

RIGHTS OF WAY COMMITTEE

11 July 2017

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

ALLEGED BYWAYS OPEN TO ALL TRAFFIC Nos 38 & 22 PARISHES OF INGRAM & WHITTINGHAM

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

Purpose of report

In this report, the Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over the U1098 and U4064 roads, between the U1092 road north of Branton Middlesteads and the C169 road east of Mile Moor Plantation.

Recommendation

It is recommended that the Committee agree that:

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route H-G-F;**
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the majority of the route;**
- (iii) the Natural Environment and Rural Communities Act 2006 would, however, appear to have extinguished the public's motorized vehicular rights over the X-Y section of the route;**
- (iv) the H-G-X and Y-F sections of the route be included in a future Definitive Map Modification Order as byways open to all traffic;**
- (v) the X-Y section 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.
- 1.4 The route that was originally consulted upon, in July 2014, reflected the alignment of the U1098 road, as shown on the Council's List of Streets on 2 May 2006. A 340 metre length of this road (between points marked X and Y) was incorrectly recorded at that time. This error was subsequently corrected. This report considers the existence of public highway rights over the historically correct route (not the May 2006 one).

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 'U1098' and 'U4064' roads), were considered to be all-purpose public highways maintainable at public expense.
- 2.3 Shortly afterwards, the processing of applications from third parties seeking to record public footpath or public bridleway rights was afforded a higher priority. Later on, the process of recording UCRs as byways open to all traffic was

effectively suspended because the Ordnance Survey indicated that they would be showing such routes on their published maps as being an "Other route with public access". Although, on that basis, members of the public would still be unclear as to precisely what rights they had over routes identified in this fashion.

- 2.4 The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis. In view of this advice, it is considered prudent to evaluate the status of the U1098 and U4064 unclassified County roads based upon more than simply their inclusion in the List of Streets.

3. LANDOWNER EVIDENCE

- 3.1 By email, on 31st July 2014, Mr D Holdsworth of Plantation House, responded to the consultation, stating:

"Hi Alex, further to your letter of 28th July, this is to confirm that I am the owner and occupier of Plantation House, Glanton, Alnwick, NE66 4BH located on the U1094 road (No 38).

"I know a little of the recent history of the U1098 if you're interested. Basically it fell into disuse about 50 years ago through lack of maintenance and was eventually 'ploughed in' when field and road became indistinguishable. The track from Plantation House to Branton Middlesteads Farm was improved and became the only means of access to the B-road linking Branton & Glanton. You can still see the original route of the U1094 on the satellite image in Google Maps.

"I have a right of access through BM Farm but there was some dispute between the former BM Farm owners, Mr & Mrs Smith (who still live in the original farmhouse) and Mr & Mrs Dods (who now own the farm land and have built a new farmhouse, Woodside, in 2008 which is not shown on your map), about the route I should take through the farm.

"The end result was a little messy - the Smiths agreeing to allow access through their yard but installing gates only wide enough for cars in order to prevent any farm traffic passing through. The Dods then locked the only gates wide enough for larger vehicles making deliveries for my self-build project rather tricky for a while. Fortunately the gates are no longer locked so we are able to live with the solution.

"I contacted Highways about the possibility of re-instating the U1098 and was visited by Terry Rogerson and his colleague on 24th January 2012 - he deduced that in previous road surveys, the farm track had been wrongly identified as being the U1098 and flagged as operational when in fact the road had disappeared. He also said he was unaware of any request post war to re-establish a road but agreed to take my request to re-open the road to the new Borough Solicitor. And that's the last I heard until your letter arrived.

“So in summary, yes we all know that the U1098 Branton to Great Ryle is an adopted road and that it has been ploughed-in. We do occasionally get off-road 4x4s and bikes coming past the house and the occasional walking group (usually lost!) and I have no objections to this. I suspect my neighbours will be less enthusiastic about opening up access given recent farm thefts.

“In terms of ownership, it does pass my house but I don't lay any claim to it - it's a public road. However, I have paid for its maintenance for the past 21 years, spending many thousands of pounds on road planings for the whole track which the farmer spreads. Without this, the track would have become impassable for cars years ago. I did persuade the council to supply 30 tonnes of planings free of charge once but never asked again once I realised it wasn't the proper U1098.

“I hope this was of use, please contact me if I can offer any further assistance.”

- 3.2 By letter, dated 6th August 2014, Mr RW Telford of Branton East Side responded to the consultation, enclosing a marked up plan and stating:

“I am writing in response to your letter of 25th July regarding Public Rights of Way. Your correspondence includes two maps containing land owned by myself and my family.

The first map 55/66 shows a Byway from point F to no.38, crossing two large arable fields. I purchased this land from W Smith & Son of Branton Middle Steads. The land was part of the same two arable fields as it is now & there is and was no evidence of a Byway i.e. no roadway material evident to carry any form of traffic. I have contacted my neighbour Mr Malcolm Smith, who owned the land from about 1950 to 1992 and he says that this route has never been used.

“There is an alternative hard road through Branton Middle Steads Farm to Plantation House (owned by Mr D Holdsworth) with access gates etc but the other possible route, following my field boundaries is through a gate near point F, along the streamside, coming out onto the hard track, which i have marked on the map as *EXIT. This route has gates and is in permanent grass.

...

“I hope that these facts are of use to you. Please feel free to contact me at anytime on either of the numbers or email address shown above.”

- 3.3 By undated note, received 3 September 2014, Mr R Ords of Branton Middle Steads responded to the consultation, enclosing a marked up plan and stating:

“Arrows mark indication of land under our ownership.”

- 3.4 By letter, dated 2nd October 2014, Lord Ravensworth of Eslington Park responded to the consultation, stating:

“I write in reference to your informal consultation over a Review of the Definitive Map and your letter to me dated 25th July 2014.

“You propose to add a new BOAT called no 22 to run over the Mile Moor between points H and G on your plan.

“I confirm that I own most of the land between points H and G on your plan and that I am writing to reject your proposal.

“There is currently no lawful public right of way of any type between points H and G on your plan.

“And there is no physical evidence whatsoever between point H and G of any form of public use, nor any sign of even a faintest pathway of any description, which could suggest or indicate that any member of the public has been trespassing on any parts of Mile Moor and / or between points H and G on your plan.

“I do not agree to the creation of any new public right of way of any type over my land.

“And I remind you that I have in the recent past taken all necessary legal steps to prevent the creation or claiming of any new public rights of way over all my land; by lodging a series of formal Statements and Statutory Declarations with your department in December 2012 (receipt of each acknowledged by yourselves in January 2013) in full compliance with the requirements of the relevant and appropriate statutory provisions in force at that time under Section 31 of the Highways Act 1990.”

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”. Five replies were received and are included below.
- 4.2 By letter, dated 17th October 2014, Ms E Bamford responded to the consultation, on behalf of the Ramblers’ Association, stating:

“My comments are attached. Where we have no facts or evidence and no objections I have written No Comment. We would support these additions.

“Parish of Ingram Byway open to all traffic No 38 No comment.”

- 4.3 By email, on 14th October 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“INGRAM PARISH

“Alleged Byway Open to All Traffic no 38

Part of this route, shown on map 2, has been well used by horse riders over many years. However the section from the road at F across arable fields to the access track to Plantation House has not been available for use because of crops and heavy gates. The route has been accessed by permission along the track from Branton Middlesteads Farm and has been followed along the line shown to G and onto H in Whittingham parish. There are suitable gates at the appropriate points in all the fence lines crossed. It is a stone and grass track for this section, largely unfenced. The BHS supports its addition to the DM.

“There is evidence on the ground that another old road joined this one in the past linking the minor tarmac road close to Mile End Farm to Plantation House across a couple of fields now a pasture and an arable field. See photograph of old hedge line. In addition the farmer who owned one of the large fields which it crossed has reported that when he originally ploughed it up, a large number of old road stones were thrown up.”

- 4.4 By email, on 26th October 2014, Whittingham, Callaly and Alnham Parish Council responded to the consultation, stating:

“With reference to the emails below the Parish Council (which includes landowners over which the relevant byways pass), at its meeting of 21st October 2014, wish to advise that the use by the public of byway No 30 in the Parish of Alnham and byway no 22 in the Parish of Whittingham is from walkers and horse riders. They are not aware of any other significant use of the byways other than this.

“While I am aware that at this stage you are simply information gathering they nevertheless asked that I stress their concern about any possibility that these could be open to ‘all traffic’ due to the growing incidents in rural crime. I much appreciate you extending your deadline for this response.”

- 4.5 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 data as possible.

"Routes traced in red have been cycled without problem. [The route of alleged Byways Open to All Traffic Nos 38 and 22 are 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."

On Mr Robert's plan, he has added the comment:

"Obstructed c2001 reported to Ass County Surveyor at Alnwick and advised to go thro' farmyard as shown."

- 4.6 By email, on 28th October 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

"WHITTINGHAM PARISH

"Alleged Byway Open to all Traffic 22
This is a continuation of alleged BOAT 38 Ingram. The comments made on that alleged BOAT apply to this one as well.

"It is regularly used principally by horse riders but also by walkers and cyclists. The gates are all in reasonable condition and so is the surface. It contributes to the ridden network of the area so the BHS would like to see it added 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 road or track approximating to the route of alleged Byways Nos 38 and 22.

1820 Fryer's County Map

There is clear evidence of a road or track approximating to the route of alleged Byway No 22 and the southernmost third of alleged Byway No 38.

1820-32 Cary's Map

There is clear evidence of a road or track approximating to the route of alleged Byway No 22 and the southernmost third of alleged Byway No 38.

1828 Greenwood's County Map

There is clear evidence of a road or track approximating to the route of alleged Byways Nos 38 and 22.

1840 Branton Tithe Award

There is no evidence of a road or track approximating to the route of alleged Byway No 38. The route of Byway No 22 (lying outside the Branton Tithe Award area) is identified with the label "To Ryle", in the same way that two other routes (again lying outside the Branton Tithe Award area) proceeding in a westerly direction are labelled "To Clich" and "To Fawdon".

1866-7 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a road / track over the route of alleged Byways Nos 38 and 22.

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a road / track over the route of alleged Byways Nos 38 and 22.

Finance Act 1910 plan

There is clear evidence of an unenclosed road / track over the route of alleged Byways Nos 38 and 22. Had the road been enclosed, with coloured boundaries delineating the road as being separate from the surrounding farmland, this would have indicated that the roads were considered to be public at that time. The route of Public Footpath No 15 (which links with the northern end of alleged Byway No 38) is annotated as "Public". The southern end of alleged Byway No 38 is also annotated as "Public". The C169 road (which the southern end of alleged Byway No 22 terminates upon) is annotated as "Public Road". More unexpectedly, the north-south track passing to the west of Plantation House is also annotated as being "Public", and so is the track proceeding south-easterly from Plantation House.

1926 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a road / track over the route of alleged Byways Nos 38 and 22.

1932 Glendale RDC Handover Map

The route of alleged Byway Open to All Traffic No 38 is not coloured in red (which would have identified it as a publicly maintainable road). No Handover Map for the Rothbury RDC area (which would have covered alleged Byway Open to All Traffic No 22) appears to have survived.

c.1939 Restriction of Ribbon Development Act (1935) Map

There do not appear to be any maps covering either the Rothbury of Glendale RDC areas.

1951 Highways Map

The route of alleged Byways Open to All Traffic Nos 38 and 22 is coloured (in purple) so as to identify it as a publicly maintainable road. It is labelled as being the U1098 and U4064 roads.

Definitive Map – original Survey Schedules & Map

The route of the U1098 and U4064 roads (i.e. alleged Byways Open to All Traffic Nos 38 and 22) exists on the base map, and is coloured brown. Known public roads were generally coloured brown to indicate what the extent of the road network was considered to be. A public footpath is shown terminating on the U1098 road north-west of Branton Middlesteads.

Draft Map

The route of the U1098 and U4064 roads exists on the base map. Public Footpath No 3 terminates on the route, north-west of Branton Middlesteads.

Provisional Map

The route of the U1098 and U4064 roads exists on the base map. Public Footpath No 3 terminates on the route, north-west of Branton Middlesteads.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a path / track over the route of alleged Byways Nos 38 and 22. The section of track north of Plantation House is annotated "FP".

1962 Original Definitive Map

The route of the U1098 and U4064 roads exists on the OS base map, though it appears to be a minor track / path and is actually annotated as "FP" south of Plantation House. The route is not identified as a public rights of way. Public Footpath No 15 terminates part way along the

U1098 road, and would be a completely pointless public right of way if the U1098 road was not a public highway of some description.

1964 Highways Map

The route of alleged Byways Open to All Traffic Nos 38 and 22 is coloured (in purple) so as to identify it as a publicly maintainable road. It is labelled as being the U1098 and U4064 roads.

1979 Ordnance Survey Map: Scale 1:10,000

There is evidence of a road / track over the northern end, the southern end, and the middle section (in the vicinity of Plantation House) of the route of alleged Byways Nos 38 and 22.

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

With the exception of the X-Y section, south of Plantation House, the route of the alleged byways is clearly identified as publicly maintainable highway. The 340 metre long X-Y portion of alleged Byway No 38 is clearly shown (incorrectly) passing through a separate land parcel, too far to the west.

5.2 The route of alleged Byway No 38 does appear to be covered by any of the entries contained in the Schedule of unclassified roads identified under the provisions contained within the Restriction of Ribbon Development Act 1935, for the Glendale RDC area. There is no corresponding schedule for the Rothbury RDC area.

5.3 The entry for the U1098 road, in the 1958 County Road Schedule is:

“U1098 Branton - Great Ryle
From U1092 1000 yards south of Branton via Plantation House to the Glendale - Rothbury Urban District Boundary.”

The length of the U1098 road is identified as being 1.2 miles.

5.4 The entry for the U4064 road, in the 1958 County Road Schedule is:

“U4064 Branton - Great Ryle
From the Glendale RD boundary at Mile Moor to C169 at Milemoor Plantation.”

The length of the U4064 road is identified as being 0.54 miles.

5.5 The entry for the U1098 road, in the 1964 County Road Schedule is:

“U1098 Branton - Great Ryle
From U1092 1000 yards south of Branton via Plantation House to the Rural District boundary near Great Ryle. (Road continues in Rothbury Rural District as U4064).”

The length of the U1098 road is identified as being 1.2 miles.

- 5.6 The entry for the U4064 road, in the 1964 County Road Schedule is:

“U4064 Great Ryle - Branton
From C169 at Milemoor Plantation north-eastwards to the Rural District boundary south of Plantation House. (Continues in Glendale Rural District as U1098).”

The length of the U4064 road is identified as being 0.54 miles.

- 5.7 The entry for the U1098 road, in the 1974 County Road Schedule is:

“U1098 Branton - Great Ryle
From U1092 some 1000 yards south of Branton (NU 047153) south-westwards via Plantation House to the Alnwick District boundary near Great Ryle (NU 037138) (Road continues in Alnwick District as U4064).”

The length of the U1098 road is identified as being 1.2 miles.

- 5.8 The entry for the U4064 road, in the 1974 County Road Schedule is:

“U4064 Great Ryle - Branton
From C169 at Milemoor Plantation (NU 034129) north-eastwards to the Berwick District boundary south of Plantation House (NU 037138). (Continues in Berwick District as U1098).”

The length of the U4064 road is identified as being 0.54 miles.

- 5.9 The original Definitive Statement for Public Footpath No 15 in the Parish of Ingram, which terminates on alleged Byway Open to All Traffic No 38 states:

“From the Branton- Glanton Pike road north of Branton Middle Steads in a south-westerly direction to the Branton - Great Ryle road.”

6. SITE INVESTIGATION

- 6.1 From a point marked H, on the C169 road, 840 metres west of Mile Moor Farm, a 3 metre wide, unenclosed, grass / stone surfaced track proceeds in a northerly direction for a distance of 400 metres, then north-easterly direction for a distance of 60 metres. Thereafter, the alleged byway continues as a largely undefined track through pasture (the initial section is overgrown with gorse) in a north-easterly direction for a distance of 570 metres. Although a visible track descends into a cutting on a route some 15 to 20 metres further to the west, the historical route of the U1098 road continues on a roughly parallel course for a distance of 145 metres following a fence line which may actually straddle the line of the road. The alleged byway then proceeds in a more northerly direction for a distance of 170 metres, now definitely on the west side

of the fence line, and mostly following a grass surfaced track. Thereafter, an unenclosed 3 metre wide grass / earth / stone surfaced track proceeds in a north-easterly direction for a distance of 245 metres. Then a 2.7 metre wide stone surfaced track, within a 6 to 8 metre wide corridor continues in a general north-easterly direction for a distance of 100 metres. Although a stone track swings to the east around the property at Plantation House, the historical route proceeds directly through gates into and then out of the property. Thereafter a 3 metre wide unenclosed stone track continues in a north-easterly direction for a distance of 110 metres. At this point, the stone track branches off to the east / north-east. The alleged byway continues, undefined on the ground, in a northerly / north-easterly direction for a distance of 975 metres across three arable fields, to join the U1092 road, 510 metres north of Branton Middlesteads (point F).

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In May 2017, 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 1 June 2017, Mr D Holdsworth of Plantation House made the following comments in relation to the draft report:

“Thanks Alex, I’ve read your report in detail and, if I understand it correctly, the route from Plantation House, north, to where the U1098 joins the U1092 will be a Byway Open to All Traffic (points Y-F) but between points X to Y there will be no vehicular access. This will have the impact of stopping off-roaders driving the whole route from H to F which will likely discourage use of the route. This might be better for my farming neighbours though these occasional visitors have always been respectful and never caused us any nuisance.

“The problem of my legal access through Branton Middlesteads farm is on-going and I met with Highways’ David Brookes in February 2017 regarding the re-instatement of the U1098, either on its original path, or following a new alternative route through the field margins as first suggested by Mr R W Telford in his letter of 6th August 2014, which appears in your report. For your information I’m also aware that a local 4x4 club lodged a complaint with Highways in January and, as a result, the route of the U1098 is currently cleared of crops and passable by 4x4s.

“It is important to me that the U1098 is classified for vehicular access as proposed in your report and I therefore fully support your conclusions.”

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.

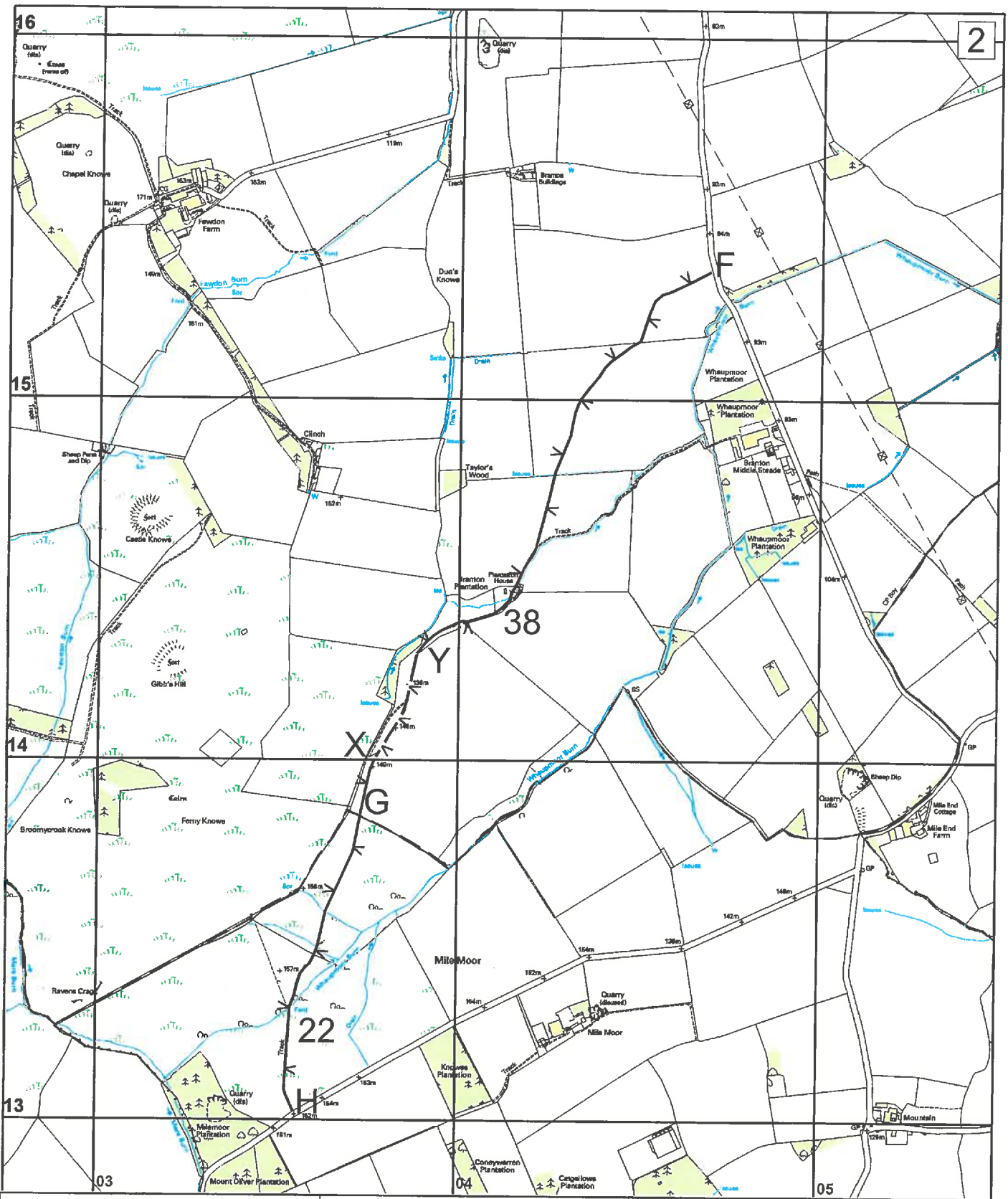
- 8.2 When considering an application / proposal for a modification order Section 32 of the Highways Act, 1980 provides for “any map, plan or history of the locality or other relevant document” to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, 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. Similarly, a route which is annotated as “FP” on the Ordnance Survey base map may, nevertheless, have higher rights over it (the “FP” annotation is a reflection the physical appearance of the route at the time of the survey).
- 8.4 The route of alleged Byway Open to All Traffic No 22 is identified on the County Council’s current List of Streets as being the U4064 road and the route of alleged Byway Open to All Traffic / Restricted Byway No 38 is identified as the U1098 road. The route was not identified as being publicly maintainable on the 1932 Glendale Rural District Council Handover Map (covering the Ingram section) and no equivalent map for the Rothbury Rural District area (covering the Whittingham section) appears to have survived. In the 1939 schedule of roads for Glendale RDC, produced in relation to the Restriction of Ribbon Development Act 1935, there does not appear to be an entry in relation to the Ingram section. No equivalent schedule covering the Whittingham section appears to exist. The whole route is clearly identifiable on the Council’s 1951 Highways Map and is recorded in the 1958 County Road Schedule and in the 1964 County Road Schedule and on the Highways Map, produced at that time, to accompany that schedule. It is also recorded in the 1974 County Road Schedule.
- 8.5 The route was consistently identified as an unenclosed track on Ordnance Survey maps from circa 1866-7 to 1926. On the 1957 OS map the northern part of the track is annotated with “FP” (indicating that this section now had the appearance of being a footpath). The southern half of the route is clearly shown on Fryer’s County Map of 1820 and on Cary’s Map of 1820-32. The whole route is clearly identified on Greenwood’s County Map of 1828. The route is not shown on Armstrong’s Map of 1769. On the plans produced in relation to the Finance Act of 1910, the southern end of alleged Byway No 38 is annotated as “Public” (as were existing Public Footpath No 15, the north-south track passing west of Plantation House, and a track heading south-easterly from Plantation House).
- 8.6 The route does not appear to have been considered for inclusion on the original Definitive Map of Public Rights of Way (as footpath, bridleway or Road

Used as Public Path) in the 1950s, despite the fact that a public footpath (No 15) terminates on the U9018 section. This implies that the road was considered to be a public highway, but presumably one of sufficiently high status that it was not considered appropriate to record it on the Definitive Map.

- 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 It is not known on precisely what basis this route was added to the List of Streets. It has appeared on all the available maps produced from Greenwood's County Map of 1828 and the Ordnance Survey Map of 1957. Alleged Byway No 22 and at the southern end of alleged Byway No 38 appeared on the earlier Fryer's County Map of 1820 and Cary's Map of 1820-32. The route has been shown as a maintainable highway in the Council's highway records since 1951.
- 8.10 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.

- 8.11 Of the saving provisions above, (b) will apply to the majority (but not the X-Y section) of this route. The public's motor vehicular rights over the H-G-X and Y-F sections would not have been extinguished by the NERC Act 2006. The X-Y section was not shown on the List of Streets on 2 May 2006 and does not appear to be covered by any of the other saving provisions. The public's motor vehicular rights over the X-Y section would, therefore, appear to have been extinguished by the NERC Act 2006, leaving this section as a restricted byway.
- 8.12 Lord Ravensworth has disputed the existence of a public right of way of any description over his land (covering most of the Whittingham H-G section). In March 2011 he deposited a Map and Statement under section 31(6) of the Highways Act 1980 setting out his land ownership and the public rights of way he acknowledged to exist over his land. No public rights were acknowledged to exist over the route of the U4064 road (alleged Byway No 22). In December 2012 he made a Statutory Declaration indicating that that situation had not changed. Such deposits, if made correctly, are an effective means of preventing the public acquiring additional rights of way on the basis of presumed dedication (i.e. long term unchallenged trespass). They do not, however, apply retrospectively and they are ineffective in cases where the public rights are being alleged on the basis of historical documentary evidence, as is the case here.
- 8.13 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.
- 8.14 The route does not have a tarmac surface. The majority of the route no longer follows a defined path / track on the ground. Only the 150 metre long section north of Plantation House would be considered drivable with a 'normal' family car. The CTC and BHS consultation responses suggest that the southernmost two-thirds of the route is used by cyclists, horse riders and walkers. Whittingham, Callaly and Alnham Parish Council has indicated that public use of the Whittingham section is only by walkers and horse riders. For these reasons 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.



NORTHUMBERLAND

Northumberland County Council

Sustainable Transport
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

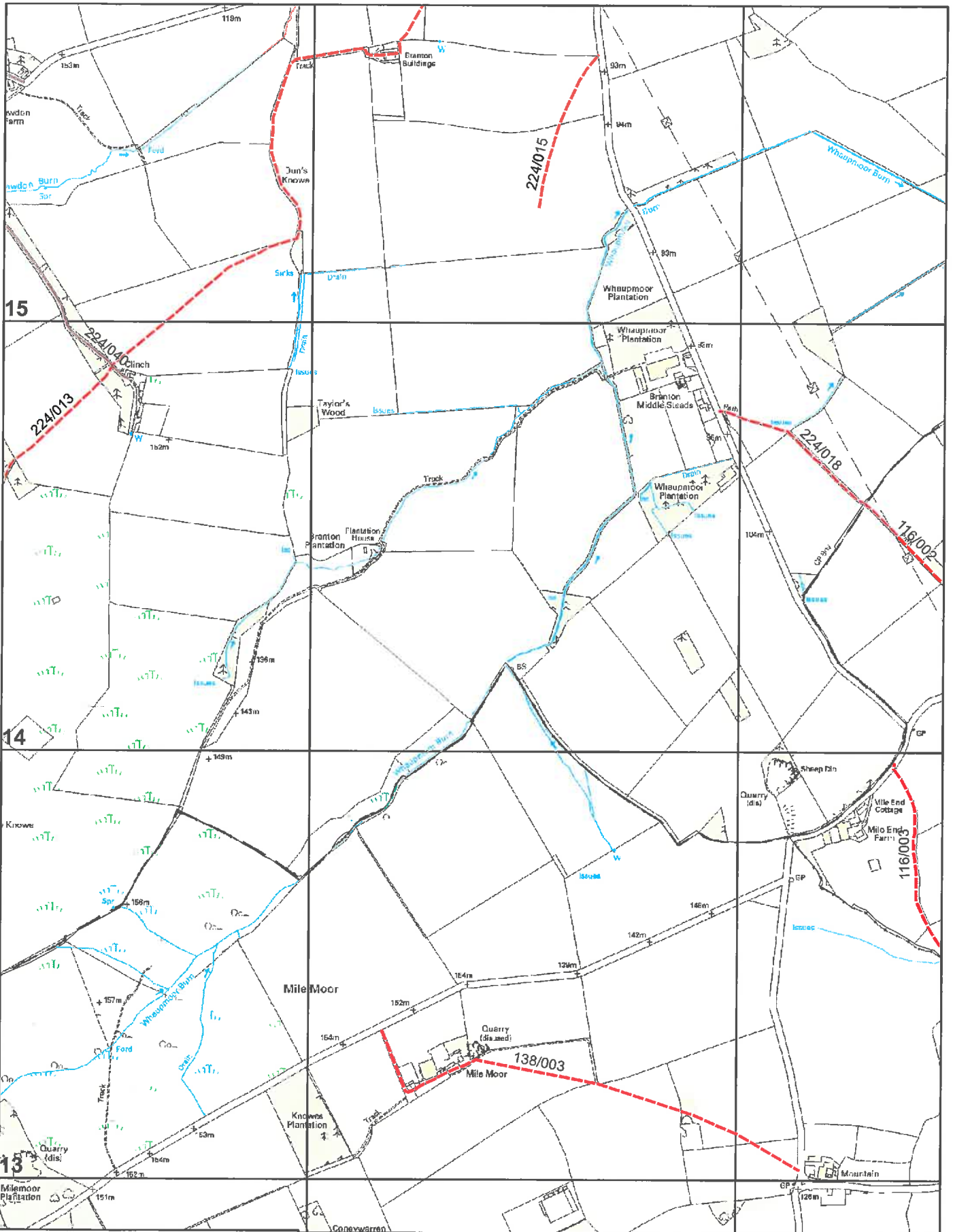


Alleged Byway Open to All Traffic



Alleged Restricted Byway

Former District(s) Berwick/Alnwick	Parish(es) Ingram/Whittingham	Scale 1:15,000
Def. Map No. 55/66	O.S. Map NU 01 NW/SW	Date May 2017



NORTHUMBERLAND
 Northumberland County Council
 Infrastructure

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

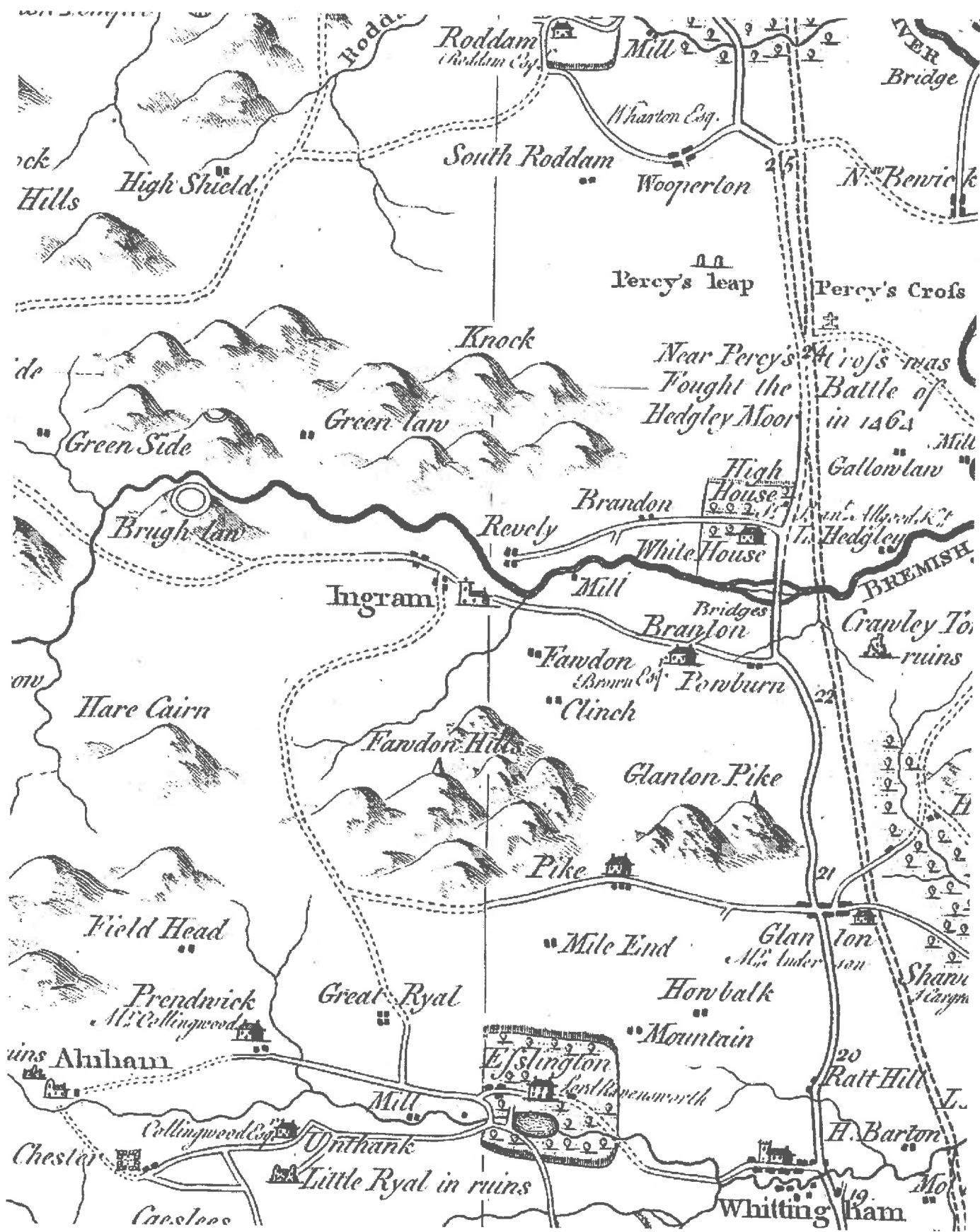
- Legend**
- Footpath
 - Bridleway
 - Restricted Byway
 - Byway Open to All Traffic

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

Scale: 1:12,000

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

Armstrong's County Map
1769

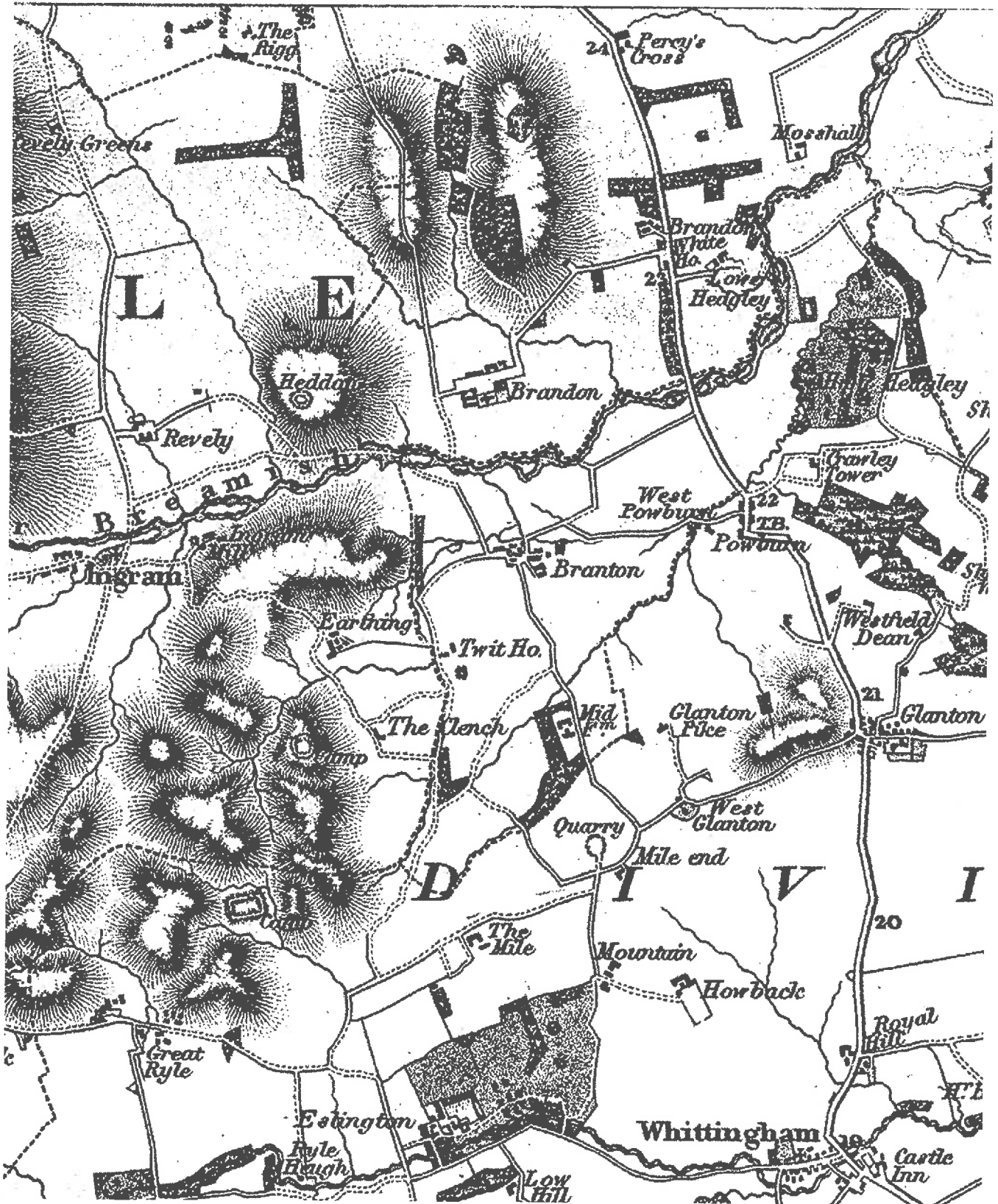


Fryer's County Map
1820

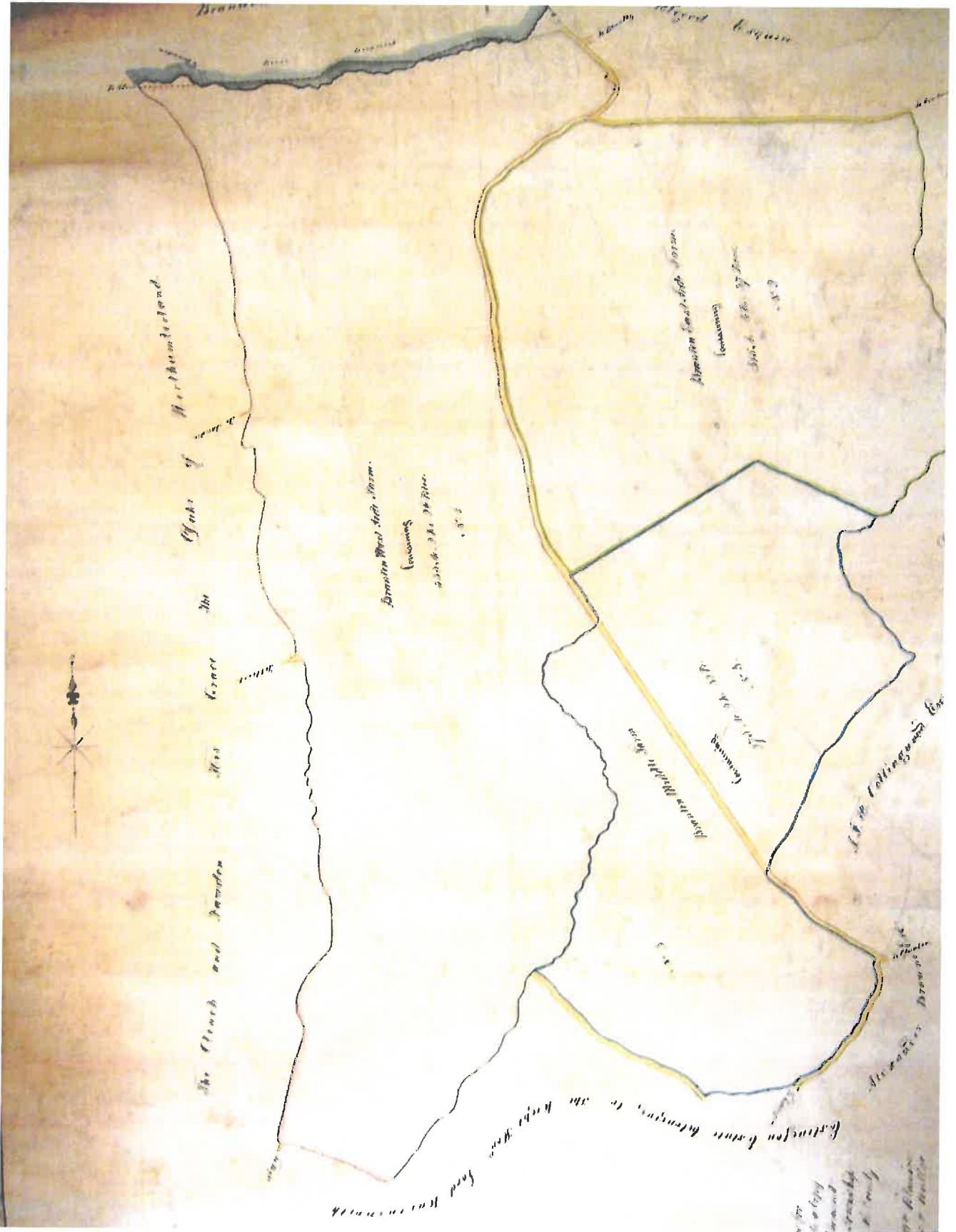




Greenwood's County Map
1828

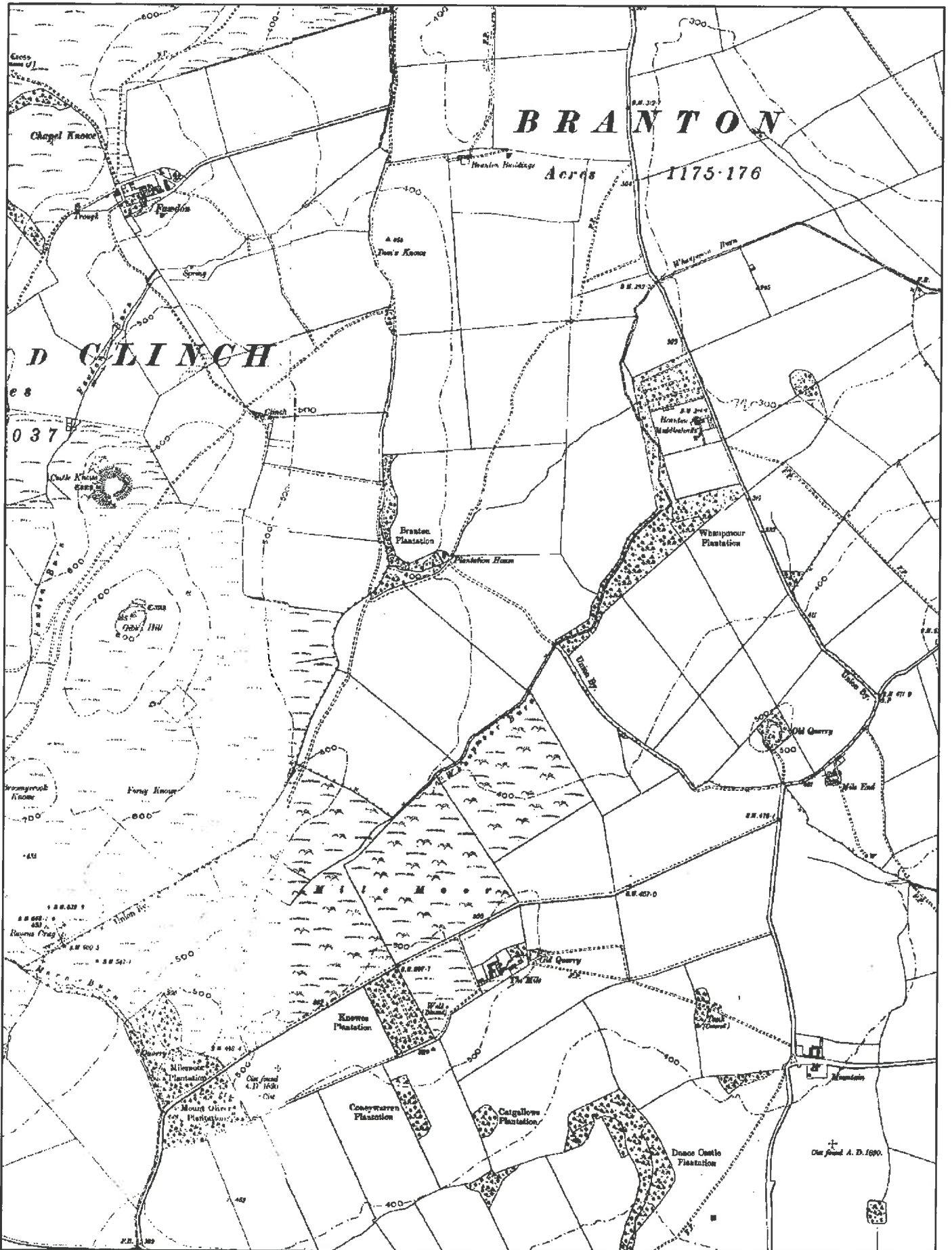


Branton Tithe Award 1840





Not to scale



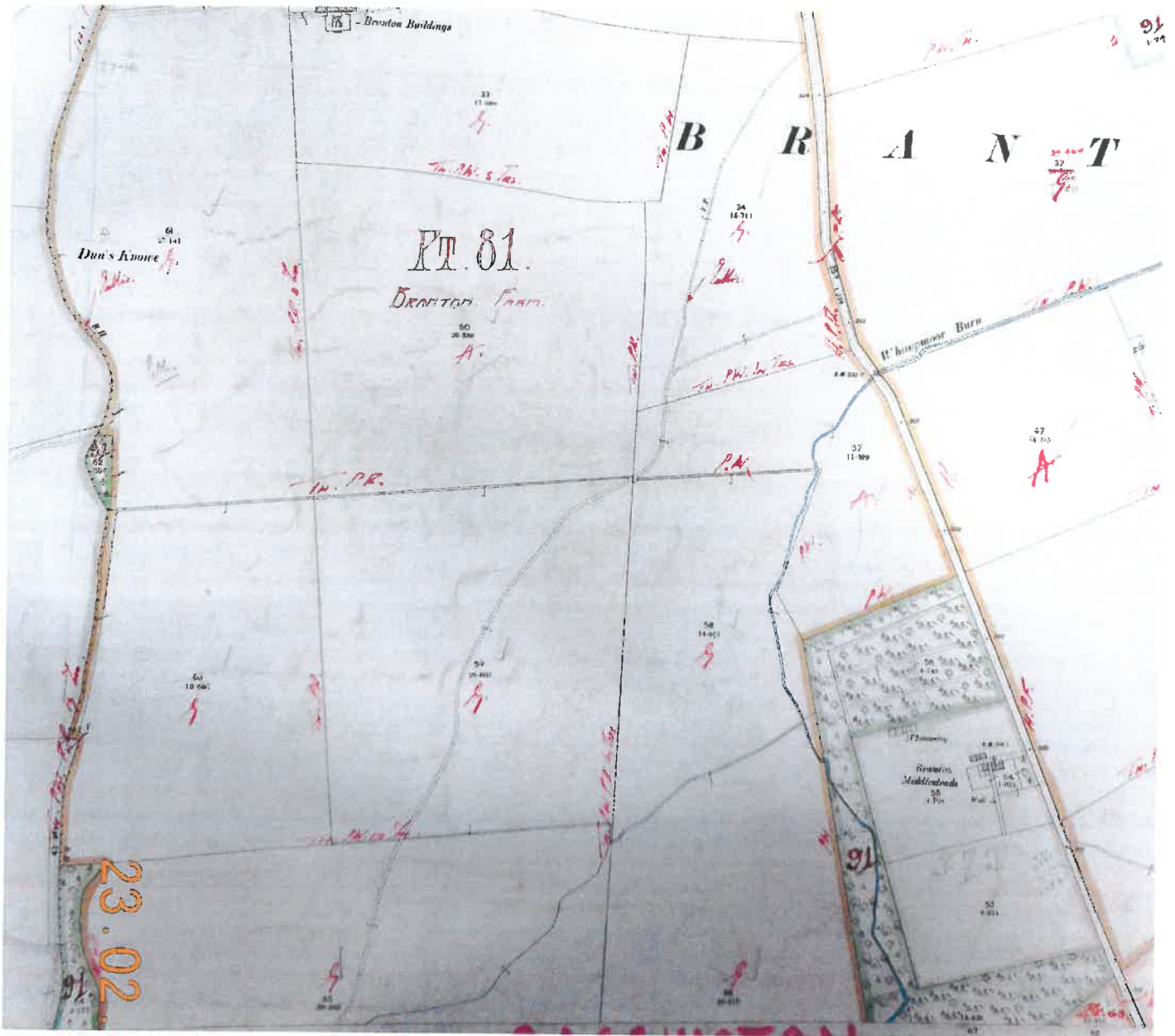
NORTHUMBERLAND

Northumberland County Council

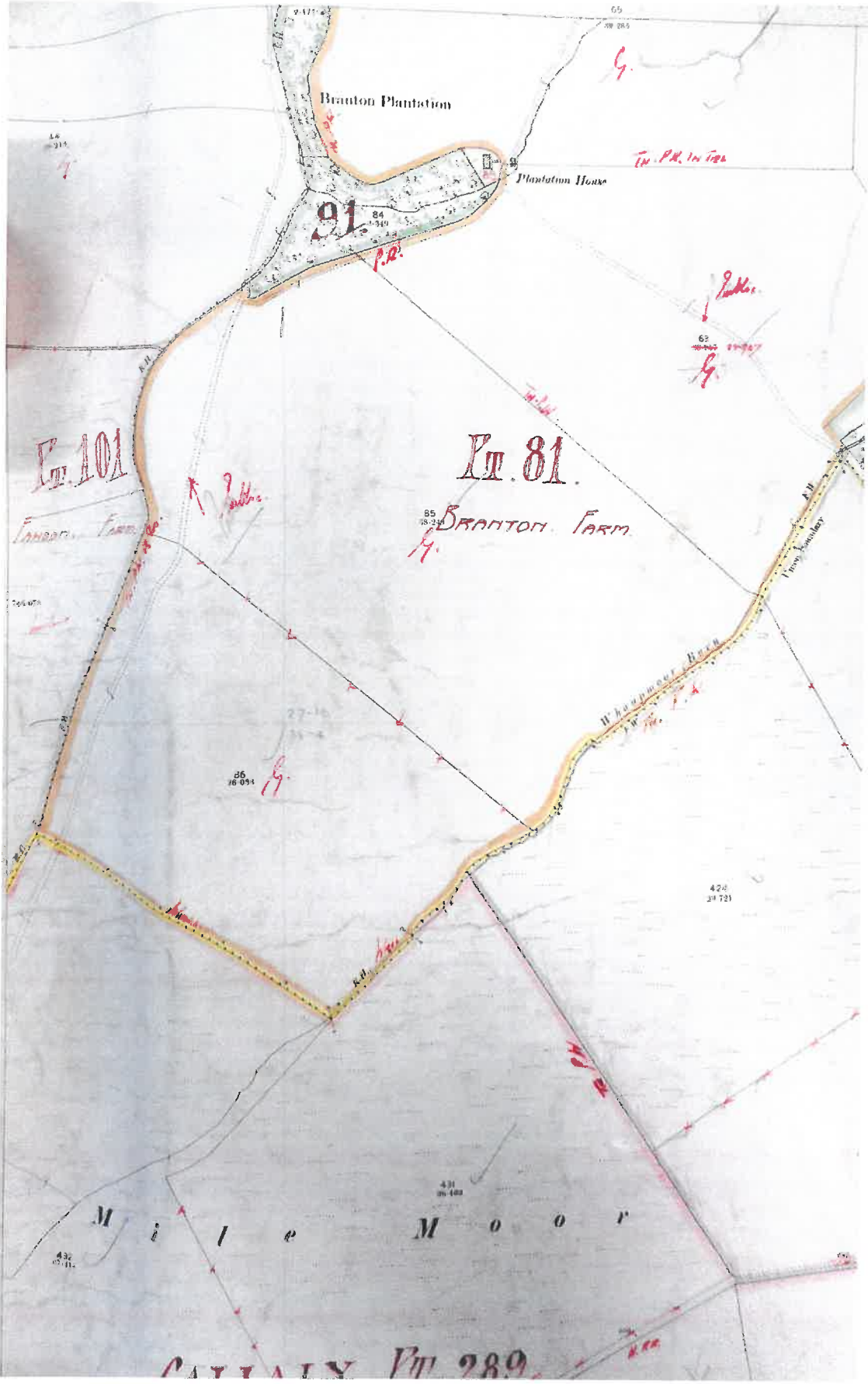
SCALE 1:15,000

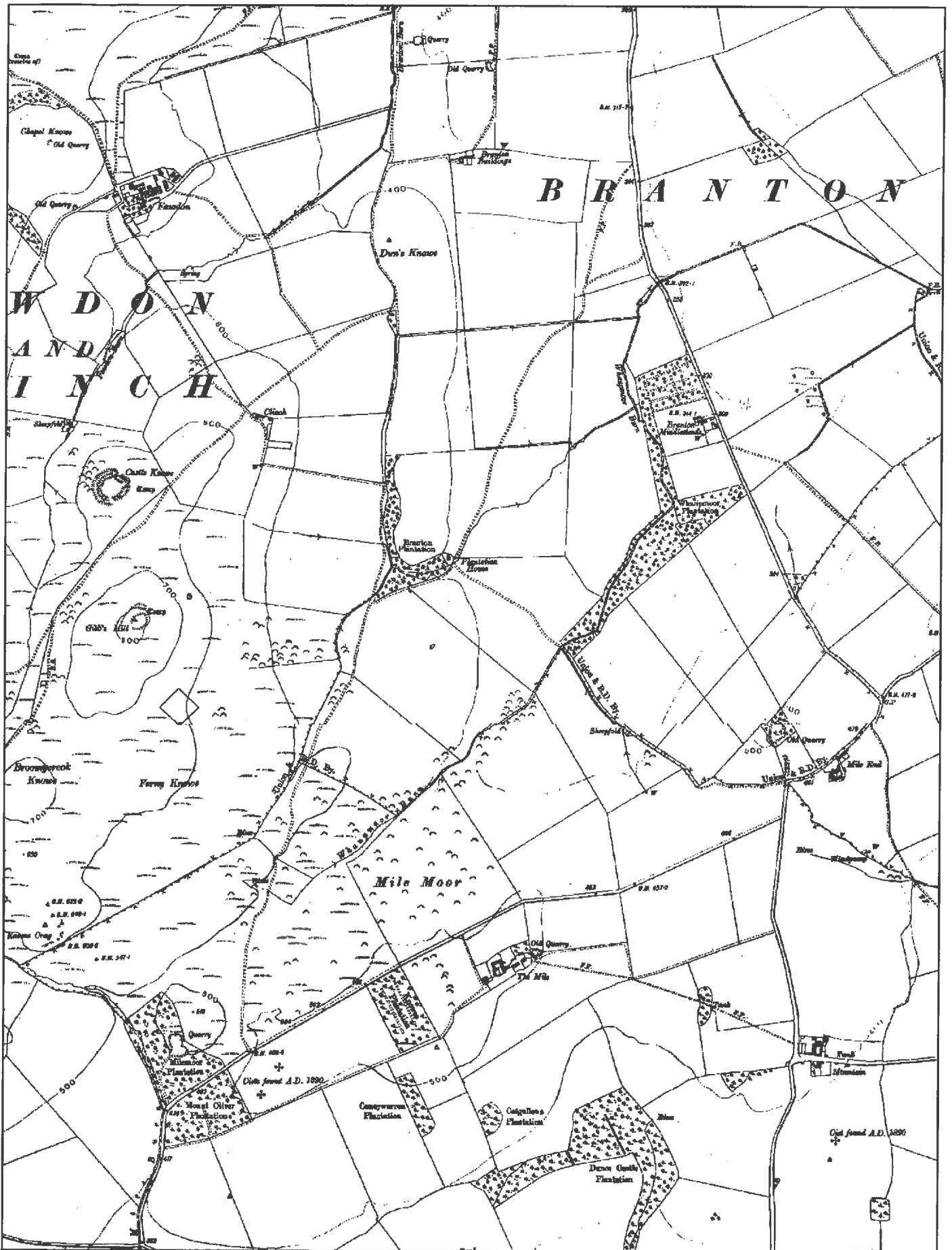
Ordnance Survey 2nd Edition 6" map (1899)

Finance Act 1910 Plan



Finance Act 1910 Plan





NORTHUMBERLAND
Northumberland County Council

SCALE 1:15,000

Ordnance Survey 3rd Edition 6" map (1926)

Glendale RDC Handover Map 1932



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

Parish of BRANTON in the Rural District of GLANDALE

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

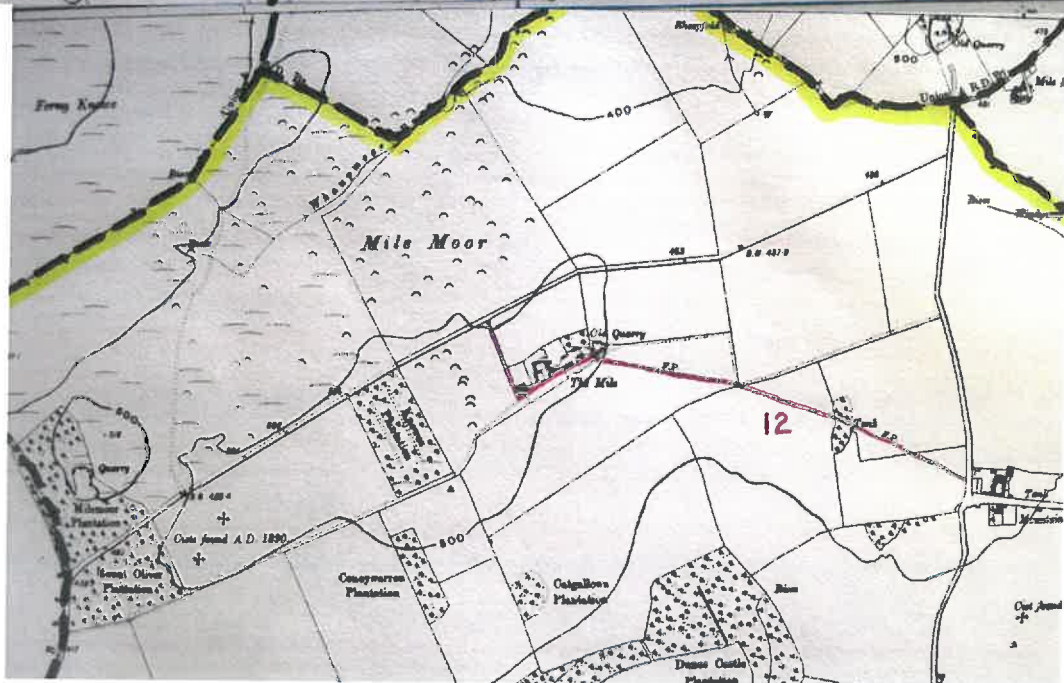
- 1. Number of highway on Map 3
2. Kind of Path (i.e., F.P., B.R.) F.P.
3. Starts at Branton Blad to Hills Moor
4. Name of Path (if any)
5. Is the Path well defined? yes
6. Is the Path metalled? If so, define length
7. If its width can be stated, insert here
8. What is the present condition of the path, stiles, etc.? Field gates gone
9. Is it subject to being ploughed out? No
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known none
11. Grounds for believing the path to be public (if known). e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant Evidence of old inhabitant
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 Capt. Budd. Arkon
15. What maps have been consulted, and where are they deposited?
16. What records have been consulted, and where are they deposited?
17. Any other relevant information.

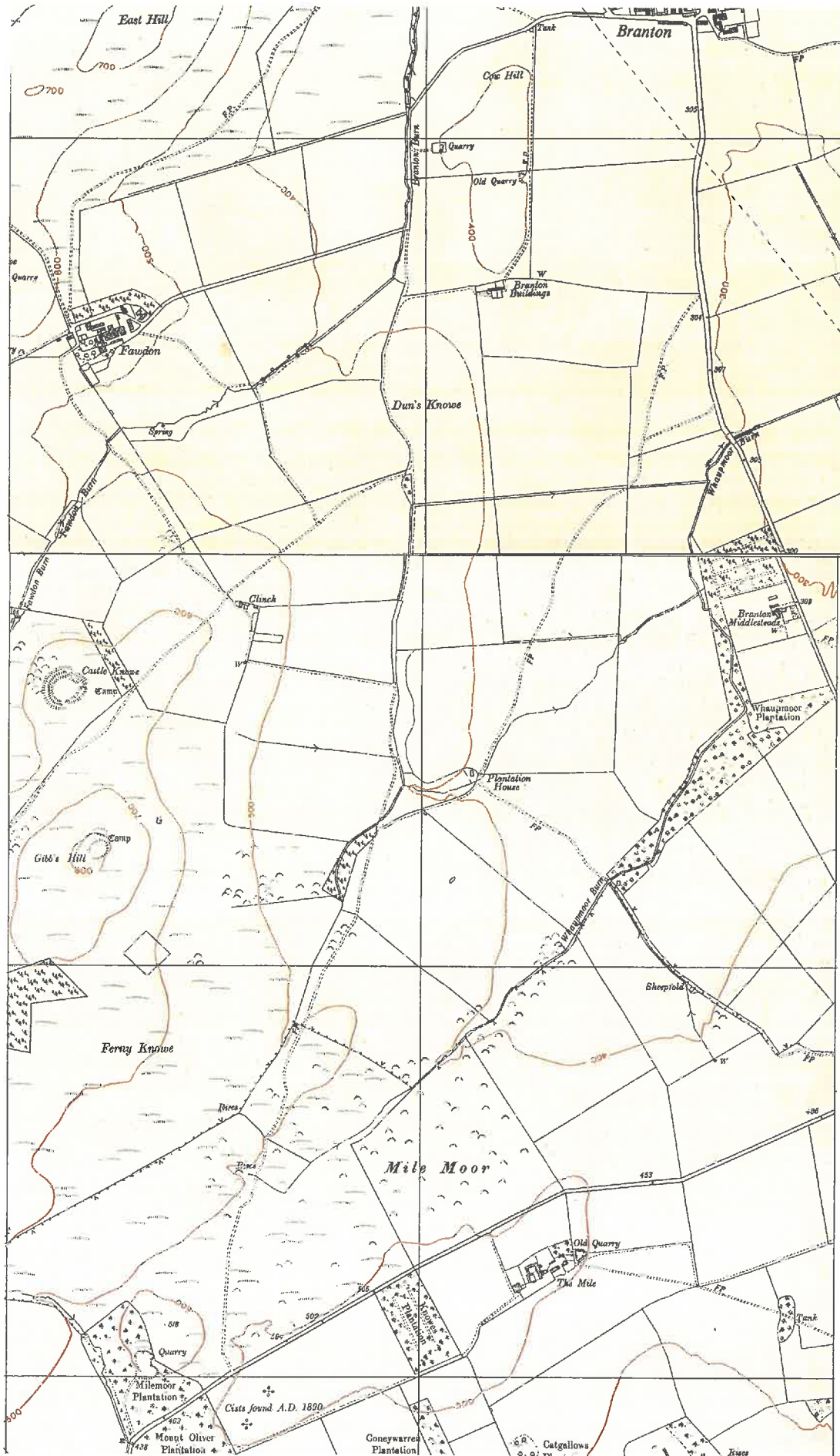
Table with 3 columns: Surveyed by, Address, Dates of Survey. Surveyed by: [Signature], Address: 2 Leamington, Sealmees, Dates of Survey: 2/4/21.

Important :- Sheet No. of Map on which Highway is shown 0.57. 11. N.E. S.F.



Provisional Map





1958 County Road Schedule

BELFORD DIVISION

Unclassified Roads in Glendale Rural District

		Brought Forward
U.1097	Roddamrigg - Roddam Bog Plantation	51.316
	From U.1089 at Roddamrigg House via Horse Close Strip to C.54 at Roddam Bog Plantation.	0.82
U.1098	Branton - Great Ryle	1.20
	From U.1092 1,000 yards south of Branton via Plantation House to the Glendale - Rothbury Urban District Boundary.	
U.1099	Ingram - Fawdon	1.226
	From U.1086 at Ingram via Chapel Knowe to U.1094 at Fawdon and including link to Ingram Mill (240 yards)	
U.1100	Ingram - Prendwick	1.82
	From U.1099 at St. Michael's Church, Ingram southwards to the Glendale - Rothbury Rural District boundary at Bowl Holes.	
U.1103	Amerside Law Farm Road	0.933
	From B.6348 east of Chetton Bridge in a southerly direction to Amersidelaw Farm and including around the Steading (1642 yards)	
U.1104	Broomey Road, Wooler	0.095
	From U.1078 at the Wooler Water Reservoir 168 yards in a north westerly direction.	
	TOTAL.	571.110

1958 County Road Schedule

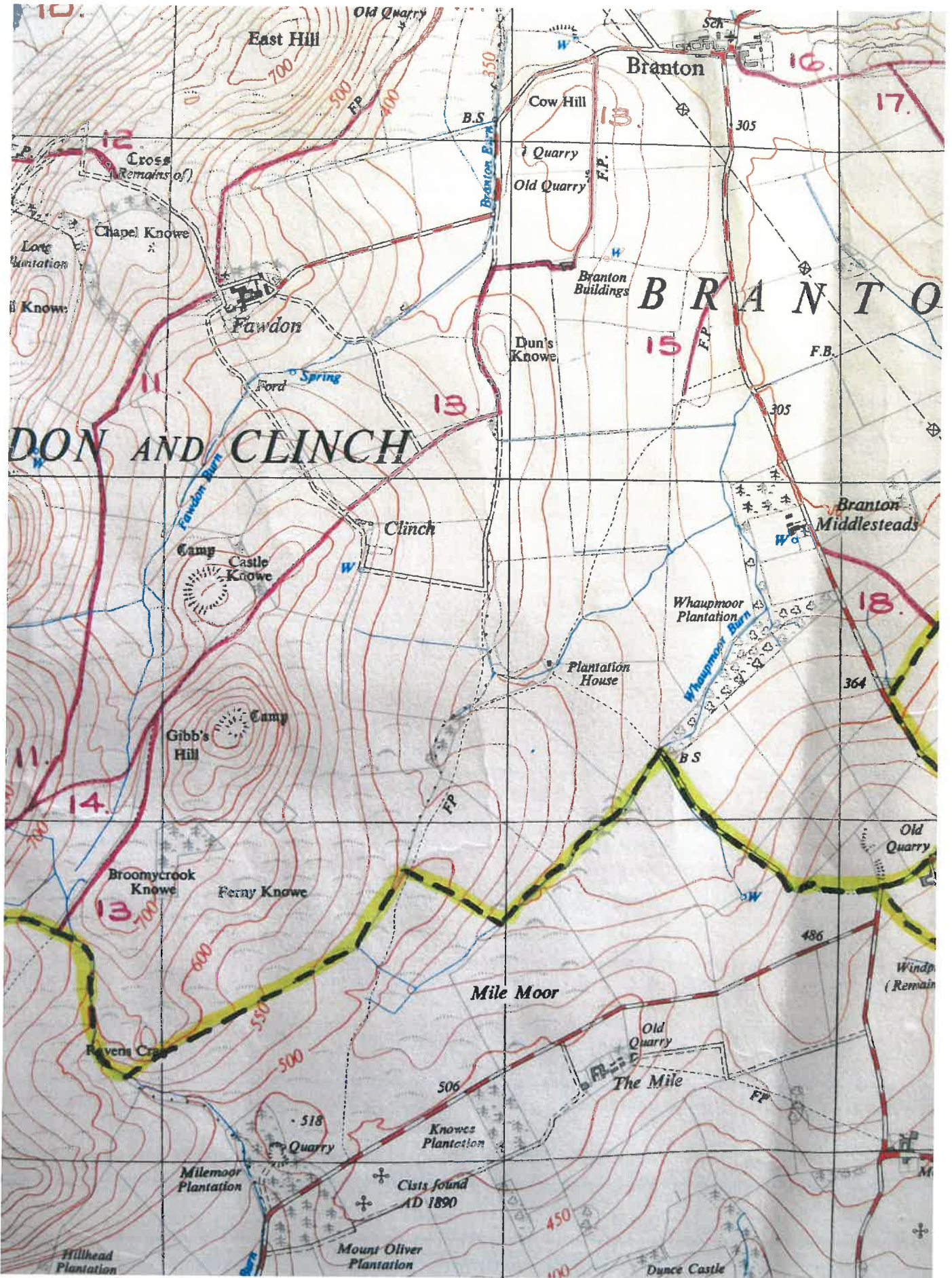
ALNWICK DIVISION

Unclassified Roads in Rothbury Rural District

		Brought Forward	
U.4061	Antons Letch - Great Tosson - Allerdene Road	From B.6341 at Antons Letch via Sweep Road, Ladies Bridge, crossing C.181 at Newtown, linking up with U.4035 at Great Tosson and continuing northwards to its junction with C.181 680 yards east of Allerdene.	62.035 miles
U.4062	Allerdene - Marbon Road	From B.6341 at its junction with C.179 south-eastwards via the Coquet fordway to C.181 at Allerdene.	1.73
U.4063	Howmoor Plantation Road	From C.178 near Whittonlee Quarry via Reynards Lodge to Howmoor Plantation.	1.25
U.4064	Branton - Great Ryle	From the Glendale R.D. boundary at Mile Moor to C.169 at Milemoor Plantation.	0.34
U.4065	Ingram - Prendwick	From the Glendale - Rothbury R.D. boundary at Bowl Holes Shottons Dene to C.169 Prendwick Cottage.	0.54
U.4066	Wagtail Road, Rothbury	From B.6342 200 yards east of Rothbury Station south-eastward to bottom of west ramp to railway bridge on road to Wagtail Farm.	0.51
U.4070	Scottish Ford Road	From B.6342 at Rothbury Railway Station via the Scottish Ford to B.6341	0.55
U.4071	Jubilee Crescent Rothbury	Off Croft Road, U.4059 for a distance of 399 yards	0.13
U.4072	Physic Lane, Thropton	From B.6341 130 yards east of the Cross Keys Public House, Thropton in a north-easterly direction for 200 yards.	0.227
U.4073	Road to Low Trewitt.	From U.4026 at Low Trewitt Bridge northwards to gate at Low Trewitt Farm.	0.114
			0.272
		TOTAL	67.998 miles

1st January, 1958

Original Definitive Map



NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1. ~~Source~~
Urban District
Rural District **GLENDALE**

2. Parish **INGRAM**

3. Number of Footpath on Map **15** ✓

4. Name of Path

5. Kind of Path (i.e. FP/BR) **F.P.**

6. General Description of Path **From the Branton - Glanton Pike road**
..... **north of Branton Middle Steads in a south-westerly direction to the**
..... **Branton - Great Ryle Road.**
.....
.....
.....

7. Other relevant information

.....
.....
.....
.....
.....

1964 County Road Schedule

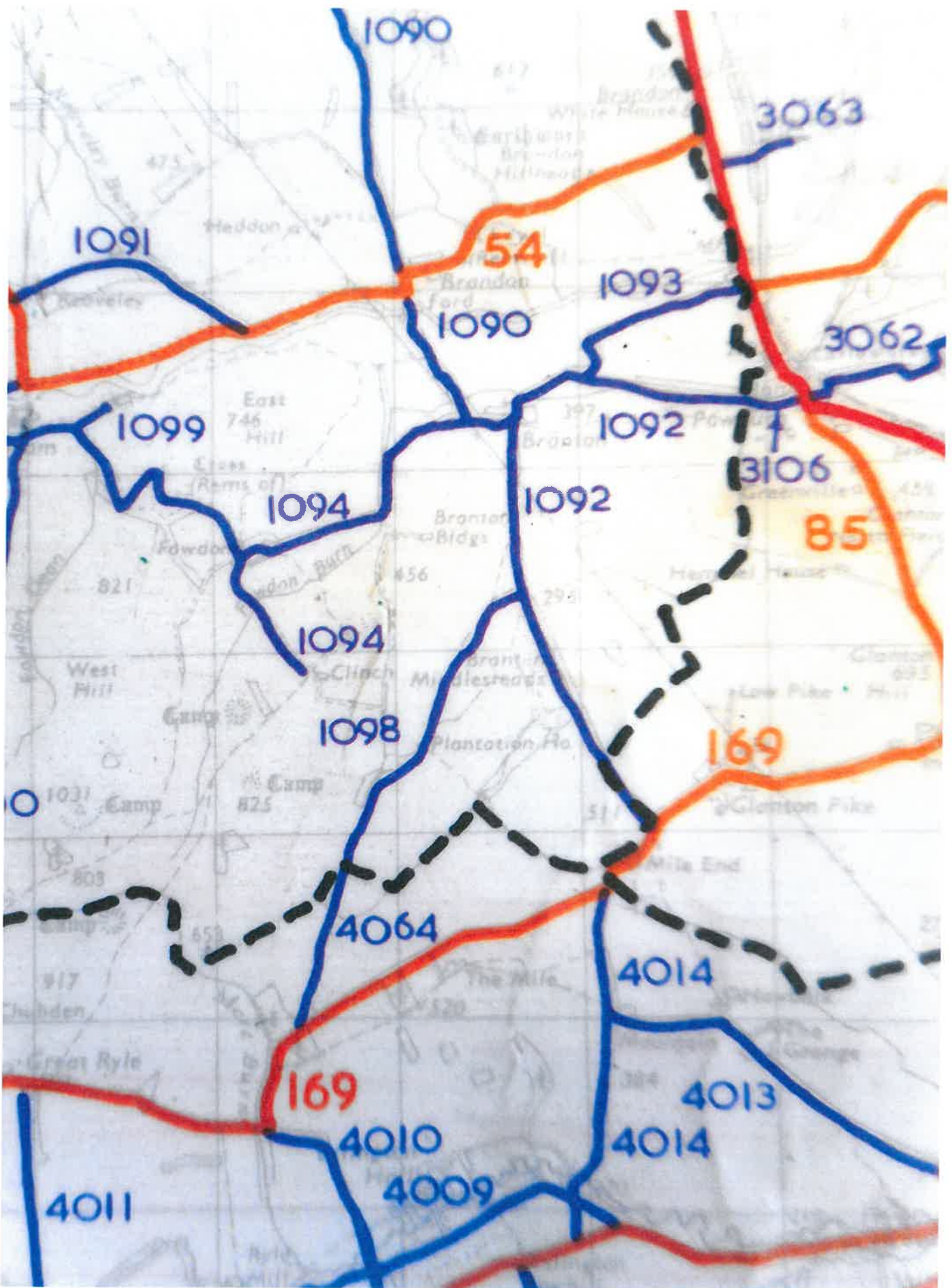
Route No.	Name of Road.	Description.	Responsible Division or Authority.	Mileage.	Total Mileage.
U.1092	Powburn-Branton-Glanton Pike.	From Rural District boundary at Breamish House, Powburn, near A.697 via Branton to C.169 at Glanton Pike. (Continues in Alnwick R.D. as U.3106)	Wooler.	2.33	2.33
U.1093	Branton-Hedgeley Station.	From U.1092 at Branton to A.697 at Hedgeley Station.	Wooler.	0.72	0.72
U.1094	Clinch Road.	From U.1090 near Branton via Fawdon to Clinch.	Wooler.	1.62	1.62
U.1095	Amersidelaw Road.	From C.43 800 yards north of Chillingham Post Office to Ford at Hollow Burn on road to Amersidelaw.	Wooler.	0.28	0.28
U.1096	Old Bewick Farm Road.	From C.43 at Old Bewick farm north-eastwards for 320 yards to gateway on to Bewick Hill.	Wooler.	0.06	0.06
U.1097	Reddamsigg Reddam-Beg Plantation	From U.1089 at Reddamsigg House via Horse Close Strip to C.54 at Reddam-Beg Plantation. Not built as from Jan. 1966.	Wooler.	0.62	0.62
U.1098	Branton-Great Ryle.	From U.1092 1,000 yards south of Branton via Plantation House to the Rural District boundary near Great Ryle. (Road continues in Rothbury Rural District as U.4064).	Wooler.	1.20	1.20
U.1099	Ingram-Fawdon.	From U.1086 at Ingram via Chapel Knowe to U.1094 at Fawdon and including link to Ingram Mill, (240 yards).	Wooler.	1.23	1.23
U.1100	Ingram-Prendwick.	From U.1099 at St. Michael's Church, Ingram, southwards to the Rural District boundary at Bowl Holes, near Prendwick. (Road continues in Rothbury Rural District as U.4065).	Wooler.	1.82	1.82
U.1101	Lowick Housing Estate Road.	From B.6353 at Lowick northwards into Housing Estate for 68 yds.	Wooler.	0.04	0.04
U.1102	Ford Village Roads.	Roads in Ford Village to the north-west of B.6353.	Wooler.	0.46	0.46
U.1103	Amerside Law Farm Road.	From B.6248 east of Chatton Bridge in a southerly direction to Amerside Law Farm and including around the Steading (1,642 yds).	Wooler.	0.93	0.93
U.1104	Broomey Road, Wooler.	From U.1078 at the Wooler Water Reservoir 168 yards in a north-westerly direction.	Wooler.	0.10	0.10

1964 County Road Schedule

- 93 -

<u>Route No.</u>	<u>Name of Road.</u>	<u>Description.</u>	<u>Responsible Division or Authority.</u>	<u>Mileage.</u>	<u>Total Mileage.</u>
U.4060	Haw Hill and Hillside Road (Part).	From Gravelly Bank, U.4059, eastwards to 'Heather Lea' and including link to Cove Cottage, (1,680 yards).	Alnwick.	0.91	0.91
U.4061	Antons Letch-Great Tosson-Allerdene Road.	From B.6341 at Antons Letch via Sweep Road, Ladies Bridge, crossing C.181 at Newtown, linking up with U.4035 at Great Tosson and continuing northwards to its junction with C.181 680 yards east of Allerdene.	Alnwick.	1.73	1.73
U.4062	Allerdene-Warton Road.	From B.6341 opposite its junction with C.179 south-eastwards via the Coquet Fordway to C.181 at Allerdene.	Alnwick.	1.25	1.25
U.4063	Howmoor Plantation Road.	From C.178 near Whittonlea Quarry via Reynards Lodge to Howmoor Plantation.	Alnwick.	0.34	0.34
U.4064	Great Ryle-Branton.	From C.169 at Milemoor Plantation north-eastwards to the Rural District boundary south of Plantation House. (Continues in Glendale Rural District as U.1098).	Alnwick.	0.54	0.54
U.4065	Ingram-Prendwick.	From C.169 at Prendwick Cottage northwards to the Rural District boundary. (Continues in Glendale Rural District as U.1100).	Alnwick.	0.81	0.81
U.4066	Wagtail Road, Rothbury.	From B.6342 200 yards east of Rothbury Station south-eastwards to bottom of west ramp to railway bridge on the road to Wagtail Farm.	Alnwick.	0.55	0.55
U.4067	Church Street, Longframington.	From A.697 at Longframington Schools via north and west sides of St. Laurence's Church to C.188.	Morpeth.	0.08	0.08
U.4068	Monkridge-Soppit.	From A.696 at Monkridge northwards to the Rural District boundary at the ford over Elsdon Burn. (Continues in Bellingham Rural District as U.5065).	Morpeth.	0.58	0.58
U.4069	Elsdon Village Roads. (See also U.4082 and U.4085).	From B.6341 at Checkgate via School to Castlegate and returning southwards along east side of St. Cuthbert's Church to rejoin B.6341 opposite junction with C.186, (357 yards). Also from Bird-in-Bush Inn, crossing C.186, to Pinfold, (160 yards).	Morpeth.	0.30	0.30

Extract from the Council's 1964 Highways Map



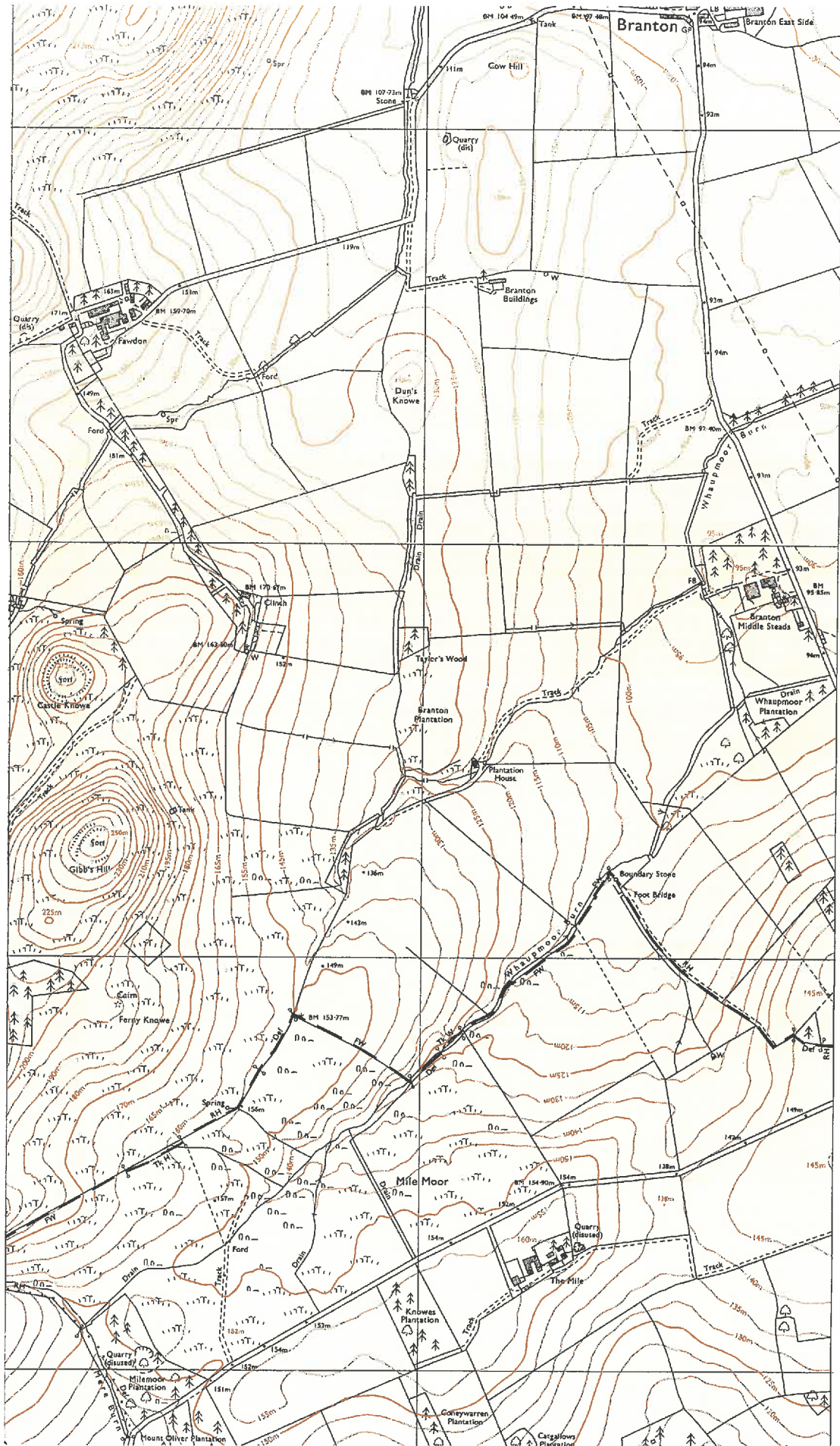
1974 County Road Schedule

Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
U.1091	Reaveley Cottage Road.	From C.54 at Reaveley (NU.019170) eastwards to rejoin C.54 west of Brandon (NU.032168).	Wooler Division		0.90
U.1092	Powburn-Branton-Glanton Pike.	From Alnwick District boundary at Breamish House, Powburn (NU.059163) westwards via Branton thence southwards to C.169 at Glanton Pike. (NU.053141). (Continues in Alnwick District as U.3106)	Wooler Division		2.33
U.1093	Brantox.-Hedgeley Station.	From U.1092 at Branton (NU.051165) north-eastwards to join A.697 opposite junction C.82 (NU.059170).	Wooler Division		0.72
U.1094	Clinch Road.	From U.1090 near Branton (NU.044163) south-westwards via Fawdon to Clinch (NU.035149).	Wooler Division		1.62
U.1095	Hollowburn Ford Road.	From C.43 some 800 yards north of Chillingham Post Office (NU.057268) eastwards to Ford at Hollow Burn on road to Amersidelaw Moor. (NU.061268).	Wooler Division		0.28
U.1096	Old Bewick Farm Road.	From C.43 at Old Bewick farm (NU.066215) north-eastwards for 320 yards to gateway on to Bewick Hill.	Wooler Division		0.06
U.1097.		Not allocated to any road.			
U.1098	Brantox.-Great Ryle.	From U.1092 some 1,000 yards south of Branton (NU.047153) south-westwards via Plantation House to the Alnwick District boundary near Great Ryle. (NU.037138) (Road continues in Alnwick District as U.4064).	Wooler Division		1.20
U.1099	Ingram-Fawdon.	From U.1086 at Ingram (NU.017162) eastwards and south-eastwards via Chapel Knowe to U.1094 at Fawdon (NU.031156) and including link to Ingram Mill, (240 yards).	Wooler Division		1.23
U.1100	Ingram-Frendwick.	From U.1099 at St. Michael's Church, Ingram (NU.020162) southwards to the Alnwick District boundary at Bowl Holes, near Frendwick (NU.009135) (Road continues in Alnwick District as U.4065).	Wooler Division		1.82

1974 County Road Schedule

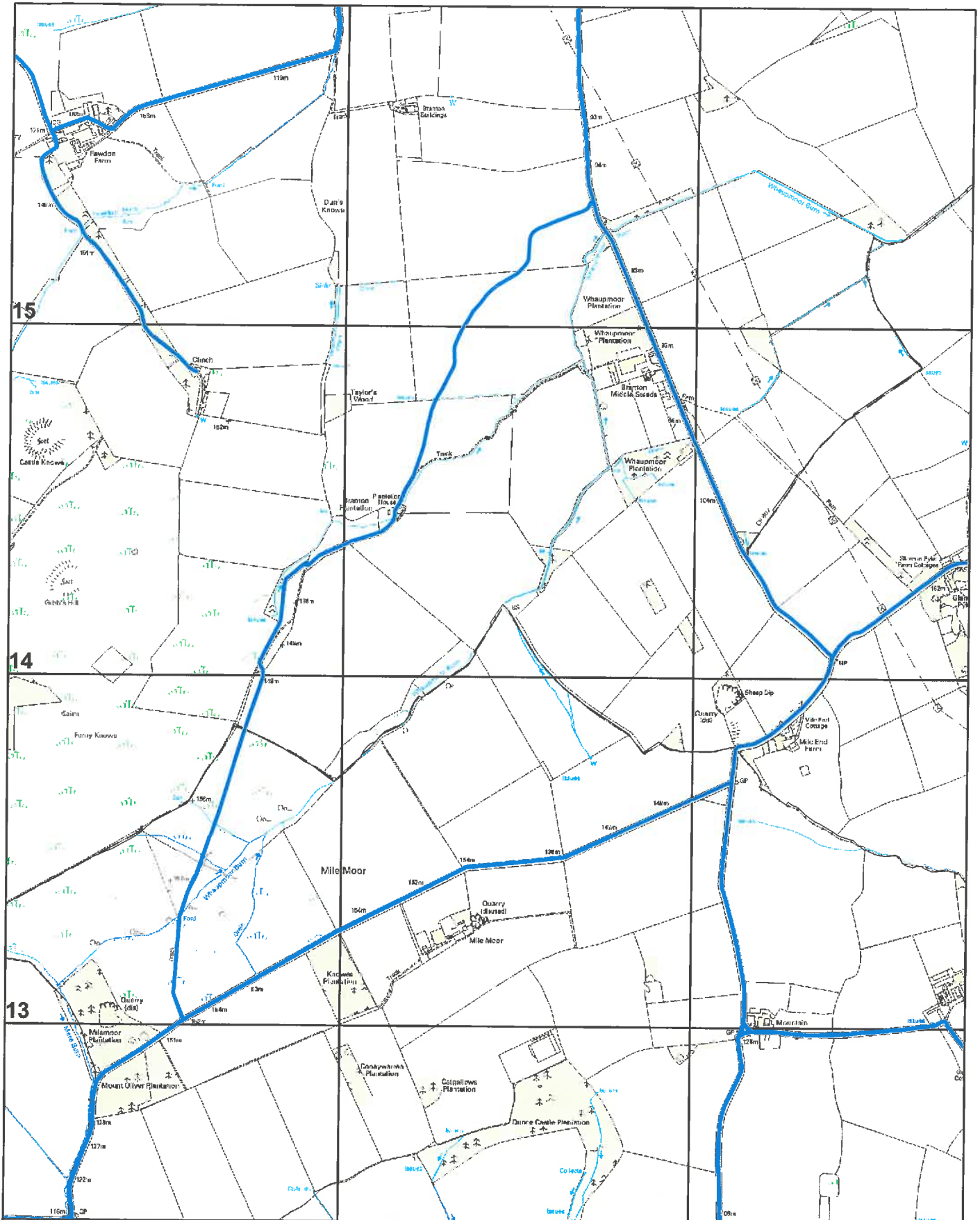
Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
U.4063	Howmoor Plantation Road.	From C.178 near Whittonlea Quarry (NU 065106) eastwards and southwards via Reynards Lodge to Howmoor Plantation. (NU 067104).	Alnwick Division.		0.34
U.4064	Great Ryle-Branton.	From C.169 at Milemoor Plantation (NU 034129) north-eastwards to the Berwick District boundary south of Plantation House (NU 087138). (Continues in Berwick District as U.1098).	Alnwick Division.		0.54
U.4065	Ingram-Prendwick.	From C.169 at Prendwick Cottage (NU 004124) northwards to the Berwick District boundary at NU 009135. (Continues in Berwick District as U.1100).	Alnwick District.		0.81
U.4066	Wagtail Road, Rothbury.	From B.6342 200 yards east of the former Rothbury Station (NU 064016) south-eastwards to bottom of west ramp to railway bridge on the road to Wagtail Farm. (NU 069010).	Alnwick Division.		0.55
U.4067	Church Street, Longframlington.	From A.697 at Longframlington Schools via north and west sides of St. Laurence's Church to C.188. (NU.131010).	Morpeth Division.		0.08
U.4068	Monkridge Soppit.	From A.696 at Monkridge (NY 914917) northwards to the Tynedale District boundary at the ford over Elsdon Burn. (NY 917926). (Continues in Tynedale District as U.5065).	Morpeth Division.		0.58
U.4069	Elsdon Village Roads. (See also U.4082 and U.4085).	From B.6341 at Checkgate via School to Castlegate and returning southwards along east side of St. Cuthbert's Church to rejoin B.6341 opposite junction with C.186, (357 yards). Also from Bird-in-Bush Inn, crossing C.186, to Pinfold, (160 yards). (NY 936933).	Morpeth Division.		0.30

1:10,000 O.S. Map
1979



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
U1094		
	U1092 JCT TO U1090 JCT	198
	U1099 JCT TO CLINCH	877
	<i>Total length for U1094</i>	2,787
U1095		
	C43 JCT TO HOLLOWBURN FORD	459
	<i>Total length for U1095</i>	459
U1096		
	C43 JCT TO GATEWAY ONTO BEWICK HIL	108
	<i>Total length for U1096</i>	108
U1098		
	DISTRICT BOUNDARY U4064 TO U1092 JC	1,959
	<i>Total length for U1098</i>	1,959
U1099		
	U1099 JCT TO INGRAM MILL	214
	U1094 JCT TO INGRAM MILL LINK	1,556
	INGRAM MILL LINK TO U1100 JCT	340
	U1100 JCT TO U1086 JCT	272
	<i>Total length for U1099</i>	2,383
U11		
	C3 JCT NEAR LOAN END TO C3 JCT	3,449
	<i>Total length for U11</i>	3,449
U110		
	OSBORNE CRESCENT FOOTWAY	33
	IVINSON ROAD	247
	IVINSON ROAD	43
	TWEEDSIDE INDUSTRIAL ESTATE	105
	TUNNEL UNDER RAILWAY OFF BACK OSB	64



Northumberland
Northumberland County Council

**Network Management
Information System**

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

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).

Drn:	Date:	Scale:
AB	May 2017	1:15,000