

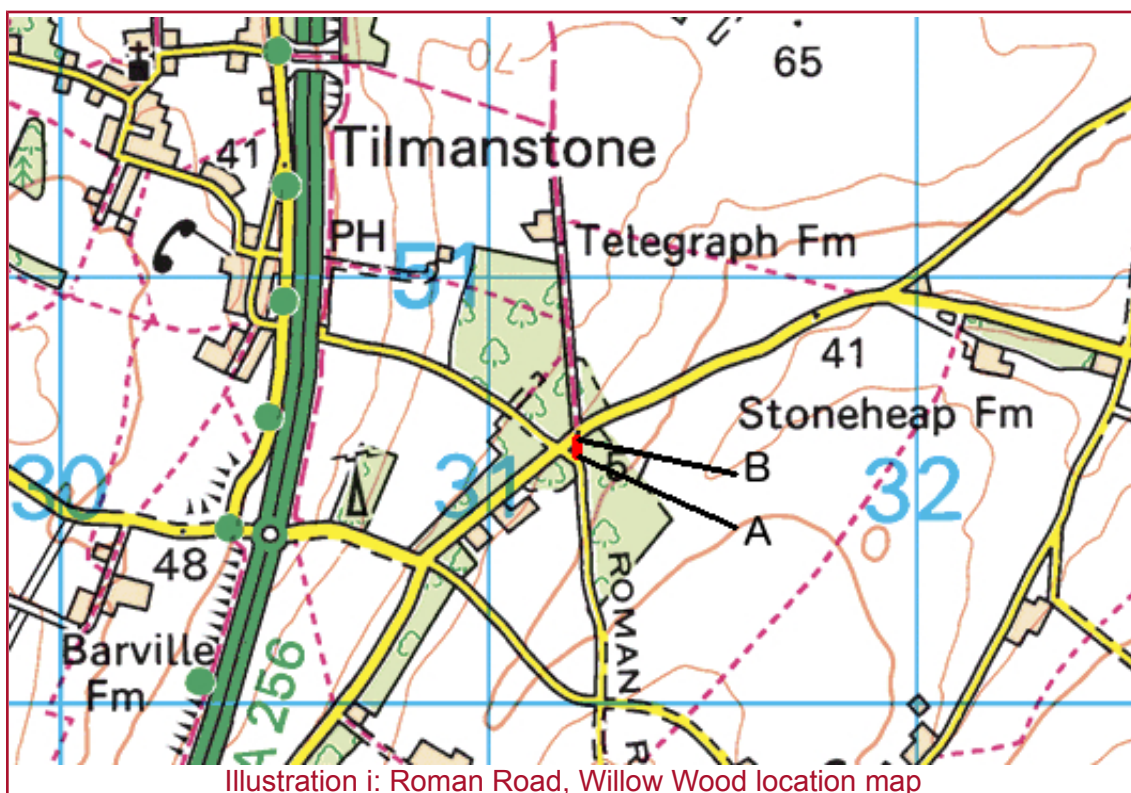
# Roman Road, Willow Wood: document analysis

## Application to record a restricted byway at Willow Wood, Tilmanstone

### I. Introduction

#### A. Quick reference

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



- A.2. Parish of: Sutton next Ripple
- A.3. Former parish of: Little Mongeham
- A.4. Termination points: Roman Road and Willow Road
- A.5. Termination points Ordnance Survey grid references: TR31225055 and TR31225061
- A.6. Postcode: CT15 5FJ
- A.7. Ordnance Survey Explorer sheet: 138
- A.8. Ordnance Survey County Series 25" sheets: Kent LVIII/6

## B. The applicant

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

## C. Locational details

C.1. This application relates to the public right of way through Willow Wood, north of Studdal, which is a continuation of Roman Road, and which lies in the parish of Sutton, in the district of Dover, Kent. The way is not currently recorded on the definitive map and statement. The application seeks to record the way as a restricted byway.

## 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)(i) to record a way in the definitive map and statement for Kent as a restricted byway in the parish of Sutton.

D.2. The application way begins on Roman Road at A, a corner where the adopted road turns northwest towards Tilmanstone (Ordnance Survey grid reference TR31225055) and continues due north for a distance of 60 metres to B, a junction with Willow Road (TR31225061).

D.3. The points A and B are identified in the application map at section II below.

## E. Background

E.1. The application way is a very small part (of length 60m) of the Roman Road between Dover and Richborough, which remains extant (with a modest exception in Bette-shanger parish) as far north as Woodnesborough.

E.2. The Roman Road remains a minor sealed public road south of the application way at A, and is recorded as a public bridleway north of the application way at B towards Bette-shanger. The application way itself is shown on earlier maps as an ordinary part of the local road network, but seems to have been omitted from being given a tarred surface in the early years of the twentieth century, probably because the way north of B was already in decline as a through vehicular route, and because the spur northwest from A towards Willow Road and Tilmanstone sufficiently fulfilled the requirement for connections heading north out of Studdal. However, as a part of the Roman Road, it seems likely that the application way has remained in continuous use for nearly two millenia.

## F. Grounds for application

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

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

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

F.2. 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.3. 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 highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see below), there were full vehicular rights.

## G. Natural Environment and Rural Communities Act 2006

G.1. The application seeks to show that the application way is a public carriageway. None of the application way is recorded as publicly maintainable in the list of streets held by Kent County Council under section 36(6) of the Highways Act 1980. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. The application is therefore made for a restricted byway.

<sup>1</sup> [2012] EWCA Civ 334

## H. Points awarded

H.1. Points have been awarded to each piece of evidence in relation to the application way, calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>2</sup>.

### H.2. Points:

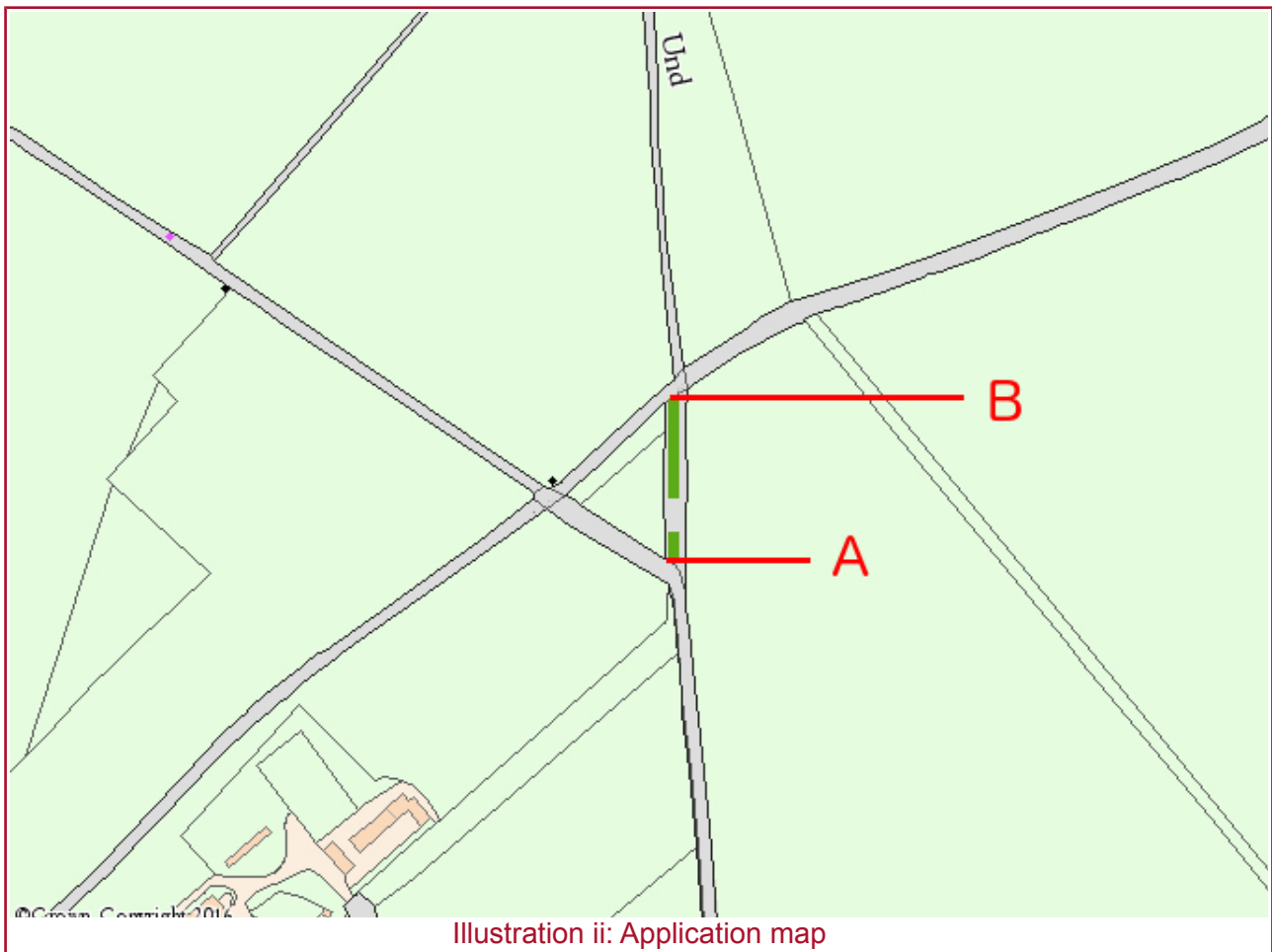
Item	Ref	Points A–B
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.A	1
Morrice Estate Plan	IV.B	2
Greenwood's map of Kent	IV.C	1
Ordnance Survey, one-inch Old Series map of Kent	IV.D	0
Tithe Commutation Act 1836	IV.E	3
Inclosure Act 1845 order of exchange	IV.F	3
Ordnance Survey boundary sketch maps	IV.G	4
Finance (1909–1910) Act 1910	IV.H	5
East Kent Light Railway	IV.I	2
East Kent District Water	IV.J	2
<b>Total points</b>		<b>23</b>

## I. Width of application way

I.1. The way appears to have a width between banks of 8 metres when scaled from contemporary and earlier Ordnance Survey maps. It is therefore proposed that the way should be recorded as having a width throughout of 8 metres.

<sup>2</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

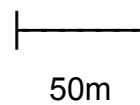
## II. Application map



Map centred on B at TR31225061

Scale: approx. 1:2,770 (when printed A4)

Application way is marked — — —



### III. Along the way



Illustration iii: Approaching A from the south



Illustration iv: At A towards B



Illustration v: From B towards A

## IV. Evidence

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

A.1. **Date:** c.1801

A.2. **Source:** Kent County Archives<sup>3</sup>

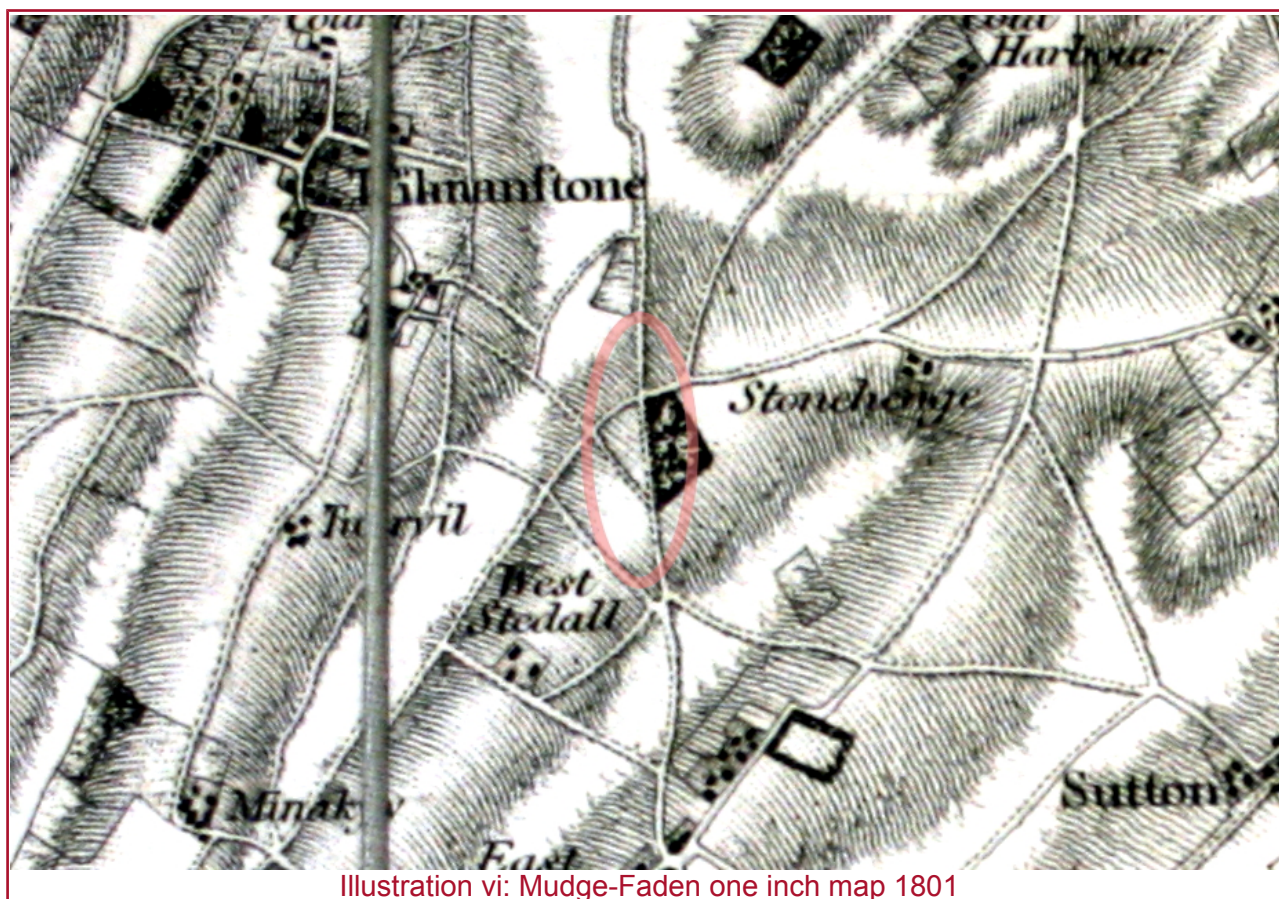


Illustration vi: Mudge-Faden one inch map 1801

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

<sup>3</sup> Also available online at: [mapco.net/kent1801/kent1801.htm](http://mapco.net/kent1801/kent1801.htm).

A.4. This map of Kent was the first Ordnance Survey map to be published. The survey of Kent was commenced in the 1790s by the Board of Ordnance, in preparation for the feared invasion of England by the French. However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

A.5. The Mudge-Faden map shows shows the application way between A and B as part of a continuous way along the course of the Roman Road between Dover and Eastry. The spur road to Tilmanstone joins with the Roman Road further south than A so that A is not shown as a junction with any other road: it appears that the spur was diverted to a new, more northerly, course, beginning at A, during the first half of the nineteenth century.

A.6. **Conclusion:** The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. The Mudge-Faden map is good evidence for the existence of a public way along the claimed route: it is shown as part of a continuous route between Dover and Betteshanger, which moreover is faithful to the course of the Roman Road between Dover and Richborough.

A.7. **Points:** 1

## B. Morrice Estate Plan

B.1. **Date:** 1807

B.2. **Source:** Kent County Archives<sup>4</sup>

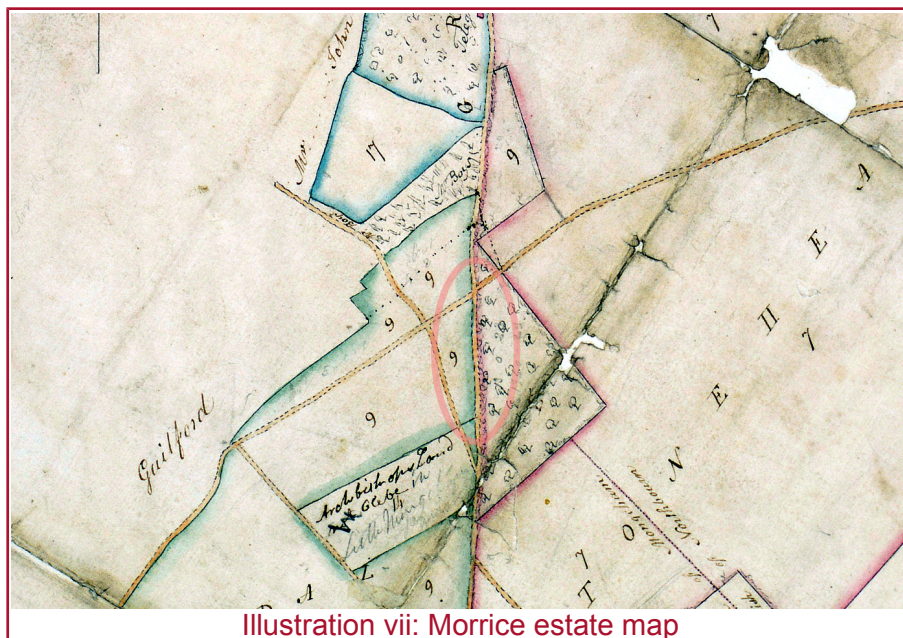


Illustration vii: Morrice estate map

B.3. **Description:** The map carries the rubric:

‘Map of Estates Belonging to the Rev<sup>D</sup> James Morrice Situate in the several parishes of Betshanger, Ham, Northbourn and Mongeham in the County of Kent. By Tho<sup>S</sup> Pelman 1807’.

4 U1328/P1

B.4. The map shows the application way as part of the course of the Roman road between Studdal and Betteshanger: the road is coloured ochre. The spur to Tilmanstone begins from a point approximately 250m south of A, consistent with the early maps in items IV.A above and IV.D below.

B.5. **Conclusion:** The estate plan is good evidence that the application way was regarded as a public road at this date: it is coloured ochre, in common with other ways now regarded as public.

B.6. **Points:** 2

## C. Greenwood's map of Kent

C.1. **Date:** 1819–20

C.2. **Source:** Kent County Archive



Illustration viii: Greenwood's map and key

C.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.

C.4. Greenwood's map shows the application way between A and B as part of a continuous way along the course of the Roman Road between Dover and Eastry. In contrast with the Ordnance Survey Old Series one-map, the spur road to Tilmanstone now appears to join with Roman Road in the vicinity of A.

C.5. **Conclusion:** Greenwood's map is good evidence for the existence of a defined way along the claimed route. The key describes the route as a 'cross road', which is suggestive of a public way.

C.6. **Points:** 1

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

D.1. **Date:** 1831

D.2. **Source:** National Library of Australia<sup>5</sup>.

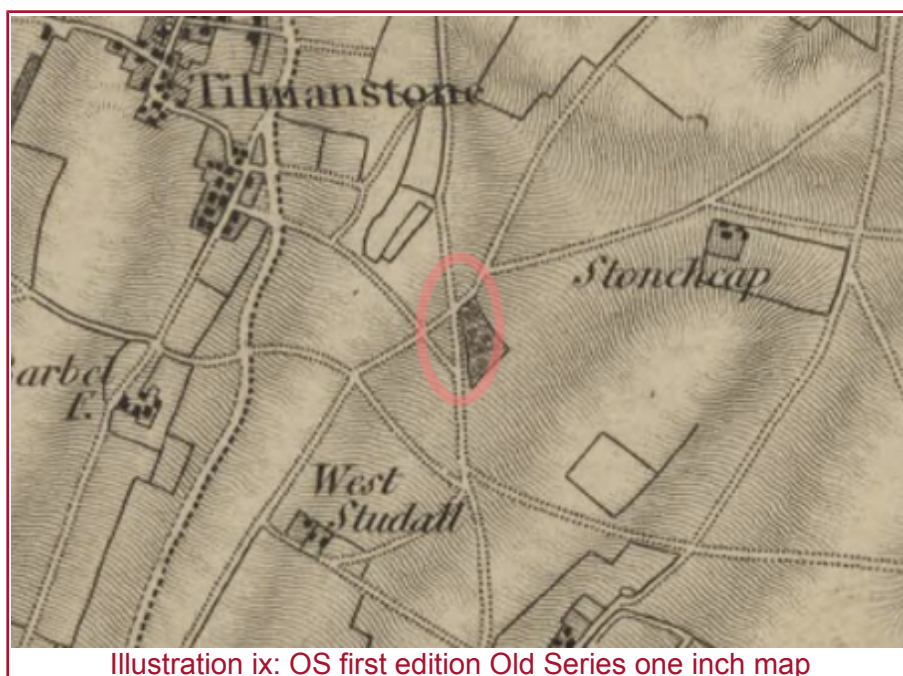


Illustration ix: OS first edition Old Series one inch map

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

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

D.5. **Conclusion:** 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.

D.6. The Ordnance Survey first edition map is good evidence for the existence of a public way along the claimed route, on the same basis as its representation in the Mudge-Faden map.

D.7. **Points:** 0 (no points are scored as this map is repetitive of the Mudge-Faden map at item IV.A above).

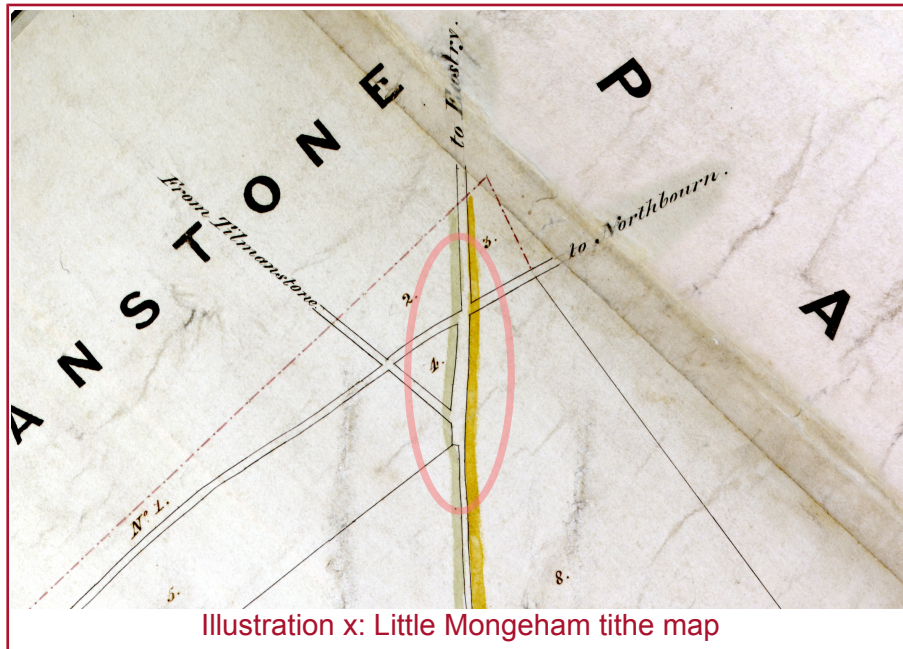
<sup>5</sup> [nla.gov.au/nla.obj-231917365/view](http://nla.gov.au/nla.obj-231917365/view).

## E. Tithe Commutation Act 1836

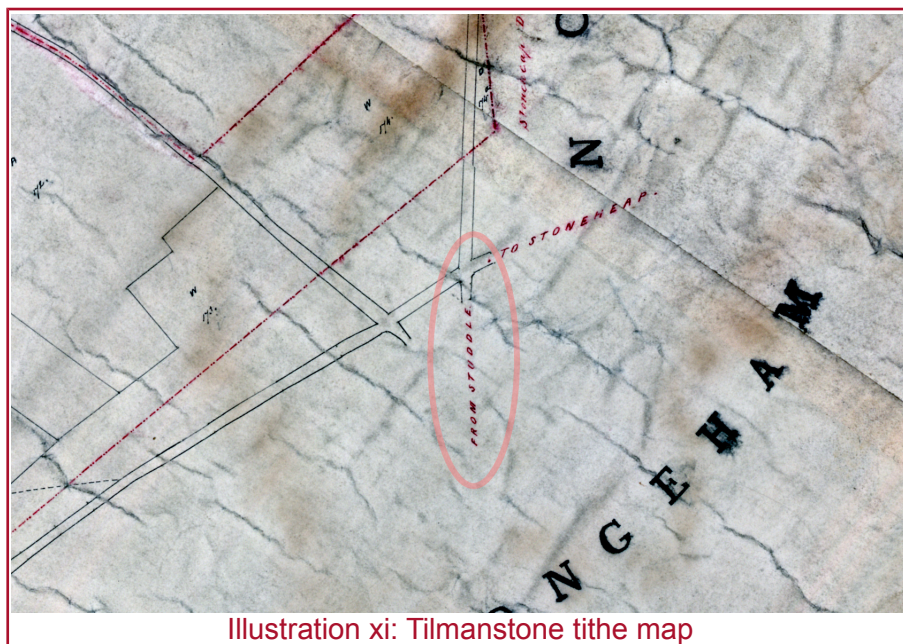
E.1. **Date:** 1841

E.2. **Source:** Kent County Archive<sup>6</sup>

### Little Mongeham



### Tilmanstone



<sup>6</sup> Tithe map data are available on CD or on application to certain libraries.

## Northbourne

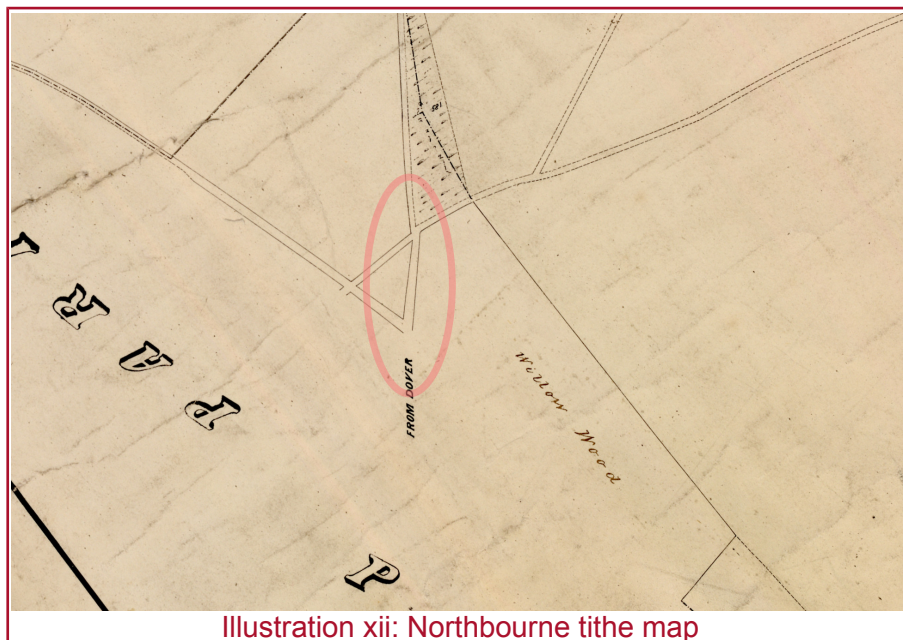


Illustration xii: Northbourne tithe map

E.3. **Description:** The application way is close to the former boundary between the parishes of Northbourne, Tilmanstone and Little Mongeham (the way formerly being located in the parish of Little Mongeham). The way is shown on the tithe maps for all three parishes, and is represented as an enclosed continuation of Roman Road north from Studdal, and south from Telegraph Farm. Labels are applied: on the Little Mongeham tithe map (illustration x above), the way continuing north from Willow Road is marked: 'To Eastry'; on the Tilmanstone tithe map (illustration xi above), the way is marked, at a point mid-way between A and B, 'From Studdal'; and on the Northbourne tithe map (illustration xii above), the way is marked, immediately south of A, 'From Dover'.

E.4. **Conclusion:** In each case, the application way is represented as an enclosed road, in the same form as other roads in the area (which today are sealed public roads), comprising Willow Road (the road from Whitfield to Little Mongeham), and the road to Tilmanstone. It is also shown in the same form as bridleway EE377, which is the Roman Road north to Telegraph Farm. The application way is also labelled either directly (on the Little Mongeham tithe map), or indirectly (on the Tilmanstone and Northbourne tithe maps) but with an implication, that the way is part of a through route to the places mentioned. Both aspects are strongly suggestive of a public carriageway.

E.5. **Points:** 3

## **F. Inclosure Act 1845 order of exchange**

F.1. **Date:** 1868

F.2. **Source:** National Archives<sup>7</sup>

<sup>7</sup> MAF 11/364

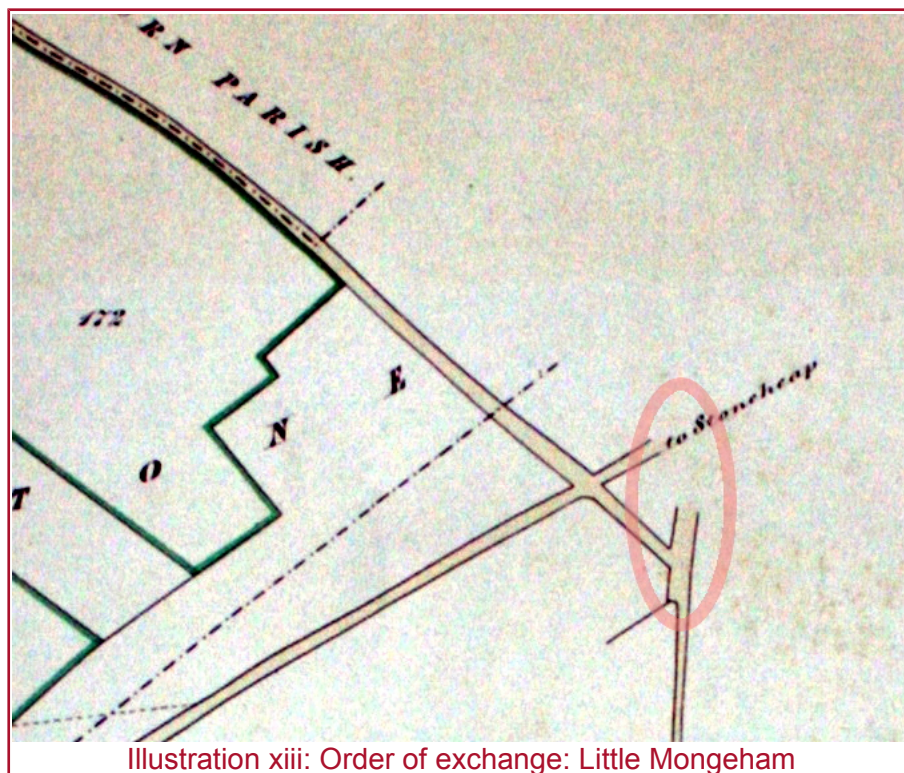


Illustration xiii: Order of exchange: Little Mongeham

F.3. **Description:** original scale: not known; orientation: unchanged (north is top).

F.4. An order of exchange was made by the Inclosure Commissioners in 1851 under section 147 of the Inclosure Act 1845, at the request of the owners of land who wished to make an exchange of their titles.

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

F.6. The application was made by Edward Boyds Rice of Dane Court and Samuel Metcalfe Latham of Dover, in relation to land in the parishes of Little Mongeham and Tilmanstone. The order was made by the Commissioners, and included (as required) a map showing the lands to be exchanged. The map shows the application way in part, as the continuation of Roman Road north from A. The way is coloured ochre.

F.7. **Conclusion:** On these and other plans prepared under section 147 of the Inclosure Act 1845, a yellow or ochre colour wash appears to denote ways which are either public roads or bridle-roads.

F.8. The map shows part of the application way as an enclosed road, coloured ochre, consistently with other roads in the local area which are today sealed public roads. The only way to be so coloured which is not today a sealed public road is the track north-west from Strakers Hill to Stoneheap Farm, now public footpath EE381, for which there is evidence elsewhere that there are higher rights. The order map is evidence that the application way was regarded as a public carriage road at the date of the order.

F.9. **Points:** 3

## G. Ordnance Survey boundary sketch maps

G.1. **Date:** 1866–1869

G.2. **Source:** National Archives<sup>8</sup>

Boundary sketch map Eythorne and Tilmanstone:

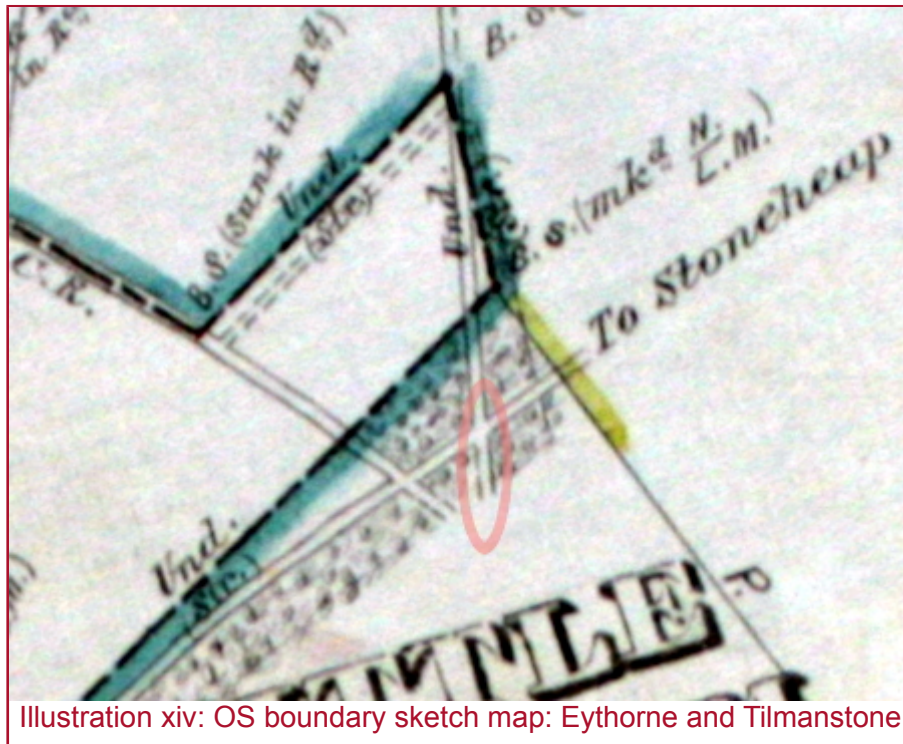


Illustration xiv: OS boundary sketch map: Eythorne and Tilmanstone

Boundary sketch map Little Mongeham:

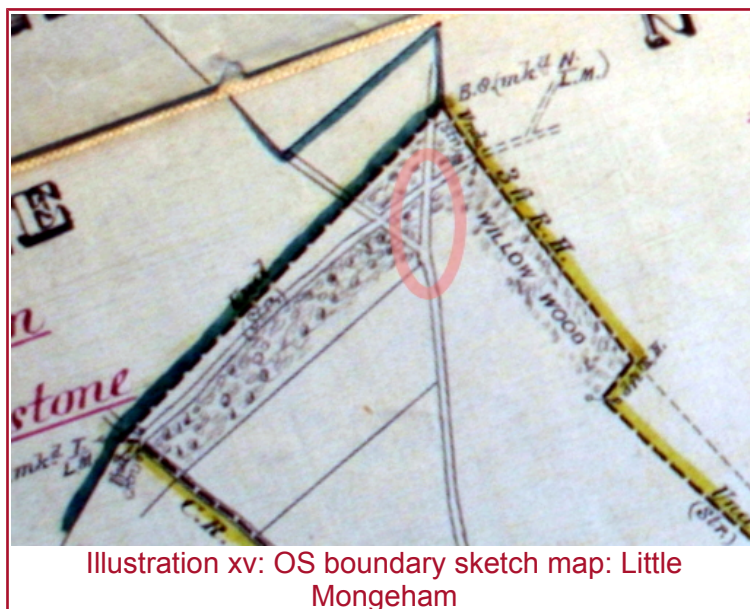


Illustration xv: OS boundary sketch map: Little Mongeham

<sup>8</sup> OS 27/2604, OS 27/2689, OS 27/2733, OS 28/302, OS 28/191

Boundary sketch map Betshanger:



Illustration xvi: OS boundary sketch map: Betshanger

Field sketch map Tilmanstone:



Illustration xvii: OS field sketch map: Tilmanstone

### Field sketch map Little Mongeham:

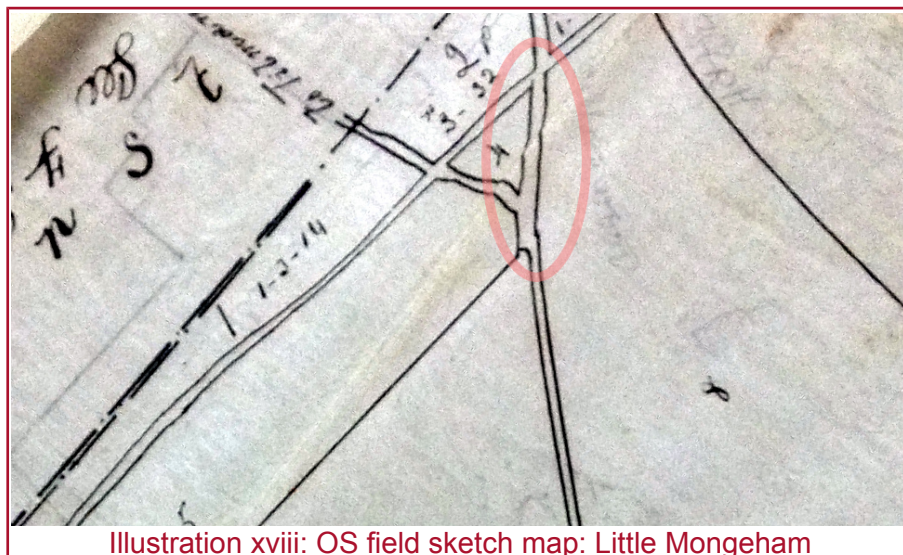


Illustration xviii: OS field sketch map: Little Mongeham

G.3. **Description:** Original scale: not known; orientation: rotated where necessary so that north is top).

G.4. 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).

G.5. The three sketch maps, for adjacent parishes (illustrations xiv, xv and xvi above), and the field sketch maps for Tilmanstone (illustration xvii above) and Little Mongeham (illustration xviii above), all record the application way as part of a network of roads focused on the cross-roads at Willow Wood. The field sketch map for Tilmanstone marks the application way, straddling the junction at A, 'From Studdle' (*sic*).

G.6. **Conclusion:** The boundary field and final sketch maps had the purposes of documenting boundaries which were to be marked on published Ordnance Survey maps. However, they also show features coincident with, or local to, the boundaries being recorded. In this case, all local roads are shown in the same form, including the application way. The annotation of the application way on the Tilmanstone field sketch map, 'From Studdle', reinforces the surveyor's understanding of the way as a local road.

G.7. **Points:** 4

## H. Finance (1909–1910) Act 1910

H.1. **Date:** 1911

H.2. **Source:** National Archives<sup>9</sup>

<sup>9</sup> IR 124/5/151 (Ordnance Survey map sheet LVIII/6)

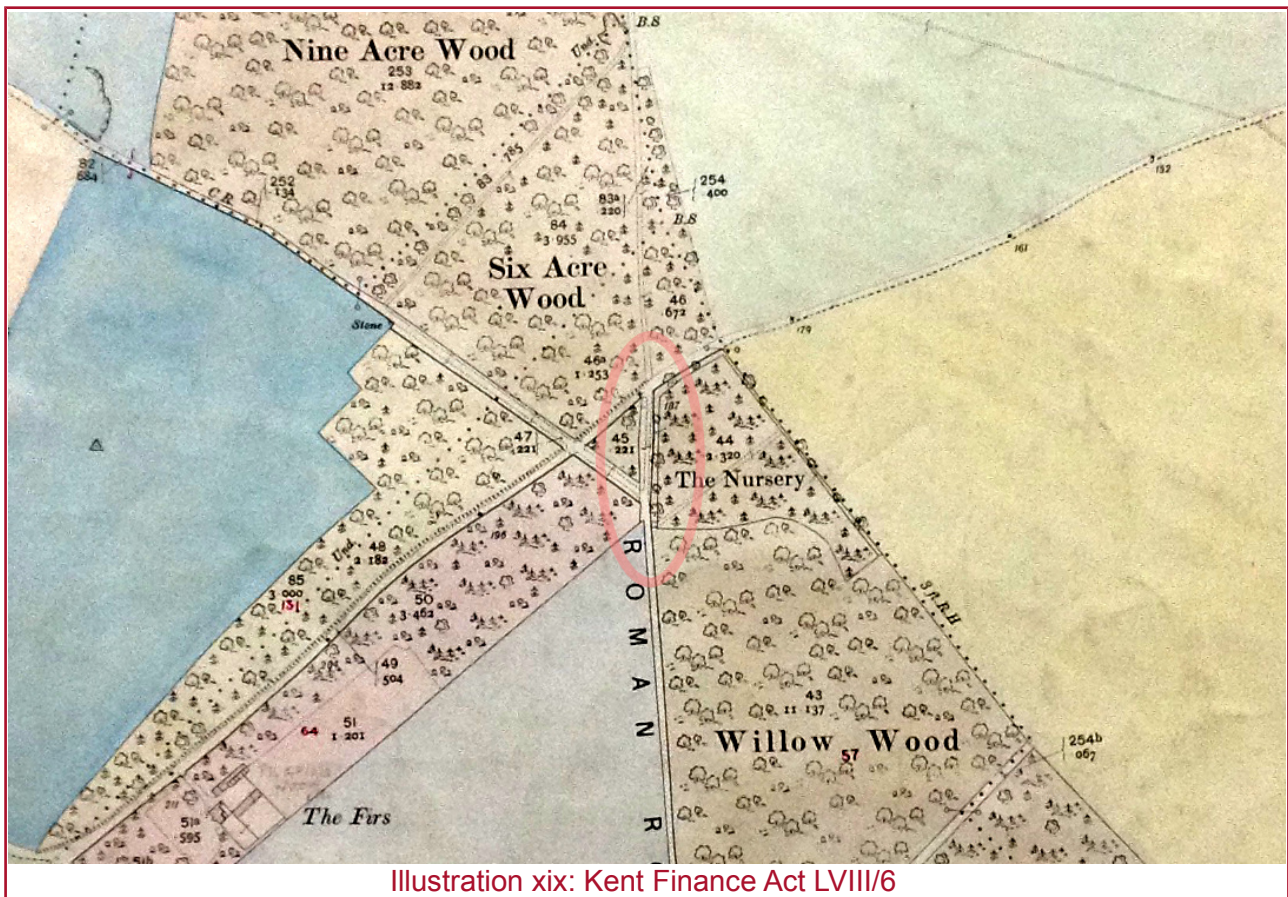


Illustration xix: Kent Finance Act LVIII/6

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

H.4. 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.

H.5. Secondly, discounts from the valuation could be requested for land crossed by foot-paths or bridleways.

H.6. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

H.7. The application way is one of several roads converging on Willow Wood (comprising Willow Road, the road to Tilmanstone, and Roman Road south to Studdal) which are excluded from the adjacent hereditaments, and therefore uncoloured. Bridleway EE377, which is the Roman Road north to Telegraph Farm, is included in hereditament numbered 131.

H.8. **Conclusion:** The exclusion of the application way from hereditaments (in common with other local roads, save bridleway EE377) is strongly suggestive that it was regarded as a public road.

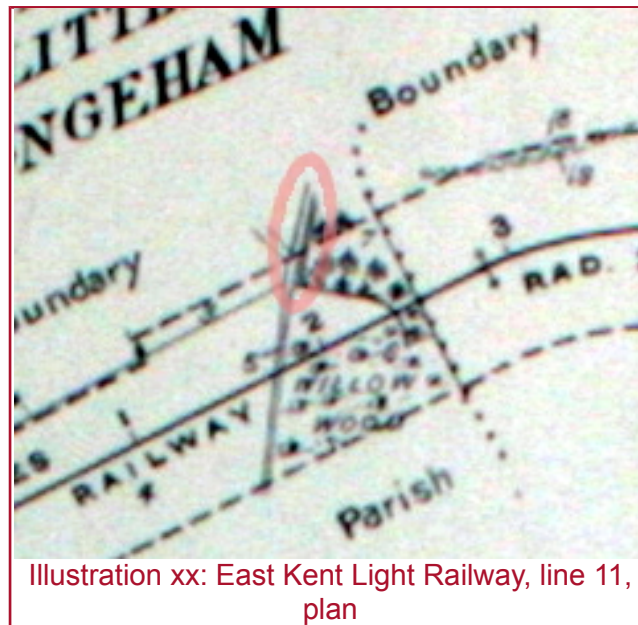
H.9. **Points:** 5

## I. East Kent Light Railway

I.1. **Date:** 1910, 1913

I.2. **Source:** National Archives<sup>10</sup>, Kent County Archive<sup>11</sup>

East Kent Light Railway line 11 plan:



10 MT 54/532

11 Q/RUm/1179

### East Kent Light Railway line 11 book of reference:

6				
EAST KENT LIGHT RAILWAYS (EXTENSIONS).				
Parish of LITTLE MONGEHAM, in the County of KENT.				
RAILWAY No. 11— <i>continued</i> .				
No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
5	Roman Road	The Eastry Rural District Council	.. ..	The Eastry Rural District Council

Illustration xxi: East Kent Light Railway, line 11, book of reference

### East Kent Light Railway plan line 26:

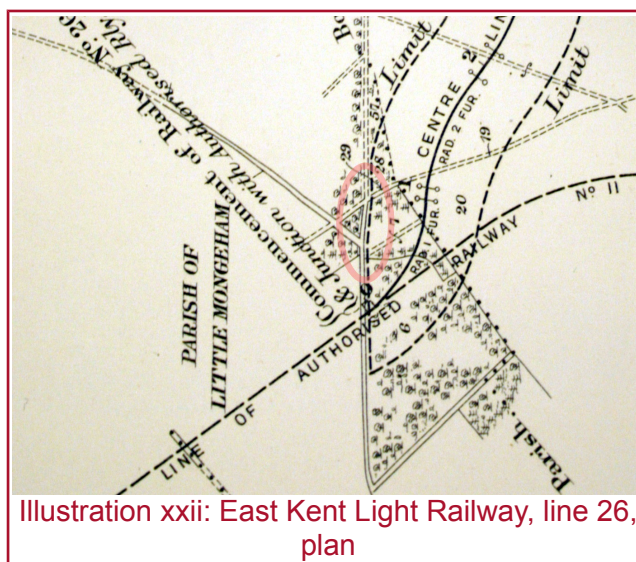


Illustration xxii: East Kent Light Railway, line 26, plan

I.3. **Description:** original scale: scale marked on plan in chains; orientation: unchanged.

I.4. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway. The promoters included Kent Coal Concessions Ltd, the original promoter of the Kent coalfield. The railway was promoted under the Light Railways Act 1896. The 1896 Act required the deposit of plans and books of reference in connection with a submission seeking authorisation under the Act.

I.5. The application way is shown in the deposited maps for lines 11 (illustration xx above) and 26 (illustration xxii above), neither of which was built. In both cases, the application way falls outside the limits of deviation, but the application way is shown as a continuation of Roman Road to the south of A and, in respect of line 26, to the north of B. In respect of line 11, the book of reference (illustration xxi above) records the status of

Roman Road immediately south of A as parcel 5, 'Roman Road', in the ownership and occupation of the Eastry Rural District Council.

I.6. **Conclusion:** The application way between A and B is shown identically to the road south of A, and it is reasonable to deduce that the way was perceived to be of the same status.

I.7. **Points:** 2

## J. East Kent District Water

J.1. **Date:** 1929

J.2. **Source:** Kent County Archive<sup>12</sup>

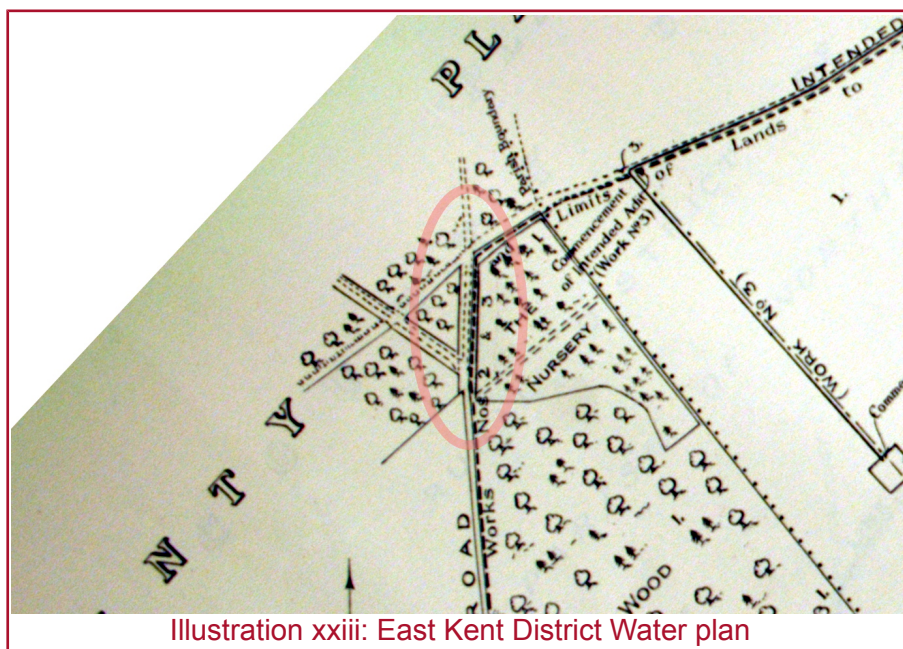


Illustration xxiii: East Kent District Water plan

J.3. **Description:** The application way is shown in the deposited plans for an Act<sup>13</sup> to extend the area of supply of the East Kent District Water Company to Great Mongeham, and to install a pumping station to the east of Willow Wood. The application way falls just outside the limits of deviation, but the application way is shown as a continuation of Roman Road to the south of A and to the north of B.

J.4. **Conclusion:** The application way between A and B is shown identically to other roads on the plan which are now recognised as public roads, and it is reasonable to deduce that the way was perceived to be of the same status.

J.5. **Points:** 2

<sup>12</sup> Q/RUm/1270

<sup>13</sup> The East Kent District Water Act 1930, c. lxxxiii