



Northumberland

County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL
22 November 2018

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

ALLEGED BYWAY OPEN TO ALL TRAFFIC No 14 & RESTRICTED BYWAY No 15 PARISH OF HOLY ISLAND

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 vehicular rights over a route between the junction of Church Lane and Fiddlers Green and Jenny's Well at the seashore.

Recommendation

It is recommended that the Council agrees that:

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route;**
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the D-E part of the route;**
- (iii) the Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the E-F part of the route;**
- (iv) the D-E part of the route be included in a future Definitive Map Modification Order as a byway open to all traffic.**
- (v) the E-F part of the route 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 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 'U37' road), 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 U37 unclassified County road based upon more than simply its inclusion in the List of Streets.

3. LANDOWNER EVIDENCE

- 3.1 In February 2018, Holy Island of Lindisfarne Community Development Trust returned a copy of the consultation plan indicating that the unenclosed section of track along the shore was owned by them and stating:

From Points D-E vehicles use the road to park when attending church.

From Points E-F used only by walkers and remain a restricted byway.

"I have lived on Holy Island all my life (74 years) and am chairman of Holy Island of Lindisfarne Community Development Trust. The Trust owns the land at the bottom of the track (see over) and have no objections to NCC proposals."

- 3.2 By letter, dated 15th May 2018, Sir George Russell of London responded to the consultation stating:

"I refer to your letter dated 02/02/2018 along with enclosed maps number 14 and number 15. I am writing on behalf of my family who have owned Seafeld Cottage, Church Lane, Holy Island since 1977.

"We are basically supporting of your proposals for the Rights Of Way as outlined in the enclosed map. It is a sound idea to welcome visitors to see the church, the Lifeboat Museum, St Cuthbert's Island, as well as the seal colony. We have no problem with church goers or birdwatchers.

"We believe it is essential that (15) exclude cars as proposed and that the ownership of both (14) and (15) is made quite clear. Questions of maintenance and accidents and Insurance could arise with claims for damages. This area of the proposal ought to be clarified as with mixing cars in (14) with only walkers and children in (15).

"We do have a problem with (14). It is a road with a covering of thin tarmac which goes no where other than to the Church. Church goers and disabled use it for parking. No one apart from residents should be permitted to park in this area. It should be clearly marked no through road for motorized vehicles.

"Further more (14) should not be used as a turning point for heavy trucks and garbage collecting vehicles. The road is not strong enough

to cope with the weight. See the enclosed photographs taken in April 2018 showing severe damage to the road and grass verge.

“The sewage and water drainage system from the Vicarage and ourselves run under the road. The weight on the road collapsed our drains and effluent backed up into the cottage. It cost me several thousand pounds to make good this damage. I do not wish to repeat this. As you see the April photos already show damage to our repaired area.

“I conclude that a non motorized right of way is acceptable for maps (14) and (15). However, if you wish to add cars to the right of way map (14) the road must be upgraded otherwise the road will be a hazard to all pedestrian visitors. Before concluding that a right of way should continue in both (14) and (15) ownership and responsibility for maintenance, and safety to visitors should be clarified.

“In answer to your other questions we assess that over the past five years the route has been used 95% by pedestrians and 5% by motorists. The same figure would have been applied from 2001-2006. I think it shouldn't be forgotten that from all the records you have indicated no right of way was ever granted in (14) for cars: there just weren't any until the causeway.

“I trust my comments will help with your deliberations. Should you have any further questions my London phone number is

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 omnibus 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.’”

There were no comments specifically in relation to the Holy Island BOAT 14 & RB 15 proposals.

4.3 By letter, dated 29th April 2018, Holy Island Parish Council responded to the consultation, stating:

“Thank you for your letter of February 14th which was considered at our last Parish Council Meeting.

"I can confirm that with regard to Holy Island - Restricted Byways Nos 14 and 15 - we agree with the proposal.

"In the past there was a sign at the start of Byway No 15 advising of no cars past this point. This disappeared some time ago. Would it be possible for a new one, small, to be installed?"

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 road or track approximating to the routes of alleged Byways Nos 14 and 15.

1820 Fryer's County Map

There is no clear evidence of a road or track approximating to the routes of alleged Byways Nos 14 and 15.

1820-32 Cary's Map

There is no clear evidence of a road or track approximating to the routes of alleged Byways Nos 14 and 15.

1828 Greenwood's County Map

There is clear evidence of a road or track approximating to the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

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

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1895 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1924 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1925 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1932 Norham & Islandshires RDC Handover Map

The scale of the mapping makes it difficult to be sure whether or not the route of alleged Byway Open to All Traffic No 14 is coloured so as to identify it as a publicly maintainable road. It seems that it may be. The route of alleged Restricted Byway No 15 is not, however, coloured so as to identify it as a publicly maintainable road.

c.1938 Restriction of Ribbon Development Act 1935 Map

The scale of the mapping makes it difficult to be sure whether or not the route of alleged Byway Open to All Traffic No 14 is coloured so as to identify it as a publicly maintainable road to be protected from ribbon development. It seems that it may be. The route of alleged Restricted Byway No 15 is not, however, coloured so as to identify it as a publicly maintainable road to be protected from ribbon development.

1951 Highways Map

The scale of the mapping makes it difficult to be sure whether or not the route of alleged Byway Open to All Traffic No 14 is coloured so as to identify it as a publicly maintainable road, though it seems that it may be.

c.1952 Definitive Map – original Survey Schedules & Map

The route of alleged Byway Open to All Traffic No 14) exists on the base map. It is not identified as a public right of way; but is coloured brown. Known public roads were generally coloured brown to indicate what the extent of the road network was considered to be. The route of alleged Restricted Byway No 15 is not coloured brown, nor is it identified as a public right of way.

Draft Map

The route of alleged Byway Open to All Traffic No 14 / Restricted Byway No 15 exists on the base map, but is not identified as being either a public footpath, public bridleway or Road Used as a Public Path (RUPP).

Provisional Map

The route of alleged Byway Open to All Traffic No 14 / Restricted Byway No 15 exists on the base map, but is not identified as being either a public footpath, public bridleway or Road Used as a Public Path (RUPP).

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

1962 Original Definitive Map

The route alleged Byway Open to All Traffic No 14 and also that part of the route of alleged Restricted Byway No 15 between Point E and the shore exists on the base map, but is not identified as a public footpath, public bridleway or Road Used as a Public Path (RUPP). One public footpath (No 1) begins on the alleged byway open to all traffic and terminates on the alleged restricted byway.

1964 Highways Map

The scale of the mapping makes it difficult to be sure whether or not the route of alleged Byway Open to All Traffic No 14 is coloured so as to identify it as a publicly maintainable road. The route of alleged Restricted Byway No 15 is not coloured so as to identify it as a publicly maintainable road.

1981 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of an enclosed road / track over the route of alleged Byway Open to All Traffic No 14 and over the route of alleged Restricted Byway No 15 between Point E and the shore.

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

The route of alleged Byway Open to All Traffic No 14 is clearly identified as publicly maintainable highway. The route of alleged Restricted Byway No 15 is not identified as publicly maintainable highway.

- 5.2 The Holy Island Inclosure Award of 1793 is kept at Durham Record Office and has not been inspected. The relevant extract from the Award states:

“And we do hereby assign set out and appoint several Highways and roads in through and over the said tract of land as are hereinafter respectively mentioned assigned set out and appointed (that is to say)
.....

“And we do also hereby assign set out and appoint one other public carriage road of various breadths as the same is now marked and staked out by stakes and land marks and which for the sake of distinction we shall hereafter refer to and call by the name of Heugh

Road leading from the South end of the street called the Prior Row in the Town of Holy island aforesaid in a southerly direction to the West end of a place called the Heugh and to the Well called Jenny Bells Well in Holy Island aforesaid.

.....

“And we do hereby order and direct that all and every the said public roads so set out and appointed by us respectively as aforesaid shall be formed and put into good and sufficient repair by the person to be appointed Surveyor by us and we direct and award that the salary or award to be allowed to such Surveyor and also the Expenses over and above the Statute Duty of forming the said roads and putting the same into good and sufficient repair shall be borne and paid by all of the proprietors of the said allotments (Except the Curate of Holy Island aforesaid) and shall be raised by a rate to be laid on such proprietors according to the value of their respective allotments as directed by the said act and that all and every such public roads shall at all times from and after the making and finishing thereof be continued of the same breadth and dimensions and shall be considered deemed and taken as part of the ancient highways of and belonging to the Township of Holy Island aforesaid and shall be severally maintained and kept in repair as such.”

- 5.3 The entry for the U37 road, in the 1958 County Road Schedule covers a number of village roads. The entry relevant to the alleged byway is:

“U37 Roads on Holy Island
The Green from School to 17 feet north of the Vicarage south wall.”

The length of that particular section of the U37 road is identified as 226 yards.

- 5.4 The entry for the U37 road, in the 1964 County Road Schedule covers a number of village roads. The entry relevant to the alleged byway is:

“U37 Holy Island Roads
'The Green' from School to 17 feet north of Vicarage south wall.”

The length of that particular section of the U37 road is identified as 226 yards.

- 5.5 The entry for the U37 road, in the 1974 County Road Schedule covers a number of village roads. The entry relevant to the alleged byway is:

“U37 Holy Island Roads
'The Green' from School to 17 feet north of Vicarage south Wall.”

The length of that particular section of the U37 road is identified as 226 yards.

- 5.6 The route of the alleged byway is identified in the Schedule of unclassified roads identified under the provisions contained within the Restriction of Ribbon Development Act 1935:

“68. Road on Holy Island from the School via Fiddlers Green to a point 40 yards south of the Vicarage.”

- 5.7 The original Definitive Statement for the public right of way that connects with this road states:

Public Footpath No 1 (Parish of Holy Island)

“From the Public road opposite the entrance to St Mary’s Church in a south-easterly direction to the Old Lifeboat house.”

6. SITE INVESTIGATION

- 6.1 From a point marked D, at the junction of Church Lane and Fiddlers Green, 45 metres north-west of St Mary’s Church, a 4.5 to 5 metre wide tarmac road, in a 10 to 9.1 metre wide corridor proceeds in a southerly direction for a distance of 30 metres to a point marked E at a junction with the eastern end of existing Public Footpath No 1.
- 6.2 From a point marked E, a 3.6 to 5 metre wide tarmac track in a 9.1 metre wide corridor continues in a southerly direction for a further 5 metres, across an entrance to St Mary’s Churchyard. From this point a 2.5 metre wide stone track within a 9.1 metre wide corridor continues in a southerly direction for a further 45 metres. Then a 2.5 metre wide stone track within a 5 metre wide corridor proceeds in a south-westerly direction for a distance of 15 metres, then southerly direction for a distance of 35 metres. After that, a 2 to 2.5 metre wide unenclosed stone track proceeds in a general north-westerly direction for a distance of 40 metres. Finally, a 2 metre wide unenclosed grass path continues in a north-westerly direction for a further 40 metres, to a point marked F, at Jenny’s Well (also the western end of existing Public Footpath No 1), 90 metres west of St Mary’s Church.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In September 2018, a copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments.
- 7.2 By email, on 20 September 2018, Sir George Russell, owner of Seafield Cottage, Church Lane, Holy Island, made the following additional comments:

“I refer to your letter of the 14th September enclosing the draft report on the routes 14 and 15 in the Parish of Holy Island and to our subsequent telephone conversation on the 19th of September.

“I am grateful that you sent me a copy of the draft report and confirm that I am supportive of your conclusions. Many congratulations on your research and presentation.

“I am also grateful that you arranged that the bin wagons should not use road 14 as a turning area. It is quite clear that the road itself is not strong enough. I will follow your suggestion that I contact the highways department of the Council should any damage occur to the road itself in the future.

“I have one final point regarding Healthy and Safety. Routes 14 and 15 are heavily used by children and schools visiting Holy Island. There used to be signs up at the entrance, near the Church and Vicarage, pointing out 14 and 15 were not through roads for motor vehicles. The signs should be replaced with and additional signs making drivers entering 14 aware of children using it as a walk way back from the beach. I feel sure that both you and the Council in their considerations would wish to do all that you can to prevent a nasty accident concerning children and reversing cars and trucks occurring.”

8. DISCUSSION

- 8.1 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.
- 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 Byway Open to All Traffic No 14 is identified on the County Council’s current List of Streets as being part of the U37 road. Due to the scale of the mapping and shortness of route it is difficult to determine whether or not the Byway Open to All Traffic No 14 part of the route was identified as being publicly maintainable on the 1932 Norham & Islandshires Rural District Council Handover Map, or in the map or schedule of roads produced in relation to the Restriction of Ribbon Development Act 1935 or the Council’s 1951 Highways Map or its later 1964 Highways Map; though it seems that it probably is. It is clear, however, that the Restricted Byway No 15 part of the route is not included on those documents.
- 8.5 The route has been consistently identified as an enclosed road / track (between Point D and the shore) on Ordnance Survey maps since circa 1865/6. The route is not shown on Armstrong’s County Map of 1769, is not clear on Fryer’s County Map of 1820 or on Cary’s Map of 1820-32, but the Point D to the shore section is clearly shown on Greenwood’s County Map of 1828.

- 8.6 The route does not appear to have been considered for inclusion (as footpath, bridleway or Road Used as Public Path) on the original Definitive Map when it was drawn up in the 1950s, despite the fact that existing Public Footpath No 1 would be entirely marooned if there were no public rights whatsoever over at least the BOAT 14 part of the route. This suggests that the route's non-inclusion was due to the fact that those responsible for preparing the maps / gathering data considered that BOAT 14 (and possibly Restricted Byway No 15 too) was a vehicular highway that did not require recording on the Definitive Map of Public Rights of Way.
- 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.

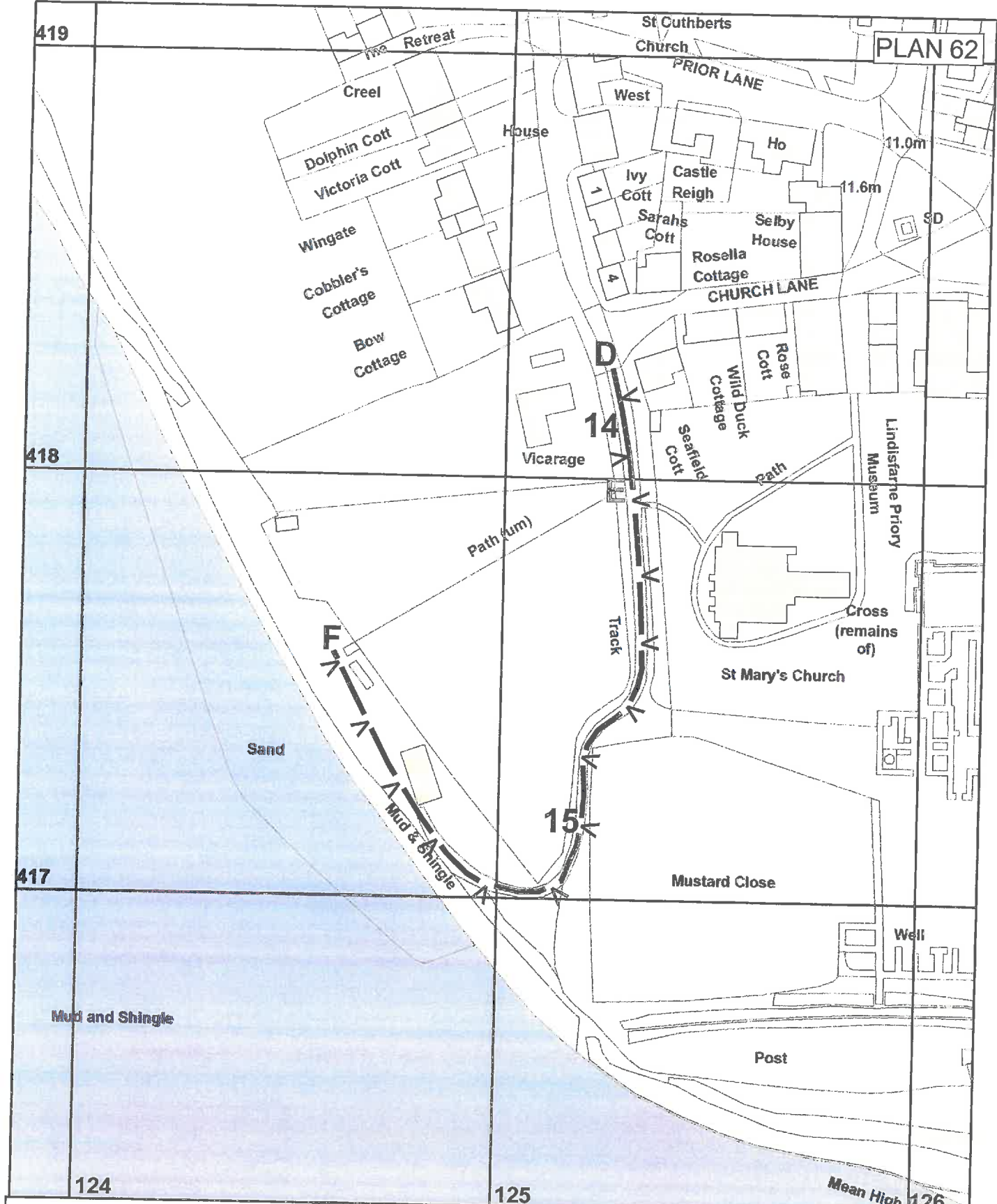
- 8.10 Of the saving provisions above, (b) will apply to the D-E section (i.e. the route of alleged BOAT No 14. The public's motor vehicular rights would not have been extinguished by the NERC Act 2006.
- 8.11 Saving provision (b) will not, however, apply to the E-F section, so here it is necessary to see whether or not one of the other saving provisions might apply.
- 8.12 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. This route was set out in the 1793 Inclosure Award (and almost certainly pre-dated that award). Unsurprisingly, no express mention of motor vehicle use was made in the inclosure award, so this saving provision cannot apply.
- 8.13 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 evidence regarding the balance of public user during this 5 year period. The road is not a through route for vehicles. The consultation responses suggest that the balance of public user during the period 2001 - 2006 is not dissimilar to the current balance - i.e. predominantly pedestrian.
- 8.14 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.
- 8.15 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 stone tracked E-F section of the route can be driven by vehicles, but this route was clearly not constructed with public motor vehicular use in mind, so this saving provision does not apply either.
- 8.16 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.
- 8.17 Although the short Byway Open to All Traffic (D-E) section of this route has a reasonable tarmac surface and is drivable with a 'normal' family car, the route is a vehicular cul-de-sac, primarily used as a vehicle turning area and as a small parking area for visitors to the church. From my site visit and the consultation responses, the route would appear to be only lightly used by the

public with motor vehicles, but it is heavily used by pedestrian traffic to gain access to the seashore and also the church. On that basis, it is considered likely that the alleged byway will be used by the general public mainly for the purposes for which footpaths and bridleways are so used; thereby satisfying the criteria for being recorded as a byway open to all traffic.

- 8.18 The Inclosure Award and other map evidence indicates that the E-F section of this route is also a public vehicular right of way. However, since none of the 'saving provisions' contained within the NERC Act 2006 apply, then that Act is considered to have extinguished the public's motor vehicular rights over this section. It would be appropriate to recognize the public's remaining rights by recording the E-F section as a restricted byway.
- 8.19 The Holy Island of Lindisfarne Community Development Trust has indicated that it owns the shoreside part of the route. Land registry information suggests they may actually own the whole restricted byway section. The Trust has indicated that it has no objections to the County Council's proposals. Sir George Russell, whose family owns the cottage immediately east of the northern end of BOAT 14, is also broadly in support of the Council's proposals. His main concern appears to be that the use of the BOAT section as a turning area by overly large vehicles - leading to damage to the drainage system underneath. Recording the route as a byway open to all traffic reflects the public rights that already exist over it (and that the main lawful public user is predominantly non-vehicular). Officers alerted Council refuse collection staff of Sir George Russell's concerns and they immediately agreed that the bin wagon would avoid using this section of road in future. The Russell family was advised to contact the County Council's highways department in the event that any further drainage breakages do occur.
- 8.20 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. On this basis, it is proposed to record Byway Open to All Traffic No 14 with a width varying from 9.1 to 10 metres, as identified in paragraph 6.1, above. It is proposed to record Restricted Byway (between point E and the shore) with a width varying from 5 to 9.1 metres, as identified in paragraph 6.2, above. It is proposed to record the unenclosed 80 metre long shoreline section of Restricted Byway No 15 (south-east of Point F) with the Council's standard default byway width of 5 metres for unenclosed routes (i.e. wide enough for two vehicles travelling in opposite directions to pass each other).

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 whole D-E-F route.
- 9.2 The Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motor vehicular rights over D-E section of the route. It would be appropriate to recognize the public's rights over this section by recording it on the Definitive Map as a byway open to all traffic.



NORTHUMBERLAND

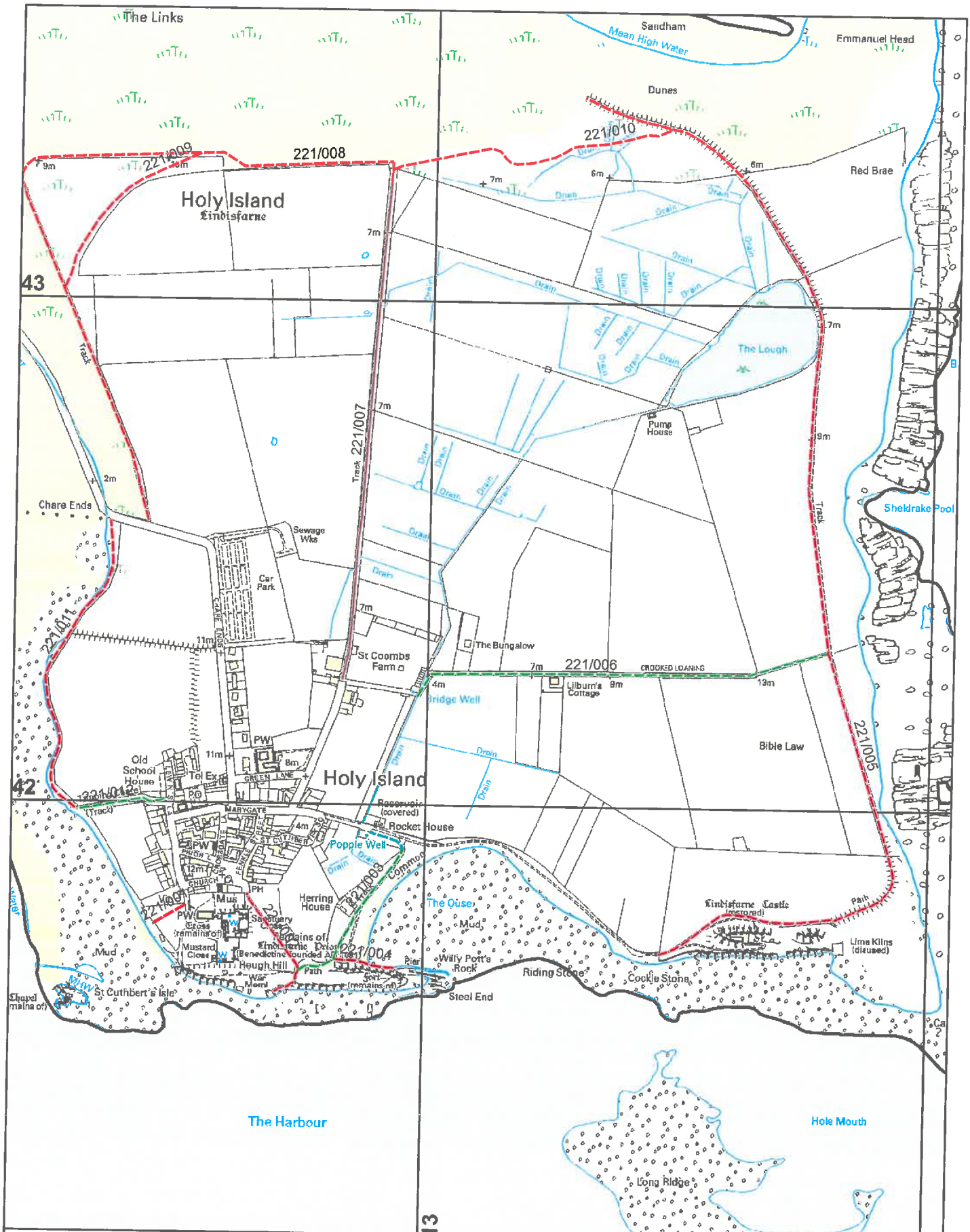
Northumberland County Council
 Infrastructure
 Local Services
 County Hall Morpeth Northumberland
 NE61 2EF
 Telephone 0845 600 6400

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

Wildlife and Countryside Act 1981 Public Rights of Way

- Alleged Byway Open to All Traffic
- Alleged Restricted Byway

Former District(s) Berwick	Parish(es) Holy Island	Scale 1:1250
Def. Map No. 15	O.S. Map NU 14 SW	Date August 2017



Northumberland
County Council

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

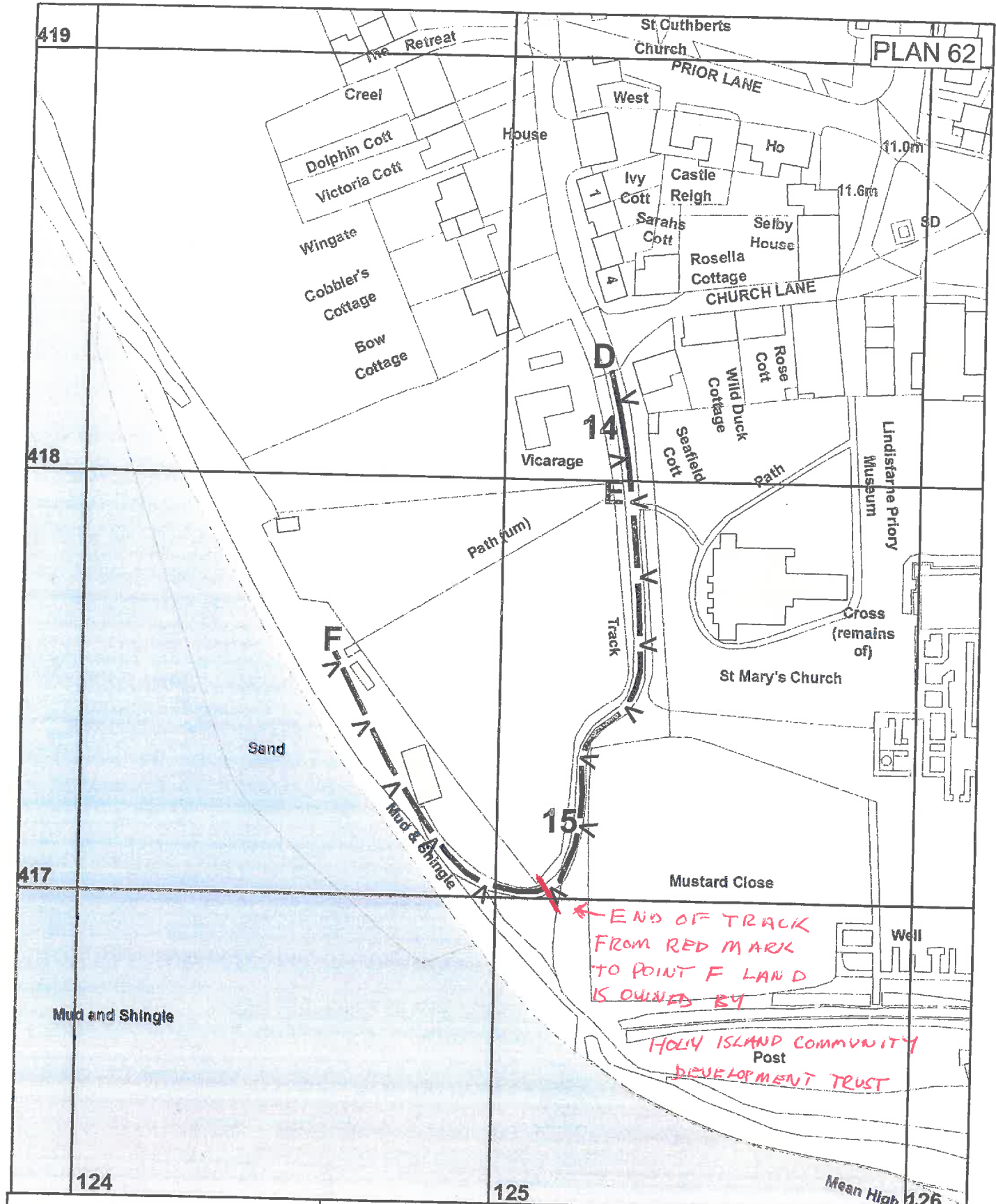
Legend

- 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

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. 100048048 (2010).



← END OF TRACK FROM RED MARK TO POINT F LAND IS OWNED BY

HOLY ISLAND COMMUNITY DEVELOPMENT TRUST

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

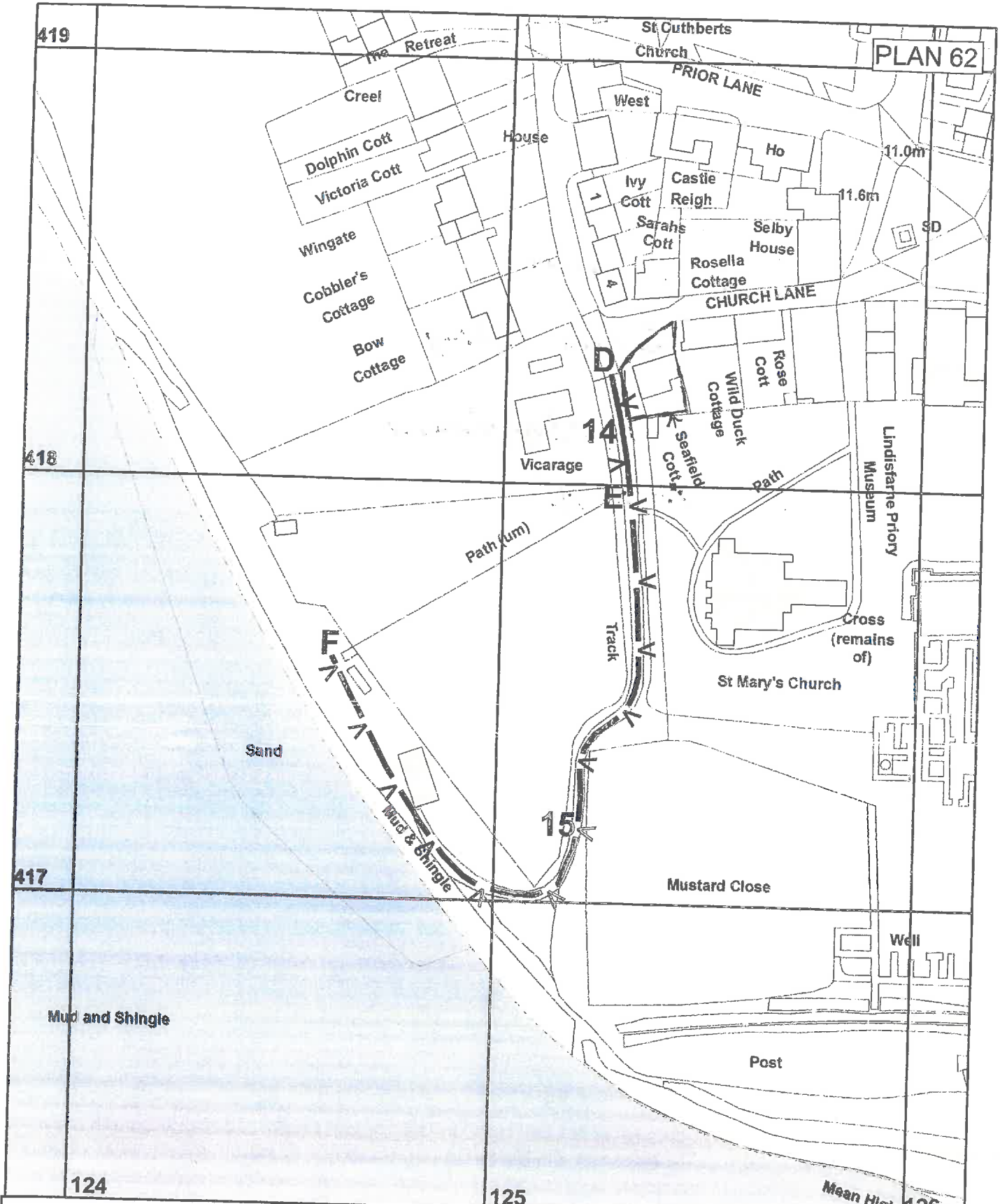
- Alleged Byway Open to All Traffic
- Alleged Restricted Byway

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) Berwick	Parish(es) Holy Island	Scale 1:1250
Def. Map No. 15	O.S. Map NU 14 SW	Date August 2017

419

PLAN 62



Northumberland

Northumberland County Council

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

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

Wildlife and Countryside Act 1981 Public Rights of Way

- Alleged Byway Open to All Traffic
- Alleged Restricted Byway

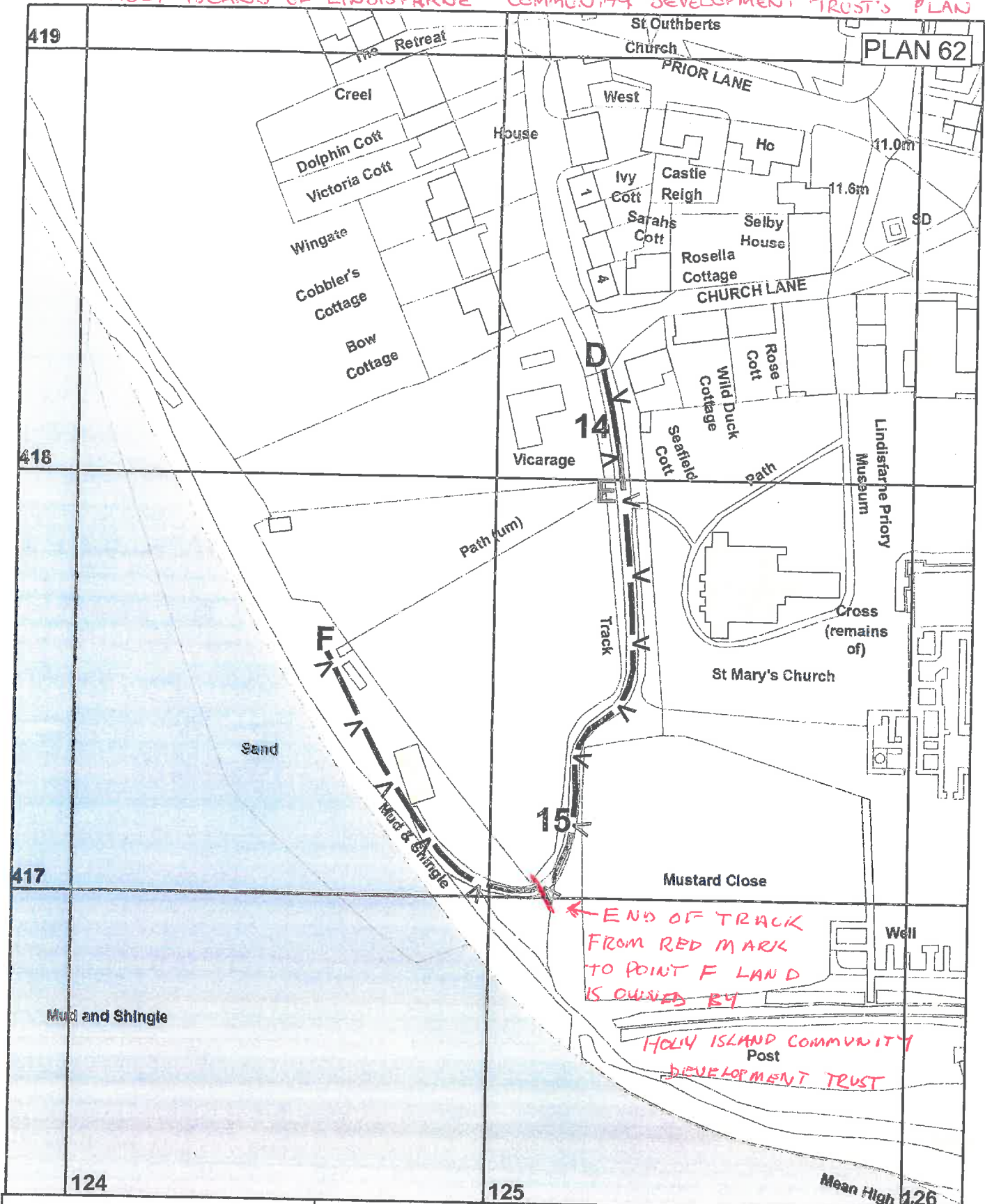
Former District(s) Berwick	Parish(es) Holy Island	Scale 1:1250
Def. Map No. 15	O.S. Map NU 14 SW	Date August 2017

SIR GEORGE RUSSELL'S PHOTOGRAPHS



SIR GEORGE RUSSELL'S PHOTOGRAPHS





Northumberland

Northumberland County Council

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

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

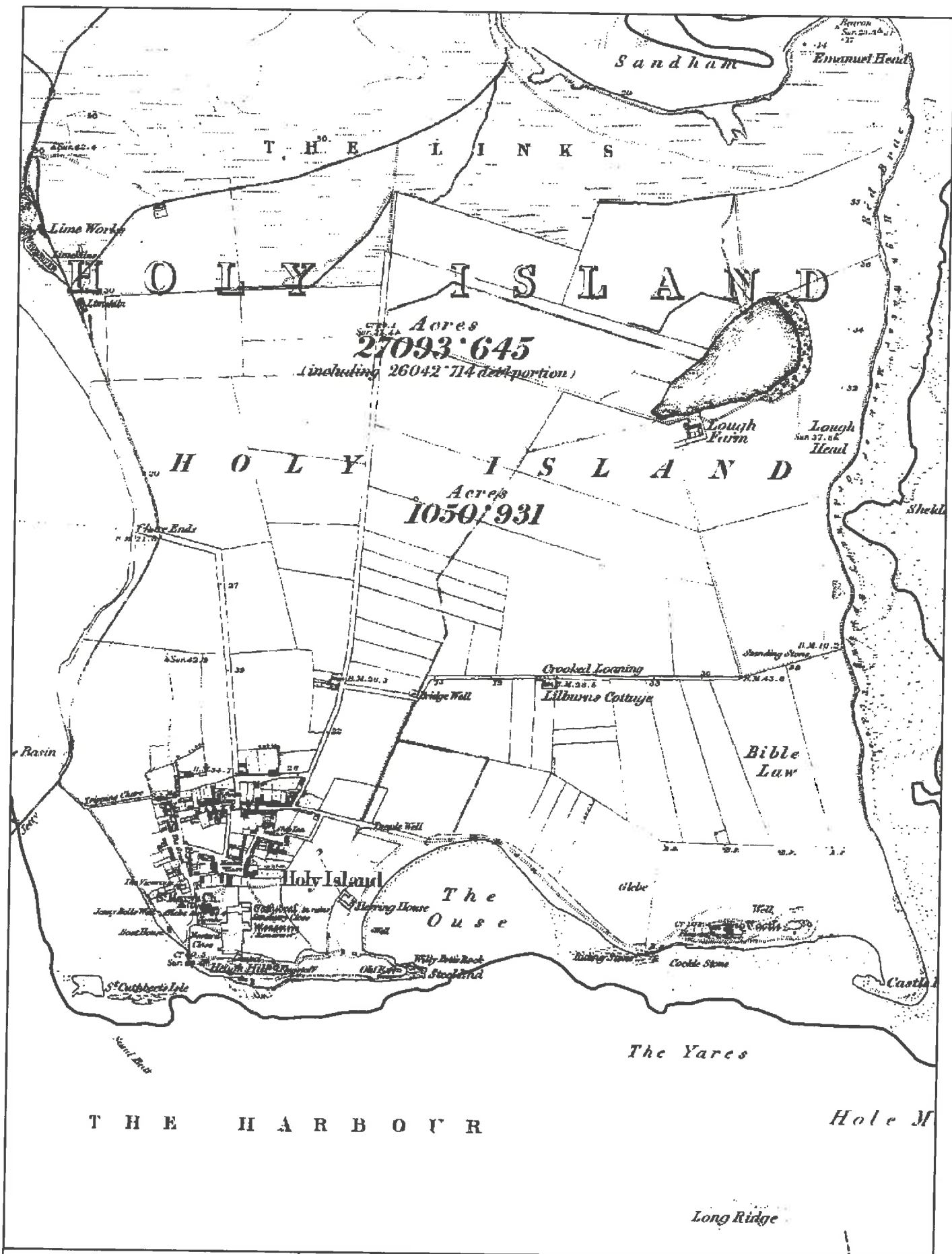
**Wildlife and Countryside Act 1981
Public Rights of Way**

- Alleged Byway Open to All Traffic
- Alleged Restricted Byway

Former District(s) Berwick	Parish(es) Holy Island	Scale 1:1250
Def. Map No. 15	O.S. Map NU 14 SW	Date August 2017

Greenwood's County Map
1828





3rd Edition 25" O.S. Map 1924



Britain's most comprehensive historical map archive

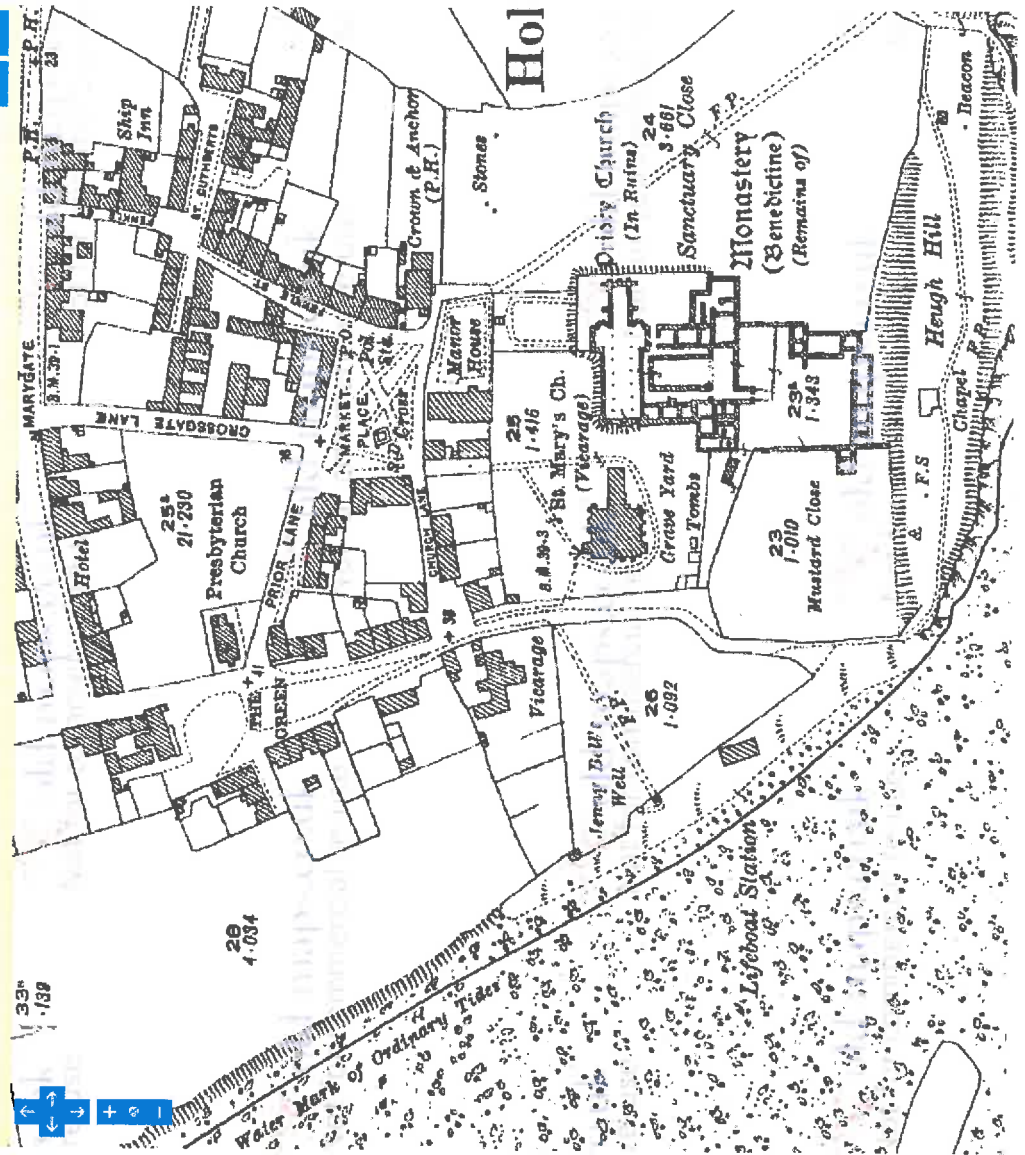
login: username? forgot: password?

- FAQ
- prices
- subscribe
- your cart (0)
- contact us

Use of this map viewer is made available solely for non-commercial purposes

Available Maps

All Map Types			
OS County Series NORTHUMBERLAND (partial)	1866 1:10,560	Enlarge View	Add to Cart
OS County Series NORTHUMBERLAND	1895 1:2,500	Enlarge View	Add to Cart
OS County Series NORTHUMBERLAND	1898 1:2,500	Enlarge View	Add to Cart
OS County Series NORTHUMBERLAND (partial)	1899 1:10,560	Enlarge View	Add to Cart
OS County Series NORTHUMBERLAND	1924 1:2,500	Enlarge View	



Norham & Islandshires RDC Handover Map 1932

HOLY ISLAND
(BERWICKSHIRE PON TWEED)

2



Extract from Northumberland County Council One Inch Maps showing restrictions under Sections 1 and 2 of the Restriction of Ribbon Development Act 1935



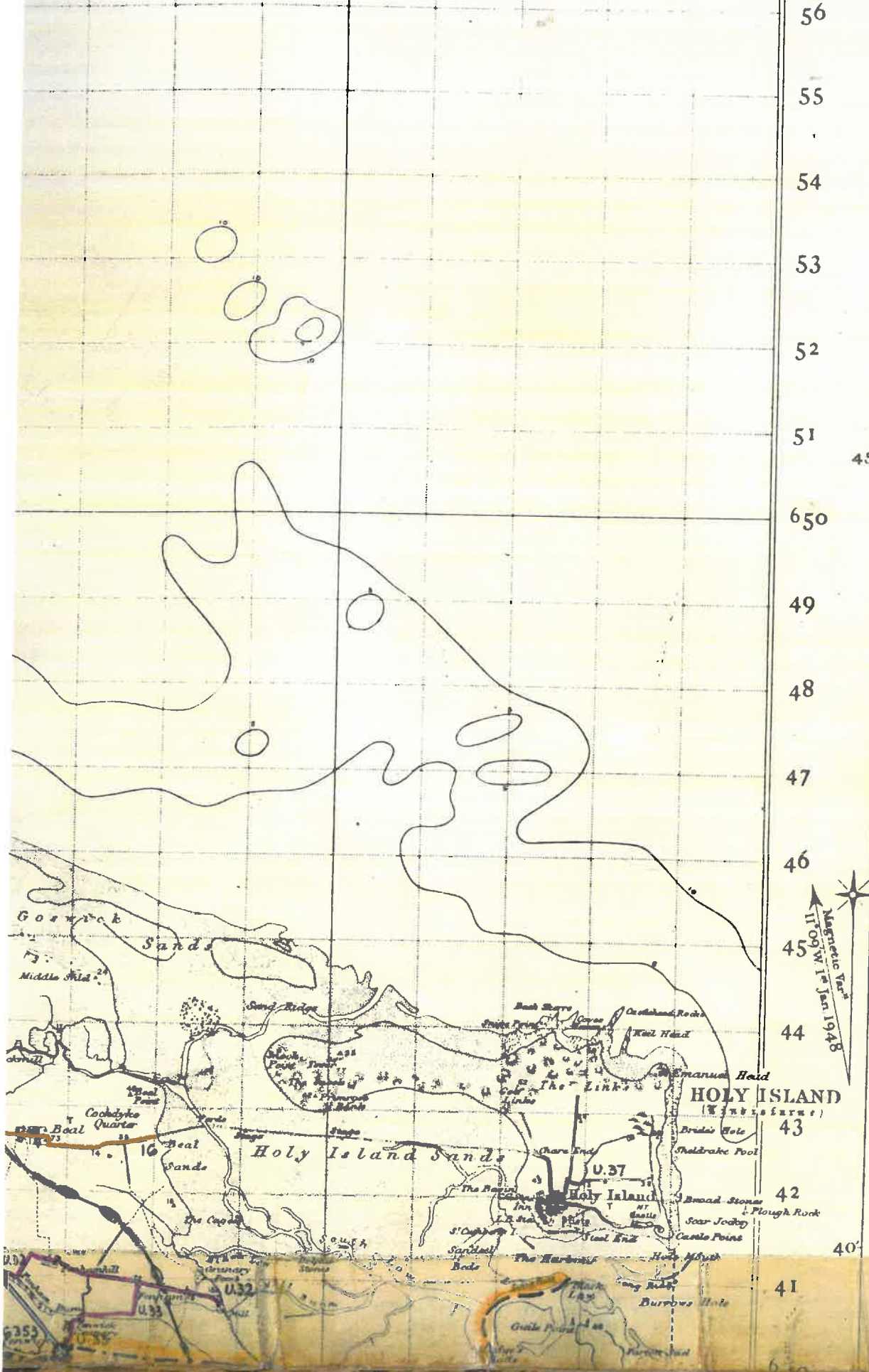
COUNTY OF NORTHUMBERLAND

Restriction of Ribbon Development Act, 1935.

LIST OF UNCLASSIFIED ROADS IN AND ADJACENT
TO THE RURAL DISTRICT OF NORHAM AND
ISLANDSHIRES IN RESPECT OF WHICH THE
PROVISIONS OF SECTION 2 OF THE RESTRICTION
OF RIBBON DEVELOPMENT ACT 1935 WERE
ADOPTED ON 19TH DECEMBER 1938 BY
RESOLUTION OF THE BRIDGES AND ROADS
COMMITTEE ACTING UNDER DELEGATED POWERS.

66. Road from a point on the Altwick-Berwick road A.1. 1/2 mile north west of Smeafield Lodge via Lowmoor Crossing and Heulham Lowmoor Farm to Fenham Lowmoor Bridge.
67. Road from a point on the Altwick-Berwick road A.1. 500 yards north west of Smeafield Lodge via Smeafield Station towards Elwick to a point thereon 350 yards east of Smeafield Station.
68. Road on Holy Island from Chare Ends via the Reading Room and Crossgate Lane to the Market Place.
69. Road on Holy Island from the School via Fiddlers Green to a point 40 yards south of the Vicarage.
70. Marygate, Holy Island, including its continuation eastwards to Popple Well.
71. Prior Lane, Holy Island.
72. Market Place, Holy Island.
73. Fenkle Street, Holy Island.
74. Road on Holy Island from the Vicarage eastwards to the Market Place.
75. Road on Holy Island from a point on Fenkle Street, 60 yards south of its junction with Marygate eastwards and then northwards to a point on the Marygate-Popple Well road, 100 yards west of Popple Well.
76. Iron Rails road, Holy Island, from Marygate via St. Cocombs Farm to Bridge Well.
77. Road on Holy Island from a point on the Chare Ends-Market Place road, 60 yards north of Marygate via the Roman Catholic Chapel to a point on Iron Rails road, 80 yards north of Marygate.

Extract from the Council's 1951 Highways Map



56
55
54
53
52
51
650
49
48
47
46
45
44
43
42
41

45°

Magnetic Var.
11° 09' W as of Jan 1948

HOLY ISLAND
(*INDEPENDENT*)

Gooswick
Middle Hill

Sands

Sand Ridge

Back Barrow

Quail Head

Quail Head Rocks

Kail Head

Emanuel Head

Cochetys
Boal Quarters

16

Beal Sands

Holy Island Sands

Chare End

U.37

Holy Island

Bride's Hole

Sheldrake Pool

The Cap

U.32

U.33

S. O. U. F. A.

S. O. U. F. A.

The Harbour

U.37

Holy Island

U.37

U.37

U.37

U.37

U.37

U.32

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.32

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

U.33

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

Parish of HOLY ISLAND in the Rural District of

Northam & Islandcliffe

Borough }
Urban District } of _____
(Delete whichever is inapplicable).

1. Number of highway on Map. 1
2. Kind of Path (i.e., F.P., B.R.) F.P.
3. Starts at Opposite small church yard gate to Old Life Boat House
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 4 ft
8. What is the present condition of the path, stiles, etc.? Moderate
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
Nil

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

Repaired at public expense. Used by public as of right from time immemorial

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

R. Bell Trust to Vicarage
Ecclesiastical Commission

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

Ordnance Survey etc.

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

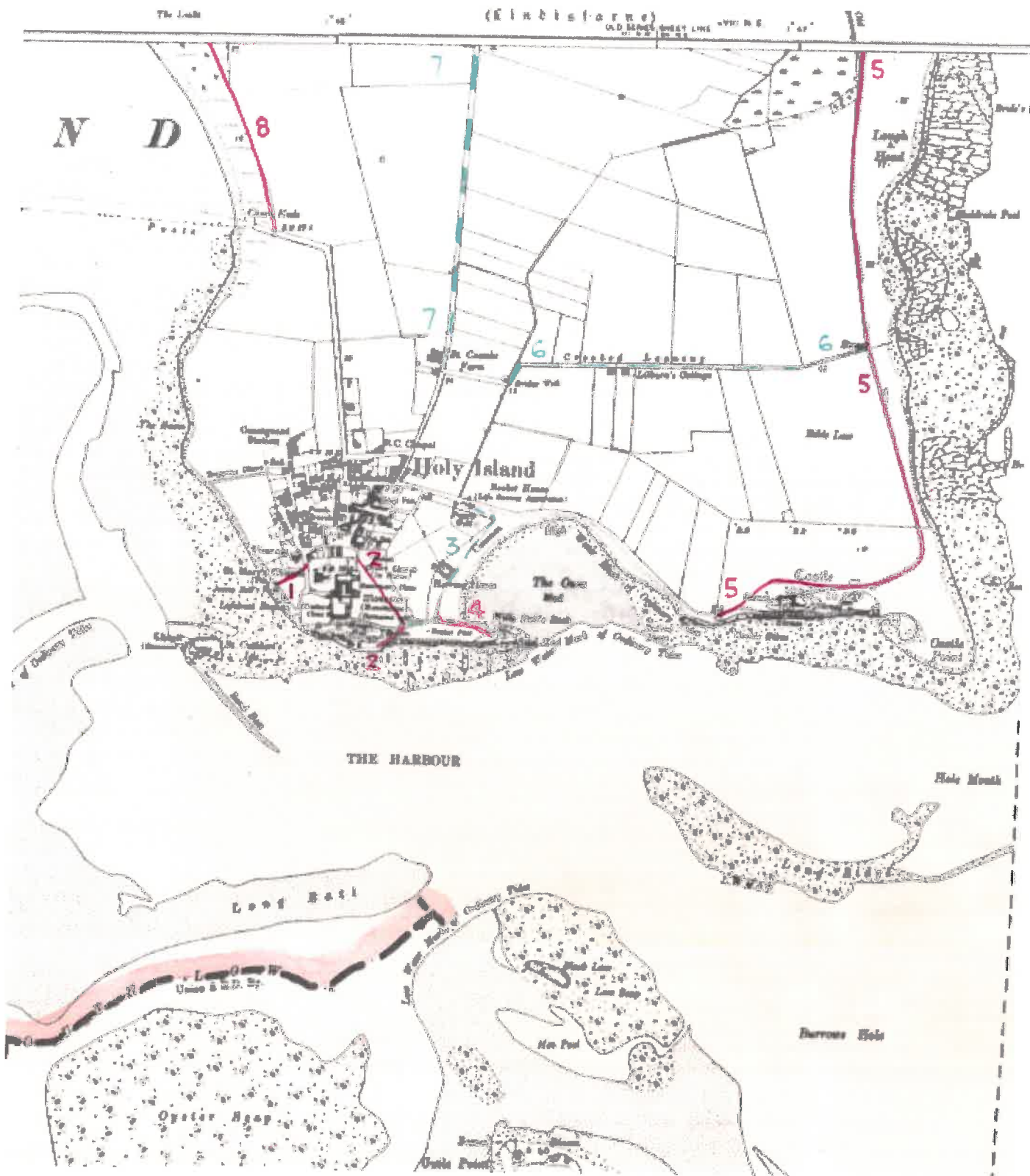
None

17. Any other relevant information

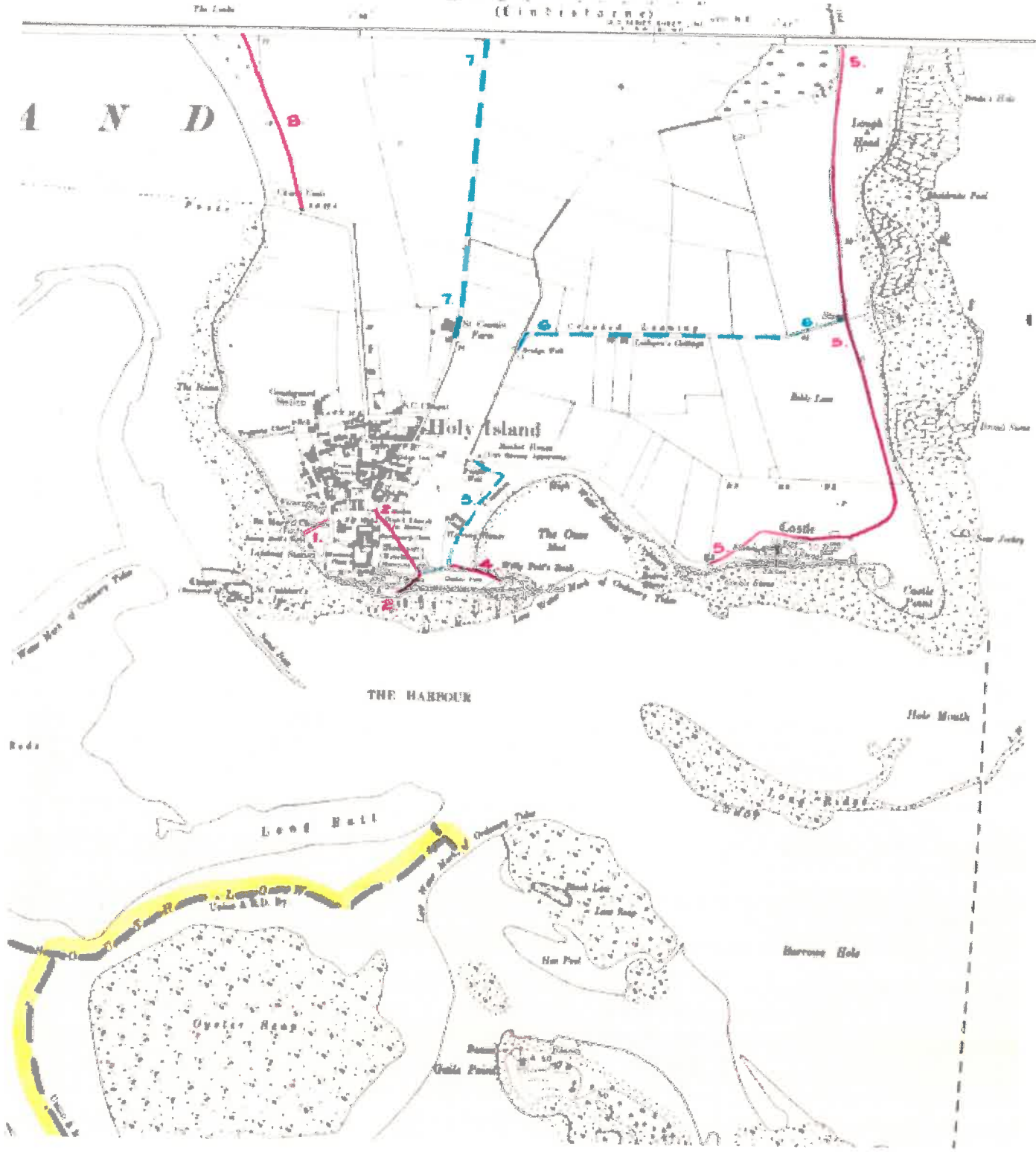
Surveyed by	Address	Dates of Survey
<u>Holy Island Parish Council</u>	<u>Clack Mun N. Strongton Cambridge Cottage Holy Island</u>	<u>7th Febry 1952</u>

Important:—Sheet No. of Map on which Highway is shown

275 / 6 / 8 SE 4



Provisional Map



1958 County Road Schedule

BERWICK DIVISION

UNCLASSIFIED ROADS IN NORHAM AND ISLANDSHIRES RURAL DISTRICT

Brought forward 41.17 miles

U.37	Roads on Holy Island	From H.W.M.O.T. at Chare Ends to Marygate From the Green via Marygate and Popple Well to the Castle. From Marygate via Coombs Farm to Bridgewell From Chare Road to Coombs Road past R.C. Chapel The Green from School to 17 feet north of Vicarage south wall. Church Lane Prior Lane Crossgate Lane Fenkle Street. St Cuthberts Turnstile, Market Place to the south boundary of Manor House Tripping Chare Market Place Footpath	801 yds. 1153 yds. 451 yds. 155 yds. 226 yds. 61 yds. 89 yds. 107 yds. 129 yds. 177 yds. 33 yds. 175 yds. 190 yds. 50 yds.
U.38	Shoreswood	From C.8 at junction with C.4 255 yards south	2.16
U.39	Mogger's Loan	From A.698 to Railway Crossing at Cremond Hill	0.14
U.40	Norham Council Housing Estate	Roads in Norham and Islandshires Rural District Council Housing Estate at Norham.	0.17
U.41	East Ord North Council Housing Estate	Hillcrest, East Ord.	0.27
U.42	St. Peter's Terrace and Cheviot Terrace, Scremerston	From A.1. opposite St. Peter's Church, Scremerston 296½ yards.	0.06
U.43	St. Guthbert's Square, Norham	From U.8 south and west for 185 yards including cul-de-sac 56 yards and footpath to U.8 39 yards (verges are not adopted)	0.17
U.44	The Croft, Horneliffe	From U.10, 107 yards from its junction with C.2. south westerly for 58 yards.	0.137

Forward

41.310 Miles

1964 County Road Schedule

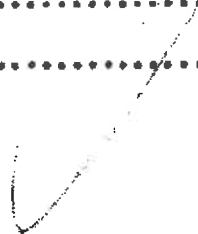
Route No.	Name of Road.	Description.	Responsible Division or Authority.	Mileage.	Total Mileage.
U.37	Holy Island Road*	From C.16 at Beal Shore via Causeway and Chare Ends to Marygate. From the Green via Marygate and Popple Well to the Castle. From Marygate via Coombs Farm to Bridgewell. From Chare Road to Coombs Farm past R.C. Chapel. *The Green' from School to 17 feet north of Vicarage south Wall.	Wooler	61.34 yds	
		Church Lane.	Wooler	226 yds	
		Prior Lane.	Wooler	61 yds	
		Crossgate Lane.	Wooler	89 yds	
		Fenkle Street.	Wooler	107 yds	
		St. Outhbert's.	Wooler	129 yds	
		Turnstile, Market Place, to the south boundary of Manor House.	Wooler	177 yds	
		Tripping Chare.	Wooler	33 yds	
		Market Place.	Wooler	175 yds	
		Footpath.	Wooler	190 yds	
U.38	Shoreswood.	From C.8 nearly opposite junction with C.4 for 255 yards southwards. (See also U.50).	Wooler	50 yds	5.19
U.39	Mugger's Loan.	From A.698 just north of Cornhill to railway crossing at Cramond Hill.	Wooler		0.14
U.40	Norham Council Housing Estate.	Roads in Norham and Islandshire's Council Housing Estate at Norham. (See also U.8, U.43 and U.55).	Wooler		0.17
U.41	East Ord North Council Housing Estate.	Hillcross, East Ord. (See also U.45, U.46 and U.47).	Wooler		0.27
U.42	St. Peter's Terrace and Cheviot Terr, Scremerston.	From A.1 opposite St. Peter's Church, Scremerston, 298½ yds. (See also U.48).	Wooler		0.06
					0.17

NORTHUMBERLAND COUNTY COUNCIL

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

PUBLIC RIGHTS OF WAY - STATEMENT.

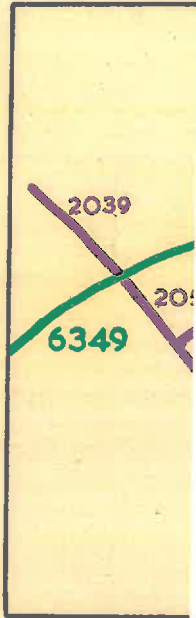
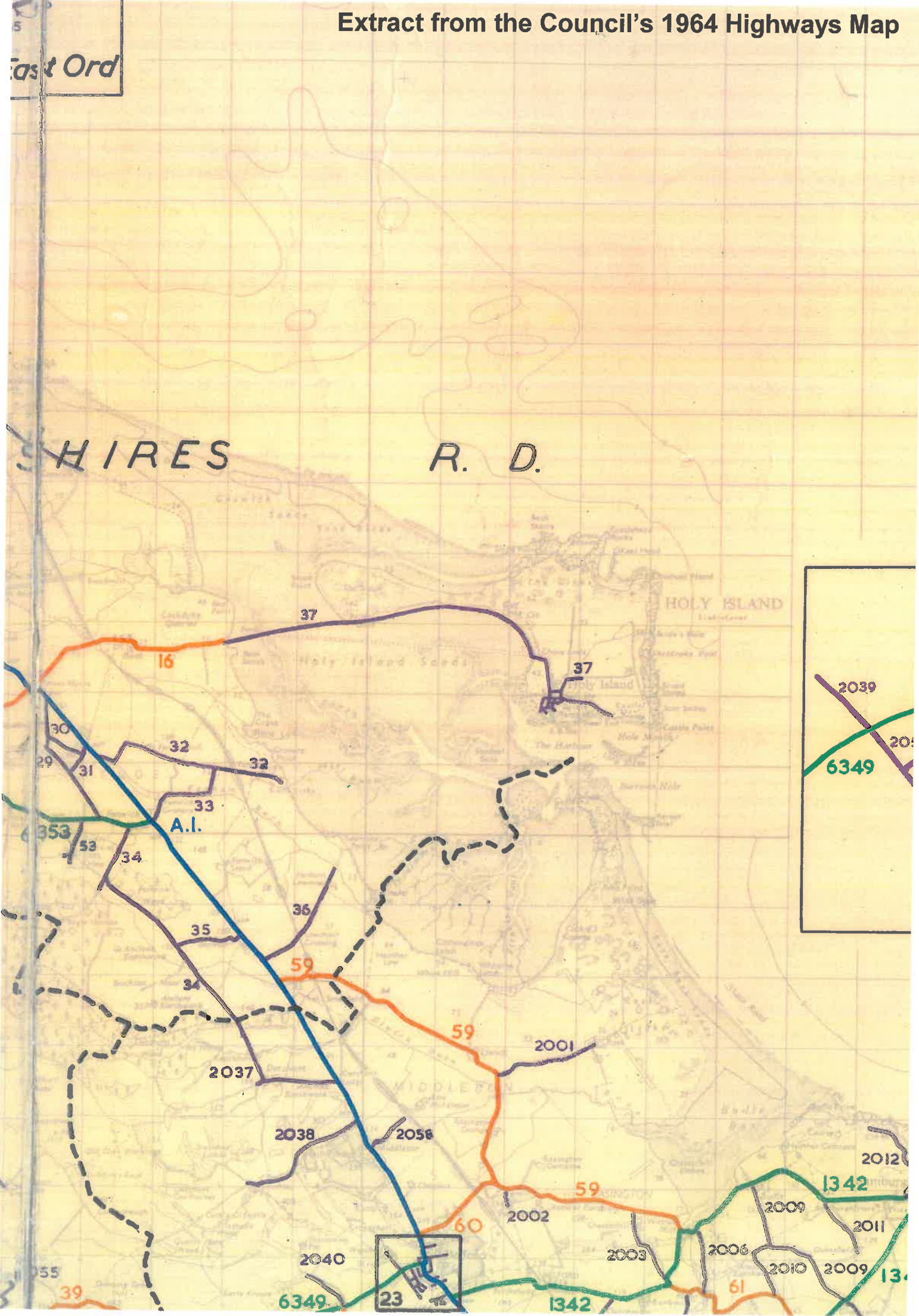
1. Borough
Urban District
Rural District **NORHAM & ISLANDSHIRES**
2. Parish **HOLY ISLAND**
3. Number of Footpath on Map **I**
4. Name of Path
5. Kind of Path (i.e. FP/BR) **F.P. width 4 feet**
6. General Description of Path **From the Public road opposite**
..... **the entrance to St. Mary's Church in a south-easterly direction to**
..... **the Old Lifeboat house.**
.....
.....
.....
7. Other relevant information
.....
.....
.....
.....



Extract from the Council's 1964 Highways Map

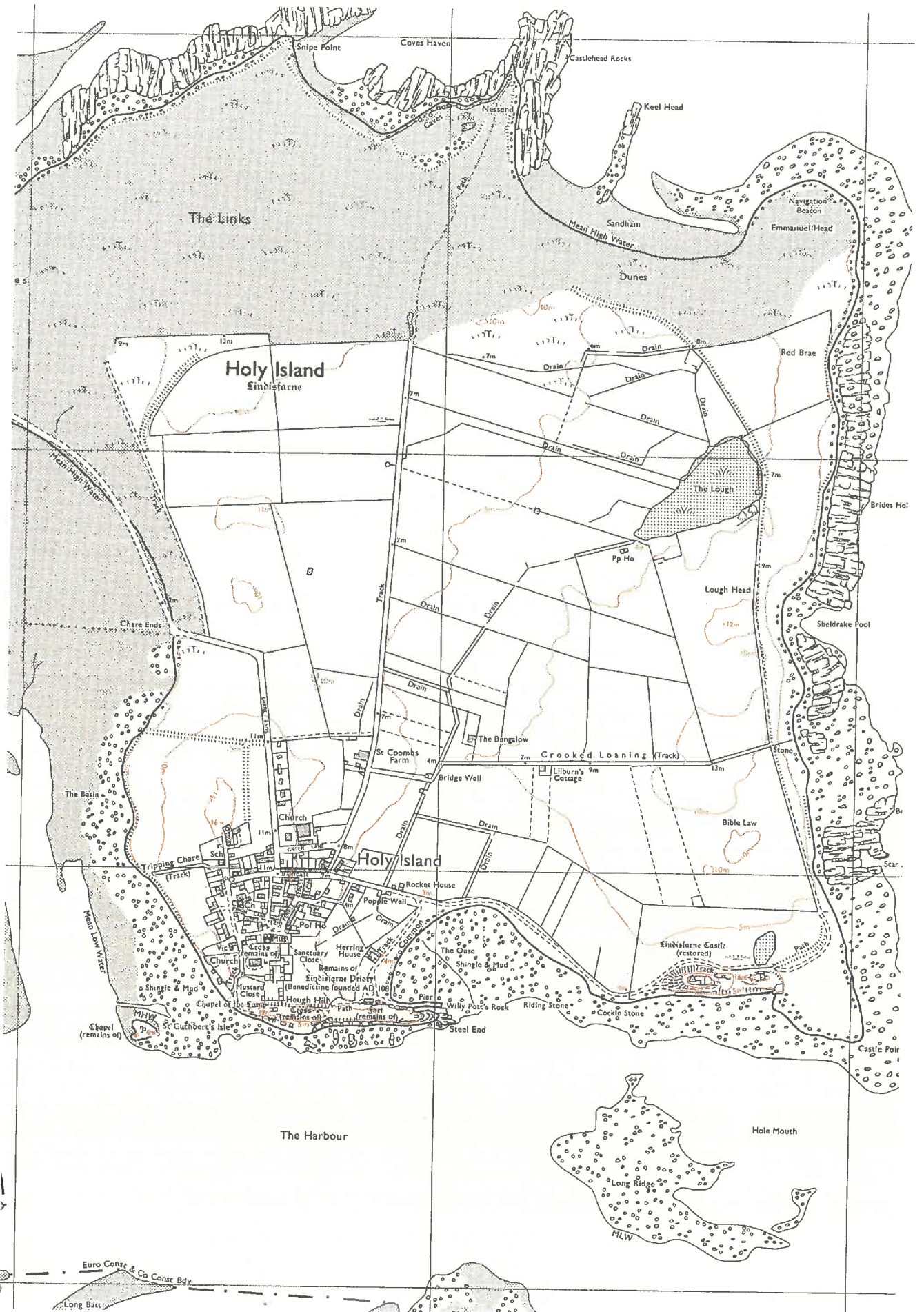
East Ord

HIRES R. D.



1974 County Road Schedule

Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage	
U.37	Holy Island Roads.	<p>From C.16 at Beal Shore (NU.080427) eastwards via Causeway and Chare Ends to Marygate (NU.126419).</p> <p>From the Green via Marygate and Popple Well to the Castle.</p> <p>From Marygate via Coombs Farm to Bridgewell.</p> <p>From Chare Road to Coombs Farm, past R.C.Chapel.</p> <p>The Green from School to 17 feet north of Vicarage south Wall.</p> <p>Church Lane.</p> <p>Prior Lane.</p> <p>Crossgate Lane.</p> <p>Fenkle Street.</p> <p>St. Cuthbert's.</p> <p>Turnstile, Market Place, to the south boundary of Manor House.</p> <p>Tripping Chare.</p> <p>Market Place.</p> <p>Footpath (50 yds.)</p>	Wooler Division	<p>6,134 yds.)</p> <p>1,153 yds.)</p> <p>451 yds.)</p> <p>155 yds.)</p> <p>226 yds.)</p> <p>61 yds.)</p> <p>89 yds.)</p> <p>107 yds.)</p> <p>129 yds.)</p> <p>177 yds.)</p> <p>33 yds.)</p> <p>175 yds.)</p> <p>190 yds.)</p>		5.16
U.38	Shoreswood. (See also U.50)	From C.8 nearly opposite junction with C.4 (NT.956466) for 255 yds. southwards.	Wooler Division		0.14	
U.39	Mugger's Loan.	From A.698 just north of Cornhill (NT.863396) north-eastwards to railway crossing at Cramond Hill. (NT.865398).	Wooler Division		0.17	
U.40	Norham Council Housing Estate (See also U.3, U.43 and U.55).	Roads in Council Housing Estate at Norham - including Marmion Way, a continuation eastwards of South Back Lane for 115 yards. (NT.904498).	Wooler Division		0.33	
U.41	East Ord North Council Housing Estate. (See also U.45, U.46, U.47 & U.57)	Hillcrest, East Ord. (NT.980516)	Berwick District		0.06	
U.42	St. Peter's Terrace and Cheviot Terrace, Scremerston. (See also U.48)	From A.1 opposite St. Peter's Church, Scremerston, 298½ yds. (NU.004493)	Berwick District		0.17	

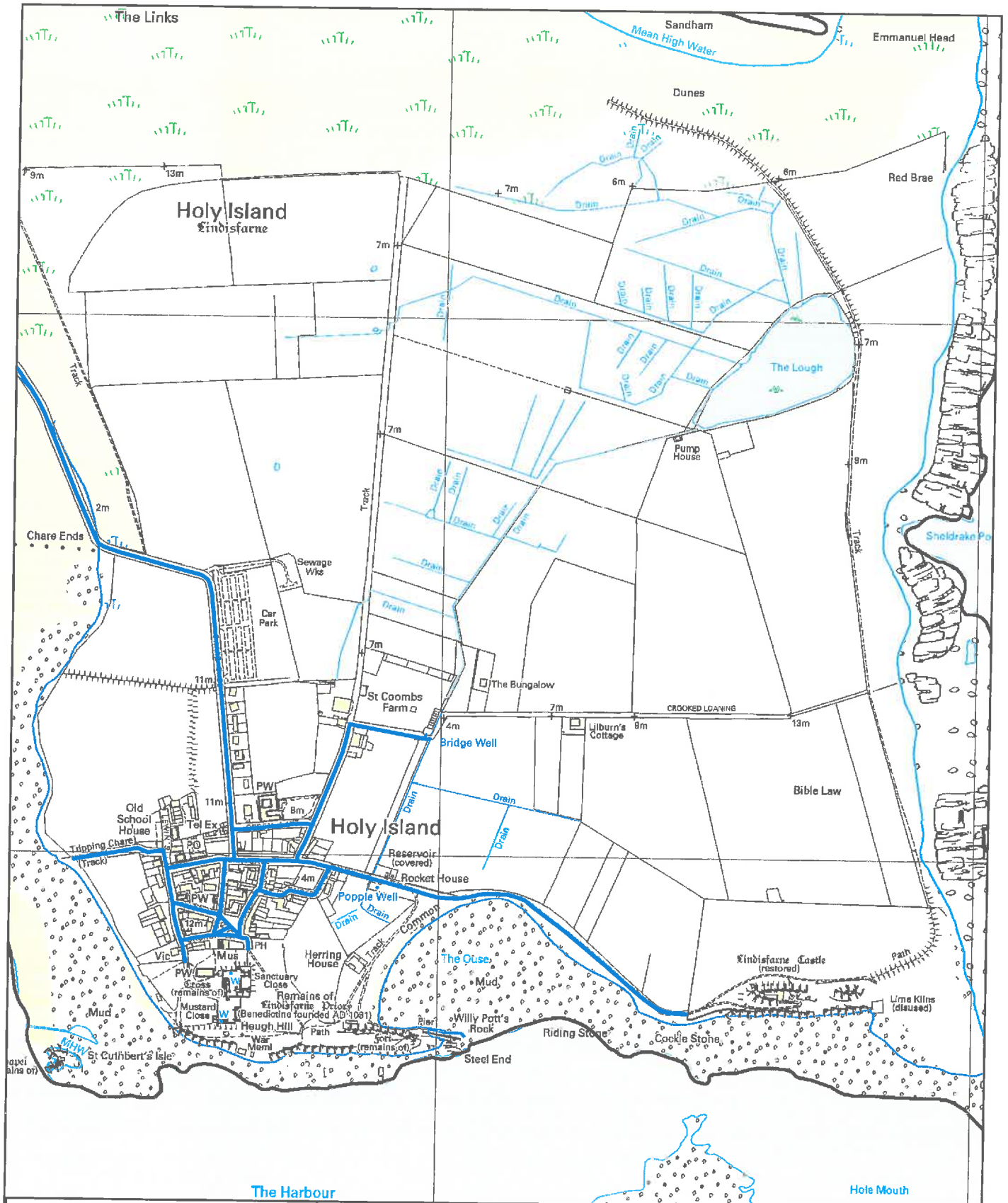


Highways Act 1980 Section 36(6)
County Of Northumberland
List of Streets which are highways maintainable at the public expense
As at 02-May-2006

Road Number	Description	Length - Metres
U3154	THE SIDINGS - CHRISTON BANK	89
	<i>Total length for U3154</i>	111
U32	A1(T) JCT TO U33 JCT	1,902
	U33 JCT TO GATEWAY AT OLD FENHAM MI	986
	<i>Total length for U32</i>	2,889
U33	A1(T) JCT TO U32 JCT	1,460
	<i>Total length for U33</i>	1,460
U34	U34 GREYMARE TO U35 JCT	2,318
	U34 JCT TO ROAD END AT GREYMARE	1,286
	U34 JCT TO B6353 JCT FENWICK	713
	U35 JCT TO U34 BLAMEARIE	1,454
	U34 JCT TO ROAD END AT BLAMEARIE	332
	C58 JCT TO U34 GREYMARE FARM	1,042
	<i>Total length for U34</i>	7,145
U35	U34 JCT TO A1(T) JCT	997
	<i>Total length for U35</i>	997
U36	A1(T) S OF BUCKTON TO ROAD END FORE	2,018
	<i>Total length for U36</i>	2,018
U37	U37 SCHOOL TO ROAD END AT FENCE LIN	171
	U37 MANOR HOUSE TO U37 MARYGATE	154
	U37 CHURCH LANE TO U37HOLY ISLAND	34

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

Road Number	Description	Length - Metres
U37		
	U37 X-ROADS TO U37 FENKLE STREET	56
	U37 GREEN TO U37 X-ROADS CROSSGAT	91
	U37 CHURCH LANE TO U37 MARYGATE	144
	U37 SCHOOL TO END OF SURFACE VICAR	211
	U37 SANDHAM TO U37 THE GREENHOLY I	245
	U37 SANDHAM TO LINDISFARNE CASTLE	811
	U37 MARY GATE TO END SURFACE BRIDG	426
	U37 TO U37 SANDHAM LANEHOLY ISLAND	150
	30MPH (N) TO U37 MARYGATE	284
	SNOOK ACCESS TO 30MPH HOLY IS(N)	2,433
	C16 JCT BEAL TO THE SNOOK ACCESS	2,903
	U37 VICARAGE TO STH BDY OF MANOR H	145
	U37 FENKLE TO U37 CASTLE ROAD HOLY I	166
	<i>Total length for U37</i>	8,425
U38		
	C8 JCT TO SHORESDEAN	239
	<i>Total length for U38</i>	239
U39		
	A698 JCT TO CRAMOND HILL RAILWAYCR	439
	<i>Total length for U39</i>	439
U4		
	C19 JCT TO U3 JCT	3,130
	<i>Total length for U4</i>	3,130
U40		
	B6470 JCT TO SOUTH BACK LANE NORHA	318
	SOUTH BACK LANE NORHAM	115
	SOUTH BACK LANE NORHAM	115




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 2018	1:10,000