

## RIGHTS OF WAY COMMITTEE

9 January 2018

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

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

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

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#### **Purpose of report**

In this report, the Committee is asked to reconsider the decision it made in July 2017, in relation to existence of public vehicular rights over the U1098 and U4064 roads, between the U1092 road north of Branton Middlesteads and the C169 road east of Mile Moor Plantation. The reconsideration is considered necessary in light of a recent High Court decision.

#### **Recommendation**

**It is recommended that the Committee agree that:**

- (i) there remains sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route H-G-F;**
- (ii) in light of the July 2017 High Court decision, the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over this route;**
- (iii) the whole route be included in a future Definitive Map Modification Order as byways open to all traffic.**

#### **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** At its meeting on 11 July 2017, the Rights of Way Committee considered evidence in support and rebuttal of public vehicular rights over the U1098 and

U4064 roads at Branton Middlesteads and agreed with the officer recommendation that:

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route H-G-F;
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the majority of the route;
- (iii) the Natural Environment and Rural Communities Act 2006 would, however, appear to have extinguished the public's motorized vehicular rights over the X-Y section of the route;
- (iv) the H-G-X and Y-F sections of the route be included in a future Definitive Map Modification Order as byways open to all traffic;
- (v) the X-Y section of the route be included in a future Definitive Map Modification Order as a restricted byway.

- 1.3 The resolutions which officers are asking the Committee to reconsider are items (iii) and (v) in paragraph 1.2 above. At the time, officers considered that public motor vehicular rights had been extinguished over the X-Y section on the basis that none of the 'saving' provisions contained within the Natural Environment and Rural Communities Act 2006 applied. In paragraph 8.11 the report stated:

Of the saving provisions above, (b) will apply to the majority (but not the X-Y section) of this route. The public's motor vehicular rights over the H-G-X and Y-F sections would not have been extinguished by the NERC Act 2006. The X-Y section was not shown on the List of Streets on 2 May 2006 and does not appear to be covered by any of the other saving provisions. The public's motor vehicular rights over the X-Y section would, therefore, appear to have been extinguished by the NERC Act 2006, leaving this section as a restricted byway.

The saving provision referred to in (b) was "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". Although the X-Y section was incorrectly shown too far to the west (typically 25 to 40 metres too far), due to a cartographical error, this error was considered to be sufficient to mean that public motor vehicular rights over that part had been extinguished.

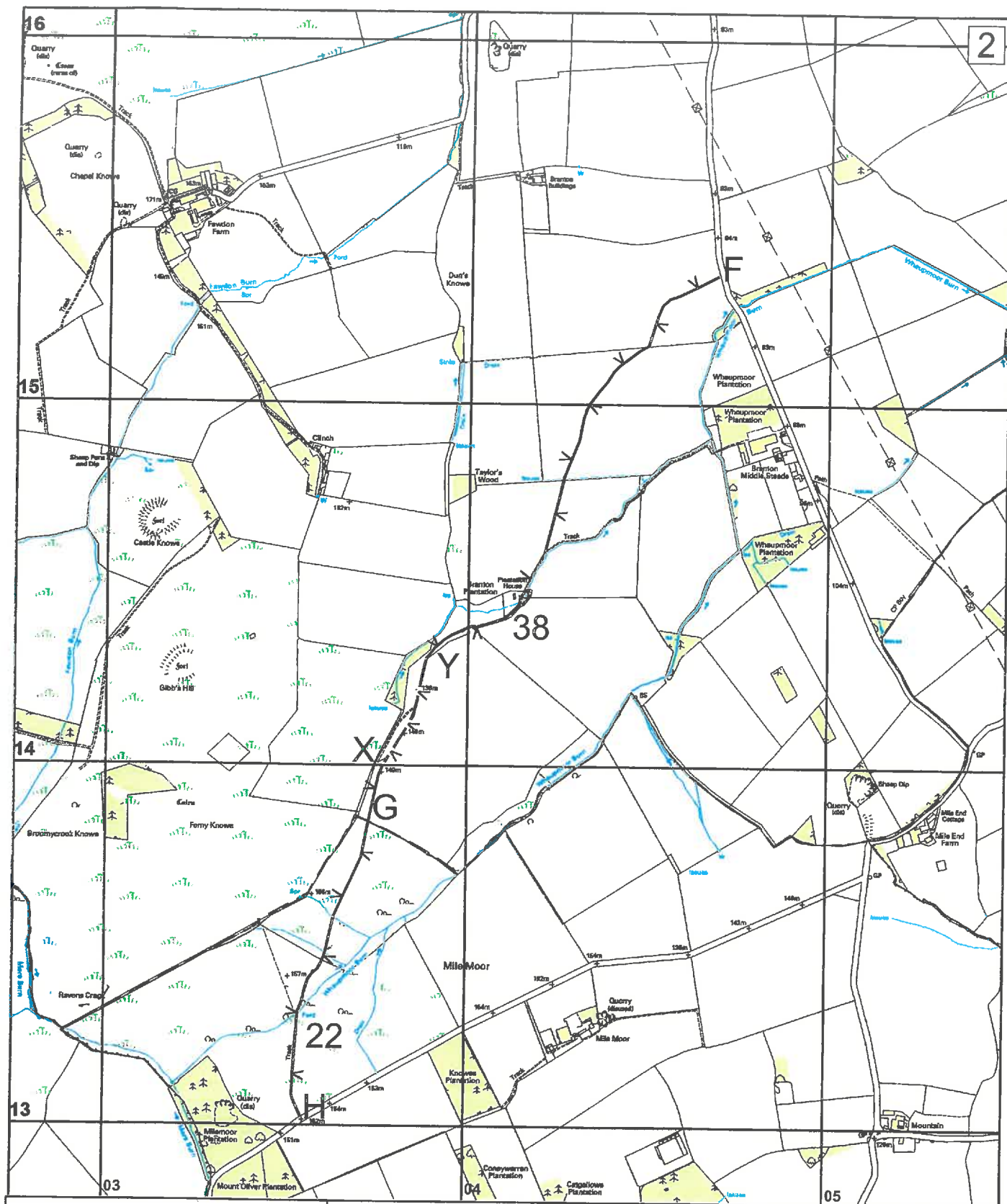
- 1.4 On 18 July 2017, in the High Court, Mr Justice Holman delivered judgement in a case brought by the Trail Riders' Fellowship, against a decision made by an Inspector appointed by Secretary of State for the Environment, Food and Rural Affairs. The Inspector's decision related to a Definitive Map Modification Order made by Hertfordshire County Council. The Inspector had determined that public motor vehicular rights had been extinguished over a 110 metre long section of a vehicular highway, on the basis that (on 2 May 2006) this section was incorrectly mapped on the Council's List of Streets (see Paragraphs 22 - 23 of the judgement), meaning that this section should be recorded on the Definitive Map as restricted byway. The discrepancy between the wrongly recorded alignment and correct alignment was 30 metres. As with the Northumberland route, this would leave a relatively short section of restricted byway sandwiched between two byways open to all traffic. As with the

1.5 In light of this High Court decision, which involved a set of circumstances very similar to the Ingram & Whittingham BOATs 38 & 22 route, officers believe that it is necessary for the Committee to revisit its earlier decision with regard to this route.

- 2.1 The previously considered historical documentary evidence supporting the existence of a public vehicular right of way remains the same, and the Committee's earlier finding, that a public vehicular right of way had been reasonably alleged to exist, holds good.
- 2.2 The July 2017 High Court decision has a direct bearing on the Committee's decision (based upon the officer recommendation) that public motor vehicular rights would have been extinguished over the X-Y section of the route, and that this section should be included in a future Definitive Map Modification order as a restricted byway.

3.1 In light of the High Court decision, the officer recommendation must now be that public motor vehicular rights over the X-Y section have not, in fact, been extinguished by the Natural Environment and Rural Communities Act 2006. The whole route should be included in a future Definitive Map Modification Order as byways open to all traffic.

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## Wildlife and Countryside Act 1981 Public Rights of Way



Alleged Byway Open to All Traffic



Alleged Restricted Byway

Former District(s)

Berwick/Alnwick

Parish(es)

Ingram/Whittingham

Scale

1:15,000

Def. Map No.

55/66

O.S. Map

NU 01 NW/SW

Date

May 2017

CO/762/2017

Neutral Citation Number: [2017] EWHC (Admin) 1866  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2A 2LL

Tuesday, 18 July 2017

**B e f o r e:**

**MR JUSTICE HOLMAN**

**Between:**

**TRAIL RIDERS FELLOWSHIP**

**Claimant**

**v**

**SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD AND RURAL  
AFFAIRS**

**Defendant**

Computer-Aided Transcript of the Stenograph Notes of  
WordWave International Limited  
Trading as DTI  
8th Floor, 165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7404 1424  
(Official Shorthand Writers to the Court)

**Mr Adrian Pay** (instructed by Brain Chase Coles) appeared on behalf of the **Claimant**  
**Mr Mark Westmoreland Smith** (instructed by the Government Legal Department) appeared  
on behalf of the **Defendant**

**J U D G M E N T**  
(As approved by the judge)  
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MR JUSTICE HOLMAN:

**The essential facts and the issue**

1. This is a statutory application to the High Court pursuant to paragraph 12 of schedule 15 to the Wildlife and Countryside Act 1981 (the 1981 Act) by a claimant who is aggrieved and questions the validity of a modification order made pursuant to section 53(2)(b) of that Act. By paragraph 12(2) of schedule 15 this court may, if satisfied that the order was not within the powers under section 53, quash the order or any provision of the order.
2. The essential facts are as follows. There is within the area of the Hertfordshire County Council a "route" known as Oakridge Lane. This is about 675 metres long from a point identified as point A, where it merges with the A51 road (Watling Street) at its northerly end, to a point F, where it becomes a public vehicular highway near Hill Farm at its southerly end. Between these points Oakridge Lane is a path or track which passes through open fields and countryside. It is common ground that there had formerly been a long-established vehicular right of way which was continuous between points A and F such that it was lawful to ride a motorbike continuously along Oakridge Lane from point A to point F or vice versa.
3. Oakridge Lane did not previously appear at all on the Definitive Map and Statement (DMS) maintained by Hertfordshire County Council pursuant to section 53 of the 1981 Act. The British Horse Society applied to Hertfordshire County Council to modify their DMS to add Oakridge Lane as a restricted byway upon the DMS, thus formally recording the right of horses to be ridden along it. However, a restricted byway does not confer or include a right of way for mechanically propelled vehicles.
4. The claimant in this application is the Trail Riders Fellowship or TRF. The TRF is a national organisation whose objectives are:

"to preserve the full status of vehicular 'green lanes' and the rights of motorcyclists and others to use them as a legitimate part of the access network of the countryside ..."
5. The TRF became aware of the application made by the British Horse Society and contended, and now contend, that the DMS should be modified to show the whole of Oakridge Lane, not as a restricted byway, but as a byway open to all traffic (a BOAT).
6. A lengthy procedure then ensued, which it is not necessary to describe in any detail. Inspectors were appointed by the defendant Secretary of State. The decision of a first inspector was made and later quashed. A second inspector, Susan Doran BA Hons, MIPROW, made three sequential decisions on 14 January 2015, 5 May 2016 and 6 December 2016. The third and last of those decisions is the operative one, although the

substance of her reasoning, so far as is material to the present application, remains contained in paragraphs 13 to 23 of her first decision, which is substantially reaffirmed and reiterated in the subsequent decisions.

7. The essential conclusion of the inspector is that Oakridge Lane is a BOAT between point A and a point which she identified as point C, and a BOAT between a point which she identified as point E and point F; but that it is only a restricted byway between points C and E. The modification order now under challenge gives effect to that conclusion by adding to the DMS BOATs from points A to C and from points E to F, but adding only a restricted byway between points C and E. The distance between points C and E is about 110 metres.
8. The practical effect is that, according to the rights now recorded in the DMS, a motorbike or other mechanically propelled vehicle may be lawfully ridden in either direction between points A and C and between points E and F, but not over the 110 metres between points C and E. This in turn means that a motorbike or other mechanically propelled vehicle can no longer lawfully travel the whole length of Oakridge Lane from one end to the other.
9. The issue on this application is whether in reaching her conclusion the inspector erred in law such that the order is not within the powers under section 53 of the 1981 Act and should be quashed. It is common ground that if the inspector made a material error of law, the resulting order is not within the powers.

### **The statutory framework**

#### **(i) Definitive map and statement**

10. Part IV of the National Parks and Access to the Countryside Act 1949 first made provision for authorities to make, publish and maintain "a definitive map and statement" (DMS) of the public rights of way in their area. The Act made detailed provisions as to the preparation of such maps and statements in draft and then provisional form, and for challenges to the draft or provisional map and statement. At the conclusion of that process, a DMS was, by section 32(4), conclusive as to the particulars contained within it and, in summary, as to the status of any given right of way. Section 33 of the 1949 Act made provision for periodic review and revisions of the DMS.
11. Part IV of the 1949 Act has been superseded and in substance replaced by Part III of the Wildlife and Countryside Act 1981 which now makes similar provision for preparing, maintaining, reviewing and revising the DMS. Section 56 of the 1981 Act now provides that a DMS "shall be conclusive evidence as to the particulars contained therein ...", substantially as in the replaced section 32(4) of the 1949 Act.

12. Section 53(2)(b) of the 1981 Act requires an authority "by order" to make such modifications to the definitive map and statement as appear to them to be necessary in consequence of certain events specified in subsection (3). These events include at paragraph (c):

"(c) the discovery by the authority of evidence which ... shows –

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist ...;

(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; ..."

13. It was pursuant to section 53(3)(c)(i) of the 1981 Act that the process was first triggered in this case to add Oakridge Lane to the DMS by the modification order ultimately made pursuant to section 53(2)(b).

(ii) List of streets

14. The function and purpose of the DMS is clearly to record in a way which is "conclusive" (in accordance with the provisions of the 1981 Act) the existence and course or alignment of rights of way. Quite separate and distinct are the provisions of Part IV of the Highways Act 1980 (the 1980 Act) which relate to the maintenance of highways which are maintainable at public expense. Section 36(6) of the 1980 act provides that:

"The council of every county ... shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense."

15. The word "street" is very widely defined in that Act and includes "any highway, road, lane, footway, alley or passage", and it is common ground that Oakridge Lane falls within that definition of a street. A list of streets (LoS) is a public document which is required to be kept available for public inspection (see section 36(7) of the 1980 Act). A LoS may serve a range of purposes, but it is apparent that its essential and primary purpose is to enable anyone to find out whether or not a given street or highway is maintainable at public expense and, if so, by which authority. There is no provision in relation to a LoS corresponding to the "conclusive" provisions of section 56 of the 1981 Act in relation to a DMS.

(iii) The Natural Environment and Rural Communities Act 2006 and the extinction of certain rights of way for mechanically propelled vehicles

16. Part 6 of the Natural Environment and Rural Communities Act 2006 (NERCA) made provision for the ending of certain existing unrecorded public rights of way. As is clear



from the government's consultative document quoted at paragraph 160 of the judgment of the Court of Appeal in Fortune v Wiltshire County Council [2012] EWCA Civ 334, [2013] 1 WLR 808, the avowed broad purpose of Part 6 of NERCA was to extinguish the right to drive modern mechanically propelled vehicles over so-called "green lanes" in reliance upon ancient, but unrecorded, rights of way based upon horse-drawn vehicles. However, rights which were already recorded in certain forms before the commencement of the Act were preserved. So far as is material, section 67 of NERCA provides as follows.

"67. Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –

(a) was not shown in a definitive map or statement, or

(b) ...

But this is subject to subsections (2) to (8).

(2) Subsection (1) does not apply to an existing public right of way if –

(a) ...

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (list of highways maintainable at public expense)

..."

17. It is common ground in this case that immediately before the commencement of NERCA on 2 May 2006 there was an existing public right of way for mechanically propelled vehicles over the whole of Oakridge Lane, but, as I have stated, Oakridge Lane was not at that time shown in the relevant DMS. Thus, the existing right of way was, by operation of NERCA on the commencement date, automatically extinguished unless it was saved by the exception made in section 67(2)(b); in short, if the "way" was "shown" in the LoS.

#### **The list of streets**

18. The Hertfordshire County Council did maintain a list of streets, and Oakridge Lane was shown upon it immediately before the commencement of NERCA. Hertfordshire have explained, and the inspector accepted, and I accept, that the LoS comprised both a descriptive list in words in the conventional sense of a list, and also an accompanying

map recorded as a Geographic Information System layer. The relevant part of the descriptive LoS is now at bundle 1 page 56 and appears as follows:

19. The reference to "sewage works" is to the south of point F, and the reference to "northern access road to A51" is a reference to point A, so the whole of Oakridge Lane from points A to F is clearly encompassed by the verbal description in the written list. The relevant part of the LoS, as recorded in map form, is now at bundle 2 page 60. This is a highly magnified portion of a much larger and smaller scale map. It clearly depicts a way from north to south which is coloured in magenta and which is clearly marked as "Oakridge Lane (Path)". Those words are printed alongside the depicted way twice, both just above the now disputed section between points C to E and also just below that section, between points E and F. None of these lettered points are themselves marked on the LoS map, as all the lettered points have only been identified and labelled later by the inspector.
20. A black and white scan of the map at page 60 appears below, although it is not reproduced with the magenta colouring nor the blue colouring of the brook.
21. For some distance to the north of what is now point C, Oakridge Lane is immediately adjacent and parallel to a brook. For a short distance between points C and E, the brook meanders or deviates in an ark or bow-shape to the left and then turns quite sharply to the right (as one looks at the map) and continues in a south-easterly direction away from Oakridge Lane. Apparently, there are over the brook two bridges, a short distance apart. The way as marked in magenta on the map bows slightly to the right and passes over the more south-easterly of the two bridges shortly before what is now point E.

#### **The decision of the inspector**

22. The inspector heard evidence and considered a considerable number of old maps and other documents. She concluded at paragraph 12 of her first decision, now at bundle 2 page 338:

"12. Taking together the historic documentary evidence summarised above, I agree with the parties that public carriageway rights exist over Oakridge Lane. It has existed as a through route since at least 1766. The 1898 Main Roads Order and 1910 Finance Act Map point to it being a public vehicular way and the County Maps, OS, DMS and other records are not inconsistent with that status."

23. However, the inspector also concluded that, between what she identified as points C and E, the historic public carriageway did not follow the slightly bowed course or alignment over the bridge marked in magenta on the map with the LoS, but a more straight course or alignment over the other bridge slightly to the west or left as one looks at the map. The distance between the two alignments is apparently at its widest about 30 metres on the ground.

24. This led the inspector to conclude that the true historic right of way (ie the straight line) between points C and E was not shown on the LoS and, accordingly, that the section between C and E (but not the remainder of Oakridge Lane to the north of C and south of E) was not shown in the LoS, albeit that the slightly bowed alignment marked in magenta clearly was. It is upon the discrepancy (said by Hertfordshire to be due to error) between the precise course or alignment of the historic right of way, as found by the inspector, and the way marked in magenta upon the map that this dispute hinges and turns.

#### **The reasoning of the inspector**

25. The reasoning of the inspector is contained within paragraphs 13 to 23 of her first Order Decision dated 14 January 2015. Those paragraphs are too long to quote in full. At paragraph 17 the inspector agreed with the argument on behalf of the TRF and others:

"... that the LoS was designed to be a record of maintenance, that it fulfils a different role to that of the DMS, and its application to the 2006 Act could not have been envisaged when the 1980 Act was drawn up."

26. The inspector further agreed that the legislation is silent as to what information is required to be contained in a LoS or what form it should take. She continued within paragraph 17 that:

"Some guidance, however, is to be found in Fortune (at paragraph 1135 of the judgment) that it is the responsibility of the Highway Authority to decide how best to make and keep corrected up to date its own section 36(6) list."

27. Pausing there, one can only gaze in awe and wonderment at the mighty first instance judgment of His Honour Judge McCahill QC in Fortune, but it is correct that at paragraph 1135 it does say just that. The inspector continued at paragraphs 18 to 23 of her Order Decision as follows:

"18. With that in mind, and in the absence of any requirements in the legislation as to what form the LoS should take, it follows that I must have regard to what the Council says is its LoS (paragraph 16). Therefore I do not share Mr Kind's view that the details contained in the GIS layer are irrelevant. The GIS layer forms an integral part of what the Council regards as its LoS. As regards Oakridge Lane the descriptive element of the LoS gives details of the length of roads defined by start and end points together with other relevant information, and the mapping element shows its alignment. The essence of Mr Westley's argument is that Oakridge Lane was shown on the LoS in 2006, notwithstanding that the entry on that List required correction. However, whilst it might have been the Council's intention to record the historic alignment of Oakridge Lane, it

does not alter the fact that immediately before 2 May 2006, the alignment recorded between points C and E was different to the historic route ...

19. I recognise that earlier records included Oakridge Lane as a publicly maintainable highway long before 2 May 2006 ... However, the question is whether the Order route was shown on the LoS immediately prior to this date, not what was shown before then or after, or what should have been shown. It follows that I do not share the view that the statutory purpose would be frustrated if vehicular rights were extinguished merely because of inaccurate particulars of alignment.

20 ... I have concluded that the List kept by the Council for the purposes of the 1980 Act and relevant to the provisions of the 2006 Act contain both a database and a GIS layer which should be read together.

21 ...

22 ...

23. The length C-E is some 110 metres which represents some 10% of the Order route. I agree with the Council that this is not insignificant such that it could be regarded as a minor discrepancy or departure. As regards a sideways displacement ... the routes are close together towards point C but the divergence more pronounced towards E. To a degree, the issue depends on the map scale as to how easy it is to distinguish between the two. However, the Council argue the difference between the routes is clearly distinguishable on a 1:10,000 map, this being the scale of their Definitive Map. I am not persuaded that any difference between the two routes can be regarded as sufficiently minor such that the section C-D should be recorded as a Byway. I therefore conclude that whilst Oakridge Lane was recorded in the LoS, it was shown on a sufficiently different alignment between C and E immediately before 2 May 2006. It follows that the exception cannot apply to this length of the Order route which should therefore be recorded as a Restricted Byway."

### Analysis

28. In my view this reasoning clearly contains a non sequitur and, with due respect to her and her specialist expertise in this field, the inspector made an error of law. I agree with the inspector at the beginning of paragraph 18 that she "must have regard to what the council says is its LoS." I agree also that "the details contained in the GIS layer" cannot be treated as "irrelevant" or be wholly disregarded. The non sequitur and error is that the inspector then jumped from not treating "the details", viz the precise alignment of the magenta line, as "irrelevant" to making them decisive. In the process, although she had correctly recognised differences between a LoS and a DMS in

paragraph 17 of her Order Decision, she treated the map within the LoS as if it was required to contain, and did contain, the cartographic accuracy and precision of a DMS; and treated it as "conclusive", although a LoS is not required to include any map at all.

29. It is in fact very obvious from the map in point in this case at bundle page 60 that the magenta line is only intended to identify, and not precisely to delineate, a given "street". In the bottom right-hand corner of the map are a number of residential streets. The thin magenta line passes through the middle of each such street but does not colour in the whole width of the street. The magenta line over the lower parts of Oakridge Lane (roughly between points E and F) does not colour in the whole width of the lane as clearly printed on the map. At various points where the lane borders the brook the magenta line has obviously been imprecisely drawn and in places runs up the middle of the brook itself. All this is consistent with the purpose of a LoS which is essential to identify and record which streets are maintainable at public expense, but not, in contrast to a DMS, precisely to delineate them.
30. The requirement of section 67(2)(b) of NERCA is simply that immediately before commencement the way "was shown in a list required to be kept under section 36(6) ..." The descriptive list in list form, now at bundle page 56, clearly does "show" and describe a continuous way from beyond or south of point F to point A, and the map at page 60 clearly depicts a continuous path twice labelled as "Oakridge Lane". In my view, the whole of Oakridge Lane was patently "shown" in the LoS, and section 67(2) (b) neither requires nor justifies the decisive concentration which the inspector gave to the precise course of the magenta line on the map. This led her to reach a conclusion which is, frankly, perverse and which Parliament cannot have intended.
31. Whilst the primary purpose of Part 6 of NERCA was clearly to extinguish existing but unrecorded public rights of way for mechanically propelled vehicles, Parliament clearly intended to make exceptions for those which were shown either in a DMS (which may be expected to be accurate and precise) or in a LoS (which may not be). This admitted historic and continuous right of way was so shown in the LoS, and it is perverse that over one section of its length it was automatically extinguished because of imprecision in the magenta line upon the map which is part of, but not the whole of, the LoS.
32. The written and oral submissions of both Mr Adrian Pay on behalf of the TRF and Mr Mark Westmoreland Smith on behalf of the Secretary of State all display great learning in this field, and I was indebted to them. It was a privilege to listen to them. However, none of the authorities cited are directly in point and I do not base my decision on such matters as the differing scales of various maps and what scales any given regulation may require.
33. For the short reason given, I am very clearly satisfied (as paragraph 12(2) of schedule 2 to the 1981 Act requires) that the inspector made an order which is founded upon a clear error of law and is, accordingly, not within the powers under section 53. I am also

clearly satisfied that that error has created in this case a perverse result such that the error cannot, in my discretion, be overlooked.

**Outcome**

34. I will accordingly exercise my power and discretion under paragraph 12(2) of schedule 15 to quash. Counsel agreed at the hearing that if that was my conclusion they would be able to consider and agree whether I should formally quash the whole order, or quash only the material and infected provisions of it. I have no power other than to quash, and I cannot substitute any amended or alternative form of order. However, if this matter is further considered by the same or another inspector, she or he must clearly have regard to the contents of this judgment.

**[END OF JUDGMENT]**

35. MR JUSTICE HOLMAN: I think you were agreed with Mr Westmoreland Smith that you would be able to draft and agree an appropriate form of order.
36. MR PAY: Yes. I have had communications with Mr Westmoreland Smith. He asked whether we could have until close of play tomorrow to agree a formal order.
37. MR JUSTICE HOLMAN: Certainly. You can certainly have until close of play on Thursday.
38. MR PAY: I am very grateful.
39. MR JUSTICE HOLMAN: I think we agreed that costs would inevitably follow the event.
40. MR PAY: Indeed. I am very grateful, my Lord, and very grateful for the speed at which you have delivered the judgment.

## RIGHTS OF WAY COMMITTEE

11 July 2017

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

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

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

#### **Purpose of report**

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

#### **Recommendation**

**It is recommended that the Committee agree that:**

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route H-G-F;**
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the majority of the route;**
- (iii) the Natural Environment and Rural Communities Act 2006 would, however, appear to have extinguished the public's motorized vehicular rights over the X-Y section of the route;**
- (iv) the H-G-X and Y-F sections of the route be included in a future Definitive Map Modification Order as byways open to all traffic;**
- (v) the X-Y section of the route be included in a future Definitive Map Modification Order as a restricted byway.**

#### **1.0 BACKGROUND**

- 1.1** By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.

- 1.2 The relevant statutory provision which applies to adding a public right of way to the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. This requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

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

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;”

- 1.3 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals' rights and the public interest.
- 1.4 The route that was originally consulted upon, in July 2014, reflected the alignment of the U1098 road, as shown on the Council's List of Streets on 2 May 2006. A 340 metre length of this road (between points marked X and Y) was incorrectly recorded at that time. This error was subsequently corrected. This report considers the existence of public highway rights over the historically correct route (not the May 2006 one).

## **2.0 PUBLIC EVIDENCE**

- 2.1 In the late 1980s the County Council carried out consultations regarding proposals to add a number of unsealed tracks in the north of the County to the Definitive Map as byways open to all traffic on the basis that the routes were included in the County Council's "List of Streets" as unclassified County roads (UCR). The rationale for doing so was that it would not be obvious to members of the public (particularly horse riders, walkers and cyclists) that they were legally entitled to use routes such as these (which were considered to have vehicular status), because their physical appearance might suggest otherwise.
- 2.2 The view, held by those officers of the Council responsible for maintaining the 'List of Streets' for the County of Northumberland was (and still is) that only public roads (not public bridleways or public footpaths) were shown on this List. The only exceptions to this are the surfaced paths and alleyways providing pedestrian links between roads, in urban streets. Thus, tracks in rural settings, which have their own unique reference numbers (e.g. the 'U1098' and 'U4064' roads), were considered to be all-purpose public highways maintainable at public expense.
- 2.3 Shortly afterwards, the processing of applications from third parties seeking to record public footpath or public bridleway rights was afforded a higher priority. Later on, the process of recording UCRs as byways open to all traffic was



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

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

### **3. LANDOWNER EVIDENCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

"Arrows mark indication of land under our ownership."

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

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

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

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

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

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

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

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

#### **4. CONSULTATION**

- 4.1 In July 2014, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders". Five replies were received and are included below.
- 4.2 By letter, dated 17<sup>th</sup> October 2014, Ms E Bamford responded to the consultation, on behalf of the Ramblers' Association, stating:

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

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

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

“INGRAM PARISH

“Alleged Byway Open to All Traffic no 38

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

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

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

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

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

- 4.5 By letter, dated 28<sup>th</sup> October 2014, Mr D Roberts responded to the consultation, on behalf of the Cyclists’ Touring Club, stating:

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

“To clarify locations I attach annotated copies of your plans. These are confined to routes of which I have knowledge. Where I have no knowledge of a route or where I know it is surfaced with tarmac and therefore suitable for ALL TRAFFIC I have omitted any comment.

"Where an obstruction has been encountered I have endeavoured to provide as accurate data as possible.

"Routes traced in red have been cycled without problem. [The route of alleged Byways Open to All Traffic Nos 38 and 22 are highlighted on Mr Roberts' plans].

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

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

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

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

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

"WHITTINGHAM PARISH

"Alleged Byway Open to all Traffic 22

This is a continuation of alleged BOAT 38 Ingram. The comments made on that alleged BOAT apply to this one as well.

"It is regularly used principally by horse riders but also by walkers and cyclists. The gates are all in reasonable condition and so is the surface. It contributes to the ridden network of the area so the BHS would like to see it added to the definitive map."

## **5. DOCUMENTARY EVIDENCE**

- 5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Council Highways records, County Maps and O.S. Maps was inspected, and the following copies are enclosed for consideration.

### **1769 Armstrong's County Map**

There is no evidence of a road or track approximating to the route of alleged Byways Nos 38 and 22.

### **1820 Fryer's County Map**

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

### **1820-32 Cary's Map**

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

1828 Greenwood's County Map

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

1840 Branton Tithe Award

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

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

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

1899 Ordnance Survey Map: Scale 1:10,560

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

Finance Act 1910 plan

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

1926 Ordnance Survey Map: Scale 1:10,560

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

1932 Glendale RDC Handover Map

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

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

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

1951 Highways Map

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

Definitive Map – original Survey Schedules & Map

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

Draft Map

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

Provisional Map

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

1957 Ordnance Survey Map: Scale 1:10,560

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

1962 Original Definitive Map

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

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

1964 Highways Map

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

1979 Ordnance Survey Map: Scale 1:10,000

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## **6. SITE INVESTIGATION**

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

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

## **7. COMMENTS RECEIVED ON THE DRAFT REPORT**

- 7.1 In May 2017, a copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments.
- 7.2 By email, on 1 June 2017, Mr D Holdsworth of Plantation House made the following comments in relation to the draft report:

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

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

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

## **8. DISCUSSION**

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

that a right of way, which is not shown in the Map and Statement, subsists or is reasonably alleged to subsist over land in the area to which the Map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or; subject to section 54A, a byway open to all traffic.

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

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

- 8.7 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown – just that they could be. It must, therefore, be entirely proper to consider each UCR on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by other means. In Northumberland there is no evidence to suggest that public footpaths and public bridleways were deliberately shown on the 1958, 1964 or 1974 County Road Schedules (forerunners of the modern day List of Streets). The fact that a route is shown on these schedules must, therefore, be evidence of some weight that public vehicular rights exist.
- 8.8 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.
- 8.9 It is not known on precisely what basis this route was added to the List of Streets. It has appeared on all the available maps produced from Greenwood's County Map of 1828 and the Ordnance Survey Map of 1957. Alleged Byway No 22 and at the southern end of alleged Byway No 38 appeared on the earlier Fryer's County Map of 1820 and Cary's Map of 1820-32. The route has been shown as a maintainable highway in the Council's highway records since 1951.
- 8.10 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less

than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.

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

- 8.15 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. Usually there is a boundary to boundary presumption for public highways. On this basis it is proposed to record a small part of Byway Open to All Traffic No 38 with a width varying from 6 to 8 metres, as identified in paragraph 6.1, above. For the remainder of the route, where no defined corridor exists, the Council has adopted a standard width of 5 metres (wide enough for two vehicles travelling in opposite directions to pass each other).

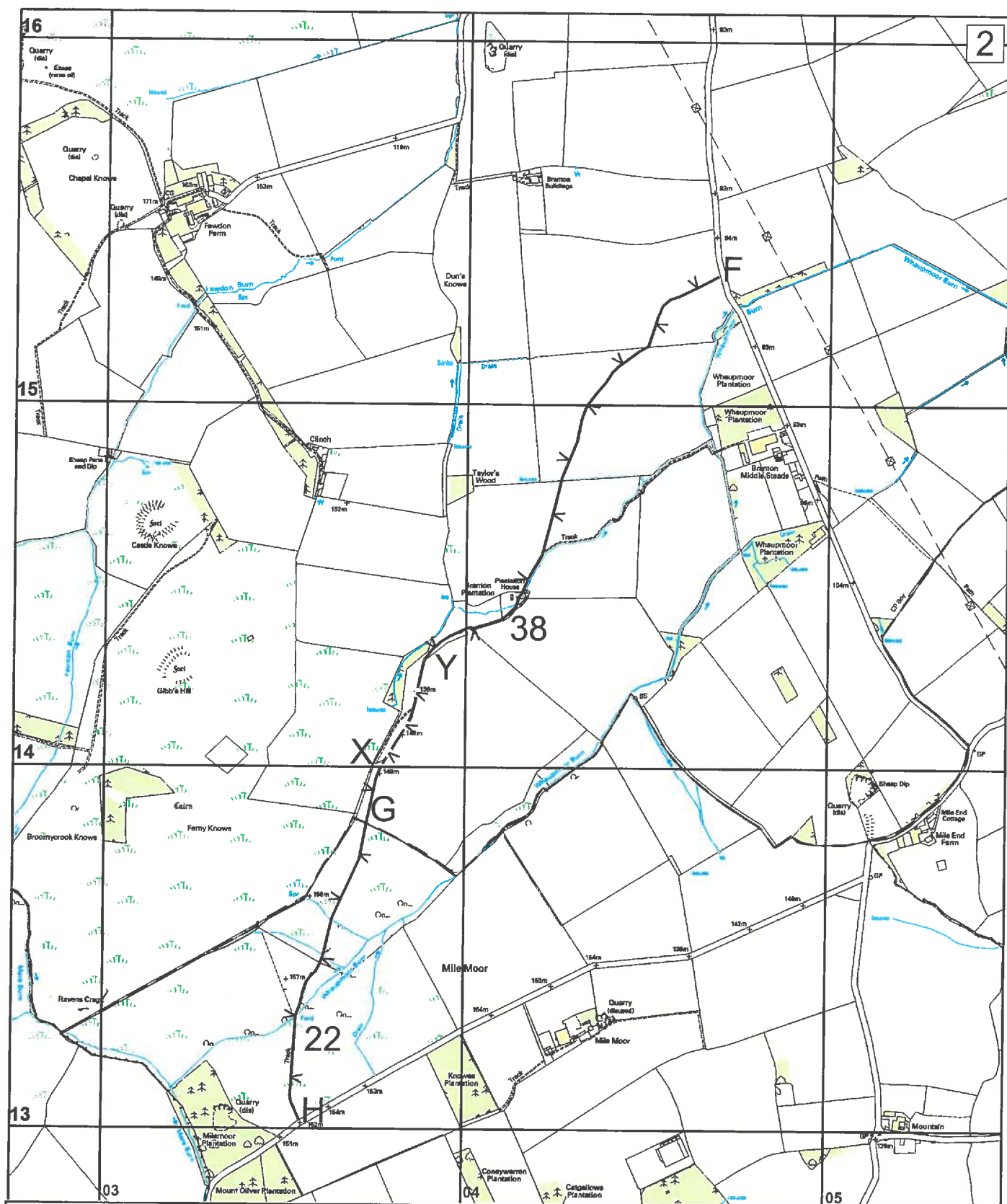
## 9. CONCLUSION

- 9.1 In light of the documentary evidence submitted, it appears that, public vehicular rights have been reasonably alleged to exist over the route of alleged Byways Open to All Traffic Nos 38 and 22.
- 9.2 The Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motor vehicular rights over the H-G-X and the Y-F sections of this route. It would be appropriate to recognize the public's rights over these sections by recording them on the Definitive Map as byways open to all traffic.
- 9.3 The Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motor vehicular rights over the X-Y section of this route. It would be appropriate to recognize the public's remaining rights over this section by recording it on the Definitive Map as a restricted byway.

## BACKGROUND PAPERS

Local Services Group File: B/24/38z & A/38/22z

Report Author      Alex Bell – Definitive Map Officer  
(01670) 624133  
Alex.Bell@Northumberland.gov.uk



**Northumberland**

Northumberland County Council

Sustainable Transport  
Local Services

County Hall Morpeth Northumberland  
NE61 2EF

Telephone 0845 600 6400

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## Wildlife and Countryside Act 1981 Public Rights of Way



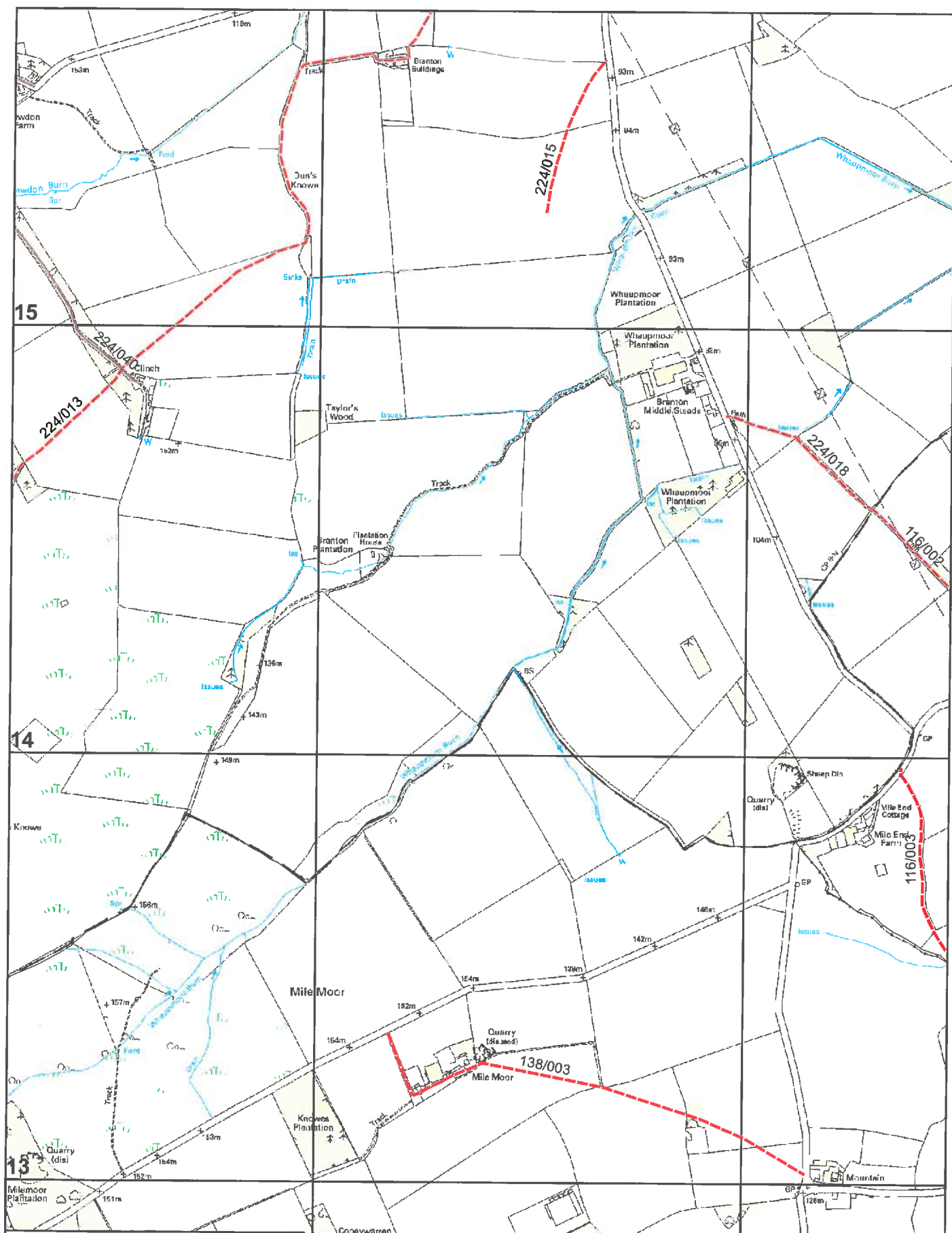
Alleged Byway Open to All Traffic



Alleged Restricted Byway

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





**Northumberland**

Northumberland County Council  
Infrastructure

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

**Legend**

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

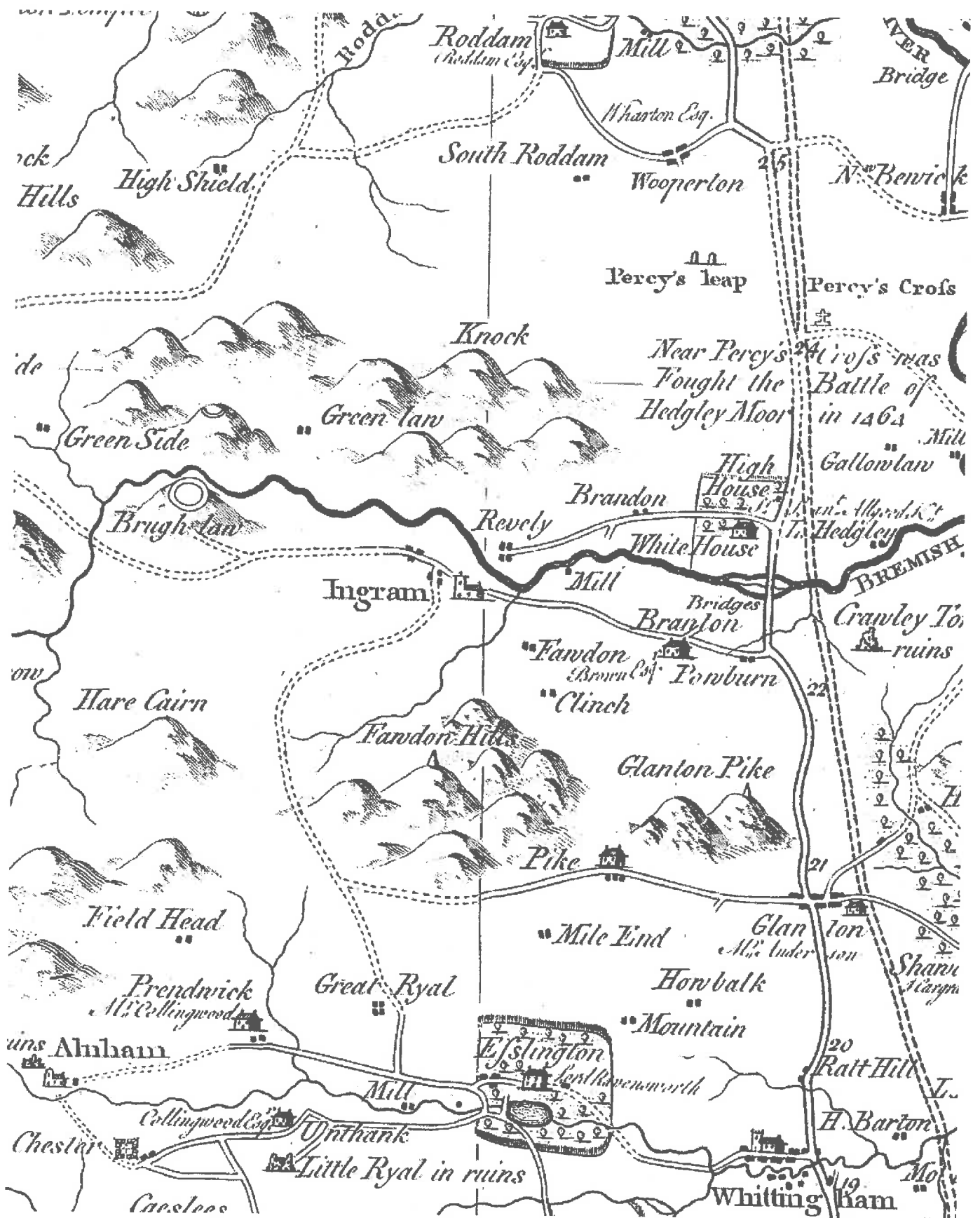
This is a computer generated extract of the Working Copy  
of the Definitive Map of Public Rights of Way

Scale: 1:12,000

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# Armstrong's County Map 1769

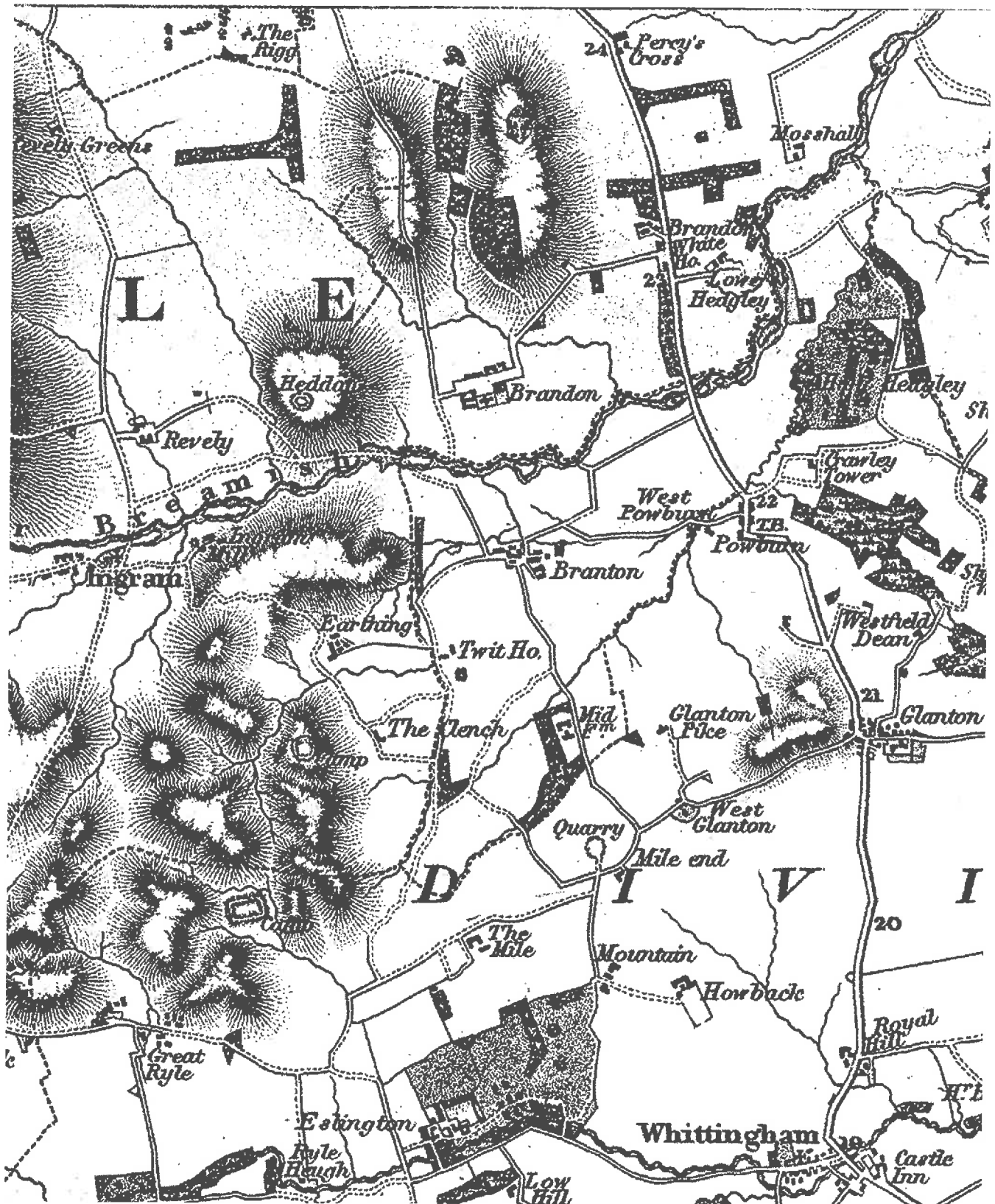


Fryer's County Map  
1820



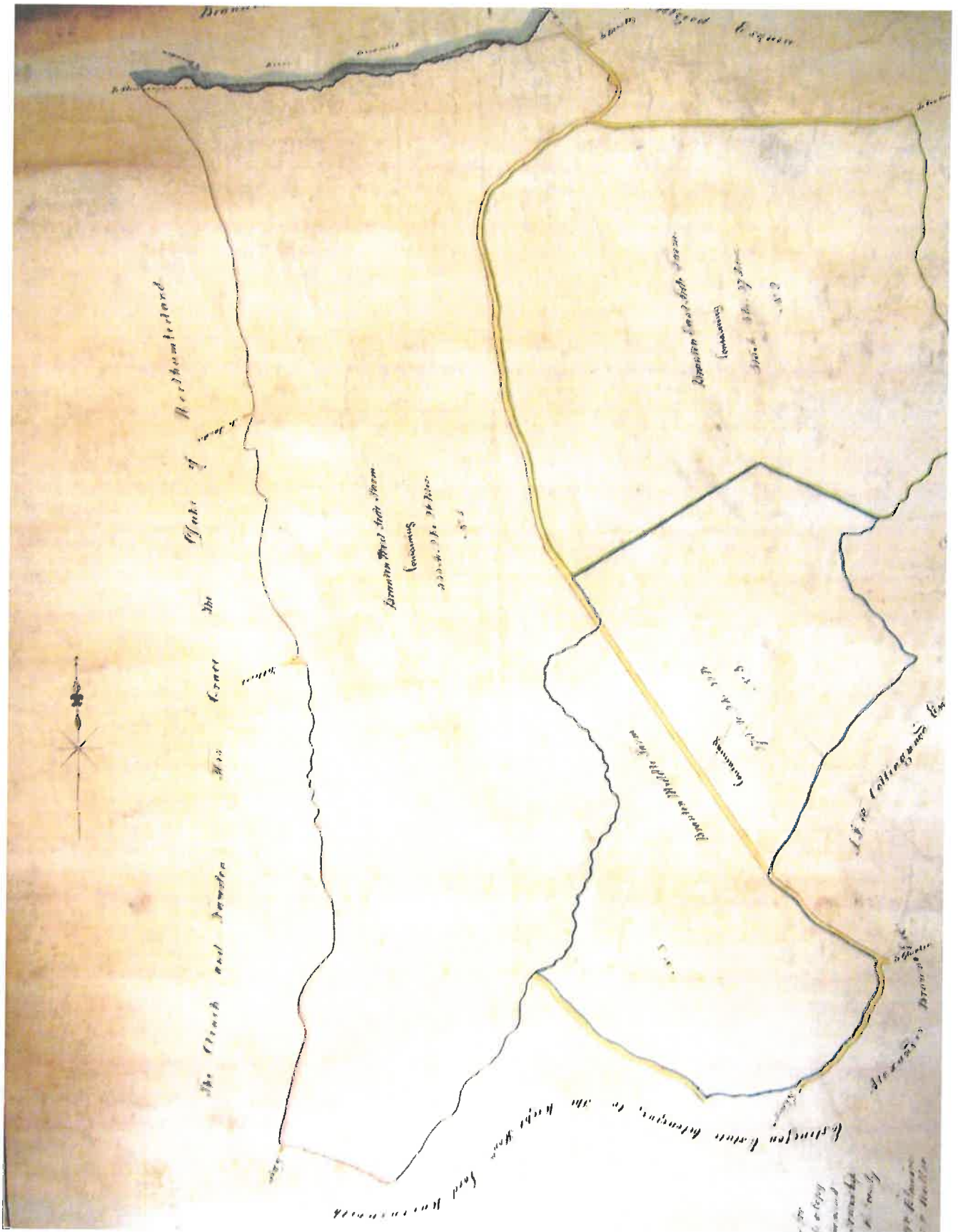


Greenwood's County Map  
1828





# Branton Tithe Award 1840





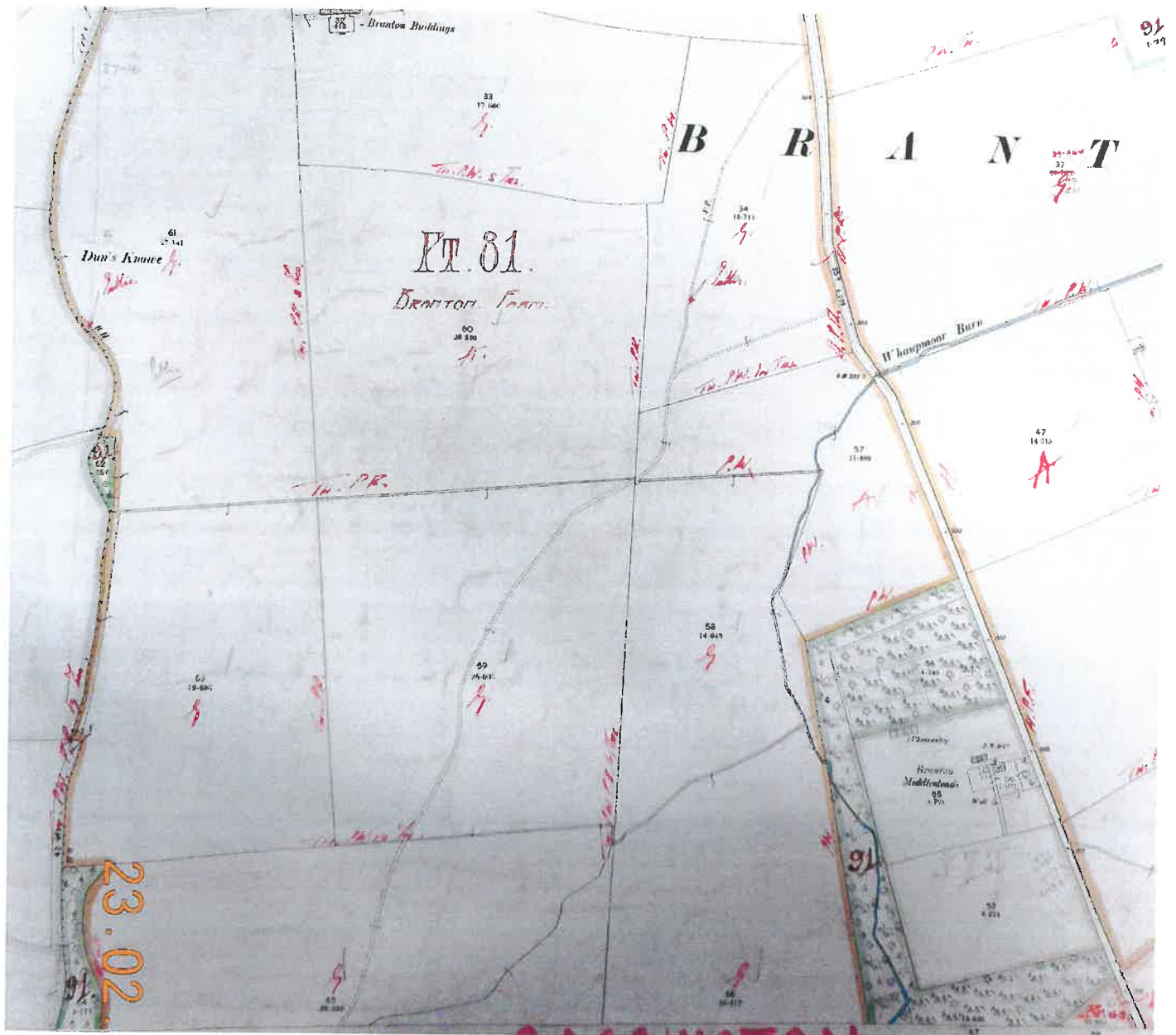
**Not to scale**





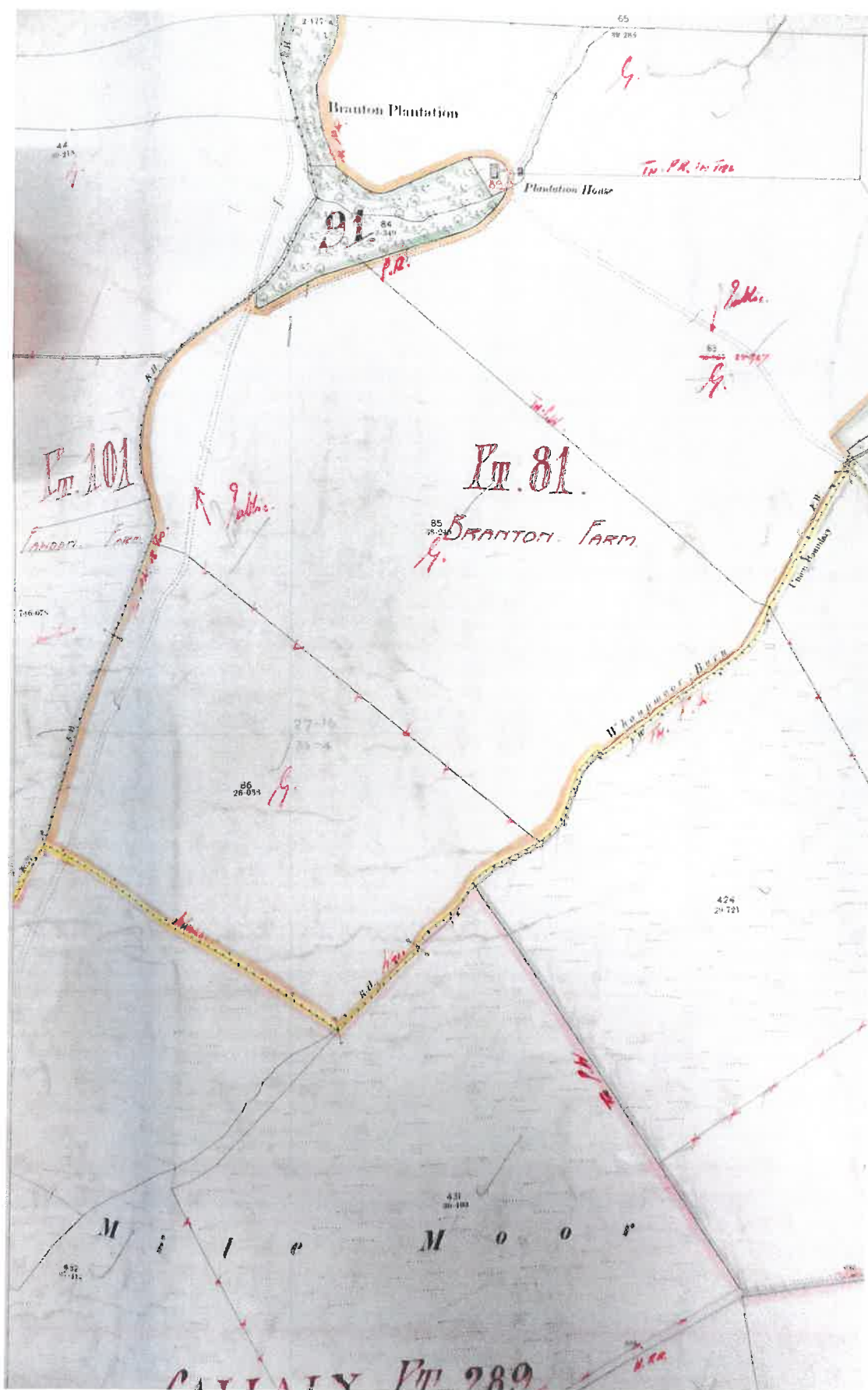
Ordnance Survey 2nd Edition 6" map (1899)

# Finance Act 1910 Plan

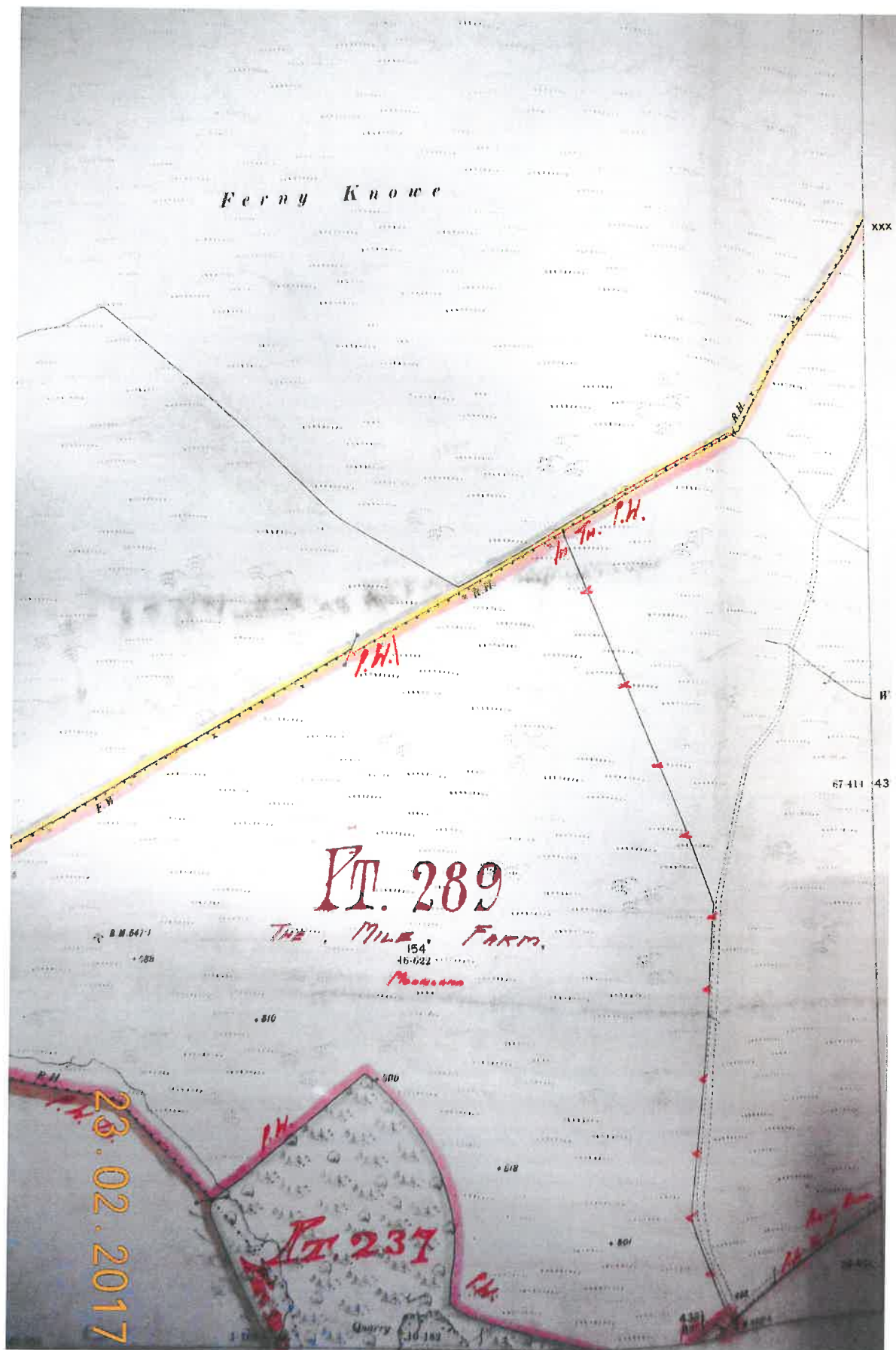


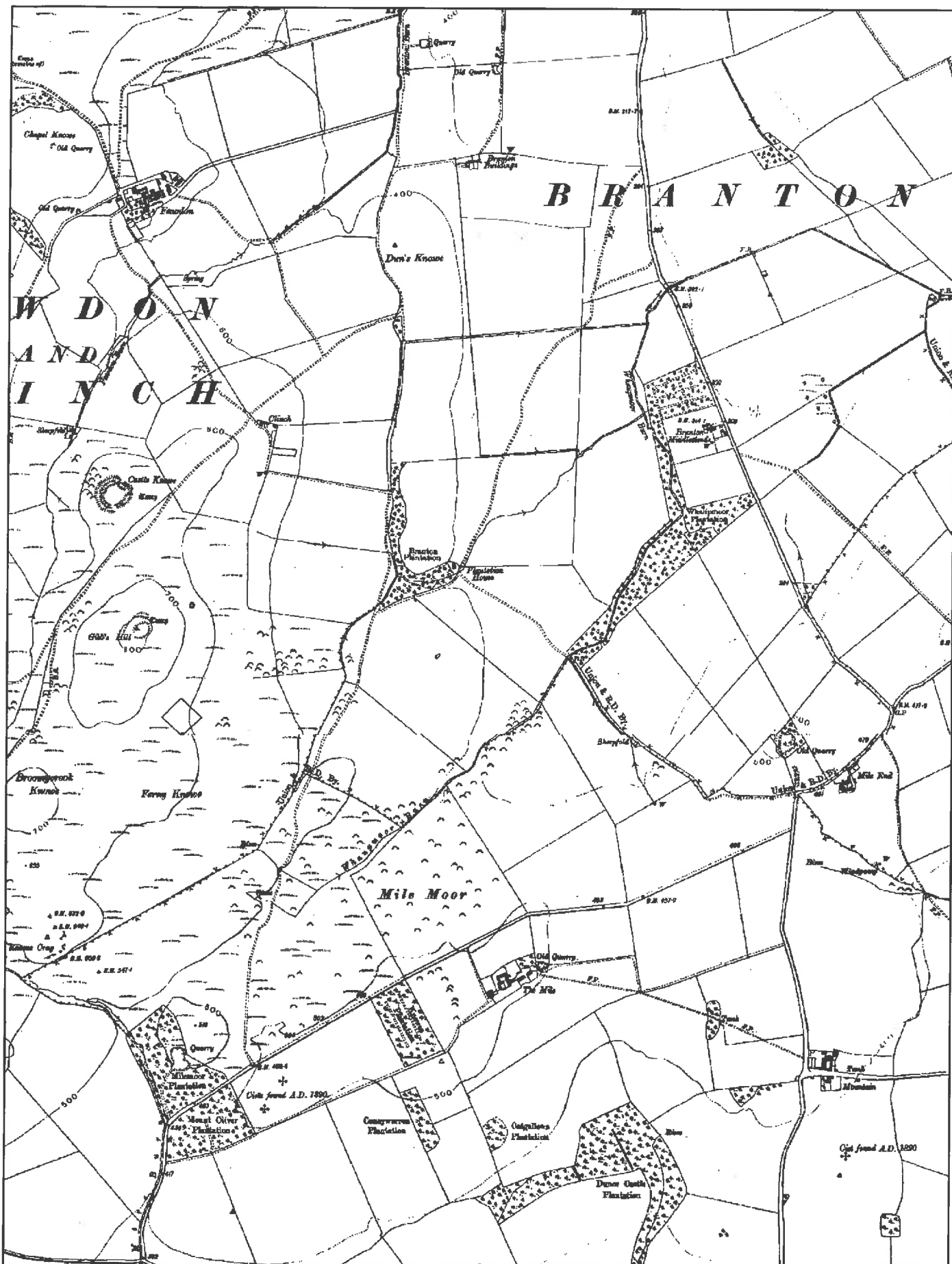


## Finance Act 1910 Plan



## Finance Act 1910 Plan





**NORTHUMBERLAND**  
Northumberland County Council

SCALE 1:15,000

Ordnance Survey 3rd Edition 6" map (1926)

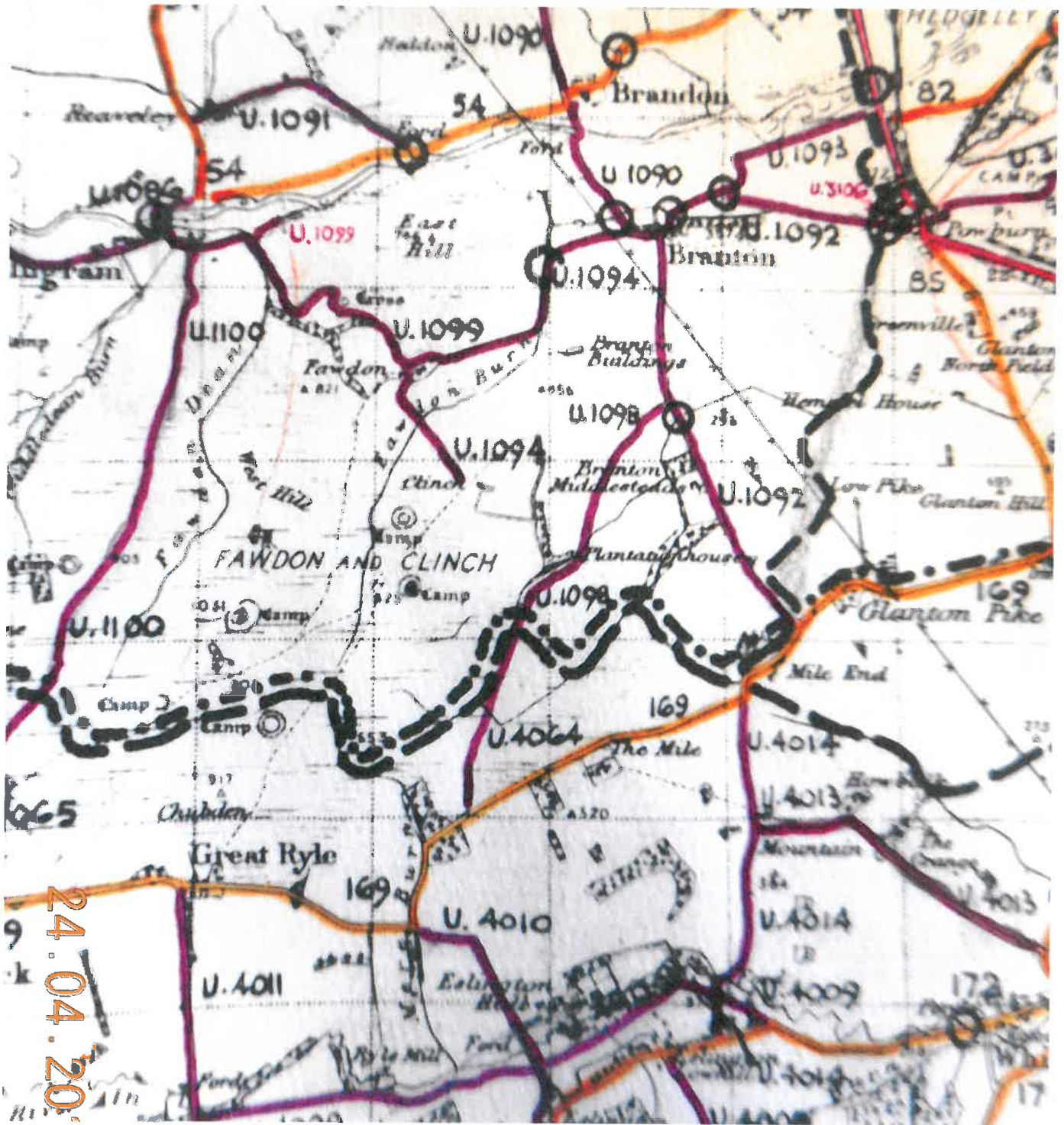


# Glendale RDC Handover Map 1932

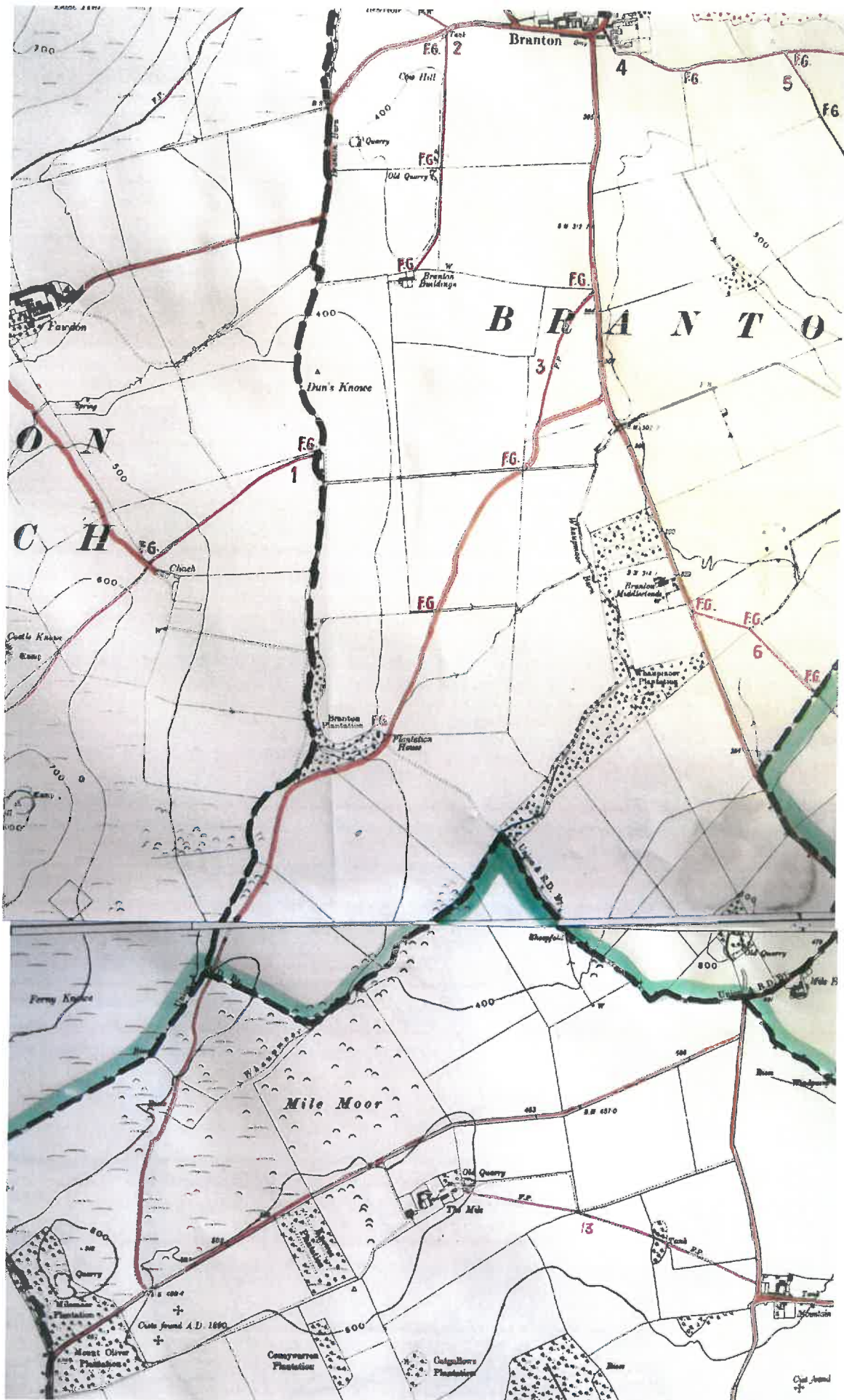




### Extract from the Council's 1951 Highways Map



# Survey Map





NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.  
SCHEDULE ACCOMPANYING SURVEY MAPS.Parish of BRANTON in the Rural District ofGLANDALEBorough }  
Urban District } of \_\_\_\_\_  
(Delete whichever is inapplicable).

1. Number of highway on Map 3
2. Kind of Path (i.e., F.P., B.R.) F.P.
3. Starts at Branton Blap to hills near
4. Name of Path (if any) \_\_\_\_\_
5. Is the Path well defined? yes.
6. Is the Path metalled? If so, define length \_\_\_\_\_
7. If its width can be stated, insert here \_\_\_\_\_
8. What is the present condition of the path, stiles, etc.? fully open good.
9. Is it subject to being ploughed out? no.
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known  
none
11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant  
Evidence of old inhabitant.
12. Have persons been prevented using the highway? no.
13. Give particulars of any obstructions none.
14. Names of owners of freehold and previous owners, if known, for past 30 years  
Capt. Budd. Arson
15. What maps have been consulted, and where are they deposited?
16. What records have been consulted, and where are they deposited?
17. Any other relevant information

Surveyed by	Address	Dates of Survey
<u>Rev.</u>	<u>2. Linn. St. Sca. Sca. Sca.</u>	<u>2/4/31.</u>

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

M.F. / 14 VII / S.F.



## Draft Map





Provisional Map





# 1958 County Road Schedule

## BELFORD DIVISION

### Unclassified Roads in Glendale Rural District

		Brought Forward	51.316
U.1097	Roddamrigg - Roddam Bog Plantation	From U.1089 at Roddamrigg House via Horse Close Strip to C.54 at Roddam Bog Plantation.	0.82
U.1098	Branton - Great Ryle	From U.1092 1,000 yards south of Branton via Plantation House to the Glendale - Rothbury Urban District Boundary.	1.20
U.1099	Ingram - Fawdon	From U.1086 at Ingram via Chapel Knowe to U.1094 at Fawdon and including link to Ingram Mill (240 yards)	1.226
U.1100	Ingram - Prendwick	From U.1099 at St. Michael's Church, Ingram southwards to the Glendale - Rothbury Rural District boundary at Bowl Holes.	1.82
U.1103	Amerside Law Farm Road	From B.6348 east of Chetton Bridge in a southerly direction to Amersidelaw Farm and including around the Steading (1642 yards)	0.933
U.1104	Broomey Road, Wooler	From U.1078 at the Wooler Water Reservoir 168 yards in a north westerly direction.	0.095
		TOTAL.	<u>5714.10</u>

1st January, 1958

# 1958 County Road Schedule

## ALNWICK DIVISION

### Unclassified Roads in Rothbury Rural District

		Brought Forward	
U.4061	Antons Letch - Great Tosson - Allerdene Road	From B.6341 at Antons Letch via Sweep Road, Ladies Bridge, crossing C.181 at Newtown, linking up with U.4035 at Great Tosson and continuing northwards to its junction with C.181 600 yards east of Allerdene.	62.035 miles
U.4062	Allerdene - Warton Road	From B.6341 at its junction with C.179 south-eastwards via the Coquet fordway to C.181 at Allerdene.	1.73
U.4063	Howmoor Plantation Road	From C.178 near Whittington Quarry via Reynards Lodge to Howmoor Plantation.	1.25
U.4064	Branton - Great Ryle	From the Glendale R.D. boundary at Mile Moor to C.169 at Milemoor Plantation.	0.34
U.4065	Ingram - Prendwick	From the Glendale - Rothbury R.D. boundary at Bowl Holes Shottons Dene to C.169 Prendwick Cottage.	0.54
U.4066	Wagtail Road, Rothbury	From B.6342 200 yards east of Rothbury Station south-eastward to bottom of west ramp to railway bridge on road to Wagtail Farm.	0.51
U.4070	Scottish Ford Road	From B.6342 at Rothbury Railway Station via the Scottish Ford to B.6341	0.55
U.4071	Jubilee Crescent Rothbury	Off Croft Road, U.4059 for a distance of 399 yards	0.13
U.4072	Physic Lane, Thropton	From B.6341 130 yards east of the Cross Keys Public House, Thropton in a north-easterly direction for 200 yards.	0.227
U.4073	Road to Low Trewitt.	From U.4026 at Low Trewitt Bridge northwards to gate at Low Trewitt Farm.	0.114
			0.272

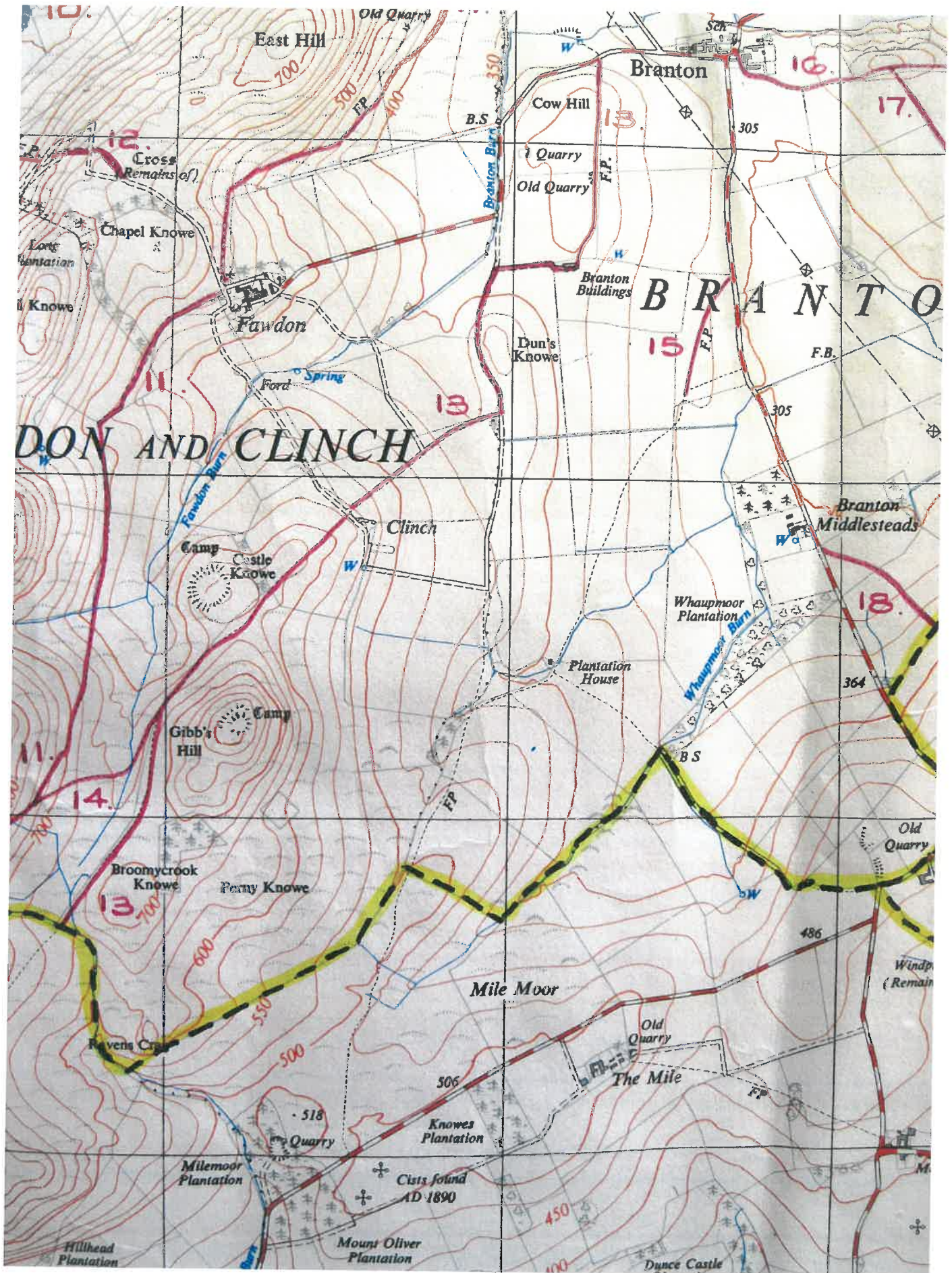
TOTAL

67.998 miles

1st January, 1958



# Original Definitive Map



NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.

PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1. ~~Borough~~ .....  
Urban District .....  
Rural District ..... **GLENDALE**
2. Parish ..... **INGRAM**
3. Number of Footpath on Map ..... **15** ✓
4. Name of Path .....
5. Kind of Path (i.e. FP/BR) ..... **F.P.**
6. General Description of Path ..... **From the Branton - Glanton Pike road**  
..... **north of Branton Middle Steads in a south-westerly direction to the**  
..... **Branton - Great Ryle Road.**  
.....  
.....  
.....
7. Other relevant information .....  
.....  
.....  
.....  
.....  
.....

# 1964 County Road Schedule

Route No.	Name of Road.	Description.	Responsible Division or Authority.	Mileage.	Total Mileage.
U.1092	Powburn-Branton-Glanton Pike.	From Rural District boundary at Breamish House, Powburn, near A.697 via Branton to C.169 at Glanton Pike. (Continues in Alnwick R.D. as U.3106)	Wooler.	2.33	
U.1093	Branton-Hedgeley Station.	From U.1092 at Branton to A.697 at Hedgeley Station.	Wooler.	0.72	
U.1094	Clinch Road.	From U.1090 near Branton via Fawdon to Clinch.	Wooler.	1.62	
U.1095	Amersidelaw Road.	From C.43 800 yards north of Chillingham Post Office to Ford at Hollow Burn on road to Amersidelaw.	Wooler.	0.28	
U.1096	Old Bewick Farm Road.	From C.43 at Old Bewick farm north-eastwards for 320 yards to gateway on to Bewick Hill.	Wooler.	0.06	
<del>U.1097</del>	<del>Reddams-Beddams Beg Plantation.</del>	<del>From U.1089 at Reddams Beg House via Hesse Close Strip to C.54 at Reddams Beg Plantation. Not County A. from Jan. 1966.</del>	<del>Wooler.</del>	<del>0.92</del>	
U.1098	Branton-Great Ryle.	From U.1092 1,000 yards south of Branton via Plantation House to the Rural District boundary near Great Ryle. (Road continues in Rothbury Rural District as U.4064).	Wooler.	1.20	
U.1099	Ingram-Fawdon.	From U.1086 at Ingram via Chapel Knowe to U.1094 at Fawdon and including link to Ingram Mill, (240 yards).	Wooler.	1.23	
U.1100	Ingram-Prendwick.	From U.1099 at St. Michael's Church, Ingram, southwards to the Rural District boundary at Bowl Holes, near Prendwick. (Road continues in Rothbury Rural District as U.4065).	Wooler.	1.82	
U.1101	Lowick Housing Estate Road.	From B.6353 at Lowick northwards into Housing Estate for 68 yds.	Wooler.	0.04	
U.1102	Ford Village Roads.	Roads in Ford Village to the north-west of B.6353.	Wooler.	0.46	
U.1103	Amerside Law Farm Road.	From B.6348 east of Chatton Bridge in a southerly direction to Amerside Law Farm and including around the Steading (1,642 yds).	Wooler.	0.93	
U.1104	Broomey Road, Wooler.	From U.1078 at the Wooler Water Reservoir 168 yards in a north-westerly direction.	Wooler.	0.10	



# 1964 County Road Schedule

- 93 -

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



[illegible]

# 1974 County Road Schedule

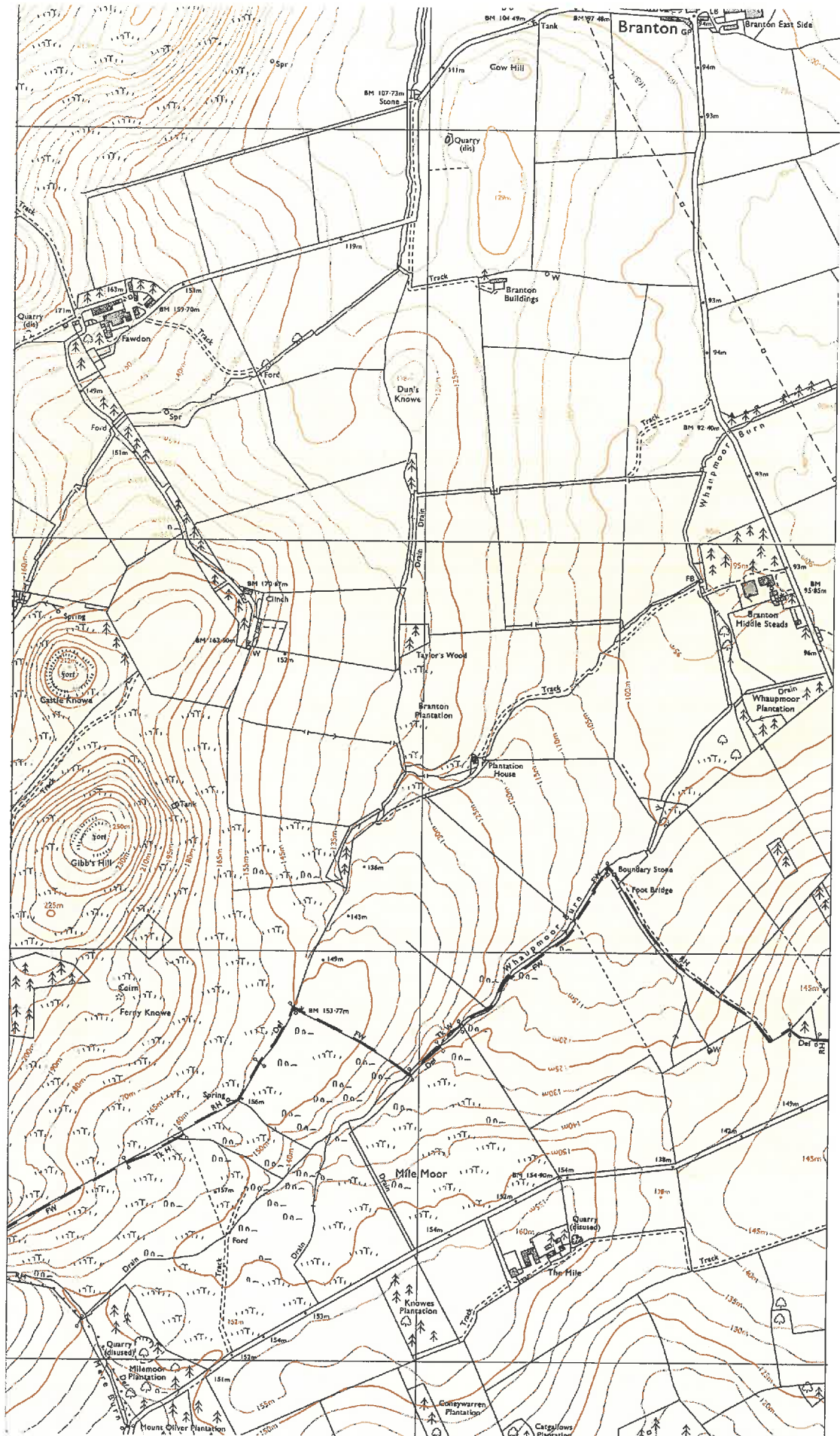
Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
U.1091	Reaveley Cottage Road.	From C.54 at Reaveley (NU.019170) eastwards to rejoin C.54 west of Brandon (NU.032168).	Wooler Division		0.90
U.1092	Powburn-Branton-Glanton Pike.	From Alnwick District boundary at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

# 1974 County Road Schedule

Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
U.4063	Howmoor Plantation Road.	From C.178 near Whittonlea Quarry (NU 065106) eastwards and southwards via Reynards Lodge to Howmoor Plantation. (NU 067104).	Alnwick Division.		0.34
U.4064	Great Ryle-Branton.	From C.169 at Milemoor Plantation (NU 034129) north-eastwards to the Berwick District boundary south of Plantation House (NU 037138). (Continues in Berwick District as U.1098).	Alnwick Division.		0.54
U.4065	Ingram-Prendwick.	From C.169 at Prendwick Cottage (NU 004124) northwards to the Berwick District boundary at NU 009135. (Continues in Berwick District as U.1100).	Alnwick District.		0.81
U.4066	Wagtail Road, Rothbury.	From D.6342 200 yards east of the former Rothbury Station (NU 064016) south-eastwards to bottom of west ramp to railway bridge on the road to Wagtail Farm. (NU 069010).	Alnwick Division.		0.55
U.4067	Church Street, Longframlington.	From A.697 at Longframlington Schools via north and west sides of St. Laurence's Church to C.188. (NU.131010).	Morpeth Division.		0.08
U.4068	Monkridge Soppit.	From A.696 at Monkridge (NY 914917) northwards to the Tynedale District boundary at the ford over Elsdon Burn. (NY 917926). (Continues in Tynedale District as U.5065).	Morpeth Division.		0.58
U.4069	Elsdon Village Roads. (See also U.4082 and U.4085).	From B.6341-at-Checkgate via School to Castlegate and returning southwards along east side of St. Cuthbert's Church to rejoin B.6341 opposite junction with C.186, (357 yards). Also from Bird-in-Bush Inn, crossing C.186, to Pinfold, (160 yards). (NY 936933).	Morpeth Division.		0.30

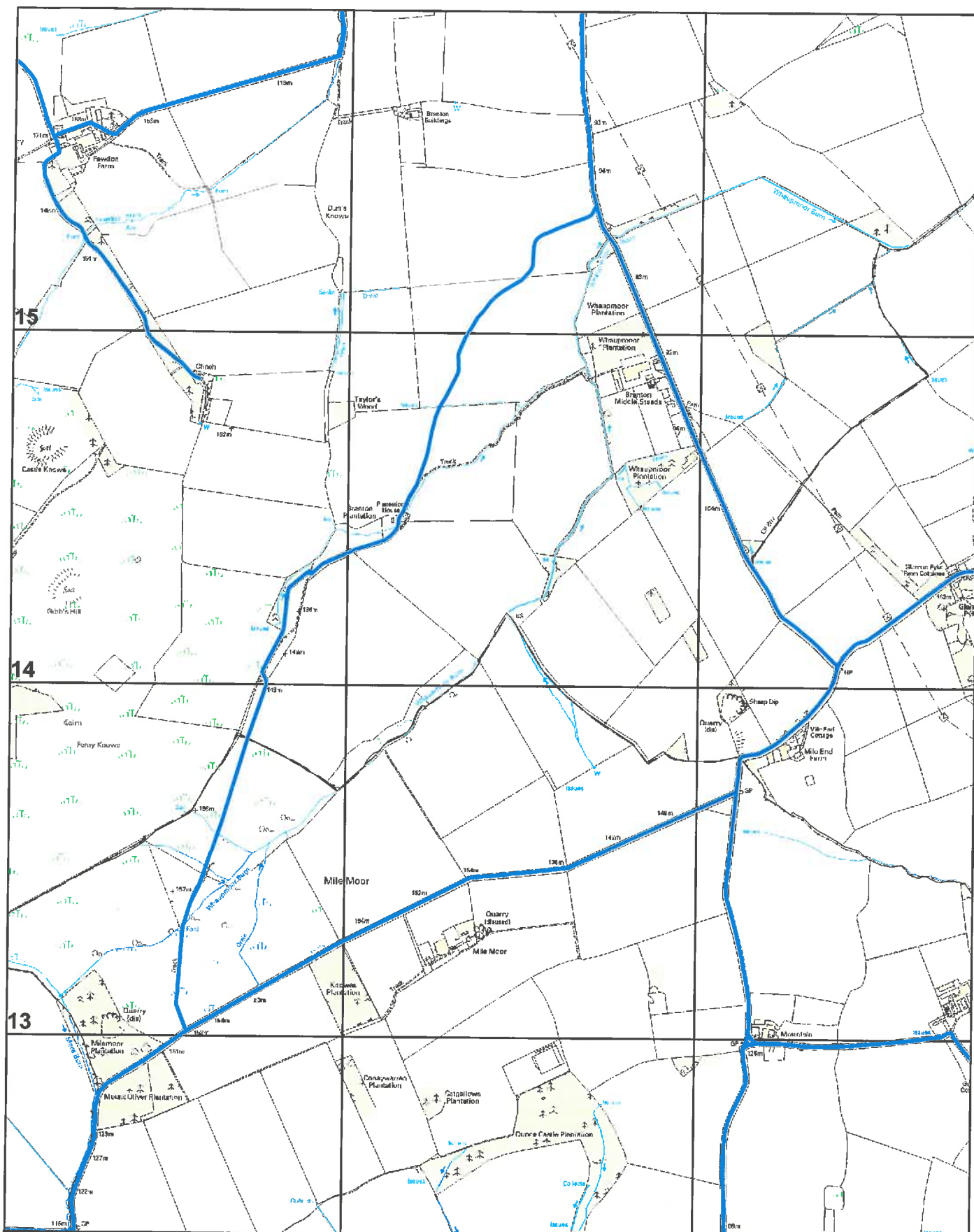


1:10,000 O.S. Map  
1979



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

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



**Northumberland**  
Northumberland County Council

## Network Management Information System

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

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