

RIGHTS OF WAY COMMITTEE

12 September 2017

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

ALLEGED PUBLIC BRIDLEWAYS Nos 17 & 40 PARISHES OF AKELD & WOOLER

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 bridleway rights over a route between existing Public Bridleway No 1 (alleged Restricted Byway No 1) east of Commonburn House and existing Public Footpath No 6 (alleged Restricted Byway No 6) south-east of Tom Tallon's Crag.

Recommendation

It is recommended that the Committee agree that there is sufficient evidence to indicate that public bridleway rights have been reasonably alleged to exist over the route M-Y-G and that this route be included in a future Definitive Map Modification Order as public bridleways.

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. PUBLIC EVIDENCE

- 2.1 In 2014, officers became aware of inclosure award evidence which appeared to indicate the existence of a public bridleway over an 850 metre long route between existing Public Bridleway No 1 (Parish of Wooler) east of Common Burn House, and existing Public Footpath No 6 (Parish of Akeld), south-east of Tom Tallon's Crag. Both existing Public Bridleway No 1 and existing Public Footpath No 6 are the subject of separate proposals which could see these two paths being upgraded to restricted byway status.
- 2.2 In July 2014, the Council consulted known owners and occupiers of the land, the parish councils, path user organisations and the local County councillor regarding the alleged public right of way.

3. REBUTTAL / LANDOWNER EVIDENCE

- 3.1 By letter, dated 2nd April 2015, Bond Dickinson responded to the consultation on behalf of the Lilburn Estate, stating:

“Application to modify the Definitive Map and Statement
Application to add a Public Bridleway from points M to Y to G in the Parishes of Wooler (number 40) and Akeld (number 17)

“As you know, we act on behalf of the Lilburn Estate. We refer to the above mentioned claims where the proposal is to add to the definitive map and statement a public bridleway. The claimed route, which joins other claimed routes, run from point M to point Y and then to point G.

“We note that it is stated that the proposed claim is supported by documentary evidence primarily being the Wooler and Humbleton Common Inclosure Award of 1869 and Ordnance Survey Maps from 1860's and thereafter.

“We confirm that we have had sight of the inclosure Award and Ordnance Survey Maps from 1860's and thereafter.

"First, we refer to the Inclosure Award. It is not clear from this plan that the route shown is not the the same route as claimed. The first edition of the OS Map does show a route however, we refer to our letters of today's date in relation to the arguments in relation to the weight to be given to Ordnance Survey Maps and rather than repeat those arguments here refer you to those. However, we can confirm that the second edition OS map in any event does not show the claimed route.

"No user evidence has been suggested or referred to in the information provided by the Council. We therefore submit that the Council should be put to proof as to the above claims and submit that the test to add a public bridleway has not been met.

"Please advise if there is any further evidence upon which the Council relies in respect of the above application to modify the definitive map and statement, or, alternatively please confirm that these particular claims will not be pursued."

4. CONSULTATION

4.1 In July 2014, the Council carried out a consultation with the Parish Councils, 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 Akeld Bridleway 17 We would strongly support this addition but would like to suggest a different line though appreciate it may not have historic documentary evidence. Further to the west there is a clear track from NT 940 268 (in Wooler parish) to 941 275 where it joins FP 6, running on the west side of the old plantation boundary. We have used it many times over a considerable number of years.

"Parish of Wooler Bridleway 40 We would support this in principle but would suggest a different line which is currently used. See Akeld 17.

4.3 By letter, dated 28th October 2014, Mr D Roberts responded to the consultation, on behalf of the Cyclists' Touring Club, stating:

"I attach comments and evidence which I judge to be relevant on behalf of Cyclists Touring Club.

"To clarify locations I attach annotated copies of your plans. These are confined to routes of which I have knowledge. Where I have no

knowledge of a route or where I know it is surfaced with tarmac and therefore suitable for ALL TRAFFIC I have omitted any comment.

“Where an obstruction has been encountered I have endeavoured to provide as accurate date as possible.

“Routes traced in red have been cycled without problem. [The route of alleged Public Bridleways Nos 17 and 40 was NOT one of the ones highlighted by Mr Roberts].

“I have commented on issues where I consider an omission has been made in your consultation.

“No distinction has been made between Restricted and All Traffic Byways.”

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

“Wooler Parish

Proposed addition of public bridleway 40

This route shown on map 22 links two alleged restricted byways and so would appear to be a useful addition to the network providing greater choice for users. It is described in the inclosure award as an ancient public bridle road but there is no evidence that it has been used in recent years but lack of use, probably due to the nature of the terrain, does not result in loss of rights. At its north end it joins the ‘Yeavinger and Humbleton road’ as described in the inclosure award, which was a major route across the hills in the nineteenth century.

“The BHS supports the proposal of NCC to record this ancient route on the definitive map in the hope that one day its line on the ground will eventually become useable by all legitimate users.”

- 4.5 By email, on 6th November 2014, Ms S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“Akeld Parish

Alleged Public Bridleway 17

“This route shown on plan 22 is the continuation of alleged public bridleway 40 Wooler which was supported by evidence from an inclosure award, as is this section. It leads to the alleged restricted byway discussed above which is also supported by evidence from an inclosure award. This evidence gives strength to all these proposals as inclosure awards were made under Acts of Parliament under the supervision of commissioners and were open to public scrutiny at the time.

“So the BHS supports NCC in its efforts to correct the record of public routes in this area which will also benefit more members of the public who come to this area to enjoy access to the hills.”

5. DOCUMENTARY EVIDENCE

- 5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions 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 track resembling the route of the alleged public bridleways.

1820 Fryer's County Map

There is no evidence of a track resembling the route of the alleged public bridleways.

1820-32 Cary's Map

There is no evidence of a track resembling the route of the alleged public bridleways.

1828 Greenwood's County Map

There is some evidence of a track approximating to the route of the alleged public bridleways.

1864/5 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed track over the route of the alleged public bridleways.

1869 Wooler & Humbleton Common Inclosure Award

The Wooler section of the alleged public bridleways is clearly shown on the Award map. It is labelled as "Ancient Public Bridle Path".

1899 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a track resembling the route of the alleged public bridleways.

1924 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a track resembling the route of the alleged public bridleways.

1957 Ordnance Survey Map: Scale 1:10,560

There is no evidence of a track resembling the route of the alleged public bridleways.

1978/9 Ordnance Survey Map: Scale 1:10,000

There is no evidence of a track resembling the route of the alleged public bridleways.

- 5.2 The public bridleway is not set out in the Wooler & Humbleton Common Inclosure Award (1869). Nevertheless, with the Award text it states:

“And I further declare that I have diverted or altered the Public Road or way in the said parish of Wooler called the Wooler and Common Burn Road between the junction of the Common Burn and Humbleton Road at the point marked F on the said Map and the junction of the **Ancient Public Bridle Road** at the point marked K2 on the said Map and in lieu thereof I have set out the Public Roads hereinafter mentioned between the points marked F and K and K and K2 on the said Map.

6. SITE INVESTIGATION

- 6.1 The route has not been walked. It has been viewed from points G, Y and M. From these points there was no obvious sign of any path or track across the moorland.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In August 2017, a copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments. No additional comments have been received.

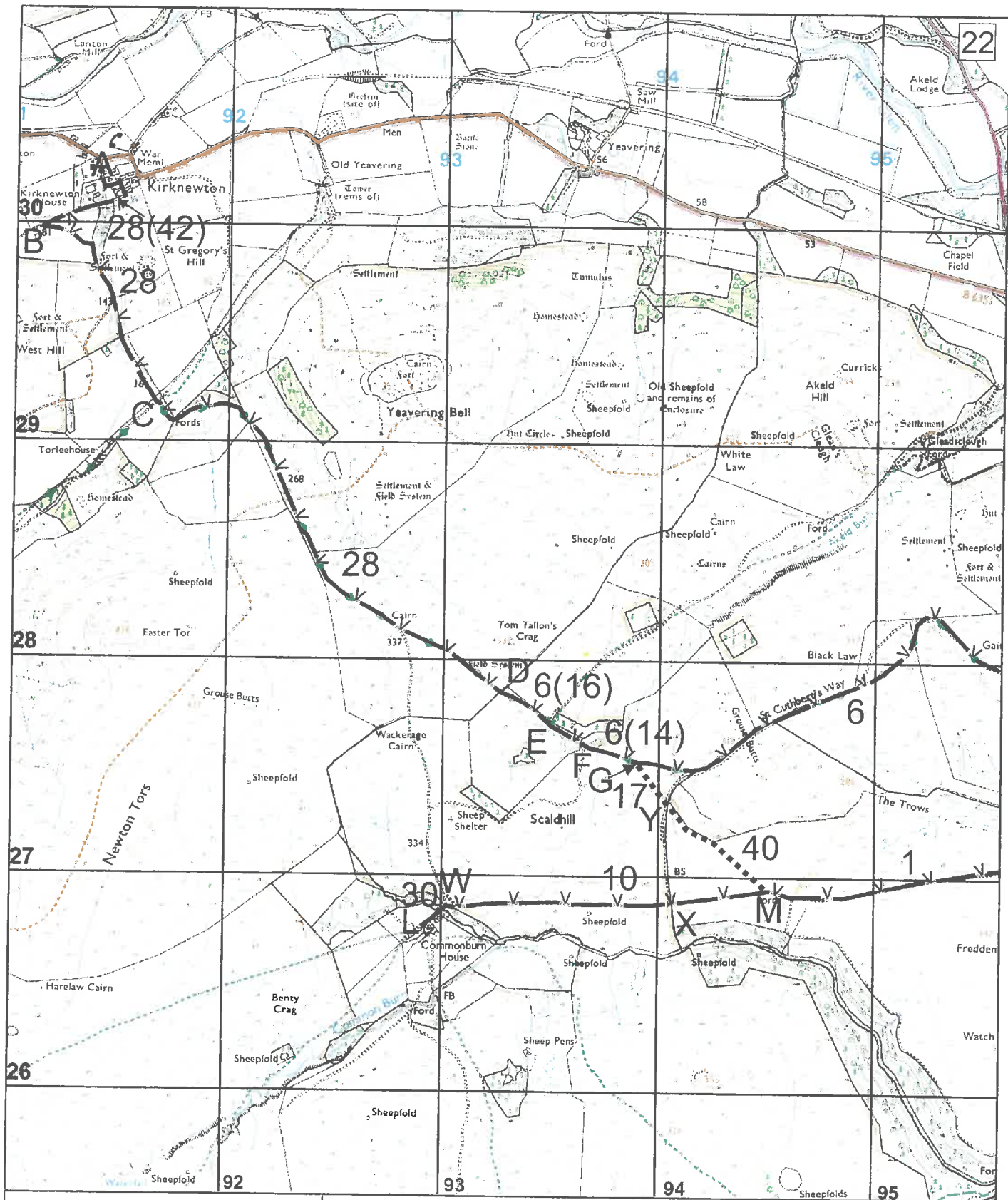
8. DISCUSSION

- 8.1 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 (or one resembling it) is identified on Greenwood's County Map of 1828. It is clearly shown as a path or track on the 1st Edition Ordnance Survey map of c.1864/5. It is not shown on any of the other County maps or on any of the Ordnance Survey maps produced after the 1st Edition.
- 8.5 The main piece of evidence supporting the existence of a public bridleway is the Wooler and Humbleton Common Inclosure Award of 1869. This makes clear reference to an "Ancient Public Bridle Road" which the Award map itself clearly depicts on the same alignment as the track / path shown on the Ordnance Survey 1st Edition Map of c.1864/65. Whilst the Ordnance Survey map shows the whole route of the alleged public bridleway, the Inclosure Award map just shows the Wooler section (the Akeld section lying outside of the area of land being inclosed). Given that the Ordnance Survey map was published as little as 5 years before the Inclosure Award, it is reasonable to assume that Akeld continuation shown on that map is, similarly, part of the "ancient public bridle road".
- 8.6 In the absence of evidence that procedures to extinguish the public bridleway were carried out, any rights which previously existed must be presumed still to exist. In law, the maxim is 'once a highway, always a highway'.
- 8.7 Bond Dickinson has again dismissed the evidential value of the 1st Edition Ordnance Survey map, although they do appear to acknowledge that it does indeed show the alleged bridleway route. The Ordnance Survey map shows that what physically existed at the time of the survey. The Council has always accepted that this does not mean this route was necessarily a public right of way. Bond Dickinson has indicated that they are not convinced that the route of the ancient public bridleway shown on the Inclosure Award is the same as the alleged public bridleway being consulted upon now. They have made no other comment regarding the Inclosure Award. This is taken to mean that, subject to this alignment issue, they would accept the existence of a public bridleway if it is identified in the Inclosure Award. Officers are confident that the alignment of the ancient public bridleway shown on the Inclosure Award map is the same as the route shown on the 1st Edition Ordnance Survey map, and the same as the Wooler section of alleged public bridleway depicted on the July 2014 consultation plan.
- 8.8 From the historical evidence available, the alleged public bridleway route would appear to have, at one time, formed a link between the Wooler - Common Burn road and the Humbleton - Kirknewton road to the north. Although the route subsequently appears to have fallen into disuse (and was



Northumberland

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

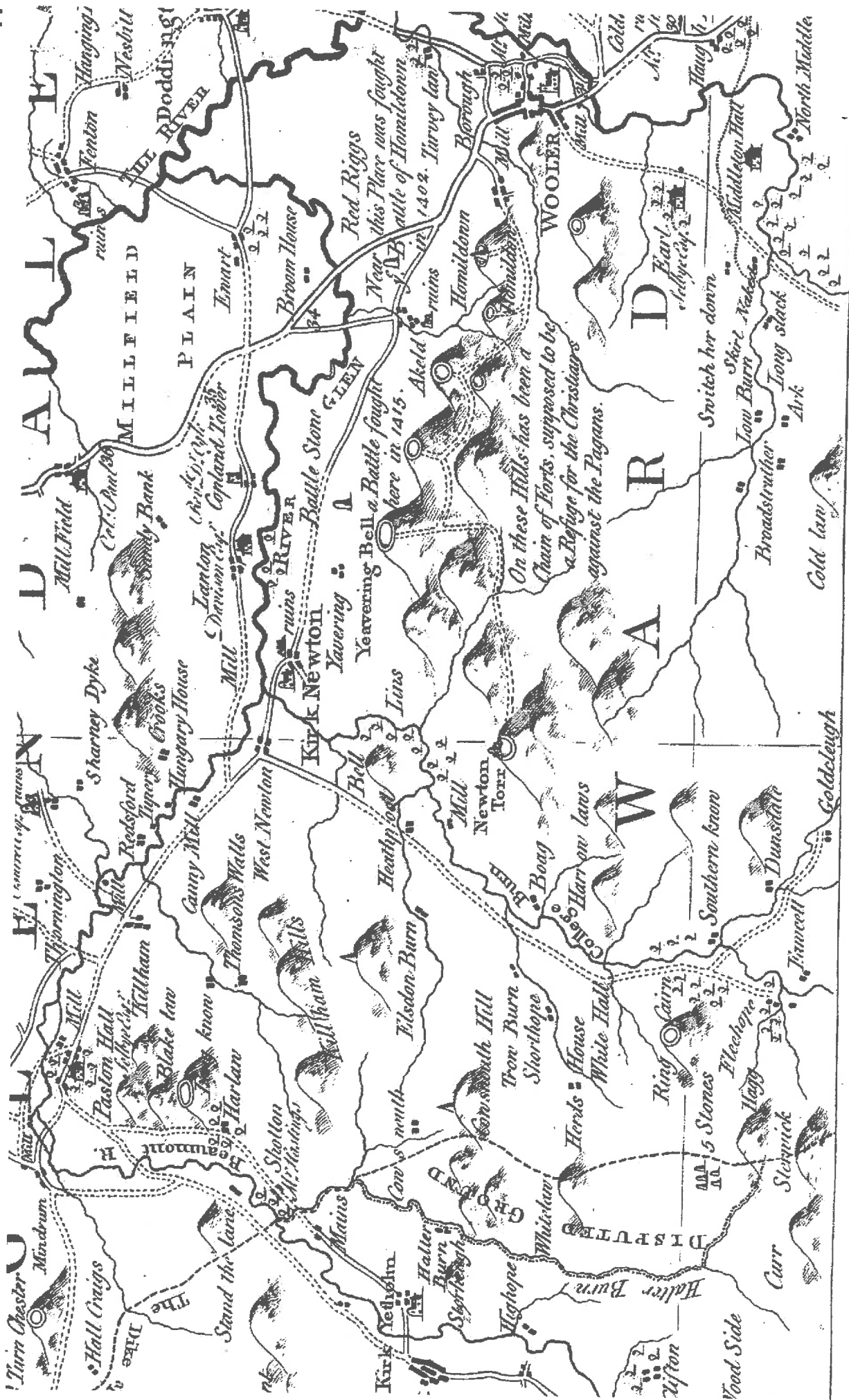
Wildlife and Countryside Act 1981 Public Rights of Way

- Alleged Restricted Byway
- Alleged Public Bridleway

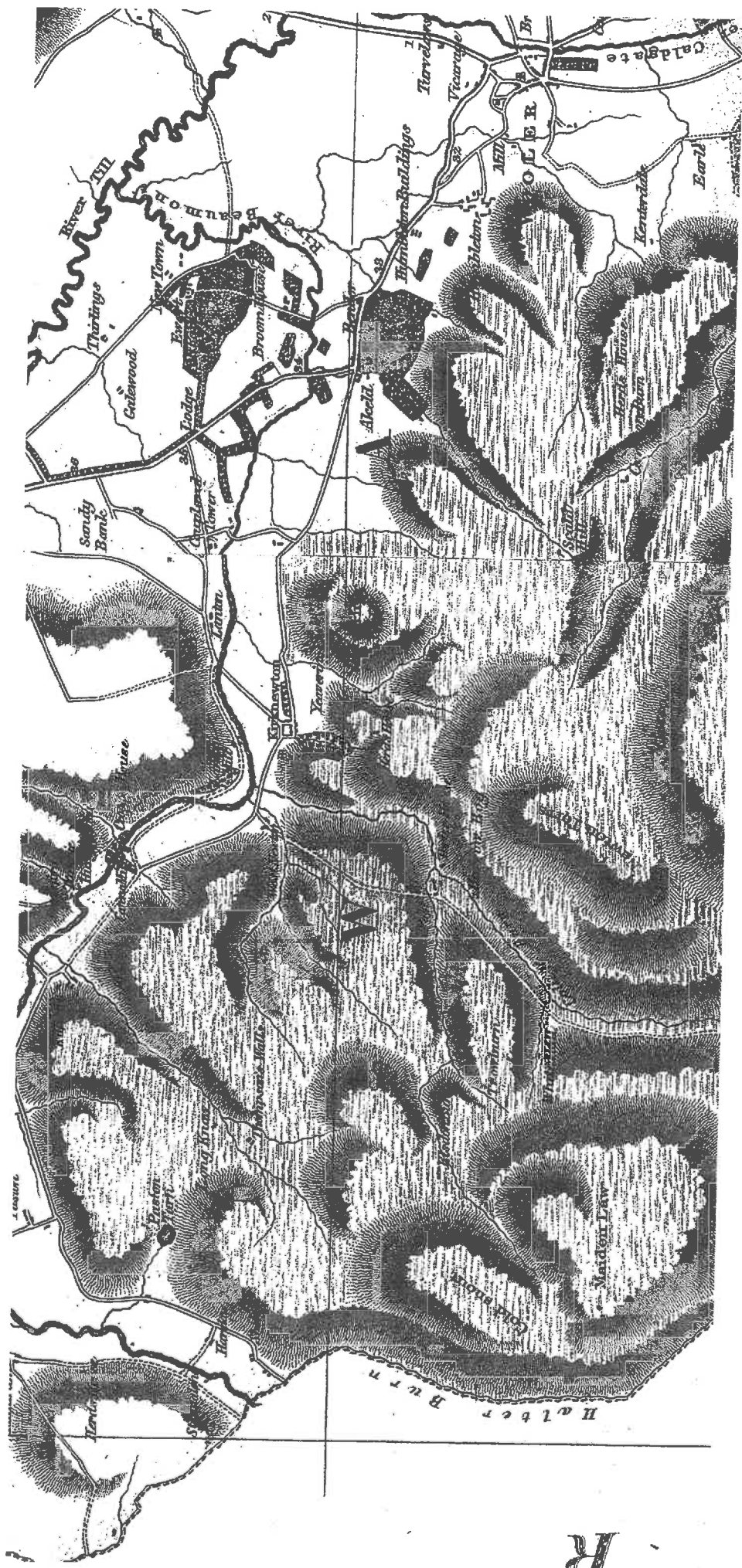
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Former District(s)	Parish(es)	Scale
Berwick	Akeld/Wooler/Kirknewton	1:25,000
Def. Map No.	O.S. Map	Date
36	NT 92 NW	February 2014

Armstrong's County Map
1769

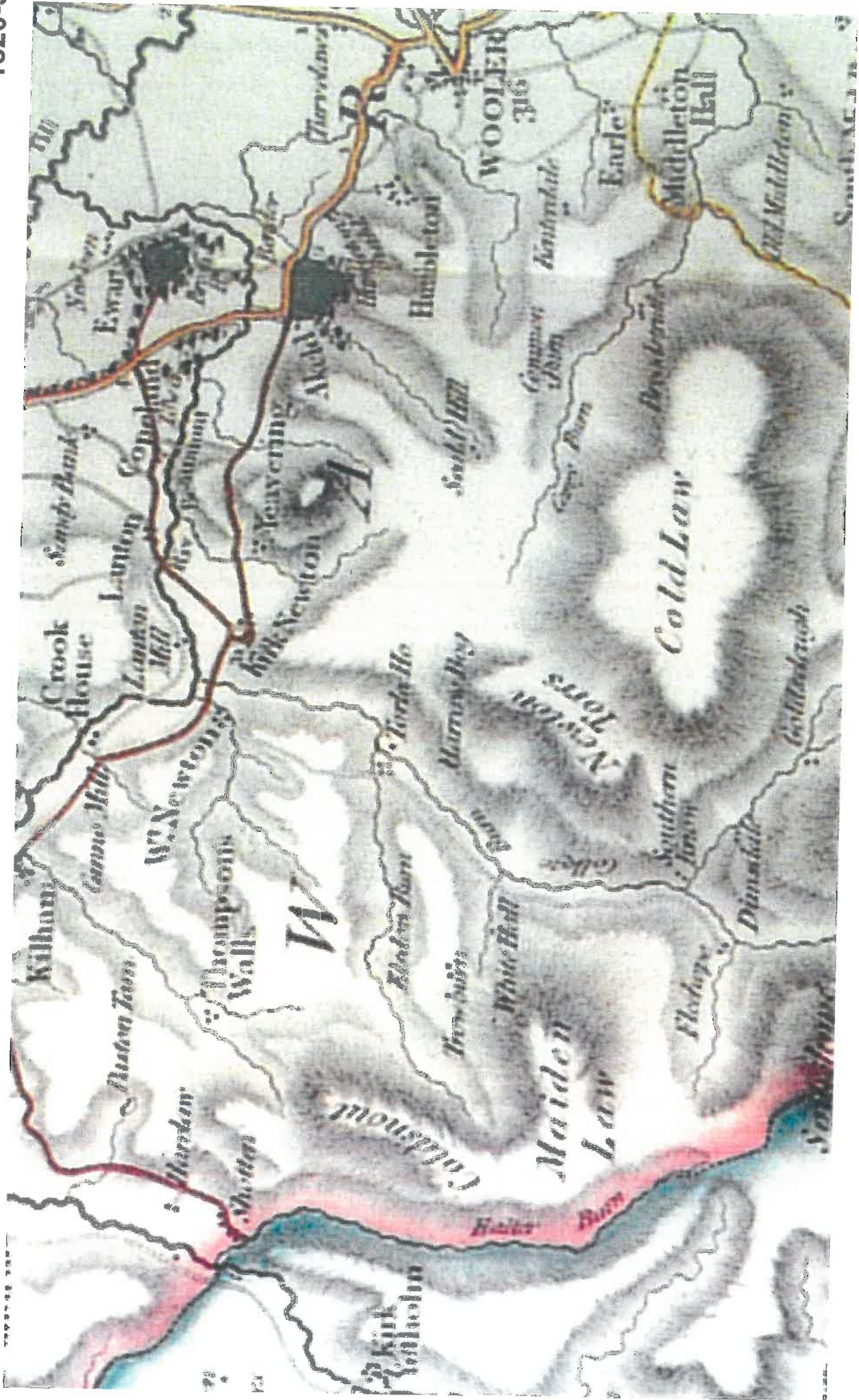


Fryer's County Map
1820

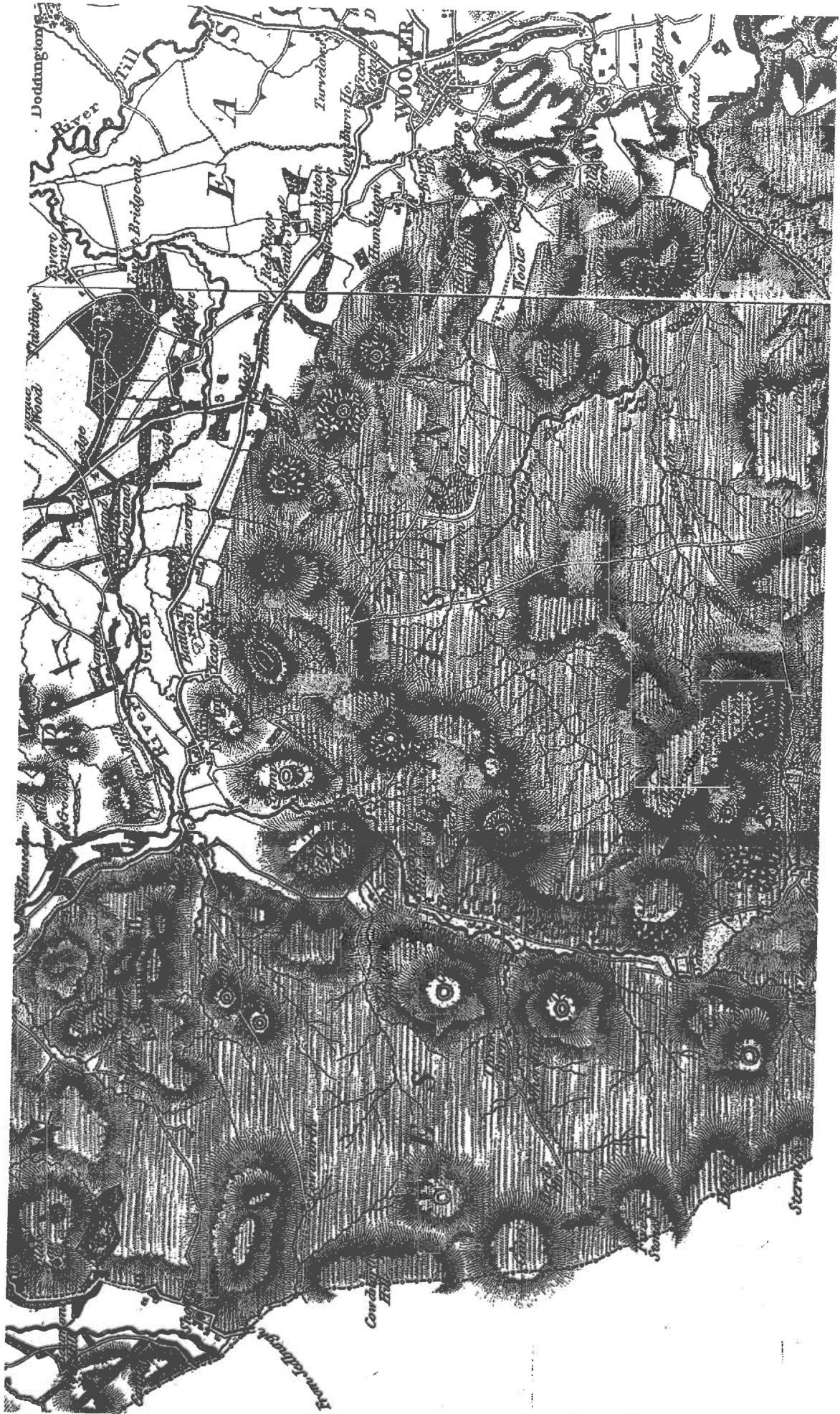


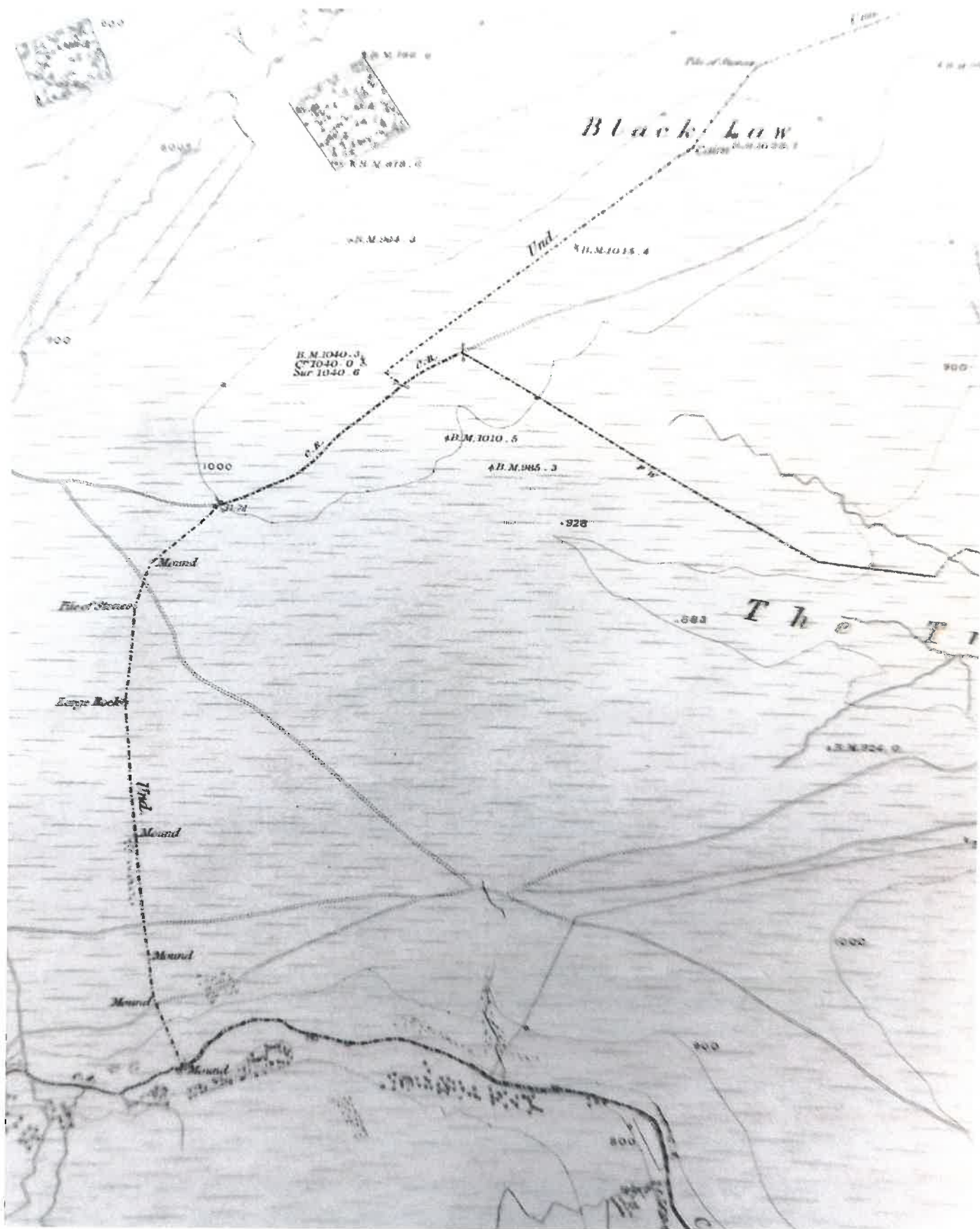
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Cary's Map
1820-32



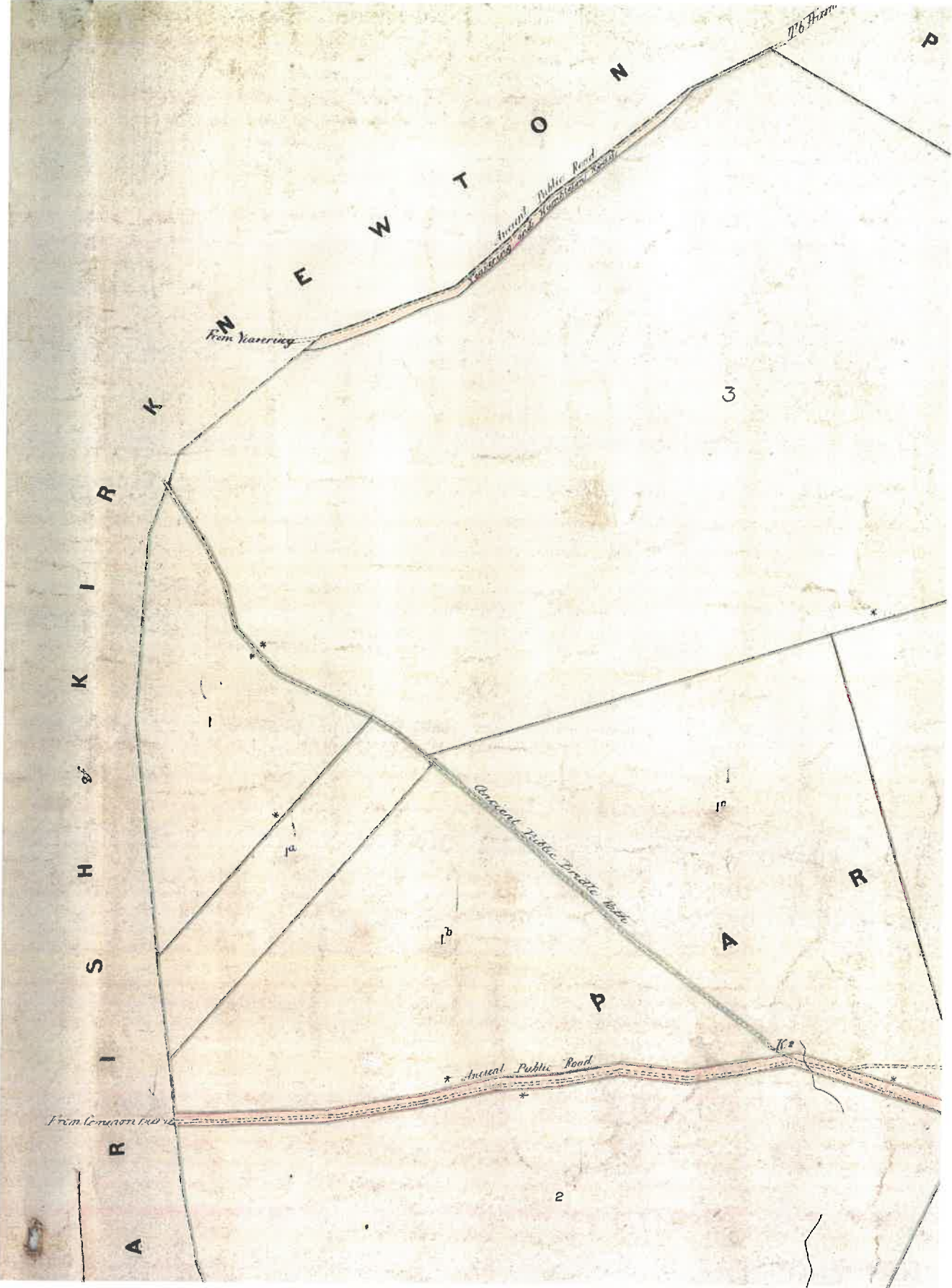
Greenwood's County Map
1828





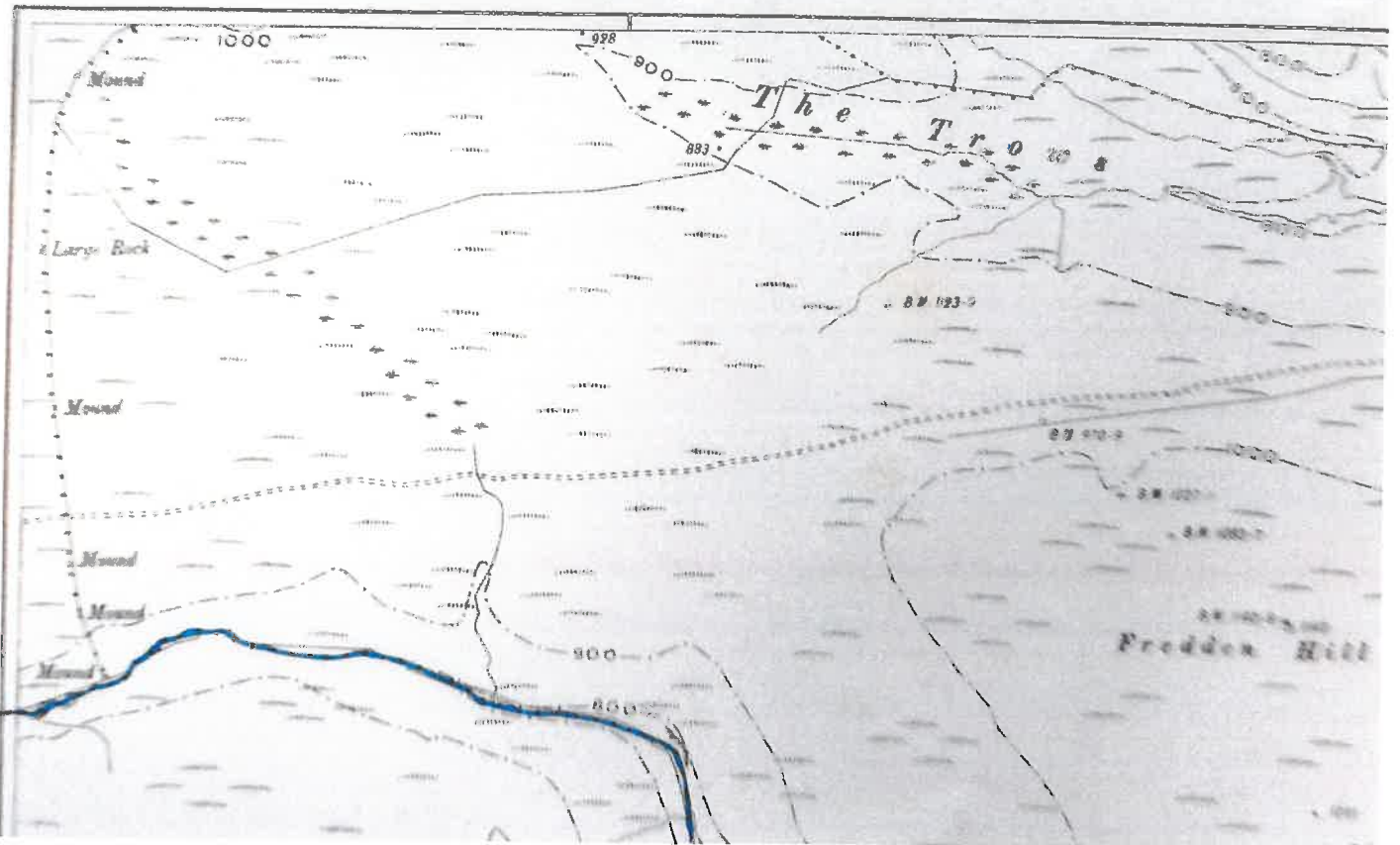
Not to scale

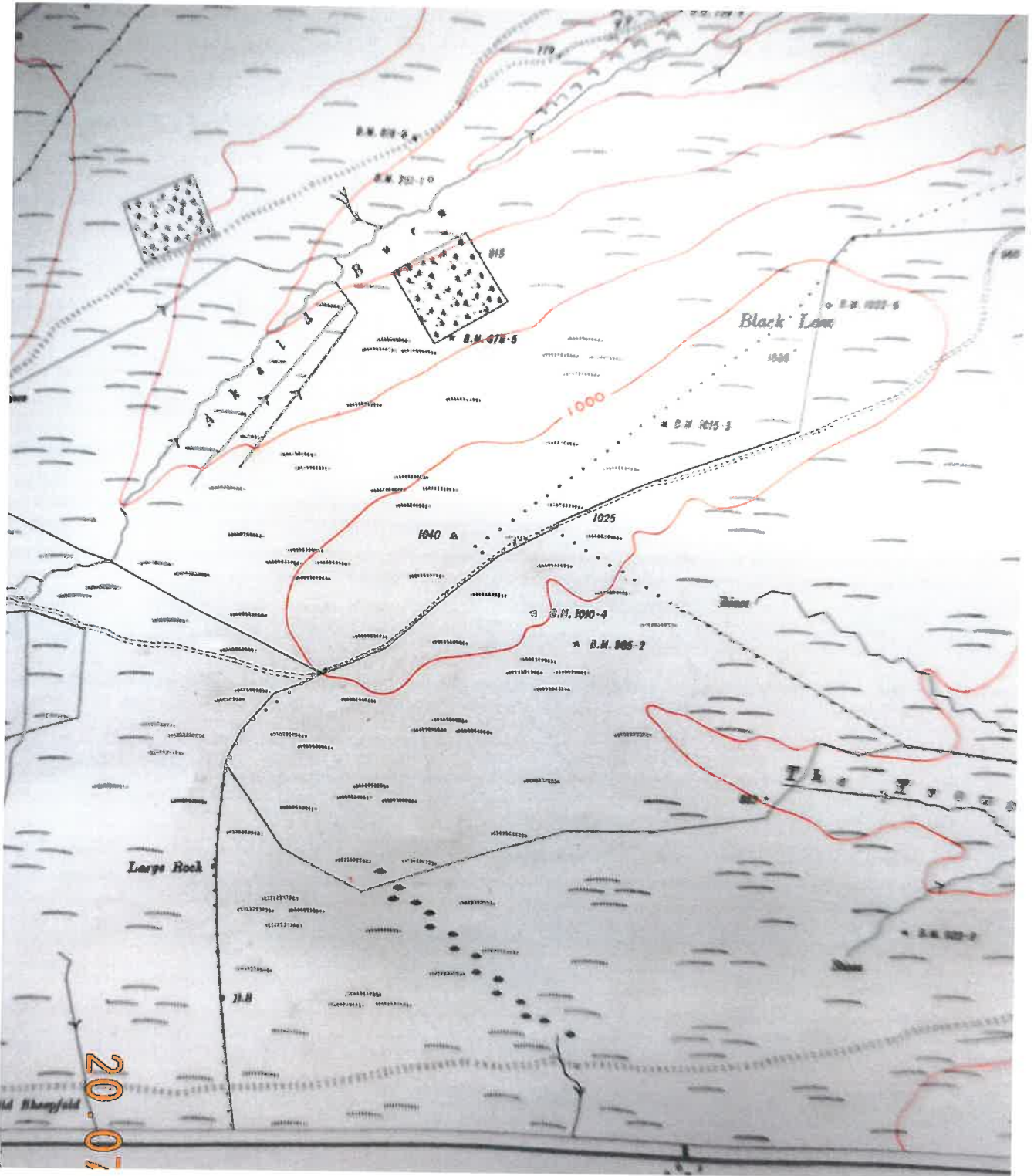
Wooler & Humbleton Common Inclosure Award 1869



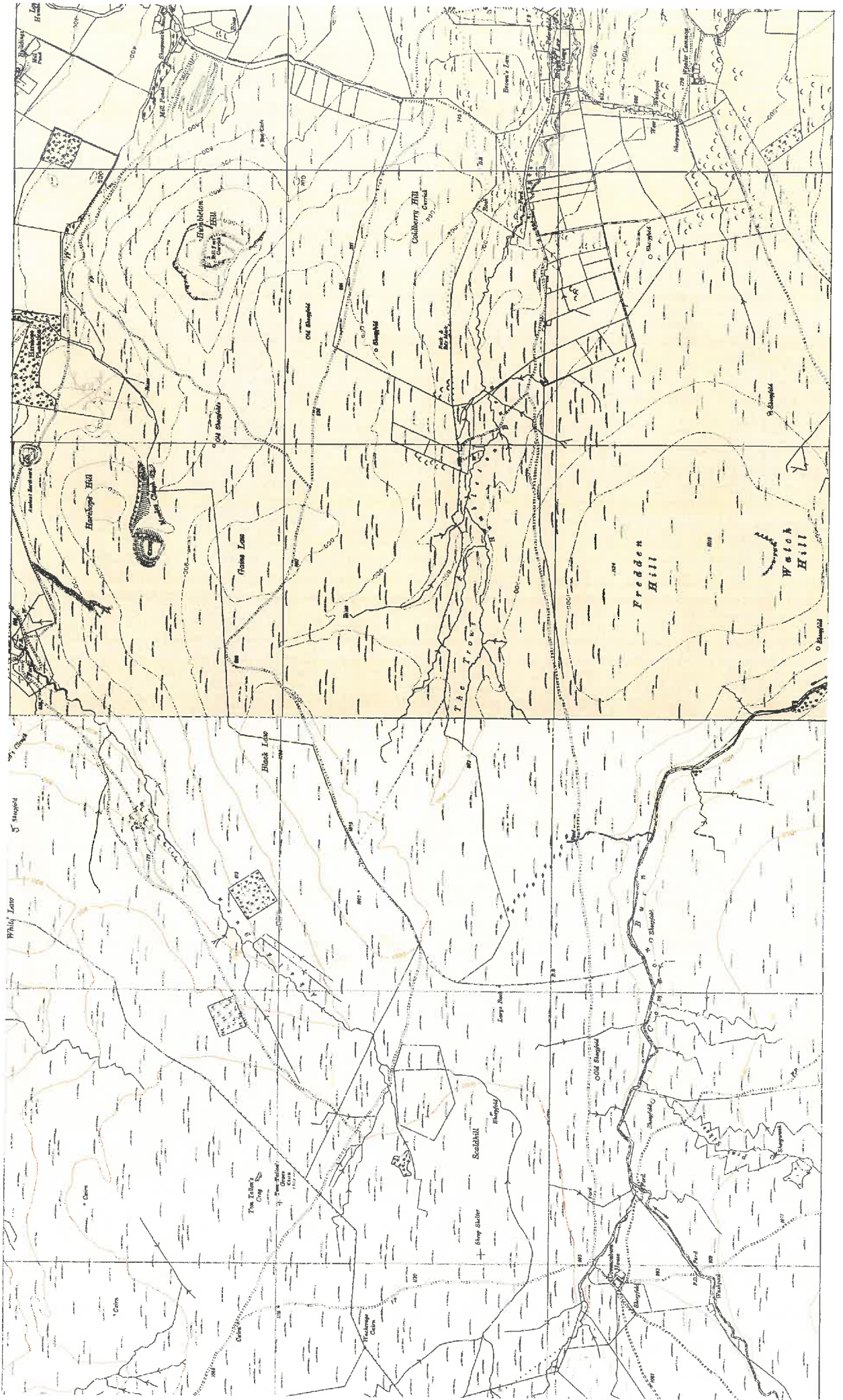


WOOLER PH.
LON. 2° 5' W.





1:10,560 scale O.S. Map
1957



1:10,000 scale O.S. Map
1978 / 79

