

RIGHTS OF WAY COMMITTEE

14 November 2017

REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY ALLEGED RESTRICTED BYWAY NO 26 PARISH OF WEST ALLEN

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

Purpose of report

In this report, the Committee is asked to give consideration to all the relevant evidence gathered in support and rebuttal of a proposal to modify the Definitive Map and Statement to upgrade, to restricted byway, existing Public Footpath No 26 from the Cumbria County boundary at Blacklaw Cross, in a general northerly direction to join the U8039 road (Byway Open to All Traffic No 37) at Keirsleywell Bank, west of Fairplay.

Recommendation

It is recommended that the Committee agree that:

- i) there is insufficient evidence to indicate that, on the balance of probabilities, public vehicular rights have been shown to exist over the route**

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 provisions which apply to adding and upgrading a public right of way on the Definitive Map and Statement based on historical documentary evidence is Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act, 1981, which 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;”

or

“that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”

- 1.3 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 In November 2016, Alan Kind of Gosforth submitted a proposal to upgrade, to restricted byway, Parish of West Allen Public Footpath No 26 from a point marked K on the Cumbria County boundary at Blacklaw Cross, in a general northerly direction over Mohope Moor, crossing Public Footpath No 12 and the Emily Cleugh on the slopes of Carriers Hill, then continuing in a general northerly direction crossing the High Blackish Cleugh and the Low Blackish Cleugh at the junction with Public Footpath No 27, then continuing to a point marked J on the U8039 road (Byway No 37) at Keirsleywell Bank, west of Fairplay.
- 2.2 The proposal is supported by historical evidence including an Inspector's decision from a Public Local Inquiry in 2004, the Hexham & Allendale Inclosure Act of 1792, the Alston Moor Inclosure Act of 1803, extracts from the Hexham & Allendale Inclosure Award of 1799, extracts from the Alston Moor inclosure Award of 1820, a paper on widths & photographs of Blakelaws Road, the 'Through Route' presumption, a report on the 'State & Condition of the Roads & Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham & Northumberland, with suggestion for their Improvement' by Edward Lockyer in 1823, Greenwood's Map of 1828 with an overlay, O.S. 27/3789 extract from the National Archives, the 2nd edition 25" O.S. extract and 1st edition Book of Reference, an extract from J B Hartley in 'Historical Geography Research Series: The Ordnance Survey and Land-Use mapping' 1979, an extract from Richard Oliver in 'Ordnance Survey Maps: a concise guide for historians' 2005, a satellite image of the route with embedded extract and larger appendix and a statement of grounds.
- 2.3 The application was also accompanied by the following 'Statement of Grounds in Support of the Application'.

1 Background

1.1 "This public right of way has been the subject of a previous definitive map modification order to 'upgrade' the status from public footpath to byway open to all traffic (BOAT). That order was the Northumberland County Council (Public Rights of Way) Modification Order (No 10) 2013, and this order triggered a public inquiry held on 6 April 2004. The Inspector's decision of 10 September 2004 (PINS ref'n FPS/R2900/7/30, attached) was that the order should not be confirmed.

1.2. "S53 of the Wildlife and Countryside Act 1981 provides:

Duty to keep definitive map and statement under continuous review.

As regards every definitive map and statement, the surveying authority shall

- (a) As soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event
- (3) The events referred to in subsection (2) are as follows -
 - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -
 - (ii) that a highway shown in the map and statement of a highway of a particular description ought to be there shown as a highway of a different description;

1.3 As regards this application, s53(3)(c)(ii) applies.

1.4 In R ex p. William John Riley v. Secretary of State for the Environment [1989] CO/153/88 (attached) the court directly addressed the situation where an application is made for a s53 modification order, where there has been an earlier order for the same route. Macpherson J deals with this particularly on page 10 at [E] of the transcript where he speaks of '...a better 'greybeard's evidence ... or by the addition of documentary evidence, such as extra evidence having been 'discovered' on its submission to the Council'

1.5 In this application there are two principal 'new' pieces of evidence (identified below) which trigger sufficient 'discovery' for the purpose of

s53(3)(c)(ii), and this evidence must be weighed with all the evidence for the purpose of determining this application.

- 1.6 The Inspector's decision of 2004 should be considered in the process, but the discovery of the 'new' evidence readmits all the evidence considered in 2004, and the Inspector's view in 2004 cannot outweigh a fresh view consequent upon this application.

The Historical Evidence

2. Overview

- 2.1 The preponderance of the historical evidence points to the order route and its continuations being an ancient highway, already ancient by the time of the two relevant inclosure awards of 1799 and 1820. There is no known map showing the application route before Greenwood's map of Northumberland in 1827. Unusually, it is later evidence, particularly the Ordnance Survey maps and books, which taken with the physical nature of the route, show that this was an ancient through-route highway.

3. The Hexham and Allendale Inclosure Act 1792 and Award 1799

- 3.1 Extracts from the 1799 inclosure award are attached as Appendix A. The inspector addresses this award evidence in the 2004 decision at paragraphs 14 - 17, and these findings need to be addressed with regard to a proper construction of this evidence. I respectfully agree with the Inspector's findings in paragraphs 14, 15 & 16 and the Act speaks for itself that any existing highways over what became the stinted pasture were not stopped up by the inclosure process.
- 3.2 I disagree with the Inspector's views in his paragraph 17. Some awarded roads are set out as running 'to the stinted pasture' and some 'into the stinted pasture'. There seems to be no obvious explanation for this linguistic distinction, and taking two roads adjacent to *Alston Road* as examples - Keirsleywell Road and Appletreeshield Road - both of these are set out as running 'to the stinted pasture', yet on a simple view of the inclosure plan and Ordnance map, both must also have run through/over the stinted pasture. Appletreeshield Road would be a dead end, both ends if it did not.
- 3.3 And further, *Alston Road* is set out as '*Alston Road, beginning at a place called Powstile gate, and leading south-westwards to the stinted pasture near Knights-cleugh head.*' On the face of the wording, that too is a double-dead-end public road, and there is no such thing known to law.
- 3.4 It is best here to 'start again' with the setting out of *Alston Road*. As explained above, this is shown and described as starting at Powstile Gate, and running up the hill towards the end of the inclosed allotments, with the width of the road 'bell-mouthing' somewhat as it runs between Richard Beaumont's allotment, and the boundary line that is largely - but not exactly hereabouts - the current parish boundary line on the '*Explorer*' OS map.

- 3.5 The inspector elsewhere in the 2004 decision discusses what is generally called the 'Long Cross Road', or 'The Old Coach Road', or the 'Green Gate', between the county boundary near Clarghyll and Ninebanks. I agree with the Inspector that this road was the principal road towards Alston from the north-east before the turnpikes were made, but it does not mean that it was the only road, nor necessarily that the *Alston Road* on the 1799 inclosure plan 'fed into' the Long Cross alignment and not the Blacklaw Cross alignment. Indeed, a proper analysis of the inclosure plan indicates that it is more probable that the awarded *Alston Road* originated as a linear continuation of the road from Blacklaw Cross. This is why:
- 3.6 The Long Cross Road turns sharply through the 'fence boundary' shown in the inclosure plan. The order route is much more a direct continuation of *Alston Road* and is respected by the allotment boundaries.
- 3.7 That is really as far as the 1799 inclosure award takes us. The act and award are not incompatible with the then-existence of the application route, and are more-compatible with the application route than with the Long Cross road alignment.

4. The Alston Moor Inclosure Act 1803 Award 1820 (in Cumbria)

- 4.1 Again, it is necessary to look at the Inspector's views in the 2004 decision, paragraph 19. The Inspector states, '*Neither party to the inquiry provided a full copy of the award or the enabling Act and I am therefore unable to comment or draw any conclusion upon the ability of the commissioners to award this road the purpose for which it was awarded or the reasoning behind the Commissioner's award.*'
- 4.2 The enabling act and the relevant parts of the award are submitted here as attachments. These documents are 'new evidence' and are 'discovered evidence' for the purpose of s53(3)(c)(ii).
- 4.3 The inclosure award sets out as a '*Public Carriage road*': *Blakelaws Road beginning at the Weardale Turnpike road near Nenthall and leading northward to the boundary of the regality or Manor of Hexham near Blake Laws Cross.*
- 4.4 None of the awarded roads in this award are set out as 'leading into' lands outside the award boundaries, and similarly none are shown on the plan as extending beyond the award boundaries, although all or some e.g. the *Weardale Turnpike road*, must have. The pre-award Long cross road is set out and mapped as 'stopping' at the inclosure boundary.
- 4.5 The 1803 local act imports (by s.1) the 'General Inclosure Act' of 1801. The local act contains no exclusion or modification of the terms of the 1801 'General Act' in respect of highways and roads. That means that with regard to 'public carriage roads' (i.e. vehicular roads) these must be set out, made, and certified in accordance with ss 8 & 9 of the 1801 Act.

- 4.6 S.8 of the 1801 Act requires that a public carriage road is set out at least 30 feet in breadth. Appendix C contains location plans of width taken at intervals along *Blakelaw Road*, plus 'sample' photographs. The road is walled and is wider than 30 feet throughout.
- 4.7 *Blakelaws Road* is a publicly maintainable road on the list of streets, and has been on the county council's records of publicly maintainable highways since 1929 (the handover from the rural district council, i.e. a road under the authority of the rural district council).
- 4.8 Nobody is questioning the status and origins of *Blakelaws Road*. The setting out of this road by the 1803 inclosure award, and its becoming a pre-1835 publicly maintainable highway, is valid by virtue of the award and the view of the court in R v. The inhabitants of the Parish of Enford, 28 March 1955.
- 4.9 The setting out of *Blakelaws Road* is important evidence regarding the status of the order route. The 1820 award is 21 years after the 1799 award. There is no power for the inclosure commissioners to set out dead-end public roads 'with an eye to the future', on the basis that a connecting road might at some time be made by somebody else. In any case the adjoining land had been statutorily inclosed 21 years earlier; it could not in the normal way of things be inclosed again.
- 4.10 The stint-holders in the 1799 inclosure award are all Northumberland land-holders. None of them are Cumberland people. The stinted pasture is not any sort of place of public resort. Although both the Alston and Allendale inclosure acts provide a power to set out 'private roads', the commissioners do not set out the order route, or its linear continuation along *Blakelaws Road*, as a private road for the stint-holders.
- 4.11 This raises a strong presumption that in 1820 when *Blakelaws Road* was set out as a public carriage road there was a purpose - a utility - in that setting out. That purpose was making a through-route from the Weardale Turnpike, to Blakelaw Cross, along the order route, and to Ninebanks and beyond. There is case law on 'through route presumption', the study of which assists here, and is set out in Appendix D. It is important here to consider the evidence as a whole.
5. **Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland, with suggestion for Their Improvement.** Edward Lockyer, 1823. (Appendix E).
- 5.1 This is an early report in the process that engaged John McAdam to survey the roads with a view to improvements. These improvements were put into effect by the turnpiking of the lower roads. Mr Locker notes on page 3, *The public roads are carried over the highest hills with scarce an attempt to find an easier level, and the surface is loaded with an immense quantity of heavy stones, without the least consideration of the wear and tear of the carriages and cattle employed in the conveyance.'*

- 5.2 'Cattle' in this context means draught animals, not 'cows'. The reference to 'carriages' in the context of 'roads ... carried over the highest hills ...' is good evidence of reputation that the hill roads were before 1823 used by 'carriages' - vehicles. Carriages are not just 'stage coaches' or vehicles for the carriage of persons. A carriage is a '*means of conveyance*'. If hill roads were used by the vehicles for the trade of the area in 1823 then it is probable that they were also used before this time for as the trade traffic existed. This bears strongly against the evidence noted by the Inspector in his paragraph 27 in the 2004 decision letter.

6 Greenwood's map of northumberland 1827. (Appendix F)

- 6.1 The inspector addresses this map in the 2004 decision at paragraphs 20-22. In paragraph 22 the inspector states that the route shown is the Long Cross Road, and that as a consequence Blakelaw Cross is 'inaccurately positioned'. With respect, the inspector is wrong. It is often difficult to understand and reconcile 'simplistic' early commercial maps, based on magnetic north, with modern Ordnance Survey maps based on grid north and with much more detail and precision.
- 6.2 This below is that Greenwood map, superimposed as a see-through layer on a same-area piece of online First Edition 6" scale OS map, rotated to register common features (such as the junction of *Alston Road* and the order route).
- 6.3 It is clear that Greenwood is showing the order route to Blakelaw Cross, and also the Long Cross road. The representation is somewhat schematic, but the commonality of features and reasonably precise registration leave little doubt that Greenwood was showing a through route along the order route in 1827.
- 6.4 It might be observed that Greenwood shows a 'dog-leg to the east. It may be that Greenwood was in error here, but his location of Blakelaw Cross is accurate. It may be that greenwood is showing a schematic representation of the boundary line around Hard Rigg. It may be that the boundary line has altered over time. Hodkinson and Donald's 1770 map of Cumberland suggests that is the case. Whichever, what matters is the reasonably accurate (by today's exacting standards) representation of Long Cross, Blakelaw Cross, and the roads leading to those.

7. The Allendale Tithe Award

- 7.1 The Inspector addresses the tithe plan in paragraphs 23 & 24. The availability now of all of the 1799 inclosure plan shows clearly that the tithe award plan is, or is copied from, the inclosure plan. It therefore has no greater evidential value, and effectively little different evidential value, than the inclosure plan. The tithe plan does not appear to be signed, sealed and certified by the tithe commissioners, and is therefore not a first class Tithe plan. It is of little help here.

8 The First Edition Ordnance Survey Maps, and the Book of Reference.

- 8.1 The Inspector in his 2004 decision letter considers the recording and depiction of the order route as '*The Carriers Way*'. He says at [26], '*No evidence was presented to assist with the determination as to why Ordnance Survey considered this feature to be a cart road, or from whom authority for the description had been sought.*' I am putting in 'new evidence' about how the Ordnance Survey gathered the information.
- 8.2 J B Hartley in *Historical Geography Research Series: The Ordnance Survey and Land-Use Mapping*, 1979; and Richard Oliver in *Ordnance Survey Maps: a concise guide for historians*, 2005 (Appendix G), both set out the process, and whilst they caution that it was 'subjective' it was still a prescribed process by local interrogation, and is therefore good contemporaneous evidence of reputation.
- 8.3 This description as '*The Carriers Way*' is presumptively the name by which local people described the route to the Ordnance surveyors. Short of their making it up, that must be where it came from. Similarly, a description as a 'cart road' is just that: a description of what the surveyors saw on the ground, and the feature that prompted them to ask questions of local people.
- 8.4 There is further new evidence from Ordnance Survey sources. In 1858 the Ordnance Survey made 'Boundary Sketch Books' which are now held at the National Archives under reference OS27. The relevant 'sketch' for Blakelaw Cross is OS27/3789. This below is the catalogue reference.
- 8.5 This below is the actual boundary sketch.
- 8.6 This sketch shows '*Black Laws ... Road*' and the continuation into Northumberland as '*Carriers Way ... Road*'; This is good evidence that in 1858 *Blakelaws Road* did not stop at the county boundary, but continued into Northumberland as an uninclosed road, locally known as 'Carriers Way' and visible enough for the OS surveyor to recognise it as a road, and to consider it worthy of mapping. That continuation road exists as a visible feature to this day, petering out as a visible 'road' as the land gets wetter with more surface growth, away from the watershed.
- 8.7 This image below is a satellite image from the website <https://wtp2.appspot.com/wheresthepath.htm> and it shows the boundary at Blakelaw Cross, and the roads both sides. The road going northwards fades into a still-clear track, visibly on the line of the current public footpath. The satellite image of the whole order route is at Appendix H.
- 8.8 There appears to be a hard layer not far below the surface on the 'road' to the Northumberland side of Blacklaw Cross. This can be 'prodded' with a metal rod. In places along the order route the ground is considerably firmer than the surrounding fell. It is improbable that the road-and-track feature visible on the satellite photograph could be made by foot traffic alone over any period, and certainly not in the period after 1820 (when *Blakelaws Road* was set out) when the turnpikes were starting to take the commercial traffic hereabouts. Where would these foot passengers come from? To where would they be going? And why?

9 The Estate Plan of 1856

- 9.1 In his paragraph 25 the Inspector in the 2004 decision references an 'estate plan' of 1856, which does not show the order route. Firstly, it is clear from the mapping evidence that the whole route, of which the order route was part, was a visibly minor route, at least until the inclosures of 1799 and 1820 widened and walled the 'ends'. Estate plans should be treated with caution because their purpose was not to record public highways.

10 Summary

- 10.1 This matter comes down to the aggregation of a number of pieces of evidence which, when aggregated, provide a sufficiently persuasive case that the order route was part of a longer through-route of (now) restricted byway status.
- 10.2 The 1799 Allendale Inclosure award does not set out the order route because it has no need to, and neither does it set out the undisputed Long Cross Road. Both the order route and the Long Cross Road are linear continuations of the awarded *Alston Road*, and both run to Alston. The order route is more in-line with *Alston Road* than is the Long Cross Road, suggesting that the order route was an earlier road than the branch to Long Cross, albeit that the latter was more notorious later.
- 10.3 The 1820 Alston award sets out the direct linear continuation of the order route, in Cumberland, as a public carriage road, and it has been regarded and recorded as a public highway ever since. There is no place of public resort at Blacklaw Cross. The stint holders over the boundary in Northumberland are all Northumberland people. There is no rational reason why the Alston inclosure commissioners would set out a dead-end public carriage road, with all the attendant procedure and cost. It is more probable that the commissioners set out a public road of a type that already existed, and 'mated' with the continuation in Northumberland.
- 10.4 On a proper view, Greenwood's map of 1827 does show the order route - through route, with Blacklaw Cross in the correct place.
- 10.5 In the mid-1800s the Ordnance Survey mapped the order route as a 'track', described it in the Book of Reference (Area Book) as a 'Cart Road', and named it there as '*The carriers' Way*'
- 10.6 The contemporary OS Boundary Remarks Book also named the route in Northumberland as *The Carriers' Way* and described it as a 'Road' and named Blacklaws Road in Cumberland.
- 10.7 These Ordnance Survey records are good evidence of reputation of the name and physical character of the order route in a period only about 40 years after the Alston inclosure commissioners set out *Blacklaws Road* as a public carriage road.

10.8 There is, and always has been since before the earliest OS maps, a track' on the same winding route that is now recorded as a public footpath, and is clearly visible as a linear feature on satellite photographs. It is not probable that this 'footpath' came into being, legally and physically, by virtue of foot user after 1820.

10.9 The route should be the width of the road just north of Blakelaw Cross: 20 feet.

3. LANDOWNER EVIDENCE

3.1 By letter dated 9th May 2017 Savills, Chartered Surveyors, responded on behalf of the owners of Wellhope Moor with the following comments.

- i) "The applicant, Mr Alan Kind, claims he has found 'new evidence' sufficient to require another appeal to upgrade this route. Having referred his application to Liz Sobell, specialist archivist, she comments as follows:
- ii) "The first 'evidence' is the Alston Moor Enclosure Act (1803) and Award (1820). Mr Kind acknowledges that this was discussed in the 2004 public enquiry, but the Inspector did not have sight of the documents and could therefore draw no conclusions from them..
- iii) "Ms Sobell does not consider this 'evidence' to be new as, Mr Kind had the opportunity to raise this in 2004 when he introduced the Alston Moor Enclosure Act (1803) at that hearing.
- iv) "The second piece of 'new; evidence is taken from the Ordnance Survey Book of Evidence and boundary Survey maps. The OS consistently warn that no depiction of a route on a map is evidence of a public right of way but Mr Kind argues that a description of the Carriers' Way as a 'cart road' in the 'Book of Evidence' and the word 'Road' extending over the boundary, is cumulative evidence of the route as a vehicular highway."
- v) "Elsewhere Mr Kind also argues as to whether leaving some of Hexhamshire and Allendale Commons as stinted pasture excluded those areas from the extinguishment of all former roads if they were not set out in the award. Liz Sobell has recently discovered two letters written as the commons were about to be enclosed which denies such interpretation.
- vi) "The owners of Wellhope Moor are loathe once again to instruct Liz Sobell, solicitors and counsel in a case already decided in 2004 and believe Mr Kind's present re-application could be considered by Northumberland County Council as an Abuse of Process.
- vii) "We hereby request the Council reject Mr Kind's contention as to production of new evidence and to thereby reject his application for a renewed hearing.

- viii) "Should the Council consider that Mr Kind's re-application must indeed be considered we would request that such hearing be delayed until next year to allow solicitors/counsel to be re-instructed in this matter."

4. CONSULTATION

- 4.1 In January 2016, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders".
- 4.2 By letter in May 2017 the County Access & Bridleways Officer for the British Horse Society responded to the consultation with the following comments:

"This proposal has its origins in the Inclosure Award of 1755 in which public highways were laid out as a result of an Act of Parliament. The fact that this network of 'old roads' is backed up by later documents shows that the routes came into being and were recognised as public roads over a long period of time.

"This significant addition of off-road routes in an area where the roads are increasingly busy will be of great benefit to the safety of all vulnerable road users - walkers, cyclists and horse riders alike."

5. DOCUMENTARY EVIDENCE

- 5.1 Copies of the documentary evidence are included in the applicants submission and Committee reports, appended to this report. A copy of the Act for the Alston Moor and Garragill Inclosure Award is not attached to the report but is available for members' perusal.

6. SITE INVESTIGATION

- 6.1 As members have access to the earlier reports regarding the route and all of the evidence is 'historical' rather than 'user' it is not considered necessary to carry out a further site investigation.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In October 2017, a draft copy of the report was circulated to the applicant and all of the interested parties that responded to the consultation.
- 7.2 By letter dated 22 October 2017, Mr Alan Kind, the applicant, submitted the following comments in response to the draft report:

- i) "Thank you for your letter of 19 October enclosing a draft report to committee. You will not be surprised to learn that I do not agree with your recommendations, but more importantly the report indicates that you have applied the wrong test to the evidence. The first sentence in 8.10 seems to me to be a clear misdirection.
- ii) "At 3.1(v) you mention 'two recently discovered letters.' Have these been given to you as part of Ms Sobell's submission? If yes, i) may I please have a copy, and ii) you should give me an opportunity to comment on these. If not, then you should advise the committee that no weight should be given to these letters.
- iii) "I would also appreciate an electronic copy of the draft report, please."

8. DISCUSSION

- 8.1 Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981, requires the County Council to modify the Definitive Map when evidence is discovered which, when considered with all other relevant evidence available to them shows:

that a 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; or

that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

- 8.2 When considering an application or 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 conclusive 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 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. None of the above saving provisions apply to the claimed route therefore, if the track were to be recorded as a restricted byway, it would be an offence for any member of the public to use the route with a mechanically propelled vehicle without the landowner's permission.

- 8.5 Mr Kind in his 'Statement of Grounds for the Application' gives some of the background information relating to Parish of West Allen Public Footpath No 26 and in particular the fact that a Public Local Inquiry to determine an Order to upgrade the footpath to a byway open to all traffic was previously determined by an Inspector appointed by the Secretary of State who after considering all the available evidence declined to confirm the Order.
- 8.6 Mr Kind suggests in his sections 1.5 and 1.6 that there are two new pieces of evidence sufficient for members to give further consideration to the proposal. He suggests that the previous evidence together with the new evidence is sufficient to, on the balance of probabilities, prove that the route is an ancient carriageway and should be recorded on the Definitive Map as a restricted byway.
- 8.7 In section 3 Mr Kind highlights some of the details of the of the Hexham & Allendale Inclosure Award where he disagrees with the Inspector's interpretation of part of the Award and in particular the wording used to set out the various public carriageways. He suggests that the wording 'running to' and 'running into' the stinted pasture was a conscious change in the thought process of the Commissioners. It is conjecture to surmise what was the mind process of the Commissioners. It may have been a conscious decision to change the wording or it may simply have been a subconscious change to vary the repetitive nature of the text.
- 8.8 In section 4 Mr Kind introduces the Alston Moor Inclosure Act as 'new evidence'. The Council accepts that a copy of the Act may not have been available for the Inspector's perusal at the Inquiry but doesn't consider that it changes the interpretation of the Award or the evidential value of the Award as considered by the Inspector.
- 8.9 The 'new evidence' produced by the Ordnance Survey Boundary Sketch Book (8.4-6) is interesting insofar as it reinforces a different status where the route crosses the county boundary. In Cumbria the route is identified as Blakelaw Road and in Northumberland, Carriers Way. There would appear to be a conscious decision by the surveyor to remedy a previous error by amending in red, the suggestion that Blakelaw Road continued into Northumberland. The surveyors have 'scratched' the word Road on the Northumberland side of the boundary and replaced it in red on the Cumbria side beneath 'Black Laws'. The route is then identified on the Northumberland side in red as 'Carriers Way'. The Inspector at the Public Inquiry gave consideration to the interpretation of the Carriers Way and the description of the route as a 'cart road' so deliberations regarding the meaning of the wording is not considered to be new evidence.

- 8.10 Officers are minded that the 'new' evidence, together with the previously considered evidence, is insufficient to persuade, on the balance of probabilities, that restricted byway rights exist over the route. Although the applicant gave no details on whom he served notice he has stated that this action was carried out. That being the case, if members are minded to refuse the proposal the applicant will be given the opportunity to appeal the Council's decision with the Secretary of State.

9. CONCLUSION

- 9.1 In the light of the evidence submitted it appears that, on the balance of probability, restricted byway rights have not been shown to exist over the route.

BACKGROUND PAPERS

Local Services Group File E/49/26z

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Wildlife & Countryside Act 1981, Part III
Definitive Map and Statement for the County of Northumberland
Application for Modification Order

To: Northumberland County Council.

of: County Hall, Morpeth NE61 2EF

I, Alan Kind, of 45 The Fairway, Newcastle upon Tyne, NE3 5AQ hereby apply for an order under section 53(2) of the Wildlife & Countryside Act 1981 modifying the definitive map and statement for the area by upgrading to a restricted byway the footpath from GR 375801-548317 (on the county boundary at Blacklaw Cross).
to GR 376243-550715 (on the BOAT at Ouston Fell).
and shown on the map accompanying this application.

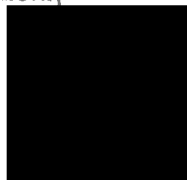
I attach copies of following documentary evidence (including statements of witnesses) in support of this application.

List of documents

1. The Inspector's decision of 10 September 2004, PINS ref'n FPS/R2900/7/30.
2. The Hexham and Allendale Inclosure Act 1792.
3. The Alston Moor Inclosure Act 1803
4. Extracts from the Hexham and Allendale Inclosure Award 1799.
5. Extracts from the Alston Moor Inclosure Award 1820.
6. Paper on widths and photographs of Blakelaws Road.
7. The 'Through Route Presumption.'
8. Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland, with suggestion for Their Improvement. Edward Lockyer, 1823.
9. Greenwood's Map of Northumberland 1827. Extract & Overlay.
10. OS 27/3789 extract from the National Archives.
11. Second Edition 25" scale Ordnance Survey map extracts showing the order route.
12. The OS 'Book of Reference' page accompanying the 25" OS map.
13. Extract from J B Hartley in Historical Geography Research Series: The Ordnance Survey and Land-Use Mapping, 1979.
14. Extract from Richard Oliver in Ordnance Survey Maps: a concise guide for historians, 2005.
15. Satellite image of the order route, embedded extract and larger appendix.
16. A statement of grounds in support of this application.

Dated: 22 November 2016

Signed:



Wildlife & Countryside Act 1981, Part III
Definitive Map and Statement for the County of Northumberland
Certificate of Service of Notice of Application for Modification Order

To: Northumberland County Council.

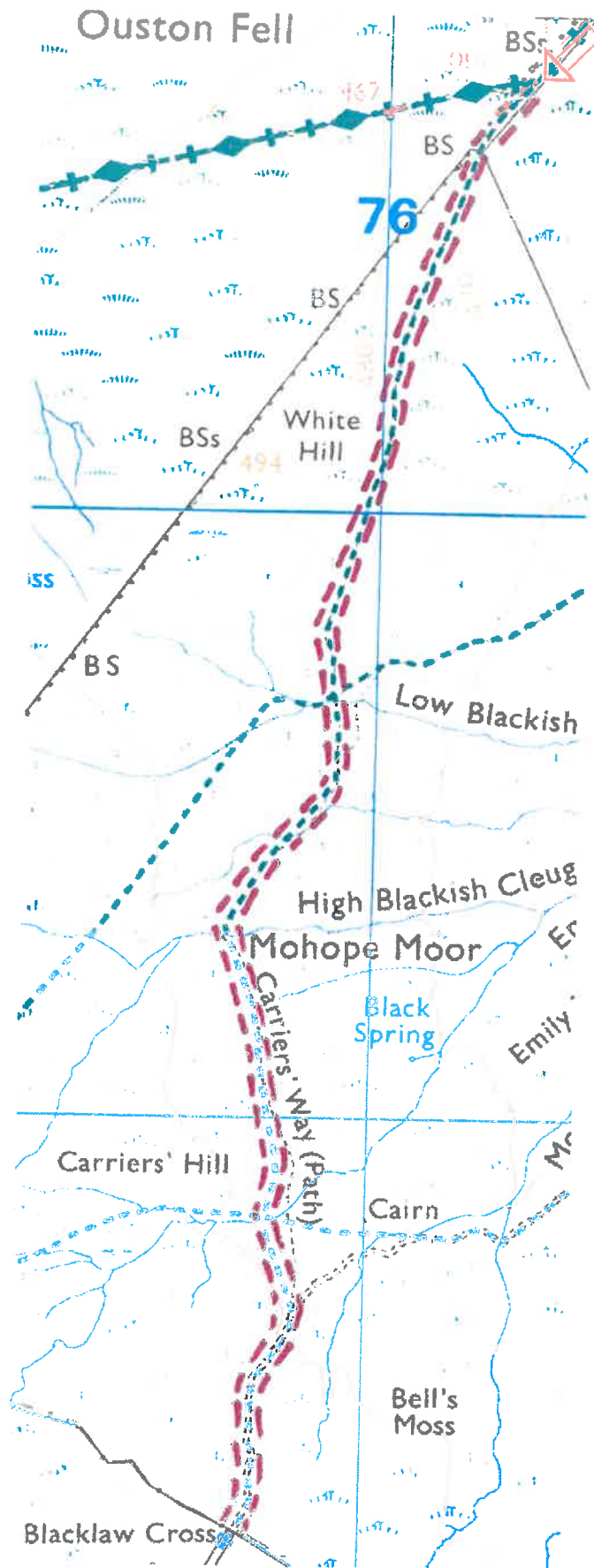
of: County Hall, Morpeth NE61 2EF

I, Alan Kind, of 45 The Fairway, Newcastle upon Tyne, NE3 5AQ hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife & Countryside Act 1981 have been complied with.

Dated: 22 November 2016

Signed:





APPLICATION PLAN

Application for a Definitive Map Modification Order.

Statement of Grounds in Support of the Application.

The Carriers' Way: Public Footpath No. 26 Parish of West Allen.

This is an application to modify the status of Footpath 26 West Allen from a public footpath to a restricted byway.

1. Background.

- 1.1. This public right of way has been the subject of a previous definitive map modification order to 'upgrade' the status from public footpath to byway open to all traffic (BOAT). That order was the Northumberland County Council (Public Rights of Way) Modification Order (No. 10) 20013, and this order triggered a public inquiry held on 6 April 2004. The Inspector's decision of 10 September 2004 (PINS ref'n FPS/R2900/7/30, attached) was that the order should not be confirmed.

- 1.2. S53 of the Wildlife and Countryside Act 1981 provides:

Duty to keep definitive map and statement under continuous review.

As regards every definitive map and statement, the surveying authority shall—

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in subsection (2) are as follows—

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;

- 1.3. As regards this application, s.53(3)(c)(ii) applies.
- 1.4. In R ex p. William John Riley v. Secretary of State for the Environment [1989] CO/153/88 (attached) the court directly addressed the situation where an application is made for a s.53 modification order; where there has been an earlier order for the

same route. Macpherson J deals with this particularly on page 10 at [E] of the transcript where he speaks of '*...a better "greybeard's" evidence ... or by the addition of documentary evidence, such as extra evidence having been "discovered" on its submission to the Council.*'

- 1.5. In this application there are two principal 'new' pieces of evidence (identified below) which trigger sufficient 'discovery' for the purposes of s.53(3)(c)(ii), and this evidence must be weighed with all the evidence for the purpose of determining this application.
- 1.6. The Inspector's decision of 2004 should be considered in the process, but the discovery of the 'new' evidence readmits all the evidence considered in 2004, and the Inspector's view in 2004 cannot outweigh a fresh view consequent upon this application.

The Historical Evidence.

2. Overview.

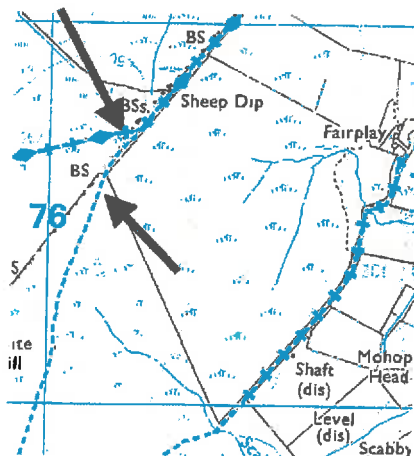
- 2.1. The preponderance of the historical evidence points to the order route and its continuations being an ancient highway, already ancient by the time of the two relevant inclosure awards of 1799 and 1820. There is no known map showing the application route before Greenwood's map of Northumberland in 1827. Unusually, it is later evidence, particularly the Ordnance Survey maps and books, which taken with the earlier inclosure evidence and the physical nature of the route, show that this was an ancient through-route highway.

3. The Hexham and Allendale Inclosure Act 1792 and Award 1799.

- 3.1. Extracts from the 1799 inclosure award are attached as Appendix A. The Inspector addresses this award evidence in the 2004 decision at paragraphs 14 - 17, and these findings need to be addressed with regard to a proper construction of this evidence. I respectfully agree with the Inspector's findings in paragraphs 14, 15 & 16, and the Act speaks for itself that any existing highways over what became the stinted pasture were not stopped-up by the inclosure process.
- 3.2. I disagree with the Inspector's views in his paragraph 17. Some awarded roads are set out as running 'to the stinted pasture' and some 'into the stinted pasture.' There seems to be no obvious explanation for this linguistic distinction, and taking two roads adjacent to *Alston Road* as examples – *Keirsleywell Road*, and *Appletreeshield Road* – both of these are set out as running 'to the stinted pasture', yet on a simple view of the inclosure plan and Ordnance map, both must also have run through/

over the stinted pasture. Appletreeshield Road would be a dead end, both ends, if it did not.

- 3.3. And further, Alston Road is set out as '*Alston Road, beginning at a place called Powstile gate, and leading south-westwards to the stinted pasture near Knights-deugh head.*' On the face of that wording, that too is a double-dead-end public road, and there is no such thing known to the law.
- 3.4. It is best here to 'start again' with the setting out of *Alston Road*. As explained above, this is shown and described as starting at Powstile Gate, and running up the hill towards the end of the inclosed allotments, with the width of the road 'bell-mouthing' somewhat as it runs between Richard Beaumont's allotment, and the boundary line that is largely – but not exactly hereabouts – the current parish boundary line on the 'Explorer' OS map.
- 3.5. The Inspector elsewhere in the 2004 decision discusses what is generally called the 'Long Cross Road', or 'The Old Coach Road', or the 'Green Gate', between the county boundary near Clarghyll and Ninebanks. I agree with the Inspector that this road was the principal road towards Alston from the north-east before the turnpikes were made, but it does not mean that it was the only road, nor necessarily that the *Alston Road* on the 1799 inclosure plan 'fed into' the Long Cross alignment and not the Blacklaw Cross alignment. Indeed, a proper analysis of the inclosure plan indicates that it is more probable that the awarded *Alston Road* originated as a linear continuation of the road from Blacklaw Cross. This is why.
- 3.6. The Long Cross Road turns sharply through the 'fence boundary' shown in the inclosure plan. The order route is much more a direct continuation of *Alston Road* and is respected by the allotment boundaries.



- 3.7. That is really as far as the 1799 inclosure award takes us. The act and award are not incompatible with the then-existence of the application route, and are more-compatible with the application route than with the Long Cross road alignment.
4. **The Alston Moor Inclosure Act 1803 Award 1820 (in Cumbria).**
- 4.1. Again, it is necessary to look at the Inspector's views in the 2004 decision, paragraph 19. The Inspector states, "*Neither party to the inquiry provided a full copy of the award, or the enabling Act and I am therefore unable to comment or draw any conclusion upon the ability of the commissioners to award this road, the purpose for which it was awarded or the reasoning behind the Commissioner's award.*"
- 4.2. The enabling act and the relevant parts of the award are submitted here as attachments. These documents are 'new evidence' and are 'discovered evidence' for the purpose of s.53(3)(c)(ii).
- 4.3. The inclosure award sets out as a '*Public Carriage Road*': '*Blakelaws Road beginning at the Weardale Turnpike road near Nenthall and leading northward to the boundary of the regality or Manor of Hexham near Blake Laws Cross.*'
- 4.4. None of the awarded roads in this award are set out as 'leading into' lands outside the award boundaries, and similarly none are shown on the plan as extending beyond the award boundaries, although all or some, e.g. the *Weardale Turnpike road*, must have. The pre-award Long Cross road is set out and mapped as 'stopping' at the inclosure boundary.
- 4.5. The 1803 local act imports (by s.1) the 'General Inclosure Act' of 1801. The local act contains no exclusion or modification of the terms of the 1801 'General Act' in respect of highways and roads. That means that with regard to 'public carriage roads' (i.e. vehicular roads) these must be set out, made, and certified in accordance with ss. 8 & 9 of the 1801 Act.
- 4.6. S.8 of the 1801 Act requires that a public carriage road is set out at least 30 feet in breadth. Appendix C contains location plans of width taken at intervals along *Blakelaws Road*, plus 'sample' photographs. The road is walled and is wider than 30 feet throughout.
- 4.7. *Blakelaws Road* is a publicly maintainable road on the list of streets, and has been on the county council's records of publicly maintainable highways since 1929 (the handover from the rural district council, i.e. a road under the authority of the rural district council).
- 4.8. Nobody is questioning the status and origins of *Blakelaws Road*. The setting out of this road by the 1803 inclosure award, and its becoming a pre-1835 publicly

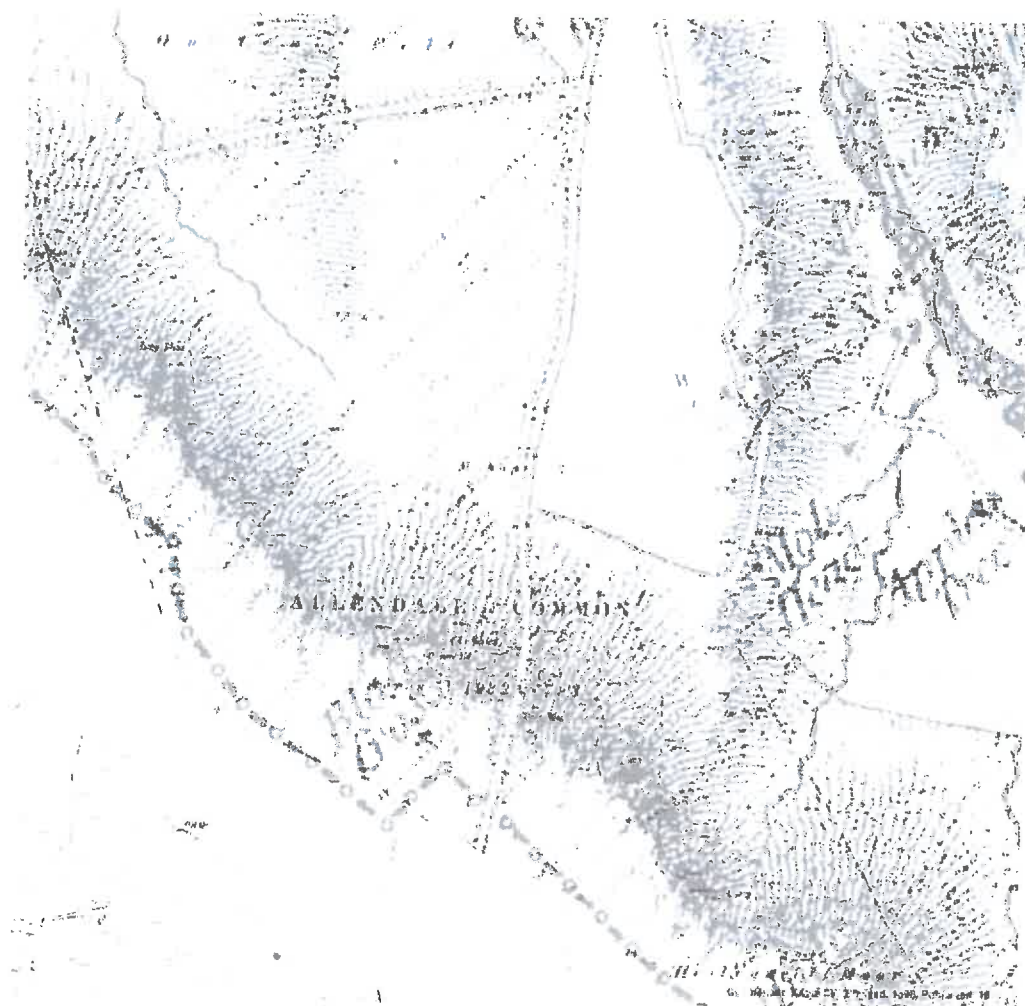
maintainable highway, is valid by virtue of the award and the view of the court in R v. The Inhabitants of the Parish of Enford, 28 March 1955.

- 4.9. The setting out of *Blakelaws Road* is important evidence regarding the status of the order route. The 1820 award is 21 years after the 1799 award. There is no power for inclosure commissioners to set out dead-end public roads 'with an eye to the future', on the basis that a connecting road might at some time be made by somebody else. In any case the adjoining land had been statutorily inclosed 21 years earlier; it could not in the normal way of things be inclosed again.
- 4.10. The stint-holders in the 1799 inclosure award are all Northumberland land-holders. None of them are Cumberland people. The stinted pasture is not any sort of place of public resort. Although both the Alston and Allendale inclosure acts provide a power to set out 'private roads', the commissioners do not set out the order route, or its linear continuation along *Blakelaws Road*, as a private road for the stint-holders.
- 4.11. This raises a strong presumption that in 1820 when *Blakelaws Road* was set out as a public carriage road there was a purpose – a utility – in that setting out. That purpose was making a through-route from the Weardale Turnpike, to Blakelaw Cross, along the order route, and to Ninebanks and beyond. There is case law on 'through route presumption', the study of which assists here, and is set out in Appendix D. It is important here to consider the evidence as a whole.
5. **Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland, with suggestion for Their Improvement.** Edward Lockyer, 1823. (Appendix E).
 - 5.1. This is an early report in the process that engaged John McAdam to survey the roads with a view to improvements. These improvements were put into effect by the turnpiking of the lower roads. Mr Locker notes on page 3, '*The public roads are carried over the highest hills with scarce an attempt to find an easier level, and the surface is loaded with an immense quantity of heavy stones, without the least consideration of the wear and tear of the carriages and cattle employed in the conveyance.*'
 - 5.2. 'Cattle' in this context means draught animals, not 'cows'. The reference to 'carriages' in the context of 'roads ... carried over the highest hills ...' is good evidence of reputation that the hill roads were before 1823 used by 'carriages' – vehicles. Carriages are not just 'stage coaches' or vehicles for the carriage of persons. A carriage is a '*means of conveyance*'. If hill roads were used by vehicles for the trade of the area in 1823 then it is probable that they were also used before this time for as

long as the trade traffic existed. This bears strongly against the evidence noted by the Inspector in his paragraph 27 in the 2004 decision letter.

6. **Greenwood's Map of Northumberland 1827.** (Appendix F)

- 6.1. The Inspector addresses this map in the 2004 decision at paragraphs 20-22. In paragraph 22 the Inspector states that the route shown is the Long Cross Road, and that as a consequence Blakelaw Cross is 'inaccurately positioned.' With respect, the Inspector is wrong. It is often difficult to understand and reconcile 'simplistic' early commercial maps, based on magnetic north, with modern Ordnance Survey maps based on grid north and with much more detail and precision.
- 6.2. This below is that Greenwood map, superimposed as a see-through layer on a same-area piece of online First Edition 6" scale OS map, rotated to register common features (such as the junction of *Alston Road* and the order route).



- 6.3. It is clear that Greenwood is showing the order route to Blakelaw Cross, and also the Long Cross road. The representation is somewhat schematic, but the commonality of features and reasonably precise registration leave little doubt that Greenwood was showing a through route along the order route in 1827.
- 6.4. It might be observed that Greenwood shows a 'dog-leg' in the county boundary line to the west of Blakelaw Cross, whereas the OS shows a dog-leg to the east. It may be that Greenwood was in error here, but his location of Blakelaw Cross is accurate. It may be that Greenwood is showing a schematic representation of the boundary line around Hard Rigg. It may be that the boundary line has altered over time. Hodgkinson and Donald's 1770 map of Cumberland suggests that is the case. Whichever, what matters is the reasonably accurate (by today's exacting standards) representation of Long Cross, Blakelaw Cross, and the roads leading to those.
7. **The Allendale Tithe Award 1847.**
 - 7.1. The Inspector addresses the tithe plan in paragraphs 23 & 24. The availability now of all of the 1799 inclosure plan shows clearly that the tithe award plan is, or is copied from, the inclosure plan. It therefore has no greater evidential value, and effectively little different evidential value, than that inclosure plan. The tithe plan does not appear to be signed, sealed, and certified by the tithe commissioners, and is therefore not a first class tithe plan. It is of little help here.
8. **The First Edition Ordnance Survey Maps, and the Book of Reference.**
 - 8.1. The Inspector in his 2004 decision letter considers the recording and depiction of the order route as '*The Carriers' Way*'. He says at [26], '*No evidence was presented to assist with the determination as to why Ordnance Survey considered this feature to be a cart road, or from whom authority for the description had been sought*'. I am putting in 'new' evidence about how the Ordnance Survey gathered this information.
 - 8.2. J B Hartley in *Historical Geography Research Series: The Ordnance Survey and Land-Use Mapping*, 1979; and Richard Oliver in *Ordnance Survey Maps: a concise guide for historians*, 2005, (Appendix G), both set out the process, and whilst they caution that it was 'subjective', it was still a prescribed process by local interrogation, and is therefore good contemporaneous evidence of reputation.
 - 8.3. This description as '*The Carriers' Way*' is presumptively the name by which local people described the route to the Ordnance surveyors. Short of their making it up, that must be where it came from. Similarly, a description as a 'cart road' is just that: a description of what the surveyors saw on the ground, and the feature that prompted them to ask questions of local people.

- 8.4. There is further new evidence from Ordnance Survey sources. In 1858 the Ordnance Survey made 'Boundary Sketch Books', which are now held at the National Archives under reference OS27. The relevant 'sketch' for Blakelaw Cross is OS27/3789. This below is the catalogue reference.

Reference: OS 27/3789

Description: Boundary sketch map, covering the following places:
Northumberland: Allendale; Allendale Town township; Catton and Broadside township;
Keenley township; Low Forest township; Park township; Stinted Pasture lands common to all
the Townships of Allendale; West Allen High township; West Allen Low township

Date: 1858

Held by: The National Archives, Kew

Former NY 7957
reference in its

- 8.5. This below is the actual boundary sketch.



- 8.6. This sketch shows '*Black Laws ... Road*' and the continuation into Northumberland as '*Carriers Way ... Road*'. This is good evidence that in 1858 *Blakelaws Road* did not stop at the county boundary, but continued into Northumberland as an uninclosed road, locally known as '*Carriers Way*' and visible enough for the OS surveyor to recognise it as a road, and to consider it worthy of mapping. That continuation road exists as a visible feature to this day, petering out as a visible 'road' as the land gets wetter with more surface growth, away from the watershed.
- 8.7. This image below is a satellite image from the website <https://wtp2.appspot.com/wheresthepath.htm>, and it shows the boundary at Blacklaw Cross, and the roads both sides. The road going northwards fades into a still-clear track, visibly on the line of the current public footpath. The satellite image of the whole order route is at Appendix H.



- 8.8. There appears to be a hard layer not far below the surface on the 'road' to the Northumberland side of Blacklaw Cross. This can be 'prodded' with a metal rod. In places along the order route the ground is considerably firmer than the surrounding fell. It is improbable that the road-and-track feature visible on the satellite photograph could be made by foot traffic alone over any period, and certainly not in the period after 1820 (when *Blakelaws Road* was set out) when the turnpikes were starting to take the commercial traffic hereabouts. Where would these foot passengers come from? To where would they be going? And why?

9. **The Estate Plan of 1856.**

- 9.1. In his paragraph 25 the Inspector in the 2004 decision references an 'estate plan' of 1856, which does not show the order route. Firstly, it is clear from the mapping evidence that the whole route, of which the order route was part, was a visibly minor route, at least until the inclosures of 1799 and 1820 widened and walled the 'ends'. Estate plans should be treated with caution because their purpose was not to record public highways.

10. **Summary.**

- 10.1. This matter comes down to the aggregation of a number of pieces of evidence which, when aggregated, provide a sufficiently persuasive case that the order route was part of a longer through-route of (now) restricted byway status.
- 10.2. The 1799 Allendale Inclosure Award does not set out the order route because it had no need to, and neither does it set out the undisputed Long Cross Road. Both the order route and the Long Cross Road are linear continuations of the awarded *Alston Road*, and both run to Alston. The order route is more in-line with *Alston Road* than is the Long Cross Road, suggesting that the order route was an earlier road than the branch to Long Cross, albeit that the latter was more notorious later.
- 10.3. The 1820 Alston award sets out the direct linear continuation of the order route, in Cumberland, as a public carriage road, and it has been regarded and recorded as a public highway ever since. There is no place of public resort at Blacklaw Cross. The stint-holders over the boundary in Northumberland are all Northumberland people. There is no rational reason why the Alston inclosure commissioners would set out a dead-end public carriage road, with all the attendant procedure and cost. It is much more probable that the commissioners set out a public road of a type that already existed, and 'mated' with the continuation in Northumberland.
- 10.4. On a proper view, Greenwood's map of 1827 does show the order route – through route, with Blacklaw Cross in the correct place.

- 10.5. In the mid-1800s the Ordnance Survey mapped the order route as a 'track', described it in the Book of Reference (Area Book) as a 'Cart Road', and named it there as '*The Carriers' Way*.'
 - 10.6. The contemporary OS Boundary Remarks Book also named the route in Northumberland as *The Carriers' Way* and described it as a 'Road', and named Blacklaws Road in Cumberland.
 - 10.7. These Ordnance Survey records are good evidence of reputation of the name and physical character of the order route in a period only about 40 years after the Alston inclosure commissioners set out *Blacklaws Road* as a public carriage road.
 - 10.8. There is, and always has been since before the earliest OS maps, a 'track' on the same winding route that is now recorded as a public footpath, and is clearly visible as a linear feature on satellite photographs. It is not probable that this 'footpath' came into being, legally and physically, by virtue of foot user after 1820.
 - 10.9. The route should be the width of the road just north of Blakelaw Cross: 20 feet.
- Ends.

Appendices.

- A. Extracts from the Hexham and Allendale Inclosure Award 1799.
- B. Extracts from the Alston Moor Inclosure Award 1820.
- C. Widths and photographs of Blacklaws Road.
- D. The 'Through Route Presumption.' (set out below).
- E. Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland, with suggestion for Their Improvement. Edward Lockyer, 1823.
- F. Greenwood's Map of Northumberland 1827.
- G. J B Hartley in *Historical Geography Research Series: The Ordnance Survey and Land-Use Mapping*, 1979; and Richard Oliver in *Ordnance Survey Maps: a concise guide for historians*, 2005.
- H. Satellite image of the order route.

Case & Statute Copies.

The Hexham and Allendale Inclosure Act 1792.

The Alston Moor Inclosure Act 1803

The Inspector's decision of 10 September 2004, PINS ref'n FPS/R2900/7/30.

R ex p. William John Riley v. Secretary of State for the Environment [1989] CO/153/88.

R v. The Inhabitants of the Parish of Enford, 28 March 1955.

Appendix D.

Part 2 of PINS's *Consistency Guidelines* states:

Rural Culs-de-Sac

2.48, The courts have long recognised that, in certain circumstances, culs-de-sac in rural areas can be highways. (e.g. Eyre v. New Forest Highways Board 1892, Moser v. Ambleside 1925, A-G and Newton Abbott v. Dyer 1947 and Roberts v. Webster 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.

2.49, In Eyre v New Forest Highway Board 1892 Wills J also covers the situation in which two apparent culs-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it.

Expanding this guidance a little further is of assistance:

In Eyre v. New Forest Highway Board (1892) JP 517, the Court of Appeal under Lord Esher, MR, considered an appeal against a decision of Wills J, who had rejected an application by Mr Eyre that Tinker's Lane in the New Forest was not a publicly repairable highway and should not be made up by the Board. Lord Esher commended Wills J's summing-up as "... copious and clear and a complete exposition of the law on the subject; it was a clear and correct direction to the jury on all the points raised."

Wills J: "It seems that there is a turnpike road, or a high road, on one side of Cadnam Common; on the other side, there is that road that leads to the disputed portion, and beyond that if you pass over that disputed portion, you come to Tinker's Lane which leads apparently to a number of places. It seems to connect itself with the high road to Salisbury, and with other more important centres, and I should gather from what I have heard that there are more important centres of population in the opposite direction. You have heard what Mr Bucknill says about there being that better and shorter road by which to go. All that appears to me on the evidence is that, for some reason or other, whether it was that they liked the picturesque (which is not very likely), or whether it is that it is really shorter; there were a certain portion of the people from first to last who wished to go that way. It is by the continual passage of people who wish to go along a particular spot that evidence of there being a high road is created; and taking the high roads in the country, a great deal more than half of them have no better origin and rest upon no more definite foundation than that. It is perfectly true that it is a necessary element in the legal definition of a highway that it must lead from one definite place to some other definite place, and that you cannot have a public right to indefinitely stray over a common for instance... There is no such right as that known to the law. Therefore, there must be a definite terminus, and a more or less definite direction...

"But supposing you think Tinker's Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a cul-de-sac, and ends at a gate onto a common? Such things exist in large towns... but who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again? ... It is a just observation that if you think Tinkers Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across that common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore it seems to me, after all said and done, that the evidence with regard to this little piece across the green cannot be severed from the other... it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green... I am not laying this down as law; but I cannot understand how there could be a public way up to the gate – practically, I mean; I do not mean theoretically, - but how in a locality like this there could be a public highway up to the gate without there being a highway beyond it. If there were a public highway

up Tinker's Lane before 1835, it does not seem to me at all a wrong step to take, or an unreasonable step to take, to say there must have been one across that green."

There are three often-cited cases on culs-de-sac and whether such can be (public) highways: Roberts v. Webster (1967) 66 LGR 298; A.G. v. Antrobus [1905] 2Ch 188; Bourke v. Davis, [1890] 44 ChD 110. In each of these the way in dispute was (apparently) a genuine dead-end with no 'lost' continuation. Fundamental argument in each was whether or not a cul-de-sac (especially in the countryside) could be a (public) highway. In each case the court took the point that the law presumes a highway is a through-route unless there are exceptional local circumstances: e.g. a place of public resort, or that the way was expressly laid out under the authority of statute, such as an inclosure award. In AG (At Relation of A H Hastie) v. Godstone RDC (1912) JP 188, Parker J was called upon to give a declaration that a cluster of minor roads were public and publicly repairable highways. "The roads in question certainly existed far back into the eighteenth century. They are shown in many old maps. They have for the most part well-defined hedges and ditches on either side, the width between the ditches, as is often the case with old country roads, varying considerably. There is nothing to distinguish any part of these roads respectively from any other part except the state of repair. They are continuous roads throughout and furnish convenient short cuts between main roads to the north and south respectively [note the similarity of logic here with Wills J in Eyre]. It is possible, of course, that a public way may end in a cul-de-sac, but it appears rather improbable that part of a continuous thoroughfare should be a public highway and part not. It was suggested that there might be a public carriageway ending in a public footpath and that Cottage Lane and St Pier's Lane are public carriageways to the points to which they are admittedly highways, and public footpaths for the rest of their length. I cannot find any evidence which points to this solution of the difficulty, and so far, at any rate as evidence of the user of the road is concerned, there is no difference *qua* the nature of that user between those parts of the roads which are admittedly highways and those parts as to which the public right is in issue."

The matter was also touched upon in Brand & Another v. Philip Lund (Consultants) Ltd (1989) Unreported. Ch 1985 B. No. 532 (this is the case reference given in the 'Blue Book': there may be a typographical mistake here, as the hearing was on 18 July 1989?) Judge Paul Baker QC (sitting as a Judge of the High Court).

"Before I come to the evidence I should deal with certain submissions of law, supported by a number of authorities which have been placed before me by Mr Marten for Mr and Mrs

Brand. The first one is that a public vehicular highway is and normally must be used to go from one public highway to another. In support of that, there was cited the well-known case of Attorney General v. Antrobus [1905] 2 Ch 188. That case concerned a path or track leading to Stonehenge. It was held to be not a public highway. I cannot accept the proposition precisely as stated. The position as I see it is this, that generally a public right of way is a right of passing from one public place or highway to another. Here the claimed right is from one highway (at Bellingdon) to another (at Chesham Vale). Hence I do not have to consider the position as to cul-de-sacs and tracks, as in the Antrobus case. The part of the formulation that I do not accept is the wording that it normally must be used to go from one public highway to another. In my judgment, it does not have to be shown that it is normally used to go from one end to the other. It may normally be used by people going from either end to and from premises fronting on to it and less frequently used by persons traversing its whole length. The user necessary to establish a right of way is to be considered separately from the way itself."

In Commission for New Towns v. J J Gallagher [2003] 2 P & CR 3, Neuberger J, at [91], "The Inclosure Award of 1824 is concerned with a relatively small part of Beoley Lane, namely the very south-eastern end. However, given that the issue between the parties concerns whether or not Beoley Lane is a carriageway, it seems clear that the highway status of this part of Beoley Lane cannot be any different from the rest of Beoley Lane."

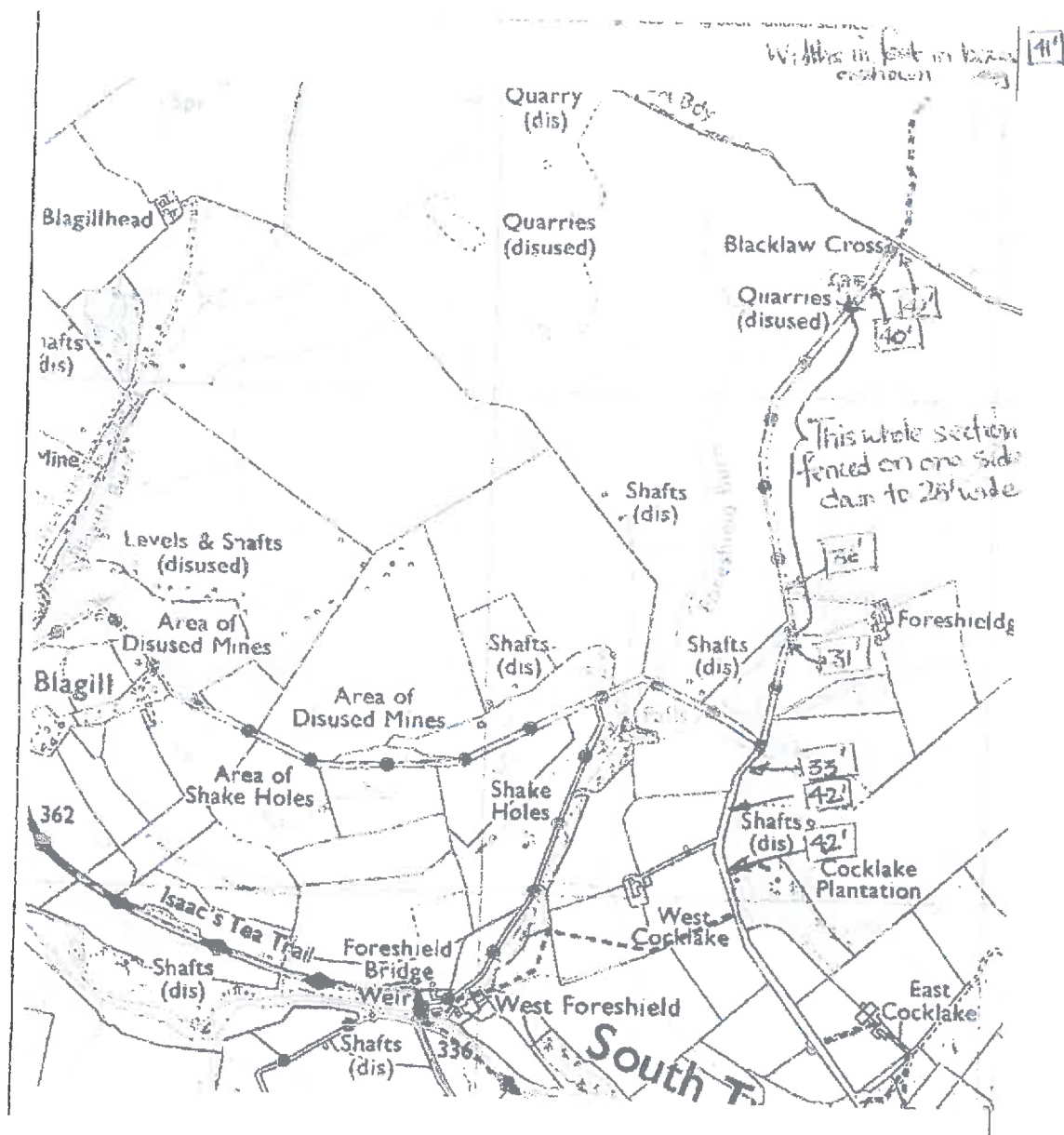
In Fortune v. Wiltshire Council [2012] EWCA Civ 334. Lord Lewison [my emphasis].

[35] Before delving into this fascinating material, there are two fundamental questions that in our judgment Mrs Fortune's case does not adequately deal with. She accepts that Rowden Lane is a public highway. It follows therefore that at some time in the past it must have been dedicated as a highway (no doubt inferred by long public use). However, Mrs Fortune says that the public rights of way are limited to use on foot or with animals. The first question is: if it is accepted that the public used the way as of right, where were they going to? The answer must be either that they were using Rowden Lane as part of a network of highways (i.e. as a thoroughfare) or they were visiting some particular place simply as members of the public. Indeed the judge recorded that Prof Williamson accepted that there must have been a public attraction or attractions at the end of section B of Rowden Lane to attract the public along it (§ 945), and the judge so found. The judge's finding was well supported by the evidence to which we were referred.

Summary.

Clearly the courts admit the possibility (but are cautious about the probability) of a cul-de-sac in a rural area, but there would need to be a 'place of public resort' at the 'dead end'. Would some cottages be a sufficient place of public resort? A village certainly could, but individual farms and single-owner settlements (farmsteads in older terminology) would generally be served by private roads. The public, on *bona fide* business, can access private property along private roads. What 'public reason' would the public have sufficient to have a public road leading to single, or small, settlements only?

[Although it is not in any way a 'precedent', it is useful to note the view of Inspector Dr T O Pritchard, when tasked to consider the true status of a through-route that currently 'changes status' part-way. He said it is "... Improbable for part of a continuous route to be part footpath and part carriageway", expressly taking the Godstone case as authority. [FPS/A4710/7/22 723, of 31 March 1999].





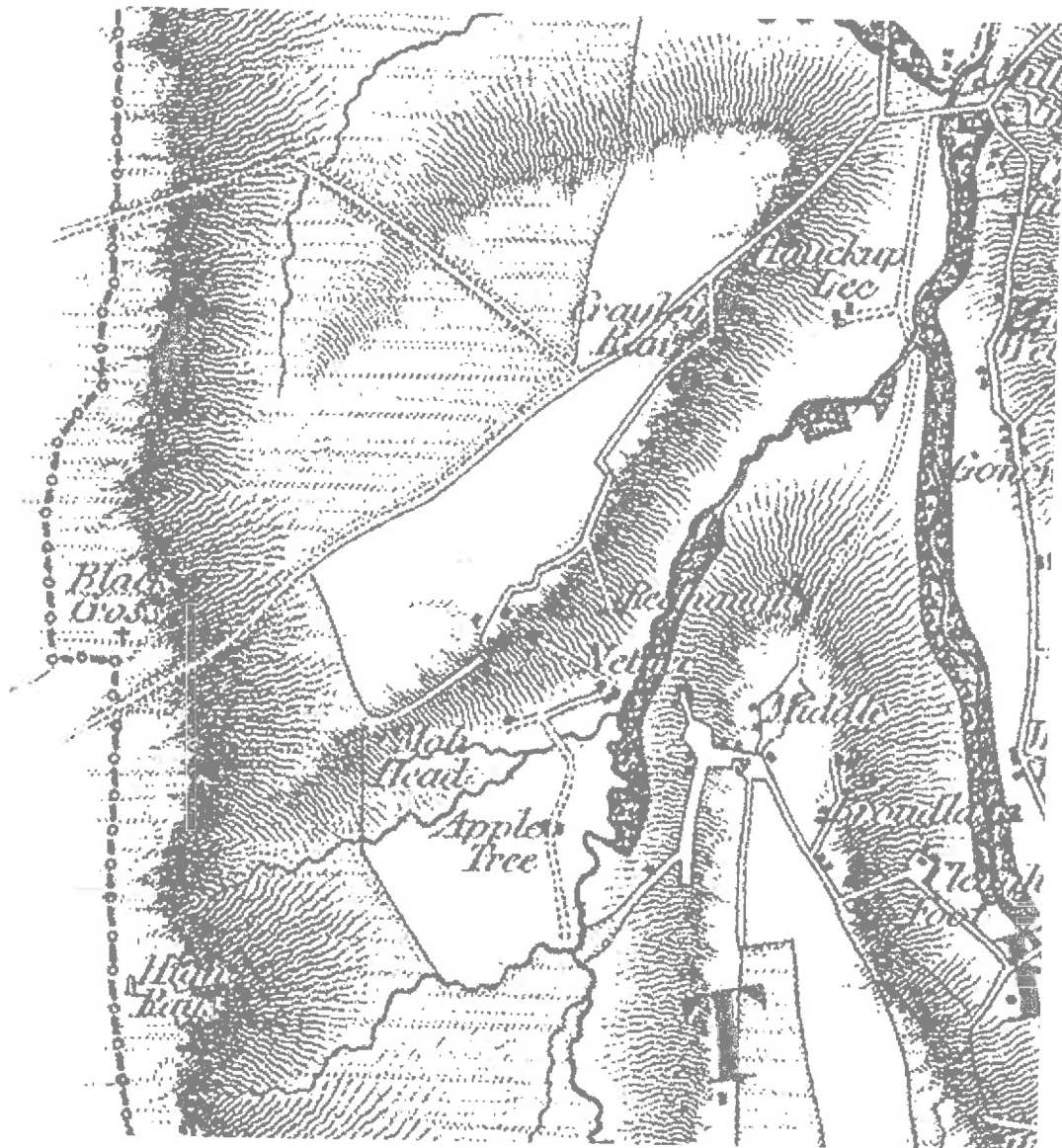
BC2



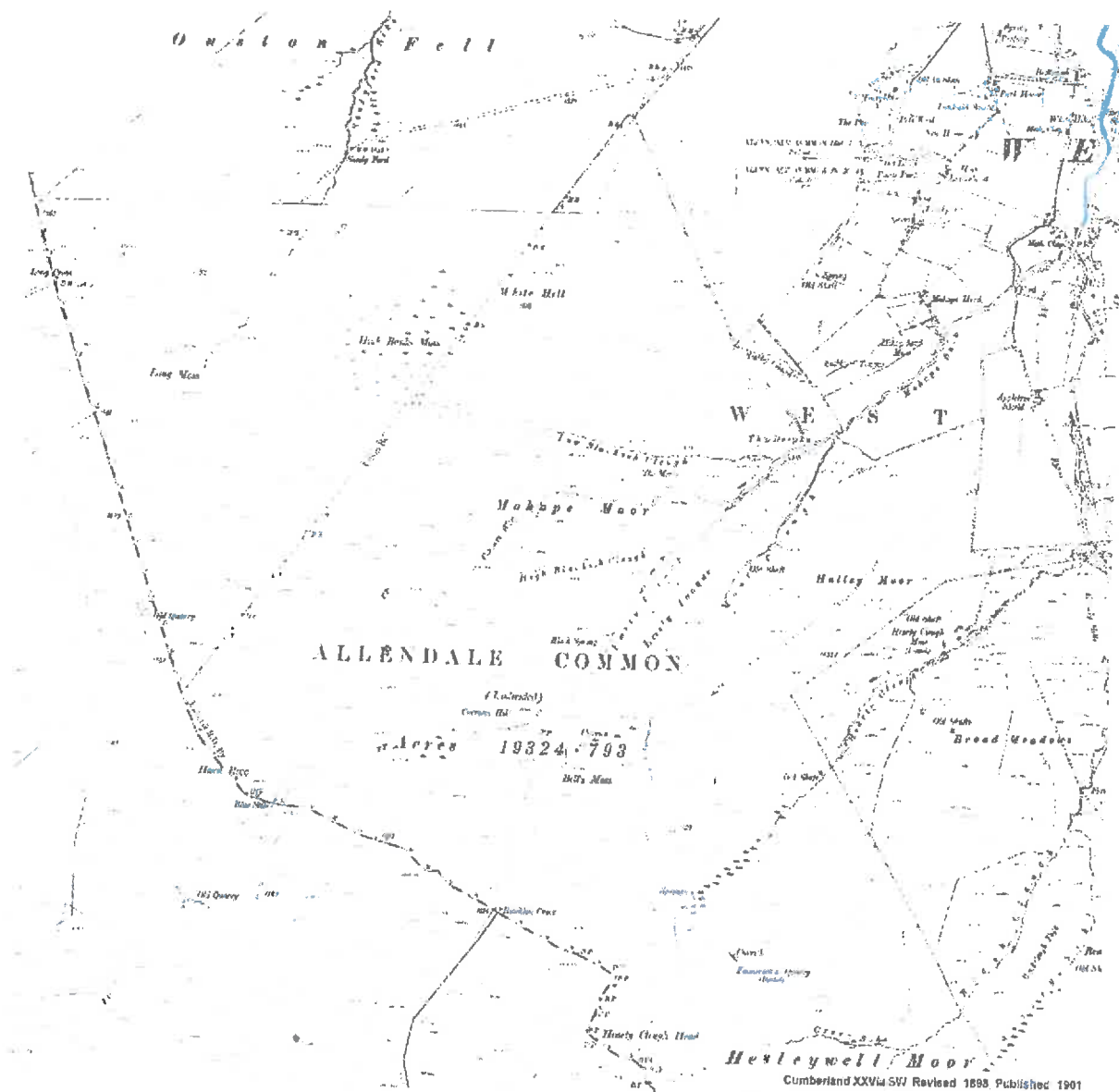
BC3



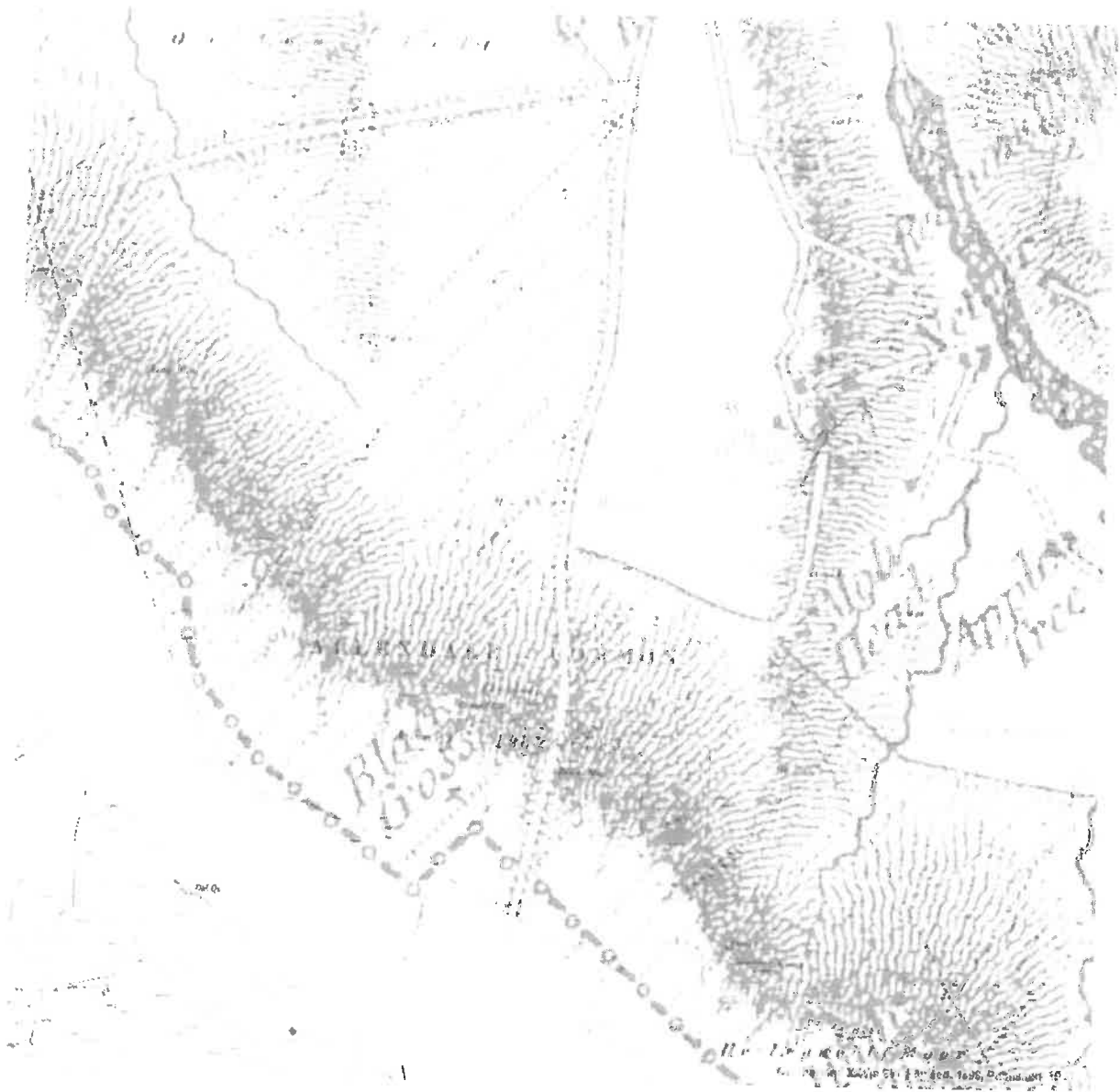
BC8



Greenwood's map of 1827



The 6"-scale OS map, same area, 1898.



A translucent overlay with Greenwood's map on top, with the 1898 OS below, showing through.



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REPORT

ON THE STATE AND CONDITION OF THE

ROADS AND MINES,

ON THE ESTATES OF GREENWICH HOSPITAL,

IN THE COUNTIES OF

CUMBERLAND, DURHAM, AND NORTHUMBERLAND,

WITH SUGGESTIONS FOR THEIR IMPROVEMENT.

BY

EDWARD HAWKE LOCKER, F.R.S.

Secretary to the Institution.

1823.

ROADS.

TO THE RIGHT HONOURABLE AND HONOURABLE,
THE DIRECTORS OF THE ROYAL HOSPITAL FOR
SEAMEN AT GREENWICH.

HAYDON BRIDGE, 29th JULY, 1823.

MY LORDS AND GENTLEMEN,

HAVING drawn your attention in my Report of last year, to the importance of improving the Roads in these Counties, as a measure of great advantage to the Property of Greenwich Hospital, and having since received your permission to engage the services of Mr. M^r. Adam, in surveying a New Line of Roads, with a view to form a more ready intercourse through this part of the kingdom, I have accompanied him in making a preliminary Survey of the District which more immediately required his attention, and I have now the honor to submit to you an outline of the improvements, which, after due deliberation, I have taken upon me to recommend to be carried into execution, so soon as an Act of Parliament can be obtained for that purpose.

In this undertaking, while I have kept in view the peculiar interests of Greenwich Hospital, I have with equal solicitude regarded the general advantage of the public, and it affords me the greatest satisfaction to state that the peculiar position of our Property, in this Country, presents the means of profiting the Hospital, and of benefiting the Inhabitants at large, without neglecting or sacrificing the interests of either party, and with reciprocal advantages to both.

In providing for the more ready communication between the several Manors belonging to the Institution; a most valuable intercourse will be opened between those parts of the Northern counties, whose internal commerce has been hitherto extremely limited by the interposition of the Mountainous Ridges, which for want of good Roads, have been considered almost impassable for heavy produce.

On my first visit to the Estates of the Hospital, two years ago, I was immediately impressed with the necessity of using some great exertion for the amendment of the Roads, and I have since frequently taken the liberty to urge the subject to your consideration, more especially on my second inspection of the Estates last year. The more accurate examination which I have now made for this particular object (under the superior intelligence of Mr. M'Adam), has opened so enlarged a view of the advantages which will thus be secured to the public, that I am more than ever anxious to extend the proposed improvements as widely as possible, and this has determined me to recommend a plan of operation which may form the centre of more enlarged operations, and immediately provide for the free communication between the Hospital's Property in Aldstone Moor, and the principal Towns within a circle of at least thirty-six Miles around them.

Although the improvements thus projected are necessarily limited to such a scale as is suited to the resources which may be placed at our disposal, I cannot but consider that you will secure to these Counties a most important benefit, by introducing Mr. M'Adam to this very extensive portion of the Island, the roads of which have hitherto been greatly neglected. The complete success which will result from the operations thus proposed to be committed to him, will spread intelligence to a wide extent, and I confidently predict that the measure now contemplated will be but the commencement of a general reformation of the Roads throughout the North of England, extending across the border into those Shires of Scotland, which have not hitherto adopted the system now so well known and practised in other parts of Great-Britain.

In a mountainous tract of country, where other means of communication are seldom practicable, it is of the utmost importance that the

Roads

Roads should be carried along the easiest level, and that the materials should be so skilfully constructed, as to resist the violent effects of those continual rains and heavy falls of snow, by which they are liable to be broken up. The slightest inspection of the Roads of this part of the country, shews the entire ignorance with which they have been contrived, and which still prevails among the inhabitants. The public Roads are carried over the highest hills with scarce an attempt to find an easier level, and the surface is loaded with an immense quantity of heavy Stones, without the least consideration of the wear and tear of the carriages and cattle employed in the conveyance. To remedy these defects, while the inequality of the surface demands the greatest skill in the choice of a new line, the abundance of Limestone, Whin, and other valuable materials, presents the greatest facility for the reconstruction of the Roads, for these are found lying upon every part of that line which has been chosen for the projected plan which I now proceed to describe.

In considering the nature of the undertaking thus proposed to your adoption, it should be borne in mind that the natural impediments, which have hitherto prevented the formation of good Roads in this District, are by no means inconsiderable. Aldstone which I propose to make the focus of these improvements, being nearly the most elevated Town in England. Under these circumstances the produce of the Lead Mines in Aldstone Moor is wholly conveyed by Land Carriage to Newcastle, as the South Tyne is not navigable, and the interposition of two very elevated ridges of hills, renders it impracticable to construct either Canal or Railway for that purpose. As the direct communication passes chiefly through the Estates of the Hospital, it has been judged advisable to reform the whole line from Hexham to Penrith, conducting the Road through Aldstone as a central point, and thereby opening a communication between the more distant parts
of

of the property, extending by Penrith towards the Estates of De westwater on the western side, by Langley Barony, Corbridge and Dilston to Newcastle on the east, and through the Barony of War to Bellingham on the north.

To carry this into effect, it is proposed to incorporate under a new Act of Parliament, the present trust from Aldstone to Hexham, with that which crosses it at the former place from Burtryford to Burnstones and connecting with them the following Branches, viz :

1. From Aldstone to Penrith, with a branch from Melmerby to Appleby, thus opening into Westmoreland and Lancashire.
2. From Burnstones to Brampton, leading to Carlisle.
3. From Burtryford through Weardale into Durham.
4. From Aldstone to Middleton and Barnard Castle, there opening the line into Yorkshire.
5. From the West Boat (between Haydon Bridge and Hexham), to Bellingham, there opening an easy access to the Road over the Carter Fell into Scotland.

Of these projected Lines it is proposed at present to execute to the extent of Seventy-five Miles, leaving to the adjacent Trusts to co-operate hereafter in completing the communication from the various points to which I have referred above, thus at once removing those obstacles which have hitherto impeded the communication from South to North and from West to East.

The

The immediate benefit to the Hospital is sufficiently apparent, from the single fact stated by Mr. M'Adam, that in the carriage of Lead and Lead Ore out of Nentwater only, some thousands annually will be saved by the accommodation thus afforded in the transport of that article. Facility will also be given to the conveyance of Coal from the Collieries to the Smelting Mills, and for the domestic use of the neighbouring Towns and Villages—the transport of Lime and Stone from the Quarries—the carriage of all sorts of Agricultural produce, provisions, and every other article of supply, and the introduction of an abundance of these commodities, which are now brought from a distance in very limited quantity, owing to the difficulties opposed to them by the wretched state of the present Roads.

Having collected such a general knowledge of the proposed improvements, as was necessary for the information of the parties most interested, we attended a General Meeting of the Commissioners of the Hexham Trust, this day, at which Lord Viscount Lowther presided, and having laid before them the proposed measure, an unanimous resolution was passed, by which these suggestions were adopted, and the Trustees of the Road from Burtryford to Burnstones were invited to co-operate in an application to Parliament to carry the proposition into effect. In anticipation of their concurrence (which had been already signified by the principal Parties), Mr. M'Adam has been directed to complete the whole of his Surveys and Estimates with all dispatch, as in order to obtain the consent of the Legislature in the next Session, it is necessary that all the documents required, should be deposited in the Office of the Clerk of the Peace of each County, on or before the 30th of September next.

The whole of the Road comprehended within the immediate undertaking, is computed to require an advance of money, on
c
loan

loan, not exceeding Twenty Thousand Pounds; two-thirds of the proposed Line being entirely new Road.

As Greenwich Hospital and the London and Hudgill-burn Lead Companies, (its principal Lessees), will derive the more immediate benefit from these improvements, I have proposed (with the concurrence of Lord Lowther and the Receivers), that Five Thousand Pounds should be advanced by each of these public Bodies, on Loan, bearing interest at four and a half per cent. on the security of the Tolls, and that the remaining sum of Five Thousand Pounds should be collected by public Subscription among the neighbouring Proprietors, or left to be provided for by the future increase of the Turnpike Revenues, which cannot fail to produce a surplus more than adequate to pay the interest of the debt, and to discharge the principal so borrowed, in a few years. The income of the two existing Trusts already exceeds their expenditure, and the produce of the additional Tolls, will amply provide for the Expenditure when the New Trust is established.

The Inhabitants of this District will probably consider themselves abundantly recompensed by the more ready communication thus afforded them, but in connecting these Roads through Aldstone Moor with the great avenues of intercourse with distant Counties, a channel will be opened for the diffusion of wealth and intelligence among an industrious and enterprising People, who have hitherto been excluded from their due share of those advantages which are enjoyed by their fellow countrymen in other parts of England.

As the success of the whole measure entirely depends on the ability and integrity with which the undertaking is effected, and further that the New Roads, when completed, shall be managed with the same skill with which they are to be constructed in the first instance,

instance, the Commissioners of the Hexham Trust have engaged with Mr. M'Adam, that the whole undertaking shall be completed under his own direction, and that when finished he will provide a skilful Surveyor, with proper Assistants, to take the future management of the Roads. I considered this a stipulation of the greatest importance to the permanency of the improvements, and the extension of the system throughout this part of the kingdom, because the roads will be secured from relapsing into mismanagement, and the presence of skilful Surveyors will enable other Districts to profit by their experience and information, and spread the improved principle of road-making to an almost indefinite extent.

The great object so long contemplated of forming a Middle Road into Scotland, upon nearly the same line as that projected a few years ago, by Mr. Telford, may thus be effected under every advantage, as a great part of the improvements now proposed will constitute a portion of that design, and at an expense trifling in comparison with all former estimates. Many of the chief Proprietors on the borders are waiting only for the encouragement which will thus be afforded them, and I am perfectly confident that so soon as Mr. M'Adam's undertaking is carried into effect, (even upon the limited plan we have at present proposed,) the Commissioners of the neighbouring Trusts, on all sides, will avail themselves of these advances towards them, and will be ready to carry forward the improvements into the adjacent Counties, thus connecting the communication with the most distant parts of the kingdom.

I have the honor to be,

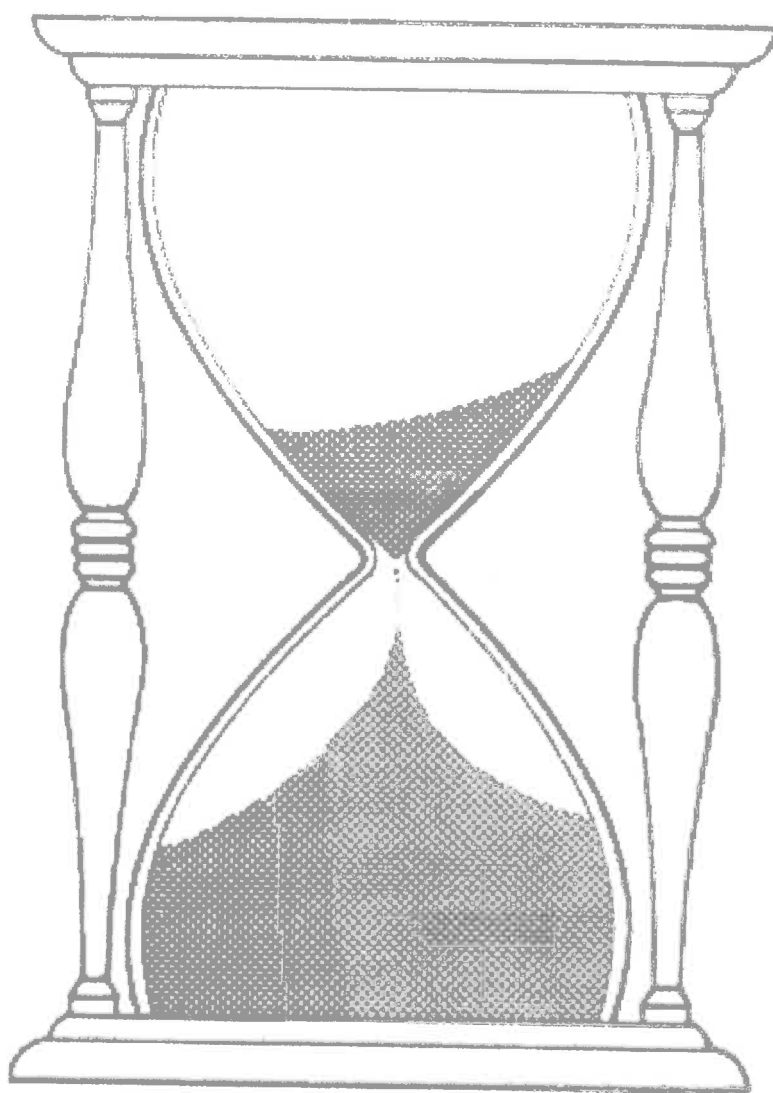
My Lords and Gentlemen,

Your most faithful Servant,

EDWARD HAWKE LOCKER.

Historical Geography Research Series

The Ordnance Survey
and
Land-Use Mapping
J. B. Harley



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HISTORICAL GEOGRAPHY RESEARCH SERIES

No. 2

THE ORDNANCE SURVEY AND LAND-USE MAPPING: PARISH
BOOKS OF REFERENCE AND THE COUNTY SERIES 1:2500
MAPS, 1855-1918

By

J. B. Harley

(Department of Geography, University of Exeter)

The pointers are ambivalent. On the one hand, there is the data on areas relating to parcel numbers on the plans. This was clearly regarded as essential information. It continued to be printed beyond 1880 and, after 1888, when the series was entirely discontinued, it was transferred to beneath the parcel numbers on the face of the maps. But what, on the other hand, are we to make of the land-use information? Clearly perhaps, insofar as it was dropped from the Books of Reference after 1880, it must be regarded as in some way a less essential category of the information recorded by the cadastral survey. It is this suspicion that the land-use information in the Books of Reference served no particular purpose which has puzzled earlier researchers and it is important, therefore, as a next stage in the argument, to set it more fully into the context of the methods and processes of the cadastral survey as a whole.

THE BOOKS OF REFERENCE AND THE PROCESSES OF THE 1:2500 SURVEY

It is possible to reconstruct the sequence of operations undertaken by the cadastral survey in the field, in broad outline at least, both from the instructions and descriptions of processes which were printed by the Ordnance Survey, and also from such fragments of their working maps, sketches, traces and data collection forms as have survived the twin assault of enemy action and past weeding of documents in the Southampton office. The reconstruction of survey processes, and in particular an examination of the field specification for the 1:2500 series, dispels the notion that the land-use information published in the Books of Reference was in some way divorced from the activities of the mapping as a whole. On the contrary, from 1855 to 1818 the Ordnance Survey conducted, as an integral part of the cadastral mapping, what may be defined as essentially a national land-use survey. It is true that the emphasis was placed on types of non-cultivated land but arable and permanent pasture were also consistently recorded. The classification of land-use observed was subject to some alteration in this two thirds or so of a century (often only in terminology rather than in topographical substance) but its scope as an integral part of the cadastral survey is confirmed in Table 1, taken from the 1932 *Instructions to Field Revisers*. This may be regarded - although the arable-pasture distinction had already been dropped - as broadly representative of Ordnance Survey land-use mapping for the County Series 1:2500 maps. No less than 26 other single or combined land-use types were specified for identification by revisers in the field, an impressive attention to detail which implies a central place for land use in the overall mapping specification.

To understand the status and significance of this data it is first necessary to appreciate how it was collected, both during and after the period of the Books of Reference. Fortunately, the slot of land-use mapping in the sequence of Ordnance Survey operations, if not the precise criteria by which

land-use types were identified, is clearly set out in an official publication as early as 1875. By this date there had already developed standardised procedures for field and office, linked to a division of labour applied to successive processes, and relying on standard documents for data collection. Land-use was recorded in an operation secondary to the initial topographical survey. This was plotted in field notebooks, which were returned either to Southampton or to one of the regional offices of the Survey,²¹ where they were fair drawn as manuscript plans. From these plans a 'manuscript trace' - covering 160 acres or 1/6th of the area represented on a 1:2500 plan - was taken and issued for the use of an 'examiner' in the field. The field examiner added land-use information. In 1875 it was noted he would be 'a surveyor and plotter, and sufficiently a draftsman to be able to represent objects clearly and distinctly to scale according to conventional rules'. The examiner's main task was to 'verify the accuracy of the detail by judicious inter-sections and productions', but, more specifically, on the 1:2500 scale he was

'required to give on the face of the traces all the information necessary for the numbering of the parcels and describing them in the books of reference ... to accomplish which he has to write the nature of the different characters of ground, whether arable, pasture, wood, rough pasture, moor, moss, sandhills, &c., and in cases of doubt, defining on the ground to the best of his judgement by dotted lines the limits of the parcels as he would recommend them to be computed.'²²

It has already been shown how similar categories of land use to those in 1875 - apart from arable and pasture - were still being collected in 1932 (Table 1) and the survival of the 1905 edition of the *Instructions to Field Examiners* provides an intermediate confirmation of this continuity of field methods and basic specification. Furthermore, in the preface to these *Instructions*, it is explained that rules current in 1905 represented an up-dating of basically similar instructions issued in 1884 and they therefore provide a direct link with the First Edition of the 1:2500 plans and the period of the Books of Reference.²³ The main land-use types, including at that date the arable-pasture distinction, are set out in the 1905 text, and they are also identified on an accompanying specimen sheet of an examiner's field trace. This reveals the nature of the land utilisation survey undertaken by the Ordnance Survey. The abbreviations for the examiner are carefully specified (A. Arable, P. Pasture, R.P. Rough pasture, V.G. Vegetable garden, etc.) so that there was little room for ambiguity (Figure 6). Apart from a few examples preserved in connection with boundary matters (Figure 7), most of the examiner's traces have now been destroyed²⁴, and it is unfortunate that the opportunity to abstract this data has now disappeared. It could have added an important dimension to our understanding of nineteenth and early-twentieth century land-use change.

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a concise guide for historians

Second Edition, revised and expanded

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The Charles Close Society

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1:50,000 Second Series material. The series was withdrawn from publication in April 1996, by which time OS had developed a digital product, Boundary-Line, which effectively replaced it.

In 1944, as part of the Planning Map series, a pair of sheets covering Britain at 1:625,000 were published: they continued to be republished up to the mid 1990s with revisions to both local government and Parliamentary and European constituency boundaries, but at the time of writing are only published with the constituency boundaries. As published in 1973-5 this mapping showed both pre- and post-reorganisation boundaries, and is thus extremely useful.

There was no 1:126,720 administrative series for Scotland, and the only 1:100,000 cover was two sheets of the central lowlands.

In 1938-40 two administrative 1:253,440 sheets were published of the south of Scotland. In 1951-2 the whole of Scotland was covered by a 1:253,440 Administrative Areas Edition, using the Fourth Edition topographic mapping as a base, and published in two versions, with and without Parliamentary constituencies: both showed counties, burghs, districts and civil parishes. These were replaced in the 1960s by a nine-sheet series based on the 1:250,000 Fifth Series.

In 1996 all the existing 1:100,000 and 1:250,000 administrative mapping was replaced by a version of the 1:250,000 *Travelmaster* overprinted with national, county, unitary and district boundaries; this series remains on sale at the time of writing.

Area books

From 1855 until the mid 1880s the 1:2500 maps were accompanied by 'area books', 'parish area books' or 'books of reference', as they have been variously called. The whole subject has been investigated thoroughly by Harley (1979) and there is practically nothing to add. The 'area books', as they will be called here, gave the acreage of each parcel and, usually, its land-use, except in villages and built-up areas. From 1855 to 1859 the 'area books' were actually lithographed sheets, which could be cut up and bound into books if desired; thereafter they were booklets, printed by letterpress. After October 1879 the land-use information was omitted, and from *circa* 1884-5 onwards the usual practice was to print the acreage of each parcel on the map, below its reference number. The main loss after 1879 was of the distinction between arable, grass and market gardens; orchards, woodland and uncultivated land continued to be shown by symbol on the published maps. The acreage of fields is probably of little importance for the great majority of researchers, whereas the land-use information is of much wider interest, particularly if it can be used in conjunction with agricultural statistics, tithe surveys or the first Land Utilisation Survey of England and Wales. For northern England, where the tithe surveys are often deficient in land-use information, and for Scotland, which had no tithe surveys at all, the information in the area books may often be the first reliable land-use information for a particular locality. Unfortunately, the data is subject to two deficiencies. First, it only covers those parts of Britain surveyed at the 1:2500 scale before *circa* 1878, so that, for example, some midland counties are only partially covered by land-use information, and some counties poorly served by tithe surveys, such as almost all of the East Midlands and parts of Wales, are not covered at all. Secondly, there was probably a subjective element in the data collection. The land-use information was gathered when the manuscript work was being examined in the field, and therefore its accuracy depended on the skill of the examiners, and whilst the examiners ensured the accuracy of the linework supplied by the detail surveyors, and the citation of authorities provided authenticity for place-names, the examiners' classification of land-use was not subject to such close control. It is possible that this explains the marked discrepancy between the proportions of arable and grass noted along the Middlesex-Hertfordshire border; grass in rotation may have been mistaken for permanent pasture. Also, the precise date of examination is unknown.



Order Decision

Inquiry opened on 6 April 2004

by Alan Beckett BA, MSc, MIPROW

an Inspector appointed by the Secretary of State for
Environment, Food and Rural Affairs

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Date **10 SEP 2004**

Order Ref: FPS/R2900/7/30

- This Order is made under Section 53(2) (b) of the Wildlife and Countryside Act 1981 and is known as the Northumberland County Council (Public Rights of Way) Modification Order (No. 10) 2003.
- Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 12 May 2003, and there were seven objections outstanding at the commencement of the inquiry.
- The Order proposes to modify the Definitive Map and Statement for the area by upgrading Footpath No 26, Parish of West Allen, to Byway Open to All Traffic.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. The effect of the Order, if confirmed without modification, would be to modify the Definitive Map and Statement for the area by upgrading to Byway Open to All Traffic ("BOAT") Public Footpath No. 26 West Allen which runs from Blakelaw Cross (point A on the Order plan) in a generally northerly direction to the U8039 road at Kiersleywell Bank (point B), an overall distance of approximately 2635 metres.
2. I have been appointed to determine the Order in accordance with Paragraph 10(1) of Schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
3. I held a public local inquiry into the Order on Tuesday 6 April and Wednesday 7 April. I carried out an unaccompanied inspection of the right of way on Monday 5 April. The parties to the Order did not require me to carry out a further accompanied inspection.
4. At the inquiry the owners of the land affected by the Order were represented by Counsel. Five of the seven objections outstanding were withdrawn when the inquiry opened.
5. Northumberland County Council had made the Order following a direction from the Secretary of State under paragraph 4(2) of Schedule 14 to the 1981 Act. The County Council, as order making authority, remained neutral at the inquiry and the case for the Order was made by the applicant, Mr A D Kind.
6. At the inquiry, it was confirmed on behalf of the County Council that all statutory procedures had been complied with.

The main issues

7. The requirements of Section 53 (3) (c) (ii) namely, the discovery of evidence which when taken with all other relevant evidence available shows that a highway shown in the map and
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statement as a highway of a particular description (namely Footpath No. 26 West Allen) ought to be there shown as a highway of a different description (namely as a BOAT).

Reasons

8. Mr Kind submitted that the Order route was part of a mediaeval high-level road between Corbridge, Alston and Penrith, which passed a settlement called Corby Gates Farm located approximately 2.8Km south-west of the Order route. Corby Gates Farm was recorded in 1314 as a farmstead by the name of Corbriggate. Mr Kind called this route the Corbrigg Gate, and located his mediaeval road in this area by suggesting that the fourteenth century farm name was taken from its proximity to the road to Corbridge. In Mr Kind's submission, the most direct route from Corby Gates Farm to the north-east in the direction of Corbridge was over Mohope Moor along the Order route via Blakelaw Cross. It was Mr Kind's case that such a route had fallen into disuse with the advent of other routes on more suitable gradients and terrain such as the road via Long Cross.
9. In support of his case Mr Kind drew on a number of authorities, namely *Commissions for New Towns v Gallagher* [2002] EWHC 2668; *Eyre v New Forest Highways Board* 56 JP 517; *Trafford v St. Faiths RDC* (1910) JP 297 and *Vyner v Wirral RDC* [1909] JP 202. Where appropriate, I have made reference to these cases.
10. Lead mining and processing was a significant local industry in the Northumberland – Cumberland border areas for many centuries. The transportation of ore from mine to smelt mills required the organisation of not only labour and capital but a network of suitable roads and trackways on which the raw material and refined product could be transported. I heard that the development of the lead trade in the eighteenth century was one of the principal driving forces behind the development of the local road network around Mohope. I have no reason to question that view.
11. The County maps of Northumberland by Kitchin (1750-1785), Horsley (1753) and Armstrong (1769) do not show the Order route, but do show the Long Cross – Ninebanks road which is now the U8039, to which the Order route connects at Knights Cleugh Head (point B). Similarly, the Hodgkinson and Donald (1770-71) map of Cumberland shows the road via Long Cross but not the Order route.
12. An estate map drawn in 1757 to show the boundaries of the Whitfield estate owned by the Greenwich Hospital annotates the Long Cross route as the "road from Alston to Hexham". This plan was drawn to show the boundaries and features within the Whitfield estate. As the Order route ran over the neighbouring Hexham estate, the cartographer would not necessarily have been concerned with roads or tracks outside the Whitfield boundary. However, the Alston – Hexham road via Long Cross is shown as crossing the estate boundary at Knights Cleugh Head. At this point there is no indication of a route running to the south over Mohope. From the County maps and from estate plans of the Greenwich Hospital it is clear that the only acknowledged road that led between Alston and Hexham until the construction of the Alston Turnpike in 1778 was the route via Long Cross and Knight's Cleugh Head.
13. The Alston Turnpike Act of 1778 provided for the construction of a new section of road between Alston and Hexham bypassing the Long Cross route. The Turnpike was promoted by the local lead mining and carrying interests as a means of improving the transportation of the lead ore from mine to smelt mill. The enabling Act provided for the old road to cease to

be maintained at the expense of the parish, although the Act did not enable the route to be extinguished. The Long Cross route therefore remained as a public road. The objectors submitted that the bulk of the important lead trade traffic would have transferred to the new turnpike, leading to a reduction in traffic on the old Alston road via Long Cross. If the traffic along the old road fell, it is therefore probable that any traffic using the claimed route over Mohope as a through route, if the alleged route existed, would similarly have dwindled.

14. The Hexhamshire and Allendale Inclosure Act of 1792 gave the commissioners who drew up the award in 1799 extensive powers to award and set out roads and other highways and to stop up existing roads and highways over the moors and waste affected by the award. Under the Act, those parcels of land which were deemed to be suitable for improvement were to be enclosed, with the remainder of the moors and waste ground being stinted amongst the commoners. Part of the old Alston road bypassed by the 1778 turnpike was awarded as a public road from Powstile Gate to Knights Clough Head.
15. The Order route is not shown on the inclosure award plan, nor is it mentioned in the award. Under the terms of the enabling Act, all former roads and ways not set out and appointed through the lands which were to be divided and allotted were to become part of those lands, and that use of such former ways was to be unlawful. A number of roads through other stinted pastures in the area covered by the Award were awarded and in the objector's view as the Order route was not awarded any such route that would have existed was stopped up under the terms of the enabling Act. Mr Kind was of the view that as the land crossed by the Order route was not divided and allotted, the Act and the Award had no impact upon any pre-existing way running over the stinted pasture.
16. The enclosure of individual parts of the moor and the award of those allotments to named individuals clearly involves the division of the land, and its physical separation from other parts of the moor by fences. I consider that these are the parts of the moor which are referred to in the enabling Act as the land to be "divided and allotted". This is supported to some extent by the terms of section 66 of the Act which grants to the owners of the allotments the right to dig for peat, slate and other materials on the stinted, unenclosed (and therefore unallotted) land. To my mind, the allocation to the commoners of the right to stint a given number of animals on the unenclosed part of the moor does not involve any such physical division. There would therefore have been no impact upon any pre-existing way over the stinted pasture, with only pre-existing ways through the divided and allotted lands being extinguished. Consequently, I find Mr Kind's argument on the interpretation of the Act to be the more persuasive.
17. However, there is no indication of a through route over Mohope Moor shown on the Award plan, and the Alston Road is awarded "to the stinted pasture" and not "into the stinted pasture" as other roads were. Unlike the Coalcleugh Road which extended over the stinted pastures and was privately maintained by the lead mining companies, the Commissioners did not extend the Alston Road into the stinted pasture to cross Mohope; in all probability because there was no recognised route over the stinted pasture at the time. From the available documentary evidence which pre-dates the 1799 award the only acknowledged route over the moors was that via Long Cross.
18. Fryer's map of Northumberland of 1820 shows the extent of the land around Mohope that had been brought into cultivation following the Inclosure Award of 1799. It also shows the

line of the 1778 turnpike and the continued existence and importance of the route over the moors by Long Cross. Blakelaw Cross is shown on the county boundary but there is no indication of a route running over Mohope Moor to it from the Long Cross road.

19. The Alston Moor Inclosure award of 1820 set out a public carriage road from the Weardale Turnpike at Nenthead to the County boundary near Blakelaw Cross. It was Mr Kind's case that the Commissioners would not have awarded a public road, with the burden of maintenance and repair falling to the Alston parishioners, if there was no onward access beyond the County boundary. The objector suggested that the road was likely to have been laid out as a means of accessing the local quarries. Neither party to the inquiry provided a full copy of the award, or the enabling Act and I am therefore unable to comment or draw any conclusion upon the ability of the commissioners to award this road, the purpose for which it was awarded or the reasoning behind the Commissioner's award.
20. Greenwood's map of Northumberland of 1827 shows a route crossing the county boundary at a point marked Blakelaw Cross. Mr Kind considered this to be evidence of the existence of the claimed route, although the objector's view was that Greenwood's map was unreliable with noticeable and obvious errors contained within it.
21. Greenwood depicts the 1823 route of the Alston turnpike where it had been diverted from the 1778 alignment between Whitfield and Alston. The road network depicted in the vicinity of Knights Cleugh and Keirsleywell Bank is accurate and equates with the depiction on modern Ordnance Survey mapping and is comparable with Fryer's 1820 map. The road leading to Mohope Head (Mob Head on Greenwood's map, Upper Mohope on Fryer's map) is also an accurate representation. However, Greenwood places Blakelaw Cross to the north-west of Mohope Head when it is quite clearly to the south-west, and Greenwood fails to mark Long Cross as a feature. A road shown leading out of the route to Blakelaw Cross and crossing the county boundary further to the north which Mr Kind claimed to be the Long Cross route is not shown on any map produced before or after Greenwood's.
22. When the route shown by Greenwood as crossing the county boundary at the point marked Blakelaw Cross is compared to other roads and features in the immediate area on Fryer's map and on modern Ordnance Survey mapping, the route shown is clearly the Long Cross route depicted by previous cartographers. The inaccurate positioning of Blakelaw Cross and the marking of an unidentifiable route to the north appear to be clear errors on Greenwood's part. In the light of these errors from an otherwise reputable cartographer, I do not attach much weight on this map as evidence of the existence of the claimed road over the moor.
23. As part of the initial consultation on the application, the agent for the owners of the moor submitted a copy of the plan attached to the Allendale Tithe Award of 1847. No apportionment detail was provided. The plan shows the extent of the enclosures awarded in 1799 with the stinted pasture marked. There is no indication of a track on the alignment of Order route running through the stinted pasture on the tithe map.
24. However, running along the Allendale side of the parish boundary, is a double peck line track that crosses the County boundary near Hard Rigg. This track is annotated "from Alston". Mr Kind suggested that this was the Long Cross route. I disagree. The tithe map is of land within Allendale, and from Knights Cleugh Head the Alston road via Long Cross

runs in the neighbouring parish. The route shown in the Tithe map, whatever it purports to be, is not the Alston road.

25. An estate plan of the Whitfield Manor of 1856 shows the line of the Long Cross road annotated "Old road from Alston to Allendale". No route leading over Mohope is shown at Knight's Cleugh Head, although the 1799 Inclosure Award road at Kiersleywell Bank is shown annotated "From Mohope".
26. Ordnance Survey mapping from the mid-nineteenth century shows the Order route as a double peck line feature annotated "Carriers Way", which in the Book of Reference is described by Ordnance Survey as a "cart road". A feature has clearly been observed by the surveyor, and whilst the maps are evidence of the physical existence of the route at the time of the survey the instructions to surveyors make quite clear that rights of way are not within Ordnance Survey's remit and that surveyors are not required to enquire into them. No evidence was presented to assist with the determination as to why Ordnance Survey considered this feature to be a cart road, or from whom authority for the description had been sought.
27. The evidence from the Whitfield estate papers suggests that the transportation of goods through the West Allen valley, particularly the transportation of lead ore was by packhorse as opposed to horse and cart due to the founderous nature of the ground and the poor state of repair of those roads and tracks in existence. The available evidence suggests that cart traffic in the area, particularly for the lead ore trade, would only have utilised formalised roads following the turnpiking of the Alston Road in 1779 or further improvements made by Macadam in 1823. On the evidence before me it does not seem probable that the feature running over Mohope recorded as a cart road by Ordnance Survey was used as such.
28. The Finance Act 1910 information is of little assistance as the land through which the Order route passed was part of a parcel some 18,000 acres in extent. A reduction of duty of £450 was claimed due to the existence of public rights of way over the land, but over such a large area no conclusion can be drawn as to whether the Order route was one for which a reduction was claimed. I was not provided with a copy of the Finance Act working plan.
29. Mr Kind submitted that the Order route may have had a hard surface which has progressively sunken into the ground over time. Mr Kind claimed that photographic images captured by satellite showed a physical feature that could not have been created solely by pedestrian use. Whilst I accept that a definable route can be seen on these photographs, no evidence from on-site investigations was submitted to substantiate the assertion regarding a sunken surface. Consequently, I do not attach significant weight to the photographic evidence.

Conclusions on the evidence

30. Mr Kind contended that the claimed route over Mohope forms part of a long distance mediaeval trade route linking Corbridge and Penrith via Alston and Corby Gates Farm. Whilst I acknowledge that reference is made to a property called Corbriggate in the county histories submitted, and whilst it is more likely than not that this property equates with the modern Corby Gates Farm, such references do not indicate either the existence of a trade route or the direction any such route may have taken. Whilst the concept of such a trade route is plausible, there is no evidence to suggest that the Order route formed part of it. Indeed, there is very little evidence of the existence of any route over Mohope Moor which

would equate with the Order route prior to that recorded in the Ordnance Survey 1st edition 6" map.

31. I accept the submission that the Allendale and Hexhamshire Enclosure Act would have had no effect upon a route running over the stinted pastures of Mohope Moor. However, there is no evidence of the existence of a route over Mohope in 1799 that would have been affected by the Act and the award. That section of the Alston road awarded did not lead into the stinted pasture on Mohope and there is no evidence within the award or plan that suggests the existence of a continuation route over the open moor at that date. It is clear that the awarded road did not form a cul-de-sac at Knight's Cleugh Head as the Alston road continued westward to Long Cross. The award of the Alston Road was for the retention of an already existing public right, which performed the dual function of allowing stint holders access to the stinted pasture as well as retaining the long-established public through route to Alston. The available evidence suggests that there was no public route over Mohope for the Commissioners to stop up.
32. Mr Kind submitted that the road set out by the Alston Inclosure Award would have served no purpose without an onward continuation at the same status over Mohope, and cited *Eyre v New Forest Highways Board* in support. The presumption against a cul-de-sac such as is found at the southern end of the Order route is a presumption that can be added into the balance when weighing all the available evidence. In my view, the evidence in favour of the existence of an all-purpose highway over Mohope is so meagre that the presumption does not weigh heavily in the balance.
33. With the exception of Ordnance Survey mapping, the through route contended for by Mr Kind is not shown on any of the submitted maps, whether produced by commercial cartographers, in relation to estate management or the lead mining industry, or through statutory process. I do not consider that the "cartographic convention" of not marking unmade roads over heaths and commons advanced in *Gallagher* is applicable in this case, as there is no supporting evidence from any other contemporaneous source for the existence of an all-purpose highway over the moor.
34. Mr Kind's theory as to the existence of a long-distance trade route as described in his paper "*Tracing the Corbrigg Gate: The mediaeval road from Corbridge to Penrith*" is plausible but the documentary evidence submitted in this case does not support the contention that the Order route was an all-purpose highway, or that it formed part of the alleged mediaeval road.
35. Under Section 53 (3) (c) (ii) of the 1981 Act the evidence offered in support must demonstrate, on the balance of probabilities, the existence of the higher rights claimed. I conclude the evidence before to me is insufficient to show the existence of public carriageway rights over the Order route.

Other matters

36. A number of the objections outstanding at the commencement of the inquiry related to the potential impact a Byway Open to All Traffic would have upon the environment of the moor, which forms part of the Allendale Moor Site of Special Scientific Interest ("SSSI") and Whitfield Moor, Plenmeller and Asholmes Common SSSI. At the inquiry, 70 letters supporting the objection to the order on environmental grounds were submitted. As

environmental concerns are not within my remit I have not taken these representations into account when reaching my decision.

Overall conclusion

37. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

38. The Order is not confirmed.

A handwritten signature in black ink, appearing to read 'Alan Beckwith', with a stylized flourish at the end.

INSPECTOR

APPEARANCES

For Northumberland County Council

Mrs B Bailey Assistant Solicitor, Northumberland County Council, County Hall,
Morpeth, NE61 2EF

In Support of the Order:

Mr A D Kind 45 The Fairway, Gosforth, Newcastle upon Tyne, NE3 5AQ

Mrs S Rogers, British Horse Society, West Turnpike, Ganton, Alnwick, NE66
4AN

For the Objectors

Mr D Warner, of Counsel, instructed by Oglethorpe, Sturton & Gillibrand,
Solicitors, 16 Castle Park, Lancaster, LA1 1YG

who called

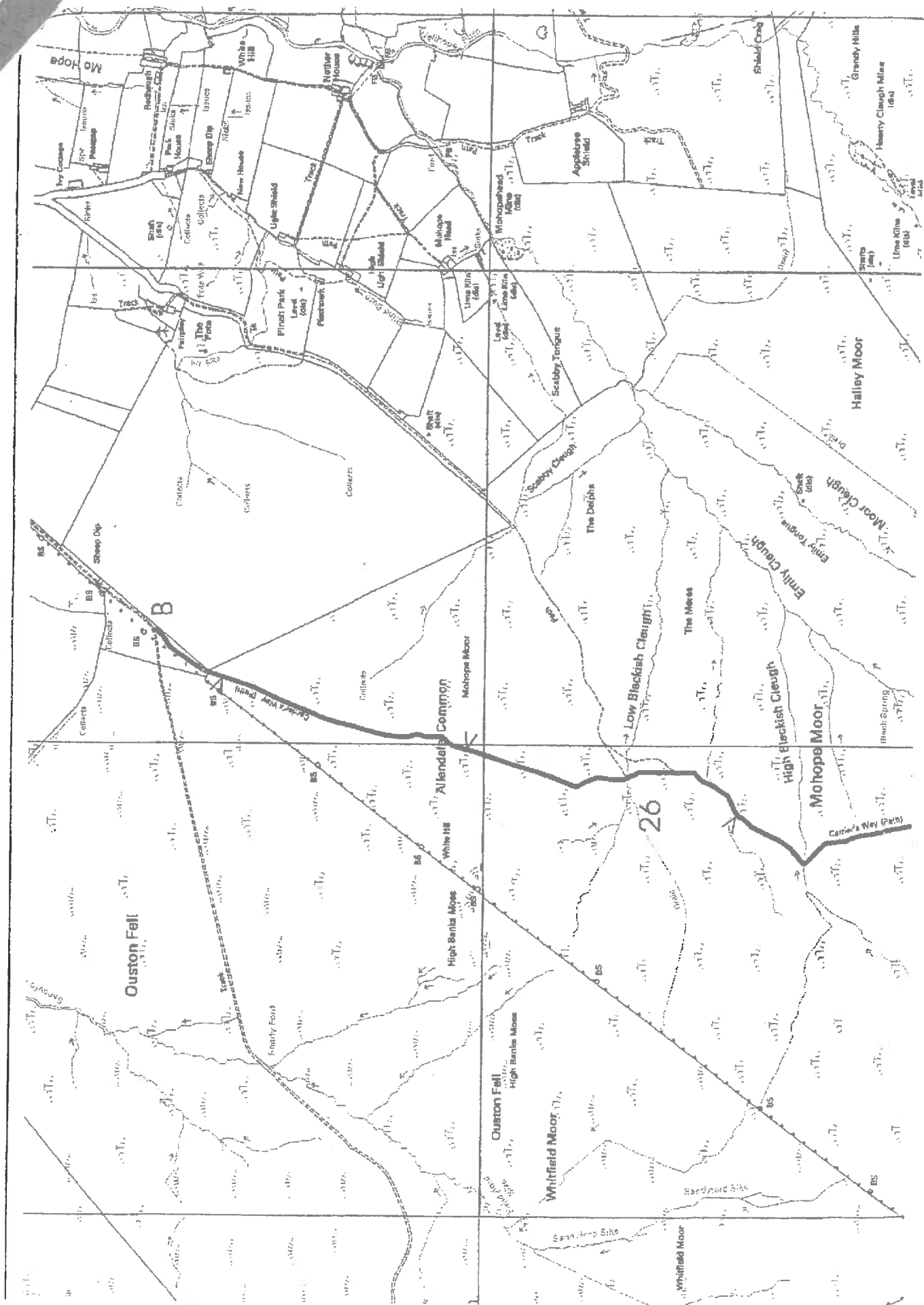
Mrs E Sobell, Turf House, Steel, Hexhamshire NE47 0HP

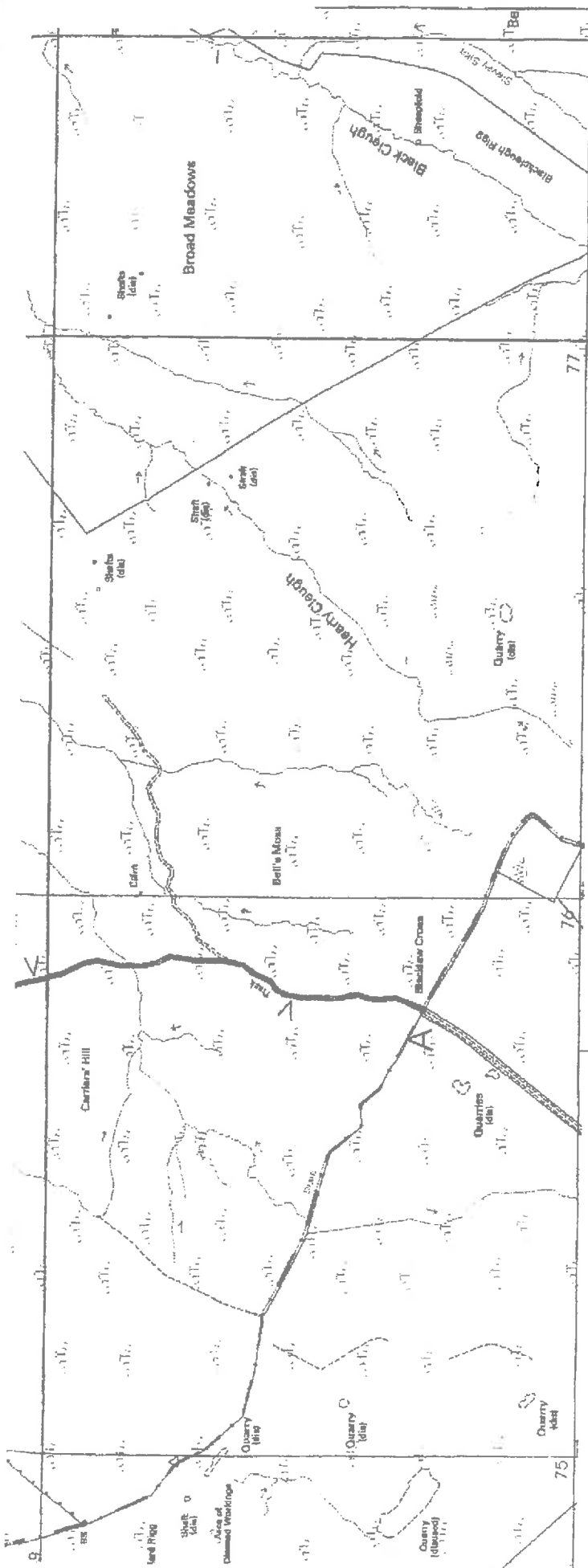
Interested Party

Mr J Lindsay, Redheugh Cottage, Mohope, NE47 8DH

INQUIRY DOCUMENTS

1. Attendance list 6 April 2004.
2. Attendance list 7 April 2004.
3. Letter from Mr K Lord.
4. Certificate of completion of procedural requirements.
5. Satellite photographs of Mohope Moor.
6. Letter from Ms Atkins & Ms Morris.
7. Letter from Ms Elliott and Mr Wenham.
8. Standard letter completed by 68 individuals.
9. Appendices to the statement of evidence of Mrs Sobell.
10. Copy extract from Hodginson & Donald's map of Cumberland 1770.
11. Copy extract from A History of Northumberland volume 4.
12. Bundle of evidence submitted by Mr Kind.





Northumberland COUNTY COUNCIL

Director of Environment
Environment Directorate

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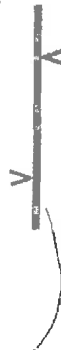
Wildlife & Countryside Act, 1981

Definitive Map of Public Rights of Way for Northumberland

The Northumberland County Council
(Public Rights of Way)

Modification Order

(No 10) 2003



Byway Open to All Traffic

District(s) Tynedale	Parish(es) West Allen	Scale 1:10,000
Def. Map No. 227/237	O.S. Map NY 74 NE / 75 SE	Date April 2003

WILTSHIRE EASTERN COUNTY QUARTER SESSIONS

SALISBURY, 28th MARCH, 1956

REGINA v. THE INHABITANTS OF THE PARISH OF ENFORD

The following Judgment was read :-

THE CHAIRMAN (the Honourable Sir Patrick Devlin:) In this case the inhabitants of the Parish of Enford are charged by the direction of the Pewsey Justices given under the Highway Act 1835 s. 95 upon an indictment that they suffered and permitted a certain part of the highway called Water Lane or Baden Down Lane to be out of repair. The inhabitants of Enford are charged because they are still responsible in law for keeping the highways in the parish in repair although the duty has for more than a century past been discharged by various statutory bodies; the duty is now discharged by the Wiltshire County Council. The inhabitants did not appear to answer the indictment but the County Council was represented and put in on behalf of the inhabitants a written plea of Not Guilty. It is some considerable time since an indictment has been brought against the inhabitants of a parish and there appears to be some uncertainty about the procedure. Since however it was plain to us that on any view of the matter the inhabitants were not pleading guilty and that the case must be proved against them, we directed that a plea of Not Guilty should be entered.

We were informed by counsel for the prosecution and for the County Council that the question at issue was chiefly one of law and they did not consider it suitable for trial by jury. They proposed that the justices present should determine the matter as arbitrators and that in accordance with their award a verdict of Guilty or Not Guilty, as the case might be, should be entered. There appear to be precedents for this course which seemed to us to be a convenient one, and accordingly we accepted the burden of making such an award.

The road in question runs out of the village of Enford over the Downs in the direction of the village of Everley. About a mile and a quarter out of the village of Enford there is a farm called Baden Down Farm; we were told that the farmhouse was built in 1867. Beyond this point, the way to Everley if ever it was a highway, is now disused. But up to this point the road has until recently been kept in repair. It is now used solely for traffic to and from Baden Down Farm and the prosecution is brought at the relation of the owner of Baden Down Farm who claims that it is a carriageway repairable by the public. Before 1929 the highway authority was the Pewsey Rural District Council and there is evidence, the weight of which we shall have to consider later on, to show that the District Council repaired the whole stretch of road up to Baden Down Farm. Since the Local Government Act 1929 the highway authority has been the County Council and they have only repaired a short stretch of road, - under half a mile, - up to a point that is marked on the map as a well by the side of the road. The Council admits its liability (it is convenient to use that word and to treat the Council as standing in law, as it does in fact, in the place of the inhabitants of Enford) to repair up to that point but denies any liability to repair beyond. We are concerned, as we have said, only with the carriageway up to the entrance to Baden Down Farm as particularized in the indictment and we shall refer to that stretch of road as Water Lane.

We are satisfied upon the evidence called before us that Water Lane has been a public carriageway for at least a century and a half. This was not indeed seriously disputed, the case for the County Council being that although a highway it was not repairable by the inhabitants at large. Prima facie any public carriageway that was in existence before 1835 is repairable by the inhabitants at large; and accordingly to escape liability the County Council must show that there was some special ground relieving them of their obligation. They claim that they are relieved of their prima facie obligation by the terms of the General Inclosure Act 1801 s.9.

The General Inclosure Act 1801 is a clauses consolidation Act which was commonly incorporated into private acts of Parliament authorising enclosures. A private act authorising an enclosure of common land invariably appointed commissioners to make an award determining how the land should be allotted and one of the first duties put upon the commissioners was to see that adequate highways for the use of the public were laid out across the land to be enclosed. The General Inclosure Act lays down the powers and duties of the Commissioners in this and other respects.

Water Lane runs across land which was the subject of two private enclosure acts, both of which incorporate the General Inclosure Act 1801. The first of them is an Act of 1805 for enclosing lands in the tythings of Enford, Fifield, Coombe, Long Street and East Chisenbury and an award was made under this Act in 1809. This award covered land which included the eastern part of the road i.e. that furthest from the village of Enford. The second Act was passed in 1814 for enclosing lands in the tything of Littlecott, - a tything nearer to Enford than the others, - and an award was made under it in 1817. Under the provisions of these awards the commissioners appointed and awarded certain public carriage roads and highways, including Water Lane. The commissioners are not of course obliged to lay out entirely new roads; they can prescribe existing highways where they choose so to do. Their duties and powers are set out in sections 8 and 9 of the Act of 1801. S.8 enacts that the commissioners are authorised and required before they proceed to make any allotments to set out and to appoint public carriage roads and highways over the land intended to be divided and to divert or to stop up any existing roads as they shall judge necessary; the highways are to be 30 feet wide at the least. S.9 is the section which deals with the upkeep of the roads laid out. The scheme of the section is that the roads, whether old or new, are to be fenced by the owners and proprietors (that is, the persons to whom the lands are allotted by the award) of the lands on either side, that they are to be put in good repair by the owners and proprietors; and that once put in good repair they are to be maintained in repair by the inhabitants of the parish. Accordingly, the commissioners are required to appoint a surveyor "for the first forming and completing such parts of the said carriage roads as shall be newly made, and for putting into complete repair such part of the same as shall have been previously made." The cost of this work and of the surveyors salary, if any, is to be raised as part of the charges and expenses of obtaining and passing the private act and of carrying it into execution. This sum is to be paid to the surveyor on or before the execution of the award and any surplus which may remain in his hands after the work is done is to be repaid. The surveyor is made "in all respects subject to the jurisdiction and control of the justices of the peace acting in and for the County in which such roads shall respectively lie." He is to account to the justices for all money received and expended by him and for the repayment of the surplus. If the surveyor neglects to complete and repair the roads within 2 years after an award, or 3 years if further time up to 1 year is allowed by the justices, he is to forfeit the sum of £20. The end of the section contains the provision which is relied upon by the County Council in this case and it runs as follows:- "and the inhabitants at large of the Parish, Township or Place wherein such Roads shall be respectively situate, shall be in no wise charged or chargeable towards forming or repairing the said roads respectively ... till such time as the same shall, by such Justices in their Special Sessions, be declared to be fully and sufficiently formed, completed and repaired, from which time, and for ever thereafter, the same shall be supported and kept in repair by such persons, and in like manner as the other public roads within such Parish, Township, or Place, are by Law to be amended and kept in repair." The County Council contends that unless the prosecution can prove a declaration made by the justices in their special sessions declaring Water Lane to be fully and sufficiently formed and completed and repaired the Act expressly provides that there is to be no liability on the inhabitants at large.

On behalf of the prosecution Mr. Molony has taken a number of points on the construction of the section all of which we think to be unsound. He has argued that a declaration is unnecessary in the case of highways that were in existence before the award and which did not require any work to be done upon them so as to put them into proper repair. We cannot accept this

construction of the section and we think that the contrary was decided in R. v. Inhabitants of Hatfield (1835) 4 Ad. & E. 155; 111 English Reports 746 and R. v. Inhabitants of East Hagbourne (1859) Bell 135; 169 English Report 1200. There is in any event no evidence that Water Lane did not require to be put into repair; and work would have had to be done on it unless it was for the whole of its length 30 feet wide. But we are satisfied that whether work was required to be done or not, it was not intended by the Act that the liability of the inhabitants should depend upon a state of facts about which there might be some dispute; the declaration of the justices was intended to be the factor that determined liability, whether it approved new work or passed as satisfactory the existing state of the road.

We are therefore of the opinion that the verdict in this case depends upon whether or not we are satisfied that a declaration of the justices was made under sec.9. If it was not, then the liability of the inhabitants to repair Water Lane is expressly suspended or discharged; and it appears that the absence of the declaration is fatal even though the Parish have subsequently to the award repaired the road, see R. v. Inhabitants of East Hagbourne (supra). If on the other hand the declaration was made, then the inhabitants, as well by the express terms of s.9 as by the common law, are made liable to support Water Lane and to keep it in repair.

No declaration has been proved and neither side is in a position to say for certain one way or another whether one was ever made. It is agreed that the body whose duty it would be to make the declaration, if they thought fit, would be the Pewsey Justices at their Petty Sessions and the records of these Sessions do not go back beyond the present century. Whichever side has the burden of proof cannot discharge it; so the question for us to decide becomes simply, - where does the burden of proof lie? Ordinarily of course it lies on the party which has, as part of his case, to assert the making of the declaration. But these are matters that took place 135 years ago; and if it were open to the County Council in every case of this sort to say that they would no longer repair the road unless proof could be given of an event which, if it occurred at all, occurred 135 years ago, it might lead to grave injustices. The point appears to be a novel one under the Act of 1801 since in each of the cases which we have cited there was positive evidence that a declaration had not been made.

Since s.9 gives the inhabitants a way of escape from their liability at common law, it might be argued that it is for them to show that the section applies in this case. It is no doubt for them to prove that the road in question is a road to which the section applies. But if they can prove that, as they have, it is at least doubtful whether they are also required to prove that the formalities necessary to make them liable have not taken place; see Attorney General v. Watford Rural District Council (1912) 1 Ch. 417 per Parker, J. at 433. Mr. Molony has therefore accepted in the first instance the burden under the section of proving the declaration, but submits that in the circumstances of this case it is shifted to the County Council by virtue of the maxim omnia praesumuntur rite esse acta. The principle embodied in this maxim certainly carries the prosecution some distance towards its goal. In Rex v. Inhabitants of Haslingfield (1814) 2 M. & S. 557; 105 English Reports 489, which was also a case arising under the Inclosure Act, Ellenborough, C.J. at 561 stated the rule thus :- "The general rule certainly is that where a person is required to do an act, the not doing of which would make him guilty of criminal neglect of duty, it shall be intended that he has duly performed it unless the contrary be shewn." Here by the terms of section 9 if the surveyor neglects to complete and repair the roads within the time specified he is to forfeit the sum of £20. We think therefore that the presumption, in the absence of evidence to the contrary, is that the surveyor did complete and repair any road which needed repair. But it does not of course follow from that that a declaration to that effect was made by the justices. If the justices were dealing with this matter purely as a judicial body, we should suppose that it would be left to some interested party, - perhaps the surveyor himself, - to apply to them for a declaration; and we could not assume from the mere fact that the surveyor had completed the roads that he necessarily made the application; if, as is possible, none of the roads needed repair so that no question of his forfeiting money arose, he might have omitted to do so,

and a judicial body does not act except upon application. But it appears to us upon a closer examination of the section that the duty imposed on the justices under it was not merely judicial but that they were given a quasi-administrative task of the sort that was more commonly imposed upon them in past centuries than it is today. For the Section provides as follows :- "such surveyor or surveyors shall, and he or they is and are hereby directed to be in all respects subject to the Jurisdiction and control of the Justices of the Peace acting in and for the County in which such roads shall respectively lie, and shall account to such Justices in like manner for all monies so to be by him or them received and expended, and for the repayment of any surplus which may remain in his or their hands to such persons as shall have been made liable to contribute thereto." We think that the effect of this is to put upon the justices the duty of seeing that the surveyor did what the section required him to do. As we have already said a sum of money was to be paid to the surveyor on or before the execution of the award. Since there is no doubt that the award was executed, we are entitled to presume that the directions of the Act in this respect were obeyed and that the necessary sum was put into the surveyor's hands. For this sum he was accountable to the justices. We think that the reason why no provision is included in the section for the making of any application to the justices for their declaration at special sessions and nothing is said about who may apply, is because the justices were themselves expected to take the initiative in the matter. The surveyor being under their control and supervision and accountable to them, it was for them to enquire whether there was any surplus or not to be dealt with in accordance with the section and to satisfy themselves that he had performed his duty. The way in which they were to express their satisfaction was by the making of a declaration in their special sessions. If therefore they discharged their duty under the Act, either they would have made such a declaration or in the alternative at the expiry of the time allowed they would have declared that the surveyor had forfeited £20. Since we are entitled to presume that the surveyor did not conduct himself in such a manner as to forfeit £20 we must also be entitled to presume that he conducted himself in such a manner as to satisfy the justices of what he had done; it would follow then that as a matter of duty they would make the appropriate declaration under the section.

Whether the process of reasoning in the preceding paragraph is entirely covered by the principle expressed in the maxim omnia praesumuntur we do not feel that we have to decide. We are satisfied that, whether it is or not, the procedure laid down by the Act is such as to raise a probability that if there was no forfeiture, - and this the principle certainly requires us to presume, - then there was a declaration; - and that that probability is sufficiently high to require very little further evidence to satisfy us that it amounts to proof. There is in our judgment sufficient further evidence, namely, the evidence of repairs made to the road by the statutory authority. We do not say, - it is unnecessary that we should, - that this evidence would by itself be sufficient; we have to bear in mind that when a statutory authority is discharging its liability of repairing a road up to a certain point, the fact that it takes in an additional stretch may sometimes be due to benevolence and not to liability. The evidence shows that the Pewsey Rural District Council, which was the statutory authority, did repair the road after 1914 and there was some evidence to show that at the time when the Local Government Act 1929 was passed the Pewsey R.D.C. considered themselves responsible for the upkeep of the road. As we say, we do not have to decide the case on this alone. Nor do we have to decide it merely upon the application of the omnia praesumuntur maxim or upon the inference which we should draw from the terms of the section. But taking all the matters into consideration, we are satisfied in this case that it is more probable than not that a declaration under section 9 was made. As the proceedings before us are in the nature of civil proceedings and only in form criminal, this is in our judgment sufficient to satisfy the burden on the prosecution, which accordingly we hold to have proved its case.

We shall therefore direct that a verdict of Guilty be entered.

A IN THE HIGH COURT OF JUSTICE

CO/153/88

QUEEN'S BENCH DIVISION

Royal Courts of Justice,

Wednesday, 8th February 1989.

B Before:

MR. JUSTICE MACPHERSON

- - - - -

C THE QUEEN

-v-

D THE SECRETARY OF STATE FOR THE ENVIRONMENT

Ex parte: WILLIAM JOHN RILEY

- - - - -

E (Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
Pemberton House, East Harding Street, London, EC4A 3AS.
Telephone No: 01-583 0889. Shorthand Writers to the Court.)

- " - - - - -

MR. G. LAURENCE (instructed by Messrs. Cripps Harries Hall,
Tunbridge Wells) appeared on behalf of the Applicant.

F MR. J. LAWS (instructed by The Treasury Solicitor) appeared
on behalf of the Respondent.

- - - - -

J U D G M E N T

(As approved by Judge)

- " - - - - -

G

H

A MR. JUSTICE MACPHERSON: Since I do not believe in unnecessary
suspense, I indicate at once that this application
succeeds.

B William John Riley, the applicant, like many people,
is dedicated to the preservation of rights of way, and in
particular as this case shows, to the protection of the
C ancient network of highways which criss-cross many parts of
the English countryside. As this case also shows, he is
determined (presumably with the backing of the Byways and
Bridleways Trust) to protect if he can the full rights of
way which accrue to any particular highway. I say this
D because this case concerns vehicular rights which Mr. Riley
wishes to confirm in connection with two rights of way on
or near Salisbury Plain in an area familiar to many
soldiers known as Collingbourne Ducis, north of Tidworth
and near Ludgershall.

E The two ways are set out in the application map and
are described as CD 19 (between A and B on the map) which
runs from Shaw Hill to a point near Southly Bridge, and
F part of CD 21 (between A and C on the map) which is a short
bit of highway going roughly from the same point near
Southly Bridge to Pennings Road. There is of
course more of CD 21, but for the present purposes
G these limited stretches are in dispute.

H The application arises out of a request made by Mr.
Riley to the Wiltshire County Council for
reclassification of these two lengths of highway. He

A applied under the provisions of the Wildlife and
B Countryside Act 1981 (the 1981 Act) and he asked the
C Council to reclassify these highways which had both
eventually been classified under earlier legislation as
D bridleways. He sought reclassification of both stretches
E as "byways open to all traffic". It is an unhappy feature
F of the case that I must for economy of words refer to that
G classification as BOTAT. And in order to deal with
H necessary but distasteful abbreviations at the start, I
also intend unwillingly to refer in this judgment to a
"road used as a public path" as a RUPP.

The Council rejected that application and confirmed
the status of these highways as bridleways as had been
established consequent to the second and special review
conducted by the Council after 1968 (see page 88, 31st
January 1986).

In his turn the Secretary of State for the Environment
affirmed the Council's decision when Mr. Riley appealed to
him under paragraph 4(1) of Schedule 14 to the 1981 Act.
The decision letter of the Secretary of State is dated
10th November 1987, pages 129-130. He there rejected Mr.
Riley's arguments and held that he was "not satisfied that
you" -- that is Mr. Riley -- "have provided any material
which would justify upgrading these bridleways to byways
open to all traffic."

Paragraph 3 of the letter is important, and it shows
that both the Council and the Secretary of State

A considered two separate tranches or collections of documentary evidence. First, they referred to and considered documentary evidence which had been used in 1981, when an Inquiry was held in respect of CD 21.

B Secondly, they referred to and considered different and additional documentary evidence supplied in 1986 at the time of the 1981 Act application by Mr. Riley. There is no doubt that these tranches of evidence were different. A C glance at the two lists of documents (maps and minutes and so on) set out at pages 42 and 96 (the 1981 Inquiry list) and at pages 97 to 100 (the additional evidence) demonstrates this conclusively.

D Furthermore, nobody could or did argue that the additional evidence was de minimis or minimal in its own effect. It is perfectly true that the Secretary of State E said at page 129 that "the additional evidence supplied did not really add to the weight of the evidence previously considered when it was acknowledged that the route was that of a former Turnpike Road, which became a County F responsibility until it was dismained in 1893." But the fact is that in the CD 21 case the additional evidence was plainly fresh to the Council and had not been considered in 1981-1984. And in the case of CD 19 both the additional G evidence and the 1981 Inquiry evidence were in truth "fresh" since there is no indication that when the fate of CD 19 was resolved in 1974/5 any of that evidence had been H considered or relied upon then or later in respect of its

A classification. The point being, and it is an important
point, that in 1972/2 CD became reclassified as a bridleway
and remained so classified without any apparent
B contest, whereas CD 21 was originally reclassified as a
byway, but this classification was later altered as a
result of the 1981 Inquiry and the Secretary of State's
ultimate decision in 1984 to that of bridleway.

C In the process it was established, by the 1981 evidence to
which I have referred, that the "documentary evidence
points strongly to the existence of a public highway
available for vehicular use along the whole of CD 21 and
D this preponderance of evidence must be accepted": see page
63.

E It is perfectly true that the same evidence would
probably have done service at any stage if CD 19 had been
under scrutiny. But in fact its classification was not
tested in the way that CD 21's classification was tested.

F CD 21 failed to maintain the draft status of byway not
because of lack of evidence of vehicular use, but for the
reasons set out in sub-paragraph 10(b) and 10(c) of Part
G III of Schedule 3 to the 1968 Countryside Act (the 1968
Act). That paragraph set out in 1968 the test for
reclassification of RUPPs, which had been designated as
such under the provisions of the 1949 National Parks and
H Access to the Countryside Act 1949 (the 1949 Act), and in
particular sections 27(6) and 32(4) of that Act.

A Looking then for a moment with these matters already
in mind at the relevant legislation, through whose
moderate maze Mr. Laurence has expertly led me, the course
of this case has been as follows:

B 1. 1949 Act. CD 19 and CD 21 were both shown on
the definitive map as RUPPs. Section 32(4)(b) therefore
applied. The map was thus conclusively proved to show
C that the public had a right of way on foot and on horseback
or leading a horse over these RUPPs, "so however that this
paragraph shall be without prejudice to any question
whether the public had at that date any right of way other
than the rights aforesaid."

D That proviso meant, as Mr. Laurence rightly argues,
that vehicular rights were not excluded and could be
asserted in respect of any RUPP. Revision or
E review of definitive maps could be carried out under the
provisions of section 33 of the 1949 Act.

F 2. 1968 Act. Schedule 3. This provided for a
"special review" (the first review after 3rd August 1968).
Part III of the Schedule allowed reclassification of RUPPs
(the 1968 classification to which I have referred). And
in particular paragraph 10 set out the test which had to be
applied. It is as well to read it in full.

G "Test for reclassification. 10. The considerations
to be taken into account in deciding in which class a road
used as a public path is to be put shall be -- (a) whether
H any vehicular right of way has been shown to exist, (b)

A whether the way is suitable for vehicular traffic having
regard to the position and width of the existing right of
B way, the condition and state of repair of the way, and the
nature of the soil, (c) where the way has been used by
vehicular traffic, whether the extinguishment of vehicular
rights of way would cause any undue hardship."

C It was because of paragraphs 10(b) and 10(c) that the
Council failed to reclassify CD 21 as a byway. Paragraph
10(a) was, as I have said, fully satisfied, because CD 21
was part of an old Turnpike Road, and the first tranche of
evidence established that.

D 3. 1981 Act. It is under the provisions of this Act
that Mr. Riley came back to the charge and argued that the
CD 21 (part) and CD 19 should be shown henceforth as
BOTATs.

E The relevant sections governing this application are
sections 53(2) and 53(3), and I read these also insofar as
they are relevant.

F "53(2) As regards every definitive map and statement,
the surveying authority shall -- (a) as soon as reasonably
practicable after the commencement date, by order make such
modifications to the map and statement as appear to them
to be requisite in consequence of the occurrence, before
G that date, of any of the events specified in subsection
(3)..." I read no more of that subsection.

H Turning to section 53(3) the words read: "The events
referred to in subsection (2) are as follows -- (c)

A the discovery by the authority of evidence which (when
considered with all other relevant evidence available to
them) shows --....(ii) that a highway shown in the map and
B statement as a highway of a particular description ought to
be there shown as a highway of a different description...."

C For some time there seemed to be a number of possible
points to resolve in this case. But in the end there is,
in my judgment, only one. There is, however, an
interlocking or subsidiary matter which I am asked to
consider and to which I will refer at the end of my
judgment.

D The real point in this case concerns the meaning of
section 53(3)(c). Mr. Laws contends that Mr. Riley cannot
rely upon this section because there was not in truth "the
discovery by the authority of evidence" which, when
E considered with all other relevant evidence available to
them, showed that the classification of CD 19 and CD 21
(part) ought to be different from that which it was on the
map.

F Mr. Laws argues that the Secretary of State rightly
took the view that no new material had in truth been shown
which would justify the upgrading of these ways under
section 53 procedure, and he points to the passage at page
G 129 of our bundle to which I have already referred.

H Mr. Laws says that the classification of these ways as
bridleways in 1973 and 1984 cannot now be attacked. He
says that Parliament must have intended, and did provide,

A that once the 1968 Act classification was recorded (from
RUPP to bridleway) there could be no change, unless true
B fresh evidence (discovered evidence, to use the section's
words) was available in this regard. Since there was
strong and accepted evidence in 1981 that both these ways
C carried vehicular rights, and since CD 21 was not made a
BOTAT in 1984 solely because of paragraphs 10(b) and (c),
Mr. Laws says that Parliament intended to leave that
classification undisturbed in such cases.

Mr. Laws argues that the simple addition of extra maps
D and documents going to prove the same point as was made
good in 1981 and 1984 in respect of CD 21 by the evidence
then addressed does not bring Mr. Riley within section
53(3)(c) of the 1981 Act.

E That then is the argument, attractive in its
simplicity, advanced for the Secretary of State. If it is
right this case would fail.

But in my judgment Mr. Laurence successfully argues
F against Mr. Laws's concise point.

His argument is also direct and simple. Indeed he
G regarded it as the least of his worries in his approach to
this case, and was bold enough to say so to the Court!

I accept Mr. Laurence's argument, which proceeds as
H follows:

1. The words of the statute must be given their
ordinary and literal meaning. See Suffolk County Council
v. Mason (1979) A.C. 705.

A 2. "The discovery by the authority of evidence" means
exactly what it says. And if there has been since the
original 1968 Act classification, and thus the 1981-1984
B Inquiry, evidence "discovered" or "produced and laid before
the Council at the appropriate time" which is different
from the original evidence, it matters not that the
original evidence carried the day by itself in connection
with paragraph 10(a) in 1981-1984.

C The words ".... evidence (when considered with all
other relevant evidence available to them)" wholly cover
the present case, where it is accepted that the
D "discovered" evidence was not minimal, even if it did not
"really add to the weight of evidence previously
considered...", (see page 129).

E 3. The relevant words simply envisage the "discovery"
of evidence triggering the right to apply for modification,
now that it is no longer necessary to consider suitability
for vehicular traffic or to consider the question of
F hardship to those who might use the way with vehicles.

G 4. Once there exist (as there do in this case) two
bodies of evidence, one recently "discovered" by the
Council through Mr. Riley, and one "the other relevant
evidence available to them", the Council and Secretary of
H State have no option but to slot these ways into their
rightful places as BOTATs.

5. It is comforting to reach this conclusion since
otherwise in the case of laggard Councils who had not yet

A even got round to reclassification of their RUPPs there
would be an immediate classification of RUPPs with
vehicular rights as BOTATs (by the operation of section 54
of the 1981 Act which clearly so provides). Yet these
B bridleways could not be properly reclassified, although if
they had never been reclassified as bridleways from RUPPs
they would at once be able to become BOTATs! Such jargon is, I
C appreciate, unattractive. But in my judgment the comment
is valid.

6. It may well be, in my judgment, that the prime
purpose of section 53(3)(c) was to allow the
D reclassification of a way which had just failed after 1968
to prove its paragraph 10(a) vehicular rights, by
allowing an applicant to adduce additional unused or
"discovered" evidence to supplement the original evidence
E and thus to achieve the necessary proof. For example, one
not very convincing "greybeard's" evidence given in 1970
could be supplemented by a better "greybeard's" evidence in
1986, or by the addition of documentary evidence, such
F extra evidence having been "discovered" on its submission to
the Council.

But this does not in my judgment mean that a case
which was well proved under paragraph 10(a) in 1981-1984
G cannot fit within the provisions of section 53(3)(c),
provided that there is more evidence "discovered".

7. All this applies of course to the case of the way
H CD 21 (part).

A A fortiori is the case of C 19. Because, as Mr.
Laurence says, C 19 went through as a bridleway
unchallenged at any stage until now. So that in analysis
all the evidence in both tranches (which here do service
B for CD 19 as well as CD 21) is evidence which in the CD 19
case is "discovered" evidence. Part of that "discovery"
occurring in 1981, and part in 1986.

C I am thus convinced that the applicant was in this
case entitled to achieve the reclassification or
modification of these two ways as BOTATs, and necessary
relief must in my judgment follow to achieve this end since
D the Council and the Secretary of State erred in their
approach to section 53 of the 1981 Act.

E It would seem very strange to me that a way with
vehicular rights which were not wholly proved in (for
example) 1981 could be promoted now to its rightful place
as a BOTAT by additional discovered evidence but that a way
with properly proved vehicular rights at that date should
F be excluded, even though there is available extra
"discovered" evidence to add to the earlier evidence. And
it should be noted that other persons (for example the
local farmer) were not originally to be favoured by the
G 1968 classification. Paragraphs 10(b) and (c) focused
upon suitability for vehicles and upon prejudice to those
who would be deprived of their rights and not on the
advantages which might accrue to those who would be
H

A preserved from the noise and fumes of vehicles including
Mr. Riley's motor bicycle.

B I turn then to the second point. It arose really
because Mr. Laurence feared that Mr. Laws might argue that
the 1968 reclassification of a RUPP as a bridleway made it
impossible to upgrade a bridleway to a BOTAT under the
provisions of the 1981 Act.

C Mr. Laws did not raise this argument, and he concedes
that in this case there is the power or duty to reclassify
under section 53 if the circumstances are within the
section 53 provisions.

D But I am asked to express my opinion as to whether a
1968 Act reclassification did or did not extinguish, at
least for the time being, vehicular rights previously alive
in respect of a RUPP which was reclassified as a bridleway.

E Mr. Laws says that the words of paragraph 10(c)
necessarily imply that these rights were extinguished on
reclassification because the question of extinguishment
and hardship are expressly made part of that sub-paragraph.

F Mr. Laws draws assistance for this argument from the
judgments of Lord Denning and Lord Justice Browne in the
case of R. v. Secretary of State for the Environment, ex
parte Hood (1975) 1 Q.B. 891, at page 899 D-E (Lord
G Denning) and page 903 G-H (Browne L.J.) I was also
referred in this context to the judgment of Ackner J. (as
he then was) in the Divisional Court in the same case
H (1974) 1 WLR, 1479.

A Mr. Laurence submits that no such conclusion can be
drawn from paragraph 10(c) and from those obiter dicta,
which he quite simply says are wrong. And he argues that
B there is nothing anywhere in the legislation which removes
pre-existing vehicular rights upon reclassification from
RUPP to bridleway. He says that the law leans against
extinguishment of rights: see Mason's case cited above.

C I decline to make any conclusion upon this topic,
since anything I said would be obiter dictum. My
inclination is that Mr. Laurence is right, and that the
test as to hardship and extinguishment is just that, a test
D to be applied as one of the considerations to be taken
into account upon reclassification and nothing more.
Since the definition of bridleway remained unaltered in
1968, and never lost its reference to possible existing
vehicular rights, and since there is not a positive word
E about extinguishment in any of the provisions of the 1968
Act, save for that one reference in paragraph 10(c).

F If this inclination is right it would follow that the
relevant dicta in Hood's case were incorrect. But I stress
that I do not do more than express an inclination, since
the matter does not need to be resolved in the light of
Mr. Laws' acceptance that reclassification to bridleway
G from RUPP did not bar the present application.

H Accordingly, as I have indicated, these applications
succeed and I will now ask for assistance as to the
necessary relief, after finally expressing my debt of

A gratitude to counsel for their clear submissions in a somewhat convoluted field of law.

B MR. LAURENCE: My Lord, I did have the opportunity to have a word with Mr. Laws yesterday. We considered the possibility that your Lordship's judgment might go the way it has gone, and he suggested to me that if that were to happen it would be inappropriate for Mr. Riley to seek as part of his relief an order of mandamus directed to the Secretary of State requiring him to hear and determine the said appeal according to law, and that it would be sufficient for him to obtain the first of the heads of relief sought in the application before your Lordship.

C I, with respect, entirely agree with that because it seems to me that it must follow that if an order of certiorari is granted the Secretary of State will need to consider anew, guided by the principles which your Lordship has now expressed, the appeal under Schedule 14 to the 1981 Act which was brought to him from the Council's refusal on Mr. Riley's application to make the relevant modification orders.

D MR. JUSTICE MACPHERSON: I entirely agree with that proposition, provided Mr. Fleming agrees on behalf of the respondent.

MR. FLEMING (for Mr. Laws): I do.

MR. JUSTICE MACPHERSON: Are there any other matters arising?

E MR. LAURENCE: There are two matters. The first is that on behalf of my clients and myself I would like to thank your Lordship for the tremendous trouble and care that you took giving that judgment, because it is a difficult area of the law and I am quite sure that any clarification is going to be extremely helpful. The other is that I would like your Lordship to make an order that the Secretary of State pays the applicant's costs.

F MR. FLEMING: I cannot resist that application.

G MR. JUSTICE MACPHERSON: The order of certiorari set out as relief 1 in this notice will go to quash the Secretary of State's decision, and I have no doubt that the Secretary of State will be advised as to the consequences of that when he reconsiders this application.

I order the Respondent to pay the Applicant's costs.

- - - - -

problem in this instance is that a byway is not a type of way that exists at common law, and it is impossible, therefore, for a byway to arise by presumed dedication. The types of way that exist at common law, and of which dedication can be presumed, are a footpath, a bridleway and a cartway or—as we now call it—a vehicular highway. A byway is a sub-species—if I may use that expression in relation to something that is neither an animal nor plant—of vehicular highway.

The factor that distinguishes it from the rest of the species has nothing to do with the rights the public may exercise over a byway, but only with the extent to which those rights are actually exercised. Thus, a byway is a vehicular highway which is used by the public mainly for the purposes for which footpaths or bridleways are used. This reflects the fact that byways result from the reclassification of roads used as public paths, and explains why a reference to a road used as a public path is incorporated in the definition of byway in the Bill—in fact, it is proposed to alter the definition of byway to refer specifically to the purpose for which they are mainly used. As I said a few moments ago, this distinguishing feature of byways has nothing to do with the public rights of way which exist over them, but only with the extent to which those rights are exercised. It follows that it is impossible to presume the dedication of a byway, since dedication is concerned with rights. If we were to consider extending the scope of paragraph (b) to cover byways, we should have to think in terms of extending it to refer to vehicular highways. In my submission, the essential purpose of definitive maps is to record the ways that are available for the benefit of people on foot or on horseback, and it would be quite wrong to show vehicular highways, as such.

Perhaps I may conclude by saying that it will, in any event, be possible to show byways in definitive maps by virtue of Clause 39(3)(i) or (ii) so that the amendments are not needed. I have gone to some length to cover this because it is a somewhat complicated matter, but I think the noble Viscount may feel in the circumstances able not to pursue his amendment.

Lord Fletcher: Some noble Lords will agree that when the noble Lord described this as a somewhat complicated provision, that may have been an understatement. I feel the Committee will wish to consider very carefully what the Minister said and if necessary revert to these matters at a later stage; it would be difficult for me, and I think for other noble Lords, to embark on a long discussion with the Minister on the statement he has just made, but there is one observation I feel I should make. As I understand this somewhat complicated Clause 39, which provides for a series of modifications to the definitive map to be made from time to time, the operative words which cover the duties of local authorities occur in subsection (2)(a), which requires local authorities,

"to make such modifications . . . as appear to them to be requisite in consequence of the occurrence".

I emphasise the word "occurrence" because the occurrence does not appear to be defined anywhere in the Bill. I hope the Minister will consider whether the word "occurrence" is sufficiently wide to cover agreements. He referred to dedications and so on and I hope that "occurrence" is sufficiently wide to cover

not merely matters discovered—"discovery" is the word used in subsection (3)(c) and is, again, a somewhat ambiguous word. When we come to debate Clause 39 stand part I shall invite the noble Lord to tell us what the Government think is meant by discovery on the part of the authority of evidence, and whether or not it involves their being persuaded that there has been sufficient or a lack of evidence. I hope that when considering amendments to the Clause the Minister will, between now and a later stage, consider the necessity of having a definition of "occurrence" in Clause 39(2)(a) and of "discovery" in Clause 39(3)(c).

Viscount Hanworth: We are agreed that this is a complicated matter. I believe the Minister has missed the point I was making and I am not sure I have the points he was making. It would therefore seem sensible if he would look in *Hansard* to see what I said and I shall certainly look at what he said. With that, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 474 and 475 not moved.]

Lord Bellwin moved Amendment No. 475A:

Page 34, line 13, leave out ("on") and insert ("in").

On Question, amendment agreed to.

Lord Bellwin moved Amendment No. 475B:

Page 34, line 18, leave out ("on") and insert ("in").

On Question, amendment agreed to.

Lord Bellwin moved Amendment No. 475C:

Page 34, line 20, leave out ("have been") and insert ("be").

On Question, amendment agreed to.

7.46 p.m.

Lord Monk Bretton moved Amendment No. 475D:

Page 34, line 21, after ("description") insert ("except that nothing in this section shall cause an authority to show as a byway open to all traffic a highway formerly shown as a road used as a public path and reclassified as a bridleway or footpath in a review under Part III of the Countryside Act 1968").

The noble Lord said: I think it would be convenient if I spoke at the same time to Amendment No. 483A. These amendments primarily concern roads used as public paths, sometimes known as RUPPs. To fill in the situation a bit, I should go back to the Gosling Committee, which sat prior to the 1968 legislation and which considered rights of way and, obviously RUPPs. By 1968 it was evident that the category of RUPPs—roads used as public paths—was most unsatisfactory, and the Gosling Committee therefore recommended that they should all be re-classified as either footpaths or bridleways, or as byways open to all traffic. These byways open to all traffic—sometimes known as BOATs—were intended to be for the use of all but were at the same time to be exempt from the normal provisions which lay a duty on a highway authority to keep the highway up.

The Countryside Act 1968, which bore well in mind the fact that the highway would not be kept up, set out the manner of reclassification, which was based on the Gosling Committee's recommendations. That consisted of a three-part review: first, to find out what

INDEX TO PLACES.

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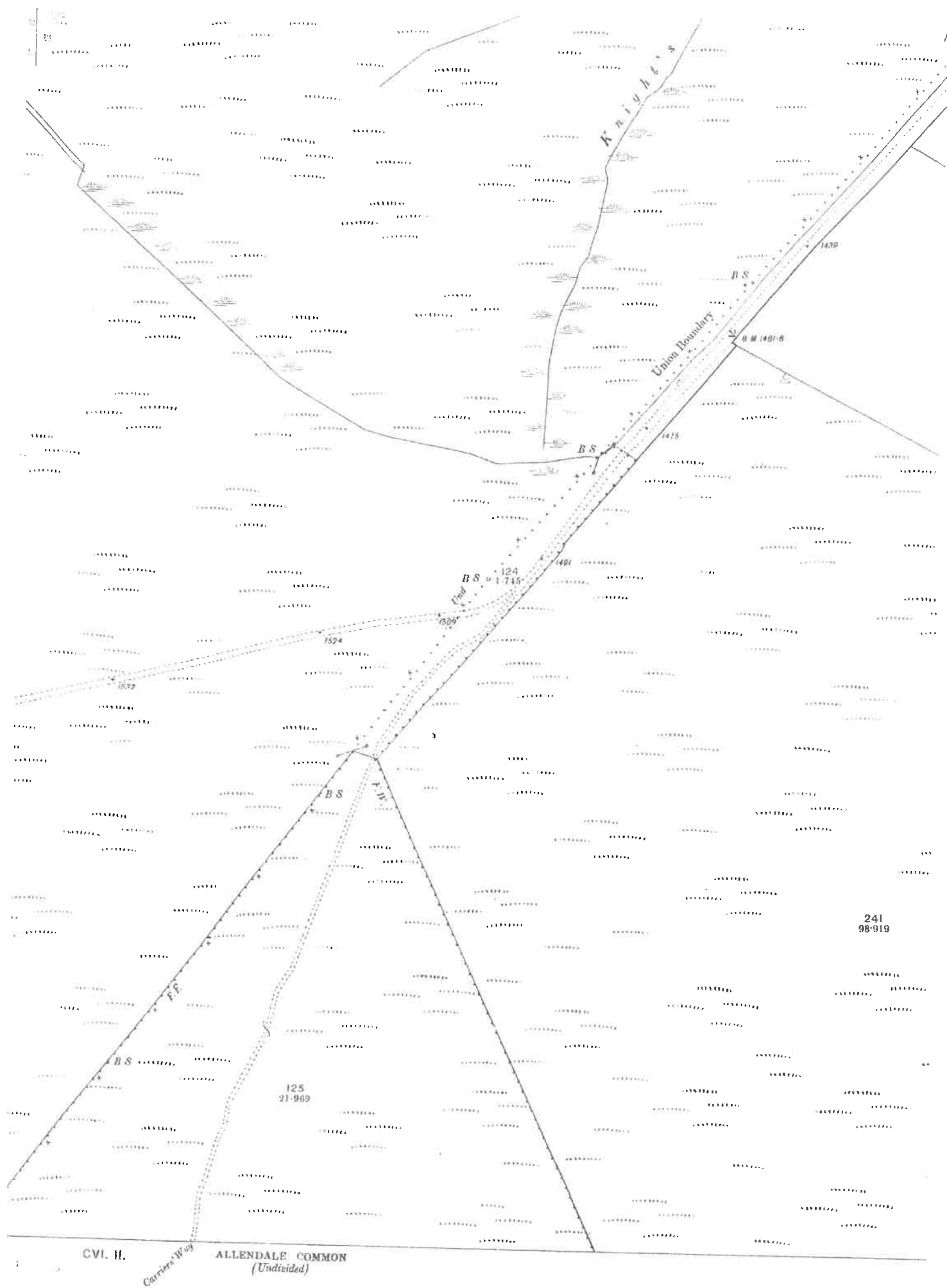
e Remarks

nd.

d.

e road.

Name of Place.	No. of Sheet.		Descriptive Remarks.
	6 inch scale.	25-344 in. scale.	
Coe's Hole.....	CII.	11	A house.
Carriers Way.....	"	13	A road.
Chapel Bank.....	CVI.	4	
Church (Per. Curacy)	"	4	
Corryhill.....	"	4	A farm house.
Crawberry Hill.....	CVII.	2	A farm house.
Crawberry Cleugh.....	"	2	A ravine.
Clint Hill.....	CVI.	8	Cottages.
Crowtree Wood.....	"	8	
Carriers Way.....	"	11, 15	A cart road. X
Carriers Hill.....	"	11, 16	
Cleugh Foot.....	"	12	A house.
Cross Sike.....	"	15	
Cross Tongue.....	"	15	
Cleugh Head.....	"	15	
Cress Well.....	CVII.	6	
Clarty Gap.....	"	9	Part of Allendale Common
Cat Pits.....	"	11	Rough ground.
Comb House.....	"	11	
Church (Per. Curacy)	"	13	
Carr Shield.....	"	13	A hamlet.
Clayhole.....	"	14	Cottages.
Crag Spring.....	"	14	
Coalpit Sike.....	"	15	
Currys Fold.....	"	15	For sheep.
Coalpits.....	"	15	A hamlet.
Coatenhill.....	"	15	Cottages.
Coatenhill Plantation.....	"	15	
Coke Shafts (Lead)	CX.	4	
Cowberry Hill.....	CXI.	1	
Carrshield Moor.....	"	1	
Crossdike.....	"	1	Cottages.
Currock Spring.....	"	1	
Coalburn.....	"	2	A farm house.
Cornfield Cottage.....	"	3	
Church.....	"	3	Chapel of Ease.
Close House.....	"	3	
Coalcleugh Mine (Lead) ..	"	5	
Coalcleugh Moor.....	"	5	
Coalcleugh T. P.....	"	5	
Coalcleugh Pits (Coal)....	"	5	
Coal Cleugh.....	"	5	A ravine.
Coalcleugh.....	"	5	A village.
Carriers Way.....	"	6	A road.
Coulsons Sike.....	"	6	
Cat Pits (Coal).....	"	7	
Craigshield Shaft (Lead) ..	"	7	
Dryburn Cleugh.....	CI.	16	A ravine.
Dry Burn.....	CVII.	16	
Ducket.....	CII.	6	A cottage.



Links 100 0 5 10
Feet 100 0 500

Scale

at the Ordnance Survey Office, Southampton, 1898
Sea at Liverpool which is 0.650 of a foot below the general Mean Level of the Sea.
Refer to Part I. of the (N.B. - P. 11.)

N.B. - The representation

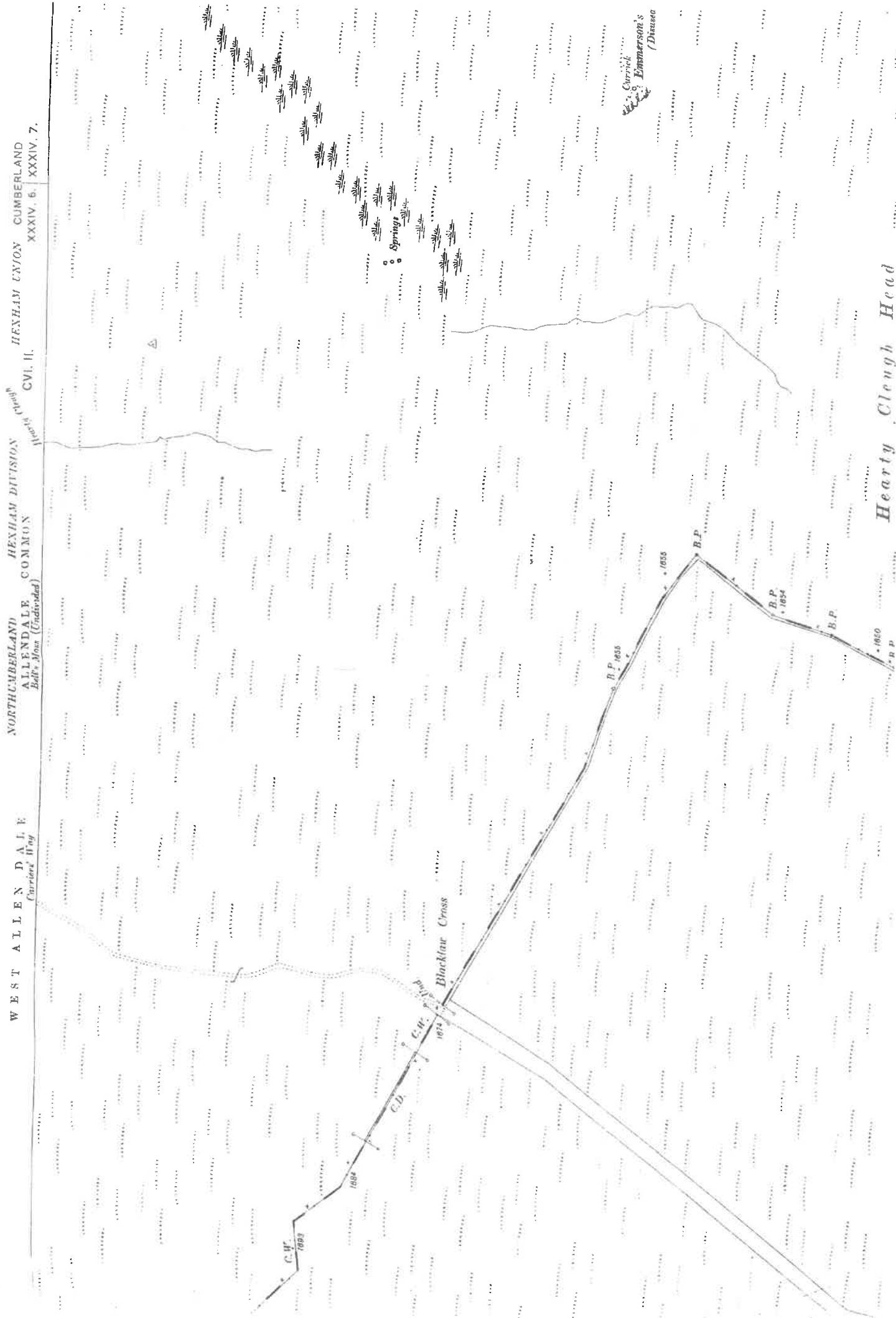
WEST ALLEN DALE
Carried Hwy

NORTH CUMBERLAND
Allen Dale (Undivided)

HEXHAM DIVISION
COMMON

CVI, II.

HEXHAM UNION CUMBERLAND
XXXIV, 6, XXXIV, 7.



Currier & Immanuel's
(Dunse)

Hearty Clough Head

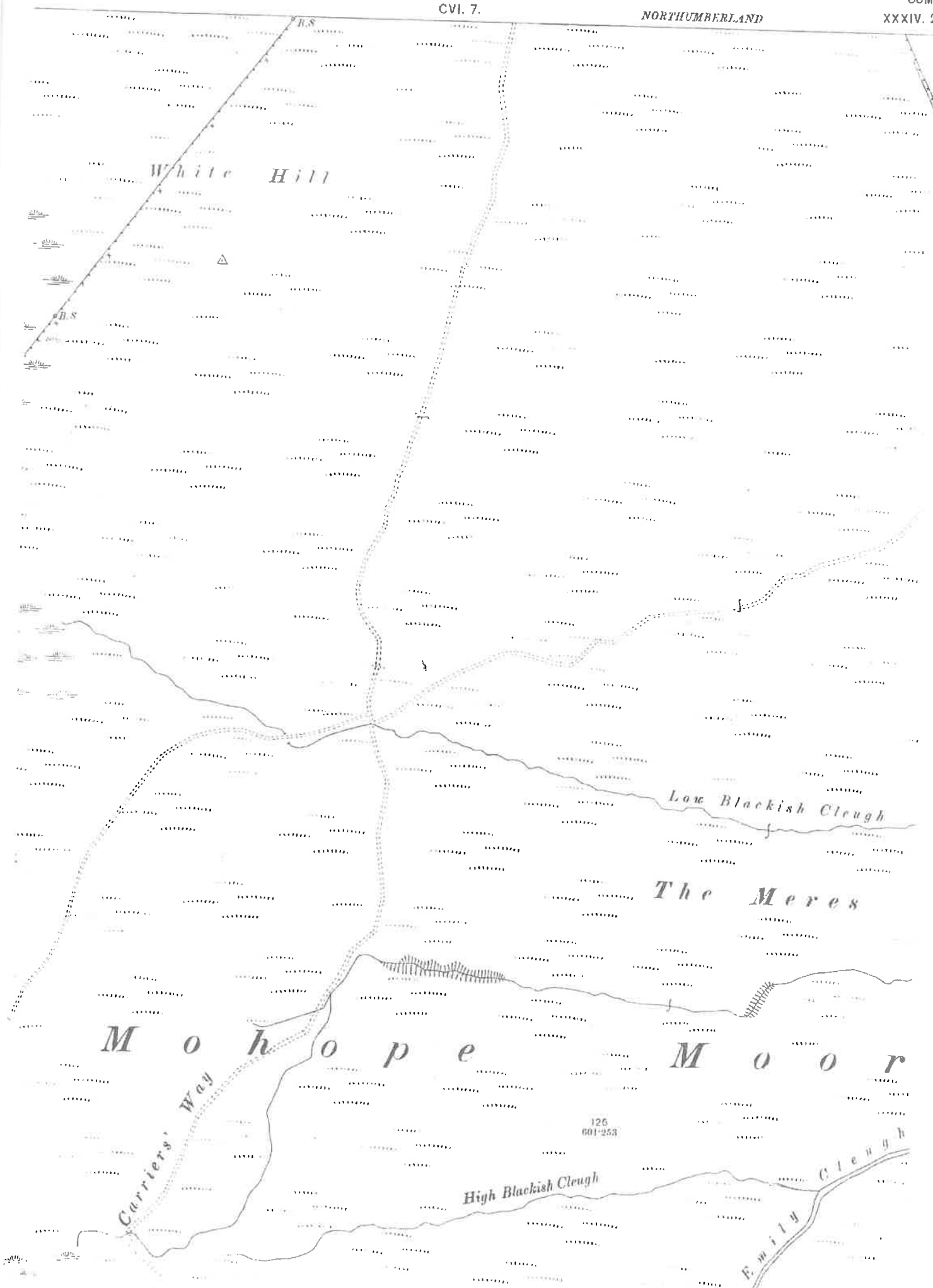
SECOND EDITION 1896

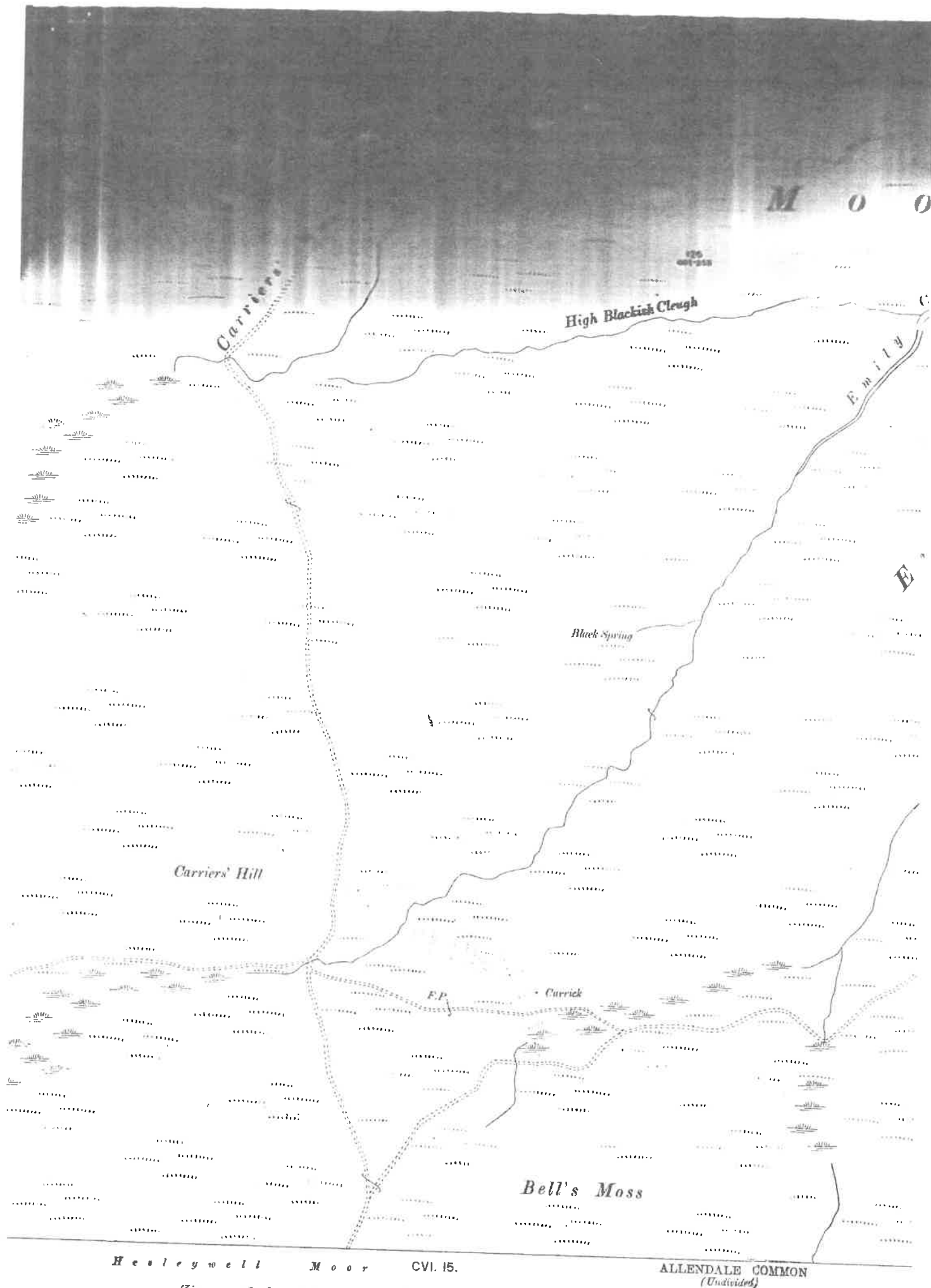
HEXHAM DIVISION

CVI. 7.

NORTHUMBERLAND

CUME
XXXIV. 2





Healeywell Moor CVI. 15.

ALLLENDALE COMMON
(Undivided)

Zincographed and Published at the Ordnance Survey Office, Southampton, 1896

The Altitudes are given in Feet above the assumed Mean Level of the Sea at Liverpool which is 0.650 of a Foot below the general Mean Level of the Sea
Altitudes indicated thus (B.M. 547) refer to Bench Marks on Buildings, Walls, &c, those marked thus (+ 52) to surface levels.

Links 16
 End 70

RIGHTS OF WAY SUB-COMMITTEE
16 APRIL 1999

REPORT OF THE COUNTY ENVIRONMENT MANAGER

ALLEGED BYWAY OPEN TO ALL TRAFFIC NO.26
PARISH OF WEST ALLEN

1. SUBJECT AND PURPOSE OF THE REPORT

- 1.1** In this report the Sub-Committee is requested to consider all the relevant evidence gathered in support and rebuttal of an application to upgrade public footpath No.26 to byway open to all traffic from Blakelaw cross on the Cumbria County boundary to the U8039 unclassified County road (Byway No.37) east of Ouston Fell.

2. IMPLICATIONS

- 2.1** There are no policy, financial, personnel or property implications resulting from this report at this stage.

3. RECOMMENDATION

- 3.1** It is recommended that the Sub-Committee agree that on the balance of probability there is insufficient evidence to justify that a byway open to all traffic is reasonably alleged to subsist.

4. BACKGROUND

- 4.1** By virtue of S.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.

5. PUBLIC EVIDENCE (Enclosure 1)

- 5.1** In February 1998, Mr A D Kind of Newcastle upon Tyne submitted evidence for the upgrading of public footpath No.26 to byway open to all traffic from Blakelaw Cross on the Cumbria County boundary to the U8039 unclassified County road (Byway No.37) east of Ouston Fell, as shown on the attached 1:15,000 scale O.S. Map extract. The application was supported by copies of the following historic documentation indicating that the route may still be susceptible to full highway rights.

Alston Moor General Inclosure Award of 1820

C Smith's Map of Northumberland. 1801

1st Edition 1:2500 scale O.S. map. C1860, plus the Book of Reference.

2nd Edition 1:2500 scale O.S. map. 1896

A copy of a paper on the origins and alignment of a putative medieval road from Corbridge to Penrith of which the Carriers' Way is part.

6. REBUTTAL EVIDENCE (Enclosure 2)

6.1 By letter in April 1999, Clark Scott Harden, Chartered Surveyors on behalf of the Trustees of the Allendale Settled Estates, submitted the following comments:

- i) "I can confirm that my Clients...are the freehold owners of this part of the Allendale Common. I can also confirm their opposition to the upgrading of any rights of way to allow vehicular access across the Common.
- ii) "I have carried out some research into the Estates' archive and I can provide the following plan extract and comments:
 - a) Allendale Commons' Award of 1800 - I enclose an extract of Plan No.4 relating to the West Allen. This shows no tracks or highways marked over the Stinted Pasture. Furthermore the Award itself is specific about public highways which were set out in the Award. The Award itself reads as follows:

And we do hereby set out and appointed several public highways and carriage roads hereinafter mentioned, through and over that part of the said Common which lies in the Parish of Allendale as they are separately staked and set out and delineated in the said plan, (that is to say)...

Alston Road, beginning at a place called Powstile gate and leading south-westward to the stinted pasture near Knightsleugh head. Keirsleywell Row Road beginning at the said Alston Road, at a place called The Green, and leading south-westward to the Stinted Pasture, near Upper Mowhope.

And we do order, direct and award, that all the said several highways hereinbefore assigned and set out over that part of the said Common which lies in the Parish of Allendale, shall be and continue 60 feet in breadth in the narrowest parts thereof.

- b) "A tracing of the Allendale Tithe Plan, Part No.2, West Allen High and Low Townships, dated 1847. This shows no track running from the Keirsleywell Road, nor any track from the Alston Road-end along the current footpath. It does, however, indicate some form of track, not necessarily a highway along the northern boundary of the Common.
- c) "I would suggest that the Alston Moor Award has little or no statutory bearing on this matter.
- d) "The delineation of tracks of any kind on Ordnance Survey or other maps has little or no statutory bearing on this matter.
- e) "In this lead mining district there were numerous routes utilised and maintained by private lead mining companies for the transit of goods.
- f) "I understand that it is not possible to establish rights of way across Registered Common land by prescription."

6.2 By letter in April 1999, Smiths Gore, Chartered Surveyors, submitted the following comments:

- i) "As far as the owners of the shooting rights are concerned, they have expended very considerable funds and resources to bring back grouse and black game to this unique area and habitat and any opening up of pathways to vehicular traffic would be severely detrimental, and any such designation would be strongly opposed."

6.3 By letter in April 1999, Mr Martin of Hesley Well, Ninebanks, whose grazing heft is affected by the proposal, submitted the following comments:

- i) "I have shepherded part of the stinted pasture where the path runs for the past forty years and previous to this my father and grandfather have. During this time the path in question has never been used for anything else other than as a footpath.
- ii) "This particular path is extremely boggy and it is difficult enough to walk along certain stretches. It would therefore prove very difficult if not impossible to use this footpath as a byway for motor vehicles.
- iii) "The area concerned is classed as SSSI (Site of Special Scientific Interest) land and it would appear to be senseless to allow vehicles to plough up land which is supposed to be protected from any kind of misuse. I am therefore very much against such a proposal".

7. CONSULTATION (Enclosure 3)

7.1 The Council carried out a consultation with the District Council, 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". Three replies were received and the comments/views expressed are summarised as follows:

7.2 In March 1999, Mr A Kind, replied on behalf of the Byways & Bridleways Trust indicating that the organisation had no additional facts or evidence that would materially add to the application.

7.3 In March 1999, Mr A Jones replied on behalf of the Ramblers' Association indicating:

"Our only reservation is that, because the path is for most of this stretch a green moorland track with a soft surface, it will be susceptible to damage from excessive use by riders and/or vehicles.

"We know that this is not a reason for objection at this stage but would advise you that we shall press for a TRO if or when appropriate."

8. DOCUMENTARY EVIDENCE (Enclosure 4)

A search has been made in the County Record Office of the archives relating to the area. Evidence of Inclosure Awards, Tithe Awards, County Maps and O.S. Maps was inspected and the following copies are available for inspection:

1769 Armstrong's Map of Northumberland.

1799 Hexhamshire and Allendale Common Inclosure Award Plan.
(See 6.1.2)

1820 Greenwood's Map of Northumberland.

1828 Fryer's Map of Northumberland.

9. DISCUSSION

9.1 Section 53 (3)(c)(iii) 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 to which this part applies.

- 9.2 When considering an application 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.
- 9.3 The Alston Moor General Inclosure award of 1820 was authorised by a private Act of Parliament and was subsequently registered with the Justice of the Peace at the Quarter Sessions Court. The Award divided up the common land amongst the people having the rights of common and thereby became private land not subject to rights of common. In addition the Award laid out a number of public carriage roads, including Blakelaw Road.
- 9.4 The Alston Moor General Inclosure Award shows Blakelaw Road entirely within the County of Cumbria "from the Weardale Turnpike road near Nanthall leading northward to the boundary of the Manor of Hexham near Blakelaw Cross".
- 9.5 A search of the historic documents available in the Northumberland County Records Office, including Inclosure Awards, Quarter Session Court Records, Tithe Awards and former District and County Council records revealed no evidence to suggest that a vehicular highway had been created over the route by a judicial or statutory method.
- 9.6 The Hexhamshire and Allendale Common Inclosure Award of 1799, set out a number of Public and Private Roads which terminated at the boundary of the Stinted Common land. The entire length of the alleged byway falls within the Stinted Common Land.
- 9.7 The Stinted Common awarded by the Hexhamshire and Allendale Inclosure Award was registered as Common land by the County Council in 1970 under the Commons Registration Act of 1965.
- 9.8 The inclusion of the route on published County Maps confirm that there was evidence of a route at the time of survey, although they appear to show conflicting evidence as to the route of the alleged byway. The evidence in the First Edition Ordnance Survey Map and accompanying Book of Reference support the appearance of the route as a "Cart Road".

10. CONCLUSION

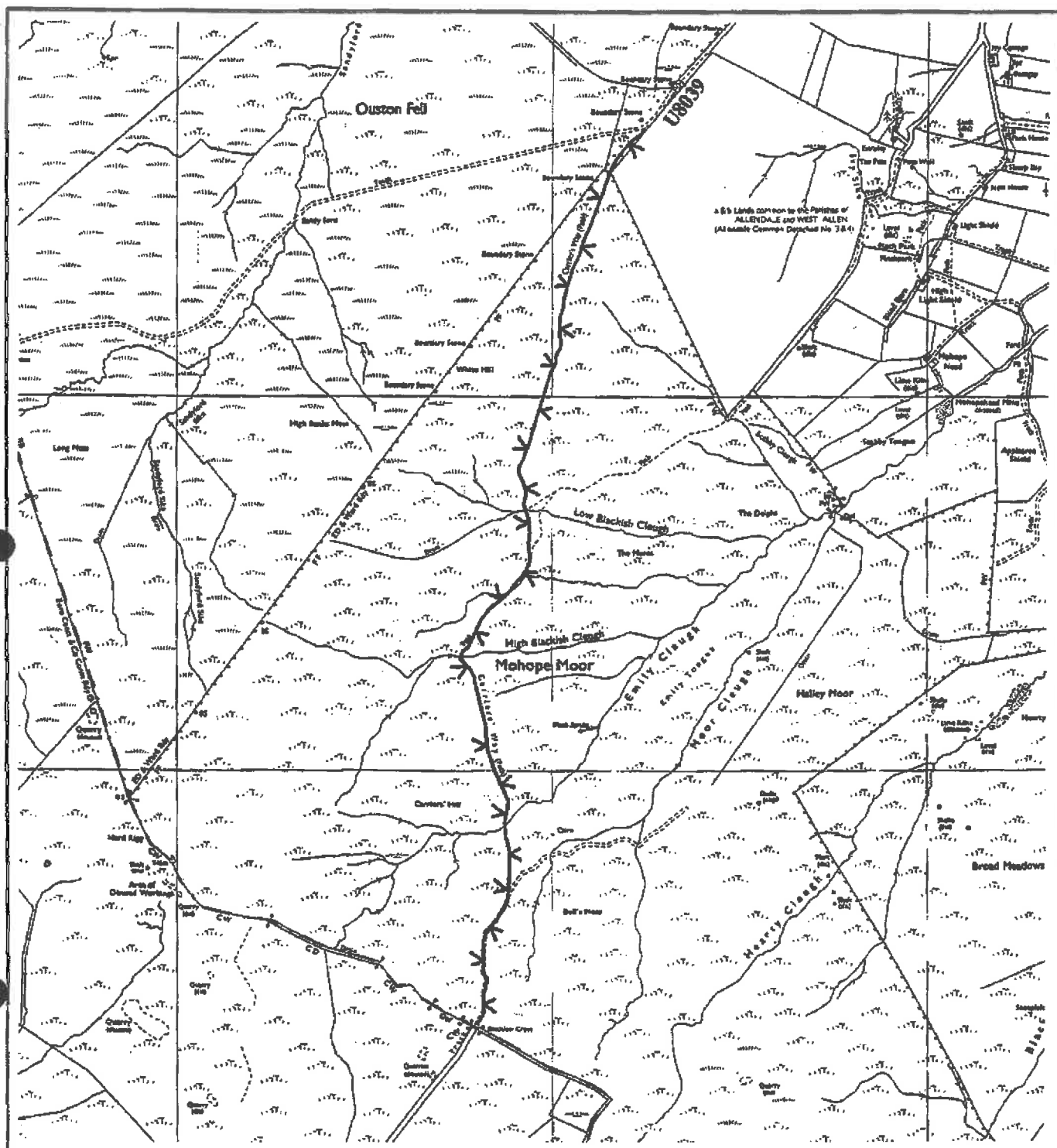
- 10.1 On the basis of the historical documentation produced vehicular rights have not been proven to exist and it is considered that, the route does not fall under the definition of a byway open to all traffic.

BACKGROUND PAPERS

Environment Department File E/49/26z

CONTACT OFFICER:

For further information contact John McErlane on extension 4084.



Northumberland COUNTY COUNCIL

County Environment Manager
Environment Department
County Hall Morpeth Northumberland
Telephone (01670) 533000 NE61 2EF

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Date: 1999 Scale: 1:15,000

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



Claimed upgrading to Byway Open to All Traffic

District(s)	Tynedale	Parish(es)	West Allen	Scale	1:15,000
Def. Map No.	227/237	O.S. Map	NY74NE/75SE	Date	March 1999

Wildlife & Countryside Act 1981, Part III

Definitive Map and Statement for the County of

Application for a Modification Order

To: Mr Peter Howe
Principal Definitive Map Officer
Northumberland County Council
County Hall
Morpeth
NE61 2EF

Borough/District: Tynedale
Parish: Allendale
Number on Definitive Map:

I, Alan Kind, of 45 The Fairway, Gosforth, Newcastle upon Tyne, NE3 5AQ, tel/fax 0191 2364086

Hereby apply for an order under section 53(2) of the Wildlife & Countryside Act 1981 modifying the definitive map and statement for the county of Northumberland by:-

Upgrading to a byway open to all traffic the footpath

From: Blakelaw Cross, on the boundary with Cumbria, at GR 758483, running slightly east of north,

To: Joining the former turnpike road variously known as 'The Old Coach Road', 'Green Gate' and 'Longcross' at GR 762507.

As shown on the plan attached.

I attach copies of documentary evidence and legal submissions as follows

1. Alston Moor General Inclosure Award of 1820, in which the county maintainable road from Nenthall (GR 86/759458 to Blakelaw Cross is set out and awarded as 'One other public carriage road... known as Blakelaw Road' for the use of all types of carriages by the public.
2. C Smith's Map of Northumberland of 1801 showing the road from Clargillhead (GR 86/738499) via Long Cross (GR 86/745501) to Ninebanks (GR 86/7853) as a 'Turnpike Road'.
3. 2nd Edition, 25 inch to the mile, Ordnance Survey map of 1896, sheets CVI-7 & CVI-11, both in Northumberland CRO, showing the line of the current footpath and labelling this as 'The Carriers' Way'.
4. Ordnance Survey Book of Reference to the 1st Edition Ordnance Survey series, for the Parish of Allendale, page 117 'The Carriers' Way' is described as 'A cart road'.
5. A paper on the origins and alignment of a putative medieval road from Corbridge to Penrith, of which The Carriers' Way is part.

Dated: 4 February 1998

Signed:



Wildlife & Countryside Act 1981, Part III
Definitive Map and Statement for the County of

Certificate of Service of Notice of Application for a Modification Order

To: Mr Peter Howe
Principal Definitive Map Officer
Northumberland County Council
County Hall
Morpeth
NE61 2EF

Borough/District: Tynedale
Parish: Allendale
Number on Definitive Map:

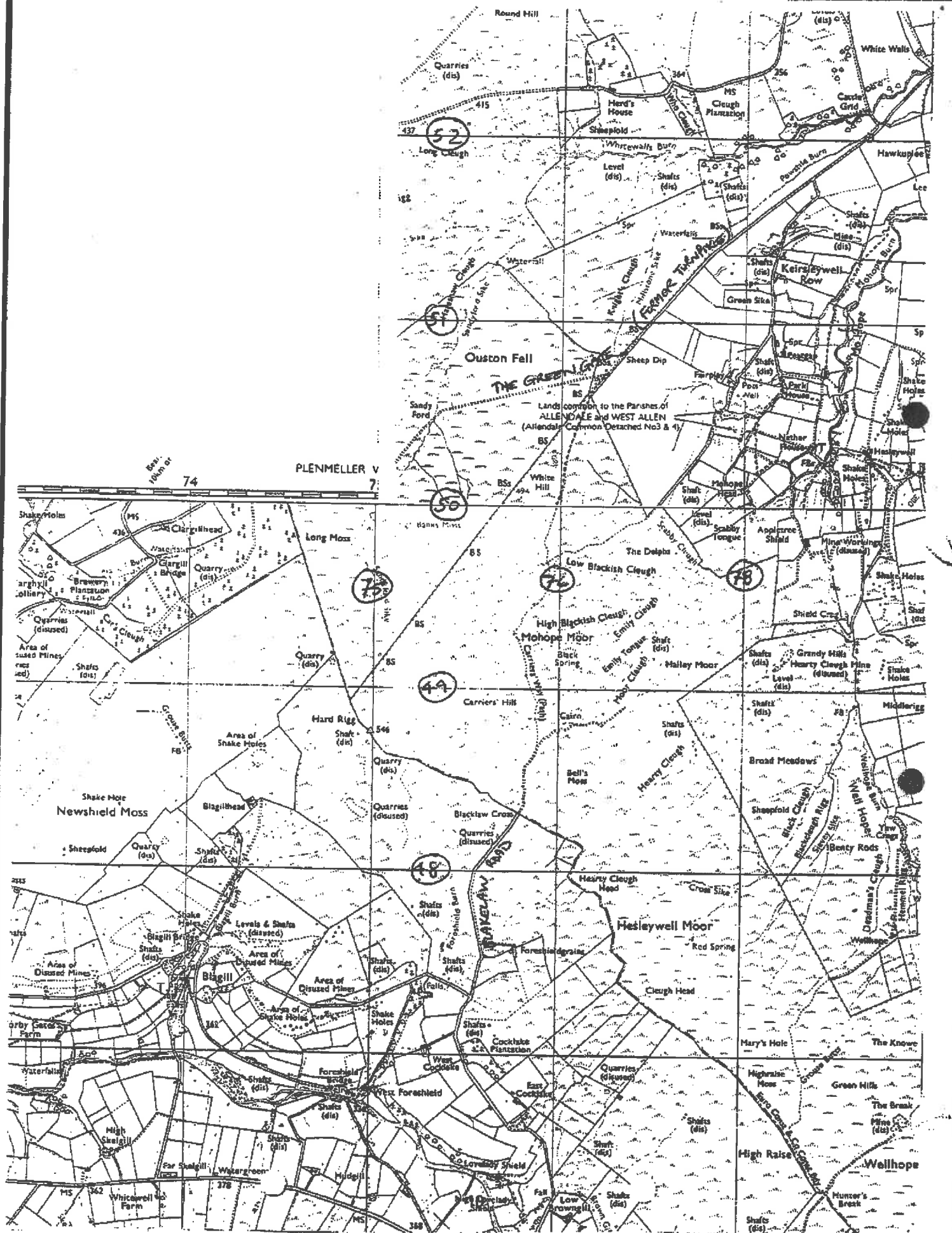
I, Alan Kind, of 45 The Fairway, Gosforth, Newcastle upon Tyne, NE3 5AQ, tel/fax 0191 2364086

Hereby certify that the requirements of paragraph 2 of schedule 14 to the Wildlife & Countryside Act 1981 have been complied with, and each of the following owners and occupiers affected by the claim has been notified:

Mr Tom Warde-Oldam
Allendale Settled Estates
Bywell Estates Office
Stocksfield
NE43 7AQ

Dated: 4 February 1998

Signed: 



Tracing *The Corbrigg Gate*: The Medieval Road from Corbridge to Penrith

This paper was submitted as part of a proof of evidence, objecting to an order of Cumbria County Council, seeking to downgrade to footpath the bridleway between Blagill and Corby Gates. The public inquiry was in September 1996. The order was not confirmed; Cumbria County Council has since removed the obstructions and opened-up the old road.

Copyright Alan Kind, 1998

1. A deed of 1453¹ describes a road: *Communa via a capite pontis ville de Corbrig usque ad Holepethe que est versus austrum, ac ab eadem ville ad villam de Hexsam, at ab eadem villa Corbrig usque Penreth*
2. This translates as: *The common road to the important bridge at Corbridge on to the Holepeth, which goes south and from this town to the town of Hexham and from the town of Corbridge to Penrith.*
3. There are five place references in this description:
 - *Corbrig* (pinpointed as Corbridge by its 'important bridge')
 - *Holepethe*
 - *Hexsam* (quite certainly Hexham)
 - *Corbrig*
 - *Penreth* (quite certainly Penrith)
4. *Holepethe* is described in the *History of Northumberland* series of 1914 (*History of Northumberland*), at p.65, in discussion of the evolution of the river bridges at Corbridge: 'The river [Tyne] was forded below Byethorn, and a road called 'Holepethe', or the hollow road, led up from the ford to a point near the modern Station Hotel, following the boundary of Corbridge and Dilston townships'. The upkeep of the bridge at Corbridge was clearly cause for some concern about who should pay. *History of Northumberland*, at p.111, describes an indenture of 20 November 1453 in which the Lord of Dilston relieved the burgesses of Corbridge of their duty to keep up the dykes on either side of the way leading from the then-new bridge to *Holepethe* (the original ford was a little way downstream of the bridge) and 'further confirms their right of way along the roads leading through Dilston grounds to Hexham and Penrith'.
5. So, for want of any better description, *Holepethe* was a road (*the road?*) from Corbridge, leading into other roads to and past Hexham, and on to Penrith. Again, the *History of Northumberland* gives some assistance. At p.62, the question of rights of estovers and turbary are examined. A deed circa 1215² defines where brushwood might be gathered 'from the sides of the six roads that came down on Corbridge from the south, namely *Daypethe*, Slaley road, the roads of Dunstanwood and Ulflawe, and the Broomley and Newbiggin roads'. The roads of Broomley, Slaley and Newbiggin are now surfaced motor roads. Ulflawe's location is not known. *Daypethe* has a clue to its location in *Doepath*, a field name close by Corbridge railway station and 'is probably the Hexham road, which anciently struck up the hill to Dilston New Town and joined the modern turnpike at Dilston Haugh Farm.³'. Dunstanwood, states the *History of Northumberland*, is now Dilston Park 'and the road leading through it is probably the packhorse road that ran through Dukeshouse wood and crossed the Devilswater by the medieval bridge at Dilston Mill'.

¹Durham. Treas. Misc. Chart. No. 463.

²Curia Regis Rolls 111 & 113.

³Also in a deed of 1354 as Dalepeth.

6. Thus it seems likely that *Holepeth* as a road or road name extended little further than the current site of Corbridge railway station. Deep holloways are common leading to and from fords. If we accept that the Corbridge to Penrith road anciently went via Hexham, then the next question is: did it follow what became the turnpike (later the A69) along the south bank of the Tyne and into Hexham past the hospital (the *Daypeth*?) or did it follow the Dunstanwood 'packhorse road' through Dukehouse Wood, largely parallel to the Daypeth/turnpike line, but running higher up the hillside to the south? This is an important question because following the riverside line to get (ultimately) to Penrith involves considerably more climbing than taking the Dukehouse Wood line (if such existed). The location of the medieval bridge at Dilston Mill must also be examined (see below), but the answer seems to lie in the route of the road to Penrith once past Hexham.
7. There are a number of route options between Hexham and Penrith. Is it possible to identify one such as the *Corbrigg Gate*? A clue lies in the *History of Northumberland* series at p.46. 'The existence of a high road from the Alston mines might be inferred from more than one entry on the Pipe Rolls of Henry II recording the convoy of lead from these mines to Newcastle for shipment abroad'. That it fell into the *Careigate* or Newcastle and Carlisle highway at Corbridge seems proved by the fact that the homestead of Corbygates, a mile north east of Alston, appears in 1314 under the name of Corbriggate⁵. A direct mention of the road, as the road leading from Corbridge to Penrith, occurs in a Corbridge deed of 1453⁶. Its line is probably that laid down by Mr Forster in his *History of Corbridge* and supposed by him to be Roman. Alternatively the road may have crossed the Devil's Water by the medieval bridge below Dilston, described in the account of that township, and, following a line suggested by MacLauchan⁷, may have joined the modern road near Nubbock. West of the Allen, which it crossed at Staward, the medieval highway does not seem to have diverged materially from its modern counterpart'. The *Cumberland County History* series⁸, at p.173 repeats the *History of Northumberland* section from the Pipe Rolls of Henry II and adds further date references for the appearance of the Corbriggate/Corby gates name: 1279, 1314, 1513, 1632, 1695.
8. So it seems reasonably safe to say that there was a recognised road from Corbridge, via Hexham, to 'Corbriggate', to Penrith, and that this 'Corbriggate' is the settlement known in 1279 and still known today as Corbygates. The County Histories speculate on the route and quote Robert Forster's 1881 *History of Corbridge*, at p.10. 'Another Roman road called the 'Maiden Way' commenced at the south end of the bridge [Corbridge] and proceeded in a straight line south, passing near the east side of the old toll bar at Dilston, continuing further south for about 300 yards, then at a right angle westwards, nearing the Linnel Wood and onward through Hexhamshire, passing Alston on the north and still westwards towards Penrith. When the 'new road' was made in 1829, betwixt Corbridge bridge and Dilston, this ancient road was unexpectedly come upon and cut through, and was found to consist mostly of paving stones firmly bedded and united together; the discovery attracted at the time considerable attention. 'Besides the grand Roman way which proceeded from Dover in Kent and crossed the Tyne here, there was another military road, which passed from this place south west through Dilston Park, over Hexham Fell to Old Town in Allendale, and meets with the Maiden Way at Whitley Castle' - Warburton's Map of Northumberland - MacKenzie [in his *History of Northumberland*]'.

⁴*Proceedings of the Archeological Institute, Newcastle* vol i. pp.38,39.

⁵*Cal. Inquisitions*, vol v. p. 280

⁶*supra*.

⁷MacLauchlan, *Survey of Watling Street*, p.20.

⁸Leath 2. Alston.

9. Forster makes a clear error in calling this claimed Roman road from Corbridge (Corstopitum) to Whitley Castle (north and west of Alston) 'The Maiden Way', since this name more properly describes the Roman road from the Vale of Eden, passing Alston to the west, and running up the South Tyne Valley for Greenhead and Scotland. It is possible that Forster regarded the Corstopitum-Whitley Castle road as part of the *Maiden Way* system or pattern of roads. Since he quotes MacKenzie in the same passage, and MacKenzie uses the name correctly, Forster's reasoning must remain a mystery. Forster seems to suggest that his 'Maiden Way' (let us call it the Corstopitum-Alston road for brevity) was also the line of the *Corbrigg Gate*, at least as far as Alston. It was not; at least in total.
10. The justification for saying that the *Corbrigg Gate* did not entirely match the 'Roman line' (and the existence of a 'true' Roman road here is open to some debate) is simple. If the supposed Roman line was followed after a point a little south and west of the Catton Old Town, then travellers would have passed Alston to the north and west, or, if leaving the Roman line to go into Alston, would have approached the town from the north along the corridor of the later turnpike roads. But Corbygates - the defining place on the medieval road is to the north east of Alston. If the Roman line was followed after Old Town and Oakpool, then the medieval road, to pass through Corby Gates, would have taken a long (perhaps two and a half miles extra) and entirely pointless deviation from heading southwest, to the east, then south, then back southwest, to pass through Alston and head for Penrith.
11. That is just not reasonable nor likely, especially when there is an alternative and ancient route from Old Town which puts Corbygates settlement almost directly in line between Old Town/Allendale and Alston. This route takes in Keenlyside Hill, Leadgate ('Lead Road'), Ninebanks (a very old settlement), up the climb on the ancient main thoroughfare (and once a turnpike road) to Long Cross, then south again on what is now known as *The Carriers' Way* (described in the 1st edition OS Book of Reference as a 'cart road' and it appears to have a sunken hard surface), across Mohope Moor, to Blakeiaw Cross (sometimes Black Cross - Armstrong's map of 1757 actually depicts a 'proper stone cross', and the same at Long Cross and Kilhope Cross, with the latter surviving), down to the old part of *Blagill Greens Road*, along the valley side to Blagill, fording the Blagill Burn, straight down the now-bridleway (with a sunken hard surface) past Corbygates' garden walls, and into Alston at The Butts.
12. What is variable in this route? Going back north, the only reasonable route for the *Corbrigg Gate* from Corbygates, is through Blagill, over Mohope, and to cross the River East Allen at Ninebanks. There is now a choice. The Oakpool⁹ - Old Town line is the straightest, but misses Allendale by three miles and Catton by one. Did the *Corbrigg Gate* necessarily pass through, or close by, Allendale? That is possible: Allendale has The Peth, the Portgate, Spitalshield, and Coldcoats as placenames, all suggestive of ancient highways, but if the *Corbrigg Gate* diverted off its straight(er) line to go into Allendale, then it would be more direct for it to continue on towards Corbridge along what is now the bridleway system over Greenrigg Moor and Dipton Mill. What old map evidence there is all suggests that the (now surfaced as the B6305) road past Nubbock, then along *The Causey*, past Yarridge, was the likely direct route. Allendale would in 1453 have been the principal settlement between Hexham and Corbygates (Alston) on the *Corbrigg Gate* route. If the *Corbrigg Gate* went to Allendale, why is it not mentioned in the Latin description? The regularity of line suggests that the *Corbrigg Gate* itself used the Oakpool/ Old Town route, although obviously travellers could access Allendale by other ancient roads.

⁹*History of Northumberland* records the current Oakpool Bridge as being built by subscription in 1700.

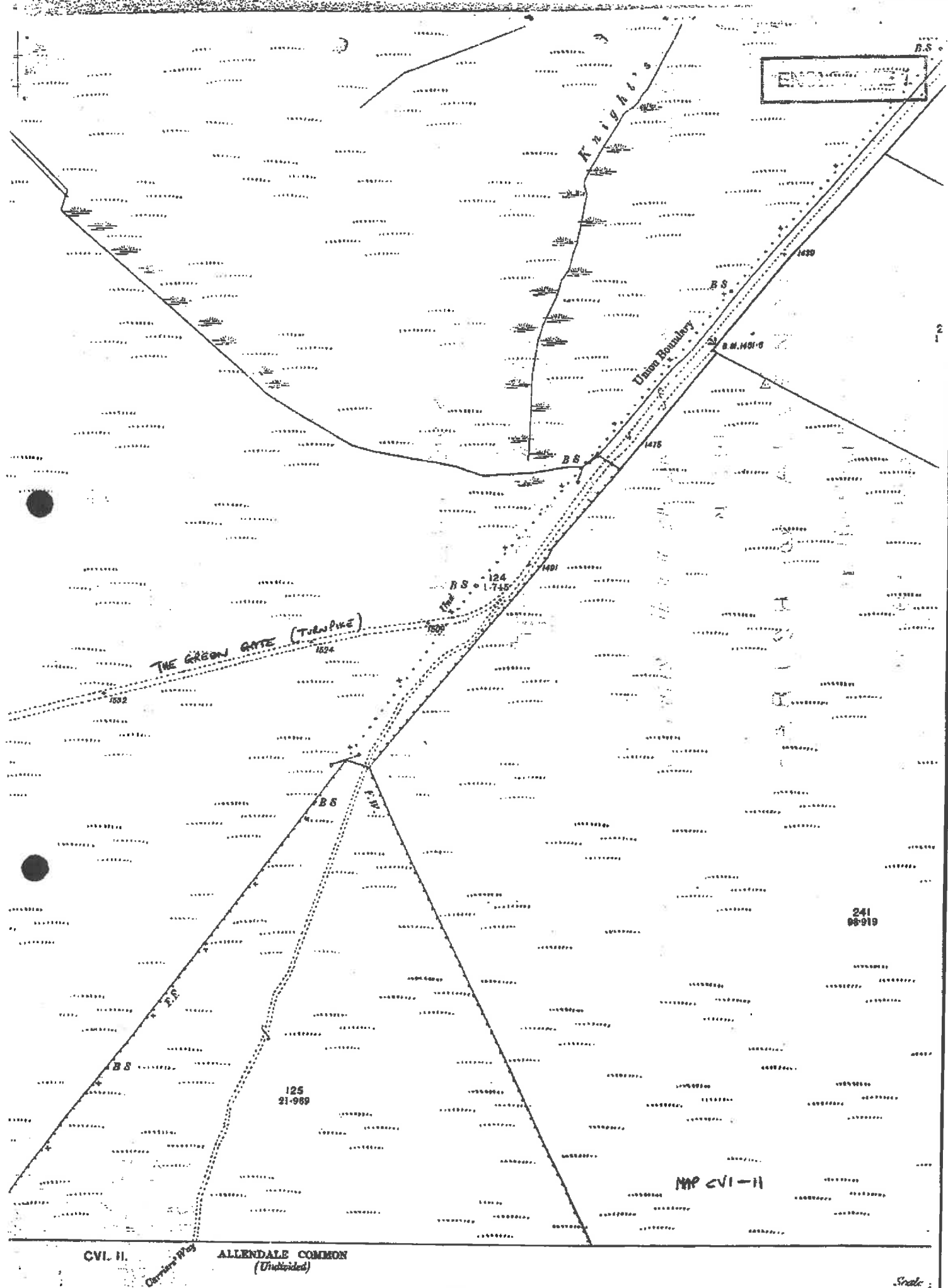
13. What of the Corbygates - Alston - Penrith alignment? This is not yet fully researched, but one alignment suggests itself as being likely. The A686 from Alston, over Hartside Top, through Melmerby and Langwathby, is MacAdam's turnpike road of 1823. The earlier turnpike of 1794 either parallels, or is overlaid by MacAdam's, almost as far as Hartside Top, then curves south behind the Hartside Cafe, and emerges to cross the MacAdam road as the made-up access road to the radio mast, before dropping down the hill to Hazel Rigg, then through Gamblesby and Melmerby. The ever-earlier route appears to be the track (now bridleway) from Hartside Cafe, past the small cottage (a fell guide's post?), over the well-constructed Selah Bridge, down the now-byway at Haresceugh to the Five Lane Ends, and across to run very straight towards Penrith. It is possible that some study of the various crossing places for the River Eden may give some further clue as to the line of the *Corbrigg Gate* from Alston to Penrith, but that remains to be done.
14. So, does the establishment of the probable line of the *Corbrigg Gate* from Corbygates, north through Old Town, assist in determining its route from Corbridge to/past Hexham? It seems likely that there was always a direct Corbridge-Hexham road on the south bank of the River Tyne - the *Daypethe*. Local, short-haul traffic from Corbridge to Hexham, or traffic coming through Corbridge to get to Hexham, would certainly have taken that. But what of traffic from Corbridge to Alston and/or Penrith? If this traffic followed the *Daypethe* into Hexham's centre, their choice then would be to turn in the High Street (now signposted for Blanchland) and climb very steeply up to join the *Causey* road at Black House, or to take what is now the B6305 to Summerrods/Low Gate, and then down past Nubbock. For long-distance traffic with no need to go into Hexham's centre, the more direct route, with much easier gradients, was to take the Dunstanwood road through what is now Dukes House Wood, to the ancient road down to Linnel's Bridge (now the B6306), turn south for a third of a mile to Oakerland, then west on to the *Causey* road past Yarridge.
15. Whether or not *The Causey* road has Roman origins or connections, it is a classic ridgeway 'bypass' around Hexham; it looks old, and it is mapped as a once-principal route. It is hard to see what its original use was other than as a direct and mostly level route from the West Allen Valley corridor to the crossing of the Tyne at Corbridge. And, of course, to the Roman *Corstopitum*.
16. What of the later turnpike roads? The current road from Corbridge to Hexham (the B6529/A695) and the A695 to its junction with the B6529 at Dilston Haughs, are both turnpikes made and improved at various times under the Gateshead-Corbridge and Greenhead-Heddon Trusts. These date from 1769 (check this) and there is Forster's recollection of a 'new road' cutting the presumed *Corbrigg Gate* in 1827. The Dunstanwood Road is said to have crossed the Devilswater on a medieval bridge at Dilston Mill. The history and fate of that bridge needs to be checked, but by 1829 the Turnpike Trust map shows the Dunstanwood road leaving the turnpike just the Hexham side of the Devilswater, before swinging ninety degrees west, exactly as it still does today. This is confirmed by John Cary's map of 1832. Plainly, whatever the reason for the old road not continuing to use the medieval bridge at Dilston Mill, when the turnpikes were made/improved, access for travellers to use the old road continued. Since the toll bar was the Corbridge side of this turning, and people could not realistically use the Dunstanwood road to get back on to the Greenhead road after dodging tolls (the most distance they could dodge for would be to Low Gate/Summerrods - hardly worth the detour on what would, by then, have been a very inferior road) there was no benefit to the Turnpike Commissioners in denying access to the old road at the Devilswater.

17. Tracing the Corbrigg Gate on old maps

1710. H Moll's map of Northumberland This is interesting. There is a road shown with solid lines (enclosed?) from Hexham, south east past Espershiels. This connects with the road shown on Moll's map of County Durham, running through Wolsingham and Doctor's gate (Hamsterley) to Barnard Castle. But - there is no road at all shown linking Hexham with Alston or beyond. However, if you look closely, the old bridge at Dilston appears to be marked with a = symbol, and there is a loop of road which appears to be the Dunstanwood road from the Devilswater as far as the branch road down to Craneheugh (which still exists). What else can it be?
1753. J Horsley's map of Northumberland Interesting. Does not show any road connecting Corbridge and Hexham. Shows what appears to be the Summerrods - Catton Beacon - Ninebanks - Long Cross route as the Hexham - Alston road.
1767. T Kitchin's map of Northumberland Essentially the same as Warburton's map of 1762. Has the Summerrods - Catton Beacon - Longcross road from Hexham to Alston, but also shows the 'Roman Road' from Whitley Castle (Alston) - Old Town - The Causey - and what may well be the Holepethe and Dunstanwood road connecting Corbridge and Hexham.
1769. Armstrong's map of Northumberland. Has the turnpike between Corbridge and Hexham and the turn on to Dunstanwood road west of the Devilswater. Also shows the probable original line(s) over the Devilswater at Dilston Mill and castle. Shows the Dunstanwood road, the dog-leg at the B6306, and the Causey road. Shows the early turnpike from Hexham via Low Gate to Haydon Bridge and the Green Rigg road (bridleway). Further on, has no through-route shown at Old Town, but note that the bit of road shown there is narrow and enclosed (as today) suggesting antiquity. Black Cross, Long Cross and Killhope Cross all have stone crosses depicted.
1770. Hodskinson & Donald's map of Cumberland Watch out for the unusual orientation. Shows Long Cross and Blacklaw Cross with crosses. Marks 'Corbygate' and Blagill. Shows the Hartside road (another 'cross') and the suggested old line via Selah, Park Head and Kirkoswald (The Eden Bridge) and on to Penrith.
1801. C Smith's map of Northumberland The main road shown (as a turnpike) from Hexham to Alston runs Summerrods - Catton - close to Allendale - Ninebanks - Longcross. Dunstanwood road is shown, but going straight through Dilston, rather than kicking to the turnpike at the Devilswater. This line is probably over the bridge shown on Moll's 1710 map. Also has what appears to be Dere Street and the Roman bridge shown at Corstopitum? This suggests this map is derived from others, rather than surveyed?
1822. Fryer's map of Northumberland. Shows Dunstanwood road coming off the turnpike at Dilston without the right angled leg. Then has the Old Town-Ninebanks route, and the possible Allendale/Green Rigg versions, but does not show the Carriers' Way over Mohope to Blakelaw.
1823. Greenwood's map of Cumberland Shows 'Corbygates' and the 1820 inclosure road pattern including the carriage road up to Blakelaw Cross. Does not show the 1823/4 turnpike leg from Blagill to Nent Hall. This suggests that this map was accurately revised between 1820 and 1823. Note too the lines over Hartside.
1829. Extract of map of the Corbridge-Greenhead Turnpike around Dilston. Shows the Dunstanwood road/Corbrigg Gate road leaving the turnpike just west of the Devilswater, as it does today. Note the location of toll bars.

1832. John Cary's map of
Northumberland

Again - an accurate survey, this time showing the 1823/4 Blagill turnpike addition and the 1823/4 Hartside turnpike. Has the usual depiction of Dunstanwood road at Dilston, the Causey, but note that the Green Rigg bridleway line has now disappeared. as a through route. Dunstanwood road is shown as a 'parochial road' indicating it is a public through-route.



SECOND EDITION 1893

HEXHAM DIVISION

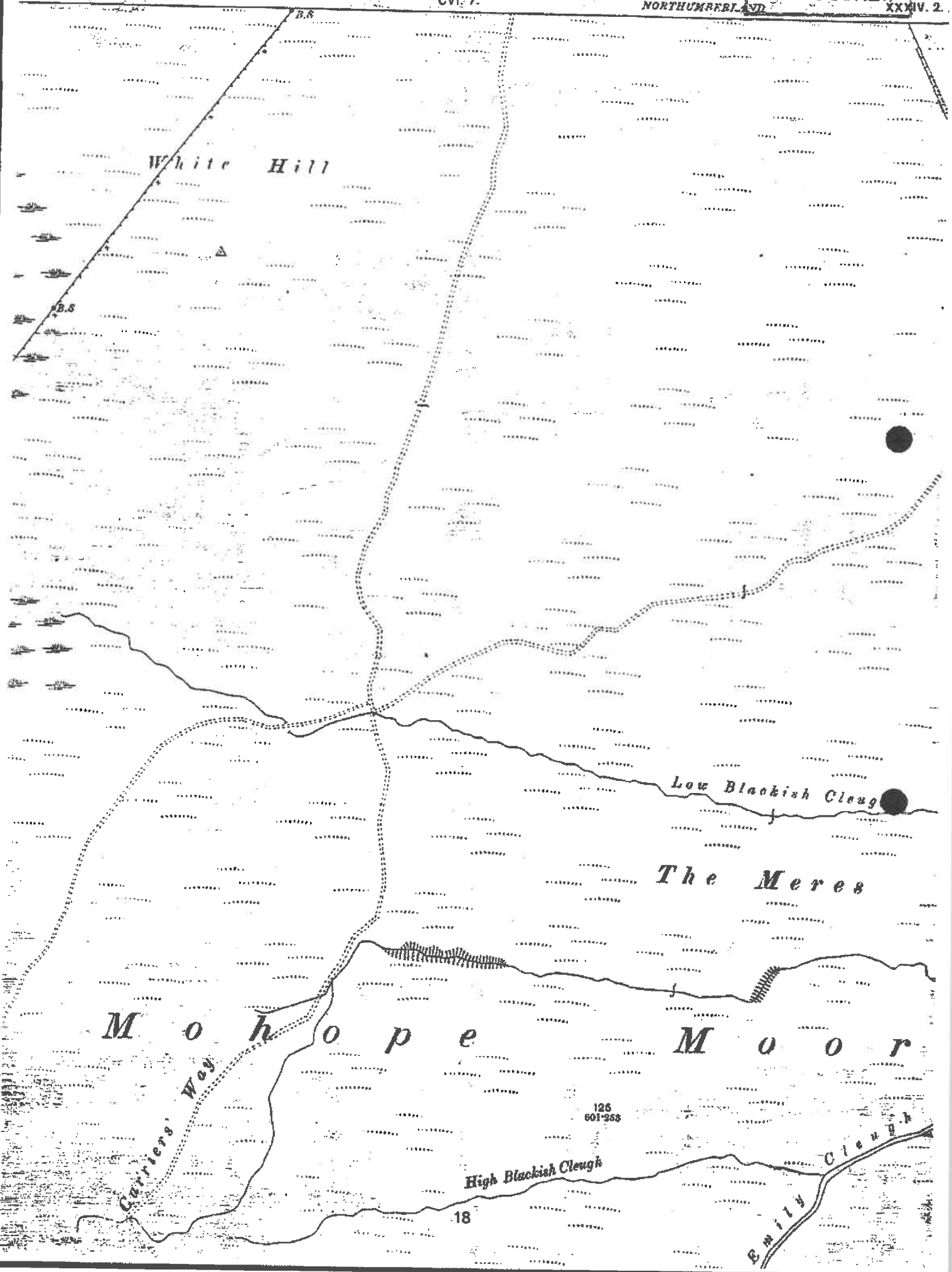
CVI. 7.

NORTHUMBERLAND

ENCLOSURE

CUMBE

XXXIV. 2.



ENCLOSURE

M o h o p e

M o o

126
601-258

Carriers' Way

High Blackish Clough

Emilly Clee

Emilly

Black Spring

Carriers' Hill

E.P.

Currier

Bell's Moss

Hastings

Moss

CVI. 15.

ALLENDALE COMMON
(Undivided)

Zincographed and Published at the Ordnance Survey Office, Southampton, 1896

The Altitudes are given in feet above the assumed Mean Level of the Sea at Liverpool which is 0-650 of a foot below the general Mean Level of the Sea.

Altitudes indicated thus (B.M. 54-7) refer to Bench Marks on Buildings, Walls, &c. those marked thus (• 52) to surface levels.

Links 100

DALE.

ownship, &c.

clusive of Detached portion
attached.

cluding Detached portion.

on (Stinted Pasture) ex-
cluded portions.

on (Stinted Pasture), De-

on (Stinted Pasture), De-

road.

INDEX TO PLACES

IN THE

PARISH OF ALLENDALE.

COUNTY OF NORTHUMBERLAND.

Name of Place.	No. of Sheet.		Descriptive Remarks.
	6 inch scale.	25-344 in. scale.	
Crowtree Wood.....	"	8	
Carriers Way.....	"	11, 15	A cart road.
Carriers Hill.....	"	11, 16	
Cleugh Foot.....	"	12	A house.
Cross Sike.....	"	15	
Cross Tongue.....	"	15	
Cleugh Head.....	"	15	
Cross Well.....	CVII.	6	
Clarty Gap.....	"	9	Part of Allendale Common
Cat Pits.....	"	11	Rough ground.
Comb House.....	"	11	
Church (Per. Curacy).....	"	13	
Carr Shield.....	"	13	A hamlet.
Clayhole.....	"	14	Cottages.
Crag Spring.....	"	14	
Coalpit Sike.....	"	15	
Currys Fold.....	"	15	For sheep.
Coalpits.....	"	15	A hamlet.
Coatenhill.....	"	15	Cottages.
Coatenhill Plantation.....	"	15	
Coke Shafts (Lead).....	CX.	4	
Cowberry Hill.....	CXI.	1	
Carrshield Moor.....	"	1	
Crossdike.....	"	1	Cottages.
Currock Spring.....	"	1	
Coalburn.....	"	2	A farm house.
Cornfield Cottage.....	"	3	
Church.....	"	3	Chapel of Ease.
Close House.....	"	3	
Coalcleugh Mine (Lead).....	"	5	
Coalcleugh Moor.....	"	5	
Coalcleugh T. P.....	"	5	
Coalcleugh Pits (Coal).....	"	5	
Coal Cleugh.....	"	5	A ravine.
Coalcleugh.....	"	5	A village.
Carriers Way.....	"	6	A road.
Coulsons Sike.....	"	6	
Cat Pits (Coal).....	"	7	
Craigshield Shaft (Lead).....	"	7	
Dryburn Cleugh.....	CI.	16	A ravine.
Dry Burn.....	CVII.	16	
Ducket.....	CII.	1	
		6	A cottage.

NEW MAP
of the COUNTY of
NORTHUMBERLAND

Divided into Wards.

LONDON:

Printed for C. SMITH, N^o 172 Strand.

January 6th 1894.

EXPLANATION

Market Towns with the distance from } **WILMINGTON**
London in measured Miles as follows } **326½**

Investment Goals

Turnpike Route

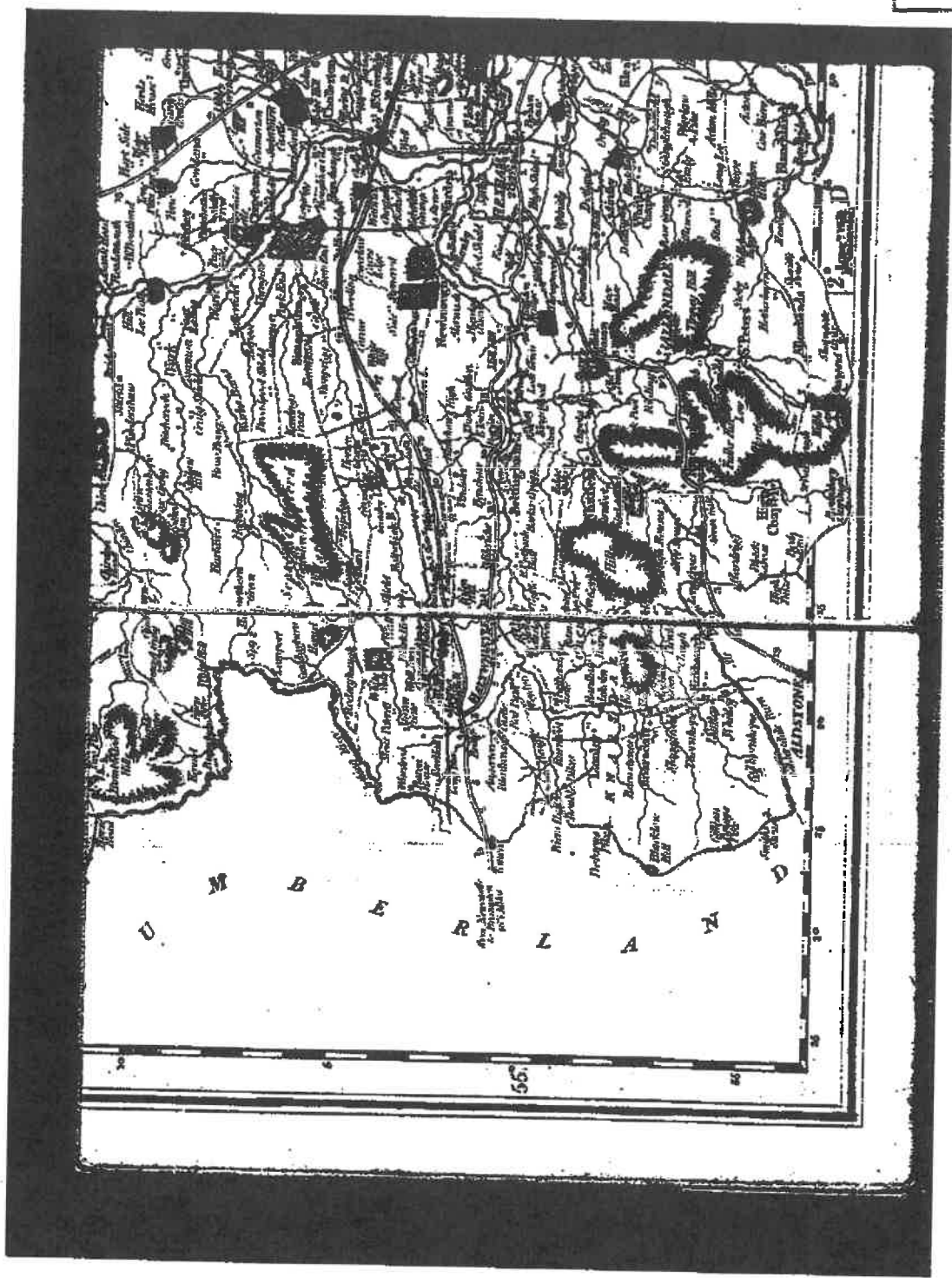
Cross Roads-

Parks and Gentlemen's Houses.....

Rivers

NB. The figures on the Turnpike Roads express the distance in measured Miles between one Market Town and another.

ADK has an original copy of this.



Clark Scott-Harden

CHARTERED SURVEYORS

Bywell Estate Office, Stocksfield
Northumberland NE43 7AQ
Tel: 01661 843168 Fax: 01661 842838
e-mail: post.bywell@csch.co.uk

Your Ref: E/49/26z

Our Ref: S/25/4

J. McErlane Esq.,
Northumberland County Council,
County Hall,
Morpeth,
Northumberland.
NE61 2EF

7th April 1999

Dear Mr McErlane,

ALLENDALE ESTATES WELLHOPE MOOR - BOAT CLAIM

I refer to your letter of 12th March 1999, from which I understand that there has been an application to upgrade Public Footpath No. 26 to a Bye-way Open to All Traffic.

I can confirm that my Clients, the Trustees of the Allendale Settled Estates, are the freehold owners of this part of the Allendale Common. I can also confirm that their opposition to the upgrading of any rights of way to allow vehicular access across the Common.

I have carried out some research into the Estates' archives and I can provide the following plan extract and comments:

- a) Allendale Commons' Award of 1800 - I enclose an extract of Plan No. 4 relating to the West Allen. This shows no tracks or highways marked over the Stinted Pasture. Furthermore, the Award itself is specific about public highways which were set out in the Award. The Award itself reads as follows:

"AND we do hereby set out and appoint the several public highways and carriage roads hereinafter mentioned, through and over that part of the said Common which lies in the Parish of Allendale as they are separately staked and set out and delineated in the said plan, (that is to say)

Alston Road, beginning at a place called Powstile Gate and leading south-westward to the stinted pasture near Knightscleugh Head. Keirsleywell Row Road, beginning at the said Alston Road, at a place called The Green, and leading south-westward to the Stinted Pasture, near Upper Mowhope.



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Managing Director:
R.A. Black BSc (Hons) MBA

Director:
J.W.G. Cameron FRICS
R.D. de V. Gaisford FRICS FAW
R.W.H. Hutchinson FRICS FAW
M. Mathews FRICS
J.D.H. Robson BSc FRICS

M.D. Stanton FRICS
E.R. Tompkin FSA FNAEA
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T.S.L. A. Wainwright BA ARCS FAW

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A.R. McKillop BSc (Hons) FIC For ARCS
D.A. Naylor FNAEA PhD
R.A.G. Parker BSc (Agric) ARCS FAW

K.C. Rosemont BSc (Hons) ARCS
V.M.B. Robinson FRICS ARCS
L.M. Spry ARCS

AND we do order, direct, and award, that all the said several highways hereinbefore assigned and set out over that part of the said Common which lies in the Parish of Allendale, shall be and continue 60 feet in breadth in the narrowest parts thereof."

- b) A tracing of the Allendale Tithe Plan, Part No. 2, West Allen High and Low Townships, dated 1847. This shows no track running from the Keirsleywell Road, nor any track from the Alston Road-end along the current footpath. It does, however, indicate some form of track, not necessarily a highway running along the northern boundary of the Common.
- c) I would suggest that the Alston Moor Award has little or no statutory bearing on this matter.
- d) The delineation of tracks of any kind on Ordnance Survey or other maps should not be construed as giving any statutory authority to those routes.
- e) In this lead mining district there were numerous routes utilised and maintained by private lead mining companies for the transit of goods.
- f) I understand that it is not possible to establish rights of way across Registered Common Land by prescription.

If you would like to discuss any of these points in more detail, please do not hesitate to let me know. I would urge you to recommend to the Rights of Way Sub-Committee that there is scant evidence for claiming higher rights over this footpath.

Yours sincerely,


T. St. A. Warde-Aldam,
for Clark Scott-Harden

Encl

PART No.2

PLAN

OF

WEST ALLEN HIGH AND LOW TOWNSHIPS

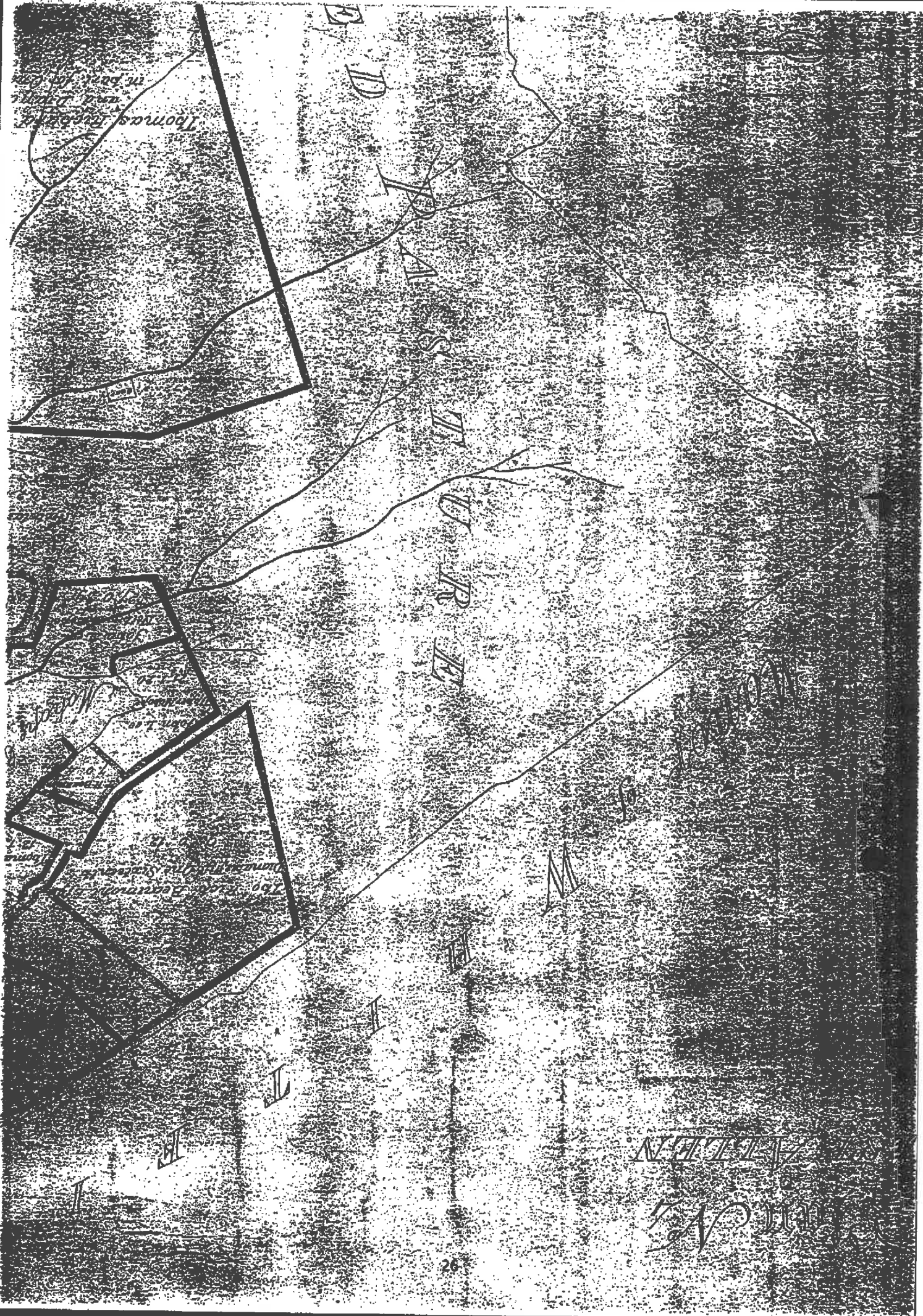
IN THE

PARISH OF ALLENDALE;

in the County of

NORTHUMBERLAND.

ENCLOSURE





SMITHS GORE

Chartered Surveyors

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Northumberland NE45 5LD

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E A Fleming-Smith FRICS
J B L Hockyns-Abraham FRICS
P A Scrope FRICS
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P R Hutton FRICS
H R A I Milton FRICS
A C R Brown FRICS
J J Dickinson FRICS
P S Coles FRICS
J P J Speller FRICS
J MacLachlan FRICS
R H Gladstone FRICS
T P Metcalfe FRICS
R A deW Weldon FRICS
A D Neal FRICS
B A F Swayne FRICS
M W Orde FRICS
A R Harle FRICS
D A Gray FRICS
R W J P Clark FRICS
P B Everett FRICS

J Dennis FRICS
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G N Mainwaring FRICS
S A Stodart FRICS
R A Windle FRICS

7 April 1999

J McErlane Esq
Northumberland County Council
County Hall
Morpeth
Northumberland
NE61 2EF

Dear Mr McErlane

**Wildlife and Countryside Act 1981
Review of the Definitive Map and Statement
of Public Rights of Way
Application for Modification Order: Evidence**

I apologise for not having replied earlier to your letter of 12th March 1999.

I have been consulting with other affected graziers, occupiers, English Nature and neighbours and have awaited the outcome of their replies, including that of the Parish Council.

A number of these will, I believe, be making their views known to you, but in the meantime, I enclose a copy of the letter received from Mr Martin, whose grazing heft is affected by the proposals.

As far as the owners of the shooting rights are concerned, they have expended very considerable funds and resources to bring back grouse and black game to this unique area and habitat and any opening up of pathways to vehicular traffic would be severely detrimental, and any such designation would be strongly opposed.

Yours sincerely



P A SCROPE

DEP -

1 APR 1999

1000 1000 1000

ENCLOSURE 2

Hesley Well
Ninebanks
Hexham
Northumberland
NE47 8DL

29/03/99

Dear Sir,

I am writing with regards to the upgrading of the West Allen footpath No 26 into a byway open to all traffic.

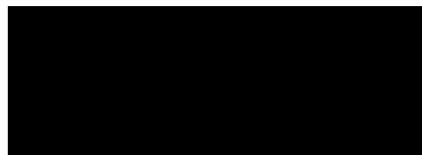
I have shepherded part of the stunted pasture where the path runs for the past forty years and previous to this my father and grandfather have. During this time the path in question has never been used for anything else other than as a footpath.

This particular path is extremely boggy and it is difficult enough to walk along certain stretches. It would therefore prove very difficult if not impossible to use this footpath as a byway for motor vehicles.

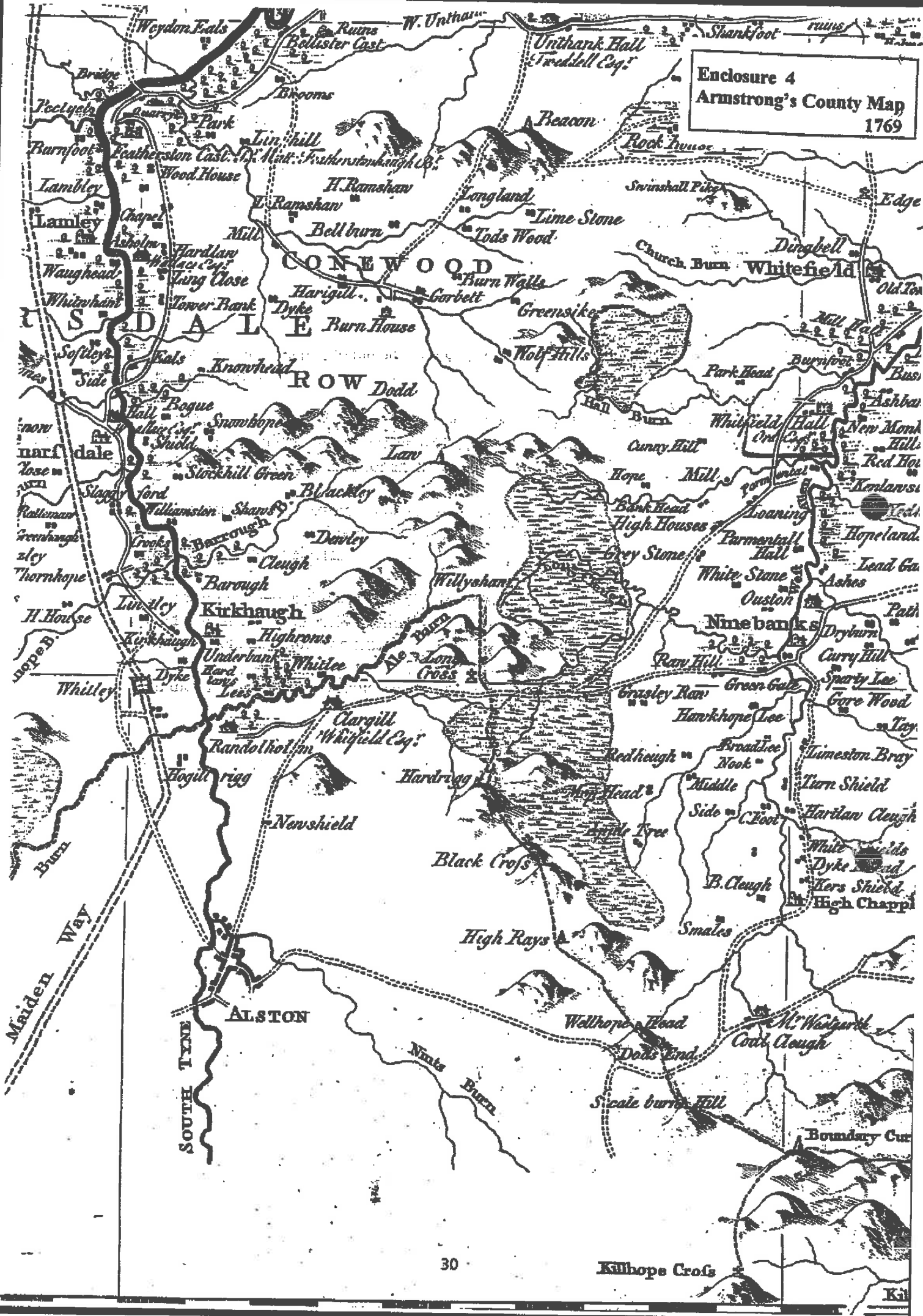
The area concerned is classed as SSSI (Site of Special Scientific Interest) land and it would appear to be senseless to allow vehicles to plough up land which is supposed to be protected from any kind of misuse.

I am therefore very much against such a proposal.

Yours Sincerely



Enclosure 4
Armstrong's County Map
1769



Enclosure 4
Greenwood's County Map
1827

ALDSTONE

31

Enclosure 4
Fryer's County Map
1820

ALSTON

High Raise

Blacklaws Cruff

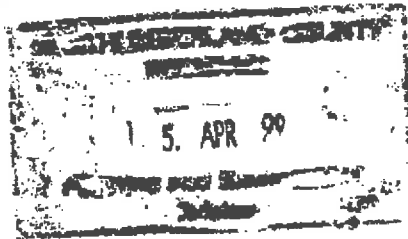
Hard Rigend

Long Cruff

Ale Burn

Enclosure 4
Fryer's County Map
1820

32



CAZ

C

The Old Rectory,
Allendale.
Hexham.
13 April 1999.

Dear Mr Crossley,

Application to upgrade Footpath No. 26 to Byway Open to All Traffic

Along with the Parish Council I am strongly opposed to this application.

I note that although several maps suggest that this may once have been a Byway Open to All Traffic, there is no such road shown on the relevant Enclosure map nor on the Tithe map. As the existing footpath is marked upon the map as "Carriers' Way" it is, of course, probable that there was a way for pack-horses and perhaps carts transporting lead from Alston Moor in the vicinity. Such carriers tended, however, not to follow very definite routes but rather to vary their tracks by several hundred yards in places over time and seasons so that the existing footpath cannot be taken as the track carriers would have taken so much as an indication that carriers made their way in its vicinity.

I would also like the following points to be taken into consideration:

- (1) The footpath is hardly passable in bad weather even to those on foot and is clearly entirely unsuitable for motorised vehicles.
- (2) Its use by motorcycles or four-wheel drive vehicles would disrupt sheep farming which is carried out by stint-holders with sheep on hefted pastures. Such sheep normally keep to the hefts to which they are accustomed but if frightened by unusual noise and strange vehicles would become mixed up with the sheep of other stint holders.
- (3) The area will almost certainly be designated as a site of Special Scientific Interest and the incursion into it of motorised vehicles would be inappropriate as they would be detrimental to both flora and fauna.
- (4) Motorised vehicles would spoil the enjoyment of the footpath, at present providing a walk through quiet and unpolluted moorland, for walkers.
- (5) An upgrading would adversely affect the use of the moor for grouse shooting, a sport which provides useful employment both directly and indirectly in the area.
- (6) Tourism, locally, is largely dependent on visitors who value the beauty of the area, the wild life and the absence of traffic and noise.

For all the above reasons, I would suggest to the Rights of Way Sub-Committee that the balance of probability is that the higher public rights do not exist, that there are good reasons in terms of the needs of farming, shooting and tourism to feel that an upgrading would be detrimental, while a byway open to all traffic would be incompatible with nature conservation.

Yours Sincerely

A black rectangular box redacting the signature of the County Councillor.

County Councillor, Allendale Division.

RINGING HILLS
CARRSHIELD
HEXHAM
NORTHUMBERLAND
NE47 8AW

TELEPHONE: 01434 345311

Your Ref. E/49/262. ~~XXXXXXXXXXXXXXXXXXXX~~ 7th April 1999.

09 APR 99

Dear Sir, I write on behalf of West Allen Parish Council to ask that the request for footpath upgrading be rejected for the following reasons:-

1. The area involved is a site of special scientific interest & as such should not be altered in any way.
2. The path is impossible for vehicles.
3. The surrounding land has been farmed by 3 generations of the same family who are very anxious

not to have their work disrupted.

Yours faithfully

[Redacted Signature]

- Clerk, West Allen Parish Council

NORTHUMBERLAND

COUNTY COUNCIL

County Hall • Morpeth • Northumberland • NE61 2EF • Telephone (01670) 533000 • Fax (01670) 534059
County Planning and Environment Manager - Harry A Fawcett BA DipTP MRTPI

Mr M Snoddy
Trailriders Fellowship
41 Cocked Hat Park
Thirsk
North Yorkshire
YO7 3HB

Our Ref: E/49/26z
Your Ref:
Contact: John McErlane
Direct Line: 534084

15 March 1999

Dear Mr Snoddy

**Wildlife and Countryside Act 1981
Review of the Definitive Map and Statement
of Public Rights of Way
Pre-order consultation : Parish of West Allen**

In accordance with the consultation arrangements previously made with you/your headquarters about the "Code of Practice on Consultation" I now write to consult you informally at the pre-order stage regarding an application under s53 of the Wildlife and Countryside Act, 1981 for a modification order to amend the definitive map and statement. The application is to upgrade existing public footpath No.26 to byway open to all traffic from Blakelaw Cross on the Cumbria County boundary to the U8039 unclassified County road (Byway No.37), as shown on the attached O.S. Map extract.

The process of determining such applications requires the County Council to gather and evaluate the available evidence from all interested parties (Parish/District Councils, owners/occupiers of the land and local representatives of the relevant national and regional path user groups) so as to determine whether on the balance of probabilities, higher public rights exist or not.

I would therefore welcome any facts or evidence that your Organisation wish the County Council to consider in support or rebuttal of the proposed modification as shown on the accompanying O.S. Map extract.

It is expected that this matter will be considered by the Rights of Way Sub-Committee at their meeting in April, so that any information you wish to be considered should be in my hands as soon as possible and preferably no later than Thursday 8 April.

I enclose a pre-paid envelope for your reply.

Yours sincerely

John McErlane

PP P Howe

Principal Definitive Map Officer

31 MAR 99

I SUPPORT THIS APPLICATION +
I AM AWARE OF MANY YEARS
OF VEHICULAR USE

Director of Technical Services - Chris J Offord BA MRTPI

RIGHTS OF WAY COMMITTEE**19 JANUARY 2001****REPORT OF THE DIRECTOR OF ENVIRONMENT****ALLEGED BYWAY OPEN TO ALL TRAFFIC NO 26
PARISH OF WEST ALLEN****1. SUBJECT AND PURPOSE OF REPORT**

- 1.1 In this report the Committee is requested to reconsider all the relevant evidence gathered in support and rebuttal of an application to upgrade public footpath No 26 to byway open to all traffic from Blakelaw Cross on the Cumbria County boundary to the U8039 unclassified County road (Byway No 37) east of Ouston Fell, in the light of recent legal judgements..

2. IMPLICATIONS

Policy: None

Financial: None

Personnel: None

Property: None

Crime and Disorder: None

3. RECOMMENDATIONS

- 3.1 It is recommended that the Committee agree that on the balance of probability there is insufficient evidence to justify that a byway open to all traffic is reasonably alleged to subsist, nor is there sufficient evidence to consider upgrading the route to bridleway status.

4. BACKGROUND

- 4.1 By virtue of S.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.

5. PUBLIC EVIDENCE (Enclosure 1)

- 5.1 In February 1998, Mr A D Kind of Newcastle upon Tyne submitted evidence for the upgrading of public footpath No 26 to byway open to all traffic from Blakelaw Cross on the Cumbria County boundary to the U8039 unclassified County road (Byway No 37) east of Ouston Fell, as shown on the attached 1:15,000 scale O.S. Map extract. The application was supported by copies of historical documentation indicating that the route may still be susceptible to full highway rights. The applicant also provided a paper on the origins and supposed alignment of a putative medieval road from Corbridge to Penrith.

Alston Moor General Inclosure Award of 1820

C Smith's Map of Northumberland. 1801

2nd Edition 1:2500 scale O.S. map. C1898, plus an extract from the Book of Reference which accompanied the first edition of the map.

6. REBUTTAL EVIDENCE (Enclosure 2)

- 6.1 By letter in April 1999, Clark Scott Harden, Chartered Surveyors on behalf of the Trustees of the Allendale Settled Estates, submitted the following comments:

- i) "I can confirm that my Clients...are the freehold owners of this part of the Allendale Common. I can also confirm their opposition to the upgrading of any rights of way to allow vehicular access across the Common.
- ii) "I have carried out some research into the Estates' archive and I can provide the following plan extract and comments:
 - a) Allendale Commons' Award of 1800 - I enclose an extract of Plan No. 4 relating to the West Allen. This shows no tracks or highways marked over the Stinted Pasture. Furthermore the Award itself is specific about public highways which were set out in the Award. The Award itself reads as follows:

And we do hereby set out and appointed several public highways and carriage roads hereinafter mentioned, through and over that part of the said Common which lies in the Parish of Allendale as they are separately staked and set out and delineated in the said plan, (that is to say)...

Alston Road, beginning at a place called Powstile gate and leading south-westward to the stinted pasture near Knightscleugh head. Keirsleywell Row Road beginning at the said Alston Road, at a place called The Green, and leading south-westward to the Stinted Pasture, near Upper Mowhope.

And we do order, direct and award, that all the said several highways hereinbefore assigned and set out over that part of the said Common which lies in the Parish of Allendale, shall be and continue 60 feet in breadth in the narrowest parts thereof.

- b) "A tracing of the Allendale Tithe Plan, Part No. 2, West Allen High and Low Townships, dated 1847. This shows no track running from the Keirsleywell Road, nor any track from the Alston Road-end along the current footpath. It does, however,

indicate some form of track, not necessarily a highway along the northern boundary of the Common.

- c) "I would suggest that the Alston Moor Award has little or no statutory bearing on this matter.
- d) "The delineation of tracks of any kind on Ordnance Survey or other maps has little or no statutory bearing on this matter.
- e) "In this lead mining district there were numerous routes utilised and maintained by private lead mining companies for the transit of goods.
- f) "I understand that it is not possible to establish rights of way across Registered Common land by prescription."

6.2 By letter in April 1999, Smiths Gore, Chartered Surveyors, submitted the following comments:

- i) "As far as the owners of the shooting rights are concerned, they have expended very considerable funds and resources to bring back grouse and black game to this unique area and habitat and any opening up of pathways to vehicular traffic would be severely detrimental, and any such designation would be strongly opposed."

6.3 By letter in April 1999, Mr Martin of Hesley Well, Ninebanks, whose grazing heft is affected by the proposal, submitted the following comments:

- i) "I have shepherded part of the stinted pasture where the path runs for the past forty years and previous to this my father and grandfather have. During this time the path in question has never been used for anything else other than as a footpath.
- ii) "This particular path is extremely boggy and it is difficult enough to walk along certain stretches. It would therefore prove very difficult if not impossible to use this footpath as a byway for motor vehicles.
- iii) "The area concerned is classed as SSSI (Site of Special Scientific Interest) land and it would appear to be senseless to allow vehicles to plough up land which is supposed to be protected from any kind of misuse. I am therefore very much against such a proposal".

7. CONSULTATION (Enclosure 3)

7.1 The Council carried out a consultation with the District Council, 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". Three replies were received and the comments/views expressed are summarised as follows:

7.2 In March 1999, Mr A Kind, replied on behalf of the Byways & Bridleways Trust indicating that the organisation had no additional facts or evidence that would materially add to the application.

- 7.3 In March 1999, Mr A Jones replied on behalf of the Ramblers' Association indicating:

"Our only reservation is that, because the path is for most of this stretch a green moorland track with a soft surface, it will be susceptible to damage from excessive use by riders and/or vehicles.

"We know that this is not a reason for objection at this stage but would advise you that we shall press for a TRO if or when appropriate."

8. DOCUMENTARY EVIDENCE (Enclosure 4)

- 8.1 A search has been made in the County Record Office of the archives relating to the area. Evidence of Inclosure Awards, Tithe Awards, County Maps and O.S. Maps was inspected and the following copies are available for inspection:

1769 Armstrong's Map of Northumberland.

1799 Hexhamshire and Allendale Common Inclosure Award Plan.

1820 Fryer's Map of Northumberland.

1828 Greenwood's Map of Northumberland.

9. DISCUSSION

- 9.1 Section 53 (3)(c)(iii) 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 to which this part applies.

- 9.2 When considering an application 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.

- 9.3 The sole criterion is the narrow question as to whether or not, on the balance of probabilities, there are existing public rights to use the route with vehicles.

To assess the balance of probability, there are three evidential tests that may be applied:

- archival evidence which shows (or implies) the route and its status on contemporary maps and other documents,

- user evidence which may show that a right of way has been established because of its enjoyment by the public as a right, (ie openly and without specific permission) continuously for a period of 20 years prior to its use being brought into question.
- evidence which reflects the official view at the time of, say, the Courts or local authorities.

As there is no user evidence, or any evidence of the official view at the time of enclosure the application is based on archival evidence.

The Alston Moor General Inclosure award of 1820 was authorised by a private Act of Parliament and was subsequently registered with the Justice of the Peace at the Quarter Sessions Court. The Award divided up the common land amongst the people having the rights of common and thereby became private land not subject to rights of common. In addition the Award laid out a number of public carriage roads, including Blakelaw Road.

- 9.4 The Alston Moor General Inclosure Award shows Blakelaw Road entirely within the County of Cumbria "from the Weardale Turnpike road near Nanthall leading northward to the boundary of the Manor of Hexham near Blakelaw Cross".
- 9.5 A search of the historic documents available in the Northumberland County Records Office, including Quarter Session Court Records, Tithe Awards and former District and County Council records revealed no evidence to suggest that a vehicular right had been created over the route by a judicial or statutory method.
- 9.6 The Hexhamshire and Allendale Common Inclosure Award of 1799 set out a number of Public and Private Roads which provided access to the Stinted Common land. In his letter of 10 May 1999 the applicant refers to cases from 1892 and 1912 which he indicates mean that the Committee would have to conclude that the route is a public carriage road (see in particular paragraphs 9-15). Officers do not believe the law is as clear cut as the applicant believes. The following is an extract from one of the leading texts - Highway Law (2nd Edition) by Stephen Sauvain QC - at Paras 1-17, where he discusses the two cases cited.

"The existence of a public right of passage across land implies some reason for the public to exercise the right of way. Traditionally, highways have been links between towns or villages. Thus, the need for a public terminus at either end (*a terminus a quo* and a *terminus ad quem*) has been considered in the past as a necessary characteristic of a highway. This must, however, be considered with some caution. Certainly it has been held, probably more as a rule of convenience than of legal principle, that if access to a highway is cut off at both ends, as a result of stopping up orders, the remaining section to which the public could only have access by trespassing over private land ceases to be a highway. However, it has long been accepted that roads leading to a river, to the sea, or to a public beauty spot, may be highways. Essentially, the existence of a public terminus is an important element in the evidence to prove a highway: 'It is always a strong observation to a jury that the way leads nowhere.' However, there is certainly no rule of law that a cul-de-sac may not be a highway, whether it be in a town or in the country. In the latter case, however, a practical evidential problem may arise in establishing some reason for the growth of the public right of way. In *Moser v. Ambleside Urban District Council* Atkin LJ, in considering the application of the principles of establishing a highway in a country cul-de-sac said:

'One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects two other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway.'

"In *Eyre v. New Forest Highway Board*, Wills J said:

'what would be the meaning in a country place like that of a highway which ends in a cul de sac and ends at a gate on to a common Where one of the public, if there were any public who wanted to use it all, would drive up to that gate for the purpose of driving back again'

"Where no obvious reason for public use of a cul-de-sac appears, then other evidence (for example, of repair) will assume greater importance in establishing that the road is a highway. Where an admitted highway has been stopped up or enclosed at one end, so as to make it a cul-de-sac, there is no alteration in its status."

The circumstances of each individual application needs to be considered. In this particular application it could be suggested that the terminus of an all-purpose route was the edge of the Common over which a stint holder had a right to graze and where there was accordingly no need for a cross-field all-purpose highway. On the other hand the committee may consider the applicant's position that the route crossed the moor based on his evidence and proposition more likely on a balance of probabilities. What is clear is that there is no absolute rule of law that a cul-de-sac cannot exist in the country.

- 9.7 The Hexhamshire and Allendale Common Inclosure Award seems to make it fairly clear that U8039 was an enclosure road, albeit on or close to a route which already existed. (Armstrong's map of 1769)
- 9.8 The Stinted Common awarded by the Hexhamshire and Allendale Inclosure Award was registered as Common land by the County Council in 1970 under the Commons Registration Act of 1965.
- 9.9 The inclusion of the alleged byway route on published County Maps confirms that there was evidence of a route at the time of survey, although they appear to show variations as to the route. The assertion referred to in Smith's map of 1801 that the Hexham-Alston Turnpike road passed near Allendale and through Ninebanks to Long Cross is not substantiated as it is not shown on any of the other County maps quoted.
- 9.10 It is alleged that the Book of Reference to the First Edition Ordnance Survey 1864 indicates that the alleged BOAT is a 'Cart Road', but there is no relevant extract from the first edition map. It is therefore not possible to associate the 'Cart Road' with the alleged BOAT on the basis of the evidence presented. It has long been a feature that the of the representation of a track or way on an O.S. map is only indicative of its physical appearance at the time of survey.

- 9.11 The Allendale Tithe Plan, Part No 2, West Allen High and Low Townships dated 1847 shows a route, stating a destination of Alston, following the northern boundary of the Common without indicating whether the route is public or private.
- 9.12 The various references made to the History of Northumberland are insufficient to prove conclusively that highway rights exist over the route. John Hodgson writing of the Parish of Whitfield in c1750 noted: "... the roads through the Parish were mere track-ways, and that the principal employment of the people was the conveyance of lead ore to the neighbouring smelt mills, in sacks, on the backs of ponies". A report to the Commissioners of the Greenwich Hospital in 1768 noted that: "The ore is carried from the mines to the mills entirely on horseback: Galloways being employed, carrying two pokes of ore. It is possible that, after 1706 when the London Lead Co took over the Whitfield smelt mill, some of their ore was carried by packhorse from the Alston area to that smelt mill via the Mohope area, but under what kind of agreement with the landowners, historically presumably the Blacketts/Beaumonts, a rival company in the lead trade to the London Lead Co, is not known.
- 9.13 The route over the Common is known as the 'Carriers Way' and is recorded on the Definitive Map of Public Rights of Way as Public Footpath No 29 within the Parish of West Allen. It should be noted that a carriers' way has no uniquely defining physical characteristics: a footpath could have exactly the same appearance.
- 9.14 From visual and documentary evidence it is likely that there was pack horse use across Mohope Moor. The evidence does however, appear to suggest that the use with pack horses was restricted to local farmers, hired by certain landowners of the time, to carry ore for smelting. It follows therefore, that the farmers could not be considered to be acting as the public at large exercising any public rights. It may be that some of the pack horse use could be attributed to the general public, but no evidence to support the assertion has been produced.
- 9.15 The Court of Appeal has recently considered the definition of a BOAT contained in Section 66 of the 1981 Act. Whilst their reasoning is not entirely clear, it is apparent that the public use of a way has to be mainly on foot or on horse for the definition to be satisfied. If the use is principally by motor vehicles then inclusion on the Definitive Map as a BOAT is inappropriate. It is also possible to consider the character of a route if it is more probable that the use will be on foot or horse.
- 9.16 In this application the route is clearly currently unsuitable for vehicles and is recorded as a public footpath. In these circumstances it would seem the application would fail on legal grounds regarding the definition of a BOAT. (The Committee may agree with the recommendation that insufficient evidence has been produced to sustain the claim.)
- 10. CONCLUSION**
- 10.1 On the basis of the historical documentation produced vehicular rights have not been proven to exist and it is considered that the route does not therefore comply with the criteria for a byway open to all traffic, nor is there sufficient evidence of public use on horseback to consider upgrading the route to bridleway status.

11. BACKGROUND PAPERS

Environment Department File E/49/26z

12. CONTACT OFFICER

This report has been prepared by the Director of Environment.

For further information please contact Peter Howe on extension 4082.

NORTHUMBERLAND COUNTY COUNCIL

RIGHTS OF WAY COMMITTEE

At a meeting of the **Rights of Way Committee** held in the Committee Room at Berwick-upon-Tweed Borough Council Offices on Friday 19th January 2001 at 2.00 p.m.

PRESENT

Councillor P. Kelly
(Chairman, in the Chair)

COUNCILLORS

Bentham, R.L.
Carruthers, Mrs. A.L.
Cutter, A.
Mash, D.A.

Patterson, Mrs. A.D.
Riddle, J.R.
Scott, Mrs. P.A.

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors A.J. Avery, B.A. Douglas, T. Flaws, D.L. Nicholson, S.A.C. Oliver, T.R. Saunders and Dr. S.M. Linsley.

2. MINUTES

RESOLVED that the minutes of the meeting of the Rights of Way Committee held on Friday, 10 November 2000, as circulated, be confirmed as a true record and signed by the Chairman, subject to :-

- (a) Councillor Mrs. P.A. Scott's name being added to the attendance list; and
- (b) it being noted that Councillor Mrs. B.M.S Trobe had resigned as a Committee member and not Councillor Mrs. A.D. Patterson.

3. REPORTS OF THE DIRECTOR OF PERSONNEL AND ADMINISTRATION

- (a) **Common Land and Village Green - Changes Introduced by the Countryside and Rights of Way Act 2000**

(Not reproduced – copy filed with the signed minutes as Appendix "A").

The report updated members on the changes.

RESOLVED that the report be noted.

(b) **Application to Register Land at Westfield Road, Berwick upon Tweed as Village Green**

(Not reproduced – copy filed with the signed minutes as Appendix “B”).

The report invited the Committee to consider the evidence produced in support and rebuttal of an application to register land at Westfield Road, Berwick-upon-Tweed as Village Green.

RESOLVED that, on a balance of probabilities, sufficient evidence has been brought to justify the registration of the land as village green, pursuant to the Commons Registration Act 1965.

4. **REPORTS OF THE DIRECTOR OF ENVIRONMENT**

(a) **Countryside and Rights of Way Act 2000**

(Not reproduced – copy filed with the signed minutes as Appendix “C”).

The report advised the Committee about the content and anticipated implications of the Countryside and Rights of Way Act 2000.

RESOLVED that the provisions of the Countryside and Rights of Way Act 2000, in respect of their impact on access and rights of way, be noted and further reports be submitted about the implementation of the Act within Northumberland.

(b) **Forest Trails Project - Progress**

(Not reproduced – copy filed with the signed minutes as Appendix “D”).

The report informed members of progress achieved by the Forest Trails Project in opening and improving the networks of public rights of way within Wark and Kidland Forest.

RESOLVED that the contents of the report be noted and copies be sent to the appropriate District Councillors and Northumberland National Park Authority members.

(c) **Forest Trails Project - Improvement Proposals around Pundershaw**

(Not reproduced – copy filed with the signed minutes as Appendix “E”).

The report sought the Committee’s agreement to a proposal to create a section of public bridleway in the Pundershaw area of Wark Parish.

RESOLVED that approval be given to the making of the necessary legal public path extinguishment, creation and diversion orders, as described in the report, and amendment of the Definitive Map of Public Rights of Way.

(d) **Alleged Public Footpath No.23 - Parish of Ancroft**

(Not reproduced – copy filed with the signed minutes as Appendix “F”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from Cheviot Terrace to St. Peters Terrace, Scremerston.

RESOLVED that, on the balance of probability, there is insufficient evidence to justify that a public right of way is reasonably alleged to exist.

(e) **Alleged Byway Open to All Traffic No.26 - Parish of West Allen**

(Not reproduced – copy filed with the signed minutes as Appendix “G”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an application to upgrade Public Footpath No.26 to Byway Open to All Traffic from Blakelaw Cross on the Cumbria County boundary to the U8039 unclassified county road (Byway No.37) east of Ouston Fell, in the light of recent legal judgements.

RESOLVED that, on the balance of probability, there is insufficient evidence to justify that a byway open to all traffic is reasonably alleged to subsist, nor is there sufficient evidence to consider upgrading the route to bridleway status.

5. EXCLUSION OF PRESS AND PUBLIC

RESOLVED that under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the Agenda as they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A of the 1972 Act and as indicated below:

Agenda Items Paragraph of Part I of Schedule 12A

8 (1) - 8 (7)

13

Information, which if disclosed to the public, would reveal that the Authority is considering making an order which imposes requirements on individuals.

6. REPORTS OF THE DIRECTOR OF ENVIRONMENT

(a) **Forest Trail Project - Improvement Proposals around Rotheryhaugh, Wark Forest**

(Not reproduced – copy filed with the signed minutes as Appendix “H” – coloured pink and marked “Not For Publication”).

The report sought the Committee’s agreement to a proposal to create a section of bridleway in the Rotheryhaugh area of Wark Parish.

RESOLVED that approval be given to the making of the necessary legal public path extinguishment, creation and diversion orders as described in the report, the required amendment of the Definitive Map of Public Rights of Way, and the payment of compensation and fees.

(b) Alleged Public Footpath No.22 - Parish of Ancroft

(Not reproduced – copy filed with the signed minutes as Appendix “T” – coloured pink and marked “Not For Publication”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from Restoration Cottages to Briar Cottages, Scremerston.

RESOLVED that, on the balance of probability, there is sufficient evidence to justify that a public right of way is reasonably alleged to exist between points B-C-D (shown on the plan accompanying the report) and the proposal be included within a future Modification Order, as a public footpath.

(c) Alleged Public Footpath No.26 - Parish of Beadnell

(Not reproduced – copy filed with the signed minutes as Appendix “J” – coloured pink and marked “Not For Publication”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from The Haven to Meadow Lane, in Beadnell.

RESOLVED that :-

- (a) there is sufficient evidence to justify that a public right of way is reasonably alleged to exist between the points marked J and H (shown on the plan accompanying the report) and that the proposal be included in a future Modification Order as a footpath; and
- (b) there is insufficient evidence to justify that a public right of way is reasonably alleged to exist between the points marked G and K.

(d) Alleged Public Footpath No.28 - Parish of Beadnell

(Not reproduced – copy filed with the signed minutes as Appendix “K” – coloured pink and marked “Not For Publication”).

Councillor Mrs. P. A. Scott declared an interest in respect of this item and left the room for the duration of the discussion and decision relating thereto.

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from Meadow Lane, Beadnell to the children's playground at the rear of the former school.

RESOLVED that, on the balance of probability, there is sufficient evidence to justify that a public right of way is reasonably alleged to exist and the proposal be included within a future Modification Order, as a public footpath.

(e) Alleged Public Footpath No.64 - Berwick Town

(Not reproduced – copy filed with the signed minutes as Appendix “L” – coloured pink and marked “Not For Publication”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from the Berwick end of Old Bridge to Shoregate/Sandgate via the Quayside.

RESOLVED that, on the balance of probability, there is sufficient evidence to justify that a public right of way is reasonably alleged to exist and the proposal be included within a future Modification Order, as a public footpath.

(f) Alleged Public Footpath No.65 - Berwick Town

(Not reproduced – copy filed with the signed minutes as Appendix “M” – coloured pink and marked “Not For Publication”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from Adams Drive, immediately north of Dixon’s News and Convenience Store to Spittal Hall Road.

RESOLVED that, on the balance of probability, there is sufficient evidence to justify that a public right of way is reasonably alleged to exist and the proposal be included within a future Modification Order, as a public footpath.

(g) Alleged Public Footpath No.16 - Parish of North Sunderland

(Not reproduced – copy filed with the signed minutes as Appendix “N” – coloured pink and marked “Not For Publication”).

The report invited the Committee to consider all the relevant evidence gathered in support and in rebuttal of an alleged public right of way from South Lane, North Sunderland to Southfield Avenue, in Seahouses.

RESOLVED that, on the balance of probability, there is sufficient evidence to justify that a public right of way is reasonably alleged to exist and the proposal be included within a future Modification Order, as a bridleway.

CHAIRMAN

DATE

Ch.’s Initials.....