

# Woodshole Lane: application to record a restricted byway from Cave Lane to Twitham Hill

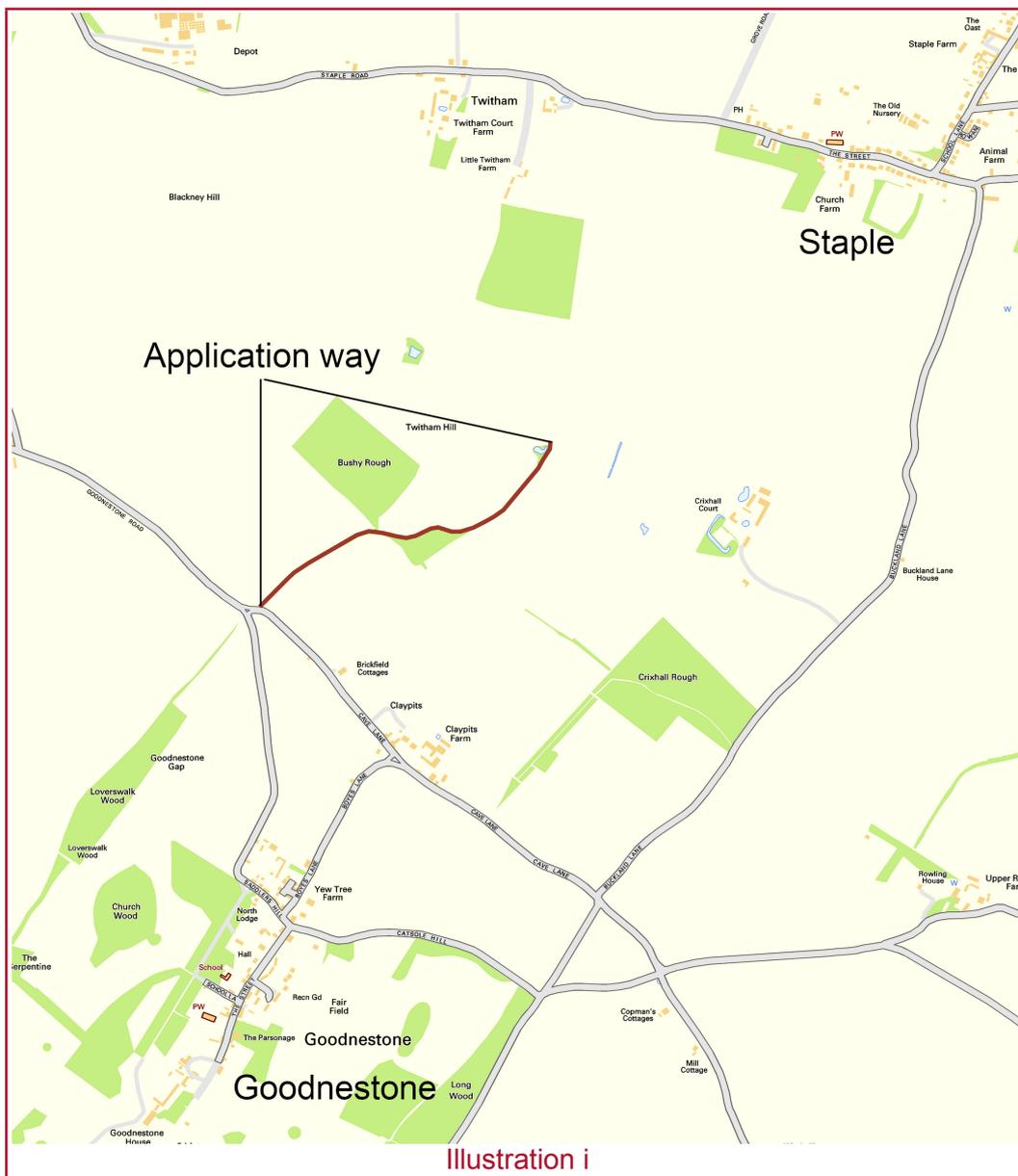


## Historical document analysis

### I. Introduction

#### A. Quick reference

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



- A.2. Existing recorded public right of way comprised in application way: EE269A
- A.3. Parish of: Goodnestone near Wingham
- A.4. Ancient parish of: Goodnestone-next-Wingham
- A.5. Termination points: Junction of Cave Lane with Goodnestone Hill and Goodnestone Road; junction with bridleway EE28 and Twitham Lane on Twitham Hill
- A.6. Termination points Ordnance Survey grid references: TR25595554, TR26275593
- A.7. Postcode: CT3 1PA
- A.8. Ordnance Survey Explorer sheet: 150
- A.9. Ordnance Survey County Series 25" sheets: Kent XLVII/11, XLVII/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 leading from Cave Lane to Twitham Hill in the parish of Goodnestone near Wingham. The way is currently recorded on the definitive map and statement as bridleway EE269A. 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)(ii) that that a highway shown in the definitive map and statement for Kent as a bridleway ought to be there shown as a restricted byway.

D.2. The way begins in the parish of Goodnestone at the junction of Cave Lane with Goodnestone Hill and Goodnestone Road at A (Ordnance Survey grid reference TR25595554), and proceeds uphill in a generally northeasterly direction as bridleway EE269A along a well-defined track for 860m to a junction with bridleway EE28 and Twitham Lane on Twitham Hill at B (TR26275593).

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

## E. Nomenclature

E.1. The application way is labelled as Woodshole Lane in the Goodnestone survey of roads (item III.A below): it is referred to in this application as the 'application way'.

E.2. Twitham Lane is a way from Staple Road at Twitham to Twitham Hill at B. It is the subject of an application to record as a restricted byway.<sup>1</sup>

## F. Background

F.1. The application way appears historically to be a continuation of Twitham Lane. The evidence that Twitham Lane is an unrecorded carriageway is convincing. As such, Twitham Lane — terminating at a junction of tracks on Twitham Hill — must have continued as a carriageway beyond Twitham Hill, either along the line of the application way towards Goodnestone, or along the line of bridleway EE28 to Crixhall Court, or both. While the society does not rule out the possibility that the latter way is also a carriageway, it is submitted that the evidence in this analysis that the application way is a carriageway, together with the evidence for the status of Twitham Lane as a carriageway, is sufficient to confirm carriageway rights on the application way.

F.2. There is further evidence in the Goodnestone survey of roads (item III.A below) and the historical maps from item III.B to III.E below, that another carriageway, Tiptoe Lane, ascended from Church Lane in Staple village to join the application way at B. There is now little trace of this carriageway south of Church Lane, although the course of the way can still be seen as a hollow way north of bridleway EE28, from a point about 160m east of B, while it also remains in use as bridleway EE28 between that point and B. As a carriageway from Staple, it would have contributed cart traffic to the application way from B towards A (there being no other plausible destination).

## G. Grounds for application

G.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>2</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."

G.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:

1 See application PROW/CA/C391, and for details of the application, see: [www.craddocks.co.uk/apps/twithamlane/index.htm](http://www.craddocks.co.uk/apps/twithamlane/index.htm)

2 [2012] EWCA Civ 334

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.<sup>3</sup>

G.3. The correct test under s.53(3)(c)(ii) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description...

G.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 reputation as a public carriageway over many years, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see item I below), there were full vehicular rights.

## H. Discovery of evidence

H.1. The application way was included on the definitive map and statement for Kent, prepared under Part IV of the National Parks and Access to the Countryside Act 1949, as a bridleway. Much or all of the evidence disclosed in this application, tending to evidence of vehicular rights, is likely to be new evidence not considered under the Part IV process.

H.2. Therefore, it is reasonable to infer discovery of new evidence for the purposes of s.53(2) of the 1981 Act.

## I. Natural Environment and Rural Communities Act 2006

I.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.

## J. Points awarded

J.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*<sup>4</sup>.

J.2. **Points:**

<sup>3</sup> [Consistency Guidelines](#): para.2.17.

<sup>4</sup> Sarah Bucks and Phil Wadey, 2<sup>nd</sup> ed. 2017.

Item	Ref	Points
Goodnestone survey of roads	III.A	4
Ordnance Survey drawing	III.B	0
Barlow-Hasted map of Kent	III.C	1
Ordnance Survey, Mudge-Faden one-inch map of Kent	III.D	1
Greenwood's map of Kent	III.E	1
Paterson's Roads — Thanet and Kent and Sussex Coast	III.F	0
Ordnance Survey, Old Series one-inch map of Kent	III.G	0
Tithe Act 1836	III.H	2
Ordnance Survey County Series twenty-five inch map	III.I	1
Finance (1909–1910) Act 1910	III.J	0
Bartholomew's map	III.K	1
East Kent mineral light railway	III.L	0
<b>Total points</b>		<b>11</b>

## K. Width of application way

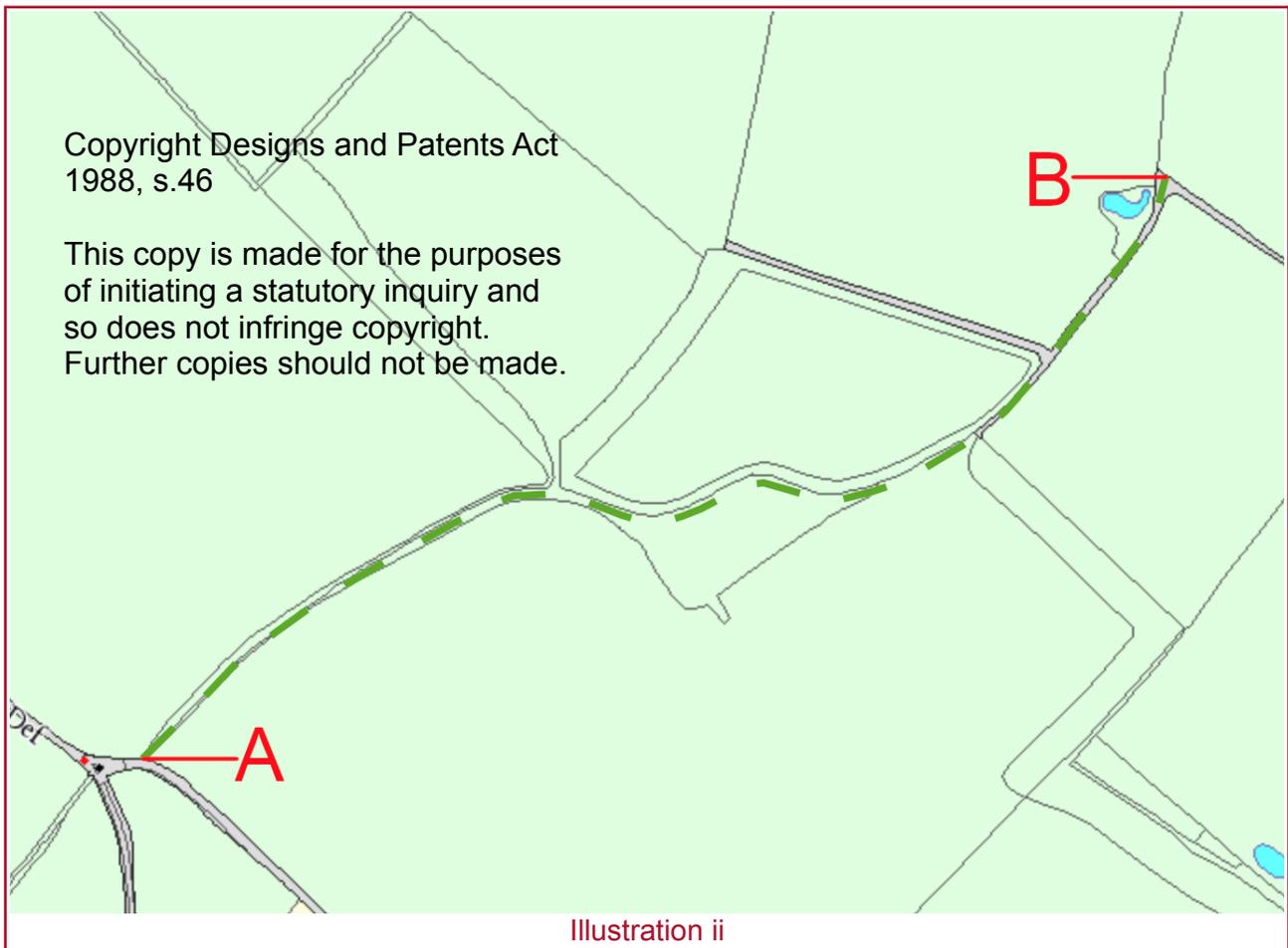
K.1. On the Ordnance Survey County Series twenty-five inch map, first edition (item III.I below), the application way is assigned parcel number 95, with an area of 1.092 acres (0.442 ha). Parcel 95 extends beyond the junction with what is now bridleway EE28 on Twitham Hill for 100m to the site of the former Higher Twitham Farm. If the application way were of uniform width, the way would have a width of:

$$\frac{0.442 \times 10,000}{(860 + 100)} = 4.6\text{m}$$

## L. Limitations

L.1. No map shows any evidence of a gate or other limitation across the application way. It is therefore sought that any definitive map modification order arising from this application should provide that the application way is subject to no limitation.

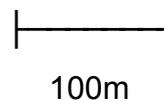
## II. Application map



Map centred on TR259557

Scale: approx. 1:5,050 (when printed A4)

Application way is marked 



### III. Evidence

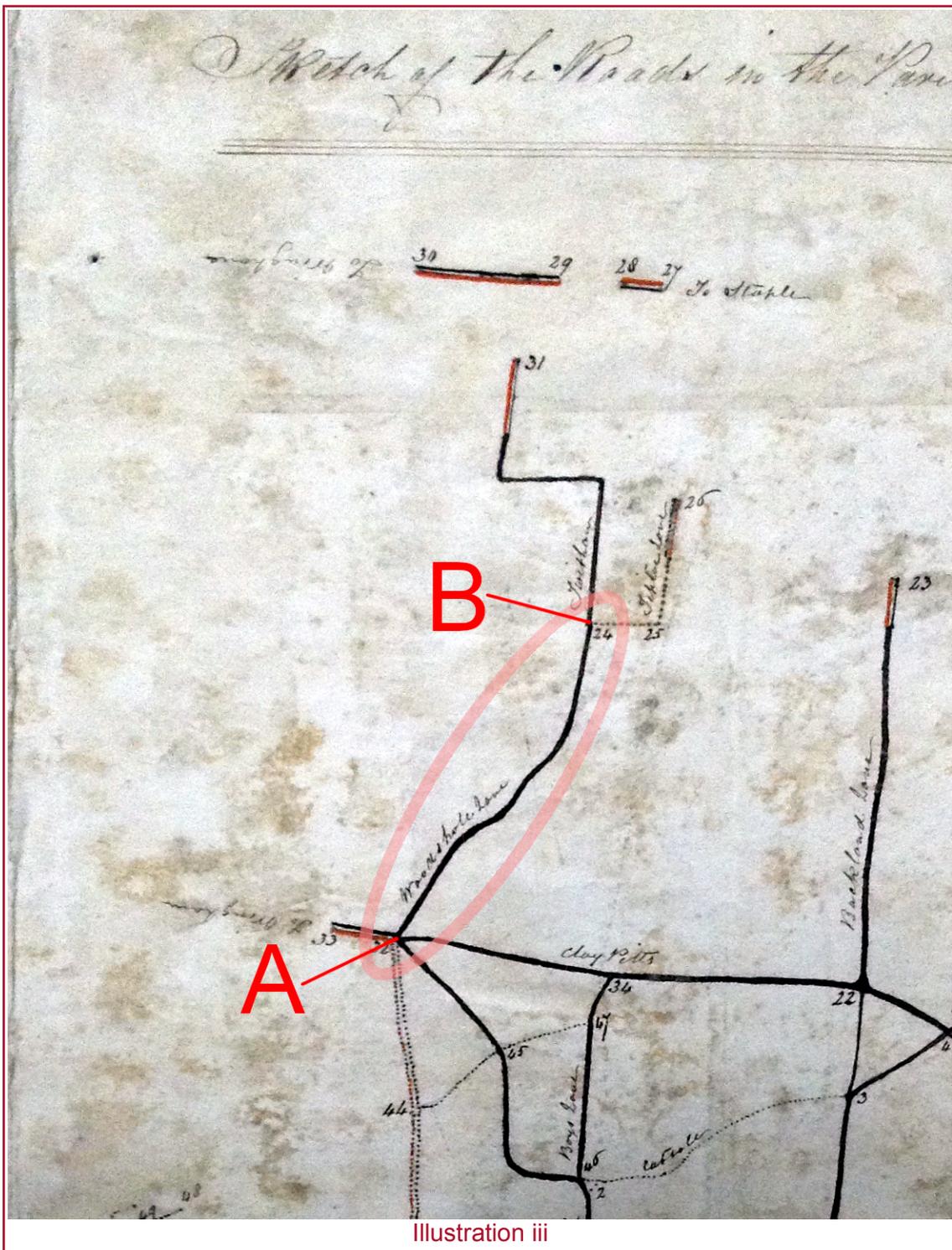
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#### A. Goodnestone survey of roads

A.1. **Date:** 1767–78

A.2. **Source:** Canterbury Cathedral Archives<sup>5</sup>



A.3. **Description:** A Survey of estate lands and roads Goodnestone, catalogued as:

A survey of the lands belonging to Brook Bridges, with plans of the various lands, and a map of the roads in the parish,

and deposited as part of the Fitzwalter Estate records. It has been suggested that,

This Parish Survey therefore presents a very accurate and complete picture of the state of the parish in the late eighteenth century, and was perhaps commissioned by the Brook Bridges estate as a prelude to rationalising and consolidating estate land holdings. Subsequent events over the next twenty

years would certainly support this view, as many pieces of land changed hands in this period.<sup>6</sup>

A.4. The survey includes a map of roads in the parish of Goodnestone, showing the application way as a thick black line between A (numbered 32 on the map) and B (numbered 24).

A.5. At B, the way is shown continuing to the north as Twitham [Lane], with a branch to the east and then north as Tiptoe Lane. The latter branch is shown as a black dotted line, subsequently combined black and brown dots.

A.6. The map is annotated as follows:

#### Reference

Where the road is drawn thus  the whole road is within the bounds of the Parish: — Where drawn thus  or thus  the road is divided between Goodnestone and the adjoining Parish; the Black denotes which side of the road belongs to Goodnestone.

Where there are only dots thus  or thus  the roads are not repaired.

The figures refer to the distance from point to point. To ascertain which, see Index; the figures written with Black Ink, in the Index, shew the Total number of Rods in each length, including the lengths of half road; and the figures written with Red Ink, show the length of such half road.

A.7. In the index to the map, the distances are given as follows:

From 32 to 24 [*i.e.* A–B]      173 rods [870m]

A.8. The distance accords almost precisely with the length of 860m measured today (see paragraph I.D.2 above).

A.9. **Conclusion:** The survey is a detailed assessment of the lands and roads of Goodnestone, prepared for the Goodnestone estate and, until recently, kept among the estate records. It includes a detailed and accurate analysis of the roads on the estate, apportioning liability for maintenance between the parish of Goodnestone, neighbouring parishes, and privately maintainable ways.

A.10. The survey records only those ways which were considered to be public carriage-ways: it refers to roads which are ‘not repaired’ (*i.e.* by the parish), but not to roads which are not public. In particular, it does not include the estate carriage drive between Bonnington Farm and Goodnestone House, while those roads which are shown are consistent with ways which are recognised today as public roads, or which are documented elsewhere as former roads which have fallen out of use.

A.11. The application way is depicted as one of the roads of the parish which is maintainable by the inhabitants of the parish. The survey refers consistently to ‘roads’, and excludes footpaths and bridleways. It is therefore good evidence that the application way was considered to be a carriageway at the date of the survey.

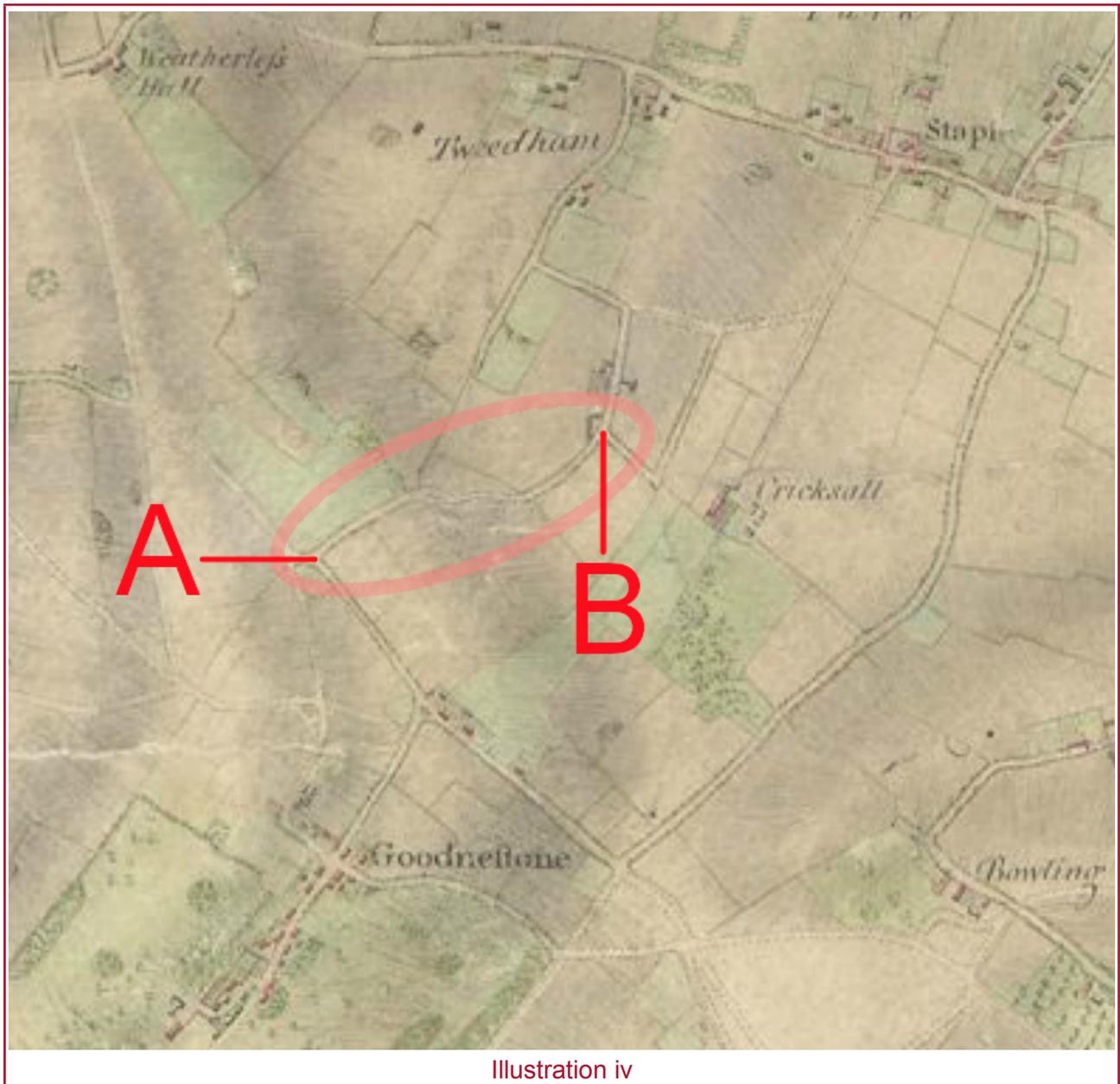
A.12. **Points:** 4

<sup>6</sup> The *Nash Families in Goodnestone-next-Wingham*, by David Nash Mills (printed by the Faversham Society as part of *About Faversham*, no.55).

## B. Ordnance Survey drawing

B.1. **Date:** 1797

B.2. **Source:** British Library website<sup>7</sup>



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

B.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one 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

<sup>7</sup> Sheet 107(E): [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/c/zoomify82432.html)

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.<sup>8</sup>

B.5. The Ordnance Survey drawing shows the application way between A and B as an enclosed way.

B.6. **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, but it is shown consistently with other known vehicular ways.

B.7. **Points:** 0

## C. Barlow-Hasted map of Kent

C.1. **Date:** 1797–1801

C.2. **Source:** Kent County Archives, also available at [www.ancestry.com](http://www.ancestry.com)<sup>9</sup>: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

8 From the Curator's introduction to the Ordnance Survey drawings, British Library: [www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html](http://www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html).

9 Indexed at [freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU\\_Pages/ENG\\_pages/ken.htm](http://freepages.genealogy.rootsweb.ancestry.com/~genmaps/genfiles/COU_Pages/ENG_pages/ken.htm)

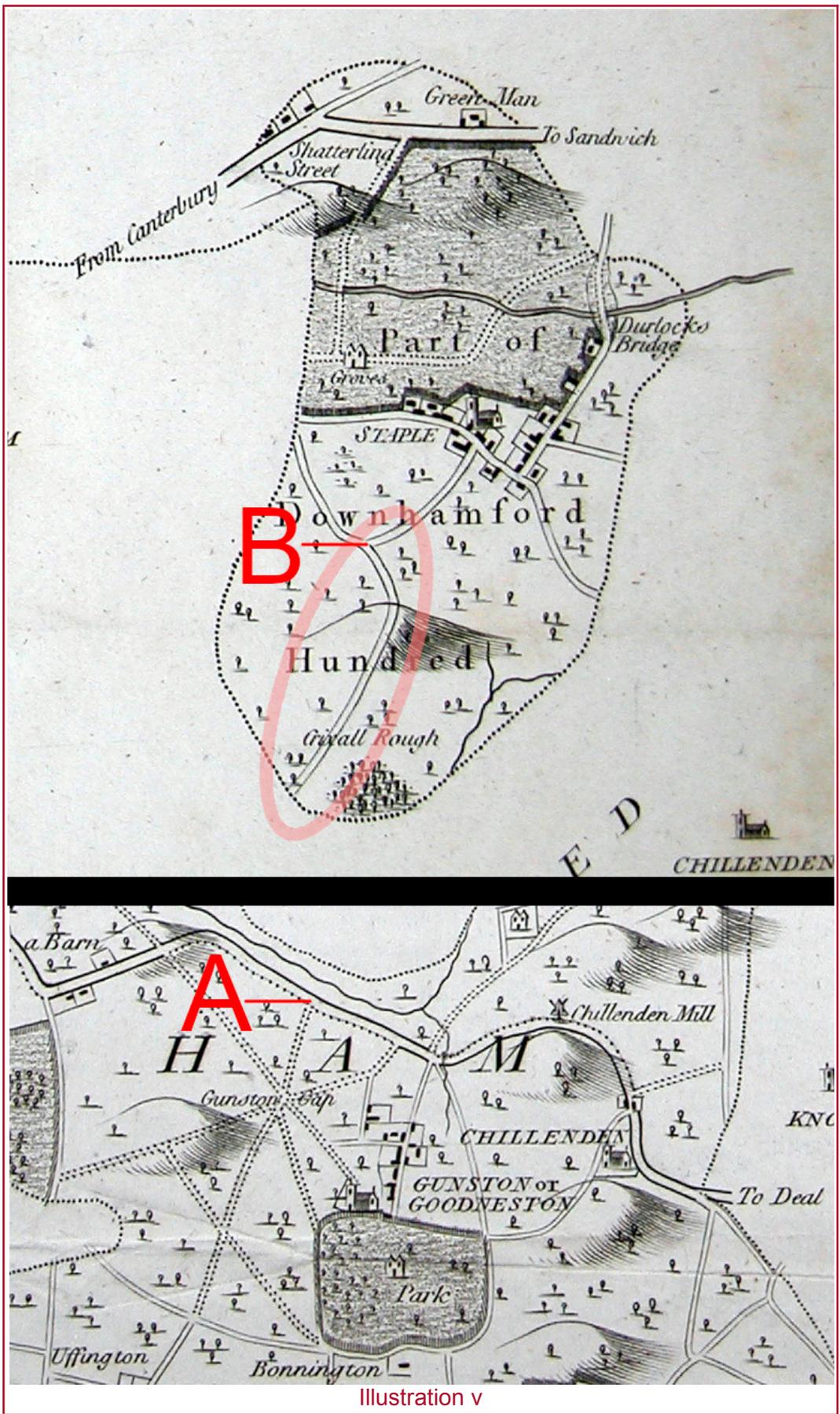


Illustration v

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

C.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. The maps are derived from the county map of Andrews, Dury and Herbert and re-engraved by William Barlow. Hasted and his collaborators did try to correct errors in the maps<sup>10</sup>, but they did not have the resources to perform any serious revision of topographical surveying. Each map represented one or more of the Kent hundreds: those shown here are extracts from the hundreds of Downhamford and Wingham.

C.5. The Barlow map shows a way, generally corresponding to the alignment of the application way, between Cave Lane and Twitham Hill. The way is shown passing to the west of Crixhall Rough, and connecting with two ways at B, corresponding to Twitham Lane and Tiptoe Lane/bridleway EE28. The junction at A is not shown on the map of the hundred of Wingham — this may be an oversight. The way is represented by double solid lines, suggesting an enclosed way.

C.6. **Conclusion:** The Barlow-Hasted map is some evidence for the existence of a defined way along the application route. The map was 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.

C.7. **Points:** 1

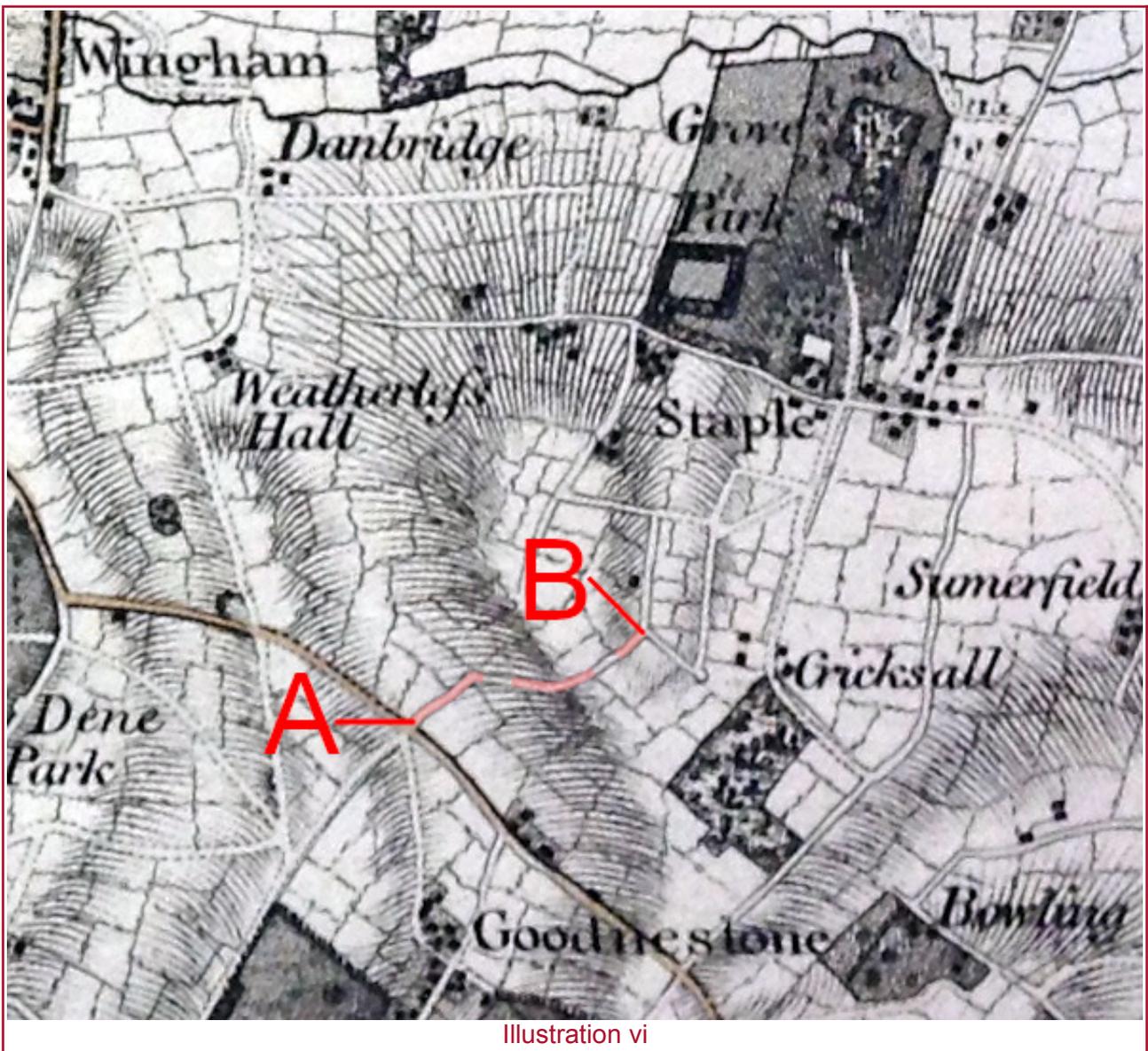
## D. Ordnance Survey, Mudge-Faden one-inch map of Kent

D.1. **Date:** 1801

D.2. **Source:** Kent County Archives<sup>11</sup>

<sup>10</sup> Shirley Burgoyne Black, *A Scholar and a Gentleman: Edward Hasted, The Historian of Kent* (2001); John Boyle, *Discoveries about Edward Hasted and his History of Kent, Archaeologia Cantiana*, vol.97, pp.235–260 at p.244 (1981).

<sup>11</sup> Also available at Mapco.net: [mapco.net/kent1801/kent31\\_02.htm](http://mapco.net/kent1801/kent31_02.htm), [mapco.net/kent1801/kent31\\_03.htm](http://mapco.net/kent1801/kent31_03.htm)



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

D.4. This map of Kent was the first 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.

D.5. The Mudge-Faden map shows a way, generally corresponding to the alignment of the application way, between Cave Lane and Twitham Hill. The way is shown connecting with two ways at B, corresponding to Twitham Lane and Tiptoe Lane/bridleway EE28. The way is represented by double solid lines, suggesting an enclosed way.

D.6. **Conclusion:** The Mudge-Faden map shows a way coincident with the application way between A and B.

D.7. The Ordnance Survey survey 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. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. The map provides some evidence for the existence of a public way along the application route.

D.8. **Points:** 1

## E. Greenwood's map of Kent

E.1. **Date:** 1819–20

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

Greenwood map



Illustration vii

## Greenwood map key

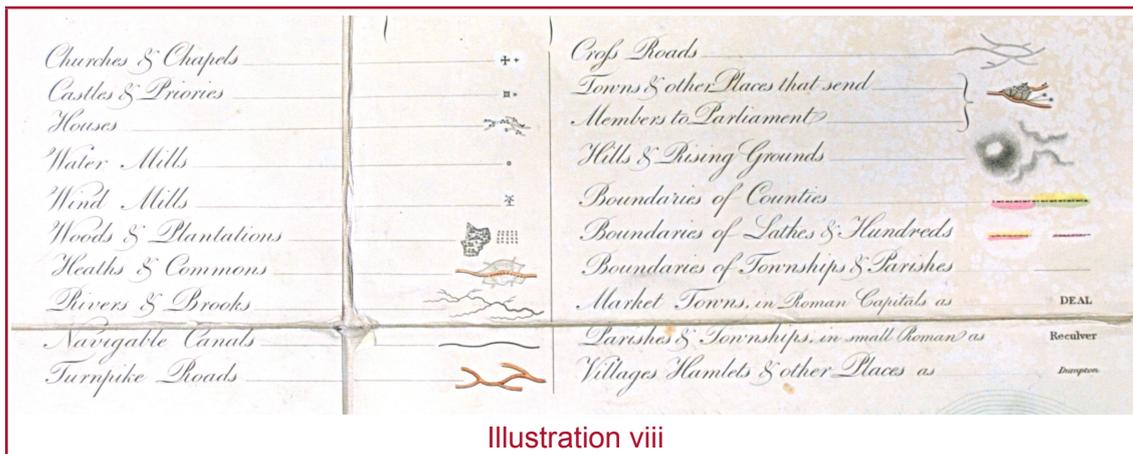


Illustration viii

E.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.

E.4. Christopher and John Greenwood were among the notable firms of publishers in the period 1820–50 who attempted to produce large-scale maps of the counties in competition with the Ordnance Survey. In the long run their efforts were unsuccessful but before giving up the struggle they published between the years 1817 and 1830 a series of splendid large-scale folding maps of most of the counties based on their own surveys. Unfortunately, they were unable to complete the series, but published large scale maps of all the counties except Buckinghamshire, Cambridgeshire, Herefordshire, Hertfordshire, Norfolk, Oxfordshire and Rutland.<sup>12</sup>

E.5. The Greenwood map shows a way, generally corresponding to the alignment of the application way, between Cave Lane and Twitham Hill. The way is shown connecting with two ways at B, corresponding to Twitham Lane and Tiptoe Lane/bridleway EE28; there is also a direct connection from a point above A north to join Twitham Lane south of Twitham Farm. The way is represented by double solid lines, suggesting an enclosed way.

E.6. In the key to the map, the way is described as a 'cross road'.

E.7. **Conclusion:** The Greenwood map shows a way coincident with the application way between A and B. The description of the way as a 'cross road' is strongly suggestive of a public road.

E.8. **Points:** 1

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

F.1. **Date:** 1811

F.2. **Source:** British Library<sup>13</sup>

<sup>12</sup> From *Antique Maps*, C Moreland and D Bannister, 1983.

<sup>13</sup> 10348.d.15: copy available at [www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg](http://www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg) .

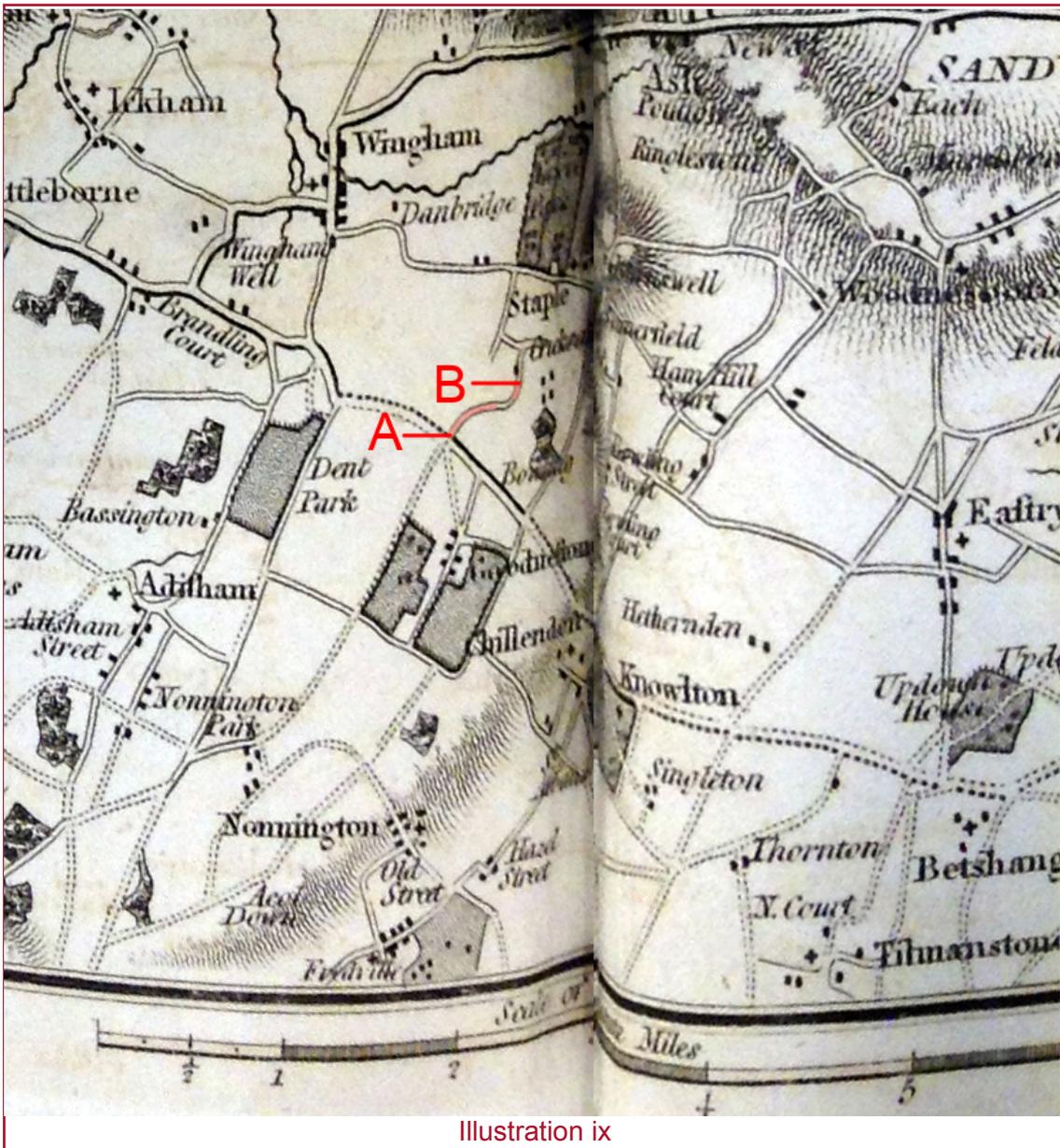


Illustration ix

F.3. **Description:** Original scale: not known, but scale marked in miles; orientation: unchanged (north). This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item III.D above): however, the map has been revised (not visible in the extract above) to show the Dover, Deal and Sandwich turnpike, the trustees of which were authorised to build a new road at Hacklinge under an Act of 1797<sup>14</sup>.

F.4. The Thomson map shows a way, generally corresponding to the alignment of the application way, between Cave Lane and Twitham Hill. The way is shown continuing as Twitham Lane, whereas Tiptoe Lane is shown forming a junction with Twitham Lane further north from point B. The way is represented by double solid lines, suggesting an enclosed way.

14 Dover, Deal and Sandwich Turnpike Act 1797, 58 Geo.III, c.xxvi.

F.5. **Conclusion:** The Thomson map appears to be derived from the Mudge-Faden map, but has been revised so as to include the Dover, Deal and Sandwich turnpike, suggestive that the representation of at least principal roads was researched and updated. The Thomson map appears to focus on key roads available to the public, and although probably based on the Mudge-Faden map, to have been revised. The Thomson map shows a way consistent with the entirety of the application way between A and B, and is good evidence for the existence of a defined route along the application way.

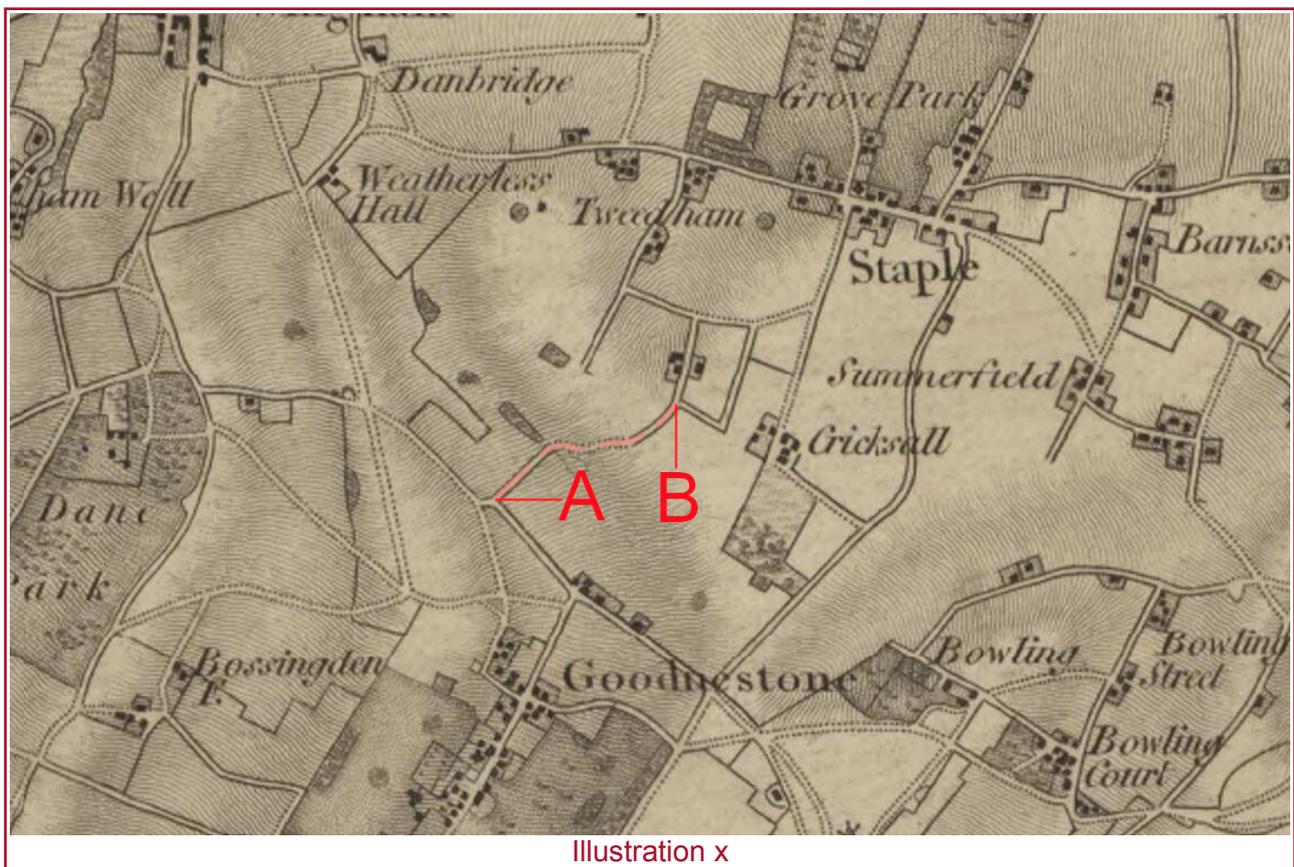
F.6. Given the smaller scale of the Thomson map, and the greater selectivity of what is shown, it can be concluded with some confidence that the way was a defined feature in the landscape, and therefore probably a carriageway.

F.7. **Points:** 0 (no more than two historical maps to be scored)

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

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

G.2. **Source:** National Library of Australia<sup>15</sup>



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

G.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 (item III.D above), the 'official' Ordnance Survey Old Series map

<sup>15</sup> [nla.gov.au/nla.obj-231917365](http://nla.gov.au/nla.obj-231917365)

was based on the same survey data. However, there is evidence of subsequent revision — in, for example, the staggered junction at A (which is shown as a straight-through cross roads on the Ordnance Survey, Mudge-Faden one-inch map of Kent).

G.5. The Old Series map shows a way, generally corresponding to the alignment of the application way, between Cave Lane and Twitham Hill. The way is shown connecting with two ways at B, corresponding to Twitham Lane and Tiptoe Lane/bridleway EE28. The way is represented by double solid lines, suggesting an enclosed way, save for a short part midway between A and B.

G.6. **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. However, it is not possible to conclude with certainty that the way was of greater status than bridleway.

G.7. **Points:** 0

## H. Tithe Act 1836

H.1. **Date:** 1841

H.2. **Source:** map — Kent County Archives<sup>16</sup>; tithe award — Kent Archaeological Society<sup>17</sup>

<sup>16</sup> Kent tithe maps are available as images on CD.

<sup>17</sup> [www.kentarchaeology.org.uk/research/tithes/goodnestone-next-wingham](http://www.kentarchaeology.org.uk/research/tithes/goodnestone-next-wingham).

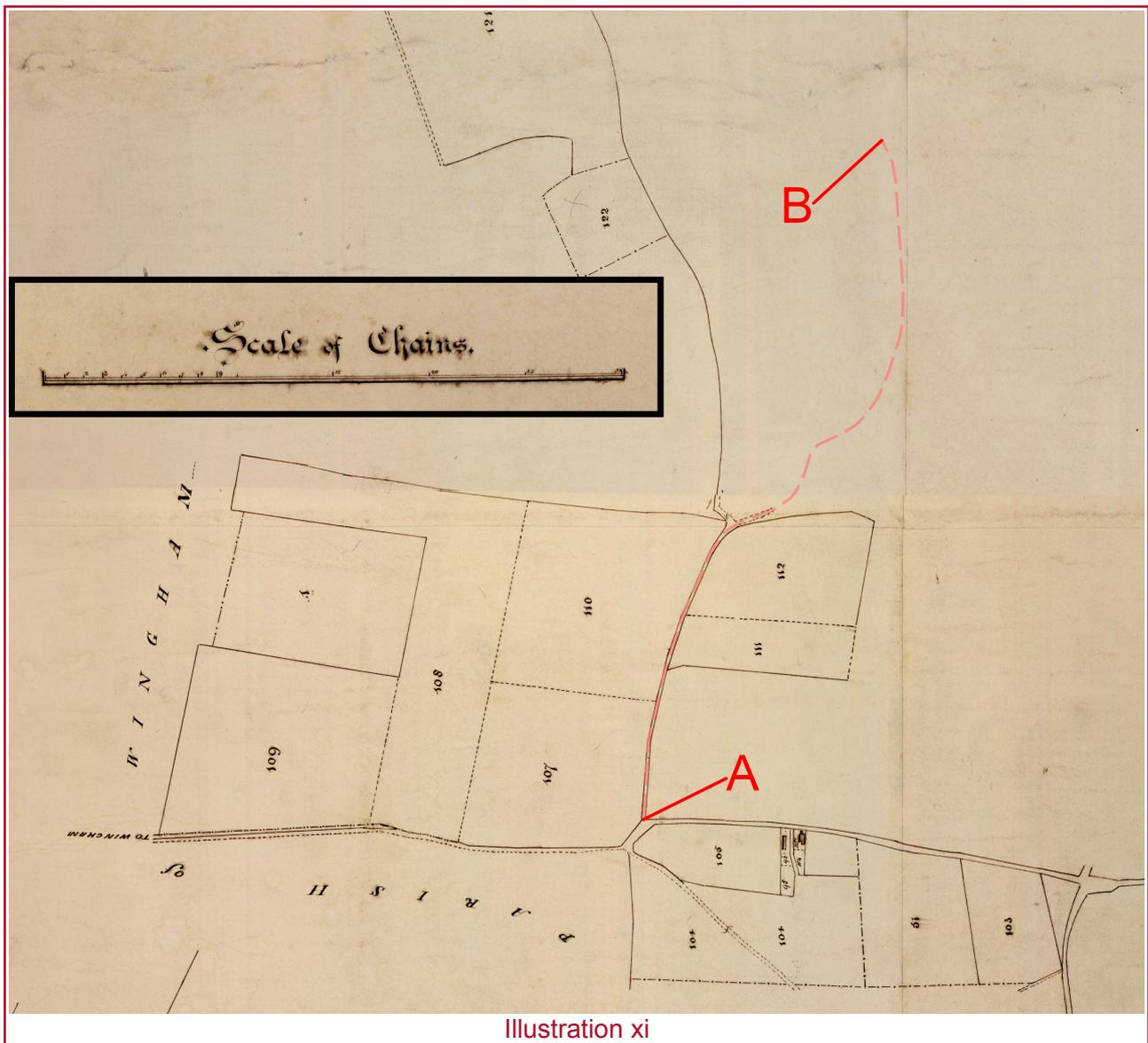


Illustration xi

H.3. **Description:** original scale: one inch to three chains: 1:2,376; orientation: rotated 300°; second class.

H.4. The Tithe Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

H.5. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch. This map, although second class, is at the scale of three chains to one inch.

H.6. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.<sup>18</sup>

H.7. Non-titheable land deemed to be unproductive was usually excluded from the process. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Foot-paths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

H.8. The tithe map for Goodnestone shows only part of the application way, between A and a point approximately two-fifths of the distance to B (a point at which is shown an intersection with a track approximately due north towards Twitham). The part of the application way north of this point was not assessed as subject to tithes, most probably because the land was then or previously in ecclesiastical ownership. The map shows the application way between A and that point as enclosed on both sides. No tithe parcel number is assigned to that part.

H.9. **Conclusion:** It is sometimes said that the exclusion of a way from being rated as titheable, as in relation to part of the application way, is not an indication that the way is or is not public. However, in the circumstances of an enclosed track across farmland, it is submitted that the absence of any rating is likely to indicate that the way was public road. As a grass track, the grazing of the way had productive value, and ought to have been assessed as rateable unless it was vested in the parish surveyor.

H.10. **Points:** 2

## I. Ordnance Survey County Series twenty-five inch map

I.1. **Date:** 1911

I.2. **Source:** British Library

18 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

Ordnance Survey County Series first edition 25" map, sheets LXVII/11 and 12

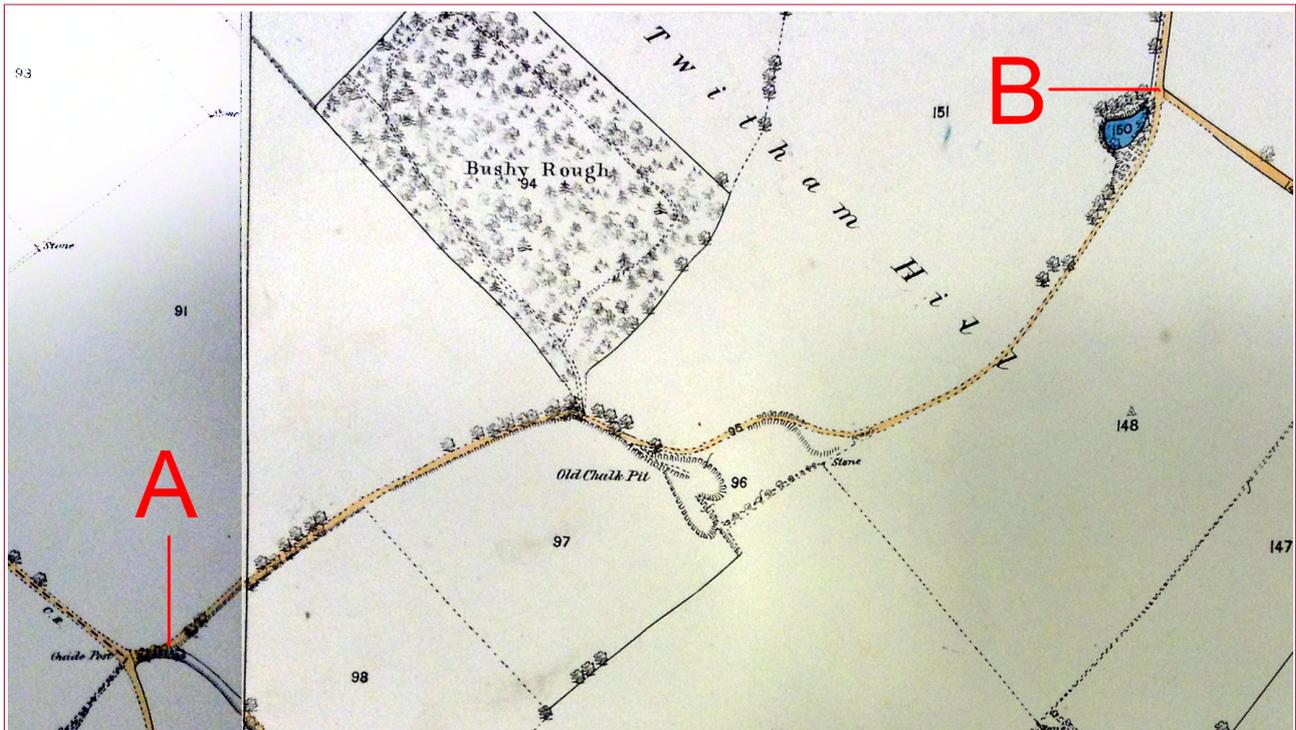


Illustration xii

Ordnance Survey book of reference — Goodnestone

2

PARISH OF GOODNESTONE.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
93	7.262	Arable.	143	15.659	Arable, &c.
94	10.669	Wood (part of).	144	2.459	Wood, &c.
95	1.092	Road (part of).	145	20.706	Arable.
96	1.461	Old chalk pit.	146	7.192	Arable.
97	7.104	Arable.	147	8.211	Arable.

Illustration xiii

I.3. **Description:** The Ordnance Survey County Series twenty-five inch map was the first large scale mapping of Kent, based on surveys in the 1860s and 1870s.

I.4. The first edition map, founded in a survey of 1872, shows the application way as an unfenced but metalled road (being coloured sienna).<sup>19</sup> It is assigned parcel number 95

<sup>19</sup> *'Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3<sup>rd</sup> ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled.

(being discrete from neighbouring parcels), which is described in the area book for the parish of Goodnestone as 'Road (part of)', with an area of 1.092 acres (0.442 ha). Parcel 95 extends beyond the junction with what is now bridleway EE28 on Twitham Hill for 100m to the site of the former Higher Twitham Farm.<sup>20</sup>

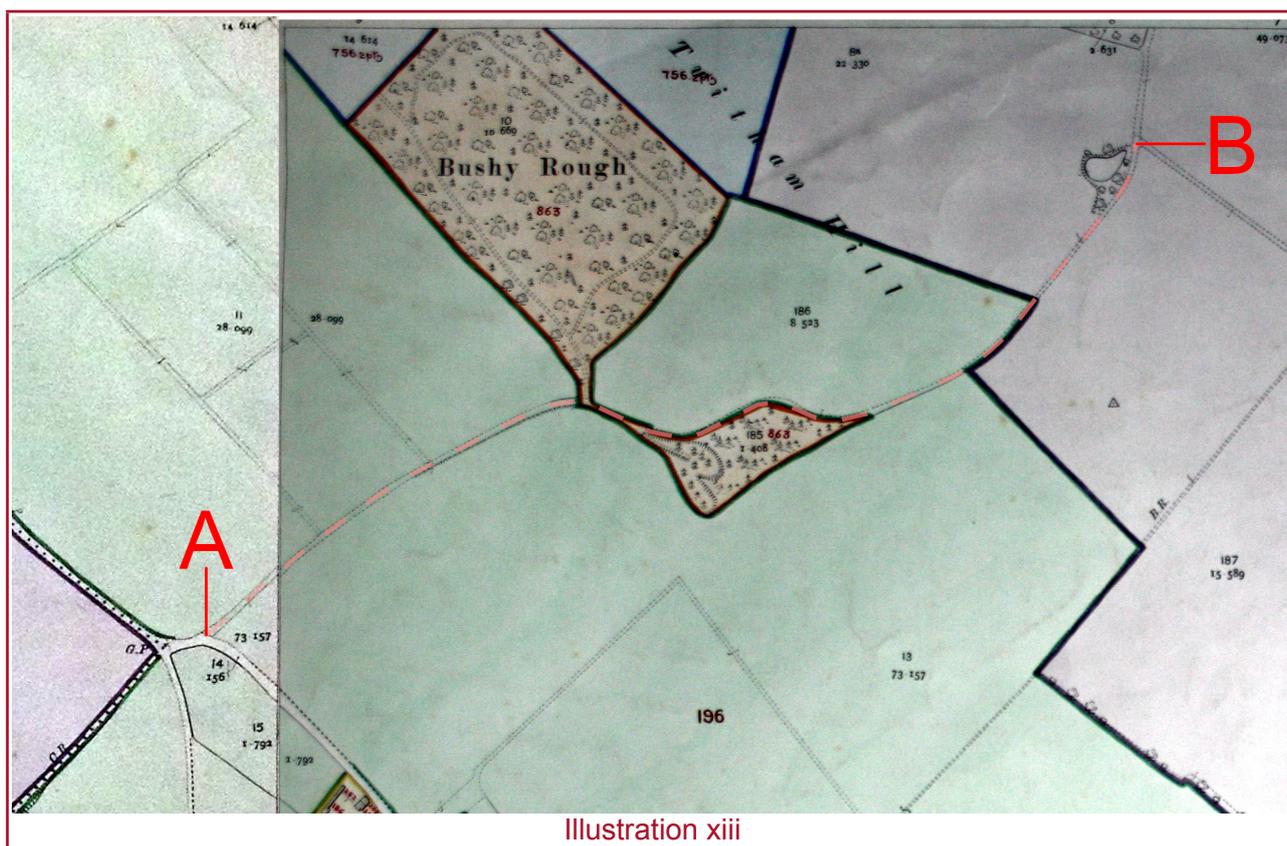
I.5. **Conclusion:** The application way is recorded on the first edition map as a metalled road and allocated a separate parcel number, notwithstanding that the way is unenclosed from the surrounding land. This is suggestive of a way maintained for vehicles, and of higher status than a mere track.

I.6. **Points:** 1

## J. Finance (1909–1910) Act 1910

J.1. **Date:** 1911

J.2. **Source:** National Archives<sup>21</sup>



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

J.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

<sup>20</sup> Higher Twitham Farm was located just to the north of the sheet boundary between sheets XLVII/12 and XLVII/8.

<sup>21</sup> IR 124/5/61

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.

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

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

J.7. The application way is not excluded from the hereditaments through which it passes. Those hereditaments are:

- 196 Claypits Farm (deduction of £50 for public rights of way/'paths')
- 863 Bushy Rough (appears to lie outside of boundary, no deduction)
- 351 Crixhall Court (deduction of £100 for public rights of way/'paths')

J.8. **Conclusion:** It is not possible to state that the deductions made in respect of Claypits Farm and Crixhall Court include provision for the application way, nor whether — if they did — those deductions had regard to the application way as a carriageway, bridleway or footpath.

J.9. **Points:** 0

## K. Bartholomew's map

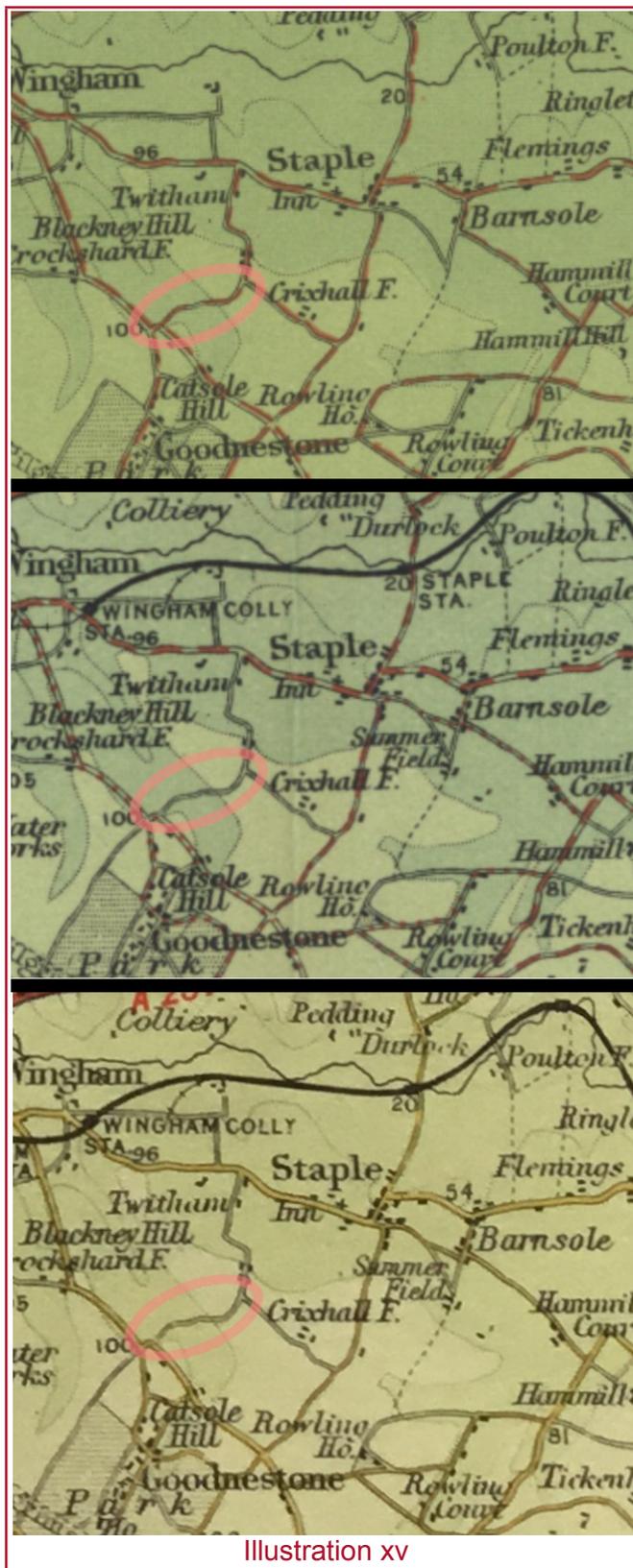
K.1. **Date:** 1904, 1922 and 1953

K.2. **Source:** National Library of Scotland<sup>22</sup>, personal collection<sup>23</sup>

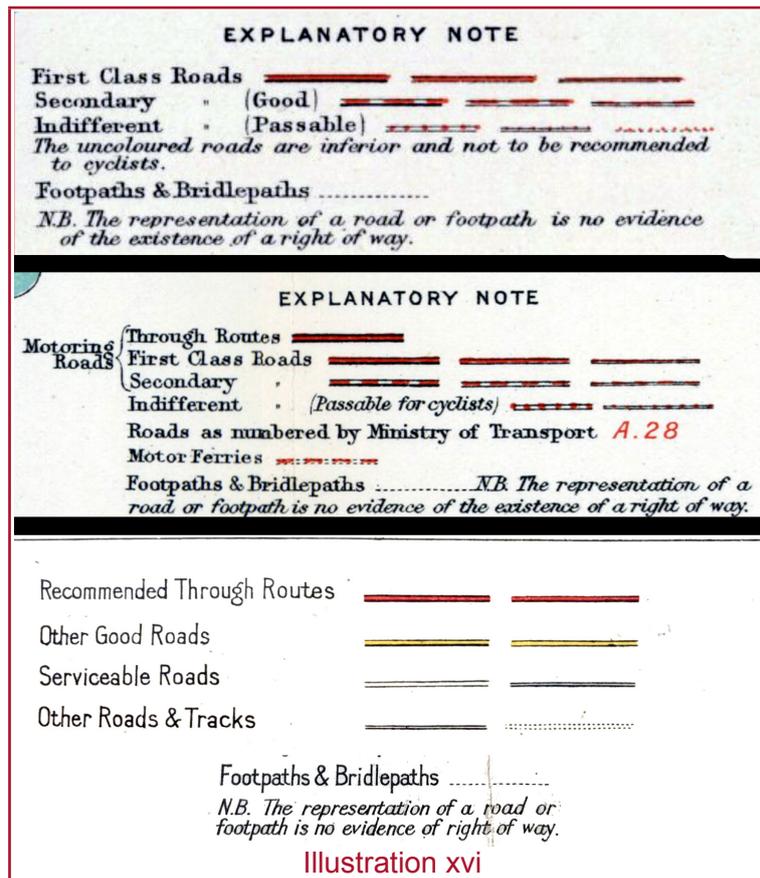
<sup>22</sup> [maps.nls.uk/mapmakers/bartholomew.html](https://maps.nls.uk/mapmakers/bartholomew.html)

<sup>23</sup> 1953 map

Bartholomew's maps: 1904, 1922 and 1953 maps



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



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

K.4. The application way is shown in the 1904 edition of the Bartholomew map as a 'Secondary Class Road (Good)', but in the 1922 edition as, in effect, unsuitable for cyclists. The 1953 edition shows the application way as a 'serviceable road'.

K.5. The first two editions are marked with the logo of the Cyclists' Touring Club (CTC), below which it is stated that: 'Roads revised by the Cyclists' Touring Club'.

K.6. **Conclusion:** The 1904 edition of the Bartholomew map suggests that the application way was assessed as a road suitable for cycling, and it remained as a 'serviceable' road by the time of the 1953 edition.

K.7. Paragraph 12.41 of the consistency guidelines<sup>24</sup> notes that:

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

24 Planning Inspectorate: September 2015: [www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines](http://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines).

K.8. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists. And both maps are marked as having been revised by the CTC, which implies detailed local knowledge.

K.9. *Bartholomew's half-inch maps*<sup>25</sup>, by W J Riley, proposes that:

From the start [the maps] were earmarked 'for Tourists and Cyclists', and the roads were classified for 'Driving and Cycling purposes'. Cyclists were confined to public carriage roads until 1968. ...Clearly, the *raison d'être* of the maps was to guide travellers along public highways most suited to their mode of travel. It was *not* to encourage trespass.

K.10. The inclusion of the application way on the 1904 edition of the Bartholomew's half-inch map is good evidence of its status as a minor public road. Its later depiction in 1922 as a way unsuitable for cyclists is likely to reflect the way having been left unimproved, at a time when many minor roads had, by the time, been tarred.

K.11. **Points:** 1

## L. East Kent mineral light railway

L.1. **Date:** 1910

L.2. **Source:** Kent County Archives<sup>26</sup>

<sup>25</sup> *Byway and Bridleway*, 1993, 9, p.37

<sup>26</sup> Q/RUm/1151.

East Kent light railway line 6, deposited plan

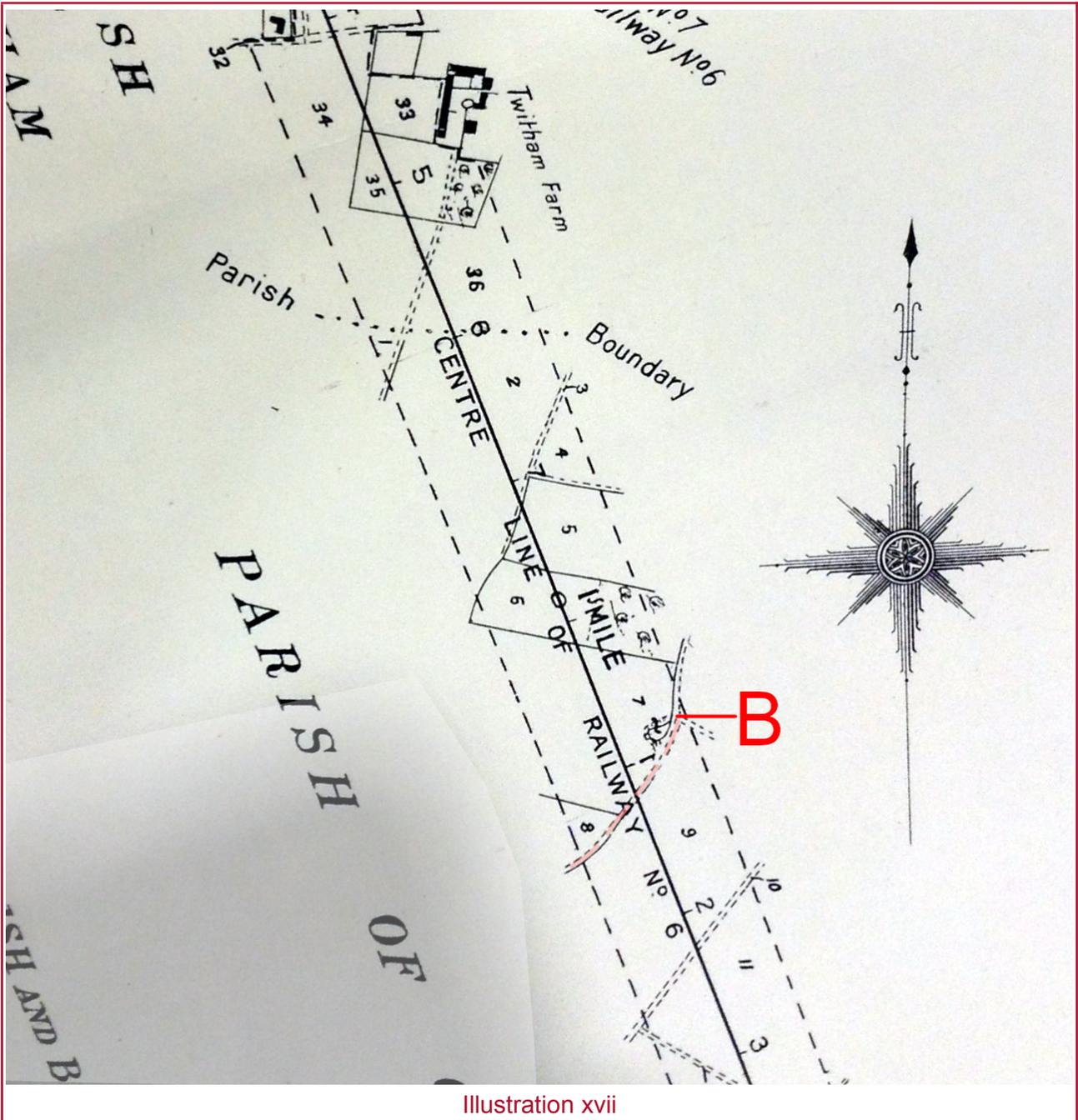


Illustration xvii

East Kent Light Railway, line 6, book of reference

55

EAST KENT MINERAL (LIGHT) RAILWAYS.

Parish of GOODNESTONE, in the County of KENT.

RAILWAY No. 6—*continued*.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
1	Arable and occupation road	Henry Fitzwalter Plumtre	.. ..	Noah Miles
2	Hopfield and arable	Henry Fitzwalter Plumtre	.. ..	Noah Miles
3	Public bridle road	The Eastry Rural District Council Frederick Spencer Cloke, clerk	.. ..	The Eastry Rural District Council
7	Arable, occupation road and pond	Henry Fitzwalter Plumtre	.. ..	George Nethersole
8	Arable and occupation road	Henry Fitzwalter Plumtre	.. ..	Henry Fitzwalter Plumtre
9	Arable	Henry Fitzwalter Plumtre	.. ..	George Nethersole
10	Bridle road	The Eastry Rural District Council	.. ..	The Eastry Rural District Council

Illustration xviii

L.3. **Description:** original scale: unknown; orientation: rotated -25°.

L.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.

L.5. Line 6 was among the initial raft of proposals for a network of lines serving prospective East Kent collieries, anticipated the development of a colliery in Goodnestone, and (unlike several lines proposed at this time) was authorised but not built.

L.6. The deposited plan for line 6 shows the application way from B southwest towards A. The application way is on the southern boundary of parcels 7 and 8. In the book of reference for Goodnestone, parcel number 7 is identified as an 'Arable, occupation road

and pond', and parcel number 8 as 'Arable and occupation road'. Both parcels are given as owned by Henry Fitzwalter Plumtre, who is also in occupation of parcel 8, while parcel 7 is occupied by George Nethersole. No specific reference is made in the section to a crossing of the 'occupation road', but it seems that a height difference between rails and road of 13 feet is noted at this point (this would have required a substantial ramp or cutting to cross the railway).

L.7. **Conclusion:** Sections 46 to 48 and 59 of the Railways Clauses Consolidation Act 1845 were excluded from incorporation in the East Kent Mineral (Light) Railways Order 1910<sup>27</sup>. The order itself provided for the bridging of certain public roads, and for other public highways to be taken over the railway on the level (consistent with the minimal expectations of light railway construction and operation). In common with other crossings for ways which were not perceived as public roads, no specific provision is made in the elevation nor the order<sup>28</sup> for the crossing of the application way, and a level crossing would have been provided.

L.8. 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.

L.9. 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.

L.10. **Points:** 0

<sup>27</sup> See art.3(1).

<sup>28</sup> See arts.21–23.