



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
RIGHTS OF WAY SUB-COMMITTEE
24 April 2019

REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

ALLEGED PUBLIC FOOTPATH No xxx PARISH OF AKELD

Report of the Executive Director of Local Services
Cabinet Member: Councillor Glen Sanderson, Environment and Local Services

Purpose of report

In this report, the Council is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of a public right of way over a route extending beyond the existing northern end of Public Footpath No 11 (Parish of Wooler) at Green Castle, Wooler.

Recommendation

It is recommended that the Council agrees that there is insufficient evidence to indicate that public footpath rights have been reasonably alleged to exist over a route extending beyond the western end of Public Footpath No 11 at Green Castle (Point T).

1.0 BACKGROUND

- 1.1 By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.
- 1.2 The relevant statutory provision which applies to adding a public right of way to the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. This requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

“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, a restricted byway or, subject to section 54A, a byway open to all traffic;”

- 1.3 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 Ever since the Definitive Map of Public Rights of Way was first published, in 1962, an anomaly has existed where Public Footpath No 11 in the Parish of Wooler meets the Akeld parish boundary, just to the south-west of Green Castle. There is no recorded continuation of this public right of way within Akeld parish.

3. LANDOWNER EVIDENCE

- 3.1 To date, no landowner comments have been received.

4. CONSULTATION

- 4.1 In July 2014, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the “prescribed and local organisations” listed in the Council’s “Code of Practice on Consultation for Public Path Orders”. Three replies were received and are included below.

- 4.2 By letter, dated 17th October 2014, Ms E Bamford responded to the consultation, on behalf of the Ramblers’ Association, stating:

“My comments are attached. Where we have no facts or evidence and no objections I have written No Comment. We would support these additions.

“Parish of Akeld Footpath xxx (continuation of Wooler FP 11) Again, we have no information and have not walked it but we would support a continuation to give access to Green Castle.”

- 4.3 By letter, dated 28th October 2014, Mr D Roberts responded to the consultation, on behalf of the Cyclists’ Touring Club, stating:

“I attach comments and evidence which I judge to be relevant on behalf of Cyclists Touring Club.

"To clarify locations I attach annotated copies of your plans. These are confined to routes of which I have knowledge. Where I have no knowledge of a route or where I know it is surfaced with tarmac and therefore suitable for ALL TRAFFIC I have omitted any comment.

"Where an obstruction has been encountered I have endeavoured to provide as accurate date as possible.

"Routes traced in red have been cycled without problem. [The route of alleged Footpath No xxx was NOT one of the ones highlighted by Mr Roberts].

"I have commented on issues where I consider an omission has been made in your consultation.

"No distinction has been made between Restricted and All Traffic Byways."

- 4.4 By email, on 6th November 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

"AKELD PARISH

Proposed addition of Footpath xxx (a continuation of Wooler FP 11)
This potential route also shown on map 23 meets the same parish boundary as the route above [i.e. alleged Bridleway xxx, beyond Point N at Bell's Valley] so the same issues will probably have affected it.

The BHS hopes that some effort will be made to ascertain if the documents mentioned above, which can be seen at TNA, show for certain if these two routes were always cul-de-sacs at this parish boundary or whether in the 9th century they continued to join the wider network in adjacent parishes, which seems more likely."

5. DOCUMENTARY EVIDENCE

- 5.1 A search has been made of archives relating to the area. Evidence of Inclosure Awards, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

1769 Armstrong's County Map

There is no evidence of a track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1820 Fryer's County Map

There is no evidence of a track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1827 Cary's Map

There is no evidence of a track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1828 Greenwood's County Map

There is no evidence of a track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1866 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1869 Wooler & Humbleton Common Inclosure Award

The route of existing Wooler Footpath No 11 appears to cross land covered by the very eastern part of the Inclosure Award. Its possible northerly continuation (within Akeld parish) lies just outside (i.e. north of) the area of land being inclosed. Neither the existing public footpath, nor its northerly continuation are depicted in the Award.

1899 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

1924-5 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

c.1951 Definitive Map – original Survey Schedules & Map

Whilst the route of existing Public Footpath No 11 (Parish of Wooler) leading northwards towards Green Castle, is clearly identified for inclusion as a public footpath (No 12), there is no continuation or linking path identified in Akeld parish. Unfortunately, no Schedule for Wooler FP 12, appears to exist - if it had, its possible some continuation into Akeld parish might have been implied.

Draft Map

Whilst the route of existing Public Footpath No 11 (Parish of Wooler) leading northwards towards Green Castle, is clearly identified for

inclusion as a public footpath, there is no continuation or linking path identified in Akeld parish.

Provisional Map

As with the Draft Map, whilst the route of existing Public Footpath No 11 (Parish of Wooler) leading northwards towards Green Castle, is clearly identified for inclusion as a public footpath, there is no continuation or linking path identified in Akeld parish.

1957 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

Original Definitive Map

Existing Public Footpath No 11 in Wooler Parish is clearly shown. This route stops at the Akeld parish boundary, just to the south-west of Green Castle. There is no recorded continuation within Akeld parish.

First Review of the Definitive Map (Relevant Date 1 Nov 1963)

As with the original Definitive Map, existing Public Footpath No 11 in Wooler Parish is clearly shown. This route stops at the Akeld parish boundary, just to the south-west of Green Castle. There is no recorded continuation within Akeld parish.

1979 Ordnance Survey Map: Scale 1:10,000

There is no evidence of a path or track approximating to the route of existing Wooler Footpath No 11 or any northerly continuation, beyond Point T, within Akeld parish.

- 5.2 The original Definitive Statement for Public Footpath No 11 (Parish of Wooler) states:

“From the Akeld Parish boundary near Green Castle in a south-easterly direction across the Humbleton Burn to the Public road.”

6. SITE INVESTIGATION

- 6.1 Existing Public Footpath No 11 (Parish of Wooler) appears to begin at a field gate on the U1078 road, south of Green Castle. It proceeds as a 1.5 metre wide grass path, in a north-westerly direction down quite a steep bank for a distance of 30 metres to a wooden footbridge over the Humbleton Burn, then continues, undefined, across a small, flat, grazed horse enclosure for a further 20 metres. There is no evidence of any continuation of this path where it continues in a north-westerly direction up a scrub / gorse covered embankment for a further 15 metres to the parish boundary. There is a barbed-wire topped fence along the parish boundary and no means of crossing this fence in the vicinity of Point T. Beyond Point T, there is no

evidence of any footpath continuation within Akeld parish. The field north of Point T is grass pasture.

7. DISCUSSION

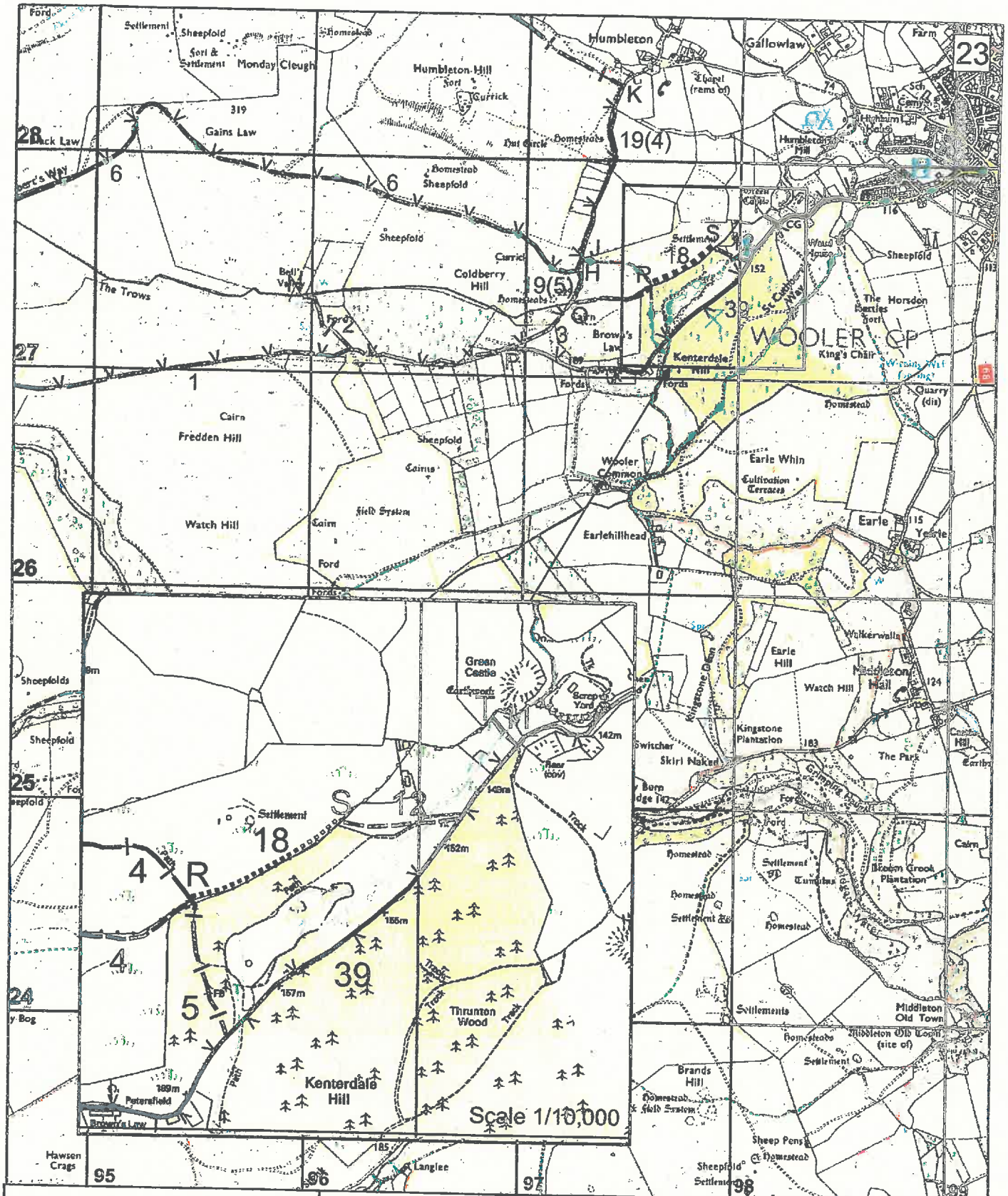
- 7.1 Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered which, when considered with all other relevant evidence available to them shows:

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, a restricted byway or, subject to section 54A, a byway open to all traffic.

- 7.2 When considering an application / proposal for a modification order Section 32 of the Highways Act, 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 7.3 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 7.4 It is unusual to have a public right of way simply terminating at a parish boundary. Unless that parish boundary was also a destination point / place of public resort it is, more often than not, the case that some public rights (as yet unrecorded) continued beyond the parish boundary. The 2014 consultation into an Akeld parish continuation of Wooler Public Footpath No 11 was formulated on that basis.
- 7.5 The original Definitive Map was the product of a multi-stage process. First of all, locally produced survey maps identified the routes which were being proposed for inclusion. Survey schedules were produced for most of these routes. A certain degree of vetting presumably took place then, based on these initial surveys, Draft Maps were published. These Draft Maps were the first official stage in the process. Anyone had an opportunity to object or make representations regarding what was shown on these maps. Typically land owners might dispute the inclusion of certain routes, individual users or path user groups might challenge the omission of certain routes and all parties might take issue with the proposed status or alignment of these routes. The County Council employed independent barristers to hear the evidence presented both for and against alterations to the Map. Some alterations were approved, others were rejected. The approved alterations were identified on Modified Draft Maps and the whole process moved forward to the next official stage, with publication of Provisional Maps. At this stage landowners (only) had a second opportunity to make objections or representations regarding what was shown on the Maps. Again, objections or representations were considered by independent barristers (looking at all the evidence available).

The Provisional Maps, as amended by the last round of successful challenges, were published as Definitive Maps.

- 7.6 The first Definitive Map was prepared in sections, based upon the old rural and urban district boundaries. Within the RDC areas, the collection of public rights of way information was further broken down into parish units. For this reason, it was not unknown for Parish A to identify a linear route within its area as being a public bridleway with the neighbouring Parish B identifying the continuation of that route as a public footpath. Occasionally, one parish might identify a cross-boundary route as a public footpath or bridleway with the neighbouring parish not identifying the continuation as a public right of way at all.
- 7.7 The current case differs from the abovementioned example, however, in that the historical map evidence available does not depict a physical route on either side of the parish boundary. A public footpath on the Wooler side is clearly identified on the Survey, Draft, Provisional and Definitive Maps, without there being any continuation acknowledged within Akeld parish. There is no obvious reason why a public footpath would simply terminate at Point T / the Akeld parish boundary. It was for this reason that the 2014 consultation schedule, very unusually, did not identify a 'claimed route' for the Akeld footpath; only that an Akeld parish continuation, proceeding from Point T, at the north end of Wooler Footpath No 11 was being investigated. The consultation process did not yield any additional information which would assist in the identification of a precise route.
- 7.8 It is not known precisely on what basis Wooler Footpath No 11 was identified as a public footpath when the Definitive Map was originally prepared in the 1950s and early 1960s. The route is not depicted as a physical entity on any of the historical maps which have been examined and, unfortunately, the Survey Schedule for Wooler Path No 12 is missing. Even if we assume (as we must, without evidence to the contrary) that Wooler Footpath No 11 was recorded correctly, there isn't any documentary evidence, or user evidence, or physical evidence on the ground to support any particular continuation within Akeld Parish. We can speculate that a route might have continued south-westerly (in the direction of alleged Footpath No 18) or northerly (in the general direction of Humbleton) or north-easterly (simply as a means of gaining access to Green Castle) but there is insufficient information available to enable any conclusions to be reached.
- 7.9 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where it can be determined, recorded in the definitive statement. Usually there is a boundary to boundary presumption for public highways – particularly those based on historical documentary evidence. In this instance, because the route is not enclosed, if members did decide that a public footpath continuation should be included in a future Definitive Map Modification Order, it is proposed that the footpath should be recorded with the Council's standard width of 1.5 metres (wide enough for two pedestrians travelling in opposite directions to pass each other).

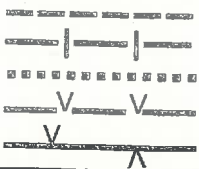


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Northumberland County Council
 Sustainable Transport
 Local Services
 County Hall Morpeth Northumberland
 NE61 2EF
 Telephone 0845 600 6400

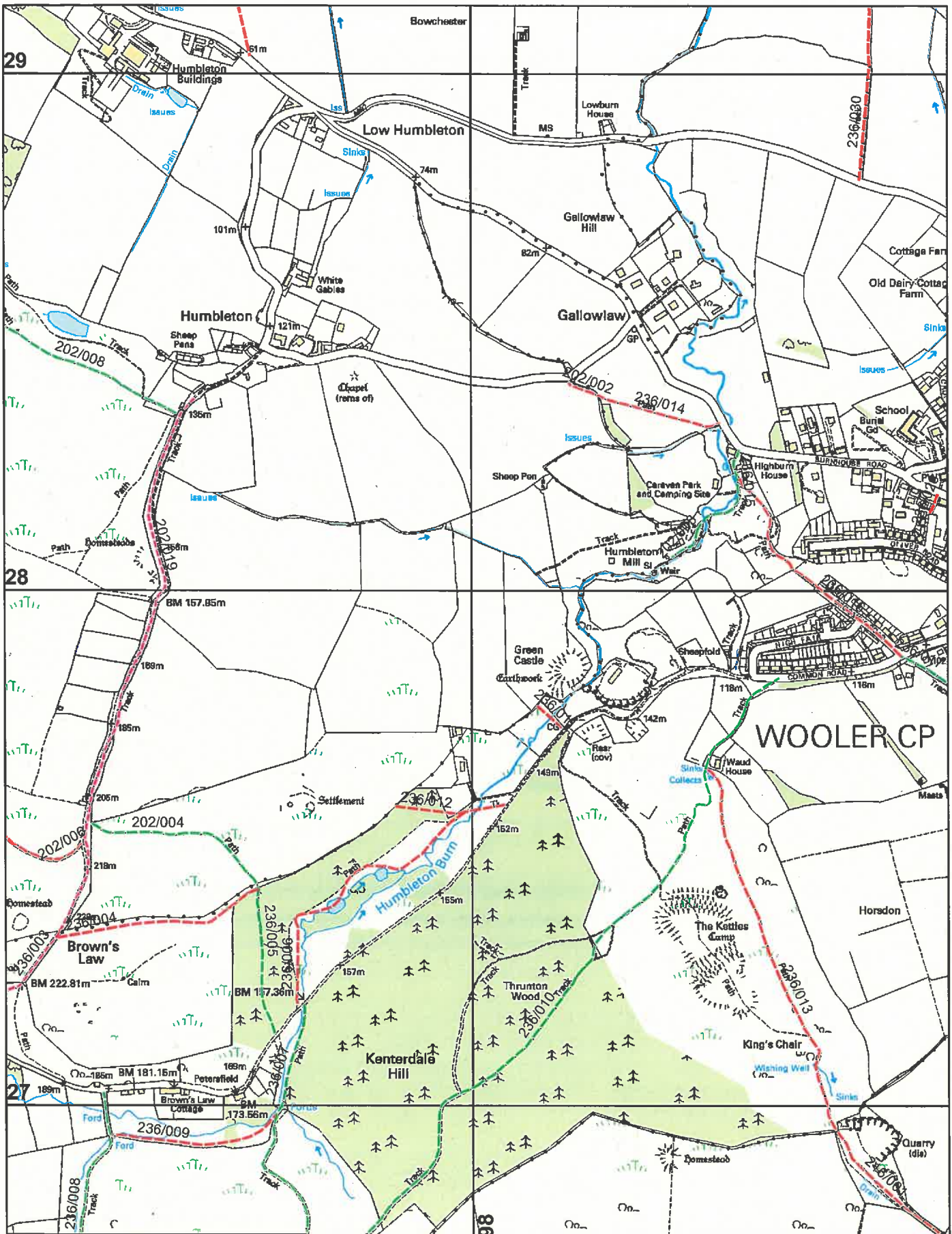
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Wildlife and Countryside Act 1981 Public Rights of Way



- Selected Existing Public Footpaths
- Selected Existing Public Bridleways
- Alleged Public Footpath
- Alleged Restricted Byway
- Alleged Byway Open to All Traffic

Former District(s)	Parish(es)	Scale
Berwick	Akeld/Wooler	1:25,000
Def. Map No.	O.S. Map	Date
37	NT 92 NE	February 2014




Northumberland
 County Council
 Contact: Alex Bell
 Telephone: 01670 624133
 Email: Alex.Bell@northumberland.gov.uk

Legend

- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic

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This is a computer generated extract of the Working Copy of the Definitive Map of Public Rights of Way

Scale: 1:10,000

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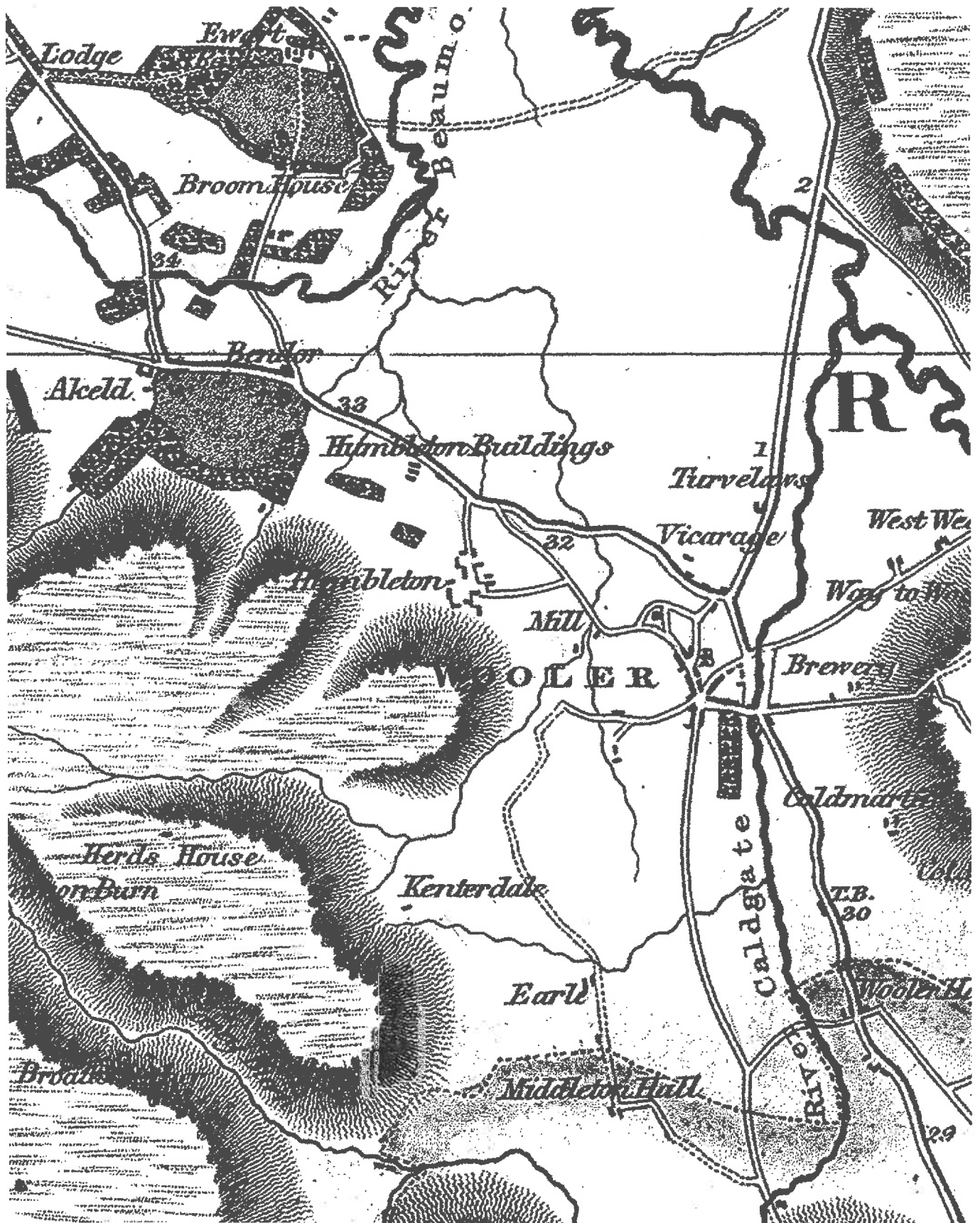
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1. ~~Borough~~
Urban District
Rural District **GLENDALE**
2. Parish **WOOLER**
3. Number of Footpath on Map **11** ✓
4. Name of Path
5. Kind of Path (i.e. FP/BR) **F.P.**
6. General Description of Path **From the Akeld Parish boundary near
Green Castle in a south-easterly direction across the Humbleton Burn
to the Public road.**
.....
.....
.....
7. Other relevant information
.....
.....
.....
.....



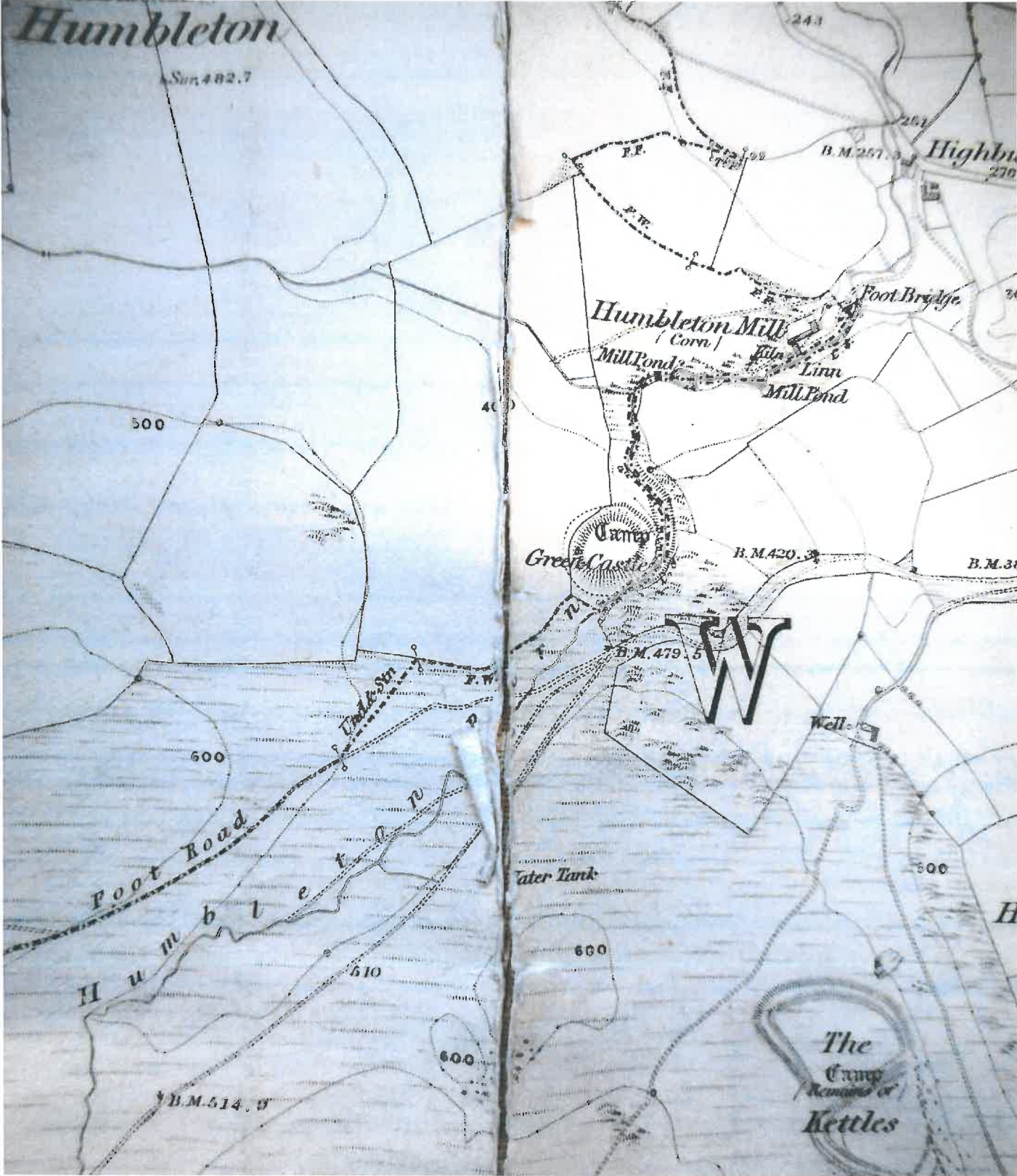
Fryer's County Map
1820



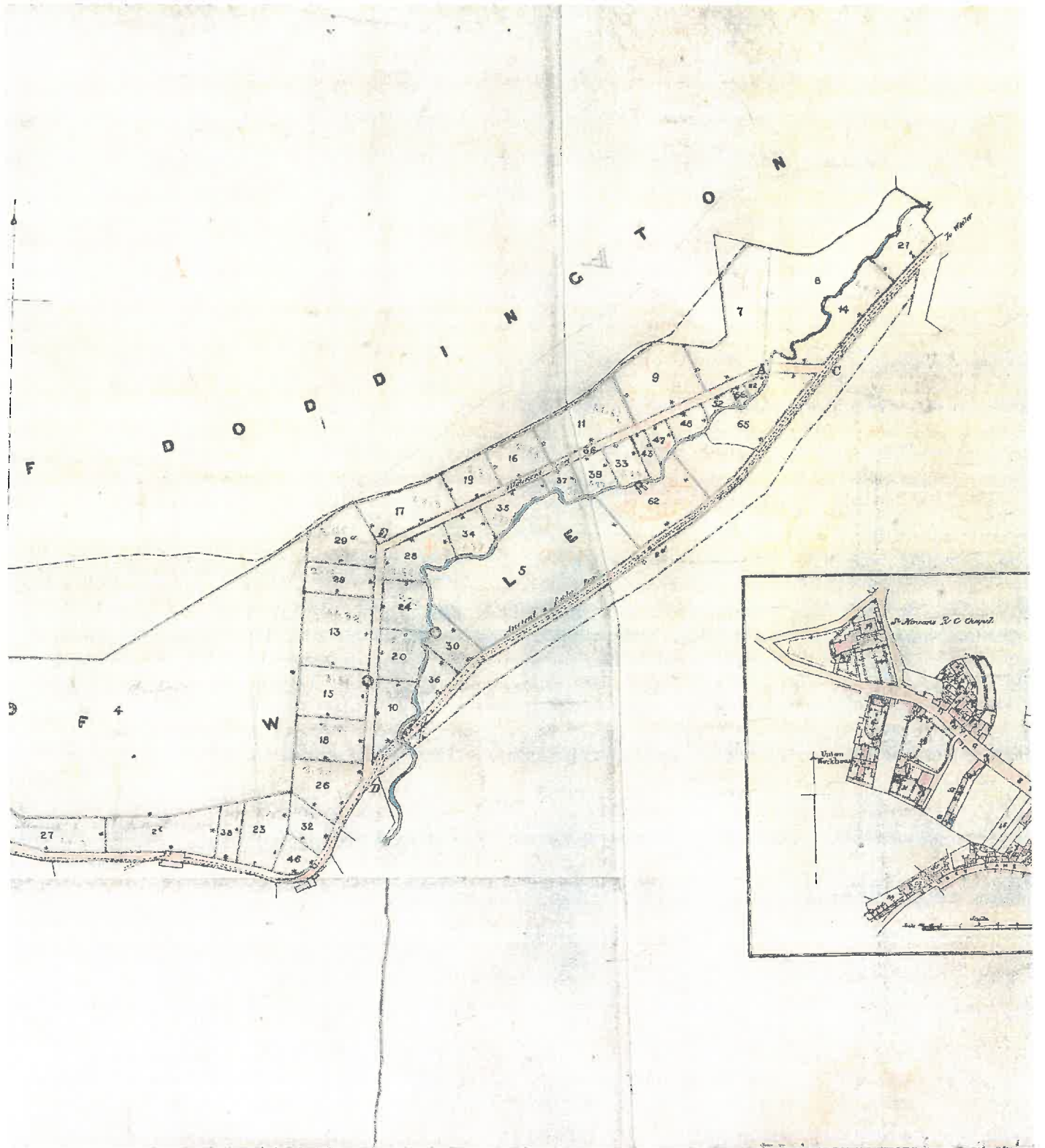


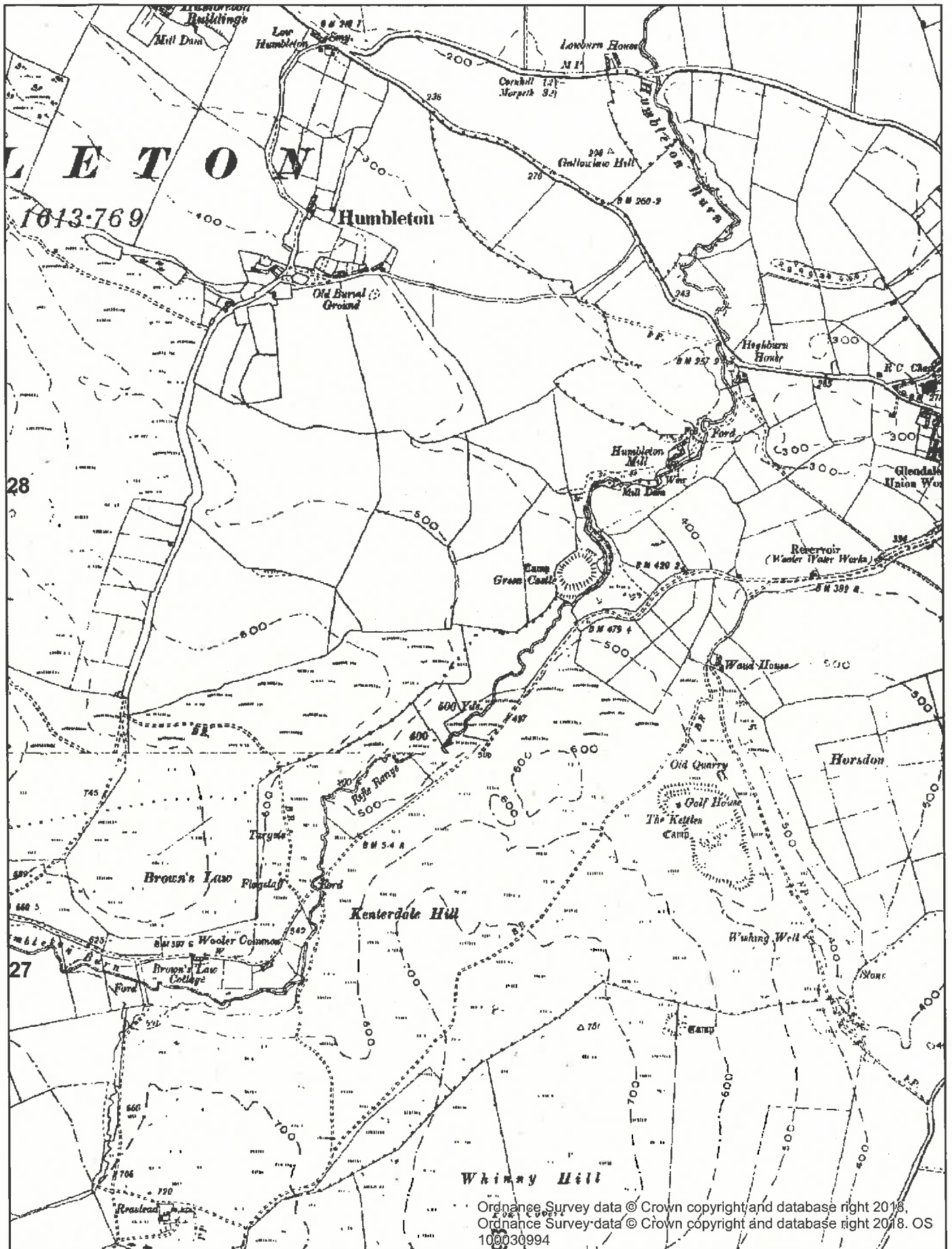
Greenwood's County Map
1828





Wooler & Humbleton Common Inclosure Award 1869





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SCALE 1:10,560



Ordnance Survey 2nd Edition 6" map (1899)



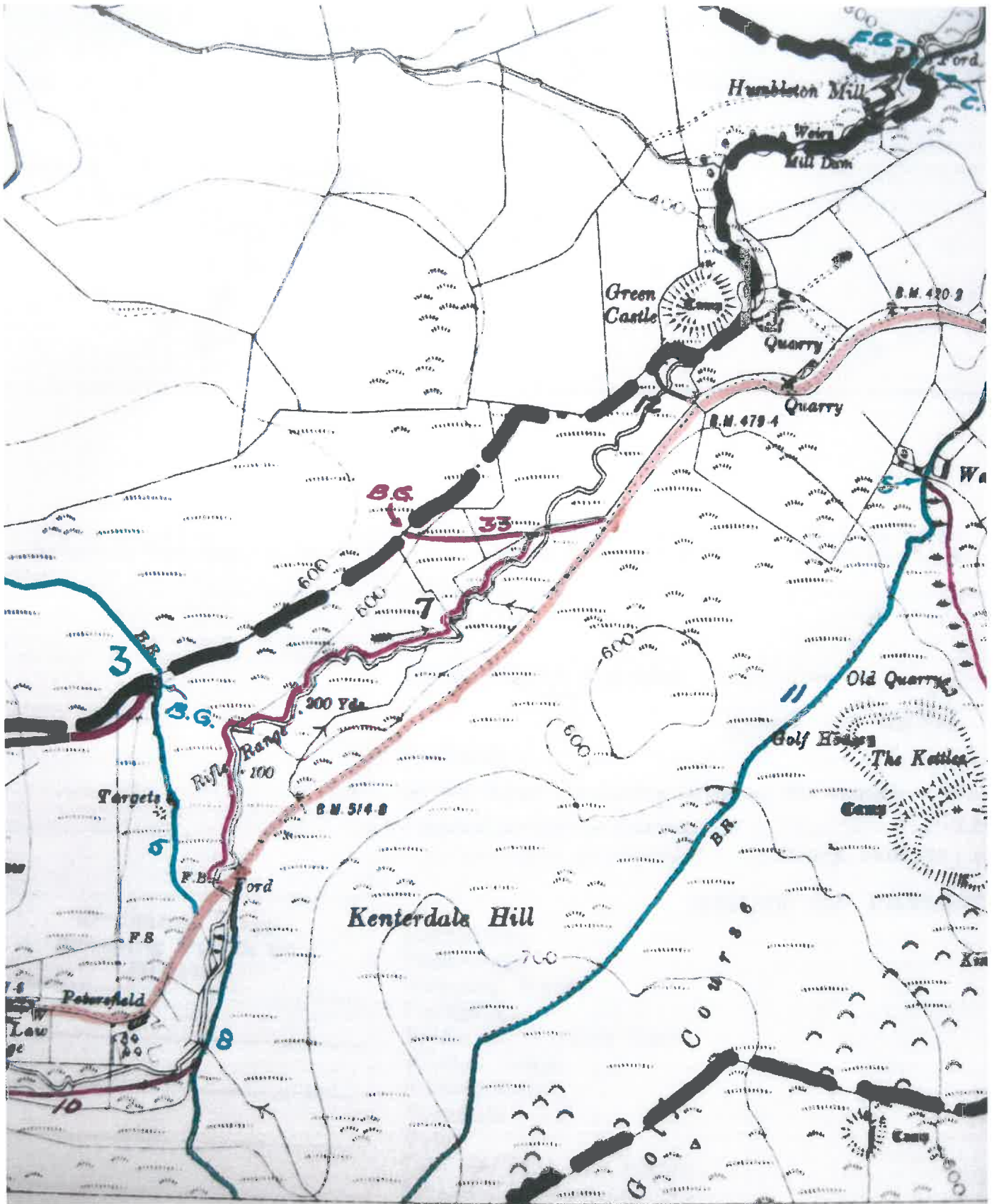
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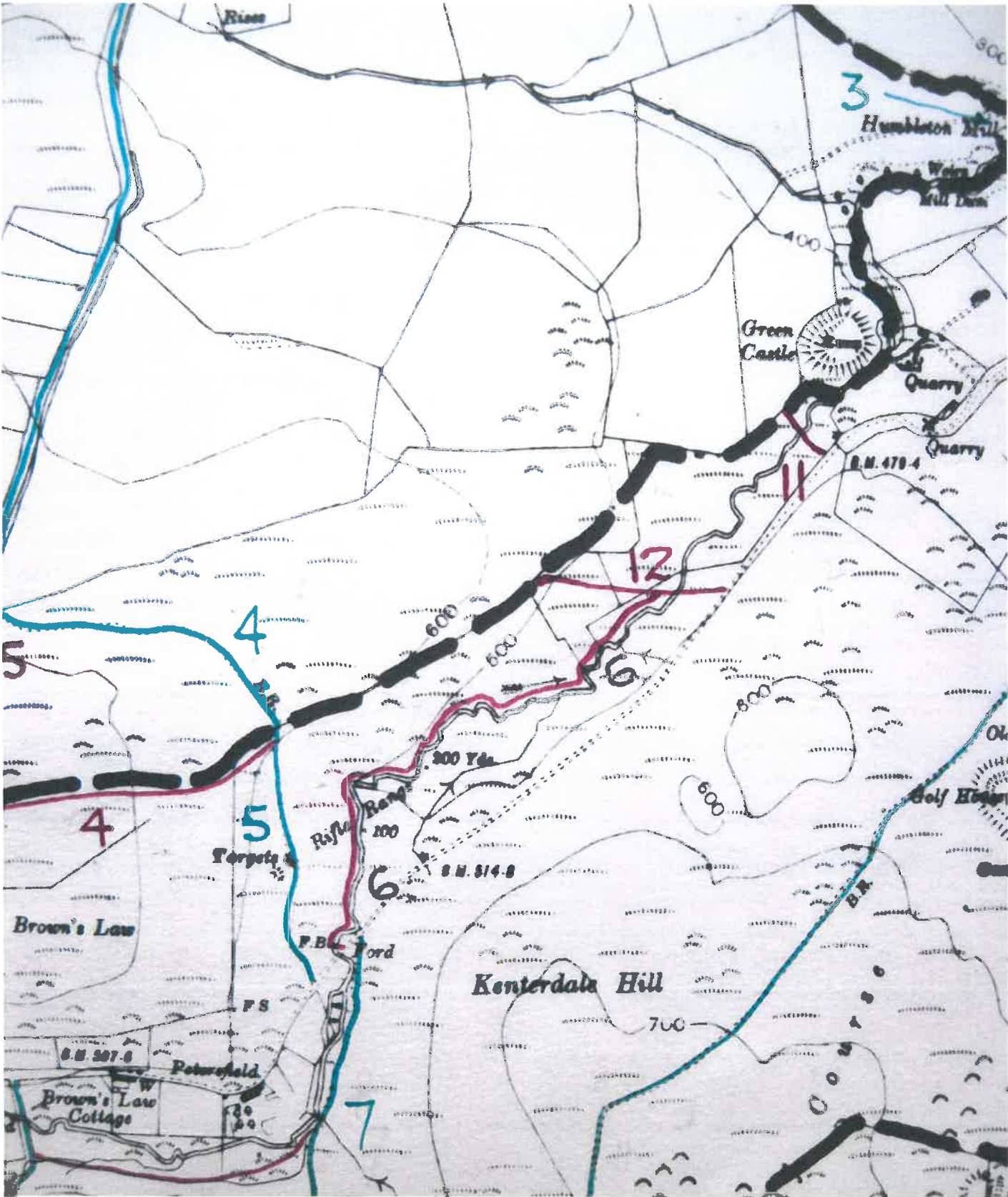
SCALE 1:10,560


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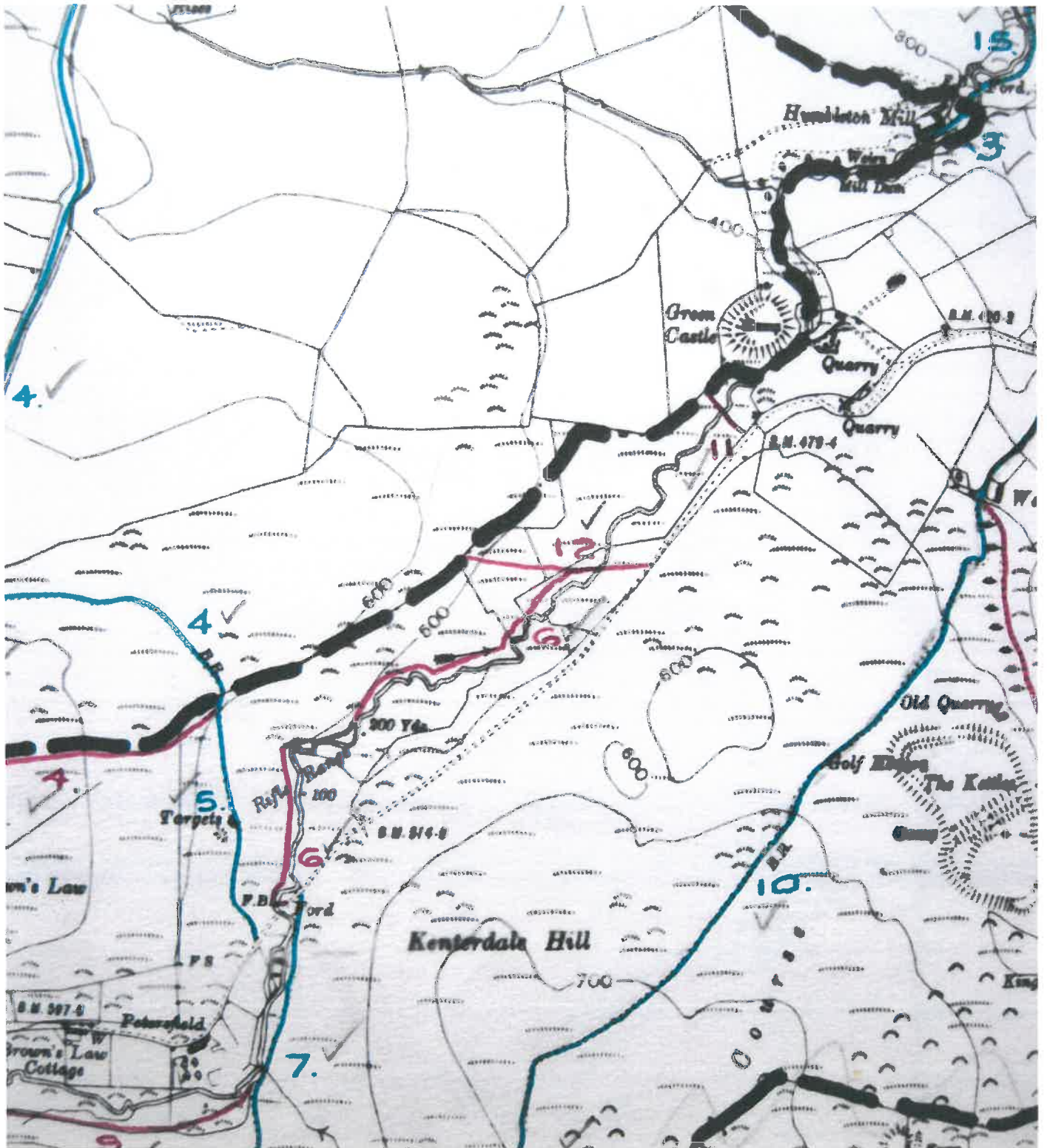
Ordnance Survey 3rd Edition 6" map (1924-25)

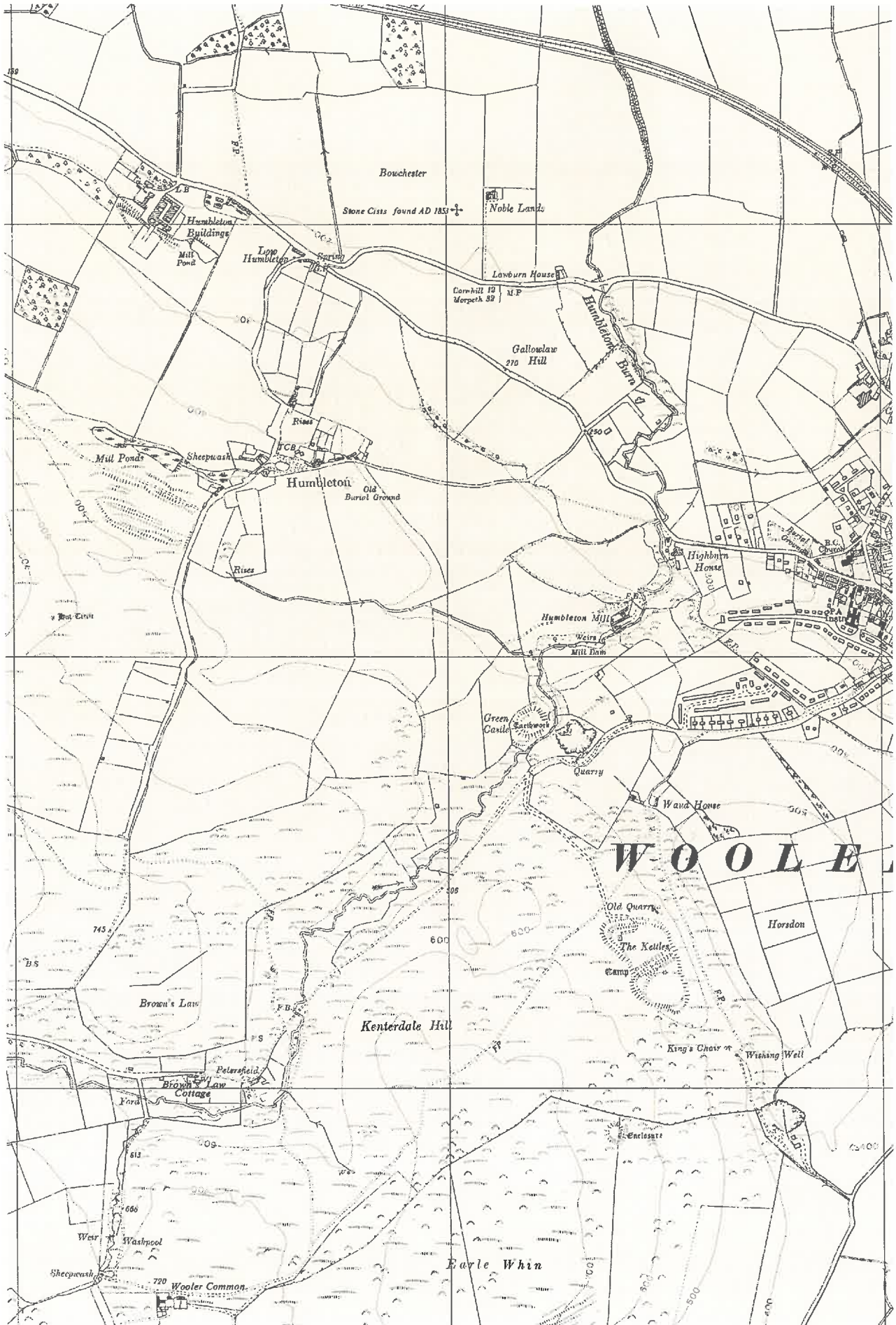
Survey Map



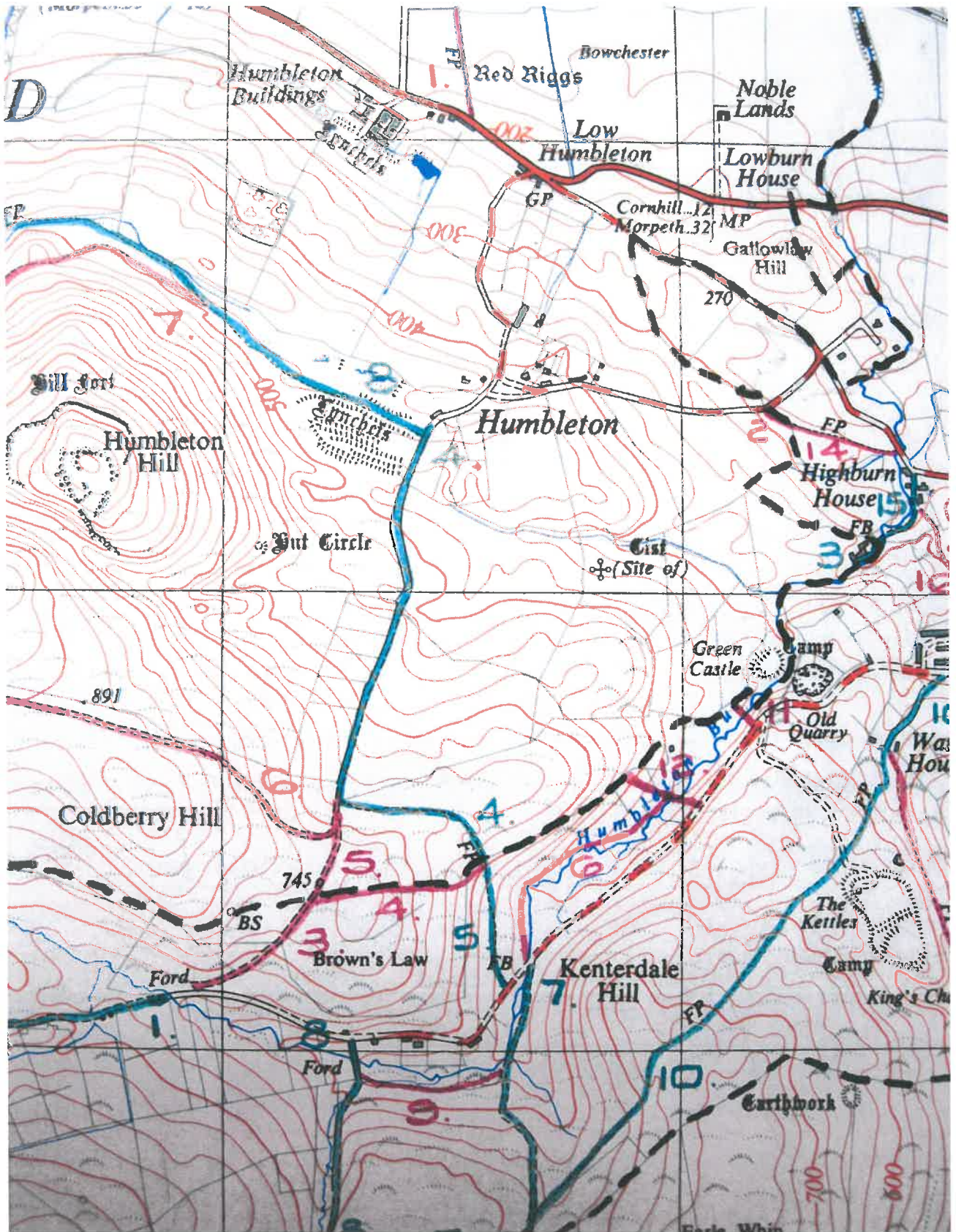


Provisional Map

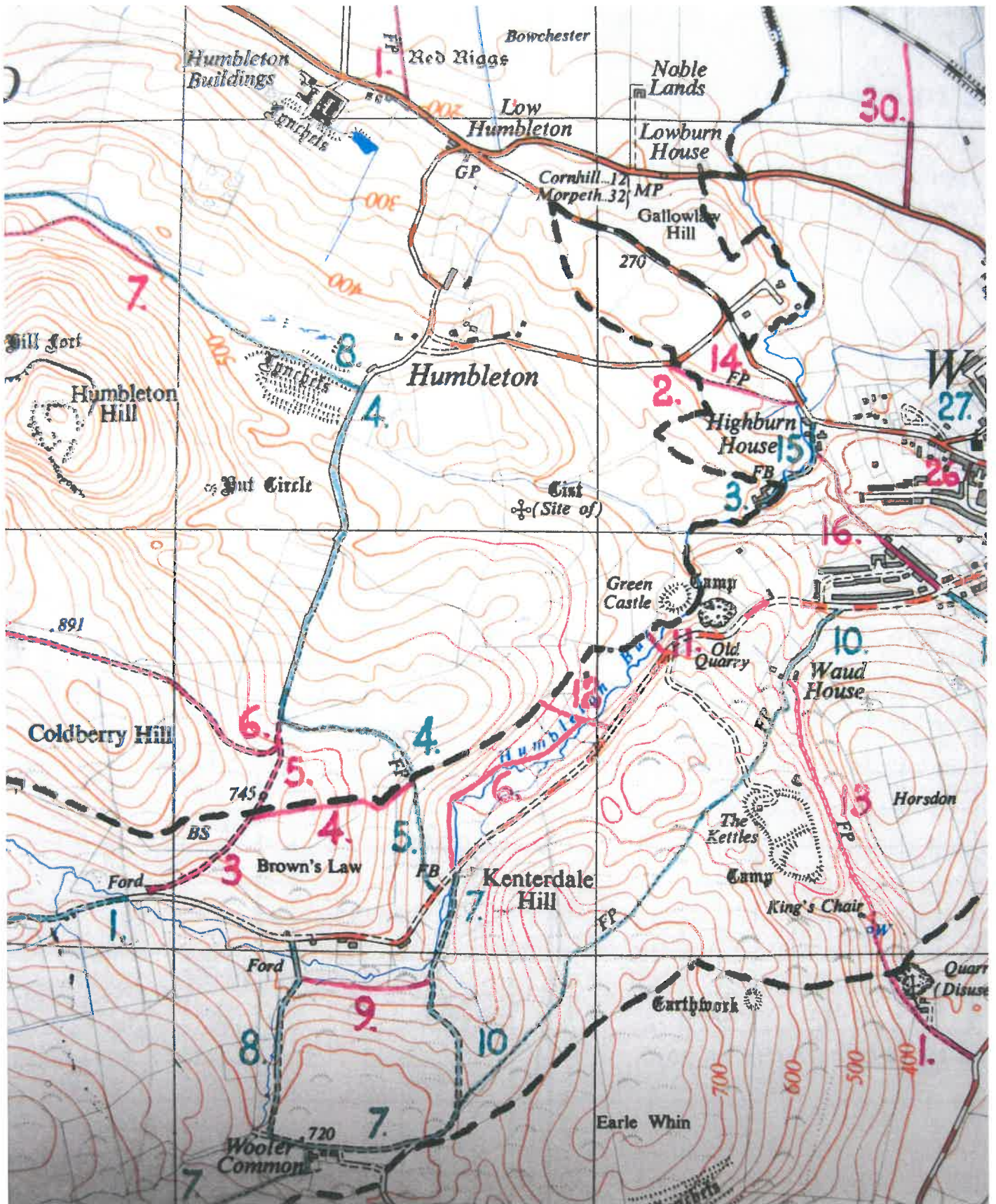




Original Definitive Map



First Review Definitive Map



1:10,000 O.S. Map
1979

