

Great Selson Farm road: historical document analysis

Application to record a restricted byway from Great Selson Farm to Drainless Drove

I. Introduction

A. Quick reference

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

Great Selson Farm road location map

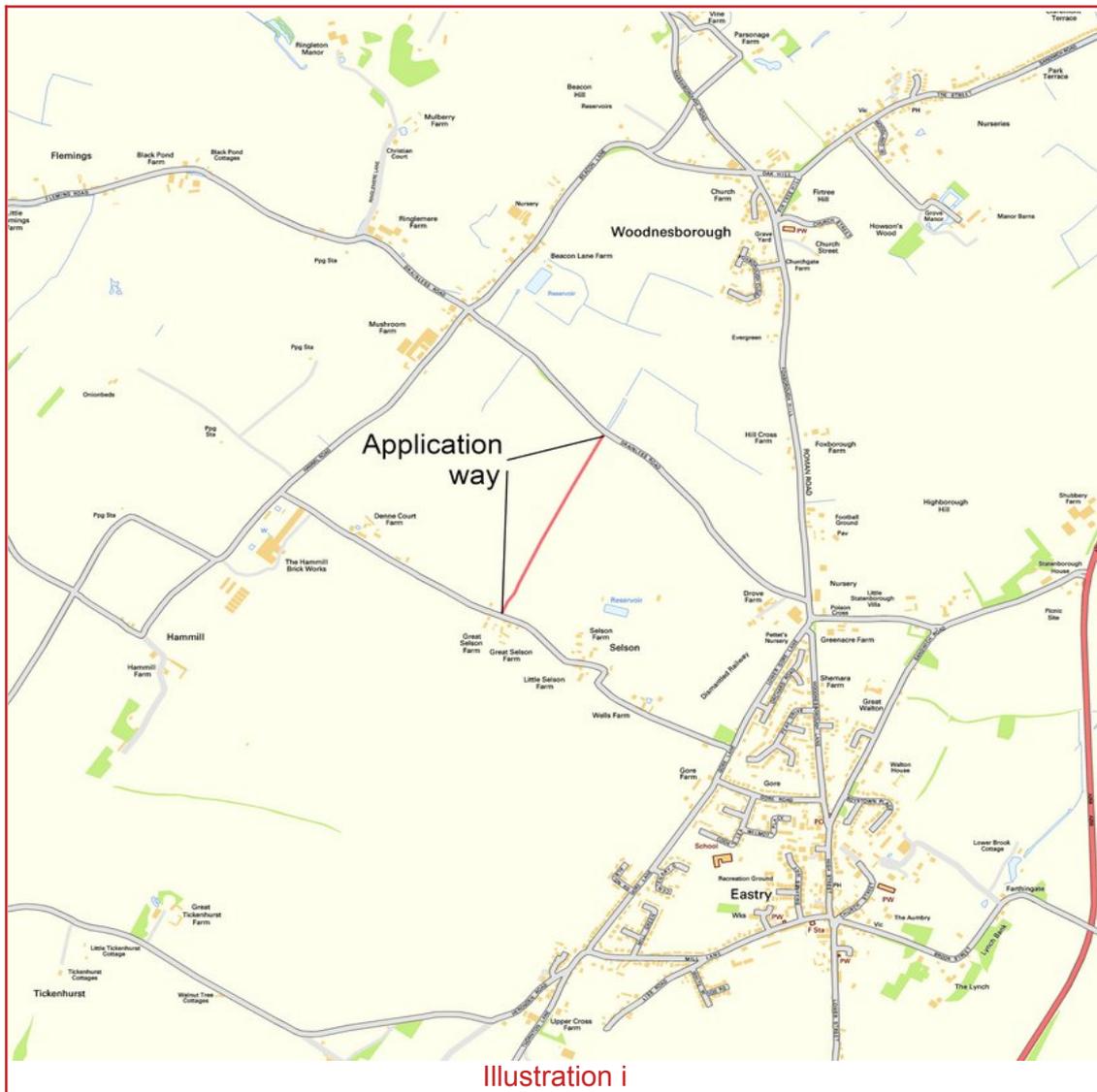


Illustration i

- A.2. **Existing public rights of way comprised in application way:** none
- A.3. **Parishes of:** Eastry and Woodnesborough
- A.4. **Former parish of:** Eastry
- A.5. **District of:** Dover
- A.6. **Hundred of:** Eastry
- A.7. **Termination points:** Selson Lane opposite Great Selson Farm, and Drainless Road about 700m northwest of Poison Cross
- A.8. **Termination points Ordnance Survey grid references:** TR30045558 and TR30325611
- A.9. **Postcode:** CT13 0EG
- A.10. **Ordnance Survey Explorer sheet:** 150
- A.11. **Ordnance Survey County Series 25" sheet:** Kent XLVIII/9

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 director and member of the Institute of Public Rights of Way and Access Management. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for the Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way at Selson, in the parishes of Eastry and Woodnesborough. 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) that a way should be added to the definitive map and statement for Kent as a restricted byway.

D.2. The application way begins on Selson Lane immediately west of and opposite Great Selson Farm at A (Ordnance Survey grid reference TR30045558), along a track, initially paved, north-northeast along the west side of a headland, for a distance of 610m to a junction with Drainless Road at B (TR30325611).

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

E. Background

E.1. The application way historically appears to be a minor road chiefly useful for local traffic.

E.2. The way appears on several historical maps, including the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.A below), the Barlow-Hasted map of Kent (item IV.B below), the Ordnance Survey, Old Series one-inch map of Kent (item IV.D below), but not clearly on the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C below). Critically, it is also one of the public roads identified as maintainable on the Contracted map of principal roads in Eastry (item IV.E below), and is excluded from apportionment in the Eastry tithe map (item IV.F below).

E.3. By 1910, the plans for the East Kent mineral light railway (item IV.J below) show the way as no more than an occupation road, but the plans and books of reference for the railway were not entirely reliable, and the assessment in 1910 cannot displace highway status acquired previously. Moreover, it is clear from the reports of the surveyor to and minutes of the Eastry Rural District Council (item IV.K below) that the railway assessment of the way was mistaken, and not endorsed by the then highway authority. Those reports, and the council minutes, support a status of at least bridleway, while a series of editions of Bartholomew's map (item IV.H below) also suggest a public path. However, while such twentieth century sources are supportive of a public right of way, they cannot displace earlier evidence of a public carriage road.

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*,¹ Lewison LJ said, at paragraph 22,

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

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

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

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

1 [2012] EWCA Civ 334

increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.²

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

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

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

F.4. 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. Discovery of evidence

G.1. There is no evidence that the application way has ever formally been considered for inclusion on the definitive map and statement for Kent. It appears that it was not considered for inclusion on the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949 perhaps because it was considered to be part of the ordinary road network. Therefore, there has been no 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.

H. Natural Environment and Rural Communities Act 2006

H.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 applies. The application therefore is made for a restricted byway.

I. Points awarded

I.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*.³

I.2. **Points:**

Item	Ref	Points
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	0

² [Consistency Guidelines](#): para.2.17.

³ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

Barlow-Hasted map of Kent	IV.B	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C	0
Ordnance Survey, Old Series one-inch map of Kent	IV.D	1
Contracted map of principal roads in Eastry	IV.E	4
Eastry tithe map	IV.F	3
Ordnance Survey County Series first edition twenty-five inch map	IV.G	1
Bartholomew's map	IV.H	1
Finance (1909–1910) Act 1910	IV.I	5
East Kent mineral light railway	IV.J	0
Eastry Rural District Council	IV.K	3
Wells and Little Selson farms conveyance	IV.L	1
National Farm Survey map	IV.M	2
Total points		22

J. Width of application way

J.1. On the Contracted map of principal roads in Eastry (item IV.E below), the application way is identified with an area of 0a, 3r, 2p, which is equivalent to 0.31 ha. The length of the application way is 610m, which suggests a mean width of 5.0m.

J.2. But on the Ordnance Survey County Series first edition twenty-five inch map (item IV.G below), the application way is identified with an area of 0.211 ha. This would suggest a mean width of 3.46m. This is very narrow for a carriageway, as it would not allow for two vehicles to pass.

J.3. As the contracted map is likely to have been prepared with the specific objective of devolving maintenance obligations on a contracted party, the width of the roads under contract would have been fundamental to costing the contract. Indeed, an endorsement on the map (para.IV.E.8 below) explains that its primary purpose is as a reference of the 'Distance Measured', and that the focus is on such measurements rather than the 'true Situation' of the roads.

J.4. The area of road stated in the contracted map is therefore likely to have been reliable, and provision is sought for a width of 5m.

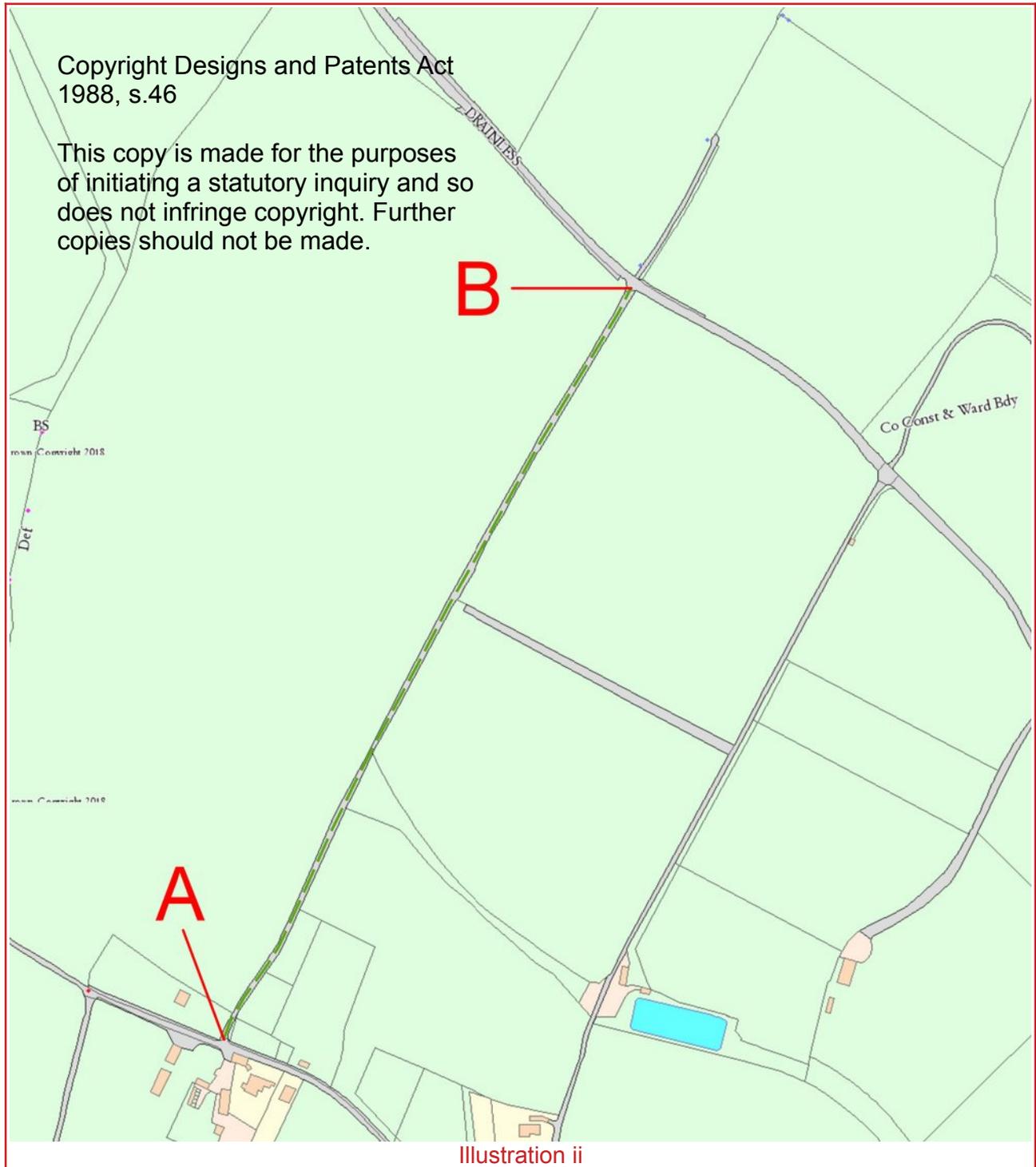
K. Limitations

K.1. There is no evidence on any document here referred to which suggests that the application way ever were subject to any limitation such as gate.

K.2. It is therefore requested that any order arising from this application expressly states that the order way is not subject to any limitation.

II. Application map

Application map



Map centred on TR30195590

Scale: approx. 1:4,300 (when printed A4)

Application way is marked 



III. Along the way



Illustration iii: At A, Selson Lane

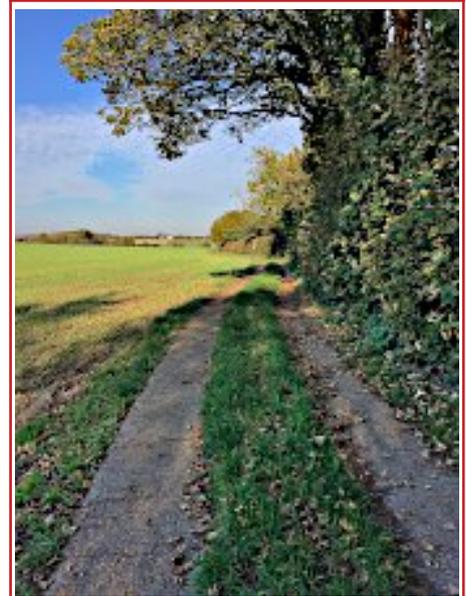


Illustration iv: Just north of A



Illustration v: At B, Drainless Road

IV. Evidence

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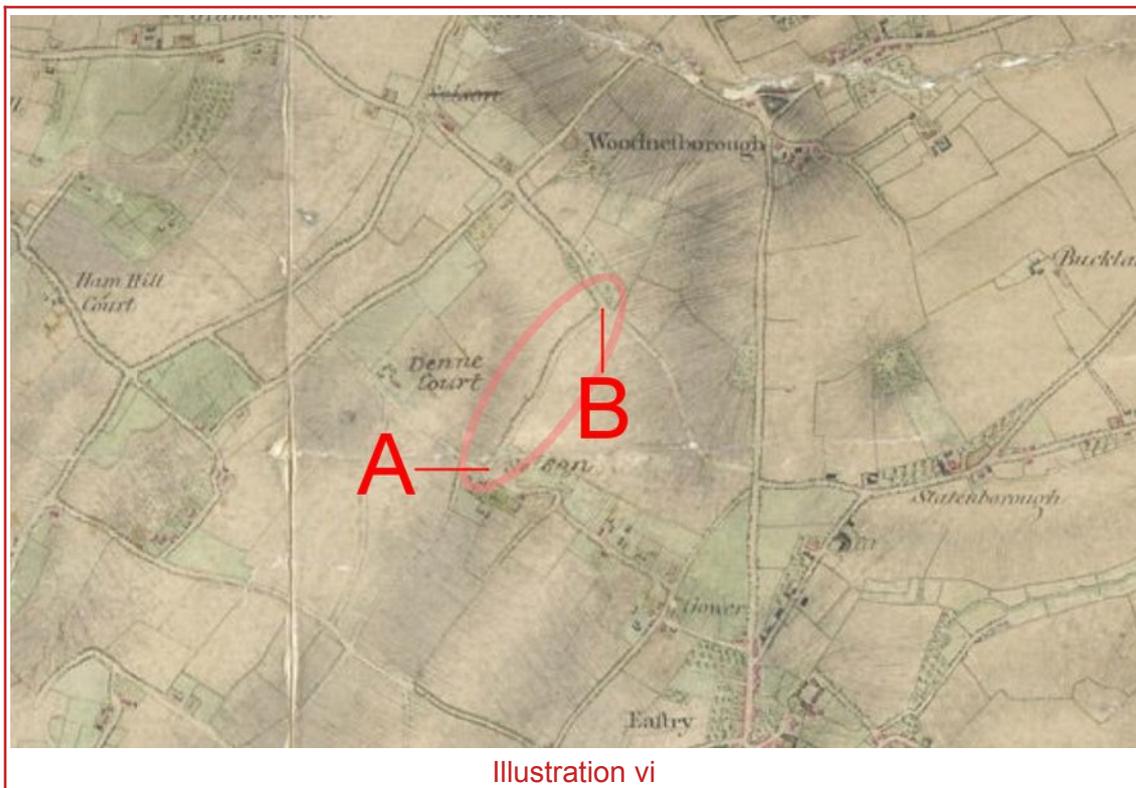
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A. Ordnance Survey surveyor's drawing, Canterbury (East)

A.1. **Date:** 1797

A.2. **Source:** British Library website, National Archives⁴

Ordnance Survey Drawing, Canterbury (East)



Topographic Survey manuscript 'fair' copy

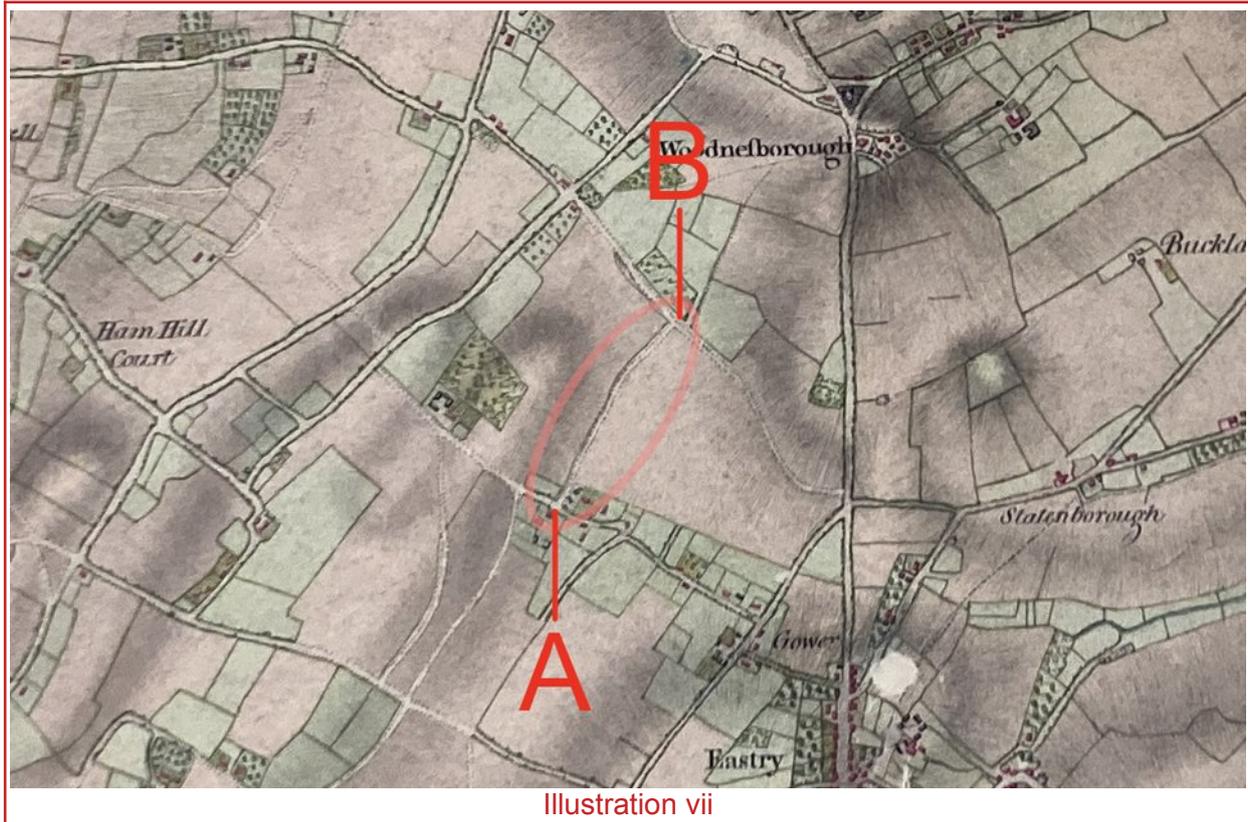


Illustration vii

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

A.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.⁵

A.5. It seems that good copies were made of the drawings to be held by the War Office. These copies are now held in the National Archives, described as, 'Topographic Survey manuscript 'fair' copies of Kent & Sussex, surveyed by Gardner & Yeakell, at 3 inches to 1 mile'.⁶ The conditions in which they have been stored, rolled, have ensured better preservation of the drawings.

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

A.6. The Ordnance Survey drawing shows the application way between A and B as a way enclosed on the west side and unenclosed on the east side, with shading on the west side.

A.7. **Conclusion:** The Ordnance Survey drawing is good evidence for the existence of the way in the late eighteenth century. It cannot be said with confidence that the way depicted is public in character.

A.8. **Points:** 0

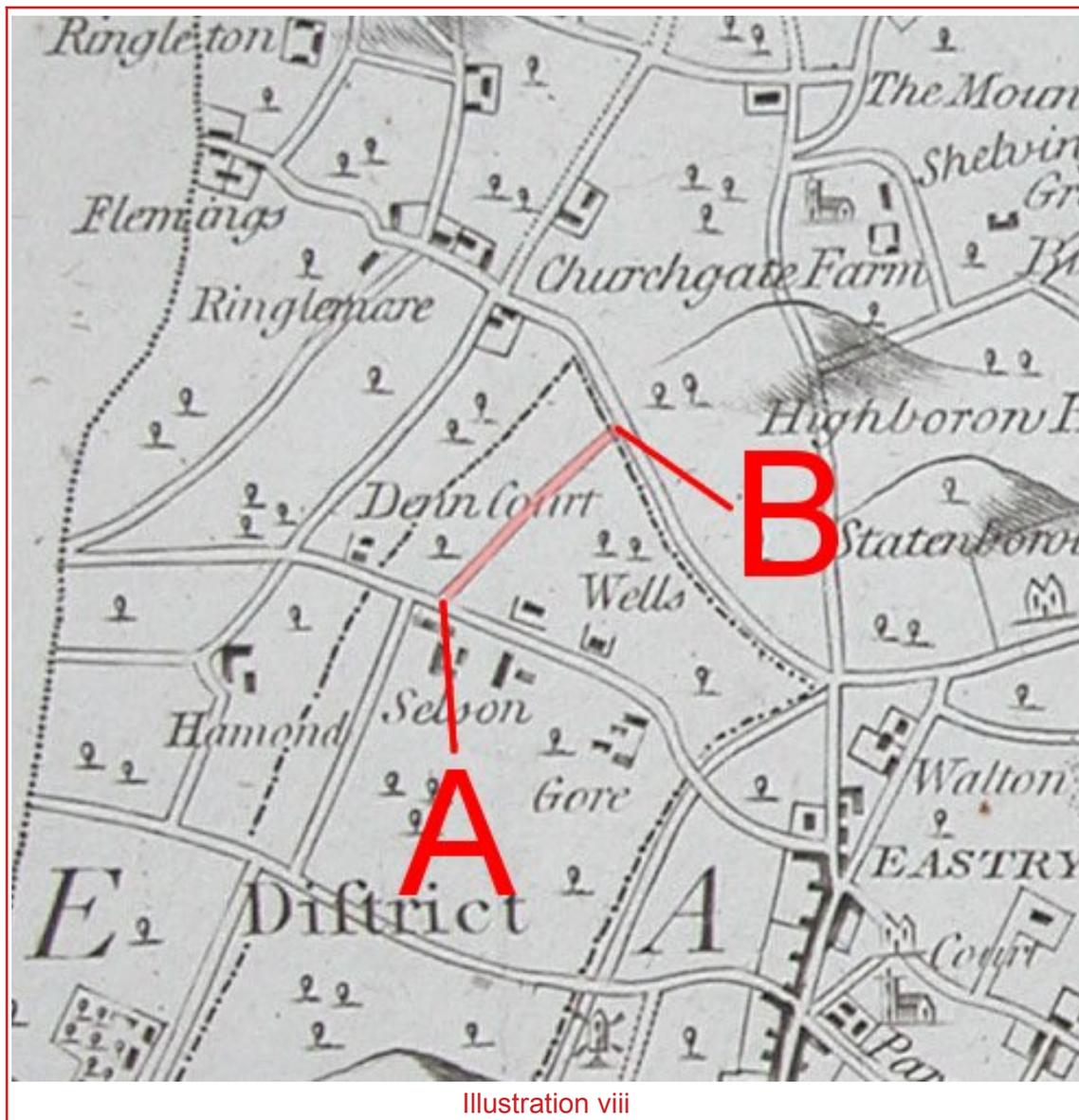
6 *Topographical survey and early Ordnance Survey maps at the National Archives: Public Record Office*, Ivan Parr, published in *Sheetlines* (Charles Close Society), no 68 (December 2003), pp.35–43 at p.38

B. Barlow-Hasted map of Kent

B.1. **Date:** 1797–1801

B.2. **Source:** Kent County Archives, also available at www.ancestry.com⁷: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

Barlow-Hasted map, Eastry hundred



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

B.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 hundred of Eastry.

⁷ Indexed at freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm

B.5. Barlow's map shows a way between A and B corresponding to the application way.

B.6. **Conclusion:** The Barlow-Hasted map is 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 (such as the track from Knowlton to Tickenhurst, and the drive through Updown park) are shown with lines across the junction with public ways. However, it cannot be assumed that the status is any greater than bridleway.

B.7. **Points:** 1

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

C.1. **Date:** 1801

C.2. **Source:** Mapco.net⁸: © Copyright David Hale and the MAPCO : Map And Plan Collection Online 2006–13

Mudge-Faden one inch map

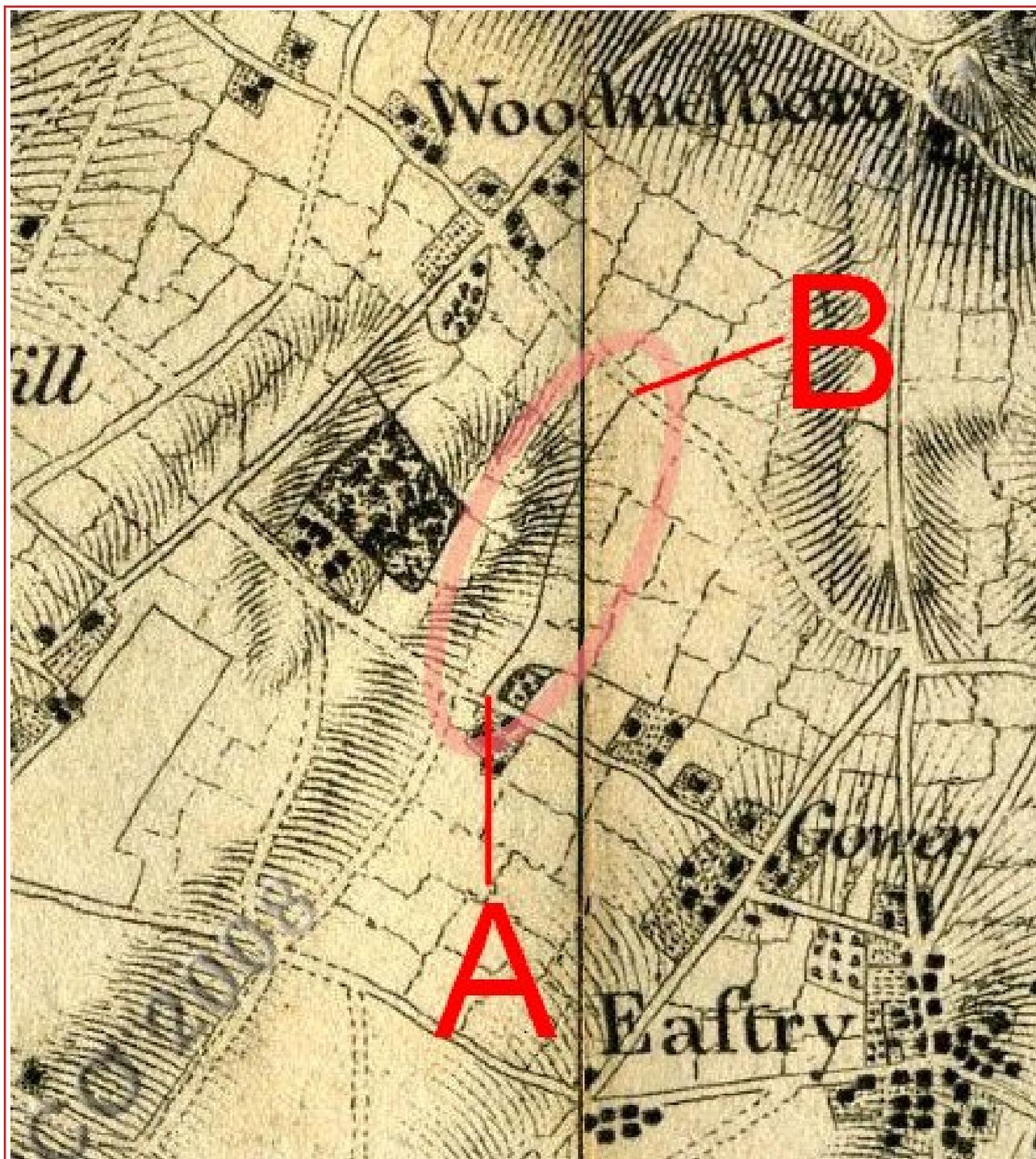


Illustration ix

8 mapco.net/kent1801/kent32_01.htm; mapco.net/kent1801/kent31_03.htm

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

C.4. This map of Kent was the first Ordnance Survey map to be published. It relied primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.A above). However, the map of Kent was not published by the Ordnance Survey until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. Unusually, the Mudge map does not clearly identify the application way, notwithstanding that it is marked on the Ordnance Survey drawing. The course of the application way is marked by a notional field boundary. An opening is present at the junction with Selson Lane, and a continuation may be discernable towards B marked by faint double pecked lines.

C.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 application way is not clearly marked on the map, but it may be faintly represented.

C.7. **Points:** 0

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

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

D.2. **Source:** National Library of Australia⁹

Ordnance Survey Old Series one-inch map



Illustration x

9 nla.gov.au/nla.obj-231917365

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.

D.5. The Old Series map shows the application way between A and B, unenclosed at least on the east side from the end of a field immediately north of A, to B (it is not entirely clear whether the way is shown as unenclosed on the west side).

D.6. The Old Series map confirms the data depicted in the Ordnance Survey surveyor's drawing, Canterbury (East) (item IV.A above), although, oddly, the way was not clearly identified on the privately-published Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above), issued in 1801.

D.7. **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.

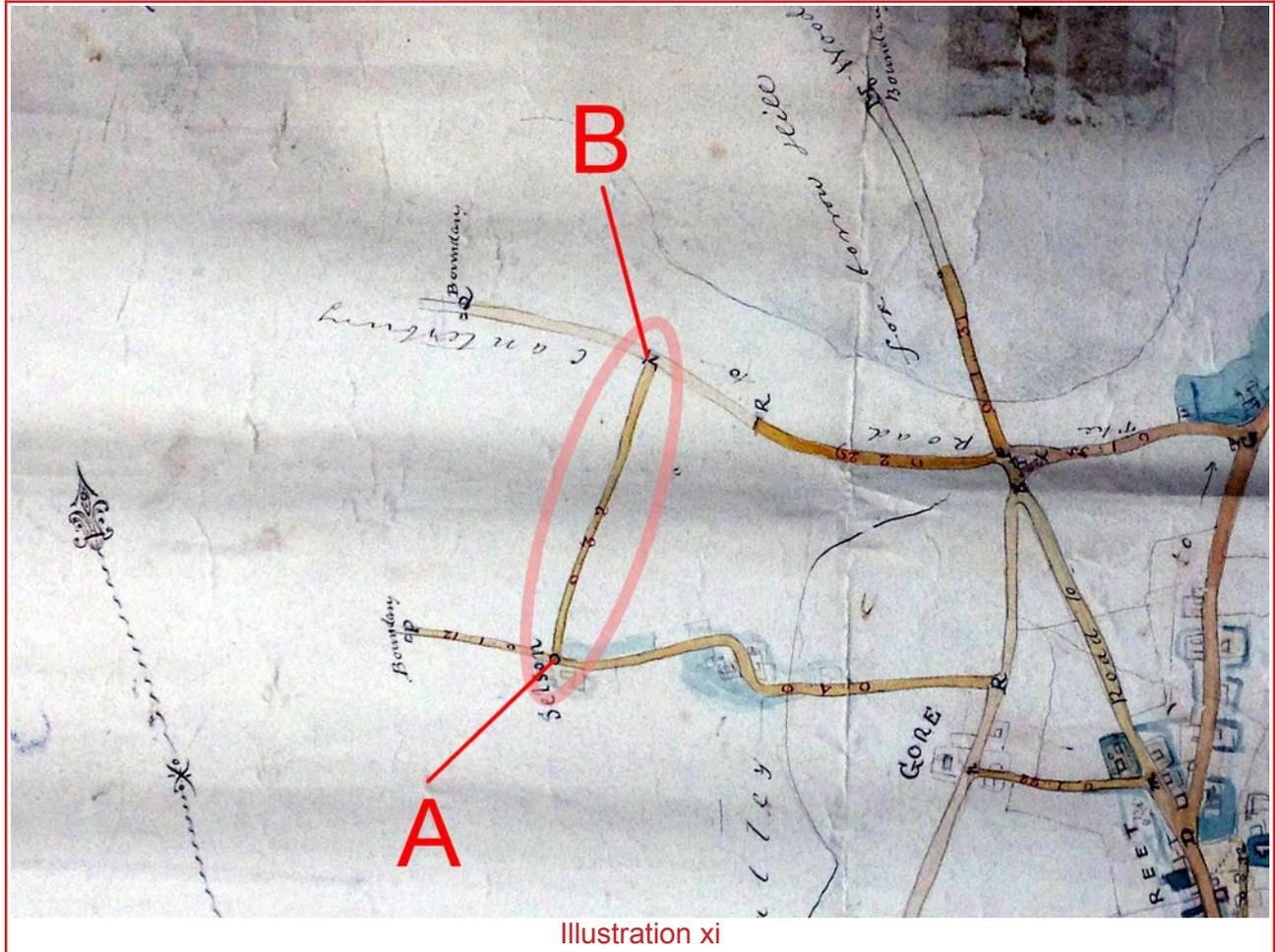
D.8. **Points:** 1

E. Contracted map of principal roads in Eastry

E.1. **Date:** 1836

E.2. **Source:** Canterbury Cathedral Archives¹⁰

Contracted map of principal roads in Eastry



E.3. **Description:** Original scale: none recorded; orientation: unchanged (approximately north, see compass on extract). A reproduction of the entire map appears in the annexe at p.46 below.

E.4. The map is derived from the surveyors records of the parish of St Mary the Virgin, Eastry, and was drawn in 1836 by surveyor J Foord of Sandwich. It is entitled, 'The contracted map of the principal roads in the parish of Eastry County of Kent 1836'.

E.5. The map is likely to be a record of those roads in the parish which are maintained by the inhabitants of the parish of Eastry, and which are therefore the responsibility of the surveyor appointed by the parish. By 'principal roads', the map appears not to record foot-paths and bridle-roads.

E.6. The map is referred to as the 'contracted map' probably on the basis that the maintenance of the parish roads was contracted out (in the same way that the collection of tolls

¹⁰ CCA-U3-275/22/2

on turnpikes was also contracted, or 'farmed', out). In that event, a clear definition of the responsibilities of the contractor, and the extent of the road network, was essential.

E.7. The map shows a road within the parish of Eastry coincident with the application way. The road is coloured sienna in common with other maintained roads within the parish of Eastry, and an area is given of 0a, 3r, 2p (0.31 ha).

E.8. The map is endorsed:

NB The Roads are given only as a Reference of the Distance Measured, places and their Names being omitted, as the time would not allow of Noticing their true Situation...as might have been done were the same required.

E.9. **Conclusion:** The map shows the application way as a road between A and B. The map shows only 'principal roads', and the map is therefore good evidence that the application way was regarded as a public carriage road maintainable by the inhabitants of Eastry.

E.10. **Points:** 4

F. Eastry tithe map

F.1. **Date:** 1841

F.2. **Source:** map: Kent County Archives¹¹; tithe award: Kent Archaeological Society¹²

11 Kent tithe maps are available as images on CD. Tithe surveying lines map: RD/Ea/P4

12 www.kentarchaeology.org.uk/Research/Maps/EAY/02.htm

Eastry tith map

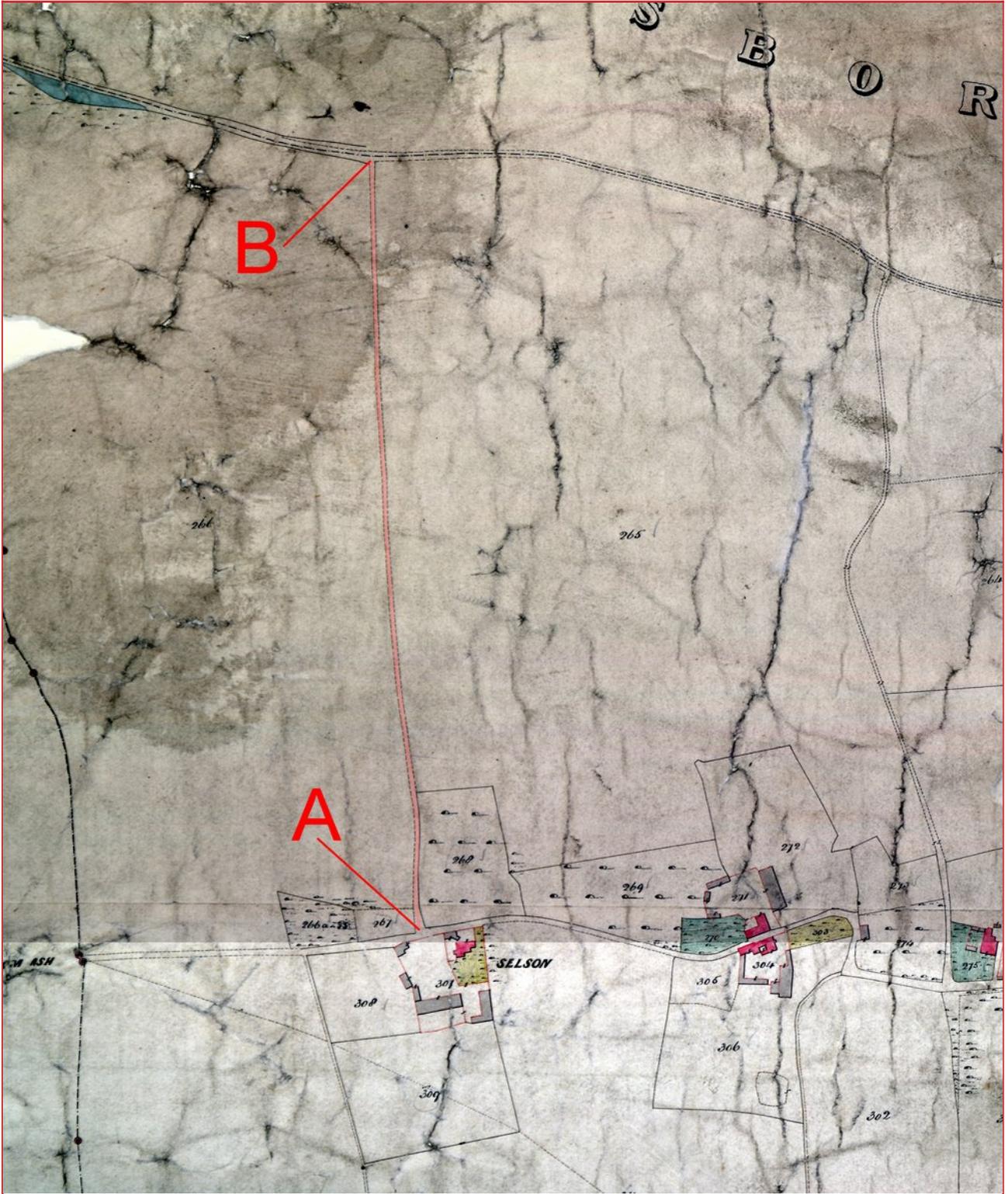


Illustration xii

Eastry tithing surveying lines map

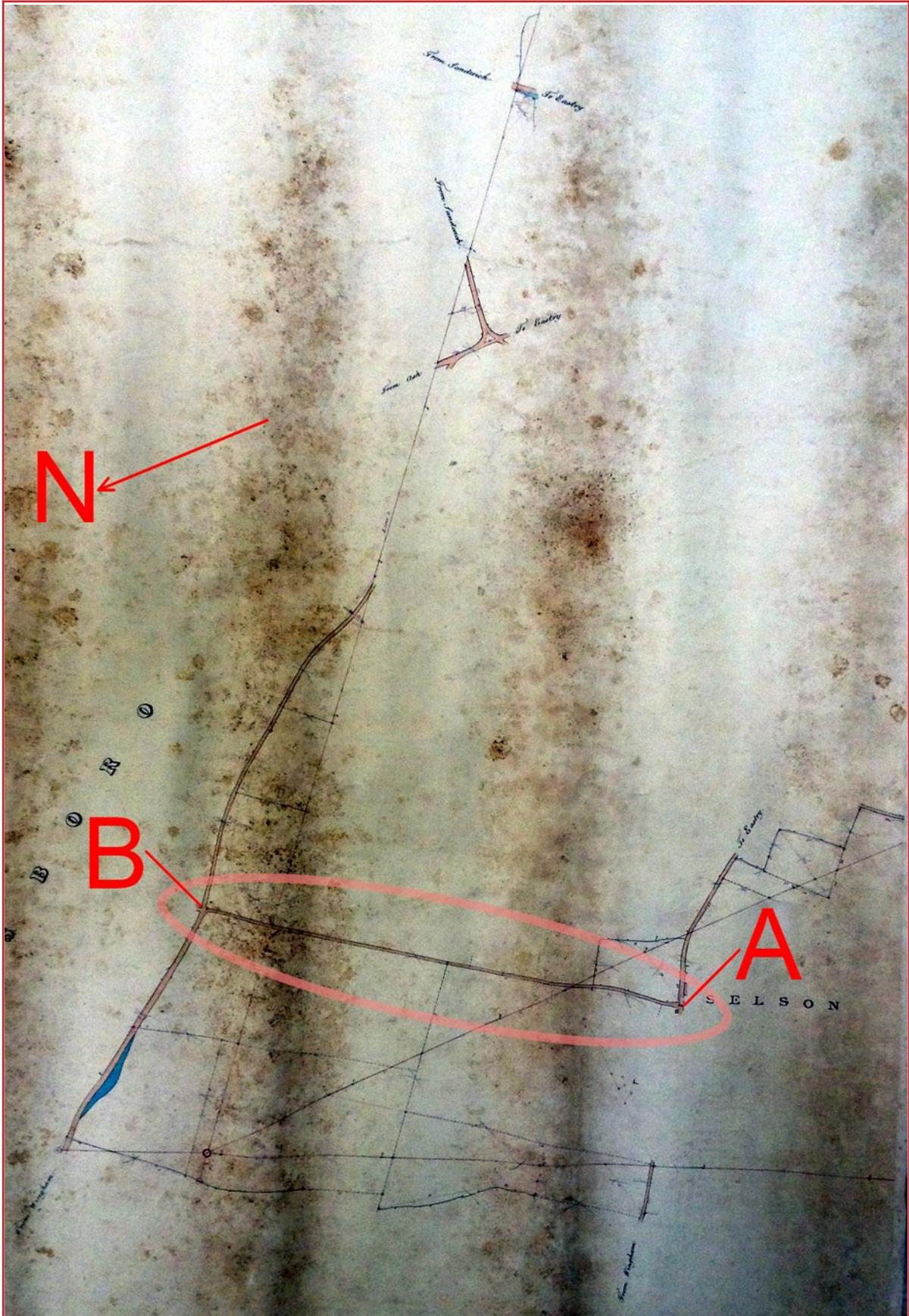


Illustration xiii

F.3. **Description:** The Tithe Commutation Act 1836 (and later amending Acts) provided for the assessment of tithes payable to the church by landowners, and for their commutation to a fixed sum. The Tithe Commissioners were established by the Act to regulate and confirm parochial agreements. Each parish was required to draw up a survey of the parish on a map, and an apportionment, identifying the parcels of land subject to tithe, the area of the land, its cultivation, and the rent charge payable.

F.4. On the tithe map of Eastry, the application way is shown as an unenclosed way between A and B (save for the most southerly part adjacent to a parcel 268 (Orchard) on the eastern side of the way). The way is shown separate from the adjacent parcels numbered 265 (Great Field) and 266 (Longtie Field) and is not braced with those parcels, nor is the way identified with a separate parcel number.

F.5. On the plan drawn up by the surveyor to assist in laying out the tithe map, the application way is shown coloured sepia, in common with the public roads which it joins at either end, as well as various other roads visible on the plan.

F.6. **Conclusion:** The absence of any titheable rating assigned to the application way is good evidence of public status. Other public roads of known status are also shown as untithed: Thornton Lane, Thornton Road, Venson Bottom, public bridleway EE266 (Venson Farm to Tilmanstone), Dover Road, Cater Road: some of these are specifically annotated with parcel reference 571, which does not appear in the tithe award, but is presumed to be 'roads and waste'. Whereas compare with driveways of presumed private status which are not: the way from just east of Little Selson Farm north to Drainless Road (approximately 300m east of the application way, which is braced with the adjoining parcels), driveway to Shingleton Farm, tracks parallel to but east of Thornton Lane, driveway to Updown House.

F.7. The application way is shown as generally unenclosed: as a private way, it would very likely have been assessed as a discrete parcel, or braced with the neighbouring land. It is not, and the most likely explanation is that, as a public road, it was regarded as not liable to be tithed.

F.8. It is not inevitable that untithed roads are public and tithed roads are private: contrary practice is encountered elsewhere. But there are two factors present in Eastry parish which suggest that it is a sound inference here. The first, noted above, is that other, clearly private, roads are either braced with neighbouring parcels or assigned their own parcel reference (other than reference 571). The second is that ways which were not capable of productive agricultural use could be omitted from the apportionment whether they were private or public. But in this case, the way is of minor status, which crosses (for nearly all of its length) open ground with productive land on either side. It is unlikely that such a way, if privately owned and with no public rights, would be excluded from assessment: it offered grazing which would be of value to the owner. But as a public way, with any grazing capacity vested in the parish surveyor, the way had no value to anyone apart from the parish, and could be excluded from assessment.

F.9. This conclusion is supported by the appearance on the surveyor's plan, in which the application way is shown coloured sepia, in common with other known public roads in the vicinity.

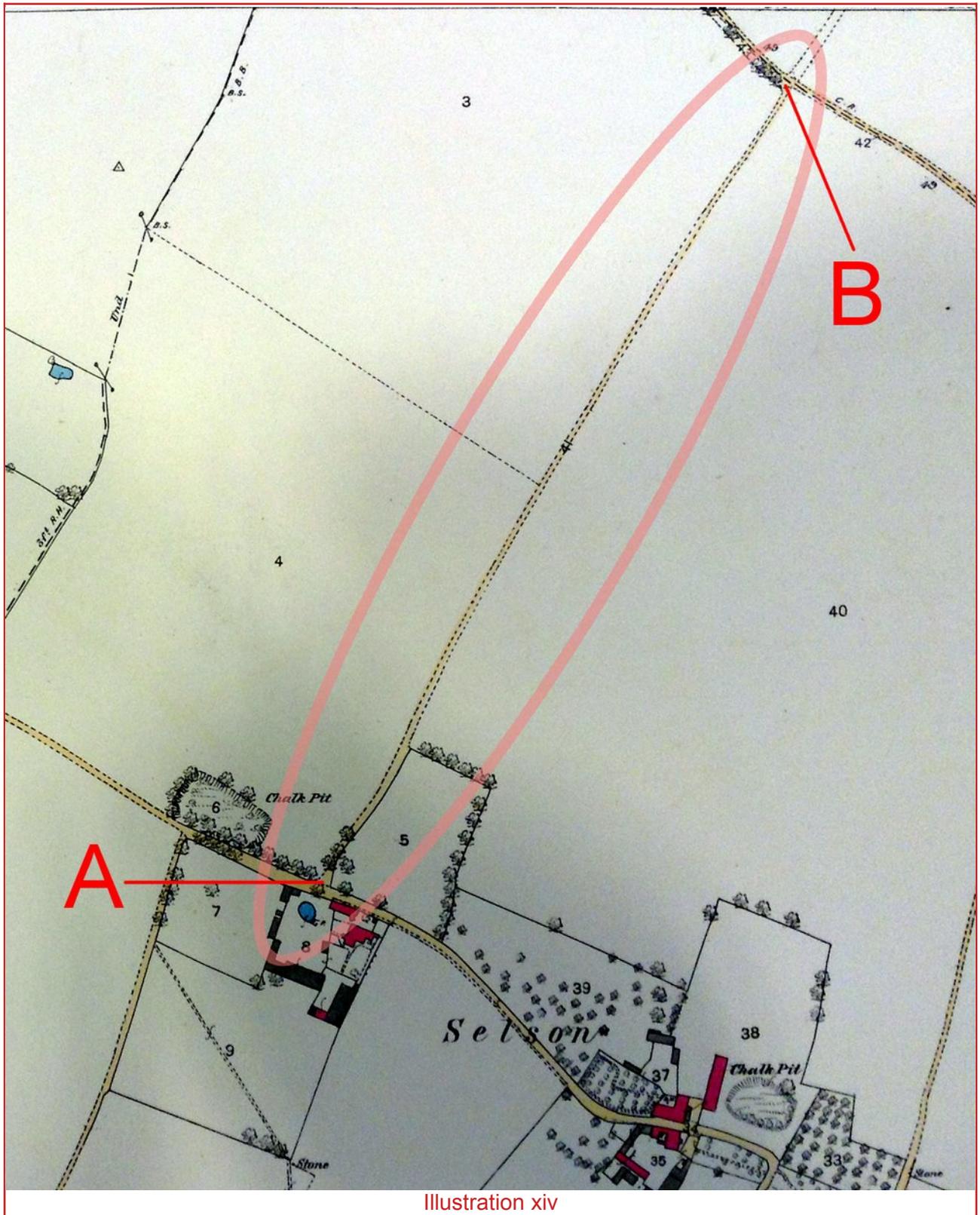
F.10. **Points:** 3

G. Ordnance Survey County Series first edition twenty-five inch map

G.1. **Date:** 1872

G.2. **Source:** British Library¹³

13 1st edition in colour.



OS 1:2,500 first edition area book, Eastry

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

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1	21.895	Arable.	37	.690	Houses, sheds, garden, &c.
2	1.067	Pasture.	38	2.704	Pasture and chalk pit.
3	26.987	Arable.	39	2.229	Orchard.
4	20.583	Arable.	40	47.225	Arable.
5	1.730	Pasture.	41	.522	Road.
6	.503	Chalk pit.	42	.563	Road (part of).
7	1.229	Pasture, &c.	43	.512	Road (part of).
8	.953	Houses, sheds, garden, &c.	44	22.888	

Illustration xv

G.3. **Description:** Original scale: 1:2,500; orientation: unchanged (north). 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. The plans show the application way throughout and hand-coloured in sienna, signifying that the way was made up.

G.4. The application way is identified as parcel 41.

G.5. In the book of reference for the parish of Eastry published with the first edition map, the entry refers to the parcel comprised in the application way as a 'road', with an area of 0.522 acres (0.211 ha).

G.6. **Conclusion:** The Ordnance Survey County Series first edition maps show that the application way was a metalled or made road throughout, capable of sustaining wheeled traffic. While by no means indicative of a public road, the metalled surface, recorded by the surveyor, is consistent with public status, and with the obligation of maintenance by the inhabitants of the parish identified in the Contracted map of principal roads in Eastry (item E above).

G.7. 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.

G.8. **Points:** 1

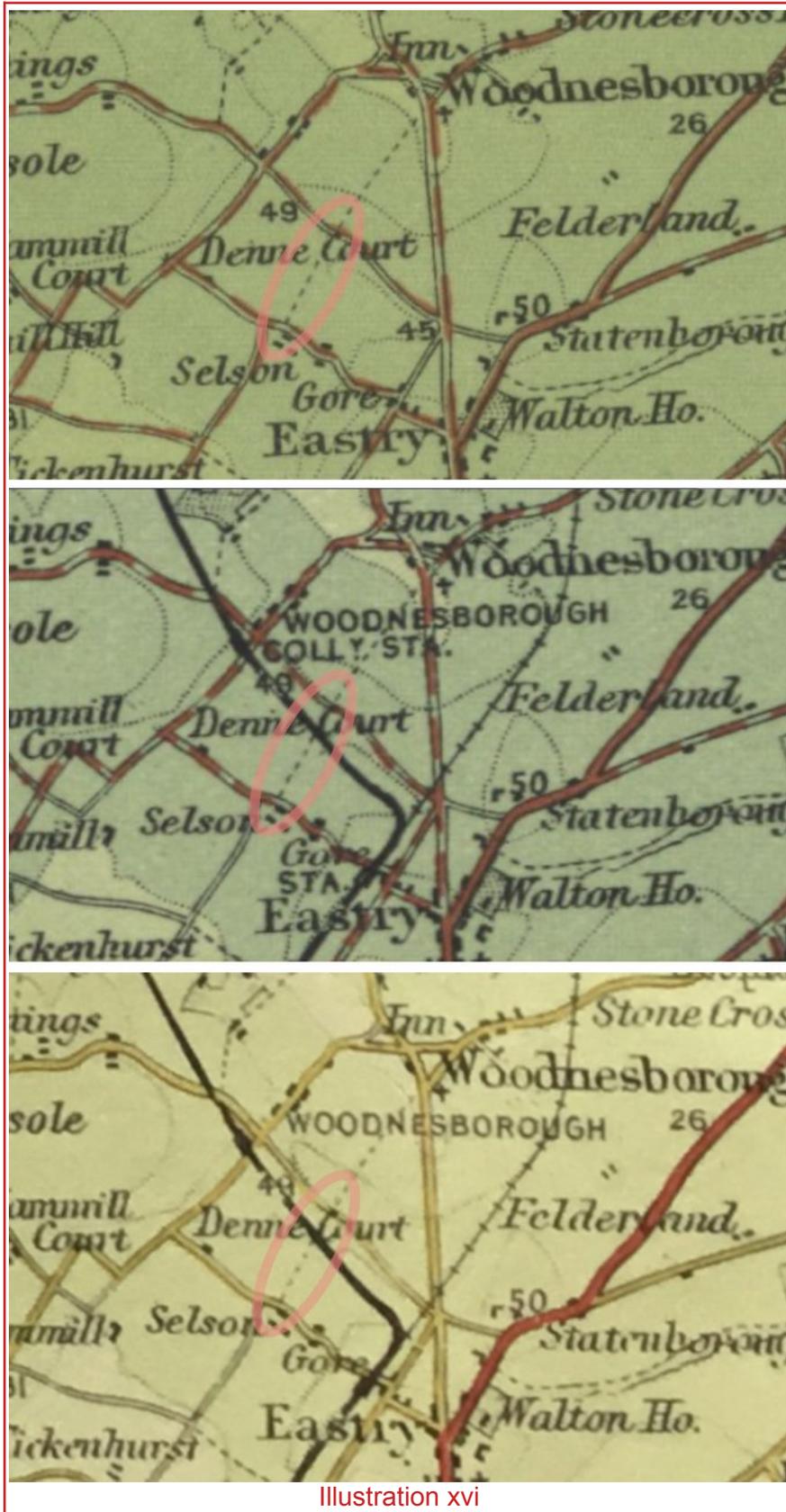
H. Bartholomew's map

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

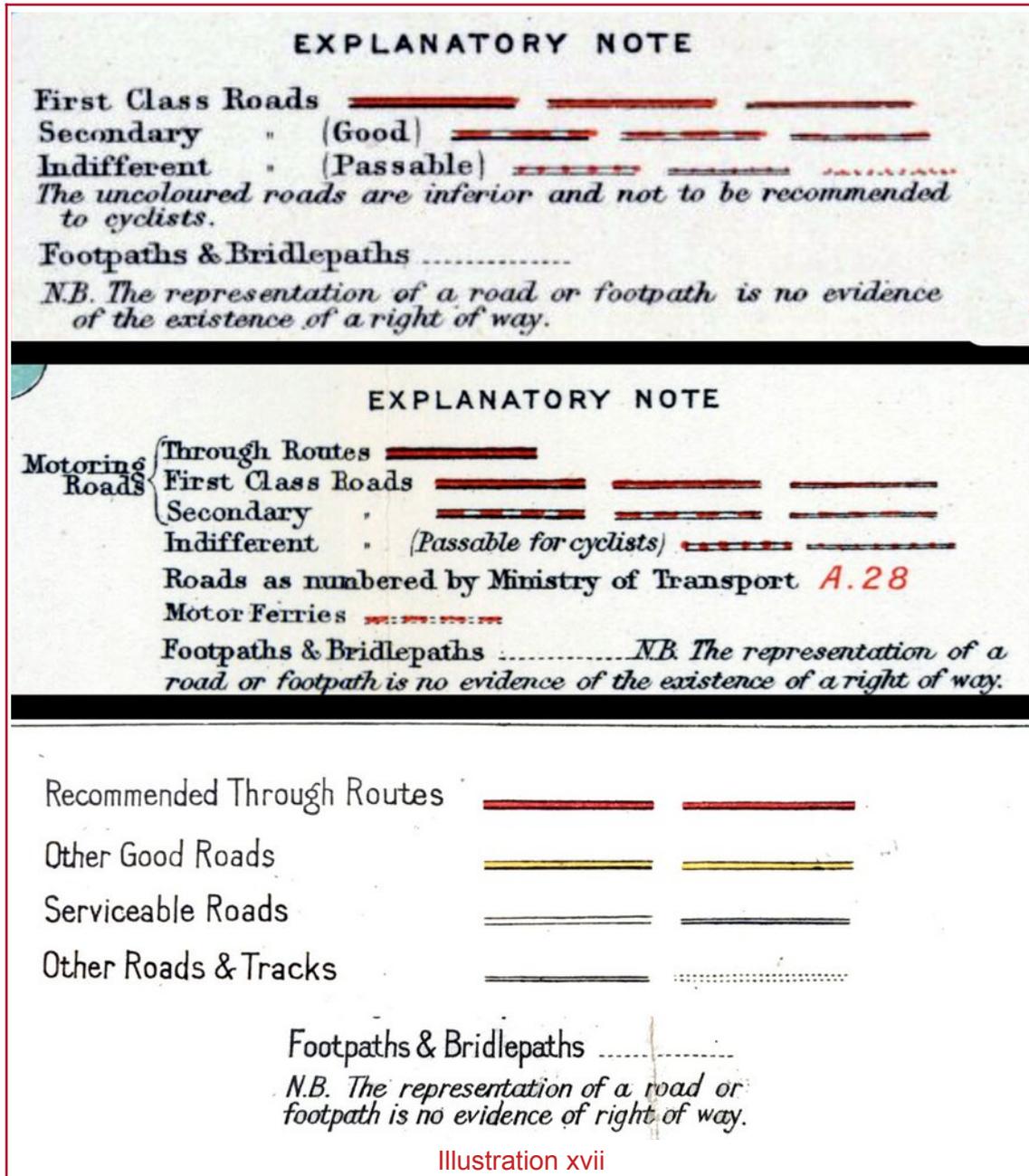
H.2. **Source:** National Library of Scotland¹⁵ (1904 and 1922); personal copy (1953 map)

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

Bartholomew's maps: 1904, 1922 and 1953 editions



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



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

H.4. Bartholomew's maps from the first half of the twentieth century show an evolving road network. However, the application way consistently is shown as a footpath or bridleway.

H.5. **Conclusion:** While the maps are not convincing evidence of public rights, it seems unlikely that an entirely private path, not subject to any public rights of passage, would have been depicted on successive editions over half a century without objection being made.

H.6. **Points:** 1

I. Finance (1909–1910) Act 1910

I.1. **Date:** 1911

I.2. **Source:** National Archives¹⁶

Finance Act map sheet Kent XLVIII/9

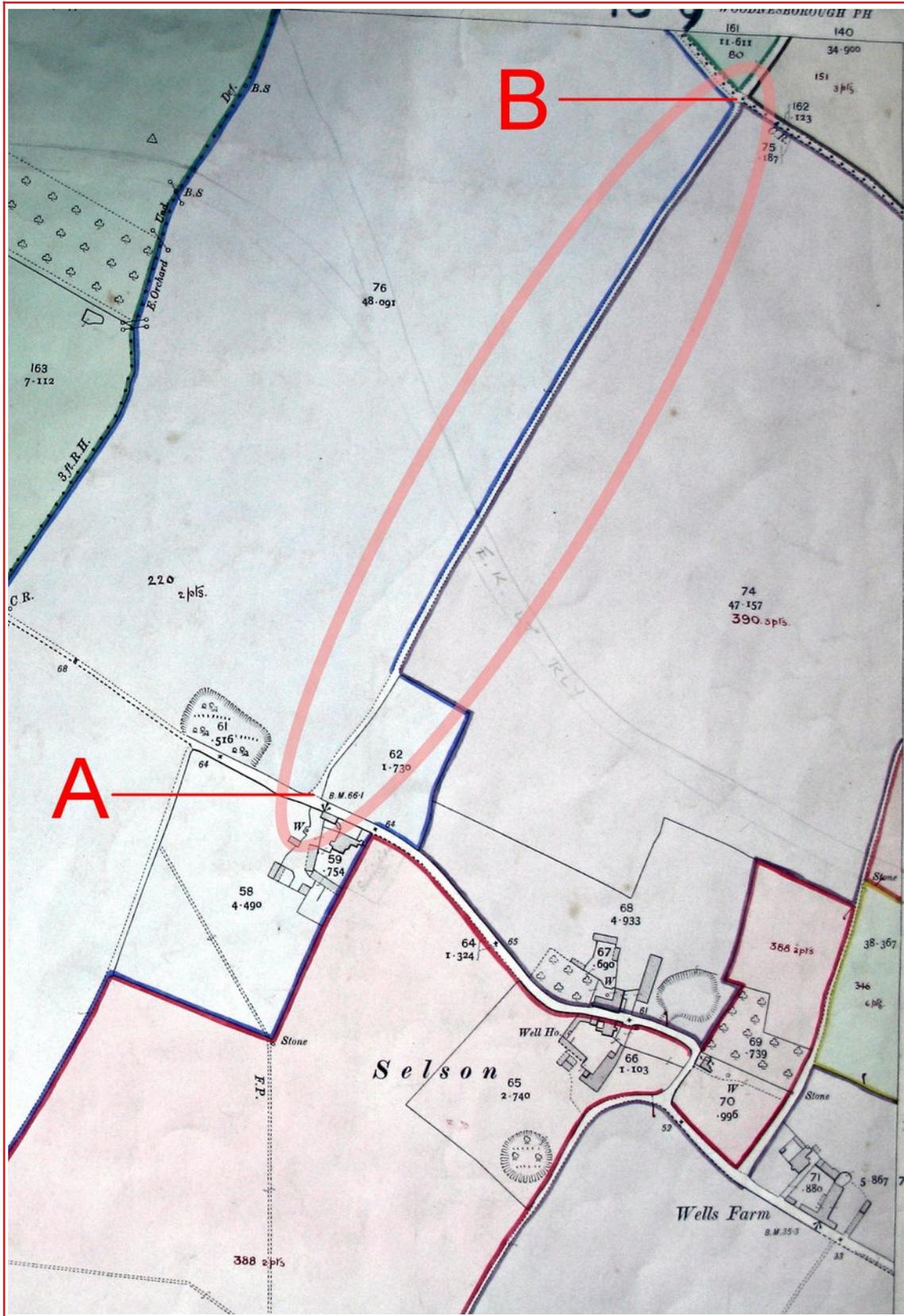


Illustration xviii

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

I.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.

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

I.6. In relation to the application way, it is generally excluded from assessment as a 'white road', except for the most southerly end of the way immediately north from A, which is included in hereditament 220.

I.7. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

I.8. **Conclusion:** The exclusion of the application way from assessment is good evidence that the way was considered to be a public highway, generally of carriageway status.

I.9. The incorporation of the southerly end of the application way in hereditament 220 does not diminish the conclusion: the practice of the valuer on this sheet was not to exclude some public roads from the assessment where the exclusion was unnecessary because the status was apparent from neighbouring treatment of the same feature: so, for example, the application way is known to be excluded because for the most part, it is: an inference of exclusion may be drawn for the southerly end without its being expressly drawn as excluded (it is very likely that the area of the southerly end was not included in the calculation of the area of hereditament 220).

I.10. Similarly, the public road which the application way joins at a T-junction at A is similarly shown within hereditament 220 in the vicinity of A, but its status as a public road is clear from the exclusion east of A.

I.11. In effect, the valuer adopted a short-hand which allowed for exclusion to be inferred where appropriate. From the valuer's (and the taxpayer's) perspective, what was important was that the area of the road was excluded from the area of the hereditament, and from the assessment.

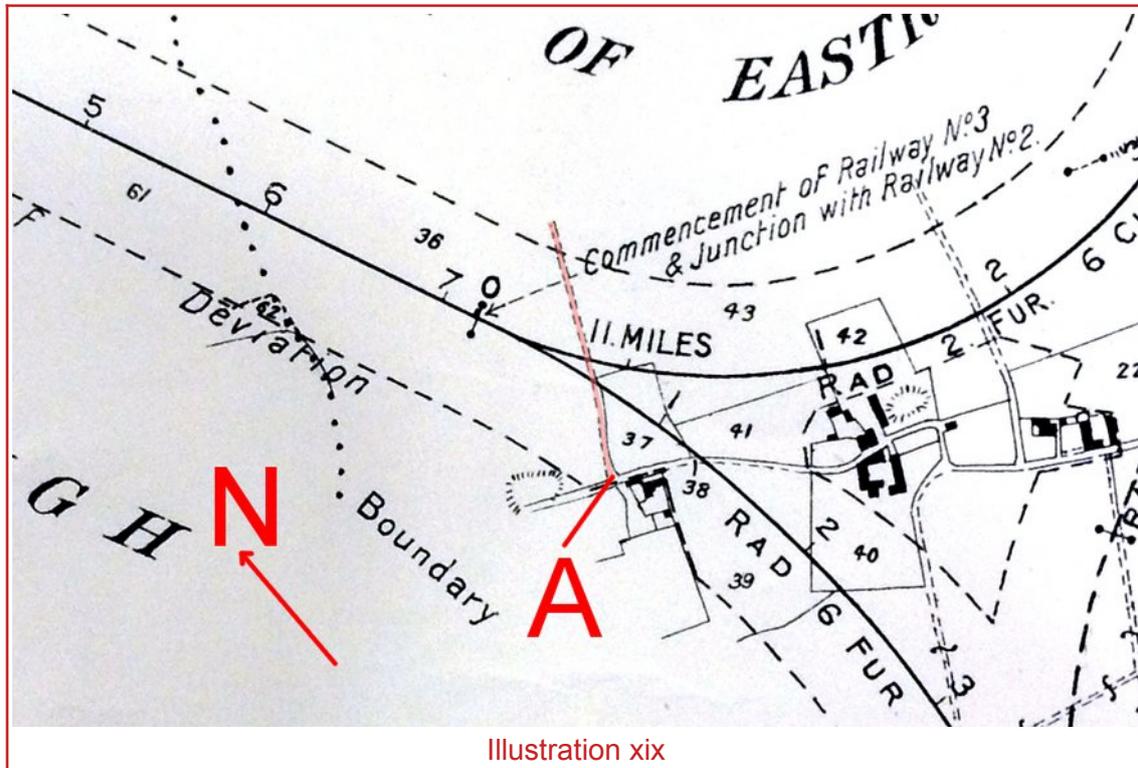
I.12. **Points:** 5

J. East Kent mineral light railway

J.1. **Date:** 1910

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

■ East Kent light railway deposited plan, lines 2 & 3



East Kent Light Railway book of reference

46

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of EASTRY, in the County of KENT.

RAILWAY No. 2—*continued.*

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
36	Arable and occupation road	The Right Honourable The Earl of Guilford	Lewis Pettman
37	Meadow	The Right Honourable The Earl of Guilford	Lewis Pettman
38	Public road	The Eastry Rural District Council	The Eastry Rural District Council

Illustration xx

J.3. **Description:** original scale: not known; orientation: unchanged (north marked on plan).

J.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.

J.5. Lines 2 and 3 were among the initial raft of proposals for a network of lines serving prospective East Kent collieries. The lines was authorised by the Board of Trade under the Light Railways Act 1896 in the East Kent Mineral (Light) Railways Order 1911, and were built, but the line 2 spur from west to north was not built (instead a shorter spur was built off line 3 to connect to line 1).

J.6. The application way is shown as forming the east boundary of parcel 36. In the book of reference, parcel 36 is recorded as 'Arable and occupation road', owned by the Rt Hon Earl of Guilford, and occupied by Lewis Pettman.

J.7. **Conclusion:** The East Kent Light Railway's surveyor tended to record public highways with the lowest possible status: BOAT EE335 (part of plot 1 in Eastry) is also recorded as a public bridleway, and numerous other examples exist of under- or unidentified public ways.

J.8. The recording of the application way as an occupation road is some indication of the reputation of the way at the date of the survey (1910), but by no means conclusive, nor capable of displacing status previously recognised.

J.9. **Points:** 0

K. Eastry Rural District Council

K.1. **Date:** 1890, 1913

K.2. **Source:** Kent County Archives¹⁸

Report, 7 January 1890

Spillstone
7 January 1890.

To the Chairman & Members
of the Eastry Highway Authority

Gentlemen
Woodnesborough

I have to report that
Mr. Henry Samariss, Wells Farm, Eastry,
has stouped up a Footpath in his
field between Mr. Baker's land and
his, which is a continuation of the one
that leads from Selson to Woodnesborough.
I wrote him regarding this on the 19th
ultimo, but as he has taken no notice
of my letter, I have brought the matter
before you.

Called to order
Mr Samariss
re-estate road

Illustration xxi

Rastry June 24th 1913

To the Chairman & Members of the
Rastry Rural District Council.

Gentlemen

Light Railway Crossings

In reference to my report at last meeting
about the rough state of road,
where the Light Railway had crossed
over at bottom of Chapel Hill Lytham.

The Contractor has had it rolled
and replied to my letter saying he
had made arrangements to make
everything safe. I met Mr. Brotherton
the Contractor's Manager in reference to
the condition they have left the road
where they have crossed road near
Wells Farm Rastry. The Manager
referred me to Mr. Stevens the Engineer.
As the work had been carried out
to his instructions I wrote Mr. Stevens
last night.

Blank to write

Illustration xxii

Report, 8 July 1913

Eastbury July 8th 1913

To the Chairman & Members of the
Eastbury Rural District Council

Gentlemen

Light Railways

In reference to my report at last meeting
about the rough state the contractor had
left the road, where the line had
crossed road near Wells Farm Eastbury.
This has since then been steam rolled &
Mr. Stevens the Engineer has written saying
it is only a temporary arrangement.

Illustration xxiii

Report, 5 August 1913

Eastbury August 5th 1913

To the Chairman & Members of the
Eastbury Rural District Council.

Gentlemen

Light Railways

In reference to letter received from
Mr. F. A. Blake about the level crossings
at Thornton Park & Wells Farm Eastbury
being dangerous. Mr. Wilks has now
had road filled up on either side of rails.

Illustration xxiv

Minute, 5 August 1913

East Kent Light Railways
Also a letter from the Woodnesborough Parish Council with reference to the obstruction of a footpath leading from Worth to Woodnesborough through Buckle's field. The Clerk stated he had called the Surveyor's attention to the matter and also to the level crossing near Thornton Bad and at Welby Farm. The Surveyor reported the steps taken by him with reference to the matter complained of. Befund

Illustration xxv

Report, 5 November 1913

Bastry November 25th 1913
To the Chairman & Members of the
Bastry Rural District Council
Gentlemen
Woodnesborough
In reference to letter received at last meeting from the Woodnesborough Parish Council, about the bridge leading from Selson Farm Bastry to Woodnesborough, which being left dangerous, where the Light Railway has crossed it.
I have inspected this & found one of the sleepers loose and wanted filling up a little each side of metals, which has now been done.

Illustration xxvi

Minute, 11 November 1913

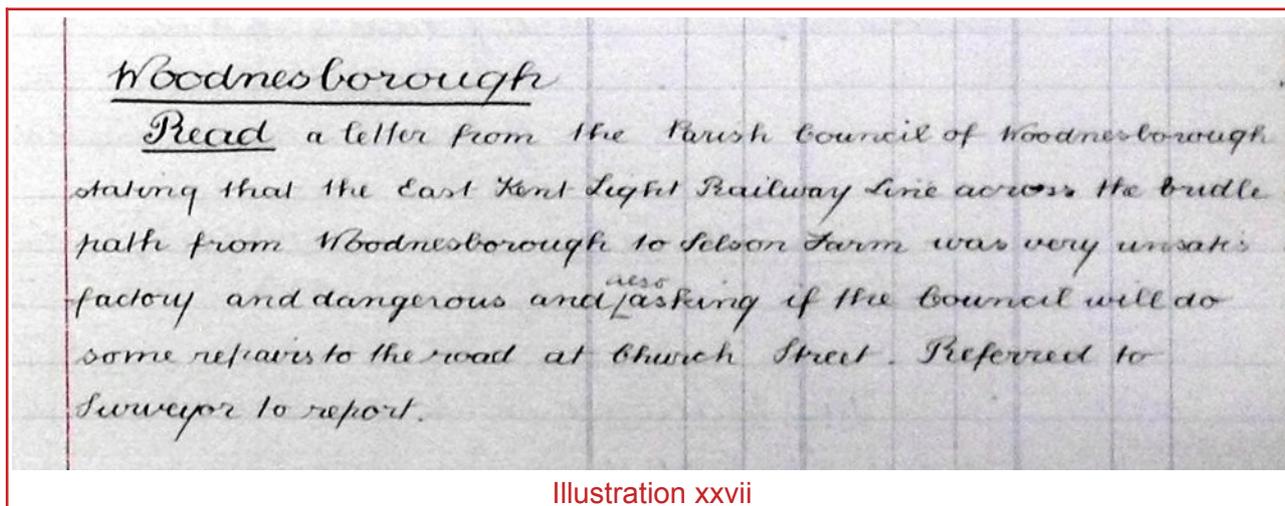


Illustration xxvii

Minute, 25 November 1913

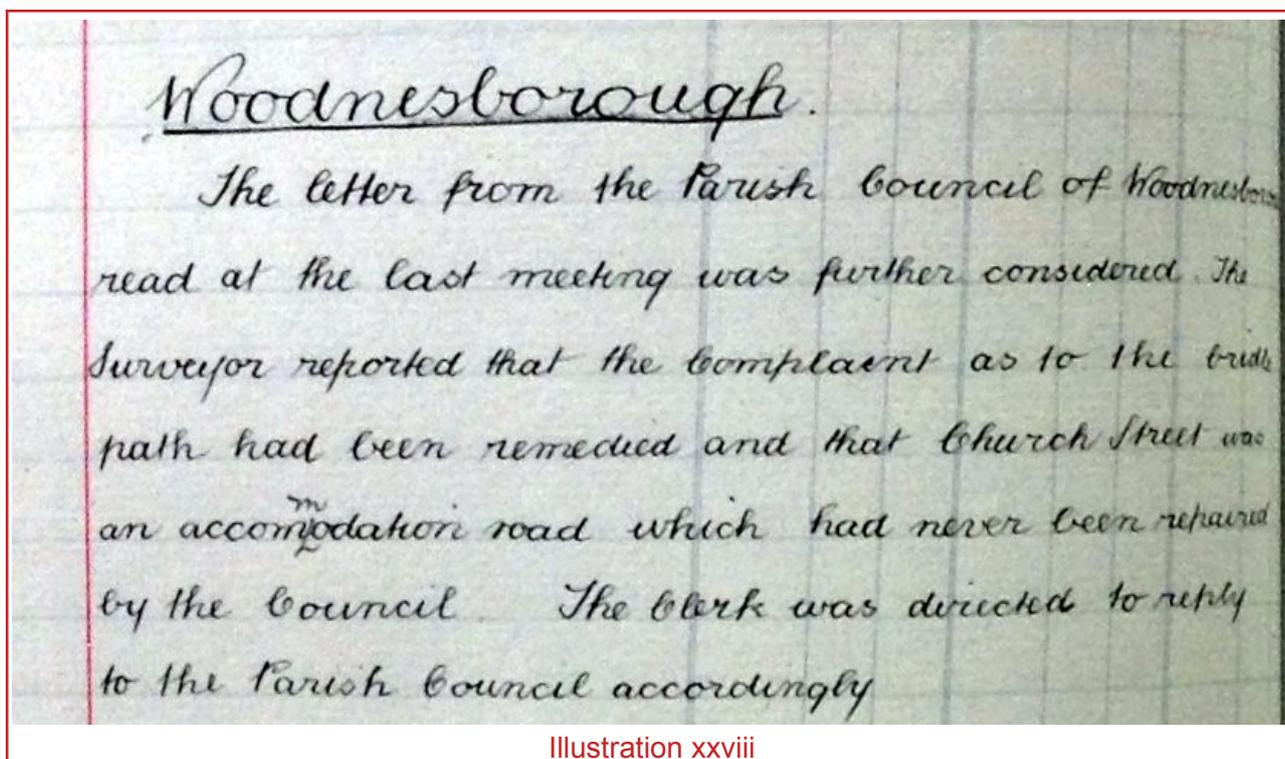


Illustration xxviii

K.3. **Description:** The Eastry Rural District Council (formerly, the Eastry Rural Sanitary Authority) was responsible for the management and maintenance of non-county roads in its area between the winding up of the Wingham Highway Board in 1880 and the transfer of highway functions to Kent County Council in 1929.¹⁹

K.4. The council, at its meetings, received regular reports from its appointed surveyor. These reports were recorded in the surveyor's report books.

K.5. Reference appears to be made to the level crossing across the application way in the

¹⁹ See [s.30](#) of the Local Government Act 1929.

surveyor's reports, which implies a public status to the way.

K.6. 7 January 1890, p.130²⁰ (Illustration xxi):

Gentlemen

Woodnesborough

I have to report that Mr Henry Famariss, Wells Farm, Eastry has ploughed up a Footpath in his field between Mr Baker's land and his, which is a continuation of the one that leads from Selson to Woodnesborough. I wrote him regarding this on the 19th ultimo, but as he has taken no notice of my letter, I have brought the matter before you.

K.7. The report book contains the marginal comment: 'Clerk to write to Mr Famariss requesting him to re-instate road.'

K.8. 24 June 1913, p.265²¹ (Illustration xxii):

Gentlemen

Light Railway Crossings

In reference to my report at last meeting about the rough state of road, where the Light Railway had crossed over at bottom of Chapel Hill Eythorne. The Contractor has had it rolled and replied to my letter saying he had made arrangements to make everything safe. I met Mr Brotherton the Contractor's Manager in reference to the condition they have left the road where they have crossed road near Wells Farm Eastry. The Manager referred me to Mr Stevens the Engineer as the work had been carried out to his instructions. I wrote Mr Stevens last night.

K.9. The report book contains the marginal comment: 'Clerk to write'.

K.10. 8 July 1913, p.267 (Illustration xxiii):

Gentlemen

Light Railways

In reference to my report at last meeting about the rough state the contractor had left the road, where the line had crossed road near Wells Farm Eastry. This has since then been steam rolled and Mr Stevens the Engineer has written saying it is only a temporary arrangement.

K.11. The report book contains a marginal tick.

K.12. 5 August 1913, p.1²² (Illustration xxiv):

Gentlemen

Light Railways

20 RD/Ea/H2 (1884–93)

21 RD/Ea/H6 (1908–13)

22 RD/Ea/H7 (1913–20)

In reference to letter received from Mr F A Cloke about the Level Crossings at Thornton Park and Wells Farm Eastry being dangerous. Mr Wilks has now had road filled up on either side of rails.

K.13. The report book contains a marginal tick.

K.14. The minute of the council meeting on that day records:

East Kent Light Railway

Also a letter from the Woodnesborough Parish Council with reference to the obstruction of a footpath leading from Worth to Woodnesborough through Buckland field. The Clerk stated he had called the Surveyor's attention to the matter and also to the level crossing near Thornton Oast and at Wells Farm. The Surveyor reported the steps taken by him with reference to the matters complained of. Deferred.

K.15. The minute of the council meeting on 11 November 1913 records:²³

Woodnesborough

Read a letter from the Parish Council of Woodnesborough stating that the East Kent Light Railway line across the bridle path from Woodnesborough to Selson Farm was very unsatisfactory and dangerous and also asking if the Council will do some repairs to the road at Church Street. Referred to Surveyor to report.

K.16. The Surveyor reports again on 25 November 1913, p.19 (Illustration xxvi):

Gentlemen

Woodnesborough

In reference to letter received at last meeting from the Woodnesborough Parish Council, about the Bridle Road leading from Selson Farm Eastry to Woodnesborough Church being left dangerous, where the Light Railway has crossed it.

I have inspected this and found one of the sleepers loose and wanted filling up a little each side of metals, which has now been done.

K.17. The report book contains a marginal tick.

K.18. The minute of the council meeting on that day records:²⁴

Woodnesborough

The letter from the Parish Council of Woodnesborough read at the last meeting was further considered. The Surveyor reported that the complaint as to the bridle path had been remedied and that Church Street was an accommodation road which had never been repaired by the Council. The Clerk was directed to reply to the Parish Council accordingly.

K.19. **Analysis:** In respect of the 1890 report (para.K.6 above) of a ploughed path on the land of Henry Famariss, there is only one path identified on Ordnance Survey County

23 RD/Ea/Am7, p.15.

24 RD/Ea/Am7, p.18.

Series maps between Selson and Woodnesborough, and that is the application way from A to B, then continuing north from Drainless Road, opposite point B, north-northwest for about 680m, to join (what is currently recorded on the definitive map and statement as) footpath EE220A east-northeast to Foxborough Hill opposite Woodnesborough church. This path appears on the first, second and third edition County Series maps; although it is excluded as a continuous path from the outline fourth edition and the 1956 National Grid plan, the physical existence of part of the way north from B remains marked on current large scale mapping.

K.20. No other path of any kind is shown, or was shown, on Ordnance Survey or any other map between Selson and Woodnesborough. An occupation road is shown north-northeast from Wells Farm, generally as far as Drainless Road (part of parcel 43 in the plan for line 2 of East Kent mineral light railway at item IV.J above, described as ‘occupation road’) but no continuation has ever been shown north of that road to Woodnesborough, other than the path previously described from B, nor is there any corroboration that this occupation road, or any continuation of it, might be a public right of way.

K.21. It therefore is probable that, while the precise location of the ploughed footpath on Mr Famariss’ land²⁵ is uncertain, the surveyor’s report refers to its continuation as ‘the one [*i.e.* footpath] that leads from Selson to Woodnesborough’. While this reference implies status as a footpath, it does not rule out the possibility that the continuation had a greater status, and indeed, the marginal note to the report refers to the reinstatement of a ‘road’.

K.22. In respect of the reports of 24 June 1913 (para.K.8 above) and subsequently, the surveyor refers to ‘the road where they have crossed road near Wells Farm Eastry’. The site of the former crossing of the East Kent mineral light railway over the application way between A and B is approximately 550m northwest of Wells Farm, and Wells Farm is not the nearest farm (Great and Little Selson Farms are closer). However, there is no nearer crossing to Wells Farm of a public road, other than Selson Lane which is carried under the railway by an underbridge (the only bridge on this part of the line) — which is ruled out by reference to the ‘Level Crossings at...Wells Farm’ at para.K.12 above. The crossing of the Hammill byway (BOAT EE109) is 750m south-southwest and an even less likely candidate for description as ‘near Wells Farm’, while the former footpath from Gore Lane at Gore Farm west-northwest to Hammill has only ever been a footpath (not now recorded on the definitive map and statement), and more correctly described as being near Gore Farm.²⁶

K.23. The only other candidate crossing is the supposed occupation road north-northeast from Wells Farm (first referred to at para.K.20 above), although there is no other convincing evidence that this crossing has ever been a public right of way. It seems that the surveyor’s report may refer:

- to the application way, impliedly as a public road; or
- to the occupation road north-northeast from Wells Farm.

K.24. If it refers to the latter supposed occupation road, the reference implies either that it was perceived to be a public road, or that the surveyor and the council concerned itself with the reinstatement of private occupation roads which were interfered with by the railway company.

²⁵ Henry Famariss appears to have been an ephemeral land owner or occupier in Selson. Neither his nor the family name appears in the Eastry tithe map apportionment, East Kent mineral light railway books of reference, the Finance (1909–1910) Act 1910 field books or the National Farm Survey maps. It is therefore unclear what land was owned or occupied by Mr Famariss.

²⁶ This footpath is now the subject of application PROW/DO/C511.

K.25. On balance, it is suggested that these reports refer to the supposed occupation road north-northeast from Wells Farm and not to the application way.

K.26. The final report and minutes, of November 1913 (paras.K.15 to K.18 above), refer to the 'Bridle Road leading from Selson Farm Eastry to Woodnesborough Church'. While this cannot be assumed with certainty to refer to the same road identified in the earlier reports made in 1913, it must inevitably refer to the application way, there being no other conceivable way. It must also refer to the same public right of way referred to in the 1890 report (para.K.6 above, analysed at para.K.19 above). Only the public path described at para.K.19 above, commencing with the application way between A and B, leads from Selson to Woodnesborough church, and while the application way begins at *Great Selson Farm*, there is no Selson Farm, and it may be assumed that the surveyor intends to refer to the former.

K.27. **Conclusion:** The reports of the surveyor to Eastry Rural District Council, and the minutes of the council, exercising the functions of the highway authority for non-county roads, refer to the application way as, respectively, a way at least of the status of public footpath, and as a bridle road. They may also refer to the application way as a public road, but the evidence of location for the relevant reports is uncertain.

K.28. The reports and minutes therefore provide convincing evidence of the public status of the application way during the late nineteenth and early twentieth centuries, of at least bridleway status.

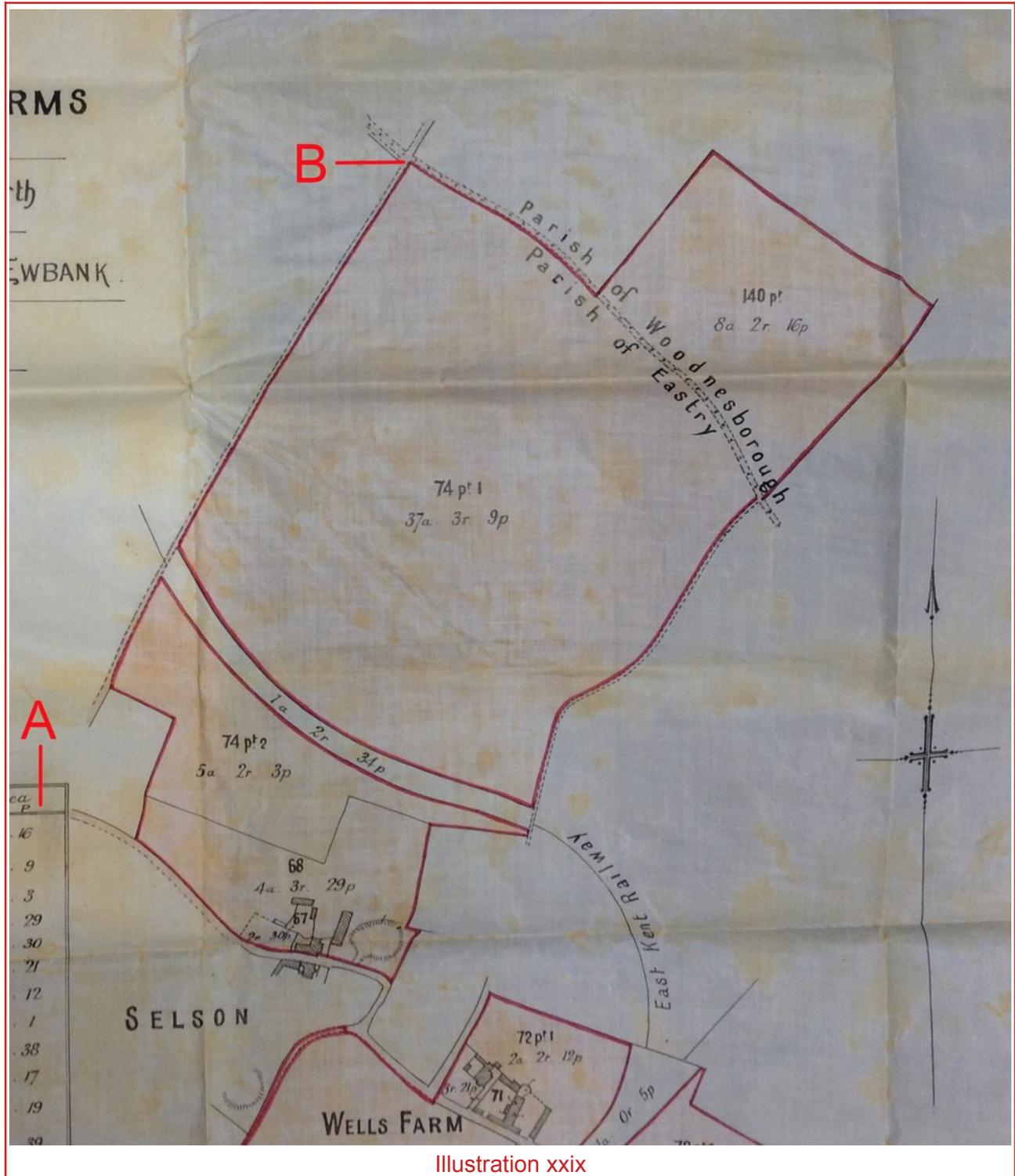
K.29. **Points:** 3

L. Wells and Little Selson farms conveyance

L.1. **Date:** 1921

L.2. **Source:** Kent County Archives²⁷

Wells and Little Selson farms conveyance



27 U854/T5

L.3. **Description:** This conveyance, made on 15 March 1921, conveyed Wells and Little Selson Farms from Miss E K Ewbank and others to Mr Alec Norwood Hogben.

L.4. The land conveyed included Great Field (as identified on the title map, see item F above), abutting on the application way (which is now divided by the East Kent mineral light railway, see item J above).

L.5. The application way is coloured sepia, in common with various other roads shown on the conveyance map. These roads are today recognised as public roads or public bridle roads, with the exception of: the continuation of the application way north from B towards Woodnesborough — this way is shown on Ordnance Survey County Series first edition twenty-five inch map (item G above) and subsequent editions as a footpath, and the records of the Eastry Rural District Council suggest it was recognised as a bridle road. A short spur immediately west of Wells Farm also conveys an impression of being coloured sepia: it is not suggested that the spur is a highway, but it is not clear whether the spur is coloured, or whether it is affected by mottling of the paper visible within the adjacent parcel 72pt1.

L.6. **Conclusion:** The conveyance map provides some limited support for the status of the application way being recognised as public, at least of bridleway status.

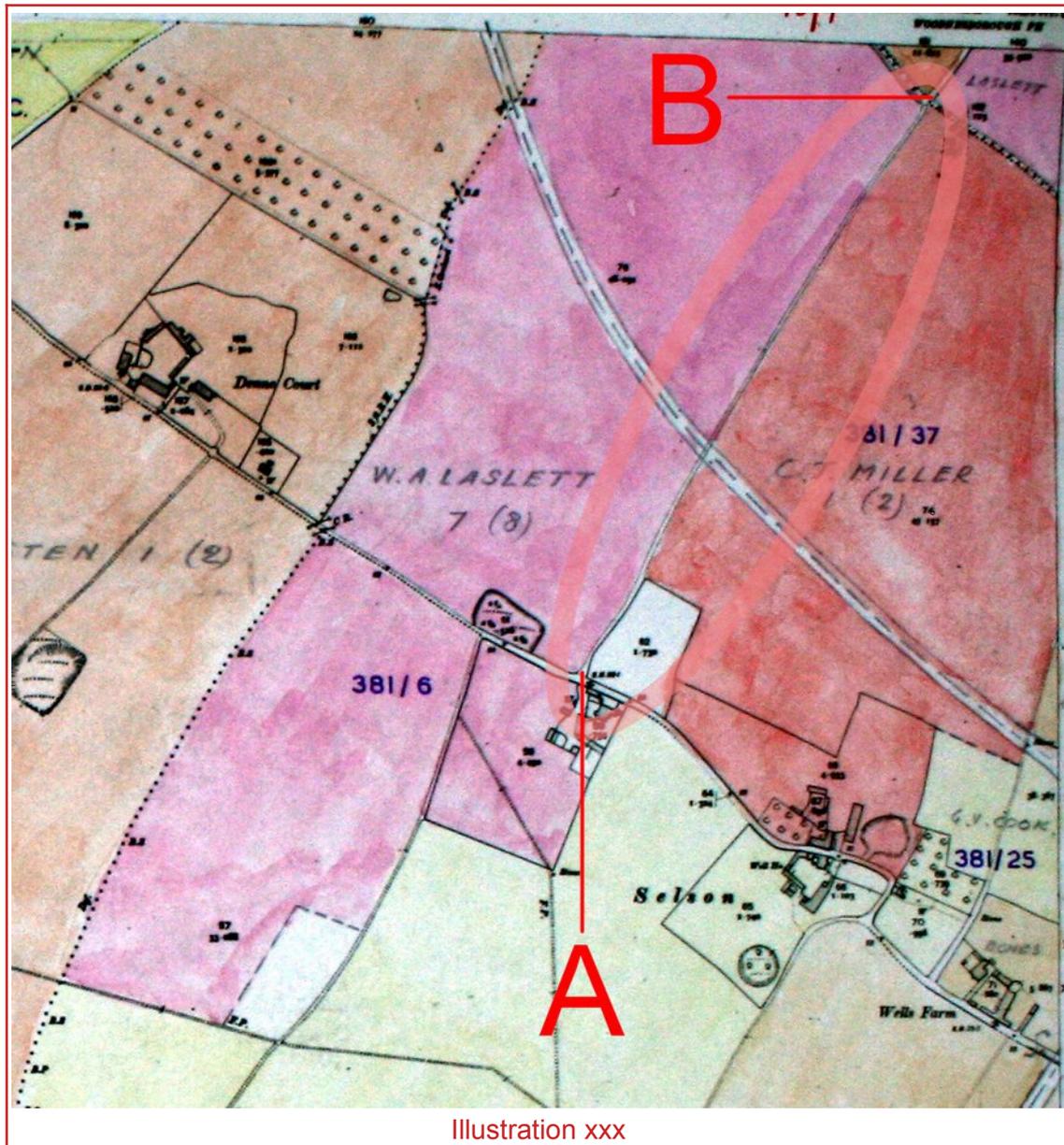
L.7. **Points:** 1

M. National Farm Survey map

M.1. **Date:** 1941–43

M.2. **Source:** National Archives²⁸

■ **National Farm Survey, sheet Kent XLVIII/9**



Enlargement



Illustration xxxi

M.3. **Description:** original scale: 1:10,560 (marked on Ordnance Survey County Series maps at this scale); orientation: unchanged (north at top).

M.4. These records are maps prepared in conjunction with the individual farm records of the National Farm Survey conducted by the (then) Ministry of Food (subsequently the Ministry of Agriculture, Fisheries and Food). The maps show the extent of each farm, or other agricultural holding, with its boundaries. The area of each farm is indicated on the map by the use of a coloured outline or a colour wash, and its code number is added in

black or red ink. The relevance of these records is that where a vehicular highway route runs between holdings, it is excluded from the holdings.

M.5. **Conclusion:** The application way divides two holdings — that of W A Laslett and that of C T Miller. The way is shown uncoloured.

M.6. On this sheet,²⁹ other known public roads are similarly uncoloured: e.g. Selson Lane, Drainless Road, Hammill Road, byway EE109 (from Gore Road to Hammill, where they form the boundary between two farms. Elsewhere, roads are coloured as part of a holding where the land is in the ownership on both sides of the road.

M.7. The exclusion of the application way on the National Farm Survey map suggests that the way was considered to be unproductive land not belonging to the holding on either side of it, and that it was excluded because it was a carriageway. This provides some support for the application as a restricted byway.

M.8. **Points:** 2

²⁹ Marked on a copy of County Series 3rd edition Kent sheet XLVIII/9.

V. Annexe

A. Annexe — Contracted map of principal roads in Eastry

(see item IV.E)

