

Saltwood Castle bridleway: application to record a bridleway from Saltwood Castle to Blackhouse Hill, Saltwood, and to record width

Historical document analysis

I. Introduction

A. Quick reference

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

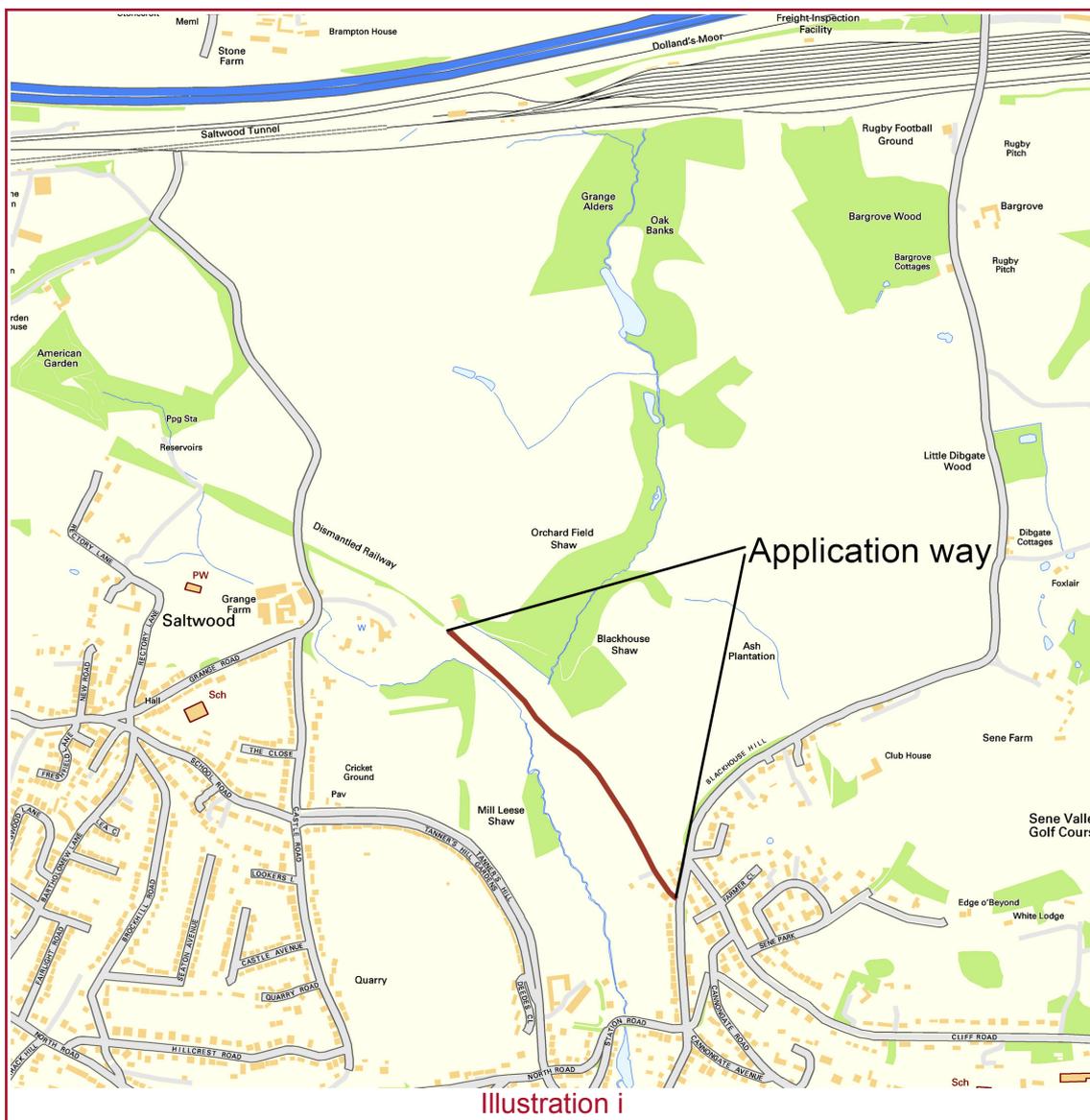


Illustration i

- A.2. Existing recorded public rights of way comprised in application way: HE287, HB23
- A.3. Parishes of: Saltwood, Hythe
- A.4. Ancient parishes of: Saltwood, Newington (detached)¹
- A.5. Hundred of: Heane
- A.6. Termination points: Saltwood Castle (bridleway HE285 adjacent bridge under former Hythe and Sandgate branch railway); Blackhouse Hill, adjacent to no.27
- A.7. Termination points Ordnance Survey grid references: TR16303593, TR16763538
- A.8. Postcode: CT21 5XA
- A.9. Ordnance Survey Explorer sheet: 138
- A.10. Ordnance Survey County Series 25" sheets: Kent LXXIV/11, 12

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 Saltwood Castle and Blackhouse Hill, partly in the parish of Saltwood and partly in the parish of Hythe. The way is currently recorded on the definitive map and statement as footpath HE287 and part of footpath HB23. The application seeks to record the way as a bridleway, and to record its width.

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) that a way which is shown on the definitive map and statement for Kent as a footpath should instead be shown there as a bridleway, and under section 53(3)(c)(iii), that the particulars contained in the definitive map and statement require modification as to the width of the way.

D.2. The way begins on bridleway HE285 at B (Ordnance Survey grid reference TR16303593) immediately east of Saltwood Castle where the bridleway turns from south-east to north-east to pass under the former Hythe and Sandgate branch railway. The way continues instead along the south-west side of the embankment of the former railway along an enclosed metalled track for a distance of 225m to a point S (TR16463576) opposite the site of a sheepwash. It continues for a further 30m along the track, before entering a pasture, and continues along the foot of the former railway embankment to a stile at C (TR16713544). It then continues in the same direction along a metalled drive

¹ Subsequently incorporated into the borough of Hythe.

before curving slightly to the east to join Blackhouse Hill at H (TR16763538) immediately below and to the south of the demolished railway bridge over the road.

D.3. The points A, S, C and H are identified in the application map at part II below.

D.4. In addition or, in the alternative if the application for the purposes of section 53(3)(c) (ii) is refused, the application seeks to record a width for the way as specified in Width of application way at item I.I below.

E. Nomenclature

E.1. No particular name is known for the application way itself, save that it is recorded in the definitive map and statement as footpath HE287 and part of footpath HB23: it is referred to in this application as the 'application way'.

F. Background

F.1. The application way between B and C is the product of a diversion order made by magistrates in 1927, so as to create a new 'footpath or bridleway' of specified width.

G. Grounds for application

G.1. The applicant submits that the diversion of a 'footpath or bridleway' so as to stop up the existing path and create a new path can be interpreted only so as to create a new path which is both footpath and bridleway — *i.e.* a bridleway.

H. Discovery of evidence

H.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent as a bridleway. It was included on the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 as a footpath, and the evidence of the parish council is that no consideration was given to the diversion order at the time of preparation of the draft map.² Therefore, there has been no previous discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is wholly new evidence.

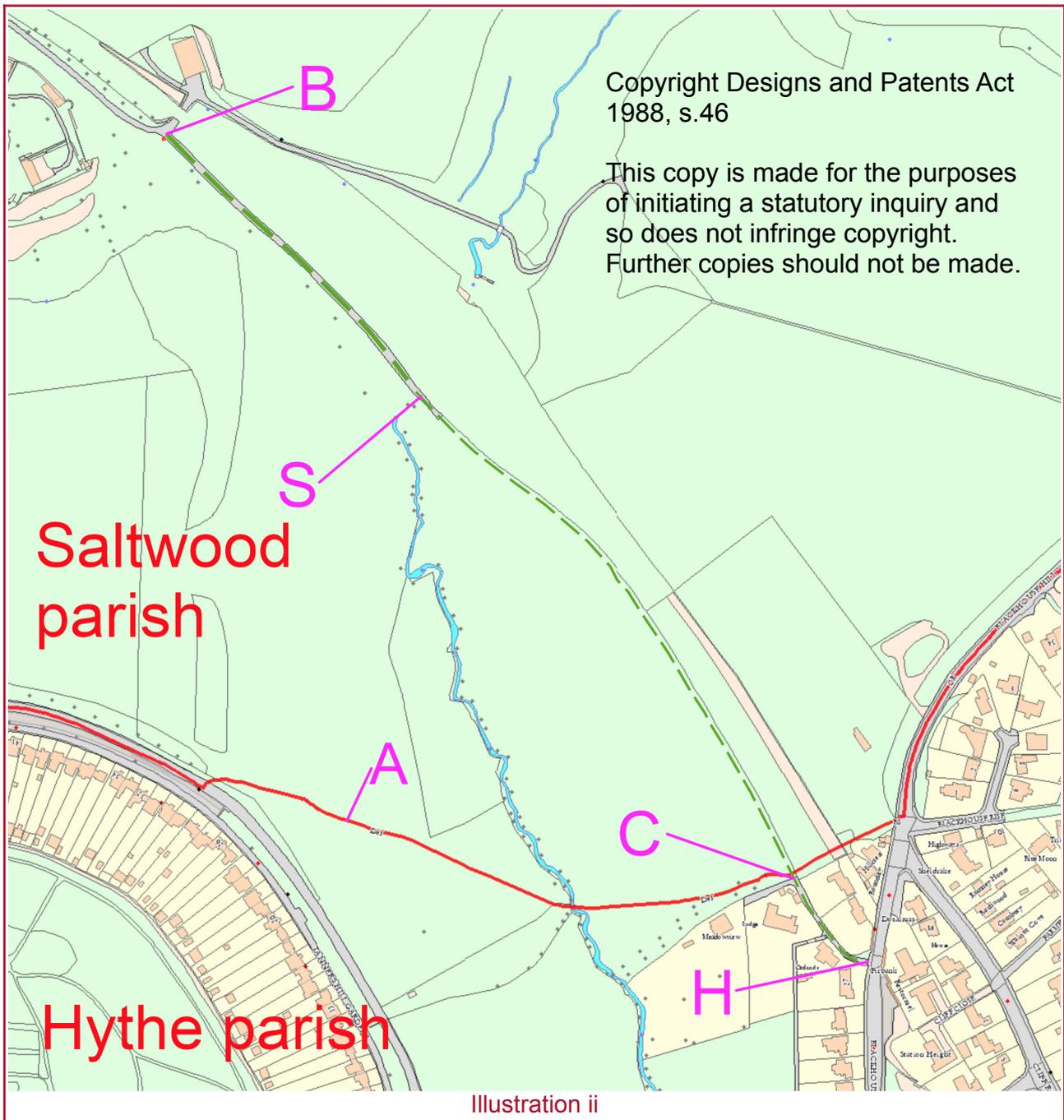
I. Width of application way

I.1. The diversion order provides for the way to be ten feet (3.05m) wide between B and S, and six feet wide (1.83m) between S and C. The width between C and H is unaffected by the order.

I.2. Application therefore is made for the purposes of section 53(3)(c)(iii) to record in the definitive statement the width of the way between B and C as specified in the diversion order.

² Email from parish clerk dated 3 September 2021.

II. Application map

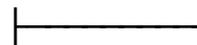


Map centred on S at TR164357

Scale: approx. 1:4,100 (when printed A4)

Application way is marked ---

Parish boundary (Hythe/Saltwood) ———



100m

III. Along the way



Illustration iii: At B



Illustration iv: Between B and S



Illustration v: Approaching S



Illustration vi: Between S and B



Illustration vii: At C



Illustration viii: at H

IV. Evidence

A. Saltwood public path diversion order

A.1. **Date:** 1929

A.2. **Source:** Kent County Archives³

A.3. **Description:** R L Lawson, of Saltwood Castle, in 1929 applied to the Elham Rural District Council to divert the public path between Saltwood Castle, on the bridleway adjacent to the bridge under former Hythe and Sandgate branch railway, to a point near Blackhouse Hill. In due course, the statutory formalities under s.85 of the Highway Act 1835 being observed, two justices of the peace made an order diverting the path to the present line of footpath HE285 as now recorded on the definitive map and statement.

A.4. Throughout the documentation, with occasional exceptions, the public path to be diverted and the replacement path are both described as a 'footway or bridle way'.

A.5. **Analysis:** S.85 of the Highway Act 1835 provides that the procedure for diversion of a highway may be put into effect where:

...it shall appear upon such View of such Two Justices of the Peace, made at the Request of the said Surveyor as aforesaid, that any public Highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the Public, and the Owner of the Lands or Grounds through which such new Highway so proposed to be made shall consent thereto by Writing under his Hand, or if it shall appear upon such View that any public Highway is unnecessary...

A.6. In such case, the proposed diversion is to be advertised locally, and the justices are to certify that the new highway is 'nearer or more commodious'. The certificate, and a plan, is then deposited with the clerk of the peace for the county, and read in open court at Quarter Sessions. It is open to any person 'injured or aggrieved' by the proposed diversion to appeal, and such appeal is then determined by a jury on its merits.

A.7. If there is no appeal, or the appeal is dismissed, the justices at Quarter Sessions must make an order for the diversion of the highway, but the existing highway is not to:

...be stopped until such new Highway shall be completed and put into good Condition and Repair, and so certified by Two Justices of the Peace upon View thereof, ...⁴

A.8. Such an order was proposed, advertised and made in relation to the application way. The existing path was stopped up between B and A,⁵ and a new path substituted between B and C. The diversion order was made on the grounds that the diverted path would be more commodious to the public.

3 Q/RH/2/852

4 S.91.

5 A is a point on the parish boundary between Saltwood and Hythe, which was at that time also the line of a right of way between Tanners Hill and C. It seems likely that the right of way between B and A continued south to a junction with Tanners Hill near the present junction with footpath HB23, but if so, no steps were taken to extinguish it.

A.9. Frequently and consistently in the order documentation, the path to be stopped up, and the path to be substituted, is described as a 'footpath or bridleway' (or 'footway or bridle path'), with the following exceptions:

Document	Description
Listing of documents ('listing')	Heading: 'Diversion and stopping up of a highway (Saltwood Castle right of way) 'Notices affixed at: each end of the highway' '...land through which new highway will be given'
Deposition of clerk to Elham Rural District Council sworn 24 August 1929 ('deposition of clerk')	Heading: 'Saltwood Castle highway diversion' para.1: 'a certain highway...namely a public footway or bridle path'; 'new footway or bridle path' para.2: 'the old right-of-way and to the diversion of the new footway or bridle path' para.4: 'proposed new highway' para.5: 'the said propo[osed]† old and new footways' para.6: 'the right of way'
Deposition of parish clerk dated 25 June 1929 ('deposition of parish clerk')	Heading: 'Diversion of right of way'
Parish council resolution dated 16 April 1929 ('parish council resolution')	Heading: Diversion of Right of Way' Resolution: 'diverting a public right of way'; 'substituting a right of way in lieu thereof'; 'proposed highway'
Deposition of surveyor dated 17 August 1929 ('depositions of surveyors')	Heading: 'Saltwood Castle highway diversion' 'plan of the old foot-way...and the footway proposed to be given in substitution'
Deposition of highway surveyor to Elham Rural District Council dated 26 August 1929 ('depositions of surveyors')	Heading: 'Saltwood Castle highway diversion' 1. 'footpath diversion'
Consents of landowner dated 16 March 1929 ('consents of landowner')	'diversion of the footway or bridle way' 'substitution thereof of a footway or bridle path' 'the old right-of-way and the substituted right-of-way' 'new or substituted right-of-way...closing of the old right-of-way'
Notice of landowner to Elham Rural District Council dated 16 March 1929 ('consents of landowner')	'highway...namely a public footway or bridle path' 'where the pathway forms a junction with a

Document	Description
	<p>pathway under a Railway Arch’ ‘footway or bridle path intercepts [at A] a footway’ ‘a new highway for use as a public footway or bridle path’ ‘the said old footway or bridle path’ ‘the proposed new or substituted footway or bridle path’</p>
<p>Public notice dated 30 July 1929 (‘public notice’)</p>	<p>‘a public footway or bridle path’ ‘such footway or bridle path’ ‘where the pathway forms a junction with a pathway under the Railway Arch’ ‘footway or bridle path intersects [at A] a footpath’ ‘a new highway substituted therefor which said highway’ ‘the said proposed new footway or bridle path’ ‘the new footway being 2111 ft...in length which said proposed new footway is coloured yellow’ ‘viewed the said highway...new proposed highway...proposed new highway’</p>
<p>Order (‘certificate’) of justices dated 26 August 1929 (‘justices’ order’)</p>	<p>Heading: ‘re Diversion of Footpath’ ‘diverting a certain highway...namely a public footway or bridle path’ ‘where the pathway forms a junction with a pathway under the railway arch’ ‘footway or bridle path intersects [at A] a footpath’ ‘a new highway for use as a public footway or bridle path’ ‘the said new substituted footway or bridle path’ ‘the new footway or bridle path’ ‘length of the new footway being Two thousand One hundred and eleven feet’ ‘when the proposed new footway or bridle path is made and opened as aforesaid of entirely stopping up the old footway or bridle path as useless’ ‘highway stopped up or diverted and of substituting therefor the said highway as previously described’ ‘the substitution of the new highway or</p>

Document	Description
	<p>bridle path for the old highway’ ‘proposed highway or bridle path’ ‘old footway or bridle path and the proposed new footway or bridle path’ ‘view the old footway...the proposed new footway’ ‘the old footway or bridle path...the proposed new footway or bridle path and also that the old footway or bridle path’ ‘proposed new footway or bridle path as of the old footway or bridle path’ ‘proposed new footway or bridle path’ ‘old footway or bridle path (the one at the end of the footpath proposed to be stopped up’ ‘foot of the proposed new footway or bridle path’ ‘the old footway or bridle path...new footway or bridle way’ ‘old footway or bridle path and of the proposed new footway or bridle path’ ‘old and proposed new footways and bridle paths’ ‘old footway or bridle path’ ‘old and new footways and bridle paths’ ‘old footway or bridle way...proposed new footway or bridle path’ ‘old footway or bridle way...new footway or bridle path’ ‘new footway or bridle way...old footway or bridle path’ ‘new footway or bridle way...old footway or bridle way’ ‘new footway or bridle path’</p>
<p>Certificate of justices dated 13 March 1930 (‘justices’ certificate’)</p>	<p>‘certain public footway or bridle path’ ‘new public footway or bridle path’ ‘public footway or bridle path...new public footway or bridle path’ ‘public footway or bridle path’ ‘the pathway forms a junction with a pathway under a railway arch’ ‘footway or bridle path intercepts [at A] a footpath’ ‘new highway for use as a public footway or bridle path’</p>

Document	Description
	'new substituted footway or bridle path' 'new footway or bridle path' 'length of the new footway being Two thousand one hundred and eleven feet' 'new footway or bridle path' 'new footway or bridle path'

A.10. The statutory documents describe the old 'footway or bridle path' (or a 'footway or bridle way') between B and A which is to be stopped up, and a new 'footway or bridle path' which is to be established between B and C (C being a stile on the footpath then existing between Tanners Hill and Blackhouse Hill, which passed through A).

A.11. Several of the statutory documents include occasional references only to a footpath. For example, the court order (annotated as the justices' certificate) is itself entitled 're Diversion of Footpath', and refers at one point of arrangements to 'view the old footway... the proposed new footway'. The surveyors' depositions and the surveyor's prepared plans refer only to a footpath or footway. Otherwise, the vast majority of references in every statutory document refers to a 'footway or bridle path' (or 'bridle way') which is to be stopped up and diverted, and a new 'footway or bridle path' (or 'bridle way') which is to be substituted.

A.12. It is suggested that the original intention was to divert the right of way as a footpath, but at some stage before the statutory machinery was engaged, it was accepted by the landowner and the council that the right of way was used as a bridleway. Therefore, it was decided that, in order to ensure a valid stopping up, the order should refer to a footpath or bridleway, and the replacement path should be likewise described.

A.13. No-one reading the public notice of the proposed diversion, or the other statutory documents, could fail to understand that what was being proposed was the substitution of a new footpath and bridleway — *i.e.* that it was a bridleway. If there was uncertainty about the true status of the old right of way, so that it could not be said whether it had acquired the status of bridleway through sufficiently long use on horseback, then that uncertainty was crystallised by the court order so as to establish a replacement bridleway.

A.14. The status of the replacement right of way cannot be conditional on the status of the old right of way — so that the new right of way would be established as a bridleway only if it could be shown that the old right of way was, at the time of the diversion, a bridleway. The court order must establish a replacement right of way of a specified and specific status, and the effect was to establish a bridleway.

A.15. There must be some uncertainty about the status of the application way between C and H, it already being in existence at the time of the diversion, and being unaffected by the diversion. It is submitted that, either the way between C and H already was a bridleway (that way passing also through point A, the terminus of the 'footway or bridle path' stopped up by the order, and thus being a legitimate means of onward travel for those using the stopped-up way on horseback); or that if it were not, the way became a bridleway through implied dedication.