



Kent Ramblers

Issue 2: April 2023

Kent Footpath Volunteer

An occasional newsletter for our volunteers engaged in looking after Kent's public rights of way network

Who is this Newsletter for?

The newsletter is for everyone working in Kent Ramblers to protect, maintain, improve and promote our extensive path network. Not every article will be relevant to every role. Some of the more technical articles are more relevant to Local Footpath Officers than to Parish Footpath Observers – although we hope many of the latter will find them interesting and perhaps even be enthused to “step up” to the former role.

We welcome contributions from all readers and we are keen to hear what you think about the newsletter so please write to us. We are all volunteers struggling to protect the interests of walkers with whatever skills we have and any statements or opinions expressed here should be regarded as a starting point for research and discussion rather than a definitive interpretation of the law.

Meeting for Footpath Volunteers in Lenham: 13 May 2023

I wrote to most of you a week ago with a provisional programme for our forthcoming meeting. There is no change to the programme which is shown on the right. The meeting will be held in Lenham Community Centre, 12 Groom Way, Lenham, Maidstone, ME17 2QT.



Take up of places has been slow so far – it seems from responses we've received that a lot of you will be on holiday, leading walks or attending rugby matches on 13 May. So there are plenty of spaces and I do hope more of you will now decide to book one. There really is a huge benefit in getting together to discuss the challenges that we face.

10:40	Doors Open. Refreshments.	
11:00	Welcome and Introduction	Colin Sefton
11:10	Planning Applications including Solar Farms	Graham Rusling
11:40	Parish Council Perspective	Sarah Barker
12:10	Damage to the Path Surface: Rights, Responsibilities and Remedies	Graham Rusling
12:40	Lunch	
13:30	British Horse Society – Working Together	Sarah Rayfield & Anne Rillie
14:00	Local Issues:	
14:00	Named Walks Project	
14:10	Donation of Gates	
14:20	Lost Ways	
14:30	Mapping for LFOs and PFOs	
14:40	Scope of PFO and LFO Roles	
14:50	Open Forum	
15:15	Finish	

Promoting Kent's Named Walks

In March we unveiled a new information board outside Tonbridge Castle, funded by profits from the sale of our walking guides. The board promotes the Wealdway, the Eden Valley Walk and the Medway Valley Walk. We hope to install a board promoting the Tunbridge Wells Circular Walk in Groombridge car park soon.

With objections to the route of the coast path around Sheppey and on the mainland near Lower Halstow unresolved, work on further guides to the Kent Coast Path is on hold and instead we plan to publish a new guide to the Wealdway in July. If you would like to help test out parts of the guide during May, please get in touch at books@kentramblers.org.uk.



Questions and Answers

We have been asked to address a number of questions commonly asked by walkers. We have done our best below but if any reader has a better answer to any question then we will be pleased to include that in a future issue.

Who is responsible for keeping the footpath passable i.e. free of overgrown vegetation, trees and other debris (fly tipping)?

Where vegetation is growing up from the surface of the path, which in most cases is deemed to belong to the Highway Authority (e.g. Kent County Council), the Highway Authority is responsible for clearance.

Where vegetation such as brambles and tree branches is overhanging from outside the path width, the landowner is responsible for clearance.

Where a path is maintainable at public expense, which is the case for most paths, the District/Borough council (or Unitary Authority in Medway) is responsible for removing rubbish from the path. This applies only to rubbish on the path, not rubbish beside the path however unsightly. There is no council obligation to remove rubbish from the minority of paths not maintainable at public expense but if the rubbish constitutes an obstruction then the landowner will have a responsibility to remove it.

Who is responsible for supplying & maintaining the furniture

(gates, stiles, bridges etc)? Who owns this furniture ?

In law, gates and stiles are the responsibility of and owned by the landowner. KCC will supply metal kissing gates at a subsidised price in order to encourage the replacement of stiles with gates. Landowners are responsible for maintaining stiles and gates but if a broken stile or gate is making the path difficult to use and the landowner is slow to act then the Highway Authority may undertake the work and bill the landowner for the cost.

While there are no doubt exceptions, in general bridges are the responsibility of and owned by the Highway Authority.

Who is responsible for keeping the ground underfoot safe to walk on?

No one has absolute responsibility for keeping a path completely safe. After all,

there is a public footpath across Striding Edge in the Lake District and few people would want it made safe for all walkers in all conditions. Some paths across moorland can be dreadfully boggy and there is no obligation on either the landowner or the Highway Authority to improve the surface, although they will sometimes do so in popular areas. Walkers have to accept that not all paths are suitable for everyone and that they have to exercise some judgement in deciding where and when to walk.

That said, most paths in parts of the country like Kent are generally safe and issues normally arise only when something happens to create risk such as surface damage, fallen trees and other obstructions. Responsibility for putting things right will depend on the nature of the problem – fallen trees will be a landowner responsibility while responsibility for repairing surface damage will usually fall to the Highway Authority who may be able to take action against whoever caused the damage if it is not simply due to wear and tear from public use.

If a footpath is blocked, what rights do I have to detour off the footpath with the aim of rejoining it later on?

If the path is obstructed by the holder of the land, walkers are permitted to deviate on to other land held by the same landholder in order to circumvent the obstruction. The obvious difficulty may be knowing where the boundary of a holder's land falls. If the path is obstructed by cropping then if at all possible the correct line of the path through the crop should be taken. On the other hand, walkers should not hesitate to deviate from the correct line of the path to avoid cattle, especially to avoid walking between cows and their calves.

If the path is obstructed by natural causes such as erosion of a riverbank, there is no right to deviate.

Is there a minimum width of a public footpath and bridleway?

There is a report later in this Newsletter of a presentation that Graham Rusling made to one of our online webinars that covers this topic.



Recent Cases: Sevington Inland Border Facility

A public hearing was held on 24 January 2023 to consider proposed changes to the public rights of way network near Sevington. The issue is complicated and it was difficult from the maps in the orders to see the full picture. I have therefore produced a single map which incorporates the relevant information from the three maps in the orders.

The background is that the government chose the site on the left half of the map for an Inland Border Facility. Readers may recall that there were proposals for another Inland Border Facility near Dover which would have obstructed and required the diversion of part of the North Downs Way. The plans for the Dover facility were abandoned but the Sevington facility was built.

In order to build the Sevington facility it was necessary to close the paths marked in orange on the map: AE337A, AE338 and the major part of AE639. However, the closures were temporary and the Inland Border Facility was also said to be temporary, the plan being to remove it by 31 December 2025.

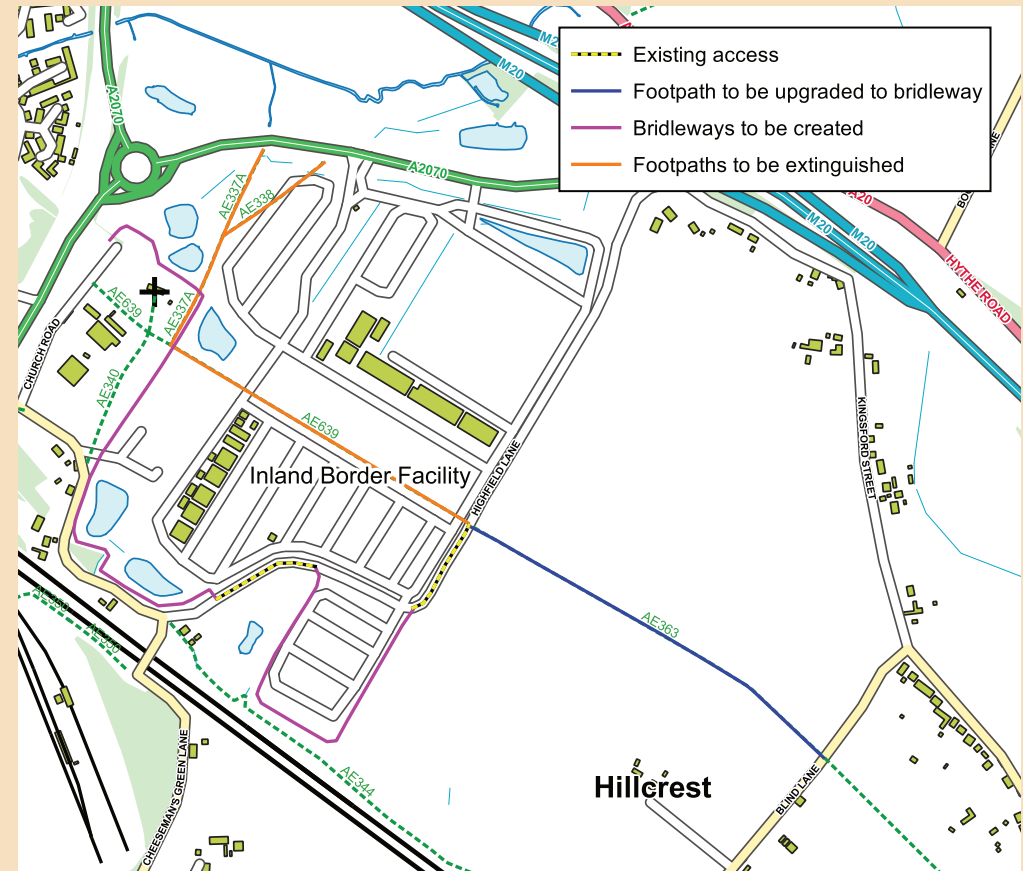
The temporary closure order was renewed several times and it would have been ideal if it had been further renewed until 31 December 2025 when the IBF would have been removed and the paths returned to public use.

The problem is that a temporary closure order can only be made on specific grounds (see the article on this subject in the last issue of this Newsletter), the relevant ones in this case being because works are being executed on or near the path. As the IBF has been completed and development work is no longer taking place, KCC concluded that there were no grounds for further temporary closures and as the paths could not be reopened while the site they cross is occupied by the IBF they came up with the following scheme:

- Permanently extinguish the orange paths
- Create new bridleways, indicated in purple on the map
- Upgrade part of footpath AE363 (indicated in dark blue on the map) to a bridleway

While welcoming the creation of the bridleways and the upgrade of AE363, Kent Ramblers opposed order extinguishing the orange paths. We had no particular problem with extinguishing AE337A and AE338 but objected to the extinguishment of AE369 on grounds broadly as follows:

- It is inappropriate to extinguish forever possibly ancient paths because of temporary circumstances, especially when there is a clear date set for those circumstances to cease
- Even if there is the possibility of the government changing its plans and retaining the IBF beyond 31 December 2025, no decisions should be taken on the fate of the paths until and unless this actually happens



- AE369 is an important part of local heritage, linking and offering a direct line of sight to Sevington and Mersham churches
- For anyone walking between the two churches, the new route will be 1km longer than the old and has 11 changes of direction compared with none for the old route
- The new route is less pleasant than the old route
- The original plans for the IBF, on the basis of which planning permission was given, clearly envisage the eventual reinstatement of path AE369

These arguments were presented by Paddy Herlihy, our recently recruited Local Footpath Officer for the area.

The Inspector considered the arguments with commendable speed, issuing his decision on 28 March 2023. Unfortunately he was not persuaded by the objections to the extinguishment order and he confirmed all three orders. His reasons appeared to be broadly as follows:

- The Inspector asserted that it was not his “duty to examine the question of need”. However, he observed that part of AE369 was unsurfaced (i.e. natural grass) and its use required the negotiation of a stile. He concluded from this that most users would prefer to use the new bridleway with its firm surface and, notwithstanding his earlier assertion, further concluded that there was therefore “no need” for AE369.
- The Inspector was unpersuaded by arguments about the history or visual amenity of AE369.
- Although the Ramblers was not arguing that AE369 should be re-opened while the IBF is in situ, the Inspector was influenced by the security issues that might arise if it were.
- The Inspector rejected the suggestion that temporary closures could continue on the basis that the presence of the IBF constituted a “danger to the public”. He said that this “is not what such orders are designed to be used for” but made no attempt to reconcile this assertion with the provision in section 14 of the Road Traffic Regulations 1984 that such orders can be made “because of the likelihood of danger to the public”.
- The Inspector appeared to be impressed by the fact that the newly created routes, being “higher status” bridleways, would contribute to KCC’s Rights of Way Improvement Plan, although that seems a factor relevant only to the creation and upgrading orders, not to the extinguishment order.

Unsatisfactory though this outcome is, the decision is final unless, exceptionally, we appeal to the courts by 9 May. The case is with Central Office for consideration.

Those who are interested can read the full decision at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1149500/RoW_3286729_OD.docx

Inquiries, Hearings and Representations

Where there is an objection to a path order that is not withdrawn, the Secretary of State will appoint an Inspector to decide whether or not the order should be confirmed.

If a local authority, including a parish council, is one of the objectors, a public inquiry must be held.

In all other cases the Inspector may hold any one of:

- A public inquiry
- A hearing
- Written representations

A **public inquiry** is a fairly formal affair where evidence will be presented and witnesses examined and cross-examined according to very similar rules to those applied in the courts.

A **hearing** is a more informal process where the parties sit around a table and the Inspector chairs a discussion of the relevant issues. A hearing should not normally be held if there are expected to be too many participants to sit around a table.

Written representations are used when there is relatively little evidence and the issues are straightforward. The Inspector will set out a timetable and procedures for submitting evidence and arguments and for responding to the evidence and arguments of others.

The Area Management Team must be consulted if it appears that a case is heading towards any of these processes and their approval is needed before proceeding on behalf of the Ramblers. If an LFO is uncomfortable representing the Ramblers at an inquiry or hearing, other arrangements can be made. In any case training, advice and support can be provided when necessary.

Extent of the Highway

in January 2022 we held an on-line seminar for PRoW volunteers at which Graham Rusling of KCC’s rights of way team addressed us on this topic. Here is our summary of the key points he made. Any errors of interpretation are ours.

Width of the Highway

When we enjoy rights to walk, ride, drive etc these are rights over a particular strip of highway, the width of which is not always stated in KCC’s records.

On 16 September 2009 PINS (the Planning Inspectorate) issued guidance that all DMMOs (Definitive Map Modification Orders) should specify the width of the route being diverted or added to the map. KCC practice when diverting a footpath is to ask for a minimum width of two metres or three metres for a bridleway, although there are exceptions when less or more may be sought.

If the DMMO is adding a path based on historic research then part of that research is to establish a width either on the ground or from historic documents.

It is important to stress that the width of the highway is not just the width of, for example, any tarmac that might have been laid down to ease passage along the highway. The width of the highway extends to the full width between the boundaries including soft margins. Section 130 of the Highways Act 1980 states that it is the duty of the Highway Authority to assert and protect the public’s rights over the highway including any waste that forms part of it.

So, sometimes the width is defined in an order and in some cases widths were stated on the definitive statements when the definitive maps were produced with the aid of the Open Spaces Society and the Ramblers at the time telling local authorities how they should record those widths. However, in most cases in Kent no width is recorded because quite often it was just too difficult to ascertain. On the other hand, the London Borough of Bromley has recorded most widths on its most recent definitive map and statement.

If no width is recorded then we rely on common law principles derived from cases decided in the High Court and higher courts. A series of cases have given guidance from which we have rebuttable presumptions, that is to say you start with a presumption based on the case law but the landowner may bring evidence to demonstrate that the presumption is incorrect in the particular circumstances of the case.

One of the first presumptions is that all highways extend to the full extent between the defined boundaries. This is because it was assumed that landowners would always fence the land to their greatest advantage. The UK Electric Telegraph Company case of 1861 applied this to hedged highways, establishing the “hedge to hedge” presumption. In the case of *Countess of Belmore v Kent County Council* (1901) the Countess succeeded in arguing that the fences had been placed for her convenience to exclude some marsh land which, nevertheless, did not belong to the Highway Authority.

Goodmayes Estates Ltd v First National Commercial Bank Ltd [2004] establishes that when looking at the “hedge to hedge” presumption you look at the centre of the hedge, not the face of the hedge. This makes sense, otherwise the landowner could just let the hedge grow wider and wider and then claim that what was part of the highway is now part of his land rather than the highway.

Of course we are looking at not just hedges but also fences, walls etc.

What happens when there is a hedge and a ditch abutting the highway? *Hanscombe v Bedfordshire County Council* (1938) held that a ditch is not designed for the passage of traffic so the ditch and the hedge combined constitute the boundary and the highway extends only up to the ditch. This may be rebutted if, for example, the highway originally extended to the hedge and the Highway Authority subsequently dug the ditch for drainage purposes, when the highway will continue to extend to the hedge.

Where a boundary consists of a hedge and a ditch, the line of the boundary on the Ordnance Survey map follows the hedge, not the ditch.

Where the boundary is a watercourse, the width of the highway may change as the bank erodes.

Of course some highways are not enclosed by hedges, walls or fences, for example across the middle of a field. In these cases we fall back on the width that is habitually used. The *New Forest Board* case from around 1900 and *Board v Harrow* in the latter part of the 19th century held that in the absence of any other evidence the width must be sufficient for two users to pass without quarrel. In days when folk were slimmer, this width was generally held to be four to five feet for a footpath. It is therefore common to see DMMOs specifying 1.3, 1.4 or 1.5 metres reflecting that. This is the fall-back position – it can be rebutted if there is evidence on the ground suggesting a different width.

Section 137A, Highways Act 1908 (interference by crops) and sections 131 and 134

use the definition in Schedule 12A of that Act of minimum and maximum widths where there is no other evidence:

- Field edge footpaths: Minimum 1.5m and maximum 1.8m
- Other footpaths: Minimum 1m and maximum 1.8m
- Bridleways that are not field edge paths: Minimum 2m and maximum 3m
- Bridleways that are field edge paths: Minimum 3m and maximum 3m
- All other rights of way (byways and restricted byways): Minimum 3m and maximum 5m

KCC make it clear that if they are forced to reinstate a path then they will do it to the maximum width so it is in landowners’ best interests to do the work themselves at an earlier stage.

Depth of the Highway

What about the depth of the highway? The highway authority has a controlling interest in the surface of the land. Some interpret that to mean ownership but the highway authority does not hold title to it. What the Highways Act says is that the surface of the highway is vested in the Highway Authority. So there is a controlling interest which is needed as the Authority has to assert it, protect it and maintain it. However, that interest does not continue forever downward to the centre of the earth but is just sufficient for the Highway Authority’s purposes. In *Tithe Commissioners v Runcorn Urban Borough Council* in the 1970s Lord Denning concluded that the Highway Authority’s interest was the top two spits, that is two spade-head depths. In *Herschel v Baird* from 1900 the Mayor of Tunbridge Wells proposed to install underground toilets for the benefit of the public but it was held that the Highway Authority’s interest was only in the surface of the land and did not extend to the ability to install toilets under it. In *Finchley Electric Lighting Company* it was held simply that the Highway Authority’s interest extended to the depth necessary to maintain the highway and this often extends beyond “two spits”, for example where street lighting is installed.

Height of the Highway

Likewise the height of the highway simply extends to the height necessary for the exercise of the public’s rights over it. This is relevant when clearing overhanging trees and shrubs.

Report of Paths Team Online Footpath Forum held on 19 April 2023

The Big Help Out

Ed Wilson explained that the Big Help Out is a campaign being launched across

Britain this summer (from 8 May) by a large coalition of 25 national charities and many smaller ones. There will be an app and we will hear a lot more about this campaign. The aim is to engage with people who have not volunteered before in hope of getting them interested.

In England and Wales the Ramblers will be offering two key opportunities:

- Don't Lose Your Way – go out and find a local path
- Protect Your Paths – go for a walk with family or friends and look at a local path

There will be different opportunities in Scotland around mapping Scotland's paths and health walks.

These opportunities are not about getting specific tasks done but about whetting people's appetites for getting involved. If people then express an interest in doing more, Central Office will pass on their details to someone locally. Meanwhile no action is required by us.

Path Accessibility Fund

Helen Bates gave an update on this project which is financed by an anonymous donor. The aim is to remove barriers that prevent some people enjoying access to the countryside. Last year there were two pilots in Lancashire and Essex that focused on replacing stiles with gates. They expected this to be a quick process leading rapidly to gates being installed but because of bureaucracy around issues such as getting landowner permission and negotiating a way through local authority payment mechanisms it has taken over a year.

Last year the focus was solely in getting a gate in place, of whatever design. This year the aim will be to get fully-accessible self-closing gates installed, not kissing gates. Another focus this year will be to look at the needs of users of mobility aids and vehicles such as wheelchairs and Trampers.

Helen noted that the 250th gate had that very day been installed under the Isle of Wight's Donate a Gate scheme.

Don't Lose Your Way

Jack Cornish lamented the government's U-turn on its promise last year to abolish the 2026 cut-off date for applying to have public rights of way added to the definitive map based on historical evidence, instead merely deferring it for five years. He does not think there is much chance of the government reversing this decision and so his focus is on mitigating the impact of the cut-off.

In particular he wishes to see ways found to deal more quickly with the backlog of at least 4000 applications, which he thinks is probably an underestimate, many of which might otherwise not be dealt with for decades.

Jack noted that the Welsh government is following through on its promise to repeal the cut-off date in Wales with appropriate legislation going through.

Josie Mizen, the DLYW Officer, said that more volunteers were coming forward for this work. At the process of researching an historical path is not simple, they will need support and the more the better. She has recently run two events in Buckinghamshire and Worcestershire to integrate newer volunteers into the very active teams working there. Additionally the Central Office team is building a library of guidance and there are now three beginners' documents in Assemble:

- Getting Started
- How to Write an Application
- Legal Background to Historical Claims

Finally, Josie advised that there are several teams in the South East going regularly into the National Archives who may be willing to photograph documents for teams based further afield.

Other Guidance and Training

Sophie Reindorp advised that a new step by step guide has been produced on applying for the addition of paths to the definitive map on the basis of user evidence. It is aimed at the public rather than volunteers.

The Central Office team recently ran an "Intermediate Rights of Way Training" session, taking a full day, in East Sussex. They are keen to roll this out to a wider audience and are seeking expressions of interest.

Paths and Access Vision

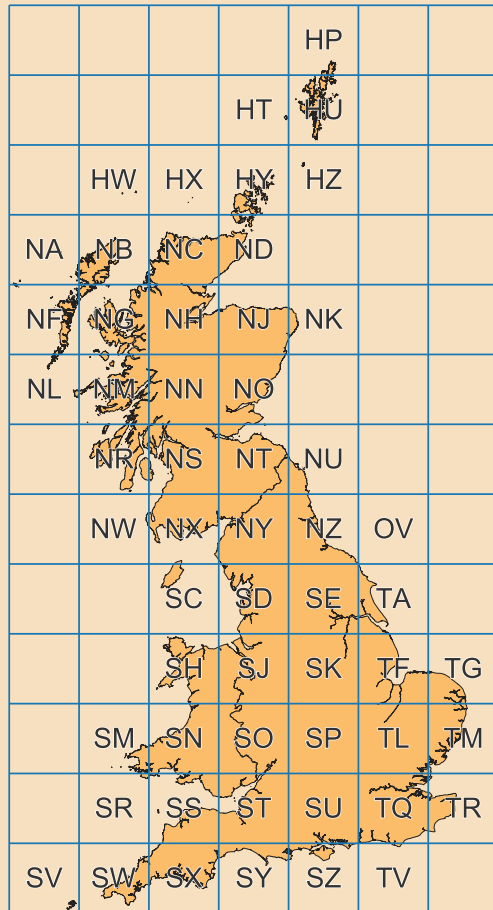
Kate Jury spoke about a project to create a Paths and Access Vision based on internal and external research. They have commissioned the University of Aberystwyth to undertake research and report on the economic value of walking. The New Economics Foundation has produced a report on the inequality of provision of access to rights of way that will be published with a fanfare as soon as the most opportune time for doing so has been decided upon. There is also a YouGov research report on barriers to access and how these differ between able and disabled people.

The team has so far identified 24 recommendations which it has grouped under what it calls "pillars" as follows:

- Protect
- Expand
- Improve
- Promote
- Champion

Kate is very excited about this and is planning to publish the work with a big PR splash. Meanwhile the recommendations are not to enter the public domain.

Figure 1: The “National Grid” on which Ordnance Survey maps are based. Every square is 100 km long and 100 km wide.



The starting point for the National Grid is that one of the north-south lines, the one that separates the SY square from the SZ square, coincides with the 2° west line of longitude.

All about Grid References

While most of the world has to make do with latitude and longitude to specify the location of a feature on the earth's surface, since around 1940 we in Great Britain have had the Ordnance Survey National Grid.

The basic concept is straightforward – a rectangular grid 700 km from west to east and 1300 km from north to south is defined and then subdivided into 100 km squares. Each of these squares that contains any land is allocated a pair of letters – see figure 1.

The starting point for the National Grid is that one of the north-south lines, the one that separates the SY square from the SZ square, coincides with the 2° west line of longitude. A key objective of the National Grid is that equal squares on the map represent equal squares on the ground. On a curved surface, particularly a surface with varying curvature such as the earth, this is quite a challenge. Converting latitude and longitude to grid references is extremely complicated – it cannot be accomplished by mathematics alone but requires a database of additional adjustments to correct for local irregularities of terrain.

Figure 2 shows the National Grid in blue and lines of latitude and longitude in red. Only one north-south gridline – marked A – runs along a line of longitude – the 2° line. West of this line, true north is east of grid north and east of this line true north is west of grid north.

On OS Landranger and Explorer maps the 100 km squares are divided into 1 km squares so that the gridlines are 20 mm

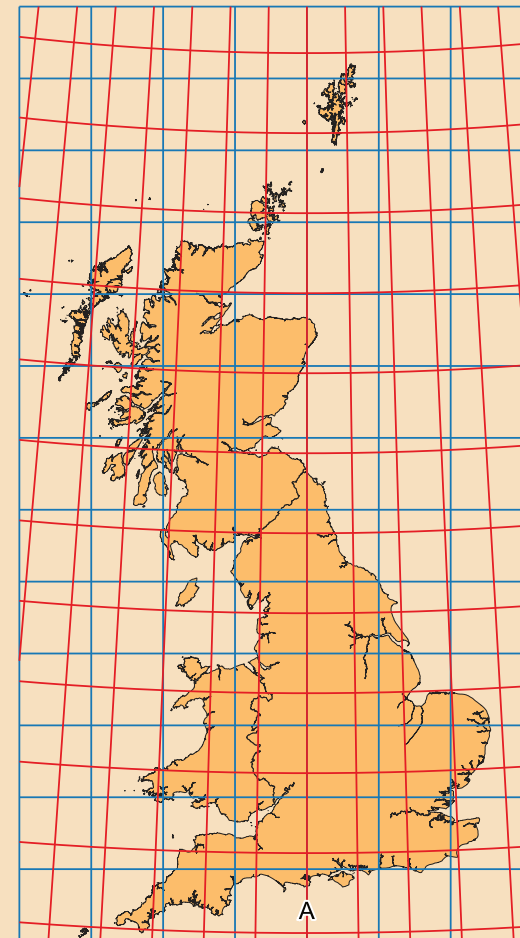
and 40 mm apart respectively. The lines are numbered by reference to their distance from the bottom left hand corner of their 100 km square, measured in kilometres. The distance of a north-south line from the left hand edge of its 100 km square is known as the easting and the distance of a west-east line from the bottom edge is known as the northing. A 1 km square can therefore be uniquely specified by giving the two letters of the 100 km, the easting and the northing in that order. For example, Ightham Mote is in square TQ5853. This would be called a four-figure grid reference.

For most practical purposes a four-figure grid reference is not precise enough and a six-figure grid reference is needed. To find a six-figure grid reference the 1 km squares have to be notionally divided into 0.1 km (100 m) squares. The six-digit grid reference for Ightham Mote is then TQ584535; note the position of the additional digits. However many digits there are, the first half are the easting and the second half the northing.

A reference system that mixes numbers and letters is not very computer-friendly. Mapping applications and websites often use a purely numerical coordinate system based on the National Grid rectangle shown in figure 1. The eastings in this system are usually the distance in metres from the left hand edge of the rectangle and the northings are the distance in metres from the bottom edge. On this system the coordinates of Ightham Mote would be 558458, 153481 – because the bottom left corner of the TQ square is 500 km from the western edge of the National Grid rectangle and 100 km from the southern edge. See also figure 4.

Figure 2 shows the National Grid in blue and lines of latitude and longitude in red. Only one north-south gridline – marked A – runs along a line of longitude – the 2° line.

In 1999, Nick Crane published a book describing his walk along this line, or as close to it as possible.



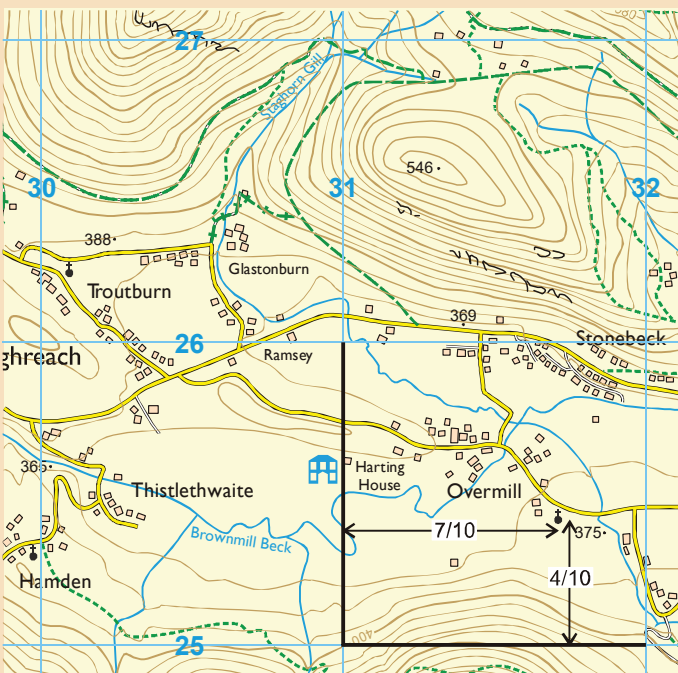


Figure 3: To take a 6-figure grid reference

What is the grid reference of Overmill church?

1. Identify the 1 km square containing the church. Do this by identifying its left and bottom sides (imagine the letter "L" that bounds the square). Take the numbers on the edge of the map for these two sides (down stroke of the "L" first, just as you would write it). This gives:

31_25_

(Note One: 3125 is the 4-

figure grid reference of the square)

(Note Two: for ease of reading, the numbers against each grid line are repeated at 10 km intervals in the body of the map)

2. Now an extra figure must be added to each pair of numbers to specify to the nearest 100 m where the church lies within the square. Estimate the number of tenths (100 m) the church lies from 'our' two sides, once again starting with the down stroke. How far right of the down stroke? Seven tenths. How far above the horizontal stroke? Four tenths. Thus the 6-figure grid reference is: 317 254

3. When quoting a grid reference, for confirmation and to guard against error, always say what the reference refers to:

"the church at grid reference 317 254"

4. 6-figure grid references are repeated at 100 km intervals across the country. In many cases it will be obvious which 100 km square is meant but if you need to define the grid reference uniquely, this can be done in either of two ways:

Method 1. The best way is to identify the two-letter code allocated to

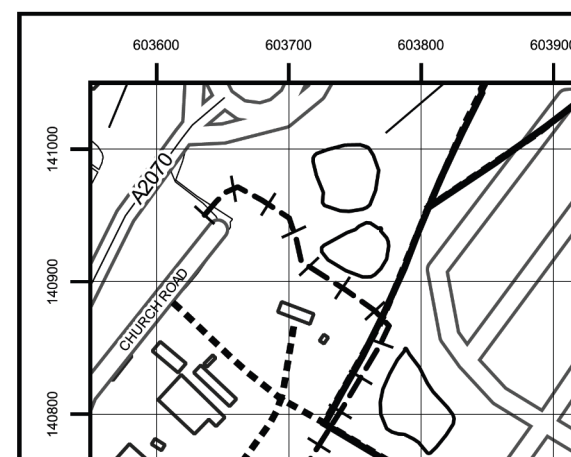
the 100 km square containing the church – see figure 1. In this example, say the code is 'SY', then the full grid reference is:

"the church at grid reference SY 317 254"

Method 2. A more informal and commonly used way of giving a unique grid reference is to quote the Explorer map sheet containing the location:

"the church at OS Explorer 123/317 254"

Figure 4. This map in the style normally used in public footpath orders shows the use of purely numerical grid reference coordinates. The 6 at the start of each easting and the 1 at the start of each northing indicates that this location is in grid square TR.



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