



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
RIGHTS OF WAY SUB-COMMITTEE
17 December 2019

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

ALLEGED PUBLIC BRIDLEWAY No 6 PARISH OF ALWINTON

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 public bridleway rights over part of the route of existing Public Footpath No 54, from the eastern end of existing Public Bridleway No 6, north-east of Windy Gyle, along a section of the Border Ridge, to join Restricted Byway No 61, north-west of Uswayford.

Recommendation

It is recommended that the Council agrees that there is insufficient evidence to indicate that, on a balance of probability, public bridleway rights have been shown to exist over the O-P part of existing Public Footpath No 54.

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 upgrading a route which is already shown on the Definitive Map as a highway of a lesser status, based on historical documentary evidence, is Section 53(3)(c)(ii) 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 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;”

- 1.3 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 When the original Definitive Map of Public Rights of Way was first published, in 1962, there was no public right of way recorded along this section of the Border Ridge. When the First Review Map (Relevant Date: 1 November 1963) was published in the early 1970s, a public right of way (an extension to existing Bridleway No 6) which was part bridleway (at the Windy Gyle end) and part footpath (at the Cheviot end) was added. It is not known why the western part was ascribed public bridleway rights, yet the eastern end was only identified as public footpath.
- 2.2 For administrative reasons, in 2005 the footpath part of the route was renumbered as a separate path - Footpath No 54.
- 2.3 The point (marked “O”) where Public Bridleway No 6 ends and Public Footpath No 54 begins appears to be somewhat arbitrary. Unusually, it is neither a parish boundary nor a land ownership boundary.
- 2.4 Given the difficulty of the terrain, it seems unlikely that the route of Bridleway No 6, as far as Point O, will be ridden with horses or pedal cycles to any significant extent, but this 1500 metre long cul-de-sac bridleway might be considered more useful if the most westerly 595 metre long section of existing Public Footpath No 54, west of Clennell Street, were upgraded to public bridleway status.

3. LANDOWNER EVIDENCE

- 3.1 By letter, dated 4 August 2014, David Gray of Gray's Consultancy Services LLP responded to the consultation stating:

“Thank you for your letter dated 25 July 2014, the contents of which I note and please can all future correspondence be sent to me at the address shown.

“I write to confirm that Uswayford Farms Limited own the land on the plan between points O and P.”

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”. Two replies were received and are included below.

4.2 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 the 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 the 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 a date as possible.

“Routes traced in red have been cycled without problem.

“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.”

The route of alleged public bridleway (O-P) was identified by Mr Roberts as a route which he had ridden.

4.3 By email, in autumn 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“ALWINTON PARISH

Parish of Alwinton Footpath No 54, upgrade to bridleway

“This short section of footpath shown on map 5 is an anomaly in a network of routes of higher status, many of which are known to have been much used in past centuries.

“Although FP 54 continues in the northeast for some distance, BW 6 to the southwest extends very much further, all the way to Chew Green where it links with routes across the Otterburn Ranges to Elsdon, which was one of main hubs of routes in droving days [see ‘Drove Roads of Northumberland’ by Ian Roberts, Richard Charlton & Alan Rushworth, published by the History Press, 2010].

“It also links to RB 61 (Clennell Street) which is an ancient cross-border route linking Alwinton to Cocklawfoot on the Scottish side and is known to have been an important drove road. This route has a number of

spurs to hill farms such as Uswayford, Trows and Barrowburn which are all of bridleway status.

“As point O does not occur at a parish boundary and there is no significant physical feature at that point, it is likely that when the draft definitive map was drawn a drafting error occurred. It is more likely that the change from bridleway to footpath occurs where the current footpath 54 crosses Clennell Street so the bridleway along the Border Ridge links into the wider bridleway / restricted byway network.

“The BHS supports NCC in its efforts to eradicate these inaccuracies of the past.”

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 Alnwinton Bridleway No 6 or Footpath No 54.

1820 Fryer's County Map

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 or Footpath No 54.

1827 Cary's Map

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 or Footpath No 54.

1828 Greenwood's County Map

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 or Footpath No 54.

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

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 leading up to Point O, or Footpath No 54.

1899 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 leading up to Point O, or Footpath No 54.

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

There is no evidence of a path or track over the route of existing Bridleway No 6 / Footpath No 54.

c.1951 Definitive Map – original Survey Schedules & Maps

Neither the route of existing Bridleway No 6, east of Windy Gyle, nor the route of existing Footpath No 54, is identified for inclusion as a public right of way.

Draft Map

Again, neither the route of existing Bridleway No 6, east of Windy Gyle, nor the route of existing Footpath No 54, is identified for inclusion as a public right of way.

Provisional Map

Again, neither the route of existing Bridleway No 6, east of Windy Gyle, nor the route of existing Footpath No 54, is identified for inclusion as a public right of way.

Original Definitive Map

Once again, neither the route of existing Bridleway No 6, east of Windy Gyle, nor the route of existing Footpath No 54, is identified as a public right of way. Pencilled annotation on the map suggests that public bridleway rights were being considered / investigated for inclusion over the route of existing Bridleway No 6 and that public footpath rights were being considered for inclusion over the route of existing Public Footpath No 54.

1962 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a road or track approximating to the route of existing Alnwinton Bridleway No 6 leading up to Point O, or Footpath No 54.

First Review Definitive Map

The route of existing Public Bridleway No 6 is clearly shown. The route of existing Public Footpath No 54 (then numbered as part of Bridleway / Footpath No 6) is clearly shown.

1988 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of a path / track over the route of existing Footpath No 54, to the east of Point P. Although there is also evidence of a path / track west of Point P, this section of track appears to be located on the north side of the east-west boundary fence (i.e. in Scotland), and not along the route of existing Bridleway No 6 or the O-P length of alleged Bridleway No 6 / existing Footpath No 54.

5.2 The First Review Definitive Statement for this route states:

Alwinton 6 (Part BR & FP)

“From the junction of BR1 and BR4 north of Black Halls in a north-easterly and easterly direction by Lamb Hill, Foul Step, Windy Gyle and Green Gair to join FP 22 in the Parish of Alnham at that Parish Boundary west of Cairn Hill.”

6. SITE INVESTIGATION

6.1 From a stile and bridle gate through the field boundary at Point X, a mainly 0.5 to 0.75 metre wide paved path proceeds in a north-easterly direction for a distance of 205 metres to Point O. Point O is a non-descript location, identifiable only by measuring 205 metres from Point X. There is no change in terrain, no change in path surface, no noteworthy physical feature. From Point O, a mainly 0.5 to 0.75 metre wide paved path continues in a north-easterly direction for a distance of 125 metres. At this point the pavement stops. A 1 metre wide mainly stone surfaced path continues in a north-easterly direction for a distance of 70 metres. The pavement then resumes for a distance of about 95 metres, then there is another length of stone surfaced path for around 70 metres, then another section of pavement for a distance of around 190 metres. When the England-Scotland boundary turns northwards, the pavement follows it, continuing for a further 45 metres (the last few metres are just stone) to join Restricted Byway No 61 (Clennell Street) at Point P.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

7.1 In November 2019, a copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments. No further comments were received.

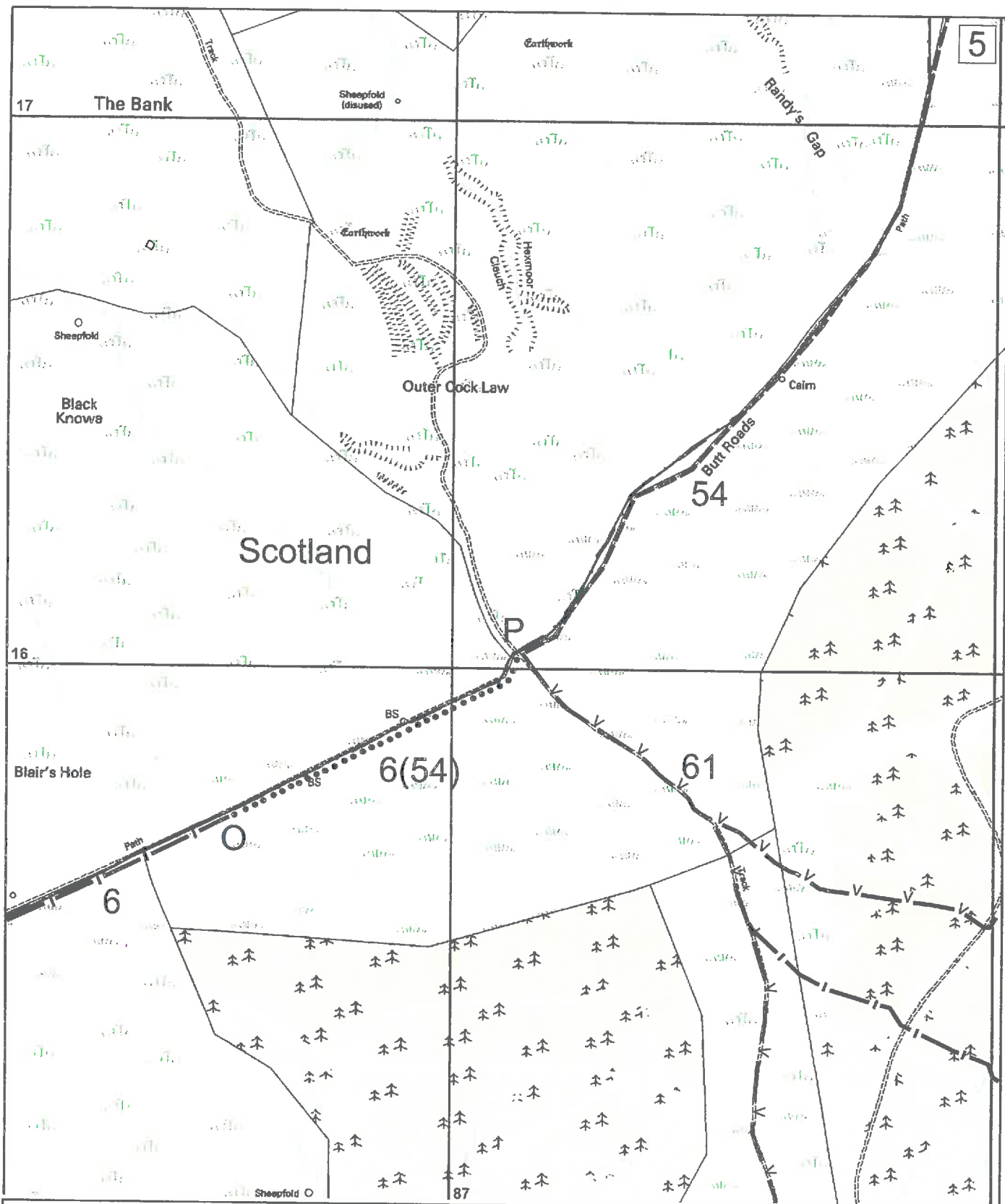
8. DISCUSSION

8.1 Section 53 (3)(c)(ii) 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 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.”

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 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. Occasionally a route might vary in status because it crosses a land ownership boundary. The route is identified for inclusion as a public bridleway at the Draft Map stage. Landowner A does not object, so the section of bridleway across their land automatically makes it to the Definitive Map as bridleway, but Landowner B does object, and is able to convince the decision makers that the section across their land is no more than a public footpath. The anomaly under consideration here does not, however, occur at a parish boundary - it is entirely within Alwinton parish. It doesn't even appear to occur at a land ownership boundary - it occurs at a non-descript point within the Uswayford Farm Ltd holding.
- 8.5 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. As indicated previously, no public rights of way were identified for inclusion along the Border Ridge between Windy Gyle and Clennell Street, when the original Definitive Map was being prepared.
- 8.6 The procedure described in 8.5 above was, broadly speaking, repeated when the Definitive Map underwent its First Review (Relevant Date: 1 November 1963) carried out during the 1960s and completed in 1972. The main difference appears to be that there was no Provisional Map stage - only a Draft Map then a Definitive Map. Unfortunately, the Draft Maps for the First Review do not appear to have survived (or if they did survive, they haven't been located) so there is a distinct lack of detail regarding the changes which were being proposed / actually occurred.



NORTHUMBERLAND

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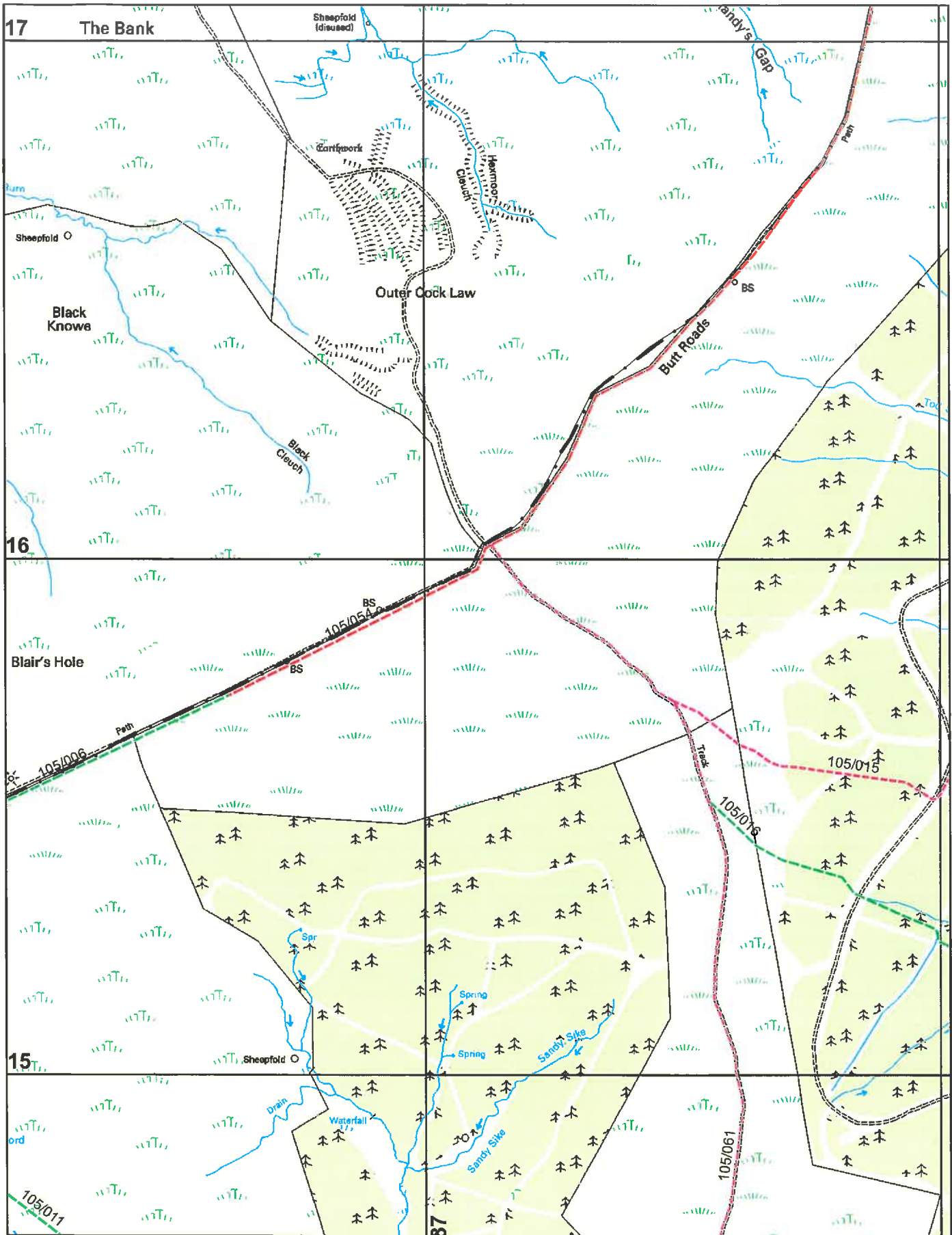
County Hall Morpeth Northumberland
NE61 2EF
Telephone 0845 600 6400

Wildlife and Countryside Act 1981 Public Rights of Way

-  Existing Public Footpath
-  Existing Public Bridleway
-  Existing Restricted Byway
-  Existing Public Footpath which may be Public Bridleway

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Former District(s) Alwinton	Parish(es) Alwinton	Scale 1:10,000
Def. Map No. 52	O.S. Map NT 81 NE	Date December 2013



17

The Bank

Sheepfold (dressed)

Sandy's Gap

Cartfwork

Outer Cock Law

Butt Roads

Sheepfold O

Black Knowe

Black Cleech

BS

16

Blair's Hole

BS

105/054

Path

105/006

BS

105/015

105/016

15

Sheepfold O

Drain

Waterfall

105/011

105/061



Northumberland
County Council

Legend

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

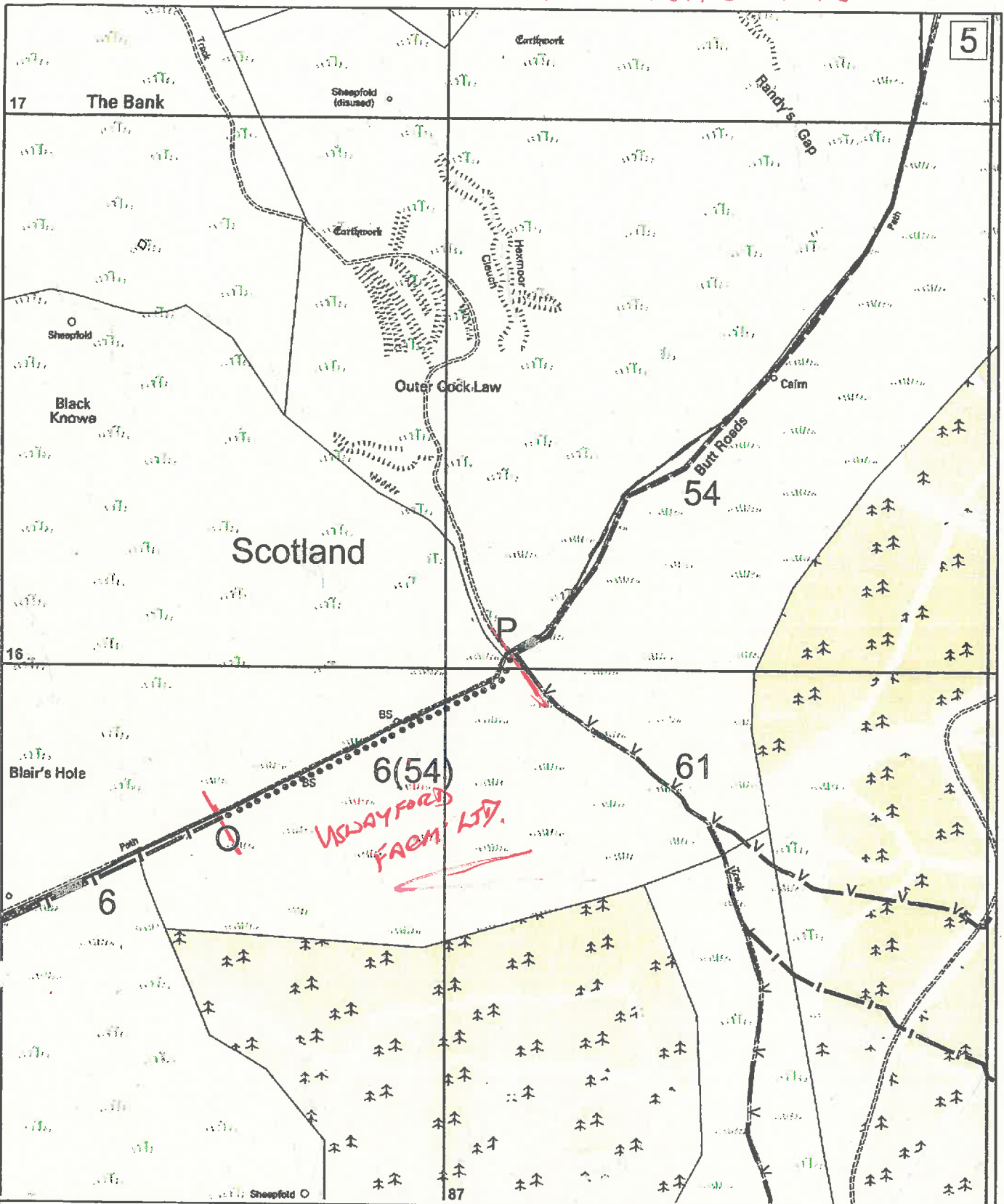
This is a computer generated extract of the Working Copy of the Definitive Map of Public Rights of Way

Scale: 1:10,000

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

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DAVID GRAY'S PLAN



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County Hall Morpeth Northumberland
NE61 2EF
Telephone 0845 600 6400

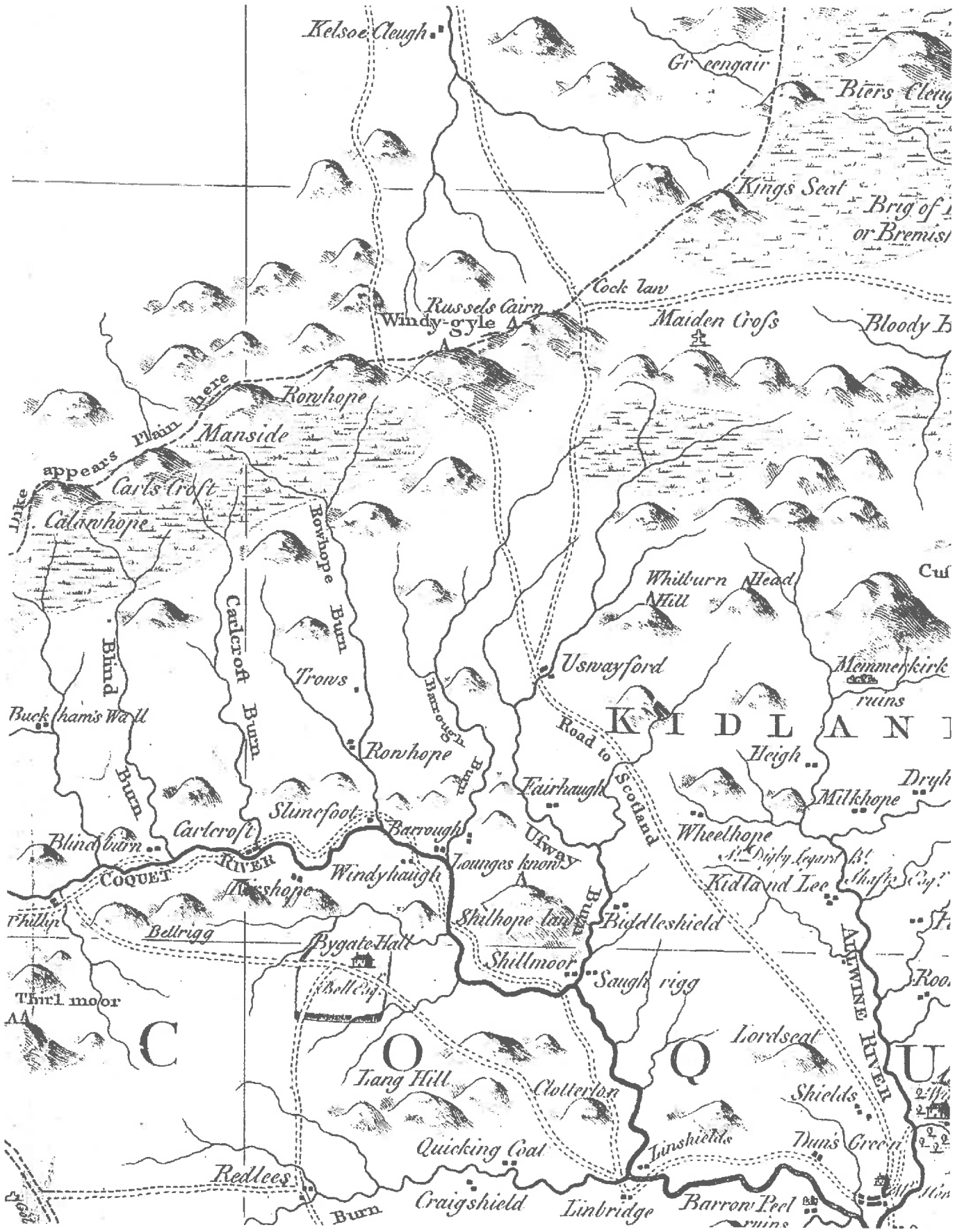
Wildlife and Countryside Act 1981
Public Rights of Way

- Existing Public Footpath
- |—|— Existing Public Bridleway
- V—V— Existing Restricted Byway
- Existing Public Footpath which may be Public Bridleway

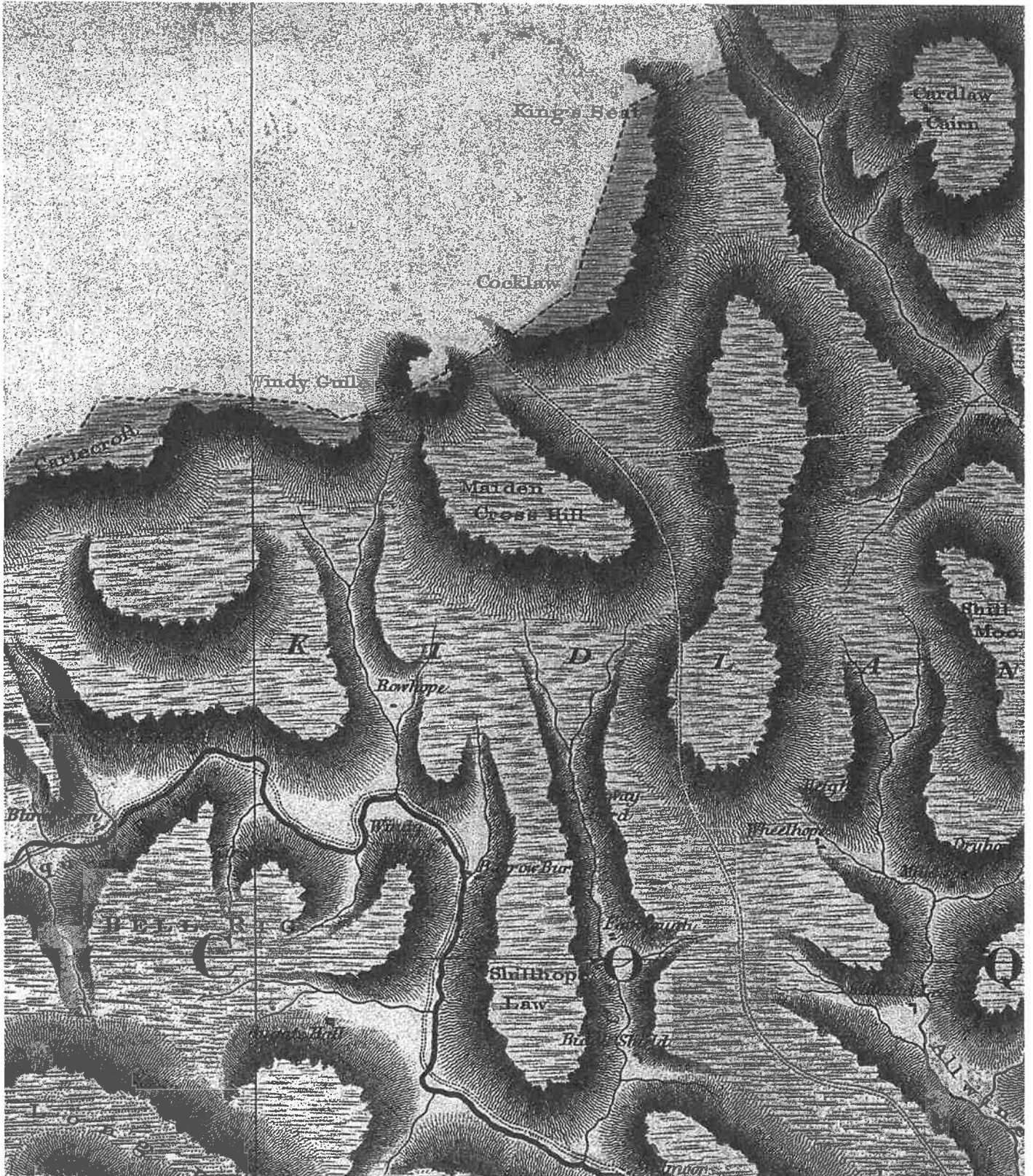
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Former District(s) Alnwick	Parish(es) Alwinton	Scale 1:10,000
Def. Map No. 52	O.S. Map NT 81 NE	Date December 2013

Armstrong's County Map
1769



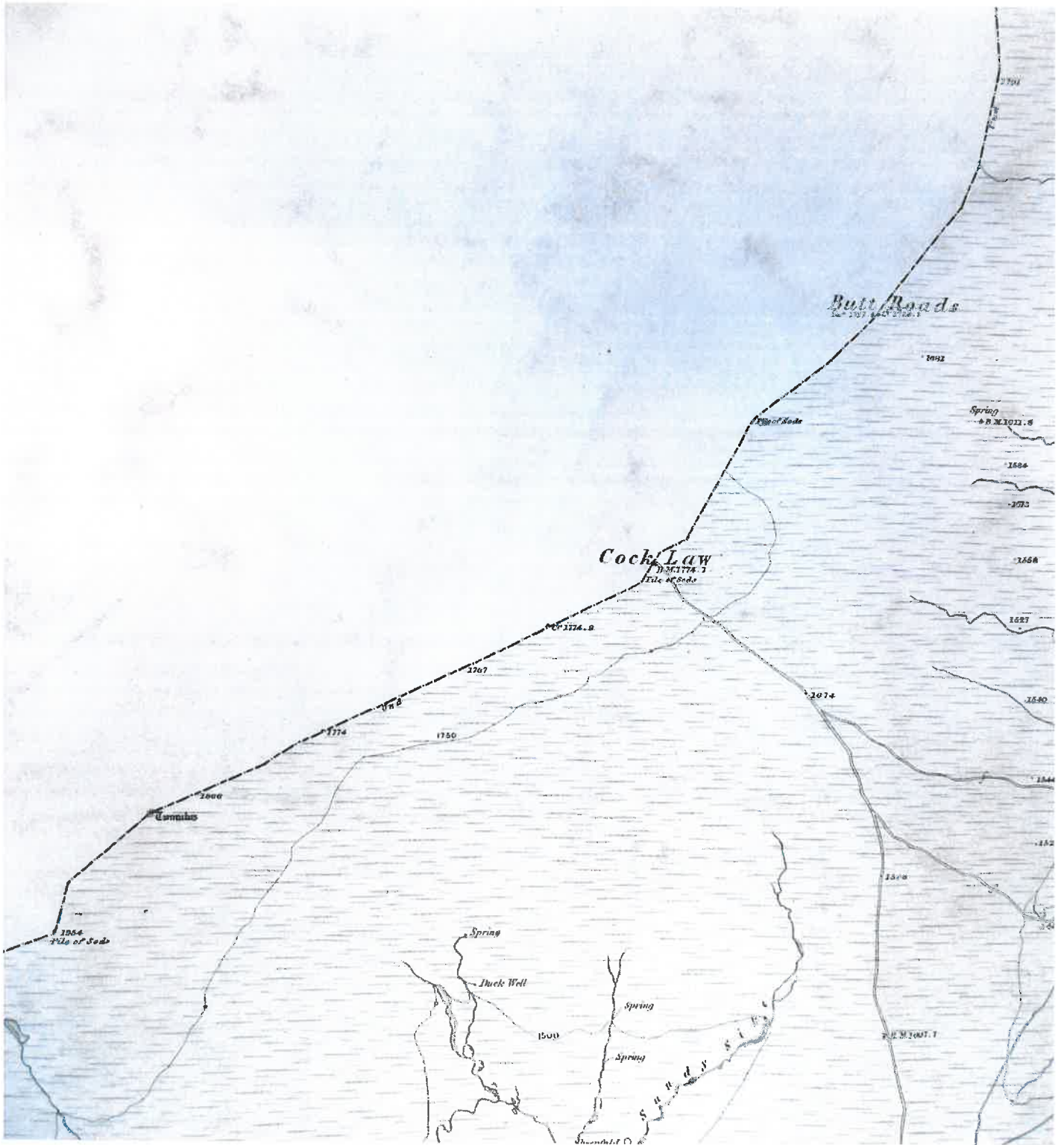
Fryer's County Map
1820

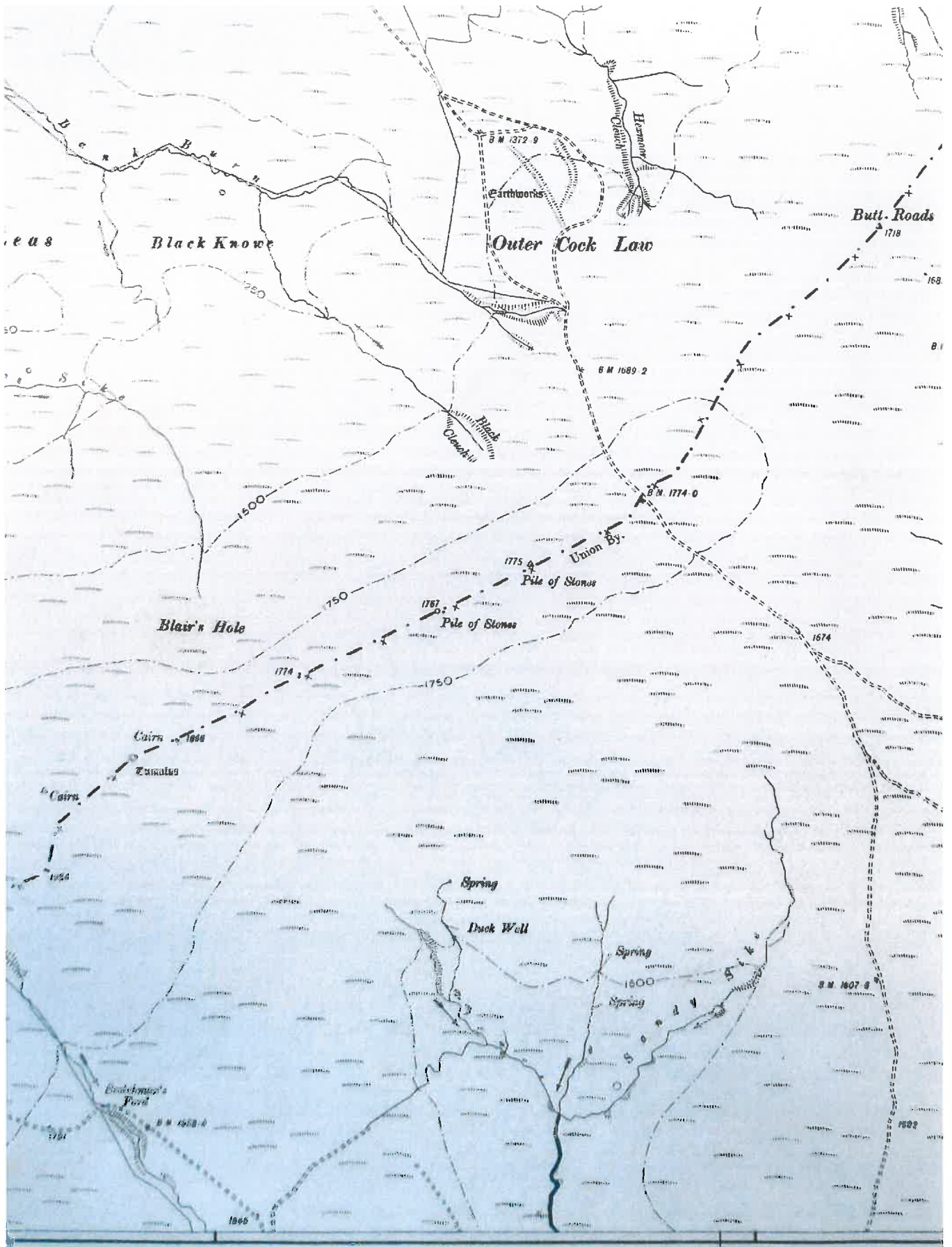


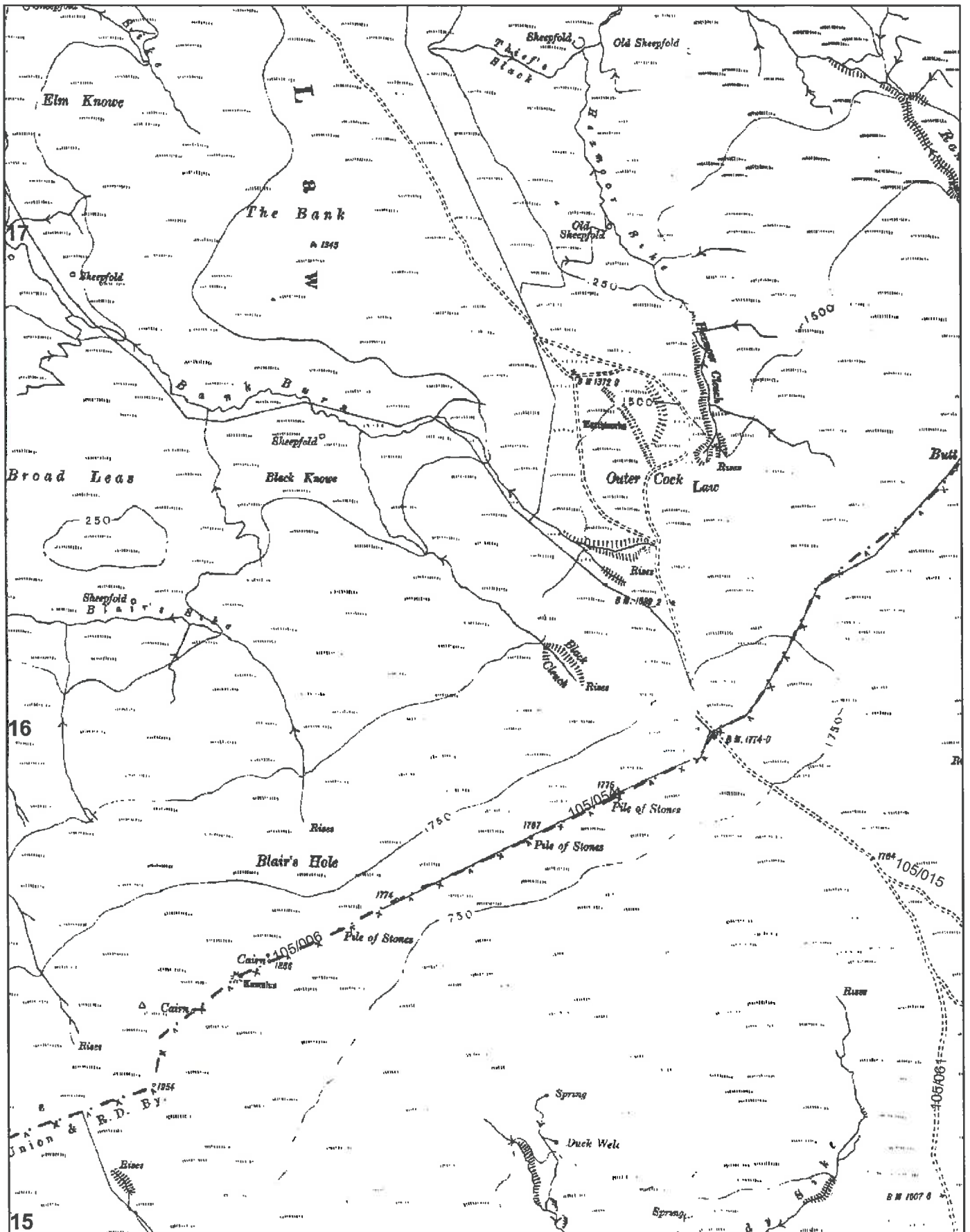


Greenwood's County Map 1828









86

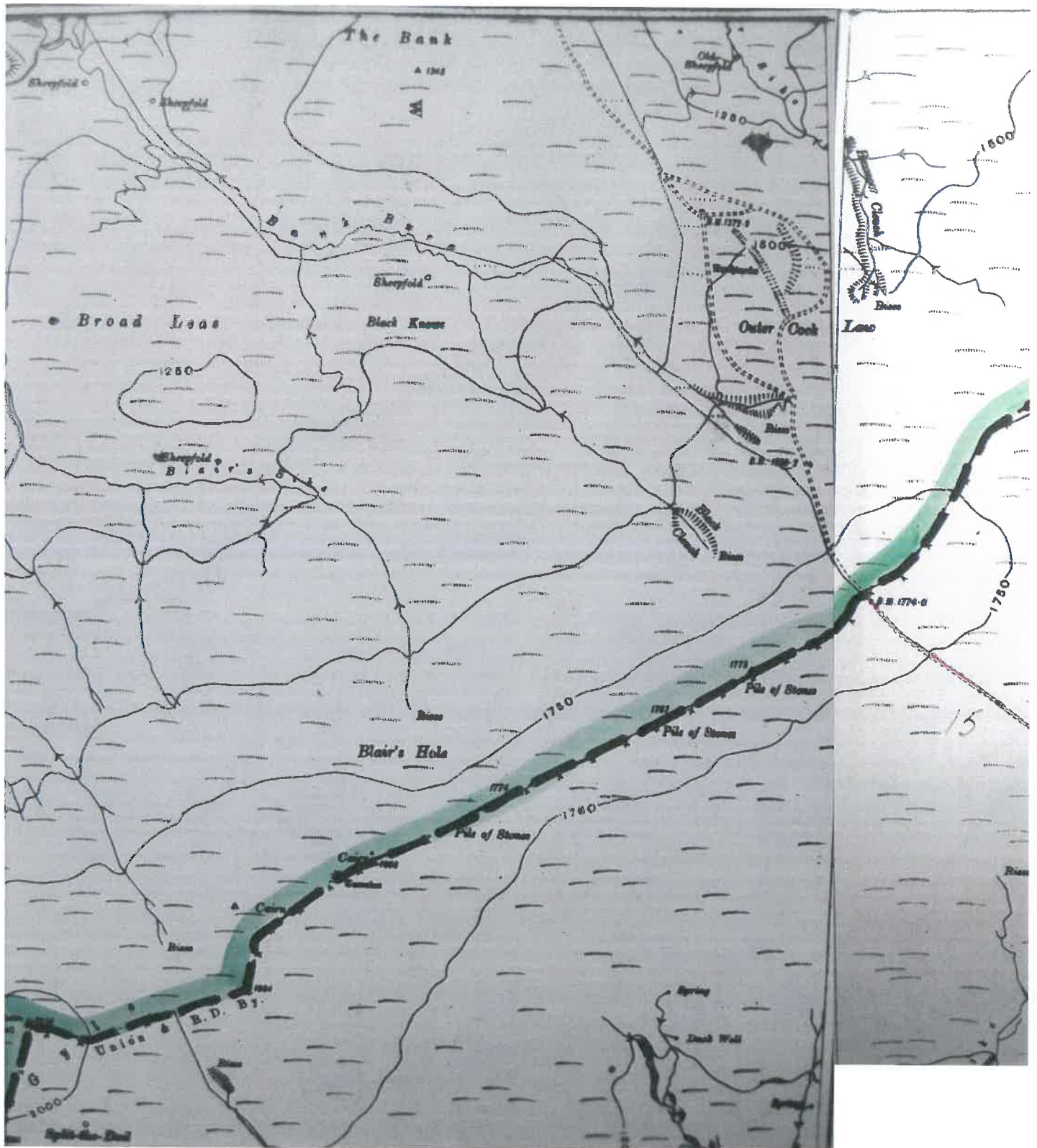
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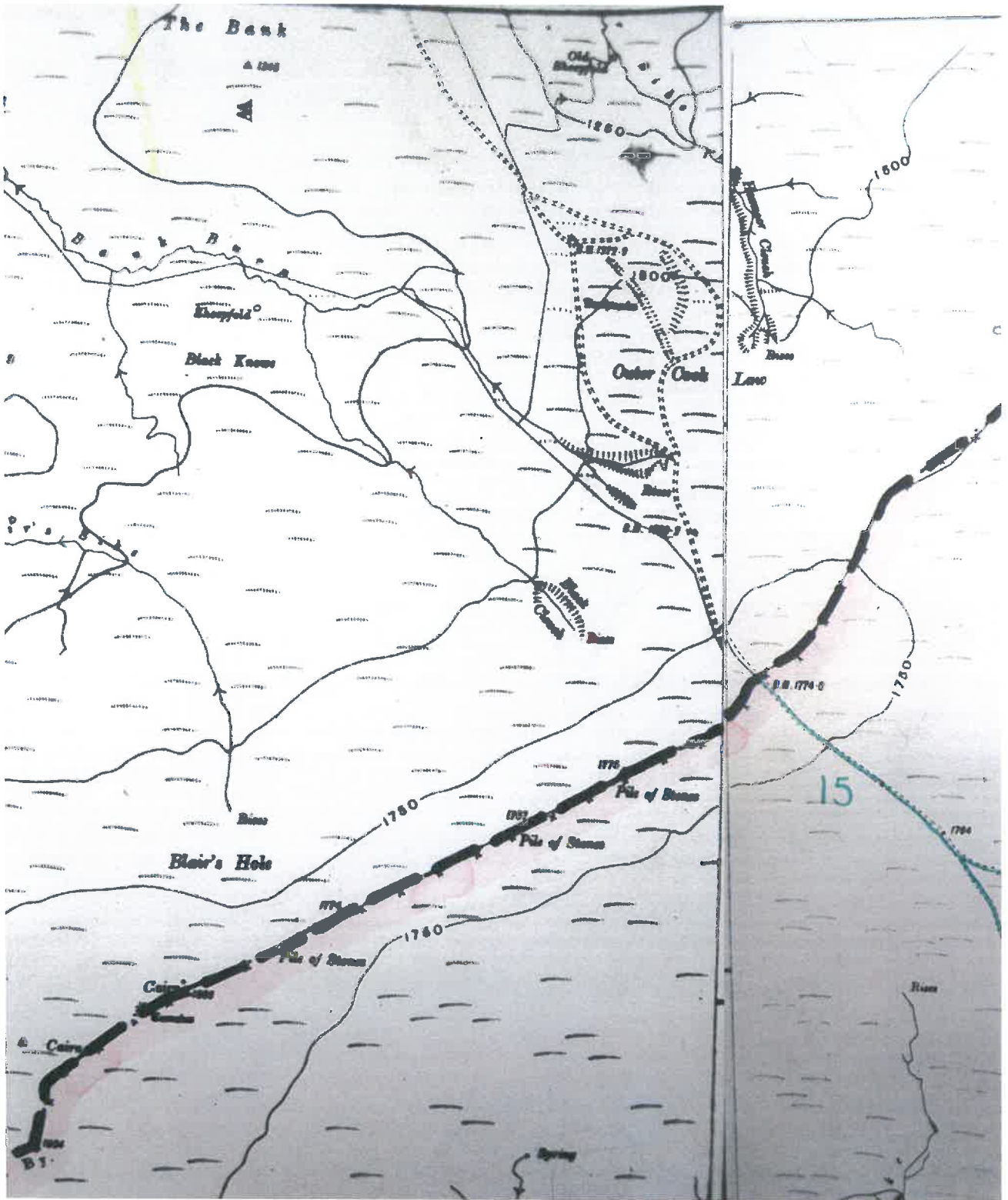

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SCALE 1:10,560

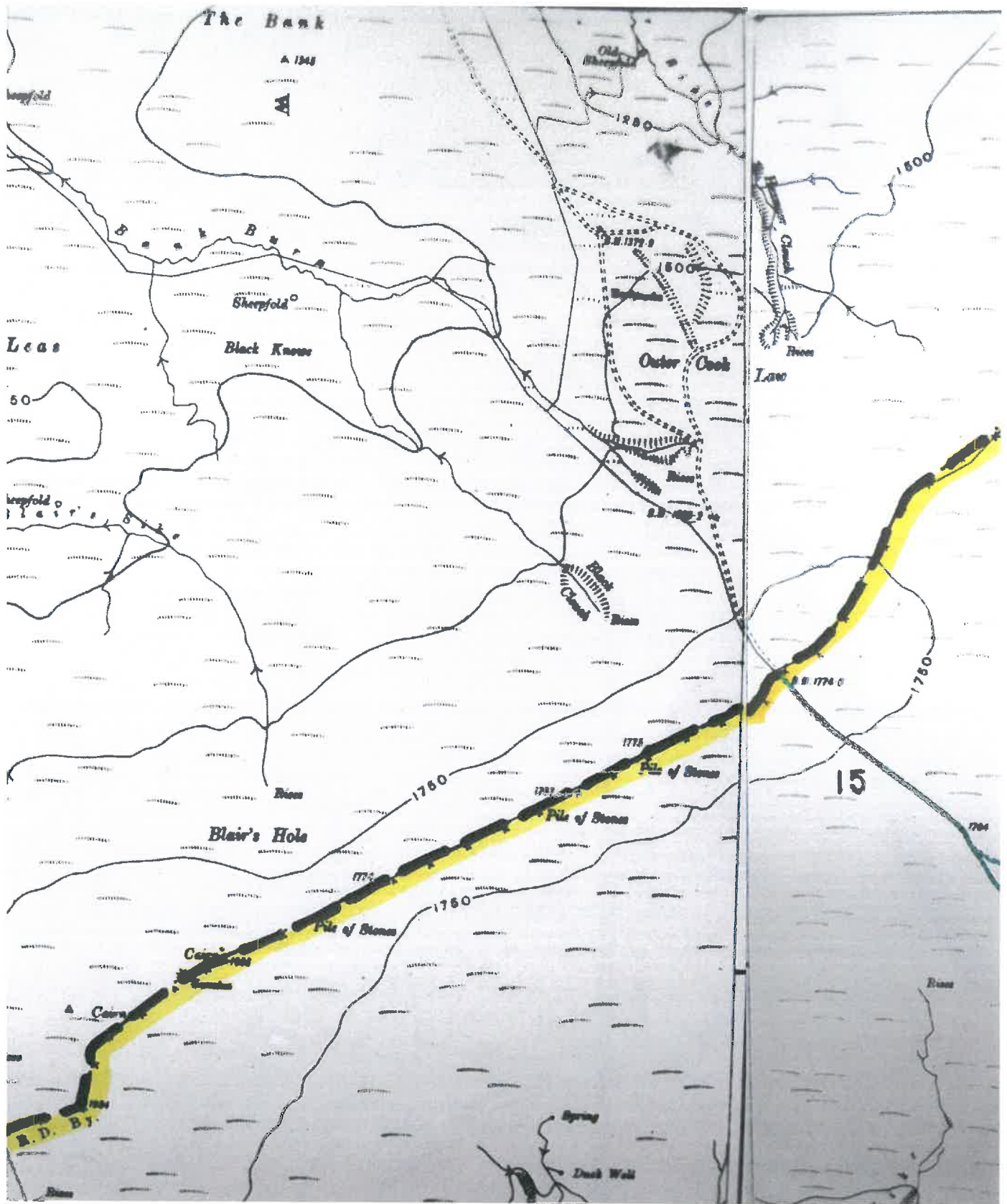
Ordnance Survey 3rd Edition 6" map (1924-25)

Survey Map

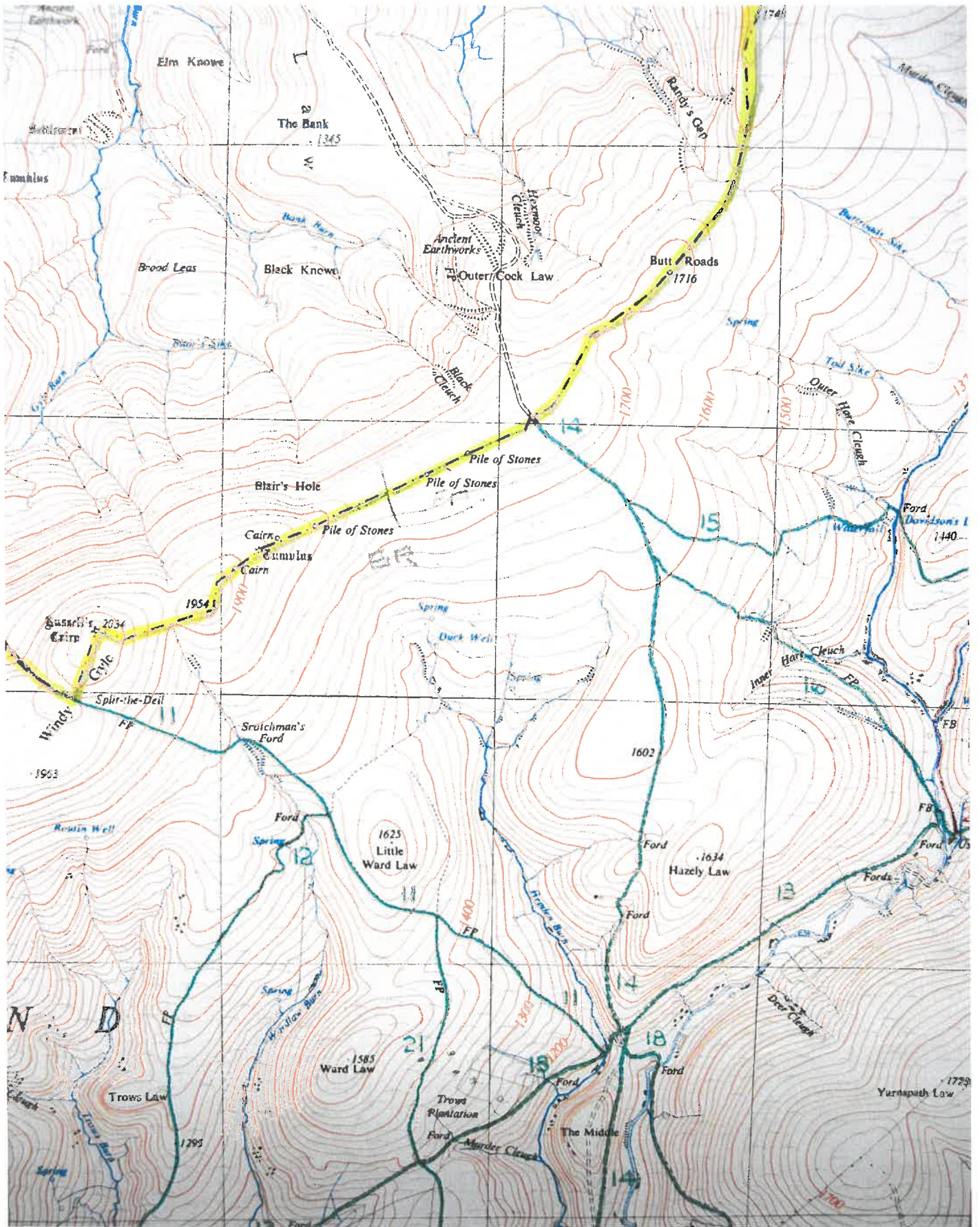




Provisional Map



Original Definitive Map





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 Alwinton

3. Number of Footpath on Map 6

4. Name of Path Pennine Way

5. Kind of Path (i.e. FP/BR) Part B.R. & F.P.

6. General Description of Path ... From the junction of B.R.1 and B.R.4 ...
... north of Elack Halls in a north-easterly and easterly direction by Lamb ...
... Hill, Foul Step, Windy Gyle and Green Gair to join F.P.22 in the Parish ...
... of Alnham at that Parish Boundary west of Cairn Hill.

7. Other relevant information

