

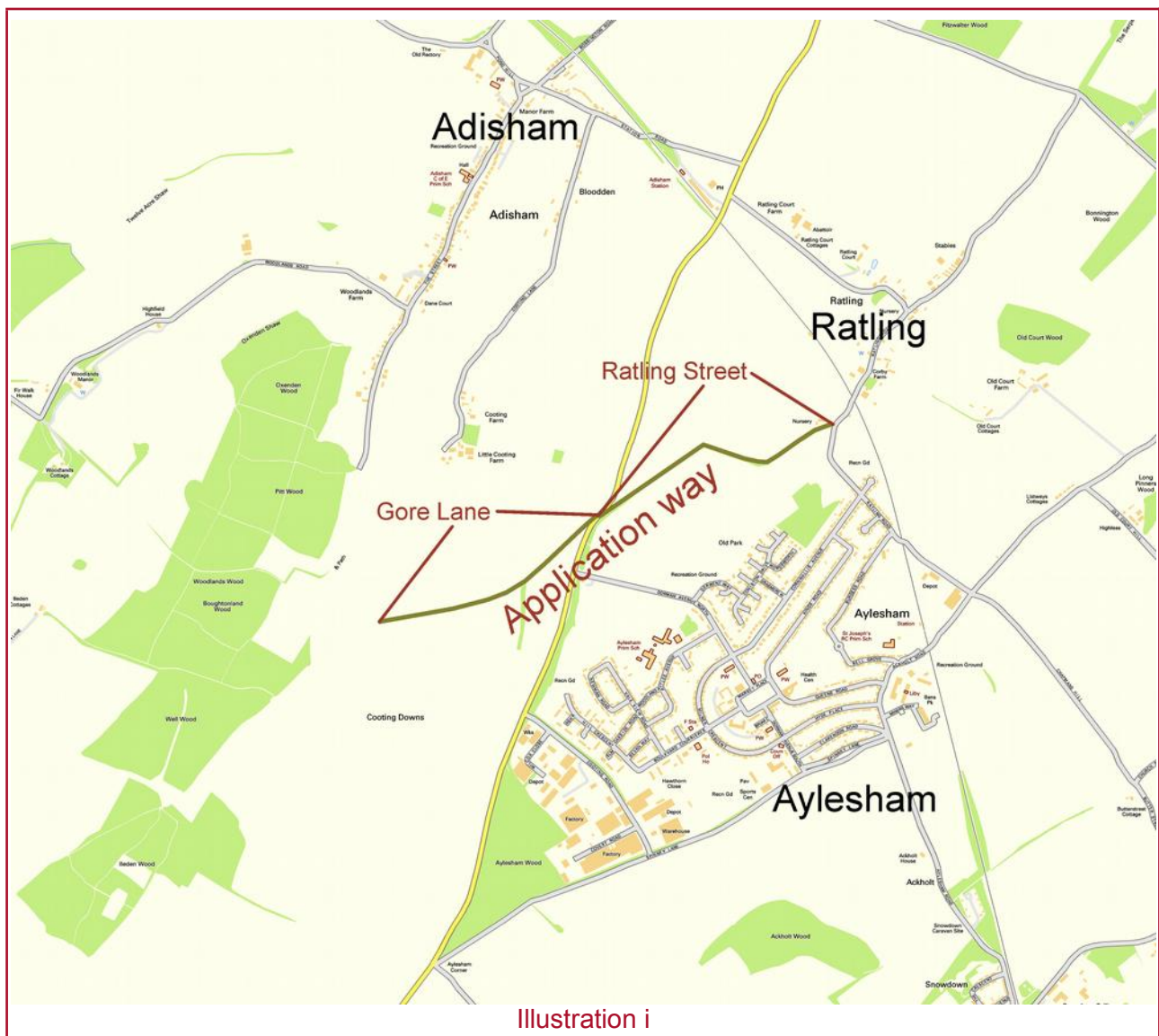
Ratling Street and Gore Lane: application to upgrade to restricted byway a footpath from Ratling to Cooting Downs via Adisham Road

Historical document analysis

I. Introduction

A. Quick reference

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



A.2. Existing rights of way comprised in upgrade: footpaths EE286A and CB526

- A.3. Hundreds of Wingham and Kinghamford
- A.4. Parishes of: Aylesham and Adisham
- A.5. Ancient parishes of: Nonington and Adisham
- A.6. Name of way: Ratling Street¹/Gore Lane
- A.7. Termination points: at northeastern end, Ratling Road; at southwestern end, the junction on Cooting Downs of bridleways CB200 and CB199A with footpath CB526
- A.8. Ordnance Survey termination points: TR23895313 and TR22395248
- A.9. Ordnance Survey Explorer sheet: 138
- A.10. Post code: CT3 3HJ
- A.11. Ordnance Survey County Series 25" sheets: Kent XLVII/14, XLVII/15, LVII/2

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 between Ratling and Cooting Downs. The way is currently recorded as public footpaths EE286A and CB526. The application seeks to record the way as a restricted byway.

C.2. The way lies in the parishes of Aylesham and Adisham. Prior to the expansion of Aylesham in the inter-war period, and the creation of the parish of Aylesham in the 1950s, the way lay in the parishes of Nonington and Adisham, although the west end of the application way lay on the boundary of a detached part of the parish of Ickham and Well.

D. Application

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

D.2. The application seeks to upgrade to restricted byway the footpaths EE286A and CB526. The way commences on Ratling Road adjacent to Timberwell at A (Ordnance Survey grid reference TR23895313), and passes southwest along the boundary of Timberwell and then along the headland of an arable field on the north side of the old Nonington or Curlswood Park pale for a distance of 280m, then west-northwest for 195m and then southwest for 440m, along the same boundary features, to a junction with the Adisham Road at South Peak Corner at B1 (TR23105282).

1 Ratling Street is the presumed name of part of the way: see para.E.2 below.

D.3. The way continues on the opposite side of the Adisham Road at B2 (TR23105282), passing southwest across an arable field for a distance of 300m, then west-southwest along the southern side of a headland for a distance of 205m, then continuing west-southwest across an arable field, through a hedgerow, and across a further corner of an arable field for a distance of 295m to join the junction of bridleways CB200 and CB199A with the application way (*i.e.* footpath CB526) at C (TR22395248).

D.4. A total distance of 1,715m.

D.5. The points A to C are identified in the application map at part II below.

E. Nomenclature

E.1. A number of names used in this application are historical in origin, and may differ from present day names.

E.2. This application refers to:

- Ratling Street, comprising the application way between A and B — the name is speculative, and attributable to an assumption that the application way was formerly the continuation of the main way through the hamlet of Ratling Street.
- Gore (or Gorr) Lane, comprising the application way between B and C — this is the name, marked on earlier maps (Illustration xxiii and Illustration xxvi), of the continuation of the way beyond C towards Barham Downs (see para.F.2 below).
- South Peak Corner, being the turning on the main road at B — as marked on the Poor Law Commissioners' survey map at item IV.J below.
- Aylesham Corner, being a turning on the Adisham Road at the junction with bridleway EE297 to the southeast, marked at that location on Ordnance Survey maps until the 1937–38 County Series twenty-five inch plan, and also on the Poor Law Commissioners' survey at item IV.J. The site of the turning has migrated in the twentieth century further south to the junction with Spinney Lane, where it is now marked on contemporary maps.

F. Background

F.1. The application way is an old road which is likely to have fallen out of regular use by horse-drawn carriages and carts in the nineteenth century. It is apparent today, and it is clear from older maps, that the junctions of the application way at its two termini with (what is today known as) Ratling Road and with Gore Lane, are no more than continuations of those same roads in the same direction, so that the turnings at those junctions (southeast along Ratling Road to Aylesham station and north along Cooting Lane to Cooting and Adisham) which today present the only continuation for vehicular traffic, were in earlier times either subsidiary turnings off the application way, or (in relation to Ratling Road) may not have existed at all. The application way, Ratling Street, southwest from A, is therefore the continuation of (what is today known as) Ratling Road towards Cooting Downs, Barham Downs, the Canterbury to Dover road, Kingston and the other villages to the southwest of that road.

F.2. Gore Lane, northeast from C, is therefore the continuation of Gore Lane towards Ratling, Staple, Ash, Eastry and Sandwich. Neither of the turnings north off Gore Lane, at C along bridleway CB200, and 300m southwest of C along byway CB202, is named Gore Lane — bridleway CB200 becomes Cooting Lane, and byway CB202 becomes the Street,

Adisham. Thus the application way is part of Gore Lane, and may be expected to have the same status throughout.

F.3. The former status of the application way as a key local road is, in addition to the evidence in part IV below, corroborated by the name attributed to the junction of the application way with the Adisham Road at B, South Peak Corner. At present, the name distinguishes nothing more than the junction of the Adisham Road with a crossing footpath. However, a name of this kind invariably identifies a crossroads or turning out of a public road, and here, signifies the crossroads between the application way and the Adisham Road. It was, formerly, a significant crossroads. Moreover, it is the Adisham Road which deflects (in both directions) to cross the application way, which continues on a direct straight line: this suggests that the application way predates the Adisham Road.

F.4. Today, the application way appears unassuming, comprising no more than a public footpath. However, older maps (from the Ordnance Survey surveyor's drawing, Canterbury (East) at item IV.B below to the Ordnance Survey, Old Series one-inch map of Kent at item IV.H below) mark the application way as roads, in the same manner as other roads in the locality.

F.5. The linear copse which bounds the southern side of the application way between A and B is a remnant of the former park pale of Curlswood Park, later marked on the older maps referred to in paragraph F.4 above as Nonington Park. Curlswood Park lay to the south of the application way between A and B, and as far southwest as the old Aylesham Corner on the Adisham Road, most of which land is now occupied by the village of Aylesham. The line of the raised bank, on which stood the paling fence, and (on the north side of the bank) the ditch, can still be seen. The application way between A and B occupied the land on the north side of the ditch.

F.6. By the late nineteenth century, use of Gore Lane between B and C may have diminished to such an extent that the road was being cultivated immediately west of B: the first and subsequent editions of the Ordnance Survey County Series 1:2,500 map omits any defined way here. However, those maps continue to show the way from C east to the boundary of that field, implying that the way continued to exist and remained in some use, with the way perhaps being cultivated and re-established across the field.

G. Definitive map history

G.1. The application way was recorded on the first definitive map and statement for Kent only between A and B, in the parish of Aylesham.

G.2. The *Dover Express and East Kent News* for 4 August 1950 records a parish meeting in Adisham to discuss the parish survey to inform the new definitive map.² The report states that:

A large map of the Parish was closely scrutinised, showing 13 footpaths and 12 bridle roads. Each path and bridle road was dealt with individually, and, of 13 [foot]paths, it was agreed that 7 were necessary, 2 necessary for part of their length and that 4 no longer had any useful purpose. Of the 12 bridle roads, 7 were considered to be still serving a use [sic] purpose, 2 for part of their length and 3 were considered of no use whatever. Although local farmers turned out in force the meeting was not well-attended, which raises the question as to whether the general public are interested in this matter.

² www.britishnewspaperarchive.co.uk/viewer/bl/0000330/19500804/083/0010 (£).

G.3. It is not known whether those paths which 'no longer had any useful purpose' or which were 'considered of no use whatsoever' in 1950 were indeed excluded from the first definitive map and statement, but the draft definitive statement records 11 bridle roads. However, figures may not be comparable owing to uncertain methodology in identifying a discrete path. Thus it is entirely possible that the application way between B and C was considered for inclusion in the Adisham parish survey, but one of those dismissed for perceived want of purpose.

G.4. The application way became recorded as a footpath on the definitive map between B and C at the review in 1969, following representations made by Adisham parish council. In evidence supporting the application to add the way to the definitive map, it was stated that the former tenant farmer of the land between B and C had recognised the way as a public footpath, and had been under a tenancy obligation to maintain a stile alongside the Adisham Road at B2.

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*,³ 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.'

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.⁴

H.3. Historic maps (from the Ordnance Survey surveyor's drawing, Canterbury (East) at item IV.B below to the Ordnance Survey, Old Series one-inch map of Kent at item IV.H below) show the application way as a road, although there is some uncertainty in such maps whether a particular road is a bridle road or a carriage road. The Bartholomew's

³ [2012] EWCA Civ 334: www.bailii.org/ew/cases/EWCA/Civ/2012/334.html.

⁴ *Consistency Guidelines*: para.2.17.

map (item IV.N below) shows the application way as a road (or later, perhaps a track) as late as 1953.

H.4. Several sources (Sketch of Curlswood Park at item IV.E, Tithe Act 1836 at Illustration xxiii, Ordnance Survey boundary records at Illustration xxvi) show the application way annotated with labels to a nearby village. Such labels are seldom used except in connection with public highways, of at least bridleway status.

H.5. In *Commission for New Towns & Anor v JJ Gallagher Ltd*, Neuberger J (as he was then) accepted the evidence of two expert witnesses:

...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.⁵

It is submitted that such a designation is of equal probative value whether in relation to a carriageway or bridleway.

H.6. 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.7. While no single piece of evidence is conclusive, the applicant believes that, taken as a whole, the evidence in this historical document analysis demonstrates highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I.J below), there were full carriageway rights.

I. Discovery of evidence

I.1. There is no evidence that the range and depth of historical material brought forward in this application has previously been considered in the context of the inclusion of footpaths EE286A and CB526 on the definitive map and statement for Kent. Therefore, there has been no previous discovery of the evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is mainly or wholly new evidence.

J. Natural Environment and Rural Communities Act 2006

J.1. The application seeks to show that the application way is a public carriageway. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980, and the applicant does not suggest that any other exception in section 67 applies. The application is therefore made for a restricted byway.

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

K. Points awarded

K.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:

K.2. Points:

Item	Ref	Points A–B1 BW ⁷	Points A–B1 RB ⁸	Points B2–C BW	Points B2–C RB
Estate map of Ileden Lodge	IV.A				2
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.B		1		1
Barlow-Hasted map of Kent	IV.C	1		1	
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.D		1		1
Sketch of Curlswood Park	IV.E	2			
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.F		1		1
Greenwood's map of Kent	IV.G				
Ordnance Survey, Old Series one-inch map of Kent	IV.H				
Tithe Act 1836	IV.I	3		2	
Poor Law Commissioners' survey	IV.J		5		
Ordnance Survey boundary records	IV.K		1		
Ordnance Survey County Series first edition twenty-five inch maps	IV.L				
Finance (1909–1910) Act 1910	IV.M		1		
Bartholomew's map	IV.N		1		
Total points		6	11	3	5

L. Width of application way

L.1. The application way between A and B is recorded as a discrete field parcel on the first edition of the Ordnance Survey County Series first edition twenty-five inch maps (item IV.L below). On sheets XLVII/14 and 15, the way is identified as a single parcel 26 from

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

7 BW=Bridleway.

8 RB=Restricted byway.

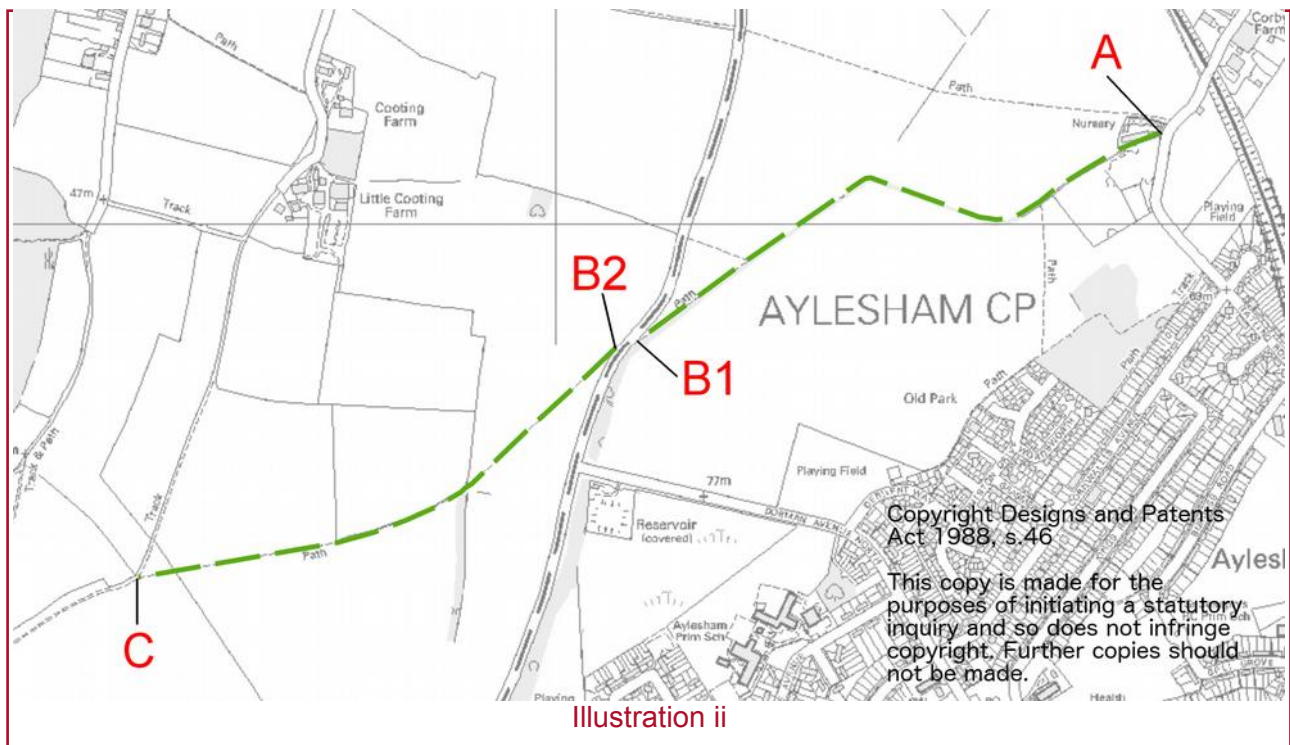
B1, through A and beyond to Upper Goodnestone Corner, with a recorded area of 0.95 hectares.⁹ However, it is not possible to allocate this area between the application way between A and B1, and between A and Upper Goodnestone Corner.

L.2. The width of the application way between B and C is not identified on any Ordnance Survey map.

L.3. As a restricted byway, a width of four metres is sought, being the minimum necessary to enable two horse-drawn carriages to pass.

⁹ The area given in acres has been converted to hectares.

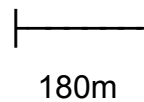
II. Application map



Map centred on B1/B2 at TR231528

Scale: approx. 1:11,000 (when printed A4)

Application way is marked — — —



III. Along the way (1)



Illustration iii: From Timberwell (near A), view SW



Illustration iv: From southwest of Timberwell (near A), view SW



Illustration v: From southwest of Timberwell (near A), view SW



Illustration vi: Between A and B, view W

Along the way (2)



Illustration vii: crossing Adisham Road



Illustration viii: southwest from Adisham Road at B



Illustration ix: southwest of B, at the turn to west-southwest



Illustration x: southwest of B, along the head-land



Illustration xi: towards C



Illustration xii: At C

IV. Evidence

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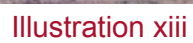
A. Estate map of Ileden Lodge

A.1. **Date:** 1678–79

A.2. **Source:** Kent County Archives¹⁰

¹⁰ R/U438/P1

Ratling Street RB historical document summary



A.3. **Description:** Original scale: not expressly annotated, but an unlabelled scale bar is partly visible in the extract; orientation: rotated 90° so that north is at top. This is a map of Illeden Lodge estate, then in the parish of Kingston, drawn by Thomas Wrake.

A.4. The map is annotated:

A map or description of one capital messuage called Illeden lying in the parish of Kingston in Kent; with 15 parcels of arable thereto belonging containing 250 acres, one halves and 3 perches. Whereof the gardens and house Steddles contain 3 acres, 5 perches. And 3 parcels of woodland to the same belonging containing 60 acres. More the manor of Cooting lying in the parish of Adisham in Kent. With 14 parcels of arable and one parcel of wood thereunto belonging containing 234 acres, one quarter and 4 perches. More 3 parcels of land belonging to Christ Church containing sixty-four acres, one quarter and nineteen perches.

A.5. The map shows several tracks or roads, one of which is coincident with the application way between B and C. At B, a boundary is shown between 'The Landes' of the Archbishop of Canterbury, east of the Adisham road, and various lands of the Illeden estate and otherwise (including of Christ Church) to the west of the Adisham road. The Adisham Road is marked as unenclosed on the west side, and the junction with the track at B appears to be staggered. The track between B and C is shown passing between (rather than through) fields to the north and south, including fields in separate ownership of Christ Church (to south) and Samuell Morton (to north). The track between B and C is shown intersecting another, similar, track from Adisham south towards what is today known as Aylesham Corner¹¹ — this track is not recorded on the definitive map, but has been shown consistently on Ordnance Survey mapping up until the 1978–90 National Grid 1:10,000 map, and is likely to be an unrecorded right of way. The junction of the application way at C is not specifically identified on the map, as the bridleways CB200 and CB199A are not shown. However, the way is shown southwest of C, continuing towards Barham Downs.

A.6. **Conclusion:** The application way is identified on the estate map in its present course, and continuing southwest to Barham Downs. The map identifies not only lands owned by the estate, but lands owned by others, which are intermixed with the estate lands. The map shows a small number of key tracks or roads: the application way, continuing southwest to Barham Downs and the Canterbury to Dover main road; Cooting Lane, which at that time, and until the late C20, continued south across Cooting Downs to the present Aylesham Corner; the Adisham Road; and the present course of bridleway CB204 from the continuation of the application way beyond C west to what is today known as Illeden Farm.

A.7. The lands crossed by the application way (and, further southwest of C, Gore Lane) were in diverse ownership. It is highly likely that the tracks so marked were public rights of way, probably cart ways, in order to confer public rights of access to the lands. There is no evidence on this map for the alternative proposition — that the application and other ways were privately owned, over which private rights had been granted or established by the owner — and indeed, the map expressly excludes (so far as is relevant) ownership of the application way, whereas the continuation of Cooting Lane across Cooting Downs to the present Aylesham Corner is not excluded.

A.8. **Points:**

¹¹ But see paragraph I.E.2

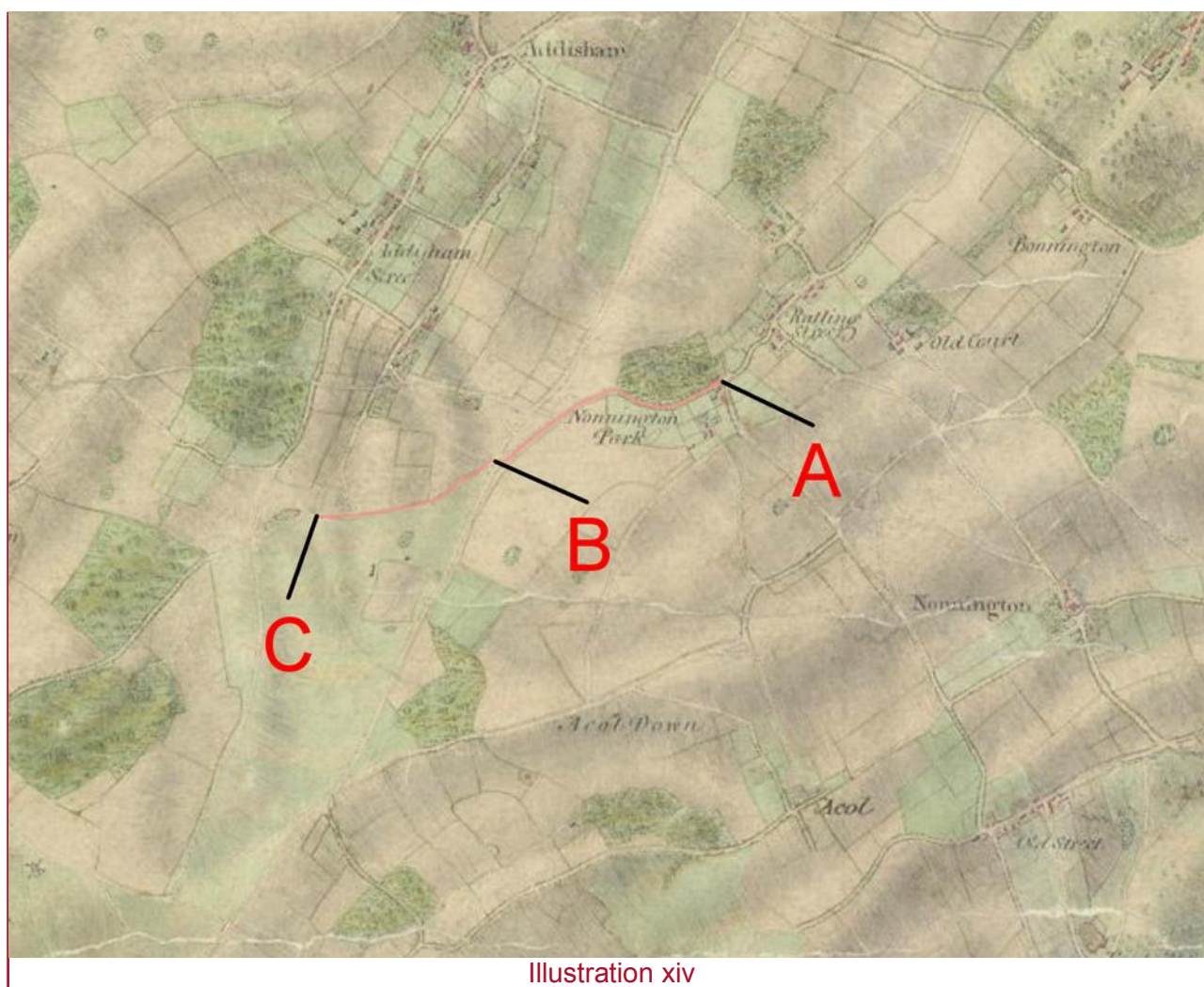
	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		
B2 to C		2

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

B.1. **Date:** 1797

B.2. **Source:** British Library website¹²

Ordnance Survey surveyor's drawing



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

B.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

12 Sheet 107(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html

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.¹³

B.5. The drawing shows a way throughout from A to C. At A, the way is shown as the continuation of Ratling Street, and the present Ratling Road leading south to Aylesham is presented as a spur off Ratling Street. Immediately west of A, the way is shown as following the northern boundary of Nonnington (*sic*) Park, with woodland to the north. The way is shown crossing the Adisham Road at B, although the details of the crossroads, and of the way from B to C, are indistinct owing to age and wear.

B.6. **Conclusion:** The way identified on the Ordnance Survey drawing is consistent with the application way. The Ordnance Survey drawings provide good evidence of the existence of the application way in its entirety at the end of the eighteenth century. The character of the way at A, as a continuation of Ratling Street towards South Peak Corner (B) and Cooting Downs (via C), is strongly suggestive of a public carriageway.

B.7. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B2 to C		1

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

C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** Kent County Archives, also available at www.ancestry.com¹⁴: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in 12 Volumes.

¹³ From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

¹⁴ Indexed at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm; map at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_files/ENG/KEN/barlow-hasted_wingham_1800.html.

Barlow-Hasted map

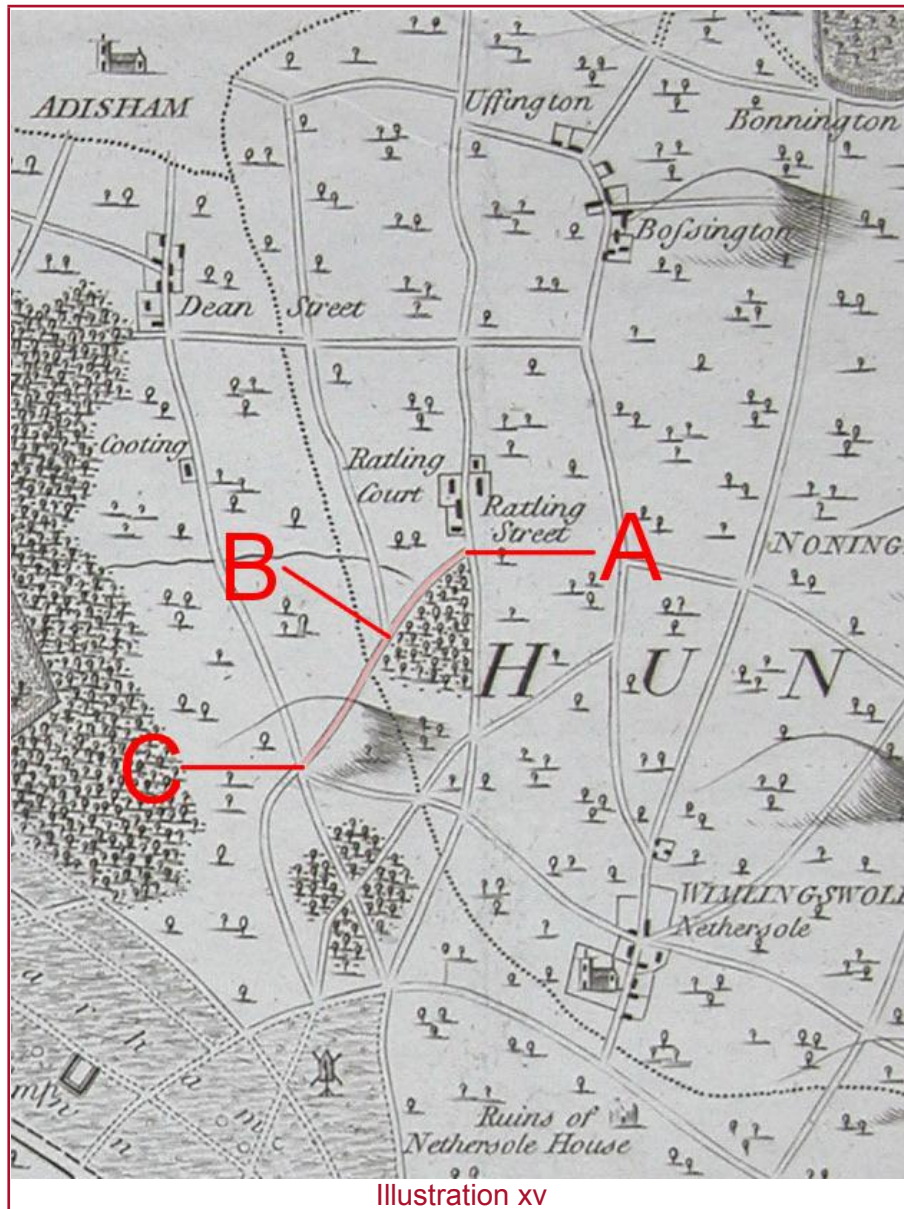


Illustration xv

C.3. **Description:** Original scale: not known; orientation: unchanged (north).

C.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundreds of Wingham and Kinghamford.

C.5. The map shows a way beginning slightly to the south of Ratling Court and Ratling Street, passing generally southwest, joining a road from the north, crossing the boundary of the hundreds of Wingham and Kinghamford, and finishing at a junction with a road leading from the north via Cooting, and with roads continuing initially southwest to Barham Downs, and to the south and southeast. The way is shown throughout as enclosed by parallel continuous lines.

C.6. **Conclusion:** The way identified above on the Barlow-Hasted map is consistent with the application way. The way crosses the hundred boundary at approximately the mid

point (slightly west of the marked B), and this very probably coincides with the present day boundary between the districts of Dover and Canterbury (and between the modern parishes of Aylesham and Adisham), which follows the main road through B. Although at C, there is no present day road leading southeast, a way is shown southeast to the present Aylesham Corner¹⁵ on all Ordnance Survey maps until the late twentieth century.

C.7. Barlow's map is therefore good evidence for the existence of a defined way along the application route. The map was widely commercially published, and would tend to show through routes which were public highways, whereas certain minor routes of questionable public status are shown with bars across the junction with public ways. The representation on the Barlow-Hasted map is consistent with a status of bridleway or carriageway.

Moreover, Barlow's map omits the Adisham Road south from B, suggestive that the application way were of superior status and relevance.¹⁶

C.8. Points:

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1	1	
B2 to C	1	

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

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

D.1. **Date:** 1801

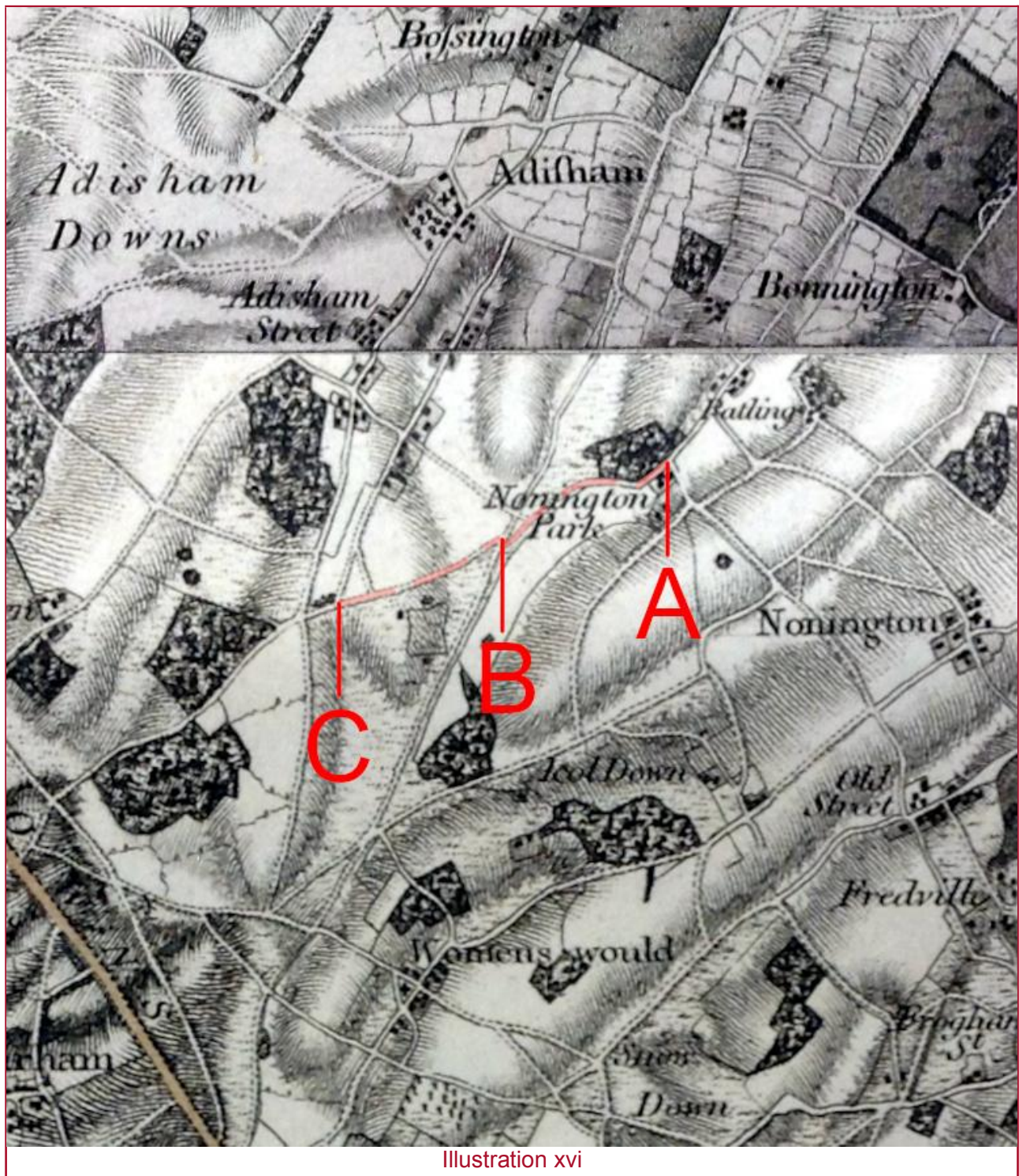
D.2. **Source:** Kent County Archives¹⁷

¹⁵ The location of Aylesham Corner has moved: see paragraph I.E.2 above.

¹⁶ It is not suggested that this part of the Adisham Road did not exist at this time.

¹⁷ Also available online at: mapco.net/kent1801/kent31_02.htm and mapco.net/kent1801/kent51_02.htm.

Mudge-Faden one inch map



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

D.4. This map of Kent was the first map primarily to rely on the survey data represented in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.B above). However, the Ordnance Survey did not itself publish a map of Kent 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.

D.5. The Mudge-Faden map shows a way throughout between A and C. From A, the way is shown bounding the southern side of Nonington Park, and is confined by double parallel lines, suggesting an enclosed way. Beyond Nonington Park, the way is shown by parallel pecked lines, suggesting an unenclosed way across downland. The way passes across a road running from north to south at B, and continues west-southwest, still unenclosed, to C.

D.6. **Conclusion:** The Ordnance Survey, Old Series one-inch map of Kent (item IV.H below) was prepared in response to an invasion threat, and primarily had a military purpose, but was not published until 1819. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements.

D.7. The Mudge-Faden map shows a way consistent with the entirety of the application way between A and C, and is good evidence for the existence of a defined route along the application way. It cannot be demonstrated with confidence that the application way is a public highway, but its depiction is consistent with a public highway, the retail publication of the Mudge-Faden map is likely to have focused on the depiction of ways accessible to the public on horseback and in carriages, and the application way is a continuation of ways at both ends which are highways today, and which enable longer journeys across country. On balance, it is submitted that the way is likely to be a carriageway.

D.8. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B2 to C		1

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

E. Sketch of Curlswood Park

E.1. **Date:** 1807

E.2. **Source:** Lambeth Palace Library¹⁸

Sketch of Curlswood Park

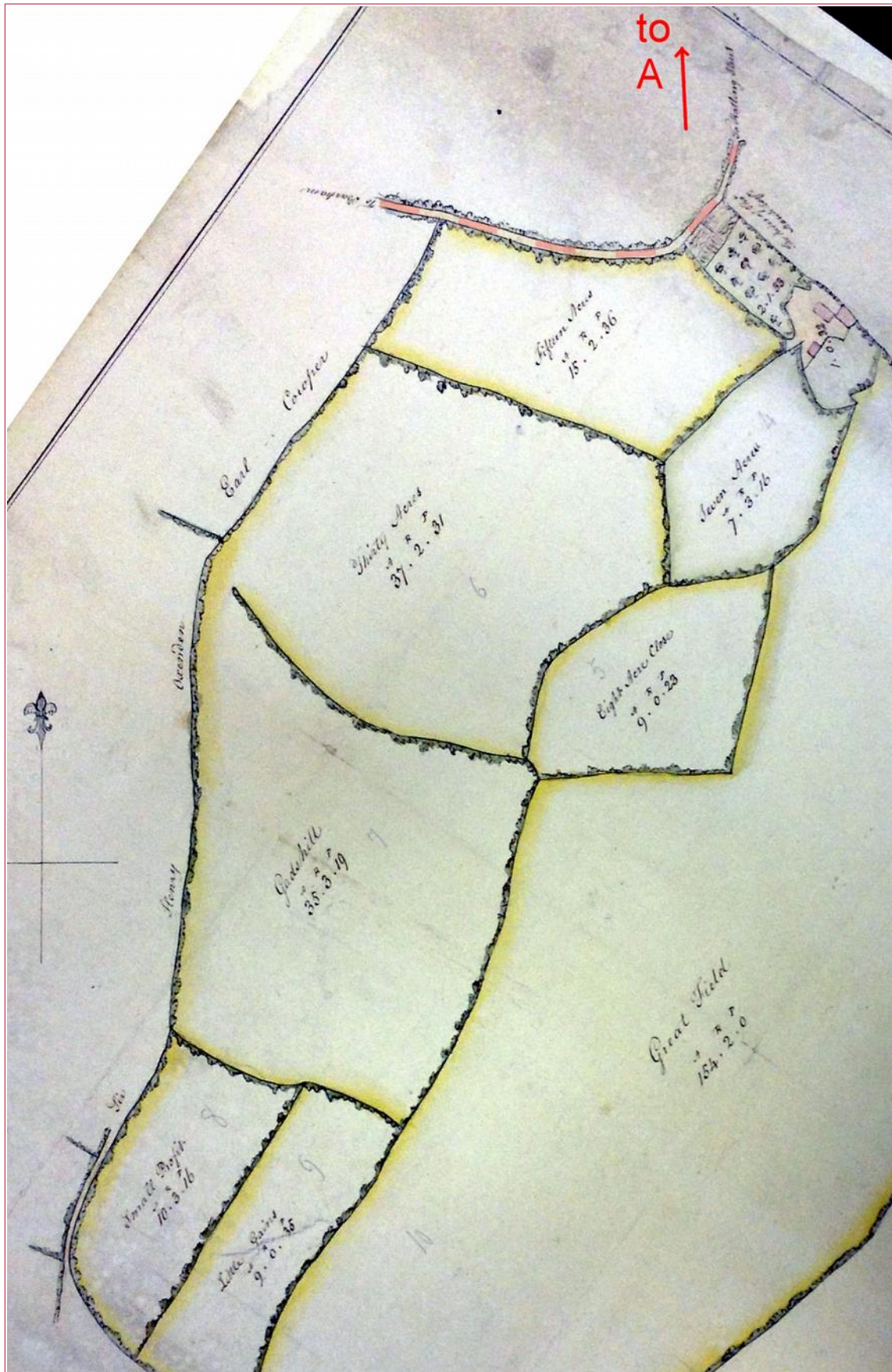


Illustration xvii

E.3. **Description:** Original scale: none stated; orientation: reorientated by 305° with north to top.

E.4. The plan is described as a 'sketch' of Curlswood Park, also known as Nonington Park, which at the time, was owned by the Archbishop of Canterbury. The sketch was made by Thomas Pettman.

E.5. The plan shows the application way west of A, where the way turns west-northwest for 195m, before turning southwest. Towards A, the way is labelled as 'to Ratling Street'; in the opposite direction, it is labelled 'to Barham'. The way is coloured-washed in yellow, as are the boundaries of individual fields.

E.6. One would expect the application way to turn to the southwest along the boundary of the land marked 'Earl Cowper', but instead, it continues west.

E.7. **Conclusion:** The plan shows the disposition of Curlswood Park at the beginning of the nineteenth century. It shows part of the application way between A and B, following the northern boundary of the park. The yellow colour-wash applied to the way, and the labels to Ratling Street and Barham, are strongly suggestive of a public highway, at least of bridleway status.

E.8. The plan is described as a sketch, and it does not appear to have been surveyed in detail. The turn of the application way is exaggerated, and the way is shown continuing west instead of turning southwest towards Aylesham Corner. However, the sketch is consistent with other contemporary maps in showing the application way, and the errors in the sketch do not diminish confidence in the status of the way.

E.9. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1	2	
B2 to C		

F. Paterson's Roads — Thanet and Kent and Sussex Coast

F.1. **Date:** 1811

F.2. **Source:** British Library¹⁹

19 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg .

Paterson's Roads

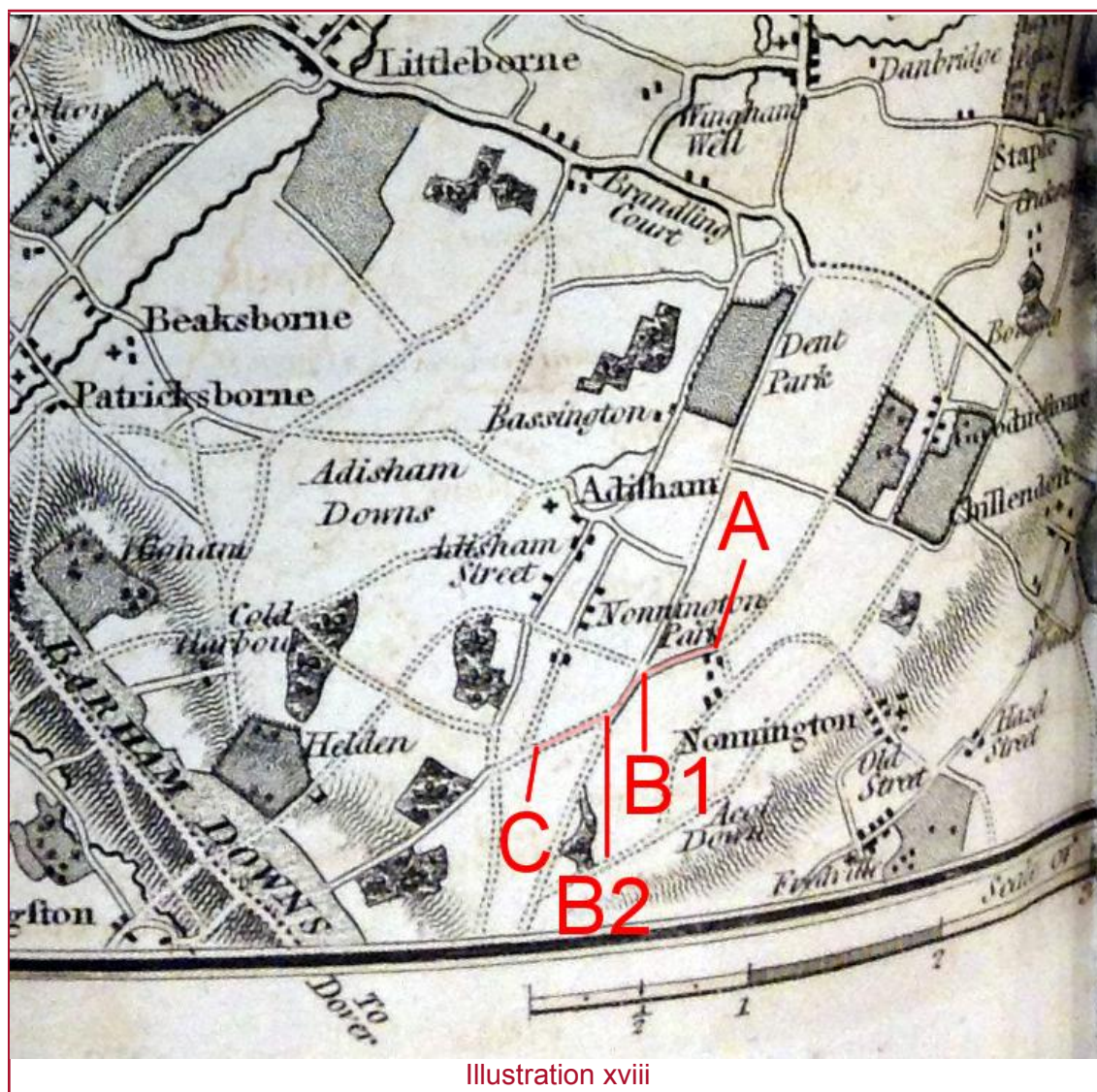


Illustration xviii

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

F.4. This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent map (item IV.D above): however, the map has been revised to show, *inter alia*, the Dover to Sandwich turnpike (*i.e.* via Hacklinge), which was authorised in 1797.

F.5. The Thomson map shows a way throughout between A and C. From A to B1, the way is shown bounding the southern side of Nonington Park, and is confined by double continuous lines, suggesting an enclosed way. Between B1 and B2, the way is shown coincident with the main road running from north to south for a distance of approximately 400 metres, before continuing southwest to C. Between B and C the way is shown by parallel dotted lines, suggesting an unenclosed way across downland.

F.6. **Conclusion:** The Thomson map appears to be derived from the Mudge-Faden map, but has been revised so as to include the Dover to Sandwich turnpike, suggestive that the

representation of at least principal roads was researched and updated. The Thomson map appears to focus on key roads available to the public, and although probably based on the Mudge-Faden map, to have been revised. The Thomson map shows a way consistent with the entirety of the application way between A and C, and is good evidence for the existence of a defined route along the application way.

F.7. The application way is represented as a continuation of ways at both ends which are highways today, and which enable longer journeys across country. Given the smaller scale of the Thomson map, and the greater selectivity of what is shown, it can be concluded with some confidence that the way was a defined feature in the landscape, capable at least of accommodating ridden horses, and probably a carriageway.

F.8. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B2 to C		1

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

G. Greenwood's map of Kent

G.1. **Date:** 1819–20

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

Greenwood map

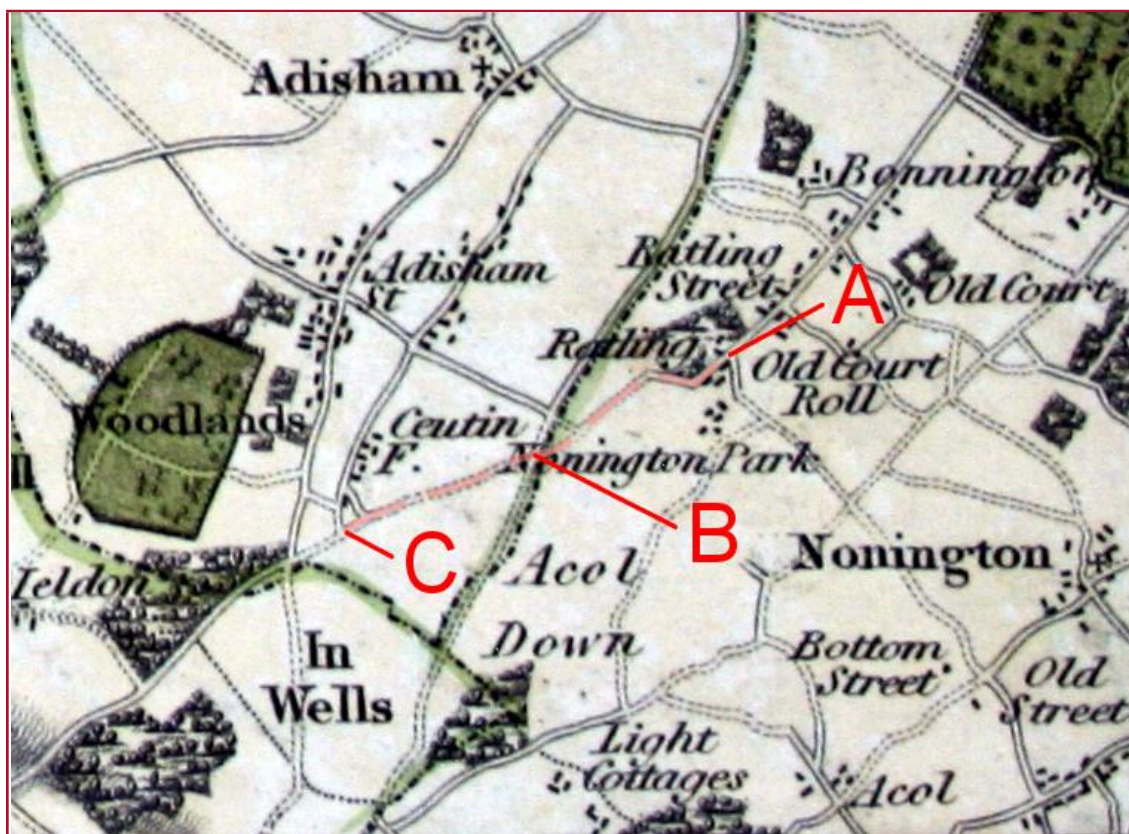


Illustration xix

Greenwood map key

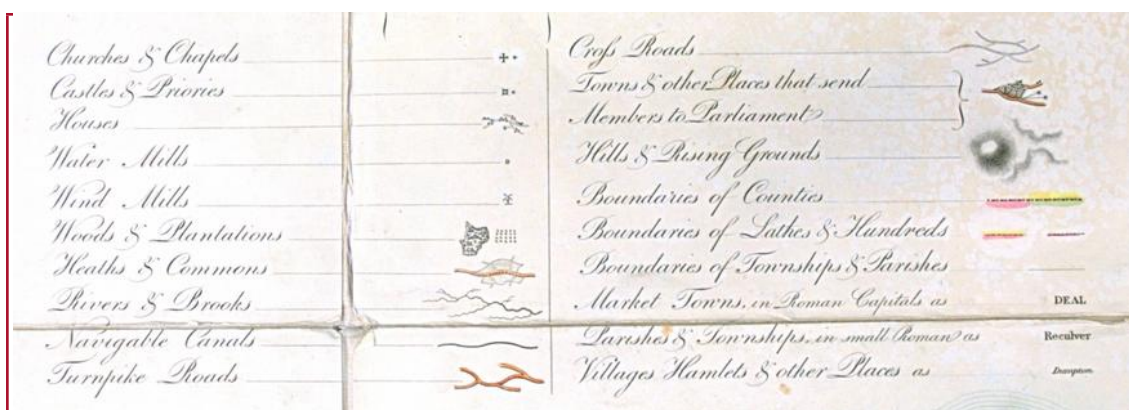


Illustration xx

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

G.4. Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the

counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.²⁰

G.5. The Greenwood map shows a way throughout between A and C. From A, the way is shown bounding the southern side of unnamed woodland or parkland, and is confined by double continuous lines, suggesting an enclosed way. Beyond the woodland or parkland, the way is shown by parallel closely dotted lines, suggesting an unenclosed way across downland. The way passes across a road running from north to south at B, which is also coincident with the marked hundred boundary, and continues southwest, still unenclosed, to C.

G.6. **Conclusion:** The Greenwood map shows a way consistent with the entirety of the application way between A and C, and is good evidence for the existence of a defined route along the application way. The application way is represented as a continuation of ways at both ends which are highways today, and which enable longer journeys across country. It can therefore be concluded with some confidence that the way was capable at least of accommodating ridden horses, and probably a carriageway. The key describes the route as a 'cross road', which is suggestive of a public carriageway. The Greenwood map is therefore good evidence for the status of the application way as a highway, probably carriageway.

G.7. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		
B2 to C		

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

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

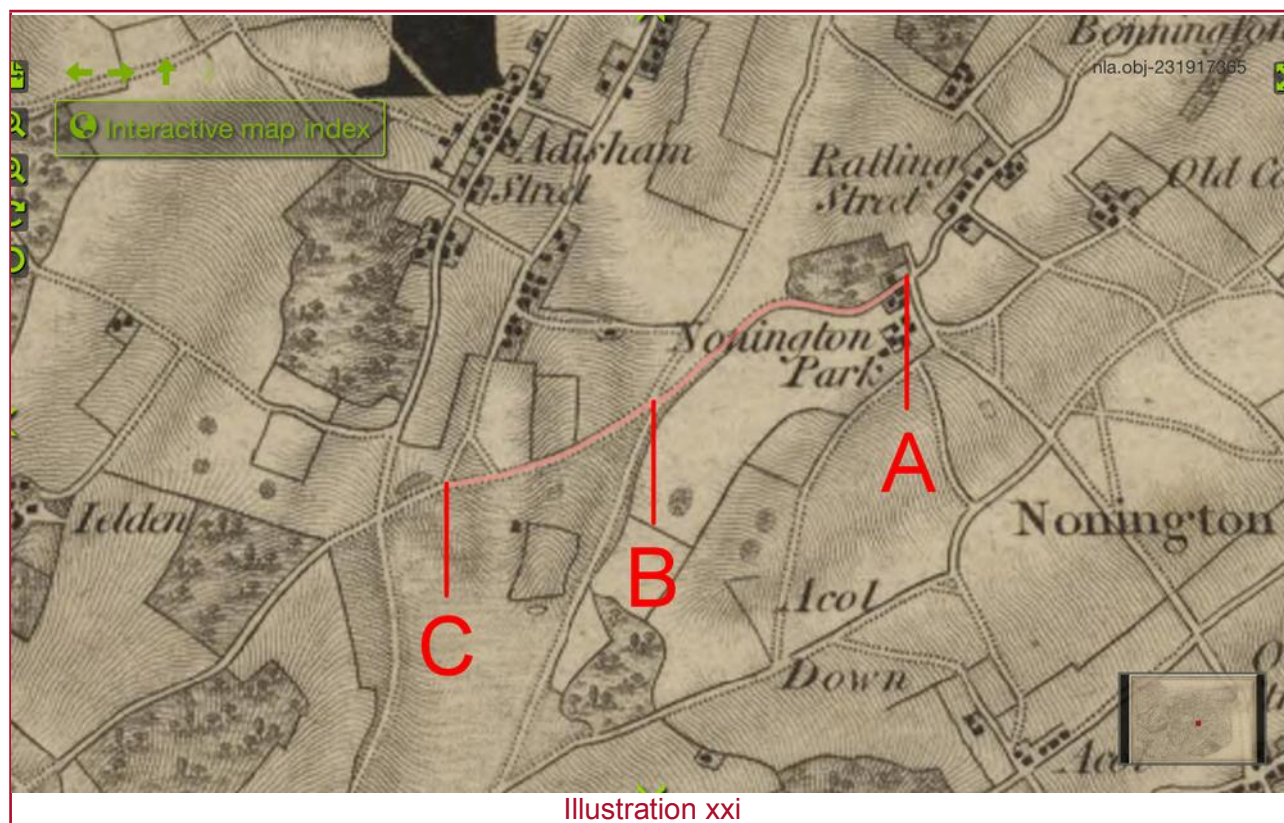
H.1. **Date:** 1831 (but survey dating from late eighteenth century and first published in 1819)

H.2. **Source:** National Library of Australia²¹

²⁰ From *Antique Maps*, C Moreland and D Bannister, 1983.

²¹ <http://nla.gov.au/nla.obj-231917365>

Ordnance Survey Old Series one-inch map



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

H.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged from state 1. Although published some years later than the Mudge-Faden map, the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

H.5. The Ordnance Survey Old Series map shows a way throughout between A and C. From A, the way is shown bounding the southern side of Nonington Park, and is confined by double continuous lines, suggesting an enclosed way. Beyond Nonington Park, the way is shown by parallel closely dotted lines, suggesting an unenclosed way across down-land. The way passes across a road running from north to south at B, and continues west-southwest, still unenclosed, to C.

H.6. **Conclusion:** The Ordnance Survey Old Series map shows a way consistent with the entirety of the application way between A and C, and is good evidence for the existence of a defined route along the application way.

H.7. While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest. The application way is represented as a continuation of ways at both ends which are highways today, and which enable longer journeys across country. It can therefore be concluded with some confidence that the way was capable at least of accommodating ridden horses, and probably a carriageway.

H.8. Points:

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		
B2 to C		

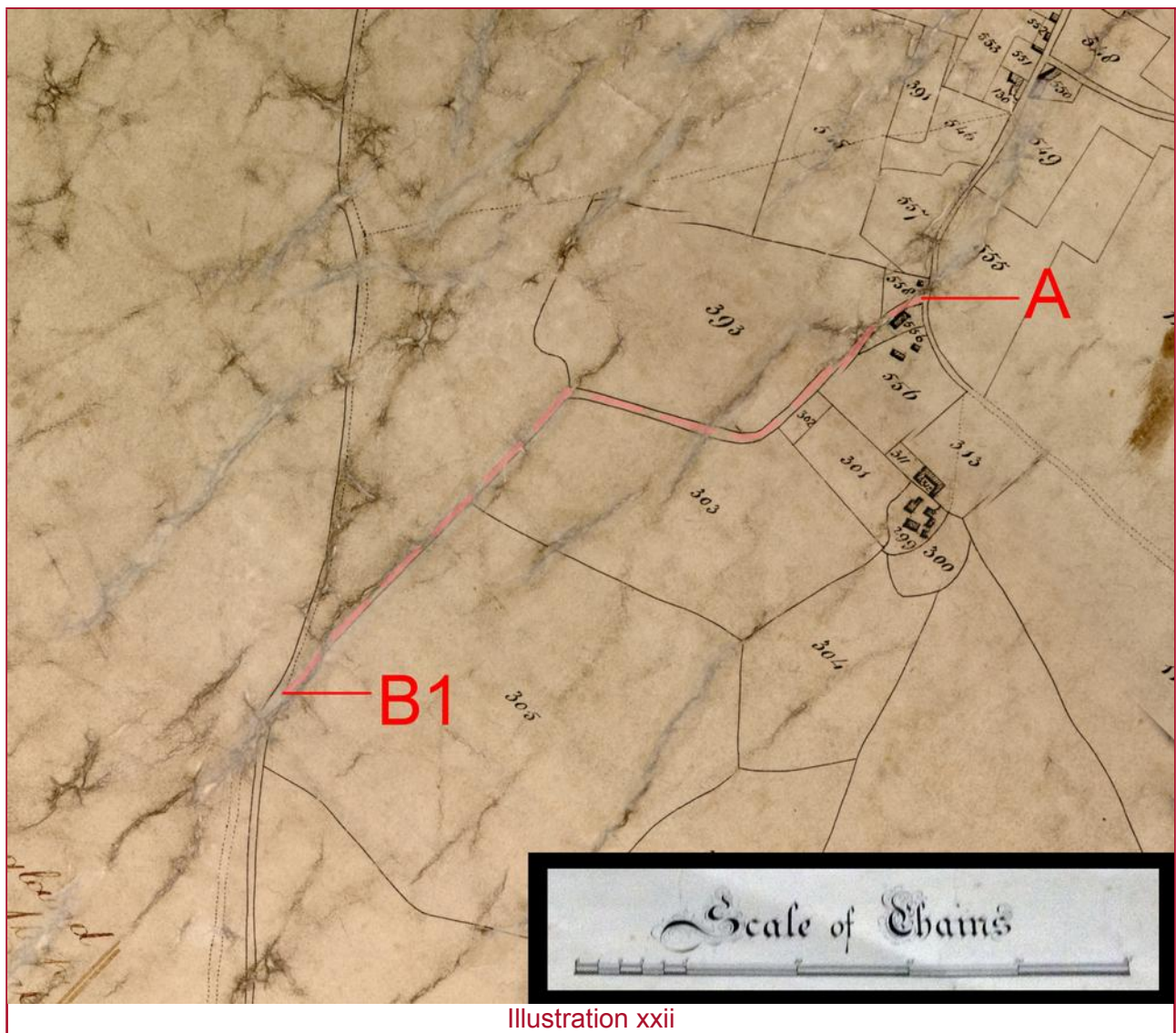
(This is the third Ordnance Survey map: no more than two such maps are scored.)

I. Tithe Act 1836

I.1. **Date:** 1841

I.2. **Source:** map — Kent County Archives²²; tithe award — Kent Archaeological Society²³

Nonington tithe map



²² Kent tithe maps are available as images on CD.

²³ www.kentarchaeology.org.uk/research/tithes/nonington-and-womenswold;
www.kentarchaeology.org.uk/research/tithes/adisham.

Adisham tithe map

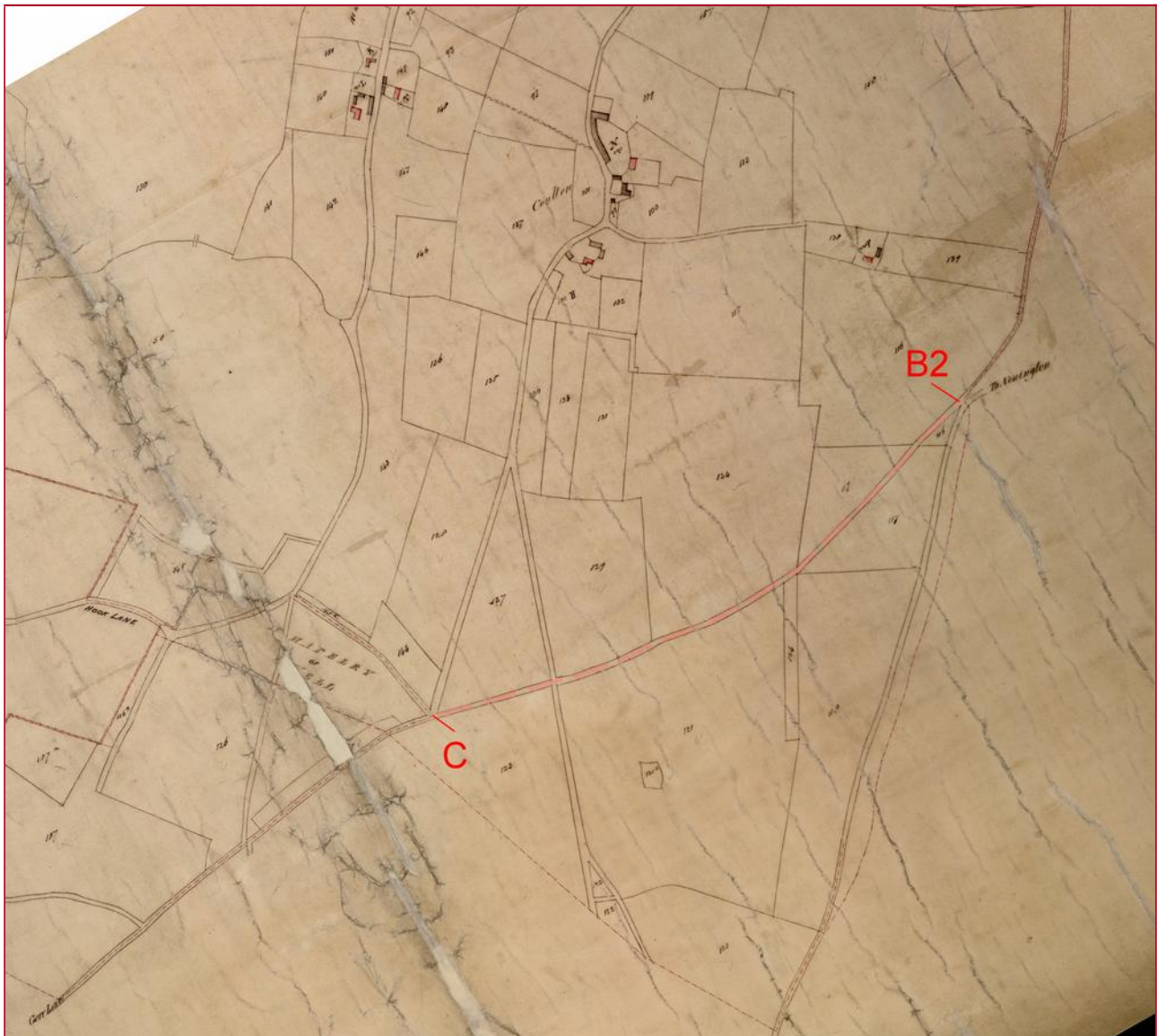


Illustration xxiii

Adisham tithe apportionment

Roads & Waste &c	25	5	6	"	"	"
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Illustration xxiv

I.3. **Description:** Nonington tithe map (second class): Original scale: scale marked on map in chains; orientation: rotated 45° east of top; Adisham tithe map (second class): Original scale: no scale declared or marked; orientation: rotated 30° west of top.

I.4. The Nonington tithe map shows a way between A and B, east of the parish boundary which follows the main road from north to south through B. The way is depicted between

parallel lines, suggestive of a route which is excluded from assessment for rent-charge. No parcel number is assigned to the way.

I.5. The Adisham tithe map shows the way between B and C. The way is also depicted between parallel lines, suggestive of a route which is excluded from assessment for rent-charge. No parcel number is assigned to the way, but the area of 'Roads and Waste' is collectively given in the apportionment. At B, the way northeast from B towards A is labelled, 'To Nonington'.

I.6. **Analysis:** 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.

I.7. 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.²⁴

I.8. 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.²⁵

I.9. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture).

I.10. It is widely said that the tithe commutation survey was not required to identify or distinguish public from private roads.²⁶ The task of those involved in implementing the 1836 Act was to ensure that the existing tithes were established, if necessary, on a monetary basis; and to calculate the amount of rent charge due on tithable land.²⁷ Land was exempt from liability if it was barren and unproductive. Both private and public roads might be classified as unproductive. Equally, both private and public roads might nevertheless yield useful grazing, and give rise to a liability to rent charge.

24 *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).

25 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

26 See, generally, Planning Inspectorate, [Consistency Guidelines](#), para.8.2: '...tithe maps were not intended to establish or record rights of way. ... It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain...'

27 *Tithe map case studies*, J Andrews, 1994, *Rights of Way Law Review*, s.9.3.67

I.11. But the assessment was not indifferent to status. An enclosed public road, which was maintained by the parish, and on which the grazing (if taken) did not belong to any particular person but might be grazed in common as waste, would be excluded from assessment, whereas an unenclosed public field road, on which the grazing might be taken by the landowner while grazing the field as a whole, might well be liable to assessment in the usual way (as part of the field). On the other hand, an enclosed private road, with generous grazed shoulders or verges at the side of any metalled road, ought to be liable to assessment.

I.12. Thus the status of a road, while not itself a specific requirement of the survey documents, was relevant to determining the output of the survey. In the present case, much of the application way, and all of it west of B, appears to have been unenclosed at the date of the tithe survey (see the Ordnance Survey, Mudge-Faden one-inch map of Kent at IV.D, Paterson's Roads — Thanet and Kent and Sussex Coast at IV.F, Greenwood's map of Kent at IV.G, Ordnance Survey, Old Series one-inch map of Kent at IV.H above) yet it is nevertheless recorded in the tithe survey as excluded from assessment and may be inferred to be included in the summary entry in the tithe apportionment for 'Roads and Waste' (which amounts to a very substantial 25 acres).

I.13. **Conclusion:** The application way is coincident with the ways shown on the tithe maps for Noninton and Adisham. The tithe maps provide evidence for the status of the application way as excluded roads. The public status of the ways cannot be concluded from the tithe maps in isolation, although the application way is depicted in the same way as other highways. However, the label which appears on the Adisham tithe map, at B1 towards A, as leading 'To Nonington', is some evidence for a public way, as destinations are usually applied to public bridleways and carriageways.²⁸ Moreover, that the application way beyond B is labelled to Nonington, and beyond C is labelled Gore Lane, is suggestive that the intervening way is itself a public way of at least bridleway status.

I.14. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1	3	
B1 to C	2	

J. Poor Law Commissioners' survey

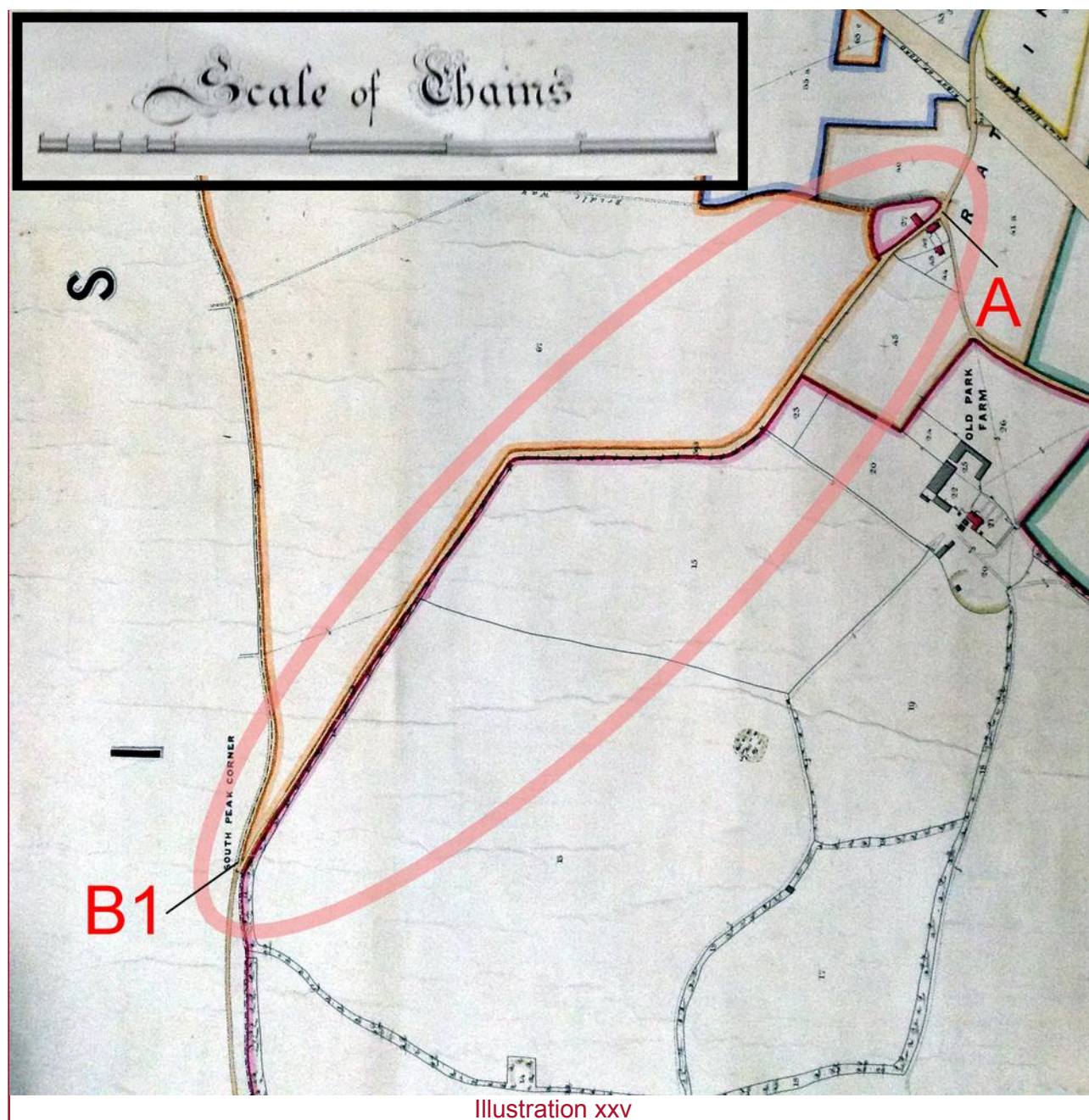
J.1. **Date:** 1859

J.2. **Source:** Canterbury Cathedral Archives²⁹

²⁸ See para.I.H.5 above.

²⁹ CCA-U3/118/19/1. A copy (in poor condition) is held by Kent County Archives: RD/Ea/P15.

Poor Law Commissioners' map



J.3. **Description:** Original scale: scale marked on map in chains (but scale is sourced from a different photograph and may not perfectly match the scale of this map extract); orientation: rotated 270°.

J.4. The Poor Law Commissioners ordered a detailed survey and map of the ownership and occupation of land in the parish of Nonington, presumably for the purposes of validating the rateable value of land assessed by the Poor Law Guardians of the parish under section 3 of the Parochial Assessment Act 1836.³⁰ The map seems to have been based

³⁰ S.3: "And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the church-wardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a

on the Tithe Act 1836 map (see item IV.I above) but with substantial modification and resurvey to reflect change during the subsequent two decades. The ownership and occupation of land was identified in an apportionment.

J.5. Unfortunately, the apportionment is now missing, despite enquiries made of both the archives which hold a copy of the map (see footnote 29 above). Recourse has therefore been made to manuscript notes made of the apportionment by a local history researcher³¹ in connection with a view of the map and apportionment around the year 2000.

J.6. The application way is assigned parcel number 595 between A and B1. In the apportionment (as recorded by the researcher), parcel 595 appears under the heading 'Roads — upkeep by Nonington Highway Surveyors', and is described as 'Road from South Peak Corner through Ratling Street to Upper Goodnestone Corner'.

J.7. **Conclusion:** The Poor Law Commissioners' survey is good evidence of the status of the application way at the date it was undertaken. The citation of the application way as one of a number of roads in the parish whose 'upkeep' was the responsibility of the parish surveyors demonstrates that the way was regarded as a public road: as such, the land occupied by these public roads would not have been rateable under the Poor Law Act 1601.³² Poor law rateable valuations attracted notoriety within the parish,³³ so that the exclusion of private roads (with their value for grazing) would have been open to criticism.

J.8. Moreover, parcel 595 comprises not only the application way between A and B1, but also the continuation northeast from A along Ratling Road, and continuing northwest along the minor road to Upper (Goodnestone) Corner. The road was therefore bundled as a single through route, presumably of greater significance at that time than the present continuation of Ratling Road south, and then southeast, from A towards Aylesham. The bundling therefore reinforces the status of the application way, between A and B1, as a public road, publicly maintainable.

J.9. Finally, the label applied to the cross-roads at B — South Peak Corner — which is also marked on the Ordnance Survey boundary records field sketch plan for Nonington (item IV.K below), is one which also suggests a junction between two intersecting public roads.

J.10. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		5
B1 to C		

survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value," S.4 confers a power of entry for the purposes of survey. S.6 enables appeals to quarter sessions against the valuation. Extracted from [Lumley's Union assessment acts](#), 1895.

31 The identity of the researcher is available on request.

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

33 Ss.1 and 2 of the Poor Rate Act 1743 required the publication of poor rates in church, and for the rates to be inspected by any inhabitant and for copies to be taken. Extracted from *Lumley's* (see footnote 30).

OS boundary field sketch map Nonington

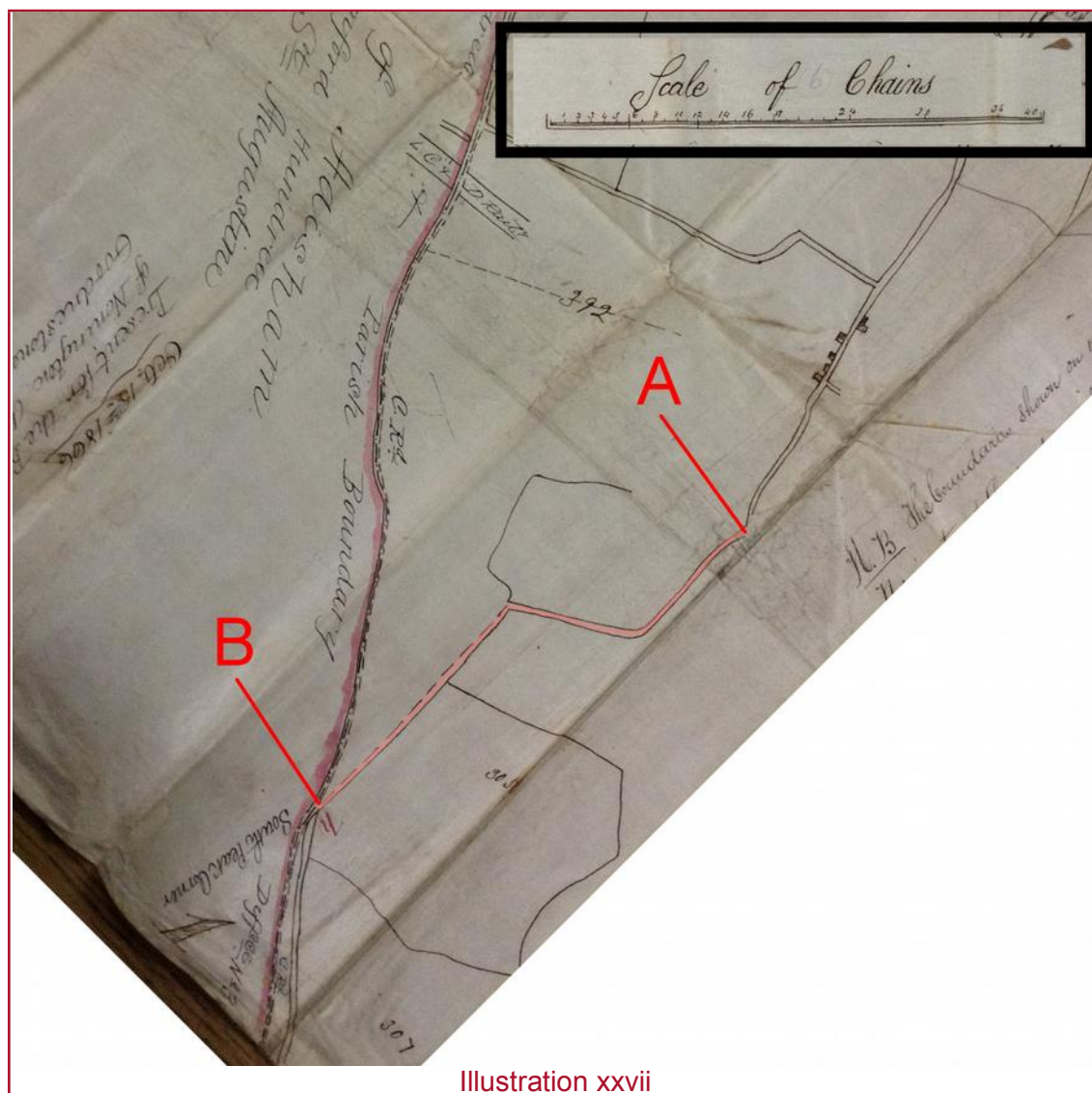


Illustration xxvii

K.3. **Description:** The Ordnance Survey boundary maps date from the late 1860s, and record the Ordnance Survey's surveyors efforts to capture the precise location of parish boundaries from local knowledge. These maps were drawn up following perambulation of the boundaries by the surveyor accompanied by the parish meresman (that is, a senior resident of the parish who was specially tasked with knowledge of the parish's boundaries, and who very likely would have acquired such knowledge first hand from his predecessor as meresman).

K.4. The field boundary sketch map for Adisham (original scale: as marked; orientation: rotated 315° so that north is at top) and Nonington (original scale: unknown; orientation: rotated 135°) were drawn onto a tracing of the parish taken from the tithe map.

K.5. The Adisham field boundary sketch map shows a way between B and C, and the Nonington map between A and B, in identical form to the respective tithe maps.

K.6. The Adisham map labels the application way from B towards A, 'To Nonington'.

K.7. Conclusion: The Ordnance Survey field boundary sketch maps record the application way between A and C in identical form to the tithe maps from which they are derived.

While the maps do not provide any new corroboration of status, the Adisham map repeats the label 'To Nonington' found on the Adisham tithe map, and this confirms, some twenty-five years later, that the application way east of B was still regarded at this time as being a public road.

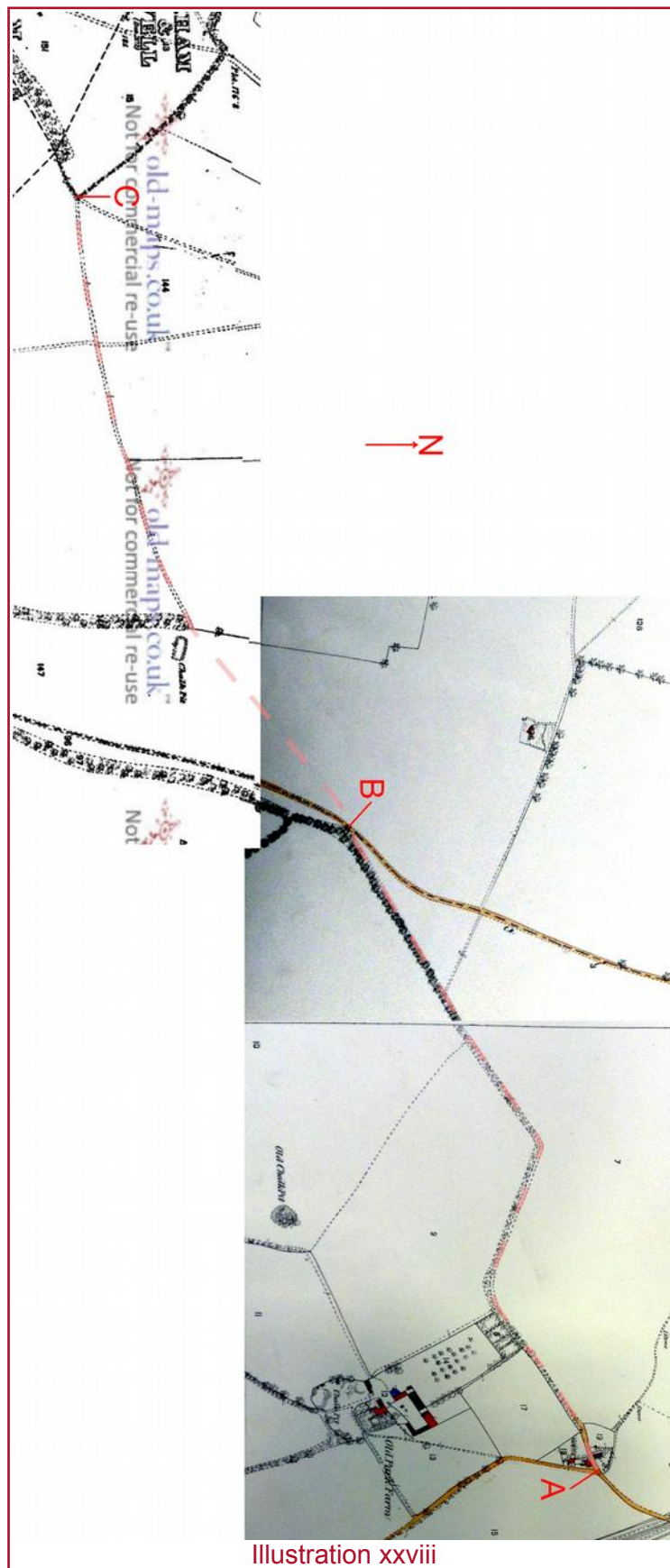
K.8. Points:

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B1 to C		

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

L.1. **Date:** 1872

L.2. **Source:** British Library; old-maps.co.uk



35 Sheet XLVII/15 surveyed 1872, sheet XLVII/14 surveyed 1872, sheet LVII/2 surveyed 1872.

PARISH OF NONINGTON,					
IN THE					
COUNTY OF KENT—(EASTERN DIVISION).					
HUNDREDS OF WINGHAM, WINGHAM (DETACHED), AND EASTRY.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
HUNDRED OF WINGHAM.			37	31·378	Arable.
			38	26·877	Arable.
25	·571	Houses and gardens.	39	·796	Arable.
26	2·346	Road.	40	9·628	Arable, &c.
27	·411	House, garden, &c.	41	1·686	Arable.

Illustration xxix

L.3. **Description:** Original scale: 1:2,500; orientation: rotated 90° (top is west).

L.4. The Ordnance Survey County Series first edition plans are the first large scale maps to be produced of Kent, with the survey dating from 1872–73. The plans show the application way between A and B, and, with an omission across the first field west of B, between B and C. The application way immediately west of A is shown hand-coloured in ochre, signifying that the way was metalled, but that the way ceased to be made up approximately 75 metres west of the road junction at A.

L.5. The way is shown in very similar terms on the successive second, third and fourth editions of the Ordnance Survey County Series plans, with survey dates up to just before the Second World War.

L.6. On the first edition plan, Ratling Road, east of the junction with the application way at A as far as Upper Goodnestone Corner, is shown as parcel 26. There is no delimitation of this parcel at A, nor is the application way (east of B) braced with the neighbouring field to the north or the line of woodland to the south (incorporating the park pale), and therefore parcel 26 includes the application way between A and B. Between B and C, the application way (where defined) is braced with a neighbouring field, and not separately identified.

L.7. **Conclusion:** The Ordnance Survey County Series first edition twenty-five inch plans show that the application way was recorded as a physical feature in the form of a track or road, other than immediately west of B. This suggests that the application way west of A was regarded as the primary continuation of Ratling Road, and that the route southeast from A was considered, at that time, to be subsidiary. It may be assumed, therefore, that the application way west from A has the same status as Ratling Road east of A (*i.e.* a public carriageway).

L.8. The entry in the area book published alongside the first edition, for the application way between A and B as a 'road', provides some support for its status as a public highway,

the entries being consistent with the way's depiction as a road on earlier historical mapping.

L.9. The omission of the application way across the the first field west of B is suggestive that, by the date of the survey (1872), the application way beyond B had diminished in use, and that it was regularly disturbed by cultivation.

L.10. **Points:**

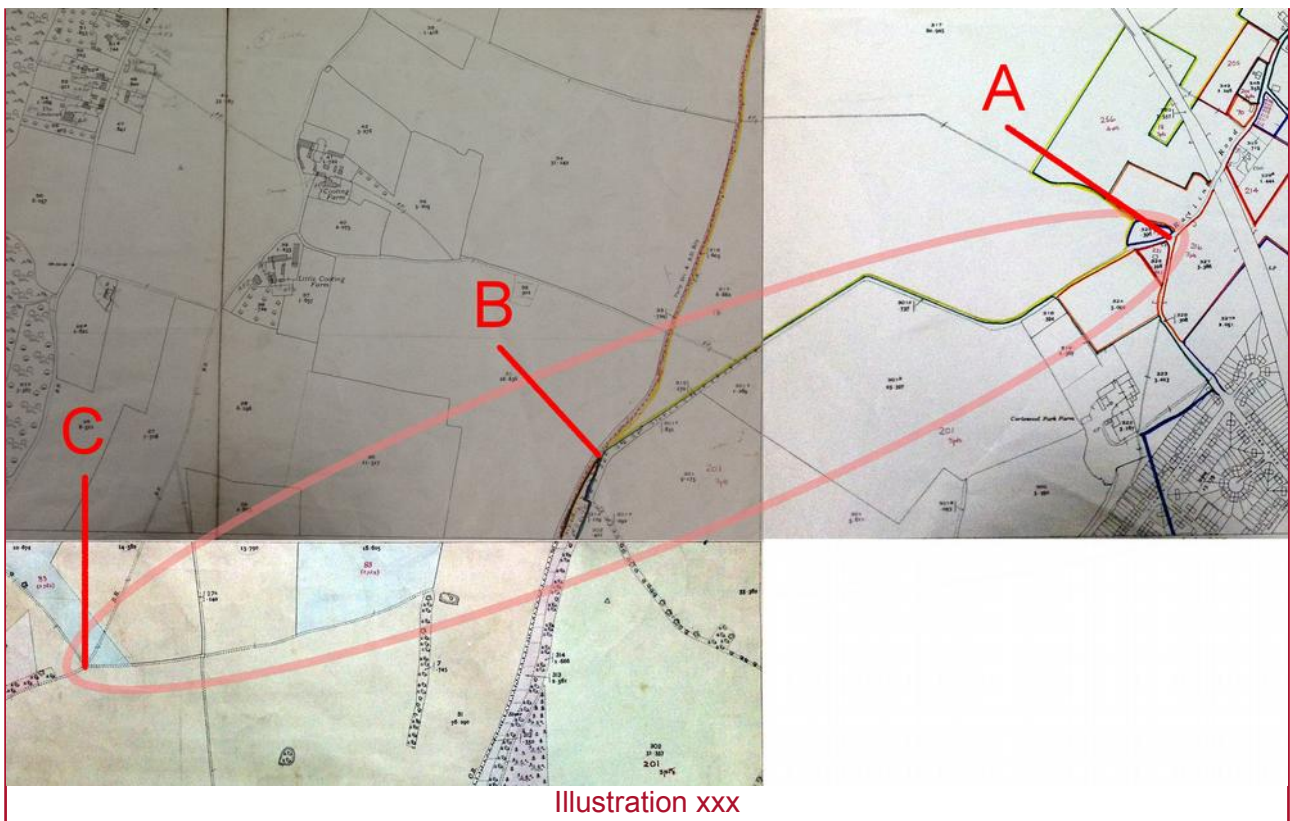
	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1	1	
B1 to C		

M. Finance (1909–1910) Act 1910

M.1. **Date:** 1911

M.2. **Source:** National Archives³⁶

Kent Finance Act map



M.3. **Description:** original scale: 1:2,500; orientation: unchanged.

M.4. The application way falls across three Ordnance Survey County Series sheets for Kent.³⁷ The way is shown uncoloured in the immediate vicinity of the junction with Ratling

³⁶ IR 124/5/60, 124/5/61, 124/2/132

³⁷ Kent XLVII/14, XLVII/15, LVII/2.

Road at A, for a distance of about 65m. The way is elsewhere included within the area of various hereditaments.

M.5. The application way (save for the uncoloured part near A) falls within two hereditaments:

- Ratling Court Farm: Nonington and Womenswold hereditament 18
- Cooting Farm: Adisham hereditament 74

M.6. **Analysis:** The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as ‘white roads’. This is because s.35 of the 1910 Act provided,

No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.

A highway authority was a rating authority.

M.7. That ‘white roads’ are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In [*Fortune v Wiltshire Council*](#), HHJ McCahill QC said (paras.753, 770), that:
the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. ...the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910.

On [appeal](#), Lewison LJ upheld the judgment at first instance, observing (para.71):

The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway.

- In [*Robinson Webster \(Holdings\) Ltd v Agombar*](#), Etherton J said (para.47) said:
The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. ... The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.
- In [*Commission for New Towns v JJ Gallagher Ltd*](#), Neuberger J found (para.106) that:
The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. ... Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].

- In *R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs*, Walker J said (para.65) that:

The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.

M.8. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways. Under s.25 of the Act,

The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land...³⁸

M.9. Under s.26(1), the Commissioners of the Inland Revenue were required to cause a valuation to be made of, *inter alia*, the total value of land. Whether a discount was, in fact, given will depend on several factors:

- Whether the right of way was excluded from valuation (i.e. as a 'white road').
- Whether the landowner acknowledged the presence of a right of way on the land (e.g. if it were disputed).
- Whether the landowner wished to reduce the valuation of the land (if development were anticipated, it might be better to secure a higher valuation, so that the increase in value arising from development were minimised. However, as the 1910 Act also provided for other levies, the calculations in a particular case might be for or against a discount from the total value of the land).
- Whether the landowner declared the right of way on form 4 or form 7 (a failure to declare might be an oversight).
- Whether the valuer accepted the claim for a discount for a right of way.
- Even if the landowner did not declare the right of way, the valuer could give a discount for a right of way which was 'known to' the valuer.

M.10. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

M.11. The Act included provision for a duty on increment in land value (to capture some of the gain from community development, such as building new railways and public services) and a duty on the capital value of unimproved land on which building might be held back for speculative gain.³⁹ It was said by the Chancellor, subsequently, that the two duties expressly were designed to help ensure an honest valuation. According to the landowner's disposition, the landowner might favour a higher valuation to minimise increment value duty, or a lower valuation to minimise the capital duty, but either way, there was a risk that favouring one might come at the expense of rendering the other more costly. As there was no obligation to declare rights of way to minimise the land valuation (though there was an obligation not to make false declarations), it is hardly surprising that some landowners

³⁸ Discounts for easements affecting the land were separately requested and recorded in the valuation book.

³⁹ For completeness, the 1910 Act also included provision for a reversion duty on the term of a lease, and a mineral rights duty. Neither is relevant here.

chose to declare, and others did not. They may have made a decision after careful calculation, or they may have been ignorant that declaration of a right of way could bring possible financial benefits. They may not have wished to draw attention to a right of way, or they may have thought it would make barely any difference (and quite possibly the effect would have been adverse to their expected interests). They may have denied (rightly or wrongly) that a right of way existed, or at least not have wanted formally to acknowledge its existence. We cannot (usually) know.

M.12. Thus the absence of any indication of a right of way in a particular hereditament — even where the evidence of adjacent hereditaments (and otherwise) suggests it was crossed by a right of way — tells us nothing at all. One cannot conclude that the absence of any deductions under the Act would appear to confirm that no such public route existed, without knowing the motivation why no deductions were claimed — and invariably there is no record of such motivation.

M.13. **Conclusion:** The Finance Act map provides some modest assurance that the first part of the application way, west from A, was regarded as a public road because it is uncoloured and not assessed.

M.14. The valuation books for the relevant hereditaments record no deductions for the application way, nor for any other rights of way across the hereditaments. No conclusion can be drawn from the absence of any such deductions.

M.15. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B1 to C		

N. Bartholomew's map

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

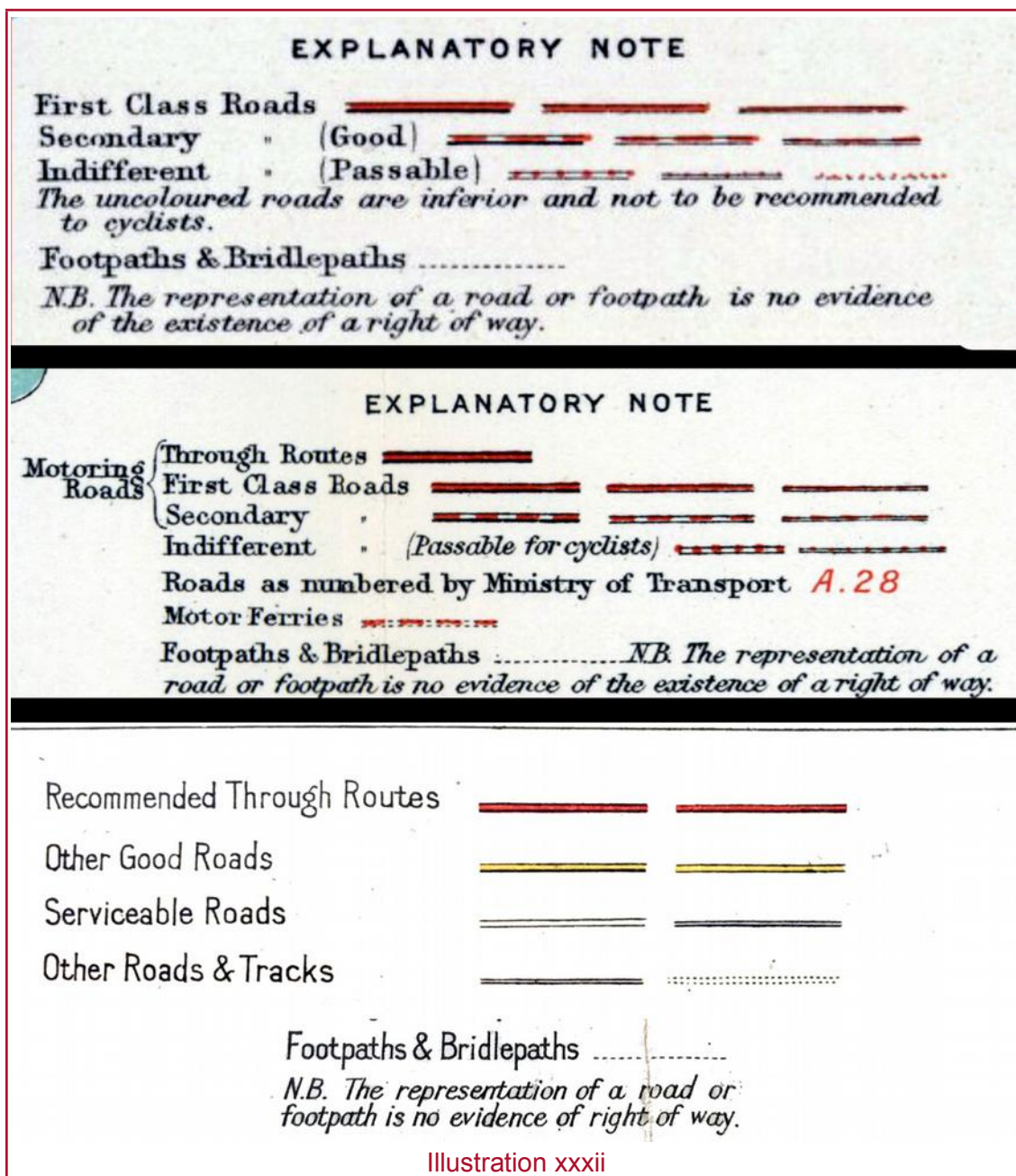
N.2. **Source:** National Library of Scotland⁴⁰ (1904 and 1922); personal copy (1953 map)

⁴⁰ maps.nls.uk/mapmakers/bartholomew.html

Ratling Street RB historical document summary



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



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

N.4. Bartholomew's maps from the first half of the twentieth century show the application way only between A and B. On the maps of 1904 and 1922, the way is depicted as an 'other road', not recommended for cyclists. The map of 1953 shows the way as an 'other road or track'.

N.5. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that the application way between A and B continued to be recognised as a road rather than a footpath or bridleway.

N.6. Paragraph 12.41 of the consistency guidelines⁴¹ 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.

N.7. 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. In the present case, the way between A and B continued to be shown as a road until at least 1953.

N.8. While the maps are not convincing evidence of public rights, it seems unlikely that an entirely private road, not subject to any public rights of passage, would have been depicted on successive editions, subject to widespread appraisal and feedback particularly from cycling users.

N.9. **Points:**

	<i>as bridleway</i>	<i>as restricted byway</i>
A to B1		1
B1 to C		

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