

Etchinghill to Newington bridleway: document analysis

Application to record a part byway open to all traffic and part bridleway from Etchinghill to Newington

I. Introduction

A. Quick reference

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



A.2. Existing recorded public rights of way comprised in application way: Coombe Farm road, and part of footpath HE245

- A.3. Parish of: Newington
- A.4. Ancient parish of: Newington
- A.5. Termination points: Junction of Coombe Farm Lane and Beachborough Road, Etchinghill; and Newington Lane, Peene
- A.6. Termination points Ordnance Survey grid references: TR16983918; TR18403783
- A.7. Postcode: CT18 8BP
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheets: Kent LXXIV/4 and LXXIV/8

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 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 in the parish of Newington near Folkestone. The way is partly recorded on the definitive map and statement as a public footpath. The application seeks to record the way part as a byway open to all traffic, and part as a bridleway.

D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under sub-paragraphs (i) to (iii) of section 53(3)(c) that part of a way should be added to the definitive map and statement for Kent as a byway open to all traffic, that a further part should be added as bridleway, that part of the way shown on the definitive map and statement as a footpath should be upgraded to bridleway, that there is no right of way over part of a way shown on the definitive map and statement as a footpath, and that the particulars in relation to part of the way should be modified.

D.2. The way begins as a byway open to all traffic in Etchinghill on the Beachborough Road at the turning to Coombe Farm at A (Ordnance Survey grid reference TR16983918), along the road to Coombe Farm. It passes the terminus of footpath HE245 at B (TR17083915), and continues to Coombe Farm, turning from south to east through an arc of approximately 100° to emerge from the curtilage of Coombe Farm at a gate immediately to the south east of Coombe Farm house at C (TR17133905). It continues as a bridleway east-northeast and then east-southeast across a field (formerly waste) to a stile at D (TR17303905), then continuing (now on the course of footpath HE245) approximately east and then southeast to the west side of the bridge under the dismantled railway line at E (TR17393905). The way continues southeast, initially at the foot of the western side of the

railway embankment, to a stile at F (TR17633879), then diagonally across a field in an approximately south-southeasterly direction to a gate and stile at G (TR17733859). It continues southeast and then south-southeast, initially through but then along the eastern edge of Asholt or Ashley Wood to a cattle grid and stile H (TR18073809), then south continuing along the edge of the wood, before turning south-southeast to join a track at I (TR18143788). Then (leaving the course of footpath HE245) turning approximately east along the track to emerge on Newington Lane, between Newington and Peene, at J (TR18403783). A total distance of 2,180m.

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

D.4. The majority of the application way is already recorded in the definitive map and statement for Kent as footpath HE245. Where the application way is coincident with that footpath, the application is made under paragraph (ii) of section 53(3)(c) of the 1981 Act to upgrade the footpath to bridleway.

D.5. But in respect of the road leading to Coombe Farm, between A and C, this road is included in the council's list of streets¹ as publicly maintainable. This part of the way is not currently recorded on the definitive map and statement. Footpath HE245 is instead recorded as terminating on this road, at B. In respect of this road, application is therefore made under paragraph (i) to record the road in the definitive map and statement for Kent as a byway open to all traffic.

D.6. Between C and D, the way is not recorded in the definitive map and statement for Kent (footpath HE245 occupies a more direct alignment between B and D). In respect of this part of the way, application is therefore made under paragraph (i) to record the way in the definitive map and statement for Kent as a bridleway.

D.7. Between F and G, footpath HE245 occupies a route along two headlands of a field. However, the evidence shows that the application route lies direct across the field between F and G. In respect of this part of the way, application is therefore made under paragraphs (i) and (iii) to record the way in the definitive map and statement for Kent as a bridleway on a direct alignment between F and G, and to delete the footpath shown along the headlands between those points. It is submitted that the headland path is an incorrect representation on the definitive map of the historical route, which followed the direct alignment across the field.

D.8. Between I and J, the way is not recorded in the definitive map and statement for Kent (footpath HE245 continues on a cross-field alignment towards Newington). In respect of this part of the way, application is therefore made under paragraph (i) to record the way in the definitive map and statement for Kent as a bridleway.

E. Background

E.1. The application way historically appears to be a long-standing field path from Etchingham to Peene, Newington and, via further field paths, Cheriton. It provides a shorter way between these places on foot and on horseback (and, since the enactment of s.30 of the Countryside Act 1968, by cycle) compared to travel via the Beachborough Road.

E.2. As a public right of way, the path's origin probably lies in the mediæval period. The way may not always have been a bridleway — we have seen no evidence about that. But

¹ The list is of highways maintainable at public expense held under s.36(6) of the Highways Act 1980.

sources show that, by the second half of the nineteenth century, the way had the reputation of a bridleway.

E.3. As to the part of the way between A and C, this part has long been recognised as a publicly maintainable road. On the date of a site visit in 2020, gates had been placed across the way adjacent to B, and it was not possible to assess the balance of public user in the definition of a byway open to all traffic, viz:

...a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used... .²

E.4. However, Roch LJ in the Court of Appeal in [*Masters v Secretary of State for the Environment*](#) said of the definition that:

...Parliament was setting out a description of ways which should be shown in the maps and statements as such byways. What was being defined was the concept or character of such a way. Parliament did not intend that highways over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horseriders than vehicular traffic because they were more suitable for use by walkers and horseriders than by vehicles.³

It therefore is submitted that the way between A and C is of a concept or character which makes it more likely to be used by walkers and horse riders.

F. Grounds for application

F.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*⁴, Lewison LJ said, at paragraph 22,

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

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

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

² Wildlife and Countryside Act 1981, s.66(1).

³ At para.41.

⁴ [2012] EWCA Civ 334

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.⁵

F.3. The correct test under s.53(3)(c)(i) is whether:

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

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

F.4. 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... .

F.5. 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 reputation as a bridleway vice a footpath over many years.

G. Discovery of evidence

G.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent as a bridleway. The way was described as a footpath and bridle road (on the line of footpath HE245 between D and I) in the parish survey undertaken under Part IV of the National Parks and Access to the Countryside Act 1949, but recorded on the draft definitive map and statement, and subsequently, as a footpath (see item IV.H below). There is no evidence that, so far as the parish survey proposed bridleway status, that status relied on the historical sources relied upon in this application. Therefore there is no discovery of evidence of bridleway status for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is new evidence.

H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*⁶.

⁵ [Consistency Guidelines](#): para.2.17.

⁶ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

H.2. Points:

| Item | Ref | Points |
|---|------|----------------------|
| Tithe Commutation Act 1836 | IV.A | 0 |
| Elham Valley Railway | IV.B | 5 (A–F) |
| Ordnance Survey County Series twenty-five inch maps | IV.C | 2 |
| Elham Valley Light Railway | IV.D | 5 |
| Elham Rural District Council | IV.E | 5 |
| Bartholomew's map | IV.F | 1 |
| List of streets | IV.G | 3 (A–C) |
| Definitive map and statement | IV.H | 3 |
| Total | | 24 (A–C) 16 (F–J) |

I. Width of application way

I.1. No width is recorded in the definitive statement for any part of footpath HE245 comprised in the way.

I.2. It is submitted that the width of the way between A and C should be as revealed by measurement and as shown on the Ordnance Survey MasterMap where it is bounded by fences or hedges.

I.3. Between the bridge over the stream 45m east-northeast of D, and F, the way is shown on the second, third and fourth editions of the Ordnance Survey County Series twenty-five inch maps (item IV.C below) as now enclosed by the construction of the railway line immediately to the northeast. The area of this enclosure is given as 0.602 acres (*i.e.* 0.2436 ha). However, part of the area of this enclosure is accounted for by the opening into the bridge under the railway, which is estimated to occupy 100m². The length of this section of path is estimated to be 415m, suggesting a mean width of 5.6m. Allowing for a slightly wider section of path immediately to the east-northeast of the bridge, at 6m, it is submitted that the width between E and F should be recorded at 5m. The path between E and F is characteristic of a made-up bridleway, being notably broad and having a metalled base (see Illustration viii below).

I.4. Elsewhere — between C and the bridge over the stream 45m east-northeast of D, and between F and J, it is submitted that a width of 3.5m should be recorded — a width sufficient to enable two riders to pass comfortably, and which is likely to have been dedicated through long use.

J. Limitations

J.1. No limitation is recorded in the definitive statement for any part of footpath HE245 comprised in the way.

J.2. On the Ordnance Survey County Series twenty-five inch maps (item IV.C below), a gate can be inferred from the first edition map at F, G, a point 160m southeast of G, I and J. On the second edition map, a further gate is apparent at H (where a short new boundary is shown linking Asholt Wood and Wick Wood. The same details appear on the third and fourth edition maps, save that the gate at H has been removed (as has the new

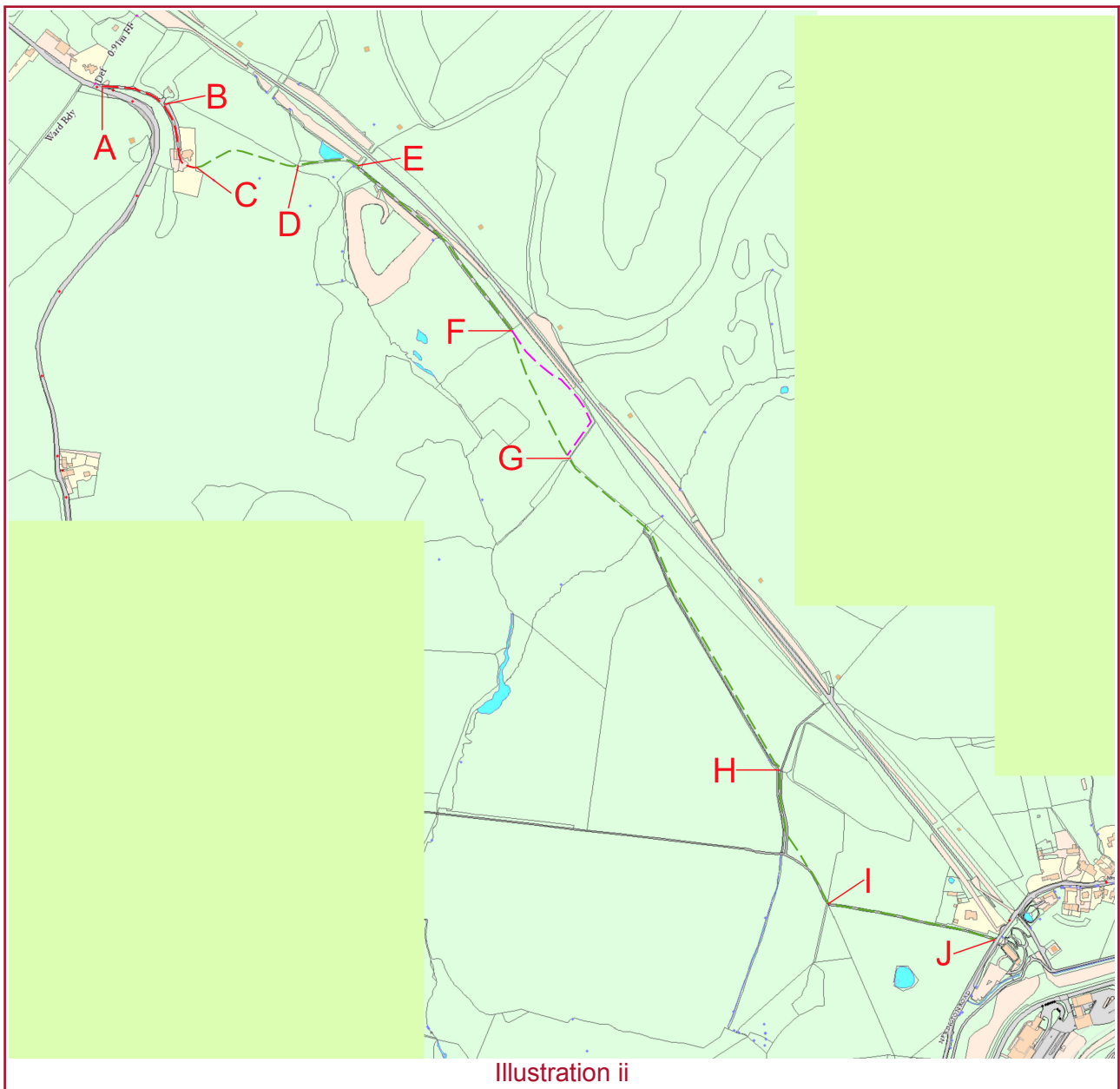
boundary), but the parcels divided by the former boundary remain separately numbered (and divided by a dotted line).

J.3. No fence, nor inferred gate, appears across the application way between A and F on any of these four editions of the County Series map.

J.4. A bridge over a stream is implied 45m east-northeast of D, and at G, the streams being apparent on all large scale maps. A bridge is referred to in the minutes of the Elham Rural District Council (item IV.E below).

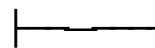
J.5. Therefore, it is conceded that the application way is subject to historical limitations, comprising a field gate, at points F, G, 160m southeast of G, I and J. It is submitted that, if an order is made in consequence of this application, it should be stated that the way is subject to these limitations, but not subject to any other limitation.

II. Application map



Map centred on G at TR17733859

Scale: approx. 1:10,400 (when printed A4)



Application bridleway is marked — — (C to J) 200m

Application byway open to all traffic is marked — — (A to C)

Application footpath to be deleted is marked — — (F to G)

III. Along the way



Illustration iii: At A



Illustration iv: B towards A



Illustration v: Between C and D



Illustration vi: Between C and D



Illustration vii: Footbridge near D



Illustration viii: Between E and F



Illustration ix: Between F and G

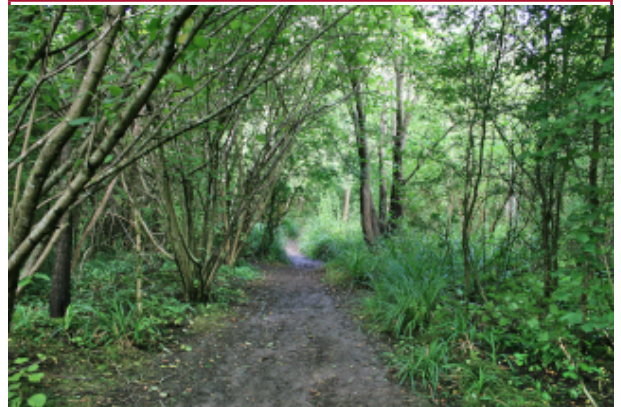


Illustration x: Towards G from H



Illustration xi: Footbridge
between G and H



Illustration xii: Between G and H



Illustration xiii: H



Illustration xiv: At J

IV. Evidence

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A. Tithe Commutation Act 1836

A.1. **Date:** 1842

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



Illustration xv

A.3. **Description:** Original scale — scale bar marked on map in chains (3 chains to one inch 1:2,376); orientation — rotated 90° (top is northwest). The tithe map for Newington is first class⁷.

A.4. The Tithe Commutation 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.

A.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. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to.⁸

A.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. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

Apportionments

| Landowners | Occupiers | No. | Name and description | State of cultivation | In-bound quantity | Out-bound quantity |
|--|---------------|-----|----------------------------|----------------------|-------------------|--------------------|
| Archbishop of Canterbury Brockman, Rev'd William (lessee) | Collick, John | 12 | Milky Down | Pasture | 17,0,32 | 17,3,27 |
| " | " | 16 | Whiteland | Arable | 30,0,9 | 34,0,18 |
| Taylor, Devises of the late John | Themselves | 420 | Coombe Pasture Field | Pasture | 9,0,12 | 9,1,27 |

⁷ See the record for this tithe apportionment held by the National Archives: [IR 30/17/11](#), and the entry, *ibid*.

⁸ *Survey of lands (Tithe Act.), letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act, 29 November 1836* (copy held at the National Archives).

| | | | | | | |
|---|-------------|----|-------------------|---------|--------|---------|
| " | Dunn, Henry | 79 | Newland Shaw | Coppice | – | 0,1,30 |
| " | " | 78 | Newland | Arable | 2,1,24 | 2,3,2 |
| " | " | 77 | Coombe Ground | Pasture | 8,1,34 | 9,0,4 |
| " | " | 76 | Ham or Wick Field | Pasture | 12,1,3 | 13,1,38 |

A.7. The application way is not apparent from the tithe map, save at the western end between A and F, where it is coincident with a defined road or track (between A and C), an inclosure or drove road (between C and E), and a farm track (between E and F). None of the relevant apportionments refer expressly to the application way.

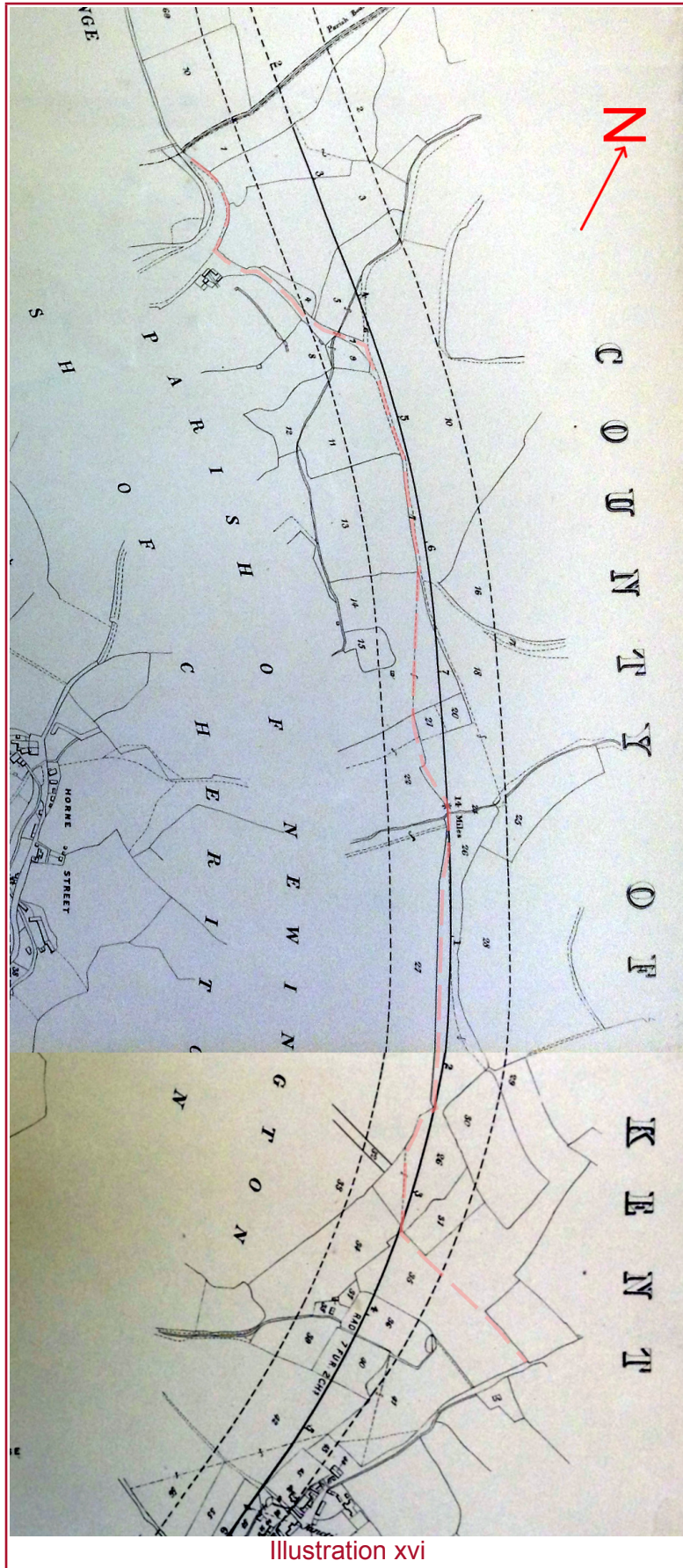
A.8. **Conclusion:** The tithe map for Newington does not assist in identifying the application way or its status: this is unsurprising, as tithe maps frequently did not identify foot-paths or bridleways across land.

A.9. **Points:** 0

B. Elham Valley Railway

B.1. **Date:** 1865–66

B.2. **Source:** Kent County Archives⁹



Book of reference

| Newington | | | | |
|--------------|---------------------------------------|---|--|--|
| NO. ON PLAN. | DESCRIPTION OF PROPERTY | OWNERS OR REPUTED OWNERS. | LESSEES OR REPUTED LESSEES. | OCCUPIERS. |
| 6 | Pasture and Cart track | The Ecclesiastical Commissioners of England and Wales James Chalk Secretary | } Reverend Tatton Brockman } Samuel Foster Ralph } Thomas Brockman | } Stephen Hogben |
| 7 | Occupation Road and Bridle Road | The Ecclesiastical Commissioners of England and Wales James Chalk Secretary | } Reverend Tatton Brockman } Samuel Foster Ralph } Thomas Brockman | } Stephen Hogben |
| 14 | Pasture and footpath | John Taylor | | John Taylor |
| 17 | Occupation Road bridle road and waste | The Ecclesiastical Commissioners of England and Wales James Chalk Secretary | } Reverend Tatton Brockman } Samuel Foster Ralph } Thomas Brockman | Reverend Tatton Brockman Stephen Hogben |
| 18 | Arable | Reverend Tatton Brockman | | Stephen Hogben |
| 21 | Wood and footpath | Reverend Tatton Brockman | | Reverend Tatton Brockman |
| 22 | Wood | Reverend Tatton Brockman | | Reverend Tatton Brockman |
| 26 | Pasture and footpath | Reverend Tatton Brockman | | William Amos |
| 34 | Pasture | Reverend Tatton Brockman | | William Amos |
| 35 | Pasture | Reverend Tatton Brockman | John Hart | John Hart |

B.3. **Description:** original scale: a scale in chains is marked on the index map, but it has not been possible reliably to apply it to this extract; orientation: rotated (top was northeast, now rotated by approximately 90° so that top is northwest).

B.4. The first prospectus for a railway along the Elham valley was presented to Parliament in 1865, proposing an 'Elham Valley Light Railway Company', which would be a

single-line railway starting at Hythe on the coast, running up through the Seabrook valley, through Newington and joining the Canterbury to Dover railway. It was to be a light railway with a maximum speed of 25 mph. It was authorised by Parliament under the Elham Valley Railway Act 1866¹⁰ on 6 August 1866, but serious financial difficulties plagued the scheme due to the national financial crisis, and it was wound up in 1873. It was abandoned by order issued by the Board of Trade on 30 August 1873, owing to 'failure to raise sufficient capital'.¹¹

B.5. The plans and book of reference record a bridleway from the Beachborough road through Coombe Farm, crossing the proposed line of the railway and turning right (south-east) approximately to track the line. No significant entry appears in the sections in relation to the application route.

B.6. However, the bridleway appears to turn northeast after passing Coombe Wood, presumably to climb the scarp towards what is now Shearins Bungalow. The continuation of the application route is recorded as a footpath (plots 21 and 26) or not at all (plot 35).

B.7. **Conclusion:** The plans and book of reference for the 1866 Elham Valley Railway contains evidence of the existence of a bridleway over the northwestern end of the application route. However, the plans suggest that the bridleway left the application route to ascend the scarp. There is evidence of a continuation of the route as a footpath — although the precise termination of the southeastern end of the path in the vicinity of Newington is also uncertain.

B.8. **Points:** 5 (A–F)

C. Ordnance Survey County Series twenty-five inch maps

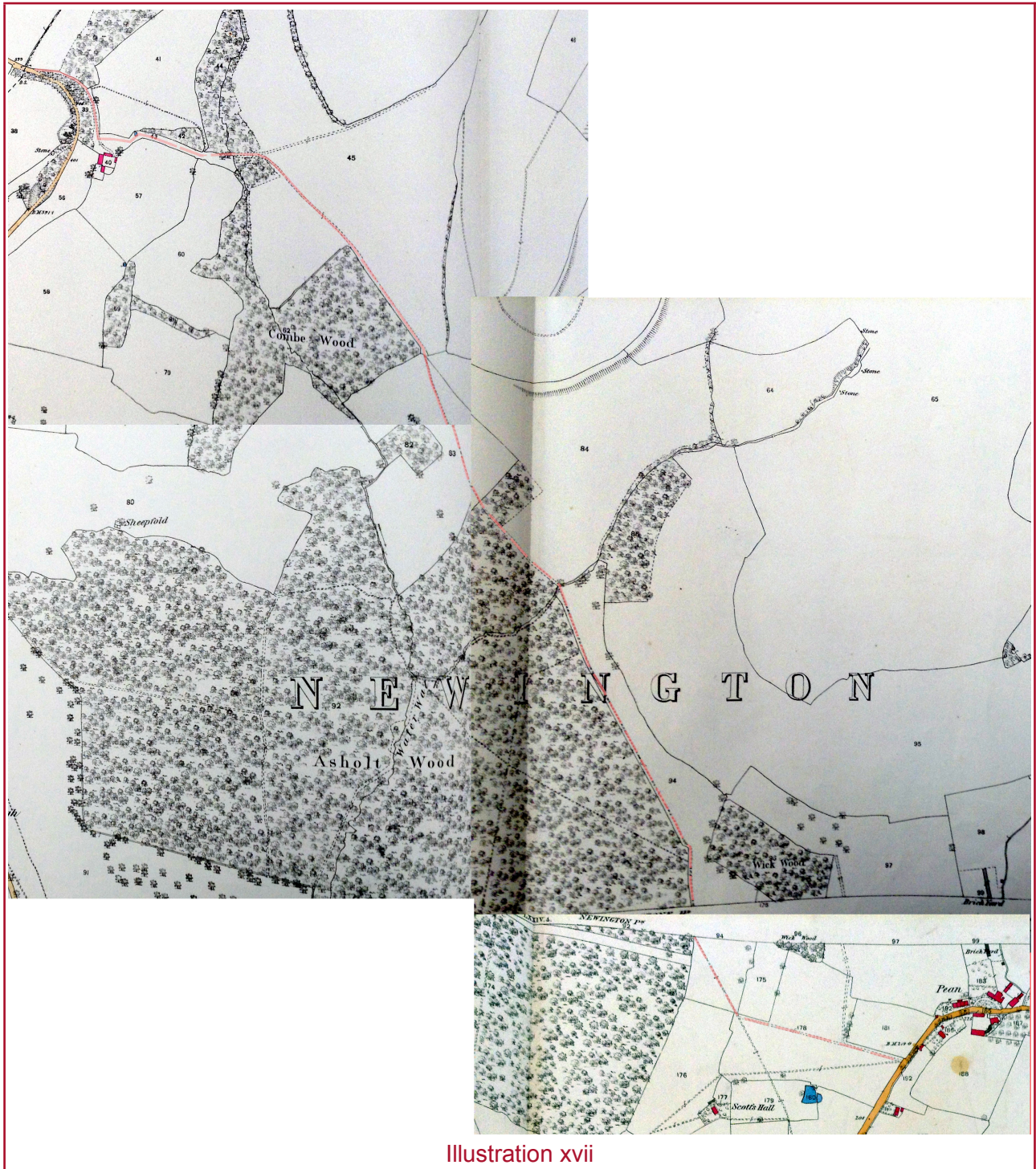
C.1. **Date:** 1872

C.2. **Source:** British Library, National Library of Scotland

¹⁰ c.cccxvi, 29 & 30 Vict.

¹¹ [Wikipedia: Elham Valley Railway](#).

County Series first edition 1872



PARISH OF NEWINGTON,
 IN THE
COUNTY OF KENT—(EASTERN DIVISION).

HUNDRED OF FOLKESTONE.

| No. on Plan. | Area in Acres. | Remarks. | No. on Plan. | Area in Acres. | Remarks. |
|--------------|----------------|--------------|--------------|----------------|-------------------|
| 1 | 6·917 | Pasture, &c. | 38 | 5·651 | Arable, &c. |
| 2 | 1·849 | Pasture. | 39 | ·839 | Wood, &c. |
| 3 | 1·747 | Pasture, &c. | 40 | ·329 | Houses and yards. |
| 4 | 53·730 | Arable, &c. | 41 | 9·052 | Pasture, &c. |
| 5 | ·788 | Road. | 42 | ·488 | Wood. |
| 6 | 11·444 | Arable. | 43 | 1·448 | Pasture, &c. |
| 7 | 1·107 | Wood. | 44 | 3·534 | Wood, &c. |
| 8 | 12·494 | Pasture, &c. | 45 | 33·074 | Arable, &c. |
| 9 | 17·267 | Pasture, &c. | 46 | 5·551 | Arable. |

Illustration xviii

County Series second edition 1896



Illustration xix

County Series third edition 1906



Illustration xx

County Series fourth edition 1938–39



Illustration xxi

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

C.4. The Ordnance County Series twenty-five inch plans consistently show the application route as a physical feature in the landscape over a period of approximately 70 years, between 1872 and 1939.

C.5. The only significant variation during that period is the construction of the Elham Valley Railway in the 1880s, which ran adjacent to part of the course of the application way. Also, by the fourth edition, the alignment of the application way south of Combe Wood follows a field-edge route, in contrast to the former cross-field route.

C.6. The second, third and fourth editions consistently mark the application way between Combe Wood and Newington as 'B.R.' — *i.e.* as a bridle road.

C.7. **Conclusion:** The annotation of the application way as a bridle road represents the opinion of the surveyor that the way was used as a bridle road vice a footpath. Such opinion was likely to have been formed from local observation — *e.g.* bridle road signs, or visible evidence of use of the way by horses.

C.8. **Points:** 2

D. Elham Valley Light Railway

D.1. **Date:** 1880–86

D.2. **Source:** Kent County Archives¹²

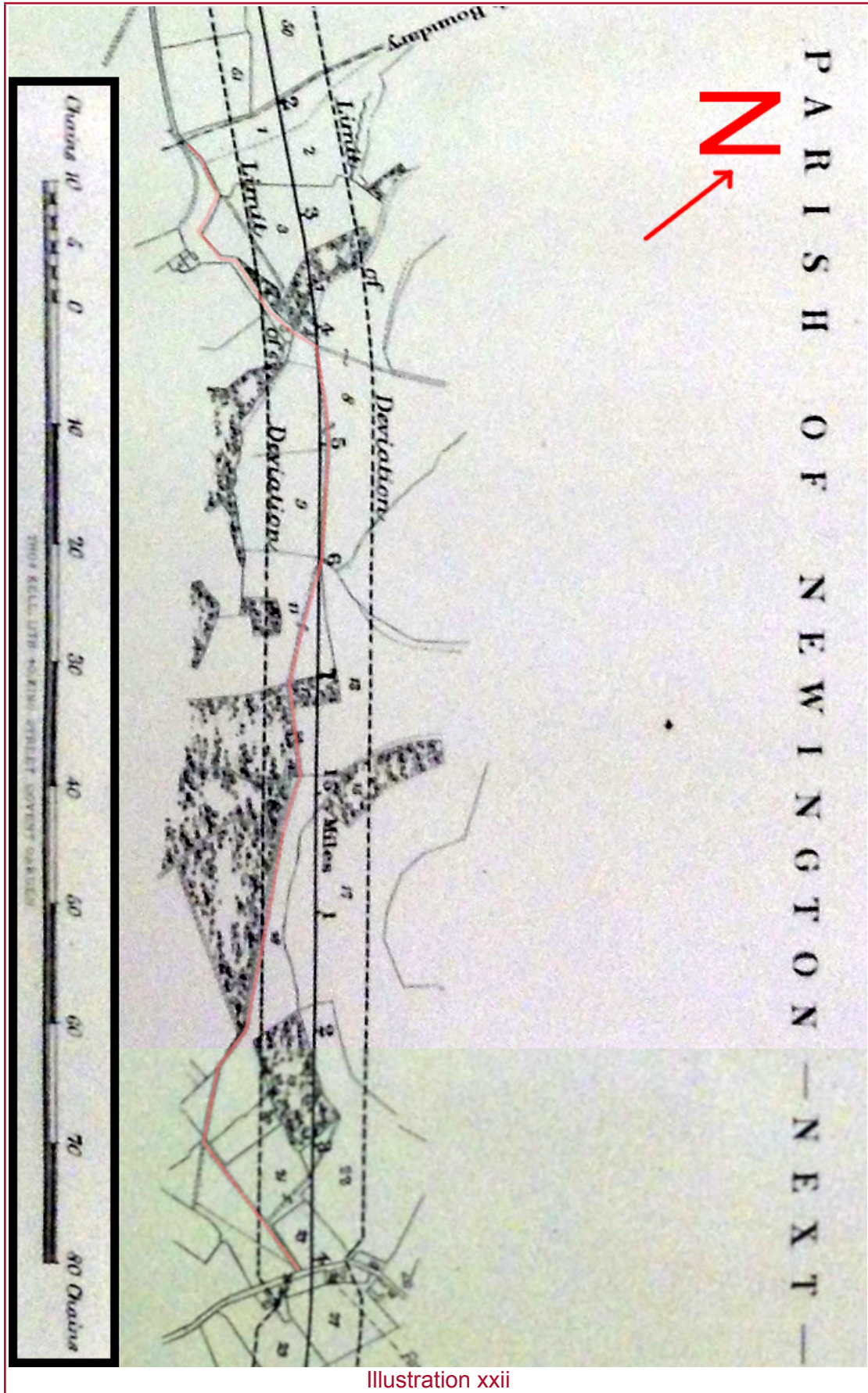


Illustration xxii

Book of reference 1879–80

| Newington | | | | |
|--------------|--|---|-----------------------------|------------------------|
| No. on Plan. | Description of Property. | Owners or reputed Owners. | Lessees or reputed Lessees. | Occupiers. |
| 5 | Public bridle road and waste | The Elham Highway Board | ... .. | ... .. |
| 8 | Field, public bridle roads and stream | Francis Drake Brockman, The Elham Highway Board | ... .. | Anne Hogben |
| 11 | Field and public bridle road | Francis Drake Brockman, The Elham Highway Board | ... .. | Francis Drake Brockman |
| 14 | Public bridle road | The Elham Highway Board | ... .. | ... .. |
| 16 | Wood and bridle roads | Francis Drake Brockman | ... .. | In hand |
| 18 | Field, shed, public bridle road and stream | Francis Drake Brockman, The Elham Highway Board | ... .. | Joseph Stockwell |
| 21 | Field, public and occupation roads | Francis Drake Brockman, The Elham Highway Board | ... .. | Alfred Woollett |
| 24 | Public road | The Elham Highway Board | ... .. | ... .. |

Book of reference 1880–81

| Newington | | | | |
|--------------|---------------------------------|---|-----------------------------|---------------------|
| No. on Plan. | Description of Property. | Owners or reputed Owners. | Lessees or reputed Lessees. | Occupiers. |
| 5 | Public bridle road and waste | The Elham Highway Board The Urban Sanitary Authority of the Borough of Hythe | ... .. | ... .. |
| 8 | Field, public bridle roads, and | Francis Drake Brockman, | ... .. | John Collick Hogben |

| | | | | |
|----|--|---|--------|------------------------|
| | stream | The Elham Highway Board The Urban Sanitary Authority of the Borough of Hythe | | |
| 11 | Field and public bridle road | Francis Drake Brockman, The Elham Highway Board The Urban Sanitary Authority of the Borough of Hythe The Trustees under the Will of the late John Taylor, viz,— Edward Tassell Taylor Alfred Ellis Dadds | ... .. | Francis Drake Brockman |
| 14 | Public bridle road | The Elham Highway Board The Urban Sanitary Authority of the Borough of Hythe | ... .. | ... .. |
| 16 | Wood and bridle roads | Francis Drake Brockman | ... .. | In hand |
| 18 | Field, shed, public bridle road and stream | Francis Drake Brockman, The Elham Highway Board, The Urban Sanitary Authority of the Borough of Hythe | ... .. | Joseph Stockwell |
| 21 | Field, public and occupation roads | Francis Drake Brockman, The Elham Highway Board, The Urban | ... .. | Alfred Woollett |

| | | | | |
|----|--------------------------|--|--------|--------|
| | | Sanitary Authority of the Borough of Hythe | | |
| 24 | Public road and footpath | The Elham Highway Board, The Urban Sanitary Authority of the Borough of Hythe | ... .. | ... .. |

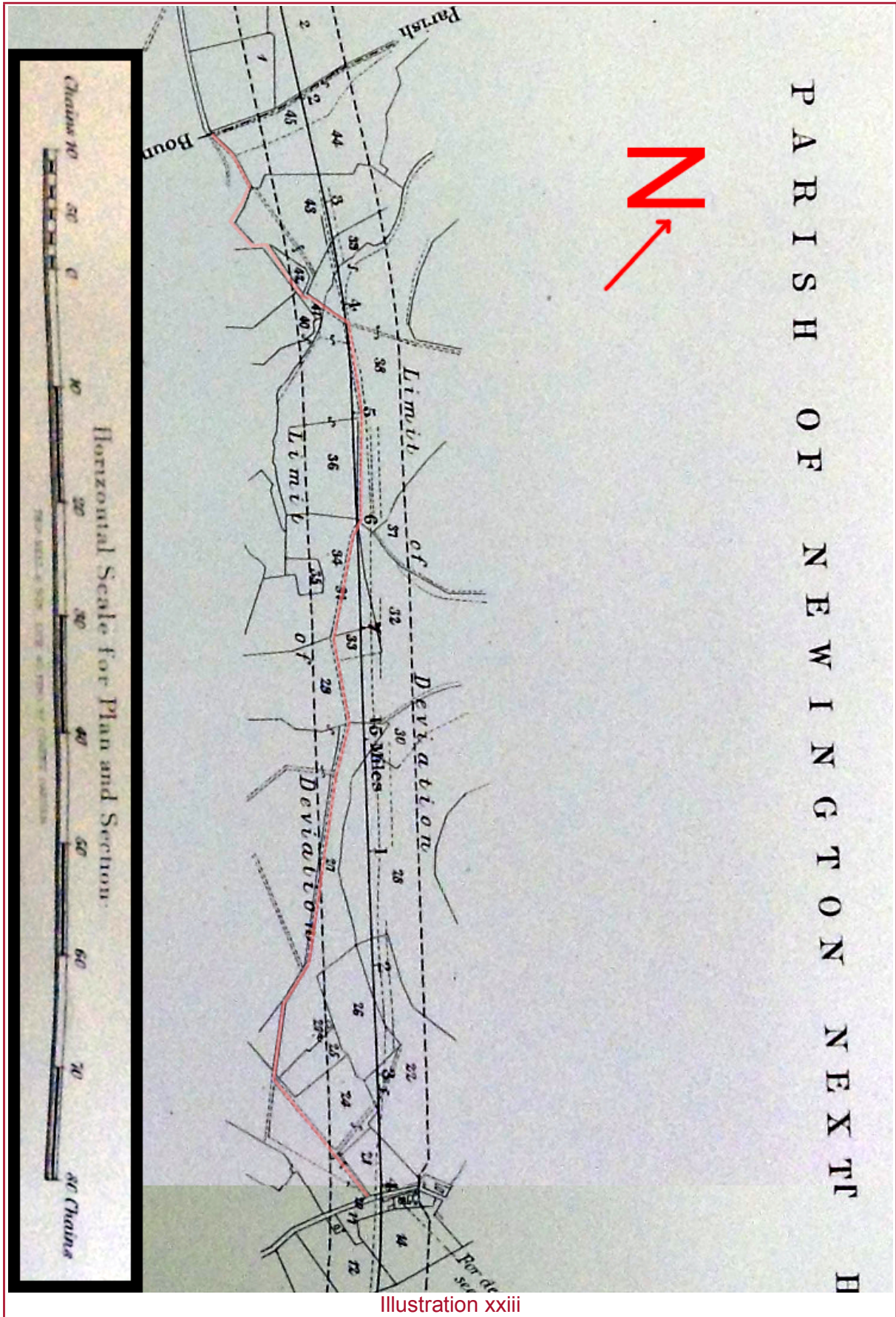


Illustration xxiii

Book of reference 1884–85

| Newington | | | | |
|--------------|---|--|-----------------------------|---|
| No. on Plan. | Description of Property. | Owners or reputed Owners. | Lessees or reputed Lessees. | Occupiers. |
| 20 | Public road | Elham Highway Board | | |
| 24 | Field, public bridle and occupation roads Contractor's temporary railway | Francis Drake Brockman Elham Highway Board Elham Valley Light Railway Company | ... .. | Francis Drake Brockman, Elham Valley Light Railway Company |
| 27 | Field, public bridle road and stream Contractor's temporary railway | Francis Drake Brockman, Elham Highway Board Elham Valley Light Railway Company | ... .. | Joseph Stockwell Elham Valley Light Railway Company |
| 29 | Wood and bridle roads | Francis Drake Brockman | ... .. | In hand |
| 31 | Public bridle road | Elham Highway Board | | |
| 34 | Field and public bridle road Contractor's temporary railway | The Trustees under the Will of the late John Taylor, viz.:— Harriett Taylor Edward Tassell Taylor Alfred Ellis Dadds Elham Highway Board Elham Valley Light Railway Company | ... .. | Francis Drake Brockman Elham Valley Light Railway Company |
| 38 | Field, public bridle roads and stream Contractor's temporary railway | Francis Drake Brockman Elham Highway Board Elham Valley Light Railway Company | ... .. | John Collick Hogben Elham Valley Light Railway Company |

| | | | | |
|----|------------------------------|--|--------|------------------------|
| 41 | Public bridle road and waste | Francis Drake Brockman Elham Highway Board | | Francis Drake Brockman |
|----|------------------------------|--|--------|------------------------|

D.3. **Description:** original scale: scale bar shown on plans; orientation: rotated by 90° (top was northeast).

D.4. Plans were put forward in 1879–80, and again in the 1880–81, Parliament to revive the line of the Elham Valley Railway, now relying on a more easterly alignment between Newington and Peene to form a junction with the South Eastern Railway mainline at Cheriton Junction.

D.5. The plans and book of reference for the 1879–80 deposit record a bridleway from the Beachborough road through Coombe Farm, crossing the proposed line of the railway and turning right (southeast) approximately to track the line. The bridleway is referred to under entries 5, 8, 11, 14 and 18. The final link to the Newington Road (parcel 24) is across parcel 21 and recorded as a public road. In each case, the bridleway (identified as a ‘public bridle road’) is recorded as in the ownership of the Elham Highway Board. Parcel 16 is not identified on the plans, but appears to be the woodland to the southwest of the bridleway recorded as parcels 14 and 18: the reference therein to ‘bridle roads’ may be to woodland rides, as they are not recorded as vested in the Elham Highway Board. No significant entry appears in the plan sections in relation to the application route.

D.6. The plans for the 1880–81 deposit are identical in material respects, but the book of reference contains amended entries. In particular, these refer to the vesting of highways in both the Elham Highway Board and the Hythe Borough urban sanitary authority.

D.7. The 1880–81 proposals received Royal Assent in the Elham Valley Light Railway Act 1881, but the line was not immediately put into construction. Instead, the South Eastern Railway began construction in 1884 in order to see off a competitive project from the London, Chatham and Dover Railway to develop a line along the Alkham Valley between Dover and Folkestone. However, proposals for variations to the levels of route gained Parliamentary approval in the Elham Valley Light Railway Act 1885, including between Etchinghill and Newington.

D.8. The plans for the 1884–85 change of levels are generally consistent with earlier plans, but the numbering of parcels of land commences from the Cheriton end of the deviation, and is therefore reversed. There are minor differences in the plans and book of reference (and parcel 29 — labelled as parcel 16 in previous deposits — remains unidentified on the plans).

D.9. **Conclusion:** The plans and book of reference for the Elham Valley Light Railway contains evidence of the existence of a bridleway over the entirety of the application route. The application route is referred to in numerous references as a public bridle road vested in the Elham Highway Board (and, in the 1880–81 plans, the Hythe Borough urban sanitary authority). The most easterly part of the application route is referred to in the 1879–80 and 1880–81 books of references as a public road, but in the 1884–85 book of reference as a public bridle road.

D.10. These deposited documents, for a railway line which was built and operated, provide convincing evidence of the reputation of the application route as a public

bridleway. The reputation of the way was identified in the 1879–80 deposit, and confirmed in two subsequent deposits over a period of five years.

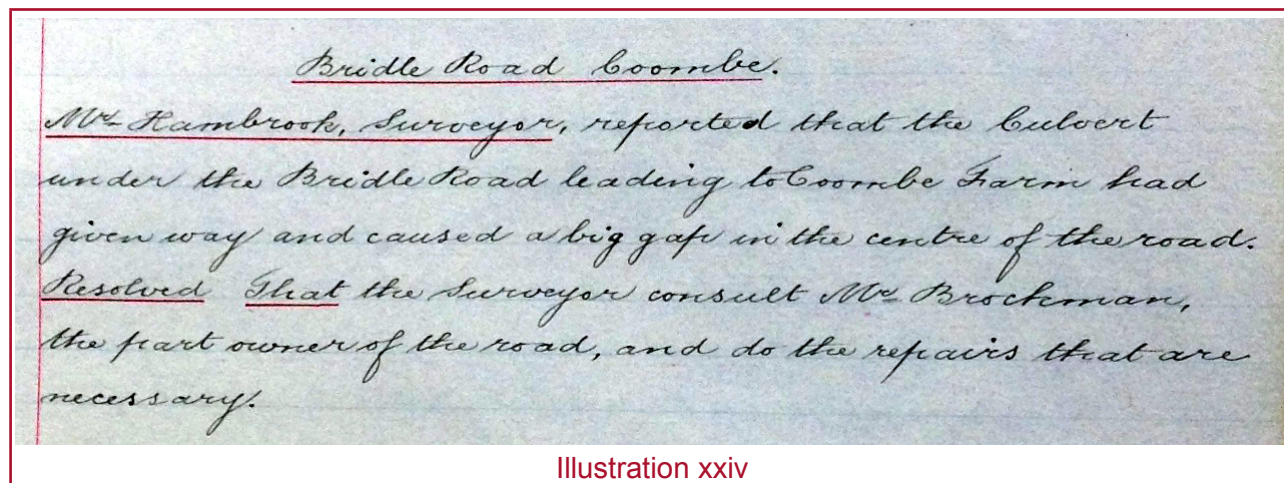
D.11. **Points:** 5

E. Elham Rural District Council

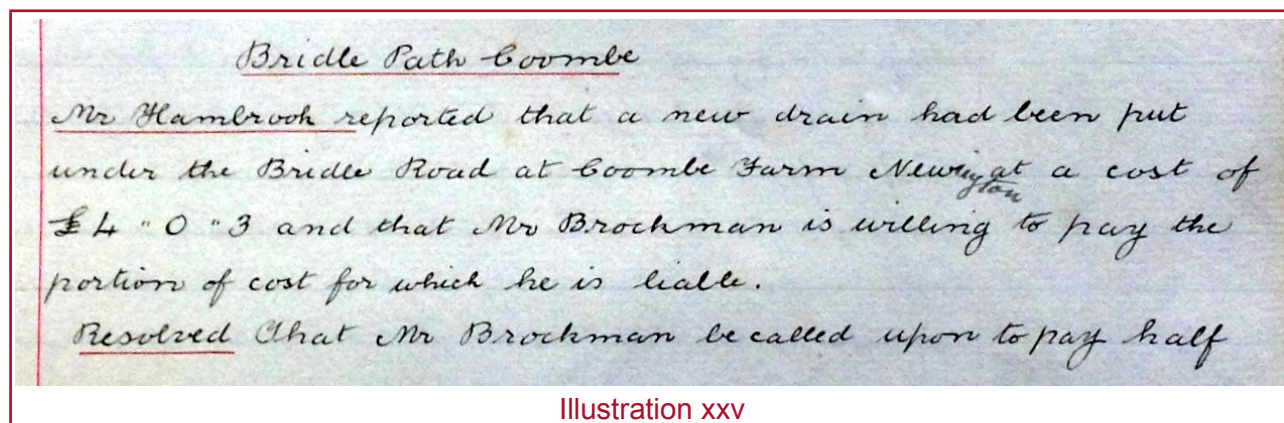
E.1. **Date:** 1895

E.2. **Source:** Kent County Archives¹³

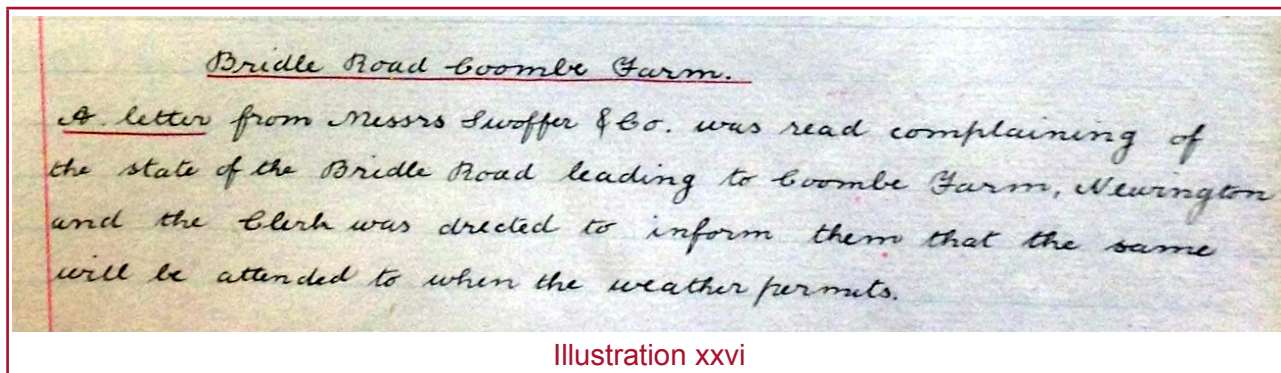
Minute of 10 January 1895



First minute of 7 February 1895



Second minute of 7 February 1895



E.3. **Description:** Elham Rural District Council assumed the highway functions of the former Elham Highway Board and, subsequently, the Elham Rural Sanitary Authority.

E.4. The minutes of the council record, *inter alia*, matters concerning the council's highway functions. The following minutes are recorded:

E.5. 10 January 1895 (Illustration xxiv):

...

Bridle Road Coombe.

Mr Hambrook, Surveyor, reported that the Culvert under the Bridle Road leading to Coombe Farm had given way and caused a big gap in the centre of the road.

Resolved That the Surveyor consult Mr Brockman, the part owner of the road, and do the repairs that were necessary.

E.6. First minute of 7 February 1895 (Illustration xxv):

Bridle Path Coombe

Mr Hambrook reported that a new drain had been put under the Bridle Road at Coombe Farm Newington at a cost of £4.0.3 and that Mr Brockman is willing to pay the portion of cost for which he is liable.

Resolved that Mr Brockman be called upon to pay half.

E.7. Second minute of 7 February 1895 (Illustration xxvi):

Bridle Road Coombe Farm

A letter from Messrs Swoffer & Co. was read complaining of the state of the Bridle Road leading to Coombe Farm, Newington and the Clerk was directed to inform them that the same will be attended to when the weather permits.

E.8. **Conclusion:** The minutes of the Elham Rural District Council from early 1895 confirm that a way leading to Coombe Farm was considered to be a public bridle road, maintainable at public expense, but with a liability on the owner of Coombe Farm to contribute towards the cost of repair of the broken culvert.

E.9. The location of the culvert is not identified, but it is likely to be over the Seabrook Stream or a tributary of it (*i.e.* between D and E). There is no culvert west of Coombe

Farm. Thus 'the Bridle Road leading to Coombe Farm' must refer to the bridle road from Newington to Coombe Farm, and not from the Beachborough Road to Coombe Farm. Although no direct such inference is possible in relation to the letter from Messrs Swoffer & Co, the firm had a tenancy of Morehall, near Cheriton, in the late nineteenth century, and therefore it seems likely that the complaint did relate to the entirety of the bridleway from Newington to Coombe Farm. Moreover, as the way between the Beachborough Road and Coombe Farm was the only means of vehicular access to the farm, it seems likely that it would have been kept in repair and not the subject of the complaint.

E.10. **Points:** 5

F. Bartholomew's map

F.1. **Date:** 1904, 1922 and 1953

F.2. **Source:** National Library of Scotland¹⁴ and printed copy of 1953 map

¹⁴ maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1904, 1922 and 1953 editions

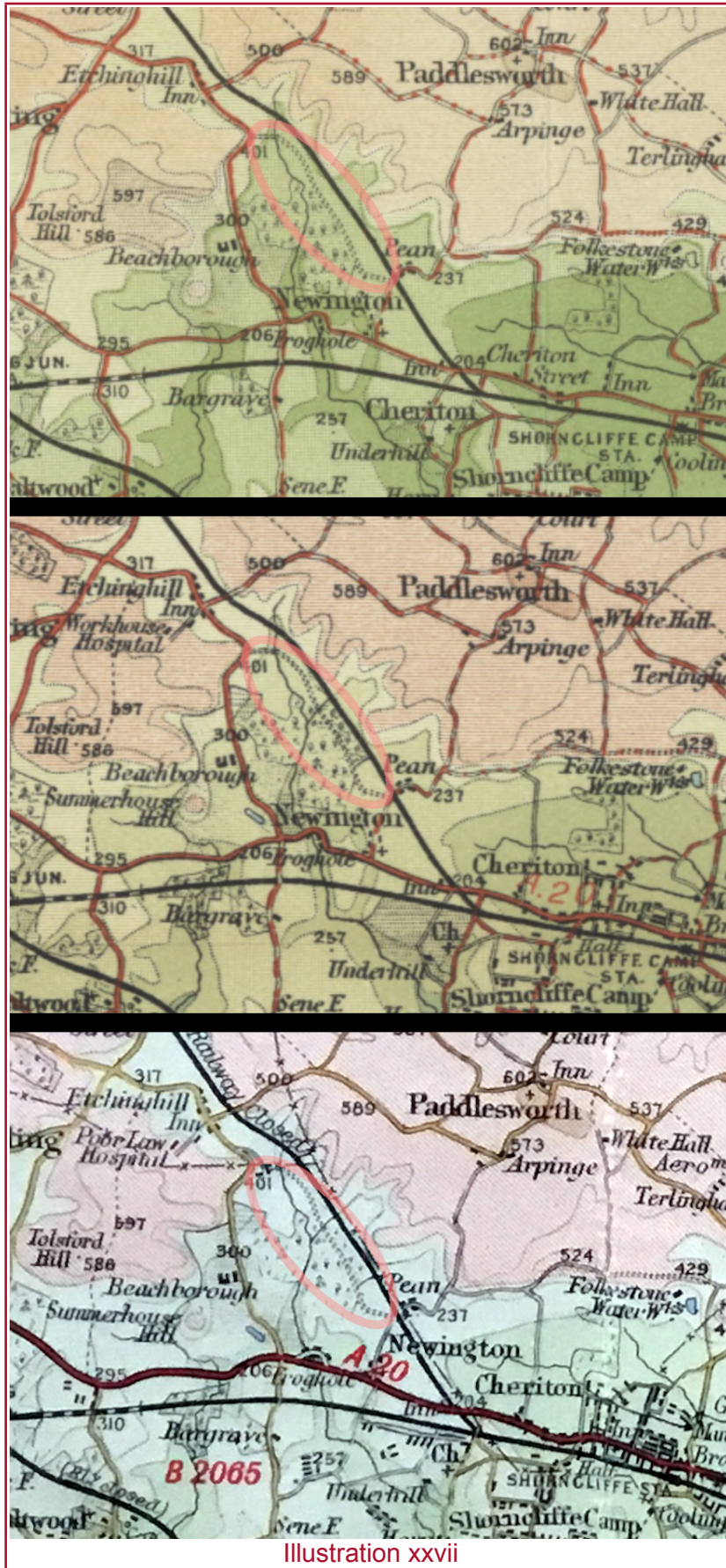
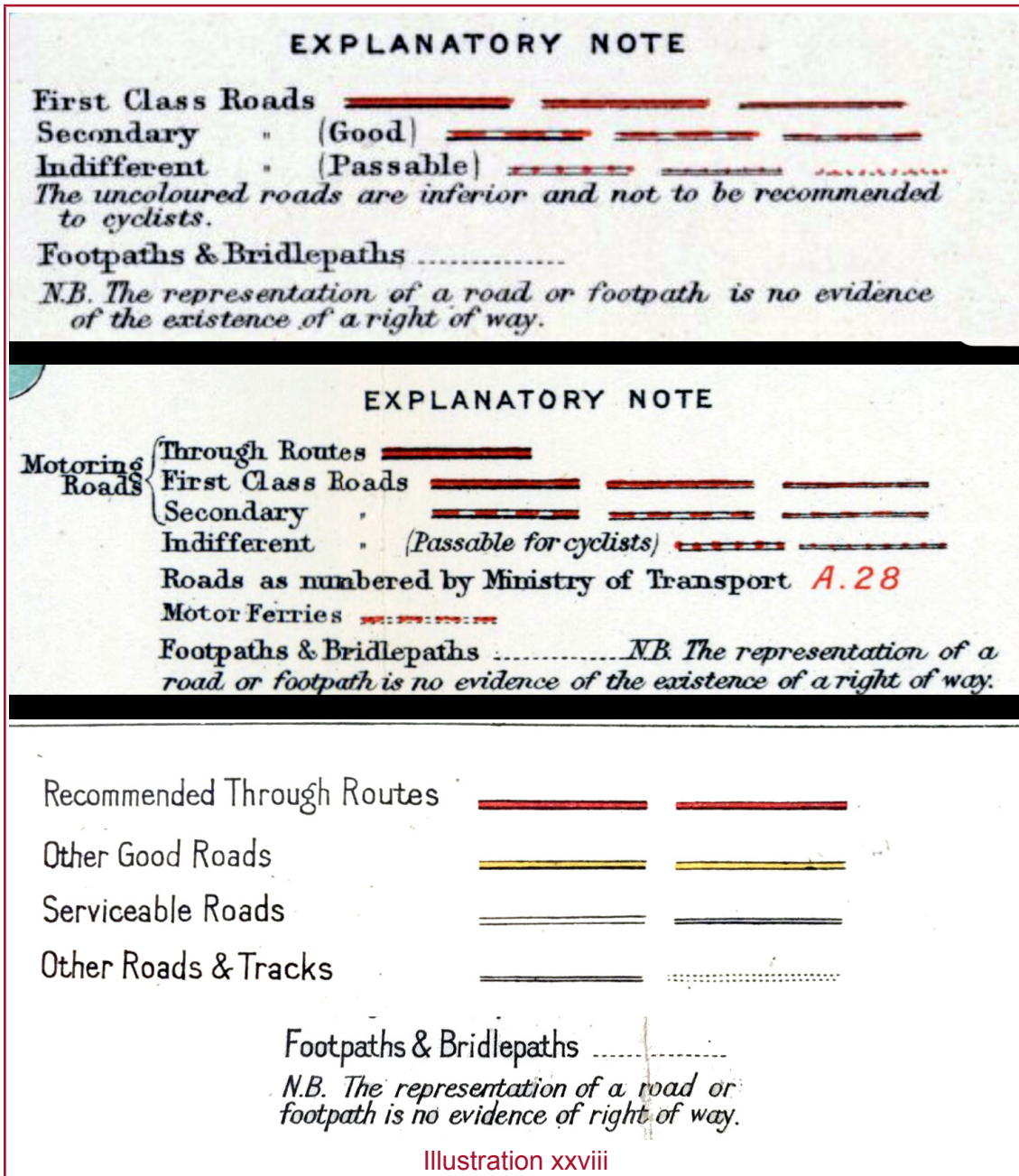


Illustration xxvii

Bartholomew's maps keys: 1904, 1922 and 1953 editions



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

F.4. All three editions of Bartholomew's maps from the first half of the twentieth century show the application way between Coombe Farm (at C) and Newington (at J) as a tracked bounded by pecked lines. The join between the way and the Beachborough Road is slightly misplaced further to the south than A: this appears to reflect the smaller scale of mapping, and the closely parallel course of the application way between C and A to the Beachborough Road.

F.5. In the key for 1904 and 1922, the way is described as a road (but not marked as suitable for cyclists); in the key for 1953, as an 'other road or track'. It is not marked as a footpath or bridleway.

F.6. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the application way was regarded as a road.

F.7. Paragraph 12.41 of the consistency guidelines¹⁵ notes that:

current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.

F.8. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists. Moreover, the 1904 map was revised and published in a new edition in 1922 and 1953, but there was no substantive change in the classification of the application way.

F.9. The classification as a road or track suggests that the application way was regarded as a well-defined track, rather than merely as a footpath or indeed bridleway. While the map is not conclusive of status, it is suggestive of something more than a footpath.

F.10. **Points:** 1

G. List of streets

G.1. **Date:** 1953, 2003

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

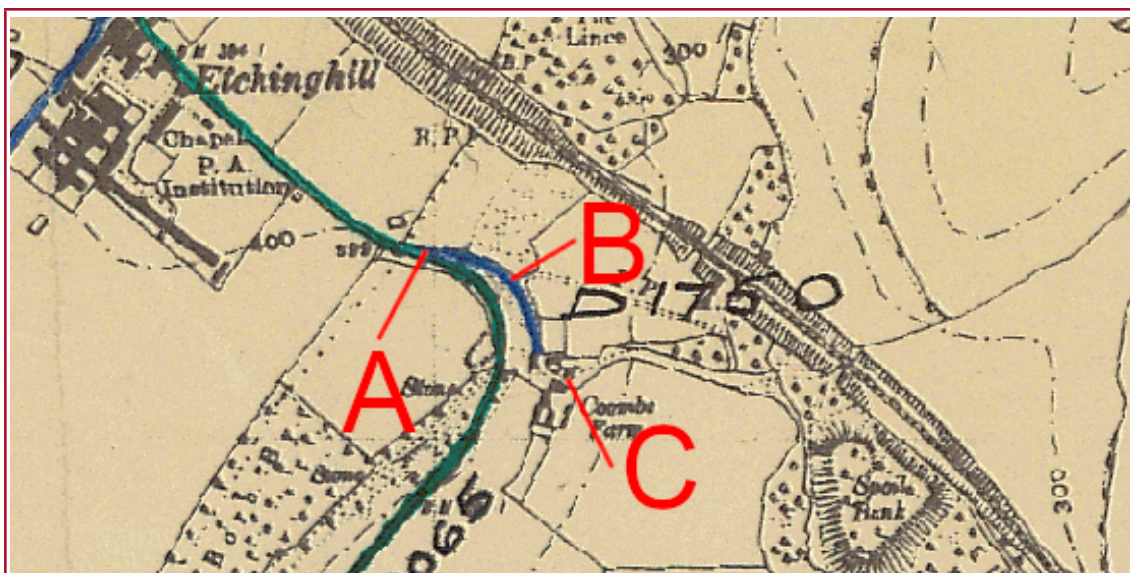


Illustration xxix

G.3. **Description:** The highway inspector's map shows the application way between A and slightly short of C as a publicly maintainable highway, with the reference number D1750.

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

G.4. In the list of streets¹⁶ for Shepway (now Folkestone and Hythe) district prepared by the highway authority, Kent County Council, in 2003, Coombe Farm is recorded as a carriageway of length 233m with termination points at A and C. The distance measured between A and C is approximately 220m. This entry corresponds with the information contained in the National Streets Gazetteer.

G.5. **Conclusion:** The application way between A and C is recorded in the list of streets maintained by the highway authority. As such, in a rural area, it is highly likely to have been entered in the list as a publicly-maintainable carriage road.

G.6. **Points:** 3 (in relation to A–C)

H. Definitive map and statement

H.1. **Date:** 1950–53

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

Newington parish map

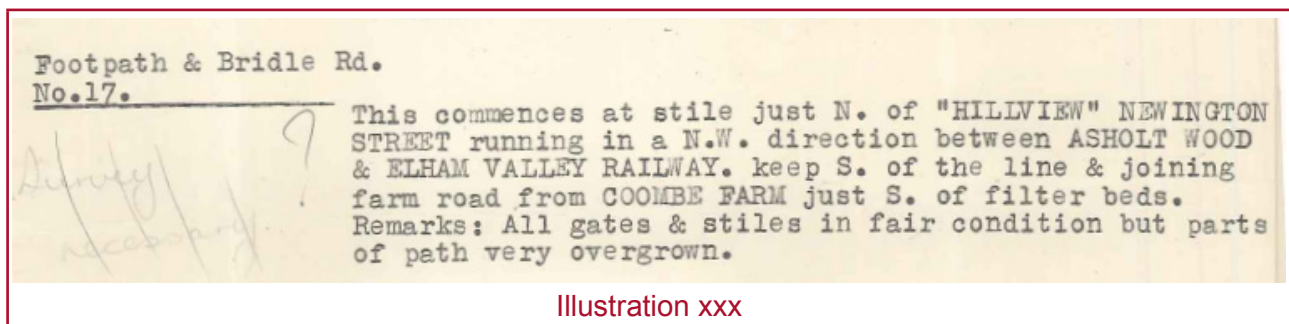
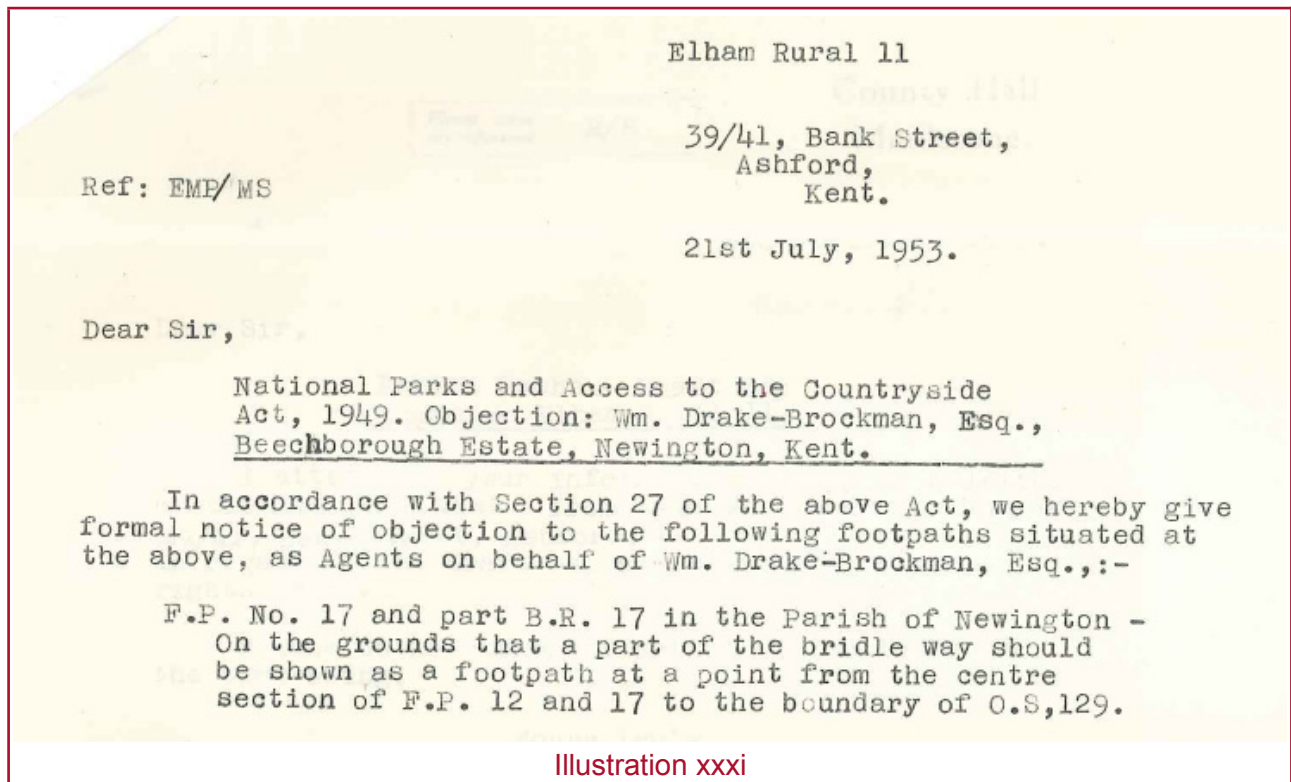


Illustration xxx

16 The list is of highways maintainable at public expense held under s.36(6) of the Highways Act 1980.

Objection by Messrs Burrows & Co



H.3. **Description:** In the return of Newington parish council under Part IV of the National Parks and Access to the Countryside Act 1949, submitted on 29 January 1951, the way corresponding to footpath HE245 was recorded as 'Footpath and Bridle Road. No.17'. The narrative stated:

This commences at a stile just N. of "HILLVIEW" NEWINGTON STREET running in a N.W. direction between ASHOLT WOOD & ELHAM VALLEY RAILWAY, keep S. of the line & joining farm road from COOMBE FARM just S. of filter beds. Remarks: All gates & stiles in fair condition but parts of path very overgrown.

H.4. In the draft map, prepared by the county council, the way is marked as a bridleway between D and a point 160m southwest of G, and from H to a point 90m southwest of I. The way between I and J is not recorded, nor the way between A and D (but as on the parish map, a cross-field footpath is recorded between A and D). The way between a point 160m southwest of G as far as H is recorded as footpath. No explanation is given why this last section is recorded as footpath vice bridleway, but both sections of bridleway are annotated 'FP' in red. The whole way was recorded as footpath 17, now footpath HE245.

H.5. In a letter dated 21 July 1953, Messrs Burrows & Co gave notice of objection to the draft map on behalf of Wm. Drake-Brockman, including to:

F.P. No. 17 and part B.R. 17 in the Parish of Newington – On the grounds that a part of the bridle way should be shown as a footpath at a point from the centre section of F.P. 12 and 17 to the boundary of O.S,129.

H.6. OS field parcel 129 is identified on the County Series Ordnance Survey 1:2,500 map of 1938 as that parcel, the southwest corner of which is at point I. On the draft map, foot-

path/bridleway 17 resumed depiction as a footpath from its junction with footpath 12 (now footpath HE250) — *i.e.* a point 90m southwest of I — as far as its junction with Newington Road. Thus the objection related to the part of the way recorded as bridleway between I and the intersection with HE250, which forms no part of this application. No objection was raised to the recording of a bridleway between D and a point 160m southwest of G, and from I to a point 90m southwest of I.

H.7. In the event, it seems that the objection, and the inconsistent recording of footpath/bridleway 17, led to its being recorded in its entirety as a footpath.

H.8. **Conclusion:** The parish council of Newington proposed that the application way be recorded as a bridleway (save in relation to parts at each end). Following an objection to the inclusion of a non-material part of the way as a bridleway, the way was shown as a footpath on the provisional map.

H.9. William Drake-Brockman was a descendent of the Brockman family which owned Beachborough Park; he continued to own the estate surrounding the house until his death in 1970.¹⁷ It may be inferred, therefore, that the absence of any objection to the recording of the way as bridleway, save in relation (correctly) to that part southwest of point I which was and remains a footpath, signalled recognition by the estate that the way was indeed a bridleway.

H.10. **Points:** 3

¹⁷ www.brockman.net.au/beachborough.html.