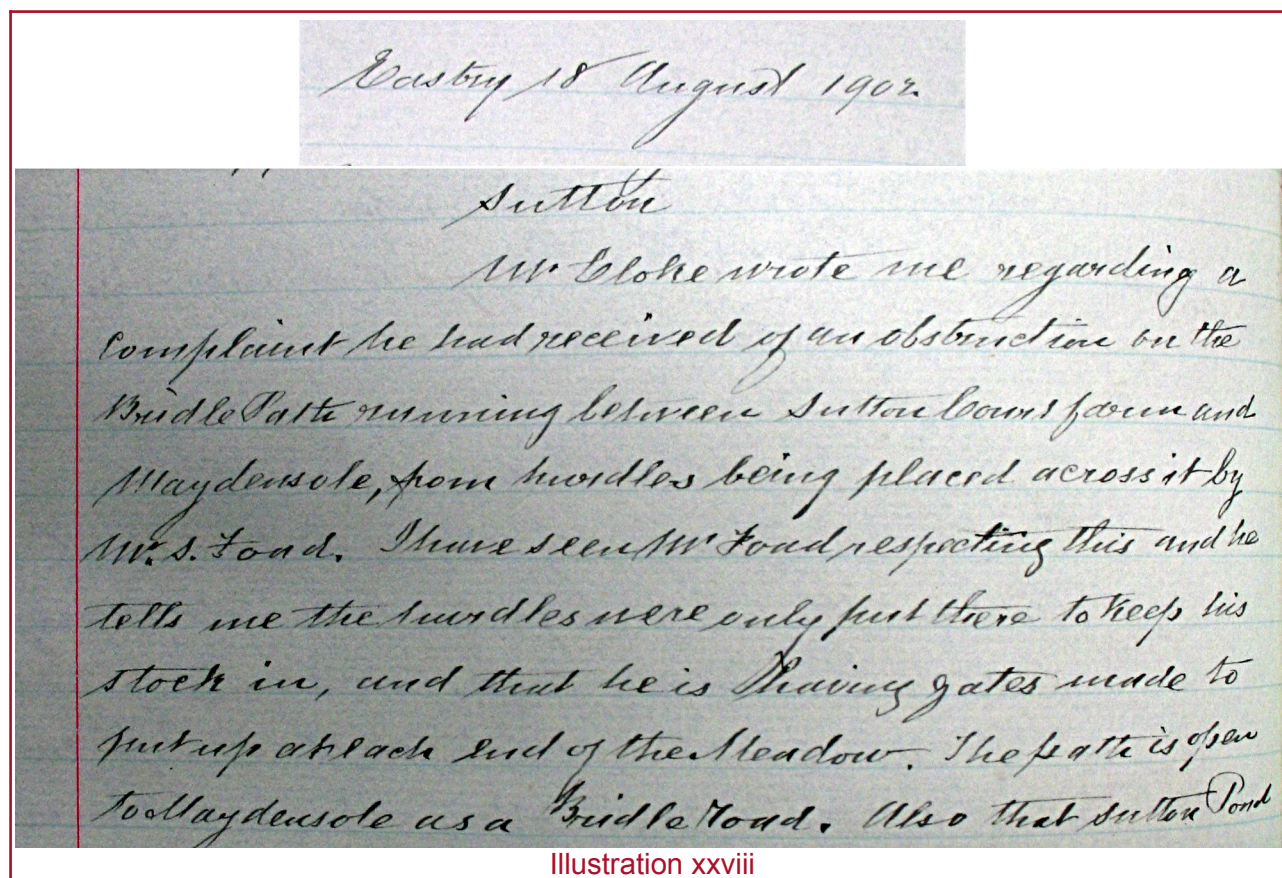
G.7. **Points:** 2

H. Eastry Rural District Council

H.1. **Date:** 1902

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

Surveyor's report, 18 August 1902



³¹ Solley & Co first advertises in the local press in 1925.

³² RD/Ea/H4 Eastry Rural District Council surveyor reports; RD/Ea/Am3 minutes 1902–05.

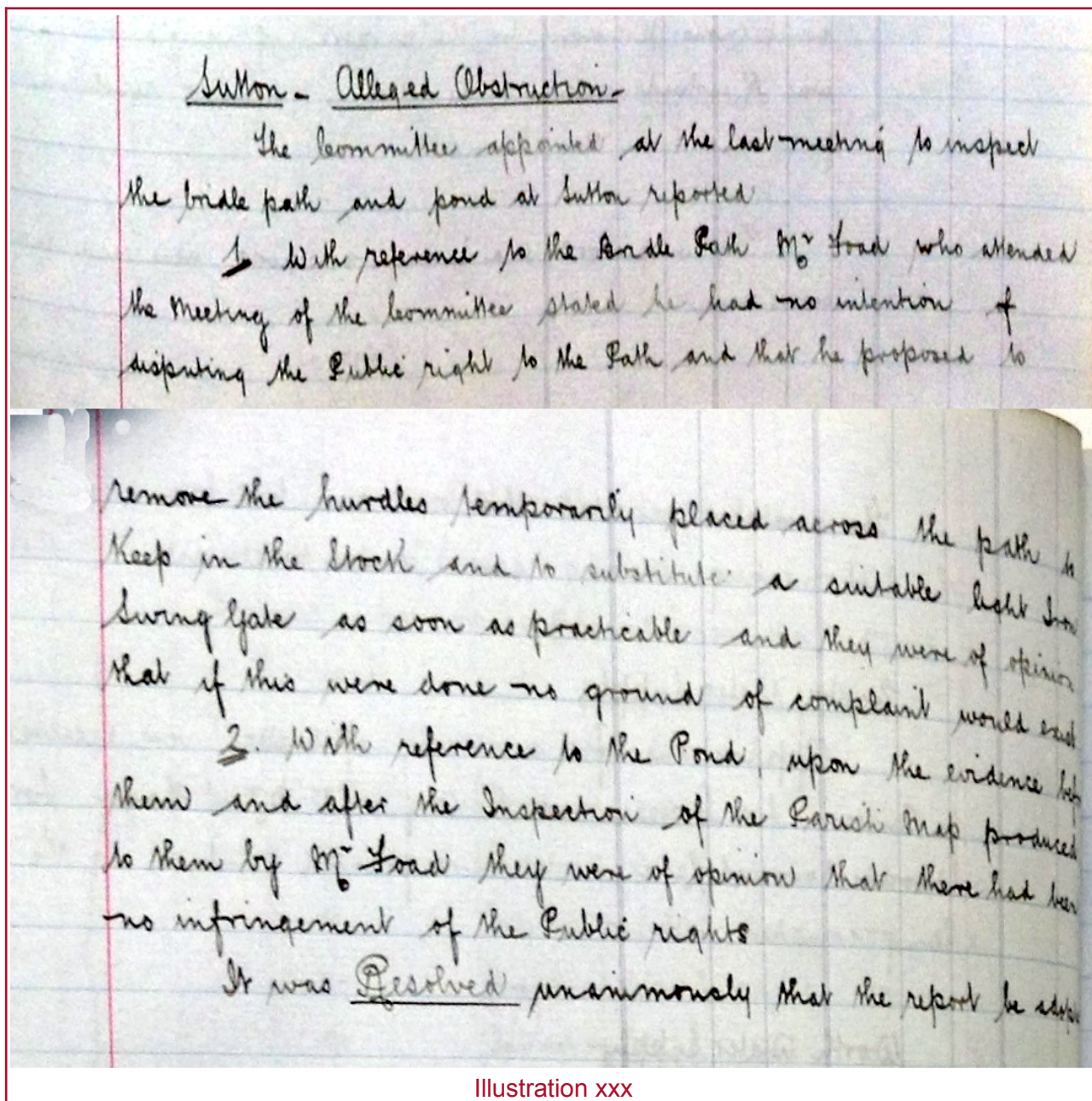
Sutton - Alleged Obstruction -

Also a letter from the Commons and Footpaths Preservation Society stating that they had received a complaint of the obstruction of a footpath starting at the entrance gate of Sutton Court by the erection of hurdles on land in the occupation of Mr S. Foad and also the enclosing of the Parish Pond by a barbed wire fence

The clerk stated that on receipt of the letter he had written to the Surveyor to report -

The Surveyor reported that he had seen Mr S. Foad who stated as to the path that he had put hurdles temporarily to keep his stock in and that as to the pond he had put a fence through and that a fence was shown on the Parish Maps - It was Resolved that the Chairman Mr Rice and Mr Inge be appointed a committee to visit the spot and report.

Illustration xxix



H.3. **Description:** The surveyor's report to the Eastry Rural District Council meeting of 18 August 1902 records:

Sutton

Mr Cloke wrote to me regarding a complaint he had received of an obstruction on the Bridle Path running between Sutton Court farm and Maydensole, from hurdles being placed across it by Mr S Foad. I have seen Mr Foad respecting this and he tells me the hurdles were only put there to keep his stock in, and that he is having gates made to put up at each end of the Meadow. The path is open to Maydensole as a Bridle Road. ...

The report is signed 'John W Watson'. Mr Watson had been in post as surveyor to the Eastry rural sanitary authority, and then the rural district council, since July 1884 — 18 years prior to August 1902. Mr Watson was one of a handful of permanent, directly-employed officers appointed by the authority at that time. Until 1905, the surveyor to the authority had responsibility for the entire area of the authority (after this date, an assistant surveyor post was created for half of the district). In a time before statutory definitive maps and statements, and lists of publicly-maintainable streets, an authority relied on the knowledge and experience of its surveyor. Thus it may be inferred that Mr Watson had an excellent knowledge of the district, acquired over his nearly 20 years in post by this time.

H.4. The council minute for the same date records:

Sutton. Alleged Obstruction—

Also a letter from the Commons and Footpaths Preservation Society stating that they received a complaint of the obstruction of a footpath starting at the entrance gate of Sutton Court by the erection of hurdles on land in the occupation of Mr S Foad and also the enclosing of the Parish Pond by a barbed wire fence.³³

The Clerk stated that on receipt of the letter he had written to the Surveyor to report.

The Surveyor reported that he had seen Mr S Foad who stated as to the path that he had put hurdles temporarily to keep his stock in and that as to the pond he had put a fence through and that a fence was shown on the Parish Maps — It was Resolved that the Chairman Mr Rice and Mr Inge be appointed a Committee to visit the spot and report.

H.5. The minute for 1 September 1902 records:

Sutton — Alleged Obstruction

The Committee appointed at the last meeting to inspect the bridle path and pond at Sutton report.

1/ With reference to the Bridle Path Mr Foad who attended the Meeting of the Committee stated that he had no intention of disputing the Public right to the Path, and that he proposed to remove the hurdles temporarily placed across the path to Keep in the Stock and to substitute a suitable light iron Swing Gate as soon as practicable and they were of opinion that if this were done no ground of complaint would exist.

2/ With reference to the Pond,...

It was Resolved unanimously that the report be adopted.

H.6. **Conclusion:** The report and council minutes record the clear understanding of the council, the authority's surveyor Mr Watson and the then landowner, Mr Foad, that the application way is a public bridleway. The surveyor unambiguously reports an obstruction to the 'Bridle Path', the committee is minuted inspecting the bridle path, and the farmer, Mr Foad, proposes to install a 'suitable light iron Swing Gate' (a gate which would be unnecessary if the way were a footpath, as suggested by the Commons and Footpaths Preservation Society). Mr Foad is minuted as having 'had no intention of disputing the Public

³³ The complaint of the Commons and Footpaths Preservation Society is addressed in item V.I below.

right to the Path'. Given that the committee and the surveyor had the understanding that the way were a bridleway, it is unlikely that Mr Foad's disposition would be recorded in these terms if he was of the opinion that it was no more than a footpath.

H.7. As no further references are made to the way in the authority's proceedings, it may be inferred that the 'suitable light iron Swing Gate' was fitted and maintained, enabling access along the way on horseback.

H.8. **Points:** 3

I. Commons and Footpaths Preservation Society, Kent & Surrey Committee

I.1. **Date:** 1902–3

I.2. **Source:** Open Spaces Society archives³⁴

Report of the Kent & Surrey Committee textual extract

26

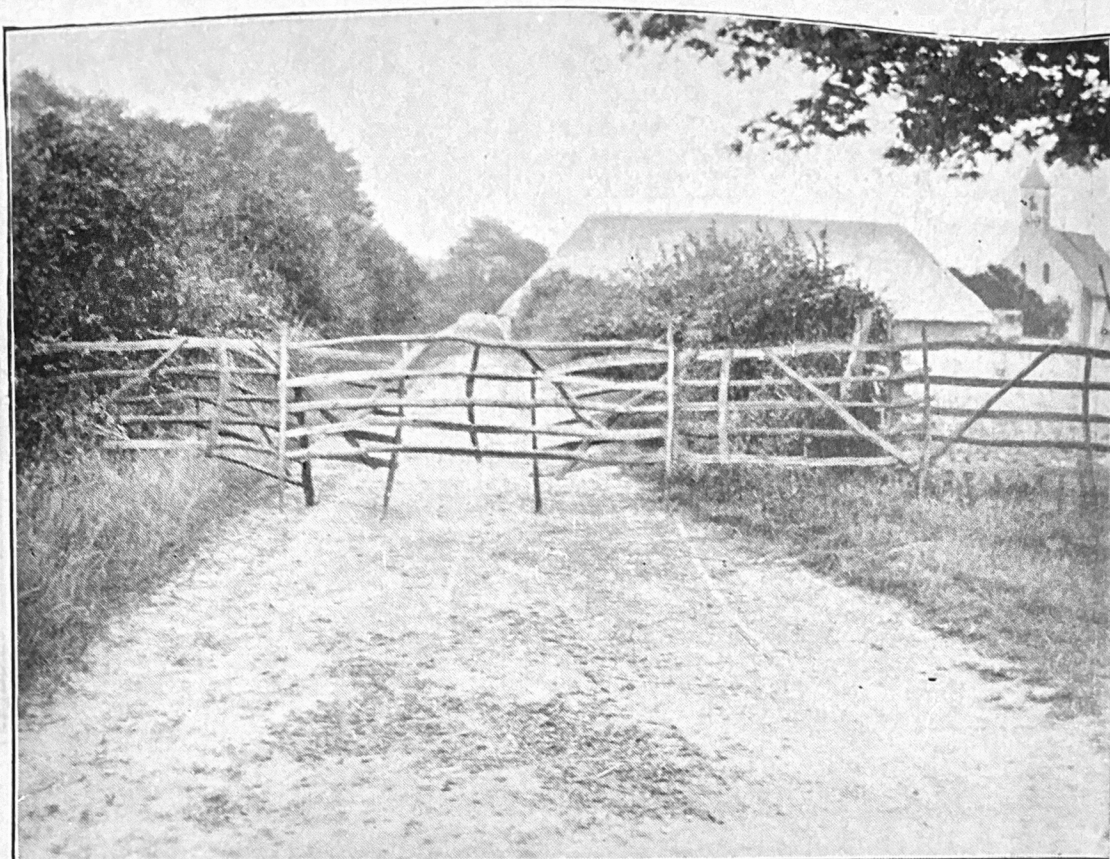
***Sutton Bridle Way
and Pond,
Dover, Kent.***

A Bridle Way, about one-and-a-half miles in length, runs over an Accommodation Road near Sutton Court Farm, in the Parish of Sutton-next-Dover. It was obstructed by the erection of hurdles, which had been placed completely across the Way at a point about fifty yards from its commencement. From enquiries made by the Committee it appeared that the Path had always been used as a public Bridle Path. The attention of the Eastry Rural District Council was drawn to the matter, and eventually the obstructions were removed and the Public Right admitted. Complaints have also been addressed to the Council on the subject of the recent enclosure of a Pond and the erection of barbed wire at the side of a Road in Sutton. Up to the present the District Council has not moved in either of the latter cases.

Illustration xxxi

34 The Open Spaces Society formerly was the Commons and Footpaths Preservation Society.

Report of the Kent & Surrey Committee photograph



SUTTON BRIDLE PATH, KENT.
(The obstructions shown have been removed).

Illustration xxxii

I.3. **Description:** The complaint of the Kent & Surrey Committee of the Commons and Footpaths Preservation Society, referred to in the minute of the Eastry Rural District Council meeting of 18 August 1902 at para.V.H.4 above, is recorded in the report of that committee published for the year 1902–03.

I.4. The relevant extract of that report appears in Illustration xxxi above, and the corresponding photograph is reproduced at Illustration xxxii. The report states:

Sutton Bridle Way and Pond, Dover, Kent

A Bridle Way, about one-and-a-half miles in length, runs over an Accommodation Road near Sutton Court Farm, in the Parish of Sutton-next-Dover. It was obstructed by the erection of hurdles, which had been placed completely across the Way at a point about fifty yards from its commencement. From enquiries made by the Committee it appeared that the Path had always been used as a public Bridle Path. The attention of the Eastry Rural District Council was drawn to the matter, and eventually the obstructions were removed and the Public Right admitted. ...

I.5. The location of the obstruction is identified in the report as slightly south-west of Sutton Court Farm, at Ordnance Survey grid reference TR33314930. In the photograph, the parish church of St Peter and St Paul can be seen in the background (the bellcote of 1857 has since been truncated).³⁵

I.6. The report affirms that, 'From enquiries made by the Committee it appeared that the Path had always been used as a public Bridle Path.' It also notes that 'the Public Right [was] admitted', which may be inferred to mean the public right of way on horseback and on foot.

I.7. **Conclusion:** The report of the Kent & Surrey Committee of the Commons and Footpaths Preservation Society documents the location of the obstruction just outside Sutton Court Farm, and corroborates the records of Easry Rural District Council (item V.H above).

I.8. **Points:** 2 (taken with 3 points in relation to the council records)

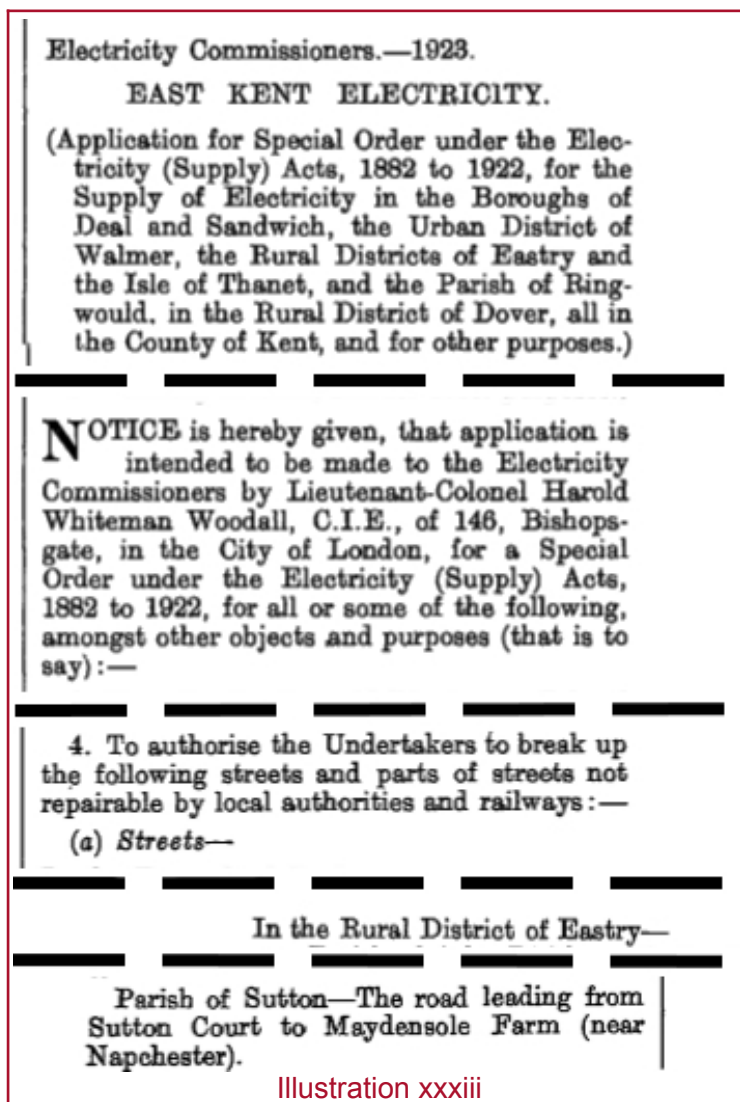
³⁵ Historic England listing of church, grade II*: historicengland.org.uk/listing/the-list/list-entry/1247673?section=official-listing.

J. Electricity Supply Acts 1882 to 1922

J.1. **Date:** 1923

J.2. **Source:** London Gazette³⁶

London Gazette, 23 October 1923 extract



J.3. **Description:** The notice published in the London Gazette on 23 October 1923 gives notice of the intention of an electricity undertaker for East Kent to lay its apparatus in certain streets not repairable by local authorities and railways, viz:

| The road leading from Sutton Court to Maydensole Farm (near Napchester).

The application was withdrawn in February 2024.

J.4. **Analysis:** The Electricity (Supply) Acts 1882 to 1922 provided for powers to be conferred on undertakers for the supply of electricity for public and private purposes. In the present case, notice of intention was given in the London Gazette for 23 October 1923

³⁶ Issue 32873, p.7140: www.thegazette.co.uk/London/issue/32873/page/7140.

that application would be made to the Electricity Commissioners for a Special Order under the Electricity (Supply) Acts 1882 to 1922, to confer powers for the supply of electricity in East Kent on one Lt-Col. Harold Whiteman Woodall.³⁷

J.5. The Electricity (Supply) Acts 1882 to 1922 incorporate the following Acts:

- [Electric Lighting Act 1882](#)
- [Electric Lighting Act 1888](#)
- [Electric Lighting Act 1909](#)
- Electricity (Supply) Act 1919
- [Electricity \(Supply\) Act 1922](#)

J.6. The notice sets out, *inter alia*, details of 'streets and parts of streets not repairable by local authorities and railways' which the applicant wishes to 'break up' in order to lay its apparatus. The notice gives an opportunity for any 'local or other public authority, company or person desirous of bringing before the Electricity Commissioners any objection respecting the application'. The notice also contains for the same purpose a list of routes which are county roads, and of roads over railway bridges and level crossings. It seems that none of those roads listed is considered to be maintainable by the local district council as highway authority for local roads, and that therefore public notice need be given of the application.

J.7. Are the ways listed in the notice public highways, and if so, of what status?

J.8. Section 32 of the Electric Lighting Act 1882 defines 'street' in a similar form to section 48 of the New Roads and Street Works Act 1991 (similar definitions have been used in legislation for around 150 years):

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act:...

A street therefore is likely to be a public highway, but:

- it may not be publicly maintainable (there being no words in the definition which might imply such a requirement);
- exceptionally, it may not be a public highway, if it nevertheless conforms to an element of the description such as a (wholly private) 'square' or 'road'.

J.9. There are other provisions in the 1882 Act which help illustrate the scope of 'street':

- Electric lighting under the 1882 Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in section 3(3) of that Act, 'lighting any street...belonging to or subject to the control of the local authority'. A privately maintainable public highway would be subject to the control of the local authority (but not maintained by it), and lighting such a street would be a naturally public purpose. Lighting a wholly private way would be a private purpose.
- Section 3(9) of the 1882 Act enables local authorities to be licensed to assume the powers of the undertaker: 'with respect to the breaking up of any street repairable by such local authority' (the expenses to be recoverable from the undertaker). The Acts

³⁷ The notice records that powers alternatively might be conferred on a company to be registered for the purpose.

therefore explicitly recognise the distinction between a street which is repairable by the local authority and a street which is not publicly repairable (*i.e.* maintainable).

- The marginal note to section 13 of the 1882 Act, 'Restriction on breaking up of private streets...' must be read in the context of the provision itself. Section 13 provides that the Act does not

authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf... after notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

The presumption is that such streets may be broken up in order to lay apparatus, subject to an opportunity for the body by which the street is repairable to voice its objections. The reference to 'private street' in the marginal note to section 13 therefore appears to qualify 'street' as one which is a public highway privately maintainable, and not one which is wholly private. If section 13 was concerned with wholly private ways, the body having responsibility for repair would be the owner, and it would not be necessary to distinguish the body by which the street is maintainable. Compare with Part XI of the Highways Act 1980, which sets out the code for *Making up of Private Streets*, in which:

"private street" means a street that is not a highway maintainable at the public expense³⁸

so that 'private street', for the purposes of Part XI, includes a public highway but only if it is not maintainable at public expense.

- Section 14 requires the consent of the local authority to place an electric line above ground in a street, and the authority is empowered to seek a magistrates' court order if the line is 'dangerous to the public safety'. The requirement for such consent in relation to a street which is a wholly private way would be odd, and inexplicable if the private way was not used by the public.

J.10. The draughtsman, in defining a 'street', is likely to have had in mind public highways which were privately maintainable, or wholly private ways in use by the public (such as carriage roads leading to stations built by the railway company, or unadopted new residential streets in towns), or at most, wholly private ways in towns which served significant numbers of dwellings or commercial premises (such as private squares or yards). It is not possible to reconcile the duty placed on an undertaker in section 14 of the 1882 Act (to seek consent to place electric lines in a street) with its application to a wholly private way not used by the public.

J.11. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in section 25 of the Act so as to include any street as defined in the 1882 Act. Given that 'street' is defined in the 1882 Act to include a 'road', it is not clear whether this circular provision can have been intended, and is suggestive of some absence of rigour on the part of the draughtsman.

³⁸ Highways Act 1980, s.203(2).

J.12. It is submitted that the definition of 'street' in the Electricity (Supply) Acts 1882 to 1922 does not extend to embrace a wholly private track, farm drive or path in the countryside. Such a way does not obviously fall within any of the components included in the definition of 'street' (unless, in particular circumstances, it might have the characteristics of a 'lane' or, if given a metalled surface, a 'road'). And while the definition of 'street' is not exhaustive, the *eiusdem generis* rule applied to the definition does not suggest that other, wholly private ways in the countryside were contemplated: quite the contrary. It would be inconsistent with the scheme of the Electricity (Supply) Acts 1882 to 1922 as a whole to apply the powers as regards streets to entirely rural, wholly private ways, without compensation to the owner, given that section 12(1) of the 1882 Act excludes undertakers from acquiring powers to compulsorily purchase private land. It would otherwise allow an undertaker to lay apparatus on private land without compensation, merely on the justification that the works were done along a part of that land which happens to conform (on one interpretation) to the general description of a 'lane' or 'road'. The only justification for conferring powers on an undertaker to lay apparatus in a rural way is if it is a public way — albeit it may be privately maintained.

J.13. In *Scales v Pickering*, section 32 of a private Act of Parliament³⁹ empowered a water company to:

break up the soil and pavement of roads, highways, footways, commons, streets, lanes, alleys, passages, and public places

provided (section 34) that the company should not enter any private lands without the consent of the owner. It was held by the Court of Common Pleas that the company had no authority, without the consent of the plaintiff, to enter a field of his, over which there was a public footpath.

J.14. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird and Others*,⁴⁰ in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense⁴¹:

“What is commonly done in a street” may include water-pipes and gas-pipes as well as sewers, and it could not be supposed that any such power was intended to be conveyed by such language. I think what his Lordship must have meant was such things as are usually done in a street for the purpose, as he elsewhere in his judgment describes it, of maintaining it as a street, and are incident to the maintenance and repair of the street as a street. For that purpose it would be intelligible. For any other purpose it would appear to me to be inconsistent with the language of the enactments, and *contrary altogether to the policy which the Legislature has certainly always pursued of not taking private rights without compensation. In circumstances in which it is essential to take private property Parliament has always provided for compensation*, and in this section the language itself imports that where private property is being dealt with it can only be done “with the consent of the owner.” [emphasis added]

J.15. Thus, the inference should be that the Electricity (Supply) Acts 1882 to 1922 were not intended to enable undertakers to lay their apparatus in wholly private roads (such as

³⁹ 47 Geo 3, sess.2, c.72, East London Waterworks Act 1807.

⁴⁰ [1896] AC 434

⁴¹ In the case, the vesting occurred under s.149 of the Public Health Act 1875.

farm access roads and private carriage drives) without compensation, but only in public roads — including those which were privately maintainable.

J.16. The notice in the *London Gazette* contains the following 32 entries, set out in the first column, together with the presumed location in the second column, and comments on the entry in the third column:

Description in notice	Presumed location	Comments
<i>Parish of Ash—</i>		
i. Richborough Castle Road	TR319603 to TR323602	Now known as Castle Road: restricted byway EE43A; title unregistered
ii. White House Drove Road	TR318604 to TR319613	Unrecorded ('private street' in NSG); title unregistered
iii. Rubery Drove Road	TR314607 to TR315613	Unrecorded; registered title
iv. Potts Farm Drove Road	TR301609 to TR304621	Public footpath EE49; registered titles
v. the road leading from Sandhill Farm to Cooper Street	TR298604 to TR304602	Public footpath EE52; title unregistered
vi. the road leading from Lower Goldstone to Red House Ferry	TR294611 to TR296625	Now known as Goldstone Drove; public footpath EE55; part title unregistered
vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane)	TR281582 to TR281577	Part adopted road, part public bridleway EE193; title unregistered
viii. the road leading from Durlock Road to Ash-Canterbury Main Road	TR275577 to TR268582	Now known as Pedding Lane; part adopted road, part public footpath EE124; land unregistered
ix. the road leading from West Marsh Road to the Marshes	TR274615 to TR274624	Now known as Westmarsh Drove; public footpath EE76; 'private street' in NSG; unregistered title with caution
x. the road leading from Paramour Street to Downfield Farm	Not identified	
xi. the road leading from Overland Lane, Corking to Ware Road	TR275598 to TR280607	Part public bridleway EE86 and EE73; part adopted road (Ware Farm Road); part unrecorded; land generally unregistered

<i>Parish of Betteshanger—</i>		
xii. the road leading from Northbourne Road to New Road, Betteshanger	TR313537 to TR309529	Restricted byway EE493; part unregistered
<i>Parish of Eastry—</i>		
xiii. the road leading from Eastry Mills to Hammill	TR302545 to TR285552	BOAT EE109; part unregistered
<i>Parish of Eythorne—</i>		
xiv. the road leading from Upper Eythorne to Brimsdale Farm	TR283491 to TR280491	Now known as Flax Court Lane; public bridleway EE345; 'private street' in NSG; part unregistered
<i>Parish of Goodnestone and Wingham—</i>		
xv. the road leading from Twitham Farm to Caves Lane, Goodnestone,	TR262568 to TR255555	Part adopted, part unrecorded, part public bridleway EE269A; land unregistered; subject of application PROW/DO/C391 and PROW/DO/C467 to record as restricted byway
xvi. the road leading from Buckland Lane to Crixhall Farm	TR269554 to TR267556	Public bridleway EE28; land unregistered
<i>Parish of Great Mongeham—</i>		
xvii. the road leading from Cherry Lane to the road leading from Northbourne to Ripple	TR346512 to TR342507	Now known as Pixwell Lane; BOAT ED53; part adopted; unregistered title
<i>Parish of Little Mongeham—</i>		
xviii. the road leading from Little Mongeham Farm to Ripple and Sutton Road	TR333509 to TR343501	Public footpath EE422; subject of application PROW/DO/C456 to record as bridleway; title registered
<i>Parish of Nonington—</i>		
xix. the road leading from Holt Street to Nonington Mill	TR262521 to TR268517	Now known as Mill Lane; adopted road; unregistered title

xx. the road leading from Gooseberry Hall to Young Wood, Goodnestone (Pilgrims Way)	TR266530 to TR259538	Now known as Cherrygarden Lane; BOAT EE280; 'private street' in NSG; part unregistered
<i>Parish of Northbourne—</i>		
xxi. the road leading from Willow Wood to Telegraph Farm	TR312506 to TR311511	Now known as Willow Woods Road (Roman Road); public bridleway EE377; 'private street' in NSG; part unregistered
<i>Parish of Preston—</i>		
xxii. the road leading from Preston Road to Marley Brook Farm	TR252616 to TR249618	Unrecorded; unregistered title
<i>Parish of Ripple—</i>		
xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton	TR342482 to TR334488	Public footpath EE427; title registered; subject of application PROW/DO/C381 to record as a bridleway
<i>Parish of Sholden—</i>		
xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay	TR371545 to TR360572	Now known as Ancient Highway; BOAT EE245; adopted; title registered
<i>Parish of Stourmouth—</i>		
xxv. the road leading from North Court Farm, Upper Stourmouth to New Road	TR256630 to TR266630	Restricted byway EE485
<i>Parish of Sutton—</i>		
xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester)	TR334493 to TR314476	Public footpath EE417; part unregistered — the application way
<i>Parish of Wingham—</i>		
xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road).	TR249571 to TR260571	Now known as Dambridge Farm Road; part adopted, part restricted byway EE165A; part unregistered
<i>Parish of Woodnesborough—</i>		

xxviii. the road leading from Foxborough Hill, Woodnesborough to Sandwich Station	TR308561 to TR331576	Part was known as Black Lane (Sandwich), now St Barts Road; part public footpath EE226, public bridleway ES8, part BOAT ES10, part adopted; part unregistered title, part land unregistered (now the subject of claim PROW/DO/C385)
<i>Parish of Worth—</i>		
xxix. the road leading from Woodnesborough and Sandwich Road to Station	TR323574 to TR331576	Part known as Black Lane (Sandwich); part now known as St Barts Road; part BOAT ES10, part adopted; part land unregistered
xxx. the road leading from Deal and Sandwich Main Road to Worth Street Road,	TR329568 to TR334560	Now known as Coventon Lane; public bridleway EE236; part unregistered title
xxxi. the road leading from Deal and Sandwich Main Road to Temptye Farm,	TR328564 to TR341565	Public bridleway EE236; part unregistered title
xxxii. the road leading from Blue Pigeons Farm to Sandwich Bay	TR344566 to TR355575	Public bridleway EE232; part unregistered title; subject of application PROW/DO/C484 to record as restricted byway

J.17. Of 32 'streets' recorded in the notice, and treating a way subject to an application for a definitive map modification order as if the application were successful:

- 13 are recorded as public carriageways
- 10 are recorded as public bridleways,
- 5 are recorded as public footpaths,
- 3 are not recorded as public ways, of which 2 are drove roads of uncertain status, and
- 1 could not be located.

J.18. At least 28 of 31 of the 'streets and parts of streets not repairable by local authorities and railways' cited in the public notice in the *London Gazette* are today public highways. This is strong evidence that such streets were considered to be public highways which were privately maintainable, and were not wholly private ways. Inclusion in the list is therefore evidence of the public status of these ways at the date of the notice.

J.19. The majority of these 28 streets are now recognised as roads and public bridleways, or subject to applications intended to secure that outcome. Of those five which currently

are recorded as public footpaths, four are drove roads recorded as footpaths, but where the true status is uncertain, and the remaining one is the subject of this application.

J.20. **Conclusion:** The three scheduled roads which are not, even now, recorded as public ways or the subject of applications for recording, are:

- (ii) White House Drove Road
- (iii) Rubery Drove Road
- (xxii) the road leading from Preston Road to Marley Brook Farm

J.21. Of these, the first two are among a number of drove roads leading into the Ash marshes, the status of which is uncertain. A recent application to record Corner Drove as a restricted byway (PROW/DO/C413) seeks to show that evidence may be sufficient to record these drove roads as a restricted byway. It seems likely that the applicants for the order proceeded on the basis that the ways were public, but potentially not publicly-maintainable.

J.22. As to the third (i.e. xxii), there is supporting evidence that this road may be public: it is excluded from assessment on the tithe map, and there is a record of material being put on the road in 1893. An absence of publicly-recorded status today does not mean that the road is not a public road.

J.23. Thus nearly all, and perhaps all, of the scheduled roads are public ways today. Of those 8½ ways which are today recorded as public footpaths, three (including the application way) are under application for upgrading, and the remainder are drove ways on Ash Level, where the recording as footpath is for want of investigation of higher rights for driving animals, riding horses or vehicles. And indeed, where such investigation has been carried out, in relation to Corner Drove and Brazen Street at Ware⁴², which were not among those cited in the notice, the correct status, with strong evidential support, is claimed to be restricted byway.⁴³

J.24. It is therefore concluded that ways in the notice identified as streets not repairable by local authorities are likely to be those which were regarded at the time as of either bridle or vehicular road status, being described as 'roads'.

J.25. **Points:** 2

42 Applications PROW/DO/C413 and PROW/DO/C414

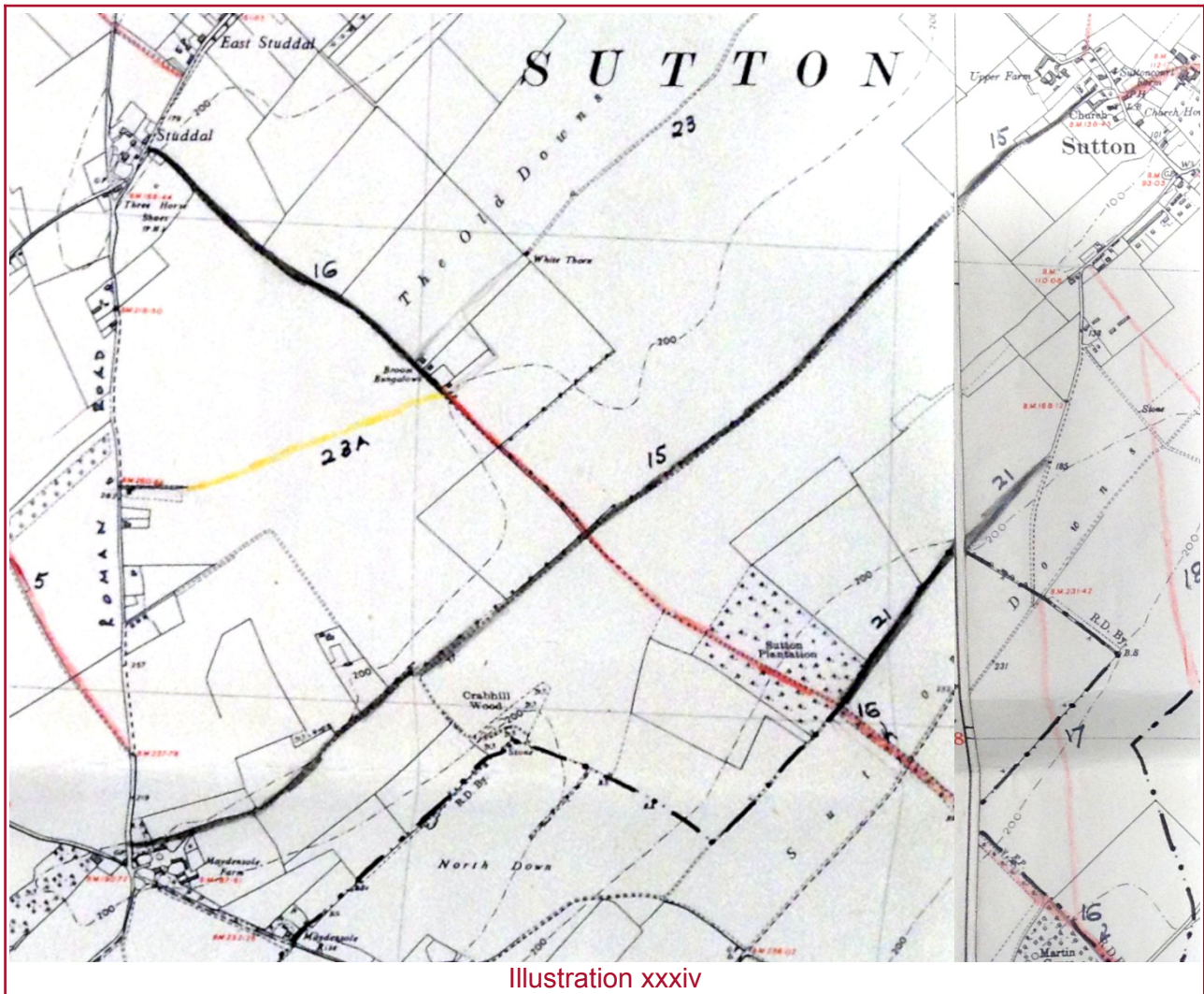
43 That Corner Drove and Brazen Street are not among those identified in the notice presumably is because the undertaker had no need to lay its apparatus in these two ways.

K. Definitive map and statement

K.1. **Date:** 1951–53

K.2. **Source:** Kent County Council⁴⁴

Parish map extract



⁴⁴ FP/R70/254 and FP/R253

Parish statement extract

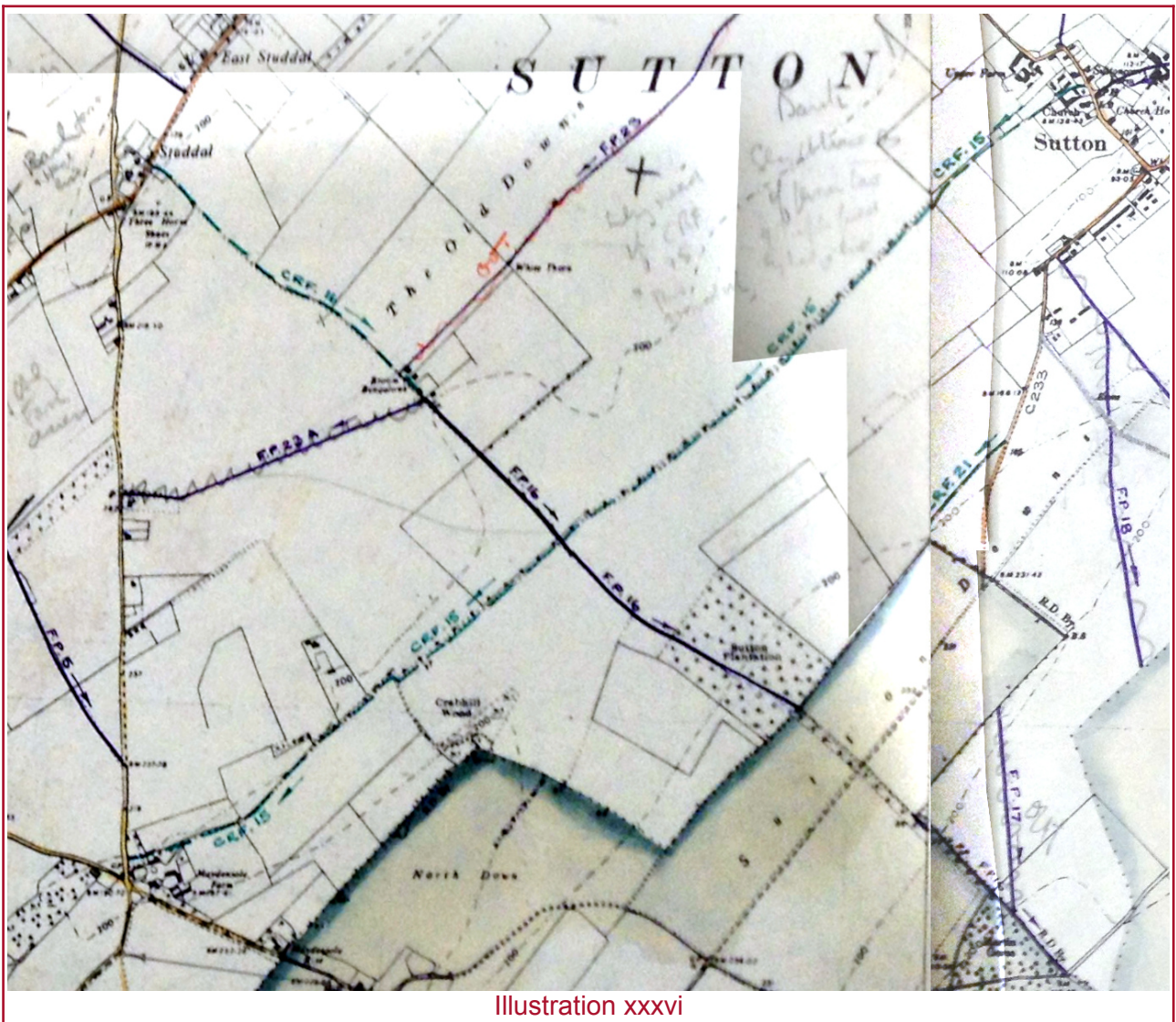
SUTTON by DOVER
 SCHEDULE of Public Footpaths and Rights of Way

Foot Path			
14.	Sutton Bottom to Sutton Church.	2 ft.	Used frequently.
15.	Sutton Court Farm to Maydensole.	Farm Road.	
16.	Studdal to Martin.	Farm Road & 2ft.	Used daily.

RED --- Footpath
 BLACK --- Farmroad
 GREEN --- Overgrown
 YELLOW --- Not shown on recent Maps but on old Maps

Illustration xxxv

Draft map extract



Draft statement extract

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949.
PART IV - SURVEY OF PUBLIC RIGHTS OF WAY.

SUTTON Parish Council
Office Ref. No. 14/16

Path Reference No.	Ordnance Survey Map Reference	Description of Route	Nature of Surface	Approximate Length (miles)	Approximate Width (feet)	GENERAL Remarks
15	LVIII. S.E. LVIIIa S.W. LVIII. S.W.	CART ROAD FOOTPATH. Sutton to Napchester. Commences at C.265 at a point 250 yds. N.W. from its junction with C.233 and proceeds S.W. for 2900 yds. crossing F.P.16 and terminating on an unclassified road about 100 yds. N.W. from Maydinsole Farm.		1.57		

Illustration xxxvii

K.3. **Description:** The parish and draft maps were drawn up under Part IV of the National Parks and Access to the Countryside Act 1949, as contributions to preparing the first definitive map and statement under that Act.

K.4. The parish map prepared by Sutton parish council shows the application way recorded as 15, and coloured black. In the schedule, the way is recorded as 'Sutton Court Farm to Maydinsole' and as 'Farm Road'. In the key, black is described as 'Farmroad'.

K.5. The draft map shows the application way also recorded as 15, now described as 'CRF', *i.e.* cart road footpath. A CRF is an alternative label used to describe a 'road used as a public path' defined in s.27(6) of the 1949 Act, *viz*:

...a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

K.6. In the draft statement, the way is recorded as:

CART ROAD FOOTPATH. Sutton to Napchester.

Commences at C.265 at a point 250 yds. N.W. from its junction with C.233 and proceeds S.W. for 2900 yds. crossing F.P.16 and terminating on an unclassified road about 100 yds. N.W. from Maydinsole Farm.

The length is given at 1.57 miles, which is 2,763 yards or 2,527 metres.⁴⁵

K.7. **Conclusion:** The parish council recorded the way as a 'cart road footpath', which is a term used to describe a road used as public path, being a way over which there are both foot and bridle rights, and which is likely to be a public road.

K.8. **Points:** 0

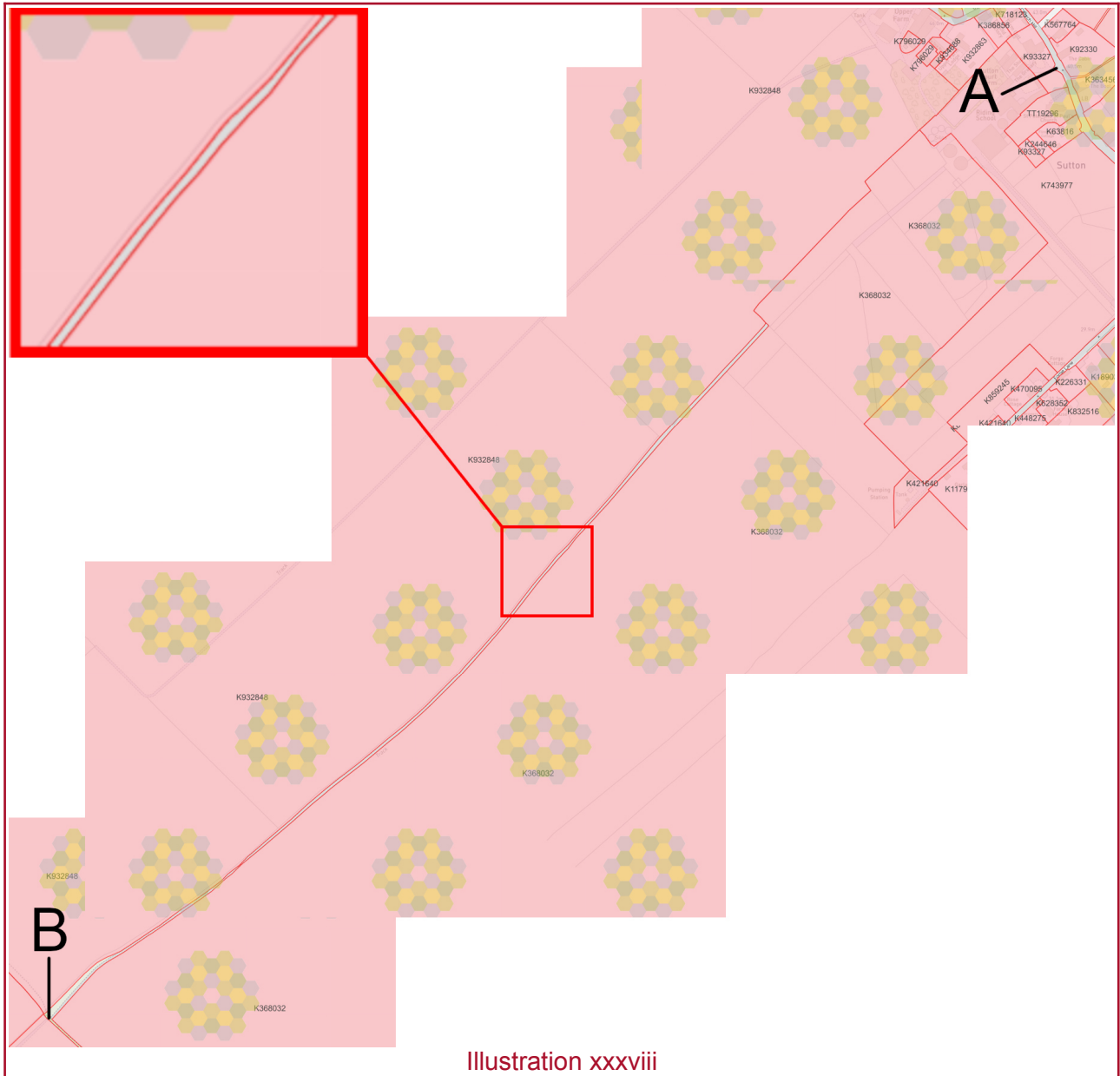
⁴⁵ The true length is 2,710 metres: see para.I.E.3 above.

L. HM Land Registry

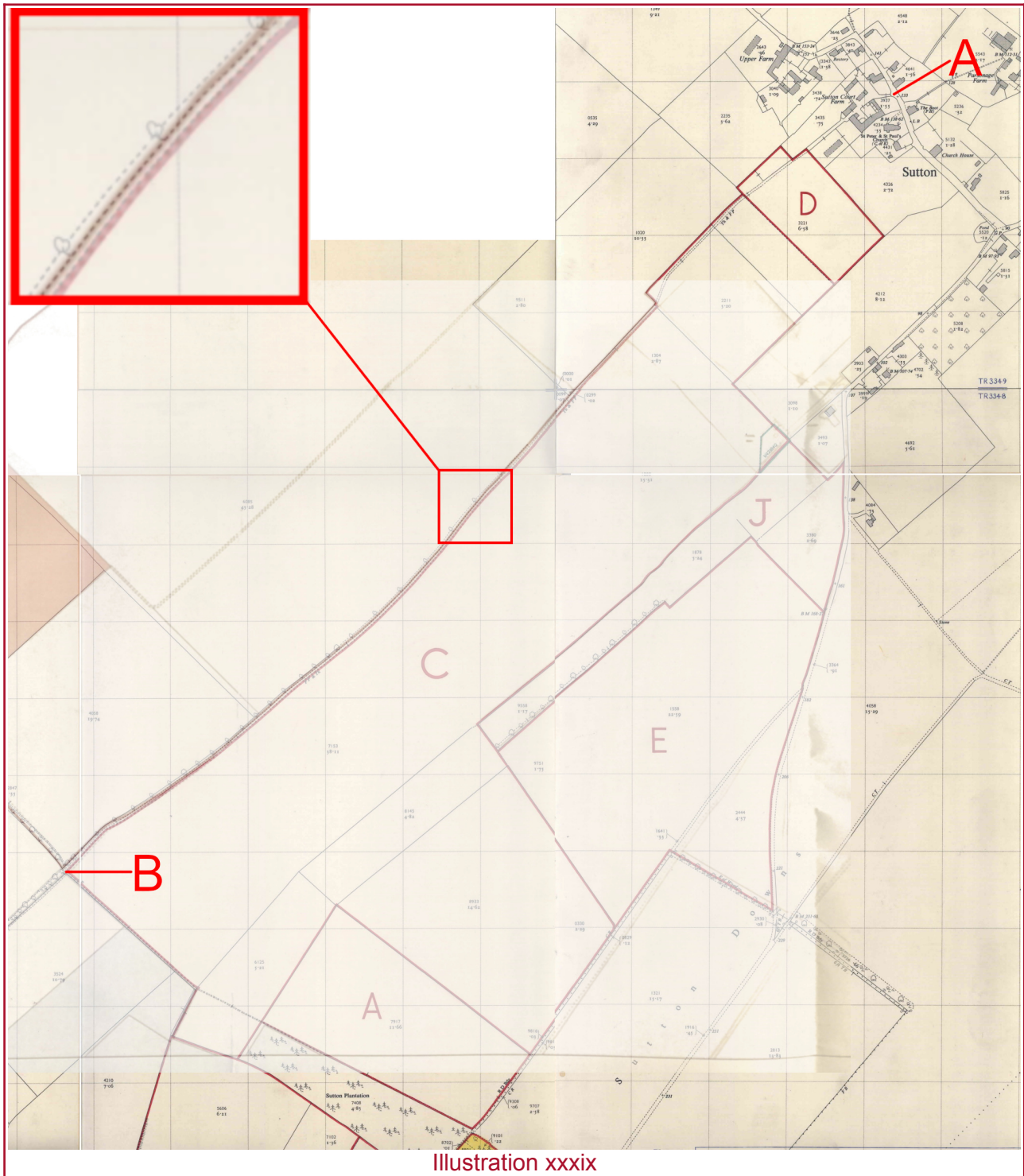
L.1. Date: 2022

L.2. Source: HM Land Registry titles K932848 and K368032

Index map extract re titles K932848 and K368032



Overlap of extracts of title plans K932848 and K368032



L.3. **Description:** Original scale: Land Registry titles overlaid on MasterMap; orientation: unchanged (top is north).

L.4. The plan shows the boundaries to two titles which abut the order way: K932848 and K368032. The plan shows the two title plans overlaid, with the upper plan rendered semi-transparent, so that the boundaries of both titles may be seen on the same plan. The boundaries are shown with a red edging (K932848) and brown edging (K368032).

L.5. Title K932848 relates to land north-west of the application way between Sutton Court and B. The title boundary follows the north-west side of the application way (extending over the hedge which lies to the north-west of the application way).

L.6. Title K368032 relates to the land south-east of the application way between Sutton Court and B. The title boundary follows the south-east side of the application way.

L.7. In Illustration xxxix, towards B, the title boundaries appear to merge for a short distance. The title boundary for KL368032 is not available as a digital download, and has been scanned for the purpose of this analysis. A pronounced fold line distorts the mapping in the vicinity of the merge. It can be seen that the merge is not visible in the wholly digitally-derived index map in Illustration xxxviii.

L.8. **Analysis:** The identified part of the application way is excluded from any registered title to the land.

L.9. The absence of any title to the application way in the Land Registry titles to the land adjoining the application way must be consequential on the conveyances of that land prior to first registration of title — such conveyances likewise must have excluded the order way.

L.10. Two possibilities arise to account for the exclusion — either that the title to the application way is unregistered and contained in a separate title; or that ownership of the application way is held *ad medium filum*⁴⁶ by the owners of the adjoining land.

L.11. The first possibility is unlikely: there is no reason why title to a narrow strip of land, coincident with the application way, should be held in a separate title yet remain unregistered — first registration of title having become compulsory in this area in January 1961.⁴⁷ Thus, if such an unregistered title exists and endures, it must have remained vested in the same proprietor for the past 60 years.

L.12. The second possibility arises only if the order way is indeed a highway to which the presumption of *ad medium filum* applies.

The 'ad medium filum' rule is a rebuttable presumption that an owner of land which abuts either:

- a public or private highway, or
- a non-tidal river or stream

also owns the soil of the adjoining highway, or the bed of the adjoining river or stream, up to its centre line. A transfer or lease of that land will therefore be presumed to include that part of the highway, river or stream without the necessity for any express mention of it.

In the case of a highway, the presumption is known as the 'ad medium filum viae' rule, and is based on a combination of convenience (so as to prevent disputes as to precise boundaries) and also on the supposition that each owner contributed a portion of land when the highway was formed.⁴⁸

46 Up to the centre line.

47 www.gov.uk/government/publications/first-registrations/practice-guide-1-first-registrations.

48 The 'ad medium filum' rule, LexisNexis, www.lexisnexis.co.uk/legal/guidance/the-ad-medium-filum-rule.

L.13. The presumption seldom is found in connection with, or applied to rural, unenclosed footpaths, because historically, it was not found necessary or appropriate to distinguish the ownership of land covered by a footpath.

L.14. Thus, the only realistic explanation for the exclusion of the whole of the order way from the adjoining owners' title is that the order way is a public bridleway or carriageway.

L.15. **Conclusion:** The absence of any registered title to the identified part of the application way is good evidence that it is a public bridleway or road in origin — indeed, it is submitted that it is the only plausible explanation.

L.16. **Points:** 2

VI. Annexes

A. Sutton tithe map (item V.D above)



A MAP of the PARISH of
SUTTON,
in the COUNTY of KENT,
Total Contents, 1055.1.36
Scale, 4 Chains to the Inch.
Corrected from a former SURVEY
Oct^r 1839,
W. HOLTUM, WALMER.

*As the Instrumental Title, Conveyances for England
 and Wales do not specify the Act or Copy by which
 they are taken, and as in the Instrumental Title
 there is a Clauses in favor of those in the Parish of
 Sutton in the County of Kent.
 (Signed) W. Holtum
 25th Decem^r
 1839.*



B. Little Mongeham tithe map (item V.D above)

LITTLE MONGEHAM,

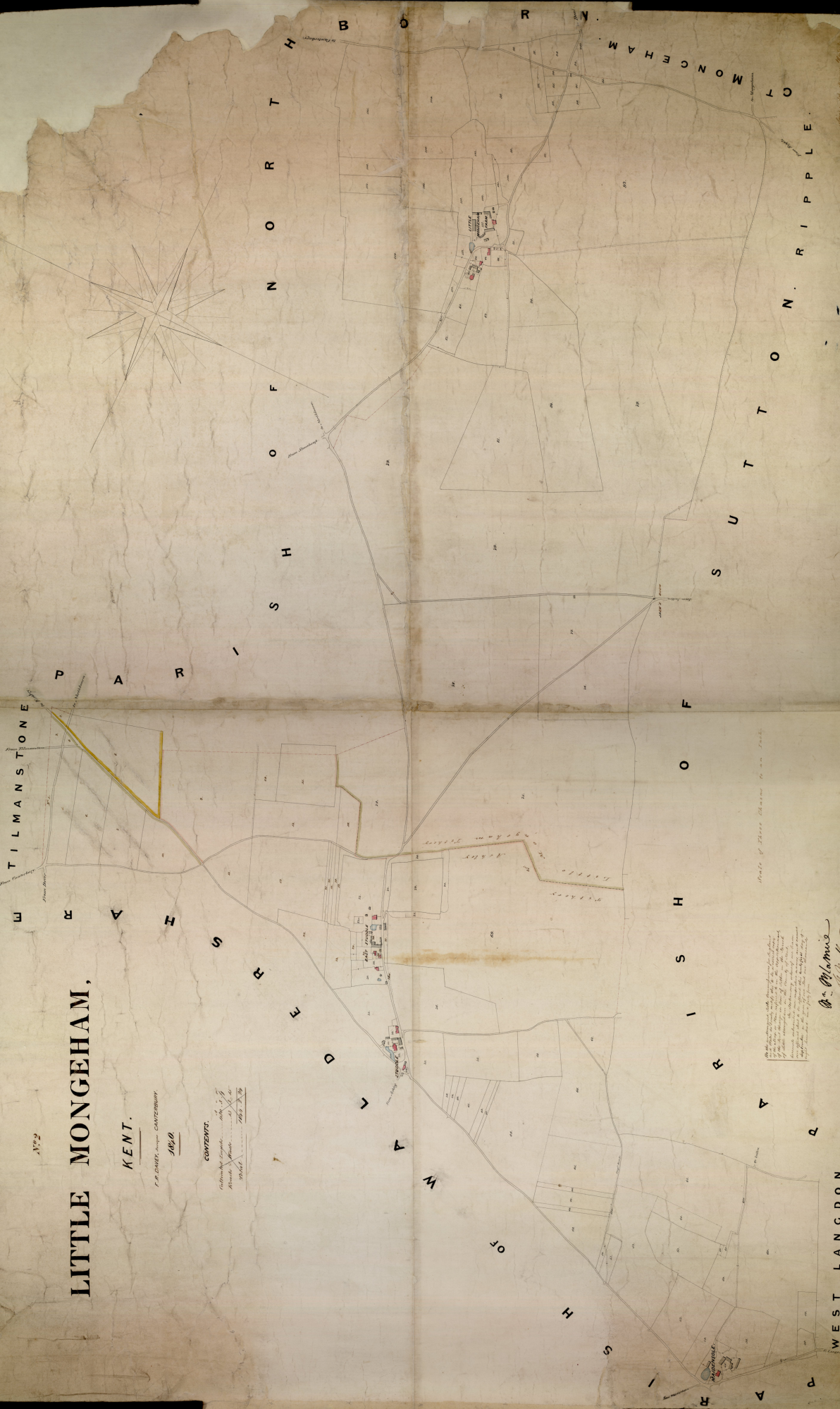
KENT.

FROM A PLAN BY JOHN CAMPBELL,

1840.

CONTENTS.

General Plan	Scale of 1/25,000
Plan of the Rectory	Scale of 1/10,000
Plan of the Farm	Scale of 1/10,000
Plan of the Mill	Scale of 1/10,000
Plan of the Chapel	Scale of 1/10,000
Plan of the Church	Scale of 1/10,000
Plan of the Vicarage	Scale of 1/10,000
Plan of the Rectory	Scale of 1/10,000
Plan of the Farm	Scale of 1/10,000
Plan of the Mill	Scale of 1/10,000
Plan of the Chapel	Scale of 1/10,000
Plan of the Church	Scale of 1/10,000
Plan of the Vicarage	Scale of 1/10,000



Scale of these Plans is one Inch

John Campbell
1840

W. M. Adams
W. Butler

C. Maydense estate map (item V.G above)

