



Northumberland

County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
23 August 2018

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

ALLEGED PUBLIC BRIDLEWAY No 54 PARISH OF KIRKNEWTON

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 Public Footpath No 2, between the B6351 road at Westnewton and that footpath's junction Public Bridleway No 1, north-west of Old Station House.

Recommendation

It is recommended that the Council agrees that:

- (i) on a balance of probability, public bridleway rights have not been shown to exist over the route of alleged Public Bridleway No 54;**
- (ii) as the landowner has, in the past, indicated that they are not opposed to the route being recognized as a public bridleway, officers investigate the possibility of public bridleway rights being created by means of a path creation agreement or path creation order.**

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)(ii) of the Wildlife and Countryside Act, 1981. This requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

“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 Ever since the Definitive Map of Public Rights of Way was first published, in 1962, an anomaly has existed where Public Bridleway No 1 terminates on Public Footpath No 2, north-east of Westnewton. Kirknewton Bridleway No 1 is a continuation of Milfield Bridleway No 1 which is, in turn, a continuation of Ford Bridleway No 32. At the time the Definitive Map was being prepared, this extended bridleway would have been a 5640 metre long cul-de-sac. At its northern end, it began on the B6352 road at West Flodden, but at its southern end it ended on Public Footpath No 2, without ever connecting with any other recorded public rights of way of bridleway (or higher) status. There was no obvious reason for the public bridleway to end at this point. It does not appear to be a place of public resort or even a parish boundary (where 'disagreements' regarding the status of a path are not uncommon). Had the public bridleway extended southwards by a further 330 metres (along the southern end of Public Footpath No 2) it would have made a through-route connection with the B6351 road. Although a 330 metres is not a small distance, it represents less than 6% of the route, taken as a whole.

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". Four replies were received and are included below.
- 4.2 By email, on 23rd September 2014, Kirknewton Parish Council responded to the consultation, stating:

“Public Bridleway No 54 (Footpath No 2): This right of way has had a “Footpath closed” notice for some time at the point marked U on the B6351 road west of Westnewton Bridge. It was thought that this was

due to the bridge over the burn being unsafe. Since this path is still closed, we assume that the bridge has not been strengthened.

- 4.3 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 Kirknewton Bridleway 54 We would agree this should be a bridleway."

- 4.4 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 Bridleway No 54 is highlighted on Mr Roberts' plans].

"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."

- 4.5 By letter, on 3rd November 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

"KIRKNEWTON PARISH

"Proposed upgrade of FP 54 to Bridleway 54

This route provides an essential link between bridleways on either side of the river across an existing bridge. It has been used by horse riders for many years and about 10 years ago, it was actually signed from the roadside on the south side as a public bridleway. It is understood that the landowner believes it to be a bridleway and is happy for horse riders to use it. So the BHS supports its addition to the definitive map."

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 no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1).

1820 Fryer's County Map

There is no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1).

1820-32 Cary's Map

There is no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1).

1828 Greenwood's County Map

There is no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1).

1866 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1). Both the northerly continuation towards Canno Mill and the easterly continuation, beyond Lanton Mill are identified with the notation "CR" (i.e. "cart road").

1881 North-East Railway – Alnwick & Cornhill Branch Deposited Plan

A track or path resembling the alignment of existing Public Footpath No 2 north of Point V is shown, but there is no evidence of a track or path shown over the route of alleged Bridleway No 54.

1881 Central Northumberland Railway Deposited Plan

A track or path resembling the alignment of existing Public Bridleway No 1 west of Point V and existing Public Footpath No 2 north of Point V is shown, but there is no evidence of a track or path shown over the route of alleged Bridleway No 54.

1899 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a path or track approximating to the route of alleged Bridleway No 54 (though there is evidence of a path / track over the southern end of existing Public Bridleway No 1).

1924 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a path or track over the northern part of the route of alleged Bridleway No 54 (i.e. between the railway and Bridleway No 1) and also over the route of Public Bridleway No 1. Close to the river this route is labelled "FP" (i.e. footpath) and the river crossing is labelled with "FB" (i.e. footbridge). There is evidence of a path / track between the B6351 road and the railway line too, but this is on a very different alignment to the route of alleged Bridleway No 54.

Definitive Map – original Survey Schedules & Map

Most of the route of alleged Bridleway No 54 exists on the base map, but it is not coloured so as to identify it as a public right of way. The route of existing Bridleway No 1 (Parish of Kirknewton) is identified as being public footpath, though the northerly continuation of this route in the Parishes of Milfield and Ford was identified as being public bridleway.

Draft Map

The northern part of the route of alleged Bridleway No 54 is identified as being part of Public Footpath No 2. The southern part of Public Footpath No 2 is shown on a different alignment to the present day path (joining the B6351 road further to the east). The continuation eastwards from Point V is not identified as a public right of way of any description.

Draft Map (Modified)

The northern part of the route of alleged Bridleway No 54 is identified as being part of Public Footpath No 2. The southern part of Public Footpath No 2 is shown on a different alignment to the present day path (joining the B6351 road further to the east). The continuation eastwards from Point V is now identified as a public bridleway to be added. A number of other public footpaths in the immediate area are to be deleted.

Provisional Map

The route of alleged Bridleway No 54 is identified as being part of Public Footpath No 2 (the alignment of the southern part has now been amended to its present day route). The continuation eastwards from Point V is identified as a public bridleway.

1962 Original Definitive Map

The route of alleged Bridleway No 54 is identified as being part of Public Footpath No 2. The continuation eastwards from Point V is identified as a public bridleway.

1968 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a path or track over the route of alleged Bridleway No 54 (and there is also evidence of a path / track over the route of Public Bridleway No 1).

First Review Definitive Map

The route of alleged Bridleway No 54 is identified as being part of Public Footpath No 2. The continuation eastwards from Point V is identified as a public bridleway.

1987 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of a path or track over the route of alleged Bridleway No 54 (and there is also evidence of a path / track over the route of Public Bridleway No 1).

6. SITE INVESTIGATION

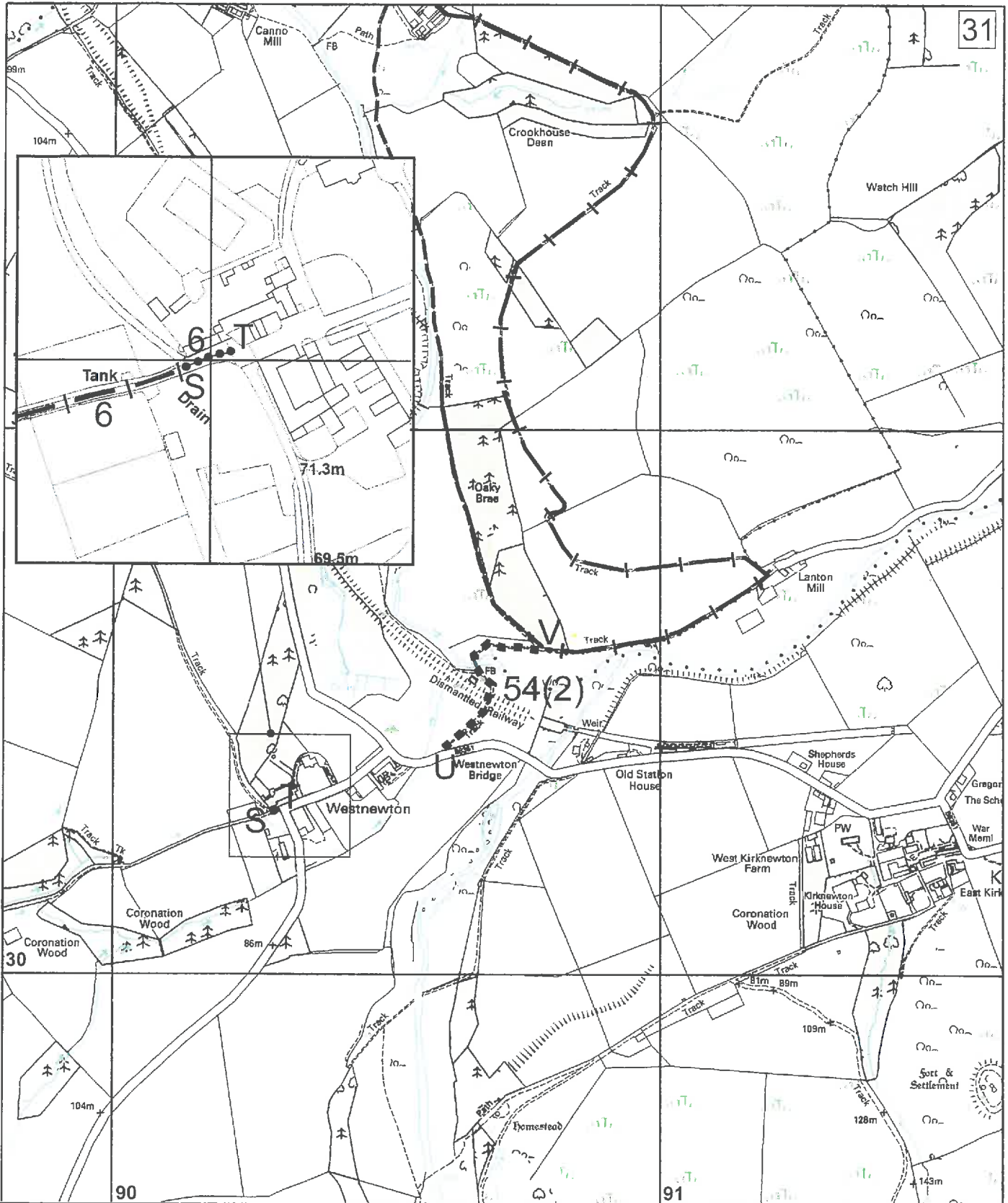
- 6.1 From a field gate on the B6351 road, 90 metres east of number 8 West Newton, a 3 metre wide stone / grass surfaced track proceeds in an easterly direction for a distance of 150 metres, then in a north-westerly direction for a distance of 40 metres to a field gate at the southern end of a bridge over the River Bowmont. A 3 metre wide wooden decked bridge crosses the River Bowmont in a north-westerly direction for a distance of 20 metres. A 2.5 to 3 metre wide stone / grass surfaced track then proceeds in a northerly direction for a distance of 10 metres, then north-easterly for a distance of 35 metres, then in an easterly direction for a distance of 90 metres, to join existing Public Bridleway No 1, 185 metres north of Bridge House.
- 6.2 The above route is presently recorded as being part of existing Public Footpath No 2. A wooden fingerpost at the edge of the B6351 road identifies the route as being "Public Footpath".

7. DISCUSSION

- 7.1 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.

- 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 route of alleged Bridleway No 54 is not identified on the commercially produced County maps from 1769 to 1832, nor is it shown on the early Ordnance Survey maps. Various routes between Lanton Mill and Crookhouse / Canno Mill are identified on the early maps. This suggests that the historical westerly continuation of the public bridleway, beyond point V, is probably to the north, and not over the alleged Bridleway No 54 route. The modern day Footpath No 2 (alleged Bridleway No 54) crossing of the Bowmont Water seems to have come into being much later (it’s not shown on the 1899 Second Edition OS map). Although part of it is depicted on the 1924 Third Edition OS map, it is labelled as “FP” with a footbridge river crossing and the southern end of the path / track is shown on a south-easterly, rather than south-westerly, alignment.
- 7.5 There appears to have been a degree of uncertainty regarding the status and alignment of routes in this vicinity, when the original Definitive Map of Public Rights of Way was being prepared in the 1950s. Alleged Public Bridleway No 54 was not, initially identified as a public right of way and existing Bridleway No 1 was initially identified as just a public footpath. At the Draft Map stage most (but not all) of existing Bridleway No 1 was upgraded to bridleway (part of it was removed altogether) and most of the route of alleged Bridleway No 54 was added as a public footpath (alignment south of the railway line was shown differently). The Draft Map was then modified to extend Public Bridleway No 1 to Point V. Finally, at the Provisional Map stage, existing Footpath No 2 (which is also alleged Bridleway No 54) was realigned (at its southern end) onto its present day alignment.
- 7.6 Whilst it might be possible to argue the existence of public bridleway rights on the basis of them being reasonably alleged, because the alleged Bridleway No 54 route is already recorded on the Definitive Map as a public footpath it is the balance of probability test which needs to be applied. Officers do not consider that there is sufficient evidence to satisfy this higher level balance of probability test.
- 7.7 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. Where a route is not enclosed by boundaries, and a width cannot be identified by legal records, the Council has adopted a standard width of 3 metres for public bridleways (i.e. wide enough for two horses travelling in opposite directions to pass each other). On this basis, should the Committee disagree with the officer recommendation, it is proposed to record Bridleway No 54 with a width of 3 metres.







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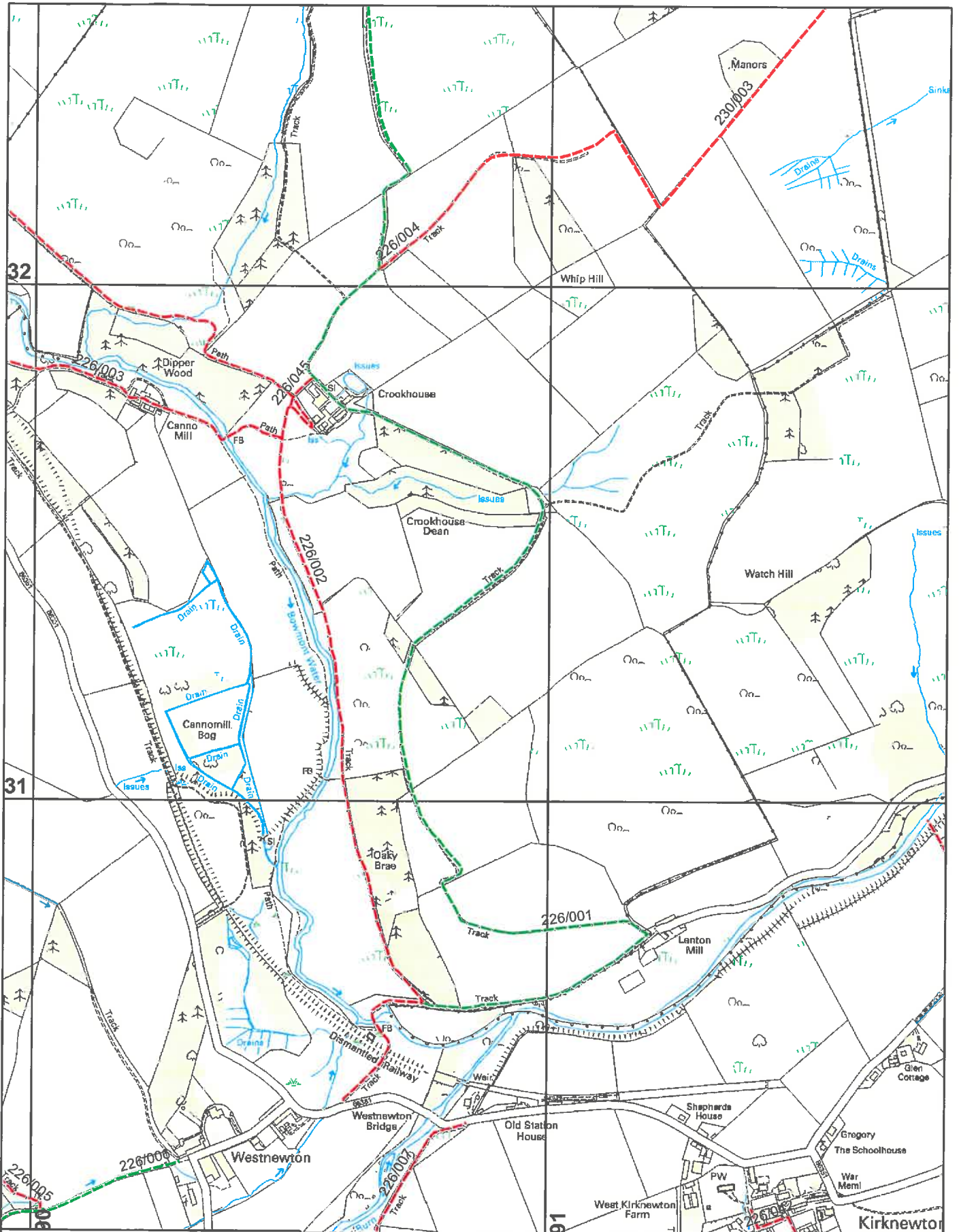
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Wildlife and Countryside Act 1981 Public Rights of Way

-  Selected existing Public Footpaths
-  Selected existing Public Bridleway
-  Existing footpath which may be Public Bridleway
-  Alleged Public Bridleway

Former District(s)	Parish(es)	Scale
Berwick	Kirknewton	1:10,000
Def. Map No.	O.S. Map	Date
27	NT 93 SW	February 2014



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Northumberland County Council
Infrastructure

Contact: Alex Bell
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Legend

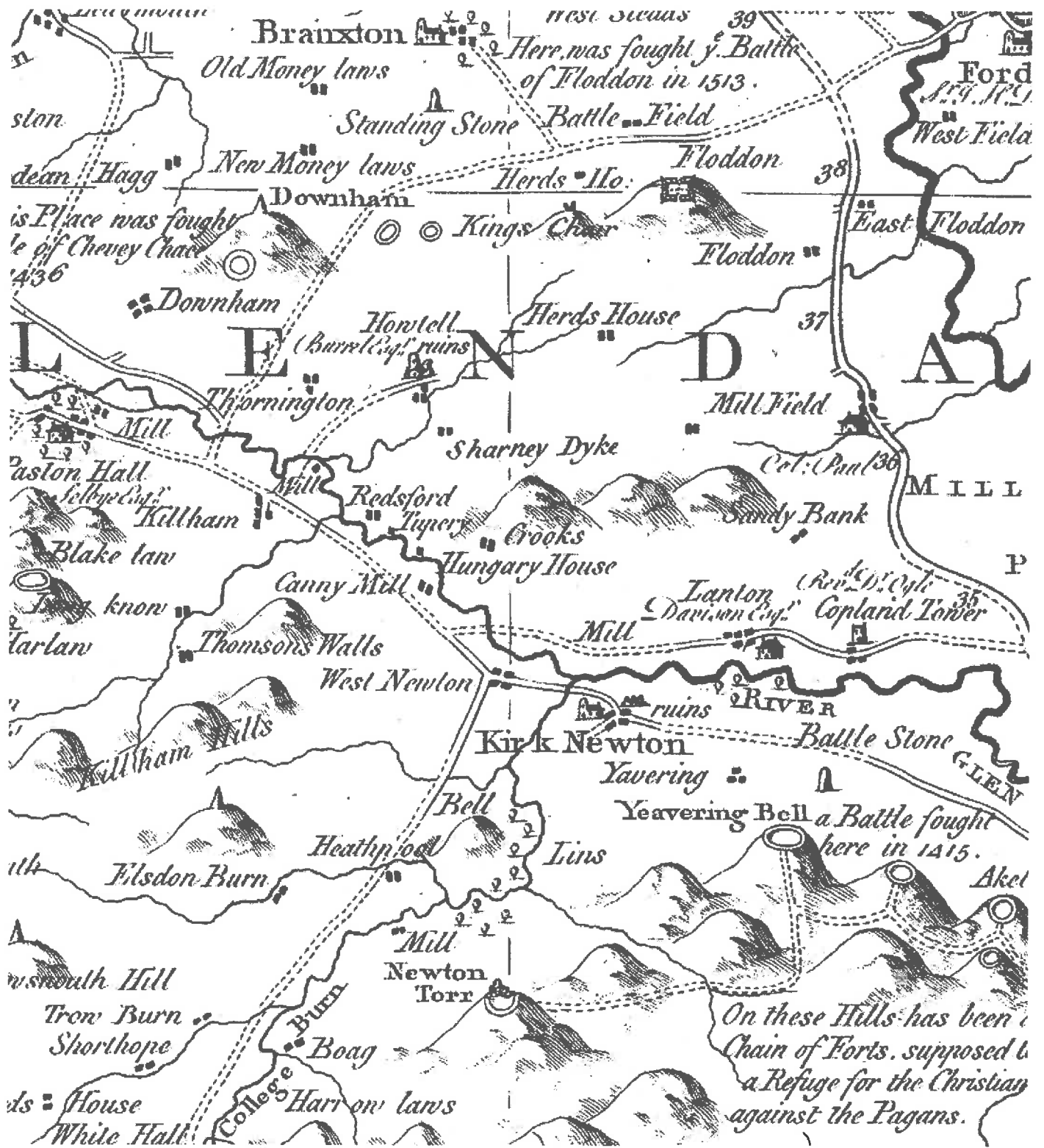
- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic

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

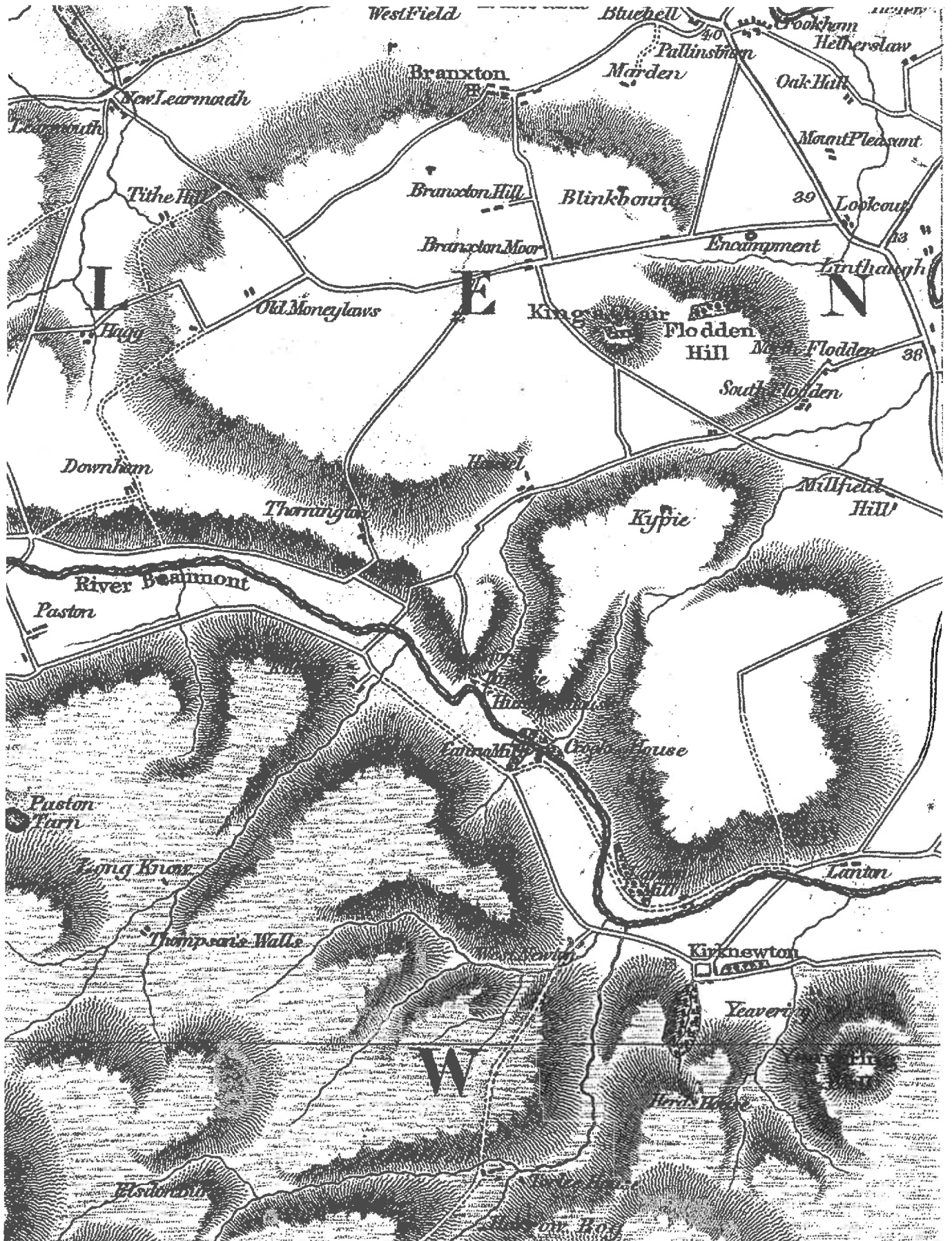
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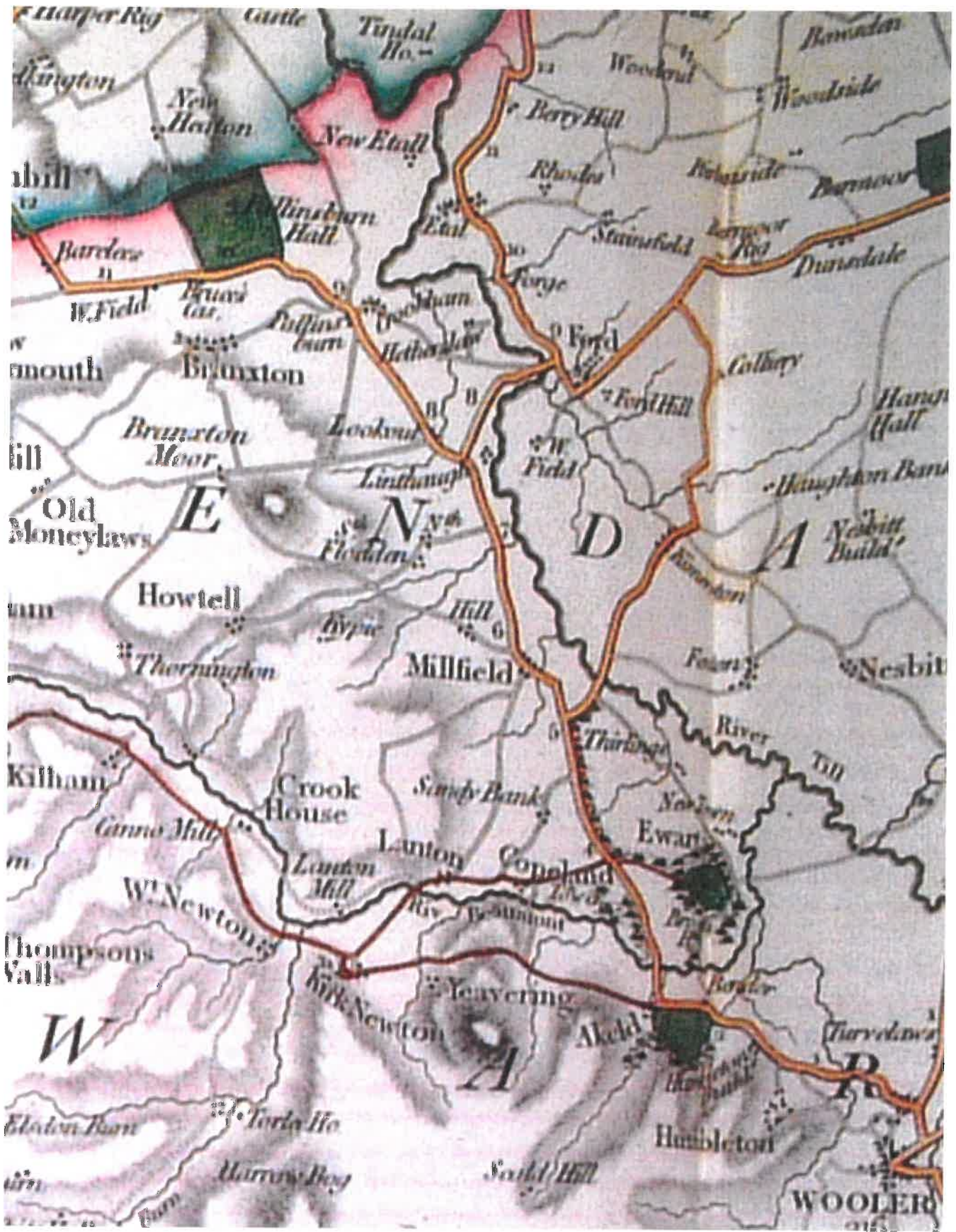
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Armstrong's County Map
1769



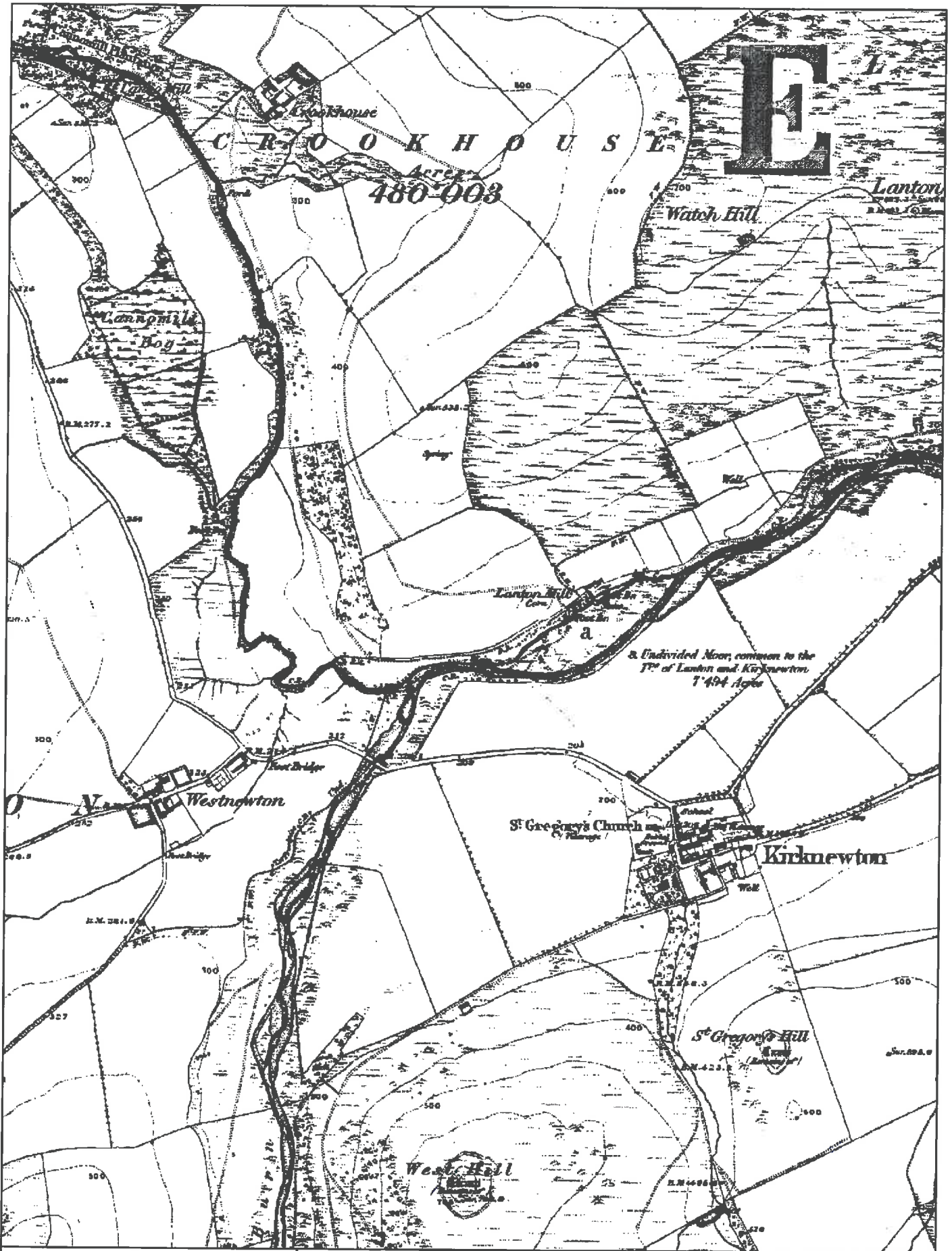
Fryer's County Map
1820





Greenwood's County Map
1828



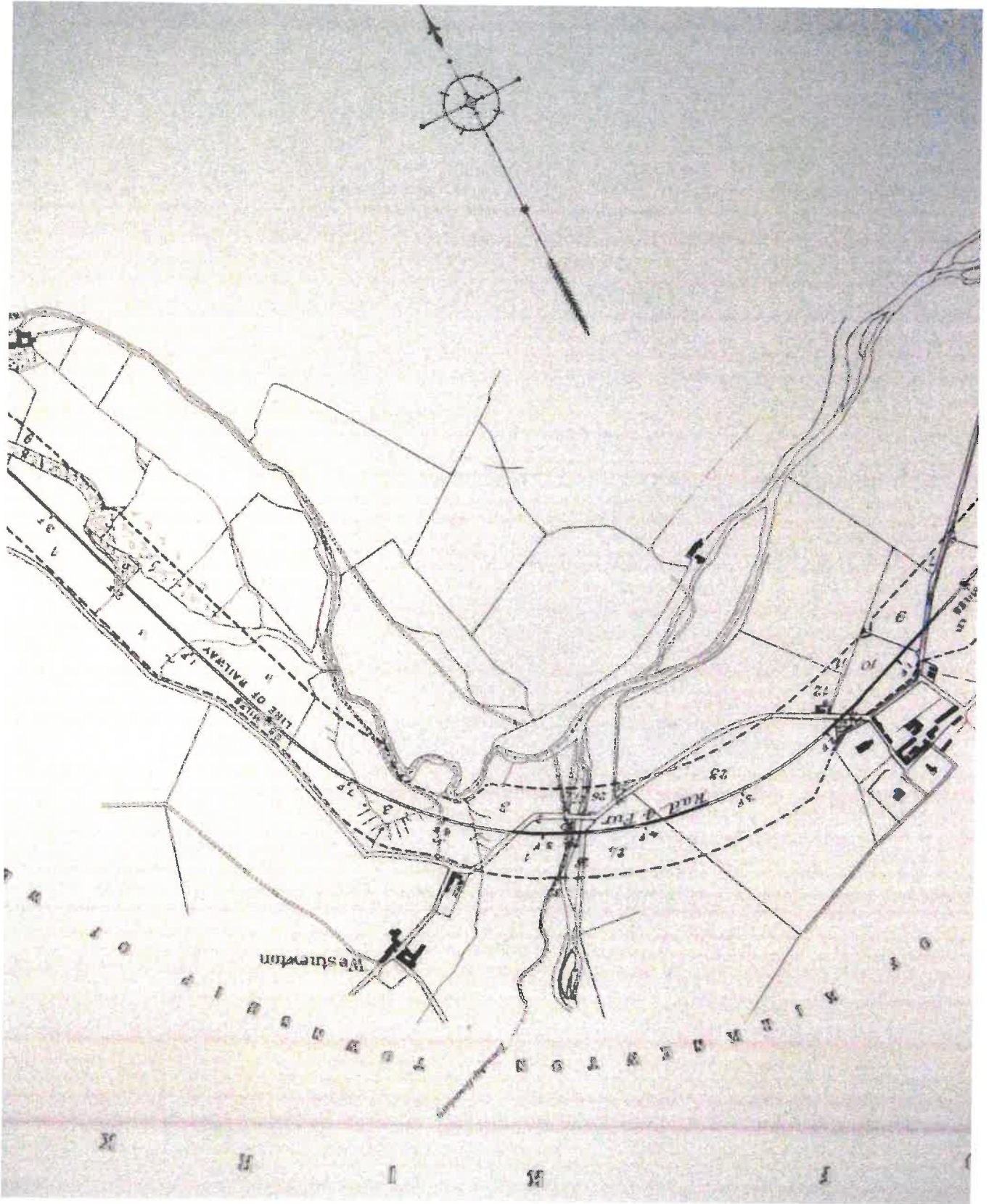


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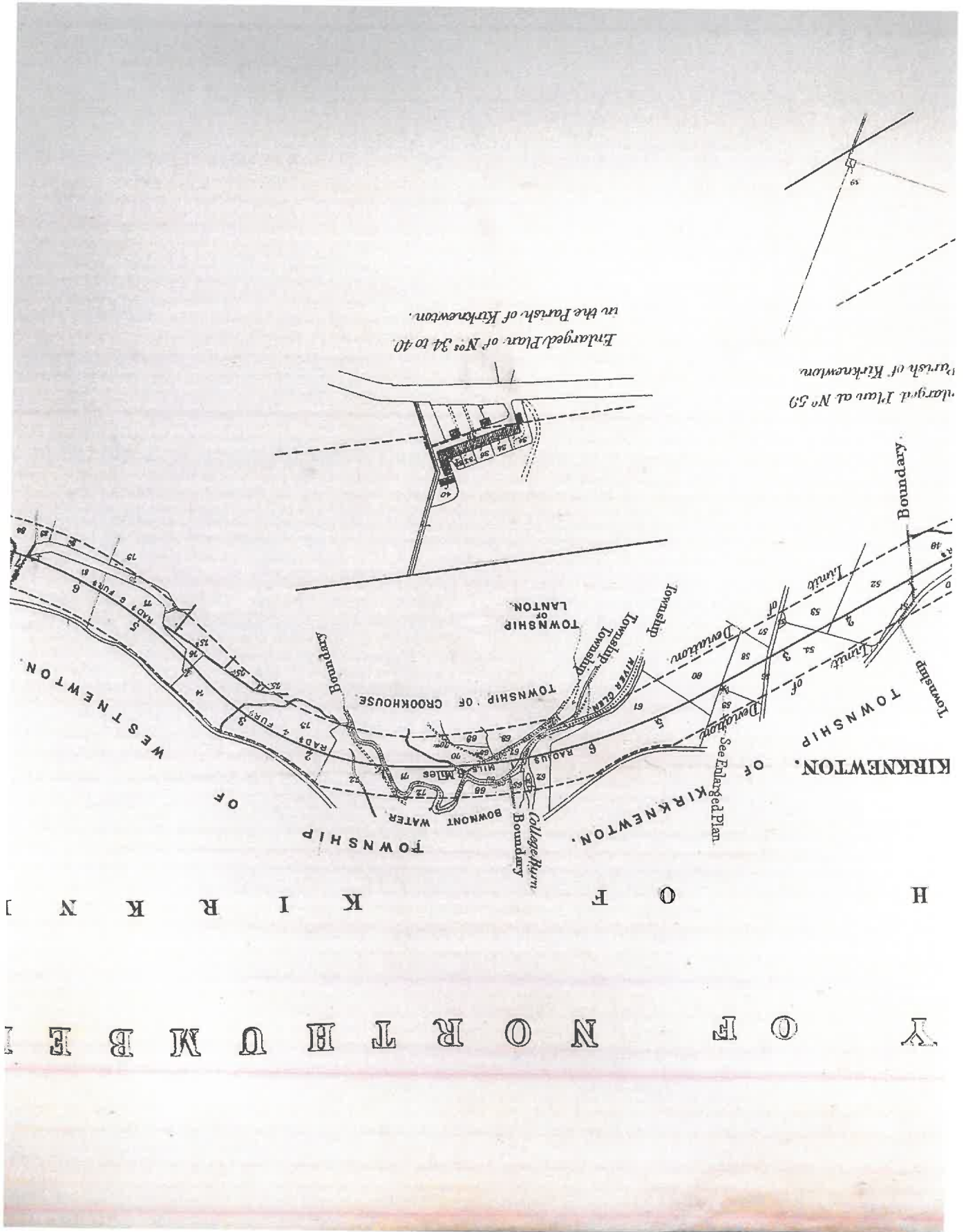
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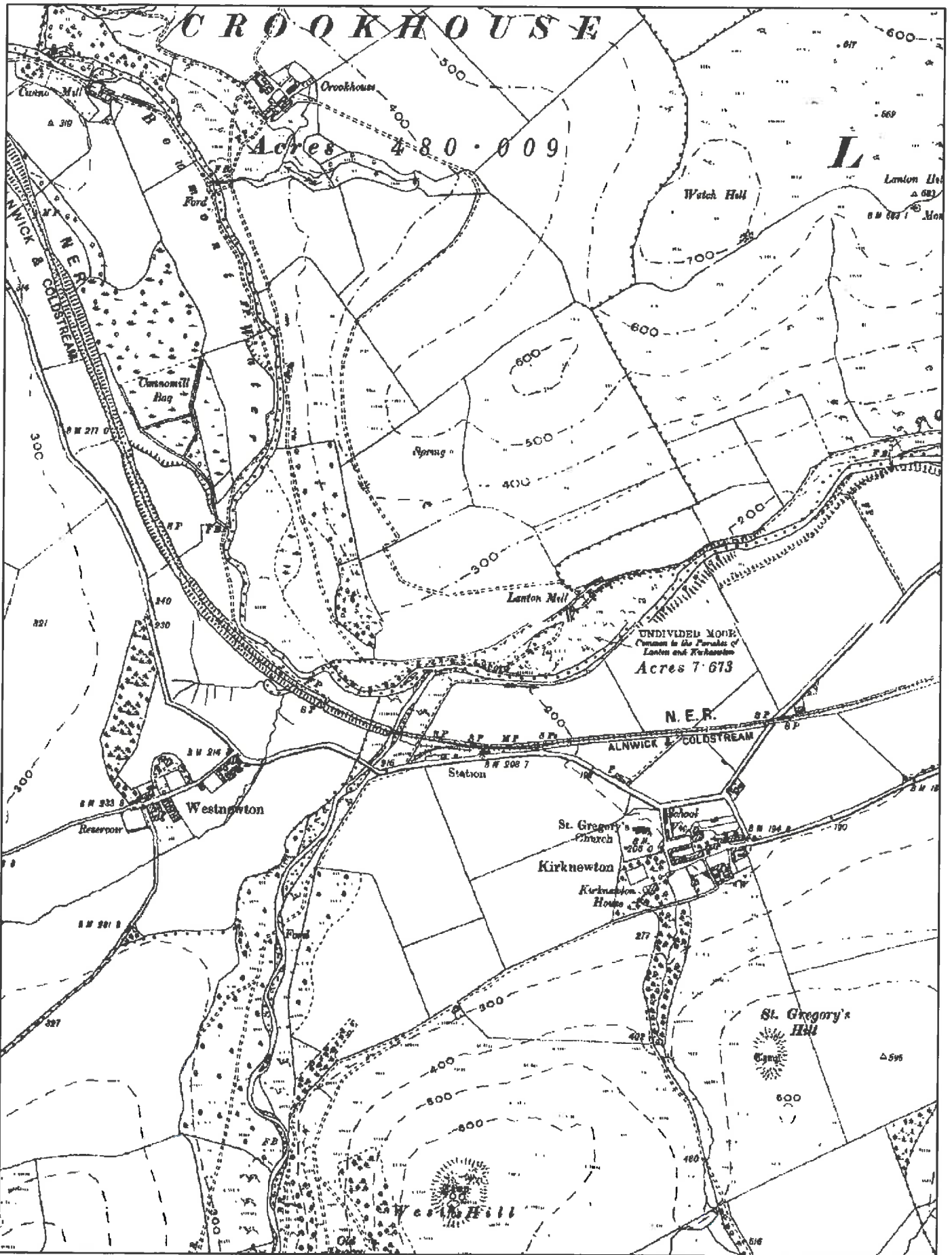
Ordnance Survey 1st Edition 6" map (1866)

North-East Railway – Alnwick & Cornhill Branch
1881



Central Northumberland Railway Deposited Plan 1881

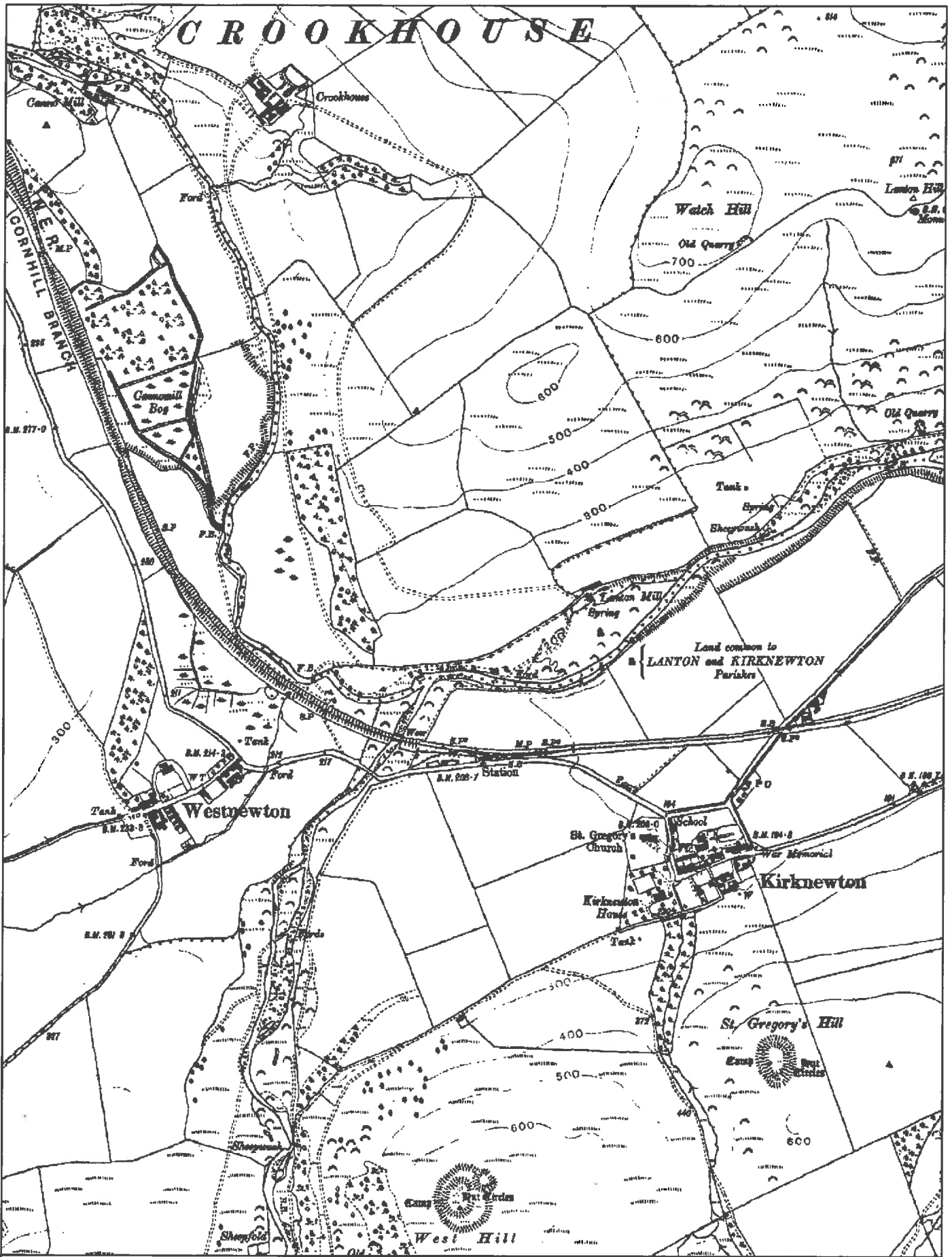




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Ordnance Survey 2nd Edition 6" map (1899)

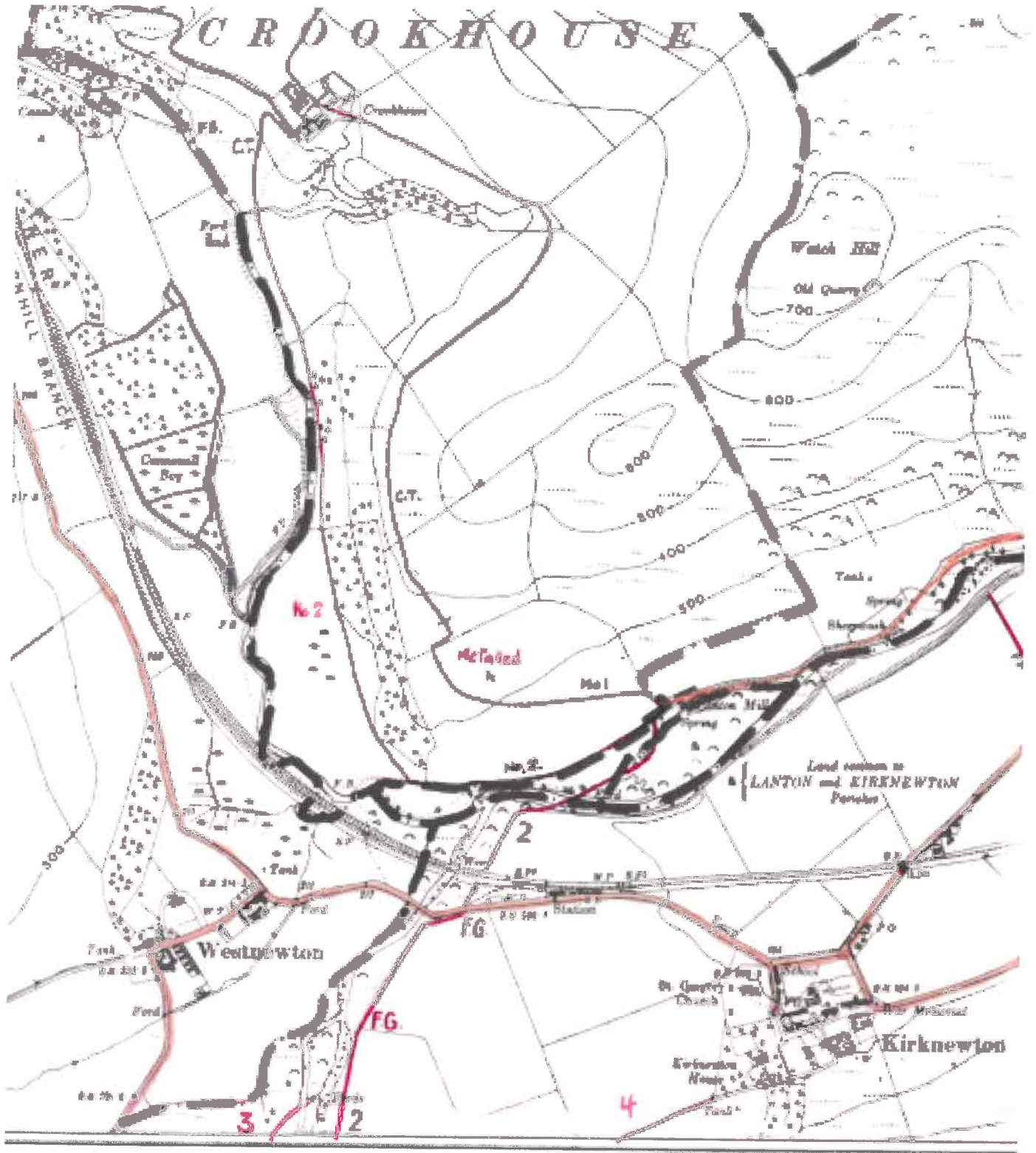


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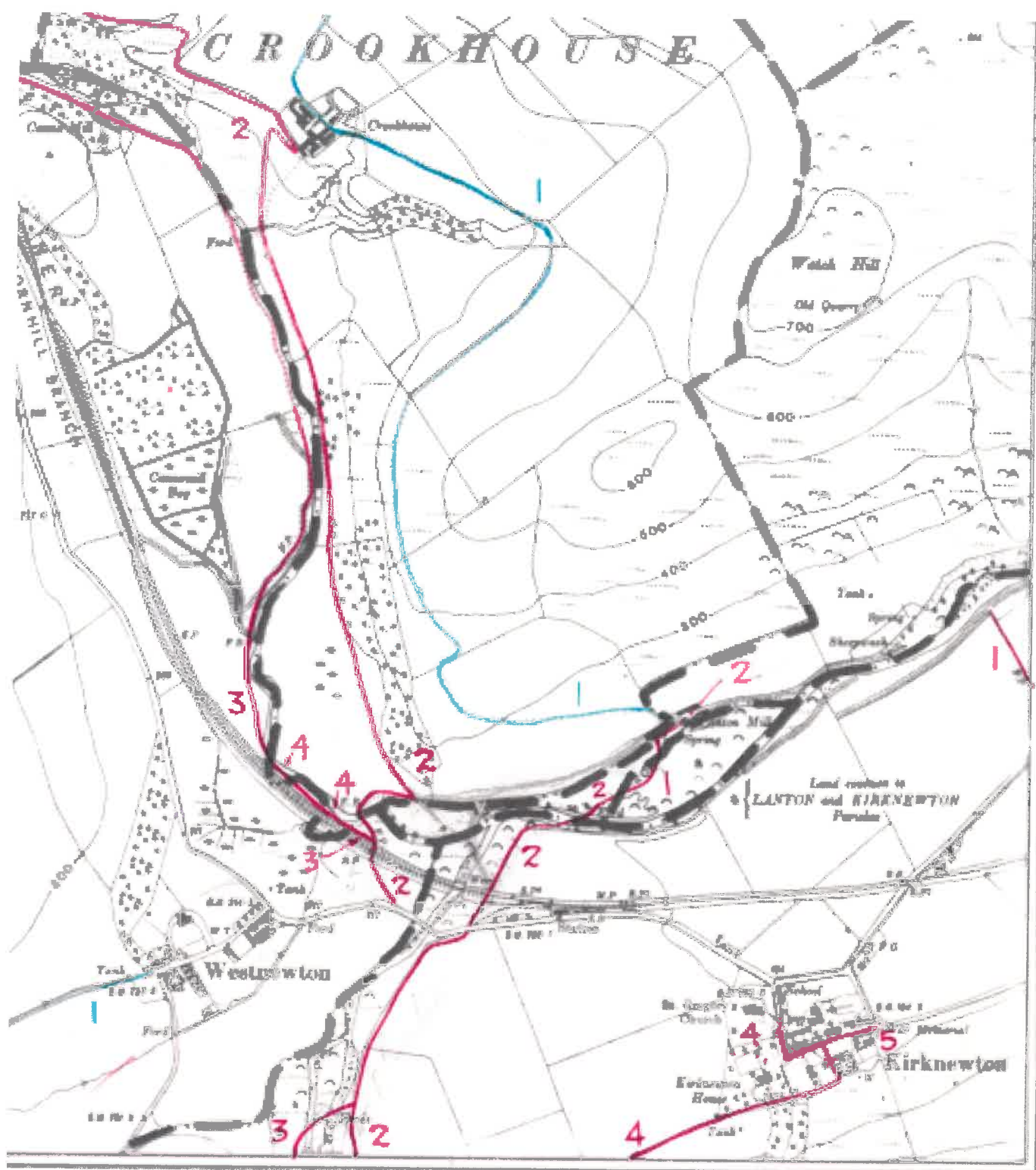
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Ordnance Survey 3rd Edition 6" map (1924)

Survey Map

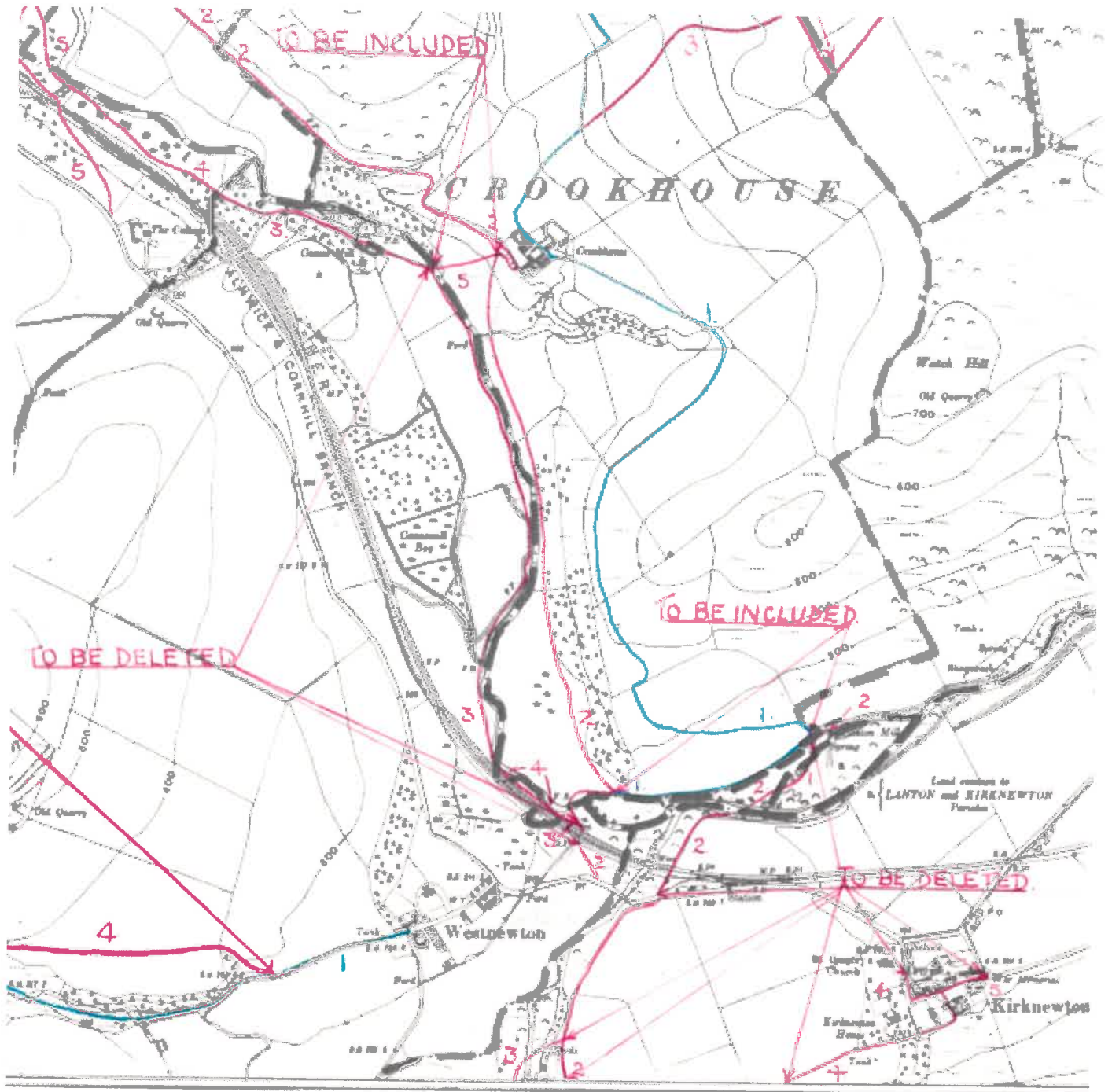


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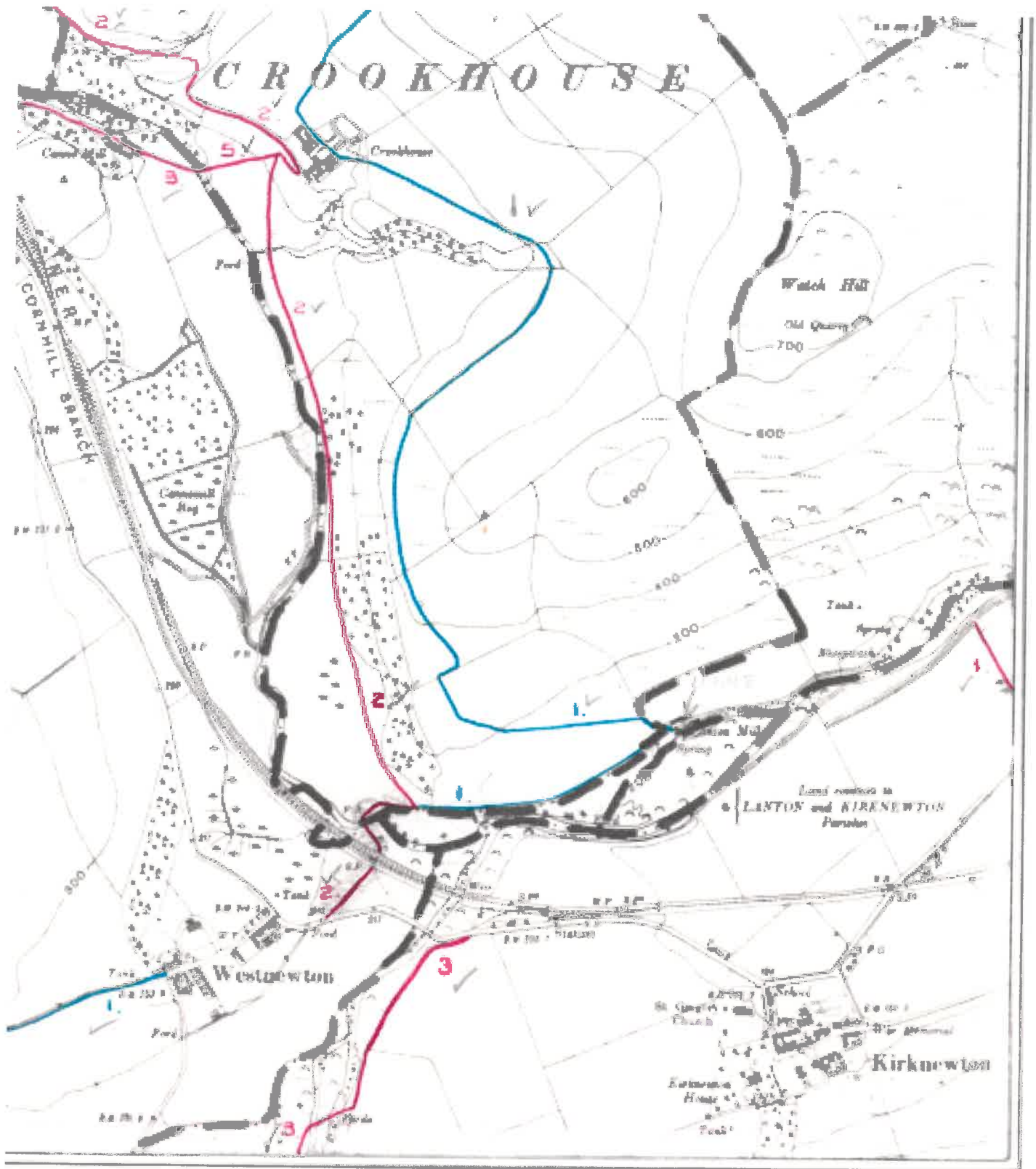
Draft Map (Modified)



KIRKNEWTON Pk

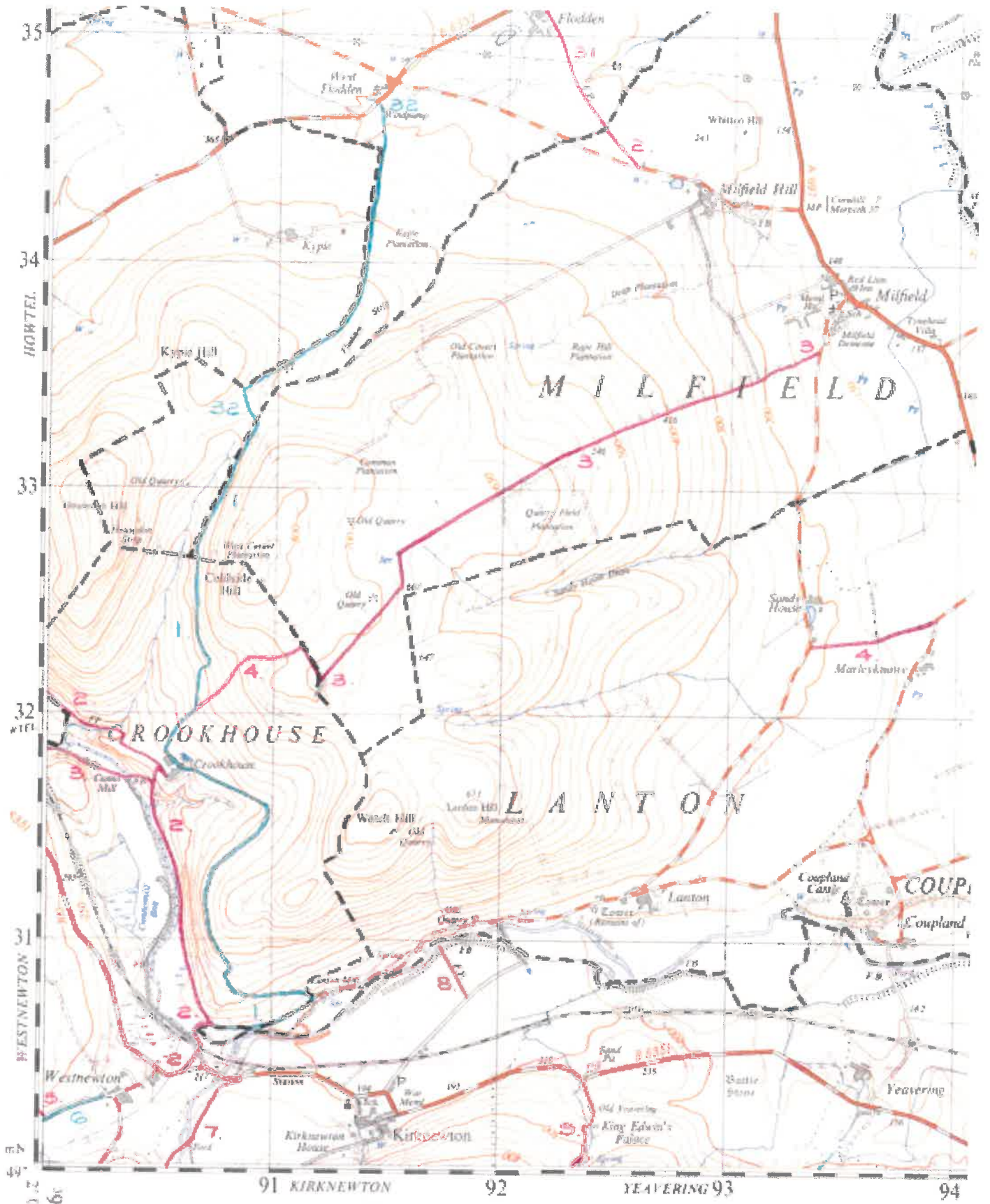
MAP (INCC)

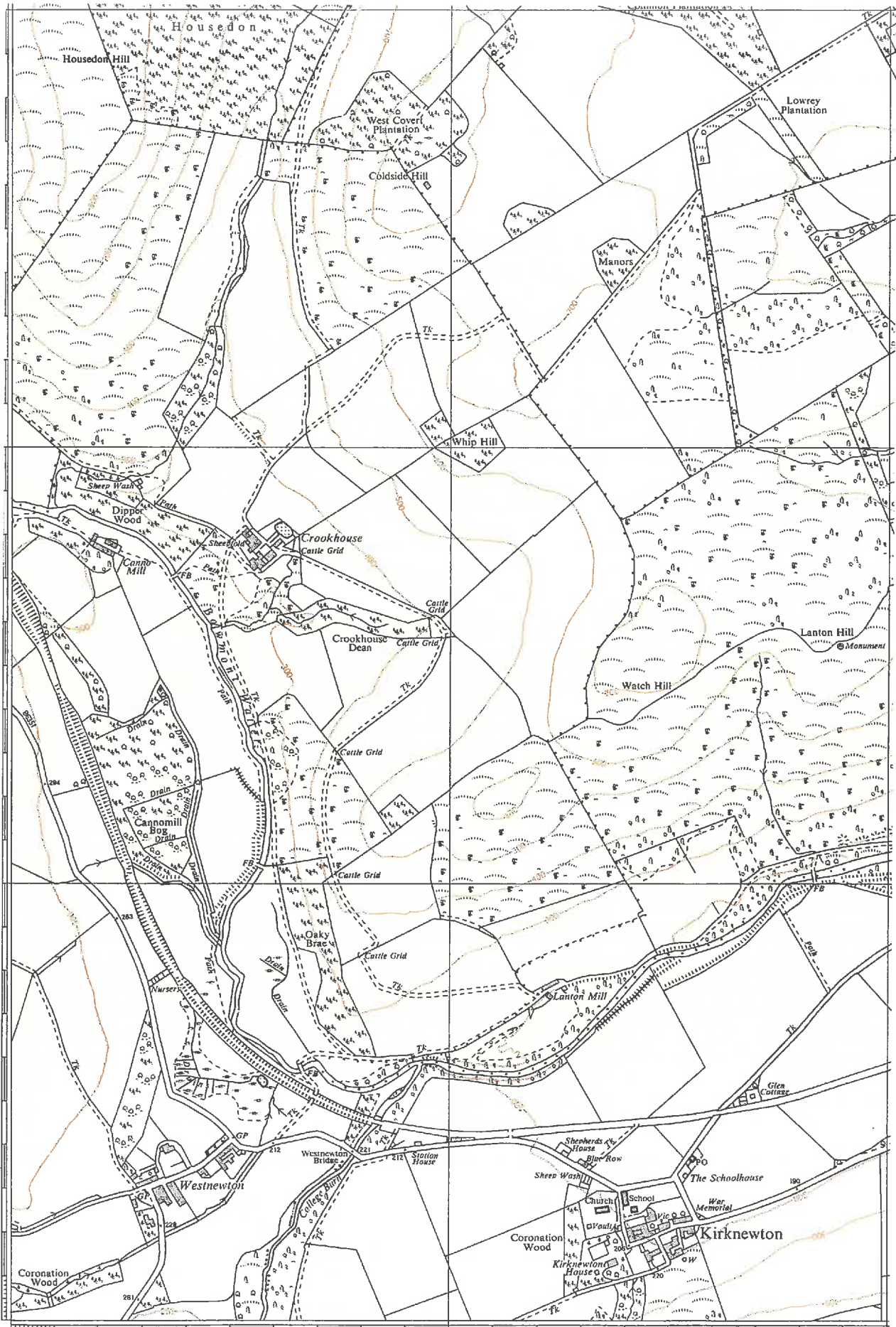
Provisional Map



KIRKNEWTON PH

Original Definitive Map





First Review Definitive Map

