



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
RIGHTS OF WAY SUB-COMMITTEE
30 October 2019

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

ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos 32, 33 & 20 PARISHES OF ALNHAM & NETHERTON

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

Purpose of report

In this report, the North Northumberland Local Area Council Rights of Way Sub-Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over the U4015 road, from the C169 road at Scrainwood, southwards to the C172 road north-east of Netherton, and over the U4016 road, from the U4015 south-east of Scrainwood, eastwards to the C172 road at Union Gate.

Recommendation

It is recommended that the sub-committee agrees that:

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route F-G-H-J;**
- (ii) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route G-K;**
- (iii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the F-G-H and G-K sections of the route;**
- (iv) the Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the H-J section of the route;**
- (v) the routes F-G-H and G-K be included in a future Definitive Map Modification Order as byways open to all traffic.**
- (vi) the routes H-J be included in a future Definitive Map Modification Order as a restricted byway.**

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 Alternatively, in a case where the route is already shown on the Definitive Map as a highway of a lesser status (as is the case with the H-J part of these routes) then Section 53(3)(c)(ii) covers situations where:

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

“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;”

1.4 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 In the late 1980s the County Council carried out consultations regarding proposals to add a number of unsealed tracks in the north of the County to the Definitive Map as byways open to all traffic on the basis that the routes were included in the County Council's "List of Streets" as unclassified County roads (UCR). The rationale for doing so was that it would not be obvious to members of the public (particularly horse riders, walkers and cyclists) that they were legally entitled to use routes such as these (which were considered to have vehicular status), because their physical appearance might suggest otherwise.

2.2 The view, held by those officers of the Council responsible for maintaining the 'List of Streets' for the County of Northumberland was (and still is) that only

public roads (not public bridleways or public footpaths) were shown on this List. The only exceptions to this are the surfaced paths and alleyways providing pedestrian links between roads, in urban streets. Thus, tracks in rural settings, which have their own unique reference numbers (e.g. the 'U4015' and 'U4016' roads), were considered to be all-purpose public highways maintainable at public expense.

- 2.3 Shortly afterwards, the processing of applications from third parties seeking to record public footpath or public bridleway rights was afforded a higher priority. Later on, the process of recording UCRs as byways open to all traffic was effectively suspended because the Ordnance Survey indicated that they would be showing such routes on their published maps as being an "Other route with public access". Although, on that basis, members of the public would still be unclear as to precisely what rights they had over routes identified in this fashion.
- 2.4 The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis. In view of this advice, it is considered prudent to evaluate the status of the U4015 and U4016 unclassified County roads based upon more than simply their inclusion in the List of Streets.

3. LANDOWNER EVIDENCE

- 3.1 By note, received on 8th June 2018, Mr P Blakey of Netherton Northside responded to the consultation, stating:

"Re H-J overleaf.

The flood of 2008 rendered the ford on this route impassable to motor vehicles. As it is SSSI, nothing has changed since then. Most public use of this route is walkers very occasional cyclists.

"2001-2006 vehicular use was negligible or non existent."

4. CONSULTATION

- 4.1 In February 2018, 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". Two replies were received and are included below.
- 4.2 By email, on 26th February 2018, Ms H Evans responded to the consultation, on behalf of Cycling UK, stating:

"Ted has now looked at these and come back to me with the attached and also the comment that "Most are standard changes to confirm existing BOATs but a few are really good gains to the access network. No comment means we support and no comments are necessary".

Cycling UK did not make any comments in relation to this particular proposal.

- 4.3 By email, on 9th March 2018, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“Alleged Byways Open to all Traffic 32 & 33 (Scrainwood)
These routes have a stone base and appear on 19th century maps which suggests that they are old roads. They are used by horse riders and walkers, and probably by cyclists as well. A party of senior military men travelled along them as part of a long ride from Callaly to Yetholm via Alwinton some years ago raising money for charity. No motor vehicles were seen on them. These routes are an important component of long distance routes in the area, which would have value for equestrian and cycling tourism, so the BHS supports their addition to the definitive map.”

- 4.4 By email, on 8th May 2018, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“Alleged byway open to all traffic 20 (leading to Scrainwood)
This is the first part of a long track which leads to Scrainwood. It joins alleged BOAT 33 Alnham and so makes a good circular routes for horse riders and is used as such. It also leads to a public bridleway beyond Scrainwood which links to the wider ridden network in the foothills of the Cheviots. For this reason the BHS supports its addition to the definitive map.”

- 4.5 By email, on 10th May 2018, Netherton & Biddlestone Parish Council responded to the consultation, stating:

“Further to correspondence dated 14/2/18, Netherton & Biddlestone Parish Council are only aware of walkers and horse riders using the routes, as opposed to open to all traffic.”

5. DOCUMENTARY EVIDENCE

- 5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Council Highways records, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

1769 Armstrong's County Map

There is evidence of a road or track approximating to the route F-G-K (i.e. the northern part of alleged Byway No 32 and all of Byway No 33).

1820 Fryer's County Map

There is evidence of a road or track over the F-G part of alleged Byway No 32 and the western half of alleged Byway No 33.

1827 Cary's Map

There is evidence of a road or track over the F-G part of alleged Byway No 32 and the western half of alleged Byway No 33.

1828 Greenwood's County Map

There is clear evidence of a road or track over the routes of alleged Byways No 32 & 20 and alleged Byway No 33.

1845 Screnwood Tithe Award

There is clear evidence of a road or track over the route of alleged Byway No 32 (though not Byway No 20) and the westernmost 80% of the route of alleged Byway No 33. The 'missing' parts lie outside the area covered by this Tithe Award, but continuations along them are implied.

c.1860 Ordnance Survey Map: Scale 1:2500

There is clear evidence of a road or track over the route of alleged Byway No 32 (though not Byway No 20) and the westernmost 80% of the route of alleged Byway No 33. The 'missing' parts are not covered by the Ordnance Survey map sheets available. The western part of Byway No 33 is identified on the OS map with the parcel number "26". In the accompanying Book of Reference for the Township of Scrainwood, this parcel is identified as "Private road".

c.1865/6 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of predominantly unenclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33.

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of mainly unenclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33.

Finance Act 1910 plan

There is clear evidence of mainly unenclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33. The enclosed parts are not identified as being separate from the adjacent land by coloured boundaries. If they had been, this would have been a good indication that the roads were considered to be public at that time. That said, the nearby C169 and C172 roads are not identified with coloured boundaries either.

1926 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of partly enclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33.

1951 Highways Map

The routes of alleged Byways Nos 32 and 20 and alleged Byway No 33 are coloured so as to identify them as a publicly maintainable roads. They are labelled as the “U4015” and “U4016” respectively.

c.1952 Definitive Map – original Survey Schedules & Map

The routes of alleged Byways Nos 32 and 20 and of alleged Byway No 33 exist on the base map, and are coloured brown. Known public roads were generally coloured brown to indicate what the extent of the road network was considered to be. Parallel to alleged Byway No 20, on the opposite side of the Scrainwood Burn a public footpath is identified for inclusion.

Draft Map

The routes of alleged Byways Nos 32 and 20 and of alleged Byway No 33 exist on the base map. Although the routes of alleged Byways Nos 32 and 33 are not identified for inclusion on the Definitive Map as public footpaths, public bridleways or Roads Used as a Public Path (RUPP), the public footpath that was previously shown running parallel to alleged Byway No 20 has been altered, so that is now depicted along the route of the alleged byway.

Provisional Map

As with the Draft Map, the routes of alleged Byways Nos 32 and 20 and of alleged Byway No 33 exist on the base map and, although the routes of alleged Byways Nos 32 and 33 are not identified for inclusion on the Definitive Map as public footpaths, public bridleways or Roads Used as a Public Path (RUPP), the public footpath that was shown on the Survey map running parallel to alleged Byway No 20 continues to be depicted along the route of the alleged byway.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of partly enclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33.

1962 Original Definitive Map

The routes of alleged Byways Nos 32 and 33 exist on the base map, but are not identified as public footpaths, public bridleways or Roads Used as a Public Path (RUPP). The route of alleged Byway No 20 is also shown on the base map, but in this instance the track it is identified as a public footpath (part of Footpath No 7).

1964 Highways Map

The routes of alleged Byways Nos 32 and 20 and alleged Byway No 33 are coloured so as to identify them as a publicly maintainable roads. They are labelled as the “U4015” and “U4016” respectively.

1980/79 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of partly enclosed roads / tracks over the routes of alleged Byways Nos 32, 20 and 33.

2005 Ordnance Survey Explorer OL 16 Map: Scale 1:25,000

There is clear evidence of partly enclosed tracks over the routes of alleged Byways Nos 31, 20 and 32. The routes of Byways Nos 31 and 32 are marked with green dots, signifying that they are "Other routes with public access" (i.e. ORPAs). The route of alleged Byway No 20 (i.e. between Points H and J) is identified as a public footpath.

2006 The Council's 'List of Streets' (2 May 2006)

The routes of the alleged byways are clearly identified as publicly maintainable highways.

5.2 The entry for the U4015 road, in the 1958 County Road Schedule, states:

"U4015 Scrainwood - Netherton Buildings Road
From C169 at Scrainwood to C172 east of Netherton Buildings."

The length of the U4015 road is identified as 1.04 miles.

5.3 The entry for the U4016 road, in the 1958 County Road Schedule, states:

"U4016 Scrainwood - Union Gate Road
From U4015 south-east of Scrainwood to C172 at Union Gate."

The length of the U4016 road is identified as 0.97 miles.

5.4 The entry for the U4015 road, in the 1964 County Road Schedule, states:

"U4015 Scrainwood - Netherton Buildings Road
From C169 at Scrainwood southwards to C172 east of Netherton Buildings."

The length of the U4015 road is identified as 1.04 miles.

5.5 The entry for the U4016 road, in the 1964 County Road Schedule, states:

"U4016 Scrainwood - Union Gate Road
From U4015 south-east of Scrainwood eastwards to C172 at Union Gate."

The length of the U4016 road is identified as 0.97 miles.

5.6 The entry for the U4015 road, in the 1974 County Road Schedule, states:

"U4015 Scrainwood - Netherton Buildings Road
From C169 at Scrainwood (NT 990095) southwards to C172 east of Netherton Buildings (NT 994080)."

The length of the U4015 road is identified as 1.04 miles.

- 5.7 The entry for the U4016 road, in the 1974 County Road Schedule, states:

“U4016 Scrainwood - Union Gate Road
From U4015 south-east of Scrainwood (NT 993093) eastwards to C172
at Union Gate (NU 007094).”

The length of the U4016 road is identified as 0.97 miles.

- 5.8 The original Definitive Statements for the public rights of way intersecting with the alleged byway open to all traffic state:

Public Bridleway No 1 (Parish of Alnham)

“From BR 15 in the Parish of Alwinton in an easterly, north-easterly direction by Wagshead Knowe, High Bleakhope to join the County Road U4075 at Shank House commencing at a distance of (approx) 480 yards along the U4075 and continuing in a south-easterly direction by White Gate and Pennylaws South Plantation to rejoin the County Road U4075 at Alnham recommencing at the Scrainwood - Prendwick road north-east of Castle Farm and continuing in a south-easterly direction by the Old Quarry to the Netherton Parish Boundary joining BR18 in that Parish.

Public Footpath No 7

“From the Netherton - Union Gate Road in a southerly direction crossing the Scrainwood Burn to join the Netherton - Follions Road east of Netherton Burnfoot.”

6. SITE INVESTIGATION

- 6.1 Byways Open to All Traffic Nos 32 and 20 (Points F-G-H-J)

At Point F, on the C169 road, at Scrainwood Farm, a 3 metre wide tarmac road proceeds in a southerly direction for a distance of 40 metres, then south-easterly direction for a distance of 50 metres, crossing the driveway entrance leading to Scrainwood. Apart from a short, less than 10 metre long section between walls, just south of the C169 road, this part of the road is not enclosed. The short enclosed (between stone walls) section lies within a 6.7 metre wide corridor. Thereafter, the 3 metre wide tarmac road continues in a south-easterly direction within a 6 to 9 metre wide corridor for a distance of 125 metres to Scrainwood Cottages. From this point, a 3 metre wide stone surfaced track, within a 10.4 metre wide corridor which then reduces down to a 5.5 to 6.5 metre wide corridor continues in a south-easterly direction for a further 140 metres to a junction with alleged Byway No 33 at Point G, 120 metres south-east of number 2 Scrainwood Cottages. Thereafter, a 2.5 metre wide stone / grass surfaced track, within a 7.5 to 8 metre wide corridor proceeds in a southerly direction for a distance of 220 metres to a field gate. Beyond the gate, an unenclosed 2.5 metre wide stone / earth / grass surfaced track continues in a southerly direction for a distance of 460 metres. Thereafter, a 3 metre wide grass / stone / earth surfaced track on a minimum 5 metre wide slightly raised terrace continues in a southerly direction for a

further 240 metres to a point marked H, at a field gate with another field gate immediately behind it. This is the Alnham - Netherton Parish boundary and also a farm boundary. A 3 metre wide grass track proceeds in a southerly direction for a distance of 25 metres to a rough ford through the Scrainwood Burn, with a footbridge immediately to the south of that ford. From the west bank of the burn, an unenclosed 2 to 2.5 metre wide grass / earth / stone surfaced track proceeds in a general southerly direction for a distance of 320 metres to a point marked J on the C172 road, 420 metres north-east of Netherton Northside.

6.2 Byway Open to All Traffic No 33 (Points G-K)

From a point marked G on the U4015 road, 105 metres south-east of Scrainwood Cottages, a 3 metre wide stone surfaced track within a 9 to 10 metre wide corridor (11 metres between the hedges) proceeds in an easterly direction for a distance of 310 metres. Thereafter an unenclosed 2 to 2.5 metre wide grass / stone / earth surfaced track continues in an easterly direction for a distance of 500 metres to a junction with existing Restricted Byway No 24. An unenclosed 2 to 2.5 metre wide grass surfaced track continues in an easterly direction for a further 475 metres. Finally, a 2.5 metre wide stone / grass / earth surfaced track proceeds in a south-easterly direction for a distance of 285 metres, to a point marked K on the C172 road, 20 metres north-east of Union Gate.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In September 2019, a copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments. No additional comments have been received.

8. DISCUSSION

- 8.1 Sections 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981, require 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 [53(3)(c)(i)];

and

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 [53(3)(c)(ii)].

- 8.2 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.

- 8.3 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.
- 8.4 The route of alleged Byways Open to All Traffic Nos 32 & 20 is identified on the County Council's current List of Streets as being the U4015 road. The route of alleged Byway Open to All Traffic No 33 is identified on the County Council's current List of Streets as being the U4016 road. Both routes appear to have been identified on both the Council's 1951 Highways Map and the later 1964 Highways Map. They were also included in the 1958, 1964 and 1974 County Road Schedules. No 1932 Handover Maps or Maps / Schedules produced under the Restriction of Ribbon Development Act 1935 appear to have survived for the former Rothbury Rural District Council area.
- 8.5 The routes have consistently been identified as partly enclosed, though Predominantly unenclosed roads / tracks on Ordnance Survey maps since c.1865 / 6. Although, in the Book of Reference accompanying the First Edition OS map, the route of alleged Byway No 33 is identified as a "Private Road" this was just the considered opinion of the Ordnance Survey surveyor at that time. It is not a statement of fact. The north - south route crossing midway along Byway No 33 was an inclosure awarded public road, yet it wasn't identified as having any public status. The whole route is not shown on Armstrong's County Map of 1769, it is shown on Fryer's and Greenwood's County Maps of 1820 and 1828 and on Cary's Map of 1827. The whole route of alleged Byways Nos 32 & 20 is shown on Greenwood's County Map of 1828 and part of it is shown on Armstrong's and Fryer's County Maps of 1769 and 1820 and Cary's Map of 1827. The whole route of alleged Byway No 33 is shown on Armstrong's and Greenwood's County Maps of 1769 and 1828 and part of it is shown on Fryer's County Maps of 1820 and Cary's Map of 1827. The route of alleged Byway No 32 and the majority of the route of alleged Byway No 33 are also identified on the Srenwood Tithe Award map of 1845.
- 8.6 Although other public rights of way were identified nearby, neither the route of alleged Byway No 32 nor alleged Byway No 33 were included on the Draft, Provisional or original Definitive Maps as a footpath, bridleway or Road Used as Public Path (RUPP). The route of alleged Byway No 20 was, however, included on the Draft, Provisional and original Definitive Maps as part of Public Footpath No 7. The Definitive Statement for Footpath No 7 describes the route as starting on the Netherton - Union Gate road (i.e. at point J on the C172 road), not at point H on the U4015 road. On the Survey Map, all three byway routes are coloured brown in the same way that other public roads were identified.
- 8.7 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown – just that they could be. It must, therefore, be entirely proper to consider each UCR on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by

other means. In Northumberland there is no evidence to suggest that public footpaths and public bridleways were deliberately shown on the 1958, 1964 or 1974 County Road Schedules (forerunners of the modern day List of Streets). The fact that a route is shown on these schedules must, therefore, be evidence of some weight that public vehicular rights exist.

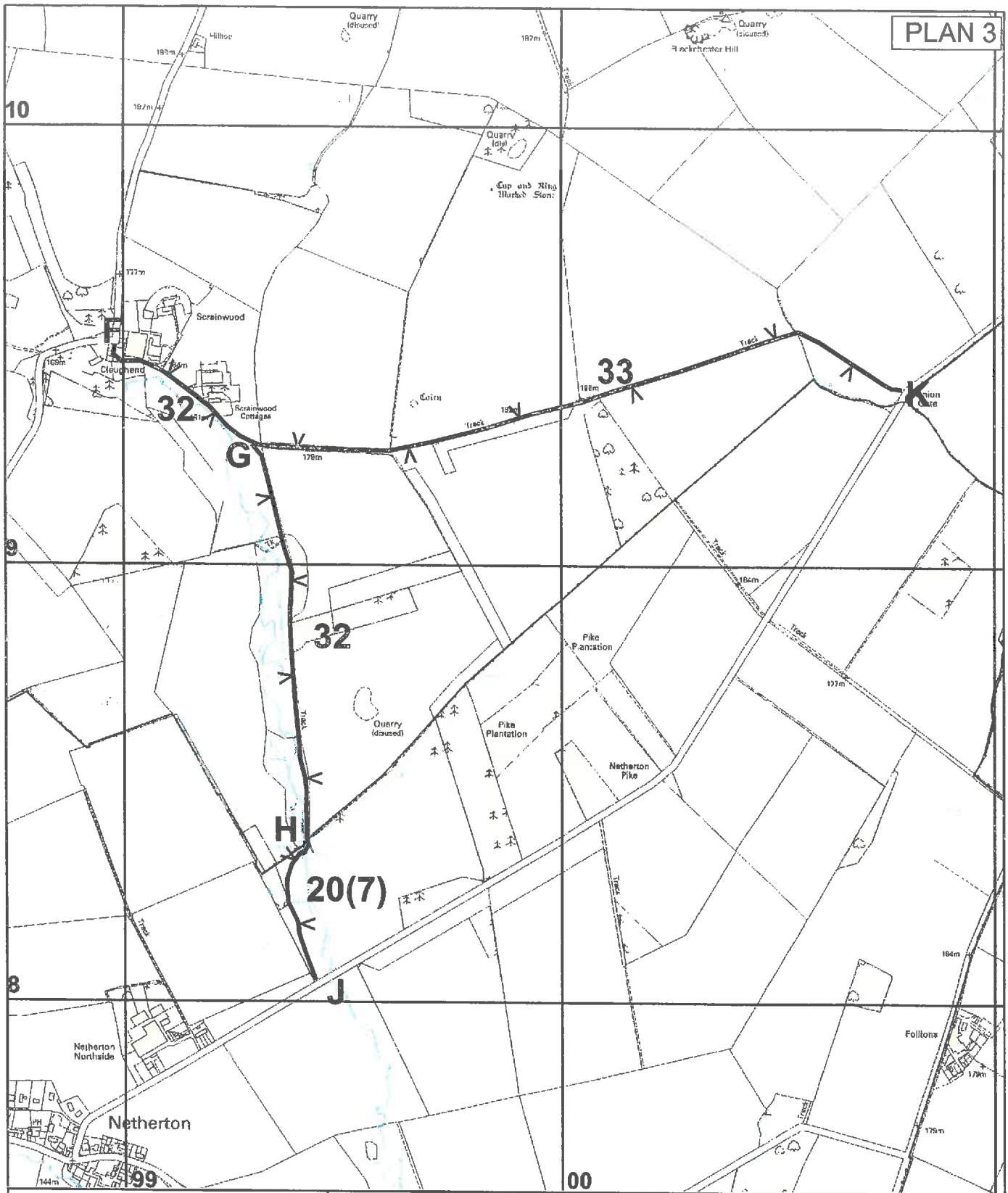
- 8.8 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.
- 8.9 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.
- 8.10 Of the saving provisions above, (b) will apply to the routes of alleged Byways Nos 32 and 33. The public's motor vehicular rights over these two sections would not have been extinguished by the NERC Act 2006. Saving provision (b) will not apply to the route of alleged BOAT 20 because on 2 May 2006 (as now) this portion was also recorded on the Definitive Map as being part of Public Footpath No 7 in the Parish of Netherton. For this section, it is necessary to see whether or not one of the other saving provisions might apply.
- 8.11 Under section 67(2)(c) of NERC Act 2006, the public's motor vehicular rights would not be extinguished if those rights had been created on terms that expressly provided for a right of way for mechanically propelled vehicles. Since we don't have any records identifying precisely when this route came into existence there is, consequently, nothing expressly identifying rights being provided for mechanically propelled vehicles, so this saving provision will not apply.
- 8.12 Under section 67(2)(a) of NERC Act 2006, the public's motor vehicular rights would not be extinguished if they are over a way whose main lawful use by the public during the period of 5 years between 2nd May 2001 and 2nd May 2006 was with mechanically propelled vehicles. The difficulty here is that the Council has no real evidence regarding the balance of public user during this 5 year period. Although the route is part of a road that is, legally, a through route for vehicles, its physical condition and the proximity of other public rights of

way nearby makes it unlikely that public motor vehicular use outweighed pedestrian, equestrian and cycle use.

- 8.13 Under section 67(2)(e) of NERC Act 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive 'off-road'. There is no evidence of long-standing public motor vehicular use before 1930 in this instance.
- 8.14 Finally, under section 67(2)(d) of NERC Act 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been created by construction of a road intended to be used by MPVs. The Inspector who determined Definitive Map Modification Order (No 23) 2012 (Kilham) concluded that public motor vehicular rights had been 'saved' over that route (in part) by virtue of this exemption. In this case, there is no evidence that the mainly grass surfaced track over which the alleged byway runs was 'constructed' with MPVs in mind.
- 8.15 For a route to be a byway open to all traffic, it has to be (i) a public motor vehicular right of way and (ii) a route which is nevertheless used (or is likely to be used) by the public mainly for the reasons which footpaths and bridleways are used.
- 8.16 Only the northern end of this route (as far as Scrainwood Cottages) has a reasonable driveable surface. This part of the route will be used by those living at the cottages, the farm and their visitors. The remainder of the route has a rougher stone / earth / grass surface. Based upon the physical condition of the route and the consultation responses, the route would appear to be mainly used by walkers, horse riders and cyclists.
- 8.17 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. Usually there is a boundary to boundary presumption for public highways. However, where no defined corridor exists, and there is no (usually) documentary evidence to establish width, the Council has adopted a standard width of 5 metres (wide enough for two vehicles travelling in opposite directions to pass each other) for vehicular rights of way. On this basis it is proposed to record Byway Open to All Traffic No 32 with a width varying from 5.5 to 9 metres, for the enclosed sections, as identified in paragraph 6.1 above, and 5 metres for the remaining (majority) of the route. It is proposed to record Byway Open to All Traffic No 33 with a width of 11 metres, for the enclosed western section, as identified in paragraph 6.2 above, and 5 metres for the remaining (majority) of the route. It is proposed to record the unenclosed Byway No 20 with a the default 5 metre width.

9. CONCLUSION

- 9.1 In light of the documentary evidence submitted, it appears that public vehicular rights have been reasonably alleged to exist over the routes of alleged Byways Open to All Traffic Nos 32 and 33, and shown to exist, on a balance of probabilities, over the route of alleged Byway No 20.



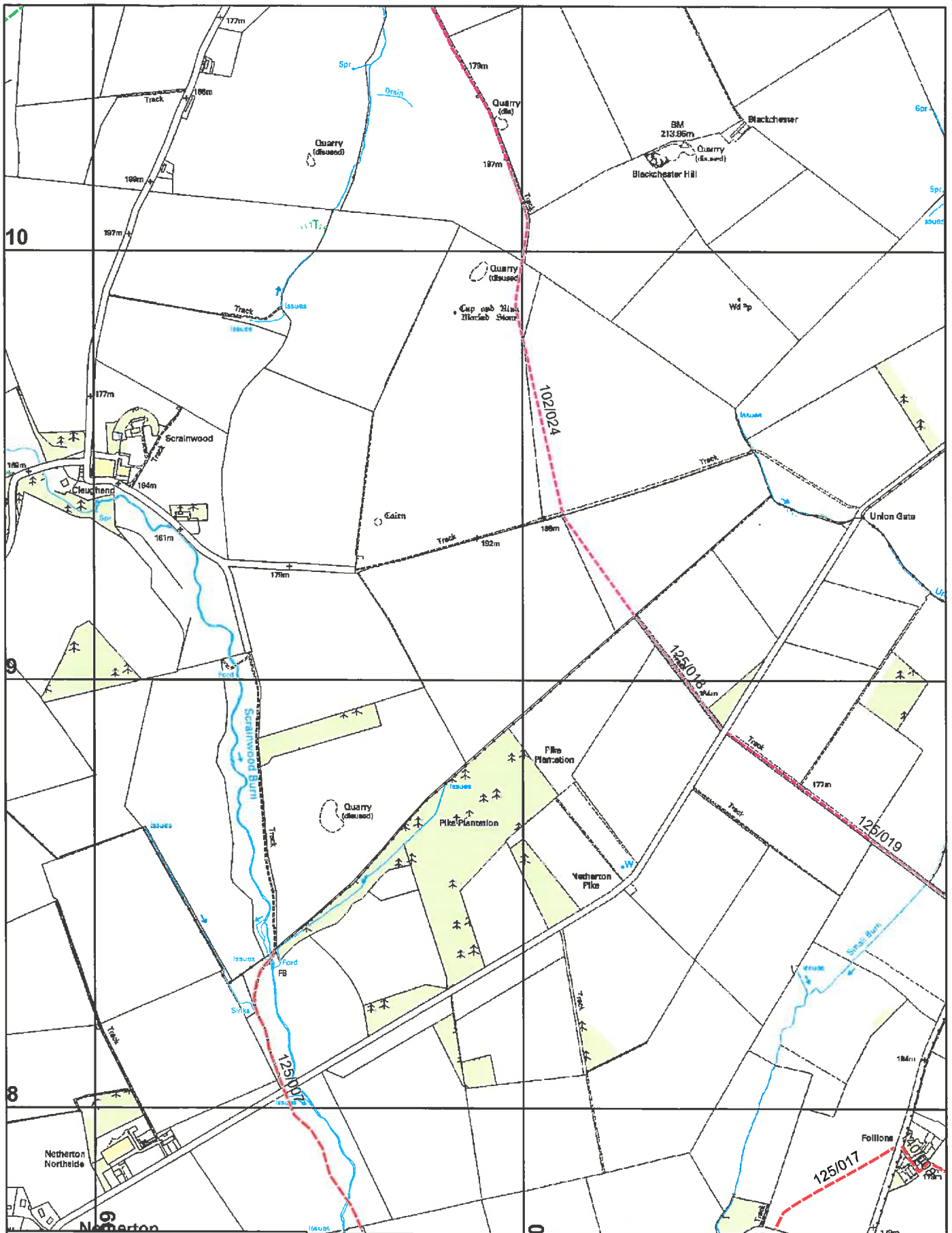
NORTHUMBERLAND
 Northumberland County Council
 Infrastructure
 Local Services
 County Hall Morpeth Northumberland
 NE61 2EF
 Telephone 0845 600 6400

**Wildlife and Countryside Act 1981
 Public Rights of Way**

 Alleged Byway Open to All Traffic

Reproduced from / based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of H.M.S.O. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Northumberland County Council O.S. Licence No 100049048

Former District(s) Alnwick	Parish(es) Alnham/Netherton	Scale 1:12,500
Def. Map No. 78/79	O.S. Map NT 90 NE/NU 00 NW	Date January 2016



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

Legend

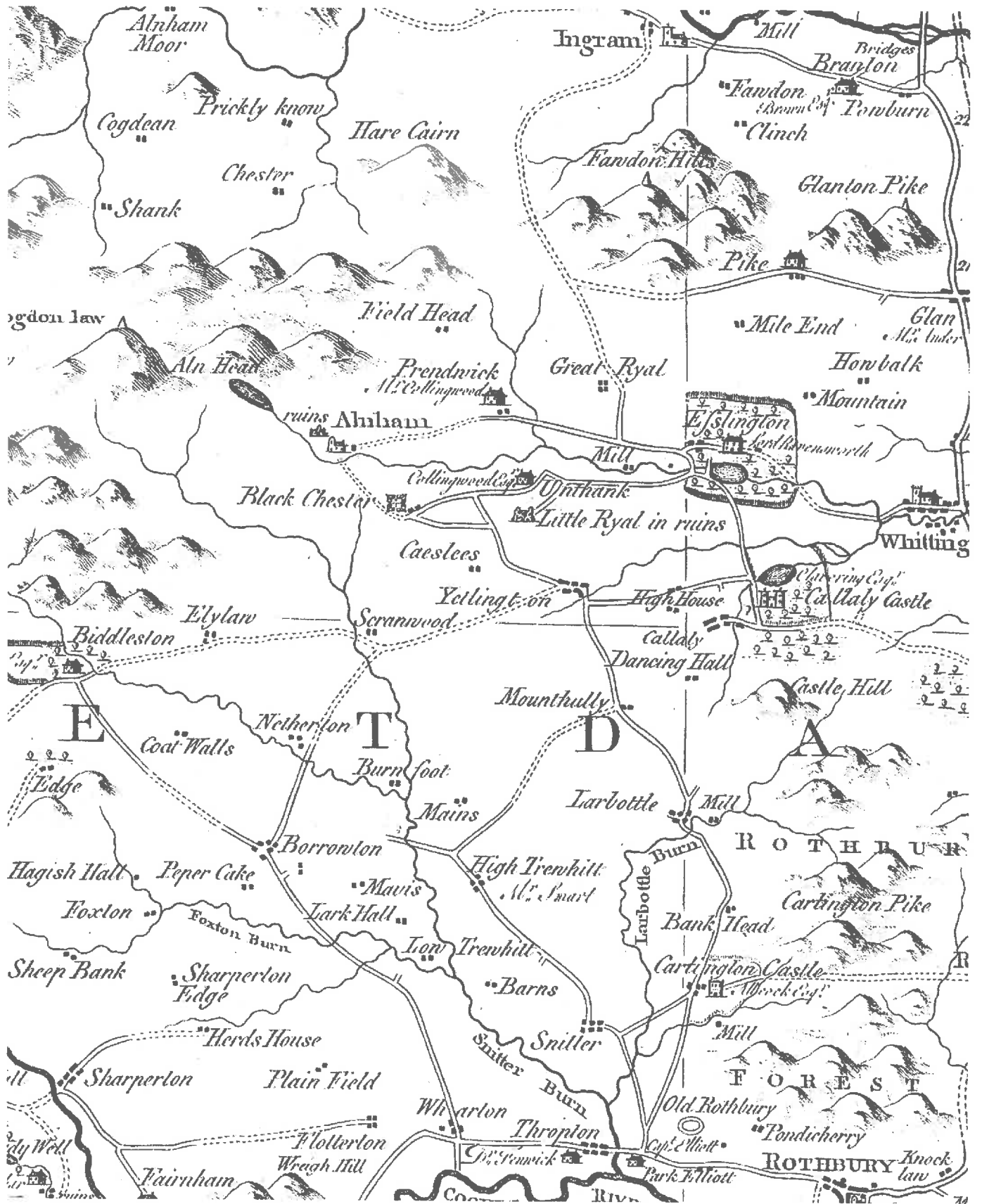
- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic

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

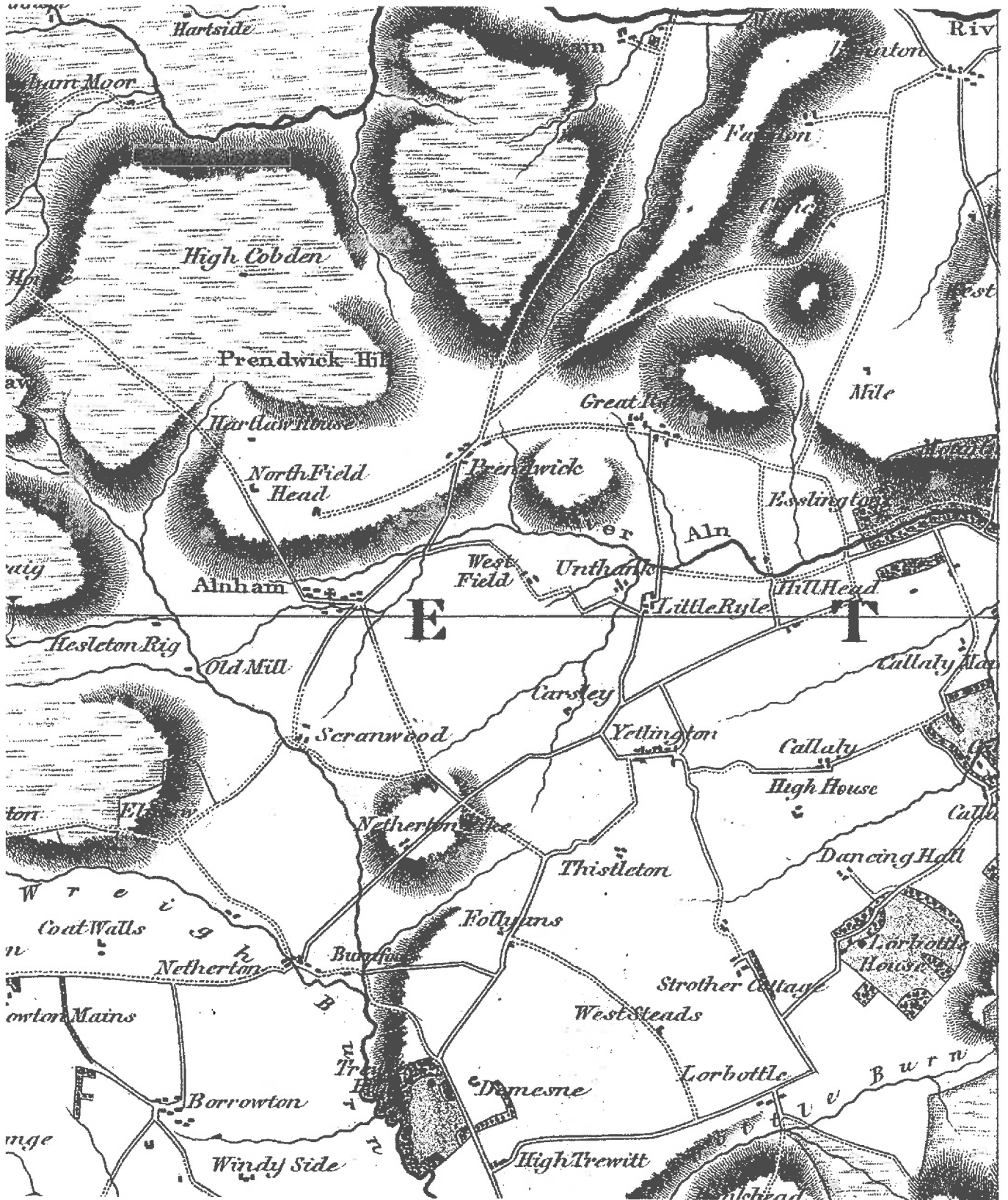
Scale: 1:10,000

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. License no. 100049048 (2010).

Armstrong's County Map
1769



Fryer's County Map
1820

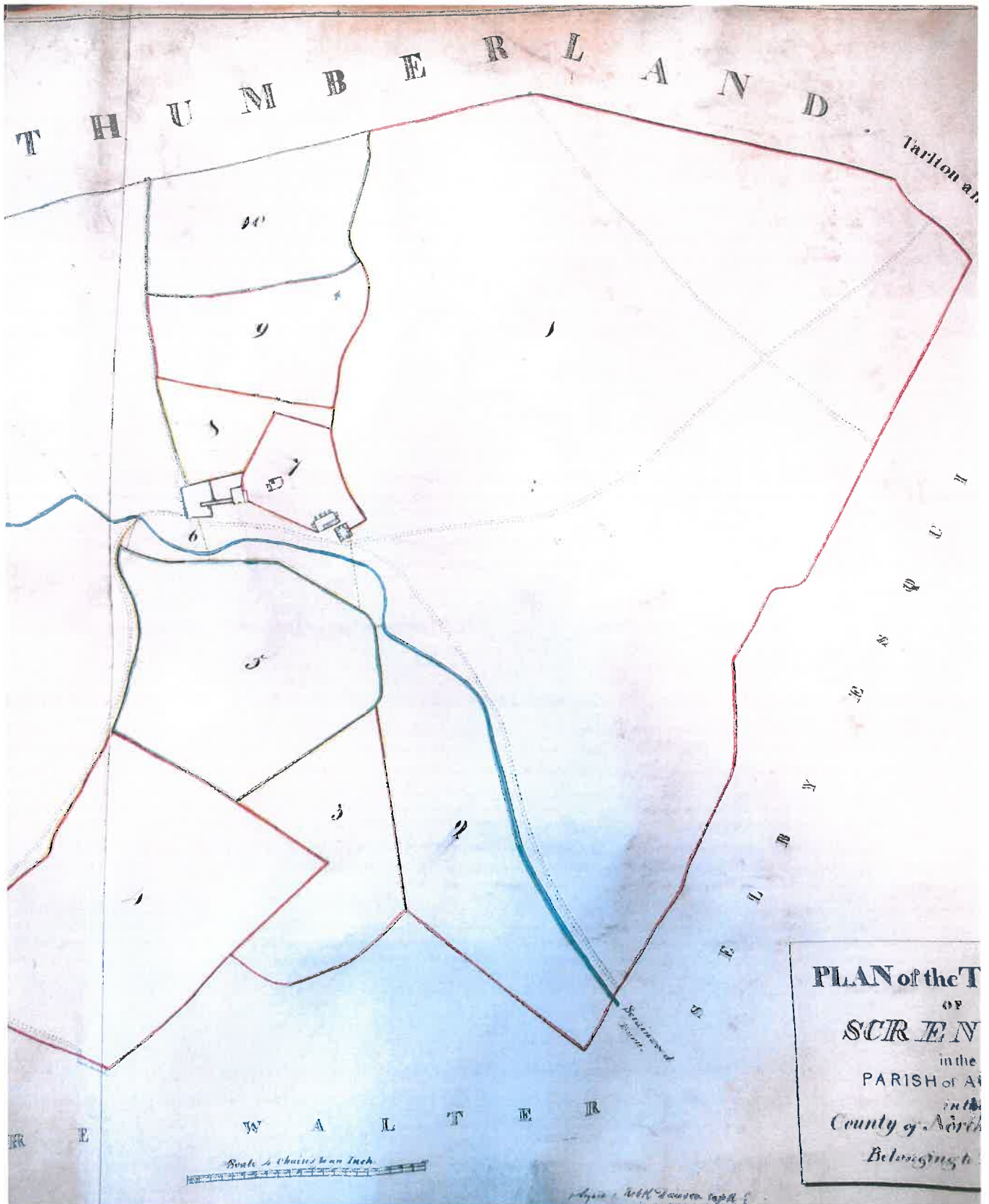


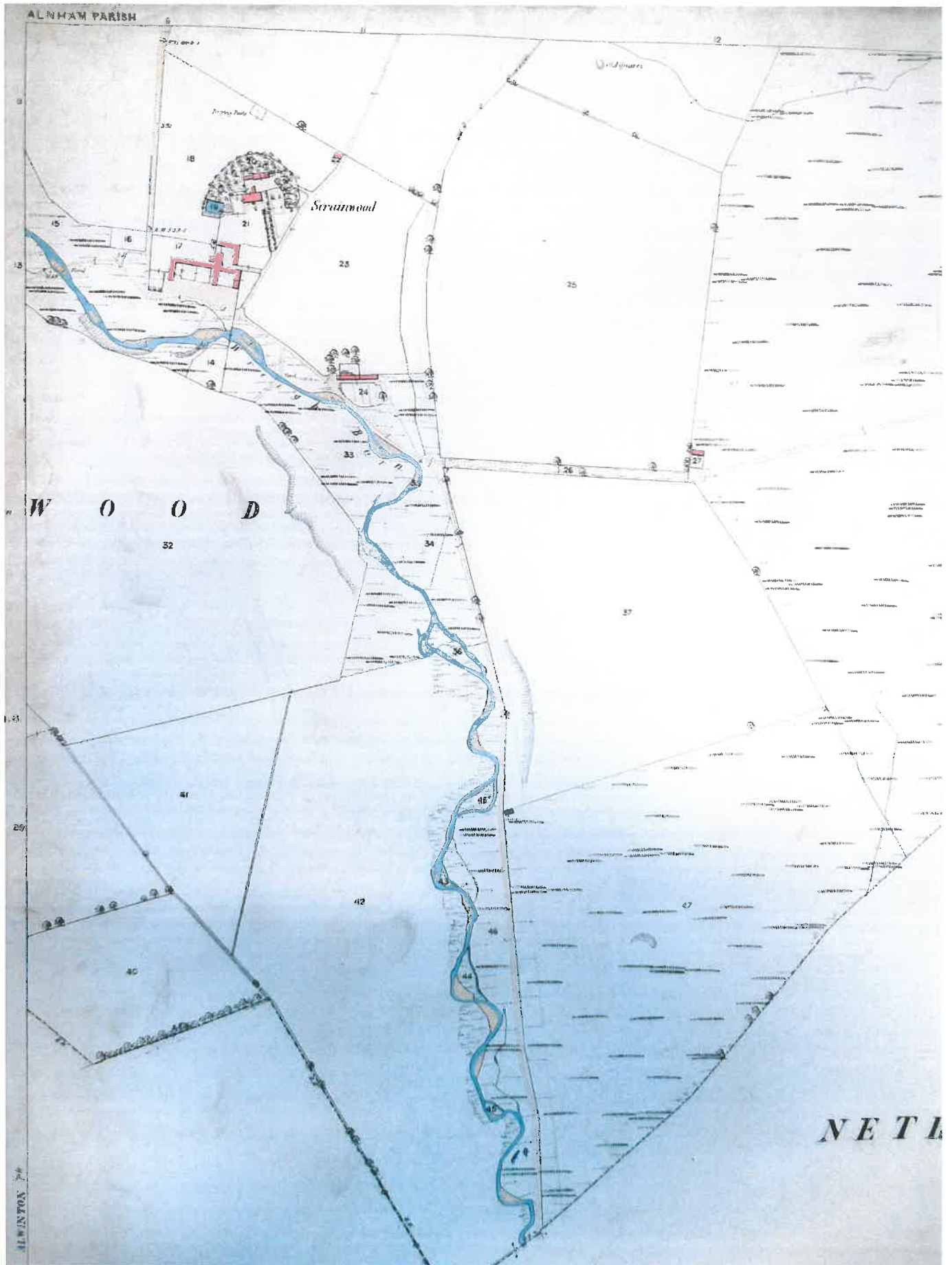


Greenwood's County Map 1828



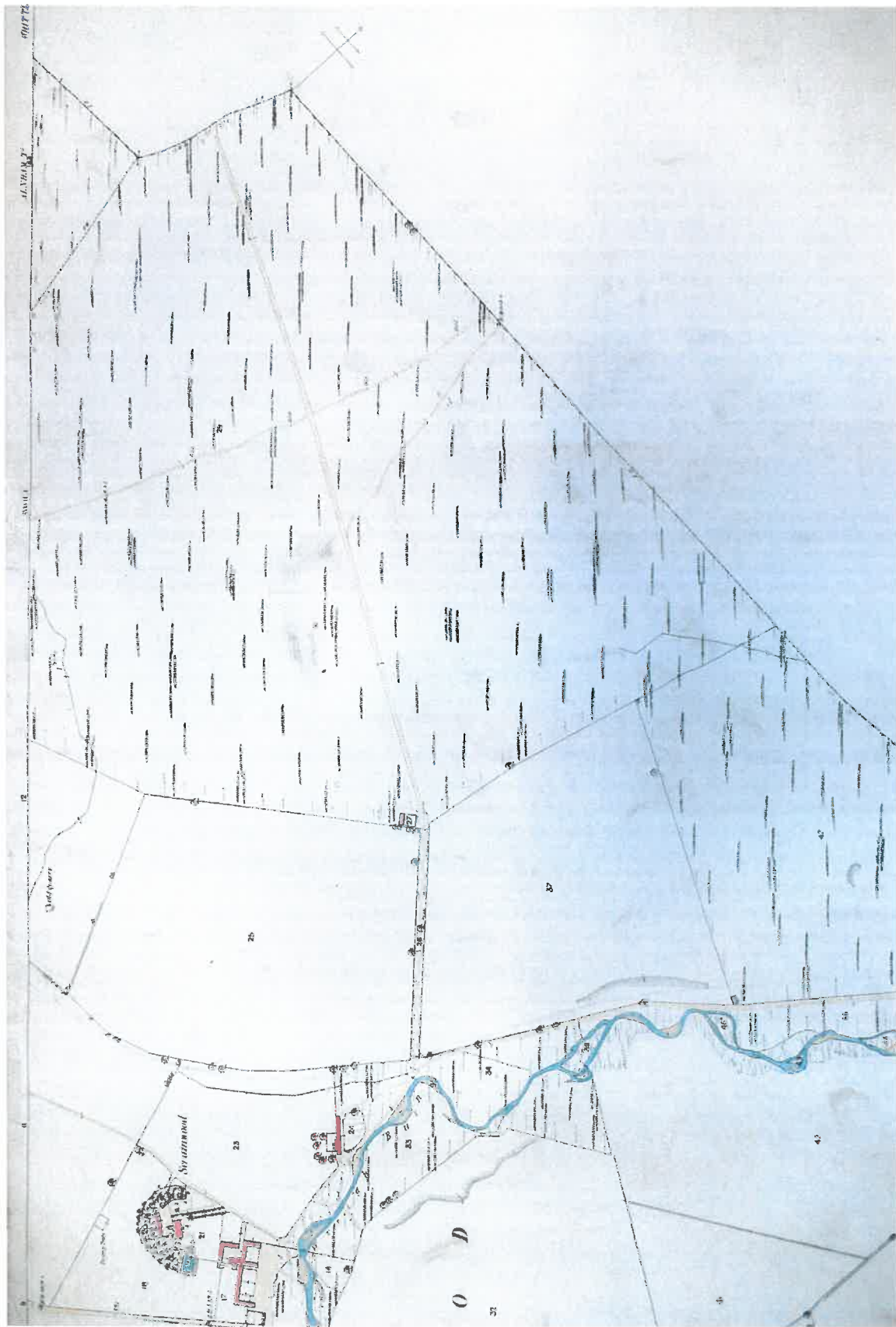
Screnwood Tithe Award
1845





(BOAT 32 route)

1st Edition 25" O.S. Map
c.1860



(BOAT 33 route)

PARISH OF ALNHAM.

No. on Plan.	Area in Acres.	Description.	No. on Plan.	Area in Acres.	Description.
TOWNSHIP OF UNTHANK.			TOWNSHIP OF SCRAINWOOD.		
1	17-316	Arable, rough pasture, & stream.	1	310-241	Rough pasture, roads, streams, &c.
2	12-550	Arable, rough pasture, & stream.	2	782	Rough pasture.
3	8-889	Arable.	3	000	Rough pasture.
4	4-407	Arable & trees.	4	180	Rough pasture.
5	1-230	Houses, gardens, yards, &c. (Unthank).	5	363	Rough pasture.
6	887	Arable.	6	746	Rough pasture.
7	18-723	Arable.	7	55-148	Rough pasture.
8	10-400	Arable.	8	38-322	Arable.
9	10-384	Arable & stream.	9	1-217	Private road.
10	4-926	Wood & roads.	10	20-860	Arable, rough pasture, stream, & old quarry.
11	184	Wood.	11	20-592	Arable, rough pasture & road.
12	10-734	Arable, rough pasture, & streams.	12	31-304	Arable, stream, & old quarries.
13	16-203	Wood & stream.	13	7-638	Rough pasture.
14	7-811	Arable.	14	427	Rough pasture.
15	1-903	Public road.	15	7-277	Rough pasture, stream, & road.
16	8-180	Arable & stream.	16	231	Arable.
17	11-002	Arable & stream.	17	1-031	Farmstead & garden.
18	1-512	Wood & stream.	18	5-390	Arable.
19	0-021	House, shed, & yard.	19	0-066	Pond.
20	0-016	House & yard.	20	0-902	Wood.
21	0-030	House & shrubbery.	21	1-345	Houses, gardens, yards, ornamental grounds, &c.
22	0-501	Pasture & trees.	22	0-024	House & yard.
23	0-050	Collingwood House.	23	9-860	Arable, stream, & road.
24	1-094	Rough pasture & roads.	24	461	House, garden, yard, &c.
25	1-129	Garden.	25	32-707	Arable.
26	1-073	Gardens & yards.	26	864	Private road.
27	1-148	House & garden.	27	0-075	House & yard.
28	1-179	Wood & road.	28	170-005	Rough pasture, streams & old quarries.
29	0-575	Wood.	29	48-130	Arable.
30	0-065	Wood.	30	13-104	Arable, streams, and roads.
31	0-275	Wood.	31	24-106	Arable & road.
32	2-113	Arable.	32	41-324	Arable.
33	0-763	Wood.	33	6-197	Rough pasture, road, & stream.
34	0-779	Arable.	34	6-117	Rough pasture, roads, & stream.
35	5-068	Arable.	35	5-155	Stream.
	176-702			879-250	Carried forward.
RECAPITULATION.					
	174-889	Land.			
	1-903	Public road.			
	176-702	Total area of the Township of Unthank.			

PARISH OF ALNHAM.

No. on Plan.	Area in Acres.	Description.	No. on Plan.	Area in Acres.	Description.
36	879-250	<i>Brought forward.</i>		1022-959	<i>Brought forward.</i>
37	323	Rough pasture.	46a	208	Island (rough pasture).
38	29-047	Arable.	47	39-609	Rough pasture, shed, & stream.
39	619	Public road.			
40	58-324	Arable & stream.		1062-771	
41	8-886	Arable & stream.			
42	9-293	Arable.			
43	85-851	Arable, rough pasture, & stream.			
44	1-088	Rough pasture.			
45	199	Rough pasture.			
46	044	Rough pasture.			
	6-140	Rough pasture, road, & stream.			
	1022-959	<i>Carried forward.</i>			
RECAPITULATION.					
				1056-931	Land.
				5-221	Water.
				619	Public road.
				1062-771	Total area of the Township of Scrainwood.

GENERAL RECAPITULATION.

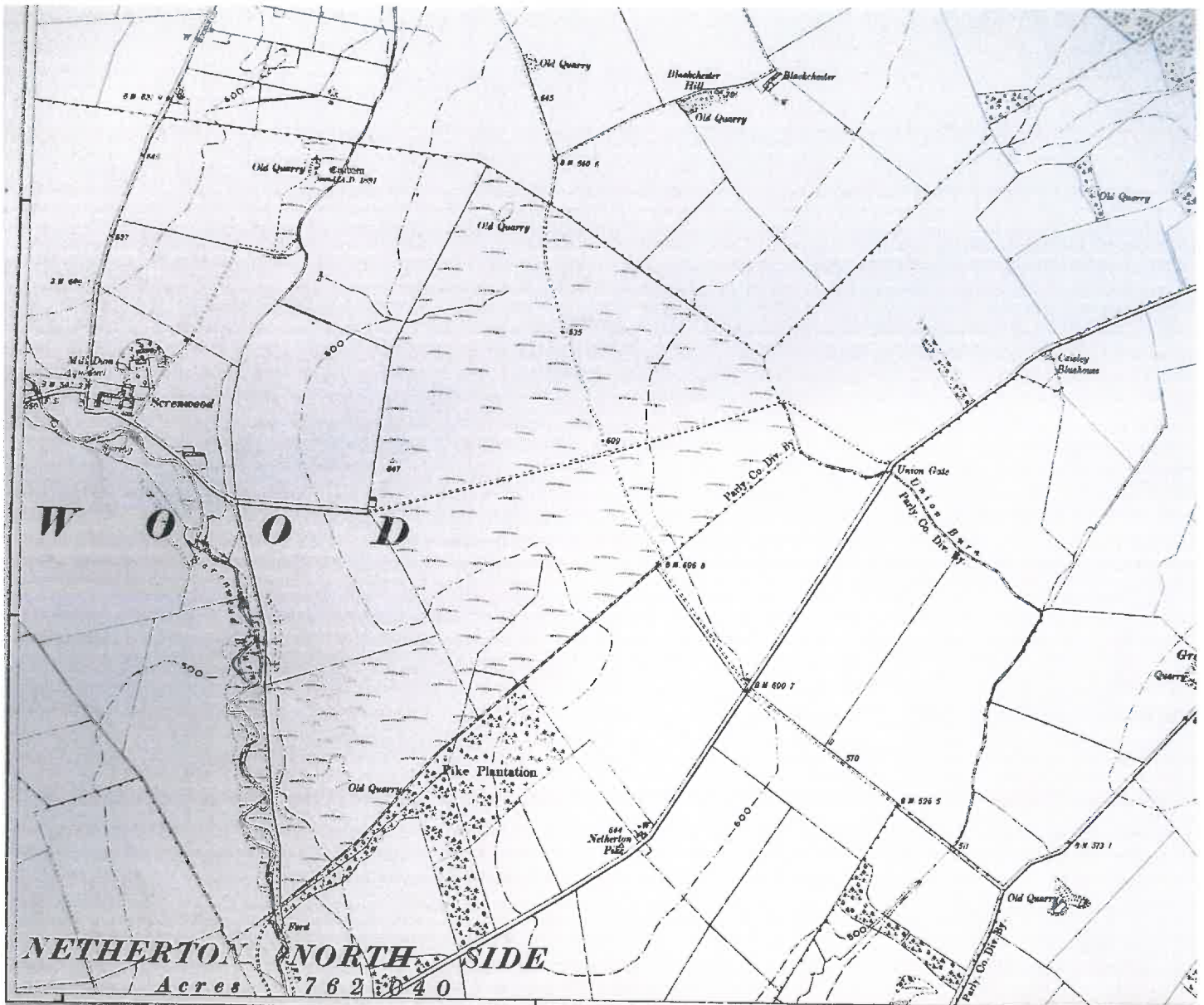
Page.	Area in Acres.	Township of
1	9402-814	Alnham.
3	1418-011	Prandwick.
4	176-792	Unthank.
4	1062-771	Scrainwood.
	12055-888	Total area of the Parish of Alnham.

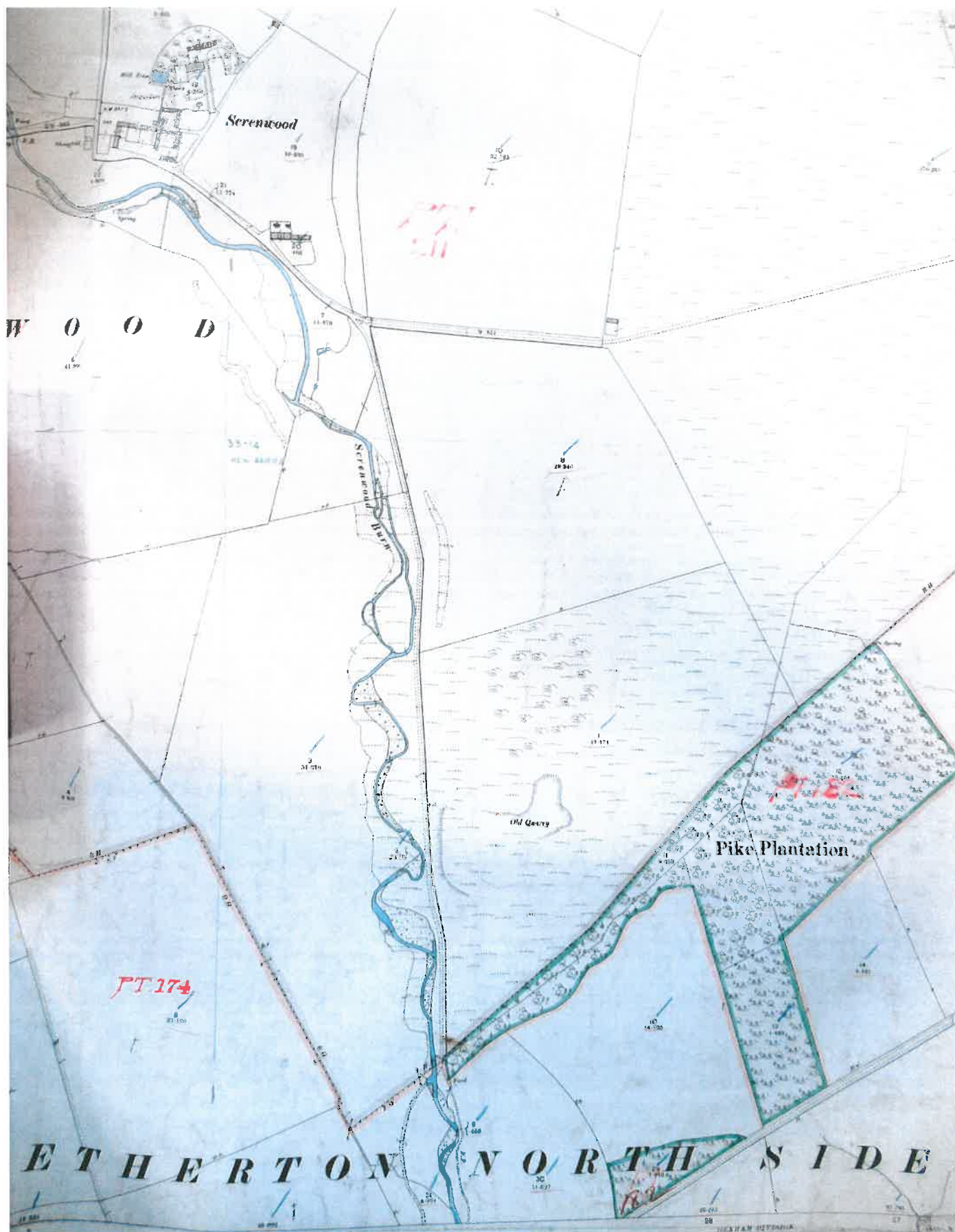
RECAPITULATION FOR THE PARISH.

Area in Acres.	1016-977	Land.
	31-047	Water.
	17-864	Public Roads.
	12055-888	Total Area of the Parish of Alnham, in the County of Northumberland.

NOTE:—Whittingham Parish (Detached) is published with the Plans of Alnham; the area is given in the Book of Reference for Whittingham.





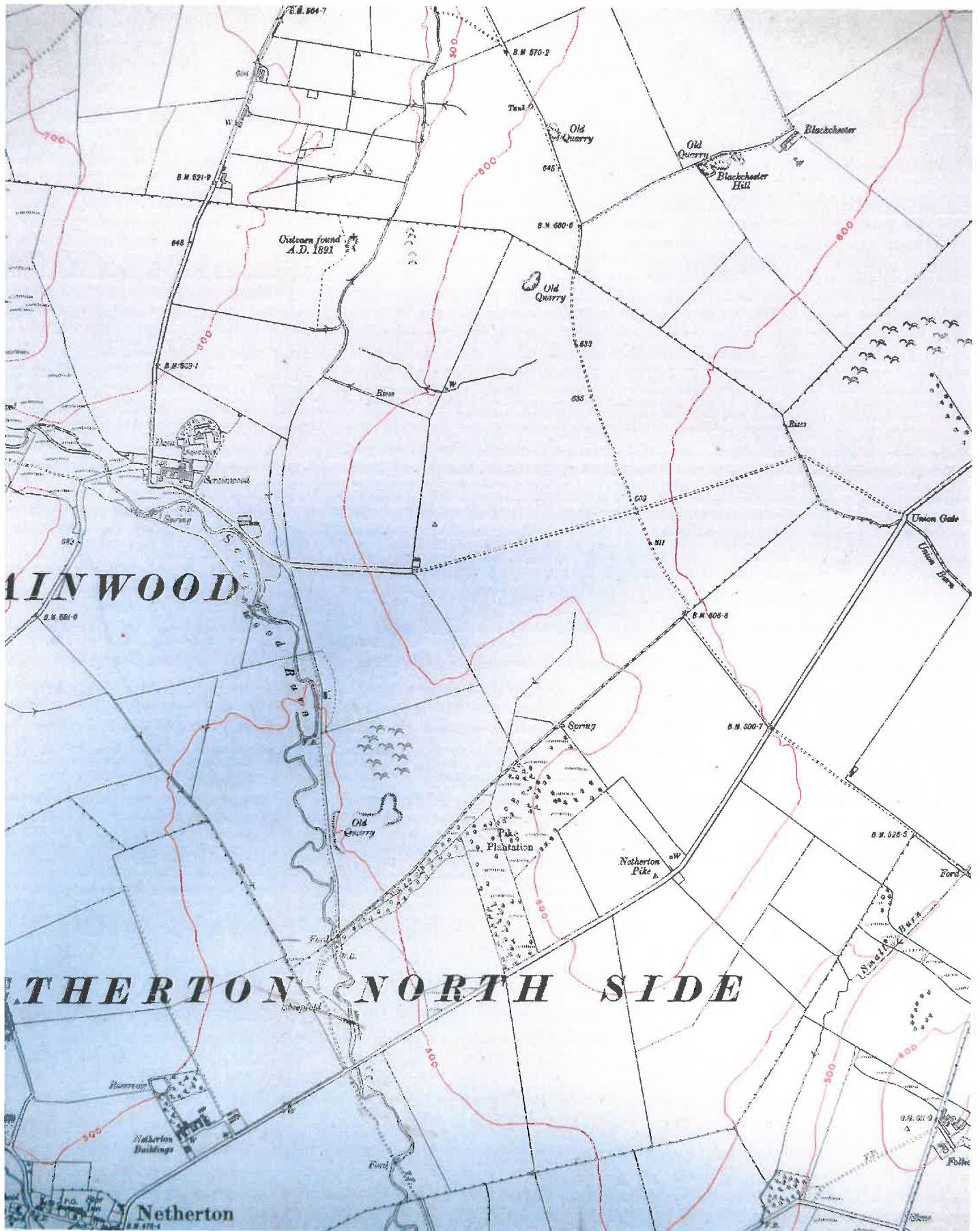


(BOAT 32 route)

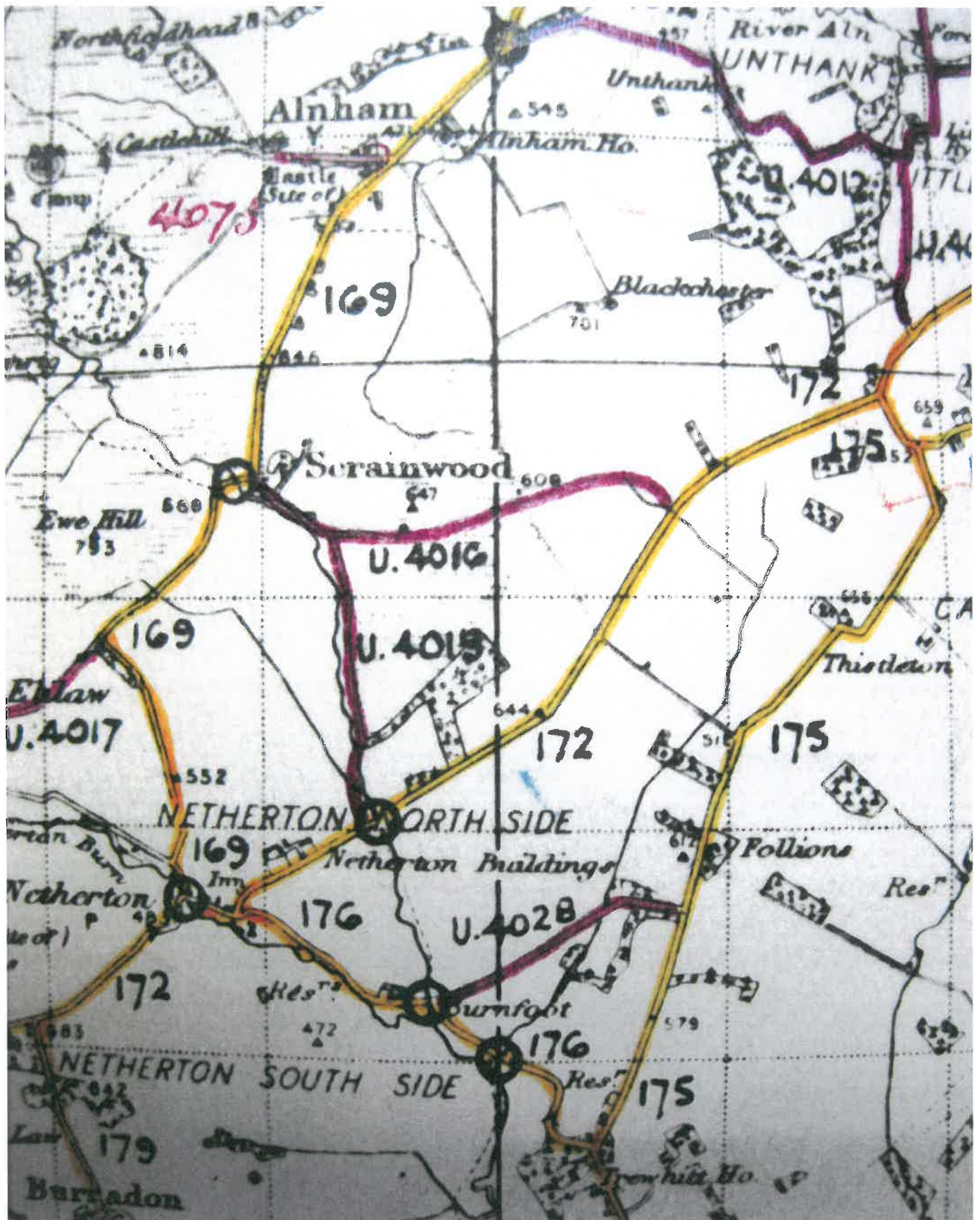
Finance Act 1910 Map



(BOAT 33 route)



Extract from the Council's 1951 Highways Map



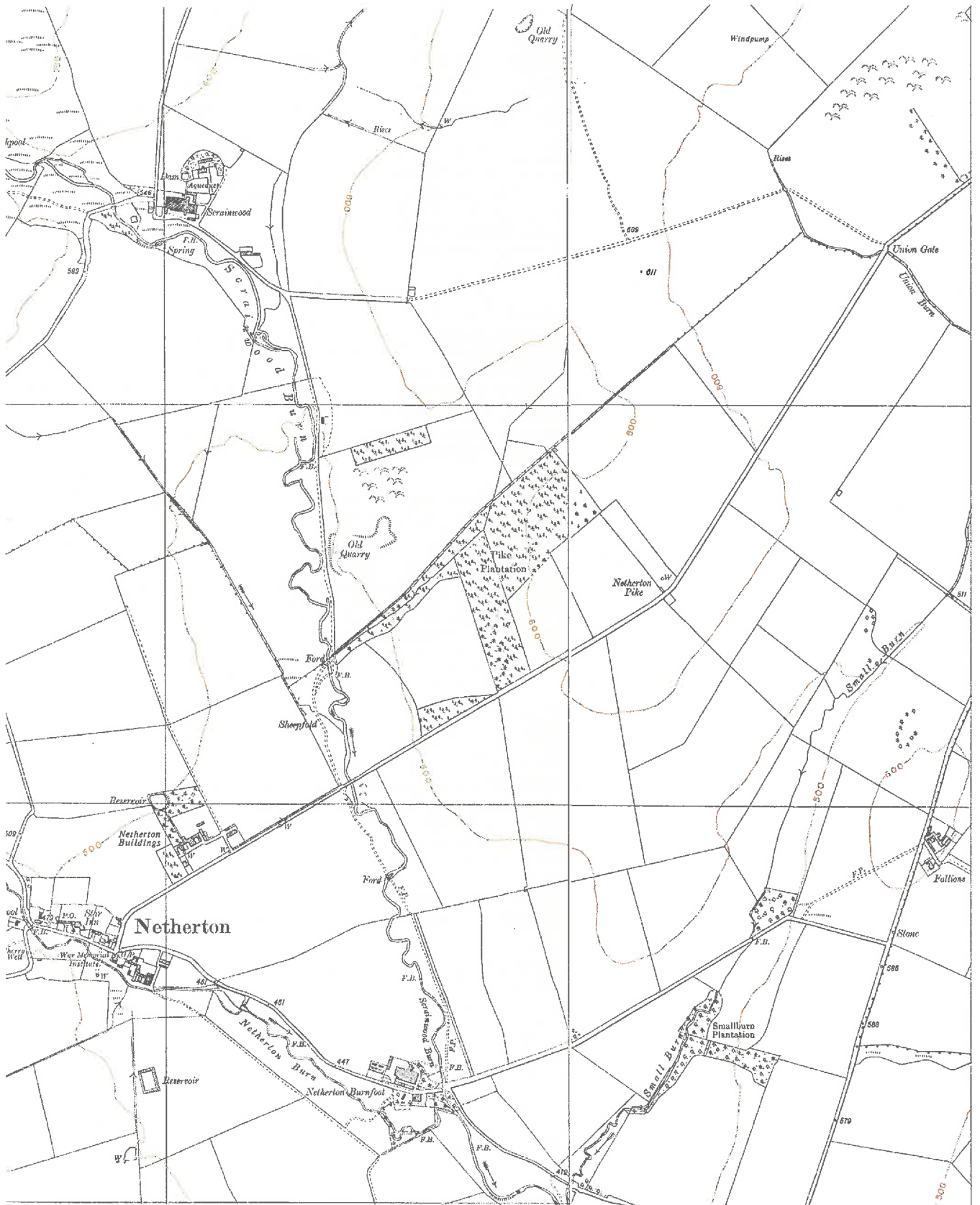
Survey Map





Provisional Map



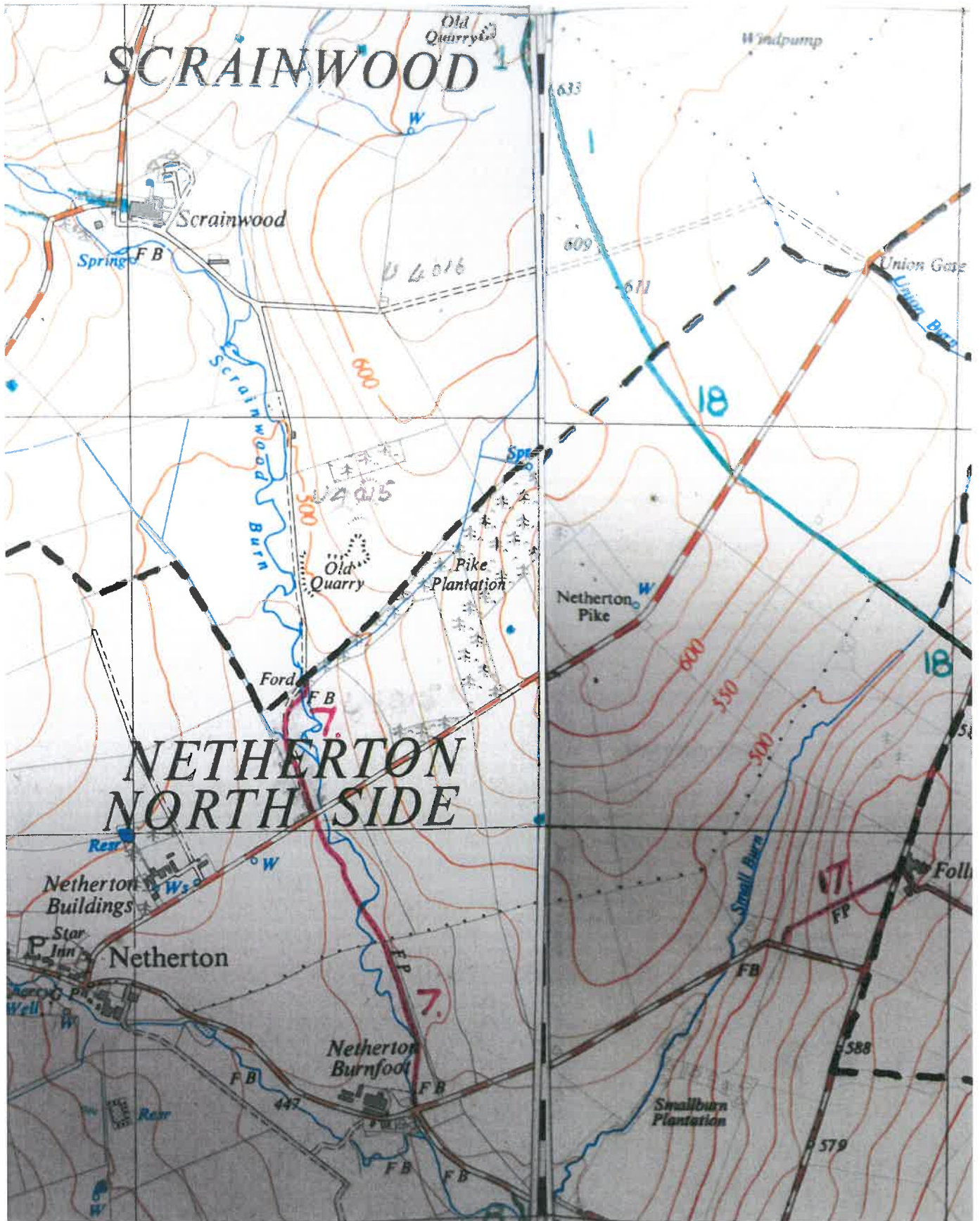


1958 County Road Schedule

ALNWICK DIVISION

Unclassified Roads in the Rothbury Rural District

		Brought Forward	19.410 miles
U.4015	Scrainwood - Nethererton Buildings Road	From C.169 at Scrainwood to C.172 east of Nethererton Buildings.	1.04
U.4016	Scrainwood - Union Gate Road	From U.4015 south-east of Scrainwood to C.172 at Union Gate	0.97
U.4017	Elilaw - Biddlestone Road	From C.169 east of Elilaw via Biddlestone Park to C.172 west of Biddlestone Edge.	2.72
U.4018	Biddlestone Edge - Harbottle Road	From C.172 east of Biddlestone Edge via Well House to C.172 at Harbottle (Includes de-classified length of road)	2.46
U.4019	Well House - Sharperton Edge Road	From U.4018 at Well House to U.4029 at North west of Sharperton Edge.	1.60
U.4020	Sharperton - Ridges Plantation Road	From C.172 at Sharperton to U.4019 at Ridges Plantation.	0.61
U.4021	Sheepbanks Road	From U.4019 at Ridges Plantation to U.4013 north-east of Well House	0.67
U.4022	Burradon - Biddlestone Hall	From C.172 at Burradon Mains to U.4017 at Biddlestone Hall.	0.08
U.4023	Llinton - Coquet Valley Road	From C.172 at Alwinton via Shillmoor, Barrowburn to Makenon	11.70
U.4024	Alwinton - Clennell Road	From C.172 east of Alwinton to Clennell.	0.63
U.4025	Farnham Tile Works - Low Farnham - Plainfield	From C.172 at Farnham Tile Works via Low Farnham to C.179 east of Plainfield	2.76
U.4026	Snitter Barns Road	From C.179 south of its crossing with the Foxton Burns, via Snitter Burns to C.176 south of the entrance to Silverside.	1.76
		Forward	<u>46.430</u> miles



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 ROTHBURY
..... ALNHAM
2. Parish
.....
3. Number of Footpath on Map 1
4. Name of Path SALTERS ROAD (PART)
5. Kind of Path (i.e. FP/BR) B.R.

6. General Description of Path ✓ From B.R.15 in the Parish of Alwinton in an easterly, north-easterly direction by Wagshead Knowe, High Bleakhope to join the County Road U.4075 at Shank House commencing at a distance of (approx:) 480 yards along the U.4075 and continuing in a south-easterly direction by White Gate and Pennylaws South Plantation to rejoin the County Road U.4075 at Alnham commencing at the Scrainwood - Prendwick road north-east of Castle Farm and continuing in a south-easterly direction by the Old Quarry to the Netherton Parish Boundary joining BR.18 in that Parish.

7. Other relevant information
.....
.....
.....
.....

BR 23, 24 (1)

NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

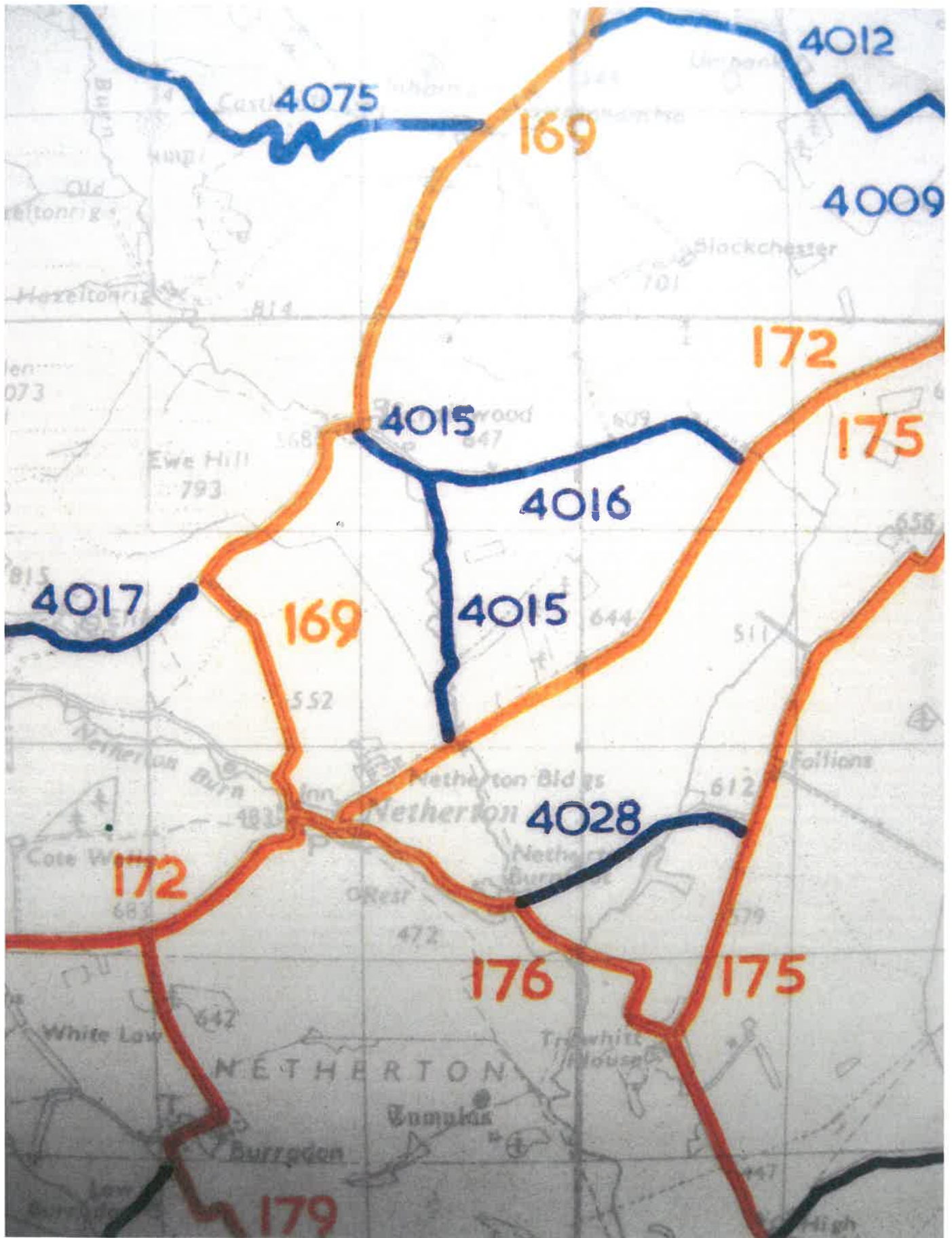
- 1. Borough
Urban District
Rural District ROTHBURY
- 2. Parish NETHERTON
- 3. Number of Footpath on Map 7
- 4. Name of Path
- 5. Kind of Path (i.e. FP/BR) F.P. (3'0" wide)
- 6. General Description of Path From the Netherton - Union Gate Road in a
southerly direction crossing the Scrainwood Burn to join the Netherton -
Follions Road east of Netherton Burnfoot.
.....
.....
.....
- 7. Other relevant information Footbridge at Scrainwood recorded on
County Council Schedule as F.B. 1029
.....
.....
.....
.....

1964 County Road Schedule

- 89 -

<u>Route No.</u>	<u>Name of Road.</u>	<u>Description.</u>	<u>Responsible Division or Authority.</u>	<u>Mileage.</u>	<u>Total Mileage.</u>
U.4013	Whittingham-Mountain Road.	From C.90 north-west of Whittingham north-westwards to U.4014 at The Mountain.	Alnwick.	1.20	
U.4014	Eslington Lowhill-Mile End Road.	From C.172 at Eslington Lowhill northwards to C.169 south-west of Mile End.	Alnwick.	1.14	
U.4015	Scrainwood-Netherton Buildings Road.	From C.169 at Scrainwood southwards to C.172 east of Netherton Buildings.	Alnwick.	1.04	
U.4016	Scrainwood-Union Gate Road.	From U.4015 south-east of Scrainwood eastwards to C.172 at Union Gate.	Alnwick.	0.97	
U.4017	Elilaw-Biddlestone Road.	From C.169 east of Elilaw via Biddlestone Park to C.172 west of Biddlestone Edge.	Alnwick.	2.72	
U.4018	Biddlestone Edge-Harbottle Road.	From C.172 east of Biddlestone/southwards and south-westwards via Well House to C.172 at Harbottle. (Includes declassified length of road as link to C.172 at Harbottle End).	Alnwick.	2.56	
U.4019	Well House-Sharperton Edge Road.	From U.4018 at Well House eastwards to U.4029 north of Sharperton Edge.	Alnwick.	1.60	
U.4020	Sharperton-Ridges Plantation.	From C.172 at Sharperton northwards to U.4019 at Ridges Plantation.	Alnwick.	0.61	
U.4021	Sheepbanks Road.	From U.4019 at Ridges Plantation northwards to U.4018 north-east of Well House.	Alnwick.	0.67	
U.4022	Burradon-Biddlestone Hall.	From C.172 at Burradon Mains northwards to U.4017 at Biddlestone Hall.	Alnwick.	0.80	
U.4023	Alwinton-Coquet Valley Road.	From C.172 at Alwinton via Shallmoor, Barrowburn to Makendon, including 133 yd. long spur from just north of Barrowburn Bridge north-eastwards to Barrowburn Farm.	Alnwick.	11.78	
U.4024	Alwinton-Clennell Road.	From U.4023 south-east of Alwinton, north-eastwards to Clennell	Alnwick.	0.79	

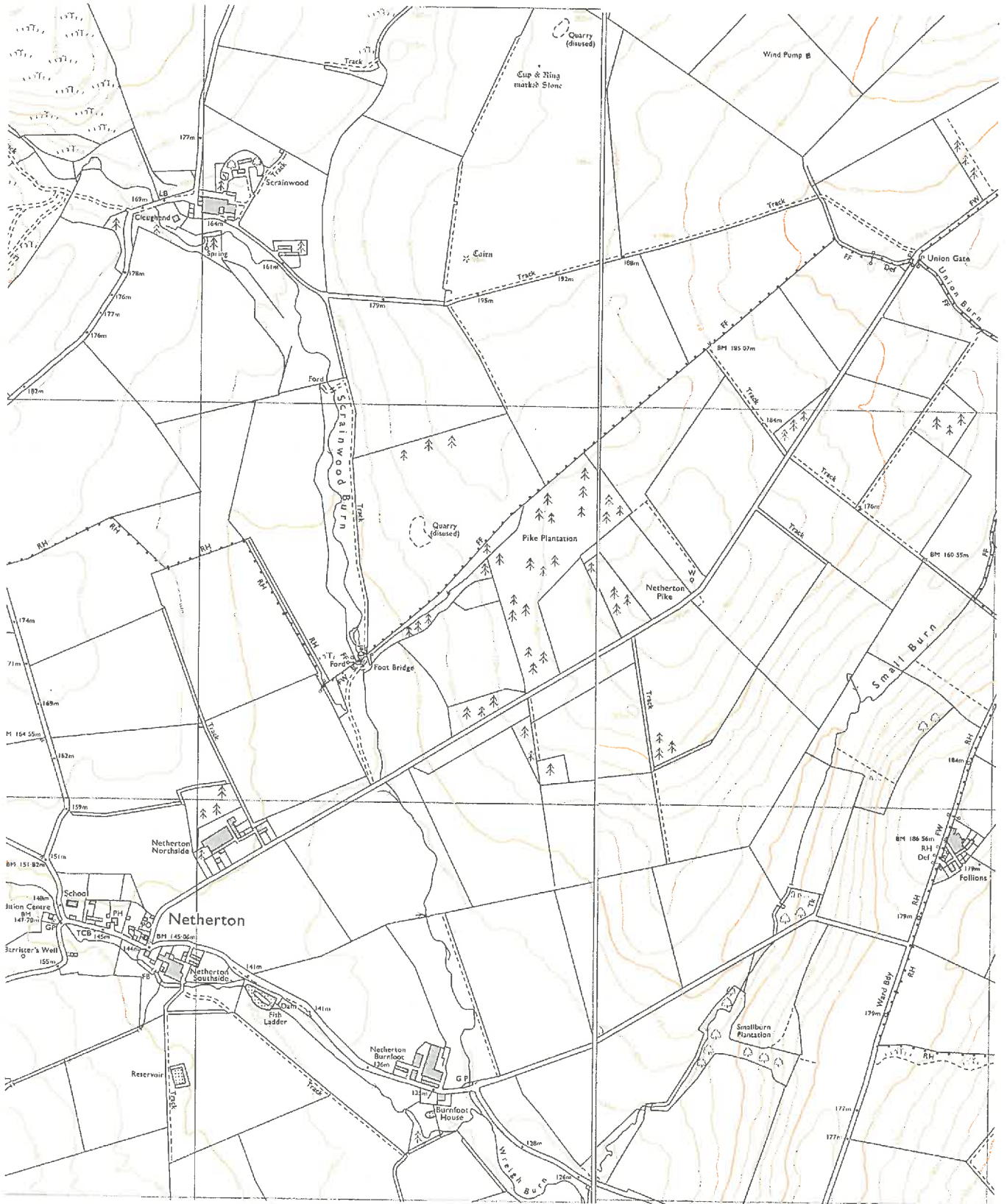
Extract from the Council's 1964 Highways Map



1974 County Road Schedule

Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
J. 4013	Whittingham-Mountain Road.	From C. 90 north-west of Whittingham (NU. 068123) north-westwards to U. 4014 at The Mountain (NU. 051130).	Alnwick Division.		1.20
J. 4014	Eslington Lowhill-Mile End Road.	From C. 172 at Eslington Lowhill (NU. 049118) northwards to C. 169 south-west of Mile End (NU. 051137).	Alnwick Division.		1.14
U. 4015	Scrainwood-Netherton Buildings Road.	From C. 169 at Scrainwood (NT. 990095) southwards to C. 172 east of Netherton Buildings (NT. 994080).	Alnwick Division.		1.04
U. 4016	Scrainwood-Union Gate Road.	From U. 4015 south-east of Scrainwood (NT. 993093) eastwards to C. 172 at Union Gate (NU. 007094).	Alnwick Division.		0.97
U. 4017	Elilaw-Biddlestone Road.	From C. 169 east of Elilaw (NF. 983087) westwards and southwards via Biddlestone Park to C. 172 west of Biddlestone Edge (NT. 948073).	Alnwick Division.		2.72
U. 4018	Biddlestone Edge-Harbottle Road.	From C. 172 east of Biddlestone Edge (NF. 960070) southwards and south-westwards via Well House to C. 172 at Harbottle (NF. 935046).	Alnwick Division.		2.56
U. 4019	Well House-Sharperton Edge Road.	From U. 4018 at Well House (NT. 948054) eastwards to U. 4029 north of Sharperton Edge (NT. 970047).	Alnwick Division.		1.60
U. 4020	Sharperton-Ridges Plantation.	From C. 172 at Sharperton (NT. 957038) northwards to U. 4019 at Ridges Plantation (NT. 957047).	Alnwick Division.		0.61
U. 4021	Sheepbanks Road.	From U. 4019 at Ridges Plantation (NT. 959047) northwards to U. 4018 northeast of Well House (NF. 957057).	Alnwick Division.		0.67

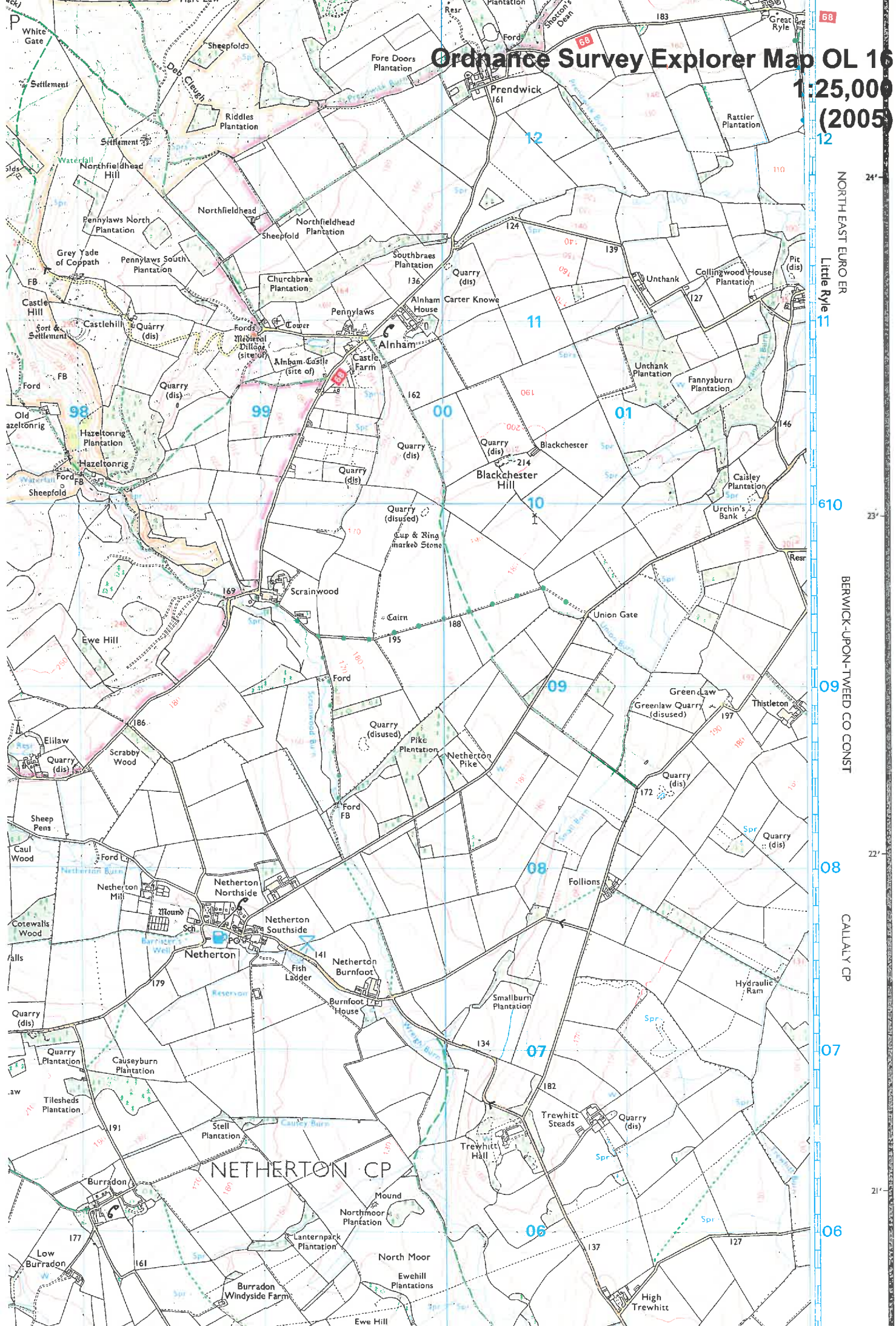
1:10,000 O.S. Map
1980 / 1979



Ordnance Survey Explorer Map OL 16

1:25,000

(2005)



68
12
11
10
09
08
07
06

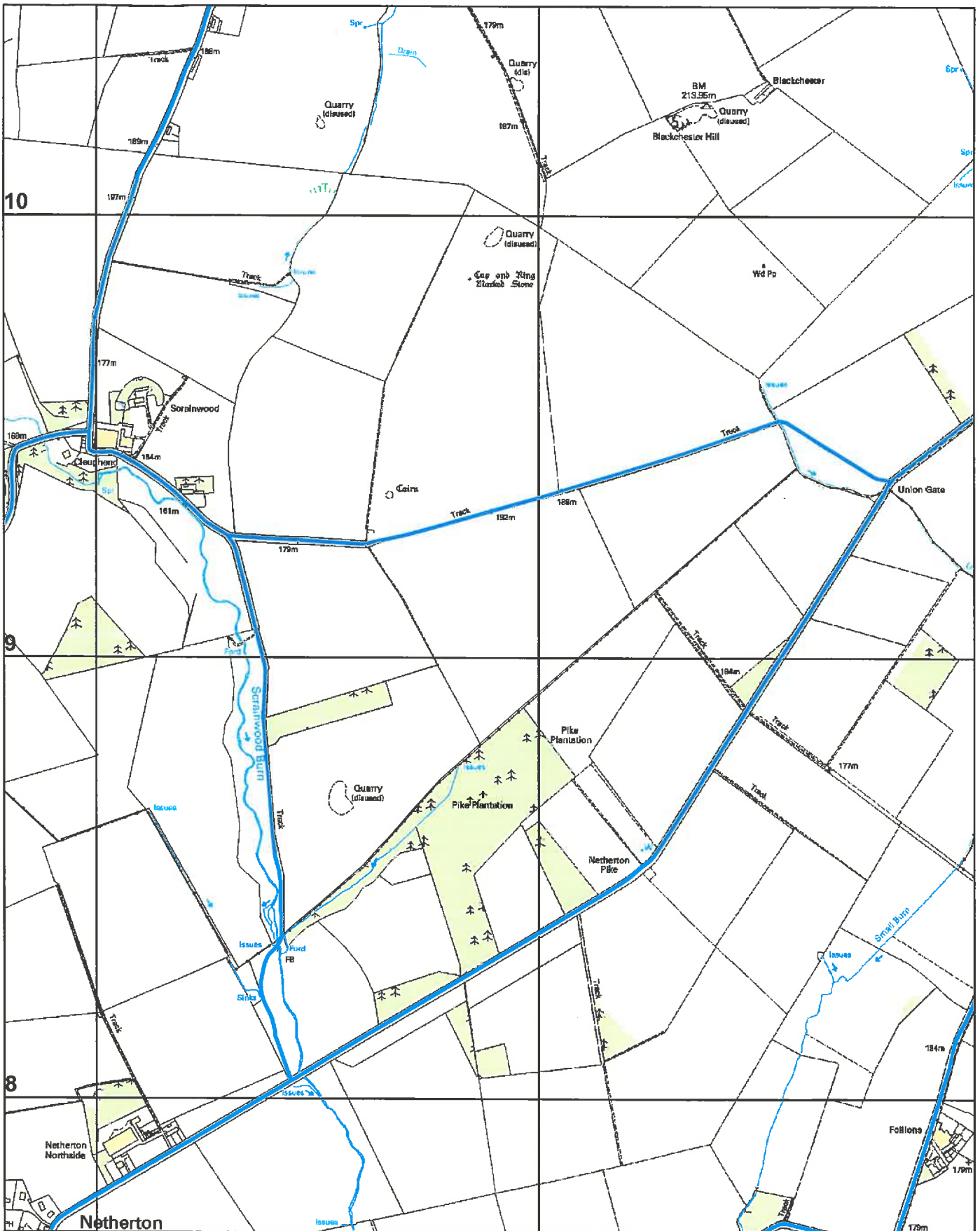
NORTH EAST EURO ER
Little Ryle

BERWICK-UPON-TWEED CO CONST

CALLALY CP

24'
23'
22'
21'

NETHERTON CP




Northumberland
County Council

**Network Management
Information System**

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. License no. 100049048 (2015).

Highways Act 1980 Section 36(6)
County of Northumberland
List of Streets which are highways
maintainable at the public expense
as at 02-May-2006

Drn:	Date:	Scale:
AB	Aug 2019	1:12,000