



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 18 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 between the western end of existing Public Bridleway No 12 (Parish of Wooler) south-west of Green Castle, and the southern end of existing Public Bridleway No 4 (Parish of Akeld) north of Brown's Law Cottage, west of Wooler.

Recommendation

It is recommended that the Council agrees that there is sufficient evidence to indicate that public footpath rights have been reasonably alleged to exist over the route S-R, and that it be included in a future Definitive Map Modification Order as a public footpath.

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 12 in the Parish of Wooler meets the Akeld parish boundary. 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 18 We strongly support this addition. There is clear evidence of usage and provides a good link between Akeld BW 4 and Wooler FP 12.”

- 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 18 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
Alleged Public Footpath 18
The BHS supports this proposal as it will help to create a linked up network of public paths."

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 road or track approximating to the route of existing Wooler Footpath No 12 or any continuation within Akeld parish.

1820 Fryer's County Map

There is no evidence of a road or track approximating to the route of existing Wooler Footpath No 12 or any continuation within Akeld parish.

1827 Cary's Map

There is no evidence of a road or track approximating to the route of existing Wooler Footpath No 12 or any continuation within Akeld parish.

1828 Greenwood's County Map

There is no evidence of a road or track approximating to the route of existing Wooler Footpath No 12 or any continuation within Akeld parish.

1866 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a path or track over the route of alleged Public Footpath No 18. The route is labelled "Foot Road". Whilst there is also clear evidence of a path or track over the routes of existing Bridleway No 4 (Parish of Akeld) and existing Public Footpath No 4 (Parish of Wooler) but not of existing Public Footpath No 12 (Parish of Wooler), although there is a Wooler continuation of alleged Footpath No 18, on a different alignment.

1869 Wooler & Humbleton Common Inclosure Award

The route of the alleged footpath lies just to the north of the area of land covered by this Inclosure award. The C-A-E-D road set out in that award was a private road. The C-A part of that route appears to coincide with the eastern end of existing Public Footpath No 12 and the E-D part resembles the route of existing Public Bridleway No 5. Within the inclosure award area, there isn't any path which represents the western section of existing Footpath No 12, beyond point A, which might then link with the eastern end of alleged Public Footpath No 18.

1899 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track over the route of either alleged Public Footpath No 18 or existing Public Footpath No 12 (Parish of Wooler). There is a track (labelled "BR") over the route of existing Public Bridleways Nos 4 and 5 (Parishes of Akeld and Wooler).

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

As with the 1899 map, there is no evidence of a path or track over the route of either alleged Public Footpath No 18 or existing Public Footpath No 12 (Parish of Wooler). There is a track (labelled "BR") over the route of existing Public Bridleways Nos 4 and 5 (Parishes of Akeld and Wooler).

c.1951 Definitive Map – original Survey Schedules & Map

Whilst the route of existing Public Footpath No 12 (Parish of Wooler) is clearly identified (as Footpath No 33) leading westwards to the Akeld parish boundary, there is no continuation / linking path identified in Akeld parish. At the parish boundary a "BG" (presumably "Bridle Gate") is identified. In the Schedule for Wooler FP 33, it is indicated that that path is well defined, has a discernible 3 - 4 ft width and is in a good condition. The grounds given for believing the path to be public is "Usage".

Draft Map

As with the Draft Map, whilst the route of existing Public Footpath No 12 (Parish of Wooler) is clearly identified leading westwards to the Akeld parish boundary, there is no continuation / linking path identified in Akeld parish.

Provisional Map

As with the Survey and Draft Maps, whilst the route of existing Public Footpath No 12 (Parish of Wooler) is clearly identified leading westwards to the Akeld parish boundary, there is no continuation / linking path identified in Akeld parish.

1957 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track over the route of either alleged Public Footpath No 18 or existing Public Footpath No 12 (Parish of Wooler). There is a track (labelled "FP") over the route of existing Public Bridleways Nos 4 and 5 (Parishes of Akeld and Wooler).

Original Definitive Map

As with the Survey, Draft and Provisional Maps, whilst the route of existing Public Footpath No 12 (Parish of Wooler) is clearly identified leading westwards to the Akeld parish boundary, there is no continuation / linking path identified in Akeld parish.

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

As with the Survey, Draft, Provisional and original Definitive Maps, whilst the route of existing Public Footpath No 12 (Parish of Wooler) is clearly identified leading westwards to the Akeld parish boundary, there is no continuation / linking path identified in Akeld parish.

1979 Ordnance Survey Map: Scale 1:10,000

There is no evidence of a path or track over the route of either alleged Public Footpath No 18 or existing Public Footpath No 12 (Parish of Wooler). There is a path (labelled "Path") over the route of existing Public Bridleway No and part of existing Bridleway No 5 (Parishes of Akeld and Wooler).

- 5.2 The original Definitive Statement for Public Footpath No 12 (Parish of Wooler) states:

"From the Public road north-east of Kenterdale Hill in a westerly direction across the Humbleton Burn to the Akeld Parish boundary."

6. SITE INVESTIGATION

- 6.1 From a point marked S, at a fenced off former gateway in the stone wall across the western end of existing Public Footpath No 12 in the Parish of Wooler, a mostly 0.3 metre wide trodden earth / grass path, proceeds in a

south-westerly direction, at a distance of about 10 to 12 metres north of the parish boundary wall, for a distance of around 95 metres. The path then moves closer to the boundary wall, and continues in a south-westerly direction, either adjacent to, or within 3 to 4 metres of, the wall for a further 210 metres to a pint marked R, at the south end of existing Bridleway No 4 in the Parish of Akeld, at a gate where that path meets the northern end of existing Bridleway No 5 in the Parish of Wooler.

7. DISCUSSION

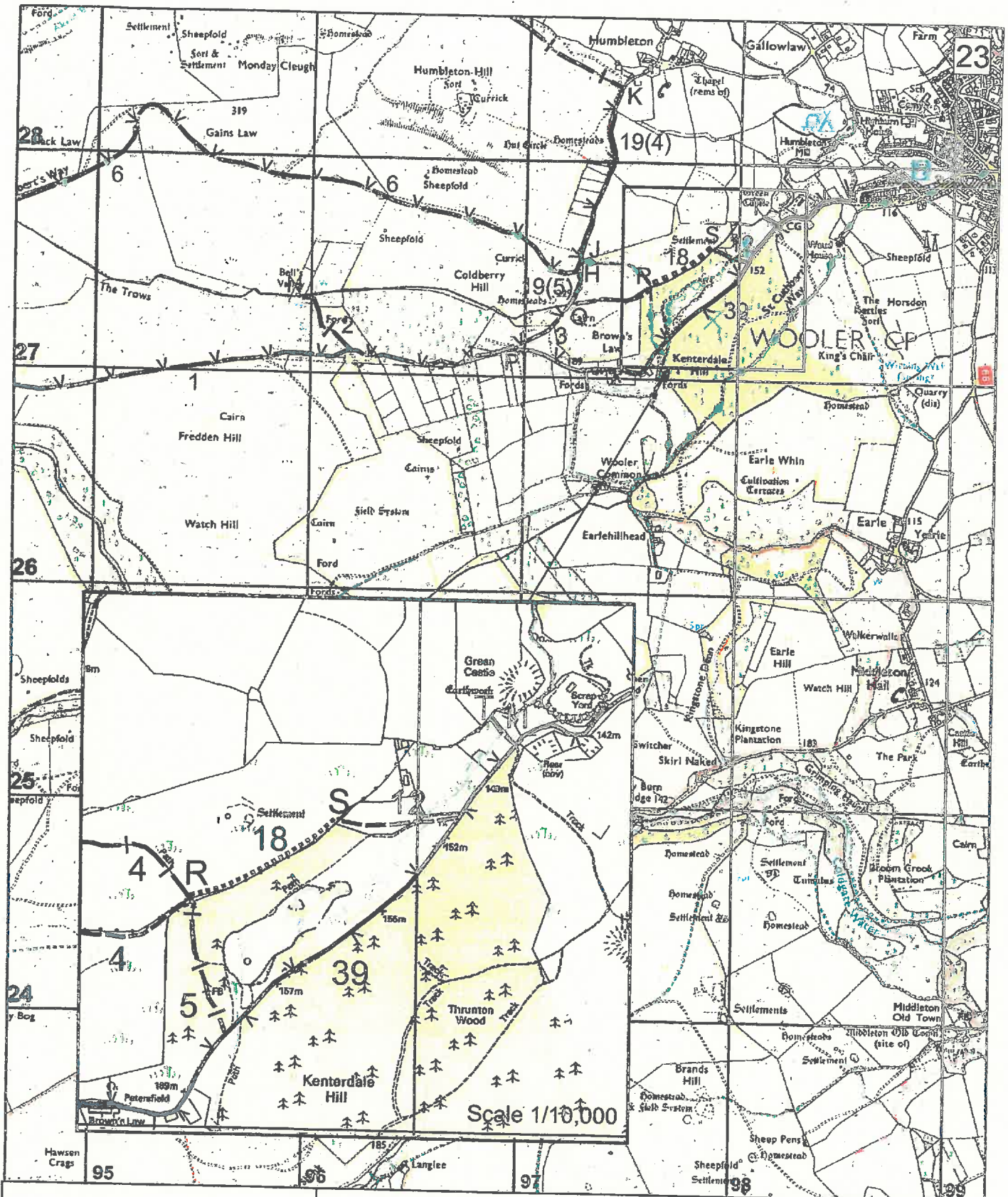
- 7.1 Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered which, when considered with all other relevant evidence available to them shows:

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 The only historical map which appears to identify a route over alleged Public Footpath No 18 is the First Edition 6 inch to the mile Ordnance Survey Map of 1866. On this map, a path is clearly depicted with double pecked lines and labelled “Foot Road”. Although the route is not identified on any of the earlier maps produced by Armstrong, Fryer, Cary and Greenwood, this is not unexpected. The earlier maps were of a much smaller scale, showing only roads and a limited number of public bridleways.
- 7.5 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 12 was formulated on that basis.
- 7.6 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.

- 7.7 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.
- 7.8 The Ordnance Survey map evidence during the 1920s - 1950s period does not depict the physical existence of a route over either existing Public Footpath No 12 (Parish of Wooler) or alleged Footpath No 18 (Parish of Akled). That is not to say there definitely was no route. It might not have been very substantial and / or it is possible that this particular area was only re-surveyed for more major changes. The Wooler Footpath No 12 route appears (from the early 1950s Survey Schedule) to have been identified on the basis of "Usage". It was identified as being 3 - 4 feet wide, and in a poor condition. On the accompanying Survey Map, a "B.G" (i.e. bridle gate) is clearly identified at the point where Wooler Footpath No 12 and Akled alleged Footpath No 18 meet. Although the Survey Schedule also indicates that Ordnance Survey maps were consulted, this route (or one quite closely resembling it) only seems to be identified (as a "Foot Road") on the very earliest OS map. The Definitive Statement for existing Public Footpath No 12 identifies the path as having a width which varies between 3 and 4 feet.
- 7.9 There is clear evidence of a former gateway in the stone wall, just to the south-west of Point S. There is very clear evidence of a well walked path over the most easterly 75% of a route resembling existing Public Footpath No 12. It must be stressed that the currently walked route does not follow the line of Footpath No 12, as it is recorded on the Definitive Map. This may reflect the fact that when the footpath was originally recorded, the Ordnance Survey base map being used was 'out-of-date', so the alignment identified involved a degree of guesswork, or it may be that it was entirely correct, but that the walked route has altered over time. There is also some evidence of recent use of a route resembling the most westerly 25% of Footpath No 12, inside the north-eastern boundary of the woodland. There is very clear evidence of a trodden earth / trodden grass path over the route of alleged Footpath No 18

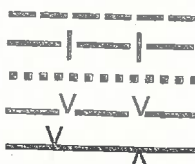


NORTHUMBERLAND

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Local Services
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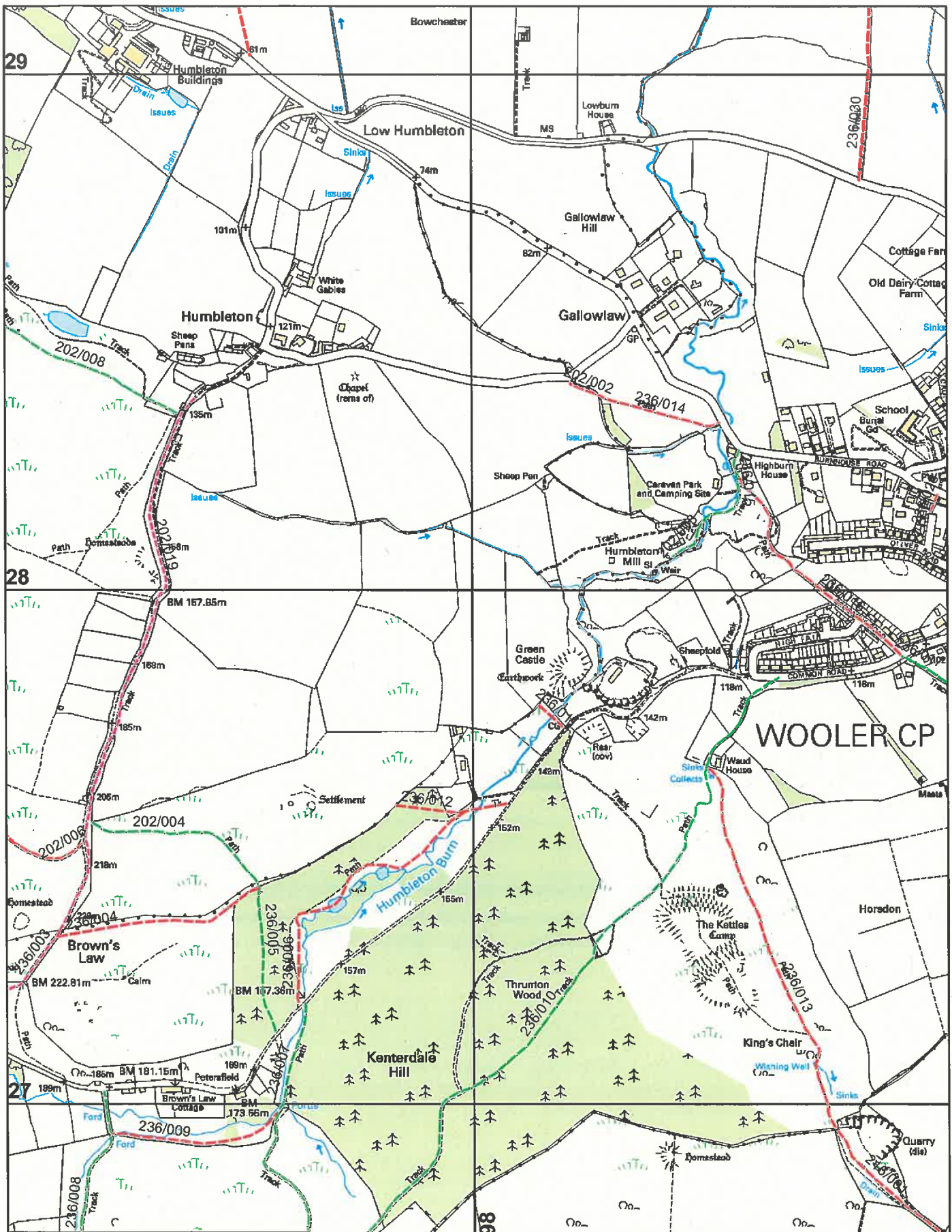
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Wildlife and Countryside Act 1981 Public Rights of Way



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

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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NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

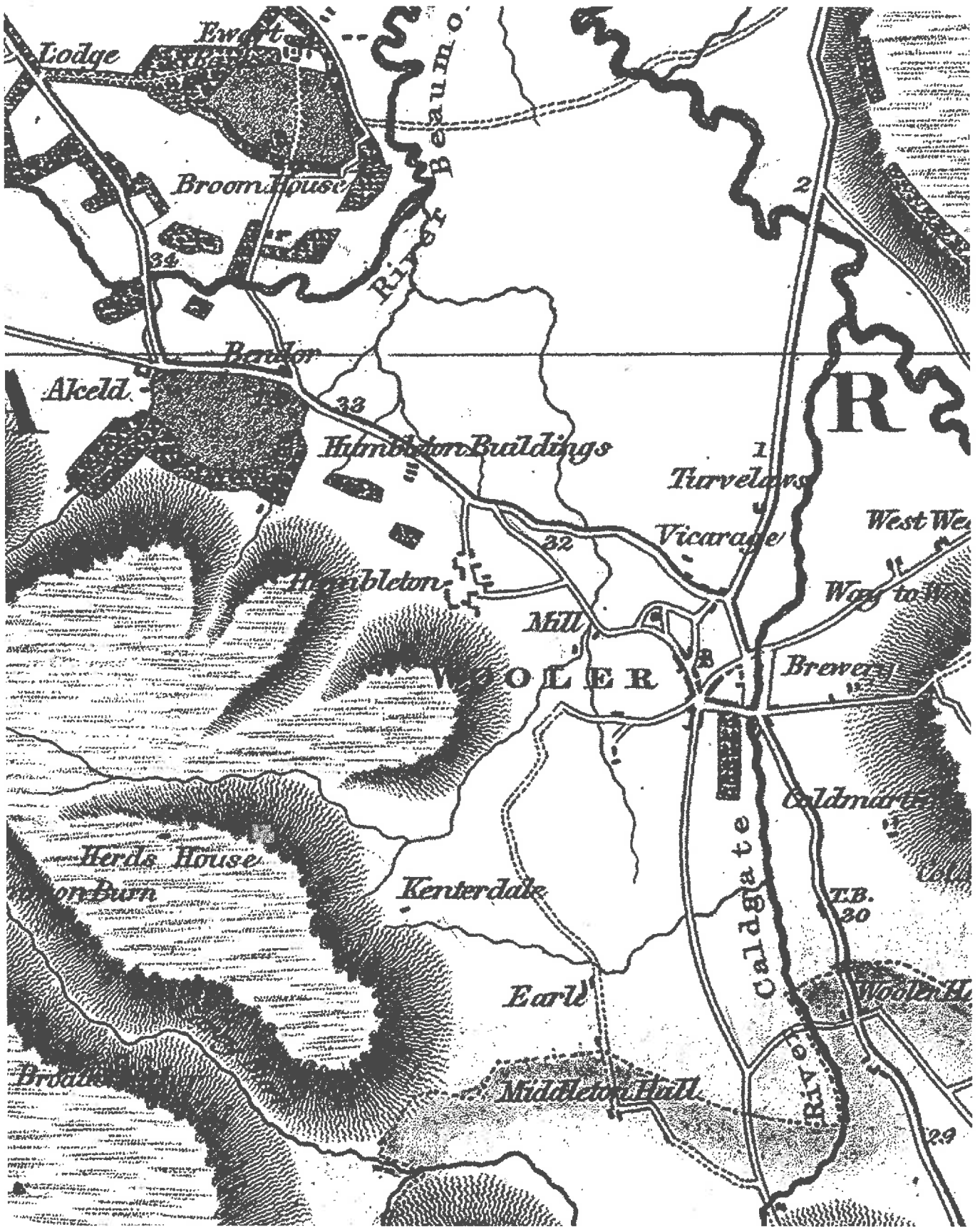
PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1. Borough
~~Urban District~~
Rural District **GLENDALH**
2. Parish **WOOLER**
3. Number of Footpath on Map **12** ✓
4. Name of Path
5. Kind of Path (i.e. FP/BR) **F.P. width varies from 3 to 4 feet**
6. General Description of Path **From the Public road north-east of**
..... **Kenterdale Hill in a westerly direction across the Humbleton Burn to the**
..... **Akeld Parish boundary.**
.....
.....
.....
7. Other relevant information
.....
.....
.....
.....

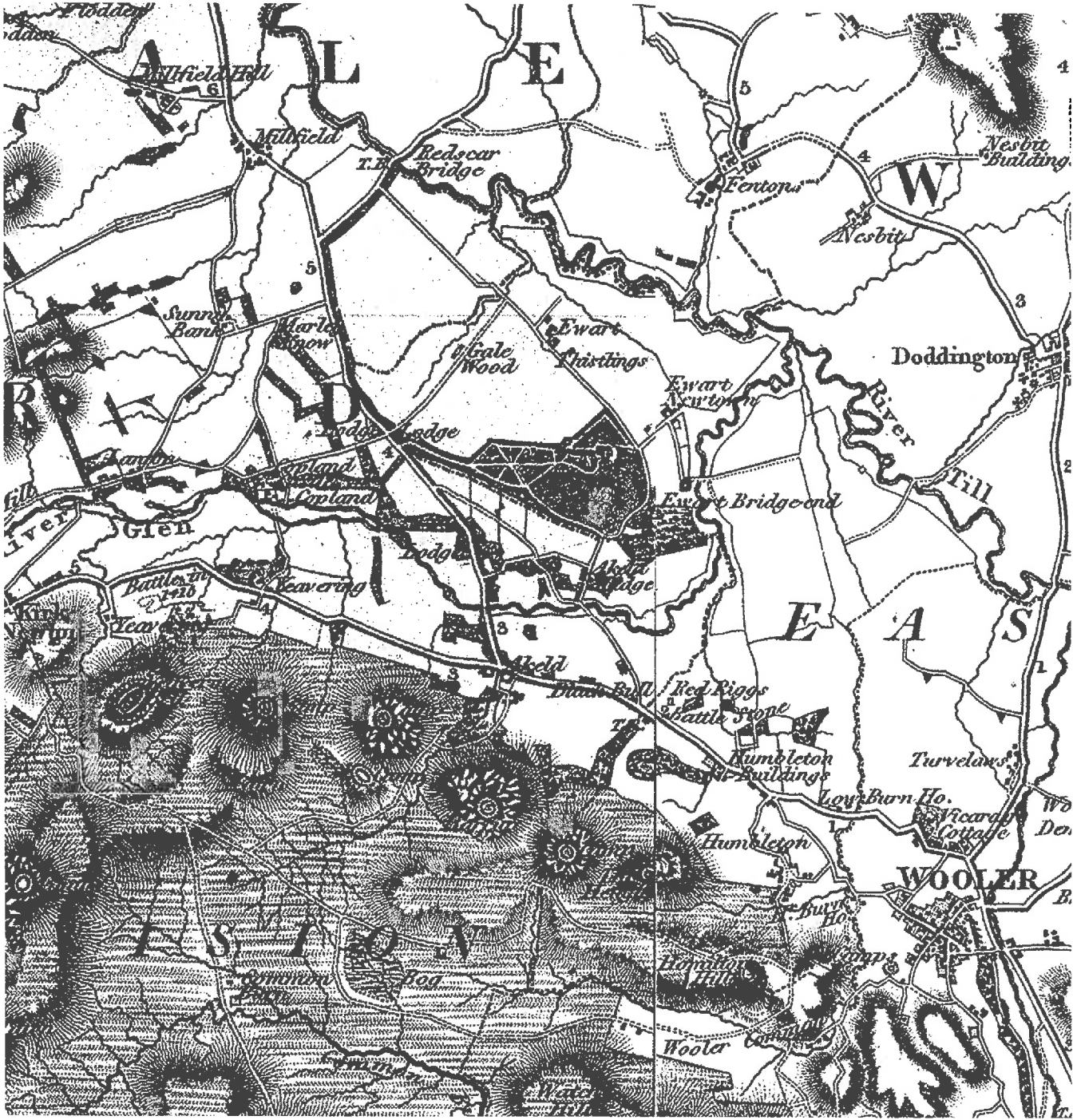


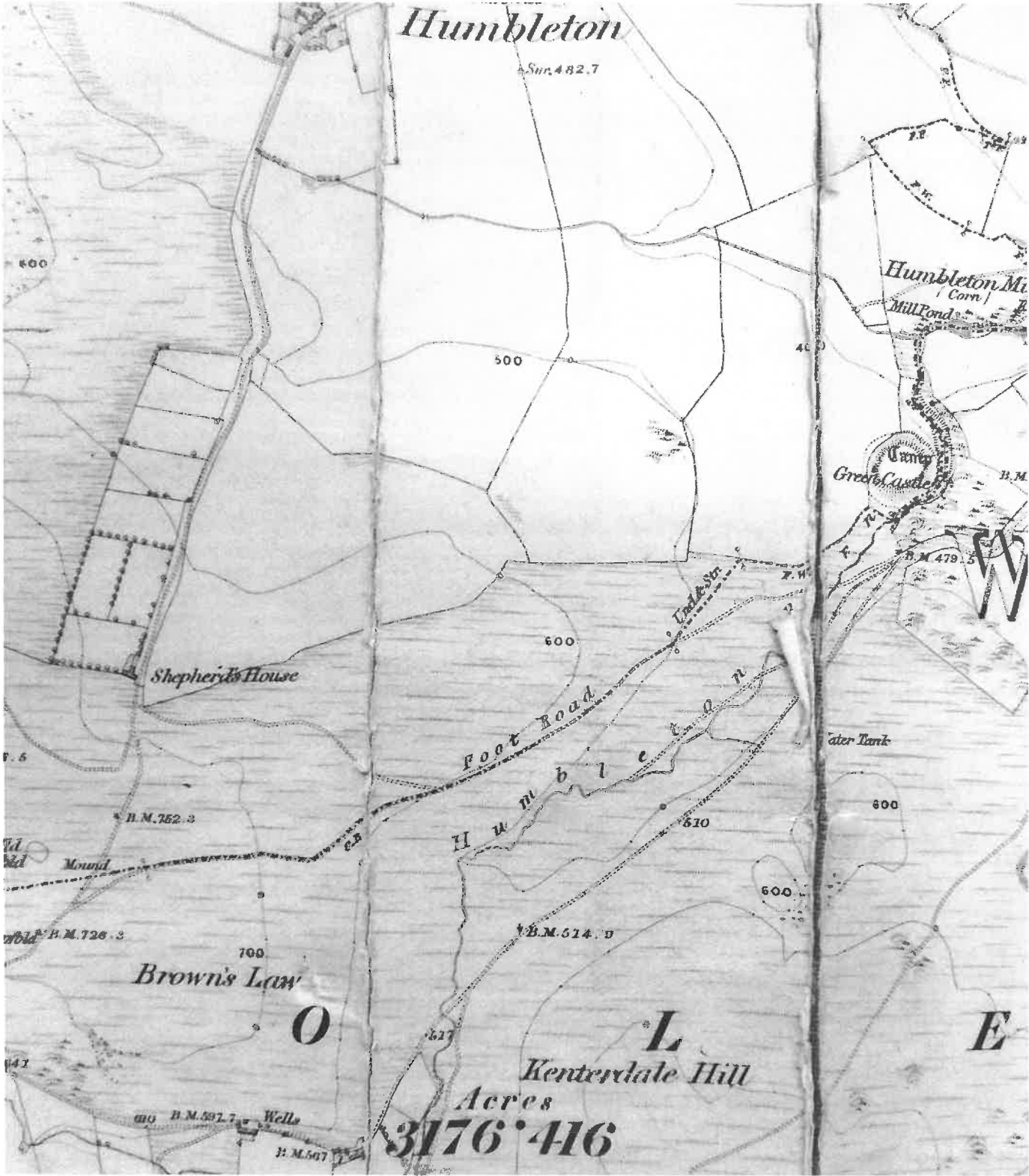
Fryer's County Map
1820



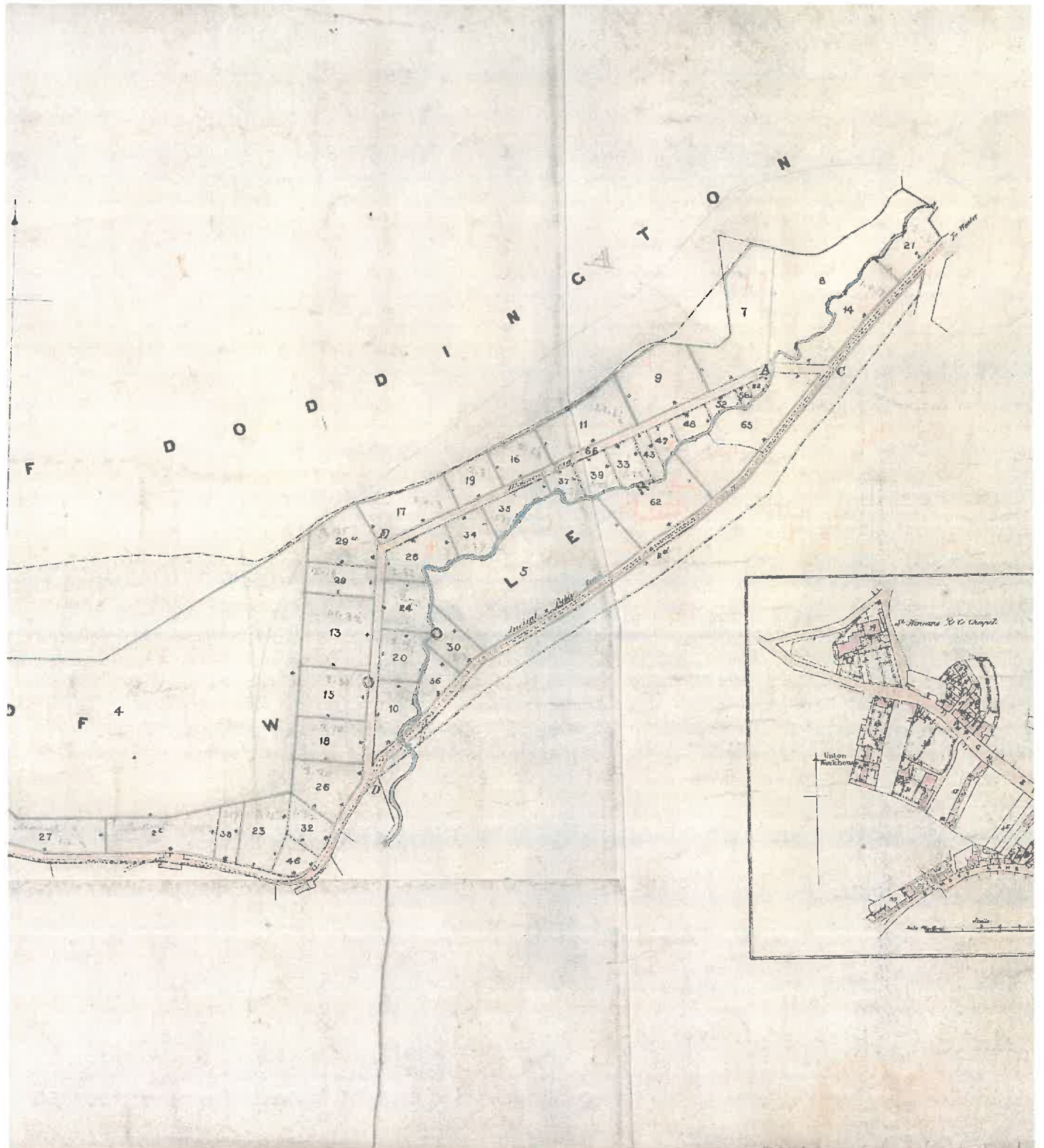


Greenwood's County Map
1828





Wooler & Humbleton Common Inclosure Award 1869



Wooler & Humbleton Common Inclosure Award 1869

All other Public Carriage Road or Highway of the width of thirty feet also to be called the Wooler and Common Burn Road being a continuation of the Road next heretofore set out commencing at the said point marked K and continuing thence in a Southwardly direction to a point marked K¹ on the said Map and thence in a Westwardly direction to and terminating at a point marked K² on the said Map

And I further declare that I have set out and appointed and do hereby set out and appoint the following Private Carriage and Occupation Roads that is to say

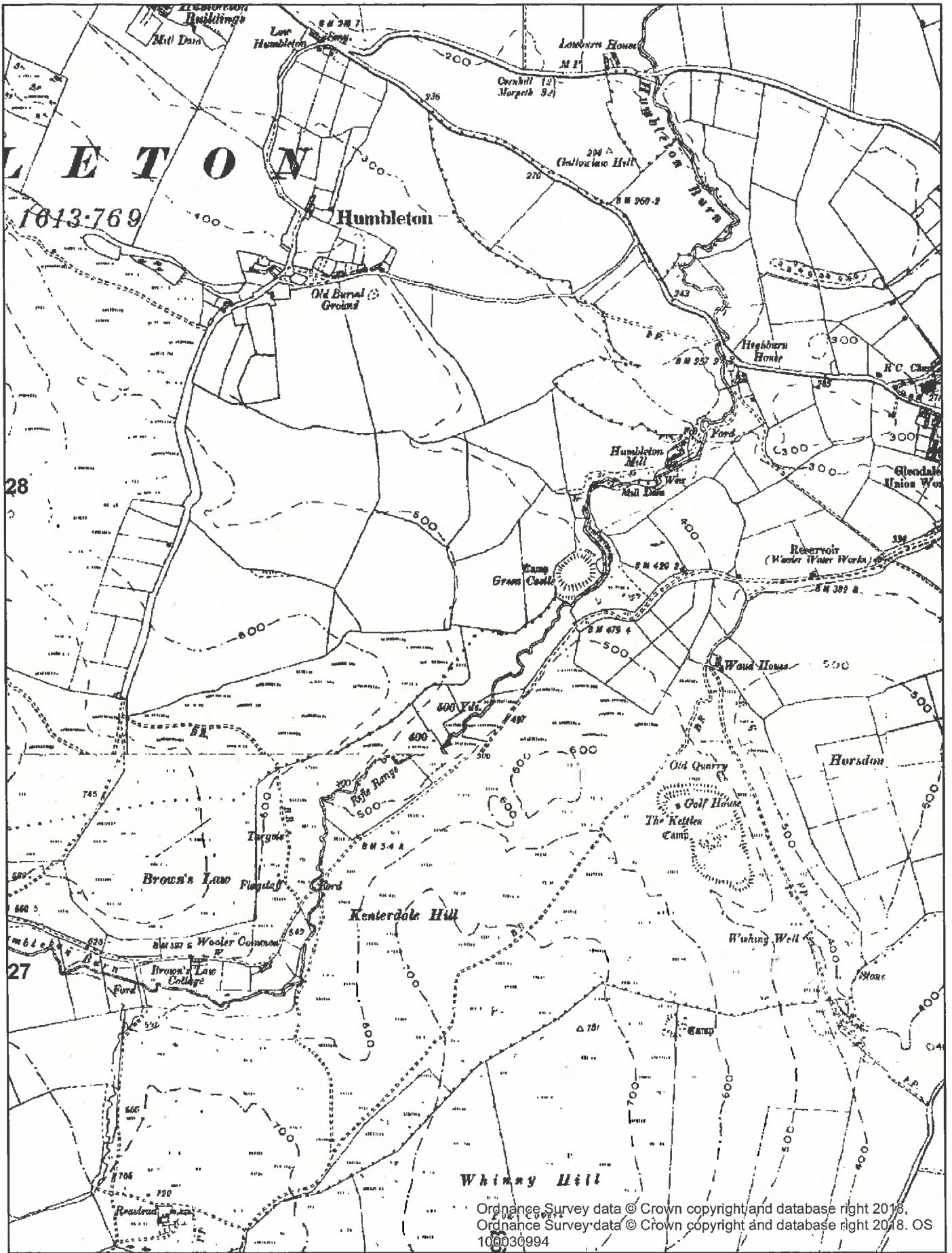
One Private Carriage and Occupation Road of the width of eighteen feet and numbered 63 on the said Map commencing at a point marked K and extending thence Northwardly and terminating at a point marked L on the said Map which said road is set out for the use of the persons interested for the time being in the Allotments numbered 2^a 2^b 6 and 49

And I direct and appoint that the expense of maintaining and repairing the said Private Carriage and Occupation Road shall for ever hereafter be raised by rate to be levied on the said Allotments numbered 2^a 2^b 6 and 49 in the following proportions that is to say

N ^o of Allotments	Proportion of rate to be levied on allotment		
	£	s	d
2 ^a 2 ^b		15	6
6		2	9
49		1	9
	1		

One other Private Carriage and Occupation Road of the width of 30 feet and numbered 66 on the said Map commencing at a point marked C on the said Map and extending thence in a Westwardly direction to a point marked A thence in a Southwardly direction to a point marked E and thence in a Southwardly direction to and terminating at a point marked D on the said Map which said road between the points C and A is set out for the use of the persons interested for the time being in the allotment numbered 8 on the said map and between the points A and D for the use of the persons interested for the time being in the allotments numbered 7 9 11 16 19 17 29 29 13 15 18 10 20 24 28 34 35 37 39 33 43 47 48 52 56 and 22 on the said map

And I direct and appoint that the said Private Carriage and Occupation road shall for ever hereafter be maintained and repaired between the points C and A by the owner and proprietor of the said allotment numbered 8 and between the points A and D by the owner and proprietor of the said allotments numbered 7 9 11 16 19 17 29 29 13 15 18 10 20 24 28 34 35 37 39 33 43 47 48 52 56 and 22



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 Ordnance Survey data © Crown copyright and database right 2018. OS
 100030994

SCALE 1:10,560


 Northumberland
 County Council

Ordnance Survey 2nd Edition 6" map (1899)



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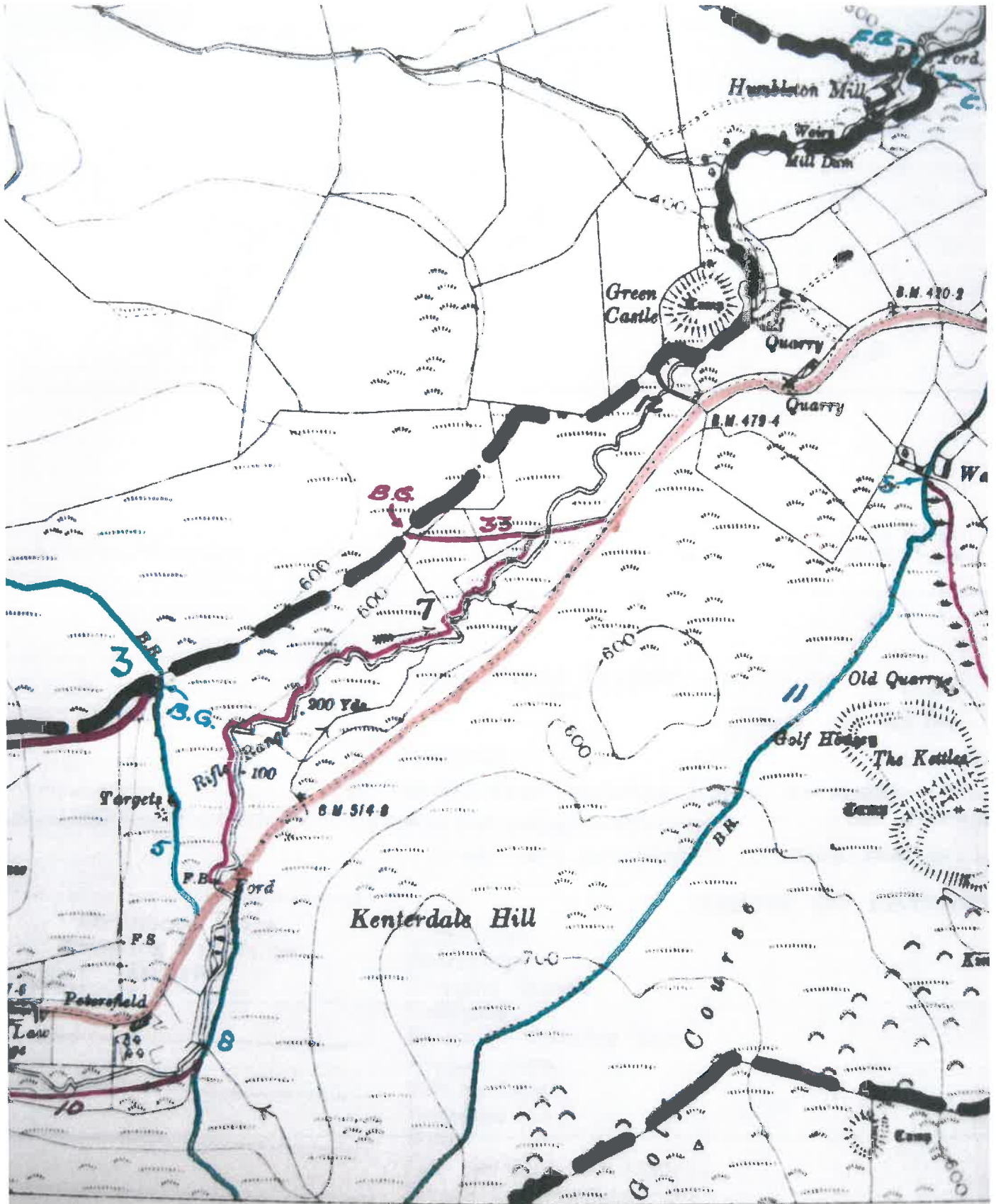
SCALE 1:10,560



Northumberland
 County Council

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

Survey Map



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. SCHEDULE ACCOMPANYING SURVEY MAPS.

Parish of North Eldon in the Rural District of North Eldon

Borough Urban District of (Delete whichever is inapplicable).

- 1. Number of highway on Map 33 2. Kind of Path (i.e., F.P., B.R.) FP
- 3. Starts at CRB boundary west to Humbleton Parish Boundary
- 4. Name of Path (if any)
- 5. Is the Path well defined? Yes
- 6. Is the Path metalled? If so, define length No
- 7. If its width can be stated, insert here 3-4 ft
- 8. What is the present condition of the path, stiles, etc.? Good

- 9. Is it subject to being ploughed out? No
- 10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known None

- 11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant Usage

- 12. Have persons been prevented using the highway? No
- 13. Give particulars of any obstructions None
- 14. Names of owners of freehold and previous owners, if known, for past 30 years J. H. Simpson Esq. Doles. J. M. Budge Messrs Law. Sedburgh.

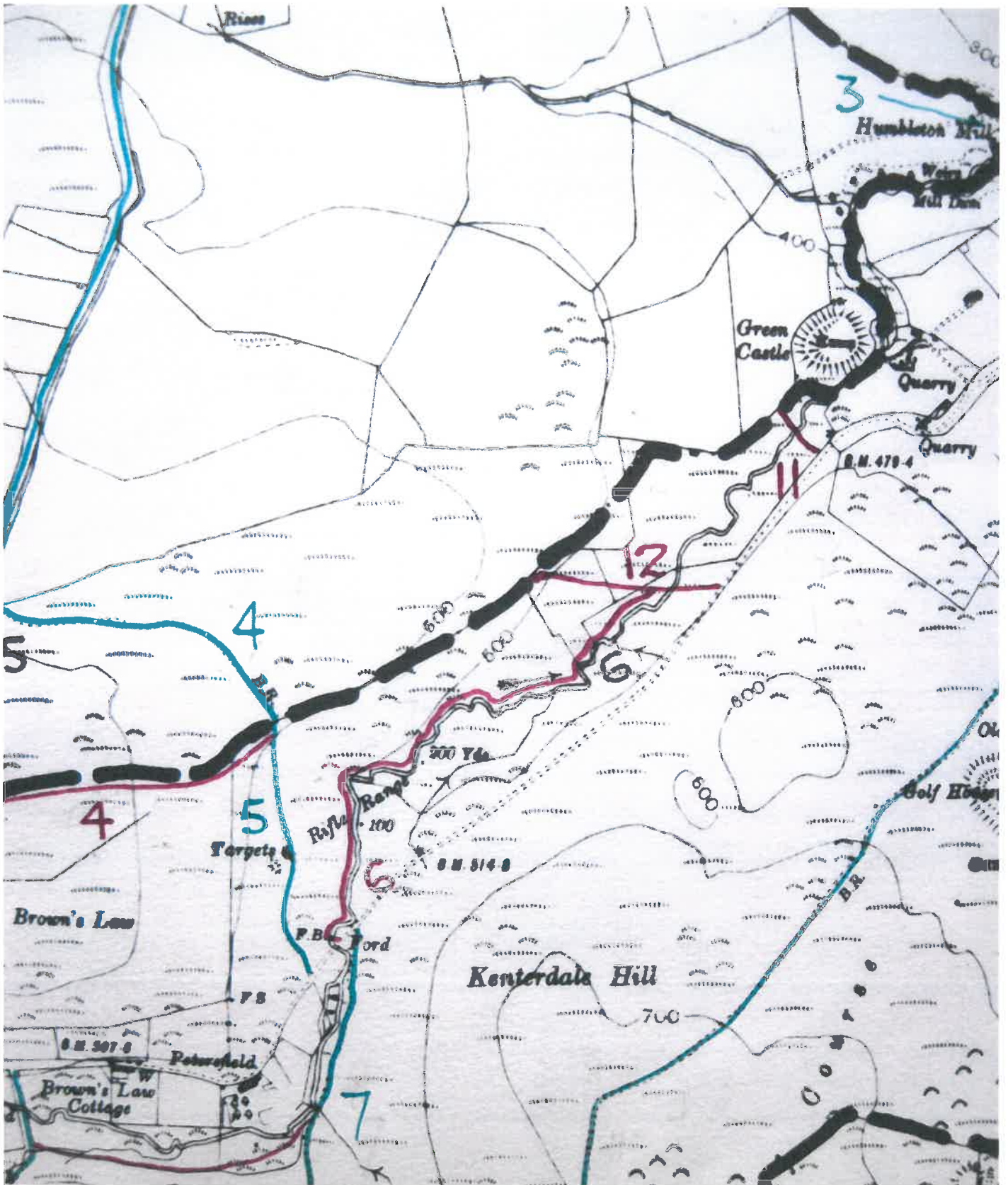
- 15. What maps have been consulted, and where are they deposited? Ordnance Survey

- 16. What records have been consulted, and where are they deposited?

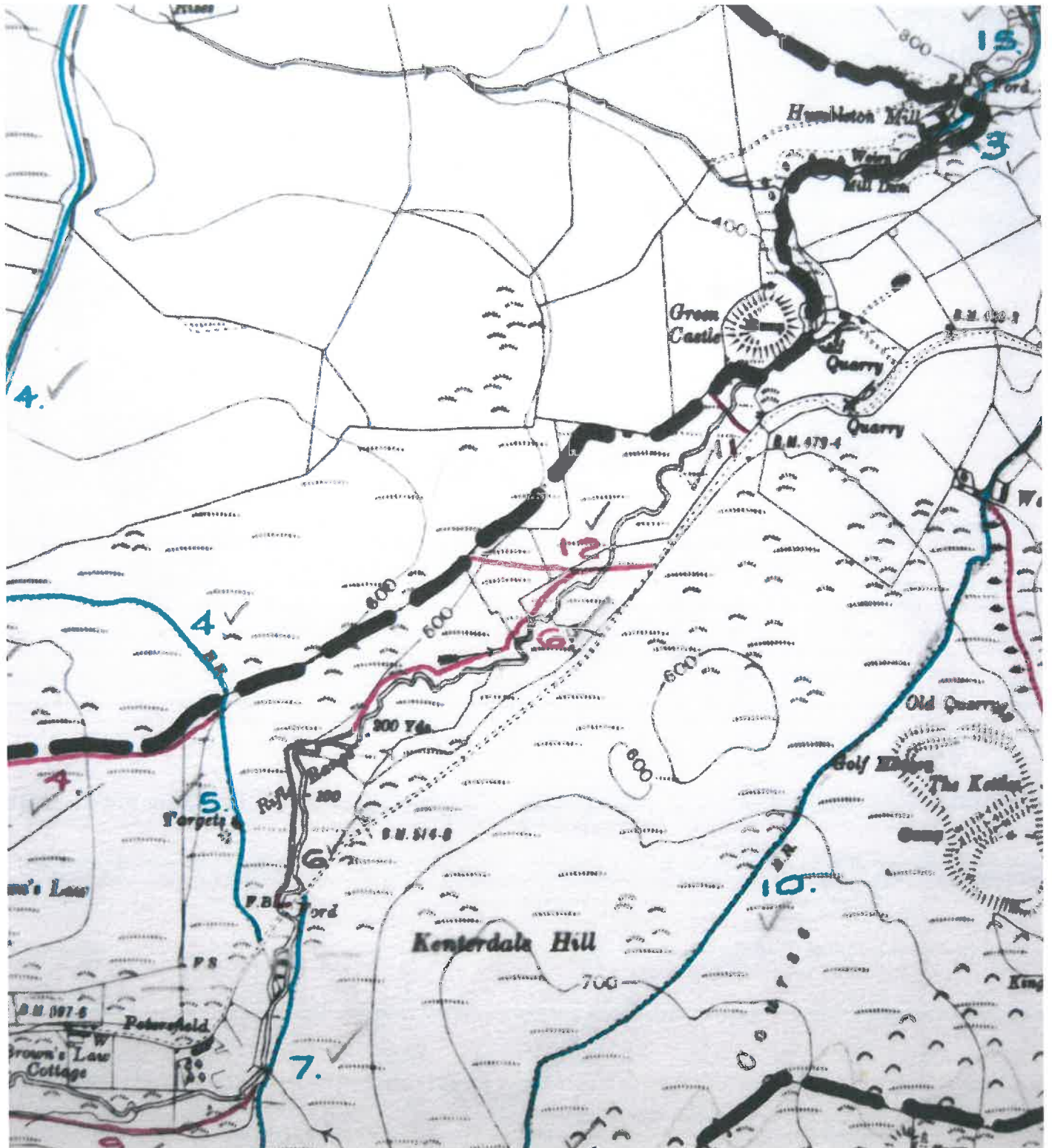
- 17. Any other relevant information

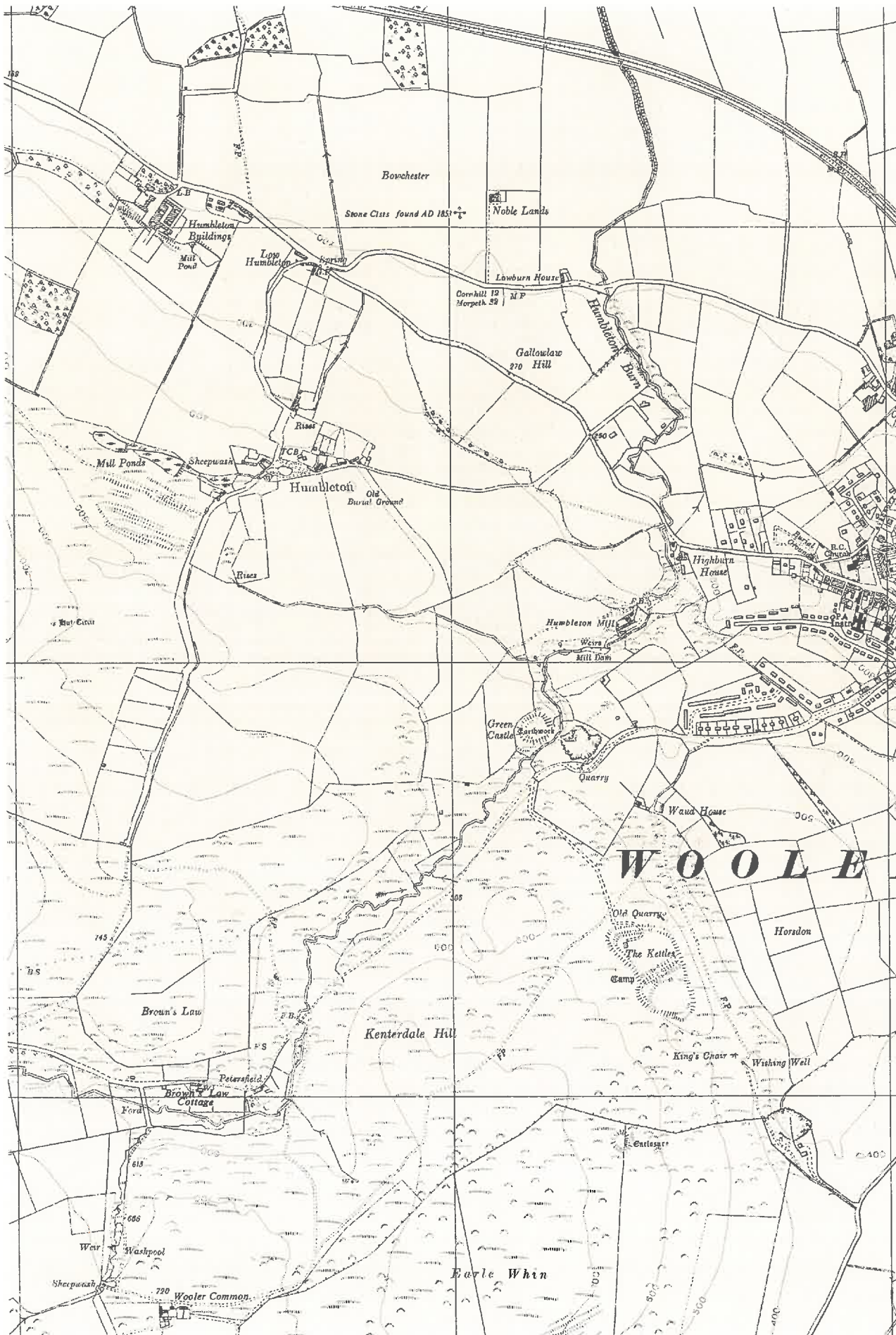
Surveyed by	Address	Dates of Survey

Important:—Sheet No. of Map on which Highway is shown
233 / 43 / 165H/6.

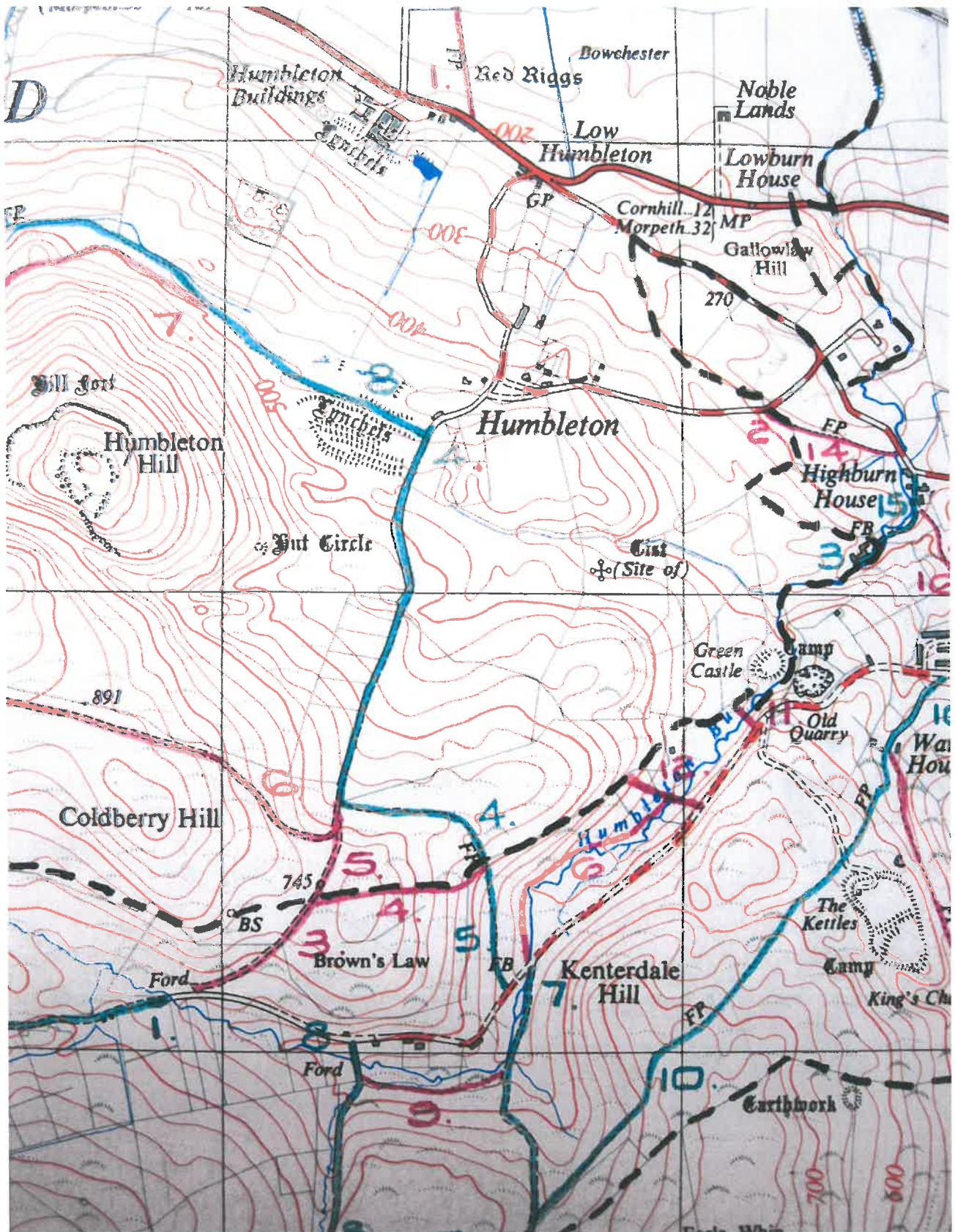


Provisional Map





Original Definitive Map



First Review Definitive Map

