

Northumberland County Council

RIGHTS OF WAY COMMITTEE

13 March 2018

REVIEW OF THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY ALLEGED RESTRICTED BYWAYS NOS 34 & 53 PARISHES OF KYLOE & LOWICK

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 add to the Definitive Map and Statement a restricted byway from the C18 road west of Catton Ridge in a general north-easterly then easterly direction, in part over existing Parish of Lowick Public Footpath No 29, crossing the Lowick / Kyloe parish boundary, then continuing in a north-easterly direction to join the U34 road at the junction with Public Footpath No 22 at Blawearie.

Recommendation

It is recommended that the Committee agree that:

- there is insufficient evidence to indicate that restricted byway rights have been reasonably alleged to exist over the routes P - S and T - R;
- ii) there is insufficient evidence to indicate that on the balance of probability restricted byway rights have been proven to exist over that part of existing Public Footpath No 29 between points S T;
- iii) there is sufficient evidence to indicate that public bridleway rights have been reasonably alleged to exist over the routes P S and T R;
- iv) there is sufficient evidence to indicate that on the balance of probability public bridleway rights have been proven to exist over that part of existing Public Footpath No 29 between points S T;
- v) the routes should be included in a future Definitive Map Modification Order as a public bridleways.

1.0 BACKGROUND

- 1.1 By virtue of Section 53 of the Wildlife and Countryside Act, 1981, the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.
- 1.2 The relevant statutory 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 January 2017, Mr T Liddle of Hexham submitted an application to amend the Definitive Map and Statement by adding a restricted byway from a point marked P on the C18 road opposite the junction with the U1046 road west of Catton Ridge in a general north-easterly direction for a distance of 520 metres, then easterly for a distance of 790 metres over existing Parish of Lowick Public Footpath No 29, then continuing in a north-easterly direction for a distance of 1335 metres to a point marked Q on the Lowick / Kyloe parish boundary, then continuing in a north-easterly direction for a distance of 905 metres to a point marked R on the U34 road at the junction with Public Footpath No 22 at Blawearie.
- 2.2 The application is supported by historical evidence including Fryer's County Map of 1820, the 1833/4 Turnpike Plans, the 1847 & 1848 Tithe Awards for the townships of Holburn and Kyloe, the 1858 O.S. Boundary Records, the 1st Edition O.S. 25" plan of 1866 with the accompanying Book of Reference, the 1st Edition 6" plan of 1866, the 2nd Edition O.S. 6" plan of 1897, the 3rd Edition

- O.S. 1" plan of 1897, the O.S. 2½" 1954 plan and the 1910 Finance Act records.
- 2.3 The application was accompanied by the following submission:

The road from Holburn

- "1. The alleged route is in the parishes of Kyloe and Lowick. It appears on OS Explorer 340 Holy Island & Bamburgh.
- "2. The northern end of the route leaves the south end of the U3410 at Blawearie (A) at GR NU 062392. The other end meets the tarmac road, the C181, at GR NU 038375 at its junction with the minor road, U1046, to Laverocklaw (D)..
- "3. The northern section of the route follows a stone surfaced forest road past Bogle Houses. It then crosses the parish boundary (B). This leads to an overgrown grassy track which it follows to pass through a gateway (C) in the old township boundary wall, which is still a landownership boundary today. This joins another stone track close to Shiellow Crags, at which point the alleged route turns west to leave the wood and cross a rough pasture. It then turns south west along the Catton Ridge and passes through a gateway in a fence to cross a pasture to reach an old gate onto the tarmac road (D).
- "4. The alleged route only coincides with an existing public footpath (229/029) for a short section, where it is going east-west.

See enclosed photographs

Documentary evidence

1. 1820 Fryer

"The alleged route is clearly shown on this map for its full length, passing close to Boggle Houses as it does today. The key indicates that it was an 'other road', as opposed to a turnpike road.

See extract.

2. **1833/34 Turnpike Plans**

QRUp/29 & 30

"This plan is entitled 'Plan of roads intended to be included in the Ford & Lowick Turnpike' which was created under the Ford & Lowick Turnpike Act 1834. It shows the north end of the alleged route clearly labelled 'From Holburn' as a spur leading to the turnpike.

See extract

3. 1847 Tithe award for the township of Holburn in the parish of Lowick DT252M

"The plan shows the alleged route clearly. There are three routes shown crossing the township boundary between Lowick township (to the North) and

Holburn township (to the South) on this plan. They are labelled (working from west to east) - 'from Lowick', 'to Fenwick' and 'to Fenwick'. The alleged route is the middle one, identified by the kink in the township boundary (C).

"The line of the alleged route can be seen going west from this point and then curving south for a short distance down Catton Ridge (not labelled) and then west to create a cross roads (D) with the road labelled 'from Lowick', (the current tarmac road between Lowick and Holburn). This leads south to Holburn, which is also labelled on the plan.

See extract

4. 1848 Tithe award for the township and parish of Kyloe

"This plan shows the northern part of the alleged route from its start at (A) as it goes south past Bogle Houses to the point where it passes into the parish of Lowick (B). South of the parish boundary it is shown continuing for a short distance, curving away from the parish boundary as it does today.

"In the award the area affected is shown as being in plot 2, East Kyloe Farm, 14 acres, 2 rods, 25 perches of Roads & Waste.

See extract

5. 1858 OS Boundary Records

"It is hoped to get copies from TNA of the OS 26 series for the two crossings this route makes across township boundaries - firstly just south of Bogle Houses when the crossing is made from Holy Island PH, Kyloe TS to Lowick PH, Lowick TS, and secondly where it crosses the wall which marks the land ownership boundary today, from Lowick PH, Lowick TS to Lowick PH, Holburn TS.

"These will be sent in when they become available'.

6. 1866 OS 1st ed 1:2,500, the 25"

"These sheets are not available at Woodhorn but copies have been obtained from the British Library.

"The north end of the route (A) is shown on sheet XI/11. It can be seen that the point, where Blawearie stands today and extending a little further south as a fenced lane, is plot 91 in Holy Island parish, Kyloe township. In the Book of Reference for this parish and township this plot is described as 'public road'. Once it ceases to be fenced, it enters plot 103, which is described in the Book of Reference as 'rough pasture, furze, etc'.

"Still in the same parish and township and on the same sheet, the alleged route then passes Bogle Houses. As it is unfenced it does not have an individual plot number. The route is braced to show that it is included in two large plots, numbers 104 & 105. These are described as 'arable & rough

pasture' and 'rough pasture, rocks and roads' respectively in the Book of Reference.

"On sheet XI/15 the alleged route is shown crossing the parish boundary (B) into the parish of Lowick, township of Lowick, just south of Bogle Houses. It continues south, just to the west of the boundary with Holy Island parish. [the photographs of this section have been mislaid.] The plot numbers were recorded as 257 - 'plantation', 248 - 'pasture & road' and 243 - 'rough pasture, streams, roads, etc'.

"Still on the same sheet, the alleged route now passes into the township of Holburn at (C) but still in the parish of Lowick. It goes south down Catton Ridge and across to the Lowick road (D). This is plot 27 which is described as 'rough pasture, roads, streams etc'.

See extracts

1866 OS 1st ed scale 1:10,560, the 6"

Roll 3

The route can be seen in its entirety from its northernmost point (A) to Bogle Houses, just south of which it crosses the parish boundary between Kyloe parish to the north and lowick parish to the south (B) and then southwards through the woods lying to the west of the parish boundary, which it crosses as it passes through the wall (C) mentioned above which is a landownership boundary today. It can then be seen turning west and then south along Catton Ridge turning to join the Lowick road (D) opposite the minor road which provides the access to Laverock Law.

See extracts

7. 1897 OS 2nd ed scale 1:10,560, the 6"

Sheet XISE

The route described above is shown just as clearly on the 2nd edition of the OS. It is not labelled BR or FP which suggests that the surveyor decided that it was of a higher status, ie a road.

See extract

8. OS maps on line

National Library of Scotland

1897 OS 1st ed revised, scale 1" to a mile

1899 OS 2nd ed, scale 6" to a mile

1954 OS, scale 2½" to a mile

These also show the route clearly. The alleged route has been highlighted in red. By 1954, it would appear that a new track has been created to give it direct access to the road shortly after C, so the section down Catton Ridge has disappeared but two gateways still exist at the appropriate points.

See extracts

9. 1910 Finance Act

NRO 2000/83

The northern part of the alleged route is shown on the **plan ref NRO 437/XI/12**. The fenced section past Blawearie is shown as a 'white road' indicating that it was considered to be a public road on which no development tax would be payable. But once it becomes unfenced it passes into plot 27 which includes Bogle Houses.

On the **plan ref NRO 437/XI/15** the route is shown to be in **plot 149** described as 'plantations, Black Heddon' in the land use and locations columns. This appears on p 13 of the Book of Reference. The owner and occupier is shown as C J Leyland and there is a **deduction for 'rights of way or user' of £30**.

See extracts

Conclusion

Please will you consider the evidence given above, which suggests that a minor public road existed between the small villages of Kyloe and Holburn in the nineteenth century?

A restricted byway or public bridleway along this line would provide a link between the villages of Fenwick and Kyloe and the excellent bridleway network which extends from Holburn thus opening it up to horse riders and cyclists from a wider area without the need for them having to mix with traffic on local tarmac roads."

3. LANDOWNER EVIDENCE

- 3.1 By letters dated 12th June 2017 Ian Robinson, Regional Manager for Scottish Woodlands responded with the following comments.
 - "Further to your letter dated 6th April 2017 and our subsequent telephone conversation I would like to make the following points regarding the Alleged Restricted Byways No 34 and 53 (Points P - Q -R) as indicated on the attached plan (Appendix A).
 - "Whilst the application is seemingly supported by historical evidence showing a long established route we have discovered other historical evidence casting doubt on the validity of the route.
 - Armstrong's County Map 1769 (Appendix B) Alleged route is not shown on the map at all.
 - Greenwoods County Map 1828 (Appendix C) A route is shown passing through the property now known as Kyloe Wood but it deviates slightly from the claimed Restricted Byway as marked P - Q - R on the plan.

- iii) "The 2nd Edition Ordnance Survey Map of 1899, the 1925 Edition of the Ordnance Survey map and the 1954 edition (Appendix D, E & F) all clearly show Public Rights of Way passing through the property now known as Kyloe Wood. Over this 55 year period the same Public Rights of Way are identified on the maps and none of these identified routes coincide with the claimed route R Q P as it passes through Kyloe Wood.
- "Kyloe Wood has only had 3 owners since it was planted in 1890 and, with the exception of the public footpath passing through the property East West, the only public access has been permissive access granted to rock climbers accessing the crags within the woods and a permit system so that local residents can access the wood on their horses. The gates are kept locked to prohibit vehicular access and signage is in place to advise the public that the woodland is private property.
- v) "Our assertion is that the route R Q is and always has been a private road from Fenwick village to the property now known as Bogle Houses. On Armstrong's County Map of 1769 there is a property identified as High Moor House, which on the Fryers County Map 1820 and subsequent maps is renamed Boggle or Bogle Houses. This was an agricultural dwelling and in the late 19th Century was converted into a forestry workshop and store.
- vi) "When Kyloe Wood was planted between 1890 and 1935 a complex system of roads, tracks and rides were formally laid out most of which still exist today. From 1890 to the present day, the route as defined in the claim P Q R has been a private road restricted to Forestry usage.
- vii) "In 1995 a statement (Appendix G) was deposited with Northumberland County Council concerning public access to Kyloe Wood. This statement confirmed the location of the dedicated footpaths passing through the property under section 31(6) of the highways Act 1980 concerning public access provision.
- viii) "In conclusion, we ascertain that whilst maps such as Fryers County Map of 1820 and the other maps presented as evidence show the route P Q R, there are other contemporary maps which show differing routes. All that these maps prove is that there were a myriad of tracks leading to agricultural settlements over private property.
- "The second edition OS map of 1899 seems definitive in identifying the Public Rights of Way passing in and around Kyloe Wood which does not show the claimed route as a PROW."
- 3.2 By email dated 19th June 2017 Guy Sampson of Savills responded on behalf of the Ford and Etal Estate with the following comments:
 - i) "I am instructed to respond that my clients have no comment to make in relation to the proposed new public right of way, and neither object to nor support its creation. The observation was made, however, that it is

- unclear why the proposed right of way is proposed to be a restricted byway, and not a footpath.
- ii) "The extent of the land ownership of Ford and Etal Estates is indicated on the attached plan highlighted in pink."
- 3.3 By letter dated 29th June 2017 Cameron Bell of East Holburn Farm, Lowick responded with the following comments:
 - i) "In answer to your letter of 6th April 2017, we wish to object to the proposed right of way as it was extinct when we purchased the farm in 1986 and it did not appear in the Particulars of Sale, nor was it on the definitive map and it therefore does not appear on our our deeds which were registered with the land registry. I note that the applicant's evidence is historical dating back to the 1820-1858, and would like to point out that the flora and fauna in this area have only been able to flourish because it has been left undisturbed for all these years. Also, we have never advertised the fact that a badger set has been on the moor ever since we took over the farm, and as they are a protected species we would prefer it to remain so. The proposed new route would walk over the set! We have enough difficulty keeping people away from the set all these years without giving them a legal right to be there. Also, the "Red Squirrel Alert" is active in Kyloe Woods and if it necessitates the Management of Kyloe Woods having to fell trees - the natural habitat of the red squirrel - to accommodate this proposed route surely defeats the object. Who takes priority, the squirrel or the walker?.
 - ii) "As time has marched on since the 1800s, we have seen the demise of the Quarry at the end of the wood and which was accessed by the existing single track and is now used by Ford and Etal when logging is carried out and by ourselves for agricultural purposes. This single track is only a footpath and not a bridleway and is served by a style for the walker provided by the footpath Agency and now in the 21st Century has had to accommodate tractors, combines and articulated wagons extracting logs from the wood. This is borne out by the modification of the entrance on to the minor road which we undertook for the benefit of Ford and Etal for safety reasons to allow articulated wagons or wagon and drag to halt and to have safe haven when extracting logs on to the minor road. This gate has been permanently padlocked by ourselves since 1986 and before by the previous owner. The reason being, is we have been plagued with fly tipping, arson, poaching/lamping, theft, vandalism, trespassing, gates lifted off their hinges and purposely left open into the wood and on to the road, cows, calves and sheep lost and some never found. This is all documented with the appropriate authorities. We constantly liaise with the police, fire brigade, footpath agency, farm-watch and our neighbours about this track and to create another exit/entry onto a minor road is taking us back into the 1800s. We wish to vigorously object to this proposal and allow the single track to remain as it is with one exit/entry please.

- "It is evident it was not classed as a bridleway in the 1800s, surely it must follow therefore, it is not suitable in the 21st Century and to create another exit/entry on to a notorious narrow minor road from the Black Heddons to Holburn is folly for safety reasons for locals and for visitors alike.
- "Even since the Wildlife and Countryside Act of 1981 came into force, the size of the modern day traffic wagons, tractors and combines have grown somewhat and they have to negotiate these minor roads which are more in keeping with the 1880s mode of travel. Please note also, there are no designated parking places on this minor road.
- v) "The Black Heddons Rock Climbing: Kyloe Wood Walks; East Holburn Track and Bridleway and St. Cuthbert's Cave Walk attract many people from far and near and all of whom abandon their vehicles (buses and cars) on both sides of the road and in gateways, from the Black Heddon to Holburn Village, all through the year and some remain overnight! There must be a limit to what this road can accommodate by way of parking places. Rushes grow in the ditches at both sides of the road which indicates the verge is unsuitable for walkers to abandon their vehicles, yet they still do it. It makes the villagers every day life very difficult as it is and to add another exit/entrance will make every day life virtually impossible if extra cars, buses and horseboxes arrive parked near the proposed entrance/exit. Our everyday life will come to a standstill.
- vi) "The Lowick Parish Council Meeting on 21st March 2013 voiced concerns on the matter of Holburn Bridge and they brought up the question of passing places to be created on the road to accommodate the extra heavy traffic coming and going from the new Hetton Grain Store on the Hetton Estates which is an essential commodity to the Estate. The problem was raised again during harvest on 17th October 2013 regarding Holburn Grange heavy traffic. Again on 21st November 2013 County Councillor Dougie Watkin was present and he said it was 'unenforceable to have them put in', ie passing places. Only recently in April 2017 again the Parish Council raised concern over the safety of this minor road and requesting passing places as 30/40 wagons travel this narrow road to the Hetton Grain Store. If passing places were provided, walkers would use them as parking places as we found when we modified the entrance on to a minor road for Ford and Etal.
- vii) "Herewith, as requested, map indicating the extent of East Holburn Farm, Lowick."

4. CONSULTATION

4.1 In April 2017, the County 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 dated 15th May 2017 the Clerk to Kyloe Parish Council responded to the consultation with the following comment:

"Kyloe Parish Council will support the wishes of the appropriate landowners, although we do have concerns of timber operations and red squirrel habitat."

- 4.3 By letter in May 2017 the County Access & Bridleways Officer for the British Horse Society responded to the consultation with the following comments:
 - i) "It would appear from the documents that support this proposal that in the past Holburn was a more significant settlement than it is today. It is likely that the 'old road' fell into disuse when the area of woodland increased and, with the coming of motor vehicles, the 'long way round' on tarmac roads ceased to matter.
 - "This route is not currently used by horse riders as the only public rights that exist are for walkers, and that only on one short section.
 - "The addition of this route as an RB to the definitive map will allow horse riders who live in the Kyloe/Fenwick area access to the excellent network of bridleways in the Holburn area which, at the moment, is denied to them as there is nowhere to park a horse trailer, the roads being too narrow to park on the verge."

5. DOCUMENTARY EVIDENCE

5.1 A search has been made, relating to historical evidence and the following copies of O.S. Maps are enclosed for consideration.

1769 <u>Armstrong's County Map</u>

Although there is no direct route following the claimed alignment there is evidence of a track from Watling Street (B6525 road) to East Kyloe.

1820 Fryer's County Map

There is no evidence of a track approximating the claimed route.

1828 Greenwood's County Map

There is evidence of a track approximating the easterly section of the claimed route.

1820-32 <u>Cary's Map</u>

There is evidence of a track approximating the claimed route.

1833/4 <u>Turnpike Plan</u>

The extreme northern section of the claimed route links to a spur off the Turnpike road which is identified as 'From Holburn'.

1847 <u>Holburn Tithe Award (No Plan)</u>

The section of the route within Holburn township is identified on the award plan with a double pecked line to and annotated as 'from Lowick'.

1848 Kyloe Tithe Award (No Plan)

The section of the route within Kyloe township is identified on the award plan with a pecked and solid line which is shown as running to and beyond Bogle Houses.

1860 <u>1st Edition O.S. Map: Scale 1:2,500 & Book of Reference</u>

There is evidence of an enclosed track over the extreme northern section of the claimed route south-west of Blawearie (points U - R).

This section of the claimed route is annotated in the Book of Reference with the number 91 and identified as a 'Public Road'.

1865/6 <u>1st Edition O.S. Map: Scale 1:10,560</u>

There is evidence of a track over the entire length of the claimed route. The extreme northern section is shown as an enclosed track. A benchmark is located in the middle section of the track in Kyloe Plantation.

1899 <u>2nd Edition O.S. Map: Scale 1:10,560</u>

There is evidence of a track over the entire length of the claimed route. The extreme northern section is shown as an enclosed track.

1925/6 <u>3rd Edition O.S. Map: Scale 1:10,560</u>

There is evidence of a track over the entire length of the claimed route. The extreme northern section to Blawearie is shown as an enclosed track. A benchmark is located in the middle section of the track in Kyloe Plantation and another on existing Public Footpath No 29.

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

There is evidence of a track over the majority of the claimed route. The extreme northern section to Blawearie is shown as an

enclosed track. There is no evidence of a track over the western section from the B6353 to join existing Public Footpath No 29.

1970 <u>O.S. Map: Scale 1:10,560</u>

There is evidence of a track over the majority of the claimed route. The extreme northern section to Blawearie is shown as an enclosed track. There is no evidence of a track over the western section from the B6353 to join existing Public Footpath No 29. A section of the claimed route within Kyloe Wood is identified as 'Sawmill Road'

6. SITE INVESTIGATION

6.1 From the C18 road opposite the junction with the U1046 road the path heads through a field gate then crosses a pasture field then through another gate to join Catton Ridge before linking with existing Public Footpath No 29. This section of path is undefined and there is no evidence of public use. The path then continues well defined over Public Footpath No 29 which is also used as an agricultural track to access Shiellow Wood. West of Shiellow Crags the path heads north-easterly and is less defined passing through a stone gateway to join the forest track in Kyloe Woods. The path then continues well defined throughout following the forest track past Bogle Houses to join the U34 road at Blawearie.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

7.1 In February 2018, a draft copy of the report was circulated to the applicant and known owners / occupiers of the land who responded to the consultation.

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.

- 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 In September 1995 the owners of Kyloe Wood deposited with the County Council a statement and plan under Section 31(6) of the Highways Act, 1980. The area of land delineated on the plan accompanying the deposit includes the northern section of the alleged path where it passes through Kyloe Wood.
- 8.4 However, a statutory declaration and deposit made under Section 31(6) of the Highways Act, 1980 does not rebut any historical evidence in support of the existence of public highway rights prior to this date.
- 8.5 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.
- 8.6 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.
- 8.7 The County Maps of Fryer, Greenwood and Cary appear to depict a track over all or part of the claimed route. If the purpose of the maps was to depict commercial travel routes throughout the County then it is reasonable to assume that the route carried higher rights than public footpath.
- 8.8 All of the Ordnance Survey plans from the 1st Edition map c1860 to the plan in 1925 depict a track over the majority of the claimed route. It is noted however, that the Ordnance Survey plans post 1957 do not depict a track over the claimed route from the B6353 road to existing Public Footpath No 29.
- 8.9 On the plans accompanying the 1910 Finance Act the section of the route leading to a point west of Blawearie is excluded from the coloured land ownership boundaries and it is therefore reasonable to assume that it was considered to be a public highway. It is accepted that the parcel of land

labelled number 149 has a proposed financial deduction of £30 listed in the accompanying valuation book but there is no conclusive evidence to suggest that the deduction is definitely associated with the claimed route. It should also be noted that part of the claimed route is recorded as existing Public Footpath No 29 which may justify the £30 valuation.

- 8.10 The Kyloe and Holburn Tithe Awards depict a track over the entire length of the claimed route annotated as 'From Lowick'. This suggests that the route was public but gives no clear indication as to its status or whether it was for pedestrians, horses or all manner of traffic including carts and carriages.
- 8.11 Although the 1st Edition Ordnance Survey 'Book of Reference' plan depicts the extreme western section of the route to the east of Blawearie as a 'Public Road' the remainder of the route is identified within larger land parcels and has no unique record for any part of the claimed route.
- 8.12 In the light of the evidence submitted it appears that the historical evidence is not sufficient to demonstrate the existence of a public vehicular right of way but is sufficient to support an assertion that, on the balance of probability, public bridleway rights have been shown to exist over the route.
- 8.13 The comments regarding environmental concerns, the suitability of the route for anything other than foot use and the problems with parking, poaching and vandalism including the conflict with the current farming operations, although of concern, are not considered relevant in determining whether or not a public rights exists over the route. If the route were to be recorded as a public right of way Northumberland County Council, if requested, would investigate any desire to divert the route onto a more commodious alignment.
- 8.14 Advice from the Planning Inspectorate states that it is important to have the correct width, where known, recorded in the definitive statement. It is considered appropriate therefore, that if the route were to be included in any future modification order as a public bridleway, a minimum width of 3 metres should be recorded over the route.

9. CONCLUSION

- 9.1 In the light of the evidence submitted it appears that public vehicular rights have not been reasonably alleged to exist over the route, but that public bridleway rights have been.
- 9.2 In the light of the evidence submitted it appears that public bridleway rights have, on the balance of probabilities, been shown to exist over that part of existing Parish of Lowick Public Footpath No 29 between points S T.

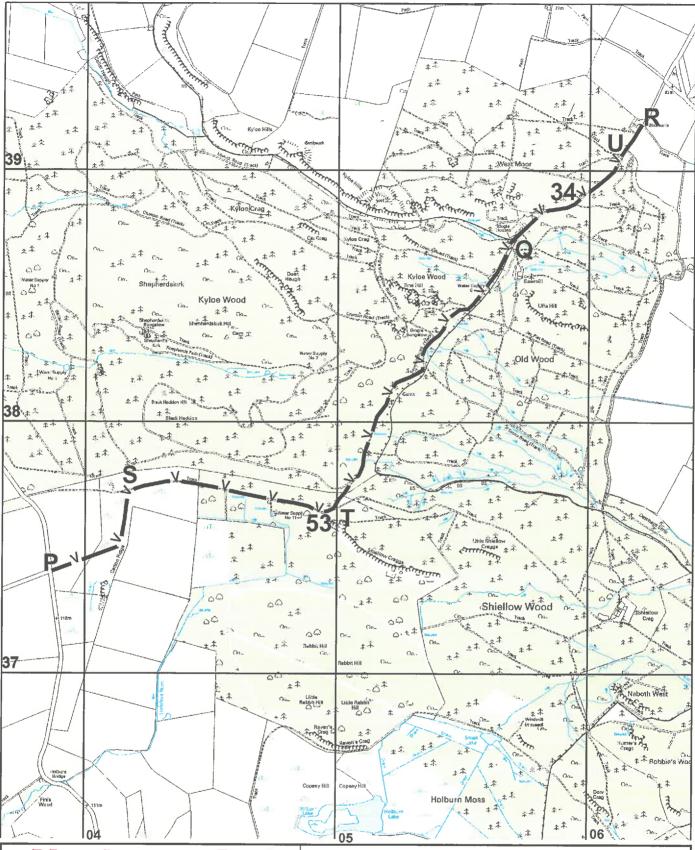
BACKGROUND PAPERS

Local Services Group File B/27/34z & B/29/53z

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Northumberland

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Wildlife and Countryside Act 1981 Public Rights of Way

Alleged Restricted Byway

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O.S. Map NU 03 NW/NE	Definitive Map No 21/22	Scale: 1/5,000			
Former District(s) Berwick	Parish(es) Kyloe/Lowick	Date: January 2018			

PUBLIC RIGHTS OF WAY

WILDLIFE AND COUNTRYSIDE ACT 1981, PART III DEFINITIVE MAP AND STATEMENT FOR THE COUNTY OF NORTHUMBERLAND

APPLICATION FOR MODIFICATION ORDER

Forme	r Borough/District RERUICK
Parish	KYLOE, LOWICK Rights of Way No. 229/029 (por (on Definitive Map)
То:	Asset & Infrastructure Manager Northumberland County Council County Hall Morpeth Northumberland NE61 2EF
I/We	TED LIDDLE (Name)
of	CHAPEL HOUSE, WHITLEY CHAPEL (Address)
	STEEL, HEXHAM, NELT OHD
hereby and Sta	apply for an order, under Section 53 (2) of the Wildlife and Countryside Act 1981, modifying the Definitive Map tement for the County of Northumberland, by:-
1.	Adding the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (Delete whichever is inapplicable)
from	BLAWEARIE CR NU 062 392
to	LOWICK-HOLBURN ROAD CR NU 038375
2.	(Upgrading) (downgrading) to a (footpath) (bridleway) (restricted byway) (byway open to all traffic) the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (Delete whichever is inapplicable)
from	
to	
3.	Deleting the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (Delete whichever is inapplicable)
from	
to	
4.	(Varying) (adding to) the particulars relating to the (footpath) (bridleway)) (restricted byway) (byway open to all traffic) (Delete whichever is inapplicable)
from	
to	
by provide as shown	ding that
I/We atta	ach copies of the following documentary evidence (including statements of witness) set out overleaf in support of ication.
Dated	12.01.2017 Signed
NOTE:	This application must be accompanied by a man showing the might(s) of man and 1.15. I

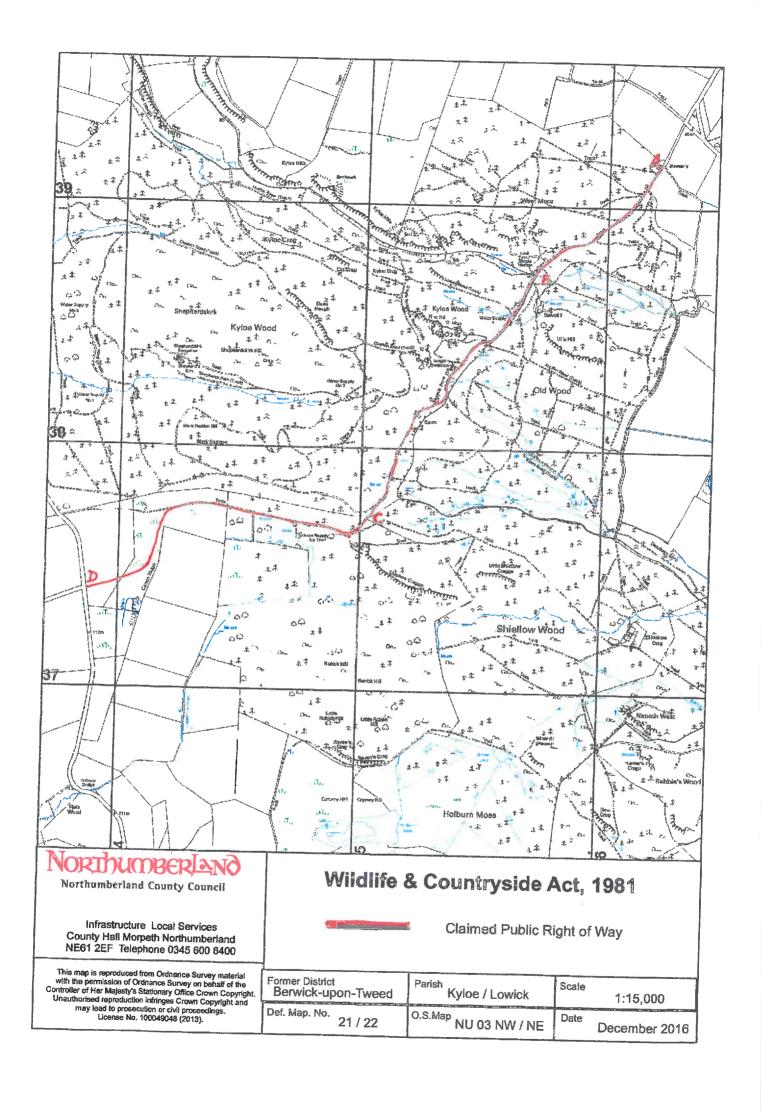
NOTE: This application **must** be accompanied by a map showing the right(s) of way applied for. Legally such a map must be at a scale of not less than $2\frac{1}{2}$ " to 1 mile, but 6" to 1 mile (being the scale at which the Definitive Map is to be prepared and maintained) will normally be preferable.

WILDLIFE AND COUNTRYSIDE ACT 1981, PART III DEFINITIVE MAP AND STATEMENT FOR THE COUNTY OF NORTHUMBERLAND

CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER

Former Borough/District	WICK	************					
Parish KYLOE, LOWI	CK	**************					
To: Asset & Infrastructure Manager Local Services Group Northumberland County Council County Hall Morpeth NE61 2EF							
I/We TED LIDAL	E	(Name)					
of CHAPEL HOUSE,	CHAPEL HOUSE, WHITLEY CHAPEL, STEEL, (Address)						
HEXHAM, NE 4	7. OH D	***************************************					
hereby certify that the requirements of Para complied with, and each of the following lan	graph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 and occupiers affected by the claim have been notified.	have been					
Name	Address						
Mr R. Flewing	Church Farm, Steeple Borton, Bro	ests,0x25 406					
Fond & Etal Estates	Ford Village, Berwick apartwead, I	DIS 2QA					
Messes Cac Bell	East Holbern Form, Loverick, Borosid Greanfield Court, TD15	Rupan Tweed,					
Scotlish Woodbands	Greenfield Court, TD15	207					
	Aluwick, NE662DE						

	Dated 12.01.2017	Signed	
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The road from Holburn

The route

- 1. The alleged route is in the parishes of Kyloe and Lowick. It appears on OS Explorer 340 Holy Island & Bamburgh.
- 2. The northern end of the route leaves the south end of the U3410 at Blawearie (A) at GR NU 062392. The other end meets the tarmac road, the C181, at GR NU 038375 at its junction with the minor road, U1046, to Laverocklaw (D).
- 3. The northern section of the route follows a stone surfaced forest road past Bogle Houses. It then crosses the parish boundary (B). This leads to an overgrown grassy track which it follows to pass through a gateway (C) in the old township boundary wall, which is still a landownership boundary today. This joins another stone track close to Shiellow Crags, at which point the alleged route turns west to leave the wood and cross a rough pasture. It then turns south west along Catton Ridge and passes through a gateway in a fence to cross a pasture to reach an old gate onto the tarmac road (D).
- 4. The alleged route only coincides with an existing public footpath (229/029) for a short section, where it is going east-west.

See enclosed photographs

Documentary evidence

1. 1820 Fryer

The alleged route is clearly shown on this map for its full length, passing close to Boggle Houses as it does today. The key indicates that it was an 'other road', as opposed to a turnpike road.

See extract

2. 1833/34 Turnpike Plans

QRUp/29 & 30

This plan is entitled 'Plan of roads intended to be included in the Ford & Lowick Turnpike' which was created under the Ford & Lowick Turnpike Act 1834. It shows the north end of the alleged route clearly labelled 'From Holburn' as a spur leading to the turnpike.

See extract

3. 1847 Tithe Award for the township of Holburn in the parish of Lowick

DT 252 M

The plan shows the alleged route clearly. There are three routes shown crossing the township boundary between Lowick township (to the North) and Holburn township (to the South) on this plan. They are labelled (working from west to east) – 'from Lowick', 'to Fenwick' and 'to Fenwick'. The alleged route is the middle one, identified by the kink in the township boundary (C).

The line of the alleged route can be seen going west from this point and then curving south for a short distance down Catton Ridge (not labelled) and then west to create a cross roads (D) with the road labelled 'from Lowick', (the current tarmac road between Lowick and Holburn). This leads south to Holburn, which is also labelled on the plan.

See extract

4. 1848 Tithe Award for the township and parish of Kyloe

DT 282 M

This plan shows the northern part of the alleged route from its start at (A) as it goes south past Bogle Houses to the point where it passes into the parish of Lowick (B). South of the parish boundary it is shown continuing for a short distance, curving away from the parish boundary as it does today.

In the award the area affected is shown as being in plot 2, East Kyloe Farm, 14 acres, 2 rods, 25 perches of Roads & Waste.

See extract

5. 1858 OS Boundary Records

It is hoped to get copies from TNA of the OS 26 series for the two crossings this route makes across township boundaries – firstly just south of Bogle Houses when the crossing is made from Holy Island PH, Kyloe TS to Lowick PH, Lowick TS, and secondly where it crosses the wall which marks the land ownership boundary today, from Lowick PH, Lowick TS to Lowick PH, Holburn TS.

These will be sent in when they become available.

6. 1866 OS 1st ed scale 1:2,500, the 25"

Sheets XI/11, XI/15

These sheets are not available at Woodhorn but copies have been obtained from the British Library.

The north end of the route (A) is shown on sheet XI/11. It can be seen that the point, where Blawearie stands today and extending a little further south as a fenced lane, is plot 91 in Holy Island parish, Kyloe township. In the Book of Reference for this parish and township this plot is described

as 'public road'. Once it ceases to be fenced, it enters plot 103, which is described in the Book of Reference as 'rough pasture, furze, etc'.

Still in the same parish and township and on the same sheet, the alleged route then passes Bogle Houses. As it is unfenced it does not have an individual plot number. The route is braced to show that it is included in two large plots, numbers 104 & 105.. These are described as 'arable & rough pasture' and 'rough pasture, rocks & roads' respectively in the Book of Reference.

On sheet XI/15 the alleged route is shown crossing the parish boundary (B) into the parish of Lowick, township of Lowick, just south of Bogle Houses. It continues south, just to the west of the boundary with Holy Island parish. [the photographs of this section have been mislaid.] The plot numbers were recorded as 257 – 'plantation', 248 – 'pasture & road' and 243 – 'rough pasture, streams, roads etc'.

Still on the same sheet, the alleged route now passes into the township of Holburn at (C) but still in the parish of Lowick. It goes south down Catton Ridge and across to the Lowick road (D). This is plot 27 which is described as 'rough pasture, roads, streams etc'

See extracts

1866 OS 1st ed scale 1:10,560, the 6"

Roll 3

The route can be seen in its entirety from its northernmost point (A) to Bogle Houses, just south of which it crosses the parish boundary between Kyloe parish to the north and Lowick parish to the south (B) and then southwards through the woods lying to the west of the parish boundary, which it crosses as it passes through the wall (C) mentioned above which is a landownership boundary today. It can then be seen turning west and then south along Catton Ridge turning to join the Lowick road (D) opposite the minor road which provides the access to Laverock Law.

See extracts

7. 1897 OS 2nd ed scale 1:10,560, the 6"

Sheet X1 SE

The route described above is shown just as clearly on the 2nd edition of the OS. It is not labelled BR or FP which suggests that the surveyor decided that it was of a higher status, ie a road.

See extract

8. OS maps on line

National Library of Scotland

1897 OS 1st ed revised, scale 1" to a mile

1899 OS 2nd ed, scale 6" to a mile

1954 OS, scale 2 1/2 " to a mile

These also show the route clearly. The alleged route has been highlighted in red. By 1954, it would appear that a new track has been created to give it direct access to the road shortly after C, so the section down Catton Ridge has disappeared but two gateways still exist at the appropriate points.

See extracts

9. 1910 Finance Act NRO 2000/83

The northern part of the alleged route is shown on the plan ref NRO 437/XI/12. The fenced section past Blawearie is shown as a 'white road' indicating that it was considered to be a public road on which no development tax would be payable. But once it becomes unfenced it passes into plot 27 which includes Bogle Houses.

On the plan ref NRO 437/XI/15 the route is shown to be in plot 149 described as 'plantations, Black Heddon' in the land use and location columns. This appears on p 13 of the Book of Reference. The owner and occupier is shown as C J Leyland and there is a deduction for 'right of way or user' of £30.

See extracts

Conclusion

Please will you consider the evidence given above, which suggests that a minor public road existed between the small villages of Kyloe and Holburn in the nineteenth century?

A restricted byway or public bridleway along this line would provide a link between the villages of Fenwick and Kyloe and the excellent bridleway network which extends from Holburn thus opening it up to horse riders and cyclists from a wider area without the need for them having to mix with traffic on local tarmac roads.

Sent to NCC January 2017

North end of alleged route (A)



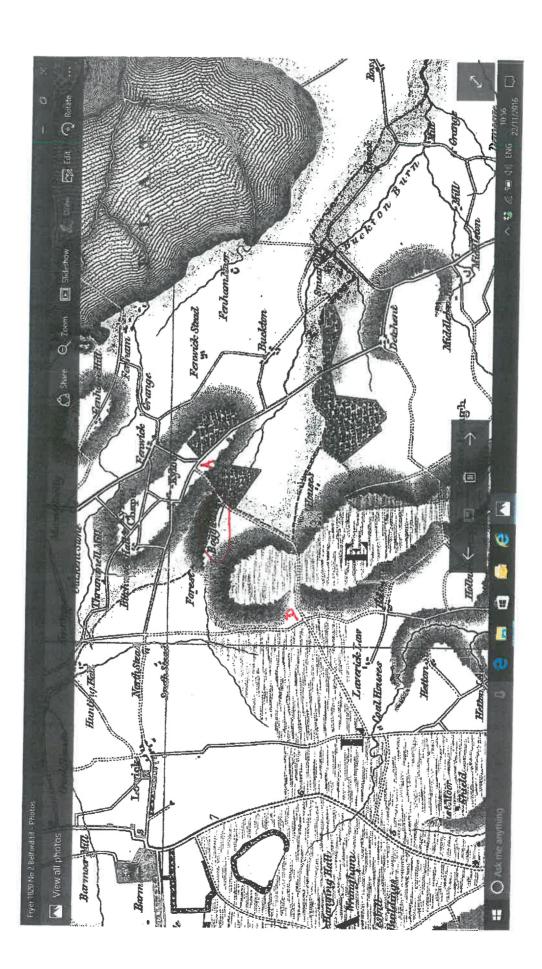
South-west end of alleged route (D)

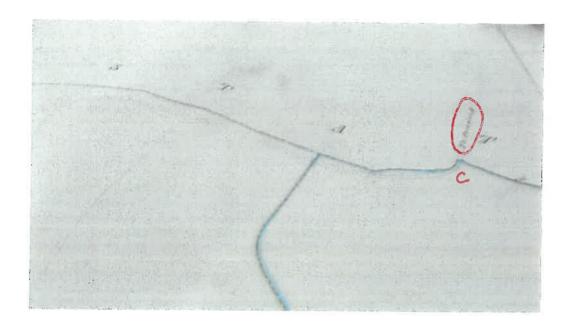
Land oronaship boundary wall with gate way (c)

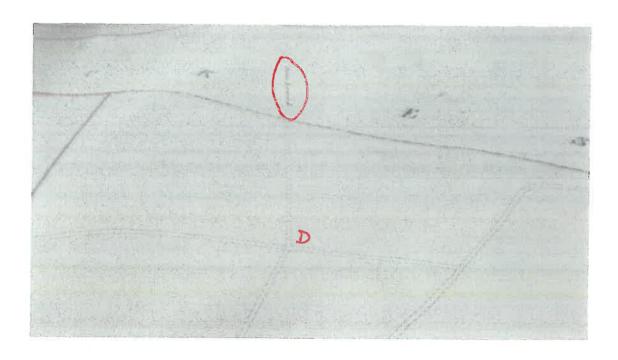


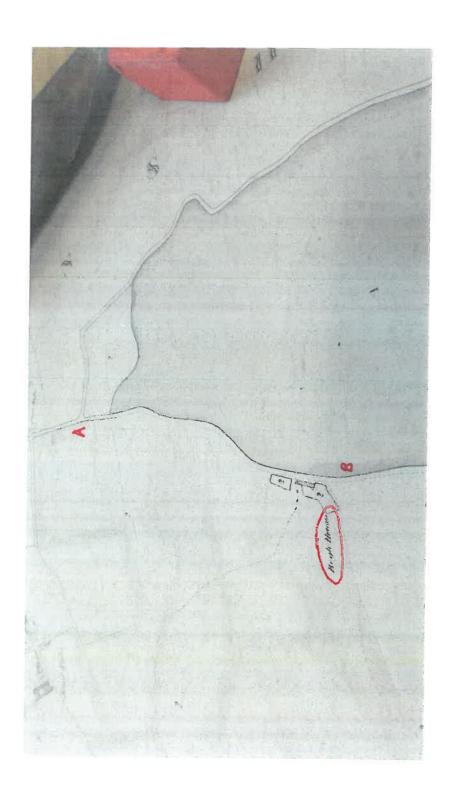


Short section not on a forest road

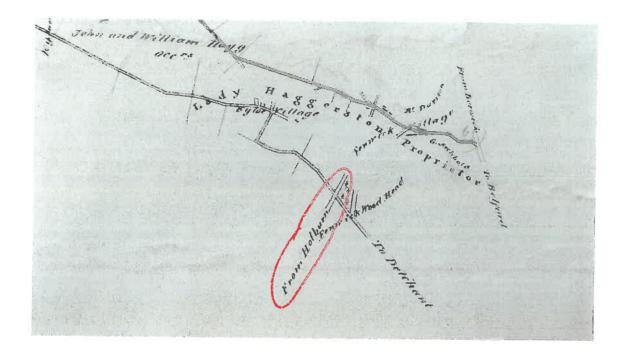


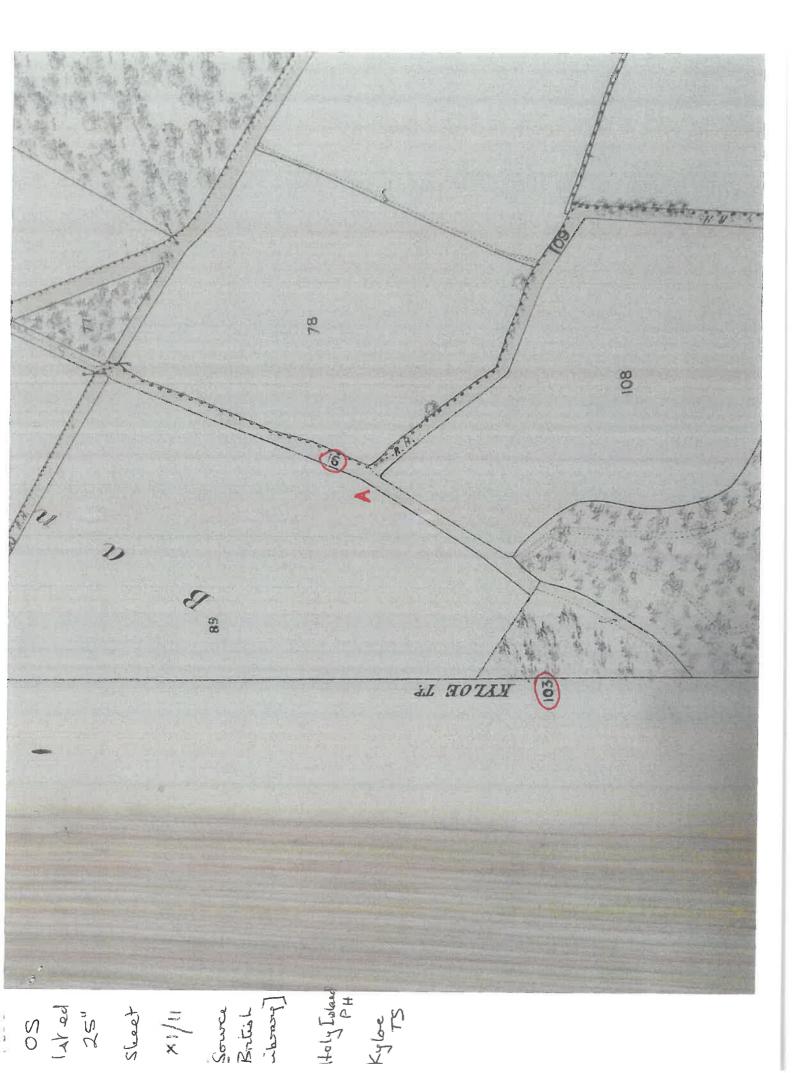


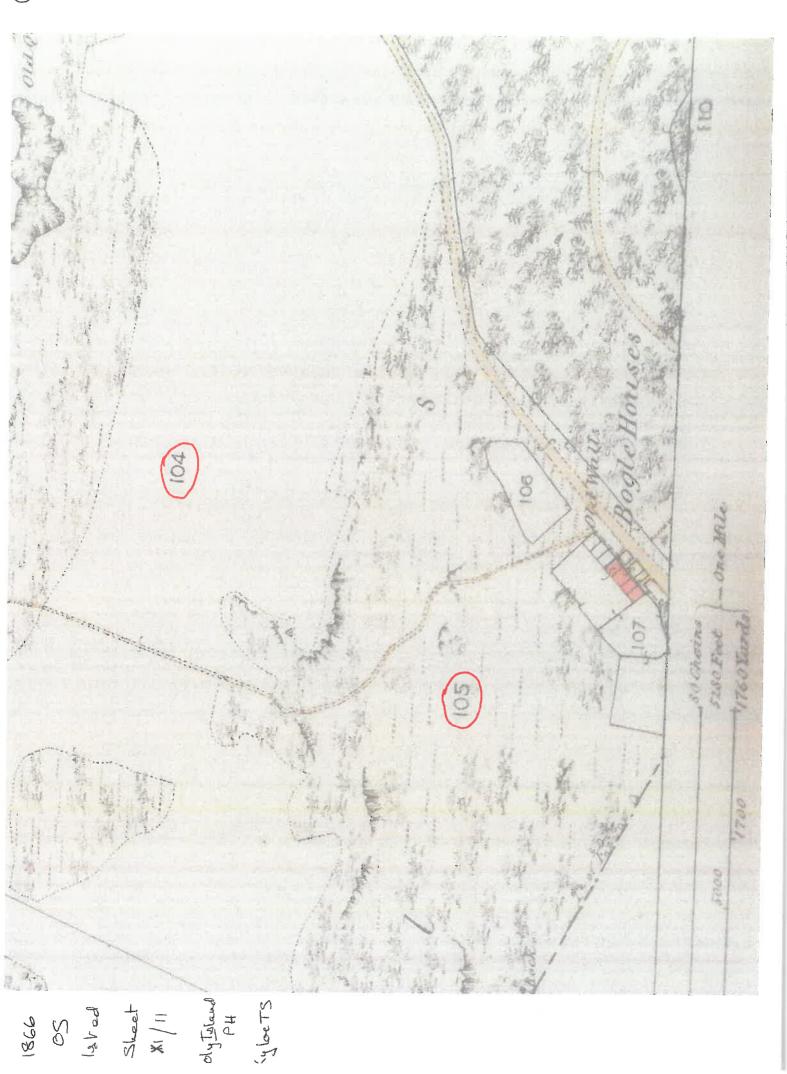




1848 Tithe Award for the Township of Kyloe in the Parish of Kyloe







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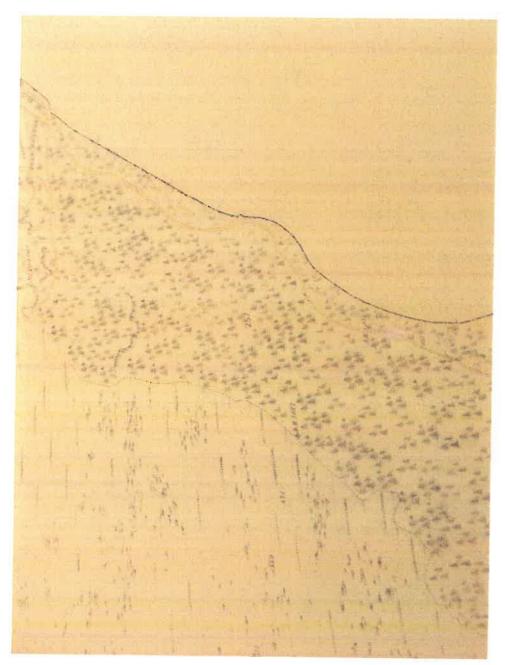
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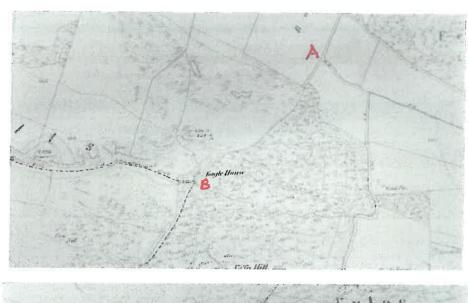
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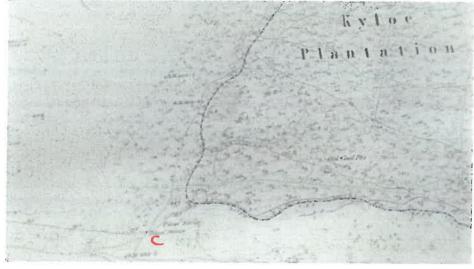
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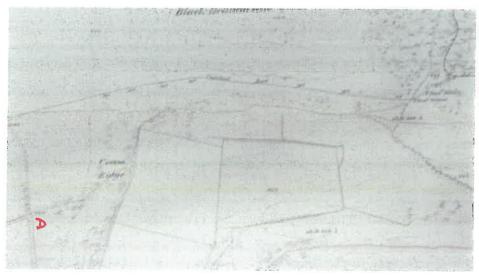
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23	14	44.712	Arable, rough pasture, & road.
22	15	23.469	Arable, stream, & road.
	16	15.079	Arable & stream.
XŸ. 3.	17	12.879	Arable.
"	18	1.816	Rough pasture.
"	19	5.758	Rough pasture & roads.
"	20	13.434	Arable.
"	21	14.510	Arable.
22	22	15.526	Arable, rough pasture, & stream.
	23	.084	Shed & yard.
**	24	17.237	Arable & stream.
25	25	9.144	Arable & road.
3)	26	6.712	Arable & road.
22	27	899-487	Rough pasture, roads, streams, &c.
	28	-009	Holburn Colliery.
XV. 4.	29	4.058	Wood.
XV. 2.	30	.702	Public road.
33	31	34.834	Arable & rough pasture.
>>	32	20.716	Arable.
>>	33	·106	House & garden.
"	84	28.955	Arable & stream.
	35	19.320	Arable & stream.
XV. 3.	36	23.335	Arable & stream.
33	37	-392	Rough pasture.
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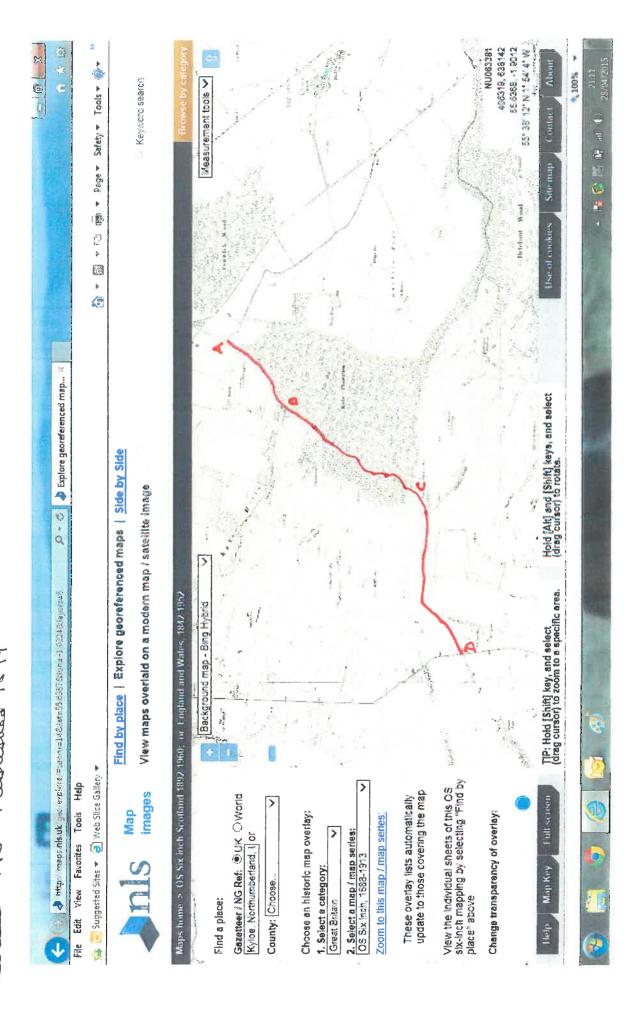


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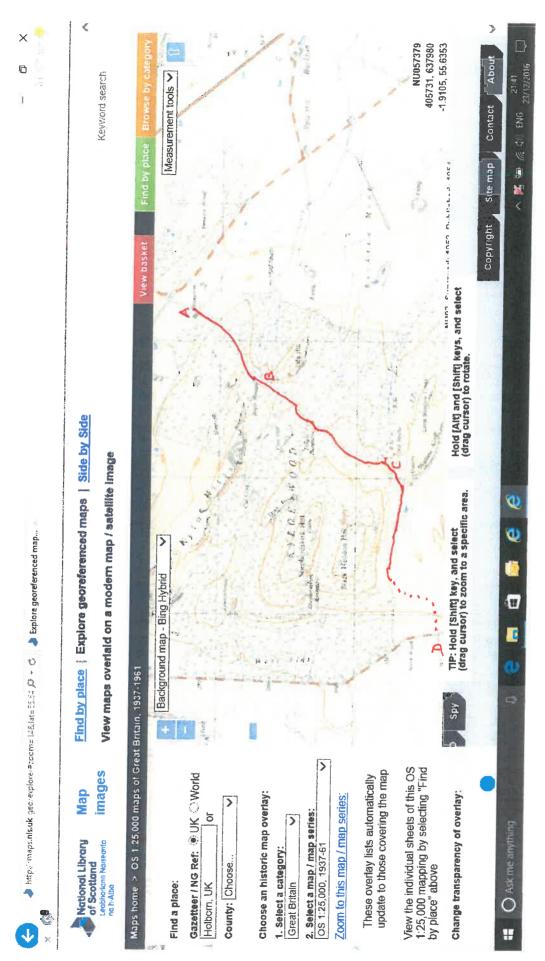
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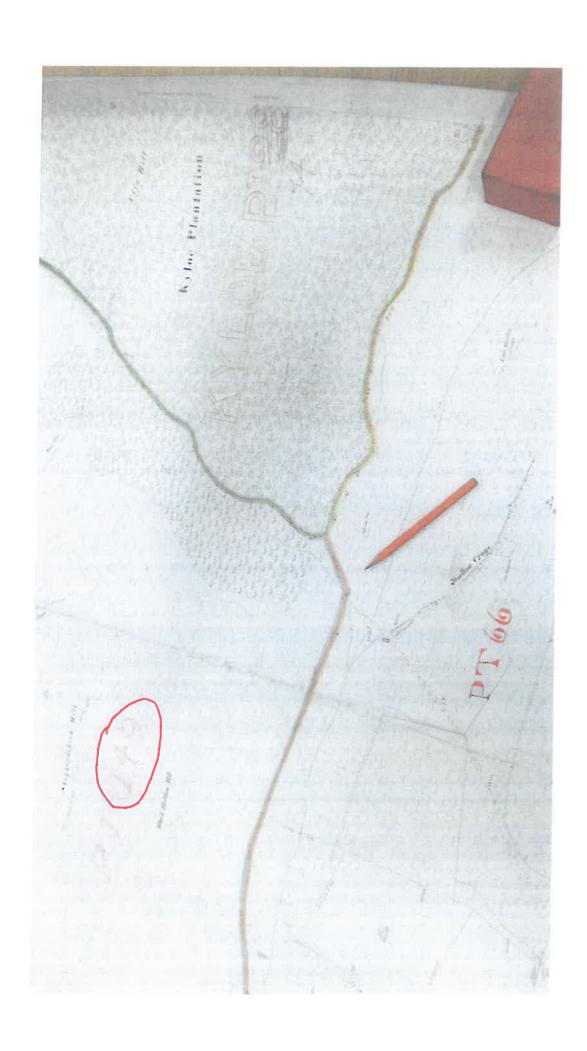


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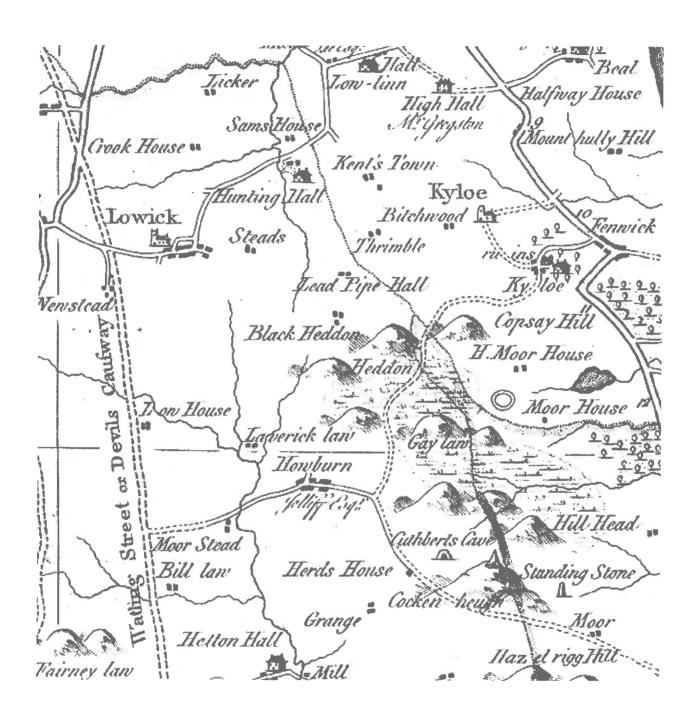
1910 Finance Act Plan

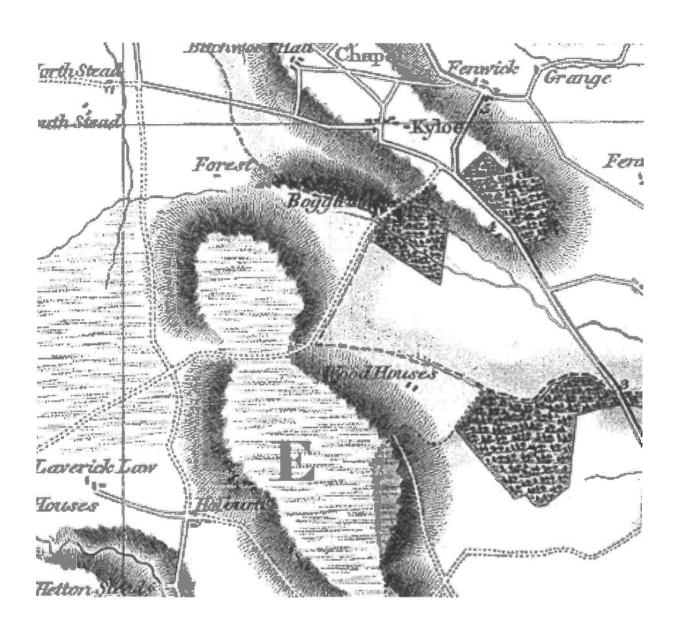


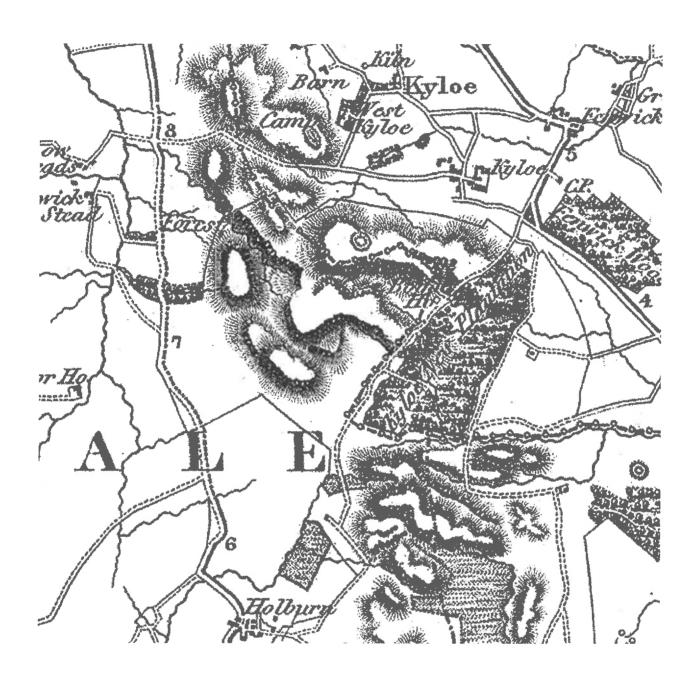
1910 Finance Act Plan

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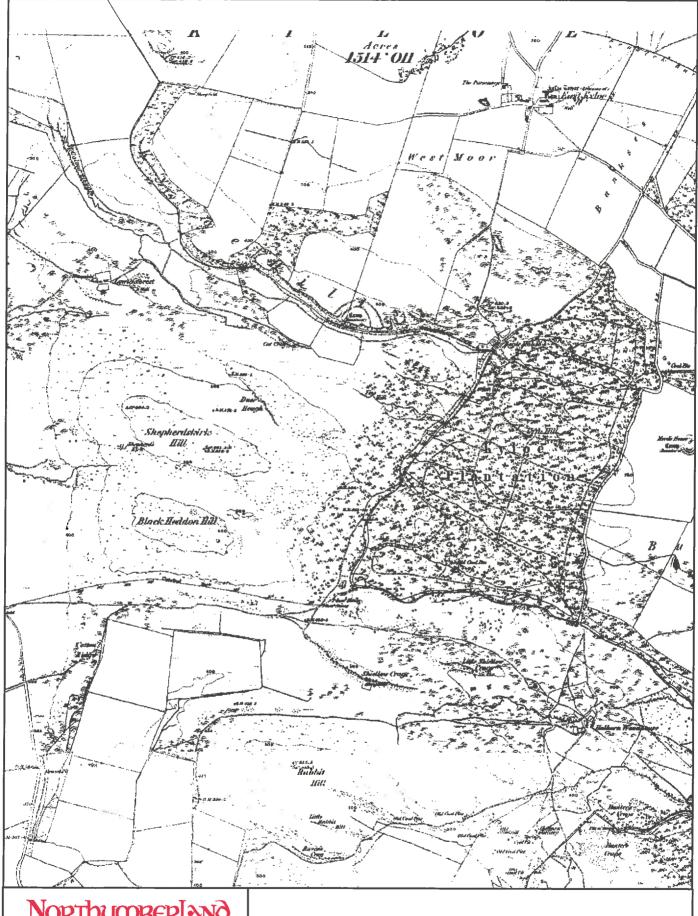
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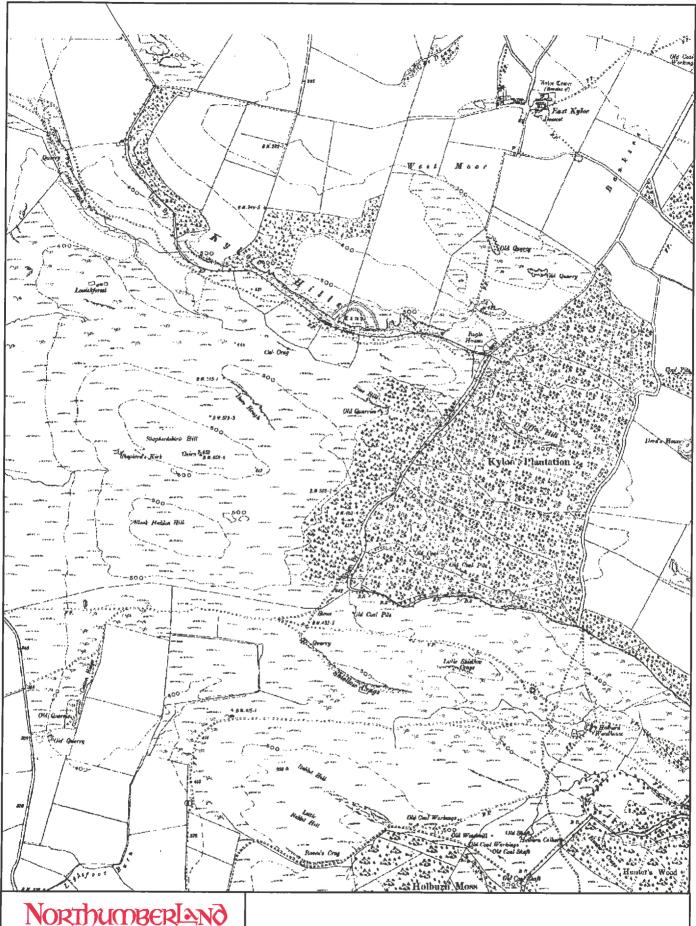


Northumberland County Council

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Ordnance Survey Map 1865/6

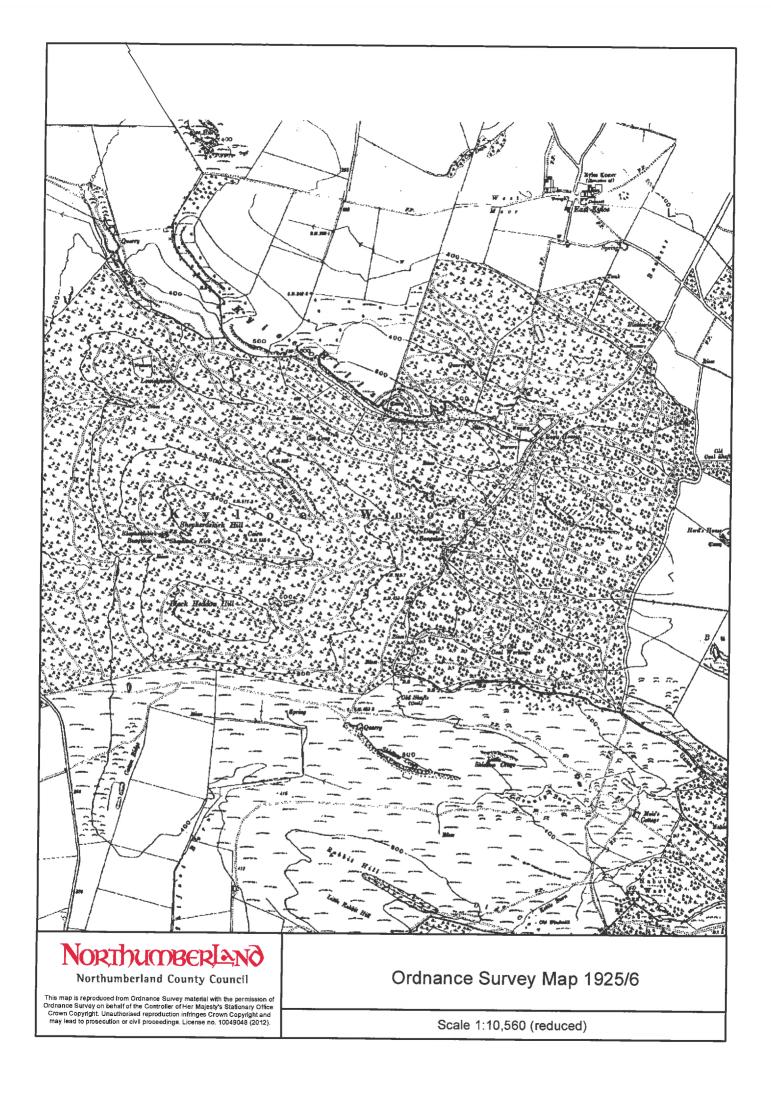
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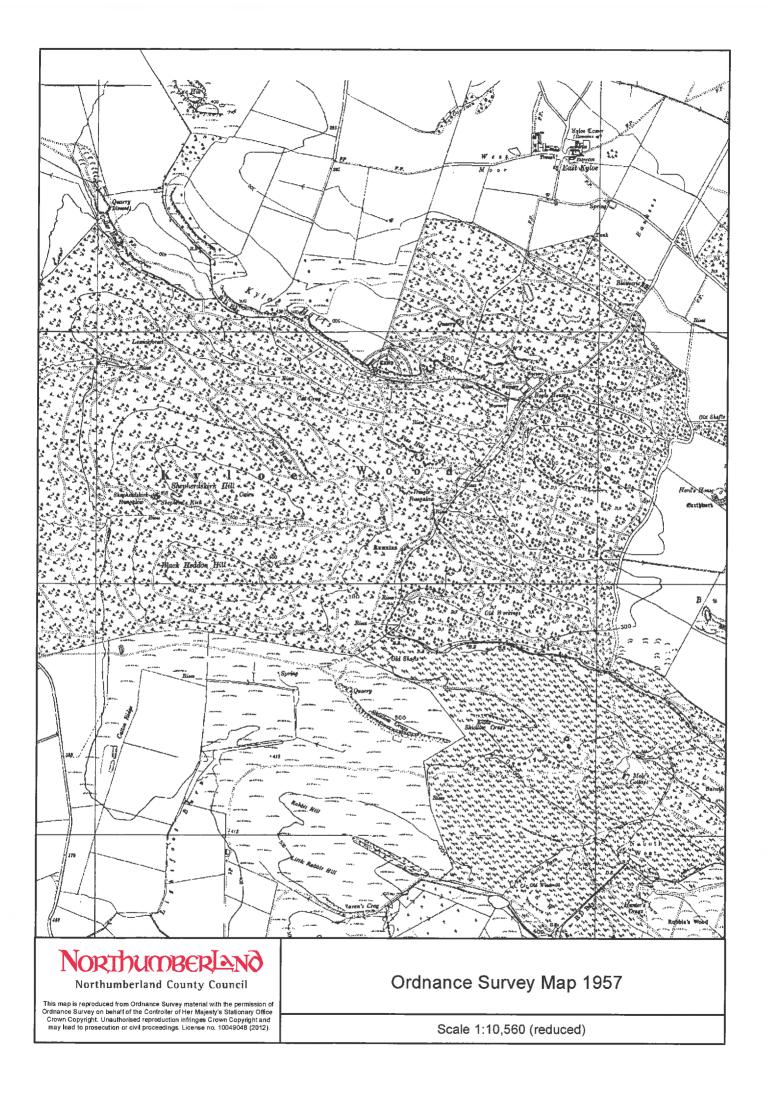


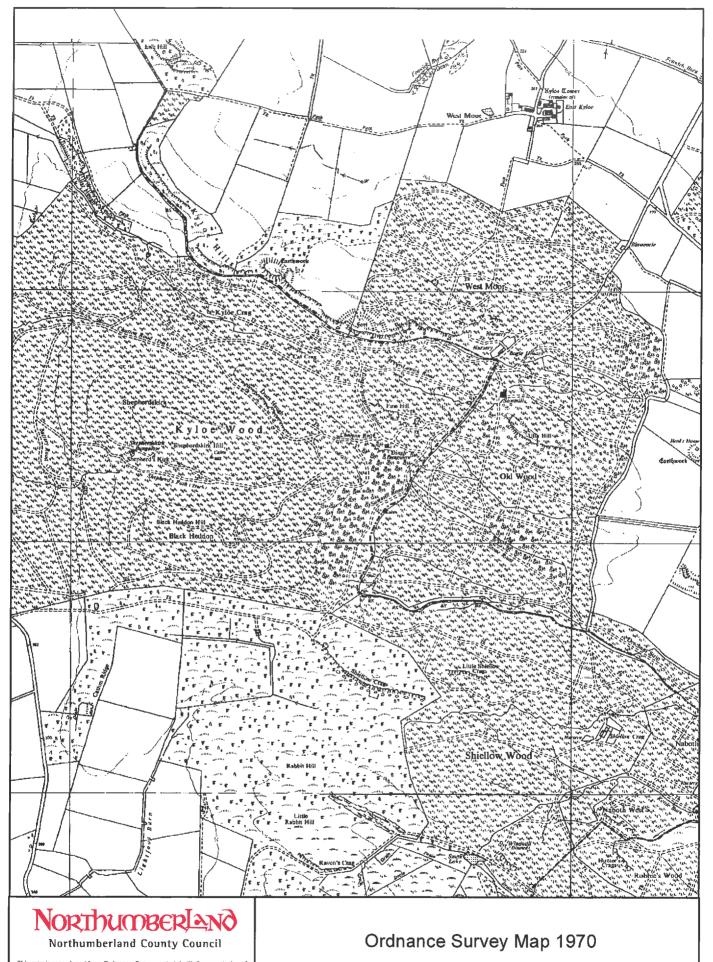
Northumberland County Council

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